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Federal Register

5–8–03 Thursday
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Contents

Federal Register
Vol. 68, No. 89
Thursday, May 8, 2003

Agriculture Department
See Animal and Plant Health Inspection Service
See Commodity Credit Corporation
See Farm Service Agency
See Forest Service

Air Force Department
NOTICES
Meetings:
Science Advisory Board, 24727–24728

Animal and Plant Health Inspection Service
RULES
Plant-related quarantine, domestic:
Fire ant, imported, 24613
Sapote Fruit Fly, 24605–24613
NOTICES
Animal drugs, feeds, and related products:
Patent extension; regulatory review period determinations—
Fel-O-Vax FIV Vaccine, 24705–24706

Broadcasting Board of Governors
NOTICES
Meetings; Sunshine Act, 24707

Centers for Disease Control and Prevention
NOTICES
Agency information collection activities; proposals, submissions, and approvals, 24744–24746
Meetings:
Disease, Disability, and Injury Prevention and Control Special Emphasis Panels, 24746

Commerce Department
See International Trade Administration
See National Oceanic and Atmospheric Administration
See Patent and Trademark Office

Commodity Credit Corporation
RULES
Conservation Reserve Program:
Acreage enrollment terms and conditions and program eligibility requirements, 24829–24845
NOTICES
Environmental statements; availability, etc.:
Conservation Reserve Program, 24847–24854

Comptroller of the Currency
NOTICES
Agency information collection activities; proposals, submissions, and approvals, 24741–24742

Defense Department
See Air Force Department

Drug Enforcement Administration
PROPOSED RULES
National Defense Authorization Act:
Federal departments or agencies may not sell from stocks any chemicals that could be used in manufacturing of controlled substances; provisions, 24689–24692

NOTICES
Applications, hearings, determinations, etc.:
Clair, Michael J., D.D.S., 24757–24758
Cleggett-Lucas, Jacqueline, M.D., et al., 24758–24759
Goswitz, Francis A., M.D., 24759–24760
Jackson, Michael D., M.D., 24760–24761
Nave, Kenneth S., M.D., 24761
Walker-Graham, Fereida, M.D., 24761–24762

Energy Department
See Federal Energy Regulatory Commission

Environmental Protection Agency
RULES
Air pollutants, hazardous; national emission standards:
Chemical recovery combustion sources at kraft, soda, sulfate, and stand-alone semichemical pulp mills
Correction, 24653
PROPOSED RULES
Air pollution; standards of performance for new stationary sources:
Monitoring requirements, 24692–24700
NOTICES
Agency information collection activities; proposals, submissions, and approvals, 24734–24737
Air programs:
Stratospheric ozone protection—
Methyl bromide; process for exempting critical uses, 24737–24740
Environmental statements; notice of intent:
Coastal nonpoint pollution control programs; States and territories—
American Samoa, 24726
North Carolina, 24726–24727
Meetings:
FIFRA Scientific Advisory Panel, 24740
Superfund; response and remedial actions, proposed settlements, etc.:
Nelson Galvanizing Site, NY, 24740–24741

Executive Office of the President
See Presidential Documents
See Trade Representative, Office of United States

Farm Service Agency
NOTICES
Environmental statements; availability, etc.:
Conservation Reserve Program, 24847–24854

Federal Aviation Administration
RULES
Airworthiness directives:
General Electric Co., 24614–24615
PROPOSED RULES
Air carrier certification and operations:
Hazardous materials training requirements; air carriers and commercial operators, 24809–24827
NOTICES
Exemption petitions; summary and disposition, 24786–24787
Meetings:
RTCA, Inc., 24787

Federal Election Commission
NOTICES
Meetings; Sunshine Act, 24741

Federal Energy Regulatory Commission
PROPOSED RULES
Electric utilities (Federal Power Act):
Undue discrimination; remedying through open access transmission service and standard electricity market design, 24679–24689
NOTICES
Environmental statements; availability, etc.:
Hackberry LNG Terminal, L.L.C.; technical conference attendees, 24733
Hydroelectric applications, 24733–24734
Applications, hearings, determinations, etc.:
AES Ocean Express, L.L.C., 24728
ANR Pipeline Co., 24728
Canyon Creek Compression Co., 24728
Columbia Gulf Transmission Co., 24728–24729
Destin Pipeline Company, L.L.C., 24729–24730
Distrigas of Massachusetts LLC, 24730
Great Lakes Gas Transmission Limited Partnership, 24730
GridAmerica Co., 24730
Islander East Pipeline Company, L.L.C., 24730–24731
National Fuel Gas Supply Corp., 24731
Natural Gas Pipeline Company of America, 24731–24732
PG&E Gas Transmission, Northwest Corp., 24732
Questar Pipeline Co., 24732
Texas Eastern Transmission, LP, 24732–24733
Williston Basin Interstate Pipeline Co., 24733

Federal Highway Administration
RULES
Indian reservation roads bridge program, 24642–24644
Railroad-highway projects, 24639–24641

Federal Railroad Administration
NOTICES
Exemption petitions; etc.
Burlington Northern & Sante Fe Railway Co., 24787–24788
Meetings:
Passenger equipment safety appliances; technical conference, 24788–24789
Traffic control systems; discontinuance or modification:
Burlington Northern & Santa Fe Railway Co., 24789–24790

Federal Reserve System
NOTICES
Agency information collection activities; proposals, submissions, and approvals, 24741–24742
Banks and bank holding companies:
Change in bank control, 24742
Formations, acquisitions, and mergers, 24742–24743
Meetings; Sunshine Act, 24743
Organization, functions, and authority delegations; Amendments, 24743

Federal Trade Commission
PROPOSED RULES
Alternative fuels and alternative fueled vehicles; labeling requirements, 24669–24679

Financial Management Service
See Fiscal Service

Fiscal Service
RULES
Book-entry Treasury savings bonds:
New Treasury Direct system; Series EE, 24793–24807

Fish and Wildlife Service
PROPOSED RULES
Marine mammals:
Incidental take during specified activities
Florida manatees; watercraft and watercraft access facilities, 24700–24704
NOTICES
Agency information collection activities; proposals, submissions, and approvals, 24751–24753
Endangered and threatened species:
Conservation banks, 24753

Forest Service
NOTICES
Agency information collection activities; proposals, submissions, and approvals, 24706–24707

Government Ethics Office
NOTICES
Privacy Act:
Systems of records, 24744

Health and Human Services Department
See Centers for Disease Control and Prevention
See Indian Health Service
See Substance Abuse and Mental Health Services Administration
NOTICES
Meetings:
Vital and Health Statistics National Committee, 24744

Housing and Urban Development Department
NOTICES
Agency information collection activities; proposals, submissions, and approvals, 24751

Indian Affairs Bureau
NOTICES
Tribal-State Compacts approval; Class III (casino) gambling:
Forest State Potawatomi Community, WI, 24754

Indian Health Service
NOTICES
Grants and cooperative agreements; availability, etc.:
American Indians/Alaska Natives; Nursing Recruitment Program, 24746–24749

Interior Department
See Fish and Wildlife Service
See Indian Affairs Bureau
See Land Management Bureau
See Reclamation Bureau
See Surface Mining Reclamation and Enforcement Office
NOTICES
Meetings:
Resource Advisory Councils—
California Desert District, 24751

Internal Revenue Service
RULES
Procedure and administration:
Electronic tax administration facilitation; correction, 24644

NOTICES
Agency information collection activities; propoals, submissions, and approvals, 24791

International Trade Administration
NOTICES
Antidumping:
Durum wheat and hard red spring wheat from - - Canada, 24707–24716
Countervailing duties:
Cut-to-length carbon quality steel plate from - - Korea, 24716–24717
Softwood lumber products from—
Canada, 24717–24725

International Trade Commission
NOTICES
Import investigations:
Plastic grocery and retail bags, 24755–24756

Justice Department
See Drug Enforcement Administration
See Justice Programs Office
NOTICES
Pollution control; consent judgments:
Levine, Syd H., et al., 24756
Metal Management Midwest, Inc., 24756
Morgantown Engineering & Construction, Inc., 24756–24757
Wyeth, et al., 24757

Justice Programs Office
NOTICES
Agency information collection activities; proposals, submissions, and approvals, 24762–24764

Land Management Bureau
NOTICES
Disclaimer of interest applications:
Alaska, 24754

National Highway Traffic Safety Administration
RULES
Motor vehicle safety standards:
Occupant crash protection—
Child restraint anchorage systems, 24664–24667

National Institute for Literacy
NOTICES
Meetings:
National Institute for Literacy Advisory Board, 24764

National Oceanic and Atmospheric Administration
RULES
Fishery conservation and management:
Alaska; fisheries of Exclusive Economic Zone-
Gulf of Alaska groundfish, 24668
Steller sea lion protection; correcting amendments, 24615–24637
Yellowfin sole, 24667–24668
NOTICES
Environmental statements; notice of intent:
Coastal nonpoint pollution control programs; States and territories—
American Samoa, 24726
North Carolina, 24726–24727
Permits:
Marine mammals, 24727

Nuclear Regulatory Commission
NOTICES
Agency information collection activities; proposals, submissions, and approvals, 24764–24765

Office of United States Trade Representative
See Trade Representative, Office of United States

Patent and Trademark Office
NOTICES
Agency information collection activities; proposals, submissions, and approvals, 24727

Personnel Management Office
RULES
Excepted service:
Temporary organizations, 24605

Public Debt Bureau
See Fiscal Service

Reclamation Bureau
NOTICES
Central Valley Project Improvement Act:
Water management plans; evaluation criteria, 24754–24755

Research and Special Programs Administration
RULES
Hazardous materials:
Hazardous materials transportation—
DOT specification cylinders; maintenance, requalification, repair, and use requirements, 24653–24664

Securities and Exchange Commission
NOTICES
Agency information collection activities; proposals, submissions, and approvals, 24765
Meetings; Sunshine Act, 24775–24776
Self-regulatory organizations; proposed rule changes:
American Stock Exchange LLC, 24776–24778
Chicago Board Options Exchange, Inc., 24778
National Securities Clearing Corp., 24778–24779
Pacific Exchange, Inc., 24779–24780
Philadelphia Stock Exchange, Inc., 24780–24782
Applications, hearings, determinations, etc.:
MAI Systems Corp., 24765–24766
Manufacturers Investment Trust, et al., 24766–24775

Selective Service System
NOTICES
Agency information collection activities; proposals, submissions, and approvals, 24782

State Department
RULES
Visas; immigrant documentation:
Victims of terrorism, 24638–24639
NOTICES
Commercial export license; notifications to Congress, 24782–24784
Shrimp trawl fishing; sea turtle protection guidelines; certifications, 24784–24785

Substance Abuse and Mental Health Services Administration
NOTICES
Agency information collection activities; proposals, submissions, and approvals, 24749–24750
Grants and cooperative agreements; availability, etc.:
Targeted Capacity Expansion Program, 24750–24751

Surface Mining Reclamation and Enforcement Office
RULES
Permanent program and abandoned mine land reclamation plan submissions:
Kentucky, 24644–24647
Wyoming, 24647–24653

Surface Transportation Board
NOTICES
Railroad operation, acquisition, construction, etc.:
Metro Regional Transit Authority, 24790

Trade Representative, Office of United States
NOTICES
Trade Act of 1974:
Countries that deny adequate protection, or market access for intellectual property rights; identification, 24785
Trade Policy Staff Committee:
U.S.-Australia Free Trade Agreement; environmental review, 24785–24786

Transportation Department
See Federal Aviation Administration
See Federal Highway Administration
See Federal Railroad Administration
See National Highway Traffic Safety Administration
See Research and Special Programs Administration
See Surface Transportation Board
See Transportation Statistics Bureau

Transportation Statistics Bureau
NOTICES
Meetings:
Transportation Statistics Advisory Council, 24790

Treasury Department
See Comptroller of the Currency
See Fiscal Service
See Internal Revenue Service
NOTICES
Agency information collection activities; proposals, submissions, and approvals, 24790–24791

Separate Parts In This Issue

Part II
Treasury Department, Fiscal Service, 24793–24807

Part III
Transportation Department, Federal Aviation Administration, 24809–24827

Part IV
Agriculture Department, Commodity Credit Corporation, 24829–24845

Part V
Agriculture Department, Commodity Credit Corporation; Agriculture Department, Farm Service Agency, 24847–24854

Part VI
Executive Office of the President, Presidential Documents, 24855–24858

Reader Aids
Consult the Reader Aids section at the end of this issue for phone numbers, online resources, finding aids, reminders, and notice of recently enacted public laws.

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CFR PARTS AFFECTED IN THIS ISSUE

A cumulative list of the parts affected this month can be found in the Reader Aids section at the end of this issue.

3 CFR
Executive Orders:
12865 (Revoked by 13298)..... 24857
13069 (Revoked by 13298)..... 24857
13098 (Revoked by 13298)..... 24857
13298..... 24857
5 CFR
213..... 24605
7 CFR
301 (2 documents)..... 24605, 24613
1410..... 24830
14 CFR
39..... 24614
Proposed Rules:
119..... 24810
121..... 24810
135..... 24810
145..... 24810
15 CFR
902..... 24615
16 CFR
Proposed Rules:
309..... 24669
18 CFR
Proposed Rules:
35..... 24679
21 CFR
Proposed Rules:
1310..... 24689
22 CFR
42..... 24638
23 CFR
140..... 24639
646..... 24639
661..... 24642
26 CFR
1..... 24644
301..... 24644
602..... 24644
30 CFR
917..... 24644
950..... 24647
31 CFR
315..... 24794
351..... 24794
353..... 24794
359..... 24794
360..... 24794
363..... 24794
40 CFR
63..... 24653
Proposed Rules:
60..... 24692
49 CFR
107..... 24653
171..... 24653
173..... 24653
177..... 24653
180..... 24653
571..... 24664
50 CFR
679 (3 documents)..... 24615, 24667, 24668
Proposed Rules:
18..... 24700

Rules and Regulations

Federal Register
Vol. 68, No. 89
Thursday, May 8, 2003

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

OFFICE OF PERSONNEL MANAGEMENT

5 CFR PART 213

RIN 3206–AJ70

Excepted Service—Temporary Organizations

AGENCY: Office of Personnel Management.

ACTION: Interim rule with request for comments.

SUMMARY: The Office of Personnel Management (OPM) is issuing an interim regulation to amend the excepted service Schedule A authority for temporary organizations. This regulation will revise the definition of the term "temporary organization" to comply with recently-enacted legislation. It will also establish criteria with which temporary organizations must comply if they wish to extend an employee's appointment.

DATES: *Effective Date:* Effective Date: May 8, 2003.

Applicability Date: A temporary organization that does not meet the new criteria must move its incumbents from the authority by August 6, 2003.

Comments Date: Comments must be received on or before July 7, 2003.

ADDRESSES: Send or deliver written comments to Ellen E. Tunstall, Deputy Associate Director for Talent and Capacity Policy, Office of Personnel Management, 1900 E Street, NW., Room 6551, Washington, DC 20415.

FOR FURTHER INFORMATION CONTACT: Christina Vay by telephone on 202–606–0960, by FAX on 202–606–2329, or by TDD on 202–418–3134.

SUPPLEMENTARY INFORMATION: The Floyd D. Spence National Defense Authorization Act for fiscal year 2001 (Pub. L. 106–398, October 30, 2000) added a new subchapter IV to chapter 31 of title 5, United States Code. The new subchapter:

—Defined the term "temporary organization;"
—Provided that the head of a temporary organization may make excepted service appointments to fill positions in these organizations of up to 3 years;
—Provided for appointment extensions for no more than 2 years; and
—Gave return rights to those who transfer or convert (with agency head approval) to these appointments from career or career-conditional appointments if certain conditions are met.

Because of these statutory changes, we are amending the current excepted service Schedule A appointing authority at 5 CFR 213.3199 for temporary organizations. If a temporary organization has employees currently appointed under this authority and the temporary organization meets the criteria of the revised authority at 5 CFR 213.3199, then the appointments are valid and no changes to the appointments are needed. If a temporary organization does not meet the criteria of the revised authority, it must move any incumbents from the authority within 90 days of the date of this interim regulation. The incumbents are moved to either another governmentwide excepted service authority or an agency-specific excepted service authority that has already been granted. If the temporary organization does not have another authority available to use, it may request from OPM an agency-specific excepted service authority.

We are issuing this regulation as an interim rule because the law defining temporary organizations is already in effect. Delaying the effective date of the regulation would not change the fact that the law is in place and must be applied.

Regulatory Flexibility Act

I certify that these regulations will not have a significant economic impact on a substantial number of small entities because the regulations pertain only to Federal employees and agencies.

Executive Order 12866, Regulatory Review

This rule has been reviewed by the Office of Management and Budget in accordance with Executive Order 12866.

List of Subjects in 5 CFR Part 213

Government employees, Reporting and recordkeeping requirements.

Office of Personnel Management.

Kay Coles James,

Director.

■ Accordingly, OPM amends 5 CFR part 213 as follows:

PART 213—EXCEPTED SERVICE

■ 1. The authority citation for part 213 is revised to read as follows:

Authority: 5 U.S.C. 3161; 5 U.S.C. 3301 and 3302, E.O. 10577, 3 CFR 1954–1958 Comp., p. 218; sec. 213.101 also issued under 5 U.S.C. 2103; sec. 213.3102 also issued under 5 U.S.C. 3301, 3302, 3307, 8337(h) and 8456; E.O. 12364, 47 FR 22931, 3 CFR 1982 Comp., p. 185; 38 U.S.C. 4301 *et seq.*; Pub. L. 105–339, 112 Stat. 3182–83; and E.O. 13162.

■ 2. In subpart C § 213.3199 is revised to read as follows:

§ 213.3199 Temporary organizations.

Positions on the staffs of temporary organizations, as defined in 5 U.S.C. 3161(a). Appointments may not exceed 3 years, but temporary organizations may extend the appointments for 2 additional years if the conditions for extension are related to the completion of the study or project.

[FR Doc. 03–11398 Filed 5–7–03; 8:45 am]
BILLING CODE 6325–38–P

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

7 CFR Part 301

[Docket No. 03–032–1]

Sapote Fruit Fly

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Interim rule and request for comments.

SUMMARY: We are quarantining part of Hidalgo County, TX, because of the sapote fruit fly and restricting the interstate movement of regulated articles from the quarantined area. This action is necessary on an emergency basis to prevent the spread of the sapote fruit fly to noninfested areas of the United States.

DATES: This interim rule was effective May 2, 2003. We will consider all comments that we receive on or before July 7, 2003.

ADDRESSES: You may submit comments by postal mail/commercial delivery or by e-mail. If you use postal mail/commercial delivery, please send four copies of your comment (an original and three copies) to: Docket No. 03–032–1, Regulatory Analysis and Development, PPD, APHIS, Station 3C71, 4700 River Road Unit 118, Riverdale, MD 20737–1238. Please state that your comment refers to Docket No. 03–032–1. If you use e-mail, address your comment to *regulations@aphis.usda.gov*. Your comment must be contained in the body of your message; do not send attached files. Please include your name and address in your message and "Docket No. 03–032–1" on the subject line.

You may read any comments that we receive on this docket in our reading room. The reading room is located in room 1141 of the USDA South Building, 14th Street and Independence Avenue SW., Washington, DC. Normal reading room hours are 8 a.m. to 4:30 p.m., Monday through Friday, except holidays. To be sure someone is there to help you, please call (202) 690–2817 before coming.

APHIS documents published in the **Federal Register**, and related information, including the names of organizations and individuals who have commented on APHIS dockets, are available on the Internet at *http://www.aphis.usda.gov/ppd/rad/webrepor.html*.

FOR FURTHER INFORMATION CONTACT: Mr. Stephen A. Knight, Senior Staff Officer, PPQ, APHIS, 4700 River Road Unit 134, Riverdale, MD 20737–1236; (301) 734–8247.

SUPPLEMENTARY INFORMATION:

Background

We are amending the "Domestic Quarantine Notices" in 7 CFR part 301 by adding a new subpart, "Sapote Fruit Fly" (§§ 301.99 through 301.99–10, referred to below as the regulations). The regulations quarantine part of Hidalgo County, TX, because of the sapote fruit fly and restrict the interstate movement of regulated articles from the quarantined area.

The sapote fruit fly (*Anastrepha serpentina*) is a destructive pest of fruits and vegetables, including apples, avocados, grapefruit, mangoes, peaches, pears, and tangerines. This pest can cause serious economic losses by lowering the yield and quality of these fruits and vegetables and, in some cases, by damaging seedlings and young plants. Heavy infestations can result in the complete loss of these crops.

Recent trapping surveys in the lower Rio Grande valley in Texas have established that part of Hidalgo County, TX, is infested with sapote fruit fly. Officials of the Animal and Plant Health Inspection Service (APHIS) and State and county agencies in Texas have begun an intensive survey and eradication program in the infested area. Texas has restricted the intrastate movement of certain articles from the infested area to prevent the spread of the sapote fruit fly within Texas. However, Federal regulations are necessary to restrict the interstate movement of certain articles from the infested area to prevent the spread of the sapote fruit fly to noninfested areas of the United States. This interim rule establishes those Federal regulations, which are described below.

Section 301.99—Restrictions on Interstate Movement of Regulated Articles

Section 301.99 prohibits the interstate movement of regulated articles from quarantined areas except in accordance with the regulations.

Section 301.99–1—Definitions

Section 301.99–1 contains definitions of the following terms: *Administrator, Animal and Plant Health Inspection Service, certificate, compliance agreement, core area, day degrees, departmental permit, dripline, infestation, inspector, interstate, limited permit, moved (move, movement), person, Plant Protection and Quarantine, quarantined area, regulated article, sapote fruit fly,* and *State.*

Section 301.99–2—Regulated Articles

Certain articles present a significant risk of spreading the sapote fruit fly if they are moved from quarantined areas without restrictions. We call these articles regulated articles. Paragraphs (a) through (e) of § 301.99–2 list the following as regulated articles:

- The sapote fruit fly;
- Fruits and vegetables that are not canned or dried or that are not frozen below −17.8 °C (0 °F);
- Soil within the dripline of plants that are producing or have produced those fruits or vegetables; and
- Any other product, article, or means of conveyance that an inspector determines to present a risk of spreading the sapote fruit fly after the inspector provides written notification to the person in possession of the product, article, or means of conveyance that it is subject to the restrictions in the regulations.

The last item listed above, which provides for the designation of "any other product, article, or means of conveyance" as a regulated article, is intended to address the risks presented by, for example, a truck with sapote fruit fly pupae in the cracks of its floorboards, thus enabling an inspector to designate that truck as a regulated article in order to ensure that any necessary risk-mitigating measures are carried out.

Section 301.99–3—Quarantined Areas

Paragraph (a) of § 301.99–3 provides the criteria for the inclusion of States, or portions of States, in the list of quarantined areas. Under these criteria, any State or portion of a State in which the sapote fruit fly is found by an inspector, or in which the Administrator has reason to believe that the sapote fruit fly is present, will be listed as a quarantined area. These criteria also provide that an area will be designated as a quarantined area when the Administrator considers it necessary due to the area's inseparability for quarantine enforcement purposes from localities in which the sapote fruit fly has been found.

Paragraph (a) of § 301.99–3 also provides that we will designate less than an entire State as a quarantined area only if we determine that the State has adopted and is enforcing restrictions on the intrastate movement of regulated articles that are equivalent to those imposed on the interstate movement of regulated articles and that the designation of less than an entire State as a quarantined area will prevent the interstate spread of the sapote fruit fly. These determinations would indicate that infestations are confined to the quarantined areas and eliminate the need for designating an entire State as a quarantined area.

The boundary lines that delimit the portion of a State that is designated as a quarantined area are set up approximately 4.5 miles from the locations where sapote fruit fly has been detected. The 4.5 mile radius distance for regulated areas from the trapping sites for sapote fruit fly is based upon several factors, including: Previous experience with fruit fly eradication programs, estimated efficacy of trapping grids, available data on natural dispersal, and recommendations from fruit fly experts familiar with the biology and behavior of the sapote fruit fly. The boundary lines may vary due to factors such as the location of sapote fruit fly host material, the location of transportation centers such as bus stations and airports, the pattern of persons moving in that State, the number and patterns of distribution of the sapote fruit fly, and the use of clearly identifiable lines for the boundaries.

We have determined that it is not necessary to designate the entire State of Texas as a quarantined area. The sapote fruit fly has not been found in any area of the State other than a portion of Hidalgo County, and Texas has adopted and is enforcing restrictions on the intrastate movement of regulated articles from that area that are equivalent to those we are imposing on the interstate movement of regulated articles. Therefore, in accordance with the criteria described in the previous paragraph, we have designated part of the lower Rio Grande valley in Hidalgo County, TX, as a quarantined area. The boundaries of the quarantined area are described in § 301.99–3(c) in the rule portion of this document.

Paragraph (b) of § 301.99–3 provides that we may temporarily designate any nonquarantined area in a State as a quarantined area when we determine that the nonquarantined area meets the criteria for designation as a quarantined area described in § 301.99–3(a). In such cases, we will give the owner or person in possession of the area a copy of the regulations along with written notice of the area's temporary designation as a quarantined area, after which time the interstate movement of any regulated article from the area will be subject to the regulations. This provision is necessary to prevent the spread of the sapote fruit fly during the time between the detection of the pest and the time a document quarantining the area can be made effective and published in the **Federal Register**. In the event that an area's designation as a temporary quarantined area is terminated, we will provide written notice of that termination to the owner or person in possession of the area as soon as practicable.

Section 301.99–4—Conditions Governing the Interstate Movement of Regulated Articles From Quarantined Areas

This section requires most regulated articles moving interstate from quarantined areas to be accompanied by a certificate or a limited permit. The U.S. Department of Agriculture (USDA or the Department) may move regulated articles interstate without a certificate or limited permit if the articles are moved for experimental or scientific purposes. However, the articles must be moved in accordance with a departmental permit issued by the Administrator, under conditions specified on the permit to prevent the spread of the sapote fruit fly.

Except for articles moved by APHIS or the Department, only regulated articles that are moved into the quarantined area from outside the quarantined area and that are accompanied by a waybill that indicates the point of origin may be moved interstate from the quarantined area without a certificate or limited permit. Additionally, the articles must be moved in an enclosed vehicle or be completely enclosed so as to prevent access by sapote fruit flies. The regulated articles must also be moved through the quarantined area without stopping (except for refueling and for traffic conditions such as traffic lights and stop signs), and the regulated articles must not be unpacked or unloaded in the quarantined area.

Section 301.99–5—Issuance and Cancellation of Certificates and Limited Permits

Under Federal domestic plant quarantine programs, there is a difference between the use of certificates and limited permits. Certificates are issued for regulated articles when an inspector finds that, because of certain conditions (*e.g.*, the article is free of sapote fruit fly), there is no pest risk before movement. Regulated articles accompanied by a certificate may be moved interstate without further restrictions. Limited permits are issued for regulated articles when an inspector finds that, because of a possible pest risk, the articles may be safely moved interstate only subject to further restrictions, such as movement to limited areas and movement for limited purposes. Section 301.99–5 explains the conditions for issuing a certificate or limited permit.

Specifically, § 301.99–5(a) provides that a certificate will be issued by an inspector for the movement of a regulated article if the inspector determines that the article: (1) Is free of the sapote fruit fly, has been treated in the presence of an inspector in accordance with § 301.99–10, or comes from a premises of origin that is free of the sapote fruit fly; (2) will be moved in compliance with any additional emergency conditions deemed necessary to prevent the spread of the sapote fruit fly under section 414 of the Plant Protection Act (7 U.S.C. 7714); and (3) is eligible for unrestricted movement under all other Federal domestic plant quarantines and regulations applicable to that article.

We have included a footnote (number 4) that provides an address for securing the addresses and telephone numbers of the local Plant Protection and Quarantine (PPQ) offices at which services of inspectors may be requested. We have also included a footnote (number 5) that explains that the Secretary of Agriculture may, under the Plant Protection Act, take emergency actions to seize, quarantine, treat, destroy, or apply other remedial measures to articles that are, or that he or she has reason to believe are, infested or infected by or contain plant pests.

Paragraph (b) of § 301.99–5 provides for the issuance of a limited permit by an inspector for interstate movement of a regulated article if the inspector determines that the article is to be moved to a specified destination for specified handling, utilization, or processing, and that the movement will not result in the spread of the sapote fruit fly. A limited permit will only be issued if the regulated article will be moved in compliance with any additional emergency conditions imposed by the Administrator under section 414 of the Plant Protection Act (7 U.S.C. 7714) to prevent the spread of the sapote fruit fly, and if the regulated article is eligible for interstate movement under all other Federal domestic plant quarantines and regulations applicable to the regulated article.

Paragraph (c) of § 301.99–5 allows any person who has entered into and is operating under a compliance agreement to issue a certificate or limited permit for the interstate movement of a regulated article after an inspector has determined that the article is eligible for a certificate or limited permit under § 301.99–5(a) or (b).

Also, § 301.99–5(d) contains provisions for the withdrawal of a certificate or limited permit by an inspector if the inspector determines that the holder of the certificate or limited permit has not complied with conditions for the use of the document. This section also contains provisions for notifying the holder of the reasons for the withdrawal and for holding a hearing if there is any conflict concerning any material fact in the event that the person wishes to appeal the cancellation.

Section 301.99–6—Compliance Agreements and Cancellation

Section 301.99–6 provides for the use of and cancellation of compliance agreements. Compliance agreements are provided for the convenience of persons who are involved in the growing, handling, or moving of regulated articles from quarantined areas. A person may enter into a compliance agreement when an inspector has determined that the person requesting the compliance

agreement has been made aware of the requirements of the regulations and the person has agreed to comply with the requirements of the regulations and the provisions of the compliance agreement. This section contains a footnote (number 7) that explains where compliance agreement forms may be obtained.

Section 301.99–6 also provides that an inspector may cancel the compliance agreement upon finding that a person who has entered into the agreement has failed to comply with any of the provisions of the regulations. The inspector will notify the holder of the compliance agreement of the reasons for cancellation and offer an opportunity for a hearing to resolve any conflicts of material fact in the event that the person wishes to appeal the cancellation.

Section 301.99–7—Assembly and Inspection of Regulated Articles

Section 301.99–7 provides that any person (other than a person authorized to issue certificates or limited permits under § 301.99–5(c)) who desires a certificate or limited permit to move regulated articles must request, at least 48 hours before the desired interstate movement, that an inspector issue a certificate or limited permit. The regulated articles must be assembled in a place and manner directed by the inspector.

Section 301.99–8—Attachment and Disposition of Certificates and Limited Permits

Section 301.99–8 requires the certificate or limited permit issued for movement of the regulated article to be attached, during the interstate movement, to the regulated article, or to a container carrying the regulated article, or to the consignee's copy of the accompanying waybill. Further, the section requires that the carrier or the carrier's representative must furnish the certificate or limited permit to the consignee listed on the certificate or limited permit upon arrival at the location provided on the certificate or limited permit.

Section 301.99–9—Costs and Charges

Section 301.99–9 explains the APHIS policy that the services of an inspector that are needed to comply with the regulations are provided without cost between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays, to persons requiring those services, but that we will not be responsible for any other costs or charges (such as overtime costs for inspections conducted at times other than between 8 a.m. to 4:30 p.m., Monday through Friday, except holidays).

Section 301.99–10—Treatments

Section 301.99–10 lists treatments that qualify soil and regulated articles for interstate movement with a certificate as provided in § 301.99–5.

The introductory text of this section provides that any person moving fruits and vegetables originating inside the quarantined area outside of the quarantined area may treat those fruits and vegetables with an applicable treatment listed in the PPQ Treatment Manual, which is incorporated by reference at 7 CFR 300.1, "Plant Protection and Quarantine Treatment Manual."

Paragraph (a) provides that soil within the dripline of plants that are producing or have produced the fruits and vegetables listed in § 301.99–2(a) of the subpart may be treated with diazinon at the rate of 5 pounds active ingredient per acre with sufficient water to wet the soil to a depth of at least ½ inch. Research by the Department's Agricultural Research Service has determined that this diazinon treatment would destroy the sapote fruit fly in soil.

Paragraph (b) provides that citrus fruits originating inside the quarantined area that are to be moved outside the quarantined area may be treated with methyl bromide fumigation in APHIS-approved chambers as an alternative to the treatments prescribed in the PPQ Treatment Manual. Exposure period for this treatment is 2 hours. Fruit pulp temperature must be between 21.1 °C and 29.4 °C (70 °F and 85 °F). This temperature requirement refers to fruit pulp only and not to air temperature within the chamber. Fruit taken from a cooling room may have to be pre-warmed before fumigation is attempted. To determine fruit pulp temperature, stab several fruit to the center with a suitable thermometer that reads at least in whole degrees (F or C). The lowest temperature should be used, not the average. The methyl bromide dosage is set at a rate of 2.5 pounds of 100 percent pure, type "Q" (for quarantine use only) methyl bromide per 1,000 cubic feet of chamber space. After the treatment cycle is complete, regulated articles will be eligible for interstate movement with a certificate as provided in § 301.99–5 unless, prior to treatment, representative sampling revealed a level of infestation greater than 0.5 percent for the lot.

Paragraph (d) provides that premises that are located within the regulated area but outside the infested core area, and that produce regulated articles, may receive regular treatments with malathion or spinosad bait spray as an alternative to treating fruits and vegetables with methyl bromide fumigation as described above or with treatments prescribed in the PPQ Treatment Manual. These treatments must take place at 6-to 10-day intervals, starting a sufficient time before harvest (but not less than 30 days before harvest) to allow for completion of egg and larvae development of the sapote fruit fly. Determination of the time period must be based on the day degrees model for sapote fruit fly. Since the length of fruit fly life cycles vary according to the temperature of their environment, the day degrees model is used to project the duration of the life cycle of the fruit fly. Once treatment has begun, it must continue through the harvest period. The malathion bait spray treatment must be applied by aircraft or ground equipment at a rate of 2.4 oz of technical grade malathion and 9.6 oz of protein hydrolysate per acre. Spinosad bait spray must be applied by aircraft or ground equipment at a rate of 0.01 oz of a USDA-approved spinosad formulation and 48 oz of protein hydrolysate per acre. For ground applications of spinosad, the mixture may be diluted with water to improve coverage. After the treatment cycle is complete, regulated articles produced on the premises will be eligible for interstate movement with a certificate as provided in § 301.99–5.

Emergency Action

This rulemaking is necessary on an emergency basis to prevent the sapote fruit fly from spreading to noninfested areas of the United States. Under these circumstances, the Administrator has determined that prior notice and opportunity for public comment are contrary to the public interest and that there is good cause under 5 U.S.C. 553 for making this rule effective less than 30 days after publication in the **Federal Register**.

We will consider comments we receive during the comment period for this interim rule (*see* **DATES** above). After the comment period closes, we will publish another document in the **Federal Register**. The document will include a discussion of any comments we receive and any amendments we are making to the rule.

Executive Order 12866 and Regulatory Flexibility Act

This rule has been reviewed under Executive Order 12866. For this action, the Office of Management and Budget has waived its review under Executive Order 12866.

This emergency situation makes timely compliance with section 604 of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) impracticable. We are currently assessing the potential economic effects of this action on small entities. Based on that assessment, we will either certify that the rule will not have a significant economic impact on a substantial number of small entities or publish a final regulatory flexibility analysis.

Executive Order 12372

This program/activity is listed in the Catalog of Federal Domestic Assistance under No. 10.025 and is subject to Executive Order 12372, which requires intergovernmental consultation with State and local officials. (*See* 7 CFR part 3015, subpart V.)

Executive Order 12988

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. This rule:

(1) Preempts all State and local laws and regulations that are inconsistent with this rule; (2) has no retroactive effect; and (3) does not require administrative proceedings before parties may file suit in court challenging this rule.

National Environmental Policy Act

An environmental assessment and finding of no significant impact have been prepared for the Sapote Fruit Fly Cooperative Eradication Program. The assessment provides a basis for the conclusion that the implementation of this interim rule will not have a significant impact on human health and the natural environment. Based on the finding of no significant impact, the Administrator of the Animal and Plant Health Inspection Service has determined that an environmental impact statement need not be prepared.

The environmental assessment and finding of no significant impact were prepared in accordance with: (1) The National Environmental Policy Act of 1969 (NEPA), as amended (42 U.S.C. 4321 *et seq.*), (2) regulations of the Council on Environmental Quality for implementing the procedural provisions of NEPA (40 CFR parts 1500–1508), (3) USDA regulations implementing NEPA (7 CFR part 1b), and (4) APHIS' NEPA Implementing Procedures (7 CFR part 372).

Copies of the environmental assessment and finding of no significant impact are available for public inspection in our reading room (information on the location and hours of the reading room is provided under the heading **ADDRESSES** at the beginning of this document). Copies may also be obtained by calling or writing to the individual listed under **FOR FURTHER INFORMATION CONTACT**. In addition, copies are available on the Internet at *http://www.aphis.usda.gov/ppd/es/sapff.htm*.

Paperwork Reduction Act

In accordance with section 3507(j) of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the information collection and recordkeeping requirements included in this interim rule have been submitted for emergency approval to the Office of Management and Budget (OMB). OMB has assigned control number 0579–0222 to the information collection and recordkeeping requirements.

We plan to request continuation of that approval for 3 years. Please send written comments on the 3-year approval request to the following addresses: (1) Office of Information and Regulatory Affairs, OMB, Attention: Desk Officer for APHIS, Washington, DC 20503; and (2) Docket No. 03–032–1, Regulatory Analysis and Development, PPD, APHIS, Station 3C71, 4700 River Road Unit 118, Riverdale, MD 20737–1238. Please state that your comments refer to Docket No. 03–032–1 and send your comments within 60 days of publication of this rule.

This interim rule quarantines a part of Hidalgo County, TX, because of the sapote fruit fly and restricts the interstate movement of regulated articles from the quarantined area. Its implementation will require us to engage in certain information collection activities, in that certain articles may not be moved interstate from the quarantined area unless they are accompanied by a certificate or limited permit. A certificate or limited permit may be issued by an inspector (*i.e.*, an APHIS employee or other person authorized by the APHIS Administrator to enforce the regulations) or by a person who has entered into a written compliance agreement with APHIS. We are soliciting comments from the public (as well as affected agencies) concerning our information collection and recordkeeping requirements. These comments will help us:

(1) Evaluate whether the information collection is necessary for the proper performance of our agency's functions, including whether the information will have practical utility;

(2) Evaluate the accuracy of our estimate of the burden of the information collection, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the information collection on those who are to respond (such as through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology; *e.g.*, permitting electronic submission of responses).

Estimate of burden: Public reporting burden for this collection of information is estimated to average 0.16 hours per response.

Respondents: Growers, State plant regulatory officials.

Estimated annual number of respondents: 700.

Estimated annual number of responses per respondent: 1.

Estimated annual number of responses: 700.

Estimated total annual burden on respondents: 112 hours. (Due to averaging, the total annual burden hours may not equal the product of the annual number of responses multiplied by the reporting burden per response.)

Copies of this information collection can be obtained from Mrs. Celeste Sickles, APHIS Information Collection Coordinator, at (301) 734–7477.

Government Paperwork Elimination Act Compliance

The Animal and Plant Health Inspection Service is committed to compliance with the Government Paperwork Elimination Act (GPEA), which requires Government agencies in general to provide the public the option of submitting information or transacting business electronically to the maximum extent possible. For information pertinent to GPEA compliance related to this interim rule, please contact Mrs. Celeste Sickles, APHIS Information Collection Coordinator, at (301) 734–7477.

List of Subjects in 7 CFR Part 301

Agricultural commodities, Plant diseases and pests, Quarantine, Reporting and recordkeeping requirements, Transportation.

■ Accordingly, we are amending 7 CFR part 301 as follows:

PART 301—DOMESTIC QUARANTINE NOTICES

1. The authority citation for part 301 is revised to read as follows:

Authority: 7 U.S.C. 7701–7772; 7 CFR 2.22, 2.80, and 371.3.

Section 301.75–15 also issued under Sec. 204, Title II, Pub. L. 106–113, 113 Stat. 1501A–293; sections 301.75–15 and 301.75–

16 also issued under Sec. 203, Title II, Pub. L. 106–224, 114 Stat. 400 (7 U.S.C. 1421 note).

■ 2. Part 301 is amended by adding a new "Subpart—Sapote Fruit Fly," §§ 301.99 through 301.99–10, to read as follows:

Subpart—Sapote Fruit Fly

Sec.

301.99 Restrictions on interstate movement of regulated articles.
301.99–1 Definitions.
301.99–2 Regulated articles.
301.99–3 Quarantined areas.
301.99–4 Conditions governing the interstate movement of regulated articles from quarantined areas.
301.99–5 Issuance and cancellation of certificates and limited permits.
301.99–6 Compliance agreements and cancellation.
301.99–7 Assembly and inspection of regulated articles.
301.99–8 Attachment and disposition of certificates and limited permits.
301.99–9 Costs and charges.
301.99–10 Treatments.

Subpart—Sapote Fruit Fly

§ 301.99 Restrictions on interstate movement of regulated articles.

No person may move interstate from any quarantined area any regulated article except in accordance with this subpart.[1]

§ 301.99–1 Definitions.

Administrator. The Administrator, Animal and Plant Health Inspection Service, or any person authorized to act for the Administrator.

Animal and Plant Health Inspection Service. The Animal and Plant Health Inspection Service (APHIS) of the United States Department of Agriculture.

Certificate. A document in which an inspector or person operating under a compliance agreement affirms that a specified regulated article is free of sapote fruit fly and may be moved interstate to any destination.

Compliance agreement. A written agreement between APHIS and a person engaged in growing, handling, or moving regulated articles, wherein the person agrees to comply with this subpart.

Core area. The 1-square-mile area surrounding each property where sapote fruit fly has been detected.

Day degrees. A mathematical construct combining average temperature over time that is used to calculate the length of a sapote fruit fly life cycle. Day degrees are the product of the following formula, with all temperatures measured in °F:

(Minimum Daily Temp + Maximum Daily Temp)/2) − 54 = Day Degrees.

Departmental permit. A document issued by the Administrator in which he or she affirms that interstate movement of the regulated article identified on the document is for scientific or experimental purposes and that the regulated article is eligible for interstate movement in accordance with § 301.99–4(c) of this subpart.

Dripline. The line around the canopy of a plant.

Infestation. The presence of the sapote fruit fly or the existence of circumstances that makes it reasonable to believe that the sapote fruit fly is present.

Inspector. Any employee of APHIS or other person authorized by the Administrator to perform the duties required under this subpart.

Interstate. From any State into or through any other State.

Limited permit. A document in which an inspector or person operating under a compliance agreement affirms that the regulated article identified on the document is eligible for interstate movement in accordance with § 301.99–5(b) only to a specified destination and only in accordance with specified conditions.

Moved (move, movement). Shipped, offered for shipment, received for transportation, transported, carried, or allowed to be moved, shipped, transported, or carried.

Person. Any association, company, corporation, firm, individual, joint stock company, partnership, society, or other entity.

Plant Protection and Quarantine. The Plant Protection and Quarantine program of the Animal and Plant Health Inspection Service, United States Department of Agriculture.

Quarantined area. Any State, or any portion of a State, listed in § 301.99–3(c) or otherwise designated as a quarantined area in accordance with § 301.99–3(b).

Regulated article. Any article listed in § 301.99–2 or otherwise designated as a regulated article in accordance with § 301.99–2(d).

Sapote fruit fly. The insect known as the sapote fruit fly, *Anastrepha serpentina*, in any stage of development.

State. The District of Columbia, Puerto Rico, the Northern Mariana Islands, or any State, territory, or possession of the United States.

[1] Any properly identified inspector is authorized to stop and inspect persons and means of conveyance and to seize, quarantine, treat, apply other remedial measures to, destroy, or otherwise dispose of regulated articles as provided in section 414 of the Plant Protection Act (7 U.S.C. 7714).

§ 301.99–2 Regulated articles.

The following are regulated articles:

(a) Sapote fruit flies.[2]

(b) The following fruits and vegetables:

Abiu (*Pouteria caimito*)
Apple (*Malus domestica*)
Avocado (*Persea americana*)
Black sapote (*Diospyros digyna*)
Citrus (*Citrus* spp.)
Egg-fruit tree (*Pouteria campechiana*)
Green sapote (*Pouteria viridis*)
Guava (*Psidium guajava*)
Hog-plum (*Spondias mombin*)
Ketembilla (*Dovyalis hebecarpa*)
Lucmo (*Pouteria obovata*)
Mammy apple (*Mammea americana*)
Mango (*Mangifera indica*)
Nance (*Byrsonima crassifolia*)
Panama orange (*Citrofortunella x mitis*)
Peach (*Prunus perscia*)
Pear (*Pyrus communis*)
Pond-apple (*Annona glabra*)
Quince (*Cydonia oblonga*)
Red mombin (*Spondias purpurea*)
Sapodilla (*Manilkara zapota*)
Sapote (*Diospyros* spp.)
Star-apple (*Chrysophyllum Cainito*)

Any fruits or vegetables that are not canned or dried or frozen below −17.8 °C. (0 °F.).

(c) Soil within the dripline of plants that are producing or have produced the fruits or vegetables listed in paragraph (b) of this section.

(d) Any other product, article, or means of conveyance not listed in paragraphs (a) through (c) of this section that an inspector determines presents a risk of spreading the sapote fruit fly, after the inspector provides written notification to the person in possession of the product, article, or means of conveyance that it is subject to the restrictions of this subpart.

§ 301.99–3 Quarantined areas.

(a) Except as otherwise provided in paragraph (b) of this section, the Administrator will list as a quarantined area in paragraph (c) of this section each State, or each portion of a State, in which the sapote fruit fly has been found by an inspector, in which the Administrator has reason to believe that the sapote fruit fly is present, or that the Administrator considers necessary to quarantine because of its inseparability for quarantine enforcement purposes from localities in which the sapote fruit fly has been found. Less than an entire State will be designated as a quarantined area only if the Administrator determines that:

(1) The State has adopted and is enforcing restrictions on the intrastate movement of the regulated articles that are equivalent to those imposed by this subpart on the interstate movement of regulated articles; and

(2) The designation of less than the entire State as a quarantined area will prevent the interstate spread of the sapote fruit fly.

(b) The Administrator or an inspector may temporarily designate any nonquarantined area in a State as a quarantined area in accordance with paragraph (a) of this section. The Administrator will give a copy of this regulation along with a written notice for the temporary designation to the owner or person in possession of the nonquarantined area. Thereafter, the interstate movement of any regulated article from an area temporarily designated as a quarantined area will be subject to this subpart. As soon as practicable, the area will be added to the list in paragraph (c) of this section or the designation will be terminated by the Administrator or an inspector. The owner or person in possession of an area for which designation is terminated will be given notice of the termination as soon as practicable.

(c) The areas described in this paragraph are designated as quarantined areas:

Texas

Hidalgo County. That portion of Hidalgo County bounded by a line as follows: Beginning at the intersection of South Cage Boulevard and the Rio Grande River; then northwest along the Rio Grande River for 17.11 miles; then north along an imaginary line to the intersection of Aloe Vera and Sunrise Street; then northeast along an imaginary line to the intersection of Victoria and Davina Street; then northwest along an imaginary line to the intersection of Farm Road 495 and North Stewart Road; then northeast along an imaginary line to the intersection of North Ware Road and Mile 4 North Road; then east on Mile 4 North Road (also known as West Alberta Road) to South I Road; then south on South I Road to West Earling Road; then east on West Earling Road to North San Juan Road; then south on North San Juan Road to East Ferguson Avenue; then east on East Ferguson Avenue to East Gasline Road; then south on East Gasline Road to East Nebraska Road; then east on East Nebraska Road to North Morningside Road; then south on North Morningside Road to Expressway 83; then east on Expressway 83 to North Alamo Road; then north on North Alamo Road to Earling Road; then west on Earling Road to North Morningside Road; then north on North Morningside Road to East Curve Road; then east on East Curve Road to Alamo Road; then north on Alamo Road to Mile 17 Road North; then west on Mile 17 Road North to Sharp Road; then northeast on Sharp Road to Mile 18 Road North; then east on Mile 18 Road North continuing along an imaginary line to Mile 17 Road North and Mile 6 Road West; then south on Mile 6 Road West to Mile 17 Road North; then east on Mile 17 Road North to West Broadway Street; then south on West Broadway Street to State Highway 107; then east on State Highway 107 to Mile 4 Road West; then south on Mile 4 Road West to Mile 13 Road North; then east on Mile 13 Road North to Farm Road 1015; then south on Farm Road 1015 to Expressway 83; then west on Expressway 83 to South Bridge Avenue; then south on South Bridge Avenue to East Eighth Street; then west on East Eighth Street to South Border Avenue; then south on South Border Avenue to Mile 6 Road North; then west on Mile 6 Road North to Midway Road; then south on Midway Road to Lott Road; then west on Lott Road, continuing along an imaginary line to the intersection of FM 907 and Resaca Road; then south on FM 907 to Balli Road; then west on Balli Road to FM 2557; then south on FM 2557 to Las Milpas Road; then east on Las Milpas Road to South I Road; then south on South I Road to Hi Line Road; then west on Hi Line Road to South Cage Boulevard; then south on South Cage Boulevard to the point of beginning.

[2] Permit and other requirements for the interstate movement of sapote fruit flies are contained in part 330 of this chapter.

§ 301.99–4 Conditions governing the interstate movement of regulated articles from quarantined areas.

Any regulated article may be moved interstate from a quarantined area[3] only if moved under the following conditions:

(a) With a certificate or limited permit issued and attached in accordance with §§ 301.99–5 and 301.99–8;

(b) Without a certificate or limited permit if:

(1) The regulated article originated outside the quarantined area and is either moved in an enclosed vehicle or is completely enclosed by a covering adequate to prevent access by sapote fruit flies (such as canvas, plastic, or other closely woven cloth) while moving through the quarantined area; and

(2) The point of origin of the regulated article is indicated on the waybill, and the enclosed vehicle or the enclosure that contains the regulated article is not opened, unpacked, or unloaded in the quarantined area; and

(3) The regulated article is moved through the quarantined area without stopping except for refueling or for traffic conditions, such as traffic lights or stop signs.

(c) Without a certificate or limited permit if the regulated article is moved:

(1) By the United States Department of Agriculture for experimental or scientific purposes;

(2) Pursuant to a departmental permit issued by the Administrator for the regulated article;

(3) Under conditions specified on the departmental permit and found by the Administrator to be adequate to prevent the spread of the sapote fruit fly; and

(4) With a tag or label bearing the number of the departmental permit issued for the regulated article attached to the outside of the container of the regulated article or attached to the regulated article itself if not in a container.

(Approved by the Office of Management and Budget under control number 0579–0222)

§ 301.99–5 Issuance and cancellation of certificates and limited permits.

(a) A certificate may be issued by an inspector[4] for the interstate movement of a regulated article if the inspector determines that:

(1)(i) The regulated article has been treated under the direction of an inspector in accordance with § 301.99–10; or

(ii) Based on inspection of the premises of origin, the premises are free from the sapote fruit fly; or

(iii) Based on inspection of the regulated article, the regulated article is free of sapote fruit flies; and

(2) The regulated article will be moved through the quarantined area in an enclosed vehicle or will be completely enclosed by a covering adequate to prevent access by the sapote fruit fly; and

(3) The regulated article is to be moved in compliance with any additional emergency conditions the Administrator may impose under section 414 of the Plant Protection Act (7 U.S.C. 7714)[5] to prevent the spread of the sapote fruit fly; and

[3] Requirements under all other applicable Federal domestic plant quarantines and regulations must also be met.

[4] Services of an inspector may be requested by contacting local offices of Plant Protection and Quarantine, which are listed in telephone directories. The addresses and telephone numbers of local offices may also be obtained from the McAllen Work Station, Federal Building Suite 119, 320 North Main, McAllen, TX 78501–4699, or the APHIS Web site at *http://www.aphis.usda.gov/travel/aqi.html*.

[5] Section 414 of the Plant Protection Act (7 U.S.C. 7714) provides that the Secretary of Agriculture

Continued

(4) The regulated article is eligible for unrestricted movement under all other Federal domestic plant quarantines and regulations applicable to the regulated article.

(b) An inspector[6] will issue a limited permit for the interstate movement of a regulated article if the inspector determines that:

(1) The regulated article is to be moved interstate to a specified destination for specified handling, processing, or utilization (the destination and other conditions to be listed in the limited permit), and this interstate movement will not result in the spread of the sapote fruit fly because life stages of the sapote fruit fly will be destroyed by the specified handling, processing, or utilization;

(2) The regulated article is to be moved in compliance with any additional emergency conditions the Administrator may impose under section 414 of the Plant Protection Act (7 U.S.C. 7714) to prevent the spread of the sapote fruit fly; and

(3) The regulated article is eligible for interstate movement under all other Federal domestic plant quarantines and regulations applicable to the regulated article.

(c) Certificates and limited permits for the interstate movement of regulated articles may be issued by an inspector or person operating under a compliance agreement. A person operating under a compliance agreement may issue a certificate for the interstate movement of a regulated article after an inspector has determined that the regulated article is eligible for a certificate in accordance with paragraph (a) of this section. A person operating under a compliance agreement may issue a limited permit for interstate movement of a regulated article after an inspector has determined that the regulated article is eligible for a limited permit in accordance with paragraph (b) of this section.

(d) Any certificate or limited permit that has been issued may be withdrawn, either orally or in writing, by an inspector if he or she determines that the holder of the certificate or limited permit has not complied with all conditions in this subpart for the use of the certificate or limited permit. If the withdrawal is oral, the withdrawal and the reasons for the withdrawal will be confirmed in writing as promptly as circumstances allow. Any person whose certificate or limited permit has been withdrawn may appeal the decision in writing to the Administrator within 10 days after receiving the written notification of the withdrawal. The appeal must state all of the facts and reasons upon which the person relies to show that the certificate or limited permit was wrongfully withdrawn. As promptly as circumstances allow, the Administrator will grant or deny the appeal, in writing, stating the reasons for the decision. A hearing will be held to resolve any conflict as to any material fact. Rules of practice concerning a hearing will be adopted by the Administrator.

(Approved by the Office of Management and Budget under control number 0579–0222)

§ 301.99–6 Compliance agreements and cancellation.

(a) Any person engaged in growing, handling, or moving regulated articles may enter into a compliance agreement when an inspector determines that the person is aware of this subpart, agrees to comply with its provisions, and agrees to comply with all the provisions contained in the compliance agreement.[7]

(b) Any compliance agreement may be canceled, either orally or in writing, by an inspector whenever the inspector finds that the person who has entered into the compliance agreement has failed to comply with this subpart. If the cancellation is oral, the cancellation and the reasons for the cancellation will be confirmed in writing as promptly as circumstances allow. Any person whose compliance agreement has been canceled may appeal the decision, in writing, to the Administrator, within 10 days after receiving written notification of the cancellation. The appeal must state all of the facts and reasons upon which the person relies to show that the compliance agreement was wrongfully canceled. As promptly as circumstances allow, the Administrator will grant or deny the appeal, in writing, stating the reasons for the decision. A hearing will be held to resolve any conflict as to any material fact. Rules of practice concerning a hearing will be adopted by the Administrator.

§ 301.99–7 Assembly and inspection of regulated articles.

(a) Any person (other than a person authorized to issue certificates or limited permits under § 301.99–5(c)) who desires a certificate or limited permit to move a regulated article interstate must notify an inspector[8] as far in advance of the desired interstate movement as possible, but no less than 48 hours before the desired interstate movement.

(b) The regulated article must be assembled at the place and in the manner the inspector designates as necessary to comply with this subpart.

§ 301.99–8 Attachment and disposition of certificates and limited permits.

(a) A certificate or limited permit required for the interstate movement of a regulated article must, at all times during the interstate movement, be:

(1) Attached to the outside of the container containing the regulated article; or

(2) Attached to the regulated article itself if not in a container; or

(3) Attached to the consignee's copy of the accompanying waybill. If the certificate or limited permit is attached to the consignee's copy of the waybill, the regulated article must be sufficiently described on the certificate or limited permit and on the waybill to identify the regulated article.

(b) The certificate or limited permit for the interstate movement of a regulated article must be furnished by the carrier or the carrier's representative to the consignee listed on the certificate or limited permit upon arrival at the location provided on the certificate or limited permit.

(Approved by the Office of Management and Budget under control number 0579–0222)

§ 301.99–9 Costs and charges.

The services of the inspector during normal business hours (8 a.m. to 4:30 p.m., Monday through Friday, except holidays) will be furnished without cost. The user will be responsible for all costs and charges arising from inspection and other services provided outside normal business hours.

§ 301.99–10 Treatments.

Treatment schedules listed in the Plant Protection and Quarantine Treatment Manual to destroy the sapote fruit fly are authorized for use on regulated articles. The Plant Protection and Quarantine Treatment Manual is incorporated by reference. For the full identification of this standard, see § 300.1 of this chapter, "Plant Protection and Quarantine Treatment Manual." The following treatments also may be used for the regulated articles indicated:

(a) *Soil within the dripline of plants that are producing or have produced the fruits and vegetables listed in § 301.99–2(a) of this subpart.* Apply diazinon at the rate of 5 pounds active ingredient per acre to the soil within the dripline with sufficient water to wet the soil to at least a depth of ½ inch.

(b) *Citrus fruits.* Regulated citrus fruits originating inside the quarantined area that are to be moved outside the quarantined area may be treated with methyl bromide fumigation in APHIS-approved chambers as an alternative to treating the fruits as provided in the Plant Protection and Quarantine Treatment Manual. Exposure period for this treatment is 2 hours.[9] Fruit pulp temperature must be between 21.1 °C and 29.4 °C (70 °F and 85 °F). This temperature requirement refers to fruit pulp only and not to air temperature within the chamber. Fruit taken from a cooling room may have to be pre-warmed before fumigation is attempted. To determine fruit pulp temperature, stab several fruit to the center with a suitable thermometer that reads at least in whole degrees (F or C). The lowest temperature should be used, not the average. The methyl bromide dosage is set at a rate of 2.5 pounds of 100 percent pure, type "Q" (for quarantine use only) methyl bromide per 1,000 cubic feet of chamber space.[10] However, if, prior to treatment, representative sampling reveals a level of infestation greater than 0.5 percent for the lot, then the fruit is ineligible for treatment.

(c) *Premises.* Fields, groves, or areas that are located within a quarantined area but outside the infested core area and that produce regulated articles may receive regular treatments with either malathion or spinosad bait spray as an alternative to treating the regulated articles with methyl bromide fumigation or those treatments provided in the Plant Protection and Quarantine Treatment Manual. These treatments must take place at 6-to 10-day intervals, starting a sufficient time before harvest (but not less than 30 days before harvest) to allow for development of sapote fruit fly egg and larvae. Determination of the time period must be based on the day degrees model for sapote fruit fly. Once treatment has begun, it must continue through the harvest period. The malathion bait spray treatment must be applied by aircraft or ground equipment at a rate of 2.4 oz of technical grade malathion and 9.6 oz of protein hydrolysate per acre. The spinosad bait spray treatment must be applied by aircraft or ground equipment at a rate of 0.01 oz of a USDA-approved spinosad formulation and 48 oz of protein hydrolysate per acre. For ground applications, the mixture may be diluted with water to improve coverage.

Done in Washington, DC, this 2nd day of May 2003 .

Peter Fernandez,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 03–11438 Filed 5–7–03; 8:45 am]

BILLING CODE 3410–34–P

may, under certain conditions, hold, seize, quarantine, treat, apply other remedial measures to destroy or otherwise dispose of any plant, plant pest, plant product, article, or means of conveyance that is moving, or has moved into or through the United States or interstate if the Secretary has reason to believe the article is a plant pest or is infested with a plant pest at the time of movement.

[6] See footnote 4 to § 301.99–5(a).

[7] Compliance agreement forms are available without charge from the McAllen Work Station, Federal Building Suite 119, 320 North Main, McAllen, TX 78501–4699, and from local Plant Protection and Quarantine offices, which are listed in telephone directories.

[8] See footnote 4 to § 301.99–5(a).

[9] To enhance equal concentrations of methyl bromide throughout the chamber, a fan should be placed near the point of gas introduction, and allowed to run for at least 15 minutes.

[10] Dosage is based upon chamber volume, not the volume of the fruit being treated. Fruit should be in cartons approved for fumigation. Cartons must be placed on pallets. There should be an air space of at least 1 foot between adjacent pallet loads; at least 1 foot between chamber walls and the nearest carton of fruit; and at least 2 feet between the height of the stack and the ceiling of the chamber. The compressed liquid methyl bromide inside the cylinder must be put through a volatilizer prior to injection into the chamber. Water temperature in the volatilizer must never fall below 65.6 °C (150 °F) at any time during gas injection.

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

7 CFR Part 301

[Docket No. 02–114–2]

Imported Fire Ant; Additions to Quarantined Areas

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Affirmation of interim rule as final rule.

SUMMARY: We are adopting as a final rule, without change, an interim rule that amended the imported fire ant regulations by designating as quarantined areas all or portions of six counties in South Carolina and nine counties in Tennessee and restricting the interstate movement of regulated articles from those areas. This interim rule was necessary to prevent the artificial spread of the imported fire ant to noninfested areas of the United States.

EFFECTIVE DATE: The interim rule became effective on January 30, 2003.

FOR FURTHER INFORMATION CONTACT: Mr. Charles L. Brown, Imported Fire Ant Program Manager, PPQ, APHIS, 4700 River Road Unit 134, Riverdale, MD 20737–1236; (301) 734–8247.

SUPPLEMENTARY INFORMATION:

Background

In an interim rule effective January 30, 2003, and published in the **Federal Register** on February 5, 2003 (68 FR 5794–5796, Docket No. 02–114–1), we amended the imported fire ant regulations contained in 7 CFR 301.81 through 301.81–10 by adding all or portions of six counties in South Carolina and nine counties in Tennessee to the list of quarantined areas in § 301.81–3(e). As a result of that interim rule, the interstate movement of regulated articles from these areas is restricted.

Comments on the interim rule were required to be received on or before April 7, 2003. We received two comments by that date. The comments were from private citizens. Both commenters generally supported the interim rule. Therefore, for the reasons given in the interim rule, we are adopting the interim rule as a final rule.

This action also affirms the information contained in the interim rule concerning Executive Order 12866 and the Regulatory Flexibility Act, Executive Orders 12372 and 12988, and the Paperwork Reduction Act.

Further, for this action, the Office of Management and Budget has waived its review under Executive Order 12866.

List of Subjects in 7 CFR Part 301

Agricultural commodities, Plant diseases and pests, Quarantine, Reporting and recordkeeping requirements, Transportation.

PART 301—DOMESTIC QUARANTINE NOTICES

■ Accordingly, we are adopting as a final rule, without change, the interim rule that amended 7 CFR part 301 and that was published at 68 FR 5794–5796 on February 5, 2003.

Authority: 7 U.S.C. 7711, 7712, 7714, 7731, 7735, 7751, 7752, 7753, 7754, and 7760; 7 CFR 2.22, 2.80, and 371.3.

Done in Washington, DC, this 2nd day of May 2003.

Peter Fernandez,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 03–11437 Filed 5–7–03; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2002–NE–23–AD; Amendment 39–13143; AD 2003–09–14]

RIN 2120–AA64

Airworthiness Directives; General Electric CF34–8C1 Turbofan Engines

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), that is applicable to General Electric (GE) CF34–8C1 turbofan engines. This amendment requires replacing combustion chamber assemblies, part number (P/N) 4126T87G04, before accumulating a new reduced cyclic life limit. This amendment is prompted by stress and life analysis conducted by GE. The actions specified by this AD are intended to prevent rupture of the combustion chamber assembly and possible engine fire.

DATES: Effective June 12, 2003.

ADDRESSES: Information regarding this action may be examined, by appointment, at the Federal Aviation Administration (FAA), New England Region, Office of the Regional Counsel, 12 New England Executive Park, Burlington, MA.

FOR FURTHER INFORMATION CONTACT: Eugene Triozzi, Aerospace Engineer, Engine Certification Office, FAA, Engine and Propeller Directorate, 12 New England Executive Park, Burlington, MA 01803–5299; telephone (781) 238–7148; fax (781) 238–7199.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an AD that is applicable to GE CF34–8C1 turbofan engines was published in the **Federal Register** on February 7, 2003, (68 FR 6379). That action proposed to require replacing combustion chamber assemblies, P/N 4126T87G04, before accumulating a new reduced cyclic life limit.

Comments

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the comment received.

One commenter requests that the combustion chamber assembly life be reduced to 25,800 cycles-since-new (CSN) from the proposed 28,000 CSN. The commenter states that this limit is specified in the GE CF34–8C1 Engine Maintenance Manual life limits section.

The FAA does not agree. The 28,000 life limit is the correct life limit approved by the FAA for combustion chamber assembly, P/N 4126T87G04. The GE manual incorrectly lists the lower life limit. That limit was submitted by GE for FAA approval in December, 2001. Subsequently, GE submitted a request to amend the cycle life limit to 28,000 CSN and the FAA approved it in March, 2002.

After careful review of the available data, including the comment noted above, the FAA has determined that air safety and the public interest require the adoption of the rule as proposed. The FAA has determined that these changes will neither increase the economic burden on any operator nor increase the scope of the AD.

Economic Analysis

There are approximately 115 GE CF34–8C1 turbofan engines of the affected design in the worldwide fleet. The FAA estimates that 75 engines are installed on airplanes of U.S. registry. The FAA also estimates that it would take approximately 24 work hours per engine to perform the actions, and that the average labor rate is $60 per work hour. Required parts would cost approximately $75,000 per engine. Based on these figures and the cost of lost life of 9,800 cycles-since-new per engine, the total cost of the AD to U.S. operators is estimated to be $1,600,000.

Regulatory Analysis

This final rule does not have federalism implications, as defined in Executive Order 13132, because it would not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Accordingly, the FAA has not consulted with state authorities prior to publication of this final rule.

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

Adoption of the Amendment

■ Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

■ 1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

■ 2. Section 39.13 is amended by adding a new airworthiness directive to read as follows:

2003–09–14 General Electric: Amendment 39–13143. Docket No. 2002–NE–23–AD.

Applicability: This airworthiness directive (AD) is applicable to General Electric (GE) CF34–8C1 turbofan engines with combustion chamber assembly, part number (P/N) 4126T87G04, installed. These engines are installed on, but not limited to Bombardier Inc. Model CL–600–2C10 (CRJ–700 & 701) airplanes.

Note 1: This AD applies to each engine identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For engines that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (c) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Compliance with this AD is required as indicated, unless already done.

To prevent rupture of the combustion chamber assembly and possible engine fire, do the following:

(a) Replace combustion chamber assembly, P/N 4126T87G04, at or before the combustion chamber assembly accumulates 28,000 cycles-since-new (CSN).

(b) After the effective date of this AD, do not install any combustion chamber assembly, P/N 4126T87G04, that exceeds 28,000 CSN.

Alternative Methods of Compliance

(c) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Engine Certification Office (ECO). Operators must submit their request through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, ECO.

Note 2: Information concerning the existence of approved alternative methods of compliance with this airworthiness directive, if any, may be obtained from the ECO.

Effective Date

(d) This amendment becomes effective on June 12, 2003.

Issued in Burlington, Massachusetts, on May 1, 2003.

Francis A. Favara,

Acting Manager, Engine and Propeller Directorate, , Aircraft Certification Service.

[FR Doc. 03–11266 Filed 5–7–03; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

15 CFR Part 902

50 CFR Part 679

[Docket No. 020718172–3062–03; I. D. 051402C]

RIN 0648–AQ08

Fisheries of the Exclusive Economic Zone Off Alaska; Steller Sea Lion Protection Measures Correction

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Correcting amendments.

SUMMARY: This final rule corrects the regulatory text of the final rule published January 2, 2003, implementing Steller sea lion protection measures for the Alaska groundfish fishery.

DATES: Effective May 7, 2003.

ADDRESSES: Copies of the Supplemental Environmental Impact Statement on Steller Sea Lion Protection Measures in the Federal Groundfish Fisheries Off Alaska (SEIS), including the 2001 biological opinion (2001 BiOp) and regulatory impact review may be obtained from the Alaska Region, NMFS, P.O. Box 21668, Juneau, AK, 99802, Attn: Lori Durall. The SEIS is also available on the NMFS Alaska Region home page at http://www.fakr.noaa.gov.

FOR FURTHER INFORMATION CONTACT: Melanie Brown, NMFS, 907–586–7228 or e-mail at melanie.brown@noaa.gov.

SUPPLEMENTARY INFORMATION:

Background

A final rule published January 2, 2003 (68 FR 204), implementing Steller sea lion protection measures for the groundfish fisheries of the Bering Sea and Aleutian Islands Management Area (BSAI) and the Gulf of Alaska (GOA), contains errors in its paragraph designations, cross-references, regulatory text, and tables which are corrected by this action.

Corrections to the Office of Management and Budget (OMB) Control Numbers Table

Two corrections are needed in the OMB control number references in the table at 15 CFR 902.1(b). The OMB control number assigned to § 679.20(a)(8)(iii) is incorrect. Also, the table is missing an OMB control number and corresponding paragraph that applies to the Steller sea lion protection measures. This action corrects the number assigned to § 679.20(a)(8)(iii) to read "-0206". OMB control number "-0269" that incorrectly was applied to § 679.20(a)(8)(iii) in the final rule is properly assigned to § 679.5(n)(2)(iii), which is added to the table with this action. This correction will accurately display the OMB control numbers for these collection-of-information approvals, as required by the Paperwork Reduction Act.

Corrections to the Regulatory Text

A number of corrections to the final rule for the Steller sea lion protection measures are needed for consistency with the final rule for Amendments 61/61/13/8 implementing the American Fisheries Act (AFA) (67 FR 79692, December 30, 2002, effective January 29, 2003). The AFA final rule at § 679.20(a)(5)(i)(A) and (a)(5)(ii) describes the Bering Sea subarea and Aleutian Islands subarea and Bogoslof district pollock AFA allocations, respectively. However, the Steller sea lion protection measures final rule provisions describing the seasonal apportionment of pollock in the BSAI and GOA also were codified at § 679.20(a)(5)(i)(A) and (a)(5)(ii)(B). This correction adds a new paragraph § 679.20(a)(5)(i)(B) describing the Steller sea lion protection measures seasonal apportionment of pollock in the Bering sea subarea. Section 679.20(a)(5)(i)(B) in the final rule regarding the Steller sea lion conservation area harvest limit is also redesignated as § 679.20(a)(5)(i)(C) to ensure proper paragraph designations. The seasonal apportionments for the GOA pollock fishery were codified by the AFA final rule at § 679.20(a)(5)(iii); therefore, no additional changes are needed in the Steller sea lion protection measures final rule for the GOA pollock seasonal apportionments. Cross-references in § 679.22(a)(7) to the redesignated paragraph § 679.20(a)(5)(i)(C) also are corrected. This correction results in no substantive changes to the requirements of the AFA or the Steller sea lion protection measures.

In addition, the Steller sea lion protection measures final rule contains cross-references to § 679.20(a)(6)(ii) and (iii) at § 679.20(b)(2)(i) and (ii). These cross-referenced paragraphs were renumbered as (a)(6)(i) and (a)(6)(ii), respectively, when the AFA final rule was published. This action corrects these cross-references in § 679.20(b)(2)(i) and (ii) to § 679.20(a)(6)(i) and (ii). This correction does not substantively change the requirements of either the final rule for the AFA or the Steller sea lion protection measures final rule.

Table 4 in 50 CFR part 679 specifies closures to directed fishing for pollock with trawl gear around identified Steller sea lion rookeries and haulouts in the Gulf of Alaska, the Bering Sea and the Aleutian Islands. The Steller sea lion protection measures final rule incorrectly specified the closed areas around Uliaga and Kagamil haulouts. Table 4 currently specifies a 10 nm closure around each of these haulouts (68 FR 218, January 2, 2003). Although these 10 nm closures are correctly specified for the waters within the Bering Sea subarea around these haulouts, Table 4 should have closed all of the Steller sea lion critical habitat aroumd these haulouts that extends west of 170 degrees W. longitude into the Aleutian Islands subarea. In the proposed rule for this amendment, NMFS announced that directed fishing for pollock inside critical habitat in the Aleutian Islands subarea would be prohibited (67 FR 56703, column 1, September 4, 2002). Steller sea lion critical habitat includes an aquatic zone that extends 20 nm seaward from Uliaga and Kagamil haulouts (50 CFR 226.202(a), Table 2). Therefore, this action corrects Table 4 in 50 CFR part 679 by closing the waters of the Aleutian Islands subarea that lie within 20 nm of Uliaga and Kagamil haulouts to directed fishing for pollock with trawl gear.

Table 5 in 50 CFR part 679 specifies closures to directed fishing for Pacific cod with trawl gear, hook-and-line gear, and pot gear around identified Steller sea lion rookeries and haulouts in the Gulf of Alaska, the Bering Sea, and the Aleutian Islands. The final rule resulted in several errors that require correction.

First, Table 5 currently specifies closures to directed fishing for Pacific cod with hook-and-line gear and pot gear within the waters around Uliaga and Kagamil haulouts in the Bogoslof foraging area (68 FR 225–26, January 2, 2003). Although these haulouts are located in the Bogoslof foraging area, the critical habitat designated around these haulouts extends west beyond 170 degrees W. longitude, the western boundary of the Bogoslof foraging area (50 CFR 226.202(a), Table 2). Table 5 should have closed all of the Steller sea lion critical habitat around these haulouts that lies between 170 degrees W. longitude and 173 degrees W. longitude as well. The preamble to the proposed rule implementing the Steller sea lion protection measures explained that hook-and-line and pot vessels would be prohibited from directed fishing for Pacific cod in critical habitat east of 173 degrees W. longitude to the western boundary of the Bogslof foraging area (67 FR 56703, column 2, September 4, 2002). Therefore, NMFS corrects Table 5 in 50 CFR part 679 by closing the waters that lie within 20 nm of Uliaga and Kagamil haulouts to directed fishing for Pacific cod with hook-and-line and pot gear.

Second, Table 5 currently specifies a closure to directed fishing for Pacific cod with hook-and-line gear within 10 nm in the waters around Chuginadak haulout (68 FR 225, January 2, 2003). Although Chuginadak is located in the Gulf of Alaska, the critical habitat designated around this haulout extends west beyond 170 degrees W. longitude, the eastern boundary of the Aleutian Islands subarea (50 CFR section 226.202(a), Table 2). For the reason stated above, this critical habitat should have been closed to fishing for Pacific cod with hook-and-line gear as well. Therefore, NMFS corrects Table 5 in 50 CFR part 679 by prohibiting directed fishing for Pacific cod with hook-and-line gear in waters west of 170 degrees W. longitude that lie within 20 nm of Chuginadak haulout. Table 5 retains the current 10 nm closure to directed fishing for Pacific cod with hook-and-line gear around Chuginadak in the Gulf of Alaska.

Third, Table 5 currently specifies no closures to directed fishing for Pacific cod with hook-and-line gear or pot gear around Marmot Island rookery in the Gulf of Alaska (68 FR 229, January 2, 2003). However, the proposed rule for this amendment announced that directed fishing for Pacific cod with hook-and-line gear or pot gear around Gulf of Alaska rookeries would be prohibited (67 FR 56704, column 2, September 4, 2002). The Steller sea lion protection measures analyzed in the 2001 BiOp and in the SEIS specified 10 nm closures to hook-and-line and pot gear fishing around Marmot Island, and these closure were implemented in 2002 by emergency interim rule (67 FR 956, January 8, 2002). Therefore, NMFS corrects Table 5 in 50 CFR part 679 by closing the waters that lie within 10 nm of Marmot Island rookery to directed fishing for Pacific cod with hook-and-line or pot gear.

Finally, the closure around Tanaga I./Bumpy Pt. for the Aleutian Islands subarea Pacific cod trawl fishery in Table 5 is also corrected. Directed fishing for Pacific cod using trawl gear should have been prohibited in the Harvest Limit Area (HLA) during the Atka mackerel HLA directed fishery (§ 679.22(a)(8)(iv)). A portion of the 20 nm critical habitat area surrounding Tanaga I./Bumpy Pt. extends west of 178° W longitude, and this portion of water, by definition, is part of the HLA (§ 679.2). Therefore, the portion of critical habitat for Tanaga I./Bumpy Pt. that lies west of 178° W longitude should have been closed to directed fishing for Pacific cod with trawl gear during the Atka mackerel HLA directed fishery. Table 5 of the final rule did not describe this portion of critical habitat associated with Tanaga I./Bumpy Pt. as being part of the HLA, although the proposed rule clearly announced that this portion of critical habitat would be closed too, until the Atka mackerel HLA fishery is completed (67 FR 56703, column 2, September 4, 2002). A footnote is added to Tanaga I./Bumpy Pt. explaining the closure around this site. Because haulout sites located east of 178° W longitude are closed to 3 nm to directed fishing for Pacific cod with trawl gear, the no-fishing zone in column 7 of Table 5 is corrected to show 3 nm and 20 nm closures that apply around the Tanaga I./Bumpy Pt. haulout.

Table 6 of 50 CFR part 679 specifies closures to directed fishing for Atka mackerel with trawl gear near identified Steller sea lion rookeries and haulouts in the BSAI. The final rule included two errors in Table 6 that require correction. First, footnote 4 to Table 6 was inadvertently omitted from the site Tanaga I./Bumpy Pt. in the final rule. This footnote was included in the emergency interim rule implementing the Steller sea lion protection measures in 2002 (67 FR 956, January 8, 2002). The footnote explains the closure around this site and is added to the site name with this correction. For the same reasons as described above for the Pacific cod trawl fishery, footnote 4 is also corrected to specify that waters within 20 nm of Tanaga I./Bumpy Pt. and west of 178° W longitude are closed as part of the HLA, as defined in § 679.2.

Second, footnote 7 to Table 6 is corrected to further describe the 10 nm and 20 nm closures around Gramp Rock. The 20 nm closure for Gramp Rock should apply to waters located east of 178° W longitude, and the 10 nm closure for Gramp Rock should apply to waters located west of 178° W longitude. Gramp Rock should be closed to directed fishing for Atka mackerel using trawl gear in waters within 20 nm and west of 178° W longitude after the closure of the Atka mackerel HLA directed fishery. This action corrects the footnote accordingly.

Classification

The Administrator, Alaska Region, NMFS (Regional Administrator), has determined that this action is necessary for the conservation and management of the groundfish fisheries of the BSAI and GOA. The Regional Administrator also has determined that this action is consistent with the Magnuson-Stevens Fishery Conservation and Management Act and other applicable laws. No relevant Federal rules exist that may duplicate, overlap, or conflict with this action.

This action has been determined to be not significant for purposes of Executive Order 12866.

A formal section 7 consultation under the Endangered Species Act (ESA) was initiated for the Steller sea lion protection measures under the fishery management plans for the groundfish fisheries of the BSAI and the GOA. In a biological opinion dated October 19, 2001, (2001 BiOp), the Director of the Office of Protected Resources determined that fishing activities conducted under the Steller sea lion protection measures implemented by the final rule (68 FR 204, January 2, 2003) are not likely to jeopardize the continued existence of any endangered or threatened species or result in the destruction or adverse modification of critical habitat. This correction fully implements the Steller sea lion protection measures analyzed in the 2001 BiOp and approved by the Secretary of Commerce.

On December 18, 2002, the United States District Court for the Western District of Washington remanded to NMFS the 2001 BiOp for the groundfish fisheries managed pursuant to the Steller sea lion protection measures published on January 2, 2003 (68 FR 204). *Greenpeace, et al.* v. *National Marine Fisheries Service*, No. C98 492Z (W.D. Wash.). The Court held that the biological opinion's findings of no jeopardy to the continued existence of endangered Steller sea lions and no adverse modification of their critical habitat were arbitrary and capricious. On December 30, 2002, the Court issued an Order declaring that the 2001 BiOp "shall remain effective until June 30, 2003," while NMFS completes the remand. The response to the remand will evaluate the effects of fishing activities authorized pursuant to the final rule, as corrected by this action, on listed species and critical habitat.

The measures in this rule correct the regulatory text to reflect the proper and intended paragraph designations, cross-references, regulatory text and tables of the final rule published on January 2, 2003, in order to make the regulations consistent with NMFS' intent and current industry practice. The affected fishermen were already complying with such measures pursuant to an earlier rule. Additionally, on January 15, 2003, NOAA Fisheries Alaska Region posted maps depicting the correct closures on its official webpage for use by affected fishermen. As a result, this rule seeks to bring the published regulations into conformity with the status quo. Prior notice and an opportunity for public comment on the substance of these measures was provided by the September 4, 2002, proposed rule. All comments provided pursuant to that proposed rule were considered in the development of the January 2, 2003, final rule. An additional opportunity for public comment would perpetuate any confusion or lack of clarity that may exist as a result of the incorrect information in the January 2, 2003, final rule. Accordingly, the Assistant Administrator for Fisheries finds good cause to waive prior notice and opportunity for public comment pursuant to 5 U.S.C. 553(b)(B). Because the affected industry is already complying with the corrected measures, additional time is not required to allow them to come into compliance. Therefore, the Assistant Administrator for Fisheries also finds that there exists good cause to waive the requirement of a 30–day delay in the effective date of this rule pursuant to 5 U.S.C. 553(d)(3).

List of Subjects

15 CFR Part 902

Reporting and recordkeeping requirements.

50 CFR Part 679

Alaska, Fisheries, Recordkeeping and reporting requirements.

Dated: May 1, 2003.

Rebecca Lent,

Deputy Assistant Administrator for Regulatory Programs, National Marine Fisheries Service.

■ Accordingly, 15 CFR part 902, chapter IX, and 50 CFR part 679, chapter VI are corrected by making the following corrections:

15 CFR Chapter IX

PART 902 NOAA INFORMATION COLLECTION REQUIREMENTS UNDER THE PAPERWORK REDUCTION ACT; OMB CONTROL NUMBERS

■ 1. The authority citation for part 902 continues to read as follows:

Authority: 44 U.S.C. 3501 *et seq.*

■ 2. In § 902.1, the table in paragraph (b) under 50 CFR is amended by adding in numerical order an entry for § 679.5(n)(2)(iii) and revising the entry for § 679.20 (a)(8)(iii) to read as follows:

§ 902.1 OMB Control numbers assigned pursuant to the Paperwork Reduction Act.

* * * * *

(b) * * *

CFR part or section where the information collection requirement is located	Current OMB control number (All numbers begin with 0648-)
. . . .	.
50 CFR	
. . . .	.
679.5(n)(2)(iii)	-0269
. . . .	.
679.20 (a)(8)(iii)	-0206
. . . .	.

50 CFR Chapter VI

PART 679—FISHERIES OF THE EXCLUSIVE ECONOMIC ZONE OFF ALASKA

■ 1. The authority citation for part 679 continues to read as follows:

Authority: 16 U.S.C. 773 *et seq.*; 1801 *et seq.*; 3631 *et seq.*; Title II of Division C, Pub. L. 105–277; Sec. 3027, Pub. L. 106–31; 57 Stat. 113; 16 U.S.C. 1540(f); and Sec. 209, Pub. L. 106–554.

■ 2. In § 679.20, paragraph (a)(5)(i)(B) is redesignated as paragraph (a)(5)(i)(C), a new paragraph (a)(5)(i)(B) is added, and paragraph (b)(2)(i) and (ii) is revised to read as follows:

§ 679.20 General limitations.

* * * * *

(a) * * *

(5) * * *

(i) * * *

(B) *BSAI seasonal allowances--(1) Inshore, catcher/processor, mothership, and CDQ components.* The portions of the BSAI area pollock directed fishing allowances allocated to each component under Sections 206(a) and 206(b) of the AFA will be divided into two seasonal allowances corresponding to the two fishing seasons set out at § 679.23(e)(2), as follows: A Season, 40 percent; B Season, 60 percent.

(*2*) *Inseason adjustments.* Within any fishing year, the Regional Administrator may add or subtract any under harvest or over harvest of a seasonal allowance for a component to the subsequent seasonal allowance for the component through notification published in the **Federal Register**.

* * * * *

(b) * * *

(2) * * *

(i) *Pollock inshore-offshore reapportionment.* Any amounts of the GOA reserve that are reapportioned to pollock as provided by paragraph (b) of this section must be apportioned for processing by the inshore component in the GOA and the offshore component in the GOA in the same proportions specified in paragraph (a)(6)(i) of this section.

(ii) *Pacific Cod inshore-offshore reapportionment.* Any amounts of the GOA reserve that are reapportioned to Pacific cod as provided by paragraph (b) of this section must be apportioned for processing by the inshore component in the GOA and the offshore component in the GOA in the same proportion specified in paragraph (a)(6)(ii) of this section.

* * * * *

■ 3. In § 679.22, paragraph (a)(7)(vii)(C) is revised to read as follows:

§ 679.22 Closures.

(a) * * *

(7) * * *

(vii) * * *

(C) *Criteria for closure -- (1) General.* The directed fishing closures identified in paragraph (a)(7)(vii)(A) of this section will take effect when the Regional Administrator determines that the harvest limit for pollock within the SCA, as specified in § 679.20(a)(5)(i)(C) is reached before April 1. The Regional Administrator shall prohibit directed fishing for pollock in the SCA by notification published in the **Federal Register**.

(2) *Inshore catcher vessels greater than 99 ft (30.2 m) LOA.* The Regional Administrator will prohibit directed fishing for pollock by vessels greater

than 99 ft (30.2 m) LOA, catching pollock for processing by the inshore component before reaching the inshore SCA harvest limit before April 1 to accommodate fishing by vessels less than or equal to 99 ft (30.2 m) inside the SCA until April 1. The Regional Administrator will estimate how much of the inshore seasonal allowance is likely to be harvested by catcher vessels less than or equal to 99 ft (30.2 m) LOA and reserve a sufficient amount of the inshore SCA allowance to accommodate fishing by such vessels after the closure of the SCA to inshore vessels greater than 99 ft (30.2 m) LOA. The Regional Administrator will prohibit directed fishing for all inshore catcher vessels within the SCA when the harvest limit specified in § 679.20(a)(5)(i)(C) has been met before April 1.

* * * * *

■ 4. Tables 4, 5, and 6 to Part 679 are revised to read as follows:

BILLING CODE 3510–22–S

Table 4 to 50 CFR Part 679 Steller Sea Lion Protection Areas Pollock Fisheries Restrictions

Column Number 1	2	3	4	5	6	7
Site Name	Area or Subarea	Boundaries from		Boundaries to[1]		Pollock No-fishing Zones for Trawl Gear 2.0 (nm)
		Latitude	Longitude	Latitude	Longitude	
St. Lawrence I./S Punuk I.	Bering Sea	63 04.00 N	168 51.00 W			20
St. Lawrence I./SW Cape	Bering Sea	63 18.00 N	171 26.00 W			20
Hall I.	Bering Sea	60 37.00 N	173 00.00 W			20
St. Paul I./Sea Lion Rock	Bering Sea	57 06.00 N	170 17.50 W			3
St. Paul I./NE Pt.	Bering Sea	57 15.00 N	170 06.50 W			3
Walrus I. (Pribilofs)	Bering Sea	57 11.00 N	169 56.00 W			10
St. George I./Dalnoi Pt.	Bering Sea	56 36.00 N	169 46.00 W			3
St. George I./S Rookery	Bering Sea	56 33.50 N	169 40.00 W			3
Cape Newenham	Bering Sea	58 39.00 N	162 10.50 W			20
Round (Walrus Islands)	Bering Sea	58 36.00 N	159 58.00 W			20
Attu I./Cape Wrangell	Aleutian I.	52 54.60 N	172 27.90 E	52 55.40 N	172 27.20 E	20
Agattu I./Gillon Pt.	Aleutian I.	52 24.13 N	173 21.31 E			20
Attu I./Chirikof Pt.	Aleutian I.	52 49.75 N	173 26.00 E			20
Agattu I./Cape Sabak	Aleutian I.	52 22.50 N	173 43.30 E	52 21.80 N	173 41.40 E	20
Alaid I.	Aleutian I.	52 46.50 N	173 51.50 E	52 45.00 N	173 56.50 E	20
Shemya I.	Aleutian I.	52 44.00 N	174 08.70 E			20
Buldir I.	Aleutian I.	52 20.25 N	175 54.03 E	52 20.38 N	175 53.85 E	20
Kiska I./Cape St. Stephen	Aleutian I.	51 52.50 N	177 12.70 E	51 53.50 N	177 12.00 E	20
Kiska I./Sobaka & Vega	Aleutian I.	51 49.50 N	177 19.00 E	51 48.50 N	177 20.50 E	20
Kiska I./Lief Cove	Aleutian I.	51 57.16 N	177 20.41 E	51 57.24 N	177 20.53 E	20
Kiska I./Sirius Pt.	Aleutian I.	52 08.50 N	177 36.50 E			20
Tanadak I. (Kiska)	Aleutian I.	51 56.80 N	177 46.50 E			20

Column Number 1	2	3	4	5	6	7
Site Name	Area or Subarea	Boundaries from		Boundaries to[1]		Pollock No-fishing Zones for Trawl Gear [2,8](nm)
		Latitude	Longitude	Latitude	Longitude	
Segula I.	Aleutian I.	51 59.90 N	178 05.80 E	52 03.06 N	178 08.80 E	20
Ayugadak Point	Aleutian I.	51 45.36 N	178 24.30 E			20
Rat I./Krysi Pt.	Aleutian I.	51 49.98 N	178 12.35 E			20
Little Sitkin I.	Aleutian I.	51 59.30 N	178 29.80 E			20
Amchitka I./Column Rocks	Aleutian I.	51 32.32 N	178 49.20 E			20
Amchitka I./East Cape	Aleutian I.	51 22.26 N	179 27.93 E	51 22.00 N	179 27.00 E	20
Amchitka I./Cape Ivakin	Aleutian I.	51 24.46 N	179 24.21 E			20
Semisopochnoi/Petrel Pt.	Aleutian I.	52 01.40 N	179 36.90 E	52 01.50 N	179 39.00 E	20
Semisopochnoi I./Pochnoi Pt.	Aleutian I.	51 57.30 N	179 46.00 E			20
Amatignak I. Nitrof Pt.	Aleutian I.	51 13.00 N	179 07.80 W			20
Unalga & Dinkum Rocks	Aleutian I.	51 33.67 N	179 04.25 W	51 35.09 N	179 03.86 W	20
Ulak I./Hangox Pt.	Aleutian I.	51 18.90 N	178 58.90 W	51 18.70 N	178 59.60 W	20
Kavalga I.	Aleutian I.	51 34.50 N	178 51.73 W	51 34.50 N	178 49.50 W	20
Tag I.	Aleutian I.	51 33.50 N	178 34.50 W			20
Ugidak I.	Aleutian I.	51 34.95 N	178 30.45 W			20
Gramp Rock	Aleutian I.	51 28.87 N	178 20.58 W			20
Tanaga I./Bumpy Pt.	Aleutian I.	51 55.00 N	177 58.50 W	51 55.00 N	177 57.10 W	20
Bobrof I.	Aleutian I.	51 54.00 N	177 37.00 W			20
Kanaga I./Ship Rock	Aleutian I.	51 46.70 N	177 20.72 W			20
Kanaga I./North Cape	Aleutian I.	51 56.50 N	177 09.00 W			20
Adak I.	Aleutian I.	51 35.50 N	176 57.10 W	51 37.40 N	176 59.60 W	20
Little Tanaga Strait	Aleutian I.	51 49.09 N	176 13.90 W			20
Great Sitkin I.	Aleutian I.	52 06.00 N	176 10.50 W	52 06.60 N	176 07.00 W	20
Anagaksik I.	Aleutian I.	51 50.86 N	175 53.00 W			20
Kasatochi I.	Aleutian I.	52 11.11 N	175 31.00 W			20

Column Number 1	2	3	4	5	6	7
Site Name	Area or Subarea	Boundaries from		Boundaries to[1]		Pollock No-fishing Zones for Trawl Gear [2,8](nm)
		Latitude	Longitude	Latitude	Longitude	
Atka I./North Cape	Aleutian I.	52 24.20 N	174 17.80 W			20
Amlia I./Sviech. Harbor[11]	Aleutian I.	52 01.80 N	173 23.90 W			20
Sagigik I.[11]	Aleutian I.	52 00.50 N	173 09.30 W			20
Amlia I./East[11]	Aleutian I.	52 05.70 N	172 59.00 W	52 05.75 N	172 57.50 W	20
Tanadak I. (Amlia[11])	Aleutian I.	52 04.20 N	172 57.60 W			20
Agligadak I.[11]	Aleutian I.	52 06.09 N	172 54.23 W			20
Seguam I./Saddleridge Pt.[11]	Aleutian I.	52 21.05 N	172 34.40 W	52 21.02 N	172 33.60 W	20
Seguam I./Finch Pt.	Aleutian I.	52 23.40 N	172 27.70 W	52 23.25 N	172 24.30 W	20
Seguam I./South Side	Aleutian I.	52 21.60 N	172 19.30 W	52 15.55 N	172 31.22 W	20
Amukta I. & Rocks	Aleutian I.	52 27.25 N	171 17.90 W			20
Chagulak I.	Aleutian I.	52 34.00 N	171 10.50 W			20
Yunaska I.	Aleutian I.	52 41.40 N	170 36.35 W			20
Uliaga[3]	Bering Sea	53 04.00 N	169 47.00 W	53 05.00 N	169 46.00 W	20,10
Chuginadak	Gulf of Alaska	52 46.70 N	169 41.90 W			20
Kagamil[3]	Bering Sea	53 02.10 N	169 41.00 W			20,10
Samalga	Gulf of Alaska	52 46.00 N	169 15.00 W			20
Adugak I.[3]	Bering Sea	52 54.70 N	169 10.50 W			10
Umnak I./Cape Aslik[3]	Bering Sea	53 25.00 N	168 24.50 W			BA
Ogchul I.	Gulf of Alaska	52 59.71 N	168 24.24 W			20
Bogoslof I./Fire I.[3]	Bering Sea	53 55.69 N	168 02.05 W			BA
Polivnoi Rock	Gulf of Alaska	53 15.96 N	167 57.99 W			20
Emerald I.	Gulf of Alaska	53 17.50 N	167 51.50 W			20
Unalaska/Cape Izigan	Gulf of Alaska	53 13.84 N	167 39.37 W			20
Unalaska/Bishop Pt.[9]	Bering Sea	53 58.40 N	166 57.50 W			10
Akutan I./Reef-lava[9]	Bering Sea	54 08.10 N	166 06.19 W	54 09.10 N	166 05.50 W	10

Column Number 1	2	3	4	5	6	7
Site Name	Area or Subarea	Boundaries from		Boundaries to[1]		Pollock No-fishing Zones for Trawl Gear [2,8](nm)
		Latitude	Longitude	Latitude	Longitude	
Unalaska I./Cape Sedanka[6]	Gulf of Alaska	53 50.50 N	166 05.00 W			20
Old Man Rocks[6]	Gulf of Alaska	53 52.20 N	166 04.90 W			20
Akutan I./Cape Morgan[6]	Gulf of Alaska	54 03.39 N	165 59.65 W	54 03.70 N	166 03.60 W	20
Akun I./Billings Head[9]	Bering Sea	54 17.62 N	165 32.06 W	54 17.57 N	165 31.71 W	10
Rootok[6]	Gulf of Alaska	54 03.90 N	165 31.90 W	54 02.90 N	165 29.50 W	20
Tanginak I.[6]	Gulf of Alaska	54 12.00 N	165 19.40 W			20
Tigalda/Rocks NE[6]	Gulf of Alaska	54 09.60 N	164 59.00 W	54 09.12 N	164 57.10 W	20
Unimak/Cape Sarichef[9]	Bering Sea	54 34.30 N	164 56.80 W			10
Aiktak[6]	Gulf of Alaska	54 10.99 N	164 51.15 W			20
Ugamak I.[6]	Gulf of Alaska	54 13.50 N	164 47.50 W	54 12.80 N	164 47.50 W	20
Round (GOA)[6]	Gulf of Alaska	54 12.05 N	164 46.60 W			20
Sea Lion Rock (Amak)[9]	Bering Sea	55 27.82 N	163 12.10 W			10
Amak I. And rocks[9]	Bering Sea	55 24.20 N	163 09.60 W	55 26.15 N	163 08.50 W	10
Bird I.	Gulf of Alaska	54 40.00 N	163 17.2 W			10
Caton I.	Gulf of Alaska	54 22.70 N	162 21.30 W			3
South Rocks	Gulf of Alaska	54 18.14 N	162 41.3 W			10
Clubbing Rocks (S)	Gulf of Alaska	54 41.98 N	162 26.7 W			10
Clubbing Rocks (N)	Gulf of Alaska	54 42.75 N	162 26.7 W			10
Pinnacle Rock	Gulf of Alaska	54 46.06 N	161 45.85 W			3
Sushilnoi Rocks	Gulf of Alaska	54 49.30 N	161 42.73 W			10
Olga Rocks	Gulf of Alaska	55 00.45 N	161 29.81 W	54 59.09 N	161 30.89 W	10
Jude I.	Gulf of Alaska	55 15.75 N	161 06.27 W			20
Sea Lion Rocks (Shumagins)	Gulf of Alaska	55 04.70 N	160 31.04 W			3
Nagai I./Mountain Pt.	Gulf of Alaska	54 54.20 N	160 15.40 W	54 56.00 N	160 15.00 W	3
The Whaleback	Gulf of Alaska	55 16.82 N	160 05.04 W			3

Column Number 1	2	3	4	5	6	7
Site Name	Area or Subarea	Boundaries from		Boundaries to[1]		Pollock No-fishing Zones for Trawl Gear [2,8](nm)
		Latitude	Longitude	Latitude	Longitude	
Chernabura I.	Gulf of Alaska	54 45.18 N	159 32.99 W	54 45.87 N	159 35.74 W	20
Castle Rock	Gulf of Alaska	55 16.47 N	159 29.77 W			3
Atkins I.	Gulf of Alaska	55 03.20 N	159 17.40 W			20
Spitz I.	Gulf of Alaska	55 46.60 N	158 53.90 W			3
Mitrofania	Gulf of Alaska	55 50.20 N	158 41.90 W			3
Kak	Gulf of Alaska	56 17.30 N	157 50.10 W			20
Lighthouse Rocks	Gulf of Alaska	55 46.79 N	157 24.89 W			20
Sutwik I.	Gulf of Alaska	56 31.05 N	157 20.47 W	56 32.00 N	157 21.00 W	20
Chowiet I.	Gulf of Alaska	56 00.54 N	156 41.42 W	55 00.30 N	156 41.60 W	20
Nagai Rocks	Gulf of Alaska	55 49.80 N	155 47.50 W			20
Chirikof I.	Gulf of Alaska	55 46.50 N	155 39.50 W	55 46.44 N	155 43.46 W	20
Puale Bay	Gulf of Alaska	57 40.60 N	155 23.10 W			10
Kodiak/Cape Ikolik	Gulf of Alaska	57 17.20 N	154 47.50 W			3
Takli I.	Gulf of Alaska	58 01.75 N	154 31.25 W			10
Cape Kuliak	Gulf of Alaska	58 08.00 N	154 12.50 W			10
Cape Gull	Gulf of Alaska	58 11.50 N	154 09.60 W	58 12.50 N	154 10.50 W	10
Kodiak/Cape Ugat	Gulf of Alaska	57 52.41 N	153 50.97 W			10
Sitkinak/Cape Sitkinak	Gulf of Alaska	56 34.30 N	153 50.96 W			10
ShaKun Rock	Gulf of Alaska	58 32.80 N	153 41.50 W			10
Twoheaded I.	Gulf of Alaska	56 54.50 N	153 32.75 W	56 53.90 N	153 33.74 W	10
Cape Douglas (Shaw I.)	Gulf of Alaska	59 00.00 N	153 22.50 W			10
Kodiak/Cape Barnabas	Gulf of Alaska	57 10.20 N	152 53.05 W			3
Kodiak/Gull Point[4]	Gulf of Alaska	57 21.45 N	152 36.30 W			10, 3
Latax Rocks	Gulf of Alaska	58 40.10 N	152 31.30 W			10
Ushagat I./SW	Gulf of Alaska	58 54.75 N	152 22.20 W			10

Column Number 1	2	3	4	5	6	7
Site Name	Area or Subarea	Boundaries from		Boundaries to[1]		Pollock No-fishing Zones for Trawl Gear[2,8] (nm)
		Latitude	Longitude	Latitude	Longitude	
Ugak I.[4]	Gulf of Alaska	57 23.60 N	152 17.50 W	57 21.90 N	152 17.40 W	10, 3
Sea Otter I.	Gulf of Alaska	58 31.15 N	152 13.30 W			10
Long I.	Gulf of Alaska	57 46.82 N	152 12.90 W			10
Sud I.	Gulf of Alaska	58 54.00 N	152 12.50 W			10
Kodiak/Cape Chiniak	Gulf of Alaska	57 37.90 N	152 08.25 W			10
Sugarloaf I.	Gulf of Alaska	58 53.25 N	152 02.40 W			20
Sea Lion Rocks (Marmot)	Gulf of Alaska	58 20.53 N	151 48.83 W			10
Marmot I.[5]	Gulf of Alaska	58 13.65 N	151 47.75 W	58 09.90 N	151 52.06 W	15, 20
Nagahut Rocks	Gulf of Alaska	58 06.00 N	151 46.30 W			10
Perl	Gulf of Alaska	59 05.75 N	151 39.75 W			10
Gore Point	Gulf of Alaska	59 12.00 N	150 58.00 W			10
Outer (Pye) I.	Gulf of Alaska	59 20.50 N	150 23.00 W	59 21.00 N	150 24.50 W	20
Steep Point	Gulf of Alaska	59 29.05 N	150 15.40 W			10
Seal Rocks (Kenai)	Gulf of Alaska	59 31.20 N	149 37.50 W			10
Chiswell Islands	Gulf of Alaska	59 36.00 N	149 34.00 W			10
Rugged Island	Gulf of Alaska	59 50.00 N	149 23.10 W	59 51.00 N	149 24.70 W	10
Point Elrington[7, 10]	Gulf of Alaska	59 56.00 N	148 15.20 W			20
Perry I.[7]	Gulf of Alaska	60 44.00 N	147 54.60 W			
The Needle[7]	Gulf of Alaska	60 06.64 N	147 36.17 W			
Point Eleanor[7]	Gulf of Alaska	60 35.00 N	147 34.00 W			
Wooded I. (Fish I.)	Gulf of Alaska	59 52.90 N	147 20.65 W			20
Glacier Island[7]	Gulf of Alaska	60 51.30 N	147 14.50 W			
Seal Rocks (Cordova)[10]	Gulf of Alaska	60 09.70 N	146 50.30 W			20
Cape Hinchinbrook[10]	Gulf of Alaska	60 14.00 N	146 38.50 W			20
Middleton I.	Gulf of Alaska	59 28.30 N	146 18.80 W			10

Column Number 1	2	3	4	5	6	7
Site Name	Area or Subarea	Boundaries from		Boundaries to[1]		Pollock No-fishing Zones for Trawl Gear[2,8] (nm)
		Latitude	Longitude	Latitude	Longitude	
Hook Point[10]	Gulf of Alaska	60 20.00 N	146 15.60 W			20
Cape St. Elias	Gulf of Alaska	59 47.50 N	144 36.20 W			20

[1] Where two sets of coordinates are given, the baseline extends in a clock-wise direction from the first set of geographic coordinates along the shoreline at mean lower-low water to the second set of coordinates. Where only one set of coordinates is listed, that location is the base point.

[2] Closures as stated in 50 CFR 679.22(a)(7)(iv), (a)(8)(ii) and (b)(2)(ii).

[3] This site lies within the Bogoslof area (BA). The BA consists of all waters of area 518 as described in Figure 1 of this part south of a straight line connecting 55°00' N/170°00' W, and 55°00' N/168°11'4.75" W. Closure to directed fishing for pollock around Uliaga and Kagamil is 20 nm for waters west of 170°W long. and 10 nm for waters east of 170°W long.

[4] The trawl closure between 0 nm to 10 nm is effective from January 20 through May 31. Trawl closure between 0 nm to 3 nm is effective from August 25 through November 1.

[5] Trawl closure between 0 nm to 15 nm is effective from January 20 through May 31. Trawl closure between 0 nm to 20 nm is effective from August 25 to November 1.

[6] Restriction area includes only waters of the Gulf of Alaska Area.

[7] Contact the Alaska Department of Fish and Game for fishery restrictions at these sites.

[8] No-fishing zones are the waters between 0 nm and the nm specified in column 7 around each site and within the BA.

[9] This site is located in the Bering Sea Pollock Restriction Area, closed to pollock trawling during the A season. This area consists of all waters of the Bering Sea subarea south of a line connecting the points 163° 0'00" W long./55°46'30" N lat., 165°08'00" W long./54°42'9" N lat., 165°40'00" long./54°26'30" N lat., 166°12'00" W long./54°18'40" N lat., and 167°0'00" W long./54°8'50" N lat.

[10] The 20 nm closure around this site is effective in federal waters outside of State of Alaska waters of Prince William Sound.

[11] Some or all of the restricted area is located in the Seguam Foraging area (SFA) which is closed to all gears types. The SFA is established as all waters within the area between 52° N lat. and 53° N lat. and between 173°30' W long. and 172°30' W long.

Table 5 to 50 CFR Part 679 Steller Sea Lion Protection Areas Pacific Cod Fisheries Restrictions

Column Number 1	2	3	4	5	6	7	8	9
Site Name	Area or Subarea	Boundaries from		Boundaries to[1]		Pacific Cod No-fishing Zones for Trawl Gear[2,3] (nm)	Pacific Cod No-fishing Zone for Hook-and-Line Gear[2,3] (nm)	Pacific Cod No-fishing Zone for Pot Gear[2,3] (nm)
		Latitude	Longitude	Latitude	Longitude			
St. Lawrence I./S Punuk I.	BS	63 04.00 N	168 51.00 W			20	20	20
St. Lawrence I./SW Cape	BS	63 18.00 N	171 28.00 W			20	20	20
Hall I.	BS	60 37.00 N	173 00.00 W			20	20	20
St. Paul I./Sea Lion Rock	BS	57 06.00 N	170 17.50 W			3	3	3
St. Paul I./NE Pt.	BS	57 15.00 N	170 06.50 W			3	3	3
Walrus I. (Pribilofs)	BS	57 11.00 N	169 56.00 W			10	3	3
St George I./Dalnoi Pt.	BS	56 36.00 N	169 46.00 W			3	3	3
St. George I./S. Rookery	BS	56 33.50 N	169 40.00 W			3	3	3
Cape Newenham	BS	58 39.00 N	162 10.50 W			20	20	20
Round (Walrus Islands)	BS	58 36.00 N	159 58.00 W			20	20	20
Attu I./Cape Wrangell[11]	AI	52 54.60 N	172 27.00 E	52 55.40 N	172 27.20 E	20, 10	3	3
Agattu I./Gillon Pt.[11]	AI	52 24.13 N	173 21.31 E			20, 10	3	3
Attu I./Chirikof Pt.[11]	AI	52 49.75 N	173 26.00 E			20, 3		
Agattu I./Cape Sabak[11]	AI	52 22.50 N	173 43.30 E	52 21.80 N	173 41.40 E	20, 10	3	3
Alaid I.[11]	AI	52 46.50 N	173 51.50 E	52 45.00 N	173 56.50 E	20, 3		
Shemya I.[11]	AI	52 44.00 N	174 08.70 E			20, 3		
Buldir I.[11]	AI	52 20.25 N	175 54.03 E	52 20.38 N	175 53.05 E	20, 10	10	10
Kiska I./Cape St. Stephen[11]	AI	51 52.50 N	177 12.70 E	51 53.50 N	177 12.00 E	20, 10	3	3
Kiska I. Sobaka & Vega[11]	AI	51 43.50 N	177 19.00 E	51 48.50 N	177 20.50 E	20, 3		
Kiska I./Lief Cove[11]	AI	51 57.16 N	177 20.41 E	51 57.24 N	177 20.53 E	20, 10	3	3

Column Number 1	2	3	4	5	6	7	8	9
Site Name	Area or Subarea	Boundaries from		Boundaries to[1]		Pacific Cod No-fishing Zones for Trawl Gear[2,3] (nm)	Pacific Cod No-fishing Zone for Hook-and-Line Gear[2,3] (nm)	Pacific Cod No-fishing Zone for Pot Gear[2,3] (nm)
		Latitude	Longitude	Latitude	Longitude			
Kiska I./Sirius Pt.[11]	AI	52 08.50 N	177 36.50 E			20, 3		
Tanadak I. (Kiska)[11]	AI	51 56.80 N	177 46.80 E			20, 3		
Segula I.[11]	AI	51 59.90 N	178 05.80 E	52 03.06 N	178 08.80 E	20, 3		
Ayugadak Point[11]	AI	51 45.36 N	178 24.30 E			20, 10	3	3
Rat I./Krysi Pt.[11]	AI	51 49.98 N	178 12.35 E			20, 3		
Little Sitkin I.[11]	AI	51 59.30 N	178 29.80 E			20, 3		
Amchitka I./Column[11]	AI	51 32.32 N	178 49.20 E			20, 10	3	3
Amchitka I./East Cape[11]	AI	51 22.26 N	179 27.93 E	51 22.00 N	179 27.00 E	20,10	3	3
Amchitka I./Cape Ivakin[11]	AI	51 24.46 N	179 24.21 E			20, 3		
Semisopochnoi/Petrel Pt.[11]	AI	52 01.40 N	179 36.90 E	52 01.50 N	179 39.00 E	20, 10	3	3
Semisopochnoi I./Pochnoi Pt.[11]	AI	51 57.30 N	179 46.00 E			20, 10	3	3
Amatignak I./Nitrof Pt.[11]	AI	51 13.00 N	179 07.80 W			20, 3		
Unalga & Dinkum Rocks[11]	AI	51 33.67 N	179 04.25 W	51 35.09 N	179 03.66 W	20, 3		
Ulak I./Hasgox Pt.[11]	AI	51 18.90 N	178 58.90 W	51 18.70 N	178 59.60 W	20, 10	3	3
Kavalga I.[11]	AI	51 34.50 N	178 51.73 W	51 34.50 N	178 49.50 W	20, 3		
Tag I.[11]	AI	51 33.50 N	178 34.50 W			20, 10	3	3
Ugidak I.[11]	AI	51 34.95 N	178 30.45 W			20, 3		
Gramp Rock[11]	AI	51 28.87 N	178 20.58 W			20, 10	3	3
Tanaga I./Bumpy Pt.[11]	AI	51 55.00 N	177 58.50 W	51 55.00 N	177 57.10 W	20,3		
Bobrof I.	AI	51 54.00 N	177 27.00 W			3		
Kanaga I./Ship Rock	AI	51 46.70 N	177 20.73 W			3		
Kanaga I./North Cape	AI	51 56.50 N	177 09.00 W			3		

Column Number 1	2	3	4	5	6	7	8	9
Site Name	Area or Subarea	Boundaries from		Boundaries to[1]		Pacific Cod No-fishing Zones for Trawl Gear[2,3] (nm)	Pacific Cod No-fishing Zone for Hook-and-Line Gear[2,3] (nm)	Pacific Cod No-fishing Zone for Pot Gear[2,3] (nm)
		Latitude	Longitude	Latitude	Longitude			
Adak I.	AI	51 35.50 N	176 57.10 W	51 37.40 N	176 59.60 W	10	3	3
Little Tanaga Strait	AI	51 49.09 N	176 13.90 W			3		
Great Sitkin I.	AI	52 06.00 N	176 10.50 W	52 06.60 N	176 07.00 W	3		
Anagaksik I.	AI	51 50.86 N	175 53.00 W			3		
Kasatochi I.	AI	52 11.11 N	175 31.00 W			10	3	3
Atka I./N. Cape	AI	52 24.20 N	174 17.80 W			3		
Amlia I./Svimch. Harbor[4]	AI	52 01.80 N	173 23.90 W			3		
Sagigik I.[4]	AI	52 00.50 N	173 09.30 W			3		
Amlia I./East[4]	AI	52 05.70 N	172 59.00 W	52 05.75 N	172 57.50 W	3	20	20
Tanadak I. (Amlia)[4]	AI	52 04.20 N	172 57.60 W			3	20	20
Agligadak I.[4]	AI	52 06.09 N	172 54.23 W			20	20	20
Seguam I./Saddleridge Pt.[4]	AI	52 21.05 N	172 34.40 W	52 21.02 N	172 33.60 W	10	20	20
Seguam I./Finch Pt.	AI	52 23.40 N	172 27.70 W	52 23.25 N	172 24.30 W	3	20	20
Seguam I./South Side	AI	52 21.60 N	172 19.30 W	52 15.55 N	172 31.22 W	3	20	20
Amukta I. & Rocks	AI	52 27.25 N	171 17.90 W			3	20	20
Chagulak I.	AI	52 34.00 N	171 10.50 W			3	20	20
Yunaska I.	AI	52 41.40 N	170 36.35 W			10	20	20
Uliaga[5, 14]	BS	53 04.00 N	169 47.00 W	53 05.00 N	169 46.00 W	10	20	20
Chuginadak[14]	GOA	52 46.70 N	169 41.80 W			20	20,10	20
Kagamil[5, 14]	BS	53 02.10 N	169 41.00 W			10	20	20
Samalga	GOA	52 46.00 N	169 15.00 W			20	10	20
Adugak I.[5]	BS	52 54.70 N	169 10.50 W			10	BA	BA
Umnak I./Cape Aslik[5]	BS	53 25.00 N	168 24.50 W			BA	BA	BA

Column Number 1	2	3	4	5	6	7	8	9
Site Name	Area or Subarea	Boundaries from		Boundaries to[1]		Pacific Cod No-fishing Zones for Trawl Gear[2,3] (nm)	Pacific Cod No-fishing Zone for Hook-and-Line Gear[2,3] (nm)	Pacific Cod No-fishing Zone for Pot Gear[2,3] (nm)
		Latitude	Longitude	Latitude	Longitude			
Ogchul I.	GOA	52 58.71 N	168 24.24 W			20	10	20
Bogoslof I./Fire I.[5]	BS	53 55.69 N	168 02.05 W			BA	BA	BA
Polivnoi Rock[9]	GOA	53 15.96 N	167 57.99 W			20	10	20
Emerald I.[13, 9]	GOA	53 17.50 N	167 51.50 W			20	10	20
Unalaska/Cape Izigan[9]	GOA	53 13.64 N	167 39.37 W			20	10	20
Unalaska/Bishop Pt.[6, 13]	BS	53 53.40 N	166 57.50 W			10	10	3
Akutan I./Reef-lava[6]	BS	54 08.10 N	166 06.19 W	54 09.10 N	166 05.50 W	10	10	3
Unalaska I./Cape Sedanka[9]	GOA	53 50.50 N	166 05.00 W			20	10	20
Old Man Rocks[9]	GOA	53 52.20 N	166 04.90 W			20	10	20
Akutan I./Cape Morgan[8]	GOA	54 03.39 N	165 59.65 W	54 03.70 N	166 03.60 W	20	10	20
Akun I./Billings Head	BS	54 17.62 N	165 33.06 W	54 17.57 N	165 31.71 W	10	3	3
Rootok[8]	GOA	54 03.90 N	165 31.90 W	54 02.90 N	165 29.50 W	20	10	20
Tanginak I.[8]	GOA	54 12.00 N	165 19.40 W			20	10	20
Tigaldm/Rocks NE[9]	GOA	54 09.60 N	164 59.00 W	54 09.12 N	164 57.18 W	20	10	20
Unimak/Cape Sarichef	BS	54 34.30 N	164 56.80 W			10	3	3
Aiktak[8]	GOA	54 10.99 N	164 51.15 W			20	10	20
Ugamak I.[9]	GOA	54 13.50 N	164 47.50 W	54 12.80 N	164 47.50 W	20	10	20
Round (GOA)[8]	GOA	54 12.05 N	164 46.60 W			20	10	20
Sea Lion Rock (Amak)	BS	55 27.82 N	163 12.10 W			10	7	7
Amak I. And rocks	BS	55 24.20 N	163 09.60 W	55 26.15 N	163 08.50 W	10	3	3
Bird I.	GOA	54 40.00 N	163 17.2 W			10		
Caton I.	GOA	54 22.70 N	162 21.30 W			3	3	3
South Rocks	GOA	54 18.14 N	162 41.3 W			10		
Clubbing Rocks (S)	GOA	54 41.90 N	162 26.7 W			10	3	3

Column Number 1	2	3	4	5	6	7	8	9
Site Name	Area or Subarea	Boundaries from		Boundaries to[1]		Pacific Cod No-fishing Zones for Trawl Gear[2,3] (nm)	Pacific Cod No-fishing Zone for Hook-and-Line Gear[2,3] (nm)	Pacific Cod No-fishing Zone for Pot Gear[2,3] (nm)
		Latitude	Longitude	Latitude	Longitude			
Clubbing Rocks (N)	GOA	54 42.75 N	162 26.7 W			10	3	3
Pinnacle Rock	GOA	54 46.06 N	161 45.85 W			3	3	3
Sushilnoi Rocks	GOA	54 49.30 N	161 42.73 W			10		
Olga Rocks	GOA	55 00.45 N	161 29.81 W	54 59.09 N	161 30.89 W	10		
Jude I.	GOA	55 15.75 N	161 06.27 W			20		
Sea Lion Rocks (Shumagins)	GOA	55 04.70 N	160 31.04 W			3	3	3
Nagai I./Mountain Pt.	GOA	54 54.20 N	160 15.40 W	54.56.00 N	160.15.00 W	3	3	3
The Whaleback	GOA	55 16.82 N	160 05.04 W			3	3	3
Chernabura I.	GOA	54 45.18 N	159 32.59 W	54 45.87 N	159 35.74 W	20	3	3
Castle Rock	GOA	55 16.47 N	159 29.77 W			3	3	3
Atkins I.	GOA	55 03.20 N	159 17.40 W			20	3	3
Spitz I.	GOA	55 46.60 N	158 53.90 W			3	3	3
Mitrofania	GOA	55 50.20 N	158 41.90 W			3	3	3
Kak	GOA	56 17.30 N	157 50.10 W			20	20	20
Lighthouse Rocks	GOA	55 46.79 N	157 24.89 W			20	20	20
Sutwik I.	GOA	56 31.09 N	157 20.47 W	56 32.00 N	157 21.00 W	20	20	20
Chowiet I.	GOA	56 00.54 N	156 41.42 W	56 00.30 N	156 41.60 W	20	20	20
Nagai Rocks	GOA	55 49.80 N	155 47.50 W			20	20	20
Chirikof I.	GOA	55 46.50 N	155 39.50 W	55 46.44 N	155 43.46 W	20	20	20
Pumle Bay	GOA	57 40.60 N	155 23.10 W			10		
Kodiak/Cape Ikolik	GOA	57 17.20 N	154 47.50 W			3	3	3
Takli I.	GOA	58 01.75 N	154 31.35 W			10		
Cape Kuliak	GOA	58 08.00 N	154 12.50 W			10		

Column Number 1	2	3	4	5	6	7	8	9
Site Name	Area or Subarea	Boundaries from		Boundaries to[1]		Pacific Cod No-fishing Zones for Trawl Gear[2,3] (nm)	Pacific Cod No-fishing Zone for Hook-and-Line Gear[2,3] (nm)	Pacific Cod No-fishing Zone for Pot Gear[2,3] (nm)
		Latitude	Longitude	Latitude	Longitude			
Cape Gull	GOA	58 11.50 N	154 09.60 W	58 12.50 N	154 10.50 W	10		
Kodiak/Cape Ugat	GOA	57 52.41 N	153 50.97 W			10		
Sitkinak/Cape Sitkinak	GOA	56 34.30 N	153 50.96 W			10		
Shakun Rock	GOA	58 32.80 N	153 41.50 W			10		
Twoheaded I.	GOA	56 54.50 N	153 32.75 W	56 53.90 N	153 33.74 W	10		
Cape Douglas (Shaw I.)	GOA	59 00.00 N	153 22.50 W			10		
Kodiak/Cape Barnabas	GOA	57 10.20 N	152 53.05 W			3	3	3
Kodiak/Gull Point[8]	GOA	57 21.45 N	152 36.30 W			10, 3		
Latax Rocks	GOA	58 40.10 N	152 31.30 W			10		
Ushagat I./SW	GOA	58 54.75	152 22.20 W			10		
Ugak I.[9]	GOA	57 23.60 N	152 17.50 W	57 21.90 N	152 17.40 W	10, 3		
Sea Otter I.	GOA	58 31.15 N	152 13.30 W			10		
Long I.	GOA	57 46.82 N	152 12.90 W			10		
Sud I.	GOA	58 54.00 N	152 12.50 W			10		
Kodiak/Cape Chiniak	GOA	57 37.90 N	152 08.25 W			10		
Sugarloaf I.	GOA	58 53.25 N	152 02.40 W			20	10	10
Sea Lion Rocks (Marmot)	GOA	58 20.53 N	151 48.83 W			10		
Marmot I.[8]	GOA	58 13.65 N	151 47.75 W	58 09.90 N	151 52.06 W	15, 20	10	10
Nagahut Rocks	GOA	59 06.00 N	151 46.30 W			10		
Perl	GOA	59 05.75 N	151 39.75 W			10		
Gore Point	GOA	59 12.00 N	150 58.00 W			10		
Outer (Pye) I.	GOA	59 20.50 N	150 23.00 W	59 21.00 N	150 24.50 W	20	10	10
Steep Point	GOA	59 29.05 N	150 15.40 W			10		
Seal Rocks (Kenai)	GOA	59 31.20 N	149 37.50 W			10		

Column Number 1	2	3	4	5	6	7	8	9
Site Name	Area or Subarea	Boundaries from		Boundaries to[1]		Pacific Cod No-fishing Zones for Trawl Gear[2,3] (nm)	Pacific Cod No-fishing Zone for Hook-and-Line Gear[2,3] (nm)	Pacific Cod No-fishing Zone for Pot Gear[2,3] (nm)
		Latitude	Longitude	Latitude	Longitude			
Chiswell Islands	GOA	59 36.00 N	149 34.00 W			10		
Rugged Island	GOA	59 50.00 N	149 23.10 W			10		
Point Elrington[10, 12]	GOA	59 56.00 N	148 15.20 W			20		
Perry I.[10]	GOA	60 44.00 N	147 54.60 W					
The Needle[10]	GOA	60 06.64 N	147 36.17 W					
Point Eleanor[10]	GOA	60 35.00 N	147 34.00 W					
Wooded I. (Fish I.)	GOA	59 52.90 N	147 20.65 W			20	3	3
Glacier Island[10]	GOA	60 51.30 N	147 14.50 W					
Seal Rocks (Cordova)[12]	GOA	60 09.78 N	146 50.30 W			20	3	3
Cape Hinchinbrook[12]	GOA	60 14.00 N	146 38.50 W			20		
Middleton I.	GOA	59 28.30 N	146 18.80 W			10		
Hook Point[12]	GOA	60 20.00 N	146 15.60 W			20		
Cape St. Elias	GOA	59 47.50 N	144 36.20 W			20		

BS = Bering Sea, AI = Aleutian Islands, GOA = Gulf of Alaska

[1] Where two sets of coordinates are given, the baseline extends in a clock-wise direction from the first set of geographic coordinates along the shoreline at mean lower-low water to the second set of coordinates. Where only one set of coordinates is listed, that location is the base point.

[2] Closures as stated in 50 CFR 679.22(a)(7)(v), (a)(8)(iv) and (b)(2)(iii).

[3] No-fishing zones are the waters between 0 nm and the nm specified in columns 7, 8, and 9 around each site and within the Bogoslof area (BA) and the Seguam Foraging Area (SFA).

[4] Some or all of the restricted area is located in the SFA which is closed to all gears types. The SFA is established as all waters within the area between 52° N lat. and 53° N lat. and between 173°30' W long. and 172°30' W long. Amlia I./East, and Tanadak I. (Amlia) haulouts 20 nm hook-and-line and pot closures apply only to waters located east of 173° W longitude.

[5] This site lies within the BA which is closed to all gear types. The BA consists of all waters of area 518 as described in Figure 1 of this part south of a straight line connecting 55°00'N/170°00'W, and 55°00' N/168°11'4.75"

[6] Hook-and-line no-fishing zones apply only to vessels greater than or equal to 60 feet LOA in waters east of 167° W long. For Bishop Point the 10 nm closure west of 167° W. long. applies to all hook and line and jig vessels.

[7] The trawl closure between 0 nm to 10 nm is effective from January 20 through June 10. Trawl closure between 0 nm to 3 nm is effective from September 1 through November 1.

[8] The trawl closure between 0 nm to 15 nm is effective from January 20 through June 10. Trawl closure between 0 nm to 20 nm is effective from September 1 through November 1.

[9] Restriction area includes only waters of the Gulf of Alaska Area.

[10] Contact the Alaska Department of Fish and Game for fishery restrictions at these sites.

[11] Directed fishing for Pacific cod using trawl gear is prohibited in the harvest limit area (HLA) as defined at § 679.2 until the HLA Atka mackerel directed fishery in the A or B seasons is completed. The 20 nm closure around Gramp Rock and Tanaga I./Bumpy Pt. applies only to waters west of 178°W long. and only during the HLA directed fishery. After closure of the Atka mackerel HLA directed fishery, directed fishing for Pacific cod using trawl gear is prohibited in the HLA between 0 nm to 10 nm of rookeries and between 0 nm to 3 nm of haulouts. Directed fishing for Pacific cod using trawl gear is prohibited between 0-3 nm of Tanaga I./Bumpy Pt.

[12] The 20 nm closure around this site is effective only in waters outside of the State of Alaska waters of Prince William Sound.

[13] See 50 CFR 679.22(a)(7)(i)(C) for exemptions for catcher vessels less than 60 feet (18.3 m) LOA using jig or hook-and-line gear between Bishop Point and Emerald Island closure areas.

[14] Trawl closure around this site is limited to waters east of 170°0'00" W long. Closure to hook-and-line fishing around Chuginadak is 20 nm for waters west of 170°W long. and 10 nm for waters east of 170°W long.

Table 6 to 50 CFR Part 679 Steller Sea Lion Protection Areas Atka Mackerel Fisheries Restrictions

Column Number 1	2	3	4	5	6	7
Site Name	Area or Subarea	Boundaries from		Boundaries to[1]		Atka mackerel No-fishing Zones for Trawl Gear [2,3](nm)
		Latitude	Longitude	Latitude	Longitude	
St. Lawrence I./S Punuk I.	Bering Sea	63 04.00 N	168 51.00 W			20
St. Lawrence I./SW Cape	Bering Sea	63 18.00 N	171 26.00 W			20
Hall I.	Bering Sea	60 37.00 N	173 00.00 W			20
St. Paul I./Sea Lion Rock	Bering Sea	57 06.00 N	170 17.50 W			20
St. Paul I./NE Pt.	Bering Sea	57 15.00 N	170 06.50 W			20
Walrus I. (Pribilofs)	Bering Sea	57 11.00 N	169 56.00 W			20
St. George I./Dalnoi Pt.	Bering Sea	56 36.00 N	169 46.00 W			20
St. George I./S Rookery	Bering Sea	56 33.50 N	169 40.00 W			20
Cape Newenham	Bering Sea	58 39.00 N	162 10.50 W			20
Round (Walrus Islands)	Bering Sea	58 36.00 N	159 58.00 W			20
Attu I./Cape Wrangell	Aleutian Islands	52 54.60 N	172 27.90 E	52 55.40 N	172 27.20 E	10
Agattu I./Gillon Pt.	Aleutian Islands	52 24.13 N	173 21.31 E			10
Attu I./Chirikof Pt.	Aleutian Islands	52 49.75 N	173 26.00 E			3
Agattu I./Cape Sabak	Aleutian Islands	52 22.50 N	173 43.30 E	52 21.80 N	173 41.40 E	10
Alaid I.	Aleutian Islands	52 46.50 N	173 51.50 E	52 45.00 N	173 56.50 E	3
Shemya I.	Aleutian Islands	52 44.00 N	174 08.70 E			3
Buldir I.	Aleutian Islands	52 20.25 N	175 54.03 E	52 20.38 N	175 53.85 E	15
Kiska I./Cape St. Stephen	Aleutian Islands	51 52.50 N	177 12.70 E	51 53.50 N	177 12.00 E	10
Kiska I./Sobaka & Vega	Aleutian Islands	51 49.50 N	177 19.00 E	51 48.50 N	177 20.50 E	3
Kiska I./Lief Cove	Aleutian Islands	51 57.16 N	177 20.41 E	51 57.24 N	177 20.53 E	10
Kiska I./Sirius Pt.	Aleutian Islands	52 08.50 N	177 36.50 E			3
Tanadak I. (Kiska)	Aleutian Islands	51 56.80 N	177 46.80 E			3

Column Number 1	2	3	4	5	6	7
Site Name	Area or Subarea	Boundaries from		Boundaries to[1]		Atka mackerel No-fishing Zones for Trawl Gear [2,3](nm)
		Latitude	Longitude	Latitude	Longitude	
Segula I.	Aleutian Islands	51 59.90 N	178 05.80 E	52 03.06 N	178 08.80 E	3
Ayugadak Point	Aleutian Islands	51 45.36 N	178 24.30 E			10
Rat I./Krysi Pt.	Aleutian Islands	51 49.98 N	178 12.35 E			3
Little Sitkin I.	Aleutian Islands	51 59.30 N	178 29.80 E			3
Amchitka I./Column Rocks	Aleutian Islands	51 32.32 N	178 49.28 E			10
Amchitka I./East Cape	Aleutian Islands	51 22.26 N	179 27.93 E	51 22.00 N	179 27.00 E	10
Amchitka I./Cape Ivakin	Aleutian Islands	51 24.46 N	179 24.21 E			3
Semisopochnoi/Petrel Pt.	Aleutian Islands	52 01.40 N	179 36.90 E	52 01.50 N	179 39.00 E	10
Semisopochnoi I./Pochnoi Pt.	Aleutian Islands	51 57.30 N	179 46.00 E			10
Amatignak I. Nitrof Pt.	Aleutian Islands	51 13.00 N	179 07.80 W			3
Unmlga & Dinkum Rocks	Aleutian Islands	51 33.67 N	179 04.25 W	51 35.09 N	179 03.66 W	3
Ulak I./Hasgox Pt.	Aleutian Islands	51 18.90 N	178 58.90 W	51 18.70 N	178 59.60 W	10
Kavalga I.	Aleutian Islands	51 34.50 N	178 51.73 W	51 34.50 N	178 49.50 W	3
Tag I.	Aleutian Islands	51 33.50 N	178 34.50 W			10
Ugidak I.	Aleutian Islands	51 34.95 N	178 30.45 W			3
Gramp Rock'	Aleutian Islands	51 28.87 N	178 30.58 W			10, 20
Tanaga I./Bumpy Pt."	Aleutian Islands	51 55.00 N	177 58.50 W	51 55.00 N	177 57.10 W	20
Bobrof I.	Aleutian Islands	51 54.00 N	177 27.00 W			20
Kanaga I./Ship Rock	Aleutian Islands	51 46.70 N	177 20.72 W			20
Kanaga I./North Cape	Aleutian Islands	51 56.50 N	177 09.00 W			20
Adak I.	Aleutian Islands	51 38.50 N	176 57.10 W	51 37.40 N	176 58.60 W	20
Little Tanaga Strait	Aleutian Islands	51 49.09 N	176 13.80 W			20
Great Sitkin I.	Aleutian Islands	52 06.00 N	176 10.50 W	52 06.00 N	176 07.00 W	20
Anagaksik I.	Aleutian Islands	51 50.86 N	175 53.00 W			20

Column Number 1	2	3	4	5	6	7
Site Name	Area or Subarea	Boundaries from		Boundaries to[1]		Atka mackerel No-fishing Zones for Trawl Gear [2,3] (nm)
		Latitude	Longitude	Latitude	Longitude	
Kasatochi I.	Aleutian Islands	52 11.11 N	175 31.00 W			20
Atka I./North Cape	Aleutian Islands	52 24.20 N	174 17.80 W			20
Amlia I./Sviech. Harbor[5]	Aleutian Islands	52 01.80 N	173 23.90 W			20
Nagigik I.[5]	Aleutian Islands	52 00.50 N	173 09.30 W			20
Amlia I./Emmt[5]	Aleutian Islands	52 05.70 N	172 59.00 W	52 05.75 N	172 57.50 W	20
Tanadak I. (Amlia)[5]	Aleutian Islands	52 04.20 N	172 57.60 W			20
Agligadak I.[5]	Aleutian Islands	52 06.09 N	172 54.23 W			20
Seguam I./Saddleridge Pt.[5]	Aleutian Islands	52 21.05 N	172 33.40 W	52 21.02 N	172 33.60 W	20
Seguam I./Finch Pt.[5]	Aleutian Islands	52 23.40 N	172 27.70 W	52 23.25 N	172 24.30 W	20
Seguam I./South Side[5]	Aleutian Islands	52 21.60 N	172 19.30 W	52 15.55 N	172 31.22 W	20
Amukta I. & Rocks	Aleutian Islands	52 27.25 N	171 17.90 W			20
Chagulak I.	Aleutian Islands	52 34.00 N	171 10.50 W			20
Yunaska I.	Aleutian Islands	52 41.40 N	170 36.35 W			20
Uliaga[6]	Bering Sea	53 04.00 N	169 47.00 W	53 05.00 N	169 46.00 W	20
Kagamil[6]	Bering Sea	53 02.10 N	169 41.00 W			20
Adugak I.[6]	Bering Sea	52 54.70 N	169 10.50 W			20
Umnak I./Cape Aslik[6]	Bering Sea	53 25.00 N	168 24.50 W			BA
Bogoslof I./Fire I.[6]	Bering Sea	53 55.69 N	168 02.05 W			BA
Unalaska/Bishop Pt.	Bering Sea	53 58.40 N	166 57.50 W			20
Akutan I./Reef-lava	Bering Sea	54 08.10 N	166 06.19 W	54 09.10 N	166 05.50 W	20
Akun I./Billings Head	Bering Sea	54 17.62 N	165 32.06 W	54 17.57 N	165 31.71 W	20
Unimak/Cape Sarichef	Bering Sea	54 34.30 N	164 56.80 W			20
Sea Lion Rock (Amak)	Bering Sea	55 27.82 N	163 12.10 W			20
Amak I. And rocks	Bering Sea	55 24.20 N	163 09.60 W	55 26.15 N	163 08.50 W	20

[1] Where two sets of coordinates are given, the baseline extends in a clock-wise direction from the first set of geographic coordinates along the shoreline at mean lower-low water to the second set of coordinates.

[2] Closures as stated in 50 CFR 679.22 (a)(7)(vi) and (a)(8)(v).

[3] No-fishing zones are the waters between 0 nm and the nm specified in column 7 around each site and within the Bogoslof area (BA).

[4] The 20 nm Atka mackerel fishery closure around the Tanaga I./Bumpy Pt. Rookery is established only for that portion of the area east of 178° W longitude. Waters located within 20 nm of Tanaga I./Bumpy Pt. and west of 178° W long. are including in the harvest limit area, as defined in §679.2.

[5] Some or all of the restricted area is located in the Seguam Foraging Area (SFA) which is closed to all gears types. The SFA is established as all waters within the area between 52° N lat. and 53° N lat. and between 173°30' W long. and 172°30' W long.

[6] This site lies in the BA, closed to all gear types. The BA consists of all waters of Area 518 described in Figure 1 of this part south of a straight line connecting 55°00'N/170°00'W and 55°00'N/168°11'4.75" W.

[7] Directed fishing for Atka mackerel by vessels using trawl gear is prohibited in waters located a)0-20 nm seaward of Gramp Rock and east of 178°W long., and b)0-10 nm of Gramp Rock and west of 178°W long.

[FR Doc. 03-11374 Filed 5-7-03; 8:45 am]
BILLING CODE 3510-22-C

DEPARTMENT OF STATE

22 CFR Part 42

[Public Notice 4316]

Visas: Documentation of Immigrants—Victims of Terrorism

AGENCY: Department of State.

ACTION: Interim rule with request for comments.

SUMMARY: This rule amends the Department's regulations concerning immigrant visas. Recent legislation, commonly known as the USA Patriot Act, permits certain victims of the September 11, 2001 terrorist attack to file petitions for classification as special immigrants. This rule implements these provisions by creating a new visa classification "SP" for these immigrants and sets forth the eligibility requirements for the issuance of an immigrant visa in that category.

DATES: *Effective date:* This interim rule is effective on May 8, 2003.

Comment date: The Department will consider written comments submitted on or before July 7, 2003.

ADDRESSES: Please submit comments to the Chief, Legislation and Regulations Division, Visa Services, Department of State, 20522–0106, e-mail *VisaRegs@state.gov*, or fax to (202) 663–3898.

FOR FURTHER INFORMATION CONTACT: Pam Chavez, Legislation and Regulations Division, Visa Services, Department of State, Washington, DC 20522–0106, phone (202) 663–1206.

SUPPLEMENTARY INFORMATION:

What Is the Authority for This Rule?

On October 26, 2001, the President signed into law the "Uniting and Strengthening America Act by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism (USA Patriot) Act," Public Law 107–56. Section 421 of the USA Patriot Act provides special immigrant status for certain victims of the terrorist attack of September 11, 2001 who file petitions for classification under the Immigration and Nationality Act (INA) section 203(b)(4).

Who Is Entitled to the Special Immigrant "SP" Classification?

Principal Alien

An alien is entitled to classification as an "SP" special immigrant if the alien can demonstrate to the Attorney General that

(1) He or she is the beneficiary of a petition, filed on or before September 11, 2001, for classification as an immigrant under INA 203(a) or (b) or as a nonimmigrant under INA 101(a)(15)(K); or

(2) He or she is the beneficiary of a labor certification application filed on or before September 11, 2001.

Additionally, the alien must present evidence that the petition or labor certification application was revoked, terminated or rendered null, either before or after its approval, due directly to the attack of September 11, 2001, that resulted in the death or disability of the petitioner, beneficiary, or applicant; or caused loss of employment due to physical damage to, or destruction of, the business of the petitioner or the applicant.

Spouse or Child

The spouse or child of an alien who meets the description of a "principal alien" (whether the principal alien is living or deceased) may be classified as an "SP" if the familial relationship existed on September 10, 2001; and if the spouse or child is

(1) Accompanying the principal alien; or

(2) Following-to-join the principal alien no later than September 11, 2003. In the case of a deceased principal alien, the requirement for accompanying or following to join is disregarded.

Grandparent of an Orphan

The grandparent of a child may be classified as an "SP", if the child is left with no parents as a direct result of a terrorist attack on September 11, 2001, if either parent was a U.S. citizen, a U.S. national, or a lawful U.S. permanent resident on September 10, 2001. The grandparent must also demonstrate that he or she is coming to the U.S. to assume legal custody of the child.

What Evidence Must Be Presented To Show That the Alien Was the Victim of the September 11, 2001, Terrorist Attack?

To qualify for classification as an "SP" immigrant, the alien must demonstrate to the Secretary of Homeland Security that he or she is a "victim of a specified terrorist activity", defined in the USA Patriot Act as any terrorist activity conducted against the Government or the people of the United States on September 11, 2001. The INS is responsible for approval of the petition, and thus responsible for determining if the alien has presented satisfactory evidence that he or she is a victim of a September 11, 2001 terrorist attack.

Are Aliens in the "SP" Category Subject to the Grounds Visa Inadmissiblity?

Aliens in the "SP" are subject to all grounds of ineligibility except INA 212(a)(4).

How Will Aliens in the "SP" Category Be Assigned a Priority Date?

The Immigration and Naturalization (INS) will assign a priority date at the time the fourth preference petition is filed. Consular officers will issue visas in the chronological order in which the petitions were submitted to the INS. However, if the annual limit under INA 203 is met, the alien may use the priority date of the revoked petition.

How Is the Department Amending Its Regulation?

The Department is amending 22 CFR 42.32(d) by adding a new fourth preference classification paragraph (9) clarifying entitlement to special immigrant status under the USA Patriot Act. This rule authorizes consular officers to accord fourth preference employment-based special immigrant classification to certain victims of the September 11, 2001, terrorist attacks. As with other classes of fourth preference employment-based immigrants, the alien must be the beneficiary of an approved petition.

Regulatory Analysis and Notices

Administrative Procedure Act

The Department's implementation of this regulation as an interim rule is based upon the "good cause" exceptions found at 5 U.S.C. 553(b)(B) and (d)(3). As the amendment to the regulation simply implements without interpretation a legislative mandate that provides a benefit to aliens by extending special immigrant status to a specific class of aliens, the Department has determined that it is unnecessary to publish a proposed rule. In view of this benefit and since the amendment applies to visas made available in any fiscal year beginning immediately, the rule will be made effective immediately upon publication in the **Federal Register**.

Regulatory Flexibility Act

The Department of State, in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)), has reviewed this regulation and, by approving it, certifies that this rule is not expected to have a significant economic impact on a substantial number of small entities.

Unfunded Mandates Reform Act of 1995

This rule will not result in the expenditure by State, local and tribal governments, in the aggregate, or by the private sector, of $100 million or more in any year and it will not significantly or uniquely affect small governments. Therefore, no actions were deemed necessary under the provisions of the Unfunded Mandates Reform Act of 1995.

Small Business Regulatory Enforcement Fairness Act of 1996

This rule is not a major rule as defined by section 804 of the Small Business Regulatory Enforcement Act of 1996. This rule will not result in an annual effect on the economy of $100 million or more; a major increase in costs or prices; or significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based companies to compete with foreign-based companies in domestic and export markets.

Executive Order 12866

Although this rule is being promulgated in conjunction with the Immigration and Naturalization Service, a domestic agency, the Department of State does not consider this rule to be a "significant regulatory action" under Executive Order 12866, section (3)(f), Regulatory Planning and Review. Therefore, in accordance with the letter to the Department of State of February 4, 1994 from the Director of the Office of Management and Budget, it does not require review by the Office of Management and Budget.

Executive Order 13132

This regulation will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with section 6 of Executive Order 13132, it is determined that this rule does not have sufficient federalism implications to warrant the preparation of a federalism summary impact statement.

Paperwork Reduction Act

This rule does not impose any new reporting or record-keeping requirements under the Paperwork Reduction Act.

List of Subjects in 22 CFR Part 42

Aliens, Immigrants, Passports and visas.

■ For the reasons set forth in the preamble, the Department is amending the regulations at 22 CFR part 42 to read as follows:

PART 42—[AMENDED]

■ 1. The authority citation for part 42 is revised to read as follows:

Authority: 8 U.S.C. 1104; Pub. L. 107–56, sec. 421.

■ 2. Amend § 42.32(d) by adding a new paragraph (9) to read as follows:

§ 42.32 Employment-based preference immigrants.

* * * * *

(d) * * *

(9) Certain Victims of the September 11, 2001 terrorist attacks. (i) Entitlement to status. An alien shall be classifiable as a special immigrant under INA 203(b)(4) as specified in section 421 of Public Law 107–56, if:

(A) The consular officer has received a petition approved by the INS to accord such classification, or official notification of such an approval, and the consular officer is satisfied from the evidence presented that the alien is entitled to that classification; or

(B) The alien is the spouse or child of an alien so classified in paragraph (d)(9)(i) of this section and is accompanying or following to join the principal alien.

(ii) *Ineligibility exemption.* An alien classified under paragraph (d)(9)(i) of this section shall not be subject to the provisions of INA 212(a)(4).

(iii) *Priority date.* Aliens entitled to status under paragraph (d)(9)(i) of this section shall be assigned a priority date as of the date the petition was filed under INA 204 for classification under section INA 203(b)(4) and visas shall be issued in the chronological order of application submission. However, in the event that the annual limit for immigrants under INA 203 is reached, the alien may retain the earlier priority date of the petition that was revoked.

* * * * *

Dated: January 3, 2003.

Maura Harty,

Assistant Secretary for Consular Affairs, Department of State.

[FR Doc. 03–11222 Filed 5–7–03; 8:45 am]

BILLING CODE 4710–06–P

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

23 CFR Parts 140 and 646

[FHWA Docket No. FHWA–97–2681]

FHWA RIN 2125–AD86

Railroad-Highway Projects

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Final rule.

SUMMARY: The FHWA adopts as final an interim final rule that amends the regulation on railroad-highway projects and reimbursement for railroad work on Federal-aid highway projects. The purpose of adopting the interim final rule as final is to reflect the statutory changes brought about by the Intermodal Surface Transportation Efficiency Act of 1991 (ISTEA) and to provide State transportation departments with clarification and more flexibility in implementing current law.

EFFECTIVE DATE: June 9, 2003.

FOR FURTHER INFORMATION CONTACT: Mr. Rudolph Umbs, Office of Safety (HSA–1), (202) 366–2177, or Mr. Raymond Cuprill, Office of the Chief Counsel (HCC–30), (202) 366–0791. Federal Highway Administration, 400 Seventh Street, SW., Washington, DC 20590–0001. Office hours are from 7:45 a.m. to 4:15 p.m., e.t., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

Electronic Access

Internet users can access all comments received by the U.S. DOT Dockets, Room PL–401, by using the universal resource locator (URL): *http://dms.dot.gov*. It is available 24 hours each day, 365 days each year. Please follow the instructions online for more information and help.

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Background

The FHWA published an interim final rule on parts 140 and 646, on August 27, 1997, at 62 FR 45326. Interested persons were invited to submit comments to FHWA Docket No. FHWA–97–2681. The interim final rule amended the

regulation on railroad/highway projects and reimbursement for railroad work on Federal-aid highway projects. The changes were made to conform these regulations to the changes brought about by the Intermodal Surface Transportation Efficiency Act of 1991 (ISTEA) (Pub. L. 102–240, 105 Stat. 1914). Additionally, the changes were to provide State transportation departments with clarification and more flexibility in implementing the current law. Other changes required railroads to submit final billings within one year following completion of the railroad work; remove the requirement of a State's certification that work is complete; remove the "G" Funds terminology; and increase the ceiling for lump sum agreements from $25,000 to $100,000. This interim final rule has been in effect since August 27, 1997. To date, the FHWA received five comments to the docket. The last comment was received in October 1997. Since the interim final rule has been in effect in 1997, the FHWA has determined that the regulation is working effectively and efficiently and without significant burden to the State transportation departments and railroad companies. Consequently, we are adopting the interim final rule as final without any changes.

Summary of Comments

The FHWA received five comments to the docket. The FHWA received comments from Ronald J. Ornee, representing the County of Los Angeles Department of Public Works; Stephanie D. Roth, representing the Railway Progress Institute (now known as the Railway Supply Institute, effective January 1, 2003); Dwight M. Bower, representing the State of Idaho Transportation Department; Michael J. Rush, representing the Association of American Railroads; and Tom Zeinz, representing the Illinois Central Railroad (which merged with the Canadian National Railway Company on July 1, 1999).

The County of Los Angeles Department of Public Works comments support the FHWA's revisions as stated in the interim final rule.

The Railway Progress Institute (RPI) submitted two recommendations. The RPI recommended that the lump sum payment arrangement for reimbursement for railroad adjustments as stated in § 646.216(d)(3)(ii) should be increased from $100,000 to $150,000. The RPI believes that this should be increased to "reflect the rise in the number of gated crossings, which are more costly to maintain." The RPI also recommended that the Appendix Subpart of Part 646 should be revised to use foot-pound units instead of metric in order to eliminate the possibility of miscalculations, which could affect the safety of grade crossings.

The State of Idaho Transportation Department (IDDOT) submitted three recommendations. The IDDOT recommends changing § 646.216(d)(3) to eliminate the phrase "with its own forces," to clarify the flexibility of the railroads" use of subcontracted work performed on behalf of the railroads. The second recommendation is to change § 646.216(3)(d)(i) to include the phrase "and other eligible work," to allow other specialized services provided to be included in State-railroad agreements. The third recommendation was to eliminate § 646.2116(d)(3)(ii), due to its concern that services provided may exceed $100,000 (*e.g.*, the average cost for installing warning devices and surfacing for a single-track at-grade crossing was $140,000 and $90,000, respectively, at the time of the docket comment submittal).

The Association of American Railroads (AAR) submitted several recommendations. The AAR recommended changing § 140.922(a) to include text regarding a time frame for payments received by the railroad company, based on the date the State transportation department received the progress billings.

The AAR recommended adding text at the end of § 140.922(b) that stipulates a time frame of the acceptance of billable work. The AAR recommended that this text include (1) a time frame for the State transportation department report project inspection results to the FHWA and railroad company; (2) when a project will be considered complete and accepted if no comments are received; and (3) a time frame when the railroad company shall receive payment from the State transportation agency.

The AAR's recommendation

Finally, the AAR recommended changes to § 140.922(c) to reduce the audit period from three years from the date final payment is received by the railroad, to one year after the date the final bill was received by the State transportation department. The AAR recommends that additional text is included stating after the one-year period, the final bill shall be accepted and approved, except as agreed to by the railroad and the State transportation department. The AAR provided these recommendations as a means to assist the FHWA with its efforts to assist State transportation departments in their efforts to obtain timely final billings from the railroads.

The Illinois Central Railroad (ICRR) submitted four recommendations that pertained to § 140.922(b). The ICRR recommended that the FHWA include text regarding inspections of the completed work by the State transportation department and the amount of time that should be allotted for the inspection. Second, the ICRR recommended is to include text that would require State transportation department's payment to the railroads to be made within 45 days, otherwise the railroad shall be entitled to receive interest at prevailing rates from the State transportation department on any outstanding amounts. Third, the ICRR recommended to include text that the State transportation departments shall have one year to conduct a final audit of the railroad's final billing before the said billing is considered accepted and final payment is made in full. Finally, the ICRR recommended including text that requires the State transportation department to conduct an audit and base FHWA's reimbursement to the State transportation department on the audited amount. The ICRR believes that these recommendations would facilitate State transportation departments to expedite its project closure and payment process.

Conclusion

This interim final rule has been in effect since August 27, 1997. The FHWA has not received any additional comments to this interim final rule since October 27, 1997. The transportation community has been conforming to the interim final rule for almost six years, and the FHWA believes that the commerce practices between State transportation departments and railroad companies has benefited from the this rule. The interim final rule was part of FHWA's effort to implement the President's Regulatory Invention Initiative and Executive Order 12866 (Regulatory Planning and Review; 58 FR 51735) by allowing administrative and fiscal flexibility for both the State and railroads as a means to implement current law. The interim final rule has provided the necessary flexibility to States and railroads since 1997.

For the reasons stated above the FHWA adopts as a final rule the interim final rule published on August 27, 1997, at 62 FR 45326.

Rulemaking Analyses and Notices

Executive Order 12866 (Regulatory Planning and Review) and DOT Regulatory Policies and Procedures

The FHWA has determined that this action is not a significant regulatory action within the meaning of Executive Order 12866 or the U.S. Department of Transportation regulatory policies and procedures. The economic impact of this rule will be minimal. This action merely adopts as final the interim final rule that has been in effect since August 27, 1997.

This final rule will not adversely affect, in a material way, any sector of the economy. In addition, these changes will not interfere with any action taken or planned by another agency and will not materially alter the budgetary impact of any entitlements, grants, user fees, or loan programs.

Regulatory Flexibility Act

In compliance with the Regulatory Flexibility Act (Pub. L. 96–354, 5 U.S.C. 601–612), the FHWA has evaluated the effects of this final rule on small entities and has determined it will not have a significant economic impact on a substantial number of small entities. This final rule adopts as final the interim final rule that clarifies, streamlines, and simplifies Federal-aid highway-railway crossing program policies for modification and management. This rule reduces the administrative burden on the States associated with the Federal-aid highway-railway crossing program actions.

Unfunded Mandates Reform Act of 1995

This rule does not impose unfunded mandates as defined by the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4, March 22, 1995, 109 Stat. 48). This rule will not result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100 million in any one year.

Additionally, the definition of "Federal mandate" in the Unfunded Mandates Reform Act excludes financial assistance of the type in which State, local, or tribal governments have authority to adjust their participation in the program in accordance with changes made in the program by the Federal government. The railroad-highway program permits this type of flexibility to the States.

Executive Order 13132 (Federalism)

This action has been analyzed in accordance with the principles and criteria contained in Executive Order 13132, and the FHWA has determined that this action does not have sufficient federalism implications to warrant the preparation of a Federalism assessment. The FHWA also determined that this action does not preempt any State law or State regulation or affect the States' ability to discharge traditional State governmental functions.

By adopting as final the interim final rule, this rule assists the States by providing more flexibility and clarification in implementing railroad-highway regulations.

Executive Order 12372 (Intergovernmental Review)

Catalog of Federal Domestic Assistance Program Number 20.205, Highway Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program.

Paperwork Reduction Act

This action does not contain a collection of information requirement under the Paperwork Reduction Act of 1995, 44 U.S.C. 3501–3520.

National Environmental Policy Act

The FHWA has analyzed this action for the purpose of the National Environmental Policy Act of 1969 (42 U.S.C. 4321–4347) and has determined that this action will not have any effect on the quality of environment.

Executive Order 13175 (Tribal Consultation)

The FHWA has analyzed this action under Executive Order 13175, dated November 6, 2000. This action will not have substantial direct effects on one or more Indian tribes; will not impose substantial direct compliance costs on Indian tribal governments; and will not preempt tribal law. Therefore, a tribal summary impact statement is not required.

Executive Order 13211 (Energy Effects)

We have analyzed this action under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. We have determined that it is not a significant energy action under that order, because it is not a significant rule and is not likely to have a significant adverse effect on the supply, distribution, or use of energy. Therefore, a Statement of Energy Effects under Executive Order 13211 is not required.

Executive Order 12988 (Civil Justice Reform)

This action meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

Executive Order 13045 (Protection of Children)

We have analyzed this action under Executive Order 13045, protection of Children from Environmental Health Risks and Safety Risks. This action is not an economically significant rule and does not concern an environmental risk to health or safety that may disproportionately affect children.

Executive Order 12630 (Taking of Private Property)

This action will not effect a taking of private property or otherwise have taking implications under Executive Order 12630, Government Actions and Interference with Constitutionally Protected Property Rights.

Regulation Identification Number

A regulation identification number (RIN) is assigned to each regulatory action listed in the Unified Agenda of Federal Regulations. The Regulatory Information Service Center publishes the Unified Agenda in April and October of each year. The RIN contained in the heading of this document can be used to cross-reference this action with the Unified Agenda.

List of Subjects

23 CFR Part 140

Bonds, Claims, Grant programs-transportation, Highways and roads, Railroads.

23 CFR Part 646

Grant programs-transportation, Highways and roads, Insurance, Railroads.

In consideration of the foregoing, and under the authority of 23 U.S.C. 109(e), 120(c), 130, 133(d)(1), and 315; and 49 CFR 1.48(b), the interim final rule amending 23 CFR parts 140 and 646, that was published at 62 FR 45326 on August 27, 1997, is adopted as a final rule without change.

Issued on: May 1, 2003.

Mary E. Peters,

Federal Highway Administrator.

[FR Doc. 03–11291 Filed 5–7–03; 8:45 am]

BILLING CODE 4910–22–P

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

23 CFR Part 661

[FHWA Docket No. FHWA–98–4743]

RIN 2125–AE57

Indian Reservation Roads Bridge Program

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Final rule.

SUMMARY: The FHWA adopts as final an interim final rule that establishes the regulation on the Indian reservation road bridge program (IRRBP). The purpose of adopting the interim final rule as final is to establish a nationwide priority program for improving deficient Indian reservation road (IRR) bridges as required by the Transportation Equity Act for the 21st Century (TEA–21). This final rule also establishes the project selection and fund allocation procedures to ensure the uniform application of this IRRBP.

EFFECTIVE DATE(S): June 9, 2003.

FOR FURTHER INFORMATION CONTACT: Mr. Wade F. Casey, P.E., Federal Lands Highway (HFPD–9), (202) 366–9486, or Ms. Vivian Philbin, Office of the Chief Counsel (HCC–40), (303) 716–2122. Federal Highway Administration, 400 Seventh Street, SW., Washington, DC 20590–0001. Office hours are from 7:45 a.m. to 4:15 p.m., e.t., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

Electronic Access

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Background

The FHWA published an interim final rule on part 661 on July 19, 1999, at 64 FR 38565. Interested persons were invited to submit comments to FHWA Docket No. FHWA–98–4743. The interim final rule established the nationwide priority program for improving deficient Indian reservation road bridges as required by section 1115 of the Transportation Equity Act for the 21st Century (TEA–21) (Pub. L. 105–178; 112 Stat. 107; June 1998). The interim final rule also established the project selection and fund allocation procedures to ensure uniform application of the program and distribution of the funds associated with this program. The interim final rule has been in effect since July 19, 1999.

Section 1115 of TEA–21 required the Secretary of Transportation (hereinafter Secretary) to establish a nationwide priority program for improving deficient IRR bridges. This legislation also required the Secretary, in cooperation with the Secretary of the Interior, to reserve not less than $13 million for projects to replace, rehabilitate, seismically retrofit, paint, apply calcium magnesium acetate to, apply sodium acetate/formate or other environmentally acceptable, minimally corrosive anti-icing and de-icing compositions or install scour countermeasures for deficient IRR bridges, including multiple-pipe culverts. In order to immediately implement the IRRBP and promptly address the deficient IRR bridges, the FHWA, in conjunction with the Bureau of Indian Affairs (BIA) and in consultation with the Indian tribal governments (ITGs) and other interested parties, developed project selection and fund allocation procedures and issued an interim final rule.

Before issuing a final rule for the IRRBP, we indicated that we would invite and actively consider comments introduced concerning the IRRBP interim final rule and that we would assess how the IRRBP is working, including the fund allocation process based on experience with these rules.

Summary of Comments

Since publication of the interim final rule, the FHWA received 5 comments to the docket, one from a tribal chairman, one from a tribal member, one from the BIA Pacific Regional Office, one from a private citizen and one from the TEA–21 Negotiated Rulemaking Tribal Caucus.

The tribal chairman was concerned that the IRRBP is funded as a $13 million set-aside from the IRR construction program; that the program would be a detriment to tribes in Oklahoma; that the bulk of deficient IRR bridges are in Oklahoma and that there is a need to place bridges on low water crossings.

The individual tribal member who commented was also from Oklahoma and stated that the interim final rule is non-compliant with the Civil Rights Act; it creates two classes of Indian people, those living on reservations and those that do not; and limits the use of program funds by non-BIA owned IRR bridges that serve non-reservation tribes such as those in Oklahoma.

The BIA Pacific Region was concerned that tribal bridge owners would not be able to provide a 20 percent funding match; that right-of-way should be accepted in the form of a memorandum of agreement (MOA) or memorandum of understanding (MOU) between government agencies; that TEA–21 be amended to provide funding for project planning and design; lastly, that the 120 calendar day award period be amended to 180 calendar days.

The private citizen who commented was concerned about treatment of BIA versus non-BIA owned bridges and that all Indian tribes regardless of location should benefit from this bridge program, even if they reside off the "Indian Reservation."

The tribal caucus of the TEA–21 Negotiated Rulemaking Committee recommended a number of changes to the interim final rule. It disagreed with the 20 percent fund match requirement for non-BIA owned IRR bridges. It also disagreed with the provision that set a $1.5 million limitation on IRRBP funds for non-BIA owned IRR bridges. In addition, it felt that for structurally deficient IRR bridges with a sufficiency rating of 50 or less, that the BIA should use its 6 percent administrative funds to design replacement bridges. It also recommended that the IRR Coordinating committee be consulted regarding the deficient bridge list.

The FHWA has considered all of the written comments submitted and we are adopting this interim rule as final based on the following discussion:

(a) It is approaching four years since the rules governing the IRRBP have been in place, and ample time has gone by to observe whether the rules are working. Since publication, 69 bridges have been funded for either replacement or rehabilitation for approximately $35.1 million. Based on a query of bridges in the process of being designed [1], 66 bridge plan, specification and estimates (PS&Es) are slated to be completed in FY 2003 that will require roughly $39.7 million in IRRBP construction funds. This is a good indication that the IRRBP funds have been fully used during the fiscal years (FY) available during TEA–21 (FY 1999—FY 2003) except for $4.9 million. The $4.9 million would be available for additional bridge projects in FY 2004 and provide a stop gap measure during the period following TEA–21's expiration at the end of FY 2003 until the reauthorization process is complete. Projecting ahead to FY 2004, 65 additional bridges are planned for PS&E completion that will require roughly $36.5 million in IRRBP construction funds. Likewise, in FY 2005, 24 bridges are planned for PS&E completion requiring approximately $9.3 million in IRRBP funds. Based on the current use of the IRRBP funds and the need for additional funds beyond TEA–21, the FHWA has determined that the interim rules are working.

(b) The concern, particularly within Oklahoma, that some Indian tribes would not have access to the IRRBP funds during the fiscal years of TEA–21 is unfounded. To date, 26 percent of the IRRBP funds has been spent on bridges in Oklahoma. Other major beneficiaries of IRRBP funds include Indian tribes within New Mexico (17 percent) and Arizona (9 percent). To date, all eligible bridge projects submitted for processing have been funded.

(c) Two Indian tribes and the TEA–21 Negotiated Rulemaking Tribal Caucus urged that the $1.5 million limitation be eliminated for non-BIA owned bridges or even simply waived. The FHWA has determined that to remove the $1.5 million limitation would jeopardize both the IRRBP statute and its legislative history that envisions a national program to address the large number of deficient IRR bridges. This rule does not address Indian people in terms of Reservation status. Rather, the rule identifies two separate classifications of IRR bridges, namely those owned by the BIA and those owned by a State, county or other entity. Based on a recent query of the National Bridge Inventory, out of an inventory of approximately 4,400 IRR bridges there are roughly 1,069 that are deficient. The average age for IRR bridges exceed 40 years and as the IRR bridge infrastructure's becomes older the propensity to become deficient increases. If the $1.5 million limitation were removed for non-BIA owned IRR bridges, it would jeopardize the funding for the 66 bridges that are currently undergoing or completing bridge PS&E's this year and would greatly limit the number of deficient IRR bridges (both BIA-owned and non-BIA owned) which could be funded for replacement or rehabilitation in the future. Finally, 23 U.S.C. 204(c) requires that IRR funds be supplemental to and not in lieu of other funds appropriated to the States. The States currently have access to Surface Transportation Program funds and Highway Bridge Replacement and Rehabilitation funds that can be used on deficient non-BIA owned IRR bridges. Removal of the matching requirement and funding cap would contravene the statutory intent by allowing non-BIA owned IRR bridges to be fully funded with IRR funds.

[1] Recall that IRRBP funds can not be used until a PS&E is completed. *See also* 23 U.S.C. 202 (d)(4)(D) and 23 CFR 661.39.

Conclusion

For the reasons stated above, the FHWA adopts as a final rule the interim final rule published on July 19, 1999, at 64 FR 38565.

Rulemaking Analyses and Notices

Executive Order 12866 (Regulatory Planning and Review) and DOT Regulatory Policies and Procedures

The FHWA has determined that this action is not a significant regulatory action within the meaning of Executive Order 12866 or the U.S. Department of Transportation regulatory policies and procedures. The economic impact of this rule will be minimal. This action merely adopts as final the interim final rule that has been in effect since July 19, 1999.

This final rule will not adversely affect, in a material way, any sector of the economy. In addition, this final rule will not interfere with any action taken or planned by another agency and will not materially alter the budgetary impact of any entitlements, grants, user fees, or loan programs as this action just continues what has been in effect since 1999.

Regulatory Flexibility Act

In compliance with the Regulatory Flexibility Act (Pub. L. 96–354, 5 U.S.C. 601–612), the FHWA has evaluated the effects of this final rule on small entities including Indian tribal governments (ITGs) and local governments and has determined it will not have a significant economic impact on a substantial number of small entities. The funding available to ITGs under the IRRBP has a beneficial economic impact by contributing to replacement and or rehabilitation of deficient IRR bridges. These bridges are vital to the transportation infrastructure and economic development on Indian reservations. By replacing or rehabilitating deficient IRR bridges the IRRBP is key to enhancing transportation and the movement of goods and services in Indian country.

Unfunded Mandates Reform Act of 1995

This rule does not impose unfunded mandates as defined by the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4, March 22, 1995, 109 Stat. 48). This rule will not result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100 million in any one year.

Additionally, the definition of "Federal mandate" in the Unfunded Mandates Reform Act excludes financial assistance of the type in which State, local, or Indian tribal governments (ITGs) have authority to adjust their participation in the program in accordance with changes made in the program by the Federal government. The IRRBP permits this type of flexibility to the ITGs.

Executive Order 13132 (Federalism)

This action has been analyzed in accordance with the principles and criteria contained in Executive Order 13132, and the FHWA has determined that this action does not have sufficient federalism implications to warrant the preparation of a federalism assessment. The FHWA also determined that this action does not preempt any State law or State regulation or affect the States' ability to discharge traditional State governmental functions.

Executive Order 12372 (Intergovernmental Review)

Catalog of Federal Domestic Assistance Program Number 20.205, Highway planning and construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program.

Paperwork Reduction Act

This action does not contain a collection of information requirement under the Paperwork Reduction Act of 1995, 44 U.S.C. 3501–3520.

National Environmental Policy Act

The FHWA has analyzed this action for the purpose of the National Environmental Policy Act of 1969 (42 U.S.C. 4321–4347) and has determined that this action will not have any effect on the quality of environment.

Executive Order 13175 (Tribal Consultation)

The FHWA has analyzed this action under Executive Order 13175, dated November 6, 2000. The FHWA has determined that participation in the IRRBP by the ITGs is optional, however; it is advantageous to the ITG to participate since the program provides bridge construction and construction monitoring funds for eliminating existing deficient IRR bridges. The ITG

does need to expend IRR or other funds in developing PS&Es and prioritize the project on their transportation improvement program (TIP) before they can apply for the IRRBP funds.

Based on this analysis the FHWA has determined that this action will not have substantial direct effects on one or more Indian tribes; will not impose substantial direct compliance costs on Indian tribal governments; and will not preempt tribal law. Therefore, a tribal summary impact statement is not required.

Executive Order 13211 (Energy Effects)

We have analyzed this action under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. Although this proposal is a significant regulatory action under Executive Order 12866, we have determined that it is not a significant energy action under that order, because it is not likely to have a significant adverse effect on the supply, distribution, or use of energy. Therefore, a Statement of Energy Effects under Executive Order 13211 is not required.

Executive Order 12988 (Civil Justice Reform)

This action meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

Executive Order 13045 (Protection of Children)

We have analyzed this action under Executive Order 13045, protection of Children from Environmental Health Risks and Safety Risks. This action is not an economically significant rule and does not concern an environmental risk to health or safety that may disproportionately affect children.

Executive Order 12630 (Taking of Private Property)

This action will not effect a taking of private property or otherwise have taking implications under Executive Order 12630, Government Actions and Interference with Constitutionally Protected Property Rights.

Regulation Identification Number

A regulation identification number (RIN) is assigned to each regulatory action listed in the Unified Agenda of Federal Regulations. The Regulatory Information Service Center publishes the Unified Agenda in April and October of each year. The RIN contained in the heading of this document can be used to cross-reference this action with the Unified Agenda.

List of Subjects 23 CFR Part 661

Bridges, Highways and roads, Indian reservation roads and bridges.

Issued on: May 1, 2003.

Mary E. Peters,

Federal Highway Administrator.

In consideration of the foregoing, and under the authority of 23 U.S.C. 120(j) and (k), 202, and 315; and 49 CFR 1.48, the interim final rule establishing 23 CFR part 661, which was published at 64 FR 38565 on June 19, 1999, is adopted as a final rule without change.

[FR Doc. 03–11295 Filed 5–7–03; 8:45 am]

BILLING CODE 4910–22–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Parts 1, 301 and 602

[TD 9040]

RIN 1545–AY56

Guidance Necessary To Facilitate Electronic Tax Administration; Correction

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Correction to final regulations.

SUMMARY: This document contains corrections to final regulations that were published in the **Federal Register** on Friday, January 31, 2003 (68 FR 4918), regarding regulations that eliminate regulatory impediments to the electronic filing of Form 1040, "U.S. Individual Income Tax Return."

DATES: This correction is effective January 31, 2003.

FOR FURTHER INFORMATION CONTACT: Joseph P. Dewald, (202) 622–4910 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

The final regulations that are the subject of these corrections are under sections 152 and 7805(f) of the Internal Revenue Code.

Need for Correction

As published, these final regulations contain an error that may prove to be misleading and is in need of clarification.

Correction of Publication

■ Accordingly, the publication of final regulations (TD 9040), that were the subject of FR Doc. 03–2063, is corrected as follows:

■ On page 4918, column 3, the regulation heading in the middle of the column, line 5, the "RIN 1545–AY56" is corrected to read "RIN 1545–AY04".

Cynthia E. Grigsby,

Chief, Regulations Unit, Associate Chief Counsel (Procedure and Administration).

[FR Doc. 03–11487 Filed 5–7–03; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 917

[KY–241–FOR]

Kentucky Regulatory Program

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSM), Interior.

ACTION: Final rule; approval of amendment.

SUMMARY: We are approving a proposed amendment to the Kentucky regulatory program (the "Kentucky program") under the Surface Mining Control and Reclamation Act of 1977 (SMCRA or the Act). Kentucky proposed revisions to the Kentucky Administrative Regulations (KAR) at 16/18:090 sections 1, 4, and 5 and added section 6 pertaining to sedimentation ponds and "other treatment facilities." Kentucky revised its program to be consistent with the corresponding Federal regulations.

EFFECTIVE DATE: May 8, 2003.

FOR FURTHER INFORMATION CONTACT: William J. Kovacic, Telephone: (859) 260–8400. Internet address: *bkovacic@osmre.gov*.

SUPPLEMENTARY INFORMATION:

I. Background on the Kentucky Program
II. Submission of the Proposed Amendment
III. OSM's Findings
IV. Summary and Disposition of Comments
V. OSM's Decision
VI. Procedural Determinations

I. Background on the Kentucky Program

Section 503(a) of the Act permits a State to assume primacy for the regulation of surface coal mining and reclamation operations on non-Federal and non-Indian lands within its borders by demonstrating that its State program includes, among other things, "a State law which provides for the regulation of surface coal mining and reclamation operations in accordance with the requirements of the Act * * *; and

rules and regulations consistent with regulations issued by the Secretary pursuant to the Act." *See* 30 U.S.C. 1253(a)(1) and (7). On the basis of these criteria, the Secretary of the Interior conditionally approved the Kentucky program on May 18, 1982. You can find background information on the Kentucky program, including the Secretary's findings, the disposition of comments, and conditions of approval in the May 18, 1982, **Federal Register** (47 FR 21404). You can also find later actions concerning Kentucky's program and program amendments at 30 CFR 917.11, 917.12, 917.13, 917.15, 917.16 and 917.17.

II. Submission of the Proposed Amendment

By letter dated June 25, 2002 (administrative record no. KY–1544), Kentucky sent us a proposed amendment to its program under SMCRA (30 U.S.C. 1201 *et seq.*). Kentucky sent the amendment in response to our request for additional information in a letter dated February 23, 2001 (administrative record no. KY–1503). In that letter, we asked Kentucky to clarify that its sedimentation pond performance standards also apply to other treatment facilities. This issue was originally presented to Kentucky in an issue letter dated May 26, 2000 (administrative record no. KY-1479). Kentucky's response on August 10, 2000 (administrative record no. KY–1489) did not fully satisfy our concerns.

In this submission, Kentucky responded by adding a new Section (6) to its sedimentation pond regulations at 405 KAR 16:090 and 18:090 to establish performance standards for "other treatment facilities."

We announced receipt of the proposed amendment in the August 16, 2002, **Federal Register** (67 FR 53539), and in the same document invited public comment period and provided an opportunity for a public hearing on the adequacy of the proposed amendment. The public comment period closed on September 16, 2002.

By letter dated October 30, 2002, (administrative record no. KY–1568) Kentucky submitted revisions to its original submittal at sections 1, 4, 5 and 6. Because the revisions were comprised of references and did not change the substance or meaning of the regulations, we did not re-open the comment period.

The chronology of events that preceded this notice follow. By letter dated July 30, 1997 (administrative record no. KY–1410), Kentucky sent us a proposed amendment to its program under SMCRA (30 U.S.C. 1201 *et seq.*). The amendment revises 405 KAR at sections 8:001, 8:030, 8:040, 16:001, 16:060, 16:090, 16:100, 16:160, 18:001, 18:060, 18:090, 18:100, 18:160, and 18:120.

We announced receipt of the proposed amendment in the September 5, 1997, **Federal Register** (62 FR 46933), and in the same document invited public comment period and provided an opportunity for a public hearing on the adequacy of the proposed amendment. The public comment period closed on October 6, 1997. On November 14, 1997, a Statement of Consideration of public comments was filed with the Kentucky Legislative Research Committee. As a result of the comments and by letter dated March 4, 1998, Kentucky made changes to the original submission (administrative record no. KY–1422). The revisions were made at 405 KAR 8:040, 16:060, 18:060, and 18:210. By letter dated March 16, 1998, Kentucky made additional changes to the original submission (administrative record no. KY–1423). The revisions were made at 8:001, 8:030, 8:040, 16:001, 16:060, 16:090, 16:100, 16:160, 18:001, 18:060, 18:090, 18:100, 18:160, and 18:210. By letter dated July 14, 1998, Kentucky submitted a revised version of the proposed amendments (administrative record no. KY–1431). All the revisions, except for a portion of those submitted March 16, 1998, were announced in the August 26, 1998, **Federal Register** (63 FR 45430).

During our review of the amendment, we identified concerns relating to the provisions at 405 KAR 8:001, 8:030, 8:040, 16:001, 16:060, 16:090, 16:100, 16:160, 18:001, 18:060, 18:090, 18:100, 18:160, and 18:210. We notified Kentucky of the concerns by letter dated May 26, 2000 (administrative record no. KY–1479). Kentucky responded in a letter dated August 10, 2000, and submitted additional explanatory information (administrative record no. KY–1489). The explanatory information and those revisions not included in previous notices were announced in the June 5, 2002, **Federal Register** (67 FR 38621).

In this rule, we will address only those revisions at 405 KAR 16/18:090 sections 1, 4, 5; and at new section 6. We addressed Kentucky's revisions to its subsidence control regulations at 405 KAR 18:210 in a **Federal Register** notice (KY–229) published on May 7, 2002 (67 FR 30549). We will address the remaining revisions to the Kentucky regulations in future **Federal Register** notices (KY–216 and KY–228).

III. OSM's Findings

Following are the findings we made concerning the amendment under SMCRA and the Federal regulations at 30 CFR 732.15 and 732.17. We are approving the amendment.

At 405 KAR 16/18:090—Sedimentation Ponds, sections 1 and 5 are revised to require that sedimentation ponds comply with sections 1 through 6 of 405 KAR 16/18:090. The revision was made to incorporate a reference to the new performance standards for "other treatment facilities" at section 6 since those facilities may be used in conjunction with, or in addition, to sedimentation ponds. Sections 1, 4, and 6 also cite KRS 350.050, which is the general grant of authority and powers to Kentucky's Natural Resources and Environmental Protection Cabinet (Cabinet). Accordingly, these added references are not inconsistent with the requirements of SMCRA and the Federal regulations.

At 405 KAR 16/18:090 new section 6, Kentucky is adding regulations for "other treatment facilities." The definition of this term was included in Kentucky's July 30, 1997, submission (administrative record no. KY–1410). It will be approved in the final rule notice for KY–228. In new section 6, Kentucky is permitting the use of other treatment facilities in conjunction with sedimentation ponds or in place of sedimentation ponds, if specifically approved by the Cabinet for that purpose on a case-by-case basis, pursuant to the Cabinet's authority in KRS 350.050. Other treatment facilities shall be designed to treat the 10-year, 24-hour precipitation event unless a lesser design event is approved by the Cabinet based on terrain, climate, other site-specific conditions and a demonstration by the permittee that the effluent limitations of 405 KAR 16:070 (or 18:070) Section 1(1)(g) will be met. They must meet all requirements for sedimentation ponds, if the requirements can be appropriately applied to other treatment facilities. The Cabinet shall determine the applicable requirements on a case-by-case basis depending upon the type of other treatment facilities. In every case, the other treatment facilities shall be designed, constructed, and maintained to: (a) Be located as near as possible to the disturbed area and out of perennial streams unless approved by the Cabinet, pursuant to the Cabinet's authority in KRS 350.050; (b) provide adequate sediment storage volume, as approved on a case-by-case basis by the Cabinet based upon the anticipated volume of sediment to be collected during the design precipitation event and a feasible plan for clean-out operations; (c) provide adequate detention time so that the discharges shall meet the

requirements of 405 KAR 16:070 (or 18:070) section 1(1)(g); (d) minimize short circuiting to the extent possible; and (e) provide periodic sediment removal sufficient enough to maintain adequate volume for the design event. The proposed plan for clean-out operations shall be included in the design and shall be approved if the Cabinet determines it is feasible. The plan shall include a time schedule or clean-out elevations, or an appropriate combination thereof, sufficient to maintain adequate volume for the sediment to be collected during the design precipitation event.

The Federal regulations at 30 CFR 816/817.46(d)(1) and Kentucky's proposed regulations both require that other treatment facilities be designed to treat the 10-year, 24-hour precipitation event unless a lesser event is approved by the regulatory authority. Additionally, the Federal regulations at 30 CFR 816/817.46(d)(2) require that other treatment facilities must be designed in accordance with the applicable requirements of 816/817.46(c). In the preamble to the 1983 Federal rule, OSM stated that in "every case, it is intended that 30 CFR 816.46 (c)(1)(ii) and (c)(1)(iii)(A), (B), (E), and (F) will apply to all other treatment facilities." 60 FR 44032, 44047 (September 26, 1983). Kentucky's proposed regulations at section 6 (3)(a) through (e) are substantively identical to the Federal regulations at 30 CFR 816/817. 46 (c)(1)(ii) and (c)(1) (iii)(A), (B), (E), and (F). Thus, we find that Kentucky's proposed revisions to sections 1, 4, and 5 and the addition of Section 6 to its regulations are no less effective than the Federal regulations at 30 CFR 816/817.46(d).

IV. Summary and Disposition of Comments

Public Comments

We announced receipt of the proposed amendment in the August 16, 2002, **Federal Register** (67 FR 53539), and in the same document invited public comment period and provided an opportunity for a public hearing on the adequacy of the proposed amendment. The Kentucky Resources Council, Inc. (KRC) submitted written comments on August 29, 2002 (administrative record no. KY–1566). The KRC generally supports the amendment and stated, "it appears that the state regulation, while different in structure and terminology, provides at least as protective and rigorous a review of proposed sediment controls as does the federal counterpart."

Federal Agency Comments

According to 30 CFR 732.17(h)(11)(i), by letter dated August 28, 2002, we solicited comments on the proposed amendment submitted on June 25, 2002, from various Federal agencies with an actual or potential interest in the Kentucky program (administrative record no. KY–1565). We received no responses.

Environmental Protection Agency (EPA)

Pursuant to 30 CFR 732.17(h)(11)(ii), OSM is required to obtain the written concurrence of the EPA with respect to those provisions of the proposed program amendment that relate to air or water quality standards promulgated under the authority of the Clean Water Act (33 U.S.C. 1251 *et seq.*) or the Clean Air Act (42 U.S.C. 7401 *et seq.*). By letter dated August 28, 2002, we solicited EPA's comments and/or concurrence (administrative record no. KY–1565). This amendment does not contain provisions that relate to air or water quality standards and, therefore, concurrence by the EPA is not required. EPA did not submit comments pertaining to Kentucky's addition of new Section 6 to 405 KAR 16/18:090 which is the subject of this rule, although the EPA commented on an earlier Kentucky submission in a letter dated November 28, 2000 (administrative record no. KY–1501).

V. OSM's Decision

Based on the above findings, we approve the proposed amendment as submitted by Kentucky on June 25, 2002, and revised on October 30, 2002. To implement this decision, we are amending the Federal regulations at 30 CFR part 917 which codify decisions concerning the Kentucky program. We find that good cause exists under 5 U.S.C. 553(d)(3) to make this final rule effective immediately. Section 503(a) of SMCRA requires that Kentucky's program demonstrates that it has the capability of carrying out the provisions of the Act and meeting its purposes. Making this regulation effective immediately will expedite that process. SMCRA requires consistency of State and Federal standards.

Effect of OSM's Decision

Section 503 of SMCRA provides that a State may not exercise jurisdiction under SMCRA unless the State program is approved by the Secretary. Similarly, 30 CFR 732.17(a) requires that any change of an approved State program be submitted to OSM for review as a program amendment. The Federal regulations at 30 CFR 732.17(g) prohibit any changes to approved State programs that are not approved by OSM. In the oversight of the Kentucky program, we will recognize only the statutes, regulations, and other materials we have approved, together with any consistent implementing policies, directives, and other materials. We will require Kentucky to enforce only approved provisions.

VI. Procedural Determinations

Executive Order 12630—Takings

This rule does not have takings implications. This determination is based on the analysis performed for the counterpart Federal regulation.

Executive Order 12866—Regulatory Planning and Review

This rule is exempted from review by the Office of Management and Budget (OMB) under Executive Order 12866.

Executive Order 12988—Civil Justice Reform

The Department of the Interior has conducted the reviews required by section 3 of Executive Order 12988 and has determined that this rule meets the applicable standards of subsections (a) and (b) of that section. However, these standards are not applicable to the actual language of State regulatory programs and program amendments because each program is drafted and promulgated by a specific State, not by OSM. Under sections 503 and 505 of SMCRA (30 U.S.C. 1253 and 1255) and the Federal regulations at 30 CFR 730.11, 732.15, and 732.17(h)(10), decisions on proposed State regulatory programs and program amendments submitted by the States must be based solely on a determination of whether the submittal is consistent with SMCRA and its implementing Federal regulations and whether the other requirements of 30 CFR Parts 730, 731, and 732 have been met.

Executive Order 13132—Federalism

This rule does not have federalism implications. SMCRA delineates the roles of the Federal and State governments with regard to the regulation of surface coal mining and reclamation operations. One of the purposes of SMCRA is to "establish a nationwide program to protect society and the environment from the adverse effects of surface coal mining operations." Section 503(a)(1) of SMCRA requires that State laws regulating surface coal mining and reclamation operations be "in accordance with" the requirements of SMCRA, and section 503(a)(7) requires that State programs contain rules and regulations "consistent with"

regulations issued by the Secretary pursuant to SMCRA.

Executive Order 13175—Consultation and Coordination With Indian Tribal Governments

In accordance with Executive Order 13175, we have evaluated the potential effects of this rule on Federally-recognized Indian tribes and have determined that the rule does not have substantial direct effects on one or more Indian tribes, on the relationship between the Federal government and Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes. The basis for this determination is that our decision is on a State regulatory program and does not involve a Federal program involving Indian lands.

Executive Order 13211—Regulations That Significantly Affect The Supply, Distribution, or Use of Energy

On May 18, 2001, the President issued Executive Order 13211 which requires agencies to prepare a Statement of Energy Effects for a rule that is (1) considered significant under Executive Order 12866, and (2) likely to have a significant adverse effect on the supply, distribution, or use of energy. Because this rule is exempt from review under Executive Order 12866 and is not expected to have a significant adverse effect on the supply, distribution, or use of energy, a Statement of Energy Effects is not required.

National Environmental Policy Act

This rule does not require an environmental impact statement because section 702(d) of SMCRA (30 U.S.C. 1292(d)) provides that agency decisions on proposed State regulatory program provisions do not constitute major Federal actions within the meaning of section 102(2)(C) of the National Environmental Policy Act (42 U.S.C. 4332(2)(C)).

Paperwork Reduction Act

This rule does not contain information collection requirements that require approval by OMB under the Paperwork Reduction Act (44 U.S.C. 3507 *et seq.*).

Regulatory Flexibility Act

The Department of the Interior certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). The State submittal, which is the subject of this rule, is based upon counterpart Federal regulations for which an economic analysis was prepared and certification made that such regulations would not have a significant economic effect upon a substantial number of small entities. In making the determination as to whether this rule would have a significant economic impact, the Department relied upon the data and assumptions for the counterpart Federal regulations.

Small Business Regulatory Enforcement Fairness Act

This rule is not a major rule under 5 U.S.C. 804(2), the Small Business Regulatory Enforcement Fairness Act. This rule: (a) Does not have an annual effect on the economy of $100 million; (b) will not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; and (c) does not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises. This determination is based upon the fact that the State submittal which is the subject of this rule is based upon counterpart Federal regulations for which an analysis was prepared and a determination made that the Federal regulation was not considered a major rule.

Unfunded Mandates

This rule will not impose an unfunded mandate on State, local, or tribal governments or the private sector of $100 million or more in any given year. This determination is based upon the fact that the State submittal, which is the subject of this rule, is based upon counterpart Federal regulations for which an analysis was prepared and a determination made that the Federal regulation did not impose an unfunded mandate.

List of Subjects in 30 CFR Part 917

Intergovernmental relations, Surface mining, Underground mining.

Dated: March 28, 2003.

Brent Wahlquist,

Regional Director, Appalachian Regional Coordinating Center.

■ For the reasons set out in the preamble, 30 CFR part 917 is amended as set forth below:

PART 917—KENTUCKY

■ 1. The authority citation for part 917 continues to read as follows:

Authority: 30 U.S.C. 1201 *et seq.*

■ 2. Section 917.15 is amended in the table by adding a new entry in chronological order by the date of final publication to read as follows:

§ 917.15 Approval of Kentucky regulatory program amendments.

* * * * *

Original amendment submission date	Date of final publication	Citation/description
June 25, 2002	May 8, 2003	KAR 16:090 Sections 1(1), (2), 4, 5(2) and (6) and 18:090 Sections 1(1), (2), 4, 5(2) and (6).

[FR Doc. 03–11221 Filed 5–7–03; 8:45 am]

BILLING CODE 4310–05–P

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 950

[WY–030–FOR]

Wyoming Regulatory Program

AGENCY: Office of Surface Mining Reclamation and Enforcement, Interior.

ACTION: Final rule; approval of amendment.

SUMMARY: We are approving a proposed amendment to the Wyoming regulatory program (the "Wyoming program") under the Surface Mining Control and Reclamation Act of 1977 (SMCRA or the Act). Wyoming proposed revisions to rules about placement of spoil outside the mined-out area, clarification of self-

bonding requirements, approving permit revisions, incremental bonds, incidental operation changes, and termination of jurisdiction to be consistent with the corresponding Federal regulations, provide additional safeguards and clarify ambiguities.

EFFECTIVE DATE: May 8, 2003.

FOR FURTHER INFORMATION CONTACT: Guy Padgett, Telephone: 307/261–6550, Internet address: *GPadgett@osmre.gov.*

SUPPLEMENTARY INFORMATION:

I. Background on the Wyoming Program
II. Submission of the Proposed Amendment
III. Office of Surface Mining Reclamation and Enforcement's (OSM) Findings
IV. Summary and Disposition of Comments
V. OSM's Decision
VI. Procedural Determinations

I. Background of the Wyoming Program

Section 503(a) of the Act permits a State to assume primacy for the regulation of surface coal mining and reclamation operations on non-Federal and non-Indian lands within its borders by demonstrating that its State program includes, among other things, "a State law which provides for the regulation of surface coal mining and reclamation operations in accordance with the requirements of this Act * * *; and rules and regulations consistent with regulations issued by the Secretary pursuant to this Act." *See* 30 U.S.C. 1253(a)(1) and (7). On the basis of these criteria, the Secretary of the Interior conditionally approved the Wyoming program on November 26, 1980. You can find background information on the Wyoming program, including the Secretary's findings, the disposition of comments, and conditions of approval in the November 26, 1980, **Federal Register** (45 FR 78637). You can also find later actions concerning Wyoming's program and program amendments at 30 CFR 950.10, 950.12, 950.15, and 950.16.

II. Submission of the Proposed Amendment

By letter dated April 30, 2002, Wyoming sent us an amendment to its program (Administrative Record No. WY–35–01) under SMCRA (30 U.S.C. 1201 *et seq.*). Wyoming sent the amendment in response to a November 7, 1988, letter (Administrative Record No. WY–35–05), and a February 21, 1990, letter (Administrative Record No. WY–35–07) that we sent to Wyoming in accordance with 30 CFR 732.17(c), and in response to the required program amendments at 30 CFR 950.16(j, k, n, y, and z) and to include the changes made at its own initiative.

The provisions of Wyoming's Coal Rules that Wyoming proposed to revise are: (1) Chapter 1, Section 2 (by) and Chapter 13, Section 1(a), (b), and (c), definitions, cross-reference, and guidelines on permit revisions; (2) Chapter 4, Section 2(b)(iv), backfilling, grading, contouring, spoil, topsoil, vegetative and organic material to satisfy the required program amendment at 30 CFR 950.16(n); (3) Chapter 11, Sections 1(a), 2(a), 3(b), 3(c) and 4(a), bond and insurance requirements for surface coal mining operations under regulatory programs, intended to satisfy some of the deficiencies identified by OSM in its November 7, 1988, 30 CFR 732 letter to Wyoming; (4) Chapter 12, Section 1(b), review, public participation, and approval or disapproval of permit applications, permit term and conditions, and Chapter 13, Section 1(d)(iv)(D), probable hydrologic consequences assessment revision or update (changes to both Chapters 12 and 13 are intended to satisfy the program deficiency identified at 30 CFR 950.16(y)); (5) Chapter 12, Section 2(d)(iii), bonding and insurance procedures intended to satisfy the program deficiencies (numbered G–1) contained in the February 21, 1990, 30 CFR part 732 letter we sent to Wyoming; (6) Chapter 15, Section 7, termination of jurisdiction, intended to satisfy the program deficiency (D–1) we sent Wyoming in a February 21, 1990, 30 CFR part 732 letter; (7) Chapter 13, Section 1(d), intended to correct a cross-reference listed as a program deficiency in 30 CFR 950.16(j) [part 2]; and (8) Chapter 13, Section 1(a), concerning alternative methods of permit revision, intended to satisfy the program deficiency listed at 30 CFR 950.16(j) [part 3].

We announced receipt of the proposed amendment in the June 19, 2002, **Federal Register** (67 FR 41656). In the same document, we opened the public comment period and provided an opportunity for a public hearing or meeting on the amendment's adequacy (Administrative Record No. WY–35–10). We did not hold a public hearing or meeting because no one requested one. The public comment period ended on July 19, 2002. We received "no comment" letters from two Federal agencies, the U.S. Fish and Wildlife Service and the U.S. Mine Safety and Health Administration.

III. OSM's Findings

Following are the findings we made concerning the amendment under SMCRA and the Federal regulations at 30 CFR 732.15 and 732.17. We are approving the amendment.

A. Minor Revisions to Wyoming's Rules

Wyoming proposed minor wording, editorial, punctuation, grammatical, and recodification changes to the following previously-approved rules.

1. Wyoming Coal Rules: Chapter 4, Section 2(b)(iv)(C); Federal rules: 30 CFR 816.102(d), Placement of spoil outside the mined-out area.

In this section, Wyoming has simply removed superfluous wording to more closely follow the Federal requirement at 30 CFR 816.102(d).

Because these changes are minor, we find that they will not make Wyoming's rules less effective than the corresponding Federal regulations.

B. Revisions to Wyoming's Rules That Have the Same Meaning as the Corresponding Provisions of the Federal Regulations

Wyoming proposed revisions to the following rules containing language that is the same as or similar to the corresponding sections of the Federal regulations.

1. Wyoming's Coal Rules: Chapter 4, Section 2(b)(iv); Federal rules: 30 CFR 816.1.2(d), backfilling, grading, contouring, spoil, topsoil, vegetative and organic material.

2. Wyoming's Coal Rules: Chapter 12, Section 1(b) and Chapter 13, Section 1(d)(iv)(D); Federal regulations: 30 CFR 774.15(c)(1), review, public participation, and approval or disapproval of permit applications, permit term and conditions, and probable hydrologic consequences assessment revision or update.

3. Wyoming's Coal Rules: Chapter 15, Section 7; Federal regulations: 30 CFR 700.11, termination of jurisdiction and release of bonds or deposits.

Because these proposed rules contain language that is the same as or similar to the corresponding Federal regulations, we find that they are no less effective than the corresponding Federal regulations.

C. Revisions to Wyoming's Rules That Are Not the Same as the Corresponding Provisions of the Federal Regulations

1. Wyoming's Coal Rules: Chapter 1, Section 2(by) and Chapter 13, Section 1(a), (b) and (c); there is no Federal counterpart; definitions, cross-reference, and guidelines on permit revisions.

There is no Federal definition of "revised mining or reclamation operations," therefore a comparison cannot be made; however, Wyoming is deleting the phrase "except for incidental operation changes," as required in our July 25, 1990, **Federal Register** notice. It is consistent with and no less effective than the Federal regulations.

2. Wyoming's Coal Rules: Chapter 11, Sections 1(a), 2(a), 3(b), 3(c), 4(a); Federal regulations: 30 CFR 800.23, self-bonding.

Wyoming proposes revisions to its rules governing self-bonding intended to satisfy deficiencies identified by OSM in its letter dated November 7, 1988, under 30 CFR 732.17 requiring amendments to the Wyoming program.

a. Chapter 11, Section 1(a)

Wyoming has proposed to amend the text of Chapter 11, Section 1(a) by revising it to read, "* * * The indemnity agreement is signed by the permittee, and if applicable, the parent company or non-parent corporate guarantor."

The Federal regulations under 30 CFR 800.5(c) state, "Self bond means an indemnity agreement in a sum certain executed by the applicant and any corporate guarantor made payable to the regulatory authority, with or without a separate surety."

A comparison of Wyoming's proposed language with that of the Federal regulations finds that it removes an old reference to a Federal agency as a potential guarantor of a self-bond for a coal mining operation. Wyoming's modification of the term "corporate" to "parent" and "non-parent" where applicable clarifies that the definition applies to both a parent and non-parent corporate guarantor. Consequently, as proposed, the minor revisions and clarifications are consistent with and no less effective than the requirements of the Federal regulations.

b. Chapter 11, Section 2(a)(x)

Wyoming has proposed to amend the text of Chapter 11, Section 2(a)(x) by revising the text to read, "A written guarantee for an operator's self-bond from a parent corporation guarantor, if the guarantor meets conditions of subsections (a)(iv), (vi), (viii) and (ix) of this Section as if it were the operator. Such a written guarantee may be accepted by the Administrator and shall be referred to as a "parent corporate guarantee."

The Federal regulations at 30 CFR 800.23(c)(1) state, "The regulatory authority may accept a written guarantee for an applicant's self-bond from a parent corporation guarantor, if the guarantor meets the conditions of Paragraphs (b)(1)-(b)(4) of this Section as if it were the applicant. Such written guarantee shall be referred to as a "corporate guarantee."

The November 7, 1988, 30 CFR part 732 letter directed Wyoming to revise the text under this section to address the statement that, "The operator must only supply information addressing requirements not met by the parent corporation guarantor." Wyoming has deleted this sentence, consequently, as proposed, the minor revisions and clarifications are consistent with and no less effective than the requirements of the Federal regulations.

c. Chapter 11, Section 2(a)(x)(A)

Wyoming has proposed to amend the text of Chapter 11, Section 2(a)(x)(A) by revising the text to read, "If the operator fails to complete the reclamation plan, the parent corporate guarantor shall do so or the parent corporate guarantor shall be liable under the indemnity agreement to provide funds to the state sufficient to complete the reclamation plan, but not to exceed the bond amount."

The Federal regulations at 30 CFR 800.23(c)(1)(i) state, "If the applicant fails to complete the reclamation plan, the guarantor shall do so or the guarantor shall be liable under the indemnity agreement to provide funds to the regulatory authority sufficient to complete the reclamation plan, but not to exceed the bond amount."

A comparison of Wyoming's proposed language with that of the Federal regulations finds that Wyoming has added the term "parent corporate" in front of guarantor to clarify which type of guarantor is being referred to in the rule. Consequently, as proposed, the clarification is consistent with and no less effective than the requirements of the Federal regulations.

d. Chapter 11, Section 2(a)(x)(B)

Wyoming has proposed to amend the text of Chapter 11, Section 2(a)(x)(B) by revising the text to read, "The parent corporate guarantee shall remain in force unless the parent corporate guarantor sends notice of cancellation by certified mail to the operator and to the Administrator at least 90 days in advance of the cancellation date, and the Administrator accepts the cancellation."

The Federal regulations under 30 CFR 800.23(c)(1)(ii) state, "The corporate guarantee shall remain in force unless the guarantor sends notice of cancellation by certified mail to the regulatory authority at least 90 days in advance of the cancellation date, and the regulatory authority accepts the cancellation."

A comparison of Wyoming's proposed language with the Federal regulations finds that the proposed revisions to Chapter 11, Section 2(a)(x)(B) remove the reference to a Federal agency guarantor and clarify which type of guarantor is being referred to in the rule. The resulting Wyoming regulations are consistent with, and no less effective than, the Federal regulations.

e. Chapter 11, Section 2(a)(xi)

Wyoming has proposed to amend the text of Chapter 11, Section 2(a)(xi) by incorporating the following language: "A written guarantee for an applicant's self-bond from any corporate guarantor, whenever the operator meets the conditions of subsections (a)(iv), (a)(vi) and (a)(ix) of this Section, and the guarantor meets the conditions of subsections (a)(iv), (a)(vi), (a)(vii) and (a)(ix) of this Section may be accepted by the Administrator. Such written guarantee shall be referred to as a "non-parent corporate guarantee." The terms of this guarantee shall provide for compliance with the conditions of subsections (a)(x)(A) and (B) of this Section. The Administrator may require the operator to submit any information specified in subsection (a)(vii) of this Section in order to determine the financial capabilities of the operator."

The Federal regulations under 30 CFR 800.23(c)(2) state, "The regulatory authority may accept a written guarantee for an applicant's self-bond from any corporate guarantor, whenever the applicant meets the conditions of paragraphs (b)(1), (b)(2) and (b)(4) of this section, and the guarantor meets the conditions of paragraphs (b)(1) through (b)(4) of this section. Such a written guarantee shall be referred to as a "non-parent corporate guarantee." The terms of this guarantee shall provide for compliance with the conditions of paragraphs (c)(1)(i) through (c)(1)(iii) of this section. The regulatory authority may require the applicant to submit any information specified in paragraph (b)(3) of this section in order to determine the financial capabilities of the applicant."

A comparison of Wyoming's proposed language with that of the Federal regulations finds that it now incorporates the Federal counterpart language addressing the conditions under which the regulatory authority may accept a written guarantee of an operator's self-bond from a third party other than the parent corporation. Therefore, it is no less effective than the Federal regulations.

f. Chapter 11, Section 2(a)(xii)

Wyoming has proposed to amend the text of Chapter 11, Section 2(a)(xi) by renumbering it as (xii), as a result of creating a new Section (2)(xi), and revising the text to read, "The following in order:

(A) For the Administrator to accept an operator's self-bond, the total amount of the outstanding and proposed self-bonds of the operator shall not exceed 25 percent of the operator's tangible net worth in the United States, or

(B) For the Administrator to accept a corporate guarantee, the total amount of the parent corporation guarantor's present and proposed self-bonds and guaranteed self-bonds shall not exceed 25 percent of the parent corporate guarantor's tangible net worth in the United States, or"

The Federal regulations at 30 CFR 800.23(d) state, "For the regulatory authority to accept an applicant's self-bond, the total amount of the outstanding and proposed self-bonds of the applicant for surface coal mining and reclamation operations shall not exceed 25 percent of the applicant's tangible net worth in the United States. For the regulatory authority to accept a corporate guarantee, the total amount of the parent corporation guarantor's present and proposed self-bonds and guaranteed self-bonds for surface coal mining and reclamation operations shall not exceed 25 percent of the guarantor's tangible net worth in the United States."

A comparison of Wyoming's proposed language with that of the Federal regulations finds that Wyoming has added the terms "parent" and "parent corporate" to maintain consistent references in the rules, and has reformatted the manner in which the rules are presented. Consequently, as proposed, the clarification is consistent with and no less effective than the requirements of the Federal regulations.

g. Chapter 11, Section 2(a)(xii)

Wyoming has proposed to amend the text of the newly created Chapter 11, Section 2(a)(xii) by incorporating the following language "(C) For the Administrator to accept a non-parent corporate guarantee, the total amount of the non-parent corporate guarantor's present and proposed self-bonds and guaranteed self-bond shall not exceed 25 percent of the non-parent corporate guarantor's tangible net worth in the United States."

The Federal regulations at 30 CFR 800.23(d) state, "For the regulatory authority to accept a non-parent corporate guarantee, the total amount of the non-parent corporate guarantor's present and proposed self-bonds and guaranteed self-bonds shall not exceed 25 percent of the guarantor's tangible net worth in the United States."

A comparison of Wyoming's proposed language with that of the Federal regulations finds that it now incorporates the Federal counterpart language addressing the conditions under which the regulatory authority may accept a non-parent corporate guarantee. Therefore, it is no less effective than the Federal regulations.

h. Chapter 11, Section 3(b)(i)

Wyoming has proposed to amend the text of Chapter 11, Section 3(b)(i) by revising the text to read, "The indemnity agreement shall be executed by all persons and parties who are to be bound by it, including the parent or non-parent corporate guarantor, and shall bind each jointly and severally."

The Federal regulations at 30 CFR 800.23(e)(1) state, "The indemnity agreement shall be executed by all persons and parties who are to be bound by it, including the parent corporation guarantor, and shall bind each jointly and severally."

A comparison of Wyoming's proposed language with that of the Federal regulations finds that Wyoming has added the term "or non-parent" and deleted the reference to "Federal agency" to clarify that both types of corporate guarantors are being referred to in the rule, and to remove the obsolete reference to a Federal agency. Consequently, as proposed, the clarification is consistent with and no less effective than the requirements of the Federal regulations.

i. Chapter 11, Section 3(b)(ii)

Wyoming has proposed to amend the text of Chapter 11, Section 3(b)(ii) by revising the text to read, "Corporations applying for a self-bond or parent and non-parent corporations guaranteeing an operator's self-bond shall submit an indemnity agreement signed by two corporate officers who are authorized to bind their corporations. A copy of such authorization shall be provided to the Administrator along with an affidavit certifying that such an agreement is valid under all applicable Federal and State laws. In addition, all corporate guarantors shall provide a copy of the corporate authorization demonstrating that the corporation may guarantee the self-bond and execute the indemnity agreement."

The Federal regulations at 30 CFR 800.23(e)(2) state, "Corporations applying for a self-bond, and parent and non-parent corporations guaranteeing an applicant's self-bond shall submit an indemnity agreement signed by two corporate officers who are authorized to bind their corporations. A copy of such authorization shall be provided to the regulatory authority along with an affidavit certifying that such an agreement is valid under all applicable Federal and State laws. In addition, the guarantor shall provide a copy of the corporate authorization demonstrating that the corporation may guarantee the self-bond and execute the indemnity agreement."

A comparison of Wyoming's proposed language with that of the Federal regulations finds that it now requires the submission of an affidavit certifying that the agreement is valid under all applicable State and Federal laws, and requires that any grantor provide a copy of the corporate authorization demonstrating that the corporation may guarantee the self-bond and execute the indemnity agreement. The revised text also deletes the outdated references to a Federal agency guaranty. It is consistent with and no less effective than the Federal regulations.

As a result of the changes made to Chapter 3(b)(ii), Wyoming has also revised their policy memorandum, "Wyoming Environmental Quality Act—Form and Execution of Self-Bonding Indemnity Agreement and Corporate or Federal Agency Guaranty" to remove all references to a Federal Agency Guaranty and to add the requirement that the affidavit certifying the agreement is valid under all applicable State and Federal laws shall also be submitted. The resulting memorandum, "Wyoming Environmental Quality Act—Form and Execution of Self-Bonding Indemnity Agreement and Parent or Non-Parent Corporate Guaranty" is consistent with and no less effective than the requirements of the Federal regulations.

j. Chapter 11, Section 3(c) and Section 4(a)(ii)

Wyoming has proposed to amend the text of the two regulations cited above to change the reference to Section 2 (a)(xi) to Section 2(a)(xii).

A comparison of Wyoming's proposed language to the existing language finds that the insertion of a new rule under Chapter 11, Section 2(a)(xi) required that the existing cross-references in these two rules reference the correct subsection. The correct subsection has been referenced and this Wyoming rule is now consistent with and no less effective than the Federal regulations.

3. Wyoming's Coal Rules: Chapter 12, Section 2(d)(iii); Federal regulations: 30 CFR 800.11(b)(4), separate increments within a bonded area.

Wyoming proposes to add a subsection to its regulations and revise its existing regulations to mandate that isolated and independent increments of the permitted mine area be of sufficient size and configuration for efficient reclamation operations, should reclamation by the Wyoming Department of Environmental Quality become necessary.

Federal regulations at 30 CFR 800.11(b)(4) require what Wyoming is proposing here. Therefore, the Wyoming regulations are no less effective than the Federal regulations.

4. Chapter 13, Section 3(a) to read Section 1(d) rather than 1(b) [formerly chapter XIV].

This revision was approved in the August 6, 1996, **Federal Register** but the required program amendment was inadvertently not removed from the Code of Federal Regulations (CFR).

IV. Summary and Disposition of Comments

Public Comments

We asked for public comments on the amendment (Administrative Record No. WY–35–6), but did not receive any.

Federal Agency Comments

Under 30 CFR 732.17(h)(11)(i) and section 503(b) of SMCRA, we requested comments on the amendment from various Federal agencies with an actual or potential interest in the Wyoming program (Administrative Record No. WY–35–6).

Two Federal agencies commented. David Lauriski of the U.S. Mine Safety and Health Administration, in his May 23, 2002, letter, stated that none of the (rule) changes have a direct impact on employee or public health or safety and that he consequently has no comments. Michael Long of the U.S. Fish and Wildlife Service, in his June 4, 2002, comment, stated that he did not believe that the proposed amended regulations would adversely affect any threatened or endangered species on coal mine permit areas in Wyoming.

Environmental Protection Agency (EPA) Concurrence and Comments

Under 30 CFR 732.17(h)(11)(i) and (ii), we are required to get concurrence from EPA for those provisions of the program amendment that relate to air or water quality standards issued under the authority of the Clean Water Act (33 U.S.C. 1251 *et seq.*) or the Clean Air Act (42 U.S.C. 7401 *et seq.*).

None of the revisions that Wyoming proposed to make in this amendment pertain to air or water quality standards. Therefore, we did not ask EPA to concur on the amendment.

State Historic Preservation Officer (SHPO) and the Advisory Council on Historic Preservation (ACHP)

Under 30 CFR 732.17(h)(4), we are required to request comments from the SHPO and ACHP on amendments that may have an effect on historic properties. On May 5, 2002, we requested comments on Wyoming's amendment (Administrative Record Nos. WY–35–3 and 4), but neither responded to our request.

V: OSM's Decision

Based on the above findings, we approve the Wyoming amendment sent to us.

We approve, as discussed in: finding III.A.1, concerning placement of spoil outside the mined-out area; finding III.B.1, concerning backfilling, grading, contouring, spoil, topsoil, vegetative and organic material; finding III.B.2, concerning review, public participation and approval or disapproval of permit applications, permit term and conditions, and probable hydrologic consequences assessment revision or update; finding III.B.3, concerning termination of jurisdiction and release of bonds or deposits; finding III.C.1, concerning the definition of revised mining or reclamation operations; finding III.C.2.a through j, concerning self-bonding; finding III.C.3, concerning isolated increments of the permitted mine area; and finding III.C.4, concerning the removal from the CFR a revision that was approved in the August 6, 1996, **Federal Register**, but was not removed as a required program amendment from the CFR.

Effect of OSM's Decision

Section 503 of SMCRA provides that a State may not exercise jurisdiction under SMCRA unless the State program is approved by the Secretary. Similarly, 30 CFR 732.17(a) requires that any change of an approved State program be submitted to OSM for review as a program amendment. The Federal regulations at 30 CFR 732.17(g) prohibit any changes to approved State programs that are not approved by OSM. In the oversight of the Wyoming program, we will recognize only the statutes, regulations and other materials we have approved, together with any consistent implementing policies, directives and other materials. We will require Wyoming to enforce only approved provisions.

VI. Procedural Determinations

Executive Order 12630—Takings

This rule does not have takings implications. This determination is based on the analysis performed for the counterpart Federal regulation.

Executive Order 12866—Regulatory Planning and Review

This rule is exempted from review by the Office of Management and Budget (OMB) under Executive Order 12866 (Regulatory Planning and Review).

Executive Order 12988—Civil Justice Reform

The Department of the Interior has conducted the reviews required by section 3 of Executive Order 12988 and has determined that this rule meets the applicable standards of subsections (a) and (b) of that section. However, these standards are not applicable to the actual language of State regulatory programs and program amendments because each program is drafted and promulgated by a specific State, not by OSM. Under sections 503 and 505 of SMCRA (30 U.S.C. 1253 and 1255) and the Federal regulations at 30 CFR 730.11, 732.15, and 732.17(h)(10), decisions on proposed State regulatory programs and program amendments submitted by the States must be based solely on a determination of whether the submittal is consistent with SMCRA and its implementing Federal regulations and whether the other requirements of 30 CFR Parts 730, 731, and 732 have been met.

Executive Order 13175—Consultation and Coordination With Indian Tribal Governments

In accordance with Executive Order 13175, we have evaluated the potential effects of this rule on Federally recognized Indian Tribes and have determined that the rule does not have substantial direct effects on one or more Indian Tribes, on the relationship between the Federal government and Indian Tribes, or on the distribution of power and responsibilities between the Federal government and Indian Tribes. The rule does not involve or affect Indian Tribes in any way.

Executive Order 13132—Federalism

This rule does not have federalism implications. SMCRA delineates the roles of the Federal and State governments with regard to the regulation of surface coal mining and reclamation operations. One of the purposes of SMCRA is to "establish a nationwide program to protect society and the environment from the adverse effects of surface coal mining operations." Section 503(a)(1) of SMCRA requires that state laws regulating surface coal mining and reclamation operations be "in accordance with" the requirements of SMCRA, and section 503(a)(7) requires that state programs contain rules and regulations "consistent with" regulations issued by the Secretary pursuant to SMCRA.

Executive Order 13211—Regulations That Significantly Affect the Supply, Distribution, or Use of Energy

On May 18, 2001, the President issued Executive Order 13211 which requires agencies to prepare a Statement of Energy Effects for a rule that is (1) considered significant under Executive Order 12866, and (2) likely to have a significant adverse effect on the supply, distribution, or use of energy. Because this rule is exempt from review under Executive Order 12866 and is not expected to have a significant adverse effect on the supply, distribution, or use of energy, a Statement of Energy Effects is not required.

National Environmental Policy Act

This rule does not require an environmental impact statement because section 702(d) of SMCRA (30 U.S.C. 1292(d)) provides that agency decisions on proposed State regulatory program provisions do not constitute major Federal actions within the meaning of section 102(2)(C) of the National Environmental Policy Act (42 U.S.C. 4332(2)(C)).

Paperwork Reduction Act

This rule does not contain information collection requirements that require approval by OMB under the Paperwork Reduction Act (44 U.S.C. 3507 *et seq.*).

Regulatory Flexibility Act

The Department of the Interior certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). The State submittal, which is the subject of this rule, is based upon counterpart Federal regulations for which an economic analysis was prepared and certification made that such regulations would not have a significant economic effect upon a substantial number of small entities. In making the determination as to whether this rule would have a significant economic impact, the Department relied upon the data and assumptions for the counterpart Federal regulations.

Small Business Regulatory Enforcement Fairness Act

This rule is not a major rule under 5 U.S.C. 804(2), the Small Business Regulatory Enforcement Fairness Act. This rule: a. does not have an annual effect on the economy of $100 million; b. will not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; and c. does not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S. based enterprises to compete with foreign-based enterprises.

This determination is based upon the fact that the State submittal which is the subject of this rule is based upon counterpart Federal regulations for which an analysis was prepared and a determination made that the Federal regulation was not considered a major rule.

Unfunded Mandates

This rule will not impose an unfunded mandate on state, local, or tribal governments or the private sector of $100 million or more in any given year. This determination is based upon the fact that the State submittal, which is the subject of this rule, is based upon counterpart Federal regulations for which an analysis was prepared and a determination made that the Federal regulation did not impose an unfunded mandate.

List of Subjects in 30 CFR Part 950

Intergovernmental relations, Surface mining, Underground mining.

Dated: February 11, 2003.

Allen D. Klein,

Regional Director, Western Regional Coordinating Center.

■ For the reasons set out in the preamble, 30 CFR part 950 is amended as set forth below:

PART 950—WYOMING

■ 1. The authority citation for part 950 continues to read as follows:

Authority: 30 U.S.C. 1201 *et seq.*

■ 2. Section 950.12 is amended by revising the section heading to read as follows:

§ 950.12 State program provisions and amendments not approved.

* * * * *

■ 3. Section 950.15 is amended in the table by adding a new entry in chronological order by May 8, 2003 to read as follows:

§ 950.15 Approval of Wyoming regulatory program amendments.

* * * * *

Original amendment submission date	Date of final publication	Citation/description
. . .	. . .	. . .
April 30, 2002	May 8, 2003	Chapter 1, Section 2(by). Chapter 4, Section 2(b)(iv). Chapter 11, Sections 1(a), 2(a), 3(b), 3(c), 4(a). Chapter 12, Section 1(b), Section 2(d)(iii). Chapter 13, Section 1(a), (b), (c), (d)(iv)(D). Chapter 15, Section 7.

§ 950.16 [Amended]

■ 4. Section 950.16 is amended by removing and reserving paragraphs (j), (k), (n), (y) and (z).

[FR Doc. 03–11219 Filed 5–7–03; 8:45 am]

BILLING CODE 4310–05–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 63

[OAR–2002–0045—FRL–7495–6]

RIN 2060–AK53

National Emission Standards for Hazardous Air Pollutants for Chemical Recovery Combustion Sources at Kraft, Soda, Sulfite, and Stand-Alone Semichemical Pulp Mills

AGENCY: Environmental Protection Agency (EPA).

ACTION: Correcting administrative amendments; change in effective date.

SUMMARY: On February 18, 2003, EPA published a direct final rule on the national emission standards for hazardous air pollutants (NESHAP) for chemical recovery combustion sources at kraft, soda, sulfite, and stand-alone semichemical pulp mills (68 FR 7706). The effective date of that direct final rule is May 19, 2003, and remain unchanged, except the amendment adding Incorporation by Reference (IBR) material which must, for administrative purposes, become effective prior to May 19, 2003. This correction moves up the effective date for that amendment, which affects the centralized IBR section for 40 CFR part 63. In addition, the IBR amendment included in the February 18 direct final rule added a new IBR addressing test method ANSI/ASME PTC 19.10–1981, Flue and Exhaust Gas Analyses [Part 10, Instruments and Apparatus]; thus the effective date of this IBR material must also match the effective date of the centralized IBR section. This correction moves up the effective date in 40 CFR 63.865(b)(3) and 40 CFR 63.865(b)(5)(iii).

DATES: Effective Dates: The revision of 40 CFR 63.14(i) and the removal of 40 CFR 63.14(j), published on February 18, 2003 (68 FR 7713) are effective May 8, 2003. The IBR amendments to 40 CFR 63.865(b), published on February 18, 2003 (68 FR 7716) are effective May 8, 2003. The IBR of certain publications in the NESHAP is approved by the Director of the Office of the Federal Register on May 8, 2003.

FOR FURTHER INFORMATION CONTACT: For information regarding the administration of the IBR, contact Ms. Janet Eck, Coatings and Consumer Products Group, Emission Standards Division (C539–03), U.S. EPA, Research Triangle Park, North Carolina 27711, telephone number (919) 541–7946, facsimile number (919) 541–5689, electronic mail (e-mail) address: *eck.janet@epa.gov*. All other inquiries regarding the NESHAP for chemical recovery combustion sources at kraft, soda, sulfite, and stand-alone semichemical pulp mills should be addressed to Mr. Jeff Telander, Minerals and Inorganic Chemicals Group, Emission Standards Division (C504–05), U.S. EPA, Research Triangle Park, North Carolina 27711, telephone number (919) 541–5427, facsimile number (919) 541–5600, e-mail address: *telander.jeff@epa.gov*.

SUPPLEMENTARY INFORMATION: An electronic copy of today's notice will be available on the Worldwide Web through the Technology Transfer Network (TTN). Following the Assistant Administrator's signature, a copy of this notice will be posted on the TTN's policy and guidance page for newly proposed or promulgated rules at *http://www.epa.gov/ttn/oarpg*. In addition, an electronic version of all of the above mentioned promulgated NESHAP is currently available on the TTN at *http://www.epa.gov/ttn/oarpg/new.html*. The TTN provides information and technology exchange in various areas of air pollution control. If more information regarding the TTN is needed, call the TTN HELP line at (919) 541–5384.

Dated: April 29, 2003.

Robert Brenner,

Acting Assistant Administrator for Air and Radiation.

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DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

49 CFR Parts 107, 171, 173, 177 and 180

[Docket No. RSPA–01–10373 (HM–220D)]

RIN 2137–AD58

Hazardous Materials: Requirements for Maintenance, Requalification, Repair and Use of DOT Specification Cylinders; Response to Appeals and Extension of Compliance Dates

AGENCY: Research and Special Programs Administration (RSPA), DOT.

ACTION: Final rule; response to appeals.

SUMMARY: On August 8, 2002, RSPA published a final rule under Docket No. RSPA–01–10373 (HM–220D) amending the requirements of the Hazardous Materials Regulations applicable to the maintenance, requalification, repair, and use of DOT specification cylinders. The revisions simplified the regulations, responded to petitions for rulemaking, addressed recommendations of the National Transportation Safety Board, and enhanced the safe transportation of hazardous materials in cylinders. In response to appeals submitted by persons affected by the August 8, 2002 final rule, this final rule amends certain requirements, extends certain compliance dates, and makes minor editorial corrections.

DATES: *Effective Date:* This rule is effective June 9, 2003.

Compliance Date: Delayed compliance dates for certain regulatory provisions are set forth in the regulatory text.

FOR FURTHER INFORMATION CONTACT: Sandra Webb, (202) 366–8553, Office of Hazardous Materials Standards or Mark Toughiry, 202–366–4545, Office of Hazardous Materials Technology, Research and Special Programs Administration, U.S. Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590–0001.

SUPPLEMENTARY INFORMATION:

I. Background

On August 8, 2002, the Research and Special Programs Administration (RSPA, we) published a final rule under Docket No. 01–10373 (HM–220D) (67 FR 51625) amending the requirements of the Hazardous Materials Regulations (HMR; 49 CFR parts 171–180) applicable to the maintenance, requalification, repair, and use of DOT specification cylinders.

We received more than 20 appeals. Several appellants filed supplements to their initial appeals of the implementation of HM–220D, either in total or in part. Appellants included the Air Conditioning and Refrigeration Institute, American Trucking Associations, Compressed Gas Association (CGA), Dangerous Goods Advisory Council, Fire Suppression Systems Association (FSSA), National Propane Gas Association (NPGA) and representatives of cylinder and equipment manufacturers, refillers and users, distributors, and shippers. Because of opposition to certain requirements in the August 8, 2002 final rule, we published a final rule in the **Federal Register** on September 30, 2002 (67 FR 51626), extending the compliance date for certain provisions until May 30, 2003. This extension allowed RSPA to fully evaluate the issues raised by the appellants. The September 30, 2002 final rule extended the compliance date for the following requirements:

—§§ 173.40(b) and 173.301a(d)(3)—Prohibiting the pressure at 55 °C (131 °F) in a cylinder from exceeding the service pressure of the cylinder. This provision affects Hazard Zone B gases, in particular hydrogen sulfide.

—§§ 173.301(f)(2) and 177.840(a)(1)—Requiring the inlet port to the relief channel of a pressure relief device, when installed, to be in the cylinder's vapor space.

—§ 173.301(f)(3) and 180.205(c)(4)—Requiring the set pressure of the pressure relief device to be at test pressure with a tolerance of minus 10% to plus zero for DOT 3-series cylinders.

—§ 173.301(h)(2)—Allowing cylinders filled with a flammable, corrosive, or noxious gas to have the valves protected by loading the cylinders in an upright position and securely bracing in rail cars or motor vehicles, when loaded by the consignor and unloaded by the consignee.

Discussion and Resolution of Appeals

Sections 173.40(b) and 173.301a(d)(3). The August 8, 2002 final rule contains a requirement that the pressure of a Hazard Zone A or B toxic by inhalation hazard material at 55 °C (131 °F) may not exceed the service pressure of the cylinder and that sufficient outage must be provided so that the cylinder will not be liquid full at 55 °C (131 °F). CGA and another appellant state that this revision would affect the shipment of hydrogen sulfide, a Hazard Zone B material, in DOT specification 3A and 3AA480 cylinders, as authorized in § 173.304a. Specifically, the appellants point out that the pressure of hydrogen sulfide at 55 °C (131 °F) exceeds the 480 psi marked service pressure for DOT 3A and 3AA480 cylinders. They also note that the § 173.304a table continues to authorize DOT specification cylinders with a marked service pressure of 480 psi, thus creating a conflict with the provisions in § 173.40(b). The appellants are correct that an inconsistency exists between the provisions in § 173.40(b) and the entry in § 173.304a table for hydrogen sulfide. Hydrogen sulfide has a vapor pressure of about 545 psi at 55 °C (131 °F). Therefore, in this final rule, we are revising the hydrogen sulfide entry in the § 173.304a table. This revised entry permits the continued use of currently authorized cylinders for hydrogen sulfide until December 31, 2003. After the transition period, hydrogen sulfide must be transported in a cylinder that conforms to the requirements in § 173.40(b). Also, for consistency we are extending the dates in §§ 173.40(b) and 173.301a(d)(3) to December 31, 2003.

In addition, an appellant notes that throughout the HMR, the normal filling densities and liquid-full conditions for liquefied compressed gas in cylinders are based on two temperatures, "54 °C (130 °F)" and "55 °C (131 °F)." The appellant suggests that one set of values be used. We agree and are revising the pressure reference temperature to read "55 °C (131 °F)" throughout the HMR, except in § 173.306. This reference temperature is consistent with that used in the United Nations Recommendations on the Transport of Dangerous Goods (UN Model Regulations).

Sections 173.301(f)(2) and 177.840(a)(1). Appellants express concern about the requirement in the August 8, 2002 final rule that the inlet port to the relief channel of a pressure relief device (PRD), when installed, must be in the cylinder's vapor space. Several appellants maintain that it is not possible to assure that the PRD is in communication with the vapor space. They further state that vapor space shifts based on the orientation of a cylinder, thus making it impossible to insure that the inlet port to the PRD is always in the cylinder's vapor space. Other appellants, representing the fire suppression industry, express concern that the current configuration of most fire suppression cylinders locates the inlet port to the pressure relief device in a siphon tube, which communicates directly with the liquid portion of the contents rather than the vapor space. Consequently, this requirement would ban most fire suppression cylinders from transportation. The appellants state that in order to comply with the requirement, fire suppression cylinders would have to be redesigned to increase flow capacity and resubmitted to Underwriters Laboratories for testing and approval. They argue that this process effectively could take eighteen months or more. Moreover, several appellants cite test data generated in the late 1970s by CGA, with DOT participation, demonstrating that the current PRDs operate as designed regardless of whether the PRD inlet port is in the liquid or vapor space of the cylinder. CGA furnished a copy of the bonfire test data used to support the adequacy of PRDs conforming to CGA Pamphlet S–1.1.

Based on the merits of the comments and test data, we agree that the current requirements in CGA Pamphlet S–1.1 are adequate, regardless of whether the inlet port to a PRD communicates with the liquefied gas or the vapor space. However, it remains our position that, in a fire, a cylinder that vents a liquefied flammable gas poses a greater risk than if it vents vapors. Appellants support continuing to apply the requirement to liquefied flammable gases to minimize the amount of gas released and potential for initiation of the gas. Therefore, we are revising §§ 173.301(f)(2) and 177.840(a)(1) to require that the PRD be in the vapor space of cylinders used to transport Division 2.1 (flammable gas) materials, only.

Sections 173.301(f)(3) and 180.205(c)(4). Sections 173.301(f)(3) and 180.205(c)(4) set forth requirements for PRDs. The August 8, 2002 final rule requires that PRDs for DOT–3 series cylinders must be set at 100% of test pressure, with an allowable tolerance of minus 10% to plus zero. CGA and several other appellants oppose this requirement, stating that it does not take into consideration that several types of PRDs are activated either by pressure, temperature or both. For example, appellants state that certain PRDs, such as CG–2, CG–3, and CG–9 devices, are fusible plug devices activated by temperature and not by pressure. PRDs incorporating a CG–1, CG–4, and CG–5 device are activated by pressure or a combination of temperature and pressure. Similarly, other appellants state that the requirements specified in CGA Pamphlet S–1.1 restrict certain PRDs, such as CG–2, CG–3, and CG–7 devices, to service pressures below 500 psig, regardless of the test pressure of the cylinder. The appellants request that the provision requiring PRDs on DOT 3-series cylinders be set at 100% of test pressure, with an allowable tolerance of minus 10% to plus zero apply to the CG–1, CG–4, and CG–5 PRDs, only. We agree with the appellants and have made the appropriate changes.

In addition, FSSA and other appellants in the fire protection industry emphasize that cylinders used for fire extinguishers have assemblies consisting of a combined rupture disk and holder as specified in CGA Pamphlet S–1.1, paragraph 6.3.2. These appellants reiterate that CGA Pamphlet S–1.1 stipulates an operating tolerance of minus 15% to plus zero for PRDs with a holder. We agree that while the rupture disks are designed with a tolerance of minus 10% to plus zero, when a disk is placed inside a holder, the disk may rupture below its allowable tolerance of 10%. Therefore, we are allowing an additional 5% tolerance, as allowed in CGA S–1.1–1994, paragraph 6.3.2, for a combined rupture disk and holder. We are revising §§ 173.301(f)(3) and 180.205(c)(4) for consistency with these tolerances requirements.

Section 173.301(h)(2). Section 173.301 sets forth the requirements for cylinder valve protection. The August 8, 2002 final rule discontinues an authorization that allows protection of the valves by loading and securing the cylinders in an upright position in cars and motor vehicles, when loaded by the consignor and unloaded by the consignee. An appellant, opposing the removal of this provision, states that shipping experience using this particular method has proven to be adequate and requests that the authorization be continued.

Based upon the appellant's request that this method be allowed for cylinders manufactured before October 1, 2007, in the September 30, 2002 final rule we adopted a new paragraph (h)(2)(iv) to permit continuance of the authorization until May 30, 2003. Upon further consideration of the impact on industry and the changes adopted in § 177.840(a)(1), we agree that the authorization should be continued for cylinders properly secured in rail cars and motor vehicles during transportation. Therefore, we are revising paragraph (h)(2)(iv) to continue the authorization.

Section by Section Review

The following is a section-by-section summary of changes and, where applicable, a discussion of appeals received.

Part 107

Section 107.803. Section 107.803 sets forth the application procedures for approval as an Independent Inspection Agency (IIA). In the August 8, 2002 final rule, we inadvertently omitted a provision contained in former § 173.300a. The provision authorizes an approved IIA to perform other inspections and functions relating to the inspections and verifications of cylinders used in the transportation of hazardous materials. We are correcting the oversight by adding this provision in a new paragraph (e) in this final rule.

Section 107.805. Section 107.805 sets forth application procedures for persons seeking approval to perform periodic cylinder requalification. In the August 8, 2002 final rule, we inadvertently omitted a provision contained in former § 173.34(e)(2)(iv). The provision requires a person who holds a current requalification identification number (RIN) to inform RSPA in writing within 20 days of any change in the company's address, cylinder qualification personnel or testing equipment. The requirement to notify RSPA of these changes is reiterated in all RIN issuance letters. We are correcting the oversight by adding the provision in a new paragraph (e) in this final rule.

Part 171

Section 171.12. In paragraph (b)(15), we are revising the reference "173.301(j) through (l)" to read "173.301(j) through (m)" for consistency with a change made in the paragraph designations in § 173.301 of this final rule.

Section 171.12a. In paragraph (b)(13), we are revising the reference "§ 173.301(i) and (j)" to read "§ 173.301(j) through (m)" for consistency with a change made in the paragraph designations in § 173.301 of this final rule.

Part 173

Section 173.40. Section 173.40 sets forth the general packaging requirements for toxic materials packaged in cylinders. An appellant requests that we reconsider the compliance date of a requirement contained in paragraph (a)(2) that permits a DOT 3AL cylinder made of aluminum alloy 6351–T6 filled with a Hazard Zone A material prior to October 1, 2002, to be offered for transportation and transported to its ultimate destination for reprocessing or disposal until April 1, 2003. The appellant states that the April 1, 2003 compliance date did not provide sufficient time to recover affected cylinders. Because cylinders made of aluminum alloy 6351–T6 are susceptible to sustained load cracking, we are not extending the April 1, 2003 compliance deadline date in this final rule. However, persons who may need to transport a filled cylinder for recovery or reprocessing after April 1, 2003, may submit an application for exemption in accordance with the procedures in 49 CFR 107.105 or 107.117.

We are revising paragraph (b), as discussed earlier in this preamble, to extend the compliance date for the requirement that the service pressure of a cylinder used for a Hazard Zone B material equal or exceed the material's vapor pressure at 55 °C (131 °F) until December 31, 2003.

An appellant questions whether the requirement in paragraph (c) that each cylinder valve outlet must be closed with a plug or valve applies to any amount of Division 2.3 Hazard Zone A gas. The requirements of § 173.40 for Division 2.3 Hazard Zone A gases apply to any quantity of hazardous material, including residues and mixtures that meet the definition for this division and zone. Further, this requirement has been in effect since October 1, 1991.

In paragraph (d)(2), we are revising the valve protection requirements to provide that when a protective device or overpack is used, it must be designed to protect the valve from breakage or leakage resulting from a drop of 2.0 m (7 ft) onto a non-yielding surface, such as concrete or steel. An appellant states that although a deformed valve is undesirable, a deformed valve should be acceptable if there is no loss of contents. We agree and are removing the requirement that the valve be protected from deformation.

Section 173.163. We are making a minor editorial change in this section.

Section 173.181. We are removing a reference to former § 173.34(d)(6).

Section 173.226 and 173.228. We are revising §§ 173.226(a) and 173.228(b) to allow welded cylinders filled before October 1, 2002 with Hazard Zone A materials to be transported until December 31, 2003, for reprocessing or disposal of the contents. An appellant requests that we allow welded cylinders filled with Hazard Zone A material before October 1, 2002, to be returned empty to the shipper without any time limitation. Because of the inherent risks posed by using welded cylinders for toxic by inhalation hazard materials, we do not agree that an unlimited time period should be granted.

Section 173.301. Paragraph (a) includes general cylinder requirements for shipment of compressed gases in cylinders and spherical pressure vessels. We are revising the wording in paragraph (a)(3) to require the replacement of a leaking PRD where the leak is through the fusible metal and the opening in the plug body. An appellant states that most gas suppliers do not have the skills to perform these repairs on defective PRDs; therefore, the device

should be replaced and not repaired. We agree with the appellant.

As discussed earlier in this preamble, we are making several changes to the PRD requirements in paragraph (f). We are revising paragraph (f)(2) to require the PRD to be in the vapor space of a cylinder only when it contains a Division 2.1 (flammable gas) material. In paragraph (f)(3), we are applying the operating tolerance requirements to types CG–1, CG–4, and CG–5 PRDs only. We are also allowing an additional 5% tolerance when a PRD is fitted in a disk holder.

A commenter pointed out that the PRD requirement in paragraph (f)(3) also should apply to a DOT 3T cylinder when fitted with a PRD. We agree that these safety controls should apply and are including the DOT 3T cylinder in the provision.

An appellant requests that in paragraph (f)(5)(i) we revise the wording "or a nonliquefied gas to a pressure of *1800 psig or higher*" to read "or a nonliquefied gas to a *pressure greater* than 1800 psig." The appellant states that this change would permit vast numbers of "DOT E1800 lecture bottles" which are rated for 1800 psi and do not have a PRD to continue to be shipped. We do not agree with the appellant. The provision requiring a cylinder filled with a nonliquefied gas to a pressure of 1800 psi or higher at 70 °F to have a PRD was adopted into the regulations before 1950. We proposed no revision to the requirement. Therefore, the appellant's request is outside the scope of this rulemaking and the requirement is retained.

Paragraph (g) sets forth requirements for manifolding cylinders in transportation. We are revising the wording in paragraph (g)(1) to allow PRDs on manifolded horizontal cylinders, mounted on a motor vehicle or in a framework, to be based on the lowest marked pressure of any individual cylinder in the manifold unit. Appellants state that allowing the manifolded cylinders to have PRDs with the same pressure setting will enhance safety because the set pressure on the individual cylinders will not exceed the minimum test pressure of the cylinders. We agree and have revised the provision accordingly. In addition, the PRD setting of any horizontal cylinder removed from an existing manifold and installed into a different manifold must meet the requirements in paragraph (g)(1) to prevent the premature release of cylinder contents during transportation.

Another appellant requests the removal of a requirement in paragraph (g)(1) stating that PRDs on manifolded horizontal cylinders filled with a compressed gas must be arranged to discharge unobstructed to the open air in such a manner as to prevent any escaping gas from contacting personnel or any adjacent cylinders. The appellant states that the requirement is unnecessary for Division 2.2 (non-flammable) gases and would impose considerable costs with no increase in safety. It was our intent to prevent, after a PRD activates, a condition that restricts the gas from releasing from the device. We are revising the requirement for clarity.

Paragraph (h) sets forth requirements for cylinder valve protection. As discussed earlier in this preamble, we are revising paragraph (h)(2) for cylinders manufactured before October 1, 2007, to allow cylinders to have their valves protected by loading the cylinders in an upright position and securely restraining them in rail cars or motor vehicles, when loaded by the consignor and unloaded by the consignee.

Paragraph (h)(3) contains valve protection requirements for cylinders manufactured on and after October 1, 2007. An appellant who opposes the requirement requests that it be removed. The appellant states that with an estimated 100 million seamless and welded cylinders in circulation within the United States, other than acetylene cylinders, a 5-year transition period does not provide sufficient time for the changeover to a new valve protection system. Further, the appellant states that the valve caps currently in use may not meet the new requirement, and a new design that is different from existing designs will be required to prevent older style caps from being used on cylinders manufactured after October 1, 2007.

Another appellant requests a revision to paragraph (h)(3) to require that cylinder caps and valve guards meeting the new performance drop test adopted in the August 8, 2002 final rule be stamped with the marking "§ 173.301(h)(3)." The appellant states that, without this marking, no means exist to identify the caps and valve guards conforming to the performance requirement; thus, the rule would be unenforceable. We do not agree with the first appellant's request that paragraph (h)(3) be removed. The performance requirement provides increased assurance that the valves will be protected if the cylinder is dropped onto a concrete surface. The August 8, 2002 final rule provides a five-year transition period to facilitate compliance with the requirement.

We believe the latter appellant's suggestion that some means should be used to identify cylinder valve caps and guards that meet the new performance requirement has merit. However, we did not include a marking requirement in the notice of proposed rulemaking (Docket HM–220, 63 FR 58460, October 30, 1998). Therefore, the request is beyond the scope of this rulemaking. Even though we did not propose a method to distinguish valve caps and guards conforming to the performance requirement, we encourage industry to employ effective methods. We will consider proposing a marking requirement in a future rulemaking.

Paragraph (i)(3) addresses cylinders longer than 2 m (6.5 ft) horizontally mounted on motor vehicles or in frames. The appellant who opposed the requirement in paragraph (h)(2) that PRDs be arranged in such a manner as to prevent any escaping gas from contacting personnel or any adjacent cylinders also opposed a similar provision in this paragraph. We are revising the provision to clarify that gas released from the device must be unobstructed.

In the August 8, 2002 final rule, we inadvertently omitted reciprocity provisions contained in former § 173.301(i)(2). The provisions authorize cylinders marked "CTC" and conforming to Canadian Transport of Dangerous Goods Regulations to be transported to, from or within the United States under certain conditions. We are correcting the oversight by adding the provisions in paragraph (m) in this final rule.

Section 173.301a. Paragraph (d)(3) is revised for consistency with the provisions in § 173.40 which contains general packaging requirements for Hazard Zone A and B materials.

Section 173.302a. An appellant expresses concern that the regulatory text adopted in paragraph (b)(3)(iii) conflicts with the preamble discussion of this section contained in the August 8, 2002 final rule. The regulatory text states that compliance with the average wall stress limitation may be met by computing the elastic expansion rejection limit (REE) in accordance with CGA Pamphlet C–5. However, the preamble states "we are not authorizing the use of an REE marking applied to the cylinder by a person other than the manufacturer because it may be inaccurate." The appellant states that CGA Pamphlet C–5 has allowed persons other than the manufacturer to determine and mark the REE on the cylinder for years. With this being the case, there is no way to differentiate between an REE marking made by the manufacturer or some other person. We disagree with appellant. In our review of CGA Pamphlet C–5, we found no

provision that allows the REE to be stamped by persons other than the cylinder manufacturer. This fact was verified with CGA.

Section 173.304. For uniformity with other references in the HMR, the reference to temperature "54 °C (130 °F)" is revised to read "55 °C (131 °F)."

Section 173.304a. In paragraph (a)(2) table the heading reference "§§ 173.301(a)(1), 173.301(a)(4)" in column three is revised to read "§§ 173.301(l), 173.301a(e), and 180.205(a)" for consistency with the provisions in the HMR. For uniformity with other temperature references in the HMR, we are revising the wording "Not liquid full at 130 °F" and "Not liquid at 130 °F" to read "Not liquid full at 131°F" in the following entries: "Dichlorodifluoromethane and difluoroethane mixture," "Insecticide, gases liquefied," "Liquefied nonflammable gases, other than classified flammable, corrosive, toxic & mixtures or solution thereof filled w/ nitrogen, carbon dioxide, or air," and "Methyl acetylene-propadiene, mixtures, stabilized."

We are correcting several shipping names by replacing the word "inhibited" with the word "stabilized" for the entries, "Tetrafluoroethylene/ inhibit," "Trifluorochloroethylene, inhibited," "Vinyl fluoride, inhibited," and "Vinyl methyl ether, inhibited." These changes were adopted in a separate final rule (Docket No. RSPA–2000–7702 (HM–215D), June 21, 2001, 66 FR 33316) that made revisions to harmonize the HMR with the standards contained in the UN Model Regulations.

In paragraph (c), for uniformity with other references in the HMR, we are revising the reference temperature "54 °C (130 °F)" to read "55 °C (131 °F)."

In paragraph (d), the specific gravity "9.504" is in error. We are correcting the value to read "0.504."

Section 173.305. In paragraph (b), for uniformity with other references in the HMR, we are revising the reference temperature "54 °C (130 °F)" to read "55 °C (131 °F)."

Section 173.306. In paragraph (g)(5), we are revising the reference "§ 173.301(a)(8)" to correctly reference the outer packaging requirements for cylinders that are now contained in § 173.301(h).

Part 177

Section 177.840. As discussed earlier in this preamble, we are revising paragraph (a)(1) to apply the requirement that a cylinder fitted with a PRD must be in communication with the vapor space to Division 2.1 (flammable gas) material, only.

An appellant states that paragraph (a)(1), as written, prohibits the use of other freight as a means of securement to prevent movement of cylinders under normal conditions of transportation. Also read literally, the wording requires boxes containing cylinders to be securely attached to the motor vehicle. The appellant states that for-hire carriers cannot comply with the requirements. It was not our intent to require that the boxes be attached to the vehicle. We are revising the wording in this paragraph for clarity. However, as adopted in the August 8, 2002 final rule, the cylinders must be secured on the vehicle to prevent their being shifted, overturned or ejected from the vehicle under normal transportation conditions. Further, because we are continuing to allow the protection of the valves to be met by loading the cylinder in an upright position under § 173.301(h)(2) of this final rule, it is crucial that the cylinders be properly secured and restrained during transportation. Depending on the size and weight of the cylinders, the use of other freight as the sole means of securement may not be entirely sufficient.

Part 178

Section 178.46. An appellant requests that the maximum amount of lead (Pb) and bismuth (Bi) for aluminum alloy 6061 be changed to 0.003 percent from 0.005 percent for consistency with the values adopted in ISO 7866 and the UN Model Regulations. As we stated in the August 8, 2002 final rule, we adopted the limits based on chemical composition prescribed for unlisted metallic elements specified in Table 1 of ASTM B221. We plan to address cylinders manufactured to the UN Model Regulations in a future rulemaking.

Part 180

Section 180.203. NPGA requests a revision of the definition of "commercially free of corrosive components" to include a reference to Table 1 in the Gas Processors Association (GPA) Standard 2140. In the final rule, we provided for cylinders used for petroleum gases meeting the moisture and corroding component limits in ASTM D–1835, "Standard Specification for Liquefied Petroleum (LP) Gases," to be given an external visual inspection in place of a pressure test. We adopted this provision in § 180.209, in paragraph (e) and the table in paragraph (g). NPGA states that GPA 2140, "Liquefied Petroleum Gas Specification and Test Methods" is a technically equivalent standard to ASTM D–1835 and contains the same provisions relative to moisture content and control of sulfur compounds as the ASTM standard. NPGA expresses concern that propane marketers whose supplier contracts may reference GPA 2140 rather than ASTM D–1835 could effectively be precluded from performing external visual inspections. We do not agree that the definition for "commercially free of corrosive components" should be revised. We are including a provision to recognize standards that are equivalent to ASTM D–1835 in § 180.209(e) and the table in paragraph(g).

An appellant requests a revision to the definition of "Non-corrosive service" to specifically include oxygen. The appellant states that including oxygen will allow cylinders used in oxygen service to be periodically retested once every 10 years instead of once every five years. We do not agree that the definition for "non-corrosive service" should be revised to include oxygen. Oxygen may be corrosive when it contains moisture or other impurities. Furthermore, current § 180.209(b) provides that a DOT 3A or 3AA cylinder may be requalified every ten years instead of five years if used for oxygen that is commercially free of corroding components.

An appellant requests a revision to the definition of "Over-heated" to add a statement that reads "WARNING: This requirement pertains to an instantaneous heating. This requirement does not imply that heating cylinders at slightly lower temperatures for longer periods of time is an acceptable practice. Before heating cylinders for any purpose, the manufacturer should be contacted for time and temperature relationships and limits." The appellant states that there is a time requirement that must be considered when heating cylinders. The effects on the material are cumulative. Therefore, this warning statement alerts the user to the time interval associated with proposed temperature and to contact the manufacturer for heating operations. We agree that metal degradation is dependent on both temperature and time. However, we do not agree the definition of "over-heated" should be revised. The definition of "over-heated" in § 180.203 applies to the condemnation criteria for aluminum cylinders during the requalification process and not to instances which may require a cylinder to be heated. Therefore, revising the definition to include a warning statement is not warranted. We recommend that users contact the manufacturers for restrictions on heating aluminum cylinders.

Section 180.205. Paragraph (c) sets forth requirements for periodic requalification of cylinders. As discussed earlier in this preamble, we are revising paragraph (c)(4) to require the PRD to be in the vapor space of a cylinder only when it contains a Division 2.1 (flammable gas) material. Also as discussed earlier, in paragraph (f)(3), we are applying the operating tolerance requirements to CG–1, CG–4, and CG–5 PRDs only.

Paragraph (d) sets forth conditions requiring test and inspection of cylinders. An appellant requests a revision to state that the inspection and test are required when the cylinder shows evidence of dents, corrosion, cracked or abraded areas, leakage, thermal damage "in excess of what is permitted by CGA Pamphlets C–6, C–6.1, C–6.2, C–6.3, C–8 or C–13." The appellant states that, as written, any of the listed conditions, regardless of how inconsequential, would require requalifying the cylinder. Therefore, the requested revision better reflects what is intended and current industry practice. We do not agree with the appellant. The requirement does not apply "regardless of how inconsequential" the condition of the cylinder. Rather, as stated, the requirement to perform a test and inspection applies to conditions that might render the cylinder "unsafe for use in transportation." The requirement is retained.

Paragraph (f) sets forth the visual inspection requirements for cylinders. We are revising paragraph (f)(4), containing inspection requirements for cylinders made of aluminum alloy 6351–T6, to remove the wording "in accordance with the cylinder manufacturer's written recommendations, which must be approved in writing by the Associate Administrator." Requalifiers are to inspect the neck and shoulder areas of these cylinders for evidence of sustained load cracking using any appropriate procedure. We are developing an NPRM to address the inspection of these cylinders.

Paragraph (g) sets forth the pressure test requirements for cylinders. In paragraph (g)(2), we are revising the reference "0.1 cm^3" to read "0.1 cc" because the acronym "cc" is a more recognizable unit of measure. In paragraph (g)(3)(ii), the reference "0.1 cubic centimeter" is removed and "0.1 cc" is added in its place for consistency with the change in paragraph (g)(2).

Section 180.209. In the table in paragraph (a), we are revising the heading to column 3 to read "Requalification period (years)" in place of "Test period (years)" to more accurately reflect that a requalification may be an inspection or a test.

In the August 8, 2002 final rule, we revised paragraph (b)(1)(ii) to allow cylinders containing "fluorinated hydrocarbons, liquefied hydrocarbons, and mixtures thereof which are commercially free from corroding components" and certain other gases to be requalified every ten years instead of every five years. An appellant states that chlorinated hydrocarbons have properties similar to fluorinated hydrocarbons and, therefore, should be listed. We agree and are adding an entry for "chlorinated hydrocarbons and mixtures thereof that are commercially free from corroding components" in paragraph (a)(1)(ii) in this final rule. For the same reason, we are adding an entry for chlorinated hydrocarbons in the table in paragraph (g). Also in the table in paragraph (g), we are correcting the entry "Ethyleneimine, inhibited" by replacing the word "inhibited" with the word "stabilized." In addition, as stated earlier in the preamble discussion to § 180.203, we are revising the wording in § 180.209(e) and the table in paragraph (g) to recognize standards that are equivalent to ASTM D–1835.

In the August 8, 2002 final rule, we inadvertently omitted a requirement in former § 173.34(e)(15) stating that a DOT 3HT cylinder must be requalified in accordance with CGA Pamphlet C–8. We are redesignating current paragraph (k) as paragraph (l) and adding the provision in new paragraph (k) in this final rule.

Finally, in this section, we are correcting several section references.

Section 180.211. In paragraph (d)(1)(iii), we are correcting a section reference.

Section 180.215. In paragraph (b)(1), we are correcting the paragraph heading "Pressure test records" to read "Calibration test records" to correctly identify the records prescribed in this paragraph. The pressure test records are prescribed in paragraph (b)(2).

Regulatory Analyses and Notices

A. Executive Order 12866 and DOT Regulatory Policies and Procedures

This final rule is not considered a significant regulatory action under section 3(f) of Executive Order 12866 and was not reviewed by the Office of Management and Budget. The rule is not considered significant under the Regulatory Policies and Procedures of the Department of Transportation (44 FR 11034).

This final rule amends an August 8, 2002 final rule that made revision to requirements applicable to the maintenance, requalification, repair and use of DOT specification cylinders. A regulatory evaluation prepared for the August 8, 2002 final rule is available for review in the docket. The original regulatory evaluation was not modified because the amendments herein do not impose additional requirements and are not substantive changes to the final rule.

B. Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) requires an agency to review regulations to assess their impact on small entities unless the agency determines a rule is not expected to have a significant economic impact on a substantial number of small entities. This final rule imposes no new costs of compliance on the regulated industry and, in fact, should reduce overall costs of compliance. Based on the assessment in the original regulatory evaluation, I hereby certify that while this final rule applies to a substantial number of small entities, there will not be a significant economic impact on those small entities. A detailed Regulatory Flexibility analysis for the August 8, 2002 final rule is available for review in the docket.

C. Executive Order 13132

This final rule has been analyzed in accordance with the principles and criteria contained in Executive Order 13132 ("Federalism"). This final rule preempts state, local, and Indian tribe requirements but does not propose any regulation with substantial direct effects on the states, the relationship between the national government and the states, or the distribution of power and responsibilities among the various levels of government. Therefore, the consultation and funding requirements of Executive Order 13132 do not apply.

Federal hazardous materials transportation law, 49 U.S.C. 5101–5127, contains an express preemption provision (49 U.S.C. 5125(b)) preempting state, local, and Indian tribe requirements on certain covered subjects. Covered subjects are:

(1) The designation, description, and classification of hazardous materials;

(2) The packing, repacking, handling, labeling, marking, and placarding of hazardous materials;

(3) The preparation, execution, and use of shipping documents related to hazardous materials and requirements related to the number, contents, and placement of those documents;

(4) The written notification, recording, and reporting of the unintentional release in transportation of hazardous material; or

(5) The design, manufacture, fabrication, marking, maintenance, recondition, repair, or testing of a packaging or container represented, marked, certified, or sold as qualified for use in transporting hazardous material.

This final rule addresses covered subject items 2 and 5 above and preempts state, local, and Indian tribe requirements not meeting the "substantively the same" standard. This final rule is necessary to assure an acceptable level of safety for the transportation of hazardous materials in cylinders.

Federal hazardous materials transportation law provides at section 5125(b)(2) that, if DOT issues a regulation concerning any of the covered subjects, DOT must determine and publish in the **Federal Register** the effective date of federal preemption. The effective date may not be earlier than the 90th day following the date of issuance of the final rule and not later than two years after the date of issuance. The effective date of federal preemption of this final rule is 90 days from publication of this final rule in the **Federal Register**.

D. Executive Order 13175

This final rule has been analyzed in accordance with the principles and criteria contained in Executive Order 13175 ("Consultation and Coordination with Indian Tribal Governments"). Because this final rule does not significantly or uniquely affect the communities of the Indian tribal governments and does not impose substantial direct compliance costs, the funding and consultation requirements of Executive Order 13175 do not apply.

E. Unfunded Mandates Reform Act of 1995

This final rule does not impose unfunded mandates under the Unfunded Mandates Reform Act of 1995. It does not result in costs of $100 million or more, in the aggregate, to any of the following: State, local, or Indian tribal governments, or the private sector. This rule is the least burdensome alternative to achieve the objective of the rule.

F. Paperwork Reduction Act

Under the Paperwork Reduction Act of 1995, no person is required to respond to an information collection unless it displays a valid OMB control number. The amendments contained in this final rule imposes no changes to the information collection and recordkeeping requirements contained in the August 8, 2002 final rule, which was approved by the Office of Management and Budget under the provisions of 44 U.S.C. chapter 35 and assigned control numbers 2137–0022 (approved through 09/30/2005) and 2137–0557 (approved through 12/31/2005).

G. Regulation Identifier Number (RIN)

A regulation identifier number (RIN) is assigned to each regulatory action listed in the Unified Agenda of Federal Regulations. The Regulatory Information Service Center publishes the Unified Agenda in April and October of each year. The RIN contained in the heading of this document can be used to cross-reference this action with the Unified Agenda.

H. Environmental Assessment

This final rule relaxes certain provisions contained in an August 8, 2002 final rule. The August 8, 2002 final rule incorporates new cylinder technologies through new and updated incorporations by reference of consensus standards developed by CGA; increases flexibility for cylinder requalifiers, and users; and facilitates compliance with the HMR by clarifying and reorganizing regulatory requirements applicable to cylinders. In addition, the August 8, 2002 final rule improves the overall safety performance of DOT specification cylinders by addressing several identified safety problems. The August 8, 2002 final rule contains revisions to minimize unintentional releases of hazardous materials from cylinders during transportation and, therefore, will reduce environmental damage associated with such releases. To the extent that the revisions in this final rule maintain an equivalent level of safety for transportation of hazardous materials in cylinders, we find that there are no significant environmental impacts associated with this final rule.

List of Subjects

49 CFR Part 107

Administrative practice and procedure, Hazardous materials transportation, Packaging and containers, Penalties, Reporting and recordkeeping requirements.

49 CFR Part 171

Exports, Hazardous materials transportation, Hazardous waste, Imports, Reporting and recordkeeping requirements.

49 CFR Part 173

Hazardous materials transportation, Packaging containers, Radioactive materials, Reporting and recordkeeping requirements, Uranium.

49 CFR Part 177

Hazardous materials transportation, Motor vehicle safety, Packaging and containers, Reporting and recordkeeping requirements.

49 CFR Part 180

Hazardous materials transportation, Motor carriers, Motor vehicle safety, Packaging and containers, Railroad safety, and Reporting and recording requirements.

PART 107—HAZARDOUS MATERIALS PROGRAM PROCEDURES

1. The authority citation for part 107 continues to read as follows:

2. **Authority:** 49 U.S.C. 5101–5127; 44701; Sec. 212–213. Pub. L. 104–121, 110 Stat. 857; 49 CFR 1.45 and 1.53.

■ 3. In § 107.803, paragraph (e) is added to read as follows:

§ 107.803 Approval of independent inspection agency.

* * * * *

(e) After approval, the Associate Administrator may authorize, upon request, the independent inspection agency to perform other inspections and functions for which the Associate Administrator finds the applicant to be qualified. Such additional authorizations will be noted on each inspection agency's approval documents.

■ 4. In § 107.805, paragraph (g) is added to read as follows:

§ 107.805 Approval of cylinder requalifiers.

* * * * *

(g) Each holder of a current RIN shall report in writing any change in its name, address, ownership, testing equipment, or management or personnel performing any function under this section, to the Associate Administrator (DHM–32) within 20 days of the change.

PART 171—GENERAL INFORMATION, REGULATIONS, AND DEFINITIONS

■ 5. The authority citation for part 171 continues to read as follows:

Authority: 49 U.S.C. 5101–5127; 49 CFR 1.53.

§ 171.12 [Amended]

■ 6. In § 171.12, paragraph (b)(15) is amended by removing the wording "173.301(j) through (l)" and adding "173.301(j) through (m)" in its place.

§ 171.12a [Amended]

■ 7. In § 171.12a, paragraph (b)(13) is amended by removing the wording

"173.301(i) and (j)" and adding "173.301(j) through (m)" in its place.

PART 173—SHIPPERS—GENERAL REQUIREMENTS FOR SHIPMENTS AND PACKAGINGS

■ 8. The authority citation for part 173 continues to read as follows:

Authority: 49 U.S.C. 5101–5127; 49 CFR 1.45 and 1.53.

■ 9. In § 173.40, paragraphs (b) and (d)(2) are revised to read as follows:

§ 173.40 General packaging requirements for toxic materials packaged in cylinders.

* * * * *

(b) *Outage and pressure requirements.* The pressure at 55 °C (131 °F) of Hazard Zone A and, after December 31, 2003, Hazard Zone B materials may not exceed the service pressure of the cylinder. Sufficient outage must be provided so that the cylinder will not be liquid full at 55 °C (131 °F).

* * * * *

(d) * * *

(2) Each cylinder with a valve must be equipped with a protective metal cap, other valve protection device, or an overpack which is sufficient to protect the valve from breakage or leakage resulting from a drop of 2.0 m (7 ft) onto a non-yielding surface, such as concrete or steel. Impact must be at an orientation most likely to cause damage.

* * * * *

■ 10. Section 173.163 is revised to read as follows:

§ 173.163 Hydrogen fluoride.

Hydrogen fluoride (hydrofluoric acid, anhydrous) must be packaged in a specification 3, 3A, 3AA, 3B, 3BN, 3E, or 4A cylinder; or a specification 4B, 4BA, or 4BW cylinder if the cylinder is not brazed. Filling density may not exceed 85 percent of the cylinder's water weight capacity. In place of the periodic volumetric expansion test, cylinders used in exclusive service may be given a complete external visual inspection in conformance with part 180, subpart C, of this subchapter, at the time such periodic requalification becomes due. Cylinders removed from hydrogen fluoride service must be condemned in accordance with § 180.205 of this subchapter and, at the direction of the owner, the cylinder may be rendered incapable of holding pressure.

§ 173.181 [Amended]

■ 11. In § 173.181, the last sentence in paragraph (a)(2) is amended by removing the reference "§§ 173.34(d)(6) and 177.838(h)" adding "§ 177.838(h)" in its place.

■ 12 In § 173.226, paragraph (a) is revised to read as follows:

§ 173.226 Materials poisonous by inhalation, Division 6.1, Packing Group 1, Hazard Zone A.

* * * * *

(a) In seamless specification cylinders conforming to the requirements of § 173.40. However, a welded cylinder filled before October 1, 2002, may be transported for reprocessing or disposal of the cylinder's contents until December 31, 2003.

* * * * *

■ 13. In § 173.228, paragraph (b) is revised to read as follows:

§ 173.228 Bromine pentafluoride or bromine trifluoride.

* * * * *

(b) A material in Hazard Zone A must be transported in a seamless specification cylinder conforming to the requirements of § 173.40. However, a welded cylinder filled before October 1, 2002, in accordance with the requirements of this subchapter in effect at the time of filling, may be transported for reprocessing or disposal of the cylinder's contents until December 31, 2003. No cylinder may be equipped with a pressure relief device.

§ 173.301 [Amended]

■ 14. In § 173.301, the following amendments are made:

■ a. Paragraph (a) is amended by removing the reference "173.302 through 173.305" and adding "173.301a through 173.305" in its place.

■ b. Paragraphs (a)(3), (f)(2), (f)(3), (g)(1) introductory text, (h)(2)(iv), (i)(3), and the beginning of the first sentence in paragraph (h)(3) introductory text, are revised.

■ c. Paragraph (m) is redesignated as paragraph (n) and a new paragraph (m) is added.

The revisions and additions read as follows:

§ 173.301 General requirements for shipment of compressed gases in cylinders and spherical pressure vessels.

* * * * *

(a) * * *

(3) Pressure relief devices must be tested for leaks before a filled cylinder is shipped from the cylinder filling plant. It is expressly forbidden to repair a leaking fusible plug device where the leak is through the fusible metal or between the fusible metal and the opening in the plug body, except by removal and replacement of the pressure relief device.

* * * * *

(f) * * *

(2) After December 31, 2003, a pressure relief device, when installed, must be in communication with the vapor space of a cylinder containing a Division 2.1 (flammable gas) material.

(3) For a specification 3, 3A, 3AA, 3AL, 3AX, 3AXX, 3B, 3BN, or 3T cylinder filled with gases in other than Division 2.2, beginning with the first requalification due after December 31, 2003, the burst pressure of a CG–1, CG–4, or CG–5 pressure relief device must be at test pressure with a tolerance of plus zero to minus 10%. An additional 5% tolerance is allowed when a combined rupture disk is placed inside a holder. This requirement does not apply if a CG–2, CG–3 or CG–9 thermally activated relief device or a CG–7 reclosing pressure valve is used on the cylinder.

* * * * *

(g) * * *

(1) Cylinder manifolding is authorized only under conditions prescribed in this paragraph (g). Manifolded cylinders must be supported and held together as a unit by structurally adequate means. Except for Division 2.2 materials, each cylinder must be equipped with an individual shutoff valve that must be tightly closed while in transit. Manifold branch lines must be sufficiently flexible to prevent damage to the valves that otherwise might result from the use of rigid branch lines. Each cylinder must be individually equipped with a pressure relief device as required in paragraph (f) of this section, except that pressure relief devices on manifolded horizontal cylinders that are mounted on a motor vehicle or framework may be selected as to type, location, and quantity according to the lowest marked pressure limit of an individual cylinder in the manifolded unit. The pressure relief devices selected for the manifolded unit must have been tested in accordance with CGA pamphlets S–1.1 and S–7 (incorporated by reference; see § 171.7 of this subchapter). Pressure relief devices on manifolded horizontal cylinders filled with a compressed gas must be arranged to discharge unobstructed to the open air. In addition, for Division 2.1 (flammable gas) material, the PRDs must be arranged to discharge upward to prevent any escaping gas from contacting personnel or any adjacent cylinders. Valves and pressure relief devices on manifolded cylinders filled with a compressed gas must be protected from damage by framing, a cabinet, or other method. Manifolding is authorized for cylinders containing the following gases:

* * * * *

(h) * * *

* * * * *

(2) For cylinders manufactured on or after October 1, 2007, * * *

* * * * *

(iv) By loading the cylinders in an upright position and securely bracing the cylinders in rail cars or motor vehicles, when loaded by the consignor and unloaded by the consignee.

(i) * * *

(3) The pressure relief device must be arranged to discharge unobstructed to the open air. In addition, for Division 2.1 (flammable gas) material, the pressure relief devices must be arranged to discharge upward to prevent any escaping gas from contacting personnel or any adjacent cylinders.

* * * * *

(m) *Canadian cylinders in domestic use.* A Canadian Transport Commission (CTC) specification cylinder manufactured, originally marked and approved in accordance with the CTC regulations and in full conformance with the Canadian Transport of Dangerous Goods (TDG) Regulations is authorized for the transportation of a hazardous material to, from or within the United States under the following conditions:

(1) The CTC specification corresponds with a DOT specification and the cylinder markings are the same as those specified in this subchapter except that they were originally marked with the letters "CTC" in place of "DOT";

(2) The cylinder has been requalified under a program authorized by the Canadian TDG regulations or requalified in accordance with the requirements in § 180.205 within the prescribed requalification period provided for the corresponding DOT specification;

(3) When the regulations authorize a cylinder for a specific hazardous material with a specification marking prefix of "DOT", a cylinder marked "CTC" which otherwise bears the same markings that would be required of the specified "DOT" cylinder may be used; and

(4) Transport of the cylinder and the material it contains is in all other respects in conformance with the requirements of this subchapter (*e.g.* valve protection, filling requirements, operational requirements, etc.).

* * * * *

■ 15. In § 173.301a, paragraph (d)(3) is revised to read as follows:

§ 173.301a Additional general requirements for shipment of specification cylinders.

* * * * *

(d) * * *

(3) The pressure at 55 °C (131 °F) of Hazard Zone A and, after December 31, 2003, Hazard Zone B materials, may not exceed the service pressure of the cylinder. Sufficient outage must be provided so that the cylinder will not be liquid full at 55 °C (131 °F).

* * * * *

§ 173.304 [Amended]

■ 16. In § 173.304, in paragraphs (b) and (d), the temperature "54 °C (130 °F)" is revised to read "55 °C (131 °F)" each place it appears.

■ 17. In § 173.304a, the following amendments are made:

■ a. In the table in paragraph (a)(2):

■ 1. The table heading is revised;

■ 2. For the entry "Dichlorodifluoromethane and difluoroethane mixture (constant boiling mixture) (R–500) (see Note 8)", in column 2, the wording "Not liquid full at 130 °F" is revised to read "Not liquid full at 131 °F";

■ 3. For the entry "Hydrogen sulfide (see Note 10)" in column one, the wording "see Note 10" is revised to read "see Notes 10 and 14";

■ 4. For the entry "Insecticide, gases liquefied (see Notes 8 and 12)", in column 2, the wording "Not liquid full at 130 °F" is removed and the wording "Not liquid full at 131 °F" is added in its place;

■ 5. For the entry "Liquefied nonflammable gases, other than classified flammable, corrosive, toxic & mixtures or solution thereof filled w/nitrogen, carbon dioxide, or air (Notes 7 and 8)", in column 2, the wording "Not liquid full at 130 °F" is revised to read "Not liquid full at 131 °F";

■ 6. For the entry "Methyl acetylene-propadiene, mixtures, stabilized DOT–3A240; (see Note 5)", in column 2, the wording "Not liquid at 130 °F" is revised to read "Not liquid full at 131 °F";

■ 7. For the entry "Tetrafluoroethylene/inhibit", in column 1, the wording is revised to read "Tetrafluoroethylene, stabilized";

■ 8. For the entry "Trifluorochloroethylene, inhibited", in column 1, the wording is revised to read "Trifluorochloroethylene, stabilized";

■ 9. For the entry "Vinyl fluoride, inhibited", in column 1, the wording is revised to read "Vinyl fluoride, stabilized";

■ 10. For the entry "Vinyl methyl ether, inhibited (see Note 5)", in column 1, the wording is revised to read "Vinyl methyl ether, stabilized"; and

■ 11. Following the table, Note 14 is added.

■ b. Paragraph (c) and the first sentence in paragraph (d)(4) are revised.

The additions and revisions read as follows:

§ 173.304a Additional requirements for shipment of liquefied compressed gases in specification cylinders.

(a) * * *

(2) * * *

Kind of gas	Maximum permitted filling density (percent) (see Note 1)	Packaging marked as shown in this column or of the same type with higher service pressure must be used, except as provided in §§ 173.301(l), 173.301a(e), and 180.205(a) (see notes following table)
• • •	•	• • •
Dichlorodifluoromethane and difluoroethane mixture (constant boiling mixture) (R–500) (see Note 8).	Not liquid full at 131 °F	DOT–3A240; DOT–3AA240; DOT–3B240; DOT–3E1800; DOT–4A240; DOT–4B240; DOT–4BA240; DOT–4BW240; DOT–4E240; DOT–9; DOT–39.
• • •	•	• • •
Hydrogen sulfide (see Notes 10 and 14)	62.5	DOT–3A480; DOT–3AA480; DOT–3B480; DOT–4A480; DOT–4B480; DOT–4BA480; DOT–4BW480.; DOT–3E1800; DOT–3AL480.
Insecticide, gases liquefied (see Notes 8 and 12)	Not liquid full at 131 °F	DOT–3A300; DOT–3AA300; DOT–3B300; DOT–4B300; DOT–4BA300; DOT–4BW300; DOT–9; DOT–40; DOT–41; DOT–3E1800.
Liquefied nonflammable gases, other than classified flammable, corrosive, toxic & mixtures or solution thereof filled w/nitrogen, carbon dioxide, or air (Notes 7 and 8).	Not liquid full at 131 °F	Specification packaging authorized in paragraph (a)(1) of this section and DOT–3HT; DOT 4D; DOT–4DA; DOT–4DS.

Kind of gas	Maximum permitted filling density (percent) (see Note 1)	Packaging marked as shown in this column or of the same type with higher service pressure must be used, except as provided in §§ 173.301(l), 173.301a(e), and 180.205(a) (see notes following table)
Methyl acetylene-propadiene, mixtures, stabilized DOT–3A240; (see Note 5).	Not liquid full at 131 °F	DOT–4B240 without brazed seams; DOT-4BA240 without brazed seams; DOT–3A240; DOT–3AA240; DOT–3B240; DOT–3E1800; DOT–4BW240; DOT–4E240; DOT–4B240ET; DOT–4; DOT–41; DOT–3AL240.
* * *	*	* *
Tetrafluoroethylene, stabilized	90	DOT–3A1200; DOT–3AA1200; DOT–3E1800.
Trifluorochloroethylene, stabilized	115	DOT–3A300; DOT–3AA300; DOT–3B300; DOT–4A300; DOT–4B300; DOT–4BA300; DOT–4BW300; DOT–3E1800.
* * *	*	* *
Vinyl fluoride, stabilized	62	DOT–3A1800; DOT–3AA1800; DOT–3E1800; DOT–3AL1800.
Vinyl methyl ether, stabilized (see Note 5)	68	DOT–4B150, without brazed seams; DOT–4BA225 without brazed seams; DOT–4BW225; DOT–3A150; DOT–3AA150; DOT–3B1800; DOT–3E1800.

* * * * *

Note 14: The use of DOT specification cylinder with a marked service pressure of 480 psi is authorized until December 31, 2003.

* * * * *

(c) *Verification of content in cylinder.* Except as noted in paragraph (d)(4) of this section, the amount of liquefied gas filled into a cylinder must be by weight or, when the gas is lower in pressure than required for liquefaction, a pressure-temperature chart for the specific gas may be used to ensure that the service pressure at 55 °C (131 °F) will not exceed 5/4 of the service pressure at 21 °C (70 °F). The weight of liquefied gas filled into the cylinder also must be checked, after disconnecting the cylinder from the filling line, by the use of an accurate scale.

(d) * * *

(4) *Verification of content.* A cylinder with a water capacity of 90.72 kg (200 lb) or more and for use with a liquefied petroleum gas with a specific gravity of 0.504 or greater at 16 °C (60 °F) may have the quantity of its contents determined by using a fixed length dip tube gauging device. * * *

* * * * *

§ 173.305 [Amended]

■ 18. In § 173.305, in paragraph (b), the term "130 °F" is revised to read "131 °F".

■ 19. In § 173.306, paragraph (g)(5) is revised to read as follows:

§ 173.306 Limited quantities of compressed gases.

* * * * *

(g) * * *

(5) Each tank must be overpacked in a strong outer packaging in accordance with § 173.301(h).

* * * * *

PART 177—CARRIAGE BY PUBLIC HIGHWAY

■ 20. The authority citation for part 177 continues to read as follows:

Authority: 49 U.S.C. 5101–5127; 49 CFR 1.53.

■ 21. In § 177.840, paragraph (a)(1) is revised to read as follows:

§ 177.840 Class 2 (gases) materials.

(a) * * *

(1) *Cylinders.* Cylinders containing Class 2 gases must be securely restrained in an upright or horizontal position, loaded in racks, or packed in boxes or crates to prevent the cylinders from being shifted, overturned or ejected from the motor vehicle under normal transportation conditions. However, after December 31, 2003, a pressure relief device, when installed, must be in communication with the vapor space of a cylinder containing a Division 2.1 (flammable gas) material.

* * * * *

PART 180—CONTINUING QUALIFICATION AND MAINTENANCE OF PACKAGINGS

■ 22. The authority citation for part 180 continues to read as follows:

Authority: 49 U.S.C. 5101–5127; 49 CFR 1.53.

■ 23. In § 180.205, the following changes are made:

■ a. Paragraphs (c)(4) and (f)(4) are revised.

■ b. In paragraph (g)(2), the reference "0.1 cm^3" is removed and "0.1 cc" is added in its place.

■ c. In paragraph (g)(3)(ii), the reference "0.1 cubic centimeter" is removed and "0.1 cc" is added in its place.

The revisions read as follows:

§ 180.205 General requirements for requalification of cylinders.

* * * * *

(c) * * *

(4) For a specification 3, 3A, 3AA, 3AL, 3AX, 3AXX, 3B, 3BN, or 3T cylinder filled with gases in other than Division 2.2, from the first requalification due on or after December 31, 2003, the burst pressure of a CG–1, CG–4, or CG–5 pressure relief device must be at test pressure with a tolerance of plus zero to minus 10%. An additional 5% tolerance is allowed when a combined rupture disc is placed inside a holder. This requirement does not apply if a CG–2, CG–3 or CG–9 thermally activated relief device or a CG–7 reclosing pressure valve is used on the cylinder.

* * * * *

(f) * * *

(4) In addition to other requirements prescribed in this paragraph (f), a specification or exemption cylinder made of aluminum alloy 6351–T6 must be inspected for evidence of sustained load cracking (SLC) in the neck and shoulder area.

* * * * *

■ 24. In § 180.209, the following amendments are made:

■ a. In the table in paragraph (a)(1):

■ 1. In Column 3, the heading "Test period (years)" is revised to read "Requalification period (years)';

■ 2. For the entry "3HT", in column 3, the wording "3 (*see* §§ 180.209(i) and 180.213(c))" is revised to read "3 (*see* §§ 180.209(k) and 180.213(c))';

■ 3. For the entry "4AA480", in column 3, the wording "5 or 10 (*see* § 180.209(e)(14)" is revised to read "5 or 10 (*see* § 180.209(h))";

■ 4. For the entry "Foreign cylinder (*see* § 173.301(j) of this subchapter for restrictions on use).", in column 3, the wording "5 (*see* §§ 180.209(k) and 180.213(d)(iii))" is revised to read "5 (*see* §§ 180.209(l) and 180.213(d)(2))"; and

■ 5. In note 2 following the table, the reference "§ 173.301(e)(1)" is revised to read "§ 173.301a(b)".

■ b. In paragraph (b)(1)(ii), the wording "fluorinated hydrocarbons, liquefied hydrocarbons, and mixtures thereof that are commercially free from corroding components;" is revised to read "chlorinated hydrocarbons, fluorinated hydrocarbons, liquefied hydrocarbons, and mixtures thereof that are commercially free from corroding components;".

■ c. Paragraph (e) is revised.

■ d. In the table in paragraph (g), a new entry is added immediately following the third entry.

■ e. In the table in paragraph (g), the entry for "Liquefied petroleum gas" and the last entry are revised.

■ f. Paragraph (k) is redesignated as paragraph (l) and a new paragraph (k) is added.

The additions and revisions read as follows:

§ 180.209 General requirements for requalification of cylinders.

(a) * * *

(1) * * *

TABLE 1.—REQUALIFICATION OF CYLINDERS [1]

Specification under which cylinder was made	Minimum test pressure (psig) [2]	Requalification period (years)
* * *	* *	* *
3HT	5/3 times service pressure	3 (*see* §§ 180.209(k) and 180.213(c)).
* * *	* *	* *
4AA480	2 times service pressure (*see* § 180.209(g))	5 or 10 (*see* § 180.209(h)).
* * *	* *	* *
Foreign cylinder (*see* § 173.301(j) of this subchapter for restrictions on use).	As marked on cylinder, but not less than 5/3 of any service or working pressure marking.	5 (*see* §§ 180.209(l) and 180.213(d)(2)).

[2] For cylinders not marked with a service pressure, *see* § 173.301a(b) of this subchapter.

* * * * *

(e) *Proof pressure test* A cylinder made in conformance with specifications DOT 4B, 4BA, 4BW, or 4E used exclusively for: liquefied petroleum gas that meets the detail requirement limits in Table I of ASTM D 1835, "Standard Specification for Liquefied Petroleum (LP) Gases" (incorporated by reference; see § 171.7 of this subchapter) or an equivalent standard containing the same limits; anhydrous dimethylamine; anhydrous methylamine; anhydrous trimethylamine; methyl chloride; methylacetylene-propadiene stabilized; or dichlorodifluoromethane, difluoroethane, difluorochloroethane, chlorodifluoromethane, chlorotetrafluoroethane, trifluorochloroethylene, or mixture thereof, or mixtures of one or more with trichlorofluoromethane; and commercially free from corroding components and protected externally by a suitable corrosion-resistant coating (such as galvanizing or painting) may be requalified by volumetric expansion testing every 12 years instead of every five years. As an alternative, the cylinder may be subjected to a proof pressure test at least two times the marked service pressure, but this latter type of test must be repeated every seven years after expiration of the first 12-year period. When subjected to a proof pressure test, the cylinder must be carefully examined under test pressure and removed from service if a leak or defect is found.

* * * * *

(g) * * *

Cylinders conforming to—	Used exclusively for—
* * *	* *
DOT 3A, DOT 3AA, DOT 3A480X, DOT 4B, DOT 4BA, DOT 4BW, DOT 4E.	Chlorinated hydrocarbons and mixtures thereof that are commercially free from corroding components.
* * *	* *
DOT 3A, DOT 3AA, DOT 3A480X, DOT 3B, DOT 4B, DOT 4BA, DOT 4BW, DOT 4E.	Liquefied petroleum gas that meets the detail requirements limits in Table 1 of ASTM 1835, Standard Specification for Liquefied Petroleum (LP) Gases (incorporated by reference; see § 171.7 of this subchapter) or an equivalent standard containing the same limits.
* * *	* *
DOT 4B240, DOT 4BW240	Ethyleneimine, stabilized.
* * *	* *

* * * * *

(k) *3HT cylinders.* In addition to the other requirements of this section, a cylinder marked DOT–3HT must be requalified in accordance with CGA Pamphlet C–8.

§ 180.211 [Amended]

■ 25. In § 180.211, in paragraph (d)(1)(iii), the reference "180.215(d)(2)" is removed and "180.215(c)(2)" is added in its place.

§ 180.215 [Amended]

■ 26. In § 180.215, in paragraph(b)(1), the heading "Pressure test records." is removed and "Calibration test records." is added in its place.

Issued in Washington DC on May 2, 2003, under authority delegated in 49 CFR part 1.

Edward A. Brigham,

Acting Deputy Administrator, Research and Special Programs Administration.

[FR Doc. 03–11334 Filed 5–5–03; 3:52 pm]

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DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 571

[Docket No. NHTSA–2003–14711]

RIN 2127–AI49

Federal Motor Vehicle Safety Standards; Child Restraint Anchorage Systems

AGENCY: National Highway Traffic Safety Administration (NHTSA), Department of Transportation.

ACTION: Final rule; interim final rule; request for comments.

SUMMARY: This document amends the Federal motor vehicle safety standard on child restraint anchorage systems to: Reflect an extension of the date by which final-stage manufacturers and alterers were required to install tether anchorages in vehicles subject to the standard; and temporarily exclude "funeral coaches" (as defined in this document) from the standard altogether. It responds to requests from the Recreation Vehicle Industry Association and from Accubuilt, Inc., respectively. This document adopts the first amendment on a final basis and the second on an interim final basis. The agency also requests comments on the second amendment.

DATES: This rule is effective May 8, 2003. The final rule reflects that the mandatory compliance date for installing tether anchorages in vehicles produced by final-stage manufacturers and alterers was changed from September 1, 2000, to May 1, 2001. This rule excludes funeral coaches from Federal Motor Vehicle Safety Standard No. 225 until May 10, 2004. After reviewing the comments received on this document, NHTSA will decide whether to exclude funeral coaches from the standard on a permanent basis. Because these amendments relieve restrictions on a class of manufacturer that comprises a substantial number of small businesses, we have determined that it is in the public interest to make the changes effective immediately.

You should submit your comments early enough to ensure that Docket Management receives them not later than July 7, 2003.

ADDRESSES: Submit written comments to the Docket Management System, U.S. Department of Transportation, PL 401, 400 Seventh Street, SW., Washington, DC 20590–0001. Comments should refer to Docket Number (NHTSA–7938) and be submitted in two copies. If you wish to receive confirmation of receipt of your written comments, include a self-addressed, stamped postcard.

Comments may also be submitted to the docket electronically by logging onto the Docket Management System website at *http://dms.dot.gov*. Click on "Help & Information" to obtain instructions for filing the comment electronically. In every case, the comment should refer to the docket number.

The Docket Management System is located on the Plaza level of the Nassif Building at the Department of Transportation at the above address. You can review public dockets there between the hours of 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. You can also review comments on-line at the DOT Docket Management System web site at *http://dms.dot.gov*.

FOR FURTHER INFORMATION CONTACT: For non-legal questions, Mike Huntley, NHTSA Office of Crashworthiness Standards, Special Vehicle and Systems Division, 400 Seventh St., SW., Washington, DC 20590 (telephone 202–366–0029). For legal questions, Deirdre Fujita, NHTSA Office of Chief Counsel, 400 Seventh St., SW., Washington, DC 20590 (telephone 202–366–2992).

SUPPLEMENTARY INFORMATION:

I. "Petition for Extraordinary Relief" From the Recreation Vehicle Industry Association

Background

On March 5, 1999, NHTSA published a final rule establishing a new Federal motor vehicle safety standard that required motor vehicle manufacturers to install child restraint anchorage systems that are standardized and independent of the vehicle seat belts.[1] (64 FR 10786) (Docket No. 98–3390, Notice 2) (Federal Motor Vehicle Safety Standard No. 225, 49 CFR 571.225.) Each system is composed of three anchorages: Two lower anchorages and one upper anchorage. The lower anchorages are two 6 millimeter (mm) round bars fastened to the vehicle 720 mm apart and located at the intersection of the vehicle seat cushion and seat back. The upper anchorage is a permanent structure to which the hook of a child restraint upper tether may be attached for the purpose of transferring load from the child restraint to the vehicle structure.

Phase-In Requirements

In the notice of proposed rulemaking (NPRM) for the March 1999 final rule, we recognized that upper tether anchorages could be installed at an earlier date than the lower anchorages (February 20, 1997; 62 FR 7858). We also recognized that more time would be needed to implement a requirement for a rigid bar lower anchorage system (which the final rule ultimately adopted) than an alternative (flexible webbing) lower anchorage system the agency was considering at the time. We requested comments on whether phasing in the requirement for the lower anchorages would be appropriate, and how long a period would be needed to achieve full implementation. We did not raise the possibility of either phasing in the requirement for upper tether anchorages, or delaying the effective date of the upper tether anchorage requirement for vehicles manufactured in more than one stage (*see* 62 FR at 7874).

Based on the information we received, we adopted a three-year phase-in schedule for the lower anchorages in S14 of Standard No. 225. S14 is titled "Lower anchorages phase-in requirements for vehicles manufactured on or after September 1, 2000 and before September 1, 2002." In S14.3, which we titled "Alternative phase-in schedule for final-stage manufacturers and alterers," we specified that a final-stage manufacturer or alterer may, at its option, comply with an alternative requirement during the phase-in. The alternative, specified in S14.3(a), stated that the vehicles "are not required to comply with the requirements specified

[1] *See* 64 FR 47566; August 31, 1999 (Docket No. NHTSA–99–6160) and 65 FR 46628; July 31, 2000 (Docket No. NHTSA–7648) for later amendments of the rule.

in this standard" during that two-year period.[2] The reference in S14.3(a) to "requirements specified in this standard" was intended to refer to only the requirement to install the lower anchorages, and not to both that requirement and the requirement to install tether anchorages. However, RVIA interpreted S14.3 to exclude vehicles produced by final-stage manufacturers and alterers between September 1, 2000 and September 1, 2002 from both the lower anchorage and the tether anchorage requirements.

RVIA Petition

RVIA notified us in August 2000 that it had informed its members (conversion vehicle manufacturers and alterers who modify vans, pickup trucks and sport utility vehicles)[3] that their vehicles were excluded from both tether anchorage and lower anchorage requirements until September 1, 2002, and had only learned in August 2000 that this advice was erroneous. RVIA further stated that conversion vehicle manufacturers would not be able to meet the September 1, 2000, compliance date for installation of tether anchorages, having relied on that advice. RVIA requested that NHTSA stay the compliance date for tether anchorages for 8 months, until May 1, 2001, for multistage manufacturers and alterers of conversion vehicles. RVIA stated that 8 months was needed to design, test, and manufacture tether anchorages that would satisfy the standard's tether anchorage requirements.

Agency Decision on RVIA Petition

We decided to allow multistage manufacturers and alterers until May 1, 2001, to install tether anchorages in their vehicles. We promptly notified RVIA of that decision and placed that notification in the public docket.[4] The phrase "[requirements specified] in this standard" in S14.3 lent itself to misinterpretation, when read apart from the context of S14, and contributed to RVIA's erroneous advice. Instead of penalizing the affected manufacturers which acted in accordance with RVIA's advice, we decided to postpone the effective date of the tether anchorage requirement to provide the affected manufacturers time to meet the requirement. The affected manufacturers are typically small volume companies. RVIA stated that "[m]ost of these companies had neither the technical staffs nor the resources to respond rapidly to rule changes," and none had known about the September 1, 2000, compliance date for installing tether anchorages. In view of the fact that most of the companies are small businesses that had acted in reliance on RVIA's advice, we believed that providing relief to the manufacturers was warranted. If a delay had not been granted, the manufacturers would have had to stop production until compliance could be achieved. Cessation of production would have significant economic effects on the small businesses. For these reasons, we concluded that it was in the public interest to postpone the compliance date of the requirement for vehicles produced by final-stage manufacturers and alterers until May 1, 2001.[5] Today's document clarifies the language in S14, and similar language in S13.

[2] This paragraph was later changed to S14.3(a)(2). *See* 65 FR 46628, 46642, July 31, 2000.

[3] RVIA stated that there are 67 conversion vehicle manufacturer members, with an aggregate annual production of approximately 90,000 vehicles. RVIA stated that, with few exceptions, these companies are small volume manufacturers that each produce fewer than 5,000 total vehicles annually.

[4] In response to RVIA's petition, NHTSA wrote to RVIA on September 26, 2000, stating that it would publish a **Federal Register** document extending, until May 1, 2001, the date by which final-stage manufacturers and alters must install tether anchorage in affected vehicles. *See* docket 7648 (document 7648–6).

II. Petition for Rulemaking From Accubuilt on Funeral Coaches

Standard No. 225 requires a vehicle to be equipped with tether anchorages in front passenger seating positions if: (1) The vehicle lacks a rear designated seating position (see S4.3(b)(3) and S4.4(c)); and (2) there is an air bag and no air bag on-off switch in the front passenger seating position. Accubuilt, a final-stage manufacturer of funeral coaches, submitted a petition for rulemaking requesting NHTSA to exclude funeral coaches from the requirement. Accubuilt stated that: "[s]ince a Funeral Coach is a single purpose vehicle, transporting a body and casket, children do not ride in the front seat."

[5] Mr. Harley Holt asked NHTSA about the degree to which anchorages voluntarily installed by final-stage manufacturers and alterers were subject to the requirements of Standard No. 225. Our answer was that the provisions of S4.1 as they relate to voluntarily-installed anchorages still applied. Thus, if a final-stage manufacturer or alterer voluntarily installed a tether anchorage system (or full child restraint anchorage system) in a vehicle from September 1, 1999 to April 30, 2001, the anchorage system would have to meet the configuration, location, marking and strength requirements of the standard. S4.1 also requires that information on using those anchorages must be provided to the vehicle owner. It is also our view that during the same period, a final-stage manufacturer or alterer voluntarily installing tether anchorages could have installed fewer than the minimum number of anchorages required by S4.3 and S4.5. On vehicles produced on or after May 1, 2001, the requisite number of anchorages must be installed.

Agency Decision on Accubuilt Request

It is implicit from Accubuilt's petition that it would be appropriate to exclude funeral coaches from the requirement when the coaches only have one row of occupant seats, *i.e.*, the front row. We agree with Accubuilt that it is unlikely that child restraint systems would be installed in such a funeral coach. We are thus excluding "funeral coaches" from the standard.

To implement this exclusion, we are adding a definition of "funeral coach" to Standard No. 225. Accubuilt stated that a funeral coach is a "single purpose vehicle" equipped with heavy duty components to handle the additional mass of a body and casket. We were further informed by Accubuilt that manufacturers of funeral coaches conform to an industry standard that requires "front and rear stops" in the interior of the coach to keep the casket stationary. We are incorporating that information into the definition.

At the same time, while Accubuilt's vehicles apparently have only 1 row of seats, it is conceivable that a funeral coach could be built with rear seating positions in which a young child might ride. We do not believe that a coach that has rear seating positions should be excluded from the standard, since the vehicle could be used to transport a child who should be in a child restraint. Therefore, based on the above, we are defining "funeral coach" as "a vehicle that contains only a front row of occupant seats, is designed exclusively for transporting a body and casket and that is equipped with features to secure a casket in place during operation of the vehicle." Comments are requested on whether the definition is inclusive of all funeral coaches with no rear seating positions and whether it excludes any vehicles that should be subject to the requirements of Standard No. 225.

We have also determined that this amendment relieves an unnecessary restriction on a group of small manufacturers. Accordingly, NHTSA finds for good cause that an immediate exclusion of funeral coaches from the standard is in the public interest, and thus we are issuing this interim final rule. We are limiting the exclusion to a period ending one year after the publication of this rule. NHTSA will review the comments we receive on this document to determine whether to exclude funeral coaches from the standard on a permanent basis.

III. Enforcement Policy Statement

This agency will not take any enforcement against any multi-stage vehicle manufacturer or alterer for not

installing tether anchorages in vehicles certified prior to May 1, 2001. Likewise, it will not take any enforcement action against any manufacturer of funeral coaches for not installing a child restraint anchorage system in the front seats of funeral coaches manufactured prior to the date one year after the publication of this rule.

IV. Rulemaking Analyses and Notices

Executive Order 12866 (Federal Regulation) and DOT Regulatory Policies and Procedures

This rulemaking document was not reviewed under E.O. 12866, "Regulatory Planning and Review." The agency has considered the impact of this rulemaking action under the Department of Transportation's regulatory policies and procedures, and has determined that it is not "significant" under them. This document amends Standard No. 225 to reflect the staying of the compliance date of one aspect of the Standard as it applies to final stage manufacturers and alterers, and excludes funeral coaches from the standard for a period ending 1 year after the publication of this rule. There are no additional costs associated with this final rule.

Regulatory Flexibility Act

The Regulatory Flexibility Act of 1980 (Pub. L. 96–354), as amended, requires agencies to evaluate the potential effects of their proposed and final rules on small businesses, small organizations and small governmental jurisdictions. I hereby certify that this rule will not have a significant economic impact on a substantial number of small entities. It amends the Standard to reflect the staying of the compliance date of the tether anchorage requirement as applied to final stage manufacturers and alterers, and for that reason affects a number of small entities. A decision not to stay the compliance date would have significantly affected the entities since the manufacturers could not have produced their vehicles until the tether anchorage requirements in question were met. We provided more time to the manufacturers to facilitate their compliance with the standard.

Executive Order 13132 (Federalism)

NHTSA has analyzed this rule in accordance with the principles and criteria contained in E.O. 13132, and has determined that it does not have sufficient federalism implications to warrant consultation with State and local officials or the preparation of a federalism summary impact statement. The rule will not have any substantial effects on the States, or on the current Federal-State relationship, or on the current distribution of power and responsibilities among the various local officials.

National Environmental Policy Act

NHTSA has analyzed this rulemaking action for the purposes of the National Environmental Policy Act. The agency has determined that implementation of this action will not have any significant impact on the quality of the human environment.

Executive Order 12778 (Civil Justice Reform)

This rule will not have any retroactive effect. A petition for reconsideration or other administrative proceeding will not be a prerequisite to an action seeking judicial review of this rule. This rule will not preempt the states from adopting laws or regulations on the same subject, except that it will preempt a state regulation that is in actual conflict with the Federal regulation or makes compliance with the Federal regulation impossible or interferes with the implementation of the Federal statute.

Comments

How Do I Prepare and Submit Comments?

Your comments must be written and in English. To ensure that your comments are correctly filed in the Docket, please include the docket number of this document in your comments.

Your comments must not be more than 15 pages long. (49 CFR 553.21). We established this limit to encourage you to write your primary comments in a concise fashion. However, you may attach necessary additional documents to your comments. There is no limit on the length of the attachments.

Please submit two copies of your comments, including the attachments, to Docket Management at the address given above under **ADDRESSES**.

How Can I Be Sure That My Comments Were Received?

If you wish Docket Management to notify you upon its receipt of your comments, enclose a self-addressed, stamped postcard in the envelope containing your comments. Upon receiving your comments, Docket Management will return the postcard by mail.

How Do I Submit Confidential Business Information?

If you wish to submit any information under a claim of confidentiality, you should submit three copies of your complete submission, including the information you claim to be confidential business information, to the Chief Counsel, NHTSA, at the address given above under **FOR FURTHER INFORMATION CONTACT**. In addition, you should submit two copies, from which you have deleted the claimed confidential business information, to Docket Management at the address given above under **ADDRESSES**. When you send a comment containing information claimed to be confidential business information, you should include a cover letter setting forth the information specified in our confidential business information regulation. (49 CFR part 512.)

Will the Agency Consider Late Comments?

We will consider all comments that Docket Management receives before the close of business on the comment closing date indicated above under **DATES**. To the extent possible, we will also consider comments that Docket Management receives after that date.

How Can I Read the Comments Submitted by Other People?

You may read the comments received by Docket Management at the address given above under **ADDRESSES**. The hours of the Docket are indicated above in the same location.

You may also see the comments on the Internet. To read the comments on the Internet, take the following steps:

(1) Go to the Docket Management System (DMS) Web page of the Department of Transportation (*http://dms.dot.gov/*).

(2) On that page, click on "search."

(3) On the next page (*http://dms.dot.gov/search/*), type in the four-digit docket number shown at the beginning of this document. Example: If the docket number were "NHTSA–1999–1234," you would type "1234." After typing the docket number, click on "search."

(4) On the next page, which contains docket summary information for the docket you selected, click on the desired comments. You may word search the Adobe pdf version of a comment by clicking on the binocular symbol (Acrobat Find) and typing in a search term. You may also download the comments.

Please note that even after the comment closing date, we will continue to file relevant information in the Docket as it becomes available. Further, some people may submit late comments. Accordingly, we recommend that you periodically check the Docket for new material.

Anyone is able to search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (Volume 65, Number 70; Pages 19477–78) or you may visit *http://dms.dot.gov*.

List of Subjects in 49 CFR Part 571

Imports, Incorporation by reference, Motor vehicle safety, Reporting and recordkeeping requirements, Tires.

■ In consideration of the foregoing, NHTSA amends 49 CFR Chapter V as set forth below.

PART 571—FEDERAL MOTOR VEHICLE SAFETY STANDARDS

■ 1. The authority citation for part 571 continues to read as follows:

Authority: 49 U.S.C. 322, 30111, 30115, 30166 and 30177; delegation of authority at 49 CFR 1.50.

■ 2. Section 571.225 is amended by:
■ a. Revising S2;
■ b. Amending S3 by adding, in alphabetical order, a definition for "Funeral coach";
■ c. Revising the introductory text of S4.3(b);
■ d. Revising the title of S13 and adding S13.3; and
■ e. Revising S14.3(a).

The revised and added text read as follows:

571.225 Standard No. 225; Child restraint anchorage systems.

* * * * *

S2. *Application.* This standard applies to passenger cars; to trucks and multipurpose passenger vehicles with a gross vehicle weight rating (GVWR) of 3,855 kilograms (8,500 pounds) or less; and to buses (including school buses) with a GVWR of 4,536 kg (10,000 lb) or less. This standard does not apply to walk-in van-type vehicles, vehicles manufactured to be sold exclusively to the U.S. Postal Service, shuttle buses, and funeral coaches.

S3. *Definitions.*

* * * * *

Funeral coach means a vehicle that contains only a front row of occupant seats, is designed exclusively for transporting a body and casket and that is equipped with features to secure a casket in place during operation of the vehicle.

* * * * *

S4.3 * * *

(b) Each vehicle, including a vehicle that is counted toward the percentage of a manufacturer's yearly production required to be equipped with child restraint anchorage systems, shall be equipped as described in S4.3(b)(1), (2) or (3), subject to S13.

* * * * *

S13. *Tether anchorage phase-in requirements.*

* * * * *

S13.3 Until May 1, 2001, vehicles manufactured by a final-stage manufacturer or alterer need not be equipped with the tether anchorages required by S4.3 of this standard. Vehicles manufactured by a final-stage manufacturer or alterer on or after May 1, 2001 must be equipped with the tether anchorages specified in S4.3.

* * * * *

S14.3 * * *—(a) *Final-stage manufacturers and alterers.* A final-stage manufacturer or alterer may, at its option, comply with the requirements set forth in S14.3(a)(1) and (2), instead of the requirements set forth in S14.1.1 through S14.1.2.

(1) Vehicles manufactured on or after September 1, 2000 and before September 1, 2002 are not required to be equipped with the lower anchorages specified in this standard.

(2) Vehicles manufactured on or after September 1, 2002 must be equipped with the lower anchorages specified in this standard.

* * * * *

Issued on May 1, 2003.

Jeffrey W. Runge,

Administrator.

[FR Doc. 03–11293 Filed 5–7–03; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 021212307 3037–02; I.D. 042903A]

Fisheries of the Exclusive Economic Zone Off Alaska; Yellowfin Sole by Vessels Using Trawl Gear in the Bering Sea and Aleutian Islands Management Area

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Modification of a closure.

SUMMARY: NMFS is reopening directed fishing for yellowfin sole by vessels using trawl gear in the Bering Sea and Aleutian Islands management area (BSAI). This action is necessary to utilize the amount of the second seasonal apportionment of the halibut bycatch allowance specified for the trawl yellowfin sole fishery category.

DATES: Effective 1200 hrs, Alaska local time (A.l.t.), May 12, 2003, through 1200 hrs, A.l.t., May 21, 2003.

FOR FURTHER INFORMATION CONTACT: Mary Furuness, 907–586–7228.

SUPPLEMENTARY INFORMATION: NMFS manages the groundfish fishery in the BSAI exclusive economic zone according to the Fishery Management Plan for the Groundfish Fishery of the Bering Sea and Aleutian Islands Area (FMP) prepared by the North Pacific Fishery Management Council under authority of the Magnuson-Stevens Fishery Conservation and Management Act. Regulations governing fishing by U.S. vessels in accordance with the FMP appear at subpart H of 50 CFR part 600 and CFR part 679.

The amount of the second seasonal apportionment of the halibut bycatch allowance specified for the trawl yellowfin sole fishery category in the BSAI was established as 195 metric tons by the final 2003 harvest specifications for groundfish in the BSAI (68 FR 9907, March 3, 2003). In accordance with § 679.21(e)(7)(v), the directed fishery for yellowfin sole by vessels using trawl gear was closed effective 1200 hrs, A.l.t., April 17, 2003 (68 FR 19465, April 21, 2003) because it was expected that the second seasonal apportionment of the trawl halibut bycatch allowance specified for the yellowfin sole fishery category would be caught.

NMFS has determined that as of April 19, 2003, the remaining amount of the second seasonal apportionment of the halibut bycatch allowance specified for the trawl yellowfin sole fishery category is 73 metric tons. Therefore, NMFS is terminating the previous closure and is re-opening directed fishing for yellowfin sole by vessels using trawl gear in the BSAI effective 1200 hrs, A.l.t., May 12, 2003.

Classification

All other closures remain in full force and effect. This action responds to the best available information recently obtained from the fishery. The Assistant Administrator for Fisheries, NOAA (AA), finds good cause to waive the requirement to provide prior notice and opportunity for public comment pursuant to the authority set forth at 5 U.S.C. 553(b)(B) as such requirement is

contrary to the public interest. This requirement is contrary to the public interest as it would delay the opening of the fishery, not allow for the full utilization of the second seasonal apportionment of the halibut bycatch allowance specified for the trawl yellowfin sole fishery category, and therefore reduce the public's ability to use and enjoy the fishery resource.

The AA also finds good cause to waive the 30–day delay in the effective date of this action under 5 U.S.C. 553(d)(3). This finding is based upon the reasons provided above for waiver of prior notice and opportunity for public comment.

This action is required by § 679.21 and is exempt from review under Executive Order 12866.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: May 2, 2003.

Bruce C. Morehead,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 03–11482 Filed 5–7–03; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 020718172–2303–02; I.D. 043003A]

Fisheries of the Exclusive Economic Zone Off Alaska; Chiniak Gully Research Area Opening for the Groundfish Trawl Fisheries of the Gulf of Alaska

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Inseason adjustment; request for comments.

SUMMARY: The Administrator, Alaska Region, NMFS (Regional Administrator) proposes to open the Chiniak Gully Research Area in the Gulf of Alaska (GOA) to directed fishing for groundfish using trawl gear from August 1, 2003, through September 20, 2003. NMFS' Alaska Fisheries Science Center (AFSC) will not conduct research in this area in 2003. Therefore, the closure of the Chiniak Gully Research Area is not needed. This action is intended to relieve an unnecessary restriction on groundfish trawl fisheries and allow the optimum utilization of fishery resources, in accordance with the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act).

DATES: Comments must be received at the following address no later than 4:30 p.m., A.l.t., June 6, 2003.

ADDRESSES: Comments may be mailed to Sue Salveson, Assistant Regional Administrator, Sustainable Fisheries Division, Alaska Region, NMFS, P.O. Box 21668, Juneau, AK 99802, Attn: Lori Durall, or delivered to room 401 of the Federal Building, 709 West 9th Street, Juneau, AK. Comments also may be sent via facsimile (fax) to 907–586–7557. Comments will not be accepted if submitted via e-mail or Internet. Courier or hand delivery of comments may be made to NMFS in the Federal Building, Room 453, Juneau, AK 99801. Copies of the environmental assessment/regulatory impact review/final regulatory flexibility analysis (EA/RIR/FRFA) for the regulatory amendment to permit an investigation of the effect of commercial fishing on Walleye pollock distribution and abundance in localized areas off the east side of Kodiak Island, may be obtained from the same address.

FOR FURTHER INFORMATION CONTACT: Melanie Brown, Sustainable Fisheries Division, Alaska Region, 907–586–7228 or email at *melanie.brown@noaa.gov*.

SUPPLEMENTARY INFORMATION: NMFS manages the groundfish fishery in the GOA exclusive economic zone according to the Fishery Management Plan for Groundfish of the Gulf of Alaska (FMP) prepared by the North Pacific Fishery Management Council (Council) and approved by the Secretary of Commerce under authority of the Magnuson-Stevens Fisheries Conservation and Management Act. Regulations governing fishing by U.S. vessels in accordance with the FMP appear at subpart H of 50 CFR part 600 and 50 CFR part 679.

Background

In April 2001, the Council endorsed a research project proposed by the AFSC in the Chiniak Gully off Kodiak Island to determine the effect of pollock fisheries on pollock school dynamics and the likelihood of localized depletions of Steller sea lion pollock prey. The research project requires the closure of the Chiniak Gully Research Area to trawl fishing from August 1 to no later than September 20 in the years 2001 through 2004. A detailed description of the research project is provided in the EA/RIR/FRFA. For copies of this document, please contact NMFS (see **ADDRESSES**). The trawl closure necessary for this research project was implemented by emergency interim rules in 2001 (66 FR 37167, July 17, 2001) and in 2002 (67 FR 956, January 8, 2002), and by final rule in 2003 (68 FR 204, January 2, 2003).

Pursuant to § 679.22(b)(3)(ii)(B), the Regional Administrator may rescind the trawl closure of the Chiniak Gully Research Area by publishing notification in the **Federal Register** prior to September 20. Because the AFSC will not be conducting research in the Chiniak Gully Research Area in 2003, the Regional Administrator is proposing to rescind the closure specified in § 679.22(b)(3)(ii)(A) for August 1, 2003, through September 20, 2003. The 2003 closure would unnecessarily restrict the trawl groundfish fisheries because no research will be conducted this year. Rescinding the 2003 trawl closure will allow vessels participating in groundfish trawl fisheries to harvest their total allowable catch amounts without the operational constraints imposed by the closure.

The effective date of this action would be August 1, 2003, through September 20, 2003.

Classification

This action responds to the best available information recently obtained from the AFSC. Without this inseason adjustment, NMFS could not allow directed fishing for groundfish using trawl gear in the Chiniak Gully Research Area from August 1 through September 20, unnecessarily restricting the groundfish trawl fisheries. Interested persons are invited to submit written comments on this action to the above address until June 6, 2003.This action is pursuant to § 679.22 and is exempt from review under Executive Order 12866.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: May 2, 2003.

Bruce C. Morehead,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 03–11483 Filed 5–7–03; 8:45 am]

BILLING CODE 3510–22–S

Proposed Rules

Federal Register
Vol. 68, No. 89
Thursday, May 8, 2003

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

FEDERAL TRADE COMMISSION

16 CFR Part 309

Labeling Requirements for Alternative Fuels and Alternative Fueled Vehicles

AGENCY: Federal Trade Commission.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Federal Trade Commission ("Commission" or "FTC") is commencing a rulemaking proceeding to amend the alternative fueled vehicle ("AFV") label specified in the Commission's rule concerning Labeling Requirements for Alternative Fuels and Alternative Fueled Vehicles ("Rule"). The Commission proposes amending the Rule's AFV label for new vehicles by either updating or deleting the Environmental Protection Agency ("EPA") emission certification standards the Rule requires be disclosed, and by adding a reference to EPA's green vehicle guide. EPA's guide, located on its website at *http://www.epa.gov/greenvehicle*, provides detailed information regarding vehicle emissions generally and by vehicle model. The Commission is commencing this rulemaking proceeding because the emissions standards on the current AFV label will be obsolete starting in the 2004 vehicle model year, and the Ford Motor Company ("Ford") has petitioned the Commission to revise the label in light of this. In this proceeding, the Commission also is conducting a review of this Rule pursuant to the Commission's regulatory review program. The notice includes a description of the procedures to be followed, an invitation to submit written comments, and questions and issues upon which the Commission particularly desires comments.

DATES: Written comments must be submitted on or before June 23, 2003.

ADDRESSES: Six paper copies of each written comment should be submitted to the Office of the Secretary, Federal Trade Commission, Room H–159, 600 Pennsylvania Ave., NW., Washington, DC 20580. To encourage prompt and efficient review and dissemination of the comments to the public, all comments also should be submitted, if possible, in electronic form, on either a 5¼ or a 3½ inch computer disk, with a label on the disk stating the name of the commenter and the name and version of the word processing program used to create the document. (Programs based on DOS are preferred. Files from other operating systems should be submitted in ASCII text format to be accepted.)

Alternatively, the Commission will accept papers and comments submitted to the following email address: *afv@ftc.gov*, provided the content of any papers or comments submitted by email is organized in sequentially numbered paragraphs. All comments and any electronic versions (*i.e.*, computer disks) should be identified as "16 CFR Part 309 Comment—Alternative Fuels and Vehicles Rule. The Commission will make this notice and, to the extent possible, all papers and comments received in electronic form in response to this notice available to the public through the Internet at the following address: *http://www.ftc.gov*.

FOR FURTHER INFORMATION CONTACT: Robin Richardson, Attorney, (202) 326–2798 (email: *rrichardson@ftc.gov*), or Neil Blickman, Attorney, (202) 326–3038 (email: *nblickman@ftc.gov*), Division of Enforcement, Bureau of Consumer Protection, Federal Trade Commission, Washington, DC 20580.

SUPPLEMENTARY INFORMATION:

Part A—Background

This Notice of Proposed Rulemaking ("NPR") is being published pursuant to the provisions of Part 1, Subpart C of the Commission's Rules of Practice, 16 CFR 1.21–1.26, and 5 U.S.C. 551 *et seq.* Specifically, this rulemaking proceeding is being conducted pursuant to section 553 of the Administrative Procedure Act ("APA"), 5 U.S.C. 553, as was the original proceeding promulgating the Rule.[1] Section 553(b)(3) of the APA provides the Commission with the option of publishing the substance of a proposed rule instead of specific proposed rule language. The Commission seeks comment on the substance of proposed amendments to the Rule. The Commission also seeks comment on whether other options not proposed herein would be more appropriate.

1. The Rule

The Energy Policy Act of 1992 ("EPA 92" or the "Act"),[2] establishes a comprehensive national energy policy to increase gradually and steadily U.S. energy security in cost-effective and environmentally beneficial ways. The Act seeks to reduce U.S. dependence on oil imports, encourage conservation and more efficient energy use, reduce the use of oil-based fuels in the motor vehicle sector, and provide new energy options. The Act provides for programs that encourage the development of alternative fuels and alternative fueled vehicles.

Section 406(a) of EPA 92 directed the Commission to establish uniform labeling requirements, to the greatest extent practicable, for alternative fuels and AFVs.[3] In accordance with the statutory directive, on May 19, 1995, the Commission published a Rule requiring disclosure of specific information on labels posted on fuel dispensers for non-liquid alternative fuels (*e.g.*, compressed natural gas, electricity, and hydrogen), effective August 21, 1995, and on labels on AFVs, effective November 20, 1995.[4]

EPA 92 did not specify what information should be displayed on these labels. Instead, it provided generally that the Commission's rule must require disclosure of "appropriate," "useful," and "timely" cost and benefit information on "simple" labels. The purpose of the labeling requirements is to enable consumers to make informed choices and comparisons among competing non-liquid alternative vehicle fuels and AFVs.

Section 309.20 of the Rule provides that before offering for consumer sale a new covered AFV, manufacturers must affix, on a visible surface of each such vehicle, a label consisting of three

[1] *See* 59 FR 24014 (May 9, 1994). These procedures include: (1) Publishing this Notice of Proposed Rulemaking; (2) soliciting written comments on the Commission's proposals to amend the Rule; (3) obtaining a final recommendation from staff; and (4) announcing final Commission action in a notice published in the **Federal Register**.

[2] Pub. L. 102–486, 106 Stat. 2776 (1992).

[3] 42 U.S.C. 13232(a).

[4] 60 FR 26926. The Rule also requires that sellers maintain records substantiating product-specific disclosures they include on these labels.

parts.[5] Part one discloses objective information about the estimated cruising range and environmental impact of the particular AFV. Part two discloses and explains specific factors consumers should consider before buying an AFV.[6] Part three lists specific toll-free telephone numbers for consumers who want to call the federal government for more information about AFVs.[7] Section 309.20 of the Rule further states that no marks or information other than that specified by the Rule may appear on the label.

With respect to environmental impact, the labels must state whether the vehicle has met an EPA emission certification standard and, if so, what standard. If a vehicle has been certified, that fact must be noted with a mark in a box on the label and a caret must be inserted above the certification standard the vehicle meets. The graphic on the label depicts seven EPA emissions standards in increasing order of stringency.

2. EPA's Emissions Certification Program

For many years, EPA has promulgated emissions classification standards as part of its Federal Motor Vehicle Control Program, which establishes pollution limits for "criteria air pollutants" (*i.e.*, hydrocarbons, carbon monoxide, nitrogen oxides, and particulate matter). These pollutants are released as exhaust from an automobile's tailpipe. In addition, hydrocarbons in vapor form are released due to the evaporation of fuel and during refueling. The standards apply to new motor vehicles manufactured in specified model years. After manufacturers submit appropriate test reports and data, the EPA Administrator issues a "certificate of conformity" to those vehicle manufacturers demonstrating compliance with the applicable emissions standards.

Pursuant to its authority under the 1990 Clean Air Act Amendments,[8] EPA began issuing stricter emission standards for each model year as a way of reducing levels of the criteria air pollutants. One set of standards, the Tier 1 standards, was phased in beginning with the 1994 model year. The second set of standards, phased in beginning with the 1999 model year, establishes stricter standards as part of a new "clean-fuel vehicles" program.[9] To qualify as a clean-fuel vehicle, a vehicle must meet one of five increasingly stringent standards. The standards are denominated, in increasing order of stringency, TLEV ("Transitional Low Emission Vehicle"), LEV ("Low Emission Vehicle"), ULEV ("Ultra Low Emission Vehicle"), ILEV ("Inherently Low Emission Vehicle"), and ZEV ("Zero Emission Vehicle"). The Rule requires both sets of EPA emission standards to be disclosed because the Commission determined that information concerning EPA emission certification levels provides a simple way of comparing different AFVs and, therefore, is useful to consumers considering AFV acquisitions.[10] Since the FTC's Rule was promulgated, EPA has promulgated new tailpipe emission standards, called the "Tier 2" standards.[11] As a result, the EPA standards currently required to be disclosed on the Commission's AFV label will be obsolete starting in the 2004 vehicle model year.

3. Ford's Petition

Ford's petition concerns EPA's new more stringent federal tailpipe emission standards. These federal tailpipe emission standards, as well as new, more stringent California Low Emission Vehicle II ("LEV II") standards discussed below, limit exhaust emissions of five pollutants: non-methane organic gases, carbon monoxide, nitrogen oxides, particulate matter, and formaldehyde.[12]

Tier 2 is a fleet averaging program, which is modeled after the California LEV II standards. Manufacturers can produce vehicles with emissions ranging from relatively dirty to zero, but the mix of vehicles a manufacturer sells each year must have average nitrogen oxide emissions below a specified value. The Tier 2 tailpipe emissions standards are structured into eleven certification levels of different stringency called "certification bins." Vehicle manufacturers will have a choice of certifying particular vehicles to any of the eleven bins. However, the average nitrogen oxide emissions of the entire vehicle fleet sold by each manufacturer will have to meet an average nitrogen oxide standard of 0.07 grams per mile.

Additionally, Ford noted that in October 1999, California adopted more stringent state tailpipe emission standards, called the "LEV II" standards, which are effective starting in the 2004 vehicle model year. California did not adopt the same standards EPA established, nor did it adopt the same acronyms (bins) for its standards. California's LEV II standards are denominated, in increasing order of stringency, LEV, ULEV, SULEV ("Super Ultra Low Emission Vehicle"), PZEV ("Partial Zero Emission Vehicle"), and ZEV. California's LEV II standards affect passenger cars, light-duty trucks, and medium-duty vehicles. Generally, the LEV II standards extend passenger car emission standards to heavier sport utility vehicles and pick-up trucks, extend and tighten fleet average tailpipe emission standards during the period 2004–2010, significantly tighten nitrogen oxide and particulate matter standards for all vehicle emission categories, and further reduce evaporative emissions.

Ford, and other manufacturers, will be certifying their AFVs to the more stringent EPA Tier 2 emission standards in the 2004 model year. Ford is petitioning the Commission to amend the Commission's AFV label because it does not provide a means of conveying information about the new EPA Tier 2 standards. Ford, therefore, is requesting that the Commission amend the Rule to permit use of an AFV label that differs in two respects from the currently required AFV label, as follows:

(1) To convey accurate information to consumers nationwide regarding new covered AFVs, Ford requested that the Commission amend the Rule's AFV label by substituting the eleven Tier 2 certification bins for the EPA emission standards that currently appear on the AFV label. To convey accurate information to consumers in California, as well as the four other states that have adopted the California standards, Ford also requested that the Commission amend the Rule to permit inclusion of boxes and acronyms for California's LEV II emission standards on the Commission's AFV label. Ford further requested permission to add a check-box to the label with accompanying text that reads, "This vehicle meets the California Air Resources Board LEV II emissions standard noted below."

(2) Alternatively, Ford requested that the AFV label be amended to require disclosure of only the EPA Tier 2 emission standard, if any, to which the AFV has been certified, and permit disclosure on the same label of the California LEV II emission standard, if any, to which the AFV has been certified.

Ford asserted that granting its petition will provide useful information to consumers considering AFV acquisitions and will permit Ford to demonstrate to consumers the technological advances it has made in producing cleaner, lower-emitting vehicles. Without changes to the Commission's AFV label, Ford stated that it will not be possible to inform customers clearly of the true emissions performance of these cleaner vehicles, because the label would not reflect the correct emission standard. Ford also stated that it is important that a single AFV label be applied to all vehicles to avoid excessive cost and complexity. Thus, Ford requested permission to include California's LEV II emission standards on the AFV label. As a result of the adoption of the California standards by Maine, Massachusetts, New York, and Vermont, California certified vehicles will be required in five states, representing over 15% of the total U.S. sales, according to Ford. Therefore, Ford asserted that including California's standards on the label also would be helpful to consumers outside of California.

4. Discussion of the Rule's Emission Disclosure Requirements

In issuing the Rule, the Commission concluded that requiring disclosure of emission certification standards is appropriate and would be useful to consumers. The Commission noted further that incorporating environmental considerations into national energy policy was a key goal of EPA 92, and improving the environment was a principal purpose of that statute. EPA 92 gives special attention to the fact that the environmental performance of alternative fuels differs, and that those differences need to be explained to consumers.[13] Granting Ford's petition to include the federal Tier 2 and California LEV II standards on AFV labels may provide relevant comparative information regarding alternative fuels that will be helpful to consumers considering AFV acquisitions (*e.g.*, fleet operators as well as environmentally concerned consumers). Specifically, because an AFV is certified to a specific emission standard, disclosure of the certification level may continue to provide a useful way of comparing different AFVs, and evaluating comparative advertising and marketing claims regarding an AFV's environmental performance.

The Commission agrees that the current label should be amended in light of EPA's new Tier 2 standards. Accordingly, the Commission seeks comment on whether either of the two Rule amendments Ford proposed should be adopted by the Commission. The Commission recognizes, however, that including the federal Tier 2 and California LEV II standards on the AFV label may result in a label that is even more complex than the current label. The additional complexity may detract from a consumer's ability to evaluate the information presented on the label. Thus, the Commission also is seeking comment on additional proposed options for amending the AFV label. These options would consolidate the information now prescribed on a two-sided label onto one side and eliminate information that soon will become obsolete by (1) deleting specific emissions information altogether or (2) requiring only the disclosure of the emission certification standard that has been met.

Part B—Proposed Alternative Options

The Commission is seeking comment on four AFV labeling options.

1. *Option No. 1:* This option tracks Ford's first proposal. It modifies the AFV label by substituting EPA's Tier 2 emission standards for the EPA standards that currently are depicted on the label. The Tier 2 standards reflect the varying emissions levels and are divided into 11 categories or "bins." These bins are depicted as a horizontal row of boxes and corresponding acronyms that is divided into 11 equal parts or "bins." This option permits, and therefore includes, an additional, second row of boxes and acronyms that depict the California LEV II standards. If a vehicle has been certified to a California LEV II standard, this option would allow that fact to be noted with a mark in a box on the label, along with a caret inserted above the standard to which the vehicle has been certified. Because California did not adopt the same number of standards ("bins") as EPA, and not all of the California standards have a bin equivalent, two different rows are necessary to present this information. The Commission has slightly modified Ford's proposal by adding a reference in part three of the label to EPA's new green vehicle guide website, and states: "Emissions are an important factor. For more information about how the vehicle you are considering compares to others, visit *http://www.epa.gov/greenvehicle.*"[14]

The proposed label represents all of the applicable federal and state emissions standards that may be used to certify a vehicle through the 2010 model year period. However, the information provided may overwhelm the label's space limitations and may not be helpful to consumers because of its complexity, and the lack of contextual references explaining the rows of boxes. Also, the addition of state standards may make the label even more information dense.[15]

Including EPA's website address on the label may provide consumers a helpful reference to comparative emissions information. At its website, EPA provides a thorough explanation of emissions information in a more comprehensive manner than otherwise would be possible on the AFV label. Thus, the Commission believes it would be helpful to consumers to reference EPA's emissions resources on the label.

[5] Section 309.1(f) of the Rule defines a covered vehicle as either of the following: (1) A dedicated or dual fueled passenger car (or passenger car derivative) capable of seating 12 passengers or less; or (2) a dedicated or dual fueled motor vehicle (other than a passenger car or passenger car derivative) with a gross vehicle weight rating less than 8,500 pounds which has a vehicle curb weight of less than 6,000 pounds and which has a basic vehicle frontal area of less than 45 square feet, which is: (i) Designed primarily for purposes of transportation of property or is a derivation of such a vehicle; or (ii) designed primarily for transportation of persons and has a capacity of more than 12 persons. Further, section 309.1(t) of the Rule defines a new covered vehicle as a covered vehicle which has not been acquired by a consumer. The Rule also contains labeling requirements for used AFVs, but they are not at issue here because they do not require the disclosure of specific emissions information.

[6] The factors include information concerning fuel type, operating costs, performance/convenience, fuel availability, and energy security/renewability. As the proposed labels below indicate, the Commission proposes simplifying the descriptions of these factors to make them easier for consumers to read and comprehend.

[7] The federal government agencies referenced are the Department of Energy ("DOE") and the National Highway Traffic Safety Administration ("NHTSA"). The Commission also proposes revising slightly part three of the label by listing the Commission's toll-free telephone number and website for consumers who wish to call the FTC for more information about AFVs.

[8] Pub. L. 101–549, 104 Stat. 2399 (1990).

[9] *See* 40 CFR 88 (1996).

[10] 60 FR 26926, 26946 (May 19, 1995).

[11] 65 FR 6698 (Feb. 10, 2000). These standards regulate emissions from cars and light-duty trucks, which include sport utility vehicles, pick-up trucks, and minivans.

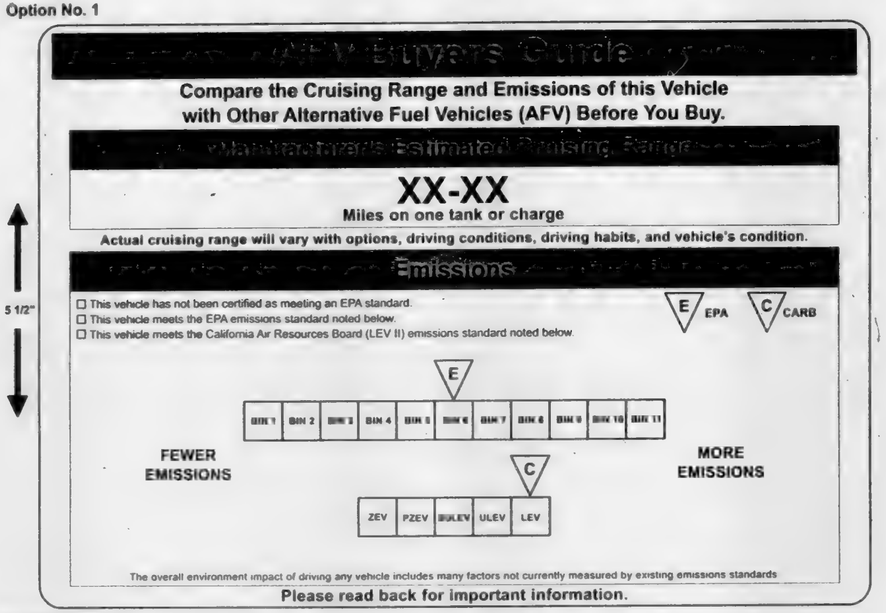
[12] According to staff at EPA, the Tier 2 program is designed to reduce the emissions most responsible for the ozone and particulate matter impact from these vehicles—nitrogen oxides and non-methane organic gases consisting primarily of hydrocarbons and contributing to ambient volatile organic compounds. Hydrocarbons and nitrogen oxides are the major contributors to urban smog.

[13] 60 FR 26926, 26946.

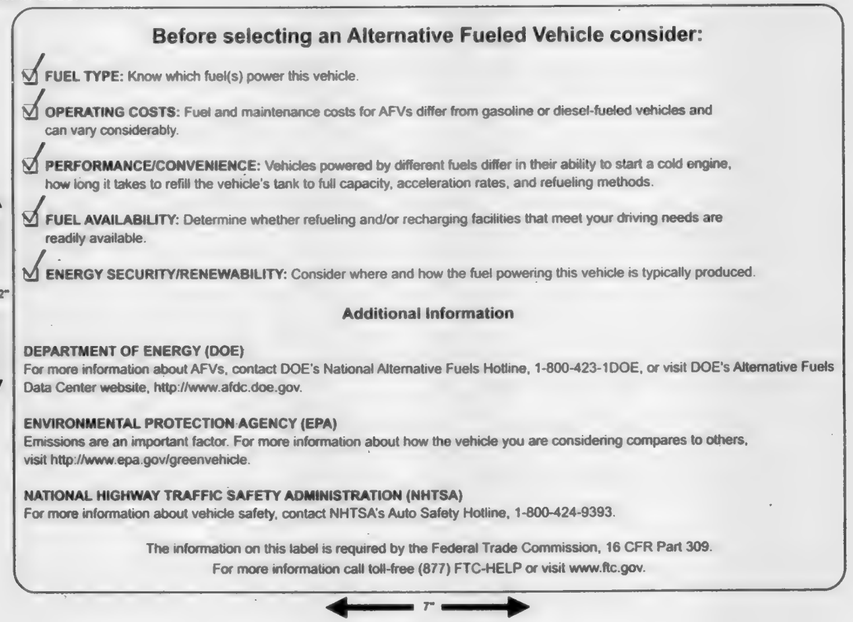
[14] The Commission also proposes adding the EPA reference to the Rule's label for used AFVs.

[15] *See generally* Wesley A. Magat, W. Kip Viscusi, and Joel Huber, *Consumer Processing of Hazard Warning Information*, Journal of Risk and Uncertainty, 1:201–232, at 228 (1988) ("information overload results in less information retained by the consumer").

Option No. 1



Back of Label



2. *Option No. 2:* This option tracks Ford's alternate proposal. It would require disclosure of the EPA Tier 2 emission standard, if any, to which the AFV has been certified, and permit disclosure on the same label of the California LEV II emission standard, if any, to which the AFV has been certified. For this option, the Commission also proposes providing a reference in part three of the label to EPA's green vehicle guide website. This option simplifies the emissions disclosure section of the label and allows manufacturers to indicate their compliance with the EPA Tier 2 and California LEV II emission standards. The label would not, however, indicate where the vehicle falls on the two ranges of emission standards and, thus, may not readily communicate that other options, in terms of emissions certifications, are available. Consumers could consult EPA's website for comparative vehicle information based on emission levels. However, the limited emissions information on the label may not provide sufficient information to help consumers make comparisons.

Option No. 2

Compare the Cruising Range and Emissions of this Vehicle with Other Alternative Fuel Vehicles (AFV) Before You Buy.

[redacted] Estimated

XX-XX

Miles on one tank or charge

Actual cruising range will vary with options, driving conditions, driving habits, and vehicle's condition.

5 1/2"

[redacted] Emissions

☐ This vehicle has not been certified as meeting an EPA standard.
☐ This vehicle meets the EPA emissions standard noted below.
☐ This vehicle meets the California Air Resources Board (LEV II) emissions standard noted below.

EPA - Tier 2 Bin 5
CARB - LEV

The overall environment impact of driving any vehicle includes many factors not currently measured by existing emissions standards

Please read back for important information.

Back of Label

Before selecting an Alternative Fueled Vehicle consider:

☑ **FUEL TYPE:** Know which fuel(s) power this vehicle.

☑ **OPERATING COSTS:** Fuel and maintenance costs for AFVs differ from gasoline or diesel-fueled vehicles and can vary considerably.

☑ **PERFORMANCE/CONVENIENCE:** Vehicles powered by different fuels differ in their ability to start a cold engine, how long it takes to refill the vehicle's tank to full capacity, acceleration rates, and refueling methods.

☑ **FUEL AVAILABILITY:** Determine whether refueling and/or recharging facilities that meet your driving needs are readily available.

☑ **ENERGY SECURITY/RENEWABILITY:** Consider where and how the fuel powering this vehicle is typically produced.

5 1/2"

Additional Information

DEPARTMENT OF ENERGY (DOE)
For more information about AFVs, contact DOE's National Alternative Fuels Hotline, 1-800-423-1DOE, or visit DOE's Alternative Fuels Data Center website, http://www.afdc.doe.gov.

ENVIRONMENTAL PROTECTION AGENCY (EPA)
Emissions are an important factor. For more information about how the vehicle you are considering compares to others, visit http://www.epa.gov/greenvehicle.

NATIONAL HIGHWAY TRAFFIC SAFETY ADMINISTRATION (NHTSA)
For more information about vehicle safety, contact NHTSA's Auto Safety Hotline, 1-800-424-9393.

The information on this label is required by the Federal Trade Commission, 16 CFR Part 309.
For more information call toll-free (877) FTC-HELP or visit www.ftc.gov.

7"

3. *Option No. 3:* This option deletes specific reference to EPA's emissions standards on the front of the AFV label, and instead directs interested consumers to EPA's green vehicle guide website where detailed information is provided. This website provides all of the necessary background information in a format more conducive to understanding and assessing comparative tailpipe emissions. It also includes references to all vehicles and is not limited to AFVs. Accordingly, the Commission requests comment on whether referring consumers to this website may provide a significantly more helpful basis for a consumer to assess relative costs and benefits in terms of purchasing an AFV than listing all the EPA emissions standards or disclosing which certification standard has been met.

This proposal is based on several considerations. First, the emissions information on the current label is based on emissions standards that change over time. Any label revisions made to reflect the new Tier 2 standards also will become obsolete in the future. Second, the emissions information on the current label already is complex. Revising the label to reflect the federal Tier 2 and California LEV II standards would add more complex and non-contextual information to the label, which may not be particularly helpful to consumers. Additionally, although the bins reflect all of EPA's Tier 2 emission standards, the overwhelming majority of AFVs ultimately may fall within only a limited number of bins. Thus, depicting bins that may never be referenced may not be helpful.

The Commission further proposes moving the information in parts two and three of the AFV label from the back to the front of the label. This information includes the specific factors consumers should consider before buying an AFV, as well as referrals to DOE, EPA, and NHTSA for more information about AFVs. This option would eliminate the need to include information on the back of the label. A one-sided label may be easier for consumer to use, and possibly less costly to produce, even if the label dimensions are increased to encompass information now on two sides.[16] A downside, however, may be that the front of the label includes so much information that it overwhelms consumers and does not help them make informed decisions.

[16] Currently the Rule specifies that the label must be 7 inches wide and 5½ inches long. One possibility would be to expand the label to 7½ inches wide and 7 inches long, or larger, so that the print size can be proportionately larger.

Option No. 3

Compare the Cruising Range of this Vehicle with
Other Alternative Fuel Vehicles (AFV) Before You Buy.

XX-XX
Miles on one tank or charge

Actual cruising range will vary with options, driving conditions, driving habits, and vehicle's condition.

7 1/2"

Before selecting an Alternative Fueled Vehicle consider:

- ☑ **FUEL TYPE:** Know which fuel(s) power this vehicle.
- ☑ **OPERATING COSTS:** Fuel and maintenance costs for AFVs differ from gasoline or diesel-fueled vehicles and can vary considerably.
- ☑ **PERFORMANCE/CONVENIENCE:** Vehicles powered by different fuels differ in their ability to start a cold engine, how long it takes to refill the vehicle's tank to full capacity, acceleration rates, and refueling methods.
- ☑ **FUEL AVAILABILITY:** Determine whether refueling and/or recharging facilities that meet your driving needs are readily available.
- ☑ **ENERGY SECURITY/RENEWABILITY:** Consider where and how the fuel powering this vehicle is typically produced.

Additional Information

DEPARTMENT OF ENERGY (DOE)
For more information about AFVs, contact DOE's National Alternative Fuels Hotline, 1-800-423-1DOE, or visit DOE's Alternative Fuels Data Center website, http://www.afdc.doe.gov.

ENVIRONMENTAL PROTECTION AGENCY (EPA)
Emissions are an important factor. For more information about how the vehicle you are considering compares to others, visit http://www.epa.gov/greenvehicle.

NATIONAL HIGHWAY TRAFFIC SAFETY ADMINISTRATION (NHTSA)
For more information about vehicle safety, contact NHTSA's Auto Safety Hotline, 1-800-424-9393.

The information on this label is required by the Federal Trade Commission, 16 CFR Part 309.
For more information call toll-free (877) FTC-HELP or visit www.ftc.gov.

7"

4. *Option No. 4:* This option combines option number two and, in part, option number three. Specifically, the Commission proposes requiring disclosure of only the EPA Tier 2 emission standard, if any, to which the AFV has been certified, and permitting disclosure on the same label of the California LEV II emission standard, if any, to which the AFV has been certified. For this option, the Commission also proposes providing a reference in part three of the label to EPA's green vehicle guide website. In addition, the Commission proposes moving the information in parts two and three of the AFV label from the back to the front of the label.

Option No. 4

Compare the Cruising Range and Emissions of this Vehicle
with Other Alternative Fuel Vehicles (AFV) Before You Buy.

XX-XX
Miles on one tank or charge

Actual cruising range will vary with options, driving conditions, driving habits, and vehicle's condition.

7 1/2"

Emissions

- ☐ This vehicle has not been certified as meeting an EPA standard.
- ☐ This vehicle meets the EPA emissions standard noted below.
- ☐ This vehicle meets the California Air Resources Board (LEV II) emissions standard noted below.

EPA - Tier 2 Bin 5
CARB - LEV

Before selecting an Alternative Fueled Vehicle consider:

- ☑ **FUEL TYPE:** Know which fuel(s) power this vehicle.
- ☑ **OPERATING COSTS:** Fuel and maintenance costs for AFVs differ from gasoline or diesel-fueled vehicles and can vary considerably.
- ☑ **PERFORMANCE/CONVENIENCE:** Vehicles powered by different fuels differ in their ability to start a cold engine, how long it takes to refill the vehicle's tank to full capacity, acceleration rates, and refueling methods.
- ☑ **FUEL AVAILABILITY:** Determine whether refueling and/or recharging facilities that meet your driving needs are readily available.
- ☑ **ENERGY SECURITY/RENEWABILITY:** Consider where and how the fuel powering this vehicle is typically produced.

Additional Information

DEPARTMENT OF ENERGY (DOE)
For more information about AFVs, contact DOE's National Alternative Fuels Hotline, 1-800-423-1DOE, or visit DOE's Alternative Fuels Data Center website, http://www.afdc.doe.gov.

ENVIRONMENTAL PROTECTION AGENCY (EPA)
Emissions are an important factor. For more information about how the vehicle you are considering compares to others, visit http://www.epa.gov/greenvehicle.

NATIONAL HIGHWAY TRAFFIC SAFETY ADMINISTRATION (NHTSA)
For more information about vehicle safety, contact NHTSA's Auto Safety Hotline, 1-800-424-9393.

The information on this label is required by the Federal Trade Commission, 16 CFR Part 309.
For more information call toll-free (877) FTC-HELP or visit www.ftc.gov.

7"

Part C—Regulatory Review

In accordance with the Commission's modified ten-year regulatory review schedule, the regulatory review of the Rule is being conducted during this rulemaking proceeding. Therefore, the Commission seeks information, as noted below, about the costs and benefits of the Rule and its regulatory and economic impact.

Part D—Preliminary Regulatory Analysis

Under section 22 of the FTC Act, 15 U.S.C. 57b, the Commission must issue a preliminary regulatory analysis for a proceeding to amend a rule only when it (1) estimates that the amendment will have an annual effect on the national economy of $100,000,000 or more; (2) estimates that the amendment will cause a substantial change in the cost or price of certain categories of goods or services; or (3) otherwise determines that the amendment will have a significant effect upon covered entities or upon consumers. The Commission has preliminarily determined that the proposed amendments to the Rule will not have such effects on the national economy, on the cost of, or on covered businesses or consumers. The Commission, however, requests comment on the economic effects of the proposed amendments.

The Regulatory Flexibility Act ("RFA"), 5 U.S.C. 601–12, requires that the agency conduct an analysis of the anticipated economic impact of the proposed amendments on small businesses. The purpose of a regulatory flexibility analysis is to ensure that the agency considers impact on small entities and examines regulatory alternatives that could achieve the regulatory purpose while minimizing burdens on small entities. Section 605 of the RFA, 5 U.S.C. 605, provides that such an analysis is not required if the agency head certifies that the regulatory action will not have a significant economic impact on a substantial number of small entities.

The Commission has tentatively concluded that the proposed Rule amendments will not affect a substantial

number of small entities because information the Commission currently possesses indicates that relatively few companies currently manufacture, convert, or sell AFVs. Of those that manufacture, convert, or sell AFVs, most are not "small entities," as that term is defined either in section 601 of RFA, 5 U.S.C. 601(6), or applicable regulations of the Small Business Administration, 13 CFR Part 121. Accordingly, the proposed amendments would not appear to have a significant economic impact upon such small entities. Specifically, the proposed amendments to the AFV label to either substitute the new EPA Tier 2 emission standards for the EPA standards currently displayed on the Commission's AFV label, or eliminate altogether or reduce the number of emission standard disclosures, and add a reference on the label to EPA's green vehicle guide website should benefit both small and large businesses. The amendments also should not have a significant or disproportionate impact on the labeling costs of small AFV manufacturers.

Based on available information, therefore, the Commission certifies that amending the Rule as proposed will not have a significant economic impact on a substantial number of small businesses. To ensure that no significant economic impact is being overlooked, however, the Commission requests comments on this issue. The Commission also seeks comments on possible alternatives to the proposed amendments to accomplish the stated objectives. After reviewing any comments received, the Commission will determine whether a final regulatory flexibility analysis is appropriate.

Part E—Paperwork Reduction Act

The Rule contains various information collection requirements for which the Commission has obtained clearance under the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*, Office of Management and Budget ("OMB") Control Number 3084–0094. As noted above, Section 309.20 of the Rule provides that before offering a new covered AFV for acquisition to consumers, manufacturers must affix on a visible surface of each such vehicle a new vehicle label consisting of three parts. Part one must disclose objective information about the estimated cruising range and environmental impact of the particular AFV. With respect to environmental impact, the labels must tell consumers whether or not the vehicle has met an EPA emission certification standard and, if so, what standard. If a vehicle has been certified, that fact must be noted with a mark in a box on the label, and a caret must be inserted above the standard the vehicle has been certified to meet. The graphic on the label depicts seven EPA emissions standards in increasing order of stringency.

The Commission has tentatively concluded that the proposed amendments would not increase and may decrease the paperwork burden associated with the aforementioned paperwork requirements. Consequently, there are no additional "collection of information" requirements included in the proposed amendments to submit to OMB for clearance under the Paperwork Reduction Act. The Commission's proposed amendments to modify the AFV label by either substituting the new EPA Tier 2 emission standards for the EPA standards currently displayed on the Commission's AFV label, or eliminating altogether or reducing the number of emission standard disclosures would not increase the Rule's paperwork burden. For example, substituting the EPA Tier 2 emission standards for the existing standards would not change the Rule's requirements, but merely would update the acronyms on the label to accurately depict the EPA emission standards currently in effect. Further, adding a specifically described reference on the label to EPA's green vehicle guide website would not increase the Rule's paperwork burden.[17]

Thus, the Commission has tentatively concluded that the proposed amendments would not increase the paperwork burden associated with compliance with the Rule. To ensure that no significant paperwork burden is being overlooked, however, the Commission requests comments on this issue.

Part F—Additional Information for Interested Persons

1. Motions or Petitions

Any motions or petitions in connection with this proceeding must be filed with the Secretary of the Commission.

2. Communications by Outside Parties to Commissioners or Their Advisors

Pursuant to Commission Rule 1.18(c)(1), 16 CFR 1.18(c)(1), the Commission has determined that communications with respect to the merits of this proceeding from any outside party to any Commissioner or Commissioner advisor shall be subject to the following treatment. Written communications and summaries or transcripts of oral communications shall be placed on the rulemaking record if the communication is received before the end of the comment period. They shall be placed on the public record if the communication is received later.

Part G—Invitation To Comment and Questions for Comment

Members of the public are invited to comment on any issues or concerns they believe are relevant or appropriate to the Commission's consideration of proposed amendments to the Rule. The Commission requests that factual data upon which the comments are based be submitted with the comments. In particular, copy test or focus group data about various label options would be appreciated. In addition to the issues raised above, the Commission solicits public comment on the costs and benefits to industry members and consumers of each of the proposals, as well as the specific questions identified below. These questions are designed to assist the public and should not be construed as a limitation on the issues on which public comment may be submitted.

The written comments submitted will be available for public inspection in accordance with the Freedom of Information Act, 5 U.S.C. 552, and Commission regulations, on normal business days between the hours of 8:30 a.m. to 5 p.m. at the Federal Trade Commission, 600 Pennsylvania Ave., NW., Room 130, Washington, DC 20580, (202) 326–2222.

Questions

Proposed Rule Amendments

1. Should the Commission amend the Rule's AFV label in accordance with option number one by substituting EPA's new Tier 2 emission standards for the EPA standards that currently are depicted on the label, permitting manufacturers to disclose on the label the California LEV II emission standard, if any, to which the vehicle has been certified, and adding a reference in part three of the label to EPA's new green vehicle guide website? If so, why? If not, why not?

2. Should the Commission amend the Rule's AFV label in accordance with option number two by requiring disclosure of only the EPA Tier 2 emission standard, if any, to which the AFV has been certified, permitting disclosure on the same label of the California LEV II emission standard, if any, to which the AFV has been certified, and adding a reference in part three of the label to EPA's green vehicle guide website? If so, why? If not, why not?

3. Should the Commission amend the Rule's AFV label in accordance with option number three by deleting altogether specific reference to EPA's emissions standards on the front of the AFV label, directing consumers to EPA's green vehicle guide website, and moving the information in parts two and three of the AFV label from the back to the front of the label? If so, why? If not, why not? What dimensions should the Commission specify if the Commission adopts a one-sided label?

4. Should the Commission amend the Rule's AFV label in accordance with option number four by requiring disclosure of only the EPA Tier 2 emission standard, if any, to which the AFV has been certified, and permitting disclosure on the same label of the California LEV II emission standard, if any, to which the AFV has been certified, providing a reference in part three of the label to EPA's green vehicle guide website, and moving the information in parts two and three of the AFV label from the back to the front of the label? If so, why? If not, why not?

5. Are there any other options not proposed herein that the Commission should consider that would be more appropriate in terms of amending the Rule's AFV label in light of EPA's new Tier 2 emission standards and California's new LEV II standards?

6. Should the Commission amend the Rule to permit disclosure of a state (*e.g.*, California) emission standard to which a covered AFV has been certified?

7. Would a required disclosure in part one of the Commission's AFV label concerning EPA emission certification standards continue to be useful to consumers considering AFV acquisitions?

8. Part two of the Commission's AFV label requires disclosure of specific factors consumers should consider before purchasing an AFV. The factors relate to fuel type, operating costs, performance/convenience, fuel availability, and energy security/renewability. Do these factors continue to be relevant and useful to consumers considering buying an AFV?

9. Should the Commission also modify the Rule's label for used AFVs by adding a reference on the label to EPA's green vehicle guide website?

10. The Commission's Rule-required labels currently reference DOE for more information about AFVs. Should the Commission add a reference on the AFV labels to DOE's alternative fuels data center website, *http://www.afdc.doe.gov*, so that interested persons can access relevant brochures?

Regulatory Review

11. Is there a continuing need for the Rule as currently promulgated?

(a) What benefits has the Rule provided to purchasers of the non-liquid alternative fuels and the AFVs affected by the Rule?

(b) Has the Rule imposed costs on purchasers?

12. What changes, if any, should be made to the Rule to increase the benefits of the Rule to purchasers? How would these changes affect the costs the Rule imposes on firms who comply with the Rule? How would these changes affect the benefits to purchasers?

13. What significant burdens or costs, including costs of compliance, has the Rule imposed on firms who comply with the Rule? Has the Rule provided benefits to such firms? If so, what benefits?

14. What changes, if any, should be made to the Rule to reduce the burdens or costs imposed on firms that comply with the Rule? How would these changes affect the benefits provided by the Rule?

15. Does the Rule overlap or conflict with other federal, state, or local laws or regulations?

16. Since the Rule was issued, what effects, if any, have changes in relevant technology or economic conditions had on the Rule?

List of Subjects in 16 CFR Part 309

Alternative fuel, Alternative fueled vehicle, Energy conservation, Labeling, Reporting and recordkeeping, Trade practices.

Authority: 42 U.S.C. 13232(a).

By direction of the Commission.

Donald S. Clark,

Secretary.

[FR Doc. 03–11391 Filed 5–7–03; 8:45 am]

BILLING CODE 6750–01–P

[17] The public disclosure of information originally supplied by the federal government to the recipient for the purpose of disclosure to the public is not included within the definition of "collection of information" in the Paperwork Reduction Act, 5 CFR 1320.3(c)(2).

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Part 35

[Docket No. RM01–12–000]

Remedying Undue Discrimination Through Open Access Transmission Service and Standard Electricity Market Design

April 28, 2003.

AGENCY: Federal Energy Regulatory Commission, DOE.

ACTION: Proposed rule; Notice of white paper and request for comments.

SUMMARY: On July 31, 2002, the Commission issued a Notice of Proposed Rulemaking (NOPR) in the above-captioned docket, proposing to amend its regulations to remedy undue discrimination through open access transmission service and standard electricity market design. *See* 67 FR 55452 (Aug. 29, 2002). The Commission has distributed a white paper to set forth its assessment of how the electric industry should move forward to achieve long-term benefits for electricity customers, and how it intends to change the rule proposed in the above docket on July 31, 2002, to meet the concerns that have been raised in rulemaking comments. The Commission welcomes public comment on this document.

DATES: Comments are welcome at any time.

ADDRESSES: Send comments to: Office of the Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

FOR FURTHER INFORMATION CONTACT:

Alice Fernandez (Technical Information), Office of Markets, Tariffs and Rates, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, (202) 502–8284.

David Mead (Technical Information), Office of Markets, Tariffs and Rates, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, (202) 502–8028.

Mark Hegerle (Technical Information), Office of Markets, Tariffs and Rates, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, (202) 502–8287.

David Withnell (Legal Information), Office of General Counsel, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, (202) 502–8421.

SUPPLEMENTARY INFORMATION: In addition to publishing the full text of this document in the **Federal Register**, the Commission provides all interested persons an opportunity to view and/or print the contents of this document via the Internet through FERC's Home Page *(http://www.ferc.gov)* and in FERC's Public Reference Room during normal business hours (8:30 a.m. to 5 p.m. Eastern time) at 888 First Street, NE., Washington, DC 20426.

Today the Commission is publishing a White Paper to set forth its assessment of how the electric utility industry should move forward to achieve long-term benefits for electricity customers, and how it intends to change the rule proposed in the above docket on July 31, 2002, to meet the concerns that have been raised in rulemaking comments.

The White Paper is being placed in the record of this rulemaking docket. It will also be available on the Commission's Web site at *http://www.ferc.gov/Electric/RTO/mrkt-strct-comments/discussion_paper.htm.*

The Commission welcomes public comment on this document. All comments will be available for review at the Commission or may be viewed on the Commission's Web site at *http://www.ferc.gov*, using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or for TTY, contact (202) 502–8659. Comments may be filed electronically via the Internet in lieu of paper; *see* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link. The Commission strongly encourages electronic filings.

The Commission also intends to begin holding regional technical conferences in the near future, to discuss with states and market participants in each region reasonable timetables for addressing wholesale market design issues discussed in the White Paper and ways to tailor the Commission's final rule to benefit customers within the region. We will issue notices of the conferences shortly.

By direction of the Commission.

Magalie R. Salas,

Secretary.

White Paper; Wholesale Power Market Platform

The Federal Energy Regulatory Commission's core mission under the Federal Power Act is to achieve wholesale electricity markets that produce just and reasonable prices and work for customers. The Commission's July 2002 proposal to harmonize wholesale power markets sought to advance this core mission in the context of the new realities of regional electricity markets.[1]

The industry has been evolving toward a market-based approach for well over a decade and active long-term wholesale bilateral markets exist in all regions of the country. However, short-term wholesale markets with transparent prices and market structures that will reliably produce just and reasonable prices are not likely to develop without strong Commission action. Wholesale electricity markets do not automatically structure themselves with fair behavioral rules, provide a level playing field for market participants, effectively monitor themselves, check the influence of market power, mitigate prices that are unlawful, or fix themselves when broken. These are the responsibilities of the Commission under current law, and our proposal was made with these responsibilities in mind.

Our proposal was informed by the experiences of this country and other countries in electric market design, including the effects of supply shortages, demand that does not respond to high prices, lack of price transparency in the marketplace, and the importance of market monitoring and market power mitigation. Based on the extensive comments we have received during the past nine months, we are issuing this White Paper to set forth our assessment of how best to move forward in the electric industry for the long-term benefit of electricity customers, and how we intend to change our proposed rule to meet the concerns that have been raised.

Our goals continue to be reliable, reasonably priced electric service for all customers; sufficient electric infrastructure; transparent markets with fair rules for all market participants; stability and regulatory certainty for customers, the electric power industry, and investors; technological innovation; and efficient use of the nation's resources. Further, providing regulatory certainty for the industry and investors in order to build needed infrastructure is a critical need facing the energy industry and requires Commission action.

Under the Final Rule, we intend to focus on the formation of regional transmission organizations (RTOs) and on ensuring that all RTOs and independent system operators (ISOs) have good wholesale market rules in place.[2] We will eliminate the proposed requirement that public utilities create or join an Independent Transmission Provider. Instead, in light of the fact that almost all public utilities already have joined, or committed to join, an RTO or ISO, the Final Rule will require public utilities to join an RTO or ISO.[3] Further, we intend to adopt a Final Rule that allows for phased-in implementation and sequencing tailored to each region and that allows modifications to benefit customers within each region. In addition, if for a specific RTO or ISO it can be demonstrated to the Commission that the costs of implementing any feature of the market platform outweigh its benefits, the Commission will not require implementation of the feature for that particular RTO or ISO.[4]

For the basic wholesale market platform, we intend to build upon the existing rules adopted in Order No. 2000 for RTOs by adding features that we have learned are necessary for effective wholesale power markets.[5] For example, Order No. 2000 did not include market power mitigation measures and does not prevent flawed market designs. Wholesale electric markets will not be able to deliver full customer benefits in the future without the oversight and transparency that regional independent transmission organizations can provide. Healthy and well-functioning wholesale power markets are central to the national economy, and we believe that regional, independent operation of the transmission system, with proven market rules in place, is the critical platform for the future success of electric markets. Divestiture is not required to achieve independent operation of the transmission system. Companies may remain vertically integrated under an RTO or ISO.

In the years since Congress enacted the Energy Policy Act of 1992, competition among power plants for wholesale customers' business has largely replaced traditional cost-of-service regulation of wholesale power sales. The Department of Energy found

[1] Notice of Proposed Rulemaking, Docket No. RM01–12–000, issued July 31, 2002.

[2] For the purposes of the Final Rule, all of the characteristics and functions for RTOs would apply to Independent System Operators (ISOs), except for scope and regional configuration.

[3] The requirements of the Final Rule will not apply to Commission-jurisdictional electric power cooperatives that serve only retail load.

[4] We intend to commence technical conferences in each region and to work with states and market participants to develop reasonable timetables for moving forward.

[5] Details of the wholesale power market platform and a comparison of them to the requirements of Order No. 2000 are included in Appendix A.

that relying more on markets has saved customers $13 billion per year over traditional regulation. It has stimulated innovation in generation and transmission technologies. It has freed customers from being forced to pay for the "stranded costs" of unwise investments. This competitive market framework came about as a result of national legislation and a series of Commission initiatives in both the wholesale gas and electric industries. In particular, these actions were intended to provide all wholesale power sellers with equal access to the transmission grid. Equal, nondiscriminatory access is a necessary prerequisite for fair competition among sellers, and, together with regional operation of the grid, gives wholesale buyers access to a much wider range of supply choices.

The transition to restructured markets has not been smooth or uniform. In regions with an effective wholesale market platform, an ISO or RTO provides effective market monitoring and has clear market rules designed to protect customers. Some markets, however, clearly have not been immune from market design flaws. Experiences in California have shown the consequences of poorly designed markets and inadequate generation, transmission and demand response. Moreover, they demonstrate the need for before-the-fact market power mitigation and ongoing market monitoring. Some areas also have experienced "seams" problems where differences in design between regions create artificial barriers to trade which raise costs, limit customer supply choices, and create opportunities for exploitation of differences between markets.

In other areas of the country, where markets do not have independent or regional grid operation, the lack of price transparency in the marketplace can mask problems and transmission operators can use their ability to control the transmission system to favor their own power sales. New competitors may be blocked or delayed because the transmission operator can favor its affiliated suppliers both in interconnecting to the grid and in allocating the costs of interconnection. The result of these problems is higher customer costs, making independence a critical element for protecting native load. Dealing with these issues and concerns on a case-by-case basis takes significant time and effort for both the Commission and market participants to resolve.

In the proposed rule, the Commission identified the building blocks for a healthy wholesale market to address the problems we have experienced in both competitive and non-competitive markets. In moving forward on a Final Rule, we believe it is critical to retain certain fundamental building blocks for healthy electric markets, and we agree with commenters that regional economic differences and regional timing constraints must be recognized. Below we identify market issues that lend themselves to regional solutions without compromising the integrity of a solid market platform.

The Commission is aware that the success of our RTO-based initiative is more likely in a region where the bulk of the transmission grid is in the hands of jurisdictional public utilities. But in the Pacific Northwest, roughly 80 percent of the grid assets are controlled by the Bonneville Power Administration, which is not a public utility under the Federal Power Act. Bonneville's participation in RTO West is essential for RTO West to succeed. Thus, we encourage Bonneville's continued voluntary participation in RTO West. We are also aware that Bonneville will continue to participate only if RTO West has the flexibility to meet the unique needs of the Pacific Northwest. We clarify what may be obvious. Any decision of Bonneville to meet its obligations and operational responsibilities with respect to such matters as irrigation, flood control, treaties, environmental rules and the like is solely Bonneville's to make and is not jurisdictional to the Commission. While the Commission has limited jurisdiction over Bonneville's rates under the Pacific Northwest Electric Power Planning and Conservation Act, the contracts between Bonneville and its customers do not require Commission review or approval. We have heard the concerns expressed about the merits of locational pricing and a day ahead market in a region dominated by interdependent hydroelectric resources. With respect to these concerns, our commitment is to work with interested parties, including state commissions, to find solutions that are appropriate to the unique needs of the Pacific Northwest.

The Commission will consider all comments received on this White Paper, as well as any pending electricity legislation being considered in the U.S. Congress, prior to issuing a Final Rule.

Comments on the Proposed Rule

A number of concerns have been raised about various aspects of the proposed rule. We have received approximately 1,000 sets of formal comments on our proposed rule. The most extensive concerns involved the following issues. We state these concerns and our responses below:

- The Commission proposed to assert jurisdiction over transmission used to provide retail service to native load customers.

Pursuant to Order No. 888, the Commission currently asserts jurisdiction over wholesale transmission service and unbundled retail transmission service by public utilities. In the Final Rule, with respect to bundled retail service, we will continue our existing practice for RTOs and ISOs of distinguishing between the non-price terms and conditions of transmission service and the rates for transmission service. As discussed in Appendix A, the non-price terms and conditions of the RTO or ISO tariff will apply equally to all users, including those taking service to meet their obligation to serve bundled retail customers. However, the Commission will not assert jurisdiction over the transmission rate component of bundled retail service, thereby avoiding unintended issues raised by a new assertion of jurisdiction.

- Specific features of the proposed rule, particularly the resource adequacy requirement and the regional transmission planning requirement, infringe on state jurisdiction.

The Commission clarifies that nothing in the Final Rule will change state authority over these matters. We will not include a minimum level of resource adequacy. The RTO or ISO may implement a resource adequacy program only where a state (or states) asks it to do so, or where a state does not act. The Final Rule will direct RTOs and ISOs to develop a periodic regional transmission plan for submission to relevant state and local siting authorities and to assist the states in whatever manner they desire, including evaluating the impact of new generation, transmission, energy efficiency, and demand response on regional reliability and resource adequacy.

- The transition process to the new proposed transmission service would not provide sufficient protection for existing customers.

As with our earlier restructuring efforts in the natural gas and electric power industries, we want to ensure that existing customers retain their existing transmission rights and retain rights for future load growth. While all customers that pay a basic access charge can schedule transmission service, it is important that customers be able to protect themselves from congestion costs through Firm Transmission Rights (FTRs). The Final Rule will eliminate any requirement that FTRs be auctioned. We will, instead, look to

regional state committees to determine how such rights should be allocated to current customers based on current uses of the grid. Varying approaches to FTR allocation need not create "seams" with neighboring regions.

- The proposed rule was too prescriptive in substance and in implementation timetable, and did not sufficiently accommodate regional differences.

As discussed above, we intend to adopt a Final Rule that allows for phased-in implementation and sequencing tailored to each region and that allows modifications to benefit customers within each region. To the extent that it can be demonstrated to the Commission that the costs of implementing any feature of the Final Rule outweigh its benefits, the Commission will not require the RTO or ISO to implement that feature. Before issuing a Final Rule, we intend to convene technical conferences with state commissioners and market participants in each region to discuss which aspects of the platform (if any) have not already been addressed and the timeline, sequence and budget for moving forward.[6] Also, as discussed in Appendix A, each RTO or ISO would provide a forum for state representatives to participate in the RTO's or ISO's decisionmaking process. That forum is referred to as the regional state committee.

- The proposed rule did not provide sufficient clarity on cost recovery for investment in new transmission facilities.

Each RTO or ISO will be required to have a clear transmission cost recovery policy outlined in its tariff. We will look to the RTO or ISO and the regional state committee to determine the appropriate regional approach for allocating the costs of new transmission. Regions may differ on the extent to which they want to rely on participant funded expansions; this difference need not create "seams" with neighboring regions. Because this issue is such an important one in stimulating appropriate investment by both existing and new transmission companies, we will allow an RTO or ISO to implement such policies once there is a regional planning process through which an independent entity performs all necessary facilities studies and determines cost responsibility for the required transmission upgrades.[7]

Wholesale Market Platform

The Commission believes that certain elements need to be in place for well-functioning wholesale markets.

Regional Independent Grid Operation

Order No. 2000 required that all RTOs meet four minimum characteristics: independence, scope and regional configuration, operational authority, and short-term reliability. The Final Rule will reaffirm the need for these characteristics. In particular, the lack of independence continues to plague electricity markets because it provides an incentive for those who own generation and operate transmission facilities to operate the transmission system in ways that exclude competing generation suppliers and can allow the exercise of market power. This conflict of interest cannot be remedied through oversight and enforcement. Rather, structural separation of transmission operation from other wholesale market activities is required to eliminate the ability for such manipulation.

Regional operation is critical for both reliability and efficiency because power flows freely throughout regional grids. Order No. 2000 said "the scope and configuration of the regions in which the RTOs are to operate will significantly affect how well they will be able to achieve the necessary regulatory, reliability, operational and competitive benefits." However, in the Final Rule we will allow flexibility on scope and configuration for ISOs. RTOs and ISOs are developing methods of interregional coordination that allow separate control, but a single market from the customer's perspective. Therefore, in the Final Rule we will not require ISOs to meet the scope and regional configuration requirement. However, all must actively pursue interregional coordination between RTOs and ISOs, including the elimination of the payment of multiple access fees for transactions that cross ISO and RTO borders.

Order No. 2000 required that the RTO be the sole provider of transmission service and sole administrator of its own open access tariff. Included in this is the requirement that the RTO have the sole authority for the evaluation and approval of all requests for transmission service including requests for new interconnections. The Final Rule will reaffirm these requirements.

Regional Transmission Planning Process

Regional planning of the transmission grid is essential to ensure the most effective use of the interconnected grid facilities. The RTO or ISO is in a unique position to discern regional needs and address factors inhibiting investment in transmission and generation through conducting a region-wide planning process. As required in Order No. 2000, the Final Rule will require the RTO or ISO to produce technical assessments of the regional grid and support the state siting authorities or multi-state entities by performing necessary studies. The purpose is to assist the states and market participants by giving an independent assessment of the transmission facilities needed by the region to reliably and economically serve load located within the region. How the RTO or ISO, state commissions, transmission owners, and other market participants participate in the process will be decided regionally. By administering the regional tariff, RTOs and ISOs also provide the critical link to a cost recovery mechanism for regional transmission expansions. The Final Rule would require RTOs and ISOs to have a regional planning process in place as soon as practicable.

Fair Cost Allocation for Existing and New Transmission

The costs associated with the existing grid, other than those directly assigned, will continue to be recovered through rates paid by customers. To avoid having customers pay multiple, cumulative charges for transmission service across multiple utility grids in a region, the rate paid by a customer should permit that customer to have access to the entire region at a single rate. As discussed in Appendix A, regional state committees may agree on the form of access charge that will be filed by the RTO or ISO under section 205 of the Federal Power Act. That means the committee will decide whether to propose to move to a uniform rate for transmission service throughout the region (known as postage stamp rates), or whether to propose to maintain single, but different access charges depending on where power is taken off the grid (known as license plate rates).[8]

[6] To avoid the reliability and operational problems that result when some parts of the grid do not participate in RTO or ISO functions, we strongly encourage regional decision-making on RTO or ISO implementation through regional state committees, stakeholder committees, and other authorities in the region.

[7] In Appendix A, we explain that allowing participant funding on the basis of having an independent entity perform transmission planning and related cost allocation is a transitional approach that could be used in anticipation of the RTO or ISO assuming operational control of the regional transmission grid within one year.

[8] Under license plate rates, the single access charge is usually based on each transmission owners' service area.

To gain access to a wider range of supply choices, RTOs and ISOs should eliminate the payment of multiple access fees across RTO and ISO borders. Rate mechanisms to minimize cost shifts should be used. If there is a notable imbalance between imports to and exports from an RTO or ISO, the net exporting RTO or ISO may seek to recover some of its transmission costs through an export rate.

As discussed above, costs of new transmission expansions will be recovered in accordance with the regional pricing policy, which may be informed by the appropriate regional state committee. As discussed in Appendix A, the regional pricing policy will be filed with the Commission by the RTO or ISO.

Market Monitoring and Market Power Mitigation

These are relatively undeveloped features of Order No. 2000, which did not have a market power mitigation component. For customers to benefit from wholesale power markets, it is critical that market prices fairly reflect the conditions of supply and demand rather than the exercise of market power. Each RTO or ISO would have an independent market monitor either for the individual RTO or ISO or for a larger region.

The market power mitigation measures must protect against the exercise of market power without suppressing prices below the level necessary to attract needed investment in new infrastructure in the region. At a minimum, the RTO's or ISO's tariff should include rules limiting bidding flexibility where there is localized market power. The RTO's or ISO's tariff must also include clear market rules designed to prevent market manipulation strategies, including the types of anti-gaming tariff provisions in the proposed rule.

The types of mitigation tools and the triggers and consequences of mitigation should be tailored to the needs of each region. For example, energy-limited resources, such as hydroelectric generators, may need to have bidding mitigation protocols and thresholds that are different from thermal generators. However, mitigation tools which vary by region across market seams have the potential to create enforcement problems and undesirable behavioral incentives. For this reason, the Commission will look closely at mitigation proposals, not only for their suitability for the RTO's or ISO's regional markets, but for their compatibility with neighboring RTOs and ISOs.

Spot Markets To Meet Customers' Real-Time Energy Needs

While we expect that the vast majority of energy bought and sold will continue to be under negotiated long-term contracts between customers and suppliers, the nature of electricity requires the availability of a spot market for the last-minute sales or purchases needed to ensure system reliability. This balancing function is currently performed by the transmission provider. Under the Final Rule, the RTO or ISO must use a real-time market for energy to resolve imbalances. A transparent spot market not only helps keep the system reliable and lowers costs but also provides important price and other information to all market participants on an equal and open basis. It also gives the public a timely way to assess the functioning of the market. These markets will also facilitate customer response to prices as well as ease the introduction of some renewable and other innovative supply technologies.[9] The RTO or ISO in each region will develop the detailed market rules that will be included in its Commission-filed tariff. An RTO or ISO must also introduce a day-ahead market and a market for various ancillary services when the market is ready for those steps. Unlike Order No. 2000, which allowed power exchanges without a check for security constraints, any RTO or ISO day-ahead market must be designed to work reliably with the congestion management system.[10]

Transparency and Efficiency in Congestion Management

Regions should develop an approach to manage congestion that protects against manipulation, uses the grid efficiently, and promotes use of the lowest cost generation. Efficient market behavior depends heavily on assigning cost responsibility to those who cause the costs and the benefits to those who reduce costs. Today, transmission providers resolve congestion through a system that causes unnecessarily expensive generation redispatch. These added costs are hidden but are real and are paid by customers today. Order No. 2000 required RTOs to have transparent market mechanisms with efficient price signals in place to manage transmission congestion within one year of initial operation. We would continue that general approach for both RTOs and ISOs. We clarify that this rule will not override decisions we have already made in individual RTO or ISO cases regarding congestion management.[11]

Firm Transmission Rights

RTOs and ISOs that use locational pricing to manage congestion would be required to make Firm Transmission Rights (FTRs) available to customers.[12] FTRs protect customers from the costs of congestion. Under the Wholesale Power Market Platform, customers in RTOs that use locational pricing along with network transmission service would have firm physical transmission service, and customers with FTRs would be protected from congestion costs.

We will not require auctions of these rights. FTRs allow customers to schedule service according to the paths specified in their rights, with no risk of congestion charges. There also would be no risk of curtailment, absent a force majeure event such as the loss of a transmission line. By providing protection from congestion costs, FTRs also allow market participants to enter into contracts with a locked-in price if desired. Thus, FTRs allow for maximum utilization of valuable scarce grid capacity and therefore lower costs to customers.

In the Final Rule, for RTOs or ISOs that have not already addressed this issue, these rights would be allocated according to existing contracts and existing service arrangements in order to hold customers harmless. To the extent transmission rights have already been approved by the Commission in RTO or ISO orders we would not override these decisions in the Final Rule.

Resource Adequacy Approaches

Order No. 2000 did not include a regional view of resource adequacy. We have learned that if one state has inadequate resources, it can create severe problems for the larger region. It is difficult for the Commission to assure just and reasonable wholesale market prices if there are insufficient resources to meet demand. Each region with an RTO or ISO will determine how it will ensure that the region has sufficient

[9] State action is required for retail customers to have demand response options. Where states permit end users to participate directly in wholesale markets, demand response programs could be administered through the RTO or ISO tariff. The Commission strongly advocates demand response to limit supplier market power, enhance reliability and resource adequacy, and limit price volatility.

[10] The failure to check for security constraints created perverse incentives for participants in California to create congestion.

[11] As discussed in Appendix A, we are also including options that will minimize cost shifts.

[12] The discussion applies to RTOs and ISOs that have embraced locational pricing. As noted in Appendix A, there are ongoing discussions in the Western Interconnection regarding common elements of market design. We will not prejudge the results of those ongoing discussions.

resources to meet customers' needs. The approach to and level of resource adequacy will be decided by the states in the region drawing from a mix of generation, transmission, energy efficiency, and demand response. It is important to have a consistent approach throughout the region, which should be developed by the regional state committee. States may decide to ensure resource adequacy through state imposed requirements on utilities serving load within the region. Other states may choose to have RTOs or ISOs operate capacity markets. In any case, the choice on the approach is made by the states within the region.

Other Issues on Which Commenters Seek Clarification

- RTO and ISO Governance—We will include overarching principles of independent governance in the Final Rule, but will decide governance issues on a case-by-case basis. The Final Rule will not override governance already approved in earlier RTO orders.
- RTO Decisions—We confirm that the decisions made in prior RTO orders in which we noted an overlap with the Standard Market Design rulemaking will not be overturned in the Final Rule.
- Liability—A standard tariff provision limiting liability for transmission providers will be included in the Final Rule.
- Cyber Security—We will adopt the North American Electric Reliability Council (NERC) standards for cyber security.
- Reciprocity—We propose no change to the Order No. 888 reciprocity requirements and Order No. 2000 provisions affecting non-jurisdictional entities in the U.S., Canada, and Mexico. We believe non-jurisdictional entities will benefit from RTO formation and the development of standardized wholesale market rules. We encourage such non-jurisdictional entities to voluntarily participate in RTOs and ISOs as full and equal members.
- Independent Transmission Company—We propose no change in our prior decisions on the functions that should be performed by an RTO and those that may be performed by an independent transmission company that operates within the RTO's territory.[13]
- Standards—We are encouraged that NERC, the North American Energy Standards Board, and RTOs and ISOs have reached agreements on a process through which they will work together in the development of reliability and market standards. Market standards developed through this process could be included in RTO and ISO tariffs to facilitate compatible and seamless rules across the interconnected power grid.

Appendix A Comparison of the Proposed Wholesale Market Platform with the RTO Requirements of Order No. 2000

This appendix compares the current requirements for RTOs of Order No. 2000 with the requirements of the Wholesale Market Platform that would apply to both RTOs and ISOs. The Wholesale Market Platform is designed to build on these existing requirements. ISOs would have to satisfy all of the same requirements as RTOs except with respect to Scope and Regional Configuration.

This appendix identifies the changes and additions to the Characteristics and Functions specified in Order No. 2000 that would result from the Wholesale Market Platform. All other Characteristics and Functions requirements would remain the same. The Final Rule for the Wholesale Market Platform would also clarify when incremental pricing of new transmission facilities (participant funding) could be used. Finally, the Final Rule would impose several new market-related requirements on RTOs and ISOs.

Order No. 2000 was a voluntary program. Since that time, almost every public utility has joined or has committed to join an RTO or ISO. Therefore, the Final Rule will require that all public utilities join an RTO or ISO.[1]

As discussed in the White Paper, if for a specific RTO or ISO it can be demonstrated to the Commission that the costs of implementing any feature of the market platform outweigh its benefits, the Commission will not require implementation of the feature for that particular RTO or ISO.

Throughout this appendix we discuss the role of the states in RTO and ISO decisions. The Wholesale Market Platform would require each RTO and ISO to provide a forum for state representatives in the decision-making process, *i.e.*, a regional state committee. This requirement is discussed in more detail below.

Finally, as discussed in the White Paper, the Commission does not intend to overturn decisions that have already been made in individual RTO cases. Decisions made in prior RTO orders in which we noted an overlap with Standard Market Design will not be overturned in the Final Rule. The Commission also does not intend to change our prior decisions regarding the functions that should be performed by an RTO and those that may be performed by an Independent Transmission Company that operates within the RTO's territory.

Characteristics and Functions

The four Characteristics required of an RTO are: Independence; Scope and Regional Configuration; Operational Authority; and Short-term Reliability.

The eight required Functions are: Tariff Administration and Design; Congestion Management; Parallel Path Flows; Ancillary Services[2]; OASIS; Market Monitoring; Planning and Expansion; and Interregional Coordination.

Characteristics

1. Independence

Order No. 2000. RTOs must be independent of market participants. As set out in Order No. 2000, by market participant, the Commission means any entity that, either directly or through an affiliate, sells or brokers electric energy, or provides transmission or ancillary services to the RTO unless the Commission finds that the entity does not have economic or commercial interests that would be affected by the RTO's actions or decisions.

Wholesale Market Platform. RTOs and ISOs would be required to meet all of the Order No. 2000 principles for Independence. In addition, the Final Rule will add to the Order No. 2000 requirements overarching principles on how to structure independent governance. The Commission will decide RTO governance matters on a case-by-case basis. Further, these overarching principles will not change governance decisions that have been approved in earlier RTO orders.

2. Scope and Regional Configuration

Order No. 2000. The RTO must serve an appropriate region. The region must be of sufficient scope and configuration to permit the RTO to maintain reliability, effectively perform its required functions, and support efficient and non-discriminatory power markets.

Wholesale Market Platform. RTOs would be required to satisfy this Characteristic. However, new and existing ISOs would not be required to satisfy this Characteristic. But, ISOs must actively pursue interregional coordination to minimize the creation of seams that act as barriers to trade among regions.

3. Operational Authority

Order No. 2000. The RTO must have operational authority for all transmission facilities under its control. The RTO must also be the security coordinator for the facilities that it controls.

Wholesale Market Platform. RTOs and ISOs would be required to meet this Characteristic.

4. Short-Term Reliability

Order No. 2000. The RTO must have exclusive authority for maintaining the short-term reliability of the grid that it operates. It must have exclusive authority for receiving, confirming and implementing all interchange schedules. The RTO must have the right to order redispatch of any generator connected to transmission facilities it operates if necessary for the reliable operation of these facilities. When the RTO operates transmission facilities owned by other entities, it must have authority to approve or disapprove all requests for scheduled outages of transmission facilities to ensure that the outages can be accommodated within established reliability standards.

Wholesale Market Platform. RTOs and ISOs would be required to satisfy this Characteristic.

Functions

Under Order No. 2000, the RTO must perform the following Functions when it commences operations, unless otherwise noted.

1. Tariff Administration and Design

Order No. 2000. The RTO must administer its own transmission tariff and employ a transmission pricing system that will promote efficient use and expansion of transmission and generation facilities. The RTO must be the only provider of transmission service over the facilities under its control, and must be the sole administrator of its own Commission-approved open access transmission tariff. It must have the sole authority to receive, evaluate, and approve or deny all requests for transmission service. The RTO must have the authority to review and approve requests for new interconnections. Customers under the RTO tariff must not be charged multiple access fees for the recovery of capital costs for transmission service over facilities that the RTO controls.

Wholesale Market Platform. The Final Rule would retain these features and also would clarify the jurisdictional consequences that result when a public utility that owns, controls, or operates transmission facilities in interstate commerce joins an RTO or ISO. In the context of RTOs and ISOs, the RTO or ISO becomes the sole provider of transmission services for the facilities it controls, and transmission owning members of the RTO or ISO become wholesale customers of the RTO or ISO.

To accommodate both the realities of a regionally operated transmission system and the jurisdiction concerns raised by the states, the Commission will distinguish non-price terms and conditions of transmission service from rates for transmission service. As discussed below, we will assert jurisdiction over the non-price terms and conditions of transmission used by wholesale transmission customers to serve bundled retail customers, but we will not assert jurisdiction over the transmission rate component of bundled retail sales of electric energy.[3] Moreover, in setting the wholesale rate for transmission, the Commission will rely upon the transmission rate set by the states for bundled retail service.

Non-price terms and conditions of transmission service include matters such as reserving capacity and scheduling service, and it is critical in the context of RTOs and ISOs that such non-price terms and conditions apply to all customers on a not unduly discriminatory basis, with appropriate protection of native load customers. Consistent with our existing policy for transmission service used to serve unbundled retail customers (*i.e.*, those in retail choice states), the Final Rule would allow state regulatory authorities to request waivers of any non-price terms and conditions of the RTO or ISO tariff that are not compatible with bundled retail service needs. We note that Commission-filed open access tariffs have successfully accommodated service to unbundled retail customers since Order No. 888 went into effect in 1996 and that ISO and RTO tariffs have successfully accommodated service to unbundled as well as bundled retail customers.

We clarify that Commission jurisdiction over non-price terms and conditions of transmission used by wholesale transmission customers to serve bundled retail customers does not affect state authority over retail choice decisions, transmission siting, or local issues associated with transmission or distribution (*e.g.*, maintenance, tree trimming, downed lines, etc.).

The price that a transmission owner pays to the RTO or ISO becomes its cost for the transmission used to deliver the energy sold at retail. Consistent with existing Commission policy, transmission owners would be free to seek a rate from the RTO or ISO for the transmission purchased to deliver energy to bundled retail customers that is equal to the transmission component of the bundled retail rates set by the state commission. Under this approach, the rate set for transmission in interstate commerce to be re-sold as part of bundled retail service would be the same rate set by the state for the transmission component of bundled retail sales. This arrangement would be accomplished under a wholesale contract between the RTO or ISO and the transmission owner. Service agreements reflecting such proposed rates would be filed with the Commission and must be consistent with the Federal Power Act (FPA).

The Final Rule would also clarify that the RTO or ISO may use license plate or postage stamp rates for designing the access charges for the region. Each regional state committee may determine which approach the RTO or ISO should file with the Commission under section 205 of the FPA. If the regional state committee is unable to reach a decision on the methodology that should be used, the RTO or ISO would file its own proposal pursuant to section 205 of the FPA.

RTOs and ISOs should eliminate export and import fees where there is not a notable imbalance between imports to and exports from a region. Other rate measures could be used to prevent cost shifts among the regions.[4] This could include adjusting the revenue requirement for the importing region to include a portion of the revenue requirement of the exporting region. However, where there is a notable imbalance between imports to and exports from a region, the RTO or ISO may seek to recover some of its transmission costs through an export fee.

2. Congestion Management

Order No. 2000. The RTO must ensure the development and operation of market mechanisms to manage transmission congestion. The market mechanisms must accommodate broad

[13] *See* TRANSLink Transmission Company, LLC, *et al.*, 99 FERC ¶ 61,106 (2002).

[1] The requirements of the Final Rule will not apply to Commission-jurisdictional electric power cooperatives that serve only retail load.

[2] This includes operation of a real-time spot market for energy imbalances.

[3] Bundled retail sales of electric energy are sales of electric energy to retail customers where generation, transmission, distribution, and other services necessary to supply electric energy to such customers are sold as a single delivered service by a single seller and retail supplier choice is not permitted by state authorities.

[4] For example, a portion of the transmission cost of service of the exporting region could be recovered through the access charge of the importing region. Such a measure would reduce the transmission costs that would be collected from customers in the exporting region.

participation by all market participants, and must provide all transmission customers with efficient price signals that show the consequences of their transmission usage decisions. The RTO must either operate such markets itself or ensure that the task is performed by another entity that is not affiliated with any market participant. The RTO must satisfy the market mechanism requirement no later than one year after it commences initial operation. However, it must have in place at the time of initial operation an effective protocol for managing congestion.

Wholesale Market Platform. The Final Rule would retain the requirements that the RTO or ISO have an effective protocol for managing congestion at the time of initial operation and a market mechanism for congestion management after one year of operation.

The Final Rule would modify the requirement for market mechanisms to manage congestion. The RTO or ISO would be required to operate such markets itself. However, two or more RTOs or ISOs may apply to the Commission to do coordinated congestion management over a multi-RTO or ISO area as long as this function is carried out by an independent entity approved by the Commission.

Additionally, the Final Rule would add general principles that a good market congestion management system must satisfy. The congestion management system must: (1) Protect against market manipulation, such as experienced in the California markets; (2) promote the efficient use of the transmission grid; (3) promote the use of the lowest cost generation as intended under traditional economic generation dispatch; (4) assign cost responsibility to those that cause congestion costs and assign the benefits to those that reduce congestion costs; (5) reduce involuntary transmission service curtailments, *e.g.*, Transmission Line Loading Relief; and (6) be compatible with congestion management systems used by other RTOs and ISOs in the electrical interconnection, to avoid creating barriers to trade among RTOs and ISOs.[5]

The Commission has already tasked the Seams Steering Group-Western Interconnection (SSG–WI) with developing consistent and compatible market elements for the Western Interconnection by the fourth quarter of 2003. The congestion management system being developed by SSG–WI should satisfy these general principles.

[5] For purposes of this discussion, the electrical interconnections are the Eastern Interconnection and the Western Interconnection.

The Commission's preferred approach to congestion management is through locational pricing. However, other methods may be proposed. The RTO or ISO would need to demonstrate to the Commission how the proposed congestion management system satisfies these general principles.

If an RTO or ISO uses locational pricing, it must ensure that each existing firm customer (including transmission owners with a service obligation for native load) has the opportunity to obtain FTRs[6] equivalent to that customer's existing firm rights.[7] We will ensure not only that existing customers retain their existing rights, but also that they have the ability to obtain rights for future load growth. Customers who paid for transmission for load growth can retain the FTRs for that capacity. The FTRs that are offered by the RTO or ISO must, in the aggregate, be consistent with the physical limitations of the transmission system.[8] If transmission rights or their allocation have already been approved by the Commission in RTO or ISO orders, we would not override these decisions in the Final Rule.

There would be no requirement to auction these FTRs either initially or after a transition period. The RTO or ISO tariff must also offer customers the ability to obtain additional FTRs for load growth. Customers paying the access charge would have the right to receive the additional FTRs associated with transmission upgrades that are included in the regional transmission plan. Entities that pay for the construction of transmission upgrades through participant funding will receive the FTRs that result from the transmission upgrades. Once the initial allocation of FTRs is completed, the RTO or ISO must operate a secondary market for holders of FTRs to voluntarily sell their FTRs to others.

The market mechanism for congestion management must be in place within one year after initial operation, unless the Commission approves a different timetable. As noted previously, the Commission will be flexible both as to timing and implementation based on regional differences and needs.

3. Parallel Path Flow

Order No. 2000. The RTO must develop and implement procedures to address parallel path flow issues within its region and with other regions. It will have three years to implement measures to address parallel path flows between regions.

Wholesale Market Platform. RTOs and ISOs will be required to perform this Function.

4. Ancillary Services

Order No. 2000. The RTO must serve as a provider of last resort of all ancillary services (including energy imbalance service) required by Order No. 888 and subsequent orders. The services must be included in the RTO administered tariff so that transmission customers will have access to one-stop shopping for transmission service. All market participants must have the option of self-supplying or acquiring ancillary services from third parties. The RTO must have the authority to decide the minimum required amounts of each ancillary service and, if necessary, the locations at which these services must be provided. All ancillary service providers must be subject to direct or indirect operational control by the RTO. The RTO must promote the development of competitive markets for ancillary services whenever feasible. To provide energy imbalance service, the RTO must ensure that its transmission customers have access to a real-time balancing market. The RTO must either develop and operate this market itself or ensure that this task is performed by another entity that is not affiliated with any market participant.

Wholesale Market Platform. The Final Rule would require RTOs and ISOs to perform this Function. In addition, the Final Rule would require the RTO or ISO itself to operate a security constrained real-time market for balancing.[9] The RTO or ISO would not be permitted to use a separate power exchange to perform this function. The RTO or ISO must also operate a day-ahead market for energy and a market for various ancillary services unless it is demonstrated that the costs exceed the benefits of such markets.

The spot market(s) operated by the RTO or ISO should facilitate price transparency (*i.e.*, for these spot markets the RTO or ISO should be required to provide on a timely basis, information about the availability and market price of sales of electric energy at wholesale in interstate commerce and transmission of electric energy in interstate commerce to the Commission, state commissions, buyers and sellers of wholesale electric energy, users of transmission services, and the public.)

Load-serving entities must also be able to schedule transmission for generation owned by or contracted for by that load-serving entity to meet a service obligation to customers or an existing wholesale obligation. Buyers, including intermittent resources, may procure power through these spot market(s) to meet their short-term energy needs. Sellers, including intermittent resources, may offer power for sale through the spot market(s).

The spot market(s) operated by the RTO or ISO must facilitate the ability of demand to respond to prices. The RTO or ISO must work with state authorities to facilitate any demand response programs operated under state retail tariffs. The RTO or ISO must also work with states that permit end users to directly access the wholesale market to facilitate state required demand response programs or to include appropriate demand response programs in the RTO's or ISO's tariff.

Where a locational pricing system is used for congestion management, the prices in these spot market(s) must be location specific for sellers (nodal). The RTO or ISO may use zonal or nodal prices for buyers. Under a zonal system, the prices paid by load would be aggregated for the zone (*e.g.*, a utility service territory).[10] A locational pricing system can use either cost-based bids or market-based bids to determine the locational prices.[11]

The RTO may charge for transmission losses within the region based on average or marginal losses.

5. OASIS and Total Transmission Capability (TTC) and Available Transmission Capability (ATC)

Order No. 2000. The RTO must be the single OASIS site administrator for all transmission facilities under its control and independently calculate TTC and ATC.

Wholesale Market Platform. RTOs and ISOs would be required to perform this Function.

6. Market Monitoring

Order No. 2000. The RTO must provide for objective monitoring of the markets it operates to identify design flaws, market power abuses, and opportunities for efficiency improvements, and must propose appropriate actions. Reports on these issues must be filed with the Commission and affected regulatory authorities. The Commission believes the information collected will be data that the RTO will collect or have access to in the normal course of business.

Wholesale Market Platform. The Final Rule would retain these features but would change the name and scope of this Function to Market Monitoring and Market Power Mitigation. The Final Rule would both expand and further define the role of market monitoring in the RTO or ISO. It would also expand this function to require the RTO or ISO and its market monitor to file market power mitigation measures that are needed for the market(s) operated by the RTO or ISO. Finally, the Final Rule would require that the RTO or ISO tariff include clear and enforceable rules to define and police market manipulation and gaming strategies.

The Final Rule would require that each RTO or ISO have an independent market monitor either for the individual RTO or ISO or for a larger region. The RTO or ISO tariff must contain appropriate market power mitigation measures to address market power problems in the spot markets. These mitigation measures must work together with measures on resource adequacy to ensure that the measures do not suppress prices below the level necessary to attract needed investment in infrastructure in the region.

The RTO or ISO tariff must also include a clear set of rules governing market participant conduct with the consequences for violations clearly spelled out. At a minimum these would include rules on: (1) Physical withholding of supplies; (2) economic withholding of supplies; (3) reporting on availability of units; (4) factual accuracy of information submitted to the RTO or ISO; (5) the obligation of market participants to provide information to the market monitor; (6) cooperation of market participants in investigations or audits conducted by the market monitor; and (7) the requirement that all bids that designate specific resources must be physically feasible.

The Final Rule would identify the reporting process that would be used if the market monitor thinks the markets are not resulting in just and reasonable prices or providing appropriate incentives for investment in needed infrastructure. This would include notification of the Commission, the regional state committee, and other appropriate state regulatory authorities of the nature of the problem and recommended solutions.

The Final Rule would also specify the periodic reports that the market monitor must prepare. The market monitor will provide annual reports on the state of its markets to the Commission, the regional state committee, and other appropriate state regulatory authorities. These reports will incorporate market metrics to provide a basis for measuring the performance of these markets across RTOs and ISOs, and to compare the performance of the market in each RTO or ISO over time. Metrics will also be developed to provide standard performance information on a monthly basis.

7. Planning and Expansion

Order No. 2000. The RTO must be responsible for planning, and for directing or arranging, necessary transmission expansions, additions, and upgrades that will enable it to provide efficient, reliable and non-discriminatory transmission service and coordinate such efforts with the appropriate state authorities. As part of this function, an RTO must encourage market-motivated operating and investment actions for preventing and relieving congestion. The RTO's planning and expansion process must accommodate efforts by state regulatory commissions to create multi-state agreements to review and approve new transmission facilities. The RTO planning and expansion process must be coordinated with programs of existing Regional Transmission Groups where appropriate. If the RTO is unable to satisfy this requirement when it commences operation, it must file with the Commission a plan with specified milestones that will ensure that it meets this requirement no later than three years after initial operation.

Wholesale Market Platform. The Final Rule would retain these features and also would modify this Function to

[6] In the proposed rule, we coined the term "Congestion Revenue Rights," or "CRRs," as a standard term to describe the tradable, financial rights that would take the place of the current "physical" rights to firm transmission service. We chose this term to accurately describe what the holder had a right to receive—congestion revenues associated with the held CRRs' specified receipt and delivery points and MW quantity. These rights mirror those of FTRs used in most power markets. Reaction to our replacing "FTR" with "CRR" was less than enthusiastic; many saw no need for a new term unless a CRR differs from an FTR. As there is no real difference, we will now use the term "FTR," or "Firm Transmission Right,".

[7] A similar transition requirement would apply to a congestion management system not based on locational pricing.

[8] Existing rights to service will be preserved. If necessary to meet these requirements, the RTO or ISO will create counterflow FTRs to make the aggregate set of FTRs physically feasible. If this results in a revenue shortfall, it could be recovered through an uplift charge.

[9] The spot market(s) operated by the RTO or ISO are intended only to supplement long-term supply arrangements.

[10] This approach is in operation in the New York Independent System Operator, Inc. Under that system, generators *see* location specific prices. Load sees an aggregate price for each zone. Each zone is based on the service territory of an individual transmission owner.

[11] When PJM Interconnection, L.L.C. first started using locational pricing it did so using cost-based bids. As a transitional measure, regions may wish to take a similar initial approach to start locational pricing.

provide that the RTO or ISO must satisfy this requirement as soon as practicable but no later than when it begins operation, rather than after three years of initial operation. The Final Rule would not change the decisions in prior RTO orders regarding the role that an Independent Transmission Company (ITC) could have in the regional planning process.[12]

The regional transmission plan must include all transmission facility expansions in the region. Thus, the RTO or ISO can assess the combined effect on loop flows and reliability of all existing and planned facilities, including transmission facility expansions for which the costs are not necessarily to be borne by all customers. However, we clarify that transmission owners and others may propose to build transmission enhancements. The RTO or ISO will assess the impact of these proposals in the regional transmission plan. In addition, the RTO or ISO may assess the need for transmission enhancements in view of opportunities for energy efficiency, demand response, and new generation technologies, consistent with the policy direction of the regional state committee on these issues.

The RTO or ISO must also be responsible for transmission planning, and for directing or arranging, necessary transmission expansions, additions, and upgrades that will enable it to reliably and economically serve the needs of all customers in the region, including historical and native load customers and their projected load growth. The RTO or ISO would include transmission upgrades in the regional plan that are necessary to maintain or improve reliability or to reduce congestion and improve access to lower cost supplies (economic enhancements).

Economic enhancements would be included in the regional transmission plan with the costs recovered through the license plate or postage stamp access charges, if it is prudent to do so from the perspective of native load in the region. For example, these projects could include transmission upgrades that: (1) Would resolve significant and persistent congestion within the region; (2) due to their size and scope, are unlikely to be undertaken as participant funded transmission upgrades; or (3) show positive benefits to the region using a cost benefit analysis that compares the cost to load within the region and the benefits to load within the region.

We will permit regional flexibility in determining the types of economic enhancements that would be recovered through the access charges.[13] Some RTO or ISO regions may choose an expansive definition of the types of economic enhancements that benefit customers within the region. Other RTO or ISO regions may choose to rely more on participant funding.

The RTO or ISO tariff would have a clear plan that states the non-discriminatory criteria that would be used for determining the reliability and economic enhancements that are needed for customers within the region. Each regional state committee may determine the criteria for these economic enhancements. If the regional state committee reaches a decision on the criteria that would be used, the RTO or ISO would file these criteria in a filing pursuant to section 205 of the FPA. If the regional state committee is unable to reach a decision, the RTO or ISO would file its own proposal pursuant to section 205 of the FPA.

The Final Rule would not require that the RTO or ISO use a Request for Proposal (RFP) process for transmission upgrades.

8. Interregional Coordination

Order No. 2000. The RTO must ensure the integration of reliability practices within an interconnection and market interface practices among regions.

Wholesale Market Platform. RTOs and ISOs would perform this Function. In addition, the Final Rule would require that RTOs and ISOs within an electrical interconnection coordinate to resolve seams issues. Additionally, as discussed above, RTOs and ISOs should coordinate to eliminate export fees where there is no significant trade imbalance between the regions.

Transmission Pricing

In addition to the above Characteristics and Functions of an RTO, Order No. 2000 also addressed transmission pricing reforms by RTOs.

Order No. 2000. RTOs may file for a variety of innovative rate reforms, including performance-based, returns on equity, non-traditional methods of determining depreciation schedules for new transmission investments, and incremental pricing for new transmission investments (which has since become known as participant funding). Some of these pricing reforms will be available only through January 1, 2005.

Wholesale Market Platform. The Final Rule would provide that both RTOs and ISOs would be eligible for the rate reforms identified in Order No. 2000.

The Final Rule would provide further clarification on when incremental pricing for new transmission facilities (participant funding) could be used. The cost of transmission projects that are determined through the regional planning process to be necessary to reliably and economically serve load in the region will be recovered through the access charge that is assessed to load in the region. As stated above, regions would have flexibility in determining the types of economic enhancements that would be recovered through the access charge. Some RTO or ISO regions may choose an expansive definition of the types of economic enhancements that benefit customers within the region. Other RTO or ISO regions may choose to rely more on participant funding.

These rate provisions would be revised to permit an optional transitional process that could be used for participant funding. For a transitional period, not to exceed a year, participant funding may be used for transmission upgrades for generator interconnection as soon as an independent entity has been approved by the Commission and the affected states. Using the regional criteria, the independent entity would make decisions on which transmission upgrades should be participant funded and which ones should not. These decisions would be made through a regional planning process conducted by an independent entity in which the independent entity is also responsible for conducting all necessary facility studies.[14] However, this transitional process is explicitly predicated on the assumption that this will be the first step towards the RTO or ISO satisfying the requirements of § 35.34 of the Commission's regulations.

Additional Requirements of the Wholesale Market Platform

In addition to the above changes to the existing requirements for RTOs, the Wholesale Market Platform would require the following:

1. Role of the States

Order No. 2000. Order No. 2000 recognizes that states have an important role in RTO formation and governance, and regional interests forming an RTO are required to consult with the states about the appropriate role for states and about the organizational form of the RTO. Although there were calls for the Commission to establish some form of regional regulation in Order No. 2000, the Commission decided, given the diversity of regional state interests and state laws, as well as differences in the organizational forms that RTOs may adopt, to decline to reach generic conclusions about states' roles. The Commission invited states to participate collaboratively with the FERC in fostering RTO formation.

Wholesale Market Platform. The Final Rule would retain the requirement for an important role for states in RTO or ISO formation. In addition, each RTO or ISO would be required to provide a forum for the participation of state representatives in its decision making process. The structure and functions of these groups will be determined by the states within the region. Each regional state committee will also decide how it will reach decisions, *e.g.*, unanimous support or simple majority. State commissions working with existing RTOs and ISOs have developed procedures that provide examples that could be used in other regions. In the Midwest, state commissions have proposed the establishment of a flexible regional organization, a "Midwest Multi-State Committee," that would provide coordinated action on matters that are subject to state jurisdiction as well as issues that relate to wholesale power markets and interstate transmission. In the mid-Atlantic region, state commissions have a memorandum of understanding with the RTO. Other procedures could also be used.

An RTO or ISO may propose to recover as part of its annual budget, the cost of reimbursing state officials' reasonable expenses incurred by serving on the regional state committee.

Each regional state committee would have the primary responsibility for determining the regional proposals for cost responsibility and the transition process listed below. The RTO or ISO will provide the regional state committee with technical assistance. If the regional state committee reaches a decision on the methodology that would be used, the RTO or ISO would file this methodology pursuant to section 205 of the FPA. If the regional state committee is unable to reach a decision, the RTO or ISO would file its own proposal pursuant to section 205 of the FPA.

- Whether, and to what extent, participant funding would be used within the region for transmission enhancements. This would include whether participant funding would be used on a transitional basis before the RTO or ISO assumes operational control of the transmission facilities.
- Whether license plate or postage stamp rates will be used for the access charge paid by load in the region.
- Where an RTO or ISO uses locational pricing, whether the region will allocate FTRs directly to customers or whether FTRs will be auctioned and the revenues from those auctions (Auction Revenue Rights or ARRs) allocated directly to customers.
- The transition process that will be used in the region to ensure that each existing firm customer receives FTRs or ARRs, based on the regional choice, equivalent to the customer's existing firm rights. This includes whether any revenue shortfalls would be recovered through an uplift charge that applies to all customers in the region or over a narrower class of customers, *e.g.*, only to customers in certain zones within the region.

Each regional state committee would determine the extent to which states within the region need to coordinate or have a consistent approach for certain planning issues that can affect cost responsibility among transmission owners and other load serving entities within the region. The RTO or ISO will provide the regional state committee with technical assistance. These include:

- Whether transmission upgrades for remote resources will be included in the regional transmission planning process.
- The role of transmission owners in proposing transmission upgrades.
- The role of generation, transmission, energy efficiency, and demand response in resource adequacy.

Each regional state committee will also be responsible for determining the resource adequacy approach that will be used across the entire region.

2. Resource Adequacy

Order No. 2000. Order No. 2000 has no provision for generation or demand response resource adequacy.

Wholesale Market Platform. Having sufficient available resources (generation, transmission, energy efficiency, demand response) is central to ensuring that wholesale power prices are just and reasonable and that service is reliable. The Final Rule will not require a uniform approach to resource adequacy. Rather, each regional state committee will be asked to determine the approach for resource adequacy across the entire region. The region may choose to use resource adequacy measures that are enforced by state regulation of utilities, enforced through the RTO or ISO tariff, *e.g.*, a capacity market, or other measures. The Final Rule will not set a minimum reserve margin.

The resource adequacy measures adopted by the region must work together with the region's market power mitigation measures to ensure that there are appropriate incentives to invest in sufficient infrastructure to maintain reliable and reasonably priced service to customers in the region.

3. Liability

The Final Rule would include standardized tariff provisions that limit the liability of RTOs and ISOs and transmission owners that belong to RTOs and ISOs. The tariff would provide that they would not be liable for any damages arising out of ordinary negligence. In instances of gross negligence, the RTO or ISO or the transmission owners that belong to RTOs or ISOs would only be liable for direct damages, and not for consequential or indirect damages. The same protections would also apply to generators when they are implementing the directives of the RTO or ISO. Courts will determine whether an action is negligent or grossly negligent.

4. Cyber Security

The Commission will adopt the North American Electric Reliability Council (NERC) standards on cyber security.

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[12] *See* TRANSLink Transmission Company, LLC, *et al.*, 99 FERC ¶ 61,106 (2002).

[13] As discussed below, the choice made by the region will affect the cost recovery for transmission upgrades. If a transmission upgrade is determined to be needed to reliably and economically serve load in the region, the costs will be recovered through the license plate or postage stamp access charges used by the region.

[14] *E.g.*, if ESBI were selected by the SeTrans Sponsors to be their proposed ISA and it received the necessary regulatory approvals, ESBI could serve this function for SeTrans RTO on an interim basis.

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

21 CFR Part 1310

[Docket No. DEA–176P]

RIN 1117–AA47

Sale by Federal Departments or Agencies of Chemicals Which Could Be Used in the Illicit Manufacture of Controlled Substances

AGENCY: Drug Enforcement Administration (DEA), Justice.

ACTION: Notice of proposed rulemaking.

SUMMARY: DEA is proposing to conform its regulations to provisions of the National Defense Authorization Act. This Act provides that a Federal department or agency may not sell from its stocks any chemical which could be used in the manufacture of a controlled substance unless the Administrator of DEA certifies in writing that there is no

reasonable cause to believe that such a sale would result in the illegal manufacture of a controlled substance. This rulemaking codifies current practice established pursuant to statutory authority by which Federal agencies provide DEA with the opportunity to ensure that the sale of chemicals by them will not result in the illegal manufacture of controlled substances.

DATES: Written comments must be submitted on or before July 7, 2003.

ADDRESSES: Comments should be submitted to the Deputy Administrator, Drug Enforcement Administration, Washington, DC 20537, Attention: DEA Federal Register Representative/CCR.

FOR FURTHER INFORMATION CONTACT: Patricia M. Good, Chief, Liaison and Policy Section, Office of Diversion Control, Drug Enforcement Administration, Washington, DC 20537, Telephone: (202) 307–7297.

SUPPLEMENTARY INFORMATION:

What Does the National Defense Authorization Act Require Federal Agencies To Do Before They May Sell Certain Chemicals?

Section 520 of the National Defense Authorization Act (Pub. L. 104–201) amended the Controlled Substances Act (CSA) to prohibit a Federal department or agency from selling from its stocks any chemical which, as determined by the Administrator of DEA, could be used in the manufacture of a controlled substance. However, the CSA as amended permits sales of such chemicals if the Administrator of DEA certifies in writing to the head of the selling Federal department or agency that there is no reasonable cause to believe that the sale of the chemical would result in the illegal manufacture of a controlled substance (21 U.S.C. 890).

Why Is DEA Taking This Action?

Since enactment of the National Defense Authorization Act in July 1996, DEA has worked with Federal departments and agencies to ensure compliance. Now, DEA plans to codify in its regulations the current practice that has been established pursuant to this statutory authority and the experience that DEA has gained from implementing these provisions.

How Does This Regulation Impact Federal Departments or Agencies?

This rule simply requires that the Federal department or agency notify DEA of the names of prospective bidders and end-users prior to the sale of chemicals which could be used in the manufacture of controlled substances. This notification will allow DEA to identify whether there is reasonable cause to believe that the sale of a specific chemical to a specific bidder or end-user would result in the illegal manufacture of a controlled substance. DEA will work with Federal departments and agencies to determine which chemicals could be used in the illicit manufacture of a controlled substance. To date, DEA has been contacted by only one Federal department or agency conducting sales of chemicals falling under the provisions of the Act, the Department of Defense (DOD). DEA has received the names of approximately fifty bidders and end-users from DOD and found, in every case, that there was no reasonable cause to believe that the sale of the specific chemical to the specific bidder and end-user would result in the illegal manufacture of a controlled substance. Therefore, DEA has certified each bidder and end-user whose name has been submitted by DOD to DEA.

What Chemicals Are Affected By These Implementing Regulations?

These implementing regulations affect any chemical which DEA determines could be used in the illicit manufacture of a controlled substance. Chemicals that can be used in the manufacture of a controlled substance include, but are not limited to, all List I and List II chemicals as provided in 21 CFR 1310.02. Further, any chemicals mentioned in the DEA "Special Surveillance List of Chemicals, Products, Materials and Equipment Used in the Clandestine Production of Controlled Substances or Listed Chemicals" published, and updated from time to time, in the **Federal Register** (64 FR 25910, May 13, 1999; corrected at 64 FR 50541, Sept. 17, 1999) are affected by these regulations. Finally, any chemical which is neither a listed chemical nor is listed in the special surveillance list but which could be used in the illicit manufacture of a controlled substance is affected by these implementing regulations. Such chemicals could include, but are not limited to, those chemicals used in the direct illegal manufacture of a controlled substance, those chemicals used as cutting agents, and those chemicals used to process the controlled substance into a dosage form. DEA strongly recommends that any Federal department or agency considering the sale of any chemical from its stocks contact DEA to determine whether such chemical could be used in the illicit manufacture of a controlled substance as far in advance of the sale of such chemical as possible.

What Do These Implementing Regulations Require?

DEA is proposing that a Federal department or agency notify the Administrator of DEA in writing at least 15 calendar days in advance of a proposed sale of chemicals covered by the Act. However, DEA strongly encourages Federal departments or agencies to notify it further in advance if possible.

By this rule, DEA is proposing that the written notification be submitted on official agency letterhead to the Drug Enforcement Administration, Office of Diversion Control, Domestic Chemical Control Unit (ODID) Washington, DC 20537 and include: (1) The name and amount of the chemical to be sold; (2) the name and address of the prospective bidder(s); (3) the name and address of the potential end-user(s), in cases where a sale is being brokered; (4) point(s) of contact for the prospective bidder and end-user; and (5) the end use of the chemical.

Within 15 calendar days from the date the written notification is received, DEA will respond in writing to the Federal department or agency certifying that there is, or is not, reasonable cause to believe that the sale of the specific chemical to the specific bidder and end-user would result in the illegal manufacture of a controlled substance. The certification that there is no reasonable cause to believe that the sale of the specific chemical to the specific bidder and end-user would result in the illegal manufacture of a controlled substance will apply to future sales to the same prospective bidder and end-user for the same chemical for one calendar year unless DEA notifies the agency to the contrary in writing.

What Factors Will DEA Consider in Certifying a Bidder or End-User?

In determining whether there is reasonable cause to believe that the sale of a specific chemical to a specific bidder or end-user would result in the illegal manufacture of a controlled substance, the Administrator will consider the following factors: (1) The prospective bidder's and end-user's past experience in the maintenance of effective controls against diversion of particular chemicals into other than legitimate medical, scientific, and industrial channels; (2) the prospective bidder's and end-user's compliance with applicable state and local law; (3) the prior conviction record of the prospective bidder and end-user relating to controlled substances or to chemicals controlled under Federal or state laws; and (4) such other factors as may be relevant to and consistent with the public health and safety.

What Recourse Is Available to a Bidder or End-user if DEA Refuses To Certify a Prospective Bidder or End-User or Withdraws an Existing Certification?

If the Administrator determines there is reasonable cause to believe the sale of a specific chemical to a specific bidder or end-user would result in the illegal manufacture of a controlled substance and refuses to certify a prospective bidder or end-user, DEA will notify both the Federal department or agency and the prospective bidder and end-user in writing. The written notice to the prospective bidder and end-user will contain a statement of the legal and factual basis for certifying that there is reasonable cause to believe the sale of the specific chemical to that specific person would result in the illegal manufacture of a controlled substance. The prospective bidder and end-user may, within thirty calendar days of notification, submit written comments or objections to the Administrator, providing reasons and supporting documentation to contest the decision. The Administrator will take the written comments or objections under consideration and will either (1) provide a written statement that affirms the original decision is final and that provides reasons why the written comments or objections are overruled or are not considered; or (2) confirm the written response and certify the transaction, thereby reversing the original decision.

If the Administrator determines that there is reasonable cause to believe that an existing certification must be withdrawn, DEA will notify both the Federal department or agency and the specific bidder and end-user in writing. The written notice to the specific bidder and end-user will contain a statement of the legal and factual basis for certifying that there is reasonable cause to believe the certification must be withdrawn. The bidder and end-user may, within thirty calendar days of notification, submit written comments or objections to the Administrator, providing reasons and supporting documentation to contest the decision. The Administrator will take the written comments or objections under consideration and will either (1) provide a written statement that affirms the original decision is final and that provides reasons why the written comments or objections are overruled or are not considered; or (2) confirm the written response and reinstate a certification, thereby reversing the original decision.

Regulatory Certifications

Regulatory Flexibility Act

The Administrator hereby certifies that this rulemaking has been drafted in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)), has reviewed this regulation, and by approving it certifies that this regulation will not have a significant economic impact on a substantial number of small entities. The rule only affects Federal departments or agencies which plan to sell from their stocks chemicals which could be used in the manufacture of a controlled substance. The rule provides DEA with advance notice of the sale and the opportunity to prevent sales of chemicals which could result in the illicit manufacture of controlled substances.

Executive Order 12866

The Administrator further certifies that this rulemaking has been drafted in accordance with the principles in Executive Order 12866, section 1(b). DEA has determined that this is not a significant rulemaking action. Therefore, this action has not been reviewed by the Office of Management and Budget.

Executive Order 12988

This regulation meets the applicable standards set forth in sections 3(a) and 3(b)(2) of Executive Order 12988 Civil Justice Reform.

Executive Order 13132

This rulemaking does not preempt or modify any provision of state law; nor does it impose enforcement responsibilities on any state; nor does it diminish the power of any state to enforce its own laws. Accordingly, this rulemaking does not have federalism implications warranting the application of Executive Order 13132.

Unfunded Mandates Reform Act of 1995

This rule will not result in the expenditure by state, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more in any one year, and will not significantly or uniquely affect small governments. Therefore, no actions were deemed necessary under the provisions of the Unfunded Mandates Reform Act of 1995.

Small Business Regulatory Enforcement Fairness Act of 1996

This rule is not a major rule as defined by section 804 of the Small Business Regulatory Enforcement Fairness Act of 1996. This rule will not result in an annual effect on the economy of $100 million or more; a major increase in costs or prices; or significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based companies to compete with foreign-based companies in domestic and export markets.

List of Subjects in 21 CFR Part 1310

Drug traffic control, Exports, Imports, Reporting and recordkeeping requirements.

For the reasons set out above, 21 CFR Part 1310 is proposed to be amended as follows:

PART 1310—[AMENDED]

1. The authority citation for Part 1310 is proposed to be revised to read as follows:

Authority: 21 U.S.C. 802, 830, 871(b), 890.

2. Part 1310 is proposed to be amended by adding §1310.21 to read as follows:

§ 1310.21 Sale by Federal departments or agencies of chemicals which could be used to manufacture controlled substances.

(a) A Federal department or agency may not sell from the stocks of the department or agency any chemical which, as determined by the Administrator of the Drug Enforcement Administration, could be used in the manufacture of a controlled substance, unless the Administrator certifies in writing to the head of the department or agency that there is no reasonable cause to believe that the sale of the specific chemical to a specific person would result in the illegal manufacture of a controlled substance. For purposes of this requirement, reasonable cause to believe means that the Administration has knowledge of facts which would cause a reasonable person to reasonably conclude that a chemical would be diverted to the illegal manufacture of a controlled substance.

(b) A Federal department or agency must request certification by submitting a written request to the Administrator, Drug Enforcement Administration, Washington, DC 20537, Attention: Domestic Chemical Control Unit (ODID). A request for certification may be transmitted directly to the Drug Enforcement Administration, Domestic Chemical Control Unit through electronic facsimile media. A request for certification must be submitted no later than 15 calendar days before the proposed sale is to take place. In order to facilitate the sale of chemicals from

Federal departments' or agencies' stocks, Federal departments or agencies may wish to submit requests as far in advance of the 15 calendar days as possible. The written notification of the proposed sale must include:

(1) The name and amount of the chemical to be sold;

(2) The name and address of the prospective bidder;

(3) The name and address of the prospective end-user, in cases where a sale is being brokered;

(4) Point(s) of contact for the prospective bidder and, where appropriate, prospective end-user; and

(5) The end use of the chemical.

(c) Within 15 calendar days of receipt of a request for certification, the Administrator will certify in writing to the head of the Federal department or agency that there is, or is not, reasonable cause to believe that the sale of the specific chemical to the specific bidder and end-user would result in the illegal manufacture of a controlled substance. In making this determination, the following factors must be considered:

(1) Past experience of the prospective bidder or end-user in the maintenance of effective controls against diversion of listed chemicals into other than legitimate medical, scientific, and industrial channels;

(2) Compliance of the prospective bidder or end-user with applicable state and local law;

(3) Prior conviction record of the prospective bidder or end-user relating to listed chemicals or controlled substances under Federal or state laws; and

(4) Such other factors as may be relevant to and consistent with the public health and safety.

(d) If the Administrator certifies to the head of a Federal department or agency that there is no reasonable cause to believe that the sale of a specific chemical to a prospective bidder and end-user will result in the illegal manufacture of a controlled substance, that certification will be effective for one year from the date of issuance with respect to further sales of the same chemical to the same prospective bidder and end-user, unless the Administrator notifies the head of the Federal department or agency in writing that the certification is withdrawn. If the certification is withdrawn, DEA will also provide written notice to the bidder and end-user, which will contain a statement of the legal and factual basis for this determination.

(e) If the Administrator determines there is reasonable cause to believe the sale of the specific chemical to a specific bidder and end-user would result in the illegal manufacture of a controlled substance, DEA will provide written notice to the head of a Federal department or agency refusing to certify the proposed sale under the authority of 21 U.S.C. 890. DEA also will provide, within fifteen calendar days of receiving a request for certification from a Federal department or agency, the same written notice to the prospective bidder and end-user, and this notice also will contain a statement of the legal and factual basis for the refusal of certification. The prospective bidder and end-user may, within thirty calendar days of receipt of notification of the refusal, submit written comments or written objections to the Administrator's refusal. At the same time, the prospective bidder and end-user also may provide supporting documentation to contest the Administrator's refusal. If such written comments or written objections raise issues regarding any finding of fact or conclusion of law upon which the refusal is based, the Administrator will reconsider the refusal of the proposed sale in light of the written comments or written objections filed. Thereafter, within a reasonable time, the Administrator will withdraw or affirm the original refusal of certification as he determines appropriate. The Administrator will provide written reasons for any affirmation of the original refusal. Such affirmation of the original refusal will constitute a final decision for purposes of judicial review under 21 U.S.C. 877.

(f) If the Administrator determines there is reasonable cause to believe that an existing certification should be withdrawn, DEA will provide written notice to the head of a Federal department or agency of such withdrawal under the authority of 21 U.S.C. 890. DEA also will provide, within fifteen calendar days of withdrawal of an existing certification, the same written notice to the bidder and end-user, and this notice also will contain a statement of the legal and factual basis for the withdrawal. The bidder and end-user may, within thirty calendar days of receipt of notification of the withdrawal of the existing certification, submit written comments or written objections to the Administrator's withdrawal. At the same time, the bidder and end-user also may provide supporting documentation to contest the Administrator's withdrawal. If such written comments or written objections raise issues regarding any finding of fact or conclusion of law upon which the withdrawal of the existing certification is based, the Administrator will reconsider the withdrawal of the existing certification in light of the written comments or written objections filed. Thereafter, within a reasonable time, the Administrator will withdraw or affirm the original withdrawal of the existing certification as he determines appropriate. The Administrator will provide written reasons for any affirmation of the original withdrawal of the existing certification. Such affirmation of the original withdrawal of the existing certification will constitute a final decision for purposes of judicial review under 21 U.S.C. 877.

Dated: April 25, 2003.

John B. Brown III,

Acting Administrator.

[FR Doc. 03–11393 Filed 5–7–03; 8:45 am]

BILLING CODE 4410–09–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 60

[AD–FRL–7496–1]

RIN 2060–AH23

Amendments to Standards of Performance for New Stationary Sources; Monitoring Requirements

AGENCY: Environmental Protection Agency.

ACTION: Proposed rule and request for public comments.

SUMMARY: In this proposal we, the Environmental Protection Agency (EPA), propose to add Procedure 3, Quality Assurance Requirements for Continuous Opacity Monitoring Systems at Stationary Sources, to the regulations. This action provides quality assurance/quality control procedures for a continuous opacity monitoring system (COMS) used for compliance purposes. We are seeking public comments on this proposal.

DATES: *Comments.* You must submit comments so that they are received on or before July 7, 2003.

Public Hearing. If a public hearing has been requested, and anyone contacts us requesting to speak at a public hearing by May 22, 2003, a public hearing will be held on August 6, 2003 beginning at 9 a.m. EST. If you are interested in attending the hearing, you must call the contact person listed below (see **FOR FURTHER INFORMATION CONTACT**). If a hearing is held, rebuttal and supplementary information may be submitted to the docket for 30 days following the hearing.

Request to Speak at Hearing. If you wish to present oral testimony at the public hearing, you must call the contact person listed below (see **FOR FURTHER INFORMATION CONTACT**) by July 7, 2003.

ADDRESSES: *Comments.* Comments may be submitted electronically, by mail, by facsimile, or through hand delivery/courier. Follow the detailed instructions as provided in Section I of the **SUPPLEMENTARY INFORMATION** section. The EPA requests a separate copy also be sent to the contact person listed in **FOR FURTHER INFORMATION CONTACT.**

Public Hearing. If a public hearing is held, it will be held at the EPA campus in Research Triangle Park, North Carolina. You should contact Mr. Solomon Ricks, Source Measurement Analysis Group, Emissions, Monitoring, and Analysis Division (D243–02), U. S. EPA, Research Triangle Park, North Carolina 27711, telephone number (919) 541–5242, to request to speak at a public hearing or to find out if a hearing will be held.

FOR FURTHER INFORMATION CONTACT: Mr. Solomon Ricks, Source Measurement Analysis Group, Emissions, Monitoring, and Analysis Division (D243–02), U. S. EPA, Research Triangle Park, North Carolina 27711; telephone number (919) 541–5242; facsimile number (919) 541–1039; electronic mail (e-mail) address: *ricks.solomon@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. General Information

A. How Can I Get Copies of Related Information?

1. *Docket.* EPA has established an official public docket for this action under Docket ID No. A–91–08. The official public docket is the collection of materials that is available for public viewing at the Air and Radiation Docket in the EPA Docket Center, (EPA/DC) EPA West, Room B102, 1301 Constitution Ave., NW., Washington, DC. The EPA Docket Center Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Reading Room is (202) 566–1744, and the telephone number for the Air and Radiation Docket is (202) 566–1742.

2. *Electronic Access.* An electronic version of the public docket is available through EPA's electronic public docket and comment system, EPA Dockets. You may use EPA Dockets at *http://www.epa.gov/edocket/* to submit or view public comments, access the index listing of the contents of the official public docket, and to access those documents in the public docket that are available electronically. Once in the system, select "search," then key in the appropriate docket identification number.

Certain types of information will not be placed in the EPA Dockets. Information claimed as confidential business information ("CBI") and other information whose disclosure is restricted by statute, which is not included in the official public docket, will not be available for public viewing in EPA's electronic public docket. EPA's policy is that copyrighted material will not be placed in EPA's electronic public docket but will be available only in printed, paper form in the official public docket. Although not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the docket facility identified in Section I.B.

For public commenters, it is important to note that EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing in EPA's electronic public docket as EPA receives them and without change, unless the comment contains copyrighted material, CBI, or other information whose disclosure is restricted by statute. When EPA identifies a comment containing copyrighted material, EPA will provide a reference to that material in the version of the comment that is placed in EPA's electronic public docket. The entire printed comment, including the copyrighted material, will be available in the public docket.

Public comments submitted on computer disks that are mailed or delivered to the docket will be transferred to EPA's electronic public docket. Public comments that are mailed or delivered to the Docket will be scanned and placed in EPA's electronic public docket. Where practical, physical objects will be photographed, and the photograph will be placed in EPA's electronic public docket along with a brief description written by the docket staff.

For additional information about EPA's electronic public docket visit EPA Dockets online or see 67 FR 38102, May 31, 2002.

B. How and to Whom Do I Submit Comments?

You may submit comments electronically, by mail, by facsimile, or through hand delivery/courier. To ensure proper receipt by EPA, identify the appropriate docket identification number in the subject line on the first page of your comment. Please ensure that your comments are submitted within the specified comment period. Comments received after the close of the comment period will be marked "late." EPA is not required to consider these late comments.

1. *Electronically.* If you submit an electronic comment as prescribed below, EPA recommends that you include your name, mailing address, and an e-mail address or other contact information in the body of your comment. Also include this contact information on the outside of any disk or CD ROM you submit, and in any cover letter accompanying the disk or CD ROM. This ensures that you can be identified as the submitter of the comment and allows EPA to contact you in case EPA cannot read your comment due to technical difficulties or needs further information on the substance of your comment. EPA's policy is that EPA will not edit your comment, and any identifying or contact information provided in the body of a comment will be included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment.

i. *EPA Dockets.* Your use of EPA's electronic public docket to submit comments to EPA electronically is EPA's preferred method for receiving comments. Go directly to EPA Dockets at *http://www.epa.gov/edocket,* and follow the online instructions for submitting comments. Once in the system, select "search," and then key in Docket ID No. A–91–08. The system is an "anonymous access" system, which means EPA will not know your identity, e-mail address, or other contact information unless you provide it in the body of your comment.

ii. *E-mail.* Comments may be sent by electronic mail (e-mail) to *A-and-R-Docket@epa.gov,* Attention Docket ID No. A–91–08. In contrast to EPA's electronic public docket, EPA's e-mail system is not an "anonymous access" system. If you send an e-mail comment directly to the Docket without going through EPA's electronic public docket, EPA's e-mail system automatically captures your e-mail address. E-mail addresses that are automatically captured by EPA's e-mail system are included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket.

iii. *Disk or CD ROM.* You may submit comments on a disk or CD ROM that

you mail to the mailing address identified in Section I.B.2. These electronic submissions will be accepted in WordPerfect or ASCII file format. Avoid the use of special characters and any form of encryption.

2. *By Mail.* Send your comments to: Air and Radiation Docket, U.S. Environmental Protection Agency, Mailcode: 6102T, 1200 Pennsylvania Ave., NW., Washington, DC, 20460, Attention Docket ID No. A–91–08.

3. *By Hand Delivery or Courier.* Deliver your comments to: Air and Radiation Docket, U.S. Environmental Protection Agency (West), 1301 Constitution Ave., NW., Room B–102, Washington, DC, 20004, Attention Docket ID No. A–91–08. Such deliveries are only accepted during the Docket's normal hours of operation as identified in Section I.A.1.

II. Outline

We provided the following outline to aid in reading the preamble to this proposal.

I. Introduction
A. Regulatory History of the Proposed Rule
II. Differences between Proposed Method 203 and the Proposed Rule (Procedure 3)
A. Quarterly Performance Audit
B. Corrective Action Section
C. Replacement Opacity Monitors
III. Administrative Requirements
A. Executive Order 12866, Regulatory Planning and Review
B. Paper Reduction Act
C. Regulatory Flexibility Act
D. Unfunded Mandates Reform Act
E. Executive Order 13132, Federalism
F. Executive Order 13175, Consultation and Coordination with Indian Tribal Governments
G. Executive Order 13045, Protection of Children from Environmental Health and Safety Risks
H. Executive Order 13211, Actions that Significantly Affect Energy Supply, Distribution, or Use
I. National Technology Transfer Advancement Act

I. Introduction

A. Regulatory History of the Proposed Rule

Procedure 3, Quality Assurance (QA) Requirements for Continuous Opacity Monitoring Systems at Stationary Sources, was originally published in the **Federal Register** on October 7, 1992 (57 FR 46114) as Method 203. At that time, it was proposed as an addition to appendix M, Example Test Methods for State implementation plans (SIP's), in 40 CFR part 51. Concurrently, work was underway to update and revise Performance Specification 1 (PS–1), Performance Specifications for a Continuous Opacity Monitoring System (COMS). It was decided to postpone further work on Method 203 until the revisions to PS–1 were promulgated. Revisions to PS–1 were published in the **Federal Register** on November 25, 1994 (59 FR 60585). Comments on the November 1994 proposal revealed some concern and confusion with the design specifications and with the test procedures to verify compliance with the design specifications. To ensure adequate understanding of the technical issues uncovered in the comments, a public stakeholders' meeting was held on June 12, 1996. As a result of that meeting, representatives from the American Society for Testing and Materials (ASTM) D22.03, a Subcommittee on Ambient Atmospheres and Source Emissions, volunteered to undertake development of a standard practice for opacity monitor manufacturers.

On September 23, 1998, we published a supplemental proposal in the **Federal Register** (63 FR 50824) to incorporate ASTM D 6216–98 by reference into the proposed revisions to PS–1. After addressing the comments from the supplemental proposal, we published PS–1 as a final rule in the **Federal Register** on August 10, 2000 (65 FR 48914).

Following the promulgation of PS–1, we formed a stakeholders' group to address technical concerns, similar to the concerns revealed in PS–1, with Method 203 as it was originally proposed. The stakeholders' group was open to the public and consisted of opacity monitor manufacturers, representatives from the ASTM D22.03 subcommittee, State/local, and regional office personnel. After holding a series of phone conferences, we decided to re-write and re-propose Method 203. The re-write takes into account technological advances in the design and manufacture of opacity monitors, as well as the revisions to PS–1. We decided to re-propose the method as an additional procedure, Procedure 3, to be added to 40 CFR part 60, appendix F, Quality Assurance Procedures for Continuous Emission Monitoring Systems. Today's proposal provides you the opportunity to comment on the changes made to Method 203 (Procedure 3) since its original proposal in October 1992, including the codification of Procedure 3 in the aforementioned appendix. Comments are not limited to the changes contained in this proposal; you may comment on Procedure 3 in its entirety. It is for this reason we are allowing a 60-day comment period.

II. Differences Between Proposed Method 203 and the Proposed Rule (Procedure 3)

A. Quarterly Performance Audit

In re-writing Method 203 we determined that, because of technological advancements in opacity monitors, requirements proposed in October 1992 were no longer necessary. Specifically, regarding the quarterly performance audits, we decided to delete the optical surface dust accumulation check, the stack exit correlation error (pathlength correction factor) check, as well as the zero and upscale response checks.

The design specifications outlined in ASTM D 6216–98, incorporated by reference into PS–1, requires manufacturers to build opacity monitors capable of adjusting the reading due to the accumulation of dust on exposed optical surfaces. Opacity monitors are also required to display the level of dust accumulation. We also determined it to be in the source's best interest to be aware of dust accumulation on a regular basis, since the result of dust accumulation would lead to higher opacity readings.

The stack exit correlation error (pathlength correction factor [PLCF]) was deleted because opacity monitor manufacturers are required to certify the system has been built so that the PLCF either cannot be changed, is recorded during each calibration cycle, or an alarm sounds when the value is changed from the certified value.

The quarterly zero and upscale response checks were deleted because the calibration drift checks (zero and upscale) are required on a daily basis. We determined that requiring zero and upscale response checks in addition to the calibration drift checks offered no additional benefits in verifying the performance of the COMS.

B. Corrective Action Section

Procedure 3 includes a new section describing the corrective action required to return an opacity monitor to normal operation after a specified maintenance or repair procedure has been executed in response to a monitor failure or pending failure. After successful completion of the applicable corrective action, the monitor can be returned to an on-line status which provides valid emission monitoring data as long as the on-going QA requirements are met.

The corrective action section establishes four classes of maintenance and repair procedures: (1) Routine/preventative maintenance, (2) Measurement non-critical repairs, (3) Measurement critical repairs, and (4) Rebuilt or refurbished analyzers. A table is included detailing the diagnostic tests required to maintain PS–1 certification following the appropriate corrective action.

C. Replacement Opacity Monitors

Procedure 3 also allows the use of a temporary replacement monitor in the event a certified opacity monitor is removed for extended service and the repair of the monitor requires more downtime than the user wishes to incur. The use of a replacement monitor will be allowed provided the monitor meets requirements specified in Procedure 3.

III. Statutory and Executive Order Reviews

A. Executive Order 12866, Regulatory Planning and Review

Under Executive Order 12866 (58 FR 51735, October 4, 1993), we are required to judge whether a regulatory action is "significant" and therefore subject to Office of Management and Budget (OMB) review and the requirements of this Executive Order. The Order defines "significant regulatory action" as one that is likely to result in a rule that may:

(1) Have an annual effect on the economy of $100 million or more, or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities;

(2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs, or the rights and obligation of recipients thereof; or

(4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

Pursuant to the terms of Executive Order 12866, we have determined that this rule is not "significant" because none of the listed criteria apply to this action. That is, this proposed rule, if promulgated, would not establish independent requirements for regulated entities. It would only apply where PS–1 is specified as the applicable method to demonstrate compliance with national emission standards or other control requirements. Consequently, this action was not submitted to OMB for review under Executive Order 12866.

B. Paperwork Reduction Act

This proposed rule does not contain any information collection requirements subject to the Office of Management and Budget review under the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 *et seq.*

C. Regulatory Flexibility Act

The RFA generally requires an agency to prepare a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements under the Administrative Procedure Act (APA) or any other statute unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small organizations, and small governmental jurisdictions.

For purposes of assessing the impacts of today's rule on small entities, small entity is defined as: (1) A small business whose parent company has fewer than 750 employees; (2) a small governmental jurisdiction that is a government of a city, county, town, school district or special district with a population of less than 50,000; and (3) a small organization that is any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.

After considering the economic impacts of today's proposed rule on small entities, I certify that this action will not have a significant economic impact on a substantial number of small entities because no significant additional cost will be incurred by such entities because of the proposed rule. The requirements of the proposal details quality assurance (QA)/quality control (QC) procedures for COMS to demonstrate continued conformance with PS–1. Facilities required by other rules to use COMS for compliance purposes have some form of QA/QC in place already; this proposal adds only minor additional requirements.

Although this proposed rule will not have a significant economic impact on a substantial number of small entities, EPA nonetheless has tried to reduce the impact of this rule on small entities. We formed a stakeholders' group to address technical concerns, similar to the concerns revealed in PS–1, with the proposed rule. The stakeholders' group was open to the public and consisted of opacity monitor manufacturers, representatives from the ASTM D22.03 subcommittee, representatives from electric utilities, State/local, and regional office personnel. We continue to be interested in the potential impacts of the proposed rule on small entities and welcome comments on issues related to such impacts.

D. Unfunded Mandates Reform Act of 1995

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. Under Section 202 of the UMRA, we must prepare a budgetary impact statement to accompany any proposed rule, or any final rule for which a notice of proposed rulemaking was published, that includes a Federal mandate that may result in estimated costs to State, local, or tribal governments in the aggregate, or to the private sector, of $100 million or more in any one year. Under Section 205, if a budgetary impact statement is required under Section 202, we must select the least costly, most cost-effective, or least burdensome alternative that achieves the objective of the rule, unless we explain why this alternative is not selected or the selection of this alternative is inconsistent with law. Section 203 requires us to establish a plan for informing and advising any small governments that may be significantly or uniquely impacted by the rule. Section 204 requires us to develop a process to allow elected State, local, and tribal government officials to provide input in the development of any proposal containing a significant Federal intergovernmental mandate.

We have determined that this proposed rule does not include a Federal mandate that may result in estimated costs of $100 million or more to either State, local, or tribal governments in the aggregate, or to the private sector in any one year. Rules establishing test methods and/or quality assurance requirements impose no costs independent from national emission standards which require their use, and such costs are fully reflected in the regulatory impact assessment for those emission standards. We have also determined that this proposed rule does not significantly or uniquely impact small governments. Therefore, today's rule is not subject to the requirements of Section 203 of the UMRA.

E. Executive Order 13132, Federalism

Executive Order 13132, entitled "Federalism" (64 FR 43255, August 10, 1999), requires that we develop an accountable process to ensure "meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications."

"Policies that have federalism implications" is defined in the

Executive Order to include regulations that have "substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government." Under Section 6 of Executive Order 13132, we may not issue a regulation that has federalism implications, that imposes substantial direct compliance costs, and that is not required by statute, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by the State and local governments, or we consult with State and local officials early in the process of developing the proposed regulation. We also may not issue a regulation that has federalism implications and that preempts State law unless we consult with State and local officials early in the process of developing the proposed regulation.

This proposed rule will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132. Thus, the requirements of Section 6 of the Executive Order do not apply to this proposed rule.

F. Executive Order 13175, Consultation and Coordination With Indian Tribal Governments

Executive Order 13175, entitled "Consultation and Coordination with Indian Tribal Governments" (65 FR 67249, November 6, 2000), requires EPA to develop an accountable process to ensure "meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications." "Policies that have tribal implications" is defined in the Executive Order to include regulations that have "substantial direct effects on one or more Indian tribes, on the relationship between the Federal government and the Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes."

This proposed rule does not have tribal implications, as specified in Executive Order 13175. Thus, Executive Order 13175 does not apply to this rule.

G. Executive Order 13045, Protection of Children From Environmental Health Risks and Safety Risks

Executive Order 13045 (62 FR 19885, April 23, 1997) applies to any rule that: (1) is determined to be "economically significant" as defined under Executive Order 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, EPA must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives that EPA considered. This proposed rule is not subject to Executive Order 13045 because it is not economically significant under Executive Order 12866 and because it does not concern environmental health and safety risks.

H. Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use

This rule is not subject to Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use" (66 FR 28355, May 22, 2001) because it is not expected to have a significant adverse affect on the supply, distribution, or use of energy.

I. National Technology Transfer and Advancement Act of 1995

The National Technology Transfer and Advancement Act of 1995 (NTTAA), Section 12(d), Public Law 104–113, requires Federal agencies and departments to use voluntary consensus standards instead of government-unique standards in their regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (*e.g.*, material specifications, test method, sampling and analytical procedures, business practices, etc.) that are developed or adopted by one or more voluntary consensus standards bodies. Examples of organizations generally regarded as voluntary consensus standards bodies include the American Society for Testing and Materials (ASTM), the National Fire Protection Association (NFPA), and the Society of Automotive Engineers (SAE). The NTTAA requires federal agencies like us to provide Congress, through OMB, with explanations when an agency decides not to use available and applicable voluntary consensus standards.

During this rulemaking, we identified no voluntary consensus standards that might be applicable. Specifically, there were none which specified quality assurance/quality control procedures for continuous opacity monitoring systems.

List of Subjects in 40 CFR Part 60

Environmental protection, Air pollution control, Continuous opacity monitoring.

Dated: May 2, 2003.

Christine Todd Whitman,

Administrator.

We propose that 40 CFR part 60 be amended as follows:

1. The authority citation for part 60 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

2. Appendix F of part 60 is amended by adding Procedure 3 to read as follows:

Appendix F to Part 60—Quality Assurance Procedures

* * * * *

Procedure 3—Quality Assurance Requirements for Continuous Opacity Monitoring Systems at Stationary Sources

1. What Are the Purpose and Applicability of Procedure 3? The purpose of Procedure 3 is to help implement procedures established by Performance Specification 1 (PS–1) for testing and verification of continuous opacity monitoring systems (COMS) applicable to new stationary sources by establishing the minimum quality control (QC) and quality assurance (QA) requirements to assess and assure the quality of a continuous opacity monitoring system (COMS). Procedure 3 applies to a COMS used for continuously determining compliance with emission standards as specified in an applicable federally enforceable regulation.

1.1 Who must comply with Procedure 3? You must comply with Procedure 3 if you are required by a federally enforceable regulation to install and operate a COMS on a continuous basis.

1.2 What are the data quality objectives of Procedure 3? The overall data quality objective (DQO) of Procedure 3 is the generation of valid, representative opacity data. Procedure 3 specifies the minimum requirements for controlling and assessing the quality of COMS data submitted to us or the delegated regulatory agency. Procedure 3 requires you to perform periodic evaluations of a COMS performance and to develop and implement QA/QC programs to ensure that a COMS data quality is maintained. You must meet these minimum requirements if you are responsible for one or more COMS used for compliance monitoring.

1.3 What is the intent of the QA/QC procedures found in Procedure 3? Procedure 3 is intended to establish the minimum requirements to verify and maintain an acceptable level of quality of the data produced by COMS. Its general terms are intended to allow you to develop a program that is most effective for your circumstances. You may adopt QA/QC procedures which go beyond these minimum requirements to ensure compliance with applicable regulations.

1.4 When must I comply with Procedure 3? You must comply with Procedure 3 following successful completion of the field audit performance tests outlined in PS–1.

2. What are the basic functions of Procedure 3? The basic functions of Procedure 3 are assessment of the quality of your COMS data, and control and improvement of the quality of the data by implementing QC requirements and corrective actions. Procedure 3 provides requirements for:

(1) Daily instrument zero and upscale drift checks, as well as daily status indicators check,

(2) Quarterly performance audits, which includes the following assessments:

(i) Optical alignment,

(ii) Calibration error,

(iii) Zero compensation, and

(3) Zero alignment.

3. What Special Definitions Apply to Procedure 3? The definitions of Procedure 3 include those provided in PS–1 and ASTM D 6216–98 (incorporated by reference into PS–1), with the following additions:

3.1 *Out-of-Control Periods.* "Out of control" means that one or more COMS parameters falls outside of the acceptable limits established by this rule.

(1) *Daily Assessments.* Whenever the calibration drift (CD) exceeds twice the specification of PS–1, the COMS is out-of-control. The beginning of the out-of-control period is the time corresponding to the completion of the daily calibration drift check. The end of the out-of-control period is the time corresponding to the completion of appropriate adjustment and subsequent successful CD assessment.

(2) *Quarterly and Annual Assessment.* Whenever a quarterly performance audit or annual zero alignment indicates unacceptable results, the COMS is out-of-control. The beginning of the out-of-control period is the time corresponding to the completion of the performance audit indicating an unacceptable performance. The end of the out-of-control is the time corresponding to the completion of appropriate corrective actions and subsequent successful audit (or, if applicable, partial audit).

4. What interferences must I avoid? Opacity cannot be measured accurately in the presence of water droplets. Thus, COMS opacity compliance determinations cannot be made when water droplets are present such as downstream of a wet scrubber without reheat or other saturated flue gas locations. Therefore, COMS must be located to avoid interferences with moisture or water droplets.

5. What Do I Need to Know to Ensure the Safety of Persons Using Procedure 3? People using Procedure 3 may be exposed to hazardous materials, operations, and equipment. Procedure 3 does not purport to address all of the safety issues associated with its use. It is your responsibility to establish appropriate safety and health practices, and determine the applicable regulatory limitations before performing this procedure. You should consult the COMS user's manual for specific precautions to take.

6. What Equipment and Supplies Do I Need? The equipment and supplies you need are those specified in PS–1.

7. What Reagents and Standards Do I Need? The reagents and standards you need are those specified in PS–1.

8. What Sample Collection, Preservation, Storage, and Transport Are Relevant to This Procedure? [Reserved]

9. What Quality Control Measures Are Required by This Procedure for My COMS? You must develop and implement a QC program for your COMS. Your QC program must, at a minimum, include written procedures which describe in detail complete step-by-step procedures and operations for the activities in paragraphs (1) through (4):

(1) Procedures for performing drift checks, including both zero and upscale drift, and the status indicators check,

(2) Procedures for performing the quarterly performance audits,

(3) A means of checking the zero alignment of the COMS, and

(4) A program of corrective action for a malfunctioning COMS. The corrective action must include, at a minimum, the requirements specified in Section 10.5.

9.1 What QA/QC documentation must I have? You are required to keep the QA/QC written procedures on record and available for inspection by us, the State and/or local enforcement agency for the life of your COMS or until you are no longer subject to the requirements of this procedure.

9.2 What are the consequences of failing QC audits? Your QC procedures are deemed to be inadequate or your COMS incapable of providing quality data if you fail two consecutive QC audits (*i.e.*, out-of-control conditions revealed by the annual audits or quarterly audits). Therefore, if you fail the same two consecutive quarterly audits or five consecutive daily checks, you must either revise your QC procedures or repair (or replace) your COMS to correct the deficiencies causing the excessive inaccuracies. If you determine your COMS requires extensive repair, you may use a substitute COMS provided the substitute meets the requirements specified in Section 10.6.

10. What Calibration and Standardization Procedures Must I Perform for My COMS? You must perform routine system checks to assure proper operation of system electronics and optics, light and radiation sources and detectors, electric or electro-mechanical systems, and general stability of the system calibration. You must subject your COMS to a performance audit, to include checks of the individual COMS components and factor affecting the accuracy of the monitoring data, at least once per calendar quarter. At least annually, you must compare the COMS simulated zero to the actual clear path zero.

10.1 What routine system checks must I perform on my COMS? Necessary components of the routine system checks will depend upon design details of your COMS. At a minimum, you must verify the system operating parameters listed in paragraphs (1) through (3) on a daily basis. Some COMSs may perform one or more of these functions automatically, or as an integral portion of unit operations; other COMS may perform one or more of these functions manually.

(1) You must check the zero drift to assure stability of your COMS response to the zero check value. The simulated zero device, an automated mechanism within the transmissometer that produces a simulated clear path condition or low-level opacity condition, is used to check zero drift. You must, at a minimum, take corrective action on your COMS whenever the daily zero drift exceeds twice the applicable drift specification given in appendix B.

(2) You must check the upscale drift to assure stability of your COMS response to the upscale drift value. The upscale calibration device, an automated mechanism (employing a filter or reduced reflectance device) within the transmissometer that produces an upscale opacity value, is used to check the upscale drift. You must, at a minimum, take corrective action on your COMS whenever the daily upscale drift check exceeds twice the applicable drift specification given in appendix B.

(3) You must, at a minimum, check the status indicators, data acquisition system error messages, and other system self-diagnostic indicators. You must take appropriate corrective actions based on manufacturer's recommendations when the COMS is operating outside preset limits. All COMS data recorded during periods in which the fault status indicators are illuminated are to be considered invalid.

10.2 What are quarterly auditing requirements for my COMS? At a minimum, the parameters listed in paragraphs (1) through (3) are to be included in the quarterly performance audit.

(1) For units with automatic zero compensation, you must determine the zero compensation for the COMS. The value of the zero compensation applied at the time of the audit must be calculated as equivalent opacity, corrected to stack exit conditions, according to the procedures specified by the manufacturer. The compensation applied to the effluent recorded by the monitor system must be recorded.

(2) You must conduct a three-point calibration error test of the COMS. For either calibration error test methods identified below, three neutral density filters, meeting the requirements of PS–1, must be placed in the COMS light beam path for three nonconsecutive readings. The monitor responses must then be independently recorded from the COMS permanent data recorder. Additional guidance for conducting this test is included in section 8.1(3)(ii) of PS–1. The low-, mid-, and high-range calibration error results must be computed as the mean difference and 95 percent confidence interval for the difference between the expected and actual responses of the monitor as corrected to stack exit conditions. The equations necessary to perform the calculations are found in section 12.0 of PS–1. For the calibration error method, you must use the external audit device. You must confirm that the external audit device produces the proper zero value on the COMS data recorder.

(3) You must check the optical alignment of the COMS. The optical alignment must be checked when the stack temperature is ± 20 percent of the typical operating temperature as measured in degrees Farenheit.

10.3 What are the annual auditing requirements for my COMS?

(1) You must perform the primary zero alignment method under clear path conditions. The COMS may be removed from its installation and setup under clear path conditions or, if the process is not operating and the monitor path is free of particulate matter, the zero alignment may be conducted at the installed site. Determining if the monitor path is free of particulate matter can be accomplished by, but is not limited to, the following procedure: (1) Observe the instantaneous or one minute average opacity for at least two hours prior to the clear path adjustment; (2) open the reflector or detector housing and observe the projected light beam and look for the presence of forward scattered light (halo-effect); (3) if the beam observation reveals no perceptible particulate and the 2-hour readings do not vary more than ± 3 percent opacity, adjust the clear path zero based on the lowest opacity reading recorded during the 2-hour period. There must be no adjustments to the monitor other than the establishment of the proper monitor path length and correct optical alignment of the COMS components. You must record the COMS response to a clear condition and to the COMS's simulated zero condition as percent opacity corrected to stack exit conditions. For a COMS with automatic zero compensation, you must disconnect or disable the zero compensation mechanism or record the amount of correction applied to the COMS's simulated zero condition. The response difference in percent opacity to the clear path and simulated zero conditions must be recorded as the zero alignment error. You must adjust the COMS's simulated zero device to provide the same response as the clear path condition. You must perform the zero alignment audits with the COMS off the stack at least every three (3) years.

(2) As an alternative, monitors capable of allowing the installation of an external zero device (commonly referred to as a zero-jig) may use the device for the zero alignment, provided: (1) the zero-jig setting has been established for the monitor path length and recorded for the specific COMS by comparison of the COMS responses to the installed zero-jig and to the clear path condition; and (2) the zero-jig is demonstrated to be capable of producing a consistent zero response when it is repeatedly (*i.e.*, three consecutive installations and removals prior to conducting the final zero alignment check) installed on the COMS. The zero-jig setting must be permanently set at the time of initial zeroing to the clear path zero value and protected when not in use to ensure that the setting equivalent to zero opacity does not change. The zero-jig setting must be checked and recorded prior to initiating the zero alignment. If the zero-jig setting has changed, you must remove the COMS from the stack in order to reset the zero-jig. If you employ a zero-jig, you must perform the zero alignment audits with the COMS off the stack every three (3) years. If the zero-jig is adjusted within the three-year period, you must perform the zero alignment with the COMS off the stack three years from the date of adjustment.

10.4 What are my limits for excessive audit inaccuracy? Unless specified otherwise in the applicable subpart, the criteria for excessive inaccuracy are listed in paragraphs (1) through (4).

(1) What is the criterion for excessive zero or upscale drift? Your COMS is out-of-control if either the zero drift check or upscale drift check exceeds twice the applicable drift specification in appendix B for any one day.

(2) What is the criterion for excessive zero alignment? Your COMS is out-of-control if the zero alignment exceeds 2 percent opacity.

(3) What is the criterion to pass the quarterly performance audit? Your COMS is out-of-control if the results of a quarterly performance audit indicate noncompliance with the following criteria:

(i) The optical alignment misalignment error exceeds 3 percent opacity,

(ii) The zero compensation exceeds 4 percent opacity, or

(iii)The calibration error exceeds 3 percent opacity.

(4) What is the criterion for data capture? The data capture will be considered insufficient if your COMS fails to obtain valid opacity data for at least 95 percent of your operating hours per calendar quarter, considering COMS downtime for all causes (*e.g.*, monitor malfunctions, data system failures, preventative maintenance, unknown causes, etc.) except for downtime associated with routine zero and upscale checks and QA/QC activities required by this procedure. Whenever less than 95 percent of the valid data averages are obtained, you must either:

(i) Perform additional QA/QC activities as deemed necessary to assure acceptable data capture, or

(ii) Determine if the COMS is functioning properly. If your COMS is malfunctioning, you may use a substitute COMS until repairs are made, provided the substitute meets the requirements specified in Section 10.6.

10.5 What corrective action must I take if my COMS is malfunctioning? You must have a corrective action program in place to address the repair and/or maintenance of your COMS. There are four classes of maintenance and repair procedures to be considered; the classes are described in paragraphs (1) through (4). They may be performed either at the manufacturer's facility, a service provider's facility, the user's instrument laboratory, or at the stack/duct at the discretion of the owner/operator and within the recommendations of the manufacturer. They must be performed by persons either skilled and/or trained in the operation and maintenance of the analyzer. After the repair/maintenance of your COMS, you must ensure the COMS is still in compliance with PS–1. Table 17–1 outlines the tests required to maintain PS–1 certification.

(1) *Routine/preventative maintenance.* Includes the routine replacement of consumables, cleaning of optical surfaces, and adjustment of monitor operating parameters as needed to maintain normal operation. Replacement of consumables which have the possibility of adversely affecting the performance of an analyzer may cause the nature of the maintenance procedure to fall within one of the classifications described below.

(2) *Measurement Non-Critical Repairs.* Includes repair and/or replacement of standard non-critical components, the unique characteristics of which do not materially affect the performance of the monitor. These components include, but are not limited to, resistors, capacitors, inductors, transformers, semiconductors such as discrete components and integrated circuits, brackets and machined parts (not associated with internal optical components), cabling and connectors, electro mechanical components such as relays, solenoids, motors, switches, blowers, air filters, pressure/flow indicators, tubing, indicator lights, fuses, software with the same version and/or revision level, glass windows (uncoated or anti-reflection coated, but with no curvature), lenses with mounts where such mounts are not adjustable as installed, circuit boards where such boards are interchangeable and without unique adjustments (except offset and gain adjustments) for the specific analyzer of the same model, with such repairs to include the maintenance procedures required to ensure that the analyzer is appropriately setup.

(3) Replace or repair the primary measurement light source.

(4) *Measurement Critical Repairs.* Includes repair and/or replacement of measurement sensitive components, the unique characteristics of which may materially affect the performance of the monitor. These components include, but are not limited to, optical detectors associated with the opacity measurement/reference beam(s), spectrally selective optical filters, beam splitters, internal zero and/or upscale reference reflective or transmissive materials, electro-optical light switches, retro reflectors, adjustable apertures used on external zero devices or reflectors, lenses which have an adjustable mount, circuit boards which are not completely interchangeable and/or require unique adjustments for the specific analyzer, with such repairs to include the maintenance procedures required to ensure that the analyzer is appropriately setup.

(5) *Rebuilt or Refurbished analyzers.* Includes analyzers for which a major sub-assembly(ies) has/have been replaced or multiple lesser sub-assemblies with different revision levels from the original have been replaced and/or modified. Also, to be defined as a major change in the analyzer measurement detection and processing hardware or software.

(6) For other repairs or replacements not specifically described above, you must consult the manufacturer for the appropriate classification of that procedure. Manufacturers must use the above guidelines in determining the appropriate classification and provide a written recommendation. The final determination as to which category a given repair falls within will be made by the Administrator.

10.6 What requirements must I meet if I use a substitute opacity monitor? In the event your certified opacity monitor has to be removed for extended service, you may install a temporary replacement monitor to obtain required opacity emissions data, provided that:

(1) The temporary monitor is a like-kind replacement, where like-kind is defined as made by the same manufacturer; carries the same model number; uses the same reflector configuration as the original (and may use the actual original reflector unit) for double pass monitors, or uses the same source or detector configuration as the original for single pass monitors (and may use the actual original source or detector unit—whichever one that did not fail); uses the same of later revision of software/firmware; setup with the same selection of configuration parameters; provides the same input/output signals; and uses the same peripheral equipment. Same in this context means the same as the original certified monitor which is being temporarily replaced,

(2) The temporary monitor has been certified according to ASTM D 6216–98 for which a manufacturer's certificate of conformance (MCOC) has been provided,

(3) The temporary monitor has not been used for more than 720 hours (30 days) of operation per year as a replacement for a fully certified opacity monitor on one location. After that time, the analyzer must complete a full certification according to PS–1 prior to further use as a temporary replacement monitor. Once a temporary replacement monitor has been installed and required testing and adjustments have been successfully completed, it can not be replaced by another temporary replacement monitor to avoid the full PS–1 certification testing required after 720 hours (30 days) of use,

(4) The temporary monitor has been installed and successfully completed an optical alignment assessment and status indicator assessment,

(5) The temporary monitor has successfully completed an off-stack clear path zero assessment and zero calibration value adjustment procedure,

(6) The temporary monitor has successfully completed an abbreviated zero and upscale drift check consisting of seven zero and upscale calibration value drift checks which may be conducted within a 24-hour period with not more than one calibration drift check every three hours, and not less than one calibration drift check every 25 hours. Calculated zero and upscale drift requirements are the same as specified for the normal PS–1 certification,

(7) The temporary monitor has successfully completed a three point calibration error test,

(8) The upscale reference calibration check value of the new monitor has been updated in the associated data recording equipment,

(9) The overall calibration of the monitor and data recording equipment has been verified, and

(10) The user has documented all of the above in the maintenance log, or in other appropriate permanent maintained records.

10.7 When do the out-of-control periods begin and end? The out-of-control periods are as specified in Section 3.1.

10.8 What are the limitations on use of my COMS data collected during out-of-control periods? During the period your COMS is out-of-control, you may not use your COMS data to calculate emission compliance or to meet minimum data availability requirements in this procedure or the applicable regulation.

10.9 What are the QA/QC reporting requirements for my COMS? You must report the accuracy results from Section 10 for your COMS at the interval specified in this procedure or the applicable regulation. Report the drift and accuracy information as a Data Assessment Report (DAR), and include one copy of this DAR for each quarterly audit with the report of emissions required under the applicable regulation. An example DAR is provided in Procedure 1, appendix F of this part.

10.10 What minimum information must I include in my DAR? As a minimum, you must include the information listed in paragraphs (1) through (5) in the DAR.

(1) Your name and address,

(2) Identification and location of your COMS(s),

(3) Manufacturer, model and serial number of your COMS(s),

(4) Assessment of COMS data accuracy/acceptability, and date of assessment, as determined by a performance audit described in section 10. If the accuracy audit results show your COMS to be out-of-control, you must report both the audit results showing your COMS to be out-of-control and the results of the audit following corrective action showing your COMS to be operating within specifications, and

(5) Summary of all corrective actions you took when you determined your COMS to be out-of-control.

10.11 Where and how long must I retain the QA data that this procedure requires me to record for my COMS? You must keep the records required by this procedure for your COMS onsite and available for inspection by us, the State and/or local enforcement agency for a period of 5 years.

11. What Analytical Procedures Apply to This Procedure? [Reserved]

12. What Calculations and Data Analysis Must I Perform for My COMS? The calcalations required for the performance audit are contained in Section 12 of PS–1.

13. Method Performance. [Reserved]

14. Pollution Prevention. [Reserved]

15. Waste Management. [Reserved]

16. Which References Are Relevant to This Procedure?

16.1 Performance Specification 1—Specifications and Test Procedures for Continuous Opacity Monitor Systems in Stationary Sources, 40 CFR part 60, appendix B, August 10, 2000.

16.2 ASTM D 6216–98: Standard Practice for Opacity Monitor Manufacturers to Certify Conformance with Design and Performance Specifications. American Society for Testing and Materials (ASTM), April 1998.

17. What Tables, Diagrams, Flowcharts, and Validation Data Are Relevant to This Procedure?

17.1 Table 17.1—Diagnostic Tests Required to Maintain PS–1 Certification Status for COMS.

Description of event	Optical alignment	Optical alignment indicator assessment (Note 1)	Zero calibration check	Clear path (off-stack) zero assessment (Note 3)	Upscale calibration check	Calibration error check	Fault status indicator check	Averaging peirod calculation and recording	7-day zero and upscale drift check (Note 2)	Recertify per PS–1	New MCOC per ASTM D 6216–98	Comments
(1) Replace or repair components described as routine and/or preventative maintenance.	X	.....	X	.....	X	.....	X	.....	.....	.....	.....	Includes replacement of blowers, cleaning optical surfaces, resetting adjustable parameters to maintain normal performance, etc.
(2) Replace or repair primary measurement light.	X	X	X	X	X	.....	X	.....	.....	.....	.....	Light source uniformity and position are key source to many performance parameters
(3) Replace or repair components which are Measurement Non-Critical.	X	.....	X	.....	X	X	X	.....	.....	.....	.....	See text description, sec. 10.5(2)
(4) Replace or repair components which are Measurement Critical.	X	X	X	X	X	X	X	.....	X	.....	.....	See text description, sec. 10.5(3)

Description of event	Optical alignment	Optical alignment indicator assessment (Note 1)	Zero calibration check	Clear path (off-stack) zero assessment (Note 3)	Upscale calibration check	Calibration error check	Fault status indicator check	Averaging peirod calculation and recording	7-day zero and upscale drift check (Note 2)	Recertify per PS–1	New MCOC per ASTM D 6216–[illegible]	Comments
(5) Replace or repair components which are Measurement Critical, but not involving optical or electro-optical components.			X		X	X	X	X				Includes change of components involving data acquisition and recording
(6) Rebuild or Substantially Refurbish the analyzer										XX		See text description, sec. 10.5(4)
(7) Change to, or addition of, analyzer components which may affect MCOC-specified performance parameters.										X	X	Significant changes which are not part of the MCOC-designated configuration

Notes: (1) Optical alignment indicator assessment requires the operator to verify during an off the stack clear path zero assessment that the beam is centered on the reflector/retro reflector when the alignment indicator indicates on-axis centered alignment. If not, the analyzer optical train must be adjusted until this condition is met.

(2) 7-day zero and upscale drift assessment. Opacity measurement data recorded prior to completion of the 7-day drift test will be considered as valid provided that the first 7-day drift test is successful, that it is completed within 14 days of completion of the repair, and that other QA requirements are met during this time period.

(3) Requires verification of the external zero jig response, or re-calibration of the same, after the off-stack clear path zero has been re-established.

[FR Doc. 03–11472 Filed 5–7–03; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 18

RIN 1018–AH86

Marine Mammals; Incidental Take During Specified Activities

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule; withdrawal. Availability of Record of Decision.

SUMMARY: We, the Fish and Wildlife Service (Service) have determined that we are unable to authorize the incidental, unintentional take of small numbers of Florida manatees (*Trichechus manatus latirostris*) resulting from governmental activities related to the authorization, regulation, or funding of watercraft and watercraft access facilities within certain regions of the species' range in Florida. Comments and new information received during the public comment period for our proposed rule to authorize such incidental take raised significant questions about the standards, information, and analytic methodologies appropriate for making the necessary findings. These significant questions preclude us from finding that incidental takings of Florida manatee resulting from these governmental activities will have a negligible impact on any of the four stocks in Florida. The Marine Mammal Protection Act (MMPA) does not allow us to authorize incidental take unless we are able to find that the total authorized incidental take will have no more than a negligible impact on the species or stock. Therefore, pursuant to 50 CFR 18.27(d)(4), we are making negative findings for all four stocks. Consistent with this determination we are withdrawing our November 2002 MMPA proposed rule to authorize the incidental take of Florida manatees.

We published a proposed regulation and announced the availability of a Draft Environmental Impact Statement (DEIS) in the **Federal Register** on November 14, 2002. We announced the availability of a Final Environmental Impact Statement (FEIS) for this decision on April 4, 2003. Responses to comments received during the public comment period for the proposed rule and DEIS are available in Appendix N of the FEIS. Through this notice, we are also announcing the availability of the Record of Decision related to the FEIS.

ADDRESSES: If you wish to review the FEIS and Record of Decision, obtain copies by any one of the following methods:

1. You may visit our Web site at *http://northflorida.fws.gov*.
2. You may request a copy by electronic mail (e-mail) to *manatee@fws.gov*.
3. You may write the Field Supervisor, Jacksonville Field Office, U.S. Fish and Wildlife Service, 6620 Southpoint Drive, South, Suite 310, Jacksonville, Florida 32216.
4. You may call the Jacksonville Field Office, 904/232–2580, during normal business hours from 8 a.m. to 4:30 p.m.

FOR FURTHER INFORMATION CONTACT: Pete Benjamin, at the above address (telephone 904/232–2580; or visit our Web site at *http://northflorida.fws.gov*).

SUPPLEMENTARY INFORMATION:

Background

On November 14, 2002, the Service published a proposed rule to authorize the incidental, unintentional take of small numbers of Florida manatees (*Trichechus manatus latirostris*) resulting from government activities that authorize and regulate watercraft and watercraft access facilities in Florida. Under the provisions of the MMPA of 1972 (16 U.S.C. 1361–1407), all take, including incidental take, is prohibited unless otherwise authorized. To date, there is no authorization for the incidental, unintentional death, injury, or harassment of Florida manatees caused by these otherwise legal activities. In the proposed rule, we examined the issue of take of Florida manatees to determine whether the incidental, unintentional take of manatees could be authorized.

The Secretary of the Interior may authorize the incidental taking of small numbers of marine mammals resulting from specified activities in a specified geographic area pursuant to 16 U.S.C. 1371(a)(5)(A) of the MMPA if the Secretary finds, based on the best scientific evidence available, that the total authorized taking for the authorized period will have no more than a negligible impact on the species or stock. Negligible impact is defined as "* * * an impact resulting from the specified activity that cannot be reasonably expected to, and is not reasonably likely to, adversely affect the species or stock through effects on annual rates of recruitment or survival." (50 CFR 18.27(c)).

If a negligible impact finding is made, specific regulations must be established for the activities that describe permissible methods of taking; means of effecting the least practicable adverse impact on the species and its habitat; and requirements for monitoring and reporting. If the Secretary cannot find that the total taking will have a negligible impact on the species or stock, the Secretary must publish a negative finding in the **Federal Register** along with the basis for such a determination (50 CFR 18.27(d)(4)).

Manatee Lawsuit Settlement

In *Save the Manatee Club, et al.* v. *Ballard, et al.*, Civil No. 00–00076 EGS (D.D.C.), several organizations and individuals filed suit against the Service and the U.S. Army Corps of Engineers alleging violations of the MMPA, the Endangered Species Act of 1973, as amended (ESA) (16 U.S.C. 1531–1543), the National Environmental Policy Act (NEPA) (42 U.S.C. 4321 *et seq.*), and the Administrative Procedure Act (APA) (5 U.S.C. 551 *et seq.*). Four groups representing development and boating interests intervened. Following extensive negotiations, a settlement agreement was approved by the court on January 5, 2001. Under the terms of the settlement, the Service agreed to take several actions, including pursuing a rulemaking proceeding to adopt incidental take regulations under the MMPA. According to the settlement agreement, draft and final products were due on November 5, 2002, and May 5, 2003, respectively. The agreement further specified that, if, during the rulemaking process, we determined that requirements of the MMPA could not be met, then we must submit a negative finding to the **Federal Register** by May 5, 2003.

Beginning in January 2001, the Service held a series of meetings with the affected agencies to discuss the scope of government activities and incidental take rulemaking. At the Manatee Population Ecology and Management Workshop in April 2002, the Service discussed the issue of incidental take rulemaking with scientists and managers involved in manatee research and conservation. On June 10, 2002, the Service published a notice in the **Federal Register** (67 FR 39668) announcing our intent to prepare an EIS to evaluate the effects on manatees of a rulemaking to authorize incidental take; public comments were solicited. On November 14, 2002, the Service published in the **Federal Register** (67 FR 69077) a proposed rule and notice of availability for the Draft EIS and announced six public hearings and the commencement of the public comment period. We published a notice on November 29, 2002, announcing a seventh public hearing (67 FR 71127). In December 2002, the Service conducted seven public hearings throughout Florida. On January 9, 2003, we extended the public comment period from its original closing date of January 13, 2003, to January 27, 2003 (68 FR 1175).

In response to these notices, meetings, and public hearings, over 8,000 written comments were received. The majority of these comments related to manatee population issues; NEPA, ESA, and MMPA concerns; recommendations regarding the proposed determination of negligible impact under the MMPA; identification of information needs believed necessary to adequately address issues of concern; and socioeconomic and public involvement concerns. The comments and our responses are provided in Appendix N of the FEIS. The Service refined the Incidental Take Model, an analytic tool; examined and fully considered all comments submitted by the public; and released a Final Environmental Impact Statement (FEIS) on March 26, 2003, with a notice of availability published in the **Federal Register** on April 4, 2003 (68 FR 16544).

We identified four distinct stocks of the Florida manatee, which we call the Upper St. Johns River, the Northwest, the Atlantic, and the Southwest stocks. In addition to the No Action Alternative, the FEIS evaluated a range of action alternatives that included findings of negligible impact for between one (Upper St. Johns River) to three stocks (Upper St. Johns River, Northwest, and Atlantic). The FEIS presented information, including new information, as well as a comparison of results from different methodologies for determining negligible impact. The FEIS also identified areas of uncertainty in various methodologies, stated pertinent information needs, and presented criticisms of each methodology and of our population benchmark criteria.

Proposed Rule

In the proposed rule, we made the following findings with respect to the effects of watercraft-related incidental take on each stock—(1) Current levels of watercraft-related incidental take were having a negligible impact on the Upper St. Johns River and Northwest stocks; (2) current incidental take levels were having a greater than negligible impact on the Atlantic stock, but incidental take could be reduced to the negligible level with implementation of additional mitigating measures; and (3) current levels of incidental take were having a greater than negligible impact on the Southwest stock, and mitigating measures were not available to reduce this take to a negligible level.

The rationale behind the negligible impact threshold presented in the proposed rule was: In terms of stocks that are depleted (*i.e.*, population levels below Optimum Sustainable Population (OSP)), it is generally accepted that the large majority of annual net productivity must be reserved for the recovery of the stock to its OSP level, and that only a small portion should be allocated for incidental take, so that human-related take does not significantly increase the time needed to reach OSP. Therefore, based on our interpretation of the MMPA, its implementing regulations, previous incidental take rulemakings, and our current understanding of manatee population dynamics, we concluded that, in order for us to determine that the allowable level of human-related incidental take would have a "negligible impact," we must be reasonably certain that the take would not significantly increase the time needed to achieve OSP (67 FR 69086). Our negligible impact standard, based on the above rationale, was reasonable certainty that authorized incidental take will not significantly increase the time needed to reach OSP (67 FR 69086). OSP is defined in the MMPA as "the number of animals which will result in the maximum productivity of the population or the species, keeping in mind the carrying capacity of the habitat and the health of the ecosystem of which they form a constituent element" (16 U.S.C. 1362).

We relied on criteria developed through the ESA recovery planning process to assess the status of the manatee stocks against the negligible impact standard. The proposed rule stated that, as concluded in the newly revised Florida Manatee Recovery Plan, the Florida manatee population could be considered to be "healthy" and able to sustain itself after the demographic benchmarks were met for all four stocks

based on at least a 20-year data set. Assuming that none of the stocks were severely depleted when data collection relative to the demographic benchmarks began (in the late 1970s and 1980s), 20 years of continued growth at the benchmark rates would in all likelihood result in stocks that are within or near the range of OSP. As such, we believed it was reasonable to assume that achievement of the demographic benchmarks would result in a population that is within or near the range of OSP, and that the negligible impact threshold would be that level of incidental take that does not significantly increase the time needed to achieve the demographic benchmarks (67 FR 69087).

Applying these standards to the best information available at the time of the proposed rule, we concluded that the Northwest and Upper St. Johns River stocks were currently meeting the demographic benchmarks and were progressing toward OSP at a biologically acceptable rate (*i.e.*, current incidental take was having a negligible impact). Regarding the Atlantic stock, we determined that it was close to the demographic benchmarks, and would meet the negligible impact standard provided additional mitigation measures were implemented to reduce take. The Southwest stock was not close to meeting the demographic benchmarks, so we proposed a negative finding with respect to that stock. We stated that it might be possible to refine this analysis for the final rule using a stochastic manatee population model (67 FR 69091), which will be referred to hereafter as the "Incidental Take Model." The Incidental Take Model structure was described in the proposed rule and DEIS, but was not completed at the time the proposed rule was published. It was included in Appendix I of the FEIS.

Discussion and Findings

Standards and Assumptions

Some of the standards and assumptions that supported our proposed rule have been questioned. This includes criteria for quantifying negligible impact and assumptions about OSP and the status of each stock (including population growth rate).

We quantified the negligible impact standard as that which would not exceed a five percent probability of delaying a stock's time to reach its OSP by no more than 10 percent. The specific probability and delay values were selected based on standards used by other agencies for other types of regulations under the MMPA, and because the 95 percent probability is frequently used in statistical decision-making. We are currently considering whether this is an appropriate standard for incidental take caused by watercraft.

We also assumed that, if historical population levels were sufficiently high relative to carrying capacity, continued growth at the benchmark rates would result in population levels that are within or near OSP. This assumption played a role in our conclusions that current levels of watercraft-related take are either not currently delaying the time to reach OSP or are mitigable, depending on the stock.

Information developed during the rulemaking process, but not available until after the DEIS and proposed rule were published and made available, calls into question some of the assumptions upon which our analysis was based. One of the uncertainties raised by the new information is that all four stocks may be further from OSP, and growing at a slower rate than we originally thought. In short, new information challenges the verity of the assumptions that we built into our negligible impact criteria.

We are also reconsidering the use of the recruitment benchmark because we have no data that allow us to generate confidence intervals for the percent of females with first and second year calves, which undermines our current ability to evaluate the status of the stocks against this benchmark.

In summary, some of the assumptions relied upon in our negligible impact criteria and standards have been called into question. Key among these are:

- The assumption that achievement of demographic benchmarks developed through an ESA recovery plan will result in a population that is within or near the range of OSP;
- The recruitment benchmark, which is complicated by gaps in our understanding of the percent of females with first and second year calves;
- The biological implications of our assumptions about the linkage between (1) stock status, and (2) population benchmarks;
- The significance of various probabilities of delay in the time to reaching OSP; and
- The time it takes to reach OSP.

New Information

We gained significant information about manatee populations and trends after the proposed rule and DEIS were made available to the public. Some fundamental questions about our understanding occurred as a result of collecting the information necessary to refine the Incidental Take Model. The most important new information included new estimates of watercraft-related mortality, age-related survivorship, trends in carrying capacity, and demographic trends in the Atlantic Stock.

New information about carcass recovery suggests that rates vary significantly by stock, which challenges our estimates of watercraft-related mortality in all four stocks. Manatee carcass recovery rate is our leading indicator of the fraction of mortality due to watercraft. The carcass recovery rate (the fraction of dead manatees recovered by the carcass salvage program) plays a role in the calculation of negligible impact, because it serves as the link between the numbers of observed and actual watercraft-related mortalities. The fraction of mortality due to watercraft also can be used to calculate the survival rate in the absence of take, hence the degree to which take-reduction could improve the population growth rate. Both of these quantities have only recently been estimated from Florida Marine Research Institute data, and a peer review of the analysis has not been conducted. Further, only a point estimate for recovery rate in each region is available, which means that we do not yet have an expression for the uncertainty in that rate.

New information about carrying capacity suggests that it may decline over the next 3 to 60 years, which would affect density-dependent life history and management functions of the Florida manatee. The limiting factor for the carrying capacity of each stock is warm water refugia. Each stock of Florida manatees is variably dependent on natural and artificial warm water refugia, such as springs, sewerage outfalls, and power plant discharges. Preliminary information presented in the Incidental Take Model, but not yet peer reviewed, suggests that a reduction in total warm water carrying capacity is possible, if not likely, in the near future. This would suggest that OSP will change over time. Our implicit assumption of a stable OSP is challenged by this information. This, in turn, has implications for our interpretation of total population estimates, and our assumption that none of the stocks were severely depleted based on the demographic benchmarks.

We also are considering how information gaps may affect our ability to make a negligible impact determination for Florida manatee. The most important information gap is our limited understanding of density-dependent effects on manatees.

Methodologies

Questions have been raised about the analytic methods we proposed to use to determine negligible impacts. We stated that, to be negligible, authorized incidental take must be reasonably certain not to significantly delay the time to reach OSP. We also said that the final determination may be informed by an Incidental Take Model (which was presented in the DEIS, or a refined version, included in the FEIS as Appendix I). Comments received during the comment period included suggestions for two alternative methodologies, the Potential Biological Removal (PBR) level, and a method which we characterize as the Fraction of Excess Growth (FEG) method.

The PBR for each species or stock of marine mammal is calculated as part of the Stock Assessment required under section 117 of the MMPA, and is defined as the maximum number of animals, not including natural mortalities, that may be removed from a marine mammal stock while allowing that stock to reach or maintain its OSP. PBR is typically used for determinations for the purpose of regulating commercial fishing activities under the MMPA, but is not used by the Department of the Interior for analyzing incidental take for activities other than commercial fishing.

The FEG method assumes that negligible impact includes both a delay in time to reach OSP and a percent of annual growth harvested through incidental take functions. As suggested, this method concludes that any incidental take that delays the time to reach OSP by 10 percent or more, or that harvests 10 percent or more of annual growth rate, exceeds negligible levels.

The Incidental Take Model is based on a model developed by USGS and presented at the April 2002 Manatee Population Ecology and Management Workshop. The model projects population trends for each of the four manatee stocks based on repeated simulations that incorporate environmental and demographic variability, as well as varying levels of human-related take. In the proposed rule, we stated that the initial model used the best available science, and that the Manatee Population Ecology and Management Workshop attendees believed that it was the most suitable model for use in the negligible impact determination. However, the Incidental Take Model currently projects population trends, including the negligible impact criteria, in 20-year increments, which exceeds the 5-year increments required in the MMPA. This approach is currently being assessed.

The qualitative assessment methodology used the initial results of the April 2002 version of the Incidental Take Model, and was described in detail in the proposed rule. This analytic methodology was applied to make the proposed findings.

Conclusion

After carefully considering the various analytic methodologies and relevant information generated during the public comment period, we conclude that the questions regarding standards and assumptions, new information, and analytic methodologies preclude us from finding that under the requirements set out in 50 CFR 18.27, incidental take resulting from government activities related to the authorization, regulation, or funding of watercraft and watercraft access facilities within certain regions of Florida will have a negligible impact on any of the four stocks of Florida manatee. Therefore, pursuant to 50 CFR 18.27(d)(4), we are withdrawing our November 2002 MMPA proposed rule to authorize the incidental take of Florida manatees and are publishing this notice as our findings.

Relationship Between MMPA Incidental Take Authorization and ESA Section 7 Consultation

We wish to clarify the relationship between an MMPA incidental take rulemaking and review of proposed watercraft access projects under section 7 of the ESA. The manatee is listed as an endangered species under the ESA and is also a marine mammal. As such, both the MMPA and the ESA prohibit the incidental take of Florida manatees in the course of conducting otherwise lawful activities, unless authorized. Through section 7 of the ESA, the Service can authorize the incidental take of listed species when take is reasonably certain to occur as a result of Federal actions as long as specific ESA requirements are met. However, if the listed species is also a marine mammal, incidental take authorization under the MMPA must be in place before incidental take under the ESA can be authorized. This rulemaking process analyzed whether incidental take could be authorized for any of the four stocks under the MMPA, which would have allowed the Service to authorize incidental take for these stocks under section 7 of the ESA.

Actions To Be Taken

The following describes additional efforts to improve manatee protection.

(1) We will continue to manage our consultation program to ensure that our responsibilities under section 7 of the ESA are fulfilled in accordance with our regulations and policies, and that these responsibilities are executed efficiently without imposing undue delays or burdens on the regulated public.

Over the past 2 years, we have made several alterations to our ESA section 7 procedures related to Corps of Engineers' authorization of new watercraft access facilities. Many members of the public apparently believed that these changes were precipitated by the MMPA incidental take proposed rule, which is not the case. Rather, these changes occurred during the same time period as development and publication of the proposed rule. Similarly, in accordance with the settlement agreement in *Save the Manatee Club, et al.* v. *Ballard, et al.*, the Service's Interim Strategy for review of watercraft access permits (*i.e.*, docks, boat ramps, and marinas) remained in effect through publication of the final MMPA incidental take determination.

With the publication of this final decision regarding MMPA incidental take regulations for manatee, the Service's Interim Strategy for review of watercraft access permits is no longer in effect. Therefore, the Service will conduct manatee consultations in accordance with section 7 of the ESA and its implementing regulations and policies.

Because no MMPA incidental take regulations have been promulgated the Service is precluded from authorizing incidental take of manatees in the ESA consultation process for any project that would be reasonably certain to result in take of manatees. In making its determinations, the Service will give consideration to State and/or local manatee protection measures, State-approved manatee protection plans and similar measures, and will use the best available scientific and commercial information, including information on law enforcement efforts and the adequacy of manatee speed zones and their signage.

(2) We have proposed additional protection measures in Duval, St. Johns, Clay, Volusia, and Lee counties (68 FR 16601, April 4, 2003).

(3) We will coordinate with the Florida Fish and Wildlife Conservation Commission to review and comment on county Manatee Protection Plans and will give consideration to approved plans and protection measures in our section 7 consultations.

(4) We will establish the Working Group on Watercraft-related Incidental

Take as a subcommittee of the Florida Manatee Recovery Team.

(5) We have initiated a status review of the Florida manatee pursuant to section 4(c)(2) of the ESA.

(6) We will be revising the Florida manatee stock assessment to reflect our determination that the four regional populations of Florida manatees are separate stocks, as defined by the MMPA. The stock assessment will build from and complement the status review to include a summary of the most recent data that provides the biological basis for separating the population into four stocks.

References Cited

A complete list of all references cited in this rule is available upon request from the Jacksonville Field Office (*see* **ADDRESSES** section).

Author

The primary author of this document is Pete Benjamin (*see* **ADDRESSES** section).

Dated: May 3, 2003.

Craig Manson,

Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 03–11480 Filed 5–7–03; 8:45 am]

BILLING CODE 4310–55–P

Notices

Federal Register

Vol. 68, No. 89

Thursday, May 8, 2003

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

[Docket No. 03–045–1]

Determination of Regulatory Review Period for Purposes of Patent Extension; Fel-O-Vax® FIV Vaccine

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Notice.

SUMMARY: We are advising the public that the Animal and Plant Health Inspection Service has determined the regulatory review period for Fel-O-Vax® FIV Vaccine and is publishing this notice of that determination as required by law. We have made this determination in response to the submission of an application to the Commissioner of Patents and Trademarks, Department of Commerce, for the extension of a patent that claims that veterinary biologic.

DATES: We will consider all requests for revision of the regulatory review period determination that we receive on or before June 9, 2003. We will consider all due diligence petitions that we receive on or before November 4, 2003.

ADDRESSES: You may submit revision requests and due diligence petitions by postal mail/commercial delivery or by e-mail. If you use postal mail/commercial delivery, please send four copies of your request or petition (an original and three copies) to: Docket No. 03–045–1, Regulatory Analysis and Development, PPD, APHIS, Station 3C71, 4700 River Road Unit 118, Riverdale, MD 20737–1238. Please state that your revision request or due diligence petition refers to Docket No. 03–045–1. If you use e-mail, address your request or petition to *regulations@aphis.usda.gov*. Your request or petition must be contained in the body of your message; do not send attached files. Please include your name and address in your message and "Docket No. 03–045–1" on the subject line.

You may request a copy of the regulatory review period determination by writing to Dr. Larry Ludemann, USDA, APHIS, VS, CVB–LPD, 510 South 17th Street, Suite 104, Ames, IA 50010–8197, or by calling (515) 232–5785. Please refer to the docket number, date, and complete title of this notice when requesting copies.

A copy of the regulatory review period determination and any revision requests or due diligence petitions that we receive on this determination are available for public inspection in our reading room. The reading room is located in room 1141 of the USDA South Building, 14th Street and Independence Avenue SW., Washington, DC. Normal reading room hours are 8 a.m. to 4:30 p.m., Monday through Friday, except holidays. To be sure someone is there to help you, please call (202) 690–2817 before coming.

APHIS documents published in the **Federal Register**, and related information, including the names of organizations and individuals who have commented on APHIS dockets, are available on the internet at *http://www.aphis.usda.gov/ppd/rad/webrepor.html*.

FOR FURTHER INFORMATION CONTACT: Dr. Albert P. Morgan, Chief Staff Officer, Operational Support Section, Center for Veterinary Biologics, Licensing and Policy Development, VS, APHIS, 4700 River Road Unit 148, Riverdale, MD 20737–1231; phone (301) 734–8245; fax (301) 734–4314. For information regarding the regulatory review period determination, contact Dr. Larry Ludemann, APHIS, VS, CVB–LPD, 510 South 17th Street, Suite 104, Ames, IA 50010–8197; phone (515) 232–5785.

SUPPLEMENTARY INFORMATION: The provisions of 35 U.S.C. 156, "Extension of patent term," provide, generally, that a patent for a product may be extended for a period of up to 5 years as long as the patent claims a product that, among other things, was subject to a regulatory review period before its commercial marketing or use. (The term "product" is defined in that section as "a drug product" [which includes veterinary biological products] or "any medical device, food additive, or color additive subject to regulation under the Federal Food, Drug, and Cosmetic Act.") A product's regulatory review period forms the basis for determining the amount of extension an applicant may receive.

The regulations in 9 CFR part 124, "Patent Term Restoration" (referred to below as the regulations), set forth procedures and requirements for the Animal and Plant Health Inspection Service's (APHIS) review of applications for the extension of the term of certain patents for veterinary biological products pursuant to 35 U.S.C. 156. As identified in the regulations, the responsibilities of APHIS include:

- Assisting Patent and Trademark Office of the U.S. Department of Commerce in determining eligibility for patent term restoration;
- Determining the length of a product's regulatory review period;
- If petitioned, reviewing and ruling on due diligence challenges to APHIS's regulatory review period determinations; and
- Conducting hearings to review initial APHIS findings on due diligence challenges.

The regulations are designed to be used in conjunction with regulations issued by the Patent and Trademark Office concerning patent term extension, which may be found at 37 CFR 1.710 through 1.791.

A regulatory review period consists of two periods of time: A testing phase and an approval phase. For veterinary biologics, the testing phase begins on the date the authorization to prepare an experimental veterinary biologic became effective and runs until the approval phase begins. The approval phase begins on the date an application for a license was initially submitted for approval and ends on the date such license was issued. Although only a portion of a regulatory review period may count toward the actual amount of extension that the Commissioner of Patents and Trademarks may award, APHIS' determination of the length of a regulatory review period for a veterinary biologic will include all of the testing phase and approval phase as specified in 35 U.S.C. 156(g)(5)(B).

APHIS recently licensed for production and marketing the veterinary biologic Fel-O-Vax® FIV Vaccine. Subsequent to this approval, the Patent and Trademark Office received a patent term restoration application for Fel-O-

Vax® FIV Vaccine (U.S. Patent No. 5,275,813) from the Regents of the University of California, and the Patent and Trademark Office requested APHIS' assistance in determining this patent's eligibility for patent term restoration. In a letter dated March 11, 2003, APHIS advised the Patent and Trademark Office that this veterinary biologic had undergone a regulatory review period and that the approval of Fel-O-Vax® FIV Vaccine (Feline Immunodeficiency Virus Vaccine, Killed Virus) represented the first permitted commercial licensing or use of the product. Subsequently, the Patent and Trademark Office requested that APHIS determine the product's regulatory review period.

APHIS has determined that the applicable regulatory review period for Fel-O-Vax® FIV Vaccine is 3,853 days. Of this time, 2,442 days occurred during the testing phase of the regulatory review period, and 1,411 days occurred during the approval phase. These periods were derived from the following dates:

1. *The date the authority to prepare an experimental biological product under the Virus-Serum-Toxin Act (21 U.S.C. 151 et seq.) became effective:* August 28, 1991. APHIS has verified the applicant's claim that the test was begun on August 28, 1991.

2. *The date the application for a license was initially submitted for approval under the Virus-Serum-Toxin Act:* May 4, 1998. APHIS has verified the applicant's claim that the application was initially submitted on May 4, 1998.

3. *The date the license was issued:* March 14, 2002. APHIS has verified the applicant's claim that the license for the commercial marketing of the vaccine was issued on March 14, 2002.

This determination of the regulatory review period establishes the maximum potential length of a patent extension. However, the U.S. Patent and Trademark Office applies several statutory limitations in its calculations of the actual period for patent extension. In its application for patent extension, this applicant seeks 3,853 days of patent term extension.

Section 124.22 of the regulations provides that any interested person may request a revision of the regulatory review period determination within 30 days of the date of this notice (see **DATES** above). The request must specify the following:

- The identity of the product;
- The identity of the applicant for patent term restoration;
- The docket number of this notice; and
- The basis for the request for revision, including any documentary evidence.

Further, under § 124.30 of the regulations, any interested person may file a petition with APHIS, no later than 180 days after the date of this notice (see **DATES** above), alleging that a license applicant did not act with due diligence in seeking APHIS approval of the product during the regulatory review period. The filing, format, and content of a petition must be as described in the regulations in "Subpart D—Due Diligence Petitions" (§§ 124.30 through 124.33).

Authority: 35 U.S.C. 156.

Done in Washington, DC, this 1st day of May 2003.

Peter Fernandez,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 03–11436 Filed 5–7–03; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF AGRICULTURE

Forest Service

Information Collection; Economic, Social, and Cultural Aspects of Livestock Ranching

AGENCY: Forest Service, USDA.

ACTION: Notice; request for comment.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, the Forest Service is seeking comments from all interested individuals and organizations on a new one-time information collection, Economic, Social, and Cultural Aspects of Livestock Ranching on the Santa Fe and Carson National Forests. The collection is necessary to provide baseline data on the economic, social, and cultural contributions of livestock ownership in northern New Mexico. The information provided by this study, will help the Forest Service administer grazing permits more effectively to better meet the needs of grazing permittees in northern New Mexico. The information will also be used for purposes of public education.

DATES: Comments must be received in writing on or before July 7, 2003 to be assured of consideration. Comments received after that date will be considered to the extent practicable.

ADDRESSES: Comments concerning this notice should be addressed to Carol Raish, Research Social Scientist, or to Alice M. McSweeney, Social Science Analyst, USDA Forest Service, Rocky Mountain Research Station, 333 Broadway SE., Suite 115, Albuquerque, NM 87102–3497.

Comments also may be submitted via facsimile to (505) 724–3688 or by e-mail to: *craish@fs.fed.us* or *amcsweeney@fs.fed.us*. The public may inspect comments received at 333 Broadway SE., Ste. 115, Albuquerque, NM 87106–3497 during normal business hours. Visitors are encouraged to call ahead to (505) 724–3666 to facilitate entry to the building.

FOR FURTHER INFORMATION CONTACT: Carol Raish, Rocky Mountain Research Station, telephone: (505) 724–3666, or Alice M. McSweeney, Rocky Mountain Research Station, telephone: (505) 724–3677. Individuals who use telecommunication devices for the deaf (TDD) may call the Federal Relay Service (FRS) at 1–800–877–8339 twenty-four hours a day, every day of the year, including holidays.

SUPPLEMENTARY INFORMATION:

Description of Information Collections

Title: Economic, Social, and Cultural Aspects of Livestock Ranching on the Santa Fe and Carson National Forests.

OMB Number: 0596–New.

Expiration Date of Approval: New.

Type of Request: New.

Abstract: Management of Federal lands is often hampered because land managing agencies lack sufficient information to understand and monitor socio-cultural values and changing attitudes toward land and resource use. This lack of up-to-date information impedes efforts of the Forest Service (FS) to work with livestock ranchers who graze their cattle under permit on Forest Service managed lands (permittees).

In northern New Mexico, many grazing permittees are descendants of Hispanic settlers who farmed and ranched in the area for 400 years. Prior to U.S. takeover of the region in 1848, much of the land now grazed under Federal permits was owned or used by local communities under Spanish and Mexican land grants. Cultural differences and historic problems over land use contribute to disagreements and misunderstandings between the permittees and Federal land managers.

The study for which this information collection is needed will encompass all grazing permittees on the Espanola District of the Santa Fe National Forest and the Canjilon District of the Carson National Forest. It will provide data on economic, social, and cultural contributions of livestock ownership to the grazing permittees of northern New Mexico. A prior pilot study conducted in 1998 on the two forests; along with studies conducted in the late 1960s and 1970s require updating and revision to provide the most current information. Additionally, the pilot study indicates that there is a need for a broader base of data.

The results of this research should help agency personnel manage the land more effectively and work more cooperatively with livestock grazing permittees. Such information may also serve to improve agency relations with area communities by promoting greater understanding of the local culture and the role of livestock ownership in that culture. As the public becomes more involved in the federal land management decision-making process, the need for public education on the relationship between land and the rural way of life increases.

To collect the required information, social science researchers from the Rocky Mountain Research Station, USDA Forest Service will personally administer a questionnaire to grazing permittees from the Santa Fe and Carson National Forests. Respondents who are unable to schedule an interview will have the option of returning their completed questionnaire by mail.

The data collected will describe the economic, social, and cultural contributions of livestock operations to grazing permittees including: (1) Background information on the permittee and his/her family; (2) background information on the livestock operation; (3) contribution of the livestock operation to the household economy; (4) contribution of the livestock operation to the cultural, and lifestyle; (5) land use values of the family and community. After completing the information collection, researchers will compile and analyze the data.

The compiled data from this study will be used to assist managers on the two forests to work more effectively with grazing permittees by encouraging increased intercultural understanding. Additionally, the collected information may be used in developing and updating grazing allotment plans and in developing forest plan revisions. This type of information is also valuable in public education programs concerning the rural culture of northern New Mexico. The results of this study will also serve as the foundation for multiple research publications.

Since this study is designed to provide information on small-scale livestock operations on Federal allotments, its implementation is of considerable importance. If this data is not collected, grazing allotment plans and forest plan revisions for the target forests will not be based on the most current and appropriate socio-cultural and economic information. Furthermore, agency relations with the community may be hindered from a lack of knowledge that might otherwise help to promote intercultural understanding and cooperation.

Estimate of Annual Burden: One and a half hours.

Type of Respondents: Livestock ranchers/owners who have permits to graze cattle or sheep on the Santa Fe and Carson National Forests in northern New Mexico.

Estimated Annual Number of Respondents: 600 respondents.

Estimated Annual Number of Responses per Respondent: One time. This is a one-time collection of information.

Estimated Total Annual Burden on Respondents: 900 total hours. This is a one-time collection of information.

Comment Is Invited

Comment is invited on: (1) Whether this collection of information is necessary for the stated purposes and the proper performance of the functions of the agency, including whether the information will have practical or scientific utility; (2) the accuracy of the agency's estimate of the burden of the collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including the use of automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Use of Comments

All comments received in response to this notice, including names and addresses when provided, will be a matter of public record. Comments will be summarized and included in the submission request toward Office of Management and Budget approval.

Dated: May 2, 2003.

Robert Lewis, Jr.,

Deputy Chief, Research and Development.

[FR Doc. 03–11409 Filed 5–7–03; 8:45 am]

BILLING CODE 3410–11–P

BROADCASTING BOARD OF GOVERNORS

Sunshine Act Meeting

DATE AND TIME: May 13, 2003; 3 p.m.–4:15 p.m.

PLACE: Radio Free Asia, 2025 M Street, NW., Suite 300, Washington, DC 20036.

CLOSED MEETING: The members of the Broadcasting Board of Governors (BBG) will meet in closed session to review and discuss a number of issues relating to U.S. Government-funded non-military international broadcasting. They will address internal procedural, budgetary, and personnel issues, as well as sensitive foreign policy issues relating to potential options in the U.S. international field. This meeting is closed because if open it likely would either disclose matters that would be properly classified to be kept secret in the interest of foreign policy under the appropriate executive order (5 U.S.C. 552b.(c)(1)) or would disclose information the premature disclosure of which would be likely to significantly frustrate implementation of a proposed agency action. (5 U.S.C. 552b.(c)(9)(B)) In addition, part of the discussion will relate solely to the internal personnel and organizational issues of the BBG or the International Broadcasting Bureau. (5 U.S.C. 552b.(c)(2) and (6)).

CONTACT PERSON FOR MORE INFORMATION: Persons interested in obtaining more information should contract either Brenda Hardnett or Carol Booker at (202) 401–3736.

Dated: May 5, 2003.

Carol Booker,

Legal Counsel.

[FR Doc. 03–11604 Filed 5–6–03; 2:11 pm]

BILLING CODE 8230–01–U

DEPARTMENT OF COMMERCE

International Trade Administration

[A–122–845, A–122–847]

Notice of Preliminary Determinations of Sales at Less Than Fair Value: Certain Durum Wheat and Hard Red Spring Wheat From Canada

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of preliminary determinations of sales at less than fair value.

SUMMARY: We preliminarily determine that durum wheat and hard red spring wheat from Canada are being, or are likely to be, sold in the United States at less than fair value, as provided in section 733(b) of the Tariff Act of 1930, as amended.

Interested parties are invited to comment on these preliminary determinations. If these investigations proceed normally, we will make our

final determinations within 75 days of these preliminary determinations.

EFFECTIVE DATE: May 8, 2003.

FOR FURTHER INFORMATION CONTACT: Jarrod Goldfeder, Julie Santoboni, or Cole Kyle, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 482–0189, (202) 482–4194, or (202) 482–1503, respectively.

SUPPLEMENTARY INFORMATION:

Background

Since the initiation of these investigations (*Notice of Initiation of Antidumping Duty Investigations: Certain Durum Wheat and Hard Red Spring Wheat from Canada*, 67 FR 65947 (October 29, 2002) ("*Initiation Notice*"), the following events have occurred:

On November 1, 2002, we solicited comments from interested parties regarding the criteria to be used for model-matching purposes. We received numerous comments on our proposed matching criteria in November and December 2002. Furthermore, we held discussions on the issue of model matching with officials from the North American Millers Association and the U.S. Department of Agriculture on November 15 and 20, 2002, respectively. On December 6, 2002, the Department adopted the model match criteria and hierarchy for these proceedings. *See* Memorandum to John Brinkmann, "Selection of Model Matching Criteria for Purposes of the Antidumping Duty Questionnaire," dated December 6, 2002, which is on file in the Central Records Unit ("CRU") in room B–099 of the main Department building.

On November 25, 2002, the United States International Trade Commission ("ITC") preliminarily determined that there is a reasonable indication that imports of durum wheat and hard red spring ("HRS") wheat from Canada are materially injuring the United States durum wheat and HRS wheat industries (*see* ITC Investigation Nos. 731–TA–1019A and 1019B (Publication No. 3563)).

On December 4, 2002, we selected the Canadian Wheat Board ("CWB") as the mandatory respondent in these proceedings. For further discussion, *see* Memorandum to John Brinkmann, "Respondent Selection" dated December 4, 2002 ("*Respondent Selection Memorandum*"), which is on file in the CRU. We subsequently issued the antidumping questionnaires to the CWB on December 9, 2002.

On November 18, 2002, the Government of Canada ("GOC") submitted two scope exclusion requests. *See* "Scope Comments" section, below. On December 12, 2002, the petitioners[1] submitted their rebuttal comments. The GOC and the petitioners submitted additional comments on February 4 and 11, 2003, respectively.

On December 23, 2002, the petitioners submitted comments in support of their allegation that a particular market situation, within the meaning of section 773(a)(1)(C)(iii) of the Tariff Act of 1930, as amended ("the Act"), exists with regard to sales of durum wheat and HRS wheat in Canada. Further information and comments were received from the CWB, the petitioners, and the GOC throughout January 2003. On February 4, 2003, the Department informed interested parties that, based on evidence on the records of these investigations as of that date, we determined that it is appropriate for the Department to collect Canadian home market sales data for use as the basis for normal value. *See* "Selection of Comparison Market," below.

In January and February 2003, the Department received responses to sections A, B, and C of the Department's original questionnaire from the CWB. The Department issued supplemental questionnaires for sections A, B, and C in February and March 2003, and received responses from the CWB from February through April 2003.

On January 24, 2003, pursuant to section 733(c)(1)(B) of the Act, we determined that these proceedings are extraordinarily complicated and that additional time was necessary to make our preliminary determinations. Therefore, we postponed the preliminary determinations until no later than May 1, 2003. *See Notice of Postponement of Preliminary Antidumping Duty Determinations: Certain Durum Wheat and Hard Red Spring Wheat from Canada*, 67 FR 24114 (January 31, 2003).

On January 29, 2003, the petitioners made an allegation of sales below the cost of production ("COP") against sales of HRS wheat from Canada. On February 19, 2003, the petitioners revised their sales-below-COP allegation on HRS wheat and also alleged that sales of durum wheat in Canada were made at prices below COP. The petitioners supplemented their cost allegation on February 24, 2003. The CWB submitted comments on these cost allegations on February 7, 24, and 27, 2003. On February 25, 2003, the Department initiated a cost investigation on Canadian sales of HRS wheat. *See* Memorandum to Neal Halper, "Certain Hard Red Spring Wheat from Canada: Petitioner's Allegation of Sales Below the Cost of Production by the Canadian Wheat Board," dated February 25, 2003, which is on file in the CRU.

Also, on February 25, 2003, we solicited comments from interested parties regarding the selection of cost respondents in the sales-below-cost investigation of HRS wheat. We received comments from the petitioners and the CWB on February 28, March 3, and March 7, 2003. On March 10, 2003, we solicited additional comments from interested parties on our proposed cost respondent selection methodology. On March 12, 2003, we received comments on the proposed cost respondent selection methodology from the petitioners and the CWB. Thereafter, on March 14, 2003, the Department issued a section D questionnaire to selected cost respondents. The Department received responses to section D of the Department's questionnaire on April 21, 2003. Supplemental questionnaires for section D will be issued subsequent to the preliminary determination on HRS wheat.

On February 28, 2003, the Department determined not to initiate a cost investigation on Canadian sales of durum wheat. *See* Memorandum to Neal Halper, "Certain Durum Wheat from Canada: Petitioner's Allegation of Sales Below the Cost of Production by the Canadian Wheat Board," dated February 28, 2003, which is on file in the CRU. On March 10, 2003, the petitioners requested that the Department reconsider its decision to not initiate an investigation of sales below COP by the CWB. The petitioners submitted further information and comments on March 14, 21, 27, and 31, 2003. On March 12, 25, and 28, 2003, the CWB filed comments opposing the petitioners' request for reconsideration. On April 8, 2003, the Department reaffirmed its decision not to initiate a cost investigation on Canadian sales of durum wheat. *See* Memorandum to Susan Kuhbach, Acting Deputy Assistant Secretary, "Antidumping Duty Investigation of Certain Durum Wheat from Canada; Request for the Department to Reconsider its Decision to Not Initiate an Investigation of Sales Below the Cost of production by the Canadian Wheat Board;" dated April 8, 2003, which is on file in the CRU.

On April 23 and 25, 2003, the petitioners submitted comments with respect to the upcoming preliminary determinations.

[1] The petitioners are the North Dakota Wheat Commission ("NDWC") (hard red spring wheat), the Durum Growers Trade Action Committee (durum wheat), and the U.S. Durum Growers Association (durum wheat).

Scope of Investigations

For purposes of these investigations, the products covered are (1) durum wheat and (2) hard red spring wheat.

A. Durum Wheat

Imports covered by this investigation are all varieties of durum wheat from Canada. This includes, but is not limited to, a variety commonly referred to as Canada Western Amber Durum. The merchandise subject to this investigation is currently classifiable under the following Harmonized Tariff Schedule of the United States ("HTSUS") subheadings: 1001.10.00.10, 1001.10.00.91, 1001.10.00.92, 1001.10.00.95, 1001.10.00.96, and 1001.10.00.99. Although the HTSUS subheadings are provided for convenience and customs purposes, our written description of the scope of these proceedings is dispositive.

B. Hard Red Spring Wheat

Imports covered by this investigation are all varieties of hard red spring wheat from Canada. This includes, but is not limited to, varieties commonly referred to as Canada Western Red Spring, Canada Western Extra Strong, and Canada Prairie Spring Red. The merchandise subject to this investigation is currently classifiable under the following HTSUS subheadings: 1001.90.10.00, 1001.90.20.05, 1001.90.20.11, 1001.90.20.12, 1001.90.20.13, 1001.90.20.14, 1001.90.20.16, 1001.90.20.19, 1001.90.20.21, 1001.90.20.22, 1001.90.20.23, 1001.90.20.24, 1001.90.20.26, 1001.90.20.29, 1001.90.20.35, and 1001.90.20.96. Although the HTSUS subheadings are provided for convenience and customs purposes, our written description of the scope of these proceedings is dispositive.

Scope Comments

In accordance with our regulations, we set aside a period of time for parties to raise issues regarding product coverage and encouraged all parties to submit comments within 20 calendar days of publication of the *Initiation Notice* (*see* 67 FR 65948).

On November 18, 2002, we received a request from the GOC to amend the scope of these investigations and the companion countervailing duty ("CVD") investigations of hard red spring wheat and durum wheat. Specifically, the GOC requested that the scope be amended to exclude those areas of Canada where the CWB does not have jurisdiction, and to remove Harmonized Tariff Schedule number 1001.90.20.96 from the scope of the antidumping and CVD investigations of certain hard red spring wheat.

On December 12, 2002, the petitioners submitted rebuttal comments. On February 4, 2003, the GOC responded to those comments, and on February 11, 2003, the petitioners commented on the GOC's February 4, 2003 comments.

In the concurrent CVD investigations of durum wheat and HRS wheat from Canada, the Department preliminarily determined that these scope exclusions were not warranted. For further discussion, *see* the March 3, 2003 memorandum to Acting Deputy Assistant Secretary Susan H. Kuhbach, "Scope Exclusion Requests: Non-Canadian Wheat Board Areas and HTSUS 1001.90.20.96," on file in the CRU for the instant proceedings; and *Preliminary Affirmative Countervailing Duty Determinations and Alignment of Final Countervailing Duty Determinations With Final Antidumping Duty Determinations: Certain Durum Wheat and Hard Red Spring Wheat from Canada*, 68 FR 11374, 11375 (March 10, 2003).

Period of Investigation

The period of investigation ("POI") is July 1, 2001, through June 30, 2002. This period corresponds to the four most recent fiscal quarters prior to the filing of the petition (*i.e.*, September 13, 2002).

Fair Value Comparisons

To determine whether sales of durum wheat and hard red spring wheat from Canada to the United States were made at less than fair value ("LTFV"), we compared the export price ("EP") to the normal value ("NV"), as described in the "Export Price" and "Normal Value" sections of this notice, below. In accordance with section 777A(d)(1)(A)(i) of the Act, we compared POI weighted-average EPs to NVs. Any specific changes to the EP and NV calculations are discussed in the May 1, 2003, calculation memoranda, which are on file in the CRU ("Calculation Memoranda").

Product Comparisons

In accordance with section 771(16) of the Act, we considered all products produced and sold by the CWB in the home market during the POI that fit the description in the "Scope of Investigations" section of this notice to be foreign like products for purposes of determining appropriate product comparisons to U.S. sales. We compared U.S. sales to sales of identical merchandise made in the home market, where possible. Where there were no sales of identical merchandise in the home market made in the ordinary course of trade to compare to U.S. sales, we compared U.S. sales to sales of the most similar foreign like product made in the ordinary course of trade.

To identify identical and similar merchandise for purposes of comparing U.S. and home market sales, we developed several product characteristics. Specifically, for durum wheat, we asked the CWB to report information on the type, grade, protein content, vitreous kernel content, test weight, and moisture content, for each sale during the POI. For HRS wheat, we asked the CWB to report information on the type, grade, protein content, class, vitreous kernel content, test weight, and moisture content, for each sale during the POI.

In its submissions concerning model matching, as well as in its initial questionnaire responses, the CWB consistently asserted that it would be unable to provide complete data on vitreous kernel content, test weight, and moisture content, because such data are not normally maintained in the CWB's books and records—in either electronic or hard copy form—in the ordinary course of business. Because the Department found that these product characteristics are appropriate for model matching purposes in these proceedings, we reiterated our request that the CWB supply all available data to the Department. In its April 23, 2003, supplemental questionnaire response, the CWB stated that it had reported all of the product characteristic data available to it. For durum wheat, the CWB reported complete product characteristics for virtually all U.S. sales and reported complete data for approximately half of the home market sales. For HRS wheat, however, the CWB reported complete product characteristic data for only a small number of U.S. and home market sales. The CWB reiterated that, because data on these product characteristics are not maintained in the CWB's normal course of business for a majority of transactions, the sales databases were "necessarily incomplete." *See* CWB's April 23, 2003, submission, at 2.

For purposes of these preliminary determinations, we have accepted the CWB's statement that it has reported all the product characteristic information available to it. However, given the magnitude of the missing data, we intend to verify very carefully the CWB's claim that all data were reported and that it does not consistently collect or maintain data on vitreous kernel

content, test weight, and moisture content. Moreover, we continue to take the position that all the product characteristics selected by the Department are important for making proper comparisons in these proceedings. Therefore, for durum wheat, we have matched U.S. sales for which complete product characteristic data was reported to those home market sales also containing complete product characteristic data, given the fact that we have almost complete U.S. data and complete data on a sufficient number of home market sales. For HRS wheat, however, we would not be able to make meaningful comparisons if we were to rely on all seven product characteristics because of the incompleteness of the U.S. and home market sales databases. Accordingly, we have matched U.S. sales of HRS wheat to home market sales using only the first four product characteristics (*i.e.*, type, grade, protein content, and class). However, we note that, consistent with the methodology outlined in the Memorandum from Theresa L. Caherty and Michael P. Martin to Neal M. Halper, "Identification of Cost of Production Respondents," dated April 22, 2003 ("Cost Respondent Selection Memorandum"), which is on file in the CRU, we have excluded Canadian western extra strong wheat, Canadian prairie spring wheat, and feed wheat from the HRS wheat antidumping duty analysis due to the relatively small quantity of sales of these products to the United States during the POI.

Date of Sale

In its original questionnaire responses, the CWB reported home market and U.S. sales using invoice date as the date of sale. Based on the description of the sales process provided by the CWB, we note that, in the CWB's normal commercial practice, the sales invoice is normally issued after the date of shipment. Because the date of shipment almost always precedes the reported date of sale, we preliminarily determine that the date of shipment better reflects the date on which the CWB established the material terms of sale, in accordance with 19 CFR 351.401(i). Accordingly, we have relied on the date of shipment as the date of sale.

Export Price

For both durum wheat and HRS wheat, we calculated EP, in accordance with section 772(a) of the Act, because the merchandise was sold prior to importation by the exporter or producer outside the United States to the first unaffiliated purchaser in the United States, or to an unaffiliated purchaser for exportation to the United States, and because constructed export price methodology was not otherwise warranted. We based EP on the in-store or C&F price to unaffiliated purchasers in the United States. We identified the starting price, where appropriate, by accounting for interest charges/allowances, cleaning allowances, cost of moving charges, late shipment storage charges, rail freight allowances, and billing adjustments, where applicable. The CWB reported agent's commissions as an adjustment to the starting price. We treated these expenses as commission expenses. *See* Calculation Memoranda. We also made deductions for movement expenses in accordance with section 772(c)(2)(A) of the Act. These included, where appropriate, foreign inland freight (country elevator to terminal, or Thunder Bay to St. Lawrence freight charges), rail carrier charges, hopper car charges, terminal expenses, fobbing costs (charges associated with loading the wheat onto the vessel), demurrage/despatch costs, country elevator storage expenses, freight revenue, and certain other freight charges, which, because of their proprietary nature, cannot be summarized in this notice. *See* Calculation Memoranda. As noted in the Calculation Memoranda, we reclassified certain expenses reported by the CWB as movement expenses as direct selling expenses.

Normal Value

A. Selection of Comparison Market

Section 773(a)(1) of the Act directs that NV be based on the price at which the foreign like product is sold in the home market, provided that the merchandise is sold in sufficient quantities (or value, if quantity is inappropriate) and that there is no particular market situation that prevents a proper comparison with the EP. In order to determine whether there is a sufficient volume of sales in the home market to serve as a viable basis for calculating NV (*i.e.*, whether the aggregate volume of home market sales of the foreign like product is equal to or greater than five percent of the aggregate volume of U.S. sales), we compared the CWB's volume of home market sales of the foreign like product to the volume of U.S. sales of the subject merchandise, in accordance with section 773(a)(1)(C) of the Act. Because the CWB's aggregate volume of home market sales of the foreign like product was greater than five percent of its aggregate volume of U.S. sales for the subject merchandise, we determined that the home market was viable for both durum wheat and HRS wheat.

In the *Initiation Notice*, we determined that information reasonably available to the petitioners indicated the existence of a particular market situation—pursuant to section 773(a)(1)(C)(iii) of the Act—which rendered price comparisons between home market and U.S. prices inappropriate for purposes of determining whether to initiate these investigations. *See Initiation Notice*, 67 FR at 65949. We noted, however, that during the course of these investigations we would examine further the issue of particular market situation and, if necessary, the proper comparison markets to be used in each investigation. *Id.*

In a letter to interested parties dated February 4, 2003, we acknowledged that "[t]he existence of a government entity, the CWB, as a monopoly buyer and seller of wheat in the Canadian domestic market raised legitimate concerns that a particular market situation might exist with respect to the Canadian home market in these investigations." However, based on evidence on the records of these investigations as of that date, we did not find that the Canadian government controls prices to such an extent that they are non-competitive and inappropriate for use in our dumping analyses. Also, in past cases the Department has recognized a strong preference for using the home market in the Department's dumping calculations and, therefore, has established a high threshold for rejecting home market sales based upon a particular market situation.[2] In the case of durum wheat and HRS wheat, we determined that it is appropriate to collect Canadian home market sales data for use as the basis for normal value. However, we also acknowledged that a number of questions needed to be addressed before a final decision on this issue could be rendered and that any decision made on this issue was subject to change based on evidence collected in supplemental questionnaires or our findings at verification.

Accordingly, in the February 4, 2003, supplemental section A questionnaire (which was modified slightly on February 20, 2003), we asked the CWB to provide further information regarding the alleged particular market situation. Specifically, we asked questions designed to establish whether the CWB's prices in the home market are based upon competitively set prices and whether the CWB consistently bases its prices on a published U.S. price (*e.g.*, daily prices reported by the Minneapolis Grain Exchange or other sources). On February 21 and March 4, 2003, the CWB submitted responses to the supplemental section A questionnaire. On April 23, 2003, the petitioners submitted additional comments on this issue.

No new information provided by interested parties since our February 4, 2003, letter suggests that the Canadian government controls prices to such an extent that they are non-competitive and inappropriate for use in our dumping analyses. *See* Memorandum to Jeffrey A. May, Deputy Assistant Secretary, "Particular Market Situation," dated May 1, 2003, which is on file in the CRU. Accordingly, we continue to find that it is appropriate to use home market sales for purposes of determining normal value in these investigations. Because this finding is based, in part, on representations by the CWB about how it sets prices in the home market, our decision regarding the appropriateness of Canadian home market prices may be subject to change based upon the results of verification.

B. Affiliated-Party Transactions and Arm's Length Test

In its questionnaire responses, the CWB noted that it is treating grain producers that supply grain to the CWB as affiliated parties, given the various aspects of the relationship between the western Canadian grain producers and the CWB. Specifically, western Canadian grain producers supply the CWB, are members of the CWB, and elect two-thirds of the CWB Board; therefore, according to the CWB, the western Canadian farmers control the CWB Board. *See* the CWB's January 10, 2003, section A questionnaire response, at A–16 to A–17. However, the CWB further noted that, under its "Producer Direct Sales" ("PDS") program, the CWB makes sales to grain producers, and it has treated sales to these producers as unaffiliated party transactions. In other words, the CWB appears to have considered grain producers to be affiliated parties when they supply grain to the CWB, but considered the same entities to be unaffiliated when they act as customers under the PDS program. For purposes of these preliminary determinations, we are treating sales to producers under the PDS program as affiliated party transactions because these entities are affiliated with the CWB pursuant to section 771(33)(G) of the Act.

The Department's standard practice with respect to the use of home market sales to affiliated parties for NV is to determine whether such sales are at arm's length prices. Therefore, in accordance with that practice, we performed an arm's length test on the CWB's sales to affiliates as follows.

Sales to affiliated customers in the home market not made at arm's length prices (if any) were excluded from our analysis because we considered them to be outside the ordinary course of trade. *See* 19 CFR 351.102. To test whether these sales were made at arm's length prices, we compared on a model-specific basis the starting prices of sales to affiliated and unaffiliated customers net of all movement charges and direct selling expenses. Where, for the tested models of subject merchandise, prices to the affiliated party were on average 99.5 percent or more of the price to the unaffiliated parties, we determined that sales made to the affiliated party were at arm's length. *See* 19 CFR 351.403(c) and *Antidumping Duties; Countervailing Duties; Final Rule*, 62 FR 27296, 27355 (May 19, 1997). In instances where no price ratio could be constructed for an affiliated customer because identical merchandise was not sold to unaffiliated customers, we were unable to determine that these sales were made at arm's-length prices and, therefore, excluded them from our LTFV analysis. *See, e.g., Final Determinations of Sales at Less Than Fair Value: Certain Cold-Rolled Carbon Steel Flat Products from Argentina*, 58 FR 37062, 37077 (July 9, 1993). Where the exclusion of such sales eliminated all sales of the most appropriate comparison product, we made a comparison to the next most similar model.

C. Cost of Production Analysis

As noted above, based on our analysis of an allegation made by the petitioners after initiation of these investigations, we found that there were reasonable grounds to believe or suspect that sales of HRS wheat in the home market were made at prices below their COP. Accordingly, pursuant to section 773(b) of the Act, we initiated a company-specific sales-below-cost investigation to determine whether sales of HRS wheat were made at prices below their COP.

As noted above in the case history, the Department selected the CWB, the largest exporter of the subject merchandise to the United States during the POI, as the sole respondent in the HRS wheat investigation. The CWB's February 5, 2003, section A questionnaire response stated that it was an exporter of the subject merchandise, not the producer of subject merchandise, and included a list of wheat suppliers. Because there are more than 56,000 HRS wheat producers in Canada, the Department developed a methodology to calculate a representative COP and constructed value ("CV") for the merchandise under consideration. The Department's cost respondent methodology resulted in stratifying producers of HRS wheat by all relevant soil types within each major producing province in Canada and selecting a sample size that ensured a minimum of two producers within each stratum.[3] The resulting final sample size was twenty-seven producers. A simple average of the costs of production within a stratum was calculated and then the amounts per stratum were weight averaged based on each stratum's delivered tons.

Of the twenty-seven producers selected, one producer (*i.e.*, cost respondent 2)[4] chose not to respond to the Department's questionnaire, two other producers (*i.e.*, cost respondents 10 and 27) did not respond based on extenuating circumstances discussed below, and one other producer (*i.e.*, cost respondent 19) had significant issues with respect to the reporting of its COP. Therefore, as described in detail below, because these producers have not provided the necessary information on the record to calculate the simple-average COP within their respective stratum, the use of facts otherwise available is warranted.

Section 776(a)(2) of the Act provides that, if an interested party or any other person (A) withholds information that has been requested by the administering authority; (B) fails to provide such information by the deadlines for the

[2] *See Fresh Kiwifruit from New Zealand: Final Results of Antidumping Administrative Review*, 61 FR 46438 (September 3, 1996); *Certain Cold-Rolled and Corrosion-Resistant Carbon Steel Flat Products from Korea: Final Results of Antidumping Duty Administrative Review*, 62 FR 18404 (April 15, 1997); *Notice of Final Results of Antidumping Duty Administrative Review: Furfuryl Alcohol from South Africa*, 62 FR 61804 (November 14, 1997); *Notice of Final Determination of Sales at Less than Fair Value: Fresh Atlantic Salmon from Chile*, 63 FR 31411 (June 8, 1998); *Final Results of Antidumping Duty Administrative Review: Electrolytic Manganese Dioxide from Greece*, 65 FR 68978 (November 15, 2000).

[3] *See* Cost Respondent Selection Memorandum.

[4] Due to the proprietary nature of the name of each producer, we have assigned a number to each farmer ("cost respondent") that will be used throughout this notice when referring to that specific farmer. A list or code key identifying the name associated with each cost respondent number can be found in attachment 1 of the Memorandum from Theresa L. Caherty and Michael P. Martin to Neal M. Halper, "Cost of Production and Constructed Value Adjustments for the Preliminary Determination," dated May 1, 2003 ("COP/CV Adjustments Memorandum"), which is on file in the CRU.

submission of the information or in the form and manner requested, subject to subsections (c)(1) and (e) of section 782 of the Act; (C) significantly impedes a proceeding under this title; or (D) provides such information but the information cannot be verified as provided in section 782(i) of the Act, the Department shall, subject to section 782(d) of the Act, use the facts otherwise available in reaching the applicable determination under this title.[5] Section 776(b) of the Act further provides that adverse inferences may be used when a party has failed to cooperate by not acting to the best of its ability to comply with a request for information.

With respect to cost respondent 2, this producer chose not to respond to the Department's questionnaire. As a result, use of facts available is appropriate pursuant to section 776(a)(2)(A) of the Act. In accordance with section 776(b) of the Act, if the Department finds that "an interested party failed to cooperate by not acting to the best of its ability to comply with a request for information," an adverse inference may be used in determining the facts otherwise available. In the instant case, cost respondent 2 did not cooperate to the best of its ability by failing to provide any of the information requested in the section D cost questionnaire with no rationale for why it could not provide such information when other producers could. Therefore, as adverse facts available for the preliminary determination on HRS wheat for this cost respondent, we used the higher of the COP from the petition for the same province and soil type or the highest reported cost for other cost respondents within the same stratum. Based on our comparison of the two amounts we found that the reported cost for the other cost respondents within the same stratum was higher. As a result, we used the other respondent's COP within the same stratum as the surrogate cost for cost respondent 2.

Both cost respondents 10 and 27 did not respond to the Department's cost questionnaire based on extenuating circumstances. With respect to cost respondent 10, the CWB explained that this farmer had deliveries of HRS wheat to the CWB during the POI, but did not produce HRS wheat during the 2001 growing season. However, cost respondent 10 did have affiliated parties that produced HRS wheat during the cost reporting period. Therefore, as a surrogate, cost respondent 10 reported its affiliate's COP for the cost reporting period. We note that this affiliate was not considered a cost respondent in the sample selection and, as such, we determined it would not be appropriate to include the affiliate's COP in our overall calculation of COP.

Similar to cost respondent 10, cost respondent 27 did not provide cost data for the 2001 growing season because the information was not available. Specifically, cost respondent 27 sold its farming operations and ceased farming. Because neither cost respondent 10 nor 27 had information available that would enable them to respond to the Department's cost questionnaire and—in the case of cost respondent 10—they attempted to provide some cost information, we applied neutral facts available for the HRS wheat preliminary determination pursuant to sections 776(a)(2)(A) and (B) of the Act. As neutral facts available, we have relied on the cost data submitted by the other cost respondents within the same stratum. Therefore, we have not included an amount for these cost respondents in the simple average calculation within their respective stratums.

With respect to cost respondent 19, we note that, unlike the farmers discussed above, it submitted COP information for the cost reporting period. However, due to extenuating circumstances during the 2001 cost reporting period, this cost respondent received insurance proceeds that exceeded its total cost incurred. In addition, due to the extenuating circumstances, the yield per acre of wheat was aberrant compared to the other cost respondents. As a result, we determined that neutral facts available was warranted pursuant to section 776(a)(2)(B) of the Act. As neutral facts available we have relied on the cost data submitted by the other cost respondents within the same stratum. Therefore, we have not included an amount for this cost respondent in the simple average calculation within its stratum.

1. Calculation of COP

As noted above, the sole respondent, the CWB, was an exporter of the subject merchandise, not the producer of subject merchandise. Therefore, consistent with our practice regarding the cost of resales of subject merchandise, we requested COP data from a sample of the CWB's wheat suppliers. *See* Cost Respondent Selection Memorandum. In accordance with section 773(b)(3) of the Act, we calculated a single weighted-average COP based on the sum of the cost of materials and fabrication for the foreign like product, plus amounts for general and administrative (G&A) expenses, interest expenses, and home market packing costs for all wheat producers selected. *See* the "Test of Comparison Market Sales Prices" section below for treatment of home market selling expenses. To calculate the weighted average COP, we first simple averaged the COPs within each stratum, then weight averaged the results based on each stratum's delivered tons.

2. Common and Individual Cost Respondent Adjustments

We relied on the COP data submitted by each cost respondent in its cost questionnaire response, except in specific instances where the submitted costs were not appropriately quantified or valued, or where the costs otherwise required adjustment, as discussed below:

(A) Common Cost Respondent Adjustments

1. We adjusted the reported labor costs for cost respondents 1, 3–9, 11–16, 18, 20–22, and 24–26. Virtually all of the labor provided on these farms was performed by the owners. For reporting purposes, the cost respondents relied on labor hours and rates from a study performed by Professor Schoney of the University of Saskatchewan. However, because this data was self-selected by the cost respondents and only represented data collected from a single province (Saskatchewan), we relied instead on the per acre labor rates published in the provincial crop guides.

2. We disallowed a reported offset to the COP for insurance proceeds received during the year by cost respondents 7, 8, 11, 15, 17, 22, 23, 25, and 26. These cost respondents failed to provide any explanation describing the facts surrounding these insurance payments. For example, it is unclear to which year's harvest the payments relate, what crops are affected, or whether the proceeds are based on market value for the damaged crops or to recover lost costs.

3. We adjusted the direct cost pool used to allocate variable and fixed overhead costs for cost respondents 1, 3, 4, 6, 8, 9, 11, 12, 14–16, 20, 21, and 22–26. Specifically, we excluded the cost of purchased livestock (whether expensed or amortized) and imputed labor from the direct cost pool.

4. We deducted imputed labor costs from the denominator used in the calculation of the G&A and financial expenses ratios. We then recalculated the ratio and applied the result to the per-unit cost of manufacture ("COM"), exclusive of imputed labor. This adjustment was made for cost respondents 1, 3–9, 11–18, and 20–26.

For detailed calculations of these adjustments for each cost respondent, *see* the COP/CV Adjustments Memorandum.

(B) Individual Cost Respondent Adjustments

Cost Respondent 1

We reduced cost respondent 1's reported production volume by the amount of seed consumed in 2002.

Cost Respondent 3

We revised cost respondent 3's allocation of land use cost to apportion an amount to pasture land used for grazing livestock.

Cost Respondent 5

We revised cost respondent 5's reported per-unit COM by calculating the per-unit amount using the actual quantity of HRS wheat produced, instead of the quantity of HRS wheat delivered.

Cost Respondent 6

We revised cost respondent 6's per-unit COM by calculating the per-unit amount using the actual quantity of HRS wheat produced. It appears that the cost respondent inadvertently used the incorrect production quantity.

Cost Respondent 7

We revised cost respondent 7's reported cost of production to include the total amount expensed for corporate and partnership start-up costs, in accordance with the cost respondent's normal books and records.

We also increased cost respondent 7's reported cost of production to include labor costs related to bookkeeping services performed by an affiliate.

Cost Respondent 9

We adjusted cost respondent 9's reported insurance costs to reflect the accrued expense. Specifically, we included the total commodity insurance premiums, not only the actual insurance payments.

Cost Respondent 14

For cost respondent 14, we revised the direct cost pool used to allocate variable and fixed overhead costs as noted in the common cost respondent adjustment 3 above. In addition, we included certain expenses (*i.e.*, repairs and maintenance, fuel, etc.) in the direct cost pool that were excluded by the cost respondent.

We increased the numerator used to calculate the G&A expense ratio to include an amount for GST taxes that were deducted twice.

We also increased the numerator for the financial expense ratio by disallowing an offset for short-term interest income. Specifically, we found no evidence on the record in the cost respondent's normal books and records where this income was actually earned and recorded.

Cost Respondent 16

We adjusted cost respondent 16's allocation of custom work expenses.

Cost Respondent 17

We adjusted cost respondent 17's labor to reflect the actual labor expense reported in the cost respondent's normal books and records.

Cost Respondent 21

We disallowed the change in accounting method related to repairs and maintenance expenses. Specifically, for reporting purposes cost respondent 21 capitalized and amortized certain repairs and maintenance expenses. However, these amounts were expensed in the cost respondent's normal books and records. Therefore, for the HRS wheat preliminary determination, we included the total amount expensed in the COP.

Cost Respondent 22

We reduced cost respondent 22's reported production volume by the amount of seed consumed in 2002.

Cost Respondent 23

We revised cost respondent 23's labor to reflect actual labor costs reported in the cost respondent's normal books and records.

We disallowed cost respondent 23's treatment of a secondary wheat product as a by-product offset. For the preliminary determination, we calculated one average cost of HRS wheat for the 2001 growing season. Thus, while we disallowed the offset to HRS wheat costs, we did include the quantity of feed HRS wheat in the denominator of the calculation of the growing season's average HRS wheat cost per ton.

Cost Respondent 25

We adjusted the reported land use cost for cost respondent 25 to include the amount of rent paid to the shareholders for land and to exclude the property taxes personally paid by the shareholders.

3. Test of Home Market Sales Prices

On a product-specific basis, we compared the adjusted weighted-average COP to the home market sales of HRS wheat, as required under section 773(b) of the Act, in order to determine whether the sale prices were below the COP. The prices were adjusted for any applicable freight revenue, interest charges/allowances, cleaning allowances, cost of moving charges, late shipment storage charges, rail freight allowances, movement charges, billing adjustments, and direct and indirect selling expenses. In determining whether to disregard home market sales made at prices less than their COP, we examined whether such sales were made (1) within an extended period of time in substantial quantities, and (2) at prices which did not permit the recovery of all costs within a reasonable period of time.

4. Results of the COP Test

Pursuant to section 773(b)(1), where less than 20 percent of the respondent's sales of a given product are at prices less than the COP, we do not disregard any below-cost sales of that product, because we determine that in such instances the below-cost sales were not made in "substantial quantities." Where 20 percent or more of a respondent's sales of a given product are at prices less than the COP, we determine that the below-cost sales represent "substantial quantities" within an extended period of time, in accordance with section 773(b)(1)(A) of the Act. In such cases, we also determine whether such sales were made at prices which would not permit recovery of all costs within a reasonable period of time, in accordance with section 773(b)(1)(B) of the Act. If so, we disregard the below-cost sales.

We found that, for certain specific HRS products, more than 20 percent of the CWB's home market sales within an extended period of time were at prices less than the COP and, in addition, such sales did not provide for the recovery of costs within a reasonable period of time. We therefore excluded these sales and used the remaining sales, if any, as the

[5] Where the Department determines that a response to a request for information does not comply with the request, section 782(d) of the Act provides that the Department will so inform the party submitting the response and will, to the extent practicable, provide that party the opportunity to remedy or explain the deficiency. If the party fails to remedy the deficiency within the applicable time limits, the Department may, subject to section 782(e) of the Act, disregard all or part of the original and subsequent responses, as appropriate. Section 782(e) of the Act provides that the Department "shall not decline to consider information that is submitted by an interested party and is necessary to the determination but does not meet all the applicable requirements established by the administering authority" if the information is timely, can be verified, and is not so incomplete that it cannot be used, and if the interested party acted to the best of its ability in providing the information. Where all of these conditions are met, the statute requires the Department to use the information, if it can do so without undue difficulties.

basis for determining NV, in accordance with section 773(b)(1) of the Act.

D. Level of Trade

Section 773(a)(1)(B)(i) of the Act states that, to the extent practicable, the Department will calculate NV based on sales at the same level of trade ("LOT") as the EP. Sales are made at different LOTs if they are made at different marketing stages (or their equivalent) according to 19 CFR 351.412(c)(2). Substantial differences in selling activities are a necessary, but not sufficient, condition for determining that there is a difference in the stages of marketing. *Id; see also Notice of Final Determination of Sales at Less Than Fair Value: Certain Cut-to-Length Carbon Steel Plate From South Africa,* 62 FR 61731, 61732 (November 19, 1997). In order to determine whether the comparison sales were at different stages in the marketing process than the U.S. sales, we reviewed the distribution system in each market (*i.e.*, the "chain of distribution"),[6] including selling functions,[7] class of customer ("customer category"), and the level of selling expenses for each type of sale.

Pursuant to section 773(a)(7)(A) of the Act and 19 CFR 351.412(c), in identifying levels of trade for EP and comparison market sales (*i.e.*, NV based on either home market or third country prices), we consider the starting prices before any adjustments.

When the Department is unable to match U.S. sales to sales of the foreign like product in the comparison market at the same LOT as the EP, the Department may compare the U.S. sale to sales at a different LOT in the comparison market. If the comparison market sales are at a different LOT, and the difference affects price comparability, as manifested in a pattern of consistent price differences between sales at different LOTs in the country in which NV is determined, we make a level of trade adjustment under section 773(a)(7)(A) of the Act.

[6] The marketing process in the United States and comparison markets begins with the producer and extends to the sale to the final user or consumer. The chain of distribution between the two may have many or few links, and the respondent's sales occur somewhere along this chain. In performing this evaluation, we considered the narrative responses of the respondent to determine properly where in the chain of distribution the sales occurred.

[7] Selling functions associated with a particular chain of distribution help us to evaluate the level(s) of trade in a particular market. For purposes of these preliminary determinations, we have organized the common durum wheat and hard red spring wheat selling functions into four major categories: Sales process and marketing support, freight and delivery, inventory and warehousing, and quality assurance/warranty services. Other selling functions unique to the respondent were considered, as appropriate.

We obtained information from the CWB regarding the marketing stages involved in making the reported home market and U.S. sales, including a description of the selling activities performed by the CWB for each channel of distribution. Our level of trade findings are summarized below. Our LOT analyses for durum wheat and HRS wheat, which contain business proprietary information, are incorporated in the Calculation Memoranda.

1. Durum Wheat

The CWB reported seven channels of distribution in the home market, with three customer categories. The first channel of distribution, coded in its submissions as channel 1, included Eastern Water In-store Thunder Bay sales made to unaffiliated resellers and end-users. The second channel of distribution, coded in its submissions as channel 2, were Eastern Water FOB In-store St. Lawrence sales made to unaffiliated resellers. The third channel of distribution, coded in its submissions as channel 3, were Rail to East (not through Thunder Bay) sales made to unaffiliated resellers and end users. The fourth channel of distribution, coded in its submissions as channel 4, were Western Elevator to Mills (acting as a process elevator) sales made to end users. The fifth channel of distribution, coded in its submissions as channel 5, were Western Elevator to Mill (not acting as a process elevator) and Producer Direct sales made to unaffiliated resellers, end users, and producers. Sales to these customer categories in each of these channels were similar with respect to sales process, freight services, warehouse/inventory maintenance, and warranty service. Accordingly, we preliminarily determine that these channels of distribution constitute a distinct LOT ("LOTH1").

The sixth channel of distribution, coded in its submissions as channel 6, were Western Mill Producer Direct sales made to end users and producers. The seventh channel of distribution, coded in its submissions as channel 10, were Producer Direct Sales, Domestic Feed Sales, or Truck Sales to the United States made to unaffiliated resellers and producers. Sales to these customer categories in both of these channels were similar with respect to sales process, freight services, warehouse/inventory maintenance, and warranty service, but differed from sales to LOTH1 substantially with respect to freight services and warehouse/inventory maintenance. Accordingly, we preliminarily determine that these channels of distribution constitute a distinct LOT ("LOTH2").

In the U.S. market, the CWB had only EP sales. The CWB reported EP sales to two channels of distribution and three customer categories. The first channel of distribution, coded in its submissions as channel 7, were Rail Minneapolis/Chicago sales made to unaffiliated resellers and end users. Sales to both customer categories in this channel were similar with respect to sales process, freight services, warehouse/inventory maintenance, and warranty service. Accordingly, we preliminarily determine that this channel of distribution constitutes a distinct LOT ("LOTU1").

The second channel of distribution, coded in its submissions as channel 10, were Producer Direct Sales, Domestic Feed Sales, or Truck Sales to the United States made only to producers. We found that sales in this channel ("LOTU2") differed substantially from LOTU1 with respect to the sales process, freight service, and warehouse/inventory maintenance, and that sales in each LOT were made at different points in the chain of distribution. Based upon our overall analysis in the U.S. market, we found that LOTU1 and LOTU2 constitute two distinct levels of trade.

The EP level of trade LOTU1 was similar to the home market level of trade LOTH1 with respect to sales process, freight services, warehousing/inventory maintenance, and warranty service, but differed considerably from home market level of trade LOTH2 with respect to freight services and warehousing/inventory maintenance. Consequently, we matched U.S. sales at EP level of trade LOTU1 to sales at the same level of trade in the home market (*i.e.*, LOTH1). Where we did not match products at the same level of trade, and there was a pattern of consistent price differences between different levels of trade, we made a level of trade adjustment. *See* section 773(a)(7)(A) of the Act.

The EP level of trade LOTU2 was similar to the home market level of trade LOTH2 with respect to sales process, freight services, warehousing/inventory maintenance, and warranty service, but differed considerably from home market level of trade LOTH1 with respect to freight services and warehousing/inventory maintenance. Consequently, we matched U.S. sales at EP level of trade LOTU2 to sales at the same level of trade in the home market (*i.e.*, LOTH2). Where we did not match products at the same level of trade, and there was a pattern of consistent price differences between different levels of trade, we made a level of trade adjustment. *See* section 773(a)(7)(A) of the Act.

2. Hard Red Spring Wheat

The CWB reported seven channels of distribution in the home market, with three customer categories. The first channel of distribution, coded in its submissions as channel 1, included Eastern Water In-store Thunder Bay sales made to unaffiliated resellers and end-users. The second channel of distribution, coded in its submissions as channel 2, were Eastern Water FOB In-store St. Lawrence sales made to end users. The third channel of distribution, coded in its submissions as channel 3, were Rail to East (not through Thunder Bay) sales made to unaffiliated resellers and end users. The fourth channel of distribution, coded in its submissions as channel 4, were Western Elevator to Mills (acting as a process elevator) sales made to unaffiliated resellers and end users. The fifth channel of distribution, coded in its submissions as channel 5, were Western Elevator to Mill (not acting as a process elevator) and Producer Direct sales made to unaffiliated resellers, end users, and producers. Sales to these customer categories in each of these channels were similar with respect to sales process, freight services, warehouse/inventory maintenance, and warranty service. Accordingly, we preliminarily determine that these channels of distribution constitute a distinct LOT ("LOTH1").

The sixth channel of distribution, coded in its submissions as channel 6, were Western Mill Producer Direct sales made to end users. The seventh channel ofdistribution, coded in its submissions as channel 10, were Producer Direct Sales, Domestic Feed Sales, or Truck Sales to the United States made to unaffiliated resellers, end users, and producers. Sales to these customer categories in these channels were similar with respect to sales process, freight services, warehouse/inventory maintenance, and warranty service, but differed from sales to LOTH1 substantially with respect to freight services. Accordingly, we preliminarily determine that these channels of distribution constitute a distinct LOT ("LOTH2").

In the U.S. market, the CWB had only EP sales. The CWB reported EP sales to four channels of distribution and three customer categories. The first channel of distribution, coded in its submissions as channel 7, were Rail Minneapolis/Chicago sales made to unaffiliated resellers and end users. The second channel of distribution, coded in its submissions as channel 8, were Vessel Thunder Bay to Buffalo/Puerto Rico sales made to unaffiliated resellers. The third channel of distribution, coded in its submissions as channel 9, were Vancouver to United States sales made to unaffiliated resellers and end users. Sales to both customer categories in these channels were similar with respect to sales process, freight services, warehouse/inventory maintenance, and warranty service. Accordingly, we preliminarily determine that these channels of distribution constitute a distinct LOT ("LOTU1").

The fourth channel of distribution, coded in its submissions as channel 10, were Producer Direct Sales, Domestic Feed Sales, or Truck Sales to the United States made to unaffiliated resellers and producers. Sales to both customer categories in this channel were similar with respect to sales process, freight services, warehouse/inventory maintenance, and warranty service. We further found that sales in this channel ("LOTU2") differed substantially from LOTU1 with respect to freight services and warehouse/inventory maintenance, and that sales in each LOT were made at different points in the chain of distribution. Based upon our overall analysis in the U.S. market, we found that LOTU1 and LOTU2 constitute two distinct levels of trade.

The EP level of trade LOTU1 was similar to the home market level of trade LOTH1 with respect to sales process, freight services, warehousing/inventory maintenance, and warranty service, but differed considerably from home market level of trade LOTH2 with respect to freight services. Consequently, we matched U.S. sales at EP level of trade LOTU1 to sales at the same level of trade in the home market (*i.e.*, LOTH1). Where we did not match products at the same level of trade, and there was a pattern of consistent price differences between different levels of trade, we made a level of trade adjustment. *See* section 773(a)(7)(A) of the Act.

The EP level of trade LOTU2 was similar to the home market level of trade LOTH2 with respect to sales process, freight services, warehousing/inventory maintenance, and warranty service, but differed considerably from home market level of trade LOTH1 with respect to freight services and warehousing/inventory maintenance. Consequently, we matched U.S. sales at EP level of trade LOTU2 to sales at the same level of trade in the home market (*i.e.*, LOTH2). Where we did not match products at the same level of trade, and there was a pattern of consistent price differences between different levels of trade, we made a level of trade adjustment. *See* section 773(a)(7)(A) of the Act.

E. Calculation of Normal Value Based on Comparison Market Prices

We calculated NV based on in-store or C&F prices to unaffiliated customers or prices to affiliated customers that we determined to be at arm's length. We identified the correct starting price, where appropriate, by accounting for interest charges/allowances, cleaning allowances, cost of moving charges, late shipment storage charges, rail freight allowances, and billing adjustments. We also made adjustments for the following movement expenses, where appropriate, in accordance with section 773(a)(6)(B)(iii) of the Act: Foreign inland freight (from country elevator to terminal or Eastern Canadian Mills, or from Thunder Bay to St. Lawrence), hopper car charges, terminal expenses, fobbing costs, handling and elevation expenses, and country elevator storage expenses. As noted in the Calculation Memoranda, we reclassified certain expenses reported by the CWB as movement expenses as direct selling expenses. Because there are no cost differences attributable to differences in the physical characteristics of the merchandise in these cases, we were not able to make a difference in merchandise adjustment—pursuant to section 773(a)(6)(C)(ii) of the Act and 19 CFR 351.411—based on costs. In addition, where appropriate, we made adjustments under section 773(a)(6)(C)(iii) of the Act for differences in circumstances of sale for imputed credit expenses, tender premiums, car awards performance measures, cleaning costs, weighing/inspection costs, protein premiums, producer revenues, and certain other proprietary adjustments. We also made adjustments, in accordance with 19 CFR 351.410(e), for indirect selling expenses incurred in the comparison market or on U.S. sales where commissions were granted on sales in one market but not in the other (the commission offset). Finally, where appropriate, we made an adjustment for differences in LOT under section 773(a)(7)(A) of the Act and 19 CFR 351.412(b)–(e).

Currency Conversion

We made currency conversions into U.S. dollars in accordance with section 773A(a) of the Act based on the exchange rates in effect on the dates of the U.S. sales as certified by the Federal Reserve.

Verification

As provided in section 782(i) of the Act, we will verify all information to be

used in making our final determinations.

Suspension of Liquidation

In accordance with section 733(d)(2) of the Act, we are directing the U.S. Bureau of Customs and Border Protection ("BCBP") to suspend liquidation of all imports of subject merchandise from Canada that are entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice in the **Federal Register**. We will instruct the BCBP to require a cash deposit or the posting of a bond equal to the weighted-average amount by which the NV exceeds the EP, as indicated in the chart below. These suspension-of-liquidation instructions will remain in effect until further notice. The weighted-average dumping margins are as follows:

DURUM WHEAT

Exporter/manufacturer	Weighted-average margin percentage
Canadian Wheat Board	8.15
All Others	8.15

HARD RED SPRING WHEAT

Exporter/manufacturer	Weighted-average margin percentage
Canadian Wheat Board	6.12
All Others	6.12

ITC Notification

In accordance with section 733(f) of the Act, we have notified the ITC of our determinations. If our final determinations are affirmative, the ITC will determine before the later of 120 days after the date of these preliminary determinations or 45 days after our final determinations whether these imports are materially injuring, or threaten material injury to, the U.S. industries.

Disclosure

We will disclose the calculations used in our analyses to parties in these proceedings in accordance with 19 CFR 351.224(b).

Public Comment

Case briefs for these investigations must be submitted to the Department no later than 50 days after the date of publication of these preliminary determinations or one week after the issuance of the last verification report, whichever is later. Rebuttal briefs must be filed five days after the deadline for submission of case briefs. A list of authorities used, a table of contents, and an executive summary of issues should accompany any briefs submitted to the Department. Executive summaries should be limited to five pages total, including footnotes.

Section 774 of the Act provides that the Department will hold a public hearing to afford interested parties an opportunity to comment on arguments raised in case or rebuttal briefs, provided that such a hearing is requested by an interested party. If a request for a hearing is made in these investigations, the hearing will tentatively be held two days after submission of the rebuttal briefs at the U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230. Parties should confirm by telephone the time, date, and place of the hearing 48 hours before the scheduled time.

Interested parties who wish to request a hearing, or to participate if one is requested, must submit a written request to the Assistant Secretary for Import Administration, U.S. Department of Commerce, Room 1870, within 30 days of the publication of this notice. Requests should contain: (1) The party's name, address, and telephone number; (2) the number of participants; and (3) a list of the issues to be discussed. Oral presentations will be limited to issues raised in the briefs.

If these investigations proceed normally, we will make our final determinations within 75 days of these preliminary determinations.

These determinations are published pursuant to sections 733(f) and 777(i) of the Act.

Dated: May 1, 2003.

Joseph A. Spetrini,

Acting Assistant Secretary for Import Administration.

[FR Doc. 03–11486 Filed 5–7–03; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[C–580–837]

Notice of Rescission of Countervailing Duty Administrative Review: Certain Cut-to-Length Carbon Quality Steel Plate From the Republic of Korea

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of rescission of countervailing duty administrative review.

SUMMARY: On March 25, 2003, the Department of Commerce (the Department) initiated an administrative review of the countervailing duty order on certain cut-to-length carbon quality steel plate (CTL Plate) from the Republic of Korea, covering the period January 1, 2002 through December 31, 2002. *See Initiation of Antidumping and Countervailing Duty Administrative Reviews and Requests for Revocation in Part*, 68 FR 14394 at 14400 (March 25, 2003). In accordance with 19 CFR 351.213(d)(1) (2002), the Department is now rescinding this review because the requester has withdrawn its request for an administrative review.

EFFECTIVE DATE: May 8, 2003.

FOR FURTHER INFORMATION CONTACT: Stephanie Moore or Joy Zhang, AD/CVD Enforcement, Office 6, Group II, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 482–3692 or (202) 482–1168, respectively.

SUPPLEMENTARY INFORMATION:

Background

On February 27, 2003, the Department received a letter from Nucor requesting an administrative review of the countervailing order on CTL Plate from Korea. On March 25, 2003, the Department initiated an administrative review of this order for the period January 1, 2002 through December 31, 2002. Nucor submitted a letter dated March 24, 2003, withdrawing its request for the above referenced administrative review.

Scope of the Review

For purposes of this administrative review, the products covered are certain hot-rolled carbon-quality steel: (1) Universal mill plates (*i.e.*, flat-rolled products rolled on four faces or in a closed box pass, of a width exceeding 150 mm but not exceeding 1250 mm, and of a nominal or actual thickness of not less than 4 mm, which are cut-to-length (not in coils) and without patterns in relief), of iron or non-alloy-quality steel; and (2) flat-rolled products, hot-rolled, of a nominal or actual thickness of 4.75 mm or more and of a width which exceeds 150 mm and measures at least twice the thickness, and which are cut-to-length (not in coils). Steel products to be included in the scope of this order are of rectangular, square, circular or other shape and of rectangular or non-rectangular cross-section where such non-rectangular cross-section is achieved subsequent to the rolling process (*i.e.*, products which have been "worked after rolling")—for example, products which have been beveled or rounded at the edges. Steel products that meet the noted physical characteristics that are painted, varnished or coated with plastic or other non-metallic substances are included within this scope. Also, specifically included in the scope of this order are high strength, low alloy (HSLA) steels. HSLA steels are recognized as steels with micro-alloying levels of elements such as chromium, copper, niobium, titanium, vanadium, and molybdenum. Steel products to be included in this scope, regardless of Harmonized Tariff Schedule of the United States (HTSUS) definitions, are products in which: (1) Iron predominates, by weight, over each of the other contained elements; (2) the carbon content is two percent or less, by weight; and (3) none of the elements listed below is equal to or exceeds the quantity, by weight, respectively indicated: 1.80 percent of manganese, or 1.50 percent of silicon, or 1.00 percent of copper, or 0.50 percent of aluminum, or 1.25 percent of chromium, or 0.30 percent of cobalt, or 0.40 percent of lead, or 1.25 percent of nickel, or 0.30 percent of tungsten, or 0.10 percent of molybdenum, or 0.10 percent of niobium, or 0.41 percent of titanium, or 0.15 percent of vanadium, or 0.15 percent zirconium. All products that meet the written physical description, and in which the chemistry quantities do not equal or exceed any one of the levels listed above, are within the scope of this order unless otherwise specifically excluded. The following products are specifically excluded from this order: (1) Products clad, plated, or coated with metal, whether or not painted, varnished or coated with plastic or other non-metallic substances; (2) SAE grades (formerly AISI grades) of series 2300 and above; (3) products made to ASTM A710 and A736 or their proprietary equivalents; (4) abrasion-resistant steels (*i.e.*, USS AR 400, USS AR 500); (5) products made to ASTM A202, A225, A514 grade S, A517 grade S, or their proprietary equivalents; (6) ball bearing steels; (7) tool steels; and (8) silicon manganese steel or silicon electric steel.

The merchandise subject to this order is classified in the HTSUS under subheadings: 7208.40.3030, 7208.40.3060, 7208.51.0030, 7208.51.0045, 7208.51.0060, 7208.52.0000, 7208.53.0000, 7208.90.0000, 7210.70.3000, 7210.90.9000, 7211.13.0000, 7211.14.0030, 7211.14.0045, 7211.90.0000, 7212.40.1000, 7212.40.5000, 7212.50.0000, 7225.40.3050, 7225.40.7000, 7225.50.6000, 7225.99.0090, 7226.91.5000, 7226.91.7000, 7226.91.8000, 7226.99.0000.

Although the HTSUS subheadings are provided for convenience and Customs purposes, the written description of the merchandise covered by these orders is dispositive.

Rescission of Review

Within 90 days of the March 25, 2003, publication of the notice of initiation, Nucor withdrew its request for an administrative review. *See* Letter from Nucor to the Department dated March 24, 2003, on file in the Central Records Unit, Room B–099, Main Building of the Department of Commerce. No other interested party requested a review, and we have received no submissions commenting on Nucor's withdrawal of its request for review.

In accordance with the Department's regulation, 19 CFR 351.213(d)(1), and consistent with its practice, the Department hereby rescinds the administrative review of CTL Plate from Korea for the period January 1, 2002 to December 31, 2002. *See, e.g., Certain Welded Carbon Steel Pipe and Tube from Turkey: Rescission of Countervailing Duty Administrative Review*, 67 FR 42541 (June 24, 2002).

This notice is in accordance with sections 751(a)(1) and 777(i) of the Tariff Act of 1930, as amended, and § 351.213(d)(4) of the Department's regulations.

Dated: May 1, 2003.

Holly A. Kuga,

Acting Deputy Assistant Secretary for Import Administration.

[FR Doc. 03–11485 Filed 5–7–03; 8:45 am]

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DEPARTMENT OF COMMERCE

International Trade Administration

[C–122–839]

Preliminary Results and Partial Rescission of Countervailing Duty Expedited Reviews: Certain Softwood Lumber Products From Canada

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of preliminary results and partial recission of countervailing duty expedited reviews.

SUMMARY: The Department of Commerce (the Department) is conducting expedited reviews of the countervailing duty order on certain softwood lumber products from Canada for the period April 1, 2000, through March 31, 2001. This notice includes the preliminary results for 28 companies. These preliminary results include 14 companies in Round 1 of the proceeding. *See Notice of Initiation of Expedited Reviews of the Countervailing Duty Order: Certain Softwood Lumber Products From Canada* (67 FR 46955; July 17, 2002) (*Notice of Initiation/Round 1*). In addition, these preliminary results of expedited review include 14 companies in Round 2 of the proceeding. *See Notice of Initiation of Expedited Reviews of the Countervailing Duty Order: Certain Softwood Lumber Products from Canada* (67 FR 59252; September 20, 2002) (*Notice of Initiation/Round 2*). For all 28 companies we applied the Group 1 methodology. For information on estimated net subsidies, see the "Preliminary Results of Reviews" section of this notice. If the final results remain the same as these preliminary results of reviews, we will instruct the Bureau of Customs and Border Protection (BCBP) to amend the cash deposit for each reviewed company as detailed in the "Preliminary Results of Reviews" section of this notice. Interested parties are invited to comment on these preliminary results. In addition, the Department is rescinding expedited reviews of five companies in Round 1 and seven companies in Round 2.

EFFECTIVE DATE: May 8, 2003.

FOR FURTHER INFORMATION CONTACT: Gayle Longest or Tipten Troidl, Office of AD/CVD Enforcement VI, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 482–3338 or (202) 482–1767.

SUPPLEMENTARY INFORMATION:

Background

On May 22, 2002, the Department published in the **Federal Register** its amended final affirmative countervailing duty determination and countervailing duty order on certain softwood lumber products (subject merchandise) from Canada (67 FR 36070), as corrected (67 FR 37775; May 30, 2002) (*Amended Final Determination*). On July 17, 2002, the Department published the *Notice of Initiation/Round 1* which covered 73 companies that filed complete and timely review applications. *See* 67 FR 46955. On September 20, 2002, the Department published the *Notice of Initiation/Round 2*, which covered 31 additional companies. *See* 67 FR 59252. This notice included 23 companies that had corrected incomplete applications

as well as eight companies whose requests were received beyond the initial application deadline for reasons outside the requesters' control.

As explained in the *Notice of Initiation/Round 1*, we segregated applicants into two groups. Group 1 consists of companies that obtain the majority of their wood (over 50 percent of their inputs) from the United States, the Maritime Provinces, Canadian private lands, and Canadian companies excluded from the order, and companies that source less than a majority of their wood from these sources and do not have tenure. Group 2 includes companies that source less than a majority of their wood from these sources and have acquired Crown timber through their own tenure contracts. In Round 1, we found that 45 companies satisfied the requirements of Group 1 and 28 companies satisfied the requirements of Group 2. In Round 2, we found that 22 companies satisfied the requirements of Group 1 and nine companies satisfied the requirement of Group 2.

In our review of the applications in Group 1 in Round 1, we noted that, in order to conduct our analysis, we required only minimal supplemental data for 24 of the 45 companies. The other Group 1 companies required additional information and more extensive analysis. We issued questionnaires to the 24 companies requiring only minimal information and set a short deadline for the response. Of the 24 companies, 18 were able to supply the supplemental information by the deadline. We completed our preliminary analysis of those 18 companies, using the Group 1 methodology (see "Methodology" section below). *See Preliminary Results of Countervailing Duty Expedited Reviews: Certain Softwood Lumber Products from Canada* (67 FR 52945; August 14, 2002) (*August Preliminary Results*). On November 5, 2002, we published the final results for 13 of the 18 companies covered by the *August Preliminary Results*. *See Final Results and Partial Recission of Countervailing Duty Expedited Reviews: Certain Softwood Lumber Products From Canada* (*November Final Results*) (67 FR 67388; November 5, 2002). Concurrent with this notice, we are publishing the final results on three additional companies.

Subsequent to the *August Preliminary Results*, nine Group 1 companies in Round 1 requested an analysis of whether they benefitted from subsidies bestowed on their inputs: American Bayridge Corporation, Blanchette and Blanchette Inc., Goodfellow Inc., Les Bois d'Oeuvre Beaudoin & Gauthier, Meunier Lumber Company Ltd., Mid-America Lumber, Olav Haavaldsrud Timber Company Limited, Treeline Wood Products Limited, and Usine Sartigan Inc. Subsequent to the *Notice of Initiation/Round 2*, three Group 1 companies in Round 2 requested an analysis of whether they benefitted from subsidies bestowed on their inputs: Carson Lake Lumber Limited, Winnipeg Forest Products, Inc., and W.I. Woodtone Industries. We are not including in this notice any of the companies that requested an analysis of whether they benefitted from subsidies bestowed on their inputs.

This notice includes the preliminary results for 28 Group 1 companies (14 in Round 1 and 14 in Round 2).

We received comments and rebuttal comments on the *August Preliminary Results*, on September 6, 2002, and September 18, 2002, respectively, from petitioners and several respondents. We addressed the issues raised in the case and rebuttal briefs in the "Issues and Decision Memorandum" (Decision Memorandum), dated concurrently with the *November Final Results* notice. However, we only addressed those issues that were of a general nature or that specifically affected those 13 reviews. We also received comments from petitioners on November 4, 2002, and December 12, 2002. On January 23, 2003, West Bay Forest Products & Manufacturing Ltd. (West Bay), a company covered by these preliminary results, submitted rebuttal comments to petitioners December 12, 2002, comments. In these preliminary results, we are addressing petitioners' November 4, 2002, and December 12, 2002, comments concerning the companies in these preliminary results, West Bay's rebuttal comments, as well as outstanding methodological issues related to Group 1 companies.

Partial Rescission

On October 18, 2002, Doman Industries Limited, a respondent company in Round 2, withdrew its request for review. On October 29, 2002, Jackpine Engineered Wood Products Inc. and Jackpine Forest Products Limited, respondent companies in Round 1, withdrew their requests for review. On February 5, 2002, Domtar Inc., another respondent company in Round 1, withdrew its request for review.

In addition, after examining information submitted by the companies in these expedited reviews proceedings, we find that one company, Francois Giguere Inc., a company in Round 1 did not ship the subject merchandise to the United States during the period of review (April 1, 2000, through March 31, 2001) (POR). In accordance with the Department's practice, companies that did not ship subject merchandise during the period covered by the investigation or review are not eligible to participate in that segment of the proceeding. *See, e.g., Final Results and Partial Rescission of Countervailing Duty Administrative Review: Stainless Steel Sheet and Strip from the Republic of Korea* (68 FR 13267; March 19, 2002). Moreover, the application to request an expedited review specifically listed exports of subject merchandise to the United States during the POR as one of the eligibility requirements. Therefore, we are rescinding the expedited review for Francois Giguere Inc.

Similarly, two companies in Round 2, 2859–8936 Quebec Inc. Les Cedre Basques and 9027–7971 Quebec Inc., stated in their applications that they did not have any sales of the subject merchandise to the United States during the POR. Instead, they claim that a wholesaler sold their subject merchandise to the United States during the POR; however, they did not provide a completed application for this wholesaler who exported their subject merchandise, as specifically requested in the application form. Because they did not provide the necessary information with regard to this wholesaler, we are not able to proceed with their expedited reviews. *See* Letter from Melissa Skinner, Director, Office VI, to 2859–8936 Quebec Inc. Les Cedre Basques and Letter from Melissa Skinner to 9027–7971 Quebec Inc., both dated April 11, 2003, on file in the Central Records Unit, Room B–099 of the main Commerce Building. Therefore, we are rescinding the expedited reviews for 2859–8936 Quebec Inc. Les Cedre Basques and 9027–7971 Quebec Inc.

Further, one of the Round 2 companies, Hollcan Millworks Ltd. (Hollcan) did not respond to our January 15, 2003, questionnaire which was due on January 29, 2003. We attempted to contact the company to follow up on the questionnaire and found that the phone line was disconnected and email messages were returned as undeliverable. *See* the Department's March 17, 2003 memorandum to the file regarding Expedited Reviews in the Countervailing Duty Order on Softwood Lumber from Canada (C–122–839), which is on file in room B–099 of the Central Records Unit of the Main Commerce Building. Because Hollcan did not provide the necessary information, we are not able to proceed. Therefore, we are rescinding the expedited review for Hollcan.

Our analysis of the information submitted by Group 1 companies in Round 1 and Round 2 also indicates that there are several companies that performed no processing or manufacturing with respect to the subject merchandise they sold to the United States during the POR, but rather these companies resold softwood lumber processed/manufactured by other companies. As we clearly indicated in our May 24, 2002, Expedited Review Application, in instances involving resales activity, we require information from all of the reseller's suppliers in order to calculate a net subsidy rate for the reseller. The pure resellers (*i.e.*, companies with no lumber production or manufacturing of their own) identified below did not provide the information originally requested in the Expedited Review Application. In fact, contrary to the Department's instructions in the Expedited Review Application, several of the companies listed below did not fully disclose their resale activities in the application. Moreover, with respect to some companies, it was not until we had analyzed sales information contained in several supplemental questionnaire responses that we realized that they were, in fact, pure resellers. Therefore, we are rescinding the expedited review for the following Round 1 company: Cando Contracting Ltd. In addition, we are rescinding the expedited reviews for the following Round 2 companies: Antrim Cedar Corporation, Goldwood Industries Ltd., and Westwood Wholesale Lumber Ltd.

Finally, we note that one Group 1 company, Kootenay Innovate Wood Inc., is cross-owned with a Group 2 company. As explained below in Comment 1 of the "Analysis of Comments Received" section of these preliminary results, Group 1 companies that are cross-owned with Group 2 companies will be processed with the Group 2 companies. Thus, Kootenay has not received a company-specific rate in these preliminary results.

Companies Addressed in These Preliminary Results

This notice includes the preliminary results of review for the following 14 Group 1 companies in Round 1:

Alexandre Cote Ltee.
Bocdam Inc.
Byrnexco Inc.
Davron Forest Products Ltd.
Fraser Pacific Forest Products Inc.
Frontier Mills Inc.
Haida Forest Products Ltd.
Landmark Truss & Lumber Inc.
Les Bois S&P Grondin Inc.
Les Industries P.F. Inc.
Sechoirs de Beauce Inc.
Tyee Timber Products Ltd.
West Bay Forest Products and Manufacturing Ltd.
West Can Rail Ltd.

These preliminary results also include the preliminary results of review for the following 14 Group 1 companies in Round 2:

Central Cedar Ltd.
Forstex Industries Inc.
Hudson Mitchell & Sons Lumber Inc.
Indian River Lumber
Les Scieries Jocelyn Lavoie Inc.
Leslie Forest Products Ltd.
Lyle Forest Products Ltd.
Power Wood Corp.
Precision Moulding Products
Ram Co. Lumber Ltd.
Rielly Industrial Lumber Inc.
Sylvanex Lumber Products Inc.
United Wood Frames Inc.
Williamsburg Woods & Garden

Further we are rescinding on the following five companies in Round 1:

Cando Contracting Ltd.
Domtar Inc.
Francois Giguere Inc.
Jackpine Engineered Wood Products Inc.
Jackpine Forest Products Limited

We are also rescinding on the following seven companies in Round 2:

2859–8936 Quebec Inc. Les Cedre Basques
9027–7971 Quebec Inc.
Antrim Cedar Corporation
Doman Industries Limited
Goldwood Industries Ltd.
Hollcan Millworks Ltd.
Westwood Wholesale Lumber Ltd.

Scope of the Reviews

The products covered by this order are softwood lumber, flooring and siding (softwood lumber products). Softwood lumber products include all products classified under headings 4407.1000, 4409.1010, 4409.1090, and 4409.1020, respectively, of the Harmonized Tariff Schedule of the United States (HTSUS), and any softwood lumber, flooring and siding described below. These softwood lumber products include:

(1) Coniferous wood, sawn or chipped lengthwise, sliced or peeled, whether or not planed, sanded or finger-jointed, of a thickness exceeding six millimeters;

(2) Coniferous wood siding (including strips and friezes for parquet flooring, not assembled) continuously shaped (tongued, grooved, rabbeted, chamfered, v-jointed, beaded, molded, rounded or the like) along any of its edges or faces, whether or not planed, sanded or finger-jointed;

(3) Other coniferous wood (including strips and friezes for parquet flooring, not assembled) continuously shaped (tongued, grooved, rabbeted, chamfered, v-jointed, beaded, molded, rounded or the like) along any of its edges or faces (other than wood moldings and wood dowel rods) whether or not planed, sanded or finger-jointed; and

(4) Coniferous wood flooring (including strips and friezes for parquet flooring, not assembled) continuously shaped (tongued, grooved, rabbeted, chamfered, v-jointed, beaded, molded, rounded or the like) along any of its edges or faces, whether or not planed, sanded or finger-jointed.

Although the HTSUS subheadings are provided for convenience and BCBP purposes, the written description of the merchandise subject to this order is dispositive.

As specifically stated in the Issues and Decision Memorandum accompanying the *Notice of Final Determination of Sales at Less Than Fair Value: Certain Softwood Lumber Products from Canada* (67 FR 15539; April 2, 2002) (*see* comment 53, item D, page 116, and comment 57, item B–7, page 126), available at *www.ia.ita.doc.gov*, drilled and notched lumber and angle cut lumber are covered by the scope of this order.

The following softwood lumber products are excluded from the scope of this order provided they meet the specified requirements detailed below:

(1) *Stringers* (pallet components used for runners): if they have at least two notches on the side, positioned at equal distance from the center, to properly accommodate forklift blades, properly classified under HTSUS 4421.90.98.40.

(2) *Box-spring frame kits:* If they contain the following wooden pieces—two side rails, two end (or top) rails and varying numbers of slats. The side rails and the end rails should be radius-cut at both ends. The kits should be individually packaged, they should contain the exact number of wooden components needed to make a particular box spring frame, with no further processing required. None of the components exceeds 1″ in actual thickness or 83″ in length.

(3) *Radius-cut box-spring-frame components*, not exceeding 1″ in actual thickness or 83″ in length, ready for assembly without further processing. The radius cuts must be present on both ends of the boards and must be substantial cuts so as to completely round one corner.

(4) *Fence pickets* requiring no further processing and properly classified under HTSUS heading 4421.90.70, 1″ or less in actual thickness, up to 8″ wide, 6′ or less in length, and have finials or decorative cuttings that clearly identify

them as fence pickets. In the case of dog-eared fence pickets, the corners of the boards should be cut off so as to remove pieces of wood in the shape of isosceles right angle triangles with sides measuring ¾ inch or more.

(5) *U.S. origin lumber* shipped to Canada for minor processing and imported into the United States, is excluded from the scope of this order if the following conditions are met: (1) The processing occurring in Canada is limited to kiln-drying, planing to create smooth-to-size board, and sanding, and (2) if the importer establishes to BCBP' satisfaction that the lumber is of U.S. origin.

(6) *Softwood lumber products contained in single family home packages or kits*,[1] regardless of tariff classification, are excluded from the scope of this order if the importer certifies to items 6 A, B, C, D, and requirement 6 E is met:

A. The imported home package or kit constitutes a full package of the number of wooden pieces specified in the plan, design or blueprint necessary to produce a home of at least 700 square feet produced to a specified plan, design or blueprint;

B. The package or kit must contain all necessary internal and external doors and windows, nails, screws, glue, sub floor, sheathing, beams, posts, connectors, and if included in the purchase contract, decking, trim, drywall and roof shingles specified in the plan, design or blueprint.

C. Prior to importation, the package or kit must be sold to a retailer of complete home packages or kits pursuant to a valid purchase contract referencing the particular home design plan or blueprint, and signed by a customer not affiliated with the importer;

D. Softwood lumber products entered as part of a single family home package or kit, whether in a single entry or multiple entries on multiple days, will be used solely for the construction of the single family home specified by the home design matching the entry.

E. For each entry, the following documentation must be retained by the importer and made available to the BCBP upon request:

i. A copy of the appropriate home design, plan, or blueprint matching the entry;

ii. A purchase contract from a retailer of home kits or packages signed by a customer not affiliated with the importer;

iii. A listing of inventory of all parts of the package or kit being entered that conforms to the home design package being entered;

iv. In the case of multiple shipments on the same contract, all items listed in E(iii) which are included in the present shipment shall be identified as well.

Lumber products that the BCBP may classify as stringers, radius cut box-spring-frame components, and fence pickets, not conforming to the above requirements, as well as truss components, pallet components, and door and window frame parts, are covered under the scope of this order and may be classified under HTSUS subheadings 4418.90.45.90 , 4421.90.70.40, and 4421.90.97.40.

Finally, as clarified throughout the course of the investigation, the following products, previously identified as Group A, remain outside the scope of this order. They are:

1. Trusses and truss kits, properly classified under HTSUS 4418.90;
2. I-joist beams;
3. Assembled box spring frames;
4. Pallets and pallet kits, properly classified under HTSUS 4415.20;
5. Garage doors;
6. Edge-glued wood, properly classified under HTSUS item 4421.90.98.40;
7. Properly classified complete door frames;
8. Properly classified complete window frames;
9. Properly classified furniture.

In addition, this scope language has been further clarified to now specify that all softwood lumber products entered from Canada claiming non-subject status based on U.S. country of origin will be treated as non-subject U.S.-origin merchandise under the countervailing duty order, provided that these softwood lumber products meet the following condition: Upon entry, the importer, exporter, Canadian processor and/or original U.S. producer establish to BCBP's satisfaction that the softwood lumber entered and documented as U.S.-origin softwood lumber was first produced in the United States as a lumber product satisfying the physical parameters of the softwood lumber scope.[2] The presumption of non-subject status can, however, be rebutted by evidence demonstrating that the merchandise was substantially transformed in Canada.

[1] To ensure administrability, we clarified the language of exclusion number 6 to require an importer certification and to permit single or multiple entries on multiple days as well as instructing importers to retain and make available for inspection specific documentation in support of each entry.

[2] *See* the scope clarification message (# 3034202), dated February 3, 2003, to the BCBP, regarding treatment of U.S. origin lumber on file in the Central Records Unit, Room B–099 of the main Commerce Building.

Methodology

Stumpage Programs

These preliminary results include: (a) Companies that obtain the majority of their wood (over 50 percent of their inputs) from the United States, the Maritime Provinces, Canadian private lands, and/or Canadian companies excluded from the order, and (b) companies that source less than a majority of their wood from these sources and do not have tenure. We calculated company-specific rates based on the methodology described in the *November Final Results*. To obtain the company-specific stumpage benefit, we multiplied the quantity of Crown logs and the quantity of lumber inputs (except for those specified below) by the province-specific stumpage benefit calculated in the underlying investigation, *i.e.*, the average per-unit differential between the calculated adjusted stumpage fee for the relevant province and the appropriate benchmark for that province. For those provinces, such as British Columbia and Ontario, for which we calculated more than one per-unit benefit in the investigation, we calculated one province-wide per-unit benefit by weight-averaging the previously calculated values by the corresponding volumes of harvested softwood (this was done in the *November Final Results*). As indicated in the *Notice of Initiation/ Round 1*, we have not attributed a benefit to (1) logs or lumber acquired from the Maritime Provinces, (2) logs or lumber of U.S. origin, (3) lumber produced by mills excluded in the investigation, and (4) logs from Canadian private land. *See* 67 FR 46955, 46957. Furthermore, we are not including in our subsidy rate calculations logs which the companies demonstrate to have acquired and resold without any processing. In addition, we are also not including in the subsidy calculations lumber purchased and resold without any further production or manufacturing because, as explained below, the companies in these preliminary results failed to submit information regarding their suppliers as originally requested in our expedited review application. We divided the stumpage benefit by the appropriate value of the company's sales (scope and non-scope softwood lumber products and softwood lumber by-products, net of resales) to determine the company's estimated subsidy rate from stumpage and then added any benefit from other programs to obtain the cash deposit rate for the company.

Several companies reported that they are cross-owned with other companies that produce and/or manufacture subject merchandise. Specifically, Fraser Pacific Forest Products Inc., Frontier Mills Inc., and Landmark Truss & Lumber Inc. (Landmark Companies) stated that they were cross-owned. Similarly, West Bay Forest Products & Manufacturing Ltd. indicated that it is cross-owned with two companies that produce and/or manufacture subject merchandise, Gold Mountain and Cedarshed (West Bay Companies). With respect to the Landmark and the West Bay Companies, in accordance with § 351.525(b)(6) of the Department's Regulations, we first calculated the benefits for each of the cross-owned companies using the approach described in the "Methodology" section of these Preliminary Results. We then summed the benefits attributable to the consolidated, cross-owned entity and divided the total by the entity's consolidated sales denominator (scope and non-scope softwood lumber products and softwood lumber by-products, net of resales).

As discussed above in the "Partial Rescission" section of these preliminary results, companies with reselling activities were instructed in the Expedited Review Application to provide information pertaining to their suppliers. However, the Group 1 companies with resale and production activities failed to provide such information. Therefore, the Department is not in a position to calculate the benefit on the portion of their sales attributable to resales. For this reason, lumber that was resold by these companies without any further production or manufacturing will remain subject to the country-wide rate established in the *Amended Final Determination*. Regarding lumber actually produced or manufactured by these companies, we have calculated a company-specific benefit that is based solely on the lumber that the companies have produced. Accordingly, for each Group 1 company included in these preliminary results that produces its own lumber and performs resale activities, we calculated a company-specific-rate for all lumber that the company produces. Lumber that is resold by these companies without any further manufacturing will be subject to the "Country-Wide Rate" calculated in the *Final Amended Determination*.

For the period April 1, 2000, to March 31, 2001, we preliminarily determine the net subsidy rate for this program to be as follows for Group 1 companies in Round 1:

Net subsidies—Producer/exporter	Net subsidy rate %
Alexandre Cote Ltee.	9.07
Boccam Inc.	0.41
Byrnexco Inc.	8.40
Davron Forest Products Ltd.	10.94
Fraser Pacific Forest Products Inc.	8.58
Frontier Mills Inc.	8.58
Haida Forest Products Ltd.	2.45
Landmark Truss & Lumber Inc.	8.58
Les Bois S&P Grondin Inc.	4.62
Les Industries P.F. Inc.	8.03
Sechoirs de Beauce Inc.	0.60
Tyee Timber Products Ltd.	4.10
West Bay Forest Products and Manufacturing Ltd.	5.34
West Can Rail Ltd.	0.00

For the period April 1, 2000, to March 31, 2001, we preliminarily determine the net subsidy rate for this program to be as follows for Group 1 companies in Round 2:

Net subsidies—producer/exporter	Net Subsidy rate %
Central Cedar Ltd.	4.91
Forstex Industries Inc.	4.51
Hudson Mitchell & Sons Lumber Inc.	4.31
Indian River Lumber	0.00
Les Scieries Jocelyn Lavoie Inc.	0.00
Leslie Forest Products Ltd.	13.62
Lyle Forest Products Ltd.	3.37
Power Wood Corp.	6.73
Precision Moulding Products	1.41
Ram Co. Lumber Ltd.	8.92
Rielly Industrial Lumber Inc.	55.15
Sylvanex Lumber Products Inc.	7.09
United Wood Frames Inc.	10.69
Williamsburg Woods & Garden	11.95

Other Programs

In the underlying investigation, the Department determined that the provinces of British Columbia and Quebec provided countervailable benefits under certain programs. British Columbia provided countervailable benefits under the Forest Renewal Program and Quebec provided countervailable benefits under the Private Forest Development Program (PFDP), loans issued by Investment Quebec, lending under Article 28 of the Society for the Industrial Development of Quebec (SDI) and loans issues by the Society for the Recuperation and Development of Quebec Forests (Rexfor). Based upon our decision in the underlying investigation, the Department requested information from companies regarding the use of these programs. Four companies from British Columbia reported using the Forest Renewal Program. These were the only companies in these preliminary results that reported using previously investigated non-stumpage programs during the POR. Consistent with our approach in the underlying investigation, we are treating benefits received under the Forest Renewal Program as countervailable grants. In accordance with § 351.524(2), we have allocated all of the benefits provided under this program to the year of receipt because the total amount approved under the subsidy program is less than 0.5 percent of the relevant sales denominator (*i.e.*, total sales of softwood lumber products, net of resales). To calculate the net subsidy rate received under this program, we divided the benefit by the companies' total sales of softwood lumber products, net of resales.

For the period April 1, 2000, to March 31, 2001, we preliminarily determine the net subsidy rate to be as follows for Group 1 companies in Round 1:

Net subsidies—producer/exporter	Net subsidy rate %
Fraser Pacific Forest Products Inc.	0.03
Frontier Mills Inc.	0.03
Landmark Truss and Lumber Inc.	0.03
West Bay Forest Products and Manufacturing	0.16

For the period April 1, 2000, to March 31, 2001, we preliminarily determine the net subsidy rate to be as follows for Group 1 companies in Round 2:

Net subsidies—producer/exporter	Net subsidy rate %
Central Cedar Ltd.	0.05
Leslie Forest Products Ltd.	0.10

Analysis of Comments Received

I. Methodological Comments

The following comments address methodological issues related to Group 1 companies as well as issues concerning the general methodologies the Department is applying in these expedited reviews.

Comment 1: Whether the Same Methodology Should Be Applied to Cross-owned Companies When One Is Assigned to Group 1 and the Other to Group 2. Tembec Inc., Dowie Timber Ltd., Selkirk Specialty Wood Ltd., Mill & Timber Products Ltd., R. Fryer Forest Products Limited, and Liskeard Lumber Ltd. (the Tembec Group) argue that treatment of Group 2 companies becomes more complicated in instances in which a Group 2 company is cross-owned with a Group 1 company. The Tembec Group contends that there is no

indication as to which methodology will be employed for each company in these types of cases. The Tembec Group maintains that if the Department uses the simplified methodology for the Group 1 company and the cost methodology for the Group 2 company, the Department would be in conflict with its own policy to treat cross-owned companies as one entity.

With respect to the treatment of cross-owned companies when one company is in Group 1 and one company is in Group 2, petitioners assert that all cross-owned companies in this situation should be examined using the Group 2 methodology. Petitioners argue that the Group 2 methodology is the most accurate of the two methods and should apply in such cases.

Department's position: We disagree with both respondents and petitioners. The Group 1 and Group 2 benefit calculation methodologies are, more or less, the same, the only difference being that the Group 2 methodology involves the calculation of a benefit attributable to timber harvested from Crown lands based on the company's actual experience. Thus, for Group 1 companies cross-owned with Group 2 companies, the Department will apply the Group 1 benefit calculation methodology to the Group 1 company and apply the Group 2 benefit calculation methodology to the cross-owned company in Group 2. To derive the net subsidy rate applicable to both the Group 1 and Group 2 company that are cross-owned, the Department will sum the two benefit amounts and divide the total by the two companies' consolidated sales denominator (scope and non-scope softwood lumber products and softwood lumber by-products, net of resales). Therefore, with respect to the methodology to be applied to companies whose cross-owned companies may be assigned to a different group, the Department, when calculating the benefit, will apply to each Group 1 or Group 2 company the methodology, regardless of cross-ownership, of the group to which the company is assigned. The rate for the cross-owned companies will be calculated taking into account the results of the two separate calculations. Given this approach, we are unable in these preliminary results to calculate a consolidated net subsidy rate for Group 1 companies that are cross-owned with Group 2 companies because we are still processing and receiving data from Group 2 companies.

Comment 2: Whether Subsidy Amounts Attributed to Logs on the Basis of Volume Should be Equal to Subsidies Amounts Attributed to Lumber and Sawdust. Petitioners argue that the Department was in error in the Issues and Decision Memorandum issued in conjunction with the *November Final Results* in saying "the Department made no distinction between the amount of subsidy attributed to one cubic meter of lumber and the amount of subsidy attributed to one cubic meter of sawdust." *See* page 15 of the *Issues and Decision Memorandum: Final Results of Expedited Reviews of 13 Companies Covered by the August 14, 2002 Notice of Preliminary Results Under the Countervailing Duty Order on Certain Softwood Lumber from Canada (November Issues and Decision Memorandum)*. Petitioners contend that this is not supported by the facts and is inconsistent with the countervailing duty methodology and economics. Petitioners contend that the allocation of subsidies is based upon the value of products of the subsidized mills. High-value products are recognized as being more highly subsidized and the majority of the subsidy is allocated to these products. In contrast, the allocation of the subsidy to low-value products is much less.

Petitioners contend that in the lumber investigation, the subsidy was attributed to the value of the lumber products produced from preferentially provided inputs. Moreover, they state that the subsidy calculation is always performed on a value, not a volume basis. They cite to 19 CFR 351.525(a) which states "the Secretary will calculate the *ad valorem* subsidy rate by dividing the amount of the benefit allocated to the period of investigation or review by the sales value * * *" Therefore, they argue that the subsidy calculation should be based on the value of the entire input and the value of the entire output since the whole log is required to produce softwood lumber. Petitioners maintain that the Department should clarify that the correct methodology of allocating the subsidy between lumber and by-products, consistent with the underlying investigation, is based on value and not volume.

Moreover, petitioners assert that in the expedited reviews the Department correctly calculated the subsidy by multiplying the per cubic meter benefit on sawtimber by the volume of sawlogs used by the sawmills. However, petitioners contend that the Department also multiplied the province-wide per-cubic-meter benefit on sawtimber by the volume of lumber used as an input by the reviewed lumber company. Petitioners argue that the per-unit benefit on logs is not the same as the per-unit benefit on lumber because it may take as much as two cubic meters of sawtimber to make a cubic meter of lumber.

Petitioners contend that this methodology is inconsistent with the *Notice of Final Affirmative Countervailing Duty Determination and Final Negative Critical Circumstances Determination: Certain Softwood Lumber Products From Canada*, 67 FR 15545 (April 2, 2002) (*Final Determination*). They claim that the Department's methodology understates the subsidy amount on lumber. Petitioners argue that the application of a per-unit benefit based on logs to lumber inputs acquired by, for example, a Canadian lumber remanufacturer, would not reflect the full value of the subsidy received when the lumber in question was resold. Petitioners maintain that this methodology is not supported mathematically. Moreover, the fact that this calculation methodology was used in the exclusion process in the underlying investigation provides no basis to continue this error. Although, assert petitioners, they did not have time to address this erroneous methodology in calculating the company-specific exclusions in their briefs, they claim this methodology should be subject to correction in these expedited reviews.

Department's position: We have carefully considered petitioners' comments on the amount of subsidies attributable to lumber acquired as an input. We remain, however, of the view that the methodology that has been followed by the Department is reasonable and in accordance with our practice.

In these expedited reviews, just as in the exclusion process in the investigation, one of the tasks before the Department is to estimate the amount of subsidy attributable to lumber as an input into the manufacturing process. No such value was derived in determining the country-wide rate in the investigation. In that context, we simply calculated the amount of subsidy attributed to timber; we did not—because we did not need to—derive a value for the subsidy attributable to lumber produced from subsidized timber.

In the exclusion process, we estimated the amount of benefit on lumber as an input into the manufacturing process based on the only value available from the investigation, *i.e.* the benefit on timber expressed as a specific dollar amount per cubic meter. Because the amount of the benefit calculated in the investigation was based on volume, we attributed the benefit to lumber on a volume (not value) basis. We applied this benefit to all lumber, not only to lumber of Crown origin, because, as we stated in the February 20, 2002, Decision Memorandum (Memorandum from Bernard Carreau, Deputy Assistant Secretary, to Faryar Shirzad, Assistant Secretary, regarding Countervailing Duty Investigation on Softwood Lumber Products from Canada), "as a practical matter it is impossible to distinguish lumber produced from private logs and lumber produced from Crown timber, once it is processed in potentially subsidized mills." We used this methodology in the exclusion process and clearly described it in the first initiation notice of the expedited reviews (*Notice of Initiation/Round 1*).

As previously stated in Comment 4 of the *November Issues and Decision Memorandum*, we believe that petitioners had ample opportunity to comment on the accuracy of this methodology during the investigation and in earlier stages of these expedited reviews, particularly when we requested comments on our proposed methodology in the first initiation notice. We received no comments on this issue; therefore, we proceeded with issuing the preliminary results for 18 companies. Petitioners commented after the publication of the *August Preliminary Results*; however, we disagreed with petitioners' position and applied the same methodology in the final results for 13 of those companies.

We find no compelling reason in petitioners' arguments to modify the methodology applied so far. In particular, petitioners have not demonstrated that—given the information that is reasonably available to the Department within the time constraints applicable to these reviews—their approach to attributing subsidies to lumber used as an input is more accurate than the approach used by the Department. Moreover, the Department finds that a change in methodology at this time could be detrimental to the companies under review, who have relied on the current methodology to make a number of decisions, such as whether or not to withdraw from the expedited reviews and whether or not to apply for an upstream analysis. For all these reasons, we are continuing to apply the province-wide stumpage benefit to a unit of lumber in these preliminary results, as we did in the *August Preliminary Results* and the investigation.

Comment 3: Whether Group 1 Companies That Did Not Request an Analysis of Whether They Benefitted From Subsidies Bestowed on Their Inputs Should Be Able To Reassess This Decision. Landmark Truss & Lumber Inc. (Landmark) and its subsidiaries Frontier Mills Inc. and Fraser Pacific Forest Products Inc. maintain that they did not request an analysis of whether they benefitted from subsidies bestowed on their inputs based on their understanding that the final results for Group 1 companies would be issued within the time frames previously announced by the Department. Furthermore, Landmark understood that any results based on an analysis of whether they benefitted from subsidies bestowed on their inputs would not be issued until after the final results of Group 2 companies.

Landmark notes that petitioners have argued in their case brief that the final results of expedited reviews for all companies should be issued simultaneously. Landmark asserts that if the Department decides not to follow its schedule for Group 1 companies and instead issues all expedited reviews simultaneously, then Group 1 companies with the same circumstances as Landmark should be allowed to reassess their decision with respect to requesting an analysis of whether subsidies bestowed on their inputs benefitted them.

Landmark also notes that the Government of Canada (GOC) has argued in case briefs submitted during the course of this proceeding that an analysis of whether the companies benefitted from subsidies bestowed on their inputs should not extend the existing timelines for the expedited reviews and that the Department should issue a proposed methodology for the conduct of this type of analysis. If the Department agrees to complete the analysis on the established schedule or if the Department issues a proposed methodology for the conduct of this type of analysis, Landmark submits that companies similarly situated should be given the opportunity to reassess their decision and to request such an analysis.

Department's Position: In their September 6, 2002, case brief at page 16, the GOC maintained that the Department should allow companies purchasing inputs through arm's length transactions to request expedited reviews subsequent to initiation of the expedited reviews. In the *November Final Results*, we emphasized that allowing other companies to request expedited reviews at that time would complicate and delay an already elaborate and cumbersome process. Similarly, giving companies the opportunity to reassess and request an analysis of whether subsidies bestowed on their inputs benefitted them at this stage in the expedited review process, as Landmark suggests, would further complicate and delay the expedited review process. Therefore, we are not adopting these suggestions.

II. Individual Company Comments

Comment 1: Antrim Cedar Corporation. Petitioners assert that Antrim Cedar's exclusion request in the underlying investigation indicated that it was a reseller of lumber during the POR, however, in these expedited reviews, Antrim reported that it had no resales of logs or lumber.

Department's Position: Antrim's application and subsequent questionnaire responses indicate resales of subject merchandise. However, as indicated above, we are rescinding Antrim's expedited review. The basis of our determination with respect to Antrim's expedited review is explained in the "Partial Recission" section of this notice.

Comment 2: Central Cedar Ltd. Petitioners contend that the total value of all sales of subject merchandise reported in Central Cedar's exclusion request differs from the amount reported in its expedited review application.

Department's Position: The exclusion request was in a different segment of the proceeding from these expedited reviews. Therefore, the figures provided in the two segments of the proceeding are not directly comparable. The numbers reported for purposes of these expedited reviews are F.O.B. values and we have sent several questionnaires to the companies clarifying exactly how the sales data should be derived for purposes of these expedited reviews. Companies have provided the clarified data to the Department and we have used it in these preliminary results.

Comment 3: Fraser Pacific Forest Products. Petitioners contend that in the exclusion process, Fraser reported that it was a wholly-owned subsidiary of Landmark Truss and reported total sales of subject merchandise for itself and its affiliated companies. However, petitioners point out that in these expedited reviews, Landmark Truss by itself claimed total sales of subject merchandise without mention of any affiliates. Petitioners assert that the sum of total sales of subject merchandise for these three companies' expedited review applications is a substantial increase over the amount reported for total sales of subject merchandise in the exclusion process.

Department's Position: Fraser Pacific Forest Products has reported in these expedited reviews that it is a wholly-owned subsidiary of Landmark and also cross-owned with Frontier Mills. In

these expedited review proceedings, we have sent several questionnaires to Fraser Pacific, Frontier Mills, and Landmark to clarify the data that was submitted. We have calculated the rate for this company using our cross-owned methodology as described above in the methodology section of this notice. Thus, we have accounted for not only its cross-ownership with Landmark, but also its cross-ownership with Frontier Mills.

Comment 4: Power Wood Corporation (Power Wood) and Rielly Industrial Lumber Inc. (Rielly). Petitioners assert that the total sales of subject merchandise reported in Power Wood's and Rielly's exclusion request differs from the amount reported in the expedited review process. Moreover, petitioners contend that in the company exclusion process these two companies certified that they received no benefit from provincial Crown stumpage in British Columbia. Yet, petitioners point out that in the Power Wood's and Rielly's expedited review application, they reported that they acquired Crown-origin logs from British Columbia during the POR.

Department's Position: As noted in Comment 2 above concerning Central Cedar, these expedited review proceedings are different from the exclusion process. We have provided in these expedited reviews specific instructions how to derive the data for sales. In addition, we have taken into account Power Wood's and Rielly's Crown-origin logs reported in the company's questionnaire response in our calculation for this company's individual cash deposit rate.

Comment 5: Sylvanex Lumber Products Inc. Petitioners argue that in the company exclusion proceeding, Sylvanex Lumber Products Inc. (Sylvanex) reported that they had received government assistance while in these expedited reviews, Sylvanex indicates that they received no government assistance.

Department's Position: As noted in numerous company-specific comments above, the company exclusion segment of the proceeding was different from the expedited review segment of the proceeding. Contrary to petitioners' assertion, during the exclusion process and by letter dated August 21, 2001, Sylvanex reported that it "did not benefit from other programs subject to this investigation." *See* the GOC's October 29, 2001, submission, of which a public version is on file in room B–099 of the Central Records Unit in the main Commerce Building. In addition, the October 10, 2001 certification supplied by Forest Renewal BC indicated that Sylvanex received zero benefits from Forest Renewal BC. The benefit that petitioner states that Sylvanex reported during the exclusion process resulted from the reporting, by Forest Renewal BC of sums provided to various associations within British Columbia. These amounts were allocated to members of the associations for purposes of the exclusion applications alone. In these expedited reviews, the participating companies have submitted program usage information based on their own financial records and experience. Under this approach, Sylvanex again has reported that it did not use the Forest Renewal Program during the POR. Given the difference in reporting methodologies between the two proceedings and the fact that Sylvanex based its questionnaire response on its own financial data, we find the discrepancy raised by petitioners is adequately explained and, thus, does not call into question the veracity of the information submitted by Sylvanex in these expedited reviews.

Comment 6: Tyee Timber Products Ltd. According to petitioners, Tyee Timber Products (Tyee) indicated in the exclusion process that they were affiliated with another company. However, petitioners point out that in these expedited reviews, Tyee does not indicate that they are affiliated with any company. Moreover, the total sales of subject merchandise reported in the exclusion proceeding differs from the total sales of subject merchandise reported in their expedited review application. Lastly, petitioners argue that in Tyee's expedited review application the company indicated that no logs were used or purchased, however, they report in another section of the application that the company used British Columbian timber as inputs.

Department's Position: As explained above, the exclusion process was a different segment of the proceeding from these expedited reviews, and we have clarified in our questionnaires how the sales data should be derived for purposes of our analysis as well as how to report data related to logs harvested and purchased. With respect to whether Tyee reported affiliates in its expedited review application, as explained above, the reporting methodologies used by participating companies differed between the exclusion process and the expedited review process. In the exclusion process, companies signed certifications regarding their affiliation and cross-ownership status that were based on questionnaires and guidelines compiled and issued by the GOC. *See* the GOC's October 29, 2001, submission. In contrast, in the expedited reviews, the Department has sent questionnaires directly to the participating companies that contain specific definitions and instructions regarding the issue of affiliation and cross-ownership. Therefore, it is entirely reasonable, since different authorities issued separate and different questionnaires, that some discrepancies would exist between the two proceedings. However, what is germane to the instant proceeding is what Tyee has stated regarding its affiliation and cross-ownership with other companies based on the definitions and instructions that were directly provided to it by the Department. On this point, Tyee has made clear in its application and questionnaire responses that it was not affiliated or cross-owned with any companies.

Comment 7: West Bay Forest Products and Manufacturing Ltd. Petitioners contend that West Bay Forest Products reported in the exclusion process different values for total sales of subject merchandise from the value they reported in their application for expedited review.

In response, West Bay Forest Products asserts that the financial information reported in their exclusion application reported total sales of all remanufactured softwood lumber. With respect to the expedited reviews, the company reported the combined total of remanufactured and resale sales amounts. Moreover, the company found an additional error in the total value of remanufactured sales reported in their original expedited review filing. In addition, the company provided a reconciliation of the difference between the figures in the two segments of the proceeding.

Department's Position: As explained above, we provided specific instructions on how to calculate sales figures in these expedited reviews. Therefore, the figures provided in the two segments of the proceeding are not directly comparable. Further, we find that the information submitted by West Bay Forest Products accounts for the differences in total sales values between the two segments of the proceeding.

Verification

In accordance with 782(I)(3) of the Act, we may verify information submitted by respondents who preliminarily received a *de minimis* subsidy rate, prior to making our final determination.

Preliminary Results of Reviews

In accordance with 19 CFR 351.221(b)(4)(I), we calculated an individual subsidy rate for each producer/exporter subject to these expedited reviews. For the period April 1, 2000, to March 31, 2001, we preliminarily determine the net subsidy to be as follows for Group 1 companies in Round 1:

Net subsidies—producer/exporter	Net subsidy rate %
Alexandre Cote Ltee	9.07
Boccam Inc	0.41
Byrnexco Inc	8.40
Davron Forest Products Ltd	10.94
Fraser Pacific Forest Products Inc	8.61
Frontier Mills Inc	8.61
Haida Forest Products Ltd	2.45
Landmark Truss & Lumber Inc	8.61
Les Bois S&P Grondin Inc	4.62
Les Industries P.F. Inc	8.03
Sechoirs de Beauce Inc	0.60
Tyee Timber Products Ltd	4.10
West Bay Forest Products and Manufacturing Ltd	5.50
West Can Rail Ltd	0.00

For the period April 1, 2000, to March 31, 2001, we preliminarily determine the net subsidy to be as follows for Group 1 companies in Round 2:

Net subsidies—producer/exporter	Net subsidy rate %
Central Cedar Ltd	4.96
Forstex Industries Inc	4.51
Hudson Mitchell & Sons Lumber Inc	4.31
Indian River Lumber	0.00
Les Scieries Jocelyn Lavoie Inc	0.00
Leslie Forest Products Ltd	13.72
Lyle Forest Products Ltd	3.37
Power Wood Corp.	6.73
Precision Moulding Products	1.41
Ram Co. Lumber Ltd	8.92
Rielly Industrial Lumber Inc	5.15
Sylvanex Lumber Products Inc	7.09
United Wood Frames Inc	10.69
Williamsburg Woods & Garden	11.95

If the final results of these reviews remain the same as these preliminary results, the Department intends to instruct the BCBP to collect cash deposits of estimated countervailing duties in the amounts indicated above of the f.o.b. invoice price on all shipments of the subject merchandise produced and exported by the reviewed companies, entered, or withdrawn from warehouse, for consumption on or after the date of publication of the final results of these reviews. These rates will not apply to merchandise produced by the reviewed companies but exported by other entities.

Those producers/exporters whose final estimated net subsidy rate, based on verified information, is zero or *de minimis* will be excluded from the order. Because, in the Department's view, there is no relevant difference for purposes of the *de minimis* rule between expedited reviews of orders resulting from investigations conducted on an aggregate basis and expedited reviews of orders resulting from investigations conducted on a company-specific basis, we believe it is appropriate in these reviews to treat *de minimis* rates, one percent *ad valorem* in this case, in accordance with section 19 CFR 351.214(k)(3)(iv). Therefore, after the issuance of its final results, the Department intends to instruct BCBP to liquidate, without regard to countervailing duties, all outstanding shipments of the subject merchandise produced and exported by excluded companies.

These expedited reviews cover only those companies that we have specifically identified as qualifying for expedited reviews. The cash deposit rate for all other non-reviewed companies subject to the country-wide rate will be adjusted in the final results of the expedited reviews to account for the benefit and the sales values of the companies that have received company-specific rates. We will instruct the BCBP to collect cash deposits for all non-reviewed companies at the new cash deposit rates established in the final results of these reviews.

Public Comment

Pursuant to 19 CFR 351.224(b), the Department will disclose to parties to the proceeding any calculations performed in connection with these preliminary results within five days after the date of publication of this notice. Pursuant to 19 CFR 351.309, interested parties may submit written comments in response to these preliminary results. Parties who submit argument in this proceeding are requested to submit with the argument: (1) a statement of the issue, and (2) a brief summary of the argument. Case and rebuttal briefs must be served on interested parties in accordance with 19 CFR 351.303(f). The due dates for the case briefs will be announced at a later date.

Individuals who wish to request a hearing must submit a written request within 14 days of the publication of this notice in the **Federal Register** to the Assistant Secretary for Import Administration, U.S. Department of Commerce, Room 1870, 14th Street and Constitution Avenue, NW., Washington, DC 20230. The time, date, and place of the hearing will be announced after the Department has released the dates of the briefing schedule. However, any party that wants to participate in a hearing must submit a written request within the time period specified above.

Requests for a public hearing should contain: (1) The party's name, address, and telephone number; (2) the number of participants; and, (3) to the extent practicable, an identification of the arguments to be raised at the hearing. In addition, ten copies of the business proprietary version and six copies of the non-proprietary version of the case briefs must be submitted to the Assistant Secretary.

Representatives of parties to the proceeding may request disclosure of proprietary information under administrative protective order no later than 10 days after the representative's client or employer becomes a party to the proceeding, but in no event later than the date the case briefs, under 19 CFR 351.309(c)(ii), are due. The Department will include the results of its analysis of issues raised in any case or rebuttal briefs in the final results of these expedited reviews. The Department will ensure that interested parties are informed of the briefing schedule.

In the interests of giving each respondent an informed opportunity to request rescission of their expedited review, we have amended the timeline announced in the application form to request rescission of an expedited review. Requests of rescission must be received by the Department no later than 30 days after the date of publication of the preliminary results of the relevant expedited review.

These expedited reviews and notice are issued and published in accordance with section 751(a)(1) and 777(I)(1) of the Act (19 U.S.C. 1675(a)(1) and 19 U.S.C. 1677(f)(I)).

Dated: April 29, 2003.

Joseph A. Spetrini,

Acting Assistant Secretary for Import Administration.

[FR Doc. 03–11353 Filed 5–7–03; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

ENVIRONMENTAL PROTECTION AGENCY

Coastal Nonpoint Pollution Control Program: Approval Decision on American Samoa Coastal Nonpoint Pollution Control Program

AGENCY: National Oceanic and Atmospheric Administration, Department of Commerce, and the Environmental Protection Agency.

ACTION: Notice of intent to approve the American Samoa Coastal Nonpoint Program.

SUMMARY: Notice is hereby given of the intent to fully approve the American Samoa Coastal Nonpoint Pollution Control Program (coastal nonpoint program) and of the availability of the draft Approval Decisions on conditions for the American Samoa coastal nonpoint program. Section 6217 of the Coastal Zone Act Reauthorization Amendments (CZARA), 16 U.S.C. section 1455b, requires States and Territories with coastal zone management programs that have received approval under section 306 of the Coastal Zone Management Act to develop and implement coastal nonpoint programs. Coastal States and Territories were required to submit their coastal nonpoint programs to the National Oceanic and Atmospheric Administration (NOAA) and the U.S. Environmental Protection Agency (EPA) for approval in July 1995. NOAA and EPA conditionally approved the American Samoa coastal nonpoint program on October 3, 1997. NOAA and EPA have drafted approval decisions describing how American Samoa has satisfied the conditions placed on its program and therefore has a fully approved coastal nonpoint program.

NOAA and EPA are making the draft decisions for American Samoa coastal nonpoint program available for a 30-day public comment period. If comments are received, NOAA and EPA will consider whether such comments are significant enough to affect the decision to fully approve the program.

Copies of the draft Approval Decisions can be found on the NOAA Web site at *http://www.ocrm.nos.noaa.gov/czm/* or may be obtained upon request from: Helen Farr, Coastal Programs Division (N/ORM3), Office of Ocean and Coastal Resource Management, NOS, NOAA, 1305 East-West Highway, Silver Spring, Maryland 20910, phone (301) 713–3155, x150, e-mail *helen.farr@noaa.gov*.

DATES: Individuals or organizations wishing to submit comments on the draft Approval Decisions should do so by June 9, 2003.

ADDRESSES: Comments should be made to: John King, Acting Chief, Coastal Programs Division (N/ORM3), Office of Ocean and Coastal Resource Management, NOS, NOAA, 1305 East-West Highway, Silver Spring, Maryland 20910, phone (301) 713–3155, x188, e-mail *john.king@noaa.gov*.

FOR FURTHER INFORMATION CONTACT: Helen Farr, Coastal Programs Division (N/ORM3), Office of Ocean and Coastal Resource Management, NOS, NOAA, 1305 East-West Highway, Silver Spring, Maryland 20910, phone (301) 713–3155, x150, e-mail *helen.farr@noaa.gov*.

(Federal Domestic Assistance Catalog 11.419 Coastal Zone Management Program Administration)

Dated: May 5, 2003.

Jamison S. Hawkins,

Acting Assistant Administrator for Ocean Services and Coastal Zone Management, National Oceanic and Atmospheric Administration.

G. Tracy Mehan III,

Assistant Administrator, Office of Water, Environmental Protection Agency.

[FR Doc. 03–11466 Filed 5–7–03; 8:45 am]

BILLING CODE 3510–08–M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

ENVIRONMENTAL PROTECTION AGENCY

Coastal Nonpoint Pollution Control Program: Approval Decision on North Carolina Coastal Nonpoint Pollution Control Program.

AGENCY: National Oceanic and Atmospheric Administration, Department of Commerce and Environmental Protection Agency.

ACTION: Notice of intent to approve the North Carolina Coastal Nonpoint Program.

SUMMARY: Notice is hereby given of the intent to fully approve the North Carolina Coastal Nonpoint Pollution Control Program (coastal nonpoint program) and of the availability of the draft Approval Decisions on conditions for the North Carolina coastal nonpoint program. Section 6217 of the Coastal Zone Act Reauthorization Amendments (CZARA), 16 U.S.C. section 1455b, requires States and Territories with coastal zone management programs that have received approval under section 306 of the Coastal Zone Management Act to develop and implement coastal nonpoint program. Coastal States and Territories were required to submit their coastal nonpoint programs to the National Oceanic and Atmospheric Administration (NOAA) and the U.S. Environmental Protection Agency (EPA) for approval in July 1995. NOAA and EPA conditionally approved the North Carolina coastal nonpoint program on February 23, 1998. NOAA and EPA have drafted approval decisions describing how North Carolina has satisfied the conditions placed on its program and therefore has a fully approved coastal nonpoint program.

NOAA and EPA are making the draft decisions for the North Carolina coastal nonpoint program available for a 30-day public comment period. If comments are received, NOAA and EPA will consider whether such comments are significant enough to affect the decision to fully approve the program.

Copies of the draft Approval Decisions can be found on the NOAA Web site at *http://www.ocrm.nos.noaa.gov/czm/* or may be obtained upon request from: Helen Farr, Coastal Programs Division (N/ORM3), Office of Ocean and Coastal Resource Management, NOS, NOAA, 1305 East-West Highway, Silver Spring, Maryland 20910, phone (301) 713–3155, x150, e-mail *helen.farr@noaa.gov*.

DATES: Individuals or organizations wishing to submit comments on the draft Approval Decisions should do so by June 9, 2003.

ADDRESSES: Comments should be made to: John King, Acting Chief, Coastal Programs Division (N/ORM3), Office of Ocean and Coastal Resource Management, NOS, NOAA, 1305 East-West Highway, Silver Spring, Maryland 20910, phone (301) 713–3155, x188, e-mail *john.king@noaa.gov.;*

FOR FURTHER INFORMATION CONTACT: Helen Farr, Coastal Programs Division (N/ORM3), Office of Ocean and Coastal Resource Management, NOS, NOAA, 1305 East-West Highway, Silver Spring, Maryland 20910, phone (301) 713–3155, x150, e-mail *helen.farr@noaa.gov*.

(Federal Domestic Assistance Catalog 11.419 Coastal Zone Management Program Administration)

Dated: May 5, 2003.

Jamison S. Hawkins,

Acting Assistant Administrator for Ocean Services and Coastal Zone Management, National Oceanic and Atmospheric Administration.

G. Tracy Mehan III,

Assistant Administrator, Office of Water, Environmental Protection Agency.

[FR Doc. 03–11467 Filed 5–7–03; 8:45 am]

BILLING CODE 3510–08–M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 050203D]

Marine Mammals; File No. 981–1707

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of public meeting.

SUMMARY: NMFS will hold a public meeting regarding the scientific research proposed by Dr. Peter Tyack in a permit application and analyzed in a draft environmental assessment.

DATES: The meeting will be held on May 19, 2003, at 1 pm.

ADDRESSES: The meeting will be held at the NOAA Silver Spring Metro Center Complex, NOAA Science Center, 1301 East-West Highway, Silver Spring, MD 20910.

FOR FURTHER INFORMATION CONTACT: Carrie Hubard or Steve Leathery, 301–713–2289.

SUPPLEMENTARY INFORMATION: On April 23, 2003, notice was published in the **Federal Register** (68 FR 19974) that a request for a scientific research permit to take various cetacean species, including endangered whales, in the North Atlantic (including the Gulf of Mexico) and Mediterranean Sea had been submitted by Dr. Peter Tyack (Biology Department, Woods Hole Oceanographic Institution, Woods Hole, Massachusetts, 02453) and that a draft environmental assessment had been prepared on the proposed research. Comments on the application and/or the draft environmental assessment must be received by May 23, 2003. NMFS will hold a public meeting to inform interested parties of the proposed research and solicit comments on the application and accompanying draft environmental assessment.

Special Accommodations

This meeting is accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Carrie Hubard, 301–713–2289 (voice) or 301–713–0376 (fax), at least five days before the scheduled meeting date.

Dated: May 5, 2003.

Stephen L. Leathery,

Chief, Permits, Conservation and Education Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 03–11484 Filed 5–7–03; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

Patent and Trademark Office

Submission for OMB Review; Comment Request

The United States Patent and Trademark Office (USPTO) has submitted to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Agency: United States Patent and Trademark Office (USPTO).

Title: Initial Patent Applications.

Form Number(s): PTO/SB/01/01A/02A/02B/02LR/03/03A/04/05/06/07/13PCT/16/17/18/19/29/29A/101 through 110/Electronic New Utility and Provisional Application Forms.

Agency Approval Number: 0651–0032.

Type of Request: Revision of a currently approved collection.

Burden: 4,171,568 hours annually.

Number of Respondents: 454,287 responses per year.

Avg. Hours Per Response: The USPTO estimates that it takes between 24 minutes to 10 hours and 45 minutes to gather the information, prepare, and submit the various paper and electronic applications in this collection, depending on the situation and the amount of information that needs to be submitted. Based on estimates of similar petitions, the USPTO believes that it takes 1 hour to gather the information, prepare, and submit the petitions to accept an unintentionally delayed priority claim and to accept non-signing inventors or legal representatives. The USPTO estimates that it takes 22 minutes to copy an oversized new original utility or provisional application that cannot be submitted electronically through EFS onto a CD–ROM, print the application transmittal, and prepare the cover letter submitting the submission.

Needs and Uses: This collection of information is required by 35 U.S.C. 131 and 37 CFR 1.16 through 1.84. An applicant must provide sufficient information to allow the USPTO to properly examine the application to determine whether it meets the requirements outlined in the patent statutes and regulations. The various fee and application transmittal forms, the declarations, the cover sheets, and the petitions permit applicants to supply all of the information necessary to process the application and enables the USPTO to ensure that all of the information has been provided in order to process the application. If an applicant tries to file a new utility or provisional application electronically through EFS and cannot submit it because the application exceeds 10 megabytes, the application can be copied onto a CD–ROM and submitted to the USPTO for examination.

Affected Public: Individuals or households, business or other for-profit, not-for-profit institutions, farms, the Federal Government, and State, Local, or Tribal Governments.

Frequency: On occasion.

Respondent's Obligation: Required to obtain or retain benefits.

OMB Desk Officer: David Rostker, (202) 395–3897.

Copies of the above information collection proposal can be obtained by calling or writing Susan K. Brown, Records Officer, Office of Data Architecture and Services, Data Administration Division, U.S. Patent and Trademark Office, Suite 310, 2231 Crystal Drive, Arlington, VA 22202; by phone at 703 308–7400; or by e-mail at *susan.brown@uspto.gov*.

Written comments and recommendations for the proposed information collection should be sent on or before June 9, 2003 to David Rostker, OMB Desk Officer, Room 10202, New Executive Office Building, Washington, DC 20503.

Dated: May 1, 2003.

Susan K. Brown,

Records Officer, USPTO, Office of Data Architecture and Services, Data Administration Division.

[FR Doc. 03–11422 Filed 5–7–03; 8:45 am]

BILLING CODE 3510–16–P

DEPARTMENT OF DEFENSE

Department of the Air Force

HQ USAF Scientific Advisory Board

AGENCY: Department of the Air Force, DoD.

ACTION: Notice of meeting.

SUMMARY: Pursuant to Pub. L. 92–463, notice is hereby given of the forthcoming meeting of the 2003 S&T Review and the Director of Defense Research and Engineering. The purpose of the meeting is to allow the SAB leadership to advise the Director on the outcome of the 2003 Review. Because classified and contractor-proprietary information will be discussed, this meeting will be closed to the public.

DATES: May 9, 2003.

ADDRESSES: Room 4E987, the Pentagon.

FOR FURTHER INFORMATION CONTACT: Lt. Col. John Pernot, Air Force Scientific Advisory Board Secretariat, 1180 Air Force Pentagon, Rm 5D982, Washington DC 20330–1180, (703) 697–4811.

Pamela D. Fitzgerald,

Air Force Federal Register Liaison Officer.

[FR Doc. 03–11396 Filed 5–7–03; 8:45 am]

BILLING CODE 5001–05–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP02–90–001]

AES Ocean Express, L.L.C.; Notice of Site Visit

May 2, 2003.

On May 8–9, 2003, the Office of Energy Projects staff will participate in pre-certification inspection of AES Ocean Express, L.L.C.'s (Ocean Express) proposed pipeline route in and offshore Broward County, Florida. We will join personnel from the Florida Department of Environmental Protection, Broward County Department of Planning and Environmental Protection, U.S. Army Corps of Engineers, and the National Marine Fisheries Service, as well as representatives of Ocean Express.

Magalie R. Salas,

Secretary.

[FR Doc. 03–11503 Filed 5–7–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP03–358–000]

ANR Pipeline Company; Notice of Revised Tariff Filing

May 2, 2003.

Take notice that on April 29, 2003, ANR Pipeline Company, (ANR) tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, the revised tariff sheets identified in Appendix A to the filing, with an effective date of June 1, 2003.

ANR states that the revised tariff sheets are being filed in order to provide additional flexibility to its existing firm hourly service, Rate Schedule FTS–3.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with sections 385.314 or 385.211 of the Commission's rules and regulations. All such motions or protests must be filed in accordance with section 154.210 of the Commission's regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link.

Comment Date: May 12, 2003.

Magalie R. Salas,

Secretary.

[FR Doc. 03–11509 Filed 5–7–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP03–359–000]

Canyon Creek Compression Company; Notice of Tariff Filing

May 2, 2003.

Take notice that on April 30, 2003, Canyon Creek Compression Company (Canyon) tendered for filing to become part of its FERC Gas Tariff, Third Revised Volume No. 1, Ninth Revised Sheet No. 6 and Original Sheet No. 6A, to be effective June 1, 2003.

Canyon states that the purpose of this filing is to make a periodic adjustment in Canyon's rates under its cost-of-service tracking mechanism. This filing represents the first tracking filing under section 37 of the General Terms and Conditions of Canyon's Tariff.

Canyon states that copies of the filing are being mailed to its customers and state regulatory agencies.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with sections 385.314 or 385.211 of the Commission's rules and regulations. All such motions or protests must be filed in accordance with section 154.210 of the Commission's regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link.

Comment Date: May 12, 2003.

Magalie R. Salas,

Secretary.

[FR Doc. 03–11510 Filed 5–7–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP96–389–084]

Columbia Gulf Transmission Company; Notice of Negotiated Rate Filing

May 2, 2003:

Take notice that on April 28, 2003, Columbia Gulf Transmission Company (Columbia Gulf) tendered for filing the following contract for disclosure of a negotiated rate transaction:

FTS–1 Service Agreement No. 75514 between Columbia Gulf Transmission Company and EnergyUSA–TPC dated April 28, 2003.

In addition, Columbia Gulf tendered for filing the following revised tariff sheet to its FERC Gas Tariff Second Revised Volume No. 1 with a proposed effective date of May 1, 2003:

Tenth Revised Sheet No. 316

Columbia Gulf states that transportation service is to commence May 1, 2003 and end May 31, 2003, under the agreement.

Columbia Gulf states that copies of the above-referenced filings have been served on all parties identified on the official service list in Docket No. RP96–389.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with sections 385.314 or 385.211 of the Commission's rules and regulations. All such motions or protests must be filed in accordance with section 154.210 of the Commission's regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link.

Comment Date: May 12, 2003.

Magalie R. Salas,

Secretary.

[FR Doc. 03–11516 Filed 5–7–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. RP96–389–085]

Columbia Gulf Transmission Company; Notice of Compliance Filing

May 2, 2003.

Take notice that on April 28, 2003, Columbia Gulf Transmission Company (Columbia Gulf) tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, Ninth Revised Sheet No. 316, to become effective April 17, 2003.

Columbia Gulf states that on March 26, 2003, it made a filing with the Commission seeking approval of a Rate Schedule FTS–1 negotiated rate agreement with CoEnergy Trading Company (CoEnergy) in Docket No. RP96–389–078. Columbia Gulf further states that on March 28, 2003, it made three similar filings with the Commission seeking approval of Rate Schedule FTS–1 negotiated rate agreements with Tenaska Marketing Ventures (Tenaska); EnergyUSA–TPC (EnergyUSA); and FPL Energy Power Marketing, Inc. (FPL) in Docket Nos. RP96–389–079, RP96–389–080, and RP96–389–081 respectively. Columbia Gulf adds that on April 1, 2003, it made a similar filing with the Commission seeking approval of a Rate Schedule PAL negotiated rate agreement with Petrocom Energy Group, Ltd. (Petrocom) in Docket No. RP96–389–082.

Columbia Gulf states that the Commission issued the following orders related to the filing mentioned above: on April 17, 2003, an order approving the CoEnergy Service Agreement effective April 1, 2003; on April 23, 2003, three separate orders approving the Tenaska, EnergyUSA, and FPL service agreements effective April 1, 2003; on April 22, 2003, an order approving the Petrocom service agreement effective May 1, 2003.

Columbia asserts that all five of the orders directed Columbia Gulf to file a tariff sheet identifying the agreements as non-conforming agreements in compliance with section 154.112(b) of the Commission's regulations. Columbia Gulf states that the instant filing is being made to comply with section 154.112(b) and to reference the non-conforming service agreements in its Volume No. 1 tariff.

Columbia Gulf further states that copies of its filing have been mailed to each of the parties listed on the service list in this proceeding.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with section 385.211 of the Commission's rules and regulations. All such protests must be filed in accordance with section 154.210 of the Commission's regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link.

Protest Date: May 12, 2003.

Magalie R. Salas,

Secretary.

[FR Doc. 03–11517 Filed 5–7–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP03–365–000]

Destin Pipeline Company, L.L.C.; Notice of Proposed Changes in FERC Gas Tariff

May 2, 2003).

Take notice that on April 30, 2003, Destin Pipeline Company, L.L.C. (Destin) tendered for filing as part of its FERC Gas Tariff, Original Volume No. 1, the following revised tariff sheet proposed to become effective June 1, 2003:

Second Revised Sheet No. 4

Destin states that purpose of this filing is to revise its system map in accordance with the provisions of section 154.106 of the Commission's regulations.

Destin states that copies of this filing are being served on all affected shippers and applicable state regulatory agencies.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with sections 385.314 or 385.211 of the Commission's rules and regulations. All such motions or protests must be filed in accordance with section 154.210 of the Commission's regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. This filing is available for review at the

Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link.

Comment Date: May 12, 2003.

Magalie R. Salas,

Secretary.

[FR Doc. 03–11514 Filed 5–7–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP03–364–000]

Distrigas of Massachusetts LLC; Notice of Proposed Changes in FERC Gas Tariff

May 2, 2003.

Take notice that on April 30, 2003, Distrigas of Massachusetts LLC (DOMAC) tendered for filing as part of its FERCGas Tariff, First Revised Volume No. 1, Fifteenth Revised Sheet No. 94, to become effective June 1, 2003.

DOMAC states that the purpose of this filing is to record semiannual changes in DOMAC's index of customers.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with sections 385.314 or 385.211 of the Commission's rules and regulations. All such motions or protests must be filed in accordance with section 154.210 of the Commission's regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link.

Comment Date: May 12, 2003.

Magalie R. Salas,

Secretary.

[FR Doc. 03–11513 Filed 5–7–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP03–366–000]

Great Lakes Gas Transmission Limited Partnership; Notice of Tariff Filing

May 2, 2003.

Take notice that on April 30, 2003, Great Lakes Gas Transmission Limited Partnership (Great Lakes) tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, the following tariff sheets, proposed to become effective January 1, 2003:

Eighth Revised Sheet No. 3
Sixth Revised Sheet No. 3A
Seventh Revised Sheet No. 3B
Sixth Revised Sheet No. 3C

Great Lakes states that the tariff sheets listed above are being filed to revise the system and zone maps included in Great Lakes' tariff pursuant to section 154.106(c) of the Commission's regulations. The revisions reflect the removal of the Summerfield Meter Station from the eastern zone of Great Lakes' system, pursuant to the abandonment authorized in Docket No. CP02–49–000, and changes to certain pipeline company entity names that appear in the system and all zone map legends.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with sections 385.314 or 385.211 of the Commission's rules and regulations. All such motions or protests must be filed in accordance with section 154.210 of the Commission's regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link.

Comment Date: May 12, 2003.

Magalie R. Salas,

Secretary.

[FR Doc. 03–11515 Filed 5–7–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EL03–119–000]

GridAmerica Companies; Notice of Initiation of Proceeding and Refund Effective Date

May 2, 2003.

Take notice that on April 30, 2003, the Commission issued an order in the above-indicated docket initiating a proceeding in Docket No. EL03–119–000 under Section 206 of the Federal Power Act.

The refund effective date in Docket No. EL03–119–000 will be 60 days after publication of this notice in the **Federal Register.**

Magalie R. Salas,

Secretary.

[FR Doc. 03–11504 Filed 5–7–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP01–384–003]

Islander East Pipeline Company, L.L.C.; Notice of Pro Forma Tariff Compliance Filing

May 2, 2003.

Take notice that on April 25, 2003, Islander East Pipeline Company, L.L.C. (Islander East) tendered for filing its Pro Forma FERC Gas Tariff, Volume No. 1.

Islander East states that it is filing its pro forma tariff to comply with the December 21, 2001, September 19, 2002 and March 27, 2003 Commission Orders in Docket Nos. CP01–384, *et al.* Specifically, Islander East states that it has revised its pro forma tariff to comply with the Commission's Order No. 637 and Order Nos. 587–O and 587–R requirements. Islander East asserts that the proposed tariff also reflects minor tariff revisions for purposes of clarity.

Islander East states that complete copies of the filing are being mailed to customers and interested state commissions. Islander East further states that due to the voluminous nature of Appendices B (clean tariff) and C (redlined tariff), copies of this filing without Appendices B and C are being mailed to all other parties on the Commission's Official Service List in the above referenced docket.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed on or before the comment date below. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link.

Comment Date: May 16, 2003.

Magalie R. Salas,

Secretary.

[FR Doc. 03–11501 Filed 5–7–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP03–363–000]

National Fuel Gas Supply Corporation; Notice of Tariff Filing

May 2, 2003.

Take notice that on April 30, 2003, National Fuel Gas Supply Corporation (National) tendered for filing as part of its FERC Gas Tariff, Fourth Revised Volume No. 1, Fifty Fourth Revised Sheet No. 9, to become effective May 1, 2003.

National states that under Article II, section 2, of the settlement, it is required to recalculate the maximum Interruptible Gathering (IG) rate semi-annually and monthly. Further, National states that it is required to charge the recalculated monthly rate on the first day of the following month if the result is an IG rate more than 2 cents above or below the IG rate as calculated under section 1 of Article II. National notes that the recalculation produced an IG rate of $1.15 per dth. In addition, National indicates that Article III, section 1 states that any overruns of the Firm Gathering service provided by National shall be priced at the maximum IG rate.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with sections 385.314 or 385.211 of the Commission's rules and regulations. All such motions or protests must be filed in accordance with section 154.210 of the Commission's regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link.

Comment Date: May 12, 2003.

Magalie R. Salas,

Secretary.

[FR Doc. 03–11512 Filed 5–7–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP99–176–085]

Natural Gas Pipeline Company of America; Notice of Negotiated Rates

May 2, 2003.

Take notice that on April 29, 2003, Natural Gas Pipeline Company of America (Natural) tendered for filing to become part of its FERC Gas Tariff, Sixth Revised Volume No. 1, First Revised Sheet No. 26W.07, to be effective May 1, 2003.

Natural states that the purpose of this filing is to implement a new negotiated rate transaction entered into by Natural and Reliant Energy Aurora, LP under Natural's Rate Schedule FTS pursuant to section 49 of the General Terms and Conditions of Natural's Tariff. Natural states that the negotiated rate agreement does not deviate in any material respect from the applicable form of service agreement in Natural's Tariff.

Natural states that copies of the filing are being mailed to all parties set out on the Commission's official service list in Docket No. RP99–176.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with sections 385.314 or 385.211 of the Commission's rules and regulations. All such motions or protests must be filed in accordance with section 154.210 of the Commission's regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact

(202) 502–8659. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link.

Comment Date: May 12, 2003.

Magalie R. Salas,

Secretary.

[FR Doc. 03–11518 Filed 5–7–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP02–362–005]

PG&E Gas Transmission, Northwest Corporation; Notice of Compliance Filing

May 2, 2003.

Take notice that on April 29, 2003, PG&E Gas Transmission, Northwest Corporation (GTN), tendered for filing to be part of its FERC Gas Tariff, Second Revised Volume No. 1–A, Fifth Revised Sheet No. 128, with an effective date of November 14, 2002.

GTN states that this tariff sheet is being submitted to comply with the Commission's April 14, 2003, Order on Rehearing, Clarification, and Compliance, in Docket Nos. RP02–362–003 and RP02–362–004. This proceeding involves proposed tariff changes by PG&E Gas Transmission, Northwest Corporation (GTN) that allow the pipeline to sell capacity on a pre-arranged basis.

GTN further states that a copy of this filing has been served on GTN's jurisdictional customers and interested state regulatory agencies.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with section 385.211 of the Commission's rules and regulations. All such protests must be filed in accordance with section 154.210 of the Commission's regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link.

Protest Date: May 12, 2003.

Magalie R. Salas,

Secretary.

[FR Doc. 03–11507 Filed 5–7–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP03–342–001]

Questar Pipeline Company; Notice of Tariff Filing

May 2, 2003.

Take notice that on April 29, 2003, Questar Pipeline Company (Questar) tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1, Substitute Second Revised Sheet No. 85 and Substitute Original Sheet No. 88C, to be effective May 12, 2003.

Questar states that this filing proposes to amend Questar's April 14, 2003, tariff filing (April 14 filing) that was filed to update Questar's Measurement section of its tariff to comport with current industry measurement standards and practices. Questar states that the proposed language in two sheets in that filing reflected an inadvertent deletion of portions of two NAESB Standards (2.3.9 and 2.3.14). With this filing, Questar seeks to amend the April 14 filing by reversing the NAESB Standards deletions.

Questar states that a copy of this filing has been served upon its customers, the Public Service Commission of Utah and the Public Service Commission of Wyoming.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with section 385.211 of the Commission's rules and regulations. All such protests must be filed in accordance with section 154.210 of the Commission's regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link.

Protest Date: May 12, 2003.

Magalie R. Salas,

Secretary.

[FR Doc. 03–11508 Filed 5–7–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. RP00–468–010, RP01–25–009, and RP03–175–004]

Texas Eastern Transmission, LP; Notice of Compliance Filing

May 2, 2003.

Take notice that on April 25, 2003, Texas Eastern Transmission, LP (Texas Eastern) tendered for filing as part of its FERC Gas Tariff, Seventh Revised Volume No. 1, the revised tariff sheets listed in Appendix A, attached to the filing, reflecting an effective date of April 1, 2003.

Texas Eastern states that the purpose of this filing is to supplement its March 25, 2003 tariff filing in compliance with the Commission's February 24, 2003, Order on Rehearing and Compliance Filings in Texas Eastern's Order No. 637 proceeding.

Texas Eastern states that copies of this filing have been mailed to all affected customers and interested state commissions, as well as to all parties on the service lists compiled by the Secretary of the Commission in these proceedings.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link.

Protest Date: May 7, 2003.

Magalie R. Salas,

Secretary.

[FR Doc. 03–11506 Filed 5–7–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP03–362–000]

Williston Basin Interstate Pipeline Company; Notice of Tariff Filing

May 2, 2003.

Take notice that on April 30, 2003, Williston Basin Interstate Pipeline Company (Williston Basin), tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, the following revised tariff sheets to become effective April 30, 2003:

Twelfth Revised Sheet No. 5
Tenth Revised Sheet No. 6
Tenth Revised Sheet No. 6A
Seventh Revised Sheet No. 7
Tenth Revised Sheet No. 8
Eleventh Revised Sheet No. 9

Williston Basin states that the revised tariff sheets are being filed simply to update its system maps through December 31, 2002.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with sections 385.314 or 385.211 of the Commission's rules and regulations. All such motions or protests must be filed in accordance with section 154.210 of the Commission's regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link.

Comment Date: May 12, 2003.

Magalie R. Salas,

Secretary.

[FR Doc. 03–11511 Filed 5–7–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP02–374–000]

Hackberry LNG Terminal, L.L.C.; List of Technical Conference Attendees

May 2, 2003.

On April 23, 2003, staff of the Office of Energy Projects convened a cryogenic design and technical conference concerning Hackberry LNG Terminal L.L.C.'s (Hackberry LNG) proposed liquefied natural gas import terminal and storage facility in Cameron Parish, Louisiana. The following parties attended:

Name/Representing

Arvedlund, Robert, FERC
Banchik, I.N., CH–IV International (Hackberry LNG)
Beppler, Laurie J., BP Energy Co.
Bowdoin, Jr, Leon A., Weaver's Cove Energy, LLC
Brouwer de Koning, Hector H., Black & Veatch Pritchard, Inc. (Hackberry LNG)
Busch, James G., BP Energy Co.
Comper, Geoffrey, Sempra Energy (HAckberry LNG)
Diemert, Michael, CH–IV International (Hackberry LNG)
Duncan, Rnady, Natural Resources Group (FERC)
Fernie, J.D., BG LNG Services, LLC
Floyd, Bradley, TRC Companies, Inc (Hackberry LNG)
Granger, E.D., Cheniere Energy, Inc.
Hand, Ron W., Hackberry LNG
Hatch, David, Hackberry LNG
Hope, David G., Skanska Whessoe (Hackberry LNG0
Isden, R.F., Skanska Whessoe (Hackberry LNG)
Johnson, Paul, Poten & Partners (HAckberry LNG)
Kelly, John, CMS Trunkline LNG Company, LLC
Kelly-Cochrane, Dale, Sempra Energy (Hackberry LNG)
Latham, Keith, Sempra Energy (Hackberry LNG)
Little, Keith, Conoco Inc.
Mash, Keith A., Skanska Whessoe (Hackberry LNG)
Mattson, Todd, Natural Resource Group, Inc. (FERC)
McCartney, Dan, Black & Veatch Pritchard, Inc (Hackberry LNG)
Morris, J.D., Hackberry LNG
Outtrim, Patricia, Project Technical Liaison Associates, Inc. (Hackberry (LNG)
Purcell, William Sempra Energy (Hackberry LNG)
Rose, Darren J., Skanska Whessoe (Hackberry LNG)
Stebbing, Roger, FERC
Terry, Sarah E., Conoco Inc.
Turpin, Terry, FERC
Zerby, Chris, FERC

Magalie R. Salas,

Secretary

[FR Doc. 03–11502 Filed 5–7–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Application Ready for Environmental Analysis and Soliciting Comments, Recommendations, Terms and Conditions, and Prescriptions

May 2, 2003.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection.

a. *Type of Application:* New Major License.

b. *Project No.:* P–1960–002.

c. *Date filed:* February 19, 1999.

d. *Applicant:* Dairyland Power Cooperative—Wisconsin.

e. *Name of Project:* Flambeau Hydroelectric Station.

f. *Location:* On the Flambeau River in Rusk County, Wisconsin. The project does not utilize federal lands.

g. *Filed Pursuant to:* Federal Power Act 16 U.S.C. §§ 791(a)–825(r).

h. *Applicant Contact:* Mr. Dave Carroll, Coordinator, Dairyland Power Cooperative, 3200 East Avenue, South La Cross, WI 54601, (608) 788–4000.

i. *FERC Contact:* Timothy Konnert, Timothy.Konnert@ferc.gov, or (202) 502–6359.

j. Pursuant to Section 4.34(b) of the Commission's Regulations (*see* Order

No. 533 issued May 8, 1991, 56 FR 23108, May 20, 1991), the deadline for filing comments, recommendations, terms and conditions, and prescriptions is 60 days from the issuance date of this notice. Reply comments are due 105 days from the issuance date of this notice.

The Commission directs, pursuant to Section 4.34(b) of the Regulations (*see* Order No. 533 issued May 8, 1991, 56 FR 23108, May 20, 1991) that all comments, recommendations, terms and conditions and prescriptions concerning the application be filed with the Commission within 60 days from the issuance date of this notice. All reply comments must be filed with the Commission within 105 days from the date of this notice.

All documents (original and eight copies) should be filed with: Magalie R. Salas, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

The Commission's Rules of Practice and Procedure require all intervenors filing documents with the Commission to serve a copy of that document on each person on the official service list for the project. Further, if an intervenor files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

Comments, recommendations, terms and conditions, and prescriptions may be filed electronically via the Internet in lieu of paper. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site (*http://www.ferc.gov*) under the "eFiling" link.

k. This application has been accepted, and is ready for environmental analysis at this time.

l. The project consists of the following existing facilities: (1) A right earthen dam, 2,570 feet-long and a left earthen dam 2,130 feet-long, separated by a 138 foot-long gated spillway section with a crest elevation of 1157.0 feet NGVD; (2) a 1,900-acre reservoir with a normal water surface elevation of 1183.48 feet NGVD; (3) a powerhouse containing 3 vertical Kaplan turbines each connected to generator units for a total installed capacity of 15,000 kW; and (4) appurtenant facilities. The average annual energy generation is 60,727,590 kWh. The dam and existing project facilities are owned by the applicant.

m. A copy of the application is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at 1–866–208–3676, or for TTY, (202) 502–8659. A copy is also available for inspection and reproduction at the address in item h above.

Register online at *http://www.ferc.gov/esubscribenow.htm* to be notified via email of new filings and issuances related to this or other pending projects. For assistance, contact FERC Online Support.

Anyone may obtain an extension of time for these deadlines from the Commission only upon a showing of good cause or extraordinary circumstances in accordance with 18 CFR 385.2008.

All filings must: (1) Bear in all capital letters the title "COMMENTS", "REPLY COMMENTS", "RECOMMENDATIONS," "TERMS AND CONDITIONS," or "PRESCRIPTIONS;" (2) set forth in the heading the name of the applicant and the project number of the application to which the filing responds; (3) furnish the name, address, and telephone number of the person submitting the filing; and (4) otherwise comply with the requirements of 18 CFR 385.2001 through 385.2005. All comments, recommendations, terms and conditions or prescriptions must set forth their evidentiary basis and otherwise comply with the requirements of 18 CFR 4.34(b). Agencies may obtain copies of the application directly from the applicant. Each filing must be accompanied by proof of service on all persons listed on the service list prepared by the Commission in this proceeding, in accordance with 18 CFR 4.34(b), and 385.2010.

n. *Procedures schedule:* The Commission staff proposes to issue one Environmental Assessment (EA) rather than issuing a draft and final EA. Staff intends to allow at least 30 days for entities to comment on the EA, and will take into consideration all comments received on the EA before final action is taken on the license application. If any person or organization objects to the staff proposed alternative procedure, they should file comments as stipulated in item k above, briefly explaining the basis for their objection. The application will be processed according to the following schedule, but revisions to the schedule may be made as appropriate:

Issue Notice of availability of EA October 2003.

Ready for Commission decision on the application January 2004.

Magalie R. Salas,

Secretary.

[FR Doc. 03–11505 Filed 5–7–03; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[OW–2003–0027, FRL–7496–3]

Agency Information Collection Activities: Proposed Collection; Comment Request; State Water Quality Program Management Resource Analysis

AGENCY: Environmental Protection Agency.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this document announces that EPA is planning to submit the following continuing Information Collection Request (ICR) to the Office of Management and Budget (OMB): State Water Quality Program Management Resource Analysis, ICR Number: 1945.02, OMB Control Number: 2040–0216, Current Expiration Date: September 30, 2003. Before submitting the ICR to OMB for review and approval, EPA is soliciting comments on specific aspects of the proposed information collection as described below.

DATES: Comments must be submitted on or before July 7, 2003.

ADDRESSES: Follow the detailed instructions in **SUPPLEMENTARY INFORMATION.**

FOR FURTHER INFORMATION CONTACT: Jane Ephremides, Resources Management and Evaluation Staff, Office of Wastewater Management, Office of Water, Mail Code: 4201M, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: (202) 564–0643; fax number: (202) 501–2399; email address: *ephremides.jane@epa.gov.*

SUPPLEMENTARY INFORMATION: EPA has established a public docket for this ICR under Docket ID number OW–2003–0027, which is available for public viewing at the Water Docket in the EPA Docket Center (EPA/DC), EPA West, Room B102, 1301 Constitution Ave., NW., Washington, DC. The EPA Docket Center Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Reading Room is (202) 566–1744, and the telephone number for the Water Docket is (202) 566–2426. An electronic version of the public docket is available through EPA Dockets (EDOCKET) at *http://www.epa.gov/edocket.* Use EDOCKET to obtain a copy of the draft collection of information, submit or view public comments, access the index listing of the contents of the public docket, and to access those documents in the public docket that are available electronically. Once in the system, select "search," then key in the docket ID number identified above.

Any comments related to this ICR should be submitted to EPA and OMB within 60 days of this notice, and according to the following detailed instructions: (1) Submit your comments to EPA online using EDOCKET (our preferred method), by email to: *ow-docket@epa.gov,* or by mail to: EPA Docket Center, Environmental Protection Agency, Water Docket, Mail Code: 4101T, 1200 Pennsylvania Ave., NW., Washington, DC 20460.

EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing in EDOCKET as EPA receives them and without change, unless the comment contains copyrighted material, CBI, or other information whose public disclosure is restricted by statute. When EPA identifies a comment containing copyrighted material, EPA will provide a reference to that material in the version of the comment that is placed in EDOCKET. The entire printed comment, including the copyrighted material, will be available in the public docket. Although identified as an item in the official docket, information claimed as CBI, or whose disclosure is otherwise restricted by statute, is not included in the official public docket, and will not be available for public viewing in EDOCKET. For further information about the electronic docket, see EPA's **Federal Register** notice describing the electronic docket at 67 FR 38102 (May 31, 2002), or go to *http://www.epa.gov/edocket.*

Affected entities: Entities potentially affected by this action are State governments.

Title: State Water Quality Program Management Resource Analysis (OMB Control Number 2040–0216; EPA ICR Number 1945.02 expiring 09/30/2003.

Abstract: The Environmental Protection Agency (EPA), in partnership with States, is conducting the State Water Quality Management Resource Analysis (Gap Analysis) to help enumerate current and future funding needs and to help identify innovative strategies for reducing resource gaps. To gather preliminary information in a short time frame, the Gap Analysis was originally divided into two phases. Phase I consisted of the development of an initial, national estimate of the resource gap faced by water quality management programs to provide a general idea of the magnitude of the resource gap faced by States.

Phase II of the Gap Analysis involved developing a detailed, activity-based workload model to provide a common framework and consistent methodology for States and EPA to estimate the cost to the States to meet the objectives of the Clean Water Act (CWA) over the next five years. In order to complete the model, EPA's Office of Wastewater Management (OWM) gathered data from 21 States on current and future resources needed for water quality management activities.

Phase III of the Gap Analysis will build upon the information collected in Phase II, which used an estimate of current State expenditures on water quality activities. Under Phase III, States will complete a portion of the Phase II modules to update the needs numbers to reflect regulatory changes or changes to their programs. In addition, States will be asked to complete an activity-based model for current expenditures that mirrors the model for needs. This baseline spending data will allow the States and EPA to more accurately estimate the gap between expenditures and needed resources.

Phase III of the Gap Analysis is a one-time collection effort by OWM, and responses to this information collection request (ICR) are voluntary. The collection is necessary to develop an estimate of the gap in resources facing water quality management programs, both for individual States and the nation.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR part 9 and 48 CFR chapter 15.

EPA is asking States to provide estimates of current spending and resource needs for water quality management program activities. EPA will provide the States with integrated modules (the Gap Analysis model) designed to capture current expenditures, current needs, and future needs to perform all activities associated with the development, planning, coordination, management, and implementation of State water quality management programs.

Each module contains lists of activities in each of the program areas. The modules will be integrated so that estimates for various program areas can be combined into a total estimate across all program areas.

To reduce the burden of the collection, the Gap Analysis model is designed to maximize State flexibility. It contains default values developed for the national estimate of the resource needs faced by State water quality management programs. Respondents can accept the default values or enter an appropriate value for their State. If the default value is altered, the change will cascade throughout the rest of the module.

The EPA would like to solicit comments to:

(i) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(ii) evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(iii) enhance the quality, utility, and clarity of the information to be collected; and

(iv) minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

Burden Statement: The total number of respondents for this ICR is estimated to be twenty State agencies. The total number of responses for each respondent is one, which averages to 0.33 responses per respondent annually. EPA estimates the burden to be $1,893 and 61 hours per respondent for each respondent that chooses to submit information. For the three-year ICR period, the average annual respondent burden and cost to States and EPA is estimated at 1,353 hours and $46,068. The annual burden and cost to State governments is estimated at 1,207 hours and $37,648. No capital costs, recordkeeping burden, or operation and maintenance (O&M) costs are associated with this ICR.

State labor costs are estimated by applying an hourly labor rate to the burden hour estimates. For purposes of calculating State labor costs, EPA assumed a single average hourly wage rate of $31.20 per hour for all State activities, which is consistent with other recent OWM ICR submittals. This rate is based on the average hourly wage for State employees, as determined by the

U.S. Department of Labor, and includes benefits. As in previous ICRs, 50 percent overhead costs were added to the average State rate.

Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

Dated: May 1, 2003.

James A. Hanlon,

Director, Office of Wastewater Management.

[FR Doc. 03–11475 Filed 5–7–03; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[OAR–2003–0042–FRL–7495–8]

Agency Information Collection Activities: Proposed Collection; Comment Request; Information Requirements for Importation of Nonconforming Vehicles; Information Requirements for Importation of Nonconforming Nonroad Compression Ignition (CI) and Small Spark Ignition (SI) Engines

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this document announces that EPA is planning to submit the following proposed and/or continuing Information Collection Request (ICR) to the Office of Management and Budget (OMB): Information Requirements for Importation of Nonconforming Vehicles, OMB Control Number 2060–0095, expiration date 08/31/03; Information Requirements for Nonconforming Nonroad Compression Ignition (CI) and Small Spark Ignition (SI) Engines, OMB Control Number 2060–0294, expiration date 08/31/03. Before submitting the ICR to OMB for review and approval, EPA is soliciting comments on specific aspects of the proposed information collection as described below.

DATES: Comments must be submitted on or before July 7, 2003.

ADDRESSES: Follow the detailed instructions in **SUPPLEMENTARY INFORMATION.**

FOR FURTHER INFORMATION CONTACT: Mrs. Chestine Payton, Certification and Compliance Division, Outreach and Planning Group, 6405J, telephone (202) 564–9240, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460, telefax (202) 565–2057, and email *payton.chestine@epa.gov*.

SUPPLEMENTARY INFORMATION: EPA has established a public docket for this ICR under Docket ID number OAR–2003–0042, which is available for public viewing at the Air Docket in the EPA Docket Center (EPA/DC), EPA West, Room B102, 1301 Constitution Ave., NW., Washington, DC. The EPA Docket Center Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Reading Room is (202) 566–1744, and the telephone number for the Air Docket is (202) 566–1742. An electronic version of the public docket is available through EPA Dockets (EDOCKET) at *http://www.epa.gov/edocket*. You may use EDOCKET to obtain a copy of the draft collection of information, submit or view public comments, access the index listing of the contents of the public docket, and to access those documents in the public docket that are available electronically. Once in the system, select "search," then key in the docket ID number identified above.

Any comments related to this ICR should be submitted to EPA within 60 days of this notice, and according to the following detailed instructions: (1) Submit your comments to EPA online using EDOCKET (our preferred method), by email to *air-and-r-docket@epa.gov*, or by mail to: EPA Docket Center, Environmental Protection Agency, OAR, Mailcode 6102T, 1200 Pennsylvania Ave., NW., Washington, DC 20460.

EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing in EDOCKET as EPA receives them and without change, unless the comment contains copyrighted material, CBI, or other information whose public disclosure is restricted by statute. When EPA identifies a comment containing copyrighted material, EPA will provide a reference to that material in the version of the comment that is placed in EDOCKET. The entire printed comment, including the copyrighted material, will be available in the public docket. Although identified as an item in the official docket, information claimed as CBI, or whose disclosure is otherwise restricted by statute, is not included in the official public docket, and will not be available for public viewing in EDOCKET. For further information about the electronic docket, *see* EPA's **Federal Register** notice describing the electronic docket at 67 *FR* 38102 (May 31, 2002), or go to *www.epa.gov./edocket*.

Affected entities: Entities potentially affected by this action include individuals and businesses (including Independent Commercial Importers) importing on and off-road motor vehicles, motor vehicle engines, or nonroad engines, including nonroad engines incorporated into nonroad equipment or nonroad vehicles.

Title: Information Requirements for Importation of Nonconforming Vehicles, OMB #2060–0095, expiring 08/31/03; Information Requirements for Nonconforming Nonroad Compression Ignition (CI) and Small Spark Ignition (SI) Engines, OMB #2060–0294, expiring 08/31/03.

Abstract: Individuals and businesses importing on and off-road motor vehicles, motor vehicle engines, or nonroad engines, including nonroad engines incorporated into nonroad equipment or nonroad vehicles report and keep records of vehicle importations, request prior approval for vehicle importations, or request final admission for vehicles conditionally imported into the U.S. The collection of this information is mandatory in order to ensure compliance of nonconforming vehicles with Federal emissions requirements. Joint EPA and Customs regulations at 40 CFR 85.1501 *et seq.*, 89.601 *et seq.*, 90.601 *et seq.*, and 19 CFR 12.73 and 12.74 promulgated under the authority of Clean Air Act sections 203 and 208 give authority for the collection of information. This authority was extended to nonroad engines under section 213(d). The information is used by program personnel to ensure that all Federal emission requirements concerning imported nonconforming motor vehicles and nonroad engines are met. Any information submitted to the Agency for which a claim of confidentiality is made is safeguarded according to policies set forth in title 40, chapter 1, part 2, subpart B—Confidentiality of Business Information (see CFR part 2), and the public is not permitted access to information containing personal or organizational identifiers. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR part 9 and 48 CFR chapter 15.

The EPA would like to solicit comments to:

(i) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(ii) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(iii) Enhance the quality, utility, and clarity of the information to be collected; and

(iv) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

Burden Statement: The annual public reporting and recordkeeping burden for this collection of information is estimated to average 0.7 hours per response (OMB #2060–0095), and 0.5 hours per response (OMB #2060–0294) respectively. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

OMB #2060–0095

Respondents/Affected entities: Individuals and businesses importing motor vehicles and motor vehicle engines.

Estimated Number of Respondents: 13,000.

Frequency of Response: 1.6 responses/year.

Estimated Total Annual Hour Burden: 15,800.

Estimated Total Annualized Costs Burden: $ 1,266,000.

OMB #2060–0294

Respondents/Affected entities: Individuals and businesses importing compression-ignition nonroad engines and small spark-ignition nonroad engines, including those incorporated into nonroad equipment or vehicles.

Estimated Number of Respondents: 1,500.

Frequency of Response: 100 responses/year.

Estimated Total Annual Hour Burden: 76,370.50.

Estimated Total Annualized Costs Burden: $ 93,765.00.

Dated: April 30, 2003.

Robert Brenner,

Acting Assistant Administrator, Office of Air and Radiation.

[FR Doc. 03–11477 Filed 5–7–03; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7495–7]

Protection of Stratospheric Ozone: Process for Exempting Critical Uses of Methyl Bromide

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of solicitation of applications and information on alternatives.

SUMMARY: EPA is soliciting applications for the Critical Use Exemption from the phaseout of methyl bromide. This application process offers users of methyl bromide the opportunity to provide technical and economic information to support a "critical use" claim.

Methyl bromide is a chemical pesticide that has been identified under the *Montreal Protocol on Substances that Deplete the Ozone Layer* and the Clean Air Act, as an ozone-depleting substance. It is scheduled for complete phaseout by January 1, 2005. The Critical Use Exemption is designed to allow continued production and import of methyl bromide after the phaseout for those uses that have no technically and economically feasible alternatives. Because Critical Use Exemptions are exemptions from the January 1, 2005, methyl bromide phaseout, they will become effective after that date.

Applicants for the exemption are requested to submit technical and economic information to EPA for U.S. review. The U.S. will then create a national nomination for review by the Parties to the Montreal Protocol. EPA encourages users with similar circumstances of use to submit a single application. Please contact your state regulatory agency to receive information about their involvement in the process.

DATES: Applications for the Critical Use Exemption must be postmarked on or before August 6, 2003. The response period is now 90 days reflecting the clarifications and reduction of burden in the application.

ADDRESSES: Applications for the methyl bromide Critical Use Exemption should be submitted in duplicate (two copies) by mail to: U.S. Environmental Protection Agency, Office of Pesticide Programs, Biological and Economic Analysis Division, Attention Methyl Bromide Review Team, Mail Code 7503C, 1200 Pennsylvania Ave, NW., Washington, DC 20460 or by courier delivery (other than U.S. Post Office overnight) to: U.S. Environmental Protection Agency, Office of Pesticide Programs, Biological and Economic Analysis Division, Attention Methyl Bromide Review Team, Crystal Mall II, 1921 Jefferson Davis Highway, Arlington, VA 22202. Applicants are encouraged to send an electronic version of their application and/or attached documents along with their paper submission or sent via electronic mail to *bromide.methyl@epa.gov*.

FOR FURTHER INFORMATION CONTACT:

General Information: U.S. EPA Stratospheric Ozone Information Hotline, 1–800–296–1996.

Technical Information: Bill Chism, U.S. Environmental Protection Agency, Office of Pesticide Programs (7503C), 1200 Pennsylvania Ave., NW., Washington, DC 20460, 703–308–8136.

Economic Information: David Widawsky, U.S. Environmental Protection Agency, Office of Pesticide Programs (7503C), 1200 Pennsylvania Ave., NW., Washington, DC 20460, 703–308–8150.

Regulatory Information: Hodayah Finman, U.S. Environmental Protection Agency, Global Programs Division (6205J), 1200 Pennsylvania Ave., NW., Washington, DC 20460, 202–564–2651.

SUPPLEMENTARY INFORMATION:

Table of Contents

I. What do I need to know to respond to this request for applications?
A. Who can respond to this request for information?
B. Who can I contact to find out if a consortium is submitting an Application Form for my methyl bromide use?
C. How do I obtain an Application Form for the Methyl Bromide Critical Use Exemption?

D. What alternatives must applicants address when applying for a Critical Use Exemption?
E. What portions of the applications will be considered confidential business information?
F. Must I submit a "Notice of Intent to Apply?"
G. What if I submit an incomplete application?
H. What if I already applied in 2002?
II. What is the legal authority for the Critical Use Exemption?
A. What is the Clean Air Act (CAA) authority for implementing the Critical Use Exemption to the methyl bromide phaseout?
B. What is the Montreal Protocol authority for granting a Critical Use Exemption after the methyl bromide phaseout?
III. How will the U.S. implement the Critical Use Exemption?
A. When will the exemption become available to U.S. users of methyl bromide?
B. What is the projected timeline for the Critical Use Exemption application process?

I. What Do I Need To Know To Respond To This Request for Applications?

A. Who Can Respond to this Request for Information?

The Application Form may be submitted either by a consortium representing multiple users or by individual users who anticipate needing methyl bromide in 2005 and believe there are no technically and economically feasible alternatives. EPA encourages users with similar circumstances of use to submit a single application (for example, any number of pre-plant users with similar soil, pest, and climactic conditions can join together to submit a single application). In some instances, State agencies will assist users with the application process (*see* discussion of voluntary State involvement in part I.B. below).

In addition to requesting information from applicants for the Critical Use Exemption, this solicitation for information provides an opportunity for any interested party to provide EPA with information on methyl bromide alternatives (*e.g.* technical and/or economic feasibility research). The Application Form for the methyl bromide Critical Use Exemption and other information on research relevant to alternatives must be sent to the addresses specified above.

B. Who Can I Contact To Find Out if a Consortium Is Submitting an Application Form for My Methyl Bromide Use?

Please contact your local, State, regional or national commodity association to find out if they plan on submitting an application on behalf of your commodity group.

Additionally, you should contact your State regulatory agency (generally this will be the State Department of Agriculture or State Environmental Protection Agency) to receive information about their involvement in the process. If your State agency has chosen to participate, EPA encourages all applicants to first submit their applications to the State regulatory agency, which will then forward them to EPA. The National Pesticide Information Center Web site is one resource available for identifying the lead pesticide agency in your State (*http://ace.orst.edu/info/npic/state1.htm*).

C. How Do I Obtain an Application Form for the Methyl Bromide Critical Use Exemption?

An Application Form for the methyl bromide Critical Use Exemption can be obtained either in electronic or hard-copy form. EPA encourages use of the electronic form. Applications can be obtained in the following ways:

1. PDF format at EPA Web site: *www.epa.gov/ozone/mbr;*
2. Microsoft Excel and other electronic spreadsheet formats at EPA Web site: *www.epa.gov/ozone/mbr;*
3. Mailed hard-copy ordered through the Stratospheric Ozone Protection Hotline at 1–800–296–1996;
4. Hard-copy format at Air Docket No. OAR–A2000–24. The docket is located in room B–102, EPA West Building, U.S. Environmental Protection Agency, 1301 Constitution Ave., NW., Washington DC, 20460. The Docket Office is open from 8:30 a.m. until 4:30 p.m. Monday through Friday. A reasonable fee may be charged by EPA for copying docket materials.

D. What Alternatives Must Applicants Address When Applying for a Critical Use Exemption?

To support the assertion that a specific use of methyl bromide is "critical," applicants are expected to demonstrate that there are no technically and economically feasible alternatives available to the user of methyl bromide. The Parties to the Montreal Protocol have developed an "International Index" of Methyl Bromide Alternatives which lists chemical and non-chemical alternatives, by crop (*http://www.epa.gov/ozone/mbr/alt_in.html*). The chemicals and non-chemical practices included on this index were identified by the international technical advisory groups under the Montreal Protocol: the Methyl Bromide Technical Options Committee (MBTOC) and the Technical and Economic Assessment Panel (TEAP). The MBTOC and the TEAP determined that alternatives in the International Index have the "technical potential" to replace methyl bromide in at least one circumstance of use on the identified crop (Report of the Technical and Economic Assessment Panel, 1997) (*http://www.teap.org/html/teap_reports.html*). A corresponding U.S. Index of Alternatives (also listed by crop) has been developed by the U.S. government regarding chemical alternatives (*http://www.epa.gov/ozone/mbr*). This U.S. Index reflects whether chemical alternatives included in the International Index have been registered for use in the United States.

Applicants must address technical, regulatory, and economic issues that limit the adoption of "chemical alternatives" and combinations of "chemical" and "non-chemical alternatives" listed for their crop within the "U.S. Index" of Methyl Bromide Alternatives. Applicants must also address technical, regulatory, and economic issues that limit the adoption of "non-chemical alternatives" and combinations of "chemical" and "non-chemical alternatives" listed for their crop in the "International Index."

E. What Portions of the Applications Will Be Considered Confidential Business Information?

The person submitting information to EPA in response to this notice may assert a business confidentiality claim covering part or all of the information by placing on (or attaching to) the application, at the time it is submitted to EPA, a cover sheet, or a stamped or typed legend placed at the front of the application, employing language such as trade secret, proprietary, or company confidential. Allegedly confidential portions of otherwise non-confidential documents should be clearly identified by the applicant, and may be submitted separately to facilitate identification and handling by EPA. If the applicant desires confidential treatment only until a certain date or until the occurrence of a certain event, the notice should so state. Information covered by a claim of confidentiality will be disclosed by EPA only to the extent, and by means of the procedures, set forth under 40 CFR part 2, subpart B; 41 FR 36902, 43 FR 40000, 50 FR 51661. If no claim of confidentiality accompanies the information when it is received by EPA, it may be made available to the public by EPA without further notice to the applicant.

If you are asserting a business confidentiality claim covering part or all of the information in the application, you must submit a non-confidential version that EPA can circulate to technical reviewers and can place in the public docket for reference by other interested parties. Under no circumstances shall the applicants claim confidentiality for the "Worksheet Six: Application Summary" portion of the application. These application information summary sheets will be posted on the EPA Web site (*www.epa.gov/ozone/mbr*) and included in Air Docket No. OAR-A2000–24. Please note, providing CBI may delay the ability of EPA to review your application.

F. Must I Submit a "Notice of Intent To Apply?"

EPA requests that people who plan to submit an application send a "notice of intent to apply" to the location listed in **ADDRESSES** above. EPA asks that you submit the "notice of intent to apply" as soon as you decide if you will be applying in 2003, but no later than 30 days before the application deadline. The "notice of intent to apply" can be a simple letter (or an email in the form *LASTNAME.FIRSTNAME@epa.gov* to one of the people listed under the section **FOR FURTHER INFORMATION CONTACT**). The Agency is not requiring a "notice of intent to apply", but believes it will facilitate the organization of the application review process, and improve the U.S. government's ability to make arguments on behalf of sectors that demonstrate a critical need for methyl bromide.

G. What if I Submit an Incomplete Application?

If the EPA determines that an application is lacking sufficient information needed in order to be processed by the technical reviewers, applicants will be notified by telephone or in writing. If the required information is not submitted 30 days after the request, the application will not be processed. Reviewers may also call applicants for further elaboration about their application, even if it is complete.

H. What if I Already Applied in 2002?

The Parties to the Montreal Protocol will decide at the end of calendar year 2003 whether exemptions will be authorized for 2005 alone or for more than one year. If methyl bromide is only authorized by the Parties for 2005 alone, then EPA is requiring those who submitted applications in 2002 to provide updated data by filling out only those very limited portions of the application necessary to furnish any updated information to EPA. The data required for updating applications will be noted is the following:

- Provide the 2002 price of methyl bromide (worksheet 2D-amount and price of methyl bromide alone);
- Provide quantity of methyl bromide used in 2002 (worksheet 2B regarding 2002 information);
- Address the technical and economic feasibility of using newly registered alternatives (provide information in worksheets 3A through 3C regarding alternatives newly registered/available since submission of application during 2002);
- Update research information about alternatives (update worksheet 4 as necessary, based on new studies);
- Update details in research plan to identify and test alternatives (follow new format and provide details in worksheet 4, as necessary); and
- Provide update on new techniques to minimize emissions (worksheet 4).

II. What Is the Legal Authority for the Critical Use Exemption?

A. What Is the Clean Air Act (CAA) Authority for Implementing the Critical Use Exemption to the Methyl Bromide Phaseout?

In October 1998, the U.S. Congress amended the Clean Air Act by adding CAA sections 604(d)(6), 604(e)(3), and 604(h) (section 764 of the 1999 Omnibus Consolidated and Emergency Supplemental Appropriations Act (Pub. L. 105–277; October 21, 1998)). The amendment requires EPA to conform the U.S. phaseout schedule for methyl bromide to the provisions of the Montreal Protocol for industrialized countries. Specifically, the amendment requires EPA to make regulatory changes to implement the following phaseout schedule:

25% reduction (from 1991 baseline) in 1999;
50% reduction in 2001;
70% reduction in 2003;
100% reduction in 2005.

EPA published regulations in the **Federal Register** on June 1, 1999 (64 FR 29240), and November 28, 2000 (65 FR 70795), instituting the phaseout reductions in the production and import of methyl bromide in accordance with the schedule listed above. Additionally, the 1998 amendment allowed EPA to exempt the production and import of methyl bromide from the phaseout for critical uses starting January 1, 2005, "to the extent consistent with the Montreal Protocol" (section 764 of the 1999 Omnibus Consolidated and Emergency Supplemental Appropriations Act (Pub. L. 105–277, October 21, 1998)(section 604(d)(6) of the Clean Air Act).

B. What Is the Montreal Protocol Authority for Granting a Critical Use Exemption After the Methyl Bromide Phaseout?

The Montreal Protocol provides an exemption to the phaseout of methyl bromide for critical uses in Article 2H, paragraph 5. The Parties to the Protocol included provisions for such an exemption in recognition that substitutes for methyl bromide may not be available by 2005 for certain uses of methyl bromide agreed by the Parties to be "critical uses".

In their Ninth Meeting (1997), the Parties to the Protocol agreed to Decision IX/6, setting forth the following criteria for a "critical use" determination:

(a) That a use of methyl bromide should qualify as "critical" only if the nominating Party [*e.g.* U.S.] determines that:

(i) The specific use is critical because the lack of availability of methyl bromide for that use would result in a significant market disruption; and

(ii) There are no technically and economically feasible alternatives or substitutes available to the user that are acceptable from the standpoint of environment and health and are suitable to the crops and circumstances of the nomination.

(b) That production and consumption, if any, of methyl bromide for a critical use should be permitted only if:

(i) All technically and economically feasible steps have been taken to minimize the critical use and any associated emission of methyl bromide;

(ii) Methyl bromide is not available in sufficient quantity and quality from existing stocks of banked or recycled methyl bromide, also bearing in mind the developing countries need for methyl bromide;

(iii) It is demonstrated that an appropriate effort is being made to evaluate, commercialize and secure national regulatory approval of alternatives and substitutes, taking into consideration the circumstances of the particular nomination * * * Non-Article 5 Parties [*e.g.*, the U.S.] must demonstrate that research programmes are in place to develop and deploy alternatives and substitutes. * * *

In the context of the phaseout program, the use of the term consumption may be misleading. Consumption does not mean the "use" of a controlled substance, but rather is defined as the formula: consumption = production + imports − exports, of controlled substances (Article 1 of the Protocol and section 601 of the CAA). Class I controlled substances that were produced or imported through the expenditure of allowances prior to their phaseout date can continue to be used by industry and the public after that specific chemical's phaseout under EPA's phaseout regulations, unless

otherwise precluded under separate regulations.

In addition to the language quoted above, the Parties further agreed to request the TEAP to review nominations and make recommendations for approval based on the criteria established in paragraphs (a)(ii) and (b) of Decision IX/6.

III. How Will the U.S. Implement the Critical Use Exemption?

A. When Will the Exemption Become Available to U.S. Users of Methyl Bromide?

Under the provisions of both the CAA and the Montreal Protocol, the Critical Use Exemption will be available to approved uses on January 1, 2005. Until that date, all production and import of methyl bromide (except for those quantities that qualify for the quarantine and preshipment exemption) must conform to the phasedown schedule listed above (*see* **SUPPLEMENTARY INFORMATION** section II A). For more information on the quarantine and preshipment exemption, please refer to 68 FR 238 (January 2, 2003).

B. What Is the Projected Timeline for the Critical Use Exemption Application Process?

There is both a domestic and international component to the Critical Use Exemption process. The following outline represents a projected timeline for the process:

May 8, 2003	Solicit applications for the methyl bromide Critical Use.
August 6, 2003	Deadline for submitting Critical Use Exemption applications to EPA.
Late 2003	U.S. government (EPA, Department of State, U.S. Department of Agriculture, and other interested federal agencies) create U.S. Critical Use nomination package.
January 31, 2004	Deadline for U.S. government to submit U.S. nomination package to the Protocol Parties.
Early 2004	Review of the nominations packages for Critical Use Exemptions by the Technical and Economic Assessment Panel (TEAP) and Methyl Bromide Technical Options Committee (MBTOC).
Early 2004	EPA publishes proposed rule for allocating Critical Use Exemptions in the U.S.
Mid 2004	Parties consider TEAP/MBTOC recommendations.
Late 2004	Parties authorize Critical Use Exemptions for methyl bromide.
Late 2004	EPA publishes final rule allocating Critical Use Exemptions in the U.S.
January 1, 2005	Critical Use Exemption permits the limited production and import of methyl bromide beyond the phaseout date for specific uses.

Authority: 42 U.S.C. 7414, 7601, 7671–7671q.

Dated: April 30, 2003.

Robert Brenner,

Acting Assistant Administrator, Office of Air and Radiation.

[FR Doc. 03–11476 Filed 5–7–03; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[OPP–2003–0024; FRL–7308–3]

FIFRA Scientific Advisory Panel; Notice of Public Meeting

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The June 3–5, 2003, Federal Insecticide, Fungicide, and Rodenticide Act Scientific Advisory Panel (FIFRA SAP) face-to-face meeting to review the effects of atrazine on amphibians has been rescheduled. Due to scheduling conflicts, the May 21st premeeting teleconference has been canceled. For further information, please notify the Designated Federal Official (DFO) listed under **FOR FURTHER INFORMATION CONTACT** or see the **Federal Register** of February 24, 2003 (68 FR 8593) (FRL–7291–9).

DATES: The new meeting date is June 17–20, 2003.

ADDRESSES: The meeting will be held at the Crowne Plaza Hotel, Washington - National Airport, 1489 Jefferson Davis Highway, Arlington, VA. The telephone number for the hotel is (703) 310–8980.

FOR FURTHER INFORMATION CONTACT: Paul Lewis, DFO, Office of Science Coordination and Policy (7202M), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: (202) 564–8450; fax number: (202) 564–8382; e-mail addresses: *lewis.paul@epa.gov*.

List of Subjects

Environmental protection, Pesticides and pests.

Dated: April 30, 2003.

Joseph J. Merenda,

Director, Office of Science Coordination and Policy.

[FR Doc. 03–11479 Filed 5–7–03; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7494–7]

Proposed CERCLA Section 122(h) Administrative Agreement for Recovery of Past Costs for the Nelson Galvanizing Superfund Site, New York City, Queens County, NY

AGENCY: Environmental Protection Agency.

ACTION: Notice; request for public comment.

SUMMARY: In accordance with section 122(i) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended ("CERCLA"), 42 U.S.C. 9622(i), notice is hereby given by the U.S. Environmental Protection Agency ("EPA"), Region II, of a proposed administrative agreement pursuant to section 122(h) of CERCLA, 42 U.S.C. 9622(h), with John T. Sweeney, Nelson Foundry, Inc. and Nelson Galvanizing, Inc., for recovery of past response costs concerning the Nelson Galvanizing Superfund Site ("Site") located at 11–02 Broadway, in the Long Island City area of Queens County, New York City, New York. The settlement requires the settling parties to pay $244,000 in reimbursement of EPA's past costs at the Site. The settlement includes a covenant not to sue the settling parties pursuant to section 107(a) of CERCLA, 42 U.S.C. 9607(a), in exchange for their payment of monies. For thirty (30) days following the date of publication of this notice, EPA will receive written comments relating to the settlement. EPA will consider all comments received and may modify or withdraw its consent to the settlement if comments received disclose facts or considerations that indicate that the proposed settlement is inappropriate, improper or inadequate. EPA's response to any comments received will be available for public inspection at EPA Region II, 290 Broadway, New York, New York 10007–1866.

DATES: Comments must be submitted on or before June 9, 2003.

ADDRESSES: The proposed settlement is available for public inspection at EPA Region II offices at 290 Broadway, New York, New York 10007–1866. Comments should reference the Nelson Galvanizing Superfund Site, 11–02 Broadway, New York City, New York, Index No. CERCLA–02–2003–2011. To request a copy of the proposed settlement agreement, please contact the individual identified below.

FOR FURTHER INFORMATION CONTACT: Michael A. Mintzer, Assistant Regional Counsel, New York/Caribbean Superfund Branch, Office of Regional Counsel, U.S. Environmental Protection Agency, 290 Broadway, 17th Floor, New York, New York 10007–1866. Telephone: 212–637–3168.

Dated: April 22, 2003.

William McCabe,

Acting Director, Emergency and Remedial Response Division, Environmental Protection Agency, Region 2.

[FR Doc. 03–11474 Filed 5–7–03; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL ELECTION COMMISSION

Sunshine Act Meeting Notice

PREVIOUSLY ANNOUNCED DATE AND TIME: Tuesday, May 6, 2003, meeting closed to the public. This meeting was rescheduled for Monday, May 5, 2003.

DATE AND TIME: Tuesday, May 13, 2003 at 10 a.m.

PLACE: 999 E Street, N.W., Washington, DC

STATUS: This meeting will be closed to the public.

ITEMS TO BE DISCUSSED: Compliance matters pursuant to 2 U.S.C. 437g. Audits conducted pursuant to 2 U.S.C. 437g, 438(b), and Title 26, U.S.C. Matters concerning participation in civil actions or proceedings or arbitration. Internal Personnel rules and procedures or matters affecting a particular employee.

PERSON TO CONTACT FOR INFORMATION: Mr. Ron Harris, Press Officer, Telephone: (202) 694–1220.

Mary W. Dove,

Secretary of the Commission.

[FR Doc. 03–11675 Filed 5–6–03; 3:12 pm]

BILLING CODE 6715–01–M

DEPARTMENT OF THE TREASURY

Office of the Comptroller of the Currency

FEDERAL RESERVE SYSTEM

Proposed Agency Information Collection Activities; Comment Request

AGENCIES: Office of the Comptroller of the Currency (OCC), Treasury; and Board of Governors of the Federal Reserve System (Board).

ACTION: Joint notice and request for comment.

SUMMARY: In accordance with the requirements of the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35), the OCC and the Board (the "agencies") may not conduct or sponsor, and the respondent is not required to respond to, an information collection unless it displays a currently valid Office of Management and Budget (OMB) control number. The Federal Financial Institutions Examination Council (FFIEC), of which the agencies are members, has approved the agencies' publication for public comment to extend, without revision, the following currently approved information collection titled, "Foreign Branch Report of Condition (FFIEC 030)." At the end of the comment period, the comments and recommendations received will be analyzed to determine whether the FFIEC and the agencies should modify the information collection. The agencies will then submit the report to OMB for review and approval. The Federal Deposit Insurance Corporation, also a member of the FFIEC, concurs with this proposal to extend without revision as noted in a separate Federal Register notice (68 FR 19452) published April 21, 2003.

DATES: Comments must be submitted on or before July 7, 2003.

ADDRESSES: Interested parties are invited to submit written comments to any or all of the agencies. All comments should refer to the OMB control number(s) and will be shared among the agencies.

OCC: Comments should be sent to the Public Information Room, Office of the Comptroller of the Currency, Mailstop 1–5, Attention: 1557–0099, 250 E Street, S.W., Washington, DC 20219. Due to delays in paper mail delivery in the Washington area, commenters are encouraged to submit comments by fax or e–mail. Comments may be sent by fax to (202) 874–4448, or by e–mail to regs.comments@occ.treas.gov. You can inspect and photocopy the comments at the OCC's Public Information Room, 250 E Street, S.W., Washington, DC 20219. You can make an appointment to inspect the comments by calling (202) 874–5043.

Board: Written comments, which should refer to "Foreign Branch Report of Condition, 7100–0071," may be mailed to Ms. Jennifer J. Johnson, Secretary, Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue, N.W., Washington, DC 20551. However, because paper mail in the Washington area and at the Board of Governors is subject to delay, please consider submitting your comments by e–mail to regs.comments@federalreserve.gov, or faxing them to the Office of the Secretary at 202–452– 3819 or 202–452–3102. Members of the public may inspect comments in Room MP–500 between 9:00 a.m. and 5:00 p.m. on weekdays pursuant to 261.12, except as provided in 261.14, of the Board's Rules Regarding Availability of Information, 12 CFR 261.12 and 261.14.

A copy of the comments may also be submitted to the OMB desk officer for the agencies: Joseph F. Lackey, Jr., Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Room 10235, Washington, DC 20503 or electronic mail to jlackeyj@omb.eop.gov.

FOR FURTHER INFORMATION CONTACT: Additional information or a copy of the collection may be requested from:

OCC: Jessie Dunaway, OCC Clearance Officer, or Camille Dixon, (202) 874–5090, Legislative and Regulatory Activities Division, Office of the Comptroller of the Currency, 250 E Street, S.W., Washington, D.C. 20219.

Board: Cynthia M. Ayouch, Board Clearance Officer, (202) 452–3829, Division of Research and Statistics, Board of Governors of the Federal Reserve System, 20th and C Streets, N.W., Washington, DC 20551. Telecommunications Device for the Deaf (TDD) users may call (202) 263–4869.

SUPPLEMENTARY INFORMATION:

Proposal to Extend For Three Years Without Revision the Following Currently Approved Information Collection:

Title: Foreign Branch Report of Condition

Form Number: FFIEC 030

Frequency of Response: Annually, and quarterly for significant branches

Affected Public: Business or other for–profit

For OCC:

OMB Number: 1557–0099
Number of Respondents: 143 annual respondents; 56 quarterly respondents
Estimated Time per Response: 3.9 burden hours.
Estimated Total Annual Burden: 1431 burden hours.
For Board:
OMB Number: 7100–0071
Number of Respondents: 40 annual respondents; 26 quarterly respondents
Estimated Time per Response: 3.9 burden hours.
Estimated Total Annual Burden: 468 burden hours.
General Description of Report
*These information collections are mandatory:*12 U.S.C. 321, 324, and 602 (Board); 12 U.S.C. 602 (OCC). These information collections are given confidential treatment (5 U.S.C. 552 (b)(8)).
Small businesses (that is, small banks) are not affected.
Abstract
This report contains asset and liability information for foreign branches of insured U.S. commercial banks and is required for regulatory and supervisory purposes. The information is used to analyze the foreign operations of U.S. commercial banks. All foreign branches of U.S. banks, regardless of charter type, file this report with the appropriate Federal Reserve District Bank. The Federal Reserve collects this information on behalf of the U.S. bank's primary federal bank regulatory agency.
Request for Comment
Comments are invited on:
a. Whether the information collections are necessary for the proper performance of the agencies' functions, including whether the information has practical utility;
b. The accuracy of the agencies' estimates of the burden of the information collections, including the validity of the methodology and assumptions used;
c. Ways to enhance the quality, utility, and clarity of the information to be collected;
d. Ways to minimize the burden of information collections on respondents, includingthrough the use of automated collection techniques or other forms of information technology; and
e. Estimates of capital or start up costs and costs of operation, maintenance, and purchase of services to provide information.
Comments submitted in response to this notice will be shared among the agencies. All comments will become a matter of public record. Written comments should address the accuracy of the burden estimates and ways to minimize burden including the use of automated collection techniques or the use of other forms of information technology as well as other relevant aspects of the information collection request.

Dated: April 29, 2003.

Mark J. Tenhundfeld,

Assistant Director, Legislative and Regulatory Activities Division,Office of the Comptroller of the Currency

Board of Governors of the Federal Reserve System, May 2, 2003.

Jennifer J. Johnson,

Secretary of the Board.

[FR Doc. 03–11426 Filed 5–7–03; 8:45 am]

BILLING CODE 6720–01–P 1/2; 6210–01–P 1/2

FEDERAL RESERVE SYSTEM

Change in Bank Control Notices; Acquisition of Shares of Bank or Bank Holding Companies

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).
The notices are available for immediate inspection at the Federal Reserve Bank indicated. The notices also will be available for inspection at the office of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than May 22, 2003.

A. Federal Reserve Bank of Atlanta (Sue Costello, Vice President) 1000 Peachtree Street, N.E., Atlanta, Georgia 30303:

1. Shuratt Whitworth, Lavonia, Georgia; Rachel M.Whitworth, Lavonia, Georgia; Mary Patsy Gilbert, Lavonia, Georgia; W.M. Gilbert, Lavonia, Georgia; Cynthia D. Gilbert, Lavonia, Georgia; Tracie G. Dowis, Lexington, South Carolina; Grant Michael Dowis, Lexington, South Carolina; Madeline Grace Dowis, Lexington, South Carolina; Brady Williams, Franklin, Tennessee; Tammy G. Williams, Franklin, Tennessee; Christopher C. Whitworth, Hartwell, Georgia; Franklin Shuratt Whitworth, Hartwell, Georgia; Randy S. Whitworth, Hartwell, Georgia; Caroline Louise Kelly, Monroe, Georgia; Leigh W. Kelly, Monroe, Georgia; Matthew Thomas Kelly, Monroe, Georgia; Wesley William Kelly, Monroe, Georgia; Wendy Whitworth, Lilburn, Georgia; Barry S. Whitworth, Toccoa, Georgia; Sarah Elizabeth Whitworth, Toccoa, Georgia; Steven Jarrett Whitworth, Toccoa, Georgia; The H. W. Whitworth Irrevocable Trust, Mary Patsy Gilbert, Trustee, Lavonia, Georgia; The H. W. Whitworth Irrevocable Trust, Shuratt Whitworth, Trustee, Lavonia, Georgia; Whitworth Family Partnership II, Shuratt Whitworth, General Partner, Lavonia, Georgia; and the Whitworth Family Partnership III, Mary Patsy Gilbert, General Partner, Lavonia, Georgia; to retain voting shares of First Security Bankshares, Inc., and thereby indirectly retain voting shares of Northeast Georgia Bank, both of Lavonia, Georgia.

Board of Governors of the Federal Reserve System, May 2, 2003.

Jennifer J. Johnson,

Secretary of the Board.

[FR Doc. 03–11425 Filed 5–7–03; 8:45 am]

BILLING CODE 6210–01–S

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR Part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.
The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The application also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States. Additional information on all bank holding companies may be obtained from the National Information Center website at www.ffiec.gov/nic/.
Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than June 2, 2003.

A. Federal Reserve Bank of Boston (Richard Walker, Community Affairs Officer) 600 Atlantic Avenue, Boston, Massachusetts 02106-2204:

1. Citizens Financial Group, Inc., Providence, Rhode Island; Royal Bank of Scotland, PLC, Theedinburgh; Royal Bank of Scotland Group PLC, Theedinburgh; and RBSG International Holdings Limited, Edinburgh, all in Scotland; to acquire 100 percent of the voting shares of Port Financial Corp., Brighton, Massachusetts, and its subsidiary, Cambridge Bank, Cambridge, Massachusetts, and to acquire up to 9.9 percent of the voting shares of Cambridge Bancorp, Cambridge, Massachusetts, and thereby indirectly acquire voting shares of Cambridge Trust Company, Cambridge, Massachusetts.

Board of Governors of the Federal Reserve System, May 2, 2003.

Jennifer J. Johnson,

Secretary of the Board.

[FR Doc. 03–11424 Filed 5–7–03; 8:45 am]

BILLING CODE 6210–01–S

FEDERAL RESERVE SYSTEM

Sunshine Act Meeting

AGENCY: Board of Governors of the Federal Reserve System.

FEDERAL REGISTER CITATION OF PREVIOUS ANNOUNCEMENT: 68 FR 2137, April 30, 2003.

PREVIOUSLY ANNOUNCED TIME AND DATE OF THE MEETING: 12 noon, Monday, May 5, 2003.

CHANGES IN THE MEETING: Addition of the following closed item(s) to the meeting: Discussion of classified security matter.

FOR FURTHER INFORMATION CONTACT: Michelle A. Smith, Assistant to the Board; 202–452–2955.

SUPPLEMENTARY INFORMATION: You may call 202–452–3206 beginning at approximately 5 p.m. two business days before the meeting for a recorded announcement of bank and bank holding company applications scheduled for the meeting; or you may contact the Board's Web site at *http://www.federalreserve.gov* for an electronic announcement that not only lists applications, but also indicates procedural and other information about the meeting.

Dated: May 5, 2003.

Jennifer J. Johnson,

Secretary of the Board.

[FR Doc. 03–11519 Filed 5–5–03; 4:01 pm]

BILLING CODE 6210–01–P

FEDERAL RESERVE SYSTEM

[Docket No. R–1149]

Rules of Organization

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Amendment to rules of organization.

SUMMARY: The Board of Governors has revised its definition of a quorum of the Board and incorporated the new quorum provision into the Board's Rules of Organization. The amendment is designed to enhance the Board's ability to perform its functions in the event of a national emergency, and would not alter the number of Board members required to constitute a quorum in normal operating environments.

DATES: The amendment to the Rules of Organization became effective on April 29, 2003.

FOR FURTHER INFORMATION CONTACT: Kieran J. Fallon, Senior Counsel (202–452–5270), or Audrey G. Decker, Attorney (202–452–3099), Legal Division, Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue, N.W., Washington, D.C. 20551. Users of Telecommunication Device for Deaf (TDD) only, call 202–263–4869.

SUPPLEMENTARY INFORMATION: The Board of Governors of the Federal Reserve System (Board) consists of seven members appointed by the President, by and with the advice and consent of the Senate, as provided in the Federal Reserve Act (Act).[1] The Act does not define a quorum of the Board, and authorizes the Board to make all rules and regulations necessary to enable the Board effectively to perform its duties and functions.[2] Since 1913, the Board itself has defined a quorum of the Board to be a majority (four members) of its authorized strength of seven members.
The Board's current practice could prevent the Board from taking action if an act of war, terrorist attack or other catastrophic event reduced the Board's membership to fewer than four members. The Board's current practice also could prevent a four–member Board from taking prompt action during an emergency if one member were unable to establish contact with the Board. In light of these possibilities, the Board has amended its definition of a quorum to provide that a majority of the members in office constitutes a quorum of the Board, *unless* there are five members in office, in which case four members will constitute a quorum of the Board.
The Board believes that the revised definition of a quorum will enhance the Board's ability to fulfill its important statutory responsibilities in an emergency. At the same time, the revised definition would *not* alter the number of Board members required to constitute a quorum or the functioning of the Board's committee structure in normal operating environments (that is, when five or more members are in office). In this regard, the revised definition would continue to require that four members of the Board participate in an action for a quorum to exist whenever the Board has five or more members in office.[3]
The Board has incorporated its new definition of a quorum into the Board's Rules of Organization. The Board's Rules of Organization are uncodified regulations for use within the Federal Reserve System, issued pursuant to 5 U.S.C. 552. The Rules of Organization were published in the Federal Register on July 19, 2001 (66 FR 37687). The amendment relates solely to the internal procedure of the Board, and, accordingly, the public notice, public comment and delayed effective date provisions of the Administrative Procedure Act do not apply. *See* 5 U.S.C. 553(b) and (d). Because public notice and comment is not required, the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) also does not apply to this action.
For the reasons discussed above, the Board of Governors of the Federal Reserve System has amended section 2 of its Rules of Organization by redesignating paragraphs (b) and (c) as paragraphs (c) and (d), respectively, and adding the following new paragraph (b):

Section 2–Composition, Location, and Public Information

* * * * *

(b) *Quorum.* A majority of the members in office constitutes a quorum of the Board for purposes of transacting business *except* that, if there are five members in office, then four members constitute a quorum.

* * * * *

By order of the Board of Governors of the Federal Reserve System, May 2, 2003.

Jennifer J. Johnson,

Secretary of the Board.

[FR Doc. 03–11427 Filed 5–7–03; 8:45 am]

BILLING CODE 6210–01–S

[1] *See* 12 U.S.C. 241
[2] *See* 12 U.S.C. 248(i)
[3] Since the current structure of the Board was established in 1936, the Board has not had fewer than five members in office at any one time.

OFFICE OF GOVERNMENT ETHICS

Privacy Act of 1974; Systems of Records Notice; Correction

AGENCY: Office of Government Ethics (OGE).

ACTION: Notice of proposed new and revised systems of records; correction.

SUMMARY: In this document, OGE is correcting several minor errors under certain headings of the Notice of Proposed New and Revised Systems of Records, which was published by OGE in the **Federal Register** on Wednesday, January 22, 2003 and will become effective on May 22, 2003.

DATES: These corrections to the proposed new and revised systems of records will become effective on May 22, 2003.

FOR FURTHER INFORMATION CONTACT: Elaine Newton, Attorney-Advisor, Office of Government Ethics, Suite 500, 1201 New York Avenue, NW., Washington, DC 20005–3917; Telephone: 202–208–8000; TDD: 202–208–8025; FAX: 202–208–8037.

SUPPLEMENTARY INFORMATION: As set forth below in this document, OGE is correcting several minor errors in the Notice of Proposed New and Revised Systems of Records document, which OGE published on January 22, 2003 at 68 FR 3098–3109 (as separate part II), with comments requested by March 24, 2003. OGE did not receive any comments; thus, as indicated in the notice, the proposed new and revised systems of records, as corrected in this document, will become effective on May 22, 2003.

Approved: April 30, 2003.

Amy L. Comstock,

Director, Office of Government Ethics.

As indicated in the preamble, the Office of Government Ethics, is correcting the January 22, 2003 publication of the Notice of Proposed New and Revised Systems of Records, which was the subject of FR Doc. 03–1101, as follows:

OGE/GOVT–1 [Corrected]

1. On page 3099, in the third column, the second sentence of the text under the heading "CATEGORIES OF RECORDS IN THE SYSTEM:" is corrected by removing the word "of" between the words "Ethics and "Government" and by adding in its place the word "in".

2. On page 3100, in the first column, the text under the heading "PURPOSE(S):" is corrected by removing the words "and E.O." and by adding in their place the words "Executive Order", and by adding a comma followed by the words "and OGE and agency regulations thereunder" after the word "modified".

3. On page 3100, in the second column, routine use (c) is corrected by removing the word "OGE" and by adding in its place the words "the disclosing agency".

OGE/GOVT–2 [Corrected]

4. On page 3101, in the third column, the text under the heading "PURPOSE(S):" is corrected by removing the word "Orders" and by adding in its place the word "Order".

5. On page 3102, in the first column, routine use (a) is corrected by removing the word "OGE" and by adding in its place the words "the disclosing agency".

6. On page 3102, in the first column, routine use (b) is corrected by adding the word "a" between the words "is" and "party".

7. On page 3102, in the second column, the text of the Note is corrected by adding a comma between the words "laws" and "Executive".

OGE/INTERNAL–1 [Corrected]

8. On page 3103, in the first column, the second sentence of the text under the heading "CATEGORIES OF RECORDS IN THE SYSTEM:" is corrected by adding the word "Employees" between the words "Federal" and "Retirement".

OGE/INTERNAL–5 [Corrected]

9. On page 3108, in the third column, the first sentence of the text under the heading "CATEGORIES OF RECORDS IN THE SYSTEM:" is corrected by inserting a comma after the word "location", by removing the word "and", and by adding the words "and hours of duty" between the words "extension" and "of".

[FR Doc. 03–11416 Filed 5–7–03; 8:45 am]

BILLING CODE 6345–02–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Committee on Vital and Health Statistics: Meeting

Pursuant to the Federal Advisory Committee Act, the Department of Health and Human Services announces the following advisory committee meeting.

Name: National Committee on Vital and Health Statistics (NCVHS), Subcommittee on Populations.

Time and Date: 8:30 a.m. to 5:30 p.m., May 22, 2003; 8:30 a.m. to 5:30 p.m., May 23, 2003.

Place: J.D. Morgan Athletics Center, The Press Room, UCLA Athletics, 325 Westwood Plaza, Los Angeles, CA 90095.

Status: Open.

Purpose: The Subcommittee on Populations. NCVHS, is holding a hearing to discuss issues relating to statistics for the determination of health disparities in racial and ethnic populations. The focus will be on issues related to the collection and use of data on race and ethnicity for Asian American, Native Hawaiian, and Pacific Islander populations. Invited panelists will address methodologic issues (*e.g.*, misclassification, small area analysis, confidentiality concerns) on the collection of data on race and ethnicity, use of mixed race data, language issues, measurement of ethnic identity, and perspectives on variables beyond race and ethnicity needed to determine health disparities in racial and ethnic groups.

FOR FURTHER INFORMATION CONTACT: Additional information about this meeting as well as summaries of past meetings and a roster of committee members may be obtained from Audrey L. Burwell, Office of Minority Health, 1101 Wooton Parkway, 6th Floor, Room 600, Rockville, Maryland 20852, telephone: (301) 443–9923, e-mail *alburwell@osophs.dhhs.gov;* or Marjorie S. Greenberg, Executive Secretary, NCVHS, National Center for Health Statistics, Centers for Disease Control and Prevention, Room 2413, 3311 Toledo Road, Hyattsville, Maryland 20782, telephone: (301) 458–4245. Information also is available on the NCVHS home page of the HHS Web site: *http://www.ncvhs.hhs.gov/* where an agenda and more details about participation in the meeting or Subcommittee deliberations will be posted when available.

Dated: May 1, 2003.

James Scanlon,

Acting Director, Office of Science and Data Policy, Office of the Assistant Secretary for Planning and Evaluation.

[FR Doc. 03–11407 Filed 5–07–03; 8:45 am]

BILLING CODE 4151–05–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[60 Day–03–66]

Proposed Data Collections Submitted for Public Comment and Recommendations

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 for opportunity for public comment on proposed data collection projects, the Centers for Disease Control and Prevention (CDC) will publish periodic summaries of proposed projects. To request more information on the proposed projects or to obtain a copy of the data collection plans and instruments, call the CDC Reports Clearance Officer on (404)498–1210.

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Send comments to Anne O'Connor, CDC Assistant Reports Clearance Officer, 1600 Clifton Road, MS–D24, Atlanta, GA 30333. Written comments should be received within 60 days of this notice.

Proposed Project: Environmental Health Specialists Network (EHS–NET) Data Collection Methodology and Instrument—New—National Centers for Environmental Health (NCEH), Centers for Disease Control and Prevention (CDC).

Background

The Centers for Disease Control and Prevention (CDC) is requesting OMB approval for a data collection system that will assist public health officials to better identify and assess environmental factors contributing to foodborne outbreaks and the prevention efforts needed to reduce or ameliorate these events. This data collection, the Environmental Health Specialists Network (EHS-Net) Information System, is a standardized survey instrument developed by CDC in collaboration with the U.S. Food and Drug Administration (FDA) and the EHS-Net participating states, California, Colorado, Connecticut, Georgia, Minnesota, New York, Oregon, and Tennessee. The instrument is for use in non-regulatory environmental evaluations.

The Environmental Health Specialist Network Information System has been pilot tested in the EHS-Net states. The eight states in the pilot testing phase used the EHS-Net survey instrument to collect environmental information from two groups of restaurants: those that reported foodborne outbreaks and those that had not. The survey instrument collected information about the restaurant's food safety policies and procedures, and includes direct observations of food preparation and handling practices, and food worker behaviors.

CDC will evaluate the data collected in these eight pilot states to further refine and improve the EHS-Net data collection instrument and methodology. Once this evaluation is completed, the EHS-Net data collection instrument and methodology will be made available to all public health officials in the United States who wish to use the system to identify and assess environmental factors in food establishments that contribute to foodborne illness and to evaluate the effectiveness of existing prevention measures including foodhandling practices, policies, and other control measures. There is no cost to respondents.

Respondents	No. of respondents	No. of responses per respondent	Average burden per response (in hrs.)	Total burden (in hrs.)
One Public Health Official Per State	50	52	6	15,600
Total				15,600

Dated: May 2, 2003.

Thomas Bartenfeld,

Acting Associate Director for Policy, Planning and Evaluation, Centers for Disease Control and Prevention.

[FR Doc. 03–11418 Filed 5–7–03; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[60 Day–03–65]

Proposed Data Collections Submitted for Public Comment and Recommendations

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 for opportunity for public comment on proposed data collection projects, the Centers for Disease Control and Prevention (CDC) will publish periodic summaries of proposed projects. To request more information on the proposed projects or to obtain a copy of the data collection plans and instruments, call the CDC Reports Clearance Officer on (404) 498–1210.

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Send comments to Anne O'Connor, CDC Assistant Reports Clearance Officer, 1600 Clifton Road, MS–D24, Atlanta, GA 30333. Written comments should be received within 60 days of this notice.

Proposed Project: Pilot Study for the National Survey of the Mining Population—NEW—National Institute for Occupational Safety and Health (NIOSH), Centers for Disease Control and Prevention (CDC).

Surveillance of occupational injuries, illnesses, and exposures has been an integral part of the work of the National Institute for Occupational Safety and Health (NIOSH) since its creation by the Occupational Safety and Health Act in 1970. To improve its surveillance capability related to the occupational risks in mining, NIOSH is planning to conduct a national survey of mines and mine employees. No national surveys have specifically targeted the mining labor force since the 1986 Mining Industry Population Survey (MIPS). The mining industry has experienced many changes in the last 17 years; consequently, the MIPS data are no

longer representative of the current mining industry labor force.

The proposed survey will be based upon a probability sample of mining operations and their employees. The major objectives of the survey will be: (1) To collect basic information about the mining operation; (2) to establish the demographic and occupational characteristics of mine operator employees within each major mining sector (coal, metal, nonmetal, stone, and sand and gravel); and (3) to determine the number and occupational characteristics of independent contractor employees within mines. The sampled mining operations will provide all survey data; individual operator and independent contractor employees will not be directly surveyed. As a result of this survey, surveillance researchers and government agencies such as the Mine Safety and Health Administration (MSHA) will be able to identify groups of miners with a disproportionately high risk of injury or illness. By capturing demographic (*e.g.*, age, gender, race/ethnicity, education level) and occupational characteristics (*e.g.*, job, title, work location, experience in this job title, total mining experience) of the mining workforce, these data will be of use in the customization of interventions such as safety training programs.

Prior to implementing the full-scale survey, NIOSH is planning to conduct a Pilot Study to evaluate the effectiveness of the survey recruitment materials, questionnaires, and procedures in the acquisition of complete and high quality data from a sample of mining operations. Data captured in the Pilot Study will guide improvements to optimize the performance of the various components of the full-scale national survey. Approximately 40 randomly selected mining operations spanning the five major mining commodities will be chosen for the Pilot Study. A survey packet will be sent to each sampled mining operation. It is expected that approximately 30 mining operations will be eligible to participate in and will respond to the Pilot Study. A portion of the survey responders and all non-responders will be asked a short number of debriefing questions by telephone. There will be no cost to respondents.

Respondents	Number of respondents	Number of responses per respondent	Average burden per response (in hours)	Total burden (in hours)
Mining Operations Participating in Pilot Study	30	1	90/60	45
Mining Operations Responding to Debriefing Questions	23	1	5/60	2
Total				47

Dated: May 1, 2003.

Thomas Bartenfeld,

Acting Associate Director for Policy, Planning and Evaluation, Centers for Disease Control and Prevention.

[FR Doc. 03–11419 Filed 5–7–03; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Disease, Disability, and Injury Prevention and Control; Special Emphasis Panel: Research on the Impact of Law on Public Health, Program Announcement #03049

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), the Centers for Disease Control and Prevention (CDC) announces the following meeting:

Name: Disease, Disability, and Injury Prevention and Control Special Emphasis Panel (SEP): Research on the Impact of Law on Public Health, Program Announcement #03049.

Times and Dates: 3 p.m.–3:30 p.m., May 27, 2003 (Open). 3:30 p.m.–7 p.m., May 27, 2003 (Closed). 8 a.m.–5 p.m., May 28, 2003 (Closed). 8 a.m.–5 p.m., May 29, 2003 (Closed). 8 a.m.–5 p.m., May 30, 2003 (Closed).

Place: Marriott Perimeter Center, 246 Perimeter Center Parkway, NE, Atlanta, GA 30346, 770.270.0422.

Status: Portions of the meeting will be closed to the public in accordance with provisions set forth in section 552b(c)(4) and (6), Title 5 U.S.C., and the Determination of the Director, Management Analysis and Services Office, CDC, pursuant to Public Law 92–463.

Matters to be Discussed: The meeting will include the review, discussion, and evaluation of Letters of Intent received in response to Program Announcement # 03049.

CONTACT PERSON FOR MORE INFORMATION: Joan Karr, Ph.D., Scientific Review Administrator, Public Health Program Practice Office, CDC, 4770 Buford Highway, NE., MS–K–38, Atlanta, GA 30341, Telephone 770.488.2597.

The Director, Management Analysis and Services Office has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities, for both CDC and the Agency for Toxic Substances and Disease Registry.

Dated: May 2, 2003.

Alvin Hall,

Director, Management Analysis and Services Office, Centers for Disease Control and Prevention (CDC).

[FR Doc. 03–11421 Filed 5–7–03; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Indian Health Service

Nursing Recruitment Program for American Indians/Alaska Natives

AGENCY: Indian Health Services (IHS), HHS.

ACTION: Notice of availability of funds for the Nursing Recruitment Program for American Indian/Alaska Natives (AI/AN).

SUMMARY: The IHS announces that competitive grant applications are now being accepted for the Nursing Education Program for AI/AN authorized by section 112 of the Indian Health Care Improvement Act Public Law 94–437, as amended. There will be only one funding cycle during Fiscal Year (FY) 2003. This program is described at 93.970 in the Catalog of Federal Domestic Assistance. Costs will be determined in accordance with applicable OMB Circulars and 45 CFR Part 74 or 45 CFR Part 92 (as applicable). Executive Order 12372 requiring intergovernmental review does not apply to this program. This program is not subject to the Public Health System Reporting Requirements.

The Public Health Service (PHS) is committed to achieving the health promotion and disease prevention objectives of *Healthy People 2010*, a PHS-led activity for setting priority areas. This program announcement is related to the priority area of Educational and Community-based programs. You may obtain the objectives from the latest *Healthy People 2010*, Review. A copy may be obtained by calling the national Center for Health Statistics, telephone (301) 436–8500.

Smoke Free Workplace

The PHS strongly encourages all grant recipients to provide a smoke-free workplace and promote the non-use of all tobacco products. Public Law 103–227, the Pro-Children Act of 1994, prohibits smoking in certain facilities that receive Federal funds in which education, library, day care, health care, and early childhood development services are provided to children.

DATES: *Application Receipt Date:* An original and two copies of the completed grant application must be submitted, with all required documents, to the grants Management Branch, Division of Acquisitions and Grants Operations, 801 Thompson Avenue, Rockville, MD 20852, by close of business (c.o.b.) June 17, 2003. COB means 5 p.m. Eastern Daylight Time. Applications shall be considered as meeting the deadline if they are either: (1) received on or before the deadline with hand carried applications received by close of business 5 p.m.; or (2) postmarked on or before the deadline date and received in time to be reviewed along with all other timely applications. A legibly dated receipt from a commercial carrier or the U.S. Postal Service will be accepted in lieu of a postmark. Private metered postmarks will not be accepted as proof of timely mailing. Late applications will be returned to the applicant and will not be considered for funding.

Additional Dates

(a) *Application Review Completed By:* July 26, 2003.

(b) *Applicants Notified of Results (approved, approved unfunded, or disapproved):* July 31, 2003.

(c) *Anticipated Start Date:* August 1, 2003.

FOR FURTHER INFORMATION CONTACT: For program information, contact Celissa G. Stephens, MSN, Acting Director, Division of Nursing Services, Office of Clinical and Preventative Services, Indian Health Service, 801 Thompson Avenue, Reyes Building, Suite 300, Rockville, MD 20852, (301) 443–1840. For grants information, contact Ms. Martha Redhouse, Grants Management Specialist, grants Management Branch, Division of Acquisition and Grants Management, Indian Health Service, 801 Thompson Avenue, Suite 120, Rockville, MD 20852, (301) 443–5204. (The telephone numbers are not toll-free.)

SUPPLEMENTARY INFORMATION: This announcement provides information on the general program purpose and objectives, programmatic priorities, eligibility requirements, funding availability, application process, required documentation, review process, and review criteria.

(a) *General Program Purpose:* To increase the number of nurses, nurse practitioners, nurse anesthetists, and nurse midwives who deliver health care service to AI/AN.

(b) *Eligibility and Preference:* The following organizations are eligible: (1) Public or private schools of nursing; (2) Tribally controlled community colleges and Tribally controlled posts-secondary vocational institutions (as defined in section 239h (2) of Title 20); and (3) nurse midwife programs, and nurse practitioner programs, that are provided by public or private institutions, for the purpose of increasing the number of nurse midwives, nurse practitioners, and nurses who deliver care to AI/AN's.

Preference will be given to programs which: (1) Provide a preference to AI/AN; (2) programs that train nurse midwives and nurse practitioners; (3) programs that are interdisciplinary; and (4) programs that are conducted in cooperation with the center for gifted and talented Indian students established under section 2624(a) of this Title 1616e(d). If an eligible organization claims preference in order to be given priority, the organization must submit verifying documentation.

(c) *Program Priorities:* All complete, eligible applications will be considered. If more than one application is received from an IHS Area only one award will be made to that particular area providing a MSN, BSN, ADN or LPN program.

Priority I—At least one project to a public or private college or university, school of nursing, which provides MSN (nurse midwife, nurse practitioner, or nurse anesthetist) degrees not to exceed $350,000 per year up to project period of five years.

Priority II—At least three projects to a public or private college or university, school of nursing which provides BSN or ADN degrees, not to exceed $400,000 per year up to a project period of five years.

Priority III—At least one project to a Tribally controlled community college, school of nursing, which provides LPN training, not to exceed $200,000 per year up to a project period of five years.

(d) *Program Objectives:* The primary objectives of a grant awarded under this program are to: (1) Recruit and train AI/AN individuals to be nurses (MSN, BSN, ADN, LPN); (2) provide scholarships to individuals enrolled in schools of nursing to pay tuition, books, fees, and stipends for living expenses; (3) provide a program that encourages nurses (MSN, BSN, ADN or LPN), to provide or continue to provide, health care services to AI/AN; and (4) provide a program that increases the skills of and provides continuing education to nurses (MSN, BSN, ADN, LPN).

Each proposal must respond to at least two of the above four objectives.

(e) *Program Activities Considered for Support:* The grant program must be developed to locate and recruit students with potential for nursing and provide support services to students who are recruited. Support services may include providing career counseling and academic advice; assistant students to identify academic deficiencies and to develop plans to correct those deficiencies; assisting students to locate financial aid; monitoring students to identify possible problems; assisting with the determination of need for and location of tutorial services; and other related activities which help to retain students in school.

(f) *Required Affiliation:* The applicant must submit documentation that it is an accredited school of nursing, or a Tribally controlled community college. The term "accredited" when applied to any program of nurse education means a program accredited or assured accreditation by a recognized body or bodies, or by a State agency, approved for such purpose by the Secretary of Education and when applied to a school, college or university (or a unit thereof) which is accredited by a recognized body or bodies, or a State agency, approved for such purpose by the Secretary of Education. In order to establish the connection between the program of the applicant and a health care facility that primarily serves Indians the Secretary requires and information regarding the accessibility of the application to target Indian communities or tribes, including evidence of past or potential cooperation between the application of such communities or Tribes. When the target population of a proposed project includes a particular Indian Tribe or Tribes, an official document, *i.e.*, a letter of support or tribal resolution, must be submitted indicating that the Tribe or Tribes will cooperate with the applicant.

Related objectives of the program are the proper administration of a project,

selection of scholarship recipients by fair and consistent means, monitoring of recipients to assure compliance with scholarship requirements and eventual job placement within the service area of the grantee to fulfill service obligation. A student must serve one year for every year funded. One of the monitoring objectives in assuring satisfactory academic performance which is defined as: (1) A 2.50 grade point average (GPA); and (2) the GPA required by the college/university.

(g) *Fund Availability:* Approximately $1.7 million is available per year, for a five year cycle. The anticipated start date for selected projects will be August 1, 2003. A total of five projects will be awarded with funding for succeeding years based on satisfactory level of performance; the availability of appropriation in future years; and the continuing need of IHS for the project. Funding will be available to fund only one project (MSN, BSN, ADN, LPN) grant within an IHS Area.

(h) *Period of Support:* Projects will be funded with annual budget periods and project periods of five years. The second, third, fourth and fifth year funding will be based on the following: (1) Satisfactory progress of the grantee; (2) availability of funds; and (3) continuing need of the IHS or the program.

(i) *Application Process:*

(1) An IHS Recruitment Grant Application Kit may be obtained from the Grants Management Branch, Division of Acquisition and Grants Management, Indian Health Service, 801 Thompson Avenue, Reyes Building, Rockville, MD 20852, (301) 443–5204. This kit includes Standard Form PHS 5161–1 (Rev. 7/00); Standard Forms 424, 424A, and 424B (Rev. 7/97); Application Receipt Card—PHS 3038–1 (Rev. 4/97); instructions for preparing the program narrative; IHS Application Check List; a copy of the **Federal Register** Notice for Nursing Recruitment Grants; and a copy of Section 112 of the Act.

(2) The application must be signed and submitted by an individual authorized to act for the applicant and to assume on behalf of the applicant the obligations imposed by the terms and conditions of any award.

(3) The available funding level is inclusive of both direct and indirect costs. Because this project is for a training grant, the Department of Health and Human Services' policy limiting reimbursement of indirect cost to 8 percent of total direct costs (exclusive of trainee costs and expenditures for equipment) is applicable. This limitation applies to all institutions of higher education other than agencies of State and local government.

(4) Each application will be reviewed by the Grants Management Branch for eligibility, compliance with the announcement, and completeness. All acceptable applications will be subject to a competitive objective review and evaluation. An unacceptable application will be returned to the applicant without further consideration.

(5) Applicants will be notified by July 31, 2003, of their status as approved, approved unfunded, or disapproved.

(6) The project period may not exceed five years. Applications must include Narrative and Budget information for the entire anticipated project period. The application must comply with the following format:

(a) Table of Contents (one page)
(b) Narrative (up to five pages)
(c) Budget and Justification
(d) Appendix (Tribal resolution, verification of accreditation, résumé's and position descriptions of staff who will administer the program, an organizational chart of placement of the administrative staff within the Tribes or Tribal organization, and supporting documentation.

(j) *Narrative:* The following instructions for the preparation of the narrative are to be used in lieu of the instructions on pages 21–23 of form PHS 5161–1. The narrative section of the application must include: (1) Description of administration of the grant; (2) description of applicant's previous experience with nursing recruitment grants; (3) methodology for recruiting, selecting, paying, and monitoring students; (4) number of nurses to be funded; (5) justification of need; and (6) description of proposed payback services by graduates. The narrative section should be written in a manner that is clear to outside reviewers unfamiliar with activities of the applicant. It should be well organized, succinct, and contain all information necessary for reviewers to understand the project fully. The narrative may not exceed five single-spaced pages in length, excluding attachments, budget, and required documentation. Pages must be numbered. Provide a narrative for year two, three, four, and five of the project; however, provide information only for those narrative items which you anticipate will change from year to year.

(a) Administration of the Grant

(1) Describe the organization submitting the application, include an organizational chart in appendix showing the grant's placement within the organization.

(2) Describe who will be responsible for administering the grant project. In the appendix, provide biographical sketches (resumes) and position descriptions for the program director and key personnel as described on pages 21–23 of form 5161–1.

(b) Prior Experience

Describe any previous experience the organization has had with nursing recruitment grant programs including information on the types of grants and funding.

(c) Methodology

(1) Describes how students will be recruited to assure maximum distribution of information about the availability of the scholarships.

(2) Describe the process by which scholarship recipients will be selected to assure fairness and consistent treatment.

(3) List, and if necessary, explain the criteria to be used in selecting recipients.

(4) Describe how and when students will be paid.

(5) Describe the process of monitoring to assure acceptable academic standing (refer to Section D—PROGRAMMATIC OBJECTIVES).

(d) Types of Scholarships

Provide information on the types and numbers of nursing scholarships to be funded.

(e) Service Payback

(1) A student must service one year for every year funded.

(2) The training institution must provide information on each scholarship recipient funded per semester, and academic year to the Section 112 Indian Health Service (IHS) Database.

(3) Indicate a plan for tracking placement of graduates and retention of nursing students in the nursing program.

(f) Evaluation

(1) Provide a narrative addressing how the conduct of the program will be evaluated. Define the procedures for determining whether the proposed methodology has been successful in announcing and carrying out the project. An evaluation should be conducted annually.

(2) Provide a narrative addressing how results of the program will be evaluated to determine the success of the Tribal scholarship program. This should be done at the end of year four to assist the IHS in determining the effectiveness of the program in meeting Tribal needs for nurses.

(3) Provide potential effectiveness of the proposed project in carrying out the purposes of Section 112, with special emphasis on the objectives and methodology portion of the application. This includes relevance of project objectives to grant program objectives; appropriateness and soundness of the procedures for identifying, recruiting, and retaining target population(s); and feasibility of project within proposed resources in time frames.

(4) Demonstrate capability of the applicant to successfully conduct the project, including organizational and scholarly commitment to the recruitment, education, and retention of students.

(5) The submission of verifying documentation when an applicant claims preference in order to be given priority.

Preference is given for programs which: (1) Provide a preference to AI/AN; (2) train nurse midwives or nurse practitioners; (3) are interdisciplinary; or (4) are conducted in cooperation with a center for gifted and talented AI/AN students established under section 5324 (a) of the Indian Education Act of 1988. Consideration will be given to the relationship of project objectives to Indian Health manpower's deficiencies, indicating the number of potential AI/An students to be contacted and recruited as well as potential cost per student recruited; (6) those projects that have the potential to serve a greater number of AI/AN will be given first consideration; (7) the soundness of the fiscal plan for assuring effective utilization of grant funds; and (8) the completeness and responsiveness of the application.

(k) *Budget:* An itemized estimate of costs must be provided on Standard Form 424A. All applications shall include funding requirements for the second, third, fourth and fifth budget periods. Project funding will be based on an average of $18,500 per scholarship. Projects must be for a minimum of five scholarship per academic year for all nursing programs.

Required Documentation

(a) Tribal Resolution

A resolution from the Tribal government specifically supporting this grant project must accompany the application submission. Resolution shall address the Tribal government's commitment to placement of program graduates. Applications by Tribal organizations will not require resolution(s) if the current Tribal resolution(s) under which they operate would encompass the proposed grant activities. A statement of proof of a copy of the current operational resolution must accompany the application. If a resolution or a statement is not submitted, the application will be considered incomplete and will be returned without consideration.

(l) *Review Process and Criteria:* Applications that meet eligibility requirements, are complete, and conform to this announcement will be reviewed by an Ad Hoc Review Committee. Applications will be reviewed against established criteria. The Ad Hoc Review Committee will assign a numerical score to each application, which will be used to rank applications. The Program Director will consider geographic location in order to limit only one grant within an IHS Area.

Applications will be evaluated against the following criteria and weights:

Weights—Criteria

40%—Methodology—Is the applicant's plan for conducting the project sound and effective? Has the applicant fully addressed the process of recruiting and selecting students? Will this process assure fair and consistent treatment of students? Is the monitoring process adequate to assure that students are complying with requirements? Will the process for placing, tracking, and retaining graduates be adequate to assure compliance with terms of the service obligation contract?

30%—Demonstrated capacity of the applicant to successfully conduct the project (accreditation). Is the applicant capable of successfully conducting the project from a technical and business standpoint? Are the qualification of the key personnel appropriate and adequate to carry out the projects? Is the applicant fiscal plan sound for use of both Federal and Non-federal funds?

15%—Need—Is the need for the project justified? Is there supporting documentation for conducting recruiting activities within the applicant's area?

10%—Evaluation—Does the applicant present a sound annual evaluation plan capable of determining success in announcing and carrying out the project? Does the applicant provide an evaluation plan for determining the success of the program within the applicant's organization at the end of the project period?

5%—Prior experience with similar programs.

(m) *Results of the Review:* Successful applicants will be notified through official Notice of Grant Award (NGA) documents. The NGA will state the amount of the Federal funds awarded, the terms and conditions of the grant award, the effective date of the award, the project period, and the budget period.

Dated: April 22, 2003.

Charles W. Grim,

Assistant Surgeon General, Interim Director, Indian Health Service.

[FR Doc. 03–11395 Filed 5–7–03; 8:45 am]

BILLING CODE 4160–16–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Substance Abuse and Mental Health Services Administration

Agency Information Collection Activities: Proposed Collection; Comment Request

In compliance with section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 concerning opportunity for public comment on proposed collections of information, the Substance Abuse and Mental Health Services Administration will publish periodic summaries of proposed projects. To request more information on the proposed projects or to obtain a copy of the information collection plans, call the SAMHSA Reports Clearance Officer on (301) 443–7978.

Comments are invited on: (a) Whether the proposed collections of information are necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Proposed Project: Administration and Financing of Group Homes and Residential Facilities for Persons with Mental Illness—New—The Substance Abuse and Mental Health Services Administration (SAMHSA) will conduct a survey of state health officials to determine what types of residential care programs for persons with mental illness are operated in each State and the District of Columbia. The state health officials will be identified through Web searches of State Mental Health Departments and other relevant agencies on a state-by-state basis.

The survey will contact identified state health officials in all fifty states

(and the District of Columbia) and will gather information on the following six survey domains: Facility characteristics (for approximately five different types of group homes); Licensing and certification; Facility programs and treatment services; Seclusion and restraint; Facility monitoring and oversight; and, Financing.

The survey will identify and describe the types of residential facilities for persons with mental illness that are licensed, certified, and/or financed by State governments; the target population served by each facility type; the range of services provided in each facility type; provisions for monitoring each facility type, including the use of seclusion and restraints; and, sources of financing for each facility type.

This information collection supports the New Freedom Initiative, one of SAMHSA's current priorities. The New Freedom Initiative is the President's comprehensive plan to reduce barriers to full community integration for people with disabilities. The national survey will provide new information to SAMHSA and to other policymakers regarding the ways in which group homes and other types of residential facilities for adults, adolescents, and children with mental illness are established, regulated, and financed.

The questionnaire will be distributed to identified state health officials in electronic and/or paper formats. State health officials may either return the completed questionnaire via email or regular mail or request a telephone interview. In addition, respondents who do not return a completed paper questionnaire will be contacted and interviewed by telephone.

ESTIMATES OF ANNUALIZED HOUR BURDEN

Number of respondents	Responses per respondent	Hours per response	Total hour burden
255	1	1	255

Send comments to Nancy Pearce, SAMHSA Reports Clearance Officer, Room 16–105, Parklawn Building, 5600 Fishers Lane, Rockville, MD 20857. Written comments should be received within 60 days of this notice.

Dated: May 2, 2003.

Richard Kopanda,

Executive Officer, SAMHSA.

[FR Doc. 03–11420 Filed 5–7–03; 8:45 am]

BILLING CODE 4162–20–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Substance Abuse and Mental Health Services Administration

Fiscal Year (FY) 2003 Funding Opportunity

AGENCY: Substance Abuse and Mental Health Services Administration, HHS.

ACTION: Notice of funding availability for Cooperative Agreements to Conduct Targeted Capacity Expansion (TCE) of Ecstasy and Other Club Drugs Prevention Interventions and/or Infrastructure Development.

SUMMARY: The Substance Abuse and Mental Health Services Administration (SAMHSA) Center for Substance Abuse Prevention announces the availability of FY 2003 funds for the grant program described below. A synopsis of this funding opportunity, as well as many other Federal government funding opportunities, is also available at the Internet site: *www.fedgrants.gov.*

This notice is not a complete description of the program; potential applicants must obtain a copy of the Request for Applications (RFA), including part I, Cooperative Agreements to Conduct Targeted Capacity Expansion (TCE) of Ecstasy and Other Club Drugs Prevention Interventions and/or Infrastructure Development SP 03–007, part II, General Policies and Procedures Applicable to all SAMHSA Applications for Discretionary Grants and Cooperative Agreements, and the PHS 5161–1 (Rev. 7/00) application form before preparing and submitting an application.

Funding Opportunity Title: Cooperative Agreements to Conduct Targeted Capacity Expansion (TCE) of Ecstasy and Other Club Drugs Prevention Interventions and/or Infrastructure Development—Short Title: Prevention of Ecstasy Abuse.

Funding Opportunity Number: SP 03–007.

Catalog of Federal Domestic Assistance (CFDA) Number: 93.243.

Authority: 519E of the Public Health Service Act, as amended and subject to the availability of funds.

Funding Instrument: CA.

Funding Opportunity Description: The Substance Abuse and Mental Health Services Administration (SAMHSA), Center for Substance Abuse Prevention is accepting applications for fiscal year 2003 for cooperative agreements to conduct targeted capacity expansion of ecstasy and other club drug prevention interventions and/or infrastructure development.

Eligible Applicants: Eligible applicants are public and domestic private non-profit entities such as units of State and local governments, Indian tribes and tribal organizations, community-based organizations, managed care and other health care delivery systems, universities and colleges, faith-based organizations, local law enforcement agencies, and current grantees as well as entities that are not current grantees.

Due Date for Applications: July 22, 2003.

Estimated Funding Available/Number of Awards: Approximately $4 million will be available for 14 awards in FY 2003. The average award will range from $300,000 to $350,000 in total costs (direct and indirect). Applications with proposed budgets that exceed $350,000 will be returned without review. Actual funding levels will depend on the availability of funds.

Is Cost Sharing Required: No.

Period of Support: Awards may be requested for up to one year. Depending on the availability of funds, grantees may be allowed to apply for limited competitive renewal at the end of the first year to continue funding for an additional one or two years.

How to Get Full Announcement and Application Materials: Complete application kits may be obtained from: the National Clearinghouse for Alcohol and Drug Information (NCADI) at 1–800–729–6686. The PHS 5161–1 application form and the full text of the funding announcement are also available electronically via SAMHSA's World Wide Web Home Page: *http://www.samhsa.gov* (click on 'Grant Opportunities').

When requesting an application kit, the applicant must specify the funding opportunity title and number for which detailed information is desired. All information necessary to apply, including where to submit applications and application deadline instructions, are included in the application kit.

Contact for Additional Information: Pamela C. Roddy, Ph.D, Substance Abuse and Mental Health Services Administration, Center for Substance Abuse and Prevention, 5600 Fishers Lane, Rockwall II, Suite 1075, Rockville, MD 20857, (301) 443–1001, E-Mail: *proddy@samhsa.gov.*

Dated: May 2, 2003.

Richard Kopanda,

Executive Officer, Substance Abuse and Mental Health Services Administration.

[FR Doc. 08–11394 Filed 5–7–03; 8:45 am]

BILLING CODE 4162–20–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4820–N–21]

Notice of Proposed Information Collection: Comment Request; Certified Eligibility for Adjustments for Damage or Neglect

AGENCY: Office of the Assistant Secretary for Housing-Federal Housing Commission, HUD.

ACTION: Notice

SUMMARY: The proposed information collection requirement described below will be submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

DATES: *Comments Due Date:* July 7, 2003.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB Control Number and should be sent to: Wayne Eddins, Reports Management Officer, Department of Housing and Urban Development, 451 7th Street; SW., L'Enfant Plaza Building, Room 8003, Washington, DC 20410 or *Wayne_Eddins@hud.gov.*

FOR FURTHER INFORMATION CONTACT: Joseph McCloskey, Director, Office of Single Family Asset Management, Department of Housing and Urban Development, 451 7th Street, SW., Washington, DC 20410, telephone (202) 708–1672 (this is not a toll free number) for copies of the proposed forms and other available information.

SUPPLEMENTARY INFORMATION: The Department is submitting the proposed information collection to OMB for review, as required by the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35, as amended).

This notice is soliciting comments from members of the public and affected agencies concerning the proposed collection of information to: (1) Evaluate whether the proposed collection is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (3) enhance the quality, utility, and clarity of the information to be collected; and (4) minimize the burden of the collection of information on those who are to respond; including the use of appropriate automated collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

This notice also lists the following information:

Title of Proposal: Certified Eligibility for Adjustments for Damage or Neglect.

OMB Control Number, if applicable: 2502–0349.

Description of the need for the information and proposed use: This information collection is needed to permit a one-time certification by mortgagees that they have acquired hazard insurance acceptable to HUD at a reasonable rate. The information collection will also permit the mortgagee to convey fire damaged properties without a surcharge to the claim.

Agency form numbers, if applicable: None.

Estimation of the total numbers of hours needed to prepare the information collection including number of respondents, frequency of response, and hours of response: The estimated total number of hours needed to prepare the information collection is 125; the number of respondents is 250 generating 250 annual responses; the frequency of response is on occasion; and the estimated time needed to prepare the response is 30 minutes.

Status of the proposed information collection: Extension of a currently approved collection.

Authority: The Paperwork Reduction Act of 1995, 44 U.S.C., chapter 35, as amended.

Dated: April 29, 2003.

Sean G. Cassidy,

General Deputy Assistant Secretary for Housing-Deputy Federal Housing Commissioner.

[FR Doc. 03–11397 Filed 5–7–03; 8:45 am]

BILLING CODE 4210–27–M

DEPARTMENT OF THE INTERIOR

Office of the Secretary

California Desert District Advisory Council; Notice of Renewal

AGENCY: Bureau of Land Management (BLM), Interior.

ACTION: California Desert District Advisory Council notice of renewal.

SUMMARY: This notice is published in accordance with section 9(a)(2) of the Federal Advisory Committee Act of 1972 (Pub. L. 92–463). Notice is hereby given that the Secretary of the Interior has renewed the Bureau of Land Management's California Desert District Advisory Council.

The purpose of the Council is to provide counsel and advice to the BLM District Manager concerning planning and management of the public land resources within the BLM California Desert District and implementation of the comprehensive, long-range plan for the management, use, development, and protection of the public lands within the California Desert Conservation Area.

Certification Statement

I hereby certify that the renewal of the California Desert District Advisory Council is necessary and in the public interest in connection with the Secretary of the Interior's responsibilities to manage the lands, resources, and facilities administered by the Bureau of Land Management.

FOR FURTHER INFORMATION CONTACT: Alden Boetsch, Intergovernmental Affairs (640), Bureau of Land Management, 1620 L Street, NW., Room 406 LS, Washington, DC 20240, telephone (202) 452–5165.

Dated: April 30, 2003.

Gale A. Norton,

Secretary of the Interior.

[FR Doc. 03–11392 Filed 5–7–03; 8:45 am]

BILLING CODE 4310–84–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Information Collection To Be Submitted to the Office of Management and Budget for Approval Under the Paperwork Reduction Act; Annual Certification of Hunting and Sport Fishing Licenses Issued

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice; request for comments.

SUMMARY: The U.S. Fish and Wildlife Service (We) will submit the collection

of information described below to the Office of Management and Budget for approval under the provisions of the Paperwork Reduction Act (PRA). You may obtain copies of the collection requirement, related forms, and explanatory material by contacting the Service's Information Collection Clearance Officer at the address listed below. We are soliciting public comment on this information collection.

DATES: Interested parties must submit comments on or before July 7, 2003.

ADDRESSES: Mail your comments on the information collection to Anissa Craghead, Information Collection Clearance Officer, U.S. Fish and Wildlife Service, 4401 North Fairfax Drive, Suite 222, Arlington, VA 22203; or e-mail *Anissa_Craghead@fws.gov.*

FOR FURTHER INFORMATION CONTACT: Anissa Craghead at (703) 358–2445 or *Anissa_Craghead@fws.gov.*

SUPPLEMENTARY INFORMATION: The Office of Management and Budget (OMB) regulations at 5 CFR 1320, which implement provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), require that interested members of the public and affected agencies have an opportunity to comment on information collection and recordkeeping activities (*see* 5 CFR 1320.8(d)). We plan to submit a request to OMB to renew its approval of the collection of information related to the annual certification of hunting and sport fishing licenses issued by States, territories, and local governments. We are requesting a 3-year term of approval for this information collection activity. Federal agencies may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control number for this collection of information is 1018–0007.

The Service administers grant programs authorized by the Federal Aid in Wildlife Restoration Act (16 U.S.C. 669–669b, 669–669k) and the Federal Aid in Sport Fish Restoration Act (16 U.S.C. 777–777m). These Acts require that States annually certify their hunting and fishing license sales. The Service uses the information collected to determine apportionment and distribution of funds under these Acts. We are proposing minimal changes to the forms we use to collect this information.

Title: Annual Certification of Hunting and Sport Fishing Licenses Issued. (**Note:** This collection consists of two parts: Part 1, Certification, and Part 2, Summary.)

OMB Approval Number: 1018–0007.

Service Form Number(s): 3–154a (Part 1) and 3–154b (Part 2).

Frequency of Collection: Annually.

Description of Respondents: State, territorial (the Commonwealth of Puerto Rico, the District of Columbia, the Commonwealth of the Northern Mariana Islands, Guam, the Virgin Islands, and American Samoa), and local governments, and others receiving grant funds.

Total Annual Burden:

Form name	Completion time per form (hours)	Annual number of respondents (forms)	Annual hour burden
Certification (Part 1)	½	56	28
Summary (Part 2)	½	56	28
Totals		112	56

We invite comments on: (1) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) the accuracy of our estimate of the burden of the collection of information; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of collection of information on respondents, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Dated: April 30, 2003.

Matt Hogan,

Acting Director, Fish and Wildlife Service.

[FR Doc. 03–11428 Filed 5–7–03; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Information Collection To Be Submitted to the Office of Management and Budget for Approval Under the Paperwork Reduction Act; Grant Agreement and Amendment to Grant Agreement

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice; request for comments.

SUMMARY: The U.S. Fish and Wildlife Service (We) will submit the collection of information described below to the Office of Management and Budget for approval under the provisions of the Paperwork Reduction Act (PRA). You may obtain copies of the collection requirement, related forms, and explanatory material by contacting the Service's Information Collection Clearance Officer at the address listed below. We are soliciting public comment on this information collection.

DATES: Interested parties must submit comments on or before July 7, 2003.

ADDRESSES: Mail your comments on the information collection to Anissa Craghead, Information Collection Clearance Officer, U.S. Fish and Wildlife Service, 4401 North Fairfax Drive, Suite 222, Arlington, VA 22203; or e-mail *Anissa_Craghead@fws.gov.*

FOR FURTHER INFORMATION CONTACT: Anissa Craghead at (703) 358–2445 or *Anissa_Craghead@fws.gov.*

SUPPLEMENTARY INFORMATION: The Office of Management and Budget (OMB) regulations at 5 CFR 1320, which implement provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), require that interested members of the public and affected agencies have an opportunity to comment on information collection and recordkeeping activities (*see* 5 CFR 1320.8(d)). We plan to submit a request to OMB to renew its approval of the collection of information for the Grant Agreement and Amendment to Grant Agreement. We are requesting a 3-year term of approval for this information collection activity. Federal agencies may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control number for this collection of information is 1018–0049.

Under the authority of the Federal Aid in Wildlife Restoration Act (16 U.S.C. 669–669i), the Federal Aid in Sport Fish Restoration Act (16 U.S.C. 777–777l), the Anadromous Fish Conservation Act (16 U.S.C. 757a–757g), the Endangered Species Act (16 U.S.C. 1531 *et seq.*), the Clean Vessel Act (16 U.S.C. 777c), the Sportfishing and Boating Safety Act (16 U.S.C. 777g–1), and the Coastal Wetlands Planning, Protection, and Restoration Act (16 U.S.C. 3951–3956), we administer several grant programs. We use the information collected in grant applications and agreements to make awards under these grant programs. The information collected on the grant applications and agreements helps us determine whether the estimated cost of the grant project is reasonable, the cost sharing is consistent with the applicable program statutes, and sufficient Federal funds are available for obligation. The State or other grantee uses the grant application forms and agreements to request funds and identify proposed cost sharing. Grantees complete an Amendment to Grant Agreement to request a change to a previously approved Grant Agreement. We use the Amendment to Grant Agreement to revise a previous funding obligation or otherwise document the approval of a revision. The Grant Agreement and Amendment to Grant Agreement that we will submit to OMB for approval are modified slightly to lesson the burden on the public and to make them easier for the Service to use.

Title: Grant Agreement and Amendment to Grant Agreement.

OMB Approval Number: 1018–0049.

Service Form Number(s): 3–1552 (Grant Agreement) and 3–1591 (Amendment to Grant Agreement).

Frequency of Collection: Annually.

Description of Respondents: State, territorial (the Commonwealth of Puerto Rico, the District of Columbia, the Commonwealth of the Northern Mariana Islands, Guam, the Virgin Islands, and American Samoa), and local governments, and others receiving grant funds.

Total Annual Burden:

Form name	Completion time per form (hours)	Annual number of respondents	Annual hour burden
Grant Agreement	1	3500	3500
Amendment to Grant Agreement	1	1750	1750
Totals		5250	5250 hours

We invite comments on: (1) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) the accuracy of our estimate of the burden of the collection of information; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of collection of information on respondents, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Dated: April 30, 2003.

Matt Hogan,

Acting Director, Fish and Wildlife Service

[FR Doc. 03–11429 Filed 5–7–03; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Guidance for the Establishment, Use, and Operation of Conservation Banks

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of availability.

SUMMARY: We, the U.S. Fish and Wildlife Service, are announcing availability of guidance for the establishment, use, and operation of conservation banks. Conservation banks are a tool to offset adverse impacts to species listed as threatened or endangered under the Endangered Species Act of 1973, as amended. The purpose of this guidance is to help Service personnel evaluate and approve conservation banks in the context of fulfilling the purposes of the Endangered Species Act.

ADDRESSES: You can obtain an electronic copy of the guidance from the Fish and Wildlife Service's Web site at "*http://endangered.fws.gov/*". You can also request a copy of the guidance by contacting the Division of Consultation, Habitat Conservation Planning, Recovery and State Grants, U.S. Fish and Wildlife Service, 4401 North Fairfax Drive, Room 420, Arlington, Virginia 22203 (Telephone 703/358–2171, Facsimile 703/358–1735).

FOR FURTHER INFORMATION CONTACT: Patrick Leonard, Chief, Division of Consultation, Habitat Conservation Planning, Recovery and State Grants, Fish and Wildlife Service (Telephone 703/358–2171, Facsimile 703/358–1735).

SUPPLEMENTARY INFORMATION: A conservation bank is a parcel of land containing natural resource values that are conserved and managed in perpetuity for listed species and used to offset impacts to the comparable resource values on non-bank lands occurring elsewhere. The bank is specifically managed and protected by the banker or designee for its natural resource values. The values of the natural resources are translated into quantified "credits." The bank owner sells habitat "credits" to parties that need to compensate for the environmental impacts of their activities. A conservation bank is a free-market enterprise that offers landowners economic incentives to protect natural resources, saves developers time and money by providing them with certainty of pre-approved compensation lands, and provides long-term protection of habitat. Conservation banking creates a collaborative incentive based approach where habitat for listed species is treated as an asset rather than a liability.

The Service has already entered into several agreements with landowners to establish conservation banks, mainly in the southwest and the southeast areas of the country. We believe that guidance will help establish conservation banks in other parts of the country. Please refer to the **ADDRESSES** section of this notice for information on how to obtain a copy of the guidance.

Authority: The authority for this action is the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*).

Dated: April 25, 2003.

Matt Hogan,

Acting Director, Fish and Wildlife Service.

[FR Doc. 03–11458 Filed 5–7–03; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Indian Gaming

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice of Tribal-State Gaming Compact Amendments between the Forest County Potawatomi and the State of Wisconsin taking effect.

SUMMARY: Pursuant to Section 11 of the Indian Gaming Regulatory Act of 1988 (IGRA), Public Law 100–497, 25 U.S.C. 2710, the Secretary of the Interior shall publish, in the **Federal Register**, notice of approved Tribal-State Compacts for the purpose of engaging in Class III gaming activities on Indian lands. The Assistant Secretary—Indian Affairs, Department of the Interior, through her delegated authority, is publishing notice that the 2003 Amendments to the Tribal-State Compact for Class III gaming between the Forest County Potawatomi Community and the State of Wisconsin executed on February 19, 2003 are considered approved. By the terms of IGRA, the 2003 Amendments to the Compact are considered approved, but only to the extent the 2003 Amendments are consistent with the provisions of IGRA.

The 2003 Amendments expand the scope of gaming activities authorized under the Compact, remove limitations on wager limits, remove limitations on the number of permitted gaming devices, extend the term of the compact to an indefinite term, subject to re-opener clauses, institute an entirely new dispute resolution provision, replaces the sovereign immunity provision, and substantially modifies the revenue-sharing provision of the Compact.

EFFECTIVE DATE: May 8, 2003.

FOR FURTHER INFORMATION CONTACT: George T. Skibine, Director, Office of Indian Gaming Management, Bureau of Indian Affairs, Washington, DC 20240, (202) 219–4066.

Dated: April 30, 2003.

Aurene M. Martin,

Assistant Secretary—Indian Affairs.

[FR Doc. 03–11390 Filed 5–7–03; 8:45 am]

BILLING CODE 4310–4N–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[AK–932–1410–EU; FF–93920]

Notice of Application for a Recordable Disclaimer of Interest for Lands Underlying a Portion of the Black River, the Black River Slough, the Salmon Fork, the Grayling Fork, and Bull Creek Located in Northeastern Alaska

AGENCY: Bureau of Land Management (BLM), Interior.

ACTION: Notice.

SUMMARY: The State of Alaska has submitted an application for a recordable disclaimer of interest from the United States pursuant to Section 315 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1745 (1994) and the regulations contained in 43 CFR part 1864. A recordable disclaimer of interest for these lands, if issued, will confirm the United States has no valid interest in the subject lands. This Notice is intended to notify the public of the pending application and the State's grounds for supporting it.

DATES: For a period of 90 days from the date of publication of this Notice, all interested parties may submit comments on the State's application, BLM Casefile FF–93920. A final decision on the merits of the application will not be made until 90 days has elapsed from the date of publication of this Notice.

ADDRESSES: Comments should be sent to the Chief, Branch of Lands and Realty, BLM Alaska State Office, 222 West 7th Avenue, No. 13, Anchorage, Alaska 99513–7599.

FOR FURTHER INFORMATION CONTACT: Mike Haskins, Branch of Lands and Realty, BLM Alaska State Office, 907–271–3351.

SUPPLEMENTARY INFORMATION: On February 14, 2003, the State of Alaska filed an application for a recordable disclaimer of interest affecting five water bodies described below. The State asserts these water bodies are navigable and, under the Equal Footing Doctrine, the State of Alaska gained title to lands underlying navigable waters upon statehood. The State's evidence of navigability of the Black River, the Salmon Fork, the Grayling Fork, and Bull Creek include administrative determinations made by the BLM, dated March 28, 1980, and July 22, 1983. A decision of the United States Court of Appeals for the Ninth Circuit, *Alaska* v. *United States*, 201 F.3d 1154 (9th Cir. 1997), which discusses the historic uses of the Black River, was also submitted as evidence with the application.

The water bodies included in the application are that portion of the bed of the Black River and Black River Slough, between the ordinary high water marks on its banks from its confluence with the Porcupine River, within T. 21 N., R. 13 E., Fairbanks Meridian, Alaska, to its confluence with the Wood River within T. 13 N., R. 27 E., Fairbanks Meridian; the Salmon Fork to the International Boundary; the Grayling Fork to the International Boundary; Bull Creek to Section 5, T. 13 N., R. 31 E., Fairbanks Meridian. Also included within the State's application are all interconnecting sloughs associated with these water bodies.

The State of Alaska did not identify any known adverse claimant or occupant of the affected lands.

Dated: May 1, 2003.

Mike Haskins,

Chief, Branch of Lands and Realty, Division of Resources, Lands, and Planning.

[FR Doc. 03–11621 Filed 5–7–03; 8:45 am]

BILLING CODE 4310–JA–P

DEPARTMENT OF THE INTERIOR

Bureau of Reclamation

Central Valley Project Improvement Act, Criteria for Evaluating Water Conservation Plans

AGENCY: Bureau of Reclamation, Interior.

ACTION: Notice.

SUMMARY: To meet the requirements of the Central Valley Project Improvement Act of 1992 (CVPIA) and the Reclamation Reform Act of 1982 (RRA), the Bureau of Reclamation (Reclamation) developed and published the Criteria for Evaluating Water Management Plans (Criteria). Note: For the purpose of this announcement, Water Management Plans are considered the same as Water Conservation Plans (Plans).

DATES: The final version is now available.

ADDRESSES: For copies contact Leslie Barbre, Bureau of Reclamation, 2800 Cottage Way, Sacramento, California 95825, 916–978–5232 (TDD 978–5608), or e-mail at *lbarbre@mp.usbr.gov*. Bryce White, Bureau of Reclamation, 2800 Cottage Way, Sacramento, California 95825, 916–978–5208 (TDD 978–5608), or e-mail at *bwhite@mp.usbr.gov*.

FOR FURTHER INFORMATION CONTACT: To be placed on a mailing list for any subsequent information, please contact Leslie Barbre or Bryce White at the e-mail address or telephone number above.

SUPPLEMENTARY INFORMATION: We are notifying the public that the 2002 revision of the Criteria is final. Section 3405(e) of the CVPIA (Title 34 Pub. L. 102–575), requires the Secretary of the Interior to establish and administer an office on Central Valley Project water conservation best management practices (BMPs) that shall develop Criteria for evaluating the adequacy of all Plans developed by project contractors, including those Plans required by section 210 of the RRA. Also, according to section 3405(e)(1), the Criteria must be developed "* * * with the purpose of promoting the highest level of water use efficiency reasonably achievable by project contractors using best available cost-effective technology and best management practices."

The Criteria states that all parties (Contractors) that contract with Reclamation for water supplies (except any contractor who receives under 2,000 acre feet, municipal and industrial contracts under 3,300 people served, and agricultural contracts under 2,000 irrigable acres) must prepare Plans that contain the following information:

1. Description of the District
2. Inventory of Water Resources
3. BMPs for Agricultural Contractors
4. BMPs for Urban Contractors
5. Plan Implementation
6. Exemption Process
7. Regional Criteria
8. Five-Year Revisions

Reclamation will evaluate Plans based on the Criteria. The CVPIA requires Reclamation to evaluate, and revise if necessary, the Criteria every 3 years. The Criteria were previously revised in 1996 and 1999.

Public comment on revision of the 2002 Criteria was received and generally incorporated. No significant changes were made to the draft Criteria. A copy can be found at the following Web site: *http://www.mp.usbr.gov/watershare/documents/files/cvpia/final2002cvpiacriteria.pdf*. A copy can also be obtained by contacting persons at the address below. The 2002 Criteria will now be used to evaluate Plans submitted after the date of this publication

Dated: May 1, 2003.

Donna E. Tegelman,

Regional Resources Manager, Mid-Pacific Region.

[FR Doc. 03–11470 Filed 5–7–03; 8:45 am]

BILLING CODE 4310–MN–P

INTERNATIONAL TRADE COMMISSION

[Inv. No. 337–TA–492]

Certain Plastic Grocery and Retail Bags; Notice of Investigation

AGENCY: International Trade Commission.

ACTION: Institution of investigation pursuant to 19 U.S.C. 1337.

SUMMARY: Notice is hereby given that a complaint was filed with the U.S. International Trade Commission on April 2, 2003, under section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. 1337, on behalf of Superbag Corp. of Houston, Texas. An amended complaint was filed on May 1, 2003. The complaint alleges violations of section 337 in the importation into the United States, the sale for importation, and the sale within the United States after importation of certain plastic grocery and retail bags by reason of infringement of claims 1–8 and 15–19 of U.S. Patent No. 5,188,235. The complaint further alleges that an industry in the United States exists as required by subsection (a)(2) of section 337.

The complainant requests that the Commission institute an investigation and, after the investigation, issue a permanent general exclusion order and permanent cease and desist orders.

ADDRESSES: The amended complaint, except for any confidential information contained therein, is available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street, SW., Room 112, Washington, DC 20436, telephone 202–205–2000. Hearing impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its internet server at *http://www.usitc.gov*. The public record for this investigation may be viewed on the Commission's electronic docket at *http://edis.usitc.gov*.

FOR FURTHER INFORMATION CONTACT: David H. Hollander, Jr., Esq., Office of Unfair Import Investigations, U.S. International Trade Commission, telephone 202–205–2746.

Authority: The authority for institution of this investigation is contained in section 337 of the Tariff Act of 1930, as amended, and in §210.10 of the Commission's rules of practice and procedure, 19 CFR 210.10 (2002).

Scope of Investigation: Having considered the complaint, the U.S. International Trade Commission, on May 1, 2003, *ordered that*—

(1) Pursuant to subsection (b) of section 337 of the Tariff Act of 1930, as amended, an investigation be instituted to determine whether there is a violation of subsection (a)(1)(B) of section 337 in the importation into the United States, the sale for importation, or the sale within the United States after importation of certain plastic grocery or retail bags by reason of infringement of one or more of claims 1–8 and 15–19 of U.S. Patent No. 5,188,235, and whether an industry in the United States exists as required by subsection (a)(2) of section 337.

(2) For the purpose of the investigation so instituted, the following are hereby named as parties upon which this notice of investigation shall be served:

(a) The complainant is—

Superbag Corp., 9291 Baythorne Drive, Houston, Texas 77041.

(b) The respondents are the following companies alleged to be in violation of section 337, and are the parties upon which the complaint is to be served:

Thai Plastics Bags Industries Co., Ltd., 42/174 Moo 5, Soi Srisatian, Raiking, Sampran, Nakhon Pathom 73210, Thailand.

Hmong Industries, Inc., 700 Prior Avenue North, St. Paul, Minnesota 55104.

Spectrum Plastics, Inc., 12850 Midway Place, Cerritos, California 90703.

Pan Pacific Plastics Mfg., Inc., 33441 Central Avenue, Union City, California 94587.

(c) David H. Hollander, Jr., Esq., Office of Unfair Import Investigations, U.S. International Trade Commission, 500 E Street, SW., Suite 401, Washington, DC 20436, who shall be the Commission investigative attorney, party to this investigation; and

(3) For the investigation so instituted, the Honorable Paul J. Luckern is designated as the presiding administrative law judge.

Responses to the complaint and the notice of investigation must be submitted by the named respondents in accordance with §210.13 of the Commission's rules of practice and procedure, 19 CFR 210.13. Pursuant to 19 CFR 201.16(d) and 210.13(a), such responses will be considered by the

Commission if received no later than 20 days after the date of service by the Commission of the complaint and the notice of investigation. Extensions of time for submitting responses to the complaint will not be granted unless good cause therefor is shown.

Failure of a respondent to file a timely response to each allegation in the complaint and in this notice may be deemed to constitute a waiver of the right to appear and contest the allegations of the complaint and to authorize the administrative law judge and the Commission, without further notice to that respondent, to find the facts to be as alleged in the complaint and this notice and to enter both an initial determination and a final determination containing such findings, and may result in the issuance of a limited exclusion order or a cease and desist order or both directed against that respondent.

Issued: May 2, 2003.

By order of the Commission.

Marilyn R. Abbott,

Secretary to the Commission.

[FR Doc. 03–11423 Filed 5–7–03; 8:45 am]

BILLING CODE 7020–02–P

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Under the Safe Drinking Water Act

Notice is hereby given that on April 22, 2003, a proposed Consent Decree in *United States* v. *Syd H. Levine, et al.*, Civil No. 4:97CV–169–M, was lodged with the United States District Court for the Western District of Kentucky.

In this action the United States sought civil penalties and injunctive relief for numerous violations of Section 1423(b) of the Safe Drinking Water Act, 42 U.S.C. 300h-2(b), and its implementing Underground Injection Control regulations for Kentucky, 40 CFR part 144. The alleged violations include [violations of an Administration Order on Consent entered into in] August 1990 by EPA and defendant Doofus Oil, doing business as Syd H. Levine and Associates, as the operator of underground injection wells owned by Hel-leva, Poor Boy, and Levine Development. In settlement of these allegations, the defendants will conduct mechanical integrity tests on their 52 underground injection wells that are the subject of this action under a compliance schedule set forth in the Decree.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication, comments relating to the Consent Decree. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611, and should refer to *United States* v. *Syd H. Levine, et al.*, D.J. Ref. 90–5–1–1–4391.

The Consent Decree may be examined at the office of the United States Attorney, 510 W. Broadway, 10th Floor, Louisville, Kentucky, and at U.S. EPA Region 4, Atlanta Federal Center, 61 Forsyth Street, Atlanta, Georgia. During the public comment period, the Consent Decree may also be examined on the following Department of Justice Web site, *http://www.usdoj.gov/enrd/open.html*. A copy of the Consent Decree may also be obtained by mail from the Consent Decree Library, P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611, or by faxing or e-mailing a request to Tonia Fleetwood (*tonia.fleetwood@usdoj.gov*,) fax no. (202) 514–0097, phone confirmation number (202) 514–1547. In requesting a copy, please enclose a check in the amount of $10.25 (25 cents per page reproduction cost) payable to the U.S. Treasury.

Ellen M. Mahan,

Assistant Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 03–11401 Filed 5–7–03; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF JUSTICE

Notice Lodging of Consent Decree Under the Clean Air Act, Clean Water Act, and Resource Conservation and Recovery Act

Under 28 CFR § 50.7, notice is hereby given that on April 23, 2003, a proposed Consent Decree in *United States* v. *Metal Management Midwest, Inc.*, Civil Action No. 01C–4551 was lodged with the United States District Court for the Northern District of Illinois.

In this action the United States sought civil penalties and injunctive relief relating to violations of the National Recycling and Emissions Reduction Program provisions of the Clean Air Act, as well as violations of the Clean Water Act and the Resource Conservation and Recovery Act ("RCRA") at three scrap yards located in Chicago, Illinois. The Consent Decree requires that Metal Management Midwest come into compliance with the applicable environmental laws and regulations, produce and distribute educational materials relating to proper recycling and disposal of chlorofluorocarbons, conduct environmental compliance audits at four additional Illinois facilities, and pay a civil penalty in the form of a $2,275,500 allowed claim in Metal Management's chapter 11 bankruptcy action (*In re: Metal Management, Inc.*, Case No. 00–4303 (Bankr. D. Del.)).

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments relating to Consent Decree. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611, and should refer to *United States* v. *Metal Management Midwest, Inc.*, D.J. Ref. #90–5–2–1–07207.

The Consent Decree may be examined at the Office of the United States Attorney, 219 South Dearborn Street, Chicago, IL 60604, and at U.S. EPA Region 5, 77 West Jackson Blvd., Chicago, IL 60604. During the public comment period, the consent Decree, may also be examined on the following Department of Justice Web site, *http://www.usdoj.gov/enrd/open.html* A copy of the Consent Decree may also be obtained by mail from the Consent Decree Library, P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611 or by faxing or e-mailing a request to Tonia Fleetwood (*tonia.fleetwood@usdoj.gov*), fax no. (202) 514–0097, phone confirmation number (202) 514–1547. In requesting a copy from the Consent Decree Library, please enclose a check in the amount of $23.50 (25 cents per page reproduction cost) payable to the U.S. Treasury.

William D. Brighton,

Assistant Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 03–11399 Filed 5–7–03; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Under Comprehensive Environmental Response, Compensation and Liability Act

In accordance with Departmental policy, 28 CFR 50.7, notice is hereby given that on April 25, 2003, a proposed Consent Decree in *United States* v. *Morgantown Engineering and Construction, Inc.* (N.D.W.Va.), C.A. No. 1: 03CV56, was lodged with the United States District Court for the Northern District of West Virginia.

In this action, the United States sought response costs incurred by the Environmental Protection Agency ("EPA"), pursuant to Section 107 of the Comprehensive Environmental Response, Compensation and Liability Act, as amended ("CERCLA"), 42 U.S.C. 9607, in connection with the clean-up of the Beaumont Glass Site, located in Morgantown, West Virginia. EPA incurred $7.3 million in response costs. The Consent Decree represents an ability-to-pay settlement with Morgantown Engineering and Construction, Inc. ("MEC"), the owner of the Site. Under the Consent Decree, MEC will pay EPA $250,000 in three installments over a period of two years. MEC will pay $25,000 within 30 days after entry of the Consent Decree by the court and will pay $112,500, plus interest as provided in the Consent Decree, one year later, and a third payment of $112,500, plus interest, two years after the entry date.

The Department of Justice will receive, for a period of 30 days from the date of this publication, comments relating to the proposed Consent Decree. Comments should be addressed to the Assistant Attorney General for the Environment and Natural Resources Division, P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611, and should refer to *United States* v. *Morgantown Engineering and Construction, Inc.*, DOJ Ref. No. 90–11–3–07651.

The proposed Consent Decree may be examined at the Office of the United States Attorney, 1100 Main Street, Suite 200, Wheeling, West Virginia 26003; and U.S. EPA Region 3, 1650 Arch Street, Philadelphia, Pennsylvania 19103. During the public comment period, the proposed Consent Decree may also be examined on the following Department of Justice Web site, *http://www.usdoj.gov/enrd/open.html*. A copy of the proposed Consent Decree may be obtained by mail from the Consent Decree Library, P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611 or by faxing or e-mailing a request to Tonia Fleetwood (*tonia.fleetwood@usdoj.gov*), fax number (202) 514–0097, phone confirmation number (202) 514–1547. In requesting a copy from the Consent Decree Library, please enclose a check in the amount of $6.00 (.25 cents per page reproduction costs), payable to the U.S. Treasury.

Robert D. Brook,

Assistant Section Chief, Environmental Enforcement Section Environment and Natural Resources Division.

[FR Doc. 03–11400 Filed 5–7–03; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Pursuant to Comprehensive Environment Response, Compensation, and Liability Act

Notice is hereby given that on April 17, 2003, a proposed consent decree in *United States* v. *Wyeth, et al*, Civil Action No. 03–1758, was lodged with the United States District Court for the District of New Jersey.

In this action, the United States alleges under, *inter alia*, Section 107 of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), 42 U.S.C. 9607, that Wyeth, f/k/a American Home Products, Corporation, and Wyeth Holdings Corporation, f/k/a American Cyanamid Company, are liable for the federal government's costs in responding to the release or threatened release of hazardous substances at the American Cyanamid Superfund Site in Bridgewater Township, Somerset County, New Jersey (the Site). Under the terms of the proposed consent decree, the settling defendants will pay the United States the sum of $220,000 with respect to the United States' claims.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments relating to the proposed consent decree. Comments should be addressed to the Assistant Attorney General of the Environment and Natural Resources Division, Department of Justice, Washington, DC 20530, and should refer to *United States* v. *Wyeth, et al.*, Civil Action No. 03–1758, D.J. Ref. 90–11–3–07250.

The proposed consent decree may be examined at the Office of the United States Attorney, District of New Jersey, 970 Broad Street, Newark, New Jersey 07102, and at U.S. Environmental Protection Agency Region II, 290 Broadway, New York, New York 10007–1866. During the public comment period, the proposed consent decree, may also be examined on the following Department of Justice Web site, *http://www.usdoj.gov/enrd/open.html*. A copy of the proposed consent decree may be obtained by mail from the Consent Decree Library, P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611 or by faxing or e-mailing a request to Tonia Fleetwood (*tonia.fleetwood@usdoj.gov*), fax no. (202) 514–0097, phone confirmation number (202) 514–1547. If requesting a copy of the proposed consent decre, please so note and enclose a check in the amouint of $4.50 (25 cent per page reproduction cost) payable to the U.S. Treasury.

Ronald Gluck,

Assistant Chief, Environmental Enforcement Section Environment and Natural Resources Division.

[FR Doc. 03–11402 Filed 5–7–03; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Michael J. Clair, D.D.S.; Revocation of Registration

On March 12, 2002, the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration (DEA), issued an Order to Show Cause to Michael Jerome Clair, D.D.S. (Dr. Clair) at his registered location in Orlando, Florida. The Order to Show Cause notified Dr. Clair of an opportunity to show cause as to why DEA should not revoke his DEA Certificate of Registration, BC1867172 under 21 U.S.C. 824(a), and deny any pending applications for renewal or modification of that registration. Specifically, the Order to Show Cause alleged that Dr. Clair was without state license to handle controlled substances in the State of Florida. The Order to Show Cause also notified Dr. Clair that should no request for a hearing be filed within 30 days, his hearing right would be deemed waived.

As alluded to above, the Order to Show Cause was sent by certified mail to Dr. Clair at his registered address, however, the order was returned to DEA unclaimed. On April 19, 2002, DEA investigators hand delivered the Order to Show Cause to the aforementioned registered address where investigators left the order with Dr. Clair's wife. DEA has not received a request for hearing or any other reply from Dr. Clair or anyone purporting to represent him in this matter.

Therefore, the Deputy Administrator, finding that (1) 30 days have passed since the receipt of the Order to Show Cause, and (2) no request for a hearing having been received, concludes that Dr. Clair is deemed to have waived his hearing right. After considering material from the investigative file in this matter, the Deputy Administrator now enters his final order without a hearing pursuant to 21 CFR 1301.43(d) and (e) and 1301.46.

The Deputy Administrator finds that Dr. Clair is currently registered with DEA as a practitioner authorized to handle controlled substances in Schedules II through V. In or around

September 2001, Dr. Clair sought to renew his DEA registration when he submitted an undated application for renewal. In response to a question on the application which asks the applicant whether he has ever had a state professional license or controlled substance registration revoked, suspended, denied, restricted, or placed on probation, Dr. Clair replied in the affirmative. He supplemented that response with a written explanation where he asserted that his Maryland dental license had been revoked in August 2000 for a period of five years, but the revocation action was "not related in any way to the prescribing of controlled substances." Dr. Clair further wrote that he is "* * * actively licensed in [Florida] and [Massachusetts]."

The Deputy Administrator's review of the investigative file reveals that on September 17, 2001, the State of Florida Board of Dentistry (Dental Board) entered a Final Order revoking Dr. Clair's state license to practice dentistry. The Dental Board's action was taken in response to the revocation of Dr. Clair's license to practice in the State of Maryland on August 12, 1999. The Dental Board also based its action in part upon findings that while practicing dentistry in Maryland, Dr. Clair performed unnecessary dental procedures on patients and encourage dentists who worked for him to do the same.

Despite assertions of professional good standing in Florida which accompanied his most recent DEA renewal application, there is no evidence before the Deputy Administrator to rebut findings that Dr. Clair's Florida dental license has been revoked and has not been reinstated. Therefore, the Deputy Administrator finds that since Dr. Clair is not currently authorized to practice dentistry in Florida, it is reasonable to infer that he is not authorized to handle controlled substances in that state.

DEA does not have statutory authority under the Controlled Substances Act to issue or maintain a registration if the applicant or registrant is without state authority to handle controlled substances in the state in which he conducts business. *See* 21 U.S.C. 802(21), 823(f) and 824(a)(3). This prerequisite has been consistently upheld. *See* Richard J. Clement, M.D., 68 FR 12103 (2003); Dominick A. Ricci, M.D., 58 FR 51104 (1993); Bobby Watts, M.D., 53 FR 11919 (1988).

Here, it is clear that Dr. Clair is not licensed to handle controlled substances in Florida, where he is registered with DEA. Therefore, he is not entitled to maintain that registration.

Accordingly, the Deputy Administrator of the Drug Enforcement Administration, pursuant to the authority vested in him by 21 U.S.C. 823 and 824 and 28 CFR 0.100(b) and 0.104, hereby orders that DEA Certificate of Registration, BC1867172, issued to Michael Jerome Clair, D.D.S., be, and it hereby is, revoked. The Deputy Administrator further orders that Dr. Clair's pending application for renewal of the aforementioned registration be, and it hereby is, denied. This order is effective June 9, 2003.

Dated: April 21, 2003.

John B. Brown, III,

Deputy Administrator.

[FR Doc. 03–11431 Filed 5–7–03; 8:45 am]

BILLING CODE 4410–09–M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

[Docket No. 02–41]

Jacqueline Cleggett-Lucas, M.D., JCL Enterprises, L.L.C, Revocation of Registration

On March 21, 2002, the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration (DEA), issued an Order to Show Cause to Jacqueline Cleggett-Lucas, M.D., and JCL Enterprises, L.L.C. (Respondents) [1], proposing to revoke her DEA Certificate of Registration, BC3404681, pursuant to 21 U.S.C. 824(a)(4) and deny any pending applications for renewal or modification of such registration under 21 U.S.C. 823(f). As a basis for revocation, the Order to Show Cause alleged that the Respondents' continued registration would be inconsistent with the public interest and that the Respondent was no longer authorized to handle controlled substances in Louisiana, the State in which she practices.

By letter dated April 24, 2002, the Respondents, through legal counsel, requested a hearing in this matter. In the request for hearing, the Respondents legal counsel argued that "(Respondents) have not been found guilty of 'prescribing large amounts of controlled substances in an inappropriate (manner) to many people who do not [have] proven indications for the need of pain alleviating drugs.'" The Respondents further asserted that any decision involving the DEA license at issue should be withheld pending the outcome of a scheduled hearing before the Louisiana State Board of Medical Examiners (Board).

On May 31, 2002, the Government filed Government's Motion for Summary Disposition and a request for stay of proceedings pending a ruling on its motion. On June 3, 2002, the presiding Administrative Law Judge Gail A. Randall (Judge Randall) issued an Order providing Respondents until June 24, 2002, to respond to the Government's motion. However, the Respondents did not file a response.

On July 19, 2002, Judge Randall issued her Opinion, Order, and Recommended Ruling of the Administrative Law Judge (Opinion and Recommended Ruling) where she granted the Government's motion for summary disposition and found that the Respondents lack authorization to handle controlled substances in the State of Louisiana. In granting the Government's motion, Judge Randall also recommended that the Respondents' DEA registration be revoked and any pending applications for renewal be denied. Neither party filed exceptions to her Opinion and Recommended Ruling, and on October 29, 2002, Judge Randall transmitted the record of these proceedings to the Office of the Deputy Administrator. The Deputy Administrator has considered the record in its entirety, and pursuant to 21 CFR 1316.67, hereby issues his final order based upon findings of fact and conclusions of law as hereinafter set forth.

The Deputy Administrator finds that the Respondents are currently registered as a practitioner under DEA Certificate of Registration BC3404681. That registration was issued under the names of two separate entities at an address in New Orleans, Louisiana. On February 14, 2002, the Board issued its Order for Summary Suspension of Medical License with respect to the Respondents' Louisiana medical license. The Board's action was based on a finding that the Respondent inappropriately prescribed "large amounts of controlled drugs" to individuals for no legitimate medical purpose. While the Civil District Court of Louisiana granted the Respondents' subsequent request for stay of the Board's suspension order, that same court lifted the stay on February 22, 2002, and reinstated the suspension of Respondents' medical license.

[1] In her July 19, 2002, Opinion, Order, and Recommended Ruling, Administrative Law Judge Gail A. Randall noted that for purposes of these proceedings, the two names represented herein are separate entities who obtained a single DEA registration by virtue of Dr. Gleggett-Lucas' ability to handle controlled substances. The Deputy Administrator hereby adopts that finding for purposes of this final ruling.

Notwithstanding the Respondents' request that DEA withhold its decision regarding her Certificate of Registration pending completion of a Board hearing, there is no evidence before the Deputy Administrator that the Board has taken any action to lift the current suspension of the Respondent's medical license.

In her Opinion and Recommended Ruling, Judge Randall found that the Respondent is without State authority to handle controlled substances. The Deputy Administrator adopts the finding of the Administrative Law Judge.

DEA does not have statutory authority under the Controlled Substances Act to issue or maintain a registration if the applicant or registrant is without State authority to handle controlled substances in the State in which he conducts business. *See* 21 U.S.C. 802(21), 823(f) and 824(a)(3). This prerequisite has been consistently upheld. *See* Muttaiya Darmarajeh, M.D.; 66 FR 52936 (2001); Dominick A. Ricci, M.D., 58 FR 51104 (1993); Bobby Watts, M.D., 53 FR 11919 (1988).

In light of the above, Judge Randall properly granted the Government's Motion for Summary Disposition. There is no dispute that the Respondents are currently without authorization to handle controlled substances in Louisiana. Therefore, it is well settled that when no question of material fact is involved, a plenary, adversary administrative proceeding involving evidence and cross-examination of witnesses is not obligatory. *See* Gilbert Ross, M.D., 61 FR 8664 (1996); Philip E. Kirk, M.D., 48 FR 32,887 (1983), *aff'd sub nom Kirk* v. *Mullen*, 749 F.2d 297 (6th Cir. 1984); *NLRB* v. *International Association of Bridge, Structural and Ornamental Ironworkers, AFL–CIO*, 549 F.2d 634 (9th Cir. 1977).

Accordingly, the Deputy Administrator of the Drug Enforcement Administration, pursuant to the authority vested in him by 21 U.S.C. 823 and 824 and CFR 0.100(b) and 0.104, hereby orders that DEA Certificate of Registration BC3404681, issued to Jacqueline Cleggett-Lucas, M.D. and JCL Enterprises, L.L.C. be, and it hereby is, revoked. The Deputy Administrator further orders that any pending applications for renewal of such registration be, and they hereby are, denied. This order is effective June 9, 2003.

Dated: April 21, 2003.

John B. Brown III,

Deputy Administrator.

[FR Doc. 03–11435 Filed 5–7–03; 8:45 am]

BILLING CODE 4410–09–M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

[Docket No. 02–52]

Francis A. Goswitz, M.D.; Revocation of Registration

On June 24, 2002, the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration (DEA), issued an Order to Show Cause to Francis A. Goswitz, M.D. (Respondent), proposing to revoke his DEA Certificate of Registration, AG0387604, pursuant to 21 U.S.C. 824(a). The Order to Show Cause alleged, *inter alia*, that the Respondent's Tennessee State medical license had been suspended.

By letter dated July 19, 2002, the Respondent, through legal counsel, requested a hearing in the matter. In the request for hearing, the Respondent's legal counsel acknowledged that the Respondent's medical license had been suspended by the Tennessee Department of Health, but argued that the matter "is pending, and a hearing on the merits has not yet been held."

On August 13, 2002, the Government filed a Motion for Summary Disposition and Stay of Proceedings, arguing that as of August 6, 2002, the Respondent's medical license remained suspended. On August 15, 2002, the presiding Administrative Law Judge Mary Ellen Bittner (Judge Bittner) issued a Memorandum to Counsel staying the filing of prehearing statements and providing the Respondent until September 4, 2002, to respond to the Government's motion. However, the Respondent did not file a response to the motion.

On October 8, 2002, Judge Bittner issued her Opinion and Recommended Decision of the Administrative Law Judge (Opinion and Recommended Decision) where she granted the Government's motion for summary disposition and found that the Respondent lacked authorization to handle controlled substances in the State of Tennessee. In granting the Government's motion, Judge Bittner also recommended that the Respondent's DEA Certificate of Registration be revoked and any pending applications for modification or renewal of that registration be denied. Neither party filed exceptions to her Opinion and Recommended Decision, and on November 12, 2002, Judge Bittner transmitted the record of these proceedings to the Office of the Deputy Administrator for a final agency decision.

The Deputy Administrator has considered the record in its entirety, and pursuant to 21 CFR 1316.67, hereby issues his final order based upon findings of fact and conclusions of law as hereinafter set forth.

The Deputy Administrator finds that the Respondent is currently registered as a practitioner under DEA Certificate of Registration AG0387604. On February 14, 2002, the Tennessee Board of Medical Examiners (Board) issued an Order of Summary Suspension with respect to the Respondent's Tennessee medical license. The Board's action was based in part upon a finding that the Respondent engaged in inappropriate sexual conduct with a patient, and subsequently attempted to influence her testimony by offering the patient money. The Board also found that in September 2001, the Respondent dispensed to a patient and her husband the controlled substances hydrocodone and alprazolam, for no legitimate medical purpose.

In its Motion for Summery Disposition, the Government attached a declaration from the Administrator of the Board, who asserted that the Respondent's Tennessee medical license remains suspended. Judge Bittner agreed with the Government that the Respondent is without state authority to handle controlled substances in Tennessee, and accordingly, granted the Government's Motion for Summary Disposition.

DEA does not have statutory authority under the Controlled Substances Act to issue or maintain a registration if the applicant or registrant is without state authority to handle controlled substances in the state in which he conducts business. *See* 21 U.S.C. 802(21), 823(f) and 824(a)(3). This prerequisite has been consistently upheld. *See* Muttaiya Darmarajeh, M.D., 66 FR 52936 (2001); Dominick A. Ricci, M.D., 58 FR 51104 (1993); Bobby Watts, M.D., 53 FR 11919 (1988).

Here, it is clear that the Respondent is not licensed to handle controlled substances in Tennessee, the state where he currently holds a DEA registration. Therefore, he is not entitled to maintain that registration. Because the Respondent lacks state authorization to handle controlled substances, the Deputy Administrator concludes that it is unnecessary to address whether or not his Certificate of Registration should be revoked based upon allegations of his improper dispensing of controlled substances and other public interest grounds alleged in the Order to Show Cause. See Samuel Silas Jackson, D.D.D., 67 FR 65145 (2002); Nathaniel-Aikens-Afful, M.D., 62 FR 16871 (1997);

Sam F. Moore, D.V.M. 58 FR 14428 (1993).

In light of the above, Judge Bittner properly granted the Government's Motion for Summary Disposition. There is no dispute that the Respondent is currently without authorization to handle controlled substances in Tennessee. Therefore, it is well settled that when no question of material fact is involved, a plenary, adversary administrative proceeding involving evidence and cross-examination of witnesses is not obligatory. *See* Gilbert Ross, M.D., 61 FR 8664 (1996); Philip E. Kirk, M.D., 48 FR 32,887 (1983), aff'd sub nom Kirk v. Mullen, 749 F.2d 297 (6th Cir. 1984); *NLRB* v. *International Association of Bridge, Structural and Ornamental Ironworkers*, AFL-CIO, 549 F.2d 634 (9th Cir. 1977).

Accordingly, the Deputy Administrator of the Drug Enforcement Administration, pursuant to the authority vested in him by 21 U.S.C. 823 and 824 and 28 CFR 0.100(b) and 0.104, hereby orders that DEA Certificate of Registration AG0387604, issued to Francis A. Goswitz, M.D. be, and it hereby is, revoked. The Deputy Administrator further orders that any pending applications for renewal or modification of the aforementioned registration be, and they hereby are, denied. This order is effective June 9, 2003.

Dated: April 21, 2003.

John B. Brown III,

Deputy Administrator.

[FR Doc. 03–11430 Filed 5–7–03; 8:45 am]

BILLING CODE 4410–09–M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

[Docket No. 01–30]

Michael D. Jackson, M.D.; Revocation of Registration

On June 8, 2001, the then-Administrator of the Drug Enforcement Administration (DEA), issued an Order to Show Cause, Immediate Suspension of Registration to Michael Delano Jackson, M.D. (hereinafter referred to as "Respondent") of the Myrtle Beach Medical Center in Myrtle Beach, South Carolina. The Order to Show Cause notified the Respondent of an opportunity to show cause as the why DEA should not revoke his DEA Certificate of Registration, BJ5063532 pursuant to 21 U.S.C. 824(a)(4) and deny any pending applications for renewal or modification of that registration pursuant to 21 U.S.C. 823(f), for reason that Respondent's continued registration with DEA would be inconsistent with the public interest.

Specifically, the Order to Show Cause outlined numerous allegations related to *inter alia*, the Respondent issuing various Schedules II through IV controlled substances for no legitimate medical purpose. Included among the drug purportedly prescribed in this fashion was OxyContin, a heavily abused Scheduled II narcotic controlled substance. The Order to Show Cause further notified the Respondent of the immediate suspension of his DEA Certificate of Registration, with the suspension to remain in effect until the final determination was reached in this matter.

By letter dated June 20, 2001, the Respondent acting *pro se* requested a hearing on the matter raised in the Order to Show Cause. Following the filing of various pre-hearing submissions by the respective parties, on May 22, 2002, the Government filed Government's Request for Stay of Proceedings and Motion for Summary Judgment (Motion). The Government asserted in its motion that the Respondent was without state authority to handle controlled substances in the State of South Carolina as well as in Alabama where he has apparently relocated his medical practice. On May 28, 2002, the presiding Administrative Law Judge Mary Ellen Bittner (Judge Bittner) issued a Memorandum to Counsel and Ruling on Motion affording the Respondent until June 11, 2002, to respond to the Government's Motion. However, the Respondent did not file a response.

On June 13, 2002, Judge Bittner issued her Opinion and Recommended Ruling of the Administrative Law Judge (Opinion and Recommended Ruling) where she granted the Government's Motion for Summary Disposition and found that the Respondent lacks authorization to handle controlled substances in South Carolina. In granting the Government's motion, Judge Bittner further recommended that the Respondent's DEA registration be revoked and any pending applications for modification or renewal be denied. Neither party filed exceptions to the Administrative Law Judge's Opinion and Recommended Decision, and on July 17, 2002, Judge Bittner transmitted the record of these proceedings to the Office of the Deputy Administrator. Following a review of the record in this proceeding, the Deputy Administrator now enters his final order pursuant to 21 CFR 1301.46.

The Deputy Administrator finds that the South Carolina Department of Health and Environmental Control (DHEC), Bureau of Drug Control, maintains a database of practitioners in South Carolina who possess valid state authority to handle controlled substances. On May 17, 2002, a DEA Diversion Investigator assigned to the agency's South Carolina District Office contacted DHEC and inquired whether the Respondent possessed state authority to handle controlled substances in that state. The investigator was informed that on June 14, 2001, DHEC revoked Respondent's state controlled substance license following the suspension of his DEA Certificate of Registration. DHEC divulged further that the Respondent surrendered his state medical license on June 29, 2001, and as a consequence, he lacks authority to handle controlled substances in South Carolina.

The Deputy Administrator's review of the records of the Alabama State Board of Medical Examiners reveals that the Respondent was also issued a controlled substance certificate in that state on June 29, 2001. That certificate expired on December 31, 2001. There is no evidence in the record that the Respondent's South Carolina medical license or his Alabama controlled substances certificate have been reinstated. It is clear that the Respondent lacks controlled substance authority in Alabama. In addition, since the Respondent is not currently authorized to practice medicine in the State of South Carolina, the Deputy Administrator finds it reasonable to infer that he is not authorized to handle controlled substances in that state as well.

DEA does not have statutory authority under the Controlled Substances Act to issue or maintain a registration if the applicant or registrant is without state authority to handle controlled substances in the state in which he conducts business. *See* 21 U.S.C. 802(21), 823(f) and 824(a)(3). This prerequisite has been consistently upheld. *See* Joseph Thomas Allevi, M.D., 67 FR 35581 (2002); Dominick A. Ricci, M.D., 58 FR 51104 (1993); Bobby Watts, M.D., 53 FR 11919 (1988).

Here, it is clear that the Respondent is not licensed to handle controlled substances in South Carolina where he is registered with DEA, or in Alabama, where he has apparently relocated his medical practice. Therefore, the Respondent is not entitled to maintain his DEA Certificate of Registration. Because he is not entitled to a DEA registration due to his lack of state authorization to handle controlled substances, the Deputy Administrator concludes that it is unnecessary to address whether the Respondent's registration should be revoked based upon the public interest grounds asserted in the Order to Show Cause. *See* Nathaniel-Aikens-Afful, M.D., 62 FR 16871 (1997).

Accordingly, the Deputy Administrator of the Drug Enforcement Administration, pursuant to the authority vested in him by 21 U.S.C. 823 and 824 and 28 CFR 0.100(b) and 0.104, hereby orders that DEA Certificate of Registration, BJ5063552, issued to Michael D. Jackson, M.D., be, and it hereby is, revoked. The Deputy Administrator further orders that any pending applications for renewal or modification of such registration be, and they hereby are, denied. This order is effective June 9, 2003.

Dated: April 21, 2003.

John B. Brown, III,

Deputy Administrator.

[FR Doc. 03–11433 Filed 5–7–03; 8:45 am]

BILLING CODE 4410–09–M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Kenneth S. Nave, M.D.; Denial of Application

On April 10, 2002, the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration (DEA), issued an Order to Show Cause to Kenneth S. Nave, M.D. (Dr. Nave) of Chicago, Illinois, notifying him of an opportunity to show cause as to why DEA should not deny his pending application for DEA Certificate of Registration, pursuant to 21 U.S.C. 823(f) for reason that such registration would be inconsistent with the public interest. The Order to Show Cause also notified Dr. Nave that should no request for a hearing be filed within 30 days, his hearing right would be deemed waived.

The Order to Show Cause was sent by certified mail to Dr. Nave at his proposed registered location in Chicago, Illinois. The order was returned to DEA on June 10, 2002 by the United States Postal Service indicating that it had been "unclaimed." On June 11, 2002, DEA resent the show cause order to the same address by regular mail. The order was not returned. DEA has not received a request for hearing or any other reply from Dr. Nave or anyone purporting to represent him in this matter.

Therefore, the Deputy Administrator of DEA, finding that (1) thirty days having passed since the attempted delivery of the Order to Show Cause at the applicant's last known address, and (2) no requests for hearing having been received, concludes that Dr. Nave is deemed to have waived his hearing right. *See* David W. Linder, 67 FR 12579 (2002). After considering material from the investigative file in this matter, the Deputy Administrator now enters his final order without a hearing pursuant to 21 CFR 1301.43(d) and (e) and 1301.46.

The Deputy Administrator's review of the investigative file reveals that on January 3, 2002, the Illinois Medical Disciplinary Board (Board) issued its Findings of Fact, Conclusions of Law and Recommendation (Recommendation) to the Director of the State Department of Professional Regulation (Director). Following its finding of a "long history of chemical dependency with several relapses" the Board recommended the indefinite suspension of Dr. Nave's Physician and Surgeon's license for a period of one year. The Director adopted the Board's Recommendation and effective March 5, 2002, ordered the indefinite suspension of Dr. Nave's Physician and Surgeon's license as well as his Controlled Substance license for a minimum period of one year.

The Deputy Administrator's review of a DEA investigative report further revealed that as of April 3, 2003, Dr. Nave's Physician and Surgeon and Controlled Substance licenses remained suspended in the State of Illinois. As of the date of this final order, there is no evidence in the record that these licenses have been reinstated. Therefore, the Deputy Administrator's finds that Dr. Nave currently lacks state authorization to practice medicine and handle controlled substances in Illinois.

DEA does not have statutory authority under the Controlled Substances Act to issue a registration if the applicant is without state authority to handle controlled substances in the state in which he conducts business. *See* 21 U.S.C. 802(21), 823(f) and 824(a)(3). The Deputy Administrator and his predecessors have consistently so held. *See* Douglas L. Geiger, M.D., 67 FR 64418 (2002); Theodore T. Ambadgis, M.D., 58 FR 5759 (1993); Ihsan A. Karaagac, M.D., 51 FR 34694 (1986).

Here, it is clear that Dr. Nave is not licensed to handle controlled substances in Illinois, where he seeks registration with DEA. Therefore, he is not entitled to such registration. Because Dr. Nave lacks state authorization to handle controlled substances, the Deputy Administrator concludes that it is unnecessary to address whether or not his application for DEA registration should be denied based upon the public interest grounds asserted in the Order to Show Cause. *See* Samuel Silas Jackson, D.D.S., 67 FR 65145 (2002); Nathaniel-Aikens-Afful, M.D., 62 FR 16871 (1997); Sam F. Moore, D.V.M., 58 FR 14428 (1993).

Accordingly, the Deputy Administrator of the Drug Enforcement Administration, pursuant to the authority vested in him by 21 U.S.C. 823 and 824 and 28 CFR 0.100(b) and 0.104, hereby orders that the pending application for DEA Certification of Registration, submitted by Kenneth S. Nave, M.D., be, and it hereby is, denied. This order is effective June 9, 2003.

Dated: April 21, 2003.

John B. Brown III,

Deputy Administrator.

[FR Doc. 03–11432 Filed 5–7–03; 8:45 am]

BILLING CODE 4410–09–M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Fereida Walker-Graham, M.D.; Revocation of Registration

On August 16, 2001, the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration (DEA), issued an Order to Show Cause to Fereida Walker-Graham, M.D. (Dr. Walker-Graham) at her registered location in Trotwood, Ohio, and at a second location in Dayton, Ohio. The Order to Show Cause notified Dr. Walker-Graham of an opportunity to show cause as to why DEA should not revoke her DEA Certificate of Registration, BW2846256 under 21 U.S.C. 824(a)(2), (a)(3), and (a)(4), and deny any pending applications for renewal or modification of that registration for reason that Dr. Walker-Graham was convicted of a felony offense related to controlled substances, is not authorized to handle controlled substances in the State of Ohio, and her continued registration would be inconsistent with the public interest. The order also notified Dr. Walker-Graham that should no request for a hearing be filed within 30 days, her hearing right would be deemed waived.

As alluded to above, the Order to Show Cause was sent by certified mail to Dr. Walker-Graham at a location in Dayton, Ohio, and DEA received a signed receipt indicating that it was received sometime in August 2001. DEA has not received a request for hearing or any other reply from Dr. Walker-Graham or anyone purporting to represent her in this matter.

Therefore, the Deputy Administrator, finding that (1) 30 days have passed since the receipt of the Order to Show Cause, and (2) no request for a hearing

having been received, concludes that Dr. Walker-Graham is deemed to have waived her hearing right. After considering material from the investigative file in this matter, the Deputy Administrator now enters his final order without a hearing pursuant to 21 CFR 1301.43(d) and (e) and 1301.46.

The Deputy Administrator finds that on June 14, 2000, the State Medical Board of Ohio (Board) entered an order permanently revoking Dr. Walker-Graham's State license to practice medicine and surgery. The Board's action arose in part from a finding that Dr. Walker-Graham dispensed phentermine (A Schedule IV controlled substance) to numerous individuals for no legitimate medical purpose. Included among the individuals that received controlled substances from Dr. Walker-Graham were several undercover officers from a local investigations unit know as the Combined Agencies for Narcotics Enforcement or the CANF Task Force. The Board's investigation revealed that on numerous occasions, Dr. Walker-Graham dispensed these drugs without performing a medical examination. The Board's ruling was also based in part upon an accountability audit conducted by the Ohio State Board of Pharmacy which revealed that Dr. Walker-Graham could not account for significant shortages of phentermine that was used in her medical practice from January 1, 1997 through November 4, 1998. As part of the Board's revocation order, Dr. Walker-Graham was further ordered to immediately cease prescribing, dispensing, or administering controlled substances.

The Deputy Administrator's review of the investigative file further reveals that on January 10, 2001, Dr. Walker-Graham was convicted on felony charges related to drug trafficking, sale of dangerous drugs and drug possession. She was sentenced five years of court supervised probation, her driver's license was suspended and she was ordered to pay a fine.

There is no evidence before the Deputy Administrator that Dr. Walker-Graham's license to practice medicine in the State of Ohio has been reinstated. The Deputy Administrator further notes that the Board's revocation order prohibits Dr. Waker-Graham from prescribing, dispensing, or administering controlled substances.

Pursuant to 21 U.S.C. 824(a), the Deputy Administrator may revoke a DEA Certificate of Registration if he finds that the registrant has been convicted of a felony related to controlled substances, has had his State license revoked and is no longer authorized to dispense controlled substances or has committed such acts as would render his registration contrary to the public interest as determined by factors listed in 21 U.S.C. 823(f). Thomas B. Pelkowski, D.D.S., 57 FR 28538 (1992). Despite Dr. Walker-Graham's felony conviction related to controlled substances, as well as the other public interest factors for the revocation of her DEA registration asserted herein, the more relevant consideration here is the present status of her State authorization to handle controlled substances.

DEA does not have statutory authority under the Controlled Substances Act to issue or maintain a registration if the applicant or registrant is without State authority to handle controlled substances in the State in which he conducts business. *See* 21 U.S.C. 802(21), 823(f) and 824(a)(3). This prerequisite has been consistently upheld. *See* Joseph Thomas Allevi, M.D., 67 FR 35581 (2002); Dominick A. Ricci, M.D., 58 FR 51104 (1993); Bobby Watts, M.D., 53 FR 11919 (1988).

Here, it is clear that Dr. Walker-Graham is not licensed to handle controlled substances in Ohio, where she is registered with DEA. Therefore, she is not entitled to maintain that registration. Because Dr. Walker-Graham lacks State authorization to handle controlled substances, the Deputy Administrator concludes that it is unnecessary to address whether her DEA registration should be revoked based upon the public interest grounds asserted in the Order to Show Cause, or whether her registration should be revoked based upon the aforementioned felony conviction in the State of Ohio. *See* Samuel Silas Jackson, D.D.S., 67 FR 65145 (2002); National-Aikens-Afful, M.D., 62 FR 16871 (1997); Sam F. Moore, D.V.M, 58 FR 14428 (1993).

Accordingly, the Deputy Administrator of the Drug Enforcement Administration, pursuant to the authority vested in him by 21 U.S.C. 823 and 824 and 28 CFR 0.100(b) and 0.104, hereby orders that DEA Certificate of Registration, BW2846256, issued to Fereida Walker-Graham, M.D., be, and it hereby is, revoked. The Deputy Administrator further orders that any pending applications for renewal or modification of such registration be, and they hereby are, denied. This order is effective June 9, 2003.

Dated: April 21, 2003.

John B. Brown, III,

Deputy Administrator.

[FR Doc. 03–11434 Filed 5–07–03; 8:45 am]

BILLING CODE 4410–09–M

DEPARTMENT OF JUSTICE

Office of Justice Programs

Agency Information Collection Activities: Proposed Collection; Comments Requested

ACTION: 60-Day notice of information collection under review: New Semi-Annual Progress Report for the Legal Assistance for Victims Grant Program.

The Department of Justice (DOJ), Office on Violence Against Women has submitted the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995. The proposed information collection is published to obtain comments from the public and affected agencies. Comments are encouraged and will be accepted for "sixty days" until July 7, 2003. This process is conducted in accordance with 5 CFR 1320.10.

If you have comments especially on the estimated public burden or associated response time, suggestions, or need a copy of the proposed information collection instrument with instructions or additional information, please contact Cynthia J. Schwimer, Comptroller (202) 307–0623, Office of Justice Programs, US Department of Justice, 810 Seventh Street NW., Washington, DC 20531.

Request written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agencies estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

Overview of This Information Collection

(1) *Type of Information Collection:* New collection.

(2) *Title of the Form/Collection:* Semi-Annual Progress Report for the Legal Assistance for Victims Grant Program.

(3) *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection:* Form Number: None. U.S. Department of Justice, Office on Violence Against Women.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: The affected public includes the approximately 200 grantees of the Legal Assistance for Victims Grant Program (LAV Program) whose eligibility is determined by statute. In 1998, Congress appropriated funding to provide civil legal assistance to domestic violence victims through a set-aside under the Grants to Combat Violence Against Women, Public Law 105–277. In the Violence Against Women Act of 2000, Congress statutorily authorized the Legal Assistance for Victims Grant Program (LAV Program). 42 U.S.C. 3796gg–6. The LAV Program is intended to increase the availability of legal assistance necessary to provide effective aid to victims of domestic violence, stalking, or sexual assault who are seeking relief in legal matters arising as a consequence of that abuse or violence. The LAV Program awards grants to law school legal clinics, legal aid or legal services programs, domestic violence victims' shelters, bar associations, sexual assault programs, private nonprofit entities, and Indian tribal governments. These grants are for providing direct legal services to victims of domestic violence, sexual assault, and stalking in matters arising from the abuse or violence and for providing enhanced training for lawyers representing these victims. The goal of the Program is to develop innovative, collaborative projects that provide quality representation to victims of domestic violence, sexual assault, and stalking.

(5) An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond/reply: It is estimated that it will take the approximately 200 respondents (LAV Program grantees) approximately one hour to complete a semi-annual progress report. The semi-annual progress report is divided into sections that pertain to the different types of activities that grantees may engage in and the different types of grantees that receive funds. An LAV Program grantee will only be required to complete the sections of the form that pertain to its own specific activities.

(6) An estimate of the total public burden (in hours) associated with the collection: The total annual hour burden to complete the data collection forms is 400 hours, that is 200 grantees completing a form twice a year with an estimated completion time for the form being one hour.

If additional information is required contact: Brenda E. Dyer, Department Deputy Clearance Officer, Information Management and Security Staff, Justice Management Division, Department of Justice, Patrick Henry Building, Suite 1600, 601 D Street NW., Washington, DC 20530.

Dated: May 2, 2003.

Brenda E. Dyer,

Department Deputy Clearance Officer, Department of Justice.

[FR Doc. 03–11410 Filed 5–7–03; 8:45 am]

BILLING CODE 4410–18–M

DEPARTMENT OF JUSTICE

Office of Justice Programs

Agency Information Collection Activities: Proposed Collection; Comments Requested

ACTION: 60-day notice of information collection under review: Extension of a currently approved collection; Bulletproof Vest Partnership.

The Department of Justice (DOJ), Office of Justice Programs, has submitted the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995. The proposed information collection is published to obtain comments from the public and affected agencies. Comments are encouraged and will be accepted for "sixty days" until July 7, 2003. This process is conducted in accordance with 5 CFR 1320.10.

If you have comments especially on the estimated public burden or associated response time, suggestions, or need a copy of the proposed information collection instrument with instructions or additional information, please contact Robert Watkins, Office of Justice Programs, U.S. Department of Justice, 810 Seventh Street NW., Washington, DC 20531.

Request written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agencies estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

Overview of this information collection:

(1) *Type of information collection:* Extension of a currently approved.

(2) *The title of the form/collection:* Bulletproof Vest Partnership.

(3) *The agency for number, if any, and the applicable component of the Department sponsoring the collection:* None. Bureau of Justice Assistance, Office of Justice Programs, United States Department of Justice.

(4) Affected public who will be asked or required to respond, as well as a brief abstract: Primary: State, Local or Tribal governments, The Department's Office of Justice Programs has decided to extend the information collection 1121–0235 titled "Bulletproof Vest Partnership" (BVP). The Bulletproof Vest Partnership Grant Act of 1998 authorizes the Bureau of Justice Assistance to provide funds to Indian Tribes and State and Local governments to assist them with purchasing armor vests that meet the standard, established by the National Institute of Justice, for law enforcement officers as defined in the Act. This collection will provide funds to these eligible jurisdictions.

(5) An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond/reply: It is estimated that between 25,000 and 30,000 eligible units of general government may complete the Registration and Application for Funding forms that may take one hour during one Fiscal Year, and may complete any number of Requests for Payment forms that may take as much as one hour total per Fiscal Year to complete as armor vests

are received accepted and Requests for Payment are made to the BVP.

(6) An estimate of the total public burden (in hours) associated with the collection: The estimated range of annual public burden hours is 125,000 and 150,000.

If additional information is required contact: Brenda E. Dyer, Department Deputy Clearance Officer, Information Management and Security Staff, Justice Management Division, Department of Justice, Patrick Henry Building, Suite 1600, 601 D Street NW., Washington, DC 20530.

Dated: April 30, 2003.

Brenda E. Dyer,

Department Deputy Clearance Officer, Department of Justice.

[FR Doc. 03–11417 Filed 5–7–03; 8:45 am]

BILLING CODE 4410–18–M

NATIONAL INSTITUTE FOR LITERACY

National Institute for Literacy Advisory Board; Meeting

AGENCY: National Institute for Literacy.

ACTION: Notice of meeting.

SUMMARY: This notice sets forth the schedule and a summary of the agenda for an upcoming meeting of the National Institute for Literacy Advisory Board (Board). The notice also describes the functions of the Board. Notice of this meeting is required by section 10(a)(2) of the Federal Advisory Committee Act. This document is intended to notify the general public of their opportunity to attend the meeting. Individuals who will need accommodations for a disability in order to attend the meeting (*e.g.*, interpreting services, assistive listening devices, or materials in alternative format) should notify Liz Hollis at telephone number (202) 233–2072 no later than May 14. We will attempt to meet requests for accommodations after this date but cannot guarantee their availability. The meeting site is accessible to individuals with disabilities.

DATE AND TIME: Open sessions—May 22, 2003, from 8:30 am to 3:30 p.m. and May 23, 2003, from 8:30 a.m. to 4 p.m. Closed session—May 22, 2003, from 3:30 p.m. to 5 p.m.

ADDRESSES: National Institute for Literacy, 1775 I Street, NW., Suite 730, Washington, DC 20006.

FOR FURTHER INFORMATION CONTACT: Liz Hollis, Special Assistant to the Director; National Institute for Literacy, 1775 I Street, NW., Suite 730, Washington, DC 20006; telephone number: (202) 233–2072; email: *ehollis@nifl.gov*.

SUPPLEMENTARY INFORMATION: The Board is established under section 242 of the Workforce Investment Act of 1998, Pub. L. 105–220 (20 U.S.C. 9252). The Board consists of ten individuals appointed by the President with the advice and consent of the Senate. The Board advises and makes recommendations to the Interagency Group, composed of the Secretaries of Education, Labor, and Health and Human Services, which administers the National Institute for Literacy (Institute). The Interagency Group considers the Board's recommendations in planning the goals of the Institute and in implementing any programs to achieve those goals. Specifically, the Board performs the following functions: (a) Makes recommendations concerning the appointment of the Director and the staff of the Institute; (b) provides independent advice on operation of the Institute; and (c) receives reports from the Interagency Group and the Institute's Director.

The National Institute for Literacy Advisory Board meeting on May 22–23, 2003, will focus on future and current program activities, reauthorization of the Workforce Investment Act, and other relevant literacy activities and issues. On May 22 from 3:30 p.m. to 5 p.m., the meeting will be closed to the public to discuss personnel issues. This discussion relates to the internal personnel rules and practices of the Institute and is likely to disclose information of personal nature where disclosure would constitute a clearly unwarranted invasion of personnel privacy. The discussion may therefore be held in closed session under exemptions 2 and 6 of the Government in the Sunshine Act, 5 U.S.C. 552b(c)(2) and (6). A summary of the activities at the closed session and related matters that are informative to the public and consistent with the policy of 5 U.S.C. 552b will be available to the public within 14 days of the meeting.

Records are kept of all Advisory Board proceedings and are available for public inspection at the National Institute for Literacy, 1775 I Street, NW., Suite 730, Washington, DC 20006, from 8:30 a.m. to 5 p.m.

Dated: May 2, 2003.

Sandra Baxter,

Interim Director.

[FR Doc. 03–11408 Filed 5–7–03; 8:45 am]

BILLING CODE 6055–01–P

NUCLEAR REGULATORY COMMISSION

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Nuclear Regulatory Commission (NRC).

ACTION: Notice of pending NRC action to submit an information collection request to the OMB and solicitation of public comment.

SUMMARY: The NRC is preparing a submittal to OMB for review of continued approval of information collections under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35).

Information pertaining to the requirement to be submitted:

1. *The title of the information collection:* Policy Statement on Cooperation with States at Commercial Nuclear Power Plants and Other Production or Utilization Facilities.

2. *Current OMB approval number:* 3150–0163.

3. *How often the collection is required:* On occasion—when a State wishes to observe NRC inspections or perform inspections for NRC.

4. *Who is required or asked to report:* Those States interested in observing or performing inspections.

5. *The number of annual respondents:* Maximum of 50, although not all States have participated in the program.

6. *The number of hours needed annually to complete the requirement or request:* An average estimate of 10 hours per State or 500 hours if all States participated in the program.

7. *Abstract:* States wishing to enter into an agreement with NRC to observe or participate in NRC inspections at nuclear power facilities are requested to provide certain information to the NRC to ensure close cooperation and consistency with the NRC inspection program as specified by the Commission's Policy of Cooperation with States at Commercial Nuclear Power Plants and Other Nuclear Production or Utilization Facilities.

Submit, by July 7, 2003, comments that address the following questions:

1. Is the proposed collection of information necessary for the NRC to properly perform its functions? Does the information have practical utility?

2. Is the burden estimate accurate?

3. Is there a way to enhance the quality, utility, and clarity of the information to be collected?

4. How can the burden of the information collection be minimized, including the use of automated collection techniques or other forms of information technology?

A copy of the draft supporting statement may be viewed free of charge at the NRC Public Document Room, One White Flint North, 11555 Rockville Pike, Room 0–1 F21, Rockville, MD 20852. OMB clearance requests are available at the NRC worldwide web site: *http://www.nrc.gov/public-involve/doc-comment/omb/index.html*. The document will be available on the NRC home page site for 60 days after the signature date of this notice.

Comments and questions about the information collection requirements may be directed to the NRC Clearance Officer, Brenda Jo Shelton, U.S. Nuclear Regulatory Commission, T–6 E6, Washington, DC 20555–0001, by telephone at 301–415–7233, or by Internet electronic mail at *infocollects@nrc.gov*.

Dated at Rockville, Maryland, this 2nd day of May, 2003.

For the Nuclear Regulatory Commission.

Brenda Jo. Shelton,

NRC Clearance Officer, Office of the Chief Information Officer.

[FR Doc. 03–11439 Filed 5–7–03; 8:45 am]

BILLING CODE 7590–01–P

SECURITIES AND EXCHANGE COMMISSION

Existing Collection; Comment Request

Upon Written Request, Copies Available From: Securities and Exchange Commission, Office of Filings and Information Services, Washington, DC 20549.

Extension:

Rule 11a–3 (17 CFR 270.11a–3), SEC File No. 270–321, OMB Control No. 3235–0358

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1995 [44 U.S.C. 3501–3520], the Securities and Exchange Commission ("Commission") is soliciting comments on the collection of information summarized below. The Commission plans to submit this existing collection of information to the Office of Management and Budget ("OMB") for extension and approval.

Rule 11a–3 under the Investment Company Act of 1940 (17 CFR 270.11a–3) is an exemptive rule that permits open-end investment companies ("funds"), other than insurance company separate accounts, and funds' principal underwriters, to make certain exchange offers to fund shareholders and shareholders of other funds in the same group of investment companies. The rule requires a fund, among other things, (i) to disclose in its prospectus and advertising literature the amount of any administrative or redemption fee imposed on an exchange transaction, (ii) if the fund imposes an administrative fee on exchange transactions, other than a nominal one, to maintain and preserve records with respect to the actual costs incurred in connection with exchanges for at least six years, and (iii) give the funds' shareholders a sixty day notice of a termination of an exchange offer or any material amendment to the terms of an exchange offer (unless the only material effect of an amendment is to reduce or eliminate an administrative fee, sales load or redemption fee payable at the time of an exchange).

The rule's requirements are designed to protect investors against abuses associated with exchange offers, provide fund shareholders with information necessary to evaluate exchange offers and certain material changes in the terms of exchange offers, and enable the Commission staff to monitor funds' use of administrative fees charged in connection with exchange transactions.

There are approximately 3,075 funds registered with the Commission as of December 31, 2002. The staff estimates that one-quarter of these funds imposes a non-nominal administrative fee on exchange transactions, and that the recordkeeping requirement of the rule requires approximately one hour annually of clerical time (at an estimated $16 per hour) per fund, for a total of 768.75 hours for all funds (at a total annual cost of $12,300). The staff estimates that one-quarter of the 3,075 funds terminates an exchange offer or makes a material change to its terms once each year, and that the notice requirement of the rule requires approximately one hour of professional time (at an estimated $60 per hour) and two hours of clerical time (at an estimated $16 per hour) per fund, for a total of approximately 2306.25 hours for all funds (at a total annual cost of $70,725). The burdens associated with the disclosure requirement of the rule are accounted for in the burdens associated with the Form N–1A registration statement for funds.

The estimate of average burden hours is made solely for the purposes of the Paperwork Reduction Act, and is not derived from a comprehensive or even a representative survey or study of the costs of Commission rules and forms. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid control number.

Written comments are requested on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information has practical utility; (b) the accuracy of the Commission's estimate of the burden[s] of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted in writing within 60 days of this publication.

Please direct your written comments to Kenneth A. Fogash, Acting Associate Executive Director/CIO, Office of Information Technology, Securities and Exchange Commission, 450 5th Street, NW., Washington, DC 20549.

Dated: April 30, 2003.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 03–11411 Filed 5–7–03; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

Issuer Delisting; Notice of Application To Withdraw From Listing and Registration on the American Stock Exchange LLC (MAI Systems Corporation, Common Stock, $.01 par value) File No. 1–09158

May 2, 2003.

MAI Systems Corporation, a Delaware corporation ("Issuer"), has filed an application with the Securities and Exchange Commission ("Commission"), pursuant to section 12(d) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 12d2–2(d) thereunder,[2] to withdraw its Common Stock, $.01 par value ("Security"), from listing and registration on the American Stock Exchange LLC ("Amex" or "Exchange").

The Issuer stated in its application that it has met the requirements of Amex Rule 18 by complying with all applicable laws in State of Delaware, in which it is incorporated, and with the Amex's rules governing an issuer's voluntary withdrawal of a security from listing and registration.

The Board of Directors ("Board") of the Issuer unanimously approved a resolution on March 4, 2003 to withdraw the Issuer's Security from listing on the Amex and to list the

[1] 15 U.S.C. 78*l*(d).

[2] 17 CFR 240.12d2–2(d).

Security on the NASDAQ over-the-counter (OTC) Bulletin Board. The Board took such action in the best interest of the Issuer and its shareholders.

The Issuer's application relates solely to the withdrawal of the Security from listing on the Amex and from registration under section 12(b) of the Act[3] shall not affect its obligation to be registered under section 12(g) of the Act.[4]

Any interested person may, on or before May 23, 2003, submit by letter to the Secretary of the Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609, facts bearing upon whether the application has been made in accordance with the rules of the Amex and what terms, if any, should be imposed by the Commission for the protection of investors. The Commission, based on the information submitted to it, will issue an order granting the application after the date mentioned above, unless the Commission determines to order a hearing on the matter.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[5]

Jonathan G. Katz,

Secretary.

[FR Doc. 03–11445 Filed 5–7–03; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. IC–26041; File No. 812–12900]

Manufacturers Investment Trust, et al.; Notice of Application

May 1, 2003.

AGENCY: Securities and Exchange Commission (the "Commission" or "SEC").

ACTION: Notice of Application pursuant to section 6(c) of the Investment Company Act of 1940 (the "Act") for an order granting exemption from the provisions of sections 9(a), 13(a), 15(a) and 15(b) of the Act and Rules 6e–2(b)(15) and 6e–3(T)(b)(15) thereunder.

APPLICANTS: Manufacturers Investment Trust ("MIT") and Manufacturers Securities Services, LLC ("MSS" or the "Adviser") (collectively, "Applicants").

SUMMARY OF APPLICATION: Applicants seek exemptive relief to the extent necessary to permit shares of existing series of MIT ("Existing Funds") and shares of Future Funds (as defined below) to be sold to and held by: (1) Separate accounts ("separate accounts") funding variable life insurance contracts and variable annuity contracts (collectively, "variable contracts") issued by both affiliated and unaffiliated life insurance companies; (2) qualified pension and retirement plans ("Qualified Plans") (as defined below) outside of the separate account context; (3) the investment adviser or any subadviser to an Existing Fund or Future Fund (each, a "Fund"; collectively, the "Funds"), certain affiliated persons of each such adviser or subadviser and all other persons described in Treasury Regulation 1.817–5(f)(3)(ii) (collectively, "Other Investors"); and (4) the general account of any Participating Insurance Company (as defined below), certain affiliated persons of each such Participating Insurance Company and all other persons described in Treasury Regulation 1.817–5(f)(3)(i) (collectively, the "General Accounts").

FILING DATE: The Application was filed on November 12, 2002 and amended on April 11, 2003.

HEARING OR NOTIFICATION OF HEARING: An order granting the Application will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the Secretary of the Commission and serving Applicants with a copy of the request, personally or by mail. Hearing requests should be received by the Commission by 5:30 p.m. on May 29, 2003, and should be accompanied by proof of service on Applicants in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interests, the reason for the request, and the issues contested. Persons may request notification of a hearing by writing to the Secretary of the Commission.

ADDRESSES: Secretary, SEC, 450 Fifth Street, NW., Washington, DC 20549. Applicants, c/o John W. Blouch, Esq., Jones & Blouch L.L.P., 1025 Thomas Jefferson St., NW., Suite 410 East, Washington, DC 20007–5252; copy to Betsy A. Seel, Esq., Assistant Vice President and Senior Counsel, Manulife Financial, 73 Tremont St., Boston, MA 02108–3915.

FOR FURTHER INFORMATION CONTACT: Mark Cowan, Senior Counsel, or Zandra Y. Bailes, Branch Chief, at (202) 942–0670 (Division of Investment Management, Office of Insurance Products).

SUPPLEMENTARY INFORMATION: The following is a summary of the Application. The complete Application is available for a fee from the Commission's Public Reference Branch, 450 Fifth St., NW., Washington, DC 20549 (tel. (202) 942–8090).

Applicants' Representations

1. *As used herein:* (a) A "Future Fund" is any investment company (or series thereof), other than an Existing Fund, that is designed to be sold to separate accounts and for which MSS or any affiliated person of MSS serves as investment adviser, subadviser, manager, administrator, principal underwriter or sponsor; (b) a "Qualified Plan" means any trust, plan, account, contract or annuity described in sections 401(a), 403(a), 403(b), 408(a), 408(b), 408(p), 408A, 414(d), 457(b), 408(k), or 501(c)(18) of the Internal Revenue Code of 1986, as amended (the "Code"), and any other trust, plan, account, contract or annuity that is determined to be within the scope of Treasury Regulation 1.817–5(f)(3)(iii); and (c) a "Participating Insurance Company" means any insurance company that purchases or will purchase shares of the Funds to serve as the investment media for variable contracts issued through its separate accounts.

2. MIT is a Massachusetts business trust that is registered as an open-end management investment company under the Act. Under Massachusetts law and MIT's Agreement and Declaration of Trust, MIT is managed by its Board of Trustees. MIT is a series trust comprising sixty-seven Existing Funds, each of which has its own investment objectives and policies. MIT may add additional Funds in the future. Shares of MIT are registered under the Securities Act of 1933, as amended (the "1933 Act"). Shares of MIT are not offered directly to the public but only to separate accounts of The Manufacturers Life Insurance Company (U.S.A.) ("Manulife USA"), a Michigan stock life insurance company, and The Manufacturers Life Insurance Company of New York ("Manulife New York"), a New York stock life insurance company (collectively, the "Insurance Companies"), as the underlying investment media for variable contracts issued by such companies. The Insurance Companies are indirect, wholly-owned subsidiaries of The Manufacturers Life Insurance Company, a stock insurance company organized under the laws of Canada ("Manulife"). Manulife Financial Corporation ("MFC"), a publicly-traded company based in Toronto, Canada, is the holding company of Manulife and its subsidiaries, collectively known as Manulife Financial. The separate accounts of the Insurance Companies include both separate accounts that are registered as investment companies under the Act ("registered separate accounts") and separate accounts that are not registered as investment companies under the Act in reliance on the exemption provided by section 3(c)(11) of the Act.

3. MSS is a Delaware limited liability company that is registered as an investment adviser under the Investment Advisers Act of 1940 (the "Advisers Act"). MSS is an indirect, wholly-owned subsidiary of Manulife USA. MSS currently serves as the investment adviser to MIT with respect to each of the Existing Funds. Pursuant to investment subadvisory agreements, MSS has retained a subadviser for each of the Existing Funds. Each such subadviser is registered as an investment adviser under the Advisers Act.

4. Applicants propose that the Existing Funds and Future Funds be authorized to offer their shares to separate accounts of Participating Insurance Companies in order to serve as the investment media for variable contracts issued through such separate accounts. Each separate account is or will be established as a segregated asset account by a Participating Insurance Company pursuant to the insurance law of such company's domicile. As such, the assets of each are or will be the property of the Participating Insurance Company, and that portion of the assets of such an account equal to the reserves and other contract liabilities with respect to the account is not or will not be chargeable with liabilities arising from any other business that the Participating Insurance Company may conduct. The income, gains and losses, realized or unrealized, from such an account's assets are or will be credited to or charged against the account without regard to other income, gains or losses of the Participating Insurance Company. If a separate account is a registered separate account, it will be a "separate account" as defined in Rule 0–1(e) (or any successor rule) under the Act and will be registered as a unit investment trust. For purposes of the Act, the Participating Insurance Company that establishes a registered separate account is the depositor or sponsor of the account as those terms have been interpreted by the Commission with respect to variable life insurance and variable annuity separate accounts.

5. The Funds will sell their shares to registered separate accounts only if the Participating Insurance Company sponsoring such a separate account enters into a participation agreement with the Fund. The participation agreements will define the relationship between each Fund and each Participating Insurance Company and provide that, except where the agreement specifically provides otherwise, the Participating Insurance Company will remain responsible for establishing and maintaining any separate account covered by the agreement and for complying with all applicable requirements of federal and state laws pertaining to such separate accounts and to the sale and distribution of variable contracts issued through such separate accounts. The participation agreements will also provide that the obligations of the Funds with regard to compliance with the federal securities laws will, unless the agreement specifically provides otherwise, relate solely to offering and selling their shares to the separate accounts covered by the agreements.

6. The use of a common management investment company (or series thereof) as an investment medium for both variable life insurance and variable annuity contracts of the same insurance company, or of two or more insurance companies that are affiliated persons of each other, is referred to herein as "mixed funding." The use of a common management investment company (or series thereof) as an investment medium for variable life insurance and variable annuity contracts of two or more unaffiliated insurance companies is referred to herein as "shared funding."

7. Applicants propose that Existing Funds and Future Funds be authorized to offer and sell their shares directly to Qualified Plans, Other Investors and General Accounts. As stated above, Qualified Plans are pension or retirement plans within the scope of Treasury Regulation 1.817–5(f)(3)(iii). Other Investors will be persons described in Treasury Regulation 1.817–5(f)(3)(ii) which purchase Fund shares in connection with advances made in connection with the operation of separate accounts. General Accounts will be persons described in Treasury Regulation 1.817–5(f)(3)(i) which, if insurance companies, hold Fund shares in their general accounts.

8. Applicants state that they expect that most of the Qualified Plans will be pension or retirement plans intended to qualify under sections 401(a) and 501(a) of the Code and that many of these Plans will include a cash or deferred arrangement (permitting salary reduction contributions) intended to qualify under section 401(k) of the Code. The Plans that qualify under sections 401(a) and 501(a) of the Code will also be subject to, and will be designed to comply with, the provisions of the Employee Retirement Income Security Act of 1974, as amended ("ERISA"), applicable to either defined benefit or defined contribution profit sharing plans, specifically "Title I—Protection of Employee Benefit Rights." These Plans will thus be subject to regulatory provisions under the Code and ERISA regarding, for example, reporting and disclosure, participation and vesting, funding, fiduciary responsibility and enforcement. Fund shares sold to Qualified Plans will be held by the trustees of such plans as required by section 403(a) of ERISA. Applicants state that pass-through voting is generally not required to be provided to participants in Qualified Plans pursuant to ERISA. Applicants note state that some of the Qualified Plans will not be subject to ERISA. These include governmental plans within the meaning of sections 414(d) or 457(b) of the Code, custodial accounts described in section 403(b) of the Code, and regular and Roth individual retirement accounts ("IRAs") described in sections 408(a) and 408A of the Code, respectively. Generally, Fund shares sold to governmental plans will be held by trustees, those sold to custodial accounts will be held by custodians, and those sold to IRAs will be held by custodians or trustees on behalf of individual plan owners. Applicants state that pass-through voting is generally not required to be provided to participants in governmental plans, and voting rights in the case of custodial accounts and IRAs are generally exercised by individual participants or owners.

9. Applicants state that the current federal tax law permits the Funds to sell their shares to Qualified Plans, Other Investors and General Accounts. Section 817(h) of the Code imposes certain diversification standards on the underlying assets of variable contracts held in segregated asset accounts. The Code provides that a variable contract shall not be treated as an annuity or life insurance contract for any period (and any subsequent period) for which the investments, in accordance with regulations prescribed by the Treasury Department, are not adequately diversified. The Treasury Department has issued regulations (Treas. Reg. 1.817–5) (the "Treasury Regulations") that establish diversification requirements for the investment portfolios underlying variable contracts. The Treasury Regulations provide that, in order to rely on certain look-through

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[3] 15 U.S.C. 78*l*(b).
[4] 15 U.S.C. 78*l*(g).
[5] 17 CFR 200.30–3(a)(1).

provisions of the diversification requirements, all of the beneficial interests in the underlying investment company must be held by the segregated asset accounts of one or more insurance companies. The Treasury Regulations, however, also contain certain exceptions to this requirement. One exception allows shares in the investment company to be held by the trustee of a qualified pension or retirement plan without adversely affecting the ability of shares in the same investment company also to be held by insurance company separate accounts. (Treas. Reg. 1.817–5(f)(3)(iii)). A second exception allows shares in the investment company also to be held by the investment manager of the investment company, and certain companies related to the investment manager, in connection with the creation or management of the investment company. (Treas. Reg. 1.817–5(f)(3)(ii)). Finally, a third exception allows shares in the investment company also to be held by the general account of a life insurance company that holds or will hold such shares in a separate account, and by certain companies related to the life insurance company. (Treas. Reg. 1.817–5(f)(3)(i)). These latter two exceptions are available only if: (1) The return on such shares held by the investment manager, the general account or the related company is computed in the same manner as the return on shares held by the separate accounts; and (2) the investment manager, the general account and the related company do not intend to sell such shares to the public. Applicants anticipate that the Other Investors and General Accounts will comply with the provisions of the Treasury Regulations when they purchase and hold shares of the Funds.

10. Applicants state that, as a result of these exceptions to the general diversification requirement, Qualified Plans may select the Funds as investment options, and the Other Investors and General Accounts may also hold shares of the Funds, without endangering the tax status of variable contracts issued through the separate accounts of Participating Insurance Companies.

11. The use of a common management investment company (or series thereof) as an investment medium for variable life insurance and variable annuity separate accounts and for Qualified Plans is referred to herein as "extended mixed and shared funding."

Applicants' Legal Analysis

1. In connection with the funding of scheduled premium variable life insurance contracts issued through a separate account registered under the Act as a unit investment trust, Rule 6e-2(b)(15) under the Act provides partial exemptions from sections 9(a), 13(a), 15(a), and 15(b) of the Act. Section 9(a) provides that it is unlawful for any company to serve as an investment adviser or principal underwriter of any registered open-end investment company if an affiliated person of that company is subject to a disqualification enumerated in sections 9(a)(1) or (2). Rules 6e-2(b)(15)(i) and (ii) provide partial exemptions from section 9(a), and Rule 6e-2(b)(15)(iii) provides a partial exemption from sections 13(a), 15(a), and 15(b) to the extent those sections have been deemed by the Commission to require "pass-through" voting with respect to an underlying fund's shares.

2. The exemptions granted to a registered variable life insurance separate account by Rule 6e–2(b)(15) are available only when all of the assets of the separate account consist of the shares of one or more registered management investment companies which offer their shares "exclusively to variable life insurance separate accounts of the life insurer, or of any affiliated life insurance company", and then only when scheduled premium variable life insurance contracts are issued through variable life insurance separate accounts. Therefore, the relief granted by Rule 6e–2(b)(15) is not available with respect to a scheduled premium variable life insurance separate account that owns shares of an underlying management company that also offers its shares (i) to a separate account of the same or an affiliated insurance company to fund variable annuity contracts or flexible premium variable life insurance contracts or (ii) to any separate account of an unaffiliated life insurance company. Furthermore, Rule 6e–2(b)(15) does not contemplate that shares of the underlying fund might also be sold to Qualified Plans, Other Investors and General Accounts.

3. In connection with flexible premium variable life insurance contracts issued through a separate account registered under the Act as a unit investment trust, Rule 6e–3(T)(b)(15) under the Act provides partial exemptions from section 9(a), and from sections 13(a), 15(a), and 15(b) of the Act to the extent that those sections have been deemed by the Commission to require pass-through voting with respect to an underlying fund's shares. The exemptions granted to a separate account by Rule 6e–3(T)(b)(15) are available only when all of the assets of the separate account consist of the shares of one or more registered management investment companies which offer their shares "exclusively to separate accounts of the life insurer, or of any affiliated life insurance company offering either scheduled [premium variable life insurance] contracts or flexible [premium variable life insurance] contracts, or both; or which also offer their shares to variable annuity separate accounts of the life insurer or of an affiliated life insurance company, or which offer their shares to any such life insurance company in consideration solely for advances made by the life insurer in connection with the operation of the separate account." Therefore, Rule 6e–3(T) permits mixed funding with respect to a flexible premium variable life insurance separate account, subject to certain conditions. Rule 6e–3(T), however, does not permit shared funding because the relief granted by Rule 6e–3(T)(b)(15) is not available with respect to a flexible premium variable life insurance separate account that owns shares of a management company that also offers its shares to separate accounts (including variable annuity and flexible premium and scheduled premium life insurance separate accounts) of unaffiliated life insurance companies. In addition, Rule 6e–3(T) does not contemplate sales to Qualified Plans or Other Investors or, except in limited circumstances, General Accounts.

4. Applicants maintain, as discussed below, that there is no policy reason why the sale of Fund shares to Qualified Plans, Other Investors or General Accounts should prohibit or otherwise limit a Participating Insurance Company from relying on the relief provided by Rules 6e–2(b)(15) and 6e–3(T)(B)(15). Nonetheless, each of Rules 6e–2 and 6e–3(T) specifically provides that the relief granted thereunder is available only where shares of the underlying fund are offered exclusively to insurance company separate accounts (and, in the case of Rule 6e–3(T), to insurance companies for advances made in connection with separate account operations). In this regard, Applicants request exemptive relief to the extent necessary to permit shares of the Funds to be sold to Qualified Plans, Other Investors and General Accounts while allowing the variable life insurance separate accounts of the Participating Insurance Companies to enjoy the benefits of the relief granted by Rules 6e–2(b)(15) and 6e–3(T)(b)(15).

5. Applicants submit that, if the Funds were to sell their shares only to Qualified Plans, Other Investors or General Accounts, no exemptive relief under Rules 6e–2 and 6e–3(T) would be necessary. The relief provided for under Rules 6e–2(b)(15) and 6e–3(T)(b)(15) does not relate to Qualified Plans, Other Investors, General Accounts or to a registered investment company's ability to sell its shares to such purchasers. Applicants note that the promulgation of Rules 6e–2(b)(15) and 6e–3(T)(b)(15) preceded the issuance of the Treasury Regulations which made it possible for shares of an investment company to be held by the trustee of a Qualified Plan, by Other Investors or by General Accounts without adversely affecting the ability of shares of the same investment company also to be held by separate accounts of insurance companies in connection with their variable contracts. Applicants submit that the sale of shares of the same investment company both to separate accounts and to Qualified Plans, Other Investors and General Accounts (other than, as permitted by Rule 6e–3(T), for advances in connection with separate account operations) was not contemplated at the time of the promulgation of Rules 6e–2(b)(15) and 6e–3(T)(b)(15).

6. Applicants are not aware of any reason for excluding separate accounts and investment companies engaged in shared funding from the exemptive relief provided under Rules 6e–2(b)(15) and 6e–3(T)(b)(15), or for excluding separate accounts and investment companies engaged in mixed funding from the exemptive relief provided under Rule 6e–2(b)(15). Similarly, Applicants are not aware of any reason for excluding separate accounts from the exemptive relief requested because the Funds may also sell their shares to Qualified Plans, Other Investors and General Accounts.

7. Applicants recognize that the reason the Commission did not grant broader relief in the area of mixed and shared funding when the Commission adopted Rule 6e–3(T) is because of the Commission's uncertainty in this area with respect to such issues as conflicts of interest. Applicants believe that the Commission's concern in this area is not warranted. Applicants have concluded that the addition of Qualified Plans, Other Investors and General Accounts as eligible shareholders in the Funds does not increase the risk of material irreconcilable conflicts among the shareholders. Applicants have further concluded that, even if a material irreconcilable conflict involving the Qualified Plans, Other Investors or General Accounts arose, such shareholders, unlike the separate accounts, could simply redeem their shares and make alternative investments.

8. Consistent with the Commission's authority under section 6(c) of the Act to grant exemptive orders to a class or classes of persons and transactions, Applicants request relief for the class consisting of Applicants, the Participating Insurance Companies and their separate accounts investing in the Existing Funds and Future Funds and, to the extent necessary, investment advisers, subadvisers, principal underwriters, managers, administrators and sponsors of the Funds.

9. The Commission has previously granted the exemptive relief requested herein, including the class relief, in the context of mixed and shared funding and extended mixed and shared funding. The Commission has also granted such relief to permit sales of fund shares to investment managers and their affiliates (*i.e.*, Other Investors) and to the general accounts of life insurance companies holding fund shares in their separate accounts and the affiliates of such insurance companies (*i.e.*, General Accounts).

10. Section 9(a) of the Act provides that it is unlawful for any company to serve as investment adviser or principal underwriter of any registered open-end investment company if an affiliated person of that company is subject to a disqualification enumerated in sections 9(a)(1) or (2). Rules 6e–2(b)(15)(i) and (ii) and Rules 6e–3(T)(b)(15)(i) and (ii) provide exemptions from section 9(a) under certain circumstances, subject to the limitations discussed above on mixed and shared funding. These exemptions limit the application of the eligibility restrictions to affiliated individuals or companies that directly participate in the management of the underlying management company.

11. Rules 6e–2(b)(15)(i) and 6e–3(T)(b)(15)(i) provide, in effect, that the fact that an individual disqualified under section 9(a)(1) or section 9(a)(2) is an officer, director, or employee of an insurance company, or any of its affiliates, would not, by virtue of section 9(a)(3) of the Act, disqualify the insurance company or any of its affiliates from serving in any capacity with respect to an underlying investment company, provided that the disqualified individual did not participate directly in the management or administration of the underlying investment company.

12. Similarly, Rules 6e–2(b)(15)(ii) and 6e–3(T)(b)(15)(ii) provide, in effect, that the fact that any company disqualified under section 9(a)(1) or section 9(a)(2) is affiliated with the insurance company would not, by virtue of section 9(a)(3), disqualify the insurance company from serving in any capacity with respect to an underlying investment company, provided that the disqualified company did not participate directly in the management or administration of the investment company.

13. The partial relief granted in Rules 6e–2(b)(15) and 6e–3(T)(b)(15) from the requirements of section 9 limits, in effect, the amount of monitoring of an insurer's personnel that would otherwise be necessary to ensure compliance with section 9. These rules recognize that it is not necessary for the protection of investors or the purposes fairly intended by the policy and provisions of the Act to apply the provisions of section 9(a) to the many individuals in a large insurance company complex, most of whom will have no involvement in matters pertaining to investment companies funding separate accounts. These rules further recognize that it is also unnecessary to apply section 9(a) to individuals in various unaffiliated insurance companies (or affiliated companies of Participating Insurance Companies) that may utilize the Funds as funding media for variable contracts.

14. Applicants submit that there is no regulatory purpose in extending the section 9(a) monitoring requirements because of mixed or shared funding. The Participating Insurance Companies are not expected to play any role in the management or administration of the Funds. Those individuals who participate in the management or administration of the Existing Funds and, it is expected, of any Future Fund, will remain the same regardless of which separate accounts, insurance companies or Qualified Plans use such Funds. Applying the monitoring requirements of section 9(a) because of investment by separate accounts of other insurers would be unjustified and would not serve any regulatory purpose. Furthermore, the increased monitoring costs would reduce the net rates of return realized by contract owners. With respect to Qualified Plans, they, unlike separate accounts, are not themselves investment companies and therefore are not subject to section 9(a) of the Act. Furthermore, it is not anticipated that a Qualified Plan would be an affiliated person of a Fund except by virtue of its holding 5% or more of a Fund's shares. Finally, the relief requested should not be affected by the sale of shares of the Funds to Other Investors or to General Accounts. The eligibility restrictions of section 9(a) will still apply to any officers, directors or employees of Other Investors or Participating Insurance

Companies who participate directly in the management or administration of the Funds.

15. Rules 6e–2(b)(15)(iii) and 6e–3(T)(b)(15)(iii) assume the existence of a pass-through voting requirement with respect to management investment company shares held by a registered separate account. Pass-through voting privileges will be provided by Participating Insurance Companies with respect to all variable contract owners so long as the Commission interprets the Act to require pass-through voting privileges for variable contract owners.

16. Rules 6e–2(b)(15)(iii) and 6e–3(T)(b)(15)(iii) provide exemptions from the pass-through voting requirement with respect to several significant matters, assuming the limitations discussed above on mixed and shared funding are observed. Rules 6e–2(b)(15)(iii)(A) and 6e–3(T)(b)(15)(iii)(A) provide that the insurance company may disregard the voting instructions of its contract owners with respect to the investments of an underlying fund, or any contract between a fund and its investment adviser, when required to do so by an insurance regulatory authority (subject to the provisions of paragraphs (b)(5)(i) and (b)(7)(ii)(A) of Rules 6e–2 and 6e–3(T)). Rules 6e–2(b)(15)(iii)(B) and 6e–3(T)(b)(15)(iii)(A)(2) provide that, with respect to registered management investment companies whose shares are held by a registered separate account of an insurance company, the insurance company may disregard voting instructions of contract owners if the contract owners initiate any change in such investment company's investment policies, principal underwriter, or any investment adviser (provided that disregarding such voting instructions is reasonable and subject to the other provisions of paragraphs (b)(5)(ii), (b)(7)(ii)(B), and (b)(7)(ii)(C) of the Rules).

17. Rules 6e–2 and 6e–3(T) recognize that a variable life insurance contract, as an insurance contract, has important elements unique to insurance contracts and is subject to extensive state regulation of insurance. In adopting Rule 6e–2(b)(15)(iii), the Commission expressly recognized that state insurance regulators have authority, pursuant to state insurance laws or regulations, to disapprove or require changes in investment policies, investment advisers, or principal underwriters. The Commission also expressly has recognized that state insurance regulators have authority to require an insurer to draw from its general account to cover costs imposed upon the insurer by a change approved by contract owners over the insurer's objection. The Commission, therefore, deemed such exemptions necessary "to assure the solvency of the life insurer and performance of its contractual obligations by enabling an insurance regulatory authority or the life insurer to act when certain proposals reasonably could be expected to increase the risks undertaken by the life insurer." In this respect, flexible premium variable life insurance contracts are identical to scheduled premium variable life insurance contracts. Therefore, the corresponding provisions of Rule 6e–3(T) (which apply to flexible premium insurance contracts and which permit mixed funding) undoubtedly were adopted in recognition of the same considerations.

18. Applicants state that, in addition, sales of shares of the Funds to Qualified Plans, Other Investors and General Accounts will not have any impact on the relief requested with respect to pass-through voting. Qualified Plans are not registered as investment companies under the Act, and there is no requirement to pass through voting rights to plan participants. For those Qualified Plans covered by ERISA, applicable law expressly reserves voting rights associated with the assets of most Plans to certain specified persons. Under section 403(a) of ERISA, shares of a fund sold to a Qualified Plan covered by ERISA must be held by the trustees of the Plan. Section 403(a) also provides that the trustees must have exclusive authority and discretion to manage and control the Plan with two exceptions: (1) When the Plan expressly provides that the trustees are subject to the direction of a named fiduciary who is not a trustee, in which case the trustees are subject to proper directions made in accordance with the terms of the plan and not contrary to ERISA; and (2) when the authority to manage, acquire, or dispose of assets of the plan is delegated to one or more investment managers pursuant to section 402(c)(3) of ERISA. Unless one of the two exceptions stated in section 403(a) applies, Qualified Plan trustees have the exclusive authority and responsibility for voting proxies.

19. When a named fiduciary appoints an investment manager, the investment manager has the responsibility to vote the shares held by the Plan unless the right to vote such shares is reserved to the trustees or the named fiduciary. The Qualified Plans may have their trustees or other fiduciaries exercise voting rights attributable to investment securities held by the Plans in their discretion. Some ERISA-covered Qualified Plans, however, may provide for the trustees, an investment adviser or another named fiduciary to exercise voting rights in accordance with instructions from participants. For Qualified Plans that are not covered by ERISA, voting rights attributable to investment securities held by the Plans are exercised in accordance with the terms of governing plan documents. Such voting rights may be exercised, as under ERISA-covered Qualified Plans, by plan trustees in their discretion or pursuant to instructions from participants, or, in the case of custodial accounts or IRAs, by individual participants or plan owners.

20. When a Qualified Plan does not provide participants with the right to give voting instructions, Applicants do not see any potential for material irreconcilable conflicts of interest between or among variable contract owners and plan investors with respect to voting a Fund's shares. Accordingly, unlike the case with insurance company separate accounts, the issue of the resolution of material irreconcilable conflicts of interest with respect to voting is not present with respect to such Qualified Plans since the Qualified Plans are not entitled to pass-through voting privileges.

21. Even if a Qualified Plan were to hold a controlling interest in a Fund, Applicants do not believe that such control would disadvantage other investors in the Fund to any greater extent than is the case when any institutional shareholder holds a majority of the voting securities of any open-end management investment company. In this regard, Applicants submit that investment in a Fund by a Qualified Plan will not create any of the voting complications occasioned by mixed and shared funding. Unlike mixed and shared funding, plan investor voting rights cannot be frustrated by veto rights of insurers or state regulators.

22. When a Qualified Plan does afford plan participants rights to give voting instructions, Applicants see no reason to believe that such participants generally or those in a particular Qualified Plan, either as a single group or in combination with participants in other Plans, would vote in a manner that would disadvantage variable contract holders.

23. Other Investors and General Accounts similarly are not subject to any pass-through voting requirements. Accordingly, unlike the case with insurance company separate accounts, the issue of the resolution of any material irreconcilable conflicts with respect to voting is not present with respect to Other Investors and General Accounts.

24. The prohibitions on mixed and shared funding might reflect concern regarding possible different investment motivations among investors. When Rule 6e–2 was adopted, variable annuity separate accounts could invest in mutual funds whose shares also were offered to the general public. At the time of the adoption of Rule 6e–2, therefore, the Commission staff contemplated underlying funds with public shareholders as well as variable life insurance separate account shareholders. The Commission staff may have been concerned with the potentially different investment motivations of public shareholders and variable life insurance contract owners. There also may have been some concern with respect to the problems of permitting a state insurance regulatory authority to affect the operations of a publicly-available mutual fund and to affect the investment decisions of public shareholders.

25. For reasons unrelated to the Act, however, Internal Revenue Service Revenue Ruling 81–225 (September 25, 1981) effectively deprived most variable annuities funded by publicly-available mutual funds of their tax-benefited status. The Tax Reform Act of 1984 codified the prohibition against the use of publicly-available mutual funds as investment media for variable contracts (including variable life contracts). Section 817(h) of the Code, in effect, requires that the investments made by variable annuity and variable life insurance separate accounts be "adequately diversified." If a separate account is organized as a unit investment trust that invests in a single fund or series, then the separate account will not be diversified. In this situation, however, section 817(h) of the Code, in effect, provides that the diversification test will be applied at the underlying fund level, rather than at the separate account level, but only if "all of the beneficial interests" in the underlying fund "are held by one or more insurance companies (or affiliated companies) in their general account or in segregated asset accounts." Accordingly, a unit investment trust separate account that invests solely in a publicly-available mutual fund will not be adequately diversified. In addition, any underlying mutual fund, including any fund that sells shares to separate accounts, in effect, would be precluded from selling its shares to the public. Consequently, there will be no public shareholders of the Funds.

26. Applicants state that shared funding by unaffiliated insurance companies does not present any issues that do not already exist when a single insurance company is licensed to do business in several or all states. When insurers are domiciled in different states, it is possible that the particular state insurance regulatory body in a state in which one insurance company is domiciled could require action that is inconsistent with the requirements of insurance regulators in other states in which other insurance companies are domiciled. The fact that a single insurer and its affiliates offer their insurance products in different states does not create a significantly different or enlarged problem.

27. Applicants further state that shared funding by unaffiliated insurers is, in this respect, no different than the use of the same investment company as the funding vehicle for affiliated insurers, which Rules 6e–2(b)(15) and 6e–3(T)(b)(15) permit under various circumstances. Affiliated insurers may be domiciled in different states and be subject to differing state law requirements. Affiliation does not reduce the potential, if any exists, for differences in state regulatory requirements. In any event, the conditions set forth below are designed to safeguard against, and provide procedures for resolving, any adverse effects that differences among state regulatory requirements may produce. For example, if a particular state insurance regulator's decision conflicts with the majority of other state regulators, the affected insurer(s) will be required to withdraw their separate accounts' investment from the relevant Fund.

28. Applicants submit that the rights of an insurance company under Rules 6e–2(b)(15) and 6e–3(T)(b)(15) to disregard the voting instructions of contract owners do not raise any issues different from those raised by the authority of state insurance regulators over separate accounts. Under Rules 6e–2(b)(15) and 6e–3(T)(b)(15), an insurer may disregard the voting instructions of the contract owners only with respect to certain specified items. Affiliation does not eliminate the potential, if any exists, for divergent judgments as to the advisability or legality of a change in investment policies, principal underwriter or investment adviser initiated by contract owners. The potential for disagreement is limited by the requirements in Rules 6e–2 and 6e–3(T) that the insurance company's disregard of voting instructions be reasonable and based on specific good-faith determinations.

29. A particular insurer's disregard of voting instructions, nevertheless, could conflict with the majority of contract owner voting instructions. The insurer's action possibly could be different than the determination of all or some of the other insurers (including affiliated insurers) that the voting instructions of contract-owners should prevail, and could either preclude a majority vote approving the change or represent a minority view. If the insurer's judgment represents a minority position or would preclude a majority vote, then the insurer may be required, at the affected Fund's election, to withdraw its separate account's investment from the Fund, and no charge or penalty would be imposed as a result of such withdrawal.

30. Applicants state that there is no reason why the investment policies of the Funds would or should be materially different from what these policies would or should be if the Funds funded only variable annuity contracts or variable life insurance policies, whether flexible or scheduled premium policies. Each type of insurance product is designed as a long-term investment program. The Funds will not be managed to favor or disfavor any particular Participating Insurance Company or type of variable contract. There is no reason to believe that different features of various types of contracts, including the "minimum death benefit" guarantee under certain variable life insurance and variable annuity contracts, will lead to different investment policies for different types of variable contracts. To the extent that the degree of risk may differ as between variable annuity contracts and variable life insurance policies, the differing insurance charges imposed, in effect, adjust any such differences and equalize the insurer's exposure in either case. No one investment strategy can be identified as appropriate to a particular insurance product. Each pool of variable annuity and variable life insurance contract owners is composed of individuals of diverse financial status, age, insurance, and investment goals. A fund supporting even one type of insurance product must accommodate these diverse factors in order to attract and retain purchasers. Permitting mixed and shared funding will provide economic justification for the continuation of the Existing Funds and will facilitate the establishment of Future Funds serving diverse goals.

31. Applicants do not believe that the proposed sale of shares of the Funds to Qualified Plans, Other Investors and General Accounts will increase the potential for material irreconcilable conflicts of interest between or among different types of investors. In considering the appropriateness of the requested relief, Applicants have

analyzed a number of issues as discussed below to assure themselves that there are either no conflicts of interest or that there will exist the ability of affected parties to resolve the issues without harm to the contract owners in the separate accounts, the participants under the Qualified Plans, the Other Investors or the General Accounts.

32. Applicants considered whether any issues are raised under the Code or the Treasury Regulations or Revenue Rulings thereunder if Qualified Plans, Other Investors, General Accounts, variable annuity separate accounts and variable life insurance separate accounts all invest in the same underlying Fund. As discussed above, section 817(h) of the Code imposes certain diversification standards on the underlying assets of variable annuity contracts and variable life insurance contracts held in an underlying mutual fund. The Code provides that a variable contract shall not be treated as an annuity contract or life insurance, as applicable, for any period (and any subsequent period) for which the investments are not, in accordance with regulations prescribed by the Treasury Department, adequately diversified.

33. Treasury Department Regulations issued under section 817(h) provide that, in order to meet the statutory diversification requirements, all of the beneficial interests in the investment company must be held by the segregated asset accounts of one or more insurance companies. However, the Regulations contain certain exceptions to this requirement, one of which permits shares in an underlying mutual fund to be held by the trustees of a qualified pension or retirement plan without adversely affecting the ability of shares in the underlying fund also to be held by separate accounts of insurance companies in connection with their variable contracts. (Treas. Reg. 1.817–5(f)(3)(iii)). A second such exception permits the investment manager and related companies also to invest in the underlying fund. (Treas. Reg. 1.817–5(f)(3)(ii)). A third such exception permits the general accounts of insurance companies, and related companies, also to invest in the underlying fund. (Treas. Reg. 1.817–5(f)(3)(i)). Thus, Treasury Regulations specifically permit qualified pension and retirement plans, investment managers and certain affiliates, insurance companies and certain affiliates and separate accounts to invest in the same underlying fund. For this reason, Applicants have concluded that neither the Code nor the Treasury Regulations or Revenue Rulings thereunder present any inherent conflicts of interest if Qualified Plans, Other Investors, General Accounts, variable annuity separate accounts and variable life insurance separate accounts all invest in the same management investment company.

34. Applicants note that, while there are differences in the manner in which distributions are taxed for variable annuity contracts, variable life insurance contracts and Qualified Plans, the tax consequences of distributions from variable contracts and Qualified Plans do not raise any conflicts of interest with respect to the use of the Funds. When distributions are to be made, and the separate account or the Qualified Plan cannot net purchase payments to make the distributions, the separate account or the Qualified Plan will redeem shares of the affected Funds at their respective net asset values. The Qualified Plan then will make distributions in accordance with the terms of the Qualified Plan. The life insurance company will surrender values from the separate account in order to make distributions in accordance with the terms of the variable contract.

35. Moreover, there is analogous precedent for a situation in which the same funding vehicle was used for contract owners subject to different tax rules, without any apparent conflicts. Prior to the Tax Reform Act of 1984, a number of insurance companies offered variable annuity contracts on both a qualified and non-qualified basis through the same separate account. Underlying reserves of both qualified and non-qualified contracts therefore were commingled in the same separate accounts. A long-term capital gains tax was incurred in such separate accounts with respect to the reserves underlying non-qualified contracts but not with respect to the reserves underlying qualified contracts. A tax reserve at the estimated tax rate was established in the separate accounts affecting only the non-qualified reserves. To the best of Applicants' knowledge, this practice was never found to have violated any fiduciary standards. Accordingly, Applicants have concluded that the tax consequences of distributions with respect to separate accounts and Qualified Plans do not raise any material irreconcilable conflicts of interest with respect to the use of a Fund.

36. Applicants considered whether, and believe that, it is possible to provide an equitable means of giving voting rights to separate account contract owners, Qualified Plans, Other Investors and General Accounts. In connection with any meetings of shareholders, each Fund or its transfer agent will inform each shareholder, including each Participating Insurance Company (with respect to each of its separate accounts and its general account), Qualified Plan, Other Investor and General Account of its share ownership in the Fund. Each Participating Insurance Company will then solicit voting instructions in accordance with Rules 6e–2 and 6e–3(T), as applicable. So long as the Commission interprets the Act as requiring Participating Insurance Companies to pass-through voting privileges to variable contract owners whose contracts are funded through registered separate accounts, each Participating Insurance Company will vote shares of a Fund held in its separate accounts in a manner consistent with voting instructions timely-received from contract owners and will vote shares of the Fund held in its separate accounts for which no voting instructions from contract owners are timely-received, as well as shares of the Fund which the Participating Insurance Company itself owns, in the same proportion as those shares of the Fund for which voting instructions from contract owners are timely-received. MSS and its affiliates will vote their shares of a Fund in the same proportion as all variable contract owners having voting rights with respect to the relevant Fund or in such manner as may be required by the Commission or its staff. Shares held by Qualified Plans will be voted in accordance with applicable law. The voting rights that are provided to Qualified Plans with respect to Fund shares would be no different from the voting rights that are provided to Qualified Plans with respect to shares of publicly-available funds.

37. Applicants considered whether a "senior security," as such term is defined under section 18(g) of the Act, is created with respect to any variable contract owner as opposed to a plan participant under a Qualified Plan, an Other Investor or a General Account. Applicants concluded that the ability of the Funds to sell their shares directly to Qualified Plans, Other Investors and General Accounts does not create a senior security. A "senior security" is defined under section 18(g) of the Act to include "any stock of a class having priority over any other class as to distribution of assets or payment of dividends." Applicants submit that, regardless of the rights and benefits of participants under Qualified Plans or contract owners under variable contracts, the Qualified Plans, separate accounts, Other Investors and General Accounts have rights only with respect to their respective shares of the Fund. They only can redeem such shares at net asset value. No shareholder of a Fund has any preference over any other shareholder with respect to distribution of assets or payment of dividends.

38. Applicants considered whether there are any conflicts between the contract owners of separate accounts and the participants under Qualified Plans, the Other Investors or the General Accounts with respect to the state insurance commissioners' veto powers (direct with respect to variable life and indirect with respect to variable annuities) over investment objectives. The basic premise of shareholder voting is that not all shareholders agree with a particular proposal. This does not mean that there are any inherent conflicts of interest between shareholders. The state insurance commissioners have been given the veto power in recognition of the fact that insurance companies cannot simply redeem their separate accounts out of one fund and invest in another. Time-consuming, complex transactions must be undertaken to accomplish such redemptions and transfers. On the other hand, the trustees of Qualified Plans can quickly make the decision to redeem and then implement the redemption of their plans' shares from the Funds and reinvest in another funding vehicle without the same regulatory impediments, or, as is the case with most Qualified Plans, even hold cash pending suitable investment. Based on the foregoing, Applicants have concluded that, even if there should arise issues where the interests of contract owners and Qualified Plans are in conflict, these issues can be resolved almost immediately in that the trustees of the Qualified Plans can, on their own, redeem shares out of the Funds. Other Investors and General Accounts can similarly redeem their shares out of the Funds and make alternative investments at any time.

39. Finally, Applicants considered whether there is a potential for future conflicts of interest between Participating Separate Accounts and Qualified Plans created by future changes in the tax laws. Applicants do not see any greater potential for material irreconcilable conflicts arising between the interests of participants under Qualified Plans and contract owners of Participating Separate Accounts from possible future changes in the federal tax laws than that which already exists between variable annuity contract owners and variable life insurance contract owners.

40. Applicants submit that permitting the sales of a Fund's shares to Other Investors and General Accounts in compliance with the Treasury Regulations will enhance Fund management without raising significant concerns regarding material irreconcilable conflicts. Section 14(a) of the Act generally requires that an investment company have a net worth of $100,000 upon making a public offering of its shares. Initial capital may also be necessary in connection with the creation of new series of shares and the voting of initial shares of such series on matters requiring shareholder approval. Potential sources of initial capital for a Fund are Other Investors or General Accounts. Any of these entities may have an interest in making the capital expenditure and in participating with the Fund in its organization. However, the provision of seed capital or the purchase of Fund shares by Other Investors or General Accounts may be deemed to violate the exclusivity requirements of Rule 6e–2(b)(15) or Rule 6e–3(T)(b)(1) under the Act.

41. Applicants anticipate that such investment in a Fund by Other Investors or General Accounts will be made in compliance with the Treasury Regulations. Given the conditions of Treas. Reg. 1.817–5(f)(3) and the harmony of interest between a Fund, on the one hand, and Other Investors and General Accounts, on the other, Applicants submit that little incentive for overreaching exists. Furthermore, such investment should not implicate the concerns discussed above regarding the creation of material irreconcilable conflicts. Rather, permitting investment by Other Investors or General Accounts will permit the orderly and efficient creation and operation of Funds.

42. Applicants state that various factors have limited the number of insurance companies that offer variable annuity and variable life insurance contracts. These factors include the costs of organizing and operating a funding medium, the lack of expertise with respect to investment management (principally with respect to stock and money market investments), and the lack of name recognition by the public of certain insurers as investment experts with whom members of the public feel comfortable entrusting their investment dollars. For example, some smaller life insurance companies may not find it economically feasible, or within their investment or administrative expertise, to enter the variable contract business on their own.

43. Applicants believe that the use of the Funds as common investment media for variable contracts, as well as for Qualified Plans, would reduce or eliminate these concerns. Mixed and shared funding, including extended mixed and shared funding, also should provide several benefits to variable contract owners by eliminating a significant portion of the costs of establishing and administering separate funds. Participating Insurance Companies and Qualified Plans will benefit not only from the investment and administrative expertise of the Funds' investment advisers and subadvisers, but also from the cost efficiencies and investment flexibility afforded by a large pool of funds. Therefore, making the Funds available for mixed and shared funding will encourage more insurance companies to offer variable contracts, and this should result in increased competition with respect to both variable contract design and pricing, which can be expected to result in more product variation and lower charges. Mixed and shared funding, and extended mixed and shared funding, also will result in a greater amount of assets available for investment by the Funds, thereby benefiting contract owners through greater diversification and by making the addition of Future Funds more feasible.

44. Applicants submit that, regardless of the type of shareholder in any of the Funds, the investment advisers and subadvisers are or will be contractually obligated to manage each Fund solely and exclusively in accordance with that Fund's investment objectives and restrictions as well as with any guidelines established by the Board of Trustees of MIT, or by the board of directors or trustees of any Future Fund that is not a series of MIT, as the case may be (each such board, together with the Board of Trustees of MIT, a "Board"). With respect to each Fund, the investment advisers and subadvisers work with a pool of money and do not take into account the identity of the shareholders. Thus, the Existing Funds are, and any Future Fund will be, managed in the same manner as any other mutual fund.

45. Applicants see no significant legal impediment to permitting mixed and shared funding and extended mixed and shared funding. Separate accounts organized as unit investment trusts historically have been employed to accumulate shares of mutual funds which have not been affiliated with the depositor or sponsor of the separate account, and Applicants believe, as indicated above, that mixed and shared funding and extended mixed and shared funding will have no adverse federal income tax consequences.

46. Applicants note that the Commission has issued numerous orders permitting mixed and shared funding and extended mixed and shared funding as well as permitting sales of fund shares in such context to investment advisers, the general accounts of insurance companies and their affiliates. Applicants' proposal for mixed and shared funding and extended mixed and shared funding as well as sales of fund shares in such context to Other Investors and General Accounts complies in all material respects with the same conditions consented to by the applicants for such orders. Therefore, granting the exemptions requested herein is in the public interest and, as discussed above, will not compromise the regulatory purposes of sections 9(a), 13(a), 15(a), or 15(b) of the Act or Rules 6e–2 or 6e–3(T) thereunder.

Applicants' Conditions

Applicants consent to the following conditions if the Commission considers them appropriate in granting the order requested herein:

1. A majority of the Board of each Fund will consist of persons ("directors") who are not "interested persons" of that Fund (the "Disinterested Directors"), as defined by section 2(a)(19) of the Act, and the rules thereunder, as modified by any applicable orders of the Commission, except that if this condition is not met by reason of the death, disqualification, or bona-fide resignation of any director, then the operation of this condition will be suspended: (a) For a period of 90 days if the vacancy or vacancies may be filled by the directors; (b) for a period of 150 days if a vote of shareholders is required to fill the vacancy or vacancies; or (c) for such longer period as the Commission may prescribe by order upon application or by future rule.

2. Each Board will monitor each of its Funds for the existence of any material irreconcilable conflict between and among the interests of the contract owners of all separate accounts, the participants under the Qualified Plans, the Other Investors and the General Accounts investing in each such Fund and determine what action, if any, should be taken in response to such conflict. A material irreconcilable conflict may arise for a variety of reasons, including: (a) An action by any state insurance regulatory authority; (b) a change in applicable federal or state insurance, tax, or securities laws or regulations, or a public ruling, private letter ruling, no-action or interpretative letter, or any similar action by insurance, tax, or securities regulatory authorities; (c) an administrative or judicial decision in any relevant proceeding; (d) the manner in which the investments of the Fund are being managed; (e) a difference in voting instructions given by variable annuity contract owners, variable life insurance contract owners and trustees of Qualified Plans; (f) a decision by a Participating Insurance Company to disregard the voting instructions of contract owners; or (g) if applicable, a decision by a Qualified Plan to disregard the voting instructions of its participants.

3. In the event that a Qualified Plan ever should become an owner of 10 percent or more of the assets of a Fund, such Qualified Plan will execute a fund participation agreement with that Fund which will include agreement to comply with the conditions set forth herein, to the extent applicable. A Qualified Plan will execute an application with each Fund that contains an acknowledgment of this condition at the time of the Qualified Plan's initial purchase of shares of such Fund.

4. Any Participating Insurance Company (on behalf of itself, its separate accounts, and any of its affiliates investing in a Fund), any Qualified Plan that executes a fund participation agreement upon becoming an owner of 10% or more of the assets of a Fund, and any investment adviser or subadviser to a Fund which is an Other Investor (each on behalf of itself and any of its affiliates (other than a Participating Insurance Company) investing in the Fund) (collectively, the "Participants") will report any potential or existing conflicts to the Board of the relevant Fund. The Participants will be responsible for assisting the Board in carrying out its responsibilities under these conditions by providing the Board with all information reasonably necessary for the Board to consider any issues raised. This includes, but is not limited to, an obligation by each Participating Insurance Company to inform the Board whenever contract owner voting instructions are disregarded, and, if pass-through voting is applicable, an obligation by each Qualified Plan to inform the Board whenever it has determined to disregard plan participant voting instructions. The responsibility to report such information and conflicts to and to assist the Board will be a contractual obligation of all Participating Insurance Companies and Qualified Plans investing in a Fund under their agreements governing participation in the Funds, and these agreements will provide that these responsibilities will be carried out with a view only to the interests of the contract owners and plan participants, as applicable.

5. If it is determined by a majority of the Board of a Fund, or a majority of its Disinterested Directors, that a material irreconcilable conflict exists with respect to that Fund, then the relevant Participant, at its own expense and to the extent reasonably practicable (as determined by a majority of the Disinterested Directors), will take whatever steps are necessary to remedy or eliminate the material irreconcilable conflict, including: (a) In the case of a Participating Insurance Company, withdrawing the assets allocable to some or all of its separate accounts from the Fund and reinvesting such assets in a different investment medium, including another Fund, or submitting the question as to whether such segregation should be implemented to a vote of all affected contract owners and, as appropriate, segregating the assets of any appropriate group (*i.e.*, variable annuity contract owners or variable life insurance contract owners of the Participating Insurance Company) that votes in favor of such segregation, or offering to the affected contract owners the option of making such a change; (b) in the case of a Qualified Plan, withdrawing the assets allocable to the Plan from the Fund and reinvesting such assets in a different investment medium, including another Fund; and (c) establishing a new registered management investment company or managed separate account. If a material irreconcilable conflict arises because of a decision by a Participating Insurance Company to disregard contract owner voting instructions, or, if applicable, a decision by a trustee of a Qualified Plan to disregard plan participant voting instructions, and that decision represents a minority position or would preclude a majority vote, then the Participating Insurance Company or Qualified Plan may be required, at the Fund's election, to withdraw its investment in the Fund, and no charge or penalty will be imposed as a result of such withdrawal. To the extent permitted by applicable law, the responsibility to take remedial action in the event of a Board determination of a material irreconcilable conflict and to bear the cost of such remedial action will be a contractual obligation of all Participating Insurance Companies and Qualified Plans under their agreements governing participation in the Funds, and such agreements will provide that these responsibilities will be carried out with a view only to the interests of contract owners and plan participants, as applicable.

For purposes of this Condition 5, a majority of the Disinterested Directors will determine whether or not any proposed action adequately remedies any material irreconcilable conflict, but, in no event will MIT, any Fund or MSS (or any other investment adviser to a Fund), as relevant, be required to establish a new funding medium for any variable contract. No Participating Insurance Company will be required by this Condition 5 to establish a new funding medium for any variable contract if an offer to do so has been declined by the vote of a majority of the contract owners materially and adversely affected by the material irreconcilable conflict. Further, no Qualified Plan will be required by this Condition 5 to establish a new funding medium for the Plan if: (a) A majority of its participants materially and adversely affected by the irreconcilable material conflict vote to decline an offer to do so, or (b) pursuant to applicable law and governing plan documents, the Qualified Plan makes such decision without a vote of plan participants.

6. A Board's determination of the existence of a material irreconcilable conflict and its implications will be made known in writing promptly to all Participants.

7. Participating Insurance Companies will provide pass-through voting privileges to all variable contract owners whose contracts are funded through registered separate accounts so long as the Commission continues to interpret the Act as requiring such pass-through voting privileges. Accordingly, each Participating Insurance Company, where applicable, will vote shares of a Fund held in its separate accounts in a manner consistent with voting instructions timely-received from contract owners. Each Participating Insurance Company will vote shares of a Fund held in its separate accounts for which no voting instructions from contract owners are timely-received, as well as shares of a Fund which the Participating Insurance Company itself owns, in the same proportion as those shares of the Fund for which voting instructions from contract owners are timely-received. Each Participating Insurance Company will be responsible for assuring that each of its separate accounts investing in a Fund calculates voting privileges in a manner consistent with other Participating Insurance Companies investing in that Fund. The obligation to calculate voting privileges in a manner consistent with all other separate accounts investing in a Fund will be a contractual obligation of all Participating Insurance Companies under their agreements governing participation in that Fund. Trustees of Qualified Plans will vote shares held by Qualified Plans in accordance with applicable law and governing plan documents.

8. As long as the Commission continues to interpret the Act as requiring pass-through voting privileges to be provided to variable contract owners, MSS and any of its affiliates will vote their shares of any Fund in the same proportion as all variable contract owners having voting rights with respect to the relevant Fund or in such other manner as may be required by the Commission or its staff.

9. Each Fund will comply with all provisions of the Act requiring voting by shareholders (which for these purposes, will be the persons having a voting interest in shares of the relevant Fund), and, in particular, each Fund will either provide for annual meetings (except to the extent that the Commission may interpret section 16 of the Act not to require such meetings) or comply with section 16(c) of the Act (although Existing Funds are not, and Future Funds will not be, the type of trust described in the section 16(c) of the Act), as well as with section 16(a) of the Act and, if and when applicable, section 16(b) of the Act. Further, each Fund will act in accordance with the Commission's interpretation of the requirements of section 16(a) with respect to periodic elections of directors and with whatever rules the Commission may promulgate with respect thereto.

10. Each Fund will notify all Participating Insurance Companies and all Qualified Plans investing in the Fund that disclosure in separate account prospectuses or any Qualified Plan prospectuses or other Plan disclosure documents regarding potential risks of mixed and shared funding may be appropriate. Each Fund will disclose in its prospectus that: (a) Shares of the Fund may be offered to insurance company separate accounts for both variable annuity and variable life insurance contracts and to Qualified Plans; (b) due to differences in tax treatments and other considerations, the interests of various contract owners participating in the Fund and the interests of Qualified Plans investing in the Fund may conflict; and (c) the Fund's Board will monitor events in order to identify the existence of any material irreconcilable conflicts and determine what action, if any, should be taken in response to any such conflict.

11. If, and to the extent that, Rule 6e–2 and Rule 6e–3(T) under the Act are amended, or proposed Rule 6e–3 under the Act is adopted, to provide exemptive relief from any provision of the Act, or the rules promulgated thereunder, with respect to mixed or shared funding, on terms and conditions materially different from any exemptions granted in the order requested in this Application, then the Funds and/or the Participating Insurance Companies, as appropriate, will take such steps as may be necessary to comply with Rules 6e–2 or 6e–3(T) as amended, or Rule 6e–3 as adopted, as such rules are applicable.

12. The Participants, at least annually, will submit to the Board of each relevant Fund such reports, materials, or data as such Board reasonably may request so that the Board may fully carry out the obligations imposed upon it by the conditions contained in this Application, and said reports, materials, and data shall be submitted more frequently if deemed appropriate by the Board. The obligations of the Participating Insurance Companies and Qualified Plans to provide these reports, materials, and data to the Board will be a contractual obligation under their agreements governing participation in the Funds.

13. All reports of potential or existing conflicts received by the Board of a Fund, and all action by the Board with regard to determining the existence of a conflict, notifying Participants of a conflict, and determining whether any proposed action adequately remedies a conflict; will be properly recorded in the minutes or other appropriate records of the Board, and such minutes or other records shall be made available to the Commission upon request.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 03–11412 Filed 5–7–03; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

Sunshine Act Meeting Notice

FEDERAL REGISTER CITATION OF PREVIOUS ANNOUNCEMENT: 68 FR 23332, May 1, 2003.

STATUS: Closed meeting.

PLACE: 450 Fifth Street, NW., Washington, DC.

DATE AND TIME OF PREVIOUSLY ANNOUNCED MEETING: Tuesday, May 6, 2003, at 10 a.m.

CHANGE IN THE MEETING: Cancellation of meeting.

The Closed Meeting scheduled for Tuesday, May 6, 2003, has been cancelled.

At times, changes in Commission priorities require alterations in the scheduling of meeting items. For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact the Office of the Secretary at (202) 942–7070.

Dated: May 5, 2003.

Jonathan G. Katz,

Secretary.

[FR Doc. 03–11567 Filed 5–6–03; 11:51 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–47774; File No. SR–Amex–2003–32]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the American Stock Exchange LLC To Increase the Maximum Size of Equity Orders That May Be Sent Through the Exchange's Order Entry System

April 30, 2003.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act" or "Exchange Act"),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on April 23, 2003, the American Stock Exchange LLC ("Amex" or "Exchange") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to increase the maximum size of equity orders that may be sent through the Exchange's order entry system.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

Currently, the maximum size of equity orders that may be sent through the Exchange's order entry system is 30,099 shares, and the maximum size of Exchange Traded Fund and Trust Issued Receipts orders is 99,999 shares and 99,900 shares, respectively. The Exchange now proposes to increase the maximum size of equity orders that may be sent through its order entry system to 99,900 shares. The Exchange believes that the proposed increase in the size of system eligible equity orders will benefit investors by giving them an additional method for sending orders to the Amex.

2. Statutory Basis

The increase in the maximum size of equity orders that may be sent through the Exchange's order entry system is consistent with section 6(b)[3] of the Act in general and furthers the objectives of section 6(b)(5)[4] in particular in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest; and is not designed to permit unfair discrimination between customers, issuers, brokers and dealers.

B. Self-Regulatory Organization's Statement on Burden on Competition

The increase in the maximum size of equity orders that may use the Exchange's order entry system will impose no burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

No written comments were solicited or received with respect to the proposed increase in the maximum size of equity orders that may use the Exchange's order entry system.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to section 19(b)(3)(A) of the Act[5] and subparagraph (f)(5) of Rule 19b–4[6] thereunder because it effects a change in an existing order entry or trading system that (i) does not significantly affect the protection of investors or the public interest; (ii) does not impose any significant burden on competition; and (iii) does not have the effect of limiting access to or availability of the system. At any time within 60 days of the filing of such proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the Exchange. All submissions should refer to File No. SR-Amex-2003–32 and should be submitted by May 29, 2003.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[7]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 03–11413 Filed 5–7–03; 8:45 am]

BILLING CODE 8010–01–P

[1] 15 U.S.C. 78s(b)(1).
[2] 17 CFR 240.19b–4.
[3] 15 U.S.C. 78f.
[4] 15 U.S.C. 78f(b)(5).
[5] 15 U.S.C. 78s(b)(3)(A).
[6] 17 CFR 240.19b–4(f)(5).
[7] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–47779; File No. SR–Amex–2003–23]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the American Stock Exchange LLC Relating to Allocation and Performance Evaluation Procedures for Securities Admitted to Dealings on an Unlisted Trading Privileges Basis

May 1, 2003.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b-4 thereunder,[2] notice is hereby given that on April 2, 2003, the American Stock Exchange LLC ("Amex" or "Exchange") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Amex. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to extend for six-months its pilot specialist allocation and performance evaluation rules for securities admitted to dealings on an unlisted trading privileges ("UTP") basis to permit these rules to remain in effect while the Commission considers permanent approval. The texts of the pilot rules are available at the Office of the Secretary, the principal office of the Amex, and at the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Amex included statements concerning the purpose of, and the basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Amex has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to extend its specialist allocation and performance evaluation rules for securities admitted to dealings on a UTP basis to permit the Commission to consider the permanent approval of these rules. The Commission approved on a pilot basis, through two independent approval orders, the Exchange's specialist allocation and performance evaluation procedures with respect to securities admitted to trading pursuant to UTP ("Pilots").[3] Amex Rule 28, "Allocation of Securities Admitted to Dealings on an Unlisted Trading Privileges ("UTP") Basis," details the Exchange's specialist allocation rules for UTP trading and Amex Rule 29, "Market Quality Committee" details the Exchange's specialist performance evaluation rules for UTP trading. The proposed rule change does not alter the operation of either of the Pilots in any way.[4] This filing extends the effective dates of both Amex Rule 28 and Amex Rule 29 until October 5, 2003.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with section 6(b) of the Act,[5] in general, and the provisions of section 6(b)(5) of the Act,[6] in particular, which requires, among other things, that the rules of an exchange be designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. The Exchange also believes that the continued trading of securities on a UTP basis will provide investors with increased flexibility in satisfying their investment needs by providing additional choice and increased competition in markets to effect transactions in the securities subject to unlisted trading.

B. Self-Regulatory Organization's Statement on Burden on Competition

The proposed rule change will impose no burden on competition. The proposed rule change, in fact, will tend to enhance competition by providing investors with additional choice and increased competition in markets to effect transactions in securities.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to section 19(b)(3)(A) of the Act[7] and Rule 19b–4(f)(6)[8] thereunder because the proposal: (1) Does not significantly affect the protection of investors or the public interest; (2) does not impose any significant burden on competition; and (3) does not become operative for 30 days from the date of filing, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest; provided that the Exchange has given the Commission notice of its intent to file the proposed rule change at least five business days prior to the filing date of the proposed rule change or the Commission waives such prior notice. At any time within 60 days of the filing of such proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate, in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.[9]

The Amex has requested that the Commission waive the five-day pre-filing notice and the 30-day operative delay. The Commission believes waiving the five-day pre-filing notice and the 30-day operative delay is consistent with the protection of investors and the public interest. Waiving the pre-filing notice and accelerating the operative date will permit the continuous operation of Amex's specialist allocation and performance evaluation rules with respect to the trading of securities pursuant to UTP. Moreover, during the

[1] 15 U.S.C. 78s(b)(1).
[2] 17 CFR 240.19b–4.
[3] For a description of the Pilots, *see* Securities Exchange Act Release Nos. 45698 (April 5, 2002), 67 FR 18051 (April 12, 2002), and 46750 (October 30, 2002), 67 FR 67880 (November 7, 2002).
[4] Telephone conference between Bill Floyd-Jones, Associate General Counsel, Amex, and Christopher B. Stone, Special Counsel, Division of Market Regulation, Commission (April 23, 2003). The Exchange's filing contained a detailed description of the Pilots. That description has not been included in this notice because it is duplicative of the descriptions contained in the original approval orders for the Pilots.
[5] 15 U.S.C. 78f(b).
[6] 15 U.S.C. 78f(b)(5).
[7] 15 U.S.C. 78s(b)(3)(A).
[8] 17 CFR 240.19b–4(f)(6).
[9] *See* section 19(b)(3)(C) of the Act, 15 U.S.C. 78s(b)(3)(C).

initial operation period of the Pilots, the Commission did not receive any comments, and, the Commission expects the Exchange to request permanent approval of these rules during the Pilot extension period. For these reasons, the Commission designates the proposal to be effective and operative upon filing with the Commission.[10] The pilot will be effective for six months from April 5, 2003 until October 5, 2003.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the Exchange. All submissions should refer to File No. SR-Amex–2003–23 and should be submitted by May 29, 2003.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[11]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 03–11443 Filed 5–7–03; 8:45 am]

BILLING CODE 8010–01–P

[10] For the purposes only of accelerating the operative date of this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[11] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–47775; File No. SR–CBOE–2003–05]

Self-Regulatory Organizations; Order Approving Proposed Rule Change and Amendment No. 1 Thereto, by the Chicago Board Options Exchange, Inc. To Prohibit Clearing Firms From Accepting Certain Third-Party Deposits

April 30, 2003.

On February 10, 2003, the Chicago Board Options Exchange, Inc. ("CBOE" or "Exchange") submitted to the Securities and Exchange Commission ("Commission"), pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b–4 thereunder,[2] a proposed rule change to establish CBOE Rule 4.21 which would prohibit, with certain exceptions, member firms that clear and carry the accounts of options market makers ("Clearing Firms") from accepting deposits to such accounts if the check, funds transfer or securities is drawn from a third party's account. The proposed rule change also would establish record retention requirements for the Clearing Firm to follow if it accepts deposits from third parties pursuant to the permitted exceptions. The CBOE filed Amendment No. 1 to the proposal on March 5, 2003. The proposed rule change, as amended, was published for comment in the **Federal Register** on March 28, 2003.[3] The Commission received no comments on the proposal.

The Commission finds that the proposed rule change, as amended, is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange[4] and, in particular, the requirements of section 6 of the Act[5] and the rules and regulations thereunder. The Commission finds that the rule change is consistent with section 6(b)(5) of the Act,[6] which requires, among other things, that the rules of the Exchange be designed to prevent fraudulent and manipulative acts and practices, and, in general, to protect investors and the public interest. The rule change establishes a practice that should help to protect Clearing Firms from risks associated with improper transfers of funds and securities.

It is therefore ordered, pursuant to section 19(b)(2) of the Act,[7] that the proposed rule change, as amended, (File No. SR–CBOE–2003–05) be, and it hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[8]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 03–11414 Filed 5–7–03; 8:45 am]

BILLING CODE 8010–01–P

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Securities Exchange Act Release No. 47553 (March 21, 2003), 68 FR 15254.

[4] In approving this proposed rule change, as amended, the Commission notes that it has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[5] 15 U.S.C. 78f.

[6] 15 U.S.C. 78f(b)(5).

[7] 15 U.S.C. 78s(b)(2).

[8] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–47767; File No. SR–NSCC–2003–06]

Self-Regulatory Organizations; National Securities Clearing Corporation; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change Modifying Clearing Fund Rules and Procedures

April 30, 2003.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934,[1] notice is hereby given that on April 7, 2003, the National Securities Clearing Corporation ("NSCC") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared primarily by NSCC. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The proposed rule change eliminates the reference to "bearer" bonds in section 1 of NSCC's Rule 4 (Clearing Fund) because bearer bonds have not been issued for some time and consequently are not eligible for deposit with NSCC.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, NSCC included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. NSCC has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.[2]

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

Prior to this rule change, Rule 4, section 1 of NSCC's Rules and Procedures stated that NSCC, in its discretion, could permit part of a participant's clearing fund deposit to be evidenced by an open account indebtedness secured by "bearer" bonds. This proposed rule change eliminates the reference to "bearer" bonds because bearer bonds have not been issued for some time now and consequently are not eligible for deposit with NSCC.

NSCC believes that the proposed rule change is consistent with the provisions of section 17A of the Act[3] and the rules and regulations thereunder because it makes a technical change to NSCC's rules to properly reflect the type of bonds eligible for clearing fund purposes and because it constitutes a stated practice with respect to the administration and enforcement of an existing rule.

B. Self-Regulatory Organization's Statement on Burden on Competition

NSCC does not believe that the proposed rule change will have an impact on or impose a burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

No written comments relating to the proposed rule change have been solicited or received. NSCC will notify the Commission of any written comments received by NSCC.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to section 19(b)(3)(A)(iii) of the Act[4] and of Securities Exchange Act Rule 19b–4(f)(4)[5] because the proposed rule change effects a change in an existing service that does not adversely affect the safeguarding of securities or funds in NSCC's custody or control and does not significantly affect the respective rights or obligations of NSCC or the persons using the service. At any time within sixty days of the filing of such rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

[2] The Commission has modified the text of the summaries prepared by NSCC.

[3] 15 U.S.C. 78q–1.

[4] 15 U.S.C. 78s(b)(3)(A)(iii).

[5] 17 CFR 240.19b–4(f)(4).

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 5th Street NW, Washington, DC 20549–0069. Comments may also be submitted electronically at the following e-mail address: *rule-comments@sec.gov.* All comment letters should refer to File No. SR–NSCC–2003–06. This file number should be included on the subject line if e-mail is used. To help us process and review comments more efficiently, comments should be sent in hardcopy or by e-mail but not by both methods. Copies of the submission, all subsequent amendments, all written statements with respect to the rule filing that are filed with the Commission, and all written communications relating to the rule filing between the Commission and any person, other than those that may be withheld from the public in accordance with provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room in Washington, DC. Copies of such filing will also be available for inspection and copying at NSCC's principal office. All submissions should refer to File No. SR–NSCC–2003–06 and should be submitted May 29, 2003.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[6]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 03–11446 Filed 5–7–03; 8:45 am]

BILLING CODE 8010–01–P

[6] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–47786; File No. SR–PCX–2003–08]

Self-Regulatory Organizations; Order Approving Proposed Rule Change by the Pacific Exchange, Inc., Relating to a One-Year Pilot for Options Intermarket Linkage Fees

May 2, 2003.

On March 11, 2003, the Pacific Exchange, Inc. ("PCX" or "Exchange") filed with the Securities and Exchange Commission ("Commission"), pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b–4 thereunder,[2] a proposed rule change to amend its fee structure to clarify which fees apply to trades pertaining to the options intermarket linkage ("Linkage") and to specify that such fees are for a one-year pilot. On March 21, 2003, PCX submitted Amendment No. 1 to the proposed rule change.[3]

The Commission published the amended proposal for comment in the **Federal Register** on March 28, 2003.[4] The Commission received no comments on the proposal. This order approves the proposal rule change, as amended.

Two PCX fees would apply to Linkage trades other than satisfaction orders: A per transaction per contract side fee of $.21; and a $.05 comparison fee. Each of these Linkage-related fees would be implemented as a one-year pilot, expiring on January 31, 2004.

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange[5] and, in particular, the requirements of section 6 of the Act.[6] The Commission finds that the proposed rule change is consistent with section 6(b)(4) of the Act,[7] which requires that the rules of an exchange provide equitable allocation of reasonable dues, fees and other charges among its members and other persons using its facilities. The Commission

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* letter from Mai Shiver, Senior Attorney, Regulatory Policy, PCX, to Nancy J. Sanow, Assistant Director, Division of Market Regulation, Commission, dated March 18, 2003 ("Amendment No. 1").

[4] *See* Securities Exchange Act Release No. 47560 (March 21, 2003), 68 FR 15257.

[5] 5 In approving this proposed rule change, the Commission notes that it has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[6] 6 15 U.S.C. 78f.

[7] 7 15 U.S.C. 78f(b)(4).

believes the one-year pilot will give the Exchange and the Commission the opportunity to evaluate whether these fees are appropriate.

It is therefore ordered, pursuant to section 19(b)(2) of the Act,[8] that the proposed rule change, as amended, is approved on a pilot basis until January 31, 2004.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[9]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 03–11442 Filed 5–7–03; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–47785; File No. SR–Phlx–2003–24]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the Philadelphia Stock Exchange, Inc. To Amend Its Rules Regarding the Calculation of Record Dates, Ex-Dividend Dates and Ex-Rights Dates

May 2, 2003.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on April 11, 2003, the Philadelphia Stock Exchange, Inc. ("Phlx" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II and III below, which Items have been prepared by the Phlx. The Exchange has designated the proposed rule change as constituting a "non-controversial" rule change under paragraph (f)(6) of Rule 19b–4 under the Act.[3] The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend Phlx Rule 817 ("Record Date "), Phlx Rule 825 ("Ex-dividend Procedure"), Phlx Rule 826 ("Ex-rights Procedure") and Phlx Rule 831 ("Special Ex-dividend Rulings"). The proposed amendments are intended by the Exchange to update several archaic rules that specify how record dates, ex-dividend dates and ex-rights dates are calculated. Below is the text of the proposed rule change. Proposed deleted text is [bracketed].

* * * * *

Rule 817. Record Date

Rule 817. A company is not permitted to close its stock transfer books for any reason, including the declaration of a dividend. Rather, it must establish a record date for shareholders entitled to a dividend which is at least ten days after the date on which the dividend is declared (declaration date).

[However, in the case of stock issues that do not have transfer facilities in the Philadelphia metropolitan area, the record date shall not be less than such number of additional days (in excess of ten) after the declaration date as is equal to the mailing time (regular mail) between Philadelphia and the city in which the Transfer Agent is located. The requirement for additional time between the declaration date and the record date would also apply in cases where there is an intervening holiday or where the record date falls on a weekend.]

A company is also required to give the Exchange at least ten days notice in advance of a record date established for any other purpose, including meetings of shareholders.

* * * * *

Rule 825. Ex-Dividend Procedure

Rule 825. [In the establishment and announcement of ex-dividend dates, the Exchange proceeds as follows:

(a) The "ex-dividend" date established by the Exchange is based on the location of the transfer facilities either in, or nearest to, Philadelphia. Thus, if an issue transfers both in Philadelphia and outside of Philadelphia the "ex" date is based on the Philadelphia transfer facilities. If an issue does not transfer in Philadelphia, but transfers in two or more cities outside of that area, the "ex" date is based on the location of the transfer facilities closest to Philadelphia.

(b) Transfer Facilities Located in Philadelphia—] Transactions in stocks (except those made for "cash") [for which there exists transfer facilities in Philadelphia] are ex-dividend on the second business day preceding the record date. If the record date selected is not a business day, the stock will be quoted ex-dividend on the third preceding business day. "Cash" transactions are ex-dividend on the business day following the record date.

[(c) Transfer Facilities Located Outside Philadelphia—The Exchange will establish an "Ex-dividend" date for those stocks with transfer facilities only outside Philadelphia predicated on a theoretical "equivalent Philadelphia record date". The equivalent Philadelphia record date is the last business day on which securities may be mailed in Philadelphia and reach the out-of-town transfer office, by regular mail, in time to effect transfer by the record date. "Regular way" transactions in these stocks are ex-dividend on the second business day preceding the equivalent Philadelphia record date. Transactions in such stocks made for "cash" are ex-dividend on the business day following such equivalent Philadelphia record date.

(d) To avoid unnecessary claims for dividends, members receiving deliveries of stocks against "dividend on" transactions are urged to provide for the earliest mailing of such stocks which transfer out of town, in order to ensure receipt by the transfer agent by the record date.]

* * * * *

Rule 826. Ex-Rights Procedure

Rule 826. In the establishment and announcement of ex-rights dates, the Exchange proceeds as follows:

Subscription Price Established—Where the Subscription price and all other terms of the rights and subscription offering are established sufficiently in advance of the record date to determine the value of the rights (and the registration statement relating to the offering has been declared effective by the SEC sufficiently in advance of the record date), transactions in stocks to which the rights pertain are quoted ex-rights in a manner similar to that described in Rule 825 above.

Subscription Price Not Known—Where the subscription price and all other terms of the rights and subscription offering are not known sufficiently in advance of the record date to determine the value of the rights, the Exchange will rule the stock ex-rights on the day following the date the rights commence trading (which, in most instances, is a date subsequent to the record date for the subscription offering).

Under such circumstances, the Exchange requires that all deliveries of stock made after the record date [(or "equivalent Philadelphia record date", where appropriate)] in settlement of transactions made prior to the ex-rights date, and on a "rights on" basis carry "due bills" for the rights.

* * * * *

[8] 15 U.S.C. 78s(b)(2).

[9] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 17 CFR 240.19b(f)(6).

Rule 831. Special Ex-Dividend Rulings

Rule 831. If, as required by Exchange rules, the Exchange does not receive a notice of a dividend declaration sufficiently in advance of a record date to permit a stock to be quoted "ex-dividend" in the usual manner, the Exchange quotes the stock "ex-dividend" as soon as possible following receipt of notice of the dividend. The Exchange also rules that the "dividend on" purchaser (in transactions made during the interval between the date when the stock should have been quoted "ex" and the date when the stock is actually quoted "ex") is entitled to receive the dividend from the seller. The seller in such transactions is required to give to the purchaser a due bill, covering the amount of the dividend, to be redeemed subsequent to the payment date for the dividend.

Larger or Valuable Dividends, Dividends "Not in Kind", and Split-ups Effected as Stock Distributions—When large or valuable cash or stock dividends (usually 25% or more), or a dividend "not in kind", (*i.e.*, a distribution of securities of another issuer), or a split-up is declared, it is the policy of the Exchange to postpone the "ex-dividend" or "ex-distribution" date until the dividend has been paid. The reason for this is so that the stock is not quoted at the substantially lower "ex-dividend" or "ex-distribution" price until the distribution is received by shareholders. If this were not the case, the collateral value of the stock would be reduced between the "ex" date and payment date, and the shareholder might be required to provide additional collateral.

In the case of dividends "not in kind" (regardless of its size in relation to the listed security), it will be necessary to postpone the "ex-dividend" date in the event a market does not exist in the security to be distributed at the time the listed issue would normally be quoted "ex-dividend".

In all of the above instances, the postponement of the "ex" date until after the payment date makes it possible for shareholders to sell all of their holdings at one time, on a "dividend on" basis (prior to the "ex" date). As a result of this ruling, purchasers of the stock prior to the "ex" date continue to pay a "dividend on" price, but will not receive the dividend payment from the company. Accordingly, the Exchange rules that the "dividend on" purchaser is entitled to receive the dividend from the seller. The seller, in turn, is required to give the purchaser a due bill, covering the amount of the dividend, to be redeemed on the date fixed by the Exchange.

"Cash" Transactions—The Ex-Dividend Rule of the Exchange specifies that "cash" transactions (in which delivery of the security must be made on the date of the transaction) [in the case of stocks transferring in the Philadelphia Metropolitan area,] shall be "ex-dividend" on the business day following the record date[, and in the case of stocks transferring only outside of that area shall be "ex-dividend" on the business day following the "equivalent Philadelphia record date"].

* * * * *

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Phlx included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below and is set forth in sections A, B, and C below.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange states that the purpose of the proposed rule change is to amend several archaic rules that specify how record dates, ex-dividend dates and ex-rights dates are to be calculated. Phlx Rules 817, 825, 826 and 831 specify that a longer record date, ex-dividend or ex-rights date, as the case may be, may be used where the issuer has a transfer agent located outside the Philadelphia metropolitan area. Given the current state of communication networks and electronic interaction among issuers, the Exchange, transfer agents and investors, the Exchange believes that these additional time periods are no longer necessary. The Exchange also states that these rules, as amended, are similar to Rules 510, 512, 513 and 521 of the American Stock Exchange, LLC. The proposed changes to the Exchange's rules are discussed below.

Phlx Rule 817. Currently, Phlx Rule 817 provides generally that a company listed on Phlx must establish a record date for shareholders entitled to a dividend, which is at least ten days after the date on which the dividend is declared. For issuers that do not have transfer facilities in the Philadelphia metropolitan area, however, current Phlx Rule 817 provides that the record date may be extended by the time equal to the mailing time between Philadelphia and the city in which the transfer agent is located. Because today most communication among issuers, the Exchange, transfer agents and investors is conducted electronically, the Exchange believes it no longer makes sense to distinguish between issuers with transfer agents located in Philadelphia and those with transfer agents located outside the Philadelphia metropolitan area when calculating a record date. As amended, Phlx Rule 817 will apply a uniform ten-day rule for establishing a record date to all Phlx issuers.

Phlx Rule 825. Similarly, Phlx Rule 825 currently provides that issuers with transfer agent facilities located outside the Philadelphia metropolitan area can have a longer period between the declaration of a dividend and the establishment of an "ex-dividend" date. This longer period is based on the time equal to the mailing time between Philadelphia and a transfer facility located outside Philadelphia. Again, since most communications in the securities industry no longer rely on regular mail, the Exchange believes that it is reasonable to put Philadelphia issuers and non-Philadelphia issuers on equal footing when it comes to establishing an "ex-dividend" date. As amended, Phlx Rule 825 will uniformly provide that all stock dividends are "ex-dividend" on the second business day preceding the record date and all cash dividends are "ex-dividend" on the day following the record date.

Phlx Rule 826. Phlx Rule 826 provides that the transactions in stocks to which rights attach are quoted "ex-rights" in a manner similar to that described in Phlx Rule 825. This reference to Phlx Rule 825 should remain, subject to the changes to Phlx Rule 825 discussed above. The last paragraph of Phlx Rule 826 is proposed to be amended, however, because of the explicit reference to "equivalent Philadelphia record date," which is being eliminated along with the other geographical references from Phlx Rule 825.

Phlx Rule 831. Phlx Rule 831 repeats the ex-dividend date rule set forth in Phlx Rule 825 as it pertains to cash transactions (*i.e.*, where an issuer pays a dividend in cash). Because Phlx Rule 825 is being amended to eliminate distinctions between Philadelphia and non-Philadelphia issuers, Phlx Rule 831 must also be amended so that the rules are consistent.

2. Statutory Basis

The Exchange believes that its proposed rule change is consistent with

section 6(b) of the Act[4] in general, and furthers the objectives of section 6(b)(5)[5] in particular, in that it is designed to facilitate transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest by removing outdated provisions.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Phlx does not believe that the proposed rule change will impose any inappropriate burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

No written comments were either solicited or received.

I. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The proposed rule change has been filed by the Exchange as a "non-controversial" rule change pursuant to section 19(b)(3)(A) of the Act[6] and subparagraph (f)(6) of Rule 19b–4 thereunder.[7] Because the foregoing proposed rule change: (1) Does not significantly affect the protection of investors or the public interest; (2) does not impose any significant burden on competition; and (3) does not become operative for thirty days from the date on which it was filed, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest, it has become effective pursuant to section 19(b)(3)(A) of the Act[8] and Rule 19b–4(f)(6)[9] thereunder.[10]

A proposed rule change filed under Rule 19b–4(f)(6)[11] normally does not become operative prior to thirty days after the date of filing. However, pursuant to Rule 19b–4(f)(6)(iii), the Commission may designate a shorter time if such action is consistent with the protection of investors and the public interest. The Phlx has requested that the proposed rule change become operative immediately upon filing so that the Exchange may remain competitive with other exchanges with similar rules in effect.

The Commission believes that it is consistent with the protection of investors and the public interest to designate the proposed rule change immediately operative. Accelerating the operative date should permit the Exchange's rules to reflect current business practices.[12] At any time within 60 days of the filing of such proposed rule change, the Commission may summarily abrogate such proposed rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposal is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the Phlx. All submissions should refer to File No. SR–Phlx–2003–24 and should be submitted by May 29, 2003.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[13]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 03–11444 Filed 5–7–03; 8:45 am]

BILLING CODE 8010–01–P

[4] 15 U.S.C. 78f(b).

[5] 15 U.S.C. 78f(b)(5).

[6] 15 U.S.C. 78s(b)(3)(A).

[7] 17 CFR 240.19b–4(f)(6).

[8] 15 U.S.C. 78s(b)(3)(A).

[9] 17 CFR 240–19b–4(f)(6).

[10] As required under Rule 19b–4(f)(6)(iii), the Exchange provided the Commission with written notice of its intent to file the proposed rule change at least five business days prior to the filing date or such shorter period as designated by the Commission.

[11] 17 CFR 240.19b–4(f)(6).

[12] For purposes of only accelerating the operative date of this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[13] 17 CFR 200.30–3(a)(12).

SELECTIVE SERVICE SYSTEM

Form Submitted to the Office of Management and Budget for Extension of Clearance

The form described below has been submitted to the Office of Management and Budget (OMB) for extension of clearance in compliance with the Paperwork Reduction Act (44 U.S.C. Chapter 35):

SSS Form 22

Title: Claim Documentation Form—Conscientious Objector.

Purpose: Is used to document a claim for classification as a conscientious objector.

Respondents: Registrants who claim to be conscientious objectors.

Frequency: One-time.

Burden: The reporting burden is one hour per individual.

Copies of the above identified form can be obtained upon written request to the Selective Service System, Reports Clearance Officer, Arlington, Virginia 22209–2425.

Written comments and recommendations for the proposed extension of clearance of the form should be sent within 30 days of publication of this notice to the Selective Service System, Reports Clearance Officer, Arlington, Virginia, 22209–2425.

A copy of the comments should be sent to Office of Information and Regulatory Affairs, Attention: Desk Officer, Selective Service System, Office of Management and Budget, New Executive Office Building, Room 3235, Washington, DC 20435.

Dated: March 11, 2003.

Lewis C. Brodsky,

Acting Director.

[FR Doc. 03–11463 Filed 5–7–03; 8:45 am]

BILLING CODE 8075–01–M

DEPARTMENT OF STATE

[Public Notice 4359]

Bureau of Political-Military Affairs: Directorate of Defense Trade Controls; Notifications to the Congress of Proposed Commercial Export Licenses

AGENCY: Department of State.

ACTION: Notice.

SUMMARY: Notice is hereby given that the Department of State has forwarded the attached Notifications of Proposed Export Licenses to the Congress on the dates shown on the attachments pursuant to sections 36(c) and 36(d) and in compliance with section 36(f) of the Arms Export Control Act (22 U.S.C. 2776).

EFFECTIVE DATE: As shown on each of the ten letters.

FOR FURTHER INFORMATION CONTACT: Mr. Peter J. Berry, Director, Office of Defense Trade Controls Licensing, Directorate of Defense Trade Controls, Bureau of Political-Military Affairs, Department of State (202–663–2700).

SUPPLEMENTARY INFORMATION: Section 36(f) of the Arms Export Control Act mandates that notifications to the Congress pursuant to sections 36(c) and 36(d) must be published in the **Federal Register** when they are transmitted to Congress or as soon thereafter as practicable.

Dated: May 2, 2003.

Terry L. Davis,

Acting Director, Office of Defense Trade Controls Licensing, Directorate of Defense Trade Controls, Bureau of Political-Military Affairs, Department of State.

The Honorable J. Dennis Hastert,
Speaker of the House of Representatives.

Dear Mr. Speaker: Pursuant to section 36(c) of the Arms Export Control Act, I am transmitting herewith, certification of a proposed license for the export of defense articles or defense services sold commercially under a contract in the amount of $50,000,000 or more.

The transactions contained in the attached certification concern future commercial activities with Russia and Kazakhstan related to the Proton Space Launch Vehicle beyond those specified in DTC 001–03 dated January 24, 2003, DTC 147–02 dated July 26, 2002; DTC 182–02 dated June 27, 2002; DTC 124–02 dated May 22, 2002; DTC 022–02 dated May 1, 2002; DTC 038–01 dated April 30, 2001; DTC 034–01 dated March 1, 2001; DTC 014–01 dated March 7, 2000; DTC 098–99 dated August 5, 1999; and DTC 039–98 dated March 19, 1998.

The United States Government is prepared to license the export of these items having taken into account political, military, economic, human rights and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the United States firm concerned.

Sincerely,
Paul V. Kelly,
Assistant Secretary, Legislative Affairs.

Enclosure: Transmittal No. DTC 022–03.

The Honorable Richard G. Lugar,
Chairman Committee on Foreign Relations, United States Senate.

Dear Mr. Chairman: Pursuant to section 36(c) of the Arms Export Control Act, I am transmitting herewith, certification of a proposed license for the export of defense articles or defense services sold commercially under a contract in the amount of $50,000,000 or more.

The transactions contained in the attached certification concern future commercial activities with Russia, Ukraine and Norway related to the launch of commercial satellites from the Pacific Ocean utilizing a modified oil platform beyond the period specified in DTC 002–03 dated January 24, 2003; DTC 148–02 dated July 26, 2002; DTC 123–02 dated May 22, 2002; DTC 023–02 dated May 1, 2002; DTC 048–01 dated April 30, 2001; DTC 026–00 dated May 19, 2000; DTC 124–99 dated November 10, 1999; DTC 006–99 dated April 16, 1999; and DTC 016–97 dated July 25, 1997.

The United States Government is prepared to license the export of these items having taken into account political, military, economic, human rights and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the United States firm concerned.

Sincerely,
Paul V. Kelly,
Assistant Secretary, Legislative Affairs.

Enclosure: Transmittal No. DTC 023–03.

The Honorable Richard G. Lugar,
Chairman, Committee on Foreign Relations, United States Senate.

Dear Mr. Chairman: Pursuant to section 36(c) of the Arms Export Control Act, I am transmitting, herewith, certification of a proposed license for the export of defense articles or defense services sold commercially under a contract in the amount of $50,000,000 or more.

The transition contained in the attached certification concerns exports of technical data and defense services for cooperation in the co-development of Japan's Galaxy Express (formerly J–1) space launch vehicle program beyond the period specified in DTC 003–03.

The United States Government is prepared to license the export of these items having taken into account political, military, economic, human rights and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the United States firm concerned.

Sincerely,
Paul V. Kelly,
Assistant Secretary, Legislative Affairs.

Enclosure: Transmittal No. DDTC 024–03.

The Honorable J. Dennis Hastert,
Speaker of the House of Representatives.

Dear Mr. Speaker: Pursuant to section 36(d) of the Arms Export Control Act, I am transmitting, herewith, certification of a proposed manufacturing license agreement for the manufacture of significant military equipment abroad.

The transition contained in the attached certification involves the transfer of technical data, assistance and manufacturing know-how to Jordan for the modernization and upgrade of 1,200 M113A1 vehicles to the M113A2Mk1 Armored Personnel Carrier configuration for the Jordan Armed Forces.

The United States Government is prepared to license the export of these items having taken into account political, military, economic, human rights and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the United States firm concerned.

Sincerely,
Paul V. Kelly,
Assistant Secretary, Legislative Affairs.

Enclosure: Transmittal No. DTC 005–03.

The Honorable J. Dennis Hastert,
Speaker of the House of Representatives.

Dear Mr. Speaker: Pursuant to section 36(c) of the Arms Export Control Act, I am transmitting, herewith, certification of a proposed license for the export of defense articles that are firearms controlled under category I of the United States Munitions List sold commercially under a contract in the amount of $1,000,000 or more.

The transition contained in the attached certification involves the transfer of export of 132 .50 caliber semi-automatic sniper rifles and associated equipment to the Greek Army.

The United States Goverament is prepared to license the export of these items having taken into account political, military, economic, human rights and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the United States firm concerned.

Sincerely,
Paul V. Kelly,
Assistant Secretary, Legislative Affairs.

Enclosure: Transmittal No. DTC 006–02.

The Honorable J. Dennis Hastert,
Speaker of the House of Representatives..

Dear Mr. Speaker: Pursuant to section 36(c) of the Arms Export Control Act, I am transmitting, herewith, certification of a proposed license for the export of major defense equipment and defense articles in the amount of $25,000,000 or more.

The transaction contained in the attached certification involves the sale of three S–70B helicopters with enhanced configuration (previously S–70B–6 configuration) to the Government of Greece.

The United States Government is prepared to license the export of these items having taken into account political, military, economic, human rights and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the United States firm concerned.

Sincerely,
Paul V. Kelly,
Assistant Secretary, Legislative Affairs.
Enclosure: Transmittal No. DTC 007–03.
The Honorable J. Dennis Hastert,
Speaker of the House of Representatives.

Dear Mr. Speaker: Pursuant to section 36(c) of the Arms Export Control Act, I am transmitting, herewith, certification of a proposed license for the export of defense articles or defense services sold commercially under a contract in the amount of $50,000,000 or more.

The transaction contained in the attached certification concerns exports of technical data and defense services to France and its subcontractors in Germany, Switzerland, Sweden, Spain and the United Kingdom for the launch of two commercial communications satellites to be owned and operated by a U.S. firm.

The United States Government is prepared to license the export of these items having taken into account political, military, economic, human rights and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the United States firm concerned.

Sincerely,
Paul V. Kelly,
Assistant Secretary, Legislative Affairs.
Enclosure: Transmittal No. DDTC 008–03.
The Honorable J. Dennis Hastert,
Speaker of the House of Representatives.

Dear Mr. Speaker: Pursuant to section 36(c) of the Arms Export Control Act, I am transmitting, herewith, certification of a proposed manufacturing license agreement for the manufacture of significant military equipment abroad.

The transaction described in the attached certification involves the transfer of technical data, defense services, and hardware to Germany for the manufacture of components for the Standard Advanced Dewar Assembly II Thermal Imaging System for end-use by the Ministries of Defense in Germany, Switzerland, Belgium, Australia, Canada, Denmark, Greece, Italy, The Netherlands, Norway, Spain, Sweden, and Turkey.

The United States Government is prepared to license the export of these items having taken into account political, military, economic, human rights and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the United States firm concerned.

Sincerely,
Paul V. Kelly,
Assistant Secretary, Legislative Affairs.
Enclosure: Transmittal No. DDTC 011–03.
The Honorable J. Dennis Hastert,
Speaker of the House of Representatives.

Dear Mr. Speaker: Pursuant to section 36(c) of the Arms Export Control Act, I am transmitting, herewith, certification of a proposed license for the export of defense articles or defense services sold commercially under a contract in the amount of $100,000,000 or more.

The transaction contained in the attached certification involves the export to the United Kingdom of technical data, defense articles and defense services for demonstration, manufacturing and in-service support phases of the Airborne Electronic Reconnaissance System known as Project EXTRACT for end-use by the United Kingdom Ministry of Defence.

The United States Government is prepared to license the export of these items having taken into account political, military, economic, human rights and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the United States firm concerned.

Sincerely,
Paul V. Kelly,
Assistant Secretary, Legislative Affairs.
Enclosure: Transmittal No. DDTC 014–03.
The Honorable J. Dennis Hastert,
Speaker of the House of Representatives.

Dear Mr. Speaker: Pursuant to section 36(c) of the Arms Export Control Act (AECA), I am transmitting, herewith, certification of a proposed license for the export of defense articles or defense services sold commercially under a contract in the amount of $50,000,000 or more.

The transaction described in the attached certification consists of the export of Sentinel radar assemblies and related equipment to the U.S. Armed Forces in Kuwait.

The United States Government is prepared to license the export of these items having taken into account political, military, economic, human rights and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the United States firm concerned.

Pursuant to a Presidential delegation of authority, and authority delegated by the Secretary of State under section 36(c) of the AECA, I wish to notify you that the Under Secretary of State for Arms Control and International Security has determined that an emergency exists which requires that the export license pertaining to the proposed transfer will become effective immediately in the national interests of the United States.

Sincerely,
Paul V. Kelly,
Assistant Secretary, Legislative Affairs.

[FR Doc. 03–11464 Filed 5–7–03; 8:45 am]
BILLING CODE 4710–25–M

DEPARTMENT OF STATE

[Public Notice 4360]

Bureau of Oceans and International Environmental and Scientific Affairs; Certifications Pursuant to Section 609 of Public Law 101–162

SUMMARY: On April 30, 2003, the Department of State certified, pursuant to section 609 of Public Law 101–162 ("Section 609"), that 15 nations have adopted programs to reduce the incidental capture of sea turtles in their shrimp fisheries comparable to the program in effect in the United States. The Department also certified that the fishing environments in 24 other countries and one economy, Hong Kong, do not pose a threat of the incidental taking of sea turtles protected under section 609. Shrimp imports from any nation not certified were prohibited effective May 1, 2003 pursuant to section 609.

EFFECTIVE DATE: On Publication.

FOR FURTHER INFORMATION CONTACT: David Hogan, Office of Marine Conservation, Bureau of Oceans and International Environmental and Scientific Affairs, Department of State, Washington, DC 20520–7818; telephone: (202) 647–2335.

SUPPLEMENTARY INFORMATION: Section 609 of Public Law 101–162 prohibits imports of certain categories of shrimp unless the President certifies to the Congress not later than May 1 of each year either: (1) That the harvesting nation has adopted a program governing the incidental capture of sea turtles in its commercial shrimp fishery comparable to the program in effect in the United States and has an incidental take rate comparable to that of the United States; or (2) that the fishing environment in the harvesting nation does not pose a threat of the incidental taking of sea turtles. The President has delegated the authority to make this certification to the Department of State. Revised State Department guidelines for making the required certifications were published in the **Federal Register** on July 2, 1999 (Vol. 64, No. 130, Public Notice 3086).

On April 30, 2003, the Department certified 15 nations on the basis that their sea turtle protection program is comparable to that of the United States: Belize, Colombia, Costa Rica, Ecuador, El Salvador, Guatemala, Guyana, Mexico, Nicaragua, Nigeria, Pakistan, Panama, Suriname, Thailand, and Trinidad and Tobago.

The Department also certified 24 shrimp harvesting nations and one economy as having fishing environments that do not pose a danger to sea turtles. Sixteen nations have shrimping grounds only in cold waters where the risk of taking sea turtles is negligible. They are: Argentina, Belgium, Canada, Chile, Denmark, Finland, Germany, Iceland, Ireland, the Netherlands, New Zealand, Norway, Russia, Sweden, the United Kingdom, and Uruguay. Eight nations and one economy only harvest shrimp using small boats with crews of less than five that use manual rather than mechanical means to retrieve nets, or catch shrimp in using other methods that do not threaten sea turtles. Use of such small-scale technology does not adversely affect sea turtles. The eight nations and one economy are: The Bahamas, China, the Dominican Republic, Fiji, Hong Kong, Jamaica, Oman, Peru and Sri Lanka.

The Department of State has communicated the certifications under section 609 to the Office of Trade Program of the United States Customs Service.

Dated: May 1, 2003.
David A. Balton,
Acting Deputy Assistant Secretary for Oceans and Fisheries, Department of State.

[FR Doc. 03–11465 Filed 5–7–03; 8:45 am]
BILLING CODE 4710–09–P

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

Identification of Countries That Deny Adequate Protection, or Market Access, for Intellectual Property Rights Under Section 182 of the Trade Act of 1974

AGENCY: Office of the United States Trade Representative.

ACTION: Notice.

SUMMARY: Notice is hereby given that the United States Trade Representative (USTR) has submitted its annual report on the identification of those foreign countries that deny adequate and effective protection of intellectual property rights or deny fair and equitable market access to United States persons that rely upon intellectual property protection, and those foreign countries determined to be priority foreign coiuntries, to the Committee on Finance of the United States Senate and the Committee on Ways and Means of the United States House of Representatives, pursuant to section 182 of the Trade Act of 1974, as amended (the Trade Act) (19 U.S.C. 2242).

DATES: This report was submitted on May 1, 2003.

ADDRESSES: Office of the United States Trade Representative, 600 17th Street, NW., Washington, DC 20508.

FOR FURTHER INFORMATION CONTACT: Kira Alvarez, Director for Intellectual Property, (202) 395–6864, or Dan Mullaney, Associate General Counsel or Victoria Espinel, Associate General Counsel at (202) 395–7305.

SUPPLEMENTARY INFORMATION: Section 182 of the Trade Act requires USTR to identify within 30 days of the publication of the National Trade Estimates Report all trading partners that deny adequate and effective protection of intellectual property rights or deny fair and equitable market access to United States persons that rely upon intellectual property protection. Those countries that have the most onerous or egregious acts, policies, or practices that have the greatest adverse impact (actual or potential) on the relevant United States products must be identified as "priority foreign countries," unless they are entering into good faith negotiations or are making significant progress in bilateral or multilateral negotiations to provide adequate and effective protection for intellectual property rights. In identifying countries in this manner, the USTR is directed to take into account the history of intellectual property laws and practices of the foreign country, including any previous identifications as a priority foreign country, and the history of efforts of the United States, and the response of hte foreign country, to achieve adequate and effective protection and enforcement of intellectual property rights. In making these determinations, the USTR must consult with the Register of Copyrights, the Commissioner of Patents and Trademarks, other appropriate officials of the Federal Government and take into account information from other sources such as information submitted by interested persons.

On May 1, 2003, USTR identified 47 trading partners that deny adequate and effective protection of intellectual property or deny fair and equitable market access to United States artists and industries that rely upon intellectual property protection. USTR maintained Ukraine's designation as a Priority Foreign Country, and again designated Paraguay and China for "Section 306 monitoring" to ensure both countries comply with the commitments made to the United States under bilateral intellectual property agreements.

USTR also announced placement of 11 trading partners on the "Priority Watch List": Argentina, the Bahamas, Brazil, European Union, India, Indonesia, Lebanon, Philippines, Poland, Russia and Taiwan. In addition, USTR placed 36 trading partners on the "Watch List." USTR will conduct an out-of-cycle review of Korea, and review any progress made in Bolivia, Ecuador, Peru and Venezuela, in the fall.

Kira M. Alvarez,
Director for Intellectual Property.

[FR Doc. 03–11440 Filed 5–7–03; 8:45 am]
BILLING CODE 3190–01–M

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

Trade Policy Staff Committee; Request for Public Comment on Review of Employment Impact of United States-Australia Free Trade Agreement

AGENCY: Office of the United States Trade Representative. Department of Labor.

ACTION: Request for comments.

SUMMARY: The Trade Policy Staff Committee (TPSC) gives notice that the Office of the United States Trade Representative (USTR) and the Department of Labor (Labor) are initiating a review of the impact of the proposed U.S.-Australia Free Trade Agreement (FTA) on United States employment, including labor markets. This notice seeks written public comment on potentially significant sectoral or regional employment impacts (both positive and negative) in the United States as well as other likely labor market impacts of the FTA.

DATE: Public comments should be received no later than June 6, 2003.

ADDRESSES: Submissions by electronic mail: *FR0076@ustr.gov*. Submissions by facsimile: Gloria Blue, Executive Secretary, Trade Policy Staff Committee, at (202) 395–6143.

FOR FURTHER INFORMATION CONTACT: For procedural questions concerning public comments, contact Gloria Blue, Executive Secretary, TPSC, Office of the USTR, 1724 F Street, NW., Washington, DC 20508, telephone (202) 395–3475. Substantive questions concerning the employment impact review should be addressed to Jorge Perez-Lopez, Director, Office of International Economic Affairs, Bureau of International Labor Affairs, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210, telephone (202) 693–4883.

SUPPLEMENTARY INFORMATION:

1. Background Information

On November 13, 2002, in accordance with section 2104(a)(1) of the Trade Act

of 2002, the United States Trade Representative, Ambassador Robert B. Zoellick, notified Congress of the President's intent to enter into trade negotiations with Australia. Ambassador Zoellick outlined specific U.S. objectives for these negotiations in the notification letters to Congress. Copies of the letters are available at *http://www.ustr.gov/releases/2002/11/2002-11-13-australia-hastert.PDF* and *http://www.ustr.gov/releases/2002/11/2002-11-13-australia-byrd.PDF*, respectively. The TPSC invited the public to provide written comments and/or oral testimony at a public hearing that took place on January 15, 2003, to assist USTR in amplifying and clarifying negotiating objectives for the proposed FTA and to provide advice on how specific goods and services and other matters should be treated under the proposed agreement (67 FR 76431).

Two-way trade between the United States and Australia has grown significantly in the past decade, and totaled more than $19 billion in 2001. The increased access to Australia s market that an FTA would provide would further boost trade in both goods and services, enhancing employment opportunities in both countries. An FTA also would encourage additional foreign investment between the United States and Australia. A free trade agreement with Australia would further deepen the already close cooperation between the United States and Australia in advancing objectives for multilateral negotiations currently underway in the World Trade Organization (WTO).

2. Employment Impact Review

Section 2102(c)(5) of the Bipartisan Trade Promotion Authority Act of 2002, 19 U.S.C. 3802(c)(5), directs the President to "review the impact of future trade agreements on United States employment, including labor markets, modeled after Executive Order 13141 to the extent appropriate in establishing procedures and criteria, report to the Committee on Ways and Means of the House of Representatives and the Committee on Finance of the Senate on such review, and make that report available to the public. USTR and the Department of Labor will conduct the employment reviews through the TPSC.

The employment impact review will be based on the following elements, which are modeled to the extent appropriate after those in EO 13141. The review will be: (1) written; (2) initiated through a **Federal Register** notice soliciting public comment and information on the employment impact of the FTA in the United States; (3) made available to the public in draft form for public comment, to the extent practicable; and (4) made available to the public in final form.

Comments may be submitted on potentially significant sectoral or regional employment impacts (both positive and negative) in the United States as well as other likely labor market impacts of the FTA. Persons submitting comments should provide as much detail as possible in support of their submissions.

3. Requirements for Submissions

To ensure prompt and full consideration of responses, the TPSC strongly recommends that interested persons submit comments by electronic mail to the following e-mail address: *FR0076@ustr.gov*. Persons making submissions by e-mail should use the following subject line: "Australia Employment Review." Documents should be submitted in WordPerfect, MSWord, or text (.TXT) files. Supporting documentation submitted as spreadsheets is acceptable in Quattro Pro or Excel format. For any document containing business confidential information submitted electronically, the file name of the business confidential version should begin with the characters "BC-", and the file name of the public version should begin with the character "P-". The "P-" or "BC-" should be followed by the name of the submitter. Persons who make submissions by e-mail should not provide separate cover letters; information that might appear in a cover letter should be included in the submission itself. To the extent possible, any attachments to the submission should be included in the same file as the submission itself, and not as separate files.

Written comments will be placed in a file open to public inspection pursuant to 15 CFR 2003.5, except confidential business information exempt from public inspection in accordance with 15 CFR 2003.6. Confidential business information submitted in accordance with 15 CFR 2003.6 must be clearly marked "BUSINESS CONFIDENTIAL" at the top of each page, including any cover letter or cover page, and must be accompanied by a non-confidential summary of the confidential information. All public documents and non-confidential summaries shall be available for public inspection in the USTR Reading Room in Room 3 of the Annex of the Office of the USTR, 1724 F Street, NW., Washington, DC 20508. An appointment to review the file may be made by calling (202) 395-6186. The USTR Reading Room is generally open to the public from 10 a.m.–12 noon and 1–4 p.m. Monday through Friday. Appointments must be scheduled at least 48 hours in advance.

General information concerning the Office of the United States Trade Representative may be obtained by accessing its Internet website (*http://www.ustr.gov*).

Carmen Suro-Bredie,

Chairman, Trade Policy Staff Committee.

[FR Doc. 03–11441 Filed 5–7–03; 8:45 am]

BILLING CODE 3190–01–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Summary Notice No. PE–2003–25]

Petitions for Exemption; Dispositions of Petitions Issued

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of dispositions of prior petitions.

SUMMARY: Pursuant to FAA's rulemaking provisions governing the application, processing, and disposition of petitions for exemption part 11 of Title 14, Code of Federal Regulations (14 CFR), this notice contains the dispositions of certain petitions previously received. The purpose of this notice is to improve the public's awareness of, and participation in, this aspect of FAA's regulatory activities. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of any petition or its final disposition.

FOR FURTHER INFORMATION CONTACT: Mike Brown, Office of Rulemaking (ARM–1), Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591. Tel. (202) 267–7653.

This notice is published pursuant to 14 CFR 11.85 and 11.91.

Issued in Washington, DC on May 2, 2003.

Donald P. Byrne,

Assistant Chief Counsel for Regulations.

Dispositions of Petitions

Docket No.: FAA–2003–14668.

Petitioner: The Boeing Company.

Section of 14 CFR Affected: 14 CFR 21.325(b)(3).

Description of Relief Sought/Disposition: To permit Boeing to issue export airworthiness approvals for Class II and Class III products produced outside the United States. *Grant, 4/24/2003, Exemption No. 7552A.*

Docket No.: FAA–2003–14212.

Petitioner: Honeywell Aerospace Electronic Systems.

Section of 14 CFR Affected: 14 CFR 21.621.

Description of Relief Sought/Disposition: To permit Honeywell to continue production and support of Technical Standard Order Authorization products made by Baker Electronics, Inc. *Grant, 4/24/2003, Exemption No. 8031.*

[FR Doc. 03–11453 Filed 5–7–03; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

RTCA Special Committee 195: Flight Information Services Communications (FISC)

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of RTCA Special Committee 195 meeting.

SUMMARY: The FAA is issuing this notice to advise the public of a meeting of RTCA Special Committee 195: Flight Information Services Communications (FISC).

DATES: The meeting will be held June 4–5, 2003, starting at 8:30 a.m.

ADDRESSES: The meeting will be held at RTCA, Inc., 1828 L Street, NW., Suite 805, Washington, DC 20036.

FOR FURTHER INFORMATION CONTACT: RTCA Secretariat, 1828 L Street, NW., Washington, DC 20036; telephone (202) 833–9339; fax (202) 833–9434; Web site *http://www.rtca.org.*

SUPPLEMENTARY INFORMATION: Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463, 5 U.S.C., Appendix 2), notice is hereby given for a Special Committee 195 meeting. The agenda will include:

- June 4:
  - Open Plenary Session (Welcome and Introductory Remarks, Approval of Agenda, Approval of Minutes, Review of Action Items)
  - Report from Working Group 1
  - Review of Product Registry Document
  - Review of DO–267 Change 1 Draft
- June 5:
  - Review and Progress DO–267 Change 1 Draft
  - Closing Plenary Session (Review Action Items, Discussion of Future Workplan, Other Business, Date and Place of Next Meeting, Adjourn)

Attendance is open to the interested public but limited to space availability. With the approval of the chairmen, members of the public may present oral statements at the meeting. Persons wishing to present statements or obtain information should contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section. Members of the public may present a written statement to the committee at any time.

Issued in Washington, DC, on April 30, 2003.

Norman T. Fujisaki,

Deputy Director, System Architecture and Investment Analysis.

[FR Doc. 03–11455 Filed 5–7–03; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

RTCA Special Committee 193/EUROCAE Working Group 44: Terrain and Airport Databases

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of RTCA Special Committee 193/EUROCAE Working Group 44 meeting.

SUMMARY: The FAA is issuing this notice to advise the public of a meeting of RTCA Special Committee 193/EUROCAE Working Group 44: Terrain and Airport Databases.

DATES: The meeting will be held June 9–13, 2003 from 9 a.m.–5 p.m.

ADDRESSES: The meeting will be held at Jeppesen, 55 Inverness Drive East, Englewood, CO 80112.

FOR FURTHER INFORMATION CONTACT: (1) RTCA Secretariat, 1828 L Street, NW., Suite 805, Washington, DC 20036; telephone (202) 833–9339; fax (202) 833–9434; Web site *http://www.rtca.org.* (2) Mr. James E. Terpstra, Jeppesen, telephone (303) 328–4401.

SUPPLEMENTARY INFORMATION: Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463, 5 U.S.C., Appendix 2), notice is hereby given for a Special Committee 193/EUROCAE Working Group 44 meeting. The agenda will include:

- June 9:
  - Opening Plenary Session (Welcome and Introductory Remarks, Review/Approval of Meeting Agenda, Review Summary of Previous Meeting)
  - Presentations/Discussions
  - Subgroup 4 (Database Exchange Format)
  - Resolution of Action Items
  - Feature catalogue review

—Aerodrome database
—Terrain database
—Obstacle database

- June 10:
  - Subgroup 4 (Continue previous day activities)
- June 11:
  - Subgroup 4 (Continue previous day activities)
  - Metadata Review
- June 12:
  - Subgroup 4 (Continue previous day activities)
- June 13:
  - Closing Plenary Session (Summary of Subgroup 4, Assign Tasks, Other Business, Date and Place of Next Meeting, Adjourn)

Attendance is open to the interested public but limited to space availability. With the approval of the chairmen, members of the public may present oral statements at the meeting. Persons wishing to present statements or obtain information should contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section. Members of the public may present a written statement to the committee at any time.

Issued in Washington, DC, on April 30, 2003.

Norman Fujisaki,

Deputy Director, System Architecture and Investment Analysis.

[FR Doc. 03–11456 Filed 5–7–03; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

[Docket Number FRA–2002–12509]

Notice of Public Hearing; Burlington Northern and Santa Fe Railway

The Burlington Northern and Santa Fe Railway has petitioned the Federal Railroad Administration (FRA) seeking approval of the proposed discontinuance and removal of the traffic control system, on the main tracks between milepost 437.2, near Sapulpa, Oklahoma and milepost 579.3, Mill Creek, Oklahoma, on the Texas Division, Creek Subdivision, a distance of approximately 142 miles, associated with the implementation of Track Warrant Control to govern train movements. This block signal application proceeding is identified as Docket No. FRA–2002–12509.

The FRA has issued a public notice seeking comments of interested parties and has conducted its own field investigation in this matter. After examining the carrier's proposal, letters of protest, and the field report, the FRA has determined that a public hearing is necessary before a final decision is made on this proposal.

Accordingly, a public hearing is hereby set for 9 a.m. on Thursday, June 5, 2003, in the Ada City Hall West Annex, 210 West 13th Street, Ada, Oklahoma 74820. Interested parties are invited to present oral statements at the hearing.

The hearing will be an informal one and will be conducted in accordance with Rule 25 of the FRA rules of practice (49 CFR part 211.25), by a representative designated by the FRA.

The hearing will be a non adversary proceeding and, therefore, there will be no cross-examination of persons presenting statements. The FRA representative will make an opening statement outlining the scope of the hearing. After all initial statements have been completed, those persons wishing to make brief rebuttal statements will be given the opportunity to do so in the same order in which they made their initial statements. Additional procedures, if necessary for the conduct of the hearing, will be announced at the hearing.

Issued in Washington, DC on May 1, 2003.

George A. Gavalla,

Associate Administrator for Safety.

[FR Doc. 03–11448 Filed 5–7–03; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

[Docket No. FRA–2003–15100]

Notice of Informal Safety Inquiry

AGENCY: Federal Railroad Administration (FRA), DOT.

ACTION: Notice of informal safety inquiry; technical conference.

SUMMARY: Pursuant to 49 CFR 211.61, FRA is issuing this document to notify all interested parties that FRA is conducting an informal safety inquiry and technical conference related to the application of safety appliances on passenger equipment. The primary focus of this informal safety inquiry and technical conference is to elicit views and information from interested parties to aid FRA in its safety oversight of existing passenger equipment with safety appliance arrangements that are mechanically affixed to brackets or plates that are welded onto the equipment. FRA intends for this informal inquiry to clarify further both the safety concerns and economic considerations involved in the various approaches available to FRA for addressing this existing equipment. The technical conference may also include a general discussion of the safety issues and practical concerns related to FRA's general prohibition on the weldment of safety appliances and safety appliance brackets or supports.

DATES: *Technical Conference:* A technical conference will be held on the date and at the location listed below to provide interested parties the opportunity to provide information and discuss the safety and economic issues related to the agency's handling of existing passenger equipment with safety appliances that are attached to the vehicles with some form of welded brackets, plates, or direct fixation. The date of the technical conference is as follows: June 17, 2003, at 10 a.m. in Washington, DC.

Comments: In addition to, or in lieu of, participation in the technical conference, interested parties may submit comments and information relevant to the issues identified in this notice or discussed at the technical conference to the address noted below. Such written materials should be received within 30 days after the date of the technical conference, noted above.

ADDRESSES: (1) *Technical Conference:* The technical conference will be held in the Adams Room at the Washington Plaza Hotel, 10 Thomas Circle, NW., Washington, DC 20005.

(2) *Attendance:* Notification to FRA's Docket Clerk must identify the name, address, and telephone number of each participant or attendee at the technical conference. This notification should be submitted to the Docket Clerk, Office of Chief Counsel, Federal Railroad Administration, RCC–10, 1120 Vermont Avenue, NW., Stop 10, Washington, DC 20590.

(3) *Comments:* Anyone wishing to file a comment related to this informal safety inquiry should refer to the FRA docket number (Docket No. FRA–2003–15100). You may submit your comments and related material by only one of the following methods:

(i) By mail to the Docket Management System, United States Department of Transportation, room PL–401, 400 7th Street, SW., Washington, DC 20590–0001; or

(ii) Electronically through the Web site for the Docket Management System at *http://dms.dot.gov*. For instructions on how to submit comments electronically, visit the Docket Management System Web site and click on the "help" menu.

The Docket Management Facility maintains the public docket for this rulemaking. Comments and documents as indicated in this preamble will become part of this docket and will be available for inspection or copying at room PL–401 on the Plaza Level of the Nassif building at the same address during regular business hours. You may also obtain access to this docket on the Internet at *http://dms.dot.gov*.

FRA wishes to inform all potential commenters that anyone is able to search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (Volume 65, Number 70; Pages 19477–78) or you may visit *http://dms.dot.gov*.

FOR FURTHER INFORMATION, CONTACT: Steve Carullo, Safety Specialist, Motive Power and Equipment Division, FRA Office of Safety Assurance and Compliance, RRS–14, 1120 Vermont Avenue, NW., Stop 25, Washington, DC 20950 (telephone 202–493–6480), or Thomas Herrmann, Trial Attorney, FRA Office of the Chief Counsel, RCC–10, 1120 Vermont Avenue, NW., Stop 10, Washington, DC 20950 (telephone 202–493–6053).

SUPPLEMENTARY INFORMATION: The purpose of the technical conference is to permit the exchange of information and concerns regarding FRA's safety oversight of existing passenger equipment containing safety appliances that are attached to the equipment by some form of weldment, typically the weldment of a bracket or plate to which the safety appliance is then mechanically fastened. Historically, FRA has required that safety appliances be mechanically fastened to the car structure. FRA has also historically required that any brackets or supports applied to a car structure solely for the purpose of securing a safety appliance must be mechanically fastened to the car body. *See* MP&E Technical Bulletin 98–14. FRA's prohibition on the weldment of safety appliances and their supports is based on its longstanding administrative interpretation of the regulatory "manner of application" provisions contained in 49 CFR part 231 which require that safety appliances be "securely fastened" with a specified mechanical fastener. *See e.g.*, 49 CFR 231.12(c)(4); 231.13(b)(4); 231.14(b)(4) and (f)(4). FRA's prohibition on the welding of safety appliances is based on its belief that welds are not uniform, are subject to failure, and are very difficult to inspect to determine if the weld is broken or cracked. Mechanical fasteners, by contrast, are generally easily inspectable and tend to become noticeably loose prior to failure.

Generally, FRA's longstanding interpretation of the regulation prohibiting the weldment of safety appliances has not been seriously questioned or opposed since its inception. Virtually all railcars manufactured for use in the United States have their safety appliances and their safety appliance brackets and supports mechanically fastened to the car body, unless a specific exception has been provided by FRA or the regulations. FRA acknowledges that it has permitted the weldment of certain safety appliances or their brackets and supports on locomotives and tanks cars. *See* MP&E Technical Bulletins 98–48 and 00–06. Although, FRA intends for this safety inquiry and technical conference to address and discuss FRA's general prohibition on the weldment of safety appliances or their supports, FRA expects the primary focus of this proceeding to be specifically directed at the safety and economic implications related to the continued operation or modification of existing passenger equipment with welded safety appliances or safety appliance brackets or supports.

Although FRA has remained consistent in its prohibition on the weldment of safety appliances and their supports, some passenger equipment has been manufactured and used in revenue service for a number of years with safety appliances being attached to the car body with some form of weldment. Currently, FRA is aware of approximately 1,000 passenger cars or locomotives that have safety appliances or safety appliance brackets or supports welded to the body of the equipment. Some units of this equipment were introduced into service within the last few years; others have been in service for more than a decade. Some of the 1,000 units noted above have been the subject of formal waiver requests pursuant to the provisions contained in 49 CFR part 211. *See* FRA Docket Nos. 2000–8588 and 2000–8044. Although FRA's Safety Board has issued determinations in these two instances, FRA intends to stay those decisions until the completion of this informal safety inquiry. Based on its review of the information gathered during this inquiry and any other relevant information, FRA's Safety Board may reaffirm its previous decisions in these two waiver proceedings or modify them as necessary.

Based on the foregoing information, FRA expects the focus of the discussions at the technical conference and written comments submitted in connection with this informal safety inquiry to include the following issues:

- The safety implications related to the continued use of existing passenger equipment with welded safety appliances or supports;
- Criteria for determining when an existing piece of passenger equipment with a welded appliance or support is defective or unsafe or both;
- The economic implications of any type of modification program on the subject cars;
- Alternative approaches to mandatory modification of existing equipment (*e.g.*, notification of when the appliances become or replacement of the appliances when they become defective; mid-life over-hauls) and the economic implication of any suggested approach;
- The safety implications and standards that should and could be addressed, were FRA to reconsider its long-standing administrative interpretation related to the weldment of safety appliances and their supports, such as:

—What part or parts of an appliance should FRA allow to be welded (*e.g.*, just brackets and supports)?
—To what base structure or material should these have to be welded (*e.g.*, structural member, car sheathing)?
—What quality control standards should apply to the welding process?
—What qualifications/training should the individual performing the welding need to possess?
—How should field or shop repairs or both be conducted on equipment with welded safety appliances or supports?
—What are the safety implications of allowing such repairs?
—When should a weld be considered defective?
—What visual and non-destructive inspection techniques are appropriate for welds?
—At what interval should welds be inspected?
—What records, if any, should be maintained of these inspections?

- Other relevant issues or information.

Public Participation Procedures

Any person wishing to attend the technical conference should notify FRA's Docket Clerk by mail at the address provided in the **ADDRESSES** section at least five working days prior to the date of the meeting and submit three copies of the issues or materials they wish to present at the conference. The notification should identify the party the person represents, and the particular subject(s) the person plans to address. The notification should also provide the Docket Clerk with the participant's mailing address. FRA reserves the right to limit participation in the conference of persons who fail to provide such notification.

Issued in Washington, DC, on May 2, 2003.

George A. Gavalla,

Associate Administrator for Safety.

[FR Doc. 03–11457 Filed 5–7–03; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

Notice of Application for Approval of Discontinuance or Modification of a Railroad Signal System or Relief From the Requirements of Title 49 Code of Federal Regulations Part 236

Pursuant to Title 49 Code of Federal Regulations (CFR) part 235 and 49 U.S.C. 20502(a), the following railroad has petitioned the Federal Railroad Administration (FRA) seeking approval for the discontinuance or modification of the signal system or relief from the requirements of 49 CFR part 236 as detailed below.

[Docket No. FRA–2003–14647]

Applicant: Burlington Northern and Santa Fe Railway, Mr. William G. Peterson, Director Signal Engineering, 4515 Kansas Avenue, Kansas City, Kansas 66106.

Burlington Northern and Santa Fe Railway (BNSF) seeks approval of the proposed modification of the traffic control system on the single main track at South Joe, Texas, milepost 633.11, Texas Division, Madill Subdivision, consisting of the replacement of the power-operated switch with an electrically locked hand-operated switch, and removal of all associated controlled signals.

The reason given for the proposed changes is that the switch is at one end of what was a 4,500 foot connecting track between the Union Pacific Railroad (UP) and the BNSF. A derailment destroyed the UP switch, after which UP straight-railed their track, leaving approximately 2,200 feet of the BNSF connection. BNSF is using the track for storage and the control point is no longer needed.

Any interested party desiring to protest the granting of an application shall set forth specifically the grounds upon which the protest is made, and include a concise statement of the interest of the party in the proceeding. Additionally, one copy of the protest shall be furnished to the applicant at the address listed above.

All communications concerning this proceeding should be identified by the docket number and must be submitted to the Docket Clerk, DOT Central Docket Management Facility, Room PL–401 (Plaza Level), 400 7th Street, SW., Washington, DC 20590–0001. Communications received within 45 days of the date of this notice will be considered by the FRA before final action is taken. Comments received after that date will be considered as far as practicable. All written communications concerning these proceedings are available for examination during regular business hours (9 a.m.—5 p.m.) at the above facility. All documents in the public docket are also available for inspection and copying on the internet at the docket facility's Web site at *http://dms.dot.gov.*

FRA expects to be able to determine these matters without an oral hearing. However, if a specific request for an oral hearing is accompanied by a showing that the party is unable to adequately present his or her position by written statements, an application may be set for public hearing.

Issued in Washington, DC on April 28, 2003.

Grady C. Cothen, Jr.,

Deputy Associate Administrator for Safety Standards and Program Development.

[FR Doc. 03–11449 Filed 5–7–03; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Finance Docket No. 34338]

Metro Regional Transit Authority—Acquisition Exemption—Certain Assets of Akron Barberton Cluster Railway Company

Metro Regional Transit Authority (METRO),[1] a regional transit authority, has filed a notice of exemption under 49 CFR 1150.31, *et seq.,* to acquire from Akron Barberton Cluster Railway Company (ABC) certain assets of a line of railroad extending between approximately milepost 11.49 in Akron, OH, and approximately milepost 8.00 in Cuyahoga Falls, OH, a distance of approximately 3.49 miles in Summit County, OH. ABC will retain an exclusive freight railroad operations easement on the subject line.

[1] METRO indicates that it will file a motion to dismiss its notice of exemption in this case to obtain a jurisdictional determination regarding its prospective common carrier status with respect to the line. That motion will be addressed in a subsequent decision.

The transaction was scheduled to be consummated on or after April 21, 2003 (7 days after the notice was filed).

If the notice contains false or misleading information, the exemption is void *ab initio.* Petitions to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke does not automatically stay the transaction.

An original and 10 copies of all pleadings, referring to STB Finance Docket No. 34338, must be filed with the Surface Transportation Board, 1925 K Street, NW., Washington, DC 20423–0001. In addition, a copy of each pleading must be served on Edward J. Fishman, Esq., Kirkpatrick & Lockhart LLP, 1800 Massachusetts Avenue, Second Floor., Washington, DC 20036, and John M. Coyne, III, Esq., Roetzel & Andress, 222 South Main Street, Akron, OH 44308.

Board decisions and notices are available on our website at *http://www.stb.dot.gov.*

Decided: April 30, 2003.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 03–11309 Filed 5–7–03; 8:45 am]

BILLING CODE 4915–00–P

DEPARTMENT OF TRANSPORTATION

Bureau of Transportation Statistics

Advisory Council on Transportation Statistics; Notice of Meeting

AGENCY: Bureau of Transportation Statistics (BTS), DOT.

ACTION: Notice.

This notice announces, pursuant to Section 10(A)(2) of the Federal Advisory Committee Act (FACA) (Pub. L. 72–363; 5 U.S.C. app. 2), a meeting of the BTS Advisory Council on Transportation Statistics (ACTS). The meeting will be held on June 2, 2003, from 10 a.m. to 4 p.m. The meeting will take place at the U.S. Department of Transportation, 400 Seventh Street, SW., Washington DC, on the 6th Floor, in Conference Room 6200 of the Nassif Building.

The ACTS, established under section 6007 of Public Law 102–240, Intermodal Surface Transportation Efficiency Act of 1991, December 18, 1991, and chartered on June 19, 1995, was created to advise the Director of BTS on transportation statistics and analyses, including whether or not the statistics and analysis disseminated by the BTS are of high quality and are based upon the best available objective information.

The following is a summary of the meeting's agenda: (1) Welcome and Introductory Remarks; (2) Overview of Agenda Items; (3) Freight Statistics; (4) Travel Statistics; (5) Airline Data; (6) Transportation Economics; (7) Transportation Geo-spatial Data; (8) System Performance; (9) Methods and Standards; (10) New Indicators and (11) Public Comments and Closing Remarks.

Since access to the DOT building is controlled, all persons who plan to attend the meeting must notify Ms. Phyllis Seville, the Committee Management Officer at (202) 366–9510 prior to May 29, 2003. Individuals attending the meeting must report to the SW Lobby of the Nassif Building for admission to the building. Attendance is open to the public, but limited space is available. With the approval of the Chair, members of the public may present oral statements at the meeting. Non-committee members wishing to present oral statements or obtain information should also contact Ms. Seville.

Questions about the agenda or written comments may be submitted by U.S. Mail to: U.S. Department of Transportation, Attention: Ms. Laura McClure, Designated Federal Officer, BTS, Room 3103, 400 Seventh St. SW., Washington DC 20590 or faxed to (202) 366–3640, Attention: Ms. Laura McClure. BTS requests that written comments be submitted prior to the meeting.

Persons with a disability requiring special services, such as an interpreter for the hearing impaired, should contact Ms. Seville at (202) 366–9510 at least seven calendar days prior to the meeting.

Notice of this meeting is provided in accordance with the FACA and the General Service Administration regulations (41 CFR part 102–3) covering management of Federal advisory committees.

Issued in Washington, DC, on May 2, 2003.

Rick Kowalewski,

Acting Director, Bureau of Transportation Statistics.

[FR Doc. 03–11451 Filed 5–7–03; 8:45 am]

BILLING CODE 4910–HY–P

DEPARTMENT OF THE TREASURY

Submission for OMB Review; Comment Request

May 1, 2003.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 11000, 1750 Pennsylvania Avenue, NW., Washington, DC 20220.

DATES: Written comments should be received on or before June 9, 2003 to be assured of consideration.

Internal Revenue Service (IRS)

OMB Number: 1545–1364.

Regulation Project Number: INTL–372–88 Final and INTL–401–88 Final.

Type of Review: Extension.

Title: INTL–372–88 Final: Section 482 Cost Sharing Regulations; and

INTL–401–88 Final: Intercompany Transfer Pricing Regulations under section 482.

Description: INTL–372–88 Final: The information will be used to determine whether an entity is an eligible participant of a qualified cost sharing arrangement and whether each eligible participant is haring the costs and benefits of intangible development on an arm's length basis. INTL–401–88 Final: This document contains regulations relating to the pricing transfers of tangible property, intangible property, or services between related parties.

Respondents: Business or other for-profit.

Estimated Number of Respondents/Recordkeepers: 1,000.

Estimated Burden Hours Per Respondent/Recordkeeper: 7 hours, 51 minutes.

Frequency of Response: Annually.

Estimated Total Reporting/Recordkeeping Burden: 7,850 hours.

Clearance Officer: Glenn Kirkland (202) 622–3428, Internal Revenue Service, Room 6411–03, 1111 Constitution Avenue, NW., Washington, DC 20224.

OMB Reviewer: Joseph F. Lackey, Jr. (202) 395–7316, Office of Management and Budget, Room 10235, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,

Departmental Reports Management Officer.

[FR Doc. 03–11468 Filed 5–7–03; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Form 6781

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Form 6781, Gains and Losses From Section 1256 Contracts and Straddles.

DATES: Written comments should be received on or before July 7, 2003 to be assured of consideration.

ADDRESSES: Direct all written comments to Glenn Kirkland, Internal Revenue Service, room 6411, 1111 Constitution Avenue, NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to Larnice Mack at Internal Revenue Service, room 6407, 1111 Constitution Avenue, NW., Washington, DC 20224, or at (202) 622–3179, or through the Internet at *Larnice.Mack@irs.gov.*

SUPPLEMENTARY INFORMATION:

Title: Gains and Losses From Section 1256 Contracts and Straddles.

OMB Number: 1545–0644.

Form Number: Form 6781.

Abstract: Form 6781 is used by taxpayers in computing their gains and losses on Internal Revenue Code section 1256 contracts under the marked-to-market rules and gains and losses under Code section 1092 from straddle positions. The data is used to verify that the tax reported accurately reflects any such gains and losses.

Current Actions: There are no changes being made to Form 6781 at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit organizations and individuals.

Estimated Number of Respondents: 100,000.

Estimated Time Per Respondent: 17 hrs. 16 min.

Estimated Total Annual Burden Hours: 1,727,000.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: April 29, 2003.

Glenn Kirkland,

IRS Reports Clearance Officer.

[FR Doc. 03–11488 Filed 5–7–03; 8:45 am]

BILLING CODE 4830–01–P

Federal Register

Thursday,
May 8, 2003

Part II

Department of the Treasury

Fiscal Service

31 CFR Part 315, et al.
Regulations Governing Treasury Securities, New Treasury Direct System; Final Rule

DEPARTMENT OF THE TREASURY

Fiscal Service

31 CFR Parts 315, 351, 353, 359, 360, and 363

Regulations Governing Treasury Securities, New Treasury Direct System

AGENCY: Bureau of the Public Debt, Fiscal Service, Treasury.

ACTION: Final rule.

SUMMARY: We recently implemented a new book-entry, online system for purchasing, holding and conducting transactions in Treasury securities. The system is known as New Treasury Direct.

At its initial implementation, the only Treasury security that could be held in New Treasury Direct was the book-entry Series I savings bond. We are now adding the book-entry Series EE savings bond to the system. We revised the regulations governing book-entry Treasury securities held in the New Treasury Direct system by adding the Series EE savings bond to the subpart dealing with the Series I savings bond. This subpart now covers both Series I and Series EE book-entry savings bonds.

We revised the offering of United States savings bonds of Series EE to provide for the book-entry Series EE savings bond. We changed the purchase limitation for definitive Series EE bonds from face amount to principal amount, for consistency with the purchase limitation for book-entry Series EE savings bonds, and with book-entry and definitive Series I bonds. We extended the original maturity period of Series EE savings bonds from 17 years to 20 years. We also rewrote the regulations in plain language.

We revised the governing regulations for United States savings bonds of Series EE to make it clear that these regulations only apply to definitive Series EE savings bonds. We revised the governing regulations for Series E, H, EE, HH, and I savings bonds to streamline the handling of bonds belonging to a decedent's estate, and to make the estate provisions consistent with those for book-entry bonds.

DATES: Effective May 8, 2003.

ADDRESSES: You can download this final rule at the following Internet address: *http://www.publicdebt.treas.gov.*

FOR FURTHER INFORMATION CONTACT:

Elisha Whipkey, Director, Division of Program Administration, Office of Securities Operations, Bureau of the Public Debt, at (304) 480–6319 or *elisha.whipkey@bpd.treas.gov.*

Susan Klimas, Attorney-Adviser, Office of the Chief Counsel, Bureau of the Public Debt, at (304) 480–8692 or *susan.klimas@bpd.treas.gov.*

Dean Adams, Assistant Chief Counsel, Office of the Chief Counsel, Bureau of the Public Debt, at (304) 480–8692 or *dean.adams@bpd.treas.gov.*

Edward Gronseth, Deputy Chief Counsel, Bureau of the Public Debt, at (304) 480–8692 or *edward.gronseth@bpd.treas.gov.*

SUPPLEMENTARY INFORMATION:

Background

Public Debt recently developed a new account-based, online, book-entry system for purchasing, holding, and conducting transactions in Treasury securities via the Internet. The new system is known as New Treasury Direct.

Upon the initial implementation of the system in October 2002, only book-entry Series I savings bonds were offered through New Treasury Direct.

We will now offer book-entry Series EE savings bonds through the New Treasury Direct system.

We will continue to offer definitive Series EE savings bonds for some period of time.

The book-entry Series EE savings bond will benefit the investor by expanding the choices available within the New Treasury Direct system. The investor will be able to purchase and conduct transactions in Series EE savings bonds using his or her New Treasury Direct account using the Internet. The system will eliminate the paperwork burden inherent in the purchase of definitive Series EE savings bonds.

The book-entry Series EE savings bond will benefit the government by providing a cost-effective and efficient processing environment, thereby reducing processing costs to Treasury.

The offering circular for Series EE savings bonds is being amended to provide for the offering of the book-entry EE bond, and has also been rewritten in plain language. The offering circular is also being amended to change the original maturity period for both definitive and book-entry Series EE savings bonds from 17 years to 20 years. This change is being done because of the provision in the regulations that provides that a Series EE bond is worth its full face amount at original maturity. The effect of extending the original maturity period is to lower the minimum interest rate that is guaranteed at final maturity.

Both definitive and book-entry Series EE savings bonds will earn interest in the same manner. Both remain accrual bonds with interest payable only at redemption. However, the definitive Series EE savings bond continues to be sold at one-half of the face amount, while the book-entry Series EE savings bond will be have a face amount equal to the amount at which it is sold.

The limitation on purchases for the principal amount of a definitive Series EE savings bond is now $30,000 per calendar year, making it consistent with the limitation on purchases for the book-entry Series EE bond, and both book-entry and definitive Series I savings bonds, which is $30,000 per calendar year, par amount. We also changed the manner in which the computation of the amount limitation is made. Previously, bonds purchased by a person as a coowner could be apportioned between the first and second-named coowners. This change requires that all bonds purchased by a person as first-named coowner be counted in the amount limitation, regardless of who is named as second-named coowner. This has the effect of removing a loophole in the amount limitation, in which a person could purchase more than the annual limitation by naming several other individuals as coowners and apportioning the amount limitation among the other coowners.

We revised the purchase limitation for Series I savings bonds from per New Treasury Direct account to per person. This change will eliminate the possibility of circumventing the amount limitation by opening more than one New Treasury Direct account, and purchasing the maximum amount per account.

Registration options of the definitive and book-entry Series EE bond differ in many respects. The terms and conditions for the book-entry Series EE savings bond will be similar to the terms and conditions of the book-entry Series I savings bond.

Like the book-entry Series I savings bond, the forms of registration for book-entry Series EE savings bonds are single owner, primary owner with secondary owner, and owner with beneficiary. In addition, several special forms of registration are offered for securities belonging to the estates of deceased owners and legally incompetent persons.

The primary owner with secondary owner form of registration replaces the coowner form used for definitive EE savings bonds. In the coowner form of registration, both coowners have an equal right to the bond. In the primary owner with secondary owner form, the purchaser of the bond, the primary owner, has control of the bond. The primary owner may give the secondary owner the right to view or the right to conduct transactions in the bond, and may at any time revoke any rights given. The primary owner may remove the secondary owner without the consent of the secondary owner.

The single owner and owner with beneficiary forms of registration are identical to the registrations offered currently in definitive Series EE savings bonds.

The book-entry Series EE savings bond may be transferred from one New Treasury Direct account to another in order to give a gift (or in response to a final judgment, court order, divorce decree, or a property settlement agreement). The owner of the bond must certify online that the transfer is for the purpose of a gift or for one of the specified exceptions.

A book-entry Series EE savings bond may also be purchased as an irrevocable gift. The purchaser may deliver a gift bond to the account of the intended recipient immediately upon issue, or the purchaser may hold the bond until the purchaser chooses to deliver the bond to the intended recipient.

When transferred or delivered to the recipient, the gift bond will be transferred or delivered in the single owner form of registration to the owner named on the gift bond.

The limitation on purchases for book-entry Series EE savings bonds is $30,000 per person per calendar year for bonds purchased by the account owner. Bonds purchased as gifts are included in the amount limitation of the recipient when delivered. Book-entry Series EE savings bonds may be purchased in a minimum amount of $25, with one-cent increments above that amount per transaction. Book-entry bonds may be redeemed or transferred as a gift (or transferred pursuant to other permitted transfers) in an amount of $25 or greater redemption value.

The provisions relating to judicial proceedings are consistent with those governing definitive Series EE savings bonds. However, the primary owner with secondary owner form of registration for book-entry Series EE savings bonds mandates that some issues be treated differently. In the primary owner with secondary owner form of registration, the secondary owner has no right to redeem unless the primary owner gives him or her that right, and the right is revocable at any time. Thus, for purposes of judicial proceedings, a secondary owner is treated the same as a beneficiary.

We revised the governing regulations for all series of savings bonds and savings notes to streamline the procedures for handling decedents' estates. The change will provide a survivors' order of precedence that will permit a specified person to redeem or reissue savings bonds owned by a decedent on behalf of all persons entitled under state law, if the estate has not been administered, and if the redemption value of the bonds does not exceed $100,000. This change will provide consistency in the processing of bonds belonging to decedents' estates among all series of bonds and between definitive bonds and book-entry bonds. The previous regulations for savings bonds (except Series I) and savings notes provided for a similar survivors' order of precedence, but had a much lower amount limitation. The previous regulations for Series I savings bonds contained a slightly different version of the survivors' order of precedence.

Procedural Requirements

This final rule does not meet the criteria for a "significant regulatory action" as defined in Executive Order 12866. Therefore, the regulatory review procedures contained therein do not apply.

This final rule relates to matters of public contract and procedures for United States securities. The notice and public procedures requirements and delayed effective date requirements of the Administrative Procedure Act are inapplicable, pursuant to 5 U.S.C. 553(a)(2).

As no notice of proposed rulemaking is required, the Regulatory Flexibility Act (5 U.S.C. 601, *et seq.*) does not apply.

We ask for no new collections of information in this final rule. Therefore, the Paperwork Reduction Act (44 U.S.C. 3507) does not apply.

List of Subjects

31 CFR Part 315

Banks and banking, Government securities, Federal reserve system.

31 CFR Part 351

Bonds, Federal Reserve system, Government securities.

31 CFR Part 353

Banks and banking, Government securities, Federal reserve system.

31 CFR Part 359

Bonds, Federal Reserve system, Government securities, Securities.

31 CFR Part 360

Bonds.

31 CFR Part 363

Bonds, Electronic funds transfer, Federal Reserve system, Government securities, Securities.

■ Accordingly, for the reasons set out in the preamble, 31 CFR chapter II, subchapter B, is amended as follows:

PART 315—REGULATIONS GOVERNING U.S. SAVINGS BONDS, SERIES A, B, C, D, E, F, G, H, J, AND K, AND U.S. SAVINGS NOTES

■ 1. The authority citation for part 315 continues to read as follows:

Authority: 31 U.S.C. 3105 and 5 U.S.C. 301.

■ 2. Revise § 315.71 to read as follows:

§ 315.71 Decedent's estate.

(a) *Estate is being administered.* (1) Appropriate proof of appointment will be required for the legal representative of the estate. Letters of appointment must be dated within one year of submission.

(2) The bonds will be registered in the following form: "John Doe, SSN 123–45–6789, Legal Representative of the estate of James Doe, deceased, SSN 987–65–4321."

(3) The legal representative of the estate may request payment of bonds and held payments belonging to a decedent's estate, to the estate or to the person(s) entitled, or may have the bonds reissued to the person(s) entitled.

(b) *Estate has been settled previously.* If the estate has been previously settled through judicial proceedings, the person(s) entitled may request payment of bonds or may have the bonds reissued to the person(s) entitled. A certified copy of the court-approved final accounting for the estate, the court's decree of distribution, or other appropriate evidence will be required.

(c) *Summary administration procedures.* If there is no formal administration and no representative of the estate is to be appointed, the person(s) entitled under state law summary or small estates procedures may request payment of bonds or may have the bonds reissued to the person(s) entitled. Appropriate evidence is required.

(d) *Survivors' order of precedence for payment or reissue.* Estates with bonds over $100,000 redemption value must be administered. If there has been no administration, no administration is pending or contemplated, no summary or small estate procedures have been used, and the redemption value of the bonds is $100,000 or less, then bonds may be paid or reissued to the persons

named in the following order of precedence:

(1) There is a surviving spouse and no surviving child or descendant of a deceased child: to the surviving spouse.

(2) There is a surviving spouse and a child or children of the decedent, or descendants of deceased children: one-half to the surviving spouse and one-half to the child or children of the decedent, and the descendants of deceased children, by representation, or by agreement of all persons entitled in this class;

(3) There is no surviving spouse and there is a surviving child or descendant of deceased children: To the child or children of the decedent, and the descendants of deceased children, by representation.

(4) There are no surviving spouse, no surviving child, and no surviving descendants of deceased children: To the parents of the decedent, one-half to each, or in full to the survivor.

(5) There are no surviving spouse, no surviving child or surviving descendants of deceased children, and no surviving parents: To the brothers and sisters and descendants of deceased brothers and sisters by representation.

(6) There are no surviving spouse, no surviving child or surviving descendants of deceased children, no surviving parents, and no brothers or sisters or descendants of deceased brothers and sisters: To other next of kin, as determined by the laws of the decedent's domicile at the time of death.

(7) There are no surviving spouse, no surviving child or surviving descendants of deceased children, no surviving parents, no brothers or sisters or descendants of deceased brothers and sisters, and no next of kin, as determined by the laws of the decedent's domicile at the time of death: To persons related to the decedent by marriage, *i.e.*, heirs of a spouse of the last decedent where the spouse predeceased that registrant.

(8) There are no surviving spouse, no surviving child or surviving descendants of deceased children, no surviving parents, no brothers or sisters or descendants of deceased brothers and sisters, no next of kin, as determined by the laws of the decedent's domicile at the time of death, and no persons related to the decedent by marriage: To the person who paid the burial and funeral expenses, or a creditor of the decedent's estate, but payment may be made only to the extent that the person has not been reimbursed. Reissues are not permitted.

(9) Escheat according to the applicable state law.

(e) When we make payments or reissues according to paragraph (d) of this section, we will make the payments to either a person individually, or individually and on behalf of all other persons entitled. A person who receives payment of bond proceeds individually and on behalf of others warrants that he or she will make distribution of the proceeds to the persons entitled by the law of the decedent's domicile. The provisions of this section are for the convenience of the United States and do not determine ownership of the bonds or their proceeds. The Department of the Treasury may rely on information provided by the person who requests payment or transfer, and is not liable for any action taken in reliance on the information furnished.

§ 315.72 [Reserved]

■ 3. Remove and reserve § 315.72.

PART 351—OFFERING OF UNITED STATES SAVINGS BONDS, SERIES EE

■ 4. Revise part 351 to read as follows:

PART 351—OFFERING OF UNITED STATES SAVINGS BONDS, SERIES EE

Sec.

Subpart A—General Information

351.0 What does this part cover?
351.1 What regulations govern Series EE savings bonds?
351.2 How do I contact Public Debt?
351.3 What special terms do I need to know to understand this part?
351.4 In what form are Series EE savings bonds issued?

Subpart B—Maturities, Redemption Values, and Investment Yields of Series EE Savings Bonds

General Provisions

351.5 What is the maturity period of a Series EE savings bond?
351.6 When may I redeem my Series EE savings bond?
351.7 May Series EE savings bonds be called for redemption prior to final maturity?
351.8 When is interest payable on Series EE savings bonds?
351.9 When will I receive the redemption value of my Series EE savings bonds?
351.10 What do I need to know about market yields, or market bid yields, to understand redemption value calculations in this subpart?
351.11 What do I need to know about the short-term savings bond rate, to understand redemption value calculations in this subpart?
351.12 What do I need to know about the long-term savings bond rate, to understand redemption value calculations in this subpart?
351.13 What do I need to know about the savings bond rate to understand redemption value calculations in this subpart?
351.14 When are rate announcements applicable to Series EE savings bonds announced?
351.15 Is the determination of the Secretary on rates and values final?
351.16 What do I need to know about the base denomination for redemption value calculations?
351.17–351.18 [Reserved]

Series EE Savings Bonds With Issue Dates Prior to May 1, 1995

351.19 What are maturity periods of Series EE savings bonds with issue dates prior to May 1, 1995?
351.20 What is the investment yield (interest) during the original maturity period of Series EE savings bonds with issue dates January 1, 1980, through April 1, 1995?
351.21 How are redemption values determined during any extended maturity period of Series EE savings bonds with issue dates prior to May 1, 1995?
351.22 When does the redemption value increase for bonds issued prior to May 1, 1995?
351.23 Are tables of redemption values available for bonds issued prior to May 1, 1995?

Series EE Savings Bonds With Issue Dates From May 1, 1995, Through April 1, 1997

351.24 What are the maturity periods of bonds with issue dates from May 1, 1995, through April 1, 1997?
351.25 What were the interest rates and redemption values for bonds with issue dates from May 1, 1995, through April 1, 1997, during semiannual rate periods in the first 5 years after issue date?
351.26 What are the interest rates and redemption values for bonds with issue dates from May 1, 1995 through April 1, 1997, during semiannual rate periods that begin 5 years or more after issue date?
351.27 What are the interest rates and redemption values for bonds with issue dates from May 1, 1995 through April 1, 1997, during an extended maturity period?
351.28 How are redemption values calculated for bonds with issue dates from May 1, 1995, through April 1, 1997?

Series EE Savings Bonds With Issue Dates From May 1, 1997, and Thereafter

351.29 What are the maturity periods of bonds with issue dates from May 1, 1997, and thereafter?
351.30 What are interest rates and monthly accruals for bonds with issue dates of May 1, 1997, or thereafter, during the original maturity period?
351.31 What is the interest penalty for Series EE bonds with issue dates of May 1, 1997, or thereafter that are redeemed less than 5 years after the issue date?
351.32 How are redemption values calculated for Series EE bonds with issue dates of May 1, 1997, or thereafter?
351.33 What are interest rates and redemption values for bonds issued May 1, 1997, or thereafter, during an extended maturity period?
351.34–351.39 [Reserved]

Subpart C—Definitive Series EE Savings Bonds

351.40 What are the denominations and prices of definitive Series EE savings bonds?
351.41 When are definitive Series EE savings bonds validly issued?
351.42 What is the issue date of a definitive Series EE savings bond?
351.43 Are taxpayer identification numbers (TINs) required for the registration of definitive Series EE savings bonds?
351.44 What amount of definitive Series EE savings bonds may I purchase per year?
351.45 What happens if I purchase definitive Series EE savings bonds in excess of the maximum annual amount?
351.46 May I purchase definitive Series EE savings bonds over-the-counter?
351.47 May I purchase definitive Series EE savings bonds through a payroll savings plan?
351.48 May I purchase definitive Series EE savings bonds through employee thrift, savings, vacation, and similar plans?
351.49 How are definitive Series EE savings bonds delivered?
351.50 How is payment made when definitive Series EE savings bonds are redeemed?
351.51 How can I find out what my definitive Series EE savings bonds are worth?
351.52–351.59 [Reserved]

Subpart D Book—Entry Series EE Savings Bonds

351.60 How are book-entry Series EE savings bonds purchased and held?
351.61 What are the denominations and prices of book-entry Series EE savings bonds?
351.62 How is payment made for purchases of book-entry Series EE savings bonds?
351.63 How are redemption payments made for my redeemed book-entry Series EE savings bonds?
351.64 What is the issue date of a book-entry Series EE savings bond?
351.65 What amount of book-entry Series EE savings bonds may I acquire per year?
351.66 What book-entry Series EE savings bonds are included in the computation?
351.67 What happens if any person purchases book-entry Series EE savings bonds in excess of the maximum annual amount?
351.68 Are taxpayer identification numbers (TINs) required for registration of book-entry Series EE savings bonds?
351.69 When is a book-entry Series EE savings bond validly issued?
351.70 How are redemption values calculated for book-entry Series EE savings bonds?
351.71 How can I find out what my book-entry Series EE savings bonds are worth?
351.72–351.80 [Reserved]

Subpart E—Miscellaneous Provisions

351.81 Is the Education Savings Bond Program available for Series EE savings bonds?
351.82 Does Public Debt prohibit the issuance of Series EE savings bonds in a chain letter scheme?
351.83 May Public Debt issue Series EE savings bonds only in book-entry form?
351.84 Does Public Debt make any reservations as to issue of Series EE savings bonds?
351.85 May Public Debt waive any provision in this part?
351.86 What is the role of Federal Reserve Banks and Branches?
351.87 May Public Debt revise, supplement or amend the terms of this offering?

Appendix to Part 351—Tax Considerations

Authority: 5 U.S.C. 301; 12 U.S.C. 391; 31 U.S.C. 3105.

Subpart A—General Information

§ 351.0 What does this part cover?

This part is the offering of United States Savings Bonds of Series EE (referred to as Series EE bonds or bonds) for sale to the people of the United States by the Secretary of the Treasury (Secretary). Series EE bonds have been offered since 1980. The current offer was effective May 1, 2003, and will continue until terminated by the Secretary.

§ 351.1 What regulations govern Series EE savings bonds?

(a) The regulations in 31 CFR part 353 apply to definitive (paper) Series EE savings bonds.

(b) The regulations in 31 CFR part 363 apply to book-entry Series EE savings bonds.

(c) The regulations in 31 CFR part 370 apply to transactions for the purchase of savings bonds issued through the Bureau of the Public Debt, but do not apply to transactions purchased through issuing agents generally.

(d) We expressly disclaim any representations or warranties regarding Series EE savings bonds that in any way conflict with these regulations and other applicable law.

§ 351.2 How do I contact Public Debt?

You may contact Public Debt by e-mail at <*savbonds@bpd.treas.gov*>, or by writing to the following address: Bureau of the Public Debt, Parkersburg, West Virginia 26106–1328. Our website address is <*www.savingsbonds.gov*>.

§ 351.3 What special terms do I need to know to understand this part?

Accrual date is the first day of any month on which earnings on a Series EE bond accrue. The redemption value of a bond does not change between these accrual dates.

Automated Clearing House (ACH) means a funds transfer system governed by the Rules of the National Automated Clearing House Association (NACHA). NACHA provides for the interbank clearing of electronic entries for participating financial institutions.

Bank account means your account at a United States depository financial institution (whether a bank or other financial institution) to which you have directed that ACH debits and payments be made.

Beneficiary refers to the second individual named in the registration of a security held in definitive form registered "John Doe SSN 123–45–6789 POD (payable on death to) Joseph Doe." In the New Treasury Direct system, beneficiary refers to the second individual named in the registration of a security registered "John Doe SSN 123–45–6789 POD (payable on death to) Joseph Doe SSN 987–65–4321." In these examples, Joseph Doe is the beneficiary.

Book-entry bond means a Series EE savings bond maintained by Treasury solely as a computer record.

Coowner means either the first or the second individual named in the registration of a definitive Series EE savings bond registered "John Doe SSN 123–45–6789 or Joseph Doe." In this example, John Doe and Joseph Doe are coowners.

Definitive bond means a Series EE savings bond issued in paper form.

Extended maturity period, second extended maturity period, and *extended maturity* refer to periods after the original maturity dates of the bonds during which owners may retain them and continue to earn interest.

Face amount refers to the nominal amount of a Series EE savings bond. The face amount of a definitive Series EE bond is imprinted on the front of the bond. The face amount of a book-entry Series EE bond is the amount of the original investment. (*See* principal amount.)

Fiduciary means the court-appointed or otherwise qualified person, regardless of title, who is legally authorized to act for another. Fiduciary does not include an attorney-in-fact.

Final maturity refers to the date that a bond ceases to earn interest.

Individual means a natural person. Individual does not mean an organization, representative, or fiduciary.

Interest, as used in this part, is the difference between the principal amount and the redemption value of the bond.

Issue date is the first day of the month in which an authorized issuing agent receives payment of the issue price of the bond.

Issuing agent means an organization that has been qualified under 31 CFR

part 317, and any other entity that is otherwise authorized to issue bonds.

New Treasury Direct system (New Treasury Direct) is an online account system in which you may hold and conduct transactions in eligible book-entry Treasury securities.

Original maturity period or *original maturity* refers to the initial maturity period of a bond prior to any extensions of maturity; this period varies from 8 to 20 years, depending on the issue date of the bond.

Owner is either a single owner, the first individual named in the registration of a bond held in the owner with beneficiary form of registration, or the primary owner of a book-entry bond held in the primary owner with secondary owner form of registration.

Par means the face amount of a Series EE savings bond.

Paying agent means a financial institution that has been qualified under 31 CFR part 321.

Person means an entity including an individual, trust, estate, corporation, government entity, association, partnership, and any other similar organization. Person does not mean a Federal Reserve Bank.

Primary owner means the first individual named in the registration of a book-entry bond held in New Treasury Direct registered "John Doe SSN 123–45–6789 with Joseph Doe SSN 987–65–4321." In this example, John Doe is the primary owner.

Principal amount means the amount of the original investment. Principal amount does not include any interest earned.

Redemption of a book-entry Series EE savings bond refers to payment of principal and accrued interest on the bond at final maturity, or, at the option of the owner, prior to final maturity. The owner of a book-entry savings bond held in New Treasury Direct may redeem all principal and interest or a portion of the principal and the proportionate amount of interest.

Redemption of a definitive Series EE savings bond refers to the payment of principal and accrued interest when the owner presents the bond for payment.

Redemption value means principal plus accrued interest of a Series EE savings bond, as of the date of potential or actual redemption. In the case of a book-entry Series EE savings bond, it also refers to a portion of the principal amount plus a proportionate amount of accrued interest of a bond, as of the date of potential or actual redemption.

Registration of a book-entry Series EE savings bond means that the name and taxpayer identification number (TIN) of all registrants are maintained on our records for a book-entry bond.

Registration of a definitive Series EE savings bond means that the name and TIN of the owner, first-named coowner, or purchaser of a gift bond are imprinted on the face of the bond.

Secondary owner means the second individual named in the registration of a book-entry bond held in New Treasury Direct registered "John Doe SSN 123–45–6789 with Joseph Doe SSN 987–65–4321." In this example, Joseph Doe is the secondary owner.

Semiannual rate periods or *semiannual earnings periods* are the six-month periods beginning on the issue date and on each semiannual anniversary of the issue date to final maturity.

Series EE savings bond is an accrual-type savings bond, offered at a discount, either in definitive (paper) form or in book-entry form, that pays interest on the principal based on rates determined by Treasury.

Single owner means the person named in the registration of a savings bond without a coowner, beneficiary or secondary owner.

Taxpayer identification number (TIN) means the identifying number required on tax returns and other documents submitted to the Internal Revenue Service; for example, an individual's social security account number (SSN) or an employer identification number (EIN). A SSN is composed of nine digits separated by two hyphens, for example, 123–45–6789. An EIN is composed of nine digits separated by one hyphen, for example, 12–3456789. The hyphens are an essential part of the numbers.

We, us, or *our* refers to the agency, the Bureau of the Public Debt. The term extends to the Secretary of the Treasury and the Secretary's delegates at the Treasury Department and Bureau of the Public Debt. The term also extends to any fiscal or financial agent we designate to act on behalf of the United States.

You or *your* refers to an owner of a Series EE savings bond.

§ 351.4 In what form are Series EE savings bonds issued?

Series EE savings bonds are issued in either book-entry or definitive form.

Subpart B—Maturities, Redemption Values, and Investment Yields of Series EE Savings Bonds

General Provisions

§ 351.5 What is the maturity period of a Series EE savings bond?

Series EE savings bonds have a total maturity period of 30 years from the issue date, consisting of an original maturity period and one or two periods of extended maturity, which vary depending on the issue date of the bond. The interest on an outstanding bond ceases to accrue 30 years after its issue date.

§ 351.6 When may I redeem my Series EE savings bond?

(a) *Bonds with issue dates on or before January 1, 2003.* You may redeem your Series EE savings bond at any time beginning six months after its issue date.

(b) *Bonds with issue dates on or after February 1, 2003.* You may redeem your Series EE savings bond at any time beginning twelve months after its issue date.

§ 351.7 May Series EE savings bonds be called for redemption prior to final maturity?

The Secretary of the Treasury may not call Series EE bonds for redemption prior to final maturity.

§ 351.8 When is interest payable on Series EE savings bonds?

Interest on a bond accrues and becomes part of the redemption value. Interest earnings are payable upon redemption.

§ 351.9 When will I receive the redemption value of my Series EE savings bonds?

(a) You will be paid the redemption value of your definitive bond when you surrender the bond for payment as provided in these regulations and in 31 CFR part 353.

(b) You will be paid the redemption value of your book-entry bond when it reaches final maturity, if you have not redeemed the bond previously.

§ 351.10 What do I need to know about market yields, or market bid yields, to understand redemption value calculations in this subpart?

We use market yields, or market bid yields, derived from Treasury bills, notes, and bonds, to create a yield curve based on the most actively traded Treasury securities. This curve relates the yield on a security to its time to maturity. Yields at particular points on the curve are referred to as "constant maturity yields" and are determined by the Treasury from this daily yield curve. Six-month and 5-year Treasury securities rates are derived from these yield curves.

§ 351.11 What do I need to know about the short-term savings bond rate, to understand redemption value calculations in this subpart?

We determine this rate by compiling 6-month Treasury securities rates as of the close of business for each day of the previous three months and calculating the monthly average for each month, rounding each monthly average to the nearest one-hundredth of one percent. We then determine the short-term savings bond rate by taking 85 percent of the three-month average and rounding the result to the nearest one-hundredth of one percent. For bonds entitled to interest accruals at the short-term savings bond rate, that rate applies to the bond's first full semiannual interest accrual period following each announcement of the rate.

§ 351.12 What do I need to know about the long-term savings bond rate, to understand redemption value calculations in this subpart?

We determine this rate by compiling 5-year Treasury securities rates as of the close of business for each day of the previous six months and calculating the monthly average for each month, rounding each monthly average to the nearest one-hundredth of one percent. We then determine the long-term savings bond rate by taking 85 percent of the 6-month average and rounding the result to the nearest one-hundredth of one percent. For bonds entitled to interest accruals at the long-term savings bond rate, that rate applies to the bond's first full semiannual interest accrual period following each announcement of the rate.

§ 351.13 What do I need to know about the savings bond rate to understand redemption value calculations in this subpart?

We determine the savings bond rate by compiling 5-year Treasury securities yields as of the close of business for each day of the previous six months and calculating the monthly average to the nearest one-hundredth of one percent. We then determine the savings bonds rate by taking 90 percent of the 6-month average and rounding the result to the nearest one-hundredth of one percent.

§ 351.14 When are rate announcements that apply to Series EE savings bonds announced?

(a) The Secretary will furnish rates that apply to Series EE savings bonds in announcements published each May 1 and November 1.

(b) If the regularly scheduled date for the announcement is a day when we are not open for business, then the Secretary will make the announcement on the next business day. However, the effective date of the rate remains the first day of the month of the announcement.

(c) The Secretary may announce rates at any other time.

§ 351.15 Is the determination of the Secretary on rates and values final?

The Secretary's determination of rates of return and savings bond redemption values is final and conclusive.

§ 351.16 What do I need to know about the base denomination for redemption value calculations?

We base all calculations of interest on a unit with a principal amount of $12.50. We use this unit value to determine the value of bonds in higher denominations. The effect of rounding off the value of the $12.50 unit increases at higher denominations. This can work to your slight advantage or disadvantage, depending on whether the value is rounded up or down.

Example. The following hypothetical example illustrates the calculation: A rate of 3.25% will result in a newly purchased $12.50 unit increasing in value after six months to $12.70, when rounded to the nearest cent. Therefore, a $5,000 definitive Series EE bond (with a principal amount of $2,500) will be worth $2,540 after six months ([$2,500 divided by $12.50] × $12.70 = $2,540.) In contrast, if applied directly to a $2,500 principal amount, the rate would render a value of $2,540.63 after six months, a difference of 63 cents. (This example does not account for any interest penalty that might apply if you redeem a bond less than five years after its issue date.)

§§ 351.17–351.18 [Reserved]

Series EE Savings Bonds with Issue Dates Prior to May 1, 1995

§ 351.19 What are maturity periods of Series EE savings bonds with issue dates prior to May 1, 1995?

Bonds with issue dates from January 1, 1980, through May 1, 1995 have an original maturity period and two extended maturity periods, as shown by the following table:

Issue dates—1st day of	Original term (in years)	First extended term (in years)	Second extended term (in years)	Final maturity dates
Jan. 1980–Oct. 1980	11	10	9	Jan. 2010–Oct. 2010.
Nov. 1980–Apr. 1981	9	10	11	Nov. 2010–Apr. 2011.
May 1981–Oct. 1982	8	10	12	May 2011–Oct. 2012.
Nov. 1982–Oct. 1986	10	10	10	Nov. 2012–Oct. 2016.
Nov. 1986–Feb. 1993	12	10	8	Nov. 2016–Feb. 2023.
Mar. 1993–Apr. 1995	18	10	2	Mar. 2023–Apr. 2025.

§ 351.20 What is the investment yield (interest) during the original maturity period of Series EE savings bonds with issue dates from January 1, 1980, through April 1, 1995?

The redemption value of a bond on a given interest accrual date during original maturity will be the higher of the value produced using the applicable guaranteed minimum investment yield or the value produced using the appropriate market-based variable investment yield.

(a) *Guaranteed minimum investment yield.* (1) *Bonds bearing issue dates prior to November 1, 1982.* You may obtain the guaranteed minimum investment yields on bonds bearing issue dates prior to November 1, 1982, by downloading from our website at <*www.savingsbonds.gov*>, contacting us by email at <*savbonds@bpd.treas.gov*>, or by writing us at the following address: Bureau of the Public Debt, Parkersburg, West Virginia 26106–1328.

(2) *Bonds bearing issue dates of November 1, 1982, through April 1, 1995.* (i) *Prior to 5 years from issue date.* You may download the guaranteed minimum investment yields prior to 5 years from issue date at our website at <*www.savingsbonds.gov*>, by contacting us by email at <*savbonds@bpd.treas.gov*>, or writing to the following address: Bureau of the Public Debt, Parkersburg, West Virginia 26106–1328.

(ii) *On or after 5 years from issue date.* The guaranteed minimum investment yield of a bond from its issue date to each semiannual interest accrual date occurring on or after 5 years from issue up to original maturity will be as follows, compounded semiannually:

Issue dates of bonds	Percent
Nov. 1, 1982–October 1, 1986 ...	7.5
Nov. 1, 1986–Feb. 1, 1993	6
Mar. 1, 1993–Apr. 1, 1995	4

(b) *Market-based variable investment yield.* If a bond is held for a period of 5 years after its first semiannual interest accrual period, occurring on or after November 1, 1982, or its issue date, whichever is later, its market-based variable investment yield for such period, and to each successive semiannual interest accrual date up to its original maturity, will be determined as follows:

(1) For each 6-month period, starting with the period beginning on May 1, 1982, we will determine the average market yield on outstanding marketable Treasury securities with a remaining term to maturity of approximately 5 years during such period.

(2) For bonds bearing an issue date prior to May 1, 1989, the market-based variable investment yield from its first semiannual interest accrual date occurring on or after November 1, 1982, or its issue date, whichever is later, to its first semiannual interest accrual date 5 years thereafter will be 85 percent, rounded to the nearest one-fourth of 1 percent, of the arithmetic average of the market yield averages for the ten 6-month periods starting with the 6-month period that most recently ended before such issue date, whichever is later.

(3) For bonds bearing issue dates of May 1, 1989, through April 1, 1995, the market-based variable investment yield from the issue date to the semiannual interest accrual date 5 years thereafter will be 85 percent, rounded to the nearest one-hundredth of 1 percent, of the arithmetic average of the market yield averages for the ten 6-month periods starting with the 6-month period that most recently ended before such issue date.

(4) In determining the market-based variable investment yield for a bond from its first semiannual interest accrual date occurring on or after November 1, 1982, or its issue date, whichever is later, to each successive semiannual interest accrual date occurring after 5 years from issue up to original maturity, the average market yield for each additional 6-month period will be included in the computation.

§ 351.21 How are redemption values determined during any extended maturity period of Series EE savings bonds with issue dates prior to May 1, 1995?

The redemption value of a bond on a given interest accrual date during an extended maturity period or periods will be the higher of the values produced using either the applicable guaranteed minimum investment yield or the appropriate market-based variable investment yield. The calculation of these yields and the resulting redemption values are described below:

(a) *Guaranteed minimum investment yield and resulting values during an extended maturity period.* A bond may be subject to one guaranteed minimum investment yield during its original maturity period and to another such yield during each of its extended maturity periods.

(1) *Bonds entering an extended maturity period from May 1, 1989, through February 1, 1993.* Bonds that entered an extended maturity period from May 1, 1989, through February 1, 1993, had a guaranteed minimum investment yield of 6 percent per annum, compounded semiannually, during that extended maturity period.

(2) *Bonds entering an extended maturity period on or after March 1, 1993.* Bonds that entered or enter an extended maturity period on or after March 1, 1993, have a guaranteed minimum investment yield of 4 percent per annum, compounded semiannually, during that extended maturity period, or the guaranteed minimum investment yield in effect at the beginning of that period.

(3) *Determination of values for a bond during extended maturity periods.* In order to determine values for a bond during its first extended maturity period, we determine the value of the bond at the end of its original maturity period using the guaranteed minimum investment yield applicable to that period. This value is then used as the base upon which interest accrues during the first extended maturity period at the applicable guaranteed minimum investment yield for that period. We use the value thus attained at first extended maturity as the base upon which interest accrues during the second extended maturity period at the applicable guaranteed minimum investment yield for that period. We then compare the resulting semiannual values with the corresponding values determined using only the applicable market-based variable investment yields.

(b) *Market-based variable investment yield and resulting values during an extended maturity period.* For a bond beginning an extended maturity period, the market-based variable investment yield from its first semiannual interest accrual date occurring on or after November 1, 1982, or its issue date, whichever is later, to each semiannual interest accrual date occurring on or after November 1, 1989, will be 85 percent, rounded to the nearest one-hundredth of one percent, of the arithmetic average of the market yield averages for the appropriate number of 6-month periods involved, beginning with the period from May 1, 1982, or the 6-month period that most recently ended before the issue date, whichever period occurs later. We use the value of a bond on its first semiannual interest accrual date occurring on or after November 1, 1982, or its issue date, whichever is later, as the base upon which interest accrues during the extended maturity period at the applicable market-based variable investment yield. As described above, the bond will receive the higher of the two values: One value produced using the applicable market-based variable investment yield; and, the other value produced using the guaranteed minimum investment yield.

§ 351.22 When does the redemption value increase for bonds issued prior to May 1, 1995?

(a) *Bonds with issue dates from January 1, 1980, through October 1, 1980.* For bonds with issue dates from January 1, 1980, through October 1, 1980, the redemption value increases on the first day of each month from the third through the thirtieth month after issue, and thereafter on the first day of each successive 6-month period.

(b) *Bonds with issue dates from November 1, 1980, through October 1, 1986.* For bonds with issue dates from November 1, 1980, through October 1, 1986, the redemption value increases on the first day of each month from the third through the eighteenth month after issue, and thereafter on the first day of each successive 6-month period.

(c) *Bonds with issue dates from November 1, 1986, through February 1, 1993.* For bonds with issue dates from November 1, 1986, through February 1, 1993, the redemption values increase on the first day of each month from the third through the thirtieth month after issue, and thereafter on the first day of each successive 6-month period.

(d) *Bonds with issue dates of March 1, 1993, through April 1, 1995.* For bonds with issue dates of March 1, 1993, through April 1, 1995, the redemption values increase on the first day of each month from the third through the sixtieth month after issue, and thereafter either on the first day of each month or on the first day of each successive 6-month period, whichever accrual schedule ensures that the actual yield from issue date to redemption date

is in no case less than 4 percent per annum, compounded semiannually.

§ 351.23 Are tables of redemption values available for bonds issued prior to May 1, 1995?

You may obtain the appropriate yields and tables by downloading from our website at <*www.savingsbonds.gov*>, contacting us by email at <*savbonds@bpd.treas.gov*>, or by writing us at the following address: Bureau of the Public Debt, Parkersburg, West Virginia 26106–1328.

Series EE Savings Bonds With Issue Dates From May 1, 1995, Through April 1, 1997

§ 351.24 What are the maturity periods of bonds with issue dates from May 1, 1995, through April 1, 1997?

(a) *Original maturity.* Bonds reach original maturity at 17 years after issue date.

(b) *Final maturity.* Series EE savings bonds have an extended maturity period of 13 years, and reach final maturity at 30 years after the issue date. Bonds cease to earn interest at final maturity.

§ 351.25 What were the interest rates and redemption values for bonds with issue dates from May 1, 1995, through April 1, 1997, during semiannual rate periods in the first 5 years after issue date?

(a) *Interest rates.* The interest rate for a Series EE bond bearing an issue date of May 1, 1995, through April 1, 1997, for semiannual earning periods during the first 5 years from issue date, was the short-term savings bond rate (see § 351.11 for a description of the short-term savings bond rate.)

(b) *Redemption values.* Redemption values for semiannual accrual dates occurring on or before 5 years from issue date are calculated in accordance with § 351.28.

§ 351.26 What are the interest rates and redemption values for bonds with issue dates from May 1, 1995 through April 1, 1997, during semiannual rate periods that begin 5 years or more after issue date?

(a) *Interest rates.* The interest rate for a Series EE bond bearing an issue date of May 1, 1995, through April 1, 1997, for semiannual earning periods beginning 5 years from issue date through original maturity, is the long-term savings bond rate as defined in § 351.12.

(b) *Redemption values.* We calculate redemption values for semiannual accrual dates occurring after 5 years from issue date, through original maturity, in accordance with § 351.28, except that the redemption value at the date of original maturity shall not be less than the denomination (face amount or face value).

§ 351.27 What are the interest rates and redemption values for bonds with issue dates from May 1, 1995, through April 1, 1997, during an extended maturity period?

During an extended maturity period the bond will be subject to the terms and conditions in effect when it is issued, and will continue to earn interest as described in paragraph § 351.26, unless the terms and conditions applicable to an extended maturity period are expressly amended prior to the beginning of such period.

§ 351.28 How are redemption values calculated for bonds with issue dates from May 1, 1995, through April 1, 1997?

We determine the redemption value of a bond on the accrual date immediately following each semiannual earning period as follows:

(a) We convert the applicable long-term or short-term savings bond rate for the semiannual earning period to decimal form by dividing by 100, and adjust it to a semiannual rate by dividing by 2.

(b) Using redemption values for the base denomination, as defined in § 351.16, we then multiply this rate by the redemption value of the bond at the beginning of the semiannual earning period.

(c) We add the resulting interest amount, rounded to the nearest cent, to the redemption value of the bond at the beginning of the earning period to produce the redemption value at the next semiannual accrual date. The redemption value of a bond remains constant between accrual dates.

Series EE Savings Bonds With Issue Dates From May 1, 1997, and Thereafter

§ 351.29 What are the maturity periods of bonds with issue dates from May 1, 1997, and thereafter?

(a) *Original maturity.* (1) *Bonds with issue dates from May 1, 1997, to May 1, 2003.* Bonds reach original maturity at 17 years after issue date.

(2) *Bonds with issue dates from June 1, 2003, and thereafter.* Bonds reach original maturity at 20 years after issue date.

(b) *Final maturity.* Bonds reach final maturity at 30 years after the issue date. Bonds cease to earn interest at final maturity.

§ 351.30 What are interest rates and monthly accruals for bonds with issue dates of May 1, 1997, or thereafter, during the original maturity period?

Savings bond rates (defined in § 351.13) apply to earnings during the first semiannual rate period beginning on or after the effective date of the rate. Interest is credited on the first day of each month and compounded semiannually. Interest accrues beginning with the fourth month from the issue date. For example, a bond issued in January has interest first credited on May 1, which represents one month of interest because of the 3-month interest penalty. The following table shows, for any given month of issue with rates announced each May and November, the months making up the semiannual rate period during which interest is earned at the announced rate (disregarding the penalty for bonds redeemed prior to 5 years after the issue date) and the months in which the bonds increase in value. This rate is an annual rate compounded semiannually.

If issue month is—	And rate announcement/ effective date is—	Then, semiannual rate periods in which interest is earned include months of—	And bonds increase in value on 1st day of months of—
Jan. or Jul	May 1	Jul. through Dec	Aug. through Jan.
Feb. or Aug	May 1	Aug. through Jan	Sep. through Feb.
Mar. or Sep	May 1	Sep. through Feb	Oct. through Mar.
Apr. or Oct	May 1	Oct. through Mar	Nov. through Apr.
May or Nov	May 1	May through Oct	Jun. through Nov.
Jun. or Dec	May 1	Jun. through Nov	Jul. through Dec.
Jan. or Jul	Nov. 1	Jan. through Jun	Feb. through Jul.
Feb. or Aug	Nov. 1	Feb. through Jul	Mar. through Aug.
Mar. or Sep	Nov. 1	Mar. through Aug	Apr. through Sep.
Apr. or Oct	Nov. 1	Apr. through Sep	May through Oct.
May or Nov	Nov. 1	Nov. through Apr	Dec. through May.

If issue month is—	And rate announcement/ effective date is—	Then, semiannual rate periods in which interest is earned include months of—	And bonds increase in value on 1st day of months of—
Jun. or Dec	Nov. 1	Dec. through May	Jan. through Jun.

§ 351.31 What is the interest penalty for Series EE bonds with issue dates of May 1, 1997, or thereafter, that are redeemed less than 5 years after the issue date?

If you redeem a Series EE savings bond with an issue date of May 1, 1997, or thereafter, less than five years following the issue date, we reduce the overall earning period from the issue date by three months. For example, if you redeem a bond issued January 1, 1998, 9 months later on October 1, 1998, we will determine the redemption value by applying the redemption value calculation formula described in § 351.32 and the savings bonds rate for that bond at 6 months after the issue date on July 1, 1998. The redemption value of a bond subject to the 3-month interest penalty shall not be reduced below the issue price. This penalty does not apply to bonds redeemed 5 years or more after the issue date.

§ 351.32 How are redemption values calculated for Series EE bonds with issue dates of May 1, 1997, or thereafter?

(a) *Formula for redemption value.* We determine the redemption value of a bond for the accrual date (the first day of each month beginning with the fourth month from the issue date) in accordance with this section and the following formula:

$FV = PV \times \{[1+(i \div 2)]^{(m/6)}\}$

where

FV (future value) = redemption value on redemption date rounded to the nearest cent.

PV (present value) = redemption value at the beginning of the semiannual rate period

i = savings bonds rate converted to decimal form by dividing by 100.

m = number of full calendar months outstanding during the semiannual rate period.[1]

(b) *Value of bonds at original maturity.* (1) *Definitive bond.* At original maturity, the redemption value of a definitive bond shall not be less than the face amount/denomination of the bond.

(2) *Book-entry bond.* At original maturity, the redemption value of a book-entry bond shall not be less than double the purchase price of the bond.

§ 351.33 What are interest rates and redemption values for bonds issued May 1, 1997, or thereafter, during an extended maturity period?

During an extended maturity period the bond will be subject to the terms and conditions in effect when it is issued and will continue to earn interest as described in § 351.30, unless the terms and conditions applicable to an extended maturity period are expressly amended prior to the beginning of such period.

§ 351.34–351.39 [Reserved]

Subpart C—Definitive Series EE Savings Bonds

§ 351.40 What are the denominations and prices of definitive Series EE savings bonds?

We issue definitive bonds in denominations of $50, $75, $100, $200, $500, $1,000, $5,000, and $10,000. The purchase price is one-half the amount of the denomination.

§ 351.41 When are definitive Series EE savings bonds validly issued?

A definitive bond is validly issued when it is registered as provided in 31 CFR part 353, and when it bears an issue date and the validation indicia of an authorized issuing agent.

§ 351.42 What is the issue date of a definitive Series EE savings bond?

The issue date of a definitive bond is the first day of the month in which an authorized issuing agent receives payment of the issue price.

§ 351.43 Are taxpayer identification numbers (TINs) required for the registration of definitive Series EE savings bonds?

The inscription of a definitive bond must include the TIN of the owner or first-named coowner. The TIN of the second-named coowner or beneficiary is not required but its inclusion is desirable. If the bond is being purchased as a gift or award and the owner's TIN is not known, the TIN of the purchaser must be included in the inscription on the bond.

§ 351.44 What amount of definitive Series EE savings bonds may I purchase per year?

The principal amount of definitive bonds that you may purchase in any calendar year is limited to $30,000. See 31 CFR 353.10 and 353.11 of this Chapter for rules governing the computation of amounts and the special limitation for employee plans.

§ 351.45 What happens if I purchase definitive Series EE savings bonds in excess of the maximum annual amount?

If you have bonds issued during any one calendar year in excess of the prescribed maximum annual amount, we reserve the right to take any action we deem necessary to adjust the excess. You should obtain instructions for adjustment of the excess from us at the following address: email at <*savbonds@bpd.treas.gov*>, or writing to Bureau of the Public Debt, Parkersburg, WV 26106–1328, or.

§ 351.46 May I purchase definitive Series EE savings bonds over-the-counter?

You may purchase definitive bonds over-the-counter through any issuing agent qualified under 31 CFR part 317.[2] To purchase over-the-counter, you must submit a purchase application, along with payment in the amount of the issue price to an issuing agent. You may use any means of payment acceptable to the issuing agent. You may authorize purchases on a recurring basis in your application. The issuing agent bears the burden of collection and the risk of loss for non-collection or return of the payment.

[1] The following hypothetical example illustrates how this formula is applied:

Example, assume a hypothetical savings bonds rate of 5.00% effective May 1, 2002, for a bond denominated at $25, with an issue date of September 1, 1997 and a redemption value of $16.00 as of September 1, 2002. The February 1, 2003, redemption value is calculated as follows: Bonds issue dated in September have semiannual rate periods beginning each March 1 and September 1. The first semiannual rate period to begin on or after the effective date of the May 1, 2002, rate would be the period beginning September 1, 2002. PV, the present value, would be the value of the bond at the beginning of the semiannual rate period, on September 1, 2002. The savings bonds rate of 5.00% converted to a decimal would be 0.05. The number of months, m, is 5 since 5 full calendar months (September through January) have lapsed since the beginning of the rate period. FV is then the result of the formula:

$FV = \$16.00 \times \{[1 + (0.05 \div 2)]^{(5/6)}\} = \$16.33$ after rounding to the nearest cent.

Using the example, the FV of a savings bond with a $50 or larger denomination can be determined by applying the appropriate multiple, for example: $16.33 \times ($50.00/$25.00) for a bond with a $50.00 face amount; or $16.33 \times ($100.00/$25.00) for a bond with a $100.00 face amount.

[2] However, an organization serving as an issuing agent because of its status as an employer or an organization operating an employer's payroll savings plan under § 317.2(c) may sell bonds only through payroll savings plans.

§ 351.47 May I purchase definitive Series EE savings bonds through a payroll savings plan?

You may purchase definitive bonds in denominations of $100 or higher through deductions from your pay if your employer maintains a payroll savings plan. An authorized issuing agent must issue the bonds.

§ 351.48 May I purchase definitive Series EE savings bonds through employee thrift, savings, vacation, and similar plans?

You may purchase bonds registered in the names of trustees of employee plans in book-entry form in multiples of $100 through a designated Federal Reserve Bank, after we have approved the plan as eligible for the special limitation under § 353.13 of this chapter.

§ 351.49 How are definitive Series EE savings bonds delivered?

We deliver definitive bonds by mail to your address. If your address is within the United States, its territories or possessions, or the Commonwealth of Puerto Rico, we will deliver bonds at our risk. Bonds delivered elsewhere will be delivered at your risk; however, at our discretion, we may require delivery to an address within the United States, or refuse delivery to addresses in countries referred to in part 211 of this chapter.

§ 351.50 How is payment made when definitive Series EE savings bonds are redeemed?

(a) *Payment in general.* A financial institution qualified as a paying agent under the provisions of 31 CFR part 321 will pay the current redemption value of a definitive Series EE bond presented for payment. The bond must meet the requirements for payment specified in 31 CFR part 353. You must establish your identity and entitlement to redemption to the satisfaction of the agent, in accordance with our instructions and identification guidelines, and must sign and complete the request for payment.

(b) *Payment to beneficiary or legal representative.* A paying agent may, but is not required to, pay the current redemption value of a definitive Series EE savings bond upon the request of a beneficiary if he or she survives the owner, or a legal representative designated in the bond registration by name and capacity, or a court-appointed legal representative of the last-deceased registrant's estate provided:

(1) The bond is in order for payment; and

(2) The presenter establishes his or her identity to the satisfaction of the agent in accordance with our instructions and identification guidelines, and signs and completes the request for payment.

§ 351.51 How can I find out what my definitive Series EE savings bonds are worth?

(a) *Redemption values.* We make redemption values available for definitive bonds in various formats and media.

(1) You may determine the redemption value for definitive bonds on the Internet at <*http://www.savingsbonds.gov*>.

(2) You may download savings bond calculators from the Internet at <*http://www.savingsbonds.gov*>.

(3) You may obtain paper tables from the Bureau of the Public Debt, Parkersburg, West Virginia 26106–1328. We reserve the right to cease making paper tables of redemption values available.

(b) *Redemption penalty.* For bonds issued after May 1, 1997, redemption values published in the tables reflect the three-month interest penalty applied to bonds redeemed prior to five years from the issue date.

§ 351.52–351.59 [Reserved]

Subpart D—Book-Entry Series EE Savings Bonds

§ 351.60 How are book-entry Series EE savings bonds purchased and held?

Book-entry bonds must be purchased and held online through your New Treasury Direct account. We provide instructions for opening an account online at <*http://www.publicdebt.treas.gov*>.

§ 351.61 What are the denominations and prices of book-entry Series EE savings bonds?

Book-entry bonds are issued in a minimum amount of $25, with additional increments of one cent.

§ 351.62 How is payment made for purchases of book-entry Series EE savings bonds?

Purchases of book-entry EE bonds are made through your New Treasury Direct account. We will debit your designated account at a United States depository financial institution for payment of the bonds.

§ 351.63 How are redemption payments made for my redeemed book-entry Series EE savings bonds?

We will make payments electronically by direct deposit, using the ACH method, to your designated account at a United States depository financial institution.

§ 351.64 What is the issue date of a book-entry Series EE savings bond?

The issue date of a book-entry savings bond is the first day of the month in which we receive ACH settlement for the bond.

§ 351.65 What amount of book-entry Series EE savings bonds may I acquire per year?

The principal amount of book-entry bonds that you may acquire in any calendar year is limited to $30,000.

§ 351.66 What book-entry Series EE savings bonds are included in the computation?

(a) We include all bonds that you purchased in that calendar year.

(b) Bonds purchased as gifts or in a fiduciary capacity are not included in the computation for the purchaser.

(c) Bonds transferred or delivered from one New Treasury Direct account to another New Treasury Direct account are included in the computation for the recipient, unless the recipient has become entitled to the transferred bonds due to the death of the registered owner.

§ 351.67 What happens if any person purchases book-entry Series EE savings bonds in excess of the maximum annual amount?

We reserve the right to take any action we deem necessary to adjust the excess, including the right to remove the excess bonds from your New Treasury Direct account and refund the payment price to your bank account of record using the ACH method of payment.

§ 351.68 Are taxpayer identification numbers (TINs) required for registration of book-entry Series EE savings bonds?

The TIN of each person named in the registration is required to purchase a book-entry bond.

§ 351.69 When is a book-entry Series EE savings bond validly issued?

A book-entry bond is validly issued when it is posted to your New Treasury Direct account.

§ 351.70 How are redemption values calculated for book-entry Series EE savings bonds?

We base current redemption values (CRV) for book-entry Series EE savings bonds on the definitive savings bond CRV. We use the CRV for a $100 principal amount as calculated in § 351.16 to calculate a CRV prorated to the book-entry principal investment amount for the corresponding issue and redemption dates. Calculated book-entry

CRV will be rounded to the nearest one cent.[3] The formula is as follows:
[Book-entry principal investment ÷ $100] × [CRV value for $100 principal amount].

§ 351.71 How can I find out what my book-entry Series EE savings bonds are worth?

(a) *Redemption values.* You may access redemption values for your book-entry bonds through your New Treasury Direct account.

(b) *Redemption penalty.* Redemption values shown in your New Treasury Direct account for bonds that are within 5 years from issue date reflect the three-month interest penalty applied to bonds redeemed prior to five years from the issue date.

§ 351.72–351.80 [Reserved]

Subpart E—Miscellaneous Provisions

§ 351.81 Is the Education Savings Bond Program available for Series EE savings bonds?

You may be able to exclude from income for Federal income tax purposes all or part of the interest received on the redemption of qualified bonds during the year. To qualify for the program, you or the coowner (in the case of definitive savings bonds) must have paid qualified higher education expenses during the same year. You also must have satisfied certain other conditions. This exclusion is known as the Education Savings Bond Program. Information about the program can be found in Internal Revenue Service Publications. (For example, *see* Publication 17, "Your Federal Income Tax," Publication 550, "Investment Income and Expenses," and Publication 970, "Tax Benefits for Higher Education.") These publications are available on the IRS Web site at <*http://www.irs.gov*>.

§ 351.82 Does Public Debt prohibit the issuance of Series EE savings bonds in a chain letter scheme?

We do not permit bonds to be issued in a chain letter or pyramid scheme. We authorize an issuing agent to refuse to issue a bond or accept a purchase order if there is reason to believe that a purchase is connected with a chain letter. The agent's decision is final.

§ 351.83 May Public Debt issue Series EE savings bonds only in book-entry form?

We reserve the right to issue bonds only in book-entry form.

§ 351.84 Does Public Debt make any reservations as to issue of Series EE savings bonds?

We may reject any application for Series EE bonds, in whole or in part. We may refuse to issue, or permit to be issued, any bonds in any case or class of cases, if we deem the action to be in the public interest. Our action in any such respect is final.

§ 351.85 May Public Debt waive any provision in this part?

We may waive or modify any provision of this part in any particular case or class of cases for the convenience of the United States or in order to relieve any person or persons of unnecessary hardship:

(a) If such action would not be inconsistent with law or equity;

(b) If it does not impair any material existing rights; and

(c) If we are satisfied that such action would not subject the United States to any substantial expense or liability.

§ 351.86 What is the role of Federal Reserve Banks and Branches?

(a) Federal Reserve Banks and Branches are fiscal agents of the United States. They are authorized to perform such services as we may request of them, in connection with the issue, servicing and redemption of Series EE bonds.

(b) We have currently designated the following Federal Reserve Offices to provide savings bond services:

Servicing site	Reserve district served	Geographic area served
Federal Reserve Bank, Buffalo Branch, 160 Delaware Avenue, Buffalo, NY 14202.	New York, Boston	Connecticut, Maine, Massachusetts, New Hampshire, New Jersey (northern half), New York, Rhode Island, Vermont, Puerto Rico, Virgin Islands.
Federal Reserve Bank, Pittsburgh Branch, 717 Grant Street, Pittsburgh, PA 15219.	Cleveland, Philadelphia	Delaware, Kentucky (eastern half), New Jersey, (southern half), Ohio, Pennsylvania, West Virginia (northern panhandle only).
Federal Reserve Bank of Richmond, 701 East Byrd Street, Richmond, VA 23219.	Richmond, Atlanta	Alabama, District of Columbia, Florida, Georgia, Louisiana (southern half), Maryland, Mississippi (southern half), North Carolina, South Carolina, Tennessee (eastern half), Virginia, West Virginia (except northern panhandle).
Federal Reserve Bank of Minneapolis, 90 Hennepin Avenue, Minneapolis, MN 55401.	Minneapolis, Chicago.	Illinois (northern half), Indiana (northern half), Iowa, Michigan, Minnesota, Montana, North Dakota, South Dakota, Wisconsin.
Federal Reserve Bank of Kansas City, 925 Grand Boulevard, Kansas City, MO 64106.	Dallas, San Francisco, Kansas City, St. Louis.	Alaska, Arizona, Arkansas, California, Colorado, Hawaii, Idaho, Illinois (southern half), Indiana (southern half), Indiana (southern half), Kansas, Kentucky (western half), Louisiana (northern half), Mississippi (northern half), Missouri, Nebraska, Nevada, New Mexico, Oklahoma, Oregon, Tennessee (western half), Texas, Utah, Washington, Wyoming, Guam.

§ 351.87 May Public Debt revise, supplement or amend the terms of this offering?

We may revise, supplement or amend the terms of this offering at any time.

Appendix to Part 351—Tax Considerations

1. What are some general tax considerations?

General. Interest on savings bonds is subject to taxes imposed under the Internal Revenue Code of 1986, as amended. The bonds are exempt from taxation by any State or political subdivision of a State, except for estate or inheritance taxes. (*See* 31 U.S.C. 3124.)

2. What reporting methods are available for savings bonds?

(a) *Reporting methods.* You may use either of the following two methods for reporting the increase in the redemption value of the bond for Federal income tax purposes:

(1) *Cash basis method.* You may defer reporting the increase to the year of final maturity, redemption, or other disposition, whichever is earliest; or

(2) *Accrual basis method.* You may elect to report the increase each year, in which case the election applies to all Series EE bonds that you then own, those subsequently acquired, and to any other obligations purchased on a discount basis.

(b) *Changing methods.* If you use the cash basis method, you may change to the accrual basis method without obtaining permission from the Internal Revenue Service. However, once you elect to use the accrual basis method in paragraph (a)(2), you may change the method of reporting the increase only by following the specific procedures prescribed by the Internal Revenue Service for making a method change. For further information, you may contact the Internal Revenue Service director for your area, or the Internal Revenue Service, Washington, DC 20224.

3. What transactions have potential tax consequences?

The following types of transactions, among others, may have potential tax consequences:

(a) A reissue that affects the rights of any of the persons named on a definitive Series EE savings bond may have tax consequences for the owner.

(b) The transfer of a book-entry Series EE savings bond from one owner to another may have tax consequences for the transferor.

(c) The redemption of a book-entry Series EE savings bond by the secondary owner may have tax consequences for the primary owner.

(d) The purchase of a Series EE savings bond as a gift may have gift tax consequences.

[3] Example: Calculated value of $25.044 rounds to $25.04; calculated value of $25.045 rounds to $25.05.

PART 353—REGULATIONS GOVERNING UNITED STATES SAVINGS BONDS, SERIES EE AND HH

■ 5. The authority citation for part 353 continues to read as follows:

Authority: 5 U.S.C. 301; 12 U.S.C. 391; 31 U.S.C. 3105, 3125.

■ 6. Revise § 353.0 to read as follows:

§ 353.0 Applicability.

(a) The regulation in this part govern definitive (paper) United States Savings Bonds of Series EE and Series HH. These bonds bear issue dates of January 1, 1980, or thereafter.

(b) The regulations in 31 CFR part 315 govern all other definitive United States Savings Bonds and Savings Notes.

(c) The regulations in 31 CFR part 363 govern Series EE savings bonds held in book-entry form in New Treasury Direct.

■ 7. Amend § 353.2 by revising paragraph (a) to read as follows:

§ 353.2 Definitions.

(a) *Bond, or Series EE or HH savings bond,* as used in this part, means a definitive United States Savings Bond of Series EE or HH.

* * * * *

■ 8. Amend § 353.10 (a) by removing the parenthetical term "face amount" and adding in its place the parenthetical term "principal amount" in the introductory paragraph.

■ 9. Amend § 353.11 by revising paragraph (b)(3) to read as follows:

§ 353.11 Computation of amount.

* * * * *

(b) * * *

(3) All bonds registered in the name of that person as first-named coowner.

* * * * *

■ 10. Revise § 353.12 to read as follows:

§ 353.12 Disposition of excess.

If any person at any time has savings bonds issued during any one calendar year in excess of the prescribed amount, the Bureau of the Public Debt reserves the right to take any action that it deems necessary to adjust the excess. Instructions for adjustment of the excess can be obtained by email at <*savbonds@bpd.treas.gov*> or by writing to Bureau of the Public Debt, Parkersburg, WV 26106–1328.

■ 11. Revise § 353.71 to read as follows:

§ 353.71 Decedent's estate

(a) *Estate is being administered.* (1) Appropriate proof of appointment will be required for the legal representative of the estate. Letters of appointment must be dated within one year of submission.

(2) The bonds will be registered in the following form: "John Doe, SSN 123–45–6789, Legal Representative of the estate of James Doe, deceased, SSN 987–65–4321."

(3) The legal representative of the estate may request payment of bonds and held payments belonging to a decedent's estate, to the estate or to the person(s) entitled, or may have the bonds reissued to the person(s) entitled.

(b) *Estate has been settled previously.* If the estate has been previously settled through judicial proceedings, the person(s) entitled may request payment of bonds or may have the bonds reissued to the person(s) entitled. A certified copy of the court-approved final accounting for the estate, the court's decree of distribution, or other appropriate evidence will be required.

(c) *Summary administration procedures.* If there is no formal administration and no representative of the estate is to be appointed, the person(s) entitled under state law summary or small estates procedures may request payment of bonds or may have the bonds reissued to the person(s) entitled. Appropriate evidence is required.

(d) *Survivors' order of precedence for payment or transfer.* Estates with bonds over $100,000 redemption value must be administered. If there has been no administration, no administration is pending or contemplated, no summary or small estate procedures have been used, and the redemption value of the bonds is $100,000 or less, then bonds may be paid or reissued to the persons named in the following order of precedence:

(1) There is a surviving spouse and no surviving child or descendant of a deceased child: to the surviving spouse.

(2) There is a surviving spouse and a child or children of the decedent, or descendants of deceased children: one-half to the surviving spouse and one-half to the child or children of the decedent, and the descendants of deceased children, by representation, or by agreement of all persons entitled in this class;

(3) There is no surviving spouse and there is a surviving child or descendant of deceased children: to the child or children of the decedent, and the descendants of deceased children, by representation.

(4) There are no surviving spouse, no surviving child, and no surviving descendants of deceased children: to the parents of the decedent, one-half to each, or in full to the survivor.

(5) There are no surviving spouse, no surviving child or surviving descendants of deceased children, and no surviving parents: to the brothers and sisters and descendants of deceased brothers and sisters by representation.

(6) There are no surviving spouse, no surviving child or surviving descendants of deceased children, no surviving parents, and no brothers or sisters or descendants of deceased brothers and sisters: to other next of kin, as determined by the laws of the decedent's domicile at the time of death.

(7) There are no surviving spouse, no surviving child or surviving descendants of deceased children, no surviving parents, no brothers or sisters or descendants of deceased brothers and sisters, and no next of kin, as determined by the laws of the decedent's domicile at the time of death: to persons related to the decedent by marriage, *i.e.*, heirs of a spouse of the last decedent where the spouse predeceased that registrant.

(8) There are no surviving spouse, no surviving child or surviving descendants of deceased children, no surviving parents, no brothers or sisters or descendants of deceased brothers and

sisters, no next of kin, as determined by the laws of the decedent's domicile at the time of death, and no persons related to the decedent by marriage: to the person who paid the burial and funeral expenses, or a creditor of the decedent's estate, but payment may be made only to the extent that the person has not been reimbursed. Transfers are not permitted.

(9) Escheat according to the applicable state law.

(e) When we make payments or reissues according to paragraph (d) of this section, we will make the payments to either a person individually, or individually and on behalf of all other persons entitled. A person who receives payment of bond proceeds individually and on behalf of others warrants that he or she will make distribution of the proceeds to the persons entitled by the law of the decedent's domicile. The provisions of this section are for the convenience of the United States and do not determine ownership of the bonds or their proceeds. The Department of the Treasury may rely on information provided by the person who requests payment or transfer, and is not liable for any action taken in reliance on the information furnished.

§ 353.72 [Reserved]

■ 12. Remove and reserve § 353.72.

PART 359—OFFERING OF UNITED STATES SAVINGS BONDS, SERIES I

■ 13. The authority citation for part 359 continues to read as follows:

Authority: 5 U.S.C. 301; 12 U.S.C. 391; 31 U.S.C. 3105.

■ 14. Revise § 359.50 to read as follows:

§ 359.50 What amount of book-entry Series I savings bonds may I acquire per year?

The principal amount of book-entry bonds that you may acquire in any calendar year is limited to $30,000.

■ 15. Revise § 359.51 to read as follows:

§ 359.51 What book-entry Series I savings bonds are included in the computation?

(a) We include all bonds that you purchased in that calendar year.

(b) Bonds purchased as gifts or in a fiduciary capacity are not included in the computation for the purchaser.

(c) Bonds transferred or delivered from one New Treasury Direct account to another New Treasury Direct account are included in the computation for the recipient, unless you have become entitled to the transferred bonds due to the death of the registered owner.

§ 359.65 [Reserved]

■ 16. Remove and reserve § 359.65.

■ 17. Revise Appendix D to Part 359, Section 1, to read as follows:

Appendix D to Part 359—Tax Considerations

1. What are some general tax considerations?

Interest on savings bonds is subject to taxes imposed under the Internal Revenue Code of 1986, as amended. The bonds are exempt from taxation by any State or political subdivision of a State, except for estate or inheritance taxes. (*See* 31 U.S.C. 3124.)

* * * * *

PART 360—REGULATIONS GOVERNING DEFINITIVE UNITED STATES SAVINGS BONDS, SERIES I

■ 18. The authority citation for part 360 continues to read as follows:

Authority: 5 U.S.C. 301; 31 U.S.C. 3105 and 3125.

■ 19. Revise § 360.71 to read as follows:

§ 360.71 Decedent's estate.

(a) *Estate is being administered.* (1) Appropriate proof of appointment will be required for the legal representative of the estate. Letters of appointment must be dated within one year of submission.

(2) The bonds will be registered in the following form: "John Doe, SSN 123–45–6789, Legal Representative of the estate of James Doe, deceased, SSN 987–65–4321."

(3) The legal representative of the estate may request payment of bonds and held payments belonging to a decedent's estate to the estate or to the person(s) entitled, or may have the bonds reissued to the person(s) entitled.

(b) *Estate has been settled previously.* If the estate has been previously settled through judicial proceedings, the person(s) entitled may request payment of bonds or may have the bonds reissued to the person(s) entitled. A certified copy of the court-approved final accounting for the estate, the court's decree of distribution, or other appropriate evidence will be required.

(c) *Summary administration procedures.* If there is no formal administration and no representative of the estate is to be appointed, the person(s) entitled under state law summary or small estates procedures may request payment of bonds or may have the bonds reissued to the person(s) entitled. Appropriate evidence is required.

(d) *Survivors' order of precedence for payment or transfer.* Estates with bonds over $100,000 redemption value must be administered. If there has been no administration, no administration is pending or contemplated, no summary or small estate procedures have been used, and the redemption value of the bonds is $100,000 or less, then bonds may be paid or reissued to the persons named in the following order of precedence:

(1) There is a surviving spouse and no surviving child or descendant of a deceased child: to the surviving spouse.

(2) There is a surviving spouse and a child or children of the decedent, or descendants of deceased children: One-half to the surviving spouse and one-half to the child or children of the decedent, and the descendants of deceased children, by representation, or by agreement of all persons entitled in this class;

(3) There is no surviving spouse and there is a surviving child or descendant of deceased children: to the child or children of the decedent, and the descendants of deceased children, by representation.

(4) There are no surviving spouse, no surviving child, and no surviving descendants of deceased children: To the parents of the decedent, one-half to each, or in full to the survivor.

(5) There are no surviving spouse, no surviving child or surviving descendants of deceased children, and no surviving parents: to the brothers and sisters and descendants of deceased brothers and sisters by representation.

(6) There are no surviving spouse, no surviving child or surviving descendants of deceased children, no surviving parents, and no brothers or sisters or descendants of deceased brothers and sisters: To other next of kin, as determined by the laws of the decedent's domicile at the time of death.

(7) There are no surviving spouse, no surviving child or surviving descendants of deceased children, no surviving parents, no brothers or sisters or descendants of deceased brothers and sisters, and no next of kin, as determined by the laws of the decedent's domicile at the time of death: To persons related to the decedent by marriage, *i.e.*, heirs of a spouse of the last decedent where the spouse predeceased that registrant.

(8) There are no surviving spouse, no surviving child or surviving descendants of deceased children, no surviving parents, no brothers or sisters or descendants of deceased brothers and sisters, no next of kin, as determined by the laws of the decedent's domicile at the time of death, and no persons related to the decedent by marriage: To the person who paid the burial and funeral expenses, or a creditor of the decedent's estate, but payment may be made only to the extent that the person has not been reimbursed. Transfers are not permitted.

(9) Escheat according to the applicable state law.

(e) When we make payments or reissues according to paragraph (d) of this section, we will make the payments to either a person individually, or individually and on behalf of all other persons entitled. A person who receives payment of bond proceeds individually and on behalf of others warrants that he or she will make distribution of the proceeds to the persons entitled by the law of the decedent's domicile. The provisions of this section are for the convenience of the United States and do not determine ownership of the bonds or their proceeds. The Department of the Treasury may rely on information provided by the person who requests payment or transfer, and is not liable for any action taken in reliance on the information furnished.

§ 360.72 [Reserved]

■ 20. Remove and reserve § 360.72.

PART 363—REGULATIONS GOVERNING SECURITIES HELD IN THE NEW TREASURY DIRECT SYSTEM

■ 21. The authority citation for part 363 continues to read as follows:

Authority: 5 U.S.C. 301; 12 U.S.C. 391; 31 U.S.C. 3102, *et seq.*, 3105 and 3125.

■ 22. Revise § 363.3 to read as follows:

§ 363.3 What Treasury securities may be held in New Treasury Direct?

Book-entry Series EE and I savings bonds may be held in New Treasury Direct.

■ 23. Amend § 363.6 by adding the following definition in alphabetical order:

§ 363.6 What special terms do I need to know to understand this part?

* * * * *

Series EE savings bond is an accrual-type savings bond, either in definitive (paper) form or in book-entry form, that pays interest on the principal based on rates determined by Treasury.

* * * * *

■ 24. Amend § 363.34 by removing the word "written" from the section.

§ 363.38 [Amended]

■ 25. Amend the section heading for § 363.38 by removing the term "Series I" from the heading.

§ 363.51 [Amended]

■ 26. Amend the section heading for § 363.51 by removing the term "Series I" from the heading.

§§ 363.53–363.54 [Amended]

■ 27. Amend the section headings for §§ 363.53–363.54 by removing the term "Series I" from each heading.

§§ 363.56–363.58 [Amended]

■ 28. Amend the section headings for §§ 363.56–363.58 by removing the term "Series I" from each heading.

§§ 363.65–363.66 [Amended]

■ 29. Amend the section headings for §§ 363.65–363.66 by removing the term "Series I" from each heading.

§§ 363.80–363.83 [Amended]

■ 30. Amend the section headings for §§ 363.80–363.83 by removing the term "Series I" from each heading.

§ 363.85 [Amended]

■ 31. Amend the section heading for § 363.85 by removing the term "Series I" from the heading.

§ 363.90 [Amended]

■ 32. Amend the section heading for § 363.90 by removing the term "Series I" from the heading.

§ 363.95 [Amended]

■ 33. Amend the section heading for § 363.95 by removing the term "Series I" from the heading.

§ 363.97 [Amended]

■ 34. Amend the section heading for § 363.97 by removing the term "Series I" from the heading.

§§ 363.105–363.106 [Amended]

■ 35. Amend the section heading for §§ 363.105–363.106 by removing the term "Series I" from each heading.

§§ 363.111–363.113 [Amended]

■ 36. Amend the section heading for §§ 363.111–363.113 by removing the term "Series I" from each heading.

§ 363.125 [Amended]

■ 37. Amend the section heading for § 363.125 by removing the term "Series I" from the heading.

Subpart C—Book-Entry Savings Bonds Purchased Through New Treasury Direct

■ 38. Amend the heading for Subpart C by revising it to read as set forth above.

■ 39. Revise § 363.50 to read as follows:

§ 363.50 What Treasury securities does this subpart cover?

This subpart covers Series EE and I book-entry savings bonds. The offering of Series EE savings bonds is contained in 31 CFR part 351. The offering of Series I savings bonds is contained in 31 CFR part 359.

■ 40. Amend § 363.52 by revising the heading and paragraph (a) to read as follows:

§ 363.52 What amount of book-entry Series EE and I savings bonds may I purchase in one year?

(a) *Purchase limitation.* The amount of bonds that you may purchase in any calendar year is limited to $30,000 for Series EE savings bonds, and $30,000 for Series I savings bonds.

* * * * *

■ 41. Amend § 363.55(b) and (d) by removing the term "Series I" from the text of each paragraph.

§ 363.95 [Amended]

■ 42. Amend § 363.95 by removing the term "Series I" from the introductory sentence.

§ 363.111 [Amended]

■ 43. Amend § 363.111 by removing the term "Series I" from the text of the section.

§ 363.112 [Amended]

■ 44. Amend § 363.112 by removing the term "Series I" from the text of the section.

§ 363.114 [Amended]

■ 45. Amend § 363.114 by removing the term "Series I" from the first sentence.

Dated: May 2, 2003.

Donald V. Hammond,

Fiscal Assistant Secretary.

[FR Doc. 03–11403 Filed 5–5–03; 11:29 am]

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Federal Register

Thursday,
May 8, 2003

Part III

Department of Transportation

Federal Aviation Administration

14 CFR Part 119, et al.
Hazardous Materials Training Requirements; Proposed Rule

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Parts 119, 121, 135, and 145

[Docket No. FAA–2003–15085; Notice No. 03–08]

RIN 2120–AG75

Hazardous Materials Training Requirements

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: The Federal Aviation Administration (FAA) is proposing to amend its hazardous materials (hazmat) training requirements for certain air carriers and commercial operators. In addition, the FAA is proposing that certain repair stations document for the FAA that persons handling hazmat for transportation have been trained as required by the Department of Transportation's Hazardous Materials Regulations (HMRs). The FAA is updating its regulations because hazmat transport and the aviation industry have changed significantly since the FAA promulgated its hazmat training regulations over 25 years ago. The proposed rule would set clear training standards and ensure uniform compliance with training requirements.

DATES: Send your comments on or before July 7, 2003.

ADDRESSES: Address your comments to the Docket Management System, U.S. Department of Transportation, Room Plaza 401, 400 Seventh St., SW., Washington, DC 20591. You must identify the docket number (FAA–2003–15085) at the beginning of your comments, and you should submit two copies of your comments. If you wish to receive confirmation that the FAA received your comments, include a self-addressed, stamped postcard.

You may also submit comments through the Internet to *http://dms.dot.gov*. You may review the public docket containing comments to these proposed regulations in person in the Dockets Office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Dockets office is on the plaza level of the Department of Transportation at the address above. Also, you may review public dockets on the Internet at *http://dms.dot.gov*.

FOR FURTHER INFORMATION CONTACT: William Wilkening, Hazardous Materials Division, ASI–300, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC, 20591; telephone (202) 267–9864; facsmilie (202) 267–9788.

SUPPLEMENTARY INFORMATION:

Comments Invited

The FAA invites interested persons to participate in this rulemaking by submitting written comments, data, or views. We also invite comments relating to the environment, energy, federalism, or economic impact that might result from adopting the proposals in this document. The most helpful comments reference a specific portion of the proposal, explain the reason for any recommended change, and include supporting data. We ask that you send us two copies of written comments.

We will file in the docket all comments we receive, as well as a report summarizing each substantive public contact with FAA personnel concerning this proposed rulemaking. The docket is available for public inspection before and after the comment closing date. If you wish to review the docket in person, go to the addresses in the **ADDRESSES** section of this preamble between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. You may also review the docket using the Internet at the web address in the **ADDRESSES** section.

Before acting on this proposal, we will consider all comments we receive on or before the closing date for comments. We will consider comments filed late if it is possible to do so without incurring expense or delay. We may change this proposal in light of the comments we receive.

If you want the FAA to acknowledge receipt of your comments on this proposal, include with your comments a pre-addressed, stamped postcard on which the docket number appears. We will stamp the date on the postcard and mail it to you.

Availability of Rulemaking Documents

You can get an electronic copy of this document from the Internet by taking the following steps:

(1) Go to the search function of the Department of Transportation's electronic Docket Management System (DMS) web page (*http://dms.dot.gov/search*).

(2) On the search page, type the last digits of the docket number shown at the beginning of this document. Click on "search."

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List of Abbreviations and Acronyms Used in This Document

AC—Advisory Circular
COMAT—Material owned or used by a certificate holder, commonly referred to as "company material"
Hazmat—Hazardous material
HMRs—Department of Transportation's Hazardous Materials Regulations found in 49 CFR parts 171 through 180
ICAO—International Civil Aviation Organization
NTSB—National Transportation Safety Board
RSPA—Research and Special Programs Administration
SFAR—Special Federal Aviation Regulation
TRF—Transport-related function, *i.e.*, any function performed for the certificate holder relating to the acceptance, rejection, storage incidental to transport, handling, packaging of COMAT, loading, unloading or carriage of items for transport on board an aircraft
USPS—United States Postal Service
Will-carry operator—An operator authorized in its operations specifications to carry hazmat
Will-not-carry operator—An operator prohibited in its operations specifications from carrying hazmat that requires declaration under the HMRs

Outline of Preamble

I. Background
  A. Purpose of the Proposed Rule
  B. Historical Overview
  C. Relationship Between FAA and DOT Training Requirements
  D. U.S. Mail as Cargo
II. Discussion of Proposals
  A. Part 119—Special Federal Aviation Regulation No. 99
  B. Section 119.49—Contents of Operations Specifications
  C. Sections 121.135 and 135.23—Manual Contents
  D. Sections 121.401 (a)(1), 121.433a, 135.323 (a)(1), and 135.333—Transfer of Hazmat Provisions to SFAR
  E. Part 121, Subpart Y, and Part 135, Subpart K—Hazardous Materials Training Program
  F. Part 121, Appendix N—Hazmat Training Curriculum
  G. Part 135, Subpart K—Single-Pilot Operations
  H. Part 145—Repair Stations
III. Paperwork Reduction Act
IV. International Compatibility
V. Economic Evaluation Summary
VI. Initial Regulatory Flexibility Determination
VII. International Trade Impact Assessment
VIII. Unfunded Mandates Reform Act Assessment
IX. Executive Order 13132, Federalism
X. Environmental Analysis
XI. Energy Impact

I. Background

A. Purpose of the Proposed Rule

The FAA regulations that prescribe hazmat training for air carriers and commercial operators conducting operations under part 121 or part 135 were first adopted over 25 years ago. Since that time, hazmat transport regulation in general has changed significantly, in part because the Department of Transportation (DOT) implemented the Hazardous Materials Regulations (HMRs) in 49 CFR parts 171 through 180 (41 FR 15972; April 15, 1976), and in part because of changes following deregulation of the airline industry in the 1970s. The hazmat regulations, which include training requirements, apply to all modes of transport. Training requirements also exist in the "Technical Instructions for the Safe Transport of Dangerous Goods by Air" of the International Civil Aviation Organization (ICAO). In addition, the FAA has provided guidance to the industry through Advisory Circulars (ACs) to help the aviation industry to comply with the FAA's and DOT's hazmat training requirements. Information from air carriers indicates that adherence to the recommendations in ACs has been high. The ACs are not mandatory, however, and these critical safety practices need to be clearly established within the FAA's safety regulations. The FAA is proposing adding training requirements to its regulations that would set clear standards and ensure uniform compliance with training requirements for the handling of hazardous cargo. This proposed rulemaking would amend the manual and training regulations in parts 121 and 135 to incorporate most of the guidance now contained in the ACs.

For example, these proposed regulations would require certificate holders operating under part 121 or part 135 to have one of two distinct hazmat training programs. One training program would be for certificate holders electing to transport hazmat ("will-carry" certificate holders), and the other would be for certificate holders who elect not to transport hazmat ("will-not-carry" certificate holders). A certificate holder that elects will-carry status would have an authorization to carry hazmat in its operations specifications. For will-not-carry certificate holders, the FAA would place a prohibition against carrying hazmat subject to regulation under the HMRs in their operations specifications.

These proposed rules also would identify the persons who must receive hazmat training by the nature of the functions they perform or supervise for the certificate holders. The term "supervise" would be defined to mean more than just being a designated supervisor. It would cover a person who has any degree of oversight over a function addressed by the proposed rule. Will-carry certificate holders would have to conduct extensive training for persons supervising or performing any of the following functions involving items for transport on aircraft: Acceptance, rejection, handling, storage incidental to transport, packaging of company materials owned or used by the certificate holder (known as COMAT), loading, unloading, and carriage. (This preamble refers to these functions as "transport-related functions" or "TRF.") Will-not-carry certificate holders would have to conduct training sufficient to enable the persons supervising or performing a TRF to identify material marked or labeled as hazmat, and material not marked or labeled but showing some indication that it is hazmat.

In addition to these proposed amendments, the FAA proposes to add requirements for repair stations that would allow the FAA to increase its oversight of the training they are required to conduct under the DOT's hazmat training requirements in 49 CFR part 172. This separate FAA requirement is needed because the FAA has noticed that, despite the training requirements of the HMRs, a number of aviation incidents, and at least one accident, involved hazmat handled by repair stations with inadequate training programs. The proposed rules also would amend part 145 to require that repair stations meeting the definition of "hazmat employers" under 49 CFR 171.8 implement a hazmat training program that satisfies 49 CFR 172.700 through 172.704.

At the time of application for a certificate, a repair station would have to certify to the FAA that all hazmat employees, as defined in 49 CFR 171.8, are trained under the HMRs, and that it is otherwise in compliance with the training requirements of the HMRs. The applicant also would have to provide evidence of compliance with the HMRs. Without this evidence, the applicant would not receive a certificate.

Additionally, all repair station workers performing or supervising a TRF for a certificate holder, would have to be trained under the certificate holder's approved training program. Furthermore, a provision would be added to part 145 to require repair stations to notify all workers of the will-carry or will-not-carry status of the certificate holders for which the repair station works. This would have to be done as soon as the repair station is informed of the certificate holder's status. This proposal would be the companion requirement to the proposed notification requirement for part 121 and part 135 certificate holders. It would ensure that repair station management gives this information to its workers immediately.

B. Historical Overview

1. Agency Rulemakings for Part 121 and Part 135

The FAA's current part 121 and part 135 hazmat training and manual requirements were adopted on June 7, 1973 (38 FR 14914). That rulemaking added § 121.433a to require hazmat training for persons performing any duty involving handling or carriage of hazmat. Section 121.401 was amended to include this training in the certificate holder's training program. Section 121.135 (b)(12) was amended to require certificate holders to include in their manuals procedures and instructions for recognizing hazmat, and instructions for the proper carriage, storage, and handling of these materials.

The same rulemaking added § 135.140 to require hazmat training provisions for part 135 certificate holders. These part 135 requirements were similar to those in part 121, but with one important difference. Part 135 distinguished between will-carry and will-not-carry certificate holders. The preamble stated that the intent of the rule was to require a "part 135 certificate holder to provide a program of training only if it undertakes to engage in the transportation of hazardous materials." Thus, only part 135 will-carry certificate holders were required to have a hazmat training program. In contrast, all part 121 certificate holders were required to have training programs.

A year and a half later, on January 3, 1975, the Hazardous Materials Transportation Act (HMTA), Title I of Public Law 93–633, was enacted. The HMTA gave the Secretary of

Transportation the authority to consolidate hazmat regulations of the various transportation modes. On April 15, 1976, using this authority, the Materials Transportation Bureau (the predecessor of the Research and Special Programs Administration (RSPA)) consolidated all hazmat regulations of the various DOT modal administrations into one set of regulations for air, water, and surface transportation of hazmat (41 FR 15972). These consolidated regulations were published in 49 CFR parts 100 through 180. In response, the FAA removed its hazmat regulations from 14 CFR part 103, but it did not remove the hazmat training and manual requirements from part 121 and part 135. These regulations remained because they were an integral part of the certification requirements and operating rules for part 121 and part 135 certificate holders.

On May 25, 1978 (43 FR 22643), the FAA amended § 121.433a to add paragraph (c) allowing certificate holders operating in foreign locations to use personnel not trained under the certificate holder's hazmat training program to load and unload aircraft. These persons, however, must be under the supervision of someone who has successfully completed the certificate holder's approved training program. The amendment also allowed flight crewmembers to complete recurrent training a month before or a month after the actual due date.

On October 10, 1978, the FAA substantially rewrote part 135 (43 FR 46742). As part of that final rule, the FAA added § 135.23(p) to require each certificate holder, whether or not it carries hazmat, to include hazmat recognition procedures and instructions in its manual. Will-carry certificate holders had to include in their manuals detailed procedures and instructions for handling and carrying hazmat.

More significantly, the October 1978 rule, added training requirements for will-not-carry certificate holders. They were required to train their crewmembers to recognize hazmat. The new training requirement was put in part 135 because of a number of incidents where a will-not-carry certificate holder inadvertently accepted hazmat because its employees did not recognize it. Part 135 hazmat recognition training, however, was limited to crewmembers.

After deregulation of the airline industry, the FAA allowed a number of part 121 certificate holders to elect will-not-carry status and to provide only general awareness/recognition of hazmat training. In accordance with this practice, on July 10, 1980 (45 FR 46736), the FAA amended part 121 manual requirements to require will-not-carry certificate holders to have procedures and instructions in sufficient detail to assist personnel in identifying packages marked or labeled as containing hazmat. The training requirements in § 121.433a, however, were not modified to incorporate a "recognition training" requirement for part 121 will-not-carry certificate holders. The FAA believes that most, if not all, part 121 certificate holders provide hazmat recognition training, but, to ensure that this training does occur, the FAA believes that these training requirements should be clearly stated in the regulations.

2. Advisory Circulars

In 1984, the FAA issued an AC providing certificate holders with information on 49 CFR parts 171 through 180, and the ICAO's "Technical Instructions for the Safe Transport of Dangerous Goods by Air" (AC 121–21B, entitled "Information Guide for Training Programs and Manual Requirements in the Air Transportation of Hazardous Materials"). The AC also provided a recommended training curriculum. This curriculum pre-dated DOT's passage of more specific hazmat training requirements in 49 CFR 172.700 through 172.704. The AC also encouraged will-not-carry certificate holders to ensure "that their personnel (including crewmembers) are adequately trained to recognize those items which can be classified as hazardous materials."

3. Training Requirements for Repair Stations

The recent hazmat incident and accident history indicates that additional requirements are needed to ensure that repair stations are doing the training required by the HMRs. In August 1997, the National Transportation Safety Board (NTSB) issued its final report on its investigation into the crash of ValuJet Airlines Flight No. 592 ("In-Flight Fire and Impact With Terrain, ValuJet Airlines Flight 592"). The report concluded that if ValuJet had implemented a hazmat recognition training program for its repair station employees, and in it had notified those employees of Valujet's will-not-carry status and its implications, SabreTech (Valujet's repair station) might not have mishandled the packaging and shipment of the chemical oxygen generators that were loaded onto the aircraft. Thus, NTSB recommended that the FAA:

> Require air carriers to ensure that maintenance facility personnel, including mechanics, shipping, receiving, and stores personnel at air carrier operated or subcontractor facilities are provided initial and recurrent training in hazardous materials recognition and in proper labeling, packaging and shipment procedures with respect to the specific items of hazardous materials that are handled by the air carrier's maintenance functions.

The FAA currently has no separate hazmat training requirement for part 145 repair stations that use, offer for transport, or otherwise handle hazmat. However, DOT's hazmat training requirements in 49 CFR part 172, apply to these repair stations. Yet, even with the heightened awareness of the dangers of oxygen generators since the crash of Valujet Airlines Flight 592, the FAA continues to find hazmat, including oxygen generators, that have been improperly prepared and offered for shipment by air carriers and repair stations. The FAA believes that the DOT training requirements need to be referenced in the FAA's rules concerning repair stations. This will ensure that repair stations are aware of them, and make retention of their repair station certificate subject to compliance with them.

C. Relationship Between FAA and DOT Training Requirements

The DOT's HMRs (49 CFR parts 171 through 180) clearly apply to air carriers and repair stations that transport hazmat. They require all "hazmat employers" to train "hazmat employees" pursuant to 49 CFR 172.700 through 172.704. The terms "hazmat employer" and "hazmat employee" are defined in 49 CFR 171.8. "Hazmat employee" includes anyone who directly affects transportation safety by performing a function regulated by the HMRs. "Hazmat employer" is defined as "a person who uses one or more of its employees in connection with: Transporting hazardous materials in commerce; causing hazardous materials to be shipped in commerce; or representing, marking, certifying, selling, offering, manufacturing, reconditioning, testing, repairing, or modifying containers, drums or packagings as qualified for use in the transportation of hazardous materials." Under DOT's regulations, however, there is no training requirement placed upon employers or employees who are not "hazmat employers" or "hazmat employees." Thus, there are no hazmat recognition training requirements in DOT's HMRs for the employees of will-not-carry certificate holders who are not supposed to handle or transport hazmat. The FAA in this proposal recognizes that employees who are not supposed to accept, handle, or carry hazmat need adequate training to recognize and appropriately reject it to prevent the improper carriage of hazmat by will-not-carry certificate holders. It should be noted that even a will-not-carry certificate holder that does not handle hazmat from the public for transport may be a hazmat employer with respect to aircraft components, consumable materials, or other items of its own or another carrier.

D. United States Mail as Cargo

Significant amounts of mail are transported as cargo by part 121 and part 135 certificate holders. Thus, certificate holders and persons acting for certificate holders perform a TRF when accepting mail for transport on an aircraft. In 1990, the U.S. mail and the U.S. Postal Service (USPS) were expressly excluded from the reach of the Federal hazardous materials transportation law (Hazardous Materials Transportation Uniform Safety Act of 1990, Pub. L. 101–615, 1990 (49 U.S.C. App. 1801 note). The USPS has its own regulations that control the transportation of hazmat in the mail (Domestic Mail Manual (DMM), C023, revised in Postal Bulletin 21997, May 6, 1999). Generally, the USPS accepts only limited quantities and classes of hazardous materials. It requires hazmat offered for transportation by air to be segregated and properly identified. The USPS standards cross-reference the HMRs and recognize the hazmat classifications, labeling and marking requirements of the HMRs. The FAA has received reports from certificate holders concerning mail cargo that did not comply with USPS requirements or the conditions of the contract of carriage between the certificate holder and the USPS. These proposed rules therefore include a training topic under proposed Module 12, Dangerous Goods Exceptions, that addresses the mail and USPS standards concerning the restrictions on hazmat in the mail and air transportation of mail.

II. Discussion of Proposals

A. Part 119—Special Federal Aviation Regulation (SFAR) No. 99

The FAA recognizes that part 121 or part 135 certificate holders would need a reasonable period of time to implement these proposed regulations. Thus, the FAA is proposing to provide a 15-month transition period to allow certificate holders certificated on or before the effective date of the final rule to bring their hazmat training programs into compliance. During this transition period, these certificate holders could continue to comply with the current requirements or comply with these proposed new rules. Certificate holders certificated after the effective date of the final rule would have to comply with the new hazmat training requirements immediately upon certification. At the end of the transition period, all certificate holders would be required to comply with the new training requirements.

The FAA proposes to move all existing hazmat training requirements in §§ 121.401(a)(1), 121.433a, 135.323(a)(1), and 135.333 into Special Federal Aviation Regulation (SFAR) No. 99 to make it easier for certificate holders to identify existing requirements and distinguish them from new requirements, which would be in parts 121 and 135. The SFAR would expire at the end of the 15-month transition period.

B. Section 119.49—Contents of Operations Specifications

Section 119.49(a)(13) would be amended to provide that a certificate holder's operations specifications would include either an authorization permitting the certificate holder to handle and transport hazmat (will-carry certificate holder) or a prohibition against handling and transporting hazmat (will-not-carry certificate holder). Current language of (a)(13) providing that operations specifications may include any other item the Administrator deems necessary would be redesignated as new (a)(14).

C. Sections 121.135 and 135.23—Manual Contents

This proposed rule would amend the manual requirements at 14 CFR 121.135(b)(23) and 135.23(p) to require both will-carry and will-not-carry certificate holders to include procedures and information in their manuals to assist each person performing or supervising a TRF in recognizing hazmat. A certificate holder authorized as a will-carry operator would be required to provide additional procedures and information in its manual. The proposed rule would apply to full time and part time employees of a certificate holder or a contractor or subcontractor, and any other person who performs or supervises a TRF for a certificate holder under any other arrangement. This more extensive language is necessary because the current manual requirements do not clearly identify the person covered by the requirements. The current rule language merely states that the procedures and information must be included in the manual to "assist personnel to identify packages marked or labeled as containing hazardous materials * * *." Furthermore, in order to emphasize that the manual applies to all persons working for the certificate holder, whether or not directly employed by the certificate holder, the FAA proposes to replace the term "personnel" with the term "person."

The proposed language of §§ 121.135 (b)(23) and 135.23(p) would require a two-tiered approach to the hazmat portion of the certificate holder's manual: Those requirements applying to both will-carry and will-not-carry certificate holders, and those requirements applying only to will-carry certificate holders.

Unlike the current rule language, the proposed amendments to §§ 121.135 (b)(23) and 135.23(p) would require both will-carry and will-not-carry certificate holders to provide procedures for rejecting packages that are not prepared and offered for shipment under the HMRs in 49 CFR parts 171 through 180, or that appear to contain undeclared hazmat. This change is needed because the current rule language only refers to identifying or recognizing packages marked and labeled as hazmat. The FAA believes that a certificate holder's manual should include procedures for rejecting known hazmat that is not properly offered for transport in compliance with DOT's HMRs. Thus, the rule would apply to materials appearing to be undeclared hazmat. The FAA has found that in many cases packages not marked and labeled as hazmat still display indicators that would lead a trained person to suspect the presence of hazmat. For example, terms such as "chemicals," "lighters," "paint," or "solvents" on packages or in documents accompanying the package may indicate the possible presence of an undeclared hazmat. Additionally, trigger lists can be used to help alert persons to the possible presence of hazmat in items not properly identified as hazmat. These items include gasoline-powered equipment (chainsaws, generators, or aviation fuel control units) not purged of their hazardous contents, and perishable goods shipped with dry ice, which is a regulated hazmat.

If this rule is adopted, persons would be trained to recognize items not properly identified as hazmat. Furthermore, the proposed rule would require both will-carry and will-not-carry certificate holders to include in their manuals procedures and information regarding notifying DOT of hazmat incidents. (See proposed §§ 121.135(b)(23)(ii)(B) and 135.23 (p)(2)(ii)). This information would have to be provided to each person performing or supervising a TRF. In

contrast, the current rule language requires a certificate holder to include this information in its manual only if the certificate holder has will-carry status.

A certificate holder may carry hazmat in accordance with 49 CFR 175.10. Training for recognition of the hazardous materials excepted from 49 CFR would be included in the will-carry and will-not-carry training programs.

The proposed rule also would require the manual to indicate whether a certificate holder is a will-carry or will-not-carry operator, as specified in its operations specifications. (See proposed §§ 121.135(b)(23)(ii)(C) and 135.23(p)(2)(iii)). This information currently does not have to be in the certificate holder's manual.

Certificate holders electing will-carry status would be required to provide procedures and information to ensure that: (1) The packages containing hazmats are properly offered, accepted, handled, stored, packaged, loaded, unloaded and carried on the aircraft in compliance with DOT's HMRs; (2) DOT requirements regarding discrepancy reporting (§ 175.31) and notice to the pilot in command (§ 175.33) are met; and (3) aircraft replacement parts shipped as COMAT, consumable materials, and any other item regulated under the HMRs, are properly handled, packaged, and carried on board an aircraft.

As noted above, if the proposed changes are adopted, certificate holders certificated on or before the effective date of the final rule would have 15 months from the effective date to revise their manuals and implement the changes. Current §§ 121.135(b) and 135.23(p) would be placed in SFAR No. 99 (discussed under II.A.), which would expire at the end of the 15-month transition period. Applicants certificated after the effective date of the final rule to operate under part 121 or 135 would be subject to the new requirements upon certification.

D. Sections 121.401(a)(1), 121.433a, 135.323(a)(1), and 135.333—Transfer of Hazmat Provisions to SFAR

The hazmat requirements currently in §§ 121.401(a)(1), 121.433a, 135.323(a)(1), and 135.333 would be moved to SFAR No. 99, which would remain in effect for the 15-month transition period, as discussed under II.A. Sections 121.401(a)(1) and 135.323(a)(1) would be revised to continue to require crewmember training other than hazmat. New subparts in parts 121 and 135 (discussed under II.E.) would contain revised hazmat training requirements. A new §§ 121.802 and 135.502 would require the hazmat training for part 119 certificate holders conducting operations in accordance with part 121 or part 135. This reorganization would provide needed separate emphasis for hazmat training.

E. Part 121, Subpart Y, and Part 135, Subpart K—Hazardous Materials Training Program

The proposed hazmat training rules in part 121, subpart Y, and part 135, subpart K, would require all air carriers and commercial operators to train each person who may perform or supervise a TRF. The FAA believes that adequate training of each person involved in a TRF would greatly enhance safety in air transportation and help avoid life-threatening incidents. Moreover, given the frequency of undeclared hazmat incidents, the FAA believes that a broader training curriculum, which includes hazmat recognition training, should be mandated for all part 121 and part 135 certificate holders.

Because the changes that are proposed to the manual and training requirements in parts 121 and 135 are virtually identical, this discussion of the individual sections will address the changes to the parallel provisions of these parts together.

1. Applicability and Definitions (§§ 121.801 and 135.501)

These proposed provisions would clarify that the new subparts prescribe requirements for certificate holders for training persons performing or supervising a TRF, whether the certificate holder is a will-carry or will-not-carry operator. The will-carry or will-not-carry status would be relevant only to the nature of the training curriculum, not to the requirement to train. The proposed rules would be broader than the current requirements in §§ 121.433a and 135.333, which apply only to persons handling or carrying hazardous materials.

Paragraph (a): The proposal would cover persons who perform or supervise any function for a certificate holder in the transport of an item on board an aircraft, whether or not an item is, or contains, a hazmat. The proposed rules would include ground-handling personnel, passenger check-in personnel, skycaps, cargo acceptance personnel, maintenance shop personnel, shipping and receiving personnel, and their supervisors.

Currently, §§ 121.433a and 135.333 forbid certificate holders from using a person to perform, and forbids a person from performing, "any assigned duties and responsibilities for the handling or carriage of dangerous articles and magnetized materials governed by Title 49 CFR" unless the person has been trained. The proposed applicability provisions in §§ 121.801 and 135.501 are intended to be broad enough to cover not only those persons directly performing a TRF, but also those persons supervising the performance of a TRF. Whether a person were officially assigned to perform a function would be irrelevant. This would ensure that the certificate holder identifies and trains each person who could reasonably be foreseen as performing or supervising a TRF, whether or not it is part of his or her job description.

Paragraph (b): Sections 121.801(b) and 135.501(b) would define "initial hazardous materials training" and "recurrent hazardous materials training."

Paragraph (b)(1) would define "Company material (COMAT)" as material owned or used by the certificate holder. COMAT is a term of art used in the aviation industry. It is used in the proposed rule to ensure that persons are trained to understand that hazardous COMAT must be marked, labeled, and identified as hazmat, and that there is no exception for the carriage of hazardous COMAT even by will-not-carry certificate holders.

Paragraph (b)(2) would define "initial hazardous materials training" consistent with the initial training required by 49 CFR 172.704, although 49 CFR does not specifically define initial hazmat training.

Paragraph (b)(3) would define "recurrent hazardous materials training" consistent with the way the term is used in 49 CFR 172.704, although it too is not a defined term in DOT's regulations. The FAA's recurrent hazardous materials training requirement, however, would be for annual training, instead of every 3 years, as required by DOT. The yearly recurrent hazardous materials training requirement is consistent with other current training requirements for part 121 and part 135 certificate holders.

2. General Requirement To Train (§§ 121.802 and 135.502)

The FAA believes that a mandated curriculum for both will-carry and will-not-carry certificate holders would improve the knowledge base of persons performing or supervising a TRF. This training would improve transportation safety by ensuring that persons perform their job functions or supervisory responsibilities under the certificate holder's hazmat policy and the DOT's HMRs.

The current regulations in parts 121 and 135 do not provide specific details on the hazmat training curriculum. Nor do the hazmat training requirements in 49 CFR part 172 provide a specific curriculum; they simply provide a general training outline that requires general awareness training, function-specific training, and safety training. As noted above, the FAA historically has provided guidance to certificate holders in the form of ACs on the suggested content of the training curriculum. This guidance has been designed to enable the certificate holders to develop a program that will be suitable for FAA approval. Under this proposal, however, the curriculum would be mandated by regulation.

Paragraph (a): Proposed §§ 121.802(a) and 135.502(a) would require all hazmat training programs to include, at a minimum, the hazmat training curriculum contained at Appendix N of part 121. (See discussion of Appendix N under II.F.) The training programs would ensure that each person performing or supervising a TRF is trained to comply with 49 CFR parts 171 through 180, and would enable trained persons to recognize items that contain, or may contain, hazmat.

Paragraph (b): The proposal envisions that a certificate holder would develop an organized training program that would build upon a person's knowledge of hazmat regulations, keep up with current requirements, and focus on any problem areas. This is consistent with current requirements. "Initial hazardous materials training" would be similar to initial flight and proficiency training in part 121, subpart N, except that it would apply to a broader category of persons, and the training curriculum would be hazmat-focused. With certain exceptions, each person performing or supervising a TRF would be required to receive initial hazardous materials training prior to performing or supervising that function.

Paragraph (c): Sections 121.802(c) and 135.502(c) would require the certificate holder to obtain FAA approval of the hazmat training program prior to implementing the program. This requirement would be consistent with the current training requirements in §§ 121.401 and 135.323.

3. Training Requirement (§§ 121.803 and 135.503—Paragraphs (a))

Proposed paragraphs (a) of §§ 121.803 and 135.503 would provide that no certificate holder could use any person to perform or supervise a TRF, unless that person had satisfactorily completed the certificate holder's FAA-approved initial or recurrent hazardous materials training program within the past year. (See discussion of recurrent training under II.E.6.) A person would be satisfactorily trained when that person understood the relevant training material and was capable of performing his or her job in compliance with both 49 CFR parts 171 through 180 and part 121, subpart Y, or part 135, subpart K, as applicable.

Under the proposed requirement, the certificate holder would have to ensure that each person performing or supervising a TRF completed the certificate holder's initial or recurrent hazardous materials training program within the past year. A person who has not received this training could not be used to perform or supervise a TRF, unless the conditions of an exception (discussed below) were satisfied. Example A explains how this general training requirement would work.

Example A: A flight attendant is employed by Certificate Holder A (a will-carry operator under part 121) and receives initial hazmat training appropriate for the job on March 1. On August 1 of the same year, the flight attendant leaves Certificate Holder A to work for Certificate Holder B (also a will-carry operator under part 121) as a flight attendant. Certificate Holder B cannot use the initial hazmat training provided by Certificate Holder A to satisfy its training obligation. Certificate Holder B must ensure that the flight attendant completes its approved hazmat training program before permitting the flight attendant to work in that capacity, unless the certificate holder uses the flight attendant as permitted by the exception in § 121.803(b).

4. New Hire/New Job Functions—(§§ 121.803 and 135.503—Paragraphs (b))

There would be two exceptions to §§ 121.803(a) and 135.503(a). The exceptions would apply to persons who are new hires or who are changing job functions and have not received the required initial or recurrent hazmat training for the new job function. The new hire/new job function exception would apply only to persons performing a function involving storage incidental to transport, or loading or unloading of items on an aircraft for transport. This exception could not be used for persons performing or supervising any other TRF. The exception would not apply to persons supervising a function, nor would the exception apply to someone performing a function involving a task other than storage incidental to transport, loading, or unloading. The new hire/new job function exception would apply for a period of not more than 30 days from either the date of hire or, for a change in functions, the date the person began performing the new job function.

To use this exception, the person would have to be under the direct visual supervision of another person authorized to supervise him or her by the certificate holder. The supervisor would have to have successfully completed the certificate holder's approved initial or recurrent hazardous materials training program. In addition, the certificate holder would have to comply with the recordkeeping requirements in § 121.804(b) or § 135.504(b), as appropriate. The supervisor would have to observe the untrained person's performance to ensure that the function is performed in compliance with both the FAA's regulations and the DOT's HMRs. The supervisor-to-worker ratio would be approved by the principal operations inspector or the principal security inspector. Use of a video camera would not satisfy the direct visual supervision requirement.

The proposed new hire/new job function exception would be similar to the exception in 49 CFR 172.704(c)(1) for multi-modal training in that it would apply to new hires or persons changing job functions. However, unlike the exception in 49 CFR, the proposed exception would apply only to persons performing storage, loading, or unloading functions and would be valid only for 30 days from the date of employment or a change in job function. This is more limited than the new hire/new job function exception now in 49 CFR is not limited by job function and applies for 90 days after employment or a change in job function.

5. Persons Working for More Than One Certificate Holder (§§ 121.803 and 135.503—Paragraphs (c))

The second exception to the proposed rule (proposed §§ 121.803(c) and 135.503(c)) would apply to workers who perform or supervise a TRF for more than one certificate holder. Under this exception, a certificate holder using a person to perform or supervise a TRF would need only to train that person in its own policies and procedures, in accordance with its own hazardous materials training program. The certificate holder could use this exception only if:

(1) It received written verification from an authorized, knowledgeable person representing the other certificate holder for whom the person works that the person has satisfactorily completed the other certificate holder's required initial or annual approved hazardous materials-training for that specific function.

(2) The certificate holder who trained the person had the same will-carry or will-not-carry status as the certificate holder using the exception.

Example B explains how this exception would apply:

Example B: Employees at a repair station perform work for 10 will-carry certificate holders. As part of the workers' duties, they package COMAT for these certificate holders and load the packages onto aircraft for transport. All these employees performing any function involving packaging, loading, or unloading COMAT would have to be trained according to Appendix N of part 121 under at least one certificate holder's approved training program and then receive the policy and procedure training (module 13 of Appendix N of part 121) for each of the remaining nine certificate holders. The employees would have to receive this training on an annual basis. However, if a worker performing loading and unloading functions for a will-not-carry certificate holder, and then were to be used for a will-carry operator, the will-carry certificate holder could not use the exception. This employee would have to be fully trained under the will-carry certificate holder's approved hazmat training program.

The exception would minimize the training burden on certificate holders. Given the curriculum mandated, the core of each certificate holder's training program would be substantially the same. The only differences would be a certificate holder's policies and procedures for implementing the regulations. Thus, a certificate holder using a person trained by another certificate holder would only have to train that person in the way it complies with the regulations.

6. Recurrent Training (§§ 121.803 and 135.503—Paragraphs (d))

As noted above, the definition of the term "recurrent hazardous materials training" would be similar to the definition of "recurrent training" used in part 121, subpart O, for flight training. Under the proposed rule, recurrent hazardous materials training would have to be completed within a year. Thus, all persons affected by these rules would have to receive hazardous materials training once a year. However, a person would be allowed to receive recurrent hazardous materials training earlier than it is due or before the end of the month after it is due. This exception would be similar to that currently in § 121.433a(a). Thus, if recurrent hazmat training were due in January, but were completed in February, it would be considered as having been accomplished in January, and recurrent training would be due again before the end of the following January. If the training occurred before January, the anniversary month would be the month in which it occurred.

7. Notice to Repair Stations—(§§ 121.803 and 135.503—Paragraphs (e))

Based on the NTSB's report on Valujet Flight 592 and the FAA's experience with repair stations, the FAA has concluded that there should be better communication between repair stations and the certificate holders regarding the will-carry or will-not-carry status of the certificate holder. This proposed requirement would ensure that communication. Under proposed §§ 121.803(e) and 135.503(e), certificate holders would be responsible for providing written notification to each repair station that performed work on its behalf and that used or replaced consumable materials, aircraft parts, or other items regulated by 49 CFR parts 171 through 180, of its will-carry or will-not-carry status, and its policies and procedures. Additionally, the certificate holder would have to verify that the repair station was "aware of" its status and policies and procedures. The words "aware of" would mean that the certificate holder could not take care of its responsibilities under this rule simply by mailing a letter to the repair station stating whether it was a will-carry or will-not-carry operator. The certificate holder would have to communicate this policy to the repair station and ensure that management were actually aware of the certificate holder's policies and procedures regarding hazmat.

8. Foreign Locations (§§ 121.803 and 135.503—Paragraphs (f))

Proposed §§ 121.803(f) and 135.503(f) would maintain the current exception in § 121.433a for certificate holders operating at foreign locations. Under this exception, part 121 or part 135 certificate holders operating in foreign locations where they are required to use persons working in that country to load and unload aircraft could use persons even if they have not received the required hazmat training, but only if they are under the direct visual supervision of someone who has received the required initial or recurrent training. This exception would apply to those persons loading or unloading an item onto or off of an aircraft.

"Direct visual supervision" in paragraph (f) would mean the same as it would for the new hire/new job function exception.

9. Recordkeeping Requirements (§§ 121.804 and 135.504)

Current §§ 121.433a(b) and 135.333(b) require records to be maintained for initial and recurrent hazmat training given to crewmembers and ground personnel "who perform assigned duties and responsibilities for the handling and carriage of dangerous articles and magnetized materials."

Paragraph (a): Proposed §§ 121.804(a) and 135.504(a) would require each certificate holder to maintain training records of all initial and recurrent training received within the preceding 3 years for all categories of persons listed in Appendix N of part 121 performing or supervising a TRF for 90 days after they stop performing or supervising TRFs. This length of time would be identical to that required by 49 CFR 172.704(d). The certificate holder would be responsible for maintaining records of anyone who performed work for the certificate holder including direct employees, contractors, subcontractors, and any other person performing or supervising a TRF.

Paragraph (b): Proposed paragraph (b) would require that these records be maintained at the current location the trained person performs or supervises the TRF. When that person ceases to perform such a function, the records must be maintained at the last location for 90 days.

Paragraph (c): Under proposed §§ 121.804(c) and 135.504(c), the information maintained would be more specific than that required by 49 CFR 172.704(d). In addition to the person's name, the proposed rule would require the following:

(1) The function performed or supervised;

(2) The dates of each training course successfully completed for the preceding 3 years;

(3) A statement signed and dated by a person designated by the Director of Training certifying that the person has completed training in accordance with the certificate holder's approved hazardous materials training program; and

(4) A description of each training course successfully completed by that person that would include for each course:

- The date of the course,
- Its subject matter of the course or training area covered;
- The number of course hours;
- The instructor's name and signature indicating the person's successful completion of the course, and the person's name and signature indicating the person's attendance; and
- The name and business address of the organization or professional instructor who provided the training.

The current FAA rules do not specify information that must be contained in the training record; however, since 1990, DOT's HMRs have specified it. Section 172.704(d) of 49 CFR specifies that the record must contain the hazmat employee's name; the most recent training completion date; a description, copy, or location of the training materials used in the training; the name and address of the person providing the training; and certification that the hazmat employee has been trained and tested as required. DOT's HMRs already require hazmat employers (will-carry certificate holders) to maintain records that include the preceding 3 years for all persons defined under 49 CFR 171.8 as hazmat employees. Thus, to the extent that the training curriculum prescribed in the proposed regulations would be used to comply with the training requirement in DOT's HMRs, the requirement is duplicative. However, because the proposed training program covers more categories of persons than the recordkeeping requirements in 49 CFR, the duplication would be necessary. The proposed recordkeeping provision also would require more extensive information on the classes attended by the affected persons. The proposed recordkeeping rules would enable the FAA to monitor compliance with the hazmat training requirements and assess the quality of training provided to persons who would be covered by this rule.

Paragraph (d): Proposed §§ 121.804(d) and 135.504(d) would also contain a recordkeeping requirement for a certificate holder using the new hire/new job function exception. This requirement would be necessary to monitor compliance with the new exception. Under the proposed requirements, a certificate holder using a person under the exception in § 121.803(b) or 135.503(b) would have to maintain a record that included:

(1) A signed statement from an authorized representative of the certificate holder authorizing the use of the person in accordance with the exception;

(2) The date of hire or change in job function;

(3) The person's name and assigned functions;

(4) The name of the supervisor of the function; and

(5) The date the person is to receive and complete hazmat training in accordance with proposed Appendix N of part 121.

F. Part 121, Appendix N—Hazmat Training Curriculum

The training curriculum in Appendix N would replace the recommended curriculum in AC 121–21B. The training curriculum would be modeled on the curriculum adopted in ICAO Document 9284/AN–905, "Technical Instructions for the Safe Transport of Dangerous Goods By Air" (ICAO Technical Instructions). However, the two curricula would not be identical. For instance, the types of training provided to certain categories of workers would be expanded from that required by the ICAO Technical Instructions, especially for will-not-carry certificate holders. Additionally, categories of workers would be function-based; thus, a flight crewmember may need to have training in acceptance of cargo if he or she performed any task relevant to that function. Finally, the ICAO Technical Instructions require recurrent training only every 2 years, instead of every year, as the FAA proposes. The ICAO 2-year requirement is reflected in most foreign regulations, such as those promulgated in the Joint Aviation Requirements and proposed by the European Union.

Appendix N of part 121 would use a matrix that identifies 13 separate training modules, six categories of workers, and the training modules required for each category of worker. Appendix N of part 121 would provide clear standards for hazmat training programs applicable to both will-carry and will-not-carry certificate holders.

The training curriculum would vary depending upon the function to be performed or supervised. Standards for will-not-carry training would require that both part 121 and part 135 will-not-carry certificate holders conduct recognition training to enable persons performing or supervising a TRF to identify undeclared, as well as declared, hazmat. The training curriculum for will-carry operators would cover the three phases of training specified by the HMRs: General awareness, function-specific, and safety training.

To receive FAA approval, a training program would have to provide ample time to ensure that all areas were thoroughly covered. Additionally, the FAA proposes that any approved training program would have to provide an interactive session with an instructor who could address any questions or problem areas.

The FAA is proposing that each person would have to be tested by a written or performance-based test. The certificate holder would have to document to the FAA that the test covered, and the person comprehended, each subject area required by Appendix N. To ensure comprehension, the FAA would expect an instructor to review parts of the test that the test taker could not answer, or answered incorrectly and re-instruct the trainee. The FAA encourages the use of performance-based or other types of tests that are characterized by practical application of the subject matter to the TRFs performed by the certificate holder. Comprehension includes both understanding the subject matter and how it relates to the functions performed by the individual.

Based on a "Special Emphasis Review" conducted by the Principal Operations Inspectors, the FAA believes that most part 121 and 135 certificate holders have already implemented a hazmat training program similar to the ICAO training curriculum. Because the ICAO Technical Instructions are the basis for proposed curriculum, the FAA believes that this proposal would largely incorporate existing practice.

It should be noted that foreign carriers entering the United States under 14 CFR part 129 would not be affected by the proposed amendment.

G. Part 135, Subpart K—Single-Pilot Operation

Current part 135 contains exceptions for certificate holders who use only one pilot in their operations. Specifically, these certificate holders are excepted from the manual requirements in § 135.21. These certificate holders, however, would remain subject to the hazmat training requirements in § 135.333.

Under the proposed rules, all part 135 certificate holders, including single-pilot certificate holders, would have to meet the hazmat training requirements of proposed part 135, subpart K, although they would not have to have a "training program" as such. Additionally, those persons loading aircraft for these certificate holders also would have to receive hazmat training that would meet the requirements of proposed Appendix N of part 121 and be informed of the certificate holder's restrictions and limitations regarding the carriage of hazardous materials.

Although certificate holders with only one pilot do not have an approved training program, these certificate holders would have to be able to demonstrate compliance with this proposed hazmat training rule and would have to continue to maintain records of training. In addition, certificate holders conducting operations that transport hazmat with one pilot would remain subject to DOT's hazardous materials training and

recordkeeping requirements in 49 CFR 172.700 through 172.704.

H. Part 145—Repair Stations

The FAA continues to be concerned about hazmat training provided to persons performing work at repair stations used by a certificate holder. The FAA, therefore, proposes to require that repair stations that are hazmat employers under 49 CFR 171.8, and use aircraft components, consumable materials, or other items regulated under 49 CFR parts 171 through 180, establish a hazmat training program and provide evidence of compliance with that program when applying for certification or rating. The proposed rule would allow the FAA to ensure compliance with DOT's HMRs. Historically, this compliance has been sought through civil penalty enforcement actions following the discovery of violations of the HMRs, but the FAA believes that additional requirements should be in place to ensure that repair stations are complying with DOT's HMRs. If they are not complied with, the FAA would have the option of taking certificate action against the repair station.

Many required items on aircraft contain, or are themselves, regulated hazmat. Examples include oxygen generators used to provide oxygen to passengers in the event of an emergency and fuel control units for jet engines. Since the crash of Valujet Flight 592, the FAA repeatedly has investigated incidents where oxygen generators and fuel control units have been improperly offered and accepted for air transportation. The FAA believes that these proposed FAA rules would increase compliance with the hazmat training requirements of 49 CFR 172.700 through 172.704, and the rules regulating hazmat in commerce.

Additionally, the FAA is proposing to require that repair station management notify all workers of the will-not-carry or will-carry status of the certificate holders for which it works. This would have to be done upon being notified by the certificate holder in accordance with § 121.803(d) or § 135.503(d). This would mirror certificate holder requirements contained in parts 121 and 135 and would provide the necessary follow-through from repair station management to worker.

Foreign repair stations must seek certification under part 145 to perform maintenance on United States-registered aircraft operated under part 121. Those part 145 foreign repair stations would be bound by the proposed rule. It would not apply to foreign repair stations that do not seek part 145 certification.

1. Section 145.5—Hazardous Materials Training

Paragraph (a): The FAA is proposing to add § 145.5(a) to cross-reference the hazardous materials training requirement in 49 CFR. The FAA is not proposing that the repair stations do anything that they are not already doing under DOT's HMRs. Based on the FAA's experience, however, many repair stations that use consumable hazardous materials or other hazmat, or replace aircraft components, do not realize that many of these items are regulated by 49 CFR parts 171 through 180. By including this cross-reference in part 145, the FAA would be notifying all repair stations that they should carefully review the items with which they work to determine whether any are regulated by 49 CFR parts 171 through 180. If so, the repair station would have to establish and implement a hazardous materials training program, if one were not already in place.

Paragraph (b): Proposed § 145.5(b) would prohibit repair station workers from performing or supervising a TRF for part 121 or part 135 certificate holders, unless those persons had received annual training in accordance with the part 121 or part 135 certificate holder's approved hazardous materials training program.

2. Section 145.11—Application and Issue

Proposed § 145.11(a)(5) would require part 145 certificate holders that are hazmat employers under 49 CFR 171.8 to certify to the FAA that, at the time of application, they train all hazmat employees, as defined in 49 CFR 171.8, as required by the HMRs. This certification would have to be submitted along with the repair station's application for a part 145 certificate or rating. Requiring the repair station to provide this certificate would impose minimal additional documentation as part of the application for certification or rating process, but would ensure that the applicant is aware of its responsibility under the HMRs.

3. Section 145.27—Notification of Hazardous Materials Authorizations

Proposed § 145.27 would require each repair station to notify each of its workers of the will-carry or will-not-carry status of the certificate holders for which the repair station does work.

III. Paperwork Reduction Act

This proposal contains the following new information collection requirements. As required by the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)), the Department of Transportation has submitted the information requirements associated with this proposal to the Office of Management and Budget for its review.

Description of respondents: Part 121, part 135, and part 145 certificate holders.

Need: This NPRM would require a part 121 or a part 135 certificate holder to update its training manuals, restructure its recordkeeping data bases, update its employee training records, and notify its repair stations of its status as a will-carry or a will-not-carry operator.

The NPRM would also require a part 145 certificate holder to notify its employees of the will-carry or will-not-carry status of each of the part 121 or part 135 certificate holders it works for, and to certify to the FAA that it is in compliance with the regulations.

Estimated burden: The NPRM would require a total of 3,673,948 hours at a cost of $75,756,500.

The agency is soliciting comments to: (1) Evaluate whether the proposed collection of information would be necessary for the proper performance of the functions of the agency, including whether the information would have practical utility; (2) evaluate the accuracy of the agency's estimate of the burden; (3) enhance the quality, utility, and clarity of the information proposed to be collected; and (4) minimize the burden of the collection of information, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology (for example, permitting electronic submission of responses).

Individuals and organizations may see the "Supporting Statement for the Paperwork Reduction Act Submission" on the Internet at *http://dms.dot.gov,* or by submitting a request to the Federal Aviation Administration, Office of Rulemaking, ARM–1, 800 Independence Ave., SW., Washington, DC 20591 (202–267–9680). Be sure to identify the docket number of this rulemaking. Individuals and organizations may submit comments on the information collection requirement by the comment closing date shown under "Dates." Comments should be directed to the address under **ADDRESSES** above.

According to the regulations implementing the Paperwork Reduction Act of 1995 (5 CFR 1320.8(b)(2)(vi)), an agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control number for this information collection will be published in the **Federal Register** after it has been approved by the Office of Management and Budget.

IV. International Compatibility

The FAA has reviewed the International Civil Aviation Organization (ICAO) Annex 18, International Standards and Recommended Practices for the Safe Transport of Dangerous Goods by Air; the ICAO Technical Instructions for the Safe Transport of Dangerous Goods by Air; the (proposed) European Union regulations OPS 1.1135, Approval to Transport Dangerous Goods; and the Joint Aviation Requirements—Operations, and other regulations, where they exist. The agency has evaluated similarities and differences in these proposed amendments and foreign regulations. Differences would affect U.S. aircraft operators only, and, therefore, it would not be necessary for the FAA to file any differences with ICAO. Foreign carriers operating in the United States would not be affected by the proposed rule.

V. Economic Evaluation Summary

Proposed changes to Federal regulations must undergo several economic analyses. First, Executive Order 12866 directs each Federal agency to propose or adopt a regulation only if the agency makes a reasoned determination that the benefits of the intended regulation justify its costs. Second, the Regulatory Flexibility Act of 1980 requires agencies to analyze the economic impact of regulatory changes on small entities. Third, the Trade Agreements Act (19 U.S.C. 2531 through 2533) prohibits agencies from setting standards that create unnecessary obstacles to the foreign commerce of the United States. In developing U.S. standards, this Trade Act requires agencies to consider international standards. Where appropriate, agencies are directed to use those international standards as the basis of U.S. standards. And fourth, the Unfunded Mandates Reform Act of 1995 requires agencies to prepare a written assessment of the costs, benefits and other effects of proposed or final rules. This requirement applies only to rules that include a Federal mandate on State, local or tribal governments or the private sector, likely to result in a total expenditure of $100 million or more in any one year (adjusted for inflation).

In conducting these analyses, FAA has determined this proposed rule: (1) Would have benefits which would justify its costs, would be a "significant regulatory action" as defined in the Executive Order and would be "significant" as defined in DOT's Regulatory Policies and Procedures; (2) would not have a significant economic impact on a substantial number of small entities; (3) would impose no barriers to international trade; and (4) would not impose an unfunded mandate on state, local, or tribal governments, or on the private sector. The FAA has placed these analyses in the docket and summarized them below.

Benefits

The proposed rule is intended to reduce the improper carriage of hazardous materials aboard part 121 and 135 aircraft by updating and clarifying the current hazardous material requirements for these operators and by amending the certification procedures and requirements for part 145 repair stations that use or handle hazardous materials.

A review of the National Transportation Safety Board database indicates that there have been six hazardous materials related accidents in the 10-year period 1989 through 1998. The FAA sanctioned 64 violations of the hazardous materials regulations and imposed fines amounting to $1.3 million for these violations during 2000. The potential for further accidents is significant given the number of serious incidents being investigated by the FAA. A review of active cases in 1999 indicated that at least 59 were for serious hazardous materials violations against certificate holders. Given that there have been six accidents in the past in which hazardous materials were involved, the FAA estimates that there almost certainly will be a hazardous materials related accident in the next decade based on the past accident history. Furthermore, given that one of the six accidents involved fatalities, the FAA believes there is a chance that there will be one or more fatal accidents attributable to hazardous materials violations if the current regulations are not improved. The FAA estimates that a single fatal accident would result in 79 lives lost and a monetary loss of $232 million.

Costs

The FAA has analyzed the expected costs of this proposal for a 10-year period, 2002 through 2011. All costs in this analysis are expressed in 1999 dollars. The estimated industry costs over 10 years total $107.5 million, or $75.8 million discounted. These costs consist of the initial cost of revising manuals and upgrading databases, annual recordkeeping, and annual notifications. In addition, some carriers would incur the cost for initially training personnel in the more comprehensive hazardous materials recognition programs and for recurrent training. The cost of revising manuals is estimated at $321,000, ($300,000 discounted); database upgrades at $617,000 ($577,000 discounted); recordkeeping at $13,526,000 ($9,294,000 discounted); and notifications at $549,500 ($449,800 discounted). The training of aircraft operator and repair station persons is estimated at $91.6 million ($64.5 million discounted). Repair station record submission and staff notification costs are estimated at $878,000 ($612,000 discounted).

Public comment is invited. The FAA requests that all comments be accompanied by clear economic documentation.

Cost-Benefit Analysis

The National Transportation Safety Board's accident database shows one fatal accident in the past 10 years. Applying the Poisson probability distribution to that one fatal accident suggests that, under the proposed rule, there would be more than a 60 percent chance that one or more fatal accidents would be avoided. (See the discussion of "Benefits" in the complete Regulatory Impact Analysis, which is contained in the public docket.) The monetary benefit of avoiding a single accident resulting in fatalities is estimated at $232 million. The cost of implementing this proposed rule is estimated at $107.5 million over the next 10 years.

The cost of a final rule ("Hazardous Materials: Chemical Oxidizers and Compressed Oxygen Aboard Aircraft" (64 FR 45388; Aug. 19, 1999)) published by the Research and Special Programs Administration, using the same accident database, was estimated at $865,000, thus raising total costs to industry to $108.3 million. Since the potential benefits exceed the additional costs of this proposed rule and the RSPA final rule, the proposed rule would be cost beneficial.

The FAA invites public comments and requests that all comments be accompanied with clear and detailed supporting economic documentation.

VI. Initial Regulatory Flexibility Determination

The Regulatory Flexibility Act of 1980 (RFA) establishes "as a principle of regulatory issuance that agencies shall endeavor, consistent with the objective of the rule and of applicable statutes, to fit regulatory and informational requirements to the scale of the business, organization, and government jurisdictions subject to regulation." To achieve that principle, the RFA requires

agencies to solicit and consider flexible regulatory proposals and to explain the rationale for their actions. The RFA covers a wide range of small entities, including small businesses, not-for-profit organizations and small governmental jurisdictions.

Agencies must perform a review to determine whether a proposed or final rule will have a significant economic impact on a substantial number of small entities. If the determination is that it will, the agency must prepare a regulatory flexibility analysis as described in the RFA. However, if an agency determines that a proposed or final rule is not expected to have a significant economic impact on a substantial number of small entities, section 605(b) of the 1980 RFA provides that the head of the agency may so certify and a regulatory flexibility analysis is not required. The certification must include a statement providing the factual basis for this determination, and the reasoning should be clear.

The Small Business Administration (SBA) suggests that "small" entities can be identified either on the basis of employees or revenues. For this proposed rule, small entities are composed of two distinct groups: Aircraft operators and repair stations. The SBA suggests that aircraft operators with 1,500 or fewer employees are "small" entities. The aircraft operators consist of small part 121 operators and small part 135 operators. To determine the impact of the proposed rule on the 110 small part 121 operators and the 1,780 small part 135 operators, the FAA has estimated the annualized cost impact on these two categories of small entities separately, since the proposed rule's impacts differ.

The proposed rule could impose an estimated cost of $4.5 million on the 110 small part 121 operators over the next 10 years. The average annualized cost per small operator is estimated at $4,100. However, the FAA estimates that two will-carry operators would incur all six cost elements (manual revisions, database upgrades, recordkeeping, notifications, deficiency training, repair station training) and the annualized cost to each of these entities is estimated at $82,400. The costs to will-not-carry operators would be lower since less training would be required. According to an SBA analysis of Bureau of Census data for scheduled air transportation firms, firms with fewer than 500 employees have average revenues of $10.75 million. The estimated cost to each of these small entities is approximately eight-tenths of one percent of the average revenue of $107,531 of these firms. Thus none of the 110 small part 121 entities would incur a substantial economic impact in the form of higher annual costs as the result of the proposed rule.

The proposed rule could impose an estimated cost of $32.6 million on the 1,780 small part 135 operators over the next 10 years. While the average annualized cost per small operator is estimated at $1,800, some 49 will-carry entities would each incur annualized costs of $7,600. These operators would incur higher training costs than will-not-carry operators. According to a Small Business Administration analysis of Bureau of Census data for non-scheduled air transportation firms, firms with fewer than 500 employees have average revenues of $1.87 million. The estimated cost to each of these small entities is approximately four-tenths of one percent of the average revenue ($18,700) of non-scheduled air transportation firms with fewer than 500 employees, based on the SBA analysis of Bureau of Census data, and thus none of the small part 135 entities would incur a substantial economic impact in the form of higher annual costs as the result of the proposed rule. Therefore, the FAA has determined that this proposed rule would not have a significant impact on a substantial number of small part 121 or part 135 operators.

The SBA suggests that "small" repair stations can be identified as those firms with annual revenues of $5 million or less. Research conducted for the FAA indicates that approximately 56 percent of all domestic repair stations meet this criterion. The proposed rule is expected to impose an estimated cost of $878,000 on the 1,935 small independent domestic part 145 repair stations. The average annualized cost to the 56 small repair stations that incur both cost elements (record submission and staff notification) is estimated at $125. The FAA considers this amount economically insignificant. Therefore, the FAA has determined that this proposed rule would not have a significant impact on a substantial number of small entities. Accordingly, pursuant to the Regulatory Flexibility Act, 5 U.S.C. 605 (b), the Federal Aviation Administration certifies that this proposed rule would not have a significant economic impact on a substantial number of small entities.

VII. International Trade Impact Assessment

The Trade Agreement Act of 1979 prohibits Federal agencies from engaging in any standards or related activities that create unnecessary obstacles to the foreign commerce of the United States. Legitimate domestic objectives, such as safety, are not considered unnecessary obstacles. The statute also requires consideration of international standards and where appropriate, that they be the basis for U.S. standards.

In accordance with the above statute, the FAA has assessed the potential effect of this proposed rule and has determined that it would impose costs on domestic entities that international entities operating into and out of the United States would not incur. However, the anticipated safety benefits warrant these costs and, therefore, these costs are not considered unnecessary obstacles to the foreign commerce of the United States.

VIII. Unfunded Mandates Reform Act Assessment

The Unfunded Mandates Reform Act of 1995 (the Act), enacted as Public Law 104–4 on March 22, 1995 is intended, among other things, to curb the practice of imposing unfunded Federal mandates on State, local, and tribal governments. Title II of the Act requires each Federal agency to prepare a written statement assessing the effects of any Federal mandate in a proposed or final rule that may result in a $100 million or more expenditure (adjusted annually for inflation) in any one year by State, local, and tribal governments, in the aggregate, or by the private sector; such a mandate is deemed to be a "significant regulatory action." This proposed rule does not contain such a mandate. Therefore, the requirements of Title II of the Unfunded Mandates Reform Act of 1995 do not apply.

IX. Executive Order 13132, Federalism

The FAA has analyzed this proposed rule under the principles and criteria of Executive Order 13132, Federalism. The FAA has determined that this action would not have a substantial direct effect on the States, or the relationship between the national government of the United States, or on the distribution of power and responsibilities among the various levels of government. Therefore, the FAA determined that this notice of proposed rulemaking would not have Federalism implications.

X. Environmental Analysis

FAA Order 1050.1D defines FAA actions that may be categorically excluded from preparation of a National Environmental Policy Act (NEPA) environmental impact statement. In accordance with FAA Order 1050.1D, appendix 4, paragraph 4(j), this proposed rulemaking action qualifies for a categorical exclusion.

XI. Energy Impact

The energy impact of this notice of proposed rulemaking has been assessed in accordance with the Energy Policy and Conservation Act (EPCA), Public Law 94–163, as amended (42 U.S.C. 6362) and FAA Order 1053.1. The FAA has determined that the proposed rule is not a major regulatory action under the provisions of the EPCA.

List of Subjects

14 CFR Part 119

Administrative practice and procedure, Air carriers, Aircraft, Aviation safety, Charter flights, Reporting and recordkeeping requirements.

14 CFR Part 121

Air carriers, Aircraft, Airmen, Aviation safety, Charter flights, Reporting and recordkeeping requirements, Safety, Transportation.

14 CFR Part 135

Aircraft, Airmen, Aviation Safety, Reporting and recordkeeping requirements.

14 CFR Part 145

Aircraft, Aviation safety, Reporting and recordkeeping requirements.

The Proposed Amendments

In consideration of the foregoing, the Federal Aviation Administration proposes to amend parts 119, 121, 135, and 145 of title 14, Code of Federal Regulations, as follows:

PART 119—CERTIFICATION: AIR CARRIERS AND COMMERCIAL OPERATORS

1. The authority citation for Part 119 continues to read as follows:

Authority: 49 U.S.C. 106(g), 1153, 40101, 40102, 40103, 40113, 44105, 44106, 44111, 44701–44717, 44722, 44901, 44903, 44904, 44906, 44912, 44914, 44936, 44938, 46103, 46105.

2. Amend part 119 by adding Special Federal Aviation Regulation No. 99 as follows:

Special Federal Aviation Regulation No. 99—Hazardous Materials Regulations Governing Manual And Training Requirements

1. *Applicability.* This Special Federal Aviation Regulation (SFAR) applies to all U.S. air carriers and commercial operators that are issued a certificate under part 119 of this chapter on or before [*effective date of the final rule*] to operate under part 121 or part 135 of this chapter. Notwithstanding parts 121 and 135 of this chapter, these air carriers and commercial operators may comply with either the provisions of this SFAR until its expiration, or part 121, subpart Y, or part 135, subpart K.

2. *Definition.* The term certificate holder, as used in this SFAR, means a person certificated in accordance with part 119, subpart C, of this chapter and operating under part 121 or part 135 of this chapter.

3. *Manual Contents.* (a) Each manual required by § 121.133 shall contain procedures and information to assist personnel to identify packages marked or labeled as containing hazardous materials and, if these materials are to be carried, stored, or handled, procedures and instructions relating to the carriage, storage, or handling of hazardous materials, including the following:

(1) Procedures for determining whether the material is accompanied by the proper shipper certification required by 49 CFR Chapter I, Subchapter C; whether it is properly packed, marked, and labeled; whether it is accompanied by the proper shipping documents; and whether requirements for compatibility of materials have been met.

(2) Instructions on the loading, storage, and handling.

(3) Notification procedures for reporting hazardous material incidents as required by 49 CFR Chapter I, Subchapter C.

(4) Instructions and procedures for the notification of the pilot in command when there are hazardous materials aboard, as required by 49 CFR Chapter I, Subchapter C.

(b) Each manual required by § 135.21 of this chapter shall contain procedures and instructions to enable personnel to recognize hazardous materials, as defined in 49 CFR, and if these materials are to be carried, stored, or handled, procedures and instructions for:

(1) Accepting shipment of hazardous material regulated by 49 CFR to assure proper packaging, marking, labeling, shipping documents, compatibility of articles, and instructions their loading, storage, and handling;

(2) Notification and reporting hazardous material incidents as required by 49 CFR; and

(3) Notification of the pilot in command when there are hazardous materials aboard, as required by 49 CFR.

4. *Training Program.* (a) Each certificate holder required to have a training program under § 121.401 of this chapter shall establish, obtain the appropriate initial and final approval of, and provide, a training program that meets the requirements of part 121, subpart N, and appendices E and F of part 121 of this chapter. Each certificate holder required to have a training program under § 121.401 of this chapter shall ensure that each crewmember, aircraft dispatcher, flight instructor, and check airman, and each person assigned duties for the carriage and handling of hazardous materials, is adequately trained to perform his or her assigned duties.

(b) Each certificate holder required to have a training program under § 135.341 of this chapter shall establish, obtain the appropriate initial and final approval of, and provide a training program that meets the requirements of this SFAR. Each certificate holder required to have a training program under § 135.341 of this chapter shall ensure that each crewmember, flight instructor, check airman, and each person assigned duties for the carriage and handling of hazardous materials (as defined in 49 CFR 171.8) is adequately trained to perform their assigned duties.

5. *Training requirements: Handling and carriage of hazardous materials under part 121.* (a) No certificate holder conducting operations under part 121 of this chapter may use any person to perform and no person may perform, any assigned duties and responsibilities for the handling or carriage of hazardous materials governed by 49 CFR, unless within the past year that person has satisfactorily completed training in a program established and approved under this SFAR, which includes instructions regarding the proper packaging, marking, labeling, and documentation of hazardous materials, as required by 49 CFR, and instructions regarding their compatibility, loading, storage, and handling characteristics. A person who satisfactorily completes training in the calendar month before, or the calendar month after, the month in which it becomes due, is considered to have taken that training during the month it became due.

(b) Each certificate holder conducting operations under part 121 of this chapter shall maintain a record of the satisfactory completion of the initial and recurrent training given to crewmembers and ground personnel who perform assigned duties and responsibilities for the handling and carriage of hazardous materials.

(c) When a certificate holder conducting operations under part 121 of this chapter operates in a foreign country where the loading and unloading of aircraft must be performed by personnel of the foreign country, that certificate holder may use personnel not

meeting the training requirements of paragraphs (a) and (b) of this provision if they are supervised by a person qualified under paragraphs (a) and (b) of this provision to supervise the loading, offloading and handling of hazardous materials.

6. *Training requirements: Handling and carriage of hazardous materials under part 135.* (a) Except as provided in paragraph (d) of this provision, no certificate holder conducting operations under part 135 may use any person to perform, and no person may perform, any assigned duties and responsibilities for the handling or carriage of hazardous materials (as defined in 49 CFR 171.8), unless within the past year that person has satisfactorily completed initial or recurrent training in an appropriate training program established by the certificate holder, which includes instruction on—

(1) The proper shipper certification, packaging, marking, labeling, and documentation for hazardous materials; and

(2) The compatibility, loading, storage, and handling characteristics of hazardous materials.

(b) Each certificate holder conducting operations under part 135 of this chapter, shall maintain a record of the satisfactory completion of the initial and recurrent training given to crewmembers and ground personnel who perform assigned duties and responsibilities for the handling and carriage of hazardous materials.

(c) Each certificate holder, conducting operations under part 135 of this chapter, that elects not to accept hazardous materials shall ensure that each crewmember is adequately trained to recognize those items classified as hazardous materials,

(d) If a certificate holder conducting operations under part 135 of this chapter operates into or out of airports at which trained employees or contract personnel are not available, it may use persons not meeting the requirements of paragraph (a) or (b) of this provision to load, offload, or otherwise handle hazardous materials if these persons are supervised by a crewmember who is qualified under paragraphs (a) and (b) of this provision.

7. *Expiration.* This Special Federal Aviation Regulation expires on [*date 15 months after the effective date of the final rule*].

3. Amend § 119.49 by redesignating paragraph (a)(13) as (a)(14) and adding a new paragraph (a)(13) to read as follows:

§ 119.49 Contents of operations specifications.

(a) * * *

(13) An authorization permitting, or a prohibition against, accepting, handling, and transporting of materials regulated as hazardous materials in transport under 49 CFR parts 171 through 180.

* * * * *

PART 121—OPERATING REQUIREMENTS: DOMESTIC FLAG, AND SUPPLEMENTAL OPERATIONS

4. The authority citation for Part 121 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 40119, 41706, 44101, 44701–44702, 44705, 44709–44711, 44713, 44716–44717, 44722, 44901, 44903–44904, 44912, 46105.

5. Amend § 121.135 by revising paragraph (b)(23) to read as follows:

§ 121.135 Contents.

* * * * *

(b) * * *

(23)

(i) Provide procedures and information, as described in paragraph (b)(23)(ii) of this section, to assist each person performing or supervising the following functions involving items for transport on an aircraft:

(A) Acceptance;
(B) Rejection;
(C) Handling;
(D) Storage incidental to transport;
(E) Packaging of company material;
(F) Loading;
(G) Unloading; or
(H) Carriage.

(ii) Ensure that the procedures and information described in this paragraph are sufficient to assist the person in identifying packages that are marked or labeled as containing hazardous materials or that show signs of containing undeclared hazardous materials. The procedures and information must include:

(A) Procedures for rejecting packages that do not conform to the Hazardous Materials Regulations in 49 CFR parts 171 through 180 or that appear to contain undeclared hazardous materials;

(B) Procedures for complying with the hazardous materials incident reporting requirements of 49 CFR 171.15 and 171.16;

(C) The certificate holder's hazmat policies and whether the certificate holder is authorized to carry, or is prohibited from carrying, hazardous materials; and

(D) If the certificate holder's operations specifications permit the carriage of hazardous materials, procedures and information to ensure the following:

(*1*) That packages containing hazardous materials are properly offered and accepted in compliance with 49 CFR parts 171 through 180;

(*2*) That packages containing hazardous materials are properly handled, stored, packaged, loaded, unloaded and carried on board an aircraft in compliance with 49 CFR parts 171 through 180;

(*3*) That the requirements for discrepancy reporting (49 CFR 175.31) and Notice to the Pilot in Command (49 CFR 175.33) are complied with; and

(*4*) That aircraft replacement parts, consumable materials or other items regulated by 49 CFR parts 171 through 180 are properly handled, packaged, and carried.

6. Amend § 121.401 by revising paragraph (a)(1) to read as follows:

§ 121.401 Training program: General.

(a) * * *

(1) Establish and implement a training program that satisfies the requirements of this subpart and appendices E and F of this part and that ensures that each crewmember, aircraft dispatcher, flight instructor and check airman is adequately trained to perform his or her assigned duties. Prior to implementation, the certificate holder must obtain initial and final FAA approval of the training program.

* * * * *

§ 121.433a [Removed]

7. Remove § 121.433a.

8. Add subpart Y, consisting of §§ 121.801 through 121.804, to read as follows:

Subpart Y—Hazardous Materials Training Program

§ 121.801 Applicability and definitions.

(a) This subpart prescribes the requirements applicable to each certificate holder for training each person performing or supervising any of the following functions involving any item for transport on board an aircraft:

(1) Acceptance;
(2) Rejection;
(3) Handling;
(4) Storage incidental to transport;
(5) Packaging of company material;
(6) Loading;
(7) Unloading; or
(8) Carriage.

(b) *Definitions.* For purposes of this subpart, the following definitions apply:

(1) *Company material (COMAT)*—Material owned or used by a certificate holder.

(2) *Initial hazardous materials training*—The basic training required for each newly hired person, or each person changing job functions, who performs or supervises any of the functions specified in paragraph (a) of this section.

(3) *Recurrent hazardous materials training*—The yearly training required for each person who has satisfactorily completed the certificate holder's approved initial hazardous materials training program and performs or supervises any of the functions specified in paragraph (a) of this section.

§ 121.802 Hazardous materials training: General.

(a) Each certificate holder must establish and implement a hazardous materials training program that:

(1) Satisfies the requirements of Appendix N of this part;

(2) Ensures that each person performing or supervising any of the functions specified in § 121.801(a) is trained in accordance with 49 CFR 172.700 and the requirements of this subpart; and

(3) Enables the trained person to recognize items that contain, or may contain, hazardous materials regulated by 49 CFR parts 171 through 180.

(b) Each certificate holder must provide initial hazardous materials training and recurrent hazardous materials training to each person performing or supervising any of the functions specified in § 121.801(a).

(c) Each certificate holder's hazardous materials training program must be approved by the FAA prior to implementation.

§ 121.803 Hazardous materials training required.

(a) *Training requirement.* Except as provided in paragraphs (b), (c) and (f) of this section, no certificate holder may use any person to perform any of the functions or supervisory responsibilities, and no person may perform any of the functions or supervisory responsibilities, specified in § 121.801(a) unless that person has satisfactorily completed the certificate holder's FAA-approved initial or recurrent hazardous materials training program within the past year.

(b) *New hire or new job function.* A person who is a new hire and has not yet satisfactorily completed the required initial hazardous materials training, or a person who is changing job functions and has not received initial or recurrent training for a function involving storage incidental to transport, loading, or unloading of items for transport on an aircraft, may perform those functions for not more than 30 days from the date of hire or a change in job function, if:

(1) The person is under the direct visual supervision of a person who is authorized by the certificate holder and who has successfully completed the certificate holder's FAA-approved initial or recurrent training program within the past year;

(2) The supervisor-to-worker ratio is approved by the principal security inspector or the principal operations inspector.

(c) *Persons who work for more than one certificate holder.* A certificate holder that uses or assigns a person to perform or supervise a function specified in § 121.801(a), when that person also performs or supervises the same function for another certificate holder, need only train that person in its own policies and procedures regarding those functions, if all of the following are met:

(1) The certificate holder using this exception receives written verification from an authorized, knowledgeable person representing the other certificate holder that the person has satisfactorily completed hazardous materials training for the specific function under the other certificate holder's approved training program under Appendix N of this part; and

(2) The certificate holder who trained the person has the same operations specifications regarding the acceptance, handling, and carriage of hazardous materials as the certificate holder using this exception.

(d) *Recurrent hazardous materials training—Completion date.* A person who satisfactorily completes recurrent hazardous materials training in the calendar month before, or the calendar month after, the month in which the recurrent training is due, is considered to have taken that training during the month in which it is due. If the person completes this training earlier than the month before it is due, the month of the completion date becomes his or her new anniversary month.

(e) *Repair stations.* A certificate holder must ensure that each repair station performing work on the certificate holder's behalf is notified in writing, and is aware of, the certificate holder's policies and operations specifications regarding the acceptance, rejection, handling, storage incidental to transport, and carriage of hazardous materials, including company material. This notification requirement applies only to repair stations that handle, use, or replace material regulated by 49 CFR parts 171 through 180, including consumable hazardous materials and aircraft parts containing hazardous materials.

(f) *Certificate holders operating at foreign locations.* This exception applies if a certificate holder operating at a foreign location where the country requires the certificate holder to use persons working in that country to load and unload aircraft. In such a case, the certificate holder may use those persons even if they have not been trained in accordance with the certificate holder's approved hazardous materials training program. Those persons, however, must be under the direct visual supervision of someone who has successfully completed the certificate holder's approved initial or recurrent hazardous materials training program in accordance with this part. This exception applies only to those persons who load or unload aircraft.

§ 121.804 Hazardous materials training records.

(a) *General requirement.* Each certificate holder must maintain a record of all training required by this part received within the preceding three years for each person who performs or supervises a function specified in § 121.801(a). The record must be maintained during the time that the person performs or supervises any of those functions, and for 90 days thereafter. These training records must be kept for direct employees of the certificate holder, as well as independent contractors, subcontractors, and any other person who performs or supervises these functions for the certificate holder.

(b) *Location of records.* The certificate holder must retain the training records required by paragraph (a) of this section at the location where the trained person performs or supervises the function specified in § 121.801(a). When the person ceases to perform the function, the certificate holder must retain these records at the last location where the person performed the function for an additional 90 days.

(c) *Content of records.* Each record must contain the following:

(1) The person's name and function performed or supervised;

(2) The dates of each training course successfully completed within the preceding three years;

(3) A statement signed and dated by a person designated by the Director of Training certifying that the person has completed training in accordance with the certificate holder's approved hazardous materials training program; and

(4) A description of each training course successfully completed by the person that includes for each course:

(i) Date of the course;

(ii) Subject matter of the course and training area covered;

(iii) Number of hours of the course;

(iv) Instructor's name and signature indicating the person's successful completion of the course, and person's name and signature indicating the person's attendance; and

(v) Name and business address of the organization or professional instructor providing the training.

(d) *New person or new job function.* Each certificate holder using a person under the exception in § 121.803(b)(1) must maintain a record for that person at the location where the person performs the function. The record must include the following:

(1) A signed statement from an authorized representative of the certificate holder authorizing the use of the person in accordance with the exception;

(2) The date of hire or change in job function;

(3) The person's name and assigned function;

(4) The name of the supervisor of the function; and

(5) The date the person is to complete hazardous materials training in accordance with Appendix N of this part.

9. Add Appendix N to read as follows:

Appendix N—Hazardous Materials Training Curriculum for Certificate Holders

This appendix prescribes the requirements for hazardous materials training under part 121, subpart Y, and part 135, subpart K of this chapter. The training requirements for various categories of persons are defined by function or responsibility. An "X" in a box under a category of persons indicates that the specified category must receive the noted training. All training requirements apply to supervisors as well as to persons actually performing the function. Training requirements for certificate holders authorized in their operations specifications to transport hazardous materials (will-carry) are prescribed in Table 1. Those certificate holders with a prohibition in their operations specifications against carrying or handling hazardous materials (will-not-carry) must follow the curriculum prescribed in Table 2. All persons must be tested through a written or performance-based test that verifies comprehension of each subject area required by this appendix.

TABLE 1.—HAZARDOUS MATERIALS TRAINING CURRICULUM FOR CERTIFICATE HOLDERS THAT TRANSPORT HAZARDOUS MATERIALS

Module	Area of training	Category of personnel (see key below)					
		1	2	3	4	5	6
1	General Overview	X	X	X	X	X	X
2	Hidden Dangerous Goods	X	X	X	X	X	X
3	Company Materials (COMAT)	X	X	X	X	X	.....
4	Documentation	X	X	X	X	X	.....
5	Acceptance & Handling	X	X	X	X	X	.....
6	Marking & Labeling	X	X	X	X	X	X
7	Classification	X	X	X	.....	X	.....
8	Identification	X	X	X	.....	X	.....
9	Packaging	X	X	.....	.....	X	.....
10	Notice to Pilot-In-Command	X	X	.....	X	X	X
11	Safety & Reporting	X	X	X	X	X	X
12	Passenger/Air Carrier Exceptions/U.S. Mail	X	X	X	X	X	.....
13	Certificate holder policies and procedures	X	X	X	X	X	X

KEY:
1—Persons who accept cargo, packages or passenger baggage.
2—Persons working in supply, storage, or warehouse facilities, or involved in shipping of aircraft parts, supplies or company material.
3—Persons who handle, store, and load or unload packages, passenger baggage or cargo.
4—Persons engaged in passenger and baggage check-in services (*e.g.*, skycaps, ticket counter agents, flight attendants, etc.).
5—Persons responsible for cargo during flight (including pilots, flight engineer, flight attendants, dispatchers).
6—Flight crewmembers who do not perform any responsibility listed above.

TABLE 2.—HAZARDOUS MATERIALS TRAINING CURRICULUM FOR CERTIFICATE HOLDERS THAT DO NOT TRANSPORT HAZARDOUS MATERIALS

Module	Area of training	Category of personnel (see key below)					
		1	2	3	4	5	6
1	General Overview	X	X	X	X	X	X
2	Hidden Dangerous Goods	X	X	X	X	X	X
3	Company Materials (COMAT)	X	X	X	X	X	.....
4	Documentation	X	X	X	X	X	.....
5	Acceptance & Handling	.....	X	.....	.....	.....	.....
6	Marking & Labeling	X	X	X	X	.....	X
7	Classification	.....	X	.....	.....	.....	.....
8	Identification	X	X	X	.....	.....	.....
9	Packaging	.....	X	.....	.....	.....	.....
10	Notice to Pilot-In-Command	.....	X	.....	.....	.....	X
11	Safety & Reporting	X	X	X	X	X	X
12	Passenger/Air Carrier Exceptions/U.S. Mail	X	X	X	X	X	.....
13	Certificate holder policies and procedures	X	X	X	X	X	X

Key:
1—Persons who accept cargo, packages or passenger baggage.
2—Persons working in supply, storage, or warehouse facilities, or involved in shipping of aircraft parts, supplies or company material.

3—Persons who handle, store, and load or unload packages, passenger baggage or cargo.
4—Persons engaged in passenger and baggage check-in services (*e.g.*, skycaps, ticket counter agents, flight attendants, etc.).
5—Persons responsible for cargo during flight (including pilots, flight engineers, flight attendants, dispatchers).
6—Flight crewmembers who do not perform any responsibility listed above.

Module 1—General Overview
- Applicable regulatory materials
- Overview of 49 CFR parts 171 through 180
- Use of ICAO Technical Instructions
- Use of IATA Dangerous Goods Manual
- Definitions used in air transportation of hazardous materials
- General transportation requirements—49 CFR 171.2
- Carriage by aircraft—49 CFR part 175
- Training and recordkeeping requirements
- Use of and familiarity with a "trigger list" and a "passenger check-in list" to assist authorized persons in the detection of undeclared hazardous materials carried in passenger baggage or other types of cargo

Module 2—Hidden Dangerous Goods
- Hidden shipment indicators (includes review and use of Hidden Shipment List and/or trigger lists)
- Suspicious cargo and baggage awareness (review and training in the use of a "passenger check-in list" to assist those authorized persons in detection of hazardous materials carried by passengers in baggage or cargo)

Module 3—Company Materials (COMAT)
- Identifying and recognizing hazardous company-materials (COMAT), including:
  —Hazardous materials on aircraft
  —Replacement components
  —Consumable materials
- Specific hazardous materials
- COMAT exceptions
- Facility storage and safe movement and handling requirements for hazardous materials COMAT—
  —Specific hazards of, and precautionary measures and proper disposal procedures, including:
  Environmental precautions
  Transportation precautions

Module 4—Documentation (49 CFR part 172, subpart C, and 49 CFR part 175, subpart A)
- Shipper's certification requirements for hazardous materials
- Shipping paper requirements
- Description of hazardous materials required on shipping papers
- Shipping papers for hazardous materials aboard aircraft, 49 CFR part 175, subpart A

Module 5—Acceptance, Handling, Loading
- Passenger and cargo information signage requirements
- Acceptance procedures and requirements for hazardous materials
- Inspection of packages and unit load devices
- Quantity limitations on aircraft
- Quantity limitations for inaccessible cargo
- Stowage compatibility
- Orientation of packages
- Securing packages
- Location of packages
- Damaged shipments of hazardous materials

Module 6—Marking and Labeling
- Markings required on packages containing hazardous materials
- Labels required on packages containing hazardous materials
- Keeping and replacing hazardous materials labels

Module 7—Classification
- Hazardous materials classification
- Unacceptable hazardous materials

Module 8—Identification
- Purpose and use of the hazardous materials tables
- Proper shipping names
- Hazard class (definitions)
- UN/ID numbers
- Packing group

Module 9—Packaging
- Shippers' responsibilities
- General packaging requirements
- Packing instructions and assignments
- Small quantity exceptions
- Limited quantity exceptions

Module 10—Notification to Pilot in Command
- Requirements for notification to pilot in command
- Emergency response information

Module 11—Safety and Reporting
- Emergency response information
- Hazardous materials discrepancy/incident reporting

Module 12—Dangerous Goods Exceptions
- Exceptions
- U.S. Mail and U.S. Postal Service standards

Module 13—Certificate Holder Policy and Procedures
- Policies and procedures regarding acceptance, rejection, handling, storage incidental to transport, packaging of company material, loading, unloading and carriage of items for transport on board aircraft
- Policies and procedures regarding handling, packaging, and transport of hazardous materials moving by means other than air

PART 135—OPERATING REQUIREMENTS: COMMUTER AND ON-DEMAND OPERATIONS

10. The authority citation for part 135 continues to read as follows:

Authority: 49 U.S.C. 106(g), 44113, 44701–44702, 44705, 44709, 44711–44713, 44715–44717, 44722.

11. Amend § 135.23 by revising paragraph (p) to read as follows:

§ 135.23 Manual contents.

* * * * *

(p)(1) Procedures and information, as described in paragraph (p)(2) of this section, for each person performing or supervising the following functions involving items for transport on board an aircraft:

(i) Acceptance;

(ii) Rejection;

(iii) Handling;

(iv) Storage incidental to transport;

(v) Packaging of company material;

(vi) Loading;

(vii) Unloading; or

(viii) Carriage.

(2) Procedures and information, as described in this paragraph, sufficient to assist a person in identifying packages that are marked or labeled as containing hazardous materials or that exhibit indications of containing undeclared hazardous materials. The procedures and information must include:

(i) Procedures for rejecting packages that do not conform to the Hazardous Materials Regulations in 49 CFR parts 171 through 180 or that appear to contain undeclared hazardous materials;

(ii) Procedures for complying with the hazardous materials incident reporting requirements of 49 CFR 171.15 and 171.16;

(iii) The certificate holder's hazmat policies and whether the certificate holder is authorized to carry, or is prohibited from carrying, hazardous materials; and

(iv) If the certificate holder's operations specifications permit the carriage of hazardous materials, procedures and information to ensure the following:

(*A*) That packages containing hazardous materials are properly offered and accepted in compliance with 49 CFR parts 171 through 180;

(*B*) That packages containing hazardous materials are properly handled, stored, packaged, loaded, unloaded and carried on board an aircraft in compliance with 49 CFR parts 171 through 180;

(*C*) That the requirements for discrepancy reporting (49 CFR 175.31) and Notice to the Pilot in Command (49 CFR 175.33) are complied with; and

(*D*) That aircraft replacement parts, consumable materials or other items regulated by 49 CFR parts 171 through 180 are properly handled, packaged, and carried.

* * * * *

12. Amend § 135.323 by revising paragraph (a)(1) as follows:

§ 135.323 Training program: General.

(a) * * *

(1) Establish and implement a training program that satisfies the requirements of this subpart and that ensures that each crewmember, aircraft dispatcher, flight instructor and check airman is adequately trained to perform his or her assigned duties. Prior to implementation, the certificate holder must obtain initial and final FAA approval of the training program.

* * * * *

§ 135.333 [Removed]

13. Remove § 135.333.

14. Add subpart K, consisting of §§ 135.501 through 135.504, to read as follows:

Subpart K—Hazardous Materials Training Program

§ 135.501 Applicability and definitions.

(a) This subpart prescribes the requirements applicable to each certificate holder for training each person performing or supervising any of the following functions involving any item for transport on board an aircraft:

(1) Acceptance;
(2) Rejection;
(3) Handling;
(4) Storage incidental to transport;
(5) Packaging of company material;
(6) Loading;
(7) Unloading; or
(8) Carriage.

(b) *Definitions.* For purposes of this subpart, the following definitions apply:

(1) *Company material (COMAT)*—Material owned or used by a certificate holder.

(2) *Initial hazardous materials training*—The basic training required for each newly hired person, or each person changing job functions, who performs or supervises any of the functions specified in paragraph (a) of this section.

(3) *Recurrent hazardous materials training*—The yearly training required for each person who has satisfactorily completed the certificate holder's approved initial hazardous materials training program and performs or supervises any of the functions specified in paragraph (a) of this section.

§ 135.502 Hazardous materials training: General.

(a) Each certificate holder must establish and implement a hazardous materials training program that:

(1) Satisfies the requirements of Appendix N of part 121 of this chapter;

(2) Ensures that each person performing supervising any of the functions specified in § 135.501(a) is trained in accordance with 49 CFR 172.700 and the requirements of this subpart; and

(3) Enables the trained person to recognize items that contain, or may contain, hazardous materials regulated by 49 CFR parts 171 through 180.

(b) Each certificate holder must provide initial hazardous materials training and recurrent hazardous materials training to each person performing or supervising any of the functions specified in § 135.501(a).

(c) Each certificate holder's hazardous materials training program must be approved by the FAA prior to implementation.

§ 135.503 Hazardous materials training required.

(a) *Training requirement.* Except as provided in paragraphs (b), (c) and (f) of this section, no certificate holder may use any person to perform any of the functions or supervisory responsibilities, and no person may perform any of the functions or supervisory responsibilities, specified in § 135.501(a) unless that person has satisfactorily completed the certificate holder's FAA-approved initial or recurrent hazardous materials training program within the past year.

(b) *New hire or new job function.* A person who is a new hire and has not yet satisfactorily completed the required initial hazardous materials training, or a person who is changing job functions and has not received initial or recurrent training for a function involving storage incidental to transport, loading, or unloading of items for transport on an aircraft, may perform those functions for not more than 30 days from the date of hire or a change in job function, if:

(1) The person is under the direct visual supervision of a person who is authorized by the certificate holder and who has successfully completed the certificate holder's FAA-approved initial or recurrent training program within the past year;

(2) The supervisor-to-worker ratio is approved by the principal security inspector or the principal operations inspector.

(c) *Persons who work for more than one certificate holder.* A certificate holder that uses or assigns a person to perform or supervise a function specified in § 135.501(a), when that person also performs or supervises the same function for another certificate holder, need only train that person in its own policies and procedures regarding those functions, if all of the following are met:

(1) The certificate holder using this exception receives written verification from an authorized, knowledgeable person representing the other certificate holder that the person has satisfactorily completed hazardous materials training for the specific function under the other certificate holder's approved training program under Appendix N of part 121 of this chapter; and

(2) The certificate holder who trained the person has the same operations specifications regarding the acceptance, handling, and carriage of hazardous materials as the certificate holder using this exception.

(d) *Recurrent hazardous materials training—Completion date.* A person who satisfactorily completes recurrent hazardous materials training in the calendar month before, or the calendar month after, the month in which the recurrent training is due, is considered to have taken that training during the month in which it is due. If the person completes this training earlier than the month before it is due, the month of the completion date becomes his or her new anniversary month.

(e) *Repair stations.* A certificate holder must ensure that each repair station performing work on the certificate holder's behalf is notified in writing, and is aware of, the certificate holder's policies and operations specifications regarding the acceptance, rejection, handling, storage incidental to transport, and carriage of hazardous materials, including company material. This notification requirement applies only to repair stations that handle, use, or replace material regulated by 49 CFR parts 171 through 180, including consumable hazardous materials and aircraft parts containing hazardous materials.

(f) *Certificate holders operating at foreign locations.* This exception applies if a certificate holder operating at a foreign location where the country requires the certificate holder to use persons working in that country to load and unload aircraft. In such a case, the certificate holder may use those persons even if they have not been trained in accordance with the certificate holder's approved hazardous materials training program. Those persons, however, must be under the direct visual supervision of someone who has successfully completed the certificate holder's approved initial or recurrent hazardous materials training program in accordance with this part. This exception applies only to those persons who load or unload aircraft.

§ 135.504 Hazardous materials training records.

(a) *General requirement.* Each certificate holder must maintain a record of all training required by this

part received within the preceding three years for each person who performs or supervises a function specified in § 135.501(a). The record must be maintained during the time that the person performs or supervises any of those functions, and for 90 days thereafter. These training records must be kept for direct employees of the certificate holder, as well as independent contractors, subcontractors, and any other person who performs or supervises these functions for the certificate holder.

(b) *Location of records.* The certificate holder must retain the training records required by paragraph (a) of this section at the location where the trained person performs or supervises the function specified in § 135.501(a). When the person ceases to perform the function, the certificate holder must retain these records at the last location where the person performed the function for an additional 90 days.

(c) *Content of records.* Each record must contain the following:

(1) The person's name and function performed or supervised;

(2) The dates of each training course successfully completed within the preceding three years;

(3) A statement signed and dated by a person designated by the Director of Training certifying that the person has completed training in accordance with the certificate holder's approved hazardous materials training program; and

(4) A description of each training course successfully completed by the person that includes for each course:

(i) Date of the course;

(ii) Subject matter of the course and training area covered;

(iii) Number of hours of the course;

(iv) Instructor's name and signature indicating the person's successful completion of the course, and the person's name and signature indicating the person's attendance; and

(v) Name and business address of the organization or professional instructor providing the training.

(d) *New person or new job function.* Each certificate holder using a person under the exception provided in § 135.503(b)(1) must maintain a record for that person at the location where the person performs the function. The record must include the following:

(1) A signed statement from an authorized representative of the certificate holder authorizing the use of the person in accordance with the exception;

(2) The date of hire or change in job function;

(3) The person's name and assigned function;

(4) The name of the supervisor of the function; and

(5) The date the person is to complete hazardous materials training in accordance with Appendix N of part 121 of this chapter.

PART 145—REPAIR STATIONS

15. The authority citation for part 145 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701–44702, 44707, 44717.

16. Add § 145.5 to read as follows:

§ 145.5 Hazardous materials training.

(a) Except for repair stations that are already subject to the training requirements of part 121 or part 135 of this chapter, each repair station that uses or replaces aircraft components, uses or handles consumable hazardous materials or other items regulated by 49 CFR parts 171 through 180 and that meets the definition of a hazmat employer under 49 CFR 171.8 must have a hazardous materials training program that meets the training requirements of 49 CFR 172.700 through 172.704.

(b) A person may not perform or supervise a function for a repair station or a certificate holder involving acceptance, rejection, handling, storage incidental to transport, packaging of material owned or used by a part 119 certificate holder (commonly referred to as company material or COMAT) for transport on the certificate holder's aircraft, loading, unloading or carriage of items for transport on an aircraft operated by a part 121 or part 135 certificate holder unless that person has received training in accordance with the part 121 or part 135 certificate holder's approved hazardous materials training program.

17. Amend § 145.11 by adding paragraph (a)(5) to read as follows:

§ 145.11 Application and issue.

(a) * * *

(5) A certification that, at the time of application, all hazmat employees are trained as required by 49 CFR 172.704 for the repair station, its contractors, or subcontractors, that handles or replaces aircraft components, or handles or uses consumable hazardous materials or other items that are regulated by 49 CFR parts 171 through 180.

* * * * *

18. Add § 145.27 to subpart A to read as follows:

§ 145.27 Notification of hazardous materials authorizations.

Each repair station must notify all workers of each certificate holder's operations specifications authorization permitting, or prohibition against, carrying hazardous materials, upon notification by the certificate holder of such operations specifications authorization/designation.

Issued in Washington, DC on May 1, 2003.

Ross Hamory,

Director, Security and Investigations.

[FR Doc. 03–11244 Filed 5–7–03; 8:45 am]

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Part IV

Department of Agriculture

Commodity Credit Corporation

7 CFR Part 1410
2002 Farm Bill—Conservation Reserve Program—Long-Term Policy; Interim Rule

DEPARTMENT OF AGRICULTURE

Commodity Credit Corporation

7 CFR Part 1410

RIN 0560–AG74

2002 Farm Bill—Conservation Reserve Program—Long-Term Policy

AGENCY: Commodity Credit Corporation, USDA.

ACTION: Interim rule.

SUMMARY: The Commodity Credit Corporation (CCC) amends the Conservation Reserve Program (CRP) regulations to set forth the terms and conditions of enrolling acreage in the CRP, update program eligibility requirements, eliminate unnecessary regulations and improve the remaining regulations. This action is being taken to cost-effectively target the CRP to more environmentally sensitive acreage and to comply with amendments made by the Farm Security and Rural Investment Act of 2002 (2002 Act).

DATES: This rule is effective May 5, 2003. Comments must be received on or before July 7, 2003 to be assured of consideration.

ADDRESSES: Comments should be directed to Matt Ponish at Mangi Environmental Group, 7915 Jones Branch Drive, Suite 2300 McLean, Virginia 22102, by calling 800–760–1421, by faxing at 703–760–4899, or by e-mail at *crprulecomment@mangi.com*.

FOR FURTHER INFORMATION CONTACT: Beverly J. Preston, CRP Program Manager, at USDA/FSA/CEPD/STOP 0513, 1400 Independence Avenue SW., Washington, DC 20250–0513; telephone 202–720–9563; e-mail: *Beverly Preston@wdc.usda.gov*. Persons with disabilities who require alternative means for communication (braille, large print, audiotape, etc.) should contact the USDA Target Center at 202–720–2600 (voice and ADD).

SUPPLEMENTARY INFORMATION:

Executive Order 12866

This rule has been determined to be economically significant and was reviewed by the Office of Management and Budget (OMB) under Executive Order 12866. A Cost/Benefit Analysis was completed and is summarized following the Background section.

Regulatory Flexibility Act

It has been determined that the Regulatory Flexibility Act is not applicable to this interim rule because the Commodity Credit Corporation (CCC) is not required by 5 U.S.C. 553 or any other provision of law to publish a notice of proposed rulemaking with respect to the subject matter of this rule. CCC is authorized by section 2702 of the 2002 Act to issue an interim rule.

Environmental Evaluation

The environmental impacts of this rule have been considered in accordance with the provisions of the National Environmental Policy Act of 1969 (NEPA), 42 U.S.C. 4321 *et seq.*; the regulations of the Council on Environmental Quality (40 CFR parts 1500–1508); and FSA's regulations for compliance with NEPA at 7 CFR part 799. It was determined that this rule constitutes a major Federal action. Therefore, FSA completed a final Environmental Impact Statement, which is on file and available to the public in the Administrative Record at the address specified in the **ADDRESSES** section. It is also available electronically at: *http://www.fsa.usda.gov/dafp/cepd/epb/nepa.htm*.

Executive Order 12372

This program is not subject to the provisions of Executive Order 12372, which require intergovernmental consultation with State and local officials. See the Notice related to 7 CFR part 3015, subpart V, published at 48 FR 29115 (June 24, 1983).

Unfunded Mandates

Title II of the Unfunded Mandate Reform Act of 1995 (UMRA), Public Law 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions that impose "Federal Mandates" that may result in expenditures to State, local, or tribal governments, in the aggregate, or the private sector, of $100 million or more in any one year. This rule contains no Federal mandates as defined by Title II of UMRA. Therefore, this rule is not subject to sections 202 and 205 of the UMRA.

Federal Domestic Assistance Program

The title and number of the Federal Domestic Assistance Program, as found in the Catalog of Federal Domestic Assistance, to which this rule applies, is the Conservation Reserve Program—10.069.

Paperwork Reduction Act

The 2002 Act specified that the issuance of regulations promulgated pursuant to this new authority would be made without regard to chapter 35 of title 44, U.S. Code (commonly known as the "Paperwork Reduction Act").

Executive Order 12778

This interim rule has been reviewed under Executive Order 12778. The provisions of this rule are not retroactive and preempt State and local laws that are inconsistent with this rule. Before any judicial action may be brought concerning this rule, appeal rights afforded program participants at 7 CFR parts 11, 624, and 780 must be exhausted.

Government Paperwork Elimination Act

FSA is working to comply with the Government Paperwork Elimination Act (GPEA) and the Freedom to E-File Act, which require Government agencies in general and FSA in particular to provide the public the option of submitting information or transacting business electronically to the maximum extent possible. The forms and other information collection activities required for participation in the program are not yet fully implemented for the public to conduct business with FSA electronically.

Currently, four CRP forms are available electronically through the USDA eForms Web site at *www.sc.egov.usda.gov* for downloading and regulations are available on the Internet at *www.fsa.usda.gov/dafp/cepd*. Offers may be submitted at FSA county offices, by mail, or by FAX. At this time, electronic submission is not available, but full implementation of electronic submission is underway.

Background

This rule revises the regulations of the Conservation Reserve Program (CRP) at 7 CFR part 1410 to improve the overall administration of the program and to implement statutory changes to the CRP. The CRP was first authorized by the Food Security Act of 1985 (1985 Act), which was recently amended by the Farm Security and Rural Investment Act of 2002, Public Law 107–171 (2002 Act), which, among other things, provided the Secretary of Agriculture (Secretary) the authority to maintain up to 39.2 million acres in the CRP. The purpose of the CRP continues to be cost-effectively assisting producers in conserving and improving soil, water, and wildlife resources by converting highly erodible and other environmentally-sensitive acreage generally devoted to the production of agricultural commodities to a long-term vegetative cover. CRP participants enroll land under contracts for 10 to 15 years in exchange for annual rental payments and financial assistance to install certain conservation practices and to maintain approved vegetative or tree covers.

Native seed and vegetation species that are suited to the soil and climatic conditions of a site provide high wildlife benefits. Accordingly, FSA encourages the use of native vegetation whenever suitable. The CRP application selection criteria (*i.e.*, the Environmental Benefits Index (EBI)) gives greater weight to contract offers that devote acreage to native seeds and plantings that are consistent with the ecosystem (discussed below). In some cases, however, critical area planting (*e.g.*, land that is severely sloped or has high potential for erosion) may require the use of introduced vegetation species because they can stabilize the soil more quickly in order to protect the soil and water resources. In addition, introduced species may be easier to establish and provide more cost-effective conservation covers.

In determining the amount of annual rental payments to be paid, CCC considers, among other things, the amount necessary to encourage owners or operators of eligible land to participate in the CRP. The maximum rental payment CCC will pay reflects site-based soil productivity, prevailing local cash-equivalent rental rates, and maintenance costs. Offers to participate in the CRP are submitted in such a manner as the Secretary prescribes. Requests for rental payments greater than the amount that CCC determines to be reasonable for the area and soil type are automatically rejected. In order to maximize the environmental and conservation benefit of the funds to be expended, conservation practices and the land for which offers may be accepted may vary as conditions change.

CCC conducts periodic, competitive general signups in which all offers are ranked competitively based on their environmental benefits considering the cost of the contract. The acceptability of such offers is determined by a formula based upon a number of environmental factors and benefits. Along with the cost of enrolling the acreage, these factors are used to construct an EBI to compare offers.

CCC scores general signup offers using the EBI, which measures the anticipated environmental benefits from several factors and costs. The Department has used an EBI to prioritize and rank CRP offers since the tenth signup in March 1991. It was developed to comply with the section 1234(c) of the 1985 Act. The goal of the EBI is to provide a relative rank order of submitted offers based on environmental factors and cost in a uniform and consistent manner for all offers. In addition, the EBI provides incentives to increase cost-effectiveness. Ultimately, the EBI is used to rank the anticipated environmental benefits from each CRP offer.

The EBI considers a number of environment factors, including water quality, soil erosion, air quality, and enduring benefits. In addition to these factors, wildlife and the quality of vegetation for wildlife habitat are factors in the ranking criteria. Because native grasses generally offer better habitat than introduced grasses, the FSA has revised the EBI selection criteria to give greater weight to the use of native seed and vegetation species. This provides incentives for producers to offer and use native species in their CRP contracts.

The effect of the greater EBI weight given for using species can be seen by examining the change in the proportion of CRP enrolled acres planted in native grasses. In 1993, when there were nearly 30 million acres of grass in the CRP, only 28 percent of these acres were planted in native grasses. Since 1998, 67 percent of the grasses established under new CRP contracts used native grasses.

Since 1996, between 70,000 and 280,000 offers were received during each four- to six-week signup period. Environmental data were collected for each of the EBI ranking factors and subfactors. Each offer was assigned a point score based upon the relative environmental indices scores. All offers were ranked in comparison to all other offers and the selections were made from that ranking.

CCC also conducts continuous, non-competitive signup of certain acreage. Under the CRP continuous signup process implemented in September 1996 and the Conservation Reserve Enhancement Program (CREP) signup process implemented in February 1997, only those practices determined to have relatively high environmental benefits are eligible. Acreage determined to be eligible for the continuous CRP or CREP signup is automatically accepted if all other eligibility requirements are met. Continuous signup affords farmers and ranchers the management flexibility in implementing certain working lands conservation practices on cropland such as filter strips, riparian buffers, shelterbelts, field windbreaks, living snow fences, grass waterways, shallow water areas for wildlife, salt-tolerant vegetation and practices to protect certain approved public wellhead protection areas. These practices are designed to achieve significant environmental benefits, giving participants a flexible option to enroll acres on a continuous basis to help protect and enhance wildlife habitat, improve air quality, and improve the condition of streams, rivers, and permanent water bodies. While acreage is accepted on a non-competitive basis, the practices provide environmental benefits that likely would consistently exceed the highest EBI score making this acreage acceptable for enrollment under a general signup.

Further, CCC may enter into a CREP agreement with States, Tribes, local governments, or private entities to use the CRP to cost-effectively address specific conservation and environmental issues of the State and the nation. Proposals, developed locally and submitted for approval by the Secretary, must address resource concerns, provide for cooperation with the CREP partners, present clear program goals with measurable objectives, and detail non-federal financial contributions.

The 2001 Agricultural Appropriations Act amended the 1985 Act and authorized a Farmable Wetlands Pilot Program (FWP) to enroll in the States of Iowa, Minnesota, Montana, Nebraska, North Dakota, and South Dakota certain wetlands and buffer acreage on a pilot basis. Enrollment under this pilot could not exceed 500,000 acres for all States and 150,000 acres in any State. The maximum enrollment for both the wetland and buffer acreage could not exceed 40 acres per tract. Also, wetlands could not exceed five acres in size to be eligible for enrollment. Acreage enrolled must be cropland that has a cropping history in at least three of the most recent ten years. Acreage offered under this pilot uses the CRP's continuous signup procedures.

On December 6, 2001, CCC published a proposed rule (66 FR 63339) that proposed a series of amendments that, if adopted, would make certain orchard lands, vineyards, berry lands, and hay lands eligible for enrollment, provide for acquisition of private sector technical assistance and make minor technical and clerical adjustments to the regulations. This action was taken to allow producers greater flexibility in enrolling in the CRP and enhance the environmental benefits under the CRP. CCC proposed that for the continuous signups held for the CRP and for enrollments in the CREP, certain orchard lands, vineyards, berry fields, and hay land be permitted to be enrolled. The 2002 Farm Bill broadened land eligibility to include hay lands if the land is otherwise cropland that has been devoted to a conserving use and expanded authority for the use of private-sector and other technical service providers. These provisions are

included in this interim rule. Fourteen comments supported the inclusion of certain orchard lands, vineyards, or berry lands as proposed. There were no comments opposed to the proposed inclusion. Therefore, the interim rule also makes certain orchard lands, vineyards, or berry lands eligible for enrollment under the continuous CRP and CREP.

Discussion of the Interim Rule

Based on the 2002 Act and FSA discretion, changes have been made to cropping history requirements, eligible land, the EBI, the FWP, managed haying and grazing authorities, and providers of technical assistance.

Generally, by statute, CRP land enrolled in the program must be cropland, but the rules for the program provide that the crop history must generally be a history of production of tillable crops. That limitation provides for focusing the CRP on the conversion of land with the most intensive uses to a cover crop. Also, this focus emphasizes the "reserve" nature of the program and can provide a greater amount of public benefit by producing savings in other programs as recompense for the funds spent on this program.

This rule, at 7 CFR part 1410.6(a)(3)(b)(13), makes certain orchard lands, vineyards and berry lands eligible for the continuous sign-ups held for the CRP and for enrollments in the CREP. FSA has determined that these lands could provide significant environmental benefits in these signups which involve certain geographical practices such as conservation buffers along stream banks. Such an expansion of the eligibility criteria for the program was requested by a number of State governments involved in CREP agreements.

Cropping History Requirements

This rule, at 7 CFR part 1410.6(a), changes the cropping history requirements required for certain land to be eligible. Before, by rule, land must have been cropped in two of the five years preceding enrollment to be eligible. However, the 2002 Act changed that requirement so that cropland, to be eligible, must be planted or considered planted for four of the six years preceding the date of enactment of the 2002 Act on May 13, 2002. Also, in 7 CFR part 1410.6, this rule provides that land may be eligible if it was devoted to a conserving use under section 1231(c) of the 1985 Act. For CRP purposes, conserving use means, during 1996 through 2001, any planted alfalfa and planted other multi-year grasses and legumes and summer fallow in a rotation with agricultural commodities are defined as conserving uses for CRP purposes.

Other Changes in Land Eligibility Requirements

The 2002 Act amendments to the 1985 Act expanded eligibility authority for marginal pasture land from riparian buffers "devoted to trees" to "devoted to appropriate vegetation, including trees," in or near riparian areas. Thus, under 7 CFR part 1410.6, CCC has made marginal pasture land acreage eligible if it is devoted to a riparian buffer practice, a new wetland practice, or a new wildlife habitat buffer practice. This enhancement will allow riparian buffers, wetlands, and wildlife habitat practices intrinsically valuable in addressing Federal and State environmental and wildlife issues near streams, rivers, or other water bodies to be established where tree plantings are not practical or appropriate. These practices improve water quality, reduce flood and storm event damage, help control soil erosion, and provide important fish and wildlife habitat. Certain wetlands are also valuable in providing filtering functions because of their location between land and water.

The 2002 Act amendments also extends eligibility to cropland when enrollment would facilitate a net savings in groundwater or surface water resources of the agricultural operation of the producer. To implement this new provision, CCC has added to the list of eligible conservation practices in 7 CFR part 1410.6 a practice that has water savings as its primary function. Water savings will advance the goal of providing the nation and States with adequate water to meet farming and ranching needs as well as the needs of an increasing population.

Another new land eligibility provision in the 2002 Act amendments provides that the remainder of cropland in a field that is not enrolled as a "buffer" may be enrolled if it is less than 50 percent of the cropland in that field, is infeasible to farm, and is enrolled at regular enrollment rates. For this provision, at 7 CFR part 1410.6 provides that a "buffer" will be considered to be riparian buffers, filter strips, or areas buffering wellhead protection areas. "Infeasible to farm" is defined as areas that are too small or isolated to be economically farmed, as determined by the FSA.

The 2002 Act also made land enrolled in the CRP but nearing contract completion eligible for new enrollment. Accordingly, any acreage currently in the CRP will be basically eligible to be offered for continued enrollment if the current contract is scheduled to expire the day before a new contract would become effective. However, land will be ineligible for enrollment if it is subject to a CRP useful life easement that extends beyond the current contract term. The interim rule provides that re-enrollment of currently enrolled acreage will be based on the same criteria as for enrolling new acreage.

The EBI has been modified after extensive negotiations with resource professionals from the Forest Service, Natural Resource Conservation Service (NRCS), U.S. Environmental Protection Agency, U.S. and Wildlife Service (FWS), U.S. Geological Survey (USGS) and others and from public scoping and public comments submitted during development of the programmatic environmental impact statement.

The 2002 Act made no changes to the EBI authority. However, the EBI has been re-engineered to continue to encourage the restoration of plantings consistent with the ecosystem where the land is offered. The EBI has also been simplified to enable producers to run different scenarios independently, reduce error rates, improve customer service by significantly reducing the time needed for a producer to submit an offer, and reduce resources needed to process an offer.

The index may include consideration of soil erosion, water quality, wildlife habitat, enduring benefits, air quality, and cost while also including consideration of other technical factors such as recommendations of the State technical committee, conservation priority areas, permanent wildlife habitat, and tree plantings.

Farmable Wetlands Program (FWP)

Under the 2002 Act amendments, the FWP, at 7 CFR part 1410.11, was expanded from a six-State pilot to all States and may include up to a total of 1 million acres. In general, up to 100,000 acres may be enrolled in any State, except that enrollment of a State may be increased to 150,000 acres after 3 years. The 2002 Act amendments also changed the maximum size of any wetland enrolled under the FWP from five to ten contiguous acres, of which not more than five acres shall be eligible for payment. No more than 40 acres from a tract may be enrolled under the FWP. All acres, including acres ineligible for payment, must be maintained according to an approved conservation plan.

Managed Haying and Grazing

Before the 2002 Act amendments, the 1985 Act generally provided that no commercial use could be made of land enrolled in CRP but permitted haying or grazing during droughts or similar weather-related emergencies. The 2002 Act amended that provision by adding an exception for managed harvesting and grazing, including the managed harvesting of biomass and the installation of wind turbines.

Wind turbines generally have a limited impact on the environment due to their small footprint of approximately one-tenth acre. They are non-polluting sources of energy and generally have a limited impact on wildlife. Wind turbines will be installed according to standards and in such numbers as determined appropriate by FSA.

Managed haying and grazing is anticipated to be a useful tool to manage CRP stands and to assist CRP participants in managing their operation. Allowing non-emergency managed haying and grazing, conducted in accordance with a conservation plan, will increase the amount of cover disturbance that will occur. Managed disturbance of vegetative covers (*i.e.*, a disturbance cycle) established on CRP land generally increases diversity and quality of vegetative covers and improves wildlife habitat benefits. Based on surveys of CRP participants, these managed haying uses could potentially affect about 25 percent of eligible CRP grassland acreage. Haying and grazing will be limited to no more than once every 3 years, depending on conservation plan guidelines, with additional restrictions in environmentally sensitive areas or practices.

All haying and grazing activities will be conducted only after a detailed conservation plan is developed for haying or grazing management according to the NRCS Field Office Technical Guide (FOTG) haying and grazing standards. The conservation plan will ensure the long-term viability of the stand while protecting and enhancing the soil, water, wildlife and other natural resources of the CRP acreage. The conservation plan will require the control of noxious weeds and other weeds, insects, and pests. All haying and grazing activities must be conducted consistent with the terms and conditions of the haying and grazing management plan. USDA will conduct compliance reviews to ensure compliance.

In November 2001, a panel of grassland ecologists with special expertise in grassland bird ecology representing academia, Government and non-profit organizations developed a number of consensus recommendations for guidance regarding haying and grazing of CRP as well as long-term protection of existing grasslands.

The panel's consensus view was "to establish a general rule favoring grazing 1 in 3 years on one-third of the enrolled CRP lands." Other species-specific haying and grazing requirements were also recommended. However, FSA was advised that the specific recommendations assumed a mono-culture for a particular species (*e.g.*, short-grass prairie) and did not take into account the landscape's natural diversity. Therefore, FSA adopted the NRCS FOTG haying and grazing standard to augment the panel's consensus view.

FSA determined that managed haying and grazing of CRP acreage once every 3 years as recommended by the grassland ecologist panel was the appropriate disturbance cycle. State committees will not be establishing disturbance cycles more frequently than the 1-in-3 year cycle. Less frequent disturbance cycles may be established by State committees with State Technical Committee consultation. The year 2003 will be considered year 1 of the management cycle for all CRP contracts in effect. For all new CRP contracts, the disturbance cycle will begin when the cover is established.

For contracts where all eligible acreage is already established, year 1 of the disturbance cycle will begin during the first managed haying and grazing period after the CRP contract is approved. For contract acreage where an acceptable cover may need to be established, year 1 will begin during the managed haying and grazing period 12 months after the applicable cover is fully established. This will ensure that the applicable acreage will be capable of withstanding the applied haying or grazing pressure without failing to recover.

Farm Service Agency State committees, in consultation with State technical committees, will determine the beginning of the primary nesting and brood rearing season during which managed haying and grazing will not be performed. The ending dates were established by FSA, in consultation with the FWS, in the 1990's and are not intended to be changed. The appropriate managed haying and grazing period, which may not overlap with the primary nesting and brood-rearing season, will be determined by the FSA State committee in consultation with the NRCS State technical committee.

Managed haying and grazing will interact with emergency authorizations of haying and grazing by including acres hayed or grazed under the emergency authority into the managed haying and grazing disturbance cycle. Thus, any acreage hayed or grazed under emergency authority would not be eligible to be hayed or grazed under managed haying or grazing provisions the following 2 years. Managed haying or grazing of CRP does not affect the eligibility of CRP acreage for emergency haying or grazing.

Emergency Haying and Grazing

Under existing emergency authority, any eligible CRP acreage may be hayed or grazed each year the county is approved. Under the new rule, any CRP acreage eligible for emergency haying or grazing within the county may be hayed or grazed within the emergency authorization regardless of whether it was hayed or grazed in previous years under managed provisions or emergency authority. This would remain consistent with current emergency authority. However, any eligible acreage hayed or grazed under either managed or emergency provisions would not be eligible for managed haying or grazing for the next two years.

Providers of Technical Assistance

The CRP is carried out by CCC through FSA using FSA State and county offices. The Farm Service Agency supplements its staff by using providers of technical assistance including, for example, NRCS, FS State foresters, individuals, private-sector entities, and public agencies certified under the regulations at 7 CFR part 652.

Conservation Priority Areas (CPA's)

Land designated as either a State or National CPA is considered eligible to be offered for enrollment in the CRP (provided it meets the cropping history and physically and legally capable of being cropped standards). Although land is considered eligible for enrollment, the offer is not automatically acceptable. CPA's are designated based on entire counties or hydrologic unit codes (HUC's). All CPA's must have a primary purpose of wildlife, water quality, or air quality. State and National CPA's may have a designated zone associated with the CPA. The zone must be designated as either a wildlife, water quality, or air quality zone. Acreage offered for enrollment in the CRP that is designated as a CPA and is located within the applicable zone is awarded EBI points.

The 2002 Act re-authorized the watershed areas of the Chesapeake Bay Region, the Great Lakes Region, the Long Island Sound Region, and other areas of special environmental sensitivity to be designated as conservation priority areas for a period

of 5 years, subject to re-designation. The purpose of the conservation priority area designation is to enhance the CRP by better addressing conservation and environmental issues in a planned and coordinated manner within a State. In addition to the national priority areas provided in the 1985 Act, CCC re-authorized two other national conservation priority areas: the Prairie Pothole and Longleaf Pine Regions with certain adjustments, as explained later. CCC will continue national conservation priority areas after reviewing and revising them, as appropriate, to conform to HUC's or county boundaries.

CCC also re-authorized State conservation priority areas. Prior to the 2002 Act, State conservation priority areas were limited to no more than 10 percent of the cropland (net of any national conservation priority area) in the State. When requesting conservation priority area designation, FSA State committees were required to develop an evaluation and monitoring system to determine the effectiveness of designating a particular area as a priority. Designations are valid for 5 years and many of these areas are approaching the expiration of their 5-year designation.

The regulations at 7 CFR part 1410.8 authorize FSA State committees to designate State conservation priority areas after consulting with the NRCS State technical committee. Conservation priority areas make cropland basically eligible for enrollment. Other qualifications including the physically and legally capable of being cropped standards at 7 CFR part 1410.6 and ownership eligibility at 7 CFR part 1410.5 continue to apply. This rule, in 7 CFR part 1410.8, changes the total area in a State eligible to be designated as a State conservation priority area from no more than 10 percent to no more than 33 percent of the cropland in the State. This change increases local flexibility in enrolling eligible land into the program and provide local natural resource managers increased flexibility in achieving environmental improvement and in achieving water quality objectives under the Clean Water Act. The increase from 10 percent to 33 percent will assist USDA in addressing certain water quality issues and is consistent with water quality areas designated for certain environmental benefit ranking factors.

Mid-Contract Cover Management

USDA will require that all new covers under new contract to be maintained and managed in a manner that will maximize wildlife benefits while ensuring soil, water, and other resources are protected. Eligible management activities incorporating native seeds and planting will be developed by FSA State committees based on recommendations from State technical committees with input from resource professionals with knowledge of wildlife, forestry, hydrology and other appropriate disciplines. Other management activities could include light discing and burning. Mid-cover management shall be conducted according to an approved conservation plan as part of the CRP contractual obligation that will maximize wildlife benefits while ensuring soil, water, and other resources are protected as determined by FSA.

Request for Comment

The regulations at 7 CFR part 1410.30 provide for enrollment methods that generally include periodic competitive signup periods and, for certain environmental practices, continuous non-competitive enrollments. Since 1996 when continuous signup was authorized, FSA has expanded the kinds of environmental practices to meet legislative and other needs. The added practices include contour grass strips on terraces, two farmable wetland practices and the marginal pasture land practices. Further, USDA recently announced the intention to include certain hardwoods under continuous signup.

We request comments on environmental and other criteria that should be used to qualify practices for a continuous signup and to distinguish the non-competitive from the competitive general signup.

Cost-Benefit Assessment (CBA)

The CBA analyzes the environmental, economic, and budgetary impacts of enrolling additional land in CRP under provisions of the accompanying rule. Principal issues analyzed are land eligibility changes and extension of authority to enroll new lands in CRP. Two enrollment options are considered: (1) Enrollment of additional acres under general signup provisions to reach the statutory maximum enrollment of 39.2 million acres and (2) enrollment of additional acreage under general signup provisions up to the pre-existing 36.4 million-acre cap. The first scenario is the selected option. It corresponds to enrollment levels included in the Office of Management and Budget's Fiscal Year (FY) 2003 Mid-Session Review budget baseline, and includes enrollment of an additional 2.8 million acres compared with option 2. Other issues analyzed include basic cropland and resource-based eligibility criteria, FWP expansion, eligibility of infeasible-to-farm field remainders, and management of enrolled fields to maintain and improve vegetative vigor and diversity.

Cropland eligibility will be based on crop history during 1996 through 2001. To be eligible, land must have been cropped, considered cropped, or in conserving uses in at least 4 of the 6 years. Land planted to an agricultural commodity at least 4 of the 6 years is estimated to total 310 million acres. Allowing land in crop/fallow rotations adds about 28.3 million acres, primarily in the Northern Plains and Mountain regions where wheat/fallow rotations are common. Including land in hay/crop rotations (25.2 million acres) brings total land meeting crop history requirements to 363.5 million acres, a 1.9 million-acre (0.5 percent) increase from estimated eligibility under prior provisions.

About 268 million acres, or 74 percent, of land meeting crop history requirements are estimated to meet one or more resource-based eligibility criteria, including 104 million acres of highly erodible cropland, 116 million acres in national conservation priority areas, and up to 94 million acres in State conservation priority areas. Because CRP enrollment in a county is limited to 25 percent of cropland in the county, only about 106 million of these acres are potentially enrollable.

Allowing non-emergency managed haying or grazing, conducted in accordance with a conservation plan, will increase the amount of cover disturbance that will occur. Managed disturbance of vegetative covers established on CRP land generally increases diversity and quality of vegetative covers, improving wildlife habitat benefits. Based on surveys of CRP participants, these managed uses could potentially affect about 25 percent of eligible CRP grassland acreage. Haying and grazing will be limited to no more than once every 3 years, depending on conservation plan guidelines, with additional restrictions in environmentally sensitive areas or practices. Thus, around 2 to 3 million acres could be hayed or grazed in any year, improving wildlife habitat benefits on a total of about 7 million acres. If the current 25-percent payment reduction is applied and there is equitable regional distribution of participation, CRP outlays could be reduced by $20 million to $25 million per year.

Establishing long-term vegetative cover on the additional 2.8 million acres of cropland enrolled under the selected option (option 1) will provide numerous environmental benefits. Soil productivity is enhanced because erosion is essentially ceased during the 10- to 15-year contract period. CRP enrollment reduces sheet and rill (water driven) soil erosion, and the quantity of agricultural pollutants available to reach water bodies and impair water uses. Reduced wind erosion provides air quality benefits. The additional 2.8 million acres will reduce estimated annual erosion 21 million tons compared with 1997 erosion rates: sheet and rill and wind erosion will be reduced by about 10 million tons and 11 million tons, respectively. Carbon sequestration, the storage of carbon in soils and vegetation, will increase by an estimated 1.3 million metric tons per year.

While comprehensive estimates of changes in wildlife populations are not generally available, expanded and enhanced wildlife habitat should result in substantial increases in the abundance of game and non-game species. Many CRP practices are specifically or primarily directed toward improving wildlife habitat. Almost 10 million acres are currently enrolled in conservation priority areas, selected for wildlife habitat enhancement purposes. Over 3 million acres of specific wildlife practices, including wildlife corridors, shallow water areas for wildlife, riparian buffers, and wetland restoration, currently provide critical wildlife habitat benefits. In addition, 1.4 million flood-prone and riparian area acres and 3.4 million cropped wetland and wetland complex acres are currently enrolled. Wildlife benefits are further enhanced by establishment of 374,000 acres of rare and declining habitats, 2.3 million acres of permanent wildlife habitat, and enrollment of 92,000 acres of former water bank land. Many of these wildlife-enhancing practices will be included in the 2.8 million acres enrolled under the selected option.

Comprehensive measures of environmental benefit values obtained from enrolling environmentally sensitive land in CRP do not currently exist. Published estimates of CRP benefits, based on currently and previously enrolled acreage, using indirect measures or secondary sources generally provide regional estimates of benefits per acre enrolled or per ton erosion reduction. Using these derived estimates enrolling the additional 2.8 million acres is estimated to provide environmental benefits of $129 million per year. These benefits include: $11 million from improved soil productivity, $19 million from improved surface water quality, $41 million from enhanced wildlife viewing opportunities, $57 million in small game and migratory waterfowl hunting benefits, and $2 million in air quality benefits. Many major benefit categories are not yet quantified, including benefits from numerous recreational activities, big game hunting, flood-control, wetland restoration, groundwater quality, improved human health from improved water and air quality, fishing, and carbon sequestration.

With about 350 million acres typically in crop production annually, idling an additional 2.8 million acres under CRP (less than 1 percent of plantings) will have minimal impacts on crop production, crop prices, and farm income. Net crop sector income is estimated to increase $307 million per year (1 percent) during the 2003–2012 crop years, due to the additional CRP enrollment. This increase is a result of larger estimated market-based net returns ($349 million per year), decreased commodity program payments ($186 million per year), and increased net CRP payments ($144 million per year) over the 10-year period. Underlying these changes is a 900,000 acre estimated decline in combined wheat, feed grains, and soybean plantings per year over the period. As a result of these reduced plantings, crop prices are estimated to increase on average $0.02 per bushel for wheat, $0.02 for corn, $0.01 to $0.02 for other feed grains, and $0.06 for soybeans per year.

Total CRP outlays are estimated to increase $1.5 billion, while commodity program outlays are estimated to decline about $1.7 billion during FY 2003 through 2012, primarily due to a $1.5 billion counter-cyclical payment decline. The additional 2.8 million-acre enrollment is estimated to decrease combined CRP and commodity program outlays by $208 million annually during the 10-year period.

Total estimated impacts for the additional CRP enrollment, including $326 million annual economic losses due to higher crop prices and reduced crop supplies (buyers' loss) and estimated average annual economic benefits (increased farm incomes and environmental benefits), results in estimated net economic benefits of $131 million per year. This amount probably understates the net impacts to society because many of the environmental benefits are not included.

List of Subjects in 7 CFR Part 1410

Administrative practices and procedures, Agriculture, Conservation plan, Contracts, Environmental protection, Natural resources, Soil conservation, Water resources, and Wildlife.

■ Accordingly, 7 CFR part 1410 is revised to read as follows:

PART 1410—CONVENTION RESERVE PROGRAM

Sec.
1410.1 Administration.
1410.2 Definitions.
1410.3 General description.
1410.4 Maximum county acreage.
1410.5 Eligible persons.
1410.6 Eligible land.
1410.7 Duration of contracts.
1410.8 Conservation priority areas.
1410.9 Conversion to trees.
1410.10 Restoration of wetlands.
1410.11 Farmable Wetlands Program.
1410.12–1410.19 [Reserved]
1410.20 Obligations of participant.
1410.21 Obligations of the Commodity Credit Corporation.
1410.22 CRP Conservation Plan.
1410.23 Eligible practices.
1410.24–1410.29 [Reserved]
1410.30 Signup.
1410.31 Acceptability of offers.
1410.32 CRP contract.
1410.33 Contract modifications.
1410.34–1410.39 [Reserved]
1410.40 Cost-share payments.
1410.41 Levels and rates for cost-share payments.
1410.42 Annual rental payments.
1410.43 Method of payment.
1410.44 Adjusted Gross Income
1410.45–1410.49 [Reserved]
1410.50 Enhancement programs.
1410.51 Transfer of land.
1410.52 Violations.
1410.53 Executed CRP contract not in conformity with regulations.
1410.54 Performance based upon advice or action of the Department.
1410.55 Access to land under contract.
1410.56 Division of payments and provisions about tenants and sharecroppers.
1410.57 Payments not subject to claims.
1410.58 Assignments.
1410.59 Appeals.
1410.60 Scheme or device.
1410.61 Filing of false claims.
1410.62 Miscellaneous.
1410.63 Permissive uses.

Authority: 15 U.S.C. 714b and 714c; 16 U.S.C. 3801–3847.

§ 1410.1 Administration.

(a) The regulations in this part will be implemented under the general supervision and direction of the Executive Vice President, Commodity Credit Corporation (CCC), the Administrator, Farm Service Agency (FSA), or a designee, or the Deputy Administrator, FSA. In the field, the regulations in this part will be implemented by the FSA State and county committees ("State committees" and "county committees," respectively).

(b) State executive directors, county executive directors, and State and county committees do not have the authority to modify or waive any of the provisions in this part unless

specifically authorized by the Deputy Administrator.

(c) The State committee may take any action authorized or required by this part to be taken by the county committee, but which has not been taken by such committee, such as:

(1) Correct or require a county committee to correct any action taken by such county committee that is not in accordance with this part; or

(2) Require a county committee to withhold taking any action that is not in accordance with this part.

(d) No delegation of authority herein to a State or county committee shall preclude the Executive Vice President, CCC, the Administrator, FSA, or a designee, or the Deputy Administrator, from determining any question arising under this part or from reversing or modifying any determination made by a State or county committee.

(e) Data furnished by prospective participants will be used to determine eligibility for program benefits. Furnishing the data is voluntary; however, the failure to provide data could result in program benefits being withheld or denied.

(f) Notwithstanding other provisions of this section, the Erodibility Index (EI), suitability of land for permanent vegetative or water cover, factors for determining the likelihood of improved water quality, and adequacy of the planned practice to achieve desired objectives shall be determined by the Natural Resource Conservation Service (NRCS) or other sources approved by CCC, in accordance with the Field Office Technical Guide (FOTG) of NRCS or other guidelines deemed appropriate by NRCS. In no case shall such determination compel CCC to execute a contract that CCC does not believe will serve the purposes of the program established by this part. Any approved technical authority shall utilize CRP guidelines established by CCC.

(g) CCC may consult with the Forest Service (FS), a State forestry agency, or other organizations as determined by CCC to be necessary for developing and implementing conservation plans that include tree planting as the appropriate practice or as a component of a practice.

(h) CCC may consult with the Cooperative State Research, Education, and Extension Service to coordinate a related information and education program as deemed appropriate to implement the Conservation Reserve Program (CRP).

(i) CCC may consult with the National Marine Fisheries Service, U.S. Fish and Wildlife Service (FWS), or State wildlife agencies for such assistance as is determined necessary by CCC to implement the CRP.

(j) The regulations governing the CRP as of May 12, 2002, shall continue to govern contracts in effect as of that date (see 7 CFR part 1410 contained in the edition of 7 CFR Parts 1200 to 1599 revised as of January 1, 2003). This part shall apply to contracts executed on or after May 13, 2002

§ 1410.2 Definitions.

(a) The definitions in part 718 of this chapter shall be applicable to this part and all documents issued in accordance with this part, except as otherwise provided in this section.

(b) The following definitions shall be applicable to this part:

Agricultural commodity means any crop planted and produced:

(1) By annual tilling of the soil;

(2) On an annual basis by one-trip planters; or

(3) Sugarcane planted or produced in a State.

Annual rental payment means, unless the context indicates otherwise, the annual payment specified in the CRP contract that, subject to the availability of funds, is made to a participant to compensate a participant for placing eligible land in the CRP.

Conservation district means a political subdivision of a State, Indian Tribe, or territory, organized pursuant to the State or territorial soil conservation district law, or Tribal law. The subdivision may be a conservation district, soil conservation district, soil and water conservation district, resource conservation district, natural resource district, land conservation committee, or similar legally constituted body.

Conservation plan means a record of the participant's decisions and supporting information for treatment of a unit of land or water, and includes a schedule of operations, activities, and estimated expenditures needed to solve identified natural resource problems by devoting eligible land to permanent vegetative cover, trees, water, or other comparable measures.

Conservation priority area means an area designated with actual and adverse water quality, wildlife habitat, air quality, or other natural resource impacts related to agricultural production activities or to assist agricultural producers to comply with Federal and State environmental laws or to meet other conservation needs, such as for air quality, as determined by the Deputy Administrator.

Conserving use means any alfalfa, other multi-year grasses and legumes planted during 1996 through 2001, and any summer fallow during 1996 through 2001.

Considered planted means: land devoted to a conserving use or land enrolled in the WBP during the crop year or during any of the 2 years preceding the crop year if the contract expired or will expire during calendar year 2000, 2001, or 2002; cropland enrolled in CRP; or land for which the producer received insurance indemnity payment for prevented planting.

Contour grass strip means a vegetation area that follows the contour of the land that complies with the FOTG and a conservation plan developed under this part.

Contract period means the term of the contract which is not less than 10, nor more than 15 years.

Cost-share payment means the payment made by CCC to assist program participants in establishing the practices required in a contract.

Cropland means land defined as cropland in part 718 of this title, except for land in terraces that are no longer capable of being cropped.

Cropped wetlands means farmed wetlands and wetlands farmed under natural conditions.

Deputy Administrator means the Deputy Administrator for Farm Programs, FSA, the CRP Program Manager, or a designee.

Erodibility Index (EI) is, as prescribed by CCC, used to determine the inherent erodibility (water or wind) of a soil.

Farmed wetlands means land defined as farmed wetlands in part 12 of this title.

Federally-owned land means land owned by the Federal Government or any department, instrumentality, bureau, or agency thereof, or any corporation whose stock is wholly owned by the Federal Government.

Field means a part of a farm that is separated from the balance of the farm by permanent boundaries such as fences, roads, permanent waterways, woodlands, other similar features, or crop-lines, as determined by CCC.

Field Office Technical Guide (FOTG) means the official USDA guidelines, criteria, and standards for planning and applying conservation treatments and conservation management systems. It contains detailed information on the conservation of soil, water, air, plant, animal resources, and cultural resources applicable to the local area for which it is prepared.

Field windbreak, shelterbelt, and/or living snowfence mean a vegetative barrier with a linear configuration composed of trees, shrubs, or other vegetation, as determined by CCC, that are designated as such in a conservation plan and that are planted for the purpose of reducing wind erosion, controlling snow, improving wildlife habitat, or conserving energy.

Filter strip means a strip or area of vegetation adjacent to a body of water the purpose of which is to remove nutrients, sediment, organic matter, pesticides, and other pollutants from surface runoff and subsurface flow by deposition, absorption, plant uptake, and other processes, thereby reducing pollution and protecting surface water and subsurface water quality and of a width determined appropriate for the purpose by the Deputy Administrator.

Highly Erodible Land (HEL) means land determined to have an EI equal to or greater than 8 on the acreage offered.

Infeasible to farm means an area that is too small or isolated to be economically farmed, as determined by the Deputy Administrator.

Landlord means a person who rents or leases acreage to another person.

Local FSA office means the FSA office serving the area in which the FSA records are located for the farm or ranch.

Offer means, unless the context indicates otherwise, if required by CCC, the per-acre rental payment requested by the owner or operator in such owner's or operator's request to participate in the CRP.

Offeror means an eligible person as determined by CCC who submits an offer of eligible acreage for enrollment into the CRP to enter into a CRP contract.

Operator means a person who is in general control of the farming operation on the farm, as determined by CCC.

Payment period means the 10- to 15-year contract period for which the participant receives an annual rental payment.

Perennial crop means an agricultural commodity that is produced from the same root structure for two or more years, as determined by CCC.

Permanent vegetative cover means perennial stands of approved combinations of certain grasses, legumes, forbs, shrubs and trees with a life span of 10 or more years.

Permanent wildlife habitat means a vegetative cover with the specific purpose of providing habitat, food, or cover for wildlife and protecting other environmental concerns for the life of the contract.

Practice means a conservation, wildlife habitat, or water quality measure with appropriate operations and management as agreed to in the conservation plan to accomplish the desired program objectives according to CRP and FOTG standards and specifications as a part of a conservation management system.

Riparian buffer means a strip or area of vegetation adjacent to a river or stream of sufficient width as determined by the Deputy Administrator to remove nutrients, sediment, organic matter, pesticides, and other pollutants from surface runoff and subsurface flow by deposition, absorption, plant uptake, and other processes, thereby reducing pollution and protecting surface water and subsurface water quality, which are also intended to provide shade to reduce water temperature for improved habitat for aquatic organisms and supply large woody debris for aquatic organisms and habitat for wildlife.

Soil loss tolerance (T) means the maximum average annual erosion rate specified in the FOTG that will not adversely impact the long-term productivity of the soil.

State means State agencies, departments, districts, county or city governments, municipalities or any other State or local government of the State.

State Technical Committee means a committee established pursuant to part 610 of this chapter to provide information, analysis, and recommendations to the U.S. Department of Agriculture.

State water quality priority areas means any area so designated by the State committee, in consultation with the State Technical Committee, where agricultural pollutants contribute to water degradation or create the potential for failure to meet applicable water quality standards or the goals and requirements of Federal or State water quality laws. These areas may include areas designated under section 319 of the Federal Water Pollution Control Act (33 U.S.C. 1329) as water quality protection areas, sole source aquifers or other designated areas that result from agricultural nonpoint sources of pollution. Acreage in these areas may be determined eligible as conservation priority areas.

Technical assistance means the assistance provided in connection with the CRP to owners or operators as approved by CCC, for developing conservation and/or tree planting plans, determining the eligibility of land and practices, implementing and certifying practices, and ensuring contract performance.

Violation means an act by the participant, either intentional or unintentional, that would cause the participant to no longer be eligible for all or a portion of cost-share, incentive, or annual contract payments.

Water Bank Program (WBP) means the program authorized by the Water Bank Act of 1970, as amended, in which eligible persons enter into 10-year agreements to preserve, restore, and improve wetlands.

Water cover means flooding of land by water either to develop or restore shallow water areas for wildlife or wetlands, or as a result of a natural disaster.

Wellhead protection area means the area designated by EPA or the appropriate State agency with an Environmental Protection Agency approved Wellhead Protection Program for water being drawn for public use, as defined for public use by the Safe Drinking Water Act, as amended.

Wetland means land defined as wetland in accordance with provisions of part 12 of this title.

Wetlands farmed under natural conditions means land defined as wetlands farmed under natural conditions in accordance with provisions of part 12 of this title.

Wetlands Reserve Program (WRP) means the program authorized by part 1467 of this chapter in which eligible persons enter into long-term agreements to restore and protect wetlands.

§ 1410.3 General description.

(a) Under the CRP, CCC will enter into contracts with eligible participants to convert eligible land to a conserving use during the contract period in return for financial and technical assistance.

(b) A participant must obtain and adhere to a conservation plan prepared in accordance with CRP guidelines, as established and determined by CCC. A conservation plan for eligible acreage must be obtained by a participant and must be approved by the conservation district in which the lands are located unless the conservation district declines to review the plan, in which case the provider of technical assistance may take such further action as is needed to account for lack of such review.

(c) The objectives of the CRP are to cost-effectively reduce water and wind erosion, protect the Nation's long-term capability to produce food and fiber, reduce sedimentation, improve water quality, create and enhance wildlife habitat, and other objectives including encouraging more permanent conservation practices and tree planting.

(d) Except as otherwise provided, a participant may, in addition to any payments under this part, receive cost-share assistance, rental or easement payments, tax benefits, or other payments from a State or a private organization in return for enrolling lands in CRP. However, a participant

may not receive or retain CRP cost-share assistance if other Federal cost-share assistance is provided for such acreage under any law, as determined by the Deputy Administrator. Further, under no circumstances may the cost-share payments received under this part, or otherwise, exceed the cost of the practice, as determined by CCC.

§ 1410.4 Maximum county acreage.

(a) Except as provided in paragraph (b) of this section, the maximum acreage that may be placed in the CRP and the WRP may not exceed 25 percent of the total cropland in the county; further, no more than 10 percent of the cropland may be subject, in the aggregate, to a CRP or WRP easement.

(b) The restrictions in paragraph (a) of this section may be waived by CCC if CCC determines that such action would not adversely affect the local economy of the county and that operators in the county are having difficulties complying with conservation plans implemented under part 12 of this title.

(c) These restrictions on participation shall be in addition to any other restriction imposed by law.

§ 1410.5 Eligible persons.

(a) In order to be eligible to enter into a CRP contract in accordance with this part, a person must be an owner, operator, or tenant of eligible land and:

(1) If an operator of eligible land, seeking to participate without the owner, must have operated such land for at least 12 months prior to the close of the applicable signup period and must provide satisfactory evidence that such operator will be in control of such eligible land for the full term of the CRP contract period;

(2) If an owner of eligible land, must have owned such land for at least 12 months prior to the close of the applicable signup period, unless:

(i) The new owner acquired such land by will or succession as a result of the death of the previous owner;

(ii) The only ownership change in the 12-month period occurred due to foreclosure on the land and the owner of the land, immediately before the foreclosure, exercises a timely right of redemption from the mortgage holder in accordance with State law; or

(iii) As determined by the Deputy Administrator, the circumstances of the acquisition are such that present adequate assurance that the new owner of such eligible land did not acquire such land for the purpose of placing it in the CRP; or

(3) If a tenant, the tenant is a participant with an eligible owner or operator.

(b) Notwithstanding paragraph (a) of this section, under continuous signup provisions authorized by § 1410.30, an otherwise eligible person must have owned or operated, as appropriate, the eligible land for at least 12 months before submitting the offer.

§ 1410.6 Eligible land.

(a) In order to be eligible to be placed in the CRP, land must be one of the following:

(1) Cropland that is subject to a conservation plan and has been annually planted or considered planted, as defined in § 1410.2, to an agricultural commodity in 4 of the 6 crop years from 1996 through 2001, as determined by the Deputy Administrator, provided further that field margins that are incidental to the planting of crops may also be considered qualifying cropland to the extent determined appropriate by the Deputy Administrator; and is physically and legally capable of being planted in a normal manner to an agricultural commodity, as determined by the Deputy Administrator; or

(2) marginal pasture land, as determined by the Deputy Administrator, that:

(i) is enrolled in the crop year or has been enrolled during any of the 2 years preceding the crop year in the WBP; and

(A) The WBP contract of the owner or operator of the cropland expired or will expire in calendar year 2000, 2001, or 2002; and

(B) The acreage is not classified as naturally occurring type 3 through 7 wetlands, as determined by the Deputy Administrator, regardless of whether the acreage is or is not protected by a Federal agency easement or mortgage restriction (types 3 through 7 wetlands that are normally artificially flooded shall not be precluded from eligibility), and;

(C) Enrollment in CRP would enhance the environmental benefits of the site, as determined by Deputy Administrator; or

(ii) Is determined to be suitable for use as a riparian buffer. A field or portion of a field of marginal pasture land may be considered to be suitable for use as a riparian buffer only if, as determined by CCC, it:

(A) Is located adjacent to permanent stream corridors excluding corridors that are considered gullies or sod waterways; and

(B) Is capable, when permanent grass, forbs, shrubs, or trees, are grown, or when planted with appropriate vegetation for the area, including vegetation suitable for wetland restoration or wildlife habitat, as determined appropriate by the Deputy Administrator, of substantially reducing sediment and/or nutrient runoff that otherwise would be delivered to the adjacent stream or waterbody or for water quality purposes; or

(3) Must be acreage enrolled in the CRP during the final year of the CRP contract provided the scheduled expiration date of the current CRP contract is before the effective date the new CRP contract, as determined by the Deputy Administrator.

(b) Land qualifying under paragraphs (a)(1) or (a) (2) of this section must also meet one of the following criteria, to be eligible for a contract:

(1) Be a field or portion of a field determined to be suitable for use, as determined by the Deputy Administrator, as a permanent wildlife habitat, filter strip, riparian buffer, contour grass strip, grass waterway, field windbreak, shelterbelt, living snowfence, other uses as determined by the Deputy Administrator, land devoted to vegetation on salinity producing areas, including any applicable recharge area, or any area determined eligible for CRP based on wetland or wellhead protection area criteria. A field or portion of a field may be considered to be suitable for use as a filter strip or riparian buffer only if it, as determined by CCC:

(i) Is located adjacent to a stream, other waterbody of a permanent nature (such as a lake, pond, or sinkhole), or wetland; excluding such areas as gullies or sod waterways; and

(ii) Is capable, when permanent grass, forbs, shrubs or trees are grown, of substantially reducing sediment or nutrient runoff that otherwise would be delivered to the adjacent stream or waterbody;

(2) Be a field that has evidence of scour erosion caused by out-of-bank flows of water, as determined by CCC:

(i) In addition, such land must:

(A) Be expected to flood a minimum of once every 10 years; and

(B) Have evidence of scour erosion as a result of such flooding.

(ii) To the extent practicable, be the actual affected cropland areas of a field; however, the entire cropland area of an eligible field may be enrolled if:

(A) The size of the field is 9 acres or less; or

(B) More than one third of the cropland in the field is land that lies between the water source and the inland limit of the scour erosion.

(iii) Or, if the full field is not eligible for enrollment under this paragraph, be the cropland between the waterbody and inland limit of the scour erosion together with, as determined by the Deputy Administrator, additional areas that would otherwise be unmanageable and would be isolated by the eligible areas.

(iv) Be planted to an appropriate tree species according to the FOTG, unless tree planting is determined to be inappropriate by NRCS, in consultation with the Forest Service, in which case the eligible cropland shall be devoted to another acceptable permanent vegetative cover in accordance with the FOTG;

(3) Be cropland that would facilitate a net savings in groundwater or surface water of the agricultural operation of the producer as determined by CCC;

(4) Be cropland in a portion of a field not enrolled in the CRP, if more than 50 percent of the remainder of the field is enrolled as a buffer practice, if the portion of the field not enrolled in the CRP will be enrolled as part of the buffer practice, and if as determined by CCC:

(i) The remainder of the field is infeasible to farm; and

(ii) The remainder of the field is enrolled at an annual payment rate not to exceed the maximum annual calculated soil rental rate;

(5) Be contributing to the degradation of water quality or posing an on-site or off-site environmental threat to water quality if such land remains in production;

(6) Be devoted to certain covers, as determined by the Deputy Administrator, that are established and maintained according to the FOTG, provided such acreage is not required to be maintained as such under any life-span obligations, as determined by the Deputy Administrator;

(7) Be non-irrigated or irrigated cropland that produces or serves as the recharge area, as determined by the Deputy Administrator, for saline seeps, or acreage that is functionally related to such saline seeps, or where a rising water table contributes to increased levels of salinity at or near the ground surface;

(8) Have an EI of greater than or equal to 8 calculated by using the weighted average of the EI's of soil map units within the field;

(9) Be within a public wellhead protection area;

(10) Be within a designated conservation priority area;

(11) Be designated as a cropped wetland and appropriate associated acreage, as determined by the Deputy Administrator;

(12) Be cropland that, as determined by the Deputy Administrator, is associated with noncropped wetlands and would provide significant environmental benefits; or

(13) Notwithstanding paragraph (a)(1) of this section, be cropland devoted to a perennial crop, as determined by CCC; such cropland will only be eligible for continuous signup practices authorized by § 1410.30 and CREP practices authorized by § 1410.50(b).

(c) Notwithstanding paragraphs (a) and (b) of this section, land shall be ineligible for enrollment if, as determined by the Deputy Administrator, land is:

(1) Federally-owned land unless the applicant has a lease for the contract period;

(2) Land on which the use of the land is restricted through deed or other restriction prior to enrollment in CRP prohibiting the production of agricultural commodities during any part of the contract term except for eligible land under paragraph (a)(2) and (3) of this section, as determined by CCC; or

(3) Land already enrolled in the CRP unless authorized by § 1410.6(a)(3), as determined by the Deputy Administrator.

§ 1410.7 Duration of contracts.

(a) Except as provided in paragraphs (b) or (c) of this section, contracts under this part shall be for a term of 10 years.

(b) In the case of land devoted to riparian buffers, filter strips, restoration of wetlands, hardwood trees, shelterbelts, windbreaks, wildlife corridors, or other practices deemed appropriate by CCC under the original terms of a contract subject to this part or for land devoted to eligible practices under a contract modified under § 1410.10, the participant may specify the duration of the contract between 10 years and 15 years in length.

(c) All contracts shall expire on September 30 of the appropriate year.

§ 1410.8 Conservation priority areas.

(a) CCC may designate National conservation priority areas according to paragraph (c) of this section.

(b) Subject to CCC review, State FSA committees, in consultation with NRCS and the State Technical Committee, may designate conservation priority areas within guidelines established by the Deputy Administrator. Such designation must clearly define conservation and environmental objectives and provide analysis of how CRP can cost-effectively address such objectives. Generally, the total acreage of all conservation priority areas, in aggregate, shall not total more than 33 percent of the cropland in a State unless there are identified and documented extraordinary environmental needs, as determined by the Deputy Administrator.

(c) As determined by the Deputy Administrator, a region shall be eligible for designation as a priority area only if the region has actual significant adverse water quality, air quality, wildlife habitat, or other natural resource impacts related to activities of agricultural production, or if the designation helps agricultural producers to comply with Federal and State environmental laws.

(d) Conservation priority area designations shall expire after 5 years unless re-designated, except they may be withdrawn:

(1) At the request of the appropriate State water quality agency; or

(2) By the Deputy Administrator.

(e) In those areas designated as conservation priority areas, under this section, cropland is considered eligible for enrollment according § 1410.6(b)(10) based on identified environmental concerns. These concerns may include water quality, such as assisting agricultural producers to comply with nonpoint source pollution requirements, air quality, or wildlife habitat (especially for threatened and endangered species or those species that may become threatened and endangered), as determined by the Deputy Administrator.

§ 1410.9 Conversion to trees.

An owner or operator who has entered into a CRP contract prior to November 28, 1990, may elect to convert areas of highly erodible cropland, subject to such contract, that is devoted to permanent vegetative cover, from such cover to hardwood trees, (including alley cropping and riparian buffers of hardwood trees, where permitted by CCC), windbreaks, shelterbelts, or wildlife corridors.

(a) For any contract modified under this section, the participant may elect to extend such contract in accordance with the provisions of § 1410.7(b).

(b) For any contract modified under this section in which such areas are converted to windbreaks, shelterbelts, or wildlife corridors, the owner must agree to maintain such plantings for a time period established by the Deputy Administrator at the time of the contract modification.

(c) CCC shall, as it determines appropriate, pay up to 50 percent of the eligible cost of establishing new conservation measures authorized under this section, except that the total cost-share paid under such contract, including cost-share assistance paid when the original cover was established, may not exceed the amount by which CCC would have paid had such land

been originally devoted to such new conservation measures.

(d) For any contract modified under this section, the participant must participate in the Forest Stewardship Program (16 U.S.C. 2103a).

§ 1410.10 Restoration of wetlands.

(a) An owner or operator who entered into a CRP contract on land that is suitable for restoration to wetlands or that was restored to wetlands while under such contract, may, if approved by CCC, subject to any restrictions as may be imposed by law, apply to transfer such eligible acres subject to such contract that are devoted to an approved cover from the CRP to the WRP. Transferred acreage shall be terminated from the CRP effective the day a WRP easement is filed. Participants will receive a prorated CRP annual payment for that part of the year the acreage was enrolled in the CRP according to § 1410.42. Refunds of cost-share payments or applicable incentive payments need not be refunded unless specified by the Deputy Administrator.

(b) An owner or operator who has enrolled acreage in the CRP may, as determined and approved by CCC, restore suitable acres to wetlands with cost-share assistance provided that Federal cost-share assistance has not been received for wetland restoration on the same land. In addition to the cost-share limitation in § 1410.41, an additional one-time financial incentive may be provided to encourage restoration of the hydrology of the site.

§ 1410.11 Farmable Wetlands Program.

(a) In addition to other allowable enrollments, land may be enrolled in this program through the Farmable Wetlands Program within the overall Conservation Reserve Program provided for in this part.

(b) As determined by the Deputy Administrator, owners and/or operators may enroll cropland that has been planted or considered planted to an agricultural commodity, as defined in § 1410.2 in three of the ten most recent crop years, provided that the cropland:

(1) Is a wetland, including a converted wetland, as determined by CCC, that does not exceed the size limitations of this section; and

(2) Subject to other provisions of this section, is buffer acreage that provides protection for and is contiguous to the wetland.

(c) An owner or operator may not enroll in this program any wetland, or land in a flood plain, that:

(1) Is located adjacent to a perennial riverine system wetland as identified on the final national wetland inventory map of the Department of the Interior; or

(2) Is located adjacent to a perennial stream identified on a 1–24,000 scale map of the United States Geological Survey, when the area is not delineated on a final national wetland inventory map.

(d) Total enrollment in the CRP under this section shall not exceed 1 million acres.

(e) The maximum size of a wetland enrolled under this section shall be 10 contiguous acres of which only the first 5 acres shall be eligible for payments.

(f) The maximum size of any buffer acreage described in paragraph (b)(2)(ii) of this section shall be the greater of:

(1) An area three times the size of the wetland described in paragraph (b)(1) of this section; or

(2) An area that continues no more than 150 feet from the edge of the wetland.

(g) The maximum total acreage enrolled in the CRP under this section, including any wetland and buffer acreage described in paragraph (b)(2) of this section, in a tract, as determined by the Deputy Administrator, of an owner or operator, is 40 acres.

(h) All participants subject to a CRP contract under this section must agree to restore the hydrology of the wetland described in paragraph (b)(1) of this section to the maximum extent possible, as determined by the Deputy Administrator, in accordance with the FOTG.

(i) Offers for contracts under this section shall be submitted under continuous signup provisions as authorized in § 1410.30.

(j) Except as otherwise determined by the Deputy Administrator, all other requirements of this part shall apply to enrollments under this section, and the Deputy Administrator by contract or otherwise may add such other requirements or conditions as are deemed necessary. Such additional conditions include but are not limited to payment limitations, adjusted gross income limitations, and limitations on the amount of acreage that can be enrolled in any one county.

§§ 1410.12–§§ 1410.19 [Reserved]

§ 1410.20 Obligations of participant.

(a) All participants subject to a CRP contract must agree to:

(1) Carry out the terms and conditions of such CRP contract;

(2) Implement the conservation plan, which is part of such contract, in accordance with the schedule of dates included in such conservation plan unless the Deputy Administrator determines that the participant cannot fully implement the conservation plan for reasons beyond the participant's control, and CCC agrees to a modified plan. However, a contract will not be terminated for failure to establish an approved vegetative or water cover on the land if, as determined by the Deputy Administrator:

(i) The failure to plant or establish such cover was due to excessive rainfall, flooding, or drought;

(ii) The land subject to the contract on which the participant could practicably plant or establish to such cover is planted or established to such cover; and

(iii) The land on which the participant was unable to plant or establish such cover is planted or established to such cover after the wet or drought conditions that prevented the planting or establishment subside;

(3) Establish temporary vegetative cover either when required by the conservation plan or, as determined by the Deputy Administrator, if the permanent vegetative cover cannot be timely established;

(4) Comply with part 12 of this title;

(5) Not allow grazing, harvesting, or other commercial use of any crop from the cropland subject to such contract except for those periods of time approved in accordance with instructions issued by the Deputy Administrator;

(6) Establish and maintain the required vegetative or water cover and the required practices on the land subject to such contract and take other actions that may be required by CCC to achieve the desired environmental benefits and to maintain the productive capability of the soil throughout the contract period;

(7) Comply with noxious weed laws of the applicable State or local jurisdiction on such land;

(8) Control on land subject to such contract all weeds, insects, pests and other undesirable species to the extent necessary to ensure that the establishment and maintenance of the approved cover as necessary or may be specified in the CRP conservation plan and to avoid an adverse impact on surrounding land, taking into consideration water quality, wildlife, and other needs, as determined by the Deputy Administrator; and

(9) Be jointly and severally responsible, if the participant has a share of the payment greater than zero, with the other contract participants in compliance with the provisions of such contract and the provisions of this part and for any refunds or payment adjustments that may be required for violations of any of the terms and conditions of the CRP contract and this part.

§ 1410.21 Obligations of the Commodity Credit Corporation.

CCC shall, subject to the availability of funds:

(a) Share up to 50 percent of the cost with participants of establishing eligible practices specified in the conservation plan at the levels and rates of cost-sharing determined in accordance with the provisions of this part; and

(b) Pay to the participant for a period of years not in excess of the contract period an annual rental payment, including applicable incentive payments, in such amounts as may be specified in the CRP contract.

§ 1410.22 CRP conservation plan.

(a) The producer shall obtain a CRP conservation plan that complies with CCC guidelines and is approved by the conservation district for the land to be entered in the CRP. If the conservation district declines to review the CRP conservation plan, or disapproves the conservation plan, such approval may be waived by CCC.

(b) The practices included in the CRP conservation plan and agreed to by the participant must cost-effectively reduce erosion necessary to maintain the productive capability of the soil, improve water quality, protect wildlife or wetlands, protect a public well head, or achieve other environmental benefits as applicable.

(c) If applicable, a tree planting plan shall be developed and included in the CRP conservation plan. Such tree planting plan may allow up to 3 years to complete plantings if 10 or more acres of hardwood trees are to be established.

(d) If applicable, the CRP conservation plan shall address the goals included in the conservation priority area designation authorized under § 1410.8.

(e) All CRP conservation plans and revisions of such plans shall be subject to the approval of CCC.

(f) Mid-cover management shall be conducted according to an approved conservation plan as part of the CRP contractual obligation such as light discing and burning as determined by the Deputy Administrator.

§ 1410.23 Eligible practices.

(a) Eligible practices are those practices specified in the conservation plan that meet all standards needed to cost-effectively:

(1) Establish permanent vegetative or water cover, including introduced or native species of grasses and legumes, forest trees, and permanent wildlife habitat;

(2) Meet other environmental benefits, as applicable, for the contract period; and

(3) Accomplish other purposes of the program.

(b) Water cover is eligible cover for purposes of paragraph (a) of this section only if approved by the Deputy Administrator for purposes such as the enhancement of wildlife or the improvement of water quality. Such water cover shall not include ponds for the purpose of watering livestock, irrigating crops, or raising aquiculture for commercial purposes.

§§ 1410.24–1410.29 [Reserved]

§ 1410.30 Signup.

Offers for contracts shall be submitted only during signup periods as announced periodically by the Deputy Administrator, except that CCC may hold a continuous signup for land to be devoted to particular uses, as CCC deems necessary. Generally, continuous signup is limited to those offers that would otherwise rank highly under § 1410.31(b) and may include high priority practices such as filter strips, riparian buffers, shelterbelts, field windbreaks, and living snow fences, grass waterways, shallow water areas for wildlife, salt-tolerant vegetation, and practices to benefit certain approved public wellhead protection areas.

§ 1410.31 Acceptability of offers.

(a) Except as provided in paragraph (c) of this section, producers may submit offers for the amounts they are willing to accept as rental payments to enroll their acreage in the CRP. The offers may, to the extent practicable, be evaluated on a competitive basis in which the offers selected will be those where the greatest environmental benefits relative to cost are generated, and provided that the offer is not in excess of the maximum acceptable payment rate established by the Deputy Administrator for the for the area offered. Acceptance or rejection of any offer, however, shall be in the sole discretion of the CCC and offers may be rejected for any reason as determined needed to accomplish the goals of the program.

(b) In evaluating contract offers, different factors, as determined by CCC, may be considered from time to time for priority purposes to accomplish the goals of the program. Such factors may include, but are not limited to:

(1) Soil erosion;

(2) Water quality (both surface and ground water);

(3) Wildlife benefits;

(4) Soil productivity;

(5) Likelihood that enrolled land will remain in non-agriculture use beyond the contract period, considering, for example, tree planting, permanent wildlife habitat, or commitments by a participant to a State or other entity to extend the conservation plan;

(6) Air quality; and

(7) Cost of enrolling acreage in the program.

(c) Acreage determined eligible for continuous signup, as provided in § 1410.30, may be automatically accepted in the program if the:

(1) Land is eligible under § 1410.6, as determined by the Deputy Administrator;

(2) A producer is eligible under § 1410.5; and

(3) A producer accepts either the maximum payment rate CCC is willing to offer to enroll the acreage in the program or a lesser rate.

§ 1410.32 CRP contract.

(a) In order to enroll land in the CRP, the participant must enter into a contract with CCC.

(b) The CRP contract is comprised of:

(1) The terms and conditions for participation in the CRP;

(2) The CRP conservation plan; and

(3) Any other materials or agreements determined necessary by CCC.

(c)(1) In order to enter into a CRP contract, the producer must submit an offer to participate as provided in § 1410.30;

(2) An offer to enroll land in the CRP shall be irrevocable for such period as is determined and announced by CCC. The producer shall be liable to CCC for liquidated damages if the applicant revokes an offer during the period in which the offer is irrevocable as determined by the Deputy Administrator. CCC may waive payment of such liquidated damages if CCC determines that the assessment of such damages, in a particular case, is not in the best interest of CCC and the program.

(d) The CRP contract must, within the dates established by CCC, be signed by:

(1) The producer; and

(2) The owners of the cropland to be placed in the CRP and other eligible participants, if applicable.

(e) The Deputy Administrator is authorized to approve CRP contracts on behalf of CCC.

(f) CRP contracts may be terminated by CCC before the full term of the contract has expired if:

(1) The owner loses control of or transfers all or part of the acreage under contract and the new owner does not wish to continue the contract;

(2) The participant voluntarily requests in writing to terminate the contract and obtains the approval of CCC according to terms and conditions as determined by CCC;

(3) The participant is not in compliance with the terms and conditions of the contract;

(4) Acreage is enrolled in another Federal, State or local conservation program;

(5) The CRP practice fails or is not established after a certain time period, as determined by the Deputy Administrator, and the cost of restoring the practice outweighs the benefits received from the restoration;

(6) The CRP contract was approved based on erroneous eligibility determinations; or

(7) CCC determines that such a termination is needed in the public interest.

(g)(1) Contracts for land enrolled in CRP before January 1, 1995, that have been continuously in effect may be unilaterally terminated by all CRP participants on a contract except for contract acreage:

(i) Located within a certain distance determined appropriate by the applicable FOTG of a perennial stream, or other permanent waterbody to reduce pollution and to protect surface and subsurface water quality;

(ii) On which a CRP easement is filed;

(iii) That is considered to be a wetland by USDA according to part 12 of this title;

(iv) Located within a wellhead protection area;

(v) That is subject to frequent flooding, as determined by the Deputy Administrator;

(vi) That may be required to serve as a wetland buffer according to the FOTG to protect the functions and values of a wetland; or

(vii) On which there exist one or more of the following practices, installed or developed as a result of participation in the CRP or as otherwise required by the conservation plan:

(A) Grass waterways;

(B) Filter strips;

(C) Shallow water areas for wildlife;

(D) Bottom land timber established on wetlands;

(E) Field windbreaks; and

(F) Shelterbelts.

(2) With respect to terminations under this paragraph:

(i) Any land for which an early termination is sought by the participant must have an EI of 15 or less;

(ii) The termination shall become effective 60 days from the date the participant submits notification to CCC of the participant's desire to terminate the contract;

(iii) Acreage terminated under this provision is eligible to be re-offered for CRP during future signup periods, provided that the acreage otherwise meets the current eligibility criteria; and

(iv) Participants must meet conservation compliance requirements of part 12 of this title to the extent applicable to other land.

(h) Except as allowed and approved by CCC where the new owner of land enrolled in CRP is a Federal agency that agrees to abide by the terms and conditions of the terminated contract, the participant in a contract that has been terminated must refund all or part of the payments made with respect to the contract plus interest thereon, as determined by CCC, and shall pay liquidated damages as provided for in the contract. CCC may permit the amount to be repaid to be reduced to the extent that such a reduction will not impair the purposes of the program. Further, a refund of all payments need not be required from a participant who is otherwise in full compliance with the CRP contract when the land is purchased by or for the United States, as determined by CCC.

§ 1410.33 Contract modifications.

(a) As agreed between CCC and the participant, a CRP contract may be modified in order to:

(1) Decrease acreage in the CRP;

(2) Permit the production of an agricultural commodity under extraordinary circumstances during a crop year on all or part of the land subject to the CRP contract as determined by the Deputy Administrator;

(3) Facilitate the practical administration of the CRP; or

(4) Accomplish the goals and objectives of the CRP, as determined by the Deputy Administrator.

(b) CCC may modify CRP contracts to add, delete, or substitute practices when, as determined by the Deputy Administrator:

(1) The installed practice failed to adequately provide for the desired environmental benefit through no fault of the participant; or

(2) The installed measure deteriorated because of conditions beyond the control of the participant; and

(3) Another practice will achieve at least the same level of environmental benefit.

(c) Offers to extend contracts may be made as allowed by law.

(d) CCC may terminate a CRP contract if the participant agrees to such termination and CCC determines such termination to be in the public interest.

§§ 1410.34–1410.39 [Reserved]

§ 1410.40 Cost-share payments.

(a) Cost-share payments shall be made available upon a determination by CCC that an eligible practice, or an identifiable unit thereof, has been established in compliance with the appropriate standards and specifications.

(b) Except as otherwise provided for in this part, cost-share payments may be made only for the cost-effective establishment or installation of an eligible practice, as determined by CCC.

(c) Except as provided in paragraph (d) of this section, cost-share payments shall not be made to the same owner or operator on the same acreage for any eligible practices that have been previously established, or for which such owner or operator has received cost-share assistance from any Federal agency.

(d) Except as provided for under § 1410.9(c), cost-share payments may be authorized for the replacement or restoration of practices for which cost-share assistance has been previously allowed under the CRP, only if:

(1) Replacement or restoration of the practice is needed to achieve adequate erosion control, enhance water quality, wildlife habitat, or increase protection of public wellheads; and

(2) The failure of the original practice was due to reasons beyond the control of the participant.

(e) The cost-share payment made to a participant shall not exceed the participant's actual contribution to the cost of establishing the practice and the amount of the cost-share may not be an amount that, when added to such assistance from other sources, exceeds the cost of the practices.

(f) CCC shall not make cost-share payments with respect to a CRP contract if any other Federal cost-share assistance has been, or is being, made with respect to the establishment of the cover crop on land subject to such contract.

§ 1410.41 Levels and rates for cost-share payments.

(a) As determined by the Deputy Administrator, CCC shall not pay more than 50 percent of the actual or average cost of establishing eligible practices specified in the conservation plan. CCC may allow cost-share payments for maintenance costs, consistent with the provisions of § 1410.40 and CCC may determine the period and amount of such cost-share payments.

(b) The average cost of performing a practice may be determined by CCC based on recommendations from the State Technical Committee. Such cost may be the average cost in a State, a county, or a part of a State or county, as determined by the Deputy Administrator.

(c) Except as otherwise provided, a participant may, in addition to any payment under this part, receive cost-share assistance, rental payments, or tax benefits from a State or a private organization in return for enrolling lands in CRP. However, as provided under § 1410.40(f), a participant may not receive or retain CRP cost-share assistance if other Federal cost-share assistance is provided for such acreage, as determined by the Deputy Administrator. Further, under no circumstances may the cost-share payments received under this part, or otherwise, exceed the cost of the practice, as determined by CCC.

§ 1410.42 Annual rental payments.

(a) Subject to the availability of funds, annual rental payments shall be made in such amount and in accordance with such time schedule as may be agreed upon and specified in the CRP contract.

(b) Annual rental payments, except for land accepted that was formerly enrolled under the WBP, include a payment based on a weighted average soil rental rate or marginal pastureland rental rate, as appropriate, and an incentive payment as a portion of the annual payment of certain practices, as determined by the Deputy Administrator. Payments for land accepted that was formerly enrolled under the WBP are limited to annual rental payments received under the WBP.

(c) The annual rental payment shall be divided among the participants on a single contract as agreed to in such contract.

(d) The maximum amount of rental payments that a person may receive under the CRP for any fiscal year shall not exceed $50,000. The regulations set forth at part 1400 of this chapter shall be applicable in making eligibility and "person" determinations as they apply to payment limitations under this part.

(e) In the case of a contract succession, annual rental payments shall be divided between the predecessor and the successor participants as agreed to among the participants and approved by CCC. If there is no agreement among the participants, annual rental payments shall be divided in such manner deemed appropriate by the Deputy Administrator and such distribution may be prorated based on the actual days of ownership of the property by each party.

(f) CCC shall, when appropriate, prepare a schedule for each county that shows the maximum soil rental rate CCC may pay which may be supplemented to reflect special contract requirements. As determined by the Deputy Administrator, such schedule will be calculated based on the relative productivity of soils within the county using NRCS data and local FSA average cash rental estimates. The schedule will be available in the local FSA office and, as determined by the Deputy Administrator, shall indicate, when appropriate, that:

(1) Offers of contracts by producers who request rental payments greater than the schedule for their soil(s) will be rejected;

(2) Offers of contracts submitted under continuous signup authorized at § 1410.30 may be accepted without further evaluation when the requested rental rate is less than or equal to the calculated weighted soil rental rate, based on the three predominant soils listed; and

(3) Otherwise qualifying offers shall be ranked competitively based on factors established under § 1410.31 of this part in order to provide the most cost-effective environmental benefits, as determined by the Deputy Administrator.

(g) Additional financial incentives may be provided to producers who offer contracts expected to provide especially high environmental benefits, as determined by the Deputy Administrator.

§ 1410.43 Method of payment.

Except as provided in § 1410.50, payments made by CCC under this part may be made in cash or other methods of payment in accordance with part 1401 of this chapter, unless otherwise specified by CCC.

§ 1410.44 Adjusted Gross Income.

Benefits under this part shall not be available to persons whose adjusted gross income exceeds 2.5 million dollars annually as determined under the standards set out in part 1400 of this chapter which shall be applicable in making adjusted gross income determinations as they apply to the CRP.

§§ 1410.45–1410.49 [Reserved]

§ 1410.50 Enhancement programs.

(a) For contracts to which a State, political subdivision, or agency thereof, has succeeded in connection with an approved conservation reserve state enhancement program, payments shall be made in the form of cash only. The provisions that limit the amount of payments per year that a person may receive under this part shall not be applicable to payments received by such State, political subdivision, or agency thereof in connection with agreements entered into under such enhancement programs carried out by such State, political subdivision, or agency thereof that has been approved for that purpose by CCC.

(b) CCC may enter into other conservation reserve enhancement program agreements in accordance with terms deemed appropriate by CCC, with a State, political subdivision, or agency thereof, to use the CRP to cost-effectively further specific conservation and environmental objectives of that State and the nation.

§ 1410.51 Transfer of land.

(a)(1) If a new owner or operator purchases or obtains the right and interest in, or right to occupancy of, the land subject to a CRP contract, as determined by the Deputy Administrator, such new owner or operator, upon the approval of CCC, may become a participant to a new CRP contract with CCC for the transferred land.

(2) For the transferred land, if the new owner or operator becomes a successor to the existing CRP contract, the new owner or operator shall assume all obligations of the CRP contract of the previous participant.

(3) If the new owner or operator is approved as a successor to a CRP contract with CCC, then, except as otherwise determined appropriate by the Deputy Administrator:

(i) Cost-share payments shall be made to the past or present participant who established the practice; and

(ii) Annual rental payments to be paid during the fiscal year when the land was transferred shall be divided between the new participant and the previous participant in the manner specified in § 1410.42.

(b) If a participant transfers all or part of the right and interest in, or right to occupancy of, land subject to a CRP contract and the new owner or operator does not become a successor to such contract within 60 days, or such other time as the Deputy Administrator determines to be appropriate, of such transfer, such contract shall be terminated with respect to the affected portion of such land and the original participant:

(1) Forfeits all rights to any future payments for that acreage;

(2) Shall refund all previous payments received under the contract by the participant or prior participants, plus interest, except as otherwise specified

by the Deputy Administrator. The provisions of § 1410.32(h) shall apply.

(c) Federal agencies acquiring property, by foreclosure or otherwise, that contains CRP contract acreage cannot be a party to the contract by succession. However, through an addendum to the CRP contract, if the current operator of the property is one of the contract participants, such operator may, as permitted by CCC, continue to receive payments under such contract if:

(1) The property is maintained in accordance with the terms of the contract;

(2) Such operator continues to be the operator of the property; and

(3) Ownership of the property remains with such federal agency.

§ 1410.52 Violations.

(a)(1) If a participant fails to carry out the terms and conditions of a CRP contract, CCC may terminate the CRP contract.

(2) If the CRP contract is terminated by CCC in accordance with this paragraph:

(i) The participant shall forfeit all rights to further payments under such contract and refund all payments previously received together, plus interest; and

(ii) Pay liquidated damages to CCC in an amount as specified in the contract.

(b) If the Deputy Administrator determines such failure does not warrant termination of such contract, the Deputy Administrator may authorize relief as the Deputy Administrator deems appropriate.

(c) CCC may reduce a demand for a refund under this section to the extent CCC determines that such relief would be appropriate and will not deter the accomplishment of the goals of the program.

§ 1410.53 Executed CRP contract not in conformity with regulations.

If, after a CRP contract is approved by CCC, it is discovered that such CRP contract is not in conformity with this part, these regulations shall prevail, and CCC may, at its sole discretion, terminate or modify the CRP contract, effective immediately or at a later date as CCC determines appropriate.

§ 1410.54 Performance based upon advice or action of the Department.

The provisions of § 718.8 of this chapter relating to performance based upon the action or advice of an authorized representative of the Department shall be applicable to this part, and may be considered as a basis to provide relief to persons subject to sanctions under this part to the extent that relief is otherwise required by this part.

§ 1410.55 Access to land under contract.

(a) Any representative of the U.S. Department of Agriculture, or designee thereof, shall, for purposes related to this program, be provided by the offeror or participant as the case may be, with access to land that is:

(1) The subject of an application for a contract under this part; or

(2) Under contract or otherwise subject to this part.

(b) For land identified in paragraph (a) of this section, the participant or producer shall provide such representatives with access to examine records for the land to determine land classification, erosion rates, or other purposes and to determine whether it is in compliance with the terms and conditions of the CRP contract.

§ 1410.56 Division of payments and provisions about tenants and sharecroppers.

(a) Payments received under this part shall be divided as specified in the applicable contract and CCC shall ensure that producers who would have an interest in acreage being offered receive treatment that is equitable, as determined by the Deputy Administrator. CCC may refuse to enter into a contract when there is a disagreement among persons seeking enrollment as to a person's eligibility to participate in the contract as a tenant and there is insufficient evidence to indicate whether the person seeking participation as a tenant does or does not have an interest in the acreage offered for enrollment in the CRP.

(b) CCC may remove an operator or tenant from a CRP contract when:

(1) The operator or tenant requests in writing to be removed from the CRP contract;

(2) The operator or tenant files for bankruptcy and the trustee or debtor in possession fails to affirm the contract, to the extent permitted by applicable bankruptcy laws;

(3) The operator or tenant dies during the contract period and the administrator of the estate fails to succeed to the contract within a period of time determined by the Deputy Administrator; or

(4) A court of competent jurisdiction orders the removal from the CRP contract of the operator or tenant and such order is received by FSA, as determined by the Deputy Administrator.

(c) In addition to paragraph (b) of this section, tenants shall maintain their tenancy throughout the contract period in order to remain on a contract. Tenants who fail to maintain tenancy on the acreage under contract, including failure to comply with applicable State law, may be removed from a contract by CCC. CCC shall assume the tenancy is being maintained unless notified otherwise by a party to contract.

§ 1410.57 Payments not subject to claims.

Subject to part 1403 of this chapter, any cost-share or annual payment or portion thereof due any person under this part shall be allowed without regard to questions of title under State law, and without regard to any claim or lien in favor of any creditor, except agencies of the United States Government.

§ 1410.58 Assignments.

Participants may assign the right to receive such cash payments, in whole or in part, as provided in part 1404 of this chapter.

§ 1410.59 Appeals.

(a) Except as provided in paragraph (b) of this section, a participant or person seeking participation may appeal or request reconsideration of an adverse determination in accordance with the administrative appeal regulations at parts 11 and 780 of this title.

(b) Determinations by NRCS assigned to make such determination for the Deputy Administrator may be appealed in accordance with procedures established under part 614 of this title or otherwise established by NRCS.

§ 1410.60 Scheme or device.

(a) If CCC determines that a person has employed a scheme or device to defeat the purposes of this part, or any part, of any program, payment otherwise due or paid such person during the applicable period may be required to be refunded with interest thereon as determined appropriate by CCC.

(b) A scheme or device includes, but is not limited to, coercion, fraud, misrepresentation, depriving any other person of cost-share assistance or annual rental payments, or obtaining a payment that otherwise would not be payable.

(c) A new owner or operator or tenant of land subject to this part who succeeds to the contract responsibilities shall report in writing to CCC any interest of any kind in the land subject to this part that is retained by a previous participant. Such interest shall include a present, future, or conditional interest, reversionary interest, or any option, future or present, on such land, and any interest of any lender in such land where the lender has, will, or can legally obtain, a right of occupancy to such land or an interest in the equity in such land other than an interest in the appreciation in the value of such land occurring after the loan was made. Failure to fully disclose such interest shall be considered a scheme or device under this section.

§ 1410.61 Filing of false claims.

If CCC determines that any participant has knowingly supplied false information or has knowingly filed a false claim, such participant shall be ineligible for payments under this part with respect to the program year in which the false information or claim was filed and the contract may be terminated, in which case a full refund of all prior payments may be demanded. False information or false claims include, but are not limited to, claims for payment for practices that do not comply with the conservation plan. Any amounts paid under these circumstances shall be refunded, together plus with interest as determined by CCC, and any amounts otherwise due to the participant shall be withheld. The remedies provided for in this section shall be in addition to any and all other remedies, criminal and/or civil, that may apply.

§ 1410.62 Miscellaneous.

(a) Except as otherwise provided in this part, in the case of death, incompetency, or disappearance of any participant, any payments due under this part shall be paid to the participant's successor(s) under part 707 of this title.

(b) Unless otherwise specified in this part, payments under this part shall be subject to the requirements of part 12 of this title concerning highly erodible land and wetland conservation and payments.

(c) Any remedies permitted CCC under this part shall be in addition to any other remedy, including, but not limited to, criminal remedies, or actions for damages in favor of CCC, or the United States, as may be permitted by law; provided further the Deputy Administrator may add to the contract such additional terms as needed to enforce these regulations that shall be binding on the parties and may be enforced to the same degree as provisions of these regulations.

(d) Absent a scheme or device to defeat the purpose of the program, when an owner loses control of CRP acreage due to foreclosure and the new owner chooses not to continue the contract in accordance with § 1410.51, refunds shall not be required from any participant on the contract to the extent that the Deputy Administrator determines that forgiving such repayment is appropriate in order to provide fair and equitable treatment.

(e) Cropland enrolled in CRP shall be classified as cropland for the time period enrolled in CRP and, after the time period of enrollment, may be removed from such classification upon a determination by the county committee that such land no longer meets the definition in part 718 of this title.

(f) Research projects may be submitted by the State committee and authorized by the Deputy Administrator to further the purposes of CRP. The research projects must include objectives that are consistent with this part, provide economic and environmental information, not adversely affect local agricultural markets, and be conducted and monitored by a bona fide research entity, as determined by the Deputy Administrator.

§ 1410.63 Permissive uses.

(a) Unless otherwise specified by the Deputy Administrator, no uses of any kind are authorized on designated CRP acreage during the contract period.

(b) Commercial shooting preserves may be operated on CRP acreage provided:

(1) The commercial shooting preserve is licensed by a State agency such as the State fish and wildlife agency or State department of natural resources;

(2) The commercial shooting preserve is operated in a manner consistent with the applicable State agency rules governing commercial shooting preserves;

(3) CRP cover is maintained according to the conservation plan; and

(4) No barrier fencing or boundary limitations exist that prohibit wildlife access to or from the CRP acreage unless required by State law.

(c) The following activities may be permitted on CRP enrolled land:

(1) Managed haying and grazing, including the harvest of biomass:

(i) In exchange for a reduction of the annual payment in an amount determined by the Deputy Administrator;

(ii) Not to exceed once every three years after the CRP vegetative cover has been established; and

(iii) According to an approved CRP conservation plan consistent with the conservation of soil, water quality, and wildlife habitat (including habitat during nesting and brood rearing seasons) and in accordance with FOTG standards.

(2) Managed grazing that is incidental to the gleaning of crop residue, but only in exchange for a reduction in the annual rental payment, as determined appropriate by the Deputy Administrator.

(3) Wind turbines on CRP land installed in numbers and locations as determined appropriate by the Deputy Administrator considering the location, size, and other physical characteristics of the land, the extent to which the land contains wildlife, wildlife habitat, and the purposes of the CRP.

(4) Spot grazing, if necessary for control of weed infestation, not to exceed a 30-day period according to an approved conservation plan, but only in exchange for a payment reduction determined by the Deputy Administrator.

(5) Forestry maintenance such as pruning, thinning, and timber stand improvement on lands converted to forestry use only in accordance with a conservation plan and in exchange for an applicable reduction in the annual rental payment as determined by the Deputy Administrator.

(6) The sale of carbon, water quality, or other environmental credits, as determined by the Deputy Administrator.

Signed at Washington, DC, on May 2, 2003.

James R. Little,

Executive Vice President, Commodity Credit Corporation.

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Part V

Department of Agriculture

Commodity Credit Corporation

Farm Service Agency

Record of Decision for the Programmatic Environmental Impact Statement on the Conservation Reserve Program; Notice

DEPARTMENT OF AGRICULTURE

Commodity Credit Corporation

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Record of Decision for the Programmatic Environmental Impact Statement on the Conservation Reserve Program

AGENCIES: Commodity Credit Corporation and Farm Service Agency, USDA.

ACTION: Record of decision.

SUMMARY: The Farm Service Agency (FSA) prepared a Final Programmatic Environmental Impact Statement (PEIS) for the Conservation Reserve Program (CRP) and the Notice of Availability was published in the **Federal Register** on January 17, 2003. This document presents the Record of Decision (ROD) regarding FSA implementation of the re-authorized CRP according to the provisions of the Farm Security and Rural Investment Act of 2002, Public Law 107–121 (2002 Farm Bill). The CRP is implemented through FSA on behalf of the Commodity Credit Corporation (CCC) and is governed by regulations published in 7 CFR part 1410. This decision record summarizes the reasons for FSA selecting the Proposed Action Alternative based on the program's expected environmental and socioeconomic impacts and benefits as documented in the PEIS, all of which were considered in this decision.

FOR FURTHER INFORMATION CONTACT: Don Steck, USDA/FSACEPD/Stop 0513, 1400 Independence Ave., SW., Washington, DC 20250–0153, (202) 690–0224, or e-mail at: *don_steck@wdc.usda.gov*. The final CRP PEIS, including appendices and this ROD, are available on the FSA Environmental Compliance Web site at: *http://www.fsa.usda.gov/dafp/cepd/epb/impact.htm#final*.

More detailed information on these programs may also be obtained from the FSA Web site at: *http://www.fsa.usda.gov/pas/default.asp* (general) *http://www.fsa.usda.gov/dafp/cepd/default.htm* (CRP, CREP, ECP, & NEPA).

Record of Decision

I. The Decision

A. Programmatic Environmental Impact Statement (PEIS) Proposed Action Alternative as the Basis for Implementing and Expanding CRP

Based on a thorough evaluation of the resource areas affected by CRP, a detailed analysis of four program alternatives, and a comprehensive review of public comments on the Draft PEIS, CCC has selected the Proposed Action Alternative to implement and expand the re-authorized CRP in accordance with the provisions of the 2002 Farm Bill.

B. Overview

CRP is the Federal Government's single largest conservation program for private lands. Through voluntary partnerships between individuals and the Government, CRP provides incentives and assistance to farmers and ranchers for establishing conservation practices that have a beneficial impact on resources both on and off the farm. CRP encourages participants to voluntarily plant permanent vegetative cover on land that is subject to erosion. This vegetation safeguards millions of acres of American topsoil from erosion, provides food and habitat for wildlife, and protects water quality by reducing runoff and sedimentation.

CRP provides annual rental payments and cost-share assistance to participants for establishing long-term, resource-conserving covers on eligible land. CRP, in most cases, makes annual rental payments based on the dry land agricultural rental value of the land, and provides cost-share assistance for up to 50 percent of the participant's costs in establishing approved conservation practices. Participants enroll in CRP contracts for 10 to 15 years. FSA administers the program, with technical support provided by the Natural Resources Conservation Service (NRCS), U.S. Forest Service, Cooperative State Research and Education Extension Service, State forestry agencies, local Soil and Water Conservation Districts, and others.

C. Programmatic Changes to CRP

To implement the Proposed Action, FSA would incorporate the provisions of the recently enacted 2002 Farm Bill into the CRP regulations and revise the CRP Handbook. The 2002 Farm Bill, which governs Federal farm programs for the next 6 years, was signed into law on May 13, 2002. The 2002 Farm Bill reauthorizes CRP through 2007 and stipulates the following changes be made to CRP:

- Increase the acreage enrollment authority to up to 39.2 million acres;
- Expand the Farmable Wetlands Program (FWP) nationwide with an aggregate acreage cap of up to 1 million acres;
- Change the cropping history requirement to be 4 out of 6 years prior to the enactment of the 2002 Farm Bill;
- Provide a 1-year extension for certain contracts on land planted to hardwood trees;
- Allow participants to enroll entire fields through certain continuous CRP practices when more than 50 percent of the field is enrolled as a buffer and the remainder of the field is infeasible to farm;
- Allow participants to continue existing vegetative cover, where practicable and consistent with the objectives of CRP; and
- Provide for managed haying (including for biomass), grazing, and construction of wind turbines on CRP lands.

II. Description of the Conservation Reserve Program

CRP was initiated by Congress in Title XII of the Food Security Act of 1985, Public Law 99–198, was extended by the Food, Agriculture, Conservation and Trade Act of 1990, Public Law 104–624, and then extended to 2002 by the Federal Agriculture Improvement and Reform Act of 1996, Public Law 107–171. It has currently been authorized to continue through 2007 by the 2002 Farm Bill.

A. Conservation Reserve Program—General Sign-up

CRP General Sign-up was established in its current form in 1985. This long-term land retirement program offers participants an annual per-acre rental payment and up to half the cost of establishing a permanent long-term conserving cover, in exchange for retiring environmentally-sensitive cropland from production for a minimum of 10 years to a maximum of 15 years. Producers offer land for competitive bidding based on an Environmental Benefits Index (EBI) during periodic announced signups. The current EBI is a form of environmental targeting which ranks offers based on environmental indices and cost.

B. Continuous CRP (CCRP)

CCRP is a program initiated by FSA in 1996, with 4 million acres reserved for enrollment of highly-environmentally sensitive land that would produce optimal environmental benefits for soils, water quality, and wildlife habitat enhancement through the implementation of high-priority conservation practices such as riparian buffers, filter strips, and grass waterways. Land eligible for these high-priority practices can be enrolled at any time and the land does not have to compete with other lands for enrollment under CRP general sign-up.

In April 2000, FSA authorized enhanced incentives to target highly environmentally-sensitive land for continuous signup participation which included: (1) An up-front Signing Incentive Payment (SIP) of $100 to $150 per acre (depending on the length of contract) for filter strips, riparian buffers, grassed waterways, field windbreaks, shelter belts, and living snow fences; (2) and a Practice Incentive Payment (PIP) equal to 40 percent of the cost of installing practices for all continuous signup practices. At that time, increased maintenance payments for certain practices were also added along with updated marginal pastureland rental rates to better reflect the agricultural value of these types of lands.

C. Farmable Wetlands Program (FWP)

FWP was established as a pilot program by the 2001 Agricultural Appropriations Act, Public Law 106–387, under which farmed wetland acres were made eligible to be enrolled through a continuous sign-up similar to that of CCRP for other high-priority conservation practices. Payments were commensurate with those provided to landowners who implemented CRP conservation practices like filter strips. The wetlands and associated buffers enrolled under the pilot program were limited to 500,000 acres in six States: Iowa, Minnesota, Montana, Nebraska, North Dakota, and South Dakota, with no more than 150,000 acres enrolled in any single State. Under the provisions of the 2002 Farm Bill, FWP will be expanded nationwide with an aggregate acreage cap of up to 1 million acres.

D. Conservation Reserve Enhancement Program (CREP)

In 1997, FSA implemented CREP as a joint Federal-State land retirement conservation program that uses the authorities of CRP in combination with State resources to target specific conservation and environmental objectives. It is a conservation partnership targeted to address specific State and nationally significant water quality, soil erosion, and wildlife habitat issues linked to agriculture and agricultural production activities.

III. Impacts Under the Alternatives Considered

FSA developed the Proposed Action Alternative based on provisions defined in the 2002 Farm Bill along with Agency scoping input provided before passage of the 2002 Farm Bill. FSA conducted formal public scoping for the PEIS and met with and solicited input from representatives of other Federal, State, and local agencies and the general public. The public scoping meetings were held in six cities located around the country. FSA published notices in the **Federal Register** and national newspapers that the agency was preparing a PEIS and that input was being sought through multiple venues including the public scoping meetings, a toll-free phone line, regular mail, and e-mail. The Proposed Action and three Alternatives considered in detail in the PEIS represented a range of program implementation choices that reflected the array of ideas voiced and recommendations made during that scoping process. The following alternatives are presented in detail in the Final PEIS.

A. No Program Alternative (Baseline)

This alternative was used as an analytical device to establish a baseline upon which to evaluate the other alternatives. The analysis established a baseline by describing what would have happened if CRP had never been implemented.

B. No Action Alternative (Current Program)

Under this alternative, FSA administration of CRP/CCRP/CREP would continue as if the pre-2002 Farm Bill provisions remained in effect, including the 4.2 million-acre holdback for CCRP and CREP.

C. Proposed Action Alternative (FSA's Preferred Alternative)

The Proposed Action is for FSA to implement changes in General CRP/CCRP/CREP administration based on the requirements of the 2002 Farm Bill. Some of the changes include: increasing the enrollment authority, changing the eligibility and cropping history requirements, implementing a nationwide farmable wetland program, and several additional minor program changes. Environmental-based allocation under the general sign-up would continue. FSA plans to utilize CCRP and CREP in addition to General CRP in its administration of CRP in a balanced way to maximize conservation benefits while minimizing adverse environmental impacts.

D. Environmental Targeting Alternative

Under this alternative, FSA would alter the mix of program goals and change acreage allocations to include CREP and continuous sign-up practices in designated environmentally-sensitive areas. The CRP general sign-up would be eliminated and the benefits produced directly by use of the EBI would be lost. Administration of CRP would then be accomplished using an environmental targeting approach that focuses program resources on addressing national or regional priority conservation goals. This targeting would be consistent with the current primary objectives of the program by targeting soil erosion, water quality, and wildlife habitat objectives in ecological regions, river basins, or impaired watersheds. Different strategies for allocating the additional acreage under the program cap would be evaluated by FSA.

If this alternative were selected, there would be no general sign-up CRP. Therefore, the environmental targeting for general sign-up under the Environmental Benefits Index (EBI) would be lost and there would be an increased risk in not enrolling all the acreage allocated under the 2002 Farm Bill. This would mean less soil, water quality, air quality, and wildlife habitat benefits because fewer acres would be enrolled than under the Proposed Action.

IV. Impacts Under the Alternatives

The environment affected by CRP consists of both the socioeconomic and natural environments associated with or affected by farming and farm conservation programs in the U.S. The natural environment includes the major terrestrial and aquatic eco-regions associated with eligible lands in the U.S. and associated sensitive resources, including:

- Soils.
- Soil and Wind Erosion (including Air Quality).
- Water Resources & Aquatic Species.
- Surface water.
- Total Maximum Daily Loads (TMDLs).
- Groundwater.
- Floodplains.
- Riparian Areas.
- Wetlands.
- Vegetation.
- Grasslands.
- Forestlands.
- Invasive Species.
- Wildlife.
- Wildlife Recreation.
- Threatened and Endangered Species (T&E).
- The social and economic aspects of the affected environment consist of farming from a national perspective and of rural communities that may be affected by CRP enrollment.

The following section summarizes some of the effects that would be expected to occur to the above-mentioned resource areas under each of the four alternatives. Due to the large programmatic scale of CRP, the timing, location, and magnitude of the

environmental effects will differ under the various alternatives.

A. No Program Alternative (Eliminate CRP)

Soil

Soil erosion rates would most likely be greater than 1.9 billion tons/year. Due to increased soil erosion rates, soil quality and productivity would also be adversely impacted.

Water Quality

Surface water quality would be substantially worse due to the loss of multiple benefits provided by vegetative cover established under CRP over the last 16 years. Impact on surface water quality would be significant and more streams would have a TMDL listing.

Groundwater quality and drinking water sources would be adversely impacted due to increased contamination by pesticides and fertilizers from land that would have been enrolled in CRP. Conservation practices targeting water quality improvement would, therefore, not be implemented.

Aquatic habitat and associated water quality would be severely impacted due to high nutrient, pesticide, and sediment runoff from cropland. See Surface and Groundwater impacts for No Program.

Floodplains, Riparian Areas, and Wetlands

Floodplain function would be decreased due to a decrease in permanent vegetative cover and an increase in soil erosion, sediment, and contaminant runoff from associated agricultural lands. There would also be a decrease in associated wetland restoration and riparian areas benefiting floodplain function; a decrease in riparian area function due to a decrease in permanent vegetative cover and an increase in soil erosion, sedimentation, and contaminant runoff from associated agricultural lands; and a decrease in riparian area restoration by 400,000 acres.

Wetlands benefits would decrease due to increased soil erosion rates resulting in sedimentation and contaminant runoff from farmlands. There would be an increase in continued use of farmed wetlands and associated uplands by approximately 3 million acres and a potential increase in wetland conversion caused by agricultural producers not participating in USDA programs regulated by Title XII of the Food Security Act of 1985, as amended. An estimated 600,000 acres of filter strips and wetland buffers would not be installed as a result of selecting this alternative.

Natural Vegetation

Without CRP, 25 million enrolled acres most likely would not have been planted to conservation cover and it might be assumed that the realized positive impacts of that cover type on cropland would be absent or considerably less. Incurred benefits of forestlands to water quality, wildlife, and soil stabilization would not have occurred in the absence of CRP. Incentives to enroll land devoted to the Longleaf Pine Conservation Priority Area (CPA) would not exist.

Wildlife

There would be significant negative impacts on local wildlife populations along with the availability of localized wildlife-based recreation such as viewing, hiking, hunting, and fishing. Continued agricultural practices could have a significant adverse impact on numerous T&E species but to what extent and to which species is unknown. There are some T&E species credited with utilizing CRP-created habitat.

Socioeconomic

On a national level, without CRP, the change in acreage planted to the major crops is expected to be minimal. However, at the local or regional level, there could be a moderate increase in planted acreage creating economic benefits arising from the additional need for farm labor, as well as demand for the services of agricultural businesses. There could also be a possible loss of recreational opportunities and a possible increased uncertainty of producer income, particularly for those non-farming landowners and part-time farmers. The magnitude of uncertainty is likely to be greater at the county or community level than nationally.

Long-term expansion of cropland supply could be beneficial for tenants, lowering rents. In the short term, the increased supply of cropland could raise rents due to temporary increase in productivity. A potentially significant decline in pheasant habitat and recreational benefits nationally and regionally would be seen in the absence of CRP, thus, potentially significantly declining of wildlife viewing benefits currently seen in the Great Plains. A potential modest decline in wildlife viewing benefits in the Northeastern region would also be seen.

Land-use decisions made by producers disconnected from environmental consideration would be based on maximizing market income. This would result in losses in soil quality, water quality, air quality, and wildlife habitat gains.

B. No Action Alternative (Continue CRP as Previously Implemented)

Soils

Soil erosion has decreased by 450 million tons since CRP's inception and additional soil erosion rate reductions would continue under this alternative. Soil quality has increased due to more topsoil left on the land and would continue as additional acreage is enrolled.

Water Quality

Surface water quality would continue to improve as producers enroll land under CRP, thus reducing runoff containing sediments, nutrients, and pesticides. TMDL-listed streams would decrease as cropland is enrolled but this would be based on the conservation practices installed on contract land and whether they directly target the impairments causing the listing.

Drinking water sources and groundwater in general would see a continued positive impact on both water quality and quantity, as cropland is taken out of production and enrolled in CRP. This would result in reduced levels of pesticides and fertilizers being used. Decreased sediment transport rates would produce a positive impact on aquatic species as further cropland is enrolled in CRP. Maintenance of high dissolved oxygen levels and cool water temperatures for aquatic organisms would continue as agricultural land is enrolled as wetland buffers.

Floodplains, Riparian Areas, and Wetlands

Floodplain function would increase due to an increase in permanent vegetative cover and a decrease in soil erosion, sediment, and contaminant runoff from agricultural lands. There would be an increase in associated wetland restoration and riparian areas benefiting floodplain function. Also, there would be an improvement and restoration of natural riparian area functions through increased vegetative cover, and reduced sediment and contaminant runoff from associated agricultural lands. There would also be an increase in riparian areas by 400,000 acres.

Water quality would improve from the reduction in sediment and contaminant runoff from agricultural lands. Wetland function would be restored to 542,278 acres of farmed wetlands and protection of 2.8 million acres of natural and farmed wetlands from agricultural runoff. An additional 1.6 million acres of wetland restoration and an additional 600,000 acres of filter strips and wetland buffers protecting wetland water quality would be seen.

Natural Vegetation

Native and introduced grass species would continue to be planted on eligible cropland producing residual benefits to water quality and soils. Cropland enrolled and planted to tree practice acreage would continue to cleanse runoff water, silt, and pollutants, protecting and improving streams while simultaneously providing food and shelter for wildlife. The Longleaf Pine CPA would continue to see enrollment of additional tree planting acres and thus provide additional positive benefits to water, soils, and wildlife in that region.

Wildlife

Areas devoted to permanent vegetation, wildlife habitat, and wetlands would continue to provide critical elements for species as more CRP acreage is enrolled. Enrollment targeted toward wildlife habitat enhancement would continue to provide critical resources and establish corridors between fragmented habitats. Continued benefits from the availability of wildlife-based recreation would be a positive impact under this alternative. Wetland restoration would continue to benefit waterfowl and upland game bird species and provide valuable habitat. Wetland buffers would continue to provide additional habitat and protection from human disturbance. Continued enhancement of wildlife habitat could produce positive impacts on T&E species.

Socioeconomic

No adverse impact on farm employment at the regional or state level would occur. However, there could be possible adverse impacts at the county or community level. There is insufficient research to support a definitive conclusion as to the magnitude of either of those impacts. A minimal impact of CRP on cropland supply would be seen. On a national and regional level, the effect of CRP land rent appears to be insignificant. At the State, county, or township level, the impact may be adverse and nominal to moderate in magnitude. There would be no change in recreational benefits.

Landowners would benefit from environmental improvements and stable income stream. Local communities would benefit from enhanced recreation and lower costs to residents and industry from air and water improvements. There could be potentially adverse impacts to tenant farmers and new farm startups.

C. Environmental Targeting Alternative

Soils

States with CREP Agreements would see additional soil erosion reduction in areas targeted if approved practices consist of permanent vegetative cover and approved soil conservation practices. Under most targeting scenarios, erosion could increase as other objectives are emphasized. Minor benefits on soil erosion could be accomplished if multiple regions, States, and watersheds are targeted to specifically address soil erosion by utilizing collaborative decision making of all interested parties and an ecosystem driven conservation initiative. Because of location, gross sheet and rill erosion may be less. Associated soil benefits of wetlands would increase as the FWP is opened to all States. Overall enrollment in general signup acreage would decrease under this alternative. As this enrollment declines, national benefits of soil erosion reduction would be significantly less.

Water Quality

States with CREP Agreements would see additional water quality benefits in areas targeted if approved practices consist of water quality enhancement conservation practices. Moderate positive impacts on water quality could be accomplished if multiple regions, States, and watersheds are targeted to address water quality impairments by using collaborative decision making of all interested parties and an ecosystem driven conservation initiative. This idea could be most beneficial when addressing effects in the Gulf of Mexico and the Chesapeake Bay Region. TMDL-listed streams would likely decrease based on the specific environmental targeting of those watersheds in the National Environmental Target Area (NETA) that have been identified as contributors to the large-scale water quality impairment problem. Overall enrollment in general CRP signup acreage would decrease under this alternative. As this enrollment declines, so would the positive impacts these acres play at maintaining good water quality.

States with CREP Agreements would see additional groundwater quality benefits if areas targeted are known groundwater source areas and if approved practices consist of water quality enhancement conservation practices. No real national impacts to groundwater quality can be accomplished if multiple regions, States, and watersheds are targeted to address groundwater quality impairments. This would be due to the fact that groundwater issues tend to be more localized and could therefore be better addressed through the CREP Agreements. TMDL-listed streams could decrease based on the specific environmental targeting of those watersheds in the NETAs that have been identified as having common groundwater quality problems. Overall enrollment in general CRP signup acreage would decrease under this alternative along with the subsequent positive impacts on groundwater quality and quantity.

States with CREP Agreements would see additional water quality benefits in areas targeted which would provide aquatic species with the optimal conditions for species success but only if approved practices consist of water quality enhancement conservation practices that have been proven to directly benefit aquatic species and their associated habitat. Minor national benefits to aquatic species could be accomplished by targeting water quality issues in multiple regions, States, and watersheds that are impaired severely. Overall, enrollment in General CRP signup acreage and associated benefits to aquatic species would decrease under this alternative.

Floodplains, Riparian Areas, and Wetlands

Beneficial impacts to floodplains as described under the No Action Alternative would possibly be seen in States with CREP Agreements. Positive benefits to floodplains could be accomplished by targeting floodplain and related resource issues in multiple regions, States, and watersheds. Overall enrollment in general CRP signup acreage and associated benefits to floodplains and riparian areas would be decreased under this alternative. However, the beneficial impacts to riparian areas as described under the No Action Alternative would be seen in States with CREP Agreements. Positive benefits to riparian areas can be accomplished by targeting riparian areas and related resource issues in multiple regions, States, and watersheds.

Natural Vegetation

Beneficial impacts to wetlands as described under No Action Alternative in States with CREP Agreements. Benefits to wetlands could be accomplished by targeting wetlands and related resource issues in multiple regions, States, and watersheds. Overall,

enrollment in General CRP signup acreage and its associated benefits to wetland areas would be decreased under this alternative.

States with CREP Agreements would see additional benefits associated with grasslands in areas targeted by approved CREP agreements, if approved practices consist of native grass species establishment conservation practices. Overall, enrollment in General CRP signup acreage and associated benefits to grasslands would be decreased under this alternative.

States with CREP Agreements would see additional benefits associated with forestlands targeted by approved CREP agreements, if approved practices consist of tree planting conservation practices. The direct positive impact of forestland restoration would benefit local CREP regions in a State by improving and protecting soil quality, water quality, and wildlife habitat, and by creating more opportunities to enjoy nature. Benefits on forestlands if multiple regions, States, and watersheds are targeted to address forestland restoration and protection would be most beneficial in the current Longleaf Pine CPA and other National Forestland areas in ecological impairment. Overall, enrollment in General CRP signup acreage and associated benefits to forestlands would be decreased under this alternative.

Wildlife

States with CREP Agreements would see additional wildlife benefits in areas targeted if approved practices consist of wildlife enhancement or wetland restoration conservation practices. Positive benefits to wildlife could be accomplished if multiple regions, States, and watersheds are targeted at specifically addressing wildlife habitat enhancement by utilizing collaborative decision making of all interested parties and an ecosystem-driven conservation initiative. Overall enrollment in General CRP signup acreage and associated benefits would be decreased under this alternative.

Benefits to T&E species and their habitat are not as likely at this level unless the species or habitat targeted encompasses large geographic areas, multiple States, or numerous watersheds. States with CREP Agreements would see additional T&E species and habitat benefits in areas targeted if approved practices consist of conservation practices targeting the species or species habitat in question.

Socioeconomic

Insignificant effect would be demonstrated on agricultural employment at the regional and State level with a potential increased uncertainty of producer income particularly for those non-farming landowners and part-time farmers. The magnitude of uncertainty is likely to be greater at the county or community level than at the regional or national level. There would likely be a change in the regional distribution of enrolled land with the decreased probability of the enrollment of entire fields providing a benefit in the increased supply of rental land. A potential increase in the supply of cropland and a possible reduction in enrollment due to it being a voluntary program would not ensure that all allocated acres are enrolled. The cost would be prohibitive. Some currently participating communities may experience reduced benefits. These impacts would be more concentrated in communities located in or near areas of program.

D. Proposed Action Alternative (FSA's Preferred Alternative)

Soils

Cumulative positive impacts on soils would continue as CRP is reauthorized and contracts are approved for 10 to 15 years with additional acreage allocated toward the program. The increased acreage could potentially reduce soil erosion by another 40 million tons. Marginal pastureland being devoted to vegetative cover would allow these areas to implement practices to help reduce soil erosion and reduce sediment runoff on these land types. An increase in the cropping history requirement has the potential to moderately impact soils by targeting cropland that has been under more intensive production and thus possibly more vulnerable to wind and water erosion than currently required to enroll in CRP. However, positive impacts would continue on those already vegetative areas because the new cropping history provision makes the breaking of new ground to create a cropping history impossible. Infeasible-to-farm areas smaller than 50 percent of the field size enrolled along with a buffer would contribute to some enhancement of soil quality, but only if enrolling it would contribute to reduced soil erosion rates. The ability to continue with existing cover where practicable and consistent with wildlife benefits of CRP would benefit soils by not removing the established vegetative cover. The potential for wind and water erosion on plowed fields would decrease. Managed haying, grazing, and harvesting will increase plant diversity and vigor. These practices should not produce any adverse impacts on soils because they must be included in the conservation plan or in the land management plan prior to contract approval. CREP Agreements would target areas within States to provide positive benefits to soil quality. Continued positive impacts on long-term soil quality would occur if States place CREP land under easement. Associated soil benefits of wetlands would increase as the FWP is opened to all States.

Water Quality

Major positive impacts on surface water quality would continue as CRP is reauthorized and contracts are approved for 10 to 15 more years with additional acreage allocated toward the program and additional acres being enrolled to replace expiring acres: A 40-million ton decrease in sediment would correlate to an increase in water quality and a decrease in nutrient and pesticide loads. Positive impacts in terms of reduced nonpoint source (NPS) pollutant loading to achieve TMDL's would occur when producers enroll land that has been cropped (4 out of 6 years prior to 2002 Farm Bill enactment), but the impact would be important only if contract land is located within a watershed having NPS issues. Marginal pastureland being devoted to vegetative cover would allow these areas to implement practices to help improve water quality and reduce sediment runoff on these land types. Infeasible to farm areas smaller than 50 percent of the field size enrolled along with a buffer would contribute to the enhancement of water quality, but only if conservation practices targeted at improving water quality are adopted. The ability to continue with existing cover where practicable and consistent with wildlife benefits of CRP would benefit water quality by not removing established vegetative cover and decreasing the potential for wind and water erosion on plowed fields. Managed haying, grazing, and harvesting practices should not produce adverse impacts on surface water based on the premise that the practices must be included in the conservation plan or in the land management plan prior to contract approval. Associated water quality benefits of wetlands would increase as FWP goes nationwide. CREP Agreements would target areas within States to provide positive benefits to water quality. CCRP would provide buffers along streams to reduce sediment runoff and subsequent water quality improvements would give direct positive benefits to aquatic species.

There would be continued cumulative positive impacts on groundwater quality as CRP is reauthorized and contracts are approved for 10 to 15 years with additional acreage allocated toward the program and additional acres being enrolled to replace expiring ones. Drinking water sources and groundwater in general would see a continued positive impact on both water quality and quantity, as cropland is taken out of production and enrolled in CRP. This would result in reduced levels of pesticides and fertilizers being used. Marginal pastureland being devoted to vegetative cover would allow these areas to implement practices to help improve groundwater quality and reduce chemical leaching on these land use types. An increase in the cropping history requirement has the potential to produce a positive impact on groundwater by targeting cropland that has been under more intensive production and thus possibly more vulnerable to leaching than currently required to enroll in CRP. Certain infeasible to farm areas less than 50 percent of the field size enrolled along with a buffer would contribute to some enhancement of groundwater quality, but only if conservation practices targeted at improving water quality are installed. The ability to continue with existing cover where practicable and consistent with wildlife benefits of CRP would benefit water quality by not removing established vegetative cover and decreasing the potential for wind and water erosion on plowed fields. Managed haying, grazing, and harvesting should not produce adverse impacts on surface water based on the premise that it must be included in the conservation plan or in the land management plan prior to contract approval. Associated groundwater quality benefits of wetlands would increase as FWP goes expands to all States. CREP Agreements would target areas within States to provide positive benefits to groundwater quality.

Floodplains, Riparian Areas, and Wetlands

The expansion of FWP would allow for an increased distribution and acreage of wetland restoration and buffers nationwide, decreasing the rate of sediment transport to adjacent water bodies and increasing the associated aquatic species benefits described under the No Action Alternative. The size of eligible wetlands would be increased from 5 acres to 10 acres, providing an increase in potential acreage that could benefit aquatic species by 2.8 million acres. Managed haying, grazing, and harvesting should not produce adverse impacts to aquatic species based on the premise that requirements for these practices must be included in the conservation plan or in the land management plan prior to contract approval, so aquatic species associated with the environmentally targeted enrolled land are not adversely affected. CREP Agreements would target areas within States to provide positive benefits to aquatic species. CCRP would provide buffers along streams to reduce sediment runoff, and subsequently improve water quality, which would have direct positive benefits on aquatic species.

Beneficial impacts to floodplains, as described under the No Action Alternative, would continue as CRP is reauthorized and contracts are approved for 10 to 15 more years with additional acreage allocated toward the program and additional acres being enrolled to replace expiring acres. There would be an increase in potential acreage of beneficial impacts to floodplains by 2.8 million acres. There would be continued benefits from hardwood tree contracts associated with floodplains for an additional year. Beneficial impacts to floodplains in States with CREP Agreements in place would be the same as those described under the No Action Alternative. Also, permanent easements under CREP would provide continued maintenance of floodplains functions and values.

Beneficial impacts to riparian areas, as described under the No Action Alternative, would continue as CRP is reauthorized and contracts are approved for 10 to 15 years with additional acreage allocated toward the program and additional acres being enrolled to replace expiring ones. There would be an increase in potential acreage of beneficial impacts to riparian areas by 2.8 million acres and continued benefits from hardwood tree contracts associated with riparian areas for an additional year. There would also be benefits from devotion of marginal pastureland to vegetation, particularly trees in riparian areas. The use of CCRP would target riparian areas by protecting them as buffers with permanent vegetative cover, which would reduce runoff. The ability to continue with existing cover where practicable and consistent with wildlife benefits of CRP will benefit associated riparian areas. Beneficial impacts to riparian areas in States with CREP Agreements in place would be the same as those described under the No Action Alternative. Also, permanent easements under CREP would provide continued maintenance of these riparian areas functions and values. Permitting haying and grazing in response to drought or other emergencies should have minor impacts on riparian areas. Potential increase in eligible acreage for buffer establishment when more than 50 percent of the field is eligible for enrollment and the other half is infeasible to farm. The increased distribution and acreage of wetland restoration and buffers nationwide through FWP expansion will benefit eligible associated riparian areas.

Beneficial impacts to wetlands, as described under the No Action Alternative, would continue as CRP is reauthorized and contracts are approved for 10 to 15 years with additional acreage allocated toward the program and additional acres being enrolled to replace expiring ones. There would be an increase in potential acreage of beneficial impacts to wetlands by 2.8 million acres. Land eligibility for CRP re-enrollment will extend associated beneficial impacts to wetlands for another 10 to 15 years. There would be continued benefits from hardwood tree contracts associated with wetlands for an additional year and an increase in potential wetland acres from conversion of marginal pastureland to wetlands. The ability to continue with existing cover where practicable and consistent with wildlife benefits of CRP will benefit wetland water quality by not removing established vegetative cover and increasing the potential for wind and water erosion on plowed-up fields. There would be beneficial impacts to wetland water quality from increased conservation of surface and groundwater in agricultural operations. An increased distribution of wetland restoration and buffer acreage would potentially be seen nationwide through the expansion of FWP. Wetland functions would potentially increase through FWP expansion of allowable wetland restoration acreage from 5 to 10 acres. State CREP Agreements could target sensitive areas with large numbers of wetlands and permanent easements could provide protection of wetlands and associated buffers.

Natural Vegetation

Grasslands throughout the country would benefit as more acreage is enrolled implementing the establishment of grass cover. However, new EBI scoring is currently being developed in connection with new regulations to implement CRP in accordance with the provisions of the 2002 Farm Bill. Ecological benefits associated with tree planting conservation practices would continue for an additional 10 to 15 years. Additional croplands enrolled and planted with tree practices would continue to cleanse silt and pollutants from runoff water, especially if installed

in riparian areas, thereby protecting and improving streams while simultaneously providing food and shelter for wildlife for an additional 10 to 15 years of CRP contracts. Marginal pastureland in additional tree practice acreage would continue to be enrolled along with other continuous practices that involve tree plantings, such as: Shelter belts, field windbreaks, and living snow fences implemented on sensitive cropland enrolled. However, the new provision would allow grasses, forbs, and shrubs to be planted on marginal pastureland along with trees, resulting in a positive impact through the creation of habitat from which multiple species may benefit. State CREP Agreements would target areas where plantings of certain species, such as hardwoods, would improve local ecosystems and provide associated benefits to water quality and wildlife.

Wildlife

Land with wildlife habitat benefits could be increased by almost 3 million acres. However, the amount of quality habitat would be dependent on the types of vegetation planted. Managed haying, grazing and harvesting, along with wind turbine placement, if done correctly and in accordance with conservation plans, would have little or no impact on resident wildlife. Permitting existing cover to continue, where practicable and consistent with wildlife benefits of CRP, would continue to have lasting positive impacts on wildlife habitat already established with vegetative cover. This would be true as long as the maintenance schedule documented in the conservation plan is followed. An increase in acreage allocated to CRP could increase the amount of upland game habitat, habitat used by birds and neo-tropical migrants and the amount of protected wetlands, simultaneously and proportionally increasing the recreation chances for those people who like to bird watch, hunt, fish, and to enjoy nature. State CREP Agreements would target specific areas with needs associated with wildlife habitat protection and restoration and achieve additional benefits. Permanent protection of wildlife through the use of easements could also be achieved with the use of State CREP Agreements. CCRP could provide positive benefits to certain wildlife species by establishing grassed and forested buffers.

Additional acreage allocated to CRP could potentially have a positive impact on almost 3 million additional acres of protected land that could be used, in part, as habitat by many T&E species. States with CREP Agreements would see additional T&E species and habitat benefits in areas targeted by the approved CREP agreement, if approved practices consist of conservation practices targeting the species or species habitat in question.

Socioeconomic

There would be insignificant adverse impacts on agricultural employment in areas gaining in CRP enrollment and potential insignificant adverse impacts on agricultural employment in areas losing CRP enrollment. No impact would be predicted on agricultural land rents at the regional and national level. Reallocation of income within the local economy with possible increased agricultural output, income in non-agricultural sectors of the economy and additional spending on agricultural inputs. Reallocation could affect leakage of value added from the local economy. There would be potential beneficial, long-term and nominal to moderate increase in agricultural land values from a reduction in the cropland supply and the capitalization of CRP income into land value. A potential increase in recreational opportunities and shifts in recreational opportunities between regions would provide certainty to the participants of CRP-related income over the long term.

The impacts would be similar to those identified under No Action Alternative. The changes would improve program performance and increase flexibility but would not substantially alter program effects on social community.

V. Rationale for Decision

The Proposed Action Alternative complies with the 2002 Farm Bill, provides FSA the most flexibility in terms of program implementation and environmental targeting, increases the significant positive benefits of CRP, and is the most balanced approach to achieving long-term program goals. The No Program Alternative was used as an analytical baseline. The Current Program Alternative would continue to produce positive benefits but without the enhancements of the 2002 Farm Bill. The Environmental Targeting Alternative runs a risk of under-enrollment and, therefore, lost environmental benefits. Many of the beneficial aspects of the environmental targeting alternative are already included in the proposed action through CREP and CCRP.

VI. Implementation and Monitoring

FSA will implement CRP, CREP, CCRP and FWP in a manner that provides the greatest amount of benefits to the environment while causing the least amount of adverse impacts. FSA will ensure that impacts are minimized through a process of completing site specific environmental evaluations for each approved contract as well as programmatic environmental assessments for CREP agreements.

Signed in Washington, DC, on May 2, 2003.

James R. Little,

Administrator, Farm Service Agency and Executive Vice President, Commodity Credit Corporation.

[FR Doc. 03–11406 Filed 5–5–03; 3:35 pm]

BILLING CODE 3410–05–P

Federal Register

Thursday,
May 8, 2003

Part VI

The President

Executive Order 13298—Termination of Emergency With Respect to the Actions and Policies of UNITA and Revocation of Related Executive Orders

Federal Register
Vol. 68, No. 89
Thursday, May 8, 2003

Presidential Documents

Title 3—

The President

Executive Order 13298 of May 6, 2003

Termination of Emergency With Respect to the Actions and Policies of Unita and Revocation of Related Executive Orders

By the authority vested in me as President by the Constitution and the laws of the United States of America, including the International Emergency Economic Powers Act (50 U.S.C. 1701 *et seq.*), the National Emergencies Act (50 U.S.C. 1601 *et seq.*) (NEA), section 5 of the United Nations Participation Act of 1945, as amended (22 U.S.C. 287c), and section 301 of title 3, United States Code, and in view of United Nations Security Council Resolution 1448 of December 9, 2002,

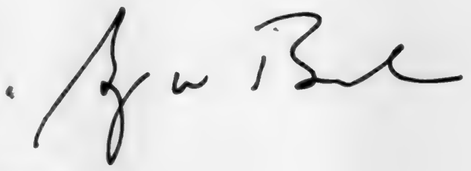
I, GEORGE W. BUSH, President of the United States of America, find that the situation that gave rise to the declaration of a national emergency in Executive Order 12865 of September 26, 1993, with respect to the actions and policies of the National Union for the Total Independence of Angola (UNITA), and that led to the steps taken in that order and in Executive Order 13069 of December 12, 1997, and Executive Order 13098 of August 18, 1998, has been significantly altered by the recent and continuing steps toward peace taken by the Government of Angola and UNITA. Accordingly, I hereby terminate the national emergency declared in Executive Order 12865, revoke Executive Orders 12865, 13069, and 13098, and order:

Section 1. Pursuant to section 202 of the NEA (50 U.S.C. 1622), termination of the national emergency with respect to the actions and policies of UNITA shall not affect any action taken or proceeding pending, not finally concluded or determined as of the effective date of this order, or any action or proceeding based on any act committed prior to the effective date of this order, or any rights or duties that matured or penalties that were incurred prior to the effective date of this order.

Sec. 2. This order in not intended to, and does not, create any right or benefit, substantive or procedural, enforceable at law or in equity by any party against the United States, or its departments, agencies, entities, officers, employees, or agents.

Sec. 3. (a) This order is effective 12:01 a.m. eastern daylight time on May 7, 2003.

(b) This order shall be transmitted to the Congress and published in the **Federal Register**.



THE WHITE HOUSE,
May 6, 2003.

[FR Doc. 03–11713
Filed 5–7–03; 11:14 am]
Billing code 3195–01–P

Reader Aids

Federal Register
Vol. 68, No. 89
Thursday, May 8, 2003

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General Information, indexes and other finding aids	202–741–6000
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Presidential Documents	
Executive orders and proclamations	741–6000
The United States Government Manual	741–6000
Other Services	
Electronic and on-line services (voice)	741–6020
Privacy Act Compilation	741–6064
Public Laws Update Service (numbers, dates, etc.)	741–6043
TTY for the deaf-and-hard-of-hearing	741–6086

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FEDERAL REGISTER PAGES AND DATE, MAY

23183–23376	1
23377–23568	2
23569–23884	5
23885–24332	6
24333–24604	7
24605–24858	8

CFR PARTS AFFECTED DURING MAY

At the end of each month, the Office of the Federal Register publishes separately a List of CFR Sections Affected (LSA), which lists parts and sections affected by documents published since the revision date of each title.

3 CFR

Proclamations:
7668 23821
7669 23823
7670 23825
7671 23827
7672 23829
7673 24333

Executive Orders:
12865 (Revoked by 13298) 24857
13069 (Revoked by 13298) 24857
13098 (Revoked by 13298) 24857
13298 24857

5 CFR

213 24605
Ch. XIV 23885
2424 23885
2429 23885
2471 23885
2472 23885

Proposed Rules:
2601 23876

7 CFR

46 23377
301 ..... 24605, 24613
932 23378
985 23569
1410 24830
1424 24596
1710 24335

Proposed Rules:
274 23927
276 23927
278 23927
279 23927
280 23927
360 23425
1530 23230

9 CFR

Proposed Rules:
2 24052

10 CFR

70 23574
71 23574
72 23183
73 23574

Proposed Rules:
20 23618
490 23620

12 CFR

740 23381

Proposed Rules:
613 ..... 23425, 23426

14 CFR

25 ..... 24336, 24338
39 ..... 23183, 23186, 23190, 23384, 23387, 23575, 23886, 24614
71 ..... 23577, 23579, 23580, 23581, 23682, 24340, 24341, 24342
77 23583
97 ..... 23888, 23889

Proposed Rules:
3 23808
39 ..... 23231, 23235, 23427, 23620, 24383
71 ..... 23622, 23624, 23625, 23626
119 24810
121 24810
135 24810
145 24810
330 23627

15 CFR

270 24343
902 24615

16 CFR

305 23584

Proposed Rules:
309 24669

17 CFR

232 24345

18 CFR

Proposed Rules:
35 24679

19 CFR

178 24052

20 CFR

404 23192
416 23192

21 CFR

310 24347
358 24347
1300 23195
1310 23195

Proposed Rules:
1 23630
101 23930
1310 24689

22 CFR

42 24638
228 23891

23 CFR

140 24639
646 24639

661 24642
Proposed Rules:
630 ..... 23239, 24384

24 CFR

203 23370

25 CFR

Proposed Rules:
170 23631

26 CFR

1 ..... 23586, 24349, 24351, 24644
301 24644
602 24644
Proposed Rules:
1 ..... 23632, 23931, 24404, 24405, 24406
54 24406
602 24406

29 CFR

Proposed Rules:
1480 23634
1910 23528

30 CFR

36 23892
917 24644
948 24355
950 24647

31 CFR

315 24794
351 24794
353 24794
359 24794
360 24794
363 24794
Proposed Rules:
103 ..... 23640, 23646, 23653

33 CFR

117 ..... 23390, 23590
165 ..... 23390, 23393, 23399, 23591, 23594, 23595, 23893, 23894, 23896, 24359, 24361
Proposed Rules:
165 ..... 23935, 24406, 24408

36 CFR

Proposed Rules:
1280 23430

37 CFR

Proposed Rules:
262 23241

38 CFR

Proposed Rules:
39 23249

39 CFR

Proposed Rules:
111 23937

40 CFR

52 ..... 23206, 23207, 23404, 23597, 23604, 24363, 24365, 24368
62 23209
63 ..... 23898, 24562, 24653
80 24300
81 24368
180 24370
271 ..... 23407, 23607
300 23211
Proposed Rules:
Ch. 1 24410
52 ..... 23270, 23430, 23661, 23662, 24416, 24417
60 24692
62 23272
80 24311
146 ..... 23666, 23673
300 23939

44 CFR

64 23408
67 23898
Proposed Rules:
67 23941

45 CFR

32 24052
148 23410
1309 23212

46 CFR

Proposed Rules:
540 23947

47 CFR

1 23417
73 ..... 23613, 23900, 23901
Proposed Rules:
1 23431
15 23677
73 24417

48 CFR

511 24372
516 24372
532 24372
538 24372
546 24372
552 24372
1802 23423
1806 23423
1815 23423
1816 23423
1843 23423
1845 23424

49 CFR

107 ..... 23832, 24653
171 ..... 23832, 24653
173 24653
176 23832
177 ..... 23832, 24653
180 24653
383 23844
384 23844
571 ..... 23614, 24664
1570 23852
1572 23852
Proposed Rules:
193 23272
572 24417
1137 23947

50 CFR

300 ..... 23224, 23901
600 23901
660 ..... 23901, 23913, 23924
679 ..... 23925, 24615, 24667, 24668
Proposed Rules:
18 24700
20 24324
622 23686
648 ..... 23275, 23948, 23949

REMINDERS

The items in this list were editorially compiled as an aid to Federal Register users. Inclusion or exclusion from this list has no legal significance.

RULES GOING INTO EFFECT MAY 8, 2003

ENVIRONMENTAL PROTECTION AGENCY
Air pollutants, hazardous; national emission standards:
Chemical recovery combustion sources at kraft, soda, sulfate, and stand-alone semichemical pulp mills
Correction; published 5-8-03

FEDERAL COMMUNICATIONS COMMISSION
Common carrier services:
Satellite communications—
18 GHz frequency band redesignation, satellite earth stations blanket licensing, and additional spectrum allocation for broadcast satellite service use; published 4-8-03

HOMELAND SECURITY DEPARTMENT
Coast Guard
Drawbridge operations:
Delaware; published 4-8-03

INTERIOR DEPARTMENT
Fish and Wildlife Service
Endangered and threatened species:
Critical habitat designations—
Bexar County, TX, invertebrate species; published 4-8-03
Scotts Valley polygonum; published 4-8-03

INTERIOR DEPARTMENT
Surface Mining Reclamation and Enforcement Office
Permanent program and abandoned mine land reclamation plan submissions:
Kentucky; published 5-8-03
Wyoming; published 5-8-03

LIBRARY OF CONGRESS
Copyright Office, Library of Congress
Copyright office and procedures:
Transfers and licenses of copyright granted in or after 1978; notices of termination; published 4-8-03

STATE DEPARTMENT
Visas; immigrant documentation:
Victims of terrorism; published 5-8-03

TRANSPORTATION DEPARTMENT
Federal Aviation Administration
Airworthiness directives:
Boeing; published 4-23-03
Bombardier; published 4-23-03
Raytheon; published 4-3-03

TRANSPORTATION DEPARTMENT
National Highway Traffic Safety Administration
Motor vehicle safety standards:
Occupant crash protection—
Child restraint anchorage systems; published 5-8-03

TREASURY DEPARTMENT
Fiscal Service
Book-entry Treasury savings bonds:
New Treasury Direct system; Series EE; published 5-8-03

COMMENTS DUE NEXT WEEK

AGRICULTURE DEPARTMENT
Agricultural Marketing Service
Blueberry promotion, research, and information order:
U.S. Highbush Blueberry Council; name change and membership increase; comments due by 5-12-03; published 3-12-03 [FR 03-05844]

AGRICULTURE DEPARTMENT
Agricultural Marketing Service
Hazelnuts grown in—
Oregon and Washington; comments due by 5-12-03; published 3-12-03 [FR 03-05843]
Onions grown in—
Texas; comments due by 5-12-03; published 3-11-03 [FR 03-05540]

AGRICULTURE DEPARTMENT
Agricultural Marketing Service
Pork promotion, research, and consumer information order; comments due by 5-12-03; published 3-13-03 [FR 03-06163]
Spearmint oil produced in Far West; comments due by 5-12-03; published 4-22-03 [FR 03-09844]

AGRICULTURE DEPARTMENT
Animal and Plant Health Inspection Service
Exportation and importation of animals and animal products:
Classical swine fever; disease status change—
East Anglia; comments due by 5-12-03; published 3-13-03 [FR 03-06059]
Noxious weeds:
Kikuyu grass cultivars; comments due by 5-16-03; published 5-2-03 [FR 03-10875]

AGRICULTURE DEPARTMENT
Farm Service Agency
Special programs:
Indian Tribal Land Acquisition Program; revision; comments due by 5-13-03; published 3-14-03 [FR 03-06162]

COMMERCE DEPARTMENT
National Oceanic and Atmospheric Administration
Fishery conservation and management:
Alaska; fisheries of Exclusive Economic Zone—
Crab species license limitation; comments due by 5-14-03; published 4-29-03 [FR 03-10556]
Rock sole and yellowfin sole; comments due by 5-12-03; published 3-28-03 [FR 03-07516]
Rock sole and yellowfin sole; comments due by 5-12-03; published 4-18-03 [FR 03-09618]

ENERGY DEPARTMENT
Federal Energy Regulatory Commission
Practice and procedure:
Critical Energy Infrastructure Information; comments due by 5-16-03; published 4-16-03 [FR 03-09267]

ENVIRONMENTAL PROTECTION AGENCY
Air pollutants, hazardous; national emission standards:
Primary aluminum reduction plants; comments due by 5-16-03; published 3-17-03 [FR 03-06303]

ENVIRONMENTAL PROTECTION AGENCY
Air pollution control:
State operating permits programs—
District of Columbia; comments due by 5-16-03; published 4-16-03 [FR 03-09343]

ENVIRONMENTAL PROTECTION AGENCY
Air pollution control:
State operating permits programs—
District of Columbia; comments due by 5-16-03; published 4-16-03 [FR 03-09344]
Air pollution control; new motor vehicles and engines:
Nonroad diesel engines; nonroad engine definition; comments due by 5-12-03; published 4-11-03 [FR 03-08956]
Air pollution; standards of performance for new stationary sources:
Gas turbines; comments due by 5-14-03; published 4-14-03 [FR 03-08151]
Air programs; approval and promulgation; State plans for designated facilities and pollutants:
Florida; comments due by 5-14-03; published 4-14-03 [FR 03-08954]

ENVIRONMENTAL PROTECTION AGENCY
Air programs; approval and promulgation; State plans for designated facilities and pollutants:
West Virginia; comments due by 5-12-03; published 4-11-03 [FR 03-08829]

ENVIRONMENTAL PROTECTION AGENCY
Air programs; approval and promulgation; State plans for designated facilities and pollutants:
West Virginia; comments due by 5-12-03; published 4-11-03 [FR 03-08830]
Air quality implementation plans:
Preparation, adoption, and submittal—
Air Quality Models Guideline; comments due by 5-15-03; published 4-15-03 [FR 03-08542]
Air quality implementation plans; approval and promulgation; various States:
California; comments due by 5-16-03; published 4-16-03 [FR 03-09042]

New York; comments due by 5-12-03; published 4-10-03 [FR 03-08826]

Wisconsin; comments due by 5-12-03; published 4-10-03 [FR 03-08535]

ENVIRONMENTAL PROTECTION AGENCY

Air quality implementation plans; approval and promulgation; various States:

Wisconsin; comments due by 5-12-03; published 4-10-03 [FR 03-08536]

Hazardous waste program authorizations:

Nebraska; comments due by 5-12-03; published 4-10-03 [FR 03-08835]

ENVIRONMENTAL PROTECTION AGENCY

Hazardous waste program authorizations:

Nebraska; comments due by 5-12-03; published 4-10-03 [FR 03-08836]

ENVIRONMENTAL PROTECTION AGENCY

Hazardous waste program authorizations:

Tennessee; comments due by 5-12-03; published 4-11-03 [FR 03-08664]

ENVIRONMENTAL PROTECTION AGENCY

Hazardous waste program authorizations:

Tennessee; comments due by 5-12-03; published 4-11-03 [FR 03-08665]

Texas; comments due by 5-15-03; published 4-15-03 [FR 03-09043]

ENVIRONMENTAL PROTECTION AGENCY

Hazardous waste program authorizations:

Texas; comments due by 5-15-03; published 4-15-03 [FR 03-09044]

ENVIRONMENTAL PROTECTION AGENCY

Hazardous waste program authorizations:

Utah; comments due by 5-12-03; published 4-10-03 [FR 03-08833]

ENVIRONMENTAL PROTECTION AGENCY

Hazardous waste program authorizations:

Utah; comments due by 5-12-03; published 4-10-03 [FR 03-08834]

Solid wastes:

Project XL (eXcellence and Leadership) program; site-specific projects—

IBM semiconductor manufacturing facility, Hopewell Junction, NY; comments due by 5-14-03; published 4-14-03 [FR 03-09047]

Water pollution; effluent guidelines for point source categories:

Pharmaceutical manufacturing; comments due by 5-12-03; published 3-13-03 [FR 03-05715]

ENVIRONMENTAL PROTECTION AGENCY

Water pollution; effluent guidelines for point source categories:

Pharmaceutical manufacturing; comments due by 5-12-03; published 3-13-03 [FR 03-05716]

FEDERAL COMMUNICATIONS COMMISSION

Common carrier services:

Interstate pay-per-call and other information services; toll-free numbers caller charges, etc.; comments due by 5-12-03; published 3-27-03 [FR 03-07319]

Radio frequency devices:

Unlicensed devices operating in additional frequency bands; feasibility; comments due by 5-16-03; published 4-21-03 [FR 03-09688]

Radio stations; table of assignments:

Alabama and Georgia; comments due by 5-12-03; published 4-10-03 [FR 03-08754]

California; comments due by 5-12-03; published 4-10-03 [FR 03-08753]

Oregon; comments due by 5-12-03; published 4-8-03 [FR 03-08407]

Television broadcasting:

Rural Translator Service; National Translation Association's rulemaking petition; comments due by 5-16-03; published 3-17-03 [FR 03-06274]

HOMELAND SECURITY DEPARTMENT
Customs Service

North American Free Trade Agreement (NAFTA):

Disassembly operations; tariff treatment; comments due by 5-12-03; published 3-13-03 [FR 03-06051]

HOUSING AND URBAN DEVELOPMENT DEPARTMENT

Mortgage and loan insurance programs:

Single family mortgage insurance—

Adjustable rate mortgages; eligibility; comments due by 5-12-03; published 3-11-03 [FR 03-05890]

INTERIOR DEPARTMENT
Fish and Wildlife Service

Endangered and threatened species:

Critical habitat designations—

Bull trout; Klamath River and Columbia River distinct population segments; comments due by 5-12-03; published 2-11-03 [FR 03-03369]

Desert yellowhead; comments due by 5-13-03; published 3-14-03 [FR 03-06131]

Migratory bird hunting:

Seasons, limits, and shooting hours; establishment, etc.; comments due by 5-15-03; published 5-6-03 [FR 03-11155]

Migratory bird permits:

Double-crested cormorant management; comments due by 5-16-03; published 3-17-03 [FR 03-06174]

INTERIOR DEPARTMENT
Surface Mining Reclamation and Enforcement Office

Permanent program and abandoned mine land reclamation plan submissions:

Texas; comments due by 5-12-03; published 4-10-03 [FR 03-08807]

West Virginia; comments due by 5-14-03; published 4-14-03 [FR 03-09033]

ARTS AND HUMANITIES, NATIONAL FOUNDATION
National Foundation on the Arts and the Humanities

Supplemental standards of ethical conduct for Institute of Museum and Library Sciences employees; comments due by 5-14-03; published 4-14-03 [FR 03-08989]

SECURITIES AND EXCHANGE COMMISSION

Securities and investment companies:

Sarbanes-Oxley Act of 2002; implementation—

Exchange Act reports; disclosure certification; comments due by 5-15-03; published 3-31-03 [FR 03-07310]

TRANSPORTATION DEPARTMENT
Federal Aviation Administration

Aircraft products and parts; certification procedures:

Production Approval Holder's quality system; products and/or parts that have left system, performing work on; policy statement; comments due by 5-12-03; published 3-12-03 [FR 03-05926]

Airworthiness directives:

Aerospatiale; comments due by 5-12-03; published 4-11-03 [FR 03-08891]

Airbus; comments due by 5-12-03; published 4-11-03 [FR 03-08893]

BAE Systems (Operations) Ltd.; comments due by 5-15-03; published 4-15-03 [FR 03-09137]

Boeing; comments due by 5-12-03; published 4-15-03 [FR 03-09138]

Eurocopter France; comments due by 5-13-03; published 3-14-03 [FR 03-06137]

Lockheed Martin; comments due by 5-12-03; published 3-11-03 [FR 03-05582]

Pilatus; comments due by 5-12-03; published 4-4-03 [FR 03-08199]

TRANSPORTATION DEPARTMENT
Federal Aviation Administration

Airworthiness directives:

Raytheon; comments due by 5-17-03; published 4-3-03 [FR 03-08066]

TRANSPORTATION DEPARTMENT
Federal Aviation Administration

Airworthiness directives:

Rolls-Royce Deutschland Ltd. & Co. KG; comments due by 5-12-03; published 3-11-03 [FR 03-05583]

TRANSPORTATION DEPARTMENT
Federal Aviation Administration

Airworthiness directives:

Rolls-Royce plc; comments due by 5-12-03; published 3-11-03 [FR 03-05691]

Titeflex Corp.; comments due by 5-12-03; published 3-13-03 [FR 03-06043]

TRANSPORTATION DEPARTMENT
Federal Aviation Administration

Class E airspace; comments due by 5-15-03; published 4-4-03 [FR 03-08142]

TRANSPORTATION DEPARTMENT
Federal Aviation Administration

Class E2 airspace; comments due by 5-15-03; published 4-15-03 [FR 03-09081]

TREASURY DEPARTMENT
Foreign Assets Control Office

Iranian transactions and Iraqi sanctions regulations:

Humanitarian activities by nongovernmental organizations; authorization; comments due by 5-12-03; published 3-12-03 [FR 03-05952]

TREASURY DEPARTMENT
Alcohol and Tobacco Tax and Trade Bureau

Electronic signatures; electronic submission of forms; comments due by 5-12-03; published 4-11-03 [FR 03-08816]

LIST OF PUBLIC LAWS

This is a continuing list of public bills from the current session of Congress which have become Federal laws. It may be used in conjunction with "PLUS" (Public Laws Update Service) on 202–741–6043. This list is also available online at *http://www.nara.gov/fedreg/plawcurr.html*.

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H.R. 1770/P.L. 108–20

Smallpox Emergency Personnel Protection Act of 2003 (Apr. 30, 2003; 117 Stat. 638)

S. 151/P.L. 108–21

Prosecutorial Remedies and Other Tools to end the Exploitation of Children Today Act of 2003 (Apr. 30, 2003; 117 Stat. 650)

Last List April 29, 2003

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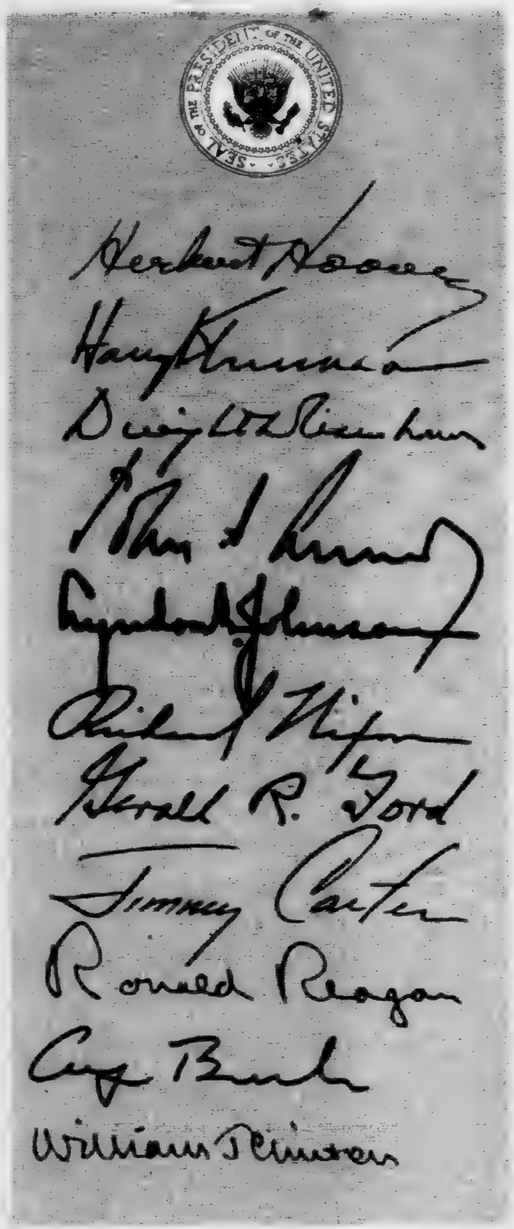
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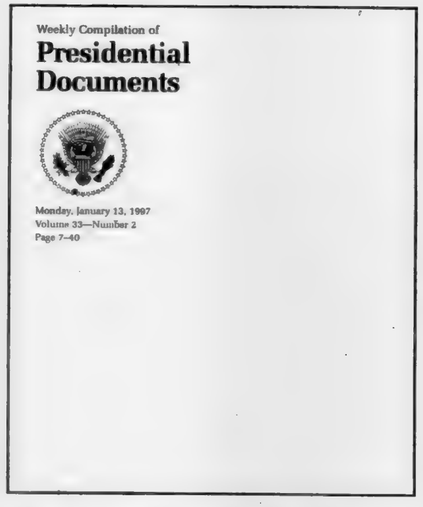
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Contents

Federal Register
Vol. 68, No. 90
Friday, May 9, 2003

Agriculture Department
See Animal and Plant Health Inspection Service
See Forest Service
See Grain Inspection, Packers and Stockyards Administration
See Natural Resources Conservation Service

Air Force Department
RULES
Privacy Act; implementation, 24881–24882
NOTICES
Privacy Act:
Systems of records, 24944–24953

Alcohol and Tobacco Tax and Trade Bureau
PROPOSED RULES
Alcoholic beverages:
Labeling and advertising; organic claims, 24903–24904
NOTICES
Agency information collection activities; proposals, submissions, and approvals, 25085–25087

Animal and Plant Health Inspection Service
NOTICES
Environmental statements; availability, etc.:
Phalaenopsis orchids from Taiwan; approved growing media, 24915

Army Department
See Engineers Corps
NOTICES
Privacy Act:
Systems of records, 24954–24959

Blind or Severely Disabled, Committee for Purchase From People Who Are
See Committee for Purchase From People Who Are Blind or Severely Disabled

Centers for Disease Control and Prevention
NOTICES
Grants and cooperative agreements; availability, etc.:
Community-Focused Initiative to Reduce Burden of Asthma, Diabetes, and Obesity, 25035–25047
Meetings:
Healthcare Infection Control Practices Advisory Committee, 25047

Citizenship and Immigration Services Bureau
NOTICES
Agency information collection activities; proposals, submissions, and approvals, 25054–25055

Coast Guard
RULES
Drawbridge operations:
Louisiana, 24883
New Jersey, 24882
New York, 24882–24883
Ports and waterways safety:
Neches River, TX; safety zones, 24883–24885

Commerce Department
See International Trade Administration
See National Oceanic and Atmospheric Administration
RULES
Employee responsibilities and conduct:
Obsolete regulations removed, 24878–24879
NOTICES
Agency information collection activities; proposals, submissions, and approvals, 24919–24920

Committee for Purchase From People Who Are Blind or Severely Disabled
NOTICES
Procurement list; additions and deletions, 24918–24919

Committee for the Implementation of Textile Agreements
NOTICES
Export visa requirements; certification, waivers, etc.:
Korea, 24929–24930

Commodity Futures Trading Commission
RULES
Currency and foreign transactions; financial reporting and recordkeeping requirements:
USA PATRIOT Act; implementation—
Futures commission merchants and introducing brokers; customer identification programs, 25148–25162

Comptroller of the Currency
RULES
Currency and foreign transactions; financial reporting and recordkeeping requirements:
USA PATRIOT Act; implementation—
Banks, savings associations, credit unions, etc.; customer identification programs, 25089–25113

Defense Department
See Air Force Department
See Army Department
See Engineers Corps
See Navy Department
RULES
Acquisition regulations:
Foreign acquisition
Correction, 25088
Privacy Act; implementation, 24880–24881
NOTICES
Agency information collection activities; proposals, submissions, and approvals, 24930–24931
Meetings:
Defense Business Practice Implementation Board, 24931–24932
Science Board, 24932
Scientific Advisory Board, 24932
Privacy Act:
Systems of records, 24935–24944
Inspector General, 24932–24933, 24937–24938
Joint Chiefs Office, 24934–24935

Education Department
NOTICES
Grants and cooperative agreements; availability, etc.:
Elementary and secondary education—
Foreign Language Assistance Program, 24978–25004
National Institute on Disability and Rehabilitation Research—
Disability and Rehabilitation Research Projects and Centers Program, 25006–25019
Rehabilitation Research and Training Centers Program, 25004–25006, 25019–25023

Employment and Training Administration
NOTICES
Adjustment assistance:
Alcatel USA Marketing, Inc., 25061–25062
Alpha Omega Jet Services, Inc., 25062
Atlantic Metal Products, 25062
BASF Corp., 25062
Casco Products, Inc., 25062
Chorum Technologies, L.P., 25063
Daniel Blanton, 25063
Diamond Brands, 25063
Garden State Tanning, 25063
International Garment Processors, 25063
Lonestar Cutting Services, Inc., 25063
Lonza Group, 25064
Malthus Diagnostics, Inc., 25064
Mann Edge Tool Co. et al., 25064
Powerex, Inc., 25064
Tecumseh Products Co., 25064–25065
Tower Automotive, Inc., 25065
Zilog, Inc., 25065
Adjustment assistance and NAFTA transitional adjustment assistance:
Arizona Chemical Co. et al., 25059–25061

Employment Standards Administration
NOTICES
Minimum wages for Federal and federally-assisted construction; general wage determination decisions, 25065–25066

Engineers Corps
NOTICES
Environmental statements; availability, etc.:
Lee and Bastrop Counties, TX; Aluminum Co. of America, Inc.'s Three Oaks Mine, 24959

Environmental Protection Agency
RULES
Air quality implementation plans; approval and promulgation; various States:
Illinois, 24885–24888
Superfund program:
Small Business Liability Relief and Brownsfields Revitalization Act; innocent landowners; standards and practices for all appropriate inquiry, 24888–24891
NOTICES
Environmental statements; availability, etc.:
Agency statements—
Comment availability, 25023–25026
Weekly receipts, 25023
Pesticide, food, and feed additive petitions:
Jeneil Biosurfactant Co., 25026–25029
Reports and guidance documents; availability, etc.:
Permitting information and Federal facility identification; data standards, 25029–25032
Waste Isolation Pilot Plant; determinations of compliance with applicable Federal environmental laws (2000-2002), 25032

Executive Office of the President
See Management and Budget Office
See Presidential Documents

Federal Aviation Administration
RULES
Airworthiness directives:
Rolls-Royce Deutschland Ltd. & Co. KG, 24861
Area navigation routes, 24864–24866
Class D and Class E airspace, 24866–24868
Class E airspace, 24868–24874
Jet routes, 24874
NOTICES
Air traffice operating and flight rules, etc.:
Oceanic airspace designation; correction, 25081–25082
Exemption petitions; summary and disposition, 25082
Passenger facility charges; applications, etc.:
Acadiana Regional Airport, LA, 25082–25083

Federal Communications Commission
NOTICES
Agency information collection activities; proposals, submissions, and approvals, 25032–25033

Federal Deposit Insurance Corporation
RULES
Currency and foreign transactions; financial reporting and recordkeeping requirements:
USA PATRIOT Act; implementation—
Banks, savings associations, credit unions, etc.; customer identification programs, 25089–25113

Federal Highway Administration
NOTICES
Environmental statements; notice of intent:
Solano County, CA, 25083

Federal Railroad Administration
RULES
Railroad safety enforcement procedures:
Small entities subject to railroad safety laws; policy statement, 24891–24895
NOTICES
Agency information collection activities; proposals, submissions, and approvals, 25083–25084

Federal Reserve System
RULES
Currency and foreign transactions; financial reporting and recordkeeping requirements:
USA PATRIOT Act; implementation—
Banks, savings associations, credit unions, etc.; customer identification programs, 25089–25113
NOTICES
Banks and bank holding companies:
Change in bank control, 25033–25034
Formations, acquisitions, and mergers, 25034

Fish and Wildlife Service
NOTICES
Comprehensive conservation plans; availability, etc.:
National Key Deer Refuge, FL, 25058

Environmental statements; availability, etc.:
Incidental take permits—
Waterman's Realty Co./Winchester Creek L.P.; Delmarva fox squirrel, 25058–25059

Food and Drug Administration
RULES
Organization, functions, and authority delegations:
Dockets Management Branch; address change, 24879–24880
PROPOSED RULES
Public Health Security and Bioterrorism Preparedness and Response Act of 2002; implementation:
Food for human and animal consumption; manufacturing, processing, packing, transporting, distribution, etc.; records establishment and maintenance, 25187–25240
Food for human consumption; administrative detention, 25241–25271
NOTICES
Food additive petitions:
Food Steris Corp., 25048
Meetings:
FDA and OCRA: Understanding the Changing Landscape; educational conference, 25049
Psychopharmacologic Drugs Advisory Committee, 25049
Risk management activities; workshop, 25049–25050
Toxicological Research National Center Science Advisory Board, 25050–25051
Reports and guidance documents; availability, etc.:
Dental amalgam in humans; information request, 25047–25048
FDA Modernization Act of 1997—
Recognized Standards List modifications (Recognition List Number: 008); correction, 25051

Forest Service
NOTICES
Meetings:
Resource Advisory Committees—
North Mt. Baker-Snoqualmie, 24916

General Services Administration
NOTICES
Federal travel:
Per diem localities; maximum lodging and meal allowances, 25034–25035

Grain Inspection, Packers and Stockyards Administration
RULES
Fees:
Rice inspection services, 24859–24861

Health and Human Services Department
See Centers for Disease Control and Prevention
See Food and Drug Administration
See Health Resources and Services Administration
See Indian Health Service
See Substance Abuse and Mental Health Services Administration

Health Resources and Services Administration
NOTICES
Grants and cooperative agreements; availability, etc.:
Black Lung Clinics Program, 25051–25052
National Health Service Corps:
Recruitment of clinicians to become commissioned officers and of sites for assignment of CO's, 25052–25053

Homeland Security Department
See Citizenship and Immigration Services Bureau
See Coast Guard

Housing and Urban Development Department
NOTICES
Grant and cooperative agreement awards:
Indian Community Development Block Grant Program, 25055–25057
Grants and cooperative agreements; availability, etc.:
Facilities to assist homeless—
Excess and surplus Federal property, 25057

Indian Health Service
NOTICES
Grants and cooperative agreements; availability, etc.:
American Indian and Alaska Native Children, Youth, and Families Mental Health and Community Safety Initiative; correction, 25088

Interior Department
See Fish and Wildlife Service
See Land Management Bureau
See National Park Service

Internal Revenue Service
RULES
Income taxes:
Stock dispositions; suspension of losses
Correction, 24880
PROPOSED RULES
Income taxes:
Partnership; noncompensatory options
Hearing cancellation, 24903
Split-dollar life insurance arrangements; hearing, 24898–24903

International Trade Administration
NOTICES
Antidumping:
Oil country tubular goods from—
Mexico, 24920
Countervailing duties:
Stainless steel sheet and strip in coils from—
France, 24921–24928
Applications, hearings, determinations, etc.:
Health and Human Services Department, National Institutes of Health, NC, 24921
Vanderbilt University, 24921

Labor Department
See Employment and Training Administration
See Employment Standards Administration
See Mine Safety and Health Administration
See Occupational Safety and Health Administration

Land Management Bureau
NOTICES
Meetings:
Resource Advisory Committees—
Coos Bay District, 25059

Management and Budget Office
NOTICES
Reports and guidance documents; availability, etc.:
Small Business Paperwork Relief Task Force; draft report, 25165–25186

Mine Safety and Health Administration
NOTICES
Agency information collection activities; proposals, submissions, and approvals, 25066–25068

National Credit Union Administration
RULES
Currency and foreign transactions; financial reporting and recordkeeping requirements:
USA PATRIOT Act; implementation—
Banks, savings associations, credit unions, etc.; customer identification programs, 25089–25113

National Oceanic and Atmospheric Administration
PROPOSED RULES
Fishery conservation and management:
Northeastern United States fisheries—
Northeast multispecies; correction, 24914
Marine mammals:
Incidental taking—
San Nicolas Island, CA; missile launch operations; pinnipeds, 24905–24913
NOTICES
Permits:
Endangered and threatened species, 24928–24929

National Park Service
RULES
Airworthiness directives:
New Piper Aircraft, Inc., 24861–24864

Natural Resources Conservation Service
NOTICES
Environmental statements; availability, etc.:
Glen Ellen Subwatershed, IA, 24916–24918

Navy Department
PROPOSED RULES
Privacy Act; implementation, 24904–24905
NOTICES
Privacy Act:
Systems of records, 24959–24978

Nuclear Regulatory Commission
NOTICES
Environmental statements; availability, etc.:
Florida Power Corp., 25069–25070
Pathfinder Mines Corp., 25070–25071

Occupational Safety and Health Administration
NOTICES
Reports and guidance documents; availability, etc.:
Ergonomics for prevention of musculoskeletal disorders; retail grocery store guidelines, 25068–25069

Office of Management and Budget
See Management and Budget Office

Presidential Documents
PROCLAMATIONS
Special observances:
Mother's Day (Proc. 7674), 25277–25278
EXECUTIVE ORDERS
Termination of Emergency with respect to the actions and policies of UNITA and revocation of related Executive Orders **[Editorial Note:** The entry for this document, published at 68 FR 24857 in the **Federal Register** of May 8, 2003, was inadvertently omitted from that issue's table of contents under Presidential Documents.], 24855–24858
ADMINISTRATIVE ORDERS
Iraq; delegation of functions under the Emergency Wartime Supplemental Appropriations Act, 2003 (Memorandum of May 6, 2003), 25273–25275

Railroad Retirement Board
NOTICES
Meetings:
Actuarial Advisory Committee, 25071

Securities and Exchange Commission
RULES
Currency and foreign transactions; financial reporting and recordkeeping requirements:
USA PATRIOT Act; implementation—
Broker-dealers; customer identification programs, 25112–25131
Mutual funds; customer identification programs, 25130–25149
NOTICES
Meetings; Sunshine Act, 25071
Self-regulatory organizations; proposed rule changes:
New York Stock Exchange, Inc., 25071–25074
Pacific Exchange, Inc., 25074–25076
Philadelphia Stock Exchange, Inc., 25076–25079

Small Business Administration
NOTICES
Disaster loan areas:
Texas, 25079
Meetings:
District and regional advisory councils—
Texas, 25079
Regional Fairness Boards—
Region V; hearing, 25079–25080

Social Security Administration
PROPOSED RULES
Social security benefits and supplemental security income:
Federal old-age, survivors, and disability benefits, and aged, blind, and disabled—
Immune system disorders; medical criteria for evaluation, 24896–24898

State Department
RULES
International Traffic in Arms regulations:
U.S. Munitions List; amendments; correction, 25088
NOTICES
Meetings:
Shipping Coordinating Committee, 25080–25081

Substance Abuse and Mental Health Services Administration
NOTICES
Grants and cooperative agreements; availability, etc.:
Community Action Grant for Service Systems Change, 25053–25054

Surface Transportation Board
NOTICES
Railroad operation, acquisition, construction, etc.:
Norfolk Southern Railway Co., 25084–25085

Textile Agreements Implementation Committee
See Committee for the Implementation of Textile Agreements

Thrift Supervision Office
RULES
Currency and foreign transactions; financial reporting and recordkeeping requirements:
USA PATRIOT Act; implementation—
Banks, savings associations, credit unions, etc.; customer identification programs, 25089–25113

Transportation Department
See Federal Aviation Administration
See Federal Highway Administration
See Federal Railroad Administration
See Surface Transportation Board
RULES
Special regulations:
Air travel; nondiscrimination on basis of disability—
Service animals in air transportation; guidance, 24874–24878
PROPOSED RULES
Computer reservation systems, carrier-owned:
General policy statements, 24896

Treasury Department
See Alcohol and Tobacco Tax and Trade Bureau
See Comptroller of the Currency
See Internal Revenue Service
See Thrift Supervision Office
RULES
Currency and foreign transactions; financial reporting and recordkeeping requirements:
USA PATRIOT Act; implementation—
Banks, savings associations, credit unions, etc.; customer identification programs, 25089–25113
Broker-dealers; customer identification programs, 25112–25131
Futures commission merchants and introducing brokers; customer identification programs, 25148–25162
Mutual funds; customer identification programs, 25130–25149
PROPOSED RULES
Currency and foreign transactions; financial reporting and recordkeeping requirements:
USA PATRIOT Act; implementation—
Banks lacking Federal functional regulator; customer identification programs, 25162–25164
NOTICES
Agency information collection activities; proposals, submissions, and approvals, 25085

Veterans Affairs Department
NOTICES
Real property; enchanced-use leases:
Butler, PA; Veterans Affairs Medical Center, 25087

Separate Parts In This Issue

Part II
Treasury Department, Comptroller of the Currency, Thrift Supervision Office; Commodity Futures Trading Commission, Federal Deposit Insurance Corporation, Federal Reserve System, National Credit Union Administration, and Securities and Exchange Commission, 25089–25164

Part III
Executive Office of the President, Management and Budget Office, 25165–25186

Part IV
Health and Human Services Department, Food and Drug Administration, 25187–25240

Part V
Health and Human Services Department, Food and Drug Administration, 25241–25271

Part VI
Executive Office of the President, Presidential Documents, 25273–25275, 25277–25278

Reader Aids

Consult the Reader Aids section at the end of this issue for phone numbers, online resources, finding aids, reminders, and notice of recently enacted public laws.

To subscribe to the Federal Register Table of Contents LISTSERV electronic mailing list, go to http://listserv.access.gpo.gov and select Online mailing list archives, FEDREGTOC-L, Join or leave the list (or change settings); then follow the instructions.

CFR PARTS AFFECTED IN THIS ISSUE

A cumulative list of the parts affected this month can be found in the Reader Aids section at the end of this issue.

3 CFR
Proclamations:
7674 25277
Administrative Orders:
Memorandums:
Memorandum of May 6, 2003 25275

7 CFR
868 24859

12 CFR
21 25090
208 25090
211 25090
326 25090
563 25090
748 25090

14 CFR
39 (2 documents) 24861
71 (8 documents) 24864, 24866, 24868, 24869, 24870, 24871, 24872, 24874
382 24874
Proposed Rules:
255 24896
399 24896

15 CFR
0 24878

17 CFR
42 25149
270 25131

20 CFR
Proposed Rules:
404 24896
416 24896

21 CFR
Ch. 1 24879
Proposed Rules:
1 (2 documents) 25242, 25188
11 25188
16 25242

22 CFR
121 25088

26 CFR
1 24880
Proposed Rules:
1 (2 documents) 24898, 24903

27 CFR
Proposed Rules:
4 24903
5 24903
7 24903
13 24903

31 CFR
103 (4 documents) 25090, 25149, 25113, 25163,
Proposed Rules:
103 25163

32 CFR
311 24880
806B 24881
Proposed Rules:
701 24904

33 CFR
117 (3 documents) 24882, 24883
165 24883

40 CFR
52 24885
312 24888

48 CFR
225 25088
252 25088

49 CFR
209 24891

50 CFR
Proposed Rules:
216 24905
648 24914

Rules and Regulations

Federal Register
Vol. 68, No. 90
Friday, May 9, 2003

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

DEPARTMENT OF AGRICULTURE

Grain Inspection, Packers and Stockyards Administration

7 CFR Part 868

RIN 0580–AA82

Fees for Rice Inspection Services

AGENCY: Grain Inspection, Packers and Stockyards Administration, USDA.

ACTION: Final rule.

SUMMARY: The Grain Inspection, Packers and Stockyards Administration (GIPSA) is implementing an approximate 4.1 percent increase in fees for all hourly rates and certain unit rates for inspection services performed under the Agricultural Marketing Act (AMA) of 1946 in the rice inspection program. These increases are needed to cover increased operational costs resulting from the mandated January 2003 Federal pay increase.

EFFECTIVE DATE: June 9, 2003.

FOR FURTHER INFORMATION CONTACT: David Orr, Director, Field Management Division, at his E-mail address: *David.M.Orr@.usda.gov*, or telephone him at (202) 720–0228.

SUPPLEMENTARY INFORMATION:

Executive Order 12866, the Regulatory Flexibility Act, and the Paperwork Reduction Act

This final rule has been determined to be nonsignificant for the purpose of Executive Order 12866 and, therefore, has not been reviewed by the Office of Management and Budget.

Also, pursuant to the requirements set forth in the Regulatory Flexibility Act, Donna Reifschneider, Administrator, GIPSA, has determined that this final rule will not have a significant economic impact on a substantial number of small entities as defined in the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*).

GIPSA regularly reviews its user-fee programs to determine if the fees are adequate and continues to seek cost-saving opportunities and implement appropriate changes to reduce costs. Such actions can provide alternatives to fee increases. Employee salaries and benefits are major program costs that account for approximately 84 percent of GIPSA's total operating budget. The mandated January 2003 general and locality salary increase that averages 4.1 percent for all GIPSA employees has increased program costs in the rice inspection program.

The existing fee schedule for GIPSA's rice inspection program will not generate sufficient revenues to cover program costs while maintaining an adequate reserve balance. Fees for this program are in Tables 1 and 2 of 7 CFR 868.91. In Fiscal Year (FY) 2000, operating costs in the rice program were $4,034,964 with revenue of $4,837,116 that resulted in a positive margin of $802,152 and a positive reserve of $406,359. In FY 2001, operating costs in the rice program were $3,842,326 with revenue of $4,102,960 that resulted in a positive margin of $260,634 and a positive reserve of $611,654. In FY 2002, operating costs in the rice program were $3,882,574 with revenue of $3,885,121 that resulted in a positive margin of $2,547 and a positive reserve of $311,596. The current positive reserve balance of $311,596 is below the desired 3-month reserve of approximately $1 million.

GIPSA has reviewed the financial position of our rice inspection program based on the increased salary and benefit costs, along with the projected FY 2003 workload. Even though the financial status of the rice inspection program has improved, GIPSA has concluded that it cannot absorb the increased costs caused by the 4.1 percent salary increase with the small positive reserve balance. This fee increase will collect an estimated $155,500 in additional revenues in the rice program based on the projected FY 2003 work volume of 3.4 million metric tons.

This fee increase applies primarily to GIPSA customers that produce, process, and market rice for the domestic and international markets. There are approximately 550 such customers located primarily in Arkansas, Louisiana, and Texas. Many of these customers meet the criteria for small entities established by the Small Business Administration criteria for small businesses. Even though the fees are being increased, the increase will not be excessive (4.1 percent) and should not significantly affect those entities. Those entities are under no obligation to use GIPSA's service and, therefore, any decision on their part to discontinue the use of service should not prevent them from marketing their products.

There will be no additional reporting or record keeping requirements imposed by this final action. In compliance with the Paperwork Reduction Act of 1995 (44 U.S.C. 35), the information collection and record keeping requirements in part 868 have been previously approved by the Office of Management and Budget under control number 0580–0013. GIPSA has not identified any other Federal rules which may duplicate, overlap, or conflict with this final rule.

Executive Order 12988

This final rule has been reviewed under Executive Order 12988, Civil Justice Reform. This final action is not intended to have a retroactive effect. This final action will not preempt any State or local laws, regulations, or policies unless they present irreconcilable conflict with this rule. There are no administrative procedures that must be exhausted prior to any judicial challenge to the provisions of this final rule.

Background

In the February 28, 2003, **Federal Register** (68 FR 9593) GIPSA proposed an approximate 4.1 percent increase in fees for rice inspection services performed under the Agricultural Marketing Act of 1946. Under the provisions of the AMA (7 U.S.C. 1621, *et seq.*), rice inspection services are provided upon request and GIPSA must collect a fee from the customer to cover the cost of providing such services. Section 203 (h) of the AMA (7 U.S.C. 1622 (h)) provides for the establishment and collection of fees that are reasonable and, as nearly as practicable, cover the costs of the services rendered. These fees cover the GIPSA administrative and supervisory costs for the performance of official services, including personnel compensation and benefits, travel, rent, communications, utilities, contractual

services, supplies, and equipment. The existing fee schedule for GIPSA's rice inspection program will not generate sufficient revenues to cover program costs while maintaining an adequate reserve balance. Fees for this program are in Tables 1 and 2 of 7 CFR 868.91. In FY 2000, operating costs in the rice program were $4,034,964 with revenue of $4,837,116 that resulted in a positive margin of $802,152 and a positive reserve of $406,359. In FY 2001, operating costs in the rice program were $3,842,326 with revenue of $4,102,960 that resulted in a positive margin of $260,634 and a positive reserve of $611,654. In FY 2002, operating costs in the rice program were $3,882,574 with revenue of $3,885,121 that resulted in a positive margin of $2,547 and a positive reserve of $311,596. The current positive reserve balance of $311,596 is below the desired 3-month reserve of approximately $1 million.

GIPSA has reviewed the financial position of its rice inspection program based on the projected increased salary and benefit costs, along with the projected FY 2003 workload. Even though the financial status of the rice inspection program has improved, GIPSA has concluded that with the small positive reserve balance it cannot absorb the increased costs caused by the 4.1 percent salary increase. This fee increase will collect an estimated $155,500 in additional revenues in the rice program based on the projected FY 2003 work volume of 3.4 million metric tons.

In 7 CFR 868.91, Table 1—Hourly Rates/Unit Rate Per CWT and Table 2—Unit Rates, currently the regular workday contract and noncontract fees are $44.60 and $54.30, respectively, while the nonregular workday contract and noncontract fees are $61.80 and $75.00, respectively. The unit rate per hundredweight for export port services is currently $0.054 per hundredweight. The rice inspection programs current unit rates are:

Service	Rough rice	Brown rice for processing	Milled rice
Inspection for quality (per lot, sublot, or sample inspection)	$34.80	$30.00	$21.50
Factor analysis for any single factor (per factor):			
(a) Milling yield (per sample)	27.00	27.00	.....
(b) All other factors (per factor)	12.90	12.90	12.90
Total oil and free fatty acid	.....	42.60	42.60
Interpretive line samples:			
(a) Milling degree (per set)	.....	.....	91.00
(b) Parboiled light (per sample)	.....	.....	22.60
Extra copies of certificates (per copy)	3.00	3.00	3.00

Comment Review

GIPSA received no comments in response to the proposed rulemaking published February 28, 2003, in the **Federal Register** at (68 FR 9593).

Final Action

Section 203 of the AMA (7 U.S.C. 1622) provides for the establishment and collection of fees that are reasonable and, as nearly as practicable, cover the costs of the service rendered. These fees cover the GIPSA costs, including administrative and supervisory costs, for the performance of official services, including personnel compensation, personnel benefits, travel, rent, communications, utilities, contractual services, supplies, and equipment.

List of Subjects in 7 CFR Part 868

Administrative practice and procedure, Agricultural commodities.

■ For reasons set out in the preamble, 7 CFR part 868 is amended as follows:

PART 868—GENERAL REGULATIONS AND STANDARDS FOR CERTAIN AGRICULTURAL COMMODITIES

■ 1. The authority citation for part 868 continues to read as follows:

Authority: Secs. 202–208, 60 Stat. 1087 as amended (7 U.S.C. 1621, *et seq.*)

■ 2. Section 868.91 is revised to read as follows:

§ 868.91 Fees for certain Federal rice inspection services.

The fees shown in Tables 1 and 2 apply to Federal rice inspection services.

TABLE 1—HOURLY RATES/UNIT RATE PER CWT.

[Fees for Federal Rice Inspection Services]

Service [1]	Regular Workday (Monday–Saturday)	Nonregular Workday (Sunday–Holiday)
Contract (per hour per Service representative)	$46.40	$64.40
Noncontract (per hour per Service representative)	56.60	78.00
Export Port Services (per hundredweight)[2]	.056	.056

[1] Original and appeal inspection services include: Sampling, grading, weighing, and other services requested by the applicant when performed at the applicant's facility.

[2] Services performed at export port locations on lots at rest.

TABLE 2.—UNIT RATES

Service [1,3]	Rough rice	Brown rice for processing	Milled rice
Inspection for quality (per lot, sublot, or sample inspection)	$35.50	$30.50	$22.00
Factor analysis for any single factor (per factor):			

TABLE 2.—UNIT RATES—Continued

Service [1,3]	Rough rice	Brown rice for processing	Milled rice
(a) Milling yield (per sample)	27.50	27.50	.....
(b) All other factors (per factor)	13.20	13.20	13.20
Total oil and free fatty acid	.....	43.00	43.00
Interpretive line samples:[2]			
(a) Milling degree (per set)	.....	.....	94.00
(b) Parboiled light (per sample)	.....	.....	23.00
Extra copies of certificates (per copy)	3.00	3.00	3.00

[1] Fees apply to determinations (original or appeals) for kind, class, grade, factor analysis, equal to type, milling yield, or any other quality designation as defined in the U.S. Standards for Rice or applicable instructions, whether performed singly or in combination at other than at the applicant's facility.

[2] Interpretive line samples may be purchased from the U.S. Department of Agriculture, GIPSA, FGIS, Technical Services Division, 10383 North Ambassador Drive, Kansas City, Missouri 64153–1394. Interpretive line samples also are available for examination at selected FGIS field offices. A list of field offices may be obtained from the Director, Field Management Division, USDA, GIPSA, FGIS, 1400 Independence Avenue, SW, STOP 3630, Washington, D.C. 20250–3630. The interpretive line samples illustrate the lower limit for milling degrees only and the color limit for the factor "Parboiled Light" rice.

[3] Fees for other services not referenced in Table 2 will be based on the noncontract hourly rate listed in § 868.90, Table 1.

Dated: May 6, 2003.

Donna Reifschneider,

Administrator, Grain Inspection, Packers and Stockyards Administration.

[FR Doc. 03–11595 Filed 5–8–03; 8:45 am]

BILLING CODE 3410–EN–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2000–NE–48–AD; Amendment 39–13107; AD 2003–07–11]

RIN 2120–AA64

Airworthiness Directives; Rolls-Royce Deutschland Ltd & Co KG Models BR700–710A1–10 and BR700–710A2–20 Turbofan Engines; Correction

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; request for comments, correction.

SUMMARY: This document makes a correction to Airworthiness Directive (AD) 2003–07–11, applicable to Rolls-Royce Deutschland Ltd & Co KG (formerly Rolls-Royce Deutschland GmbH, formerly BMW Rolls-Royce GmbH), models BR700–710A1–10 and BR700–710A2–20 turbofan engines. AD 2003–07–11 was published in the **Federal Register** on April 11, 2003 (68 FR 17727). Subsequently, a correction document was published in the **Federal Register** on April 23, 2003 (68 FR 19944) that made corrections to the compliance section starting at paragraph (g). This document corrects paragraph (f) of the compliance section that incorrectly references cycles instead of hours. This document changes cycles to hours in paragraph (f). In all other respects, the original document, with the corrections published on April 23, 2003, remains the same.

EFFECTIVE DATE: April 28, 2003.

FOR FURTHER INFORMATION CONTACT: James Lawrence, Aerospace Engineer, Engine Certification Office, FAA, Engine and Propeller Directorate, 12 New England Executive Park, Burlington, MA 01803–5299; telephone (781) 238–7176; fax (781) 238–7199.

SUPPLEMENTARY INFORMATION: A final rule; request for comments airworthiness directive FR DOC. 03–8327, applicable to Rolls-Royce Deutschland Ltd & Co KG models BR700–710A1–10 and BR700–710A2–20 turbofan engines, was published in the **Federal Register** on April 11, 2003 (68 FR 17727). The following correction is needed:

■ On page 17729, in the second column, under Repetitive Inspections heading, paragraph (f), third line, which reads "500 CSN, in accordance with paragraphs" is corrected to read "500 hours-since-new, in accordance with paragraphs".

Issued in Burlington, MA, on May 2, 2003.

Francis A. Favara,

Acting Manager, Engine and Propeller Directorate, Aircraft Certification Service.

[FR Doc. 03–11537 Filed 5–8–03; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2002–CE–44–AD; Amendment 39–13142; AD 2003–09–13]

RIN 2120–AA64

Airworthiness Directives; the New Piper Aircraft, Inc. Models PA–23, PA–23–160, PA–23–235, PA–23–250, and PA–E23–250 Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD) that applies to certain The New Piper Aircraft, Inc. (Piper) Models PA–23, PA–23–160, PA–23–235, PA–23–250, and PA–E23–250 airplanes that do not incorporate a certain design flap control torque tube or torque tube assembly. This AD requires you to repetitively inspect the flap control torque tube for cracks, corrosion, wear, or elongation of the attachment bolt holes (referred to as damage); and requires you to replace any damaged torque tube with either an improved design flap control torque-tube or flap control torque tube assembly. The repetitive inspections will no longer be necessary when the improved design torque tube or torque tube assembly is installed. This AD is the result of several reports of damage found in the flap control torque tube on the affected airplanes. The actions specified by this AD are intended to detect and correct damage to the flap control torque tube, which could result in failure of the flap operating system. If such failure occurred during landing or takeoff, then a split flap condition

could occur with potential loss of control of the airplane.

DATES: This AD becomes effective on June 23, 2003.

The Director of the Federal Register approved the incorporation by reference of certain publications listed in the regulations as of June 23, 2003.

ADDRESSES: You may get the service information referenced in this AD from The New Piper Aircraft, Inc., Customer Services, 2926 Piper Drive, Vero Beach, Florida 32960; telephone: (561) 567–4361; facsimile: (772) 978–6573. You may view this information at the Federal Aviation Administration (FAA), Central Region, Office of the Regional Counsel, Attention: Rules Docket No. 2002–CE–44–AD, 901 Locust, Room 506, Kansas City, Missouri 64106; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Hassan Amini, Aerospace Engineer, FAA, Atlanta Aircraft Certification Office, One Crown Center, 1895 Phoenix Boulevard, Suite 450, Atlanta, Georgia 30349; telephone: (770) 703–6080; facsimile: (770) 703–6097.

SUPPLEMENTARY INFORMATION:

Discussion

What Events Have Caused This AD?

A review of FAA's service difficulty report (SDR) database shows several incidents of cracks and corrosion in the flap control torque tube on Piper PA–28 series airplanes. One incident of a broken flap control torque tube resulted in a split flap condition during approach.

What Is the Potential Impact if FAA Took No Action?

Cracked or corroded flap torque tubes, if not detected and corrected, could result in damage to the flap control torque tube and failure of the flap operating system. If such failure occurred during landing or takeoff, then a split flap condition could occur with potential loss of control of the airplane.

Has FAA Taken Any Action to This Point?

We issued a proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an AD that would apply to certain Piper Models PA–23, PA–23–160, PA–23–235, PA–23–250, and PA–E23–250 airplanes that do not incorporate a certain design flap control torque tube or torque tube assembly. This proposal was published in the **Federal Register** as a notice of proposed rulemaking (NPRM) on January 27, 2003. The NPRM proposed to require you to repetitively inspect the flap control torque tube for cracks, corrosion, wear, or elongation of the attachment bolt holes; and would require you to replace any damaged flap control torque tube with either an improved design flap control torque tube or flap control torque tube assembly. The repetitive inspections would no longer be necessary when the improved design flap control torque tube or flap control torque tube assembly is installed.

Was the Public Invited To Comment?

The FAA encouraged interested persons to participate in the making of this amendment. We did not receive any comments on the proposed rule or on our determination of the cost to the public.

FAA's Determination

What Is FAA's Final Determination on This Issue?

After careful review of all available information related to the subject presented above, we have determined that air safety and the public interest require the adoption of the rule as proposed except for minor editorial corrections. We have determined that these minor corrections:

—Provide the intent that was proposed in the NPRM for correcting the unsafe condition; and

—Do not add any additional burden upon the public than was already proposed in the NPRM.

How Does the Revision to 14 CFR Part 39 Affect This AD?

On July 10, 2002, FAA published a new version of 14 CFR part 39 (67 FR 47997, July 22, 2002), which governs FAA's AD system. This regulation now includes material that relates to special flight permits, alternative methods of compliance, and altered products. This material previously was included in each individual AD. Since this material is included in 14 CFR part 39, we will not include it in future AD actions.

Cost Impact

How Many Airplanes Does This AD Impact?

We estimate that this AD affects 3,733 airplanes in the U.S. registry.

What Is the Cost Impact of This AD on Owners/Operators of the Affected Airplanes?

We estimate the following costs to accomplish the inspection:

Labor cost	Parts cost	Total cost per airplane	Total cost on U.S. operators
8 workhours × $60 per hour = $480.	None for inspection	$480 per airplane	$1,791,840.

We estimate the following costs to accomplish any necessary replacement that will be required based on the results of the inspection. We have no way of determing the number of airplanes that may need such repair/replacement:

Labor cost	Parts cost	Total cost per airplane
4 workhours × $60 per hour = $240	$452 per airplane	$692 per airplane.

Regulatory Impact

Does This AD Impact Various Entities?

The regulations adopted herein will not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this final rule does not have federalism implications under Executive Order 13132.

Does This AD Involve a Significant Rule or Regulatory Action?

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the final evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

■ Accordingly, under the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

■ 1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

■ 2. FAA amends § 39.13 by adding a new AD to read as follows:

2003–09–13 The New Piper Aircraft, Inc.: Amendment 39–13142; Docket No. 2002–CE–44–AD.

(a) *What airplanes are affected by this AD?* This AD affects the following airplane models and serial numbers that are certificated in any category and do not incorporate a part number (P/N) 17634–002 flap control torque tube; or a P/N 104622–002 or 104622–004 flap control torque tube assembly:

Model	Serial numbers
PA–23 and PA–23–160	23–1 through 23–2046.
PA–23–235	27–505 through 27–622.
PA–23–250	27–1 through 27–504 and 27–2000 through 27–8154030.
PA–E23–250	27–2505 through 27–4916 and 27–7304917 through 27–7554168.

(b) *Who must comply with this AD?* Anyone who wishes to operate any of the airplanes identified in paragraph (a) of this AD must comply with this AD.

(c) *What problem does this AD address?* The actions specified by this AD are intended to detect and correct damage to the flap control torque tube, which could result in failure of the flap operating system. If such failure occurred during landing or takeoff, then a split flap condition could occur with potential loss of control of the airplane.

(d) *What actions must I accomplish to address this problem?* To address this problem, you must accomplish the following:

Actions	Compliance	Procedures
(1) Inspect the flap control torque tube for cracks, corrosion, wear, or elongation of the attachment bolt holes (referred to as damage).	Initially inspect upon accumulating 2,500 hours time-in-service (TIS) on the flap control torque tube or within the next 100 hours TIS after June 23, 2003 (the effective date of this AD), whichever occurs later. Repetitively inspect thereafter at intervals not to exceed 500 hours TIS until a replacement flap control torque tube or flap control torque tube assembly specified in paragraph (d)(2) of this AD is installed.	In accordance with sections 3 through 10 of the ACCOMPLISHMENT INSTRUCTIONS section of Piper Mandatory Service Bulletin No. 1051B, dated November 5, 2002.
(2) Replace any damaged flap control torque tube and replace any wooden end plugs with new plastic end plugs, P/N 17631–002. Replace the flap control torque tubes with either a P/N 17634–002 flap control torque tube or a P/N 104622–002 or 104622–004 flap control torque tube assembly. (i) The P/N 17631–002 end plugs are part of the P/N 104622–002 and 104622–004 flap control torque tube assemblies, but must be obtained for the P/N 17634–002 installation. (ii) You do not have to inspect the existing wooden end plugs as specified in the service bulletin since this AD requires the installation of plastic end plugs.	Prior to further flight after the inspection where damage is found.	In accordance with sections 3 through 10 of the ACCOMPLISHMENT INSTRUCTIONS section of Piper Mandatory Service Bulletin No. 1051B, dated November 5, 2002.
(3) The repetitive inspections required by this AD may be terminated after installation of a replacement flap control torque tube or flap control torque tube assembly as specified in paragraph (d)(2) of this AD.	You may replace the flap control torque tube assembly at any time, but must replace prior to further flight if damage is found during an inspection.	In accordance with sections 3 through 10 of the ACCOMPLISHMENT INSTRUCTIONS section of Piper Mandatory Service Bulletin No. 1051B, dated November 5, 2002.

(e) *Can I comply with this AD in any other way?* To use an alternative method of compliance or adjust the compliance time, use the procedures in 14 CFR 39.19. Send these requests to the Manager, Atlanta Aircraft Certification Office. For information on any already approved alternative methods of compliance, contact Hassan Amini, Aerospace Engineer, FAA, Atlanta Aircraft Certification Office, One Crown Center, 1895 Phoenix Boulevard, Suite 450, Atlanta,

Georgia 30349; telephone: (770) 703–6080; facsimile: (770) 703–6097.

(f) *Are any service bulletins incorporated into this AD by reference?* Actions required by this AD must be done in accordance with Piper Mandatory Service Bulletin No. 1051B, dated November 5, 2002. The Director of the Federal Register approved this incorporation by reference under 5 U.S.C. 552(a) and 1 CFR part 51. You may get copies from The New Piper Aircraft, Inc., Customer Services, 2926 Piper Drive, Vero Beach, Florida 32960; telephone: (561) 567–4361; facsimile: (772) 978–6573. You may view copies at the FAA, Central Region, Office of the Regional Counsel, 901 Locust, Room 506, Kansas City, Missouri, or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(g) *When does this amendment become effective?* This amendment becomes effective on June 23, 2003.

Issued in Kansas City, Missouri, on April 30, 2003.

Michael Gallagher,

Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 03–11265 Filed 5–8–03; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

RIN 2120–AA66

[Docket No. FAA–2003–14611; Airspace Docket No. 03–AWA–4]

Establishment of Area Navigation Routes (RNAV)

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action establishes Area Navigation Routes (RNAV) as part of the National Airspace System (NAS). The FAA is implementing these routes to enhance safety and to improve the efficient use of the navigable airspace.

EFFECTIVE DATE: 0901 UTC, July 10, 2003.

FOR FURTHER INFORMATION CONTACT: Ken McElroy, Airspace and Rules Division, ATA–400, Office of Air Traffic Airspace Management, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone: (202) 267–8783.

SUPPLEMENTARY INFORMATION:

Background

Historically, the principal means of air navigation for instrument flight rules (IFR) operations in the United States National Airspace System (NAS) has been a system of ground-based navigation aids (NAVAIDs) (*e.g.*, nondirectional beacon (NDB), very high frequency omnidirectional range (VOR), and distance measuring equipment (DME)). Airways were subsequently developed according to these NAVAIDs, and pilots were required to fly directly toward or away from them. This limitation in the NAS has resulted in less-than-optimal routes, and contributed to the inefficient use of the airspace.

The advent of area navigation (RNAV) in the 1960's, provided enhanced navigation capabilities to the pilot. Early RNAV allowed properly equipped aircraft to navigate via a user-defined track, rather than depending primarily on ground-based NAVAIDs. Early RNAV systems, however, still relied on signals from a ground-based NAVAID for source information to calculate navigational position. In the 1970's, to take advantage of this improved navigation capability, the FAA began to publish a series of routes for use by RNAV-equipped aircraft. A nationwide system of high-altitude RNAV routes was established consisting of approximately 156 route segments.

These fixed routes, however, still depended on information from ground-based NAVAIDs. The FAA later determined that most aircraft using RNAV in the en route system, were doing so on a random basis using inertial navigation systems (INS) (with little use being made of the fixed high altitude RNAV route structure). Operators were using RNAV from point to point, not with the high-altitude RNAV route structure designed and published by the FAA. This minimal use of the charted RNAV routes proved insufficient to justify their retention on a cost-benefit basis. As a result, in January 1983, the FAA revoked all high altitude RNAV routes in the conterminous United States (46 FR 848). The RNAV routes in Alaska were retained and remain in use today because of the scarcity of ground-based navigational aids in that region.

The technology that evolved over the past 40 years gave avionics systems increased positional accuracy, which provided users with a greater ability to fly direct routes between any two points. In recent years, satellite navigation using the Global Positioning System (GPS) has provided even greater flexibility in defining routes, establishing instrument procedures, and designing airspace. When GPS is combined with existing RNAV system capabilities, continuous course guidance is available over longer routes than is possible with ground-based NAVAIDs. As a result of these technological advances, the FAA has implemented a number of RNAV routes on a test basis for use by air carriers operating suitably equipped aircraft in the northeast, southeast, and southwest regions of the United States. The results so far have demonstrated the potential of these RNAV routes, when used with newer navigation reference sources such as GPS.

As part of the on going National Airspace Redesign, the FAA has implemented the High Altitude Redesign (HAR) Program. This specific effort looks at how best to obtain maximum system efficiency by introducing advanced RNAV routes for use by suitably equipped aircraft. Under the first phase of HAR, 11 RNAV routes are being established in the high altitude structure. These new routes will allow users to begin achieving the economic benefits of flying their preferred routes and altitudes with fewer routing restrictions.

Related Rulemaking

On April 8, 2003, the FAA published the Designation of Class A, B, C, D, and E Airspace Areas; Air Traffic Service Routes; and Reporting Points in the **Federal Register** [68 FR 16943]. This rule adopted certain amendments proposed in Notice No. 02–20, Area Navigation (RNAV) and Miscellaneous Amendments. This action revised and adopted several definitions in FAA regulations, including Air Traffic Service routes, to be in concert with International Civil Aviation Organization (ICAO) definitions; and reorganized the structure of FAA regulations concerning the designation of class A, B, C, D, and E airspace areas; airways; routes, and reporting points.

The U.S. and Canada have been assigned the alphanumeric "Q" as a designator for RNAV routes (U.S. 1–499/Canada 500–999). RNAV routes between, and within, Canada and the U.S. will use the "Q" designator.

The Rule

This action amends Title 14 Code of Federal Regulations (14 CFR) part 71 (part 71) by establishing RNAV routes as part of the NAS. These routes are designed to provide safe and efficient use of the navigable airspace, and to promote safe flight operations under instrument flight rules (IFR) within the NAS.

The complete regulatory criteria on each RNAV route is contained in the appropriate FAA Form 8260. The RNAV routes described in this rule will also be published in a new paragraph (paragraph 2006) of FAA Order 7400.9K dated August 30, 2002, effective September 16, 2002, which is incorporated by reference in 14 CFR 71.1. The RNAV routes listed in this document will be published subsequently in the order.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore, this regulation: (1) Is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

Environmental Review

The FAA has determined that this action qualifies for categorical exclusion under the National Environmental Policy Act in accordance with FAA Order 1050.1D, Policies and Procedures for Considering Environmental Impacts. This airspace action is not expected to cause any potentially significant environmental impacts, and no extraordinary circumstances exist that warrant preparation of an environmental assessment.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

■ In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A, CLASS B, CLASS C, CLASS D, AND CLASS E, AIRSPACE AREAS; AIRWAYS; ROUTES; AND REPORTING POINTS

■ 1. The authority citation for part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§ 71.1 [Amended]

■ 2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9K, Airspace Designations and Reporting Points, dated August 30, 2002, and effective September 16, 2002, is amended as follows:

PARAGRAPH 2006(a)—AREA NAVIGATION ROUTES

Q–1 ELMAA to PYE [New]			
ELMAA	Fix	(Lat. 47°08′53″ N., long. 123°24′35″ W.)	
ERAVE	WP	(Lat. 46°54′35″ N., long. 123°24′06″ W.)	
EASON	WP	(Lat. 44°30′00″ N., long. 123°19′44″ W.)	
EBINY	WP	(Lat. 42°28′50″ N., long. 123°15′01″ W.)	
ENVIE	WP	(Lat. 41°20′09″ N., long. 123°12′32″ W.)	
ETCHY	WP	(Lat. 39°05′28″ N., long. 123°08′05″ W.)	
PYE	VOR	(Lat. 38°04′47″ N., long. 122°52′04″ W.)	
Q–3 FEPOT to PYE [New]			
FEPOT	WP	(Lat. 47°04′51″ N., long. 123°13′08″ W.)	
FAMUK	WP	(Lat. 44°30′00″ N., long. 123°08′09″ W.)	
FRFLY	WP	(Lat. 42°28′50″ N., long. 123°03′57″ W.)	
FINER	WP	(Lat. 41°20′09″ N., long. 123°01′45″ W.)	
FOWND	WP	(Lat. 39°05′46″ N., long. 122°57′48″ W.)	
PYE	VOR	(Lat. 38°04′47″ N., long. 122°52′04″ W.)	
Q–5 HAROB to STIKM [New]			
HAROB	WP	(Lat. 47°14′36″ N., long. 123°02′27″ W.)	
HISKU	WP	(Lat. 44°30′00″ N., long. 122°56′39″ W.)	
HARPR	WP	(Lat. 42°28′50″ N., long. 122°53′02″ W.)	
HOMEG	WP	(Lat. 41°20′09″ N., long. 122°51′05″ W.)	
HUPTU	WP	(Lat. 39°30′00″ N., long. 122°44′39″ W.)	
STIKM	WP	(Lat. 38°32′00″ N., long. 122°39′00″ W.)	
Q–7 JINMO to AVE [New]			
JINMO	WP	(Lat. 46°22′17″ N., long. 122°07′31″ W.)	
JOGEN	WP	(Lat. 44°19′44″ N., long. 121°39′04″ W.)	
JUNEJ	WP	(Lat. 41°00′06″ N., long. 120°55′06″ W.)	
JAGWA	WP	(Lat. 37°19′49″ N., long. 120°38′18″ W.)	
AVE	VORTAC	(Lat. 35°38′49″ N., long. 119°58′43″ W.)	
Q–9 SUMMA to DERBB [New]			
SUMMA	Fix	(Lat. 46°37′04″ N., long. 121°59′18″ W.)	
SMIGE	WP	(Lat. 43°50′46″ N., long. 121°20′45″ W.)	
SUNBE	WP	(Lat. 41°00′14″ N., long. 120°44′32″ W.)	
REBRG	WP	(Lat. 35°58′53″ N., long. 119°36′53″ W.)	
DERBB	Fix	(Lat. 35°15′21″ N., long. 119°38′29″ W.)	
Q–11 PAAGE to LAX [New]			
PAAGE	WP	(Lat. 46°25′22″ N., long. 121°44′44″ W.)	
PAWLI	WP	(Lat. 43°10′48″ N., long. 120°55′50″ W.)	
PITVE	WP	(Lat. 41°00′14″ N., long. 120°24′57″ W.)	
PUSHH	WP	(Lat. 38°18′53″ N., long. 119°36′40″ W.)	
LAX	VORTAC	(Lat. 33°55′59″ N., long. 118°25′55″ W.)	

PARAGRAPH 2006(a)—AREA NAVIGATION ROUTES—Continued

Q–13 PAWLI to LIDAT [New]		
PAWLI	WP	(Lat. 43°10′48″ N., long. 120°55′50″ W.)
RUFUS	WP	(Lat. 41°26′00″ N., long. 120°00′00″ W.)
LOMIA	WP	(Lat. 39°13′12″ N., long. 119°06′23″ W.)
LIDAT	Fix	(Lat. 37°25′49″ N., long. 117°16′41″ W.)
Q–501 SOBME to VIXIS [New]		
SOBME	WP	(Lat. 44°58′24″ N., long. 97°40′44″ W.)
GEP	VORTAC	(Lat. 45°08′45″ N., long. 93°22′24″ W.)
VIXIS	Fix	(Lat. 44°20′07″ N., long. 82°17′19″ W.)
excluding the portion within Canada.		
Q–502 SOBME to KENPA [New]		
SOBME	WP	(Lat. 44°58′24″ N., long. 97°40′44″ W.)
GEP	VORTAC	(Lat. 45°08′45″ N., long. 93°22′24″ W.)
KENPA	Fix	(Lat. 44°47′42″ N., long. 82°23′36″ W.)
excluding the portion within Canada.		
Q–504 HEMDI to NOTAP [New]		
HEMDI	WP	(Lat. 45°19′50″ N., long. 97°37′46″ W.)
CESNA	WP	(Lat. 45°52′14″ N., long. 92°10′59″ W.)
NOTAP	WP	(Lat. 45°12′30″ N., long. 82°28′30″ W.)
excluding the portion within Canada.		
Q–505 HEMDI to OMAGA [New]		
HEMDI	WP	(Lat. 45°19′50″ N., long. 97°37′46″ W.)
CESNA	WP	(Lat. 45°52′14″ N., long. 92°10′59″ W.)
RIMBE	WP	(Lat. 46°02′04″ N., long. 88°04′50″ W.)
OMAGA	Fix	(Lat. 46°03′04″ N., long. 84°00′00″ W.)
excluding the portion within Canada.		

* * * * *

Issued in Washington, DC, on April 28, 2003.

Reginald C. Matthews,

Manager, Airspace and Rules Division.

[FR Doc. 03–11638 Filed 5–8–03; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2003–14937; Airspace Docket No. 03–ACE–40]

Modification of Class D Airspace; and Modification of Class E Airspace; Sioux City, IA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Direct final rule; request for comments.

SUMMARY: Sioux Gateway Airport, Sioux City, IA, has been renamed Sioux Gateway/Col. Bud Day Field. An examination of controlled airspace for Sioux City, IA revealed discrepancies in the Sioux Gateway/Col. Bud Day Field airport reference point used in the legal descriptions for the Sioux City, IA Class D and Class E airspace areas. The intended effect of this rule is to replace "Sioux Gateway Airport" in the legal descriptions of Sioux City, IA Class D and Class E airspace areas with "Sioux Gateway/Col. Bud Day Field," to incorporate the current Sioux Gateway/Col. Bud Day Field airport reference point into the legal descriptions of these airspace areas and to bring the legal descriptions into compliance with FAA Orders.

DATES: This direct final rule is effective on 0901 UTC, September 4, 2003. Comments for inclusion in the Rules Docket must be received on or before June 10, 2003.

ADDRESSES: Send comments on this proposal to the Docket Management System, U.S. Department of Transportation, Room Plaza 401, 400 Seventh Street, SW., Washington, DC 20590–0001. You must identify the docket number FAA–2003–14937/Airspace Docket No. 03–ACE–40, at the beginning of your comments. You may also submit comments on the Internet at *http://dms.dot.gov*. You may review the public docket containing the proposal, any comments received, and any final disposition in person in the Dockets Office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Docket Office (telephone 1–800–647–5527) is on the plaza level of the Department of Transportation NASSIF Building at the above address.

FOR FURTHER INFORMATION CONTACT: Kathy Randolph, Air Traffic Division, Airspace Branch, ACE–520C, DOT Regional Headquarters Building, Federal Aviation Administration, 901 Locust, Kansas City, MO 64106; telephone: (816) 329–2525.

SUPPLEMENTARY INFORMATION: This amendment to 14 CFR part 71 modifies the Class D airspace area, the Class E airspace area designated as an extension to the Class D airspace area, the Class E airspace designated as a surface area and the Class E airspace area extending upward from 700 feet above the surface at Sioux City, IA. It replaces "Sioux Gateway Airport," the former name of the airport, with "Sioux Gateway/Col. Bud Day Field," the new name of the airport, in the legal descriptions. This amendment also incorporates the current Sioux Gateway/Col. Bud Day Field airport reference point into the legal descriptions of these airspace areas. It brings the legal description of these airspace areas into compliance with FAA Order 7400.2E, Procedures for Handling Airspace Matters. The areas will be depicted on appropriate aeronautical charts. Class D airspace areas are published in paragraph 5000 of FAA Order 7400.9K, dated August 30, 2002, and effective September 16, 2002, which is incorporated by reference in 14 CFR 71.1. Class E airspace areas designated as an extension to a Class D or Class E surface area, Class E airspace designated as surface areas and the Class E airspace areas extending upward from 700 feet or more above the surface of the earth are published in paragraph 6004, 6002 and 6005 respectively of the same FAA Order. The Class D and Class E airspace designations listed in this document will be published subsequently in the Order.

The Direct Final Rule Procedure

The FAA anticipates that this regulation will not result in adverse or negative comment and, therefore, is issuing it as a direct final rule. Previous actions of this nature have not been controversial and have not resulted in adverse comments or objections. Unless a written adverse or negative comment, or a written notice of intent to submit an adverse or negative comment is received within the comment period, the regulation will become effective on the date specified above. After the close of the comment period, the FAA will publish a document in the **Federal Register** indicating that no adverse or negative comments were received and confirming the date on which the final rule will become effective. If the FAA does receive, within the comment period, an adverse or negative comment, or written notice of intent to submit such a comment, a document withdrawing the direct final rule will be published in the **Federal Register**, and a notice of proposed rulemaking may be published with a new comment period.

Comments Invited

Interested parties are invited to participate in this rulemaking by submitting such written data, views, or arguments, as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify both docket numbers and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made "Comments to Docket No. FAA–2003–14937/Airspace Docket No. 03–ACE–40." The postcard will be date/time stamped and returned to the commenter.

Agency Findings

The regulations adopted herein will not have a substantial direct effect on the States, on the relationship between the National Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this final rule does not have federalism implications under Executive Order 13132.

The FAA has determined that this regulation is noncontroversial and unlikely to result in adverse or negative comments. For the reasons discussed in the preamble, I certify that this regulation (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under Department of Transportation (DOT) Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

■ Accordingly, the Federal Aviation Administration amends 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A, CLASS B, CLASS C, CLASS D, AND CLASS E AIRSPACE AREAS; AIRWAYS; ROUTES; AND REPORTING POINTS

■ 1. The authority citation for part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§ 71.1 [Amended]

■ 2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9K, dated August 30, 2002, and effective September 16, 2002, is amended as follows:

Paragraph 5000 Class D Airspace.

* * * * *

ACE IA D Sioux City, IA

Sioux City, Sioux Gateway/Col. Bud Day Field, IA
(Lat. 42°24′09″N., long. 96°23′04″W.)
South Sioux City, Martin Field, NE
(Lat. 42°27′15″N., long. 96°28′21″W.)

That airspace extending upward from the surface to and including 3,600 feet MSL within a 4.3-mile radius of Sioux Gateway/Col. Bud Day Field, excluding that airspace within a 1-mile radius of the South Sioux City, Martin Field. This Class D airspace area is effective during the specific dates and times established in advance by a Notice to Airmen. The effective date and time will thereafter be continuously published in the Airport/Facility Directory.

* * * * *

Paragraph 6004 Class E Airspace Designated as an Extension to a Class D or Class E Surface Area.

* * * * *

ACE IA E4 Sioux City, IA

Sioux City, Sioux Gateway/Col. Bud Day Field, IA
(Lat. 42°24′09″N., long. 96°23′04″W.)
Sioux City VORTAC
(Lat. 42°20′40″N., long. 96°19′25″W.)
Gateway NDB
(Lat. 42°24′29″N., long. 96°23′09″W.)

That airspace extending upward from the surface within 2.2 miles each side of the 140° radial of the Sioux City VORTAC extending from the 4.3-mile radius of the Sioux Gateway/Col. Bud Day Field to 5.3 miles southeast of the VORTAC and 2.5 miles each side of the 170° bearing from the Gateway NDB extending from the 4.3-mile radius of Sioux Gateway/Col. Bud Day Field to 7 miles south of the NDB. This Class E airspace area is effective during the specific dates and times established in advance by a Notice to Airmen. The effective date and time will thereafter be continuously published in the Airport/Facility Directory.

* * * * *

Paragraph 6002 Class E Airspace Designated as Surface Areas.

* * * * *

ACE IA E2 Sioux City, IA

Sioux City, Sioux Gateway/Col. Bud Day Field, IA
(Lat. 42°24′09″ N., long. 96°23′04″ W.)
South Sioux City, Martin Field, NE
(Lat. 42°27′15″ N., long. 96°28′21″ W.)
Sioux City VORTAC
(Lat. 42°20′40″ N., long. 96°19′25″ W.)
Gateway NDB
(Lat. 42°24′29″ N., long. 96°23′09″ W.)

Within a 4.3-mile radius of Sioux Gateway/Col. Bud Day Field, excluding that airspace within a 1-mile radius of the South Sioux City, Martin Field and that airspace extending upward from the surface within 2.2 miles each side of the 140° radial of the Sioux City VORTAC extending from the 4.3-mile radius of the Sioux Gateway/Col. Bud Day Field to 5.3 miles southeast of the VORTAC and 2.5 miles each side of the 170° bearing from the Gateway NDB extending from the 4.3-mile radius of Sioux Gateway/Col. Bud Day Field to 7 miles south of the NDB. This Class E airspace area is effective during the specific dates and times established in advance by a Notice to Airmen. The effective date and time will thereafter be continuously published in the Airport/Facility Directory.

* * * * *

Paragraph 6005 Class E Airspace Areas Extending Upward From 700 Feet or More Above the Surface of the Earth.

* * * * *

ACE IA E5 Sioux City, IA

Sioux City, Sioux Gateway/Col. Bud Day Field, IA
(Lat. 42°24′09″N., long. 96°23′04″W.)
Sioux City VORTAC

Lat. 42°20′40″N., long. 96°19′25″W.)

That airspace extending upward from 700 feet above the surface within a 7-mile radius of Sioux Gateway/Col. Bud Day Field and within 3 miles each side of the 139° radial of the Sioux City VORTAC extending from the 7-mile radius to 17.8 miles southeast of the VORTAC and within 3 miles each side of the 319° radial of the Sioux City VORTAC extending from the 7-mile radius to 25.3 miles northwest of the VORTAC and within 2 miles each side of the 360° bearing from the Sioux Gateway/Col. Bud Day Field extending from the 7-mile radius to 9.2 miles north of the airport.

* * * * *

Issued in Kansas City, MO on April 28, 2003.

Herman J. Lyons, Jr.,

Manager, Air Traffic Division, Central Region.

[FR Doc. 03–11640 Filed 5–8–03; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2003–15074; Airspace Docket No. 03–ACE–42]

Modification of Class E Airspace; Cedar Rapids, IA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Direct final rule; request for comments.

SUMMARY: An examination of controlled airspace for Cedar Rapids, IA revealed a discrepancy in the Cedar Rapids, The Eastern Iowa Airport, IA airport reference point. This action corrects the discrepancy by modifying the Cedar Rapids, IA Class E airspace areas and by incorporating the change into the Class E airspace legal descriptions. For continuity, it also modifies the legal description title of the Class E surface area at Cedar Rapids, IA.

DATES: This direct final rule is effective on 0901 UTC, September 4, 2003. Comments for inclusion in the Rules Docket must be received on or before June 25, 2003.

ADDRESSES: Send comments on this proposal to the Docket Management System, U.S. Department of Transportation, Room Plaza 401, 400 Seventh Street, SW., Washington, DC 20590–0001. You must identify the docket number FAA–2003–15074/Airspace Docket No. 03–ACE–42, at the beginning of your comments. You may also submit comments on the Internet at *http://dms.dot.gov*. You may review the public docket containing the proposal, any comments received, and any final disposition in person in the Dockets Office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Docket Office (telephone 1–800–647–5527) is on the plaza level of the Department of Transportation NASSIF Building at the above address.

FOR FURTHER INFORMATION CONTACT: Kathy Randolph, Air Traffic Division, Airspace Branch, ACE–520C, DOT Regional Headquarters Building, Federal Aviation Administration, 901 Locust, Kansas City, MO 64106; telephone: (816) 329–2525.

SUPPLEMENTARY INFORMATION: An examination of controlled airspace for Cedar Rapids, IA revealed a discrepancy in the Cedar Rapids, The Eastern Iowa Airport, IA airport reference point. This amendment to 14 CFR part 71 modifies the legal description of the Class E airspace designated as a surface area at Cedar Rapids, IA by incorporating the revised airport reference point and, for continuity, by modifying the title of this airspace area to agree with other Class E airspace at Cedar Rapids, IA. This amendment also modifies Cedar Rapids, IA Class E airspace area extending upward from 700 feet above the surface and its legal description by incorporating the revised The Eastern Iowa Airport airport reference point. This action brings the legal descriptions of both Cedar Rapids, IA Class E airspace areas into compliance with FAA Order 7400.2E, Procedures for Handling Airspace Matters. The areas will be depicted on appropriate aeronautical charts. Class E airspace designated as surface areas are published in paragraph 6002 of FAA Order 7400.9K, dated August 30, 2002, and effective September 16, 2002, which is incorporated by reference in 14 CFR 71.1. Class E airspace areas extending upward from 700 feet or more above the surface of the earth are published in paragraph 6005 of the same FAA Order. The Class E airspace designations listed in this document will be published subsequently in the Order.

The Direct Final Rule Procedure

The FAA anticipates that this regulation will not result in adverse or negative comment and, therefore, is issuing it as a direct final rule. Previous actions of this nature have not been controversial and have not resulted in adverse comments or objections. Unless a written adverse or negative comment, or a written notice of intent to submit an adverse or negative comment is received within the comment period, the regulation will become effective on the date specified above. After the close of the comment period, the FAA will publish a document in the **Federal Register** indicating that no adverse or negative comments were received and confirming the date on which the final rule will become effective. If the FAA does receive, within the comment period, an adverse or negative comment, or written notice of intent to submit such a comment, a document withdrawing the direct final rule will be published in the **Federal Register**, and a notice of proposed rulemaking may be published with a new comment period.

Comments Invited

Interested parties are invited to participate in this rulemaking by submitting such written data, views, or arguments, as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify both docket numbers and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. FAA–2003–15074/Airspace Docket No. 03–ACE–42." The postcard will be date/time stamped and returned to the commenter.

Agency Findings

The regulations adopted herein will not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this final rule does not have federalism implications under Executive Order 13132.

The FAA has determined that this regulation is noncontroversial and unlikely to result in adverse or negative comments. For the reasons discussed in the preamble, I certify that this regulation (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under Department of Transportation (DOT) Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

■ Accordingly, the Federal Aviation Administration amends 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A, CLASS B, CLASS C, CLASS D, AND CLASS E AIRSPACE AREAS; AIRWAYS; ROUTES; AND REPORTING POINTS

■ 1. The authority citation for part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§ 71.1 [Amended]

■ 2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9K, dated August 30, 2002, and effective September 16, 2002, is amended as follows:

Paragraph 6002 Class E Airspace Designated as Surface Areas.

* * * * *

ACE IA E2 Cedar Rapids, IA

Cedar Rapids, The Eastern Iowa Airport, IA
(Lat. 41°53′05″ N., long. 91°42′37″ W.)

Within a 4.4-mile radius of The Eastern Iowa Airport. This Class E airspace area is effective during the specific dates and times established in advance by a Notice to Airmen. The effective date and time will thereafter be continuously published in the airport/Facility/Directory.

* * * * *

Paragraph 6005 Class E airspace areas extending upward from 700 feet or more above the surface of the earth.

* * * * *

ACE IA E5 Cedar Rapids, IA

Cedar Rapids, The Eastern Iowa Airport, IA
(Lat. 41°53′05″ N., long. 91°42′37″ W.)
CINDY LOM
(Lat. 41°53′08″ N., long. 91°48′09″ W.)

That airspace extending upward from 700 feet above the surface within a 7.4-mile radius of The Eastern Iowa Airport and within 3 miles each side of the 271° bearing from the CINDY LOM, extending from the 7.4-mile radius to 19.3 miles west of the airport.

* * * * *

Issued in Kansas City, MO, on May 1, 2003.

Herman J. Lyons, Jr.,

Acting Manager, Air Traffic Division, Central Region.

[FR Doc. 03–11645 Filed 5–8–03; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2003–14935; Airspace Docket No. 03–ACE–38]

Modification of Class E Airspace; Monticello, IA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Direct final rule; request for comments.

SUMMARY: This action modifies Class E airspace at Monticello, IA. An examination of controlled airspace for Monticello, IA revealed discrepancies in the Monticello Regional Airport airport reference point used in the legal description for the Monticello, IA Class E airspace area. This action corrects the discrepancies by modifying the Monticello, IA Class E airspace area. It also incorporates the revised Monticello Regional Airport airport reference point in the Class E airspace legal description.

DATES: This direct final rule is effective on 0901 UTC, September 4, 2003. Comments for inclusion in the Rules Docket must be received on or before June 10, 2003.

ADDRESSES: Send comments on this proposal to the Docket Management System, U.S. Department of Transportation, Room Plaza 401, 400 Seventh Street, SW., Washington, DC 20590–0001. You must identify the docket number FAA–2003–14935/Airspace Docket No. 03–ACE–38, at the beginning of your comments. You may also submit comments on the Internet at *http://dms.dot.gov*. You may review the public docket containing the proposal, any comments received, and any final disposition in person in the Dockets Office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Docket Office (telephone 1–800–647–5527) is on the plaza level of the Department of Transportation NASSIF Building at the above address.

FOR FURTHER INFORMATION CONTACT: Kathy Randolph, Air Traffic Division, Airspace Branch, ACE–520C, DOT Municipal Headquarters Building, Federal Aviation Administration, 901 Locust, Kansas City, MO 64106; telephone: (816) 329–2525.

SUPPLEMENTARY INFORMATION: This amendment to 14 CFR part 71 modifies the Class E airspace area extending upward from 700 feet above the surface of the earth at Monticello, IA. An examination of controlled airspace for Monticello, IA revealed discrepancies in the Monticello Regional Airport airport reference point used in the legal description for this airspace area. This amendment incorporates the revised Monticello Regional Airport airport reference point and brings the legal description of the Monticello, IA Class E airspace area into compliance with FAA Order 7400.2E, Procedures for Handling Airspace Matters. This area will be depicted on appropriate aeronautical charts. Class E airspace areas extending upward from 700 feet or more above the surface of the earth are published in paragraph 6005 of FAA Order 7400.9K, dated August 30, 2002, and effective September 16, 2002, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document will be published subsequently in the Order.

The Direct Final Rule Procedure

The FAA anticipates that this regulation will not result in adverse or negative comment and, therefore, is issuing it as a direct final rule. Previous actions of this nature have not been controversial and have not resulted in adverse comments or objections. Unless a written adverse or negative comment, or a written notice of intent to submit an adverse or negative comment is received within the comment period, the regulation will become effective on the date specified above. After the close of the comment period, the FAA will publish a document in the **Federal Register** indicating that no adverse or negative comments were received and confirming the date on which the final rule will become effective. If the FAA does receive, within the comment period, an adverse or negative comment, or written notice of intent to submit such a comment, a document withdrawing the direct final rule will be published in the **Federal Register**, and a notice of proposed rulemaking may be published with a new comment period.

Comments Invited

Interested parties are invited to participate in this rulemaking by submitting such written data, views, or arguments, as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify both docket numbers and be submitted in triplicate to the address listed above. Commenters wishing the FAA to

acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. FAA–2003–14935/Airspace Docket No. 03–ACE–38." The postcard will be date/time stamped and returned to the commenter.

Agency Findings

The regulations adopted herein will not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this final rule does not have federalism implications under Executive Order 13132.

The FAA has determined that this regulation is noncontroversial and unlikely to result in adverse or negative comments. For the reasons discussed in the preamble, I certify that this regulation (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under Department of Transportation (DOT) Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

■ Accordingly, the Federal Aviation Administration amends 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A, CLASS B, CLASS C, CLASS D, AND CLASS E AIRSPACE AREAS; AIRWAYS; ROUTES; AND REPORTING POINTS

■ 1. The authority citation for part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§71.1 [Amended]

■ 2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9K, date August 30, 2002, and effective September 16, 2002, is amended as follows:

* * * * *

Paragraph 6005 Class E airspace areas extending upward from 700 feet or more above the surface of the earth.

* * * * *

ACE IA E5 Monticello, IA

Monticello Regional Airport, IA
(Lat. 42°13'13" N., long. 91°09'48" W.)
Monticello NDB
(Lat. 42°12'02" N., long. 91°08'14" W.)

That airspace extending upward from 700 feet above the surface within a 6.4-mile radius of Monticello Regional Airport and within 2.6 miles each side of the 141° bearing from the Monticello NDB extending from the 6.4-mile radius to 9.2 miles southeast of the airport.

* * * * *

Issued in Kansas City, MO, on April 28, 2003.

Herman J. Lyons, Jr.,

Manager, Air Traffic Division, Central Region.

[FR Doc. 03–11644 Filed 5–8ndash;03; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2003–14658; Airspace Docket No. 03–ACE–27]

Modification of Class E Airspace; Fort Leonard Wood, MO

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This notice modifies Class E airspace areas at Fort Leonard Wood, MO. An examination of controlled airspace at Fort Leonard, MO revealed discrepancies in the dimensions of the Fort Leonard, MO Class E4 and Class E5 airspace areas. This action corrects the discrepancies by modifying the airspace areas.

The effect of this rule is to provide appropriate controlled Class E airspace for aircraft executing instrument approach procedures to Waynesville Regional Airport at Forney Field and to segregate aircraft using instrument approach procedures in instrument conditions from aircraft operating in visual conditions.

EFFECTIVE DATE: 0901 UTC, June 12, 2003.

FOR FURTHER INFORMATION CONTACT: Brenda Mumper, Air Traffic Division, Airspace Branch, ACE–520A, DOT Regional Headquarters Building, Federal Aviation Administration, 901 Locust, Kansas City, MO 64106; telephone: (816) 329–2524.

SUPPLEMENTARY INFORMATION:

History

On Tuesday, March 25, 2003, the FAA proposed to amend 14 CFR part 71 by modifying the Class E airspace areas at Fort Leonard Wood, MO (68 FR 14359) [FR Doc. 03–7073]. The proposal was to modify the Class E airspace area designated as an extension to the Class D airspace and the Class E airspace area extending upward from 700 feet or more above the surface at Fort Leonard Wood, MO. Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments objecting to the proposal were received.

Class E airspace areas designated as an extension to a Class D area are published in Paragraph 6004 of FAA Order 7409.9K, dated August 30, 2002, and effective September 16, 2002, which is incorporated by reference in 14 CFR 71.1. Class E airspace areas extending upward from 700 feet or more above the surface of the earth are published in Paragraph 6005 of the same Order. The Class E airspace designations listed in this document will be published subsequently in the Order.

The Rule

This amendment to Part 71 of the Federal Aviation Regulations (14 CFR part 71) decreases the size of the Fort Leonard Wood, MO Class E airspace area designated as an extension to the Class D airspace by relocating the southeastern boundary of from 16 miles to 7 miles southeast of the Buckhorn Nondirectional Radio Beacon (NDB). It also increases the dimensions of the Class E airspace area extending upward from 700 feet or more above the surface to approximately the current dimensions of the Class E airspace area designated as an extension to the Class D airspace. These actions correct the discrepancies in the controlled airspace at Fort Leonard Wood, MO and bring them into compliance with FAA Order 8260.19. The areas will be depicted on appropriate aeronautical charts.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore, this regulation—(1) Is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a Regulatory Evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (Air).

Adoption of the Amendment

■ In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A, CLASS B, CLASS C, CLASS D, AND CLASS E AIRSPACE AREAS; AIRWAYS; ROUTES; AND REPORTING POINTS

■ 1. The authority citation for part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g); 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§71.1 [Amended]

■ 2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9K, Airspace Designations and Reporting Points, dated August 30, 2002, and effective September 16, 2002, is amended as follows:

Paragraph 6004 Class E airspace areas designated as an extension to Class D or Class E Surface area.

* * * * *

ACE MO E4 Fort Leonard Wood, MO

Waynesville Regional Airport at Forney Field, MO
(Lat. 37°44'30" N., long. 92°08'27" W.)
Forney VOR
(Lat. 37°44'33" N., long. 92°08'20" W.)
Buckhorn NDB
(Lat. 37°41'51" N., long. 92°06'14" W.)

That airspace extending upward from the surface within 2.4 miles each side of the Forney VOR 318° radial extending from the 4-mile radius of Waynesville Regional Airport at Forney Field to 7 miles northwest of the VOR and within 4 miles southwest and 8 miles northeast of the 147° bearing from the Buckhorn NDB extending from the 4-mile radius of the airport to 7 miles southeast of the Buckhorn NDB, excluding that airspace within the R–4501 Fort Leonard Wood Restricted Areas, during the specific times they are in effect. This Class E airspace area is effective during the specific dates and times established in advance by a Notice to Airmen. The effective date and time will thereafter be continuously published in the Airport/Facility Directory.

* * * * *

Paragraph 6005 Class E airspace areas extending upward from 700 feet or more above the surface of the earth.

* * * * *

ACE MO E5 Fort Leonard Wood, MO

Waynesville Regional Airport at Forney Field, MO
(Lat. 37°44'30" N., long. 92°08'27" W.)
Forney VOR
(Lat. 37°44'33" N., long. 92°08'20" W.)
Buckhorn NDB
(Lat. 37°41'51" N., long. 92°06'14" W.)

That airspace extending upward from 700 feet above the surface within a 6.5-mile radius of Waynesville Regional Airport at Forney Field and within 2.4 miles each side of the Forney VOR 318° radial extending from the 6.5-mile radius of the airport to 7 miles northwest of the VOR and within 4 miles southwest and 8 miles northeast of the 147° bearing from the Buckhorn NDB extending from the 6.5-mile radius of the airport to 16 miles southeast of the Buckhorn NDB; excluding that airspace within the R–4501 Fort Leonard Wood, MO, Restricted Areas during the specific times they are in effect.

* * * * *

Issued in Kansas City, MO, on April 28, 2003.

Herman J. Lyons, Jr.,

Manager, Air Traffic Division, Central Region.

[FR Doc. 03–11643 Filed 5–8–03; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2003–14936; Airspace Docket No. 03–ACE–39]

Modification of Class E Airspace; Muscatine, IA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Direct final rule; request for comments.

SUMMARY: The intended effect of this rule is to provide appropriate controlled Class E airspace for aircraft operating under Instrument Flight Rules (IFR) at Muscatine, IA, delete the Muscatine NDB and coordinates from the legal description of Class E airspace at Muscatine, IA, and bring the legal description into compliance with FAA Order 7400.2E, Procedures for Handling Airspace Matters.

DATES: This direct final rule is effective on 0901 UTC, September 4, 2003. Comments for inclusion in the Rules Docket must be received on or before June 10, 2003.

ADDRESSES: Send comments on this proposal to the Docket Management System, U.S. Department of Transportation, Room Plaza 401, 400 Seventh Street, SW., Washington, DC 20590–0001. You must identify the docket number FAA–2003–14936/Airspace Docket No. 03–ACE–39, at the beginning of your comments. You may also submit comments on the Internet at *http://dms.dot.gov*. You may review the public docket containing the proposal, any comments received, and any final disposition in person in the Dockets Office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Docket Office (telephone 1–800–647–5527) is on the plaza level of the Department of Transportation NASSIF Building at the above address.

FOR FURTHER INFORMATION CONTACT: Kathy Randolph, Air Traffic Division, Airspace Branch, ACE–520C, DOT Regional Headquarters Building, Federal Aviation Administration, 901 Locust, Kansas City, MO 64106; telephone: (816) 329–2525.

SUPPLEMENTARY INFORMATION: This amendment to 14 CFR part 71 revises the Class E airspace at Musatine, IA. The Muscatine Nondirectional Radio Beacon (NDB) that served Muscatine Municipal Airport was decommissioned and the standard instrument approach procedures (SIAP) that utilized the NDB were cancelled. Controlled airspace extending upward from 700 feet Above Ground Level (AGL) that accommodated the NDB SIAPs is no longer needed. An examination of controlled airspace for Muscatine, IA revealed discrepancies in the Muscatine Municipal Airport airport reference point used in the legal description for this airspace area. The examination also revealed discrepancies in the location of the Port City Very High Frequency Omni-directional Range (VOR)/Distance Measuring Equipment (DME) used in the legal description for the Muscatine, IA Class E airspace area. This amendment incorporates the revised Muscatine Municipal Airport airport reference point and the revised location of the Port City VOR/DME and brings the legal description of the Muscatine, IA Class E airspace area into compliance with FAA Order 7400.2E, Procedures for Handling Airspace Matters. The amendment to Class E airspace at Muscatine, IA provides controlled airspace at and above 700

feet AGL to contain SIAPs, other than the NDB SIAPs, at Muscatine Municipal Airport. The additional Class E airspace necessary for the NDB SIAPs is revoked. The Muscatine NDB and coordinates, and reference to these, are deleted from the legal description of Muscatine, IA Class E airspace. The area will be depicted on appropriate aeronautical charts. Class E airspace areas extending upward from 700 feet or more above the surface of the earth are published in paragraph 6005 of FAA Order 7400.9K, dated August 30, 2002, and effective September 16, 2002, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document will be published subsequently in the Order.

The Direct Final Rule Procedure

The FAA anticipates that this regulation will not result in adverse or negative comment and, therefore, is issuing it as a direct final rule. Previous actions of this nature have not been controversial and have not resulted in adverse comments or objections. The amendment will enhance safety for all flight operations by designating an area where VFR pilots may anticipate the presence of IFR aircraft at lower altitudes, especially during inclement weather conditions. A greater degree of safety is achieved by depicting the area on aeronautical charts. Unless a written adverse or negative comment, or a written notice of intent to submit an adverse or negative comment is received within the comment period, the regulation will become effective on the date specified above. After the close of the comment period, the FAA will publish a document in the **Federal Register** indicating that no adverse or negative comments were received and confirming the date on which the final rule will become effective. If the FAA does receive, within the comment period, an adverse or negative comment, or written notice of intent to submit such a comment, a document withdrawing the direct final rule will be published in the **Federal Register**, and a notice of proposed rulemaking may be published with a new comment period.

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments, as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify both docket numbers and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. FAA–2003–14936/Airspace Docket No. 03–ACE–39". The postcard will be date/time stamped and returned to the commenter.

Agency Findings

The regulations adopted herein will not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this final rule does not have federalism implications under Executive Order 13132.

The FAA has determined that this regulation is noncontroversial and unlikely to result in adverse or negative comments. For the reasons discussed in the preamble, I certify that this regulation (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under Department of Transportation (DOT) Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

■ Accordingly, the Federal Aviation Administration amends 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A, CLASS B, CLASS C, CLASS D, AND CLASS E AIRSPACE AREAS; AIRWAYS; ROUTES; AND REPORTING POINTS

■ 1. The authority citation for part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§ 71.1 [Amended]

■ 2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9K, dated August 30, 2002, and effective September 16, 2002, is amended as follows:

Paragraph 6005 Class E airspace areas extending upward from 700 feet or more above the surface of the earth.

* * * * *

ACE IA E5 Muscatine, IA

Muscatine Municipal Airport, IA
(Lat. 41°22′04″ N., long. 91°08′54″ W.)
Port City VOR/DME
(Lat. 41°21′59″ N., long. 91°08′57″ W.)

That airspace extending upward from 700 feet above the surface within a 6.5-mile radius of Muscatine Municipal Airport and within 2.6 miles each side of the 061° radial of the Port City VOR/DME extending from the 6.5-mile radius to 7 miles northwest of the airport and within 2.6 miles each side of the 231° radial of the VOR/DME extending from the 6.5-mile radius to 7 miles southwest of the airport.

* * * * *

Issued in Kansas City, MO, on April 28, 2003.

Herman J. Lyons, Jr.,

Manager, Air Traffic Division, Central Region.

[FR Doc. 03–11642 Filed 5–8–03; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2003–14938; Airspace Docket No. 03–ACE–41]

Modification of Class E Airspace; Ottumwa, IA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Direct final rule; request for comments.

SUMMARY: An examination of controlled airspace for Ottumwa, IA revealed discrepancies in the legal descriptions for the Ottumwa, IA Class E airspace areas. This action corrects the discrepancies by modifying the Ottumwa, IA Class E airspace areas and by incorporating the changes into the Class E airspace legal descriptions.

DATES: The direct final rule is effective on 0901 UTC, September 4, 2003. Comments for inclusion in the Rules Docket must be received on or before June 10, 2003.

ADDRESSES: Send comments on this proposal to the Docket Management System, U.S. Department of Transportation, Room Plaza 401, 400 Seventh Street, SW., Washington, DC 20590–0001. You must identify the docket number FAA–2003–14938/Airspace Docket No. 03–ACE–41, at the beginning of your comments. You may also submit comments on the Internet at *http://dms.dot.gov*. You may review the public docket containing the proposal, any comments received, and any final disposition in person in the Dockets Office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Docket Office (telephone 1–800–647–5527) is on the plaza level of the Department of Transportation NASSIF Building at the above address.

FOR FURTHER INFORMATION CONTACT: Kathy Randolph, Air Traffic Division, Airspace Branch, ACE–520C, DOT Regional Headquarters Building, Federal Aviation Administration, 901 Locust, Kansas City, MO 64106; telephone: (816) 329–2525.

SUPPLEMENTARY INFORMATION: This amendment to 14 CFR part 71 modifies the legal description of the Class E airspace designated as a surface area at Ottumwa, IA. The navigational aid serving Ottumwa Industrial Airport is misidentified as a collocated very high frequency omni-directional radio range and tactical air navigational aid (VORTAC) when it is actually a very high frequency omni-directional range (VOR)/distance measuring equipment (DME) facility. This amendment also modifies Ottumwa, IA Class E airspace area extending upward from 700 feet above the surface and its legal description. It makes the correction listed above to this airspace area, modifies the airport name and corrects an error in the listed location of the navigational aid serving Ottumwa Industrial Airport. This action brings the legal descriptions of both Ottumwa, IA airspace areas into compliance with FAA Order 7400.2E, Procedures for Handling Airspace Matters. The areas will be depicted on appropriate aeronautical charts. Class E airspace designated as surface areas are published in paragraph 6002 of FAA Order 7400.9K, dated August 30, 2002, and effective September 16, 2002, which is incorporated by reference in 14 CFR 71.1. Class E airspace areas extending upward from 700 feet or more above the surface of the earth are published in paragraph 6005 of the same FAA Order. The Class E airspace designations listed in this document will be published subsequently in the Order.

The Direct Final Rule Procedure

The FAA anticipates that this regulation will not result in adverse or negative comment and, therefore, is issuing it as a direct final rule. Previous actions of this nature have not been controversial and have not resulted in adverse comments or objections. Unless a written adverse or negative comment, or a written notice of intent to submit an adverse or negative comment is received within the comment period, the regulation will become effective on the date specified above. After the close of the comment period, the FAA will publish a document in the **Federal Register** indicating that no adverse or negative comments were received and confirming the date on which the final rule will become effective. If the FAA does receive, within the comment period, an adverse or negative comment, or written notice of intent to submit such a comment, a document withdrawing the direct final rule will be published in the **Federal Register**, and a notice of proposed rulemaking may be published with a new comment period.

Comments Invited

Interested parties are invited to participate in this rulemaking by submitting such written data, views, or arguments, as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify both docket numbers and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. FAA–2003–14938/Airspace Docket No. 03–ACE–41." The postcard will be date/time stamped and returned to the commenter.

Agency Findings

The regulations adopted herein will not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this final rule does not have federalism implications under Executive Order 13132.

The FAA had determined that this regulation is noncontroversial and unlikely to result in adverse or negative comments. For the reasons discussed in the preamble, I certify that this regulation (1) Is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under Department of Transportation (DOT) Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

■ Accordingly, the Federal Aviation Administration amends 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A, CLASS B, CLASS C, CLASS D, AND CLASS E AIRSPACE AREAS; AIRWAYS; ROUTES; AND REPORTING POINTS

■ 1. The authority citation for part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§ 71.1 [Amended]

■ 2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9K, dated August 30, 2002, and effective September 16, 2002, is amended as follows:

Paragraph 6002 Class E Airspace Designated as Surface Areas.

* * * * *

ACE IA E2 Ottumwa, IA

Ottumwa Industrial Airport, IA
(Lat. 41°06′24″ N., long. 92°26′53″ W.)
Ottumwa VOR/DME
(Lat. 41°01′45″ N., long. 92°19′33″ W.)

Within a 4.1-mile radius of Ottumwa Industrial Airport and within 1.8 miles each side of the Ottumwa VOR/DME 309° radial extending from the 4.1-mile radius to the VOR/DME.

* * * * *

Paragraph 6005 Class E airspace areas extending upward from 700 feet or more above the surface of the earth.

* * * * *

ACE IA E5 Ottumwa, IA

Ottumwa Industrial Airport, IA
(Lat. 41°06′24″ N., long. 92°26′53″ W.)
Ottumwa VOR/DME
(Lat. 41°01′45″ N., long. 92°19′33″ W.)

That airspace extending upward from 700 feet above the surface within a 6.6 mile radius of Ottumwa Industrial Airport and within 1.8 miles each side of the Ottumwa VOR/DME 309° radial extending from the 6.6-mile radius to 11.2 miles northwest of the

airport and within 2 miles each side of the Ottumwa VOR/DME 129° radial extending from the 6.6-mile radius to 1 mile southeast of the VOR/DME.

* * * * *

Issued in Kansas City, MO, on April 29, 2003.

Paul J. Sheridan,

Acting Manager, Air Traffic Division, Central Region.

[FR Doc. 03–11641 Filed 5–8–03; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

RIN 2120–AA66

[Docket No. FAA 2003–14368; Airspace Docket No. ASD 02–ASW–4]

Revision of Jet Routes; Baton Rouge, LA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action revises segments of Jet Route 2 (J–2), J–138, and J–590 by realigning the routes to the north over the Baton Rouge, LA, Very High Frequency Omnidirectional Range/Tactical Air Navigation (VORTAC). The FAA is taking this action to enhance the management of the aircraft operations over the Baton Rouge, LA, area.

EFFECTIVE DATE: 0901 UTC, July 10, 2003.

FOR FURTHER INFORMATION CONTACT: Steve Rohring, Airspace and Rules Division, ATA–400, Office of Air Traffic Airspace Management, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone: (202) 267–8783.

SUPPLEMENTARY INFORMATION:

Background

On February 19, 2003, the FAA proposed to amend 14 CFR part 71 to revise J–2, J–138 and J–590 (68 FR 7949). The FAA is conducting a comprehensive revision of the Houston terminal airspace area. As part of this effort, the FAA is taking this action to realign certain segments of J–2, J–138, and J–590 over the new Baton Rouge, LA, VORTAC to promote the expeditious movement of aircraft through the Baton Rouge, LA, airspace area. Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on this proposal to the FAA. No comments were received in response to the proposal.

The Rule

This amendment to 14 CFR part 71 revises segments of J–2 and J–138 between the Lake Charles, LA, VORTAC and the Semmes, AL, VORTAC; and J–590 between the Lake Charles, LA, VORTAC and the Greene County, MS, VORTAC, by realigning the routes to the north over the Baton Rouge, LA, VORTAC. This action supports the planned revision of the Houston terminal airspace area.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore, this proposed regulation: (1) Is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under Department of Transportation (DOT) Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

Jet routes are published in paragraph 2004 of FAA Order 7400.9K dated August 30, 2002, and effective September 16, 2002, which is incorporated by reference in 14 CFR 71.1. The jet routes listed in this document will be published subsequently in the order.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A, CLASS B, CLASS C, CLASS D, AND CLASS E, AIRSPACE AREAS; AIRWAYS; ROUTES; AND REPORTING POINTS

■ 1. The authority citation for part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§ 71.1 [Amended]

■ 2. The incorporation by reference in 14 CFR 71.1 of FAA Order 7400.9K, Airspace Designations and Reporting Points, dated August 30, 2002, and effective September 16, 2002, is amended as follows:

Paragraph 2004—Jet Routes

* * * * *

J–2 [Revised]

From Mission Bay, CA, via Imperial, CA; Bard, AZ; INT of the Bard 089° and Gila Bend, AZ, 261° radials; Gila Bend; Cochise, AZ; El Paso, TX; Fort Stockton, TX; Junction, TX; San Antonio, TX; Humble, TX; Lake Charles, LA; Baton Rouge, LA; Semmes, AL; Crestview, FL; INT of the Crestview 091° and the Seminole, FL, 290° radials; Seminole to Taylor, FL.

* * * * *

J–138 [Revised]

From Fort Stockton, TX, via Center Point, TX; San Antonio, TX; Hobby, TX; Lake Charles, LA; Baton Rouge, LA; to Semmes, AL.

* * * * *

J–590 [Revised]

From Lake Charles, LA, via Baton Rouge, LA; Greene County, MS; to Montgomery, AL.

* * * * *

Issued in Washington, DC, on May 2, 2003.

Reginald C. Matthews,

Manager, Airspace and Rules Division.

[FR Doc. 03–11637 Filed 5–8–03; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

14 CFR Part 382

[Docket No. OST–2003–15072]

Guidance Concerning Service Animals in Air Transportation

AGENCY: Department of Transportation, Office of the Secretary.

ACTION: Notice of policy guidance concerning service animals in air transportation.

SUMMARY: This notice publishes a revision to the Department of Transportation's Guidance Concerning Service Animals in Air Transportation, originally published in the **Federal Register** on November 1, 1996. It is the result of the Department's review of a September 19, 2002, submission of suggested improvements to the existing guidance from representatives of the disability community and the airline industry.

ADDRESSES: This guidance document is available on the Department's Web site at *http://airconsumer.ost.dot.gov/* and future updates or revisions will be posted there. Questions regarding this notice may be addressed to the Office of Aviation Enforcement and Proceedings, C–70, 400 7th Street, SW., Washington, DC 20590.

FOR FURTHER INFORMATION CONTACT: Damon P. Whitehead, Office of the General Counsel, Office of Aviation Enforcement and Proceedings, 400 Seventh Street, SW., Washington, DC 20590; (202) 366–1743; fax: (202) 366–7152; E-mail: *damon.whitehead@ost.dot.gov.*

Policy Guidance Concerning Service Animals in Air Transportation

In 1990, the U.S. Department of Transportation (DOT) promulgated the official regulations implementing the Air Carrier Access Act (ACAA). Those rules are entitled *Nondiscrimination on the Basis of Disability in Air Travel* (14 CFR part 382). Since then the number of people with disabilities traveling by air has grown steadily. This growth has increased the demand for air transportation accessible to all people with disabilities and the importance of understanding DOT's regulations and how to apply them. This document expands on an earlier DOT guidance document published in 1996[1], which was based on an earlier Americans with Disabilities Act (ADA) service animal guide issued by the Department of Justice (DOJ) in July 1996. The purpose of this document is to aid airline employees and people with disabilities in understanding and applying the ACAA and the provisions of Part 382 with respect to service animals in determining:

(1) Whether an animal is a service animal and its user a qualified individual with a disability;

(2) How to accommodate a qualified person with a disability with a service animal in the aircraft cabin; and

(3) When a service animal legally can be refused carriage in the cabin.

Background

The 1996 DOT guidance document defines a service animal as "any guide dog, signal dog, or other animal individually trained to provide assistance to an individual with a disability. If the animal meets this definition, it is considered a service animal regardless of whether it has been licensed or certified by a state or local government." This document refines DOT's previous definition of service animal[2] by making it clear that animals that assist persons with disabilities by providing emotional support qualify as service animals and ensuring that, in situations concerning emotional support animals, the authority of airline personnel to require documentation of the individual's disability and the medical necessity of the passenger traveling with the animal is understood.

Today, both the general public and people with disabilities use many different terms to identify animals that can meet the legal definition of "service animal." These range from umbrella terms such as "assistance animal" to specific labels such as "hearing," "signal," "seizure alert," "psychiatric service," "emotional support" animal, etc. that describe how the animal assists a person with a disability.

When Part 382 was promulgated, most service animals were guide or hearing dogs. Since then, a wider variety of animals (*e.g.*, cats, monkeys, etc.) have been individually trained to assist people with disabilities. Service animals also perform a much wider variety of functions than ever before (*e.g.*, alerting a person with epilepsy of imminent seizure onset, pulling a wheelchair, assisting persons with mobility impairments with balance). These developments can make it difficult for airline employees to distinguish service animals from pets, especially when a passenger does not appear to be disabled, or the animal has no obvious indicators that it is a service animal. Passengers may claim that their animals are service animals at times to get around airline policies that restrict the carriage of pets. Clear guidelines are needed to assist airline personnel and people with disabilities in knowing what to expect and what to do when these assessments are made.

Since airlines also are obliged to provide all accommodations in accordance with FAA safety regulations (*see* section 382.3(d)), educated consumers help assure that airlines provide accommodations consistent with the carriers' safety duties and responsibilities. Educated consumers also assist the airline in providing them the services they want, including accommodations, as quickly and efficiently as possible.

General Requirements of Part 382

In a nutshell, the main requirements of Part 382 regarding service animals are:

- Carriers shall permit dogs and other service animals used by persons with disabilities to accompany the persons on a flight. See section 382.55(a)(1–2).

—Carriers shall accept as evidence that an animal is a service animal identifiers such as identification cards, other written documentation, presence of harnesses, tags or the credible verbal assurances of a qualified individual with a disability using the animal.

—Carriers shall permit a service animal to accompany a qualified individual with a disability in any seat in which the person sits, unless the animal obstructs an aisle or other area that must remain unobstructed in order to facilitate an emergency evacuation or to comply with FAA regulations.

- If a service animal cannot be accommodated at the seat location of the qualified individual with a disability whom the animal is accompanying, the carrier shall offer the passenger the opportunity to move with the animal to a seat location in the same class of service, if present on the aircraft, where the animal can be accommodated, as an alternative to requiring that the animal travel in the cargo hold (see section 382.37(c)).
- Carriers shall not impose charges for providing facilities, equipment, or services that are required by this part to be provided to qualified individuals with a disability (see section 382.57).

Two Steps for Airline Personnel

To determine whether an animal is a service animal and should be allowed to accompany its user in the cabin, airline personnel should:

1. Establish whether the animal is a pet or a service animal, and whether the passenger is a qualified individual with a disability; and then

2. Determine if the service animal presents either

- a "direct threat to the health or safety of others," or
- a significant threat of disruption to the airline service in the cabin (*i.e.* a "fundamental alteration" to passenger service). *See* 382.7(c).

Service Animals

How Do I Know It's a Service Animal and Not a Pet?

Remember: In most situations *the key is TRAINING.* Generally, a service animal is individually trained to perform functions to assist the passenger who is a qualified individual with a disability. In a few extremely limited situations, an animal such as a seizure alert animal may be capable of performing functions to assist a qualified person with a disability without individualized training. Also, an animal used for emotional support need not have specific training for that function. Similar to an animal that has been individually trained, the definition of a service animal includes: An animal that has been shown to have the innate ability to assist a person with a disability; or an emotional support animal.

These five steps can help one determine whether an animal is a service animal or a pet:

1. *Obtain credible verbal assurances:* Ask the passenger: "Is this your pet?" If the passenger responds that the animal is a service animal and not a pet, but uncertainty remains about the animal, appropriate follow-up questions would include:

—"What tasks or functions does your animal perform for you?" or

—"What has it been trained to do for you?"

—"Would you describe how the animal performs this task (or function) for you?"

- As noted earlier, functions include, but are not limited to:

A. Helping blind or visually impaired people to safely negotiate their surroundings;

B. Alerting deaf and hard-of-hearing persons to sounds;

C. Helping people with mobility impairments to open and close doors, retrieve objects, transfer from one seat to another, maintain balance; or

D. Alert or respond to a disability-related need or emergency (*e.g.*, seizure, extreme social anxiety or panic attack).

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[1] 61 FR 56409, 56420 (Nov. 1, 1996).

[2] See Glossary for definition of this and other terms.

• Note that to be a service animal that can properly travel in the cabin, the animal need not necessarily perform a function for the passenger during the flight. For example, some dogs are trained to help pull a passenger's wheelchair or carry items that the passenger cannot readily carry while using his or her wheelchair. It would not be appropriate to deny transportation in the cabin to such a dog.

• If a passenger cannot provide credible assurances that an animal has been individually trained or is able to perform some task or function to assist the passenger with his or her disability, the animal might not be a service animal. In this case, the airline personnel may require documentation (*see* Documentation below).

• There may be cases in which a passenger with a disability has personally trained an animal to perform a specific function (*e.g.*, seizure alert). Such an animal may not have been trained through a formal training program (*e.g.*, a "school" for service animals). If the passenger can provide a reasonable explanation of how the animal was trained or how it performs the function for which it is being used, this can constitute a "credible verbal assurance" that the animal has been trained to perform a function for the passenger.

2. *Look for physical indicators on the animal:* Some service animals wear harnesses, vests, capes or backpacks. Markings on these items or on the animal's tags may identify it as a service animal. It should be noted, however, that the absence of such equipment does not necessarily mean the animal is not a service animal.

3. *Request documentation for service animals other than emotional support animals:* The law allows airline personnel to ask for documentation as a means of verifying that the animal is a service animal, but DOT urges carriers not to require documentation as a condition for permitting an individual to travel with his or her service animal in the cabin unless a passenger's verbal assurance is not credible. In that case, the airline may require documentation as a condition for allowing the animal to travel in the cabin. The purpose of documentation is to substantiate the passenger's disability-related need for the animal's accompaniment, which the airline may require as a condition to permit the animal to travel in the cabin. Examples of documentation include a letter from a licensed professional treating the passenger's condition (*e.g.*, physician, mental health professional, vocational case manager, etc.)

4. *Require documentation for emotional support animals:* With respect to an animal used for emotional support (which need not have specific training for that function), airline personnel may require current documentation (*i.e.*, not more than one year old) on letterhead from a mental health professional stating (1) that the passenger has a mental health-related disability; (2) that having the animal accompany the passenger is necessary to the passenger's mental health or treatment or to assist the passenger (with his or her disability); and (3) that the individual providing the assessment of the passenger is a licensed mental health professional and the passenger is under his or her professional care. Airline personnel may require this documentation as a condition of permitting the animal to accompany the passenger in the cabin. The purpose of this provision is to prevent abuse by passengers that do not have a medical need for an emotional support animal and to ensure that passengers who have a legitimate need for emotional support animals are permitted to travel with their service animals on the aircraft. Airlines are not permitted to require the documentation to specify the type of mental health disability, *e.g.*, panic attacks.

5. *Observe behavior of animals:* Service animals are trained to behave properly in public settings. For example, a properly trained guide dog will remain at its owner's feet. It does not run freely around an aircraft or an airport gate area, bark or growl repeatedly at other persons on the aircraft, bite or jump on people, or urinate or defecate in the cabin or gate area. An animal that engages in such disruptive behavior shows that it has not been successfully trained to function as a service animal in public settings. Therefore, airlines are not required to treat it as a service animal, even if the animal performs an assistive function for a passenger with a disability or is necessary for a passenger's emotional well-being.

What About Service Animals in Training?

Part 382 requires airlines to allow service animals to accompany their handlers [3] in the cabin of the aircraft, but airlines are not required otherwise to carry animals of any kind either in the cabin or in the cargo hold. Airlines are free to adopt any policy they choose regarding the carriage of pets and other animals provided that they comply with other applicable requirements (*e.g.*, the Animal Welfare Act). Although "service animals in training" are not pets, the ACAA does not include them, because "in training" status indicates that they do not yet meet the legal definition of service animal. However, like pet policies, airline policies regarding service animals in training vary. Some airlines permit qualified trainers to bring service animals in training aboard an aircraft for training purposes. Trainers of service animals should consult with airlines, and become familiar with their policies.

What About a Service Animal That Is Not Accompanying a Qualified Individual With a Disability?

When a service animal is not accompanying a passenger with a disability, the airline's general policies on the carriage of animals usually apply. Airline personnel should know their company's policies on pets, service animals in training, and the carriage of animals generally. Individuals planning to travel with a service animal other than their own should inquire about the applicable policies in advance.

[3] Service animal users typically refer to the person who accompanies the animal as the "handler."

Qualified Individuals With Disabilities [4]

How Do I Know if a Passenger Is a Qualified Individual With a Disability Who Is Entitled To Bring a Service Animal in the Cabin of the Aircraft if the Disability Is Not Readily Apparent?

• Ask the passenger about his or her disability as it relates to the need for a service animal. Once the passenger identifies the animal as a service animal, you may ask, "How does your animal assist you with your disability?" Avoid the question "What is your disability?" as this implies you are asking for a medical label or the cause of the disability, which is intrusive and inconsistent with the intent of the ACAA. Remember, Part 382 is intended to facilitate travel by people with disabilities by requiring airlines to accommodate them on an individual basis.

• Ask the passenger whether he or she has documentation as a means of verifying the medical necessity of the passenger traveling with the animal. Keep in mind that you can ask but cannot require documentation as proof of service animal status UNLESS (1) a passenger's verbal assurance is not credible and the airline personnel cannot in good faith determine whether the animal is a service animal without documentation, or (2) a passenger indicates that the animal is to be used as an emotional support animal.

• Using the questions and other factors above, you must decide whether it is reasonable to believe that the passenger is a qualified individual with a disability, and the animal is a service animal.

Denying a Service Animal Carriage in the Cabin

What Do I Do if I Believe That Carriage of the Animal in the Cabin of the Aircraft Would Inconvenience Non-Disabled Passengers?

Part 382 requires airlines to permit qualified individuals with a disability to be accompanied by their service animals in the cabin, as long as the animals do not (1) pose a direct threat to the health or safety of others (*e.g.*, animal displays threatening behaviors by growling, snarling, lunging at, or attempting to bite other persons on the aircraft) or (2) cause a significant disruption in cabin service (*i.e.*, a "fundamental alteration" to passenger service). Inconvenience of other passengers is not sufficient grounds to deny a service animal carriage in the cabin; as indicated later in this document, however, airlines are not required to ask other passengers to relinquish space that they would normally use in order to accommodate a service animal (*e.g.*, space under the seat in front of the non-disabled passenger).

What Do I Do if I Believe That a Passenger's Assertions About Having a Disability or a Service Animal Are Not Credible?

• Ask if the passenger has documentation that satisfies the requirements for determining that the animal is a service animal (*see* discussion of "Documentation" above).

• If the passenger has no documents, then explain to the passenger that the animal

[4] See Glossary.

cannot be carried in the cabin, because it does not meet the criteria for service animals. Explain your airline's policy on pets (*i.e.*, will or will not accept for carriage in the cabin or cargo hold), and what procedures to follow.

• If the passenger does not accept your explanation, avoid getting into an argument. Ask the passenger to wait while you contact your airline's *complaint resolution official (CRO)*. Part 382 requires all airlines to have a CRO available at each airport they serve during all hours of operation. The CRO may be made available by telephone. The CRO is a resource for resolving difficulties related to disability accommodation.

• Consult with the CRO immediately, if possible. The CRO normally has the authority to make the final decision regarding carriage of service animals. In the rare instance that a service animal would raise a concern regarding flight safety, the CRO may consult with the pilot-in-command. If the pilot-in-command makes a decision to restrict the animal from the cabin or the flight for safety reasons, the CRO cannot countermand the pilot's decision. This does not preclude the Department from taking subsequent enforcement action, however, if it is determined that the pilot's decision was inconsistent with part 382.

• If a passenger makes a complaint to a CRO about a past decision not to accept an animal as a service animal, then the CRO must provide a written statement to the passenger within 10 days explaining the reason(s) for that determination. If carrier personnel other than the CRO make the final decision, a written explanation is not required; however, because denying carriage of a legitimate service animal is a potential civil rights violation, it is recommended that carrier personnel explain to the passenger the reason the animal will not be accepted as a service animal. A recommended practice may include sending passengers whose animals are not accepted as service animals a letter within ten business days explaining the basis for such a decision.

In considering whether a service animal should be excluded from the cabin, keep these things in mind:

• Certain unusual service animals pose unavoidable safety and/or public health concerns and airlines are not required to transport them. Snakes, other reptiles, ferrets, rodents, and spiders certainly fall within this category of animals.

• In all other circumstances, each situation must be considered individually. Do not make assumptions about how a particular unusual animal is likely to behave based on past experience with other animals. You may inquire, however, about whether a particular animal has been trained to behave properly in a public setting.

• Before deciding to exclude the animal, you should consider and try available means of mitigating the problem (*e.g.*, muzzling a dog that barks frequently, allowing the passenger a reasonable amount of time under the circumstances to correct the disruptive behavior, offering the passenger a different seat where the animal won't block the aisle.)

If it is determined that the animal should not accompany the disabled passenger in the cabin at this time, offer the passenger alternative accommodations in accordance with part 382 and company policy (*e.g.*, accept the animal for carriage in the cargo hold).

What About Unusual Service Animals?

• As indicated above, certain unusual service animals, pose unavoidable safety and/or public health concerns and airlines are not required to transport them. Snakes, other reptiles, ferrets, rodents, and spiders certainly fall within this category of animals. The release of such an animal in the aircraft cabin could result in a direct threat to the health or safety of passengers and crewmembers. For these reasons, airlines are not required to transport these types of service animals in the cabin, and carriage in the cargo hold will be in accordance with company policies on the carriage of animals generally.

• Other unusual animals such as miniature horses, pigs and monkeys should be evaluated on a case-by-case basis. Factors to consider are the animal's size, weight, state and foreign country restrictions, and whether or not the animal would pose a direct threat to the health or safety of others, or cause a fundamental alteration (significant disruption) in the cabin service. If none of these factors apply, the animal may accompany the passenger in the cabin. In most other situations, the animal should be carried in the cargo hold in accordance with company policy.

Miscellaneous Questions

What About the Passenger Who Has Two or More Service Animals?

• A single passenger legitimately may have two or more service animals. In these circumstances, you should make every reasonable effort to accommodate them in the cabin in accordance with part 382 and company policies on seating. This might include permitting the passenger to purchase a second seat so that the animals can be accommodated in accordance with FAA safety regulations. You may offer the passenger a seat on a later flight if the passenger and animals cannot be accommodated together at a single passenger seat. Airlines may not charge passengers for accommodations that are required by part 382, including transporting service animals in the cargo compartment. If carriage in the cargo compartment is unavoidable, notify the destination station to return the service animal(s) to the passenger at the gate as soon as possible, or to assist the passenger as necessary to retrieve them in the appropriate location.

What if the Service Animal Is Too Large to Fit Under the Seat in Front of the Customer?

• If the service animal does not fit in the assigned location, you should relocate the passenger and the service animal to some other place in the cabin in the same class of service where the animal will fit under the seat in front of the passenger and not create an obstruction, such as the bulkhead. If no single seat in the cabin will accommodate the animal and passenger without causing an obstruction, you may offer the option of purchasing a second seat, traveling on a later flight or having the service animal travel in the cargo hold. As indicated above, airlines may not charge passengers with disabilities for services required by part 382, including transporting their oversized service animals in the cargo compartment.

Should Passengers Provide Advance Notice to the Airline Concerning Multiple or Large Service Animals?

In most cases, airlines may not insist on advance notice or health certificates for service animals under the ACAA regulations. However, it is very useful for passengers to contact the airline well in advance if one or more of their service animals may need to be transported in the cargo compartment. The passenger will need to understand airline policies and should find out what type of documents the carrier would need to ensure the safe passage of the service animal in the cargo compartment and any restrictions for cargo travel that might apply (*e.g.*, temperature conditions that limit live animal transport).

What if an Airline Employee or Another Passenger on Board Is Allergic or Has an Adverse Reaction to a Passenger's Service Animal?

Passengers who state they have allergies or other animal aversions should be located as far away from the service animal as practicable. Whether or not an individual's allergies or animal aversions are disabilities (an issue this Guidance does not address), each individual's needs should be addressed to the fullest extent possible under the circumstances and in accordance with the requirements of part 382 and company policy.

Accommodating Passengers With Service Animals in the Cabin

How Can Airline Personnel Help Ensure That Passengers With Service Animals Are Assigned and Obtain Appropriate Seats on the Aircraft?

• Let passengers know the airline's policy about seat assignments for people with disabilities. For instance: (1) Should the passenger request pre-boarding at the gate? or (2) should the passenger request an advance seat assignment (a priority seat such as a bulkhead seat or aisle seat) up to 24 hours before departure? or (3) should the passenger request an advance seat assignment at the gate on the day of departure? When assigning priority seats, ask the passenger what location best fits his/her needs.

• Passengers generally know what kinds of seats best suit their service animals. In certain circumstances, passengers with service animals must either be provided their pre-requested priority seats, or if their requested seat location cannot be made available, they must be assigned to other available priority seats of their choice in the same cabin class. Part 382.38 requires airlines to provide a bulkhead seat or a seat other than a bulkhead seat at the request of an individual traveling with a service animal.

• Passengers should comply with airline recommendations or requirements regarding when they should arrive at the gate before a flight. This may vary from airport to airport and airline to airline. Not all airlines

announce pre-boarding for passengers with special needs, although it may be available. If you wish to request pre-boarding, tell the agent at the gate.

• Unless pre-boarding is not part of your carrier's business operation, a timely request for pre-boarding by a passenger with a disability should be honored (382.38 (d)).

• Part 382 does not require carriers to make modifications that would constitute an undue burden or would fundamentally alter their programs (382.7 (c)). Therefore, the following are *not* required in providing accommodations for users of service animals and are examples of what might realistically be viewed as creating an undue burden:

— Asking another passenger to give up the space in front of his or her seat to accommodate a service animal;
— Denying transportation to any individual on a flight in order to provide an accommodation to a passenger with a service animal;
— Furnishing more than one seat per ticket; and
— Providing a seat in a class of service other than the one the passenger has purchased.

Are Airline Personnel Responsible for the Care and Feeding of Service Animals?

Airline personnel are not required to provide care, food, or special facilities for service animals. The care and supervision of a service animal is solely the responsibility of the passenger with a disability whom the animal is accompanying.

May an Air Carrier Charge a Maintenance or Cleaning Fee to Passengers Who Travel With Service Animals?

Part 382 prohibits air carriers from imposing special charges for accommodations required by the regulation, such as carriage of a service animal. However, an air carrier may charge passengers with a disability if a service animal causes damage, as long as it is its regular practice to charge non-disabled passengers for similar kinds of damage. For example, it could charge a passenger with a disability for the cost of repairing or cleaning a seat damaged by a service animal, assuming that it is its policy to charge when a non-disabled passenger or his or her pet causes similar damage.

Advice for Passengers With Service Animals

• Ask about the airline's policy on advance seat assignments for people with disabilities. For instance: (1) Should a passenger request pre-boarding at the gate? or (2) should a passenger request an advance seat assignment (a priority seat such as a (bulkhead seat or aisle seat)) up to 24 hours before departure? or (3) should a passenger request an advance seat assignment at the gate on the day of departure?

• Although airlines are not permitted to automatically require documentation for service animals other than emotional support animals, if you think it would help you explain the need for a service animal, you may want to carry documentation from your physician or other licensed professional confirming your need for the service animal. Passengers with unusual service animals also may want to carry documentation confirming that their animal has been trained to perform a function or task for them.

• If you need a specific seat assignment for yourself and your service animal, make your reservation as far in advance as you can, and identify your need at that time.

• You may have to be flexible if your assigned seat unexpectedly turns out to be in an emergency exit row. When an aircraft is changed at the last minute, seating may be reassigned automatically. Automatic systems generally do not recognize special needs, and may make inappropriate seat assignments. In that case, you may be required by FAA regulations to move to another seat.

• Arrive at the gate when instructed by the airline, typically at least one hour before departure, and ask the gate agent for pre-boarding—if that is your desire.

• Remember that your assigned seat may be reassigned if you fail to check in on time; airlines typically release seat assignments not claimed 30 minutes before scheduled departure. In addition, if you fail to check in on time you may not be able to take advantage of the airline's pre-board offer.

• If you have a very large service animal or multiple animals that might need to be transported in the cargo compartment, contact the airline well in advance of your travel date. In most cases, airlines cannot insist on advance notice or health certificates for service animals under the ACAA regulations. However, it is very useful for passengers to contact the airline well in advance if one or more of their service animals may need to be transported in the cargo compartment. The passenger will need to understand airline policies and should find out what type of documents the carrier would need to ensure the safe passage of the service animal in the cargo compartment and any restrictions for cargo travel that might apply (*e.g.*, temperature conditions that limit live animal transport).

• If you are having difficulty receiving an appropriate accommodation, ask the airline employee to contact the airline's *complaint resolution official (CRO)*. Part 382 requires all airlines to have a CRO available during all hours of operation. The CRO is a resource for resolving difficulties related to disability accommodations.

• Another resource for resolving issues related to disability accommodations is the U.S. Department of Transportation's aviation consumer disability hotline. The toll-free number is 1–800–778–4838 (voice) and 1–800–455–9880 (TTY).

Glossary

Direct Threat to the Health or Safety of Others

A significant risk to the health or safety of others that cannot be eliminated by a modification of policies, practices, or procedures, or by the provision of auxiliary aids or services.

Fundamental Alteration

A modification that substantially alters the basic nature or purpose of a program, service, product or activity.

Individual With a Disability

"Any individual who has a physical or mental impairment that, on a permanent or temporary basis, substantially limits one or more major life activities, has a record of such an impairment, or is regarded as having such an impairment." (Section 382.5).

Qualified Individual With a Disability

Any individual with a disability who:

(1) "Takes those actions necessary to avail himself or herself of facilities or services offered by an air carrier to the general public with respect to accompanying or meeting a traveler, use of ground transportation, using terminal facilities, or obtaining information about schedules, fares or policies";

(2) "Offers, or makes a good faith attempt to offer, to purchase or otherwise validly to obtain * * * a ticket" "for air transportation on an air carrier"; or

(3) "Purchases or possesses a valid ticket for air transportation on an air carrier and presents himself or herself at the airport for the purpose of traveling on the flight for which the ticket has been purchased or obtained; and meets reasonable, nondiscriminatory contract of carriage requirements applicable to all passengers." (Section 382.5).

Service Animal

Any animal that is individually trained or able to provide assistance to a qualified person with a disability; or any animal shown by documentation to be necessary for the emotional well being of a passenger.

Sources

See: 14 CFR 382.5, 14 CFR 382.37(a) and (c), 14 CFR 382.38 (a)(3), (b), (d) & (h)–(j), 14 CFR 382.55(a)(1)–(3), 14 CFR 382.57, "Guidance Concerning Service Animals in Air Transportation," (61 FR 56420–56422, (November 1, 1996)), "Commonly Asked Questions About Service Animals in Places of Business" (Department of Justice, July 1996), and "ADA Business Brief: Service Animals" (Department of Justice, April 2002).

Issued in Washington, DC, on May 2, 2003.

Samuel Podberesky,

Assistant General Counsel for Aviation Enforcement and Proceedings.

[FR Doc. 03–11452 Filed 5–8–03; 8:45 am]

BILLING CODE 4910–62–P

DEPARTMENT OF COMMERCE

Office of the Secretary

15 CFR Part 0

[Docket No.: 010926237–3101–02]

RIN 0690–AA32

Employee Responsibilities and Conduct; Removal of Obsolete Regulations

AGENCY: Office of the General Counsel, Department of Commerce.

ACTION: Final rule.

SUMMARY: The Department of Commerce (the "Department") issues this final rule to revise and remove certain sections of the Commerce and Foreign Trade Regulation concerning the policies and procedures relating to employee responsibilities and conduct. The government-wide regulations of the Office of Government Ethics make these Department provisions obsolete.

EFFECTIVE DATE: May 9, 2003.

FOR FURTHER INFORMATION CONTACT: Chris Cox, Attorney-Advisor, telephone number: (202) 482–2442, fax: (202) 501–2295.

SUPPLEMENTARY INFORMATION: In August, 1992, the Office of Government Ethics promulgated the Executive Branch Financial Disclosure, Qualified Trusts, and Certificate of Divestiture regulations, 5 CFR part 2634, and the Standards of Ethical Conduct for Employees of the Executive Branch, 5 CFR part 2635. These regulations implemented the responsibilities and standards required by the 1978 Ethics in Government Act.

This final rule removes the following provisions from the Department's internal conduct regulations codified at 15 CFR part 0:

• Subparts B, C, and E;

• Sections 0.735–10a, 0.735–11, 0.735–12, 0.735–13, 0.735–14, and 0.735–15; and

• Appendices B and C.

These provisions are removed because they are superseded by provisions in the Ethics Program that are codified at 5 CFR parts 2634 and 2635.

This final rule also modifies the authority citation for 15 CFR part 0, and revises the language in 15 CFR section 0.735–2 to indicate that employees should refer to the standards of ethical conduct, financial disclosure, and other applicable regulations that are codified in 5 CFR part 2635 and 5 CFR part 2634.

Any supplementary regulations necessary, for Department-specific circumstances, may be promulgated in the future as provided by the current Office of Government Ethics regulations.

Classification

Executive Order 12866

This action has been determined to be not significant for purposes of Executive Order 12866.

Executive Order 13132

It has been determined that this action does not contain policies with Federalism implications as that term is defined in Executive Order 13132.

Administrative Procedure Act

Pursuant to 5 U.S.C 553(b)(A) prior notice and an opportunity for public comment are not required for this rule of agency organization, management, and procedure. Further, this rule of agency organization, management, and procedure is not a substantive rule subject to the 30-day delay in effective date requirement of 5 U.S.C. 553(d).

Regulatory Flexibility Act

As this rule is not subject to the requirement to provide prior notice and an opportunity for public comment pursuant to 5 U.S.C. 553, or any other law, it is not subject to the analytical requirements of the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*

Paperwork Reduction Act

This rule does not contain or involve any information collection requirements that require the approval of the Office of Management and Budget pursuant to the Paperwork Reduction Act, 44 U.S.C. chapter 35.

List of Subjects 15 CFR Part 0

Administrative practice and procedure, Conflict of interests.

Theodore W. Kassinger,

General Counsel.

■ For the reasons set forth in the preamble, the Department of Commerce is amending 15 CFR part 0 as follows:

PART 0—EMPLOYEE RESPONSIBILITIES AND CONDUCT

■ 1. The authority citation for part 0 is revised to read as follows:

Authority: 5 U.S.C. 301, 7301, 7353; 5 U.S.C. App. (Ethics in Government Act of 1978); 26 U.S.C. 7214(b); E.O. 12674, 54 FR 15159, 3 CFR 1989 Comp., p. 215, as modified by E.O. 12731, 55 FR 42547, 3 CFR 1990 Comp., p. 306; 5 CFR part 2635.

■ 2. Section 0.735–2 is revised to read as follows:

§ 0.735–2 Cross-references to ethical conduct, financial disclosure, and other applicable regulations.

Employees of the Department of Commerce should refer to the executive branch-wide Standards of Ethical Conduct at 5 CFR part 2635 and the executive branch-wide financial disclosure regulations at 5 CFR part 2634

■ 3. Subparts B and C are removed and reserved.

■ 4. In Subpart D, §§ 0.735.10a, 0.735–11, 0.735–12, 0.735–13, 0.735–14, 0.735–15 are removed and reserved.

■ 5. Subpart E is removed and reserved.

■ 6. Appendices B and C to part 0 are removed.

[FR Doc. 03–11490 Filed 5–8–03; 8:45 am]

BILLING CODE 3510–BW–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Chapter 1

Change of Address; Technical Amendment

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule; technical amendment.

SUMMARY: The Food and Drug Administration (FDA) is amending its regulations to reflect a change in the address for the Dockets Management Branch (DMB). This action is editorial in nature and is intended to improve the accuracy of the agency's regulations.

EFFECTIVE DATE: May 9, 2003.

FOR FURTHER INFORMATION CONTACT: Joyce Strong, Office of Policy and Planning (HF–27), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–7010.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of June 16, 1998 (63 FR 32888), FDA published a notice announcing the relocation of DMB from 12420 Parklawn Dr., rm. 1–23, Rockville, MD 20857, to its current location at 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. This document amends FDA's regulations to reflect DMB's change of address by removing the entire outdated address wherever it appears and by adding the new address in its place in 21 CFR parts 3, 7, 10, 12, 17, 25, 60, 100, 101, 109, 184, 201, 312, 314, 328, 330, 355, 500, 509, 520, 522, 601, 808, 812, 814, 1030, 1240, and 1250.

Publication of this document constitutes final action on these changes under the Administrative Procedure Act (5 U.S.C. 553). Notice and public procedure are unnecessary because FDA is merely correcting nonsubstantive errors.

■ Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, 21 CFR chapter I is amended as follows:

■ 1. Parts 3, 7, 10, 12, 17, 25, 60, 100, 101, 109, 184, 201, 312, 314, 328, 330, 355, 500, 509, 520, 522, 601, 808, 812, 814, 1030, 1240, and 1250 are amended by removing "12420 Parklawn Dr., rm. 1–23, Rockville, MD 20857" or "rm. 1–23, 12420 Parklawn Dr., Rockville, MD 20857" wherever they appear and by adding in their place "5630 Fishers Lane, rm. 1061, Rockville, MD 20852."

Dated: May 2, 2003.

Jeffrey Shuren,

Assistant Commissioner for Policy.

[FR Doc. 03–11650 Filed 5–8–03; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[TD 9048]

Guidance Under Section 1502; Suspension of Losses on Certain Stock Dispositions; Correction

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Correcting amendment.

SUMMARY: This document contains a correction to Treasury Decision 9048, which was published in the **Federal Register** on Friday, March 14, 2003 (68 FR 12287) that redetermines the basis of stock of a subsidiary member or a consolidated group immediately prior to certain transfers of such stock and certain deconsolidations of a subsidiary member.

DATES: This correction is effective on March 14, 2003.

FOR FURTHER INFORMATION CONTACT: Aimee K. Meacham at (202) 622–7530 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

The final regulations that are the subject of this correction are under section 1502 of the Internal Revenue Code.

Need for Correction

As published, TD 9048 contains an error which may prove to be misleading and is in need of clarification.

List of Subjects in 26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

Correction of Publication

■ Accordingly, 26 CFR Part 1 is corrected by making the following correcting amendment:

PART 1—INCOME TAXES

■ **Paragraph 1.** The authority citation for part 1 continues to read in part as follows:

Authority: 26 U.S.C. 7805 * * *

§ 1.1502–35T [Corrected]

■ **PAR. 2.** Section 1.1502–35T(b)(2)(ii)(B) is amended by removing the word "or" at the end of the paragraph.

LaNita Van Dyke,

Acting Chief, Regulations Unit, Associate Chief Counsel, (Procedure and Administration).

[FR Doc. 03–11591 Filed 5–8–03; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF DEFENSE

Office of the Secretary

32 CFR Part 311

[Administrative Instruction 81]

Privacy Act; Implementation

AGENCY: Office of the Secretary of Defense, DoD.

ACTION: Final rule.

SUMMARY: The Office of the Secretary of Defense is exempting a system of records in its inventory of systems of records pursuant to the Privacy Act of 1974 (5 U.S.C. 552a), as amended.

EFFECTIVE DATE: January 28, 2003.

FOR FURTHER INFORMATION CONTACT: Mr. Dan Cragg at (703) 601–4722.

SUPPLEMENTARY INFORMATION: The proposed rule was published on November 29, 2002, at 67 FR 71119–71120. One comment was received which has prompted a change in the final rule. The rule, as changed, is being adopted as final.

One public comment was received where the commenter expressed concern that the wording of the proposed rule appears to impute criminality to those individuals receiving background checks and appears to suspend the rights of those individuals interacting with the DoD. We disagree. As provided by law, the rule provides a basis for the Department to exempt specified records from certain provisions of the Privacy Act. It does not serve as a basis for making judgments regarding individuals on whom the Department conducts background checks. Neither does it act to suspend any rights the individual may be entitled to under DoD administered programs. The commenter observes that the rule is unecessary and redundant. We disagree. The purpose of the rule is to preserve and protect the identity of a source who has been promised confidentiality in return for the information he or she is providing the Department. Because only a specific exemption can be claimed for the records, the Department must establish the exemption in order to accomplish the desired objective. And finally, the commenter expresses the view that the scope of the rule is overly broad. We agree. The principal purpose of the claimed exemption is to protect the identity of a confidential source. We therefore have revised the rule so that the exemption is only being claimed for those provisions of the Act that are supportive of the overally purpose of the exemption.

Executive Order 12866, "Regulatory Planning and Review"

It has been determined that Privacy Act rules for the Department of Defense are not significant rules. The rules do not (1) Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy; a sector of the economy; productivity; competition; jobs; the environment; public health or safety; or State, local, or tribal governments or communities; (2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another Agency; (3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs, or the rights and obligations of recipients thereof; or (4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in this Executive order.

Public Law 96–354, "Regulatory Flexibility Act" (5 U.S.C. Chapter 6)

It has been determined that Privacy Act rules for the Department of Defense do not have significant economic impact on a substantial number of small entities because they are concerned only with the administration of Privacy Act systems of records within the Department of Defense.

Public Law 96–511, "Paperwork Reduction Act" (44 U.S.C. Chapter 35)

It has been determined that Privacy Act rules for the Department of Defense impose no information requirements beyond the Department of Defense and that the information collected within the Department of Defense is necessary and consistent with 5 U.S.C. 552a, known as the Privacy Act of 1974.

Section 202, Public Law 104–4, "Unfunded Mandates Reform Act"

It has been determined that the Privacy Act rulemaking for the Department of Defense does not involve a Federal mandate that may result in the expenditure by State, local and tribal governments, in the aggregate, or by the private sector, of $100 million or more and that such rulemaking will not significantly or uniquely affect small governments.

Executive Order 13132, "Federalism"

It has been determined that the Privacy Act rules for the Department of Defense do not have federalism implications. The rules do not have substantial direct effects on the States, on the relationship between the National Government and the States, or on the distribution of power and responsibilities among the various levels of government.

List of Subjects in 32 CFR Part 311

Privacy.

■ Accordingly, 32 CFR part 311 is amended to read as follows:

PART 311—OSD PRIVACY PROGRAM

■ 1. The authority citation for 32 CFR part 311 continues to read as follows:

Authority: Pub.L. 93–579, 88 Stat. 1896 (5 U.S.C. 552a).

■ 2. Section 311.8, is amended by adding paragraph (c)(14) to read as follows:

§ 311.8 Procedures for exemptions.

* * * * *

(c) Specific exemptions. * * *

(14) System identifier and name: DHRA 02, PERSEREC Research Files.

(i) Exemption: (A) Investigative material compiled solely for the purpose of determining suitability, eligibility, or qualifications for federal civilian employment, military service, federal contracts, or access to classified information may be exempt pursuant to 5 U.S.C. 552a(k)(5), but only to the extent that such material would reveal the identity of a confidential source.

(B) Therefore, portions of this system may be exempt pursuant to 5 U.S.C. 552a(k)(5) from the following subsections of 5 U.S.C. 552a(c)(3), (d), and (e)(1).

(ii) Authority: 5 U.S.C. 552a(k)(5).

(iii) Reasons: (A) From subsection (c)(3) and (d) when access to accounting disclosures and access to or amendment of records would cause the identity of a confidential source to be revealed. Disclosure of the source's identity not only will result in the Department breaching the promise of confidentiality made to the source but it will impair the Department's future ability to compile investigatory material for the purpose of determining suitability, eligibility, or qualifications for Federal civilian employment, Federal contracts, or access to classified information. Unless sources can be assured that a promise of confidentiality will be honored, they will be less likely to provide information considered essential to the Department in making the required determinations.

(B) From (e)(1) because in the collection of information for investigatory purposes, it is not always possible to determine the relevance and necessity of particular information in the early stages of the investigation. In some cases, it is only after the information is evaluated in light of other information that its relevance and necessity becomes clear. Such information permits more informed decision-making by the Department when making required suitability, eligibility, and qualification determinations.

Dated: April 28, 2003.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 03–11574 Filed 5–8–03; 8:45 am]

BILLING CODE 5001–08–P

DEPARTMENT OF DEFENSE

Department of the Air Force

32 CFR Part 806b

[Air Force Instruction 37–132]

Privacy Act; Implementation

AGENCY: Department of the Air Force.

ACTION: Final rule.

SUMMARY: The Department of the Air Force is adding an exemption rule for the system of records F031 DoD A, entitled "Joint Personnel Adjudication System". The Joint Personnel Adjudication System is used for personnel security management within DoD, and provides a common, comprehensive medium to record and document personnel security actions within the DoD.

EFFECTIVE DATE: January 28, 2003.

FOR FURTHER INFORMATION CONTACT: Mrs. Anne Rollins at (703) 601–4043 or DSN 329–4043.

SUPPLEMENTARY INFORMATION: The proposed rule was published on November 29, 2002, at 67 FR 71120. No comments were received, therefore, the rule, as changed, is being adopted as final.

The principal purpose of the claimed exemption is to protect the identity of a confidential source. Therefore the rule has been changed to eliminate those provisions for which an exemption had been claimed but which now have been determined as not being supportive of the overall purpose of the exemption.

Executive Order 12866, "Regulatory Planning and Review"

It has been determined that Privacy Act rules for the Department of Defense are not significant rules. The rules do not (1) have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy; a sector of the economy; productivity; competition; jobs; the environment; public health or safety; or State, local, or tribal governments or communities; (2) create a serious inconsistency or otherwise interfere with an action taken or planned by another agency; (3) materially alter the budgetary impact of entitlements, grants, user fees, or loan programs, or the rights and obligations of recipients thereof; or (4) raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in this Executive order.

Public Law 96–354, "Regulatory Flexibility Act" (5 U.S.C. Chapter 6)

It has been determined that Privacy Act rules for the Department of Defense do not have significant economic impact on a substantial number of small entities because they are concerned only with the administration of Privacy Act systems of records within the Department of Defense.

Public Law 96–511, "Paperwork Reduction Act" (44 U.S.C. Chapter 35)

It has been determined that Privacy Act rules for the Department of Defense impose no information requirements beyond the Department of Defense and that the information collected within the Department of Defense is necessary and consistent with 5 U.S.C. 552a, known as the Privacy Act of 1974.

Section 202, Public Law 104–4, "Unfunded Mandates Reform Act".

It has been determined that the Privacy Act rulemaking for the Department of Defense does not involve a Federal mandate that may result in the expenditure by State, local and tribal governments, in the aggregate, or by the private sector, of $100 million or more and that such rulemaking will not significantly or uniquely affect small governments.

Executive Order 13132, "Federalism"

It has been determined that the Privacy Act rules for the Department of Defense do not have federalism implications. The rules do not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and

responsibilities among the various levels of government.

List of Subjects in 32 CFR Part 806b

Privacy.

■ Accordingly, 32 CFR part 806b is amended to read as follows:

PART 806b—AIR FORCE PRIVACY ACT PROGRAM

■ 1. The authority citation for 32 CFR part 806b continues to read as follows:

Authority: Pub. L. 93–579. 88 Stat. 1896 (5 U.S.C. 552a).

■ 2. Appendix C to part 806b, is amended by adding paragraph (b)(23) to read as follows:

Appendix C to Part 806b—General and specific exemptions

* * * * *

(b) *Specific exemptions.* * * *

(23) *System identifier and name:* F031 DoD A, Joint Personnel Adjudication System.

(i) *Exemption:* (1) Investigatory material compiled solely for the purpose of determining suitability, eligibility, or qualifications for federal civilian employment, military service, federal contracts, or access to classified information may be exempt pursuant to 5 U.S.C. 552a(k)(5), but only to the extent that such material would reveal the identity of a confidential source.

(2) Therefore, portions of this system may be exempt pursuant to 5 U.S.C. 552a(k)(5) from the following subsections of 5 U.S.C. 552a(c)(3), (d), and (e)(1).

(ii) *Authority:* 5 U.S.C. 552a(k)(5).

(iii) *Reasons:* (A) From subsection (c)(3) and (d) when access to accounting disclosures and access to or amendment of records would cause the identity of a confidential sources to be revealed. Disclosure of the source's identity not only will result in the Department breaching the promise of confidentiality made to the source but it will impair the Department's future ability to compile investigatory material for the purpose of determining suitability, eligibility, or qualifications for Federal civilian employment, Federal contracts, or access to classified information. Unless sources can be assured that a promise of confidentiality will be honored, they will be less likely to provide information considered essential to the Department in making the required determinations.

(B) From (e)(1) because in the collection of information for investigatory purposes, it is not always possible to determine the relevance and necessity of particular information in the early stages of the investigation. In some cases, it is only after the information is evaluated in light of other information that its relevance and necessity becomes clear. Such information permits more informed decision-making by the Department when making required suitability, eligibility, and qualification determinations.

Dated: April 28, 2003.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 03–11575 Filed 5–8–03; 8:45 am]

BILLING CODE 5001–08–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 117

[CGD01–03–038]

Drawbridge Operation Regulations: Hackensack River, NJ

AGENCY: Coast Guard, DHS.

ACTION: Notice of temporary deviation from regulations.

SUMMARY: The Commander, First Coast Guard District, has issued a temporary deviation from the drawbridge operation regulations for the NJTRO HX Bridge, mile 7.7, across the Hackensack River at Secaucus, New Jersey. Under this temporary deviation the bridge may remain closed from 6 a.m. on May 10, 2003, through 5 p.m. on May 11, 2003, and from 6 a.m. on May 17, 2003, through 5 p.m. on May 18, 2003. This temporary deviation is necessary to facilitate structural repairs at the bridge.

DATES: This deviation is effective from May 10, 2003, through May 18, 2003.

FOR FURTHER INFORMATION CONTACT: Joe Arca, Project Officer, First Coast Guard District, at (212) 668–7165.

SUPPLEMENTARY INFORMATION: The NJTRO HX Bridge has a vertical clearance in the closed position of 4 feet at mean high water and 9 feet at mean low water. The existing drawbridge operation regulations are listed at 33 CFR 117.723(5)(e).

The bridge owner, New Jersey Transit Operation (NJTRO), requested a temporary deviation from the drawbridge operation regulations to facilitate necessary maintenance, the replacement of timber railroad ties on the moveable span. The bridge must remain in the closed position to perform these repairs.

The Coast Guard coordinated this closure with the mariners who normally use this waterway to help facilitate this necessary bridge repair and to minimize any disruption to the marine transportation system.

Under this temporary deviation the NJTRO HX Bridge may remain in the closed position from 6 a.m. on May 10, 2003, through 5 p.m. on May 11, 2003, and from 6 a.m. on May 17, 2003, through 5 p.m. on May 18, 2003.

This deviation from the operating regulations is authorized under 33 CFR § 117.35, and will be performed with all due speed in order to return the bridge to normal operation as soon as possible.

Dated: April 28, 2003.

John L. Grenier,

Captain, U.S. Coast Guard, Acting Commander, First Coast Guard District.

[FR Doc. 03–11602 Filed 5–8–03; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 117

[CGD01–03–041]

Drawbridge Operation Regulations: Long Island, NY Inland Waterway From East Rockaway Inlet to Shinnecock Canal, NY

AGENCY: Coast Guard, DHS.

ACTION: Notice of temporary deviation from regulations.

SUMMARY: The Commander, First Coast Guard District, has issued a temporary deviation from the drawbridge operation regulations for the Wantagh State Parkway Bridge, mile 16.1, across Goose Creek at Wantagh, New York. Under this temporary deviation the bridge may remain in the closed position from 6 a.m. on May 1, 2003, through 4 p.m. on May 15, 2003. This temporary deviation is necessary to complete painting operations at the bridge.

DATES: This deviation is effective from May 1, 2003, through May 15, 2003.

FOR FURTHER INFORMATION CONTACT: Joseph Schmied, Project Officer, First Coast Guard District, at (212) 668–7195.

SUPPLEMENTARY INFORMATION: The Wantagh State Parkway Bridge has a vertical clearance in the closed position of 16 feet at mean high water and 19 feet at mean low water. The existing drawbridge operation regulations are listed at 33 CFR 117.799(i).

The bridge owner, New York State Department of Transportation, requested a temporary deviation from the drawbridge operation regulations to facilitate the completion of painting operations at the bridge. The bridge must remain in the closed position to perform this work.

The Coast Guard previously issued a 30 day temporary deviation effective from April 1, 2003, through April 30, 2003, to facilitate painting operations at this bridge. Inclement weather conditions during the effective period of the first temporary deviation have resulted in a second request from the bridge owner for an additional 15 days to complete painting operations at the bridge.

The Coast Guard coordinated this second closure with the mariners who normally use this waterway to help facilitate this necessary bridge maintenance and to minimize any disruption to the marine transportation system.

Under this temporary deviation the Wantagh State Parkway Bridge will remain in the closed position from 6 a.m. on May 1, 2003, through 4 p.m. on May 15, 2003.

This deviation from the operating regulations is authorized under 33 CFR 117.35, and will be performed with all due speed in order to return the bridge to normal operation as soon as possible.

Dated: April 29, 2003.

John L. Grenier,

Captain, U.S. Coast Guard, Acting Commander, First Coast Guard District.

[FR Doc. 03–11600 Filed 5–8–03; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 117

[CGD08–03–020]

Drawbridge Operation Regulations; Lower Grand River (Alternate Route), Grosse Tete, LA

AGENCY: Coast Guard, DHS.

ACTION: Notice of temporary deviation from regulations.

SUMMARY: The Commander, Eighth Coast Guard District, has issued a temporary deviation from the regulation governing the operation of the Grosse Tete Swing Span Highway Bridge across Lower Grand River (Alternate Route), mile 47.0, at Grosse Tete, Iberville Parish, LA. This deviation allows the bridge to remain closed to navigation from May 20, 2003, through May 22, 2003. The deviation is necessary to conduct scheduled maintenance to the drawbridge.

DATES: This deviation is effective from 6:30 a.m. on May 20, 2003, through 8:30 p.m. on May 22, 2003.

ADDRESSES: Materials referred to in this document are available for inspection or copying at the office of the Eighth Coast Guard District, Bridge Administration Branch, Hale Boggs Federal Building, room 1313, 501 Magazine Street, New Orleans, Louisiana 70130–3396 between 7 a.m. and 3 p.m., Monday through Friday, except Federal holidays. The telephone number is (504) 589–2965. The Bridge Administration Branch of the Eighth Coast Guard District maintains the public docket for this temporary deviation.

FOR FURTHER INFORMATION CONTACT: Kay Wade, Bridge Administration Branch, telephone (504) 589–2965.

SUPPLEMENTARY INFORMATION: The Louisiana Department of Transportation and Development has requested a temporary deviation in order to remove and replace the swing cylinders of the swing span bridge across Lower Grand River (Alternate Route) at mile 47.0 at Grosse Tete, Iberville Parish, Louisiana. This maintenance is essential for the continued safe operation of the bridge. This temporary deviation will allow the bridge to remain in the closed-to-navigation position from 6:30 a.m. on Tuesday, May 20, 2003, through 8:30 p.m. on Thursday, May 22, 2003.

The swing span bridge has a vertical clearance of 2.5 feet above mean high water, elevation 9.0 feet Mean Sea Level and 11.5 feet above mean low water, elevation 0.0 Mean Sea Level in the closed-to-navigation position. Navigation at the site of the bridge consists mainly of tows with barges and some recreational craft. There are no commercial fishermen that transit the waterway at the bridge site. Due to prior experience, as well as coordination with water way users, it has been determined that this three day closure will not have a significant effect on these vessels. The bridge normally opens to pass navigation an average of 490 times per month. In accordance with 33 CFR 117.478, the draw of the LA 77 bridge, mile 47.0 (Alternate Route) at Grosse Tete, shall open on signal; except that, from about August 15 to about June 5 (the school year), the draw need not be opened from 6 a.m. to 8 a.m. and from 2:30 p.m. to 4:30 p.m., Monday through Friday except Federal holidays. The draw shall open on signal at any time for an emergency aboard a vessel. The bridge will not be able to open for emergencies during the closure period. Alternate routes are available. Mariners may transit the area via the Mississippi River through the Harvey Canal lock or via the Atchafalaya River through the Old River lock.

In accordance with 33 CFR 117.35(c), this work will be performed with all due speed in order to return the bridge to normal operation as soon as possible. This deviation from the operating regulations is authorized under 33 CFR 117.35.

Dated: April 28, 2003.

Marcus Redford,

Bridge Administrator.

[FR Doc. 03–11601 Filed 5–8–03; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[COTP Port Arthur 03–002]

RIN 1625–AA00

Safety Zones; Port Neches Riverfest, Neches River, Port Neches, TX

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing temporary safety zones for all waters of the Neches River adjacent to Port Neches Park in Port Neches, TX. These safety zones are necessary to protect spectators and vessels from the potential safety hazards associated with boat races and a fireworks display that are part of the Port Neches Chamber of Commerce Riverfest. Entry into these zones by anyone other than event participants is prohibited, unless specifically authorized by the Captain of the Port, Port Arthur or a designated representative.

DATES: This rule is effective from 1 p.m. on May 10, 2003, until 6 p.m. on May 11, 2003.

ADDRESSES: Documents indicated in this preamble as being available in the docket are part of docket (COTP Port Arthur–03–003) and are available for inspection or copying at Marine Safety Office Port Arthur, 2875 Jimmy Johnson Blvd., Port Arthur, TX 77640 between 8 a.m. and 3:30 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Lieutenant Junior Grade (LTJG) Bryan Markland, Waterways Management Branch, Marine Safety Office Port Arthur at (409) 723–6500.

SUPPLEMENTARY INFORMATION:

Regulatory Information

We did not publish a notice of proposed rulemaking (NPRM) for this regulation. Under 5 U.S.C. 553(b)(B), the Coast Guard finds good cause exists for not publishing an NPRM. Publishing an NPRM would be contrary to public interest because immediate action is needed to protect vessels and mariners from the hazards associated with this event. The Coast Guard did not receive notice of the Port Neches Riverfest in sufficient time to publish an NPRM.

Background and Purpose

The Port Neches Chamber of Commerce Riverfest will include a fireworks display as well as a series of boat races on the Neches River, adjacent to Port Neches Park, Port Neches, TX. Safety zones are established for those events to ensure the safety of the participants, spectators, and other vessels.

The fireworks safety zone will encompass all waters of the Neches River, shore to shore, adjacent to Port Neches Park between a northern boundary at 30°00′00″ N. and southern boundary at 29°59′42″ N. Those coordinates are based upon (NAD 83). This safety zone will be enforced from 8 p.m. to 10 p.m. on May 10, 2003.

The safety zone for the boat races will encompass all waters of the Neches River, shore to shore, adjacent to Port Neches Park in Port Neches, Texas, between a northern boundary at 30°00′12″ N. and southern boundary at 29°59′36″ N. Those coordinates are based upon (NAD 83). This safety zone will be enforced from 1 p.m. to 6 p.m. on May 10, 2003, and from 8 a.m. to 6 p.m. on May 11, 2003.

Entry into these zones by anyone other than event participants is prohibited, unless authorized by the Captain of the Port Port Arthur or a designated representative.

Regulatory Evaluation

This rule is not a "significant regulatory action" under section 3(f) of Executive Order 12866, Regulatory Planning and Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that Order. It is not "significant" under the regulatory policies and procedures of the Department of Homeland Security.

During the boat races on May 10, 2003, the waterway will be closed for 5 hours between 1 p.m. and 6 p.m. On May 11, 2003, the waterway will be closed for 10 hours. There will be two breaks during the May 11, 2003, boat races. During those breaks, vessel traffic will be allowed to pass through the zone as directed by the Coast Guard patrol commander. The break periods will begin at approximately 11 a.m. and 3 p.m. and each will last about an hour. Notifications of the safety zones and break periods will be made to the marine community by broadcast notices to mariners, through the event sponsors, and by publication in the **Federal Register**. The impacts on routine navigation are expected to be minimal.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), we have considered whether this rule would have a significant economic impact on a substantial number of small entities. The term "small entities" comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000.

The Coast Guard certifies under 5 U.S.C. 605(b) that this proposed rule would not have a significant economic impact on a substantial number of small entities. This rule will affect the following entities, some of which may be small entities: the owners and operators of vessels intending to transit the portion of the Neches River adjacent to Port Neches Park, Port Neches, TX, from 1 p.m. to 6 p.m. and 8 p.m. to 10 p.m. on May 10, 2003, and from 8 a.m. to 6 p.m. on May 11, 2003.

This safety zone will not have a significant economic impact on a substantial number of small entities for the following reasons: (1) The safety zone for the fireworks will only be in effect for a short period of time; (2) there will be two breaks during the May 11, 2003, boat races and during those breaks vessel traffic will be allowed to pass through the zone as directed by the Coast Guard patrol commander, and (3) notifications of the safety zones and break periods will be made to the marine community by broadcast notices to mariners and event sponsors.

If you are a small business entity and are significantly affected by this regulation please contact LTJG Bryan Markland, Marine Safety Office Port Arthur, at (409) 723–6500.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Public Law 104–121), we offered to assist small entities in understanding the rule so that they could better evaluate its effects on them and participate in the rulemaking process.

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1–888–REG–FAIR (1–888–734–3247).

Collection of Information

This rule calls for no new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

Federalism

Arule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on State or local governments and would either preempt State law or impose a substantial direct cost of compliance on them. We have analyzed this rule under that Order and have determined that it does not have implications for federalism.

Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of $100,000,000 or more in any one year. Though this rule will not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

Taking of Private Property

This rule will not effect a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

Civil Justice Reform

This rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

Protection of Children

We have analyzed this rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and would not create an environmental risk to health or risk to safety that might disproportionately affect children.

Indian Tribal Governments

This rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal government and Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes.

Energy Effects

We have analyzed this rule under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. We have determined that it is not a "significant energy action" under that order because it is not a "significant regulatory action" under Executive Order 12866 and is not likely to have a significant adverse effect on the supply, distribution, or use of energy. The Administrator of the Office of Information and Regulatory Affairs has not designated it as a significant energy action. Therefore, it does not require a Statement of Energy Effects under Executive Order 13211.

Environment

We have analyzed this rule under Commandant Instruction M16475.l, which guides the Coast Guard in complying with the National Environmental Policy Act of 1969 (42 U.S.C. 4321–4370f), and have concluded that there are no factors in this case that would limit the use of a categorical exclusion under section 2.B.2 of the instruction. Therefore, this rule is categorically excluded, under figure 2–1, paragraph (34)(g), of the Instruction, from further environmental documentation.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, Waterways.

■ For the reasons discussed in the preamble, the Coast Guard proposes to amend 33 CFR part 165 as follows:

PART 165—REGULATED NAVIGATION ARES AND LIMITED ACCESS AREAS

■ 1. The authority citation for part 165 continues to read as follows:

Authority: 33 U.S.C. 1231; 50 U.S.C. 191; 33 CFR 1.05–1(g), 6.04–1, 6.04–6, and 160.5; Department of Homeland Security Delegation No. 0170.

■ 2. A new temporary § 165.T08–033 is added to read as follows:

§ 165.T08–033 Safety Zones; Port Neches Riverfest, Neches River, Port Neches, TX.

(a) *Regulated Areas.* The following areas are safety zones:

(1) *Fireworks safety zone.* All waters of the Neches River, shore to shore, adjacent to Port Neches Park, Port Neches, TX, between a northern boundary at 30°00′00″ N and southern boundary at 29°59′42″ N. Those coordinates are based upon [NAD 83].

(2) *Boat race safety zone.* All waters of the Neches River, shore to shore, adjacent to Port Neches Park, Port Neches, TX, between a northern boundary at 30°00′12″ N and southern boundary at 29°59′36″ N. Those coordinates are based upon [NAD 83].

(b) *Enforcement dates.* (1) The fireworks safety zone in paragraph (a)(1) of this section will be enforced from 8 p.m. to 10 p.m. on May 10, 2003.

(2) The boat race safety zone in paragraph (a)(2) of this section will be enforced from 1 p.m. to 6 p.m. on May 10, 2003, and from 8 a.m. to 6 p.m. on May 11, 2003.

(c) *Regulations.* (1) In accordance with the general regulations in § 165.23 of this part, entry into the safety zones in this section is prohibited unless, authorized by the Captain of the Port Port Arthur or a designated representative.

(2) Vessels requiring entry into or passage through a safety zone must request permission from the Captain of the Port Port Arthur or a designated representative. They may be contacted via VHF Channel 16 or by telephone at 409–723–6500.

(3) All persons and vessels shall comply with the instructions of the Captain of the Port Port Arthur and designated on-scene U.S. Coast Guard patrol personnel. On-scene U.S. Coast Guard personnel include commissioned, warrant, and petty officers of the U.S. Coast Guard.

Dated: April 2, 2003.

Eric A. Nicolaus,

Captain, U.S. Coast Guard, Captain of the Port, Port Arthur.

[FR Doc. 03–11603 Filed 5–8–03; 8:45 am]

BILLING CODE 4910–15–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[IL207–3; FRL–7487–5]

Approval and Promulgation of Implementation Plans; Illinois Emission Test Averaging

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is approving revisions to Illinois rules for averaging of emission tests. Illinois requested these revisions on October 9, 2001. For sources with steady emission rates, these revisions provide for assessing compliance with mass emission limits on the basis of an average of three test runs.

EPA proposed to approve these revisions on April 15, 2002, at 67 FR 18115. The Environmental Law & Policy Center and others submitted a comment letter objecting to this proposed approval. The comments observed that averaging three test runs yields a less stringent compliance test than assessing compliance based on each test run individually. The commenters thus view the submittal as an inappropriate relaxation. The comments further object that the State's rules provide for insufficient information on case-specific test protocol revisions to be able to judge how these revisions would affect test results.

EPA concludes that averaging of three mass measurement test runs is standard practice, and concludes that Illinois is formalizing its pre-existing approach and not relaxing its compliance assessments. EPA concludes further that Illinois has adopted an appropriate approach to differentiating between major and minor test method revisions and to addressing minor revisions.

DATES: This rule is effective on June 9, 2003.

ADDRESSES: Copies of the Illinois submittal and other information are available for inspection during normal business hours at the following address: (We recommend that you telephone John Summerhays at (312) 886–6067, before visiting the Region 5 Office.)

United States Environmental Protection Agency, Region 5, Air Programs Branch (AR–18J), Regulation Development Section, 77 West Jackson Boulevard, Chicago, Illinois 60604.

FOR FURTHER INFORMATION CONTACT: John Summerhays, Environmental Scientist, United States Environmental Protection Agency, Region 5, Air Programs Branch (AR–18J), Regulation Development

Section, 77 West Jackson Boulevard, Chicago, Illinois 60604, (312) 886–6067, (*summerhays.john@epa.gov*).

SUPPLEMENTARY INFORMATION:

This document is organized according to the following table of contents:

I. What did EPA propose?
II. What did commenters say and what is EPA's response?
III. EPA Action.
IV. Statutory and Executive Order Reviews.

I. What Did EPA Propose?

EPA proposed to approve Illinois' test averaging rules. EPA proposed this action on April 15, 2002, at 67 FR 18115, based on a submittal by the Illinois Environmental Protection Agency on October 9, 2001.

Illinois' submittal includes a new part 283 of Title 35 of the Illinois Administrative Code, entitled General Procedures for Emissions Tests Averaging. A core feature of these rules is that evaluations of compliance of sources having relatively stable emissions with mass emission limits shall be on the basis of the average of three test runs whenever feasible. The rules further specify that the emissions tests must be in conformance with a test plan that the source must submit prior to compliance testing. Sources may request permission from IEPA to make minor deviations from the test plan. "Minor deviations" are defined in the rule to include only those testing procedures that do not affect the level of emissions measured and do not affect how other sources in the source category might be tested.

The averaging of three test runs is standard practice. Almost all air emission compliance tests in Illinois use methods given in Appendix A to Title 40 Code of Federal Regulations part 60 (40 CFR part 60). While EPA only requires these methods for assessing compliance with new source performance standards, in practice these methods are used nearly universally in evaluating compliance with limits applicable to older as well as newer sources. Averaging provisions for the 40 CFR part 60 methods are given in 40 CFR 60.8(f), stating that "unless otherwise specified * * *, each performance test shall consist of three separate runs using the applicable test method * * *. For the purpose of determining compliance with an applicable standard, the arithmetic means of results of the three runs shall apply." Further text of 40 CFR 60.8(f) explains that compliance may be judged on the basis of an average of two test runs if for specified reasons a valid third test run cannot be obtained. These provisions represent standard practice in compliance assessments. EPA proposed to approve Illinois' rules because it judged them consistent with this standard practice.

It may be noted that visible emission tests are addressed somewhat differently from the mass emission tests addressed in 40 CFR 60.8. Visible emission tests, including opacity observations under Method 9 and tests of the duration of visible emissions under Method 22, involve many observations per hour (240 observations per hour in the case of Method 9), so that measurement uncertainty is addressed in these methods without averaging the results for multiple hours. That is, averaging of three test runs is standard practice only for mass emissions testing, where each test run produces only one mass emissions result. Illinois clearly intended its averaging of three test runs to apply only to mass emissions testing, and EPA's approval actions reflect that understanding.

II. What Did Commenters Say and What Is EPA's Response?

EPA received one letter commenting on its proposed rulemaking. This letter was co-signed by the Environmental Law & Policy Center, the American Lung Association of Metropolitan Chicago, and the Illinois Chapter of the Sierra Club. The following discussion is organized in comment-response format, presenting each issue or concern raised by the commenters followed by EPA's response.

Comment: The commenters observe that averaging results from three test runs provides a less stringent test of compliance than treating any one test run with excessive emissions as a violation. The commenters therefore consider Illinois' adoption of a rule providing for averaging of three test runs to be a relaxation of Illinois' rules. The commenters state that such a relaxation is impermissible under Clean Air Act section 110(l) and (for nonattainment areas) section 193 and under rules for prevention of significant deterioration unless special demonstrations of acceptability are provided.

Response: EPA agrees that averaging three test runs is less stringent than using each test run as an independent test of compliance. However, EPA does not agree that Illinois is in fact relaxing its compliance assessments.

As stated in Illinois' technical support document for its state rulemaking, "The purpose of these * * * rules is to codify an existing Agency policy." Thus, compliance assessments after this rule change are no less stringent than compliance assessments before this rule change; Illinois used an average of three test runs to assess compliance before this rule change and will continue to use an average of three test runs after this rule change. Thus, this rule change merely formalized existing practice, and did not relax the procedures by which Illinois assesses compliance.

Similarly, approval of these rules into the State Implementation Plan (SIP) does not relax the approach EPA will use to assess compliance, since EPA's approach for assessing compliance before Illinois adopted these rules is the same as the approach it will use afterward, *i.e.* generally assessing compliance based on an average of three test runs.

Thus, Illinois' formalization of this practice does not represent a relaxation, since in fact Illinois and EPA will be assessing compliance in the same way after this revision as before. Since EPA does not consider this a relaxation, the provisions of sections 110(l) and 193 and the prevention of significant deterioration provisions do not apply.

The purpose of addressing compliance on the basis of a three run average is to address measurement uncertainty. Under normal circumstances, EPA believes that results from one test run do not provide sufficient reliability to demonstrate compliance or noncompliance with mass emission limits. Use of a three run average (or, when necessary and appropriate, at least a two run average) provides a better degree of confidence in the compliance assessment.

Comment: The commenters state that "there are inadequate safeguards built into the rule to assure that averaging is only used to remedy random results that are a result of inaccurate test methods." The commenters cite example test results included in IEPA's testimony during its rule adoption process (test results of 201, 166, and 154 ppm, showing compliance on average with a 200 ppm limit). The commenters believe this testimony demonstrates that test result variability that IEPA views as reflecting testing variability in fact represents variability in source operations and source emission rates. The commenters believe this evidence contradicts IEPA's claims that its rule addresses modest variability in test results and not variability in source emission rates. The commenters believe that the rule allows sources to be treated as complying with applicable limits on average when in fact the sources are going in and out of compliance.

Response: Consecutive test runs on a facility that by objective measures is being operated in the same manner can yield test result differences like those identified in IEPA's testimony. Thus, averaging three test runs is needed to improve the confidence level of the conclusion that the source is operating in or out of compliance.

Illinois' rules provide additional safeguards against finding compliance on average for a source that is moving in and out of compliance. These safeguards are based on restrictions that three run averaging is permissible only for sources with steady state emissions.

Comment: The commenters are concerned in particular that variations in emissions can arise from variations in source operations. The commenters observe that "[i]t is not possible to define every operating parameter in the testing plan." As a result, the commenters conclude that the rule does not prevent facilities from either intentionally or unintentionally varying operations so that excessive emissions in one test run do not recur in the next test runs.

Response: Testing plans are generally designed with the most important operating parameters set to have maximum emissions. If variation of parameters not addressed in the testing plan were found to affect emissions significantly, this could signify that the test results do not truly assess whether the facility complies with the limit under the normal range of routine operating conditions. If so, an additional test may be required. However, in most cases, variations in results among test runs can be attributed largely to testing variability, such that the test provides a valid indication of whether the facility complies with the limit in routine operation.

Comment: The commenters object that "insufficient information is included regarding the test plans for the commenters to determine whether * * * testing in accordance with a valid test plan will assure the reliability of emission test averaging."

Response: Due to the variety of facilities to be tested, it is not possible for a testing rule to specify the parameters that would be necessary to address for every situation. Therefore, it is essential that a process be established by which the State, with EPA oversight, can evaluate each testing plan individually. EPA believes that the State's rule provides for proper governmental review of each testing plan on a case-by-case basis.

Comment: The commenters express concern about provisions for "minor deviations" from submitted test plans. In particular, the commenters state that the absence of a definition of the operating parameters in test plans results in insufficient guarantees against changes in critical parameters between test runs.

Response: The range of circumstances requiring minor deviations from planned testing procedures is as wide as the range of relevant operating parameters. Furthermore, the minor deviations authorized here generally apply to the entire set of test runs, typically to address site-specific circumstances where the state finds that the full test may be run under conditions deviating slightly from the planned conditions without affecting the results of the test. An example of a minor deviation would be an incinerator that is operating slightly cooler than was anticipated in the test plan, in circumstances where the alternate temperature does not significantly affect emissions. For the range of facilities covered by this general testing rule, the need for minor deviations from standard testing methods is inevitable, and yet the range of necessary deviations cannot be predicted or readily defined. The need for government concurrence with the minor deviation is a safeguard against deviations pursued to underrepresent emissions. Thus, Illinois has adopted a reasonable approach to addressing site-specific circumstances where minor modifications of testing procedures are appropriate.

Comment: The commenters believe that variations in results among test runs should not be assumed to reflect imprecision in test results. The commenters observe that variations in operating parameters as well as plant equipment and malfunctions are just as likely as variations resulting from test imprecision.

Response: Illinois reviews test reports to assess whether circumstances arose during the test that would significantly affect emissions. Tests done during a facility malfunction or during other abnormal operations significantly affecting emissions would generally not be in accordance with the test plan, and the test would not be considered a valid test. In most cases, it is reasonable to attribute most of the variations among results among three test runs to testing uncertainties.

Comment: The commenters express concern that facilities, who get "benefit of the assumption * * * of imprecise testing methods" are "also responsible for maintaining the testing equipment and conducting the test."

Response: The comment seems intended to imply a concern that the facility operators have an incentive to maintain the testing equipment poorly and conduct the test imprecisely. In fact, most tests are done by contractors, whose livelihoods depend on conducting tests as reliably as possible. Even for facility-run tests, greater imprecision does not benefit the facility, since imprecision does not preferentially lead to a lower average emission value. On the contrary, greater imprecision increases the risk that a complying facility could have three test runs with average emissions above the applicable limit.

Comment: The commenters recommend alternatives to averaging of three test runs. The commenters recommend that more than three test runs be conducted. The commenters further recommend that the State (and EPA) be granted the discretion to evaluate test results "with outliers examined on a case by case basis to determine if they were a violation in fact or if it was a failure of testing methods." The commenters also suggest the possibility of conducting multiple tests with different testing equipment and the possibility of operators "running the facility with emissions further within the limits".

Response: Illinois' rule seeks to establish standard practice for conducting and evaluating tests. Illinois makes the recommended choice in stipulating that mass emission tests shall generally consist of three test runs. Illinois further applies standard, recommended practice by averaging the results of the test runs, thereby improving the reliability of the conclusions drawn. Illinois (and EPA) retain the option to require further tests if variability in test results or other factors indicate that the conducted test does not adequately assess whether the facility complies with applicable limits under all operating conditions. It would be inappropriate for Illinois to require use of multiple sets of testing equipment on a routine basis or to require facilities to emit below the applicable limit by an amount that reflects testing uncertainties.

The discretion that the commenters recommend, for examining outliers on a case by case basis, is in fact granted in the rule. In examining test results, Illinois (and EPA) examine the variability from run to run and assess whether operating conditions were held constant. If Illinois (or EPA) concludes that operating conditions varied, causing significant variations in emissions, the rules provide for a conclusion that the facility did not have steady state emissions and therefore did not qualify for averaging of three test runs. More generally, if Illinois (or EPA) simply concludes that the variations exceed those attributable to normal testing uncertainties, Illinois (or EPA) may find that the test is unreliable and

request a retest. If, on the other hand, the variation in test results is judged to reflect normal variability in test measurements, then the rule provides for averaging of three test runs, as is appropriate to enhance the reliability of the results.

III. EPA Action

EPA is approving the revisions to Illinois' rules for emissions averaging. EPA concludes that these rules codify standard practice in preparation and review of test plans and in averaging of three test runs in assessing compliance with mass emission limits.

IV. Statutory and Executive Order Reviews

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a "significant regulatory action" and therefore is not subject to review by the Office of Management and Budget. For this reason, this action is also not subject to Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use" (66 FR 28355, May 22, 2001). This action merely approves state rules as meeting Federal requirements and imposes no additional requirements beyond those imposed under state law. Accordingly, the Administrator certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this rule approves pre-existing requirements under state law and does not impose any additional enforceable duty beyond that required by state law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4).

This rule also does not have tribal implications because it will not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000). This action also does not have Federalism implications because it does not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999). This action merely approves a state rule implementing Federal standards, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. This rule also is not subject to Executive Order 13045 "Protection of Children from Environmental Health Risks and Safety Risks" (62 FR 19885, April 23, 1997), because it is not economically significant.

In reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. In this context, in the absence of a prior existing requirement for the State to use voluntary consensus standards (VCS), EPA has no authority to disapprove a SIP submission for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews a SIP submission, to use VCS in place of a SIP submission that otherwise satisfies the provisions of the Clean Air Act. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

The Congressional Review Act, 5 U.S.C. section 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a "major rule" as defined by 5 U.S.C. section 804(2).

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by July 8, 2003. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (*See* section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Nitrogen oxides, Particulate matter, Reporting and recordkeeping requirements, Sulfur dioxide, Volatile organic compounds.

Dated: April 11, 2003.

Bharat Mathur,

Acting Regional Administrator, Region 5.

■ For the reasons set out in the preamble, chapter I, title 40 of the Code of Federal Regulations is amended as follows:

PART 52—[AMENDED]

■ 1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

Subpart O—Illinois

■ 2. Section 52.720 is amended by adding paragraph (c)(164) to read as follows:

§ 52.720 Identification of plan.

* * * * *

(c) * * *

(164) On October 9, 2001, the State of Illinois submitted new rules regarding emission tests.

(i) Incorporation by reference.

(A) New rules of 35 Ill. Admin. Code Part 283, including sections 283.110, 283.120, 283.130, 283.210, 283.220, 283.230, 283.240, and 283.250, effective September 11, 2000, published in the Illinois Register at 24 Ill. Reg. 14428.

(B) Revised section 283.120 of 35 Ill. Admin. Code, correcting two typographical errors, effective September 11, 2000, published in the Illinois Register at 25 Ill. Reg. 9657.

* * * * *

[FR Doc. 03–11471 Filed 5–8–03; 8:45 am]
BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 312

[FRL–7496–2]

RIN 2050–AF05

Clarification to Interim Standards and Practices for All Appropriate Inquiry Under CERCLA

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This final rule clarifies a provision included in recent amendments to the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA). Specifically, today's final rule addresses the interim standard set by Congress in the Small Business Liability Relief and Brownfields Revitalization Act ("The Brownfields Law") for conducting "all appropriate inquiry." Today's action clarifies that, in the case of property purchased on or after May 31, 1997, the requirements for conducting "all appropriate inquiry," including the conduct of such activities to qualify as a *bona fide* prospective purchaser and to establish an innocent landowner defense under CERCLA, can be satisfied through the use of ASTM Standard E1527–00, entitled "Standard Practice for Environmental Site Assessment: Phase I Environmental Site Assessment Process." In addition, recipients of brownfields site assessment grants will be in compliance with the all appropriate inquiry requirements if they comply with either the ASTM Standard E1527–97, or the ASTM E1527–00 Standard.

DATES: This final rule is effective June 9, 2003.

ADDRESSES: The record for this rulemaking has been established under docket number SFUND–2002–0007. Copies of public comments received, EPA response, and all other supporting documents are available for review at the U.S. Environmental Protection Agency Docket Center located at 1301 Constitution Ave., NW., Washington, DC 20004. This Docket Facility is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding Federal holidays. To review docket material, it is recommended that the public make an appointment by calling (202) 566–0276.

FOR FURTHER INFORMATION CONTACT: For general information, contact the RCRA/CERCLA Call Center at 800–424–9346 or TDD 800–553–7672 (hearing impaired). In the Washington, DC metropolitan area, call 703–412–9810 or TDD 703–412–3323. For more detailed information on specific aspects of this rule, contact Patricia Overmeyer, Office of Brownfields Cleanup and Redevelopment (5105T), U.S. Environmental Protection Agency, 1200 Pennsylvania Avenue, NW., Washington, DC 20460–0002, 202–566–2774. *overmeyer.patricia@epa.gov.*

SUPPLEMENTARY INFORMATION:

Regulated Entities

Entities potentially affected by this action include public and private parties who, as *bona fide* prospective purchasers, contiguous property owners, or innocent landowners, purchase property and intend to claim a limitation on CERCLA liability in conjunction with the property purchase. In addition, any entity conducting a site characterization or assessment with a brownfields grant awarded under CERCLA section 104(k)(2)(B) may be affected by today's action. This includes State, local and tribal governments that receive brownfields site assessment grants. A summary of the potentially affected industry sectors (by NAICS codes) is displayed in the table below.

Industry category	NAICS code
Real Estate	531
Insurance	52412
Banking/Real Estate Credit	52292
Environmental Consulting Services	54162
State, Local and Tribal Government	N/A

The list of potentially affected entities in the above table may be exhaustive. Our aim is to provide a guide for readers regarding those entities that EPA is aware potentially could be affected by this action. However, this action may affect other entities or listed in the table. If you have questions regarding the applicability of this action to a particular entity, consult the person listed in the preceding section entitled **FOR FURTHER INFORMATON CONTACT**.

Preamble

I. Statutory Authority
II. Background
III. Summary of Final Rule
IV. Changes from January 24, 2003 Proposed Rule
V. Response to Comments
VI. Administrative Requirements

I. Statutory Authority

This final rule clarifies provisions included in section 223 of the Small Business Liability Relief and Brownfields Revitalization Act which amends section 101(35)(B) of CERCLA (42 U.S.C. 9601(35)) and clarifies interim standards for the conduct of "all appropriate inquiry" for obtaining CERCLA liability relief and for conducting site characterizations and assessments with the use of brownfields grant monies.

II. Background

On January 11, 2002, President Bush signed the Small Business Liability Relief and Brownfields Revitalization Act ("the Brownfields Law"). The Brownfields Law revises CERCLA section 101(35) and provides Superfund liability limitations for *bona fide* prospective purchasers and contiguous property owners, in addition to clarifying the requirements necessary to establish the innocent landowner defense under CERCLA. Among the requirements added to CERCLA is the requirement that such parties undertake "all appropriate inquiry" into prior ownership and use of certain property.

The Brownfields Law requires EPA to develop regulations that will establish standards and practices for how to conduct all appropriate inquiry. In addition, in the Brownfields Law, Congress established, as the Federal interim standard for conducting all appropriate inquiry, the procedures of the American Society for Testing and Materials (ASTM) including Standard E1527–97 (entitled "Standard Practice for Environmental Site Assessment: Phase 1 Environmental Site Assessment Process"). This interim standard applies to properties purchased on or after May 31, 1997, until EPA promulgates Federal regulations establishing standards and practices for conducting all appropriate inquiry.

On January 24, 2003, EPA published a proposed rule (68 FR 3478) that would clarify for the purposes of CERCLA section 101(35)(B), and until the Agency promulgates regulations implementing standards for all appropriate inquiry, parties may use either the procedures provided in ASTM E1527–00, entitled "Standard Practice for Environmental Site Assessment: Phase I Environmental Site Assessment Process," or the standard ASTM E1527–97. Today's rulemaking constitutes EPA's final action on the proposed rule.

III. Summary of Final Rule

Today's final rule clarifies that persons may use the current ASTM standard, E1527–00 for conducting all appropriate inquiry under CERCLA section 101(35)(B) for properties purchased on or after May 31, 1997. Such property owners also may continue to use ASTM's previous standard, E1527–97 for conducting all appropriate inquiry. In addition, parties receiving federal grant monies for the characterization and assessment of brownfields properties, may use either the 1997 or the 2000 version of the ASTM Phase I Site Assessment Standard when conducting site assessments using brownfields grant monies.

IV. Changes From the January 24, 2003 Proposed Rule

We made one minor change in the rule text. One commenter pointed out that the most recent version of the ASTM Phase I Environmental Site Assessment Standard was incorrectly referenced as "ASTM E1527–2000" in the proposed rule. We agree that the

correct nomenclature is ASTM E1527–00 and we made the corresponding correction in today's final rule.

The statutory cite referencing the award of brownfields assessment grants was corrected to reflect the appropriate cite.

V. Response to Comments

On January 24, 2003, EPA published a proposed rule (68 FR 3478) clarifying that both the 1997 and the 2000 version of ASTM's E1527 Phase I environmental site assessment standard may be used to comply with the interim standard for all appropriate inquiry established by Congress in the Brownfields Law. We received several comments on the proposed rule. A discussion of the significant comments follows. A complete copy of the comments and EPA's response are included in the docket for today's final rule.

One commenter, the Utah Professional Environmental Consultants Association, stated that EPA's proposal was inappropriate and biased because the site assessment method cited by EPA (the ASTM–E1527–00 standard) "excludes methods of site auditing that do not conform to or acknowledge ASTM standards." The commenter also stated that "States should be setting the standards for site assessment, not the Federal EPA, especially when the Agency is using the auditing style of a for-profit organization."

The Ohio Department of Transportation (ODOT) commented that Ohio did not adopt the ASTM Phase I site assessment standards because it is designed for private commercial/industrial transactions and does not address ODOT's needs.

Section 101(35)(B)(iv)(II) of CERCLA provides that until EPA promulgates the regulations under (B)(ii), "the procedures of the American Society for Testing and Materials * * * shall satisfy the requirements in clause (i)." Thus, the decision to accept ASTM procedures was made by Congress, and not by EPA. The narrow purpose of today's rule is to recognize that there is a more recent ASTM standard than the one mentioned in the statute. In addition, EPA is developing a regulation pursuant to section 101(35)(B) that will establish new Federal standards for conducting all appropriate inquiry for the purposes of establishing liability and conducting property assessments with brownfields grants. States also are free to promulgate any standards they feel are appropriate for use in their State programs. To the extent any State has regulations establishing standards for all appropriate inquiry, EPA may consider the merits of such standards during the development of the Federal standard.

Another commenter, INTERTOX, stated that the ASTM standard "inadequately accounts for regional differences in the availability of historical documents for the characterization of past uses of a site." The commenter also stated that all appropriate inquiry "should vary according to the geographic location of the site under investigation."

As stated in the proposed rule, the interim ASTM standard, as provided by Congress in the Brownfields Law, will be effective only until EPA promulgates regulations setting a federal standard for all appropriate inquiry. The issue of "historical sources" will be addressed in the subsequent rule, consistent with the statutory criteria for those standards and practices. While developing the "all appropriate inquiry" standards, EPA intends to consider multiple sources of information regarding technical standards and "historical sources" of site use.

Phase Engineering, Inc. submitted a comment pointing out that EPA incorrectly cited the most recent version of the ASTM Phase I site assessment standards as "ASTM E1527–2000." The commenter pointed out that the correct nomenclature is "ASTM E1527–00." Today's final rule includes the correct nomenclature.

VI. Administrative Requirements

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a "significant regulatory action" and is therefore not subject to review by the Office of Management and Budget.

This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 FR U.S.C. 3501 *et seq.*).

The Regulatory Flexibility Act (RFA) generally requires an agency to prepare a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements under the APA or any other statute unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. This action will not have a significant impact on a substantial number of small entities because it does not create any new requirements.

Because the purpose of today's action is to make a clarification that does not create any new requirements it has no economic impact and is not subject to sections 202 and 205 of the Unfunded Mandates Reform Act of 1995 (UMRA) (Public Law 104–4). In addition, this action does not significantly or uniquely affect small governments or impose a significant intergovernmental mandate, as described in sections 203 and 204 of UMRA.

This rule will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999). In addition, this rule also does not have tribal implications, as specified by Executive Order 13175 (65 FR 67249, November 6, 2000).

This rule also is not subject to Executive Order 13045 (62 FR 1985, April 23, 1997), because it is not economically significant.

This rule is not subject to Executive Order 13211, "Actions Concerning Regulations that Significantly Affect Energy Supply, Distribution, or Use" (66 FR 28355, May 22, 2001) because it is not a significant regulatory action under Executive Order 12866.

This action does involve technical standards. Therefore, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272) apply. The NTTAA was signed into law on March 7, 1996, and, among other things, directs the National Institute of Standards and Technology (NIST) to bring together Federal agencies as well as state and local governments to achieve greater reliance on voluntary standards and decreased dependence on in-house standards. It states that use of such standards, whenever practicable and appropriate, is intended to achieve the following goals: (a) Eliminate the cost to the government of developing its own standards and decrease the cost of goods procured and the burden of complying with agency regulation; (b) provide incentives and opportunities to establish standards that serve national needs; (c) encourage long-term growth for U.S. enterprises and promote efficiency and economic competition through harmonization of standards; and (d) further the policy of reliance upon the private sector to supply government needs for goods and services. The Act requires that Federal agencies adopt private sector standards, particularly those developed by standards developing organizations (SDOs), wherever possible in lieu of creating proprietary, non-consensus standards. Today's action is compliant with the spirit and requirements of the NTTAA, given that the interim standard for all appropriate inquiry that is the subject of today's action is a private sector standard developed by a standard developing organization. Today's action allows for the use of the American Society for Testing and Materials (ASTM) standard known as Standard E1527–00 and entitled "Standard Practice for Environmental Site Assessment: Phase 1 Environmental Site Assessment Process" as the interim standard for conducting all appropriate inquiry for properties purchased on or after May 31, 1997, or in the alternative, the use of Standard E1527–97, and entitled "Standard Practice for Environmental Site Assessment: Phase 1 Environmental Site Assessment Process."

Today's action does not involve special consideration of environmental justice related issues as required by Executive Order 12898 (59 FR 7629, February 16, 1994).

The Congressional Review Act (5 U.S.C. 801 *et seq.*), as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA submitted a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register.** A major rule cannot take effect until 60 days after it is published in the **Federal Register.** This action is not a "major rule" as defined by 5 U.S.C. 804(2). This rule will be effective June 9, 2003.

List of Subjects in 40 CFR Part 312

Environmental protection, Administrative practice and procedure, Hazardous substances, Intergovernmental relations, Reporting and recordkeeping requirements.

Dated: May 2, 2003.

Christine Todd Whitman,

Administrator.

■ For the reasons set out in the preamble, title 40, chapter I of the code of Federal Regulations is amended as follows:

■ 1. Subchapter J is amended by adding new part 312 to read as follows:

PART 312—INNOCENT LANDOWNERS, STANDARDS FOR CONDUCTING ALL APPROPRIATE INQUIRY

Subpart A—Introduction

Sec.

312.1 Purpose and applicability.
312.2 Standards and practices for all appropriate inquiry.

Subpart B—[Reserved]

Authority: Section 101(35)(B) of CERCLA, as amended, 42 U.S.C. 9601(35)(B).

Subpart A—Introduction

§ 312.1 Purpose and applicability.

(a) *Purpose.* The purpose of this section is to provide standards and procedures for "all appropriate inquiry" for the purposes of CERCLA Section 103(35)(B).

(b) *Applicability.* This section is applicable to: potential innocent landowners conducting all appropriate inquiry under Section 101(35)(B) of CERCLA; *bona fide* prospective purchasers defined under Section 101(40) of CERCLA; contiguous property owners under Section 107(q) of CERCLA; and persons conducting site characterization and assessments with the use of a grant awarded under CERCLA Section 104(k)(2)(B).

§ 312.2 Standards and practices for all appropriate inquiry.

With respect to property purchases on or after May 31, 1997, the procedures of the American Society for Testing and Materials (ASTM) 1527–97 and the procedures of the American Society for Testing and Materials (ASTM) 1527–00, both entitled "Standard Practice for Environmental Site Assessment: Phase 1 Environmental Site Assessment Process," shall satisfy the requirements for conducting "all appropriate inquiry" under Section 101(35)(B)(i)(I) of CERCLA, as amended by the Small Business Liability Relief and Brownfields Revitalization Act.

[FR Doc. 03–11473 Filed 5–8–03; 8:45 am]

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DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

49 CFR Part 209

[Docket No. FRA 1999–6086]

RIN 2130–AB15

Final Policy Statement Concerning Small Entities Subject to the Railroad Safety Laws

AGENCY: Federal Railroad Administration (FRA), Department of Transportation (DOT).

ACTION: Final rule; final statement of agency policy.

SUMMARY: On August 11, 1997, in compliance with the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), FRA issued an Interim Policy Statement Concerning Small Entities Subject to the Railroad Safety Laws. This document discusses comments received in response to the Interim Policy Statement and adopts the Interim Policy Statement as the Final Policy Statement Concerning Small Entities Subject to the Railroad Safety Laws, with minor edits required to update the language. The Final Policy Statement contains FRA's communication and enforcement policy statements concerning small entities subject to the railroad safety laws. FRA has in place programs that devote special attention to the unique concerns and operations of small entities in the administration of the national railroad safety compliance and enforcement program.

DATES: This policy statement is effective May 9, 2003.

FOR FURTHER INFORMATION CONTACT: (1) *Principal Program Person:* Jeffrey Horn, Office of Safety Planning and Evaluation, Federal Railroad Administration, 1120 Vermont Ave. NW., Mail Stop 25, Washington, DC 20590 (tel: (202) 493–6283) (2) *Principal Attorney:* Melissa Porter, Office of Chief Counsel, Federal Railroad Administration, 1120 Vermont Ave., NW., Mail Stop 10, Washington, DC 20590 (tel: (202) 493–6034) (3) *Enforcement Issues:* Douglas Taylor, Operating Practices Division, 1120 Vermont Ave., NW., Mail Stop 25, Washington, DC 20590 (tel: (202) 493–6255).

SUPPLEMENTARY INFORMATION:

I. Background

On August 11, 1997, FRA issued an Interim Policy Statement Concerning Small Entities Subject to the Railroad Safety Laws (62 FR 43024, August 11, 1997) (Interim Policy Statement) in compliance with the requirements of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121) (SBREFA). SBREFA establishes requirements for federal agencies to follow with respect to small businesses, creates duties for the Small Business Administration (SBA), and amends portions of the Regulatory Flexibility Act (5 U.S.C. 601, *et seq.*) and the Equal Access to Justice Act (EAJA) (5 U.S.C. 501, *et seq,*). The primary purposes of SBREFA are to implement recommendations developed at the 1995 White House Conference on Small Business, to provide small businesses enhanced opportunities for judicial review of final agency action, to encourage small business participation in the regulatory process, to develop accessible sources of information on

regulatory requirements for small business, to create a cooperative regulatory environment for small business, and to make federal regulators accountable for "excessive" enforcement actions.

SBREFA, among other things, requires federal enforcement agencies to institute two new policies. The first is a communication policy, described in section 213 of SBREFA, in which each agency must "answer inquiries by small entities concerning information on, and advice about, compliance with" statutes and regulations within the agency's jurisdiction, "interpreting and applying the law to specific sets of facts supplied by the small entity." The second is an enforcement policy, required by section 223 of SBREFA, in which each agency must establish a program to provide for the reduction, and under appropriate circumstances for the waiver, of civil penalties for violations of a statutory or regulatory requirement by a small entity.

SBREFA incorporates the definition for "small entity" that is established by existing law (5 U.S.C. 601, 15 U.S.C. 632, 13 CFR part 121) for those businesses to be covered by the agency policies. Generally, a small entity is a business concern that is independently owned and operated, and is not dominant in its field of operation. SBREFA defines "small governmental jurisdictions" that serve populations of 50,000 or less as small entities. An agency may establish one or more other definitions for this term, in consultation with the SBA and after opportunity for public comment, that are appropriate to the agency's activities.

In the Interim Policy Statement, FRA invited comments on the definition of "small entity," potential alternative definitions, and supporting rationale for suggested alternative definitions. FRA also held a public meeting on September 28, 1999 to further explore the issue.

II. Definition of Small Entity in the Railroad Industry

Pursuant to its statutory authority, the SBA promulgated regulations that clarify the term "small entity" by industry, using number of employees or annual income as criteria. 13 CFR 121.101–108, and 201. In the SBA regulations, main line railroads with 1500 or fewer employees, and switching or terminal establishments with 500 or fewer employees constitute small entities. The SBA regulations do not address hazardous material shippers in the railroad industry, or commuter railroads. However, commuter railroads are governmental jurisdictions, and some may fit within this statutory delineation for small governmental jurisdictions, or small entities addressed in SBREFA.

Prior to the SBA regulations establishing size categories, the Interstate Commerce Commission (ICC) developed a classification system for freight railroads as Class I, II or III, based on annual operating revenue. (The detailed, qualifying criteria for these classifications are set forth in 49 CFR part 1201.) The Department of Transportation's Surface Transportation Board (STB), which succeeded the ICC, has not changed these classifications. The ICC classification system has been used pervasively by FRA and the railroad industry to identify entities by size. The SBA recognizes this classification system as a sound one, and concurred with FRA's decision to use it in the Interim Policy Statement, provided the public has notice of the classification system in use for any particular proceeding and an opportunity to comment on it.

In the Interim Policy Statement, FRA defined "small entity," for the purpose of communication and enforcement policies, the Regulatory Flexibility Act (5 U.S.C. 601, *et seq.*), and the Equal Access to Justice Act (5 U.S.C. 501, *et seq.*), to include only those railroads which are classified as Class III. FRA further clarified the definition to include, in addition to Class III railroads, hazardous material shippers that meet the income level established for Class III railroads (those with annual operating revenues of $20 million per year or less, as set forth in 49 CFR 1201.1–1); railroad contractors that meet the income level established for Class III railroads; and those commuter railroads or small governmental jurisdictions that serve populations of 50,000 or less.

III. Analysis of Comments

FRA received ten comments regarding the definition of a small entity (which can be accessed on-line at DOT's Docket Management System at *http://dms.dot.gov*). FRA also received additional comments from several organizations during the public meeting held on September 28, 1999. While a number of commenters expressed the view that FRA has been very helpful and flexible in its approach to dealing with small businesses, commenters differed on their proposed definitions of "small entity."

Two small railroads agreed that FRA should retain the definition of a small railroad, as it has been used historically, and as it was used in the Interim Policy Statement: Class III railroads. One other commenter also agreed with that definition, and also agreed with FRA's definitions for other entities: contractors and hazardous materials shippers meeting the economic criteria established for Class III railroads in 49 CFR 1201.1–1, and small governmental jurisdictions or commuter railroads that serve populations of 50,000 or less.

The American Short Line Railroad Association (ASLRA) (now The American Short Line and Regional Rail Association) suggested the most expansive definition, proposing that FRA regard all entities classified as Class II and Class III carriers by the Surface Transportation Board (STB) as small entities. ASLRA did not address application of the definition to hazardous materials shippers, contractors, governmental units, or commuter operations. ASLRA believes that its proposed definition is consistent with SBA's "1500 employees for main line railroads" and "500 employees for switching or terminal establishments" definitions because the SBA's definition would include all except one Class II and Class III carriers. ASLRA also claimed that the definition would not impose any additional burdens on FRA beyond what FRA already undertakes during its communication and enforcement processes. However, as ASLRA commented, "FRA has consistently recognized the special needs of Class II and Class III railroads, and has specially tailored its regulatory requirements or implementation dates for them in many instances." As noted, FRA does have a history of being very responsive to entities' concerns during its rulemaking and enforcement processes, and does not feel that Class II entities have been adversely affected by FRA's treatment of their concerns. FRA will continue to address those concerns in its regulatory and enforcement actions. Nevertheless, including Class II railroads as small entities in this policy would require that FRA provide those railroads, which are of considerable size and sophistication (with annual operating revenues of up to $250 million), the benefits of the agency's communication and enforcement policies, which are clearly designed for much smaller entities that truly merit such special attention. FRA will continue to provide compliance guidance and consideration of financial condition to any particular Class II railroad entity that needs these actions, but will not include all of the Class II entities within these policies because they are intended for a class of railroads much more likely to need such actions. As such, FRA sees no justification in expanding its current definition of a small entity to meet ASLRA's proposed definition.

Several other entities suggested a narrower definition, limiting the definition of a small entity to those entities having less than a total of 400,000 annual employee hours. Some commenters also included other qualifiers, such as including operating revenue as a qualifying threshold. Commenters generally believed applying these measures would ensure consistent treatment to all entities throughout the railroad industry, regardless of whether they are a carrier, switching or terminal operation, hazardous materials shipper, or contractor. The National Railroad Construction and Maintenance Association (NRC) believed that for contractors specifically, this approach was fairer than applying the STB's Class I, II, and III monetary thresholds. The NRC claimed that operating revenues for contractors are sometimes artificially high because labor and material costs are included in the contract price, thereby potentially putting a small contractor above the $20 million threshold set by the STB.

Other commenters agreed with NRC that 400,000 annual employee hours was an appropriate measure that would ensure consistency, yet felt that further limiting those entities to $20 million in annual operating revenues would eliminate the possibility that larger railroads would sneak into the "small entity" category if they increase operating efficiencies, and thereby limit employee hours. The Brotherhood of Maintenance of Way Employes also proposed that all hours of persons engaged in the operation or maintenance of a railroad or its infrastructure (*i.e.*, railroad contract employees or volunteers) be included in the total annual employee hours calculation to avoid underreporting of actual work performed for one railroad. The theory is that if contractor hours are not included in the total employee hour calculation, a railroad who is above the 400,000 annual employee hour threshold could contract out most of its work to reduce its total employee hours, so that it could still receive "small entity" treatment.

Although FRA has used the 400,000 annual employee hour designation when conducting regulatory analyses for several rules, FRA has also used the Class I, II, and III categories to differentiate compliance dates when necessary to lessen the burden on small entities. FRA believes that, although the 400,000 annual employee hour criterion is useful in certain rules, the use of STB's Class III definition as its measure of a small entity for carriers, switching and terminal operations, hazardous materials shippers, and contractors is more appropriate for the purposes of this broad policy. Under the Final Policy Statement issued today, FRA retains the ability to use different criteria to tailor the applicability of any regulations it issues to address appropriately the specific safety problem at issue. For example, even though FRA is retaining the Class III standard for "small entity" for its communication and enforcement policy purposes, FRA may issue a rule that applies only to railroads with more than a certain number of annual employee hours or to all railroads, regardless of size.

The American Public Transit Association (APTA), which represents several commuter operations, proposed that FRA define rail systems with less than 200 cars as small entities. APTA believes there are very few entities that would fit the definition of operations serving populations of 50,000 or less. FRA did not believe the 200-car limit was a useful distinction, and determined it is appropriate to retain commuter railroads or small governmental jurisdictions that serve populations of 50,000 or less (a standard based on SBREFA's own definition of a small governmental jurisdiction) as its definition of a small commuter railroad.

The September 28, 1999 public meeting gave commenters an opportunity to iterate many of the same ideas expressed in the written comments FRA received. Aside from the merits of each definition, the attendees discussed the logistics of tracking the number of small entities for the proposed definitions. For example, if FRA adopts STB's definition, how will FRA ensure that STB is keeping accurate records of Class III carriers? STB requires regular reporting of the necessary information, and FRA has complete confidence in that process. Attendees also discussed what effect the number of entities considered "small entities" would have on FRA's litigation costs under the EAJA. FRA notes that the only provisions of EAJA affected by this definition are 5 U.S.C. 504 (a)(4), and 28 U.S.C. 2412 (d)(1)(D). These provisions permit recovery of costs and fees only if a civil penalty demand is held to be substantially in excess of the judgment finally obtained, and is unreasonable when compared with that judgment. Because FRA pays special attention to the circumstances of small entities in assessing or collecting civil penalties, such a situation is extremely unlikely. The definition of "small entity" contained in this policy has no effect on EAJA claims brought in response to other types of agency action; such claims are governed by the EAJA definition of "party." Note that the principles concerning the aggregation of company affiliates set forth in DOT's regulations at 49 CFR 6.7(f) apply to this definition for purposes of claims brought under EAJA.

FRA indicated in the Interim Policy Statement that the Final Policy Statement would establish a definition of "small entity" for Regulatory Flexibility Act (RFA) purposes. While FRA will generally use the "small entity" definition adopted here in doing RFA analyses, it needs to retain sufficient flexibility to use a different definition if appropriate in the context of a particular RFA analysis. FRA has, and will continue to comply with the RFA's provisions requiring notice and comment, and consultation with the Small Business Administration's Office of Advocacy, when it uses a definition of "small entity" that differs from that adopted here to complete RFA analyses.

IV. FRA's Small Business Communication and Enforcement Programs

FRA's purpose in publishing this policy statement is to formally announce and explain its communication and enforcement policies concerning small entities in the railroad industry, which have already existed for some time. FRA is hopeful that this publication will; in addition to achieving compliance with the SBREFA requirements, enhance railroad safety in several ways: (1) Increase the number of small entities that participate cooperatively in the safety compliance and enforcement program; (2) better inform small businesses of railroad safety requirements; (3) encourage small entities to communicate more freely with agency personnel to alleviate potential safety risks before they become hazardous; and (4) improve FRA's understanding of small operations.

FRA's small business communication program has existed for some time, and continues to grow to meet the needs of our customers in the railroad industry. FRA Office of Safety and Office of Chief Counsel personnel, at the headquarters, regional and local level, devote a great deal of attention to the inquiries and concerns of small entities. FRA's program is flexible and responsive to the particular need expressed. The agency's response takes a variety of forms: oral and written answers to questions received, training sessions for new or existing small businesses on the substance of railroad safety regulations, and advice on a particular standard or

interpretation of a standard. Some of the FRA Regional Administrators have established programs in which small entities in the region meet with FRA regional specialists on a regular basis to discuss new regulations, persistent safety concerns, developing technology, and on going compliance issues. FRA regional offices hold yearly conferences in which specific blocks of time are set aside to meet with small businesses and hear their concerns. In addition, FRA has instituted innovative programs that expand our existing communication policy for small entities. The Railroad Safety Advisory Committee (RSAC) plays an integral role in the development of railroad safety regulations, and includes representatives of small businesses.

Similarly, FRA's enforcement program devotes special attention to ensuring that the limited financial resources of small entities are considered during the enforcement process. FRA inspectors have and utilize discretion when determining whether a civil penalty citation or other enforcement action should be taken against a small entity. Staff attorneys in FRA's Office of Chief Counsel regularly assess information provided by a company concerning the degree to which fines will impact the viability of a small business, and the extent to which a fine may prevent the business from improving the safety of its operation. In fact, the federal railroad safety laws include the requirement that agency personnel consider a respondent's ability to pay in any civil penalty action taken. 49 U.S.C. 21301–21303. Staff attorneys regularly invite small entities to present information concerning financial status and other factors that may result in a reduction or waiver of penalty assessments. This policy statement will be codified in the Code of Federal Regulations as an appendix to 49 CFR part 209, so that all members of the public have access to it as needed. The terms "small business" and "small entity" have identical meaning for purposes of this document, and are used interchangeably throughout.

The Final Policy Statement issued today is substantially the same as the Interim Policy Statement. However, FRA edited language that has become outdated since the initial statement was published, and further clarified FRA's position in some instances, none of which alter the substance of the policy statements themselves. FRA also added language that makes clear that the Final Policy Statement's definition of "small entity" is applicable to RFA, and to the "excessive demand" provisions in the EAJA, but not other provisions of that law.

List of Subjects in 49 CFR Part 209

Administrative practice and procedure, Penalties, Railroad Safety, Reporting and recordkeeping requirements.

The Policy Statement

■ In consideration of the foregoing, chapter II, subtitle B of title 49, Code of Federal Regulations is amended as follows:

PART 209—[AMENDED]

■ 1. The authority citation for part 209 continues to read as follows:

Authority: 49 U.S.C. 20103, 20107, 20111, 20112, 20114, and 49 CFR 1.49.

■ 2. A new Appendix C is added to 49 CFR part 209 to read as follows:

Appendix C to Part 209—FRA's Policy Statement Concerning Small Entities

This policy statement required by the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121) (SBREFA) explains FRA's communication and enforcement policies concerning small entities subject to the federal railroad safety laws. These policies have been developed to take into account the unique concerns and operations of small businesses in the administration of the national railroad safety program, and will continue to evolve to meet the needs of the railroad industry. For purposes of this policy statement, the Regulatory Flexibility Act (5 U.S.C. 601, *et seq.*), and the "excessive demand" provisions of the Equal Justice Act (5 U.S.C. 504 (a)(4), and 28 U.S.C. 2412 (d)(1)(D)), Class III railroads, contractors and hazardous materials shippers meeting the economic criteria established for Class III railroads in 49 CFR 1201.1–1, and commuter railroads or small governmental jurisdictions that serve populations of 50,000 or less constitute the class of organizations considered "small entities" or "small businesses."

FRA understands that small entities in the railroad industry have significantly different characteristics than larger carriers and shippers. FRA believes that these differences necessitate careful consideration in order to ensure that those entities receive appropriate treatment on compliance and enforcement matters, and enhance the safety of railroad operations. Therefore, FRA has developed programs to respond to compliance-related inquiries of small entities, and to ensure proper handling of civil penalty and other enforcement actions against small businesses.

Small Entity Communication Policy

It is FRA's policy that all agency personnel respond in a timely and comprehensive fashion to the inquiries of small entities concerning rail safety statutes, safety regulations, and interpretations of these statutes and regulations. Also, FRA personnel provide guidance to small entities, as needed, in applying the law to specific facts and situations that arise in the course of railroad operations. These agency communications take many forms, and are tailored to meet the needs of the requesting party.

FRA inspectors provide training on the requirements of all railroad safety statutes and regulations for new and existing small businesses upon request. Also, FRA inspectors often provide impromptu training sessions in the normal course of their inspection duties. FRA believes that this sort of preventive, rather than punitive, communication greatly enhances railroad safety. FRA's Office of Safety and Office of Chief Counsel regularly provide oral and written responses to questions raised by small entities concerning the plain meaning of the railroad safety standards, statutory requirements, and interpretations of the law. As required by the SBREFA, when FRA issues a final rule that has a significant impact on a substantial number of small entities, FRA will also issue a compliance guide for small entities concerning that rule.

It is FRA's policy to maintain frequent and open communications with the national representatives of the primary small entity associations and to consult with these organizations before embarking on new policies that may impact the interests of small businesses. In some regions of the country where the concentration of small entities is particularly high, FRA Regional Administrators have established programs in which all small entities in the region meet with FRA regional specialists on a regular basis to discuss new regulations, persistent safety concerns, emerging technology, and compliance issues. Also, FRA regional offices hold periodic conferences, in which specific blocks of time are set aside to meet with small businesses and hear their concerns.

In addition to these communication practices, FRA has instituted an innovative partnership program that expands the extent to which small entities participate in the development of policy and process. The Railroad Safety Advisory Committee (RSAC) has been established to advise the agency on the development and revision of railroad safety standards. The committee consists of a wide range of industry representatives, including organizations that represent the interests of small business. The small entity representative groups that sit on the RSAC may appoint members of their choice to participate in the development of new safety standards. This reflects FRA's policy that small business interests must be heard and considered in the development of new standards to ensure that FRA does not impose unnecessary economic burdens on small businesses, and to create more effective standards. Finally, FRA's Web site (*http://www.fra.dot.gov*) makes pertinent agency information available instantly to the public.

FRA's longstanding policy of open communication with small entities is apparent in these practices. FRA will make every effort to develop new and equally responsive communication procedures as is warranted by new developments in the railroad industry.

Small Entity Enforcement Policy

FRA has adopted an enforcement policy that addresses the unique nature of small entities in the imposition of civil penalties and resolution of those assessments. Pursuant to FRA's statutory authority, and as described in Appendix A to 49 CFR part 209, it is FRA's policy to consider a variety of factors in determining whether to take enforcement action against persons, including small entities, who have violated the safety laws and regulations. In addition to the seriousness of the violation and the person's history of compliance, FRA inspectors consider "such other factors as the immediate circumstances make relevant." In the context of violations by small entities, those factors include whether the violations were made in good faith (*e.g.*, based on an honest misunderstanding of the law), and whether the small entity has moved quickly and thoroughly to remedy the violation(s). In general, the presence of both good faith and prompt remedial action militates against taking a civil penalty action, especially if the violations are isolated events. On the other hand, violations involving willful actions and/or posing serious health, safety, or environmental threats should ordinarily result in enforcement actions, regardless of the entity's size.

Once FRA has assessed a civil penalty, it is authorized to adjust or compromise the initial penalty claims based on a wide variety of mitigating factors, unless FRA must terminate the claim for some reason. FRA has the discretion to reduce the penalty as it deems fit, but not below the statutory minimums. The mitigating criteria FRA evaluates are found in the railroad safety statutes and SBREFA: The severity of the safety or health risk presented; the existence of alternative methods of eliminating the safety hazard; the entity's culpability; the entity's compliance history; the entity's ability to pay the assessment; the impacts an assessment might exact on the entity's continued business; and evidence that the entity acted in good faith. FRA staff attorneys regularly invite small entities to present any information related to these factors, and reduce civil penalty assessments based on the value and integrity of the information presented. Staff attorneys conduct conference calls or meet with small entities to discuss pending violations, and explain FRA's view on the merits of any defenses or mitigating factors presented that may have resulted or failed to result in penalty reductions. Among the "other factors" FRA considers at this stage is the promptness and thoroughness of the entity's remedial action to correct the violations and prevent a recurrence. Small entities should be sure to address these factors in communications with FRA concerning civil penalty cases. Long-term solutions to compliance problems will be given great weight in FRA's determinations of a final settlement offer.

Finally, under FRA's Safety Assurance and Compliance Program (SACP), FRA identifies systemic safety hazards that continue to occur in a carrier or shipper operation, and in cooperation with the subject business, develops an improvement plan to eliminate those safety concerns. Often, the plan provides small entities with a reasonable time frame in which to make improvements without the threat of civil penalty. If FRA determines that the entity has failed to comply with the improvement plan, however, enforcement action is initiated.

FRA's small entity enforcement policy is flexible and comprehensive. FRA's first priority in its compliance and enforcement activities is public and employee safety. However, FRA is committed to obtaining compliance and enhancing safety with reasoned, fair methods that do not inflict undue hardship on small entities.

Issued in Washington, DC on May 1, 2003.

Allan Rutter,

Administrator.

[FR Doc. 03–11450 Filed 5–8–03; 8:45 am]

BILLING CODE 4910–06–P

Proposed Rules

Federal Register
Vol. 68, No. 90
Friday, May 9, 2003

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

14 CFR Parts 255 and 399

[Dockets Nos. OST–97–2881, OST–97–3014, OST–98–4775, and OST–99–5888]

RIN 2105–AC65

Computer Reservations System (CRS) Regulations (Part 255); Statements of General Policy (Part 399)

AGENCY: Office of the Secretary, Department of Transportation.

ACTION: Proposed rule; notice extending comment period.

SUMMARY: The Department has issued a notice of proposed rulemaking that proposes to readopt and amend its existing rules governing airline computer reservations systems (CRSs) and to clarify the requirements of its Statements of General Policy on travel agency disclosure of any agency service fees. The Department is now extending the due date for reply comments on this notice of proposed rulemaking to June 9, 2003, from the current date of May 15, 2003.

ADDRESSES: To make sure your comments and related material are not entered more than once in the docket, please submit them (marked with docket number OST–97–2881) by only one of the following means:

(1) By mail to the Docket Management Facility, U.S. Department of Transportation, room PL–401, 400 Seventh Street SW., Washington, DC 20590–0001.

(2) By hand delivery to room PL–401 on the Plaza level of the Nassif Building, 400 Seventh Street SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The telephone number is (202) 366–9329.

(3) Electronically through the Web Site for the Docket Management System at *http://dms.dot.gov*. Comments must be filed in Dockets OST–97–2881, OST–97–3014, and OST–98–4775, U.S. Department of Transportation, 400 7th St. SW., Washington, DC 20590. Late filed comments will be considered to the extent possible.

Due to security procedures in effect since October 2001 on mail deliveries, mail received through the Postal Service may be subject to delays. Commenters should consider using an express mail firm to ensure the timely filing of any comments not submitted electronically or by hand.

FOR FURTHER INFORMATION CONTACT: Thomas Ray, Office of the General Counsel, 400 Seventh St. SW., Washington, DC 20590, (202) 366–4731.

SUPPLEMENTARY INFORMATION: The Department has begun a rulemaking to reexamine whether it should maintain its existing rules governing CRS operations. We issued a notice of proposed rulemaking that set forth our tentative conclusions on whether the rules should be readopted, whether we should extend the rules to cover the sale of airline tickets through the Internet, and whether we should clarify our full-fare advertising policy insofar as it concerns the disclosure of travel agency service fees. (67 FR 69366, November 15, 2002). We have stated that we intend to hold a public hearing in this rulemaking between the March 17 due date for comments and the due date for reply comments, currently May 15. (68 FR 12883, March 18, 2003).

Several firms and organizations have filed comments in response to our stated intent to hold a public hearing. They have made various suggestions on how the hearing should be structured and when it should be scheduled, including proposals to hold the hearing after the filing of reply comments and requests that we take into account the commenters' need for adequate time to prepare both reply comments and a hearing presentation. We continue to believe that we will obtain a more useful record if we hold the hearing before the submission of reply comments. We are currently planning to schedule the hearing, which will last one day, on Tuesday, Wednesday, or Thursday, May 20, 21, or 22, in the Washington, DC, area, and are in the process of arranging for a room for the hearing. We will provide notice as soon as possible on the time and place of the hearing.

To enable the commenters to respond in their reply comments to arguments made at the hearing, we are extending the due date for reply comments to June 9. This extension will also give commenters a better opportunity to prepare for a hearing and write thorough reply comments without significantly delaying our completion of this proceeding.

Issued in Washington, DC on May 6, 2003.

Kirk K. Van Tine,

General Counsel.

[FR Doc. 03–11634 Filed 5–6–03; 2:53 pm]

BILLING CODE 4910–62–P

SOCIAL SECURITY ADMINISTRATION

20 CFR Parts 404 and 416

[Regulations Nos. 4 and 16]

RIN 0960–AF33

Revised Medical Criteria for Evaluating Immune System Disorders

AGENCY: Social Security Administration.

ACTION: Advance notice of proposed rulemaking.

SUMMARY: We are planning to update and revise the rules that we use to evaluate immune system disorders of adults and children who apply for, or receive, disability benefits under title II and Supplemental Security Income (SSI) payments based on disability under title XVI of the Social Security Act (the Act). The rules we plan on revising are sections 14.00 and 114.00 in the Listing of Impairments in appendix 1 to subpart P of part 404 of our regulations (the listings). We invite you to send us comments and suggestions for updating and revising these rules.

After we have considered your comments and suggestions, as well as information about advances in medical knowledge, treatment, and methods of evaluating immune system disorders, and our program experience, we intend to publish for public comment a Notice of Proposed Rulemaking (NPRM) that will propose specific revisions to the rules.

As part of our long-term planning for the disability programs, we are also interested in your ideas for how we may be able to improve our programs for people who have immune system disorders, especially those who would like to work.

DATES: To be sure your comments are considered, we must receive them by July 8, 2003.

ADDRESSES: You may give us your comments using: our Internet site facility (*i.e.*, Social Security Online) at: *http://policy.ssa.gov/pnpublic.nsf/LawsRegs*; e-mail to *regulations@ssa.gov*; telefax to (410) 966–2830; or, by letter to the Commissioner of Social Security, P.O. Box 17703, Baltimore, Maryland 21235–7703. You may also deliver them to the Office of Regulations, Social Security Administration, 100 Altmeyer Building, 6401 Security Boulevard, Baltimore, Maryland 21235–6401, between 8 a.m. and 4:30 p.m. on regular business days. Comments are posted in our Internet site at *http://policy.ssa.gov/pnpublic.nsf/LawsRegs*, or you may inspect them on regular business days by making arrangements with the contact person shown in this preamble.

Electronic Version: The electronic file of this document is available on the date of publication in the **Federal Register** at *http://www.access.gpo.gov/su_docs/aces/aces140.html*. It is also available on the Internet site for SSA (*i.e.*, Social Security Online): *http://www.ssa.gov/regulations/*.

FOR FURTHER INFORMATION CONTACT: Suzanne DiMarino, 100 Altmeyer Building, 6401 Security Boulevard, Baltimore, Maryland 21235–6401, (410) 965–1769 or TTY (410) 966–5609. For information on eligibility or filing for benefits, call our national toll-free number 1–800–772–1213 or TTY 1–800–325–0778, or visit our Internet Web site, Social Security Online, at *www.ssa.gov*.

SUPPLEMENTARY INFORMATION:

What Is the Purpose of This Notice?

We are planning to update and revise the rules that we use to evaluate immune system disorders of adults and children who apply for, or receive, disability benefits under title II and Supplemental Security Income (SSI) payments based on disability under title XVI of the Act. The purpose of this notice is to give you an opportunity to send us comments and suggestions for updating and revising those rules as we begin the rulemaking process. We are also asking for your comments and ideas about how we can improve our disability programs in the future for people with immune system disorders.

Who Should Send Us Comments and Suggestions?

We invite comments and suggestions from anyone who has an interest in the rules we use to evaluate claims for benefits filed by people who have immune system disorders. We are interested in getting comments and suggestions from people who apply for or receive benefits from us, members of the general public, advocates and organizations who advocate for people who have immune system disorders, experts in the evaluation of immune system disorders, researchers, people who make disability determinations for us, and any other people who may have ideas for us to consider.

Will We Respond to Your Comments from This Notice?

No, we will not respond directly to comments you send us because of this notice. However, after we consider your comments in response to this notice, along with other information such as medical research and our program experience, we will decide how to revise the rules we use to evaluate immune system disorders. When we propose specific revisions to the rules, we will publish an NPRM in the **Federal Register**. In accordance with the usual rulemaking procedures we follow, you will have a chance to comment on the revisions we propose when we publish the NPRM, and we will summarize and respond to the significant comments on the NPRM in the preamble to any final rules.

Which Rules Are We Considering for Updating and Revising?

We are considering two sections of our listings for revision, sections 14.00 and 114.00. These are the listings for immune disorders for adults (Part A, 14.00) and children (Part B, 114.00). It includes such disorders as HIV infection, other Immunoglobulin deficiency syndromes or deficiencies of cell-mediated immunity, Systemic Lupus Erythematosus, Scleroderma, Polymyositis, Inflammatory Arthritis, and other connective tissue disorders.

Where Can You Find These Rules on the Internet?

You can find these rules on our Internet site at these locations:

- Sections 14.00 and 114.00 are in the Listing of Impairments in appendix 1 to subpart P of part 404 of our regulations at: *http://www.ssa.gov/OP_Home/cfr20/404/404-ap09.htm*.
- You can also look up sections 14.00 and 114.00 at: *http://www.ssa.gov/disability/professionals/bluebook/*.
- If you do not have Internet access, you can find the Code of Federal Regulations in some public libraries, Federal depository libraries, and public law libraries.

Why Are We Updating and Revising Our Rules for Evaluating Immune System Disorders?

- The current listings for immune system disorders for adults (14.00) and children (114.00) will no longer be in effect on July 2, 2003, unless we extend them or revise and promulgate them again, so we must consider now whether to update and revise them.

We published final rules on July 2, 1993, which established body system listings in part A and part B of the listings for immune system disorders (58 FR 36008). We made those rules effective for five years from the date of publication, unless we extended them, or revised and issued them again (58 FR 36051). Since that time, we have extended the expiration date of the immune body system listings. Most recently, on June 28, 2001, we published rules that extended the effective date of the current immune system listings until July 2, 2003 (66 FR 34361). Although we published final rules in the **Federal Register** revising some of the immune system listings on November 19, 2001 (66 FR 58009), we have not comprehensively revised them since 1993.

We will be considering information from many sources, including the following recent documents, for relevance to our policy for evaluating immune system diseases.

- Kippel, J., Weyand, C., & Wortmann, R. (Eds.). (1997). Primer on the Rheumatic Diseases, (11th ed.). Atlanta: Arthritis Foundation.
- Davidson, A. & Diamond, B. (2001). Autoimmune Diseases. The New England Journal of Medicine, 345(5), 1–21.
- Marmont, A. (2000). New Horizons in the Treatment of Autoimmune Diseases: Immunoablation and Stem Cell Transplantation. Annual Reviews, 51, 115–134.
- Nash, R.A. (2000). Prospects of Stem Cell Transplantation in Autoimmune Diseases. Journal of Clinical Immunology, 20(1), 38–45.
- Sicherer, S.H. (*et al.*). (1998). Primary Immunodeficiency Diseases in Adults. Journal of American Medical Association, 279:58.

What Should You Comment About?

We are interested in any comments and suggestions you have for revising sections 14.00 and 114.00 of our listings. For example, with regard to our listings, we are interested in knowing if:

- You have concerns about any of the current listings provisions for adults or children; such as whether you think we should change any of our criteria or

whether you think a listing is difficult to use or understand.

• You would like to see our listings include something that they do not include now.

You can also make any other comments or suggestions to help us improve our rules for evaluating claims for benefits filed by adults and children who have immune system disorders.

In addition to your comments about our regulations, we are also interested in any ideas you have about how the disability requirements of the Act and our regulations affect people who have immune system disorders, especially those who would like to work, full-time or part-time with supports. Your ideas can address our existing rules and regulations or suggest changes to the law. For example, we know that many people who have immune system disorders might not need benefits from us if they could get treatment before their disorders make them unable to work. Others may be unable to work but may not need to stay out of work indefinitely if they could get treatment or other interventions. Many people with permanent disorders can work if they have a supporting safety net (including title II disability benefits and SSI payments). Work can also be therapeutic for some people. Although the Act and our regulations include some access to health care through Medicare and Medicaid, some provision for vocational rehabilitation, and a number of work incentives, these provisions are generally for people who already qualify for benefits under our disability programs.

We are interested in your ideas for how we may be able to improve our programs for people who have immune system disorders, especially those who would like to work full-time or part-time with supports. Your ideas can address our existing rules and regulations or suggest changes to the law. We will consider your ideas as we develop the NPRM we intend to publish for public comment, and, where applicable, as part of our long-term planning for the disability program.

Other Information

Who Can Get Disability Benefits?

Under title II of the Act, we provide for the payment of disability benefits if you are disabled and belong to one of the following three groups:

• Workers insured under the Act,

• Children of insured workers, and

• Widows, widowers, and surviving divorced spouses (see 20 CFR 404.336) of insured workers.

Under title XVI of the Act, we provide for Supplemental Security Income (SSI) payments on the basis of disability if you are disabled and have limited income and resources.

How Do We Define Disability?

Under both the title II and title XVI programs, disability must be the result of any medically determinable physical or mental impairment or combination of impairments that is expected to result in death or which has lasted or is expected to last for a continuous period of at least 12 months. Our definitions of disability are shown in the following table:

If you file a claim under * * *	And you are * * *	Disability means you have a medically determinable impairment(s) as described above and that results in * * *
title II	an adult or a child	the inability to do any substantial gainful activity (SGA).
title XVI	a person age 18 or older	the inability to do any SGA.
title XVI	a person under age 18	marked and severe functional limitations.

What Are the Listings?

The listings are examples of impairments that we consider severe enough to prevent a person from doing any gainful activity, or that result in "marked and severe functional limitations" in children seeking SSI payments under title XVI of the Act. Although we publish the listings only in appendix 1 to subpart P of part 404 of our rules, we incorporate them by reference in the SSI program in § 416.925 of our regulations, and apply them to claims under both title II and title XVI of the Act.

How Do We Use the Listings?

The listings are in two parts. There are listings for adults (part A) and for children (part B). If you are a person age 18 or over, we apply the listings in part A when we assess your claim, and we never use the listings in part B.

If you are a person under age 18, we first use the criteria in part B of the listings. If the listings in part B do not apply, and the specific disease process(es) has a similar effect on adults and children, we then use the criteria in part A. (See §§ 404.1525 and 416.925.)

If your impairment(s) does not meet any listing, we will also consider whether it medically equals any listing; that is, whether it is as medically severe. (See §§ 404.1526 and 416.926.)

We use the listings only to decide that people are disabled or that they are still disabled. We will never deny your claim or decide that you no longer qualify for benefits simply because your impairment(s) does not meet or medically equal a listing. If you have a severe impairment(s) that does not meet or medically equal any listing, we may still find you disabled based on other rules in the "sequential evaluation process" that we use to evaluate all disability claims. (See §§ 404.1520, 416.920, and 416.924.) If you have a severe impairment(s) that does not meet or medically equal any listing, we may still find you disabled based on other rules in the "sequential evaluation process" that we use to evaluate all disability claims. (See §§ 404.1520, 416.920, and 416.924.)

List of Subjects

20 CFR Part 404

Administrative practice and procedure, Blind, Disability benefits, Old-Age, Survivors, and Disability Insurance, Reporting and recordkeeping requirements, Social Security.

20 CFR Part 416

Administrative practice and procedure, Aged, Blind, Disability benefits, Public assistance programs, Supplemental Security Income (SSI), Reporting and recordkeeping requirements.

Dated: April 16, 2003.

Jo Anne B. Barnhart,

Commissioner of Social Security.

[FR Doc. 03–11491 Filed 5–8–03; 8:45 am]

BILLING CODE 4191–02–U

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[REG–164754–01]

RIN 1545–BA44

Split-Dollar Life Insurance Arrangements

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of proposed rulemaking and notice of public hearing.

SUMMARY: This document contains proposed regulations relating to the valuation of economic benefits under certain equity split-dollar life insurance arrangements. The proposed regulations will provide needed guidance to persons who enter into split-dollar life insurance arrangements. This document also provides notice of a public hearing on the proposed regulations.

DATES: Written or electronic comments must be received by July 8, 2003. Requests to speak and outlines of topics to be discussed at the public hearing scheduled for July 29, 2003, must be received by July 8, 2003.

ADDRESSES: Send submissions to CC:PA:RU (REG–164754–01), room 5226, Internal Revenue Service, POB 7604, Ben Franklin Station, Washington, DC 20044. Submissions may be hand delivered Monday through Friday between the hours of 8 a.m. and 4 p.m. to: CC:PA:RU (REG–164754–01), Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue, NW., Washington, DC or sent electronically, via the IRS Internet site at *www.irs.gov/regs*. The public hearing will be held in the IRS Auditorium, Internal Revenue Building, 1111 Constitution Avenue, NW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Concerning the regulations, please contact Elizabeth Kaye at (202) 622–4920. To be placed on the attendance list for the hearing, please contact LaNita Van Dyke at (202) 622–7180.

SUPPLEMENTARY INFORMATION:

Background and Overview of Notice of Proposed Rulemaking

1. Summary of the Prior Notice of Proposed Rulemaking

On July 9, 2002, a notice of proposed rulemaking (REG–164754–01) was published in the **Federal Register** (67 FR 45414) proposing comprehensive rules for the income, gift, and employment taxation of equity and non-equity split-dollar life insurance arrangements (the 2002 proposed regulations). The 2002 proposed regulations will apply to split-dollar life insurance arrangements entered into after the date final regulations are published in the **Federal Register** and to arrangements entered into on or before that date that are materially modified after that date. Under certain conditions, taxpayers may rely on the 2002 proposed regulations for split-dollar life insurance arrangements entered into on or before the date final regulations are published in the **Federal Register**.

In general, a split-dollar life insurance arrangement is an arrangement between two or more parties to allocate the policy benefits and, in some cases, the costs of a life insurance contract. Under a so-called equity split-dollar life insurance arrangement, one party to the arrangement typically receives an interest in the policy cash value (or equity) of the life insurance policy disproportionate to that party's share of policy premiums. That party also typically receives the benefit of current life insurance protection under the arrangement. Under a so-called non-equity split-dollar life insurance arrangement, one party typically provides the other party with current life insurance protection but not any interest in the policy cash value.

The 2002 proposed regulations provide two mutually exclusive regimes for taxation of split-dollar life insurance arrangements—a loan regime and an economic benefit regime. Under the loan regime (which is set forth in § 1.7872–15 of the 2002 proposed regulations), the non-owner of the life insurance contract is treated as loaning the amount of its premium payments to the owner of the contract. The loan regime generally will govern the taxation of collateral assignment arrangements. Under the economic benefit regime (which is set forth in § 1.61–22(d) through (g) of the 2002 proposed regulations), the owner of the life insurance contract is treated as providing economic benefits to the non-owner of the contract. The economic benefit regime generally will govern the taxation of endorsement arrangements.

The 2002 proposed regulations reserved on the rules for valuing economic benefits provided to the non-owner under an equity split-dollar life insurance arrangement governed by the economic benefit regime, pending receipt of comments from interested parties. The preamble to the 2002 proposed regulations notes that any proposal "for a specific methodology should be objective and administrable" and describes a potential approach under which the non-owner would include in income the difference between current premium payments and the net present value of the amount to be repaid to the owner in the future.

A public hearing on the 2002 proposed regulations was held on October 23, 2002. In addition, interested parties have submitted detailed comments on the 2002 proposed regulations, including comments on the valuation of economic benefits provided to a non-owner under an equity split-dollar life insurance arrangement governed by the economic benefit regime.

2. Explanation of Provisions and Summary of Comments

a. Overview

These proposed regulations, which supplement the 2002 proposed regulations, provide guidance on the valuation of economic benefits (including the valuation of an interest in policy cash value) under an equity split-dollar life insurance arrangement governed by the economic benefit regime. These proposed regulations apply for purposes of Federal income, employment, and gift taxes.

These proposed regulations address only those comments received by the IRS and the Treasury Department on the valuation of economic benefits under an equity split-dollar life insurance arrangement governed by the economic benefit regime. Comments received on other issues regarding the 2002 proposed regulations and comments on these proposed regulations will be addressed when both sets of proposed regulations are finalized.

These proposed regulations provide that in the case of an equity split-dollar life insurance arrangement, the value of the economic benefits provided to the non-owner under the arrangement for a taxable year equals the cost of any current life insurance protection provided to the non-owner, the amount of policy cash value to which the non-owner has current access (to the extent that such amount was not actually taken into account for a prior taxable year), and the value of any other economic benefits provided to the non-owner (to the extent not actually taken into account for a prior taxable year). The terms *owner* and *non-owner* are defined in § 1.61–22(c)(1) and (2) of the 2002 proposed regulations.

b. Current Access to Policy Cash Value

Generally, under an equity split-dollar life insurance arrangement governed by the economic benefit regime, the owner of the life insurance contract pays policy premiums, thereby establishing a pool of assets with respect to which the non-owner has certain rights under the arrangement (for example, rights of withdrawal, borrowing, surrender, or assignment). Additionally, the pool of assets is held by a third party, the life insurance company, effectively placing the cash value beyond the reach of the employer or the employer's general creditors in many cases. Thus, an equity split-dollar life insurance arrangement confers on the non-owner rights to

direct or indirect economic enjoyment of policy cash value, making current taxation of the non-owner's interest in the cash value appropriate under the doctrines of constructive receipt, economic benefit, and cash equivalence.

These proposed regulations provide that the non-owner has current access to any portion of the policy cash value that is directly or indirectly accessible by the non-owner, inaccessible to the owner, or inaccessible to the owner's general creditors. For this purpose, "access" is to be construed broadly and includes any direct or indirect right under the arrangement of the non-owner to obtain, use, or realize potential economic value from the policy cash value. Thus, for example, a non-owner has current access to policy cash value if the non-owner can directly or indirectly make a withdrawal from the policy, borrow from the policy, or effect a total or partial surrender of the policy. Similarly, for example, the non-owner has current access if the non-owner can anticipate, assign (either at law or in equity), alienate, pledge, or encumber the policy cash value or if the policy cash value is available to the non-owner's creditors by attachment, garnishment, levy, execution, or other legal or equitable process. Policy cash value is inaccessible to the owner if the owner does not have the full rights to policy cash value normally held by an owner of a life insurance contract. Policy cash value is inaccessible to the owner's general creditors if, under the terms of the split-dollar life insurance arrangement or by operation of law or any contractual undertaking, the creditors cannot, for any reason, effectively reach the full policy cash value in the event of the owner's insolvency.

In a typical equity split-dollar life insurance arrangement, the non-owner has current access to all portions of the policy cash value in excess of the amount payable to the owner. In many arrangements, the non-owner may also have current access to the portion of the cash value payable to the owner if, for example, that portion of the policy cash value is for any reason not accessible to the owner or the owner's general creditors.

Under these proposed regulations, policy cash value is determined without regard to surrender charges or other similar charges or reductions. To provide uniformity, certainty, and administrative ease, policy cash value generally is determined on the last day of the non-owner's taxable year. In addition, solely for purposes of employment tax (as defined in § 1.61–22(c)(5) of the 2002 proposed regulations) and the penalty for failure to pay estimated income taxes, the portion of the policy cash value that is treated as provided by the owner to the non-owner during the non-owner's taxable year is treated as so provided on the last day of that taxable year. The IRS and the Treasury Department request comments regarding circumstances in which it might be appropriate to use a different date for employment tax withholding purposes.

Several commentators on the 2002 proposed regulations asserted that those regulations were contrary to the intention, announced by the IRS and the Treasury Department in Notice 2002–8 (2002–1 C.B. 398), to publish proposed regulations that will not treat an owner as having made a transfer of a portion of the cash surrender value of a life insurance contract to a non-owner for purposes of section 83 solely because interest or other earnings credited to the cash surrender value of the contract cause the cash surrender value to exceed the portion thereof payable to the owner. The valuation methodology described in these proposed regulations, however, does not treat an owner as having made a transfer under section 83 solely because of growth in policy cash value. Rather, this approach, consistent with the doctrines of constructive receipt, economic benefit, and cash equivalence, treats the non-owner as having a taxable interest in policy cash value only to the extent that the non-owner has current access to the policy cash value.

Several commentators stated that a non-owner who includes in income a portion of the policy cash value should be credited with "inside build-up" on that portion of the policy cash value. This result might be appropriate if there were actual transfers of ownership of the underlying life insurance contract (or a portion thereof) from the owner to the non-owner. Here, by contrast to transfers described in § 1.61–22(g) of the 2002 proposed regulations, no part of the life insurance contract is actually transferred from the owner to the non-owner by reason of the non-owner's taking policy cash value into account.

In addition, some commentators expressed the view that, under the economic benefit regime, if the policy cash value in one year is less than the policy cash value in a prior year, the non-owner should be allowed a loss to the extent this difference was included in income in the prior year. Consistent with the underlying doctrines of constructive receipt, economic benefit, and cash equivalence, a loss should not be allowed in this situation. Note, however, that under § 1.61–22(g)(4)(ii)(A) of the 2002 proposed regulations, if a life insurance contract is transferred from an owner to a non-owner (the transferee), the transferee's investment in the contract under section 72(e) will include the amount of economic benefits previously taken into account by the transferee prior to the transfer.

c. Current Term Life Insurance Protection

These proposed regulations provide that, in the case of an equity split-dollar life insurance arrangement governed by the economic benefit regime, the value of the economic benefits provided to a non-owner for a taxable year also includes the cost of current life insurance protection provided to the non-owner. The cost of current life insurance protection provided to the non-owner in any year equals the amount of the current life insurance protection provided to the non-owner multiplied by the life insurance premium factor designated or permitted in guidance published in the Internal Revenue Bulletin. The amount of the current life insurance protection (including paid-up additions thereto) provided to the non-owner for a taxable year equals the excess of the average death benefit of the life insurance contract over the sum of the total amount payable to the owner (including any outstanding policy loans that offset amounts otherwise payable to the owner) under the split-dollar life insurance arrangement and the portion of the policy cash value actually taken into account for the current taxable year or for any prior taxable year. This subtraction of the portion of the policy cash value actually taken into account by the non-owner prevents the non-owner from being taxed twice on the same amount, once as part of the policy cash value to which the non-owner has current access and again as an amount provided to the non-owner in the form of death benefit protection.

d. Other Economic Benefits

These proposed regulations provide that, in the case of an equity split-dollar life insurance arrangement governed by the economic benefit regime, the value of all other economic benefits provided to the non-owner must be taken into account (to the extent not actually taken into account for a prior taxable year). For this purpose, the term "other economic benefits" should be construed broadly to include any benefit, right, or feature of the life insurance contract (other than current life insurance protection and policy cash value) provided to the non-owner under the arrangement.

Proposed Effective Date

These proposed regulations will have the same applicability date as that set forth in § 1.61–22(j) of the 2002 proposed regulations. Thus, these proposed regulations will apply to split-dollar life insurance arrangements entered into after the date final regulations are published in the **Federal Register** and to arrangements entered into on or before that date that are materially modified after that date.

In addition, taxpayers may rely on these proposed regulations for equity split-dollar life insurance arrangements entered into on or before the date final regulations are published in the **Federal Register** if the conditions in § 1.61–22(j)(2)(i) of the 2002 proposed regulations are met. For taxable years beginning after December 31, 2002, however, parties to an equity split-dollar life insurance arrangement may rely on these proposed regulations only if the value of all economic benefits taken into account by the parties is determined in accordance with these proposed regulations. These proposed regulations also conform to the early reliance rules in § 1.83–6(a)(5)(ii)(B) and § 1.301–1(q)(4)(ii) of the 2002 proposed regulations to that set forth in the preceding sentence.

Special Analyses

It has been determined that this notice of proposed rulemaking is not a significant regulatory action as defined in Executive Order 12866. Therefore, a regulatory flexibility assessment is not required. It has been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. Chapter 5) does not apply to these regulations, and because these regulations do not impose a collection of information on small entities, the Regulatory Flexibility Act (5 U.S.C. chapter 6) does not apply. Pursuant to section 7805(f) of the Internal Revenue Code, this notice of proposed rulemaking will be submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business.

Comments and Public Hearing

Before these proposed regulations are adopted as final regulations, consideration will be given to any written or electronic comments (a signed original and eight (8) copies) that are submitted timely to the IRS. The Treasury Department and IRS specifically request comments on the clarity of the proposed rules and how they may be made easier to understand. All comments will be available for public inspection and copying.

A public hearing has been scheduled for July 29, 2003, beginning at 10 a.m. in the IRS Auditorium in the Internal Revenue Building, 1111 Constitution Avenue, NW., Washington, DC. Thus, the public hearing concerning these proposed regulations will be held on a date sooner than the usual 120 days after the date of publication of proposed regulations in the **Federal Register**. The IRS and the Treasury Department believe that this shorter period is sufficient for taxpayers to comment on these proposed regulations because the issue addressed by these proposed regulations is narrowly focused and taxpayers have already submitted comments on this issue in connection with the 2002 proposed regulations.

All visitors must present photo identification to enter the building. Because of access restrictions, visitors will not be admitted beyond the immediate entrance area more than 30 minutes before the hearing starts. For information about having your name placed on the building access list to attend the hearing, see the **FOR FURTHER INFORMATION CONTACT** section of this preamble.

The rules of 26 CFR 601.601(a)(3) apply to the hearing. Persons who wish to present oral comments at the hearing must submit written comments and an outline of the topics to be discussed and the time to be devoted to each topic (signed original and eight (8) copies) by July 8, 2003. A period of 10 minutes will be allotted to each person for making comments. An agenda showing the schedule of speakers will be prepared after the deadline for receiving outlines has passed. Copies of the agenda will be available free of charge at the hearing.

Drafting Information

The principal author of these proposed regulations is Elizabeth Kaye of the Office of Associate Chief Counsel (Income Tax and Accounting). However, other personnel from the IRS and Treasury Department participated in their development.

List of Subjects in 26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

Proposed Amendments to the Regulations

Accordingly, 26 CFR part 1 is proposed to be amended as follows:

PART 1—INCOME TAXES

Paragraph 1. The authority citation for part 1 continues to read in part as follows:

Authority: 26 U.S.C. 7805 * * *

Par. 2. Section 1.61–22, as proposed on July 9, 2002, at 67 FR 45423, is amended as follows:

1. The text of paragraph (d)(3)(ii) is added.

2. Paragraph (j)(2)(iii) is added.

The additions read as follows:

§ 1.61–22 Taxation of split-dollar life insurance arrangements.

* * * * *

(d) * * *

(3) * * *

(ii) *Valuation of economic benefits*—(A) *In general.* In the case of a split-dollar life insurance arrangement described in paragraph (d)(3)(i) of this section, the value of the economic benefits provided to a non-owner for a taxable year under the arrangement equals—

(*1*) The cost of current life insurance protection provided to the non-owner as determined under paragraph (d)(3)(ii)(B) of this section;

(*2*) The amount of policy cash value to which the non-owner has current access within the meaning of paragraph (d)(3)(ii)(C) of this section (to the extent that such amount was not actually taken into account for a prior taxable year); and

(*3*) The value of any economic benefits not described in paragraph (d)(3)(ii)(A)(*1*) or (*2*) of this section provided to the non-owner (to the extent not actually taken into account for a prior taxable year).

(B) *Valuation of current term life insurance protection.* In the case of a split-dollar life insurance arrangement described in paragraph (d)(3)(i) of this section, the amount of the current life insurance protection (including paid-up additions thereto) provided to the non-owner for a taxable year equals the excess of the average death benefit of the life insurance contract over the sum of the total amount payable to the owner under the split-dollar life insurance arrangement and the portion of the policy cash value actually taken into account for the current taxable year or for any prior taxable year. The total amount payable to the owner is increased by the amount of any outstanding policy loan. The cost of current life insurance protection provided to the non-owner in any year equals the amount of the current life insurance protection provided to the non-owner multiplied by the life insurance premium factor designated or

permitted in guidance published in the Internal Revenue Bulletin (*see* § 601.601(d)(2)(ii) of this chapter).

(C) *Current access.* For purposes of this paragraph (d)(3), a non-owner has current access to that portion of the policy cash value that is directly or indirectly accessible by the non-owner, inaccessible to the owner, or inaccessible to the owner's general creditors.

(D) *Valuation date—(1) General rules.* For purposes of paragraph (d)(3)(ii)(A) of this section, the policy cash value is determined on the last day of the taxable year of the non-owner. Notwithstanding the previous sentence, if the split-dollar life insurance arrangement terminates during the taxable year of the non-owner, the policy cash value is determined on the day that the arrangement terminates.

(2) *Artifice or device.* Notwithstanding paragraph (d)(3)(ii)(D)(*1*) of this section, if any artifice or device is used to understate the amount of policy cash value to which the non-owner has current access on the valuation date in paragraph (d)(3)(ii)(D)(*1*) of this section, then, for purposes of paragraph (d)(3)(ii)(A) of this section, the date on which the amount of policy cash value is determined is the date on which the amount of policy cash value is greatest during that taxable year.

(E) *Policy cash value.* For purposes of this paragraph (d)(3), policy cash value is determined without regard to surrender charges or other similar charges or reductions.

(F) *Special rule for certain taxes.* For purposes of employment tax (as defined in paragraph (c)(5) of this section), and sections 6654 and 6655 (relating to the failure to pay estimated income tax), that portion of the policy cash value (as determined under paragraph (d)(3)(ii)(A)(*2*) of this section) that is treated as provided by the owner to the non-owner under paragraph (d)(1) of this section shall be treated as so provided on the last day of the taxable year of the non-owner. Notwithstanding the previous sentence, if the split-dollar life insurance arrangement terminates during the taxable year of the non-owner, such portion of the policy cash value shall be treated as so provided on the day that the arrangement terminates.

(G) *Examples.* The following examples illustrate the rules of this paragraph (d)(3)(ii). Except as otherwise provided, both examples assume the following facts: employer (R) is the owner (as defined in paragraph (c)(1) of this section) and employee (E) is the non-owner (as defined in paragraph (c)(2) of this section) of a life insurance contract that is part of an equity split-dollar life insurance arrangement that is subject to the provisions of paragraphs (d) through (g) of this section; the contract is a life insurance contract as defined in section 7702 and not a modified endowment contract as defined in section 7702A; R does not withdraw or obtain a loan of any portion of the policy cash value and does not surrender any portion of the life insurance contract; the compensation paid to E is reasonable; E is not provided any economic benefits described in paragraph (d)(3)(ii)(A)(*3*) of this section; E does not make any premium payments; E's taxable year is the calendar year; and E reports on E's Federal income tax return for each year that the equity split-dollar life insurance arrangement is in effect the amount of income required to be reported under paragraph (d) of this section. The examples are as follows:

Example 1. (i) *Facts.* In year 1, R and E enter into the equity split-dollar life insurance arrangement. Under the arrangement R pays all of the premiums on the life insurance contract until the termination of the arrangement or E's death. The arrangement also provides that upon termination of the arrangement or E's death, R is entitled to receive the lesser of the aggregate premiums paid or the policy cash value of the contract and E is entitled to receive any remaining amounts. Under the terms of the arrangement and applicable state law, the policy cash value is fully accessible by R and R's creditors but E has the right to borrow or withdraw the portion of the policy cash value exceeding the amount payable to R upon termination of the arrangement or E's death. To fund the arrangement, R purchases a life insurance contract with constant death benefit protection equal to $1,500,000. As of December 31 of year 1, the policy cash value equals $55,000 and R has paid $60,000 of premiums on the life insurance contract. As of December 31 of year 2, the policy cash value equals $140,000 and R has paid aggregate premiums of $120,000 on the life insurance contract. As of December 31 of year 3, the policy cash value equals $240,000 and R has paid $180,000 of premiums on the life insurance contract.

(ii) *Analysis.* Under the terms of the equity split-dollar life insurance arrangement, E has the right for year 1 and all subsequent years to borrow or withdraw the portion of the policy cash value exceeding the amount payable to R. Thus, under paragraph (d)(3)(ii)(C) of this section, E has current access to such portion of the policy cash value for each year that the arrangement is in effect. In addition, because R pays all of the premiums on the life insurance contract, R provides to E all of the economic benefits that E receives under the arrangement. Therefore, under paragraph (d)(1) of this section, E includes in gross income the value of all economic benefits described in paragraphs (d)(3)(ii)(A)(*1*) and (*2*) of this section provided to E under the arrangement.

(iii) *Results for year 1.* For year 1, E is provided, under paragraph (d)(3)(ii)(A)(*2*) of this section, $0 of policy cash value (excess of $55,000 policy cash value determined as of December 31 of year 1 over $55,000 payable to R). For year 1, E is also provided, under paragraph (d)(3)(ii)(A)(*1*) of this section, current life insurance protection of $1,445,000 ($1,500,000 minus $55,000 payable to R). Thus, E includes in gross income for year 1 the cost of $1,445,000 of current life insurance protection.

(iv) *Results for year 2.* For year 2, E is provided, under paragraph (d)(3)(ii)(A)(*2*) of this section, $20,000 of policy cash value ($140,000 policy cash value determined as of December 31 of year 2 minus $120,000 payable to R). For year 2, E is also provided, under paragraph (d)(3)(ii)(A)(*1*) of this section, current life insurance protection of $1,360,000 ($1,500,000 minus the sum of $120,000 payable to R and the aggregate of $20,000 of policy cash value that E actually includes in income on E's year 1 and year 2 income tax returns). Thus, E includes in gross income for year 2 the sum of $20,000 of policy cash value and the cost of $1,360,000 of current life insurance protection.

(v) *Results for year 3.* For year 3, E is provided, under paragraph (d)(3)(ii)(A)(*2*) of this section, $40,000 of policy cash value ($240,000 policy cash value determined as of December 31 of year 3 minus the sum of $180,000 payable to R and $20,000 of aggregate policy cash value that E actually included in gross income on E's year 1 and year 2 federal income tax returns). For year 3, E is also provided, under paragraph (d)(3)(ii)(A)(*1*) of this section, current life insurance protection of $1,260,000 ($1,500,000 minus the sum of $180,000 payable to R and $60,000 of aggregate policy cash value that E actually includes in gross income on E's year 1, year 2, and year 3 federal income tax returns). Thus, E includes in gross income for year 3 the sum of $40,000 of policy cash value and the cost of $1,260,000 of current life insurance protection.

Example 2. (i) *Facts.* The facts are the same as in *Example 1* except that E cannot directly or indirectly access any portion of the policy cash value, but the terms of the equity split-dollar life insurance arrangement or applicable state law provide that the policy cash value in excess of the amount payable to R upon termination of the arrangement or E's death is inaccessible to R's general creditors.

(ii) *Analysis.* Under the terms of the equity split-dollar life insurance arrangement or applicable state law, the portion of the policy cash value exceeding the amount payable to R is inaccessible to R's general creditors. Thus, under paragraph (d)(3)(ii)(C) of this section, E has current access to such portion of the policy cash value for each year that the arrangement is in effect. In addition, because R pays all of the premiums on the life insurance contract, R provides to E all of the economic benefits that E receives under the arrangement. Therefore, under paragraph (d)(1) of this section, E includes in gross income the value of all economic benefits described in paragraphs (d)(3)(ii)(A)(*1*) and (*2*) of this section provided to E under the arrangement.

(iii) *Results for years 1, 2 and 3.* The results for this example are the same as the results in *Example 1*.

* * * * *

(j) * * *

(2) * * *

(iii) *Valuation of economic benefits.* Notwithstanding paragraph (j)(2)(ii) of this section, for taxable years beginning after December 31, 2002, parties to an arrangement described in paragraph (d)(3) of this section may rely on this section only if the value of all economic benefits taken into account by the parties is determined in accordance with paragraph (d)(3)(ii) of this section.

* * * * *

Par. 3. Section 1.83–6, as proposed on July 9, 2002, at 67 FR 45428, is amended by adding paragraph (a)(5)(ii)(B)(*3*) to read as follows:

§ 1.83–6 Deduction by employer.

(a) * * *

(5) * * *

(ii) * * *

(B) * * *

(*3*) *Valuation of economic benefits.* Notwithstanding paragraph (a)(5)(ii)(B)(*2*) of this section, for taxable years beginning after December 31, 2002, parties to an arrangement described in § 1.61–22(d)(3) may rely on this section only if the value of all economic benefits taken into account by the parties is determined in accordance with § 1.61–22(d)(3)(ii).

* * * * *

Par. 4. Section 1.301–1, as proposed on July 9, 2002, at 67 FR 45428, is amended by adding paragraph (q)(4)(ii)(C) to read as follows:

§ 1.301–1 Rules applicable with respect to distributions of money and other property.

* * * * *

(q) * * *

(4) * * *

(ii) * * *

(C) *Valuation of economic benefits.* Notwithstanding paragraph (q)(4)(ii)(B) of this section, for taxable years beginning after December 31, 2002, parties to an arrangement described in § 1.61–22(d)(3) may rely on this section only if the value of all economic benefits taken into account by the parties is determined in accordance with § 1.61–22(d)(3)(ii).

* * * * *

David A. Mader,

Assistant Deputy Commissioner of Internal Revenue.

[FR Doc. 03–11568 Filed 5–8–03; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[REG–103580–02]

RIN 1545–BA53

Noncompensatory Partnership Options

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Cancellation of notice of public hearing on proposed rulemaking.

SUMMARY: This document provides notice of cancellation of a public hearing on proposed regulations relating to the tax treatment of noncompensatory options and convertible instruments issued by a partnership.

DATES: The public hearing originally scheduled for Tuesday, May 20, 2003, at 10 a.m., is cancelled.

FOR FURTHER INFORMATION CONTACT: Treena Garrett of the Regulations Unit, Associate Chief Counsel (Procedure and Administration), (202) 622–7180 (not a toll-free number).

SUPPLEMENTARY INFORMATION: A notice of proposed rulemaking and notice of public hearing that appeared in the **Federal Register** on Wednesday, January 22, 2003, (68 FR 2930), announced that a public hearing was scheduled for Tuesday, May 20, 2003, at 10 a.m. in room 4718, Internal Revenue Service Building, 1111 Constitution Avenue, NW., Washington, DC. The subject of the public hearing is proposed regulations under sections 704(b), 721, and 761of the Internal Revenue Code. The public comment period for these proposed regulations expired on Tuesday, April 29, 2003. Outlines of oral comments were due on Tuesday, April 29, 2003.

The notice of proposed rulemaking and notice of public hearing, instructed those interested in testifying at the public hearing to submit a request to speak and an outline of the topics to be addressed. As of Tuesday, May 6, 2003, no one has requested to speak. Therefore, the public hearing scheduled for Tuesday, May 20, 2003, is cancelled.

LaNita Van Dyke,

Acting Chief, Regulations Unit, Associate Chief Counsel (Procedure and Administration).

[FR Doc. 03–11592 Filed 5–8–03; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Alcohol and Tobacco Tax and Trade Bureau

27 CFR Parts 4, 5, 7 and 13

[Notice No. 7; Ref: T.D. ATF–483, ATF Notices No. 954 and No. 964]

RIN 1513–AA46 (Formerly 1512–AC87)

Organic Claims in Labeling and Advertising of Alcohol Beverages (2002R–288P)

AGENCY: Alcohol and Tobacco Tax and Trade Bureau, Treasury.

ACTION: Notice of proposed rulemaking; reopening of comment period.

SUMMARY: In response to an industry request, TTB reopens the comment period for ATF Notice No. 954, a notice of proposed rulemaking published in the **Federal Register** on October 8, 2002.

DATES: Written comments must be received on or before June 23, 2003.

ADDRESSES: You may view copies of the temporary and proposed regulations, the notice of proposed rulemaking, the request for extension, and any comments received on the notice by appointment at the ATF Reference Library, Public and Governmental Affairs, Room 6480, 650 Massachusetts Avenue, NW., Washington, DC 20226, or online under Notice No. 954 at *http://www.ttb.gov/alcohol/rules/index.htm*.

You may send comments to any of the following addresses—

- Chief, Regulations and Procedures Division, Alcohol and Tobacco Tax and Trade Bureau, P.O. Box 50221, Washington, DC 20091–0221 (Attn: Notice No. 954);
- 202–927–8525 (Facsimile);
- *nprm@ttb.treas.gov* (E-mail);
- *http://www.ttb.gov/alcohol/rules/index.htm* (Online—A comment form is available with Notice 954.)

FOR FURTHER INFORMATION CONTACT: James VanVliet, Alcohol and Tobacco Tax and Trade Bureau, Alcohol Labeling and Formulation Division, 650 Massachusetts Avenue, NW., Washington, DC 20226; telephone 202–927–8140; e-mail *James.Vanvliet@ttb.treas.gov*.

SUPPLEMENTARY INFORMATION:

Background

On October 8, 2002, the Bureau of Alcohol, Tobacco and Firearms (ATF) published a temporary rule (T.D. ATF–483, 67 FR 62856) to amend the alcohol labeling and advertising rules to cross-reference the United States Department of Agriculture's (USDA) National

Organic Program (NOP) rules, which took effect October 21, 2002. The temporary rule confirmed that any alcohol beverage labeled or advertised with an organic claim must comply with both NOP rules administered by USDA and the applicable rules administered by ATF.

At the same time, ATF published a notice of proposed rulemaking (Notice No. 954, 67 FR 62860) to solicit comments on the temporary rule. The comment period for Notice No. 954 was scheduled to close on December 9, 2002.

Before the close of the comment period, ATF received a request from the Wine Institute to extend the comment period for 90 days. The Wine Institute stated that it requested the extension in order to provide ATF with thoroughly researched comments that represented a full discussion among its members. In consideration of that request, on December 27, 2002, ATF published Notice No. 964 (67 FR 79014) to reopen the comment period until March 27, 2003.

Effective January 24, 2003, the Homeland Security Act of 2002, Pub. L. 107–296, 116 Stat. 2135 (2002), divided the Bureau of Alcohol, Tobacco and Firearms, Department of the Treasury, into two separate agencies, the Bureau of Alcohol, Tobacco, Firearms, and Explosives (ATF) in the Department of Justice, and the Tax and Trade Bureau (TTB) in the Department of the Treasury. Under the Homeland Security Act of 2002, the Administrator TTB is authorized to administer and enforce Chapters 51 (relating to distilled spirits, wine and beer) and 52 (relating to tobacco products and cigarette papers and tubes) of the Internal Revenue Code of 1986 (IRC), as amended, and IRC sections 4181 and 4182 (relating to the excise tax on firearms and ammunition). TTB also administers and enforces the Federal Alcohol Administration Act (FAA Act) and Webb-Kenyon Act in title 27, United States Code. Proceedings pending at the time the Homeland Security Act of 2002 was enacted, including notices of proposed rulemaking, are continued within the jurisdiction of the respective agencies under section 1512 of the Act. Therefore, TTB is continuing with the rulemaking on organic labels begun by ATF.

Before the March 27, 2003 due date for comments, TTB received a request from the Wine Institute for an additional 45-day extension of the comment period. The Wine Institute stated that it would like additional time to work with USDA representatives on labeling issues as they apply to wine. Since we have a temporary rule in place, we believe that an additional 45-day extension of the comment period is justified.

Additional Information on the Sulfite Statement in Wine

In early comments, several wine producers expressed concern that they would be required to list sulfites twice on their labels if they made wine from organic grapes, since sulfite statements are required under the FAA Act regulations and full ingredient listings are required by the USDA NOP rules. Commenters stated that they would be required to list any sulfiting agent as an ingredient under the NOP rules, and still give the sulfite warning required by 4.32(e). TTB's Advertising, Labeling and Formulation Division (ALFD) takes a different approach. ALFD approves labels that include the sulfite statement or identify the specific sulfiting agent in the ingredient listing, provided that the sulfite statement appears more conspicuous than its surrounding text and in a format allowed under the regulations. An example of this presentation appears in the sample label for wine made from 70% or more organic ingredients posted on the TTB Web site (*http://www.ttb.gov/alcohol/alfd/wine.pdf*).

Drafting Information

Marjorie Ruhf of the Regulations and Procedures Division, Alcohol and Tobacco Tax and Trade Bureau, drafted this notice.

List of Subjects

27 CFR Part 4

Advertising, Customs duties and inspection, Imports, Labeling, Packaging and containers, Reporting and recordkeeping requirements, Trade practices, Wine.

27 CFR Part 5

Advertising, Consumer protection, Customs duties and inspection, Imports, Labeling, Liquors, Packaging and containers.

27 CFR Part 7

Advertising, Beer, Customs duties and inspection, Imports, Labeling, Reporting and recordkeeping requirements, Trade practices.

27 CFR Part 13

Administrative practice and procedure, Alcohol and alcoholic beverages, Labeling.

Authority and Issuance

This document is issued under the authority in 27 U.S.C. 205.

Signed: May 2, 2003.

Arthur J. Libertucci,

Administrator.

[FR Doc. 03–11609 Filed 5–8–03; 8:45 am]

BILLING CODE 4810–31–P

DEPARTMENT OF DEFENSE

Department of the Navy

32 CFR Part 701

[Secretary of the Navy Instruction 5211.5]

Privacy Act; Implementation

AGENCY: Department of the Navy.

ACTION: Proposed rule.

SUMMARY: The Department of the Navy is proposing to revise the exemption rule for N05520–5, entitled "Personnel Security Program Management Records System". The revision includes deleting the (k)(1) exemption because it is redundant and claiming subsections (c)(3) and (e)(1) under the (k)(5) exemption. The principal purpose of the (k)(5) exemption is to protect the identity of a confidential source. The expansion is considered supportive, and in furtherance, of the overall purpose of the exemption.

EFFECTIVE DATE: Comments must be received on or before July 8, 2003, to be considered by this agency.

FOR FURTHER INFORMATION CONTACT: Mrs. Doris Lama at (202) 685–6545 or DSN 325–6545.

SUPPLEMENTARY INFORMATION:

Executive Order 12866

It has been determined that this Privacy Act rule for the Department of Defense does not constitute 'significant regulatory action'. Analysis of the rule indicates that it does not have an annual effect on the economy of $100 million or more; does not create a serious inconsistency or otherwise interfere with an action taken or planned by another agency; does not materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; does not raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in Executive Order 12866 (1993).

Regulatory Flexibility Act

It has been determined that this Privacy Act rule for the Department of Defense does not have significant economic impact on a substantial number of small entities because it is concerned only with the administration of Privacy Act systems of records within the Department of Defense.

Paperwork Reduction Act

It has been determined that this Privacy Act rule for the Department of Defense imposes no information requirements beyond the Department of Defense and that the information collected within the Department of Defense is necessary and consistent with 5 U.S.C. 552a, known as the Privacy Act of 1974.

Section 202, Public Law 104–4, "Unfunded Mandates Reform Act"

It has been determined that this Privacy Act rulemaking for the Department of Defense does not involve a Federal mandate that may result in the expenditure by State, local and tribal governments, in the aggregate, or by the private sector, of $100 million or more and that such rulemaking will not significantly or uniquely affect small governments.

Executive Order 13132, "Federalism"

It has been determined that this Privacy Act rule for the Department of Defense does not have federalism implications. The rule does not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.

List of Subjects in 32 CFR Part 701

Privacy.

Accordingly, 32 CFR part 701 is amended to read as follows:

PART 701—AVAILABILITY OF DEPARTMENT OF THE NAVY RECORDS AND PUBLICATION OF DEPARTMENT OF THE NAVY DOCUMENTS AFFECTING THE PUBLIC

1. The authority citation for 32 CFR part 701, subpart F continues to read as follows:

Authority: Pub. L. 93–579, 88 Stat. 1896 (5 U.S.C. 552a).

2. Section 701.118, paragraph (n) is revised to read as follows:

§ 701.118 Exemptions for specific Navy record systems.

* * * * *

(n) *System identifier and name:*

(1) *N05520–5, Personnel Security Program Management Records System.*

(2) *Exemption:* (i) Investigative material compiled solely for the purpose of determining suitability, eligibility, or qualifications for federal civilian employment, military service, federal contracts, or access to classified information may be exempt pursuant to 5 U.S.C. 552a(k)(5), but only to the extent that such material would reveal the identity of a confidential source.

(ii) Therefore, portions of this system may be exempt pursuant to 5 U.S.C. 552a(k)(5) from the following subsections of 5 U.S.C. 552a(c)(3), (d), and (e)(1).

(3) *Authority:* 5 U.S.C. 552a(k)(5).

(4) *Reasons:* (i) From subsection (c)(3) and (d) when access to accounting disclosures and access to or amendment of records would cause the identity of a confidential sources to be revealed. Disclosure of the source's identity not only will result in the Department breaching the promise of confidentiality made to the source but it will impair the Department's future ability to compile investigatory material for the purpose of determining suitability, eligibility, or qualifications for Federal civilian employment, Federal contracts, or access to classified information. Unless sources can be assured that a promise of confidentiality will be honored, they will be less likely to provide information considered essential to the Department in making the required determinations.

(ii) From (e)(1) because in the collection of information for investigatory purposes, it is not always possible to determine the relevance and necessity of particular information in the early stages of the investigation. In some cases, it is only after the information is evaluated in light of other information that its relevance and necessity becomes clear. Such information permits more informed decision-making by the Department when making required suitability, eligibility, and qualification determinations.

* * * * *

Dated: May 2, 2003.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 03–11576 Filed 5–8–03; 8:45 am]

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 216

[Docket No. 030421095–3095–01; I.D. 111902C]

RIN 0648–AQ61

Taking and Importing Marine Mammals; Taking Marine Mammals Incidental to Missile Launch Operations from San Nicolas Island, CA

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Proposed rule; request for comments.

SUMMARY: NMFS has received an application from the U.S. Navy requesting a Letter of Authorization (LOA) for the harassment of small numbers of pinnipeds incidental to missile launch operations from San Nicolas Island, CA (SNI). By this document, NMFS is proposing regulations to govern that take. In order to issue the LOA and issue final regulations governing the take, NMFS must determine that the taking will have a negligible impact on the affected species and stocks of marine mammals, will be at the lowest level practicable, and will not have an unmitigable adverse impact on the availability of the species or stock(s) for subsistence uses. NMFS invites comment on the application and the regulations.

DATES: Comments must be postmarked no later than June 23, 2003. Comments will not be accepted if submitted via e-mail or the Internet.

Comments regarding the burden-hour estimate or any other aspect of the collection of information requirement contained in this rule should be sent to the Chief, and to the Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Attention: NOAA Desk Officer, Washington, DC 20503.

ADDRESSES: Comments should be addressed to the Chief, Marine Mammal Conservation Division, Office of Protected Resources, National Marine Fisheries Service, 1315 East-West Highway, Silver Spring, MD 20910–3226. A copy of the application and a list of references used in this document are available and may be obtained by writing to this address or by telephoning the contact listed here (see **FOR FURTHER INFORMATION CONTACT**).

FOR FURTHER INFORMATION CONTACT: Kenneth R. Hollingshead (301) 713–2322, ext. 128.

SUPPLEMENTARY INFORMATION:

Background

Section 101(a)(5)(A) of the Marine Mammal Protection Act (MMPA) (16 U.S.C. 1361 *et seq.*) directs the Secretary of Commerce (Secretary) to allow, upon request, the incidental, but not intentional taking of small numbers of marine mammals by U.S. citizens who engage in a specified activity (other than commercial fishing) within a specified geographical region if certain findings are made and regulations are issued.

Permission may be granted for periods of 5 years or less if the Secretary finds that the taking will be small, have a negligible impact on the species or stock(s) of affected marine mammals, and will not have an unmitigable adverse impact on the availability of the species or stock(s) for subsistence uses, and if regulations are prescribed setting forth the permissible methods of taking and the requirements pertaining to the monitoring and reporting of such taking. NMFS has defined "negligible impact" in 50 CFR 216.103 as:

> an impact resulting from the specified activity that cannot be reasonably expected to, and is not reasonably likely to, adversely affect the species or stock through effects on annual rates of recruitment or survival.

Under section 3(18)(A), The MMPA defines "harassment" as:

> any act of pursuit, torment, or annoyance which (i) has the potential to injure a marine mammal or marine mammal stock in the wild; or (ii) has the potential to disturb a marine mammal or marine mammal stock in the wild by causing disruption of behavioral patterns, including, but not limited to, migration, breathing, nursing, breeding, feeding, or sheltering.
>
> (B) The term "Level A harassment" means harassment described in subparagraph (A)(i).
>
> (C) The term "Level B harassment" means harassment described in subparagraph (A)(ii).

Summary of Request

On October 23, 2002, NMFS received an application from the Naval Air Weapons Station, China Lake (NAWS), under section 101(a)(5)(A) of the MMPA, requesting an authorization, effective from August 26, 2003 through August 25, 2008, for the harassment of small numbers of three species of marine mammals incidental to target missile launch operations conducted by the Naval Air Warfare Center Weapons Division (NAWCWD) on SNI, one of the Channel Islands in the Southern California Bight. These regulations, if implemented, would allow NMFS to issue an annual LOA to NAWS, which would replace the process of issuance of annual Incidental Harassment Authorizations (IHAs) under section 101(a)(5)(D) of the MMPA (see 66 FR 41843, August 9, 2001; 67 FR 56271, September 3, 2002). This action is being undertaken in part based upon recommendations made on May 23, 2001 and August 6, 2002 by the Marine Mammal Commission, under section 202(a)(4) of the MMPA. The current IHA expires on August 26, 2003.

According to the NAWS' application, these operations may occur at any time during the year depending on test and training requirements and meteorological and logistical limitations. On occasion, two or three launches may occur in quick succession on a single day. NAWS anticipates an average of 40 launches annually of Vandal (or similar sized) vehicles from SNI's Alpha Launch Complex (ALC) and smaller supersonic and subsonic missiles and targets from either ALC or the Building 807 Launch Site (Building 807). Launches at this level would be an increase as the NAWCWD conducted a total of 19 launches (including one dual launch) of Vandal rockets (14 launches) and 5 other missiles and targets from SNI between August 15, 2001 and July 18, 2002 under an IHA.

The purpose of these launches is to support activities associated with operations on the NAWCD's Point Mugu Sea Range. The Sea Range is used by the U.S. and Allied military services to test and evaluate sea, land, and air weapon systems; to provide realistic training opportunities; and to maintain operational readiness of these forces. Some of the SNI launches are used for practicing defensive drills against the types of weapons simulated by these vehicles. Some launches may be conducted for the related purpose of testing new types of targets, to verify that they are suitable for use as operational targets. While SNI is under the land management responsibility of NAWS, planned missile and other target launches are conducted by the NAWCWD. A detailed description of the operations is contained in the NAWS application (NAWS, 2002) which is available upon request (see **ADDRESSES**).

Measurement of Airborne Sound Levels

The following section is provided to facilitate understanding of airborne and impulsive noise characteristics. In its application, NAWS has referenced both pressure and energy measurements for sound levels. For pressure, the sound pressure level (SPL) is described in terms of decibels (dB) re micro-Pascal (micro-Pa), and for energy, the sound exposure level (SEL) is described in terms of dB re micro-Pa^2 -second. In other words, SEL is the squared instantaneous sound pressure over a specified time interval, where the sound pressure is averaged over 5 percent to 95 percent of the duration of the sound (in this case, one second).

Airborne noise measurements are usually expressed relative to a reference pressure of 20 micro-Pa, which is 26 dB above the underwater sound pressure reference of 1 micro-Pa. However, the conversion from air to water intensities is more involved than this and is beyond the scope of this document. NMFS recommends interested readers review NOAA's tutorial on this issue: *http://www.pmel.noaa.gov/vents/acoustics/tutorial/tutorial.html.* Also, airborne sounds are often expressed as broadband A-weighted (dBA) or C-weighted (dBC) sound levels. A-weighting refers to frequency-dependent weighting factors applied to sound in accordance with the sensitivity of the human ear to different frequencies. With A-weighting, sound energy at frequencies below 1 kHz and above 6 kHz are de-emphasized and approximates the human ear's response to sounds below 55 dB. C-weighting corresponds to the relative response to the human ear to sound levels above 85 dB. C-weight scaling is useful for analyses of sounds having predominantly low-frequency sounds, such as sonic booms.

While it is unknown whether the pinniped ear responds similarly to the human ear, a study by C. Malme (pers. commun. to NMFS, March 5, 1998) found that for predicting noise effects, the Navy believes that A-weighting is better than unweighted pressure levels because the pinniped's highest in-air hearing sensitivity is at higher frequencies than that of humans. In this document, whenever possible sound levels have been provided with A-weighting.

Description of the Specified Activity

In general, launch vehicles are the Vandal and a variety of other supersonic and subsonic missiles and targets. Most other vehicles used would be similar in size and weight or slightly smaller and would have characteristics generally similar to the Vandal. However, NAWS also has requested a marine mammal take authorization for up to 3 launches annually for vehicles that may be larger than the Vandal, but would be under 50,000 lbs (23,000 kilograms (kg)) in weight.

Vandal Target Missiles

The Vandal (designated MQM–8G) target missile is a relatively large, air-breathing (ramjet) vehicle with no explosive warhead that is designed to provide a realistic simulation of the mid-course and terminal phase of a supersonic anti-ship cruise missile. These missiles are 7.7 m (25.2 ft) in length with a mass at launch of 3,674 kg (8,100 lbs) including the solid propellant booster. There are variants of the Vandal; they all have the same dimensions, but differ in their operational range. The Vandals are remotely controlled, non-recoverable missiles. At launch, the Vandal is accelerated for several seconds by a solid propellant rocket booster to a speed sufficient for the ram-jet engine to start. After several seconds of thrust, the booster is discarded, falls into the water of the Sea Range, and the Vandal continues along its flight path at supersonic speed under ramjet power.

The Vandal and most other targets are launched from the ALC on the west-central part of SNI, a land-based launch site. The ALC is 192 m (630 ft) above sea level and is approximately 2 kilometers (km)(1.25 miles (mi)) from the nearest pinniped haul-out site. Launch trajectories from ALC may vary from a near-vertical liftoff, crossing the west end of SNI at an altitude of approximately 3,962 m (13,000 ft) to a nearly horizontal liftoff, crossing the west end of SNI at an altitude of approximately 305 m (1,000 ft). However, to date, most Vandal launches during NAWS first IHA monitoring program had low angles (8 degrees) crossing the SNI beaches at an altitude of about 1,300 ft (396 m)(Lawson, 2002). Four Vandals however, had high angle (42 degrees) profiles, crossing SNI beaches at an altitude of about 9,600 ft (2,926 ft)(Lawson, 2002).

Vandal launches produce strong noise levels. Sound measurements collected during two Vandal launches in 1997 and 1999 indicated received A-weighted SPLs ranged from 123 dB (re 20 micro-Pa) (SEL of 126 dB re 20 micro-Pa2 -sec) at 945 m (3,100 ft) to 136 dB (re 20 μPa) (SEL of 131 dB re 20 micro-Pa^2 -sec) at 370 m (1,215 ft) (Burgess and Greene, 1998; Greene, 1999). The most intense sound exposure occurred during the first 0.4 to 4.1 seconds after launch (Greene, 1999; Greene and Malme, 2002). However, what is important for this action is not the noise level near the launch site but the noise level over the pinniped haulouts on the SNI beaches. This will be discussed later in this document.

Supersonic and Subsonic Targets and Other Missiles

The Navy also plans to launch other subsonic and supersonic vehicles to simulate various types of threat missiles and aircraft. These are small unmanned aircraft that are launched using jet-assisted take-off (JATO) rocket bottles. Once launched, they continue offshore where they are used in training exercises to simulate various types of subsonic threat missiles and aircraft. The larger target, BQM–34, is 7 m (23 ft) long and has a mass of approximately 1,134 kg (2,500 lbs) plus the JATO bottle. The smaller BQM–74, is 420 centimeters (cm) (165.5 inches (in)) long and has a mass of approximately 250 kg (550 lbs) plus the JATO bottle. Additional types of small vehicles that may be launched include the Exocet and Tomahawk missiles, and the Rolling Airframe Missile (RAM).

All of these smaller targets are launched from either the ALC or from Building 807. Building 807 is approximately 10 m (30 ft) above sea level and accommodates several fixed and mobile launchers that range from 30 m (98 ft) to 150 m (492 ft) from the nearest shoreline. For these smaller vehicles, launch trajectories from Building 807 may range from 6 to 45 degrees and cross over the nearest beach at altitudes from 15 to 190 m (50 to 625 ft).

Sound measurements were collected from the launch of a BQM–34S at the Point Mugu Naval Air Station (NAS) in 1997. Burgess and Greene (1998) found that for this launch, the A-weighted SPL ranged from 92 dB (re 20 micro-Pa) (SEL of 102.2 dB re 20 micro-Pa2 -sec) at 370 m (1,200 ft) to 145 dB (re 20 micro-Pa) (SEL of 142.2 dB re 20 micro-Pa2 -sec) at 15 m (50 ft). These estimates are approximately 20 dB lower than that of a Vandal launch at similar distances (Greene, 1999). The measured Terrior Orion SPL ranged from 89 to 138 dB and the SEL from 93 to 138 dB, although the SPL/SEL of 138 dB appears to be anomalously high (Lawson, 2002). The SPL/SELs for the AGS launches ranged from 95 to 150 dB (93 to 137 dB SEL) and the RAM launch SPL was 126 dB (131 dB SEL). It should be noted that these measurements were all flat-weighted, meaning that A-weighted SPL/SELs values were several decibels lower.

General Launch Operations

Aircraft and helicopter flights between NAS on the mainland, the airfield on SNI and the target sites in the Sea Range will be a routine part of any planned launch operation. These operational flights do not pass at low level over the beaches where pinnipeds are expected to be hauled out. In addition, movements of personnel are restricted near the launch sites 2 hours prior to a launch, no personnel are allowed on the western end of SNI during Vandal and other vehicle launches, and various environmental protection restrictions exist near the island's beaches during other times of the year.

Comments and Responses

On March 11, 2003 (68 FR 11527), NMFS published a notice of receipt of the Navy's application for a small take authorization and requested comments, information and suggestions concerning the request and the structure and content of regulations to govern the take. During the 30–day public comment period, NMFS received comments from the Marine Mammal Commission (Commission) and the Stop LFAS Worldwide Network (Stop LFAS). The Commission supports NMFS' intent to publish proposed small take regulations for the Navy's activities on SNI provided that the mitigation and monitoring activities described in the NAWS petition for regulations are incorporated into the proposal.

Comment 1: The Stop LFAS states that underwater marine impacts due to missile testing will not be known unless an environmental impact statement is prepared.

Response: In March, 2002, the NAWCWD prepared and released to the public a Final Environmental Impact Statement/Overseas Environmental Impact Statement on the NAWCPNS Point Mugu Sea Range activities (Final EIS). This Final EIS analyzed in detail the potential for impacts on marine mammals including the Eastern North Pacific gray whale. In addition, on August 9, 2001 (66 FR 41834), NMFS released an Environmental Assessment/Finding of No Significant Impact on the issuance of a small take authorization for Vandal and other rocket and missile launches at SNI in 2001. The potential for gray whales (or other cetaceans) to be taken by harassment, injury or mortality is virtually nonexistent for several reasons, including low numbers offshore of SNI (< 10 percent of population), seasonality (spring/autumn), transitory behavior (non-feeding) off SNI, infrequent and low number of missile launches, airborne noise levels less than levels that could potentially cause temporary threshold shift (TTS), and a narrow window (maximum of 13 degree radius from perpendicular from the launch vehicle) for sound penetration into the water (i.e., almost all sounds hitting the water surface are reflected). For information on calculating "take" levels and the potential for marine mammals to be taken by this activity, please refer to the Navy's Final EIS on this action.

Comment 2: The Stop LFAS noted that in 2001, the State of California's Coastal Commission (CCC) did not have the benefit of information which has since come about as a result of recent litigation regarding noise issues and the potential harm which noise may have on marine mammals. Therefore, there is a need for greater environmental scrutiny than may have been suspected by the CCC over two years ago.

Response: On February 14, 2001, the CCC concluded that, with the monitoring and mitigation commitments the Navy has incorporated into their various testing and training activities on the Point Mugu Sea Range, including activities on SNI, and including the commitment to enable continuing CCC staff review of finalized monitoring plans and ongoing monitoring results, the activities are consistent with the marine resources, environmentally sensitive habitat and water quality policies (Sections 30230, 30240, and 30231) of the California Coastal Act. Federal regulations implementing the Coastal Zone Management Act (CZMA; 15 CFR part 930.46(a)) instituted procedures for supplemental coordination if, among other reasons, there is significant new information relevant to the proposed activity and its effect on any coastal use or resource. NMFS is unaware of any significant new information that would warrant supplemental coordination, but NMFS has forwarded this document to the CCC for review.

Comment 3: The Stop LFAS asked "whatever monitoring would there be to gauge underwater responses from submerged marine life? How do we know that panic and death would not be assured?"

Response: See response to comment 1. Essentially, most airborne noise will be reflected at the water surface, significantly limiting penetration into the water column. Also, since the airborne sounds are less than would cause TTS, and propagation of those sounds that penetrate the water surface would quickly reduce to insignificant levels, it is unlikely that any cetacean would be affected by launch noises. Therefore, underwater monitoring is not considered necessary. However, NMFS would welcome suggestions on how to establish a practical monitoring program given the infrequency of both launches, low density of offshore marine mammals and the need to ensure personnel safety during launches.

Description of Habitat and Marine Mammals Affected by the Activity

A detailed description of the Channel Islands/southern California Bight ecosystem and its associated marine mammals can be found in several documents (Le Boeuf and Brownell, 1980; Bonnell *et al.*, 1981; Lawson *et al.*, 1980; Stewart, 1985; Stewart and Yochem, 2000; Sydeman and Allen, 1999) and is not repeated here.

Many of the beaches in the Channel Islands provide resting, molting or breeding places for species of pinnipeds including: northern elephant seals (*Mirounga angustirostris*), harbor seals (*Phoca vitulina*), California sea lions (*Zalophus californianus*), northern fur seals (*Callorhinus ursinus*), and Steller sea lions (*Eumetopias jubatus*). On SNI, three of these species, northern elephant seals, harbor seals, and California sea lions, can be expected to occur on land in the area of the proposed activity either regularly or in large numbers during certain times of the year. Descriptions of the biology and distribution of these three species and others in the region can be found in NAWS (2002), Stewart and Yochem (2000, 1994), Sydeman and Allen (1999), Lowry *et al.* (1996), Schwartz (1994), Lowry (1999) and several other documents (Barlow *et al.*, 1997; NMFS, 2000; NMFS, 1992; Koski *et al.*, 1998; Gallo-Reynoso, 1994; Stewart *et al.*, 1987). General information on harbor seals and other marine mammal species found in Central California waters can be found in Caretta *et al.* (2001, 2002), which are available at the following URL: *http://www.nmfs.noaa.gov/prot_res/PR2/Stock_Assessment_Program/ sars.html.* Please refer to those documents and the application for further information on these species.

Potential Effects of Target Missile Launches and Associated Activities on Marine Mammals

As outlined in several previous NMFS documents, the effects of noise on marine mammals are highly variable, and can be categorized as follows (based on Richardson *et al.*, 1995):

(1) The noise may be too weak to be heard at the location of the pinniped (i.e., lower than the prevailing ambient noise level, the hearing threshold of the animal at relevant frequencies, or both);

(2) The noise may be audible but not strong enough to elicit any overt behavioral response;

(3) The noise may elicit reactions of variable conspicuousness and variable relevance to the well being of the pinniped; these can range from temporary alert responses to active avoidance reactions such as stampedes into the sea from terrestrial haulout sites;

(4) Upon repeated exposure, pinnipeds may exhibit diminishing responsiveness (habituation), or disturbance effects may persist; the latter is most likely with sounds that are highly variable in characteristics, infrequent and unpredictable in occurrence (as are vehicle launches), and associated with situations that the pinniped perceives as a threat;

(5) Any anthropogenic noise that is strong enough to be heard has the potential to reduce (mask) the ability of pinnipeds to hear natural sounds at similar frequencies, including calls from conspecifics, and environmental sounds such as surf noise;

(6) If mammals remain in an area because it is important for feeding, breeding or some other biologically important purpose even though there is chronic exposure to noise, it is possible that there could be noise-induced physiological stress; this might (in turn) have negative effects on the well-being or reproduction of the animals involved; and

(7) Very strong sounds have the potential to cause temporary or permanent reduction in hearing sensitivity. In terrestrial mammals, and presumably marine mammals, received sound levels must far exceed the animal's hearing threshold for there to be any temporary threshold shift (TTS). For transient sounds, the sound level necessary to cause TTS is inversely related to the duration of the sound. Received sound levels must be even higher for there to be risk of permanent hearing impairment.

Sounds generated by the launches of Vandal and similar target missiles and smaller subsonic targets and missiles (BQM–34 or BQM–74 type), as they depart sites on SNI towards operational areas in the Point Mugu Sea Range, have the potential to result in the incidental harassment of seals and sea lions. Taking by harassment will potentially result from these launches when pinnipeds on the beaches near the launch sites are exposed to the sounds produced by the rocket boosters and the high-speed passage of the missiles as they depart the island on their routes to the Sea Range. However, the extremely rapid departure of the Vandal and other targets means that pinnipeds would be exposed to increased sound levels for very short time intervals (i.e., a few seconds). In addition, because launches are conducted relatively infrequently, neither physiological stress nor hearing related injuries are likely for pinnipeds exposed to more than a single launch event.

Noise generated from aircraft and helicopter activities associated with the launches may provide a potential secondary source of incidental harassment of seals and sea lions. The physical presence of aircraft could also lead to non-acoustic effects on marine mammals involving visual or other cues. There are no anticipated effects from human presence on the beaches, since movements of personnel are restricted near the launch sites two hours prior to launches for safety reasons.

Reactions of pinnipeds on the western end of SNI to Vandal target launches have not been well-studied, but based on monitoring studies conducted under the IHA for this activity on SNI in 2001 and 2002, and on other rocket launch activities and their effects on pinnipeds in the Channel Islands (Stewart *et al.*, 1993), anticipated impacts can be predicted. In general, studies have shown that responses of pinnipeds on beaches to acoustic disturbance arising from rocket and target missile launches are highly variable. This variability may be due to many factors, including species, age class, and time of year. Among species, northern elephant seals seem very tolerant of acoustic disturbances (Stewart, 1981), whereas harbor seals (particularly outside the breeding season) seem more easily disturbed. Research and monitoring at Vandenberg Air Force Base found that prolonged or repeated sonic booms, very strong sonic booms, or sonic booms accompanying a visual stimulus, such as a passing aircraft, are most likely to stimulate seals to leave the haul-out area and move into the water. During three launches of Vandal missiles from SNI, California sea lions near the launch track line were observed from video recordings to be disturbed and to flee (both up and down the beach) from their former resting positions. Launches of the smaller BQM–34 targets from NAS have not normally resulted in harbor seals leaving their haul-out area at the mouth of Mugu Lagoon, which is approximately 3.2 km (2 mi) from the launch site. An Exocet missile launched from the west end of SNI appeared to cause far less disturbance to hauled out California sea lions than Vandal launches.

Given the variability in pinniped response to acoustic disturbance, as supported by recent IHA monitoring (Lawson *et al.*, 2002), the Navy (NAWS, 2002) conservatively assumes that biologically significant disturbance (i.e., Level B harassment) will sometimes occur upon exposure to launch sounds with SEL's of 100 dBA (re 20 micro-Pa^2 -sec) or higher for California sea lions and northern elephant seals and 90 dBA for Pacific harbor seals. A biologically significant disturbance has been defined by NMFS in several previous rulemakings (e.g., 66 FR 43442, August 17, 2001; 67 FR 46712, July 16, 2002) as a disturbance of a behavior pattern that has the potential to have an effect on the reproduction or survival of the animal or the species.

A conservative estimate of the SEL at which TTS (Level B harassment) may be elicited in harbor seals, California sea lions and northern elephant seals has been determined to be 145 dB (re 20 micro-Pa^2 -sec) and 165 dB (re 20 micro-Pa^2 -sec), respectively (Lawson *et al.*, 1998). The sound levels necessary to elicit mild TTS in captive California sea lions and harbor seals exposed to impulse noises, such as sonic booms, were tens of decibels higher (Bowles *et al.*, 1999) than sound levels measured during Vandal launches (Burgess and Greene, 1998; Greene, 1999). This evidence, in combination with the known sound levels produced by vehicles launched from SNI (described later in this document), suggests that no pinnipeds will be exposed to TTS-inducing SELs during planned launches.

Based on modeling of sound propagation in a free field situation, Burgess and Greene (1998) data were used by the Navy to predict that Vandal target launches from SNI could produce a 100–dBA acoustic contour that extends an estimated 4,263 m (13,986 ft) perpendicular to its launch track. In other words, Vandal target launch sounds are predicted to exceed the SEL (100 dBA) disturbance criteria out to a distance of 4,263 m (13,986 ft) from the ALC. Northern elephant seals, harbor seals, and California sea lions haul out in areas within the perimeter of this 100–dBA contour for Vandal launches. For BQM–34 launches from ALC, the Navy assumes that the 100 dBA contour extends an estimated 1,372 m (4,500 ft), perpendicular to its launch track (C. Malme, Engineering and Scientific Services, Hingham; MA, unpublished data). Along the launch track and ahead of the BQM–34, the 100 dBA contour extends a shorter distance (549 m or 1,800 ft). For the smaller BQM–74 and Exocet missiles, the Navy predicts that the 100 dBA contours will be smaller still. The free field modeling scenario used to predict these acoustic contours does not account for transmission losses caused by wind, intervening topography, and variations in launch trajectory or azimuth. Therefore, the predicted 100 dBA contours may be smaller at certain beach locations and for different launch trajectories.

In general, the extremely rapid departure of the Vandal and smaller targets means that pinnipeds could be exposed to increased sound levels for very short time intervals (a few seconds) potentially leading to alert and startle responses from individuals on haul out sites in the vicinity of launches. Some animals may flee to the water. Since recorded observations of the responses of pinnipeds to Vandal launches along with post-launch surveys at the SNI haulouts have not shown injury, mortality, or extended biological disturbance, the Navy anticipates that the effects of the planned target launches will have no more than a negligible impact on pinniped populations.

Since the launches are relatively infrequent, and of brief duration, it is unlikely that the pinnipeds near the launch site will become habituated to launch sounds. Pinnipeds that haul out on beaches at the western end of SNI for extended periods, or that return to haul-out sites regularly over the course of the year, may be exposed to sounds of more than a single launch, and may be "harassed" more than once each year. However, given the infrequency and brevity of these events, it is unlikely that much, if any, habituation to target missile launch activities has occurred.

In addition, the infrequent and brief nature of these sounds will cause masking for not more than a very small fraction of the time (usually less than 2 seconds per launch) during any single day. Therefore, the Navy assumes that these occasional and brief episodes of masking will have no significant effects on the abilities of pinnipeds to hear one another or to detect natural environmental sounds that may be relevant to the animals.

Numbers of Marine Mammals Expected to Be Taken by Harassment

NAWS provisionally estimates that the following numbers of pinnipeds may be subject to Level B harassment annually: 1,403 northern elephant seals, 457 harbor seals, and 1,637 California sea lions. To determine the number of takings by harassment annually, one would need to multiply those numbers by the number of launches conducted annually. The animals affected may be the same animals or may be different animals, depending upon site fidelity of the species. Based on the results of recent monitoring of the haulouts, the estimated number of potential harassment takes would be significantly less than authorized under the two recent IHAs.

Effects of Target Missile Launches and Associated Activities on Subsistence Needs

There are no subsistence uses for these pinniped species in California waters, and, thus, there are no anticipated effects on subsistence needs.

Effects of Target Missile Launches and Associated Activities on Marine Mammal Habitat on SNI

Harbor seals, California sea lions, and northern elephant seals use various beaches around SNI as places to rest, molt, and breed. These beaches consist of sand (e.g., Red Eye Beach), rock ledges (e.g., Phoca Beach) and rocky cobble (e.g., Vizcaino Beach). Pinnipeds do not feed when hauled out on these beaches, and the airborne launch sounds will mostly reflect or refract from the water surface and, except for sounds within a diameter of approximately 30 degrees directly below the launch vehicle, will not penetrate into the water column. The sounds that do penetrate will not persist in the water for more than a few seconds. Therefore, the Navy does not expect that launch activities will have any impact on the food or feeding success of these animals. The solid rocket booster from the Vandal target and the JATO bottles from the BMQs are jettisoned shortly after launch and fall into the sea west of SNI. While it is theoretically possible that one of these boosters might instead land on a beach, the probability of this occurring is very low. Fuel contained in the boosters and JATO bottles is consumed rapidly and completely, so there would be no risk of contamination even if a booster or bottle did land on the beach. Overall, the proposed target missile launches and associated activities are not expected to cause significant impacts on habitats or on food sources used by pinnipeds on SNI.

Mitigation

To avoid additional harassment to the pinnipeds on beach haul out sites and to avoid any possible sensitizing or predisposing of pinnipeds to greater responsiveness towards the sights and sounds of a launch, NAWCWD Point Mugu will limit its activities near the beaches in advance of launches. Existing safety protocols for Vandal launches provide a built-in mitigation measure. That is, personnel are normally not allowed near any of the pinniped beaches close to the flight track on the western end of SNI within two hours prior to a launch. Where practicable, NAWCWD Point Mugu will adopt the following additional mitigation measures when doing so will not compromise operational safety requirements or mission goals: (1) The Navy will attempt to limit launch activities during pinniped pupping seasons, particularly harbor seal pupping season; (2) the Navy will attempt not to launch vehicles at low elevation on launch azimuths that pass close to beach haul-out site(s); (3) the Navy will attempt to avoid multiple target launches in quick succession over haul-out sites, especially when young pups are present; and, (4) the Navy will attempt to limit launch activities during the night.

Monitoring

As part of its application, NAWS provided a proposed monitoring plan, similar to that adopted for the 2001/2002 and 2002/2003 IHAs (see 66 FR 41834, August 9, 2001; 67 FR 56271, September 3, 2002), for assessing impacts to marine mammals from Vandal and smaller subsonic target and missile launch activities on SNI. This monitoring plan is described in their application (NAWS, 2002).

The Navy proposes to conduct the following monitoring during the first year under an LOA and regulations.

Land-Based Monitoring

In conjunction with a biological contractor, the Navy will continue its land-based monitoring program to assess effects on the three common pinniped species on SNI: northern elephant seals, harbor seals, and California sea lions. This monitoring would occur at three different sites of varying distance from the launch site before, during, and after each launch. The monitoring would be via autonomous video cameras.

During the day of each missile launch, the observer would place three digital video cameras overlooking chosen haul out sites. Each camera would be set to record a focal subgroup within the haul out aggregation for a maximum of 4 hours or as permitted by the videotape capacity.

Following each launch, all digital recordings will be transferred to DVDs for analysis. A DVD player/computer with high-resolution freeze-frame and jog shuttle will be used to facilitate distance estimation, event timing, and characterization of behavior. Details of analysis methods can be found in LGL Ltd. Environmental Research Associates et al. (LGL, 2002).

Acoustical Measurements

During each launch, the Navy would obtain calibrated recordings of the levels and characteristics of the received launch sounds. Acoustic data would be acquired using three Autonomous Terrestrial Acoustic Recorders (ATAR) at three different sites of varying distances from the target's flight path. ATARs can record sounds for extended periods (dependent on sampling rate) without intervention by a technician, giving them the advantage over traditional digital audio tape (DAT) recorders should there be prolonged launch delays of as long as 10 hours. To the extent possible, acoustic recording locations would correspond with the sites where video monitoring is taking place. The collection of acoustic data would provide information on the magnitude, characteristics, and duration of sounds that pinnipeds may be exposed to during a launch. In addition, the acoustic data can be combined with the behavioral data collected via the land-based monitoring program to determine if there is a dose-response relationship between received sound levels and pinniped behavioral reactions. Once collected, sound files will be transferred onto compact discs (CDs) and sent to the acoustical contractor for sound analysis.

For further details regarding the installation and calibration of the acoustic instruments and analysis methods refer to LGL (2002).

Reporting Requirements

An interim technical report is proposed to be submitted to NMFS 60 days prior to the expiration of each annual LOA issued under these regulations, along with a request for a follow-on annual LOA. This interim technical report will provide full documentation of methods, results, and interpretation pertaining to all monitoring tasks for launches during the period covered by the LOA. However, only preliminary information would be available to be included for any launches during the 60–day period immediately preceding submission of the interim report to NMFS. In the unanticipated event that any cases of pinniped mortality are judged to result from launch activities at any time during the period covered by these regulations, this event will be reported to NMFS immediately.

The proposed 2003–04 launch monitoring activities will constitute the third year of formal, concurrent pinniped and acoustical monitoring during launches from SNI. Several of the questions about effects of such launch activities on pinnipeds ashore are expected to be answered before the first LOA is issued based on the 2001–2003 monitoring under IHAs. Additional questions will be answered during the first year of monitoring under an LOA in 2003–2004. Following submission in 2004 of the interim report on the first phase of monitoring under an LOA, NAWS believes that it would be appropriate for the Navy and NMFS to discuss the scope for any additional launch monitoring work on SNI subsequent to the first LOA issued under these regulations. In particular, some biological or acoustic parameters may be documented adequately prior to or during the first LOA (2003–2004), and it may not be necessary to continue all aspects of the monitoring work after the first year.

In addition to annual LOA reports, NMFS proposes to require NAWS to submit a draft comprehensive final technical report to NMFS 180 days prior to the expiration of the regulations. This technical report will provide full documentation of methods, results, and interpretation of all monitoring tasks for launches during the first four LOAs, plus preliminary information for launches during the first 6 months of the final LOA.

National Environmental Policy Act (NEPA)

NMFS prepared an Environmental Assessment (EA) on a similar action in 2001, and made a Finding of No Significant Impact (FONSI). Based on that EA/FONSI, the NAWCWD's March, 2002 Final Environmental Impact Statement to assess the effects of its ongoing and proposed operations in the Sea Range; and NAWS' October 2002 request for the subject proposed regulations, NMFS has preliminarily determined that this action will not have a significant effect on the human environment.

Endangered Species Act (ESA)

Under section 7 of the ESA, NMFS has begun consultation on the proposed issuance of regulations under section 101(a)(5)(A) of the MMPA for this activity. Consultation will be concluded prior to promulgation of a final rule.

CZMA Consistency

On February 14, 2001, by a unanimous vote, the California Coastal Commission concluded that, with the monitoring and mitigation commitments the Navy has incorporated into their various testing and training activities on the Point Mugu Sea Range, including activities on SNI, and including the commitment to enable continuing Commission staff review of finalized monitoring plans and ongoing monitoring results, the activities are consistent with the marine resources, environmentally sensitive habitat and water quality policies (Sections 30230, 30240, and 30231) of the California Coastal Act.

National Marine Sanctuaries Act

According to the Navy, except for aircraft and vessel traffic transiting the area, none of the Navy's proposed activities would take place within the Channel Islands National Marine Sanctuary (CINMS). Also, all Navy Sea Range test and training activities are consistent with CINMS regulations (15 CFR 920.70).

Information Solicited

As this document is being published in conformance with NMFS regulations implementing the small take program (50 CFR 216.105), NMFS requests interested persons to submit comments, information, and suggestions concerning the request and the content of the proposed regulations to authorize the taking. As required by 50 CFR 216.105, NMFS will consider this information in developing proposed regulations to authorize the taking. Prior to submitting comments, NMFS recommends reviewers of this document read the responses to comments made previously (see 66 FR 41843, August 9, 2001; 67 FR 56271, September 3, 2002; 68 FR 11527, March 11, 2003) for this action, as NMFS does not intend to address these issues further without the submission of additional scientific information.

Classification

This action has been determined to be not significant for purposes of Executive Order 12866.

The Chief Counsel for Regulation of the Department of Commerce has certified to the Chief Counsel for Advocacy of the Small Business Administration that this proposed rule, if adopted, would not have a significant economic impact on a substantial number of small entities since it would apply only to the U.S. Navy and would have no effect, directly or indirectly, on small businesses. It may affect a small number of contractors providing services related to reporting the impact of the activity on marine mammals, some of whom may be small businesses, but the number involved would not be substantial. Further, since the monitoring and reporting requirements are what would lead to the need for their services, the economic impact on them would be beneficial. Because of this certification, a regulatory flexibility analysis is not required and none has been prepared.

Notwithstanding any other provision of law, no person is required to respond to nor shall a person be subject to a penalty for failure to comply with a collection of information subject to the requirements of the Paperwork Reduction Act (PRA) unless that collection of information displays a currently valid OMB control number. This final rule contains collection-of-information requirements subject to the provisions of the PRA. These requirements have been approved by OMB under control number 0648–0151, and include applications for LOAs, and reports.

The reporting burden for the approved collections-of-information is estimated to be approximately 120 hours for the annual applications for an LOA, and a total of 120 hours for the quarterly and annual reports. These estimates include the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection-of-information. Send comments regarding these burden estimates, or any other aspect of this data collection, including suggestions for reducing the burden, to NMFS and OMB (see **ADDRESSES**).

List of Subjects in 50 CFR Part 216

Exports, Fish, Imports, Indians, Labeling, Marine-mammals, Penalties, Reporting and recordkeeping requirements, Seafood, Transportation.

Dated: May 5, 2003.

Rebecca Lent,

Deputy Assistant Administrator for Regulatory Programs, National Marine Fisheries Service.

For reasons set forth in the preamble, 50 CFR part 216 is proposed to be amended as follows:

PART 216—REGULATIONS GOVERNING THE TAKING AND IMPORTING OF MARINE MAMMALS

1. The authority citation for part 216 continues to read as follows:

Authority: 16 U.S.C. 1361 *et seq.*, unless otherwise noted.

2. Subpart N is added to read as follows:

Subpart N—Taking of Marine Mammals Incidental to Missile Launch Operations from San Nicolas Island, CA

Sec.

216.151 Specified activity, geographical region, and incidental take levels.
216.152 Effective dates.
216.153 Permissible methods of taking; mitigation.
216.154 Prohibitions.
216.155 Requirements for monitoring and reporting.
216.156 Letter of Authorization.
216.157 Renewal of the Letter of Authorization.

216.158 Modifications to the Letter of Authorization.

Subpart N—Taking of Marine Mammals Incidental to Missile Launch Operations from San Nicolas Island, CA

§ 216.151 Specified activity, geographical region, and incidental take levels.

(a) Regulations in this subpart apply only to the incidental taking of marine mammals specified in paragraph (b) of this section by U.S. citizens engaged in target missile launch activities at the Naval Air Warfare Center Weapons Division facilities on San Nicolas Island, California.

(b) The incidental take of marine mammals under the activity identified in paragraph (a) of this section is limited to the following species: northern elephant seals (*Mirounga angustirostris*), harbor seals (*Phoca vitulina*), and California sea lions (*Zalophus californianus*).

(c) This Authorization is valid only for activities associated with the launching of a total of 40 Vandal (or similar sized) vehicles from Alpha Launch Complex and smaller missiles and targets from Building 807 on San Nicolas Island, California.

§ 216.152 Effective dates.

Regulations in this subpart are effective from August 26, 2003, through August 25, 2008.

§ 216.153 Permissible methods of taking; mitigation.

(a) Under a Letter of Authorization issued pursuant to § 216.106, the U.S. Navy may incidentally, but not intentionally, take marine mammals by harassment, in the course of conducting target missile launch activities within the area described in § 216.151(a) provided all terms, conditions, and requirements of these regulations and such Letter of Authorization are complied with.

(b) The activity identified in paragraph (a) of this section must be conducted in a manner that minimizes, to the greatest extent possible, adverse impacts on marine mammals and their habitat. When conducting these activities, the following mitigation measures must be utilized:

(1) The holder of the Letter of Authorization must prohibit personnel from entering pinniped haul-out sites below the missile's predicted flight path for 2 hours prior to planned missile launches.

(2) The holder of the Letter of Authorization must avoid launch activities during harbor seal pupping season (February to April), when operationally practicable.

(3) The holder of this Authorization must limit launch activities during other pinniped pupping seasons, when operationally practicable.

(4) The holder of the Letter of Authorization must not launch Vandal target missiles from the Alpha Complex at low elevation (less than 1,000 feet (304.8 m) on launch azimuths that pass close to pinniped haul-out sites).

(5) The holder of the Letter of Authorization must avoid, where practicable, launching multiple target missiles in quick succession over haul-out sites, especially when young pups are present.

(6) The holder of the Letter of Authorization must limit launch activities during nighttime hours when operationally practicable.

(7) Aircraft and helicopter flight paths must maintain a minimum altitude of 1,000 feet (304.8 m) from pinniped haul-outs.

(8) If injurious or lethal take is discovered during monitoring, the holder of the Letter of Authorization must contact the Regional Administrator, Southwest Region, National Marine Fisheries Service, or his/her designee, at (562) 980–4023 within 48 hours and, in cooperation with the National Marine Fisheries Service, launch procedure, mitigation measures, and monitoring methods must be reviewed and appropriate changes made prior to the next launch.

(9) If post-test surveys determine that an injurious or lethal take of a marine mammal has occurred, the test procedure and the monitoring methods must be reviewed and appropriate changes must be made prior to conducting the next detonation.

§ 216.154 Prohibitions.

Notwithstanding takings authorized by § 216.151(b) and by a Letter of Authorization issued under § 216.106, the following activities are prohibited:

(a) The taking of a marine mammal that is other than unintentional.

(b) The violation of, or failure to comply with, the terms, conditions, and requirements of this part or a Letter of Authorization issued under § 216.106.

(c) The incidental taking of any marine mammal of a species not specified in this subpart.

§ 216.155 Requirements for monitoring and reporting.

(a) The holder of the Letter of Authorization is required to cooperate with the National Marine Fisheries Service and any other Federal, state or local agency monitoring the impacts of the activity on marine mammals.

(b) The National Marine Fisheries Service must be informed immediately of any changes or deletions to any portions of the proposed monitoring plan submitted, in accordance with the Letter of Authorization.

(c) The holder of the Letter of Authorization must designate biologically trained, on-site individual(s), approved in advance by the National Marine Fisheries Service, to record the effects of the launch activities and the resulting noise on pinnipeds.

(d) The holder of the Letter of Authorization must implement the following monitoring measures:

(1) Visual Land-Based Monitoring. (i) Prior to each missile launch, an observer(s) will place 3 autonomous digital video cameras overlooking chosen haul-out sites located varying distances from the missile launch site. Each video camera will be set to record a focal subgroup within the larger haul-out aggregation for a maximum of 4 hours or as permitted by the videotape capacity.

(ii) Systematic visual observations, by those individuals, described in paragraph (c) of this section, on pinniped presence and activity will be conducted and recorded in a field logbook a minimum of 2 hours prior to the estimated launch time and for no less than 1 hour immediately following the launch of Vandal and similar types of target missiles.

(iii) Systematic visual observations, by those individuals, described in paragraph (c) of this section, on pinniped presence and activity will be conducted and recorded in a field logbook a minimum of 2 hours prior to launch, during launch, and for no less than 1 hour after the launch of the BQM–34, BQM–74, Exocet, Tomahawk, RAM target and similar types of missiles.

(iv) Documentation, both via autonomous video camera and human observer, will consist of:

(A) numbers and sexes of each age class in focal subgroups;

(B) description and timing of launch activities or other disruptive event(s);

(C) movements of pinnipeds, including number and proportion moving, direction and distance moved, and pace of movement;

(D) description of reactions;

(E) minimum distances between interacting and reacting pinnipeds;

(F) study location;

(G) local time;

(H) substratum type;

(I) substratum slope;

(J) weather condition;

(K) horizontal visibility; and

(L) tide state.

(2) Acoustic Monitoring. (i) During all target missile launches, calibrated recordings of the levels and characteristics of the received launch sounds will be obtained from 3 different locations of varying distances from the target missile's flight path. To the extent practicable, these acoustic recording locations will correspond with the haul-out sites where video and human observer monitoring is done.

(ii) Acoustic recordings will be supplemented by the use of radar and telemetry systems to obtain the trajectory of target missiles in three dimensions.

(iii) Acoustic equipment used to record launch sounds will be suitable for collecting a wide range of parameters, including the magnitude, characteristics, and duration of each target missile.

(e) The holder of the Letter of Authorization must implement the following reporting requirements:

(1) For each target missile launch, the lead contractor or lead observer for the holder of the Letter of Authorization must provide a status report to the National Marine Fisheries Service, Southwest Regional Office, providing reporting items found under the Letter of Authorization, unless other arrangements for monitoring are agreed in writing.

(2) An initial report must be submitted to the Office of Protected Resources, and the Southwest Regional Office at least 60 days prior to the expiration of each annual Letter of Authorization. This report must contain the following information:

(i) Timing and nature of launch operations;

(ii) Summary of pinniped behavioral observations;

(iii) Estimate of the amount and nature of all takes by harassment or by other means.

(3) A draft comprehensive technical report will be submitted to the Office of Protected Resources and Southwest Regional Office, National Marine Fisheries Service, 180 days prior to the expiration of these regulations and providing full documentation of the methods, results, and interpretation of all monitoring tasks for launches to date plus preliminary information for missile launches during the first 6 months of the final Letter of Authorization.

(4) A revised final technical report, including all monitoring results during the entire period of the Letter of Authorization will be due 90 days after the end of the period of effectiveness of these regulations.

(5) Both the 60–day and final reports will be subject to review and comment by the National Marine Fisheries Service. Any recommendations made by the National Marine Fisheries Service must be addressed in the final comprehensive report prior to acceptance by the National Marine Fisheries Service.

(f) Activities related to the monitoring described in paragraphs (c) and (d) of this section, or in the Letter of Authorization issued under § 216.106, including the retention of marine mammals, may be conducted without the need for a separate scientific research permit.

(g) In coordination and compliance with appropriate Navy regulations, at its discretion, the National Marine Fisheries Service may place an observer on San Nicolas Island for any activity involved in marine mammal monitoring either prior to, during, or after a missile launch in order to monitor the impact on marine mammals.

§ 216.156 Letter of Authorization.

(a) A Letter of Authorization, unless suspended or revoked, will be valid for a period of time specified in the Letter of Authorization but may not exceed the period of validity of this subpart.

(b) A Letter of Authorization with a period of validity less than the period of validity of this subpart may be renewed subject to renewal conditions in § 216.157.

(c) A Letter of Authorization will set forth:

(1) Permissible methods of incidental taking;

(2) Authorized geographic area for taking;

(3) Means of effecting the least practicable adverse impact on the species of marine mammals authorized for taking and its habitat; and

(4) Requirements for monitoring and reporting incidental takes.

(d) Issuance of a Letter of Authorization will be based on a determination that the number of marine mammals taken by the activity will be small, and that the number of marine mammals taken by the activity, specified in § 216.151(b), as a whole, will have no more than a negligible impact on the species or stocks of affected marine mammal(s).

(e) Notice of issuance or denial of a Letter of Authorization will be published in the **Federal Register** within 30 days of a determination.

§ 216.157 Renewal of a Letter of Authorization.

(a) A Letter of Authorization issued under § 216.106 and § 216.156 for the activity identified in § 216.151(a) will be renewed annually upon:

(1) Notification to the National Marine Fisheries Service that the activity described in the application for a Letter of Authorization submitted under § 216.156 will be undertaken and that there will not be a substantial modification to the described work, mitigation, or monitoring undertaken during the upcoming season;

(2) Timely receipt of the monitoring reports required under § 216.155, which have been reviewed by the National Marine Fisheries Service and determined to be acceptable;

(3) A determination by the National Marine Fisheries Service that the mitigation, monitoring, and reporting measures required under §§ 216.153 and 216.155 and the Letter of Authorization were undertaken and will be undertaken during the upcoming period of validity of a renewed Letter of Authorization; and

(4) Renewal of a Letter of Authorization will be based on a determination that the number of marine mammals taken by the activity continues to be small and that the number of marine mammals taken by the activity, specified in § 216.151(b), will have no more than a negligible impact on the species or stock of affected marine mammal(s).

(b) A notice of issuance or denial of a renewal of a Letter of Authorization will be published in the **Federal Register** within 30 days of a determination.

§ 216.158 Modifications to the Letter of Authorization.

(a) Except as provided in paragraph (b) of this section, no substantive modification, including withdrawal or suspension, to the Letter of Authorization issued pursuant to § 216.106 and subject to the provisions of this subpart shall be made until after notice and an opportunity for public comment.

(b) If the Assistant Administrator determines that an emergency exists that poses a significant risk to the well-being of the species or stocks of marine mammals specified in § 216.151(b), the Letter of Authorization issued pursuant to § 216.106 may be substantively modified without prior notice and an opportunity for public comment. Notification will be published in the **Federal Register** subsequent to the action.

[FR Doc. 03–11613 Filed 5–8–03; 8:45 am]
BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[Docket No. 030409081–3081–01; I.D. 032103B]

RIN 0648–AQ72

Magnuson-Stevens Fishery Conservation and Management Act Provisions; Fisheries of the Northeastern United States; Northeast (NE) Multispecies Fishery; Correction

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Proposed emergency rule; correction.

SUMMARY: This document corrects the preamble and regulatory text to a proposed emergency rule published on April 24, 2003, regarding a proposed action to ensure that the regulations governing the Northeast Multispecies fishery continue to be in compliance with the Settlement Agreement Among Certain Parties, which was ordered to be implemented as ordered by the U.S. District Court for the District of Columbia (Court) in a Remedial Order issued on May 23, 2002. This correction remedies certain typographical, editorial, and format errors contained in the proposed emergency rule.

FOR FURTHER INFORMATION CONTACT: Thomas Warren, Fishery Policy Analyst, phone 978–281–9347.

SUPPLEMENTARY INFORMATION:

Need for Correction

The proposed emergency rule published on April 24, 2003, which was the subject of FR Doc. 03–10163, contained information that may be confusing to the public. This document corrects those items as follows:

1. On page 20097, in the first column under **SUMMARY**, in the 29th line down, add "13" following the word "Amendment".

2. On page 20097, in the first column under **ADDRESSES**, remove the second paragraph in its entirety, and add in its place the following: "Written comments regarding the proposed collection-of-information requirements should be sent to the Regional Administrator and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503 (Attn: NOAA Desk Officer)."

3. On page 20097, in the first column under **ADDRESSES**, in the third paragraph, remove the first two lines, "Written comments regarding the proposed collection-of-information".

4. On page 20098, under Regulated Mesh Areas (RMAs), at the end of the paragraph remove "≥" and add quotation marks in its place (").

5. On page 20103, Table 3, seventh column heading, remove "401–65" and add in its place "401–650".

6. On page 20108, Table A, under § 648.82(m)(4)(iii), seventh column heading, remove "401–65" and add in its place "401–650".

Dated: May 1, 2003.

Rebecca Lent,

Deputy Assistant Administrator for Regulatory Programs, National Marine Fisheries Service.

[FR Doc. 03–11614 Filed 5–8–03; 8:45 am]

BILLING CODE 3510–22–S

Notices

Federal Register

Vol. 68, No. 90

Friday, May 9, 2003

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

[Docket No. 98–035–3]

Importation of Phalaenopsis spp. From Taiwan in Growing Media; Availability of Environmental Assessment and Request for Comments

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Notice of availability and request for comments.

SUMMARY: We are informing the public that the Animal and Plant Health Inspection Service has prepared an environmental assessment for a proposal to allow orchids of the genus *Phalaenopsis* to be imported from Taiwan in approved growing media. The environmental assessment documents our review and analysis of environmental impacts associated with the proposed action. We are making the environmental assessment available to the public for review and comment.

DATES: We will consider all comments that we receive on or before June 9, 2003.

ADDRESSES: You may submit comments by postal mail/commercial delivery or by e-mail. If you use postal mail/commercial delivery, please send four copies of your comment (an original and three copies) to: Docket No. 98–035–3, Regulatory Analysis and Development, PPD, APHIS, Station 3C71, 4700 River Road Unit 118, Riverdale, MD 20737–1238. Please state that your comment refers to Docket No. 98–035–3. If you use e-mail, address your comment to *regulations@aphis.usda.gov*. Your comment must be contained in the body of your message; do not send attached files. Please include your name and address in your message and "Docket No. 98–035–3" on the subject line.

You may read any comments that we receive on this docket in our reading room. The reading room is located in room 1141 of the USDA South Building, 14th Street and Independence Avenue SW., Washington, DC. Normal reading room hours are 8 a.m. to 4:30 p.m., Monday through Friday, except holidays. To be sure someone is there to help you, please call (202) 690–2817 before coming.

APHIS documents published in the **Federal Register**, and related information, including the names of organizations and individuals who have commented on APHIS dockets, are available on the Internet at *http://www.aphis.usda.gov/ppd/rad/webrepor.html*.

FOR FURTHER INFORMATION CONTACT: Mr. William Thomas, Import Specialist, Phytosanitary Issues Management, PPQ, APHIS, 4700 River Road Unit 140, Riverdale, MD 20737–1236; (301) 734–6799.

SUPPLEMENTARY INFORMATION:

Background

The Animal and Plant Health Inspection Service (APHIS) of the United States Department of Agriculture regulates the importation of plants and plant parts into the United States to guard against the introduction of plant pests and noxious weeds into the United States. The regulations pertaining to the importation of plants and plant parts are set forth in the Code of Federal Regulations (CFR), title 7, chapter III, part 319.

On September 1, 1998, we published in the **Federal Register** (63 FR 46403–46406, Docket No. 98–035–1) a proposal to amend the regulations to add orchids of the genus *Phalaenopsis* to the list of plants that may be imported from all areas of the world in an approved growing medium subject to specified growing, inspection, and certification requirements. We accepted comments on our proposal for a total of 90 days, ending December 1, 1998.[1]

In response to comments received on the proposed rule, APHIS narrowed the application of the rule to *Phalaenopsis* spp. from Taiwan only and entered into formal section 7 consultation with the U.S. Fish and Wildlife Service (FWS) to assess the potential effects of the proposed action on endangered or threatened species, as required under the Endangered Species Act. On April 7, 2003, FWS concluded the section 7 consultation process by concurring with APHIS's determination that the importation of *Phalaenopsis* spp. from Taiwan in growing media will not adversely affect federally listed or proposed endangered or threatened species or their habitats.

Upon receiving concurrence from FWS, APHIS prepared an environmental assessment in accordance with: (1) The National Environmental Policy Act of 1969, as amended (NEPA) (42 U.S.C. 4321 *et seq.*), (2) regulations of the Council on Environmental Quality for implementing the procedural provisions of NEPA (40 CFR parts 1500–1508), (3) USDA regulations implementing NEPA (7 CFR part 1b), and (4) APHIS' NEPA Implementing Procedures (7 CFR part 372).

This notice announces the availability of the environmental assessment for public review and comment. The assessment, titled "Proposed Rule for the Importation of Moth Orchids (*Phalaenopsis* spp.) in Growing Media From the Republic of China (Taiwan)," and dated April 2003, may be viewed on the Internet at *http://www.aphis.usda.gov/ppd/es/ppqdocs.html*. You may request paper copies of the environmental assessment from the person listed under **FOR FURTHER INFORMATION CONTACT.** Please refer to the title of the environmental assessment when requesting copies.

The environmental assessment is also available for review in our reading room (the location and hours of the reading room are listed under the heading **ADDRESSES** at the beginning of this notice).

Done in Washington, DC, this 6th day of May 2003.

Peter Fernandez,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 03–11538 Filed 5–8–03; 8:45 am]

BILLING CODE 3410–34–P

[1] The comment period on the proposed rule was extended from 60 to 90 days in a notice published in the **Federal Register** on October 29, 1998 (63 FR 57932).

DEPARTMENT OF AGRICULTURE

Forest Service

North Mt. Baker-Snoqualmie Resource Advisory Committee

AGENCY: Forest Service, USDA.
ACTION: Notice of meeting.

SUMMARY: The North Mt. Baker-Snoqualmie Resource Advisory Committee (RAC) will meet on Thursday, May 29, 2003, at the Whatcom County Parks and Recreation Department Conference Room, 3373 Mt. Baker Highway, Bellingham, WA. The meeting will begin at 9 a.m. and last until approximately 12 noon.

The purpose of the meeting will be to prioritize projects under consideration for FY2004 Title II funding under the Secure Rural Schools and Community Self-Determination Act.

All North Mt. Baker-Snoqualmie Resource Advisory Committee meetings are open to the public. Interested citizens are encouraged to attend.

The North Mt. Baker-Snoqualmie Resource Advisory Committee advised Whatcom and Skagit Counties on projects, reviews project proposals, and makes recommendations to the appropriate USDA official for projects to be funded by Title II dollars. The North Mt. Baker-Snoqualmie Resource Advisory Committee was established to carry out the requirements of the Secure Rural Schools and Community Self-Determination Act.

FOR FURTHER INFORMATION CONTACT: Direct questions regarding this meeting to Jon Vanderheyden, Designated Federal Official, USDA Forest Service, Mt. Baker-Snoqualmie National Forest, 810 State Route 20, Sedro Woolley, Washington 98284 (360–856–5700, Extension 201).

Dated: May 5, 2003.

Jon Vanderheyden,

Designated Federal Official.

[FR Doc. 03–11535 Filed 5–8–03; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Natural Resources Conservation Service

Glen Ellen Subwatershed Supplemental Watershed Plan and Environmental Assessment Number 1, Woodbury County, IA

AGENCY: Natural Resources Conservation Service, USDA.
ACTION: Notice of Finding of No Significant Impact.

SUMMARY: Pursuant to Section 102(2)(c) of the National Environmental Policy Act of 1969; the Council on Environmental Quality Regulations (40 CFR part 1500); and the Natural Resources Conservation Service Regulations (7 CFR part 650); the Natural Resources Conservation Service, U.S. Department of Agriculture, gives notice that an environmental impact statement is not being prepared for the Glen Ellen Subwatershed Supplemental Plan Number 1, Woodbury County, Iowa.

FOR FURTHER INFORMATION CONTACT: Leroy Brown, State Conservationist, Natural Resources Conservation Service, 210 Walnut Street, 693 Federal Building, Des Moines, IA, 50309–2180.

SUPPLEMENTARY INFORMATION: The environmental assessment of this federally assisted action indicates that the project will not cause significant impacts on the environment. As a result of these findings, Leroy Brown, State Conservationist, has determined that the preparation and review of an environmental impact statement are not needed for this project.

The project purpose is to prevent the loss of life from catastrophic dam failures and to maintain the gully stabilization and flood protection functions of three dams that were constructed in 1963.

The project actions include relocating three houses from the breach inundation area of Site (dam) 2–2, rehabilitating both this site and Site 3–1 to low hazard class, and rehabilitating Site 3–2 to high hazard class. This rehabilitation will provide a new 50 year life to the three sites to continue their original gully stabilization and flood prevention functions. Future residential and commercial development in the breach inundation areas below Sites 2–2 and 3–1 will be restricted by county zoning ordinance.

The Plan and Environmental Assessment has been forwarded to the Environmental Protection Agency and to various Federal, State, and local agencies and to interested parties. A limited number of copies of the plan and environmental assessment are available to fill single copy requests at the above address. Basic data developed during the environmental assessment are on file and may be viewed by contacting Leroy Brown.

No administrative action will be taken until 30 days after the date of this publication in the **Federal Register**.

Finding of No Significant Impact for the Glen Ellen Subwatershed Supplemental Watershed Plan and Environmental Assessment Number 1 Woodbury County, IA

Introduction

The supplemental watershed plan and environmental assessment describes the recommended alternative and other alternatives to prevent the loss of life from catastrophic dam failures within the Glen Ellen Subwatershed of the Little Sioux River Flood Prevention Project. Rehabilitating Sites 2–2, 3–1, and 3–2 also provides continued flood protection and gull stabilization.

The rehabilitation of these three dams is necessary because four houses occupied by eleven people have been built in the breach inundation areas since the dams were constructed in 1963. Sites 2–2 and 3–2 have been reclassified as high hazard by NRCS because of the possibility of loss of life should the dams fail.

The dams were installed to control severe gully erosion and reduce flooding. The structures receive drainage from areas of 194 to 350 acres.

The Glen Ellen Subwatershed project was approved in 1963 under the authority of the Flood Control Act of 1944 (Pub. L. 534, 78th Congress, 2nd Session).

This rehabilitation action is being planned and will be implemented under the Watershed Protection and Flood Prevention Act Public Law 83–566 as amended by Public Law 106–472. It is being planned and is in compliance with all National Environmental Policy Act (NEPA) and the National Historic Preservation Act of 1966 as amended (NHPA) provisions. The policies and procedures of the Watershed Protection and Flood Prevention Act, Public Law 83–566 as amended (16 U.S.C. 1001 et seq.) are being utilized for the planning and implementation of this project.

Glen Ellen Watershed was a federally assisted action authorized and installed under Public Law 78–534, The Flood Control Act as part of the Little Sioux River Flood Prevention Project. The proposed rehabilitation actions are authorized in accordance with the original federal authorities as amended by the Small Watershed Rehabilitation Amendments of 2000.

An environmental assessment was undertaken by the Natural Resources Conservation Service (NRCS) in conjunction with the development of this rehabilitation plan. This assessment was undertaken in conjunction with local, state and federal agencies as well as interested organizations and individuals. Data developed during this assessment and copies of the rehabilitation plan are available for public review at the following location: Natural Resources Conservation Service, 210 Walnut Street, 693 Federal Building, Des Moines, IA 50309–2180.

An Environmental Impact Statement (EIS) was prepared for the Little Sioux Watershed Flood Prevention Project in 1976. The EIS discusses the effects of installing flood prevention and grade stabilization dams and land treatment practices.

Recommended Action

Rehabilitation of site 2–2 will consist of relocating three houses currently located in the breach inundation area and rehabilitating the dam to low hazard class criteria for a new 50-year life. Rehabilitating Site 2–2 includes replacing the inlet of the principal spillway, raising the crest of the principal spillway one foot, and excavating about 1.5 acre-feet of sediment from the existing pool. The three houses will be purchased and the three homeowners will be provided relocation assistance in accordance with the Federal Uniform Relocation Assistance and Real Property Acquisitions Policies Act (Public Law 91–646). The Woodbury County Zoning Administrator will carry out the relocation process.

Site 3–1, which is in series upstream of Site 3–2, will be rehabilitated for a new 50-year life using high hazard class hydrology but will remain a low hazard class dam. Site 3–1 will be rehabilitated by replacing the corrugated metal pipe with concrete pipe, raising the principal spillway elevation one foot, and raising the top of dam 6.2 feet. About 3.5 acre-feet of sediment will be removed from the existing permanent pool. The auxiliary spillway will be widened an additional 40 feet.

Site 3–2 will be rehabilitated to high hazard class criteria by replacing the corrugated metal pipe with concrete pipe, raising the principal spillway elevation one foot, and raising the top of dam 5.5 feet. The auxiliary spillway will be widened an additional 40 feet. The rehabilitation of this site eliminates the threat to loss of life at one house from catastrophic dam failure.

Future residential and commercial development in the breach inundation areas of Sites 2–2 and 3–1 will be restricted. Downstream of Site 2–2 the Woodbury County Board of Supervisors will take fee title to the three lots following relocation of the houses. The sponsors may also add deed restrictions prohibiting development or use county zoning ordinances for these three lots. The balance of the breach inundation area beyond the acquired properties will be restricted by using county zoning ordinances. Restrictions will be enacted prior to any rehabilitation construction. County zoning ordinances will prohibit development in the upstream areas of each site, as defined from principal spillway elevation to an elevation of six feet above designed top of dam.

Effects of the Recommended Actions

- Threats to loss of life from catastrophic breaches and storm events are eliminated at Sites 2-2 and 3-2. Eleven people in four houses are protected.
- There are no cultural resources in the area of potential effect. Construction discoveries will be handled in accordance with NRCS General Manual, Section 420, part 401.
- Gully erosion remains controlled at all 3 sites. Sheet and rill erosion as well as ephemeral cropland gully erosion remains controlled.
- Flood control benefits are maintained for another 50 years on 366 acres of agricultural land.
- Sediment delivered to all three sites is trapped and not delivered to Farmers Drainage Ditch and Little Sioux River system. A total of five acre-feet of sediment will be removed during construction from Sites 2-2 and 3-1. This sediment will be used to top dress Site 3-1's borrow area and the area where the three houses are removed. A plan to remove, utilize, and stabilize the sediment by controlling erosion and runoff will be developed with consultation with the Iowa Department of Natural Resources.
- There are wetlands associated with the three pools. Raising the spillway elevation will deepen water over some wetlands. This deeper water will not eliminate any wetlands but it will change their classification to another type. The expanded pools will create new wetlands.
- No Threatened and Endangered species are present at the existing sites.
- Raising the principal spillway elevations of the structures will inundate an additional 1.5 acres of low value grassland habitat. Increasing the fill heights of the structures will impact 1.6 acres of low value grassland habitat. The area downstream of Site 2-2, where the three houses are removed, will be seeded to a mixed prairie seeding increasing this habitat type by 3.3 acres in the subwatershed. The impacts to grassland habitat have been determined to be not significant, therefore formal mitigation will not be required.
- Continued flood protection on 110 acres maintains the land as prime farmland.
- Soil erosion, especially gully erosion, will be controlled in this portion of the Loess Hills which are a nationally recognized and unique natural resource.
- Construction will result in temporary generation of dust and emissions from internal combustion engines.
- Local fishing opportunity will be maintained.
- No other significant adverse environmental impacts will occur from installation of project features.
- There are no existing or anticipated public controversies associated with this proposed action.

Alternative Actions

Other alternative actions were considered in the planning process but were rejected. The plan is the most acceptable to local residents and local project sponsors. The plan eliminates threats to loss of life from catastrophic breaches and storm events. The original project purposes of gully control and flood prevention are maintained. The plan is not the National Economic Development (NED) plan. An exception to selecting the NED plan was granted by the Chief of the NRCS on April 21, 2003.

Consultation and Public participation

The Woodbury County SWCD and the Woodbury County Board of Supervisors discussed and conducted official actions to support the rehabilitation of Sites 2-2, 3-1, and 3-2 at their respective public meetings in 2001. The sponsors indicated a clear interest in rehabilitating these three Glen Ellen sites. Representatives of the sponsors, the Woodbury County Secondary Road Department, and NRCS met on February 12, 2001, to discuss the dam hazard class changes and possible alternatives to resolve the situation. The road department agreed to investigate relocating a segment to Glen Ellen Road as a component of raising the dam at Site 2-2. A follow up meeting was held on June 13, 2001.

Iowa NRCS conducted a state level informational meeting on the Watershed Rehabilitation Program on October 30, 2001. More than 60 letters of invitation were mailed to state level representatives of state and federal agencies, tribes, conservation groups, agricultural groups and others. Discussion of the Glen Ellen project was included at the meeting.

Two public meetings were held in Sergeant Bluff on November 29, 2001 to inform the public about the rehabilitation needs on Sites 2-2, 3-1, and 3-2 in addition to gaining public

input and support for the planning process. The three homeowners downstream of Site 2-2 voiced strong support for voluntary relocation of their houses.

Individual meetings were held with the three homeowners downstream, of Site 2-2 on April 22, 2002. The homeowners confirmed their continued strong support for relocation and each indicated their intent to participate in relocation. The Woodbury County SWCD voted on April 16, 2002 to support the relocation alternative. On April 23, 2002, the Woodbury County Board of Supervisors voted to support the project by providing extensive in-kind services from their Planning and Zoning Department, Secondary Roads Department, and County Conservation Board.

Twenty Indian tribal contacts and two local historical societies were notified of this intended action in accordance with 36 CFR part 800. They were consulted about their knowledge of historical properties in the project area. The only response received during the comment period was from the Prairie Band Potawatomi Nation who stated they were unaware of cultural resources related to the tribe in the project area.

The Glen Ellen Subwatershed Draft Supplemental Watershed Plan and Environmental Assessment Number 1 was sent to 40 public agencies and private groups interested in natural resource issues. Six letters of comment were received during the 45-day review period ending on February 24, 2003.

Changes were made to the plan in response to the Woodbury County Zoning Administrator's comment on the use of deed restrictions in addition to zoning to prevent redevelopment on three lots downstream from Site 2-2. Clarifications were made to reflect impacts on wetlands in response to comments received from the Army Corps of Engineers.

Conclusion

The Environmental Assessment summarized above indicates that this Federal action will not cause significant impacts on the environment. Therefore, based on the above findings, I have determined that an environmental impact statement for the Glen Ellen Subwatershed Draft Supplemental Watershed Plan and Environmental Assessment Number 1 is not required.

Dated: April 30, 2003.

Dennis J. Pate,

Assistant State Conservationist—Technology.

[FR Doc. 03–11596 Filed 5–8–03; 8:45 am]

BILLING CODE 3410–16–M

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

Procurement List; Additions

AGENCY: Committee for Purchase from People Who Are Blind or Severely Disabled.

ACTION: Additions to procurement list.

SUMMARY: This action adds to the Procurement List services to be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities.

EFFECTIVE DATE: June 8, 2003.

ADDRESSES: Committee for Purchase From People Who Are Blind or Severely Disabled, Jefferson Plaza 2, Suite 10800, 1421 Jefferson Davis Highway, Arlington, Virginia 22202–3259.

FOR FURTHER INFORMATION CONTACT: Sheryl D. Kennerly, (703) 603–7740.

SUPPLEMENTARY INFORMATION: On January 10, March 14, and March 21, 2003, the Committee for Purchase From People Who Are Blind or Severely Disabled published notice (68 F.R.1434, 12340, and 13895) of proposed additions to the Procurement List.

After consideration of the material presented to it concerning capability of qualified nonprofit agencies to provide the services and impact of the additions on the current or most recent contractors, the Committee has determined that the services listed below are suitable for procurement by the Federal Government under 41 U.S.C. 46–48c and 41 CFR 51–2.4. I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organizations that will furnish the services to the Government.

2. The action will result in authorizing small entities to furnish the services to the Government.

3. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with the services proposed for addition to the Procurement List.

Accordingly, the following services are added to the Procurement List:

Services

Service Type/Location: Administrative, Mail/Messenger and Warehouse Service, Federal Highway Administration, Eastern Federal Lands Highway Division, Sterling, Virginia

NPA: Anchor Mental Health Association (Anchor Services Workshop), Washington, DC

Contract Activity: Federal Highway Administration, Sterling, Virginia

Service Type/Location: Custodial Service, Naval Air Facility, Camp Springs, Maryland, Naval Research Laboratory, Washington, DC, Washington Navy Yard, Anacostia Annex (ANA), Washington, DC, Washington Navy Yard, Washington, DC

NPA: Melwood Horticultural Training Center, Upper Marlboro, Maryland

Contract Activity: Engineering Field Activity Chesapeake, Washington Navy Yard, DC

Service Type/Location: Janitorial/Custodial, USCG, Sandy Hook Detachment, Highlands, New Jersey

NPA: Monmouth Center for Vocational Rehabilitation, Eatontown, New Jersey

Contract Activity: USCG Activities New York, Staten Island, New York

This action does not affect current contracts awarded prior to the effective date of this addition or options that may be exercised under those contracts.

Sheryl D. Kennerly,

Director, Information Management.

[FR Doc. 03–11593 Filed 5–8–03; 8:45 am]

BILLING CODE 6353–01–P

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

Procurement List; Proposed Additions

AGENCY: Committee for Purchase from People Who Are Blind or Severely Disabled.

ACTION: Proposed additions to Procurement List.

SUMMARY: The Committee is proposing to add to the Procurement List services to be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities.

COMMENTS MUST BE RECEIVED ON OR BEFORE: June 8, 2003.

ADDRESSES: Committee for Purchase From People Who Are Blind or Severely Disabled, Jefferson Plaza 2, Suite 10800, 1421 Jefferson Davis Highway, Arlington, Virginia 22202–3259.

FOR FURTHER INFORMATION CONTACT: Sheryl D. Kennerly, (703) 603–7740.

SUPPLEMENTARY INFORMATION: This notice is published pursuant to 41 U.S.C. 47(a)(2) and 41 CFR 51–2.3. Its purpose is to provide interested persons an opportunity to submit comments of the proposed actions. If the Committee approves the proposed additions, the entities of the Federal Government identified in the notice for each service will be required to procure the services listed below from nonprofit agencies employing persons who are blind or have other severe disabilities.

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. If approved, the action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organizations that will furnish the services to the Government.

2. If approved, the action will result in authorizing small entities to furnish the services to the Government.

3. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with the services proposed for addition to the Procurement List. Comments on this certification are invited.

Commenters should identify the statement(s) underlying the certification on which they are providing additional information.

The following services are proposed for addition to Procurement List for production by the nonprofit agencies listed:

Services

Service Type/Location: Custodial Service, Bureau of Engraving and Printing, Landover Warehouse Facility, Landover, Maryland

NPA: Davis Memorial Goodwill Industries, Washington, DC

Contract Activity: Bureau of Engraving, Department of the Treasury, Washington, DC

Service Type/Location: Custodial Service, Franklin D. Roosevelt Library, Hyde Park, New York

NPA: Gateway Community Industries, Inc., Kingston, New York

Contract Activity: National Archives & Records Administration, College Park, Maryland

Service Type/Location: Custodial Service, Overton Corner Border Station, Champlain, New York

NPA: Clinton County Chapter, NYSARC, Inc., Plattsburgh, New York

Contract Activity: GSA/PBS Upstate New York Service Center, Syracuse, New York

Service Type/Location: Custodial Service, U.S. Border Station, Old Champlain (Farm), Champlain, New York

NPA: Clinton County Chapter, NYSARC, Inc., Plattsburgh, New York

Contract Activity: GSA/PBS Upstate New York Service Center, Syracuse, New York

Service Type/Location: Forms Distribution Service, Department of Health and Human Services, Agency for Healthcare, Research and Quality (AHRQ), Rockville, Maryland

NPA: Sheltered Occupational Center of Northern Virginia, Inc., Arlington, Virginia

Contract Activity: Agency for Healthcare Research and Quality, Rockville, Maryland

Service Type/Location: Janitorial/Custodial, Carl B. Stokes Federal Courthouse, Cleveland, Ohio

NPA: VGS, Inc., Cleveland, Ohio

Contract Activity: GSA, Public Buildings Service (5P), Chicago, Illinois

Service Type/Location: Janitorial/Custodial, FAA, ATCT & FSDO, Gerald Ford International Airport, Grand Rapids, Michigan

NPA: Hope Network Services Corporation, Grand Rapids, Michigan

Contract Activity: Federal Aviation Administration, Des Plaines, Illinois

Service Type/Location: Janitorial/Custodial, U.S. Army Reserve Center, Flint, Michigan

NPA: Michigan Community Services, Inc., Swartz Creek, Michigan

Contract Activity: Headquarters, 88th Regional Support Command, Fort Snelling, Minnesota

Service Type/Location: Janitorial/Custodial, U.S. Army Reserve Center (Reading), Reading, Pennsylvania

NPA: Quality Employment Services and Training, Inc., Lebanon, Pennsylvania

Contract Activity: 99th Regional Support Command, Coraopolis, Pennsylvania

Service Type/Location: Janitorial/Grounds Maintenance, Bureau of Customs and Border Protection, McAllen Sector Quonset Hut, McAllen, Texas, Bureau of Customs and Border Protection, Traffic Checkpoint (Sarita)—McAllen Sector, Kingsville, Texas, Bureau of Customs and Border Protection, Traffic Checkpoint—McAllen Sector, Brownsville, Texas, Bureau of Customs and Border Protection, Traffic Checkpoint—McAllen Sector, Falfurrias, Texas, Bureau of Customs and Border Protection Traffic Checkpoint (Mercedes)—McAllen Sector, Weslaco, Texas, Bureau of Customs and Border Protection Station, Electronic/Technical, McAllen Sector, Kingsville, Texas, Bureau of Customs and Border Protection Station, McAllen Sector, Corpus Christi, Texas, Bureau of Customs and Border Protection Station (McAllen Sector), Falfurrias, Texas, Bureau of Customs and Border Protection Station (McAllen Sector), Harlingen, Texas, Bureau of Customs and Border Protection Station (McAllen Sector), Rio Grande City, Texas

NPA: Training, Rehabilitation, & Development Institute, Inc., San Antonio, Texas

Contract Activity: Immigration and Naturalization Service, DOJ

Sheryl D. Kennerly,

Director, Information Management.

[FR Doc. 03–11594 Filed 5–8–03; 8:45 am]

BILLING CODE 6353–01–P

DEPARTMENT OF COMMERCE

Submission for OMB Review; Comment Request

DOC has submitted to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35).

Agency: U.S. Census Bureau.

Title: Manufacturers' Shipments, Inventories, and Orders (M3) Survey.

Form Number(s): M–3(SD).

Agency Approval Number: 0607–0008.

Type of Request: Extension of a currently approved collection.

Burden: 14,000 hours.

Number of Respondents: 3,500.

Avg Hours Per Response: 20 minutes.

Needs and Uses: The U.S. Census Bureau is requesting an extension of the currently approved collection for the Manufacturers' Shipments, Inventories, and Orders (M3) survey. This survey collects monthly data from domestic manufacturers on Form M–3 (SD), which is mailed at the end of each month. Data requested are shipments, new orders, unfilled orders, total inventory, materials and supplies, work-in-process, and finished goods. It is currently the only survey that provides broad-based monthly statistical data on the economic conditions in the domestic manufacturing sector. It is designed to measure current industrial activity and to provide an indication of future production commitments.

This survey provides an essential part of the current economic indicators needed for assessing the evolving status of the economy and formulating economic policy. The Office of Information and Regulatory Affairs, Office of Management and Budget (OMB) has designated this survey as a principal federal economic indicator. The shipments and inventory data are essential inputs to the gross domestic product (GDP), while the orders data are direct inputs to the leading economic indicator series. The GDP and the economic indicator series would be incomplete without these data. The survey also provides valuable and timely domestic manufacturing data for economic planning and analysis to business firms, trade associations, research and consulting agencies, and the academia.

Affected Public: Business or other for-profit.

Frequency: Monthly.

Respondent's Obligation: Voluntary.

Legal Authority: Title 13 U.S.C., Sections 131 & 182.

OMB Desk Officer: Susan Schechter, (202) 395–5103.

Copies of the above information collection proposal can be obtained by calling or writing Diana Hynek, Departmental Paperwork Clearance Officer, (202) 482–0266, Department of Commerce, room 6625, 14th and Constitution Avenue, NW., Washington, DC 20230 (or via the Internet at *dhynek@doc.gov*).

Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to Susan Schechter, OMB Desk Officer either by fax (202–395–7245) or e-mail (*susan_schechter@omb.eop.gov*).

Dated: May 5, 2003.

Madeleine Clayton,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. 03–11495 Filed 5–8–03; 8:45 am]

BILLING CODE 3510–07–P

DEPARTMENT OF COMMERCE

[I.D. 050603A]

Submission for OMB Review; Comment Request

SUPPLEMENTARY INFORMATION: The Department of Commerce has submitted to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the emergency provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Agency: National Oceanic and Atmospheric Administration.

Title: Gulf of Mexico Shrimp Economic Data Collection.

Form Number(s): None.

OMB Approval Number: None.

Type of Request: Emergency submission.

Burden Hours: 134.

Number of Respondents: 120.

Average Hours Per Response: 52 minutes.

Needs and Uses: NOAA proposes to collect information on fishing vessel expenses and earnings on a voluntary and continuous basis in the Gulf of Mexico offshore shrimp fishery.

The information will be used to conduct socioeconomic analyses that will improve fishery management in the fishery. Used in conjunction with catch and effort data already being collected in this fishery as part of its dealer reporting program, as well as Coast Guard and fishing permit data on vessel characteristics, this data will be used to assess how fishermen will be impacted by and respond to any regulation likely to be considered by fishery managers.

In addition, this data will be used to determine how fishing communities will be impacted by proposed fishing regulations. In the program's first year, the program will only cover vessels that primarily port in the state of Texas. The data will be collected by interviews.

Affected Public: Business or other for-profit, individuals or households.

Frequency: One-time.

Respondent's Obligation: Voluntary.

OMB Desk Officer: David Rostker, (202) 395–3897.

Copies of the above information collection proposal can be obtained by calling or writing Diana Hynek, Departmental Paperwork Clearance Officer, (202) 482–0266, Department of Commerce, Room 6625, 14th and Constitution Avenue, NW, Washington, DC 20230 (or via the Internet at dHynek@doc.gov).

Written comments and recommendations for the proposed information collection should be sent by May 15, 2003 to David Rostker, OMB Desk Officer, Room 10202, New Executive Office Building, Washington, DC 20503.

Dated: May 1, 2003.

Gwellnar Banks,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. 03–11615 Filed 5–8–03; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

International Trade Administration

[A-201–817]

Administrative Review of Oil Country Tubular Goods from Mexico: Extension of Time Limit for Preliminary Results of Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: May 9, 2003.

FOR FURTHER INFORMATION CONTACT: Phyllis Hall at (202) 482–1398, or Abdelali Elouaradia at (202) 482–1374, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Ave, NW, Washington, DC 20230.

SUPPLEMENTARY INFORMATION:

Statutory Time Limits

Section 751(a)(3)(A) of the Tariff Act of 1930, as amended (the Act), requires the Department of Commerce (the Department) to make a preliminary determination within 245 days after the last day of the anniversary month of an order for which a review is requested, and a final determination within 120 days after the date on which the preliminary determination is published. However, if it is not practicable to complete the review within these time periods, section 751(a)(3)(A) of the Act allows the Department to extend the time limit for the preliminary determination to a maximum of 365 days and for the final determination to 180 days (or 300 days if the Department does not extend the time limit for the preliminary determination) from the date of publication of the preliminary determination.

Background

On September 25, 2002, the Department published in the **Federal Register** a notice announcing the initiation of an administrative review of the antidumping duty order on oil country tubular goods (OCTG) from Mexico. *See Initiation of Antidumping and Countervailing Duty Administrative Reviews and Requests for Revocation in Part*, 67 FR 60210. The period of review is August 1, 2001 through July 31, 2002. The preliminary results are currently due no later than May 5, 2003.

Extension of Time Limit for Preliminary Results of Review

The instant administrative review involves several complex issues that necessitate a greater amount of time, including discrepancies between the public version and proprietary version of U.S. Bureau of Customs and Border Protection import statistics. Therefore, it is not practicable to complete the preliminary results of this review within the original time limits mandated by section 751(a)(3)(A) of the Act. The Department is extending the time limit for completion of the preliminary results by 120 days, until not later than September 2, 2003.

This extension of the time limit is in accordance with sections 751(a)(3)(A) of the Act and 19 CFR 351.213(h)(2).

Dated: May 5, 2003.

Barbara E. Tillman,

Acting Deputy Assistant Secretary for Import Administration, Group III.

[FR Doc. 03–11617 Filed 5–8–03; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

Department of Health and Human Services, NIH; Notice of Decision on Application for Duty-Free Entry of Electron Microscope

This is a decision pursuant to section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89–651, 80 Stat. 897; 15 CFR part 301). Related records can be viewed between 8:30 a.m. and 5 p.m. in Suite 4100W, U.S. Department of Commerce, Franklin Court Building, 1099 14th Street, NW., Washington, DC.

Docket Number: 03–014. *Applicant:* Department of Health and Human Services, NIH, Research Triangle, NC 27709. *Instrument:* Electron Microscope, Model Tecnai G2 BioTWIN, BioTWIN Upgrade, and Accessories.

Manufacturer: FEI Company, The Netherlands. *Intended Use: See* notice at 68 FR 16472, April 4, 2003. *Order Date:* August 1, 2002.

Comments: None received. *Decision:* Approved. No instrument of equivalent scientific value to the foreign instrument, for such purposes as the instrument is intended to be used, was being manufactured in the United States at the time the instrument was ordered. *Reasons:* The foreign instrument is a conventional transmission electron microscope (CTEM) and is intended for research or scientific educational uses requiring a CTEM. We know of no CTEM, or any other instrument suited to these purposes, which was being manufactured in the United States at the time of order of the instrument.

Gerald A. Zerdy,

Program Manager, Statutory Import Programs Staff.

[FR Doc. 03–11619 Filed 5–8–03; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

Vanderbilt University; Notice of Decision on Application for Duty-Free Entry of Scientific Instrument

This decision is made pursuant to section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89–651, 80 Stat. 897; 15 CFR part 301). Related records can be viewed between 8:30 a.m. and 5 p.m. in Suite 4100W, U.S. Department of Commerce, Franklin Court Building, 1099 14th Street, NW., Washington, DC.

Docket Number: 03–010. *Applicant:* Vanderbilt University, Nashville, TN 37203. *Instrument:* Scanning Near-field Optical Microscope, Model AlphaSNOM. *Manufacturer:* Wissenschaftliche Instrumente und Technologie GmbH, Germany. *Intended Use: See* notice at 68 FR 14197, March 24, 2003.

Comments: None received. *Decision:* Approved. No instrument of equivalent scientific value to the foreign instrument, for such purposes as it is intended to be used, is being manufactured in the United States. *Reasons:* The foreign instrument provides: (1) A standard invertible microscope platform with multiple connections for lasers and detection ports, (2) resolution of 80 nm, (3) capability of switching readily among a wide variety of operating modes with minimal sample rearrangements and (4) optimal flexibility for operation in a multi-user environment. A university research institute advised May 1, 2003, that (1) these capabilities are pertinent to the applicant's intended purpose and (2) it knows of no domestic instrument or apparatus of equivalent scientific value to the foreign instrument for the applicant's intended use.

We know of no other instrument or apparatus of equivalent scientific value to the foreign instrument which is being manufactured in the United States.

Gerald A. Zerdy,

Program Manager, Statutory Import Programs Staff.

[FR Doc. 03–11618 Filed 5–8–03; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[C–427–815]

Stainless Steel Sheet and Strip in Coils From France: Preliminary Results of Second Countervailing Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of preliminary results of second countervailing duty administrative review.

SUMMARY: The Department of Commerce is conducting an administrative review of the countervailing duty order on stainless steel sheet and strip in coils from France for the period January 1, 2001, through December 31, 2001. We have preliminarily found that Usinor, the sole producer/exporter covered by this review, has received countervailable subsidies during the period of review.

Interested parties are invited to comment on these preliminary results.

EFFECTIVE DATE: May 9, 2003.

FOR FURTHER INFORMATION CONTACT: Jesse Cortes, Group I, Office 1, Import Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone (202) 482–3986.

SUPPLEMENTARY INFORMATION:

Case History

The Department published the countervailing duty order on stainless steel sheet and strip in coils from France on August 6, 1999. *See Amended Final Determination: Stainless Steel Sheet and Strip in Coils From the Republic of Korea; and Notice of Countervailing Duty Orders: Stainless Steel Sheet and Strip in Coils from France, Italy, and the Republic of Korea*, 64 FR 42923. The Department published the results of its first administrative review of the order on October 3, 2002. *See Stainless Steel Sheet and Strip in Coils from France: Final Results of Countervailing Duty Administrative Review*, 67 FR 62098 (*"First Review"*).

On August 6, 2002, the Department published a notice of "Opportunity to Request Administrative Review" of this countervailing duty order for calendar year 2001. *See Notice of Opportunity to Request Administrative Review of Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation*, 67 FR 50856. We received a review request from Ugine SA ("Ugine") on August 29, 2002. We published the initiation of this review on September 25, 2002. *See Initiation of Antidumping and Countervailing Duty Administrative Reviews, Requests for Revocation in Part and Deferral of Administrative Reviews*, 67 FR 60210.

On October 18, 2002, we issued countervailing duty questionnaires to the Commission of the European Union ("EC"), the Government of France ("GOF"), and Usinor. We received responses to our questionnaires on December 13, 2002 (EC), and December. 19, 2002 (GOF and Usinor). We issued a supplemental questionnaire to Usinor on February 24, 2003, and received Usinor's response on March 20, 2003. We received no comments on the responses from Allegheny Ludlum Corporation, AK Steel, Inc., North American Stainless, United Steelworkers of America, AFL–CIO/CLC, Butler Armco Independent Union, and Zanesville Armco Independent Organization ("petitioners").

Scope of the Review

The products covered by this countervailing duty order are certain stainless steel sheet and strip in coils. Stainless steel is an alloy steel containing, by weight, 1.2 percent or less of carbon and 10.5 percent or more of chromium, with or without other elements. The subject sheet and strip is a flat-rolled product in coils that is greater than 9.5 mm in width and less than 4.75 mm in thickness, and that is annealed or otherwise heat treated and pickled or otherwise descaled. The subject sheet and strip may also be further processed (*e.g.*, cold-rolled, polished, aluminized, coated, *etc.*) provided that it maintains the specific dimensions of sheet and strip following such processing.

The merchandise covered by this order is currently classifiable in the *Harmonized Tariff Schedule of the United States* ("HTSUS") at the following subheadings: 7219.13.00.30, 7219.13.00.50, 7219.13.00.70, 7219.13.00.80, 7219.14.00.30, 7219.14.00.65, 7219.14.00.90, 7219.32.00.05, 7219.32.00.20, 7219.32.00.25, 7219.32.00.35, 7219.32.00.36, 7219.32.00.38, 7219.32.00.42, 7219.32.00.44, 7219.33.00.05, 7219.33.00.20, 7219.33.00.25, 7219.33.00.35, 7219.33.00.36, 7219.33.00.38, 7219.33.00.42, 7219.33.00.44, 7219.34.00.05, 7219.34.00.20, 7219.34.00.25, 7219.34.00.30, 7219.34.00.35, 7219.35.00.05, 7219.35.00.15, 7219.35.00.30, 7219.35.00.35, 7219.90.00.10, 7219.90.00.20, 7219.90.00.25, 7219.90.00.60, 7219.90.00.80, 7220.12.10.00, 7220.12.50.00, 7220.20.10.10, 7220.20.10.15, 7220.20.10.60, 7220.20.10.80, 7220.20.60.05, 7220.20.60.10, 7220.20.60.15, 7220.20.60.60, 7220.20.60.80, 7220.20.70.05, 7220.20.70.10, 7220.20.70.15, 7220.20.70.60, 7220.20.70.80, 7220.20.80.00, 7220.20.90.30, 7220.20.90.60, 7220.90.00.10, 7220.90.00.15, 7220.90.00.60, and 7220.90.00.80.

Although the HTSUS subheadings are provided for convenience and customs purposes, the Department's written description of the merchandise under investigation is dispositive.

Excluded from the scope of this order are the following: (1) Sheet and strip that is not annealed or otherwise heat treated and pickled or otherwise descaled; (2) sheet and strip that is cut to length; (3) plate (*i.e.*, flat-rolled stainless steel products of a thickness of 4.75 mm or more); (4) flat wire (*i.e.*, cold-rolled sections, with a prepared edge, rectangular in shape, of a width of not more than 9.5 mm); and (5) razor blade steel. Razor blade steel is a flat-rolled product of stainless steel, not further worked than cold-rolled (cold-reduced), in coils, of a width of not more than 23 mm and a thickness of 0.266 mm or less, containing, by weight, 12.5 to 14.5 percent chromium, and certified at the time of entry to be used in the manufacture of razor blades. *See* Chapter 72 of the HTSUS, "Additional U.S. Note" 1(d).

Also excluded from the scope of this order are:

Flapper Valve Steel: Flapper valve steel is defined as stainless steel strip in coils containing, by weight, between 0.37 and 0.43 percent carbon, between 1.15 and 1.35 percent molybdenum, and between 0.20 and 0.80 percent manganese. This steel also contains, by weight, phosphorus of 0.025 percent or less, silicon of between 0.20 and 0.50 percent, and sulfur of 0.020 percent or less. The product is manufactured by means of vacuum arc remelting, with inclusion controls for sulphide of no more than 0.04 percent and for oxid of no more than 0.05 percent. Flapper valve steel has a tensile strength of between 210 and 300 ksi, yield strength of between 170 and 270 ksi, plus or minus 8 ksi, and a hardness (Hv) of between 460 and 590. Flapper valve steel is most commonly used to produce specialty flapper valves in compressors.

Suspension Foil: Suspension foil is a specialty steel product used in the manufacture of suspension assemblies for computer disk drives. Suspension foil is described as 302/304 grade or 202 grade stainless steel of a thickness between 14 and 127 microns, with a thickness tolerance of plus-or-minus 2.01 microns, and surface glossiness of 200 to 700 percent Gs. Suspension foil must be supplied in coil widths of not more than 407 mm and with a mass of 225 kg or less. Roll marks may only be visible on one side, with no scratches of measurable depth. The material must exhibit residual stresses of 2 mm maximum deflection and flatness of 1.6 mm. over 685 mm length.

Certain Stainless Steel Foil for Automotive Catalytic Converters: This stainless steel strip in coils is a speciality foil with a thickness of between 20 and 110 microns used to produce a metallic substrate with a honeycomb structure for use in automotive catalytic converters. The steel contains, by weight, carbon of no more than 0.030 percent, silicon of no more than 1.0 percent, manganese of no more than 1.0 percent, chromium of between 19 and 22 percent, aluminum of no less than 5.0 percent, phosphorus of no more than 0.045 percent, sulfur of no more than 0.03 percent, lanthanum of less than 0.002 or greater than 0.05 percent, and total rare earth elements of more than 0.06 percent, with the balance iron.

Permanent Magnet Iron-chromium-cobalt Alloy Stainless Strip: This ductile stainless steel strip contains, by weight, 26 to 30 percent chromium and 7 to 10 percent cobalt, with the remainder of iron, in widths 228.6 mm or less, and a thickness between 0.127 and 1.270 mm. It exhibits magnetic remanence between 9,000 and 12,000 gauss, and a coercivity of between 50 and 300 oersteds. This product is most commonly used in electronic sensors and is currently available under priorietary trade names such as "Arnokrome III."[1]

Certain Electrical Resistance Alloy Steel: This product is defined as a non-magnetic stainless steel manufactured to American Society of Testing and Materials (ASTM) specification B344 and containing, by weight, 36 percent nickel, 18 percent chromium, and 46 percent iron, and is most notable for its resistance to high-temperature corrosion. It has a melting point of 1390 degrees Celsius and displays a creep rupture limit of 4 kilograms per square millimeter at 1000 degrees Celsius. This steel is most commonly used in the production of heating ribbons for circuit breakers and industrial furnaces, and in rheostats for railway locomotives. The product is currently available under proprietary trade names such as "Gilphy 36."[2]

Certain Martensitic Precipitation-hardenable Stainless Steel: This high-strength, ductile stainless steel product is designated under the Unified Numbering System (UNS) as S45500-grade steel, and contains, by weight, 11 to 13 percent chromium and 7 to 10 percent nickel. Carbon, manganese, silicon and molybdenum each comprise, by weight, 0.05 percent or less, with phosphorus and sulfur each comprising, by weight, 0.03 percent or less. This steel has copper, niobium, and titanium added to achieve aging and will exhibit yield strengths as high as 1700 Mpa and ultimate tensile strengths as high as 1750 Mpa after aging, with elongation percentages of 3 percent or less in 50 mm. It is generally provided in thicknesses between 0.635 and 0.787 mm, and in widths of 25.4 mm. This product is most commonly used in the manufacture of television tubes and is currently available under proprietary trade names such as "Durphynox 17."[3]

Three Specialty Stainless Steels Typically Used in Certain Industrial Blades and Surgical and Medical Instruments: These include stainless steel strip in coils used in the production of textile cutting tools (*e.g.*, carpet knives).[4] This steel is similar to AISI grade 420 but containing, by weight, 0.5 to 0.7 percent of molybdenum. The steel also contains, by weight, carbon of between 1.0 and 1.1 percent, sulfur of 0.020 percent or less, and includes between 0.20 and 0.30 percent copper and between 0.20 and 0.50 percent cobalt. This steel is sold under proprietary names such as "GIN4 Mo."[5] The second excluded stainless steel strip in coils is similar to AISI 420–J2 and contains, by weight, carbon of between 0.62 and 0.70 percent, silicon of between 0.20 and 0.50 percent, manganese of between 0.45 and 0.80 percent, phosphorus of no more than 0.025 percent, and sulfur of no more than 0.020 percent. This steel has a carbide density on average of 100 carbide particles per 100 square microns. An example of this product is "GIN5" steel. The third specialty steel has a chemical composition similar to AISI 420 F, with carbon of between 0.37 and 0.43 percent, molybdenum of between 1.15 and 1.35 percent, but lower manganese of between 0.20 and 0.80 percent, phosphorus of no more than 0.025 percent, silicon of between 0.20 and 0.50 percent, and sulfur of no more than 0.020 percent. This product is supplied with a hardness of more than Hv 500 guaranteed after customer processing, and is supplied as, for example, "GIN6."

[1] "Arnokrome III" is a trademark of the Arnold Engineering Company.

[2] "Gilphy 36" is a trademark of Imphy, S.A.

[3] "Durphynox 17" is a trademark of Imphy, S.A.

[4] This list of uses is illustrative and provided for descriptive purposes only.

[5] "GIN4 Mo," "GIN5" and "GIN6" are the proprietary grades of Hitachi Metals America, Ltd.

Period of Review

The period of review ("POR") for which we are measuring subsidies is January 1, 2001, through December 31, 2001.

Attribution of Subsidies

Usinor has filed its responses on behalf of its French affiliates involved in the manufacture, production or exportation of the subject merchandise. These affiliates are: Ugine SA, Imphy Ugine Precision, Ugine France Service, Sollac Mediterrannee, Usinor Packaging, Sollac Lorraine, Sollac Atlantique, CARLAM, G. Fer, IRSID, and Usinor Stainless (hereafter collectively referred to as "Usinor"). Usinor holds a majority interest in all of these companies.

Changes in ownership

On February 2, 2000, the U.S. Court of Appeals for the Federal Circuit ("CAFC"), in *Delverde Srl* v. *United States*, 202 F.3d 1360, 1365 (Fed. Cir. 2000), *reh'g en banc denied*, 2000 U.S. App. LEXIS 15215 (June 20, 2000) ("*Delverde III*"), rejected the Department's change-in-ownership methodology as explained in the *General Issues Appendix*.[6]

In accordance with the CAFC's finding, the Department developed a new change-in-ownership methodology, which was applied in a redetermination resulting from a remand order by the Court of International Trade ("CIT") in *Allegheny-Ludlum Corp.* v. *United States*, No. 99–09–00566 (CIT August 15, 2000) ("*Allegheny I*"). *See final Results of Redetermination Pursuant to Court Remand: Allegheny-Ludlum Corp., et al* v. *United States* (Dept. of Commerce, December 20, 2000) ("*Redetermination I*"). In *Allegheny I*, the CIT reviewed the final determination which gave rise to the countervailing duty order covered by this review. In *Redetermination I*, the Department examined the privatization of Usinor and found that the pre-privatization subsidies continued to benefit subject merchandise exported to the United States after Usinor's privatization. Upon review of *Redetermination I*, the CIT again remanded the issue to the Department. *See Allegheny Ludlum Corp.* v. *United States*, 182 F. Supp. 2d 1357, 1369 (CIT 2002) ("*Allegheny II*").

On June 3, 2002, the Department issued its second *Results of Redetermination Pursuant to Court Remand: Allegheny Ludlum Corp., et al.* v. *United States* ("*Redetermination II*"), which the CIT sustained on September 24, 2002. *See Allegheny Ludlum Corp.* v. *United States*, No. 99–09–00566, 2002 Ct. Intl. Trade Lexis 114, Slip Op. 2002–114 (September 24, 2002) ("The *Allegheny Decision*"). The *Allegheny Decision* is currently on appeal at the CAFC. Usinor argues that the *Allegheny Decision* rejects as unlawful the change-in-ownership test applied by the Department in its *Redetermination I*. Pending a decision from the CAFC, however, we have continued to apply the same change-in-ownership methodology employed in *Redetermination I* in these preliminary results.

Therefore, in accordance with 19 CFR 351.525(b)(6)(iii), we have preliminarily attributed subsidies received by these companies to the total sales by Usinor of French-produced merchandise.

The first step under this methodology is to determine whether the legal person (entity) to which the subsidies were given is, in fact, distinct from the legal person that produced the subject merchandise exported to the United States. If we determine the two persons are distinct, we then analyze whether a subsidy has been provided to the purchasing entity as a result of the change-in-ownership transaction. If we find, however, that the original subsidy recipient and the current producer/exporter are the same person, then that person benefits from the original subsidies, and its exports are subject to countervailing duties to offset those subsidies. In other words, we will determine that a "financial contribution" and a "benefit" have been received by the "person" under investigation. Assuming that the original subsidy has not been fully amortized under the Department's normal allocation methodology as of the POI, the Department would then continue to countervail the remaining benefits of that subsidy.

In making the "person" determination, where appropriate and applicable, we analyze factors such as (1) continuity of general business operations, including whether the successor holds itself out as the continuation of the previous enterprise, as may be indicated, for example, by use of the same name, (2) continuity of production facilities, (3) continuity of assets and liabilities, and (4) retention of personnel. No single factor will necessarily provide a dispositive indication of any change in the entity under analysis. Instead, the Department will generally consider the post-sale person to be the same person as the pre-sale person if, based on the totality of the factors considered, we determine the entity in question can be considered a continuous business entity because it was operated in substantially the same manner before and after the change in ownership.

Usinor's Privatization

Up until the time of Usinor's privatization, Usinor was owned (directly or indirectly) by the GOF. Usinor was privatized beginning in July 1995, when the GOF and Clindus offered the vast majority of their shares in the company for sale. Clindus was a subsidiary of Credit Lyonnais, which at that time was controlled by the GOF. After the privatization and, in particular, by the end of calendar year 1997, 82.28 percent of Usinor's shares

[6] *Final Affirmative Countervailing Duty Determination: Certain Steel Products from Austria*, 58 FR 37217, 37225 (July 9, 1993).

were held by private shareholders who could trade them freely. Usinor's employees owned 5.16 percent of Usinor's shares; Clindus, 2.5 percent; and, the GOF, 0.93 percent. The remaining 14.29 percent of Usinor's shares were held by the so-called "Stable Shareholders." According to Usinor's 2000 annual report, the government-owned Electricite de France continues to own 3.6 percent of Usinor's shares.

In analyzing whether the producers of merchandise subject to review is the same business entity as pre-privatization Usinor, we have examined whether Usinor continued the same general business operations, retained production facilities, had a continuity of assets and liabilities, and retained the personnel of the pre-privatization Usinor. Based on our analysis, we have concluded that the privatized Usinor is, for all intents and purposes, the same person as the GOF-owned steel producer of the same name which existed prior to the privatization. Consequently, the subsidies bestowed on Usinor prior to its 1995 privatization are attributable to present-day Usinor and continue to benefit the subject merchandise during the POR.

1. Continuity of General Business Operations

Usinor has produced the same products and remained the same corporation at least since the late 1980s. In 1987, Usinor became the holding company for the French steel groups, Usinor and Sacilor (the GOF had majority ownership of both Usinor and Sacilor beginning in 1981). Usinor's principal businesses covered flat products, stainless steel and alloys, and specialty products. In 1994, these three product groups were produced by three subsidiaries: Sollac, Ugine and Aster (respectively). *See* Usinor 12/19/2002 Questionnaire Response, Exhibit 6 at 46. This same structure continued after Usinor's privatization in 1995. Usinor's organizational chart during the original investigation shows the same three major products being produced by the same three subsidiaries. *See Final Affirmative Countervailing Duty Determination: Stainless Steel Sheet and Strip in Coils from France*, 64 FR 30774, 30776 (June 8, 1999) ("*SSSS from France*").

In 1994 (prior to the privatization), flat products constituted 55 percent of consolidated sales, while stainless and specialty products constituted 20 and 18 percent respectively. *See* Usinor 12/19/2002 Questionnaire Response, Exhibit 6 at 47. In the years following privatization (1995–2000), flat carbon steels continued to account for between 49 and 58 percent of Usinor's consolidated net sales. *See Stainless Steel Sheet and Strip in Coils from France; Preliminary Results of Countervailing Duty Administrative Review*, 67 FR 31774, 31776 (May 10, 2002) ("*First Review Prelim*"). Sales of stainless and alloy, and specialty steel accounted for between 23 and 25 percent, and between 19 and 21 percent, respectively, during the post-privatization years, 1995 through 1997. Since then, sales of stainless, alloy, and specialty steel have been combined in Usinor's annual report and a separate category has been reported for "processing and distribution." The combined sales of stainless, alloy and specialty steel ranged from 21 to 28 percent of Usinor's consolidated net sales over the period 1998–2000, while processing and distribution ranged from 6 to 18 percent over the same period. *See Id.* In 1999, Usinor divested itself of its specialty steels business.

We have also examined whether post-privatization Usinor held itself out as the continuation of the previous enterprise (*e.g.*, by retaining the same name). In this instance, Usinor retained its same name and there is no indication that the privatized company held itself out as anything other than a continuation of pre-privatization Usinor.

The continuity of Usinor's business operations is also reflected in Usinor's customer base. Prior to privatization, the automobile industry was a principal purchaser of Usinor's output, accounting for approximately 30 percent of Usinor's sales in 1994 and the construction industry was its second largest purchaser, accounting for approximately 26 percent of Usinor's sales in 1994. *See* Usinor 12/19/2002 Questionnaire Response, Exhibit 6, 17–18. In 1997 and 2000, the automobile industry was still Usinor's major customer (36 percent of Usinor's sales in 1997 and 38 percent in 2000). The construction industry has continued as the second largest purchaser: 23 percent in 1997, and 15 percent in 2000. *See First Review Prelim*, 67 FR at 31777.

2. Continuity of Production Facilities

Neither product lines nor production capacity changed as a result of the privatization, except those changes that occurred in an ongoing manner in the ordinary course of business. No facilities or production lines were added or eliminated specifically as a result of the sale. A comparison of the Prospectus for the 1995 privatization and Usinor's 1997 Annual Report demonstrates that steel production facilities have remained intact. The company has continued to focus on an "all steel" strategy, engaging in all aspects of the steel production process and produces a wide variety of steel products. Finally, Usinor's steel production facilities did not change their physical locations.

3. Continuity of Assets and Liabilities

Usinor was sold intact, with all of its assets and liabilities. *See* Usinor 12/19/2002 Questionnaire Response, Exhibit 21 and *First Review Prelim*, 67 FR at 31777. While the GOF continued to own a small percentage of Usinor's shares, there is no indication that it retained any of Usinor's assets or liabilities.

4. Retention of Personnel

Usinor's Articles of Incorporation changed as a result of the privatization, and the new Articles of Incorporation specified new procedures for electing the Board of Directors. New directors were elected to the Board under the new procedures. However, Usinor's Chairman and Chief Executive Officer remained the same before and after the privatization. Similarly, Usinor's workforce did not change. *See First Review Prelim*, 67 FR at 31777.

Therefore, based on the facts and our analysis of a variety of relevant factors, once privatized, Usinor continued to operate, for all intents and purposes, as the same person that existed prior to the privatizaton and, thus, the pre-privatization subsidies continued to benefit Usinor even under private ownership.

Use of Facts Available

Sections 776(a)(2)(A) and (B) of the Tariff Act of 1930, as amended by the Uruguay Round Agreements Act, effective January 1, 1995 ("the Act"), require the use of facts available when an interested party withholds information requested by the Department, or when an interested party fails to provide information required in a timely manner and in the format requested. In selecting from among facts available, section 776(b) of the Act provides that the Department may use an inference adverse to the interests of a party if the Department determines that the party has failed to cooperate to the best of its ability. Such adverse inference may include reliance on information derived from (1) the petition; (2) a final determination in a countervailing duty or an antidumping duty investigation; (3) any previous administrative review, new shipper review, expedited antidumping review, section 753 or 762 review; or (4) any other information placed on the record. *See* section 776(b) of the Act; *see also*, 19 CFR 351.308(a), (b), and (c).

Section 782(d) of the Act requires the Department to inform a respondent if there are deficiencies in its responses and allow it a reasonable time to correct these deficiencies before the Department applies facts available. Even if the information provided is deficient, if it is usable without undue difficulty, is timely, is verifiable, can serve as a reliable basis for reaching our determination, and if the party has cooperated to the best of its ability in providing responses to the Department's questionnaires, section 782(e) of the Act directs the Department not to decline to consider deficient submissions.

In the present review, the GOF did not provide information regarding the specificity of benefits under certain programs included under Investment/Operating Subsidies reported by Usinor. Instead, the GOF responded that "in view of the multiplicity of programs, the noncountervailability of several of them, and the small amounts involved, the GOF has not undertaken to provide the requested documentation." *See* GOF Questionnaire Response, dated December 19, 2002, at 6–7. Similarly, the GOF was asked to provide this information in the investigation segment of this proceeding and elected not to do so. *See SSSS from France*, 64 FR at 30779–80. Thus, the GOF is aware of the specific information needed by the Department and apparently possesses responsive information, but has declined to provide it in response to our questionnaires.

Given these circumstances, the Department preliminarily has determined to apply facts available, pursuant to section 776(a)(2)(A) of the Act. Further, we preliminarily find that an adverse inference is warranted in applying facts available because, as noted above, the GOF elected not to provide information which it could provide and, hence, has not acted to the best of its ability. Verification, if one is conducted, is not the appropriate means for gathering this information.

Because the GOF did not provide information about these programs, including the distribution of benefits under the programs, the Department is unable to make specificity findings. Therefore, in applying adverse facts available, we preliminarily find that these programs are *de facto* specific. *See* section 771(5A)(D)(ii) of the Act. (Our analysis of the financial contribution and benefit under these programs is discussed below under "Investment/Operating Subsidies.")

Subsidies Valuation Information

Allocation Period

Pursuant to 19 CFR 351.524(b), non-recurring benefits are allocated over a period corresponding to the average useful life ("AUL") of the renewable physical assets used to produce the subject merchandise. Section 351.524(d)(2) of the regulations creates a rebuttable presumption that the AUL will be taken from the U.S. Internal Revenue Service's 1977 Class Life Asset Depreciation Range System ("the IRS Tables"). For stainless steel sheet and strip in coils, the IRS Tables prescribe an AUL of 15 years.

To rebut the presumption in favor of the IRS tables, the challenging party must demonstrate that the IRS tables do not reasonably reflect the company-specific AUL or the country-wide AUL for the industry in question, and that the difference between the company-specific or country-wide AUL and the IRS tables is significant. *See* 19 CFR 351.524(d)(2)(i). For this difference to be considered significant, it must be one year or greater. *See* 19 CFR 351.524(d)(2)(ii).

In this proceeding, Usinor has calculated a company-specific AUL of 12 years. *See* Usinor 12/19/2002 Questionnaire Response, Exhibit 26. We note, however, that the one allocable subsidy received by Usinor and attributed to Ugine, bonds issued by Fonds d'Intervention Sidérurgique (steel intervention fund) ("FIS"), has previously been allocated over a company-specific AUL of 14 years. The 14-year AUL was calculated in a remand determination involving the *Final Affirmative Countervailing Duty Determination: Certain Steel Products from France*, 58 FR 37304 (July 9, 1993) ("*French Certain Steel*") and was subsequently used to allocate this same subsidy in *SSSS from France* (64 FR at 30778) and *Final Affirmative Countervailing Duty Determination: Certain Cut-to-Length Carbon-Quality Steel Plate From France*, 64 FR 73277, 73280 (December 29, 1999) ("*French Plate*"). Because the 14-year AUL was calculated using company-specific information and the information is more contemporaneous with the bestowal of the subsidy in question than the information underlying Usinor's 12-year calculation, we have continued to use the 14-year AUL to allocate the benefits of the FIS Bonds in this proceeding.

For non-recurring subsidies to Usinor, we applied the "0.5 percent expense test" described in 19 CFR 351.524(b)(2). Under this test, we compare the amount of subsides approved under a given program in a particular year to sales (total or export, as appropriate) in that year. If the amount of subsides is less than 0.5 percent of sales, the benefits are expensed in full in the year of receipt rather than allocated over the AUL period.

Equityworthiness and Creditworthiness

In *French Certain Steel* and *SSSS from France*, we found Usinor to be unequityworthy from 1986 through 1988 and uncreditworthy from 1982 through 1988. *See French Certain Steel*, 58 FR 37304, 37305; *SSSS from France*, 64 FR 30774, 30778. No new information has been presented in this review to warrant a reconsideration of these findings. Therefore, based upon these previous findings of unequityworthiness and uncreditworthiness, in this review, we continue to find Usinor unequityworthy and uncreditworthy from 1987 through 1988, the years relevant to this proceeding.

Benchmarks for Loans and Discount Rates

As discussed above, we have determined that Usinor was uncreditorthy in 1988, the only year in which it received a countervailable subsidy which is being allocated over time.

In accordance with 19 CFR 341.524(d)(3)(ii), the discount rate for companies considered uncreditworthy is the rate described in 19 CFR 351.505(a)(3)(iii). To calculate that rate, the Department must specify values for four variables: (1) The probability of default by an uncreditworthy company; (2) the probability of default by a creditworthy company; (3) the long-term interest rate for creditworthy borrowers; and (4) the term of the debt.

For the probability of default by an uncreditworthy company, we have used the average cumulative default rates reported for the Caa- to C-rated category of companies as published in Moody's Investors Service, "Historical Default Rates of Corporate Bond Issuers, 1920–1997" (February 1998). For the probability of default by a creditworthy company, we used the cumulative default rates for investment grade bonds as published in Moody's Investor Service's: "Statistical Tables of Default Rates and Recovery Rates" (February 1998). For the commercial interest rate charged to creditworthy borrowers, we used the average of the following long-term interest rates: medium-term credit to enterprises, equipment loan rates as published by the OECD, cost of credit rates published in the *Bulletin of Banque de France*, and private sector bond rates as published by the

International Monetary Fund. For the term of the debt, we used the AUL period for Usinor, as the equity benefits are being allocated over that period.

To measure the benefit from reimbursable advances received by Usinor, we relied on an average long-term interest rate developed in *SSSC from France* for 1989, and on Usinor's company's-specific borrowing rate for 1995.

I. Programs Preliminarily Found To Be Countervailable

A. FIS Bonds

The 1981 Corrected Finance Law granted Usinor the authority to issue convertible bonds. In 1983, the FIS was created to implement that authority. In 1983, 1984, and 1985, Usinor issued convertible bonds to the FIS, which in turn, with the GOF's guarantee, floated the bonds to the public and to institutional investors. These bonds were converted to common stock in 1986 and 1988.

In several previous cases, the Department has treated these conversions of Usinor's FIS Bonds into equity as countervailable equity infusions. *See French Certain Steel*, 58 FR at 37307; *French Plate*, 64 FR at 73282; *SSSS from France*, 64 FR at 30779; and *Final Affirmative Countervailing Duty Determinations: Certain Hot Rolled Lead and Bismuth Carbon Steel Products From France*, 58 FR 6221, 6224 (January 27, 1997). These equity infusions were limited to Usinor and were, therefore, specific as a matter of law within the meaning of section 771(5A)(D)(i) of the Act. Also, these equity infusions provided a financial contribution to Usinor within the meaning of section 771(5)(D)(i) of the Act. Finally, because Usinor was unequityworthy at the time of the infusions, we find that Usinor received benefit in the amount of the investments. *See* Section 771(5)(E)(i) of the Act.

No new information or evidence of changed circumstances has been submitted in this proceeding to warrant a reconsideration of our past findings. Therefore, we find that a countervailable benefit is being bestowed on the subject merchandise. Because the final year of the benefit stream for the 1986 infusion was 1999, *i.e.*, prior to this POR, we find that there is no countervailable benefit to the subject merchandise in this POR for the 1986 conversion. Thus, only the 1988 equity infusion continues to provide a benefit in the POR.

Pursuant to 19 CFR 351.507(c), we have treated the 1988 equity infusion as a non-recurring subsidy and allocated it over time according to 19 CFR 351.524(d). Because Usinor was uncreditworthy in 1988 (*see* section above on "Subsidies Valuation Information: Equityworthiness and Creditworthiness"), we used an uncreditorworthy discount rate to allocate the benefit of the equity infusion.

In *French Plate*, we attributed separately to Usinor and GTS Industries S.A. their relative portions of the benefits from the equity infusion. *See French Plate*, 64 FR at 733282. We have continued to do so in this proceeding. We note, however, that the amount attributed to the respective companies differs from the amounts in *French Plate*. This is because of the revisions to the Department's change-in-ownership methodology since the *French Plate* determination as described in the "Changes in Ownership" section above.

Dividing the POR benefit attributed to Usinor by Usinor's total sales of French-produced merchandise during the POR, we preliminarily find Usinor's net subsidy rate for this program to be 1.06 percent *ad valorem*.

B. Investment/Operating Subsidies

During the period 1987 through the POR, Usinor received a variety of small investment and operating subsidies from various GOF agencies and from the European Coal and Steel Community ("ECSC"). These subsidies were provided to Usinor for research and development, projects to reduce work-related illnesses and accidents, projects to combat water pollution, etc. The subsidies are classified as investment, equipment, or operating subsidies in the company's accounts, depending on how the funds are used.

In *SSSS from France* and *French Plate*, the Department determined that the funding provided to Usinor by the water boards (*les agences de l'eau*) and certain work/training grants were not countervailable. *See SSSS from France*, 64 FR at 30779, 30788; *French Plate*, 64 FR at 73282. Additionally, in the *First Review*, the Department also found that funding provided under ECSC Article 55 was not countervailable. *See First Review*, 67 FR 62098, and accompanying "Issues and Decision Memorandum," at Comment 5. Consistent with these previous findings, we have excluded these particular subsidies from the calculation of the benefit under this program.

Other than the exclusions noted above, we preliminarily find that the investment and operating subsidies provide a financial contribution, as described in section 771(5)(D)(i) of the Act, and a benefit, as described in section 771(5)(E)(i) of the Act. Also, as discussed above under "Use of Facts Available," we preliminarily find that these investment and operating subsidies are specific within the meaning of section 771(5A)(D)(ii) of the Act. Therefore, consistent with *SSSS from France*, 64 FR at 30779, and *French Plate*, 64 FR at 73282, we preliminary find that these investment and operating subsidies are countervailable subsidies.

The investment and operating subsidies provided through 2000 have already been determined to be less than 0.5 percent of Usinor's sales of French-produced merchandise in the relevant year. *See SSSS from France*, 64 FR at 30780; *French Plate*, 64 FR at 73283; and the *First Review*, 67 FR at 62098, and accompanying "Issues and Decision Memorandum," at 3–4. Therefore, these benefits were expensed in the years of receipt, in accordance with 19 CFR 351.524(b)(2).

To calculate the benefit received during the POR, we divided the subsidies received by Usinor in the POR by Usinor's total sales of French-produced merchandise during the POR. Accordingly, we preliminarily find Usinor's net subsidy rate for this program to be 0.04 percent *ad valorem*.

C. Funding for Myosotis Project

In *SSSS from France*, we explained that Usinor received grants and reimbursable advances from the GOF to fund the Myosotis project under three agreements. We found that the amounts received by Usinor between 1989 and 1993 were properly expensed in the years of receipt and, hence, that there was no countervailable subsidy to the subject merchandise from these grants. We also found that, under the 1995 agreement, Usinor received a reimbursable advance from the GOF in support of the Myosotis project in 1997. *See SSSS from France*, 64 FR at 30780. In the prior review, Usinor reported that it received another advance in 1999 under the same 1995 agreement. The 1997 and 1999 advances were to be repaid in 1999 and 2001, respectively. *See First Review Prelim*, 67 FR at 31779.

In the instant review, Usinor reported that it recognized the entire 1999 advance as a grant during the POR. *See* Usinor 12/19/2002 Questionnaire Response at 34. The GOF reported that Usinor made a partial repayment on the balance outstanding from the 1997 advance. *See* GOF 12/19/2002 Questionnaire Response at 9.

As we established in the *First Review Prelim*, regardless of whether we treat the 1997 reimbursable advance as a grant, which would have been expensed prior to the POR, or a zero-interest long-term loan, which would yield a benefit of zero during the POR (when rounded to the nearest hundredth), we continue to find that the 1997 reimbursable advance does not confer a countervailable benefit on subject merchandise during the POR. *See First Review Prelim*, 67 FR 31744, 31779.

With regard to the conversion of the 1999 reimbursable advance into a grant during the POR, this conversion constitutes a financial contribution within the meaning of section 771(5)(D)(i) of the Act and confers a benefit in the amount of the grant under 19 CFR 351.504. The Department determined in *SSSS from France* that assistance to Usinor for the Myosotis Project was specific. *See SSSS from France*, 64 FR at 30780. We have treated the benefit of the conversion as having occurred during the POR. We divided the total amount of the grant portion of the 1999 advance by Usinor's total sales of French-produced sales during the POR (*i.e.*, the year in which the 1999 reimbursable advance was converted to and approved as a grant). The result was less than 0.5 percent. Therefore, we have expensed the entire amount of the converted 1999 reimbursable advance (*i.e.*, the grant amount) during the POR. *See* 19 CFR 351.524(b)(2). To calculate the benefit, we divided the amount of the grant by Usinor's total sales of French-produced merchandise during the POR, consistent with the provisions of 19 CFR 351.504.

Therefore, we preliminarily find Usinor's net subsidy rate for the 2001 conversion of the 1999 reimbursable grant under this program to be 0.01 percent *ad valorem*.

II. Programs Preliminarily Found To Be Not Countervailable

A. Loans With Special Characteristics (PACS)

In *SSSS from France*, we determined that Usinor received a countervailable subsidy as a result of the GOF's 1986 conversions of PACS into common shares of Usinor. *See SSSS from France*, 64 FR at 30779. Because the final year of the benefit stream for this subsidy was 1999, *i.e.*, prior to this POR, we preliminarily find that there is no countervailable benefit to the subject merchandise in the POR.

B. Shareholders' Advances

In *SSSS from France*, we determined that Usinor received a countervailable subsidy as a result of shareholder advances made by the GOF in 1982–1986. *See SSSS from France*, 64 FR at 30779. Because the final year of the benefit streams for these advances was 1999, *i.e.*, prior to this POR, we preliminarily find that there is no countervailable benefit to the subject merchandise in the POR.

C. Electric Arc Furnace

In *SSSS from France*, we explained that the GOF had agreed to provide Usinor with reimbursable advances to support the company's efforts to increase the efficiency of the melting process, the first stage in steel production. *See SSSS from France*, 64 FR at 30780. Because the first disbursements were not to be made until 1998, *i.e.*, after the POI in *SSSS from France*, the Department found no benefit during the POI. *See SSSS from France*, 64 FR at 30780. In *French Plate*, the Department also found no benefit during the POI (1998), because the reimbursable advance was treated as a contingent liability loan and no payment would be due on a comparable commercial loan until 1999. *See French Plate*, 64 FR at 73284.

In the present review, Usinor reported that it received reimbursable advances under this program in 1998 and 1999, and that the program was phased out in 1999 and 2000. *See* Usinor 12/19/2002 Questionnaire Response at 35–36. These advances were approved in 1995, with repayments in 2002 and 2005, respectively. Usinor further reported that no new advances were received during the POR. *See* Usinor 12/19/2002 Questionnaire Response at 36.

We divided the total amount approved by the GOF for this project by Usinor's total sales of French-produced merchandise in 1995, the year the reimbursable advances were approved. The result was less than 0.5 percent. Therefore, if these reimbursable advances were treated as grants, they would be expensed prior to the POR. *See* 19 CFR 351.505(d)(2) and 351.524(b)(2). Alternatively, we calculated the possible benefit to Usinor if the reimbursable advances were treated as zero-interest long-term loans. *See* 19 CFR 351.505(d)(1). The benefit (when rounded to the nearest hundredth) is zero during the POR.

Therefore, we have not analyzed these reimbursable advances further and preliminarily find that they do not confer a countervailable benefit on the subject merchandise during the POR.

D. Conditional Advances

In *SSSS from France*, we explained that Usinor received a conditional advance from the GOF in connection with a project aimed at developing a new type of steel used in the production of catalytic converters. *See SSSS from France*, 64 FR at 30780. Payments were received by Usinor in 1992 and 1995. Repayment of the conditional advance was contingent upon sales of the product resulting from the project exceeding a set amount. We found that no repayment had been made and we treated the advance as a countervailable short-term, interest-free loan. In the present review, Usinor reported a balance outstanding in the POR and that it received no new assistance under this program. *See* Usinor 12/19/2002 Questionnaire Response at 32.

Assuming the conditional advance was approved in either 1991 or 1992, we divided the total amount received by Usinor's total sales of French-produced merchandise in each of those years. The result in both instances was less than 0.5 percent. Therefore, if the conditional advance were treated as a grant, it would have been expended prior to the POR. *See* 19 CFR 351.505(d). Alternatively, we have calculated the possible benefit to Usinor if the outstanding amount of the conditional advance were treated as a zero-interest long-term loan. *See* 19 CFR 351.505(d)(1). The benefit (when rounded to the nearest hundredth) is zero during the POR.

Therefore, we have not analyzed the conditional advance further and preliminarily find that it does not confer a countervailable benefit on the subject merchandise during the POR.

III. Programs Preliminary Found To Be Not Used

Based on the information provided in the responses, we find that neither Usinor nor its affiliated companies that produce subject merchandise received benefits under the following programs during the POI:

A. ESF Grants

In *SSSS from France* and *French Plate*, we found that certain Usinor companies had received grants under the European Social Fund ("ESF") for worker training, and that the grants provided countervailable subsidies. Normally, the Department treats benefits from worker training programs to be recurring. *See* CFR 351.524(c)(1). However, we have found in several cases that ESF grants relate to specific, individual projects that require separate approval and, hence, should be treated as non-recurring grants. *See, e.g., SSSS from France*, 64 FR at 30781; *Final Affirmative Countervailing Duty Determination: Certain Stainless Steel Wire Rod from Italy*, 63 FR 40474, 40488 (July 29, 1998).

Because ESF grants are non-recurring subsidies and potentially allocable over time, we reviewed *SSSS from France* and *French Plate* regarding past disbursements to Usinor under this program. In *SSSS from France*, we determined that ESF grants received in 1995 and 1997 were less than 0.5 percent of Ugine's sales in those years. Hence, the benefits of those ESF grants were expensed in the years of receipt. *See SSSS from France*, 64 FR 30781. In *French Plate*, an ESF grant received in 1998 by CLI, a Usinor subsidiary, was also expensed in the year of receipt. In the *First Review*, we determined that the program was not used in 2000. *See First Review*, 67 FR at 62098, and the accompanying "Isseus and Decision Memorandum," at "Programs Determined To Be Not Used." Therefore, we find that ESF grants received by Usinor and its affiliates prior to the POR do not confer a countervailable benefit on the subject merchandise during the POR. Moreover, in the present review, Usinor reported that it did not receive any additional ESF grants during the POR. *See* 12/19/2002 Response at 36.

B. Export Financing under Natexis Banque Programs

C. DATAR Regional Development Grants (PATs)

D. DATAR 50 Percent Taxing Scheme

E. DATAR Tax Exemption for Industrial Expansion

F. DATAR Tax Credit for Companies Located in Special Investment Zone

G. DATAR Tax Credits for Research

H. GOF Guarantees

I. Long-term Loans from CFDI

J. Resider I and II Programs

K. Youthstart

L. ECSC Article 54 Loans

M. ECSC Article 56(2)(b) Redeployment/ Readaptation Aid

N. ERDF Grants

Preliminary Results of Review

In accordance with 19 CFR 351.221(b)(4)(i), we calculated an individual subsidy rate for Usinor. For the period January 1, 2001, through December 31, 2001, we preliminarily find Usinor's net subsidy rate to be 1.11 percent. The calculations will be disclosed to the interested parties in accordance with section 351.224(b) of the regulations.

If the final results of this review remain the same as these preliminary results, the Department intends to instruct the U.S. Bureau of Customs and Border Protection ("BCBP") to collect cash deposits of estimated countervailing duties at the rate of 1.11 percent on the f.o.b. value of all shipments of the subject merchandise from Usinor and its affiliates that are entered, or withdrawn from warehouse, for consumption on or after the date of publication of the final results of this administrative review.

For companies that were not named in our notice initiating this administrative review, we will instruct BCBP to collect cash deposits of estimated countervailing duties at the most recent company-specific or country-wide rate applicable to the company. Accordingly, the cash deposit rates that will be applied to non-reviewed companies covered by this order are those established in the *Amended Final Determination: Stainless Steel Sheet and Strip in Coils From the Republic of Korea; and Notice of Countervailing Duty Orders: Stainless Steel Sheet and Strip in Coils From France, Italy, and the Republic of Korea*, 64 FR 42923 (August 6, 1999). These rates shall apply to all non-reviewed companies until a review of a company assigned these rates is requested.

While the countervailing duty deposit rate for Usinor and its affiliates may change as a result of this administrative review, we have been enjoined from liquidating any entries of the subject merchandise after August 6, 1999. Consequently, we do not intend to issue liquidation instructions for these entries until such time as the injunction, issued on December 22, 1999, is lifted.

Public Comment

Interested parties may submit written arguments in case briefs within 30 days of the date of publication of this notice. *See* 19 CFR 351.309(c)(ii). Rebuttal briefs, limited to issues raised in case briefs, may be filed not later than five days after the date of filing the case briefs. 19 CFR 351.309(d)(1). Parties who submit briefs in this proceeding should provide a summary of the arguments not to exceed five pages and a table of statutes, regulations, and cases cited. Copies of case briefs and rebuttal briefs must be served on interested parties in accordance with 19 CFR 351.303(f).

Interested parties may request a hearing within 30 days after the date of publication of this notice. Any hearing, if requested, ordinarily will be held two days after the scheduled date for submission of rebuttal briefs. 19 CFR 351.310(c).

Representatives of parties to the proceeding may request disclosure of proprietary information under administrative protective order no later than 10 days after the representative's client or employer becomes a party to the proceeding, but in no event later than the date the case briefs, under 19 CFR 351.309(c)(ii), are due. 19 CFR 351.305(b).

The Department will publish a notice of the final results of this administrative review within 120 days from the publication of these preliminary results.

This administrative review and notice are in accordance with sections 751(a)(1) and 777(i)(1) of the Act.

Dated: May 5, 2003.

Joseph A. Spetrini,

Acting Assistant Secretary for Import Administration

[FR Doc. 03–11620 Filed 5–8–03; 8:45 am]

BILLING CODE 3510–DS–M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 032003A]

Endangered Species; File No. 1189

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Issuance of permit modification.

SUMMARY: Notice is hereby given that Dr. James P. Kirk, USAE Waterways Experiment Station, CEWES-ER-A, 3909 Halls Ferry Road, Vicksburg, Mississippi 39180–6199 has been issued a modification to scientific research Permit No.1189.

ADDRESSES: The amendment and related documents are available for review upon written request or by appointment in the following office(s):

Permits, Conservation and Education Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13705, Silver Spring, MD 20910; phone (301)713–2289; fax (301)713–0376; and,

Southeast Region, NMFS, 9721 Executive Center Drive North, St. Petersburg, FL 33702–2432; phone (727)570–5301; fax (727)570–5320.

FOR FURTHER INFORMATION CONTACT: Jennifer Jefferies or Gene Nitta, (301)713–2289.

SUPPLEMENTARY INFORMATION: On February 25, 2002, and on July 18, 2002, notices were published in the **Federal Register** [(67 FR 8526) and (67 FR 47351), respectively] that modifications of Permit No. 1189, issued April 22, 1999 (64 FR 23281), had been requested by the above-named individual. The requested modifications have been granted under the authority of the Endangered Species Act of 1973, as amended (ESA; 16 U.S.C. 1531 *et seq.*) and the regulations governing the taking, importing, and exporting of endangered and threatened species (50 CFR 222–226).

Permit No. 1189 authorizes the permit holder to capture 300 shortnose sturgeon annually by gill net or trot lines in the Ogeechee River, Georgia, then measure, tag, weigh, and release them. Twenty of these may be surgically implanted with radio/sonic tags and tracked. Accidental mortalities are not to exceed one shortnose sturgeon per year. The issuance of this modification extends the permit's expiration date to December 31, 2004 and adds trawling as a sampling method for the purpose of capturing shortnose sturgeon less than eight years of age.

Issuance of this modification, as required by the ESA, was based on a finding that such permit (1) was applied for in good faith, (2) will not operate to the disadvantage of the endangered species which is the subject of this permit, and (3) is consistent with the purposes and policies set forth in section 2 of the ESA.

Dated: May 2, 2003.

Stephen L. Leathery,

Chief, Permits, Conservation and Education Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 03–11616 Filed 5–8–03; 8:45 am]

BILLING CODE 3510–22–S

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Announcement of the Paperless ELVIS (Electronic Visa Information System) Requirement for Certain Cotton, Wool, Man-Made Fiber, Silk Blend and Other Vegetable Fiber Textiles and Textile Products Produced or Manufactured in the Republic of Korea

May 5, 2003.

AGENCY: Committee for the Implementation of Textile Agreements (CITA)

ACTION: Issuing a directive to the Commissioner, Bureau of Customs and Border Protection eliminating the paper visa requirement.

EFFECTIVE DATE: May 19, 2003.

FOR FURTHER INFORMATION CONTACT: Shikha Bhatnagar, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482-3400.

SUPPLEMENTARY INFORMATION:

Authority: Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Executive Order 11651 of March 3, 1972, as amended.

In an exchange of notes on March 6, 2003 and March 20, 2003, the Governments of the United States and the Republic of Korea agreed to the paperless Electronic Visa Information System (ELVIS). This arrangement provides for electronic transmission of visa information to the Bureau of Customs and Border Protection by the Government of the Republic of Korea for textiles and textile products exported to the United States which describes the shipment and includes the visa number assigned to the shipment. The transmission certifies the country of origin and authorizes the shipment to be charged against any applicable quota.

Effective on May 19, 2003, for entry into the United States, the paper visa requirement is eliminated for textiles and textile products, produced or manufactured in the Republic of Korea and exported on or after May 19, 2003. The Government of the Republic of Korea must issue an ELVIS transmission for each shipment of textiles and textile products exported on or after May 19, 2003. For exempt product shipments, the paper exempt certification remains unchanged and an ELVIS transmission is not required.

In the letter published below, the Chairman of CITA directs the Commissioner of the Bureau of Customs and Border Protection to eliminate the paper visa requirement and to require an ELVIS transmission for shipments of certain textiles and textile products, produced or manufactured in the Republic of Korea and exported to the United States on or after May 19, 2003. A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see Federal Register notice 68 FR 1599, published on January 13, 2003). See also 61 FR 69082, published on December 31, 1996; and 56 FR 18574, published on April 23, 1991, as amended.

Goods integrated into GATT 1994 in Stages II and III by the United States will not require an ELVIS transmission (see Federal Register notices 63 FR 53881, published on October 7, 1998 and 66 FR 63225, published on December 5, 2001). An ELVIS transmission will continue to be required for non-integrated products.

Interested persons are advised to take all necessary steps to ensure that textile products that enter into the United States for consumption, or withdrawn from warehouse for consumption, will meet the visa requirements set forth in the letter published below to the Commissioner, Bureau of Customs and Border Protection.

D. Michael Hutchinson,

Acting Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

May 5, 2003.

Commissioner,

Bureau of Customs and Border Protection, Washington, DC 20229.

Dear Commissioner: this directive amends, but does not cancel, the directive issued to you on December 24, 1996, as amended, by the Chairman, Committee for the Implementation of Textile Agreements, that directed you to prohibit entry of certain cotton, wool, man-made fiber, silk blend and other vegetable fiber textiles and textile products, produced or manufactured in the Republic of Korea for which the Government of the Republic of Korea has not issued an appropriate export visa and Electronic Visa Information System (ELVIS) transmission, or exempt certification.

Effective on May 19, 2003, the paper visa will no longer be required for the entry of shipments of textiles and textile products, produced or manufactured in the Republic of Korea and exported to the United States on or after May 19, 2003. For exempt product shipments, the paper exempt certification will remain unchanged.

Under the terms of Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Executive Order 11651 of March 3, 1972, as amended; and pursuant to the Uruguay Round Agreement on Textiles and Clothing and the Electronic Visa Information System (ELVIS) Arrangement of March 6, 2003 and March 20, 2003 between the Government of the United States and the Republic of Korea; and in accordance with the provisions of Executive Order 11651 of March 3, 1972, as amended, you are directed to prohibit, effective on May 19, 2003, entry into the Customs territory of the United States (i.e. the 50 states, the District of Columbia and the Commonwealth of Puerto Rico) for consumption and withdrawal from warehouse for consumption of cotton, wool, man-made fiber, silk blend and other vegetable fiber textiles and textile products in Categories 200-239, 300-369, 400-469, 600-670, and 800-899, including part categories and merged categories, produced or manufactured in the Republic of Korea and exported on or after May 19, 2003 for which the Republic of Korea has not issued an Electronic Visa Information System (ELVIS) transmission fully described below. Exempt product shipments do not require an ELVIS transmission. The list of part categories, merged categories and exempt products remains unchanged.

An ELVIS message must accompany each commercial shipment of the aforementioned textile products.

A. Each ELVIS transmission shall include the following information:

a. The visa number: The visa number shall be in the standard nine digit letter format beginning with one numeric digit for the last

digit of the year of export, followed by the two character alpha code specified by the International Organization for Standardization (ISO) (The code for Korea is KR), and a six digit numerical serial number identifying the shipment; e.g., 3KR123456.

b. The date of issuance: The date of issuance shall be the day, month and year on which the visa was issued.

c. The correct category(s), merged category(s), part category(s), quantity(s), and unit(s) of quantity of the shipment in the unit(s) of quantity provided for in the U.S. Department of Commerce Correlation and in the Harmonized Tariff Schedule of the United States, Annotated or successor documents. Quantities must be quoted in whole numbers. Decimals or fractions will not be accepted.

d. The manufacturer ID code.

B. Entry of a shipment shall not be permitted:

a. if an ELVIS transmission has not been received for the shipment from the Republic of Korea;

b.if the ELVIS transmission for that shipment is missing any of the following information:

i. visa number

ii. category, part category, or merged category

iii.quantity

iv. unit of measure

v. date of issuance

vi. manufacturer ID number

c. if the ELVIS transmission for the shipment does not match the information supplied by the importer, or the Customs broker acting as an agent on behalf of the importer, with regard to any of the following:

i. visa number

ii. category, part category, or merged category

iii. unit of measure

d.If the quantity being entered is greater than the quantity transmitted.

e. If the visa number has previously been used, except in the case of a split shipment, or cancelled, except when entry has already been made using the visa number.

C. A new, correct ELVIS transmission from the Republic of Korea is required before a shipment that has been denied entry for one the circumstances mentioned above will be released.

D. Visa waivers will only be accepted if the shipment qualifies for a one-time special purpose shipment that is not part of an ongoing commercial enterprise. A visa waiver may be issued by the Department of Commerce at the request of the Korea Embassy in Washington, DC. A visa waiver only waives the requirements to present an ELVIS transmission at entry, and does not waive any quota requirements.

E. In the event of a systems failure, shipments will not be released for twenty-four hours or 1 calendar day. If system failure exceeds twenty-four hours or 1 calendar day, for the remaining period of the system failure, the Bureau of Customs and Border Protection will release shipments on the basis of the visa data provided by the Republic of Korea. The Republic of Korea will retransmit all data that was affected by the systems failure when the system is functioning normally.

F. If a shipment from the Republic of Korea is allowed entry into the commerce of the United States with an incorrect ELVIS transmission, or no ELVIS transmission, and redelivery is requested but cannot be made, the shipment will be charged to the applicable category quota.

Other Provisions

A. The date of export is the actual date the merchandise finally leaves the country of exportation. For merchandise exported by vessel, this is the day on which the carrier departs the last port in the country of origin.

B. Merchandise imported for the personal use of the importer and not for resale, regardless of value, and properly marked commercial sample shipments valued at U.S. $800 or less do not require an ELVIS transmission or an exempt certification for entry and shall not be charged to the agreement levels.

C. For exempt products shipments, the paper exempt certification remains unchanged and an ELVIS transmission is not required.

Goods integrated into GATT 1994 in Stages II and III by the United States will not require an ELVIS transmission (see Federal Register notices 63 FR 53881, published on October 7, 1998 and 66 FR 63225, published on December 5, 2001, respectively). An ELVIS transmission will continue to be required for non-integrated products.

The Committee for the Implementation of Textile Agreements has determined that this action fall with the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

D. Michael Hutchinson,

Acting Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 03–11528 Filed 5–8–03; 8:45 am]

BILLING CODE 3510–DR–S

DEPARTMENT OF DEFENSE

Office of the Secretary

Submission for OMB Review; Comment Request

ACTION: Notice.

The Department of Defense has submitted to OMB for clearance, the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35). The Office of Management and Budget has approved this information collection through September 30, 2003.

DATES: Consideration will be given to all comments received by June 9, 2003.

Title, Form Number and OMB Number: Application for Correction of Military Records Under the Provisions of Title 10, U.S. Code, Section 1552; DD Form 149; OMB Control Number 0704–0003.

Type of Request: Revision of a currently approved collection.

Number of Respondents: 25,000.

Responses Per Respondent: 1.

Annual Responses: 25,000.

Average Burden Per Response: 30 minutes.

Annual Burden Hours: 12,500.

Needs and Uses: This information collection requirement is necessary for all Service personnel (current and former service members) to apply to their respective Boards for Correction of Military Records (BCMR) for a correction of their military records under Title 10, United States Code Section 1552. The BCMRs of the Services are the highest administrative boards and appellate review authorities in the Services for the resolution of military disputes. The Service Secretaries, acting through the BCMRs, are empowered with broad powers and are duly bound to correct records if an error or injustice exists. The range of issues includes, but is not limited to awards, clemency petitions (of courts-martial sentences), disabilities, evaluation reports, home of record, memoranda of reprimands, promotions, retirements, separations, survivor benefit plans, and titling decisions by law enforcement authorities.

This information collection is needed to provide current and former service members with a method through which to request correction of a military record, and to provide the Services with the basic data needed to process the request.

Affected Public: Individuals or households.

Frequency: On occasion.

Respondent's Obligation: Required to obtain or retain benefits.

OMB Desk Officer: Ms. Jacqueline Zeiher.

Written comments and recommendations on the proposed information collection should be sent to Ms. Zeiher at the Office of Management and Budget, Desk Officer for DOD, Room 10236, New Executive Office Building, Washington, DC 20503.

DOD Clearance Officer: Mr. Robert Cushing.

Written requests for copies of the information collection should be sent to Mr. Cushing, WHS/DIOR, 1215 Jefferson Davis Highway, Suite 1204, Arlington, VA 22202–4302.

Dated: April 25, 2003.

Patricia L. Toppings,

Alternate OSD Federal Register, Liaison Officer, Department of Defense.

[FR Doc. 03–11563 Filed 5–8–03; 8:45 am]

BILLING CODE 5001–08–M

DEPARTMENT OF DEFENSE

Office of the Secretary

Submission for OMB Review; Comment Request

ACTION: Notice.

The Department of Defense has submitted to OMB for clearance, the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

DATES: Consideration will be given to all comments received by June 9, 2003.

Title, Form, and OMB Number: Medical Information Questionnaire; DSS FL 144; OMB Number 0704–0206.

Type of Request: Reinstatement.

Number of Respondents: 11,700.

Responses Per Respondent: 1.

Annual Responses: 11,700.

Average Burden Per Response: 30 minutes.

Annual Burden Hours: 5,850.

Needs and Uses: The specific objective of a personnel security investigation is to elicit information concerning the loyalty, character, and reliability of the individual being investigated to ascertain his or her suitability for a position of trust. The DoD adjudicator may determine if it is clearly consistent with the interests of national security to grant the individual access to classified information. Adjudicative determinations are made in accordance with DoD 5200.2–R, "DoD Personnel Security Program." This regulation specifies medical information that is to be obtained from records and physicians when there is an indication of a history of mental or nervous disorder, use or abuse of prescribed or illegal drugs, or abuse or excessive use of alcohol. The information provides the adjudicator with a complex picture of the individual to determine whether the individual should be granted access to classified information.

Affected Public: Individuals or Households; Business or Other For-Profit.

Frequency: On Occasion.

Respondent's Obligation: Voluntary.

OMB Desk Officer: Ms. Jackie Zeiher.

Written comments and recommendations on the proposed information collection should be sent to Ms. Zeiher at the Office of Management and Budget, Desk Officer for DoD, Room 10236, New Executive Office Building, Washington, DC 20503.

DoD Clearance Officer: Mr. Robert Cushing.

Written requests for copies of the information collection proposal should be sent to Mr. Cushing, WHS/DIOR, 1215 Jefferson Davis Highway, Suite 1204, Arlington, VA 2202–4302.

Dated: April 25, 2003.

Patricia L. Toppings,

Alternate OSD Federal Register, Liaison Officer, Department of Defense.

[FR Doc. 03–11564 Filed 5–8–03; 8:45 am]

BILLING CODE 5001–08–M

DEPARTMENT OF DEFENSE

Office of the Secretary

Proposed Collection; Comment Request

AGENCY: Defense Finance and Accounting Service, DoD.

ACTION: Notice.

SUMMARY: In compliance with section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Defense Finance and Accounting Service announces the proposed public information collection and seeks public comment on the provisions thereof. Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed information collection; (c) ways to enhance the quality, utility and clarity of the information to be collected; and (d) ways to minimize the burden of the information collection on respondents, including through the use of automated collection techniques or other forms of information technology.

DATES: Consideration will be given to all comments received by July 8, 2003.

ADDRESSES: Written comments and recommendations on the proposed information collection should be sent to the Defense Finance and Accounting Service—Cleveland, DFAS–CL/PDS, ATTN: Addie El-Amin, 1240 E. 9th Street, Cleveland, CL 44199.

FOR FURTHER INFORMATION CONTACT: To request more information on this proposed information collection or to obtain a copy of the proposal and associated collection instruments, please write to the above address, or call Addie El-Amin, 216–522–6096.

Title, Associated Form, and OMB Number: Physician Certificate for Child Annuitant, DD Form 2828, OMB License 0730–0011.

Needs and Uses: This form is required and must be on file to support an incapacitation occurring prior to age 18. The form provides the authority for the Directorate of Annuity Pay, Defense Finance and Accounting Service—Cleveland (DFAS–CL/PD) to establish and pay a Retired Serviceman's Family Protection Plan (RSFPP) or Survivor Benefit Plan (SBP) annuity to the incapacitated individual.

Affected Public: Incapacitated child annuitants, and/or their legal guardians, custodians and legal representatives.

Annual Burden Hours: 240 hours.

Number of Respondents: 120.

Responses Per Respondent: 1.

Average Burden Per Response: 2 hours.

Frequency: On occasion.

SUPPLEMENTARY INFORMATION:

Summary of Information Collection

The form will be used by the Directorate of Annuity Pay, Defense Finance and Accounting Service—Cleveland (DFAS–CL/PD), in order to establish and start the annuity for a potential child annuitant. When the form is completed, it will serve as a medical report to substantiate a child's incapacity. The law requires that an unmarried child who is incapacitated must provide a current certified medical report. When the incapacity is not permanent a medical certification must be received by DFAS–CL/PD] every two years in order for the child to continue receiving annuity payments.

Dated: April 28, 2003.

Patricia L. Toppings,

Alternate OSD Federal Register, Liaison Officer, Department of Defense.

[FR Doc..03–11565 Filed 5–8–03; 8:45 am]

BILLING CODE 5001–08–M

DEPARTMENT OF DEFENSE

Office of the Secretary

Defense Business Practice Implementation Board; Notice of Advisory Committee Meeting

AGENCY: Department of Defense.

ACTION: Notice of Advisory Committee Meeting.

SUMMARY: The Defense Business Practice Implementation Board (DBB) will meet in open session on Wednesday, May 14, 2003, at the Pentagon, Washington, DC from 0830 until 12 p.m. The mission of the DBB is to advise the Senior Executive Council (SEC) and the Secretary of Defense on effective strategies for implementation of best business practices of interest to the Department of Defense. At this meeting, the Board's Acquisition, Human Resources, Financial Management, and General Management related task groups will deliberate on their findings and

proposed recommendations related to tasks assigned earlier this year. Additional task groups may deliberate on proposed recommendations.

DATES: Wednesday, May 14, 2003, 8:30 a.m. to 12 p.m.

ADDRESSES: Pentagon, Washington, DC.

FOR FURTHER INFORMATION CONTACT: The DBB may be contacted at: Defense Business Practice Implementation Board, 1100 Defense Pentagon, Room 2E314, Washington, DC 20301–1100, via E-mail at *DBB @osd.pentagon.mil*, or via phone at (703) 695–0505.

SUPPLEMENTARY INFORMATION: Members of the public who wish to attend the meeting must contact the Defense Business Practices Implementation Board no later than Wednesday, May 7 for further information about admission as seating is limited. Additionally, those who wish to make oral comments or deliver written comments should also request to be scheduled, and submit a written text of the comments by Friday, May 2 to allow time for distribution to the Board members prior to the meeting. Individual oral comments will be limited to five minutes, with the total oral comment period not exceeding thirty-minutes.

Dated: April 30, 2003.

Patricia L. Toppings,

Alternate OSD Federal Register, Liaison Officer, Department of Defense.

[FR Doc. 03–11585 Filed 5–8–03; 8:45 am]

BILLING CODE 5001–08–M

DEPARTMENT OF DEFENSE

Office of the Secretary

Defense Science Board

AGENCY: Department of Defense.

ACTION: Notice of Advisory Committee meeting date change.

SUMMARY: On Thursday, March 6, 2003 (68 FR 10704), the Department of Defense announced closed meetings of the Defense Science Board Task Force on Enabling Joint Force Capabilities. The Task Force meeting originally scheduled May 20, 2003, has been rescheduled to May 12, 2003, in Washington, DC.

Dated: April 30, 2003.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 03–11584 Filed 5–8–03; 8:45 am]

BILLING CODE 5001–08–M

DEPARTMENT OF DEFENSE

Office of the Secretary

Strategic Environmental Research and Development Program, Scientific Advisory Board

AGENCY: Department of Defense.

ACTION: Notice.

SUMMARY: In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), announcement is made of the following Committee meeting:

DATES: June 11, 2003 from 8 a.m. to 5:35 p.m.

ADDRESSES: 901 North Stuart Street, Suite 804, Arlington, VA 22203.

FOR FURTHER INFORMATION CONTACT: Ms. Veronica Rice, SERDP Program Office, 901 North Stuart Street, Suite 303, Arlington, VA or by telephone at (703) 696–2119.

SUPPLEMENTARY INFORMATION:

Matters To Be Considered

Research and Development proposals and continuing projects requesting Strategic Environmental Research and Development Program funds in excess of $1M will be reviewed.

This meeting is open to the public. Any interested person may attend, appear before, or file statements with the Scientific Advisory Board at the time and in the manner permitted by the Board.

Dated: May 2, 2003.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 03–11583 Filed 5–8–03; 8:45 am]

BILLING CODE 5001–08–M

DEPARTMENT OF DEFENSE

Office of the Inspector General; Privacy Act of 1974; System of Records

AGENCY: Office of the Inspector General, DoD.

ACTION: Notice to Amend Systems of Records.

SUMMARY: The Office of the Inspector General, DoD, is amending a system of records notice in its existing inventory of record systems subject to the Privacy Act of 1974, (5 U.S.C. 552a), as amended.

DATES: This proposed action will be effective without further notice on June 9, 2003 unless comments are received which result in a contrary determination.

ADDRESSES: Send comments to Office of the Inspector General, Department of Defense, 400 Army Navy Drive, Room 201, Arlington, VA 22202–4704.

FOR FURTHER INFORMATION CONTACT: Mr. Joseph E. Caucci at (703) 604–9786.

SUPPLEMENTARY INFORMATION: The Office of the Inspector General, DoD, systems of records notices subject to the Privacy Act of 1974, (5 U.S.C. 552a), as amended, have been published in the **Federal Register** and are available from the address above.

The specific changes to the records systems being amended are set forth below followed by the notices, as amended, published in their entirety. The proposed amendments are not within the purview of subsection (r) of the Privacy Act of 1974, (5 U.S.C. 552a), as amended, which requires the submission of a new or altered system report.

Dated: April 30, 2003.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

CIG–09

SYSTEM NAME:

Personnel Security Clearance/ Eligibility Data (February 22, 1993, 58 FR 10213).

CHANGES:

* * * * *

SYSTEM NAME:

Replace entry with 'Security Management and Access Files'.

* * * * *

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Delete entry and replace with 'All civilian, contractor, and military personnel of the Office of the Inspector General of the Department of Defense (OIG DoD) who have been found eligible for employment/assignment, and who qualify and are eligible to occupy sensitive positions, perform sensitive duties, or for access to classified information.'

CATEGORIES OF RECORDS IN THE SYSTEM:

Delete entry and replace with 'Records of each individual associated with personnel security functions. These records also include, but are not limited to, individual's name; Social Security Number; date and place of birth; current employment status; duty address; security training; an individual's qualification and eligibility to occupy sensitive positions, perform sensitive duties, or for access to classified information; certificates of clearance; security violations; identification badge records, courier authorizations, and access control records."

* * * * *

RETRIEVABILITY:

Delete entry and replace with 'Information is retrieved by individual's name, Social Security Number, and date and place of birth.'

SAFEGUARDS:

Delete entry and replace with 'Access to building is protected by guards requiring positive identification for admission. Access to computerized files is password protected, and is limited to authorized users having a need-to-know in the performance of their official duties.'

RETENTION AND DISPOSAL:

Delete entry and replace with Paper records are destroyed when superseded, obsolete or upon notification of death, or no later than 5 years after transfer or separation of the individual.

Electronic records are deleted after dissemination, revision or updating is complete, or within 180 days after the paper copy has been produced."

* * * * *

CIG–09

SYSTEM NAME:

Security Management and Access Files.

SYSTEM LOCATION:

Office of Security, Office of the Chief of Staff, Office of the Inspector General of the Department of Defense, 400 Army Navy Drive, Arlington, VA 22202–4704.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

All civilian, contractor, and military personnel of the Office of the Inspector General of the Department of Defense (OIG DoD) who have been found eligible for employment/assignment, and who qualify and are eligible to occupy sensitive positions, perform sensitive duties, or for access to classified information.

CATEGORIES OF RECORDS IN THE SYSTEM:

Records of each individual associated with personnel security functions. These records also include, but are not limited to, individual's name; Social Security Number; date and place of birth; current employment status; duty address; security training; an individual's qualification and eligibility to occupy sensitive positions, perform sensitive duties, or for access to classified information; certificates of clearance; security violations; identification badge records, courier authorizations, and access control records.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

E.O. 10450, Security Requirements for Government Employment, as amended; DoD 5200.2–R, DoD Personnel Security Program Regulation; and E.O. 9397 (SSN).

PURPOSE(S):

This record system is used by OIG Management officials to control the number of, and level of, sensitive positions; identify personnel assigned to these positions; and to determine whether personnel have been granted a clearance and the level of such clearance or access authorized.

Routine uses of records maintained in the system, including categories of users and the purposes of such uses:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

Information on the clearance/ eligibility status of individuals may be provided to the appropriate clearance access officials of other agencies when necessary in the course of official business. Certifications of clearance are issued to officials of other agencies when necessary in the course of official business.

The DoD 'Blanket Routine Uses' set forth at the beginning of the OIG's compilation of systems of records notices also apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records maintained in folders; computer printouts and automated data base files.

RETRIEVABILITY:

Information is retrieved by individual's name, Social Security Number, and date and place of birth.

SAFEGUARDS:

Access to building is protected by guards requiring positive identification for admission. Access to computerized files is password protected, and is limited to authorized users having a need-to-know in the performance of their official duties.

RETENTION AND DISPOSAL:

Paper records are destroyed when superseded, obsolete or upon notification of death, or no later than 5 years after transfer or separation of the individual.

Electronic records are deleted after dissemination, revision or updating is complete, or within 180 days after the paper copy has been produced.

SYSTEM MANAGER(S) AND ADDRESS:

Director, Office of Security, Office of the Chief of Staff, Office of the Inspector General of the Department of Defense, 400 Army Navy Drive, Arlington, VA 22202–4704.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether information about themselves is contained in this system of records should address written inquiries to the Chief, Freedom of Information Act/ Privacy Act Office, 400 Army Navy Drive, Arlington, VA 22202–4704.

Written request should contain the individual's full name, Social Security Number, date and place of birth, current address and telephone numbers of the individual requester.

RECORD ACCESS PROCEDURES:

Individuals seeking to determine whether information about themselves is contained in this system of records should address written inquiries to the Chief, Freedom of Information Act/ Privacy Act Office, 400 Army Navy Drive, Arlington, VA 22202–4704.

Written request should contain the individual's full name, Social Security Number, date and place of birth, current address and telephone numbers of the individual requester.

For personal visits, the individual should be able to provide some acceptable identification, that is driver's license or employing office identification card.

CONTESTING RECORD PROCEDURES:

The OIG's rules for accessing records and for contesting contents and appealing initial agency determinations are published in 32 CFR part 312 or may be obtained from the system manager.

RECORD SOURCE CATEGORIES

Certificates of clearance and/or record of personnel security investigations which are completed during a review of reports of investigations conducted by the Department of Defense and other Federal investigative organizations. Also, personnel security files are maintained on individuals.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

[FR Doc. 03–11566 Filed 5–8–03; 8:45 am]

BILLING CODE 5001–08–P

DEPARTMENT OF DEFENSE

Office of the Joint Chiefs; Privacy Act of 1974; System of Records

AGENCY: Office of the Joint Chiefs, DoD.

ACTION: Notice to amend a system of records.

SUMMARY: The Office of the Joint Chiefs is amending a system of records notice in its inventory of records systems subject to the Privacy Act of 1974, as amended (5 U.S.C. 552a).

DATES: The changes will be effective on June 9, 2003 unless comments are received that would result in a contrary determination.

ADDRESSES: Send comments to OSD Privacy Act Coordinator, Records Management Section, Washington Headquarters Services, 1155 Defense Pentagon, Washington, DC 20301–1155.

FOR FURTHER INFORMATION CONTACT: Mr. Dan Cragg at (703) 601–4722.

SUPPLEMENTARY INFORMATION: The Office of the Joint Chiefs notices for systems of records subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended, have been published in the **Federal Register** and are available from the address above.

The specific changes to the records system being amended are set forth below followed by the notice, as amended, published in its entirety. The proposed amendments are not within the purview of subsection (r) of the Privacy Act of 1974 (5 U.S.C. 552a), as amended, which requires the submission of a new or altered system report.

Dated: April 30, 2003.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

JS007MPD

SYSTEM NAME:

Joint Manpower Automation System (September 20, 2001, 66 FR 48431).

CHANGE:

* * * * *

PURPOSE(S):

Delete "for the CINC" from entry.

* * * * *

JS007MPD

SYSTEM NAME:

Joint Manpower Automation System.

SYSTEM LOCATION:

Primary system: the Joint Staff (J–1), The Pentagon, Room 1D957, Washington, DC 20318–1000.

Decentralized Segments: National Defense University, Directorate of Resource Management, ATTN: RMD–M, Ft McNair, Washington, DC 20319–6000.

Headquarters, U.S. Space Command, ATTN: J1, Peterson Air Force Base, CO 80914–5001.

Headquarters, U.S. Pacific Command, ATTN: J1, Camp H. M. Smith, HI 96861–5025.

HQ U.S. Strategic Command, ATTN: J11, Offutt Air Force Base, NE 68113.

Headquarters, U.S. European Command, ATTN: ECJ1, APO AE 09128–4209.

Headquarters, U.S. Southern Command, ATTN: SCJ1, APO AA 34003–0100.

Headquarters, U.S. Transportation Command, ATTN: J–1, Scott Air Force Base, IL 62225.

Headquarters, U.S. Central Command, ATTN: CCJ1, MacDill Air Force Base, FL 33608–7001; and

U.S. Joint Forces Command, 1562 Mitscher Avenue, Suite 200, Norfolk, VA 23511–2488.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

All military and civilian personnel assigned to duty at each of the activities cited above.

CATEGORIES OF RECORDS IN THE SYSTEM:

Files contain personnel information which has been extracted from official personnel files, including name; grade/rank; Social Security Number; salary; family member information; home address and telephone number; security clearance and date; date of rank; date of birth; Service; sex; race; marital status; reporting/departure date; current assignment data; education; experience; language proficiency; schooling; rating chain; and physical fitness data such as height, weight, fitness test results, body fat percentage, HIV test date.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

10 U.S.C., Chapter 5, Sections 151–155 and Chapter 6, Section 165; and E.O. 9397 (SSN).

PURPOSE(S):

To be used by officials of the personnel divisions of the decentralized segments noted above in performing all administrative functions as appropriate with respect to personnel assigned; for monitoring and processing requests for manpower; for performing organizational and manpower reviews; and for processing personnel actions requested by or required for the individual.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

The DoD 'Blanket Routine Uses' set forth at the beginning of the Joint Staff compilation of records system notices apply to this record system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records exist on magnetic tape, diskette, and other machine-readable media.

RETRIEVABILITY:

Retrieved by name, Social Security Number, and/or any combination of the data fields described in 'Categories of Records.'

SAFEGUARDS:

Access to this record system is restricted to authorized personnel in performance of official duties. Entry into the system is controlled by password.

RETENTION AND DISPOSAL:

Records are deleted when no longer needed for current business. This is in accordance with Item 5, General Records Schedule 20.

SYSTEM MANAGER(S) AND ADDRESS:

Joint Manpower Automation System Project Manager, Manpower Management Division, Manpower and Personnel Directorate, J–1, the Joint Staff, Washington, DC 20318–1000.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether information about themselves is contained in this system should address written inquiries to the Joint Manpower Automation System Functional Manager, Manpower Management Division, Manpower and Personnel Directorate, J–1, the Joint Staff, Washington, DC 20318–1000.

RECORD ACCESS PROCEDURES:

Individuals seeking access to information about themselves contained in this system should address written inquiries to the Joint Manpower Automation System Project Manager, Manpower Management Division, Manpower and Personnel Directorate, J–1, the Joint Staff, Washington, DC 20318–1000.

Written requests should include full name, Social Security Number, address, and signature of the requester.

CONTESTING RECORD PROCEDURES:

The Joint Staff rules for accessing records and for contesting contents and appealing initial determinations are contained in OSD Administrative Instruction 81; Joint Administrative Instruction 2530.9A; 32 CFR part 311; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

Source of information is the individual and the individual's Official Personnel File.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

[FR Doc. 03–11570 Filed 5–8–03; 8:45 am]

BILLING CODE 5001–08–P

DEPARTMENT OF DEFENSE

Office of the Secretary

Privacy Act of 1974; System of Records

AGENCY: Office of the Secretary, DoD.

ACTION: Notice to transfer systems of records.

SUMMARY: Two Department of the Army Privacy Act systems of records are being transferred to the Department of Defense Education Activity (DoDEA), Office of the Secretary of Defense. The DoDEA is the responsible activity for maintaining records formerly maintained under A0352–3 CFSC, entitled 'Dependent Children School Program Files' and A0690–200 DAPE, entitled 'School Employee File'.

The notices will now be known as DODDS 26, 'DoD Domestic and Elementary School Program Files' and DODDS 27, 'DoD Domestic and Elementary School Employee File', respectively. Before being transferred, administrative changes have been made to the system name, system location, and authority categories within the notices.

DATES: The changes will be effective on June 9, 2003, unless comments are received that would result in a contrary determination.

ADDRESSES: Send comments to OSD Privacy Act Coordinator, Records Management Section, Washington Headquarters Services, 1155 Defense Pentagon, Washington, DC 20301–1155.

FOR FURTHER INFORMATION CONTACT: Mr. Dan Cragg at (703) 601–4722.

SUPPLEMENTARY INFORMATION: The Office of the Secretary of Defense notices for systems of records subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended, have been published in the **Federal Register** and are available from the address above.

The specific changes to the records system being amended are set forth below followed by the notice, as amended, published in its entirety. The proposed amendments are not within the purview of subsection (r) of the Privacy Act of 1974, (5 U.S.C. 552a), as amended, which requires the submission of a new or altered system report.

Dated: April 30, 2003.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

DODDS 26

SYSTEM NAME:

DoD Domestic and Elementary School Program Files.

SYSTEM LOCATION:

Department of Defense Domestic Elementary and Secondary Schools, 700 W. Park Drive, Peachtree City, GA 30269–1498.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Students in the Department of Defense Education Activity (DoDEA) dependents schools located at Fort Benning, GA; Fort Bragg, NC; Fort Campbell, KY; Fort McClellan, AL; Fort Rucker, AL; Fort Stewart, GA; and U.S. Military Academy, West Point, NY.

CATEGORIES OF RECORDS IN THE SYSTEM:

Enrollment/admission/registration/transfer applications; course preferences/curriculum; health records; attendance registers; academic achievements and report cards reflecting grades/credits earned; aptitude, intelligence quotient, and other test results; notes regarding student's special interests; hobbies, activities, sports; counseling documents; high school transcripts and certificates; and related supporting documents.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

10 U.S.C. 2164, Department of Defense Domestic Dependent Elementary and Secondary Schools; DoD Directive 1342.20, Department of Defense Education Activity (DODEA); and DoD Directive 1342.21, Department of Defense Section 6 Schools.

PURPOSE(S):

To record education provided for eligible dependent children of military and civilian personnel residing at Fort Benning, GA; Fort Bragg, NC; Fort Campbell, KY; Fort McClellan, AL; Fort Rucker, AL; Fort Stewart, GA; and U.S. Military Academy, West Point, NY.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

Information may be disclosed to the Department of Education in connection with Federal funding for public education; to federal and state educational agencies in connection with student's application for financial aid; to student's parents/legal guardians when DoDEA officials determine a bona fide need exits.

The DoD 'Blanket Routine Uses' set forth at the beginning of the OSD compilation of systems of records notices also apply to this system.

Policies and practices for storing, retrieving, accessing, retaining, and disposing of records in the system:

Storage:

Paper records in file folders.

RETRIEVABILITY:

By student surname.

SAFEGUARDS:

Records are accessible only to authorized personnel having need for the information in the performance of their official duties.

RETENTION AND DISPOSAL:

Academic records for elementary school students are destroyed at the school attended after 5 years; those for secondary school students are destroyed after 65 years by the Washington National Records Center where such records are retired 5 years following student's graduation/withdrawal.

Individual student health records and tests/achievements documents are retained at the local school 1 year for elementary students; 2 years for secondary students, after which they are destroyed.

Teacher class registers of attendance and scholastic marks and averages are retained at the local school for 5 years; then destroyed.

SYSTEM MANAGER(S) AND ADDRESS:

Director, Department of Defense Education Activity, 4040 North Fairfax Drive, Arlington, VA 22203–1634.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether information about themselves

is contained in this system should address written inquiries to the principal of the school attended.

Individual should provide current full name, name used at the time of school attendance, date of birth, identity and location of school attended, dates of attendance, and signature.

RECORD ACCESS PROCEDURES:

Individuals seeking access to information about themselves contained in this system should address written inquiries to the principal of the school attended.

Individual should provide current full name, name used at the time of school attendance, date of birth, identity and location of school attended, dates of attendance, and signature.

CONTESTING RECORDS PROCEDURES:

The OSD rules for accessing records, for contesting contents and appealing initial agency determinations are contained in OSD Administrative Instruction 81; 32 CFR part 311; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

From the individual, school teachers, principal, counselors, medical personnel, parents/guardians.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

DODDS 27

SYSTEM NAME:

DoD Domestic and Elementary School Employee File.

SYSTEM LOCATION:

Department of Defense Domestic Elementary and Secondary Schools, 700 W. Park Drive, Peachtree City, GA 30269–1498.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Employees of Department of Defense Dependent Schools.

CATEGORIES OF RECORDS IN THE SYSTEM:

Employment applications; personnel action forms; copies of contracts or excerpts there from which describe services to be performed; time periods involved; amount of pay; location of employment; appointment affidavits; statements of service; group life and accident insurance election; survivor benefit elections; change of name request; educational transcripts; position assignment notices; promotion/reduction recommendations with approvals/declinations; supervisor evaluations; annual, sick and/or teacher leave records; miscellaneous correspondence, documents, and records concerning dependents; military and other Federal service, including service in other Federally funded dependents schools; letters of recommendations, commendations, reprimands, counseling sessions, and conference records.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

10 U.S.C. 2164, Department of Defense Domestic Dependent Elementary and Secondary Schools; DoD Directive 1342.20, Department of Defense Education Activity (DODEA); and DoD Directive 1342.21, Department of Defense Section 6 Schools.

PURPOSE(S):

To maintain record of the individual's Federal service; to document actions attributable to his/her employment and status; to administer pay and other employment policies and regulations as required by Pub. L. 81–874, the U.S. Commissioner of Education, and/or respective State Departments of Education.

Routine uses of records maintained in the system, including categories of users and the purposes of such uses:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

Information may be disclosed to authorized representatives of the Secretary of the Department of Health and Human Services and/or the Department of Education to verify that pay and employment practices in Department of Defense Education Activity are comparable to those of the school districts in the State used for comparability purposes; verification, for salary and retirement purposes of Federal employment for personnel subsequently employed by public, Federal, or private school systems.

The DoD 'Blanket Routine Uses' set forth at the beginning of the OSD compilation of systems of records notices also apply to this system.

Policies and practices for storing, retrieving, accessing, retaining, and disposing of records in the system:

STORAGE:

Paper records in file folders.

RETRIEVABILITY:

By employee's surname.

SAFEGUARDS:

Records are maintained in secured areas accessible only to authorized personnel having official need therefore in the performance of official duties.

RETENTION AND DISPOSAL:

Records are permanent. They are retained at the dependents schools until 30 days after termination of individual's service and subsequently retired to the National Personnel Records Center, St. Louis, MO 63118–4199.

SYSTEM MANAGER(S) AND ADDRESS:

Director, Department of Defense Education Activity, 4040 North Fairfax Drive, Arlington, VA 22203–1634.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether information about themselves is contained in this system should address written inquiries to the Director, Department of Defense Education Activity, 4040 North Fairfax Drive, Arlington, VA 22203–1634.

If inquiry is made 30 days after termination of employment, it should be made to the National Personnel Records Center.

Individual should provide current name, the name used during the period of Federal employment at the school concerned, if different, date of birth, names of schools, locations, and dates of employment.

RECORD ACCESS PROCEDURES:

Individuals seeking access to information about themselves contained in this system should address written inquiries to the Director, Department of Defense Education Activity, 4040 North Fairfax Drive, Arlington, VA 22203–1634.

If inquiry is made 30 days after termination of employment, it should be made to the National Personnel Records Center.

Individual should provide current name, the name used during the period of Federal employment at the school concerned, if different, date of birth, names of schools, locations, and dates of employment.

CONTESTING RECORD PROCEDURES:

The OSD rules for accessing records, for contesting contents and appealing initial agency determinations are contained in OSD Administrative Instruction 81; 32 CFR part 311; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

From the individual, notice of personal security clearance from Defense Investigative Service, appointment affidavits, copies of contracts or excerpts there from, personnel action, survivor benefit forms, education transcripts, position assignment notices, promotion/reduction recommendations with approvals/declinations, leave records, records and reports, documents from previous employers and/or other Federal agencies.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

[FR Doc. 03–11572 Filed 5–8–03; 8:45 am]

BILLING CODE 5001–08–P

DEPARTMENT OF DEFENSE

Office of the Inspector General; Privacy Act of 1974; System of Records

AGENCY: Office of the Inspector General.

ACTION: Notice to amend systems of records.

SUMMARY: The Office of the Inspector General, DoD, is amending a system of records notice in its existing inventory of record systems subject to the Privacy Act of 1974, (5 U.S.C. 552a), as amended.

DATES: This proposed action will be effective without further notice on June 5, 2003 unless comments are received which result in a contrary determination.

ADDRESSES: Send comments to Office of the Inspector General, Department of Defense, 400 Army Navy Drive, Room 201, Arlington, VA 22202–4704.

FOR FURTHER INFORMATION CONTACT: Mr. Joseph E. Caucci at (703) 604–9786.

SUPPLEMENTARY INFORMATION: The Office of the Inspector General, DoD, systems of records notices subject to the Privacy Act of 1974, (5 U.S.C. 552a), as amended, have been published in the **Federal Register** and are available from the address above.

The specific amendments to the records system being amended are set forth below followed by the notice, as amended, published in its entirety. The proposed amendments are not within the purview of subsection (r) of the Privacy Act of 1974, (5 U.S.C. 552a), as amended, which requires the submission of a new or altered system report.

Dated: May 2, 2003.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

CIG–16

SYSTEM NAME:

DoD Hotline Program Case Files (February 22, 1993, 58 FR 10213).

CHANGES:

* * * * *

STORAGE:

Delete entry and replace with 'Paper records are stored in file folders and automated records are maintained on a computerized database.'

* * * * *

RETENTION AND DISPOSAL:

Hotline case files not referred are destroyed after 2 years.

Electronic copies created on electronic mail and word processing systems are deleted after a record keeping copy has been produced.

Automated and paper records are retained within the Office of the Defense Hotline Division for a period of 5 years after closure. The records are then retired to the Washington National Records Center for an additional 5 years, and then destroyed.

* * * * *

CIG–16

SYSTEM NAME:

DoD Hotline Program Case Files.

SYSTEM LOCATION:

DoD Hotline Division, Office of the Assistant Inspector General for Inspections and Policy of the Office of the Inspector General of the Department of Defense, 400 Army Navy Drive, Arlington, VA 22202–4704.

CATEGORIES OF INDIVIDUALS COVERED IN THE SYSTEM:

Individuals filing hotline complaints; individuals alleged to have been involved in criminal or administrative misconduct, including, but not limited to, fraud, waste, or mismanagement; or individuals identified as having been adversely affected by matters being investigated by the Office of the Inspector General.

CATEGORIES OF RECORDS IN THE SYSTEM:

Records resulting from the referral of, and inquiry into, hotline complaints, such as the date of the complaint; the hotline control number; the name of the complainant; the actual allegations; referral documents to DoD components requesting investigation into DoD Hotline complaints; referral documents from DoD components transmitting the DoD Hotline Completion Report, which normally contains the name of the examining official(s) assigned to the case; background information regarding the investigation itself, such as the scope of the investigation, relevant facts discovered, information received from witnesses, and specific source documents reviewed; the investigator's findings, conclusions, and recommendations; and the disposition of the case; and internal DoD Hotline forms documenting review and analysis of DoD Hotline Completion Reports received from DoD components.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Inspector General Act of 1978 (Pub. L. 95–452), as amended; DoD Directive 5106.1, Inspector General of the Department of Defense (IG, DoD) (32 CFR part 373); DoD Directive 7050.1, Defense Hotline Program (32 CFR part 98).

PURPOSE(S):

To record information related to official hotline investigations.

To compile statistical information to disseminate to other components within the Department of Defense engaged in the Hotline Program.

To provide prompt, responsive, and accurate information regarding the status of ongoing cases.

To provide a record of complaint disposition. Hotline complaints appearing to involve criminal wrongdoing will be referred to the Defense Criminal Investigative Service or other criminal investigative units of DoD components.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM INCLUDING CATEGORIES OF USERS, AND PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

The DoD 'Blanket Routine Uses' set forth at the beginning of the OIG's compilation of systems of records notices also apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper records are stored in file folders and automated records are maintained on a computerized database.

RETRIEVABILITY:

By Hotline case number, by subject matter, by the names of complainant(s), by subject(s) of the complaint, and by individual(s) alleged to have been adversely affected by matters being investigated by the OIG.

SAFEGUARDS:

Access is limited to DoD Hotline staff. Paper and automated records are stored in rooms protected by cipher lock. The automated system is password protected, and regular back-ups of data are performed.

RETENTION AND DISPOSAL:

Automated and paper records are retained within the DoD Hotline Program office for a period of five years following completion of final action. Thereafter, physical files are stored with the Federal Records Center, and automated data are archived within the DoD Hotline automated system for statistical purposes. Physical files and automated data are destroyed 15 years after the physical files are retired to the Federal Records Center.

RETENTION AND DISPOSAL:

Hotline case files not referred are destroyed after 2 years.

Electronic copies created on electronic mail and word processing systems are deleted after a record keeping copy has been produced.

Automated and paper records are retained within the Office of the Defense Hotline Division for a period of 5 years after closure. The records are then retired to the Washington National Records Center for an additional 5 years, and then destroyed.

SYSTEM MANAGER(S) AND ADDRESS:

Director, DoD Hotline Division, Office of the Assistant Inspector General for Inspections and Policy of the Office of the Inspector General of the Department of Defense, 400 Army Navy Drive, Arlington, VA 22202–4704.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether this system of records contains information about themselves should address written inquiries to the Chief, Freedom of Information Act/Privacy Act Office, 400 Army Navy Drive, Arlington, VA 22202–4704.

The request should contain the individual's full name, address, and Social Security Number. Requests submitted on behalf of other persons must include their written authorization. Provision of the Social Security Number is voluntary and it will be used solely for identification purposes. Failure to provide the Social Security Number will not affect the individual's rights.

RECORD ACCESS PROCEDURES:

Individuals seeking access to records about themselves contained in this system should address written inquiries to the Chief, Freedom of Information Act/Privacy Act Office, 400 Army Navy Drive, Arlington, VA 22202–4704.

The request should contain the individual's full name, address, and Social Security Number. Requests submitted on behalf of other persons must include their written authorization. Provision of the Social Security Number is voluntary and it will be used solely for identification purposes. Failure to provide the Social Security Number will not affect the individual's rights.

CONTESTING RECORD PROCEDURES:

The OIG's rules for accessing records and for contesting contents and appealing initial agency determinations are published in 32 CFR part 312 or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

Sources, subjects, witnesses, all levels of Government, private businesses, and nonprofit organizations.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

Investigatory material compiled for law enforcement purposes, other than material within the scope of subsection 5 U.S.C. 552a(j)(2), may be exempt pursuant to 5 U.S.C. 552a(k)(2). However, if an individual is denied any right, privilege, or benefit for which he would otherwise be entitled by Federal law or for which he would otherwise be eligible, as a result of the maintenance of the information, the individual will be provided access to the information exempt to the extent that disclosure would reveal the identiy of a confidential source.

Note: When claimed, this exemption allows limited protection of investigative reports maintained in a system of records used in personnel or administrative actions.

Investigatory material compiled solely for the purpose of determining suitability, eligibility, or qualifications for federal civilian employment, military service, federal contracts, or access to classified information may be exempt pursuant to 5 U.S.C. 552a(k)(5), but only to the extent that such material would reveal the identity of a confidential source.

An exemption rule for this record system has been promulgated in accordance with the requirements of 5 U.S.C. 553(b)(1), (2), and (3), (c) and (e) and published in 32 CFR part 312. For additional information contact the system manager.

[FR Doc. 03–11579 Filed 5–8–03; 8:45 am]
BILLING CODE 5001–08–P

DEPARTMENT OF DEFENSE

Office of the Secretary

Privacy Act of 1974; System of Records

AGENCY: Office of the Secretary, DoD.

ACTION: Notice to amend and delete systems of records.

SUMMARY: The Office of the Secretary is amending 4 systems of records notices in its inventory of records systems subject to the Privacy Act of 1974, as amended (5 U.S.C. 552a), and deleting one.

The amendments are required to alert the users of these systems of records of the additional requirements of the Health Insurance Portability and Accountability Act (HIPAA) of 1996, as implemented by DoD 6025.18–R, DoD Health Information Privacy Regulation. Language being added under the 'Routine Use' category is as follows:

Note: This system of records contains individually identifiable health information. The DoD Health Information Privacy Regulation (DoD 6025.18–R) issued pursuant to the Health Insurance Portability and Accountability Act of 1996, applies to most such health information. DoD 6025.18–R may place additional procedural requirements on the uses and disclosures of such information beyond those found in the Privacy Act of 1974 or mentioned in this system of records notice.

DATES: The changes will be effective on (insert date thirty days after publication in the **Federal Register**) unless comments are received that would result in a contrary determination.

ADDRESSES: Send comments to OSD Privacy Act Coordinator, Records Management Section, Washington Headquarters Services, 1155 Defense Pentagon, Washington, DC 20301–1155.

FOR FURTHER INFORMATION CONTACT: Mr. Dan Cragg at (703) 601–4722.

SUPPLEMENTARY INFORMATION: The Office of the Secretary of Defense notices for systems of records subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended, have been published in the **Federal Register** and are available from the address above.

The specific amendments to the records systems being amended are set forth below followed by the notices, as amended, published in their entirety. The proposed amendments are not within the purview of subsection (r) of the Privacy Act of 1974, (5 U.S.C. 552a), as amended, which requires the submission of a new or altered system report.

Dated: May 2, 2003.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

Deletion

DTMA 05

SYSTEM NAME:

Grievance Records (May 15, 2000, 65 FR 30966).

REASON:

These records are now being maintained under the system of records notice DWHS P37, Grievance and Unfair Labor Practices Records.

Amendments

DTMA 01

SYSTEM NAME:

Health Benefits Authorization Files (May 15, 2000, 65 FR 30966).

CHANGES:

* * * * *

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Add to end of entry 'NOTE: This system of records contains individually identifiable health information. The DoD Health Information Privacy Regulation (DoD 6025.18–R) issued pursuant to the Health Insurance Portability and Accountability Act of 1996, applies to most such health information. DoD 6025.18–R may place additional procedural requirements on the uses and disclosures of such information beyond those found in the Privacy Act of 1974 or mentioned in this system of records notice.'

* * * * *

DTMA 01

SYSTEM NAME:

Health Benefits Authorization Files.

SYSTEM LOCATION:

TRICARE Management Activity, Department of Defense, 16401 East Centretech Parkway, Aurora, CO 80011–9066, and contractors under contract to TRICARE. A listing of TRICARE contractors maintaining these records is available from the system manager.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

All individuals who seek authorization or pre-authorization for medical and dental health care under TRICARE/CHAMPUS and CHAMPVA.

CATEGORIES OF RECORDS IN THE SYSTEM:

Original correspondence to and from individuals; medical/dental statements; medical/dental histories; Health Care Advise Nurse records; Congressional inquiries; medical/dental treatment records; authorization and pre-authorization requests for care; case status sheets; memoranda for the record; follow-up reports justifying extended care; correspondence with contractors; and work-up sheets maintained by case workers.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

41 CFR part 101–11.000; chapter 55, 10 U.S.C. 613, chapter 17, 38 U.S.C.; 32 CFR part 199; and E.O. 9397 (SSN).

PURPOSE(S):

To maintain and control records pertaining to requests for authorization or pre-authorization of health and dental care under TRICARE/CHAMPUS.

To determine eligibility of an individual, authorize payment, control and review health care management plans, health care demonstration programs, control accomplishment of reviews, and coordinate subject matter clearance for internal and external audits and reviews of the program.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

To the Department of Health and Human Services and/or the Department of Veterans Affairs consistent with their statutory administrative responsibilities under TRICARE/CHAMPUS and CHAMPVA pursuant to chapter 55, 10 U.S.C. and section 613, chapter 17, 38 U.S.C.

Referral to Federal, state, local, or foreign governmental agencies, and to private business entities, including individual providers of care (participating and non-participating), on matters relating to eligibility, claims pricing and payment, fraud, program abuse, utilization review, quality assurance, peer review, program integrity, third-party liability, coordination of benefits, and civil or criminal litigation related to the operation of TRICARE/CHAMPUS.

Disclosure to the Department of Justice and the United States Attorneys in situations where the United States is an interested party.

Disclosure to third-party contacts in situations where the party to be contacted has, or is expected to have, information necessary to establish the validity of evidence or to verify the accuracy of information presented by the individual concerning his or her entitlement, the amount of benefit payments, any review of suspected abuse or fraud, or any concern for program integrity or quality appraisal.

The DoD 'Blanket Routine Uses' set forth at the beginning of OSD's compilation of systems of records notices apply to this system.

Note: This system of records contains individually identifiable health information. The DoD Health Information Privacy Regulation (DoD 6025.18–R) issued pursuant to the Health Insurance Portability and Accountability Act of 1996, applies to most such health information. DoD 6025.18–R may place additional procedural requirements on the uses and disclosures of such information beyond those found in the Privacy Act of 1974 or mentioned in this system of records notice.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are maintained on paper, electronic, microfilm, imaging, or optical formats.

RETRIEVABILITY:

Information is retrieved by sponsor's Social Security Number and sponsor's or beneficiary's name.

SAFEGUARDS:

Records are maintained in areas accessible only to authorized personnel who are properly screened, cleared, and trained. Decentralized automated segments within contractor's operations are accessible on-line only to authorized persons possessing user identification codes. Security systems and/or security guards protect buildings where records are maintained.

RETENTION AND DISPOSAL:

Automated indexes are maintained for six years. Hard copy records are closed out at the end of the calendar year in which finalized and held six additional years. Where hard copy records have been converted to electronic, microfilm, imaging, or optical formats, the hard copy is destroyed and the electronic, microfilm, imaging, or optical format is kept by the contractor for six years after claim is processed to completion.

SYSTEM MANAGER(S) AND ADDRESS:

TRICARE Management Activity, Department of Defense, Administration and Evaluation Directorate, 16401 East Centretech Parkway, Aurora, CO 80011–9066.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether information about themselves is contained in this system should address written inquiries to the TRICARE Management Activity, Department of Defense, ATTN: Privacy Act Officer, 16401 Centretech Parkway, Aurora, CO 80011–9066.

RECORD ACCESS PROCEDURES:

Individuals seeking access to information about themselves contained in this system should address written inquiries to the TRICARE Management Activity, Department of Defense, ATTN: Privacy Act Officer, 16401 Centretech Parkway, Aurora, CO 80011–9066.

Written requests for information should include the full name of the beneficiary, the full name of the sponsor and sponsor's Social Security Number, current address and telephone number.

For personal visits to examine records, the individual should provide some acceptable identification such as a driver's license or other form of picture identification.

If it is determined that the release of medical information to the requester could have an adverse effect upon the individual's physical or mental health, the requester should be prepared to provide the name and address of a physician who would be willing to receive the medical record, and at the physician's discretion, inform the individual covered by the system of the contents of that record. In the event the physician does not agree to convey the information contained within the record to the individual, TRICARE Management Activity will take positive measures to ensure the individual is provided the requested information.

CONTESTING RECORD PROCEDURES:

The OSD rules for accessing records, for contesting contents and appealing initial agency determinations are published in OSD Administrative Instruction 81; 32 CFR part 311; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

Contractors, Health Benefits Advisors, all branches of the Uniformed Services, congressional offices, providers of care, consultants and individuals.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

DTMA 02

SYSTEM NAME:

Medical/Dental Care and Claims Inquiry Files (May 15, 2000, 65 FR 30966).

CHANGES:

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ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Add to end of entry 'NOTE: This system of records contains individually identifiable health information. The DoD Health Information Privacy Regulation (DoD 6025.18–R) issued pursuant to the Health Insurance Portability and Accountability Act of 1996, applies to most such health information. DoD 6025.18–R may place additional procedural requirements on the uses and disclosures of such information beyond those found in the Privacy Act of 1974 or mentioned in this system of records notice.'

* * * * *

DTMA 02

SYSTEM NAME:

Medical/Dental Care and Claims Inquiry Files.

SYSTEM LOCATION:

TRICARE Management Activity, Department of Defense, 16401 East Centretech Parkway, Aurora, CO 80011–9066, and contractors under contract to TRICARE. A listing of TRICARE contractors maintaining these records is available from the system manager.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

All individuals who seek information concerning health care (medical and dental) under TRICARE/CHAMPUS and CHAMPVA.

CATEGORIES OF RECORDS IN THE SYSTEM:

Documents reflecting inquiries received from private individuals for information on TRICARE/CHAMPUS and CHAMPVA and replies thereto; congressional inquiries on behalf of constituents and replies thereto; and files notifying personnel of eligibility or termination of benefits.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

41 CFR 101–11.000; chapter 55, 10 U.S.C.; section 613, chapter 17, 38 U.S.C.; and E.O. 9397 (SSN).

PURPOSE(S):

To maintain and control records pertaining to requests for information concerning an individual's TRICARE/CHAMPUS eligibility status, the benefits provided under programs of TRICARE/CHAMPUS and CHAMPVA and the processing of individual TRICARE/CHAMPUS and CHAMPVA claims.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

To the Department of Health and Human Services and/or the Department of Veterans Affairs consistent with their statutory administrative responsibilities under TRICARE/CHAMPUS and CHAMPVA pursuant to chapter 55, 10 U.S.C. and section 613, chapter 17, 38 U.S.C.

Referral to Federal, state, local, or foreign governmental agencies, and to private business entities, including individual providers of care (participating and non-participating), on matters relating to eligibility, claims pricing and payment, fraud, program abuse, utilization review, quality assurance, peer review, program integrity, third-party liability, coordination of benefits, and civil or criminal litigation related to the operation of TRICARE/CHAMPUS.

Disclosure to the Department of Justice and the United States Attorneys in situations where the United States is an interested party.

Disclosure to third-party contacts in situations where the party to be contacted has, or is expected to have, information necessary to establish the validity of evidence or to verify the accuracy of information presented by the individual concerning his or her entitlement, the amount of benefit payments, any review of suspected abuse or fraud, or any concern for program integrity or quality appraisal.

The DoD 'Blanket Routine Uses' set forth at the beginning of OSD's compilation of systems of records notices apply to this system.

Note: This system of records contains individually identifiable health information. The DoD Health Information Privacy Regulation (DoD 6025.18–R) issued pursuant to the Health Insurance Portability and Accountability Act of 1996, applies to most such health information. DoD 6025.18–R may place additional procedural requirements on the uses and disclosures of such information beyond those found in the Privacy Act of 1974 or mentioned in this system of records notice.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are maintained on paper, electronic, microfilm, imaging, or optical formats.

RETRIEVABILITY:

Information is retrieved by case number, sponsor name and/or Social Security Number, and inquirer name.

SAFEGUARDS:

Records are maintained in areas accessible only to authorized personnel who are properly screened, cleared, and trained. Automated segments are accessible only by authorized persons possessing user identification codes. Security systems and/or security guards protect buildings where records are maintained.

RETENTION AND DISPOSAL:

Paper records are retained in active file until end of calendar year in which closed, held two additional years, and then destroyed. Where hard copy records have been converted to electronic, microfilm, imaging or optical formats, the hard copy record is destroyed and the electronic, microfilm, imaging, or optical format is kept by the contractor for six years after claim is processed to completion.

SYSTEM MANAGER(S) AND ADDRESS:

TRICARE Management Activity, Department of Defense, Administration and Evaluation Directorate, 16401 East Centretech Parkway, Aurora, CO 80011–9066.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether information about themselves is contained in this system should address written inquiries to the TRICARE Management Activity, Department of Defense, ATTN: Privacy Act Officer, 16401 Centretech Parkway, Aurora, CO 80011–9066.

RECORD ACCESS PROCEDURES:

Individuals seeking access to information about themselves contained in this system should address written inquiries to the TRICARE Management Activity, Department of Defense, ATTN: Privacy Act Officer, 16401 Centretech Parkway, Aurora, CO 80011–9066.

Written request for information should include the full name of the beneficiary, the full name of the sponsor and sponsor's Social Security Number, current address and telephone number.

For personal visits to examine records, the individual should provide some acceptable identification such as a driver's license or other form of picture identification.

If it is determined that the release of medical information to the requester could have an adverse effect upon the individual's physical or mental health, the requester should be prepared to provide the name and address of a physician who would be willing to receive the medical record, and at the physician's discretion, inform the individual covered by the system of the contents of that record. In the event the physician does not agree to convey the information contained within the record to the individual, TRICARE Management Activity will take positive measures to ensure the individual is provided the requested information.

CONTESTING RECORD PROCEDURES:

The OSD rules for accessing records, for contesting contents and appealing initial agency determinations are published in OSD Administrative Instruction 81; 32 CFR part 311; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

Contractors, congressional offices, Health Benefits Advisors, all branches of the Uniformed Service, congressional offices, providers of care, consultants and individuals.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

DTMA 03

SYSTEM NAME:

Legal Opinion Files (May 15, 2000, 65 FR 30966).

CHANGES:

* * * * *

Routine uses of records maintained in the system, including categories of users and the purposes of such uses:

Add to end of entry 'NOTE: This system of records contains individually identifiable health information. The DoD Health Information Privacy Regulation (DoD 6025.18–R) issued pursuant to the Health Insurance Portability and Accountability Act of 1996, applies to most such health information. DoD 6025.18–R may place additional procedural requirements on the uses and disclosures of such information beyond those found in the Privacy Act of 1974 or mentioned in this system of records notice.'

* * * * *

DTMA 03

SYSTEM NAME:

Legal Opinion Files.

SYSTEM LOCATION:

TRICARE Management Activity, Department of Defense, Office of General Counsel, 16401 East Centretech Parkway, Aurora, CO 80011–9066.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals who have contacted or corresponded with TRICARE Management Activity regarding any matter requiring legal clarification or resolution.

CATEGORIES OF RECORDS IN THE SYSTEM:

Inquiries received from individuals, attorneys, fiscal administrators, hospital contractors, other government agencies, Health Care Advise Nurse records, and congressional offices. Files contain legal opinions, correspondence, memoranda for the record, and similar documents. Medical/dental treatment records, authorizations and pre-authorizations, care and claims inquiry documents, and medical/dental history files may be included in these records, as appropriated to document TRICARE legal determinations.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

41 CFR 101–11.000; Chapter 55, 10 U.S.C. 613, Chapter 17, 38 U.S.C.; 32 CFR part 199; and E.O. 9397 (SSN).

PURPOSE(S):

TRICARE Management Activity uses these records to address and resolve legal issues and for research, precedent, historical, and record purposes.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

To the Department of Health and Human Services and/or the Department of Veterans Affairs consistent with their statutory administrative responsibilities under TRICARE/CHAMPUS and CHAMPVA pursuant to chapter 55, 10 U.S.C. and section 613, chapter 17, 38 U.S.C.

Referral to Federal, state, local, or foreign governmental agencies, and to private business entities, including individual providers of care (participating and non-participating), on matters relating to eligibility, claims pricing and payment, fraud, program abuse, utilization review, quality assurance, peer review, program integrity, third-party liability, coordination of benefits, and civil or

criminal litigation related to the operation of TRICARE/CHAMPUS.

Disclosure to the Department of Justice and the United States Attorneys in situations where the United States is an interested party.

Disclosure to third-party contacts in situations where the party to be contacted has, or is expected to have, information necessary to establish the validity of evidence or to verify the accuracy of information presented by the individual concerning his or her entitlement, the amount of benefit payments, any review of suspected abuse or fraud, or any concern for program integrity or quality appraisal.

The DoD 'Blanket Routine Uses' set forth at the beginning of OSD's compilation of systems of records notices apply to this system.

Note: This system of records contains individually identifiable health information. The DoD Health Information Privacy Regulation (DoD 6025.18–R) issued pursuant to the Health Insurance Portability and Accountability Act of 1996, applies to most such health information. DoD 6025.18–R may place additional procedural requirements on the uses and disclosures of such information beyond those found in the Privacy Act of 1974 or mentioned in this system of records notice.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are maintained on paper, electronic, microfilm, imaging, or optical formats.

RETRIEVABILITY:

Information is retrieved by subject matter with cross-reference by individual name and/or Social Security Number.

SAFEGUARDS:

Records are maintained in areas accessible only to authorized personnel who are properly screened, cleared, and trained. Security systems and/or security guards protect buildings where records are maintained.

RETENTION AND DISPOSAL:

Records are permanent. Paper records are retired to the Denver Regional Records Center when ten years old or when no longer needed for current business. Records are transferred to the NARA when thirty years old. Electronic and other non-paper media records are maintained until no longer needed for current business and are then deleted or destroyed.

SYSTEM MANAGER(S) AND ADDRESS:

TRICARE Management Activity, Department of Defense, Office of General Counsel, 16401 East Centretech Parkway, Aurora, CO 80011–9066.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether information about themselves is contained in this system should address written inquiries to the TRICARE Management Activity, Department of Defense, ATTN: Privacy Act Officer, 16401 Centretech Parkway, Aurora, CO 80011–9066.

RECORD ACCESS PROCEDURES:

Individuals seeking access to information about themselves contained in this system should address written inquiries to the TRICARE Management Activity, Department of Defense, ATTN: Privacy Act Officer, 16401 Centretech Parkway, Aurora, CO 80011–9066.

Written requests for information should include the full name of the beneficiary, the full name of the sponsor, and sponsor's Social Security Number, current address and telephone number.

For personal visits to examine records, the individual should be able to provide some acceptable identification such as a driver's license or other form of picture identification.

If it is determined that the release of medical information to the requester could have an adverse effect upon the individual's physical or mental health, the requester should be prepared to provide the name and address of a physician who would be willing to receive the medical record, and at the physician's discretion, inform the individual covered by the system of the contents of that record. In the event the physician does not agree to convey the information contained within the record to the individual, TRICARE Management Activity will take positive measures to ensure the individual is provided the requested information.

CONTESTING RECORD PROCEDURES:

The OSD rules for accessing records, for contesting contents and appealing initial agency determinations are published in OSD Administrative Instruction 81; 32 CFR part 311; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

Individuals (TRICARE/CHAMPUS and CHAMPVA beneficiaries, sponsors, or others), attorneys, fiscal administrators, hospital contractors, managed care support contractors, providers of care, medical records, other government agencies (Federal, state, local and foreign), and Congressional offices.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

DTMA 04

SYSTEM NAME:

Medical/Dental Claim History Files (May 15, 2000, 65 FR 30966).

CHANGES:

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ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Add to end of entry 'NOTE: This system of records contains individually identifiable health information. The DoD Health Information Privacy Regulation (DoD 6025.18–R) issued pursuant to the Health Insurance Portability and Accountability Act of 1996, applies to most such health information. DoD 6025.18–R may place additional procedural requirements on the uses and disclosures of such information beyond those found in the Privacy Act of 1974 or mentioned in this system of records notice.'

* * * * *

DTMA 04

SYSTEM NAME:

Medical/Dental Claim History Files.

SYSTEM LOCATION:

TRICARE Management Activity, Department of Defense, 16401 East Centretech Parkway, Aurora, CO 80011–9066, and contractors under contract to TRICARE. A listing of TRICARE contractors maintaining these records is available from the system manager.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Eligible beneficiaries and all individuals who seek health care (medical and dental) under TRICARE/CHAMPUS and CHAMPVA.

CATEGORIES OF RECORDS IN THE SYSTEM:

File contains claims, billings for services, applications or approval forms, enrollment files, recoupment files, third-party liability files, fraud and abuse files, case management files, resource sharing files, utilization management/quality assurance files, payment files, medical/dental records, family history files, records of grievances with a medical/dental provider, appeals, hearings, or any other correspondence, memoranda, or reports which are acquired or utilized in the development and processing of TRICARE/CHAMPUS or CHAMPVA claims. Records are also maintained on health care demonstration projects, including enrollment and authorization agreements, correspondence, memoranda, forms and reports, which are acquired or utilized during the projects.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

41 CFR 101–11.000; chapter 55, 10 U.S.C. 613, chapter 17, 38 U.S.C.; 32 CFR part 199; and E.O. 9397 (SSN).

PURPOSE(S):

TRICARE Management Activity and its contractors, DoD staff (including Military Treatment Facilities, clinics and Lead Agent Staff) use the information to control and process health care benefits available under TRICARE/CHAMPUS and CHAMPVA including the processing of medical/dental claims, the control and approval of medical/dental treatments, issuance of deductible certificates, and necessary interface with providers of health care. The system also supports audits of contractor-processed claims to determine payment and occurrence accuracy of the contractor's adjudication process.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

To the Department of Health and Human Services and/or the Department of Veterans Affairs consistent with their statutory administrative responsibilities under TRICARE/CHAMPUS and CHAMPVA pursuant to chapter 55, 10 U.S.C. and section 613, chapter 17, 38 U.S.C.

Referral to Federal, state, local, or foreign governmental agencies, and to private business entities, including individual providers of care (participating and non-participating), on matters relating to eligibility, claims pricing and payment, fraud, program abuse, utilization review, quality assurance, peer review, program integrity, third-party liability, coordination of benefits, and civil or criminal litigation related to the operation of TRICARE/CHAMPUS.

Disclosure to the Department of Justice and the United States Attorneys in situations where the United States is an interested party.

Disclosure to third-party contacts in situations where the party to be contacted has, or is expected to have, information necessary to establish the validity of evidence or to verify the accuracy of information presented by the individual concerning his or her entitlement, the amount of benefit payments, any review of suspected abuse or fraud, or any concern for program integrity or quality appraisal.

The DoD 'Blanket Routine Uses' set forth at the beginning of OSD's compilation of systems of records notices apply to this system.

Note: This system of records contains individually identifiable health information. The DoD Health Information Privacy Regulation (DoD 6025.18–R) issued pursuant to the Health Insurance Portability and Accountability Act of 1996, applies to most such health information. DoD 6025.18–R may place additional procedural requirements on the uses and disclosures of such information beyond those found in the Privacy Act of 1974 or mentioned in this system of records notice.

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

Disclosures pursuant to 5 U.S.C. 552a(b)(12) may be made from this system to consumer reporting agencies as defined in the Fair Credit Reporting act of 1966 (15 U.S.C. 1681a(f)) or the Federal Claims Collections Act of 1966 (31 U.S.C. 3701(a)(3)). The purpose of the disclosure is to aid in the collection of outstanding debts owed to the Federal Government; typically, to provide an incentive for debtors to repay delinquent Federal Government debts by making these debts part of their credit records.

The disclosure is limited to information necessary to establish the identity of the individual, including name, address, and taxpayer identification number (Social Security Number); the amount, status, and history of the claim; and the agency or program under which the claim arose for the sole purpose of allowing the consumer reporting agency to prepare a commercial credit report.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are maintained on paper, electronic, microfilm, imaging, or optical formats.

RETRIEVABILITY:

Information is retrieved by sponsor's name; sponsor's Social Security Number; beneficiary's name; beneficiary's Social Security Number; provider's name; provider's number (Tax Identification Number or Social Security Number); internal control number; classification of medical diagnosis; procedure code; geographical location of care provided; and selected utilization limits.

SAFEGUARDS:

Records are maintained in areas accessible only to authorized personnel who are properly screened, cleared and trained. Decentralized automated segments within contractor's operations are accessible on-line only to authorized persons possessing user identification codes. The automated portion of the Primary System is accessible only through TRICARE Management Activity on-line data systems. Security systems and/or security guards protect buildings where records are maintained.

RETENTION AND DISPOSAL:

Paper records are closed out at the end of the calendar year in which finalized and held six additional years and then destroyed. Where hard copy records (except Claims History Files) have been converted to electronic, microfilm, imaging, or optical formats, the hard copy record is destroyed and the electronic, microfilm, imaging, or optical format is kept by the contractor for six years after claim is processed to completion and then destroyed. Claims History Files maintained in electronic format are kept for ten years and are then destroyed or deleted.

SYSTEM MANAGER(S) AND ADDRESS:

TRICARE Management Activity, Department of Defense, Administration and Evaluation Directorate, 16401 East Centretech Parkway, Aurora, CO 80011–9066.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether information about themselves is contained in this system should address written inquiries to the TRICARE Management Activity, Department of Defense, ATTN: Privacy Act Officer, 16401 Centretech Parkway, Aurora, CO 80011–9066.

RECORD ACCESS PROCEDURES:

Individuals seeking access to information about themselves contained in this system should address written inquiries to the TRICARE Management Activity, Department of Defense, ATTN: Privacy Act Officer, 16401 Centretech Parkway, Aurora, CO 80011–9066.

Written request for information should include the full name of the beneficiary, the full name of the sponsor and sponsor's Social Security Number, current address and telephone number.

For personal visits to examine records, the individual should provide

some acceptable identification such as a driver's license or other form of picture identification. If it is determined that the release of medical information to the requester could have an adverse effect upon the individual's physical or mental health, the requester should be prepared to provide the name and address of a physician who would be willing to receive the medical record, and at the physician's discretion, inform the individual covered by the system of the contents of that record. In the event the physician does not agree to convey the information contained within the record to the individual, TRICARE Management Activity will take positive measures to ensure the individual is provided the requested information.

CONTESTING RECORD PROCEDURES:

The OSD rules for accessing records, for contesting contents and appealing initial agency determinations are published in OSD Administrative Instruction 81; 32 CFR part 311; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

Contractors, Health Benefit Advisors; other Components of the Department of Defense; all branches of the Uniformed Services; Congressional offices; providers of care; consultants; and individuals.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

[FR Doc. 03–11582 Filed 5–8–03; 8:45 am]

BILLING CODE 5001–08–P

DEPARTMENT OF DEFENSE

Department of the Air Force

Privacy Act of 1974; System of Records

AGENCY: Department of the Air Force, DoD.

ACTION: Notice to Amend Systems of Records.

SUMMARY: The Department of the Air Force is amending five systems of records notices in its existing inventory of record systems subject to the Privacy Act of 1974, (5 U.S.C. 552a), as amended.

DATES: This proposed action will be effective without further notice on June 9, 2003 unless comments are received which result in a contrary determination.

ADDRESSES: Send comments to the Air Force Privacy Act Manager, Office of the Chief Information Officer, AF–CIO/P, 1155 Air Force Pentagon, Washington, DC 20330–1155.

FOR FURTHER INFORMATION CONTACT: Mrs. Anne Rollins at (703) 601–4043.

SUPPLEMENTARY INFORMATION: The Department of the Air Force systems of records notices subject to the Privacy Act of 1974, (5 U.S.C. 552a), as amended, have been published in the **Federal Register** and are available from the address above.

The specific changes to the records systems being amended are set forth below followed by the notices, as amended, published in their entirety. The proposed amendments are not within the purview of subsection (r) of the Privacy Act of 1974, (5 U.S.C. 552a), as amended, which requires the submission of a new or altered system report.

Dated: April 30, 2003.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

F033 AF CIC A

SYSTEM NAME:

Automated Orders Data System (June 11, 1997, 62 FR 31793).

CHANGES:

SYSTEM IDENTIFIER:

Replace entry with 'F033 AF D'.

* * * * *

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Delete 'who perform annual, school, special, and Military Personnel Appropriation (MPA) tours' and add 'and other individuals that travel on Air Force travel orders'.

CATEGORIES OF RECORDS IN THE SYSTEM:

Replace entry with 'Records relating to official travel of individuals, including travel orders, per diem vouchers, transportation requests, travel itinerary, and supporting documentation. Records contain individual's name, Social Security Number, rank/grade, office name, telephone, and related information.'

* * * * *

PURPOSE(S):

Replace entry with 'To maintain an official travel record authorization and payment file system. Provides management information for control of travel expenditures and supports documentation requirements for official travel.'

* * * * *

F033 AF D

SYSTEM NAME:

Automated Orders Data System.

SYSTEM LOCATION:

Any location where temporary orders are published at all levels down to and including squadrons. Official mailing addresses are published as an appendix to the Air Force compilation of systems of records notices.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

All Air Force civilian employees and military members who perform temporary duty travel, including all Air Force reserve personnel and other individuals that travel on Air Force travel orders.

CATEGORIES OF RECORDS IN THE SYSTEM:

Records relating to official travel of individuals, including travel orders, per diem vouchers, transportation requests, travel itinerary, and supporting documentation. Records contain individual's name, Social Security Number, rank/grade, office name, telephone, and related information.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

10 U.S.C. 8013, Secretary of the Air Force; Joint Federal Travel Regulation; Air Force Instruction 33–328, Administrative Orders; Air Force Instruction 65–103, Temporary Duty Orders; and E.O. 9397 (SSN).

PURPOSE(S):

To maintain an official travel record authorization and payment file system. Provides management information for control of travel expenditures and supports documentation requirements for official travel.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

The DoD 'Blanket Routine Uses' published at the beginning of the Air Force's compilation of systems of records notices apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Maintained on computer.

RETRIEVABILITY:

Retrieved by name and Social Security Number.

SAFEGUARDS:

Records are accessed by person(s) responsible for servicing the record system in performance of their official duties and are properly screened for need-to-know. Passwords are established for computer system entrance.

RETENTION AND DISPOSAL:

Identification data is maintained until the individual is reassigned. Orders are maintained for 1 to 56 years after the year in which they are published.

SYSTEM MANAGER(S) AND ADDRESS:

Records Custodians at the installation, base, unit, organization, office or function to which the individual is assigned, attached, tenanted on, or on temporary duty. Official mailing addresses are published as an appendix to the Air Force's compilation of systems of records notices.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether this system of records contains information on themselves should address inquiries to the Records Custodian at the installation, base, unit, organization, office or function to which the individual is assigned, attached, tenanted on, or on temporary duty. Official mailing addresses are published as an appendix to the Air Force's compilation of systems of records notices.

Individual should provide full name, Social Security Number, and office or organization.

RECORD ACCESS PROCEDURES:

Individuals seeking access to records about themselves contained in this system should address requests to the Records Custodian at the installation, base, unit, organization, office or function to which the individual is assigned, attached, tenanted on, or on temporary duty. Official mailing addresses are published as an appendix to the Air Force's compilation of systems of records notices.

Individual should provide full name, Social Security Number, and office or organization.

CONTESTING RECORD PROCEDURES:

The Air Force rules for accessing records, and for contesting contents and appealing initial agency determinations are published in Air Force Instruction 37–132; 32 CFR part 806b; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

Information is obtained from personnel records, automated system interfaces, individuals, and orders requests.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

F033 AF CIC D

SYSTEM NAME:

Locator, Registration and Postal Directory Files (June 11, 1997, 62 FR 31793).

CHANGES:

SYSTEM IDENTIFIER:

Change to read 'F033 AF C'.

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CATEGORIES OF INDIVIDUALS:

Replace 'unified and specified' with 'combatant'.

CATEGORIES OF RECORDS IN THE SYSTEM:

Delete "military service identification number"

* * * * *

F033 AF C

SYSTEM NAME:

Locator, Registration and Postal Directory Files.

SYSTEM LOCATION:

Headquarters, United States Air Force; Air Force installations to include bases; units; offices and functions, and headquarters of combatant commands for which Air Force is Executive Agent. Official mailing addresses are published as an appendix to the Air Force's compilation of systems of records notices.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Air Force military and civilian personnel; Air Force Reserve and National Guard personnel; volunteer personnel; United States Armed Forces military and civilian personnel assigned to headquarters of combatant commands for which Air Force is Executive Agent, and contractor personnel. Dependents may also be included in this system.

CATEGORIES OF RECORDS IN THE SYSTEM:

Cards or listings may contain the individuals name, grade, Social Security Number, duty location, office telephone number, residence address and residence telephone number, and similar type personnel data determined to be necessary by local authority.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

10 U.S.C. 8013, Secretary of the Air Force and E.O. 9397 (SSN).

PURPOSE(S):

Used to locate or identify personnel assigned/attached to, tenanted on, or on temporary duty at the specific installation, office, base, unit, function, and/or organization in response to specific inquiries from authorized users for the conduct of business. Portions of the system are used for directory service and forwarding individual personal mail received by Air Force postal activities, and for assignment of individual mailboxes. Files may be used locally to support official and unofficial programs that require minimal locator information, membership or user listings.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records, or information contained therein, may specifically be disclosed outside the DOD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

The DoD 'Blanket Routine Uses' published at the beginning of the Air Force's compilation of systems of records notices apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Maintained on paper records in card or form media in visible file binders/cabinets or card files, in computers and on computer output products.

RETRIEVABILITY:

Retrieved by name and/or Social Security Number.

SAFEGUARDS:

Records are accessed by person(s) responsible for servicing the record system in performance of their official duties and by authorized personnel who are properly screened and cleared for need-to-know. Records are stored in locked rooms and cabinets. Those in computer storage devices are protected by computer system software.

RETENTION AND DISPOSAL:

Retained in office files until reassignment or separation, or when superseded or no longer needed for reference. Postal directory files are destroyed for one year after permanently assigned personnel depart, or three months after transient personnel depart. Records are destroyed by tearing into pieces, shredding, pulping, macerating or burning. Computer records are destroyed by erasing, deleting or overwriting.

SYSTEM MANAGER(S) AND ADDRESS:

Records Custodians at the installation, base, unit, organization, office or function to which the individual is assigned, attached, tenanted on,

performing volunteer service at, or on temporary duty. Official mailing addresses are published as an appendix to the Air Force's compilation of systems of records notices.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether this system of records contains information about themselves should address inquiries to or visit the local system manager. Official mailing addresses are published as an appendix to the Air Force's compilation of systems of records notices.

RECORD ACCESS PROCEDURES:

Individuals seeking access to records about themselves contained in this system should address written requests to the local system manager. Official mailing addresses are published as an appendix to the Air Force's compilation of systems of records notices.

CONTESTING RECORD PROCEDURES:

The Air Force rules for accessing records, and for contesting contents and appealing initial agency determinations are published in Air Force Instruction 37–132; 32 CFR part 806b; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

Information obtained from automated system interfaces; the individuals, or from personnel records.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

F036 AETC B

SYSTEM NAME:

Air Force Junior ROTC (AFJROTC) Applicant/Instructor System (June 11, 1997, 62 FR 31793).

CHANGES:

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CATEGORIES OF RECORDS IN THE SYSTEM:

Delete from entry 'ROTC Form 0–217, Change in'; 'ROTC Form 0–214', AFJROTC Instructor Contract Card, AFROTC'; 'or 0–218'. Replace 'comments on AFROTC' with 'comments on Officer Accession and Training School (AFOATS)'. Replace 'or 0–218 and' with 'and Departure/ Transfer Questionnaire'.

* * * * *

F036 AETC B

SYSTEM NAME:

Air Force Junior ROTC (AFJROTC) Applicant/Instructor System.

SYSTEM LOCATION:

Air Force Junior Reserve Officer Training Corps, 551 East Maxwell Boulevard, Maxwell Air Force Base, AL 36112–6110.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Air Force Junior Reserve Officer Training Corps (AFJROTC) instructor applicants and instructors.

CATEGORIES OF RECORDS IN THE SYSTEM:

Application for AFJROTC instructor duty, processing checklist, applicant evaluation forms, interview record, last 10 Airman Performance Reports or Officer Effectiveness Reports or summary of last 10 reports which includes period of supervision and overall evaluation, letter requesting Defense Central Index of Investigation (DCII) name check, photograph, Report of Separation from Active Duty, Retirement Order (if applicable), Commander's recommendation (for noncommissioned officers on active duty only), miscellaneous correspondence such as resume and letter of recommendation, copy of AF retirement physical and Physical Evaluation Board Findings if applicant is retired with 30 percent or more disability awarded by VA, letter requesting medical evaluation of AFJROTC instructor applicants for personnel retired with 30 percent or more disability, letter verifying dependents, instructor preference card, instructor intent letter, contract data cards, termination letters, certification certificates, AFJROTC Instructor Status, Air Force Junior ROTC Instructor Evaluation Report, letters pertaining to appeals of ratings and/or comments on Officer Accession and Training School (AFOATS) Form 98; and Departure/ Transfer Questionnaire.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

10 U.S.C. 102, Junior Reserve Officers' Training Corps; Air Force Instruction 36–2010, Air Force Junior Reserve Officers' Training Corps; and E.O. 9397 (SSN).

PURPOSE(S):

Used to evaluate applicant qualifications for employment as AFJROTC instructors. Also used to determine if instructor is meeting Air Force standards.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

The DoD 'Blanket Routine Uses' published at the beginning of the Air Force's compilation of systems of records notices apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Maintained in file folders, and on computer magnetic tape and computer printouts.

RETRIEVABILITY:

Retrieved by name and Social Security Number.

SAFEGUARDS:

Records are accessed by person(s) responsible for servicing the record system in performance of their official duties. Records are stored in locked cabinets or rooms. Those in computer storage devices are protected by computer system software.

RETENTION AND DISPOSAL:

Retained in office files until superseded, obsolete, no longer needed for reference, or on inactivation, then destroyed by tearing into pieces, shredding, pulping, macerating, or burning. Computer records are destroyed by erasing, deleting and overwriting.

SYSTEM MANAGER(S) AND ADDRESS:

Commander, Air Force Junior Reserve Officer Training Corps, 551 East Maxwell Boulevard, Maxwell Air Force Base, AL 36112–6110.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether this system of records contains information on them should address inquiries to the Commander, Air Force Junior Reserve Officer Training Corps, 551 East Maxwell Boulevard, Maxwell Air Force Base, AL 36112–6110.

Individuals who write must furnish name, grade, Social Security Number, unit of assignment and address.

RECORD ACCESS PROCEDURES:

Individuals seeking to access records about themselves contained in this system should address requests to the Commander, Air Force Junior Reserve Officer Training Corps, 551 East Maxwell Boulevard, Maxwell Air Force Base, AL 36112–6110.

Individuals who write must furnish name, grade, Social Security Number, unit of assignment and address.

Visitors must show armed forces identification card and some additional source of positive identification.

CONTESTING RECORD PROCEDURES:

The Air Force rules for accessing records, and for contesting contents and appealing initial agency determinations are published in Air Force Instruction 37–132; 32 CFR part 806b; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

Information obtained from previous employers, financial institutions, educational institutions, police and investigating officers, the bureau of motor vehicles, a state or local government, witnesses and from source documents (such as reports) prepared on behalf of the Air Force by boards, committees, panels, auditors, and so forth.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

F065 AF SVA B

SYSTEM NAME:

Non-appropriated Fund (NAF) Insurance and Employee Benefit System File (June 11, 1997, 62 FR 31793).

CHANGES:

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SYSTEM NAME:

* * * * *

Change 'File' to 'Files'.

* * * * *

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Replace entry with 'Non-appropriated Fund (NAF) participants of the Air Force NAF Group Insurance and Retirement Programs as well as any NAF civilian who has filed a claim with Air Force NAF Workers' Compensation or Unemployment Compensation programs.'

* * * * *

RETENTION AND DISPOSAL:

Replace 'Life and Health' with 'Group'; after '20 years' delete 'upon' and add 'after'; after 'erasing' add 'degaussing'.

* * * * *

F065 AF SVA B

SYSTEM NAME:

Non-appropriated Fund (NAF) Insurance and Employee Benefit System Files.

SYSTEM LOCATION:

Air Force installations; NAF Instrumentalities (NAFIs), local Human Resources Offices and the Air Force Services Agency (HQ AFSVA), 10100 Reunion Place, Suite 502, San Antonio TX 78216–4138. Official mailing addresses are published in the appendix to the Air Force's compilation of record systems notices.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

NAF participants of the Air Force NAF Group Insurance and Retirement Programs as well as any NAF civilian who has filed a claim with Air Force NAF Workers' Compensation or Unemployment Compensation programs.

CATEGORIES OF RECORDS IN THE SYSTEM:

Group Life and Health Insurance Plan Files, Retirement and 401(k) Plan Files, Unemployment Compensation File, and Workers' Compensation Claim Files, all of which consist of, but are not limited to the following: applications and/or waivers of participation; notices of change of beneficiary; notices of termination of eligibility, disability and death; evidence of age and qualification for benefits; application for retirement; election to reinstate prior participation and survivor annuities; Social Security earnings data; employer certification of coverage; hospitalization and claims forms; report of accident or occupational illness; medical reports; payment forms; Unemployment Compensation claims; personal historical information, and other related correspondence.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

10 U.S.C. 8013, Secretary of the Air Force; 5 U.S.C. 8171–73 Non-appropriated Fund Employees, Compensation for Work Injuries; Air Force Instruction 34–301, Air Force Non-appropriated Fund Personnel Management and Administration; Air Force Instruction 34–302, Non-appropriated Fund Employee Retirement Plan; Air Force Instruction 34–305 Non-appropriated Fund Employee Group Health Plan; Air Force Instruction 34–306 Non-appropriated Fund Employee Group Life and Accidental Death and Dismemberment Plan; Air Force Instruction 34–307 Non-appropriated Fund Employee Flexible Benefits Plan; Air Force Instruction 34–308 Non-appropriated Fund Employee Worker's Compensation Program; Air Force Instruction 34–309 Non-appropriated Fund Employee Unemployment Compensation; Air Force Instruction 34–315 Non-appropriated Fund Employees' 401(k) Savings Plan; and E.O. 9397 (SSN).

PURPOSE(S):

Provides information for the administration of the programs to determine eligibility and compensation entitlements. It is used in statistical and actuarial evaluations of the program; and to insure compliance with applicable laws, determine benefits and adjudicate pay claims.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

Information in the system may be disclosed to commercial concerns in actuarial evaluations and determinations of eligibility, and amounts of benefit payments due.

May be disclosed to Federal, state, and local governmental agencies as required by law, and to the Department of Labor to ensure compliance with statutory requirements, in furtherance of the Air Force Program involved, and to insure benefits for proper recipients.

The DoD 'Blanket Routine Uses' published at the beginning of the Air Force's compilation of record system notices apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Maintained in file folders, microform, in computers and on computer output products.

RETRIEVABILITY:

Retrieved by name or Social Security Number.

SAFEGUARDS:

Records are accessed by custodian of the record system, by person(s) responsible for servicing the record system in performance of their official duties, who are properly screened and cleared for need-to-know. Records are stored in locked file containers, cabinets, vaults or rooms, and in computerized data storage devices controlled by computer system software.

RETENTION AND DISPOSAL:

At installation level, NAF Group Insurance Program and NAF Retirement Program records are retired to National Personnel Records Center, 111 Winnebago Street, St. Louis, MO 62225–2001, upon employee's separation, death, or retirement. At Headquarters Air Force level, NAF Retirement and Unemployment Compensation Programs records are retained for a minimum of 20 years after an employee's withdrawal from the program. At Headquarters Air Force level, NAF Workers'

Compensation Program records are retained for 3 years after file is closed, retired to National Personnel Records Center for 15 additional years, and then destroyed. For all systems, eventual destruction is by burning, shredding, pulping, or macerating. Computer records are destroyed by erasing, degaussing, deleting or overwriting.

SYSTEM MANAGER(S) AND ADDRESS:

Chief, Benefits and Insurance Division, HQ Air Force Services Agency (HQ AFSVA/SVXBC), 10100 Reunion Place, Suite 502, San Antonio, TX 78216–4138.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether this system of records contains information on them should address written inquiries to or visit the Benefits and Insurance Division, HQ Air Force Services Agency (HQ AFSVA/SVXBC), 10100 Reunion Place, Suite 502, San Antonio, TX 78216–4138 or to the local Human Resources Office at installation of employment of individual making request.

Give name and Social Security Number (and date of accident or injury if related to worker's compensation claim).

RECORD ACCESS PROCEDURES:

Individuals seeking to access records about themselves contained in this system should address written requests to or visit the Benefits and Insurance Division, Headquarters Air Force Services Agency (HQ AFSVA/SVXBC), 10100 Reunion Place, Suite 502, San Antonio, TX 78216–4138 or to the local Human Resources Office at installation of employment of individual making request.

Give name and Social Security Number (and date of accident or injury if related to worker's compensation claim). Government identification card, or vehicle driver's license is required for positive identification.

CONTESTING RECORD PROCEDURES:

The Air Force rules for accessing records, and for contesting contents and appealing initial agency determinations are published in Air Force Instruction 37–132; 32 CFR part 806b; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

Information obtained from the individuals and their survivors and beneficiaries; Department of Labor; Social Security Administration; previous employers; medical institutions, and any individual in a position to verify relevant information.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

F065 AF SVA C

SYSTEM NAME:

Morale, Welfare, and Recreation (MWR) Participation/Membership/Training Records (June 11, 1997, 62 FR 31793).

CHANGES:

* * * * *

SYSTEM NAME:

Replace entry with 'Services Activities Participation/Membership/Training Records.

* * * * *

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Replace entry with 'Active duty and retired military members and their dependents; members of Reserve components, DOD appropriated and non-appropriated civilian employees and their dependents; and certain other categories of individuals identified as authorized patrons of Service activities in accordance with Air Force regulations.'

CATEGORIES OF RECORDS:

Replace 'MWR' with 'Services'.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Replace entry with '10 U.S.C. 8013, Secretary of the Air Force; Air Force Instruction 34–121, Other Recreation Membership Clubs Programs; Air Force Instruction 34–217, Air Force Aero Club Program; and Air Force Instruction 34–272, Air Force Club Program; and E.O. 9397 (SSN).'

* * * * *

STORAGE:

Replace entry with 'Maintained in paper and on computers and computer output products.'

SAFEGUARDS:

Replace entry with 'Records are accessed by person(s) responsible for servicing the record system in performance of official duties and by authorized personnel who are properly screened and cleared for a need to know. Records are stored in locked rooms, cabinets, and in computer storage devices protected by computer system software.'

* * * * *

RECORD SOURCE CATEGORIES:

Replace entry with 'Individual applications and/or activity reports of membership/participation in Services activities and offices of primary responsibility for Services activities.'

* * * * *

F065 AF SVA C

SYSTEM NAME:

Services Activities Participation/Membership/Training Records.

SYSTEM LOCATION:

Air Force Services Agency, 10100 Reunion Place Suite 402, San Antonio, TX 78216–4138; Air Force installations; major commands; and individual activities. Official mailing addresses are published in the appendix to the Air Force's compilation of record system notices.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Active duty and retired military members and their dependents; members of Reserve components, DOD appropriated and non-appropriated civilian employees and their dependents; and certain other categories of individuals identified as authorized patrons of Services activities in accordance with Air Force regulations.

CATEGORIES OF RECORDS IN THE SYSTEM:

Volunteer, membership, attendance, training, and participation/competition records and supporting data relative to Air Force Services activities.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

10 U.S.C. 8013, Secretary of the Air Force; Air Force Instruction 34–121, Other Recreation Membership Clubs Programs; Air Force Instruction 34–217, Air Force Aero Club Program; and Air Force Instruction 34–272, Air Force Club Program; and E.O. 9397 (SSN).

PURPOSE(S):

Determine membership/participation eligibility; maintain patron attendance; conduct contests; monitor training and currency of members; and serve as database for designing and conducting various recreation programs. Used by personnel responsible for conducting Air Force Services activities.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

May be provided to commercial or non-profit concerns conducting activities on behalf of, in support of or in conjunction with the Air Force Services programs involved.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Maintained in paper and on computers and computer output products.

RETRIEVABILITY:

Retrieved by name and/or Social Security Number.

SAFEGUARDS:

Records are accessed by person(s) responsible for servicing the record system in performance of official duties and by authorized personnel and limited to those requiring access in the performance of their duties, and who are properly screened and cleared for a need-to-know. Records are stored in locked rooms, cabinets, and in computer storage devices protected by computer system software.

RETENTION AND DISPOSAL:

Retained in office files until superseded, obsolete, no longer needed for reference, or on inactivation, then destroyed by tearing into pieces, shredding, pulping, macerating, or burning, or surrender to member upon termination, as applicable. Computer records are destroyed by deleting files, erasing, degaussing, or overwriting using approved Air Force procedures and products.

SYSTEM MANAGER(S) AND ADDRESS:

Chief of Community Programs, Community Programs Division, HQ Air Force Services Agency (HQ AFSVA/SVP), 10100 Reunion Place, Suite 402, San Antonio, TX 78216–4138.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether information about themselves is contained in this system should address written inquiries to or visit the Community Programs Division, Headquarters Air Force Services Agency (HQ AFSVA/SVPA), 10100 Reunion Place, Suite 402, San Antonio, TX 78216–4138 or Services activities at the appropriate Air Force installation. Official mailing addresses are published as an appendix to the Air Force's compilation of systems of records notices.

Individual should provide full name and Social Security Number.

RECORD ACCESS PROCEDURES:

Individuals seeking access to information about themselves contained in this system should address written inquiries to or visit the Community Programs Division, Headquarters Air Force Services Agency (HQ AFSVA/SVPA), 10100 Reunion Place, Suite 402, San Antonio TX 78216–4138 or Services activities at the appropriate Air Force installation. Official mailing addresses are published as an appendix to the Air Force's compilation of systems of records notices.

Individual should provide full name and Social Security Number.

CONTESTING RECORD PROCEDURES:

The Air Force rules for accessing records, and for contesting contents and appealing initial agency determinations are published in Air Force Instruction 37–132; 32 CFR part 806b; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

Individual applications and/or activity reports of membership/participation in Services activities and offices of primary responsibility for Services activities.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

[FR Doc. 03–11577 Filed 5–8–03; 8:45 am]

BILLING CODE 5001–08–P

DEPARTMENT OF DEFENSE

Department of the Air Force

Privacy Act of 1974; System of Records

AGENCY: Department of the Air Force, DoD.

ACTION: Notice to amend systems of records.

SUMMARY: The Department of the Air Force is amending four systems of records notices in its existing inventory of record systems subject to the Privacy Act of 1974, (5 U.S.C. 552a), as amended.

DATES: This proposed action will be effective without further notice on June 9, 2003, unless comments are received which result in a contrary determination.

ADDRESSES: Send comments to the Air Force Privacy Act Manager, Office of the Chief Information Officer, AF–CIO/P, 1155 Air Force Pentagon, Washington, DC 20330–1155.

FOR FURTHER INFORMATION CONTACT: Mrs. Anne Rollins at (703) 601–4043.

SUPPLEMENTARY INFORMATION: The Department of the Air Force systems of records notices subject to the Privacy Act of 1974, (5 U.S.C. 552a), as amended, have been published in the **Federal Register** and are available from the address above.

The specific changes to the records systems being amended are set forth below followed by the notices, as amended, published in their entirety. The proposed amendments are not within the purview of subsection (r) of the Privacy Act of 1974, (5 U.S.C. 552a), as amended, which requires the submission of a new or altered system report.

Dated: April 30, 2003.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

F036 AFPC H

SYSTEM NAME:

Medical Opinions on Board for Correction of Military Records Cases (BCMR) (June 11, 1997, 62 FR 31793).

CHANGES:

* * * * *

SYSTEM LOCATION:

Delete entry and replace with 'Headquarters Air Force Personnel Center, Superintendent, Medical Accessions and Personnel Programs (DPAMF2), Medical Service Officer Management Division, 550 C Street West, Suite 25, Randolph Air Force Base, TX 78150–4727.'

* * * * *

SYSTEM MANAGER(S) AND ADDRESS:

Delete entry and replace with 'Superintendent, Medical Accessions and Personnel Programs (DPAMF2), Medical Service Officer Management Division, Headquarters Air Force Personnel Center, 550 C Street West, Suite 25, Randolph Air Force Base, TX 78150–4727.'

* * * * *

F036 AFPC H

SYSTEM NAME:

Medical Opinions on Board for Correction of Military Records Cases (BCMR).

SYSTEM LOCATION:

Headquarters Air Force Personnel Center, Superintendent, Medical Accessions and Personnel Programs (DPAMF2), Medical Service Officer Management Division, 550 C Street West, Suite 25, Randolph Air Force Base, TX 78150–4727.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Files are maintained on individuals making application to the Air Force Board for Correction of Military Records

on which a medical opinion has been rendered.

CATEGORIES OF RECORDS IN THE SYSTEM:

Contains a copy of the medical advisory opinion rendered on Air Force Board for Correction of Military Records.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

10 U.S.C. 8013, Secretary of the Air Force and 10 U.S.C. 79, Correction of Military Records; as implemented by Air Force Instruction 36–2603, Air Force Board for Correction of Military Records.

PURPOSE(S):

A historical reference, by name, to previous action taken regarding a specific BCMR application.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records, or information contained therein, may specifically be disclosed outside the DOD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

The DoD 'Blanket Routine Uses' published at the beginning of the Air Force's compilation of systems of records notices apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Maintained in file folders in filing cabinets.

RETRIEVABILITY:

Retrieved by name.

SAFEGUARDS:

Records are accessed by person(s) responsible for servicing the record system in performance of their official duties and by authorized personnel who are properly screened and cleared for need-to-know. Records are stored in cabinets and locked rooms.

RETENTION AND DISPOSAL:

Retained in office files for one year or until no longer needed for reference, then destroyed by tearing into pieces, shredding, pulping, macerating, or burning.

SYSTEM MANAGER(S) AND ADDRESS:

Superintendent, Medical Accessions and Personnel Programs (DPAMF2), Medical Service Officer Management Division, Headquarters Air Force Personnel Center, 550 C Street West, Suite 25, Randolph Air Force Base, TX 78150–4727.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether this system of records contains information on themselves should address written inquiries to the Superintendent, Medical Accessions and Personnel Programs (DPAMF2), Medical Service Officer Management Division, Headquarters Air Force Personnel Center, 550 C Street West, Suite 25, Randolph Air Force Base, TX 78150–4727.

RECORD ACCESS PROCEDURES:

Individuals seeking to access records about themselves contained in this system should address written requests to the Superintendent, Medical Accessions and Personnel Programs (DPAMF2), Medical Service Officer Management Division, Headquarters Air Force Personnel Center, 550 C Street West, Suite 25, Randolph Air Force Base, TX 78150–4727.

CONTESTING RECORD PROCEDURES:

The Air Force rules for accessing records, and for contesting contents and appealing initial agency determinations are published in Air Force Instruction 37–132; 32 CFR part 806b; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

Information obtained from medical institutions.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

F036 AFPC G

SYSTEM NAME:

Medical Officer Personnel Utilization Records (June 11, 1997, 62 FR 31793).

CHANGES:

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CATEGORIES OF RECORDS IN THE SYSTEM:

Delete 'Air Force Manpower and Personnel Center (AFMPC) Form 8' and 'Air Force Manpower and Personnel Center (AFMPC) Form 138'.

AUTHORITY FOR THE MAINTENANCE OF THE SYSTEM:

Delete entry and replace with '10 U.S.C. 8013, Secretary of the Air Force; as implemented by Air Force Instruction 36–2105, Officer Classification; Air Force Instruction 41–109, Special Pay for Health Professionals; Air Force Instruction 36–2610, Appointing Regular Air Force Officers and Obtaining Conditional Reserve Status; Air Force Instruction 36–2110, Assignments; Air Force Instruction 36–2504, Officer Promotion, Continuation and Selective Early Removal in the Reserve of the Air Force; Air Force Instruction 36–2107, Active Duty Service Commitments; and Air Force Instruction 36–2133, Specified Period of Time Contracts (SPTC).'

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F036 AFPC G

SYSTEM NAME:

Medical Officer Personnel Utilization Records.

SYSTEM LOCATION:

Headquarters Air Force Personnel Center, Deputy Director, Medical Service Officer Management Division, 550 C Street West, Suite 25, Randolph Air Force Base, TX 78150–4727.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

All Air Force active duty medical service officers.

CATEGORIES OF RECORDS IN THE SYSTEM:

Personnel Utilization records containing: Career briefs; Print-outs; Letters from individuals; Letters from Utilization Branch to individuals Letters concerning medical service education and training; Copy of application for Indefinite Reserve Status; Copy of request to join spouse; Copy of Specified Period of Time Contract (SPTC) requests; Assignment/Actions Worksheet; Officer Reassignment; Memorandum of Official Contact; Officer Career Objective Statement; Personnel Action Request; Application for Appointment in the AF Reserve; Recall to Active Duty; Supplement to Application for Commission in the United States Air Force (U.S.) Medical Services; Assignment Notification of Medical Service Officer; Constructive Credit Computation; Personal Interview-USAF Nurse Application; Air Force Institute of Technology (AFIT) Education Plan; Messages; Department of Defense Notification of change in service members official records; Master Personnel Record Fiche; Training/Specialty Board Certification Records; Continuation Pay Contracts; Specialty Badge Award; Personnel Data Systems (PDS) transactions; Record of Office of Special Investigations (OSI) background checks; Resumes/special applications.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

10 U.S.C. 8013, Secretary of the Air Force; as implemented by Air Force Instruction 36–2105, Officer Classification; Air Force Instruction 41–109, Special Pay for Health Professionals; Air Force Instruction 36–2610, Appointing Regular Air Force Officers and Obtaining Conditional Reserve Status; Air Force Instruction 36–2110, Assignments; Air Force Instruction 36–2504, Officer Promotion, Continuation and Selective Early Removal in the Reserve of the Air Force; Air Force Instruction 36–2107, Active Duty Service Commitments; and Air Force Instruction 36–2133, Specified Period of Time Contracts (SPTC).

PURPOSE(S):

Verify current assignment; verify history of application for: Tour extension, tour curtailment, Specified Period of Time Contract, Indefinite Reserve Status, duty Air Force specialty code change, special duty application, formal school application, change of assignment reporting dates, join spouse application; Use AF Form 24 for obtaining date of birth and place of birth when processing assignment to academy or other highly sensitive area of assignment; to hold messages pertaining to assignment; to hold action notices and career briefs as a result of input from original office and any other office pertaining to an individual. This also includes career briefs and action notices from automatic actions (*i.e.*, available assignment); pay computation; grade computation; to provide background information to answer correspondence.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records, or information contained therein, may specifically be disclosed outside the DOD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

The DoD "Blanket Routine Uses" published at the beginning of the Air Force's compilation of systems of records notices apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Maintained in visible file binders/cabinets, etc.

RETRIEVABILITY:

Retrieved by name.

SAFEGUARDS:

Records are accessed by custodian of the record system and by person(s) responsible for servicing the record system in performance of their official duties and who are properly screened and cleared for need-to-know. Records are stored in locked cabinets or rooms.

RETENTION AND DISPOSAL:

Retained in office files for six months after the individual terminates military service, then destroyed by tearing into pieces, shredding, pulping, macerating, or burning.

SYSTEM MANAGER(S) AND ADDRESS:

Deputy Director, Medical Service Officer Management Division, Headquarters Air Force Personnel Center, 550 C Street West, Suite 25, Randolph Air Force Base, TX 78150–4727.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether this system of records contains information on themselves should address written inquiries to the Deputy Director, Medical Service Officer Management Division, Headquarters Air Force Personnel Center, 550 C Street West, Suite 25, Randolph Air Force Base, TX 78150–4727.

RECORD ACCESS PROCEDURES:

Individuals seeking to access records about themselves contained in this system should address written requests to the Deputy Director, Medical Service Officer Management Division, Headquarters Air Force Personnel Center, 550 C Street West, Suite 25, Randolph Air Force Base, TX 78150–4727.

CONTESTING RECORD PROCEDURES:

The Air Force rules for accessing records, and for contesting contents and appealing initial agency determinations are published in Air Force Instruction 37–132; 32 CFR part 806b; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

Applications for appointment, letters written by individual or on individuals by others. Computer print-outs, forms completed by individuals, Personnel Data Systems (PDS) transactions, other information pertinent to assignments or career development of the officer.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

F036 AFPC P

SYSTEM NAME:

Separation Case Files (Officer and Airman) (June 11, 1997, 62 FR 31793).

CHANGES:

* * * * *

SYSTEM LOCATION:

Delete "Military"; before "Randolph" add "550 C Street West,"; after "Air Reserve Personnel Center" add "6760 East Irvington Place".

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Replace 'Air Force Regulation 36–2, Administrative Discharge Procedures (For Sub-standard Performance of Duty, Misconduct, Moral or Professional Dereliction, or in the Interest of National Security); 36–12, Administrative Separation of Commissioned Officers; and 39–10, Administrative Separation of Airmen' with 'Air Force Instruction 36–3206, Administrative Discharge Procedures For Commissioned Officers; 36–3207, Separating Commissioned Officers; and 36–3208, Administrative Separation of Airmen.'

* * * * *

F036 AFPC P

SYSTEM NAME:

Separation Case Files (Officer and Airman).

SYSTEM LOCATION:

Air Force Military Personnel Center, 550 C Street West, Randolph Air Force Base, TX 78150–6001. National Personnel Records Center, Military Personnel Records Center, Military Personnel Records, 9700 Page Boulevard, St. Louis, MO 63132–5000. Air Reserve Personnel Center, 6760 East Irvington Place, Denver, CO 80280–5000. Duplicate copies may be retained temporarily at each level requiring review or action on the case.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Officers and Airmen who have requested voluntary separation, who have been recommended or identified for involuntary separation under 10 U.S.C. 617(b) (including Reserve officers as a matter of Air Force Policy). Individuals who, under Pub. L. 95–202, Section 401, have requested review of service performed with the Army Air Force or U.S. Air Force to determine if such service was equivalent to active duty for purposes of laws administered by the Department of Veterans Affairs.

CATEGORIES OF RECORDS IN THE SYSTEM:

Member's application, letter from commander initiating separation action with endorsements, supporting documents, and record of final action take. If congressional inquiry involved, request for information and reply provided is also filed by those offices involved.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

10 U.S.C. Chapter 59, Separations, 10 U.S.C. Chapter 36, Promotion, Separation and Involuntary Retirement of Officer on the Active-Duty List, Chapter 60, Separation of Regular Officers for Substandard Performance of

Duty or for Certain Other Reasons, and 38 U.S.C., Veteran's Benefits; as implemented by Air Force Instruction 36–3206, Administrative Discharge Procedures For Commissioned Officers; 36–3207, Separating Commissioned Officers; and 36–3208, Administrative Separation of Airmen.

PURPOSE(S):

The original document is retained as a permanent record of action taken. The duplicate copies are retained to provide a temporary record of actions being taken for responding to inquiries concerning the status of a particular case. Occasionally, a case file is retained as a precedence file for later reference in revising separation directives.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

Individual case files may be released to a governmental body or agency or health care professional society or organization if such record is needed to perform licensing or professional standards monitoring related to credentialed health care practitioners or licensed, non-credentialed health care personnel who are or were formerly members of the Armed Forces. Case files may also be released to medical institutions or organizations wherein such member has applied for or been granted authority or employment to provide health care services if such record is needed to assess the professional qualifications of such member.

The DoD 'Blanket Routine Uses' published at the beginning of the Air Force's compilation apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Maintained in visible file binders/cabinets.

RETRIEVABILITY:

Retrieved by name. At National Personnel Records Center. Cases and correspondence are filed with Master Personnel Records. Transitory copies are filed alphabetically by general subject categories, *i.e.*, involuntary officer separations, involuntary airman separations, etc.

SAFEGUARDS:

Records are accessed by custodian of the record system and by person(s) responsible for servicing the record system in performance of their official duties and by authorized personnel who are properly screened and cleared for need-to-know. Records are stored in locked rooms and cabinets. File cabinets and power files are secured during nonduty hours.

RETENTION AND DISPOSAL:

Master copies are retained permanently. Temporary files are disposed of within three years after final action is taken. Files are disposed of by shredding.

SYSTEM MANAGER(S) AND ADDRESS:

Chief, Retirements and Separations Division (DPPR), Headquarters Air Force Personnel Center, 550 C Street West, Suite 11, Randolph Air Force Base, TX 78150–4713.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether this system of records contains information on them should address inquiries to or visit the Retirements and Separations Division (DPPR), Headquarters Air Force Personnel Center, 550 C Street West, Suite 11, Randolph Air Force Base, TX 78150–4713.

RECORD ACCESS PROCEDURES:

Individuals seeking to access records about themselves contained in this system should address requests to the Retirements and Separations Division (DPPR), Headquarters Air Force Personnel Center, 550 C Street West, Suite 11, Randolph Air Force Base, TX 78150–4713.

CONTESTING RECORD PROCEDURES:

The Air Force rules for accessing records, and for contesting contents and appealing initial agency determinations are published in Air Force Instruction 37–132; 32 CFR part 806b; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

Member's application, correspondence from unit commander's initiating separation action.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

F051 AFJA C

SYSTEM NAME:

Judge Advocate Personnel Records (June 11, 1997, 62 FR 31793).

CHANGES:

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CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Delete entry and replace with 'All Air Force active duty judge advocates and paralegals; Air Force civilian attorneys employed in classification series GS–905 and GS–1222 at Air Staff and AFLSA; active duty Air Force applicants for Funded Legal Education Program and Excess Leave Program, civilian employees and others with access to FLITE and other TJAG Department automated information systems.'

CATEGORIES OF RECORDS IN THE SYSTEM:

Replace 'Military Personnel Center' with 1Air Force Personnel Center. After 'computer data' add 'official and personal locator information; officer performance and training'. Add at the end of the entry 'and Professional Development Information.'

* * * * *

PURPOSE(S):

Delete entry and replace with 'Records for military members are used by the Judge Advocate General, Deputy Judge Advocate General, and Professional Development Division (AF/JAX) to determine assignments.

Records for civilian members are used by the Executive Secretary and members of Ad Hoc and Air Force Civilian Attorney Qualifying Committees in evaluating and selecting civilian attorneys for appointment to Air Force position vacancies and promotions. Funded Legal Education and Excess Leave Program records are used by the Judge Advocate General, Deputy Judge Advocate General, Professional Development (AF/JAX) personnel, and selection board members in monitoring, evaluating and selecting the best qualified applicants for the programs.'

RETRIEVABILITY:

Add to the end of the entry 'Social Security Number, duty location, rank, job series, and other personnel information.'

* * * * *

RECORD SOURCE CATEGORIES:

After 'Information' add 'obtained directly from the individual or'

* * * * *

F051 AFJA C

SYSTEM NAME:

Judge Advocate Personnel Records.

SYSTEM LOCATION:

Professional Development Division, Office of The Judge Advocate General, Headquarters United States Air Force, HQ USAF/JAX, 1420 Air Force Pentagon, Washington, DC 20330–1420. Office and personnel directory information is maintained at Air Force Legal Information Services Directorate, Air Force Legal Services (AFLSA/JAS), 150 Chennault Circle, Maxwell Air Force Base, AL 36112–6148.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

All Air Force active duty judge advocates and paralegals; Air Force civilian attorneys employed in classification series GS–905 and GS–1222 at Air Staff and AFLSA; active duty Air Force applicants for Funded Legal Education Program and Excess Leave Program, civilian employees and others with access to FLITE and other TJAG Department automated information systems.

CATEGORIES OF RECORDS IN THE SYSTEM:

Educational background; certificate of admission to the bar; career management questionnaire; career objective statement; active duty and reassignment orders; correspondence relating to the individual; Air Force Personnel Center computer data; official and personal locator information; officer performance and training; classification/on-the-job training actions; Judge Advocate General Reserve Personnel Questionnaire; Headquarters USAF active duty and attachment orders; training reports; authorizations for inactive duty training; civilian personal qualifications statement; notification of personnel actions; statement of good standing before the bar; transcript of law school record; statement of availability for Air Force civilian attorney vacancies; actions by Ad Hoc Selection Committee and Air Force Civilian Attorney Qualifying Committee; Judge Advocate interview; letter of acceptance from an American Bar Association accredited law school; application and agreement; LSDAS report; transcript of all undergraduate and graduate education, letters of recommendation, and Professional Development Information.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 3301, Civil service; generally; 10 U.S.C. 261, Reserve Components named; 806, Judge advocates and legal officers; 2004, Detail of commissioned officers of the military departments as students at law schools; 8072, Judge Advocate General: Appointment and duties; 62 Stat. 1014; Air Force Instruction 51–802, Assignment to the Judge Advocate General's Department Reserve; Air Force Instruction 36–2110, Assignments; and E.O. 10577.

PURPOSE(S):

Records for military members are used by the Judge Advocate General, Deputy Judge Advocate General, and Professional Development Division (AF/JAX) to determine assignments.

Records for civilian members are used by the Executive Secretary and members of Ad Hoc and Air Force Civilian Attorney Qualifying Committees in evaluating and selecting civilian attorneys for appointment to Air Force position vacancies and promotions. Funded Legal Education and Excess Leave Program records are used by the Judge Advocate General, Deputy Judge Advocate General, Professional Development (AF/JAX) personnel, and selection board members in monitoring, evaluating and selecting the best qualified applicants for the programs.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

The DoD 'Blanket Routine Uses' published at the beginning of the Air Force's compilation of systems of records notices apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Maintained in file folders, card files, in computers and on computer output products.

RETRIEVABILITY:

Retrieved by name, Social Security Number, duty location, rank, job series, and other personnel information.

SAFEGUARDS:

Records are accessed by person(s) responsible for servicing the record system in performance of their official duties and by authorized personnel who are properly screened and cleared for need-to-know. Records are stored in locked rooms and cabinets. Those in computer storage devices are protected by computer system software.

RETENTION AND DISPOSAL:

Judge Advocate Officer Personnel records and Funded Legal Education and Excess Leave Program records are retained in office files for one year after the individual terminates military service, or until no longer needed for reference, then destroyed. Computer records are destroyed when the individual terminates military service. Other records: Retained in office files until superseded, obsolete, no longer needed for reference, or on inactivation. Records are destroyed by tearing into pieces, shredding, pulping, macerating or burning. Computer records are destroyed by erasing, deleting or overwriting.

SYSTEM MANAGER(S) AND ADDRESS:

Chief, Professional Development Division, Office of The Judge Advocate General, Headquarters United States Air Force, HQ USAF/JAX, 1420 Air Force Pentagon, Washington, DC 20330–1420.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether this system of records contains information on themselves should address written inquiries to or visit the Chief, Professional Development Division, Office of The Judge Advocate General, Headquarters United States Air Force, HQ USAF/JAX, 1420 Air Force Pentagon, Washington, DC 20330–1420.

Full name and Social Security Number should be furnished.

RECORD ACCESS PROCEDURES:

Individuals seeking access to records about themselves contained in this system should address written requests to or visit the Chief, Professional Development Division, Office of The Judge Advocate General, Headquarters United States Air Force, HQ USAF/JAX, 1420 Air Force Pentagon, Washington, DC 20330–1420.

Visits may be made to HQ USAF/JAX, Pentagon, Washington, DC 20330–5000. Valid identification card, driver's license or equivalent must be presented.

CONTESTING RECORD PROCEDURES:

The Air Force rules for accessing records, and for contesting contents and appealing initial agency determinations are published in Air Force Instruction 37–132; 32 CFR part 806b; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

Information obtained directly from the individual or obtained from previous employers, educational institutions, automated system interfaces, state or local governments, source documents, and from Air Reserve Personnel Center.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

[FR Doc. 03–11580 Filed 5–8–03; 8:45 am]

BILLING CODE 5001–08–P

DEPARTMENT OF DEFENSE

Department of the Army

Privacy Act of 1974; System of Records

AGENCY: Department of the Army, DoD.

ACTION: Notice to delete and amend Systems of Records.

SUMMARY: The Department of the Army is deleting two systems of records notices from its inventory, and amending four systems of records notices in its existing inventory of records systems subject to the Privacy Act of 1974, (5 U.S.C. 552a), as amended.

The two Army systems of records known as A0352–3 CFSC, 'Dependent Children School Program Files' (February 22, 1993, 58 FR 10002) and A0690–200 DAPE, 'School Employee File' (February 22, 1993, 58 FR 10002) are now under the cognizance of the Department of Defense Education Activity (DoDEA), Office of the Secretary of Defense and are therefore being transferred. Their new system identifiers are DODDS 26, 'DoD Domestic and Elementary School Program Files' and DODDS 27, 'DoD Domestic and Elementary School Employee File'.

The Army is also amending several addresses in its Address Directory under the Major Commands and Unified Commands headings. The amendment replaces 'Commander in Chief' to 'Commander'.

DATES: This proposed action will be effective without further notice on June 9, 2003 unless comments are received which result in a contrary determination.

ADDRESSES: Department of the Army, Freedom of Information/Privacy Act Office, U.S. Army Records Management and Declassification Agency, ATTN: TAPC–PDD–FP, 7798 Cissna Road, Suite 205, Springfield, VA 22153–3166.

FOR FURTHER INFORMATION CONTACT: Ms. Janice Thornton at (703) 806–7137/DSN 656–7137.

SUPPLEMENTARY INFORMATION: The Department of the Army systems of records notices subject to the Privacy Act of 1974, (5 U.S.C. 552a), as amended, have been published in the **Federal Register** and are available from the address above.

The specific changes to the records system being amended are set forth below followed by the notice, as amended, published in its entirety. The proposed amendments are not within the purview of subsection (r) of the Privacy Act of 1974, (5 U.S.C. 552a), as amended, which requires the submission of a new or altered system report.

Dated: April 30, 2003.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

Deletions

A0352–3 CFSC

SYSTEM NAME:

Dependent Children School Program Files (February 22, 1993, 58 FR 10002).

Reason: These records are now under the cognizance of the Department of Defense Education Activity, Office of the Secretary of Defense, and will be maintained under the Privacy Act system of records notice DODDS 26, entitled 'DoD Domestic and Elementary School Program Files'.

A0690–200 DAPE

SYSTEM NAME:

School Employee File (February 22, 1993, 58 FR 10002).

Reason: These records are now under the cognizance of the Department of Defense Education Activity, Office of the Secretary of Defense, and will be maintained under the Privacy Act system of records notice DODDS 27, entitled 'DoD Domestic and Elementary School Employee File'.

Amendments

A0025–55SAIS

SYSTEM NAME:

Request for Information Files (August 3, 1993, 58 FR 41250).

CHANGES:

SYSTEM IDENTIFIER:

Delete entry and replace with 'A0025–55 TAPC'.

SYSTEM NAME:

Delete entry and replace with 'Freedom of Information Act Program Files'.

* * * * *

STORAGE:

Replace entry with 'Paper records in file folders and electronic storage media.'

* * * * *

SAFEGUARDS:

Replace entry with 'All records are maintained in areas accessible only to authorized personnel who have official need in the performance of their assigned duties. Automated records are further protected by assignment of users identification and password to protect the system from unauthorized access. User identification and passwords are changed at random times.'

RETENTION AND DISPOSAL:

Replace entry with 'Records reflecting granted requests are destroyed after 2 years. When requests have been denied, records are retained for 6 years; and if appealed, records are retained 6 years after final denial by the Army or 3 years after final adjudication by the courts, whichever is later.'

* * * * *

EXEMPTIONS CLAIMED FOR THE SYSTEM:

Delete entry and replace with 'During the course of a FOIA action, exempt materials from 'other' systems of records may in turn become part of the case records in this system. To the extent that copies of exempt records from those 'other' systems of records are entered into this FOIA case record, the Department of the Army hereby claims the same exemptions for the records from those 'other' systems that are entered into this system, as claimed for the original primary systems of records which they are a part.

An exemption rule for this system has been promulgated in accordance with requirements of 5 U.S.C. 553(b)(1), (2), and (3), (c) and (e) and published in 32 CFR part 505. For additional information contact the system manager.'

* * * * *

A0025–55 TAPC

SYSTEM NAME:

Freedom of Information Act Program Files.

SYSTEM LOCATION:

Headquarters, Department of the Army, staff and field operating agencies, major commands, installations and activities receiving requests to access records pursuant to the Freedom of Information Act or to declassify documents pursuant to E.O. 12958, National Classified Security Information, as amended. Official mailing addresses are published as an appendix to the Army's compilation of record system notices.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Any individual who requests an Army record under the Freedom of Information Act, or requests mandatory review of a classified document pursuant to E.O. 12958, National Classified Security Information, as amended.

CATEGORIES OF RECORDS IN THE SYSTEM:

Individual's request, related papers, correspondence between office of receipt and records custodians, Army staff offices and other government agencies; retained copies of classified or other exempt materials; and other selective documents.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 552, Freedom of Information Act, as amended by Pub. L. 93–502; 10 U.S.C. 3013, Secretary of the Army; Army Regulation 25–55, The Department of the Army Freedom of Information Act Program; and E.O. 12958, National Classified Security Information, as amended.

PURPOSE(S):

To control administrative processing of requests for information either pursuant to the Freedom of Information Act or to E.O. 12958, National Classified Security Information, as amended, including appeals from denials.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

The DoD 'Blanket Routine Uses' set forth at the beginning of the Army's compilation of systems of records notices also apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper records in file folders and electronic storage media.

RETRIEVABILITY:

By requester's surname.

SAFEGUARDS:

All records are maintained in areas accessible only to authorized personnel who have official need in the performance of their assigned duties. Automated records are further protected by assignment of users identification and password to protect the system from unauthorized access. User identification and passwords are changed at random times.

RETENTION AND DISPOSAL:

Records reflecting granted requests are destroyed after 2 years. When requests have been denied, records are retained for 6 years; and if appealed, records are retained 6 years after final denial by the Army or 3 years after final adjudication by the courts, whichever is later.

SYSTEM MANAGER(S) AND ADDRESS:

Director, U.S. Army Records Management and Declassification Agency, Freedom of Information/Privacy Acts Office, 7798 Cissna Road, Springfield, VA 22153–3166.

NOTIFICATION PROCEDURE:

Individuals seeking to determine if information about themselves is contained in this record system should address written inquiries to the Director, U.S. Army Records Management and Declassification Agency, Freedom of Information/Privacy Acts Office, 7798 Cissna Road, Springfield, VA 22153–3166.

For verification purposes, individual should provide enough information to permit locating the record.

RECORD ACCESS PROCEDURES:

Individuals seeking access to records about themselves contained in this record system should address written inquiries to the Director, U.S. Army Records Management and Declassification Agency, Freedom of Information/Privacy Acts Office, 7798 Cissna Road, Springfield, VA 22153–3166.

For verification purposes, individual should provide enough information to permit locating the record.

CONTESTING RECORD PROCEDURES:

The Army's rules for accessing records, and for contesting contents and appealing initial agency determinations are published in Army Regulation 340–21; 32 CFR part 505; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

From the individual, Army organizations, Department of Defense components, and other federal, state, and local government agencies.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

During the course of a FOIA action, exempt materials from 'other' systems of records may in turn become part of the case records in this system. To the extent that copies of exempt records from those 'other' systems of records are entered into this FOIA case record, the Department of the Army hereby claims the same exemptions for the records from those 'other' systems that are entered into this system, as claimed for the original primary systems of records which they are a part.

An exemption rule for this system has been promulgated in accordance with requirements of 5 U.S.C. 553(b)(1), (2), and (3), (c) and (e) and published in 32 CFR part 505. For additional information contact the system manager.

A0220–1 USSOCOM

SYSTEM NAME:

Military Personnel Data File, USSOCOM (February 22, 1993, 58 FR 10002).

CHANGES:

* * * * *

SYSTEM MANAGER(S) AND ADDRESS:

Delete entry and replace with 'Commander, U.S. Special Operations Command, MacDill Air Force Base, FL 33608–6001.'

* * * * *

A0220–1 USSOCOM

SYSTEM NAME:

Military Personnel Data File, USSOCOM.

SYSTEM LOCATION:

U.S. Special Operations Command, MacDill Air Force Base, FL 33608–6001.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

All Army, Navy, Marine Corps, and Air Force personnel assigned for duty with U.S. Special Operations Command (USSOCOM).

CATEGORIES OF RECORDS IN THE SYSTEM:

File contains individual's name, Social Security Number, rank, pay grade, date of rank, branch of service, Army officer branch, basic active service date, basic pay entry date, date of birth, organization and division, primary and secondary military specialty, duty MOS/AFSC, marital status, officer evaluation report/enlisted efficiency report date, reserve regular officer status, duty telephone number, home address and telephone number, spouse's name, date arrived at USSOCOM, projected loss date, expiration term of service, foreign service availability code, human personal reliability screening data, language proficiency, enlisted evaluation report weighted average, name of OER/EER rater, duty title, permanent grade, date of rank, rated category, highest professional military and civilian education, source of commission, mandatory retirement date (officers).

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

10 U.S.C. 3013, Secretary of the Army and E.O. 9397 (SSN).

PURPOSE(S):

To maintain a consolidated joint personnel file pertaining to Army, Navy,

Marine Corps, and Air Force personnel. Although each service has its own personnel records system, USSOCOM requires basic personnel data for Command Manning Rosters and similar management purposes.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

The DoD 'Blanket Routine Uses' set forth at the beginning of the Army's compilation of systems of records notices also apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

The system is an on-line disc resident application with back-up maintained on magnetic tape.

RETRIEVABILITY:

Standard reports and ad hoc retrievals are generated via remote terminals using a data management system. Updates and record browsing may be accomplished in the interactive mode through keying by Social Security Number.

SAFEGUARDS:

All operators have passwords, which are required for access to the computer file. All output products bear Privacy Act labels.

RETENTION AND DISPOSAL:

Personnel data are deleted upon departure of the individual from USSOCOM.

SYSTEM MANAGER(S) AND ADDRESS:

Commander, U.S. Special Operations Command, MacDill Air Force Base, FL 33608–6001.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether information about themselves is contained in this system should address written inquiries to the Commander, U.S. Special Operations Command, ATTN: Director of Personnel (SOJ1–P), MacDill Air Force Base, FL 33608–6001.

Individual should provide the full name, Social Security Number, and military status or other information verifiable from the record itself.

RECORD ACCESS PROCEDURES:

Individuals seeking access to record about themselves contained in this system should address written inquiries to Commanding General, U.S. Special Operations Command, ATTN: Director of Personnel (SOJ1–P), MacDill Air Force Base, FL 33608–6001.

Individual should provide the full name, Social Security Number, and military status or other information verifiable from the record itself.

CONTESTING RECORD PROCEDURES:

The Army's rules for accessing records, and for contesting contents and appealing agency determinations are published in Department of the Army Regulation 340–21; 32 CFR part 505; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

From official military personnel records of the individual upon his/her reporting to USSOCOM for duty.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

A0340–21 TAPC

SYSTEM NAME:

Privacy Case Files (April 13, 2001, 66 FR 19150).

CHANGES:

* * * * *

STORAGE:

Delete entry and replace with 'Paper records in file folders and on electronic storage media.'

* * * * *

SYSTEM MANAGER(S) AND ADDRESSES:

Replace 'Fort Belvoir, VA 22153–3166' with 'Springfield, VA 22153–3166'.

* * * * *

A0340–21 TAPC

SYSTEM NAME:

Privacy Case Files.

SYSTEM LOCATION:

These records exist at Headquarters, Department of the Army, staff and field operating agencies, major commands, installations and activities receiving Privacy Act requests. Official mailing addresses are published as an appendix to the Army's compilation of systems of records notices.

Records also exist in offices of Access and Amendment Refusal Authorities when an individual's request to access and/or amend his/her record is denied. Upon appeal of that denial, record is maintained by the Department of the Army Privacy Review Board.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals who request information concerning themselves which is in the custody of the Department of the Army or who request access to or amendment of such records in accordance with the Privacy Act of 1974, as amended.

CATEGORIES OF RECORDS IN THE SYSTEM:

Documents notifying requesters of the existence of records on them, providing or denying access to or amendment of records, acting on appeals or denials to provide access or amend records, and providing or developing information for use in litigation; Department of the Army Privacy Review Board minutes and actions; copies of the requested and amended or unamended records; statements of disagreement; and other related documents.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 552a, the Privacy Act of 1974, as amended; 10 U.S.C. 3013, Secretary of the Army; and Army Regulation 340–21, The Army Privacy Program.

PURPOSE(S):

To process and coordinate individual requests for access and amendment of personal records; to process appeals on denials of requests for access or amendment to personal records by the data subject against agency rulings; and to ensure timely response to requesters.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

The DoD 'Blanket Routine Uses' set forth at the beginning of the Army's compilation of systems of records notices also apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper records in file folders and on electronic storage media.

RETRIEVABILITY:

By name of requester on whom the records pertain.

SAFEGUARDS:

Records are accessed by custodian of the record system and by persons responsible for servicing the record system in performance of their official duties. Records are stored in locked cabinets or rooms.

RETENTION AND DISPOSAL:

Approved requests, denials that were not appealed, denials fully overruled by appellate authorities and appeals adjudicated fully in favor of requester are destroyed after 4 years. Appeals denied in full or in part are destroyed after 10 years, provided legal proceedings are completed.

SYSTEM MANAGER(S) AND ADDRESS:

Director, U.S. Army Records Management and Declassification Agency, ATTN: Freedom of Information/Privacy Act Office, 7798 Cissna Road, Springfield, VA 22153–3166.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether information about themselves is contained in this system should address written inquiries to the U.S. Army Records Management and Declassification Agency, Freedom of Information/Privacy Act Office, 7798 Cissna Road, Springfield, VA 22153–3166.

For verification purposes, individual should provide full name, date and place of birth, current address and other personal information necessary to locate the record.

RECORD ACCESS PROCEDURES:

Individuals seeking access to information about themselves contained in this system should address written inquiries to the office that processed the initial inquiry, access request, or amendment request. Individual may obtain assistance from the U.S. Army Records Management and Declassification Agency, Freedom of Information/Privacy Act Office, 7798 Cissna Road, Springfield, VA 22153–3166.

For verification purposes, individual should provide full name, date and place of birth, current address and other personal information necessary to locate the record.

CONTESTING RECORD PROCEDURES:

The Army's rules for accessing records, and for contesting contents and appealing initial agency determinations are contained in Army Regulation 340–21; 32 CFR part 505; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

From the individual, Army organizations, Department of Defense components, and other Federal, state, and local government agencies.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

During the course of a Privacy Act (PA) action, exempt materials from 'other' systems of records may become part of the case records in this system of records. To the extent that copies of exempt records from those 'other' systems of records are entered into these PA case records, the Department of the Army hereby claims the same exemptions for the records as they have in the original primary systems of records which they are a part.

An exemption rule for this system has been promulgated in accordance with requirements of 5 U.S.C. 553(b)(1), (2), and (3), (c) and (e) published in 32 CFR part 505. For additional information contact the system manager.

A0600–85 DAPE

SYSTEM NAME:

Alcohol and Drug Abuse Rehabilitation Files (April 4, 2003, 16484).

CHANGES:

* * * * *

SYSTEM NAME:

Delete entry and replace with 'Army Substance Abuse Program'.

* * * * *

A0600–85 DAPE

SYSTEM NAME:

Army Substance Abuse Program.

SYSTEM LOCATION:

Primary location: Army Substance Abuse Program (ASAP) rehabilitation/counseling facilities (*e.g.*, Community Counseling Center/ASAP Counseling Facilities) at Army installations and activities. Official mailing addresses are published as an appendix to the Army's compilation of record system notices.

Secondary location: Army Center for Substance Abuse Program, 4501 Ford Avenue, Suite 320, Alexandria, VA 22302–1460.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Active Army, Army National Guard of the U.S., Army National Guard, U.S. Army Reserve, Army civilian employees, military and civilian employee family members and military retirees who are screened and/or enrolled in the Army Substance Abuse Program.

CATEGORIES OF RECORDS IN THE SYSTEM:

Primary location: Copies of patient intake records, progress reports, psychosocial histories, counselor observations and impressions of patient's behavior and rehabilitation progress, copies of medical consultation and laboratory procedures performed, results of biochemical urinalysis for alcohol/drug abuse, Patient Intake/Screening record—PIR (DA Form 4465–R); Patient Progress Report—PPR (DA Form 4466–R); Resource and Performance Report (DA Form 3711–R); and Specimen Custody Document—Drug Testing (DD Form 2624), and similar or related documents.

Secondary location: Copies of Patient Intake/Screening record—PIR (DA Form 4465–R); Patient Progress Report—PPR (DA Form 4466–R); Resource and Performance Report (DA Form 3711–R); and Specimen Custody Document—Drug Testing (DD Form 2624), and demographic composites thereof.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

10 U.S.C. 3013, Secretary of the Army; 42 U.S.C. 290dd–2; Federal Drug Free Workplace Act of 1988; Army Regulation 600–85, Army Substance Abuse Program; and E.O. 9397 (SSN).

PURPOSE(S):

To identify alcohol and drug abusers within the Army; to treat, counsel, and rehabilitate individuals who participate in the Army Substance Abuse Program; to judge the magnitude of drug and alcohol abuse in the Army.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

The Patient Administration Division at the medical treatment facility with jurisdiction is responsible for the release of medical information to malpractice insurers in the event of malpractice litigation or prospect thereof.

Information is disclosed only to the following persons/agencies:

To health care components of the Department of Veterans Affairs furnishing health care to veterans.

To medical personnel to the extent necessary to meet a bona fide medical emergency.

To qualified personnel conducting scientific research, audits, or program evaluations, provided that a patient may not be identified in such reports, or his or her identity further disclosed by such personnel.

In response to a court order based on the showing of good cause in which the need for disclosure and the public's interest is shown to exceed the potential

harm that would be incurred by the patient, the physician-patient relationship, and the Army's treatment program. Except as authorized by a court order, no record may be used to initiate or substantiate any criminal charges against a patient or to conduct any investigation of a patient.

Note: Records of identity, diagnosis, prognosis, or treatment of any client/patient, irrespective of whether or when he/she ceases to be a client/patient, maintained in connection with the performance of any alcohol or drug abuse prevention and treatment function conducted, requested, or directly or indirectly assisted by any department or agency of the United States, shall, except as provided therein, be confidential and be disclosed only for the purposes and under circumstances expressly authorized in 42 U.S.C. 290dd-2. This statute takes precedence over the Privacy Act of 1974 to the extent that disclosure is more limited. However, access to the record by the individual to whom the record pertains is governed by the Privacy Act. The DoD 'Blanket Routine Uses' set forth at the beginning of the Army's compilation of systems of records notices do not apply to this system.

Note: This system of records contains individually identifiable health information. The DoD Health Information Privacy Regulation (DoD 6025.18–R) issued pursuant to the Health Insurance Portability and Accountability Act of 1996, applies to most such health information. DoD 6025.18–R may place additional procedural requirements on the uses and disclosures of such information beyond those found in the Privacy Act of 1974 or mentioned in this system of records notice.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper records in locked metal containers; computer database; computer magnetic discs/tapes.

RETRIEVABILITY:

By patient's surname, Social Security Number or other individually identifying characteristics.

SAFEGUARDS:

Records are maintained in storage areas in locked file cabinets where access is restricted to authorized persons having an official need-to-know.

RETENTION AND DISPOSAL:

Primary location: Records are destroyed 5 years after termination of the patient's treatment, unless the Army Medical Department Activity/Facility commander authorizes retention for an additional 6 months.

Secondary location: Manual records are retained up to 18 months or until information taken there from and entered into computer records is transferred to the 'history' file, whichever is sooner. Disposal of manual records is by burning or shredding. Computer records are retained permanently for historical and/or research purposes.

Personnel Reliability Program (PRP) records are maintained no longer than 6 years after individual is separated from PRP, then destroyed.

SYSTEM MANAGER(S) AND ADDRESS:

Deputy Chief of Staff for Personnel, Headquarters, Department of the Army, 300 Army Pentagon, Washington, DC 20320–3000.

NOTIFICATION PROCEDURE:

Individuals seeking to determine if information about themselves is contained in this record system should address written inquiries to either the commander of the medical center/medical department activity where treatment was obtained or the Army Center for Substance Abuse Programs, 4501 Ford Avenue, Suite 320, Alexandria, VA 22302–1460. Official mailing addresses are published as an appendix to the Army's compilation of record system notices.

Individual should provide the full name, Social Security Number, date of birth, current address and telephone number, and signature.

RECORD ACCESS PROCEDURES:

Individuals seeking access to records about themselves contained in this record system should address written inquiries to either the commander of the medical center/medical department activity where treatment was obtained or the Army Center for Substance Abuse Programs, 4501 Ford Avenue, Suite 320, Alexandria, VA 22302–1460. Official mailing addresses are published as an appendix to the Army's compilation of record system notices.

Individual should provide the full name, Social Security Number, date of birth, current address and telephone number, and signature.

CONTESTING RECORD PROCEDURES:

The Army's rules for accessing records, and for contesting contents and appealing initial agency determinations are contained in Army Regulation 340–21; 32 CFR part 505; or may be obtained from the system manager.

Denial to amend records in this system can be made only by the Deputy Chief of Staff for Personnel in coordination with The Surgeon General.

RECORD SOURCE CATEGORIES:

From the individual by interviews and history statement; abstracts or copies of pertinent medical records; abstracts from personnel records; results of tests; physicians' notes, observations of client's behavior; related notes, papers, and forms from counselor, clinical director, and/or commander.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

* * * * *

MAJOR COMMANDS

Commander, U.S. Army Europe and Seventh Army, Unit 29351, APO AE 09014–0010.

Commander, U.S. Army Forces Command, 1777 Hardee Avenue, SW., Fort McPherson, GA 30330–1062.

Commander, U.S. Army Corps of Engineers, 20 Massachusetts Avenue NW., Washington, DC 20314–1000.

Commander, U.S. Army Criminal Investigation Command, 6010 6th Street, Fort Belvoir, VA 22060–5506.

Commander, U.S. Army Medical Command, 2050 Worth Road, Fort Sam Houston, TX 78234–6003.

Commander, U.S. Army Intelligence and Security Command, 8825 Beulah Street, Fort Belvoir, VA 22060–5246.

Commander, U.S. Army Materiel Command, 5001 Eisenhower Avenue, Alexandria, VA 22333–0001.

Commander, U.S. Army Military District of Washington, 103 Third Avenue, Fort McNair, DC 20319–5058.

Commander, U.S. Army South, P.O. Box 34000, Fort Buchanan, Puerto Rico 00934–5301.

Commander, U.S. Army Special Operations Command (Airborne), Fort Bragg, NC 28307–5200.

Commander, U.S. Army Space and Missile Defense Command, P.O. Box 15280, 111 South George Mason Drive, Arlington, VA 22215–0280.

Commander, U.S. Army Training and Doctrine Command, 102 McNair, Fort Monroe, VA 23651–1047.

Commander, U.S. Army Pacific, Fort Shafter, HI 96858–5100.

Commander, U.S. Army Operational Test and Evaluation, Command, 4501 Ford Avenue, Alexandria, VA 22302–1458.

Commander, Eighth U.S. Army, APO AP 96205–0010.

Commander, U.S. Military Traffic Management Command, 200 Stovall Street, Alexandria, VA 22332–5000.

Unified Commands

Commander, U.S. European Command, Unit 30400 Box 10000, APO AE 09128–4209.

Commander, U.S. Southern Command, 3511 NW 91st Avenue, Miami, FL 33172–1217.

Commander, U.S. Special Operations Command, 7701 Tampa Point Boulevard, MacDill Air Force Base, FL 33621–5357.

Commander, U.S. Atlantic Command, 1562 Mitscher Avenue, Norfolk, VA 23551–2488.

Commander, U.S. Pacific Command, Honolulu, HI 96861–4031.

Commander, U.S. Space Command, 250 South Peterson Boulevard, Peterson AFB, CO 80914–3190.

Commander, U.S. Transportation Command, 508 Scott Drive, Scott AFB, IL 62225–5357.

Commander, U.S. Strategic Command, 901 Sac Boulevard, Offutt AFB, NE 68113–6000.

[FR Doc. 03–11569 Filed 5–8–03; 8:45 am]

BILLING CODE 5001–08–P

DEPARTMENT OF DEFENSE

Department of the Army; Corps of Engineers

Availability of a Final Environmental Impact Statement To Consider Issuance of a Department of the Army Permit Pursuant to Section 404 of the Clean Water Act for Aluminum Company of America (Alcoa) Inc.'s Proposal To Construct and Operate Three Oaks Mine in Lee and Bastrop Counties, TX

AGENCY: Department of the Army, U.S. Army Corps of Engineers, DoD.

ACTION: Notice of availability.

SUMMARY: In accordance with the requirements of the National Environmental Policy Act (NEPA), the U.S. Army Corps of Engineers (USACE) Fort Worth District has prepared a Final Environmental Impact Statement (FEIS). This FEIS evaluates potential impacts to the natural, physical and human environment as a result of the proposed mining activities associated with Aluminum Company of America (Alcoa) Inc.'s proposed Three Oaks Mine. The USACE regulates this proposed project pursuant to Section 404 of the Clean Water Act. The proposed activity would involve the discharge of dredged and fill material into waters of the United States associated with the proposed construction and operation of a surface lignite mine. The document was prepared following a public review and 74-day comment period on the Draft Environmental Impact Statement (DEIS), during which time a public information meeting was held on October 1, 2002, and a public hearing was held on October 2, 2002. Both meetings were held in Elgin, Bastrop County, Texas.

DATES: Submit comments by June 23, 2003.

ADDRESSES: Send written comments and suggestions concerning this proposal to Ms. Jennifer Walker, Regulatory Project Manager, Regulatory Branch, CESWF–PER–R, U.S. Army Corps of Engineers, Fort Worth District, P.O. Box 17300, Fort Worth, TX 76102–0300 or via e-mail: *3oakseis@swf02.usace.army.mil.* Requests to be placed on the mailing list should also be sent to this address.

FOR FURTHER INFORMATION CONTACT: Ms. Jennifer Walker, Regulatory Project Manager at (817) 886–1733 or via e-mail: *3oakseis@swf02.usace.army.mil.*

SUPPLEMENTARY INFORMATION: Discharges of dredged or fill material into waters of the United States are regulated by the USACE under Section 404 of the Clean Water Act. Alcoa must also address the proposed project's environmental impacts relative to other regulations including the Clean Air Act, other sections of the Clean Water Act, Endangered Species Act and the Fish and Wildlife Coordination Act. In accordance with NEPA, the FEIS evaluates practicable alternatives for the USACE's decision making process. As required by NEPA, the USACE also analyzes the "no action" alternative as a baseline for gauging potential impacts.

Copies of the FEIS may be obtained by contacting USACE Fort Worth District Regulatory Branch at (817) 886–1731 or from Three Oaks Mine EIS link found at the bottom of the Fort Worth District USACE Internet home page at *http://www.swf.usace.army.mil.*

Copies of the FEIS are also available for inspection at the locations identified below:

(1) Bastrop City Hall, 902 Main Street, Bastrop, TX 78602.

(2) Lexington City Hall, PO Box 56, Lexington, TX 78947.

(3) Austin City Hall, 124 West 8th Street, PO Box 1088, Austin, TX 78767.

(4) Rockdale City Hall, PO Box 586, Rockdale, TX 76567.

(5) Elgin City Hall, PO Box 591, Elgin, TX 78621.

(6) Giddings City Hall, 118 E. Richmond Street, Giddings, TX 78942.

(7) Lee County Courthouse, PO Box 390, Giddings, TX 78942.

(8) Milam County Courthouse, PO Box 1008, Cameron, TX 76520.

(9) Bastrop County Courthouse, 804 Pecan Street, Bastrop, TX 78602.

(10) Travis County Courthouse, 1000 Guadalupe Street, PO Box 1748, Austin, TX 78767.

(11) City of Austin Library—Milwood Branch, 12500 Amherst Drive, Austin, TX 78727.

(12) City of Austin Library—John Henry Faulk Branch, 800 Guadalupe, Austin, TX 78701.

(13) City of Austin Library—Will Hampton at Oak Hill Branch, 5125 Convict Hill Road, Austin, TX 78749.

(14) City of Bastrop Public Library, 1100 Church Street, Bastrop, TX 78602.

(15) City of Elgin Public Library, 404 North Main Street, Elgin, TX 78621.

(16) City of Giddings Public Library, 177 South Madison Street, Giddings, TX 78942.

(17) City of Rockdale Public Library, 201 Ackerman Street, Rockdale, TX 76567.

The Record of Decision (ROD) will be signed no sooner than 45 days after publication of the notice of availability in the **Federal Register** by the U.S. Environmental Protection Agency.

Wayne A. Lea,

Chief, Regulatory Branch.

[FR Doc. 03–11149 Filed 5–8–03; 8:45 am]

BILLING CODE 3710–20–M

DEPARTMENT OF DEFENSE

Department of the Navy

Privacy Act of 1974; System of Records

AGENCY: Department of the Navy, DoD.

ACTION: Notice to amend a records system.

SUMMARY: The Department of the Navy is amending eighteen of records notices in its inventory of records systems subject to the Privacy Act of 1974, as amended (5 U.S.C. 552a). The amendments are administrative and consist of replacing 'Commander in Chief' with 'Commander' throughout these eighteen notices. This change is based on the Secretary of Defense memorandum dated October 24, 2002, in which he states that 'Commander in Chief' shall only be used to connote the President of the United States of America.

DATES: The amendments will be effective on June 9, 2003, unless comments are received that would result in a contrary determination.

ADDRESSES: Send comments to Department of the Navy, PA/FOIA Policy Branch, Chief of Naval Operations, N09B10, 2000 Navy Pentagon, Washington, DC 20350–2000.

FOR FURTHER INFORMATION CONTACT: Mrs. Doris Lama at (202) 685–6545 or DSN 325–6545.

SUPPLEMENTARY INFORMATION: The Department of the Navy's record system notices for records systems subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended, have been published in the **Federal Register** and are available from the address above.

The Department of the Navy proposes to amend several system of records notices in its inventory of record systems subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended. The amendments to the system of records are not within the purview of subsection (r) of the Privacy Act of 1974 (5 U.S.C. 552a), as amended, which requires the submission of new or altered systems reports. The records systems being amended are set forth below, as amended, published in their entirety.

Dated: May 2, 2003.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

N01640–1

SYSTEM NAME:

Individual Correctional Records.

SYSTEM LOCATION:

United States Navy Brigs and United States Marine Corps Correctional Facilities. Official mailing addresses are published as an appendix to the Navy's compilation of systems of records notices, and/or may be obtained from the Bureau of Naval Personnel (Pers 84), 2 Navy Annex, Washington, DC 20370–5084.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Military members confined in a naval facility as a result of or pending trial by courts-martial; military members sentenced to three days bread and water or diminished rations; and military members awarded correctional custody to be served in a correctional custody unit.

CATEGORIES OF RECORDS IN THE SYSTEM:

Documents related to the administration of individual prisoners in the Department of the Navy confinement and correctional custody facilities—courts martial orders; release orders; confinement orders; medical examiners' reports; requests and receipts for health and comfort supplies; reports and recommendations relative to disciplinary actions; clothing and equipment records; mail and visiting lists and records; personal history records; individual prisoner utilization records; requests for interview; initial interview; spot reports; prisoner identification records; parolee agreements; inspection record of prisoner in segregation; personal funds records; valuables and property record; daily report of prisoners received and released; admission classification summary; social history; clemency recommendations and actions; parole recommendations and actions; restoration recommendations and actions; psychiatric, psychological, and sociological reports; certificate of parole; certificate of release from parole; requests to transfer prisoners; disciplinary action data cards showing name, grade, Social Security Number, sex, education, sentence, offense(s), sentence computation, organization, ethnic group, discharge awarded, length of unauthorized absence, number and type of prior punishments, length of service, and type release; weekly status report (each member's legal status, offense charged, length of time confined). On tape, the same data as the disciplinary action data card, except name, computation of sentence. Names, addresses, and telephone numbers of victims/witnesses.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

10 U.S.C. 951; 42 U.S.C. 10601 *et seq.*, Victim's Rights and Restitution Act of 1990 as implemented by DoD Instruction 1030.2, Victim and Witness Assistance Procedures; and E.O. 9397 (SSN).

PURPOSE(S):

To determine initial custody classification; to determine when custody grade change is appropriate; to gauge member's adjustment to confinement or correctional custody; to identify areas of particular concern to prisoners and personnel in correctional custody; to determine work assignment; to determine educational needs; serves as the basis for correctional treatment; serves as a basis for recommendations for clemency, restoration, and parole; and to notify victims/witnesses of crime of release related activities.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

To Federal, state, and local law enforcement and investigative agencies for investigation and possible criminal prosecution, civil court actions or regulatory order.

To state and local authorities for purposes of providing (1) notification that individuals, who have been convicted of a specified sex offense or an offense against a victim who is a minor, will be residing in the state upon release from military confinement and (2) information about the individual for inclusion in a state operated sex offender registry.

To confinement/correctional system agencies for use in the administration of correctional programs to include custody classification; employment, training and educational assignments; treatment programs; clemency, restoration to duty, and parole actions; verifications concerning military offenders or military criminal records, employment records and social histories.

To victims and witnesses of a crime for the purpose of notifying them of date of parole or clemency hearing and other release related activities.

The DoD 'Blanket Routine Uses' that appear at the beginning of the Navy's compilation of systems of records notices also apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper records and computerized data base.

RETRIEVABILITY:

Name and Social Security Number.

SAFEGUARDS:

Records are maintained in areas accessible only to authorized personnel who are properly screened, cleared, and trained. Computer data base is password protected.

RETENTION AND DISPOSAL:

Two years after a prisoner is released or transferred from a brig or expiration of parole, prisoner records are transferred to the appropriate Federal Records Center.

Federal Records Center Atlanta, 1557 St. Joseph Avenue, East Point, GA 30344 has records from ashore brigs under the area coordination of the Commander, U.S. Atlantic Fleet; Commander, U.S. Naval Forces Europe; Commander, Naval Education and Training, afloat brig on Atlantic Fleet ships, and Navy Consolidated Brig, Charleston.

Federal Records Center Los Angeles, 2400 Avila Road, P.O. Box 6719, Laguna Niegel, CA 92607–6719 has records for ashore brigs under the area consideration of the Commander, U.S. Pacific Fleet; afloat brigs on Pacific Fleet ships; and Navy Consolidated Brig, Miramar.

Records of prisoners accompany their transfer to other facilities.

SYSTEM MANAGER(S) AND ADDRESS:

Policy Officials: Chief of Naval Personnel (Pers 84), Bureau of Naval Personnel, 2 Navy Annex, Washington, DC 20370–5084, and Commandant of the Marine Corps (Code MHC), Headquarters, U.S. Marine Corps, 2 Navy Annex, Washington, DC 20380–0001. Record Holders: United States Navy Brigs and United States Marine Corps Brigs. Official mailing addresses are published as an appendix to the Navy's compilation of systems of records notices, and/or may be obtained from the Bureau of Naval Personnel (Pers 84), 2 Navy Annex, Washington, DC 20370–5084.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether information about themselves is contained in this system should address written inquiries to the United States Navy Brig or United States Marine Corps Brigs where incarcerated. Official mailing addresses are published as an appendix to the Navy's compilation of systems of records notices, and/or may be obtained from the Bureau of Naval Personnel (Pers 84), 2 Navy Annex, Washington, DC 20370–5084. Requests should include full name and social security number and must be signed by the requesting individual.

RECORD ACCESS PROCEDURES:

Individuals seeking access to information about themselves contained in this system should address written inquiries to the United States Navy Brig or United States Marine Corps Brigs where incarcerated. Official mailing addresses are published as an appendix to the Navy's compilation of systems of records notices, and/or may be obtained from the Bureau of Naval Personnel (Pers 84), 2 Navy Annex, Washington, DC 20370–5084. Requests should include full name and Social Security Number and must be signed by the requesting individual.

CONTESTING RECORD PROCEDURES:

The Navy's rules for accessing records, and for contesting contents and appealing initial agency determinations are published in Secretary of the Navy Instruction 5211.5; 32 CFR part 701; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

Military personnel records; military financial and medical records; military and civilian investigative and law enforcement agencies; courts-martial proceedings; records of non-judicial administrative proceedings; United States military commanders; staff members and cadre supply information relative to service member's conduct or duty performance; and other individuals or organizations which may supply information relevant to the purpose for which this system was designed.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

Parts of this system may be exempt pursuant to 5 U.S.C. 552a(j)(2) if the information is compiled and maintained by a component of the agency which performs as its principle function any activity pertaining to the enforcement of criminal laws.

An exemption rule for this system has been promulgated in accordance with requirements of 5 U.S.C. 553(b)(1), (2), and (3), (c) and (e) and published in 32 CFR part 701, subpart G. For additional information contact the system manager.

N01650–1

SYSTEM NAME:

Awards Information Management System and Records.

SYSTEM LOCATION:

DATABASE LOCATION:

Naval Computer Telecommunications Station, Washington Navy Yard, Washington, DC 20374–1435.

USER LOCATIONS:

Chief of Naval Operations (N09B33), 2000 Navy Pentagon, Washington, DC 20350–2000;

Secretary of the Navy Administrative Office, 1000 Navy Pentagon, Washington, DC 20350–1000;

Chief of Naval Personnel (Pers-324), Bureau of Naval Personnel, 2 Navy Annex, Washington, DC 20370–5001;

Commandant of the Marine Corps, Headquarters, U.S. Marine Corps (MHM), 2 Navy Annex, Washington, DC 20380–0001;

National Personnel Records Center, 9700 Page Avenue, St. Louis. MO 63132–5100 and Fleet Commanders and Type Commanders. Official mailing addresses for the Fleet Commanders and Type Commanders are published as an appendix to the Navy's compilation of systems of records notices.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

All U.S. military recipients (includes U.S. Coast Guard) of Navy personal awards.

CATEGORIES OF RECORDS IN THE SYSTEM:

The Awards Information Management System (AIMS): contains electronic records of individual personal awards for 1967 and continuing and unit awards for 1941 and continuing that are maintained by the Board of Decorations and Medals (BDM). Data includes information extracted from OPNAV Form 1650/3, Personal Award Recommendation, such as name, Social Security Number, type of award, approval authority, recommended award, approved award, meritorious start and end dates, service status of recipient, originator of the recommendation, designator, Unit Identification Code, officer or enlisted, service component, rate/rating, pay grade, number of award recommended, assigned billet of individual, campaign designation, classified or unclassified designated award, date of recommendation, award approved date, approved award, chain of command data, extraordinary heroism determination, letter type, board serial number, pertinent facts, date forwarded to Secretary of the Navy (SECNAV), Board's recommendation, participating command field, Board meeting data, receipt date by Board of Decorations and Medals, name of unit, name of ship, etc.

MASTER RECORD OF AWARDS TO NAVY AND MARINE CORPS PERSONNEL MAINTAINED BY THE BOARD OF DECORATIONS AND MEDALS:

File includes awards approved by SECNAV and those authorized for approval by subordinate commanders. Record includes service member's name, service number/Social Security Number, award recommended, award approved, and a narrative summary of the SECNAV approved citation. A second section of the file contains activities awarded Unit Awards and the dates of eligibility.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301, Departmental Regulations; E.O. 9397 (SSN); Secretary of the Navy Instruction 1650.1F, Navy and Marine Corps Awards Manual.

PURPOSE(S):

To maintain records of military personal awards and unit awards.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

The DoD 'Blanket Routine Uses' that appear at the beginning of the Navy's compilation of systems of records notices apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Computerized data base; microfiche; and paper records.

RETRIEVABILITY:

Social Security Number and individual or unit name.

SAFEGUARDS:

Automated data base requires authorized access; password protected; some user sites only have read capability; designated user capability regarding add/delete/change functions. Paper and microfiche records are under the control of authorized personnel during working hours and the office space in which records are located is locked outside official working hours.

RETENTION AND DISPOSAL:

Permanent. A duplicate copy of the active file is provided to the National Archives and Records Administration. History files for the years 1967 to 1989 have been transferred to NARA.

SYSTEM MANAGER(S) AND ADDRESS:

Chief of Naval Operations (N09B33/BDM), 2000 Navy Pentagon, Washington, DC 20350–2000.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether this system of records contains information about themselves should address written inquiries to Chief of Naval Operations (N09B33/BDM), 2000 Navy Pentagon, Washington, DC 20350–2000.

Request should include full name, Social Security Number, award time-frame, and service component.

RECORD ACCESS PROCEDURES:

Individuals seeking access to records about themselves contained in this system of records should address written inquiries to the Chief of Naval Operations (N09B33/BDM), 2000 Navy Pentagon, Washington, DC 20350–2000.

Request should include full name, Social Security Number, award time-frame, and service component.

CONTESTING RECORD PROCEDURES:

The Navy's rules for accessing records and contesting contents and appealing initial agency determinations are published in Secretary of the Navy Instruction 5211.5; 32 CFR part 701; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

OPNAV Form 1650/3, Personal Award Recommendation Form, general orders, award letter 1650.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

N03501–2

SYSTEM NAME:

Navy Recovery Data Base System.

SYSTEM LOCATION:

PRIMARY LOCATION:

Commander, Naval Facilities Engineering Command (Code 0622), 200 Stovall Street, Alexandria, VA 22332–2300.

SECONDARY SYSTEM:

Principal Planning Agents are the Commander, U.S. Pacific Fleet, 250 Makalapa Drive, Pearl Harbor, HI 96860–7000 and Commander, U.S. Atlantic Fleet, Norfolk, VA 23511–2487. The Regional Planning Agents are the Commander, Naval Base, Seattle, WA 98115–5012, the Commandant Naval District Washington, Washington Navy Yard, Washington, DC 20374–2002; the Commander, Naval Base San Francisco, Naval Station, Treasure Island, San Francisco, CA 94130–5018; the Commander, Naval Base, 937 North Harbor Drive, San Diego, CA 93132–5100; the Commander, Naval Base, Box 110, Pearl Harbor, HI 96860; the Commander, Naval Base, Philadelphia, PA 19112–5098; the Commander, Naval Base, Norfolk, VA 23511–6002; the Commander, Naval Training Center, Building 1, Great Lakes, IL 60088–5026; the Chief of Naval Air Training, Naval Air Station, Corpus Christi, TX 78419–5100 and the Commander, Naval Base, Charleston, SC 29408–5100.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Selected Naval Reserve Officers assigned to appropriate civil/military headquarters to represent Department of the Navy (DON) planning agents in planning and coordinating DON assistance to civil authorities in civil emergencies/disasters.

CATEGORIES OF RECORDS IN THE SYSTEM:

Names, home addresses and telephone numbers of Navy Reserve Officers currently assigned to the program.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301, Departmental Regulations.

PURPOSE(S):

To assist in the operation and administration of the Department of the Navy Civil Disaster Assistance Program.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

The DoD "Blanket Routine Uses" that appear at the beginning of the Navy's compilation of systems of records notices apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

The media in which these records are stored vary; but include magnetic disks and file copies.

RETRIEVABILITY:

Automated records may be retrieved by name or area of responsibility.

SAFEGUARDS:

Records are available only to authorized personnel having a need-to-know through the use of access codes and encrypted data.

RETENTION AND DISPOSAL:

Records on Navy Reserve Officers are retained only for their tour of duty while assigned to the program and superseded data is removed from the system or destroyed.

SYSTEM MANAGER(S) AND ADDRESS:

Commander, Naval Facilities Engineering Command (FAC 0622), 200 Stovall Street, Alexandria, VA 22332–2300.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether information about themselves is contained in this system should address written inquiries to the Commander, Naval Facilities Engineering Command (FAC 0622), 200 Stovall Street, Alexandria, VA 22332–2300.

Requests received by mail must be accompanied by the individual's full name and a statement verifying the requester's identity. Requesters may also inquire in person at the naval base or station. In such case, proof of identity will consist of full name and a positive piece of identification such as a driver's license or DOD I.D. card.

RECORD ACCESS PROCEDURES:

Individuals seeking access to information about themselves contained in this system should address written inquiries to the Commander, Naval Facilities Engineering Command (FAC 0622), 200 Stovall Street, Alexandria, VA 22332–2300.

CONTESTING RECORD PROCEDURES:

The Navy's rules for accessing records, and for contesting contents and appealing initial agency determinations are published in Secretary of the Navy Instruction 5211.5; 32 CFR part 701; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

The information is supplied by the Naval Reserve Officer upon his/her assignment to the program.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

N05000–1

SYSTEM NAME:

General Correspondence Files.

SYSTEM LOCATION:

Organizational elements of the Department of the Navy. Official mailing addresses are published as an appendix to the Navy's compilation of systems of records notices.

Commander, U.S. Joint Forces Command, 1562 Mitscher Avenue, Suite 200, Norfolk, VA 23551–2488.

Commander, U.S. Pacific Command, PO Box 64028, Camp H.M. Smith, HI 96861–4028.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals who have initiated correspondence with the Department of the Navy.

CATEGORIES OF RECORDS IN THE SYSTEM:

Incoming correspondence which may include name, address, telephone number, organization, date of birth, and Social Security Number of correspondent and supporting documentation. Files also contain copy of response letter and documentation required to prepare the response.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301, Departmental Regulations and E.O. 9397 (SSN).

PURPOSE(S):

To maintain a record of correspondence received and responses made.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

The DoD 'Blanket Routine Uses' that appear at the beginning of the Navy's compilation of systems notices apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper and automated records.

RETRIEVABILITY:

Name, organization, and date of correspondence.

SAFEGUARDS:

Access is provided on need-to-know basis only. Manual records are maintained in file cabinets under the control of authorized personnel during working hours. The office space in which the file cabinets are located is locked outside of official working hours. Computer terminals are located in supervised areas. Access to computerized data is controlled by password or other user code system.

RETENTION AND DISPOSAL:

Retained for two years and then destroyed.

SYSTEM MANAGER(S) AND ADDRESS:

Commanding officer of the activity in question. Official mailing addresses are published as an appendix to the Navy's compilation of system of record notices.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether this system of records contains information about themselves should address written inquiries to the commanding officer of the activity in question. Official mailing addresses are published as an appendix to the Navy's compilation of system of records notices.

The request should contain full name and date individual wrote to the activity or received a response. Request must be signed.

RECORD ACCESS PROCEDURES:

Individuals seeking access to records about themselves contained in this system of records should address written inquiries to the commanding officer of the activity in question. Official mailing addresses are published as an appendix to the Navy's compilation of system of record notices.

The request should contain full name and date individual wrote to the activity or received a response. Request must be signed.

CONTESTING RECORD PROCEDURES:

The Navy's rules for accessing records, and for contesting contents and appealing initial agency determinations are published in Secretary of the Navy Instruction 5211.5; 32 CFR part 701; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

Individual concerned and records collected by the activity to respond to the request.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

N05000–2

SYSTEM NAME:

Administrative Personnel Management System.

SYSTEM LOCATION:

Organizational elements of the Department of the Navy. Official mailing addresses are published as an appendix to the Navy's compilation of systems of records notices.

Commander, U.S. Joint Forces Command, 1562 Mitscher Avenue, Suite 200, Norfolk, VA 23551–2488.

Commander, U.S. Pacific Command, P.O. Box 64028, Camp H.M. Smith, HI 96861–4028.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

All civilian, (including former members and applicants for civilian employment), military and contract employees.

CATEGORIES OF RECORDS IN THE SYSTEM:

Records and correspondence needed to manage personnel and projects, such as Name, Social Security Number, date of birth, photo id, grade and series or rank/rate, etc., of personnel; location (assigned organization code and/or work center code); MOS; labor code; payments for training, travel advances and claims, hours assigned and worked, routine and emergency assignments, functional responsibilities, clearance, access to secure spaces and issuance of keys, educational and experience characteristics and training histories, travel, retention group, hire/termination dates; type of appointment; leave; trade, vehicle parking, disaster control, community relations, (blood donor, etc), employee recreation programs; retirement category; awards; biographical data; property custody; personnel actions/dates; violations of rules; physical handicaps and health/safety data; veterans preference; postal address; location of dependents and next of kin and their addresses; mutual

aid association memberships; union memberships; qualifications; computerized modules used to track personnel data; and other data needed for personnel, financial, line, safety and security management, as appropriate.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301, Departmental Regulations and E.O. 9397 (SSN).

PURPOSE(S):

To manage, supervise, and administer programs for all Department of the Navy civilian and military personnel such as preparing rosters/locators; contacting appropriate personnel in emergencies; training; identifying routine and special work assignments; determining clearance for access control; record handlers of hazardous materials; record rental of welfare and recreational equipment; track beneficial suggestions and awards; controlling the budget; travel claims; manpower and grades; maintaining statistics for minorities; employment; labor costing; watch bill preparation; projection of retirement losses; verifying employment to requesting banking; rental and credit organizations; name change location; checklist prior to leaving activity; payment of mutual aid benefits; safety reporting/monitoring; and, similar administrative uses requiring personnel data. Arbitrators and hearing examiners in civilian personnel matters relating to civilian grievances and appeals.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

The DoD 'Blanket Routine Uses' that appear at the beginning of the Navy's compilation of systems of records notices apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper and automated records.

RETRIEVABILITY:

Name, Social Security Number, employee badge number, case number, organization, work center and/or job order, supervisor's shop and code.

SAFEGUARDS:

Password controlled system, file, and element access based on predefined need-to-know. Physical access to terminals, terminal rooms, buildings and activities' grounds are controlled by locked terminals and rooms, guards, personnel screening and visitor registers.

RETENTION AND DISPOSAL:

Destroy when no longer needed or after two years, whichever is later.

SYSTEM MANAGER(S) AND ADDRESS:

Commanding officer of the activity in question. Official mailing addresses are published as an appendix to the Navy's compilation of systems of records notices.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether this system of records contains information about themselves should address written inquiries to the commanding officer of the activity in question. Official mailing addresses are published as an appendix to the Navy's compilation of systems of records notices.

The request should include full name, Social Security Number, and address of the individual concerned and should be signed.

RECORD ACCESS PROCEDURES:

Individuals seeking access to records about themselves contained in this system of records should address written inquiries to the commanding officer of the activity in question. Official mailing addresses are published as an appendix to the Navy's compilation of systems of records notices.

The request should include full name, Social Security Number, and address of the individual concerned and should be signed.

CONTESTING RECORD PROCEDURES:

The Navy's rules for accessing records, and for contesting contents and appealing initial agency determinations are published in Secretary of the Navy Instruction 5211.5; 32 CFR part 701; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

Individual, employment papers, other records of the organization, official personnel jackets, supervisors, official travel orders, educational institutions, applications, duty officer, investigations, OPM officials, and/or members of the American Red Cross.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

N05000–3

SYSTEM NAME:

Organization Locator and Social Roster.

SYSTEM LOCATION:

Organizational elements of the Department of the Navy. Official mailing addresses are published as an appendix to the Navy's compilation of systems of records notices.

Commander, U.S. Joint Forces Command, 1562 Mitscher Avenue, Suite 200, Norfolk, VA 23551–2488.

Commander, U.S. Pacific Command, P.O. Box 64028, Camp H.M. Smith, HI 96861–4028.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Military and civilian personnel attached to the activity, Departments of the Navy and Defense, or other government agencies; family members; and guests or other invitees.

CATEGORIES OF RECORDS IN THE SYSTEM:

Manual or mechanized records. Includes information such as names, addresses, telephone numbers; official titles or positions and organizations; invitations, acceptances, regrets, protocol, and other information associated with attendants at functions. Locator records of personnel attached to the organization.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301, Departmental Regulations and E.O. 9397 (SSN).

PURPOSE(S):

To notify personnel of arrival of visitors; recall personnel to duty station when required; locate individuals on routine matters; provide mail distribution and forwarding addresses; compile a social roster for official and non-official functions; send personal greetings and invitations; and locate individuals during medical emergencies, facility evacuations, and similar threat situations.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

The DoD 'Blanket Routine Uses' that appear at the beginning of the Navy's compilation of systems of records notices apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Manual and automated records.

RETRIEVABILITY:

Name, Social Security Number, and/or organization code.

SAFEGUARDS:

Documents are marked 'FOR OFFICIAL USE ONLY—PRIVACY SENSITIVE' and are only distributed to those persons having an official need to know. Computerized records are password protected and only accessible by those persons with an official need to know.

RETENTION AND DISPOSAL:

Records are destroyed upon update of roster to add/delete individuals who have arrived/departed the organization.

SYSTEM MANAGER(S) AND ADDRESS:

Commanding officer of the activity in question. Official mailing addresses are published as an appendix to the Navy's compilation of systems of records notices.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether information about themselves is contained in this system should address written inquiries to the Commanding officer of the activity in question. Official mailing addresses are published as an appendix to the Navy's compilation of systems of records notices. Request must be signed.

RECORD ACCESS PROCEDURES:

Individuals seeking access to information about themselves contained in this system should address written inquiries to the Commanding officer of the activity in question. Official mailing addresses are published as an appendix to the Navy's compilation of systems of records notices. Request must be signed.

CONTESTING RECORD PROCEDURES:

The Navy's rules for accessing records, and for contesting contents and appealing initial agency determinations are published in Secretary of the Navy Instruction 5211.5; 32 CFR part 701; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

Individual and records of the activity.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

N05100–3

SYSTEM NAME:

Safety Equipment Needs, Issues, Authorizations.

SYSTEM LOCATION:

Organizational elements of the Department of the Navy. Official mailing addresses are published as an appendix to the Navy's compilation of systems of records notices.

Commander, U.S. Joint Forces Command, 1562 Mitscher Avenue, Suite 200, Norfolk, VA 23551–2488.

Commander, U.S. Pacific Command, PO Box 64028, Camp H.M. Smith, HI 96861–4028.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Personnel whose work requires them to wear, or are issued, protective clothing or equipment, including prescription safety lenses.

CATEGORIES OF RECORDS IN THE SYSTEM:

Listings, cards, and other records which list individuals requiring, authorized, or issued prescription or other safety equipment. Such listings may include name, Social Security Number, organization code, date equipment issued, date equipment returned, equipment I.D. number, etc.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301, Departmental Regulations and E.O. 9397 (SSN).

PURPOSE(S):

To determine who needs, is eligible, or has been authorized or issued prescription or other safety equipment for protection.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

The DoD 'Blanket Routine Uses' that appear at the beginning of the Navy's compilation of systems of records notices apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper and automated records.

RETRIEVABILITY:

Name, Social Security Number, or date equipment was issued.

SAFEGUARDS:

File areas are accessible only to authorized persons who are properly screened, cleared, and trained. Computer terminals/personal computers are password protected.

RETENTION AND DISPOSAL:

Destroy when equipment is returned or inventoried.

SYSTEM MANAGER(S) AND ADDRESS:

Commanding officer of the activity in question. Official mailing addresses are published as an appendix to the Navy's compilation of systems of records notices.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether this system of records contains information about themselves should address written inquiries to the commanding officer of the activity where assigned. Official mailing addresses are published as an appendix to the Navy's compilation of systems of records notices.

Requests should contain full name, Social Security Number, and date equipment was assigned (if known), and be signed.

RECORD ACCESS PROCEDURES:

Individuals seeking access to records about themselves contained in this system of records should address written inquiries to the commanding officer of the activity where assigned. Official mailing addresses are published as an appendix to the Navy's compilation of systems of records notices.

Requests should contain full name, Social Security Number, and date equipment was assigned (if known), and be signed.

CONTESTING RECORD PROCEDURES:

The Navy's rules for accessing records, and for contesting contents and appealing initial agency determinations are published in Secretary of the Navy Instruction 5211.5; 32 CFR part 701; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

Individual.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

N05211–1

SYSTEM NAME:

Privacy Act Request Files and Tracking System.

SYSTEM LOCATION:

Organizational elements of the Department of the Navy. Official

mailing addresses are published as an appendix to the Navy's compilation of systems of records notices.

Commander, U.S. Joint Forces Command, 1562 Mitscher Avenue, Suite 200, Norfolk, VA 23551–2488.

Commander, U.S. Pacific Command, P.O. Box 64028, Camp H.M. Smith, HI 96861–4028.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals who request information concerning themselves which is in the custody of the Department of the Navy or who request access to or amendment of such records in accordance with the Privacy Act of 1974, as amended.

CATEGORIES OF RECORDS IN THE SYSTEM:

Letters, memoranda, legal opinions, messages, and miscellaneous documents relating to an individual's request for access to or amendment of records concerning that person, including letters authorizing release to another individual, letters of denial, appeals, statements of disagreements, and related documents accumulated in processing requests received under the Privacy Act of 1974.

Names, addresses, and other personal identifiers of the individual requester. Data base which tracks action from start to finish.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301, Departmental Regulations; 5 U.S.C. 552a, the Privacy Act of 1974, as amended; and E.O. 9397 (SSN).

PURPOSE(S):

To track, process, and coordinate individual requests for access and amendment of personal records; to process appeals on denials of requests for access or amendment to personal records; to compile information for reports, and to ensure timely response to requesters.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

The DoD 'Blanket Routine Uses' set forth at the beginning of the Navy's compilation of systems of records notices also apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Maintained in file folders, microform, microfilm, manual/computerized data bases, and/or optical disk.

RETRIEVABILITY:

Name of requester; year request filed; serial number of response letter; case file number; etc.

SAFEGUARDS:

Records are accessed by custodian of the record system and by persons responsible for servicing the record system in performance of their official duties. Records are stored in locked cabinets or rooms. Computerized data bases are password protected and accessed by individuals who have a need to know.

RETENTION AND DISPOSAL:

Granted requests, responses to requests for non-existent records, responses to requesters who provide inadequate descriptions and responses to requesters who fail to pay agency reproduction fees that are not appealed are destroyed 2 years after date of reply; requests which are denied and are appealed are destroyed after 5 years; requests which are amended are retained for 4 years; requests for amendment which are refused are destroyed after 3 years; disclosure accounting forms are retained for the life of the record of 5 years after the disclosure, whichever is later; and privacy act databases are destroyed after 5 years.

SYSTEM MANAGER(S) AND ADDRESS:

Policy Official: Chief of Naval Operations (N09B10), 2000 Navy Pentagon, Washington, DC 20350–2000.

RECORD HOLDERS:

Organizational elements of the Department of the Navy;

Commander, U.S. Joint Forces Command, 1562 Mitscher Avenue, Suite 200, Norfolk, VA 23551–2488; and

Commander, U.S. Pacific Command, P.O. Box 64028, Camp H.M. Smith, HI 96861–4028. Official mailing addresses are published as an appendix to the Navy's compilation of systems of records notices.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether information about themselves is contained in this system should address written inquiries to the commanding officer of the activity in question. Official mailing addresses are published in the Navy's compilation of systems of records notices.

The request must be signed and contain the full name of the individual and one or more of the following kinds of information: year request filed; serial number of response letter; case file number.

RECORD ACCESS PROCEDURES:

Individuals seeking access to information about themselves contained in this system should address written inquiries to the commanding officer of the activity in question. Official mailing addresses are published in the Navy's compilation of systems of records notices.

The request must be signed and contain the full name of the individual and one or more of the following kinds of information: year request filed; serial number of response letter; case file number.

CONTESTING RECORD PROCEDURES:

The Navy's rules for accessing records, and for contesting contents and appealing initial agency determinations are contained in Secretary of the Navy Instruction 5211.5D; 32 CFR part 701; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

From the individual, Navy organizations, Department of Defense components, and other Federal, state, and local government agencies.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

During the course of a Privacy Act (PA) action, exempt materials from other systems of records may become part of the case records in this system of records. To the extent that copies of exempt records from those "other" systems of records are entered into these PA case records, the Department of the Navy hereby claims the same exemptions for the records as they have in the original primary systems of records of which they are a part. Department of the Navy exemption rules have been promulgated in accordance with requirements of 5 U.S.C. 553(b)(1), (2), and (3), (c) and (e) published in 32 CFR part 701, subpart G. For additional information contact the system manager.

N05354–1

SYSTEM NAME:

Equal Opportunity Management Information System.

SYSTEM LOCATION:

Primary location: Bureau of Naval Personnel, 2 Navy Annex, Washington, DC 20370–5001; local activity to which

individual is attached. Official mailing addresses are published as an appendix to the Navy's compilation of system of record notices.

Commander, U.S. Atlantic Command, 1562 Mitscher Avenue, Suite 200, Norfolk, VA 23551–2488.

Commander, U.S. Pacific Command, P.O. Box 64028, Camp H.M. Smith, HI 96861–4028.

Secondary location: Department of the Navy activities in the chain of command between the local activity and the headquarters level. Official mailing addresses are published as an appendix to the Navy's compilation of system of record notices.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Military personnel who are involved in formal or informal complaints or investigations involving aspects of equal opportunity; and/or who have initiated, or were the subject of correspondence concerning aspects of equal opportunity.

CATEGORIES OF RECORDS IN THE SYSTEM:

Correspondence and records concerning incident data, endorsements and recommendations, formal and informal complaints and investigations concerning aspects of equal opportunity.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301, Departmental Regulations.

PURPOSE(S):

To assist in equal opportunity measures, including but not limited to, complaints, investigations, and correspondence.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

The DoD 'Blanket Routine Uses' that appear at the beginning of the Navy's compilation of systems notices apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Automated records may be stored on magnetic tapes, disc, and drums. Manual records may be stored in paper files, microfiche, or microform.

RETRIEVABILITY:

Filed alphabetically by last name of individual concerned.

SAFEGUARDS:

Computer facilities are located in restricted areas accessible only to authorized persons that are properly screened, trained and cleared. Manual records and computer printouts are available only to authorized personnel having a need-to-know.

RETENTION AND DISPOSAL:

Records maintained for two years and then destroyed.

SYSTEM MANAGER(S) AND ADDRESS:

Chief of Naval Personnel (Pers 06), Bureau of Naval Personnel, 2 Navy Annex, Washington, DC 20370–5001.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether this system of records contains information about themselves should address written inquiries to the Chief of Naval Personnel (Pers 06), Bureau of Naval Personnel, 2 Navy Annex, Washington, DC 20370–5001; or to the local activity where assigned. Official mailing addresses are published as an appendix to the Navy's compilation of system of record notices.

The letter should contain full name and signature of the requester. The individual may visit the Chief of Naval Personnel, Bureau of Naval Personnel, 2 Navy Annex, Washington, DC 20370–5001, for assistance with records located in that building; or the individual may visit the local activity to which attached for access to locally maintained records. Proof of identification will consist of Military Identification Card for persons having such cards, or other picture-bearing identification.

RECORD ACCESS PROCEDURES:

Individuals seeking access to records about themselves contained in this system of records should address written inquiries to the Chief of Naval Personnel (Pers 06), Bureau of Naval Personnel, 2 Navy Annex, Washington, DC 20370–5001; or, in accordance with the Directory of Department of the Navy Mailing Addresses (*i.e.*, local activities).

The letter should contain full name and signature of the requester. The individual may visit the Chief of Naval Personnel, Bureau of Naval Personnel, 2 Navy Annex, Washington, DC 20370–5001, for assistance with records located in that building; or the individual may visit the local activity to which attached for access to locally maintained records. Proof of identification will consist of Military Identification Card for persons having such cards, or other picture-bearing identification.

CONTESTING RECORD PROCEDURES:

The Navy's rules for accessing records, and for contesting contents and appealing initial agency determinations are published in Secretary of the Navy Instruction 5211.5; 32 CFR part 701; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

Federal, state, and local court documents; military investigatory reports; general correspondence concerning individual.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

Information specifically authorized to be classified under E.O. 12958, as implemented by DoD 5200.1–R, may be exempt pursuant to 5 U.S.C. 552a(k)(1).

Investigatory material compiled solely for the purpose of determining suitability, eligibility, or qualifications for federal civilian employment, military service, federal contracts, or access to classified information may be exempt pursuant to 5 U.S.C. 552a(k)(5), but only to the extent that such material would reveal the identity of a confidential source.

An exemption rule for this system has been promulgated in accordance with the requirements of 5 U.S.C. 553(b)(1), (2) and (3), (c) and (e) and published in 32 CFR part 701, subpart G. For additional information contact the system manager.

N05370–2

SYSTEM NAME:

Financial Interest Disclosure Statements.

SYSTEM LOCATION:

Organizational elements of the Department of the Navy. Official mailing addresses are published as an appendix to the Navy's compilation of systems of records notices.

Commander, U.S. Joint Forces Command, 1562 Mitscher Avenue, Suite 200, Norfolk, VA 23551–2488.

Commander, U.S. Pacific Command, PO Box 64028, Camp H.M. Smith, HI 96861–4028.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals required to file SF 450, SF 278, and/or DD Form 1787.

CATEGORIES OF RECORDS IN THE SYSTEM:

SF 450, Confidential Statement of Affiliations and Financial Interests; SF 278, Financial Disclosure Report; DD Form 1787, Report of DOD and Defense Related Employment; Position Descriptions; and related information.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301, Departmental Regulations; Pub.L. 95–521, Ethics in Government Act of 1978; E.O. 11222; and E.O. 9397 (SSN).

PURPOSE(S):

To permit supervisors, counselors, and other responsible DON officials to determine whether there are actual or apparent conflicts of interests between members' or employees' present and prospective official duties and their nonfederal affiliations and financial interests.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

The DoD 'Blanket Routine Uses' that appear at the beginning of the Navy's compilation of systems of records notices apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper and automated records.

RETRIEVABILITY:

Name.

SAFEGUARDS:

Information is locked in a file cabinet accessible to authorized personnel only.

RETENTION AND DISPOSAL:

SF 450 and a complete record of all action taken thereon are retained for a period of six years in a central location within the command or activity to which the reporting official was assigned at the time of filing, after which they will be destroyed.

SF 278 and DD Forms 1787 are retained for six years from the date of filing, and then destroyed unless needed for any investigation in which case they shall be held pending completion of the investigation.

SYSTEM MANAGER(S) AND ADDRESS:

Policy Officials: General Counsel of the Navy, 720 Kennon Street SE., Room 214, Washington Navy Yard, DC 20374–5012 and Judge Advocate General, 1322 Patterson Avenue SE., Suite 3000, Washington Navy Yard, DC 20375–5066.

RECORD HOLDER:

Commanding Officer or head of the organization in question. Official mailing addresses are published as an appendix to the Navy's compilation of systems of records notices.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether this system of records contains information about themselves should address written inquiries to the Commanding Officer or head of the activity where they filed the forms.

Written requests should contain full name and must be signed by the individual.

RECORD ACCESS PROCEDURES:

Individuals seeking access to records about themselves should address written inquiries to the Commanding Officer or head of the activity where they filed the forms.

Written requests should contain full name and must be signed by the individual.

CONTESTING RECORD PROCEDURES:

The Navy's rules for accessing records, and for contesting contents and appealing initial agency determinations are published in Secretary of the Navy Instruction 5211.5; 32 CFR part 701; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

Individual concerned, his/her supervisor, and ethics counselor.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

N05380–1

SYSTEM NAME:

Combined Federal Campaign/Navy Relief Society.

SYSTEM LOCATION:

Organizational elements of the Department of the Navy. Official mailing addresses are published as an appendix to the Navy's compilation of systems of records notices.

Commander, U.S. Joint Forces Command, 1562 Mitscher Avenue, Suite 200, Norfolk, VA 23551–2488.

Commander, U.S. Pacific Command, P.O. Box 64028, Camp H.M. Smith, HI 96861–4028.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

All assigned personnel.

CATEGORIES OF RECORDS IN THE SYSTEM:

Names, addresses, Social Security Numbers, payroll identifying data, contributor cards and lists.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

E.O.s 10927 and 12353, E.O. 9397 (SSN).

PURPOSE(S):

To manage the Combined Federal Campaign and Navy Relief Society Fund drives and provide the respective campaign coordinator with necessary information.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

The DoD 'Blanket Routine Uses' that appear at the beginning of the Navy's compilation of systems of records notices apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Manual and computerized records.

RETRIEVABILITY:

Name, Social Security Number, and organization.

SAFEGUARDS:

Access is provided on need-to-know basis only. Manual records are maintained in file cabinets under the control of authorized personnel during working hours. The office space in which the file cabinets are located is locked outside of official working hours. Computer terminals are located in supervised areas. Access to computerized data is controlled by password or other user code system.

RETENTION AND DISPOSAL:

Records are maintained for one year or completion of next equivalent campaign and then destroyed.

SYSTEM MANAGER(S) AND ADDRESS:

Commanding officer of the activity in question. Official mailing addresses are published as an appendix to the Navy's compilation of systems of records notices.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether this system of records contains information about themselves should address written inquiries to the commanding officer of the naval activity where currently or previously employed. Official mailing addresses are published as an appendix to the Navy's compilation of systems of records notices.

The request should include full name, Social Security Number, address of the individual concerned, and should be signed.

RECORD ACCESS PROCEDURES:

Individuals seeking access to records about themselves contained in this system of records should address written inquiries to the commanding officer of the naval activity where currently or previously employed. Official mailing addresses are published as an appendix to the Navy's compilation of systems of records notices.

The request should include full name, Social Security Number, address of the individual concerned, and should be signed.

CONTESTING RECORD PROCEDURES:

The Navy's rules for accessing records, and for contesting contents and appealing determinations are published in Secretary of the Navy Instruction 5211.5; 32 CFR part 701; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

Individual; payroll files; personnel files.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

N05500–1

SYSTEM NAME:

Security Inspection and Violation System.

SYSTEM LOCATION:

Organizational elements of the Department of the Navy. Official mailing addresses are published as an appendix to the Navy's compilation of systems of records notices.

Commander, U.S. Joint Forces Command, 1562 Mitscher Avenue, Suite 200, Norfolk, VA 23551–2488.

Commander, U.S. Pacific Command, P.O. Box 64028, Camp H.M. Smith, HI 96861–4028.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals involved in security violations.

CATEGORIES OF RECORDS IN THE SYSTEM:

Security violation reports, security inspection reports.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301, Departmental Regulations and E.O. 9397 (SSN).

PURPOSE(S):

To identify problem areas in security indoctrination, to alert command management officials to areas which present larger than normal security problems and identify personnel who are cited as responsible for non-compliance with procedures.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

The DoD 'Blanket Routine Uses' that appear at the beginning of the Navy's compilation of systems of records notices apply to this system.

Policies and practices for storing, retrieving, accessing, retaining, and disposing of records in the system:

STORAGE:

File folders, card files, personal computers, and magnetic tape.

RETRIEVABILITY:

Name, Social Security Number, Case number, organization.

SAFEGUARDS:

Access provided on a need-to-know basis only. Manual records are maintained in file cabinets under the control of authorized personnel during working hours. The office space in which the file cabinets are located is locked outside of official working hours. Computer terminals are located in supervised areas. Access is controlled by password or other user code system.

RETENTION AND DISPOSAL:

Records are destroyed 2 years after completion of final corrective or disciplinary action.

SYSTEM MANAGER(S) AND ADDRESS:

Commanding officer of the activity in question. Official mailing addresses are published as an appendix to the Navy's compilation of systems of records notices.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether information about themselves is contained in this system should address written inquiries to the Commanding officer of the activity in question. Official mailing addresses are published as an appendix to the Navy's compilation of systems of records notices.

Requests must be signed and contain the individual's name and Social Security Number.

RECORD ACCESS PROCEDURES:

Individuals seeking access to information about themselves contained in this system should address written inquiries to the Commanding officer of the activity in question. Official mailing addresses are published as an appendix to the Navy's compilation of systems of records notices.

Requests must be signed and contain the individual's name and Social Security Number.

CONTESTING RECORD PROCEDURES:

The Navy's rules for accessing records, and for contesting contents and appealing initial agency determinations are published in Secretary of the Navy Instruction 5211.5; 32 CFR part 701; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

Individual; records of the activity; investigator's reports; witness statements.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

N05512–1

SYSTEM NAME:

Vehicle Control System.

SYSTEM LOCATION:

Organizational elements of the Department of the Navy. Official mailing addresses are published as an appendix to the Navy's compilation of systems of records notices.

Commander, U.S. Joint Forces Command, 1562 Mitscher Avenue, Suite 200, Norfolk, VA 23551–2488.

Commander, U.S. Pacific Command, P.O. Box 64028, Camp H.M. Smith, HI 96861–4028.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals who have registered their vehicles, boats, or trailers at a Navy/combatant command installation; individuals who have applied for a Government Motor Vehicle Operator's license; and individuals who possess a Government Motor Vehicle Operator's license with authority to operate government vehicles.

CATEGORIES OF RECORDS IN THE SYSTEM:

File contains records of each individual who has registered a vehicle on the installation concerned to include decal data, insurance information, state of registration and identification. Applications may contain such information as name, date of birth, Social Security Number, Driver's license information (*i.e.*, height, weight, hair and eye color), place of employment, driving record, Military I.D. information, etc.

File also contains records/notations of traffic violations, citations, suspensions,

applications for government vehicle operator's I.D. card, operator qualifications and record licensing examination and performance, record of failures to qualify for a Government Motor Vehicle Operator's permit, record of government motor vehicle and other vehicle's accidents, and information on student driver training.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301, Departmental Regulations and E.O. 9397 (SSN).

PURPOSE(S):

To provide a record of each individual who has registered a vehicle in an installation to include a record on individuals authorized to operate official government vehicles.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

The DoD 'Blanket Routine Uses' that appear at the beginning of the Navy's compilation of systems of records notices apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper records in file folders, card files, computerized data base and on magnetic tape.

RETRIEVABILITY:

Name, Social Security Number, case number, and organization.

SAFEGUARDS:

Limited access provided on a need-to-know basis only. Information maintained on computers is password protected. Files maintained in locked and/or guarded office.

RETENTION AND DISPOSAL:

Records are maintained for one year after transfer or separation from the installation concerned. Paper records are then destroyed and records on magnetic tapes erased.

SYSTEM MANAGER(S) AND ADDRESS:

Commanding officer of the activity in question. Official mailing addresses are published as an appendix to the Navy's compilation of systems of records notices.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether this system of records contains information about themselves should address written inquiries to the Commanding Officer or head of the activity where assigned. Official mailing addresses are published as an appendix to the Navy's compilation of systems of records notices.

Written requests should contain full name and Social Security Number, and request must be signed.

RECORD ACCESS PROCEDURES:

Individuals seeking access to records about themselves should address written inquiries to the Commanding Officer or head of the activity where assigned. Official mailing addresses are published as an appendix to the Navy's compilation of systems of records notices.

Written requests should contain full name and Social Security Number, and requests must be signed.

CONTESTING RECORD PROCEDURES:

The Navy's rules for accessing records, and for contesting contents and appealing initial agency determinations are published in Secretary of the Navy Instruction 5211.5; 32 CFR part 701; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

Individual concerned, driving record, insurance papers, activity correspondence, investigators reports, and witness statements.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

N05512–2

SYSTEM NAME:

Badge and Access Control System.

SYSTEM LOCATION:

Organizational elements of the Department of the Navy. Official mailing addresses are published as an appendix to the Navy's compilation of systems of records notices.

Commander, U.S. Joint Forces Command, 1562 Mitscher Avenue, Suite 200, Norfolk, VA 23551–2488.

Commander, U.S. Pacific Command, PO Box 64028, Camp H.M. Smith, HI 96861–4028.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals considered or seeking consideration for access to space under the control of the Department of the Navy/combatant command and any visitor (military, civilian, or contractor) requiring access to a controlled facility.

CATEGORIES OF RECORDS IN THE SYSTEM:

Visit requests for permission to transact commercial business, visitor clearance data for individuals to visit a naval base/activity/contractor facility; barring lists and letters of exclusion, and badge/pass issuance records.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301, Departmental Regulations; OPNAVINST 5530.14C, DON Physical Security and Loss Prevention; and E.O. 9397 (SSN).

PURPOSE(S):

To maintain all aspects of proper access control; to issue badges; replace lost badges; to retrieve passes upon separation; to maintain visitor statistics; and collect information to adjudicate access.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

To designated contractors, Federal agencies and foreign governments for the purpose of granting Navy officials access to their facility.

The DoD 'Blanket Routine Uses' that appear at the beginning of the Navy's compilation of systems of records notices apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

File folders, card files, magnetic tape, personal computers, and electronic badging system.

RETRIEVABILITY:

Name, Social Security Number, Case number, organization, and company name.

SAFEGUARDS:

Access is provided on a need-to-know basis only. Manual records are maintained in file cabinets under the control of authorized personnel during working hours. The office space in which the file cabinets are located is locked outside of official working hours. Computer terminals are located in supervised areas. Access is controlled by password or other user code system.

RETENTION AND DISPOSAL:

Badges and passes are destroyed three months after return to issuing office. Records of issuance are destroyed six months after new accountability system is established or one year after final disposition of each issuance record is

entered in retention log or similar record, whichever is earlier. Visit request records are destroyed two years after final entry or two years after date of document, whichever is later.

SYSTEM MANAGER(S) AND ADDRESS:

Policy Official for Security Badges: Chief of Naval Operations (N09N2), 2000 Navy Pentagon, Washington, DC 20350–2000.

RECORD HOLDER:

Commanding officer of the activity in question. Official mailing addresses are published as an appendix to the Navy's compilation of systems of records notices.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether information about themselves is contained in this system should address written inquiries to the Commanding officer of the activity in question. Official mailing addresses are published as an appendix to the Navy's compilation of systems of records notices.

Individual should provide full name and Social Security Number.

RECORD ACCESS PROCEDURES:

Individuals seeking access to information about themselves contained in this system should address written inquiries to the Commanding officer of the activity in question. Official mailing addresses are published as an appendix to the Navy's compilation of systems of records notices.

Individual should provide full name and Social Security Number.

CONTESTING RECORD PROCEDURES:

The Navy's rules for accessing records, and for contesting contents and appealing initial agency determinations are published in Secretary of the Navy Instruction 5211.5; 32 CFR part 701; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

Visit requests; individual; records of the activity; investigators; witnesses; contractors; companies.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

N05880–2

SYSTEM NAME:

Admiralty Claims Files.

SYSTEM LOCATION:

Office of the Judge Advocate General; Office of the Commander, United States Naval Forces Europe; Office of the Commander Sixth Fleet; and the Federal Records Center, Suitland, MD. Local commands with which claims under the Public Vessels Act and the Suits in Admiralty Act are initially filed, typically retain copies of such claims and accompanying files. Official mailing addresses are published as an appendix to the Navy's compilation of systems of records notices.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

All individuals who have asserted claims or instituted suits under the Public Vessels Act and Suits in Admiralty Act against the Department of the Navy in the name of the United States and all individuals who have instituted suits against third parties who have impleaded the Department of the Navy in the name of the United States.

CATEGORIES OF RECORDS IN THE SYSTEM:

The files may contain claims filed, correspondence, investigative reports, accident reports, medical and dental records, x-rays, allied reports (such as local police investigations, etc.), photographs, drawings, legal memoranda, opinions of experts, and court documents.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Admiralty Claims Act (10 U.S.C. 7622); 5 U.S.C. 301, Departmental Regulations; 44 U.S.C. 3101.

PURPOSE(S):

To evaluate admiralty claims asserted for and against the Navy for settlement and for litigation support to the Department of Justice.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

The DoD 'Blanket Routine Uses' that appear at the beginning of the Navy's compilation of systems notices apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper records in file folders stored in file cabinets or other storage devices and duplicate portions of the records are also stored in computer system.

RETRIEVABILITY:

Name of claimant or ship.

SAFEGUARDS:

Files are maintained in file cabinets or other storage devices under the control of authorized personnel during working hours; the office space in which the file cabinets and storage devices are located is locked outside of official working hours.

Computer files subject to controlled access and maintained on a controlled access server.

RETENTION AND DISPOSAL:

Records are retained at OJAG headquarters as long as necessary and destroyed when no longer required.

SYSTEM MANAGER(S) AND ADDRESS:

Deputy Assistant Judge Advocate General (Admiralty), Office of the Judge Advocate General, Department of the Navy, 1322 Patterson Avenue SE., Suite 3000, Washington Navy Yard, Washington DC 20374–1566.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether this system of records contains information about themselves should address written inquiries to the Deputy Assistant Judge Advocate General (Admiralty), Office of the Judge Advocate General, Department of the Navy, 1322 Patterson Avenue SE., Suite 3000, Washington Navy Yard, Washington DC 20374–1566.

Requesting individuals should specify their full names. Visitors should be able to identify themselves by any commonly recognized evidence of identity. Written requests must be signed by the requesting individual.

RECORD ACCESS PROCEDURES:

Individuals seeking access to records about themselves contained in this system of records should address written inquiries to the Deputy Assistant Judge Advocate General (Admiralty), Office of the Judge Advocate General, Department of the Navy, 1322 Patterson Avenue SE., Suite 3000, Washington Navy Yard, Washington DC 20374–1566.

Requesting individuals should specify their full names. Visitors should be able to identify themselves by any commonly recognized evidence of identity. Written requests must be signed by the requesting individual. For personal visits, the individual should be able to provide some acceptable identification, *e.g.*, driver's license, etc., and give some verbal information that could be verified in the file.

CONTESTING RECORD PROCEDURES:

The Navy's rules for accessing records, and for contesting contents and appealing initial agency determinations

are published in Secretary of the Navy Instruction 5211.5; 32 CFR part 701; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

The sources of information contained in the files include the following: X-rays, medical and dental records from civilian and military doctors and medical facilities; investigative reports; witnesses; and correspondence from claimants and their representatives.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

N07320–1

SYSTEM NAME:

Property Accountability Records.

SYSTEM LOCATION:

Organizational elements of the Department of the Navy. Official mailing addresses are published as an appendix to the Navy's compilation of systems of records notices.

Commander, U.S. Joint Forces Command, 1562 Mitscher Avenue, Suite 200, Norfolk, VA 23551–2488.

Commander, U.S. Pacific Command, P.O. Box 64028, Camp H.M. Smith, HI 96861–4028.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Any individual who receives and signs for government property.

CATEGORIES OF RECORDS IN THE SYSTEM:

The receipts maintained are any of the following: Logbooks, property passes, custody chits, charge tickets, sign out cards, tool tickets, sign out forms, photographs, charge cards, or any other statement of individual accountability for receipt of government property.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301, Departmental Regulations and E.O. 9397 (SSN).

PURPOSE(S):

To identify individuals to whom government property has been issued.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

The DoD 'Blanket Routine Uses' that appear at the beginning of the Navy's compilation of systems of records notices apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

The receipts may be maintained in any of the following formats: Logbooks, property passes, custody chits, charge tickets, sign out cards, tool tickets, sign out forms, photographs, computerized data base, charge out cards or any other statement of individual accountability for receipt of government property.

RETRIEVABILITY:

Retrievability may be by any of the following: Name, Social Security Number, badge number, tool number, property serial number, or any other locally determined method of property receipt accountability.

SAFEGUARDS:

Access is limited and provided on a need-to-know basis only. Computerized data bases are password protected.

RETENTION AND DISPOSAL:

Property accounting records are destroyed when two years old. Custody receipts are destroyed when material or equipment is destroyed.

SYSTEM MANAGER(S) AND ADDRESS:

The system manager is the commanding officer or officer in charge of the activity where the property accountability records are maintained.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether system records contain information pertaining to them may do so by making application to the commanding officer or officer in charge of the activity where the receipts are located. Individuals making application must have an identification card.

RECORD ACCESS PROCEDURES:

Individuals seeking access to information about themselves contained in this system should address written inquiries to the commanding officer or officer in charge of the activity where the receipts are located. Individuals making application must have an identification card.

CONTESTING RECORD PROCEDURES:

The Navy's rules for accessing records, and for contesting contents and appealing initial agency determinations are published in Secretary of the Navy Instruction 5211.5; 32 CFR part 701; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

Information is collected directly from the subject individual.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

N08370–1

SYSTEM NAME:

Weapons Registration.

SYSTEM LOCATION:

Organizational elements of the Department of the Navy. Official mailing addresses are published as an appendix to the Navy's compilation of systems of records notices.

Commander, U.S. Joint Forces Command, 1562 Mitscher Avenue, Suite 200, Norfolk, VA 23551–2488.

Commander, U.S. Pacific Command, P.O. Box 64028, Camp H.M. Smith, HI 96861–4028.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals registering firearms or other weapons with station security officers.

CATEGORIES OF RECORDS IN THE SYSTEM:

Weapon registration records, weapon permit records.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301, Departmental Regulations and E.O. 9397 (SSN).

PURPOSE(S):

To assure proper control of weapons on installations and to monitor and control purchase and disposition of weapons.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

The DoD 'Blanket Routine Uses' that appear at the beginning of the Navy's compilation of systems of records notices apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

File folders, card files, punched cards, and magnetic tape.

RETRIEVABILITY:

Name, Social Security Number, Case number, organization.

SAFEGUARDS:

Access provided on a need-to-know basis only. Locked and/or guarded office.

RETENTION AND DISPOSAL:

Per Secretary of the Navy Records Disposal Manual.

SYSTEM MANAGER(S) AND ADDRESS:

Commanding officer of the activity in question. Official mailing addresses are published as an appendix to the Navy's compilation of systems of records notices.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether information about themselves is contained in this system should address written inquiries to the Commanding officer of the activity in question. Official mailing addresses are published as an appendix to the Navy's compilation of systems of records notices.

RECORD ACCESS PROCEDURES:

Individuals seeking access to information about themselves contained in this system should address written inquiries to the Commanding officer of the activity in question. Official mailing addresses are published as an appendix to the Navy's compilation of systems of records notices.

CONTESTING RECORD PROCEDURES:

The Navy's rules for accessing records, and for contesting contents and appealing initial agency determinations are published in Secretary of the Navy Instruction 5211.5; 32 CFR part 701; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

Individual concerned, other records of activity, investigators, witnesses, and correspondents.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

N12610–1

SYSTEM NAME:

Hours of Duty Records.

SYSTEM LOCATION:

Organizational elements of the Department of the Navy. Official mailing addresses are published as an appendix to the Navy's compilation of systems of records notices.

Commander, U.S. Joint Forces Command, 1562 Mitscher Avenue, Suite 200, Norfolk, VA 23551–2488.

Commander, U.S. Pacific Command, PO Box 64028, Camp H.M. Smith, HI 96861–4028.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Military and civilian personnel.

CATEGORIES OF RECORDS IN THE SYSTEM:

Record contains such information as name, grade/rate, Social Security Number, organizational code, work center code, grade code, pay rate, labor code, type transaction, hours assigned. Data base includes scheduling and assignment of work; skill level; tools issued; leave; temporary assignments to other areas.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301, Departmental Regulations and E.O. 9397 (SSN).

PURPOSE(S):

To effectively manage the work force.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

The DoD 'Blanket Routine Uses' that appear at the beginning of the Navy's compilation of systems of records notices apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper and computerized records.

RETRIEVABILITY:

Name, organization code, Social Security Number, and work center.

SAFEGUARDS:

Access is provided on need-to-know basis only. Manual records are maintained in file cabinets under the control of authorized personnel during working hours. The office space in which the file cabinets are located is locked outside of official working hours. Computer terminals are located in supervised areas. Access to computerized data is controlled by password or other user code system.

RETENTION AND DISPOSAL:

Records are destroyed when three years old.

SYSTEM MANAGER(S) AND ADDRESS:

The commanding officer of the activity in question. Official mailing addresses are published as an appendix to the Navy's compilation of systems of records notices.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether this system of records contains information about themselves should address written inquiries to the commanding officer of the naval activity where currently employed. Official mailing addresses are published as an appendix to the Navy's compilation of systems of records notices.

The request should include full name, Social Security Number, address of individual concerned, and should be signed.

RECORD ACCESS PROCEDURES:

Individuals seeking access to records about themselves contained in this system of records should address written inquiries to the commanding officer of the naval activity where currently employed. Official mailing addresses are published as an appendix to the Navy's compilation of systems of records notices.

The request should include full name, Social Security Number, address of individual concerned, and should be signed.

CONTESTING RECORD PROCEDURES:

The Navy's rules for accessing records, and for contesting contents and appealing determinations are published in Secretary of the Navy Instruction 5211.5; 32 CFR part 701; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

Individual, correspondence, and personnel records.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

[FR Doc. 03–11571 Filed 5–8–03; 8:45 am]

BILLING CODE 5001–08–P

DEPARTMENT OF DEFENSE

Department of the Navy

Privacy Act of 1974; System of Records

AGENCY: Department of the Navy, DoD.

ACTION: Notice to add a system of records.

SUMMARY: The Department of the Navy proposes to add a system of records notice to its inventory of record systems subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended.

DATES: This action will be effective on June 9, 2003 unless comments are received that would result in a contrary determination.

ADDRESSES: Send comments to the Department of the Navy, PA/FOIA Policy Branch, Chief of Naval Operations (N09B10), 2000 Navy Pentagon, Washington, DC 20350–2000.

FOR FURTHER INFORMATION CONTACT: Mrs. Doris Lama at (202) 685–6545 or DSN 325–6545.

SUPPLEMENTARY INFORMATION: The Department of the Navy's record system notices for records systems subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended, have been published in the **Federal Register** and are available from the address above.

The proposed system report, as required by 5 U.S.C. 552a(r) of the Privacy Act, was submitted on April 21, 2003, to the House Committee on Government Reform, the Senate Committee on Governmental Affairs, and the Office of Management and Budget (OMB) pursuant to paragraph 4c of Appendix I to OMB Circular No. A–130, 'Federal Agency Responsibilities for Maintaining Records About Individuals,' dated February 8, 1996, (61 FR 6427, February 20, 1996).

Dated: April 28, 2003.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

N05100–4

SYSTEM NAME:

Occupational Injuries/Illnesses Log.

SYSTEM LOCATION:

Organizational elements of the Department of the Navy. Official mailing addresses are published as an appendix to the Navy's compilation of systems of records notices.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Navy military, civilian personnel, non-appropriated and foreign national civilian personnel who are involved in accidents or occupational illnesses that result in lost time, government or private property damage or destruction, and personnel injury or death.

CATEGORIES OF RECORDS IN THE SYSTEM:

The Log contains a civilian/military indicator, event reference number, case or file number, unit identification code (UIC), activity name, major command code, last name, first name and middle initial, department, sex, age, job title, rank/rate/grade, Social Security Number, date of mishap/illness, time of mishap/illness, general location of mishap/illness, lost workday count, injury/illness type, Occupational Safety and Health Administration (OSHA) code, part(s) of body injured, mishap/illness type, object involved (injury source), process control number (job/activity at time of mishap), chemical involved, chemical comments, formal training involved; case type (fatality, lost time, no lost time, first aid), mishap class, date of death, short narrative, start date, sent date, and claims information.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

10 U.S.C. 5013, Secretary of the Navy; DoD Instruction 6055.7, Accident Investigation, Reporting, and Record Keeping; and E.O. 12196, Occupational Safety and Health Programs for Federal Employees; and E.O. 9397 (SSN).

PURPOSE(S):

To collect injury and occupational illnesses required of Federal governmental agencies by the Occupational Safety and Health Administration (OSHA). The summary data of occupational injuries or illnesses maintained in this log will be used for analytical purposes to improve the Department of the Navy's accident prevention policies, procedures, standards, and operations as well as ensure internal data quality assurance.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

The DoD "Blanket Routine Uses" that appear at the beginning of the Navy's compilation of systems of records notices apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper and electronic records.

RETRIEVABILITY:

By individual's name, Social Security Number, location of the accident or illness, or date of mishap or illness.

SAFEGUARDS:

File cabinets and computer terminals are located in limited access areas and handled by personnel that are properly trained in working with automated Privacy Act systems of records. Computer terminals are password protected.

RETENTION AND DISPOSAL:

Naval Safety Center computerized records are maintained for 20 fiscal years following the end of the fiscal year to which they relate. All other records held outside of the Naval Safety Center are maintained for five years following the end of the fiscal year to which they relate and then destroyed.

SYSTEM MANAGER(S) AND ADDRESS:

Policy Official: Commander, Naval Safety Center, 375 A Street, Norfolk, VA 23511–4399.

LOCAL RECORD HOLDERS:

Organizational elements of the Department of the Navy. Official mailing addresses are published as an appendix to the Navy's compilation of systems of records notices.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether information about themselves is contained in this system should address written inquiries to the Commanding Officer of the local activity where the mishap or injury occurred.

The request should contain full name, Social Security Number and address of the individual concerned and should be signed.

RECORD ACCESS PROCEDURES:

Individuals seeking access to information about themselves contained in this system should address written inquiries to the Commanding Officer of the local activity where the mishap or injury occurred.

The request should contain full name, Social Security Number and address of the individual concerned and should be signed.

CONTESTING RECORD PROCEDURES:

The Navy's rules for accessing records, and for contesting contents and appealing initial agency determinations are published in Secretary of the Navy Instruction 5211.5; 32 CFR part 701; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

Mishap Investigation Reports, departmental records such as personnel file excerpts, medical record excerpts, State and Federal records, and excerpts of police reports, witness statements and general correspondence.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

[FR Doc. 03–11578 Filed 5–8–03; 8:45 am]

BILLING CODE 5001–08–P

DEPARTMENT OF DEFENSE

Department of the Navy

Privacy Act of 1974; System of Records

AGENCY: Department of the Navy, DoD.

ACTION: Notice to amend a records system.

SUMMARY: The Department of the Navy proposes to amend a system of records notices in its inventory of record systems subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended.

DATES: The amendments will be effective on June 9, 2003 unless comments are received that would result in a contrary determination.

ADDRESSES: Send comments to Department of the Navy, PA/FOIA Policy Branch, Chief of Naval Operations, N09B10, 2000 Navy Pentagon, Washington, DC 20350–2000.

FOR FURTHER INFORMATION CONTACT: Mrs. Doris Lama at (202) 685–6545 or DSN 325–6545.

SUPPLEMENTARY INFORMATION: The Department of the Navy's record system notices for records systems subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended, have been published in the **Federal Register** and are available from the address above.

The Department of the Navy proposes to amend a system of records notice in its inventory of record systems subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended. The amendments to the system of records are not within the purview of subsection (r) of the Privacy Act of 1974 (5 U.S.C. 552a), as amended, which requires the submission of new or altered system report. The records system being amended is set forth below, as amended, published in its entirety.

Dated: May 2, 2003.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

N05520–5

SYSTEM NAME:

Personnel Security Program Management Records System (January 23, 1998, 63 FR 3546).

CHANGES:

* * * * *

CATEGORIES OF RECORDS IN THE SYSTEM:

Delete the first paragraph and replace with "Individual"s name (both current, former, and alternate names), Social Security Number, date and place of birth, citizenship status and the unit identification code (UIC) of the individual's assignment. Other data elements track the individual's status in the clearance adjudication process and records the final determination. Data files may also include duty-assignment designations and sensitivity levels, as well as specific access such as cryptographic information access or participation in the Personnel Reliability Program."

* * * * *

SAFEGUARDS:

Delete entry and replace with "Buildings are security-controlled areas accessible only to authorized persons. Department of the Navy Central Adjudications Facility (DON CAF) primary system paper, microfilm and electronic/optical imaged records are maintained in General Service Administration (GSA) approved security containers and/or are stored in security controlled areas accessible only to authorized persons. If classified, locally generated paper security records and/or copies of investigative reports are stored in a vault, safe, or steel file cabinet having at least a lock bar and approved three-position, dial type lock combination padlock, or in similarly protected containers. Sensitive but unclassified records are stored on open shelves and filing cabinets located in secure areas accessible only to authorized personnel. Electronically and optically stored records are maintained in a "fail-safe" system software with password protected access. Records are accessible only to authorized persons with a need-to-know who are properly screened, cleared, and trained.

Files transferred to the NCIS Records Management Division for storage are in an alarmed area approved for open storage, monitored and stored on open shelves, in GSA approved security containers and filing cabinets located in secure areas accessible only to authorized personnel.

DON CAF employees authorized to work offsite will safeguard government/agency records from unauthorized disclosure or damage by transporting only unclassified records in secured briefcases, satchels or boxes. When not in use by the offsite employee, all records or case-related material is stored in a locked file cabinet or desk in the areas designated that is accessible only to authorized persons. Some documents will be prepared on government computers by DON CAF employees at designated offsite locations. When offsite, computers are not authorized to be connected to any network, and no data is authorized to be stored to any employee's personal computer storage device. Documents prepared at designated offsite locations and or temporarily held for the purposes of offsite work will not be printed at any unauthorized offsite location."

RETENTION AND DISPOSAL:

Delete entry and replace with "Investigative/adjudicative records on non-DoD-affiliated persons who are considered for affiliation with DoD are destroyed after 1 year if affiliation is not completed.

Adjudication decisions that are entered into electronic systems such as JPAS and NJACS, to include decisions by DON CAF employees based on contractor case review records containing recommendations on the suitability of individuals for security clearance and reviews with no or minor issues that do not require the creation of a dossier, are destroyed/deleted 1 year after affiliation is terminated. Reviews with issues are filed for 15 or 25 years as cited below. Contractor case review records are destroyed one year after verification that the case review record information is accurately entered into the electronic system.

Investigative/DON CAF adjudicative records of a routine nature are retained in the active file until final adjudicative decision is made; then retired to NCIS Records Management Division and retained for 15 years after last action reflected in the file, except that files that contain significant derogatory information and/or resulted in adverse action(s) against the individual are destroyed after 25 years. Administrative papers not included in the case file are destroyed 1 year after closure or when no longer needed, whichever is later. Records determined to be of historical value, of wide spread value or Congressional interest are permanent. They will be retained for 25 years after the date of last action reflected in the file and then permanently transferred to the National Archives. Classified nondisclosure agreements if maintained separately from the individual's official personnel folder will be destroyed when 70 years old. If maintained in the individual's personnel folder, the disposition for the official personnel file applies. Locally stored case file paper or automated access records are destroyed when employee/service member is separated or departs the command, except for access determinations not recorded in official personnel folders. They are destroyed 2 years after the person departs the command. However, once affiliation is terminated, acquiring and adding material to the file is prohibited unless affiliation is renewed. The automated NJACS maintains records on persons as long as they continue to be employed by or affiliated with the DON. NJACS computer data records are purged two years after an individual terminates DON employment

or affiliation. General and flag officer data records are maintained until the individual's death. Destruction of records will be by shredding, burning, or pulping for paper records; burning for microform records and magnetic erasing for computerized records. Optical digital data and CD–ROM records are destroyed as required by Information Assurance Remanence Security Publication 5239–26 of May 2000.

* * * * *

RECORD SOURCE CATEGORIES:

Delete entry and replace with "Information in this system comes from the individual, cognizant security manager or other official sponsoring the security clearance/determination for the subject and from information provided by other sources, *e.g.*, personnel security investigations, personal financial records, military service records and the subject."

EXEMPTIONS CLAIMED FOR THE SYSTEM:

Delete the first paragraph.

* * * * *

N05520–5

SYSTEM NAME:

Personnel Security Program Management Records System.

SYSTEM LOCATION:

Department of the Navy Central Adjudication Facility, Building 176, 716 Sicard Street SE., Suite 2000, Washington Navy Yard, DC 20388–5389 with some portions of the record created and temporarily held at designated off-site locations.

SYSTEM COMPUTER FACILITY:

Defense Security Service, Personnel Investigations Center, 88 Eldridge Landing Road, Linthicum, MD 21090–2902.

RECORD DOCUMENTATION:

Naval Criminal Investigative Service, 716 Sicard Street SE., Suite 2000, Washington Navy Yard, DC 20388–5380.

DECENTRALIZED SEGMENTS:

The security office of command to which the individual is assigned; Naval Security Group, 9800 Savage Road, Fort Meade, MD 20755–6585; Office of Naval Intelligence (OCB3), 4251 Suitland Road, Washington, DC 20395–5720; and, Headquarters, Naval Criminal Investigative Service, 716 Sicard Street SE., Suite 2000, Washington Navy Yard, DC 20388–5380.

Additionally, duplicate portions of records may be held by the Navy Personnel Command (Pers-83), 5720 Integrity Drive, Millington, TN 38055–0600; servicing Human Resource Offices; Naval Reserve Personnel Center, 4400 Dauphine Boulevard, New Orleans, LA 70149–7800; Headquarters, U.S. Marine Corps (Code MIF), James Wesley Marsh Center, 3280 Russell Road, Quantico, VA 22143–5103; and, the security office at the local activity to which the individual is assigned. Official mailing addresses are published as an appendix to the Navy's compilation of system of record notices.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

All Department of the Navy military personnel and civilian employees and certain "affiliated employees" whose duties require or may in the future require a DON security clearance or assignment to sensitive positions and aliens being processed for access to National Security information. Also included are DON adjudicative actions for all U.S. Coast Guard (USCG) military personnel and those USCG civilian employees having access to sensitive compartmented information only. Individuals adjudicated as a result of interservice and interagency support agreements. "Affiliated employees" include contractors, consultants, non-appropriated fund employees, USO personnel and Red-Cross volunteers and staff.

CATEGORIES OF RECORDS IN THE SYSTEM:

Individual's name (both current, former, and alternate names), Social Security Number, date and place of birth, citizenship status and the unit identification code (UIC) of the individual's assignment. Other data elements track the individual's status in the clearance adjudication process, and records the final determination. Data files may also include duty-assignment designations and sensitivity levels, as well as specific access such as cryptographic information access or participation in the Personnel Reliability Program

The documentation system includes information pertaining to the investigation, inquiry, or its adjudication by clearance authority to include: (1) Chronology of the investigation, inquiry, and/or adjudication; (2) all recommendations regarding future status of subject; (3) decisions of security/loyalty review boards and Defense Office of Hearings and Appeals (DOHA); (4) final actions/determinations made regarding subject; and (5) security clearance, access authorizations, or security determination; index tracings that contain aliases and names of subject as reflected in Defense Clearance and Investigations Index (DCII) under system notice V5–02; security termination; notification of denial, suspension, or revocation of clearance or access; classified nondisclosure agreements created from 1987 to early 1992 and managed by DON CAF; and other documentation related to the adjudication decision.

At local command security offices information includes tickler copies of requests for clearance and access; records of access, reports of disqualifying/derogatory information; records of clearance of individual personnel as well as accreditation of personnel for access to classified information requiring special access authorizations; nondisclosure agreements, associated briefings and debriefing statements; and other related records supporting the Personnel Security Program.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301, Departmental Regulations; 5 U.S.C. 7311; 10 U.S.C. 5013; and E.O. 9397 (SSN); E.O. 10450, Security Requirements for Government Employees, in particular sections 2–9, and 14; E.O. 12958, Classified National Security Information; E.O. 12968, Access to Classified Information; DoD Regulation 5200.2–R, Personnel Security Program Regulation; and OPNAV Instruction 5510.30A, Department of Navy Personnel Security Program.

PURPOSE(S):

To provide a comprehensive system to manage information required to adjudicate and document the eligibility of DON military, civilian, and certain affiliated employees for access to classified information and assignment to sensitive positions.

These records are also used to make determinations of suitability for promotion, employment, or assignments.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

To the White House to obtain approval of the President of the United States regarding certain military personnel officer actions as provided for in DoD Instruction 1320.4, Military Officer Actions Requiring Approval of

the Secretary of Defense or the President, or Confirmation by the Senate.

To the Immigration and Naturalization Service for use in alien admission and naturalization inquiries for purposes of determining access to National Security information.

The DoD "Blanket Routine Uses" that appear at the beginning of the Navy's compilation of systems notices apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Maintained on paper records in file folders, audio or audiovisual tapes, micro-imaging; CD-ROM; optical digital data disk; computers; magnetic tapes, disks, and drums; and computer output products.

RETRIEVABILITY:

By name, dossier number, Social Security Number, and date and place of birth.

SAFEGUARDS:

Buildings are security-controlled areas accessible only to authorized persons. Department of the Navy Central Adjudications Facility (DON CAF) primary system paper, microfilm and electronic/optical imaged records are maintained in General Service Administration (GSA) approved security containers and/or are stored in security controlled areas accessible only to authorized persons. If classified, locally generated paper security records and/or copies of investigative reports are stored in a vault, safe, or steel file cabinet having at least a lock bar and approved three-position, dial type lock combination padlock, or in similarly protected containers. Sensitive but unclassified records are stored on open shelves and filing cabinets located in secure areas accessible only to authorized personnel. Electronically and optically stored records are maintained in a "fail-safe" system software with password protected access. Records are accessible only to authorized persons with a need-to-know who are properly screened, cleared, and trained.

Files transferred to the NCIS Records Management Division for storage are in an alarmed area approved for open storage, monitored and stored on open shelves, in GSA approved security containers and filing cabinets located in secure areas accessible only to authorized personnel.

DON CAF employees authorized to work offsite will safeguard government/agency records from unauthorized disclosure or damage by transporting only unclassified records in secured briefcases, satchels or boxes. When not in use by the offsite employee, all records or case-related material is stored in a locked file cabinet or desk in the areas designated that is accessible only to authorized persons. Some documents will be prepared on government computers by DON CAF employees at designated offsite locations. When offsite, computers are not authorized to be connected to any network, and no data is authorized to be stored to any employee's personal computer storage device. Documents prepared at designated offsite locations and or temporarily held for the purposes of offsite work will not be printed at any unauthorized offsite location.

RETENTION AND DISPOSAL:

Investigative/adjudicative records on non-DoD-affiliated persons who are considered for affiliation with DoD are destroyed after 1 year if affiliation is not completed.

Adjudication decisions that are entered into electronic systems such as JPAS and NJACS, to include decisions by DON CAF employees based on contractor case review records containing recommendations on the suitability of individuals for security clearance and reviews with no or minor issues that do not require the creation of a dossier, are destroyed/deleted 1 year after affiliation is terminated. Reviews with issues are filed for 15 or 25 years as cited below. Contractor case review records are destroyed one year after verification that the case review record information is accurately entered into the electronic system.

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SYSTEM MANAGER(S) AND ADDRESS:

Director, Department of the Navy Central Adjudication Facility, Building 176, 716 Sicard Street SE, Suite 2000, Washington Navy Yard, DC 20388–5389.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether this system of records contains information about themselves should address written inquiries to the Director, Department of the Navy Central Adjudication Facility, Building 176, 716 Sicard Street SE., Suite 2000, Washington Navy Yard, DC 20388–5389 or to the Commanding Officer/Director of the activity in question. Official mailing addresses are published as an appendix to the Navy's compilation of systems of records notices.

Individuals requesting personal records must properly establish their identity to the satisfaction of the Director, Navy Central Adjudication Facility or the Commanding Officer/Director of the local command, as appropriate. This can be accomplished by providing an unsworn declaration subscribed to be true that states "I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct". Individual should also provide their full name, aliases, date and place of birth, Social Security Number, or other

information verifiable from the records in the written request.

Individuals should mark the letter and envelope containing the request "Privacy Act Request".

Proposed amendments to the information must be directed to the agency which conducted the investigation.

RECORD ACCESS PROCEDURES:

Individuals seeking access to records about themselves contained in this system of records should address written inquiries to the Director, Department of the Navy Central Adjudication Facility, Building 176, 716 Sicard Street SE., Suite 2000, Washington Navy Yard, DC 20388–5389 or to the Commanding Officer/Director of the activity in question. Official mailing addresses are published as an appendix to the Navy's compilation of systems of records notices.

Individuals requesting personal records must properly establish their identity to the satisfaction of the Director, Navy Central Adjudication Facility or the Commanding Officer/ Director of the local command, as appropriate. This can be accomplished by providing an unsworn declaration subscribed to be true that states "I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct". Individual should also provide their full name, aliases, date and place of birth, Social Security Number, or other information verifiable from the records in the written request.

Individuals should mark the letter and envelope containing the request with "Privacy Act Request".

Proposed amendments to the information must be directed to the agency which conducted the investigation.

Attorneys or other persons acting on behalf of an individual must provide a written authorization from that individual for their representative to act on their behalf.

CONTESTING RECORD PROCEDURES:

The Navy's rules for accessing records, and for contesting contents and appealing initial agency determinations are published in Secretary of the Navy Instruction 5211.5; 32 CFR part 701; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

Information in this system comes from the individual, cognizant security manager or other official sponsoring the security clearance/determination for the subject and from information provided by other sources, *e.g.*, personnel security investigations, personal financial records, military service records and the subject.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

Investigatory material compiled solely for the purpose of determining suitability, eligibility, or qualifications for federal civilian employment, military service, federal contracts, or access to classified information may be exempt pursuant to 5 U.S.C. 552a(k)(5), but only to the extent that such material would reveal the identity of a confidential source.

An exemption rule for this system has been promulgated in accordance with the requirements of 5 U.S.C. 553(b)(1), (2) and (3), (c) and (e) and published in 32 CFR part 701, subpart G. For additional information, contact the system manager.

[FR Doc. 03–11581 Filed 5–8–03; 8:45 am]

BILLING CODE 5001–08–P

DEPARTMENT OF EDUCATION

[CFDA No.: 84.293B]

Foreign Language Assistance Grants (Local Educational Agencies); Notice Inviting Applications for New Awards for Fiscal Year (FY) 2003

Note to Applicants: This notice is a complete application package. Together with the statute authorizing the program and the Education Department General Administrative Regulations (EDGAR), this notice contains all of the information, application forms, and instructions you need to apply for an award under this program.

Purpose of Program: The Foreign Language Assistance Program (FLAP) provides grants to local educational agencies for innovative model programs providing for the establishment, improvement, or expansion of foreign language study for elementary and secondary school students.

For FY 2003 the competition for new awards focuses on projects designed to meet the priorities we describe in the Priorities section of this notice.

Eligible Applicants: Local educational agencies (LEAs).

E-Mail Notification of Intent to Apply for Funding: The Department will be able to develop a more efficient process for reviewing grant applications if it has a better understanding of the number of LEAs that intend to apply for funding under this competition. Therefore, we strongly encourage each potential applicant to notify the Department with a short e-mail noting the intent to submit an application for funding. The e-mail should not include information regarding the content of the proposed application. Please provide the following information:

(1) FLAP–LEA program 84:293B, (2) intent to apply, (3) planned number of applications, (4) school district, (5) city and (6) state. We request that this e-mail notification be sent no later than May 30, 2003. The e-mail should be sent to Ms. Amy Weinmann at *Amy.Weinmann@ed.gov*. Applicants that do not provide this e-mail notification may still apply for funding.

Deadline for Transmittal of Applications: June 13, 2003.

Deadline for Intergovernmental Review: August 13, 2003.

Estimated Available Funds: $10,000,000.

Estimated Range of Awards: $50,000–$175,000.

Estimated Average Size of Awards: $112,500.

Estimated Number of Awards: 89.

Note: The Department is not bound by any estimates in this notice.

Project Period: 36 months.

Page Limit: The application narrative (Part III of the application) is where you, the applicant, address the selection criteria that reviewers use to evaluate your application. You must limit Part III to the equivalent of no more than 35 pages, using the following standards:

- A "page" is 8.5" x 11", on one side only, with 1" margins at the top, bottom, and both sides.
- Double space (no more than three lines per vertical inch) all text in the application narrative, including titles, headings, footnotes, quotations, references, and captions, as well as all text in charts, tables, figures, and graphs.
- Use a font that is either 12-point or larger or no smaller than 10 pitch (characters per inch).

The page limit does not apply to Part I, the cover sheet; Part II, the budget section, including the itemized budget breakdown and the narrative budget justification; Part IV, the assurances and certifications; or the one-page abstract. However, you must include all of the application narrative in Part III.

We will reject your application if—

- You apply these standards and exceed the page limit; or
- You apply other standards and exceed the equivalent of the page limit.

Applicable Regulations: (a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 75, 77, 79, 80, 81, 82, 85, 86, 97, 98 and 99.

Description of Program: If you are an LEA that receives a grant under this program, you must use the funds to provide a program that—

(A) Shows the promise of being continued beyond the project period; and

(B) Demonstrates approaches that can be disseminated and duplicated in other LEAs.

You may also use funds under this program to—

(C) Include a professional development component.

In order to build foreign language program capacity at the local level, cost sharing is required. You should note that the Federal share of the cost of activities assisted under this program for each fiscal year is 50 percent. The Secretary may waive this requirement for any LEA which the Secretary determines does not have adequate resources to pay the non-Federal share.

The Secretary does not fund projects that propose Native American languages, Native Hawaiian, other Pacific Island languages or Native Alaskan languages. In addition, the program is not intended to support the teaching of English.

Competitive Priorities

Under 34 CFR 75.105(c)(2)(i) we award an additional 5 points to an application, depending on whether the application meets one or both of the following priorities.

Note: A total of 5 points will be awarded. There is no advantage in addressing both priorities, but you should not be dissuaded from addressing both priorities in your application if they provide a program that will meet the needs of your students and community. These points are in addition to any points the applicant earns under the selection criteria.

(1) Applications proposing to establish, improve, or expand foreign language learning in any or all of the following grades, Kindergarten through eighth grade, that teach any or all of the following less commonly taught languages of major economic and political importance to the United States: Russian, Chinese and Arabic.

(2) Applications proposing to establish a foreign language program in underserved schools. For the purpose of this priority an underserved school is defined as a school that does not currently have a foreign language program implemented during the school day, including two-way immersion and heritage language programs, and has not had one in the previous two school years 2001–2002 and 2002–2003.

Competitive Preferences

Under 34 CFR 75.105(c)(2)(ii) we give preference to applications that meet one of the following priorities over an application of comparable merit that does not meet one of the priorities.

Note: There is no advantage in addressing all five priorities. Creating a program around the five priorities may result in a scattered or unfocused program design.

We give preference to applications describing programs that:

(1) Include intensive summer foreign language programs for professional development;

(2) Link non-native English speakers in the community with the schools in order to promote two-way language learning;

(3) Promote the sequential study of a foreign language for students, beginning in elementary schools;

(4) Make effective use of technology, such as computer-assisted instruction, language laboratories, or distance learning, to promote foreign language study; or

(5) Promote innovative activities, such as foreign language immersion, partial foreign language immersion, or content-based instruction.

Waiver of Proposed Rulemaking

Under the Administrative Procedure Act (5 U.S.C. 553) the Department generally offers interested parties the opportunity to comment on proposed priorities and selection criteria. Section 437(d)(1) of the General Education Provisions Act, however, exempts from this requirement rules that apply to the first competition under a new or substantially revised program authority. This is the first competition under the Foreign Language Assistance Program as substantially revised by the No Child Left Behind Act of 2001. The requirements will apply to the FY 2003 grant competition only.

Reporting Requirements and Expected Outcomes

The Secretary requires successful applicants to submit annual performance reports that document the grantee's yearly progress toward meeting expected programmatic outcomes. These outcomes should be based on measurable performance objectives. The Secretary will use these reports to measure the success of the grantee's project, and the reports will contribute to a broader knowledge base about high-quality, effective foreign language programs. In addition, grantees will be required to submit a final performance report, due no later than 90 days after the end of the project period.

Selection Criteria

We use the following selection criteria to evaluate applications for new grants under this competition.

The maximum score for all of these criteria is 100 points.

The maximum score for each criterion is indicated in parentheses.

(a) *Significance*. (10 points)

We evaluate an application by determining how well the project proposed by the applicant meets the following statutory provisions:

(1) The extent to which the project shows the promise of being continued beyond the grant period.

(2) The extent to which the project demonstrates approaches that can be disseminated and duplicated in other local educational agencies.

(3) The extent to which the project will result in an effective effort to establish, improve or expand foreign language teaching and learning.

(b) *Quality of the product design*. (40 points)

In determining the quality of the design of the proposed project, we consider the following factors:

(1) The extent to which the project design represents a comprehensive plan which effectively links identified needs, goals, objectives, activities and outcomes.

(2) The extent to which the goals, objectives and outcomes are clearly specified and measurable.

(3) The extent to which the design of the proposed project incorporates the National Foreign Language Standards and up-to-date knowledge from scientifically based research and effective practice.

(4) The extent to which the project design will provide performance feedback and permit periodic assessment of progress toward achieving intended outcomes, such as, student progress, capacity building and dissemination.

(5) The extent to which the project design will provide guidance about effective strategies suitable for disseminating and duplicating the project in other settings.

(6) The extent to which the project design will provide quantifiable data reflecting:

(i) Student proficiency in reading, writing, comprehending and communicating in the foreign language,

(ii) Usage of the National Foreign Language Standards (Communication, Culture, Connections, Comparisons and Communities),

(iii) Building local capacity to continue program components beyond the grant period, and

(iv) Disseminating and duplicating program approaches to other local educational agencies.

(c) *Quality of project services.* (8 points)

In determining the quality of the services to be provided by the proposed project, we consider the following factors:

(1) The quality and sufficiency of strategies for ensuring equal access and treatment for eligible project participants who are members of groups that have traditionally been underrepresented based on race, color, national origin, gender, age, or disability.

(2) The extent to which the services to be provided by the proposed project are appropriate to the needs of the intended recipients or beneficiaries of those services.

(3) The likelihood that the services to be provided will lead to improvements in the achievement of students as measured against rigorous academic standards.

(d) *Quality of project personnel.* (12 points)

In determining the quality of project personnel, we consider the following:

(1) The extent to which the applicant encourages applications for employment from persons who are members of groups that have traditionally been underrepresented based on race, color, national origin, gender, age, or disability.

(2) The qualifications, including relevant training and experience, of the project director and key project personnel as required by position descriptions.

(3) The qualifications, including relevant training and experience of project teachers.

(e) *Adequacy of resources.* (5 points)

In determining the adequacy of resources for the proposed project, we consider the following factors:

(1) The extent to which the budget is adequate to support the proposed project.

(2) The extent to which the costs are reasonable in relation to the objectives, design, and potential significance of the proposed project.

(f) *Quality of the management plan.* (10 points)

In determining the quality of the management plan for the proposed project, we consider the following factors:

(1) The effectiveness of the management plan in demonstrating how the objectives and activities of the proposed project will be achieved on time, and within budget, including clearly defined responsibilities of staff, timelines, benchmarks, continuous improvement strategies and milestones for accomplishing project tasks.

(2) The extent to which the time commitments of the project director and other key project personnel are appropriate and adequate to meet the objectives of the proposed project.

(g) *Quality of the project evaluation.* (15 points)

In determining the quality of the project evaluation, we consider the following factors:

(1) The extent to which the methods of evaluation are thorough, feasible, and appropriate to the goals, objectives, and outcomes of the proposed project.

(2) The extent to which the evaluation plan will produce quantitative and qualitative data.

(3) The extent to which the evaluation plan will provide performance feedback and permit periodic assessment of progress toward achieving intended outcomes, such as, student progress, capacity building and dissemination.

(4) The extent to which the evaluation plan will provide guidance about effective strategies suitable for disseminating and duplicating the project in other settings.

(5) The extent to which the evaluation plan design will provide quantifiable data reflecting:

(i) Student proficiency in reading, writing, comprehending and communicating in the foreign language,

(ii) Usage of the National Foreign Language Standards (Communication, Culture, Connections, Comparisons and Communities),

(iii) Building local capacity to continue program components beyond the grant period, and

(iv) Disseminating and duplicating program approaches to other local educational agencies.

Intergovernmental Review of Federal Programs

This program is subject to Executive Order 12372 (Intergovernmental Review of Federal Programs) and the regulations in 34 CFR part 79.

One of the objectives of the Executive order is to foster an intergovernmental partnership and a strengthened federalism. The Executive order relies on processes developed by State and local governments for coordination and review of proposed Federal financial assistance.

If you are an applicant, you must contact the appropriate State Single Point of Contact (SPOC) to find out about, and to comply with, the State's process under Executive Order 12372. If you propose to perform activities in more than one State, you should immediately contact the SPOC for each of those States and follow the procedure established in each State under the Executive order. If you want to know the name and address of any SPOC, see the latest official SPOC list on the Web site of the Office of Management and Budget at the following address: *http://www.whitehouse.gov/omb/grants/spoc.html*.

In States that have not established a process or chosen a program for review, State, areawide, regional, and local entities may submit comments directly to the Department.

Any State Process Recommendation and other comments submitted by a State Single Point of Contact and any comments from State, areawide, regional, and local entities must be mailed or hand-delivered by the date indicated in the actual application notice to the following address: The Secretary, E.O. 12372—CFDA# 84.293B, U.S. Department of Education, room 7E200, 400 Maryland Avenue, SW., Washington, DC 20202–0125.

We will determine proof of mailing on the same basis as applications (see 34 CFR 75.102). Recommendations or comments may be hand-delivered until 4:30 p.m. (Washington, DC time) on the date indicated in this notice.

Please Note That This Address Is Not the Same Address as the One to Which an Applicant Submits Its Completed Application. Do Not Send Applications to the Above Address.

Application Instructions and Forms

The Appendix to this notice contains all required forms and instructions, a statement regarding estimated public reporting burden, a notice to applicants regarding compliance with section 427 of the General Education Provisions Act (GEPA), various assurances, certifications and a checklist for applicants.

- Application for Federal Assistance (ED 424 (Exp. 11/30/2004)) and instructions and definitions.
- Protection of Human Subjects in Research (Attachment to ED 424).
- Budget Information—Non-Construction Programs (ED Form No. 524). Including Section A—Budget Summary, U.S. Department of Education Funds; Section B—Budget Summary, Non-Federal Funds; and Instructions for ED Form 524 containing Section C—Other Budget Information to provide an Itemized Budget Breakdown.
- Application Narrative. While no form is provided, the sections on **Instructions for Application Narrative** and **Page Limit** elsewhere in this application notice apply to your application narrative.

- Group Application Certification.
- Foreign Language Data Form.
- Assurances—Non-Construction Programs (Standard Form 424B) (Rev. 7–97).
- Certifications regarding Lobbying; Debarment, Suspension, and Other Responsibility Matters; and Drug-Free Workplace Requirements (ED 80–0013, 12/98) and instructions.
- Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion: Lower Tier Covered Transactions (ED 80–0014, 9/90) and instructions.
- Disclosure of Lobbying Activities (Standard Form LLL (Rev. 7–97)) and instructions.
- Notice to All Applicants concerning the Department of Education's General Education Provisions Act (GEPA).
- Survey on Ensuring Equal Opportunity for Applicants.
- Program Non-Regulatory Guidance.

You may submit information on a photocopy of the application forms, the assurances, and the certifications. However, you must submit ONE original signed application, including ink signatures on all forms and assurances and THREE copies of the application. Please mark each application as original or copy. We will not award a grant unless we have received a completed application form.

Individuals with disabilities may obtain this document in an alternative format (e.g., Braille, large print, audiotape, or computer diskette) on request to either of the program contact persons listed under **FOR FURTHER INFORMATION CONTACT**. However, the Department is not able to reproduce in an alternative format the standard forms included in this application notice.

Electronic Access to This Document: You may view this document, as well as all other Department of Education documents published in the **Federal Register**, in text or Adobe Portable Document Format (PDF) on the Internet at the following site: *www.ed.gov/legislation/FedRegister*.

To use PDF you must have Adobe Acrobat Reader, which is available free at this site. If you have questions about using PDF, call the U.S. Government Printing Office (GPO), toll free at 1–888–293–6498; or in the Washington, DC area at (202) 512–1530.

You may also view this document at the following site: *www.ed.gov/offices/OELA/funding.html*.

Note: The official version of this document is the document published in the **Federal Register**. Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available on GPO Access at: *http://www.access.gpo.gov/nara/index.html*.

FOR FURTHER INFORMATION CONTACT: East of the Mississippi River—Rebecca Richey, U.S. Department of Education, 400 Maryland Avenue, SW., room 5617, Switzer Building, Washington, DC 20202–6510. Telephone: (202) 205–9717 or via Internet: *rebecca.richey@ed.gov*.

West of the Mississippi River—Itzetht Testa-Salcedo, U.S. Department of Education, 400 Maryland Avenue, SW., room 5629, Switzer Building, Washington, DC 20202–6510. Telephone: (202) 205–8726 or via Internet: *itzetht.testa-salcedo@ed.gov*.

Or, Sharon Manassa, U.S. Department of Education, 400 Maryland Avenue, SW., room 5647, Switzer Building, Washington, DC 20202–6510. Telephone: (202) 205–8731 or via Internet: *sharon.manassa@ed.gov*.

If you use a telecommunications device for the deaf (TDD), you may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

Instructions for Transmitting Applications

If you want to apply for a grant and be considered for funding, you must meet the following deadline requirements:

(a) *If You Send Your Application by Mail.*

You must mail the original and two copies on or before the deadline date. Mail your application to: U.S. Department of Education, Application Control Center, Attention: (CFDA# (84.293B), 7th and D Streets, SW., Room 3633, Regional Office Building 3, Washington, DC 20202–4725.

You must show one of the following as proof of mailing:

(1) A legibly dated U.S. Postal Service postmark.

(2) A legible mail receipt with the date of mailing stamped by the U.S. Postal Service.

(3) A dated shipping label, invoice, or receipt from a commercial carrier.

(4) Any other proof of mailing acceptable to the Secretary.

If you mail an application through the U.S. Postal Service, we do not accept either of the following as proof of mailing:

(1) A private metered postmark.

(2) A mail receipt that is not dated by the U.S. Postal Service.

Note: The Department encourages you to consider using an alternative delivery method (for example, a commercial carrier, such as Federal Express or United Parcel Service; U.S. Postal Service Express Mail; or a courier service) to transmit your application for this competition. If you use an alternative delivery method, please obtain the appropriate proof of mailing under this section (a) "If You Send Your Application by Mail," then follow the instructions in section (b) "If You Deliver Your Application by Hand."

(b) *If You Deliver Your Application by Hand*

You or your courier must hand deliver the original and two copies by 4:30 p.m. (Washington, DC time) on or before the deadline date. Deliver your application to: U.S. Department of Education, Application Control Center, Attention: (CFDA #293B), 7th and D Streets, SW., Room 3633, Regional Office Building 3, Washington, DC 20202–4725.

The Application Control Center accepts application deliveries daily between 8 a.m. and 4:30 p.m. (Washington, DC time), except Saturdays, Sundays and Federal holidays. The Center accepts application deliveries through the D Street entrance only. A person delivering an application must show identification to enter the building.

Notes

(1) The U.S. Postal Service does not uniformly provide a dated postmark. Before relying on this method, you should check with your local post office.

(2) If you send your application by mail or if you or your courier delivers it by hand, the Application Control Center will mail a Grant Application Receipt Acknowledgment to you. If you do not receive the notification of application receipt within 15 days from the date of mailing the application, you should call the U. S. Department of Education Application Control Center at (202) 708–9493.

(3) If your application is late, we will notify you that we will not consider the application.

(4) You must indicate on the envelope and—if not provided by the Department—in Item 4 of the Application for Federal Education Assistance (ED 424 (exp. 11/30/2004)) the CFDA number—and suffix letter, if any—of the competition under which you are submitting your application.

Program Authority: 20 U.S.C. 7259–7259b.

Dated: May 5, 2003.

Kathleen Leos,

Senior Policy Advisor, Office of English Language Acquisition, Language Enhancement, and Academic Achievement for Limited English Proficient Students.

Appendix—Instructions for Estimated Public Reporting Burden

According to the Paperwork Reduction Act of 1995, you are not required to respond to a collection of information unless it displays a valid OMB control number. The valid OMB control number for this information collection is 1885–0540. Expiration date: 1/31/2006. We estimate the time required to complete this information collection to average 80 hours per response, including the time to review instructions, search existing data resources, gather the data needed, and

complete and review the collection of information. If you have any comments concerning the accuracy of the time estimate or suggestions for improving this form, please write to: U.S. Department of Education, Washington, DC 20202–4651.

If you have comments or concerns regarding the status of your individual submission of this form, write directly to: Office of English Language Acquisition, U.S. Department of Education, 400 Maryland Avenue, SW., Room 5626, Switzer Building, Washington, DC 20202–6510.

Instructions for Application Narrative

Before preparing the Application Narrative you should read carefully the description of the program, the information regarding priorities, preferences and the selection criteria we use to evaluate applications.

Note: The section on PAGE LIMIT elsewhere in this application notice applies to your application.

1. Abstract. The narrative section should be preceded by a one-page, single-spaced Abstract summarizing your proposed Foreign Language Assistance Program. The Abstract should include a brief description of the project design, goals and the population to be served. If applicable, it is important to include information on the Competitive Priorities the project proposes to address. For Competitive Priority 1, be sure to include the language(s) and grade levels to be taught. For Competitive Priority 2, explain how the school qualifies as underserved. In addition, provide a short description of how the proposed program will not duplicate projects funded under Subpart 1 of Part A of Title VII of the Elementary and Secondary Education Act of 1965.

2. Table of Contents. Include a Table of Contents listing the parts of the narrative in the order of the selection criteria and the page numbers where the parts of the narrative are found. Be sure to number the pages of the narrative.

3. Selection Criteria. The narrative should fully address all aspects of the selection criteria in the order listed and should give detailed information regarding each criterion. Do not simply paraphrase the criteria. Do not include resumes. Instead, provide position descriptions for key personnel. Do not include bibliographies, letters of support or appendices in your application. Paginate all pages of the narrative. This package includes Program Guidance (Questions and Answers) to assist you in preparing the narrative portion of your application.

Checklist for Applicants

Use the following checklist to verify that all necessary items are addressed in your final application preparation. Prepare one original with an original signature and include three additional copies. Do not use elaborate bindings, notebooks or covers. The application package must be delivered to the Application Control Center (ACC) and postmarked by the deadline date published in this notice.

1. Application for Federal Assistance (ED 424 (Exp. 11/30/2004)).

2. Budget Information—Non-Construction Programs (ED Form No. 524).

- Section A—Complete the Budget Summary for U.S. Department of Education Funds requested for Project Years 1, 2 and 3,
- Section B—Complete the Budget Summary for Non-Federal Funds (local cost sharing) for Project Years 1, 2 and 3, and
- Section C—Provide an Itemized Budget Breakdown for Project Years 1, 2 and 3.
- A Budget Narrative may be provided for each of the 11 Budget Categories. It may be placed directly after the three Itemized Budgets and does not require double spacing or page numbers.

3. Group Application Certification, if more than one LEA is applying.

4. Foreign Language Data Form.

5. Assurances—Non-Construction Programs (Standard Form 424B) (Rev. 7–97).

6. Certifications regarding Lobbying; Debarment, Suspension, and Other Responsibility Matters; and Drug-Free Workplace Requirements (ED 80–0013, 12/98).

7. Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion: Lower Tier Covered Transactions (ED 80–0014, 9/90) and instructions. (**Note:** ED 80–0014 is intended for the use of grantees and should not be transmitted to the Department.)

8. Disclosure of Lobbying Activities (Standard Form LLL (Rev. 7–97)) if applicable.

9. Applicant's response to the "Notice to All Applicants" concerning the Department of Education's General Education Provisions Act (GEPA).

10. Survey on Ensuring Equal Opportunity for Applicants.

11. Copy of letter to State Single Point of Contact (SPOC), if applicable.

12. Letter from an Authorized Representative of the school district requesting waiver of cost sharing requirement, if applicable.

13. Abstract. Including information on Competitive Priorities and Competitive Preferences, if applicable.

14. Table of Contents.

15. Application Narrative. No more than 35 pages using the section on **Page Limit** elsewhere in this application.

Foreign Language Assistance Program (FLAP) Grants to Local Educational Agencies Additional Non-Regulatory Guidance (Questions and Answers)

Q. Who is eligible to apply for a FLAP grant in this competition?

A. In this competition, eligibility is limited to local educational agencies. The term "local educational agency" means a public board of education or other public authority which maintains administrative control of public elementary or secondary schools in a city, county, township, school district or other political subdivision of a state. An intermediate unit within a State (*e.g.*, a Board of Cooperative Educational Services (a BOCES) may apply for and receive a grant.

Q. If awarded a grant, may a grantee count on receiving FLAP funding for the full period of three years?

A. The actual level of program funding, if any, depends on final Congressional action each fiscal year.

Q. Is the estimated range of awards $50,000 to $175,000 over the period of three years?

A. The estimated range of awards is $50,000 to $175,000 for each year.

Q. May an LEA submit a proposal for afternoon and/or Saturday foreign language instruction?

A. The purpose of the Foreign Language Assistance Program is to pay the Federal share of the cost of innovative model programs, providing for the establishment, improvement or expansion of foreign language study. Therefore, it is recommended that the majority of instruction be carried out during the traditional school day with supplemental activities in the afternoon and/or Saturday.

Q. What is not a foreign language?

A. The Secretary does not award grants to programs that teach Native American languages, Native Hawaiian, other Pacific Island languages or Native Alaskan languages. In addition, the program is not intended to support the teaching of English. Although improvement of the English language skills of non-native English speakers is a desirable ancillary benefit of a two-way foreign language immersion program, the primary focus of projects funded under the Foreign Language Assistance program must be on foreign language learning. As a consequence, funds received under the Foreign Language Assistance Program may not be used to fund an activity that is solely or primarily concerned with English language instruction.

Q. How does an applicant for the Foreign Language Assistance Program address the requirements set forth by the Government Performance and Results Act (GPRA)?

A. Each applicant should align program goals, objectives and outcomes with the following GPRA indicators for the Foreign Language Assistance Program:

1. To increase student proficiency in reading, writing, comprehending and communicating in the foreign language.

2. To increase the usage of the National Foreign Language Standards (Communication, Culture, Connections, Comparisons and Communities).

3. To build local capacity to continue the foreign language program components beyond the grant period.

4. To disseminate and duplicate program approaches to other local educational agencies.

Q. What is the definition of an "elementary school"?

A. The term "elementary school" means a non-profit institutional day or residential school, including a public elementary charter school, that provides elementary education, as determined under State law. The definition of this term is in section 9101 of the Elementary and Secondary Education Act, as amended by the No Child Left Behind Act of 2001.

Q. What is the definition of a "secondary school"?

A. The term "secondary school" means a non-profit institutional day or residential school, including a public secondary charter school, that provides secondary education, as determined under State law, except that the term does not include any education beyond grade 12. The definition of this term is in section 9101 of the Elementary and Secondary Education Act, as amended by the No Child Left Behind Act of 2001.

Q. May an applicant use FLAP funds to support a foreign language program for Pre-kindergarten children?

A. If your State defines Pre-kindergarten as elementary education, FLAP funds may be used to serve those students.

Q. Where are the State definitions of an "elementary" or "secondary" program?

A. If you do not know what grade levels in your State are considered elementary and secondary, you should consult with your State educational agency.

Q. In light of the Competitive Priorities for Kindergarten through eighth grade and programs that teach Russian, Chinese and Arabic; should districts submit proposals for high schools and teaching other foreign languages?

A. Yes, applications that propose programs at the high school level and foreign languages other than Russian, Chinese and Arabic are encouraged to apply.

Q. How much of the estimated $10 million in program funds will be used to fund elementary programs?

A. By law, not less than 75 percent of the total funds appropriated must be used for the expansion of foreign language learning in the elementary grades. This requirement does not apply to individual programs.

Q. What is scientifically based research (SBR)?

A. SBR is research that involves the application of rigorous, systematic, and objective procedures to obtain reliable and valid knowledge relevant to education activities and programs. Some of the critical elements of SBR are as follows:

- Scientific Method
  —Hypothesis
  —Controls are used
  —Outcome proves or disproves the hypothesis
- Replicated—repeat studies find the same results
- Generalized—study findings represent truth for the general population
- Meets Rigorous Standards—methods and conclusions must be confirmed by peer review
- Convergent findings—conclusions are in line with findings from other studies

Q. How does an applicant address the "Notice to all Applicants" concerning the Department of Education's General Education Provisions Act (GEPA)?

A. First, read the "Notice to all Applicants" included in the application package. Be sure to note the three examples included in the second column. Second, it is recommended that the applicant respond on a separate sheet of paper entitled "GEPA". The required response should include a description of the steps the applicant proposes to take to ensure equitable access to, and participation in, its Federally assisted program for students, teachers, and other program beneficiaries with special needs.

Q. How does an applicant comply with Executive Order 12372, the Intergovernmental Review of Federal Programs, item #10 of the Application for Federal Education Assistance (ED 424)?

A. Applicants must first review the State Single Point of Contact (SPOC) list available at *http://www.whitehouse.gov/omb/grants/spoc.html*. If a State contact is included in the list, the applicant must contact the SPOC to inquire about the State's process under Executive Order 12372. If the State requests the application for review, a copy of the cover letter sent to the State contact must be submitted with the application package and Item #10 checked Yes with the date included. If the program is not covered by the Executive order, or the State has not selected the program for review, Item #10 must be checked No and the reason checked.

Q. What is the LEA's share of costs for the Foreign Language Assistance program for each fiscal year?

A. In order to build program capacity at the State and local level, cost sharing is required. The Federal share of the foreign language program for each fiscal year is restricted to 50 percent. Therefore, if the total cost of the proposed program is $100,000, the school district may request $50,000 in Federal funding. While a waiver may be granted for an LEA if the Secretary determines that the LEA does not have adequate resources to pay the non-Federal share of the cost of the activities, it is recommended that the district share the cost to the extent possible. The Education Department General Administrative Regulations, at 34 CFR 80.24, addresses Federal Cost sharing requirements.

Q. How does an LEA apply for a waiver of the non-Federal share of costs?

A. It is suggested that local educational agencies wishing to request a waiver from the requirement attach a letter to the application. The waiver request, signed by the Authorized Representative, should include information that will assist in determining whether the local educational agency seeking a waiver does not have adequate resources to pay the non-Federal share of the costs of the activities assisted under the Foreign Language Assistance program.

Q. Who should sign as the Authorized Representative on the Application for Federal Assistance and other forms?

A. It is recommended that the Superintendent of Schools sign as the Authorized Representative.

Q. Under this program, may an applicant propose to hire foreign language teachers?

A. Yes, program funds may be used to hire foreign language teachers.

Q. May two districts apply together if they are already working together in a foreign language program?

A. Yes, the statute does not prohibit school districts from applying together. However, one district must be designated as the fiscal agent and the Group Application Certification must be included in the application package and signed by an authorized representative from each district. The requirements on group applications are in 34 CFR 75.127–75.129.

Q. How may an applicant access information on the National Foreign Language Standards when designing their program?

A. An applicant may access information on the National Standards, State-Level Foreign Language Standards, the National Foreign Language Resource Centers and other useful Web sites at: *http://www.cal.org/ericcll/faqs/rgos/flstandards.html*.

Q. How does an applicant access the statutory provisions authorizing FLAP (Sections 5492 and 5493 of the Elementary and Secondary Education Act)?

A. Applicants may access sections 5492 and 5493 at the following Web site: *http://www.ed.gov/offices/OELA/funding.html*.

BILLING CODE 4000–01–P

Application for Federal Education Assistance (ED 424)

U.S. Department of Education

Form Approved
OMB No. 1875-0106
Exp. 11/30/2004

Applicant Information

1. Name and Address
Legal Name: _____
Address: _____
_____
City _____ State _____ County _____ ZIP Code + 4 _____

Organizational Unit

2. Applicant's D-U-N-S Number |__|__|__|__|__|__|__|__|__|

3. Applicant's T-I-N |__|__|-|__|__|__|__|__|__|__|

4. Catalog of Federal Domestic Assistance #: **84.293B**

Title: FOREIGN LANGUAGE ASSISTANCE PROGRAM
LOCAL EDUCATIONAL AGENCIES

5. Project Director: _____
Address: _____
City _____ State _____ Zip code + 4 _____
Tel. #: ( ) _____-_____ Fax #: ( ) _____-_____
E-Mail Address: _____

6. Novice Applicant ___Yes ___No

7. Is the applicant delinquent on any Federal debt? ___Yes ___No
(If "Yes," attach an explanation.)

8. Type of Applicant *(Enter appropriate letter in the box.)* |___|

A - State
B - Local
C - Special District
D - Indian Tribe
E - Individual
F - Independent School District
G - Public College or University
H - Private, Non-profit College or University
I - Non-profit Organization
J - Private, Profit-Making Organization
K - Other (*Specify*): _____

Application Information

9. Type of Submission:
-PreApplication ___ Construction ___ Non-Construction
-Application ___ Construction ___ Non-Construction

10. Is application subject to review by Executive Order 12372 process?
___ Yes *(Date made available to the Executive Order 12372 process for review)*: ___/___/_____
___ No *(If "No," check appropriate box below.)*
___ Program is not covered by E.O. 12372.
___ Program has not been selected by State for review.

11. Proposed Project Dates: ___/___/_____ ___/___/_____
Start Date: **End Date:**

12. Are any research activities involving human subjects planned at any time during the proposed project period?
___ Yes (Go to 12a.) ___ No (Go to item 13.)

12a. Are **all** the research activities proposed designated to be exempt from the regulations?
___ Yes (Provide Exemption(s) #): _____
___ No (Provide Assurance #): _____

13. Descriptive Title of Applicant's Project:
_____
_____

Estimated Funding

14a. Federal	$ _____	.00
b. Applicant	$ _____	.00
c. State	$ _____	.00
d. Local	$ _____	.00
e. Other	$ _____	.00
f. Program Income	$ _____	.00
g. TOTAL	$ _____	.00

Authorized Representative Information

15. To the best of my knowledge and belief, all data in this preapplication/application are true and correct. The document has been duly authorized by the governing body of the applicant and the applicant will comply with the attached assurances if the assistance is awarded.

a. Authorized Representative (*Please type or print name clearly.*)
_____
b. Title: _____
c. Tel. #: ( ) _____-_____ Fax #: ( ) _____-_____
d. E-Mail Address: _____
e. Signature of Authorized Representative
_____ Date: ___/___/_____

Instructions for Form ED 424

1. **Legal Name and Address.** Enter the legal name of applicant and the name of the primary organizational unit which will undertake the assistance activity.

2. **D-U-N-S Number.** Enter the applicant's D-U-N-S Number. If your organization does not have a D-U-N-S Number, you can obtain the number by calling 1-800-333-0505 or by completing a D-U-N-S Number Request Form. The form can be obtained via the Internet at the following URL: **http://www.dnb.com.**

3. **Tax Identification Number.** Enter the taxpayer's identification number as assigned by the Internal Revenue Service.

4. **Catalog of Federal Domestic Assistance (CFDA) Number.** Enter the CFDA number and title of the program under which assistance is requested. The CFDA number can be found in the federal register notice and the application package.

5. **Project Director.** Name, address, telephone and fax numbers, and e-mail address of the person to be contacted on matters involving this application.

6. **Novice Applicant.** Check **"Yes"** or **"No"** only if assistance is being requested under a program that gives special consideration to novice applicants. Otherwise, **leave blank.**

   Check **"Yes"** if you meet the requirements for novice applicants specified in the regulations in 34 CFR 75.225 and included on the attached page entitled "Definitions for Form ED 424." By checking "Yes" the applicant certifies that it meets these novice applicant requirements. Check "No" if you do not meet the requirements for novice applicants.

7. **Federal Debt Delinquency.** Check **"Yes"** if the applicant's organization is delinquent on any Federal debt. (This question refers to the applicant's organization and not to the person who signs as the authorized representative. Categories of debt include delinquent audit disallowances, loans and taxes.) Otherwise, check **"No."**

8. **Type of Applicant.** Enter the appropriate letter in the box provided.

9. **Type of Submission.** See **"Definitions for Form ED 424"** attached.

10. **Executive Order 12372.** See "Definitions for Form ED 424" attached. Check **"Yes"** if the application is subject to review by E.O. 12372. Also, please enter the month, day, and four (4) digit year (e.g., 12/12/2001). Otherwise, check **"No."**

11. **Proposed Project Dates.** Please enter the month, day, and four (4) digit year (e.g., 12/12/2001).

12. **Human Subjects Research.** (See I.A. "Definitions" in attached page entitled "Definitions for Form ED 424.")

    If Not Human Subjects Research. Check **"No"** if research activities involving human subjects are not planned at any time during the proposed project period. The remaining parts of Item 12 are then not applicable.

    If Human Subjects Research. Check **"Yes"** if research activities involving human subjects are planned at any time during the proposed project period, either at the applicant organization or at any other performance site or collaborating institution. Check **"Yes"** even if the research is exempt from the regulations for the protection of human subjects. (See I.B. "Exemptions" in attached page entitled "Definitions for Form ED 424.")

    12a. If Human Subjects Research is Exempt from the Human Subjects Regulations. Check **"Yes"** if all the research activities proposed are designated to be exempt from the regulations. Insert the exemption number(s) corresponding to one or more of the six exemption categories listed in I.B. "Exemptions." In addition, follow the instructions in II.A. "Exempt Research Narrative" in the attached page entitled "Definitions for Form ED 424." Insert this narrative immediately following the ED 424 face page.

    12a. If Human Subjects Research is Not Exempt from Human Subjects Regulations. Check **"No"** if some or all of the planned research activities are covered (not exempt). In addition, follow the instructions in II.B. "Nonexempt Research Narrative" in the page entitled "Definitions for Form ED 424." Insert this narrative immediately following the ED 424 face page.

    12a. Human Subjects Assurance Number. If the applicant has an approved Federal Wide (FWA) or Multiple Project Assurance (MPA) with the Office for Human Research Protections (OHRP), U.S. Department of Health and Human Services, that covers the specific activity, insert the number in the space provided. If the applicant does not have an approved assurance on file with OHRP, enter "None." In this case, the applicant, by signature on the face page, is declaring that it will comply with 34 CFR 97 and proceed to obtain the human subjects assurance upon request by the designated ED official. If the application is recommended/selected for funding, the designated ED official will request that the applicant obtain the assurance within 30 days after the specific formal request.

    Note about Institutional Review Board Approval. ED does not require certification of Institutional Review Board approval with the application. However, if an application that involves nonexempt human subjects research is recommended/selected for funding, the designated ED official will request that the applicant obtain and send the certification to ED within 30 days after the formal request.

13. **Project Title.** Enter a brief descriptive title of the project. If more than one program is involved, you should append an explanation on a separate sheet. If appropriate (e.g., construction or real property projects), attach a map showing project location. For preapplications, use a separate sheet to provide a summary description of this project.

14. **Estimated Funding.** Amount requested or to be contributed during the first funding/budget period by each contributor. Value of in-kind contributions should be included on appropriate lines as applicable. If the action will result in a dollar change to an existing award, indicate only the amount of the change. For decreases, enclose the amounts in parentheses. If both basic and supplemental amounts are included, show

breakdown on an attached sheet. For multiple program funding, use totals and show breakdown using same categories as item 14.

15. **Certification.** To be signed by the authorized representative of the applicant. A copy of the governing body's authorization for you to sign this application as official representative must be on file in the applicant's office. Be sure to enter the telephone and fax number and e-mail address of the authorized representative. Also, in item 15e, please enter the month, day, and four (4) digit year (e.g., 12/12/2001) in the date signed field.

Paperwork Burden Statement. According to the Paperwork Reduction Act of 1995, no persons are required to respond to a collection of information unless such collection displays a valid OMB control number. The valid OMB control number for this information collection is **1875-0106**. The time required to complete this information collection is estimated to average between 15 and 45 minutes per response, including the time to review instructions, search existing data resources, gather the data needed, and complete and review the information collection. **If you have any comments concerning the accuracy of the estimate(s) or suggestions for improving this form, please write to:** U.S. Department of Education, Washington, D.C. 20202-4651. **If you have comments or concerns regarding the status of your individual submission of this form write directly to:** Joyce I. Mays, Application Control Center, U.S. Department of Education, 7th and D Streets, S.W. ROB-3, Room 3633, Washington, D.C. 20202-4725

Definitions for Form ED 424

Novice Applicant (See 34 CFR 75.225). For discretionary grant programs under which the Secretary gives special consideration to novice applications, a novice applicant means any applicant for a grant from ED that—

- Has never received a grant or subgrant under the program from which it seeks funding;
- Has never been a member of a group application, submitted in accordance with 34 CFR 75.127-75.129, that received a grant under the program from which it seeks funding; and
- Has not had an active discretionary grant from the Federal government in the five years before the deadline date for applications under the program. For the purposes of this requirement, a grant is active until the end of the grant's project or funding period, including any extensions of those periods that extend the grantee's authority to obligate funds.

In the case of a group application submitted in accordance with 34 CFR 75.127-75.129, a group includes only parties that meet the requirements listed above.

Type of Submission. "Construction" includes construction of new buildings and acquisition, expansion, remodeling, and alteration of existing buildings, and initial equipment of any such buildings, or any combination of such activities (including architects' fees and the cost of acquisition of land). "Construction" also includes remodeling to meet standards, remodeling designed to conserve energy, renovation or remodeling to accommodate new technologies, and the purchase of existing historic buildings for conversion to public libraries. For the purposes of this paragraph, the term "equipment" includes machinery, utilities, and built-in equipment and any necessary enclosures or structures to house them; and such term includes all other items necessary for the functioning of a particular facility as a facility for the provision of library services.

Executive Order 12372. The purpose of Executive Order 12372 is to foster an intergovernmental partnership and strengthen federalism by relying on State and local processes for the coordination and review of proposed Federal financial assistance and direct Federal development. The application notice, as published in the Federal Register, informs the applicant as to whether the program is subject to the requirements of E.O. 12372. In addition, the application package contains information on the State Single Point of Contact. An applicant is still eligible to apply for a grant or grants even if its respective State, Territory, Commonwealth, etc. does not have a State Single Point of Contact. For additional information on E.O. 12372 go to http://www.cfda.gov/public/eo12372.htm.

PROTECTION OF HUMAN SUBJECTS IN RESEARCH

I. Definitions and Exemptions

A. Definitions.

A research activity involves human subjects if the activity is research, as defined in the Department's regulations, and the research activity will involve use of human subjects, as defined in the regulations.

—Research

The ED Regulations for the Protection of Human Subjects, Title 34, Code of Federal Regulations, Part 97, define research as "a systematic investigation, including research development, testing and evaluation, designed to develop or contribute to generalizable knowledge." *If an activity follows a deliberate plan whose purpose is to develop or contribute to generalizable knowledge it is research.* Activities which meet this definition constitute research whether or not they are conducted or supported under a program which is considered research for other purposes. For example, some demonstration and service programs may include research activities.

—Human Subject

The regulations define human subject as "a living individual about whom an investigator (whether professional or student) conducting research obtains (1) data through intervention or interaction with the individual, or (2) identifiable private information." *(1) If an activity involves obtaining information about a living person by manipulating that person or that person's environment, as might occur when a new instructional technique is tested, or by communicating or interacting with the individual, as occurs with surveys and interviews, the definition of human subject is met. (2) If an activity involves obtaining private information about a living person in such a way that the information can be linked to that individual (the identity of the subject is or may be readily determined by the investigator or associated with the information), the definition of human subject is met.* [Private information includes information about behavior that occurs in a context in which an individual can reasonably expect that no observation or recording is taking place, and information which has been provided for specific purposes by an individual and which the individual can reasonably expect will not be made public (for example, a school health record).]

B. Exemptions.

Research activities in which the **only** involvement of human subjects will be in one or more of the following six categories of ***exemptions*** are not covered by the regulations:

(1) Research conducted in established or commonly accepted educational settings, involving normal educational practices, such as (a) research on regular and special education instructional strategies, or (b) research on the effectiveness of or the comparison among instructional techniques, curricula, or classroom management methods.

(2) Research involving the use of educational tests (cognitive, diagnostic, aptitude, achievement), survey procedures, interview procedures or observation of public behavior, unless: (a) information obtained is recorded in such a manner that human subjects can be identified, directly or through identifiers linked to the subjects; and (b) any disclosure of the human subjects' responses outside the research could reasonably place the subjects at risk of criminal or civil liability or be damaging to the subjects' financial standing, employability, or reputation. ***If the subjects are chil-***

dren, exemption 2 applies only to research involving educational tests and observations of public behavior when the investigator(s) do not participate in the activities being observed. Exemption 2 does not apply if children are surveyed or interviewed or if the research involves observation of public behavior and the investigator(s) participate in the activities being observed. [Children are defined as persons who have not attained the legal age for consent to treatments or procedures involved in the research, under the applicable law or jurisdiction in which the research will be conducted.]

(3) Research involving the use of educational tests (cognitive, diagnostic, aptitude, achievement), survey procedures, interview procedures or observation of public behavior that is not exempt under section (2) above, if the human subjects are elected or appointed public officials or candidates for public office; or federal statute(s) require(s) without exception that the confidentiality of the personally identifiable information will be maintained throughout the research and thereafter.

(4) Research involving the collection or study of existing data, documents, records, pathological specimens, or diagnostic specimens, if these sources are publicly available or if the information is recorded by the investigator in a manner that subjects cannot be identified, directly or through identifiers linked to the subjects.

(5) Research and demonstration projects which are conducted by or subject to the approval of department or agency heads, and which are designed to study, evaluate, or otherwise examine: (a) public benefit or service programs; (b) procedures for obtaining benefits or services under those programs; (c) possible changes in or alternatives to those programs or procedures; or (d) possible changes in methods or levels of payment for benefits or services under those programs.

(6) Taste and food quality evaluation and consumer acceptance studies, (a) if wholesome foods without additives are consumed or (b) if a food is consumed that contains a food ingredient at or below the level and for a use found to be safe, or agricultural chemical or environmental contaminant at or below the level found to be safe, by the Food and Drug Administration or approved by the Environmental Protection Agency or the Food Safety and Inspection Service of the U.S. Department of Agriculture.

II. Instructions for Exempt and Nonexempt Human Subjects Research Narratives

If the applicant marked "Yes" for Item 12 on the ED 424, the applicant must provide a human subjects "exempt research" or "nonexempt research" narrative and insert it immediately following the ED 424 face page.

A. Exempt Research Narrative.

If you marked "Yes" for item 12 a. and designated exemption numbers(s), provide the "exempt research" narrative. The narrative must contain sufficient information about the involvement of human subjects in the proposed research to allow a determination by ED that the designated exemption(s) are appropriate. The narrative must be succinct.

B. Nonexempt Research Narrative.

If you marked "No" for item 12 a. you must provide the "nonexempt research" narrative. The narrative must address the following seven points. Although no specific page limitation applies to this section of the application, be succinct.

(1) **Human Subjects Involvement and Characteristics**: Provide a detailed description of the proposed involvement of human subjects. Describe the characteristics of the subject population, including their anticipated number, age range, and health status. Identify the criteria for inclusion or exclusion of any subpopulation. Explain the rationale for the involvement of special classes of subjects, such as children, children with disabilities, adults with disabilities, persons with mental disabilities, pregnant women, prisoners, institutionalized individuals, or others who are likely to be vulnerable

(2) **Sources of Materials**: Identify the sources of research material obtained from individually identifiable living human subjects in the form of specimens, records, or data. Indicate whether the material or data will be obtained specifically for research purposes or whether use will be made of existing specimens, records, or data.

(3) **Recruitment and Informed Consent**: Describe plans for the recruitment of subjects and the consent procedures to be followed. Include the circumstances under which consent will be sought and obtained, who will seek it, the nature of the information to be provided to prospective subjects, and the method of documenting consent. State if the Institutional Review Board (IRB) has authorized a modification or waiver of the elements of consent or the requirement for documentation of consent.

(4) **Potential Risks**: Describe potential risks (physical, psychological, social, legal, or other) and assess their likelihood and seriousness. Where appropriate, describe alternative treatments and procedures that might be advantageous to the subjects.

(5) **Protection Against Risk**: Describe the procedures for protecting against or minimizing potential risks, including risks to confidentiality, and assess their likely effectiveness. Where appropriate, discuss provisions for ensuring necessary medical or professional intervention in the event of adverse effects to the subjects. Also, where appropriate, describe the provisions for monitoring the data collected to ensure the safety of the subjects.

(6) **Importance of the Knowledge to be Gained**: Discuss the importance of the knowledge gained or to be gained as a result of the proposed research. Discuss why the risks to subjects are reasonable in relation to the anticipated benefits to subjects and in relation to the importance of the knowledge that may reasonably be expected to result.

(7) **Collaborating Site(s)**: If research involving human subjects will take place at collaborating site(s) or other performance site(s), name the sites and briefly describe their involvement or role in the research.

Copies of the Department of Education's Regulations for the Protection of Human Subjects, 34 CFR Part 97 and other pertinent materials on the protection of human subjects in research are available from the Grants Policy and Oversight Staff, Office of the Chief Financial Officer, U.S. Department of Education, Washington, D.C. 20202-4248, telephone: (202) 708-8263, and on the U.S. Department of Education's Protection of Human Subjects in Research Web Site at http://www.ed.gov/offices/OCFO/humansub.html

FOREIGN LANGUAGE DATA

Name of Local Educational Agency

Note: This section must be completed by local educational agencies applying under the following program:

- **Foreign Language Assistance Grants**

	Secondary			
	Language(s) to be taught	Grade(s) to be served	Number of students to be served	
1. Total number of students in the school district				
2. Total number of students in the district enrolled in a foreign language program				
3. Foreign languages taught in the school district				
	Elementary			
4. Name of project school				

OMB Number 1885-0540 Expires 1/31/2006

GROUP APPLICATION CERTIFICATION

NOTE: This form must be completed by eligible parties applying as a group for a grant. This form must be accompanied by a group agreement that details the activities that each member of the group plans to perform under the grant.

(34 FR 75.128(b)-(c)).

To the best of my knowledge and belief, all data in this application are true and correct. I agree to be bound to every statement and assurance made in this application

Authorized Representative					Name of Institution/ Organization
Typed Name	Title	Signature	Date Signed	Telephone Number (Including Area Code)	

OMB Number 1885-0551 Expires 10/31/2005

Paperwork Burden Statement: According to the Paperwork Reduction Act of 1995, no persons are required to respond to a collection of information unless such collection displays a valid OMB control number. The valid OMB control number for this information collection is **1885-0551.** The time required to complete this information collection is estimated to average 4 hours (or minutes) per response, including the time to review instructions, search existing data resources, gather the data needed, and complete and review the information collection. **If you have any comments concerning the accuracy of the time estimate(s) or suggestions for improving this form, please write to:** U.S. Department of Education, Washington, DC 20202-4651. **If you have comments or concerns regarding the status of your individual submission of this form, write directly to: Native American and Alaska Native Children in School Program,** Office of English Language Acquisition, Language Enhancement, and Academic Achievement for Limited English Proficient Students, U.S. Department of Education, 400 Maryland Avenue, S.W., Switzer Building, Room 5605, Washington, D.C. 20202-4651

U.S. DEPARTMENT OF EDUCATION

BUDGET INFORMATION

NON-CONSTRUCTION PROGRAMS

OMB Control Number: 1890-0004

Expiration Date:

Name of Institution/Organization

Applicants requesting funding for only one year should complete the column under "Project Year 1." Applicants requesting funding for multi-year grants should complete all applicable columns. Please read all instructions before completing form.

SECTION A - BUDGET SUMMARY
U.S. DEPARTMENT OF EDUCATION FUNDS

Budget Categories	Project Year 1 (a)	Project Year 2 (b)	Project Year 3 (c)	Project Year 4 (d)	Project Year 5 (e)	Total (f)
1. Personnel						0
2. Fringe Benefits						0
3. Travel						0
4. Equipment						0
5. Supplies						0
6. Contractual						0
7. Construction						0
8. Other						0
9. Total Direct Costs (lines 1-8)	0	0	0	0	0	0
10. Indirect Costs						0
11. Training Stipends						0
12. Total Costs (lines 9-11)	0	0	0	0	0	0

ED Form No. 524

Name of Institution/Organization

Applicants requesting funding for only one year should complete the column under "Project Year 1." Applicants requesting funding for multi-year grants should complete all applicable columns. Please read all instructions before completing form.

SECTION B - BUDGET SUMMARY NON-FEDERAL FUNDS

Budget Categories	Project Year 1 (a)	Project Year 2 (b)	Project Year 3 (c)	Project Year 4 (d)	Project Year 5 (e)	Total (f)
1. Personnel						0
2. Fringe Benefits						0
3. Travel						0
4. Equipment						0
5. Supplies						0
6. Contractual						0
7. Construction						0
8. Other						0
9. Total Direct Costs (lines 1-8)	0	0	0	0	0	0
10. Indirect Costs						0
11. Training Stipends						0
12. Total Costs (lines 9-11)	0	0	0	0	0	0

SECTION C - OTHER BUDGET INFORMATION (see instructions)

ED Form No. 524

Public reporting burden for this collection of information is estimated to vary from 13 to 22 hours per response, with an average of 17.5 hours per response, including the time reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the U.S. Department of Education, Information Management and Compliance Division, Washington, D.C. 20202-4651; and the Office of Management and Budget, Paperwork Reduction Project 1875-0102, Washington DC 20503.

INSTRUCTIONS FOR ED FORM 524

General Instructions

This form is used to apply to individual U.S. Department of Education discretionary grant programs. Unless directed otherwise, provide the same budget information for each year of the multi-year funding request. Pay attention to applicable program specific instructions, if attached.

Section A - Budget Summary
U.S. Department of Education Funds

All applicants must complete Section A and provide a breakdown by the applicable budget categories shown in lines 1-11.

Lines 1-11, columns (a)-(e): For each project year for which funding is requested, show the total amount requested for each applicable budget category.

Lines 1-11, column (f): Show the multi-year total for each budget category. If funding is requested for only one project year, leave this column blank.

Line 12, columns (a)-(e): Show the total budget request for each project year for which funding is requested.

Line 12, column (f): Show the total amount requested for all project years. If funding is requested for only one year, leave this space blank.

Section B - Budget Summary
Non-Federal Funds

If you are required to provide or volunteer to provide matching funds or other non-Federal resources to the project, these should be shown for each applicable budget category on lines 1-11 of Section B.

Lines 1-11, columns (a)-(e): For each project year for which matching funds or other contributions are provided, show the total contribution for each applicable budget category.

Lines 1-11, column (f): Show the multi-year total for each budget category. If non-Federal contributions are provided for only one year, leave this column blank.

Line 12, columns (a)-(e): Show the total matching or other contribution for each project year.

Line 12, column (f): Show the total amount to be contributed for all years of the multi-year project. If non-Federal contributions are provided for only one year, leave this space blank.

Section C - Other Budget Information
Pay attention to applicable program specific instructions, if attached.

1. Provide an itemized budget breakdown, by project year, for each budget category listed in Sections A and B.
2. If applicable to this program, enter the type of indirect rate (provisional, predetermined, final or fixed) that will be in effect during the funding period. In addition, enter the estimated amount of the base to which the rate is applied, and the total indirect expense.
3. If applicable to this program, provide the rate and base on which fringe benefits are calculated.
4. Provide other explanations or comments you deem necessary.

OMB Control No. 1890-0007 (Exp. 09/30/2004)

NOTICE TO ALL APPLICANTS

The purpose of this enclosure is to inform you about a new provision in the Department of Education's General Education Provisions Act (GEPA) that applies to applicants for new grant awards under Department programs. This provision is Section 427 of GEPA, enacted as part of the Improving America's Schools Act of 1994 (Public Law (P.L.) 103-382).

To Whom Does This Provision Apply?

Section 427 of GEPA affects applicants for new grant awards under this program. **ALL APPLICANTS FOR NEW AWARDS MUST INCLUDE INFORMATION IN THEIR APPLICATIONS TO ADDRESS THIS NEW PROVISION IN ORDER TO RECEIVE FUNDING UNDER THIS PROGRAM.**

(If this program is a State-formula grant program, a State needs to provide this description only for projects or activities that it carries out with funds reserved for State-level uses. In addition, local school districts or other eligible applicants that apply to the State for funding need to provide this description in their applications to the State for funding. The State would be responsible for ensuring that the school district or other local entity has submitted a sufficient section 427 statement as described below.)

What Does This Provision Require?

Section 427 requires each applicant for funds (other than an individual person) to include in its application a description of the steps the applicant proposes to take to ensure equitable access to, and participation in, its Federally-assisted program for students, teachers, and other program beneficiaries with special needs. This provision allows applicants discretion in developing the required description. The statute highlights six types of barriers that can impede equitable access or participation: gender, race, national origin, color, disability, or age. Based on local circumstances, you should determine whether these or other barriers may prevent your students, teachers, etc. from such access or participation in, the Federally-funded project or activity. The description in your application of steps to be taken to overcome these barriers need not be lengthy; you may provide a clear and succinct description of how you plan to address those barriers that are applicable to your circumstances. In addition, the information may be provided in a single narrative, or, if appropriate, may be discussed in connection with related topics in the application.

Section 427 is not intended to duplicate the requirements of civil rights statutes, but rather to ensure that, in designing their projects, applicants for Federal funds address equity concerns that may affect the ability of certain potential beneficiaries to fully participate in the project and to achieve to high standards. Consistent with program requirements and its approved application, an applicant may use the Federal funds awarded to it to eliminate barriers it identifies.

What are Examples of How an Applicant Might Satisfy the Requirement of This Provision?

The following examples may help illustrate how an applicant may comply with Section 427.

(1) An applicant that proposes to carry out an adult literacy project serving, among others, adults with limited English proficiency, might describe in its application how it intends to distribute a brochure about the proposed project to such potential participants in their native language.

(2) An applicant that proposes to develop instructional materials for classroom use might describe how it will make the materials available on audio tape or in braille for students who are blind.

(3) An applicant that proposes to carry out a model science program for secondary students and is concerned that girls may be less likely than boys to enroll in the course, might indicate how it intends to conduct "outreach" efforts to girls, to encourage their enrollment.

We recognize that many applicants may already be implementing effective steps to ensure equity of access and participation in their grant programs, and we appreciate your cooperation in responding to the requirements of this provision.

Estimated Burden Statement for GEPA Requirements

According to the Paperwork Reduction Act of 1995, no persons are required to respond to a collection of information unless such collection displays a valid OMB control number. The valid OMB control number for this information collection is **1890-0007.** The time required to complete this information collection is estimated to average 1.5 hours per response, including the time to review instructions, search existing data resources, gather the data needed, and complete and review the information collection. **If you have any comments concerning the accuracy of the time estimate(s) or suggestions for improving this form, please write to:** Director, Grants Policy and Oversight Staff, U.S. Department of Education, 400 Maryland Avenue, SW (Room 3652, GSA Regional Office Building No. 3), Washington, DC 20202-4248.

CERTIFICATIONS REGARDING LOBBYING; DEBARMENT, SUSPENSION AND OTHER RESPONSIBILITY MATTERS; AND DRUG-FREE WORKPLACE REQUIREMENTS

Applicants should refer to the regulations cited below to determine the certification to which they are required to attest. Applicants should also review the instructions for certification included in the regulations before completing this form. Signature of this form provides for compliance with certification requirements under 34 CFR Part 82, "New Restrictions on Lobbying," and 34 CFR Part 85, "Government-wide Debarment and Suspension (Nonprocurement) and Government-wide Requirements for Drug-Free Workplace (Grants)." The certifications shall be treated as a material representation of fact upon which reliance will be placed when the Department of Education determines to award the covered transaction, grant, or cooperative agreement.

1. LOBBYING

As required by Section 1352, Title 31 of the U.S. Code, and implemented at 34 CFR Part 82, for persons entering into a grant or cooperative agreement over $100,000, as defined at 34 CFR Part 82, Sections 82.105 and 82.110, the applicant certifies that:

(a) No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the making of any Federal grant, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal grant or cooperative agreement;

(b) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal grant or cooperative agreement, the undersigned shall complete and submit Standard Form - LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions;

(c) The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subgrants, contracts under grants and cooperative agreements, and subcontracts) and that all subrecipients shall certify and disclose accordingly.

2. DEBARMENT, SUSPENSION, AND OTHER RESPONSIBILITY MATTERS

As required by Executive Order 12549, Debarment and Suspension, and implemented at 34 CFR Part 85, for prospective participants in primary covered transactions, as defined at 34 CFR Part 85, Sections 85.105 and 85.110—

A. The applicant certifies that it and its principals:

(a) Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal department or agency;

(b) Have not within a three-year period preceding this application been convicted of or had a civil judgement rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State, or local) transaction or contract under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;

(c) Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, State, or local) with commission of any of the offenses enumerated in paragraph (2)(b) of this certification; and

(d) Have not within a three-year period preceding this application had one or more public transaction (Federal, State, or local) terminated for cause or default; and

B. Where the applicant is unable to certify to any of the statements in this certification, he or she shall attach an explanation to this application.

3. DRUG-FREE WORKPLACE (GRANTEES OTHER THAN INDIVIDUALS)

As required by the Drug-Free Workplace Act of 1988, and implemented at 34 CFR Part 85, Subpart F, for grantees, as defined at 34 CFR Part 85, Sections 85.605 and 85.610 -

A. The applicant certifies that it will or will continue to provide a drug-free workplace by:

(a) Publishing a statement notifying employees that the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance is prohibited in the grantee's workplace and specifying the actions that will be taken against employees for violation of such prohibition;

(b) Establishing an on-going drug-free awareness program to inform employees about:

(1) The dangers of drug abuse in the workplace;

(2) The grantee's policy of maintaining a drug-free workplace;

(3) Any available drug counseling, rehabilitation, and employee assistance programs; and

(4) The penalties that may be imposed upon employees for drug abuse violations occurring in the workplace;

(c) Making it a requirement that each employee to be engaged in the performance of the grant be given a copy of the statement required by paragraph (a);

(d) Notifying the employee in the statement required by paragraph (a) that, as a condition of employment under the grant, the employee will:

(1) Abide by the terms of the statement; and

(2) Notify the employer in writing of his or her conviction for a violation of a criminal drug statute occurring in the workplace no later than five calendar days after such conviction;

(e) Notifying the agency, in writing, within 10 calendar days after receiving notice under subparagraph (d)(2) from an employee or otherwise receiving actual notice of such conviction. Employers of convicted employees must provide notice, including position title, to: Director, Grants Policy and Oversight Staff, U.S. Department of Education, 400 Maryland Avenue, S.W. (Room 3652, GSA Regional Office Building No. 3), Washington, DC 20202-4248. Notice shall include the identification number(s) of each affected grant;

(f) Taking one of the following actions, within 30 calendar days of receiving notice under subparagraph (d)(2), with respect to any employee who is so convicted:

(1) Taking appropriate personnel action against such an employee, up to and including termination, consistent with the requirements of the Rehabilitation Act of 1973, as amended; or

(2) Requiring such employee to participate satisfactorily in a drug abuse assistance or rehabilitation program approved for such purposes by a Federal, State, or local health, law enforcement, or other appropriate agency;

(g) Making a good faith effort to continue to maintain a drug-free workplace through implementation of paragraphs (a), (b), (c), (d), (e), and (f).

B. The grantee may insert in the space provided below the site(s) for the performance of work done in connection with the specific grant:

Place of Performance (Street address. city, county, state, zip code)

_____

_____

_____

Check ☐ if there are workplaces on file that are not identified here.

_____

DRUG-FREE WORKPLACE
(GRANTEES WHO ARE INDIVIDUALS)

As required by the Drug-Free Workplace Act of 1988, and implemented at 34 CFR Part 85, Subpart F, for grantees, as defined at 34 CFR Part 85, Sections 85.605 and 85.610-

A. As a condition of the grant, I certify that I will not engage in the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance in conducting any activity with the grant; and

B. If convicted of a criminal drug offense resulting from a violation occurring during the conduct of any grant activity, I will report the conviction, in writing, within 10 calendar days of the conviction, to: Director, Grants Policy and Oversight Staff, Department of Education, 400 Maryland Avenue, S.W. (Room 3652, GSA Regional Office Building No. 3), Washington, DC 20202-4248. Notice shall include the identification number(s) of each affected grant.

As the duly authorized representative of the applicant, I hereby certify that the applicant will comply with the above certifications.

NAME OF APPLICANT	PR/AWARD NUMBER AND / OR PROJECT NAME
PRINTED NAME AND TITLE OF AUTHORIZED REPRESENTATIVE	
SIGNATURE	DATE

ED 80-0013 12/98

Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion — Lower Tier Covered Transactions

This certification is required by the Department of Education regulations implementing Executive Order 12549, Debarment and Suspension, 34 CFR Part 85, for all lower tier transactions meeting the threshold and tier requirements stated at Section 85.110.

Instructions for Certification

1. By signing and submitting this proposal, the prospective lower tier participant is providing the certification set out below.

2. The certification in this clause is a material representation of fact upon which reliance was placed when this transaction was entered into. If it is later determined that the prospective lower tier participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.

3. The prospective lower tier participant shall provide immediate written notice to the person to which this proposal is submitted if at any time the prospective lower tier participant learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.

4. The terms "covered transaction," "debarred," "suspended," "ineligible," "lower tier covered transaction," "participant," " person," "primary covered transaction," " principal," "proposal," and "voluntarily excluded," as used in this clause, have the meanings set out in the Definitions and Coverage sections of rules implementing Executive Order 12549. You may contact the person to which this proposal is submitted for assistance in obtaining a copy of those regulations.

5. The prospective lower tier participant agrees by submitting this proposal that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency with which this transaction originated.

6. The prospective lower tier participant further agrees by submitting this proposal that it will include the clause titled "Certification Regarding Debarment, Suspension, Ineligibility, and Voluntary Exclusion-Lower Tier Covered Transactions," without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions.

7. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that it is not debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant may decide the method and frequency by which it determines the eligibility of its principals. Each participant may but is not required to, check the Nonprocurement List.

8. Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of a participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.

9. Except for transactions authorized under paragraph 5 of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal Government, the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.

Certification

(1) The prospective lower tier participant certifies, by submission of this proposal, that neither it nor its principals are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or agency.

(2) Where the prospective lower tier participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

NAME OF APPLICANT	PR/AWARD NUMBER AND/OR PROJECT NAME
PRINTED NAME AND TITLE OF AUTHORIZED REPRESENTATIVE	
SIGNATURE	DATE

ED 80-0014, 9/90 (Replaces GCS-009 (REV.12/88), which is obsolete)

OMB Approval No. 0348-0040

ASSURANCES - NON-CONSTRUCTION PROGRAMS

Public reporting burden for this collection of information is estimated to average 15 minutes per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Office of Management and Budget, Paperwork Reduction Project (0348-0040), Washington, DC 20503.

PLEASE DO NOT RETURN YOUR COMPLETED FORM TO THE OFFICE OF MANAGEMENT AND BUDGET. SEND IT TO THE ADDRESS PROVIDED BY THE SPONSORING AGENCY.

NOTE: Certain of these assurances may not be applicable to your project or program. If you have questions, please contact the awarding agency. Further, certain Federal awarding agencies may require applicants to certify to additional assurances. If such is the case, you will be notified.

As the duly authorized representative of the applicant, I certify that the applicant:

1. Has the legal authority to apply for Federal assistance and the institutional, managerial and financial capability (including funds sufficient to pay the non-Federal share of project cost) to ensure proper planning, management and completion of the project described in this application.

2. Will give the awarding agency, the Comptroller General of the United States and, if appropriate, the State, through any authorized representative, access to and the right to examine all records, books, papers, or documents related to the award; and will establish a proper accounting system in accordance with generally accepted accounting standards or agency directives.

3. Will establish safeguards to prohibit employees from using their positions for a purpose that constitutes or presents the appearance of personal or organizational conflict of interest, or personal gain.

4. Will initiate and complete the work within the applicable time frame after receipt of approval of the awarding agency.

5. Will comply with the Intergovernmental Personnel Act of 1970 (42 U.S.C. §§4728-4763) relating to prescribed standards for merit systems for programs funded under one of the 19 statutes or regulations specified in Appendix A of OPM's Standards for a Merit System of Personnel Administration (5 C.F.R. 900, Subpart F).

6. Will comply with all Federal statutes relating to nondiscrimination. These include but are not limited to: (a) Title VI of the Civil Rights Act of 1964 (P.L. 88-352) which prohibits discrimination on the basis of race, color or national origin; (b) Title IX of the Education Amendments of 1972, as amended (20 U.S.C. §§1681-1683, and 1685-1686), which prohibits discrimination on the basis of sex; (c) Section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. §794), which prohibits discrimination on the basis of handicaps; (d) the Age Discrimination Act of 1975, as amended (42 U.S.C. §§6101-6107), which prohibits discrimination on the basis of age; (e) the Drug Abuse Office and Treatment Act of 1972 (P.L. 92-255), as amended, relating to nondiscrimination on the basis of drug abuse; (f) the Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment and Rehabilitation Act of 1970 (P.L. 91-616), as amended, relating to nondiscrimination on the basis of alcohol abuse or alcoholism; (g) §§523 and 527 of the Public Health Service Act of 1912 (42 U.S.C. §§290 dd-3 and 290 ee 3), as amended, relating to confidentiality of alcohol and drug abuse patient records; (h) Title VIII of the Civil Rights Act of 1968 (42 U.S.C. §§3601 et seq.), as amended, relating to nondiscrimination in the sale, rental or financing of housing; (i) any other nondiscrimination provisions in the specific statute(s) under which application for Federal assistance is being made; and, (j) the requirements of any other nondiscrimination statute(s) which may apply to the application.

7. Will comply, or has already complied, with the requirements of Titles II and III of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (P.L. 91-646) which provide for fair and equitable treatment of persons displaced or whose property is acquired as a result of Federal or federally-assisted programs. These requirements apply to all interests in real property acquired for project purposes regardless of Federal participation in purchases.

8. Will comply, as applicable, with provisions of the Hatch Act (5 U.S.C. §§1501-1508 and 7324-7328) which limit the political activities of employees whose principal employment activities are funded in whole or in part with Federal funds.

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Prescribed by OMB Circular A-102

9. Will comply, as applicable, with the provisions of the Davis-Bacon Act (40 U.S.C. §§276a to 276a-7), the Copeland Act (40 U.S.C. §276c and 18 U.S.C. §874), and the Contract Work Hours and Safety Standards Act (40 U.S.C. §§327-333), regarding labor standards for federally-assisted construction subagreements.

10. Will comply, if applicable, with flood insurance purchase requirements of Section 102(a) of the Flood Disaster Protection Act of 1973 (P.L. 93-234) which requires recipients in a special flood hazard area to participate in the program and to purchase flood insurance if the total cost of insurable construction and acquisition is $10,000 or more.

11. Will comply with environmental standards which may be prescribed pursuant to the following: (a) institution of environmental quality control measures under the National Environmental Policy Act of 1969 (P.L. 91-190) and Executive Order (EO) 11514; (b) notification of violating facilities pursuant to EO 11738; (c) protection of wetlands pursuant to EO 11990; (d) evaluation of flood hazards in floodplains in accordance with EO 11988; (e) assurance of project consistency with the approved State management program developed under the Coastal Zone Management Act of 1972 (16 U.S.C. §§1451 et seq.); (f) conformity of Federal actions to State (Clean Air) Implementation Plans under Section 176(c) of the Clean Air Act of 1955, as amended (42 U.S.C. §§7401 et seq.); (g) protection of underground sources of drinking water under the Safe Drinking Water Act of 1974, as amended (P.L. 93-523); and, (h) protection of endangered species under the Endangered Species Act of 1973, as amended (P.L. 93-205).

12. Will comply with the Wild and Scenic Rivers Act of 1968 (16 U.S.C. §§1271 et seq.) related to protecting components or potential components of the national wild and scenic rivers system.

13. Will assist the awarding agency in assuring compliance with Section 106 of the National Historic Preservation Act of 1966, as amended (16 U.S.C. §470), EO 11593 (identification and protection of historic properties), and the Archaeological and Historic Preservation Act of 1974 (16 U.S.C. §§469a-1 et seq.).

14. Will comply with P.L. 93-348 regarding the protection of human subjects involved in research, development, and related activities supported by this award of assistance.

15. Will comply with the Laboratory Animal Welfare Act of 1966 (P.L. 89-544, as amended, 7 U.S.C. §§2131 et seq.) pertaining to the care, handling, and treatment of warm blooded animals held for research, teaching, or other activities supported by this award of assistance.

16. Will comply with the Lead-Based Paint Poisoning Prevention Act (42 U.S.C. §§4801 et seq.) which prohibits the use of lead-based paint in construction or rehabilitation of residence structures.

17. Will cause to be performed the required financial and compliance audits in accordance with the Single Audit Act Amendments of 1996 and OMB Circular No. A-133, "Audits of States, Local Governments, and Non-Profit Organizations."

18. Will comply with all applicable requirements of all other Federal laws, executive orders, regulations, and policies governing this program.

SIGNATURE OF AUTHORIZED CERTIFYING OFFICIAL	TITLE
APPLICANT ORGANIZATION	DATE SUBMITTED

Standard Form 424B (Rev. 7-97) Back

DISCLOSURE OF LOBBYING ACTIVITIES

Approved by OMB
0348-0046

Complete this form to disclose lobbying activities pursuant to 31 U.S.C. 1352
(See reverse for public burden disclosure.)

1. Type of Federal Action:	2. Status of Federal Action:	3. Report Type:
☐ a. contract b. grant c. cooperative agreement d. loan e. loan guarantee f. loan insurance	☐ a. bid/offer/application b. initial award c. post-award	☐ a. initial filing b. material change **For Material Change Only:** year _____ quarter _____ date of last report _____

4. Name and Address of Reporting Entity:	5. If Reporting Entity in No. 4 is a Subawardee, Enter Name and Address of Prime:
☐ Prime ☐ Subawardee Tier _____, *if known*: **Congressional District**, *if known*:	 **Congressional District**, *if known*:
6. Federal Department/Agency:	**7. Federal Program Name/Description:** CFDA Number, *if applicable*: _____
8. Federal Action Number, *if known*:	**9. Award Amount**, *if known*: $
10. a. Name and Address of Lobbying Registrant (*if individual, last name, first name, MI*):	**b. Individuals Performing Services** (*including address if different from No. 10a*) (*last name, first name, MI*):
11. Information requested through this form is authorized by title 31 U.S.C. section 1352. This disclosure of lobbying activities is a material representation of fact upon which reliance was placed by the tier above when this transaction was made or entered into. This disclosure is required pursuant to 31 U.S.C. 1352. This information will be reported to the Congress semi-annually and will be available for public inspection. Any person who fails to file the required disclosure shall be subject to a civil penalty of not less that $10,000 and not more than $100,000 for each such failure.	Signature: _____ Print Name: _____ Title: _____ Telephone No.: _____ Date: _____
Federal Use Only:	Authorized for Local Reproduction Standard Form LLL (Rev. 7-97)

INSTRUCTIONS FOR COMPLETION OF SF-LLL, DISCLOSURE OF LOBBYING ACTIVITIES

This disclosure form shall be completed by the reporting entity, whether subawardee or prime Federal recipient, at the initiation or receipt of a covered Federal action, or a material change to a previous filing, pursuant to title 31 U.S.C. section 1352. The filing of a form is required for each payment or agreement to make payment to any lobbying entity for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with a covered Federal action. Complete all items that apply for both the initial filing and material change report. Refer to the implementing guidance published by the Office of Management and Budget for additional information.

1. Identify the type of covered Federal action for which lobbying activity is and/or has been secured to influence the outcome of a covered Federal action.

2. Identify the status of the covered Federal action.

3. Identify the appropriate classification of this report. If this is a followup report caused by a material change to the information previously reported, enter the year and quarter in which the change occurred. Enter the date of the last previously submitted report by this reporting entity for this covered Federal action.

4. Enter the full name, address, city, State and zip code of the reporting entity. Include Congressional District, if known. Check the appropriate classification of the reporting entity that designates if it is, or expects to be, a prime or subaward recipient. Identify the tier of the subawardee, e.g., the first subawardee of the prime is the 1st tier. Subawards include but are not limited to subcontracts, subgrants and contract awards under grants.

5. If the organization filing the report in item 4 checks "Subawardee," then enter the full name, address, city, State and zip code of the prime Federal recipient. Include Congressional District, if known.

6. Enter the name of the Federal agency making the award or loan commitment. Include at least one organizational level below agency name, if known. For example, Department of Transportation, United States Coast Guard.

7. Enter the Federal program name or description for the covered Federal action (item 1). If known, enter the full Catalog of Federal Domestic Assistance (CFDA) number for grants, cooperative agreements, loans, and loan commitments.

8. Enter the most appropriate Federal identifying number available for the Federal action identified in item 1 (e.g., Request for Proposal (RFP) number; Invitation for Bid (IFB) number; grant announcement number; the contract, grant, or loan award number; the application/proposal control number assigned by the Federal agency). Include prefixes, e.g., "RFP-DE-90-001."

9. For a covered Federal action where there has been an award or loan commitment by the Federal agency, enter the Federal amount of the award/loan commitment for the prime entity identified in item 4 or 5.

10. (a) Enter the full name, address, city, State and zip code of the lobbying registrant under the Lobbying Disclosure Act of 1995 engaged by the reporting entity identified in item 4 to influence the covered Federal action.

    (b) Enter the full names of the individual(s) performing services, and include full address if different from 10 (a). Enter Last Name, First Name, and Middle Initial (MI).

11. The certifying official shall sign and date the form, print his/her name, title, and telephone number.

According to the Paperwork Reduction Act, as amended, no persons are required to respond to a collection of information unless it displays a valid OMB Control Number. The valid OMB control number for this information collection is OMB No. 0348-0046. Public reporting burden for this collection of information is estimated to average 10 minutes per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Office of Management and Budget, Paperwork Reduction Project (0348-0046), Washington, DC 20503.

Survey on Ensuring Equal Opportunity for Applicants

Do not enter information below unless instructed to do so.

OMB No. 1890-0014 Exp. 1/31/2006

Purpose: This form is for applicants that are nonprofit private organizations (not including private universities). Please complete it to assist the Federal government in ensuring that all qualified applicants, small or large, non-religious or faith-based, have an equal opportunity to compete for Federal funding. Information provided on this form will not be considered in any way in making funding decisions and will not be included in the Federal grants database.

Instructions for Submitting Survey

If submitting hard copy, please place the completed survey in an envelope labeled "Applicant Survey." Seal the envelope and include it with your application package.

If submitting electronically, please include the PR Award Number assigned to your e-application in the box above entitled "***Do not enter information below unless instructed to do so.***" Place and seal the completed survey in an envelope and mail it to: Joyce I. Mays, Application Control Center, U.S. Department of Education, 7th and D Streets, SW, ROB-3, Room 3671, Washington, DC 20202-4725.

1. Does the applicant have 501(c)(3) status?

   ❑ Yes ❑ No

2. How many full-time equivalent employees does the applicant have? *(Check only one box).*

   ❑ 3 or Fewer ❑ 15-50
   ❑ 4-5 ❑ 51-100
   ❑ 6-14 ❑ over 100

3. What is the size of the applicant's annual budget? *(Check only one box.)*

   ❑ Less Than $150,000
   ❑ $150,000 - $299,999
   ❑ $300,000 - $499,999
   ❑ $500,000 - $999,999
   ❑ $1,000,000 - $4,999,999
   ❑ $5,000,000 or more

4. Is the applicant a faith-based/religious organization?

   ❑ Yes ❑ No

5. Is the applicant a non-religious community-based organization?

   ❑ Yes ❑ No

6. Is the applicant an intermediary that will manage the grant on behalf of other organizations?

   ❑ Yes ❑ No

7. Has the applicant ever received a government grant or contract (Federal, State, or local)?

   ❑ Yes ❑ No

8. Is the applicant a local affiliate of a national organization?

   ❑ Yes ❑ No

Survey Instructions on Ensuring Equal Opportunity for Applicants

1. 501(c)(3) status is a legal designation provided on application to the Internal Revenue Service by eligible organizations. Some grant programs may require nonprofit applicants to have 501(c)(3) status. Other grant programs do not.

2. For example, two part-time employees who each work half-time equal one full-time equivalent employee. If the applicant is a local affiliate of a national organization, the responses to survey questions 2 and 3 should reflect the staff and budget size of the local affiliate.

3. Annual budget means the amount of money your organization spends each year on all of its activities.

4. Self-identify.

5. An organization is considered a community-based organization if its headquarters/service location shares the same zip code as the clients you serve.

6. An "intermediary" is an organization that enables a group of small organizations to receive and manage government funds by administering the grant on their behalf.

7. Self-explanatory.

8. Self-explanatory

Paperwork Burden Statement

According to the Paperwork Reduction Act of 1995, no persons are required to respond to a collection of information unless such collection displays a valid OMB control number. The valid OMB control number for this information collection is 1890-0014. The time required to complete this information collection is estimated to average five (5) minutes per response, including the time to review instructions, search existing data resources, gather the data needed, and complete and review the information collection. **If you have any comments concerning the accuracy of the time estimate(s) or suggestions for improving this form, please write to:** U.S. Department of Education, Washington, D.C. 20202-4651. **If you have comments or concerns regarding the status of your individual submission of this form, write directly to:** Joyce I. Mays, Application Control Center, U.S. Department of Education, 7th and D Streets, SW, ROB-3, Room 3671, Washington, DC 20202-4725.

[FR Doc. 03–11622 Filed 5–8–03; 8:45 am]
BILLING CODE 4000–01–C

DEPARTMENT OF EDUCATION

RIN 1820 ZA18

National Institute on Disability and Rehabilitation Research

AGENCY: Office of Special Education and Rehabilitative Services, Department of Education.

ACTION: Notice of proposed priority.

SUMMARY: The Assistant Secretary for Special Education and Rehabilitative Services proposes a priority for a Disability Demographics and Statistics Center under the Rehabilitation Research and Training Centers (RRTC) Program for the National Institute on Disability and Rehabilitation Research (NIDRR). The Assistant Secretary may use this priority for competitions in fiscal year (FY) 2003 and later years. We take this action to focus research attention on an area of national need. We intend this priority to improve the rehabilitation services and outcomes for individuals with disabilities.

DATES: We must receive your comments on or before June 9, 2003.

ADDRESSES: Address all comments about this proposed priority to Donna Nangle, U.S. Department of Education, 400 Maryland Avenue, SW., room 3412, Switzer Building, Washington, DC 20202–2645. If you prefer to send your comments through the Internet, use the following address: *donna.nangle@ed.gov*.

FOR FURTHER INFORMATION CONTACT: Donna Nangle. Telephone: (202) 205–5880.

If you use a telecommunications device for the deaf (TDD), you may call the TDD number at (202) 205–4475 or via the Internet: *donna.nangle@ed.gov*.

Individuals with disabilities may obtain this document in an alternative format (e.g., Braille, large print, audiotape, or computer diskette) on request to the contact person listed under **FOR FURTHER INFORMATION CONTACT.**

SUPPLEMENTARY INFORMATION:

Invitation to Comment

We invite you to submit comments regarding this proposed priority.

We invite you to assist us in complying with the specific requirements of Executive Order 12866 and its overall requirement of reducing regulatory burden that might result from this proposed priority. Please let us know of any further opportunities we should take to reduce potential costs or increase potential benefits while preserving the effective and efficient administration of the program.

During and after the comment period, you may inspect all public comments about this priority in Room 3412, Switzer Building, 330 C Street SW., Washington, DC, between the hours of 8:30 a.m. and 4 p.m., Eastern time, Monday through Friday of each week except Federal holidays.

Assistance to Individuals With Disabilities in Reviewing the Rulemaking Record

On request, we will supply an appropriate aid, such as a reader or print magnifier, to an individual with a disability who needs assistance to review the comments or other documents in the public rulemaking record for this proposed priority. If you want to schedule an appointment for this type of aid, please contact the person listed under **FOR FURTHER INFORMATION CONTACT.**

We will announce the final priority in a notice in the **Federal Register**. We will determine the final priority after considering responses to this notice and other information available to the Department. This notice does not preclude us from proposing or funding additional priorities, subject to meeting applicable rulemaking requirements.

Note: This notice does *not* solicit applications. In any year in which we choose to use this proposed priority, we invite applications through a notice published in the **Federal Register**. When inviting applications we designate each priority as absolute, competitive preference, or invitational. The effect of each type of priority follows:

Absolute priority: Under an absolute priority, we consider only applications that meet the priority (34 CFR 75.105(c)(3)).

Competitive preference priority: Under a competitive preference priority, we give competitive preference to an application by either (1) awarding additional points, depending on how well or the extent to which the application meets the priority (34 CFR 75.105(c)(2)(i)); or (2) selecting an application that meets the competitive priority over an application of comparable merit that does not meet the competitive priority (34 CFR 75.105(c)(2)(ii)).

Invitational priority: Under an invitational priority, we are particularly interested in applications that meet the invitational priority. However, we do not give an application that meets the priority a competitive or absolute preference over other applications (34 CFR 75.105(c)(1)).

Note: NIDRR supports the goals of President Bush's New Freedom Initiative (NFI). The NFI can be accessed on the Internet at the following site: *http://www.whitehouse.gov/news/freedominitiative/freedominitiative.html*.

The proposed priority is in concert with NIDRR's Long-Range Plan (the Plan). The Plan is comprehensive and integrates many issues relating to disability and rehabilitation research topics. While applicants will find many sections throughout the Plan that support potential research to be conducted under this proposed priority, a specific reference is included for the topic presented in this notice. The Plan can be accessed on the Internet at the following site: *http://www.ed.gov/offices/OSERS/NIDRR/Products*.

Through the implementation of the Plan, NIDRR seeks to:

(1) Improve the quality and utility of disability and rehabilitation research; (2) foster an exchange of expertise, information, and training to facilitate the advancement of knowledge and understanding of the unique needs of traditionally underserved populations; (3) determine best strategies and programs to improve rehabilitation outcomes for underserved populations; (4) identify research gaps; (5) identify mechanisms of integrating research and practice; and (6) disseminate findings.

Rehabilitation Research and Training Centers

We may make awards for up to 60 months to institutions of higher education or providers of rehabilitation or other appropriate services. RRTCs conduct coordinated and integrated advanced programs of research targeted toward the production of new knowledge to improve rehabilitation methodology and service delivery systems, alleviate or stabilize disability conditions, or promote maximum social and economic independence for persons with disabilities. Additional information on the RRTC program can be found at: *http://www.ed.gov/officers/OSERS/NIDRR/Programs/res_program.html#RRTC*.

General Requirements of Rehabilitation Research and Training Centers

RRTCs must:

- Carry out coordinated advanced programs of rehabilitation research;
- Provide training, including graduate, pre-service, and in-service training to help rehabilitation personnel more effectively provide rehabilitation services to individuals with disabilities;
- Provide technical assistance to individuals with disabilities, their representatives, providers, and other interested parties;
- Disseminate informational materials to individuals with disabilities, their representatives, providers, and other interested parties;
- Serve as centers for national excellence in rehabilitation research for individuals with disabilities, their representatives, providers, and other interested parties; and
- Involve individuals with disabilities and individuals from minority backgrounds as recipients or research as well as training.

The Department is particularly interested in ensuring that the expenditure of public funds is justified by the execution of intended activities and the advancement of knowledge and, thus, has built this accountability into the selection criteria. Not later than three years after the establishment of any RRTC, NIDRR will conduct one or more reviews of the activities and achievements of the Center. In accordance with the provisions of 34 CFR 75.253(a), continued funding depends at all times on satisfactory performance and accomplishment.

Priority

Background

Policymakers, researchers, consumers, and advocates use information about the prevalence of disabilities for many purposes. Information about demographics and distribution of individuals with disabilities is essential in program planning and assessing performance. Data are key to evidence-based decisionmaking about the need for, costs of, and outcomes of assisting individuals with disabilities. Reliable and valid measures are necessary for evaluating disability policies, services, and outcomes.

The dynamic nature of disability challenges accurate measurement. Environmental and individual interactions complicate analysis. Causes and patterns of disability change constantly, straining the capacity of demographics to describe new populations and their impact on service systems. Immigrants, for example, especially those who are not legal residents, present unique challenges to the rehabilitation system. Emergent disabilities such as multiple chemical sensitivity (MCS), chronic fatigue immune deficiency syndrome (CFIDS), and fibromyalgia are examples where definitional factors complicate diagnosis, reporting, and analysis necessary to address policy and service issues. Population surveys on health and disability frequently lack an adequate number of low prevalence but potentially highly disabling cases necessary for statistical analyses.

Policymakers and program administrators need continual, rigorous improvement in data methods to identify and respond to disability trends. Decisionmakers and citizens must know the costs and benefits of services and policies for individuals with disabilities at home, in the community, and when learning or working. Measures and indicators of supports such as technology, personal assistance services, health insurance, and accommodations are needed in assessing factors that lead to high quality outcomes such as successful employment, community living, and educational success of people of all ages.

Lack of standard definitions, terminology, coding, classification, and measurement of disability and functioning often limits generalization of research findings. Extending use of research findings or population trends to inform policy or clinical interventions is limited due to the difficulty of extrapolating knowledge about disabilities that is gathered from a disparate range of data sources, classification and coding systems, and measures of disability. For example, it is important to estimate future potential demands on rehabilitation systems, but existing population data sources do not adequately provide for planning, development, and evaluation of rehabilitation services and population trends. The International Classification of Functioning, Disability, and Health (ICF) is a coding system that allows one to assess disability as a dynamic interaction between the person and the environment. The ICF can assist with generating evidence-based policy, research, programs, and services. To extend the use of the ICF within the United States, a variety of measurement tools and data systems must be examined in addition to further evaluation of the implications of the classification system for U.S. populations. To better serve consumers, NIDRR intends to support the development, evaluation, and improvement of the ICF as it applies to participation of individuals with disabilities in society and the environments, systems, and policies that have the potential to affect their lives.

Letters of Intent

To assist with selection of reviewers for this competition, NIDRR is requiring all potential applicants to submit a Letter of Intent (LOI). Each LOI must be limited to a maximum of four pages and must include the following information: (1) The title of the proposed RRTC, the name of the host institution, the name of the Principal Investigator (PI), and the names of partner institutions and entities; (2) a brief statement of the vision, goals, and objectives of the proposed RRTC and a description of its research and development activities at a sufficient level of detail to allow NIDRR to select potential peer reviewers; (3) a list of proposed RRTC staff including the Center Director and key personnel; and (4) a list of individuals whose selection as a peer reviewer might constitute a conflict of interest due to involvement in proposal development, selection as an advisory board member, co-PI relationships, etc. Submission of a LOI is a prerequisite for eligibility to submit an application.

The signed, original LOI, or with prior approval an email or facsimile copy, must be received by NIDRR no later than June 9, 2003. Applicants that submit email or facsimile copies must follow up by sending to NIDRR the signed original copy no later than one week after the date the e-mail or facsimile copy was sent. All communications pertaining to the LOI must be sent to: David Keer, U.S. Department of Education, 400 Maryland Avenue, SW., room 3431, Switzer Building, Washington, DC 20202–2645. With prior approval, an email or facsimile copy of a LOI will be accepted by NIDRR as meeting the four-week deadline. However, in these cases, NIDRR must receive a signed original no later than one week after the date the e-mail or facsimile copy was sent. For further information regarding the LOI requirement, contact David Keer at (202) 205–5633 or by e-mail at: *david.keer@ed.gov*.

Proposed Priority

The Assistant Secretary proposes to fund one RRTC on disability demographics and statistics. The purpose of the RRTC is to support rigorous collaborative research to generate new knowledge that advances evidence-based decisionmaking to improve the lives of persons with disabilities. The references for this topic can be found in the Plan, Chapter 2, Dimensions of Disability: Age, Gender, Education, Income, and Geography; Chapter 7, Associated Disability Areas: Disabilty Statistics. The RRTC must:

(1) Conduct analyses using a variety of data sources, including those that assess facilitators and barriers to participation in society, to address the status and understanding of the population of individuals with disabilities;

(2) Identify, develop as necessary, and validate a series of best-practice

approaches that facilitate the selection of appropriate measures, ensure a high degree of power and representativeness of the sample, and apply techniques of interviewing and data collection that lead to high levels of quality and relevance of information while minimizing the burden on respondents;

(3) Identify, develop as necessary, and evaluate instruments, data sources, administrative records, or other sources that allow Federal policymakers to use the ICF classification system for evidence-based decisionmaking;

(4) Serve as a resource on disability statistics and demographics for Federal and other government agencies, policymakers, consumers, advocates, researchers, and others; and

(5) Develop quality standards to guide the identification of information for dissemination and conduct all activities to prepare, produce, and disseminate findings in a variety of media, such as web-based and print documents, meetings and conferences, and teleconferences that are targeted to the wide range of audiences who need such information.

In addition to the activities proposed by the applicant to carry out these purposes, the RRTC must:

- Conduct a state-of-the-science conference on its respective area of research in the third year of the grant cycle and publish a comprehensive report on the final outcomes of the conference in the fourth year of the grant cycle. This conference must include materials from experts internal and external to the center;
- Develop a systematic plan for widespread dissemination of informational materials based on knowledge gained from the Center's research activities, and disseminate the materials to persons with disabilities, their representatives, service providers, and other interested parties.
- Coordinate on research projects of mutual interest with relevant NIDRR-funded projects as identified through consultation with the NIDRR project officer;
- Involve individuals with disabilities in planning and implementing its research, training, and dissemination activities, and in evaluating the Center;
- Demonstrate in its application how it will address, in whole or in part, the needs of individuals with disabilities from minority backgrounds;
- Demonstrate how the RRTC project will yield measurable results for people with disabilities;
- Identify specific performance targets and propose outcome indicators, along with time lines to reach these targets; and
- Demonstrate how the RRTC project can transfer research findings to practical applications in planning, policy-making, program administration, and delivery of services to individuals with disabilities.

Executive Order 12866

This notice of proposed priority has been reviewed in accordance with Executive Order 12866. Under the terms of the order, we have assessed the potential costs and benefits of this regulatory action.

The potential costs associated with the notice of proposed priority are those resulting from statutory requirements and those we have determined as necessary for administering this program effectively and efficiently.

In assessing the potential costs and benefits—both quantitative and qualitative—of this notice of proposed priority, we have determined that the benefits of the proposed priority justify the costs.

Summary of potential costs and benefits: The potential cost associated with this proposed priority is minimal while the benefits are significant. Grantees may anticipate costs associated with completing the application process in terms of staff time, copying, and mailing or delivery. The use of e-Application technology reduces mailing and copying costs significantly.

The benefits of the Disability Demographics and Statistics Center have been well established over the years in that similar projects have been completed. This proposed priority will generate new knowledge through a research, dissemination, utilization, training, and technical assistance project.

The benefit of this proposed priority and proposed applications and project requirements will be the establishment of a new RRTC that generates, disseminates, and promotes the use of new information that will improve the options for disabled individuals to perform regular activities in the community.

Applicable Program Regulations: 34 CFR part 350.

Electronic Access to This Document

You may view this document, as well as all other Department of Education documents published in the **Federal Register**, in text or Adobe Portable Document Format (PDF) on the Internet at the following site: *http://www.ed.gov/legislation/FedRegister.*

To use PDF you must have Adobe Acrobat Reader, which is available free at this site. If you have questions about using PDF, call the U.S. Government Printing Office (GPO), toll free, at 1–888–293–6498; or in the Washington, DC, area at (202) 512–1530.

Note: The official version of this document is published in the **Federal Register**. Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available on GPO Access at: *http://www.access.gpo.gov/nara/index.html.*

(Catalog of Federal Domestic Assistance Number: 84.133B, Rehabilitation Research and Training Center Program)

Program Authority: 29 U.S.C. 762(g) and 764(b)(2).

Dated: May 6, 2003.

Robert H. Pasternack,

Assistant Secretary for Special Education and Rehabilitative Services.

[FR Doc. 03–11623 Filed 5–8–03; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

RIN 1820 ZA21

National Institute on Disability and Rehabilitation Research

AGENCY: Office of Special Education and Rehabilitative Services, Department of Education.

ACTION: Notice of proposed priorities.

SUMMARY: The Assistant Secretary for Special Education and Rehabilitative Services proposes priorities for one or more development projects under the Disability and Rehabilitation Research Projects (DRRP) Program under the National Institute on Disability and Rehabilitation Research (NIDRR). The Assistant Secretary may use these priorities for competitions in fiscal year (FY) 2003 and later years. We take this action to focus research attention on identified national needs. We intend these priorities to improve rehabilitation services and outcomes for individuals with disabilities.

DATES: We must receive your comments on or before June 9, 2003.

ADDRESSES: Address all comments about these proposed priorities to Donna Nangle, U.S. Department of Education, 400 Maryland Avenue, SW., room 3412, Switzer Building, Washington, DC 20202–2645. If you prefer to send your comments through the Internet, use the following address: *donna.nangle@ed.gov.*

FOR FURTHER INFORMATION CONTACT: Donna Nangle. Telephone: (202) 205–5880.

If you use a telecommunications device for the deaf (TDD), you may call the TDD number at (202) 205–4475 or via the Internet: *donna.nangle@ed.gov.*

Individuals with disabilities may obtain this document in an alternative format (e.g., Braille, large print, audiotape, or computer diskette) on request to the contact person listed under **FOR FURTHER INFORMATION CONTACT.**

SUPPLEMENTARY INFORMATION:

Invitation To Comment

We invite you to submit comments regarding these proposed priorities.

We invite you to assist us in complying with the specific requirements of Executive Order 12866 and its overall requirement of reducing regulatory burden that might result from these proposed priorities. Please let us know of any further opportunities we should take to reduce potential costs or increase potential benefits while preserving the effective and efficient administration of the program.

During and after the comment period, you may inspect all public comments about these priorities in Room 3412, Switzer Building, 330 C Street SW., Washington, DC, between the hours of 8:30 a.m. and 4:00 p.m., Eastern time, Monday through Friday of each week except Federal holidays.

Assistance to Individuals With Disabilities in Reviewing the Rulemaking Record

On request, we will supply an appropriate aid, such as a reader or print magnifier, to an individual with a disability who needs assistance to review the comments or other documents in the public rulemaking record for these proposed priorities. If you want to schedule an appointment for this type of aid, please contact the person listed under **FOR FURTHER INFORMATION CONTACT.**

We will announce the final priorities in a notice in the **Federal Register**. We will determine the final priorities after considering responses to this notice and other information available to the Department. This notice does not preclude us from proposing or funding additional priorities, subject to meeting applicable rulemaking requirements.

Note: This notice does *not* solicit applications. In any year in which we choose to use these proposed priorities, we invite applications through a notice published in the **Federal Register**. When inviting applications we designate each priority as absolute, competitive preference, or invitational. The effect of each type of priority follows:

Absolute priority: Under an absolute priority, we consider only applications that meet the priority (34 CFR 75.105(c)(3)).

Competitive preference priority: Under a competitive preference priority, we give competitive preference to an application by either (1) awarding additional points, depending on how well or the extent to which the application meets the priority (34 CFR 75.105(c)(2)(i)); or (2) selecting an application that meets the competitive priority over an application of comparable merit that does not meet the competitive priority (34 CFR 75.105(c)(2)(ii)).

Invitational priority: Under an invitational priority, we are particularly interested in applications that meet the invitational priority. However, we do not give an application that meets the priority a competitive or absolute preference over other applications (34 CFR 75.105(c)(1)).

Note: NIDRR supports the goals of President Bush's New Freedom Initiative (NFI). The NFI can be accessed on the Internet at the following site: *http://www.whitehouse.gov/news/freedominitiative/freedominitiative.html.*

The proposed priorities are in concert with NIDRR's Long-Range Plan (the Plan). The Plan is comprehensive and integrates many issues relating to disability and rehabilitation research topics. While applicants will find many sections throughout the Plan that support potential research to be conducted under these proposed priorities, a specific reference is included for each topic presented in this notice. The Plan can be accessed on the Internet at the following site: *http://www.ed.gov/offices/OSERS/NIDRR/Products.*

Through the implementation of the Plan, NIDRR seeks to: (1) Improve the quality and utility of disability and rehabilitation research; (2) foster an exchange of expertise, information, and training to facilitate the advancement of knowledge and understanding of the unique needs of traditionally underserved populations; (3) determine best strategies and programs to improve rehabilitation outcomes for underserved populations; (4) identify research gaps; (5) identify mechanisms of integrating research and practice; and (6) disseminate findings.

Disability and Rehabilitation Research Projects (DRRP) Program

The purpose of the DRRP Program is to plan and conduct research, demonstration projects, training, and related activities that help to maximize the full inclusion and integration of individuals with disabilities into society and to improve the effectiveness of services authorized under the Rehabilitation Act of 1973, as amended (the Act).

An applicant for assistance under this program must demonstrate in its application how it will address, in whole or in part, the needs of individuals with disabilities from minority backgrounds (34 CFR 350.40(a)). The approaches an applicant may take to meet this requirement are found in 34 CFR 350.40(b).

Under the DRRP program, we define a development activity as the use of knowledge and understanding gained from research to create materials, devices, systems, or methods beneficial to the target population, including design and development of prototypes and processes.

Priorities—Development Projects for Stabilizing and Improving Lives of Persons With Disabilities

Background

On May 17, 2002, we published in the **Federal Register** (67 FR 35417–35419) a notice inviting written comments suggesting priorities for research centers and projects administered by NIDRR under title II of the Act. Individuals were encouraged to suggest research centers and projects consistent with the Plan and that support the NFI.

We received many suggestions. The purpose of this notice of proposed priorities is to present two development topics from public suggestions. These topics are for development activities under the DRRP program.

We propose priorities for development that will alleviate problems and challenges faced by people with disabilities as they seek improved life outcomes. These priorities share the goal of developing new materials, devices, systems, or methods to improve the inclusion and participation of individuals with disabilities in their families and communities. We propose two topics with the knowledge that we may not issue final priorities nor make awards in both areas.

Letters of Intent

Due to the open nature of this competition, NIDRR is requiring all potential applicants to submit a Letter of Intent (LOI). Each LOI must be limited to a maximum of four pages and must include the following information: (1) The title of the proposed DRRP, the name of the host institution, the name of the Principal Investigator (PI), and the names of partner institutions and entities; (2) a brief statement of the vision, goals, and objectives of the proposed DRRP and a description of its research and development activities at a sufficient level of detail to allow potential peer reviewers to be selected; (3) a list of proposed DRRP staff including the center Director and key

personnel; and (4) a list of individuals whose selection as a peer reviewer might constitute a conflict of interest due to involvement in proposal development, selection as an advisory board member, co-PI relationships, etc.

Submission of a LOI is a prerequisite for eligibility to submit an application. The signed, original LOI, or with prior approval an e-mail or facsimile copy, must be received by NIDRR no later than June 9, 2003. Applicants that submit e-mail or facsimile copies must follow up by sending to NIDRR the signed original copy no later than one week after the date the e-mail or facsimile copy was sent. All communications pertaining to the LOI must be sent to: Donna Nangle, U.S. Department of Education, 400 Maryland Avenue, SW., room 3412, Switzer Building, Washington, DC 20202–2645. For further information regarding the LOI requirement, contact Donna Nangle at (202) 205–5880 or by e-mail at: *Donna.Nangle@ed.gov.*

Priorities

The Assistant Secretary proposes to fund one or more DRRPs that will focus on stabilizing and improving lives of persons with disabilities. In carrying out the purposes of the priority, projects awarded under each of the topics, in consultation with the NIDRR project officer, must:

- Coordinate and establish partnerships, as appropriate, with other academic institutions and organizations that are relevant to the project's proposed activities;
- Demonstrate use of culturally appropriate data collection, evaluation, dissemination, training, and development methodologies and significant knowledge of the needs of individuals with disabilities from traditionally underserved populations;
- Involve, as appropriate, individuals with disabilities or their family members, or both in all aspects of development as well as in design of clinical services and dissemination activities;
- Demonstrate how the project will yield measurable results for people with disabilities;
- Identify specific performance targets and propose outcome indicators, along with time lines to reach these targets; and
- Disseminate findings on products and technologies to appropriate audiences, including information on best practices, where applicable.

An applicant must propose development activities and dissemination of findings under one of the following topics:

(a) *Voting Access and Privacy.* This project must develop technologies, strategies, and approaches that can be used to improve and expand access, including physical accessibility, to voting accurately, independently, and privately for all citizens with disabilities. Voting is a citizen's most basic right. Yet many individuals with disabilities find it difficult, if not impossible, to vote without a poll worker's or another individual's assistance. Development products may address, but are not limited to, voting apparatus, accommodations information, training materials (*i.e.*, books, guidelines, electronic materials) for public elections officials and citizens, and cost analysis and evaluation of products and technologies to enhance voting access for citizens with disabilities. The reference for this topic can be found in the Plan, Chapter 5, Technology for Access and Function: Research to Improve Accessibility of Telecommunications and Information Technology.

(b) *Technologies for Families and Caregivers.* This project must develop technologies, strategies, and approaches that will facilitate and improve the continuum of activities and reduce the demands involved in care giving for individuals with disabilities. The upsurge of programs such as "Long-Term Care" and "Home-Health Care" has stimulated the need for tools and strategies that enable individuals with disabilities to live longer and more productively in their communities. New and improved technologies for care giving will help implement the *Supreme Court's Olmstead* v. *L.C.* decision. Development products may address, but are not limited to, evaluation and assessment of existing technology solutions, accommodations information, training materials (*i.e.*, books, guidelines, electronic materials) for public officials and citizens, and cost analysis and evaluation of products and technologies to enhance community integration, personal assistance services, and independent living for citizens with disabilities. The reference for this topic can be found in the Plan, Chapter 5, Technology for Access and Function: Assistive Technology for Individuals.

Executive Order 12866

This notice of proposed priorities has been reviewed in accordance with Executive Order 12866. Under the terms of the order, we have assessed the potential costs and benefits of this regulatory action.

The potential costs associated with the notice of proposed priorities are those resulting from statutory requirements and those we have determined as necessary for administering this program effectively and efficiently.

In assessing the potential costs and benefits—both quantitative and qualitative—of this notice of proposed priorities, we have determined that the benefits of the proposed priorities justify the costs.

Summary of potential costs and benefits: The potential cost associated with these proposed priorities is minimal while the benefits are significant. Grantees may anticipate costs associated with completing the application process in terms of staff time, copying, and mailing or delivery. The use of e-Application technology reduces mailing and copying costs significantly.

The benefits of the DRRP Program have been well established over the years that similar projects have been completed. These proposed priorities will generate new knowledge through development to focus on stabilizing and improving lives of persons with disabilities.

The benefit of these proposed priorities and proposed applications and project requirements will be the establishment of new DRRP projects that generate, disseminate, and promote the use of new information that will improve the options for disable individuals to perform regular activities in the community.

Applicable Program Regulations: 34 CFR part 350.

Electronic Access to This Document

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To use PDF you must have Adobe Acrobat Reader, which is available free at this site. If you have questions about using PDF, call the U.S. Government Printing Office (GPO), toll free, at 1–888–293–6498; or in the Washington, DC, area at (202) 512–1530.

Note: The official version of this document is published in the **Federal Register**. Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available on GPO Access at: *http://www.access.gpo.gov/nara/index.html.*

(Catalog of Federal Domestic Assistance Number 84.133A, Disability Rehabilitation Research Project)

Program Authority: 29 U.S.C. 762(g) and 764(a).

Dated: May 6, 2003.

Robert H. Pasternack,

Assistant Secretary for Special Education and Rehabilitative Services.

[FR Doc. 03–11624 Filed 5–8–03; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

RIN 1820 ZA25

National Institute on Disability and Rehabilitation Research

AGENCY: Office of Special Education and Rehabilitative Services, Department of Education.

ACTION: Notice of proposed priority.

SUMMARY: The Assistant Secretary proposes a priority for Research Infrastructure Capacity Building under the Disability and Rehabilitation Research Projects (DRRP) Program under the National Institute on Disability and Rehabilitation Research (NIDRR). The Assistant Secretary may use this priority for competitions in fiscal year (FY) 2003 and later years. We take this action to focus research attention on an identified national need. We intend this priority to improve rehabilitation services and outcomes for individuals with disabilities.

DATES: We must receive your comments on or before June 9, 2003.

ADDRESSES: Address all comments about this proposed priority to Donna Nangle, U.S. Department of Education, 400 Maryland Avenue, SW., room 3412, Switzer Building, Washington, DC 20202–2645. If you prefer to send your comments through the Internet, use the following address: *donna.nangle@ed.gov.*

FOR FURTHER INFORMATION CONTACT: Donna Nangle. Telephone: (202) 205–5880.

If you use a telecommunications device for the deaf (TDD), you may call the TDD number at (202) 205–4475 or via the Internet: *donna.nangle@ed.gov.*

Individuals with disabilities may obtain this document in an alternative format (*e.g.*, Braille, large print, audiotape, or computer diskette) on request to the contact person listed under **FOR FURTHER INFORMATION CONTACT.**

SUPPLEMENTARY INFORMATION:

Invitation To Comment

We invite you to submit comments regarding this proposed priority.

We invite you to assist us in complying with the specific requirements of Executive Order 12866 and its overall requirement of reducing regulatory burden that might result from this proposed priority. Please let us know of any further opportunities we should take to reduce potential costs or increase potential benefits while preserving the effective and efficient administration of the program.

During and after the comment period, you may inspect all public comments about this priority in Room 3412, Switzer Building, 330 C Street SW., Washington, DC, between the hours of 8:30 a.m. and 4 p.m., Eastern time, Monday through Friday of each week except Federal holidays.

Assistance to Individuals With Disabilities in Reviewing the Rulemaking Record

On request, we will supply an appropriate aid, such as a reader or print magnifier, to an individual with a disability who needs assistance to review the comments or other documents in the public rulemaking record for this proposed priority. If you want to schedule an appointment for this type of aid, please contact the person listed under **FOR FURTHER INFORMATION CONTACT.**

We will announce the final priority in a notice in the **Federal Register.** we will determine the final priority after considering responses to this notice and other information available to the Department. This notice does not preclude us from proposing or funding additional priorities, subject to meeting applicable rulemaking requirements.

Note: This notice does *not* solicit applications. In any year in which we choose to use this proposed priority, we invite applications through a notice published in the **Federal Register**. When inviting applications we designate each priority as absolute, competitive preference, or invitational. The effect of each type of priority follows:

Absolute priority: Under an absolute priority, we consider only applications that meet the priority (34 CFR 75.105(c)(3)).

Competitive preference priority: Under a competitive preference priority, we give competitive preference to an application by either (1) awarding additional points, depending on how well or the extent to which the application meets the priority (34 CFR 75.105(c)(2)(i)); or (2) selecting an application that meets the competitive priority over an application of comparable merit that does not meet the competitive priority (34 CFR 75.105(c)(2)(ii)).

Invitational priority: Under an invitational priority, we are particularly interested in applications that meet the invitational priority. However, we do not give an application that meets the priority a competitive or absolute preference over other applications (34 CFR 75.105(c)(1)).

Note: NIDRR supports the goals of President Bush's New Freedom Initiative (NFI). The NFI can be accessed on the Internet at the following site: *http://www.whitehouse.gov/news/freedominitiative/freedominitiative.html.*

The proposed priority is in concert with NIDRR's Long-Range Plan (the Plan). The Plan is comprehensive and integrates many issues relating to disability and rehabilitation research topics. While applicants will find many sections throughout the Plan that support potential research to be conducted under this proposed priority, a specific reference is included for the topic presented in this notice. The Plan can be accessed on the Internet at the following site: *http://www.ed.gov/offices/OSERS/NIDRR/Products.*

Through the implementation of the Plan, NIDRR seeks to: (1) Improve the quality and utility of disability and rehabilitation research; (2) foster an exchange of expertise, information, and training to facilitate the advancement of knowledge and understanding of the unique needs of traditionally underserved populations; (3) determine best strategies and programs to improve rehabilitation outcomes for underserved populations; (4) identify research gaps; (5) identify mechanisms of integrating research and practice; and (6) disseminate findings.

Disability and Rehabilitation Research Projects (DRRP) Program

The purpose of the DRRP Program is to plan and conduct research, demonstration projects, training, and related activities that help to maximize the full inclusion and integration of individuals with disabilities into society and to improve the effectiveness of services authorized under the Rehabilitation Act of 1973, as amended (the Act). An applicant for assistance under this program must demonstrate in its application how it will address, in whole or in part, the needs of individuals with disabilities from minority backgrounds (34 CFR 350.40(a)). The approaches an applicant may take to meet this requirement may include one or more of the following (34 CFR 350.40(b)):

(1) Proposing project objectives addressing the needs of individuals with disabilities from minority backgrounds.

(2) Demonstrating that the project will address a problem that is of particular significance to individuals with disabilities from minority backgrounds.

(3) Demonstrating that individuals from minority backgrounds will be included in study samples in sufficient numbers to generate information pertinent to individuals with disabilities from minority backgrounds.

(4) Drawing study samples and program participant rosters from populations or areas that include individuals from minority backgrounds.

(5) Providing outreach to individuals with disabilities from minority backgrounds to ensure that they are aware of rehabilitation services, clinical care, or training offered by the project.

(6) Disseminating materials to or otherwise increasing the access to disability information among minority populations.

Priority

Background

This priority supports one DRRP on Research Infrastructure Capacity Building. This DRRP will improve the rehabilitation research infrastructure and rehabilitation services and outcomes for individuals with disabilities from minority populations. Minority population refers to specific race and ethnicity categories. The following race and ethnic categories are applicable for this priority: (1) American Indian or Alaska Native, (2) Asian, (3) Black or African American, (4) Native Hawaiian or Other Pacific Islander, and (5) Hispanic or Latino. Definitions and further information about race and ethnic categories is available in the Office of Management and Budget Directive 15 at *http://www.whitehouse.gov/OMB/fedreg/ombdir15.html*.

Minority populations are among the fastest growing racial and ethnic groups in the United States. The U.S. Census Bureau predicts that the American Indian, Asian and Pacific Islander, Black, and Hispanic population will increase to 40 percent of the U.S. population by 2010 and 50 percent by 2050. Additionally, more than 32 million individuals in the U.S. speak a language other than English (latest figures available from the U.S. Census Bureau). Currently, about 10.4 percent of the U.S. population is foreign-born; by the year 2050, this figure is likely to rise to approximately 13.3 percent (U.S. Census Bureau, 2000).

Historically, disability disproportionately affects minority racial and ethnic populations. The changing demographic profile of the U.S. will potentially increase the demand for a disability and rehabilitation community that is better prepared to address the needs of a more ethnically, racially, culturally, and linguistically diverse population.

Language barriers and lack of understanding about cultural values and beliefs are challenges that may impact access to services, rehabilitation outcomes, and research activities. Additionally, traditional theories and methodologies may ignore the unique characteristics and needs of minority populations and be ineffective for conducting research activities, disseminating research findings, and fostering the participation of minority racial and ethnic populations in research activities. Research activities are often challenged by methodological issues, particularly questions about the use of specific research approaches within certain cultural contexts.

NIDRR is interested in funding activities focused on high quality research that will assist with further development of the research infrastructure, particularly activities that expand research approaches for scientific inquiry of relevant variables to improve understanding of the needs of minority populations, including issues of race, ethnicity, and cultural context; improve our understanding about rehabilitation outcomes, and the disparate rate of disability in minority racial and ethnic populations; and assist with development of innovative methods for establishing collaborative research partnerships.

Proposed Priority—Research Infrastructure Capacity Building

The Assistant Secretary proposes to fund one DRRP that will focus on a research, development, and dissemination project on Research Infrastructure Capacity Building. The reference for this topic can be found in the Plan, Chapter 9, Capacity Building: Priorities in Capacity Building. In carrying out this purpose the DRRP must:

(1) Develop and evaluate an innovative method(s) for establishing long-term collaborative research partnerships, with an emphasis on relationships between minority entities, Indian tribes, and nonminority entities;

(2) Research, develop, and evaluate strategies to assess the efficacy of existing research theories, methodologies, and measures for studying and describing underrepresented individuals with disabilities from minority racial and ethnic populations and their needs;

(3) Research, identify and modify or develop, and evaluate scientifically valid measurement strategies and methodologies for research involving the study of underrepresented minority racial and ethnic populations; determine their efficacy; and examine the implications of introducing newly developed approaches designed specifically for the study of this population;

(4) Develop and evaluate research principles or standards for culturally appropriate and linguistically competent disability and rehabilitation research, and disseminate guidelines; and

(5) Develop, implement, and evaluate approaches for disseminating research findings, information about best practices for research involving underrepresented minority race and ethnic populations, and information about research collaboration.

In carrying out the purposes of the priority, the DRRP must:

- In the first three months of the grant, develop and implement a research partnership plan ensuring that all activities are predominantly focused on research infrastructure capacity building and provide for mutual benefit for each member of the partnership, including persons with disabilities or their representatives;
- In the first year of the grant, implement a plan to disseminate research results;
- In the third year of the grant, conduct a state-of-the-science conference focused on the funded area of research and related topics;
- In the fourth year of the grant, publish and disseminate a comprehensive report on the outcomes and proceedings of the conference;
- Demonstrate how the research project can transfer research findings to practical applications in planning, policy-making, program administration, and delivery of services to individuals with disabilities; and
- Conduct ongoing program evaluation and produce a closing report describing research outcomes, as they relate to the research goals and objectives, and future directions for research infrastructure development and capacity building.

Executive Order 12866

This notice of proposed priority has been reviewed in accordance with Executive Order 12866. Under the terms of the order, we have assessed the potential costs and benefits of this regulatory action.

The potential costs associated with the notice of proposed priority are those resulting from statutory requirements and those we have determined as necessary for administering this program effectively and efficiently.

In assessing the potential costs and benefits—both quantitative and qualitative—of this notice of proposed priority, we have determined that the benefits of the proposed priority justify the costs.

Summary of potential costs and benefits: The potential cost associated with this proposed priority is minimal while the benefits are significant. Grantees may anticipate costs associated with completing the application process in terms of staff time, copying, and mailing or delivery. The use of e-Application technology reduces mailing and copying costs significantly.

The benefits of the research infrastructure capacity building projects have been well established over the years in that similar projects have been completed. This proposed priority will generate new knowledge through a dissemination, utilization, training, and technical assistance project.

The benefit of this proposed priority and proposed applications and project requirements will be the establishment of a new DRRP projects that generates, disseminates, and promotes the use of new information that will improve the options for disable individuals to perform regular activities in the community.

Applicable Program Regulations: 34 CFR part 350.

Electronic Access to This Document

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(Catalog of Federal Domestic Assistance Number 84.133A, Disability Rehabilitation Research Project.)

Program Authority: 29 U.S.C. 762(g) and 764(a).

Dated: May 6, 2003.

Robert H. Pasternack,

Assistant Secretary for Special Education and Rehabilitative Services.

[FR Doc. 03–11625 Filed 5–8–03; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

RIN 1820–ZA23

National Institute on Disability and Rehabilitation Research

AGENCY: Office of Special Education and Rehabilitative Services, Department of Education.

ACTION: Notice of proposed priorities.

SUMMARY: The Assistant Secretary for Special Education and Rehabilitative Services proposes priorities for up to seven awards under the Rehabilitation Research and Training Centers (RRTC) Program under the National Institute on Disability and Rehabilitation Research (NIDRR). The Assistant Secretary may use these priorities for competition in fiscal year (FY) 2003 and later years. We take this action to focus research attention on areas of national need. We intend these priorities to improve the rehabilitation services and outcomes for individuals with disabilities.

DATES: We must receive your comments on or before June 9, 2003.

ADDRESSES: Address all comments about these proposed priorities to Donna Nangle, U.S. Department of Education, 400 Maryland Avenue, SW., room 3412, Switzer Building, Washington, DC 20202–2645. If you prefer to send your comments through the Internet, use the following address: *donna.nangle@ed.gov*.

FOR FURTHER INFORMATION CONTACT: Donna Nangle. Telephone: (202) 205–5880.

If you use a telecommunications device for the deaf (TDD), you may call the TDD number at (202) 205–4475 or via the Internet: *donna.nangle@ed.gov*.

Individuals with disabilities may obtain this document in an alternative format (e.g., Braille, large print, audiotape, or computer diskette) on request to the contact person listed under **FOR FURTHER INFORMATION CONTACT**.

SUPPLEMENTARY INFORMATION:

Invitation To Comment

We invite you to submit comments regarding these proposed priorities.

We invite you to assist us in complying with the specific requirements of Executive Order 12866 and its overall requirement of reducing regulatory burden that might result from these proposed priorities. Please let us know of any further opportunities we should take to reduce potential costs or increase potential benefits while preserving the effective and efficient administration of the program.

During and after the comment period, you may inspect all public comments about these priorities in Room 3412, Switzer Building, 330 C Street SW., Washington, DC, between the hours of 8:30 a.m. and 4 p.m., Eastern time, Monday through Friday of each week except Federal holidays.

Assistance to Individuals With Disabilities in Reviewing the Rulemaking Record

On request, we will supply an appropriate aid, such as a reader or print magnifier, to an individual with a disability who needs assistance to review the comments or other documents in the public rulemaking record for these proposed priorities. If you want to schedule an appointment for this type of aid, please contact the person listed under **FOR FURTHER INFORMATION CONTACT**.

We will announce the final priorities in a notice in the **Federal Register**. We will determine the final priorities after considering responses to this notice and other information available to the Department. This notice does not preclude us from proposing or funding additional priorities, subject to meeting applicable rulemaking requirements.

Note: This notice does *not* solicit applications. In any year in which we choose to use these proposed priorities, we invite applications through a notice published in the **Federal Register**. When inviting applications we designate each priority as absolute, competitive preference, or invitational. The effect of each type of priority follows:

Absolute priority: Under an absolute priority, we consider only applications that meet the priority (34 CFR 75.105(c)(3)).

Competitive preference priority: Under a competitive preference priority, we give competitive preference to an application by either (1) awarding additional points, depending on how well or the extent to which the application meets the priority (34 CFR 75.105(c)(2)(i)); or (2) selecting an application that meets the competitive priority over an application of comparable merit that does not meet the competitive priority (34 CFR 75.105(c)(2)(ii)).

Invitational priority: Under an invitational priority, we are particularly interested in applications that meet the invitational priority. However, we do not give an application that meets the priority a competitive or absolute preference over other applications (34 CFR 75.105(c)(1)).

Note: NIDRR supports the goals of President Bush's New Freedom Initiative (NFI). The NFI can be accessed on the Internet at the following site: *http://www.whitehouse.gov/news/freedominitiative/freedominitiative.html*.

These proposed priorities are in concert with NIDRR's Long-Range Plan (the Plan). The Plan is comprehensive

and integrates many issues relating to disability and rehabilitation research topics. While applicants will find many sections throughout the Plan that support potential research to be conducted under these proposed priorities, a specific reference is included for the topic presented in this notice. The Plan can be accessed on the Internet at the following site: *http://www.ed.gov/offices/OSERS/NIDRR/Products.*

Through the implementation of the Plan, NIDRR seeks to: (1) Improve the quality and utility of disability and rehabilitation research; (2) foster an exchange of expertise, information, and training to facilitate the advancement of knowledge and understanding of the unique needs of traditionally underserved populations; (3) determine best strategies and programs to improve rehabilitation outcomes for underserved populations; (4) identify research gaps; (5) identify mechanisms of integrating research and practice; and (6) disseminate findings.

Rehabilitation Research and Training Centers

We may make awards for up to 60 months to institutions of higher education or providers of rehabilitation or other appropriate services. RRTCs conduct coordinated and integrated advanced programs of research targeted toward the production of new knowledge to improve rehabilitation methodology and service delivery systems, alleviate or stabilize disability conditions, or promote maximum social and economic independence for persons with disabilities. Additional information on the RRTC program can be found at: *http://www.ed.gov/officers/OSERS/NIDRR/Programs/res_program.html#RRTC.*

General Requirements of Rehabilitation Research and Training Centers

RRTCs must:

- Carry out coordinated advanced programs of rehabilitation research;
- Provide training, including graduate, pre-service, and in-service training to help rehabilitation personnel more effectively provide rehabilitation services to individuals with disabilities;
- Provide technical assistance to individuals with disabilities, their representatives, providers, and other interested parties;
- Disseminate informational materials to individuals with disabilities, their representatives, providers, and other interested parties;
- Serve as centers for national excellence in rehabilitation research for individuals with disabilities, their representatives, providers, and other interested parties; and
- Involve individuals with disabilities and individuals from minority backgrounds as recipients of research as well as training.

The Department is particularly interested in ensuring that the expenditure of public funds is justified by the execution of intended activities and the advancement of knowledge and, thus, has built this accountability into the selection criteria. Not later than three years after the establishment of any RRTC, NIDRR will conduct one or more reviews of the activities and achievements of the Center. In accordance with the provisions of 34 CFR 75.253(a), continued funding depends at all times on satisfactory performance and accomplishment.

Priorities

Background

The following categories represent areas of NIDRR interest based on prior investment, recommendations from constituencies, and opportunities for continued advancement in rehabilitation treatment and support of community integration efforts. Basic incidence and prevalence data are provided for each of the proposed Health and Function RRTCs.

There are increasing numbers of individuals aging with disability in the United States. As reported in Chapter Six of Healthy People 2010, from 1990 to 1994, disability rates increased in youth under the age of 18 as well as in the age group between 18 and 44. Advances in medical science, technology, rehabilitation treatment, public health, and consumer education have resulted in increased life expectancies for individuals with significant physical disabilities. In addition, the absolute number of persons aged 65 or older living with disabilities also increased.

There are approximately 10,000 new cases of spinal cord injury (SCI) each year; the prevalence of SCI is estimated to be between 183,000 and 230,000. Although medical advances have improved the probability of surviving SCI, the life expectancy of individuals with SCI is lower than that of the general population. People living with SCI continue to be at higher risk than the general population for secondary disabilities such as pressure ulcers, respiratory complications, urinary tract infections (UTIs), pain, depression, and obesity.

An estimated 5.3 million Americans currently live with disabilities resulting from traumatic brain injury (TBI). The Centers for Disease Control (CDC) estimate that approximately 80,000 Americans experience the onset of disabilities resulting from TBI each year. As stated in the 1998 National Institute of Health (NIH) Consensus Conference Proceedings, "TBI may result in lifelong impairment of an individual's physical, cognitive, and psychosocial functioning." Among children up to age 14, TBI results annually in an estimated 3,000 deaths, 29,000 hospitalizations, and 400,000 emergency department visits. The long-term consequences of these occurrences are not well documented. A working group convened by the National Center for Injury Prevention and Control at the CDC in October, 2000, called for more research on patterns of recovery, secondary conditions, effectiveness of treatment, and issues of measurement for this population.

Neuromuscular diseases affect approximately 400,000 children and adults in the U.S. Neuromuscular disease is a classification category that describes diseases of the peripheral neuromuscular system, both acquired and hereditary. This category encompasses diseases such as amyotrophic lateral sclerosis, post-polio, Guillan-Barre, muscular dystrophy, myasthenia gravis, and other muscular atrophies and myopathies. Conditions associated with these disorders include progressive weakness, limb contractures, spine deformity, and impaired pulmonary function.

New or recurrent stroke affects approximately 600,000 people each year in the U.S., the majority of whom (72 percent) are 65 or older. Approximately 84 percent of these events are first attacks, while the remaining 16 percent are recurrent episodes. Stroke is the leading diagnosis for individuals treated in medical rehabilitation facilities in the U.S. In addition, there are approximately 4.4 million stroke survivors living in the U.S.

Arthritis affects approximately 43 million Americans, which is about 1 of every 6 people, making it one of the most common disease groups in the U.S. In addition, as the U.S. population ages, the number of Americans with arthritis is expected to increase to 60 million persons by 2020. Arthritis is also the leading cause of disability among adults in America, with more than 7 million persons in our population reporting daily limitations in their activities due to arthritis.

Approximately 300,000 individuals in the U.S. have multiple sclerosis (MS), an autoimmune disease that affects the central nervous system when the white matter protecting the nerve fibers is damaged. The age of onset peaks between 20 and 30 years. Almost 70 percent of persons exhibit symptoms between the ages of 21 and 40. The life expectancy of persons with MS is essentially normal; however, there may be progressive or recurring and relapsing incidences of symptoms and disability over the life course. Recent pharmacological treatments reduce the progression or frequency of attacks of the symptoms for some people with MS, and other treatments are effective for some manifestations of the disease.

Letters of Intent

Due to the open nature of this competition, NIDRR is requiring all potential applicants to submit a Letter of Intent (LOI). Each LOI must be limited to a maximum of four pages and must include the following information: (1) The title of the proposed RRTC, the name of the host institution, the name of the Principal Investigator (PI), and the names of partner institutions and entities; (2) a brief statement of the vision, goals, and objectives of the proposed RRTC and a description of its research and development activities at a sufficient level of detail to allow NIDRR to select potential peer reviewers; (3) a list of proposed RRTC staff including the center Director and key personnel; and (4) a list of individuals whose selection as a peer reviewer might constitute a conflict of interest due to involvement in proposal development, selection as an advisory board member, co-PI relationships, etc.

Submission of a LOI is a prerequisite for eligibility to submit an application. The signed, original LOI, or with prior approval an email or facsimile copy, must be received by NIDRR no later than June 9, 2003. Applicants that submit email or facsimile copies must follow up by sending to NIDRR the signed original copy no later than one week after the date the e-mail or facsimile copy was sent. All communications pertaining to the LOI must be sent to: Ruth Brannon, U.S. Department of Education, 400 Maryland Avenue, SW., room 3425, Switzer Building, Washington, DC 20202–2645. For further information regarding the LOI requirement, contact Ruth Brannon at (202) 358–2971 or by e-mail at: *ruth.brannon@ed.gov.*

Proposed Priorities

The Assistant Secretary proposes to fund up to seven RRTCs that will focus on rehabilitation to improve the health and function of persons with disabilities and thus to improve their ability to live in the community. Each RRTC must:

(1) Identify, develop, and evaluate rehabilitation techniques to address its respective area of research and improve outcomes for its designated population group;

(2) Develop, implement, and evaluate a comprehensive plan for training critical stakeholders, *e.g.*, consumers/family members, practitioners, service providers, researchers, and policymakers;

(3) Provide technical assistance, as appropriate, to critical stakeholders, (*e.g.*, consumers/family members, practitioners, and service providers) to facilitate utilization of research findings in its respective area of research; and

(4) Develop a systematic plan for widespread dissemination of informational materials based on knowledge gained from the Center's research activities, and disseminate the materials to persons with disabilities, their representatives, service providers, and other interested parties.

In addition to the activities proposed by the applicant to carry out these purposes, each RRTC must:

- Conduct a state-of-the-science conference on its respective area of research in the third year of the grant cycle and publish a comprehensive report on the final outcomes of the conference in the fourth year of the grant cycle. This conference must include materials from experts internal and external to the center;
- Coordinate on research projects of mutual interest with relevant NIDRR-funded projects as identified through consultation with the NIDRR project officer;
- Involve individuals with disabilities in planning and implementing its research, training, and dissemination activities, and in evaluating the Center;
- Demonstrate in its application how it will address, in whole or in part, the needs of individuals with disabilities from minority backgrounds; and
- Demonstrate how the RRTC project will yield measurable results for people with disabilities;
- Identify specific performance targets and propose outcome indicators, along with time lines to reach these targets; and
- Demonstrate how the RRTC project can transfer research findings to practical applications in planning, policy-making, program administration, and delivery of services to individuals with disabilities.

Each RRTC must focus on one of the following priority topic areas:

(a) *Psycho-social Factors Affecting Individuals Aging with Disability:* This Center must conduct research and training activities that generate new knowledge regarding the psycho-social issues that affect individuals aging with disabilities and the sources of resilience used by this population to cope with or respond to these issues. In an effort to improve long-term outcomes for these individuals, the Center is encouraged to identify or develop and test the effectiveness of interventions that will prevent or minimize the impact of psycho-social issues on the health, activity, and community participation of individuals with disabilities across the life span and promote positive adjustment and improved quality of life. The reference for this topic can be found in the Plan, Chapter 4, Health and Function: Research on Aging with a Disability.

(b) *Secondary Conditions in Rehabilitation of Individuals with Spinal Cord Injury (SCI):* In an effort to improve the general health, well-being, and community integration of individuals with SCI, this Center must conduct research and training activities to enhance knowledge regarding treatment or prevention strategies or both that address the wide array of secondary conditions associated with SCI, including, but not limited to, respiratory complications, urinary tract infections, pressure ulcers, pain, obesity, and depression. The reference for this topic can be found in the Plan, Chapter 4, Health and Function: Research on Secondary Conditions.

(c) *Community Integration of Individuals With Traumatic Brain Injury (TBI):* This Center must identify, assess, and evaluate current and emerging community integration needs of individuals with TBI, including but not limited to mild TBI. The Center should consider the impact of secondary conditions on community integration outcomes as well as the role of assistive devices and other technology. In addition, this Center must develop and evaluate a comprehensive plan to facilitate the translation of new knowledge into rehabilitation practice and the delivery of community-based services. The reference for this topic can be found in the Plan, Chapter 4, Health and Function: Research on Aging with a Disability.

(d) *Rehabilitation of Individuals with Neuromuscular Diseases:* This Center must conduct research that addresses rehabilitation needs, particularly related to exercise, nutrition, and pain, of individuals with neuromuscular diseases. In doing this, the Center must identify or develop and evaluate health promotion and wellness programs to enhance recreational opportunities for individuals with neuromuscular

diseases. This Center must identify, develop as appropriate, and evaluate devices and other technology that improve employment and community integration outcomes for this population of individuals with disabilities. The reference for this topic can be found in the Plan, Chapter 4, Health and Function: Research on Progressive and Degenerative Disease Rehabilitation.

(e) *Rehabilitation of Stroke Survivors:* This Center must conduct research to develop rehabilitation interventions that improve rehabilitation, employment, and community integration outcomes of stroke survivors, including young stroke survivors. Such interventions may include robotics, complementary alternative therapies, and universal design methodologies aimed at improving the utility of workplace tools and devices. This Center must explore the cost-effectiveness of stroke rehabilitation treatments, such as group model approaches. The reference for this topic can be found in the Plan, Chapter 4, Health and Function: Research on Trauma Rehabilitation.

(f) *Rehabilitation of Individuals with Arthritis:* This Center must address national goals to reduce pain and disability, improve physical fitness and quality of life, and promote independent living and community integration for persons with arthritis of all ages in the United States. This Center must research the benefits of exercise and physical fitness; home and community-based self-management programs; and technologies available to the broad populations of persons with arthritis in the environments where they live, learn, work, and play. The reference for this topic can be found in the Plan, Chapter 4, Health and Function: Research on Progressive and Degenerative Disease Rehabilitation.

(g) *Rehabilitation of Children with Traumatic Brain Injury (TBI):* This Center must identify, assess, and evaluate current and emerging rehabilitation needs for children and adolescents with TBI. In doing this, the Center must document patterns of recovery, determining the effectiveness of current outcome measures for this population. Of particular interest will be evaluation of interventions and technologies, including specialized support services, to assist families and caregivers with transition to the school and the community. This RRTC must identify or develop effective rehabilitation strategies to improve outcomes for children and adolescents with TBI at all stages of rehabilitation. The reference for this topic can be found in the Plan, Chapter 4, Health and Function: Research on Trauma Rehabilitation.

(h) *Rehabilitation of Individuals with Multiple Sclerosis (MS):* This Center must conduct research to maximize the participation of people with MS, including those with all levels of symptoms associated with the disease, at home, in the community, and while working or learning. In doing so, the Center must identify, develop as necessary, and evaluate interventions to enhance the independence of people with MS. Those interventions must include strategies and programs that address interactions between cognitive, psychosocial, sensory, mobility, and other manifestations of the disease across the lifespan. The Center must consider the role of assistive and universally designed technologies, strategic goals, and financial planning for persons with MS, and the role of caregivers throughout the disease course. The reference for this topic can be found in the Plan, Chapter 4, Health and Function: Research on Progressive and Degenerative Disease Rehabilitation.

Executive Order 12866

This notice of proposed priorities has been reviewed in accordance with Executive Order 12866. Under the terms of the order, we have assessed the potential costs and benefits of this regulatory action.

The potential costs associated with the notice of proposed priorities are those resulting from statutory requirements and those we have determined as necessary for administering this program effectively and efficiently.

In assessing the potential costs and benefits—both quantitative and qualitative—of this notice of proposed priorities, we have determined that the benefits of the proposed priorities justify the costs.

Summary of potential costs and benefits: The potential cost associated with these proposed priorities is minimal while the benefits are significant. Grantees may anticipate costs associated with completing the application process in terms of staff time, copying, and mailing or delivery. The use of e-Application technology reduces mailing and copying costs significantly.

The benefits of the Rehabilitation Research and Training Center Program have been well established over the years in that similar projects have been completed. These proposed priorities will generate new knowledge through a research, dissemination, utilization, training, and technical assistance projects.

The benefit of these proposed priorities and proposed applications and project requirements will be the establishment of a new RRTCs that generate, disseminate, and promote the use of new information that will improve the options for disabled individuals to perform regular activities in the community.

Applicable Program Regulations: 34 CFR part 350.

Electronic Access to This Document

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To use PDF you must have Adobe Acrobat Reader, which is available free at this site. If you have questions about using PDF, call the U.S. Government Printing Office (GPO), toll free, at 1–888–293–6498; or in the Washington, DC, area at (202) 512–1530.

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(Catalog of Federal Domestic Assistance Number: 84.133B, Rehabilitation Research and Training Center Program)

Program Authority: 29 U.S.C. 762(g) and 764(b)(2).

Dated: May 6, 2003.

Robert H. Pasternack,

Assistant Secretary for Special Education and Rehabilitative Services.

[FR Doc. 03–11626 Filed 5–8–03; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

RIN 1820 ZA17

National Institute on Disability and Rehabilitation Research

AGENCY: Office of Special Education and Rehabilitative Services, Department of Education.

ACTION: Notice of proposed priorities.

SUMMARY: The Assistant Secretary for Special Education and Rehabilitative Services proposes priorities for one or more research projects under the Disability and Rehabilitation Research Projects (DRRP) Program under the National Institute on Disability and Rehabilitation Research (NIDRR). The Assistant Secretary may use these priorities for competitions in fiscal year (FY) 2003 and later years. We take this action to focus research attention on identified national needs. We intend these priorities to improve rehabilitation services and outcomes for individuals with disabilities.

DATES: We must receive your comments on or before June 9, 2003.

ADDRESSES: Address all comments about these proposed priorities to Donna Nangle, U.S. Department of Education, 400 Maryland Avenue, SW., room 3412, Switzer Building, Washington, DC 20202–2645. If you prefer to send your comments through the Internet, use the following address: *donna.nangle@ed.gov.*

FOR FURTHER INFORMATION CONTACT: Donna Nangle. Telephone: (202) 205–5880.

If you use a telecommunications device for the deaf (TDD), you may call the TDD number at (202) 205–4475 or via the Internet: *donna.nangle@ed.gov.*

Individuals with disabilities may obtain this document in an alternative format (*e.g.*, Braille, large print, audiotape, or computer diskette) on request to the contact person listed under **FOR FURTHER INFORMATION CONTACT.**

SUPPLEMENTARY INFORMATION:

Invitation To Comment

We invite you to submit comments regarding these proposed priorities.

We invite you to assist us in complying with the specific requirements of Executive Order 12866 and its overall requirement of reducing regulatory burden that might result from these proposed priorities. Please let us know of any further opportunities we should take to reduce potential costs or increase potential benefits while preserving the effective and efficient administration of the program.

During and after the comment period, you may inspect all public comments about these priorities in Room 3412, Switzer Building, 330 C Street, SW., Washington, DC, between the hours of 8:30 a.m. and 4 p.m., eastern time, Monday through Friday of each week except Federal holidays.

Assistance to Individuals With Disabilities in Reviewing the Rulemaking Record

On request, we will supply an appropriate aid, such as a reader or print magnifier, to an individual with a disability who needs assistance to review the comments or other documents in the public rulemaking record for these proposed priorities. If you want to schedule an appointment for this type of aid, please contact the person listed under **FOR FURTHER INFORMATION CONTACT.**

We will announce the final priorities in a notice in the **Federal Register**. We will determine the final priorities after considering responses to this notice and other information available to the Department. This notice does not preclude us from proposing or funding additional priorities, subject to meeting applicable rulemaking requirements.

Note: This notice does *not* solicit applications. In any year in which we choose to use these proposed priorities, we invite applications through a notice published in the **Federal Register**. When inviting applications we designate each priority as absolute, competitive preference, or invitational. The effect of each type of priority follows:

Absolute priority: Under an absolute priority, we consider only applications that meet the priority (34 CFR 75.105(c)(3)).

Competitive preference priority: Under a competitive preference priority, we give competitive preference to an application by either (1) awarding additional points, depending on how well or the extent to which the application meets the priority (34 CFR 75.105(c)(2)(i)); or (2) selecting an application that meets the competitive priority over an application of comparable merit that does not meet the competitive priority (34 CFR 75.105(c)(2)(ii)).

Invitational priority: Under an invitational priority, we are particularly interested in applications that meet the invitational priority. However, we do not give an application that meets the priority a competitive or absolute preference over other applications (34 CFR 75.105(c)(1)).

Note: NIDRR supports the goals of President Bush's New Freedom Initiative (NFI). The NFI can be accessed on the Internet at the following site: *http://www.whitehouse.gov/news/freedominitiative/freedominitiative.html.*

The proposed priorities are in concert with NIDRR's Long-Range Plan (the Plan). The Plan is comprehensive and integrates many issues relating to disability and rehabilitation research topics. While applicants will find many sections throughout the Plan that support potential research to be conducted under these proposed priorities, a specific reference is included for each topic presented in this notice. The Plan can be accessed on the Internet at the following site: *http://www.ed.gov/offices/OSERS/NIDRR/Products.*

Through the implementation of the Plan, NIDRR seeks to: (1) Improve the quality and utility of disability and rehabilitation research; (2) foster an exchange of expertise, information, and training to facilitate the advancement of knowledge and understanding of the unique needs of traditionally underserved populations; (3) determine best strategies and programs to improve rehabilitation outcomes for underserved populations; (4) identify research gaps; (5) identify mechanisms of integrating research and practice; and (6) disseminate findings.

Disability and Rehabilitation Research Projects (DRRP) Program

The purpose of the DRRP program is to plan and conduct research, demonstration projects, training, and related activities that help to maximize the full inclusion and integration of individuals with disabilities into society and to improve the effectiveness of services authorized under the Rehabilitation Act of 1973, as amended (the Act).

An applicant for assistance under this program must demonstrate in its application how it will address, in whole or in part, the needs of individuals with disabilities from minority backgrounds (34 CFR 350.40(a)). The approaches an applicant may take to meet this requirement are found in 34 CFR 350.40(b).

Under the DRRP program, we define a research project as basic or applied (34 CFR 350.5). Research is classified on a continuum from basic to applied:

(1) Basic research is research in which the investigator is concerned primarily with gaining new knowledge or understanding of a subject without reference to any immediate application or utility.

(2) Applied research is research in which the investigator is primarily interested in developing new knowledge, information, or understanding which can be applied to a predetermined rehabilitation problem or need. Applied research builds on selected findings from basic research.

In carrying out a research activity under this program (34 CFR 350.13), a grantee must:

(a) Identify one or more hypotheses; and

(b) Based on the hypotheses identified, perform an intensive systematic study directed toward—

(1) New or full scientific knowledge; or

(2) Understanding of the subject or problem studied.

Priorities

Research Projects for Stabilizing and Improving Lives of Persons with Disabilities

Background

On May 17, 2002, we published in the **Federal Register** (67 FR 35417–35419) a notice inviting written comments suggesting priorities for research centers and projects administered by NIDRR under title II of the Act. Individuals were encouraged to suggest research priorities consistent with the Plan and that support the NFI.

We received many suggestions. The purpose of this notice of proposed priorities is to present multiple research topics from public suggestions as well as related topics from staff analysis of emerging disability needs. All topics are for research activities under the DRRP program.

We propose priorities for applied research that will alleviate problems and challenges faced by people with disabilities as they seek improved life outcomes. These priorities share the goal of developing new knowledge to improve the inclusion and participation of individuals with disabilities in their families, school, or work. Although we are proposing multiple priorities, we may not issue final priorities or make awards in all areas.

Letters of Intent

Due to the open nature of this competition, NIDRR is requiring all potential applicants to submit a Letter of Intent (LOI). Each LOI must be limited to a maximum of four pages and must include the following information: (1) The title of the proposed DRRP, the name of the host institution, the name of the Principal Investigator (PI), and the names of partner institutions and entities; (2) a brief statement of the vision, goals, and objectives of the proposed DRRP and a description of its research and development activities at a sufficient level of detail to allow potential peer reviewers to be selected; (3) a list of proposed DRRP staff including the center Director and key personnel; and (4) a list of individuals whose selection as a peer reviewer might constitute a conflict of interest due to involvement in proposal development, selection as an advisory board member, co-PI relationships, etc.

Submission of a LOI is a prerequisite for eligibility to submit an application. The signed, original LOI, or with prior approval an email or facsimile copy, must be received by NIDRR no later than June 9, 2003. Applicants that submit email or facsimile copies must follow up by sending to NIDRR the signed original copy no later than one week after the date the email or facsimile copy was sent. All communications pertaining to the LOI must be sent to: Donna Nangle, U.S. Department of Education, 400 Maryland Avenue, SW., room 3412, Switzer Building, Washington, DC 20202–2645. For further information regarding the LOI requirement, contact Donna Nangle at (202) 205–5880 or by email at: *Donna.Nangle@ed.gov*.

Priorities

The Assistant Secretary proposes to fund one or more DRRPs that will focus on stabilizing and improving lives of persons with disabilities. In carrying out the purposes of these priorities, projects awarded under each of the topics must, in consultation with the NIDRR project officer:

- Coordinate and establish partnerships, as appropriate, with other academic institutions and organizations that are relevant to the project's proposed activities;
- Demonstrate use of culturally appropriate data collection, evaluation, dissemination, training and research methodologies, and significant knowledge of the needs of individuals with disabilities from traditionally underserved populations;
- Involve, as appropriate, individuals with disabilities or their family members, or both in all aspects of the research as well as in design of clinical services and dissemination activities;
- Demonstrate how the research project can transfer research findings to practical applications in planning, policymaking, program administration, and delivery of services to individuals with disabilities; and
- Disseminate findings to appropriate audiences, including information on best practices, where applicable.

An applicant must propose research activities and dissemination of findings under one of the following topics:

(a) *Self-Determination in Transition to Adulthood for Youth with Disabilities:* This project must conduct research and disseminate information about factors that enhance and promote self-determination for youth with disabilities who are transitioning into adulthood. The project may include research on interventions that (1) enable successful transition to life activities such as independent living, higher education, and employment; and (2) improve functional outcomes such as enhanced memory, learning, visual perception, auditory reception, literacy, and self-advocacy. The reference for this topic can be found in the Plan, chapter 3, Employment Outcomes: Transition from School to Work.

(b) *Examining Violence Against People With Disabilities:* This project must conduct research and disseminate information on violence against persons with disabilities. Activities may include research on statistics related to criminal victimization of people with disabilities compiled under the 1998 Crime Victims with Disabilities Awareness Act (Pub. L. 301–105); study of data from enhanced crime incident reports; and analysis of data and research findings on the impact of violence on specific populations such as, but not limited to, individuals with cognitive or intellectual disabilities, women with disabilities, individuals with sensory disabilities, and individuals with mobility disabilities. The reference for this topic can be found in the Plan, chapter 2, Dimensions of Disability: Emerging Universe of Disability.

(c) *Family and Cultural Aspects of Independent Living:* This project must conduct research and disseminate information on how individuals with disabilities draw upon their families (or those with whom they share living arrangements) to obtain necessary supports such as economic assistance, informal and formal care giving, and emotional nurturing. Activities may include: (1) Identifying factors that help or hinder NFI goals regarding educational attainment, home ownership, and full access in community life; (2) research on ways that family and shared-community living arrangements may facilitate independence and help implement the Supreme Court's *Olmstead* v. *L.C.* ruling; and (3) research on how family and shared-community living arrangements may facilitate meeting the objectives for people with disabilities in Healthy People 2010. The references for this topic can be found in the Plan, chapter 2, Dimensions of Disability: Disability, Employment, and Independent Living and chapter 6, Research on Social Roles.

(d) *Older Women and Falls:* This project must identify and compare outcomes-oriented rehabilitation interventions for older women to overcome the disabilities and secondary conditions associated with falls and to prevent secondary falls and other complications. The project must examine risk factors for falls (*e.g.*, age, disability, medications use, health, functional ability, environmental hazards). The references for this topic can be found in the Plan, chapter 2, Dimensions of Disability: Emerging Universe of Disability and chapter 4, Health and Function: Research on Trauma Rehabilitation; Research on Aging.

(e) *Issues in Asset Accumulation and Tax Policy for People with Disabilities:* This project must conduct research on fiscal and social environmental barriers to economic empowerment and self-sufficiency for people with disabilities and the impact of legislation designed to promote economic self-sufficiency and facilitate community integration. The project must conduct systematic analysis of the relationship between tax policy and asset accumulation for individuals with disabilities and improved economic and community integration outcomes. This includes testing the impact of asset accumulation on economic improvements and community integration for individuals with disabilities. The reference for this topic can be found in the Plan, chapter 3, Employment Outcomes: Economic Policy and Labor Market Trends.

(f) *Identifying Opportunities and Barriers to Entrepreneurship for People with Disabilities:* This project must conduct research on ways to improve employment outcomes of individuals with disabilities through self-employment and entrepreneurial strategies and how to train both people with disabilities and counselors in successful use of these strategies. The research must include analysis of the effects of policies and practices of the vocational rehabilitation system; related programs such as those of the Small Business Administration; and other public, private, or nonprofit employment organizations on self-employment options for individuals with disabilities. The reference for this topic can be found in the Plan, chapter 3, Employment Outcomes: Economic Policy and Labor Market Trends.

Executive Order 12866

This notice of proposed priorities has been reviewed in accordance with Executive Order 12866. Under the terms of the order, we have assessed the potential costs and benefits of this regulatory action.

The potential costs associated with the notice of proposed priorities are those resulting from statutory requirements and those we have determined as necessary for administering this program effectively and efficiently.

In assessing the potential costs and benefits—both quantitative and qualitative—of this notice of proposed priorities, we have determined that the benefits of the proposed priorities justify the costs.

Summary of potential costs and benefits: The potential cost associated with these proposed priorities is minimal while the benefits are significant. Grantees may anticipate costs associated with completing the application process in terms of staff time, copying, and mailing or delivery. The use of e-Application technology reduces mailing and copying costs significantly.

The benefits of the DRRP Program have been well established over the years that similar projects have been completed. These proposed priorities will generate new knowledge through research to focus on stabilizing and improving lives of persons with disabilities.

The benefit of these proposed priorities and proposed applications and project requirements will be the establishment of new DRRP projects that generate, disseminate, and promote the use of new information that will improve the options for disabled individuals to perform regular activities in the community.

Applicable Program Regulations: 34 CFR part 350.

Electronic Access to This Document

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Note: The official version of this document is published in the **Federal Register**. Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available on GPO Access at: *http://www.access.gpo.gov/nara/index.html*.

(Catalog of Federal Domestic Assistance Number 84.133A, Disability Rehabilitation Research Project.)

Program Authority: 29 U.S.C. 762(g) and 764(a).

Dated: May 6, 2003.

Robert H. Pasternack,

Assistant Secretary for Special Education and Rehabilitative Services.

[FR Doc. 03–11627 Filed 5–8–03; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

RIN 1820 ZA19

National Institute on Disability and Rehabilitation Research

AGENCY: Office of Special Education and Rehabilitative Services, Department of Education.

ACTION: Notice of proposed priority.

SUMMARY: The Assistant Secretary for Special Education and Rehabilitative Services proposes a priority for a Technical Assistance Resource Center on Parenting with a Disability under the Disability and Rehabilitation Research Projects (DRRP) Program under the National Institute on Disability and Rehabilitation Research (NIDRR). The Assistant Secretary may use this priority for competitions in fiscal year (FY) 2003 and later years. We take this action to focus research attention on an identified national need. We intend this priority to improve rehabilitation services and outcomes for individuals with disabilities.

DATES: We must receive your comments on or before June 9, 2003.

ADDRESSES: Address all comments about this proposed priority to Donna Nangle, U.S. Department of Education, 400 Maryland Avenue, SW., room 3412, Switzer Building, Washington, DC 20202–2645. If you prefer to send your comments through the Internet, use the following address: *donna.nangle@ed.gov*.

FOR FURTHER INFORMATION CONTACT: Donna Nangle. Telephone: (202) 205–5880.

If you use a telecommunications device for the deaf (TDD), you may call the TDD number at (202) 205–4475 or via the Internet: *donna.nangle@ed.gov*.

Individuals with disabilities may obtain this document in an alternative format (*e.g.*, Braille, large print, audiotape, or computer diskette) on request to the contact person listed under **FOR FURTHER INFORMATION CONTACT.**

SUPPLEMENTARY INFORMATION:

Invitation to Comment

We invite you to submit comments regarding this proposed priority.

We invite you to assist us in complying with the specific requirements of Executive Order 12866 and its overall requirement of reducing regulatory burden that might result from this proposed priority. Please let us know of any further opportunities we should take to reduce potential costs or increase potential benefits while

preserving the effective and efficient administration of the program.

During and after the comment period, you may inspect all public comments about this priority in Room 3412, Switzer Building, 330 C Street, SW., Washington, DC, between the hours of 8:30 a.m. and 4 p.m., eastern time, Monday through Friday of each week except Federal holidays.

Assistance to Individuals With Disabilities in Reviewing the Rulemaking Record

On request, we will supply an appropriate aid, such as a reader or print magnifier, to an individual with a disability who needs assistance to review the comments or other documents in the public rulemaking record for this proposed priority. If you want to schedule an appointment for this type of aid, please contact the person listed under **FOR FURTHER INFORMATION CONTACT.**

We will announce the final priority in a notice in the **Federal Register**. We will determine the final priority after considering responses to this notice and other information available to the Department. This notice does not preclude us from proposing or funding additional priorities, subject to meeting applicable rulemaking requirements.

Note: This notice does *not* solicit applications. In any year in which we choose to use this proposed priority, we invite applications through a notice published in the **Federal Register**. When inviting applications we designate each priority as absolute, competitive preference, or invitational. The effect of each type of priority follows:

Absolute priority: Under an absolute priority, we consider only applications that meet the priority (34 CFR 75.105(c)(3)).

Competitive preference priority: Under a competitive preference priority, we give competitive preference to an application by either (1) awarding additional points, depending on how well or the extent to which the application meets the priority (34 CFR 75.105(c)(2)(i)); or (2) selecting an application that meets the competitive priority over an application of comparable merit that does not meet the competitive priority (34 CFR 75.105(c)(2)(ii)).

Invitational priority: Under an invitational priority, we are particularly interested in applications that meet the invitational priority. However, we do not give an application that meets the priority a competitive or absolute preference over other applications (34 CFR 75.105(c)(1)).

Note: NIDRR supports the goals of President Bush's New Freedom Initiative (NFI). The NFI can be accessed on the Internet at the following site: *http://www.whitehouse.gov/news/freedominitiative/freedominitiative.html.*

The proposed priority is in concert with NIDRR's Long-Range Plan (the Plan). The Plan is comprehensive and integrates many issues relating to disability and rehabilitation research topics. While applicants will find many sections throughout the Plan that support potential research to be conducted under this proposed priority, a specific reference is included for the topic presented in this notice. The Plan can be accessed on the Internet at the following site: *http://www.ed.gov/offices/OSERS/NIDRR/Products.*

Through the implementation of the Plan, NIDRR seeks to: (1) Improve the quality and utility of disability and rehabilitation research; (2) foster an exchange of expertise, information, and training to facilitate the advancement of knowledge and understanding of the unique needs of traditionally underserved populations; (3) determine best strategies and programs to improve rehabilitation outcomes for underserved populations; (4) identify research gaps; (5) identify mechanisms of integrating research and practice; and (6) disseminate findings.

Disability and Rehabilitation Research Projects (DRRP) Program

The purpose of the DRRP Program is to plan and conduct research, demonstration projects, training, and related activities that help to maximize the full inclusion and integration of individuals with disabilities into society and to improve the effectiveness of services authorized under the Rehabilitation Act of 1973, as amended (the Act). An applicant for assistance under this program must demonstrate in its application how it will address, in whole or in part, the needs of individuals with disabilities from minority backgrounds (34 CFR 350.40(a)). The approaches an applicant may take to meet this requirement are found in 34 CFR 350.40(b).

Priority

Background

This DRRP will provide expertise or information to assist people who have disabilities to fulfill their roles as parents. Dissemination is the systematic distribution of information or knowledge through a variety of ways to potential users or beneficiaries. Utilization relates research findings to practical applications in planning, policymaking, program administration, and delivery of services to individuals with disabilities.

NIDRR research addresses many aspects of parenting with a disability. NIDRR projects develop and evaluate assistive devices for use in child care; analyze employment and health care benefits and options to enhance families; assess the impact of public and private policies on parents with a disability; and investigate models of home-based care and positive family roles as community integration strategies. The resource center may provide information and technical assistance on custody, prenatal and neonatal, adoption, adaptive parenting equipment, and general parenting information. Information and technical assistance will assist individuals with a wide range of disabilities including, but not limited to, parents with physical, vision, hearing, intellectual, and behavioral disabilities.

In addition to parents with disabilities and their families, individuals in need of information about parenting with a disability may include advocates and personal care providers (especially those working in independent living); legal, social service, and medical professionals; rehabilitation personnel; teachers and school administrators; librarians and information specialists; and members of the media.

Proposed Priority—Resource and Technical Assistance Center on Parenting with a Disability

The Assistant Secretary proposes to fund one DRRP that will focus a dissemination, utilization, training, and technical assistance project to be a "Resource and Technical Assistance Center on Parenting with a Disability." The references for this topic can be found in the Plan, chapter 2, Dimensions of Disability: Disability, Employment, and Independent Living and chapter 8, Knowledge Dissemination and Utilization: Overview. The DRRP must:

(1) Develop quality standards to guide the identification of information for dissemination;

(2) Provide information and technical assistance to people with disabilities who are or wish to be parents. A variety of methods and tools will be developed to provide information and technical assistance. Tools might include such items as: Catalogues and listings of assistive technology, fact sheets, and articles for publication in various media. Methods to reach interested parties might include: interactive features of the Internet, wide area telephone service, presentations at meetings or conferences and personal visits;

(3) Develop parent-to-parent support methods, including approaches for sharing of information about "best practices" in parenting with a disability;

(4) Train parents, potential parents, service providers and others on issues relating to parenting with a disability and the research, information and services available to them; and

(5) Evaluate project technical assistance and information dissemination activities.

In carrying out the purposes of the priority, the DRRP must:

- Through consultation with the NIDRR project officer, coordinate and establish partnerships, as appropriate, with other projects sponsored by OSERS, academic institutions and organizations that are relevant to the project's proposed activities;
- Demonstrate how the project will yield measurable results for people with disabilities;
- Identify specific performance targets and propose outcome indicators, along with time lines to reach these targets; and
- Using information developed from the project's dissemination, training, and technical assistance activities, with emphasis on materials from NIDRR projects, provide materials, consultation, technical assistance, and related capacity-building activities to NIDRR grantees on how to assist parents with disabilities.

Executive Order 12866

This notice of proposed priority has been reviewed in accordance with Executive Order 12866. Under the terms of the order, we have assessed the potential costs and benefits of this regulatory action.

The potential costs associated with the notice of proposed priority are those resulting from statutory requirements and those we have determined as necessary for administering this program effectively and efficiently.

In assessing the potential costs and benefits—both quantitative and qualitative—of this notice of proposed priority, we have determined that the benefits of the proposed priority justify the costs.

Summary of potential costs and benefits: The potential cost associated with this proposed priority is minimal while the benefits are significant. Grantees may anticipate costs associated with completing the application process in terms of staff time, copying, and mailing or delivery. The use of e-Application technology reduces mailing and copying costs significantly.

The benefits of the Resource and Technical Assistance Center on Parenting with a Disability has been well established over the years in that similar projects have been completed. This proposed priority will generate new knowledge through a dissemination, utilization, training, and technical assistance project.

The benefit of this proposed priority and proposed applications and project requirements will be the establishment of a new DRRP projects that generates, disseminates, and promotes the use of new information that will improve the options for disable individuals to perform regular activities in the community.

Applicable Program Regulations: 34 CFR part 350.

Electronic Access to This Document

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To use PDF you must have Adobe Acrobat Reader, which is available free at this site. If you have questions about using PDF, call the U.S. Government Printing Office (GPO), toll free, at 1–888–293–6498; or in the Washington, DC, area at (202) 512–1530.

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(Catalog of Federal Domestic Assistance Number 84.133A, Disability Rehabilitation Research Project.)

Program Authority: 29 U.S.C. 762(g) and 764(a).

Dated: May 6, 2003.

Robert H. Pasternack,

Assistant Secretary for Special Education and Rehabilitative Services.

[FR Doc. 03–11628 Filed 5–8–03; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

National Institute on Disability and Rehabilitation Research

AGENCY: Office of Special Education and Rehabilitative Services, Department of Education.

ACTION: Notice of proposed priorities.

SUMMARY: The Assistant Secretary for Special Education and Rehabilitative Services proposes funding priorities under the Rehabilitation Research and Training Centers (RRTC) Program for up to four awards for the National Institute on Disability and Rehabilitation Research (NIDRR) for Fiscal Year (FY) 2003 and later years. We take this action to focus research attention on areas of national need. We intend these priorities to improve the rehabilitation services and outcomes for individuals with disabilities.

DATES: We must receive your comments on or before June 9, 2003.

ADDRESSES: Address all comments about these proposed priorities to Donna Nangle, U.S. Department of Education, 400 Maryland Avenue, SW., room 3412, Switzer Building, Washington, DC 20202–2645. If you prefer to send your comments through the Internet, use the following address: *donna.nangle@ed.gov.*

FOR FURTHER INFORMATION CONTACT: Donna Nangle. Telephone: (202) 205–5880.

If you use a telecommunications device for the deaf (TDD), you may call the TDD number at (202) 205–4475 or via the Internet: *donna.nangle@ed.gov.*

Individuals with disabilities may obtain this document in an alternative format (*e.g.*, Braille, large print, audiotape, or computer diskette) on request to the contact person listed under **FOR FURTHER INFORMATION CONTACT.**

SUPPLEMENTARY INFORMATION:

Invitation To Comment

We invite you to submit comments regarding these proposed priorities.

We invite you to assist us in complying with the specific requirements of Executive Order 12866 and its overall requirement of reducing regulatory burden that might result from these proposed priorities. Please let us know of any further opportunities we should take to reduce potential costs or increase potential benefits while preserving the effective and efficient administration of the program.

During and after the comment period, you may inspect all public comments about these priorities in Room 3412, Switzer Building, 330 C Street, SW., Washington, DC, between the hours of 8:30 a.m. and 4 p.m., eastern time, Monday through Friday of each week except Federal holidays.

Assistance to Individuals With Disabilities in Reviewing the Rulemaking Record

On request, we will supply an appropriate aid, such as a reader or print magnifier, to an individual with a disability who needs assistance to review the comments or other

documents in the public rulemaking record for these proposed priorities. If you want to schedule an appointment for this type of aid, please contact the person listed under **FOR FURTHER INFORMATION CONTACT**.

We will announce the final priorities in a notice in the **Federal Register**. We will determine the final priorities after considering responses to this notice and other information available to the Department. This notice does not preclude us from proposing or funding additional priorities, subject to meeting applicable rulemaking requirements.

Note: This notice does *not* solicit applications. In any year in which we choose to use these proposed priorities, we invite applications through a notice published in the **Federal Register**. When inviting applications we designate each priority as absolute, competitive preference, or invitational. The effect of each type of priority follows:

Absolute priority: Under an absolute priority, we consider only applications that meet the priority (34 CFR 75.105(c)(3)).

Competitive preference priority: Under a competitive preference priority, we give competitive preference to an application by either (1) awarding additional points, depending on how well or the extent to which the application meets the priority (34 CFR 75.105(c)(2)(i)); or (2) selecting an application that meets the competitive priority over an application of comparable merit that does not meet the competitive priority (34 CFR 75.105(c)(2)(ii)).

Invitational priority: Under an invitational priority, we are particularly interested in applications that meet the invitational priority. However, we do not give an application that meets the priority a competitive or absolute preference over other applications (34 CFR 75.105(c)(1)).

Note: NIDRR supports the goals of President Bush's New Freedom Initiative (NFI). The NFI can be accessed on the Internet at the following site: *http://www.whitehouse.gov/news/freedominitiative/freedominitiative.html*.

These proposed priorities are in concert with NIDRR's Long-Range Plan (the Plan). The Plan is comprehensive and integrates many issues relating to disability and rehabilitation research topics. While applicants will find many sections throughout the Plan that support potential research to be conducted under these proposed priorities, a specific reference is included for the topic presented in this notice. The Plan can be accessed on the Internet at the following site: *http://www.ed.gov/offices/OSERS/NIDRR/Products*.

Through the implementation of the Plan, NIDRR seeks to: (1) Improve the quality and utility of disability and rehabilitation research; (2) foster an exchange of expertise, information, and training to facilitate the advancement of knowledge and understanding of the unique needs of traditionally underserved populations; (3) determine best strategies and programs to improve rehabilitation outcomes for underserved populations; (4) identify research gaps; (5) identify mechanisms of integrating research and practice; and (6) disseminate findings.

Rehabilitation Research and Training Centers

We may make awards for up to 60 months to institutions of higher education or providers of rehabilitation or other appropriate services. RRTCs conduct coordinated and integrated advanced programs of research targeted toward the production of new knowledge, to improve rehabilitation methodology and service delivery systems, alleviate or stabilize disability conditions, or promote maximum social and economic independence for persons with disabilities. Additional information on the RRTC program can be found at: *http://www.ed.gov/officers/OSERS/NIDRR/Programs/res_program.html#RRTC*.

General Requirements of Rehabilitation Research and Training Centers

RRTCs must:

- Carry out coordinated advanced programs of rehabilitation research;
- Provide training, including graduate, pre-service, and in-service training, to help rehabilitation personnel more effectively provide rehabilitation services to individuals with disabilities;
- Provide technical assistance to individuals with disabilities, their representatives, providers, and other interested parties;
- Disseminate informational materials to individuals with disabilities, their representatives, providers, and other interested parties;
- Serve as centers for national excellence in rehabilitation research for individuals with disabilities, their representatives, providers, and other interested parties; and
- Involve individuals with disabilities and individuals from minority backgrounds as recipients or research as well as training.

The Department is particularly interested in ensuring that the expenditure of public funds is justified by the execution of intended activities and the advancement of knowledge and, thus, has built this accountability into the selection criteria. Not later than three years after the establishment of any RRTC, NIDRR will conduct one or more reviews of the activities and achievements of the Center. In accordance with the provisions of 34 CFR 75.253(a), continued funding depends at all times on satisfactory performance and accomplishment.

Priorities

Background

Community integration (CI) and independent living (IL) are at the heart of NIDRR's mission, which is to develop knowledge that will "improve substantially the options for disabled individuals to perform regular activities in the community, and the capacity of society to provide full opportunities and appropriate supports for its disabled citizens." The Plan, which articulates this mission, emphasizes that community integration is not just about being located physically in the community; it is about full participation, independence, empowerment, choice, and control.

CI and IL are critical components of the new model of disability set forth in the Plan. This model maintains that disability is a product of an interaction between individual characteristics and the characteristics of the natural, built, cultural, and social environments. It incorporates a civil-rights model of disability.

NIDRR's focus on CI follows the stated purpose of IL programs under the Rehabilitation Act. That purpose is "to promote a philosophy of independent living, including a philosophy of consumer control, peer support, self help, self determination, equal access, and individual and system advocacy, in order to maximize the leadership, empowerment, independence, and productivity of individuals with disabilities, and the integration and full inclusion of individuals with disabilities into the mainstream of American society."

The urgent need for CI of individuals with disabilities was made clear during Congressional passage of the Americans with Disabilities Act (ADA). Witnesses testified that when they tried to participate in community life, they experienced exclusion, derision, and a host of architectural, communication, and transportation barriers (S. Report 101–116, Committee on Labor and Human Resources report on S. 933, 101st Congress, 1989).

While great strides have been made since the passage of the ADA in 1990, much more remains to be done. In general, people with disabilities continue to live outside the mainstream of American life. They remain unnecessarily institutionalized. They have lower rates of participation in community life. They have lower educational levels and higher unemployment levels and poverty rates.

The 2000 National Organization on Disability/Lou Harris Survey on Community Integration found that 40 percent of people with severe disabilities are not at all involved in their communities; this is almost double the percentage as people without disabilities.

The NFI expands research on and access to assistive technology (AT); promotes education, homeownership, and employment opportunities for people with disabilities; and emphasizes swift implementation of the ADA and the U.S. Supreme Court's *Olmstead* decision. The *Olmstead* decision holds that title II of the ADA prohibits unjustified isolation or segregation of qualified individuals with disabilities through institutionalization. The President further issued Executive Order 13217, "Community-Based Alternatives for Individuals with Disabilities," which requires Federal agencies to implement *Olmstead*.

In order to further the goals of CI and IL, NIDRR intends to fund up to four community integration-related RRTCs.

Applicants must select from the following topic areas: (a) Community Integration for Individuals with Intellectual and Developmental Disabilities; (b) Promoting Healthy Aging and Community Inclusion Among Adults with Intellectual and Developmental Disabilities; (c) Positive Behavioral Support in Community Settings; (d) Policies Affecting Families of Children with Disabilities; (e) Community Integration for People with Psychiatric Disabilities; and (f) Community-Based Substance Abuse Rehabilitation for Individuals with Disabilities.

For purposes of this priority, the definition of "Intellectual Disability" follows that of the American Association of Mental Retardation (AAMR). A person with an intellectual disability, as defined by the AMMR, must have:

(1) A significantly sub-average general IQ. The AAMR defines this as an IQ of 70 or less on a standard measure of intelligence;

(2) Limitations in two or more of the following adaptive skills: communication, self-care, home living, social skills, community use, self-direction, health and safety, functional academics, and leisure and work; and

(3) Acquired their condition before 18 years old.

For purposes of this priority, the definition of "Developmental Disability" follows the Developmental Disabilities from the Developmental Disabilities Assistance and Bill of Rights Act. The term developmental disability means a severe, chronic disability of an individual that:

(1) Is attributable to a mental or physical impairment or combination of mental and physical impairments;

(2) Is manifested before the individual attains age 22;

(3) Is likely to continue indefinitely;

(4) Results in substantial functional limitations in 3 or more of the following areas of major life activity: self-care; receptive and expressive language; learning; mobility; self-direction; capacity for independent living; economic self-sufficiency; and

(5) Reflects the individual's need for a combination and sequence of special, interdisciplinary, or generic services, individualized supports, or other forms of assistance that are of lifelong or extended duration and are individually planned and coordinated.

Letters of Intent

Due to the open nature of this competition, NIDRR is requiring all potential applicants to submit a Letter of Intent (LOI). Each LOI must be limited to a maximum of four pages and must include the following information: (1) The title of the proposed RRTC, the name of the host institution, the name of the Principal Investigator (PI), and the names of partner institutions and entities; (2) a brief statement of the vision, goals, and objectives of the proposed RRTC and a description of its research and development activities at a sufficient level of detail to allow NIDRR to select potential peer reviewers; (3) a list of proposed RRTC staff including the Center Director and key personnel; and (4) a list of individuals whose selection as a peer reviewer might constitute a conflict of interest due to involvement in proposal development, selection as an advisory board member, co-PI relationships, etc.

The signed, original LOI, or with prior approval an e-mail or facsimile copy, must be received by NIDRR no later than June 9, 2003. Applicants that submit e-mail or facsimile copies must follow up by sending to NIDRR the signed original copy no later than one week after the date the e-mail or facsimile copy was sent. All communications pertaining to the LOI must be sent to: Ruth Brannon, U.S. Department of Education, 400 Maryland Avenue, SW., room 3425, Switzer Building, Washington, DC 20202–2645. For further information regarding the LOI requirement, contact Ruth Brannon at (202) 358–2971 or by e-mail at: *ruth.brannon@ed.gov*.

Proposed Priorities

The Assistant Secretary proposes to fund up to four RRTCs that will focus on improving the community integration outcomes of persons with disabilities. Each RRTC must:

(1) Identify, develop, and evaluate rehabilitation techniques to address its respective area of research and improve outcomes for its designated population group;

(2) Develop, implement, and evaluate a comprehensive plan for training critical stakeholders, *e.g.*, consumers and their family members, practitioners, service providers, researchers, and policymakers;

(3) Provide technical assistance to critical stakeholders, as appropriate, *e.g.*, consumers and their family members, practitioners, and service providers, to facilitate utilization of research findings in its respective area of research; and

(4) Develop a systematic plan for widespread dissemination of informational materials based on knowledge gained from the Center's research activities, and disseminate the materials to persons with disabilities, their representatives, service providers, and other interested parties.

In addition to the activities proposed by the applicant to carry out these purposes, each RRTC must:

- Conduct a state-of-the-science conference on its respective area of research in the third year of the grant cycle and publish a comprehensive report on the final outcomes of the conference in the fourth year of the grant cycle;
- Coordinate on research projects of mutual interest with relevant NIDRR-funded projects as identified through consultation with the NIDRR project officer;
- Involve individuals with disabilities in planning and implementing its research, training, and dissemination activities, and in evaluating the Center;
- Demonstrate in its application how it will address, in whole or in part, the needs of individuals with disabilities from minority backgrounds.
- Demonstrate how the RRTC project will yield measurable results for people with disabilities;

• Identify specific performance targets and propose outcome indicators, along with time lines to reach these targets; and

• Demonstrate how the RRTC project can transfer research findings to practical applications in planning, policy-making, program administration, and delivery of services to individuals with disabilities.

Each RRTC must focus on one of the following priorities.

(a) *Community Integration for Individuals with Intellectual and Developmental Disabilities (I/DD):* This Center must conduct qualitative and quantitative research, including the development and implementation of outcome measures, on factors that assist and hinder community integration, self-determination, training, employment, and independent living for persons with I/DD. The references for this topic can be found in the Plan, chapter 6, Independent Living and Community Integration: Independent Living and Community Integration Concepts; Expanding the Theoretical Framework; and Directions of Future Research on Independent Living and Community Integration.

(b) *Promoting Healthy Aging and Community Inclusion Among Adults with Intellectual and Developmental Disabilities (I/DD):* This Center must conduct epidemiological and community-based research, training, and dissemination activities regarding factors, such as aging, healthcare utilization, and caregiver characteristics, that assist and hinder community integration for adults with intellectual and developmental disabilities. The references for this topic can be found in the Plan, chapter 4, Health and Function: Research on Aging with a Disability; and chapter 6, Independent Living and Community Integration: Independent Living and Community Integration Concepts; Expanding the Theoretical Framework; and Directions of Future Research on Independent Living and Community Integration.

(c) *Positive Behavioral Support in Community Settings:* This Center must conduct research, training, and dissemination activities on positive behavioral support interventions that assist and sustain community integration efforts for a broad range of individuals with disabilities, including people with mental illness, over time and across systems. Dissemination and training efforts must target community partners, *e.g.*, employers, teachers and coaches, and landlords, as well as individuals with disabilities and their families. The reference for this topic can be found in the Plan, chapter 6, Independent Living and Community Integration: Research on Increasing Personal Development and Adaptation.

(d) *Policies Affecting Families of Children with Disabilities:* This Center must research and disseminate information on the effects of government, system, network, and agency policies on community integration and quality of life for families who have children with disabilities. The Center also must validate instruments to measure these effects and provide technical assistance, with the goal of improving community integration and quality of life, by: (a) enhancing and coordinating policies between systems and (b) informing and empowering family and peer-based networks and partnerships. The references for this topic can be found in the Plan, chapter 2, Dimensions of Disability: Employment and Independent Living; and chapter 6, Research on Social Roles.

(e) *Community Integration for People with Psychiatric Disabilities:* This Center must research, disseminate, and provide training on factors, policies, and interventions, such as peer-support models and other innovative treatment approaches, that assist community integration for people with psychiatric disabilities. The target population may include individuals from any age group. The references for this topic can be found in the Plan, chapter 6, Independent Living and Community Integration: Independent Living and Community Integration Concepts; Expanding the Theoretical Framework; and Directions of Future Research on Independent Living and Community Integration.

(f) *Substance Abuse:* This Center must conduct research, disseminate information, and provide training on community-based interventions, partnerships, and service delivery models that improve community integration outcomes for people with disabilities who are recovering from substance abuse problems. The target population may or may not include individuals with co-occurring disorders such as mental illness. The reference for this topic can be found in the Plan, chapter 2, Dimensions of Disability: Emerging Universe of Disability.

Executive Order 12866

This notice of proposed priorities has been reviewed in accordance with Executive Order 12866. Under the terms of the order, we have assessed the potential costs and benefits of this regulatory action.

The potential costs associated with the notice of proposed priorities are those resulting from statutory requirements and those we have determined as necessary for administering this program effectively and efficiently.

In assessing the potential costs and benefits—both quantitative and qualitative—of this notice of proposed priorities, we have determined that the benefits of the proposed priorities justify the costs.

Summary of potential costs and benefits: The potential cost associated with these proposed priorities is minimal while the benefits are significant. Grantees may anticipate costs associated with completing the application process in terms of staff time, copying, and mailing or delivery. The use of e-Application technology reduces mailing and copying costs significantly.

The benefits of the Rehabilitation Research and Training Center Program have been well established over the years in that similar projects have been completed. These proposed priorities will generate new knowledge through research, dissemination, utilization, training, and technical assistance projects.

The benefit of these proposed priorities and proposed applications and project requirements will be the establishment of new RRTCs that generate, disseminate, and promote the use of new information that will improve the options for disabled individuals to perform regular activities in the community.

Applicable Program Regulations: 34 CFR part 350.

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(Catalog of Federal Domestic Assistance Number: 84.133B, Rehabilitation Research and Training Center Program.)

Program Authority: 29 U.S.C. 762(g) and 764(b)(2).

Dated: May 6, 2003.

Robert H. Pasternack,

Assistant Secretary for Special Education and Rehabilitative Services.

[FR Doc. 03–11629 Filed 5–8–03; 8:45 am]

BILLING CODE 4000–01–P

ENVIRONMENTAL PROTECTION AGENCY

[ER–FRL–6639–9]

Environmental Impact Statements; Notice of Availability

Responsible Agency: Office of Federal Activities, General Information (202) 564–7167 or *http://www.epa.gov/compliance/nepa/.*

Weekly receipt of Environmental Impact Statements

Filed April 28, 2003 through May 2, 2003

Pursuant to 40 CFR 1506.9.

EIS No. 030193, Draft EIS, AFS, CA, Spalding Land Exchange Project, Proposed Land Exchange between Spalding Community Service District (SCSD) and Lassen National Forest (LNF), Special Use Permit, Lassen County, CA, Comment Period Ends: June 23, 2003, Contact: Lois Charlton (530) 257–2151.

EIS No. 030194, Draft EIS, AFS, SD, Sioux Ranger District Oil and Gas Leasing Project, Implementation, Sioux Ranger District, Custer National Forest, Harding County, SD, *Comment Period Ends:* July 8, 2003, Contact: Laurie Waters-Clark (605) 707–4432. The U.S. Department of Agriculture, Forest Service and the U.S. Department of the Interior, Bureau of Land Management are Joint Lead Agencies on the above project. This document is available on the Internet at: *http://(www.fs.fed.us/r1/custer/.*

EIS No. 030195, Final Supplement, COE, TX, Dallas Floodway Extension, Flood Damage Reduction and Environmental Restoration, Implementation, Trinity River Basin, Dallas County, TX, *Wait Period Ends:* June 9, 2003, *Contact:* Gene T. Rice, Jr. (817) 886–1374.

EIS No. 030196, Draft EIS, AFS, MN, Chippewa and Superior National Forests Land and Resource Management Plans Revision, Implementation, Beltrami, Cass, Itasca, Cook, Lake and St. Louis Counties, MN, *Comment Period Ends:* August 6, 2003, *Contact:* Duane Lula (218) 626–4300. This document is available on the Internet at: *http://www.fs.fed.us/r9/chippewa/plan/planning.htm.*

EIS No. 030197, Final EIS, FHW, MI, US–31 Petoskey Area Improvement Study, Congestion Reduction on US–31 in the City of Petoskey and Resport and Bear Creek Townships, Funding and US Army COE Section 404 Permit Issuance, Emmet County, MI, *Wait Period Ends:* June 9, 2003, *Contact:* James A. Kirschensteiner (517) 702–1835.

EIS No. 030198, Draft EIS, AFS, NV, Jarbidge Canyon Project, To Implement a Road Management Plan and Construct a Water Projects along the Charleston-Jarbidge Road, and Reconstruct the South Canyon Road, Humbolt-Toiyabe National Forest, Jarbidge Ranger District, ELko County, NV. *Comment Period Ends:* June 23, 2003, *Contact:* Jim Winfrey (778) 778–0229.

EIS No. 030199, Final EIS, COE, TX, Three Oaks Mine Project, Construction and Operation of a Surface Lignite Mine, U.S. Army COE Section 404 Permit Issuance, Lee and Bastrop Counties, TX, *Wait Period Ends:* June 23, 2003, *Contact:* Jennifer Walker (817) 886–1733.

EIS No. 030200, Draft EIS, DOD, Programmatic EIS—Chemical and Biological Defense Program, To Protect our Soldiers, Sailors, Marines and Airmen on the Battlefield, United States and other Countries, *Comment Period Ends:* June 23, 2003, *Contact:* Jolane Souris (301) 619–2004.

EIS No. 030201, Final EIS, USN, CA, Advanced Amphibious Assault Vehicle (AAAV) Development, Replacement and Establishment, Implementation, Del Mar Basin Area of Marine Base Corps (MCB) Camp Pendelton, San Diego County, CA, *Wait Period Ends:* June 9, 2003, *Contact:* Lisa Seneca (619) 532–4744.

EIS No. 030202, Final EIS, DOE, AZ, ID, NV, OR, WY, CA, MT, NM, UT, Fish and Wildlife Implementation Plan, To Implement and Fund a Policy Directions for Fish and Wildlife Mitigation and Recovery, Pacific Northwest, AZ, CA, ID, MT, NV, NM, OR, UT, WY and British Columbia, *Wait Period Ends:* June 9, 2003, *Contact:* Charles Alton (503) 230–5878.

EIS No. 030203, Final EIS, AFS, AK, Cholmondeley Timber Sales, Implementation, Harvesting Timber, Tongass Forest Plan, Tongass National Forest, Craig Ranger District, West of Ketchikan and South of Prince of Wales Island, AK, *Wait Period Ends:* June 9, 2003, *Contact:* Dale Kanen (907) 826–3211.

EIS No. 030204, Draft EIS, STB, TX, Bayport Loop Rail Line Project, Construction and Operation, between Bayport Loop and the former Galveston, Houston, Henderson Railroad Rail Line, Houston, Harris County, TX, *Comment Period Ends:* June 23, 2003, *Contact:* Dana White (888) 229–7857. This document is available on the Internet at: *http://www.stb.dot.gov.*

EIS No. 030205, Final EIS, NPS, FL, Biscayne National Park General Management Plan Amendment, Evaluation of the Effects of Several Alternatives for the Long-Term Management Plan, Stillsville, Biscayne National Park, Homestead, Miami-Dade County, FL, *Wait Period Ends:* June 9, 2003, *Contact:* Linda Canzanell (305) 230–1144.

EIS No. 030206, Draft EIS, NOA, LA, Programmatic EIS—The Louisiana Regional Restoration Planning Program, To Establish and Implement Natural Resource Trust Mandates, LA, *Comment Period Ends:* July 9, 2003, *Contact:* William Conner (301) 713–3038 Ext 190. This document is available on the Internet at: *http://www.darp.noaa.gov/.*

EIS No. 030208, Final EIS, AFS, ID, Golden Hand No. 3 and No. 4 Lode Mining Claims Plan of Operations Approval, Implementation, Frank Church-River of No Return (FC-RONR) Wilderness, Payette National Forest, Krassel Ranger District, Valley County, ID, *Wait Period Ends:* June 9, 2003, *Contact:* Quinn Carver (208) 634–0600. This document is available on the Internet at: *http://www.fs/fed/us/r4/payette/main.htm/.*

Dated: May 6, 2003.

Joseph C. Montgomery,

Director, NEPA Compliance Division, Office of Federal Activities.

[FR Doc. 03–11632 Filed 5–8–03; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[ER–FRL–6640–1]

Environmental Impact Statements and Regulations; Availability of EPA Comments

Availability of EPA comments prepared pursuant to the Environmental Review Process (ERP), under section 309 of the Clean Air Act and section 102(2)(c) of the National Environmental Policy Act as amended. Requests for copies of EPA comments can be directed to the Office of Federal Activities at (202) 564–7167.

An explanation of the ratings assigned to draft environmental impact statements (EISs) was published in the

Federal Register dated April 01, 2003 (68 FR 16511).

Draft EISs

ERP No. D–AFS–E65038–FL Rating LO, USDA Forest Service and State of Florida Land Exchange Project, Assembled Exchange of both Fee, Ownership Parcels and Partial Interest Parcels, Baker, Citrus, Franklin, Hernando, Lake, Liberty, Okaloosa, Osceola, Santa Rosa and Sumter Counties, FL.

Summary: EPA supports the proposed objectives of land consolidation and has identified opportunities to improve upon the proposed action through additional mitigative commitments involving Tribal interests.

ERP No. D–AFS–F65039–WI Rating EC2, McCaslin Project, Vegetation Management Activities Consistent with Direction in the Nicolet Forest Plan, Lakewood/Laona District, Chequamegon-Nicolet National Forest, Oconto and Forest Counties, WI.

Summary: EPA expressed environmental concerns relating to adverse impacts from roads to water quality and habitat and forest fragmentation of wildlife. The final EIS should update the predicted percent decline from the preferred alternative on the Golden-Winged Warbler, a management indicator species.

ERP No. D–AFS–L65408–ID Rating EC2, Salmon-Challis National Forest Noxious Weed Management Program, Integrated Series of Weed Treatment and Non-Treatment Practices, Implementation, Custer, Lemhi, Butte and Blaine Counties, ID.

Summary: EPA expressed environmental concerns with the range of alternatives evaluated in detail and the continued reliance on strategies that focus on treatment of invasive weed species instead of strategies designed to prevent the spread of noxious weeds. EPA recommended that the final EIS further evaluate approaches to reduce the spread of invasive weeds and assess the environmental effects of using herbicides, grazing treatment options and effects of multi-chemical applications.

ERP No. D–AFS–L65416–ID Rating NS, Upper Bear Timber Sale Project, Fuel Reduction, Forest Vegetation and Roads Management, Payette National Forest, Council Ranger District, Adams County, ID.

Summary: Region 10 used a screening tool to conduct a limited review of this action. Based on this screen, EPA does not foresee having any environmental objections to the proposed project and will not be conducting a detailed review.

ERP No. D–AFS–L67042–OR Rating EO2, Steamboat Mountain Mining Operations, Surface Quarry or "Open Pit" Mineral Extraction, Plan-of-Operation Approval, Appelgate Adaptive Management Area, Rogue River National Forest, Applegate Ranger District, Jackson County, OR.

Summary: EPA expressed environmental objections with potential adverse impacts to water quality and aquatic resources. Existing mineral pyrite deposits pose a high risk for Acid Rock Drainage. Cumulative impacts from milling activities have not been well characterized. EPA recommends that the final EIS identify the location and potential impacts of secondary and tertiary milling processing, characterize bedrock and waste rock acid generating potential, and include a plan to prevent erosion at the mine site and along transport roads.

ERP No. D–AFS–L67044–ID Rating EC2, Golden Hand No. 3 and No. 4 Lode Mining Claims Plan of Operations Approval, Implementation, Frank Church-River of No Return (FC–RONR) Wilderness, Payette National Forest, Krassel Ranger District, Valley County, ID.

Summary: EPA expressed environmental concerns with potential environmental impacts to water quality, salmonids and wilderness resources. The final EIS should discuss connected actions and potential impacts associated with tailings disposal, further characterize and describe the use of waste rock, disclose post-mining land use objectives and implementation, provide a cost estimate for meeting post-closure objectives, predict compliance with water quality standards and include quality assurance protocols.

ERP No. D–BLM–J01079–WY Rating EC2, South Powder River Basin Coal Project, Application for Leasing of Five Federal Coal Tracts: NARO Tracts: NARO North and NARO South (North Antelope/Rochelle Mine Complex), Little Thunder (Black Thunder Mine), West Roundup (North Rochelle Mine), and West Antelope (Antelope Mine), Campbell and Converse Counties, WY.

Summary: EPA expressed environmental concerns about potential adverse impacts to air quality from fugitive dust and nitrogen oxides. In addition, EPA has concerns about the cumulative impact assessment, impacts to wetlands and sage grouse habitat.

ERP No. D–FHW–J40158–MT Rating EC2, I–15 Corridor Project, Transportation Improvements from Montana City to the Lincoln Road Interchange, Funding and U.S. Army COE Section 404 Permit Issuance, Jefferson and Lewis & Clark Counties, MT.

Summary: EPA expressed environmental concerns regarding direct and indirect environmental impacts. EPA recommends the development of a detailed wetland mitigation plan, and consultation with the MDEQ to assure concurrence on proposed transportation improvements with TMDL development for Tenmile Creek and Silver Creek. Information is needed to fully assess and mitigate all potential impacts of the management actions.

ERP No. D–FRC–K05058–CA Rating EC2, EL Dorado Hydroelectric Project, Application for a New License, South Fork of the American River Basin and Truckee River Basin (FERC NO. 184–065), EL Dorado National Forest, Lake Tahoe Basin Management Unit, Alpine, Amador and El Dorado Counties, CA.

Summary: EPA expressed environmental concerns and requested additional information regarding impacts to threatened and endangered species and Tribal resources.

ERP No. D–JUS–G81011–TX Rating LO, Rio Grande Operation Project, Reduction or Elimination of Illegal Drug Activities and Illegal Immigrants, Starr, Hidalgo and Cameron Counties, TX.

Summary: EPA has no objection to the selection of the preferred alternative.

ERP No. D–JUS–K81028–CA Rating LO, Juvenile Justice Facility and East County Hall of Justice Development, Potential Construction of Both Projects on the Same Site or on Separate Sites, Alameda County, CA.

Summary: EPA had no objections to this project but recommended that the Federally preferred alternative be identified in the Final EIS.

ERP No. D–JUS–K99031–AZ Rating EO2, Programmatic EIS—US Border Patrol Activities within Border Areas of the Tucson and Yuma Sectors to Gain, Maintain, and Extend Control of the Border to Prevent Unlawful Entry of Persons into the US, Cochise, Santa Cruz, Pima and Yuma Counties, AZ.

Summary: EPA expressed environmental objections to the preferred alternative based on the project's significant environmental degradation of cultural/tribal resources, wetlands and water quality, wildlife habitat, endangered species, ecologically or historically unique areas and air quality, that should be corrected by project modification or implementation of other feasible alternatives. EPA also expressed concerns about potential impacts to human health and safety and transboundary environmental effects.

ERP No. D–NPS–F65038–OH Rating EC2, Cuyahoga Valley National Park Rural Landscape Management Program, Rural Landscape Resources Preservation and Protection, Cuyahoga River, Cuyahoga and Summit Counties, OH.

Summary: EPA expressed environmental concerns regarding potential deer over grazing which damage native plant communities, herd health and the lack of invasive species control measures.

ERP No. DS–AFS–J65334–MT Rating EC2, Keystone-Quartz Ecosystem Management Plan, Implementation, Updated Information on Alternatives, Beaverhead-Deerlodge National Forest, Wise River Ranger District, Beaverhead County, MT.

Summary: While EPA supports the preferred alternative EPA expressed environmental concerns with recommended soil protection measures and recommends restoration and upgrading of existing low standard roads which can impact water quality.

ERP No. DS–AFS–J65353–MT Rating EC2, Threemile Stewardship Project, Additional Information concerning the Potential Effects on the Goshawk Habitat, Ashland Ranger District, Custer National Forest, Powder and Rosebud Counties, MT.

Summary: EPA does not object to the preferred alternative to harvest and thin timber, use prescribed fire and manage road systems. EPA did express environmental concerns with the disclosure project effects on Goshawk nest territories and implementation via stewardship contracting to adequately address environmental and ecological concerns.

ERP No. DS–FHW–E40183–FL Rating EC2, FL–23 Extension (Branan Field-Chaffee Road), Construction from FL–134 (103rd Street) to FL–8 (I–10) and FL–10(US–90/Beaver Street), NPDES and US Army COE Section 404 Permits Issuance, Clay and Duval Counties, FL.

Summary: EPA has environmental concerns with the project due primarily to a substantial direct impact to wetlands as well as potential impacts to air quality. EPA requests additional wetlands avoidance and minimization as well as further information regarding compensatory mitigation. An analysis of direct and cumulative impacts is also requested by EPA.

ERP No. DS–JUS–K81010–AZ Rating LO, Pinal County Private Detention Facility, Updated Information, Single Contract for Approximately 3,000 Beds, Possible Sites: Undeveloped Parcel of Land in the City of Eloy and the Existing Central Arizona Detention Center Located in Florence, Pinal County, AZ.

Summary: EPA has a lack of objections to the proposed project. Based on our review, it is unlikely that implementation of the proposed action, with proposed mitigation measures, will result in significant adverse environmental impacts.

Final EISs

ERP No. F–BLM–J02039–MT, Montana Statewide Conventional Oil and Gas and Coal Bed Methane Gas Exploration and Development Management Plan within the Bureau of Land Management's Powder River and Billings Resources Management Plan Areas and the State of Montana, Implementation, MT.

Summary: While the final EIS addressed EPA's objections on disclosing environmental impacts, particularly for water quality issues, mitigation issues relating to air and water quality remain. These may be addressed in the Record of Decision (ROD). Long term mitigation implementation will be addressed by both the State of Montana and EPA in Region 8. Mitigation for coalbed methane development will be addressed by EPA as it meets its responsibilities for direct implementation and oversight of state and Tribal programs.

ERP No. F–BLM–J65358–WY, Powder River Basin Oil and Gas Project, Extraction, Transportation and Oil and Natural Gas Resources Sale, Application for a Permit to Drill (APD), Special Use Permit and Right-of-Way Grants, Campbell, Converse, Johnson and Sheridan Counties, WY.

Summary: While the final EIS addressed EPA's objections related to disclosing environmental impacts, particularly water quality, mitigation issues realted to air and water remain and may be addressed in the Record of Decision (ROD). Implementation of long term mitigation will be addressed by both the State of Montana and EPA in Region 8 related to its direct implementation and oversight of state Tribal programs.

ERP No. F–BLM–L65371–OR, Rogue National Wild and Scenic River Hellgate Recreation Area (Applegate River to Grave Creek) Management Plan, Implementation, Bedford District, Josephine County, OR.

Summary: EPA continued to express environmental concerns that levels of recreation activity predicted under the preferred alternative may cause adverse impacts to wetlands and fishery resources. The selected alternative should achieve a better balance between visitors and recreation activities and impacts to the river ecosystem.

ERP No. F–COE–C30012–NJ, South River Raritan River Basin Hurricane and Storm Damage Reduction and Ecosystem Restoration, Implementation, Middlesex County, NJ.

Summary: EPA continues to have outstanding environmental concerns with regards to wetland and air quality impacts.

ERP No. F–JUS–K80043–CA, Juvenile Justice Campus (JJC) Construction and Operation of a 1,400 Bed and Related Functions Facility, Conditional Use Permit, Fresno County, CA.

Summary: No formal comment letter was sent to the preparing agency.

ERP No. F–JUS–K80044–CA, Sacramento County Juvenile Hall Expansion Project, Accommodation of 90 New Beds in the Short-Term and 240 New Beds in the Long-Term, Sacramento County, CA.

Summary: No formal comment letter was sent to the preparing agency.

ERP No. F–NRS–H34029–MO, Little Otter Creek Watershed Plan, Installation of One Multi-Purpose Reservoir and Development of Basic Facilities for Recreational Use, Implementation, Caldwell County, MO.

Summary: EPA has no objection to the proposed watershed plan and appreciates the additional information provided in the FEIS concerning land acquisition, watershed conservation programs and aquatic habitat.

ERP No. FS–AFS–L65290–ID, North Lochsa Face Ecosystem Management Project, Updated Information on the Potential Effects of Vegetation and Aquatic Restoration Management, Clearwater National Forest, Lochsa Ranger District, Idaho County, ID.

Summary: No formal comment letter was sent to the preparing agency.

ERP No. FS–COE–H32002–00, Missouri River Fish and Wildlife Mitigation Project to Restore Fish and Wildlife Habitat Losses Resulting from Construction, Operation and Maintenance of the Missouri River Bank Stabilization and Navigation Project (BSNP), Missouri River, Sioux City, Iowa to the Mouth near St. Louis, NB, KS and MO.

Summary: EPA has no objections to the proposed action. EPA supports the Congressional land acquisition target of 166,750 acres, with associated habitat development. EPA recommended that the Record of Decision provide details of possible incentive-based land acquisition opportunities.

ERP No. FS–JUS–K81010–AZ, Pinal County Private Detention Facility, Updated Information, Single Contract for 3,000 Beds, Possible Sites: Undeveloped Parcel of Land in the City of Eloy or the Existing Central Arizona Detention Center in Florence, Pinal County, AZ.

Summary: No formal comment letter was sent to the preparing agency.

Dated: May 6, 2003.

Joseph C. Montgomery,

Director, NEPA Compliance Division, Office of Federal Activities.

[FR Doc. 03–11633 Filed 5–8–03; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[OPP–2003–0162; FRL–7306–3]

Rhamnolipid Biosurfactant; Notice of Filing a Pesticide Petition to Establish a Tolerance for a Certain Pesticide Chemical in or on Food

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces the initial filing of a pesticide petition proposing the establishment of regulations for residues of a certain pesticide chemical in or on various food commodities.

DATES: Comments, identified by docket ID number OPP–2003–0162, must be received on or before June 9, 2003.

ADDRESSES: Comments may be submitted electronically, by mail, or through hand delivery/courier. Follow the detailed instructions as provided in Unit I. of the **SUPPLEMENTARY INFORMATION**.

FOR FURTHER INFORMATION CONTACT: Denise Greenway, Biopesticides and Pollution Prevention Division (7511C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 308–8263; e-mail address: *greenway.denise@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

You may be potentially affected by this action if you are an agricultural producer, food manufacturer, or pesticide manufacturer. Potentially affected entities may include, but are not limited to:

- Crop production (NAICS 111)
- Animal production (NAICS 112)
- Food manufacturing (NAICS 311)
- Pesticide manufacturing (NAICS 32532)

This listing is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in this unit could also be affected. The North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether this action might apply to certain entities. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

B. How Can I Get Copies of this Document and Other Related Information?

1. *Docket.* EPA has established an official public docket for this action under docket identification (ID) number OPP–2003–0162. The official public docket consists of the documents specifically referenced in this action, any public comments received, and other information related to this action. Although a part of the official docket, the public docket does not include Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. The official public docket is the collection of materials that is available for public viewing at the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA. This docket facility is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The docket telephone number is (703) 305–5805.

2. *Electronic access.* You may access this **Federal Register** document electronically through the EPA Internet under the "**Federal Register**" listings at *http://www.epa.gov/fedrgstr/*.

An electronic version of the public docket is available through EPA's electronic public docket and comment system, EPA Dockets. You may use EPA Dockets at *http://www.epa.gov/edocket/* to submit or view public comments, access the index listing of the contents of the official public docket, and to access those documents in the public docket that are available electronically. Although not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the docket facility identified in Unit I.B.1. Once in the system, select "search," then key in the appropriate docket ID number.

Certain types of information will not be placed in the EPA Dockets. Information claimed as CBI and other information whose disclosure is restricted by statute, which is not included in the official public docket, will not be available for public viewing in EPA's electronic public docket. EPA's policy is that copyrighted material will not be placed in EPA's electronic public docket but will be available only in printed, paper form in the official public docket. To the extent feasible, publicly available docket materials will be made available in EPA's electronic public docket. When a document is selected from the index list in EPA Dockets, the system will identify whether the document is available for viewing in EPA's electronic public docket. Although not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the docket facility identified in Unit I.B.1. EPA intends to work towards providing electronic access to all of the publicly available docket materials through EPA's electronic public docket.

For public commenters, it is important to note that EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing in EPA's electronic public docket as EPA receives them and without change, unless the comment contains copyrighted material, CBI, or other information whose disclosure is restricted by statute. When EPA identifies a comment containing copyrighted material, EPA will provide a reference to that material in the version of the comment that is placed in EPA's electronic public docket. The entire printed comment, including the copyrighted material, will be available in the public docket.

Public comments submitted on computer disks that are mailed or delivered to the docket will be transferred to EPA's electronic public docket. Public comments that are mailed or delivered to the docket will be scanned and placed in EPA's electronic public docket. Where practical, physical objects will be photographed, and the photograph will be placed in EPA's electronic public docket along with a brief description written by the docket staff.

C. How and to Whom Do I Submit Comments?

You may submit comments electronically, by mail, or through hand delivery/courier. To ensure proper receipt by EPA, identify the appropriate docket ID number in the subject line on the first page of your comment. Please ensure that your comments are submitted within the specified comment period. Comments received after the close of the comment period will be marked "late." EPA is not required to consider these late comments. If you wish to submit CBI or information that is otherwise protected by statute, please follow the instructions in Unit I.D. Do not use EPA Dockets or e-mail to submit CBI or information protected by statute.

1. *Electronically.* If you submit an electronic comment as prescribed in this unit, EPA recommends that you include your name, mailing address, and an e-mail address or other contact information in the body of your comment. Also include this contact information on the outside of any disk or CD ROM you submit, and in any cover letter accompanying the disk or CD ROM. This ensures that you can be identified as the submitter of the comment and allows EPA to contact you in case EPA cannot read your comment due to technical difficulties or needs further information on the substance of your comment. EPA's policy is that EPA will not edit your comment, and any identifying or contact information provided in the body of a comment will be included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment.

i. *EPA Dockets.* Your use of EPA's electronic public docket to submit comments to EPA electronically is EPA's preferred method for receiving comments. Go directly to EPA Dockets at *http://www.epa.gov/edocket*, and follow the online instructions for submitting comments. Once in the system, select "search," and then key in docket ID number OPP–2003–0162. The system is an "anonymous access" system, which means EPA will not know your identity, e-mail address, or other contact information unless you provide it in the body of your comment.

ii. *E-mail.* Comments may be sent by e-mail to *opp-docket@epa.gov*, Attention: Docket ID number OPP–2003–0162. In contrast to EPA's electronic public docket, EPA's e-mail system is not an "anonymous access" system. If you send an e-mail comment directly to the docket without going through EPA's electronic public docket, EPA's e-mail system automatically captures your e-mail address. E-mail addresses that are automatically captured by EPA's e-mail system are included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket.

iii. *Disk or CD ROM.* You may submit comments on a disk or CD ROM that you mail to the mailing address identified in Unit I.C.2. These electronic submissions will be accepted in WordPerfect or ASCII file format. Avoid the use of special characters and any form of encryption.

2. *By mail.* Send your comments to: Public Information and Records Integrity Branch (PIRIB) (7502C), Office of Pesticide Programs (OPP), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001, Attention: Docket ID number OPP–2003–0162.

3. *By hand delivery or courier.* Deliver your comments to: Public Information and Records Integrity Branch (PIRIB), Office of Pesticide Programs (OPP), Environmental Protection Agency, Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA, Attention: Docket ID number OPP–2003–0162. Such deliveries are only accepted during the docket's normal hours of operation as identified in Unit I.B.1.

D. How Should I Submit CBI to the Agency?

Do not submit information that you consider to be CBI electronically through EPA's electronic public docket or by e-mail. You may claim information that you submit to EPA as CBI by marking any part or all of that information as CBI (if you submit CBI on disk or CD ROM, mark the outside of the disk or CD ROM as CBI and then identify electronically within the disk or CD ROM the specific information that is CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

In addition to one complete version of the comment that includes any information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket and EPA's electronic public docket. If you submit the copy that does not contain CBI on disk or CD ROM, mark the outside of the disk or CD ROM clearly that it does not contain CBI. Information not marked as CBI will be included in the public docket and EPA's electronic public docket without prior notice. If you have any questions about CBI or the procedures for claiming CBI, please consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

E. What Should I Consider as I Prepare My Comments for EPA?

You may find the following suggestions helpful for preparing your comments:

1. Explain your views as clearly as possible.

2. Describe any assumptions that you used.

3. Provide copies of any technical information and/or data you used that support your views.

4. If you estimate potential burden or costs, explain how you arrived at the estimate that you provide.

5. Provide specific examples to illustrate your concerns.

6. Make sure to submit your comments by the deadline in this notice.

7. To ensure proper receipt by EPA, be sure to identify the docket ID number assigned to this action in the subject line on the first page of your response. You may also provide the name, date, and **Federal Register** citation.

II. What Action is the Agency Taking?

EPA has received a pesticide petition as follows proposing the establishment and/or amendment of regulations for residues of a certain pesticide chemical in or on various food commodities under section 408 of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a. EPA has determined that this petition contains data or information regarding the elements set forth in FFDCA section 408(d)(2); however, EPA has not fully evaluated the sufficiency of the submitted data at this time or whether the data support granting of the petition. Additional data may be needed before EPA rules on the petition.

List of Subjects

Environmental protection, Agricultural commodities, Feed additives, Food additives, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: April 29, 2003.

Janet L. Andersen,

Director, Biopesticides and Pollution Prevention Division, Office of Pesticide Programs.

Summary of Petition

The petitioner summary of the pesticide petition is printed below as required by FFDCA section 408(d)(3). The summary of the petition was prepared by the petitioner and represents the view of the petitioner. The petition summary announces the availability of a description of the analytical methods available to EPA for the detection and measurement of the pesticide chemical residues or an explanation of why no such method is needed.

Jeneil Biosurfactant Company

PP 1F6288

EPA has received a pesticide petition 1F6288 from Jeneil Biosurfactant Company, 400 N. Dekora Woods Boulevard, Saukville, Wisconsin 53080, proposing pursuant to section 408(d) of

the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a(d), to amend 40 CFR part 180 to establish an exemption from the requirement of a tolerance for the biochemical pesticide rhamnolipid biosurfactant in or on all food commodities.

Pursuant to section 408(d)(2)(A)(I) of the FFDCA, as amended, Jeneil Biosurfactant Company has submitted the following summary of information, data, and arguments in support of their pesticide petition. This summary was prepared by Jeneil Biosurfactant Company, and EPA has not fully evaluated the merits of the pesticide petition. The summary may have been edited by EPA if the terminology used was unclear, the summary contained extraneous material, or the summary unintentionally made the reader conclude that the findings reflected EPA's position and not the position of the petitioner.

A. Product Name and Proposed Use Practices

Rhamnolipid biosurfactant is intended for the prevention and control of plant pathogenic fungi on horticultural and agricultural crops. Fungal diseases are often spread by zoospores that are transported from one plant to another and from field to field. Rhamnolipid biosurfactant kills zoospores that cause fungal disease, on contact. Target pests are any zoosporic plant pathogenic microorganisms including the following genera: *Plasmodiophora, Polymyxa, Spongospora, Physoderma, Olpidium, Synchytrium, Rhizophydium, Achlya, Aphanomyces, Albugo, Peronopythora, Pachymetra, Pythium, Phytophthora, Trachysphaera, Basidiophora, Peronosclerospora, Plasmopara, Pseudoperonospora, Sclerophthora*, and *Sclerospora*. End-use formulations of rhamnolipid biosurfactant are applied through conventional equipment as a spray, fog, drench or seed soak to the point of saturation, and can also be incorporated into nutrient solutions for hydroponic plants and vegetables. The product will be diluted with water and applied to growing plants and agricultural commodities at a rate of 70 to 100 parts per million (ppm). One end-use formulation, Zonix Biofungicide (8.5% active ingredient), is proposed at this time.

B. Product Identity/Chemistry

1. *Identity of the pesticide and corresponding residues.* Rhamnolipid biosurfactant, CAS number: 147858–26–2; CAS name: Decanoic acid, 3-[[6-deoxy-2-O-(6-deoxy-α-L-mannopyranosyl)-α-L-mannopyranosyl]oxy]-, 1-(carboxymethyl)octyl ester, mixture with 1-(carboxymethyl)octyl 3-[(6-deoxy-α-L-mannopyranosyl)oxy]decanoate. The basic composition of the active ingredient consists of a well-known carbohydrate (rhamnose sugar) and fatty acid (hydroxydecanoic acid). The active ingredient is a mixture of two types of rhamnolipid molecules, R1 (RLL) and R2 (RRLL) at a ratio of R2:R1 = 0.7 - 2.0. Chemical name of the rhamnolipid molecules is as follows: Molecule 1 (defined as R1 or RLL): Decanoic acid, 3-[(6-deoxy-α-L-mannopyranosyl) oxy]-, 1-(carboxymethyl) octyl ester; and molecule 2 (defined as R2 or RRLL): Decanoic acid, 3-[[6-deoxy-2-O-(6-deoxy-α-L-mannopyranosyl)-α-L-mannopyranosyl] oxy]-, 1-(carboxymethyl) octyl ester.

Rhamnolipid biosurfactant, in particular, causes the lysis of zoospores of plant pathogens. Zoospores, the unicellular, motile spore stage in the life cycle of plant pathogens, are vulnerable to rhamnolipid biosurfactants due to the fact that the membrane-bound spore lacks a protective cell wall. The rhamnolipid destroys the permeability of the plasma membrane and results in the loss of motility and rapid lysis of the zoospore. Rhamnolipid biosurfactants are effective against all zoosporic plant pathogens, such as downy mildews, *Pythium* and *Phytophthora*.

Biosurfactants are produced by a variety of microorganisms and have been shown to play a role in enhancing bioavailability and biodegradation of petroleum hydrocarbons, in the attachment and detachment of bacteria to surfaces, and in complexing metals efficiently. Biosurfactants have application in cosmetics, personal care products, detergents, textile processing, agricultural crop protection products, metal treatment and processing, leather processing, hard surface cleaning, electronics component cleaning, pulp and paper processing, paint formulation, hydrocarbon recovery, oil tank cleaning and oil sludge remediation.

Rhamnolipids are comprised of extra-cellular natural substances (glycolipids) produced during a controlled aerobic fermentation process utilizing a strain of the bacterium *pseudomonas aeruginosa*. Rhamnolipids are recovered from the process by centrifugation, extraction, and subsequent purification. No bacteria are present in the manufactured product and the production processes are strict in quality control to assure no live organisms exist. Purified rhamnolipids can be quantified by weight and rhamnose determination.

2. *A statement of why an analytical method for detecting and measuring the levels of the pesticide residue are not needed.* An analytical method for residues is not applicable. It is not expected that, when used as proposed, rhamnolipid biosurfactant would result in residues that are of toxicological concern.

C. Mammalian Toxicological Profile

Rhamnolipid biosurfactant has been evaluated for toxicity through oral, dermal, inhalation and eye routes of exposure. Studies indicate the end-use product is Toxicity Category I for eye irritation (diluted end-use product is Toxicity Category IV for eye irritation), and Toxicity Category IV for all other routes of exposure. Studies resulted in an acute oral lethal dose (LD_{50}) >5,000 milligrams/kilogram (mg/kg), acute dermal LD_{50} >5,000 mg/kg, acute inhalation lethal concentration (LC_{50}) 2.05 mg/L, primary eye irritation severe at 9.5% active ingredient and slight at 1.0% active ingredient, and primary skin irritation minimal.

A waiver has been requested for dermal sensitization based on the fact that the active ingredient is not toxic or irritating dermally, and a lack of reported effects by users of the surfactant in a variety of products. Rhamnolipid biosurfactants have been marketed for over 3 years as an emulsifier, dispersant and wetting agent. Since its discovery, no incidents of hypersensitivity have been reported by researchers, manufacturers or users. A waiver has been requested for genotoxicity based on the fact that rhamnolipid biosurfactant is not related to any known mutagen and does not belong to a chemical class of compounds containing known mutagens. The rhamnolipid molecules are simply glycolipids composed of a rhamnose sugar ring and a fatty acid tail. Individually these molecules are not considered toxic or mutagenic. Rhamnose is a comparatively rare sugar listed by FDA as a food additive. Fatty acids are ubiquitous in animals and plants, and are the major source of energy in the body. Consequently the breakdown products of rhamnolipids are of little toxicological concern. A waiver has been requested for 90–day oral toxicity, teratogenicity and immunotoxicity based on the physical mode of action of the product, the demonstrated lack of oral, dermal and inhalation toxicity, and the innocuous nature of the potential breakdown products of rhamnolipid biosurfactants. The mode of action of rhamnolipid biosurfactants is a physical action on the plant pathogen rather than a specific toxic action. Rhamnolipid biosurfactant is virtually non-toxic to rats as demonstrated in the acute oral, dermal and inhalation studies submitted. The lack of mammalian toxicity supports the position that the physical action of rhamnolipid biosurfactants is a physical interaction with the zoospore membrane rather than a specific toxic mechanism that might be of concern. The chemical structures of the rhamnolipids suggest that there is little potential for chronic toxicity, teratogenicity or immunotoxicity in animals or humans as a result of exposure. The rhamnolipid molecules are simply glycolipids composed of a rhamnose sugar ring and a fatty acid tail. Individually these molecules are not considered toxic.

D. Aggregate Exposure

1. *Dietary exposure*—i. *Food.* Dietary exposure from use of rhamnolipid biosurfactant, as proposed, is minimal. The use of rhamnolipid biosurfactant involves low levels of active ingredient applied to growing plants prior to harvest. Residues of rhamnolipid biosurfactant are not expected to be of toxicological concern. The rhamnolipid molecules are simply glycolipids composed of a rhamnose sugar ring and a fatty acid tail. Individually these molecules are not considered toxic.

ii. *Drinking water.* Similarly, exposure to humans from residues of rhamnolipid biosurfactant in consumed drinking water would be unlikely. Rhamnolipid biosurfactant is a naturally occurring extra-cellular substance that is produced by a microorganism known to exist in plant habitats; it is not known to grow or thrive in aquatic environments. Potential exposure to surface water would be negligible and exposure to drinking water (well or ground water) would be impossible to measure.

2. *Non-dietary exposure.* The potential for non-dietary exposure to the general population, including infants and children, is unlikely as the proposed use sites are agricultural settings. However, non-dietary exposures would not be expected to pose any quantifiable risk due to a lack of residues of toxicological concern. Personal protective equipment mitigates the potential for exposure to applicators and handlers of the proposed products, when used in agricultural settings.

E. Cumulative Exposure

It is not expected that, when used as proposed, rhamnolipid biosurfactant would result in residues that are of toxicological concern. The rhamnolipid molecules are simply glycolipids composed of a rhamnose sugar ring and a fatty acid tail. Individually these molecules are not considered toxic.

F. Safety Determination

1. *U.S. population.* Acute toxicity studies have shown that rhamnolipid biosurfactant is not toxic, but is irritating via ocular exposure. Residues of rhamnolipid biosurfactant are not expected to be of toxicological concern. The rhamnolipid molecules are simply glycolipids composed of a rhamnose sugar ring and a fatty acid tail. Individually these molecules are not considered toxic. There is a reasonable certainty of no harm to the general U.S. population from exposure to this active ingredient.

2. *Infants and children.* As mentioned above, residues of rhamnolipid biosurfactant are not expected to be of toxicological concern. There is a reasonable certainty of no harm for infants and children from exposure to rhamnolipid biosurfactant from the proposed uses.

G. Effects on the Immune and Endocrine Systems

To date there is no evidence to suggest that rhamnolipid biosurfactant functions in a manner similar to any known hormone, or that it acts as an endocrine disrupter.

H. Existing Tolerances

There is no U.S. EPA tolerance for rhamnolipid biosurfactant.

I. International Tolerances

A Codex Alimentarium Commission Maximum Residue Level is not required for rhamnolipid biosurfactant.

[FR Doc. 03–11478 Filed 5–8–03; 8:45 am]
BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7496–7]

Office of Environmental Information Draft Data Standard for Exchanging Permitting Information and Draft Data Standard for Federal Facility Identification

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of information availability and request for comments.

SUMMARY: Notice of availability is hereby given for a 45-day public comment period for the draft data standards: Draft Data Standard for Permitting Information; and the Draft Federal Facility Identification Data Standard. These draft standards consist of a list of data elements, definitions for these elements, formats, notes, and explanatory preamble language. The draft standards were developed through the partnership efforts of States, tribes, and the U.S. Environmental Protection Agency participating in the Environmental Data Standards Council (EDSC). The EDSC convened one Action Team to develop a more comprehensive set of data elements to facilitate the sharing permit related information. The EDSC also formed an Action Team whose purpose was to reach consensus on standardized means of identifying facilities that are owned or operated, or were owned or operated, by the Federal government. The EPA and the EDSC invite comment on these standards from States, EPA, tribes, database managers in the public and private sectors, and the general public with interest in exchanging information concerning environmental permits and Federal facilities.

DATES: Comments must be submitted on or before June 23, 2003.

ADDRESSES: Comments may be submitted electronically, by mail, by facsimile, or through hand delivery/courier. Follow the detailed instructions as provided in Unit 1.A. of the **SUPPLEMENTARY INFORMATION** section.

FOR FURTHER INFORMATION CONTACT: Draft Data Standard for Permitting Information, Tim Crawford, Office of Environmental Information, Office of Information Collection, MC–2822T, U.S. Environmental Protection Agency, 1200 Pennsylvania Avenue, NW., Washington DC 20460; Telephone (202) 566–1652.

Draft Federal Facility Identification Data Standard, John Harman, Office of Environmental Information, Office of Information Collection, MC–2822T, U.S. Environmental Protection Agency, 1200 Pennsylvania Avenue, NW., Washington DC 20460; Telephone (202) 566 0748.

SUPPLEMENTARY INFORMATION:

I. General Information

A. How Can I Get Copies of These Draft Standards and Other Related Information ?

1. Docket. EPA has established an official public docket for this action under Docket ID No. OEI–2003–0028. The official public docket consists of the documents specifically referenced in this action, any public comments received, and other information related to this action. Although a part of the official docket, the public docket does not include Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. The official public docket is the

collection of materials that is available for public viewing at the Office of Environmental Information Docket in the EPA Docket Center, (EPA/DC) EPA West, Room B102, 1301 Constitution Ave., NW., Washington, DC. The EPA Docket Center Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the Office of Environmental Information Docket is (202) 566–1752."

2. Electronic Access. You may access this **Federal Register** document electronically through the EPA Internet under the "**Federal Register**" listings at *http://www.epa.gov/fedrgstr/*. You may view and download the draft data standards and related explanatory material at the EDSC Web site at: *http://www.epa.gov/edsc/* in the area of the site marked "Data Standards." The draft data standards can also be viewed and downloaded at the EPA Environmental Data Registry (EDR) at *http://www.epa.gov/edr/* in the area of the site marked "Data Standards". Or for those with password access, at the WISER portion of the State/EPA Web site at: *http://www.ecos.org/wiser*.

An electronic version of the public docket is available through EPA's electronic public docket and comment system, EPA Dockets. You may use EPA Dockets at *http://www.epa.gov/edocket/* to submit or view public comments, access the index listing of the contents of the official public docket, and to access those documents in the public docket that are available electronically. Once in the system, select "search," then key in the appropriate docket identification number.

Certain types of information will not be placed in the EPA Dockets. Information claimed as CBI and other information whose disclosure is restricted by statute, which is not included in the official public docket, will not be available for public viewing in EPA's electronic public docket. EPA's policy is that copyrighted material will not be placed in EPA's electronic public docket but will be available only in printed paper form in the official public docket. To the extent feasible, publicly available docket materials will be made available in EPA's electronic public docket. When a document is selected from the index list in EPA Dockets, the system will identify whether the document is available for viewing in EPA's electronic public docket. Although not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the docket facility identified in Unit I.A.1. EPA intends to work towards providing electronic access to all of the publicly available docket materials through EPA's electronic public docket.

For public commenters, it is important to note that EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing in EPA's electronic public docket as EPA receives them and without change, unless the comment contains copyrighted material, CBI, or other information whose disclosure is restricted by statute. When EPA identifies a comment containing copyrighted material, EPA will provide a reference to that material in the version of the comment that is placed in EPA's electronic public docket. The entire printed comment, including the copyrighted material, will be available in the public docket.

Public comments submitted on computer disks that are mailed or delivered to the docket will be transferred to EPA's electronic public docket. Public comments that are mailed or delivered to the Docket will be scanned and placed in EPA's electronic public docket. Where practical, physical objects will be photographed, and the photograph will be placed in EPA's electronic public docket along with a brief description written by the docket staff.

For additional information about EPA's electronic public docket visit EPA Dockets online or *see* 67 FR 38102, May 31, 2002.

B. How and To Whom Do I Submit Comments?

You may submit comments electronically, by mail, by facsimile, or through hand delivery/courier. To ensure proper receipt by EPA, identify the appropriate docket identification number in the subject line on the first page of your comment. Please ensure that your comments are submitted within the specified comment period. Comments received after the close of the comment period will be marked "late." EPA is not required to consider these late comments, however, late comments may be considered if time permits.

1. *Electronically.* If you submit an electronic comment as prescribed below, EPA recommends that you include your name, mailing address, and an e-mail address or other contact information in the body of your comment. Also include this contact information on the outside of any disk or CD ROM you submit, and in any cover letter accompanying the disk or CD ROM. This ensures that you can be identified as the submitter of the comment and allows EPA to contact you in case EPA cannot read your comment due to technical difficulties or needs further information on the substance of your comment. EPA's policy is that EPA will not edit your comment, and any identifying or contact information provided in the body of a comment will be included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment.

i. EPA Dockets. Your use of EPA's electronic public docket to submit comments to EPA electronically is EPA's preferred method for receiving comments. Go directly to EPA Dockets at *http://www.epa.gov/edocket*, and follow the online instructions for submitting comments. To access EPA's electronic public docket from the EPA Internet Home Page, select "Information Sources," "Dockets," and "EPA Dockets." Once in the system, select "search," and then key in Docket ID No. OEI–2003–0028. The system is an "anonymous access" system, which means EPA will not know your identity, e-mail address, or other contact information unless you provide it in the body of your comment.

ii. E-mail. Comments may be sent by electronic mail (e-mail) to *oei.docket@epa.gov*, Attention Docket ID No. OEI–2003–0028. In contrast to EPA's electronic public docket, EPA's e-mail system is not an "anonymous access" system. If you send an e-mail comment directly to the Docket without going through EPA's electronic public docket, EPA's e-mail system automatically captures your e-mail address. E-mail addresses that are automatically captured by EPA's e-mail system are included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket.

iii. Disk or CD ROM. You may submit comments on a disk or CD ROM that you mail to the mailing address identified in Unit I.B.2. These electronic submissions will be accepted in WordPerfect or ASCII file format. Avoid the use of special characters and any form of encryption.

2. *By Mail.* Send three copies of your comments to: Office of Environmental Information Docket, Environmental Protection Agency, Mailcode: 28221T, 1200 Pennsylvania Ave., NW., Washington, DC, 20460, Attention Docket ID No. OEI–2003–0028.

3. *By Hand Delivery or Courier.* Deliver your comments to the location provided in Unit I.A.1, Attention Docket ID No. OEI–2003–0028. Such deliveries are only accepted during the Docket's normal hours of operation as identified in Unit I.A.1.

4. *By Facsimile.* Fax your comments to: (202) 566–1753, Attention Docket ID. No. OEI–2003–0028.

C. What Should I Consider as I Prepare My Comments for EPA?

You may find the following suggestions helpful for preparing your comments:

1. Explain your views as clearly as possible.

2. Describe any assumptions that you used.

3. Provide any technical information and/or data you used that support your views.

4. If you estimate potential burden or costs, explain how you arrived at your estimate.

5. Provide specific examples to illustrate your concerns.

6. Offer alternatives.

7. Make sure to submit your comments by the comment period deadline identified.

8. To ensure proper receipt by EPA, identify the appropriate docket identification number in the subject line on the first page of your response. It would also be helpful if you provided the name, date, and **Federal Register** citation related to your comments.

II. Background: Environmental Data Standards Council

Data sharing has become an increasingly important aspect of sound environmental management. States, Tribes, and EPA together face the critical challenge of sharing information among themselves and with their respective stakeholders and public. Fundamental to the seamless exchange of data are data standards. Data standards help improve the ability of partners (internal and external) to exchange data efficiently and accurately, and also assist secondary users of data to understand, interpret, and use data appropriately. Recognition of the need for EPA, States and Tribes to develop and agree upon data standards for environmental information sharing has lead to the creation of the EDSC. Data standards are documented agreements on formats and definitions of data elements. The EDSC agrees to develop data standards only when there is a strong environmental management business reason that would benefit from establishing a consistency in information exchanged.

These draft standards were delivered to the EDSC and approved for publication in the **Federal Register** for a 45-day public comment period. After the comment period announced in this Notice is complete, the EDSC and its Action Teams will review comments received and make appropriate modifications. The EDSC will then consider approval of these data standards as appropriate. EDSC approval does not bind an individual agency to using a standard. It will be up to the individual or programs to determine if, when, and how it might use a standard developed under the auspices of the EDSC. It is the intent of EPA to adopt and implement the consistent use of EDSC-approved standards in its information systems and programs.

III. Background of Draft Data Standards

A. Draft Data Standard Permit Related Information

The EDSC is proposing to adopt a revision to the original Permitting Data Standard that was approved in April 2002. The original exchange standard for permit related information identified those data elements that are generally believed to be universally applicable to the identification and tracking of permits. While standard terms, definitions and formats for these types of data were needed, it was subsequently recognized that other information that is also common to multiple permitting programs exists and should be included in the same standard rather than duplicate similar information in separate data standards. As a result, the revised draft permitting data standard incorporates the original permitting data standard and extends the original scope to include information germane to multiple permitting programs.

The draft Permitting Information Data Standard consists of data elements from the original Permit Data Standard organized by the categories or data blocks: Permit Identification, Permitted Feature, and Permit Administration. The revised draft standard also includes data elements under the data blocks: Facility/Feature Characteristic, Control Methodology, Permit Condition, Reporting Condition, and Monitoring Condition. These additional data blocks provide data elements that can be used to describe the functional aspects of a facility or feature, as well as the constraints imposed by a permit including any monitoring or reporting requirements. The Action Team determined that additional permit related information will likely require program-specific permit standards.

B. Draft Federal Facility Identification Data Standard

The EDSC is proposing a Data Standard for the identification of facilities that are owned or operated, or were owned or operated, by the Federal Government. This draft Federal Facility Identification Data Standard builds on the Facility Identification Data Standard by focusing on identification issues for a specific type of facility.

Several EPA offices have specific programs that focus on issues related to Federal facilities. Other EPA programs use naming conventions to identify Federal facilities separately from other types of facilities. The reporting forms for certain EPA programs include data elements that ask facilities to indicate whether they are owned or operated by the Federal government.

Federal facilities are a diverse class, having functions that typically are different from other privately owned and operated facilities, thus potentially posing unique types of environmental concerns. Federal facilities conduct activities ranging from launching space shuttles to managing national parks. Tracking ownership or operation of a site over time is also important because certain former Federal sites can have legacy issues, such as spent munitions at former Department of Defense sites.

The Draft Federal Facility Identification Data Standard includes the three categories of data elements, or data blocks: Federal Facility Identification Information; Federal Facility Ownership and/or Operation Information; and Federal Facility Responsible Party Information. The Federal Facility Ownership and/or Operation Information category provides a means of indicating the present ownership or operation of a facility that once was a Federal facility. An example is a local airport that formerly was an Air Force base. The Federal Facility Responsible Party Information category provides standardized naming conventions for the Federal agencies that own or operate a particular Federal facility and for the classification of the ownership/operation of a Federal facility.

An ancillary, but supportive goal, of the Draft Federal Facility Identification Data Standard is to serve as a guide for identifying facilities owned or operated by non-Federal governments, such as States, tribes, counties or municipalities. States and tribes may choose to adopt the permissible values and follow similar naming conventions

when tracking non-Federal government facilities.

IV. Future Revisions

EDSC standards are periodically reviewed and revised as recommended by the EDSC or the stewards of the respective data standards. The most current standards will be posted at *www.edsc.org* and *www.epa.gov/edr*.

V. Review of Draft Standards to Date

These draft standards have received significant input through the representatives from EPA programs, States, and tribal organizations serving on the Action Teams and consulted though the development of the draft standard. EDSC members have also reviewed and recommended these draft standards for this public comment process.

Dated: April 24, 2003.

Mark Luttner,

Director, Office of Information Collection, Office of Environmental Information.

[FR Doc. 03–11631 Filed 5–8–03; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7495–9]

Determination of the Waste Isolation Pilot Plant's Compliance With Applicable Federal Environmental Laws for the Period 2000 to 2002

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: Based on documentation submitted by the U.S. Department of Energy (DOE) for the Waste Isolation Pilot Plant (WIPP), the U.S. Environmental Protection Agency (EPA or "we") determined that between 2000 and 2002, DOE operated the WIPP facility in compliance with applicable Federal statutes, regulations, and permit requirements designated in Section 9(a)(1) of the WIPP Land Withdrawal Act, as amended. The Secretary of Energy was notified of the determination via a letter from EPA Administrator Christine Todd Whitman dated May 2, 2003.

We made this determination under the authority of Section 9 of the WIPP Land Withdrawal Act (WIPP LWA). (Pub. L. Nos. 102–579 and 104–201.) Section 9(a)(1) of the WIPP LWA requires that, as of the date of the enactment of the WIPP LWA, DOE shall comply with respect to WIPP with; regulations for the management and storage of radioactive waste (40 CFR part 191, subpart A); the Clean Air Act; the Solid Waste Disposal Act; the Safe Drinking Water Act; the Toxic Substances Control Act; the Comprehensive Environmental Response, Compensation, and Liability Act; and all other applicable Federal laws pertaining to public health and safety or the environment. Section 9(a)(2) of the WIPP LWA requires DOE biennially to submit to EPA documentation of continued compliance with the laws, regulations, and permit requirements set forth in section 9(a)(1). (DOE must also submit similar documentation of compliance with the Solid Waste Disposal Act to the State of New Mexico.) Section 9(a)(3) requires the Administrator of EPA to determine on a biennial basis, following the submittal of documentation of compliance by the Secretary of DOE, whether the WIPP is in compliance with the pertinent laws, regulations, and permit requirements, as set forth at section 9(a)(1).

We determined that for the period 2000 to 2002, the DOE-submitted documentation showed continued compliance with 40 CFR Part 191, subpart A, the Clean Air Act, the Safe Drinking Water Act, the Toxic Substances Control Act, and the Comprehensive Environmental Response, Compensation, and Liability Act. With respect to other applicable Federal laws pertaining to public health and safety or the environment, as required by section 9(a)(1)(G), DOE's documentation also indicates that DOE was in compliance with the Clean Water Act, the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), and certain statutes under the jurisdiction of the Department of Interior.

This determination is not directly related to, or a part of, our certification decision regarding whether the WIPP complies with EPA's disposal regulations for transuranic radioactive waste at 40 CFR part 191.

FOR FURTHER INFORMATION CONTACT: Nick Stone; telephone number: (214) 665–7226; address: WIPP Project Officer, Mail Code 6PD–N, U.S. Environmental Protection Agency, Region 6, 1445 Ross Avenue, Dallas, TX 75202.

Materials related to this determination have been placed in docket A–98–49, item II–B2–14, located at the U.S. Environmental Protection Agency, Air and Radiation Docket, Attn: Docket A–98–49, EPA Docket Center (EPA/DC), EPA West, Mail Code 6102T, 1200 Pennsylvania Ave., NW., Washington, DC, 20460. The docket is open for public inspection from 8 a.m. until 5:30 p.m., Monday through Friday, except on Federal holidays. A reasonable fee may be charged for photocopying services.

Dated: May 2, 2003.

Christine Todd Whitman,

Administrator.

[FR Doc. 03–11525 Filed 5–8–03; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collection(s) Being Reviewed by the Federal Communications Commission

April 23, 2003.

SUMMARY: The Federal Communications Commission, as part of its continuing effort to reduce paperwork burden invites the general public and other Federal agencies to take this opportunity to comment on the following information collection(s), as required by the Paperwork Reduction Act of 1995, Public Law 104–13. An agency may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a valid control number. Comments are requested concerning (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniqués or other forms of information technology.

DATES: Persons wishing to comment on this information collection should submit comments July 8, 2003. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: Direct all Paperwork Reduction Act (PRA) comments to Judy B. Herman, Federal Communications Commission, 445 12th Street, SW., Room 1–C804, Washington, DC 20554 or via the Internet to *Judith-B.Herman@fcc.gov*.

FOR FURTHER INFORMATION CONTACT: For additional information or copies of the information collections contact Judy B. Herman at 202–418–0214 or via the Internet at Judith-B.Herman@fcc.gov.

SUPPLEMENTARY INFORMATION:

OMB Control No.: 3060–0919.

Title: CORES Certification Form.

Form No.: FCC Form 162.

Type of Review: Extension of a currently approved collection.

Respondents: Individuals or households, business or other for profit, not-for-profit institutions, and state, local or tribal government.

Number of Respondents: 200.

Estimated Time Per Response: .084 hours (5 minutes).

Frequency of Response: One-time reporting requirement.

Total Annual Burden: 17 hours.

Annual Reporting and Recordkeeping Cost Burden: N/A.

Needs and Uses: This form will be used in the transition period to certify entities FCC Registration Number (FRN). The FRN will affect approximately 60 public-use application forms and will require the forms to change. During the transition period the FCC Form 162 will be kept in effect until all FCC forms have been updated with an FRN block. Once the application forms have been updated, this information collection will be canceled. The information will be used by the FCC for the purpose of collecting and reporting on any delinquent amounts arising out of such person's relationship with the Commission. The FRN will be used solely by the Commission as the unique business account number for identification purposes only.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. 03–11492 Filed 5–8–03; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collection(s) Being Reviewed by the Federal Communications Commission

May 1, 2003.

SUMMARY: The Federal Communications Commission, as part of its continuing effort to reduce paperwork burden invites the general public and other Federal agencies to take this opportunity to comment on the following information collection(s), as required by the Paperwork Reduction Act of 1995, Public Law 104–13. An agency may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a valid control number. Comments are requested concerning (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

DATES: Persons wishing to comment on this information collection should submit comments July 8, 2003. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: Direct all Paperwork Reduction Act (PRA) comments to Judy B. Herman, Federal Communications Commission, 445 12th Street, SW., Room 1–C804, Washington, DC 20554 or via the Internet to *Judith-B.Herman@fcc.gov*.

FOR FURTHER INFORMATION CONTACT: For additional information or copies of the information collection(s) contact Judy B. Herman at 202–418–0214 or via the Internet at *Judith-B.Herman@fcc.gov*.

SUPPLEMENTARY INFORMATION:

OMB Control No.: 3060–0917.

Title: CORES Registration Form.

Form No.: FCC Form 160.

Type of Review: Extension of a currently approved collection.

Respondents: Individuals or households, business or other for profit, not-for-profit institutions, state, local or tribal government.

Number of Respondents: 134,500.

Estimated Time Per Response: .166 hours (10 minutes).

Frequency of Response: One-time reporting requirement.

Total Annual Burden: 22,327 hours.

Annual Reporting and Recordkeeping Cost Burden: N/A.

Needs and Uses: The Commission Registration System (CORES) will assign each entity doing business with the Commission with a FCC Registration Number (FRN) for collecting and reporting on any delinquent amounts arising out of such person's relationship with the FCC. The respondents are anyone doing business with the FCC. These forms are received by both Mellon Bank and FCC CORES Help Desk for data entry. The information will be used for a standard data repository for entity name, address, Taxpayer Identification Number, telephone number, email address, fax, contact representative, contact representative address, telephone, email address and fax.

OMB Control No.: 3060–0918.

Title: CORES Update/Change Form.

Form No.: FCC Form 161.

Type of Review: Extension of a currently approved collection.

Respondents: Individuals or households, business or other for-profit, not-for-profit institutions, state, local or tribal government.

Number of Respondents: 21,000.

Estimated Time Per Response: .166 hours (10 minutes).

Frequency of Response: On occasion reporting requirement.

Total Annual Burden: 3,486 hours.

Annual Reporting and Recordkeeping Cost Burden: N/A.

Needs and Uses: The purpose of this form is used to update/change an entity name, address, telephone number, email address, fax, contact representative, contact representative address, telephone number, email address, and fax in the CORES system. The information is received at the CORES Help desk for data entry/update. The purpose of obtaining the FCC Registration Number (FRN) is for collecting and reporting on any delinquent amounts arising out of such person's relationship with the FCC. The respondents are anyone doing business with the Commission.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. 03–11493 Filed 5–8–03; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL RESERVE SYSTEM

Change in Bank Control Notices; Acquisition of Shares of Bank or Bank Holding Companies

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. The notices also will be available for inspection at the office of the Board of Governors.

Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than May 23, 2003.

A. Federal Reserve Bank of Atlanta (Sue Costello, Vice President) 1000 Peachtree Street, N.E., Atlanta, Georgia 30303:

1. R.C. Patel, Duluth, Georgia, and Mukesh Patel, Atlanta, Georgia; to each retain voting shares of Horizon Bancorp, Inc., Decatur, Georgia, and thereby indirectly retain voting shares of Horizon Bank, Decatur, Georgia.

B. Federal Reserve Bank of Minneapolis (Richard M. Todd, Vice President and Community Affairs Officer) 90 Hennepin Avenue, Minneapolis, Minnesota 55480-0291:

1. William F. Wanner, Jr. Revocable Trust U/A Dated 12/29/94 and William F. Wanner, Jr., and Kathleen A. Wanner as Trustees, all of Wayzata, Minnesota; to acquire voting shares of Ridgedale Financial Services, Inc., Minnetonka, Minnesota, and thereby acquire voting shares of Ridgedale State Bank, Minnetonka, Minnesota.

Board of Governors of the Federal Reserve System, May 5, 2003.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. 03–11521 Filed 5–8–03; 8:45 am]

BILLING CODE 6210–01–S

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR Part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The application also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States. Additional information on all bank holding companies may be obtained from the National Information Center website at www.ffiec.gov/nic/.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than June 2, 2003.

A. Federal Reserve Bank of Cleveland (Stephen J. Ong, Vice President) 1455 East Sixth Street, Cleveland, Ohio 44101-2566:

1. Columbia Bancorp, Inc., Cincinnati, Ohio; to become a bank holding company by acquiring 100 percent of the voting shares of Columbia Savings Bank, Cincinnati, Ohio.

Board of Governors of the Federal Reserve System, May 5, 2003.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. 03–11520 Filed 5–8–03; 8:45 am]

BILLING CODE 6210–01–S

GENERAL SERVICES ADMINISTRATION

Maximum Per Diem Rates for Kentucky, North Carolina, Ohio, and Virginia

AGENCY: Office of Governmentwide Policy, General Services Administration (GSA).

ACTION: Notice of Per Diem Bulletin 03–1, revised continental United States (CONUS) per diem rates.

SUMMARY: To improve the ability of the per diem rates to meet the lodging demands of Federal travelers to high cost travel locations, the General Services Administration (GSA) has integrated the contracting mechanism of the new Federal Premier Lodging Program (FPLP) into the per diem rate-setting process. An analysis of FPLP contracting actions and the lodging rate survey data reveals that the maximum per diem rate should be adjusted to provide for the reimbursement of Federal employees' lodging expenses covered by the per diem. This notice announces the new per diem rates for Kentucky, North Carolina, Ohio, and Virginia.

DATES: This notice is effective May 27, 2003.

FOR FURTHER INFORMATION CONTACT: For clarification of content, contact Joddy P. Garner, Office of Governmentwide Policy, Travel Management Policy, at (202) 501–4857. Please cite Notice of Per Diem Bulletin 03–1.

SUPPLEMENTARY INFORMATION:

A. Background

In the past, properties in high cost travel areas have been under no obligation to provide lodging to Federal travelers at the prescribed per diem rate. Thus, GSA established the FPLP to contract directly with properties in high cost travel markets to make available a set number of rooms to Federal travelers at contract rates. FPLP contract results along with the lodging survey data are integrated together to determine reasonable per diem rates that more accurately reflect lodging costs in these areas. In addition, the FPLP will enhance the Government's ability to better meet its overall room night demand, and allow travelers to find lodging close to where they need to conduct business. After an analysis of this additional data, the maximum lodging amounts published in the **Federal Register** at 67 FR 56160, August 30, 2002 and amended at 67 FR 69634, November 18, 2002, are being changed in the following locations:

State of Kentucky

- Cities of Hebron/Florence/Covington, including Boone and Kenton Counties

State of North Carolina

- City of Chapel Hill, including Orange County.
- City of Raleigh, including Wake County.
- Cities of Research Triangle Park/Durham, including Durham County.

State of Ohio

- City of Cincinnati, including Hamilton and Warren Counties.

State of Virginia

- City of Colonial Heights (independent city).
- City of Hopewell (independent city).
- City of Petersburg (independent city).
- Prince George County.
- City of Richmond (independent city, but includes Chesterfield and Henrico Counties, also Defense Supply Center).

B. Change in Standard Procedure

Since per diem rates frequently change, effective April 28, 2003 (see 68 FR 22314, April 28, 2003), the Office of Governmentwide Policy (OGP), GSA, will issue/publish the CONUS per diem rates, formerly published in appendix A to 41 CFR chapter 301, solely on the Internet at *http://www.gsa.gov/perdiem*. This new process will ensure more timely increases or decreases in per diem rates established by GSA for Federal employees on official travel within CONUS. This notice advises agencies of revisions in per diem rates prescribed by OGP for CONUS. Notices published periodically in the **Federal Register**, such as this one, now constitute the only notification of revisions in CONUS per diem rates to agencies.

Dated: May 2, 2003.

G. Martin Wagner,

Associate Administrator.

[FR Doc. 03–11529 Filed 5–8–03; 8:45 am]

BILLING CODE 6820–14–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[Program Announcement 03135]

Steps to a HealthierUS: A Community-Focused Initiative To Reduce the Burden of Asthma, Diabetes, and Obesity; Notice of Availability of Funds

Application Deadline: July 15, 2003.

A. Authority and Catalog of Federal Domestic Assistance Number

This program is authorized under section 301(a) and 317(k)(2) of the Public Health Service Act, (42 U.S.C., sections 241(a) and 247b(k)(2), as amended. The Catalog of Federal Domestic Assistance Number is 93.283.

B. Purpose

The Department of Health and Human Services (HHS), acting through the Centers for Disease Control and Prevention (CDC), and combining the strengths and resources of all relevant HHS agencies and programs, announces the availability of fiscal year (FY) 2003 funds for a cooperative agreement program to implement the Secretary of HHS Initiative for Americans entitled Steps to a HealthierUS (hereafter referred to as STEPS). The relevant HHS agencies and offices include, but are not limited to, the Administration on Aging, Administration for Children and Families, Agency for Healthcare Research and Quality, CDC, Centers for Medicare and Medicaid Services, Food and Drug Administration, Health Resources and Services Administration, Indian Health Service, National Institutes of Health, Office of Disease Prevention and Health Promotion, and the Substance Abuse and Mental Health Services Administration hereafter referred to as "HHS agencies").

STEPS is a bold new initiative. The centerpiece of this initiative is a five-year cooperative agreement program to create healthier communities by improving the lives of Americans through innovative and effective community-based health promotion and chronic disease prevention and control programs.

STEPS is based on the President's HealthierUS Initiative, which highlights the influence that healthy lifestyles and behaviors—such as making healthful nutritional choices, being physically active, and avoiding tobacco use and exposure—have in achieving and maintaining good health for persons of all ages. STEPS will work through public-private partnerships at the community level to support community-driven programs that enable persons to adopt healthy lifestyles that contribute directly to the prevention, delay, and/or mitigation of the consequences of diabetes, asthma, and obesity.

The initiative's goals are to:

- Prevent 75,000 to 100,000 Americans from developing diabetes
- Prevent 100,000 to 150,000 Americans from developing obesity
- Prevent 50,000 Americans from being hospitalized for asthma

The purpose of STEPS is to enable communities to reduce the burden of chronic disease, including: Preventing diabetes among populations with prediabetes; increasing the likelihood that persons with undiagnosed diabetes are diagnosed; reducing complications of diabetes; preventing overweight and obesity; reducing overweight and obesity; and reducing the complications of asthma. STEPS will achieve these outcomes by improving nutrition; increasing physical activity; preventing tobacco use and exposure, targeting adults who are diabetic or who live with persons with asthma; increasing tobacco cessation, targeting adults who are diabetic or who live with persons with asthma; increasing use of appropriate health care services; improving the quality of care; and increasing effective self-management of chronic diseases and associated risk factors.

The key to the success of STEPS will be community-focused programs that include the full engagement of schools, businesses, faith-communities, health care purchasers, health plans, health care providers, academic institutions, senior centers, and many other community sectors working together to promote health and prevent chronic disease. STEPS programs need to build on, but not duplicate, current and prior HHS programs and coordinate fully with existing programs and resources in the community.

Background

In the United States today, seven of ten deaths and the vast majority of serious illness, disability, and health care costs are caused by chronic diseases, such as diabetes, asthma, and obesity. Underlying these serious diseases are several important risk factors that can be modified years before they contribute to illness and death. Three risk factors—poor nutrition, lack of physical activity, and tobacco use and exposure—are major contributors to the nation's leading causes of death and must be addressed as part of this initiative. The first two of these risk factors contribute primarily to obesity and diabetes. Tobacco use contributes primarily to asthma, but it also contributes to the risk of poor circulation and heart disease among those who have diabetes. Research has demonstrated a clear link between exposure to tobacco smoke and exacerbation of asthma, and has provided evidence of a causal link between exposure to tobacco smoke and the development of asthma. Research has also shown that smoking heightens the risk for diabetes-related complications of neuropathy and nephropathy; cigarette use has been shown to be a significant risk factor for death by coronary heart disease in type 2 diabetes. By requiring recipients to address nutrition, physical activity, and tobacco use as core components of their community interventions, STEPS programs will reduce the burden of diabetes, asthma, and obesity.

Efforts to address risk factors and disease management through improved health care access, health care utilization, health care quality, and self-management skills, including adherence to medication and other health regimens, also may be addressed as part of this initiative. While payment for health care services is not an allowable expense under this program announcement, increasing access to and use of diagnostic screening and improved treatment can be accomplished in four primary ways: (1) Identifying existing services and resources in the community and linking/referring persons to treatment; (2) educating health care providers on current standards of care and methods for implementing those standards; (3) developing consumer awareness and demand for quality health care (*e.g.*, using media to promote increased

demand for vaccinations, appropriate screenings, and treatment); (4) helping health care providers implement effective office-based strategies, such as patient reminder systems, that help ensure timely and appropriate care.

This cooperative agreement is designed to establish community-based, coordinated, comprehensive health promotion, prevention, and control programs of sufficient intensity and durability to create sustainable change and thereby achieve the "Healthy People 2010" objectives shown in Attachment A. All referenced attachments are posted with this announcement on the CDC Web site (*http://www.cdc.gov*). Click on "Funding" then "Grants and Cooperative Agreements".

Resources useful to the preparation of applications and in support of program implementation are available in Attachment B.

Cooperative agreement recipients are expected to participate fully in coordinated monitoring and evaluation activities that include collecting and reporting common performance measures as well as participating in an independent, external evaluation to measure the impact of STEPS.

C. Eligible Applicants

Cities, urban communities, states, and Tribes or Tribal consortia are eligible under this announcement. The District of Columbia, other large cities, and urban communities (defined as a contiguous geographic area (including counties) with a population exceeding 400,000 persons) with substantial expertise and infrastructure for the design, delivery and evaluation of chronic disease prevention and control interventions can apply directly under this announcement (hereafter referred to as "Large City and Urban Community" applicants). Federally recognized Tribal Governments, Regional Area Indian Health Boards, Urban Indian organizations, and Inter-Tribal Councils which serve 10,000 or more American Indians/Alaskan Natives in their catchment area(s) can apply directly under this announcement (hereafter referred to as "Tribal" applicants). All other communities, not otherwise included in the applications above, may be eligible for awards under state applications (hereafter referred to as "State-Coordinated Small City and Rural Community" applicants).

In determining eligibility, Large Community and Urban Community applicants must meet the criteria under number 1 below, Tribal applicants must meet the criteria under number 2 below, and State-Coordinated Small Cities and Rural Community applicants must meet the criteria under number 3 below.

Note: Public Law 104–65 states that an organization described in section 501(c)(4) of the Internal Revenue Code of 1986 which engages in lobbying activities shall not be eligible for the receipt of Federal funds constituting an award, grant, contract, or any other form.

1. Large City and Urban Community Applicants

The official local health department (or its bona fide agent), or its equivalent, as designated by the mayor, county executive, or other equivalent governmental official, will serve as the lead/fiduciary agent for a Large City and Urban Community application. For this announcement, the term "large cities and urban communities" is defined as any contiguous geographic area (including counties) with a population exceeding 400,000 persons. The District of Columbia is eligible to apply for funding under this section of the program announcement. Large City and Urban Community Applicants can specify an intervention area that is smaller than the entire city or community, but the intervention area must be geographically contiguous and must include a population of at least 150,000 residents, but not more than 500,000 residents. Only one application will be accepted from each eligible large city and urban community.

2. Tribal Applicants

Federally recognized Tribal Governments, Regional Area Indian Health Boards, Urban Indian organizations, and Inter-Tribal Councils as designated by the Principal Tribal elected official or chief executive officer will serve as the lead/fiduciary agency for tribal applications. Each tribal application must include a minimum population of 10,000 American Indians/Alaskan Natives within a defined geographic area or set of areas that may or may not be geographically contiguous.

3. State-Coordinated Small City and Rural Community Applicants

The official state health department (or its bona fide agent), or its equivalent, as designated by the Governor, is to serve as the lead/fiduciary agency for Small City and Rural Community applications. For this announcement, the term "State" includes the 50 states, the Commonwealth of Puerto Rico, the Virgin Islands, the Commonwealth of the Northern Marianna Islands, American Samoa, Guam, the Federated States of Micronesia, the Republic of the Marshall Islands, and the Republic of Palau. States must identify two to four communities of total resident size not to exceed 800,000 persons combined. Each selected community must be geographically contiguous and include a minimum population of 10,000 persons. Neighboring small or rural counties may be grouped together to form a single, contiguous "community." States are strongly encouraged to include diverse communities that vary in size and location. HHS anticipates funding some programs that encompass rural communities as well as small cities. Only one application will be accepted from each state.

D. Funding

Availability of Funds

Approximately $13,650,000 is available in FY 2003 to fund STEPS. Of this amount, approximately $9,000,000 is available to fund 9 to 12 Large City and Urban Community applications. It is expected that the average award will be $1,000,000 and will range from $750,000 to $1,250,000. Approximately $250,000 is available to fund one Tribal application. Of the total amount available, approximately $4,400,000 is available to fund up to four State-Coordinated Small City and Rural Community application. It is expected that the average award will be $1,500,000 and will range from $1,000,000 to $2,000,000. State Health Departments must ensure that 75 percent of the total STEPS award is distributed on an annual basis to the identified communities in the state-coordinated application within four months of the award date, and that the remaining funds are used to support the funded communities through technical assistance and other means.

It is expected that awards will begin on or about September 22, 2003, and will be made for a 12-month budget period within a project period of up to five years. It is expected that projects will emphasize program assessment and evaluation during the first two years of funding. Continuation awards and level of funding within an approved project period (FY 2004 through FY 2007) will be based on the availability of funds and satisfactory progress in achieving performance measures as evidenced by required progress reports.

Funding for FY 2004 and beyond is expected to range from $2,000,000 to $3,000,000 for each Large City and Urban Community recipient; $300,000 to $1,000,000 for each Tribal recipient; and from $4,000,000 to $10,000,000 for each State-Coordinated Small City and Rural Community recipient. It is also anticipated that additional FY 2004 resources may enable the Secretary to fund additional prevention initiatives based on this announcement or a separate announcement.

Applicants funded for the first time in FY 2004 will be required to submit a revised work plan and budget in order to receive funds at FY 2004 funding levels during their first year of funding.

Pending availability of funds, beginning in FY 2004 and each of the remaining years of this program announcement (September 22, 2004 through September 21, 2007), there may be an open season for new competitive applications. Specific guidance will be provided with exact application due dates and funding levels each year.

Recipient Financial Participation

Matching funds, that is, a specific percentage of program costs that must be contributed by a recipient in order to be eligible for this announcement, are not required. Applicants are encouraged, however, to identify financial and in-kind contributions from their own organization and their partners to support and sustain the activities of this program announcement. Program applications that include private partners who contribute in-kind or funding support and incentives to these efforts are strongly encouraged.

Funding Preferences

Preference in funding, based on well-documented data, may be given to ensure:

- Inclusion of populations disproportionately affected by chronic disease and associated risk factors.
- Inclusion of geographic areas with high, age-adjusted rates of chronic disease and associated risk factors.
- Geographic distribution of STEPS programs nationwide.
- Inclusion of communities of varying sizes, including rural, suburban, and urban communities.

Use of Funds

Cooperative agreement funds may be used to expand, enhance, or complement existing activities to accomplish the objectives of this program announcement. Funds may be used to pay for, but are not limited to: staffing, consultants, contractors, materials, resources, travel, and associated expenses to implement and evaluate intervention activities such as: promoting healthy food choices in away-from-home settings; encouraging restaurants to label heart-healthy menu items; establishing community walking programs; helping schools, worksites, shopping malls, senior centers, and other community locations establish health-promoting programs and environments; establishing community-based education, exercise, healthy nutrition, and smoking cessation programs in accessible locations; educating health plans and providers regarding standards for preventive health care practices and how to fully implement them; enhancing office-based systems to ensure that persons with chronic disease are called for routine exams and other follow-up; using information technology (such as the web and email) to communicate with people with chronic disease or associated risk factors; developing community support groups for persons with chronic disease or associated risk factors; conducting awareness and media campaigns to educate persons about their risk of chronic disease and what actions to take; using health risk appraisals such as the American Diabetes Association's self-assessment risk tool, "Take the Test/Know Your Score"; conducting community-based outreach to high-risk individuals, encouraging them to seek appropriate care; establishing telephone hotlines for tobacco cessation and other health information needs; training lay health workers ("promotoras") to conduct health promotion programs.

Funds received under this announcement may not be used to supplant/replace existing local, state, or federal funds or activities. Cooperative agreement funds may not be used for direct patient care, diagnostic medical testing, patient rehabilitation, pharmaceutical purchases, facilities construction, lobbying, basic research or controlled trials.

Lead/fiduciary agencies will be eligible to receive up to five percent of their total award for indirect costs.

Direct Assistance

Direct assistance, that is, assistance provided by the Federal government in the form of Federal employee staffing when detailed to the recipient (pay, allowances, and travel), supplies, or equipment in lieu of cooperative agreement/financial assistance funds, is not available as part of FY 2003 STEPS awards. Direct assistance in lieu of cash may be available in subsequent years.

E. Program Requirements

All recipient activities funded under this program announcement need to coordinate with and reinforce, but not duplicate, related, existing federal, state, and local activities. In conducting activities to achieve the purpose of this program announcement, Large Cities and Urban Community applicants will be responsible for the activities listed under number 1 below, Tribal applicants for the activities listed under number 2 below, State-Coordinated Small City and Rural Community applicants for the activities listed under number 3 below, and HHS Agencies for the activities listed under number 4 below. All recipients must address both community and school-based components.

1. Large City and Urban Community Recipient Activities

(a) Fiduciary Responsibilities

i. *Lead Agency.* Establish the lead/fiduciary agency to be the local health department (or its bona fide agent) or its equivalent as designated by the mayor, county executive, or other equivalent governmental official.

ii. *Allocate Funds.* Allocate and disperse funds to the local education agency or agencies responsible for schools within the intervention area, and additional key partners and collaborators to implement recipient activities. Include adequate funds to participate fully in the substantial data collection and evaluation activities associated with this award.

iii. *Contract Services.* Contract for services, as needed, to accomplish the objectives of this program announcement.

vi. *Link Budget to Performance.* Provide integrated progress and financial reports that link the performance and expenditures of the local health department and all key partners.

v. *Sustainability.* If funded for years three through five, engage in efforts that will sustain successful interventions on a long-term basis.

(b) Community Consortium

Identify key partners and coalitions that focus on the prevention and control of chronic disease and associated risk factors. Build an alliance of partnerships and coalitions committed to participating actively in the planning, implementation, and evaluation of STEPS. Effective partnerships are central to the success and sustainability of STEPS. Key partners should demonstrate a high-level commitment to the initiative by their willingness to invest expertise, leadership, personnel, and other resources in the success of the project.

Partners must include, but are not limited to, the mayor's office (or equivalent); local and state health departments; local and state education agencies; key community, health care, voluntary, and professional

organizations; business, community, and faith-based leaders; and at least one lay person representative of the population to be served. Other partners may include, but are not limited to, existing community coalitions (especially those already focusing on chronic diseases), Federally Qualified Health Centers including community health centers [1], worksite wellness programs, health care purchasers, health plans, unions, health care providers for farm and migrant workers and their families, school-based and school-linked clinics, health care providers for the homeless, primary care associations, social service providers, health maintenance organizations, private providers, hospitals, universities, schools of public health, academic health centers, organizations that serve young children and youth, parks and recreation departments, departments of transportation, public housing authorities, state Medicaid officials, service organizations, food manufacturers and distributors, aging services organizations, senior centers, community action groups, consumer groups, and the media.

Note: [1] Consolidated Health Centers under Section 330, of the Public Health Service Act are commonly referred to as community health centers. They include centers that tailor resources for populations such as low-income persons, the uninsured, homeless people, migrant and seasonal farm workers, and public housing residents.

(c) Leadership, Coordination, and Management

i. *Leadership Team.* Establish and coordinate a leadership team responsible for overseeing project activities, establishing and maintaining an organizational structure and governance for the community consortium (including decision-making procedures), determining the project budget and subcontracts, and participating in project-related local and national meetings. The leadership team must include, but is not limited to, the local health department, the local education agency or agencies, and other key leaders from the community.

ii. *Project Staff.* Establish and maintain paid project staff to include a full-time project coordinator with management experience in risk factor interventions and community-based chronic disease prevention and control. Other part-time or full-time staff, contactors, and consultants must be sufficient in number and expertise to ensure project success and have demonstrated skills and experience in coalition and partnership development, community mobilization, health care systems, public health, program evaluation, epidemiology, data management, health promotion, policy and environmental interventions, health care quality improvement, communications, resource development, school health, and the risk factor and disease areas targeted by the program.

iii. *Project Management.* The project coordinator with the other project staff and leadership team, should:

a. Encourage active participation of consortium members in project activities and decisions, through regular meetings and other proactive methods of communication

b. Actively oversee all project activities during their planning, development, implementation, and evaluation phases

c. Track performance in relationship to the achievement of short-term and intermediate outcomes and budgetary expenditures

d. Seek technical assistance from the State, HHS agencies, other Federal agencies, other recipients, national voluntary organizations, universities, or other sources

e. Keep the Project Officer informed and seek Project Officer input and assistance

f. Take corrective action promptly when necessary to ensure project success

g. Participate in STEPS-wide program evaluations.

iv. *Coordinate with State Plans and Activities.* Ensure that community objectives, activities, and interventions are consistent with and supportive of state plans and activities for the prevention and control of diabetes, asthma, obesity, and associated risk factors. Ensure that community objectives, activities, and interventions do not duplicate existing efforts.

(d) Community Action Plan, Community and School-Based Interventions

Identify and implement high priority, eligible intervention strategies proven to prevent and control diabetes, asthma, and obesity. To establish such priorities, communities must examine their chronic disease burden, at-risk populations, current services and resources, and partnership capabilities to develop a comprehensive community action plan.

Communities can select particular areas of programmatic focus within STEPS. However, all communities must address nutrition, physical activity, and tobacco use and exposure since these areas will positively impact primary and/or secondary prevention in diabetes, asthma, and obesity. Additionally, communities are expected to implement other specific interventions to reduce the burden of the diseases/conditions addressed by STEPS (asthma, diabetes, and obesity). Such interventions might include: (1) Conducting community-wide campaigns to implement a diabetes assessment questionnaire (*e.g.*, American Diabetes Association's "Are You at Risk?"); (2) promoting quality care by providing health care settings with effective systems for handling referrals, follow-ups, and patient reminder systems; and (3) providing training for health care providers on how to establish effective asthma care plans with patients and their families.

i. *Community Interventions.* Programs are expected to employ multiple, evidence-based public health strategies based on the existing and emerging research base and careful scientific reviews such as the Guide to Community Preventive Services (*http://www.thecommunityguide.org/*), the Guide to Clinical Preventive Services (*http://www.odphp.osophs.dhhs.gov/pubs/guidecps/*) and *http://www.ahrq.gov/clinic/prevnew.htm),* and the National Registry for Effective Programs (*http://modelprograms.samhsa.gov/template.cfm?page=nrepbutton*). Effective public health strategies may include changes to the social and physical environments; health promotion, public education, and information; media and other communication strategies; technological advances; economic incentives and disincentives; system improvements; provider education and medical office-based improvement strategies. (*See* Attachment C for additional, example intervention strategies).

While project activities should reach all persons in an identified intervention area, special efforts should be taken to ensure focus on populations with disproportionate burden of chronic diseases/conditions who also tend to experience disparities in access to and use of preventive and health care services. Populations of special focus might include racial and ethnic minorities, low-income persons, the medically underserved, persons with disabilities, and others with special needs. Programs must be culturally competent, and meet the health literacy and linguistic needs of target populations in the intervention area.

Programs should optimize resources by coordinating and partnering with existing programs and resources in the community, surrounding areas, and the state (*e.g.*, state incentive grant programs). Programs should expand the resources available through public-private ventures, foundation grants, public funding, and in-kind contributions in order to achieve and sustain STEPS outcomes.

Collaborative partnerships with, for example, professional organizations; health care providers, employers/purchasers, and plans; faith-based organizations; schools; child care, early childhood programs, and other organizations that serve children and youth; senior centers or service organizations; primary care associations; area health education centers; community health centers; local, regional, and state chapters of national chronic disease organizations (*e.g.*, the American Diabetes Association, the American Heart Association, the American Lung Association, the Asthma and Allergy Foundation of America, the American Cancer Society); and many others will be key to reaching affected populations and delivering and sustaining effective programs. Strong, cooperative linkages between clinical preventive care and community public health should be established and maintained.

With direction and coordination from the leadership team, the community consortium should develop and implement priority community health interventions to prevent and control diabetes, asthma, obesity, and associated risk factors in the identified intervention area. Such interventions may include:

a. Actively engaging members of the intended audience in community assessments, program planning (including establishing program goals and specifying intervention content and design), delivery, evaluation, and program improvement.

b. Supporting community-based initiatives to increase physical activity, improve nutrition, and eliminate tobacco use and exposure.

c. Increasing healthy food choices in restaurants, grocery stores, vending machines, worksites, shopping malls, senior centers, and other community settings. *http://www.cdc.gov/nccdphp/dnpa/obesity/index.htm*

d. Increasing access to and use of attractive and safe locations for engaging in physical activity.

e. Increasing access to and use of effective cessation programs for persons who use tobacco, targeting adults who are diabetic or who live with persons with asthma. (*http://www.surgeongeneral.gov/tobacco/default.htm*)

f. Improving strategic communication through the use of media and information technologies to improve public awareness and motivation to establish healthy nutrition, physical activity, and avoidance of tobacco use.

g. Developing supportive environments to complement and sustain individual change efforts.

h. Providing social support, reinforcement, and inducements to make healthy choices.

i. Enlisting the support of organizations and settings (*e.g.*, after school programs, worksites, youth-serving organizations, families, faith-based organizations, senior centers, and health care partners) to encourage and support healthy behavior.

j. Working with health care providers, health plans, and employer/purchasers to increase the use of evidence-based preventive care practices.

k. Improving access to and utilization of quality health care services for primary and secondary prevention of the Steps diseases/conditions (asthma, diabetes, and obesity).

l. Increasing self-management skills, including adherence to medication and other health regimens, among persons with established risk factors or chronic disease.

m. Ensuring adequate provider education, including strategies to implement national guidelines on quality care, and improving provider communication and counseling skills.

n. Educating persons with chronic disease on the proper management of their disease and the importance of seeking early, appropriate care to prevent and minimize complications.

o. Raising levels of health literacy to enable persons to make informed health decisions.

ii. *School interventions.* With guidance from the local education agency or agencies, implement school health interventions to prevent and control diabetes, asthma, and obesity in the same intervention area being served by the community interventions. Such interventions may include:

a. Identifying or establishing a full-time school health program coordinator and School Health Council to direct project activities and assist in their implementation. See the American Cancer Society's Guide on the Role of the School Health Coordinator and Guide to School Health Councils. (*http://www.schoolhealth.info*)

b. Reviewing and strengthening the schools' health-related policies and instructional programs using the CDC's School Health Index (*http://www.cdc.gov/nccdphp/dash/SHI/*), and the National Association of State Boards of Education's Fit, Healthy and Ready to Learn: A School Health Policy Guide. (*http://www.nasbe.org/HealthySchools/fithealthy.mgi*)

c. Providing adequate physical education for all students throughout the school year and increasing opportunities for physical activity through recess, intramural activities, and other offerings. (*http://www.cdc.gov/nccdphp/dash/healthtopics/physical_activity/guidelines/index.htm*)

d. Providing professional development for staff to enable them to deliver effective, skills-based health instruction for students (*http://www.nasn.org/*).

e. Implementing staff wellness programs that include health assessment, health promotion, and health management components.

f. Ensuring that school food service personnel are qualified and trained in the use of United States Department of Agriculture (USDA) guidelines for healthy eating.

g. Wherever food is served in school, make appealing foods available that are low in fat, sodium, and added sugars. Limit the sale and distribution of foods of minimal nutritional value. (*http://www.cdc.gov/nccdphp/dash/healthtopics/nutrition/guidelines/index.htm*)

h. Establishing a tobacco-free school environment that prohibits tobacco use on school property, in school vehicles, at school-sponsored events (on and off school property) for students, staff, and visitors, at all times in order to reduce potential exposure to those with asthma. Offer or refer students and staff to school- or community-based tobacco use cessation programs, targeting those who have diabetes or who live with persons with asthma. (*http://www.cdc.gov/nccdphp/dash/healthtopics/tobacco/guidelines/index.htm*)

i. Alleviating indoor air quality problems caused by allergens and irritants such as smoke, dust, mites, molds, warm-blooded animals, and cockroaches.

j. Establishing management and support systems for students with targeted health problems. Ensure communication and coordination among students, families, relevant school staff, and community health and mental health providers.

k. Coordinating school, family, and community efforts. Assist families to support a healthy lifestyle for their children and families. Link school efforts to community programs and activities.

l. Working with school-based and school-linked clinics, assist students and families in meeting their chronic disease-related health needs.

(e) Updated Community Action Plans

Within the first eight months, finalize a five-year community action plan, based on the guidelines of this announcement, the preliminary plan submitted with this application, input from the application review process, newly available community information, HHS agencies and other sources of technical support, and continuing discussions with the community consortium. Base your revised action plan on a logic model that serves as the foundation for prioritizing, planning, and budgeting interventions, program management, and program sustainability (See Attachment B for references regarding logic model development and use). Review and update the community action plan annually to reflect community needs, opportunities, resources, and program evaluation findings.

(f) Project Monitoring and Evaluation

i. *Risk Factor Surveillance.* Work with the state health department and CDC to expand existing surveillance mechanisms to collect representative Behavioral Risk Factor Surveillance System (BRFSS) baseline data for 1,500 to 2,000 adults within the intervention area, and repeat such assessments on an annual basis. (*http://www.cdc.gov/brfss/*)

Work with the state education agency and CDC to collect representative baseline data ffrom the Youth Risk Behavior Surveillance System (YRBSS) (including, at a minimum, information on nutrition, physical activity, asthma, and tobacco) for 1,500 to 2,000 middle and/or high school students within the intervention area, and repeat such assessments on at least a biennial basis. (*http://www.cdc.gov/nccdphp/dash/yrbs/about_yrbss.htm*)

ii. *Existing Data Sources.* Identify existing data sources that can be used to design and monitor STEPS interventions, including hospital discharge data; medical care practice data; vital statistics data; Women, Infants, and Children (WIC) data; community health centers data; Medicaid and Medicare data; school data such absentee rates, academic, health, and risk information; and other sources of information about individual, group, or community health status, needs, and resources.

iii. *Common Performance Measures.* STEPS recipients will participate in establishing a common set of core performance measures to track the number and types of persons served by various intervention strategies and the achievement of related short-term, intermediate, and long-term outcomes. Recipients must agree to collect and report on core performance measures using standardized methodology to document how intervention strategies are being implemented and are successfully addressing STEP priorities. Performance goals should show the link between program activities and the achievement of the initiative's overarching goals. See Attachment A for selected "Healthy People 2010" objectives that are anticipated to form part of the core performance measures.

iv. *Comprehensive Evaluation Plan.* Agree to participate fully in a STEPS-wide independent, external evaluation to examine and document the effectiveness of this cooperative agreement program. An important mechanism for changing behavior and implementing effective practices in a variety of settings is the ability to examine and act on successes, barriers to success, and failures. The recipients are expected to be full partners in the evaluation of this initiative by actively gathering and submitting data on selected outcome and performance measures. Grantees will also participate in other evaluation activities that may include regular debriefings, descriptive case studies, special analyses, and mid-course adjustments.

v. *Data-Based Decision Making.* Projects are expected to use all the information above, in consultation with their Project Officer, to design and modify intervention strategies and the community action plan; revise budgets and subcontracts; request technical assistance from HHS agencies and/or contracted experts; recruit new members to the consortium; and/or change the structure of the consortium to improve project participation and outcomes.

(g) Information Sharing

Actively promote the sharing of experiences, strategies, and results with both funded and unfunded cities, communities, and interested partners. Ensure effective, timely communication and exchange of information, experiences, and results through the use of the internet; management information systems; other electronic approaches and formats; workshops; site visits to and between communities and cities; and other activities.

2. Tribal Recipient Activities

Recipient activities are the same as the activities outlined under sections E.1. (a) through (g) for Large Cities and Urban Communities.

3. State-Coordinated Small City and Rural Community Recipient Activities

(a) State Fiduciary Responsibilities

i. *Lead Agency.* Establish the lead/fiduciary agency to be the state health department (its bona fide agent) or its equivalent as designated by the Governor.

ii. *Allocate Funds.* Allocate and disperse funds to communities, the state education agency, other key partners to implement recipient activities at the community level. Include adequate funds to participate fully in the substantial data collection and evaluation activities associated with this award.

iii. *Contract Services.* Contract for services, as needed, to accomplish the objectives of this program announcement.

iv. *Link Budget to Performance.* Provide integrated progress and financial reports that link the performance and expenditures of the communities and all key partners.

v. *Sustainability.* If funded for years three through five, engage in efforts that will sustain successful community programs on a long-term basis.

(b) Small City and Rural Community Responsibilities

Each of the two to four identified communities is expected, with state assistance, to assume the responsibilities identified under Large City and Urban Community Recipient Activities section E.1. (a) through (g).

(c) Leadership/Coordination/Management

In support of the communities, the state health department should establish and coordinate a State-Community Management Team, including participation from the funded communities, the state health department, education agency, Office of Rural Health, any city or large community that is funded within the state borders under this program announcement, and other key public and private sector partners.

i. *Coordinate community objectives with state health plans.* Ensure that, community, and city objectives, activities, and interventions are consistent with, and are supportive of state plans and activities for the prevention and control of diabetes, asthma, and obesity.

ii. *Collaboration.* Ensure collaboration between the community and city programs funded under this program announcement and other state and local chronic disease prevention and control programs.

iii. *Project Staff.* Establish and maintain project staff sufficient to provide oversight and technical assistance to the funded communities.

(d) Technical Assistance

The state health department and state education agency should provide or facilitate the provision of technical assistance, consultation, and support to the funded communities in:

i. *Monitoring Disease Burden.* Defining and monitoring the burden of chronic diseases and disparities through surveillance, epidemiology, and existing data sources (*e.g.*, vital statistics, hospital discharge data, WIC data, community health centers data, Health Centers Uniform Data System, Medicaid and Medicare data).

ii. *Risk Factor Surveillance.* Working with participating communities and other interested parties, ensure that surveillance mechanisms are in place to monitor changes in risk factors (*e.g.*, BRFSS & YRBSS).

iii. *Program Evaluation.* Work with funded communities on on-going evaluation, including assessing the effectiveness of, targeting of, number of persons reached by, and use of intervention strategies; tracking the accomplishment of activities and the achievement of short-term and intermediate outcomes; monitoring changes in health outcomes; tracking performance in relationship to budget execution; and using program evaluation findings to adjust plans and strengthen the program.

iv. *Evidence-Based Practices.* Accessing and sharing with funded communities current prevention effectiveness, intervention effectiveness, and other research and program evaluation findings. Identifying and sharing promising practices.

v. *Community Support.* Helping to build community engagement, mobilization, ownership, and organization.

vi. *Intervention Selection and Development.* Identifying, recommending, and adapting, evidence-based intervention strategies consistent with the needs, cultures, and resources of the communities.

vii. *Resource Development.* Promoting public and private resource development in support of community-based intervention strategies and long-term sustainability.

(e) Project Monitoring and Evaluation

The state health department should work with each of the selected communities to ensure that surveillance mechanisms collect representative data for program planning and monitoring. Obtain existing and new data sources to better understand the burden and trends of chronic diseases, and associated risk factors, and the effects of the STEPS program.

(f) Information Sharing

The state health department should actively promote the sharing of experiences, strategies, and results among communities and cities within the state, between states funded under this program announcement, and with other interested communities. Support community efforts by ensuring effective, timely communication and exchange of information, experiences, and results through the use of the internet; management information systems; other electronic approaches and formats; workshops; site visits to and between communities and cities; and other activities.

4. HHS Activities

(a) Leadership and Coordination

i. *HHS Prevention Steering Committee.* An HHS Prevention Steering Committee has been established to coordinate and organize the "Steps to a HealthierUS" initiative and is comprised of high-level representatives of relevant HHS agencies and offices. The Committee will provide ongoing policy oversight and direction to STEPS and will coordinate technical assistance from each agency in support of the successful achievement of the purposes and performance objectives of this program announcement.

ii. *STEPS workgroup.* A STEPS workgroup comprised of representatives from funded communities, cities, tribes and states will be established and coordinated by the HHS Prevention Steering Committee in collaboration with the National Association of City and Community Health Officers, the Association of State and Territorial Health Officials, the National Association of Community Health Centers, the Association of Maternal and Child Health Programs, and other public health leadership organizations to:

a. Ensure collaboration between the recipients and their key partners funded under this program announcement and other local and state chronic disease prevention and control programs.

b. Anticipate the priority needs of recipients and prepare to meet these needs on a timely basis so that STEPS is implemented efficiently and successfully.

c. Assist in organizing and facilitating approaches to sharing experiences, lessons learned, results, and resources among recipients and existing community and state local chronic disease programs.

d. Make available the expertise, staff, and evidence-based resources of HHS agencies to assist and enhance the work of funded communities, states, and tribes.

iii. In concert with all of the HHS activities planned in support of STEPS, the Indian Health Service will provide additional coordination and assistance to the tribe funded under this announcement.

(b) Technical Assistance

Provide technical assistance, training, and support to funded projects in the areas of surveillance and epidemiology, community assessment and planning, evidence-based interventions, community mobilization and partnership development, monitoring of program performance outcomes, data management, program sustainability, and other areas as needed. Provide on-site assistance, workshops, webforums, training and intervention materials.

(c) Evaluation Oversight and Coordination

HHS will separately fund and direct an independent, external evaluation of STEPS. However, recipients are expected to budget for their full participation in the data collection associated with this external review. Additionally, HHS will coordinate cross-site evaluation activities, including the establishment of core performance measures. HHS will provide, or ensure the provision of, expert resources to assist communities, states and tribes in the design, collection, analysis, and use of comparable evaluation data for evaluating and strengthening their programs.

F. Content

Letter of Intent (LOI)

An LOI is requested from all potential applicants for the purpose of planning the competitive review process. The narrative should be no more than two pages, double-spaced, printed on one side, with one-inch margins, and unreduced 12-point font. LOIs should include the following information: (1) The program announcement title and number; (2) whether the application will be from a Large City and Urban Community applicant, a Tribal applicant, or a State-Coordinated Small City and Rural Community applicant; and (3) the name of the applicant agency or organization, the official contact person and that person's telephone

number, fax number, mailing and e-mail addresses. If the LOI is being sent from a Large City and Urban Community applicant, also provide the exact boundaries and total population size of the contiguous geographic area with population exceeding 400,000 persons that qualifies the applicant as eligible for this program announcement.

Application

The program announcement title and number must appear in the application. Use the information in the Program Requirements, Other Requirements, Evaluation Criteria, and this section to develop the application content. Your application will be evaluated on the criteria listed, so it is important to follow this guidance carefully. Content requirements for Large City and Urban Community applicants are listed under number 1 below; for Tribal applicants under number 2 below; and for State-Coordinated Small City and Rural Community applicants under number 3 below:

1. Large City and Urban Community Applicants

The narrative (excluding appendices) must be no more than 50 pages, double-spaced, printed on one side, with one-inch margins, and unreduced 12-point font. In addition to the application forms, the application must contain the following in this order:

(a) Official Transmittal Letter. Letter of transmittal from the Chief Executive Officer (Mayor, county executive, or other equivalent governmental official) committing local government support, identifying the lead agency (local health department, bona fide agent, or equivalent) and citing the amount requested.

(b) Table of Contents. Table of Contents with page numbers for each of the following sections.

(c) Executive Summary. Executive summary briefly describing the overall project, intervention area and population size, partnerships, intervention strategies, and major short-term and intermediate outcomes.

(d) Lead Agency. Description of the lead agency, including fiduciary and programmatic capabilities, as well as an inventory of current agency activities related to this announcement.

(e) Intervention Area. Description of the intervention area, including its demographic, geographic and political boundaries, target populations to receive special focus under this award, as well as evidence of the burden of disease, disparities in diabetes, asthma, obesity, associated risk factors, and access to and use of proven prevention and control interventions. Description of current activities and projects underway to address chronic diseases in the intervention area. Overview of the assets and deficiencies of the intervention area, including state, local, and private sector efforts, and a description of findings from any community assessments or asset mapping done in the past three years.

(f) Staff. Description of the proposed STEPS staff, including resumes or job descriptions for the full-time project coordinator and other key staff, the qualifications and responsibilities of each staff member and the percent of time each are committing to STEPS.

(g) Community. Description of the community consortium, including a list of key partners, and documentation of their capabilities; their commitment to specific functions, responsibilities, and resources; and evidence of prior successful collaborations. The structure, decision-making processes, and methods for accountability of the members should be described as well as how coordination and linkage with existing programs and interventions with similar focus will be maintained.

(h) Community Action Plan. A preliminary five-year community action plan that includes the community and school interventions to be employed in the intervention area. The community action plan should include time-phased, specific, measurable, and realistic short-term and intermediate outcomes based on the needs of the community and gaps in current prevention and control activities. The community action plan should identify likely approaches, strategies, and interventions to be used over the entire five-year project period to address nutrition, physical activity, and tobacco use and exposure as well as additional interventions to address the targeted STEPS chronic diseases/conditions. The organizations responsible for the interventions should be clearly identified as well as the target populations to be addressed. The community action plan should address first year activities in depth and their relationship to attaining specific short-term and intermediate outcomes. The community action plan should include a plan to ensure long-term sustainability of project efforts and outcomes.

(i) Financial Contributions. Description of financial and in-kind resources, if any, that will be contributed toward activities initiated as part of STEPS.

(j) Evaluation and Monitoring. A plan for data identification, collection, and use for program planning and monitoring. Describe efforts to obtain existing and new data sources to better understand chronic disease burden and trends, related risk factors and the effects of STEPS. Provide specific assurances to track common performance measures and participate fully in an independent, external evaluation of STEPS processes and outcomes. Performance goals should directly link program activities to the achievement of the initiative's overarching goals. Describe how the project is anticipated to improve specific performance measures and outcomes compared to baseline performance.

(k) Communications Plan. A plan to communicate and share information with the members of the consortium, the community, and other key partners. The plan should describe the proposed exchange of information, the means and proposed timing of communication, with an emphasis on communications innovations such as electronic formats, management information systems, webforums, etc.

(l) Budget and Budget Justification/Narrative. i. *Allocate Budget.* Clearly indicate estimated budget amounts to be allocated and dispersed to the local education agency or agencies and other key consortium members. Provide a description of the funding mechanisms and timelines that will be used to disperse these funds.

ii. *One-Year and Five-Year Budgets.* In support of the five-year community action plan, provide both a detailed budget and budget justification/narrative for the first budget year, and a budget estimate for budget years two through five.

a. Provide a detailed budget for the first budget year in support of each activity that must be completed in the first year of program operations to accomplish the short-term and intermediate outcomes specified in the five-year community action plan. Develop a budget justification and narrative that describes all requested funds by object class category: personnel, fringe benefits, travel, equipment, supplies, contractual, and other direct costs. As part of the request for travel funds in FY 2003, applicants should budget for two trips to workshops and/or conferences for key staff members of the lead/fiduciary organization and its key partners. For planning purposes, use Atlanta and Washington, DC as the travel destinations. Summarize all of the first-year requested funds in the form included in Attachment D, Activity-Based Plan and Budget. This information must be consistent with the first year budget information entered in Section B of Standard Form 424A (Budget Information—Non-Construction Programs).

b. Provide estimated budgets for FY 2004 through FY 2007 that are linked to the accomplishment of intermediate outcomes. For each budget year, include budget estimates for two trips to workshops and/or conferences for key staff members of the lead/ fiduciary organization and its key partners. For planning purposes, use Atlanta and Washington, DC as the travel destinations. Provide budget estimates for each year for each object class category in Section B of a separate Standard Form 424A (Budget Information—Non-Construction Programs).

(m) Letters of Support. Provide letters of support and Memoranda of Understanding (as appropriate) from the local health agencies, local Education Agency or agencies, Health Center Networks or Primary Care Associations and other key members of the consortium that specify their roles, responsibilities, and resources.

2. Tribal Applicants

The narrative (excluding appendices) should be no more than 50 pages double-spaced, printed on one side, with one-inch margins, and unreduced 12-point font. In addition to the application forms, the application must contain the following in this order:

(a) Official Transmittal Letter. Letter of transmittal from the Principal Tribal elected official or the chief executive officer of the Tribe, Inter-Tribal Council, Urban Indian Organization, or Regional Area Indian Health Board identifying the lead agency and citing the amount requested.

(b) Narrative Content. The remainder of the narrative should address the content described under F.1. b) through m) above for Large Cities and Urban Communities.

3. State-Coordinated Small City and Rural Community Applicants

The narrative (excluding appendices) should be no more than 100 pages, double-spaced, printed on one side, with one-inch margins, and unreduced 12-point font. In addition to the application forms, the application must contain the following in this order:

(a) Official Transmittal Letter. Letter of transmittal from the Governor committing state support, identifying the lead agency (state health department, bona fide agent, or equivalent) and citing the amount requested.

(b) Table of Contents. Table of Contents with page numbers for each of the following sections.

(c) Executive Summary. Executive Summary briefly describing the overall project; intervention area(s) and population sizes; partnerships, intervention strategies, and major short-term and intermediate outcomes.

(d) State Lead Agency. Description of the lead agency including fiduciary and programmatic capabilities, as well as an inventory of current agency activities related to this announcement. Description of the state health department's ability to provide, and history of providing, expert assistance to local communities in the design and delivery of evidence-based approaches to chronic disease prevention and control.

(e) Community Lead Agencies. Description of the lead agency (local health department or equivalent) for each of two to four separate community intervention areas, including fiduciary and programmatic capabilities, as well as an inventory of current agency activities related to this announcement.

(f) Intervention Areas. Description of each of the community intervention areas, including their demographic, geographic and political boundaries, target populations to receive special focus under this award, as well as evidence of the burden of disease, and disparities in diabetes, asthma, obesity, associated risk factors, and access to and use of proven prevention and control interventions. Description of current state, local, and private-sector activities underway to address chronic diseases in the intervention areas. Overview of the assets and deficiencies of the intervention areas including a description of findings from any community assessments or asset mapping done in the past three years.

(g) Staffing. Description of the proposed STEPS staff including resumes or job descriptions for full-time project coordinators in each community and other key staff at the state and community levels, the qualifications and responsibilities of each staff member and percent of time each is committing to STEPS.

(h) Community Consortia. Description of the community consortia for each community including a list of key partners and documentation of their capabilities; their commitment to specific functions, responsibilities, and resources; and evidence of prior successful collaborations. The structure, decision-making processes, and methods for accountability of the members should be described as well as how coordination and linkage with existing programs and interventions with similar focus will be maintained.

(i) Community Action Plans. A preliminary five-year community action plan for each community that includes the community and school interventions to be employed in the intervention areas. The community action plans should include time-phased, specific, measurable, and realistic short-term and intermediate outcomes that are based on the needs of the communities and gaps in current prevention and control activities. The community action plans should identify likely approaches, strategies, and interventions to be used over the entire five-year project period to address nutrition, physical activity, and tobacco use and exposure as well as additional interventions to address the STEPS chronic diseases/conditions (asthma, diabetes, and obesity). The organizations responsible for the interventions should be clearly identified as well as the target populations to be addressed. The community action plan should address first year activities in depth and their relationship to attaining specific short-term and intermediate outcomes. The community action plan should include a plan to ensure long-term sustainability of project efforts and outcomes.

(j) Financial Contributions. Description of financial and in-kind resources that will be contributed toward new activities initiated as part of STEPS.

(k) Evaluation and Monitoring. A plan for data identification, collection, and use for program planning and monitoring for each community. Describe efforts to obtain existing and new data sources to better understand the burden and trends of chronic diseases and their risk factors and the effects of the STEPS program. Provide specific assurance from each community, and from the state, to track common performance measures and to participate fully in an independent, external evaluation of STEPS outcomes. Describe for each community how the project is anticipated to improve specific performance measures and outcomes compared to baseline performance.

(l) Communication Plans. A plan for each community to communicate and share information with the members of their consortia, other key partners, and their own communities broadly, as well as with other funded communities and the state. The plans should describe the proposed exchange of information, the proposed means and timing of communication, with an emphasis on communications innovations such as electronic formats, management information systems, webforums, etc.

(m) Budget and Budget Justification/ Narrative i. *Community Funding.* Provide a description of how the state will distribute a minimum of 75 percent of total STEPS funds to the identified communities within four months of the receipt of their award.

ii. *Allocate Budget.* Clearly indicate estimated budget amounts to be allocated and dispersed to the funded communities, the State Education Agency, and other state partners. Provide a description of the funding mechanisms and timelines that will be used to disperse these funds.

iii. *One-Year and Five-Year Budgets.* In support of the five-year community action plans, provide a detailed budget and budget justification/narrative for the first budget year and a budget estimate for years two through five.

a. Provide a detailed budget for the first budget year in support of each activity that must be completed in the first year of program operations to accomplish the short-term and intermediate outcomes specified in the five-year community action plans. This detailed budget must include:

• *State expenditures.* A budget justification and narrative that describes all requested funds for the State Health and Education Agencies, and other key state partners by object class category: personnel, fringe benefits, travel, equipment, supplies, contractual, and other direct costs. State expenditures should clearly reflect activities that support the efforts of the funded communities. As part of the request for travel funds in FY 2003, applicants should budget for two trips to workshops and/or conferences for key staff members of the lead/fiduciary organization and its key partners. For planning purposes, use Atlanta and Washington, DC as the travel destinations. Summarize all of the first-year state-level expenditures in the form included in Attachment D, Activity-Based Plan and Budget.

• *Community expenditures.* For each community, a budget justification and narrative that describe all requested funds for the local health department, the local education agency or agencies, and other key community partners by object class category in support of first-year activities in the five-year community action plan. As part of the request for travel funds in FY 2003, applicants should budget for two trips to workshops and/or conferences for key community members. For planning purposes, use Atlanta and Washington, DC as the travel destinations. Summarize all of the first-year requested funds, by community, in the form included in Attachment D, Activity-Based Plan and Budget Form.

• The information above should be consistent with the first year budget information entered in Section B of Standard Form 424A (Budget Information—Non-Construction Programs).

b. Provide estimated budgets for FY 2004 through FY 2007 that are linked to the accomplishment of intermediate outcomes for each funded community. For each budget year, include budget estimates for two trips to workshops and/or conferences for key staff members of the lead/fiduciary organization and its key partners. For planning purposes, use Atlanta and Washington, DC as the travel destinations. Provide the estimated total budget for each year (*i.e.,* state plus all funded communities) for each object class category in Section B of Standard Form 424A (Budget Information—Non-Construction Programs).

(n) Letters of Support. Provide letters of support and Memoranda of Understanding (as appropriate) from the local health departments and education agencies, state education agency, and other key members of the consortia that specify their roles, responsibilities, and resources.

G. Submission and Deadline

Letter of Intent (LOI) Submission

On or before June 1, 2003 submit the LOI to: Dr. Stephanie Zaza, National Center for Chronic Disease Prevention and Health Promotion, Centers for Disease Control and Prevention, 4770 Buford Highway E.E., Mailstop K–40, Atlanta, GA 30341.

Application Forms

Submit the signed original and two copies of the CDC 0.1246 form. Forms are available at: *http://www.cdc.gov/od/pgo/forminfo.htm.*

If you do not have access to the Internet, or if you have difficulty accessing the forms on-line, please contact the CDC Procurement and Grants Office Technical Information Management Section (PGO–TIM) at: 770–488–2700. Application forms can be mailed to you.

Submission Date, Time, and Address

The application must be received by 4 p.m. Eastern Time, July 15, 2003. Submit the application to: Technical Information Management—PA 03135, CDC Procurement and Grants Office, Centers for Disease Control and Prevention, 2920 Brandywine Rd., Atlanta, GA 30341–4146.

Applications may not be submitted electronically.

Acknowledgement of Application Receipt

A postcard will be mailed by PGO–TIM, notifying you that CDC has received your application.

Deadline

LOIs and applications shall be considered as meeting the deadline if they are received before 4:00 p.m. Eastern Time on the deadline date. Any applicant who sends their application by the United States Postal Service or commercial delivery services must ensure that the carrier will be able to guarantee delivery of the application by the closing date and time. If an application is received after closing due to 1) carrier error, when the carrier accepted the package with a guarantee for delivery by the closing date and time, or 2) significant weather delays or natural disasters, CDC will upon receipt of proper documentation, consider the application as having been received by the deadline.

Any application that does not meet the above criteria will not be eligible for competition, and will be returned to the applicant. The applicant will be notified of their failure to meet the submission requirements.

H. Evaluation Criteria

An Independent Objective Review Group appointed by HHS will evaluate each application against the following criteria. Evaluation criteria for Large City and Urban Communities are listed under number 1 below, for Tribes under number 2 below, and for State-Coordinated Small City and Rural Communities under number 3 below.

1. Large City and Urban Community Applicants

(a) Intervention Strategies (40 Points)

i. Community Interventions (30 of 40 points). a. The degree to which the applicant describes a five-year community action plan with objectives and activities that are specific, time-phased, measurable, realistic, and related to identified needs and gaps in existing programs, program requirements, and purposes and goals of this cooperative agreement program.

b. The degree to which the science-base for effective community interventions is being used to create the community action plan and its evaluation.

c. The likely effectiveness of each intervention strategy as well as the plan as a whole. This includes the estimated efficacy of each intervention based on existing science, the likely reach of each intervention (percentage of the community likely to be engaged/impacted by the intervention), the extent to which interventions build on and complement, but do not duplicate, existing programs, and the potential synergy created through multiple interventions.

d. The degree to which the proposed plan addresses nutrition, physical activity, tobacco, and intervention strategies/activities to address the chronic diseases/conditions covered by STEPS (asthma, diabetes, and obesity).

e. The degree to which the plan reflects and builds on a substantiated and comprehensive understanding of the assets, attributes, and deficiencies of the communities including non-STEPS-related activities completed or on-going in these communities.

f. The extent to which the applicant includes a plan to sustain the project long term.

ii. School Interventions (10 of 40 points). a. The extent to which the applicant describes plans to implement school-based interventions that promote healthy lifestyles among students and their families, and address the prevention and control of chronic diseases within the same intervention area as the community interventions.

b. The clarity and feasibility of a plan to establish a full-time school health program coordinator and a school health council that will direct school-based activities and assist in their implementation.

c. The degree to which the science-base for effective school-based interventions is being used to create the community action plan and its evaluation.

d. The extent to which the proposed objectives and activities are specific, time-phased, measurable, realistic, feasible, and related to identified needs and gaps in existing programs, program requirements, and purposes and goals of this cooperative agreement program.

(b) Project Leadership and Management (20 Points)

i. The identification of a lead/fiduciary agency that will ensure accountability for expenditures in relationship to performance of all key partners.

ii. The extent to which the applicant describes the proposed structure of the project including decision-making processes.

iii. The extent to which the applicant provides letters of support and Memoranda of Understanding (as appropriate) with partner agencies and organizations, and the extent to which these documents describe specific collaborative actions to be undertaken and the role of the partners.

iv. The extent to which the applicant and its key partner organizations provide financial or in-kind contributions toward the success of the STEPS initiative.

v. The extent to which the applicant describes realistic plans to coordinate proposed activities with state- and community-level programs to prevent and control chronic disease.

vi. The degree to which proposed staff have the relevant background, expertise, qualifications, and experience.

vii. The degree to which the proposed staffing plan appears appropriate to the level of work proposed and demonstrates the intent to minimize staff levels in order to maximize funding for interventions.

viii. The extent to which the applicant describes clearly defined roles of project staff and an appropriate percent of time each is committing to STEPS.

(c) Plan for Project Monitoring and Evaluation (15 Points)

i. The extent to which the applicant describes plans to collaborate with other STEPS recipients in developing and implementing a set of common performance measures to monitor the success of funded projects.

ii. The extent to which appropriate data sources are currently available or will be made available, and are used to monitor and track changes in community capacity; the extent to which interventions reach populations at high risk; changes in risk factors, chronic disease burden, and disparities; the relationship between interventions and outcomes; and changes in program efficiency.

iii. The extent to which the applicant describes plans to collaborate fully in external, independently coordinated evaluation activities to evaluate the overall impact of STEPS.

iv. The extent to which evidence is provided to demonstrate the applicant's capability to conduct surveillance and program evaluation, access and analyze official data sources, and use evaluation to strengthen the program.

v. The extent to which the applicant describes how the project is anticipated to improve specific performance measures and outcomes compared to baseline performance.

(d) Background and Need (10 Points)

i. The extent to which the proposed intervention area is described, including the populations to be served.

ii. The extent to which data are provided substantiating existing burden and/or disparities of chronic diseases and conditions, specifically diabetes, asthma, and obesity in the proposed intervention area and populations to be served.

iii. The extent to which data are provided substantiating existing health risk behaviors and risk factors related to chronic diseases in the proposed intervention area and populations to be served.

iv. The extent to which assets and barriers to successful program implementation are identified.

v. The extent to which existing resources will be utilized to complement or contribute to the effort planned in the proposal.

(e) Community Consortium (10 Points)

i. The extent to which the applicant demonstrates the ability to establish a consortium that is inclusive of key partners, and related coalitions.

ii. The extent to which the applicant describes the capacity of the proposed consortium in terms of leadership, expertise, community representation, collaborative experience/abilities, and agency representation.

iii. The extent to which key partners demonstrate a high-level commitment to planning, implementing, and evaluating the proposed project, including a commitment of staff and other resources.

iv. The extent to which members of the proposed consortia have successfully worked together or with others in the past to achieve improved health outcomes.

(f) Communication and Information Sharing (5 Points)

i. The extent to which the applicant describes plans to share experiences, strategies, and results with other interested states, communities, and partners.

ii. The extent to which the applicant describes plans to ensure effective and timely communication and exchange of information, experiences and results through mechanisms such as the internet, management information systems, other electronic formats, workshops, publications, and other innovations.

(g) Budget (not scored)

The extent to which the budget appears reasonable and consistent with the proposed activities and intent of the program.

2. Tribal Applicants

Will be evaluated according to the Large City and Urban Community evaluation criteria listed under H.1. (a) through (g) above.

3. State-Coordinated Small City and Rural Community Applicants

(a) Intervention Strategies (40 Points)

The points for this section will be divided equally between the two to four pre-selected communities where project activities and interventions will occur (*i.e.*, 20 points per community if the project proposes to work in two communities, 13 points per community if three communities, ten points per community if four communities). This section will be evaluated according to the same criteria for Large City and Urban Community proposals under H.1.a) (i-ii) above.

(b) Project Leadership, Collaboration, and Proposed Structure (15 Points)

i. The identification of a lead/fiduciary agency that will ensure accountability for expenditures in relationship to performance of all key partners.

ii. The extent to which the applicant describes the proposed structure of the project including decision-making processes, monitoring, problem solving, and providing support to community-based programs.

iii. The extent to which the applicant provides letters of support and Memoranda of Understanding (as appropriate) with partner agencies and organizations, and the extent to which these documents describe specific collaborative actions to be undertaken and the role, responsibilities, and commitment of resources of the partners.

iv. The extent to which the applicant and its key partner organizations provide financial or in-kind contributions toward the success of the STEPS initiative.

v. The extent to which the applicant describes realistic plans to coordinate proposed activities with state- and community-level programs to prevent and control chronic disease.

vi. The degree to which proposed staff have the relevant background, qualifications, and experience to facilitate support to community-level efforts.

vii. The degree to which the proposed staffing plan appears appropriate to the level of work proposed and demonstrates the intent to minimize staff levels in order to maximize funding for interventions.

viii. The extent to which the applicant describes clearly defined roles of project staff and an appropriate percent time each is committing to STEPS.

ix. The capacity of the proposed local consortia in terms of leadership, expertise, community representation, collaborative experience/abilities, and agency representation.

x. Past history and evidence of effectiveness of community-state partnerships in relation to health issues and interventions (especially those related to chronic disease prevention and control, and those involving the specific communities selected for this program).

xi. Past history and evidence of effectiveness of community partnerships in the two to four proposed communities in relation to health issues and interventions (especially those involving chronic disease prevention and control).

(c) Plan for Project Monitoring and Evaluation (15 Points)

i. The extent to which the applicant describes plans for the state and proposed communities to collaborate with other STEPS recipients in developing and implementing a set of common performance measures to monitor the success of funded projects.

ii. The extent to which appropriate data sources are currently available or will be made available to monitor and track changes in community capacity; the extent to which community-driven interventions reach populations at high risk; changes in risk factors, chronic disease burden, and disparities; the relationship between interventions and outcomes; and changes in program efficiency.

iii. The extent to which the applicant describes plans for the state, proposed communities, and other key partners to collaborate fully in external, independently coordinated evaluation activities to evaluate the overall impact of STEPS.

iv. The extent to which evidence is provided to demonstrate the applicant's capability to conduct surveillance and program evaluation, access and analyze official data sources, and use evaluation to strengthen the program and support community-based efforts.

v. The extent to which the applicant describes how the project is anticipated to improve specific performance measures and outcomes compared to baseline performance.

(d) Capacity to Guide and Support Intervention Communities (15 Points)

i. The extent to which the applicant proposes a State-Community Management Team fully capable of guiding and directing the overall project.

ii. The extent of state experience, expertise, and capacity to assist local communities in the activities of this project are described. Evidence of having provided guidance and support to local communities that resulted in successful implementation and outcomes.

iii. The extent to which specific methods are described to assist local communities in the activities of this project.

(e) Background and Need (10 Points)

i. The extent to which the proposed intervention communities are described, including the populations to be served.

ii. The extent to which data are provided substantiating the burden and disparities of chronic diseases and conditions, specifically diabetes, asthma, and obesity in the proposed intervention communities and populations to be served.

iii. The extent to which data are provided substantiating health risk behaviors and risk factors related to chronic diseases in the proposed intervention communities and populations to be served.

iv. The extent to which assets and barriers to successful program implementation are identified in each intervention community.

v. The extent to which existing resources will be utilized to complement or contribute to the effort planned in the proposal.

(f) Communication and Information Sharing (5 Points)

i. The extent to which the applicant describes plans to share experiences, strategies, and results between the proposed communities, with the state, and with other interested communities and partners.

ii. The extent to which the applicant describes plans to ensure effective and timely communication and exchange of information, experiences, and results between the proposed communities, the state, and others through mechanisms such as the internet, managements information systems, other electronic formats, workshops, and other innovations.

(g) Budget (Not Scored)

The extent to which the budget appears reasonable and consistent with the proposed activities and intent of the program.

I. Other Requirements

Technical Reporting Requirements

Provide CDC with original and two copies of:

1. Interim progress report will be due May 30, 2004, and subsequent interim progress reports will be due on the 30th of May each year through May 30, 2008. The progress report will serve as the non-competing continuation application for the subsequent year, and must contain the following elements:

(a) A succinct description of the program accomplishments/narrative and progress made in achieving short-term and intermediate outcomes and other performance measures within the planned budget during the first six months of the budget period.

(b) The reason(s) for not achieving established short-term and intermediate outcomes and other performance measures within the planned budget and what will be done to achieve unmet objectives.

(c) Current budget period financial progress.

(d) New budget period proposed program activities and objectives.

(e)Detailed changes in the activity-based budget, the line-item budget, existing contracts, summary budget, and budget justification.

(f)For newly proposed contracts, provide the name of the contractor(s), method of selection, period of performance, scope of work, and itemized budget and budget justification/narrative.

2. An annual progress report summarizing the budget period (12 month) accomplishments for each budget period objective. The annual progress report will be due on November 20, 2004 and subsequent annual progress reports will be due on the 20th of November each year through November 20, 2007.

3. Financial status report, no more than 90 days after the end of the budget period.

4. Final financial, performance, and evaluation reports, no more than 90 days after the end of the five-year project period.

Send all reports to the Grants Management Specialist identified in the "Where to Obtain Additional Information" section of this announcement.

Additional Requirements

The following additional requirements are applicable to this program. For a complete description of each, see Attachment I of the program announcement as posted on the CDC web site.

AR–7—Executive Order 12372 Review
AR–8—Public Health Systems Reporting Requirements
AR–9—Paperwork Reduction Act Requirements
AR–10—Smoke-Free Workplace Requirements
AR–11—Healthy People 2010
AR–12—Lobby Restrictions

J. Where To Obtain Additional Information

A live, interactive satellite broadcast and webcast about this announcement and the STEPS Program will be held on May 22, 2003, from 1 to 3 pm Eastern Standard Time. After May 1, 2003, updates about this broadcast and participation information may be found at *http://www.phppo.cdc.gov/phtn*.

This and other CDC announcements, the necessary applications, and associated forms can be found on the CDC Web site, Internet address: *http://www.cdc.gov*

Click on "Funding" then "Grants and Cooperative Agreements".

For general questions about this announcement, contact: Technical Information Management, CDC Procurement and Grants Office, 2920 Brandywine Rd., Room 3000, Atlanta, GA 30341–2700, Telephone: 770–488–2700.

For business management and budget assistance, contact: Ms. Sylvia Dawson, Procurement and Grants Office, Centers for Disease Control and Prevention, 2920 Brandywine Rd., Room 3000, Atlanta, GA 30341–4146, Telephone: 770–488–2771, E-mail address: *snd8@cdc.gov*.

For business management and budget assistance, in the territories contact: Charlotte Flitcraft, Procurement and Grants Office, Centers for Disease Control and Prevention, 2920 Brandywine Rd., Room 3000, Atlanta, GA 30341–4146, Telephone: 770–488–2632, Email address: *caf5@cdc.gov*.

For program technical assistance, contact: Dr. Stephanie Zaza, Centers for Disease Control and Prevention, 4770 Buford Highway NE., Mailstop K–40, Atlanta, GA 30341, Telephone: 770–488–6452, E-mail address: *sxz2@cdc.gov*.

Edward Schultz,

Acting Director, Procurement and Grants Office, Centers for Disease Control and Prevention.

[FR Doc. 03–10986 Filed 5–6–03; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Healthcare Infection Control Practices Advisory Committee (HICPAC): Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), the Centers for Disease Control and Prevention (CDC) announces the following meeting.

Name: Healthcare Infection Control Practices Advisory Committee.

Times and Dates: 8:30 a.m.–5 p.m., June 2, 2003. 8:30 a.m.–4 p.m., June 3, 2003.

Place: Centers for Disease Control and Prevention, Building 17, Rooms 1039/1041, 1600 Clifton Road, NE, Atlanta, Georgia 30333.

Status: Open to the public, limited only by the space available.

Purpose: The committee is charged with providing advice and guidance to the Secretary; the Assistant Secretary for Health; the Director, CDC; and the Director, National Center for Infectious Diseases (NCID), regarding (1) the practice of hospital infection control; (2) strategies for surveillance, prevention, and control of infections (*e.g.*, nosocomial infections), antimicrobial resistance, and related events in settings where healthcare is provided; and (3) periodic updating of guidelines and other policy statements regarding prevention of healthcare-associated infections and healthcare-related conditions.

Matters to be Discussed: Agenda items will include a review of the Draft Guideline for Preventing Transmission of Infectious Agents in Healthcare Settings (formerly Guideline Isolation Precautions in Hospitals); infection control issues related to Severe Acute Respiratory Syndrome (SARS); strategies for prevention of surgical site infections; and updates on CDC activities of interest to the committee.

Agenda items are subject to change as priorities dictate.

Contact Person for More Information: Michele L. Pearson, M.D., Executive Secretary, HICPAC, Division of Healthcare Quality Promotion, NCID, CDC, 1600 Clifton Road, NE, M/S A–07, Atlanta, Georgia 30333, telephone 404/498–1182.

The Director, Management Analysis and Services Office, has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities, for both CDC and the Agency for Toxic Substances and Disease Registry.

Dated: May 2, 2003.

Diane C. Allen,

Acting Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.

[FR Doc. 03–11533 Filed 5–8–03; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 03N–0169]

Dental Amalgam; Request for Information

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is providing an opportunity for interested persons to provide information for a scientific literature review related to the health effects of dental amalgam in humans. Over the years there has been concern about the safe use of dental amalgam because of the presence of mercury. FDA is publishing this notice to gather recommendations from the scientific and lay communities about peer-reviewed journal articles from 1996 to 2002 that address human health risks from dental amalgam.

DATES: Submit information by June 2, 2003.

ADDRESSES: Submit written information to the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. Submit electronic information to http://www.fda.gov/dockets/ecomments.

FOR FURTHER INFORMATION CONTACT: Susan Runner, Center for Devices and Radiological Health (HFZ–480), Food and Drug Administration, 9200 Corporate Blvd., Rockville, MD 20850, 301–827–5283.

SUPPLEMENTARY INFORMATION: Dental amalgam has been in use as a restorative material for approximately 150 years. It consists of an alloy of powdered silver, tin, copper and sometimes smaller amounts of zinc, palladium, or indium. Elemental liquid mercury holds these powders together. There has been concern about the safety of dental amalgam because of its mercury content. In 1993, to address this concern, the Subcommittee on Risk Management of the Committee to Coordinate Environmental Health and Related Programs of the Public Health Service (PHS) completed a major review of the scientific literature on the use and safety of dental amalgam.

The review concluded that there was no evidence that dental amalgam posed a serious health risk in humans except in the very few instances of localized allergic reactions. The World Health Organization as well as the Working Group on Dental Amalgam of the Environmental Health Policy Committee of the PHS reaffirmed this conclusion.

In 1997, the Working Group on Dental Amalgam, with input from a broad cross-section of scientists and dental professionals, issued a joint report. This report indicated that the current body of literature through 1997 does not support claims that individuals with dental amalgam restorations will experience adverse effects, except for rare allergic or hypersensitivity reactions. Adverse effects include neurological, renal, or developmental effects.

There was a review of the peer-reviewed scientific literature on studies of the health effects of dental amalgam in 1993 and 1998. A current review, covering the literature from 1996 through 2002, is in the planning stages. The National Institute of Dental and Craniofacial Research in conjunction with the Centers for Disease Control and Prevention and FDA are sponsoring the review. The purpose of the review is to determine whether any studies published in the peer-reviewed, scientific literature provide new evidence related to the health effects of dental amalgam in humans. An independent group will conduct the review in the latter part of 2003.

The review will include articles from standard bibliometric databases as well as suggestions from the scientific and lay communities.

Scientific and lay communities should provide the following information to recommend an article for consideration:

- Name(s) of author(s),
- Complete title of article,
- Name of peer-reviewed journal,
- Year of publication,
- Volume number of journal,
- Page numbers of article.

Recommended articles should shed light on the possible health effects of dental amalgam in humans. Articles published in peer-reviewed journals should be from the time period between January 1, 1996, and June 1, 2003.

Interested persons may submit to the Dockets Management Branch (see **ADDRESSES**) written or electronic information regarding this document. Submit a single copy of electronic information or two paper copies of any mailed information, except individuals may submit one paper copy. Information is to be identified with the docket number found in brackets in the heading of this document. Any received information may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

Dated: May 1, 2003.

Linda S. Kahan,

Deputy Director, Center for Devices and Radiological Health.

[FR Doc. 03–11648 Filed 5–8–03; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 03F–0182]

Food Steris Corp.; Filing of Food Additive Petition

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that Steris Corp. has filed a petition proposing that the food additive regulations be amended to provide for the safe use of ionizing radiation for the control of microbial contamination on dietary supplements up to a maximum absorbed dose of 30 kiloGray (kGy).

FOR FURTHER INFORMATION CONTACT: Lane A. Highbarger, Center for Food Safety and Applied Nutrition (HFS–255), Food and Drug Administration, 5100 Paint Branch Pkwy., College Park, MD 20740, 202–418–3032.

SUPPLEMENTARY INFORMATION: Under the Federal Food, Drug, and Cosmetic Act (sec. 409(b)(5) (21 U.S.C. 348(b)(5))), notice is given that a food additive petition (FAP 2M4741) has been filed by Steris Corp., P.O. Box 147, St. Louis, MO 63166. The petition proposes that the food additive regulations in part 179 *Irradiation in the Production, Processing and Handling of Food* (21 CFR part 179) be amended to provide for the safe use of ionizing radiation for the control of microbial contamination on dietary supplements, and ingredients used in the manufacture of dietary supplements, up to a maximum absorbed dose of 30 kGy.

The agency has determined under 21 CFR 25.32(j) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

Dated: April 16, 2003.

Alan M. Rulis,

Director, Office of Food Additive Safety, Center for Food Safety and Applied Nutrition.

[FR Doc. 03–11496 Filed 5–8–03; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

The Sixth Annual FDA–Orange County Regulatory Affairs (OCRA) Educational Conference "FDA and OCRA: Understanding the Changing Landscape"

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice of meeting.

The Food and Drug Administration (FDA) is announcing its sixth annual educational conference entitled "FDA and OCRA: Understanding the Changing Landscape" cosponsored with OCRA. The conference is intended to provide the drug, device and biologics industries with an opportunity to interact with FDA reviewers and compliance officers from FDA's centers and district offices, as well as other industry experts. The main focus of this interactive conference will be product approval, compliance, and risk management in the three medical product areas. Industry speakers, interactive questions and answer, and workshop sessions will also be included to assure open exchange and dialogue on the relevant regulatory issues.

Date and Time: The meeting will be held on June 4 and 5, 2003, from 7:30 a.m. to 5 p.m.

Location: The meeting will be held at The Irvine Marriott, 18000 Von Karman Ave., Irvine, CA.

Contact: Ramlah Oma, Food and Drug Administration, 19900 MacArthur Blvd., suite 300, Irvine, CA 92612, 949–798–7611, FAX 949–798–7656, or OCRA, Attention to detail (ATD), 111 East Avenida San Gabriel, San Clemente, CA 92672, 949–366–1056, FAX 949–366–1057, Web site: http://www.ocra-dg.org. (FDA has verified the Web site address, but is not responsible for subsequent changes to the Web site after the document publishes in the **Federal Register**.)

Registration and Meeting Information: See OCRA Web site at http://www.ocra-dg.org. Contact ATD at 949–366–1056.

Before May 20, 2003, registration fees are as follows: $425.00 for members, $500.00 for nonmembers, and $275.00 for FDA/government/full-time students with proper identification. After May 20, 2003, $495.00 for members, $575.00 for nonmembers, and $325.00 for FDA/government/full-time students with proper identification.

If you need special accommodations due to a disability, please contact Ramlah Oma at least 10 days in advance.

Dated: May 2, 2003.

Jeffrey Shuren,

Assistant Commissioner for Policy.

[FR Doc. 03–11651 Filed 5–8–03; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

Psychopharmacologic Drugs Advisory Committee; Notice of Meeting

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

This notice announces a forthcoming meeting of a public advisory committee of the Food and Drug Administration (FDA). The meeting will be open to the public.

Name of Committee: Psychopharmacologic Drugs Advisory Committee.

General Function of the Committee: To provide advice and recommendations to the agency on FDA's regulatory issues.

Date and Time: The meeting will be held on June 16, 2003, from 8 a.m. to 5 p.m.

Location: Marriott Washingtonian Center, Grand Ballroom, 9751 Washingtonian Blvd., Gaithersburg, MD.

Contact Person: Jayne E. Peterson, Center for Drug Evaluation and Research (HFD–21), Food and Drug Administration, 5600 Fishers Lane, (for express delivery, 5630 Fishers Lane, rm. 1093), Rockville, MD 20857, 301–827–7001, e-mail: petersonj@cder.fda.gov, or FDA Advisory Committee Information Line, 1–800–741–8138 (301–443–0572 in the Washington, DC area), code 12544. Please call the Information Line for up-to-date information on this meeting.

Agenda: On June 16, 2003, the committee will discuss the white blood cell (WBC) monitoring schedule for patients being treated long-term with clozapine. Currently, the WBC monitoring schedule is weekly for the first 6 months of continuous therapy and biweekly thereafter. The committee will consider the question of whether the frequency of WBC monitoring can be diminished further following some period of biweekly monitoring. When available, background materials for this meeting will be posted 1-business day prior to the meeting on the FDA Web site at: www.fda.gov/ohrms/dockets/ac/acmenu.htm. (Click on the year 2003 and scroll down to Psychopharmacologic Drugs Advisory Committee.)

Procedure: Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Written submissions may be made to the contact person by June 9, 2003. Oral presentations from the public will be scheduled between approximately 1 p.m. and 2 p.m. Time allotted for each presentation may be limited. Those desiring to make formal oral presentations should notify the contact person before June 9, 2003, and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time requested to make their presentation.

Persons attending FDA's advisory committee meetings are advised that the agency is not responsible for providing access to electrical outlets.

FDA welcomes the attendance of the public at its advisory committee meetings and will make every effort to accommodate persons with physical disabilities or special needs. If you require special accommodations due to a disability, please contact Jayne Peterson at least 7 days in advance of the meeting.

Notice of this meeting is given under the Federal Advisory Committee Act (5 U.S.C. app. 2).

Dated: May 5, 2003.

Peter J. Pitts,

Associate Commissioner for External Relations.

[FR Doc. 03–11649 Filed 5–8–03; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 02N–0528]

Risk Management; Public Workshop; Reopening of Comment Period

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice of public workshop; reopening of comment period.

SUMMARY: The Food and Drug Administration (FDA) is reopening until May 30, 2003, the comment period for three concept papers entitled "Premarketing Risk Assessment," "Risk Management Programs," and "Risk Assessment of Observational Data: Good Pharmacovigilance Practices and Pharmacoepidemiologic Assessment." The document that requested public input, review, and comments for the three concept papers was published in

the **Federal Register** of March 7, 2003 (68 FR 11120). The agency is taking this action in response to informal requests for an extension of the comment period.

DATES: Submit written or electronic comments on the concept papers by May 30, 2003.

ADDRESSES: Submit written requests for single copies of the concept paper(s) to Lee Lemley, Executive Operations Staff (HFD–006), Center for Drug Evaluation and Research, Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857. See the **SUPPLEMENTARY INFORMATION** section for electronic access to the concept papers.

Submit written comments to the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852, e-mail: *FDADockets@oc.fda.gov*, or on the Internet at *http://accessdata.fda.gov/scripts/oc/dockets/commentdocket.cfm*.

FOR FURTHER INFORMATION CONTACT: Lee Lemley, Center for Drug Evaluation and Research (HFD–006), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–594–6218, *lemleyl@cder.fda.gov*.

SUPPLEMENTARY INFORMATION:

I. Background

In the **Federal Register** of March 7, 2003 (68 FR 11120), FDA published a document announcing a public workshop to discuss risk management activities for drug and biological products (excluding blood products other than plasma derivatives). The public workshop was held, as scheduled, on April 9, 10, and 11, 2003. To facilitate public input and discussion, FDA simultaneously had issued three concept papers for review and comment entitled: (1) "Premarketing Risk Assessment," (2) "Risk Management Programs," and (3) "Risk Assessment of Observational Data: Good Pharmacovigilance Practices and Pharmacoepidemiologic Assessment." Interested persons were given until April 30, 2003, to submit written or electronic comments on the concept papers. In response to informal requests from interested persons for additional time to submit comments on the concept papers, FDA has decided to reopen the comment period until May 30, 2003.

II. Comments

Interested persons may submit to the Dockets Management Branch (see **ADDRESSES**) written or electronic comments on the concept papers. You should annotate and organize your comments to identify the specific concept paper and issue to which the comments refer. Where possible, comments should reference line numbers in the concept papers. Two paper copies of any mailed comments are to be submitted, except that individuals may submit one paper copy. Comments are to be identified with the docket number found in brackets in the heading of this document. The concept papers and received comments may be seen at the Dockets Management Branch between 9 a.m. and 4 p.m. Monday through Friday.

III. Electronic Access

Electronic versions of the concept papers are available via the Internet at *http://www.fda.gov/cder/meeting/riskmanagement.htm*.

Dated: May 2, 2003.

Jeffrey Shuren,

Assistant Commissioner for Policy.

[FR Doc. 03–11497 Filed 5–8–03; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

Science Advisory Board to the National Center for Toxicological Research; Notice of Meeting

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

This notice announces a forthcoming meeting of a public advisory committee of the Food and Drug Administration (FDA). At least one portion of the meeting will be closed to the public.

Name of Committee: Science Advisory Board (SAB) to the National Center for Toxicological Research (NCTR).

General Function of the Committee: The Board advises the Director, NCTR, in establishing, implementing, and evaluating the research programs that assist the Commissioner of Food and Drugs in fulfilling his regulatory responsibilities. The Board provides an extra-agency review in ensuring that the research programs at NCTR are scientifically sound and pertinent.

Date and Time: The meeting will be held on June 19, 2003, from 9 a.m. to 4:45 p.m. and on June 20, 2003, from 9 a.m. to 12:15 p.m.

Location: NCTR, Building #12, Conference Center, 3900 NCTR Dr., Jefferson, AR 72079.

Contact Person: Leonard M. Schechtman, NCTR (HFT–10), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–6696, or FDA Advisory Committee Information Line, 1–800–741–8138 (301–443–0572 in the Washington, DC area), code 12559. Please call the Information Line for up-to-date information on this meeting.

Agenda: The Board will be presented with a draft report on the evaluation of the Division of Biometry. The draft report is the product of a site visit team that conducted an onsite review of the Division in May. Division staffers will provide a preliminary response to the issues raised and recommendations made.

The establishment of a Pharmaceutical Safety Working Group and the background and history of two Expert Working Groups (EWG) will be discussed. A proposal to move oversight for the EWGs from the Center for Drug Evaluation and Research (CDER) to NCTR will also be reviewed. Representatives from CDER and industry will present perspectives on the proposed change in oversight. An earlier version of this proposal was discussed at the June 2001 and August 2002 meetings of the SAB. The Board will also receive updates on the activities of the Cardiotoxicity and Vascular Injury EWGs.

Procedure: On June 19, 2003, from 9 a.m. to 4:45 p.m., and June 20, 2003, from 9 a.m. to 11:45 a.m., the meeting is open to the public. Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Written submissions may be made to the contact person by June 6, 2003. Oral presentations from the public will be scheduled between approximately 10:45 a.m. and 11:45 a.m., on June 20, 2003. Time allotted for each presentation may be limited. Those desiring to make formal oral presentations should notify the contact person before June 6, 2003, and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time requested to make their presentation.

Closed Committee Deliberations: On June 20, 2003, from 11:45 a.m. to 12:15 p.m., the meeting will be closed to permit discussion where disclosure would constitute a clearly unwarranted invasion of personal privacy (5 U.S.C. 552b(c)(6)). This portion of the meeting will be closed to permit discussion of information concerning individuals associated with the research programs at NCTR.

Persons attending FDA's advisory committee meetings are advised that the agency is not responsible for providing access to electrical outlets.

FDA welcomes the attendance of the public at its advisory committee meetings and will make every effort to accommodate persons with physical disabilities or special needs. If you require special accommodations due to a disability, please contact Leonard M. Schechtman at least 14 days in advance of the meeting.

Notice of this meeting is given under the Federal Advisory Committee Act (5 U.S.C. app. 2).

Dated: May 3, 2003.

Peter J. Pitts

Associate Commissioner for External Relations.

[FR Doc. 03–11605 Filed 5–8–03; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 03N–0077]

FDA Modernization Act of 1997; Modifications to the List of Recognized Standards, Recognition List Number: 008; Correction

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice; correction.

SUMMARY: The Food and Drug Administration (FDA) is correcting a notice that appeared in the **Federal Register** of April 28, 2003 (68 FR 22391). The document announced a publication entitled "FDA Modernization Act of 1997; Modifications to the List of Recognized Standards, Recognition List Number; 008." The publication contains modifications the agency is making to the list of standards FDA recognizes for use in the premarket reviews. The document published with an inadvertent error. This document corrects that error.

DATES: May 9, 2003.

FOR FURTHER INFORMATION CONTACT: Joyce Strong, Office of Policy and Planning (HF–27), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–7010.

SUPPLEMENTARY INFORMATION: In FR Doc. 03–10417, appearing on page 22397 in the **Federal Register** of Monday, April 28, 2003, the following correction is made:

On page 22397, the section heading "IV. Listing of New Entries" is corrected to read "III. Listing of New Entries."

Dated: May 2, 2003.

Jeffrey Shuren,

Assistant Commissioner for Policy.

[FR Doc. 03–11498 Filed 5–8–03; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Fiscal Year 2003 Competitive Application Cycle for the Black Lung Clinics Program (BLCP) CFDA Number 93.965; HRSA–03–086

AGENCY: Health Resources and Services Administration, HHS.

ACTION: Notice of availability of funds.

SUMMARY: The Health Resources and Services Administration (HRSA) announces the availability of up to $250,000 to support one grant project to an eligible entity for the purpose of carrying out a program to seek out and provide services to active and inactive miners, in southwest Indiana, who were exposed to coal dust as a result of employment. The former grantee in southwest Indiana relinquished the grant on September 23, 2002. As a result, an interim grantee was identified. The project period for the interim grantee ends on June 30, 2003. Eligible entities are expected to provide services described below in "Program Expectations. The Bureau of Primary Health Care (BPHC) intends to fund no more than one award.

Authorizing Legislation: The Black Lung Clinics Program (BLCP) was authorized by the Federal Mine Safety and Health Act of 1977 as amended by the Black Lung Benefits Reform Act of 1977 (Pub. L. 95–239), in order to provide treatment and rehabilitation for individuals who currently or formerly worked within a coal or other mining industry and, as a result, were exposed to coal dust. It provides the authority for competitive grants to States, private, or public entities to provide the services listed below in "Program Expectations" to the population described above. Services may be provided either directly or through formal arrangements with appropriate health care providers. The implementing regulations for the BLCP may be found at 42 CFR part 55a.

DATES: The intended timeline for application submission, review and award are as follows: June 13, 2003, application deadline; July 31, 2003, grant awards announced.

Applications will be considered on time if they are: (1) Received on or before the established deadline date; or (2) postmarked on or before the deadline date given in the **Federal Register** notice. Late applications will be returned to the applicant. Applicants should obtain a legibly dated receipt from a commercial carrier or the U.S. Postal Service or request a legibly dated U.S. Postal Service postmark. Private metered postmarks shall not be accepted as proof of timely mailing. Applications sent to any address other than that specified below are subject to being returned. Applicants will receive notification of their application receipt. Electronic submission is not available for this program announcement.

Application Requests: To receive a complete application kit (*i.e.*, application instructions, necessary forms, and application review criteria), contact the HRSA Grants Application Center at:

HRSA Grants Application Center, 901 Russell Avenue, Suite 450, Gaithersburg, MD 20879. Phone: 1–877–HRSA–123 (1–877–477–2123). Fax: 1–877–HRSA–345 (1–877–477–2345). E-mail: *hrsagac@hrsa.gov*.

When contacting the HRSA Grants Application Center (GAC) please use the following program announcement when requesting application materials: HRSA–03–086. Applications must be submitted to the HRSA GAC. Applicants should note that beginning April 1, 2003, HRSA will begin accepting grant applications online. Please refer to the HRSA grants schedule at *http://www.hrsa.gov/grants.htm* for more information. Applications *must be postmarked* by the due date as specified above for each program area.

Eligible Applicants: The following entities are eligible to apply for the funds described in this notice:

- Any State, private, or public entities, including faith-based and community-based organizations, proposing to serve miners or coal miners, in southwest Indiana, exposed to coal dust as a result of employment.

Program Expectations: The purpose of the BLCP is to improve the health status of miners or coal miners exposed to coal dust as a result of employment and to increase coordination with other services and benefits programs to meet the health-related needs of this population.

The following is a list of core services that must be provided by all grantees:

- Primary care, including screening, diagnosis, treatment, and rehabilitation
- Patient and family education and counseling
- Outreach

• Patient care coordination, including individual patient care plans for all patients, and referrals, as indicated
• Antismoking advice
• Other symptomatic treatments, including pulmonary rehabilitation
• The applicant must provide services in consultation with a physician with special training or experience in the diagnosis and treatment of respiratory diseases. In addition, the applicant must meet all criteria for approval and designation by the Department of Labor under 20 CFR part 725 to perform disability examination and provide treatment under the Federal Mine Safety and Health Act of 1977, as amended. All services must be provided regardless of a person's ability to pay. Grants funds under this program must supplement and not supplant existing services of the grantee.

Matching or Cost Sharing Requirement: Matching in not required, however, cost participation is encouraged.

Application Review and Funding Criteria: Each application submitted by the deadline will be reviewed initially for eligibility. Those applications that are determined to be ineligible, incomplete or non-responsive will be returned to the applicant without further consideration. Those applications that are determined to be eligible will be reviewed by a panel of reviewers comprised of non-Federal experts using the following objective review criteria:

• Need and Readiness—the extent to which the applicant can demonstrate a need for these services in their area and their readiness to provide them.
• Administration—the extent to which the applicant demonstrates that it has the administrative experience and capacity to successfully implement this program.
• Health Care Services—the extent to which the applicant has the capacity to provide or arrange for the required services (quality and breadth).
• Collaborative Arrangements—the extent to which the applicant has developed and documented collaborative arrangements with other local providers to conduct outreach, receive referrals and provide services, number of miners to be served and their needs.
• Appropriateness of Budget—the extent to which the applicant's budget is appropriate for the scope of the proposed activities.

Funding Preferences and Priorities: The Bureau of Primary Health Care (BPHC) intends to fund one award. The goal of the BPHC is to award funds to organizations that can best provide comprehensive services to the largest number of eligible individuals in a cost-effective manner.

Funding Preferences

A funding preference is defined as the funding of a specific category or group of approved applications ahead of other categories or groups of applications. The BPHC will give preference to applicants that are State entities which meet the legislative requirements of the Federal Mine and Safety Health Act of 1977 as amended by the Black Lung Benefits Reform Act of 1977. States are given preference per the relevant regulations, specifically 42 CFR 55a.103. The requirements are detailed in regulations.

Funding Priorities

A funding priority is defined as the favorable adjustment of aggregate review scores of individually approved applications when applications meet specific criteria. The following funding priority is applicable to the Black Lung Clinics Program.

• Applicants that are currently operating a Black Lung for patients in compliance with Program Expectations will receive 3 additional points.

Estimated Amount of Available Funds: Up to $250,000 will be available in fiscal year 2003 for this program.

Estimated Project Period: 3 years.

Estimated Number of Awards: It is estimated that one award will be made.

FOR FURTHER INFORMATION CONTACT: Ms. Shirl Taylor-Wilson, Black Lung Clinics Program, Bureau of Primary Health Care, Health Resources Services Administration, 4350 East-West Highway, 9th Floor, Bethesda, Maryland 20818. Phone: 301–594–4420. Fax: 301–594–2470. E-mail: *staylor-wilson@hrsa.gov.*

Public Health System Reporting Requirements: Under these requirements (approved by the Office of Management and Budget 0937–0195), a community-based non-governmental applicant must prepare and submit a Public Health System Impact Statement to the head of the appropriate State and local health agencies in the area(s) to be impacted no later than the Federal application receipt due date. This statement must include:

(a) A copy of the face page of the application (SF 424)

(b) A summary of the project, not to exceed one page, which provides:

• A description of the population to be served,

• A summary of the services to be provided, and

• A description of the coordination planned with the appropriate State and local health agencies.

Executive Order 12372

This program has been determined to be a program which is subject to the provisions of Executive Order 12372 concerning intergovernmental review of Federal programs by appropriate health planning agencies, as implemented by 45 CFR part 100. Executive Order 12372 allows States the option of setting up a system for reviewing applications from within their States for assistance under certain Federal programs. The application packages to be made available under this notice will contain a listing of States that have chosen to set up such a review system and will provide a single point of contact (SPOC) in the States for review. Applicants (other than Federally-recognized Indian tribal government) should contact their State SPOC as early as possible to alert them to the prospective applications and receive any necessary instructions on the State process. For proposed projects serving more than one State, the applicant is advised to contact the SPOC of each affected State. The due date for State process recommendations is 60 days after the application deadline for new and competing awards. The granting agency does not guarantee to "accommodate or explain" for State process recommendations it receives after that date. (*See* part 148, Intergovernmental Review of Public Health Service Programs under Executive Order 12372 and 45 CFR part 100 for a description of the review process and requirements.)

Dated: April 16, 2003.

Elizabeth M. Duke,

Administrator.

[FR Doc. 03–11652 Filed 5–8–03; 8:45 am]

BILLING CODE 4165–15–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Recruitment of Clinicians To Become Commissioned Officers; Recruitment of Sites for Assignment of Commissioned Officers

AGENCY: Health Resources and Services Administration (HRSA), HHS.

ACTION: General notice.

SUMMARY: The Health Resources and Services Administration (HRSA) announces that applications will be accepted to recruit clinicians who will be hired as commissioned officers in the U.S. Public Health Service. This notice also solicits applications from sites that are seeking the assistance of these commissioned officers. These commissioned officers will be family practice physicians and dentists. They will be assigned by the National Health Service Corps (NHSC) to the neediest Health Professional Shortage Areas throughout the Nation. The NHSC will pay the salaries, moving expenses and benefits for these commissioned officers.

These officers will be part of a mobile cadre of health care professionals, who, in addition to the services they will provide to patients at their assigned sites, may be called upon to respond to regional and/or national emergencies. The NHSC will assist the officers in acquiring, maintaining and enhancing emergency response skills. Their initial assignments will be no longer than three years in duration, after which, should these clinicians choose to stay in the U.S. Public Health Service, they will progress to new assignments.

Eligible Applicants

Clinicians—Applicants must file a U.S. Public Health Service Commissioned Corps application, meet the requirements for such commissioning, have completed a Family Practice residency or dental school (prior to the start of the assignment), have successfully passed the Family Practice board certification or a regional dental licensing exam (prior to the start of the assignment) and have a current, unrestricted license to practice medicine or dentistry in at least one U.S. State or Territory.

Sites—Applicants must be located in a Health Professional Shortage Area (HPSA) and submit a Proposal for Use of a Commissioned Officer 2003 (and, if not yet approved as an NHSC site, a Recruitment and Retention Assistance Application). All sites to which NHSC clinicians are assigned must accept assignment under Medicare, have appropriate agreements with the applicable State entity to participate in Medicaid and the State Children's Health Insurance Program, see all patients regardless of their ability to pay, and use and post a discounted fee plan. Sites must also understand and accept that these officers will periodically be away from their assigned locations as they train for, or respond to, a regional and/or national health emergency.

Application Requests, Dates and Addresses

Application materials are available for downloading via the Web at: *http://nhsc.bhpr.hrsa.gov.*

Clinicians—Completed applications must be postmarked or delivered to the HRSA Commissioned Corps Operations Office by no later than September 30, 2003. Clinicians are encouraged to submit an application early, as applications will be considered as soon as they are received. Completed applications should be mailed or delivered to: HRSA Commissioned Corps Operations Office, Parklawn Building, Room 13A–22, 5600 Fishers Lane, Rockville, MD 20857. Applications received or postmarked after the deadline date or sent to a different address will be returned to the applicant and not considered.

Sites—Completed applications must be postmarked or delivered to the NHSC by no later than September 30, 2003. Site applications will be evaluated as soon as they are received at NHSC headquarters. Sites will be deemed qualified based on the quality of the application submitted and the score of the HPSA in which they are located, with preference being given to sites in HPSAs with higher scores. Officers will then be assigned to qualified sites on an ongoing basis. Sites are encouraged to apply early so as to have a better chance of acquiring one of the commissioned officers. The number of qualified sites is expected to exceed the limited supply of commissioned officers. Completed site applications should be mailed or delivered to: National Health Service Corps, Parklawn Building, Room 8A–55, 5600 Fishers Lane, Rockville, MD 20857. Applications received or postmarked after the deadline date or sent to a different address will be returned to the applicant and not considered.

Additional Information

Eligible clinicians and sites interested in receiving application material may do so by calling the National Health Service Corps call center at 1–800–221–9393.

Dated: May 2, 2003.

Dennis P. Williams,

Deputy Administrator.

[FR Doc. 03–11499 Filed 5–8–03; 8:45 am]

BILLING CODE 4165–15–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Substance Abuse and Mental Health Services Administration

Fiscal Year (FY) 2003 Funding Opportunity

AGENCY: Substance Abuse and Mental Health Services Administration, HHS.

ACTION: Notice of funding availability for Community Action Grant for Service Systems Change.

SUMMARY: The Substance Abuse and Mental Health Services Administration (SAMHSA) Center for Mental Health Services announces the availability of FY 2003 funds for the grant program described below. A synopsis of this funding opportunity, as well as many other Federal Government funding opportunities, is also available at the Internet site: www.fedgrants.gov.

This notice is not a complete description of the program; potential applicants must obtain a copy of the Request for Applications (RFA), including Part I, Community Action Grant SM 03–007, Part II, General Policies and Procedures Applicable to all SAMHSA Applications for Discretionary Grants and Cooperative Agreements, and the PHS 5161–1 (Rev. 7/00) application form before preparing and submitting an application.

Funding Opportunity Title: Community Action Grant for Service Systems Change—Short Title: Community Action Grant.

Funding Opportunity Number: SM 03–007.

Catalog of Federal Domestic Assistance (CFDA) Number: 93.243.

Authority: Public Health Service Act, as amended, Title V, Part B, Section 520A, 42 U.S.C. [290bb–32] Priority Mental Health Needs of Regional and National Significance.

Funding Instrument: G.

Funding Opportunity Description: The Substance Abuse and Mental Health Services Administration, Center for Mental Health Services (CMHS) announces the availability of $1,000,000 in funding for Phase II Community Action Grants. Successful Phase I grantees may apply for one-year Phase II grants of up to $150,000 (direct and indirect).

The purpose of the Community Action Grant Program (CAG) is to promote the adoption of exemplary mental health practices in communities around the country. Community Action Grants support consensus building, infrastructure development, and training activities for the organization and delivery of services to children with

serious emotional disturbance, adults with serious mental illness, and those with co-occurring substance disorders.

Phase I of the CAG program has supported the development of consensus among key stakeholders with the applicant communities or states to adopt an exemplary practice. When consensus is achieved, grantees begin implementation of the practice. Consensus must be demonstrated through a process evaluation report, memoranda of understanding, funding plans and other documentation that demonstrate stakeholders' firm commitment to adopt the practice. Because of limited funding availability in Fiscal 2003, no applications for Phase I grants will be accepted under this announcement.

Phase II supports implementation through infrastructure development, training, program adaptation and evaluation. Grant funds may be used to provide direct services (therapy, case management, or other interventions to service recipients) only in pilot efforts with a small group of participants in preparation for larger scale implementation.

The two phases of the Community Action Grant operate in sequence to ensure that tested, effective, and documented exemplary practices attain the endorsement and support of the community before they are implemented.

Eligible Applicants: Units of State or local governments, tribal governments and organizations, and domestic private nonprofit organizations such as community-based organizations, faith-based organizations, provider and consumer groups, universities, and health care organizations can apply for CAG.

Because only Phase II grants will be awarded under this announcement, only former or current Community Action Grant Phase I grantees are eligible to apply for Phase II awards. Please *see* the Project Narrative/Review Criteria Section A, Preconditions for further information.

Due Date for Applications: July 8, 2003.

Estimated Funding Available/Number of Awards: Successful Phase I grantees may apply for one-year Phase II grants of up to $150,000 (direct and indirect). It is expected that six to seven awards will be made in FY 2003 under this announcement. Applications with budgets that exceed $150,000 will be returned without review.

Is Cost Sharing Required: No.

Period of Support: 1 year.

How to Get Full Announcement and Application Materials: Complete application kits may be obtained from: the SAMHSA Mental Health Information Center at (800) 789–2647, Monday through Friday, 8:30 A.M. to 5 P.M., EDT; TDD: (301) 443–9006; Fax: (301) 984–8796; P.O. Box 42490, Washington, DC 20015. The PHS 5161–1 application form and the full text of the funding announcement are also available electronically via SAMHSA's World Wide Web Home Page: *http://www.samhsa.gov* (Click on "Grant Opportunities").

Contact for Additional Information: David Morrissette, DSW, Substance Abuse and Mental Health Services Administration, Center for Mental Health Services, Room 11C–22, 5600 Fishers Lane, Rockville, MD 20857, (301) 443–3653, e-mail: *dmorriss@samhsa.gov*.

Dated: May 5, 2003.

Richard Kopanda,

Executive Officer, Substance Abuse and Mental Health Services Administration.

[FR Doc. 03–11653 Filed 5–8–03; 8:45 am]

BILLING CODE 4162–20–P

DEPARTMENT OF JUSTICE

Bureau of Citizenship and Immigration Services

Agency Information Collection Activities: Comment Request

ACTION: Request OMB emergency approval; petition for alien relative, Form I–130.

The Department of Homeland Security, Bureau of Citizenship and Immigration Services (BCIS) has submitted an emergency information collection request (ICR) utilizing emergency review procedures, to the Office of Management and Budget (OMB) for review and clearance in accordance with section 1320.13(a)(1)(ii) and (a)(2)(iii) of the Paperwork Reduction Act of 1995. The BCIS has determined that it cannot reasonably comply with the normal clearance procedures under this part because normal clearance procedures are reasonably likely to prevent or disrupt the collection of information. The BCIS is requesting emergency review from OMB of this information collection to ensure that certain immigration benefits are available to eligible applicants. OMB approval has been requested by May 30, 2003. If granted, the emergency approval is only valid for 180 days. ALL comments and/or questions pertaining to this pending request for emergency approval MUST be directed to OMB, Office of Information and Regulatory Affairs, Attention: Ms. Karen Lee, Department of Homeland Security Desk Officer, 725–17th Street, NW., Suite 10235, Washington, DC 20503. Comments regarding the emergency submission of this information collection may also be submitted via facsimile to Ms. Lee at 202–395–6974.

During the first 60 days of this same period, a regular review of this information collection is also being undertaken. During the regular review period, the BCIS requests written comments and suggestions from the public and affected agencies concerning this information collection. Comments are encouraged and will be accepted until July 8, 2003. During the 60-day regular review, all comments and suggestions, or questions regarding additional information, to include obtaining a copy of the information collection instrument with instructions, should be directed to Mr. Richard A. Sloan, 202–514–3291, Director, Regulations and Forms Services Division, U.S. Department of Homeland Security, Room 4304, 425 I Street, NW., Washington, DC 20536. Written comments and suggestions from the public and affected agencies concerning the proposed collection of information should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agencies estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

Overview of this information collection:

(1) *Type of Information Collection: Extension of a currently approved collection.*

(2) *Title of the Form/Collection:* Petition for Alien Relative.

(3) *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection:* Form I–130. Bureau of Citizenship and Immigration Services, Department of Homeland Security.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: Individuals or households. The information collected on this form will be used by BCIS to determine eligibility for benefits sought for relatives of U.S. citizens and lawful permanent residents.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* 183,034 responses at 30 minutes (.50 hours) per response.

(6) *An estimate of the total public burden (in hours) associated with the collection:* 91,517 annual burden hours.

If additional information is required contact: Ms. Kathy Schultz, Clearance Officer, United States Department of Homeland Security, 1800 G Street, NW., 10th Floor, Washington, DC 20530.

Dated: May 5, 2003.

Richard A. Sloan,

Department Clearance Officer, United States Department of Homeland Security, Bureau of Immigration and Customs Enforcement.

[FR Doc. 03–11530 Filed 5–8–03; 8:45 am]

BILLING CODE 4410–10–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4723–FA–07]

Announcement of Funding Awards for the Indian Community Development Block Grant Program for Fiscal Year 2002

AGENCY: Office of Native American Programs, HUD.

ACTION: Announcement of funding awards.

SUMMARY: In accordance with section 102(a)(4)(C) of the Department of Housing and Urban Development Reform Act of 1989, this announcement notifies the public of funding decisions made by the Department in a competition for funding under the Fiscal Year 2002 Notice of Funding Availability (NOFA) for the Indian Community Development Block Grant (ICDBG) Program. This announcement contains the consolidated names and addresses of this years award recipients under the ICDBG.

FOR FURTHER INFORMATION CONTACT: For questions concerning the Indian Community Development Block Grant Program awards, contact the Area Office of Native American Programs serving your area or Jackie Kruszek, Office of Native Programs, Denver Program Office, 1999 Broadway, Suite 3390, Denver, CO 80202, telephone 800–561–5913. Hearing- or speech-impaired individuals may access this number via TTY by calling the toll-free Federal Information Relay Service at 1–800–877–8339.

SUPPLEMENTARY INFORMATION:

This program provides grants to Indian tribes and Alaska Native Villages to develop viable Indian and Alaska Native communities, including the creation of decent housing, suitable living environments, and economic opportunities primarily for persons with low and moderate incomes as defined in 24 CFR 1003.4.

The FY 2002 awards announced in this notice were selected for funding in a competition announced in a NOFA published in the **Federal Register** on March 26, 2002 (67 FR 13909). Applications were scored and selected for funding based on the selection criteria in that NOFA and Area Office of Native American Programs (ONAPs) geographic jurisdictional competitions.

The amount appropriated in FY 2002 to fund the ICDBG was $70,000,000. Two million of this amount was retained to fund imminent threat grants in FY 2002. In addition, a total of $4,056,177 in carryover funds from prior years was also available. The allocations for the Area ONAP geographic jurisdictions, including carryover, are as follows:

Eastern/Woodlands	$6,151,645
Southern Plains	12,608,675
Northern Plains	11,293,350
Southwest	29,923,175
Northwest	5,391,769
Alaska	6,628,571
Total	$72,056,177

In accordance with section 102(a)(4)(C) of the Department of Housing and Urban Development Reform Act of 1989 (103 Stat. 1987, 42 U.S.C. 3545), the Department is publishing the names, addresses, and amounts of the 95 awards made under the various regional competitions in Appendix A to this document.

Dated: May 2, 2003.

Michael Liu,

Assistant Secretary for Public and Indian Housing.

Appendix A

Indian Community Development Block Grant Awards for Fiscal Year 2002

Chairman Dave Lopeman, Squaxin Island Tribe, SE Squaxin Lane, Shelton, WA 98584, Phone: (360) 426–9781; Grant Award: $500,000; Activity: Profession Center/Public Services.

Chairman Denny Hurtado, Skokomish Indian Tribes, North 80 Tribal Center Road, Shelton, WA 98584, Phone: (360) 426–4232; Grant Award: $530,000; Activity: Health Services Expansion/Diabetes Prevention Program.

Chairman Ernest L. Stensgar, Coeur d'Alene Tribe, P. O. Box 408, Plummer, ID 83851, Phone: (208) 686–1800; Grant Award: $449,500; Activity: Development of Trailhead Facilities.

Chairperson Cheryl Kennedy, Grand Ronde Indian Tribe, 9615 Grand Ronde Road, Grand Ronde, OR 97347, Phone: (503) 879–5211; Grant Award: $500,000; Activity: Sewer Interceptor Project.

Chairman Matthew Dick, Colville Indian Tribe, P. O. Box 150, Nespelem, WA 99155, Phone: (509) 634–4711; Grant Award: $500,000; Activity: Health Clinic.

Chairman Dennis Sullivan, Lower Elwha Klallam Tribe, 2851 Lower Elwha Road, Port Angeles, WA 98363, Phone: (360) 452–8471; Grant Award: $500,000; Activity: Health Clinic Expansion.

Chairman Kenneth Hansen, Samish Indian Nation, P. O. Box 217, Anacortes, WA 98221, Phone: (360) 299–0790; Grant Award: $500,000; Activity: Cultural and Environmental Facility.

Chairman Edward Metcalf, Coquille Indian Tribe, P. O. Box 783, North Bend, OR 97459, Phone number: (541) 756–0904; Grant Award: $330,366; Activity: Diabetes Clinic.

Chairman Ron Charles, Port Gamble S'Klallam Tribe, 31912 Little Boston Road NE, Kingston, WA 98346, Phone: (360) 297–2646; Grant Award: $500,000; Activity: Career and Education Center.

Chairman Ron Brainard, Confederated Tribes of Coos, Lower Umpqua, and Siuslaw Indians, 338 Wallace Avenue, Coos Bay, OR 97420, Phone: (541) 888–9577; Grant Award: $500,000; Activity: Multi-Purpose Center.

Chairman Terry Enos, Ak-Chin Indian Reservation, 42507 West Peters & Nall Road, Maricopa, AZ 85239, Phone: 520–568–2618, Fax: 520–568–4566; Grant Award: $550,000; Activity: Public Facilities Infrastructure.

Chairman Anthony Jack, Big Valley Rancheria of Pomo & Pit River Indians, 2726 Rancheria Road, Lakeport, CA 95453, Phone: 707–263–3924, Fax: 707–263–3977; Grant Award: $550,000; Activity: Housing—New Construction.

Chairman Edward Smith, Chemehuevi Indian Tribe, P.O. Box 1976, Havasu Lake, CA 92363, Phone: 760–858–4219, Fax: 760–858–5400; Grant Award: $550,000; Activity: Public Facilities Infrastructure.

Chairman Wayne Mitchum, Colusa Indian Community—Cachil, DeHe Band, 3730 Highway 45, Colusa, CA 95932, Phone: 530–458–8231, Fax: 530–458–3866; Grant Award: $305,287; Activity: Public Facilities Community Center.

Chairman Henry Blackeye, Jr., Duckwater Shoshone Tribe, P. O. Box 140068, Duckwater, NV 89314, Phone: 775–863–0227, Fax: 775–863–0301; Grant Award: $550,000; Activity: Housing—New Construction.

Chairperson Frances Benally, Fort Bidwell Paiute Indian Community, P. O. Box 129, Fort Bidwell, CA 96112, Phone: 530–279–6310, Fax: 530–279–2233; Grant Award: $550,000; Activity: Public Facilities Infrastructure.

Governor Donald Antone, Gila River Pima-Maricopa Indian Community, P. O. Box 97,

Sacaton, AZ 85247, Phone: 520–562–6000, Fax: 520–562–6010; Grant Award: $2,484,112; Activity: Public Facilities—Health Clinic.

Governor Gregg Sarris, Graton Rancheria Indians, P. O. Box 185, Novato, CA 94948, Phone: 707–566–2288; Grant Award: $185,000; Activity: Housing Rehabilitation.

Chairperson Lyle Marshall, Hoopa Valley Tribe, P. O. Box 1348, Hoopa, CA 95546, Phone: 530–625–4211, Fax: 530–625–4594; Grant Award: $750,000; Activity: Public Facilities/Building.

Chairperson Louise Benson, Hualapai Indian Tribe, P. O. Box 179, Peach Springs, AZ 86434, Phone: 928–769–2216, Fax: 928–769–2343; Grant Award: $750,000; Activity: Public Facilities/Building.

Chairperson Rachel Joseph, Lone Pine—Paiute Shoshone Indians, P. O. Box 747, Lone Pine, CA 93545, Phone: 760–876–1034, Fax 760–876–8302; Grant Award: $550,000; Activity: Public Facilities—Community Center.

Chairman Leroy Elliott, Manzanita Band of Diegueno Indians, P. O. Box 1302, Boulevard, CA 91905, Phone: 619–766–4930, Fax: 619–766–4957; Grant Award: $550,000; Activity: Housing New Construction.

Chairperson Shirley Prusia, Mooretown Racheria of Maidu, 1 Alverda Drive, Oroville, CA 95966, Phone: 530–533–3625, Fax: 530–533–3680; Grant Award: $450,000; Activity: Public Facilities/Building.

President Kelsey Begaye, Navajo Nation, P.O. Box 9000, Window Rock, AZ 86515, Phone: 928–871–6352, Fax: 928–871–4025; Grant Award: $5,000,000; Activity: Public Facilities Infrastructure.

Chairperson Leona Williams, Pinoleville Rancheria of Pomo Indians, 367 N. State Street, Suite 204, Ukiah, CA 95482, Phone: 707–463–1454, Fax: 707–463–6601; Grant Award: $550,000; Activity: Land Acquisition for Housing.

Governor Jacob Viarrial, Pueblo of Pojoaque, 39 Camino del Rincon Suite 6, Santa Fe, NM 87501, Phone: 505–867–3381, Fax: 505–455–3363; Grant Award: $550,000; Activity: Housing Rehabilitation.

Chairman Arlan Melendezj, Reno-Sparks Indian Colony, 98 Colony Road, Reno, NV 89502, Phone: 775–329–2936, Fax: 775–329–8710; Grant Award: $550,000; Activity: Public Facilities Building.

Chairman John Currier, Rincon Band of Luiseno Mission Indians, P.O. Box 68, Valley Center, CA 92082, Phone: 760–749–1051, Fax: 760–749–8901; Grant Award: $550,000; Activity: Public Facilities Infrastructure.

Chairperson Claire Wilson, Robinson Rancheria of Pomo Indians, 1545 East Highway 20, Nice, CA 95464, Phone: 707–275–0527, Fax: 707–275–0235; Grant Award: $550,000; Activity: Public Facilities Infrastructure.

Chairman James Moon, Jr., Rohnerville Rancheria Band of Bear River Indians, 32 Bear River Drive, Loleta, CA 95551; Phone: 707–733–1900, Fax: 707–733–1972; Grant Award: $550,000; Activity: Land Acquisition for Housing.

President John Azbill, Round Valley Indian Tribe of the Round Valley Reservation, P.O. Box 448, Covelo, CA 95428, Phone: 707–983–6126, Fax: 707–983–6128; Grant Award: $550,000; Activity: Public Facilities Community Center.

President Ivan Makil, Salt River Pima-Maricopa Indians, 10005 East Osborn Road, Scottsdale, AZ 85256, Phone: 480–850–8000, Fax: 480–850–8014; Grant Award: $2,000,000; Activity: Public Facilities—Community Center.

Chairman Raymond Stanley, San Carlos Apache Tribe, Box 0, San Carlos, AZ 85550, Phone: 928–475–2361 Fax: 928–475–2567; Grant Award: $542,022; Activity: Public Facilities—Senior P.O. Center

Spokesperson Allen Lawson, San Pasqual Band of Diegueno Mission Indians, P.O. Box 365, Valley Center, CA 92082, Phone: 760–749–3200, Fax: 760–749–3876; Grant Award: $550,000; Activity: Public Facilities—Building.

Chairman Gabriel Ray, Scotts Valley Band of Pomo Indians, 9700 Soda Bay Road, Kelseyville, CA 95451, Phone: 707–459–9690, Fax: 707–459–6936; Grant Award: $550,000; Activity: Housing—New Construction.

Chairman Joseph E. Bulfer. Southern Indian Health Council, P.O. Box 2250, Alpine, CA 91903, Phone: 619–445–6315, Fax: 619–445–9126; Grant Award: $550,000; Activity: Public Facilities/Building.

Chairperson Mary Belardo, Torres-Martinez Band of Cahuilla Indians, P.O. Box 1160, Thermal, CA 92274, Phone: 760–397–0300, Fax: 760–397–8146; Grant Award: $525,555; Activity: Housing—New Construction.

Chairperson Carmella Johnson, Upper Lake band of Pomo Indians, P.O. Box 516, Upper Lake, CA 95485, Upper Lake, CA 95485, Phone: 707–275–0737, Fax: 707–275–0757; Grant Award: $413,040; Activity: Public Facilities Infrastructure.

Chairman Robert Quintero, Walker River Paiute Tribe, P.O. Box 220, Schurz, NV 89427, Phone: (775) 773–2306, Fax: (775) 773–2585; Grant Amount: $550,000; Activity: Public Facilities Infrastructure.

Chairperson Susan Masten, Yurok Tribe, P.O. Box 1027, Klamath, CA 95548, Phone: (707) 444–0433, Fax: (707) 444–0437; Grant Amount: $550,000; Activity: Economic Development.

John Lufkins, President, Bay Mills Indian Community, 12140 West Lake Shore Drive, Brimely, Michigan 49715, Phone: (906) 248–5224; Grant Amount: $360,000; Activity: Community Facility.

Chief Paul Thompson, Saint Regis Mohawk Tribe, 412 Route 37, Akwesasne, New York 13655, Phone: (518) 358–2272; Grant Amount: $550,000; Activity: Water Distribution System.

President Troy Swallow, Ho-Chunk Nation, P.O. Box 667, Highway 54 East, Black River Falls, WI 54615, Telephone: (715) 284–9343; Grant Amount: $500,000; Activity: Water System.

Chairperson Sandra Rachal, Sokaogon Chippewa Community, 3086 State Highway 55, Crandon, WI 54520, Telephone: (715) 478–7628; Grant Amount: $500,000; Activity: Convenience Store.

Chairman Robert Chicks, Stockbridge-Munsee Community, N 8476 Mo He Con Nuck Road, Bowler, WI 54861, Telephone: (715) 793–4111; Grant Amount: $500,000; Activity: Assisted Living Center.

Governor Richard Doyle, Pleasant Point Passamaquoddy Tribal Government, P.O. Box 301, Princeton, ME 04668, Telephone: (207) 796–8004; Grant Amount: $500,000; Activity: Housing Rehabilitation.

Chairman Gary Donald, Bois Forte Reservation, P.O. Box 16, Nett Lake, MN 55772, Telephone: (218) 757–3261; Grant Amount: $500,000; Activity: Fitness/Rehabilitation Center.

Ogema Jonnie J. Sam II, Little River Band of Ottawa Indians, 375 River Street, Manistee, MI 49660, Telephone: (231) 723–8288; Grant Amount: $500,000; Activity: Water Storage and Distribution System.

Chairman Gerald Brun, Red Lake Band of Chippewa Indians, P.O. Box 547, Red Lake, MN 56671, Telephone: (218) 679–3341; Grant Amount: $500,000; Activity: McBride Loop Water Project.

Principal Chief Leon Jones, Eastern Band of Cherokee Indians, P. O. Box 455, Cherokee, NC 28719, Telephone: (828) 497–2771; Grant Amount: $500,000; Activity: Women's Wellness Center.

Chairperson Beverly Wright, Wampanoag Tribe of Gay Head, 20 Black Brook Road, Aquinnah, MA 02535, Telephone: (508) 645–3790; Grant Amount: $500,000; Activity: Community Center.

Chairman Doyle Turner, White Earth Reservation Tribal Council, P.O. Box 418, White Earth, MN 56591, Telephone: (218) 983–3285; Grant Amount: $500,000; Activity: Public Facilities/Improvements.

Governor Bill Anoatubby, Chickasaw Nation, P. O. Box 1548, Ada, OK 74821, Telephone: (580) 436–2603; Grant Amount: $750,000.00; Activity: Wellness Center.

Chairman Alton LeBlanc, Jr., Chitimacha Tribe of Louisiana, P. O. Box 661, Charenton, LA 70523, Telephone: (580) 924–8280; Grant Amount: $750,000; Activity: Infrastructure.

Chief Gregory E. Pyle, Choctaw Nation of Oklahoma, P. O. Drawer 1210, Durant, OK 74702, Telephone: (580) 924–8280; Grant Amount: $750,000; Activity: Diabetes/Wellness Center.

Chairman John Barrett, Citizen Potawatomi Nation, 1601 S. Gordon Cooper Drive, Shawnee, OK 74801, Telephone: (405) 275–3121; Grant Amount: $750,000; Activity: Microenterprise.

Chairman Johnny Wauqua, Comanche Tribe, P. O. Box 908, Lawton, OK 73502, Telephone: (580) 492–4988; Grant Amount: $435,394; Activity: Community Center.

Chief Larry Joe Brooks, Delaware Tribe of Indians, Childcare Center 220 NW Virginia Ave., Bartlesville, OK 74003, Telephone: (918) 336–5272; Grant Amount: $750,000; Activity: Childcare Center.

Chairman Jeff Houser, Fort Sill Apache Tribe, Route 2, Box 121, Apache, OK 73006, Telephone: (580) 588–2298; Grant Amount: $750,000; Activity: Econimic Development.

Mr. Lowell Wesley, Town King, Kialegee Tribal Town, P. O. Box 332, Wetumka, OK 74883, Telephone: (405) 452–3262; Grant Amount: $324,817; Activity: Infrastructure.

Chairman Danny Kaskaske, Kickapoo Tribe of OK, P. O. Box 70, McLoud, OK 74851, Telephone: (405) 964–2075; Grant Amount: $750,000; Activity: Childcare Center.

Principal Chief Perry Beaver, Muskogee (Creek) Nation, P. O. Box 580, Okmulgee, OK 74447, Telephone: (918) 756–8700; Grant Amount: $750,000; Activity: Food Distribution Center.

Principal Chief Jim Gray, Osage Tribe, 627 Grandview, Pawhuska, OK 74056, Telephone: (918) 287–1128; Grant Amount: $528,500; Activity: Headstart/Childcare Center.

Acting Chairman Mike Gawhega, Otoe-Missouria Tribe, 8151 Highway 177, Red Rock, OK 74651–0348, Telephone: (580) 723–4466; Grant Amount: $750,000; Activity: Wellness Center.

President Robert Chapman, Pawnee Business Council, P. O. Box 470, Pawnee, OK 74058, Telephone: (918) 762–3621; Grant Amount: $750,000; Activity: Health Facility.

Chairman Badger Wahwassuck, Prairie Band of Potawatomi, 16281 Q Road, Mayetta, KS 66509, Telephone: (785) 966–2255; Grant Amount: $710,657; Activity: Infrastructure.

Principal Chief Don Abney, Sac & Fox Nation of OK, Route 2, Box 246, Stroud, OK 74079, Telephone: (918) 968–3526; Grant Amount: $750,000; Activity: Youth Center.

Chief LeRoy Howard, Seneca-Cayuga Tribe of Oklahoma, P. O. Box 1283, Miami, OK 74355, Telephone: (918) 542–3684; Grant Amount: $750,000; Activity: Fire Station.

Chairman Earl J. Barbry, Sr., Tunica-Biloxi Tribe of LA, P.O. Box 1585, Marksville, LA 71351; Grant Amount: $750,000; Activity: Multipurpose Center.

President Gary McAdams, Wichita & Affiliated Tribes, P.O. Box 729, Anadarko, OK 73005, Telephone: (405) 247–2425; Grant Amount: $749,957; Activity: Family Community Center.

Chief DuWayne Johnson, Curyung Tribal Council, 134 First Avenue West, P.O. Box 216, Dillingham, AK 99576, Telephone: (907) 842–2384; Grant Amount: $500,000; Activity: Head Start/Family Resource Center.

President Robert Heyano, Native Village of Ekuk, P.O. Box 530 Center, Dillingham, AK 99576, Telephone: (907) 842–3842; Grant Amount: $500,000; Activity: Head Start/Family Resource Center.

President Wassalie Bavilla, Native Village of Kwinhagak, Box 149, Quinhagak, AK 99655, Telephone: (907) 556–8167; Grant Amount: $500,000; Activity: Youth Center/Multipurpose P.O. Center.

First Chief Bobby Tritt, Venetie Village Council, P.O. Box 81119, Venetie, AK 99781, Telephone: (907) 849–8212; Grant Amount: $495,000; Activity: New Housing Construction.

President Gary Kompkoff, Native Village of Tatitlek, P.O. Box 171, Tatitlek, AK 99677, Telephone: (907) 325–2311; Grant Amount: $470,320; Activity: Assisted Living Facility.

First Chief Henry Deacon, Grayling IRA Tribal Council, P.O. Box 49, Grayling, AK 99590, Telephone: (907) 453–5116; Grant Amount: $500,000; Activity: Primary Care Facility.

President Pete Mellick, Sleetmute Traditional Council, P.O. Box 34, Sleetmute, AK 99668, Telephone: (907) 449–4205; Grant Amount: $500,000; Activity: Public Services Facility.

First Chief Evon Peter, Arctic Village Council, P.O. Box 69, Arctic Village, AK 99722, Telephone: (907) 587–5523; Grant Amount: $439,500; Activity: New Housing Construction.

President Andrew Boots, Marshall Traditional Council, P.O. Box 110, Marshall, AK 99585, Telephone: (907) 679–6302; Grant Amount: $500,000; Activity: Water/Sewer Expansion.

President Joseph Mike, Native Village of Kotlik, P.O. Box 20210, Kotlik, AK 99620, Telephone: (907) 899–4326; Grant Amount: $500,000; Activity: Water/Sewer/Power/Boardwalk Expansion.

President Moses Carl, Newtok Village, P.O. Box 5545, Newtok, AK 99559, Telephone: (907) 237–2314; Grant Amount: $498,824; Activity: Primary Care Facility.

President Andrew Kasayuli, Scammon Bay Traditional Council, P.O. Box 126, Scammon Bay, AK 99662, Telephone: (907) 588–5425; Grant Amount: $351,594; Activity: Primary Care Facility.

President Thomas F. Soolook, Native Village of Diomede, P.O. Box 7079, Diomede, AK 99762, Telephone: (907) 686–2175; Grant Amount: $500,000; Activity: Housing Rehabilitation.

Chairman Earl Old Person, Blackfeet Tribe, P.O. Box 850, Browning, MT 59417, Telephone: (406) 338–7521; Grant Amount: $800,000; Activity: Community Water Project.

Chairman Alvin Windy Boy, Chippewa Cree Tribe, P.O. Box 544, Box Elder, MT 59521, Telephone: (406) 395–4282; Grant Amount: $800,000; Activity: Head Start Facility.

Chairman Michael B. Jandreau, Lower Brule Sioux Tribe, P.O. Box 183, Lower Brule, SD 57548, Telephone: (605) 473–5522; Grant Amount: $800,000; Activity: Housing Rehabilitation.

Chairman Gregg Bourland, Cheyenne River Sioux Tribe, P.O. Box 590, Eagle Butte, SD 57625, Telephone: (605) 964–4155; Grant Amount: $800,000; Activity: General Purpose Community Center.

Chairman Tex Hall, Three Affiliated Tribes of Fort Berthold, 404 Frontage Road, New Town, ND 58763, Telephone: (701) 627–4781; Grant Amount: $800,000; Activity: Multi-Purpose Cultural Community Center.

Co-Chairman Ben S. Ridgley, Northern Arapaho Tribe, P.O. Box 396, Fort Washakie, WY 82514, Telephone: (307) 332–6120; Grant Amount: $600,000; Activity: Community Facility to House Public Services.

Chairperson Geri Small, Northern Cheyenne Tribe, P.O. Box 128, Lame Deer, MT 59043, Telephone: (406) 477–6284; Grant Amount: $749,549; Activity: Solid Waste Canister Transfer Station.

Chairman Leonard Burch, Southern Ute Tribe, P.O. Box 800, Ignacio, CO 81137, Telephone: (970) 563–4517; Grant Amount: $800,000; Activity: Alcohol and Drug Treatment Facility.

Chairwoman Lora Tom, Paiute Indian Tribe of Utah, 440 North Paiute Drive, Cedar City, UT 84720, Telephone: (435) 586–1112; Grant Amount: $450,000; Activity: Water Distribution System, Grant Amount: $333,936; Activity: Health Clinic.

Robert Gautier, Executive Director, Salish and Kootenai Housing Authority, P.O. Box 38, Pablo, MT 59855, Telephone: (406) 675–4491; Grant Amount: $800,000; Activity: Water and Sewer Services.

Chairman Charles Murphy, Standing Rock Sioux Tribe, P.O. Box D, Fort Yates, ND 58538, Telephone: (701) 854–7201; Grant Amount: $800,000; Activity: General Purpose Community Center Addition.

Chairman John Blackhawk, Winnebago Tribe, P.O. Box 687, Winnebago, NE, Telephone: (402) 878–2272; Grant Amount: $800,000; Activity: Infrastructure.

[FR Doc. 03–11523 Filed 5–8–03; 8:45 am]

BILLING CODE 4210–35–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4809–N–19]

Federal Property Suitable as Facilities To Assist the Homeless

AGENCY: Office of the Assistant Secretary for Community Planning and Development, HUD.

ACTION: Notice.

SUMMARY: This notice identifies unutilized, underutilized, excess, and surplus Federal property reviewed by HUD for suitability for possible use to assist the homeless.

EFFECTIVE DATE: May 9, 2003.

FOR FURTHER INFORMATION CONTACT: Mark Johnston, Department of Housing and Urban Development, Room 7262, 451 Seventh Street, SW., Washington, DC 20410; telephone (202) 708–1234; TTY number for the hearing- and speech-impaired (202) 708–2565, (these telephone numbers are not toll-free), or call the toll-free Title V information line at 1–800–927–7588.

SUPPLEMENTARY INFORMATION: In accordance with the December 12, 1988 court order in *National Coalition for the Homeless* v. *Veterans Administration*, No. 88–2503–OG (D.D.C.), HUD publishes a notice, on a weekly basis, identifying unutilized, underutilized, excess and surplus Federal buildings and real property that HUD has reviewed for suitability for use to assist the homeless. Today's notice is for the purpose of announcing that no additional properties have been determined suitable or unsuitable this week.

Dated: May 1, 2003.

John D. Garrity,

Director, Office of Special Needs Assistance Programs.

[FR Doc. 03–11240 Filed 5–8–03; 8:45 am]

BILLING CODE 4210–29–M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

National Key Deer Refuge; Key West, Great White Heron, and Crocodile Lake National Wildlife Refuges

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of Intent to Prepare Comprehensive Conservation Plans and Environmental Assessments for National Key Deer Refuge; Key West, Great White Heron, and Crocodile Lake National Wildlife Refuges in Florida.

SUMMARY: This notice advises the public that the Fish and Wildlife Service, Southeast Region, intends to gather information necessary to prepare comprehensive conservation plans and environmental assessments pursuant tot he National Environmental Policy Act and its implementing regulations. The Service is furnishing this notice in compliance with the National Wildlife Refuge System Administration Act of 1966, as amended (16 U.S.C. 668dd *et seq.*), to achieve the following:

(1) Advise other agencies and the public of our intentions, and

(2) Obtain suggestions and information on on the scope of issues to include in the environmental documents.

Special mailings, newspaper articles, and other media announcements will be used to inform the public and government and non-government agencies of the opportunities for input throughout the planning process.

ADDRESSES: Address comments, questions, and requests for more information to the following: Van Fischer, Natural Resource Planner, National Key Deer Refuge, 28950 Watson Boulevard, Big Pine Key, Florida 33043–0510, Telephone 305/872–2239; Fax 305/872–3675; E-mail *Van_Fisher@fws.gov*. Additional information concerning these refuges may be found at the Service's Internet site *http:///www.fws.gov*.

SUPPLEMENTARY INFORMATION: Federal law, all lands within the National Wildlife Refuge System are to be managed in accordance with an approved comprehensive conservation plan. The plan guides management decisions and identifies refuge goals, long-range objectives, and strategies for achieving refuge purpose. The planning process will consider many elements including wildlife and habitat management, public recreational activities, and cultural resource protection. Public input into the planning process is essential.

Crocodile Lake National Wildlife Refuge was established in 1980, to provide wildlife and habitat protection for federally listed threatened and endangered species and migratory birds. A draft comprehensive conservation plan is expected to be completed for this refuge by June 2004.

Key West and Great White Heron National Wildlife Refuges were established in 1908 and 1938 respectively, to protect herons and egrets from plume hunters. National Key Deer Refuge was established in 1957, to protect the endangered Key Deer and other wildlife. Each of the refuges is located in Monroe County, Florida.

As the draft plans for these refuges are completed, reviews will be conducted in accordance with the requirements of the National Environmental Policy Act of 1969, as amended (41 U.S.C. 4321 *et seq.*), NEPA regulations (40 CFR parts 1500–1508), other appropriate Federal laws and regulations, and Service policies and procedures for compliance with those regulations.

Authority: This notice is published under the authority of the National Wildlife Refuge System Improvement Act of 1997, Public Law 105–57.

Dated: March 31, 2003.

Christine E. Eustis,

Acting Regional Director.

[FR Doc. 03–11534 Filed 5–8–03; 8:45 am]

BILLING CODE 4310–55–M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Notice of Availability and Public Comment Period for Documents Associated With the Incidental Take Permit (ITP) Previously Issued to Waterman's Realty Co./Winchester Creek Limited Partnership for the Home Port on Winchester Creek Habitat Conservation Plan

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of availability.

SUMMARY: Waterman's Realty Company/Winchester Creek Limited Partnership was issued an ITP, permit number TE006310, on May 13, 1999, for take of the Delmarva for squirrel. In response to a ruling by the Court of Appeals, the U.S. Fish and Wildlife Service (Service) announces the availability of two documents associated with this ITP and the opening of a 60-day comment period.

DATES: Written comments on these documents should be received within 60 days of the date of this publication.

ADDRESSES: Persons wishing to review these documents may obtain a copy at *http://www.fws.gov/r5cbfo*, or by written or telephone request to John Wolflin, U.S. Fish and Wildlife Service, 177 Admiral Cochrane Drive, Annapolis, Maryland 21401 (410–573–4573). Additionally, documents will be available for public inspection by appointment during normal business hours (8 to 4:30) at the U.S. Fish and Wildlife Service, Annapolis, Maryland. Data or comments concerning the offsite mitigation map or revised analysis should be submitted in writing to the Project Leader, U.S. Fish and Wildlife Service Office, Annapolis, Maryland at the above address. Please refer to permit number TE006310 when submitting comments.

FOR FURTHER INFORMATION CONTACT: John Wolflin at the above Service Office, Annapolis, Maryland.

SUPPLEMENTARY INFORMATION: On May 13, 1999, after an expanded public comment period of 37 days on the proposed Home Port On Winchester Creek Habitat Conservation Plan (Home Port HCP), the Service issued an ITP for "take" of the Delmarva fox squirrel (DFS). The ITP was issued pursuant to the Endangered Species Act (ESA) § 10(a)(2)(B), 16 U.S.C. 1539(a)(2)(B), and its implementing regulations at 50 CFR 17.22(b)(1). On September 7, 1999, a neighbor to the proposed development (Gerber) and Defenders of Wildlife (DOW) filed suit alleging numerous violations of the National Environmental Policy Act (NEPA), ESA and the Administrative Procedure Act (APA) related to issuance of the ITP for the Home Port HCP.

The District Court granted summary judgment on all counts in favor of the Service on May 15, 2001. *See Gerber* v. *Babbitt*, 146 F.Supp.2d 1 (D. D.C. 2001). DOW appealed the District Court's ruling on two issues. The availability of a map during the original public comment period, and the Service's finding regarding the impracticability of a project design alternative.

A summary of the first issued follows: The Plaintiffs/Appellants, who had been provided approximately 45 days (due to receipt of an advance copy by agreement) to comment on the HCP, notified the Service shortly before the end of the public comment period of their desire for additional time to comment because no map of the offense mitigation area had been provided. The Service sent them the map, but did not extend the comment period. While the District Court ruled that omission of the map was a harmless error, not in violation of the ESA, the Court of

Appeals disagreed. *See Gerber* v. *Norton*, 294 F.3d 173, 175, 178–84 (D.C. Cir. 2002). The Court of Appeals held that the failure to allow additional formal opportunity to comment once provided with the map violated the ESA and therefore remanded the matter to the District Court with instructions to remand to the agency. *See id.* at 184.

The second issue is whether the Service satisfied its statutory issuance criteria. A summary of this issue follows: Section 10(a)(2) of the ESA, 16 U.S.C. 1539(a)(2), specifies the requirements for issuance of an incidental take permit. This provision is broken into two distinct subsections. One sets forth the required components of an application from which the Service can judge whether an applicant's submission is complete. *See* Section 10(a)(2)(A). 16 U.S.C. 1539(a)(2)(A). The other provides the issuance criteria by which the Service must evaluate and approve an application package once it has determined the submission is complete. *See* section 10(a)(2)(B), 16 U.S.C. 1539 (a)(2)(B).

While the District Court ruled the Service had adequately justified all of its requisite findings, the Court of Appeals agreed with Plaintiffs/Appellants that the service had violated the ESA by failing to independently make the requisite finding that the developer would minimize and mitigate the impacts of the taking to the maximum extent practicable as required under § 10(a)(2)(b)(ii), 16 U.S.C. 1539(a)(2)(b)(ii). The Court of Appeals held that the Service's finding concerning whether the impacts of the taking from the project would be minimized and mitigated to the maximum extent practicable was made improperly. Specifically, the Court held that the Service did not make its own independent finding as to whether a possible project change identified in the record (the "Reduced Take Alternative") was practicable.

The Service has now conducted its own independent analysis, which is reflected in the draft document entitled "Draft—Assessment of Practicability of the Reduced Take Alternative on Remand". This document evaluates the practicability of additional minimization measures discussed in the Reduced Take Alternative in the Home Port HCP and the practicability of measures considered as alternatives in the Environmental Assessment. The Service has independently evaluated the operative constraints on these measures, which include local governmental processes and permitting, costs and time delays. While the Service was previously aware of many of these constraints, no analysis was presented in detail in any document.

Accordingly, the Service makes available for public review and comment: (1) A map of the offsite mitigation land proposed by the applicant to mitigate for impacts to the Delmarva fox squirrel from the Home Port development in accordance with 16 U.S.C. 1539(a)(2)(B): and (2) a revised analysis of the statutorily mandated finding under 16 U.S.C. 1539 (a)(2(B)(ii), that "the applicant will, to the maximum extent practicable, minimize and mitigate the impacts of such taking".

Public Comments Solicited

The Service solicits written comments on the offsite mitigation land proposed by the applicant and a more detailed analysis of the practicability of the reduced take alternative. All comments received by the date specified above will be considered prior to completion of a revised decision document on remand.

Dated: April 18, 2003.

Richard O. Bennett,

Acting Regional Director.

[FR Doc. 03–11531 Filed 5–8–03; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[OR 120 5882 CD99; 3–0159]

Notice of Public Meeting, Coos Bay Resource Advisory Committee Meeting

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Bureau of Land Management (BLM) Coos Bay District Resource Advisory Committee (RAC) Meeting as identified in section 205 (f) (2) of the Secure Rural Schools and Community Self-Determination Act of 2000, Public Law 106–393 (the Act).

SUMMARY: The BLM Coos Bay District RAC will be meeting on May 30, 2003 from 9 a.m. until 12:30 p.m. at the BLM Coos Bay District Office. The Coos Bay District Office is located at 1300 Airport Lane in North Bend, Oregon. The purpose of this meeting will be to review the progress of previously funded projects, elect a new Chairperson, present the RAC with this year's projects to be reviewed for funding, and provide an opportunity for dialogue between the RAC, the Bureau, and the public.

FOR FURTHER INFORMATION CONTACT: Sue Richardson, District Manager, at 756–0100 or Glenn Harkleroad, District Restoration Coordinator, at 751–4361 or *glenn_harkleroad@or.blm.gov*. The mailing address for the BLM Coos Bay District Office is 1300 Airport Lane, North Bend, Oregon 97459.

SUPPLEMENTARY INFORMATION: Additional information about the Coos Bay RAC and a meeting agenda can be found at *http://www.or.blm.gov/coosbay*.

Dated: May 2, 2003.

Sue E. Richardson,

Coos Bay District Manager.

[FR Doc. 03–11494 Filed 5–8–03; 8:45 am]

BILLING CODE 4310–33–P

DEPARTMENT OF LABOR

Employment and Training Administration

Notice of Determinations Regarding Eligibility To Apply for Worker Adjustment Assistance and NAFTA Transitional Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974, as amended, the Department of Labor herein presents summaries of determinations regarding eligibility to apply for trade adjustment assistance for workers (TA–W) issued during the period of April 2003.

In order for an affirmative determination to be made and a certification of eligibility to apply for worker adjustment assistance to be issued, each of the group eligibility requirements of section 222 of the Act must be met.

(1) That a significant number or proportion of the workers in the workers' firm, or an appropriate subdivision thereof, have become totally or partially separated, or are threatened to become totally or partially separated; and

(2) That sales or production, or both, of the firm or sub-division have decreased absolutely, and

(3) That increases of imports of articles like or directly competitive with articles produced by the firm or appropriate subdivision have contributed importantly to the separations, or threat thereof, and to the absolute decline in sales or production of such firm or subdivision.

Negative Determinations for Worker Adjustment Assistance

In each of the following cases the investigation revealed that criterion (3) has not been met. A survey of customers indicated that increased imports did not contribute importantly to worker separations at the firm.

None

In the following case, the investigation revealed that the criteria for eligibility have not been met for the reasons specified.

The investigation revealed that criterion (a)(2)(A) (I.C.) (Increased imports) and (a) (2)(B) (II.B) (No shift in production to a foreign country) have not been met.

TA–W–50,654; Arizona Chemical Co., Esters Department, Dover, OH
TA–W–50,651; Vishay BLH, Inc., Canton, MA
TA–W–51,175; Jamestown Precision Wooling, Inc., Jamestown Div., Jamestown, NY
TA–W–51,206; Hosokawa Micron International, Inc., Hosokawa Manufacturing Div., Santa Rosa, CA
TA–W–51,265; Galt Alloys, Inc., a subsidiary of RTI International, Canton, OH
TA–W–50,803; Rock-Tenn Co., El Paso, TX
TA–W–50,860; Cannondale Corp., Motorsports Plant, Bedford, PA
TA–W–51,044; Greenlee-Fairmont, a wholly-owned subsidiary of Textron, Inc., Fairmont, MN
TA–W–50,427; Boxboard Packaging, Inc., Norwalk, OH
TA–W–51,569; Arris Group, Inc., Formerly Arris Interactive, LLC and Antec, Keptel Div., Rock Falls Facility, Rock Falls, IL
TA–W–50,075; Mayville Engineering Co., Inc., Mayville, WI
TA–W–50,205; McInnes Rolled Rings, Erie, PA
TA–W–50,447; Fulton Bellows and Components, Knoxville, TN
TA–W–50,580; Allsteel, Inc., Casegoods Div., An Operating Unit of Hon Industries, Inc., West Hazelton, PA
TA–W–50,597 &A; Harriet & Henderson Yarns, Inc., J.D. Plant, Henderson, NC and Henderson Plant, Henderson, NC
TA–W–50,823; Alcoa Composition Foils, Pevely, MO
TA–W–51,005; Louisiana Pacific Corp., Missoula, MT
TA–W–51,045; Precision Cast Parts, Steel Plant, Portland, OR
TA–W–51,011; Ivy Steel & Wire, a Div. of MMI Products, Inc., Baltimore, MD
TA–W–51,320; Heath Electronic Manufacturing Corp., Glenns Ferry, ID
TA–W–51,355; Culp, Inc., Rossville Div., Chattanooga, TN
TA–W–51,443; Automotive Ignition Co., Inc., Pittsburgh, PA
TA–W–51,466; Fishing Vessel (F/V) Fawcett Point, State of Alaska Commercial Fisheries Entry Commission Permit # S04K595562L, Old Harbor, AK
TA–W–51,562; The Interflex Group, Ashland, VA
TA–W–51,596; State of Alaska Commercial Fisheries Entry Commission Permit #S04T65030C, Nondalton, AK

The workers firm does not produce an article as required for certification under section 222 of the Trade Act of 1974.

TA–W–51,101; Agilent Technologies, ASIC Product Div., Fort Collins, CO
TA–W–51,111; General Magnetic Technology, Inc., Lake Worth, FL
TA–W–51,203; Arrow Electronics, Inc., BP Branch, Foothill Ranch, CA
TA–W–51,335; General Electric Industrial Systems, Drives and Controls, Inc., Salem, VA
TA–W–51,054; Sonicblue, Inc., Call Center, Tigard, OR
TA–W–51,189; Nokia, Inc., Broadband Systems Div., Santa Rosa, CA
TA–W–51,085; Fluor Daniel, Rochester, MN
TA–W–51,103; Toshiba America Electronic Components, Inc., Design Center, Beaverton, OR
TA–W–51,127; Omega Worldwide, Inc., Corporate Office, Ann Arbor, MI
TA–W–51,315; Cela Fabrics, Inc., New York, NY
TA–W–51,352; Friedman Bag Co., Inc., Portland, OR
TA–W–51,410; Gates Mills, Inc., Johnstown, NY
TA–W–51,537; Tru-Stitch Footwear, Div. of Wolverine Worldwide, Inc., Malone, NY
TA–W–51,534; HTP Security, Inc., Goldendale, WA
TA–W–51,528; Battery Sales, Inc., Hempstead, NY

The investigation revealed that criterion (a)(2)(A) (I.A) (no employment declines) have not been met.

TA–W–50,337; Maclean-ESNA, a subsidiary of Maclean Fogg Co., Pocahontas, AR
TA–W–51,601; Schroder Boards, Bingen, WA

The investigation revealed that criterion (a)(2)(A) (I.B.) (Sales or production, or both, did not decline) and (II.B) (has shifted production to a country not under the free trade agreement with the U.S.) have not been met.

TA–W–51,326; Ross Mould, Inc., Washington, PA

The investigation revealed that criteria (2) has not been met. The workers firm (or subdivision) is not a supplier or downstream producer to trade-affected companies.

TA–W–51,403; Clariant Corp., Oak Creek, WI

The following certification has been issued. The requirement of (a)(2)(A) (increased imports) of section 222 has been met.

TA–W–51,246; Cold Metal Products, Youngstown, OH

Affirmative Determinations for Worker Adjustment Assistance

The following certifications have been issued; the date following the company name and location of each determination references the impact date for all workers of such determination.

The following certifications have been issued. The requirements of (a)(2)(A) (increased imports) of Section 222 have been met.

TA–W–50,133 &A; Phelps Dodge Corp., Phelps Dodge Wire and Cable Group, Phelps Dodge High Performance Conductors (Div), West Caldwell, NY and Phelps Dodge Specialty Copper Products (Div), Elizabeth, NJ: November 14, 2001.
TA–W–51,365; Dirigo Stitching, Inc., Skowhegan, ME: March 26, 2002.
TA–W–51,395; Lexington Home Brands, Plants 1,2,4,5 and 12, Lexington, NC: March 31, 2002.
TA–W–51,460; Mettler Toledo, Inc., Spartanburg Product Organization, Inman, SC: April 8, 2002.
TA–W–51,505; KMC Products, Inc., d/b/a KMC Wheel Co., Riverside, CA: March 31, 2002.
TA–W–51,427; Rhodia, Inc., Freeport, TX: March 28, 2002.
TA–W–50,975; Pasco Tool & Plastics, Inc., Meadville, PA: February 24, 2002.
TA–W–51,137; SASOL North America, Inc., Baltimore, MD: March 13, 2002.
TA–W–51,196; Siemens Energy & Automation, Inc., Power Conversion Div., Norwood, OH: January 13, 2002.
TA–W–51,290; Glassco, IN., d/b/a Traditions Lamp Co., Altoona, AL: March 24, 2002.
TA–W–50,678; Keller Manufacturing Co., Inc., Culpeper, VA: January 22, 2002.
TA–W–50,878; Cannondale Corp., Bicycle Plant, Bedford, PA: February 10, 2002.
TA–W–50,045; Domestic Manufacturing Corp., Kinston, NC: November 12, 2001.
TA–W–50,879; Maine Brand Manufacturing, Inc., Littleton, ME: February 12, 2002.
TA–W–50,668; JDS Uniphase Corp., Lundy facility, Optical Layer Group, San Jose, CA: December 9, 2001.
TA–W–50,382; Reddog Industries, Inc., Erie, PA: December 17, 2001.

TA–W–50,654; Arizona Chemical Co., Sebacic Department and Esters Department, Dover, OH: January 21, 2002.
TA–W–50,742 &A,B; Tweel Home Furnishing, Newark, NJ and Harrison, NJ and Lakewood, NJ: January 24, 2002.
TA–W–50,938; Rexnord Industries, Inc., Milwaukee, WI: February 21, 2002.
TA–W–50,953; Advanced Energy, Voorhees, NJ: February 19, 2002.
TA–W–50,978; The Magnus Group, Inc., d/b/a Progressive Information Technologies, Emigsville, PA: February 20, 2002.
TA–W–51,062; Ethan Allen, Inc., Dudley Plant, Dudley, MA: February 25, 2002.
TA–W–51,289 &A; Sun Hill Industries, including temporary workers of Adecco, Scotia, NY and Stamford, CT: March 18, 2002.
TA–W–51,115; Meadwestvaco Corp., Luke, MD: March 7, 2002.
TA–W–51,215; Hydromatic Pump, Ashland, OH: March 5, 2002.
TA–W–51,192; U.S. Textile Corp., Newland, NC: March 12, 2002.
TA–W–51,233; Universal Stainless and Alloy Products, Bridgeville, PA: March 17, 2002.
TA–W–51,349; Alpharma, Inc., Hannibal Manufacturing Plant, including leased workers of BASF, Palmyra, MO: March 27, 2002.
TA–W–51,441; Rochester Button Co., Inc., Kenbridge, VA and South Boston, VA: April 14, 2002.
TA–W–51,481; Alexandra Fashions, Inc., North Bergen, NJ: March 31, 2002.
TA–W–51,483; Whiting & Davis, Inc., a div. of Bacou-Dallos and leased workers of Adecco, Attleboro Falls, MA: April 10, 2002.

The following certifications have been issued. The requirements of (a)(2)(B) (shift in production) of Section 222 have been met.

TA–W–50,260; Motorola, Inc., Semiconductor Products Sector, Bipolar Manufacturing Center, Mesa, AZ: December 5, 2001.
TA–W–51,323; Michael Anthony Jewelers, Inc., Mt. Vernon, NY: February 28, 2002.
TA–W–51,430 &A,B; Triangle Suspension Systems, Inc., DuBois, PA, Brentwood, TN and Fontana, CA: April 3, 2002.
TA–W–50,615; BP Solor, LLC, Toano, VA: January 18, 2002.
TA–W–50,650; Davol, Inc., Lawrence, KS: January 22, 2002.
TA–W–50,733; Nidec America Corp., Power General Div., Canton, MA: January 29, 2002.
TA–W–51,517; Ace's Sanding Shop, Thomasville, NC: April 14, 2002.
TA–W–50,743; The compare Corp., Sidney, OH: January 16, 2002.
TA–W–50,807; MCB, Inc., d/b/a Wild Rose, Los Angeles, CA: January 21, 2002.
TA–W–51,322; Alburg Door & Window Ltd., Alburg, VT: March 24, 2002.
TA–W–51,398; Textron Fastening Systems, Syntek Operations, a wholly owned subsidiary of Textron, Inc., including leased workers of QSP Staffing, Rockford, IL: March 21, 2002.
TA–W–51,416; Weyerhaeuser Box Plant, Laredo, TX: March 18, 2002.
TA–W–51,444; Lindley Laboratories, Inc., Gibsonville, NC: March 31, 2002.
TA–W–51,487 & A; R.A.G.S., Inc., Lexington, NC and Richfield, NC: April 11, 2002.
TA–W–51,476; Ultra cutting, Inc., Medley, FL: April 2, 2002.

The following certification has been issued. The requirement of upstream supplier to a trade certified primary firm has been met.

TA–W–51,319; Gem Island Enterprises, a/b/a Opal Industries, Morganton, NC: March 18, 2002.

Also, pursuant to Title V of the North American Free Trade Agreement Implementation Act (Pub.L. 103–182) concerning transitional adjustment assistance hereinafter called (NAFTA–TAA) and in accordance with Section 250(a), Subchaper D, Chapter 2, Title II, of the Trade Act as amended, the Department of Labor presents summaries of determinations regarding eligibility to apply for NAFTA–TAA issued during the month of April 2003.

In order for an affirmative determination to be made and a certification of eligibility to apply for NAFTA–TAA the following group eligibility requirements of Section 250 of the Trade Act must be met:

(1) That a significant number or proportion of the workers in the workers' firm, or an appropriate subdivision thereof, (including workers in any agricultural firm or appropriate subdivision thereof) have become totally or partially separated from employment and either—

(2) That sales or production, or both, of such firm or subdivision have decreased absolutely,

(3) That imports from Mexico or Canada of articles like or directly competitive with articles produced by such firm or subdivision have increased, and that the increases imports contributed importantly to such workers' separations or threat of separation and to the decline in sales or production of such firm or subdivision; or

(4) That there has been a shift in production by such workers' firm or subdivision to Mexico or Canada of articles like or directly competitive with articles which are produced by the firm or subdivision.

Negative Determinations NAFTA–TAA

In each of the following cases the investigation revealed that criteria (3) and (4) were not met. Imports from Canada or Mexico did not contribute importantly to workers' separations. There was no shift in production from the subject firm to Canada or Mexico during the relevant period.

None

The investigation revealed that the criteria for eligibility have not been met for the reasons specified.

The investigation revealed that the workers of the subject firm did not produce an article within the meaning of Section 250(a) of the Trade Act, as amended.

None

Affirmative Determinations NAFTA–TAA

None

I hereby certify that the aforementioned determinations were issued during the month of April 2003. Copies of these determinations are available for inspection in Room C–5311, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210 during normal business hours or will be mailed to persons who write to the above address.

Dated: May 2, 2003.

Terrence Clark,

Acting Director, Division of Trade Adjustment Assistance.

[FR Doc. 03–11552 Filed 5–8–03; 8:45 am]
BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–42,315]

Alcatel USA Marketing, Inc., Voice Network Division (VND), Wireless Switching Group, EMX 5000 Product Group, Plano, TX; Notice of Negative Determination Regarding Application for Reconsideration

By application received on April 3, 2003, a petitioner requested administrative reconsideration of the

Department's negative determination regarding eligibility for workers and former workers of the subject firm to apply for Trade Adjustment Assistance (TAA). The denial notice applicable to workers of Alcatel USA Marketing, Inc., Voice Network Division (VND), Wireless Switching Group, EMX 5000 Product Group, Plano, Texas was signed on March 7, 2003, and published in the **Federal Register** on March 26, 2003 (67 FR 14706).

Pursuant to 29 CFR 90.18(c) reconsideration may be granted under the following circumstances:

(1) If it appears on the basis of facts not previously considered that the determination complained of was erroneous;

(2) If it appears that the determination complained of was based on a mistake in the determination of facts not previously considered; or

(3) If in the opinion of the Certifying Officer, a misinterpretation of facts or of the law justified reconsideration of the decision.

The TAA petition was filed on behalf of workers at Alcatel USA Marketing, Inc., Voice Network Division (VND), Wireless Switching Group, EMX 5000 Product Group, Plano, Texas engaged in activities related to software and hardware support. The petition was denied because the petitioning workers did not produce an article within the meaning of section 222(3) of the Act.

The petitioner alleges the software and hardware support at Alcatel USA Marketing, Inc., Voice Network Division (VND), Wireless Switching Group, EMX 5000 Product Group, Plano, Texas is an "integral part of the product" made for the customer.

An investigation of this matter, including contact with the company, revealed that a very small portion of the services supplied involve hardware (modifications) and that all of the software support provided is electronically generated to the customer. Electronically generated material does not constitute production within the meaning of Section 222 of the Trade Act.

Only in very limited instances are service workers certified for TAA, namely the worker separations must be caused by a reduced demand for their services from a parent or controlling firm or subdivision whose workers produce an article and who are currently under certification for TAA.

Conclusion

After review of the application and investigative findings, I conclude that there has been no error or misinterpretation of the law or of the facts which would justify reconsideration of the Department of Labor's prior decision. Accordingly, the application is denied.

Signed at Washington, DC, this 29th day of April, 2003.

Elliott S. Kushner,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 03–11543 Filed 5–8–03; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–51,509]

Alpha Omega Jet Services, Inc., Sulphur Springs, TX; Notice of Termination of Investigation

Pursuant to section 221 of the Trade Act of 1974, as amended, an investigation was initiated on February 26, 2003 in response to a worker petition filed by a company official on behalf of workers at Alpha Omega Jet Services, Inc., Sulphur Springs, Texas.

The petitioner has requested that the petition be withdrawn. Consequently, the investigation has been terminated.

Signed at Washington, DC, this 22nd day of April, 2003.

Elliott S. Kushner,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 03–11551 Filed 5–8–03; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–50,264]

Atlantic Metal Products Springfield, NJ; Notice of Termination of Investigation

Pursuant to section 221 of the Trade Act of 1974, as amended, an investigation was initiated on December 6, 2002, in response to a worker petition filed at a company official's request by the New Jersey State Trade Coordinator on behalf of workers at Atlantic Metal Products, Springfield, New Jersey.

The Department of Labor has been unable to obtain the information necessary to reach a determination on worker group eligibility. Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed at Washington, DC, this 25th day of April, 2003.

Richard Church,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 03–11544 Filed 5–8–03; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–51,555]

BASF Corporation, Anderson, SC; Notice of Termination of Investigation

Pursuant to section 221 of the Trade Act of 1974, as amended, an investigation was initiated on April 21, 2003, in response to a worker petition filed by a company official on behalf of workers at BASF Corporation, Anderson, South Carolina.

The petitioner has requested that the petition be withdrawn. Consequently, the investigation has been terminated.

Signed in Washington, DC this 29th day of April, 2003.

Richard Church,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 03–11558 Filed 5–8–03; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–51,622]

Casco Products, Inc., Bridgeport, CT; Notice of Termination of Investigation

Pursuant to section 221 of the Trade Act of 1974, as amended, an investigation was initiated on April 29, 2003 in response to a worker petition filed by the IUE/CWA on behalf of workers at Casco Products, Inc., Bridgeport, Connecticut.

The petitioning group of workers is covered by an active certification issued on July 19, 2002 (TA–W–41,561). Consequently, further investigation in this case would serve no purpose and the investigation has been terminated.

Signed at Washington, DC, this 30th day of April, 2003.

Richard Church,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 03–11560 Filed 5–8–03; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–51,480]

Chorum Technologies, L.P., Richardson, TX; Notice of Termination of Investigation

Pursuant to section 221 of the Trade Act of 1974, as amended, an investigation was initiated on April 11, 2003 in response to a petition filed by a company official on behalf of workers at Chorum Technologies, L.P., Richardson, Texas.

The petitioner has requested that the petition be withdrawn. Consequently, further investigation would serve no purpose and the investigation has been terminated.

Signed at Washington, DC, this 29th day of April, 2003.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 03–11555 Filed 5–8–03; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–50,902]

Daniel Blanton, Homosassa, FL; Notice of Termination of Investigation

Pursuant to section 221 of the Trade Act of 1974, as amended, an investigation was initiated on February 14, 2003 in response to a petition filed by a company official on behalf of workers at Daniel Blanton, Homosassa, Florida.

The Department has been unable to locate a company official to obtain the information necessary to render a determination on worker group eligibility.

Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed at Washington; DC this 25th day of April, 2003.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 03–11548 Filed 5–8–03; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–50,849]

Diamond Brands—Wilton Box Plant, Dryden, ME; Notice of Termination of Investigation

Pursuant to section 221 of the Trade Act of 1974, as amended, an investigation was initiated on February 11, 2003 in response to a worker petition filed on behalf of workers at Diamond Brands, Wilton Box Plant, Dryden, Maine.

The petitioner has requested that the petition be withdrawn. Consequently, the investigation has been terminated.

Signed at Washington, DC this 25th day of April, 2003.

Richard Church,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 03–11547 Filed 5–8–03; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–50,631]

Garden State Tanning, Williamsport, MD; Notice of Termination of Investigation

Pursuant to section 221 of the Trade Act of 1974, as amended, an investigation was initiated on January 22, 2003 in response to a worker petition filed on behalf of workers at Garden State Tanning, Williamsport, Maryland.

The petitioner has requested that the petition be withdrawn. Consequently, the investigation has been terminated.

Signed at Washington, DC this 22nd day of April, 2003.

Richard Church,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 03–11546 Filed 5–8–03; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–51,630]

J.C. Viramontes, Inc., D/B/A International Garment Processors, El Paso, TX; Notice of Termination of Investigation

Pursuant to section 221 of the Trade Act of 1974, as amended, an investigation was initiated on April 29, 2003, in response to a worker petition filed by a company official on behalf of workers at J.C. Viramontes, Inc., d/b/a International Garment Processors, El Paso, Texas.

The petitioning group of workers is covered by an active certification issued on June 29, 2001 and which remains in effect (TA–W–39,196). Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed at Washington, DC, this 29th day of April, 2003.

Richard Church,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 03–11561 Filed 5–8–03; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–51,572]

Lonestar Cutting Services, Inc., El Paso, TX; Notice of Termination of Investigation

Pursuant to section 221 of the Trade Act of 1974, an investigation was initiated on April 24, 2003, in response to a petition filed on behalf of workers at Lonestar Cutting Services, Inc., El Paso, Texas.

All workers were separated from the subject firm more than one year before the date of the petition. Section 223 (b) of the Act specifies that no certification may apply to any worker whose last separation occurred more than one year before the date of the petition. Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed in Washington, DC this 28th day of April, 2003.

Elliott S. Kushner,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 03–11559 Filed 5–8–03; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–50,992]

Lonza Group, Los Angeles, CA; Notice of Termination of Investigation

Pursuant to section 221 of the Trade Act of 1974, as amended, an investigation was initiated on February 26, 2003 in response to a worker petition filed on behalf of workers at Lonza Group, Los Angeles, California.

The petitioner has requested that the petition be withdrawn. Consequently, the investigation has been terminated.

Signed at Washington, DC this 23rd day of April, 2003.

Richard Church,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 03–11549 Filed 5–8–03; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–51,499]

Malthus Diagnostics, Inc., North Ridgeville, OH; Notice of Termination of Investigation

Pursuant to section 221 of the Trade Act of 1974, an investigation was initiated on April 15, 2003, in response to a worker petition which was filed by a company official on behalf of workers at Malthus Diagnostics, Inc., North Ridgeville, Ohio.

The petitioner has requested that the petition be withdrawn. Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed in Washington, DC this 28th day of April, 2003.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 03–11557 Filed 5–8–03; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–51,174, TA–W–51,174A, TA–W–51,174B, and TA–W–51,174C]

Mann Edge Tool Company, Assembly and Shipping Division, Lewistown, PA; Mann Edge Tool Company, Forge Division, Lewistown, PA; American Hickory Corporation, a Wholly Owned Subsidiary of Mann Edge Tool Company, Lewistown, PA; White Container Corporation, a Wholly Owned Subsidiary of Mann Edge Tool Company, Lewiston, PA; Notice of Termination of Investigation

Pursuant to section 221 of the Trade Act of 1974, as amended, an investigation was initiated on March 17, 2003 in response to a worker petition filed by a company official on behalf of workers at Mann Edge Tool Company, Assembly and Shipping Division, Lewistown, Pennsylvania (TA–W–51,174), Mann Edge Tool Company, Forge Division, Lewistown, Pennsylvania (TA–W–51,174A), American Hickory Corporation, a wholly-owned subsidiary of Mann Edge Tool Company, Lewistown, Pennsylvania (TA–W–51,174B), and White Container Corporation, a wholly-owned subsidiary of Mann Edge Tool Company, Lewistown, Pennsylvania (TA–W–51,174C).

The petitioner has requested that the petition be withdrawn. Consequently, further investigation would serve no purpose and the investigation has been terminated.

Signed at Washington, DC, this 25th day of April, 2003.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 03–11553 Filed 5–8–03; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–41,451]

Powerex, Inc., Youngwood, PA; Amended Notice of Revised Determination On Reconsideration

In accordance with section 223 of the Trade Act of 1974 (19 U.S.C. 2273) the Department of Labor issued a Notice of Revised Determination on Reconsideration on April 17, 2003, applicable to workers of Powerex, Inc, Youngwood, Pennsylvania. The notice will be published soon in the **Federal Register**.

At the request of the State agency, the Department reviewed the certification for workers of the subject firm. The workers produce semiconductor products (thyristors and rectifiers).

New findings show that there was a previous certification, TA–W–37,447, issued on June 16, 2000, for workers of Powerex, Inc., Youngwood, Pennsylvania who were engaged in employment related to the production of semiconductor products (thyristors and rectifiers). That certification expired June 16, 2002. To avoid an overlap in worker group coverage, the revised determination is being amended to change the impact date from March 8, 2002, to June 17, 2002, for workers of the subject firm.

The amended notice applicable to TA–W–41,451 is hereby issued as follows:

All workers of Powerex, Youngwood, Pennsylvania, who became totally or partially separated from employment on or after June 17, 2002, through April 17, 2005, are eligible to apply for adjustment assistance under section 223 of the Trade Act of 1974.

Signed in Washington, DC this 29th day of April, 2003.

Elliott S. Kushner,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 03–11542 Filed 5–8–03; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–51,431]

Tecumseh Products Company, Grafton Operations, Grafton, WI; Notice of Termination of Investigation

Pursuant to section 221 of the Trade Act of 1974, as amended, an investigation was initiated on April 4, 2003 in response to a petition filed by the International Association of Machinists and Aerospace Workers, District 10 on behalf of workers at Tecumseh Products Company, Grafton Operations, Grafton, Wisconsin.

The petitioner has requested that the petition be withdrawn. Consequently, further investigation would serve no purpose, and the investigation has been terminated.

Signed at Washington, DC, this 28th day of April, 2003.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 03–11554 Filed 5–8–03; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–51,482]

Tecumseh Products Company, Douglas Operations, Douglas, GA; Notice of Termination of Investigation

Pursuant to section 221 of the Trade Act of 1974, as amended, an investigation was initiated on April 11, 2003 in response to a petition filed by a company official on behalf of workers at Tecumseh Products, Douglas Operations, Douglas, Georgia.

The petitioner has requested that the petition be withdrawn. Consequently, the investigation has been terminated.

Signed at Washington, DC, this 28th day of April, 2003.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 03–11556 Filed 5–8–03; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–50,339]

Tower Automotive, Inc., Milwaukee, WI; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974 (19 U.S.C. 2273) the Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance on January 23, 2003, applicable to workers of Tower Automotive, Inc., Milwaukee, Wisconsin. The notice was published in the **Federal Register** on February 24, 2003 (68 FR 8623).

The Department reviewed the certification for workers of the subject firm. The workers produce structural component parts and assemblies for light truck bodies.

New findings show that there was a previous certification, TA–W–38,407, issued on January 31, 2001, for workers of Tower Automotive, Inc., Milwaukee, Wisconsin who were engaged in employment related to the production of structural component parts and assemblies for light truck bodies. That certification expired January 31, 2003. To avoid an overlap in worker group coverage, the certification is being amended to change the impact date from December 9, 2001 to February 1, 2003, for workers of the subject firm.

The amended notice applicable to TA–W–50,339 is hereby issued as follows:

All workers of Tower Automotive, Inc., Milwaukee, Wisconsin, who became totally or partially separated from employment on or after February 1, 2003, through January 23, 2005, are eligible to apply for adjustment assistance under section 223 of the Trade Act of 1974.

Signed at Washington, DC this 29th day of April, 2003.

Richard Church,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 03–11545 Filed 5–8–03; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–51,330]

Zilog, Incorporated, MOD II, Nampa, ID; Notice of Termination of Investigation

Pursuant to section 221 of the Trade Act of 1974, as amended, an investigation was initiated on March 27, 2003 in response to a worker petition filed by a company official on behalf of workers at Zilog, Inc., Mod II, Nampa, Idaho.

The petitioner has requested that the petition be withdrawn. Consequently, the investigation has been terminated.

Signed at Washington, DC, this 23rd day of April, 2003.

Elliott S. Kushner,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 03–11550 Filed 5–8–03; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment Standards Administration Wage and Hour Division

Minimum Wages for Federal and Federally Assisted Construction; General Wage Determination Decisions

General wage determination decisions of the Secretary of Labor are issued in accordance with applicable law and are based on the information obtained by the Department of Labor from its study of local wage conditions and data made available from other sources. They specify the basic hourly wage rates and fringe benefits which are determined to be prevailing for the described classes of laborers and mechanics employed on construction projects of a similar character and in the localities specified therein.

The determinations in these decisions of prevailing rates and fringe benefits have been made in accordance with 29 CFR part 1, by authority of the Secretary of Labor pursuant to the provisions of the Davis-Bacon Act of March 3, 1931, as amended (46 Stat. 1494, as amended, 40 U.S.C. 26a) and of other Federal statutes referred to in 29 CFR part 1, Appendix, as well as such additional statutes as may from time to time be enacted containing provisions for the payment of wages determined to be prevailing by the Secretary of Labor in accordance with the Davis-Bacon Act. The prevailing rates and fringe benefits determined in these decisions shall, in accordance with the provisions of the foregoing statutes, constitute the minimum wages payable on Federal and Federally assisted construction projects to laborers and mechanics of the specified classes engaged on contract work of the character and in the localities described therein.

Good cause is hereby found for not utilizing notice and public comment procedure thereon prior to the issuance of these determinations as prescribed in 5 U.S.C. 553 and not providing for delay in the effective date as prescribed in that section, because the necessity to issue current construction industry wage determinations frequently and in large volume causes procedures to be impractical and contrary to the public interest.

General wage determination decisions, and modifications and supersedes decisions thereto, contain no expiration dates and are effective from their date of notice in the **Federal Register**, or on the date written notice is received by the agency, whichever is earlier. These decisions are to be used in accordance with the provisions of 29 CFR part 1 and 5. Accordingly, the applicable decision, together with any modifications issued, must be made a part of every contract for performance of the described work within the geographic area indicated as required by an applicable Federal prevailing wage law and 29 CFR part 5. The wage rates and fringe benefits, notice of which is published herein, and which are contained in the Government Printing Office (GPO) document entitled "General Wage Determinations Issued

Under The Davis-Bacon And Related Acts," shall be the minimum paid by contractors and subcontractors to laborers and mechanics.

Any person, organization, or governmental agency having an interest in the rates determined as prevailing is encouraged to submit wage rate and fringe benefit information for consideration by the Department.

Further information and self-explanatory forms for the purpose of submitting this data may be obtained by writing to the U.S. Department of Labor, Employment Standards Administration, Wage and Hour Division, Division of Wage Determinations, 200 Constitution Avenue, NW., Room S–3014, Washington, DC 20210.

Modification to General Wage Determination Decisions

The number of the decisions listed to the Government Printing Office document entitled "General Wage Determinations Issued Under the Davis-Bacon and Related Acts" being modified are listed by Volume and State. Dates of publication in the **Federal Register** are in parentheses following the decisions being modified.

Volume I
None
Volume II
None
Volume III
None
Volume IV
None
Volume V
None
Volume VI
None
Volume VII
None

General Wage Determination Publication

General wage determinations issued under the Davis-Bacon and Related Acts, including those noted above, may be found in the Government Printing Office (GPO) document entitled "General Wage Determinations Issued Under the Davis-Bacon and Related Acts". This publication is available at each of the 50 Regional Government Depository Libraries and many of the 1,400 Government Depository Libraries across the country.

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Signed in Washington, DC this 30th day of April, 2003.

Carl Poleskey,

Chief, Branch of Construction Wage Determinations.

[FR Doc. 03–11117 Filed 5–8–03; 8:45 am]

BILLING CODE 4510–27–M

DEPARTMENT OF LABOR

Mine Safety and Health Administration

Proposed Information Collection Request Submitted for Public Comment and Recommendations; Fire Protection (Underground Coal Mines)

ACTION: Notice.

SUMMARY: The Department of Labor, as part of its continuing effort to reduce paperwork and respondent burden conducts a pre-clearance consultation program to provide the general public and Federal agencies with an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA95) [44 U.S.C. 3506(c)(2)(A)]. This program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed.

Currently, the Mine Safety and Health Administration (MSHA) is soliciting comments concerning the extension of the information collection related to the 30 CFR Sections 75.1100–3, 75.1101–23, 75.1103–8, & 75.1103–11; Fire Protection (Underground Coal Mines).

DATES: Submit comments on or before July 8, 2003.

ADDRESSES: Send comments to Jane Tarr, Management Analyst, Administration and Management, 1100 Wilson Boulevard, Room 2171, Arlington, VA 22209–3939. Commenters are encouraged to send their comments on computer disk, or via Internet E-mail to *Tarr-Jane@Msha.Gov*. Ms. Tarr can be reached at (202) 693–9824 (voice), or (202) 693–9801 (facsimile).

FOR FURTHER INFORMATION CONTACT: Jane Tarr, Management Analyst, Records Management Group, U.S. Department of Labor, Mine Safety and Health Administration, Room 2171, 1100 Wilson Boulevard, Arlington, VA 22209–3939. Ms. Tarr can be reached at *Tarr-Jane@Msha.Gov* (Internet E-mail), (202) 693–9824 (voice), or (202) 693–9801 (facsimile).

SUPPLEMENTARY INFORMATION:

I. Background

Under 30 CFR 75.1100–3, chemical fire extinguishers must be examined every 6 months and the date of the examination recorded on a permanent tag attached to the extinguisher. Under § 75.1101–23(a), operators of underground coal mines are required to establish a program for the instruction of all miners in the proper fire fighting and evacuation procedures to be followed in event of an emergency. The program includes a specific fire fighting and evacuation plan designed to acquaint miners on all shifts with procedures for: (i) Evacuation of all miners not required for fire fighting activities; (ii) rapid assembly and transportation of necessary people, fire suppression equipment, and rescue apparatus to the scene of the fire; and (iii) operation of the fire suppression equipment available in the mine. Under 75–1101–23(c), an underground coal mine operator is required to conduct fire drills at intervals of not more than 90 days. The operator is to certify by signature and date that fire drills were conducted in accordance with the approved program. Under § 75.1103–8, a qualified person must examine the automatic fire sensor and warning device systems on a weekly basis, and must conduct a functional test of the complete system at least once a year. Under § 75.1103–11, each fire hydrant and hose must be tested at least once a year, and the records of those tests shall be kept in an appropriate location.

II. Desired Focus of Comments

MSHA is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submissions of responses.

A copy of the proposed information collection request can be obtained by contacting the employee listed in the For Further Information Contact section of this notice, or viewed on the Internet by accessing the MSHA home page (*http://www.msha.gov*) and then choosing "Statutory and Regulatory Information" and "Federal Register Documents."

III. Current Actions

30 CFR 75.1100–3, 1101–23, 1103–8 & 11, requires chemical fire extinguishers to be examined every 6 months; requires operators to establish a program for the instruction of all miners in the proper fire fighting and evacuation procedures in the event of an emergency; requires operators to conduct fire drills; requires a qualified person to examine the automatic fire sensor and warning device systems; and requires that each fire hydrant and hose be tested.

Type of Review: Extension.

Agency: Mine Safety and Health Administration.

Title: Fire Protection (Underground Coal Mines).

OMB Number: 1219–0054.

Recordkeeping: § 75.1100–3 requires that after the examination of chemical fire extinguishers, the date of the examination be recorded on a permanent tag attached to the extinguisher. § 75.1101–23(c), requires that after conducting fire drills the operator must certify by signature and date that the fire drills were conducted. § 75.1103–8 requires the mine operator to maintain records of the annual functional test of the automatic fire sensor and warning device systems. And § 75.1103–11 requires that records be kept of each fire hydrant and hose test.

Frequency: On occasion.

Affected Public: Business or other for-profit.

Respondents: 893.

Estimated Time Per Response: 14 minutes.

Total Burden Hours: 77,122 hours.

Total Burden Cost (in thousands) (capital/startup): $0.

Total Burden Cost (operating/maintaining): $1.

Comments submitted in response to this notice will be summarized and/or included in the request for Office of Management and Budget approval of the information collection request; they will also become a matter of public record.

Dated at Arlington, Virginia, this 2nd day of May, 2003.

David L. Meyer,

Director, Office of Administration and Management.

[FR Doc. 03–11540 Filed 5–8–03; 8:45 am]

BILLING CODE 4510–43–U

DEPARTMENT OF LABOR

Mine Safety and Health Administration

Proposed Information Collection Request Submitted for Public Comment and Recommendations; Ground Control Plan

ACTION: Notice.

SUMMARY: The Department of Labor, as part of its continuing effort to reduce paperwork and respondent burden conducts a pre-clearance consultation program to provide the general public and Federal agencies with an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA95) [44 U.S.C. 3506 (c)(2)(A)]. This program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed.

DATES: Submit comments on or before July 8, 2003.

ADDRESSES: Send comments to Jane Tarr, Management Analyst, Administration and Management 1100 Wilson Boulevard, Room 2171, Arlington, VA 22209–3939. Commenters are encouraged to send their comments on computer disk, or via Internet E-mail to *Tarr-Jane@Msha.Gov*. Ms. Tarr can be reached at (202) 693–9824 (voice), or (202) 693–9801 (facsimile).

FOR FURTHER INFORMATION CONTACT: Jane Tarr, Management Analyst, Records Management Group, U.S. Department of Labor, Mine Safety and Health Administration, Room 2171, 1100 Wilson Boulevard, Arlington, VA 22209–3939. Ms. Tarr can be reached at *Tarr-Jane@Msha.Gov* (Internet E-mail), (202) 693–9824 (voice), or (202) 693–9801 (facsimile).

SUPPLEMENTARY INFORMATION:

I. Background

Each operator of a surface coal mine is required under 30 CFR 77.1000 to establish and follow a ground control plan that is consistent with prudent engineering design and which will ensure safe working conditions. The plans are based on the type of strata expected to be encountered, the height and angle of highwalls and spoil banks, and the equipment to be used at the mine. Ground control plans are required by 30 CFR 77.1000–1 to be filed with the MSHA district Manager in the district in which the mine is located. The plans are reviewed by MSHA to ensure that highwalls, pits, and spoil banks are maintained in safe condition through the use of sound engineering design.

II. Desired Focus of Comments

MSHA is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submissions of responses.

A copy of the proposed information collection request can be obtained by contacting the employee listed in the FOR FURTHER INFORMATION CONTACT

section of this notice, or viewed on the Internet by accessing the MSHA home page (*http://www.msha.gov*) and then choosing "Statutory and Regulatory Information" and "**Federal Register** Documents."

III. Current Actions

MSHA is seeking to continue the requirement for mine operators to submit ground control plans to ensure that highwalls, pits, and spoil banks are maintained in safe condition so that a safe working environment is provided for miners.

Type of Review: Extension.

Agency: Mine Safety and Health Administration.

Title: Ground Control Plan.

OMB Number: 1219–0026.

Recordkeeping: § 77.1000–1 states that the operator shall file a copy of the ground control plan and revisions with the Coal Mine Health and Safety District or Subdistrict office for the District or Subdistrict in which the mine is located and shall identify the name and location of the mine; the Mine Safety and Health Administration identification number if known; and the name and address of the mine operator.

Frequency: On Occasion.

Affected Public: Business or other for-profit.

Respondents: 1,401.

Average Time Per Response: 8.5 hours.

Total Burden Hours: 1,718 hours.

Total Burden Cost (capital/startup): $0.

Total Burden Cost (operating/maintaining): $0.

Comments submitted in response to this notice will be summarized and/or included in the request for Office of Management and Budget approval of the information collection request; they will also become a matter of public record.

Dated at Arlington, Virginia, this 2nd day of May, 2003.

David L. Meyer,

Director, Office of Administration and Management.

[FR Doc. 03–11541 Filed 5–8–03; 8:45 am]

BILLING CODE 4510–43–P

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

[Docket No. GE2003–1]

Request for Comments on the Draft Ergonomics for the Prevention of Musculoskeletal Disorders: Guidelines for Retail Grocery Stores

AGENCY: Occupational Safety and Health Administration (OSHA); Department of Labor.

ACTION: Request for comments.

SUMMARY: The Department of Labor is inviting comments on its draft Ergonomics for the Prevention of Musculoskeletal Disorders: Guidelines for Retail Grocery Stores (draft guidelines). The draft guidelines are available on OSHA's Web site and through its publications office. Interested persons may submit written or electronic comments on the draft guidelines. The agency will also hold a stakeholder meeting where the public is invited to express its views on the draft guidelines.

DATES: *Written Comments:* Comments must be submitted by the following dates:

Hard Copy: You must submit your comments (postmarked or sent) by July 8, 2003.

Facsimile and electronic transmission: You must submit your comments by July 8, 2003.

(Please see the **SUPPLEMENTARY INFORMATION** below for additional information on submitting comments.)

Stakeholder meeting: OSHA will hold a one-day stakeholder meeting in the Washington, DC metropolitan area to discuss the draft guidelines. OSHA will announce the exact location and date of the stakeholder meeting prior to the close of the comment period. OSHA requests that interested parties submit their intention to participate in the stakeholder meeting through express delivery, hand delivery, messenger service, fax or electronic means by July 8, 2003.

ADDRESSES:

I. Submission of Comments and Intention To Participate in Stakeholder Meeting

Regular mail, express delivery, hand-delivery, and messenger service: You must submit three copies of your comments and attachments to the OSHA Docket Office, Docket No. GE2003–1, Room N–2625, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210, telephone (202) 693–2350 (OSHA's TTY number is (877) 889–5627). The OSHA Docket Office and the Department of Labor hours of operation are 8:15 a.m. to 4:45 p.m., E.S.T. You must submit one copy of your intent to participate in the stakeholder meeting by express delivery, hand delivery, or messenger service to the above address.

Facsimile: If your comments, including any attachments, are 10 pages or fewer, you may fax them to the OSHA Docket Office at (202) 693–1648. You must include the docket number of this document, Docket No. GE2003–1, in your comments. You may also fax your intention to participate in the stakeholder meeting.

Electronic: You may submit comments (but not attachments) and your intention to participate in the stakeholder meeting through the Internet at *http://ecomments.osha.gov/*. (Please see the **SUPPLEMENTARY INFORMATION** below for additional information on submitting comments.)

II. Obtaining Copies of the Draft Guidelines

You can download the draft guidelines for the retail grocery industry from OSHA's Web site at *www.osha.gov*. A printed copy of the draft guidelines is available from the OSHA Office of Publications, Room N–3101, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210, or by telephone at (800) 321–OSHA (6742). You may fax your request for a copy of the draft guidelines to (202) 693–2498.

FOR FURTHER INFORMATION CONTACT: Steven F. Witt, OSHA Directorate of Standards and Guidance, Room N–3718, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210, telephone (202) 693–1950.

SUPPLEMENTARY INFORMATION:

I. Submission of Comments and Internet Access to Comments

You may submit comments in response to this document by (1) hard copy, (2) fax transmission (facsimile), or (3) electronically through the OSHA Web site. Please note that you cannot attach materials such as studies or journal articles to electronic comments. If you have additional materials, you must submit three copies of them to the OSHA Docket Office at the address above. The additional materials must clearly identify your electronic comments by name, date, subject and docket number so we can attach them to your comments. Because of security-related problems there may be a significant delay in the receipt of comments and intentions to participate in the stakeholder meeting by regular mail. Please contact the OSHA Docket Office at (202) 693–2350 (TTY (877) 889–5627) for information about security procedures concerning the delivery of materials by express delivery, hand delivery and messenger service.

All comments and submissions will be available for inspection and copying at the OSHA Docket Office at the above address. Comments and submissions will be posted on OSHA's Web site at *http://www.osha.gov*. OSHA cautions you about submitting personal information such as social security numbers, date of birth, etc. Contact the OSHA Docket Office at (202) 693–2350 (TTY (877) 889–5627) for information about materials not available through the OSHA Web site and for assistance in using the Web site to locate docket submissions.

OSHA is providing the public with 60 days to provide comments on the draft retail grocery store ergonomics guidelines. During the development of the nursing home ergonomics guidelines (the final version was published march 13, 2003), the agency provided 30 days for comment, then extended the comment period for an additional 30 days at the request of several stakeholders. The 60-day period provided adequate time for the public to provide comments, so OSHA believes that allowing 60 days for the public to comment on the draft retail grocery guidelines is adequate.

II. Background

On April 5, 2002, the Department of Labor announced a four-pronged comprehensive approach for addressing musculoskeletal disorders (MSDs), which calls for OSHA to develop industry- or task-specific guidelines. OSHA's second industry-specific guidelines address ergonomic concerns in retail grocery stores and supercenters (combined full-line supermarket and discount merchandisers). While other business operations, such as distribution centers, banks, post offices, or other retail or wholesale operations may also be located in grocery stores, these guidelines are not intended to apply to these other businesses. The guidelines are also not intended to apply to other retail and distribution operations, such as warehouses or convenience stores.

The draft guidelines contain an introduction and two main sections. The introduction provides an overview of MSDs in retail grocery stores. It also explains the role of ergonomics in reducing the incidence of these injuries. A section entitled "A Process for Protecting Workers" describes a process for developing and implementing a strategy for analyzing the workplace, implementing ergonomic solutions, training, addressing reports of injuries, and evaluating progress.

The Implementing Solutions section describes examples of ergonomic solutions that may be used by grocery stores to control exposure to ergonomic risk factors in grocery stores. The Implementing Solutions section includes general corrective actions, followed by solutions for certain grocery store departments, including:

- Stocking,
- Bakery,
- Produce, and
- Meat department.

The draft guidelines finish with a list of references and sources of additional information grocery store managers can use to help them with their ergonomic efforts.

OSHA encourages interested parties to comment on all aspects of the draft guidelines. The agency is particularly interested in any information about successful ergonomics efforts, and individual ergonomic interventions, that the grocery store industry has used to address ergonomic concerns.

III. Stakeholder Meeting

Following the close of the comment period, OSHA will hold a stakeholder meeting in the Washington, DC metropolitan area during the week of July 28, 2003. The agency will announce the exact date and location of the stakeholder meeting at a later date.

This notice was prepared under the direction of John L. Henshaw, Assistant Secretary for Occupational Safety and Health. It is issued under sections 4 and 8 of the Occupational Safety and Health Act of 1970 (29 U.S.C. 653, 657).

Issued at Washington, DC, this 6th day of May, 2003.

John L. Henshaw,

Assistant Secretary of Labor.

[FR Doc. 03–11562 Filed 5–8–03; 8:45 am]

BILLING CODE 4510–26–M

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–302]

Florida Power Corporation; Crystal River Unit 3; Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (NRC) is considering issuance of an exemption from Title 10 of the Code of Federal Regulations (10 CFR) part 55, section 55.59(c)(1) for Facility Operating License No. DPR–72, issued to Florida Power Corporation (the licensee), for operation of Crystal River Unit 3 (CR–3), located in Citrus County, Florida. As required by 10 CFR 51.21, the NRC is issuing this environmental assessment and finding of no significant impact.

Environmental Assessment

Identification of the Proposed Action

The proposed action would constitute a one-time exemption to allow the current licensed operator requalification program to exceed 24 months. The requested exemption would extend the completion date for the current requalification program from December 31, 2004, to February 28, 2005, and would include an extension to February 28, 2005, for completing the required annual operating tests and comprehensive biennial written examination. The next requalification program period would begin on March 1, 2005, and continue for 24 months to February 28, 2007, with successive periods running for 24 months.

The proposed action is in accordance with the licensee's application for exemption dated March 6, 2003.

The Need for the Proposed Action

The proposed action would extend the current CR–3 requalification program from December 31, 2004, to February 28, 2005. The next requalification program period would begin on March 1, 2005, and continue for 24 months to February 28, 2007, with successive periods running for 24 months. The proposed action is needed to allow for minimal interruption of the licensed personnel based on scheduling difficulties associated with an end-of-the-year requalification program cycle. Specifically, the licensee has stated that moving operator annual and biennial exams to a January to February timeframe would support the following benefits for the licensee: (1) Minimize the fall refueling outage impact on exam development; (2) minimize the potential impact from any fall refueling outage extensions; (3) minimize the scheduling and resource impact from holidays; (4) minimize the potential scheduling and resource impact of any exam remediation or retesting requirements during the holidays; and (5) minimize the potential impact from future bargaining unit negotiations that occur periodically in the fourth calendar quarter. The licensee deems it prudent to allow the licensed personnel operating the plant to remain fully available to stand watch on operating

crews and not be distracted by completing the licensed operator requalification program by December 31, 2004.

Environmental Impacts of the Proposed Action

The NRC has completed its evaluation of the proposed action and concludes that there are no significant environmental impacts associated with the extension of the completion date for the operator requalification program from December 31, 2004, to February 28, 2005.

The proposed action will not significantly increase the probability or consequences of accidents, no changes are being made in the types of effluents that may be released off site, and there is no significant increase in occupational or public radiation exposure. Therefore, there are no significant radiological environmental impacts associated with the proposed action.

With regard to potential nonradiological impacts, the proposed action does not have a potential to affect any historic sites. It does not affect nonradiological plant effluents and has no other environmental impact. Therefore, there are no significant nonradiological environmental impacts associated with the proposed action.

Accordingly, the NRC concludes that there are no significant environmental impacts associated with the proposed action.

Environmental Impacts of the Alternatives to the Proposed Action

As an alternative to the proposed action, the staff considered denial of the proposed action (i.e., the "no-action" alternative). Denial of the application would result in no change in current environmental impacts. The environmental impacts of the proposed action and the alternative action are similar.

Alternative Use of Resources

The action does not involve the use of any different resources than those previously considered in the Final Environmental Statement for CR–3.

Agencies and Persons Consulted

On May 1, 2003, the staff consulted with the Florida State official, William Passetti, of the Florida Department of Health Bureau of Radiation Control, regarding the environmental impact of the proposed action. The State official had no comments.

Finding of No Significant Impact

On the basis of the environmental assessment, the NRC concludes that the proposed action will not have a significant effect on the quality of the human environment. Accordingly, the NRC has determined not to prepare an environmental impact statement for the proposed action.

For further details with respect to the proposed action, see the licensee's letter dated March 6, 2003. Documents may be examined, and/or copied for a fee, at the NRC's Public Document Room (PDR), located at One White Flint North, Public File Area O1 F21, 11555 Rockville Pike (first floor), Rockville, Maryland. Publicly available records will be accessible electronically from the Agencywide Documents Access and Management System (ADAMS) Public Electronic Reading Room on the Internet at the NRC Web site, *http://www.nrc.gov/reading-rm/adams.html*. Persons who do not have access to ADAMS or who encounter problems in accessing the documents located in ADAMS, should contact the NRC PDR Reference staff by telephone at 1–800–397–4209 or 301–415–4737, or by e-mail to *pdr@nrc.gov*.

For the Nuclear Regulatory Commission.

Dated at Rockville, Maryland, this 5th day of May, 2003.

Allen G. Howe,

Chief, Section 2, Project Directorate II, Division of Licensing Project Management, Office of Nuclear Reactor Regulation.

[FR Doc. 03–11526 Filed 5–8–03; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 40–6622]

Finding of No Significant Impact and Availability of the Environmental Assessment Regarding the Proposed Changes to the Reclamation Plan for the Pathfinder Mines Corporation's Shirley Basin Site, Shirley Basin Region of Wyoming

I. Introduction

The U.S. Nuclear Regulatory Commission (NRC) is considering an amendment of NRC Source Material License SUA–442 to authorize the licensee, Pathfinder Mines Corporation (PMC), to change the Reclamation Plan for the Shirley Basin uranium mill tailings site located in the Shirley Basin region of Wyoming. PMC requested that NRC approve the proposed changes to the Reclamation Plan by letter dated October 16, 2001, as amended August 9, 2002.

An Environmental Assessment (EA) was performed by the NRC staff in support of its review of PMC's license amendment request, in accordance with the requirements of 10 CFR Part 51. Based on the evaluation, the staff concluded that a Finding of No Significant Impact (FONSI) is appropriate for this licensing action.

II. EA Summary

The EA was prepared to evaluate the environmental impacts of PMC's request to amend NRC license SUA–442, by revising the Reclamation Plan for the Shirley Basis site to allow PMC to do two things. First, in response to recent tailings analysis which showed a significant decrease in source term from what was estimated in the original Reclamation Plan, it would allow PMC to reduce the radon clay barrier thickness from 2.5 feet to .5 feet. The licensee has calculated that with this reduction on thickness, the average radon flux will still be within the required levels and they will confirm this fact by actual measurement. Second, it would allow PMC to create relatively flat vegetated surfaces or benches, with rock protected apron slopes to make the transition between benches. This would provide a reclamation surface covered primarily by vegetated topsoil instead of large expanses of rock. The technical aspects of the application are to be discussed separately in a Technical Evaluation Report (TER) that will accompany the agency's final licensing action.

The results of the staff's evaluation are documented in an EA placed in the Publicly Available Records (PAR) component of NRC's document system (ADAMS).

III. Finding of No Significant Impact

Based on the EA, as summarized above, the staff has concluded that the proposed licensing action would not have any significant effect on the quality of the human environment, and therefore, an environmental impact statement is unnecessary.

IV. Further Information

The EA for this proposed action as well as the licensee's request are available for inspection at the NRC's Public Document Reading Room at *http://www.nrc.gov/reading-rm/adams.html* (ADAMS Accession Number for licensee request is: ML012980334 (October 16, 2001), ML022310348 (August 8, 2002) and ADAMS Accession Number for the EA is: ML031190198). Documents can also

be examined and/or copied for a fee, at the NRC's Public Document Room, located at One White Flint North, 11555 Rockville Pike, Rockville, MD 20852. Any questions with respect to this action should be referred to Michael Raddatz, Fuel Cycle Facilities Branch, Division of Fuel Cycle Safety and Safeguards, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Mail Stop T8–A33, Washington DC 20555–0001. Telephone (301) 415–6334.

Dated at Rockville, Maryland, this 30th day of April, 2003.

For the U.S. Nuclear Regulatory Commission.

Susan M. Frant,

Chief, Fuel Cycle Facilities Branch, Division of Fuel Cycle Safety and Safeguards, Office of Nuclear Material Safety and Safeguards.

[FR Doc. 03–11527 Filed 5–8–03; 8:45 am]

BILLING CODE 7590–01–P

RAILROAD RETIREMENT BOARD

Actuarial Advisory Committee With Respect to the Railroad Retirement Account; Notice of Public Meeting

Notice is hereby given in accordance with Public Law 92–463 that the Actuarial Advisory Committee will hold a meeting on May 29, 2003, at 10 a.m. at the office of the Chief Actuary of the U.S. Railroad Retirement Board, 844 North Rush Street, Chicago, Illinois, on the conduct of the 22nd Actuarial Valuation of the Railroad Retirement System. The agenda for this meeting will include a discussion of the results and presentation of the 22nd Actuarial Valuation. The text and tables which constitute the Valuation will have been prepared in draft form for review by the Committee. It is expected that this will be the last meeting of the Committee before publication of the Valuation.

The meeting will be open to the public. Persons wishing to submit written statements or make oral presentations should address their communications or notices to the RRB Actuarial Advisory Committee, c/o Chief Actuary, U.S. Railroad Retirement Board, 844 North Rush Street, Chicago, Illinois 60611–2092.

Dated: May 5, 2003.

Beatrice Ezerski,

Secretary to the Board.

[FR Doc. 03–11536 Filed 5–8–03; 8:45 am]

BILLING CODE 7905–01–M

SECURITIES AND EXCHANGE COMMISSION

Sunshine Act Meeting Notice

Notice is hereby given, pursuant to the provisions of the Government in the Sunshine Act, Pub. L. 94–409, that the Securities and Exchange Commission will hold the following meeting during the week of May 12, 2003:

A Closed Meeting will be held on Tuesday, May 13, 2003 at 2 p.m.

Commissioners, Counsel to the Commissioners, the Secretary to the Commission, and recording secretaries will attend the Closed Meeting. Certain staff members who have an interest in the matters may also be present.

Commissioner Glassman, as duty officer, determined that no earlier notice thereof was possible.

The General Counsel of the Commission, or his designee, has certified that, in his opinion, one or more of the exemptions set forth in 5 U.S.C. 552b(c)(5), (7), (9)(B) and (10) and 17 CFR 200.402(a)(5), (7), (9)(ii) and (10), permit consideration of the scheduled matters at the Closed Meeting.

The subject matter of the Closed Meeting scheduled for Tuesday, May 13, 2003 will be:

Institution and settlement of administrative proceedings of an enforcement nature;

Institution and settlement of injunctive actions;

Formal order of investigation; and

Adjudicatory matter.

At times, changes in Commission priorities require alterations in the scheduling of meeting items. For further information and to ascertain what, if any, matters have been added, deleted, or postponed, please contact: The Office of the Secretary at (202) 942–7070.

Dated: May 7, 2003.

Jonathan G. Katz,

Secretary.

[FR Doc. 03–11823 Filed 5–7–03; 4:03 pm]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–47793; File No. SR–NYSE–2003–10]

Self-Regulatory Organizations; Notice of Filing and Order Granting Accelerated Approval of a Proposed Rule Change and Amendment No. 1 thereto by the New York Stock Exchange, Inc. To Disengage NYSE Direct+ in Five Actively-Traded Stocks on a One-Week Pilot Basis

May 2, 2003.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on April 9, 2003, the New York Stock Exchange, Inc. ("NYSE" or the "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. On April 28, 2003, the Exchange filed Amendment No. 1 to the proposed rule change.[3] The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons and to grant accelerated approval of the proposed rule change.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange is proposing to disengage NYSE Direct+®[4] in five

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* letter from Darla C. Stuckey, Corporate Secretary, NYSE, to Nancy J. Sanow, Assistant Director, Division of Market Regulation ("Division"); Commission, dated April 24, 2003 ("Amendment No. 1"). Among other things, Amendment No. 1: (1) Clarifies that the NYSE is disengaging NYSE Direct+ in five stocks to assess the impact of its automated dissemination of quotes feature on Exchange floor transactions without Direct+ changing the depth of the market; (2) clarifies that during this pilot, the Exchange intends to monitor variables such as liquidity, continuity, spread, depth, and number of trades; and (3) provides proposed rule text regarding the pilot and the five stocks that will not be participating in NYSE Direct+. On April 30, 2003, the NYSE submitted a new exhibit A to Amendment No. 1. The new exhibit, which supercedes only Exhibit A to Amendment No. 1, makes corrections to the proposed rule text by inserting previously approved rule language under NYSE Rule 1000 that the NYSE inadvertently excluded from the original filing. *See* letter from Donald Siemer, Director, Rule Development, NYSE, to Lisa N. Jones, Attorney, Division, Commission, dated April 30, 2003.

[4] NYSE Rules 1000–1005 provide for the automatic execution of limit orders of 1,099 shares or less against the Exchange's disseminated bid or offer. NYSE Direct+ was originally filed as a one-year pilot. *See* Securities Exchange Act Release No. 43767 (December 22, 2000), 66 FR 834 (January 4,

Continued

actively-traded stocks on a one-week pilot basis to assess the impact of autoquoting of bids and offers in connection with the Exchange's initiative to disseminate "liquidity quotes." Below is the text of the proposed rule change. Proposed new language is *italicized*.

* * * * *

Rule 1000

Automatic Execution of Limit Orders Against Orders Reflected in NYSE Published Quotation

Only straight limit orders without tick restrictions are eligible for entry as auto ex orders. Auto ex orders to buy shall be priced at or above the price of the published NYSE offer. Auto ex orders to sell shall be priced at or below the price of the NYSE bid. An auto ex order shall receive an immediate, automatic execution against orders reflected in the Exchange's published quotation and shall be immediately reported as NYSE transactions, unless:

(i)–(vi) No change.

Auto ex orders that cannot be immediately executed shall be displayed as limit orders in the auction market. An auto-ex order equal to or greater than the size of the NYSE's published bid or offer shall trade against the entire published bid or offer, and a new bid or offer shall be published pursuant to Rule 60(e). The unfilled balance of the auto ex order shall be displayed as a limit order in the auction market.

During a one-week pilot program in 2003, NYSE Direct+ shall not be available in the following five stocks: American Express (AXP), Pfizer (PFE), International Business Machines (IBM), Goldman Sachs (GS), and Citigroup (C). The Exchange will announce in advance to its membership the week the pilot will run.

* * * * *

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of, and basis for, the proposed rule change. The text of these statements may be examined at the places specified in Item III below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange has begun to test on the Exchange's floor its initiative to disseminate "liquidity quotes" [5] in addition to the NYSE's highest bid and lowest offer. As part of this initiative, the Exchange has amended Rule 60 to provide that the Exchange will "autoquote" or automatically update the NYSE's highest bid or lowest offer whenever a limit order is transmitted to the specialist's book at a price higher (lower) than the previously disseminated highest (lowest) bid (offer).[6] When the NYSE's highest bid or lowest offer has been traded with in its entirety, the Exchange will autoquote a new bid or offer reflecting the total size of orders on the specialist's book at the next highest (in the case of a bid) or lowest (in the case of an offer) price.[7]

The NYSE believes that both NYSE Direct+ and autoquoting have the potential to impact the functioning of the NYSE's auction market, as they involve, without specialist or trading crowd intervention, changes to the depth of the market and prices at which securities may trade. NYSE Direct+ involves automatic executions of limit orders of 1,099 shares or less against the Exchange's best bid or offer.[8] According to the Exchange, NYSE Direct+ executions have the potential to change the depth of the market, as well as the tick and last reported sale. Autoquoting involves the automatic adjustment of the Exchange's disseminated bids/offers as new limit orders are received onto the specialist's book.

In anticipation of the rollout of NYSE Liquidity Quote,SM as approved in SR–NYSE–2002–55,[9] the Exchange would like to test the impact of autoquoting without the impact of NYSE Direct+ occurring at the same time. To do so, the Exchange is proposing to disengage NYSE Direct+ in five actively-traded stocks during a one-week pilot program. The stocks, which include one company from each of the Exchange's five largest specialist units, are American Express (AXP), Pfizer (PFE), International Business Machines (IBM), Goldman Sachs (GS), and Citigroup (C). The Exchange represents that it will study the impact of autoquoting on the Exchange floor [10] with regard to liquidity, continuity, spread, depth, number of trades, and other variables.

The Exchange notes that any NYSE Direct+ order ("auto-ex order") that would be entered during the one-week pilot in the five stocks mentioned above would automatically be converted to a SuperDOT order during that time for representation by the specialist in the Exchange's auction market.[11] Further, the Exchange intends to implement the one-week pilot as soon as practicable after Commission approval and will notify the Exchange's membership at least one week prior to the actual implementation date of the one-week pilot.[12]

2. Statutory Basis

The Exchange believes that the proposed rule change, as amended, is consistent with Section 6(b)(5) of the Act,[13] which requires, among other things, that the Exchange's rules are designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system and, in general, to protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange believes that the proposed rule change will not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

The Exchange has not solicited nor received written comments on the proposed rule change.

III. Solicitation of Comments

Interested persons are invited to submit written data, views and

2001) SR–NYSE–00–18). The Direct+ pilot was subsequently extended for an additional year by Securities Exchange Act Release No. 45331 (January 24, 2002), 67 FR 5024 (February 1, 2002) (SR–NYSE–2001–50), and recently extended for an additional year by Securities Exchange Act Release No. 46906 (November 25, 2002), 67 FR 72260 (December 4, 2002) (SR–NYSE–2002–47).

[5] Liquidity quotes represent additional buying and selling interest below the best bid and above the best offer.

[6] *See* Securities Exchange Act Release No. 47614 (April 2, 2003), 68 FR 17140 (April 8, 2003) (order approving SR–NYSE–2002–55).

[7] *See id.*

[8] *See supra* note 4.

[9] *See supra* note 6.

[10] Telephone conversation among Sonia Trocchio, Special Counsel, Division, Commission, Donald Siemer, Director, Rule Development and Jeffrey Rosenstruck, NYSE, dated May 2, 2003.

[11] Currently, under Exchange Rule 1000, auto-ex orders that cannot be immediately executed shall be converted into SuperDot orders and displayed as limit orders in the auction market. Telephone conversation among Sonia Trocchio, Special Counsel, Division, Commission, Donald Siemer, Director, Rule Development and Jeffrey Rosenstruck, NYSE, dated May 2, 2003.

[12] *See* Amendment No. 1, *supra* note 3.

[13] 15 U.S.C. 78f(b)(5).

arguments concerning the foregoing, including whether the proposed rule change, as amended, is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the NYSE. All submissions should refer to File No. SR–NYSE–2003–10 and should be submitted by May 30, 2003.

IV. Commission Findings and Order Granting Accelerated Approval of Proposed Rule Change

The Commission finds that the proposed rule change, as amended, is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange. In particular, the Commission believes that the proposed rule change is consistent with the requirements of Section 6(b)(5) of the Act,[14] which requires, among other things, that the rules of the Exchange be designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system and, in general, to protect investors and the public interest.[15]

The Commission believes that the proposal should help the NYSE to maintain a fair and orderly market by enabling the NYSE to test its autoquoting feature without the interruption of NYSE Direct+, which automatically changes the depth of market, as well as the tick and last reported sale in these stocks. In addition, the Commission notes that NYSE has represented that it will notify members at least one week in advance of the implementation date of the pilot.

The Commission finds good cause for accelerating approval of the proposed rule change and Amendment No. 1 prior to the thirtieth day after publication in the **Federal Register**. The Commission believes that accelerated approval will permit the Exchange, without undue delay, to assess the impact of autoquoting on the Exchange's auction market, particularly with regard to liquidity, continuity, spread, depth, number of trades, and other such variables.

Accordingly, the Commission finds good cause, consistent with Section 19(b)(2) of the Act,[16] to approve the proposed rule change, as amended, prior to the thirtieth day after publication of the notice of filing, on a pilot basis for seven days.

V. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[17] that the proposed rule change, as amended, (File No. SR–NYSE–2003–10) be approved as a one week pilot, on an accelerated basis.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[18]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 03–11588 Filed 5–8–03; 8:45 am]

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[14] 15 U.S.C. 78f(b)(5).

[15] In approving the proposed rule, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[16] 15 U.S.C. 78s(b)(2).

[17] 15 U.S.C. 78s(b)(2).

[18] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–47792; File No. SR–NYSE–2002–41]

Self-Regulatory Organizations; New York Stock Exchange; Order Approving Proposed Rule Change by the New York Stock Exchange, Inc. Amending the Exchange's Specialist Combination Review Policy in NYSE Rule 123E

May 2, 2003.

I. Introduction

On August 29, 2002, the New York Stock Exchange, Inc. ("NYSE" or "Exchange") filed with the Securities and Exchange Commission ("Commission"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b–4 thereunder,[2] a proposed rule change to amend its Specialist Combination Review Policy ("Policy"). On January 27, 2003 the NYSE amended the proposed rule change.[3] On March 20, 2003, the rule proposal, as amended, was published for comment in the **Federal Register**.[4] The Commission received no comments on the proposal. This order approves the amended proposed rule change.

II. Description of the Proposed Rule Change

NYSE Rule 123E sets forth the NYSE's Specialist Combination Review Policy.[5] Currently, the Policy requires the Quality of Markets Committee ("QOMC") to review proposed specialist unit combinations that exceed five, ten, or fifteen percent tier levels in any one of four concentration measures.[6]

The proposed rule change removes the QMOC review requirement for combinations that result in an increase in any concentration measure of less than two percentage points within a tier level. If, however, the percentage change increase results in the unit moving into a higher tier classification, a review will result. The proposed rule change also eliminates capital position requirements for the various tiers in light of recent amendments of other Exchange requirements to Exchange Rules 104.21 and 104.22.[7] The proposed rule change also delegates to the Market Performance Committee ("MPC") the responsibility of reviewing and approving, or disapproving in writing, a specialist combination to see what effect it will have on market quality. Furthermore, the proposed rule change amends the Policy to require that proponents of the combined units

[3] *See* letter from Darla C. Stuckey, Corporate Secretary, NYSE, to Nancy Sanow, Assistant Director, Division of Market Regulation ("Division"), Commission, dated January 24, 2003 ("Amendment No. 1"). In Amendment No. 1 the Exchange provided a new Exhibit A that completely replaced and superseded the proposed rule language in the original filing.

[4] *See* Securities Exchange Act Release No. 47547 (March 20, 2003), 68 FR 15027 (March 27, 2003).

[5] *See* Securities Exchange Act Release No. 46579 (October 1, 2002), 67 FR 63004 (October 9, 2002) (SR–NYSE–2002–31) (formal codification as Rule 123E); Securities Exchange Act Release No. 34167 (June 6, 1994), 59 FR 30625 (June 14, 1994) (SR–NYSE–93–45) (permanent pilot approval).

[6] The concentration measures include a specialist unit's share of: (1) Common stocks listed on the Exchange; (2) the 250 most active listed common stocks for the last 12 months; (3) total listed common stock share volume for the last 12 months; and (4) total listed common stock dollar volume for the last 12 months.

[7] *See* Securities Exchange Act Release No. 43098 (July 31, 2000), 65 FR 49044 (August 10, 2000) (SR–NYSE–99–46). *See also* Exchange Rule 104.22 that requires any new specialist entities that result from merger, acquisition, consolidation, or other combination of specialist assets to maintain net liquid assets (NLA) equivalent to the greater of either: (1) The aggregate of the NLA of the specialist entities prior to their combination, or (2) the capital requirement prescribed by Rule 104.

maintain separate corporate relations departments and disclose whether the existing clerical support of the combined units will be maintained or increased. Additionally, the rule now describes the type of information the QMOC considers in determining whether the public interest factor has been met. Finally, the proposal adopts factors the MPC must consider when assessing the impact of the proposed combination upon specialist performance and market quality with respect to the subject securities.

III. Discussion and Commission Findings

After careful review, the Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.[8] Specifically, the Commission finds the proposed rule change is consistent with Section 6(b)(5) of the Act,[9] which requires among other things, that the rules of the Exchange be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and national market system, and in general, to protect investors and the public interest.

The Commission believes that the proposed rule change is a reasonable modification of the Policy. The Commission does not believe that consolidations among specialist units are inherently harmful, and believes that in certain situations they can be beneficial, particularly for those units with limited capital. At the same time, the Commission recognizes that undue concentration may have negative effects on market quality by, among other things, hampering competition among specialists and reducing incentives for specialists to provide better markets.

The Commission believes that the modifications are reasonably designed to result in approval of proposed combinations that will not have an adverse impact on market quality or result in undue concentration. Although the Commission recognizes that the Policy, as amended, could result in prohibiting a combination from occurring, the Commission believes the factors for consideration in reviewing the impact of concentration are related to legitimate market quality issues that the NYSE should be permitted to weigh. The proposal should also benefit specialist units, as well as the MPC, because it sets forth the specific factors the MPC must consider when reviewing specialist combinations. The Commission also notes that the MPC denials must be in writing, and must be communicated to the specialist. This will ensure that the basis for any denial is provided to the specialist unit.

The Commission believes that the proposal does not impose any unnecessary or inappropriate burden on competition under Section 6(b)(8) of the Act,[10] in that it establishes review procedures to prevent potential under capitalization of specialist units that could hinder market quality. Accordingly, any potential burden on competition resulting from the proposal is justified as necessary and appropriate under the Act.

IV. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[11] that the amended proposed rule change (SR–NYSE–2002–41) be, and hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[12]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 03–11589 Filed 5–8–03; 8:45 am]

BILLING CODE 8010–01–U

[8] In approving the proposed rule change, the Commission has considered the proposed rule's impact on efficiency, competition and capital formation. 15 U.S.C. 78c(f).

[9] 15 U.S.C. 78f(b)(5).

[10] 15 U.S.C. 78f(b)(8).

[11] 15 U.S.C. 78s(b)(2).

[12] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–47795; File No. SR–PCX–2002–25]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the Pacific Exchange, Inc. Relating to Elimination of the Lead Market Maker Concentration Level of 15% of the Issues Traded on the Exchange's Options Floor

May 5, 2003.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on April 22, 2002, the Pacific Exchange, Inc. ("PCX" or "Exchange"), filed with the Securities and Exchange Commission ("Commission" or "SEC") the proposed rule change as described in Items I, II and III below, which Items have been prepared by the Exchange. On April 29, 2003, the Exchange filed Amendment No. 1 to the proposed rule change.[3] The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange is proposing to eliminate the concentration limit for the number of issues that a Lead Market Maker ("LMM") on the Exchange may be allocated. Below is the text of the proposed rule change. Proposed new language is *italicized*. Proposed deletions are in [brackets].

* * * * *

Pacific Exchange, Inc. Rules of the Board of Governors

* * * * *

Rule 6.82 (a)–(d)—No change.

(e) Allocation:

(1) *Allocation.* The allocation of option issues to LMMs [shall] *will* be effected by the Options Allocation Committee. The Options Allocation Committee [shall] *will* select that candidate who appears best able to perform the function of an LMM in the designated option issue. Factors to be considered for selection include, but are not limited to, the following: experience with trading the option issue; adequacy of capital; willingness to promote the Exchange as a marketplace; operational capacity; support personnel; history of adherence to Exchange rules and securities laws; trading crowd evaluations made pursuant to [OFPA B–13] *Rule 6.100;* and any other criteria specified in this Rule. *The Options Allocation Committee will also consider the number and quality of issues that have been allocated, reallocated or transferred to a Lead Market Maker.*

(2) *Transfer of Issues.* Issues allocated to an LMM may not be transferred to another firm or between nominees without the express approval of the Options Allocation Committee.

[(3) *Concentration of Issues.* In the absence of extraordinary circumstances, as determined by the Options Allocation Committee, no LMM may be allocated more than fifteen percent (15%) of the number of issues traded on the Options Floor.]

[(4)] (3) *Evaluation of LMMs.* The Options Allocation Committee shall monitor and evaluate the performance of LMMs with regard to quality of markets and shall do so at least semiannually. In reviewing and evaluating an LMM's performance, the Committee will consider, among other things, the LMM's evaluation conducted pursuant to [Options Floor Procedure Advice B–13] *Rule 6.100*, the LMM's compliance with Exchange Rules, including, but not limited to, Rule 6.32 through 6.40 and Article XI, Section 2 of the Exchange Constitution.

* * * * *

Guidelines of the Options Allocation Committee

The Options Allocation Committee has developed a guideline to assist the Committee in its review of matters that affect the level of LMM concentration on the Exchange. The Committee intends to evaluate matters related to the LMM concentration by considering a number of factors, including the number of issues allocated to an LMM and the contract volume in the products allocated to a LMM.

Under the Committee's guidelines, the Committee intends to take into consideration an LMM's level of concentration if there is an event or proposal that would cause an LMM to meet either of the following criteria:

1. The number of issues allocated to an LMM (and any affiliated LMM) is 25% or more of the total number of issues traded on the PCX;

2. The volume in the issues allocated to an LMM (and any affiliated LMM) is 50% or more of the total volume of the PCX or 25% or more of the total volume in equity option issues of the PCX.

If there is an event or proposal that would cause an LMM to reach either of the two above criteria (such as, for example, the allocation to an LMM of additional issues or a proposal involving a transfer of interest in an LMM organization), the Committee will carefully evaluate the level of concentration that would result. If the Committee determines that the event or proposal would result in an unacceptable level of concentration, the Committee could exercise its discretion and take action to lower the resulting level of concentration or to deny the applicable proposal. The Committee retains the discretion to review an LMM's level of concentration at any time regardless of whether the above criteria are satisfied.

* * * * *

[1] 15 U.S.C. 78s(b)(1)

[2] 17 CFR 240.19b–4.

[3] *See* letter from Mai Shiver, Senior Attorney, Regulatory Policy, PCX, to Nancy Sanow, Assistant Director, Division of Market Regulation, SEC, dated April 28, 2003.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the PCX included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The PCX has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

Current PCX Rule 6.82(e) provides that the allocation of option issues to an LMM is effected by the Options Allocations Committee ("OAC"). Under this rule, the OAC selects the candidate who appears best able to perform the function of an LMM in a particular designated option issue. Factors to be considered for selection include, but are not limited to: experience with trading the option issue; adequacy of capital; willingness to promote the Exchange as a marketplace; operational capacity; support personnel; history of adherence to Exchange rules and securities laws; trading crowd evaluations made pursuant to Options Floor Procedure Advice ("OFPA") B–13 (renumbered Rule 6.100)[4], and any other criteria specified in Rule 6.82. In addition to the above, the rule provides that in the absence of extraordinary circumstances, as determined by the OAC, the OAC may not allocate more than 15% of the number of issues traded on the Options Floor to any LMM.[5]

The options industry continues to experience a consolidation and withdrawal of liquidity providers and therefore, the Exchange is proposing a rule change that would eliminate the 15% LMM concentration limit and replace it with a provision that would require the OAC to consider the number and quality of issues that it has allocated, reallocated or transferred to an LMM. Consistently, the Exchange seeks to apply a guideline developed by the OAC in order to assist it in its review of matters that affect the level of LMM concentration on the Exchange. The guideline requires the OAC to take into consideration the concentration of an LMM's issues if there is an event or proposal that would cause an LMM to meet either of the following criteria: (i) the number of issues allocated to an LMM (and any affiliated LMM) is 25% or more of the total number of issues traded on the PCX; or (ii) the volume in the issues allocated to an LMM (and any affiliated LMM) is 50% or more of the total volume of the PCX or 25% or more of the total volume in equity option issues of the PCX. If an LMM meets either of the two above criteria, the guideline requires the OAC to evaluate the level of concentration and determine whether the event or proposal would result in an unacceptable level of concentration. If so, the OAC could exercise its discretion and take action to lower the resulting level of concentration or to deny the applicable proposal. Pursuant to the guideline, the OAC will retain the discretion to review an LMM's level of concentration at any time regardless of whether the above criteria are satisfied.

The Exchange believes that the rule change and accompanying guideline are necessary to assure not only that the OAC has the discretion to allocate an issue to the most qualified LMM, but also to maintain a competitive advantage relative to other options exchanges with respect to the number of issues that an LMM may be allocated.[6]

2. Statutory Basis

The Exchange believes that the proposed rule change are consistent with section 6(b)[7] of the Act, in general, and further the objectives of section 6(b)(5),[8] in particular, in that they are designed to facilitate transactions in securities, to promote just and equitable principles of trade, to enhance competition, to perfect the mechanism of a free and open market and to protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not

[4] *See* Securities and Exchange Act Release No. 44345 (May 23, 2001), 66 FR 30037 (June 4, 2001).

[5] In 2000, the Commission approved a PCX proposal to increase the cap on the percentage of issues per LMM from 10% to 15%. *See* Securities and Exchange Act Release No. 42583 (March 28, 2000), 65 FR 17689 (April 4, 2000).

[6] The Exchange notes that the Chicago Board Options Exchange ("CBOE") has a guideline, which dates back to 1999, that has no mandatory cap on the number of issues that may be allocated to a Designated Primary Market-Maker ("DPM"). The CBOE guideline may trigger a review with the relevant committee when, *inter alia*, the number of classes allocated to a DPM is 25% or more of the total number of classes traded on CBOE. *See* CBOE Regulatory Guideline 99–135.

[7] 15 U.S.C. 78f(b).

[8] 15 U.S.C. 78f(b)(5).

necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

The PCX neither solicited nor received written comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) by order approve such proposed rule change, or

(B) institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposal is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of PCX. All submissions should refer to File No. PCX–2002–25 and should be submitted by May 30, 2003.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[9]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 03–11586 Filed 5–8–03; 8:45 am]

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[9] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–47794; File No. SR–Phlx–2003–27]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change, and Amendment No. 1 Thereto, by the Philadelphia Stock Exchange, Inc. Relating to the Amendment of Price Criteria for Certain Securities that Underlie Options Traded on the Exchange

May 5, 2003.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on April 23, 2003, the Philadelphia Stock Exchange, Inc. ("Phlx" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. On April 30, 2003, the Phlx filed Amendment No. 1 to the proposal.[3] The proposed rule change, as amended, has been filed by Phlx as a "non-controversial" rule change under Rule 19b–4(f)(6) under the Act.[4] The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Phlx proposes to amend Commentary .01 to Phlx Rule 1009 to allow the Exchange to list options series on covered securities, as defined under Section 18(b)(1)(A) of the Securities Act of 1933 ("Covered Securities"),[5] where the closing market price of the underlying Covered Securities was at least $3.00 per share for the five consecutive business days prior to the date that the Phlx submits an option class certification for listing and trading options to the Options Clearing Corporation ("OCC"). The listing criteria will remain the same for non–Covered Securities.

The text of the proposed rule change, as amended, is below. Proposed additions are in *italics* and proposed deletions are in [brackets.]

* * * * *

Rule 1009. Criteria for Underlying Securities

(a) No change.
(b) No change.
(c) No change.
Commentary:
.01 The Board of Governors has established guidelines to be considered by the Exchange in evaluating potential underlying securities for Exchange option transactions. Absent exceptional circumstances with respect to items 1, 2, 3, or 4 listed below, at the time the Exchange selects an underlying security for Exchange options transactions, the following guidelines with respect to the issuer shall be met:

(1) No change.
(2) No change.
(3) No change.
(4) *(i) If the underlying security is a "covered security" as defined in Section 18(b)(1)(A) of the Securities Act of 1933, the market price per share of the underlying security has been at least $3.00 for the previous five (5) consecutive business days preceding the date on which the Exchange submits a certificate to the Options Clearing Corporation for listing and trading. For purposes of this rule, the market price of such underlying security is measured by the closing price reported in the primary market in which the underlying security is traded.*

[Either (i)]*(ii) If the underlying security is not a "covered security,"* the market price per share of the underlying security has been at least $7.50 for the majority of business days during the three calendar months preceding the date of selection, as measured by the lowest closing price reported in any market in which the underlying security traded on each of the subject days or [(ii)](a) the underlying security meets the guidelines for continued listing in Rule 1010; (b) options on such underlying security are traded on at least one other registered national securities exchange; and (c) the average daily trading volume for such options over the last three (3) calendar months proceeding the date of selection has been at least 5,000 contracts.

(5) No change.
.02 No change.
.03 No change.
.04 No change.
.05
(a) through (c) No change.
(d) In the case of a Restructured Transaction that satisfies either or both of the conditions of subparagraphs (a)(1) or (2) above in which shares of the restructure security are sold in a public offering or pursuant to a rights distribution: (i) the Exchange may assume the satisfaction of one or both of the requirements of paragraph (1) and (2) of Commentary .01 above on the date the restructure security is selected for options trading only if (A) the applicable conditions set forth in paragraph (c)(i) above are met with respect to whichever of these requirements is assumed to be satisfied, or (B) the condition set forth in paragraph (c)(ii) above is met, in either case subject to the limitations stated in said paragraph (c); (ii) the Exchange may certify that the market price of the restructure security satisfies the requirement of paragraph (4) of Commentary .01 above by relying on the market price history of the original security prior to the ex-date for the Restructure Transaction in the manner described in paragraph (a) above, but only if the restructure security has traded "regular way" on an exchange or automatic quotation system for at least five trading days immediately preceding the date of selection, and at the close of trading on each trading day preceding the date of selection, as well as at the opening of trading on the date of selection the market price of the restructure security was at least $7.50 *or, if the restructure security is a "covered security" as defined in paragraph (4) of Commentary .01 above, the market price of the restructure security was at least $3.00;* and (iii) the Exchange may certify that the trading volume of the restructure security satisfies the requirement of paragraph (3) of Commentary .01 above only if the trading volume in the restructure security has been at least 2,400,000 shares during a period of 12 months or less ending on the date the restructure security is selected for options trading.
.06 No change.
.07 No change.
* * * * *

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Phlx included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of the proposed rule change is to amend the pricing requirement to initially list options overlying Covered Securities that have traded at a price of $3.00 or higher for the five consecutive business days prior to the date that the Phlx submits an option class certification for listing and trading options to the OCC. The proposal would allow the Exchange to act competitively in listing options pursuant to a listing standard similar to one that has been adopted by other options exchanges.[6]

The Exchange is proposing to amend its pricing requirement for underlying securities in Commentary .01 to Phlx Rule 1009 to provide that, for underlying securities that are deemed to be Covered Securities, the closing market price of the underlying security must be at least $3.00 per share for the five consecutive business days prior to the date on which Phlx submits an option issue certification to the OCC. The $7.50 price per share requirement would continue to apply to underlying securities that are not Covered Securities. In particular, for non-Covered Securities, Commentary .01 to Phlx Rule 1009 would continue to require that the market price per share of any underlying security must be at least $7.50 for the majority of business days during the three calendar months preceding the date of selection of an option class, as measured by the lowest closing price reported in any market in which the underlying security traded on each of the subject days.[7] When the $7.50 price requirement was first implemented, the listed options market was in its infancy. Now, more than twenty-eight years after the Phlx first started trading listed options, the Exchange believes that the options market is a mature market with sophisticated investors. The Exchange does not believe that the $7.50 initial listing criteria serves to accomplish its presumed intended purpose of preventing the proliferation of option issues on overlying securities that lack liquidity needed to maintain fair and orderly markets. Phlx now seeks to move away from the current approach to listing standards and allow the desires of its customers and the workings of the marketplace to determine the securities that underlie the option that the Exchange will list.

Due to recent trends in the securities markets, which include, among other things, a precipitous decline in the price of many securities, there has been a marked increase in the number of underlying securities that, but for the current pricing standard, would otherwise qualify for options listing on the Exchange. The Phlx states that changing the pricing standard to the proposed $3.00 market price per share requirement would allow it to evaluate whether to list options on a greater number of classes without compromising investor protection. In doing so, the Exchange would endeavor to ensure that its own systems and those of the Options Price Reporting Authority have the capacity to handle the potential increased capacity requirements.

The Exchange notes that although this proposal amends the minimum closing market price for an underlying security which is deemed a Covered Security, as well as the time period for which it must trade at that price before its overlying option can be listed on the Exchange, the Phlx will otherwise continue to maintain its initial listing standards. The Exchange does not

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] See letter from Jurij Trypupenko, Counsel and Director of Litigation andOperations, Legal Department, Phlx to Terri Evans, Assistant Director, Division of Market Regulation ("Division"), Commission, dated April 29, 2003 ("Amendment No. 1"). In Amendment No. 1, the Exchange submitted a technical correction by inserting rule text that had been inadvertently omitted in the original filing.

[4] 17 CFR 240.19b–4(f)(6). For purposes of determining the effective date and calculating the sixty-day period within which the Commission may summarily abrogate the proposed rule change under Section 19(b)(3)(C) of the Act, the Commission considers that period to commence on April 30, 2003, the date Phlx filed Amendment No. 1. See 15 U.S.C. 78s(b)(3)(C).

[5] Section 18(b)(1)(A) of the Securities Act of 1933 (the "1933 Act") provides that "[a] security is a covered security if such security is—listed, or authorized for listing, on the New York Stock Exchange or the American Stock Exchange, or listed or authorized for listing on the National Market System of the Nasdaq Stock Market (or any successor to such entities) * * *." 15 U.S.C. 77r(b)(1)(A). The term "Covered Security," for the operation of proposed Commentary .01 to Phlx Rule 1009, will not include those securities defined in Section 18(b)(1)(B) of the 1933 Act. 15 U.S.C. 77r(b)(1)(B).

[6] See Securities Exchange Act Release Nos. 47190 (January 15, 2003), 68 FR 3072 (January 22, 2003) (SR–CBOE–2002–62); 47352 (February 11, 2003), 68 FR 8319 (February 20, 2003) (SR–PCX–2003–06); 47483 (March 11, 2003), 68 FR 13352 (March 19, 2003) (SR–ISE–2003–04); and 47613 (April 1, 2003), 68 FR 17120 (April 8, 2003) (SR–Amex–2003–19).

[7] In the alternative to the $7.50 price requirement, an option on a non-Covered Security may meet the requirements provided in Commentary .01 to Phlx Rule 1009 when: (a) The underlying security meets the guidelines for continued listing in Phlx Rule 1010; (b) options on such underlying security are traded on at least one other registered national securities exchange; and (c) the average daily trading volume for such options over the last three (3) calendar months preceding the date of selection has been at least 5,000 contracts. Telephone conversation among Jurij Trypupenko, Counsel and Director of Litigation and Operations, Legal Department, Phlx, Terri Evans, Assistant Director, Division, Commission, and Tim Fox, Attorney, Division, Commission on April 28, 2003.

propose to amend any of the other criteria in Commentary .01 to Phlx Rule 1009, including the requirements that: there must be a minimum of 7,000,000 shares of the underlying security owned by public investors; there must be a minimum of 2,000 holders of the underlying security; and that there must be a trading volume of at least 2,400,000 shares in the preceding twelve months.

Moreover, the Exchange believes that requiring in the proposal that the underlying security be listed on the New York Stock Exchange, Inc. ("NYSE"), the American Stock Exchange LLC ("Amex"), or the Nasdaq Stock Market, Inc. ("Nasdaq"), as provided for in the definition of "Covered Security" from Section 18(b)(1)(A) of the 1933 Act[8] would ensure that the underlying security meets the highest listing standards in the securities industry. Should the underlying security not qualify as a Covered Security, the $7.50 market price per share standard would still apply.

The Exchange believes that the proposed $3.00 market price per share standard is also consistent with the Phlx maintenance and delisting criteria found in Phlx Rule 1010, which are used to determine whether an underlying security previously approved for Exchange options transactions no longer meets the requirements for listing. Commentary .02 to Phlx Rule 1010 sets a $3.00 market price per share of the underlying security threshold for determining whether the Exchange may continue listing and trading options on an underlying security that has been previously approved for options trading under Phlx Rule 1009. As long as a $3.00 standard is recognized as an acceptable pricing standard for options trading, albeit as a standard for continued listing, the Exchange believes that the proposed $3.00 should be the threshold standard for initial listing as well.

Consistent with the listing standards proposed by other options exchanges,[9] the Exchange has proposed, as a safeguard against price manipulation, that the underlying security has a closing market price of at least $3.00 per share for the five consecutive business days preceding the date on which the Exchange submits a certificate to the OCC for listing and trading. The market price of such underlying security would be measured by the closing price reported in the primary market in which the underlying security is traded. The Exchange believes that this "look back" period of five consecutive days would provide a sufficient measure of protection from any attempts to manipulate the market price of the underlying security.

The Exchange also believes that the proposed rule change, as amended, would encourage specialists to delist inactive option classes, particularly those classes in which the market price of the underlying security is below $7.50. In particular, under Phlx Rule 1009 as it currently exists, a specialist on the Exchange to whom an option class has been allocated may be reluctant to delist an inactive option class if the market price of the underlying security is below $7.50 because once delisted, the Exchange's current initial listing criteria must be met to re-list the option class, including the requirement that the market price per share of the underlying security be at least $7.50 for the majority of business days during the preceding three months. The Phlx believes that the proposed $3.00 price standard and the five-day look-back period would provide a reliable test for stability, would present a more reasonable time period for qualifying the price of an underlying security, and makes sense in today's economic conditions. The Exchange notes that the Commission recently granted Phlx and other options exchanges approval to list additional series on an option class when the market price of the underlying security is below $3.00, provided that at least one other options exchange trades the series to be added, and at the time the other options exchange added that series, it met the requirements to add a new series, including the $3.00 price requirement.[10]

Finally, for the purposes of consistency within the Phlx rules, the Exchange proposes to amend Commentary .05 to Phlx Rule 1009 which relates to Restructure Securities. Currently, Commentary .05 provides a method to certify that the market price of a Restructure Security satisfies the pricing requirement of Commentary .01 to Phlx Rule 1009, and specifically references the $7.50 market price per share in Commentary .05(d). In order to make all of Phlx Rule 1009 consistent with the pricing standard change of this proposal, the amended rule would reflect that the market price standard for Restructure Securities that are "covered securities" will also be reduced from $7.50 to $3.00.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act[11] in general, and furthers the objectives of Section 6(b)(5) of the Act[12] in particular, in that by changing listing standards for Covered Securities, the Exchange can provide investors with those options that are most useful and demanded by them without sacrificing investor protection.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change, as amended, will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change, as amended.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change, as amended, has been filed by the Exchange as a "non-controversial" rule pursuant to Section 19(b)(3)(A) of the Act[13] and subparagraph (f)(6) of Rule 19b–4 thereunder.[14] Consequently, because the foregoing rule change, as amended: (1) Does not significantly affect the protection of investors or the public interest; (2) does not impose any significant burden on competition; and (3) does not become operative for thirty days from the date on which it was filed, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest, it has become effective pursuant to Section 19(b)(3)(A) of the Act[15] and Rule 19b–4 thereunder.[16]

The Phlx has requested that the Commission waive the five-day pre-filing notice requirement and the thirty-day operative waiting period. The Commission is exercising its authority to waive the five-day pre-filing requirement and believes that it is consistent with the protection of investors and the public interest to accelerate the operative date since the proposed rule change, as amended, is similar to the programs of other options exchanges, and raises no new regulatory issues.[17] For these reasons, the Commission designates the proposal to be effective and operative upon filing with the Commission.[18]

At any time within sixty days of the filing of such proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change, as amended, is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the Phlx. All submissions should refer to File No. SR–Phlx–2003–27 and should be submitted by May 30, 2003.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[19]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 03–11587 Filed 5–8–03; 8:45 am]

BILLING CODE 8010–01–P

[8] *See* note 5 *supra.*

[9] *See* note 6 *supra.*

[10] *See* Securities Exchange Act Release No. 46789 (November 7, 2002), 67 FR 69284 (November 15, 2002) (SR–Phlx–2002–71). The Exchange represents that this rule (Commentary .02 to Phlx Rule 1010)is consistent with similar rules regarding listing and maintenance standards of the Amex, International Securities Exchange, Inc. ("ISE"), Chicago Board Options Exchange, Inc. ("CBOE") and the Pacific Exchange, Inc. ("PCX"). *See* Commentary .02 to Amex Rule 916; ISE Rule 503(c); Interpretation and Policy .02 to CBOE Rule 5.4; and Commentary .02 PCX Rule 3.7.

[11] 15 U.S.C. 78f(b).

[12] 15 U.S.C. 78f(b)(5).

[13] 15 U.S.C. 78s(b)(3)(A).

[14] 17 CFR 240.19b–4(f)(6).

[15] 15 U.S.C. 78s(b)(3)(A).

[16] 17 CFR 240.19b–4.

[17] For purposes of accelerating the operative date of the proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[18] For purposes of determining the effective date and calculating the sixty-day period within which the Commission may summarily abrogate the proposed rule change under Section 19(b)(3)(C) of the Act, the Commission considers that period to commence on April 30, 2003, the date Phlx filed Amendment No. 1. *See* 15 U.S.C. 78s(b)(3)(C).

[19] 17 CFR 200.30–3(a)(12).

SMALL BUSINESS ADMINISTRATION

[Declaration of Disaster #3495]

State of Texas

Johnson County and the contiguous counties of Bosque, Ellis, Hill, Hood, Parker, Somervell and Tarrant in the State of Texas constitute a disaster area due to severe thunderstorms that occurred on April 23, 2003. Applications for loans for physical damage as a result of this disaster may be filed until the close of business on July 3, 2003, and for economic injury until the close of business on February 3, 2004, at the address listed below or other locally announced locations: U.S. Small Business Administration, Disaster Area 3 Office, 4400 Amon Carter Boulevard, Suite 102, Forth Worth, TX 76155.

The interest rates are:

For Physical Damage:	
Homeowners with credit available elsewhere	5.625
Homeowners without credit available elsewhere	2.812
Businesses with credit available elsewhere	5.906
Businesses and non-profit organizations without credit available elsewhere	2.953
Others (including non-profit organizations) with credit available elsewhere	5.500
For Economic Injury:	
Businesses and small agricultural cooperatives without credit available elsewhere	2.953

The number assigned to this disaster for physical damage is 349511 and for economic injury the number is 9V1400.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008.)

Dated: May 2, 2003.

Hector V. Barreto,

Administrator.

[FR Doc. 03–11597 Filed 5–8–03; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

Region VI—Houston District Advisory Council Meeting; Public Meeting

The U.S. Small Business Administration, Region VI, Houston District Advisory Council, located in the geographical area of Houston, Texas will hold a public meeting at 9 a.m. on Wednesday, May 28, 2003. The meeting will be held in the Conference Room at the Small Business Administration, 87011 S. Gessner, Suite 1200, Houston, Texas 77074. The meeting will be conducted to discuss such matters that may be presented by members of the District Advisory Council, staff of the U.S. Small Business Administration, and others attending. Anyone wishing to make an oral or written presentation to the Board must contact Mr. Milton Wilson in writing by letter or fax no later than May 19, 2003, in order to be put on the agenda. Mr. Milton Wilson, District Director, U.S. Small Business Administration, 87011 S. Gessner, Suite 1200 Houston, TX 77074, (713) 773–6500 ph. or (713) 773–6550 fax.

Candace H. Stoltz,

Director, Advisory Councils.

[FR Doc. 03–11598 Filed 5–8–03; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

Region V Regulatory Fairness Board; Public Federal Regulatory Enforcement Fairness Hearing

The Small Business Administration Region V Regulatory Fairness Board and the SBA Office of the National Ombudsman will hold a Public Hearing on Thursday, May 22, 2003 at 2 p.m. in the COSE conference room located at 200 Tower City Center, 50 Public Square, Cleveland, OH 44113–2291, to receive comments and testimony from small business owners, small government entities, and small non-profit organizations concerning regulatory enforcement and compliance actions taken by federal agencies.

Anyone wishing to attend or to make a presentation must contact Gilbert Goldberg in writing or by fax, in order to be put on the agenda. Gilbert Goldberg, District Director, U.S. Small Business Administration, Cleveland District Office, 1111 Superior Avenue East, Suite 630, Cleveland, OH 44114, phone (216) 522–4182, fax (216) 522–2038, e-mail *gilbert.goldberg@sba.gov.*

For more information, see our Web site at *www.sba.gov/ombudsman.*

Dated: May 5, 2003.
Michael L. Barrera,
National Ombudsman.
[FR Doc. 03–11599 Filed 5–8–03; 8:45 am]
BILLING CODE 4025–01–P

DEPARTMENT OF STATE

[Public Notice 4188]

Shipping Coordinating Committee; Notice of Meeting

The Shipping Coordinating Committee (SHC) will conduct a joint, open meeting at 1:30 p.m. on Thursday, May 22, 2003, at the Island Grand Beach Resort and Conference Center; 5600 Gulf Boulevard, St. Pete Beach, Florida. The meeting will be held in connection with the Radio Technical Commission for Maritime Services (RTCM) 2003 Annual Assembly Meeting. The purpose of the meeting is to review the outcome of the Seventh Session of the International Maritime Organization (IMO) Subcommittee on Radiocommunications and Search and Rescue (COMSAR), that occurred in January 13–17, 2003, at IMO headquarters in London, England. Additionally, the meeting is to prepare for the 49th session of the IMO Subcommittee on Safety of Navigation (NAV 49), which is scheduled for June 30–July 4, 2003, at the IMO Headquarters in London.

Items of principal interest on the COMSAR agenda are:

- Maritime Safety Information for GMDSS;
- Development of a procedure for recognition of mobile satellite systems;
- Revision of performance standards for NAVTEX equipment;
- Emergency radiocommunications, including false alerts and interference;
- Large passenger ship safety;
- Issues related to maritime security;
- Developments in maritime radiocommunication systems and technology, including long-range tracking;
- Matters concerning Search & Rescue;
- Planning for the 8th session of COMSAR.

Items of principal interest on the NAV 49 agenda are:

- Routing of ships, ship reporting and related matters;
- Requirements for the display and use of Automatic Identification System (AIS) information on shipborne navigational displays;
- Places of refuge;
- Anchoring, mooring and towing equipment;
- Revision of performance standards for radar reflectors;
- Review of performance standards for radar equipment;
- International Telecommunication Union (ITU) matters, including Radiocommunication ITU–R Study Group 8 matters;
- Large passenger ship safety: Effective voyage planning for large passenger ships;
- Measures to enhance maritime security;
- World-wide radionavigation system;
- Casualty analysis;
- Guidance on early abandonment for bulk carriers.

Members of the public may attend these meetings up to the seating capacity of the rooms. Interested persons may seek information, including meeting room numbers, by writing; Mr. Russell S. Levin, U.S. Coast Guard Headquarters, Commandant (G–SCT–2), Room 6509, 2100 Second Street, SW., Washington, DC 20593–0001, by calling: (202) 267–1389, or by sending Internet electronic mail to *rlevin@comdt.uscg.mil.*

Information for the RTCM meeting can be found at *https://www.rtcm.org/index2.html.*

Dated: May 1, 2003.
Frederick J. Kenney,
Executive Secretary, Shipping Coordinating Committee, Department of State.
[FR Doc. 03–11606 Filed 5–8–03; 8:45 am]
BILLING CODE 4710–07–P

DEPARTMENT OF STATE

[Public Notice 4307]

Shipping Coordinating Committee; Notice of Meeting

The Shipping Coordinating Committee (SHC) will conduct an open meeting at 9:30 a.m. on Tuesday, May 20, 2003, in Room 2415, at U.S. Coast Guard Headquarters, 2100 Second Street, SW., Washington, DC. The purpose of the meeting is for members of the SHC to discuss and decide upon changes to the SHC charter regarding SHC subcommittee structure. The proposed change to the subcommittee structure is described below.

The SHC has presently established six subcommittees, the Subcommittee for the Prevention of Marine Pollution, the Subcommittee on Safety of Life at Sea, the Maritime Law Subcommittee, the Subcommittee on Tonnage and Measurement, the Subcommittee on the United Nations Conference on Trade and Development (UNCTAD) and the Subcommittee on Ocean Dumping. This subcommittee structure was established at the time of the original SHC charter in 1958, and has not been amended since the mid-1970's. The Subcommittees on Tonnage Measurement and UNCTAD have not met in over 10 years. The primary focus of the SHC is to assist in the development of and receive public input on U.S. negotiating positions at the International Maritime Organization (IMO) and on various international instruments (*i.e.*, treaties, conventions and protocols) administered by the IMO. Over the last 15 years, the IMO has added a number of committees and subcommittees, whose functions are not directly addressed by the current subcommittees contained in the SHC Charter.

At this meeting SHC members will be asked to discuss and decide whether to:

1. Disestablish the Subcommittee on Tonnage and Measurement and the Subcommittee on UNCTAD.

2. Establish the following new subcommittees:

a. The Subcommittee on IMO Administration and Budgeting. The purpose of the subcommittee would be to ascertain views and make recommendations consistent with paragraphs (1) and (2) of Article I of the SHC Charter for matters before the IMO Assembly and Council.

b. The Subcommittee on IMO Technical Cooperation. The purpose of the subcommittee would be to ascertain views and make recommendations consistent with paragraphs (1) and (2) of Article I of the SHC Charter for matters before the IMO Technical Cooperation Committee.

c. The Subcommittee on Facilitation. The purpose of the subcommittee would be to ascertain views and make recommendations consistent with paragraphs (1) and (2) of Article I of the SHC Charter in regards to United States participation in the Convention on Facilitation of International Maritime Traffic, 1965, and for matters before the IMO Facilitation Committee.

d. The Subcommittee on the Carriage of Bulk Liquids and Gases. The purpose of the subcommittee would be to ascertain views and make recommendations consistent with paragraphs (1) and (2) of Article I of the SHC Charter for matters before the IMO Bulk Liquids and Gases Subcommittee.

e. The Subcommittee on Ship Design and Equipment. The purpose of the subcommittee would be to ascertain views and make recommendations consistent with paragraphs (1) and (2) of Article I of the SHC Charter for matters before the IMO Design and Equipment Subcommittee.

f. The Subcommittee on Dangerous Goods, Solid Cargos and Containers. The purpose of the subcommittee would be to ascertain views and make recommendations consistent with paragraphs (1) and (2) of Article I of the SHC Charter for matters before the IMO Dangerous Goods, Solid Cargos and Containers Subcommittee.

g. The Subcommittee on Radio Communications and Search and Rescue. The purpose of the subcommittee would be to ascertain views and make recommendations consistent with paragraphs (1) and (2) of Article I of the SHC Charter regarding United States participation in the International Convention on Maritime Search and Rescue, 1979 and for matters before the IMO Radio Communications and Search and Rescue Subcommittee.

h. The Subcommittee on Fire Protection. The purpose of the subcommittee would be to ascertain views and make recommendations consistent with paragraphs (1) and (2) of Article I of the SHC Charter for matters before the IMO Fire Protection Subcommittee.

i. The Subcommittee on Flag State Implementation. The purpose of the subcommittee would be to ascertain views and make recommendations consistent with paragraphs (1) and (2) of Article I of the SHC Charter for matters before the IMO Flag State Implementation Subcommittee.

j. The Subcommittee on the Safety of Navigation. The purpose of the subcommittee would be to ascertain views and make recommendations consistent with paragraphs (1) and (2) of Article I of the SHC Charter for matters before the IMO Safety of Navigation Subcommittee.

k. The Subcommittee on Stability, Load Lines and Fishing Vessel Safety. The purpose of the subcommittee would be to ascertain views and make recommendations consistent with paragraphs (1) and (2) of Article I of the SHC Charter regarding United States participation in the International Convention on Load Lines, 1966, the International Convention on Tonnage Measurement, 1969 and for matters before the IMO Subcommittee on Stability and Loadlines and on Fishing Vessels Safety.

l. The Subcommittee on Standards of Training, Certification and Watchkeeping. The purpose of the subcommittee would be to ascertain views and make recommendations consistent with paragraphs (1) and (2) of Article I of the SHC Charter regarding United States participation in the International Convention on Standards of Training, Certification and Watchkeeping for Seafarers, 1978 and for matters before the IMO Standards for Training and Watchkeeping Subcommittee.

3. Designate the head of the United States delegation to the relevant IMO committee or subcommittee as the chairperson of the subcommittee with cognizance over that IMO committee or subcommittee.

Members of the public may attend this meeting up to the seating capacity of the room. Interested persons may seek information by writing: Commander Frederick J. Kenney, Executive Secretary, Shipping Coordinating Committee, U.S. Department of State (OES/OA), Room 5805, 2201 C Street, NW., Washington, DC 20520, by e-mailing *kenneyfj@state.gov*, or by calling 202–647–3946.

Dated: May 1, 2003.
Frederick J. Kenney,
Executive Secretary, Shipping Coordinating Committee, Department of State.
[FR Doc. 03–11607 Filed 5–8–03; 8:45 am]
BILLING CODE 4710–07–P

DEPARTMENT OF STATE

[Public Notice 4361]

Shipping Coordinating Committee; Notice of Meeting

The Shipping Coordinating Committee, Subcommittee on Maritime Safety, will conduct an open meeting at 9:45 a.m. on Tuesday May 20, 2003, in Room 2415, at U.S. Coast Guard Headquarters, 2100 2nd Street, SW., Washington, DC, 20593–0001. The purpose of this meeting will be to finalize preparations for the 77th Session of the Maritime Safety Committee, and associated bodies of the International Maritime Organization (IMO), which is scheduled for May 28 to June 6, 2003, at IMO Headquarters in London. At this meeting, papers received and the draft U.S. positions for the Maritime Safety Committee will be discussed. Items of particular interest are:

—Adoption of amendments to the International Convention for the Safety of Life at Sea (SOLAS) regarding navigation bridge visibility and ship longitudinal strength evaluation and repair.
—Adoption of amendments to the International Convention on Loadlines regarding the regulations for determining loadlines on all ships.
—Large passenger ship safety;
—Bulk carrier safety;
—Measures to enhance maritime security–Outcome of the 2002 Conference;
—Proposed IMO Model Audit Scheme;
—Piracy and armed robbery against ships;
—Reports of seven subcommittees-Dangerous Goods, Solid Cargoes and Containers; Radiocommunications and Search and Rescue; Fire Protection; Standards of Training and Watchkeeping; Ship Design and Equipment; Bulk Liquids and Gases; and Flag State Implementation.

Members of the public may attend this meeting up to the seating capacity of the room. Interested persons may seek information by writing to Mr. Joseph J. Angelo, Commandant (G–MS), U.S. Coast Guard Headquarters, 2100 2nd Street, SW., Room 1218, Washington, DC 20593–0001 or by calling (202) 267–2970.

Dated: May 1, 2003.
Frederick J. Kenney,
Executive Secretary, Shipping Coordinating Committee, Department of State.
[FR Doc. 03–11608 Filed 5–8–03; 8:45 am]
BILLING CODE 4710–07–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Docket No. FAA–2003–14824; Airspace Docket No. 00–AWA–3]

RIN 2120–AA66

Designation of Oceanic Airspace

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of Provision of Air Traffic Services in Oceanic Airspace.

SUMMARY: This action corrects the Notice of Provision of Air Traffic Services in Oceanic Airspace, published in the **Federal Register** on April 3, 2003. This notice informs airspace users of the type of air traffic control (ATC) service provided in the oceanic airspace controlled by the United States of America.

FOR FURTHER INFORMATION CONTACT: Terry Brown, Airspace and Rules Division, ATA–400, Office of Air Traffic Airspace Management, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone: (202) 267–8783.

SUPPLEMENTARY INFORMATION: On April 3, 2003, Docket No. FAA–2003–14824; Airspace Docket No. 00–AWA–3, **Federal Register** Document 03–8139,

was published in the **Federal Register** informing airspace users of the type of ATC service provided in oceanic airspace controlled by the United States (68 FR 16340). The notice inadvertently contained two minor errors in the text. This action corrects those errors.

Correction to the Notice

Accordingly, pursuant to the authority delegated to me, the Notice of Provision of Air Traffic Control, as published in the **Federal Register** on April 3, 2003 (68 FR 16340); **Federal Register** Document 03–8139, is corrected as follows:

[Correction]

Page 16341, third column, second line, under the heading Miami Oceanic CTA/FIR, Aircraft operating in the Miami Oceanic CTA/FIR can expect to receive ATC services associated with the following types of airspace areas and associated altitudes: change "Class" to read "Class E."

Page 16342, first column, fourth line, fourth word under the heading Oakland/Nauru UTA Airspace Area Delegated to Oakland Center Above FL245: change "ATA" to read "ATC."

Issued in Washington, DC, on May 2, 2003.

Reginald C. Matthews,

Manager, Airspace and Rules Division.

[FR Doc. 03–11639 Filed 5–8–03; 8:45 am]

BILLING CODE 4915–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Summary Notice No. PE–2003–26]

Petitions for Exemption; Summary of Petitions Received

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of petitions for exemption received.

SUMMARY: Pursuant to FAA's rulemaking provisions governing the application, processing, and disposition of petitions for exemption part 11 of Title 14, Code of Federal Regulations (14 CFR), this notice contains a summary of certain petitions seeking relief from specified requirements of 14 CFR, dispositions of certain petitions previously received, and corrections. The purpose of this notice is to improve the public's awareness of, and participation in, this aspect of FAA's regulatory activities. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of any petition or its final disposition.

DATES: Comments on petitions received must identify the petition docket number involved and must be received on or before May 27, 2003.

ADDRESSES: Send comments on any petition to the Docket Management System, U.S. Department of Transportation, Room Plaza 401, 400 Seventh Street, SW., Washington, DC 20590–0001. You must identify the docket number FAA–2000–XXXX at the beginning of your comments. If you wish to receive confirmation that FAA received your comments, include a self-addressed, stamped postcard.

You may also submit comments through the Internet to *http://dms.dot.gov*. You may review the public docket containing the petition, any comments received, and any final disposition in person in the Dockets Office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Dockets Office (telephone 1–800–647–5527) is on the plaza level of the NASSIF Building at the Department of Transportation at the above address. Also, you may review public dockets on the Internet at *http://dms.dot.gov*.

FOR FURTHER INFORMATION CONTACT: Denise Emrick (202) 267–5174, Office of Rulemaking (ARM–1), Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591.

This notice is published pursuant to 14 CFR 11.85 and 11.91.

Issued in Washington, DC, on May 6, 2003.

Donald P. Byrne,

Assistant Chief Counsel for Regulations.

Petitions for Exemption

Docket No.: FAA–2003–14909.
Petitioner: America West Airlines.
Section of 14 CFR Affected: 14 CFR 121.356.
Description of Relief Sought: To permit America West Airlines to accept and operate two Airbus A320 airplanes, that have Traffic Alert and Collision Avoidance System II equipment installed after April 30, 2003, that does not meet Technical Standard Order C–119b version 7.0.

Docket No.: FAA–2002–14227.
Petitioner: Kenmore Air Harbor, Inc.
Section of 14 CFR Affected: 14 CFR 135.154(b)(2).
Description of Relief Sought: To permit Kenmore Air Harbor, Inc. to operate nine single-engine, turbine-powered seaplanes after March 29, 2005, without being equipped with an approved terrain awareness and warning system that meets the requirements for class B equipment in Technical Standard Order C151, both inside and out of the United States.

Docket No.: FAA–2003–14366.
Petitioner: Baby B'Air.
Section of 14 CFR Affected: 14 CFR 121.311(c)(1), 91.107(a)(3)(iii)(B) and (a)(3)(iii)(C)(3); 121.311(b)(1) and (b)(2)(ii).
Description of Relief Sought: To allow people to use the Baby B'Air flightvest (a vest-type, lap-held child restraint system) that is not manufactured to U.S. standards and does not conform to all applicable Federal motor vehicle safety standards, is not certificated for use in motor vehicles and aircraft; and has not been accepted by the FAA during all phases of flight, including critical phases of flight.

[FR Doc. 03–11636 Filed 5–8–03; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Intent to Rule on Request to Release Airport Property at Acadiana Regional Airport, New Iberia, LA.

AGENCY: Federal Aviation Administration (FAA), Department of Transportation.

ACTION: Notice of Request to Release Airport Property.

SUMMARY: The FAA proposes to rule and invites public comment on the release of land at Acadiana Regional Airport, New Iberia, Louisiana, under the provisions of Section 125 of the Wendell H. Ford Aviation Investment Reform Act for the 21st Century (AIR 21).

DATES: Comments must be received on or before June 9, 2003.

ADDRESSES: Comments on this application may be mailed or delivered to the FAA at the following address:

Mr. Lacey D. Spriggs, Manager, Federal Aviation Administration, Southwest Region, Airports Division, Louisiana/New Mexico Airports Development Office, ASW–640, Fort Worth, Texas 76193–0640.

In addition, one copy of any comments submitted to the FAA must be mailed or delivered to Mr. Robert Mouton, Airport Director, Acadiana Regional Airport, at the following address:

Mr. Robert Mouton, Airport Director, 5217 North South Taxi Road, New Iberia, LA 70560.

FOR FURTHER INFORMATION CONTACT: Mr. Michael J. Saupp, Program Manager, Federal Aviation Administration, LA/NM ADO, ASW–640, 2601 Meacham Blvd., fort Worth, Texas 76193–0640.

The request to release property may be reviewed in person at this same location.

SUPPLEMENTARY INFORMATION: The FAA invites public comment on the request to release property at the Acadiana Regional Airport, New Iberia, Louisiana, under the provisions of the AIR 21.

On April 25, 2003, the FAA determined that the request to release property at Acadiana Regional Airport submitted by the Iberia Parish Airport Authority met the procedural requirements of the Federal Aviation Regulations, Part 155. The FAA may approve the request, in whole or in part, no later than August 15, 2003.

The following is a brief overview of the request:

The Iberia Parish Airport Authority requests the release of 2.277 acres of airport property. The release of property will allow for an industrial development project to proceed. The sale is estimated to provide $50,000 for airport maintenance.

Any person may inspect the request in person at the FAA office listed above under **FOR FURTHER INFORMATION CONTACT.**

In addition, any person may, upon request, inspect the application, notice and other documents germane to the application in person at the Acadiana Regional Airport.

Issued in Fort Worth, Texas on April 29, 2003.

Naomi L. Saunders

Manager, Airports Division

[FR Doc. 03–11646 Filed 5–8–03; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Environmental Impact Statement: Solano County, CA

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of intent.

SUMMARY: The FHWA is issuing this notice to advise the public that an environmental impact statement will be prepared for a proposed highway project in Solano County, California.

FOR FURTHER INFORMATION CONTACT: Maiser Khaled, Chief District Operations—North, Federal Highway Administration, California Division, 980 Ninth Street, Suite 400, Sacramento, California 95814–2724, Telephone (916) 498–5020.

SUPPLEMENTARY INFORMATION: The FHWA, in cooperation with the California Department of Transportation (Caltrans), will prepare an environmental impact statement (EIS) for a proposed project to improve the Interchange of I–80, I–680, and State route (SR) 12 in Solano County, California. The I–80/I–680/SR–12 Interchange experiences traffic congestion due to regional traffic that includes the San Francisco Bay Area commuter traffic and recreational traffic traveling between the San Francisco Bay Area and Lake Tahoe. The objectives of the proposed project are to alleviate congestion, improve safety, and provide for the predicted traffic demand.

Alternatives that may be considered in the EIS include (1) taking no action; and (2) a range of alternatives that include two or more of the following components: reconfiguration and expansion of the existing I–80/I–680 interchange widening of I–80 (may include auxiliary lanes, high occupancy vehicle (HOV) lanes, collector/distributor roads, and viaducts), construction of an I–680 viaduct, construction of a new I–680 to SR–12 East connector roadway, reconstruction of the interchange on I–680 at Red Top Road, and on I–80 at Green valley/Suisun Valley Road, Abernathy Road and West Texas Street. Alternatives will include options for reconfiguration or relocation of the existing truck scales to improve access and egress.

Letters describing the proposed action and soliciting comments will be sent to appropriate Federal, State, and local agencies, and to private organizations and citizens who have previously expressed or are known to have an interest in this proposal. A public scoping meeting will be held on May 12, 2003, from 6 p.m. to 8:30 p.m. at Rodriguez High School, 5000 Red top Road, Fairfield, California. Additional public meetings will be held. In addition, a public hearing will be held. The draft EIS will be available for public and agency review prior to the public hearing. Public notice will be given of the exact time and location of the meetings and hearing.

To ensure that the full range of issues related to this proposed action are addressed and all significant issues identified, comments and suggestions are invited from all interested parties. Comments or questions concerning this proposed action and the EIS should be directed to the FHWA at the address provided above.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation of Federal programs and activities apply to this program.)

Dated: Issued on: May 5, 2003.

Maiser Khaled,

Chief—District Operations, North Sacramento, California.

[FR Doc. 03–11532 Filed 5–8–03; 8:45 am]

BILLING CODE 4910–22–M

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

Proposed Agency Information Collection Activities; Comment Request

AGENCY: Federal Railroad Administration, DOT.

ACTION: Notice and request for comments.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), this notice announces that the Information Collection Requirements (ICRs) abstracted below have been forwarded to the Office of Management and Budget (OMB) for review and comment. The ICRs describe the nature of the information collection and its expected burden. The **Federal Register** notice with a 60-day comment period soliciting comments on the following collections of information was published on March 4, 2003 (68 FR 10304).

DATES: Comments must be submitted on or before June 9, 2003.

FOR FURTHER INFORMATION CONTACT: Mr. Robert Brogan, Office of Planning and Evaluation Division, RRS–21, Federal Railroad Administration, 1120 Vermont Ave., NW., Mail Stop 17, Washington, DC 20590 (telephone: (202) 493–6292) or Debra Steward, Office of Information Technology and Productivity Improvement, RAD–20, Federal Railroad Administration, 1120 Vermont Ave., NW., Mail Stop 35, Washington, DC 20590 (telephone: (202) 493–6139). (These telephone numbers are not toll-free.)

SUPPLEMENTARY INFORMATION: The Paperwork Reduction Act of 1995 (PRA), Pub. L. 104–13, section 2, 109 Stat. 163 (1995) (codified as revised at 44 U.S.C. 3501–3520), and its implementing regulations, 5 CFR part 1320, require Federal agencies to issue two notices seeking public comment on information collection activities before OMB may approve paperwork packages. 44 U.S.C. 3506, 3507; 5 CFR 1320.5, 1320.8(d)(1), 1320.12. On March 4, 2003, FRA published a 60-day notice in the **Federal Register** soliciting comment on ICRs that the agency was seeking

OMB approval. *See* 68 FR 10304. FRA received no comments after issuing this notice. Accordingly, DOT announces that these information collection activities have been re-evaluated and certified under 5 CFR 1320.5(a) and forwarded to OMB for review and approval pursuant to 5 CFR 1320.12(c).

Before OMB decides whether to approve these proposed collections of information, it must provide 30 days for public comment. 44 U.S.C. 3507(b); 5 CFR 1320.12(d). Federal law requires OMB to approve or disapprove paperwork packages between 30 and 60 days after the 30-day notice is published. 44 U.S.C. 3507 (b)–(c); 5 CFR 1320.12(d); *see also* 60 FR 44978, 44983, Aug. 29, 1995. OMB believes that the 30 day notice informs the regulated community to file relevant comments and affords the agency adequate time to digest public comments before it renders a decision. 60 FR 44983, Aug. 29, 1995. Therefore, respondents should submit their respective comments to OMB within 30 days of publication to best ensure having their full effect. 5 CFR 1320.12(c); *see also* 60 FR 44983, Aug. 29, 1995.

The summaries below describe the nature of the information collection requirements (ICRs) and the expected burden. The revised requirements are being submitted for clearance by OMB as required by the PRA.

Title: Railroad Police Officers.

OMB Control Number: 2130–0537.

Type of Request: Extension of a currently approved collection.

Affected Public: Railroads and States.

Form(s): None.

Abstract: Under 49 CFR part 207, railroads are required to notify states of all designated police officers who are discharging their duties outside of their respective jurisdictions. This requirement is necessary to verify proper police authority.

Annual Estimated Burden Hours: 155 hours.

Title: Control of Alcohol and Drug Use in Railroad Operations.

OMB Control Number: 2130–0526.

Type of Request: Extension of a currently approved collection.

Affected Public: Railroads.

Form(s): FRA F 6180.73; 6180.74; 6180.94A, and 6180.94B.

Abstract: The information collection requirements contained in pre-employment and "for cause" testing regulations are intended to ensure a sense of fairness and accuracy for railroads and their employees. The principal information—evidence of unauthorized alcohol or drug use—is used to prevent accidents by screening personnel who perform safety-sensitive service. FRA uses the information to measure the level of compliance with regulations governing the use of alcohol or controlled substances. Elimination of this problem is necessary to prevent accidents, injuries, and fatalities of the nature already experienced and further reduce the risk of a truly catastrophic accident. Finally, FRA analyzes the data provided in the Management Information System annual report to monitor the effectiveness of a railroad's alcohol and drug testing program.

Annual Estimated Burden Hours: 34,378 hours.

Title: Identification of Cars Moved in Accordance with Order 13528.

OMB Control Number: 2130–0506.

Type of Request: Extension of a currently approved collection.

Affected Public: Railroads.

Form(s): None.

Abstract: This collection of information identifies a freight car being moved within the scope of Order 13528 (Order). *See* 49 CFR part 232, appendix B. Otherwise, an exception will be taken, and the car will be set out of the train and not delivered. The information that must be recorded is specified at 49 CFR part 232, appendix B, requiring that a car be properly identified by a card attached to each side of the car and signed stating that such movement is being made under the authority of the Order. The Order does not require retaining cards or tags. When a car bearing a tag for movement under the Order arrives at its destination, the tags are simply removed.

Annual Estimated Burden Hours: 67 hours.

ADDRESSES: Send comments regarding this information collection to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725 Seventeenth Street, NW., Washington, DC 20503, Attention: FRA Desk Officer.

Comments are invited on the following: Whether the proposed collection of information is necessary for the proper performance of the functions of the Department, including whether the information will have practical utility; the accuracy of the Department's estimate of the burden of the proposed information collection; ways to enhance the quality, utility, and clarity of the information to be collected; and ways to minimize the burden of the collection of information on respondents, including the use of automated collection techniques or other forms of information technology.

A comment to OMB is best assured of having its full effect if OMB receives it within 30 days of publication of this notice in the **Federal Register**.

Authority: 44 U.S.C. 3501–3520.

Issued in Washington, DC, on May 6, 2003.

Kathy A. Weiner,

Acting Director, Office of Information Technology and Support Systems, Federal Railroad Administration.

[FR Doc. 03–11635 Filed 5–8–03; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Finance Docket No. 34334]

Lancaster and Chester Railway Company—Acquisition and Operation Exemption—Norfolk Southern Railway Company

Lancaster and Chester Railway Company (L&C), a Class III rail carrier, has filed a verified notice of exemption under 49 CFR 1150.41 to acquire from Norfolk Southern Railway Company (NS) approximately 30.8 miles of rail line in Kershaw and Lancaster Counties, SC. The line extends from approximately milepost SB–58.7, at Kershaw, to approximately milepost SB–89.5, at Catawba, SC. The line connects to L&C's existing rail line at L&C Chester District Connection, at approximately milepost SB–76.4, near Lancaster. L&C currently operates the subject line under a lease from NSR.[1]

L&C certifies that its projected revenues as a result of this transaction will not result in the creation of a Class II or Class I rail carrier.[2]

L&C states that it expects to consummate the transaction: (1) By the end of April 2003, but not before the Board renders its decision on the petition for waiver; (2) if it satisfies the requirements under CFR 1150.42(e); or (3) on April 21, 2003 (7 days after the exemption was filed). As a result of the waiver of the labor notice requirements, the exemption in this proceeding was effective on April 28, 2003.

If the notice contains false or misleading information, the exemption is void *ab initio*. Petitions to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction.

An original and 10 copies of all pleadings, referring to STB Finance Docket No. 34334, must be filed with the Surface Transportation Board, 1925 K Street NW., Washington, DC 20423–0001. In addition, one copy of each pleading must be served on Rose-Michele Weinryb, Esq., Weiner Brodsky Sidman Kider, PC, 1300 19th Street, NW., Fifth Floor, Washington, DC 20036–1609.

Board decisions and notices are available on our website at *http://www.stb.dot.gov*.

Decided: May 5, 2003.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 03–11481 Filed 5–8–03; 8:45 am]

BILLING CODE 4915–00–P

[1] L&C leases the line pursuant to a notice of exemption in *Lancaster and Chester Railway Company—Lease and Operation Exemption—Norfolk Southern Railway Company*, STB Finance Docket No. 33969 served and published in the **Federal Register** on February 7, 2001 (66 FR 9410).

[2] In a decision served on April 28, 2003, the Board granted L&C's request to waive the labor notice requirements of 49 CFR 1150.42(e). The Board noted that no NS employees have worked on the line for more than 2 years, and that, when L&C leased the line, required notice was sent to national offices of all labor unions representing employees on the line and was posted at the workplace of employees on the line in compliance with 49 CFR 1150.42(e).

DEPARTMENT OF THE TREASURY

Submission for OMB Review; Comment Request

April 29, 2003.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 11000, 1750 Pennsylvania Avenue, NW., Washington, DC 20220.

DATES: Written comments should be received on or before June 9, 2003, to be assured of consideration.

Financial Management Service (FMS)

OMB Number: 1510–0043.

Form Number: FMS 133 and FMS 135.

Type of Review: Extension.

Title: Notice of Reclamation, Electronic Funds Transfer Federal Recurring Payments (FMS 133); and Request for Debit, Electronic Funds Transfer Federal Recurring Payments (FMS 135).

Description: A program agency authorizes Treasury to recover payments that have been issued after the death of the beneficiary. FMS Form 133 is used by Treasury to notify the financial institution (FI) of the FI's accountability concerning the funds. When the FI's do not respond to the FMS 133, Treasury then prepares FMS 135 and sends it to the Federal Reserve Bank (FRB) which services the FI to request the FRB to debit the account of the FI.

Respondents: Business or other for-profit.

Estimated Number of Respondents: 55,000.

Estimated Burden Hours Per Respondent: 12 minutes.

Frequency of Response: Other (as needed).

Estimated Total Reporting Burden: 79,335 hours.

OMB Number: 1510–0045.

Form Number: FMS 150.1 and FMS 150.2.

Type of Review: Extension.

Title: Trace Request for EFT Payments.

Description: The purpose is to notify the financial organization that a customer (beneficiary) has claimed non-receipt of credit for a payment. The form is designed to help the financial organization locate any problem and to keep the customer (beneficiary) informed of any action taken.

Respondents: Business or other for-profit.

Estimated Number of Respondents: 134,783.

Estimated Burden Hours Per Respondent: 8 minutes.

Frequency of Response: Other (as needed).

Estimated Total Reporting Burden: 17,971 hours.

OMB Number: 1510–0073.

Form Number: FMS 111.

Type of Review: Extension.

Title: ETA Financial Agency Agreement.

Description: This application will collect a financial institution's identifying information, confirm a financial institution's commitment to offering the Electronic Transfer Accounts (ETAs), identify a point of contact for the ETA Program and determine when the financial institution will begin offering the ETA.

Respondents: Business or other for-profit.

Estimated Number of Respondents: 20.

Estimated Burden Hours Per Respondent: 2 hours.

Frequency of Response: Other (as required).

Estimated Total Reporting Burden: 40 hours.

Clearance Officer: Juanita Holder, Financial Management Service, 3700 East West Highway, Room 135, PGP II, Hyattsville, MD 20782.

OMB Reviewer: Joseph F. Lackey, Jr., Office of Management and Budget, Room 10235, New Executive Office Building, Washington, DC 20503, (202) 395–7316.

Mary A. Able,

Departmental Reports Management Officer.

[FR Doc. 03–11590 Filed 5–8–03; 8:45 am]

BILLING CODE 4810–35–P

DEPARTMENT OF THE TREASURY

Alcohol and Tobacco Tax and Trade Bureau

Proposed Collection; Comment Request

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the Alcohol and Tobacco Tax and Trade Bureau, Department of the Treasury, is soliciting comments concerning the Airlines Withdrawing Stock from Customs Custody.

DATES: Written comments should be received on or before July 8, 2003, to be assured of consideration.

ADDRESSES: Direct all written comments to Linda Barnes, Alcohol and Tobacco Tax and Trade Bureau, 650 Massachusetts Avenue, NW., Washington, DC 20226, telephone (202) 927–8930.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form(s) and instructions should be directed to Kristy Colon, Alcohol and Tobacco Tax and Trade Bureau, Regulations and Procedures Division, 650 Massachusetts Avenue, NW., Washington, DC 20226, telephone (202) 927–8210.

SUPPLEMENTARY INFORMATION:

Title: Airlines Withdrawing Stock From Customs Custody.

OMB Number: 1513–0074.

Recordkeeping Requirement ID Number: TTB REC 5620/2.

Abstract: Airlines may withdraw tax exempt distilled spirits, wine, and beer from Customs custody for foreign flights. The required record shows amount of spirits and wines to be traced and maintains accountability. The

record retention period for this information collection is 2 years.

Current Actions: There are no changes to this information collection and it is being submitted for extension purposes only.

Type of Review: Extension.

Affected Public: Business or other for-profit.

Estimated Number of Respondents: 25.

Estimated Total Annual Burden Hours: 2,500.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Dated: May 2, 2003.

William H. Foster,

Chief, Regulations and Procedures Division.

[FR Doc. 03–11610 Filed 5–8–03; 8:45 am]

BILLING CODE 4810–31–P

DEPARTMENT OF THE TREASURY

Alcohol and Tobacco Tax and Trade Bureau

Proposed Collection; Comment Request

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the Alcohol and Tobacco Tax and Trade Bureau, Department of the Treasury, is soliciting comments concerning the Alcohol, Tobacco and Firearms Tax Returns, Claims and Related Documents.

DATES: Written comments should be received on or before July 8, 2003, to be assured of consideration.

ADDRESSES: Direct all written comments to Linda Barnes, Alcohol and Tobacco Tax and Trade Bureau, 650 Massachusetts Avenue, NW., Washington, DC 20226, telephone (202) 927–8930.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form(s) and instructions should be directed to Kristy Colon, Alcohol and Tobacco Tax and Trade Bureau, 650 Massachusetts Avenue, NW., Washington, DC 20226, telephone (202) 927–8210.

SUPPLEMENTARY INFORMATION:

Title: Alcohol, Tobacco and Firearms Tax Returns, Claims and Related Documents.

OMB Number: 1513–0088.

Recordkeeping Requirement ID Number: TTB REC 5000/24.

Abstract: TTB is responsible for the collection of excise taxes on firearms, ammunition, distilled spirits, wine, beer, cigars, cigarettes, chewing tobacco, snuff, cigarette papers, tubes and pipe tobacco. Alcohol, tobacco firearms and ammunition excise taxes, plus alcohol, tobacco and firearms special occupational taxes are required to be collected on the basis of a return. 26 U.S.C. 5555 authorizes the Secretary of Treasury to prescribe the regulations requiring every person liable for tax to prepare any records, statements or returns as necessary to protect the revenue. The record retention requirement for this information collection is 3 years.

Current Actions: There are no changes to this information collection and it is being submitted for extension purposes only.

Type of Review: Extension.

Affected Public: Business or other for-profit, individuals or households, not-for-profit institutions.

Estimated Number of Respondents: 503,921.

Estimated Total Annual Burden Hours: 503,921.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Dated: May 2, 2003.

William H. Foster,

Chief, Regulations and Procedures Division.

[FR Doc. 03–11611 Filed 5–8–03; 8:45 am]

BILLING CODE 4810–31–P

DEPARTMENT OF THE TREASURY

Alcohol and Tobacco Tax and Trade Bureau

Proposed Collection; Comment Request

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the Alcohol and Tobacco Tax and Trade Bureau, Department of the Treasury, is soliciting comments concerning the Liquors and Articles From Puerto Rico or the Virgin Islands.

DATES: Written comments should be received on or before July 8, 2003, to be assured of consideration.

ADDRESSES: Direct all written comments to Linda Barnes, Alcohol and Tobacco Tax and Trade Bureau, 650 Massachusetts Avenue, NW., Washington, DC 20226, telephone (202) 927–8930.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form(s) and instructions should be directed to Kristy Colon, Alcohol and Tobacco Tax and Trade Bureau, Regulations and Procedures Division, 650 Massachusetts Avenue, NW., Washington, DC 20226, telephone (202) 927–8210.

SUPPLEMENTARY INFORMATION:

Title: Liquors and Articles From Puerto Rico or the Virgin Islands.

OMB Number: 1513–0089.

Recordkeeping Requirement ID Number: TTB REC 5530/3.

Abstract: This information collection applies to persons bringing nonbeverage products into the United States from Puerto Rico and the Virgin Islands. Recordkeeping requirements are necessary for the verification of claims for drawback of distilled spirits excise taxes paid on such products. The record retention period for this information collection is 3 years.

Current Actions: There are no changes to this information collection and it is being submitted for extension purposes only.

Type of Review: Extension.

Affected Public: Business or other for-profit.

Estimated Number of Respondents: 20.

Estimated Total Annual Burden Hours: 120.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Dated: May 2, 2003.

William H. Foster,

Chief, Regulations and Procedures Division.

[FR Doc. 03–11612 Filed 5–8–03; 8:45 am]

BILLING CODE 4810–31–P

DEPARTMENT OF VETERANS AFFAIRS

Enhanced-Use Lease Development of Property at the Department of Veterans Affairs Medical Center, Butler, PA

AGENCY: Department of Veterans Affairs.

ACTION: Notice of designation and intent to execute.

SUMMARY: The Secretary of the Department of Veterans Affairs (VA) intends to execute 1.25 acres of land of the Department of Veterans Affairs Medical Center, Butler, Pennsylvania, for an enhanced-use leading development. The Department intends to enter into a 50-year lease of rental property with the Butler Department of Human Services, selected lessee/developer who will finance, design, develop, maintain and manager a mental health facility, all at no cost to VA.

FOR FURTHER INFORMATION CONTACT: Vanessa Chambers, Capital Asset Management and Planning Service (182C), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420; (202) 565–6554.

SUPPLEMENTARY INFORMATION: 38 U.S.C. 8161 *et seq.* specifically provided that the Secretary may enter into an enhanced-use lease if he determines that at least part of the use of property under the lease will be to provide appropriate space for an activity contributing to the mission of the Department; the lease will not be inconsistent with and will not adversely affect the mission of the Department; and the lease will enhance the property or result in improved services to veterans. This project meets these requirements.

Approved: April 30, 2003.

Anthony J. Principi,

Secretary of Veterans Affairs.

[FR Doc. 03–11489 Filed 5–8–03; 8:45 am]

BILLING CODE 8320–01–M

Corrections

Federal Register
Vol. 68, No. 90
Friday, May 9, 2003

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF DEFENSE

48 CFR Parts 225 and 252

[DFARS Case 2002–D009]

Defense Federal Acquisition Regulation Supplement; Foreign Acquisition

Correction

In rule document 03–7531 beginning on page 15616 in the issue of Monday, March 31, 2003 make the following corrections:

225.1101 [Corrected]

1. On page 15626, in the third column, in 225.1101, in paragraph (2), in the last line. "unless' " should read "unless–".

252.225-7000 [Corrected]

2. On page 15634, in the first column, in 252.225–7000, after paragraph (c)(2), the next entry, "(Line Item Number Country of Origin)" should read "(Line Item Number)".

[FR Doc. C3–7531 Filed 5–8–03; 8:45 am]
BILLING CODE 1505–01–D

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Indian Health Service

Mental Health and Community Safety Initiative for American Indian and Alaska Native Children, Youth, and Families

Correction

In notice document 03–10884 beginning on page 23468 in the issue of Friday, May 2, 2003, make the following correction:

On page 23470, in the first column, under the heading **Contacts for Assistance**, in the second line from the bottom, "*JDAVIS@HQE.GOV*" should read, "*JDAVIS@HQE.IHS.GOV*".

[FR Doc. C3–10884 Filed 5–8–03; 8:45 am]
BILLING CODE 1505–01–D

DEPARTMENT OF STATE

22 CFR Part 121

[Public Notice 4209]

RIN AB–60

Amendment to the International Traffic in Arms Regulations, United States Munitions List

Correction

In rule document 02–29595 beginning on page 70839 in the issue of Wednesday, November 27, 2002 make the following corrections:

§ 121.1 [Corrected]

1. On page 70841, in the third column, in § 121.1, in paragraph (a)(33), in the sixth line, "(250oC)" should read "(250°C)"

2. On the same page, in the same column, in the same section, in paragraph (b)(4), in the sixth line, "(210°C)" should read "(21°C)".

3. On page 70843, in the third column, in the same section, in paragraph (a)(3)i), in the sixth line, "Bis(2-ch1oroethylthio)methane" should read "Bis(2-chloroethylthio)methane".

4. On the same page, in the same column, in the same section, in the same paragraph, in the 10th line, "1,3-bis (2-ch1oroethylthio)-n-propane" should read " 1,3-bis (2-chloroethylthio)-n-propane".

5. On page 70844, in the third column, in the same section, in paragraph (m), in the fifth line, "artic1es" should read "articles".

[FR Doc. C2–29595 Filed 5–8–03; 8:45 am]
BILLING CODE 1505–01–D

Federal Register

Friday,
May 9, 2003

Part II

Department of the Treasury
31 CFR Part 103
Office of the Comptroller of the Currency
12 CFR Part 21
Office of Thrift Supervision
12 CFR Part 563

Federal Reserve System
12 CFR Parts 208 and 211

Federal Deposit Insurance Corporation
12 CFR Part 326

National Credit Union Administration
12 CFR Part 748

Commodity Futures Trading Commission
17 CFR Parts 1 and 42

Securities and Exchange Commission
17 CFR Part 270 and 31 CFR Part 103
Transactions and Customer Identification Programs; Final Rules and Proposed Rule

DEPARTMENT OF THE TREASURY

Office of the Comptroller of the Currency

12 CFR Part 21

[Docket No. 03–08]

RIN 1557–AC06

FEDERAL RESERVE SYSTEM

12 CFR Parts 208 and 211

[Docket No. R–1127]

FEDERAL DEPOSIT INSURANCE CORPORATION

12 CFR Part 326

DEPARTMENT OF THE TREASURY

Office of Thrift Supervision

12 CFR Part 563

[Docket No. 2003–16]

NATIONAL CREDIT UNION ADMINISTRATION

12 CFR Part 748

RIN 3133

DEPARTMENT OF THE TREASURY

31 CFR Part 103

RIN 1506–AA31

Customer Identification Programs for Banks, Savings Associations, Credit Unions and Certain Non-Federally Regulated Banks

AGENCIES: The Financial Crimes Enforcement Network, Treasury; Office of the Comptroller of the Currency, Treasury; Board of Governors of the Federal Reserve System; Federal Deposit Insurance Corporation; Office of Thrift Supervision, Treasury; National Credit Union Administration.

ACTION: Joint final rule.

SUMMARY: The Department of the Treasury, through the Financial Crimes Enforcement Network (FinCEN), together with the Office of the Comptroller of the Currency (OCC), the Board of Governors of the Federal Reserve System (Board), the Federal Deposit Insurance Corporation (FDIC), the Office of Thrift Supervision (OTS), and the National Credit Union Administration (NCUA) (collectively, the Agencies), have jointly adopted a final rule to implement section 326 of the Uniting and Strengthening America by Providing Appropriate Tools Required To Intercept and Obstruct Terrorism (USA PATRIOT) Act of 2001 (the Act). Section 326 requires the Secretary of the Treasury (Secretary) to jointly prescribe with each of the Agencies, the Securities and Exchange Commission (SEC), and the Commodity Futures Trading Commission (CFTC), a regulation that, at a minimum, requires financial institutions to implement reasonable procedures to verify the identity of any person seeking to open an account, to the extent reasonable and practicable; maintain records of the information used to verify the person's identity; and determine whether the person appears on any lists of known or suspected terrorists or terrorist organizations provided to the financial institution by any government agency. This final regulation applies to banks, savings associations, credit unions, private banks, and trust companies.

DATES: *Effective Date:* This rule is effective June 9, 2003.

Compliance Date: Each bank must comply with this final rule by October 1, 2003.

FOR FURTHER INFORMATION CONTACT:

OCC: Office of the Chief Counsel at (202) 874–3295.

Board: Enforcement and Special Investigations Sections at (202) 452–5235, (202) 728–5829, or (202) 452–2961.

FDIC: Special Activities Section, Division of Supervision and Consumer Protection, and Legal Division at (202) 898–3671.

OTS: Compliance Policy Division at (202) 906–6012.

NCUA: Office of General Counsel at (703) 518–6540; or Office of Examination and Insurance at (703) 518–6360.

Treasury: Office of the Chief Counsel (FinCEN) at (703) 905–3590; Office of the General Counsel (Treasury) at (202) 622–1927; or the Office of the Assistant General Counsel for Banking & Finance (Treasury) at (202) 622–0480.

SUPPLEMENTARY INFORMATION:

I. Background

A. Section 326 of the USA PATRIOT Act

On October 26, 2001, President Bush signed into law the USA PATRIOT Act, Pub. L. 107–56. Title III of the Act, captioned "International Money Laundering Abatement and Anti-terrorist Financing Act of 2001," adds several new provisions to the Bank Secrecy Act (BSA), 31 U.S.C. 5311 *et seq.* These provisions are intended to facilitate the prevention, detection, and prosecution of international money laundering and the financing of terrorism.

Section 326 of the Act adds a new subsection (l) to 31 U.S.C. 5318 of the BSA that requires the Secretary to prescribe regulations "setting forth the minimum standards for financial institutions and their customers regarding the identity of the customer that shall apply in connection with the opening of an account at a financial institution."

Section 326 applies to all "financial institutions." This term is defined very broadly in the BSA to encompass a variety of entities, including commercial banks, agencies and branches of foreign banks in the United States, thrifts, credit unions, private banks, trust companies, investment companies, brokers and dealers in securities, futures commission merchants, insurance companies, travel agents, pawnbrokers, dealers in precious metals, check-cashers, casinos, and telegraph companies, among many others. *See* 31 U.S.C. 5312(a)(2) and (c)(1)(A).

For any financial institution engaged in financial activities described in section 4(k) of the Bank Holding Company Act of 1956 (section 4(k) institutions), the Secretary is required to prescribe the regulations issued under section 326 jointly with each of the Agencies, the SEC, and the CFTC (the Federal functional regulators).

Section 326 of the Act provides that the regulations must require, at a minimum, financial institutions to implement reasonable procedures for (1) verifying the identity of any person seeking to open an account, to the extent reasonable and practicable; (2) maintaining records of the information used to verify the person's identity, including name, address, and other identifying information; and (3) determining whether the person appears on any lists of known or suspected terrorists or terrorist organizations provided to the financial institution by any government agency. In prescribing these regulations, the Secretary is directed to take into consideration the various types of accounts maintained by various types of financial institutions, the various methods of opening accounts, and the various types of identifying information available.

B. Overview of Comments Received

On July 23, 2002, Treasury and the Agencies published a joint notice of proposed rulemaking in the **Federal Register** (67 FR 48290) applicable to (a) any financial institution defined as a "bank" in 31 CFR 103.11(c) [1] and

[1] This definition includes banks, savings associations, credit unions, Edge Act and Agreement corporations, and branches and agencies of foreign banks.

subject to regulation by one of the Agencies; and (b) any foreign branch of an insured bank. On the same date, Treasury separately published an identical, proposed rule for credit unions, private banks, and trust companies that do not have a Federal functional regulator (67 FR 48299).[2] Treasury and the Agencies proposed general standards that would require each bank to design and implement a customer identification program (CIP) tailored to the bank's size, location, and type of business. The proposed rule also included certain specific standards that would be mandated for all banks.[3]

Treasury and the Agencies collectively received approximately five hundred comments in response to these proposed rules (collectively referred to as the "proposal" or the "proposed rule" for "banks"), although some commenters sent copies of the same letter to Treasury and to each of the Agencies. The majority of comments received by Treasury and the Agencies were from banks, savings associations, credit unions, and their trade associations. Most of these commenters agreed with the largely risk-based approach set forth in the proposal that allowed each bank to develop a CIP based on its specific operations.

Some commenters, however, criticized the specific requirements in the proposed rule and suggested that Treasury and the Agencies issue a final rule containing an entirely risk-based approach without any minimum identification and verification requirements. According to some of these commenters, such a thoroughly risk-based approach would give banks appropriate discretion to focus their efforts and finite resources on specific, high-risk accounts most likely to be used by money-launderers and terrorists.

Other commenters, especially those representing credit card banks and credit card issuers, asserted that the proposed minimum identification and verification requirements should be eliminated because they did not take into account the unique nature of credit card operations. They warned that these requirements, if implemented, would have a chilling effect on credit practices important to U.S. consumers and would impose significant compliance costs on their industry with little benefit to law enforcement.

By contrast, some smaller banks criticized the flexibility of the proposal and stated that a risk-based approach would leave too much room for interpretation by the Agencies. These commenters urged Treasury and the Agencies to issue a final rule establishing more specific requirements. For example, some commenters suggested that the rule prescribe risk assessment levels for each customer type and type of account, along with a specific description of acceptable forms of identification and methods of verification appropriate for each bank's size and location.

While commenters representing various segments of the industry differed on the approach that should be taken in the final rule, the vast majority concluded that Treasury and the Agencies had underestimated the compliance burden that would be imposed by certain elements of the proposal. Commenters were especially concerned about the proposed requirements that banks verify the identity of signatories on accounts, keep copies of documents used to verify a customer's identity, and retain identity verification records for five years after an account is closed.

Some commenters also suggested that banks be given greater flexibility when dealing with established customers and urged that banks be permitted to rely on identification and verification of customers performed by a third party, including an affiliate. Other commenters asked for additional guidance regarding the lists of known and suspected terrorists and terrorist organizations that must be checked, and regarding what will be deemed adequate notice to customers for purposes of complying with the final rule. Many commenters requested that the final rule contain a delayed implementation date that would provide banks with the time needed to design a customer identification program, obtain board approval, alter existing policies and procedures, forms and software, and train staff.

Several comments were received from companies engaged in the sale of technology or services that could be used to identify and verify customers, retain records, and check lists of known and suspected terrorists and terrorist organizations. Many of these companies recommended that the proposed rule be modified to make clear that use of specific products and services would be permissible. Some of these commenters urged that the rule require banks to authenticate any documents obtained to verify the identity of the customer through the use of automated document authentication technology.

A small number of comments were received from individuals. Some of these individuals criticized the proposed requirement that banks obtain a social security number from persons opening an account as an infringement upon individual liberty and privacy. Some individuals were concerned that this requirement would expose them to an added risk of identity theft. Other individuals supported the proposal and concluded that its verification requirements might diminish instances of identity theft and fraud. A few commenters suggested that the government develop a separate national identification number or require that social security cards bear photographs and or other safeguards.

A variety of commenters applauded the efforts of Treasury and the Federal functional regulators to devise a uniform set of rules that apply to banks, broker-dealers, mutual funds, futures commission merchants, and introducing brokers.[4] They noted that, without uniformity, customers of financial institutions may seek to open accounts with institutions that customers perceive to have less robust customer identification requirements. These commenters also suggested revisions that would enhance the uniformity of the rules.

Treasury and the Agencies have modified the proposed rule in light of the comments received. A discussion of the comments, and the manner in which the proposed rule has been modified, follows in the section-by-section analysis.

In addition, as suggested by a number of commenters, Treasury and the Agencies expect to issue supplementary guidance following issuance of the final rule.

C. Joint Issuance by Treasury and the Agencies

The final rule implementing section 326 is being issued jointly by Treasury, through FinCEN, and by the Agencies. It applies to (1) a "bank," as defined in 31 CFR 103.11(c), that is subject to regulation by one of the Agencies, and (2) to any non-Federally insured credit union, private bank or trust company that does not have a Federal functional regulator (collectively referred to in the final rule as "a bank").

[2] In the preamble for this proposed rule, Treasury explained that a single final regulation would be issued for all financial institutions defined as "banks" under 31 CFR 103.11(c), with modifications to accommodate certain differences between Federally regulated and non-Federally regulated banks. *See* 67 FR 48299, 48300.

[3] At the same time, Treasury also published (1) together with the SEC, proposed rules for broker-dealers (67 FR 48306) and mutual funds (67 FR 48318); and (2) together with the CFTC, proposed rules for futures commission merchants and introducing brokers (67 FR 48328).

[4] *See* footnote 3, *supra*.

The substantive requirements of this joint final rule are being codified as part of Treasury's BSA regulations located in 31 CFR part 103. In addition, each of the Agencies is concurrently publishing a provision in its own regulations [5] to cross-reference this final rule in order to clarify the applicability of the final rule to the banks subject to its jurisdiction.

Regulations governing the applicability of section 326 to certain financial institutions that are regulated by the SEC and the CFTC are the subject of separate rulemakings. Treasury, the Agencies, the SEC, and the CFTC consulted extensively in the development of all joint rules implementing section 326 of the Act. All of the participating agencies intend the effect of the rules to be uniform throughout the financial services industry. Treasury intends to issue separate rules under section 326 for certain non-bank financial institutions that are not regulated by one of the Federal functional regulators.

The Secretary has determined that the records required to be kept by section 326 of the Act have a high degree of usefulness in criminal, tax, or regulatory investigations or proceedings, or in the conduct of intelligence or counterintelligence activities, to protect against international terrorism.

In addition, Treasury, under its own authority, is issuing conforming amendments to 31 CFR 103.34, which imposes requirements concerning the identification of bank customers.

D. Compliance Date

Nearly all commenters on the proposed rule requested that banks be given adequate time to develop and implement the requirements of any final rule implementing section 326 of the Act. These commenters stated that if the proposed rule were implemented, banks would be required, among other things, to revise existing account opening policies and procedures, obtain board approval, train staff, update forms, purchase new or updated software for customer verification and checking of government lists, and purchase new equipment for copying or scanning and storing records. Commenters requested a delayed effective or compliance date, but, given the variety of banks that would be covered by the final rule, there was no consensus regarding the amount of time that would be necessary to comply with the final rule. The transition periods suggested by commenters ranged from 60 days to two years from the date a final rule is published.

The final rule modifies various aspects of the proposal and eliminates some of the requirements that commenters identified as being most burdensome. Nonetheless, Treasury and the Agencies recognize that some banks will need time to develop a CIP, obtain board approval, and implement the CIP, which will include various measures, such as training of staff, reprinting forms, and developing new software. Accordingly, although this final rule will be effective 30 days after publication, banks are provided with a transition period to implement the rule. Treasury and the Agencies have determined that each bank must fully implement its CIP by October 1, 2003.

II. Section-by-Section Analysis of Final Rule Implementing Section 326

Section 103.121(a) Definitions

Section 103.121(a)(1) Account. The proposed rule defined "account" as each formal banking or business relationship established to provide ongoing services, dealings, or other financial transactions and stated that a deposit account, transaction or asset account, and a credit account or other extension of credit would each constitute an "account." [6] The proposal also explained that the term "account" was limited to formal banking and business relationships established to provide "ongoing" services, dealings, or other financial transactions to make clear that this term is not intended to cover infrequent transactions such as the occasional purchase of a money order or a wire transfer.

Treasury and the Agencies received a large number of comments on this proposed definition. Some commenters agreed with the proposed definition though others thought the definition of "account" was either too broad or needed clarification. Some commenters suggested that the definition of "account" be narrowed to include only those relationships that are financial in nature. A number of commenters urged that the definition be limited to high-risk relationships that experts have identified as actually used by money launderers and terrorists. Some of these commenters suggested that particular types of accounts, especially those established as part of employee benefit plans, be excluded from the definition of "account."

Most commenters requested that the final rule provide additional examples of the relationships that would constitute an "account." Many commenters requested that the rule clarify the meaning of "ongoing services." These commenters asked whether a person who repeatedly and regularly purchased a money order, requested a wire transfer, or cashed a check on a weekly basis, without any other relationship with a bank, would be considered to have an "account." Many other commenters asked that the exclusion for transfers of accounts between banks described in the preamble for the proposal—which commenters characterized as the "transfer exception" —be stated expressly in the regulation and expanded to cover all loans originated by a third party and purchased by a bank, such as mortgages purchased from non-bank lenders and vehicle loans purchased from car dealers.

The final rule contains a number of changes prompted by these comments. First, the reference to the term "business relationship" has been deleted from the definition of "account." This change is made to clarify that the regulation applies to the bank's provision of financial products and services, as opposed to general "business" dealings, such as those in connection with the bank's own operations or premises. Second, the definition now contains additional, but non-exclusive, examples of products and services, such as safety deposit box and other safekeeping services, cash management, and custodian and trust services, that constitute an "account."

The definition of "account" also has been changed to include a list of products and services that will not be deemed an "account." The preamble for the proposed rule had used the term "ongoing services" to define accounts covered by the final rule, and had referred to the exclusion of "occasional" transactions and "infrequent" purchases (which arguably would require a bank to monitor all transactions for repetitive contacts). By contrast, the final rule clarifies that "account" excludes products and services where a *formal banking relationship* is not established with a person, such as check cashing, wire transfer, or the sale of a check or money order.[7] Treasury and the Agencies note that part 103 already requires verification of identity in connection with many of these products and services. *See, e.g.*, 31 CFR 103.29 (purchases of bank checks and drafts, cashier's checks, money orders, and traveler's checks for $3000 or more); 31 CFR 103.33 (funds transfers of $3000 or more).

In addition, the final rule codifies and clarifies the "transfer exception." Under the final rule, the definition of "account" excludes accounts that a bank acquires through an acquisition, merger, purchase of assets, or assumption of liabilities from any third party.[8] Treasury and the Agencies note that the Act provides that the regulations shall require reasonable procedures for "verifying the identity of *any person seeking to open an account.*" Because these transfers are not initiated by customers, these accounts do not fall within the scope of section 326.[9]

Treasury and the Agencies generally agree with the view expressed by commenters who suggested that a bank's limited resources be focused on relationships that pose a higher risk of money laundering and terrorism. Accordingly, the Agencies have included an exception to the definition of "account" for accounts opened for the purpose of participating in an employee benefit plan established pursuant to the Employee Retirement Income Security Act of 1974. These accounts are less susceptible to use for the financing of terrorism and money laundering, because, among other reasons, they are funded through payroll deductions in connection with employment plans that must comply with Federal regulations which impose various requirements regarding the funding and withdrawal of funds from such accounts, including low contribution limits and strict distribution requirements.

Section 103.121(a)(2) Bank. The proposal jointly issued by Treasury and the Agencies applied to any financial institution defined as a "bank" in 31 CFR 103.11(c) and subject to regulation by one of the Agencies, including banks, savings associations, credit unions, Edge Act and Agreement corporations, and branches and agencies of foreign banks. The proposed definition also included "any foreign branch of an insured bank" to make clear that the procedures required by the rule would have to be implemented throughout the bank, no matter where its offices are located. The preamble for the proposal explained that the rule would apply to bank subsidiaries to the same extent as existing regulations requiring banks to have BSA compliance programs.[10] As described above, a second proposal issued simultaneously by Treasury applied to certain other financial institutions defined as a "bank" in 31 CFR 103.11(c), namely, those credit unions, private banks, and trust companies that do not have a Federal functional regulator.

Under the final rule, "bank" includes all financial institutions covered by both of the proposals described above, except that "bank" does not include any foreign branch of an insured U.S. bank. Several commenters explained that the proposal to cover foreign branches might conflict with local laws applicable to branches of insured banks operating outside of the United States and might place U.S. institutions at a competitive disadvantage. Consistent with the approach taken with respect to final regulations implementing other sections of the Act,[11] Treasury and the Agencies have determined that foreign branches of insured U.S. banks are not covered by the final rule. Nevertheless, Treasury and the Agencies encourage each bank to implement an effective CIP, as required by this final rule, throughout its organization, including in its foreign branches, except to the extent that the requirements of the rule would conflict with local law.

As noted in the preamble for the proposal, the CIP must be a part of a bank's BSA compliance program. Therefore, it will apply throughout such a bank's U.S. operations (including subsidiaries) in the same way as the BSA compliance program requirement. However, all subsidiaries that are in compliance with a separately applicable, industry-specific rule implementing section 326 of the Act will be deemed to be in compliance with this final rule.

Section 103.121(a)(3) Customer. The proposal defined "customer" to mean any person [12] seeking to open a new account. In addition, the proposal defined a "customer" to include any signatory on an account. The preamble for the proposal explained that the term "customer" included a person that applied to open an account, but not someone seeking information about an account, such as rates charged or interest paid on an account, if the person did not apply to open an account. The preamble also stated that any person seeking to open an account at a bank, on or after the effective date of the final rule, would be a "customer," regardless of whether that person already had an account at the bank.

This proposed definition prompted a large number of comments. First, nearly all commenters recommended that the Agencies clarify in the text of the final rule that "customer" does not include a person who does not receive banking services, such as a person whose deposit or loan application is denied. Some of these commenters suggested that the rule for banks define "customer" to mean "a person who opens a new account," as did the proposed rules for broker-dealers, mutual funds, futures commission merchants and introducing brokers.

[5] 12 CFR 21.21 (OCC); 12 CFR 208.63, 211.5, and 211.24 (FRB); 12 CFR 326.8 (FDIC); 12 CFR 563.177 (OTS); and 12 CFR 748.2 (NCUA).

[6] The definition of "account" in the proposed rule was based on the statutory definition of "account" that is used in section 311 of the Act.

[7] This exclusion is consistent with legislative history indicating that by referencing the term "customers," Congress intended "that the regulations prescribed by Treasury take an approach similar to that of regulations promulgated under title V of the Gramm-Leach-Bliley Act of 1999, where the Federal functional regulators defined "customers" and "customer relationship" for purposes of the financial privacy rules." H.R. Rep. No. 107–250, pt. 1, at 62 (2001). The definitions of "customer" and "customer relationship" in the financial privacy rules apply only to a consumer who has a "continuing relationship" with a bank, for example, in the form of a deposit or investment account, or a loan. *See* .3(h) and (i) of 12 CFR part 40 (OCC); 12 CFR part 216 (Board); 12 CFR part 332 (FDIC); 12 CFR part 573 (OTS); and 12 CFR part 716 (NCUA).

[8] In many cases, these third parties are themselves "financial institutions" for purposes of the BSA. Treasury anticipates that these third parties ultimately will be subject to their own customer identification rules implementing section 326 of the Act in the event that they are not presently covered by such a rule.

[9] Nevertheless, there may be situations involving the transfer of accounts where it would be appropriate for a bank, as part of the customer due diligence procedures required under existing regulations requiring banks to have compliance programs implementing the BSA (BSA compliance programs), to verify the identity of customers associated with accounts that it acquires from another financial institution. Treasury and the Agencies expect financial institutions to implement reasonable procedures to detect money laundering in any account, however acquired.

[10] All insured depository institutions currently must have a BSA compliance program. *See* 12 CFR 21.21 (OCC); 12 CFR 208.63 (Board); 12 CFR 326.8 (FDIC); 12 CFR 563.177 (OTS); and 12 CFR 748.2 (NCUA). In addition, all financial institutions are required by section 352 of the Act, 31 U.S.C. 5318(h), to develop and implement an anti-money laundering program. Treasury issued a regulation implementing section 352 providing that a financial institution regulated by a Federal functional regulator is deemed to satisfy the requirements of section 5318(h)(1) if it implements and maintains an anti-money laundering program that complies with the regulation of its Federal functional regulator, *i.e.*, the requirement to implement a BSA compliance program. *See* 31 CFR 103.120(b); 67 FR 2113 (April 29, 2002). However, Treasury temporarily deferred subjecting certain non-Federally regulated banks to the anti-money laundering program requirements in section 352. *See* 67 FR 67547 (November 6, 2002) (corrected 67 FR 68935 (November 14, 2002)).

[11] *See, e.g.*, 67 FR 60562, 60565 (Sept. 26, 2002) (FinCEN's regulation titled "Anti-Money Laundering Requirements "Correspondent Accounts for Foreign Shell Banks: Recordkeeping and Termination of Correspondent Accounts for Foreign Banks' implementing sections 313 and 319(b) of the Act).

[12] The proposed rule defined "person" by reference to § 103.11(z). This definition includes individuals, corporations, partnerships, trusts, estates, joint stock companies, associations, syndicates, joint ventures, other unincorporated organizations or groups, certain Indian Tribes, and all entities cognizable as legal personalities. Treasury and the Agencies agree that it is not necessary to repeat this definition. Therefore, it is omitted from the final rule.

Treasury and the Agencies agree with the view expressed by some commenters that the statute should be construed to ensure that banks design procedures to determine the identity of only those persons who open accounts. Accordingly, the final rule defines a "customer" as "a person that opens a new account."[13] For example, in the case of a trust account, the "customer" would be the trust. For purposes of this rule, a bank will not be required to look through trust, escrow, or similar accounts to verify the identities of beneficiaries and instead will only be required to verify the identity of the named accountholder.[14] In the case of brokered deposits, the "customer" will be the broker that opens the deposit account. A bank will not need to look through the deposit broker's account to determine the identity of each individual sub-account holder; it need only verify the identity of the named accountholder.

Many commenters requested that the final rule clarify whether "customer" includes a minor child or an informal group with a common interest, such as a club account, where there is no legal entity. The final rule addresses these comments by providing that "customer" means "an individual who opens a new account for (1) an individual who lacks legal capacity, such as a minor; or (2) an entity that is not a legal person, such as a civic club."

A few banks stated that defining "customer" to include a signatory was consistent with their current practice of verifying the identity of the named accountholder and any signatory on the account. However, most commenters strenuously objected to the inclusion of a signatory as a customer whose identity must be verified, and asserted that this proposed requirement would deviate significantly from their current business practices. These commenters stated that requiring banks to verify signatories on an account would be enormously burdensome to the financial institutions and signatories themselves—many of whom simply work as employees for firms with corporate accounts—and would outweigh any benefit.[15] One commenter asserted that inclusion of signatories as customers went beyond the scope of section 326 of the Act. Although some commenters advocated that any requirement regarding a signatory should be omitted altogether, these commenters generally advocated a risk-based approach that would give banks the discretion to determine when a signatory's identity should be verified.

Credit card banks, in particular, were critical of the signatory requirement because the proposed provision, as drafted, encompassed all authorized users of credit cards. These banks characterized the signatory requirement as unnecessary in the case of credit card companies, which, they explained, already use sophisticated fraud filters to detect fraud and abnormal use. These banks also noted that a person need not be a signatory to use another person's credit card, especially when purchasing products by telephone or over the Internet. Therefore, the signatory requirement would not necessarily ensure that banks would be able to verify the identity of those using a credit card account.

After revisiting the issue of whether a signatory should be a "customer," Treasury and the Agencies have determined that requiring a bank to expend its limited resources on verifying the identity of all signatories on accounts could interfere with the bank's ability to focus on identifying customers and accounts that present a higher risk of not being properly identified. Accordingly, the proposed provision defining "customer" to include a signatory on an account is deleted. Instead, the final rule, at § 103.121(b)(2)(ii)(C), requires a bank's CIP to address situations when the bank will take additional steps to verify the identity of a customer that is not an individual by seeking information about individuals with authority or control over the account, including signatories, in order to verify the customer's identity.

In addition to defining who is a "customer," the final rule contains a list of entities that will not be deemed "customers." Many commenters questioned why a bank should be required to verify the identity of a government agency or instrumentality opening a new account, or of a publicly-traded company that is subject to SEC reporting requirements. Consistent with these and other comments urging that the final rule focus on requiring verification of the identity of customers that present a higher risk of not being properly identified, the final rule excludes from the definition of "customer" the following readily identifiable entities: a financial institution regulated by a Federal functional regulator; a bank regulated by a state bank regulator; and governmental agencies and instrumentalities, and companies that are publicly traded described in § 103.22(d)(2)(ii)–(iv).[16] Section 103.22(d)(2)(iv) exempts such companies only to the extent of their domestic operations. Accordingly, a bank's CIP will apply to any foreign offices, affiliates, or subsidiaries of such entities that open new accounts.

A great many commenters also objected to the requirement in § 103.121(b)(2)(ii) of the proposed rule that a bank verify the identity of an existing customer seeking to open a new account unless the bank previously verified the customer's identity in accordance with procedures consistent with the proposed rule and continues to have a reasonable belief that it knows the true identity of the customer. These commenters asserted that such a requirement would be burdensome for the bank and would upset existing customers. Some commenters recommended that the rule apply prospectively to new customers who previously had no account with the bank. Many commenters suggested that the final rule contain a risk-based approach where verification would not be required for an existing customer who opens a new account if the bank has a reasonable belief that it knows the identity of the customer, regardless of the procedures the bank followed to form this belief.

[13] Therefore, each person named on a joint account is a "customer" under this final rule unless otherwise provided.

[14] However, based on a bank's risk assessment of a new account opened by a customer that is not an individual, a bank may need to take additional steps to verify the identity of the customer by seeking information about individuals with ownership or control over the account in order to identify the customer, as described in § 103.121(b)(2)(ii)(C), or may need to look through the account in connection with the customer due diligence procedures required under other provisions of its BSA compliance program.

[15] Commenters contended that banks and individuals would confront numerous practical problems. Some commenters noted, for example, that the identification and verification of signatories could be burdensome for banks because business accounts might have many signatories and those signatories would change over time. Some commenters explained that collecting detailed information about an employee who is a signatory would raise privacy concerns for those employees who would be required to disclose personal information to their employer's financial institutions. Other commenters stated that a signatory rarely is present at the time of account opening and, consequently, a bank would encounter substantial obstacles when attempting to verify the signatory's identity using any of the most common methods described in the proposal, including by examining documents or by obtaining a credit report. (Under the Fair Credit Reporting Act (FCRA), a consumer reporting agency generally may furnish a consumer report in connection with transactions involving the consumer and no other. *See* 15 U.S.C. 1681b. Thus, for example, a bank would be prohibited from obtaining a credit report to verify the identity of an authorized user of a customer's credit card.)

[16] Treasury previously determined that banks should be exempted from having to file reports of transactions in currency in connection with these entities. *See* 31 CFR 103.22(d)(1).

Treasury and the Agencies acknowledge that the proposed rule might have had unintended consequences for bank-customer relationships and that the risk-based approach suggested by commenters would avoid these consequences. Accordingly, the final rule excludes from the definition of "customer" a person that has an existing account with the bank, provided that the bank has a reasonable belief that it knows the true identity of the person.[17]

Section 103.121(a)(4) Federal functional regulator. The proposed rule defined "Federal functional regulator" by reference to § 103.120(a)(2), meaning each of the Agencies, the SEC, and the CFTC. There were no comments on this definition, and Treasury and the Agencies have adopted it as proposed.

Section 103.121(a)(5) Financial institution. The final rule includes a new definition for the term "financial institution" that cross-references the BSA, 31 U.S.C. 5312(a)(2) and (c)(1). This is a more expansive definition of "financial institution" than that in 31 CFR 103.11, and includes entities such as futures commission merchants and introducing brokers.

Section 103.121(a)(6) Taxpayer identification number. The proposed rule repeated the language from § 103.34(a)(4), which states that the provisions of section 6109 of the Internal Revenue Code and the regulations of the Internal Revenue Service thereunder determine what constitutes "a taxpayer identification number." There were no comments on this approach, and Treasury and the Agencies have adopted it substantially as proposed, with minor technical modifications.

Section 103.121(a)(7) and (8) U.S. Person and non-U.S. person. The proposed rule provided that "U.S. person" is an individual who is a U.S. citizen, or an entity established or organized under the laws of a State or the United States. A "non-U.S. person" was defined as a person who did not satisfy either of these criteria.

As described in greater detail below, a bank is generally required to obtain a U.S. taxpayer identification number from a customer who opens a new account. However, if the customer is a non-U.S. person and does not have such a number, the bank may obtain an identification number from some other form of government-issued document evidencing nationality or residence and bearing a photograph or similar safeguard.

Several commenters suggested that it would be less confusing to bankers if "U.S. person" meant both a U.S. citizen and a resident alien, consistent with the definition of this term used in the Internal Revenue Code (IRS definition).[18] A few commenters criticized the proposed definition because it would require banks to establish whether a customer is or is not a U.S. citizen.

Treasury and the Agencies believe that the proposed definition of "U.S. person" is a better standard for purposes of this final rule than the IRS definition. Adoption of the IRS definition of "U.S. person" would require bank staff to distinguish among various tax and immigration categories in connection with any type of account that is opened. Under the proposed definition, a bank will not necessarily need to establish whether a potential customer is a U.S. citizen. The bank will have to ask each customer for a U.S. taxpayer identification number (social security number, employer identification number, or individual taxpayer identification number). If a customer cannot provide one, the bank may then accept alternative forms of identification. For these reasons, the definition is adopted as proposed.

Section 103.121(b) Customer Identification Program: Minimum Requirements

Section 103.121(b)(1) General Rule. The proposed rule required each bank to implement a CIP that is appropriate given the bank's size, location, and type of business. The proposed rule required a bank's CIP to contain the statutorily prescribed procedures, described these procedures, and detailed certain minimum elements that each of the procedures must contain. In addition, the proposed rule required that the CIP be written and that it be approved by the bank's board of directors or a committee of the board.

The proposed rule also stated that the CIP must be incorporated into the bank's BSA[19] compliance program and should not be a separate program. A bank's BSA compliance program must be written, approved by the board, and noted in the bank's minutes. It must include (1) internal policies, procedures, and controls to ensure ongoing compliance; (2) designation of a compliance officer; (3) an ongoing employee training program; and (4) an independent audit function to test programs. The preamble for the proposal explained that the CIP should be incorporated into each of these four elements of a bank's BSA program.

Most commenters agreed with the proposal's approach of allowing banks to develop risk-based programs tailored to their specific operation, though some of these commenters recommended that Treasury and the Agencies adopt an entirely risk-based approach without any minimum requirements while others recommended a more prescriptive approach. Many commenters suggested that Treasury and the Agencies clarify the extent to which a bank could rely on a third party, especially an affiliate, to perform some or all aspects of its CIP.

Other commenters focused on the requirement that a bank's board of directors approve the CIP. These commenters urged Treasury and the Agencies to adopt a regulation that states that the role of a bank's board of directors need only be to approve broad policy rather than the specific methods or actual procedures that will be a part of a bank's CIP. One commenter recommended that the governing body of a financial institution be permitted to delegate its responsibility to approve the CIP.

The final rule attempts to strike an appropriate balance between flexibility and detailed guidance by allowing a bank broad latitude to design and implement a CIP that is tailored to its particular business practices while providing a framework of minimum standards for identifying each customer, as the Act mandates. Following the description of the procedures and minimum requirements for each element of a bank's CIP (identity verification, recordkeeping, comparison with government lists, and customer notice), the final rule contains a new section describing the extent to which a bank may rely on a third party to perform these elements, described in detail below.

The final rule removes the requirement that the bank's board of directors or a committee of the board must approve the bank's CIP because this requirement is redundant. A bank's BSA compliance program must already be approved by the board. Treasury and the Agencies regard the addition of a CIP to the bank's BSA compliance program to be a material change in the BSA compliance program that will require board approval. The board of director's responsibility to oversee bank compliance with section 326 of the Act

[17] As a foreign branch of an insured U.S. bank is no longer a "bank" for purposes of this rule, a customer of a bank's foreign branch will no longer be "a person who has an existing account with the bank." Therefore, the bank must verify the identity of a customer of its foreign branch in accordance with its CIP if such a customer opens a new account in the U.S.

[18] 26 U.S.C. 7701(a)(30)(A).

[19] *See* footnote 10, supra.

is a part of a board's conventional supervisory BSA compliance responsibilities that cannot be delegated to bank management. Therefore, a bank's board of directors must be responsible for approving a CIP described in detail sufficient for the board to determine that (1) the bank's CIP contains the minimum requirements of this final rule; and (2) the bank's identity verification procedures are designed to enable the bank to form a reasonable belief that it knows the true identity of the customer. Nevertheless, responsibility for the development, implementation, and day-to-day administration of the CIP may be delegated to bank management.

The final rule will apply to some non-Federally regulated banks that are not yet subject to an anti-money laundering compliance program requirement.[20] Therefore, the final rule only requires that the CIP be a part of a bank's anti-money laundering program once a bank becomes subject to an anti-money laundering compliance program requirement.[21]

Section 103.121(b)(2) Identity Verification Procedures. The proposed rule provided that each bank must have a CIP that includes procedures for verifying the identity of each customer, to the extent reasonable and practicable, based on the bank's assessment of certain risks. The proposed rule stated that these procedures must enable the bank to form a reasonable belief that it knows the true identity of the customer.

Some commenters recommended that the identity verification requirement be waived for new customers that are well known to a senior officer of the bank. Some of these commenters endorsed such a waiver provided that a bank employee could provide "an affidavit of identity" on behalf of the customer.

One commenter criticized the standard requiring a bank to have identity verification procedures "that enable the bank to form a reasonable belief that it knows the true identity of the customer" as too subjective. This commenter suggested that a better standard would be lack of affirmative notice of deficiency in the identity process. Another commenter suggested that the rule make clear that a bank is only required to verify a customer's identity, to the extent reasonable and practical, in order to establish that it has a reasonable basis for knowing the true identity of its customer.

The final rule provides that a bank's CIP must include risk-based procedures for verifying the identity of each customer[22] to the extent reasonable and practicable. The final rule also states that the procedures must enable the bank to form a reasonable belief that it knows the true identity of the customer. As section 326 of the Act states, a bank's affirmative obligation to verify the identity of its customer applies to "any person" rather than only to a person whose identity is suspect, as suggested by one commenter. Furthermore, Treasury and the Agencies have determined that the statutory obligation to "*verify* the identity of any person" requires the bank to implement and follow procedures that allow the bank to have a reasonable belief that it knows the true identity of the customer.

Given the flexibility built into the final rule, Treasury and the Agencies believe that it is not appropriate to provide special treatment for new customers known to bank personnel. In addition, permitting reliance on bank personnel to attest to the identity of a customer may be subject to manipulation. Accordingly, the final rule does not establish different rules for customers who are known to bank personnel.

The final rule requires the identity verification procedures to be based upon relevant risks, including those presented by the types of accounts maintained by the bank, the various methods of opening accounts provided by the bank, and the types of identifying information available. In addition to these risk factors, which are specifically identified in section 326, the final rule states that the procedures should take into account the bank's size, location, and type of business or customer base, additional factors mentioned in the Act's legislative history.[23]

Section 103.121(b)(2)(i) Customer Information Required. The proposed rule required that a bank's CIP must contain procedures that specify the identifying information the bank must obtain from a customer. It stated that, at a minimum, a bank must obtain from each customer the following information prior to opening an account: (1) Name; (2) address (a residential and mailing address for individuals, and principal place of business and mailing address for a person other than an individual); (3) date of birth for individuals; and (4) an identification number.

Treasury and the Agencies received a variety of comments criticizing the requirement that a bank obtain certain minimum identifying information prior to opening an account. Some commenters, including a trade association representing large financial institutions, recommended that a bank be permitted to open an account for a customer who lacks some of the minimum identifying information, provided that the bank has formed a reasonable belief that it knows the true identity of the customer. Credit card banks explained that the minimum information requirement would create problems for retailers that offer credit cards at the point of sale. These commenters stated that retailers were not likely to have the means to record identifying information other than what is currently collected. They suggested that when there are systems in place to identify customers and detect suspicious transactions, the rule should require only the collection of information that the credit card bank or card issuer deems necessary and appropriate to identify the customer.

Other commenters stated that the rule should not require a bank to obtain the minimum identifying information prior to account opening in every instance. Some of these commenters suggested that a bank be permitted to obtain the required information within a reasonable time after the account is opened. Some commenters suggested that the rule permit banks to obtain identifying information from a party other than the customer. This would arise, for example, when a bank offers a credit card based on information obtained from a credit reporting agency. Other commenters suggested that a bank also be required to obtain information about a customer's occupation, profession or business, as this information is needed by a bank that intends to file a report of transactions in currency or a suspicious activities report on the customer.

Consistent with the proposal, the final rule provides that a bank's CIP must contain procedures that specify the identifying information that the bank must obtain from each customer prior to opening an account. In addition, the rule specifies the four basic categories of information that a bank must obtain from the customer prior to opening an account. Treasury and the Agencies believe that requiring banks to gather these standard forms of information prior to opening an account is not overly burdensome because such identifying information is routinely gathered by most banks in the account opening process and is required by other sections of 31 CFR part 103. Of course, based upon an assessment of the risks described above, a bank may require a customer to provide additional information to establish the customer's identity.

Treasury and the Agencies acknowledge that imposing this requirement on banks that offer credit card accounts is likely to alter the manner in which they do business by requiring them to gather additional information beyond that which they currently obtain directly from a customer who opens an account at the point of sale or by telephone. Treasury and the Agencies are mindful of the legislative history of section 326, which indicates that Congress expected the regulations implementing this section to be appropriately tailored for accounts opened in situations where the account holder is not physically present at the financial institution and that the regulations should not impose requirements that are burdensome, prohibitively expensive, or impractical.[24]

Therefore, Treasury and the Agencies have included an exception in the final rule for credit card accounts only, which would allow a bank broader latitude to obtain some information from the customer opening a credit card account, and the remaining information from a third party source, such as a credit reporting agency, prior to extending credit to a customer. Treasury and the Agencies recognize that these practices have produced an efficient and effective means of extending credit with little risk that the lender does not know the identity of the borrower.

Treasury and the Agencies also received comments on the advisability of requiring banks to collect the specific identifying information (name, date of birth, address, and identification number), as would have been required under the proposed rule. With respect to obtaining the customer's name, one commenter recommended that based on Texas law and banks' experience, a bank should be required to obtain the name under which the customer is doing business and the customer's legal name. The final rule continues to require that the bank obtain the customer's name, meaning a legal name that can be verified. As noted above, this is a minimum requirement, and a bank may also need to obtain the name under which a person does business in order to establish a reasonable belief it knows the true identity of the customer.

One trade association suggested that banks be permitted to make a risk-based determination before requiring a customer to provide date of birth because many customers would prefer not to share this information. One commenter stated that date of birth is not an important identifying characteristic and should be deleted. Another commenter stated that credit card issuers do not request this information because it can raise fair lending issues. Finally, a few commenters noted that standardized mortgage applications require age rather than date of birth and would have to be altered.

The final rule provides that a bank must obtain the date of birth for a customer who is an individual. Treasury and the Agencies believe that date of birth is an important identifying characteristic and can be used to provide a bank or law enforcement with an additional means to distinguish between customers with identical names. However, the required collection and retention of information about a customer's date of birth does not relieve the bank from its obligations to comply with anti-discrimination laws or regulations, such as the prohibition in the Equal Credit Opportunity Act against discrimination in any aspect of a credit transaction on the basis of age or other prohibited classification. Banks collecting date of birth from individual customers should be able to take reasonable measures to convert this information into age for purposes of the forms used in the secondary mortgage market given the delayed compliance date for the final rule.

Many commenters criticized the requirement that a bank obtain both the customer's physical and mailing address, if different. Most commenters urged Treasury and the Agencies to eliminate the requirement that the customer provide a physical address. Some of these commenters stated that this requirement could interfere with the ability of certain segments of the population to obtain a bank account, such as members of the military, persons who reside in mobile homes with no fixed address, and truck drivers who do not have a physical address. Banks that offer credit card accounts and card issuers stated that the address requirement would be extremely burdensome because they would have to change the manner in which they do business, and in some cases, credit card banks currently do not have the capacity to collect both addresses. Some of these commenters stated that new credit card customers are reluctant to give more than one address and, therefore, it would be difficult to obtain this information from customers. A trade association representing credit card banks asserted that customers may have a legitimate reason for handling correspondence through post office boxes and should not have to provide a physical address. This commenter asserted that requiring the customer to provide a physical address will discourage the provision of financial services to the unbanked and will prevent a victim of identity theft from using an alternative to an unsecured home mailbox. Another commenter noted that the physical address of a customer's principal place of business may not be relevant if the bank is working with a customer's local office. This commenter recommended that the rule simply permit the bank to obtain the customer's street address. Credit card banks and issuers urged Treasury and the Agencies to make the requirement that a bank obtain the customer's physical address optional.

Section 326 of the Act requires Treasury and the Agencies to prescribe regulations that require financial institutions to implement "reasonable procedures." Accordingly, under the final rule, a bank will not be required to obtain more than a single address for a customer. Nonetheless, Treasury and the Agencies believe that the identification, verification, and recordkeeping provisions of the Act, taken together, should provide appropriate resources for law enforcement agencies to investigate money laundering and terrorist financing. The final rule therefore provides that a bank generally must obtain a residential or business street address for a customer who is an individual because Treasury and the Agencies have determined that law enforcement agencies should be able to contact an individual customer at a physical location, rather than solely through a mailing address. Treasury and the Agencies recognize that this provision may be impracticable for members of the military who cannot readily provide a physical address, and other individuals who do not have a physical address but who reliably can be contacted. Accordingly, the final rule provides an exception under these circumstances that allows a bank to obtain an Army Post Office or Fleet Post Office box number, or the residential or business street address of next of kin or of another contact individual. For a customer other than an individual, such as a corporation, partnership, or trust, the bank may obtain the address of the principal place of business, local office,

[20] See footnote 10, *supra*.

[21] The final rule therefore provides that until such time as credit unions, private banks, and trust companies without a Federal functional regulator are subject to such a program, their CIPs must be approved by their boards of directors.

[22] Other elements of the bank's CIP, such as procedures for recordkeeping or checking of government lists, are requirements that may not vary depending on risk factors.

[23] H.R. Rep. No. 107–250, pt. 1, at 62 and 63 (2001).

[24] H.R. Rep. No. 107–250, pt. 1, at 63 (2001).

or other physical location of the customer. Of course, a bank is free to obtain additional addresses from the customer, such as the customer's mailing address, to meet its own or its customer's business needs.

The proposal required that banks obtain an identification number from customers. For U.S. persons, a bank would have been required to obtain a U.S. taxpayer identification number. For non-U.S. persons, a bank would have been required to obtain a number from various alternative forms of government-issued identification.

One commenter stated that this requirement would not be burdensome. Commenters representing certain consumer advocacy groups commended Treasury and the Agencies for providing banks with the discretion to accept alternative forms of identifying information from non-U.S. citizens. These commenters stated that this position would assist low-income immigrants in gaining financial stability. By contrast, some commenters stated that the final rule should not permit a bank to open an account for a customer using only a foreign identification number when the customer provides a U.S. address. Other commenters asked for guidance on whether a bank is permitted to accept a number from the identification document issued by a foreign government. A few commenters urged the government to require a national identification document for all individuals.

Other commenters, primarily credit card banks, stated that the requirement that a bank obtain a U.S. taxpayer identification number from U.S. persons would create considerable hardship. They stated that new credit card customers are reluctant to give out their social security numbers, especially over the telephone. They urged that banks be given the discretion to collect identifying information, other than social security numbers, when appropriate in light of consumer privacy and security concerns. In the alternative, they recommended that banks be permitted to obtain a U.S. taxpayer identification number for U.S. persons from a trusted third party source, such as a credit reporting agency.

Some commenters questioned what number to use for accounts opened in the name of a bowling league or class reunion, or to accept donations for a special cause. Other commenters questioned what number could be obtained from foreign businesses and enterprises that have no taxpayer identification number or other government-issued documentation.

The final rule provides that a bank must obtain an "identification number" from every customer. As discussed above, under the definition of "customer," the final rule permits a bank to obtain the identification number of the individual who opens an account in the name of an individual who lacks legal capacity, such as a minor, or a civic group, such as a bowling league.

After reviewing the comments, Treasury and the Agencies have determined that requiring a bank to obtain a customer's identification number, such as a social security number, from the customer himself or herself, in every case, including over the telephone, would be unreasonable and impracticable because it would be contrary to banks' current practices and could alienate many potential customers. Accordingly, Treasury and the Agencies have adopted an exception for credit card accounts that will permit a bank offering such accounts to acquire information about the customer, including an identification number, from a trusted third party source prior to extending credit to the customer, rather than having to obtain this information directly from the customer prior to opening an account.

The final rule also provides that for a non-U.S. person, a bank must obtain one or more of the following: A taxpayer identification number (social security number, individual taxpayer identification number, or employer identification number); passport number and country of issuance; alien identification card number; or number and country of issuance of any other government-issued document evidencing nationality or residence and bearing a photograph or similar safeguard. This standard provides a bank with some flexibility to choose among a variety of identification numbers that it may accept from a non-U.S. person.[25] However, the identifying information the bank accepts must permit the bank to establish a reasonable belief that it knows the true identity of the customer.

Treasury and the Agencies emphasize that the final rule neither endorses nor prohibits bank acceptance of information from particular types of identification documents issued by foreign governments. A bank must decide for itself, based upon appropriate risk factors, including those discussed above (the types of accounts maintained by the bank, the various methods of opening accounts provided by the bank, the other types of identifying information available, and the bank's size, location, and customer base), whether the information presented by a customer is reliable.

Treasury and the Agencies recognize that a foreign business or enterprise may not have a taxpayer identification number or any other number from a government-issued document evidencing nationality or residence and bearing a photograph or similar safeguard. Therefore, the final rule notes that when opening an account for such a customer, the bank must request alternative government-issued documentation certifying the existence of the business or enterprise.

The proposal also contained a limited exception to the requirement that a bank obtain a taxpayer identification number from a customer opening a new account. The exception permitted a bank to open an account for a person other than an individual (such as a corporation, partnership, or trust) that has applied for, but has not received, an employer identification number (EIN), provided that the bank obtains a copy of the application before it opens the account and obtains the EIN within a reasonable period of time after the account is established. The preamble for the proposed rule explained that this exception was included for a new business that might need access to banking services, particularly a bank account or an extension of credit, before it has received an EIN from the Internal Revenue Service.

Some commenters questioned this limited exception for certain businesses. A few commenters suggested expanding the exception to include individuals who have applied for, but have not yet received a taxpayer identification number. Another commenter stated that the exception provided no added benefit and would add to a bank's recordkeeping and monitoring burden.

Treasury and the Agencies have determined that a bank should be afforded more flexibility in situations where a person, including an individual, has applied for, but has not yet received, a taxpayer identification number. Therefore, the final rule states that instead of obtaining a taxpayer identification number from a customer prior to opening an account, the CIP may include procedures for opening an account for a customer (including an individual) that has applied for, but has not received, a taxpayer identification number.[26] To lessen the recordkeeping burden for a bank that elects to use this exception, the final rule also provides that the bank's CIP need only include procedures requiring the bank to confirm that the application was filed before the customer opens the account and to obtain the taxpayer identification number within a reasonable period of time after the account is opened. Thus, a bank will be able to exercise its discretion[27] to determine how to confirm that a customer has filed an application for a taxpayer identification number rather than having to keep a copy of the application on file.

Section 103.121(b)(2)(ii) Customer Verification. The proposed rule provided that the CIP must contain risk-based procedures for verifying the information that the bank obtains in accordance with § 103.121(b)(2)(i), within a reasonable period of time after the account is opened.[28] The proposed rule also described when a bank is required to verify the identity of existing customers.

Several commenters asked Treasury and the Agencies to underscore that these verification procedures may be risk-based by noting that a bank may verify less than all of the identifying information provided by the customer. Many commenters noted that there is currently no reliable, efficient, or effective means of verifying a customer's social security number. Some of these commenters asked the government to establish a method that would permit banks to establish the authenticity and accuracy of a customer's name and taxpayer identification number.

Treasury and the Agencies recognize that there currently is no method that would permit a bank to verify, for example, a taxpayer identification, passport or alien identification number through an official source. Accordingly, the final rule provides that a bank's CIP must contain procedures for verifying the *identity* of the customer, "using the information obtained in accordance with paragraph (b)(2)(i)," namely, the identifying information obtained by the bank. Thus, a bank need not establish the accuracy of every element of identifying information obtained but must do so for enough information to form a reasonable belief it knows the true identity of the customer.

Some commenters stated that they appreciated the flexibility of the proposal permitting an institution to determine how soon identity must be verified. Other commenters asked Treasury and the Agencies to clarify what is a "reasonable period of time." As stated in the preamble for the proposal, Treasury and the Agencies believe that the amount of time it will take an institution to verify a customer's identity may depend upon various factors, such as the type of account opened, whether the customer is physically present when the account is opened, and the type of identifying information available. For the same reasons, the final rule provides banks with the flexibility necessary to accommodate a wide range of situations by stating that the bank must verify the identifying information within a reasonable time after the account is opened.[29]

As discussed above in the definition section, many commenters criticized the proposed approach regarding verification of existing customers that open new accounts. The final rule addresses these concerns by modifying the definition of "customer" to exclude a person who has an existing account with the bank if the bank has a reasonable belief that it knows the true identity of the person.

Many commenters urged that the final rule continue to allow, but not mandate, documentary verification. A few commenters requested that the final rule provide additional guidance on verification. Some commenters asked that the final rule clarify that a bank may choose to use only documentary methods and may refuse to open an account using other methods.

The final rule addresses these comments by stating that a bank's CIP's verification procedures must describe when the bank will use documents, non-documentary methods, or a combination of both methods to verify a customer's identity.

Section 103.121(b)(2)(ii)(A) Verification Through Documents. The proposed rule provided that the CIP must contain procedures describing when the bank will verify identity through documents and setting forth the documents that the bank will use for this purpose. It then gave examples of documents that could be used to verify the identity of individuals and other persons such as corporations, partnerships, and trusts.

Most commenters noted that banks do not have the means to authenticate or validate documents provided by their customers and urged Treasury and the Agencies to clarify that document authentication is not a CIP requirement. Treasury and the Agencies wish to confirm that once a bank has obtained and verified the identity of the customer through a document such as a driver's license or passport, the bank will not be required to take steps to determine whether the document has been validly issued. A bank generally may rely on government-issued identification as verification of a customer's identity; however, if a document shows obvious indications of fraud, the bank must consider that factor in determining whether it can form a reasonable belief that it knows the customer's true identity.

Some commenters also asked that Treasury and the Agencies provide more examples and discuss appropriate types of documentary identification in the final rule or in separate guidance that banks may easily access. Commenters asked whether a utility bill, or library card addressed to the same physical address and name of the person seeking the account, or a foreign identification card, such as a foreign voter registration card or driver's license, would be acceptable. Some commenters questioned whether copies of documents would suffice.

Given the recent increases in identity theft and the availability of fraudulent documents, Treasury and the Agencies agree with a commenter who suggested that the value of documentary verification is enhanced by redundancy. The rule gives examples of types of documents that are considered reliable. However, a bank is encouraged to obtain more than one type of documentary verification to ensure that it has a reasonable belief that it knows the customer's true identity. Moreover, banks are encouraged to use a variety of methods to verify the identity of a customer, especially when the bank does not have the ability to examine original documents.

The final rule attempts to strike the appropriate balance between the

[25] The rule provides this flexibility because there is no uniform identification number that non-U.S. persons would be able to provide to a bank. *See* Treasury Department, "A Report to Congress in Accordance with Section 326(b) of the USA PATRIOT Act," October 21, 2002.

[26] This position is analogous to that in regulations issued by the Internal Revenue Service (IRS) concerning "awaiting-TIN [taxpayer identification number] certificates." The IRS permits a taxpayer to furnish an "awaiting-TIN certificate" in lieu of a taxpayer identification number to exempt the taxpayer from the withholding of taxes owed on reportable payments (*i.e.*, interest and dividends) on certain accounts. *See* 26 CFR 31.3406(g)–3.

[27] For example, the bank may wish to examine a copy of the application filed.

[28] The preamble for the proposed rule noted that, although an account may be opened, it is common practice among banks to place limits on the account, such as by restricting the number of transactions or the dollar value of transactions, until a customer's identity is verified. Therefore, the proposed regulation provided the bank with the flexibility to use a risk-based approach to determine how soon identity must be verified.

[29] It is possible that a bank would, however, violate other laws by permitting a customer to transact business prior to verifying the customer's identity. *See, e.g.*, 31 CFR part 500 (regulations of Treasury's Office of Foreign Asset Control (OFAC) prohibiting transactions involving designated foreign countries or their nationals).

benefits of requiring additional documentary verification and the burdens that may arise from such a requirement by providing that a bank's CIP must state the documents that a bank will use. This will require each bank to conduct its own risk-based analysis of the types of documents it believes will enable it to know the true identity of its customers.

The final rule continues to provide an illustrative list of identification documents. For an individual, these may include an unexpired government-issued identification evidencing nationality or residence and bearing a photograph or similar safeguard, such as a driver's license or passport. For a person other than an individual, these may include documents showing the existence of the entity, such as certified articles of incorporation, a government-issued business license, a partnership agreement, or a trust instrument.

Some commenters questioned whether the examples of identification documents given for persons other than individuals would be reliable. One commenter questioned whether trust documents alone would be sufficient verification of identity. Another commenter suggested allowing banks to rely on a certification by the trustee, or an appropriate legal opinion, rather than the trust instrument to verify the existence of a trust. Someone else suggested that banks should be allowed to rely on documentation consisting of evidence that a business is either publicly traded or is authorized to do business in a state or the United States.

The examples provided in the final rule were intended only to illustrate the documents a bank might use to verify the identity of a customer that is a corporation, partnership, or trust. A bank may use other documents, provided that they allow the bank to establish that it has a reasonable belief that it knows the true identity of its customer. Accordingly, the final rule makes no significant changes to the examples.

Section 103.121(b)(2)(ii)(B) Non-Documentary Verification. Recognizing that some accounts are opened by telephone, by mail, and over the Internet, the proposed rule provided that a bank's CIP also must contain procedures describing what non-documentary methods the bank will use to verify identity and when the bank will use these methods (whether in addition to, or instead of, relying on documents). The preamble for the proposed rule also noted that even if the customer presents identification documents, it may be appropriate to use non-documentary methods as well.

The proposed rule gave examples of non-documentary verification methods that a bank may use, including contacting a customer after the account is opened; obtaining a financial statement; comparing the identifying information provided by the customer against fraud and bad check databases to determine whether any of the information is associated with known incidents of fraudulent behavior (negative verification); comparing the identifying information with information available from a trusted third party source, such as a credit report from a consumer reporting agency (positive verification); and checking references with other financial institutions. The preamble for the proposed rule stated that a bank also may wish to analyze whether there is logical consistency between the identifying information provided, such as the customer's name, street address, ZIP code, telephone number, date of birth, and social security number (logical verification).

The proposal required that the procedures address situations where an individual, such as an elderly person, legitimately is unable to present an unexpired government-issued identification document that bears a photograph or similar safeguard; the bank is not familiar with the documents presented; the account is opened without obtaining documents; the account is not opened in a face-to-face transaction, for example over the phone, by mail, or through the Internet; and the type of account increases the risk that the bank will not be able to verify the true identity of the customer through documents.

Several commenters asked for additional guidance regarding when non-documentary verification methods should be used in addition to documentary verification methods and the circumstances in which only one or all of the non-documentary verification methods listed are necessary. Commenters also asked for guidance on audit methodology, and an explanation of the due diligence required for verification of accounts opened by telephone, mail, and through the Internet. A few commenters suggested that reference to verification, where a bank compares information provided by the customer with information from trusted third party sources, be expressly mentioned in the final rule.

As the large number of comments on this section illustrates, a rule that attempted to address every scenario and combination of risk-factors that a bank might confront would be extremely complex and invariably would fail to address many situations. Rather than adopt a lengthy and potentially unwieldy rule that still would not address every situation, Treasury and the Agencies have concluded that it would be more effective to adopt general principles that are fleshed out through examples. Therefore, the final rule states that for a bank relying on non-documentary verification methods, the CIP must contain procedures that describe the non-documentary methods the bank will use.

The final rule *generally* retains the illustrative list of non-documentary methods contained in the proposal. Treasury and the Agencies have clarified that one method is "independently verifying the customer's identity through the comparison of information provided by the customer with information obtained from a consumer reporting agency, public database, or other source," rather than verifying "documentary information" through such sources.

The final rule also retains the variety of situations that the procedures must address that were identified in the proposal, with the following two changes. First, because "transaction" is a defined term in 31 CFR part 103, instead of using the term "face-to-face transaction," the final rule states that the procedures must address the situation where a customer opens an account without appearing in person at the bank. Second, the final clause of this provision provides that the CIP must include procedures to address situations where the bank is otherwise presented with circumstances that increase the risk that the bank will be unable to verify the true identity of a customer through documents. This clause acknowledges that there may be circumstances beyond those specifically described in this provision when a bank should use non-documentary verification procedures.

As stated in the preamble for the proposed rule, because identification documents may be obtained illegally and may be fraudulent, and in light of the recent increase in identity theft, Treasury and the Agencies encourage banks to use non-documentary methods even when the customer has provided identification documents.

Section 103.121(b)(2)(ii)(C) Additional Verification for Certain Customers. As described above, the proposed rule required the identification and verification of each signatory for an account. Most commenters objected to this requirement as overly burdensome, and, upon consideration of the points raised by the commenters, Treasury and the Agencies agree that it is appropriate to delete it. For the reasons discussed below, however, the rule does require that a bank's CIP address the circumstances in which it will obtain information about such individuals in order to verify the customer's identity. Treasury and the Agencies believe that while the majority of customers may be verified adequately through the documentary or non-documentary verification methods described in paragraphs (b)(2)(ii)(A) and (B), there may be instances where this is not possible. The risk that the bank will not know the customer's true identity may be heightened for certain types of accounts, such as an account opened in the name of a corporation, partnership, or trust that is created or conducts substantial business in a jurisdiction that has been designated by the United States as a primary money laundering concern or has been designated as non-cooperative by an international body.

Obtaining sufficient information to verify a customer's identity can reduce the risk that a bank will be used as a conduit for money laundering and terrorist financing. Treasury and the Agencies believe that a bank must identify customers that pose a heightened risk of not being properly identified, and a bank's CIP must prescribe additional measures that may be used to obtain information about the identity of the individuals associated with the entity in whose name such an account is opened when standard documentary and non-documentary methods prove to be insufficient.

For these reasons, the requirement to verify the identity of signatories has been replaced by a new provision in the final rule that requires that a bank's CIP address situations where, based on the bank's risk assessment of a new account opened by a customer that is not an individual, the bank also will obtain information about individuals with authority or control over such account, including signatories, in order to verify the customer's identity. This additional verification method will only apply when the bank cannot adequately verify the customer's identity using the documentary and non-documentary verification methods described in (b)(2)(ii)(A) and (B). Moreover, a bank need not undertake any additional verification if it chooses not to open an account when it cannot verify the customer's identity using standard documentary and non-documentary verification methods.

Section 103.121(b)(2)(iii) Lack of Verification. The proposed rule stated that a bank's CIP must include procedures for responding to circumstances in which the bank cannot form a reasonable belief that it knows the true identity of a customer. The preamble for the proposed rule listed what these procedures should include. In addition, the proposal stated that a bank should only maintain an account for a customer when it can form a reasonable belief that it knows the customer's true identity.[30]

The final rule retains the general requirement that a bank's CIP include procedures for responding to circumstances in which the bank cannot form a reasonable belief that it knows the true identity of the customer. However, the rule text itself now states that the procedures should describe the following: when a bank should not open an account for a potential customer; the terms under which a customer may use an account while the bank attempts to verify the customer's identity; when the bank should close an account after attempts to verify a customer's identity have failed; and when the bank should file a Suspicious Activity Report in accordance with applicable law and regulation.

One commenter stated that requiring a bank to close an account if it cannot verify a customer's identity would conflict with state laws and would subject the bank to legal liability. The commenter urged that if this provision is retained, the final rule also should shield banks from state regulatory and borrower liability in these circumstances. Other commenters asked that Treasury and the Agencies clarify that further investigation that results in failure to open an account will not trigger adverse action requirements under the FCRA, 15 U.S.C. 1681 *et seq.* or the Equal Credit Opportunity Act (ECOA), 15 U.S.C. 1691 *et seq.*

The final rule does not specifically require a bank to close the account of a customer whose identity the bank cannot verify, but instead leaves this determination to the discretion of the bank. Treasury and the Agencies have determined that there is no statutory basis to create a safe harbor that would shield banks from state regulatory or borrower liability if a bank should choose to close a customer's account. Any such closure should be consistent with the bank's existing procedures for closing accounts in accordance with its risk management practices. Treasury and the Agencies also note that a bank must comply with other applicable laws and regulations, such as the adverse action provisions under ECOA and the FCRA, when determining not to open an account because it cannot establish a reasonable belief that it knows the true identity of the customer.[31]

Section 103.121(b)(3) Recordkeeping

Section 103.121(b)(3)(i) Required Records. The proposed rule set forth recordkeeping procedures that must be included in a bank's CIP. Under the proposal, a bank would have been required to maintain a record of the identifying information provided by the customer. Where a bank relies upon a document to verify identity, the proposal would have required the bank to maintain a copy of the document that the bank relied on that clearly evidences the type of document and any identifying information it may contain. The bank also would have been required to record the methods and result of any additional measures undertaken to verify the identity of the customer. Last, the bank would have been required to record the resolution of any discrepancy in the identifying information obtained.

This section of the proposed rule prompted the most comment. Though one commenter felt that the recordkeeping requirements in the proposed rule were weak, almost all other commenters identified the proposed documentation and record retention requirements as overly burdensome. Commenters urged Treasury and the Agencies to permit a bank to record the information from the documents obtained rather than requiring banks to maintain copies of these documents for the life of the account. Commenters generally argued that it would be difficult and very burdensome to store and retrieve copies of documents used to verify the identity of the customer. In addition, some commenters noted that many kinds of identification documents, particularly some new driver's licenses, have security features that prevent them from being copied legibly. Other commenters stated that copies of documents would be difficult to safeguard and could facilitate identity theft.

Commenters stated that requiring banks to keep copies of documents would substantially deviate from current banking practice and would violate certain states' laws. Banks offering credit card accounts through retailers, who require the customer to

[30] The preamble also explained that there are some exceptions to this basic rule. For example, a bank may maintain an account at the direction of a law enforcement or intelligence agency, even though the bank does not know the true identity of the customer.

[31] *See* 12 CFR 202.9(b) (Federal Reserve Regulation B that prescribes the form of ECOA notice and statement of specific reasons); 15 U.S.C. 1681m (FCRA provision that provides for duties of users taking adverse actions on the basis of information contained in consumer reports from other third parties or affiliates).

provide identifying documents at the point of sale, strenuously opposed this requirement if it were interpreted to cover documents presented to the merchant. These commenters stated that copy machines are not usually available at the point of sale, and that the rule as proposed would require merchants to purchase large numbers of additional copy machines. The commenters also anticipated that consumers would be greatly inconvenienced by this requirement and might have to endure lengthy waits during any busy shopping season. These commenters questioned whether the risks of money-laundering and the financing of terrorism through retail store credit cards, which generally have relatively low credit limits, restrictions on pre-payment, and other features to detect fraud, warrant the imposition of these additional costs.

Other commenters stated that requiring banks to keep copies of documents that have pictures, such as driver's licenses, could expose the bank to allegations of unlawful discrimination, even if the retention of this information were not prohibited under ECOA. Some banks objected to this requirement on the grounds that it directly conflicted with the position that the Agencies have traditionally taken on this issue, including the criticism of banks that have retained such information in their files when extending credit.

Other commenters asked that a bank be permitted to record the processes and procedures generally used for verification rather than being required to keep records of the methods used and the resolution for each and every account, especially where the bank uses standardized procedures for all customers and could demonstrate that these procedures were applied. Some commenters suggested that the final rule permit banks to use a risk-based approach for recordkeeping.

In light of the comments received, Treasury and the Agencies have reconsidered and modified the recordkeeping requirements of the proposed rule. The final rule provides that a bank's CIP must include procedures for making and maintaining a record of all information obtained under the procedures implementing the requirement that a bank develop and implement a CIP. However, the final rule affords banks significantly more flexibility than did the recordkeeping provisions contained in the proposal. Under the final rule, a bank's records are to include "a description," rather than a copy, of any document upon which the bank relied in order to verify the identity of the customer, noting the type of document, any identification number contained in the document, the place of issuance, and, if any, the date of issuance and expiration date. The final rule also clarifies that the record must include "a description" of the methods and results of any measures undertaken to verify the identity of the customer, and of the resolution of any "substantive" discrepancy discovered when verifying the identifying information obtained, rather than any documents generated in connection with these measures.

As Treasury and the Agencies indicated in the preamble for the proposal, nothing in the rule modifies, limits, or supersedes section 101 of the Electronic Signatures in Global and National Commerce Act, Pub. L. 106–229, 114 Stat. 464 (15 U.S.C. 7001) (E-Sign Act). Thus, a bank may use electronic records to satisfy the requirements of this final rule, as long as the records are accurate and remain accessible in accordance with 31 CFR 103.38(d).

Section 103.121(b)(3)(ii) Retention of Records

The proposal required a bank to retain all of the records specified in the recordkeeping provision for five years after the date the account is closed.

This requirement prompted strenuous objections. Assuming that copies of the documents used to verify the identity of the customer would have to be retained, commenters asserted that retaining records until five years after the account is closed would be very burdensome. Some commenters noted that imaging is not a routine practice for community banks and could be costly. Banks offering credit card accounts stated that the record retention requirement would require a change in forms, processes, and systems, while also increasing storage costs. As credit cards do not have a specific term, commenters noted that banks would be required to keep these records forever, unless they are culled manually. Some commenters suggested that the retention period be shortened, with suggestions ranging from one to three years after the account is closed, while other commenters suggested that the period be shortened to five years from when the account is opened. Many commenters stated that two years from when the information is obtained would be consistent with other regulatory requirements, such as the record retention requirements for an application for an extension of credit subject to ECOA (12 CFR 202.12(b)).

By eliminating the requirement that a bank retain copies of the documents used to verify the identity of the customer, Treasury and the Agencies believe that the final rule largely addresses the main concern of these commenters. However, Treasury and the Agencies also have determined that, while the identifying information provided by the customer should be retained, there is little value in requiring banks to retain the remaining records for five years after an account is closed because this information is likely to have become stale. Therefore, the final rule now prescribes a bifurcated record retention schedule that is consistent with the general five-year retention requirement in 31 CFR 103.38. First, the bank must retain the information referenced in paragraph (b)(3)(i)(A) (that is, information obtained about a customer), for five years after the date the account is closed or, in the case of credit card accounts, five years after the account is closed or becomes dormant. Second, the bank need only retain the records that it must make and maintain under the remaining parts of the recordkeeping provision, paragraphs (b)(3)(i)(B), (C), and (D) (that is, information that verifies a customer's identity) for five years after the record is made.

Section 103.121(b)(4) Comparison with Government Lists. The proposed rule required a bank to have procedures for determining whether the customer appears on any list of known or suspected terrorists or terrorist organizations provided to the bank by any Federal government agency. In addition, the proposal stated that the procedures must ensure that the bank follows all Federal directives issued in connection with such lists.

Most commenters were concerned about how a bank would be able to determine what lists should be checked for purposes of this provision and how these lists would be made available. Some commenters asked that the final rule confirm that a bank will not have an affirmative duty to *seek out* all lists compiled by the Federal government and would only be required to check lists *provided* to it by the Federal government. Some commenters noted that lists published by OFAC are published but are not provided to financial institutions.[32] Many commenters urged that all lists within the meaning of section 326 of the Act, be centralized, issued by a single designated government agency, and provided to financial institutions in a commonly used electronic format. Some of these commenters suggested that instead of providing multiple lists, the government set up a single Web site that would permit a bank to search for a name alphabetically, similar to the OFAC list. Other commenters asked Treasury and the Agencies to clarify what action a bank should take when a customer appears on a list.

Commenters also asked for guidance regarding the timing of when the comparison must be performed and asked whether the lists could be checked after an account is opened. Some commenters stated that there is no practical way for a financial institution to check lists prior to opening an account.

The final rule states that a bank's CIP must include procedures for determining whether the customer appears on any list of known or suspected terrorists or terrorist organizations issued by any Federal government agency and designated as such by Treasury in consultation with the Federal functional regulators. Because Treasury and the Federal functional regulators have not yet designated any such lists, the final rule cannot be more specific with respect to the lists banks must check in order to comply with this provision. However, banks will not have an affirmative duty under this regulation to seek out all lists of known or suspected terrorists or terrorist organizations compiled by the Federal government. Instead, banks will receive notification by way of separate guidance regarding the lists that must be consulted for purposes of this provision.

Treasury and the Agencies have modified this provision to give guidance as to *when* a bank must consult a list of known or suspected terrorists or terrorist organizations. The final rule states that the CIP's procedures must require the bank to make a determination regarding whether a customer appears on a list "within a reasonable period of time" after the account is opened, or earlier if required by another Federal law or regulation or by a Federal directive issued in connection with the applicable list.

The final rule provides that a bank's CIP must contain procedures requiring the bank to follow all Federal directives issued in connection with such lists. Again, because there are no lists that have been designated under this provision as yet, the final rule cannot provide more guidance in this area.

Section 103.121(b)(5) Customer Notice. The proposed rule would have required a bank's CIP to include procedures for providing bank customers with adequate notice that the bank is requesting information to verify their identity. The preamble for the proposal stated that a bank could satisfy that notice requirement by generally notifying its customers about the procedures the bank must comply with to verify their identities. It stated that the bank could post a notice in its lobby or on its Internet website, or provide customers with any other form of written or oral notice.

Treasury and the Agencies received a large number of comments on this provision. Some commenters did not agree that section 326 of the Act requires notice to bank customers. Some of these commenters suggested that a bank's request for identifying information should be considered adequate notice. Other commenters did not question this requirement and stated that they appreciated the flexibility of this provision. However, a great many commenters asked for additional guidance on the content and timing of the notice and specifically requested that the final rule provide model language so that all institutions represent the requirements of section 326 in the same manner and the adequacy of notice is not left to the interpretation of individual examiners.

Section 326 provides that the regulations issued "shall, at a minimum, require financial institutions to implement, and customers (after being given adequate notice) to comply with reasonable procedures" that satisfy the statute. Based upon this statutory requirement, the final rule requires a bank's CIP to include procedures for providing bank customers with adequate notice that the bank is requesting information to verify their identities. However, the final rule provides additional guidance regarding what constitutes adequate notice and the timing of the notice requirement.

The final rule states that notice is adequate if the bank generally describes the identification requirements of the final rule and provides notice in a manner reasonably designed to ensure that a customer views the notice, or is otherwise given notice, before opening an account. The final rule also states that depending upon the manner in which an account is opened, a bank may post a notice in the lobby or on its website, include the notice on its account applications, or use any other form of oral or written notice. In addition, the final rule includes sample language that, if appropriate, will be deemed adequate notice to a bank's customers when provided in accordance with the requirements of this final rule.

Section 103.121(b)(6) Reliance on Another Financial Institution. Many commenters urged that the final rule permit a bank to rely on a third party to perform elements of the bank's CIP. For example, some commenters asked that the final rule clarify that a bank may use a third party service provider to perform tasks and keep records. Other commenters recommended that the rule should permit a third party to verify the identity of the bank's customer in indirect lending arrangements, for example, where a car dealer acting as agent of the bank extends a loan to a customer or where a mortgage broker acts on a bank's behalf. Some commenters urged that the final rule be modified to more broadly permit financial institutions to share customer identification and verification duties with other financial institutions so as to avoid each institution having to undertake duplicative customer identification efforts. Some of these commenters suggested that a bank be permitted to allocate its responsibility to verify the customer's identity by contract with another financial institution as permitted in the proposed rule for broker-dealers.

Other commenters requested that the final rule permit the CIP obligations to be performed initially by only one financial institution if a customer has different accounts with different affiliates. These commenters noted that it is common for a customer to maintain several different accounts with a financial institution and its affiliates. The same customer, for example, may have a credit card account with one affiliate, a home mortgage with another affiliate, and a brokerage account with a broker-dealer affiliate. The commenters urged that a bank be permitted to rely on customer identification and verification performed by an affiliate because it would be superfluous and unnecessarily burdensome to subject the same customer to substantially similar customer identification and verification procedures on multiple occasions. Furthermore, those commenters urged Treasury and the Agencies to allow a bank to rely on an affiliate in order to reduce the substantial costs of maintaining duplicative records regarding identity verification under the recordkeeping provisions of the rule.

Treasury and the Agencies recognize that there may be circumstances where a bank should be able to rely on the performance by another financial institution of some or all of the elements of the bank's CIP. Therefore, the final rule provides that a bank's CIP may

[32] Nevertheless, the legislative history for this provision indicates that the lists Congress intended financial institutions to consult "are those already supplied to financial institutions by the Office of Foreign Asset Control (OFAC), and occasionally by law enforcement and regulatory authorities, as in the days immediately following the September 11, 2001, attacks on the World Trade Center and the Pentagon." H.R. Rep. No. 107–250, pt. 1, at 63 (2001).

include procedures specifying when the bank will rely on the performance by another financial institution (including an affiliate) of any procedures of the bank's CIP and thereby satisfy the bank's obligations under the rule. Reliance is permitted if a customer of the bank is opening, or has opened, an account or has established a similar banking or business relationship with the other financial institution to provide or engage in services, dealings, or other financial transactions.

In order for a bank to rely on the other financial institution, such reliance must be reasonable under the circumstances, and the other financial institution must be subject to a rule implementing the anti-money laundering compliance program requirements of 31 U.S.C. 5318(h) and be regulated by a Federal functional regulator. The other financial institution also must enter into a contract requiring it to certify annually to the bank that it has implemented its anti-money laundering program and that it will perform (or its agent will perform) the specified requirements of the bank's CIP. The contract and certification will provide a standard means for a bank to demonstrate the extent to which it is relying on another institution to perform its CIP, and that the institution has in fact agreed to perform those functions. If it is not clear from these documents, a bank must be able to otherwise demonstrate when it is relying on another institution to perform its CIP with respect to a particular customer.

The bank will not be held responsible for the failure of the other financial institution to adequately fulfill the bank's CIP responsibilities, provided the bank can establish that its reliance was reasonable and that it has obtained the requisite contracts and certifications. Treasury and the Agencies emphasize that the bank and the other financial institution upon which it relies must satisfy all of these conditions set forth in the rule. If they do not, then the bank remains solely responsible for applying its own CIP to each customer in accordance with this regulation.

All of the Federal functional regulators are adopting comparable provisions in their respective regulations to permit such reliance. Furthermore, the Federal functional regulators expect to share information and to cooperate with each other to determine whether the institutions subject to their jurisdiction are in compliance with the conditions of the reliance provision of this final rule.

The final rule issued here does not affect a bank's authority to contract for services to be performed by a third party either on or off the bank's premises. Thus, for example, a bank may contract with a third party service provider to keep its records even when the bank does not act under the reliance provision set forth in the regulation. However, Treasury and the Agencies note that the performance of these services for Federally regulated banks[33] will be subject to regulation and examination by the Agencies under other applicable laws and regulations. *See, e.g.*, 12 U.S.C. 1867.

The final rule also does not alter a bank's authority to use an agent to perform services on its behalf. Therefore, a bank is permitted to arrange for a car dealer or mortgage broker, acting as its agent in connection with a loan, to verify the identity of its customer. However, as with any other responsibility performed by an agent, and in contrast to the reliance provision in the rule, the bank ultimately is responsible for that agent's compliance with the requirements of this final rule.

Section 103.121(c) Exemptions. The proposed rule provided that the appropriate Federal functional regulator, with the concurrence of Treasury, may by order or regulation exempt any bank or type of account from the requirements of this section. The proposal stated that, in issuing such exemptions, the Federal functional regulator and Treasury shall consider whether the exemption is consistent with the purposes of the BSA, consistent with safe and sound banking, and in the public interest. The proposal stated that the Federal functional regulator and Treasury also may consider other necessary and appropriate factors.

There were a number of comments suggesting that various types of accounts be exempted from the final rule. For example, several commenters suggested that accounts of Federal, state, and local governmental entities, public companies, and correspondent banks be exempted from the final rule. One commenter suggested that student loan programs be exempted from the rule because current safeguards are sufficient to verify the identity of student loan borrowers. Another commenter suggested that small trust companies and limited purpose banks that provide trust services be exempted from the rule, because such entities are more local in operation, would be burdened by the rule, and have fewer employees to ensure compliance. Yet another commenter suggested that the NCUA exempt credit unions from the CIP requirements.

Any suggested exemptions that Treasury and the Agencies have determined to be appropriate are incorporated into the definitions of "account" and "customer" for the reasons described above. The exemption provision of the final rule is essentially adopted as proposed with respect to banks that have a Federal functional regulator. Because the final rule will also apply to certain banks that do not have a Federal functional regulator, a new provision has been added to make clear that Treasury alone will make all determinations regarding exemptions for these institutions.

Section 103.121(d) Other Information Requirements Unaffected. The proposal provided that nothing in § 103.121 shall be construed to relieve a bank of its obligations to obtain, verify, or maintain information in connection with an account or transaction that is required by another provision in part 103. For example, if an account is opened with a deposit of more than $10,000 in cash, the bank opening the account must comply with the customer identification requirements in § 103.121, as well as with the provisions of § 103.22, which require that certain information concerning the transaction be reported by filing a Currency Transaction Report (CTR). There were no comments on this provision. Therefore, Treasury and the Agencies have adopted this provision generally as proposed, except that it has been clarified to provide that nothing in § 103.121 should be construed to relieve a bank of any of its obligations, including its obligations to obtain, verify, or maintain information in connection with an account or transaction that is required by another provision in part 103.

III. Conforming Amendments to 31 CFR 103.34

Section 103.34(a) sets forth customer identification requirements when certain types of deposit accounts are opened. Together with the proposed rule implementing section 326, Treasury, on its own authority, proposed deleting 31 CFR 103.34(a) for the following reasons.

First, the preamble for the proposal explained that Treasury regards the requirements of §§ 103.34(a)(1) and (2) as inconsistent with the intent and purpose of section 326 of the Act and incompatible with proposed section 103.121. Generally §§ 103.34(a)(1) and (2) require a bank, within 30 days after certain deposit accounts are opened, to secure and maintain a record of the taxpayer identification number of the customer involved. If the bank is unable to obtain the taxpayer identification number within 30 days (or a longer time if the person has applied for a taxpayer identification number), it need take no further action under § 103.34 concerning the account if it maintains a list of the names, addresses, and account numbers of the persons for which it was unable to secure taxpayer identification numbers, and provides that information to Treasury upon request. In the case of a non-resident alien, the bank is required to record the person's passport number or a description of some other government document used to determine identification. These requirements conflicted with those in proposed § 103.121 which required a bank to obtain the name, address, date of birth and an identification number from any person seeking to open a new account.

Second, § 103.34(a)(3) currently provides that a bank need not obtain a taxpayer identification number with respect to specified categories of persons[34] opening certain deposit accounts. Proposed § 103.121 did not exempt any persons from the CIP requirements. Treasury requested comment on whether any of the exemptions in § 103.34(a)(3) should apply in light of the intent and purpose of section 326 of the Act and the requirements of proposed § 103.121.

Third, § 103.34(a)(4) also provides that IRS rules shall determine whose number shall be obtained in the case of multiple account holders. In the preamble that accompanied its proposal, Treasury stated that this provision is inconsistent with section 326 of the Act, which requires that banks verify the identity of "any" person seeking to open an account.

In addition, Treasury proposed deleting § 103.34(b)(1) which requires a bank to keep "any notations, if such are normally made, of specific identifying information verifying the identity of the signer [who has signature authority over an account] (such as a driver's license number or credit card number)." Treasury stated that the quoted language in § 103.34(b)(1) is inconsistent with the proposed requirements of § 103.121. For this reason, Treasury, under its own authority, proposed to delete the quoted language.

Few comments were received regarding the proposed deletion of these provisions. Some commenters agreed that § 103.34(a) should be deleted if proposed § 103.121 were adopted. One commenter suggested that § 103.34(a) should be revised to achieve the objectives of the section 326 of the Act. One commenter representing a military bank requested continuance of the exemption for agencies and instrumentalities of the Federal government that will permit exemption of commissaries, exchanges and various military organizations. Another commenter requested maintenance of the exemption for government entities, court funds, unincorporated units of tax-exempt organizations, and school thrift programs.

Treasury has determined that given the more comprehensive requirements of the final version of § 103.121, there is no longer a need for § 103.34 (a). A number of the exemptions formerly in § 103.34(a) have now been added to § 103.121. Other exemptions conflict with the language and intent of section 326 of the Act and thus were not adopted in the final rule. While § 103.34(a) will no longer be needed once the final rule is fully effective, withdrawing the provision before October 1, 2003, would create a gap period during which banks would not be subject to a rule under the BSA requiring a customer to be identified when opening an account. Because Treasury and the Agencies do not believe such a gap period would be appropriate, the final rule—rather than withdrawing § 103.34(a)—amends the section to cut off its applicability on October 1, 2003, when § 103.121 becomes fully effective.[35]

By contrast, Treasury no longer believes that it is necessary to delete the quoted language in § 103.34(b), which requires a bank to keep "any notations, if such are normally made, of specific identifying information verifying the identity of [a person with signature authority over an account] (such as a driver's license number or credit card number)." The definition of "customer" in the final version of § 103.121 no longer includes a signatory on an account. Therefore, § 103.121 and § 103.34(b)(1) are not inconsistent and the records required to be kept in accordance with § 103.34(b)(1) will still have a high degree of usefulness in criminal, tax, or regulatory investigations or proceedings, or in the conduct of intelligence or counterintelligence activities, and to protect against international terrorism. Therefore, the proposal to delete the quoted language in § 103.34(b)(1) is not adopted as proposed.

IV. Technical Amendment to 31 CFR 103.11(j)

Section 103.11(j), which defines the term "deposit account," contains an obsolete reference to the definition of "transaction account," which is defined in § 103.11(hh). Under its own authority, Treasury proposed to correct this reference. There were no comments on this proposed technical correction. Therefore, it is adopted as proposed.

V. Regulatory Analysis

A. Regulatory Flexibility Act

Under the Regulatory Flexibility Act (RFA), an agency must either prepare a Final Regulatory Flexibility Analysis (FRFA) for a final rule or certify that the final rule will not have a significant economic impact on a substantial number of small entities.[36] *See* 5 U.S.C. 604 and 605(b).

Treasury and the Agencies have reviewed the impact of this final rule on small banks. Treasury and the Agencies certify that the final rule will not have a significant economic impact on a substantial number of small entities.

First, Treasury and the Agencies believe that banks already have implemented prudential business practices and anti-money laundering

[33] Because it lacks the specific statutory authority to regulate and examine service providers, NCUA, as a matter of safety and soundness, will require credit unions to document that their service providers fully comply with this regulation and with the credit union's customer identification program.

[34] The exemption applies to (i) agencies and instrumentalities of Federal, State, local, or foreign governments; (ii) judges, public officials, or clerks of courts of record as custodians of funds in controversy or under the control of the court; (iii) aliens who are ambassadors; ministers; career diplomatic or consular officers; naval, military, or other attaches of foreign embassies and legations; and members of their immediate families; (iv) aliens who are accredited representatives of certain international organizations, and their immediate families; (v) aliens temporarily residing in the United States for a period not to exceed 180 days; (vi) aliens not engaged in a trade or business in the United States who are attending a recognized college or university, or any training program supervised or conducted by an agency of the Federal Government; (vii) unincorporated subordinate units of a tax exempt central organization that are covered by a group exemption letter; (viii) a person under 18 years of age, with respect to an account opened as part of a school thrift savings program, provided the annual interest is less than $10; (ix) a person opening a Christmas club, vacation club, or similar installment savings program, provided the annual interest is less than $10; and (x) non-resident aliens who are not engaged in a trade or business in the United States.

[35] Appropriate conforming amendments are made to §§ 103.34(b)(11) and (12) to add a cross-reference to the Internal Revenue Code regarding the rules for determining what constitutes a taxpayer identification number.

[36] The RFA defines the term "small entity" in 5 U.S.C. 601 by reference to the definitions published by the Small Business Administration (SBA). The SBA has defined a "small entity" for banking purposes as a bank or savings institution with less than $150 million in assets. *See* 13 CFR 121.201. The NCUA defines "small credit union" as those under $1 million in assets. Interpretive Ruling and Policy Statement No. 87–2, Developing and Reviewing Government Regulations (52 FR 35231, September 18, 1987).

programs that include most of the procedures that a CIP must contain under this final rule. Banks generally undertake extensive measures to verify the identity of their customers as a matter of good business practice. In addition, Federally regulated banks already must have anti-money laundering programs that include procedures for identification, verification, and documentation of customer information.[37]

Second, although the final rule contains several requirements that will be new to banks we anticipate that the costs of implementing these requirements will not be economically significant. For example, the recordkeeping requirements in the final rule may impose some costs on banks to the extent that the information that must be maintained is not already collected and retained.[38] Treasury and the Agencies believe that the compliance burden is minimized for banks, including small banks, because the final rule vests a bank with the discretion to design and implement appropriate recordkeeping procedures, including allowing banks to maintain electronic records in lieu of (or in combination with) paper records.

The section of the final rule that requires banks to check lists of known and suspected terrorists and terrorist organizations and to follow Federal agency directives in connection with the lists is also a new requirement that will impose nominal burden, once Treasury and the Agencies publish lists that banks must consult. However, no such lists have been issued to date. Moreover, banks already must have procedures to satisfy other similar requirements. For instance, banks already have to ensure that they do not engage in transactions involving designated foreign countries, foreign nationals, and other entities prohibited under OFAC rules. *See* 31 CFR part 500. We also understand that many banks, including small banks, use electronic search tools to check lists [39] and already use identity verification software, both as part of their customer due diligence obligations under existing BSA compliance program requirements and to detect fraud.

The notice provisions of the rule also are new. However, they are very flexible and, as written, should impose only minimal costs. The final rule permits a bank to satisfy the notice requirement by choosing from a variety of low-cost measures, such as posting a sign in the lobby or on its website, by adding it to an account statement, or using any other form of written or oral notice. In addition, the amount of time that a bank will need to develop its notices will be minimal as the final rule now contains a sample notice.

Treasury and the Agencies believe that the flexibility incorporated into the final rule will permit each bank to tailor its CIP to fit its own size and needs. In this regard, Treasury and the Agencies believe that expenditures associated with establishing and implementing a CIP will be commensurate with the size of a bank. If a bank is small, the burden to comply with the proposed rule should be *de minimis*.

Most commenters on the proposed rule stated that Treasury and the Agencies had underestimated the burden imposed by the proposed rule. They highlighted aspects of the proposal that they maintained would have imposed excessive burdens and would have required banks to alter their current practices. Most comments focused on the proposed provisions requiring banks to verify the identity of signatories on accounts, to keep copies of documents used to verify a customer's identity, and to retain identity verification records for five years after an account is closed.

In drafting the final rule, Treasury and the Agencies have either eliminated or minimized the most significant burdens identified by commenters. In response to commenters, for example, the final rule eliminates signatories from the definition of "customer," no longer requires a bank to keep copies of documents used to verify a customer's identity, and reduces the universe of records that must be kept for five years after an account is closed. Treasury and the Agencies have taken other steps that significantly reduce the scope of the rule and burdens of the rule. Many of these burden-reducing actions are described in the Paperwork Reduction Act discussion below.[40] As a result of these changes, the final rule is far more flexible and less burdensome than the proposed rule while still fulfilling the statutory mandates enumerated in section 326 of the Act.

Finally, Treasury and the Agencies did consider whether it would be appropriate to exempt small banks from the requirements of the rule. We do not believe that an exemption for small banks is appropriate, given the flexibility built into the rule to account for, among other things, the differing sizes and resources of banks, as well as the importance of the statutory goals and mandate of section 326. Money laundering can occur in small banks as well as large banks.

B. Paperwork Reduction Act

Certain provisions of the final rule contain "collection of information" requirements within the meaning of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). An agency may not conduct or sponsor, and a respondent is not required to respond to, an information collection unless it displays a currently valid Office of Management and Budget (OMB) control number. Treasury submitted the final rule to the OMB for review in accordance with 44 U.S.C. 3507(d). The OMB has approved the collection of information requirements in today's rule under control number 1506–0026.

[37] *See* footnote 10.

[38] *See, e.g.*, identification and verification of customers in connection with each share or deposit account opened (31 CFR 103.34).

[39] We believe that most banks will use technology rather than manual methods to check lists. OFAC lists are generally incorporated into bank software and, in response to bank inquiries, Treasury and the Agencies have made clear that banks are permitted to share the lists they receive pursuant to section 314 of the Act with their service providers. We expect that any lists provided under section 326 of the Act will also be provided under the same conditions.

[40] In addition to the burden-reducing measures discussed in the Paperwork Reduction Act discussion, other changes include:

- A clarification that a bank must verify the customer's *identity* using the identifying information obtained. The proposed rule would have required the bank to verify all identifying information. The elimination of the requirement that a bank must obtain a physical and a mailing address from a customer opening an account. Under the final rule, the bank is only required to obtain a physical address.
- A new provision that permits a bank to rely on another financial institution to perform its CIP under certain conditions. This provision allows financial institutions that share a customer to share customer identification and verification obligations and to reduce the cost of maintaining duplicative records required by the recordkeeping provisions of the final rule.
- A revised provision that extends to customers who are individuals the exception that permits a bank to open an account for a customer that has applied for, but has not received, a taxpayer identification number.
- A new exemption for credit card accounts from the requirement that a bank obtain identifying information from the customer prior to opening an account. In connection with credit card accounts, a bank is permitted to obtain identifying information from a third party source prior to extending credit.
- A clarification stating that the government will provide lists of known or suspected terrorists and terrorist organizations to banks. Banks will not be required to seek out this information. In addition, the rule now states that the bank may determine whether a customer appears on the list within a reasonable time after the account is opened, unless it is required to do so earlier by another Federal law, regulation, or directive.
- A transition period that permits banks a period of several months to comply with the final rule.

Collection of Information Under the Proposed Rule

The proposed rule applied only to a financial institution that is a "bank" as defined in 31 CFR 103.11(c),[41] and any foreign branch of an insured bank. The proposed rule required each bank to establish a written CIP that must include recordkeeping procedures (proposed § 103.121(b)(3)) and procedures for providing customers with notice that the bank is requesting information to verify their identity (proposed § 103.121(b)(5)).

The proposed rule required a bank to maintain a record of (1) the identifying information provided by the customer, the type of identification document(s) reviewed, if any, the identification number of the document(s), and a copy of the identification document(s); (2) the means and results of any additional measures undertaken to verify the identity of the customer; and (3) the resolution of any discrepancy in the identifying information obtained. It also required these records to be maintained at the bank for five years after the date the account is closed (proposed § 103.121(b)(3)).

The proposed rule also required a bank to give its customers "adequate notice" of the identity verification procedures (proposed § 103.121(b)(5)). The proposed rule stated that a bank could satisfy the notice requirement by posting a sign in the lobby or providing customers with any other form of written or oral notice.

Collection of Information Under the Final Rule

The final rule, like the proposed rule, requires banks to implement reasonable procedures to (1) maintain records of the information used to verify a customer's identity, and (2) provide notice of these procedures to customers. These recordkeeping and disclosure requirements are required under section 326 of the Act. However, the final rule greatly reduces the paperwork burden attributable to these requirements, as described below.

The final rule also contains a new recordkeeping provision permitting a bank to rely on another financial institution to perform some or all its CIP, under certain circumstances. Among other things, the other financial institution must provide the bank with a contract requiring it to certify annually to the bank that it has implemented its anti-money laundering program, and that it will perform (or its agent will perform) the specified requirements of the bank's CIP.

Response to Comments Received

We received approximately 500 comments on the proposed rule. Most of the commenters specifically mentioned the recordkeeping burden associated with the proposed rule. Some commenters also asked Treasury and the Agencies to clarify the meaning of "adequate notice" and requested that a sample notice be provided in the final rule.

Only a few commenters provided burden estimates of additional burden hours that would result from the proposed rule. However, these burden estimates did not necessarily focus on the recordkeeping and disclosure requirements in the proposal and ranged from 200 extra hours per year to 9,000 additional hours. Treasury and the Agencies believe that the final rule substantially addresses the concerns of the commenters. Specific concerns about paperwork burden have been addressed as follows:

First, the recordkeeping and disclosure burden are minimized in the final rule because Treasury and the Agencies reduced the entire scope of the final rule, by:

- Narrowing and clarifying the scope of "account." The final rule specifically excludes accounts that (1) a bank acquires through an acquisition, merger, purchase of assets, or assumption of liabilities from a third party, and (2) accounts opened for the purpose of participating in an employee benefit plan established pursuant to the Employee Retirement Income Security Act of 1974. It also specifically excludes wire transfers, check cashing, and the sale of travelers checks, and any other product or service that does not lead to a "formal banking relationship" from the scope of the rule;
- Narrowing the definition of "bank" covered by the rule to exclude a bank's foreign branches; and
- Limiting and clarifying who is a "customer" for purposes of the final rule. The final rule now defines "customer" as "a person that opens a new account" making clear that a person who does not receive banking services, such as a person whose deposit or loan application is denied, is not a customer. The definition of customer also excludes signatories from the definition of "customer." Moreover, the final rule excludes from the definition of "customer" the following readily-identifiable entities: A financial institution regulated by a Federal functional regulator; a bank regulated by a state bank regulator; and governmental agencies and instrumentalities and companies that are publicly traded (*i.e.*, entities described in § 103.22(d)(2)(ii)–(iv)). The final rule also excludes existing customers of the bank, provided that the bank has a reasonable belief that it knows the true identity of the person.[42]

Second, recordkeeping burden was further reduced by:

- Eliminating the requirement that a bank keep copies of any document that it relied upon in order to verify the identity of the customer and substituting a requirement that a bank's records need only include "a description" of any document that it relied upon in order to verify the identity of the customer. The final rule also clarifies that the records need only include "a description" of the methods and results of any measure undertaken to verify the identity of the customer, and of the resolution of any substantive discrepancy discovered when verifying the identifying information obtained, rather than any documents generated in connection with these measures; and
- Reducing the length of time that records must be kept. The final rule requires that identifying information be kept for five years after the date the account is closed (or for credit card accounts, five years after the account is closed or becomes dormant). All other records may be kept for five years after the account is opened.

Third, disclosure burden was reduced by providing sample language that, if appropriate and properly provided, will be deemed adequate notice to a bank's customer. Disclosure burden also was reduced by clarifying the term "adequate notice."

Treasury and the Agencies believe that little additional burden is imposed as a result of the recordkeeping requirements outlined in section 103.121(b)(3), because the type of recordkeeping required by the final rule is a usual and customary business practice. In addition, banks already must keep similar records to comply with existing regulations in 31 CFR part 103 (*see, e.g.*, 31 CFR 103.34, requiring certain records for each deposit or share account opened).

Treasury and the Agencies believe that nominal burden is associated with the disclosure requirement outlined in § 103.121(b)(5). This section contains a sample notice that if appropriate and

[41] This definition includes banks, thrifts, and credit unions.

[42] The proposed rule stated that the identity of an existing customer would not need to be verified if the bank (1) had previously verified the customer's identity in accordance with procedures consistent with the proposed rule, and (2) continues to have a reasonable belief that it knows the true identity of the customer.

provided in accordance with the final rule, will be deemed adequate notice. In addition, it continues to permit banks to choose among a variety of low-cost methods of providing adequate notice and to select the least burdensome method, given the circumstances under which customers seek to open new accounts.

Treasury and the Agencies also believe that nominal burden is associated with the new recordkeeping requirement in § 103.121(b)(6). This section permits a bank to rely on another financial institution to perform some or all its CIP under certain conditions, including the condition that the financial institution enter into a contract with the bank providing that it will certify annually to the bank that it (1) has implemented its anti-money laundering program and (2) will perform (or its agent will perform) the specified requirements of the bank's CIP. Not all banks will choose to rely on a third party. For those that do, the minimal burden of retaining the certification described above should allow them to reduce net burden under the rule by such reliance.

Burden Estimates

Treasury and the Agencies have reconsidered the burden estimates published in the proposed rule, given the comments stating that the burdens associated with the paperwork collections were underestimated. Having done so, and considering the reduction in burden taken in this final rule, Treasury and the Agencies have adjusted their estimates of the paperwork burden of this rule. The burden estimates that follow are estimates of the incremental burden imposed upon banks by this final rule, recognizing that some of the requirements in this rule are a usual and customary practice in the banking industry, or duplicate other regulatory requirements.

The potential respondents are national banks and Federal branches and agencies (OCC financial institutions); state member banks and branches and agencies of foreign banks (Board financial institutions); insured state nonmember banks (FDIC financial institutions); savings associations (OTS financial institutions); Federally insured credit unions (NCUA financial institutions); and certain non-Federally regulated credit unions, private banks, and trust companies (FinCEN institutions).

Estimated number of respondents:
OCC: 2207.
Board: 1240.
FDIC: 5,500.
OTS: 962.
NCUA: 9,688.
FinCEN: 2,460.

Estimated average annual recordkeeping burden per respondent: 10 hours.

Estimated average annual disclosure burden per respondent: 1 hour.

Estimated total annual recordkeeping and disclosure burden: 242,627 hours.

Treasury and the Agencies invite comment on the accuracy of the burden estimates and invite suggestions on how to further reduce these burdens. Comments should be sent (preferably by fax (202–395–6974)) to Desk Officer for the Department of the Treasury, Office of Information and Regulatory Affairs, Office of Management and Budget, Paperwork Reduction Project (1506–0026), Washington, DC 20503 (or by the Internet to *jlackeyj@omb.eop.gov*), with a copy to FinCEN by mail or the Internet at the addresses previously specified.

Executive Order 12866

Treasury, the OCC, and OTS have determined that the final rule is not a "significant regulatory action" under Executive Order 12866 for the following reasons.

The rule follows closely the requirements of section 326 of the Act. Moreover, Treasury, the OCC, and OTS believe that national banks and savings associations already have procedures in place that fulfill most of the requirements of the final rule because the procedures are a matter of good business practice. In addition, national banks and savings associations already are required to have BSA compliance programs that address many of the requirements detailed in this final rule.

At the proposed rule stage, Treasury, the OCC, and OTS invited national banks, the thrift industry, and the public to provide any cost estimates and related data that they think would be useful in evaluating the overall costs of the rule. Most of the cost estimates provided by commenters related to the requirements in the proposed rule that banks verify the identity of signatories on accounts, keep copies of documents used to verify a customer's identity, and retain identity verification records for five years after an account is closed. As described in the preamble, the final rule eliminates signatories from the definition of "customer," and no longer requires a bank to keep copies of documents used to verify a customer's identity. The final rule also reduces the universe of records that must be kept for five years after an account is closed. Treasury, the OCC and the OTS have taken other steps that significantly reduce the scope of the rule and the burden of the rule. These burden-reducing measures are described in the Paperwork Reduction Act discussion and Regulatory Flexibility Act discussion, above.[43]

List of Subjects

12 CFR Part 21

Crime, Currency, National banks, Reporting and recordkeeping requirements, Security measures.

12 CFR Part 208

Accounting, Agriculture, Banks, banking, Confidential business information, Crime, Currency, Investments, Mortgages, Reporting and recordkeeping requirements, Securities.

12 CFR Part 211

Exports, Foreign banking, Holding companies, Investments, Reporting and recordkeeping requirements.

12 CFR Part 326

Banks, banking, Currency, Insured nonmember banks, Reporting and recordkeeping requirements, Security measures.

12 CFR Part 563

Accounting, Advertising, Crime, Currency, Investments, Reporting and Recordkeeping requirements, Savings associations, Securities, Surety bonds.

12 CFR Part 748

Credit unions, Crime, and Security measures.

31 CFR Part 103

Administrative practice and procedure, Authority delegations (Government agencies), Banks, banking, Brokers, Currency, Foreign banking, Foreign currencies, Gambling, Investigations, Law enforcement, Penalties, Reporting and recordkeeping requirements, Securities.

Department of the Treasury

31 CFR Chapter I

Authority and Issuance

■ For the reasons set forth in the preamble, part 103 of title 31 of the Code of Federal Regulations is amended as follows:

[43] For these same reasons, and consistent with section 201 of the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4), Treasury, the OTS and the OCC have also determined that this final rule will not result in expenditures by State, local, and tribal governments in the aggregate, or by the private sector of $100 million or more in any one year, and therefore the rule is not subject to the requirements of section 202 of that Act.

PART 103—FINANCIAL RECORDKEEPING AND REPORTING OF CURRENCY AND FOREIGN TRANSACTIONS

■ 1. The authority citation for part 103 is revised to read as follows:

Authority: 12 U.S.C. 1829b and 1951–1959; 31 U.S.C. 5311–5314 and 5316–5332; title III, secs. 312, 313, 314, 319, 326, 352, Pub L. 107–56, 115 Stat. 307.

§ 103.11 [Amended]

■ 2. Section 103.11(j) is amended by removing "paragraph (q)" and adding "paragraph (hh)" in its place.

§ 103.34 [Amended]

■ 3. Section 103.34 is amended as follows:

■ a. By amending the first sentence of paragraph (a)(1) to add the words "and before October 1, 2003" after the words "May 31, 1978" and after the words "June 30, 1972";

■ b. By amending paragraph (b)(11) to add the words "as determined under section 6109 of the Internal Revenue Code of 1986" after the words "taxpayer identification number;" and

■ c. By amending paragraph (b)(12) to add the words "as determined under section 6109 of the Internal Revenue Code of 1986" after the words "taxpayer identification number."

■ 2. Subpart I of part 103 is amended by adding new § 103.121 to read as follows:

§ 103.121 Customer Identification Programs for banks, savings associations, credit unions, and certain non-Federally regulated banks.

(a) *Definitions.* For purposes of this section:

(1)(i) *Account* means a formal banking relationship established to provide or engage in services, dealings, or other financial transactions including a deposit account, a transaction or asset account, a credit account, or other extension of credit. *Account* also includes a relationship established to provide a safety deposit box or other safekeeping services, or cash management, custodian, and trust services.

(ii) *Account* does not include:

(A) A product or service where a formal banking relationship is not established with a person, such as check-cashing, wire transfer, or sale of a check or money order;

(B) An account that the bank acquires through an acquisition, merger, purchase of assets, or assumption of liabilities; or

(C) An account opened for the purpose of participating in an employee benefit plan established under the Employee Retirement Income Security Act of 1974.

(2) *Bank* means:

(i) A bank, as that term is defined in § 103.11(c), that is subject to regulation by a Federal functional regulator; and

(ii) A credit union, private bank, and trust company, as set forth in § 103.11(c), that does not have a Federal functional regulator.

(3)(i) *Customer* means:

(A) A person that opens a new account; and

(B) An individual who opens a new account for:

(*1*) An individual who lacks legal capacity, such as a minor; or

(*2*) An entity that is not a legal person, such as a civic club.

(ii) *Customer* does not include:

(A) A financial institution regulated by a Federal functional regulator or a bank regulated by a state bank regulator;

(B) A person described in § 103.22(d)(2)(ii) through (iv); or

(C) A person that has an existing account with the bank, provided that the bank has a reasonable belief that it knows the true identity of the person.

(4) *Federal functional regulator* is defined at § 103.120(a)(2).

(5) *Financial institution* is defined at 31 U.S.C. 5312(a)(2) and (c)(1).

(6) *Taxpayer identification number* is defined by section 6109 of the Internal Revenue Code of 1986 (26 U.S.C. 6109) and the Internal Revenue Service regulations implementing that section (*e.g.*, social security number or employer identification number).

(7) *U.S. person* means:

(i) A United States citizen; or

(ii) A person other than an individual (such as a corporation, partnership, or trust), that is established or organized under the laws of a State or the United States.

(8) *Non-U.S. person* means a person that is not a *U.S. person.*

(b) *Customer Identification Program: minimum requirements.*

(1) *In general.* A bank must implement a written Customer Identification Program (CIP) appropriate for its size and type of business that, at a minimum, includes each of the requirements of paragraphs (b)(1) through (5) of this section. If a bank is required to have an anti-money laundering compliance program under the regulations implementing 31 U.S.C. 5318(h), 12 U.S.C. 1818(s), or 12 U.S.C. 1786(q)(1), then the CIP must be a part of the anti-money laundering compliance program. Until such time as credit unions, private banks, and trust companies without a Federal functional regulator are subject to such a program, their CIPs must be approved by their boards of directors.

(2) *Identity verification procedures.* The CIP must include risk-based procedures for verifying the identity of each customer to the extent reasonable and practicable. The procedures must enable the bank to form a reasonable belief that it knows the true identity of each customer. These procedures must be based on the bank's assessment of the relevant risks, including those presented by the various types of accounts maintained by the bank, the various methods of opening accounts provided by the bank, the various types of identifying information available, and the bank's size, location, and customer base. At a minimum, these procedures must contain the elements described in this paragraph (b)(2).

(i) *Customer information required.* (A) *In general.* The CIP must contain procedures for opening an account that specify the identifying information that will be obtained from each customer. Except as permitted by paragraphs (b)(2)(i)(B) and (C) of this section, the bank must obtain, at a minimum, the following information from the customer prior to opening an account:

(*1*) Name;

(*2*) Date of birth, for an individual;

(*3*) Address, which shall be:

(*i*) For an individual, a residential or business street address;

(*ii*) For an individual who does not have a residential or business street address, an Army Post Office (APO) or Fleet Post Office (FPO) box number, or the residential or business street address of next of kin or of another contact individual; or

(*iii*) For a person other than an individual (such as a corporation, partnership, or trust), a principal place of business, local office, or other physical location; and

(*4*) Identification number, which shall be:

(*i*) For a U.S. person, a taxpayer identification number; or

(*ii*) For a non-U.S. person, one or more of the following: a taxpayer identification number; passport number and country of issuance; alien identification card number; or number and country of issuance of any other government-issued document evidencing nationality or residence and bearing a photograph or similar safeguard.

Note to paragraph (b)(2)(i)(A)(*4*)(*ii*): When opening an account for a foreign business or enterprise that does not have an identification number, the bank must request alternative government-issued documentation certifying the existence of the business or enterprise.

(B) *Exception for persons applying for a taxpayer identification number.*

Instead of obtaining a taxpayer identification number from a customer prior to opening the account, the CIP may include procedures for opening an account for a customer that has applied for, but has not received, a taxpayer identification number. In this case, the CIP must include procedures to confirm that the application was filed before the customer opens the account and to obtain the taxpayer identification number within a reasonable period of time after the account is opened.

(C) *Credit card accounts.* In connection with a customer who opens a credit card account, a bank may obtain the identifying information about a customer required under paragraph (b)(2)(i)(A) by acquiring it from a third-party source prior to extending credit to the customer.

(ii) *Customer verification.* The CIP must contain procedures for verifying the identity of the customer, using information obtained in accordance with paragraph (b)(2)(i) of this section, within a reasonable time after the account is opened. The procedures must describe when the bank will use documents, non-documentary methods, or a combination of both methods as described in this paragraph (b)(2)(ii).

(A) *Verification through documents.* For a bank relying on documents, the CIP must contain procedures that set forth the documents that the bank will use. These documents may include:

(*1*) For an individual, unexpired government-issued identification evidencing nationality or residence and bearing a photograph or similar safeguard, such as a driver's license or passport; and

(*2*) For a person other than an individual (such as a corporation, partnership, or trust), documents showing the existence of the entity, such as certified articles of incorporation, a government-issued business license, a partnership agreement, or trust instrument.

(B) *Verification through non-documentary methods.* For a bank relying on non-documentary methods, the CIP must contain procedures that describe the non-documentary methods the bank will use.

(*1*) These methods may include contacting a customer; independently verifying the customer's identity through the comparison of information provided by the customer with information obtained from a consumer reporting agency, public database, or other source; checking references with other financial institutions; and obtaining a financial statement.

(*2*) The bank's non-documentary procedures must address situations where an individual is unable to present an unexpired government-issued identification document that bears a photograph or similar safeguard; the bank is not familiar with the documents presented; the account is opened without obtaining documents; the customer opens the account without appearing in person at the bank; and where the bank is otherwise presented with circumstances that increase the risk that the bank will be unable to verify the true identity of a customer through documents.

(C) *Additional verification for certain customers.* The CIP must address situations where, based on the bank's risk assessment of a new account opened by a customer that is not an individual, the bank will obtain information about individuals with authority or control over such account, including signatories, in order to verify the customer's identity. This verification method applies only when the bank cannot verify the customer's true identity using the verification methods described in paragraphs (b)(2)(ii)(A) and (B) of this section.

(iii) *Lack of verification.* The CIP must include procedures for responding to circumstances in which the bank cannot form a reasonable belief that it knows the true identity of a customer. These procedures should describe:

(A) When the bank should not open an account;

(B) The terms under which a customer may use an account while the bank attempts to verify the customer's identity;

(C) When the bank should close an account, after attempts to verify a customer's identity have failed; and

(D) When the bank should file a Suspicious Activity Report in accordance with applicable law and regulation.

(3) *Recordkeeping.* The CIP must include procedures for making and maintaining a record of all information obtained under the procedures implementing paragraph (b) of this section.

(i) *Required records.* At a minimum, the record must include:

(A) All identifying information about a customer obtained under paragraph (b)(2)(i) of this section;

(B) A description of any document that was relied on under paragraph (b)(2)(ii)(A) of this section noting the type of document, any identification number contained in the document, the place of issuance and, if any, the date of issuance and expiration date;

(C) A description of the methods and the results of any measures undertaken to verify the identity of the customer under paragraph (b)(2)(ii)(B) or (C) of this section; and

(D) A description of the resolution of any substantive discrepancy discovered when verifying the identifying information obtained.

(ii) *Retention of records.* The bank must retain the information in paragraph (b)(3)(i)(A) of this section for five years after the date the account is closed or, in the case of credit card accounts, five years after the account is closed or becomes dormant. The bank must retain the information in paragraphs (b)(3)(i)(B), (C), and (D) of this section for five years after the record is made.

(4) *Comparison with government lists.* The CIP must include procedures for determining whether the customer appears on any list of known or suspected terrorists or terrorist organizations issued by any Federal government agency and designated as such by Treasury in consultation with the Federal functional regulators. The procedures must require the bank to make such a determination within a reasonable period of time after the account is opened, or earlier, if required by another Federal law or regulation or Federal directive issued in connection with the applicable list. The procedures must also require the bank to follow all Federal directives issued in connection with such lists.

(5)(i) *Customer notice.* The CIP must include procedures for providing bank customers with adequate notice that the bank is requesting information to verify their identities.

(ii) *Adequate notice.* Notice is adequate if the bank generally describes the identification requirements of this section and provides the notice in a manner reasonably designed to ensure that a customer is able to view the notice, or is otherwise given notice, before opening an account. For example, depending upon the manner in which the account is opened, a bank may post a notice in the lobby or on its website, include the notice on its account applications, or use any other form of written or oral notice.

(iii) *Sample notice.* If appropriate, a bank may use the following sample language to provide notice to its customers:

IMPORTANT INFORMATION ABOUT PROCEDURES FOR OPENING A NEW ACCOUNT

To help the government fight the funding of terrorism and money laundering activities, Federal law requires all financial institutions to obtain, verify, and record information that identifies each person who opens an account.

What this means for you: When you open an account, we will ask for your name, address, date of birth, and other information that will allow us to identify you. We may also ask to see your driver's license or other identifying documents.

(6) *Reliance on another financial institution.* The CIP may include procedures specifying when a bank will rely on the performance by another financial institution (including an affiliate) of any procedures of the bank's CIP, with respect to any customer of the bank that is opening, or has opened, an account or has established a similar formal banking or business relationship with the other financial institution to provide or engage in services, dealings, or other financial transactions, provided that:

(i) Such reliance is reasonable under the circumstances;

(ii) The other financial institution is subject to a rule implementing 31 U.S.C. 5318(h) and is regulated by a Federal functional regulator; and

(iii) The other financial institution enters into a contract requiring it to certify annually to the bank that it has implemented its anti-money laundering program, and that it will perform (or its agent will perform) the specified requirements of the bank's CIP.

(c) *Exemptions.* The appropriate Federal functional regulator, with the concurrence of the Secretary, may, by order or regulation, exempt any bank or type of account from the requirements of this section. The Federal functional regulator and the Secretary shall consider whether the exemption is consistent with the purposes of the Bank Secrecy Act and with safe and sound banking, and may consider other appropriate factors. The Secretary will make these determinations for any bank or type of account that is not subject to the authority of a Federal functional regulator.

(d) *Other requirements unaffected.* Nothing in this section relieves a bank of its obligation to comply with any other provision in this part, including provisions concerning information that must be obtained, verified, or maintained in connection with any account or transaction.

Dated: April 28, 2003.

James F. Sloan,

Director, Financial Crimes Enforcement Network.

Dated: April 17, 2003.

In concurrence:

John D. Hawke, Jr.,

Comptroller of the Currency.

In concurrence:

By order of the Board of Governors of the Federal Reserve System, April 21, 2003.

Jennifer J. Johnson,

Secretary of the Board.

In concurrence:

By order of the Board of Directors of the Federal Deposit Insurance Corporation this 16th day of April, 2003.

Valerie J. Best,

Assistant Executive Secretary.

In concurrence:

Dated: April 9, 2003.

James E. Gilleran,

Director, Office of Thrift Supervision.

In concurrence:

Dated: April 7, 2003.

Becky Baker,

Secretary of the Board, National Credit Union Administration.

Office of the Comptroller of the Currency

12 CFR Chapter I

Authority and Issuance

■ For the reasons set out in the preamble, the OCC amends chapter I of title 12 of the Code of Federal Regulations as set forth below:

PART 21—MINIMUM SECURITY DEVICES AND PROCEDURES, REPORTS OF SUSPICIOUS ACTIVITIES, AND BANK SECRECY ACT COMPLIANCE PROGRAM

Subpart C—Procedures for Monitoring Bank Secrecy Act Compliance

■ 1. The authority citation for part 21, subpart C, continues to read as follows:

Authority: 12 U.S.C. 93a, 1818, 1881–1884 and 3401–3422; 31 U.S.C. 5318.

■ 2. In § 21.21:

■ A. Revise the section heading; and

■ B. Revise § 21.21(b) to read as follows:

§ 21.21 Procedures for monitoring Bank Secrecy Act (BSA) compliance.

* * * * *

(b) *Establishment of a BSA compliance program.* (1) *Program requirement.* Each bank shall develop and provide for the continued administration of a program reasonably designed to assure and monitor compliance with the recordkeeping and reporting requirements set forth in subchapter II of chapter 53 of title 31, United States Code and the implementing regulations issued by the Department of the Treasury at 31 CFR part 103. The compliance program must be written, approved by the bank's board of directors, and reflected in the minutes of the bank.

(2) *Customer identification program.* Each bank is subject to the requirements of 31 U.S.C. 5318(l) and the implementing regulation jointly promulgated by the OCC and the Department of the Treasury at 31 CFR 103.121, which require a customer identification program to be implemented as part of the BSA compliance program required under this section.

* * * * *

Dated: April 17, 2003.

John D. Hawke, Jr.,

Comptroller of the Currency.

Federal Reserve System

12 CFR Chapter II

Authority and Issuance

■ For the reasons set out in the preamble, the Board of Governors of the Federal Reserve System amends 12 CFR Chapter II as follows:

PART 208—MEMBERSHIP OF STATE BANKING INSTITUTIONS IN THE FEDERAL RESERVE SYSTEM (REGULATION H)

■ 1. The authority citation for part 208 continues to read as follows:

Authority: 12 U.S.C. 24, 24a, 36, 92a, 93a, 248(a), 248(c), 321–338a, 371d, 461, 481–486, 601, 611, 1814, 1816, 1818, 1820(d)(9), 1823(j), 1828(o), 1831, 1831o, 1831p–1, 1831r–1, 1831w, 1831x, 1835a, 1843(l), 1882, 2901–2907, 3105, 3310, 3331–3351, and 3906–3909; 15 U.S.C. 78b, 78l(b), 78l(g), 78l(i), 78o–4(c)(5), 78q, 78q–1, and 78w; 31 U.S.C. 5318; 42 U.S.C. 4012a, 4104a, 4104b, 4106, and 4128.

■ 2. Revise § 208.63(b) to read as follows:

§ 208.63 Procedures for monitoring Bank Secrecy Act compliance.

* * * * *

(b) *Establishment of BSA compliance program.* (1) *Program requirement.* Each bank shall develop and provide for the continued administration of a program reasonably designed to ensure and monitor compliance with the recordkeeping and reporting requirements set forth in subchapter II of chapter 53 of title 31, United States Code, the Bank Secrecy Act, and the implementing regulations promulgated thereunder by the Department of the Treasury at 31 CFR part 103. The compliance program shall be reduced to writing, approved by the board of directors, and noted in the minutes.

(2) *Customer identification program.* Each bank is subject to the requirements of 31 U.S.C. 5318(l) and the implementing regulation jointly promulgated by the Board and the Department of the Treasury at 31 CFR 103.121, which require a customer identification program to be

implemented as part of the BSA compliance program required under this section.

* * * * *

PART 211—INTERNATIONAL BANKING OPERATIONS (REGULATION K)

■ 1. The authority citation for part 211 is revised to read as follows:

Authority: 12 U.S.C. 221 *et seq.*, 1818, 1835a, 1841 *et seq.*, 3101 *et seq.*, and 3901 *et seq.*; 15 U.S.C. 6801 and 6805; 31 U.S.C. 5318.

■ 2. In § 211.5, add new paragraph (m) to read as follows:

§ 211.5 Edge and agreement corporations.

* * * * *

(m) *Procedures for monitoring Bank Secrecy Act compliance.*

(1) [Reserved]

(2) *Customer identification program.* Each Edge or agreement corporation is subject to the requirements of 31 U.S.C. 5318(l) and the implementing regulation jointly promulgated by the Board and the Department of the Treasury at 31 CFR 103.121, which require a customer identification program.

■ 3. In § 211.24, add new paragraph (j) to read as follows:

§ 211.24 Approval of offices of foreign banks; procedures for applications; standards for approval; representative office activities and standards for approval; preservation of existing authority.

* * * * *

(j) *Procedures for monitoring Bank Secrecy Act compliance.*

(1) [Reserved]

(2) *Customer identification program.* Except for a federal branch or a federal agency or a state branch that is insured by the FDIC, a branch, agency, or representative office of a foreign bank operating in the United States is subject to the requirements of 31 U.S.C. 5318(l) and the implementing regulation jointly promulgated by the Board and the Department of the Treasury at 31 CFR 103.121, which require a customer identification program.

By order of the Board of Governors of the Federal Reserve System, April 21, 2003.

Jennifer J. Johnson,

Secretary of the Board.

Federal Deposit Insurance Corporation

12 CFR Chapter III

Authority and Issuance

■ For the reasons set out in the preamble, the FDIC amends title 12, chapter III of the Code of Federal Regulations, as set forth below:

PART 326—Minimum Security Devices and Procedures and Bank Secrecy Act Compliance

■ 1. The authority citation for part 326 is revised to read as follows:

Authority: 12 U.S.C. 1813, 1815, 1817, 1818, 1819 (Tenth), 1881–1883; 31 U.S.C. 5311–5314 and 5316–5332.2.

■ 2. Revise § 326.8(b) to read as follows:

§ 326.8 Bank Secrecy Act compliance.

* * * * *

(b) *Compliance procedures.* (1) *Program requirement.* Each bank shall develop and provide for the continued administration of a program reasonably designed to assure and monitor compliance with recordkeeping and reporting requirements set forth in subchapter II of chapter 53 of title 31, United States Code and the implementing regulations issued by the Department of the Treasury at 31 CFR part 103. The compliance program shall be written, approved by the bank's board of directors, and noted in the minutes.

(2) *Customer identification program.* Each bank is subject to the requirements of 31 U.S.C. 5318(l) and the implementing regulation jointly promulgated by the FDIC and the Department of the Treasury at 31 CFR 103.121, which require a customer identification program to be implemented as part of the Bank Secrecy Act compliance program required under this section.

* * * * *

By order of the Board of Directors of the Federal Deposit Insurance Corporation this 16th day of April, 2003.

Valerie J. Best,

Assistant Executive Secretary.

Office of Thrift Supervision

12 CFR Chapter V

Authority and Issuance

■ For the reasons set out in the preamble, OTS amends title 12, chapter V of the Code of Federal Regulations, as set forth below:

PART 563—SAVINGS ASSOCIATIONS—OPERATIONS

■ 1. The authority citation for part 563 is revised to read as follows:

Authority: 12 U.S.C. 375b, 1462, 1462a, 1463, 1464, 1467a, 1468, 1817, 1820, 1828, 1831o, 3806; 31 U.S.C. 5318; 42 U.S.C. 4106.

■ 2. In § 563.177:

■ A. Revise the section heading; and

■ B. Revise paragraph (b) to read as follows:

§ 563.177 Procedures for monitoring Bank Secrecy Act (BSA) compliance.

* * * * *

(b) *Establishment of a BSA compliance program.* (1) *Program requirement.* Each savings association shall develop and provide for the continued administration of a program reasonably designed to assure and monitor compliance with the recordkeeping and reporting requirements set forth in subchapter II of chapter 53 of title 31, United States Code and the implementing regulations issued by the Department of the Treasury at 31 CFR part 103. The compliance program must be written, approved by the savings association's board of directors, and reflected in the minutes of the savings association.

(2) *Customer identification program.* Each savings association is subject to the requirements of 31 U.S.C. 5318(l) and the implementing regulation jointly promulgated by the OTS and the Department of the Treasury at 31 CFR 103.121, which require a customer identification program to be implemented as part of the BSA compliance program required under this section.

* * * * *

Dated: April 9, 2003.

James E. Gilleran,

Director, Office of Thrift Supervision.

National Credit Union Administration

12 CFR Chapter VII

Authority and Issuance

■ For the reasons set out in the preamble, NCUA amends title 12, chapter VII of the Code of Federal Regulations, as set forth below:

PART 748—SECURITY PROGRAM, REPORT OF CRIME AND CATASTROPHIC ACT AND BANK SECRECY ACT COMPLIANCE

■ 1. The authority citation for part 748 is revised to read as follows:

Authority: 12 U.S.C. 1766(a), 1786(q); 15 U.S.C. 6801 and 6805(b); 31 U.S.C. 5311 and 5318.

■ 2. In § 748.2:

■ A. Revise the section heading; and

■ B. Revise paragraph (b) to read as follows:

§ 748.2 Procedures for monitoring Bank Secrecy Act (BSA) compliance.

* * * * *

(b) *Establishment of a BSA compliance program.* (1) *Program requirement.* Each federally-insured credit union shall develop and provide for the continued administration of a program reasonably designed to assure and monitor compliance with the recordkeeping and recording requirements set forth in subchapter II of chapter 53 of title 31, United States Code and the implementing regulations issued by the Department of the Treasury at 31 CFR part 103. The compliance program must be written, approved by the credit union's board of directors, and reflected in the minutes of the credit union.

(2) *Customer identification program.* Each federally-insured credit union is subject to the requirements of 31 U.S.C. 5318(l) and the implementing regulation jointly promulgated by the NCUA and the Department of the Treasury at 31 CFR 103.121, which require a customer identification program to be implemented as part of the BSA compliance program required under this section.

* * * * *

Dated: April 7, 2003.

Becky Baker,

Secretary of the Board, National Credit Union Administration.

[FR Doc. 03–11019 Filed 5–8–03; 8:45 am]

BILLING CODE 4810–02–P; 6720–01–P; 6210–01–P; 7537–01–P; 4810–33–P; 6714–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–47752, File No. S7–25–02]

DEPARTMENT OF THE TREASURY

31 CFR Part 103

RIN 1506–AA32

Customer Identification Programs for Broker-Dealers

AGENCIES: Financial Crimes Enforcement Network, Treasury; Securities and Exchange Commission.

ACTION: Joint final rule.

SUMMARY: The Department of the Treasury, through the Financial Crimes Enforcement Network (FinCEN), and the Securities and Exchange Commission are jointly adopting a final rule to implement section 326 of the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001. Section 326 requires the Secretary of the Treasury to jointly prescribe with the Securities and Exchange Commission a regulation that, at a minimum, requires brokers or dealers to implement reasonable procedures to verify the identity of any person seeking to open an account, to the extent reasonable and practicable; to maintain records of the information used to verify the person's identity; and to determine whether the person appears on any lists of known or suspected terrorists or terrorist organizations provided to brokers or dealers by any government agency. This final regulation applies to brokers or dealers in securities except for brokers or dealers that register with the Securities and Exchange Commission solely because they effect transactions in securities futures products.

DATES: *Effective Date:* This rule is effective June 9, 2003.

Compliance Date: Brokers or dealers subject to this final regulation must comply with it by October 1, 2003.

FOR FURTHER INFORMATION CONTACT: *Securities and Exchange Commission:* Division of Market Regulation, (202) 942–0177 or *marketreg@sec.gov*.

Treasury: Office of the Chief Counsel (FinCEN), (703) 905–3590; Office of the General Counsel (Treasury), (202) 622–1927; or the Office of the Assistant General Counsel for Banking & Finance (Treasury), (202) 622–0480.

SUPPLEMENTARY INFORMATION:

I. Background

A. Section 326 of the USA PATRIOT Act

On October 26, 2001, President Bush signed into law the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001 (USA PATRIOT Act or Act).[1] Title III of the Act, captioned "International Money Laundering Abatement and Anti-terrorist Financing Act of 2001," adds several new provisions to the Bank Secrecy Act (BSA).[2] These provisions are intended to facilitate the prevention, detection, and prosecution of international money laundering and the financing of terrorism. Section 326 of the Act adds a new subsection (l) to 31 U.S.C. 5318 of the BSA that requires the Secretary of the Treasury (Secretary or Treasury) to prescribe regulations "setting forth the minimum standards for financial institutions and their customers regarding the identity of the customer that shall apply in connection with the opening of an account at a financial institution."

Section 326 applies to all "financial institutions." This term is defined broadly in the BSA to encompass a variety of entities, including commercial banks, agencies and branches of foreign banks in the United States, thrifts, credit unions, private banks, trust companies, brokers and dealers in securities, investment companies, futures commission merchants, insurance companies, travel agents, pawnbrokers, dealers in precious metals, check-cashers, casinos, and telegraph companies, among many others.[3]

The regulations implementing section 326 must require, at a minimum, financial institutions to implement reasonable customer identification procedures for (1) verifying the identity of any person seeking to open an account, to the extent reasonable and practicable; (2) maintaining records of the information used to verify the person's identity, including name, address, and other identifying information; and (3) determining whether the person appears on any lists of known or suspected terrorists or terrorist organizations provided to the financial institution by any government agency. In prescribing these regulations, the Secretary is directed to take into consideration the types of accounts maintained by different types of financial institutions, the various methods of opening accounts, and the types of identifying information that are available.

B. Overview of Comments Received

On July 23, 2002, Treasury and the SEC jointly proposed a rule to implement section 326 with respect to brokers or dealers in securities (broker-dealers).[4] We received 20 comments in

[1] Pub. L. 107–56.

[2] 31 U.S.C. 5311 *et seq.*

[3] *See* 31 U.S.C. 5312(a)(2), 5312(c)(1)(A). For any financial institution engaged in financial activities described in section 4(k) of the Bank Holding Company Act of 1956, the Secretary is required to prescribe the regulations issued under section 326 jointly with the Office of the Comptroller of the Currency, the Board of Governors of the Federal Reserve System, the Federal Deposit Insurance Corporation, the Office of Thrift Supervision, and the National Credit Union Administration (collectively, the "banking agencies"), the Securities and Exchange Commission (Commission or SEC), and the Commodity Futures Trading Commission (CFTC).

[4] Customer Identification Programs for Broker-Dealers, Securities Exchange Act of 1934 Release No. 46192 (July 12, 2002), 67 FR 48306 (July 23, 2002) (Notice of Proposed Rulemaking or NPRM). Treasury simultaneously published (1) jointly with the banking agencies, a proposed rule applicable to banks (as defined in 31 CFR 103.11(c)) and foreign branches of insured banks; (2) a proposed rule applicable to credit unions, private banks and trust companies that do not have a federal functional regulator; (3) jointly with the SEC, a proposed rule applicable to mutual funds; and (4) jointly with the CFTC, a proposed rule applicable to futures commission merchants and introducing brokers. Customer Identification Programs for Banks, Savings Associations, and Credit Unions, 67 FR 48290 (July 23, 2002); Customer Identification Programs for Certain Banks (Credit Unions, Private Banks and Trust Companies) That Do Not Have a Federal Functional Regulator, 67 FR 48299 (July 23, 2002); Customer Identification Programs for Mutual Funds, IC–25657 (July 12, 2002), 67 FR 48318 (July 23, 2002); Customer Identification Programs for

Continued

response to the proposal.[5] Commenters included broker-dealers, financial services holding companies and trade associations. Commenters generally supported the proposal but suggested revisions.

Fifteen commenters addressed the proposed rule's definition of "customer." The inclusion in the definition of persons with authority over an account caused the greatest number of comments. The commenters provided several reasons why verifying this class of persons would be difficult. Many suggested using a risk-based approach. Commenters also suggested that the definition not include public companies, government agencies, investment advisors, investment advisor sub-account holders, beneficiaries of retirement accounts, or persons whose account relationship with the broker-dealer was limited to delivery-versus-payment transactions.

Twelve commenters addressed the proposed rule's recordkeeping requirements. The primary concern noted was the requirement to retain copies of documents used to verify the identities of customers. This was stated to be a substantial recordkeeping burden. Commenters suggested, as an alternative, requiring a record of the type of document used. Some commenters also were concerned about the requirement that these records be maintained until five years after the account is closed. They suggested shorter retention periods.

Twelve commenters addressed the effective date of the proposed rule. They suggested varying implementation periods ranging from 90 days to two years.

Nine commenters addressed the verification requirement in the proposed rule. Several commenters suggested that existing customers or long-time acquaintances need not be verified. Others suggested additional verification methods such as using legal opinions and annual reports. Two commenters requested clarification that broker-dealers would not be responsible for verifying the validity of verification documents. One commenter requested clarification that customers could be verified using both documentary and non-documentary methods.

Seven commenters addressed the proposed rule's definition of "account." Some requested that the definition only apply to accounts established to provide ongoing services. Others suggested that the definition should not include the sale of mutual funds or variable life products on a subscription way basis or dealer-to-dealer delivery-versus-payment transactions.

Seven commenters addressed the proposed rule's customer notice requirement. Three commenters suggested that the rule set forth model notice language. Two commenters suggested that the rule permit notice to be given within a reasonable time after the account is opened.

Six commenters addressed the provision in the proposed rule permitting reliance between clearing and introducing broker-dealers. Generally, most of the commenters suggested the provision be expanded to allow for reliance between an executing dealer and prime broker and between a broker-dealer and its affiliates and other types of financial institutions such as banks, investment advisers and commodities firms.

Three commenters addressed the requirement to collect minimum types of identifying information. One suggested that the rule not require a residential address since some persons may not have such an address. One suggested that the rule allow accounts to be opened even if all the required identifying information is not obtained, provided the broker-dealer has a reasonable belief that it knows the true identity of the customer. One suggested that the requirement be risk-based.

Three commenters addressed the requirement to check customers against terrorist lists. One suggested that FinCEN act as a clearinghouse for such lists. One suggested that the rule identify the lists that must be checked and specify which agencies can provide them. One suggested permitting the lists to be checked within a reasonable time after an account is opened and that the lists be provided in a single electronic format.

One commenter addressed the proposed rule's definitions of "U.S. person" and "Non-U.S. person." The commenter suggested that the rule use the definitions on certain Internal Revenue Service forms.

One commenter expressed concern as to whether the Fair Credit Reporting Act (FCRA) would apply to verification database searches. It requested an exemption from the FCRA for such searches.

We have modified the proposed rule in light of many of these comments and comments made with respect to the customer identification and verification rules being adopted for other financial institutions. The section-by-section analysis that follows discusses the comments and the modifications that we have made to the rule.

C. Codification of the Joint Final Rule

The final rule is being issued jointly by Treasury, through FinCEN, and the SEC. It applies to any person that is registered or required to be registered with the Commission as a broker or dealer under the Securities Exchange Act of 1934 (Exchange Act),[6] except persons who register solely for the purpose of effecting transactions in securities futures products.[7] The substantive requirements of this joint final rule will be codified as part of Treasury's BSA regulations located in 31 CFR Part 103.[8] SEC Rule 17a–8 [9] requires broker-dealers to comply with all reporting, recordkeeping and record retention requirements under the BSA. The final rule being adopted today falls directly within the scope of Rule 17a–8, and will be examined for, and enforced, by the Commission and appropriate self-regulatory organizations.

Final rules governing the applicability of section 326 to certain other financial institutions, including banks, thrifts, credit unions, mutual funds and futures commission merchants, are being issued separately. Treasury, the SEC, the CFTC and the banking agencies consulted extensively in the development of all joint rules implementing section 326 of the Act. These participating agencies intend the effect of the final rules to be uniform throughout the financial services industry. Treasury intends to issue separate rules under section 326 for certain non-bank financial institutions that are not regulated by one of the Federal Functional regulators.

D. Compliance Date

Many commenters requested that broker-dealers be given adequate time to develop and implement the requirements of any final rule implementing section 326. The transition periods suggested by commenters ranged from 90 days to two years after the publication of a final rule.

The final rule modifies various aspects of the proposed rule and eliminates some of the requirements that commenters identified as being most burdensome. Nonetheless, we recognize that some broker-dealers will need time to develop and implement the customer identification program (CIP) required under the rule, as doing so may include various measures, such as training staff, reprinting forms, and programming automated systems. Accordingly, although this rule will be effective 30 days after publication, broker-dealers will have a transition period to implement the rule. Broker-dealers must fully implement their CIPs under the final rule by October 1, 2003.[10]

II. The Joint Final Rule

A. Section-by-Section Analysis

Section 103.122(a) Definitions

Section 103.122(a)(1) Account. We proposed to define "account" as any formal business relationship with a broker-dealer established to effect financial transactions in securities, including, but not limited to, the purchase or sale of securities, securities loan and borrowed activity or the holding of securities or other assets for safekeeping or as collateral.[11]

Four commenters suggested that the definition of "account" incorporate the concept of ongoing relationships to make it consistent with the rules proposed by the banking agencies. The bank rules limited the definition of "account" to "ongoing transactions" to specifically address situations where a person obtains certain services or products from a bank such as cashing or buying a check or purchasing a wire transfer or money order. In the final rules being issued by Treasury and the banking agencies, the definition of account no longer contains the term "ongoing." Instead, the definition of "account" now specifically excludes these types of products or services or any others where a "formal banking relationship" is not established with the person.[12] They are being excluded because, standing alone, they do not establish a formal banking relationship. Moreover, they generally are covered by other provisions of the BSA.[13] Except in conjunction with an established securities account, broker-dealers do not offer products or services similar to those excluded in the bank rules. Thus, we did not include the term "ongoing" in the definition of account or adopt the specific exclusion included in the bank rule.[14]

Two commenters requested clarification as to whether the sale of mutual fund shares or variable life annuities on a subscription way basis constituted an account relationship, given that the broker-dealer's role in the transactions could be considered limited. We believe these transactions can give rise to an account relationship and, therefore, have not excluded them specifically from the definition of account. However, changes we made to the reliance and recordkeeping sections of the rule address many of the concerns raised by these commenters.[15]

We also have removed the word "business" from the definition of account. This change is made to clarify further that the rule applies to relationships established for the purpose of effecting securities transactions as opposed to general business dealings, such as those established in connection with a broker-dealer's own operations or premises.

The definition of "account" in the proposed rule contained a second sentence setting forth examples of the types of accounts that would constitute an "account" for the purposes of the rule.[16] The examples—cash accounts, margin accounts, prime brokerage accounts and accounts established to engage in securities repurchase transactions—were not intended to be an exhaustive list. These types of accounts remain "accounts" for the purposes of the final rule. However, the final rule text no longer specifically cites them as examples in order to make clear that the list was not exhaustive.[17]

The final rule now contains two exclusions from the definition of "account." The first is for certain transferred accounts.[18] The Notice of Proposed Rulemaking stated that transfers of accounts from one broker-dealer to another were outside the definition of "account" for purposes of the proposed rule.[19] The final rule codifies and expands this exception, by excluding from the definition of "account" any account that a broker-dealer acquires through an acquisition, merger, purchase of assets, or assumption of liabilities. Customers do not initiate these transfers and, therefore, the accounts do not fall within the scope of section 326.[20] Transfers may, however, fall within the broader scope of the anti-money laundering program rules required under section 352 of the USA PATRIOT Act.[21] Accordingly, in developing and implementing programs under section 352, broker-dealers should consider situations where it would be appropriate to verify the identity of customers associated with transferred accounts.[22]

The rule also now excludes from the definition of "account" accounts opened for the purpose of participating in an employee benefit plan established pursuant to the Employee Retirement Income Security Act of 1974.[23] Seven commenters recommended that the rule not cover these types of accounts. These accounts are less susceptible to be used for the financing of terrorism and money laundering because, among other reasons, they are funded through payroll deductions in connection with employment plans that must comply with federal regulations. These regulations impose, among other requirements, low contribution limits and strict distribution requirements.

Section 103.122(a)(2) Broker-dealer. We proposed to define "broker-dealer" as any person registered or required to

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Futures Commission Merchants and Introducing Brokers, 67 FR 48328 (July 23, 2002). Treasury, the Commission, the CFTC, and the banking agencies received approximately 500 comments in response to these proposed rules. Many of those commenters raised issues similar to those we received in connection with the proposal respecting broker-dealer customer identification programs.

[5] The comment letters are available for public inspection and copying in the SEC's Public Reference Room, 450 5th Street, NW., Washington, DC (File No. S7–25–02).

[6] 15 U.S.C. 77a *et seq.*

[7] Brokers or dealers that limit their securities business to effecting transactions in securities futures products may register with the Commission pursuant to 15 U.S.C 78o(b)(11). These persons will be subject to the customer identification rule being issued by the CFTC.

[8] The regulation will be codified at 31 CFR 103.122.

[9] 17 CFR 240.17a–8.

[10] The CIP rules issued by the other Federal functional regulators also have an implementation date of October 1, 2003.

[11] The proposed rule text is set forth in the NPRM, 67 FR at 48317.

[12] *See* 31 CFR 103.121(a)(1).

[13] For example, 31 CFR 103.29 requires banks to obtain and verify identifying information of any person who purchases a bank check or draft, cashier's check, money order or traveler's check of $3,000 or more.

[14] *See* final rule, paragraph (a)(1)(i).

[15] The changes—discussed later in the Release—permit broker-dealers to rely on mutual funds to perform the CIP requirements and eliminate the requirement to retain a copy of documents used to verify the identity of a customer.

[16] *See* NPRM, 67 FR at 48317.

[17] *See* final rule, paragraph (a)(1)(i).

[18] *See* final rule, paragraph (a)(1)(ii)(A).

[19] *See* NPRM, Section II.A, 67 FR at 48307.

[20] Transfers of accounts that result from an introducing broker-dealer changing its clearing firm would fall within this exclusion. However, the introducing firm and the new clearing firm would need to meet the requirements in paragraph (b)(6) (such as entering into a contract and providing certifications) to the extent they intend to rely on each other to undertake CIP requirements with respect to customers that open accounts after the transfer.

[21] Section 352 requires brokers and dealers to establish anti-money laundering programs that, at a minimum, include (1) the development of internal policies, procedures, and controls; (2) the designation of a compliance officer; (3) an ongoing employee training program; and (4) an independent audit function to test programs. On April 22, 2002, the Commission approved rule changes submitted by the NASD and the NYSE. Exchange Act Release No. 45798 (April 22, 2002), 67 FR 20854 (April 26, 2002). These rules (NASD Rule 3011 and NYSE Rule 445) set forth minimum requirements for these programs.

[22] For example, it may be appropriate to verify transferred accountholders if the accounts are coming from a broker-dealer that was found to have failed to establish or maintain an adequate CIP.

[23] Final rule, paragraph (a)(1)(ii)(B).

be registered with the Commission, except persons who register solely to effect transactions in securities futures products.[24] There were no comments on this definition and we are adopting it as proposed.[25]

Section 103.122(a)(3) Commission. We proposed to define "Commission" as the United States Securities and Exchange Commission.[26] There were no comments on this definition and we are adopting it as proposed.[27]

Section 103.122(a)(4) Customer. We proposed "customer" to mean any person who opens a new account with a broker-dealer, and any person granted authority to effect transactions in an account.[28] Fifteen commenters expressed concern about the proposed definition. Nine commenters suggested that the definition not include persons with authority over accounts. Some suggested that these persons be excluded from the definition entirely while others proposed using a risk-based approach. Seven commenters suggested that the sponsors of employee benefit plans be considered customers, rather than the beneficiaries. Three commenters suggested that the definition of "customer" exclude beneficiaries of trust and escrow accounts. Three commenters suggested that the definition exclude beneficiaries of omnibus accounts. Two commenters suggested that the definition exclude persons who are allocated portions of delivery-versus-payment securities transactions at the direction of an investment advisor. One commenter suggested that the definition may not capture registered owners of an account if someone else undertook the necessary steps to open the account for the owners. One commenter suggested that the definition exclude banks, government agencies and public companies. We have addressed most of these comments and other issues through revisions to the definition of customer and through changes made to other sections of the rule.

For consistency with the Act, the final rule defines "customer" as "a person that opens a new account."[29] This means the person identified as the accountholder, except in the case of minors and non-legal entities. It does not refer to persons who fill out the account opening paperwork or provide information necessary to set up an account, if such persons are not the accountholder as well. Thus, under this rule, a broker-dealer is not required to look through a trust, or similar account to its beneficiaries, and is required only to verify the identity of the named accountholder.[30] Similarly, with respect to an omnibus account established by an intermediary, a broker-dealer is not required to look through the intermediary to the underlying beneficial owners, if the intermediary is identified as the accountholder.[31]

As mentioned, we received the greatest number of comments for defining persons with authority over an account as "customers." This component of the companion CIP rules proposed for banks, mutual funds and commodities firms also garnered a great deal of comment. Commenters asserted that the proposal in this respect was overbroad and unduly burdensome, and would not further the goals of the statute.[32] Some commenters did acknowledge that a risk-based approach would be appropriate.

After revisiting this component of the "customer" definition, we have determined that requiring limited resources to be expended on verifying the identities of persons with authority over accounts could interfere with a broker-dealer's ability to focus on identifying customers and accounts that present a higher risk of not being properly identified. Accordingly, the final rule does not include persons with authority over accounts in the definition of "customer."[33] Instead, paragraph (b)(2)(ii)(C) of the final rule requires a broker-dealer's CIP to address situations where the broker-dealer will take additional steps to verify the identity of a customer that is not an individual by seeking information about individuals with authority or control over the account in order to verify the customer's identity.

The definition of "customer" has been revised to clarify the treatment of minors and informal groups (non-legal entities) with a common interest (*e.g.*, civic clubs).[34] In the case of a minor or informal group, the "customer" for purposes of the rule is the individual who undertakes to open the account in the name of the minor or the group. Generally, this will be the person who fills out the account opening paperwork and provides the information necessary to set up the account in the name of the minor or group.

In order to make the rule less burdensome, the final rule excludes from the definition of "customer" certain readily identifiable entities, including: (1) Financial institutions regulated by a federal functional regulator; (2) banks regulated by a state bank regulator; and (3) persons described in section 103.22(d)(2)(ii)–(iv) of the BSA regulations. These excluded persons include entities such as governmental agencies and instrumentalities and companies that are publicly traded.[35] The definition of "customer" also excludes a person who has an existing account with the broker-dealer, provided that the broker-dealer has a reasonable belief that it knows the true identity of the person.

Section 103.122(a)(5) Federal functional regulator. We have added a definition of "Federal functional regulator" to the final rule.[36] The term is used in connection with the new provision in the rule allowing broker-dealers to rely on certain other financial institutions.[37] One of the requirements for such reliance is that the other financial institution be regulated by a Federal functional regulator. The final rule uses the definition of "Federal functional regulator" in section 103.120(a)(2) of the BSA regulations, meaning each of the banking agencies, the SEC and the CFTC.

Section 103.122(a)(6) Financial institution. We have added a definition of "financial institution" to the final rule.[38] The term is used in connection with the new provision in the rule allowing broker-dealers to rely on certain other "financial institutions." The definition of "financial institution" cross-references the BSA, 31 U.S.C. 5312(a)(2) and (c)(1). This is a more expansive definition of "financial institution" than that in section 103.11 of the BSA regulations, and includes entities such as commodities firms.

Section 103.122(a)(7) Taxpayer identification number. The proposed rule contained a definition of "taxpayer identification number" because that term is used later in the rule with respect to the types of information broker-dealers must collect from customers.[39] The term was defined by referencing the provisions of section 6109 of the Internal Revenue Code of 1986 and the regulations of the Internal Revenue Service (IRS) promulgated under that act. There were no comments on this approach and, therefore, we have adopted it as proposed.[40]

Section 103.122(a)(8) U.S. Person and § 103.131(a)(9) Non-U.S. Person

The proposed rule defined "U.S. person" as an individual who is a U.S. citizen, or an entity established or organized under the laws of a State or the United States.[41] A "non-U.S. person" was defined as a person who did not satisfy either of these criteria.[42] One commenter suggested that the definitions of "U.S. person" and "non-U.S. person" should comport with the definitions in certain IRS forms.

We believe that the proposed definitions of "U.S. person" and "Non-U.S. person" are better standards for purposes of this final rule than the IRS definitions. Adoption of the IRS definition of "U.S. person" would require broker-dealers to distinguish among various tax and immigration categories in connection with any type of account that is opened. Under the proposed definition, a broker-dealer will not necessarily need to establish whether a potential customer is a U.S. citizen. The broker-dealer will have to ask each customer for a U.S. taxpayer identification number (social security number, employer identification number, or individual taxpayer identification number). If a customer cannot provide one, the broker-dealer may then accept alternative forms of identification. Therefore, the definitions are adopted as proposed.[43]

Section 103.122(b) Customer Identification Program: Minimum Requirements

Section 103.122(b)(1) In General

We proposed to require that each broker-dealer establish, document, and maintain a written CIP as part of its required anti-money laundering (AML) program,[44] and that the procedures of the CIP enable the broker-dealer to form a reasonable belief that it knows the true identity of a customer.[45] The CIP procedures were to be based on the type of identifying information available and on an assessment of relevant risk factors, including the broker-dealer's size; location and methods of opening accounts, the types of accounts maintained for customers and types of transactions executed for customers, and the broker-dealer's reliance on another broker-dealer.[46]

The NPRM discussed these risk factors and explained that, although the rule requires certain minimum identifying information and suitable verification methods, broker-dealers should consider on an ongoing basis whether other information or methods are appropriate, particularly as they become available in the future.[47] Commenters generally supported the approach of the proposed general CIP requirements.

In the final rule, paragraph (b)(1) continues to set forth the general requirement that a broker-dealer must establish, document, and maintain a written CIP as part of its required AML program. It now provides that the CIP should be appropriate for the broker-dealer's size and business and that, at a minimum, it must contain the requirements set forth in paragraphs (b)(1) through (b)(5) (which are discussed below). The final rule was re-organized in order to be structurally consistent with the rules being issued by the banking agencies. Thus, requirements that had been set forth in paragraphs (c), (d), (e), (f), (g) and (h) in the proposed rule are now contained in paragraphs (b)(2) through (b)(5) of the final rule to the extent they have been adopted.[48] The rule's structure was changed in order to avoid causing confusion by having different looking rules and to affirm the intent of Treasury and the Federal functional regulators that all the CIP rules impose the same requirements.

Finally, the reference to risk factors has been moved to paragraph (b)(2) of the final rule, which requires broker-dealers to establish identity verification procedures. This change was made to highlight that the risk factors should be considered specifically when developing identification verification procedures.[49]

Section 103.122(b)(2) Identity Verification Procedures

We proposed to require that a broker-dealer's CIP include procedures for verifying the identity of customers, to the extent reasonable and practicable, using information specified in the rule, and that such verification occur within a reasonable time before or after the customer's account is opened or the customer is granted authority to effect transactions with respect to an account.[50] Commenters supported these general requirements, although several commenters recommended greater use of a risk-based approach.

The final rule continues to strike a balance between flexibility and detailed guidance, and we are adopting the provisions on identity verification procedures substantially as proposed.[51] Under the final rule, a broker-dealer's CIP must include risk-based procedures for verifying the identity of each customer to the extent reasonable and practicable.[52] Such procedures must enable the broker-dealer to form a reasonable belief that it knows the true identity of each customer.[53] The procedures must be based on the broker-dealer's assessment of the relevant risks, including those presented by the

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[24] *See* NPRM, 67 FR at 48317.

[25] *See* final rule, paragraph (a)(2).

[26] *See* NPRM, 67 FR at 48317.

[27] *See* final rule, paragraph (a)(3).

[28] *See* NPRM, 67 FR at 48317.

[29] Final rule, paragraph (a)(4)(i)(A).

[30] However, as discussed below, under paragraph (b)(2)(ii)(C) of the final rule, a broker-dealer, based on its risk-assessment of a new account, may need to take additional steps to verify the identity of a customer that is not an individual, such as obtaining information about persons with control over the account. In addition, the due diligence procedures required under other provisions of the BSA or the securities laws may require broker-dealers to look through to owners of certain types of accounts.

[31] The final rule does not affect any requirements under 17 CFR 240.17a–3(a)(9) to make records with respect to the beneficial owners of certain accounts.

[32] For example, commenters pointed out that corporations and other entities may have a substantial number of individuals authorized to act on their behalf, and that administrative personnel and other individuals acting on the entity's behalf may pose a minimal risk of money laundering, especially when the entity is a publicly traded company. Several commenters emphasized that requiring an individual employee to disclose personal information to all of the employer's financial institutions may be an unwarranted intrusion into the privacy of those individuals, increasing their risk of becoming victims of identity theft.

[33] *See* final rule, paragraph (a)(4).

[34] *See* final rule, paragraph (a)(4)(i)(B).

[35] *See* final rule, paragraph (a)(4)(ii). Section 103.22(d)(2)(iv) exempts publicly traded companies only to the extent of their domestic operations. Accordingly, a broker-dealer's CIP will apply to any foreign offices, affiliates, or subsidiaries of such entities that open new accounts.

[36] Final rule, paragraph (a)(5).

[37] *See* final rule, paragraph (b)(6).

[38] Final rule, paragraph (a)(6).

[39] *See* NPRM, 67 FR at 48317.

[40] *See* final rule, paragraph (a)(7).

[41] The proposed rule contained a definition of "person" that cross-referenced the definition in section 103.11(z) of the BSA regulations. Since the final rule is being codified in 31 CFR Part 103, it will incorporate the definition in section 103.11(z) without the need for a specific citation. Therefore, the citation has been removed from the final rule. The definition of "person" in section 103.11(z) applicable to the final rule is: "an individual, a corporation, a partnership, a trust or estate, a joint stock company, an association, a syndicate, joint venture, or other unincorporated organization or group, an Indian tribe (as that term is defined in the Indian Gaming Regulatory Act), and all entities cognizable as legal personalities."

[42] As described in greater detail below, a broker-dealer is generally required to obtain a U.S. taxpayer identification number from a customer who opens a new account. However, if the customer is a non-U.S. person and does not have such a number, the broker-dealer may obtain an identification number from some other form of government-issued document evidencing nationality or residence and bearing a photograph or similar safeguard.

[43] *See* final rule, paragraphs (a)(6) and (a)(9).

[44] NASD Rule 3011 and NYSE Rule 445 set forth minimum requirements for these programs.

[45] *See* NPRM, 67 FR at 48317.

[46] *Id.*

[47] *See* NPRM, Section II.B, 67 FR at 48307–48308.

[48] Paragraph (b)(6) of the final rule is not specified as a minimum CIP requirement because it contains the provisions permitting broker-dealers to rely on another financial institution. Reliance under this paragraph is optional.

[49] The other requirements of the final rule—such as providing notice to customers, checking government lists, and recordkeeping—are standard requirements that may not vary depending on risk factors.

[50] *See* NPRM, 67 FR at 48317.

[51] *See* final rule, paragraph (b)(2).

[52] *Id.*

[53] *Id.*

various types of accounts maintained by the broker-dealer, the various methods of opening accounts provided by the broker-dealer, the various types of identifying information available and the broker-dealer's size, location and customer base.[54]

Section 103.122(b)(2)(i) Customer Information Required

The proposed rule would have required a broker-dealer's CIP to require the firm to obtain certain identifying information about each customer, including, at a minimum: (1) Name; (2) date of birth, for a natural person; (3) certain addresses; [55] and (4) identification number.[56] The NPRM further stated that in certain circumstances a broker-dealer should obtain additional identifying information, and that the CIP should set forth guidelines regarding those circumstances and the additional information that should be obtained.[57]

Three commenters submitted comments on the required information component of the proposed rule. One commenter pointed out that certain persons may not have permanent residential addresses because they are military personnel living overseas or are living on boats. This commenter suggested the rule only require that a mailing address be obtained. Another commenter suggested that the rule permit broker-dealers to open an account even if all the minimum identifying information is not obtained, provided the broker-dealer has a reasonable belief that it knows the customer's true identity. The final commenter suggested the rule be risk-based with respect to the required minimum information. This commenter also stated that the rule should require a mailing address only.

We are adopting the customer information provisions substantially as proposed with changes to accommodate individuals who may not have physical addresses.[58] We believe the minimum required information is collected by most broker-dealers already, is necessary for the verification process and serves an important law enforcement function. Accordingly, prior to opening an account, a broker-dealer must obtain, at a minimum, a customer's (1) name; (2) date of birth, for an individual; (3) address; and (4) identification number.[59] The address must be (1) for an individual, a residential or business street address, or for an individual who does not have a residential or business street address, an Army Post Office or Fleet Post Office box number, or the residential or business street address of next of kin or another contact individual; or (2) for a person other than an individual, a principal place of business, local office or other physical location.[60]

We are adopting the identification number requirement substantially as proposed.[61] For a customer that is a U.S. person, the identification number is a taxpayer identification number (social security number or employer identification number).[62] For a customer that is not a U.S. person, the identification number is one or more of the following: A taxpayer identification number, passport number and country of issuance, alien identification card number, or number and country of issuance of any other government-issued document evidencing nationality or residence and bearing a photograph or similar safeguard.[63] This provision provides a broker-dealer with some flexibility to choose among a variety of information numbers that it may accept from a non-U.S. person.[64] However, the identifying information the broker-dealer accepts must permit the firm to form a reasonable belief that it knows the true identity of the customer.[65]

The proposed rule included an exception from the requirement to obtain a taxpayer identification number from a customer opening a new account.[66] The exception would have allowed a broker-dealer to open an account for a person that has applied for, but has not yet received, an employer identification number (EIN).[67] We are adopting an expanded version of this exception in the final rule.[68] As proposed, the exception was limited to persons that are not natural persons.[69] On further consideration, we have determined that it is appropriate to expand the exception to include natural persons who have applied for, but have not received, a taxpayer identification number.[70] We also have modified the exception to reduce the recordkeeping burden. The proposed rule would have required the broker-dealer to retain a copy of the customer's application for a taxpayer identification number.[71] The final rule permits the broker-dealer to exercise discretion to determine how to confirm that a person has filed an application.[72]

Section 103.122(b)(2)(ii) Customer Verification

We proposed to require that a broker-dealer's CIP include procedures for verifying the identity of customers, to the extent reasonable and practicable, using the information obtained under the rule.[73] We also proposed to require such verification to occur within a reasonable time before or after the customer's account is opened or the customer is granted authority to effect transactions with respect to an account.[74] The NPRM stated that a broker-dealer need not verify each piece of identifying information if it is able to form a reasonable belief that it knows the customer's identity after verifying only certain of the information.[75] The NPRM also stated that the flexibility to undertake verification within a reasonable time must be exercised in a reasonable manner.[76] It noted that verifications too far in advance may become stale and verifications too long after the fact may provide opportunities to launder money while verification is pending, and that the appropriate amount of time may depend on the type of account opened, whether the customer opens the account in person, and the type of identifying information available.[77]

Five commenters suggested that the rule should not require existing customers to be verified. Two of these commenters also pointed out that a second account is not created when a customer changes a cash account into a margin account. Accordingly, they argued that the changing of a cash account into a margin account should not be considered the opening of a new account. As discussed above, the definition of "customer" in the final rule has been changed to exclude persons who have an existing account at the broker-dealer, provided the broker-dealer has a reasonable belief that it knows the customer's true identity. Accordingly, broker-dealers will not be required to verify the identities of such persons. One commenter also suggested that the rule should not require broker-dealers to verify the identities of personal acquaintances.

The final rule adopts the customer verification requirements substantially as proposed, with modifications that conform this provision of the final rule to the revised definition of "customer," described above. The final rule requires that the CIP contain procedures for verifying the identity of the customer, using the customer information obtained in accordance with paragraph (b)(2)(i), within a reasonable time before or after the account is opened.[78] The final rule does not require the identity of a person granted authority to effect transactions in an account to be verified.

As stated in the NPRM, broker-dealers must reasonably exercise the flexibility to undertake verification before or after an account is opened. The amount of time may depend on various factors, such as the type of account opened, whether the customer opens the account in-person, and the type of identifying information that is available.[79]

The final rule also requires that a broker-dealer's CIP include procedures that describe when the firm will use documents, non-documentary methods, or a combination of both to verify customer identities.[80] Depending on the type of customer and the method of opening an account, it may be more appropriate to use either documentary or non-documentary methods, and in some cases it may be appropriate to use both methods. The CIP should set forth guidelines describing when documents, non-documentary methods, or a combination of both will be used. These guidelines should be based on the broker-dealer's assessment of the relevant risk factors.

Finally, with respect to the comment on personal acquaintances, we believe it would be inappropriate to provide special treatment for such customers. The rule is sufficiently flexible to make their verification as unobtrusive as possible.

Section 103.122(b)(2)(ii)(A) Customer Verification—Through Documents

We proposed to require that a broker-dealer's CIP describe documents that the firm will use to verify customers' identities.[81] Suitable documents for verification would include: (1) For natural persons, unexpired government-issued identification evidencing nationality or residence and bearing a photograph or similar safeguard; and (2) for persons other than natural persons, documents showing the existence of the entity, such as certified articles of incorporation, a government-issued business license, a partnership agreement, or a trust instrument.

Three commenters submitted comments on this aspect of the rule. Two commenters sought clarification that broker-dealers will not be responsible for ensuring the validity of verifying documents. One commenter suggested that certificates of trust and legal opinions should be suitable documents for verification.

The final rule attempts to strike an appropriate balance between the benefits of requiring additional documentary verification and the burdens that may arise from such a requirement. The final rule requires a broker-dealer's CIP to contain procedures that set forth the documents that the firm will use for verification.[82] Each broker-dealer will conduct its own risk-based analysis of the types of documents that it believes will enable it to verify the true identities of customers.

In light of recent increases in identity theft and the availability of fraudulent documents, we believe that the value of documentary verification is enhanced by redundancy. The rule gives examples of types of documents that are considered reliable.[83] However, we encourage broker-dealers to obtain more than one type of documentary verification to ensure that it has a reasonable belief that it knows the customer's true identity. Moreover, we encourage broker-dealers to use a variety of methods to verify the identity of a customer, especially when the broker-dealer does not have the ability to examine original documents.

The final rule continues to include, without significant change, an illustrative list of identification documents.[84] A broker-dealer may use other documents, provided they allow the firm to establish a reasonable belief that it knows the true identity of the customer. In addition to the risk factors described in paragraph (b)(2), the broker-dealer should take into account the problems of authenticating documents and the inherent limitations of documents as a means of identity verification. These limitations will affect the types of documents that will be necessary to establish a reasonable belief that the broker-dealer knows the true identity of the customer, and may require the use of non-documentary methods in addition to documents.

Finally, with respect to the comments on ensuring the validity of documents, once a broker-dealer obtains and verifies the identity of a customer through a document, such as a driver's license or passport, the firm is not required to take steps to determine whether the document has been validly issued. A broker-dealer generally may rely on

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[54] *Id.*

[55] We proposed to require broker-dealers to obtain residence and mailing addresses (if different) for a natural person, or principal place of business and mailing address (if different) for a person other than a natural person. *See* NPRM, 67 FR at 48317.

[56] We proposed to require broker-dealers to obtain: (1) For a customer that is a U.S. person, a taxpayer identification number, or (2) for a customer that is not a U.S. person, a taxpayer identification number, passport number and country of issuance, alien identification card number, or number and country of issuance of any other government-issued document evidencing nationality or residence and bearing a photograph or similar safeguard. *See* NPRM, 67 FR at 48317.

[57] *See* NPRM, Section II.C, 67 FR at 48308–48309.

[58] Final rule, paragraph (b)(2)(i)(A).

[59] Based on an assessment of the relevant risk factors, the broker-dealer's CIP may require a customer to provide additional information to establish the customer's identity.

[60] Final rule, paragraph (b)(2)(i)(A)(*3*).

[61] *See* NPRM, 67 FR at 48317.

[62] Final rule, paragraph (b)(2)(i)(A)(*4*).

[63] *Id.*

[64] The final rule provides this flexibility because there is no uniform identification number that non-U.S. persons would be able to provide to a broker-dealer. *See* Treasury Department, "A Report to Congress in Accordance with Section 326(b) of the USA PATRIOT Act," October 21, 2002.

[65] We emphasize that the rule neither endorses nor prohibits a broker-dealer from accepting information from particular types of identification documents issued by foreign governments. The broker-dealer must determine, based upon appropriate risk factors, including those discussed above, whether the information presented by a customer is reliable. We recognize that a foreign business or enterprise may not have an identification number. Therefore the final rule notes that when opening an account for such a customer, the broker-dealer must request alternative government-issued documentation certifying the existence of the business or enterprise.

[66] *See* NPRM, 67 FR at 48317.

[67] This position is analogous to that in regulations issued by the Internal Revenue Service (IRS) concerning "awaiting-TIN [taxpayer identification number] certificates." The IRS permits a taxpayer to furnish an "awaiting-TIN certificate" in lieu of a taxpayer identification number to exempt the taxpayer from the withholding of taxes owed on reportable payments (*i.e.* interest and dividends) on certain accounts. *See* 26 CFR 31.3406(g)-3.

[68] *See* final rule, paragraph (b)(2)(i)(B).

[69] In the NPRM, we explained that the exception was for new businesses that may need to open a brokerage account before they receive an EIN from the Internal Revenue Service. *See* NPRM, Section II.C, 67 FR at 48309.

[70] Final rule, paragraph (b)(2)(i)(B).

[71] *See* NPRM, 67 FR at 48317.

[72] The broker-dealer's CIP must include procedures to confirm that the application was filed before the person opens the account and to obtain the taxpayer identification number within a reasonable period of time after the account is opened.

[73] *See* NPRM, 67 FR at 48317.

[74] *Id.*

[75] NPRM, Section II.D, 67 FR at 48309.

[76] *Id.*

[77] *Id.*

[78] Final rule, paragraph (b)(2)(ii).

[79] It is possible, however, that a broker-dealer would violate other laws by permitting a customer to transact business prior to verifying the customer's identity. *See, e.g.*, 31 CFR Part 500 (regulations of Treasury's Office of Foreign Asset Control prohibiting transactions involving designated foreign countries or their nationals).

[80] Final rule, paragraph (b)(2)(ii).

[81] *See* NPRM, 67 FR at 48317.

[82] Final rule, paragraph (b)(ii)(A).

[83] *Id.* Other documents, such as the trust certificates and legal opinions suggested by one commenter, also may be appropriate for verification. The list in the rule is meant to be illustrative.

[84] For an individual, these documents may include unexpired government-issued identification evidencing nationality or residence and bearing a photograph or similar safeguard, such as a driver's license or passport. Final rule, paragraph (b)(2)(ii)(A)(*1*). For a person other than an individual, these documents may include documents showing the existence of the entity, such as certified articles of incorporation, a government-issued business license, a partnership agreement, or a trust instrument. Final rule, paragraph (b)(2)(ii)(A)(*2*).

government issued identification as verification of a customer's identity; however, if a document shows obvious indications of fraud, the broker-dealer must consider that factor in determining whether it can form a reasonable belief that it knows the customer's true identity.

Section 103.122(b)(2)(ii)(B) Customer Verification—Through Non-Documentary Methods

We proposed to require a broker-dealer's CIP to describe the non-documentary methods the broker-dealer would use to verify customers' identities and when the firm would use these methods in addition to, or instead of, relying on documents.[85] We explained that the proposed rule allowed the exclusive use of non-documentary methods because some accounts are opened by telephone, mail, or over the Internet.[86] We also noted that, even if the customer presents identification documents, it might be appropriate to use non-documentary methods as well.[87]

The proposed rule provided examples of non-documentary verification methods that a broker-dealer may use, including: Contacting a customer; independently verifying information through credit bureaus, public databases, and other sources; and checking references with other financial institutions. In the NPRM, we observed that broker-dealers may wish to analyze whether there is logical consistency between the identifying information provided, such as the customer's name, street address, ZIP code, telephone number (if provided), date of birth, and social security number.[88]

We proposed to require broker-dealers to use non-documentary methods when: (1) A customer who is a natural person cannot present an unexpired, government-issued identification document that bears a photograph or similar safeguard; (2) the broker-dealer is presented with unfamiliar documents to verify the identity of a customer; or (3) the broker-dealer does not obtain documents to verify the identity of a customer, does not meet face-to-face with a customer who is a natural person, or is otherwise presented with circumstances that increase the risk the broker-dealer will be unable to verify the true identity of a customer through documents.[89] In the NPRM, we explained that we recognize that identification documents may be obtained illegally and may be fraudulent.

In light of the recent increase in identity theft, we encouraged broker-dealers to use non-documentary methods even when the customer has provided identification documents.[90]

One commenter requested that we clarify that account applicants who are not physically present at an account opening may be treated under the broker-dealer's non-documentary verification methods.[91] One commenter sought clarification that a broker-dealer is not prohibited from using both documentary methods in conjunction with non-documentary methods.[92] One commenter suggested that public databases, such as the SEC's EDGAR system, should be considered a suitable source of non-documentary verification. One commenter expressed concern about the applicability of the Fair Credit Reporting Act (FCRA) when using non-documentary methods, such as credit reports.[93]

We recognize that there are many scenarios and combinations of risk factors that broker-dealers may encounter, and we have decided to adopt general principles that are illustrated by examples, in lieu of a lengthy and possibly unwieldy regulation that attempts to address a wide variety of situations with particularity. Under the final rule, a broker-dealer relying on non-documentary verification methods must describe them in its CIP.[94] The final rule includes an illustrative list of methods, similar to the list that was included in the proposed rule. These methods may include: (1) Contacting a customer; (2) independently verifying the customer's identity through the comparison of information provided by the customer with information obtained from a consumer reporting agency, public database,[95] or other source; (3) checking references with other financial institutions; and (4) obtaining a financial statement.[96] We continue to recommend that broker-dealers analyze whether there is logical consistency between the identifying information provided, such as the customer's name, street address, ZIP code, telephone number (if provided), date of birth, and social security number.

The final rule also includes a list, similar to that in the proposed rule, of circumstances that may require the use of non-documentary procedures.[97] Specifically, non-documentary procedures must address circumstances in which: (1) An individual is unable to present an unexpired government-issued identification document that bears a photograph or similar safeguard; (2) the broker-dealer is not familiar with the documents presented; (3) the account is opened without obtaining documents; (4) the customer opens the account without appearing in person; and (5) the circumstances increase the risk that the broker-dealer will be unable to verify the true identity of a customer through documents.[98]

As we stated in the NPRM, because identification documents may be obtained illegally and may be fraudulent, and in light of the recent increase in identity theft, we encourage broker-dealers to use non-documentary methods even when the customer has provided identification documents.

Section 103.122(b)(2)(ii)(C) Customer Verification—Additional Verification for Certain Customers

As described earlier, we originally proposed to require verification of the identity of any person authorized to effect transactions in a customer's account. Most commenters objected to this requirement, and it does not appear in the final rule. For the reasons discussed below, however, the rule does require that a broker-dealer's CIP address the circumstances in which it will obtain information about such individuals in order to verify a customer's identity.[99]

Treasury and the SEC believe that, while broker-dealers may be able to verify the majority of customers adequately through the documentary or non-documentary verification methods described above, there may be circumstances when these methods are inadequate. The risk that the broker-dealer will not know the customer's true identity may be heightened for certain types of accounts, such as an account opened in the name of a corporation, partnership, or trust that is created or conducts substantial business in a jurisdiction that has been designated by the United States as a primary money laundering concern or has been designated as non-cooperative by an international body. We believe that a broker-dealer must identify customers that pose a heightened risk of not being properly identified and that a broker-dealer's CIP must prescribe additional measures that may be used to obtain information about the identity of the individuals associated with the customer when standard documentary or non-documentary methods prove to be insufficient.

The final rule, therefore, includes a new provision on verification procedures. This provision requires that the CIP address circumstances in which, based on the broker-dealer's risk assessment of a new account opened by a customer that is not an individual, the broker-dealer also will obtain information about individuals with authority or control over the account, including persons authorized to effect transactions in the account, in order to verify the customer's true identity.[100] This additional verification method applies only when the broker-dealer cannot adequately verify the customer's true identity using documentary and non-documentary verification methods.[101]

Section 103.122(b)(2)(iii) Lack of Verification

We proposed to require that a broker-dealer's CIP include procedures for responding to circumstances in which the firm cannot form a reasonable belief that it knows the true identity of the customer.[102] We explained in the NPRM that the CIP should specify the actions to be taken, which could include closing the account or placing limitations on additional purchases.[103] We also explained that there should be guidelines for when an account will not be opened (*e.g.*, when the required information is not provided), and that the CIP should address the terms under which a customer may conduct transactions while the customer's identity is being verified.[104]

We did not receive any comments on this aspect of the proposed rule and the final rule adopts the provision substantially as proposed.[105] However, it adds a description of recommended features of these procedures, based on the features described in the NPRM. Thus, the final rule states that the procedures should describe: (1) When the broker-dealer should not open an account; (2) the terms under which a customer may use an account while the broker-dealer attempts to verify the customer's identity; (3) when the broker-dealer should file a Suspicious Activity Report (SAR) in accordance with applicable law; and (4) when the broker-dealer should close an account, after attempts to verify a customer's identity have failed.[106]

Section 103.122(b)(3) Recordkeeping

Section 103.122(b)(3)(i) Required Records

We proposed to require broker-dealer CIPs to include certain recordkeeping procedures.[107] First, the proposed rule would have required that a broker-dealer maintain a record of the identifying information provided by customers. Second, if a broker-dealer relies on a document to verify a customer's identity, the proposed rule would have required the firm to maintain a copy of the document. Third, the proposed rule would have required broker-dealers to record the methods and results of any additional measures undertaken to verify the identity of customers. Finally, the proposed rule would have required broker-dealers to record the resolution of any discrepancy in the identifying information obtained.

Twelve commenters submitted comments on this aspect of the rule. Generally they objected to the requirement to maintain copies of verification documents or reports of non-documentary methods. They argued that this requirement was overly burdensome. Two commenters requested that the language in the proposed rule requiring broker-dealers to make copies that "accurately depict" the documentary records be harmonized with the CIP rules issued by the other Federal functional regulators.

We have reconsidered and modified the recordkeeping requirements of the rule. The final rule provides that a broker-dealer's CIP must include procedures for making and maintaining records related to verifying customers. However, the final rule is significantly more flexible than the proposed rule. Under the final rule, a broker-dealer must still make a record of the identifying information obtained about each customer.[108] However, rather than requiring copies of verification documents, the final rule requires that a broker-dealer's records include a *description* of any document that the broker-dealer relied on to verify the identity of the customer, noting the type of document, any identification number contained in the document, the place of issuance, and the issuance and expiration dates, if any.[109] With respect to non-documentary verification, the final rule now requires the records to include "a description" of the methods and results of any measures undertaken to verify the identity of the customer.[110] The final rule also requires a record of the resolution of any substantive discrepancy discovered when verifying the identifying information obtained.[111]

As we stated in the NPRM, nothing in the rule modifies, limits, or supersedes Section 101 of the Electronic Signatures in Global and National Commerce Act.[112] A broker-dealer may use electronic records to satisfy the requirements of this final rule, in accordance with guidance that the Commission has issued.[113]

Section 103.122(b)(3)(ii) Record Retention

We proposed to require that a broker-dealer retain all required records for five years after the account is closed. Three commenters expressed concern about this aspect of the proposal, recommending that the recordkeeping period be shortened.

We believe that, by eliminating the requirement that a broker-dealer retain copies of documents used to verify customer identities, the final rule addresses many of the commenters' concerns. Nonetheless, while the identifying information provided by customers should be retained as proposed, there is little value in requiring broker-dealers to retain the remaining records for five years after an account is closed, because this information is likely to grow stale. Therefore, the final rule prescribes a

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[85] *See* NPRM, 67 FR at 48317.

[86] *See* NPRM, Section II.D.2, 67 FR at 48310.

[87] *Id.*

[88] *Id.*

[89] *See* NPRM, 67 FR at 48317.

[90] *See* NPRM, Section II.D.2, 67 FR at 48310.

[91] As discussed above, non-documentary methods may be used in any circumstance.

[92] *Id.*

[93] We have determined that there is no statutory basis to shield broker-dealers from FCRA requirements with respect to requirements under the final rule.

[94] Final rule, paragraph (b)(2)(ii)(B).

[95] We do not list the specific types of databases that would be suitable for verification. Thus, in response to the one comment, the SEC's EDGAR system may be an appropriate means of undertaking non-documentary verification. Ultimately, it will depend on the circumstances and the broker-dealer's assessment of the relevant risk factors.

[96] Final rule, paragraph (b)(2)(ii)(B)(*1*).

[97] Final rule, paragraph (b)(2)(ii)(B)(*2*).

[98] *Id.* The final clause acknowledges that there may be circumstances, beyond those specifically described in this provision, when a broker-dealer should use non-documentary verification procedures.

[99] *See* final rule, paragraph (b)(2)(ii)(C).

[100] *Id.*

[101] A broker-dealer need not undertake any additional verification if it chooses not to open an account when it cannot verify the customer's true identity after using standard documentary and non-documentary verification methods.

[102] *See* NPRM, 67 FR at 48317.

[103] *See* NPRM, Section II.G, 67 FR at 48310.

[104] *Id.*

[105] Final rule, paragraph (b)(2)(iii).

[106] *Id.*

[107] *See* NPRM, 67 FR at 48317.

[108] *See* final rule, paragraph (b)(3)(i)(A).

[109] Final rule, paragraph (b)(3)(i)(B).

[110] Final rule, paragraph (b)(3)(i)(C).

[111] Final rule, paragraph (b)(3)(i)(D). In response to one of the commenters, we limited this requirement to "substantive" discrepancies to make clear that records would not have to be made in the case of minor discrepancies, such as those that might be caused by typographical mistakes.

[112] Pub. L. 106–229, 114 Stat. 464 (15 U.S.C. 7001).

[113] *See* Commission Guidance to Broker-dealers on the Use of Electronic Storage Media Under the Electronic Signatures in Global and National Commerce Act of 2000 with Respect to Rule 17a–4(f), Exchange Act Release No. 44238 (May 1, 2001), 66 FR 22916 (May 7, 2001).

bifurcated record retention schedule that is consistent with a general five-year retention requirement.[114] Under the final rule, the broker-dealer must retain the information obtained about a customer pursuant to paragraph (b)(3)(i)(A) for five years after the date the account is closed.[115] The remaining records required under paragraphs (b)(3)(i)(B), (C), and (D) (*i.e.*, information that verifies a customer's identity) need only be retained for five years after the record is made. The final rule provides that these records otherwise shall be maintained in accordance with the provisions of the broker-dealer recordkeeping rule (Rule 17a–4).[116]

Section 103.122(b)(4) Comparison With Government Lists

We proposed to require that a broker-dealer's CIP have procedures for determining whether the customer appears on any list of known or suspected terrorists or terrorist organizations prepared by any federal government agency and made available to the broker-dealer.[117] In addition, the proposed rule stated that broker-dealers must follow all federal directives issued in connection with such lists.

Two commenters recommended that the final rule specify which government lists must be checked and provide a mechanism for communicating that information to broker-dealers. These commenters also suggested that all such lists be consolidated or provided through a clearinghouse, such as FinCEN. One commenter suggested that the rule should allow for the lists to be checked after an account is opened. Another commenter sought clarification that the requirement to check these lists only applied to the broker-dealer and not its affiliates.[118]

The final rule states that a broker-dealer's CIP must include procedures for determining whether the customer appears on any list of known or suspected terrorists or terrorist organizations issued by any federal government agency and designated as such by Treasury in consultation with the federal functional regulators.[119] Because Treasury and the federal functional regulators have not yet designated any such lists, the final rule cannot be more specific with respect to the lists that broker-dealers must check.[120] However, broker-dealers will not have an affirmative duty under this rule to seek out all lists of known or suspected terrorists or terrorist organizations compiled by the federal government. Instead, they will receive notification by way of separate guidance regarding the lists that they must consult for purposes of this provision.

We also have modified this provision to give guidance as to when a broker-dealer must consult a list of known or suspected terrorists or terrorist organizations. The final rule states that the CIP's procedures must require the broker-dealer to determine whether a customer appears on a list "within a reasonable period of time" after the account is opened, or earlier if required by another federal law or regulation or by a federal directive issued in connection with the applicable list.[121]

The final rule also requires a broker-dealer's CIP to include procedures that require the firm to follow all federal directives issued in connection with such lists.[122] Again, because no lists have yet been designated under this provision, the final rule cannot provide more guidance in this area.

Section 103.122(b)(5) Customer Notice

We proposed to require that a broker-dealer's CIP include procedures for providing customers with adequate notice that the firm is requesting information to verify their identities.[123] The NPRM stated that a broker-dealer could satisfy that notice requirement by generally notifying its customers about the firm's verification procedures.[124] It stated that if an account is opened electronically, such as through an Internet Web site, the broker-dealer could provide notice electronically.[125]

Four commenters requested model language for the notice. Two commenters suggested that the rule allow notice to be given within a reasonable time after the account is opened.

Section 326 of the Act provides that the regulations issued "shall at a minimum, require financial institutions to * * * [give] customers * * * adequate notice" of the procedures they adopt concerning customer identification. Based on this statutory requirement, the final rule requires a broker-dealer's CIP to include procedures for providing customers with adequate notice that the firm is requesting information to verify their identities. The final rule provides additional guidance regarding what constitutes adequate notice and the timing of the notice requirement. The final rule states that notice is adequate if the broker-dealer generally describes the identification requirements of the final rule and provides notice in a manner reasonably designed to ensure that a customer views the notice before opening an account.[126] The final rule states that, depending on how an account is opened, a broker-dealer may post a notice in the lobby or on its website, or use any other form of oral or written notice, such as a statement on an account application.[127] In addition, the final rule includes sample language that, if appropriate, will be deemed adequate notice to a broker-dealer's customers when provided in accordance with the requirements of the final rule.[128]

Section 103.122(b)(6) Reliance on Other Financial Institutions

In the proposed rule, we included as a risk factor a broker-dealer's reliance on another broker-dealer.[129] In the NPRM, we stated that this requires an assessment of whether the broker-dealer can rely on another broker-dealer, with which it shares an account relationship, to undertake any of the steps required by this proposed rule with respect to the shared account.[130] We stated that a shared account means an account subject to a carrying or clearing agreement governed by New York Stock Exchange (NYSE) Rule 382 or National Association of Securities Dealers, Inc. (NASD) Rule 3230 (*i.e.*, a customer account introduced by a correspondent broker-dealer to a clearing and carrying broker-dealer).[131]

Six commenters submitted a variety of comments on this aspect of the proposed rule and the NPRM. Generally, they all supported expanding the reliance provision beyond the confines of a clearing/introducing broker-dealer relationship. Some suggested allowing reliance in other broker-dealer relationships, such as that between a prime broker and an executing broker. Some also suggested permitting broker-dealers to rely on other types of entities, such as other financial institutions or affiliates. Two commenters also expressed concern with the degree of liability that remained with a broker-dealer relying on another broker-dealer.

We recognize that there may be circumstances in which a broker-dealer should be able to rely on the performance by another financial institution of some or all of the elements of the firm's CIP.[132] Therefore, the final rule provides that a broker-dealer's CIP may include procedures that specify when the broker-dealer will rely on the performance by another financial institution (including an affiliate) of any procedures of the firm's CIP, and thereby satisfy the broker-dealer's obligations under the rule.[133] Reliance is permitted if a customer of the broker-dealer is opening, or has opened, an account or has established a similar relationship with the other financial institution to provide or engage in services, dealings, or other financial transactions.

In order for a broker-dealer to rely on the other financial institution, (1) such reliance must be reasonable under the circumstances, (2) the other financial institution must be subject to a rule implementing the anti-money laundering compliance program requirements of 31 U.S.C. 5318(h) and be regulated by a federal functional regulator, and (3) the other financial institution must enter into a contract with the broker-dealer requiring it to certify annually to the broker-dealer that it has implemented an anti-money laundering program and will perform (or its agent will perform) the specified requirements of the broker-dealer's CIP. The contract and certification will provide a standard means for a broker-dealer to demonstrate the extent to which it is relying on another financial institution to perform its CIP, and that the other institution has, in fact, agreed to perform those functions.[134] If it is not clear from these documents, a broker-dealer must be able to otherwise demonstrate when it is relying on another financial institution to perform its CIP with respect to a particular customer. The broker-dealer will not be held responsible for the failure of the other financial institution to fulfill adequately the broker-dealer's CIP responsibilities, provided that the broker-dealer can establish that its reliance was reasonable and that it has obtained the requisite contracts and certifications. Treasury and the SEC emphasize that the broker-dealer and the other financial institution upon which it relies must satisfy all of the conditions set forth in this final rule. If they do not, then the broker-dealer remains solely responsible for applying its own CIP to each customer in accordance with this rule.

All of the federal functional regulators are adopting comparable provisions in their CIP rules to permit such reliance. Furthermore, the federal functional regulators expect to share information and cooperate with each other to determine whether the institutions subject to their jurisdiction are in compliance with the reliance provision of this rule.

Section 103.122(c) Exemptions

The proposed rule provided that the Commission, with the concurrence of the Secretary, may exempt any broker-dealer that registers with the Commission pursuant to 15 U.S.C. 78o and 78o–4.[135] However, it excluded from this exemptive authority broker-dealers that register pursuant to 15 U.S.C. 78o(b)(11). These are firms that register as broker-dealers solely because they deal in securities futures products. The exemptive authority with respect to these firms will be in the rule issued jointly by Treasury and the CFTC. The proposed rule provided that the Secretary, with the concurrence of the Commission, may exempt any broker-dealer that registers pursuant to 15 U.S.C 78o–5 (*i.e.*, government securities dealers).

We received no comments on this provision in the proposed rule and are adopting it substantially as proposed.[136]

Section 103.122(d) Other Requirements Unaffected

The final rule includes a provision, parallel to that in CIP rules adopted by the other Federal functional regulators, to the effect that nothing in the rule shall be construed to relieve a broker-dealer of its obligations to obtain, verify, or maintain information that is required by another regulation in Part 103.[137] In addition, broker-dealers continue to be subject to existing securities law requirements, which may have different or more rigorous requirements than those in the final rule.[138]

B. Requirement for CIP Approval Removed

The proposed rule had a requirement in paragraph (i) that the CIP be approved by the broker-dealer's board of directors, managing partners, board of managers or other governing body performing similar functions or by a person or persons specifically authorized by such bodies to approve the CIP.[139] The final rule requires the CIP to be a part of the overall AML programs required of broker-dealers under NASD Rule 3011 and NYSE Rule 445.[140] NASD Rule 3011 and NYSE Rule 445 require the AML programs to be approved in writing by a member of the broker-dealer's senior management. We removed the approval requirement in the final rule because it was unnecessary given the approval requirements in NASD Rule 3011 and NYSE Rule 445. We note, however, that a broker-dealer with an AML program that has been approved as required, must nonetheless obtain approval of a new CIP because it would be a material change to the AML program.

III. Conforming Amendments to 31 CFR 103.35

As Treasury explained in the NPRM, current section 103.35(a) sets forth customer identification requirements when certain brokerage accounts are opened. Together with the proposed rule implementing section 326 of the Act, Treasury, on its own authority, proposed deleting 31 CFR 103.35(a) for the following reasons.

Generally, sections 103.35(a)(1) and (2) require a broker-dealer, within 30

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[114] *See* Final rule, paragraph (b)(3)(ii).

[115] The Secretary has determined that the records required to be retained under section 326 of the Act have a high degree of usefulness in criminal, tax, or regulatory investigations or proceedings, or in the conduct of intelligence or counterintelligence activities, to protect against international terrorism.

[116] 17 CFR 240.17a–4.

[117] See NPRM, 67 FR at 48317.

[118] This rule only applies to "broker-dealers" as that term is defined in the rule. However, there may be cases where a broker-dealer's affiliate is subject to a CIP rule issued by Treasury and one of the other Federal functional regulators.

[119] Final rule, paragraph (b)(4).

[120] This is not to say, however, that broker-dealers do not have obligations under other laws to screen their customers against government lists. For example, broker-dealers already should have compliance programs in place to ensure they comply with Treasury's Office of Foreign Assets Control rules prohibiting transactions with certain foreign countries or their nationals. *See* OFAC's Foreign Assets Control Regulations for the Securities Industry, which can be viewed at the following Web site: *http://www.ustreas.gov/offices/enforcement/ofac/regulations/t11facsc.pdf.*

[121] Final rule, paragraph (b)(4).

[122] *Id.*

[123] *See* NPRM, 67 FR at 48317.

[124] NPRM, Section II.F, 67 FR at 48310.

[125] *Id.*

[126] Final rule, paragraph (b)(5)(ii).

[127] *Id.*

[128] Final rule, paragraph (b)(5)(iii).

[129] *See* NPRM, 67 FR at 48317.

[130] NPRM, Section II.B, 67 FR at 48307–48308.

[131] *Id.*

[132] This provision of the rule does not affect the ability of a broker-dealer to contractually delegate the implementation and operation of its CIP to a service provider that would not qualify under the reliance provisions of paragraph (b)(6). However, in such a case, the broker-dealer remains solely responsible for assuring compliance with the rule, and therefore must actively monitor the operation of its CIP and assess its effectiveness.

[133] Final rule, paragraph (b)(6).

[134] A broker-dealer must be able to demonstrate that the other financial institution has agreed to perform the relevant requirements of the broker-dealer's CIP, regardless of whether the other financial institution is an affiliate or a non-affiliate. Accordingly, the contract and certification requirement in the final rule applies equally to affiliate and non-affiliate reliance.

[135] *See* NPRM, 67 FR at 48317.

[136] Final rule, paragraph (c). The reference to firms that register under 15 U.S.C. 78o(b)(11) has been removed since these firms are excluded from the rule's definition of broker-dealer.

[137] Final rule, paragraph (d).

[138] For example, Rule 17a–3(a)(9) requires broker-dealers to obtain the name and address of the beneficial owners of certain accounts and NASD Rule 3110, among other things, requires broker-dealers to obtain the names of persons authorized to transact business on behalf of customers that are legal entities.

[139] *See* NPRM, 67 FR at 48317.

[140] *See* final rule, paragraph (b)(1).

days after an account is opened, to secure and maintain a record of the taxpayer identification number of the customer involved. If the broker-dealer is unable to obtain the taxpayer identification number within 30 days (or a longer time if the person has applied for a taxpayer identification number), it need take no further action under section 103.35 concerning the account if it maintains a list of the names, addresses, and account numbers of the persons for which it was unable to secure taxpayer identification numbers, and provides that information to the Secretary upon request. In the case of a non-resident alien, the broker-dealer is required to record the person's passport number or a description of some other government document used to determine identification. These requirements conflicted with those in the proposed CIP rule, which required broker-dealers to obtain the name, address, date of birth and an identification number from any person opening a new account.

Section 103.35(a)(3) currently provides that a broker-dealer need not obtain a taxpayer identification number with respect to specified categories of persons [141] opening accounts. The proposed rule did not exempt any persons from the CIP requirements. As stated in the NPRM, Treasury believes that the requirements of section 103.35(a) are inconsistent with the intent and purpose of section 326 of the Act and incompatible with the proposed rule.

For these reasons, Treasury, under its own authority, proposed deleting the above referenced provisions in 103.35(a). Treasury and the Commission requested comments on whether any of the exemptions in Section 103.35(a)(3) should apply in the context of the proposed CIP requirements in light of the intent and purpose of section 326 of the Act. The comments we received requesting exemptions from the CIP requirements have been discussed above in the section-by-section analysis of the final rule.

Treasury has determined that given the more comprehensive requirements of the final CIP rule, there is no longer a need for § 103.35 (a). A number of the exemptions formerly in § 103.35(a) have now been added to the final CIP rule. Other exemptions conflict with the language and intent of section 326 of the Act and thus are not adopted in the final rule. While 103.35(a) will no longer be needed once the final rule is fully effective, withdrawing the provision before October 1, 2003, would create a gap period during which broker-dealers would not be subject to a rule under the BSA requiring customers to be identified when opening brokerage accounts. Because Treasury and the Commission do not believe such a gap period would be appropriate, the final rule—rather than withdrawing 103.35(a)—amends the section to cut off its applicability on October 1, 2003, when 103.122 becomes fully effective.

IV. Paperwork Reduction Act

The new rule has certain provisions that contain "collection of information" requirements within the meaning of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). Treasury submitted the proposed rule to the Office of Management and Budget ("OMB") for review in accordance with 44 U.S.C 3507(d) and 5 CFR 1320.11. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid control number. The OMB has approved the collection of information requirements in today's rule under control number 1506–0034.

A. Collection of Information Under the Proposed Rule

The final rule contains recordkeeping and disclosure requirements that are subject to the Paperwork Reduction Act of 1995. In summary, the final rule, like the proposed rule, requires broker-dealers to implement reasonable procedures to (1) maintain records of the information used to verify the person's identity and (2) provide notice of the CIP procedures to customers. These recordkeeping and notice requirements are required under section 326 of the Act. However, the final rule reduces the paperwork burden attributable to these requirements, as described below.

B. Proposed Use of the Information

Section 326 of the Act requires Treasury and the Commission jointly to issue a regulation setting forth minimum standards for broker-dealers and their customers regarding the identity of the customer that shall apply in connection with opening of an account at the broker-dealer. Furthermore, section 326 provides that the regulations, at a minimum, must require broker-dealers to implement reasonable procedures for (1) verifying the identity of any person seeking to open an account, to the extent reasonable and practicable; (2) maintaining records of the information used to verify the person's identity, including name, address, and other identifying information; and (3) determining whether the person appears on any lists of known or suspected terrorists or terrorist organizations provided to the financial institution by any government agency.

The purpose of section 326, and the regulations promulgated thereunder, is to make it easier to prevent, detect and prosecute money laundering and the financing of terrorism. In issuing the final rule, Treasury and the Commission are seeking to fulfill their statutorily mandated responsibilities under section 326 and to achieve its important purpose.

The final rule requires each broker-dealer to establish a written CIP that must include recordkeeping procedures and procedures for providing customers with notice that the broker-dealer is requesting information to verify their identity. The final rule requires a broker-dealer to maintain a record of (1) the identifying information provided by the customer, the type of identification document(s) reviewed, if any, and the identification number of the document(s); (2) the means and results of any additional measures undertaken to verify the identity of the customer; and (3) the resolution of any discrepancy in the identifying information obtained.

The final rule also requires each broker-dealer to give customers "adequate notice" of the identity verification procedures. Depending on how an account is opened, a broker-dealer may satisfy this disclosure requirement by posting a sign in the lobby or providing customers with any other form of written or oral notice. If the account is opened electronically, the broker-dealer may provide the notice electronically. Accordingly, a broker-dealer may choose among a variety of methods of providing adequate notice and may select the least burdensome method, given the circumstances under which customers seek to open new accounts.

[141] The exemption applies to (i) agencies and instrumentalities of Federal, State, local, or foreign governments; (ii) aliens who are ambassadors; ministers; career diplomatic or consular officers; naval, military, or other attaches of foreign embassies and legations; and members of their immediate families; (iii) aliens who are accredited representatives of certain international organizations, and their immediate families; (iv) aliens temporarily residing in the United States for a period not to exceed 180 days; (v) aliens not engaged in a trade or business in the United States who are attending a recognized college or university, or any training program supervised or conducted by an agency of the Federal Government; and (vi) unincorporated subordinate units of a tax exempt central organization that are covered by a group exemption letter.

C. Respondents

The final rule will apply to approximately 5,448 broker-dealers, which is the approximate number of firms that conduct business with the general public.[142]

D. Total Annual Reporting and Recordkeeping Burden

1. Providing Notice to Customers

The requirement to provide notice to customers generally will be a one-time burden in terms of drafting and posting or implementing the notices. The Commission estimates that broker-dealers will take two hours each to draft and post the required notices. There are approximately 5,448 broker-dealers that will have to undertake this task. Therefore, in complying with this requirement, the Commission estimates that the industry as a whole will spend approximately 10,896 hours.

2. Recordkeeping

The requirement to make and maintain records related to the CIP will be an annual time burden. The total burden to the industry will depend on the number of new accounts added each year. The Commission estimates that broker-dealers, on average, will spend two minutes per account making and maintaining the required records.[143] Therefore, in complying with this requirement, the Commission estimates that the industry as a whole will spend approximately 140,833 hours in 2003, 620,000 hours in 2004 and 683,833 hours in 2005.[144]

We believe that there is a nominal burden associated with the new recordkeeping requirement. Under the final rule, a broker-dealer may rely on another financial institution to perform some or all its CIP under certain conditions, including that the financial institution must enter into a contract requiring the financial institution to certify annually to the broker-dealer that it has implemented its anti-money laundering program and that it will perform (or its agent will perform) the specified elements of the broker-dealer's CIP. Not all broker-dealers will choose to rely on a third party. The minimal burden of retaining the certification described above should allow a broker-dealer to reduce its net burden under the rule by relying on another financial institution to perform some or all of its CIP.

3. Request for Comment

Treasury and the Commission invite comments on the accuracy of the burden estimates and suggestions on how to further reduce these burdens. Comments should be sent (preferably by fax (202–395–6974)) to Desk Officer for the Department of the Treasury, Office of Information and Regulatory Affairs, Office of Management and Budget, Paperwork Reduction Project (1506–0034), Washington, DC 20503 (or by the Internet to *jlackeyj@omb.eop.gov*), with a copy to FinCEN by mail or the Internet at the addresses previously specified.

E. Collection of Information Is Mandatory

These recordkeeping and disclosure (notice) requirements are mandatory.

F. Confidentiality

The collection of information pursuant to the proposed rule would be provided by customers and other sources to broker-dealers and maintained by broker-dealers. In addition, the information may be used by federal regulators, self-regulatory organizations, and authorities in the course of examinations, investigations, and judicial proceedings. No governmental agency regularly would receive any of the information described above.

G. Record Retention Period

The final rule requires that the documentation of the identifying information obtained from the customer be retained until five years after the date the account of the customer is closed and that the other records relating to the verification of the customer be retained until five years after the record is made.

V. SEC's Analysis of the Costs and Benefits Associated With the Final Rule

Section 326 of the Act requires Treasury and the Commission to prescribe regulations setting forth minimum standards for broker-dealers regarding the identities of customers that shall apply in connection with the opening of an account. The statute also provides that the regulations issued by Treasury and the Commission must, at a minimum, require financial institutions to implement reasonable procedures for: (1) Verification of customers' identities; (2) determination of whether a customer appears on a government list; and (3) maintenance of records related to customer verification. The final rule implements this statutory mandate by requiring broker-dealers to (1) establish a CIP; (2) obtain certain identifying information from customers; (3) verify the identifying information; (4) check customers against lists provided by federal agencies, (5) provide notice to customers that information may be requested in the process of verifying their identities; and (6) make and maintain records. The Commission believes that these requirements are reasonable and practicable, as required by the section 326 and, therefore, that the costs associated with them are attributable to the statute. Moreover, while the final rule specifies certain minimum requirements, broker-dealers are able to design their CIPs in a manner most appropriate to their business models and customer bases. This flexibility should be beneficial to broker-dealers in helping them to tailor their CIPs appropriately, while still meeting the statutory requirements of section 326.

Even though the Commission believes the costs associated with the final rule are attributable to the statute, it considered preliminarily the costs and benefits associated with the proposed rule and requested comment on all aspects of its cost-benefit analysis.[145] The Commission sought comment on all aspects of the rule, including whether the establishment of minimum requirements creates a benefit or, conversely, imposes costs because broker-dealers will not be able to choose for themselves the minimum procedures they wish to use to meet the requirements of the statute. The Commission also sought comment on whether the costs are attributable to the statute. Most commenters did not address the Commission's cost-benefits

[142] This figure is derived from financial information filed by broker-dealers on Form X–17a–5—Financial and Operational Combined Uniform Single (FOCUS) Reports—pursuant to section 17 of the Exchange Act and rule 17a–5 (17 CFR 240.17a–5).

[143] The Commission estimates that the number of new accounts per year will be: 16,900,000 in 2003, 18,600,000 in 2004, and 20,515,000 in 2005. The Commission arrived at this estimate by considering: (1) The total number of accounts at the 2001 year-end (102,700,000) as reported by broker-dealers on their FOCUS Reports; and (2) the annualized growth rate in total accounts for the years 1990 through 2001 (ten percent). The Commission also estimates that the number of accounts that are closed each year equals five percent of the total number of accounts. Accordingly, the Commission estimates that the total annualized growth rate for new accounts each year is fifteen percent. Therefore, starting with the 2001 total of 102,700,000 and using an annualized growth rate of fifteen percent, the Commission estimates that 16,900,000 new accounts will be added in 2003, 18,600,000 in 2004 and 20,515,000 in 2005.

[144] The Commission derived these estimates by taking the number of new accounts projected for each upcoming year and multiplying the number by two minutes and then dividing that number by 60 to convert minute totals into hour totals. The final rule will be effective only for the last quarter of 2003. Therefore, while the total burden for a twelve-month effective period would be 583,333 hours, the actual burden being allocated to the rule is 140,833 (or ¼ of 563,333).

[145] NPRM, Section VI, 67 FR at 48313.

analysis. The commenters that did discuss costs stated generally that they believed the Commission had underestimated them.

In light of the comments, the Commission re-examined its analysis, obtained further cost information and adjusted its cost estimate with respect to the one-time costs associated with implementing a CIP. The adjustment is reflected in the cost section below titled "Implementing the CIP." The Commission also adjusted certain of the burden totals to reflect updated figures (*e.g.*, number broker-dealers doing a public business) obtained from more recent broker-dealer FOCUS reports. As discussed throughout this release, the burdens that would have been imposed by the proposed rule have been lessened as a result of changes to the final rule including (1) the narrowing of the definitions of "account" and "customer," (2) the elimination of need to make and retain certain records, and (3) the expansion of the reliance provision. The estimates below take these changes into account.

A. Benefits Associated With the Final Rule

The anti-money laundering provisions in the Act are intended to make it easier to prevent, detect and prosecute money laundering and the financing of terrorism. The final rule is an important part of this effort. It fulfills the statutory mandate of section 326 by specifying how a broker-dealer is to establish a program that will assist it in determining the identities of customers. Verifying identities, in turn, will reduce the risk of broker-dealers unwittingly aiding criminals, including terrorists, in accessing U.S. financial markets to launder money or move funds for illicit purposes. Additionally, the implementation of such programs should make it more difficult for persons to successfully engage in fraudulent activities involving identity theft or the placing of fictitious orders to buy or sell securities.

B. Costs Associated With the Final Rule

1. Implementing a CIP

Most broker-dealers, as a matter of prudent business practices, already should have procedures in place for verifying identities of customers. In addition, Exchange Act Rule 17a–3(a)(9) requires broker-dealers to obtain the name and address of each beneficial owner of a cash or margin account.[146] Similarly, the self-regulatory organizations have rules requiring broker-dealers to obtain identifying information from customers.[147] Accordingly, firms should have written procedures for complying with these existing regulations.

Nonetheless, the Commission believes that some broker-dealers will have to update or establish a CIP. The proposed rule seeks to keep costs low by allowing for great flexibility in establishing a CIP. For example, the CIP should be based on factors specific to each broker-dealer, such as size, customer base and location. Thus, the analysis and detail necessary for a CIP will depend on the complexity of the broker-dealer and its operations. Given the considerable differences among broker-dealers, it is difficult to quantify a cost per broker-dealer. Highly complex firms will have more risk factors to consider, given, for example, their size, multiple offices, variety of services and products offered, and range of customers. However, most large firms already have some procedures in place for verifying customer identities. Smaller and less complex firms will not have as many risk factors.

The Commission estimates that establishing a written CIP could result in additional costs for some broker-dealers to the extent they do not have verification procedures that meet the minimum requirements in the rule. This includes broker-dealers that would need to augment their procedures to make them compliant. On average, the Commission estimates the additional cost per broker-dealer to draft CIP procedures to be approximately $2,244, resulting in a one time overall cost to the industry of approximately $12,225,312.[148]

Previously, the Commission included, as part of the costs of establishing a CIP, a cost estimate associated with updating account opening applications or account opening websites. This was estimated as a one-time cost to the industry of $563,760.[149] Several commenters stated that they believed the Commission had underestimated the burden of establishing a CIP. One commenter also identified steps that would need to be taken in addition to updating applications and websites. Accordingly, the Commission is now adjusting its estimate of the costs associated with revising or designing forms and other documentation (including applications and Web sites), and including costs associated with programming and testing automated systems. The Commission estimates the one-time costs associated with modifying account application materials to be $8,274,150.[150] Further, the Commission estimates the one-time costs associated with programming and testing automated systems to be $25,505,536.[151]

2. Obtaining Identifying Information

The Commission believes that broker-dealers already obtain from customers most, if not all, of the information required under the final rule.[152] Rule 17a–3(a)(9) requires broker-dealers to obtain, with respect to each margin and cash account, the name and address of each beneficial owner, provided that the broker-dealer need only obtain such information from the persons authorized to transact business for the account if it is a joint or corporation account.[153]

Further, broker-dealers are already required, pursuant to NASD Rule 3110, to obtain certain identifying information with respect to each account.[154] For example, if the customer is a natural person, the rule requires the broker-dealer to obtain the customer's name and address.[155] In addition, the broker-dealer must determine whether the customer is of legal age, and, if the customer purchases more than just open-end investment company shares or is solicited to purchase such shares, the broker-dealer must obtain the customer's tax identification or social security number.[156] If the customer is a corporation, partnership, or other legal entity, the broker-dealer must obtain its name, residence, and the names of any persons authorized to transact business on behalf of the entity.[157] If the account is a discretionary account, the broker-dealer must obtain the signature of each person authorized to exercise discretion over the account.[158] Finally, the broker-dealer must maintain all of this information as a record of the firm.

In addition, NYSE Rule 405 requires broker-dealers to "[u]se due diligence to learn the essential facts relative to every customer, every order, every cash or margin account accepted or carried by such organization and every person holding power of attorney over any account accepted or carried by such organization."[159]

While broker-dealers currently are required to obtain most of this information, the Commission estimates that there will be some new costs for broker-dealers because some may not be obtaining all the required information. The Commission estimates that the total cost to the industry to obtain the minimum identifying information will be $1,598,458 in 2003, $7,037,000 in 2004 and $7,761,508 in 2005.[160]

3. Verifying Identifying Information

The final rule gives broker-dealers substantial flexibility in establishing how they will independently verify the information obtained from customers. For example, customers that open accounts on a broker-dealer's premises can provide a driver's license or passport, or if the customer is not a natural person, it can provide a copy of any documents showing its existence as a legal entity (*e.g.*, articles of incorporation, business licenses, partnership agreements or trust instruments). There are also a number of options for customers opening accounts via the telephone or Internet. In these cases, broker-dealers may obtain a financial statement from the customer, check the customer's name against a credit bureau or database, or check the customer's references with other financial institutions.

The documentary and non-documentary verification methods set forth in the rule are not meant to be an exclusive list of the appropriate means of verification. Other reasonable methods may be available now or in the future. The purpose of making the rule flexible is to allow broker-dealers to select verification methods that are, as section 326 requires, reasonable and practicable. Methods that are appropriate for a smaller broker-dealer with a fairly localized customer base may not be sufficient for a larger firm with customers from many different countries. The proposed rule recognizes this fact and, therefore, allows broker-dealers to employ such verification methods as would be suitable for a given firm to form a reasonable belief that it knows the true identities of its customers.

The Commission estimates identity verification could result in costs for broker-dealers because some firms currently may not use verification methods. The Commission estimates that the total cost to the industry to verify the identifying information will be $13,343,958 in 2003, $58,745,000 in 2004 and $64,793,208 in 2005.[161]

4. Determining Whether Customers Appear on a Federal Government List

The Commission believes that broker-dealers that receive federal government lists, chiefly clearing firms, already have procedures for checking customers against them. First, there are substantive legal requirements associated with the lists circulated by Treasury's Office of Foreign Asset Control of the U.S. Treasury (OFAC). The failure of a firm to comply with these requirements could result in criminal and civil penalties. The Commission believes that, given the events of September 11, 2001, most broker-dealers that receive lists from the federal government have implemented procedures for checking their customers against them.

The Commission estimates that this requirement could result in some additional costs for broker-dealers because some may not already check such lists. The Commission estimates

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[146] 17 CFR 240.17a–3(a)(9).

[147] *See, e.g.*, NYSE Rule 405, NASD Rule 3110.

[148] The Commission estimates that it will take broker-dealers on average approximately 20 hours to draft a CIP. This estimate seeks to account for the fact that many firms already have customer identification and verification procedures and that discrepancies in size and complexity will result in differing time burdens. The Commission believes that broker-dealers will have senior compliance personnel draft their CIPs and that this will take an average of 16 hours. The Commission anticipates that in-house counsel will spend on average 4 hours reviewing the CIP. According to the Securities Industry Association ("SIA") *Management and Professional Earnings 2000* report ("SIA Earnings Report"), Table 051, the hourly cost of a compliance manager plus 35% overhead is $101.25. The hourly cost for an in-house counsel plus 35% overhead is $156.00 (SIA Earnings Report, Table 107 (Attorney)). Therefore, the Commission estimates that the total cost per broker-dealer to establish a CIP would be $2,244 per broker-dealer [(16 × $101.25) + (4 × $156.00)]. As of September 30, 2002, there were approximately 5,448 broker-dealers that engaged in some form of a public business. Therefore, the Commission estimates that the total cost to the industry would be $2,244 multiplied by 5,448 or $12,225,312.

[149] The Commission estimated that it would take each broker-dealer, on average, one hour to update account opening applications or electronic account opening systems. The Commission believed broker-dealers would have a compliance manager implement the necessary changes. The hourly cost for a compliance manager is $101.25 (SIA Earnings Report, Table 051 (Compliance manager)). Accordingly, the total cost to the industry was estimated to be: ($101.25) × (the number of broker-dealers doing a public business or 5,568) or $563,760.

[150] The Commission estimates that it will take each broker-dealer, on average, fifteen hours to modify account opening documentation or electronic account opening systems. The Commission believes broker-dealers will have a compliance manager implement the necessary changes. The hourly cost for a compliance manager is $101.25 (SIA Earnings Report, Table 051 (Compliance manager)). Accordingly, the total cost to the industry was estimated to be: ($101.25) × (15 hours) × (the number of broker-dealers doing a public business—5,448) or $8,274,150.

[151] The Commission estimates that it will take broker-dealers on average approximately 640 hours to program and test the automated systems that will need to be changed to comply with the rule. The Commission estimates computer programmers will do this work. The hourly cost of a computer programmer is $66.20 (SIA Earnings Report, Table 158 (Senior Programmer)). The Commission estimates that generally systems changes will need to be made only by broker-dealers that carry or clear customer accounts. FOCUS report data indicates that there are approximately 602 such broker-dealers. Accordingly, the total cost to the industry is estimated to be ($66.20) × (640 hours) × (602 broker-dealers) or $25,505,536.

[152] For example, the Anti-Money Laundering Committee of the SIA recommended in its *Preliminary Guidance for Deterring Money Laundering Activity* (February 2002) that broker-dealers obtain certain identifying information from customers at the commencement of the business relationship, including, for natural persons: name, address, date of birth, investment experience and objectives, social security number or taxpayer identification number, net worth, annual income, occupation, employer's address, and the names of any persons authorized to effect transactions in the account. For non-resident aliens, the SIA Committee recommended that the broker-dealer obtain, in addition to the information above, a passport number or other valid government identification number. The SIA Committee also made a number of recommendations with respect to customers that are not natural persons.

[153] 17 CFR 240.17a–3(a)(9).

[154] Section 15(b)(8) of the Exchange Act (15 U.S.C. 78o(b)(8)) requires each broker-dealer to become a member of a securities association registered pursuant to section 15A of the Exchange Act (15 U.S.C. 78o–3) unless the broker-dealer effects transactions solely on a national securities exchange of which it is a member. The NASD is the only securities association registered pursuant to section 15A. Exchange Act Rule 15b9–1 (17 CFR 240.15b9–1) exempts broker-dealers from this requirement to register with the NASD if they (1) are an exchange member, (2) carry no customer accounts, and (3) derive gross annual income from purchases and sales of securities other than on a national securities exchange of not greater than $1,000. Generally then, most broker-dealers that carry customer accounts are members of the NASD and subject to Rule 3110.

[155] NASD Rule 3110(c)(1).

[156] NASD Rule 3110(c)(2).

[157] NASD Rule 3110(c)(1).

[158] NASD Rule 3110(c)(3).

[159] NYSE Rule 405(1).

[160] The Commission estimates that obtaining the required minimum identifying information will take broker-dealers approximately one minute per account. This takes into consideration the fact that approximately 97% of customer accounts are held at the 70 largest broker-dealers. These firms likely already obtain the required identifying information from their customers. Therefore, requiring that each piece of identifying information be obtained should not impose a significant additional burden. The average hourly cost of the person who would be obtaining this information is $22.70 per hour (per the SIA Earnings Report, Table 082 (Retail Sales Assistant, Registered) and including 35% in overhead charges). Therefore, the costs to the industry would be: (number of new accounts per year) × (1/60 of an hour) × ($22.70). As indicated previously, the Commission estimates that the number of new accounts in the upcoming years will be: 16,900,000 in 2003, 18,600,000 in 2004 and 20,515,000 in 2005. The final rule will be effective only for the last quarter of 2003. Therefore, while the total cost for a twelve-month effective period would be $6,393,833, the actual cost being allocated to the rule for 2003 is $1,598,458 (or ¼ of $6,393,833).

[161] The Commission estimates that the processing costs associated with verification methods will be approximately $1.00 per account. The Commission further estimates that the average time spent verifying an account will be five minutes. The hourly cost of the person who would undertake the verification is $25.90 per hour (per the SIA Earnings Report, Table 086 (Data Entry Clerk, Senior) and including 35% in overhead charges). Therefore, the costs to the industry reported above are: (number of new accounts per year) × ($1.00) + (number of new accounts per year) × (1/12 of an hour) × ($25.90). The Commission estimates that the number of new accounts in the upcoming years will be: 16,900,000 in 2003, 18,600,000 in 2004 and 20,515,000. The final rule will be effective only for the last quarter of 2003. Therefore, while the total cost for a twelve-month effective period would be $53,375,833, the actual cost being allocated to the rule for 2003 is $13,343,958 (or ¼ of $53,375,833).

that the total cost to the industry to check such lists will be $911,896 in 2003, $4,014,500 in 2004 and $4,427,820 in 2005.[162]

5. Providing Notice to Customers

A broker-dealer may satisfy the notice requirement by generally notifying its customers about the procedures the broker-dealer must comply with to verify their identities. Depending on how accounts are opened, the broker-dealer may post a sign in its lobby or provide customers with any other form of written or oral notice. If an account is opened electronically, such as through an Internet website, the broker-dealer may provide notice electronically. The Commission estimates the total one-time cost to the industry to implement adequate notices will be $1,401,498.[163]

6. Recordkeeping

The Commission estimates that many of the records required by the rule are already made and maintained by broker-dealers. As discussed above, Commission and self-regulatory organization rules already require broker-dealers to obtain much of the minimum identifying information specified in the proposed rule. These regulations also require that records be made and kept of this information. Moreover, the final rule has modified the recordkeeping requirements to make them less burdensome. The Commission estimates that the recordkeeping requirement could result in additional costs for some broker-dealers that currently do not maintain certain of the records for the prescribed time period. The Commission estimates that the total cost to the industry to make and maintain the required records in the upcoming years will be $3,647,583 in 2003, $16,058,000 in 2004 and $17,711,283 in 2005.[164]

VI. Regulatory Flexibility Act

Treasury and the Commission are sensitive to the impact our rules may impose on small entities. Congress enacted the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, to address concerns related to the effects of agency rules on small entities. In the NPRM, Treasury and the Commission stated that the proposed rule likely would not have a "significant economic impact on a substantial number of small entities."[165] 5 U.S.C. 605(b). First, we noted that the economic impact on small entities should not be significant because most small entities are likely to have a relatively small number of accounts, and thus compliance should not impose a significant economic impact. Second, we pointed out that the economic impact on broker-dealers, including small entities, is imposed by the statute itself, and not by the final rule.

While Treasury and the Commission believed that the proposed rule likely would not have a significant economic impact on a substantial number of small entities, Treasury and the Commission prepared an Initial Regulatory Flexibility Analysis (IRFA) that was published in the NPRM. Therefore, a Final Regulatory Flexibility Analysis (FRFA) has been prepared in accordance with 5 U.S.C. 604.

A. Need for and Objectives of the Rule

Section 326 of the Act requires Treasury and the Commission jointly to issue a regulation setting forth minimum standards for broker-dealers and their customers regarding the identity of the customer that shall apply in connection with the opening of an account at the broker-dealer. Furthermore, section 326 requires, at a minimum, that broker-dealers implement reasonable procedures for (1) verifying the identity of any person seeking to open an account, to the extent reasonable and practicable; (2) maintaining records of the information used to verify the person's identity, including name, address, and other identifying information; and (3) determining whether the person appears on any lists of known or suspected terrorists or terrorist organizations provided to the financial institution by any government agency.

The purpose of section 326, and the regulations promulgated thereunder, is to make it easier to prevent, detect and prosecute money laundering and the financing of terrorism. In issuing the proposed rule, Treasury and the Commission are seeking to fulfill their statutorily mandated responsibilities under section 326 and to achieve its important purpose.

The rule seeks to achieve the goals of section 326 by specifying the information broker-dealers must obtain from or about customers that can be used to verify the identity of the customers. This will make it more difficult for persons to use false identities to establish customer relationships with broker-dealers for the purposes of laundering money or moving funds to effectuate illegal activities, such as financing terrorism.

B. Significant Issues Raised by Public Comment

In the NPRM, Treasury and the Commission specifically requested public comments on any aspect of the IRFA, as well as the number of small entities that may be affected by the proposed rule. The agencies received no comments on the IRFA.

C. Small Entities Subject to the Rule

The final rule will affect broker-dealers that are small entities. Rule 0–10 under the Exchange Act[166] defines a broker-dealer to be small if it (1) had total capital (net worth plus subordinated liabilities) of less than $500,000 on the date in the prior fiscal year as of which its audited financial statements were prepared pursuant to § 240.17a–5(d) or, if not required to file such statements, a broker or dealer that had total capital (net worth plus subordinated liabilities) of less than $500,000 on the last business day of the preceding fiscal year (or in the time that it has been in business, if shorter); and (2) is not affiliated with any person (other than a natural person) that is not a small business or small organization as defined in the rule.

The Commission estimates there are approximately 878 broker-dealers that were "small" for purposes of Rule 0–10 that would be subject to this rule because they conduct business with the general public. The Commission bases its estimate on the information provided in broker-dealer FOCUS Reports.

D. Reporting, Recordkeeping and Other Compliance Requirements

The proposed rule would require broker-dealers to (1) establish a CIP; (2) obtain certain identifying information from customers; (3) verify identifying information of customers; (4) check customers against lists provided by federal agencies; (5) provide notice to customers that information may be requested in the process of verifying their identities; and (6) make and maintain records related to the CIP.

As noted above, the rule is not expected to have a significant economic impact on a substantial number of small entities. Commission staff estimates that broker-dealers needing to draft a CIP will spend, on average, approximately 20 hours, at a cost of approximately $2,244 per firm, and that broker-dealers needing to make systems modifications will spend, on average, approximately 640 hours at a cost of $39,864.44 per firm.

Although small entities will also incur annual costs, the Commission expects that they will not have a significant economic impact. For each new account, a broker-dealer will require what we estimate to be one minute for collecting customer information, 5 minutes for verifying customer information, half a minute for comparison to government lists, and 2 minutes for record retention, each at a cost of approximately $22 to $26 per hour. Small entities are likely to have a relatively small number of accounts; therefore, they will incur the ongoing costs of individual customer identifications relatively infrequently.

E. Agency Action To Minimize Effect on Small Entities

Treasury and the Commission considered significant alternatives to the amendments that would accomplish the stated objective, while minimizing any significant adverse impact on small entities.

In connection with the proposed amendments, we considered the following alternatives: (1) The establishment of differing compliance or reporting requirements or timetables that take into account the resources of small entities; (2) the clarification, consolidation, or simplification of compliance and reporting requirements under the rule for small entities; (3) the use of performance rather than design standards; and (4) an exemption for small broker-dealers from coverage of the proposed amendments or any part thereof.

The final rule provides for substantial flexibility in how each broker-dealer may meet its requirements. This flexibility is designed to account for differences between broker-dealers, including size. Nonetheless, Treasury and the Commission did consider alternatives indicated above. Treasury and the Commission believe that the alternative approaches to minimize the adverse impact of the rule on small entities are not consistent with the statutory mandate of section 326. In addition, Treasury and the Commission do not believe that an exemption is appropriate, given the flexibility built into the rule to account for, among other things, the differing sizes and resources of broker-dealers, as well as the importance of the statutory goals and mandate of section 326. Money laundering can occur in small firms as well as large firms.

VII. Executive Order 12866

The Department of the Treasury has determined that this rule is not a significant regulatory action for purposes of Executive Order 12866. As noted above, the final rule parallels the requirements of section 326 of the Act. Accordingly, a regulatory impact analysis is not required.

List of Subjects in 31 CFR Part 103

Administrative practice and procedure, Authority delegations (Government agencies), Banks, banking, Brokers, Currency, Foreign banking, Foreign currencies, Gambling, Investigations, Law enforcement, Penalties, Reporting and recordkeeping requirements, Securities.

Department of the Treasury

31 CFR Chapter I

Authority and Issuance

■ For the reasons set forth in the preamble, part 103 of title 31 of the Code of Federal Regulations is amended as follows:

PART 103—FINANCIAL RECORDKEEPING AND REPORTING OF CURRENCY AND FOREIGN TRANSACTIONS

■ 1. The authority citation for part 103 continues to read as follows:

Authority: 12 U.S.C. 1829b and 1951–1959; 31 U.S.C. 5311–5314 and 5316–5332; title III, secs. 312, 313, 314, 319, 326, 352, Pub. L. 107–56, 115 Stat. 307, 12 U.S.C. 1818, 12 U.S.C. 1786(q).

§ 103.35 [Amended]

■ 2. In § 103.35, amend the first sentence of paragraph (a)(1) to add the words "and before October 1, 2003" after the words "June 30, 1972".

■ 3. Subpart I of part 103 is amended by adding § 103.122 to read as follows:

§ 103.122 Customer identification programs for broker-dealers.

(a) *Definitions.* For the purposes of this section:

(1)(i) *Account* means a formal relationship with a broker-dealer established to effect transactions in securities, including, but not limited to, the purchase or sale of securities and securities loaned and borrowed activity, and to hold securities or other assets for safekeeping or as collateral.

(ii) *Account* does not include:

(A) An account that the broker-dealer acquires through any acquisition, merger, purchase of assets, or assumption of liabilities; or

(B) An account opened for the purpose of participating in an employee benefit plan established under the Employee Retirement Income Security Act of 1974.

(2) *Broker-dealer* means a person registered or required to be registered as a broker or dealer with the Commission under the Securities Exchange Act of 1934 (15 U.S.C 77a *et seq.*), except persons who register pursuant to 15 U.S.C 78o(b)(11).

(3) *Commission* means the United States Securities and Exchange Commission.

(4)(i) *Customer* means: (A) A person that opens a new account; and (B) an individual who opens a new account for: (*1*) An individual who lacks legal capacity; or (*2*) an entity that is not a legal person.

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[162] The Commission believes that most of the firms that receive these lists already check their customers against them. Moreover, as indicated previously, 97% of customer accounts are held at the 70 largest firms. The Commission understands that most of these firms have automated processes for complying with many regulatory requirements. Accordingly, the Commission estimates that it will take broker-dealers on average thirty seconds to check whether a person appears on a government list. The hourly cost of the person who would check the list is $25.90 per hour (per the SIA Earnings Report, Table 086 (Data Entry Clerk, Senior) and including 35% in overhead charges). Therefore, the costs to the industry reported above are: (number of new accounts per year) × (1/120 of an hour) × ($25.90). The Commission estimates that the number of new accounts in the upcoming years will be: 16,900,000 in 2003, 18,600,000 in 2004 and 20,515,000 in 2005. The final rule will be effective only for the last quarter of 2003. Therefore, while the total cost for a twelve-month effective period would be $3,647,583, the actual cost being allocated to the rule for 2003 is $911,896 (or ¼ of $3,647,583).

[163] The Commission estimates that it will take each broker-dealer, on average, two hours to create and implement the appropriate notice. This estimate takes into consideration the fact that many small firms will be able to provide adequate notice by hanging signs in their premises. Larger firms will be able to provide notice by updating account opening documentation or electronic account opening systems. The Commission believes that broker-dealers will have an attorney draft the appropriate notice, and that this will take approximately one hour. The hourly cost for an in-house counsel plus 35% overhead is $156.00 (SIA Earnings Report, Table 107, (Attorney)). The Commission believes that broker-dealers will have a compliance manager implement the notice, and that implementation will take approximately one hour. The hourly cost for a compliance manager is $101.25 (SIA Earnings Report, Table 051 (Compliance manager)). Accordingly, the total cost to the industry would be: ($156.00 + 101.25) × (the number of broker-dealers doing a public business or 5,448) or $1,401,498.

[164] The Commission estimates that it will take approximately two minutes per new account to make and maintain the required records. This estimate takes into account the fact that many broker-dealers already make and maintain many of the required records and that the requirements in the final rule have been modified. The hourly cost of the person who would undertake the verification is $25.90 per hour (per the SIA Earnings Report, Table 086 (Data Entry Clerk, Senior) and including 35% in overhead charges). Therefore, the costs to the industry reported above are: (number of new accounts per year) × (1/30 of an hour) × ($25.90). The Commission estimates that the number of new accounts in the upcoming years will be: 16,900,000 in 2003, 18,600,000 in 2004 and 20,515,000 in 2005. The final rule will be effective only for the last quarter of 2003. Therefore, while the total cost for a twelve-month effective period would be $14,590,333, the actual cost being allocated to the rule for 2003 is $3,647,583 (or ¼ of $14,590,333).

[165] NPRM, Section VII, 67 FR at 48315.

[166] 17 CFR 240.0–10(c).

(ii) *Customer* does not include: (A) A financial institution regulated by a Federal functional regulator or a bank regulated by a state bank regulator; (B) a person described in § 103.22(d)(2)(ii) through (iv); or (C) a person that has an existing account with the broker-dealer, provided the broker-dealer has a reasonable belief that it knows the true identity of the person.

(5) *Federal functional regulator* is defined at § 103.120(a)(2).

(6) *Financial institution* is defined at 31 U.S.C. 5312(a)(2) and (c)(1).

(7) *Taxpayer identification number* is defined by section 6109 of the Internal Revenue Code of 1986 (26 U.S.C. 6109) and the Internal Revenue Service regulations implementing that section (*e.g.*, social security number or employer identification number).

(8) *U.S. person* means: (i) A United States citizen; or (ii) a person other than an individual (such as a corporation, partnership or trust) that is established or organized under the laws of a State or the United States.

(9) *Non-U.S. person* means a person that is not a *U.S. person*.

(b) *Customer identification program: minimum requirements.*

(1) *In general.* A broker-dealer must establish, document, and maintain a written Customer Identification Program ("CIP") appropriate for its size and business that, at a minimum, includes each of the requirements of paragraphs (b)(1) through (b)(5) of this section. The CIP must be a part of the broker-dealer's anti-money laundering compliance program required under 31 U.S.C. 5318(h).

(2) *Identity verification procedures.* The CIP must include risk-based procedures for verifying the identity of each customer to the extent reasonable and practicable. The procedures must enable the broker-dealer to form a reasonable belief that it knows the true identity of each customer. The procedures must be based on the broker-dealer's assessment of the relevant risks, including those presented by the various types of accounts maintained by the broker-dealer, the various methods of opening accounts provided by the broker-dealer, the various types of identifying information available and the broker-dealer's size, location and customer base. At a minimum, these procedures must contain the elements described in this paragraph (b)(2).

(i)(A) *Customer information required.* The CIP must contain procedures for opening an account that specify identifying information that will be obtained from each customer. Except as permitted by paragraph (b)(2)(i)(B) of this section, the broker-dealer must obtain, at a minimum, the following information prior to opening an account:

(*1*) Name;

(*2*) Date of birth, for an individual;

(*3*) Address, which shall be: (*i*) For an individual, a residential or business street address; (*ii*) for an individual who does not have a residential or business street address, an Army Post Office (APO) or Fleet Post Office (FPO) box number, or the residential or business street address of a next of kin or another contact individual; or (*iii*) for a person other than an individual (such as a corporation, partnership or trust), a principal place of business, local office or other physical location; and

(*4*) Identification number, which shall be: (*i*) For a U.S. person, a taxpayer identification number; or (*ii*) for a non-U.S. person, one or more of the following: a taxpayer identification number, a passport number and country of issuance, an alien identification card number, or the number and country of issuance of any other government-issued document evidencing nationality or residence and bearing a photograph or similar safeguard.

Note to paragraph (b)(2)(i)(A)(*4*)(*ii*): When opening an account for a foreign business or enterprise that does not have an identification number, the broker-dealer must request alternative government-issued documentation certifying the existence of the business or enterprise.

(B) *Exception for persons applying for a taxpayer identification number.* Instead of obtaining a taxpayer identification number from a customer prior to opening an account, the CIP may include procedures for opening an account for a customer that has applied for, but has not received, a taxpayer identification number. In this case, the CIP must include procedures to confirm that the application was filed before the customer opens the account and to obtain the taxpayer identification number within a reasonable period of time after the account is opened.

(ii) *Customer verification.* The CIP must contain procedures for verifying the identity of each customer, using information obtained in accordance with paragraph (b)(2)(i) of this section, within a reasonable time before or after the customer's account is opened. The procedures must describe when the broker-dealer will use documents, non-documentary methods, or a combination of both methods, as described in this paragraph (b)(2)(ii).

(A) *Verification through documents.* For a broker-dealer relying on documents, the CIP must contain procedures that set forth the documents the broker-dealer will use. These documents may include:

(*1*) For an individual, an unexpired government-issued identification evidencing nationality or residence and bearing a photograph or similar safeguard, such as a driver's license or passport; and

(*2*) For a person other than an individual (such as a corporation, partnership or trust), documents showing the existence of the entity, such as certified articles of incorporation, a government-issued business license, a partnership agreement, or a trust instrument.

(B) *Verification through non-documentary methods.* For a broker-dealer relying on non-documentary methods, the CIP must contain procedures that set forth the non-documentary methods the broker-dealer will use.

(*1*) These methods may include contacting a customer; independently verifying the customer's identity through the comparison of information provided by the customer with information obtained from a consumer reporting agency, public database, or other source; checking references with other financial institutions; or obtaining a financial statement.

(*2*) The broker-dealer's non-documentary procedures must address situations where an individual is unable to present an unexpired government-issued identification document that bears a photograph or similar safeguard; the broker-dealer is not familiar with the documents presented; the account is opened without obtaining documents; the customer opens the account without appearing in person at the broker-dealer; and where the broker-dealer is otherwise presented with circumstances that increase the risk that the broker-dealer will be unable to verify the true identity of a customer through documents.

(C) *Additional verification for certain customers.* The CIP must address situations where, based on the broker-dealer's risk assessment of a new account opened by a customer that is not an individual, the broker-dealer will obtain information about individuals with authority or control over such account. This verification method applies only when the broker-dealer cannot verify the customer's true identity using the verification methods described in paragraphs (b)(2)(ii)(A) and (B) of this section.

(iii) *Lack of verification.* The CIP must include procedures for responding to circumstances in which the broker-dealer cannot form a reasonable belief that it knows the true identity of a customer. These procedures should describe:

(A) When the broker-dealer should not open an account;

(B) The terms under which a customer may conduct transactions while the broker-dealer attempts to verify the customer's identity;

(C) When the broker-dealer should close an account after attempts to verify a customer's identity fail; and

(D) When the broker-dealer should file a Suspicious Activity Report in accordance with applicable law and regulation.

(3) *Recordkeeping.* The CIP must include procedures for making and maintaining a record of all information obtained under procedures implementing paragraph (b) of this section.

(i) *Required records.* At a minimum, the record must include:

(A) All identifying information about a customer obtained under paragraph (b)(2)(i) of this section,

(B) A description of any document that was relied on under paragraph (b)(2)(ii)(A) of this section noting the type of document, any identification number contained in the document, the place of issuance, and if any, the date of issuance and expiration date;

(C) A description of the methods and the results of any measures undertaken to verify the identity of a customer under paragraphs (b)(2)(ii)(B) and (C) of this section; and

(D) A description of the resolution of each substantive discrepancy discovered when verifying the identifying information obtained.

(ii) *Retention of records.* The broker-dealer must retain the records made under paragraph (b)(3)(i)(A) of this section for five years after the account is closed and the records made under paragraphs (b)(3)(i)(B), (C) and (D) of this section for five years after the record is made. In all other respects, the records must be maintained pursuant to the provisions of 17 CFR 240.17a–4.

(4) *Comparison with government lists.* The CIP must include procedures for determining whether a customer appears on any list of known or suspected terrorists or terrorist organizations issued by any Federal government agency and designated as such by Treasury in consultation with the Federal functional regulators. The procedures must require the broker-dealer to make such a determination within a reasonable period of time after the account is opened, or earlier if required by another Federal law or regulation or Federal directive issued in connection with the applicable list. The procedures also must require the broker-dealer to follow all Federal directives issued in connection with such lists.

(5)(i) *Customer notice.* The CIP must include procedures for providing customers with adequate notice that the broker-dealer is requesting information to verify their identities.

(ii) *Adequate notice.* Notice is adequate if the broker-dealer generally describes the identification requirements of this section and provides such notice in a manner reasonably designed to ensure that a customer is able to view the notice, or is otherwise given notice, before opening an account. For example, depending upon the manner in which the account is opened, a broker-dealer may post a notice in the lobby or on its Web site, include the notice on its account applications or use any other form of oral or written notice.

(iii) *Sample notice.* If appropriate, a broker-dealer may use the following sample language to provide notice to its customers:

Important Information About Procedures for Opening a New Account

To help the government fight the funding of terrorism and money laundering activities, Federal law requires all financial institutions to obtain, verify, and record information that identifies each person who opens an account.

What this means for you: When you open an account, we will ask for your name, address, date of birth and other information that will allow us to identify you. We may also ask to see your driver's license or other identifying documents.

(6) *Reliance on another financial institution.* The CIP may include procedures specifying when the broker-dealer will rely on the performance by another financial institution (including an affiliate) of any procedures of the broker-dealer's CIP, with respect to any customer of the broker-dealer that is opening an account or has established an account or similar business relationship with the other financial institution to provide or engage in services, dealings, or other financial transactions, provided that:

(i) Such reliance is reasonable under the circumstances;

(ii) The other financial institution is subject to a rule implementing 31 U.S.C. 5318(h), and regulated by a Federal functional regulator; and

(iii) The other financial institution enters into a contract requiring it to certify annually to the broker-dealer that it has implemented its anti-money laundering program, and that it will perform (or its agent will perform) specified requirements of the broker-dealer's CIP.

(c) *Exemptions.* The Commission, with the concurrence of the Secretary, may by order or regulation exempt any broker-dealer that registers with the Commission pursuant to 15 U.S.C. 78o or 15 U.S.C. 78o–4 or any type of account from the requirements of this section. The Secretary, with the concurrence of the Commission, may exempt any broker-dealer that registers with the Commission pursuant to 15 U.S.C. 78o–5. In issuing such exemptions, the Commission and the Secretary shall consider whether the exemption is consistent with the purposes of the Bank Secrecy Act, and in the public interest, and may consider other necessary and appropriate factors.

(d) *Other requirements unaffected.* Nothing in this section relieves a broker-dealer of its obligation to comply with any other provision of this part, including provisions concerning information that must be obtained, verified, or maintained in connection with any account or transaction.

Dated: April 28, 2003.

By the Financial Crimes Enforcement Network.

James F. Sloan,

Director.

Dated: April 29, 2003.

In concurrence: By the Securities and Exchange Commission.

Margaret H. McFarland,

Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

17 CFR Part 270

[Release No. IC–26031; File No. S7–26–02]

DEPARTMENT OF THE TREASURY

31 CFR Part 103

RIN 1506–AA33

Customer Identification Programs for Mutual Funds

AGENCIES: Financial Crimes Enforcement Network, Treasury; Securities and Exchange Commission.

ACTION: Joint final rule.

SUMMARY: The Department of the Treasury, through the Financial Crimes Enforcement Network (FinCEN), and the Securities and Exchange Commission are jointly adopting a final rule to implement section 326 of the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism (USA PATRIOT ACT) Act of 2001 (the Act). Section 326 requires the Secretary

of the Treasury (the Secretary or Treasury) to jointly prescribe with the Securities and Exchange Commission (the Commission or SEC) a regulation that, at a minimum, requires investment companies to implement procedures to verify the identity of any person seeking to open an account, to the extent reasonable and practicable; to maintain records of the information used to verify the person's identity; and to determine whether the person appears on any lists of known or suspected terrorists or terrorist organizations provided to investment companies by any government agency. This final regulation applies to investment companies that are mutual funds.

DATES: *Effective Date:* This rule is effective June 9, 2003.

Compliance Date: Each mutual fund must comply with this final rule by October 1, 2003. Section I.D. of the **SUPPLEMENTARY INFORMATION** contains additional information concerning the compliance date for the final rule.

FOR FURTHER INFORMATION CONTACT:

Securities and Exchange Commission: Division of Investment Management, Office of Regulatory Policy at (202) 942–0690.

Treasury: Office of the Chief Counsel (FinCEN) at (703) 905–3590; Office of the General Counsel (Treasury) at (202) 622–1927; or the Office of the Assistant General Counsel for Banking & Finance (Treasury) at (202) 622–0480.

SUPPLEMENTARY INFORMATION: Treasury and the Commission are jointly adopting (1) a new final rule, 31 CFR 103.131, proposed in July 2002,[1] to implement section 326 of the USA PATRIOT Act[2] and (2) a new rule 0–11 [17 CFR 270.0–11] under the Investment Company Act of 1940[3] (the "1940 Act") that cross-references this new final rule.

I. Background

A. Section 326 of the USA PATRIOT Act

On October 26, 2001, President Bush signed into law the USA PATRIOT Act. Title III of the Act, captioned "International Money Laundering Abatement and Anti-terrorist Financing Act of 2001," adds several new provisions to the Bank Secrecy Act (BSA).[4] These provisions are intended to facilitate the prevention, detection, and prosecution of international money laundering and the financing of terrorism. Section 326 of the Act adds a new subsection (l) to 31 U.S.C. 5318 of the BSA that requires the Secretary to prescribe regulations "setting forth the minimum standards for financial institutions and their customers regarding the identity of the customer that shall apply in connection with the opening of an account at a financial institution."

Section 326 applies to all "financial institutions." This term is defined broadly in the BSA to encompass a variety of entities, including commercial banks, agencies and branches of foreign banks in the United States, thrifts, credit unions, private banks, trust companies, investment companies, brokers and dealers in securities, futures commission merchants, insurance companies, travel agents, pawnbrokers, dealers in precious metals, check-cashers, casinos, and telegraph companies, among many others.[5] Although "investment companies" are "financial institutions" for purposes of the BSA,[6] the BSA does not define "investment company."[7] The 1940 Act defines the term broadly and subjects investment companies to comprehensive regulation by the SEC.[8] This final rule applies only to those investment companies that are "open-end companies" required to register with the SEC under section 8 of the 1940 Act.[9] These entities are commonly referred to as "mutual funds."

The regulations implementing section 326 must require, at a minimum, financial institutions, including investment companies, to implement reasonable procedures for (1) verifying the identity of any person seeking to open an account, to the extent reasonable and practicable; (2) maintaining records of the information used to verify the person's identity, including name, address, and other identifying information; and (3) determining whether the person appears on any lists of known or suspected terrorists or terrorist organizations provided to the financial institution by any government agency. In prescribing these regulations, the Secretary is directed to take into consideration the types of accounts maintained by different types of financial institutions, the various methods of opening accounts, and the types of identifying information that are available.

Final rules governing the applicability of section 326 to other financial institutions, including broker-dealers, banks, thrifts, credit unions, and futures commission merchants, are being issued separately.[10] Treasury, the SEC, the CFTC and the banking agencies consulted extensively in the development of all rules implementing section 326 of the Act. These participating agencies intend the effect of the final rules to be uniform throughout the financial services industry.

[1] Customer Identification Programs for Mutual Funds, 67 FR 48318 (July 23, 2002) (proposed rule).

[2] Pub. L. 107–56.

[3] 15 U.S.C. 80a–1.

[4] 31 U.S.C. 5311 *et seq.*

[5] *See* 31 U.S.C. 5312(a)(2) and (c)(1)(A). For any financial institution engaged in financial activities described in section 4(k) of the Bank Holding Company Act of 1956, the Secretary is required to prescribe the regulations issued under section 326 jointly with the Office of the Comptroller of the Currency, the Board of Governors of the Federal Reserve System, the Federal Deposit Insurance Corporation, the Office of Thrift Supervision, and the National Credit Union Administration (collectively, the banking agencies), the SEC, and the Commodity Futures Trading Commission (CFTC).

[6] *See* 31 U.S.C. 5312(a)(2)(I).

[7] Treasury has not yet adopted rules defining "investment company" for purposes of the BSA. By interim rule published on April 29, 2002, Treasury required that certain "open-end companies," as that term is defined in the 1940 Act (mutual funds) adopt anti-money laundering programs pursuant to section 352 of the Act. 67 FR 21117 (Apr. 29, 2002). Treasury temporarily exempted investment companies other than mutual funds from the requirement that they establish anti-money laundering programs and temporarily deferred determining the definition of "investment company" for purposes of the BSA. *Id.* On September 26, 2002, Treasury issued a rule proposal that, if adopted, would require certain "unregistered investment companies" to adopt and implement anti-money laundering programs. 67 FR 60617 (Sept. 26, 2002). Treasury has also submitted, jointly with the SEC and the Board of Governors of the Federal Reserve System, a report to Congress recommending that customer identification requirements be applied to unregistered investment companies. *See* A Report to Congress in Accordance with § 356(c) of the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001 (USA PATRIOT Act) (December 31, 2002) at 38 (available at *www.treasury.gov/press/releases/reports/356report.pdf*). We anticipate that this recommendation will be addressed by separate rulemaking.

[8] Section 3(a)(1) of the 1940 Act defines "investment company" as any issuer that (A) is or holds itself out as being engaged primarily, or proposes to engage primarily, in the business of investing, reinvesting, or trading in securities; (B) is engaged or proposes to engage in the business of issuing face-amount certificates of the installment type, or has been engaged in such business and has any such certificate outstanding; or (C) is engaged or proposes to engage in the business of investing, reinvesting, owning, holding, or trading in securities, and owns or proposes to acquire investment securities having a value exceeding 40 per centum of the value of such issuer's total assets (exclusive of Government securities and cash items) on an unconsolidated basis.

[9] *See* § 103.131(a)(8). Section 5(a)(1) of the 1940 Act defines "open-end company." Other types of investment companies regulated by the SEC include closed-end companies and unit investment trusts. The Secretary and the SEC will continue to consider whether a CIP requirement would be appropriate for the issuers of these products, or whether they are effectively covered by the CIP requirements of other financial institutions involved in their distribution (*e.g.*, broker-dealers).

[10] Treasury intends to issue separate rules under section 326 for non-bank financial institutions that are not regulated by the federal functional regulators.

B. Overview of Comments Received

On July 23, 2002, Treasury and the SEC jointly proposed a rule to implement section 326 with respect to mutual funds.[11] Treasury and the SEC proposed general standards that would require each mutual fund to design and implement a customer identification program (CIP) tailored to the mutual fund's size, location, and type of business. The proposed rule also included certain specific standards that would be mandated for all mutual funds.

Treasury and the SEC received eight comments in response to the proposal.[12] Commenters included investment companies, a financial services holding company, a registered investment adviser, a transfer agent, trade associations, and a company engaged in the sale of technologies and services used to locate persons and authenticate identities. Commenters generally supported the proposal but suggested revisions.

Two commenters agreed with the largely risk-based approach set forth in the proposal, which allows each mutual fund to develop a CIP based on its specific operations, taking into consideration variables such as size and type of business. Five commenters suggested that the final rule make greater use of a risk-based approach, in lieu of specific identification and verification requirements. They suggested that such a comprehensively risk-based approach would give mutual funds appropriate discretion to focus efforts and resources on the high-risk accounts that are most likely to be used by money launderers and terrorists. All of the commenters recommended that the final rule include more specific requirements addressing the risks presented by particular situations.[13] Seven of the eight commenters suggested that we had underestimated the burdens that would be imposed by certain elements of the proposal. Three commenters suggested that mutual funds be given greater flexibility when dealing with established customers and be permitted to rely on identification and verification of customers performed by third parties, including other funds in the same fund complex.

All of the commenters asked for additional guidance concerning one or more elements of the proposed rule. Six commenters requested guidance regarding the requirement to check government lists of known and suspected terrorists and terrorist organizations. Four commenters requested guidance concerning the proposal to require notice to customers that the mutual fund is requesting information to verify the customer's identity. Seven commenters requested that the final rule contain a delayed implementation date in order to provide mutual funds with sufficient time to design CIPs, obtain board approval, alter existing policies and procedures, forms, and software, and train staff.

We have modified the proposed rule in light of these comments. The section-by-section analysis that follows discusses the comments and the modifications that we have made to the rule.

C. Codification of the Joint Final Rule

The final rule is being issued jointly by Treasury, through FinCEN, and by the SEC. The substantive requirements of this joint final rule are being codified as part of Treasury's BSA regulations located in 31 CFR Part 103. In addition, to provide a reference to the joint final rule in the SEC regulations for investment companies, the SEC is concurrently publishing a provision in its own regulations in 17 CFR Part 270 that cross-references this final rule.[14]

D. Compliance Date

Six commenters requested that mutual funds be given adequate time to develop and implement the requirements of any final rule implementing section 326. The transition periods suggested by commenters ranged from 90 days to 12 months after the publication of a final rule.

The final rule modifies various aspects of the proposed rule and eliminates some of the requirements that commenters identified as being most burdensome. Nonetheless, we recognize that some mutual funds will need time to develop a CIP, obtain board approval, and implement the CIP, which will include various measures, such as training staff, reprinting forms, and developing new software. Accordingly, although this rule will be effective 30 days after publication, mutual funds will have a transition period to implement the rule. Treasury and the Commission have determined that each mutual fund must fully implement its CIP by October 1, 2003.

II. Section-by-Section Analysis

Section 131(a) Definitions

Section 103.131(a)(1) Account. We proposed to define "account" as any contractual or other business relationship between a customer and a mutual fund established to effect financial transactions in securities, including the purchase or sale of securities.[15] The final rule limits the definition of "account" to relationships between a person and a mutual fund that are established to effect *transactions in securities issued by the mutual fund* in order to clarify that the purchase or sale of a mutual fund's underlying portfolio securities does not establish an "account" for purposes of this rule.[16]

The proposed rule stated that transfers of accounts from one mutual fund to another are outside the definition of "account" for purposes of

[11] Proposed rule, *supra* note 1. Treasury simultaneously published (1) jointly with the banking agencies, a proposed rule applicable to banks (as defined in 31 CFR 103.11(c)) and foreign branches of insured banks; (2) a proposed rule applicable to credit unions, private banks and trust companies that do not have a federal functional regulator; (3) jointly with the SEC, a proposed rule applicable to broker-dealers; and (4) jointly with the CFTC, a proposed rule applicable to futures commission merchants and introducing brokers. Customer Identification Programs for Banks, Savings Associations, and Credit Unions, 67 FR 48290 (July 23, 2002); Customer Identification Programs for Certain Banks (Credit Unions, Private Banks and Trust Companies) That Do Not Have a Federal Functional Regulator, 67 FR 48299 (July 23, 2002); Customer Identification Programs for Broker-Dealers, 67 FR 48306 (July 23, 2002); Customer Identification Programs for Futures Commission Merchants and Introducing Brokers, 67 FR 48328 (July 23, 2002). Treasury, the Commission, the CFTC, and the banking agencies received approximately five hundred comments in response to these proposed rules. Many of those commenters raised issues similar to those we received in connection with the proposal respecting mutual fund customer identification programs.

[12] The comment letters are available for public inspection and copying in the SEC's Public Reference Room, 450 5th Street, NW., Washington, DC (File No. S7–28–02).

[13] For example, two commenters suggested that the rule exclude accounts opened by participants in qualified retirement plans or other qualified benefit plan customers.

[14] 17 CFR 270.0–11.

[15] *See* proposed § 103.131(a)(1).

[16] *See* § 103.131(a)(1)(i). Three commenters suggested that the definition of "account" be limited to formal ongoing relationships, as in the CIP rules proposed by Treasury and the banking agencies. These commenters suggested that, as proposed, the definition could be read to include isolated transactions where an account relationship with the mutual fund is not established. Treasury and the banking agencies proposed to limit the definition of "account" to "ongoing transactions" to specifically address situations where a person obtains certain services or products from a bank such as cashing or buying a check or purchasing a wire transfer or money order. The final rules being issued by the Treasury and the banking agencies do not include the term "ongoing" in their definitions of "account." Instead, their definitions of "account" now specifically exclude these types of products or services and any others where a "formal banking relationship" is not established with a person. Mutual funds do not offer these types of products or services to persons who are not fund shareholders. Thus, we did not include the term "ongoing" in the definition of account or adopt the specific exclusions included in the bank rules.

the proposed rule.[17] The final rule codifies and clarifies this "transfer exception," by excluding from the definition of "account" any account that a mutual fund acquires through an acquisition, merger, purchase of assets, or assumption of liabilities from any third party. Because these transfers are not initiated by customers, the accounts do not fall within the scope of section 326.[18] Finally, the rule excludes from the definition of "account" accounts opened for the purpose of participating in an employee benefit plan established pursuant to the Employee Retirement Income Security Act of 1974.[19] Two commenters recommended that these accounts be excluded from the rule. We believe that these accounts are less susceptible to use for the financing of terrorism and money laundering, because, among other reasons, they are funded through payroll deductions in connection with employment plans that must comply with federal regulations that impose various requirements regarding the funding and withdrawal of funds from such accounts, including low contribution limits and strict distribution requirements. Therefore, we have decided to exclude them from the definition of "account" in the final rule.

Section 103.131(a)(2) Customer. We proposed to define "customer" to mean any mutual fund shareholder of record who opens a new account with a mutual fund, and any person authorized to effect transactions in the shareholder of record's account.[20] The proposed rule described various relationships that would be included in, or excluded from, the definition of "customer."[21] Seven commenters expressed concern about the proposed definition. Three commenters recommended that the final rule provide that persons who do not actually establish an account or receive services from a mutual fund are not "customers." One commenter recommended that the rule define "customer" as a person who opens a new account, and explicitly exclude existing customers. Two commenters suggested that a person who exchanges fund shares within a fund family be excluded, whether or not the exchange occurred in a single account.

We have revised the definition of "customer" to address these and other issues. The final rule defines "customer" as "a person that opens a new account."[22] For example, in the case of a trust account, the "customer" would be the trust. For purposes of this rule, a mutual fund is not required to look through a trust, or similar account to verify the identities of beneficiaries, and instead is required only to verify the identity of the named accountholder.[23] Similarly, with respect to an omnibus account established by an intermediary, a mutual fund generally is not required to look through the intermediary to the underlying beneficial owners.[24]

The final rule clarifies the treatment of a minor child or an informal group with a common interest (*e.g.*, a civic club), where there is no legal entity. In those circumstances, "customer" includes "an individual who opens a new account for (1) an individual who lacks legal capacity, such as a minor; or (2) an entity that is not a legal person, such as a civic club."[25]

In order to make the rule less burdensome, the final rule excludes from the definition of "customer" certain readily identifiable entities, including: (1) Financial institutions regulated by a federal functional regulator; (2) banks regulated by a state bank regulator; and (3) governmental agencies and instrumentalities and companies that are publicly traded (*i.e.*, the entities described in § 103.22(d)(2)(ii)–(iv)).[26] Finally, the definition of "customer" excludes a person that has an existing account with a mutual fund, provided that the mutual fund has a reasonable belief that it knows the true identity of the person.[27]

Five commenters objected to the proposal to define "customer" to include all persons with authority to effect transactions in the account of a shareholder of record.[28] While acknowledging that there are circumstances in which it would be appropriate to verify the identity of all such persons (*e.g.*, accountholders that are small or closely held corporations), they asserted that the proposal in this respect was overbroad and unduly burdensome, and would not further the goals of the statute. In light of these comments, we have revisited the issue and have determined that requiring a mutual fund to verify the identity of all such parties could interfere with the mutual fund's ability to focus on identifying customers that present a significant risk of not being properly identified. Accordingly, the final rule does *not* define "customer" to include persons authorized to effect transactions in the account of a shareholder of record. Rather, a mutual fund's CIP must address situations in which the mutual fund will take additional steps to verify the identity of a customer that is not an individual (such as a corporation or partnership) by seeking information about individuals with authority or control over the account, including persons with authority to effect transactions in the account.[29]

Section 103.131(a)(3) Federal functional regulator. The proposed rule did not define "federal functional regulator." The final rule uses the term in several provisions, including the provisions concerning government lists and reliance on other financial institutions. The final rule defines the term by reference to § 103.120(a)(2), meaning each of the banking agencies, the SEC, and the CFTC.

Section 103.131(a)(4) Financial institution. The proposed rule did not define "financial institution." The final rule uses the term in several provisions, including the definition of "customer" and the provisions on verification through non-documentary methods, notices, and reliance on other financial institutions. Therefore, the final rule defines the term by cross-reference to the BSA.[30]

Section 103.131(a)(5) Mutual fund. We proposed to define "mutual fund" as an "investment company" that is an "open-end company" (as those terms are defined in the 1940 Act).[31] We have revised the definition to limit it to entities that are registered or are required to register with the SEC under section 8 of the 1940 Act.[32] This change clarifies that the rule does not apply to foreign mutual funds that meet the statutory definition but are not subject to the registration requirements of the 1940 Act.

Section 103.131(a)(6) Non-U.S. person. We proposed to define "non-U.S. person" as a person that is not a U.S. person.[33] There were no comments on this definition and we are adopting it as proposed.

Section 103.131(a)(7) Taxpayer identification number. We proposed to define "taxpayer identification number" by reference to section 6109 of the Internal Revenue Code and the regulations of the Internal Revenue Service.[34] There were no comments on this approach and we are adopting it substantially as proposed, with minor technical modifications.

Section 103.131(a)(8) U.S. person. We proposed to define "U.S. person" as a U.S. citizen, or a corporation, partnership, trust, or person (other than a natural person) established or organized under the laws of a State or the United States.[35] There were no comments on this definition and we are adopting it substantially as proposed, with technical changes that conform the definition to that used in the final CIP rules for other financial institutions.

Section 103.131(b) Customer Identification Program: Minimum Requirements

Section 103.131(b)(1) General Rule. We proposed to require that each mutual fund establish, document, and maintain a written CIP as part of its required anti-money laundering (AML) program, and that the procedures of the CIP enable the fund to form a reasonable belief that it knows the true identity of a customer.[36] The mutual fund's CIP procedures were to be based on the type of identifying information available and on an assessment of relevant risk factors, including (1) the mutual fund's size; (2) the manner in which accounts are opened, fund shares are distributed, and purchases, sales and exchanges are effected; (3) the mutual fund's types of accounts; and (4) the mutual fund's customer base.[37] The proposed rule discussed these risk factors and explained that, although the rule requires certain minimum identifying information and suitable verification methods, mutual funds should consider on an ongoing basis whether other information or methods are appropriate, particularly as they become available in the future.[38] Commenters generally supported the approach of the proposed general CIP requirements and we are adopting them substantially as proposed, although the final rule reorganizes the provisions of the CIP requirements section.[39]

The proposed rule would have required a mutual fund's CIP to be approved by the fund's board of directors or trustees.[40] Four commenters requested clarification that the provision would not require ongoing review or monitoring by the board. One commenter observed that fund AML programs must already be approved by the board, and suggested that it would be redundant to require that the CIP, which is part of the fund's AML program, be separately approved.[41] In order to eliminate any duplicative requirements we are eliminating the board approval requirement from the final rule. We note, however, that a fund with an AML program that the board has approved as required, must nonetheless obtain board approval of a new CIP. The addition of the CIP is a material change that must be approved by the board.

Section 103.131(b)(2) Identity verification procedures. We proposed to require that a mutual fund's CIP include procedures for verifying the identity of customers, to the extent reasonable and practicable, using information specified in the rule, and that such verification occur within a reasonable time before or after the customer's account is opened or the customer is granted authority to effect transactions with respect to an account.[42] Commenters supported these general requirements, although five commenters recommended greater use of a risk-based approach.

The final rule continues to strike a balance between flexibility and detailed guidance, and we are adopting the provisions on identity verification procedures substantially as proposed. Under the final rule, a mutual fund's CIP must include risk-based procedures for verifying the identity of each customer to the extent reasonable and practicable.[43] Such procedures must enable the mutual fund to form a reasonable belief that it knows the true identity of each customer.[44] The procedures must be based on the mutual fund's assessment of the relevant risks, including those presented by the manner in which accounts are opened, fund shares are distributed, and purchases, sales and exchanges are effected, the various types of accounts maintained by the mutual fund, the various types of identifying information available, and the mutual fund's customer base.[45] As noted in the proposed rule, a mutual fund's CIP need not include procedures for verifying identities of persons whose transactions are conducted through an omnibus account.[46] The holder of the omnibus account (*e.g.*, a broker-dealer) is considered to be the customer for purposes of this rule.[47]

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[17] *See* proposed rule, *supra* note 1, Section I.A.

[18] Section 326 of the Act provides that the regulations thereunder shall require financial institutions to implement reasonable procedures for "verifying the identity of *any person seeking to open an account.*" (emphasis added) If a financial institution acquires a pre-existing account, the customer is not opening an account with the financial institution. Nevertheless, there may be situations involving the transfer of accounts where it would be appropriate for a mutual fund to verify the identity of customers associated with the accounts that it acquires from another financial institution. We expect financial institutions to implement reasonable procedures to detect money laundering in any accounts, however acquired. A mutual fund may, as part of its AML compliance program, need to take additional steps to verify the identity of customers, based on its assessment of the relevant risks.

[19] Section 103.131(a)(1)(ii)(B).

[20] Proposed § 103.131(a)(3).

[21] *See* proposed rule, *supra* note 1, Section II.A.

[22] Section 103.131(a)(2)(i). Each person named on a joint account is a "customer" under this final rule unless otherwise provided.

[23] However, based on its risk assessment of a new account opened by a customer that is not an individual, a mutual fund may need to take additional steps to verify the identity of the customer by seeking information about individuals with ownership or control over the account in order to identify the customer, as described in § 103.121(b)(2)(ii)(C). *See* notes 82–84 *infra* and accompanying text, discussing procedures for additional verification for certain customers. A mutual fund may, as a part of its AML compliance program, need to take additional steps to verify the identity of customers, based on its assessment of the relevant risks.

[24] *See* also note 47 *infra* and accompanying text, discussing omnibus accounts.

[25] Section 103.131(a)(2)(ii)(B).

[26] Section 103.131(a)(2)(ii)(A)–(B). Section 103.22(d)(2)(ii)–(iv) exempts such companies only to the extent of their domestic operations. Accordingly, a mutual fund's CIP will apply to any foreign offices, affiliates, or subsidiaries of such entities that open new accounts.

[27] Section 103.131(a)(2)(ii)(C). Although a customer of one mutual fund would not necessarily be considered an existing customer of other funds in the same fund complex, one fund may rely on another fund's performance of any elements of its CIP. *See* discussion at notes 115–122 and accompanying text, *infra* describing circumstances in which a fund may rely on the performance of all or part of its CIP by another financial institution, including another fund in the fund complex.

[28] Proposed § 103.131(a)(3)(ii).

[29] Section 103.131(b)(2)(ii)(C). See discussion at notes 82–84 and accompanying text, *infra*.

[30] Section 103.131(a)(4), referring to 31 U.S.C. 5312(a)(2) and (c)(1). This definition is more expansive than the definition of "financial institution" in 31 CFR 103.11, and includes entities such as futures commission merchants and introducing brokers.

[31] Proposed § 103.131(a)(4).

[32] Section 103.131(a)(5).

[33] Proposed § 103.131(a)(6).

[34] Proposed § 103.131(a)(6).

[35] Proposed § 103.131(a)(7).

[36] Proposed § 103.131(b). 31 CFR 103.130 requires mutual funds to develop and implement AML programs.

[37] *Id.*

[38] Proposed rule, *supra* note 1, Section II.B.

[39] In the final rule, § 103.131(b)(1) specifies the general requirement that a mutual fund adopt a written CIP appropriate for its size and type of business, and that the CIP must be a part of the mutual fund's AML program under 31 CFR 103.130. The discussion of the factors to be considered in implementing a CIP now is in § 103.131(b)(2).

[40] Proposed § 103.131(i).

[41] *See* 31 CFR 103.130(b) (requiring that each mutual fund's AML program be approved in writing by its board of directors or trustees).

[42] Proposed § 103.131(d).

[43] Section 103.131(b)(2). Other elements of the fund's CIP, such as procedures for recordkeeping or checking of government lists, are requirements that may not vary depending on risk factors.

[44] *Id.*

[45] *Id.*

[46] Proposed rule, *supra* note 1, Section II.B.

[47] *See* note 24 *supra* and accompanying text. This treatment of omnibus accounts is consistent with the legislative history of the Act, which includes the following: "[W]here a mutual fund sells its shares to the public through a broker-dealer and maintains a "street name" or omnibus account in the broker-dealer's name, the individual purchasers of the fund shares are customers of the broker-dealer, rather than the mutual fund. The mutual fund would not be required to "look through" the broker-dealer to identify and verify the identities of those customers. Similarly, where a mutual fund sells its shares to a qualified retirement plan, the plan, and not its participants, would be the fund's customers. Thus the fund would not be required to "look through" the plan to identify its participants." H.R. Rep. 107–250, pt. 1, at 62 (2001).

Section 103.131(b)(2)(i) Customer Information Required

The proposed rule would have required a mutual fund's CIP to require the fund to obtain certain identifying information about each customer, including, at a minimum: (1) Names; (2) dates of birth, for natural persons; (3) certain addresses;[48] and (4) certain identification numbers.[49] The proposed rule further stated that in certain circumstances a mutual fund should obtain additional identifying information, and that the CIP should set forth guidelines regarding those circumstances and the additional information that should be obtained.[50]

Commenters expressed some concerns about this aspect of the proposal. Two commenters objected to the proposed requirement to obtain more than one address from a customer. Two commenters pointed out that a non-U.S. person may not have any of the specified identification numbers. One commenter recommended that the rule permit a mutual fund to obtain the foreign equivalent of a taxpayer identification number from non-U.S. persons, or a number and country of issuance of any government-issued document evidencing nationality or residence, without the requirement of a photograph or similar safeguard, from non-U.S. entities. Two commenters argued that the final rule should provide financial institutions with flexibility to determine what information to obtain, using a risk-based approach.

We are adopting the customer information provisions substantially as proposed, with changes to accommodate individuals who may not have physical addresses. Prior to opening an account, a mutual fund must obtain, at a minimum, a customer's (1) name; (2) date of birth, for an individual; (3) address; and (4) identification number.[51] The address must be (1) for an individual, a residential or business street address, or for an individual who does not have a residential or business street address, an Army Post Office or Fleet Post Office box number, or the residential or business street address of next of kin or another contact individual; or (2) for a person other than an individual, a principal place of business, local office or other physical location.[52]

We are adopting the identification number requirement substantially as proposed. For a customer that is a U.S. person, the identification number is a taxpayer identification number (social security number, individual taxpayer identification number, or employer identification number). For a customer that is not a U.S. person, the identification number is one or more of the following: a taxpayer identification number, passport number and country of issuance, alien identification card number, or number and country of issuance of any other government-issued document evidencing nationality or residence and bearing a photograph or similar safeguard.[53] This provision provides a mutual fund with some flexibility to choose among a variety of identification numbers that it may accept from a non-U.S. person.[54] However, the identifying information the mutual fund accepts must permit the fund to establish a reasonable belief that it knows the identity of the customer.[55]

The proposed rule included an exception from the requirement to obtain a taxpayer identification number from a customer opening a new account. The exception would have allowed a mutual fund to open an account for a person that has applied for, but has not yet received, an employer identification number (EIN).[56] We are adopting an expanded version of this exception in the final rule. As proposed, the exception was limited to persons that are not natural persons.[57] On further consideration, we have determined that it is appropriate to expand the exception to include natural persons who have applied for, but have not received, a taxpayer identification number.[58] We have also modified the exception to reduce the recordkeeping burden for mutual funds. The proposed rule would have required the mutual fund to retain a copy of the customer's application for a taxpayer identification number. The final rule permits the fund to exercise discretion to determine how to confirm that a customer has filed an application.[59]

Section 103.131(b)(2)(ii) Customer Verification

We proposed to require that a mutual fund's CIP include procedures for verifying the identity of customers, to the extent reasonable and practicable, using the information obtained under the rule.[60] We also proposed to require such verification to occur within a reasonable time before or after the customer's account is opened or the customer is granted authority to effect transactions with respect to an account.[61] The proposed rule stated that a mutual fund need not verify each piece of identifying information if it is able to form a reasonable belief that it knows the customer's identity after verifying only certain of the information.[62] The proposed rule also stated that the flexibility to undertake verification within a reasonable time must be exercised in a reasonable manner, that verifications too far in advance may become stale and verifications too long after the fact may provide opportunities to launder money while verification is pending, and that the appropriate amount of time may depend on the type of account opened, whether the customer opens the account in person, and the type of identifying information available.[63]

The final rule adopts the customer verification requirements substantially as proposed, with modifications that conform this provision of the final rule to the revised definition of "customer," described above. The final rule requires that the CIP contain procedures for verifying the identity of the customer, using the customer information obtained in accordance with paragraph (b)(2)(i), within a reasonable time after the account is opened.[64] The final rule does not require verification if a person is granted authority to effect transactions with respect to an account. As stated in the proposed rule, mutual funds must exercise in a reasonable manner the flexibility to undertake verification within a reasonable time. The amount of time may depend on various factors, such as the type of account opened, whether the customer opens the account in-person, and the type of identifying information that is available.[65]

The final rule also requires that a mutual fund's CIP include procedures that describe when the fund will use documents, non-documentary methods, or a combination of both to verify customer identities.[66] Depending on the type of customer and the method of opening an account, it may be more appropriate to use either documentary or non-documentary methods, and in some cases it may be appropriate to use both methods. The CIP should set forth guidelines describing when documents, non-documentary methods, or a combination of both will be used. These guidelines should be based on the mutual fund's assessment of the relevant risk factors.[67]

Section 103.131(b)(2)(ii)(A) Customer Verification—Through Documents

We proposed to require that a mutual fund's CIP describe documents that the fund will use to verify customers' identities. Suitable documents for verification would include: (1) For natural persons, unexpired government-issued identification evidencing nationality or residence and bearing a photograph or similar safeguard; and (2) for persons other than natural persons, documents showing the existence of the entity, such as registered articles of incorporation, a government-issued business license, partnership agreement, or trust instrument.[68]

Three commenters noted problems with the use of documents to verify customers' identities. Two commenters stated that it is impossible to obtain objective verification that documents are authentic, complete or current. One commenter pointed out that some states do not require documentation of certain legal entities, and that, as a result, there may be no documentary evidence of such entities. One commenter stated that documents, even government-issued identification cards, are inadequate as a sole means of verification, and recommended that the rule require a mutual fund also to obtain information about customers from unrelated sources. The final rule attempts to strike an appropriate balance between the benefits of requiring additional documentary verification and the burdens that may arise from such a requirement. The final rule requires a mutual fund's CIP to contain procedures that set forth the documents that the mutual fund will use for verification.[69] Each mutual fund will conduct its own risk-based analysis of the types of documents that it believes will enable it to verify customer identities, given the risk factors that are relevant to the mutual fund.[70]

In light of recent increases in identity theft and the availability of fraudulent documents, we believe that the value of documentary verification is enhanced by redundancy. The rule gives examples of types of documents that are considered reliable. However, we encourage mutual funds to obtain more than one type of documentary verification to ensure that it has a reasonable belief that it knows the customer's true identity. Moreover, we encourage mutual funds to use a variety of methods to verify the identity of a customer, especially when the mutual fund does not have the ability to examine original documents.

The final rule continues to include, without significant change, an illustrative list of identification documents.[71] A mutual fund may use other documents, provided that they allow the fund to establish a reasonable belief that it knows the true identity of the customer. In addition to the risk factors described in paragraph (b)(2), the mutual fund should take into account the problems of authenticating documents and the inherent limitations of documents as a means of identity verification. These limitations will affect the types of documents that will be necessary to establish a reasonable belief that the fund knows the true identity of the customer, and may require the use of non-documentary methods in addition to documents.

Section 103.131(b)(2)(ii)(B) Customer Verification—Through Non-Documentary Methods

Recognizing that some accounts are opened by telephone, by mail and over the Internet, we proposed to require a mutual fund's CIP to describe what non-documentary methods the fund would use to verify customers' identities and when the fund would use these methods in addition to, or instead of, relying on documents.[72] We explained that the proposed rule allowed the exclusive use of non-documentary methods because some accounts are opened by telephone, mail, or over the Internet.[73] We also noted that even if the customer presents identification documents, it may be appropriate to use non-documentary methods as well.[74]

The proposed rule provided examples of non-documentary verification methods that a mutual fund may use, including: Contacting a customer; independently verifying information through credit bureaus, public databases, and other sources; and checking references with other financial institutions.[75] In the proposed rule we observed that mutual funds may wish to analyze whether there is logical consistency between the identifying information provided, such as the customer's name, street address, ZIP

[48] Proposed § 103.131(c)(1)(iii). We proposed to require funds to obtain residence and mailing addresses (if different) for a natural person, or principal place of business and mailing address (if different) for a person other than a natural person.

[49] Proposed § 103.131(c)(1)(iv). We proposed to require funds to obtain: (1) for a customer that is a U.S. person, a taxpayer identification number, or (2) for a customer that is not a U.S. person, a taxpayer identification number, passport number and country of issuance, alien identification card number, or number and country of issuance of any other government-issued document evidencing nationality or residence and bearing a photograph or similar safeguard.

[50] Proposed rule, *supra* note 1, Section II.C.

[51] Section 103.131(b)(2)(i)(A).

[52] Section 103.131(b)(2)(i)(A)(3).

[53] Section 103.131(b)(2)(i)(A)(4).

[54] The rule provides this flexibility because there is no uniform identification number that non-U.S. persons would be able to provide to a mutual fund. *See* Treasury Department, "A Report to Congress in Accordance with Section 326(b) of the USA PATRIOT Act," October 21, 2002.

[55] We emphasize that the rule neither endorses nor prohibits a mutual fund from accepting information from particular types of identification documents issued by foreign governments. The mutual fund must determine, based upon appropriate risk factors, including those discussed above, whether the information presented by a customer is reliable. We recognize that a foreign business or enterprise may not have a taxpayer identification number or any other number from a government-issued document evidencing nationality or residence and bearing a photograph or similar safeguard. Therefore the final rule notes that when opening an account for such a customer, the mutual fund must request alternative government-issued documentation certifying the existence of the business or enterprise.

[56] Proposed § 103.131(c)(2). This position is analogous to that in regulations issued by the Internal Revenue Service (IRS) concerning "awaiting-TIN [taxpayer identification number] certificates." The IRS permits a taxpayer to furnish an "awaiting-TIN certificate" in lieu of a taxpayer identification number to exempt the taxpayer from the withholding of taxes owed on reportable payments (*i.e.* interest and dividends) on certain accounts. *See* 26 CFR 31.3406(g)–3.

[57] In the proposed rule, we explained that the exception was for businesses that may need to open a mutual fund account before they receive an EIN from the Internal Revenue Service. Proposed rule, *supra* note 1, Section II.C.

[58] Section 103.131(b)(2)(i)(B).

[59] The mutual fund's CIP must include procedures to confirm that the application was filed before the person opens the account and obtain the taxpayer identification number within a reasonable period of time after the account is opened. Section 103.131(b)(2)(i)(B).

[60] Proposed § 103.131(d).

[61] *Id.*

[62] Proposed rule, *supra* note 1, Section II.D.

[63] *Id.*

[64] Section 103.131(b)(2)(ii).

[65] It is possible, however, that a mutual fund would violate other laws by permitting a customer to transact business prior to verifying the customer's identity. *See, e.g.*, 31 CFR part 500 (regulations of Treasury's Office of Foreign Asset Control prohibiting transactions involving designated foreign countries or their nationals).

[66] *Id.* In the proposed rule, this language was in the provisions on verification through documents and non-documentary methods. Proposed § 103.131(d)(1) and (2).

[67] Section 103.131(b)(2) describes these risk factors.

[68] Proposed § 103.131(d)(1).

[69] Section 103.131(b)(2)(ii)(A).

[70] Once a mutual fund obtains and verifies the identity of a customer through a document, such as a driver's license or passport, the fund is not required to take steps to determine whether the document has been validly issued. A fund generally may rely on government issued identification as verification of a customer's identity; however, if a document shows obvious indications of fraud, the fund must consider that factor in determining whether it can form a reasonable belief that it knows the customer's true identity.

[71] For an individual, these documents may include unexpired government-issued identification evidencing nationality or residence and bearing a photograph or similar safeguard, such as a driver's license or passport. § 103.131(b)(2)(ii)(A)(*1*). For a person other than an individual, these documents may include documents showing the existence of the entity, such as certified articles of incorporation, a government-issued business license, a partnership agreement, or trust instrument. § 103.131(b)(2)(ii)(A)(*2*).

[72] Proposed § 103.131(d)(2).

[73] Proposed rule, *supra* note 1, Section II.D.2.

[74] *Id.*

[75] Proposed § 103.131(d)(2).

code, telephone number (if provided), date of birth, and social security number.[76]

We proposed to require mutual funds to use non-documentary methods when: (1) A customer who is a natural person cannot present an unexpired, government-issued identification document that bears a photograph or similar safeguard; (2) the mutual fund is presented with unfamiliar documents to verify the identity of a customer; or (3) the mutual fund does not obtain documents to verify the identity of a customer, does not meet face-to-face with a customer who is a natural person, or is otherwise presented with circumstances that increase the risk the mutual fund will be unable to verify the true identity of a customer through documents.[77] In the proposed rule we explained that we recognize that identification documents may be obtained illegally and may be fraudulent.[78] In light of the recent increase in identity theft, we encouraged mutual funds to use non-documentary methods even when the customer has provided identification documents.[79]

One commenter requested that we clarify that account applicants who are not physically present at an account opening may be treated under the mutual fund's non-documentary verification methods. Another commenter suggested that the proposed non-documentary methods of verification would be ineffective for foreign individuals, and therefore could preclude foreign individuals who are not physically present in the United States from investing in mutual funds.

We recognize that there are many scenarios and combinations of risk factors that mutual funds may encounter, and we have decided to adopt general principles that are illustrated by examples, in lieu of a lengthy and possibly unwieldy regulation that attempts to address a wide variety of situations with particularity. Under the final rule, for a mutual fund relying on non-documentary verification methods, the CIP must contain procedures that describe non-documentary methods the mutual fund will use. The final rule includes an illustrative list of methods, similar to the list that was included in the proposed rule. These methods may include: (1) Contacting a customer; (2) independently verifying the customer's identity through the comparison of information provided by the customer with information obtained from a consumer reporting agency, public database, or other source; (3) checking references with other financial institutions; and (4) obtaining a financial statement.[80] As we stated in the proposed rule, we recommend that mutual funds analyze whether there is logical consistency between the identifying information provided, such as the customer's name, street address, ZIP code, telephone number (if provided), date of birth, and social security number.

The final rule also includes a list, similar to that in the proposal, of circumstances that may require the use of non-documentary procedures. The final rule requires that non-documentary procedures address circumstances in which: (1) An individual is unable to present an unexpired government-issued identification document that bears a photograph or similar safeguard; (2) the mutual fund is not familiar with the documents presented; (3) the account is opened without obtaining documents; (4) the customer opens the account without appearing in person; and (5) the circumstances increase the risk that the mutual fund will be unable to verify the true identity of a customer through documents.[81]

As we stated in the proposed rule, because identification documents may be obtained illegally and may be fraudulent, and in light of the recent increase in identity theft, we encourage mutual funds to use non-documentary methods even when the customer has provided identification documents.

Section 103.131(b)(2)(ii)(C) Customer Verification—Additional Verification for Certain Customers

As described above, we proposed to require verification of the identity of any person authorized to effect transactions in a shareholder's account with a mutual fund. Most commenters objected to this requirement, and it does not appear in the final rule.[82] For the reasons discussed below, however, the rule does require that a mutual fund's CIP address the circumstances in which it will obtain information about such individuals in order to verify the customer's identity. Treasury and the SEC believe that while mutual funds may be able to verify the majority of customers adequately through the documentary or non-documentary verification methods described above, there may be circumstances when these methods are inadequate. The risk that the mutual fund will not know the customer's true identity may be heightened for certain types of accounts, such as an account opened in the name of a corporation, partnership, or trust that is created or conducts substantial business in a jurisdiction that has been designated by the United States as a primary money laundering concern or has been designated as non-cooperative by an international body. We believe that a mutual fund must identify customers that pose a heightened risk of not being properly identified and that a mutual fund's CIP must prescribe additional measures that may be used to obtain information about the identity of the individuals associated with the customer, when standard documentary or non-documentary methods prove to be insufficient.

The final rule, therefore, includes a new provision on verification procedures.[83] This provision requires that the CIP address circumstances in which, based on the mutual fund's risk assessment of a new account opened by a customer that is not an individual, the mutual fund also will obtain information about individuals with authority or control over the account, including persons authorized to effect transactions in the shareholder's account, in order to verify the customer's identity.[84] This additional verification method will apply only when the mutual fund cannot adequately verify the customer's identity using the documentary and non-documentary verification methods.[85]

Section 103.131(b)(2)(iii) Lack of Verification

We proposed to require that a mutual fund's CIP include procedures for responding to circumstances in which the fund cannot form a reasonable belief that it knows the true identity of the customer.[86] We explained in the proposed rule that the CIP should specify the actions to be taken, which could include closing the account or placing limitations on additional purchases.[87] We also explained that there should be guidelines for when an account will not be opened (*e.g.*, when the required information is not provided), and that the CIP should address the terms under which a customer may conduct transactions while the customer's identity is being verified.[88]

The final rule adopts this provision substantially as proposed, and adds a description of recommended features of these procedures, based on the features described in the proposed rule.[89] The final rule states that the procedures should describe: (1) When the mutual fund should not open an account; (2) the terms under which a customer may use an account while the mutual fund attempts to verify the customer's identity; (3) when the mutual fund should file a Suspicious Activity Report (SAR) in accordance with applicable law;[90] and (4) when the mutual fund should close an account, after attempts to verify a customer's identity have failed.[91]

Section 103.131(b)(3) Recordkeeping

Section 103.131(b)(3)(i) Required Records. We proposed to require mutual fund CIPs to include certain recordkeeping procedures.[92] First, the proposed rule would have required that a mutual fund maintain a record of the identifying information provided by customers.[93] Second, if a mutual fund relies on a document to verify a customer's identity, the proposed rule would have required the mutual fund to maintain a copy of the document.[94] Third, the proposed rule would have required mutual funds to record the methods and results of any additional measures undertaken to verify the identity of customers.[95] Finally, the proposed rule would have required mutual funds to record the resolution of any discrepancy in the identifying information obtained.[96]

Six commenters expressed concern that the recordkeeping requirements as proposed were unduly burdensome. Two commenters recommended that the rule be modified to incorporate a materiality standard so that a fund need retain only those records that reflect the resolution of material discrepancies. Three commenters recommended that we eliminate the requirement that mutual funds retain copies of documents used to verify customer identities. One commenter requested clarification on the types of records that will suffice to memorialize non-documentary customer verification methods and their results.

In light of these comments, we have reconsidered and modified the recordkeeping requirements of the rule. The final rule provides that a mutual fund's CIP must include procedures for making and maintaining a record of all information obtained under the procedures implementing the requirement that a mutual fund develop and implement a CIP.[97] However, the final rule is significantly more flexible than the proposed rule. Under the final rule, in addition to required identifying information about a customer, a mutual fund's records must include a description, rather than a copy, of any document that the mutual fund relied on to verify the identity of the customer, noting the type of document, any identification number contained in the document, the place of issuance, and the issuance and expiration dates, if any.[98] The record must include "a description" of the methods and results of any measures undertaken to verify the identity of the customer, and of the resolution of any "substantive" discrepancy discovered when verifying the identifying information obtained, rather than any documents generated in connection with these measures.[99]

As we stated in the proposed rule, nothing in the rule modifies, limits, or supersedes section 101 of the Electronic Signatures in Global and National Commerce Act.[100] A mutual fund may use electronic records to satisfy the requirements of this final rule, in accordance with guidance that the Commission has issued.[101]

Section 103.131(b)(3)(ii) Record Retention

We proposed to require that a mutual fund retain all required records for five years after the account is closed.[102] Six commenters expressed concern about this aspect of the proposal, recommending that the recordkeeping period be shortened, or that mutual funds be required to retain records only for five years after verification of the customer's identity.

We believe that, by eliminating the requirement that a mutual fund retain copies of documents used to verify customer identities, the final rule addresses many of the commenters' concerns. Nonetheless, we believe that, while the identifying information provided by customers should be retained, there is little value in requiring mutual funds to retain the remaining records for five years after an account is closed, because this information is likely to be stale. Therefore, the final rule prescribes a bifurcated record retention schedule that is consistent with a general five-year retention requirement. Under the final rule, the mutual fund must retain the information referenced in paragraph (b)(3)(i)(A) (*i.e.*, information obtained about a customer) for five years after the date the account is closed.[103] The mutual fund need only retain a record that it must make and maintain under the other recordkeeping provisions, paragraphs (b)(3)(i)(B), (C), and (D) (*i.e.*, information that verifies a customer's identity) for five years after the record is made.[104]

Section 103.131(b)(4) Comparison With Government Lists

We proposed to require that a mutual fund's CIP have procedures for determining whether the customer appears on any list of known or suspected terrorists or terrorist organizations prepared by any federal government agency and made available to the fund.[105] In addition, the proposed rule stated that mutual funds must follow all federal directives issued in connection with such lists.[106]

Six commenters recommended that the final rule specify which government lists must be checked and provide a mechanism for communicating that information to mutual funds. These commenters also suggested that all such lists be consolidated, and that mutual funds not be required to check such lists until an account is established or a customer receives services from the fund.

The final rule states that a mutual fund's CIP must include procedures for

[76] Proposed rule, *supra* note , Section II.D.2.
[77] Proposed § 103.131(d)(2).
[78] Proposed rule, *supra* note 1, Section II.D.2.
[79] *Id.*
[80] Section 103.131(b)(2)(ii)(B)(*1*).
[81] Section 103.131(b)(2)(ii)(B)(*2*). The final clause acknowledges that there may be circumstances, beyond those specifically described in this provision, when a mutual fund should use non-documentary verification procedures.
[82] *See supra* notes 28–29, and accompanying text.
[83] Section 103.131(b)(2)(ii)(C).
[84] *Id.*
[85] *Id.* A mutual fund need not undertake any additional verification if it chooses not to open an account when it cannot verify the customer's true identity using standard documentary and non-documentary verification methods.
[86] Proposed § 103.131(g).
[87] *See* proposed rule, *supra* note 1, at section II.G.
[88] *Id.*
[89] § 103.131(b)(2)(iii).
[90] Although mutual funds are not currently required to file SARs, they are encouraged to do so voluntarily. On January 21, 2003, Treasury proposed new rule 31 CFR 103.15 which, if adopted, will require mutual funds to file SARs in certain circumstances. 68 FR 2716 (Jan. 21, 2003).
[91] Section 103.131(b)(2)(iii)(A)–(D).
[92] Proposed § 103.131(h).
[93] Proposed § 103.131(h)(1).
[94] *Id.*
[95] Proposed § 103.131(h)(2).
[96] Proposed § 103.131(h)(3).
[97] Section 103.131(b)(3).
[98] Section 103.131(b)(3)(i)(A)–(B).
[99] Section 103.131(b)(3)(i)(C)–(D).
[100] Pub. L. 106–229, 114 Stat. 464 (15 U.S.C. 7001).
[101] *See* Electronic Recordkeeping by Investment Companies and Investment Advisers, Investment Company Act Release No. 24991 (May 24, 2001)[66 FR 29224 (May 30, 2001)].
[102] Proposed § 103.131(h).
[103] Section 103.131(b)(3)(ii). The Secretary has determined that the records required to be kept by section 326 of the Act have a high degree of usefulness in criminal, tax, or regulatory investigations or proceedings, or in the conduct of intelligence or counterintelligence activities, to protect against international terrorism.
[104] *Id.*
[105] Proposed § 103.131(e).
[106] *Id.*

determining whether the name of the customer appears on any list of known or suspected terrorists or terrorist organizations issued by any federal government agency and designated as such by Treasury in consultation with the federal functional regulators.[107] Because Treasury and the federal functional regulators have not yet designated any such lists, the final rule cannot be more specific with respect to the lists that mutual funds must check. However, mutual funds will not have an affirmative duty under this rule to seek out all lists of known or suspected terrorists or terrorist organizations compiled by the federal government. Instead, mutual funds will receive notification by way of separate guidance regarding the lists that they must consult for purposes of this provision.

We also have modified this provision to give guidance as to when a mutual fund must consult a list of known or suspected terrorists or terrorist organizations. The final rule states that the CIP's procedures must require the mutual fund to determine whether a customer appears on a list "within a reasonable period of time" after the account is opened, or earlier if required by another federal law or regulation or by a federal directive issued in connection with the applicable list.[108]

The final rule also requires a mutual fund's CIP to include procedures that require the fund to follow all federal directives issued in connection with such lists. Again, because no lists have yet been designated under this provision, the final rule cannot provide more guidance in this area.

Section 103.131(b)(5) Customer Notice

We proposed to require that a mutual fund's CIP include procedures for providing customers with adequate notice that the fund is requesting information to verify their identities.[109] The proposed rule stated that a mutual fund could satisfy that notice requirement by generally notifying its customers about the fund's verification procedures.[110] It stated that if an account is opened electronically, such as through an Internet website, the mutual fund could provide notice electronically.

Three commenters generally supported the proposal, but asked that we provide model language and additional guidance about the circumstances in which a mutual fund would be deemed to comply with the requirement. One commenter stated that the proposed notice requirement was overbroad.

The Act requires that our rules "at a minimum, require financial institutions to * * * [give] customers * * * adequate notice" of the procedures they adopt concerning customer identification. Based on this statutory requirement, the final rule requires a mutual fund's CIP to include procedures for providing fund customers with adequate notice that the fund is requesting information to verify their identities.[111] The final rule provides additional guidance regarding what constitutes adequate notice and the timing of the notice requirement. The final rule states that notice is adequate if the mutual fund generally describes the identification requirements of the final rule and provides notice in a manner reasonably designed to ensure that a customer views the notice, or is otherwise given notice, before opening an account.[112] The final rule states that a mutual fund may, depending on how an account is opened, post a notice on its website, include the notice on its account applications, or use any other form of oral or written notice.[113] In addition, the final rule includes sample language that, if appropriate, will be deemed adequate notice to a mutual fund's customers when provided in accordance with the requirements of this final rule.[114]

Section 103.131(b)(6) Reliance on Other Financial Institutions

In the proposed rule we recognized that because mutual funds typically conduct their operations through separate entities, some elements of the CIP will best be performed by personnel of these separate entities.[115] As we stated, it is permissible for a mutual fund to contractually delegate the implementation and operation of its CIP to another affiliated or unaffiliated service provider, such as a transfer agent.[116] However, the mutual fund remains responsible for assuring compliance with the rule, and therefore must actively monitor the operation of its CIP and assess its effectiveness.[117]

Four commenters suggested that, in certain circumstances, mutual funds be permitted to rely on customer identification and verification performed by other financial institutions (including other funds in the same fund complex). Two commenters suggested that an investor that opens an account or conducts a transaction with a mutual fund through another financial institution that is itself subject to BSA anti-money laundering and CIP requirements should be considered a customer of the other financial institution and not a customer of the mutual fund. One commenter suggested that all intermediated accounts (*i.e.*, accounts that are opened through another financial institution) be treated similarly to omnibus accounts when the intermediary has identification and verification responsibilities under the BSA.

We recognize that there may be circumstances in which a mutual fund should be able to rely on the performance by another financial institution of some or all of the elements of the fund's CIP. Therefore, the final rule provides that a mutual fund's CIP may include procedures that specify when the fund will rely on the performance by another financial institution of any procedures of the fund's CIP and thereby satisfy the mutual fund's obligations under the rule.[118] Reliance is permitted if a customer of the mutual fund is opening, or has opened, an account or has established a similar business relationship with the other financial institution to provide or engage in services, dealings, or other financial transactions.[119]

In order for a mutual fund to rely on the other financial institution, (1) such reliance must be reasonable under the circumstances, (2) the financial institution must be subject to a rule implementing the anti-money laundering compliance program requirements of 31 U.S.C. 5318(h) and be regulated by a federal functional regulator, and (3) the other financial institution must enter into a contract with the mutual fund requiring it to certify annually to the mutual fund that it has implemented an anti-money laundering program and will perform (or its agent will perform) the specified requirements of the mutual fund's CIP.[120] The contract and certification will provide a standard means for a mutual fund to demonstrate the extent to which it is relying on another institution to perform its CIP and that the institution has in fact agreed to perform these requirements.[121] If it is not clear from these documents, a mutual fund must be able to otherwise demonstrate when it is relying on another institution to perform its CIP with respect to a particular customer. The mutual fund will not be held responsible for the failure of the other financial institution to fulfill adequately the mutual fund's CIP responsibilities, provided that the mutual fund can establish that its reliance was reasonable and that it has obtained the requisite contracts and certifications. Treasury and the SEC emphasize that the mutual fund and the other financial institution upon which it relies must satisfy all of the conditions set forth in this final rule. If they do not, then the mutual fund remains solely responsible for applying its own CIP to each customer in accordance with this rule.[122]

All of the federal functional regulators are adopting comparable provisions in their CIP rules to permit such reliance. Furthermore, the federal functional regulators expect to cooperate and share information to determine whether the institutions subject to their jurisdiction are in compliance with the conditions of the reliance provision of this rule.

Section 103.131(c) Exemptions

The proposed rule provided that the SEC, with the concurrence of Treasury, may by order or regulation exempt any mutual fund or type of account from the requirements of the rule.[123] Under the proposal, in issuing such exemptions, the SEC and Treasury were to consider whether the exemption is consistent with the purposes of the BSA, and in the public interest.[124] The proposal stated that the SEC and Treasury could also consider other necessary and appropriate factors.[125]

Six commenters recommended that various types of accounts and customers be exempted from the final rule (*e.g.*, participants in qualified retirement plans, court-appointed executors and guardians, and individuals granted authority to effect transactions in an account upon the death of a shareholder). We have incorporated any suggested exemptions that we have determined to be appropriate into the definitions of "account" and "customer," for the reasons described above.[126] We are adopting this provision of the rule as proposed.

Section 103.131(d) Other Requirements Unaffected

The final rule includes a provision, parallel to that in the rules that require other financial institutions to adopt and implement CIPs,[127] to the effect that nothing in § 103.131 shall be construed to relieve a mutual fund of its obligations to obtain, verify, or maintain information that is required by another regulation in part 103. This provision will resolve any ambiguity if mutual funds in the future become obligated to obtain, verify, or maintain information under such regulations.

III. The Commission's Analysis of the Costs and Benefits Associated With the Final Rule

Treasury and the Commission are sensitive to the costs and benefits imposed by their rules. Nevertheless, we believe that the rule imposes no costs in addition to those that would result from compliance with the USA PATRIOT Act by mutual funds. While the Commission believes the costs of the rule are attributable to the statute, the Commission has nonetheless undertaken an analysis of these requirements.

Section 326 requires Treasury and the Commission to prescribe regulations setting forth minimum standards for mutual funds regarding verification of the identities of customers.[128] The rule requires mutual funds to implement a written CIP as part of the anti-money laundering programs required by 31 U.S.C. 5318(h). The CIP must include risk-based procedures for verifying the identity of each customer, to the extent reasonable and practicable. As required by section 326, these procedures must (1) specify the identifying information that the mutual fund will obtain with respect to each customer, (2) contain procedures for verifying the identity of the customer, within a reasonable time after the account is opened, using documents, non-documentary methods, or a combination of both, and (3) include procedures for responding to circumstances in which the mutual fund cannot form a reasonable belief that it knows the true identity of the customer. The CIP also must include procedures for (1) maintaining a record of all information obtained (for either five years after the date the account is closed or five years after the record is made, depending on the type of information), (2) determining whether the customer appears on any list of known or suspected terrorists or terrorist organizations issued by any federal agency and designated as such by the Department of the Treasury in consultation with the federal functional regulators, and (3) providing customers with adequate notice that the mutual fund is requesting information to verify their identities.

As discussed in more detail below, the Commission estimates that approximately 890 registered mutual funds and fund "families" are required to comply with section 326.[129] The requirements of section 326 as implemented by today's rule will impose initial, one-time costs and ongoing costs on mutual funds and fund families. The costs associated with establishment of CIPs and modification of computer systems and account applications (both paper and web-based applications) to conform to the information and notice requirements of the CIP will represent initial, one-time costs. Ongoing costs for mutual funds

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[107] Section 103.131(b)(4).

[108] *Id.*

[109] Proposed § 103.131(f).

[110] Proposed rule, *supra* note 1, at section II.F.

[111] Section 103.131(b)(5)(i).

[112] Although a fund may include the notice in its prospectus, the prospectus would need to be provided to the investor no later than the trade date in order to satisfy the requirement that the notice be provided in a manner reasonably designed to ensure that a customer receives it before the account is opened.

[113] Section 103.131(b)(5)(ii).

[114] Section 103.131(b)(5)(iii).

[115] Proposed rule, *supra* note 1, section II.B.

[116] *Id.*

[117] *Id.*

[118] *See* § 103.131(b)(6).

[119] *Id.*

[120] *Id.*

[121] A mutual fund must be able to demonstrate that the other financial institution has agreed to perform the relevant requirements of the fund's CIP, regardless of whether the other financial institution is an affiliated person of the fund. Accordingly, the contract and certification requirement in the final rule applies equally to affiliated person or unaffiliated person reliance.

[122] This provision of the rule does *not* affect the ability of a mutual fund to contractually delegate the implementation and operation of its CIP to another service provider. However, the mutual fund remains responsible for assuring compliance with the rule, and therefore must actively monitor the operation of its CIP and assess its effectiveness.

[123] Proposed § 103.131(j).

[124] *Id.*

[125] *Id.*

[126] *See* notes 15–19, 20–30 and accompanying text *supra*.

[127] As to the rules that require other financial institutions to adopt and implement CIPs, *see supra* Section I.A.

[128] As discussed above, section 326 provides that such regulations, at a minimum, must require financial institutions to implement, and customers to comply with, reasonable procedures for—(A) verifying the identity of any person seeking to open an account to the extent reasonable and practicable; (B) maintaining records of the information used to verify a person's identity, including name, address, and other identifying information; and (C) consulting lists of known or suspected terrorists or terrorist organizations provided to the financial institution by any government agency to determine whether a person seeking to open an account appears on any such list. *See* Section I.A. *supra*.

[129] Currently there are an estimated 3,060 mutual funds registered with the SEC. The 3,060 registered mutual funds are advised by approximately 890 different primary investment advisers. We assume, for purposes of this analysis, that mutual funds that share a common primary investment adviser are part of the same fund family. Therefore, we assume that 890 fund families will be required by today's rule to develop and implement a CIP. For purposes of estimating the total costs associated with section 326 requirements in the Proposed rule, we assumed that each mutual fund would be responsible for establishing a CIP. *See* proposed rule, *supra* note 11 at Section V.B.1. Consequently, the initial cost for the 3,060 mutual funds was estimated to be approximately $19,125,000. In the proposed rule, we acknowledged that using the number of mutual funds to estimate the costs may result in a high estimate of those costs, and said that we assumed that, in many instances, a single CIP will be developed by a mutual fund family and used by all of the funds in that family. *See* proposed rule, *supra* note 11, at n.20.

and fund families will include: (1) Collecting the information required by the CIP; (2) verifying customers' identities; (3) determine whether customers appear on designated lists issued by federal government agencies; and (4) making and maintaining required records. The magnitude of these ongoing costs will, in large part, depend on the number of new accounts opened.

The Commission and Treasury believe that the requirements in the final rule are reasonable and practicable and that, accordingly, the costs to mutual funds and fund families of compliance with the rule's requirements are attributable to the statute. In the proposed rule, we requested comment and specific data regarding the costs and benefits of the proposed rule. We did not receive any data in comment letters concerning the costs and benefits of the proposed rule.

A. Benefits Associated With the Final Rule

We anticipate that mutual funds, fund customers, and the nation as a whole will benefit from the new rule. The anti-money laundering provisions of the USA PATRIOT Act are intended to facilitate the prevention, detection, and prosecution of money laundering and terrorist financing. Today's rule implements an important part of those provisions. By requiring that mutual funds establish CIPs, section 326 and the rule will limit the ability of criminals, including terrorists, to use mutual fund accounts to finance their activities, or shelter the proceeds of criminal conduct. Moreover, mutual fund CIPs should deter criminals from using mutual fund accounts to perpetrate fraud on the fund complex (by placing fictitious buy and sell orders) and identity theft of legitimate mutual fund customers. We also believe that the rules provide greater certainty to the private sector on how to comply with the USA PATRIOT Act because they are consistent with and comparable to the rules adopted by the other federal functional regulators. Finally, in order to reduce compliance burdens, the final rule allows mutual funds flexibility to adopt CIPs and to distribute notices that are best suited to the funds' businesses and needs. These benefits are difficult to quantify. We received no data from commenters quantifying the value of these benefits.

B. Costs Associated With the Final Rule

Section 326 of the USA PATRIOT Act, and the new rule, allow for great flexibility in the development of CIPs. Differences in the ways that mutual fund accounts are opened, fund shares are distributed, and fund purchases, sales and exchanges are effected; differences in the various types of accounts maintained by mutual funds; and differences among mutual fund customer bases make it difficult to quantify accurately a universally applicable cost per mutual fund. Most mutual funds currently have some procedures in place for collecting information about and verifying the identities of their customers, and for detecting fraud in the account opening process by looking for inconsistencies in the information provided by customers and/or checking customer names against certain databases. We anticipate that the requirements of section 326 as implemented by today's rule nonetheless will impose initial, one-time costs and ongoing costs on mutual funds and fund families in connection with formulating and implementing programs that comply with today's rule, and modifying existing procedures to conform to those new programs. Initial one-time costs associated with establishment of CIPs would include: (1) The development, adoption, and implementation of a CIP; (2) the creation or modification of computer systems and account applications (both paper and web-based applications) to collect required information and disseminate required notices; (3) the modification of electronic recordkeeping systems to verify and retain the required information; and (4) personnel training. Ongoing costs for mutual funds and fund families will include: (1) Collecting the information required by the CIP; (2) verifying customers' identities; (3) determining whether customers appear on designated lists issued by federal government agencies; and (4) making and maintaining required records. As discussed above, the magnitude of these ongoing costs will, in large part, depend on the number of new accounts opened. From January 1, 1990 through December 31, 2001, approximately 16 million mutual fund accounts were opened annually.[130]

[130] This estimate is derived from information reported in the Investment Company Institute's 2002 Mutual Fund Fact Book. It represents the net annual increase in the number of mutual fund accounts. The actual number of new accounts that were opened during this period is probably higher because this estimate is reduced by the number of accounts that were closed during the same period. No data are available regarding the number of accounts that were closed. The number of accounts with respect to which customers' identities will be required to be verified is, however, significantly lower than the aggregate number of new accounts that are created annually. A mutual fund will not be required to verify the identity of a customer who has an existing account with the mutual fund, provided that the mutual fund has a reasonable belief that it knows the true identity of the person.

1. Costs Associated With Establishing a CIP

Program Implementation. Section 326 of the Act and the new rule require mutual funds to develop written CIPs. Based on discussions with industry representatives, the Commission estimates that it will take approximately 50 hours for a fund, or fund family, to develop a CIP at a cost of approximately $3,810.[131] Based on these assumptions, we estimate that the aggregate cost of developing CIPs will be approximately $3.4 million ($3,810 per program × 890 fund families).

We believe this is a reasonable estimate of the cost of developing and implementing CIPs. We recognize that the actual development costs associated with establishing a CIP may vary from this estimate depending upon the size of the mutual fund or fund family, the distribution channels used by the fund or fund family, the fund's customer base, number of affiliates, and the extent to which a fund or fund family relies on third parties or allocates responsibilities under its CIP. For mutual funds that delegate implementation of their CIPs to unaffiliated service providers, the burden per mutual fund may be less because those service providers will likely use the same or similar software and systems for several different registrants. Similarly, the cost per fund for funds that use a CIP developed by their fund family may be less.

Systems Modifications. The Commission anticipates that the new rule will cause individual mutual funds and mutual fund families to incur costs to modify items such as account applications and websites, to create or modify electronic links to other databases, and to modify their electronic recordkeeping systems in order to collect, verify, and retain the required information, and to provide the required notice to customers. The cost-benefit analysis in the proposed rule did not discuss the time and costs associated with computer system modifications, but commenters suggested that these costs could be substantial. The Commission estimates, based on discussions with industry representatives, that it will cost each fund or fund family approximately $40,000 to make these types of system modifications.[132] Therefore the Commission estimates that there will be a one-time aggregate cost of approximately $36 million for these systems modifications.

2. Ongoing Costs

As mentioned above, ongoing costs for mutual funds will be associated with the need to: (1) Collect the information required by the CIPs, (2) verify customers' identities, (3) determine whether customers appear on lists provided by federal agencies, and (4) make and maintain records related to CIPs.

Information Collection. Although mutual funds generally require customers to provide a name and mailing address in order to open an account, mutual funds currently may not require all fund customers to provide all of the information required to be collected pursuant to a CIP. Moreover, mutual funds may not be collecting all such information with respect to all of the persons who will be considered to be customers for purposes of the new rule. Therefore the Commission anticipates that mutual funds will incur costs in connection with the collection of identifying information from their customers. Based on discussions with industry participants, the staff of the SEC estimates that the average time spent collecting the required information will be between one and four minutes per account and that the hourly personnel and overhead associated with these requirements will be $25 per hour. Therefore, the SEC staff estimates that this burden will result in an aggregate annual cost to the industry of between $6.7 million and $26.7 million.[133]

Information Verification. The new rule also requires CIPs to contain procedures for funds to verify customer identities. The rule provides funds with substantial flexibility to decide how they will verify identification information. The purpose of making the rule flexible is to give funds the ability to select verification methods that are, as section 326 requires, reasonable and practicable. The new rule allows a mutual fund to employ such verification methods as permit it to form a reasonable belief that it knows the true identities of its customers.

The rule sets forth non-exclusive lists of methods that a fund may use to verify customer identification. A fund may use other reasonable methods that are currently available, or that become available in the future. The Commission believes that verifying the identifying information could result in costs for mutual funds because some firms currently may not use verification methods. Based on discussions with industry participants, the SEC staff estimates that the total annual cost to the industry to verify the identifying information will be between $49.3 million and $98.6 million.[134]

Resolution of discrepancies. Based on discussions with industry participants, the staff of the SEC believes that initial detection of discrepancies in information collected will be automated and conducted on a batch-file basis. Once discrepancies have been detected, staff of the SEC estimates that the average time spent by compliance personnel to resolve discrepancies in information collected will be between one and four minutes per account and that the hourly personnel and overhead cost associated with these requirements will be $25 per hour. Therefore, the SEC staff estimates that this burden will result in an aggregate annual cost to the industry of between $6.7 million and $26.7 million.

Comparison with government lists of known or suspected terrorists. Section 326 and the new rule require that mutual fund CIPs include reasonable procedures for determining whether a customer's name appears on designated lists of known or suspected terrorists or terrorist organizations issued by any federal government agency. Mutual funds should already have procedures for determining whether customers' names appear on some federal government lists. There are substantive legal requirements associated with the lists circulated by Treasury's Office of Foreign Asset Control (OFAC). Failure to comply with these requirements may result in criminal and civil penalties. Based on discussions with industry representatives the SEC staff estimates that the annual cost to the mutual fund industry of this requirement will be $3.4 million.[135]

Recordkeeping. The Commission believes that the recordkeeping requirement in the new rule will result in additional costs for mutual funds that currently do not maintain certain of the records for the prescribed time period. We believe that most funds already retain certain of the records required by the new rule as a matter of good business practice.

The proposed rule provided that mutual fund CIPs provide for the retention of all information for five years after a customer account is closed. The final rule bifurcates the record retention provisions so that funds will be required to retain customer identification information for five years after the account is closed, and to retain a description of (1) the documents relied upon to verify the customer's identity, (2) the methods and results of measures undertaken to verify the identity a customer and (3) the resolution of any substantive discrepancies discovered during the identity verification process for five years after the date the record was made. The SEC staff estimates, based on discussions with

See note *supra* and accompanying text. A mutual fund may also, in certain circumstances, rely on the performance by another financial institution of any procedures of the mutual fund's CIP with respect to a customer. *See* notes 118–122 *supra* and accompanying text.

[131] We estimate that it will take compliance personnel 45 hours at a cost of $62 per hour, attorneys 4 hours at a cost of $130 per hour, and directors 1 hour at $500 per hour, to develop a CIP. We have revised this estimate since the proposal to more accurately reflect the hourly costs of the various types of persons who must be involved in the creation and implementation of a CIP. This estimate of the cost of developing a CIP includes the cost of the rule's requirement that the mutual fund's CIP include procedures for providing fund customers with notice that the fund is requesting information to verify their identities. A mutual fund may satisfy the notice requirement by generally notifying its customers about the procedures the fund must comply with to verify their identities. Depending on how accounts are opened, the mutual fund may post a notice on its website, or provide customers with any other form of written or oral notice.

[132] Based on discussions with industry representatives, SEC staff estimates that it will take compliance personnel fifteen hours, at $62 per hour ($930) to modify fund account applications in order to collect all of the required information from and provide required notice to fund customers. The SEC staff estimates that the aggregate cost of such modifications will be approximately $828,000 ($930 per fund family × 890 fund families). Based on discussions with industry representatives, the SEC staff estimates that it will take computer programmers 640 hours at $62 per hour to implement the necessary computer system modifications ($39,680). The SEC staff estimates the aggregate cost of these modifications to be $35.3 million ($39,680 per fund family × 890 fund families). Thus, the SEC staff estimates the total costs of systems modifications to be $36.1 million ($35.3 million + $828,000).

[133] We estimate that there are 16 million new mutual fund shareholder accounts created each year. Therefore, we estimate the range of cost to be between $6.7 million (16 million new accounts per year × 1/60 of an hour × $25) and $26.7 million (16 million new accounts per year × 1/15 of an hour × $25).

[134] The SEC staff believes that the processing costs associated with verification methods will be between $1.00 and $2.00 per account. The SEC staff further estimates that the average time spent verifying an account will be between five and ten minutes. The hourly cost of the person who would undertake the verification is estimated to be $25 per hour including overhead. Therefore, the estimated costs to the industry reported above are between: $49.3 million ((16 million new accounts per year) × ($1.00) + (16 million new accounts per year) × (1/12 of an hour) × ($25)) and $98.6 million ((16 million new accounts per year) × ($2.00) + (16 million new accounts per year) × (1/6 of an hour) × ($25)).

[135] Based on discussions with industry representatives, the SEC staff estimates that it takes a data entry clerk approximately 30 seconds to ascertain whether a customer's name is on a government list. We assume that for most mutual fund customers this check will be automated and conducted on a batch-file basis. Therefore we estimate that cost of this requirement is $.21 per customer (1/120 hour × $25 per hour (cost per hour of data entry)). We estimate the aggregate annual cost of this requirement to be $3.4 million ($.21 per customer × 16 million customers).

representatives of the mutual fund industry, that this recordkeeping requirement will cost $13.3 million annually.[136]

IV. Final Regulatory Flexibility Analysis

Treasury and the Commission are sensitive to the impact our rules may impose on small entities. Congress enacted the Regulatory Flexibility Act[137] to address concerns related to the effects of agency rules on small entities. Treasury and the Commission believed that the proposed rule likely would not have a "significant economic impact on a substantial number of small entities."[138] First, the economic impact on small entities should not be significant because most small entities are likely to have a relatively small number of accounts, and thus compliance should not impose a significant economic impact. Second, the economic impact on mutual funds, including small entities, is imposed by the statute itself, and not by the rule. Treasury and the Commission sought comment on whether the proposed rule would have a significant economic impact on a substantial number of small entities and whether the costs are imposed by the statute itself and not the proposed rule. Treasury and the Commission did not receive any comments in response to this request.

While Treasury and the Commission believed that the proposed rule likely would not have a significant economic impact on a substantial number of small entities, we prepared an Initial Regulatory Flexibility Analysis that was published in the proposed rule. Therefore, a Final Regulatory Flexibility Analysis has been prepared for this final rule in accordance with 5 U.S.C. 604.

A. Need for and Objectives of the Rule

Section 326 requires Treasury and the Commission jointly to issue a regulation setting forth minimum standards for mutual funds and their customers regarding the identities of customers that will apply in connection with the opening of an account at a mutual fund.[139]

The purpose of section 326, and the regulations promulgated thereunder, is to make it easier to prevent, detect, and prosecute money laundering and the financing of terrorism. In issuing the final rule, Treasury and the Commission are seeking to fulfill their statutorily mandated responsibilities under section 326 and to achieve its important purpose.

The objective of the final rule is to make it easier to prevent, detect, and prosecute money laundering and the financing of terrorism. The rule seeks to achieve this goal by specifying the information mutual funds must obtain from or about customers that can be used to verify the identity of the customers. This will make it more difficult for persons to use false identities to establish customer relationships with mutual funds for the purposes of laundering money or moving funds to effectuate illegal activities, such as financing terrorism.

B. Significant Issues Raised by Public Comment

In the proposed rule, Treasury and the Commission specifically requested public comments on any aspect of the IRFA, as well as the number of small entities that might be affected by the proposed rule. The agencies received no comments on the IRFA.

C. Small Entities Subject to the Rule

A small business or organization (collectively, "small entity") for purposes of the Regulatory Flexibility Act, is a small entity if the fund, together with other funds in the same group of related funds, has net assets of $50 million or less as of the end of its most recent fiscal year.[140] Of approximately 3,060 registered mutual funds, approximately 158 are small entities. These 158 small entities are divided into approximately 154 fund families.[141] As discussed above in Section III, in most cases, a single customer identification program will be developed and used by all of the mutual funds in a family of funds.

D. Projected Reporting, Recordkeeping, and Other Compliance Requirements

The rule requires a mutual fund to adopt a written CIP that, at a minimum, includes each of the following: (1) Risk-based procedures for verifying the identity of each customer, to the extent reasonable and practicable;[142] (2) procedures for maintaining records of all information obtained under its customer identity verification procedures, (3) procedures for determining whether a customer appears on any list of known or suspected terrorists or terrorist organizations issued by the federal government and designated by Treasury, and (4) procedures for providing notice to customers.

As noted above, the rule is not expected to have a significant economic impact on a substantial number of small entities. Commission staff estimates that developing a CIP will require approximately 50 hours of each fund or fund family developing a CIP, at a cost of approximately $3,810,[143] and that systems modification will entail approximately 655 hours at a cost of $40,610 to each fund or fund family.[144]

Although small entities will also incur ongoing costs, the Commission expects that they will not have a significant economic impact. For each new account, a fund will require what we estimate to be 1–4 minutes for collecting customer information, 5–10 minutes for verifying customer information, 1–4 minutes for resolution of discrepancies in customer information, half a minute for comparison to government lists, and 2 minutes for record retention, each at a cost of approximately $25 per hour. Small entities are likely to have a relatively small number of accounts; therefore, they will incur the ongoing costs of individual customer identifications relatively infrequently.

E. Agency Action To Minimize Effect on Small Entities

Treasury and the Commission considered significant alternatives to the proposed rule that would accomplish the stated objective, while minimizing any significant adverse impact on small entities. In connection with the proposed rule, we considered the following alternatives: (1) The establishment of differing compliance or reporting requirements or timetables that take into account the resources of small entities; (2) the clarification, consolidation, or simplification of compliance and reporting requirements under the rule for small entities; (3) the use of performance rather than design standards; and (4) an exemption from coverage of the rule, or any part thereof, for small entities.

The final rule provides for substantial flexibility in how each mutual fund may meet its requirements. This flexibility is designed to account for differences between mutual funds, including size. Nonetheless, Treasury and the Commission did consider the alternatives described above. Treasury and the Commission believe that the alternative approaches to minimize the adverse impact of the rule on small entities are not consistent with the statutory mandate of section 326. In addition, Treasury and the Commission do not believe that an exemption for small mutual funds is appropriate, given the flexibility built into the rule to account for, among other things, the differing sizes and resources of mutual funds, as well as the importance of the statutory goals and mandate of section 326. Money laundering can occur in small firms as well as large firms.

V. Paperwork Reduction Act

Certain provisions of the final rule contain "collection of information" requirements within the meaning of the Paperwork Reduction Act of 1995.[145] An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid control number. Treasury submitted the final rule to the Office of Management and Budget ("OMB") for review in accordance with 44 U.S.C 3507(d). The OMB has approved the collection of information requirements in today's rule under control number 1506–0033.

In the proposed rule Treasury and the Commission estimated the paperwork burden that would be imposed by the rule and sought comments on the estimates. None of the commenters specifically addressed the paperwork burden associated with the rule.

A. Collection of Information Under the Final Rule

The final rule contains recordkeeping and disclosure requirements that are subject to the Paperwork Reduction Act of 1995. Like the proposed rule, the final rule requires mutual funds to (1) maintain records of the information used to verify customers' identities and (2) provide notice to customers that information they supply may be used to verify their identities. These recordkeeping and disclosure requirements are required under section 326 of the Act. The final rule also contains a new recordkeeping provision—a mutual fund that relies on another financial institution to perform some or all of the elements of its CIP must obtain and retain an annual certification from the financial institution that it has implemented its anti-money laundering program, and that it will perform (or its agent will perform) the specified requirements of the mutual fund's CIP.

B. Proposed Use of the Information

Section 326 of the Act requires Treasury and the Commission jointly to issue a regulation setting forth minimum standards for mutual funds to verify the identities of their customers. Furthermore, section 326 provides that the regulations must, at a minimum, require mutual funds to implement reasonable procedures for (1) verifying the identity of any person seeking to open an account, to the extent reasonable and practicable; (2) maintaining records of the information used to verify the person's identity, including name, address, and other identifying information; and (3) determining whether the person appears on any lists of known or suspected terrorists or terrorist organizations provided to the financial institution by any government agency.

The purpose of section 326, and the regulations promulgated thereunder, is to make it easier to prevent, detect and prosecute money laundering and the financing of terrorism. In issuing the final rule, Treasury and the Commission are seeking to fulfill their statutorily mandated responsibilities under section 326 and to achieve its important purpose.

The final rule requires each mutual fund to establish a written CIP that must include recordkeeping procedures and procedures for providing customers with notice that the mutual fund is requesting information to verify their identity. The final rule requires a mutual fund to maintain a record of (1) the identifying information provided by the customer, the type of identification document(s) reviewed, if any, and the identification number of the document(s); (2) the means and results of any additional measures undertaken to verify the identity of the customer; and (3) the resolution of any discrepancy in the identifying information obtained.

The final rule also requires each mutual fund to give customers "adequate notice" of the identity verification procedures. Depending on how an account is opened, a mutual fund may satisfy this disclosure requirement by providing customers with any form of written or oral notice. Accordingly, a mutual fund may choose among a variety of methods of providing adequate notice and may select the least burdensome method, given the circumstances under which customers seek to open new accounts.

The final rule permits a mutual fund to rely on performance of elements of its CIP by other financial institutions. The required contract and certification will provide mutual fund examiners with a standard means of ascertaining that the other financial institution has agreed to undertake the mutual fund's CIP requirements.

C. Respondents

The final rule will apply to approximately 3,060 mutual fund companies that are registered with the Commission.[146]

D. Total Annual Reporting and Recordkeeping Burden

1. Recordkeeping

The requirement to make and maintain records related to the CIP will be an annual burden. As adopted, the rule differs from the proposed rule in its requirements for the retention of records of information obtained under customer identification procedures. Whereas the proposed rule required that such records be retained until five years after the date the account of a customer is closed or the grant of authority to effect transactions with respect to an account is revoked, the final rule has two different times for the start of the five-year period for record retention: (1) The date the account is closed, for identifying information about the customer, and (2) the date the record is made, for descriptions of any documents relied on for verification of identity, of the methods and results of any measures undertaken to verify customer identity and of the resolution of any substantive discrepancy discovered when verifying identifying information.

We believe that most mutual funds already retain certain of the records required by the new rule as a matter of good business practice, but that the

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[136] The staff estimates that it will take a data entry clerk approximately two minutes per customer to maintain the records required by the rule. The staff assumes that for most mutual fund accounts performance of this requirement will be automated. The staff estimates that the cost of this requirement will be $.83 per customer (1/30 hour × $25 per hour (estimated cost per hour of data entry)). We estimate the aggregate annual cost of this requirement to be $13.3 million ($.83 per customer × 16 million new accounts per year).

[137] 5 U.S.C. 601 *et seq.*

[138] 5 U.S.C. 605(b).

[139] As discussed previously, section 326 provides that such regulations, at a minimum, must require mutual funds to implement, and customers to comply with, reasonable procedures for—(1) verifying the identity of any person seeking to open an account to the extent reasonable and practicable; (2) maintaining records of the information used to verify a person's identity, including name, address, and other identifying information; and (3) consulting lists of known or suspected terrorists or terrorist organizations provided to the financial institution by any government agency to determine whether a person seeking to open an account appears on any such list.

[140] Rule 0–10 [17 CFR 27.0–10].

[141] The estimates of the number of registered mutual funds that are small entities and of the number of fund families are based on figures compiled by the Commission staff from outside databases.

[142] These procedures must specify the identifying information that the mutual fund will obtain with respect to each customer, such information to include, at a minimum, name, date of birth (for an individual), street address, and identification number.

[143] *See* note 131 *supra* regarding the cost of developing a CIP.

[144] *See* note 132 *supra* regarding the cost of systems modifications.

[145] 44 U.S.C. 3501 *et seq.*

[146] This estimate is based on figures compiled by the Commission staff from Commission filings.

recordkeeping requirement will result in additional costs for mutual funds that do not currently maintain records for the prescribed time period. The total industry-wide burden will depend on the number of new accounts added each year. We estimate that data entry will require approximately two minutes per customer, and therefore that the annual, industry-wide burden will be approximately 533,000 hours.[147]

We believe that there is a nominal burden associated with the new recordkeeping requirement. Under the final rule, a mutual fund may rely on another financial institution to perform some or all its CIP under certain conditions, including that the financial institution must enter into a contract requiring the financial institution to certify annually to the fund that it has implemented its anti-money laundering program and that it will perform (or its agent will perform) the specified elements of the fund's CIP. Not all mutual funds will choose to rely on a third party. The minimal burden of retaining the certification described above should allow a mutual fund to reduce its net burden under the rule by relying on another financial institution to perform some or all of its CIP.

2. Providing Notice to Customers

The requirement for mutual funds to provide the required notice to customers regarding use of customers' information will create a one-time burden by necessitating the amendment of mutual funds' account applications, both paper and web-based. As adopted, the rule differs from the proposed rule in providing additional guidance regarding what constitutes adequate notice and on the timing of the notice requirement, and in including sample language that, if appropriate, will be deemed adequate notice to a mutual fund's customers. We estimate that the estimated 3,060 registered mutual funds will each spend approximately two hours modifying their account applications. Thus, we estimate that the industry-wide burden will be approximately 6,120 hours.

E. Collection of Information Is Mandatory

These recordkeeping and disclosure (notice) requirements are mandatory.

F. Confidentiality

The collection of information pursuant to the final rule would be provided by customers and other sources to mutual funds and maintained by mutual funds. In addition, the information may be used by federal regulators and other authorities in the course of examinations, investigations, and judicial proceedings. No governmental agency regularly would receive any of the information described above.

G. Record Retention Period

The final rule requires that the identifying information obtained about a customer be retained until five years after the date the account of the customer is closed and that other records relating to the verification of the customer be retained until five years after the record is made.

H. Request for Comment

Treasury and the Commission invite comment on the accuracy of the burden estimates and suggestions on how to further reduce these burdens. Comments should be sent (preferably by fax (202–395–6974)) to Desk Officer for the Department of the Treasury, Office of Information and Regulatory Affairs, Office of Management and Budget, Paperwork Reduction Project (1506–0033), Washington, DC 20503 (or by the Internet to *jlackeyj@omb.eop.gov*), with a copy to FinCEN by mail or the Internet at the addresses previously specified.

VI. Executive Order 12866

The Department of the Treasury has determined that this rule is not a significant regulatory action for purposes of Executive Order 12866. As noted above, the final rule parallels the requirements of section 326 of the Act. Accordingly, a regulatory impact analysis is not required.

List of Subjects

17 CFR Part 270

Investment companies, Reporting and recordkeeping requirements, Securities.

31 CFR Part 103

Administrative practice and procedure, Authority delegations (Government agencies), Banks, Banking, Brokers, Currency, Foreign banking, Foreign currencies, Gambling, Investigations, Investment companies, Law enforcement, Penalties, Reporting and recordkeeping requirements, Securities.

Securities and Exchange Commission

17 CFR Chapter II

Authority and Issuance

The Commission is adopting 17 CFR 270.0–11 pursuant to the authority set forth in sections 6(c) and 38(a) of the Act [15 U.S.C. 80a–6(c) and 80a–37(a)].

■ For the reasons as set out in the preamble, title 17, part 270 of the Code of Federal Regulations is amended as follows:

PART 270—RULES AND REGULATIONS, INVESTMENT COMPANY ACT OF 1940

■ 1. The authority citation for part 270 continues to read, in part, as follows:

Authority: 15 U.S.C. 80a–1 *et seq.*, 80a–34(d), 80a–37, 80a–39, unless otherwise noted;

* * * * *

■ 2. Section 270.0–11 is added to read as follows:

§ 270.0–11 Customer identification programs.

Each registered open-end company is subject to the requirements of 31 U.S.C. 5318(l) and the implementing regulation at 31 CFR 103.131, which requires a customer identification program to be implemented as part of the anti-money laundering program required under subchapter II of chapter 53 of title 31, United States Code and the implementing regulations issued by the Department of the Treasury at 31 CFR part 103. Where 31 CFR 103.131 and this chapter use different definitions for the same term, the definition in 31 CFR 103.131 shall be used for the purpose of compliance with 31 CFR 103.131. Where 31 CFR 103.131 and this chapter require the same records to be preserved for different periods of time, such records shall be preserved for the longer period of time.

By the Securities and Exchange Commission.

Dated: April 29, 2003.

Margaret H. McFarland,

Deputy Secretary.

Department of the Treasury

31 CFR Chapter I

Authority and Issuance

Treasury is adopting 31 CFR 103.131 pursuant to the authority set forth in 31 U.S.C. 5318(l).

■ For the reasons as set out in the preamble, title 31, part 103 of the Code of Federal Regulations is amended as follows:

PART 103—FINANCIAL RECORDKEEPING AND REPORTING OF CURRENCY AND FOREIGN TRANSACTIONS

■ 3. The authority citation for part 103 continues to read as follows:

[147] Since mutual funds will not be required to comply with the requirements of this final rule until October 1, 2003, the industry-wide burden during the first year will be approximately 133,250 hours.

Authority: 12 U.S.C. 1829b and 1951–1959; 31 U.S.C. 5311–5314 and 5316–5332; title III, secs. 312, 313, 314, 319, 326, 352, Pub L. 107–56, 115 Stat. 307, 12 U.S.C. 1818, 12 U.S.C. 1786(q).

■ 4. Subpart I of part 103 is amended by adding § 103.131 to read as follows:

§ 103.131 Customer identification programs for mutual funds.

(a) *Definitions.* For purposes of this section:

(1)(i) *Account* means any contractual or other business relationship between a person and a mutual fund established to effect transactions in securities issued by the mutual fund, including the purchase or sale of securities.

(ii) *Account* does not include:

(A) An account that a mutual fund acquires through any acquisition, merger, purchase of assets, or assumption of liabilities; or

(B) An account opened for the purpose of participating in an employee benefit plan established under the Employee Retirement Income Security Act of 1974.

(2)(i) *Customer* means:

(A) A person that opens a new account; and

(B) An individual who opens a new account for:

(*1*) An individual who lacks legal capacity, such as a minor; or

(*2*) An entity that is not a legal person, such as a civic club.

(ii) *Customer* does not include:

(A) A financial institution regulated by a federal functional regulator or a bank regulated by a state bank regulator;

(B) A person described in § 103.22(d)(2)(ii) through (iv); or

(C) A person that has an existing account with the mutual fund, provided that the mutual fund has a reasonable belief that it knows the true identity of the person.

(3) *Federal functional regulator* is defined at § 103.120(a)(2).

(4) *Financial institution* is defined at 31 U.S.C. 5312(a)(2) and (c)(1).

(5) *Mutual fund* means an "investment company" (as the term is defined in section 3 of the Investment Company Act (15 U.S.C. 80a–3)) that is an "open-end company" (as that term is defined in section 5 of the Investment Company Act (15 U.S.C. 80a–5)) that is registered or is required to register with the Commission under section 8 of the Investment Company Act (15 U.S.C. 80a–8).

(6) *Non-U.S. person* means a person that is not a *U.S. person.*

(7) *Taxpayer identification number* is defined by section 6109 of the Internal Revenue Code of 1986 (26 U.S.C. 6109) and Internal Revenue Service regulations implementing that section (*e.g.*, social security number or employer identification number).

(8) *U.S. person* means:

(i) A United States citizen; or

(ii) A person other than an individual (such as a corporation, partnership or trust), that is established or organized under the laws of a State or the United States.

(b) *Customer identification program: minimum requirements.*

(1) *In general.* A mutual fund must implement a written Customer Identification Program ("CIP") appropriate for its size and type of business that, at a minimum, includes each of the requirements of paragraphs (b)(1) through (5) of this section. The CIP must be a part of the mutual fund's anti-money laundering program required under the regulations implementing 31 U.S.C. 5318(h).

(2) *Identity verification procedures.* The CIP must include risk-based procedures for verifying the identity of each customer to the extent reasonable and practicable. The procedures must enable the mutual fund to form a reasonable belief that it knows the true identity of each customer. The procedures must be based on the mutual fund's assessment of the relevant risks, including those presented by the manner in which accounts are opened, fund shares are distributed, and purchases, sales and exchanges are effected, the various types of accounts maintained by the mutual fund, the various types of identifying information available, and the mutual fund's customer base. At a minimum, these procedures must contain the elements described in this paragraph (b)(2).

(i) *Customer information required.* (A) *In general.* The CIP must contain procedures for opening an account that specify the identifying information that will be obtained with respect to each customer. Except as permitted by paragraph (b)(2)(i)(B) of this section, a mutual fund must obtain, at a minimum, the following information prior to opening an account:

(*1*) Name;

(*2*) Date of birth, for an individual;

(*3*) Address, which shall be:

(*i*) For an individual, a residential or business street address;

(*ii*) For an individual who does not have a residential or business street address, an Army Post Office (APO) or Fleet Post Office (FPO) box number, or the residential or business street address of next of kin or of another contact individual; or

(*iii*) For a person other than an individual (such as a corporation, partnership, or trust), a principal place of business, local office or other physical location; and

(*4*) Identification number, which shall be:

(*i*) For a U.S. person, a taxpayer identification number; or

(*ii*) For a non-U.S. person, one or more of the following: a taxpayer identification number; passport number and country of issuance; alien identification card number; or number and country of issuance of any other government-issued document evidencing nationality or residence and bearing a photograph or similar safeguard.

Note to paragraph (b)(2)(i)(A)(*4*)(*ii*): When opening an account for a foreign business or enterprise that does not have an identification number, the mutual fund must request alternative government-issued documentation certifying the existence of the business or enterprise.

(B) *Exception for persons applying for a taxpayer identification number.* Instead of obtaining a taxpayer identification number from a customer prior to opening an account, the CIP may include procedures for opening an account for a person that has applied for, but has not received, a taxpayer identification number. In this case, the CIP must include procedures to confirm that the application was filed before the person opens the account and to obtain the taxpayer identification number within a reasonable period of time after the account is opened.

(ii) *Customer verification.* The CIP must contain procedures for verifying the identity of the customer, using the information obtained in accordance with paragraph (b)(2)(i) of this section, within a reasonable time after the account is opened. The procedures must describe when the mutual fund will use documents, non-documentary methods, or a combination of both methods as described in this paragraph (b)(2)(ii).

(A) *Verification through documents.* For a mutual fund relying on documents, the CIP must contain procedures that set forth the documents that the mutual fund will use. These documents may include:

(*1*) For an individual, unexpired government-issued identification evidencing nationality or residence and bearing a photograph or similar safeguard, such as a driver's license or passport; and

(*2*) For a person other than an individual (such as a corporation, partnership, or trust), documents showing the existence of the entity, such as certified articles of incorporation, a government-issued business license, a partnership agreement, or trust instrument.

(B) *Verification through non-documentary methods.* For a mutual fund relying on non-documentary methods, the CIP must contain procedures that describe the non-documentary methods the mutual fund will use..

(*1*) These methods may include contacting a customer; independently verifying the customer's identity through the comparison of information provided by the customer with information obtained from a consumer reporting agency, public database, or other source; checking references with other financial institutions; and obtaining a financial statement.

(*2*) The mutual fund's non-documentary procedures must address situations where an individual is unable to present an unexpired government-issued identification document that bears a photograph or similar safeguard; the mutual fund is not familiar with the documents presented; the account is opened without obtaining documents; the customer opens the account without appearing in person; and where the mutual fund is otherwise presented with circumstances that increase the risk that the mutual fund will be unable to verify the true identity of a customer through documents.

(C) *Additional verification for certain customers.* The CIP must address situations where, based on the mutual fund's risk assessment of a new account opened by a customer that is not an individual, the mutual fund will obtain information about individuals with authority or control over such account, including persons authorized to effect transactions in the shareholder of record's account, in order to verify the customer's identity. This verification method applies only when the mutual fund cannot verify the customer's true identity using the verification methods described in paragraphs (b)(2)(ii)(A) and (B) of this section.

(iii) *Lack of verification.* The CIP must include procedures for responding to circumstances in which the mutual fund cannot form a reasonable belief that it knows the true identity of a customer. These procedures should describe:

(A) When the mutual fund should not open an account;

(B) The terms under which a customer may use an account while the mutual fund attempts to verify the customer's identity;

(C) When the mutual fund should file a Suspicious Activity Report in accordance with applicable law and regulation; and

(D) When the mutual fund should close an account, after attempts to verify a customer's identity have failed.

(3) *Recordkeeping.* The CIP must include procedures for making and maintaining a record of all information obtained under paragraph (b) of this section.

(i) *Required records.* At a minimum, the record must include:

(A) All identifying information about a customer obtained under paragraph (b)(2)(i) of this section;

(B) A description of any document that was relied on under paragraph (b)(2)(ii)(A) of this section noting the type of document, any identification number contained in the document, the place of issuance, and if any, the date of issuance and expiration date;

(C) A description of the methods and the results of any measures undertaken to verify the identity of the customer under paragraph (b)(2)(ii)(B) or (C) of this section; and

(D) A description of the resolution of any substantive discrepancy discovered when verifying the identifying information obtained.

(ii) *Retention of records.* The mutual fund must retain the information in paragraph (b)(3)(i)(A) of this section for five years after the date the account is closed. The mutual fund must retain the information in paragraphs (b)(3)(i)(B), (C), and (D) of this section for five years after the record is made.

(4) *Comparison with government lists.* The CIP must include procedures for determining whether the customer appears on any list of known or suspected terrorists or terrorist organizations issued by any federal government agency and designated as such by the Department of the Treasury in consultation with the federal functional regulators. The procedures must require the mutual fund to make such a determination within a reasonable period of time after the account is opened, or earlier, if required by another federal law or regulation or federal directive issued in connection with the applicable list. The procedures must also require the mutual fund to follow all federal directives issued in connection with such lists.

(5)(i) *Customer notice.* The CIP must include procedures for providing mutual fund customers with adequate notice that the mutual fund is requesting information to verify their identities.

(ii) *Adequate notice.* Notice is adequate if the mutual fund generally describes the identification requirements of this section and provides the notice in a manner reasonably designed to ensure that a customer is able to view the notice, or is otherwise given notice, before opening an account. For example, depending on the manner in which the account is opened, a mutual fund may post a notice on its website, include the notice on its account applications, or use any other form of written or oral notice.

(iii) *Sample notice.* If appropriate, a mutual fund may use the following sample language to provide notice to its customers:

IMPORTANT INFORMATION ABOUT PROCEDURES FOR OPENING A NEW ACCOUNT

To help the government fight the funding of terrorism and money laundering activities, Federal law requires all financial institutions to obtain, verify, and record information that identifies each person who opens an account.

What this means for you: When you open an account, we will ask for your name, address, date of birth, and other information that will allow us to identify you. We may also ask to see your driver's license or other identifying documents.

(6) *Reliance on other financial institutions.* The CIP may include procedures specifying when a mutual fund will rely on the performance by another financial institution (including an affiliate) of any procedures of the mutual fund's CIP, with respect to any customer of the mutual fund that is opening, or has opened, an account or has established a similar formal business relationship with the other financial institution to provide or engage in services, dealings, or other financial transactions, provided that:

(i) Such reliance is reasonable under the circumstances;

(ii) The other financial institution is subject to a rule implementing 31 U.S.C. 5318(h) and is regulated by a federal functional regulator; and

(iii) The other financial institution enters into a contract requiring it to certify annually to the mutual fund that it has implemented its anti-money laundering program, and that it (or its agent) will perform the specific requirements of the mutual fund's CIP.

(c) *Exemptions.* The Commission, with the concurrence of the Secretary, may, by order or regulation, exempt any mutual fund or type of account from the requirements of this section. The Commission and the Secretary shall consider whether the exemption is consistent with the purposes of the Bank Secrecy Act and is in the public interest, and may consider other appropriate factors.

(d) *Other requirements unaffected.* Nothing in this section relieves a mutual fund of its obligation to comply with any other provision in this part, including provisions concerning information that must be obtained, verified, or maintained in connection with any account or transaction.

Dated: April 28, 2003.

James F. Sloan,

Director, Financial Crimes Enforcement Network.

In concurrence:

By the Securities and Exchange Commission.

Dated: April 29, 2003.

Margaret H. McFarland,

Deputy Secretary.

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COMMODITY FUTURES TRADING COMMISSION

17 CFR Part 42

RIN 3038–AB90

DEPARTMENT OF THE TREASURY

31 CFR Part 103

RIN 1506–AA34

Customer Identification Programs For Futures Commission Merchants and Introducing Brokers

AGENCIES: Financial Crimes Enforcement Network, Treasury; Commodity Futures Trading Commission.

ACTION: Joint final rule.

SUMMARY: The Department of the Treasury, through the Financial Crimes Enforcement Network (FinCEN), and the Commodity Futures Trading Commission (CFTC) are jointly adopting a final rule to implement section 326 of the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism (USA PATRIOT ACT) Act of 2001. Section 326 requires the Secretary of the Treasury to jointly prescribe with the CFTC a rule that, at a minimum, requires futures commission merchants and introducing brokers to implement reasonable procedures to verify the identity of any person seeking to open an account, to the extent reasonable and practicable; maintain records of the information used to verify the person's identity; and determine whether the person appears on any lists of known or suspected terrorists or terrorist organizations provided to futures commission merchants or introducing brokers by any government agency. This final rule applies to all futures commission merchants and introducing brokers, except for futures commission merchants and introducing brokers that register with the CFTC solely because they effect transactions in security futures products.

DATES: *Effective Date:* This rule is effective June 9, 2003.

Compliance Date: Futures commission merchants and introducing brokers subject to this final rule must comply with it by October 1, 2003.

FOR FURTHER INFORMATION CONTACT: *Commodity Futures Trading Commission:* Office of the General Counsel, (202) 418–5120, Commodity Futures Trading Commission, 1155 21st Street, NW., Washington, DC 20581; or *AMLstaff@cftc.gov.*

Treasury: Office of the Chief Counsel (FinCEN), (703) 905–3590; Office of the General Counsel (Treasury), (202) 622–1927; or the Office of the Assistant General Counsel for Banking & Finance (Treasury), (202) 622–0480.

SUPPLEMENTARY INFORMATION:

I. Background

A. Section 326 of the USA PATRIOT Act

On October 26, 2001, President Bush signed into law the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism (USA PATRIOT ACT) Act of 2001 (Act).[1] Title III of the Act, captioned "International Money Laundering Abatement and Anti-terrorist Financing Act of 2001," added several new provisions to the Bank Secrecy Act (BSA).[2] These provisions are intended to facilitate the prevention, detection, and prosecution of international money laundering and the financing of terrorism. Section 326 of the Act added a new subsection (l) to 31 U.S.C. 5318 of the BSA that requires the Secretary of the Treasury (Secretary or Treasury) to prescribe regulations "setting forth the minimum standards for financial institutions and their customers regarding the identity of the customer that shall apply in connection with the opening of an account at a financial institution."

Section 326 of the Act applies to all "financial institutions." This term is defined broadly in the BSA to encompass a variety of entities, including commercial banks, agencies and branches of foreign banks in the United States, thrifts, credit unions, private banks, trust companies, brokers and dealers in securities, investment companies, futures commission merchants (FCMs), introducing brokers (IBs),[3] insurance companies, travel agents, pawnbrokers, dealers in precious metals, check-cashers, casinos, and telegraph companies, among many others.[4]

The regulations implementing section 326 of the Act must require, at a minimum, financial institutions to implement reasonable customer identification procedures for: (1) Verifying the identity of any person seeking to open an account, to the extent reasonable and practicable; (2) maintaining records of the information used to verify the person's identity, including name, address, and other identifying information; and (3) determining whether the person appears on any lists of known or suspected terrorists or terrorist organizations provided to the financial institution by any government agency. In prescribing these regulations, the Secretary is directed to take into consideration the types of accounts maintained by different types of financial institutions, the various methods of opening accounts, and the types of identifying information that are available.

B. Overview of Comments Received

On July 23, 2002, Treasury and the CFTC jointly proposed a rule to implement section 326 of the Act with respect to FCMs and IBs.[5] Treasury and the CFTC received three comments directed to this proposal.[6] Commenters

[1] Pub. L. 107–56.

[2] 31 U.S.C. 5311 *et seq.*

[3] Treasury has clarified that the term "a broker or dealer in securities or commodities" in the BSA, 31 U.S.C. 5312(a)(2)(H), includes IBs within the definition of "financial institution." 67 FR 48328, 48329 n.2 (July 23, 2002); *see also* 67 FR 21110, 21111 n.5 (April 29, 2002).

[4] *See* 31 U.S.C. 5312(a)(2), 5312(c)(1)(A). For any financial institution engaged in financial activities described in section 4(k) of the Bank Holding Company Act of 1956, the Secretary is required to prescribe the regulations issued under section 326 of the Act jointly with the Office of the Comptroller of the Currency, the Board of Governors of the Federal Reserve System, the Federal Deposit Insurance Corporation, the Office of Thrift Supervision, and the National Credit Union Administration (collectively, the banking agencies), the CFTC, and the Securities and Exchange Commission (SEC).

[5] Customer Identification Programs for FCMs and IBs, 67 FR 48328 (July 23, 2002) (NPRM). Treasury simultaneously published: (1) jointly with the banking agencies, a proposed rule applicable to banks (as defined in 31 CFR 103.11(c)) and foreign branches of insured banks (67 FR 48290 (July 23, 2002)); (2) a proposed rule applicable to credit unions, private banks and trust companies that do not have a Federal functional regulator (67 FR 48299 (July 23, 2002)); (3) jointly with the SEC, a proposed rule applicable to broker-dealers (67 FR 48306 (July 23, 2002)); and (4) jointly with the SEC, a proposed rule applicable to mutual funds (67 FR 48318 (July 23, 2002)). Treasury, the CFTC, the SEC, and the banking agencies received approximately 500 comments in response to these proposed rules. Many of those commenters raised similar issues applicable to all the affected sectors of the financial services industry.

[6] The comment letters are available for public inspection and copying in the CFTC's Reading

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were a registered futures association and two futures industry trade associations. Commenters generally supported the proposal but suggested a few revisions.

One commenter addressed the rule's definition of "customer," specifically the definition's inclusion of persons with authority to effect transactions in the account. This commenter argued that the definition was overly broad and suggested that a risk-based approach be adopted instead.

Two commenters addressed the proposed rule's identity verification requirement. One commenter supported the proposed rule's framework for when verification would be required of existing customers that open new accounts. The other commenter requested clarification as to what would be considered a "new account" for which verification would be necessary. Both commenters suggested that the final rule text include the exception discussed in the NPRM for certain non-customer initiated transfers of accounts between FCMs.[7]

Two commenters addressed the issue of permissible reliance between FCMs and IBs that share an account relationship with respect to the performance of customer identification and verification functions. The commenters requested clarification regarding the requirement that the relied-upon firm provide a certification to the relying firm. They suggested that the relied-upon firm be allowed to provide one certification that would suffice for all customers for which the two financial institutions share an account relationship. The commenters also suggested that reliance upon non-U.S. financial institutions, particularly affiliates, be permitted as well.

One commenter addressed the proposed rule's customer notice requirement. This commenter suggested that notice should not be required of FCMs and IBs, and that if it is required, posting a notice on the firm's Internet website should be deemed sufficient for all customers.

Treasury and the CFTC have modified the proposed rule in light of these comments. It is the intent of Treasury, the CFTC, the SEC and the banking agencies that all the final rules implementing 31 U.S.C. 5318(l) be substantively identical, which approach was supported by commenters from all affected sectors of the financial services industry. Accordingly, Treasury and the CFTC also have modified the proposed rule for FCMs and IBs to maintain consistency and parallel treatment with the final rules imposing customer identification and verification requirements upon other financial institutions.[8] The section-by-section analysis that follows discusses the comments and the modifications that Treasury and the CFTC have made to the proposed rule.

C. Codification of the Joint Final Rule

The joint final rule applies to any person that is registered or required to be registered with the CFTC under the Commodity Exchange Act (CEA)[9] as either an FCM or IB, except persons who register as an FCM or IB solely for the purpose of effecting any transactions in a security futures product (SFP).[10] The substantive requirements of this joint final rule will be codified as part of Treasury's BSA regulations located in 31 CFR Part 103.[11]

As proposed, the CFTC is adding a rule in its own regulations that will cross-reference the joint rule in 31 CFR Part 103. Specifically, the CFTC is concurrently amending Chapter I of 17 CFR to add a new Part 42 and adopting a new rule in this Part, Rule 42.2 (Compliance with Bank Secrecy Act).[12] CFTC Rule 42.2 will require each FCM and IB to comply with the applicable provisions of the BSA and the implementing regulations, including 31 U.S.C. 5318(l) and the implementing regulation jointly promulgated by Treasury and the CFTC at 31 CFR 103.23, requiring customer identification and verification procedures as part of the FCM's or IB's anti-money laundering (AML) compliance program.

Final rules governing the applicability of section 326 of the Act to certain other financial institutions, including banks, thrifts, credit unions, mutual funds and securities broker-dealers, are being issued separately. Treasury, the CFTC, the SEC and the banking agencies consulted extensively in the development of all joint rules implementing section 326 of the Act. These agencies intend the effect of the final rules to be uniform throughout the financial services industry. Treasury intends to issue separate rules under section 326 of the Act for certain non-bank financial institutions that are not regulated by one of the Federal functional regulators.

D. Compliance Date

Many commenters on the other proposed rules[13] requested that financial institutions be given adequate time to develop and implement the requirements of any final rule adopted under section 326 of the Act. The transition periods suggested by these commenters ranged from 60 days to two years after the publication of a final rule.

The final rule for FCMs and IBs modifies various aspects of the proposed rule and eliminates some of the requirements that commenters identified as being most burdensome. Nonetheless, Treasury and the CFTC recognize that some FCMs and IBs will need time to develop and implement the customer identification program (CIP) required by the rule, because doing so may include various measures, such as training staff, reprinting forms, and programming automated systems. Accordingly, although this rule will be effective 30 days after publication, FCMs and IBs will have a transition period to implement the rule. FCMs and IBs must fully implement their CIPs under the final rule by October 1, 2003.[14]

II. The Joint Final Rule Implementing Sections 326 of the Act

A. Section-by-Section Analysis

Section 103.123(a) Definitions

Section 103.123(a)(1) Account. The proposed rule defined "account" as any formal business relationship with an FCM, including, but not limited to, any relationship established to effect transactions in contracts of sale for future delivery, options on contracts of sale for future delivery, or options on physicals in any commodity.[15]

The final rule includes certain changes to this definition. First, the reference to a "business relationship" has been removed from the definition of "account." This change has been made to clarify that the rule applies to the FCM's provision of financial services,[16] as opposed to general business dealings such as those established in connection with an FCM's own operations or premises. Second, in order to clarify the covered relationships, the final rule refers to transactions in "contracts of sale of a commodity for future delivery, options on any contract of sale of a commodity for future delivery, or options on a commodity."

Two commenters requested that the final rule codify the "transfer exception" to the definition of an "account." The NPRM stated that transfers of accounts from one FCM to another that are not initiated by the customer fall outside the scope of section 326 of the Act,[17] and would not be covered by the proposed rule.[18] The final rule codifies this exception[19] by excluding from the definition of "account" any account that an FCM acquires through an acquisition, merger, purchase of assets, or assumption of liabilities.[20]

The final rule also excludes from the definition of "account" those accounts that are opened for the purpose of participating in an employee benefit plan established pursuant to the Employee Retirement Income Security Act of 1974. These accounts are less susceptible to being used for the financing of terrorism and money laundering because, among other reasons, they are funded through payroll deductions in connection with employment plans that must comply with Federal regulations imposing, among other requirements, low contribution limits and strict distribution requirements.

Section 103.123(a)(2) Commission. The proposed rule defined "Commission" as the United States Commodity Futures Trading Commission. There were no comments on the definition, and Treasury and the CFTC have adopted it as proposed.

Section 103.123(a)(3) Commodity. The proposed rule defined "commodity" by reference to Section 1a(4) of the CEA, 7 U.S.C. 1a(4). There were no comments on the definition, and Treasury and the CFTC have adopted it as proposed.

Section 103.123(a)(4) Contract of sale. The final rule adds a definition of "contract of sale." The term is used in the definition of "account."[21] The final rule defines "contract of sale" as any sale, agreement of sale or agreement to sell as described in Section 1a(7) of the CEA, 7 U.S.C. 1a(7).

Section 103.123(a)(5) Customer. The proposed rule defined "customer" to mean any person who opens a new account with an FCM, and any person granted authority to effect transactions in an account.[22] For consistency with the text of section 326 of the Act, the final rule defines "customer" as "a person that opens a new account." Except in the case of minors and informal groups with a common interest (*e.g.*, civic clubs), this means that the "customer" is the person identified as the account holder, or persons in the case of a joint account. It does not refer to a person who fills out the account opening paperwork or provides information necessary to open an account, if such person is not the account holder as well. Thus, an FCM or IB is not required to look through a trust or similar account to its beneficiaries, and is required only to verify the identity of the named account holder.[23] The final rule provides for similar treatment of intermediated accounts.

As stated in the NPRM,[24] the focus of the CIP with respect to intermediated accounts will be the intermediary itself. If the intermediary is the account holder, such as in the case of an omnibus account, an FCM is not required to look through the intermediary to the underlying beneficiaries. Likewise, if the intermediary opens an account in the name of a collective investment vehicle, such as commodity pools, an FCM or IB is not required to look through the collective investment vehicle to the underlying participants.[25]

After revisiting the "authorized person" component of the proposed "customer" definition, Treasury and the CFTC have determined that requiring limited resources to be expended on verifying the identities of persons with authority over accounts could interfere with an FCM's or IB's ability to focus on customers that present a higher risk of not being properly identified. Accordingly, the final rule does not include persons with authority to effect transactions in accounts within the definition of "customer." Instead, paragraph (b)(2)(ii)(C) of the final rule requires FCMs and IBs to address situations where they will take additional steps to verify the identity of a customer that is not an individual by seeking information about individuals with authority or control over the account in order to verify the customer's identity.

The definition of "customer" has been revised to clarify the treatment of

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Room, located in Room 4072 at the CFTC's principal office at Three Lafayette Centre, 1155 21st Street, NW., Washington, DC 20581. The telephone number is (202) 418–5025. Comment letters are also available on the CFTC's Internet website at *http://www.cftc.gov/foia/comment02/foi02—009_1.htm.*

[7] *See* NPRM, 67 FR at 48330.

[8] *See supra* notes 4 and 5. Treasury and the CFTC believe that these changes either clarify or liberalize the scope of the proposed rule with respect to FCMs and IBs.

[9] 7 U.S.C. 1, *et seq.*

[10] FCMs and IBs that limit their futures business to effecting transactions in SFPs may register with the CFTC pursuant to 7 U.S.C. 6f(a)(2). These persons will be subject to the customer identification rule being issued by the SEC with respect to securities brokers or dealers.

[11] The rule will be codified at 31 CFR 103.123.

[12] 17 CFR 42.2.

[13] *See supra* note 5.

[14] The final CIP rules issued by Treasury and the other Federal functional regulators also require full implementation by October 1, 2003.

[15] *See* NPRM, 67 FR at 48337.

[16] This term is intended to operate broadly to include all financial services provided by an FCM. It would include, for example, the provision of any guarantee or clearing services provided by an FCM. It would also include an FCM's provision of financial services involving any foreign currency futures contract, option on any foreign currency futures contract, or option on a foreign currency that occurs on an off-exchange basis. *See* 7 U.S.C. 2(c)(1)–(2).

[17] Section 326 of the Act applies with respect to persons seeking to open an account at a financial institution. If a financial institution acquires an account through a non-customer initiated transaction, such as a transfer due to the insolvency of an FCM, the customer is not seeking to open an account with the financial institution.

By the same reasoning, the final rule does not, as one commenter requested, expand the "transfer exception" to include transfers where a customer account follows an associated person who moves from one firm to another, because such transfers are, at a minimum, undertaken with the acquiescence of the customer. Nonetheless, as discussed, *infra*, while the final rule requires that certain minimum customer information be obtained prior to opening an account, verification of the customer's identity may be done within a reasonable time before or after the account is opened.

[18] *See* NPRM, 67 FR at 48330 (discussion of definition of the term "customer").

[19] Nevertheless, there may be situations involving the transfer of accounts where it would be appropriate for an FCM, as part of its anti-money laundering compliance program (*see, infra*, note 89 and accompanying text) to verify the identity of customers associated with accounts that it acquires from another financial institution. For example, it may be appropriate to verify transferred account holders if the accounts are coming from a financial institution that has failed to establish or maintain a CIP. Treasury and the Federal functional regulators expect financial institutions to implement reasonable procedures to detect money laundering in any account, however acquired.

[20] This "transfer exception" includes bulk transfers made in accordance with CFTC Rule 1.65, 17 CFR 1.65, or as required by the CFTC's minimum financial requirements in CFTC Rule 1.17(a)(4), 17 CFR 1.17(a)(4). This exception would also cover transfers of accounts that result when an IB changes its introducing relationship from one FCM to another. For customers that open accounts after the transfer, however, the IB and the new FCM would need to meet the requirements in paragraph (b)(6) (including entering into a contract and providing certifications) to the extent they intend to rely on each other to undertake CIP requirements with respect to these customers.

[21] *See* final rule, 103.123(a)(1).

[22] *See* NPRM, 67 FR at 48337.

[23] However, as discussed below, under paragraph (b)(2)(ii)(C) of the final rule, an FCM or IB, based on its risk-assessment of a new account, may need to take additional steps to verify the identity of a non-individual, such as obtaining information about persons with control over the account. In addition, the due diligence procedures required under other provisions of the BSA or the futures laws may require FCMs and IBs to look through to owners of certain types of accounts.

[24] *See* NPRM, 67 FR at 48331.

[25] This is not because the FCM or IB is relying upon the intermediary to perform its required due diligence. It is because under the final rule, FCMs and IBs are required only to verify the identity of their customers, and when an intermediary opens an account in its own name (or in the name of its collective investment vehicle), the intermediary (or collective investment vehicle) is the firm's "customer."

By contrast, if an intermediary were to open an account not in its own name (or the name of a collective investment vehicle) but in the name of its client, then under the final rule the FCM's or IB's customer would be the client. In this situation, the FCM or IB may indeed seek to rely upon the intermediary for performance of its CIP procedures with respect to these shared customers. *See* discussion *infra* regarding final rule, 103.123(b)(6) (reliance on other financial institutions).

accounts for an individual who lacks legal capacity (such as a minor) and accounts for an entity that is not a legal person (such as informal groups with a common interest, which includes civic clubs).[26] In the case of a minor child or informal group, the "customer" for purposes of the rule is the individual who undertakes to open the account in the name of the minor or group. Generally, this will be the person who fills out the account opening paperwork and provides the information necessary to open the account in the name of the minor or group.

In order to make the rule less burdensome, the final rule excludes from the definition of "customer" certain readily identifiable entities, including: (1) Financial institutions regulated by a Federal functional regulator; (2) banks regulated by a state bank regulator; and (3) persons described in § 103.22(d)(2)(ii)–(iv), which includes entities such as governmental agencies and instrumentalities and companies that are publicly traded.[27] The definition of "customer" also excludes a person who has an existing account, provided that the FCM or IB has a reasonable belief that it knows the true identity of the person.[28]

Finally, the proposed definition of "customer" stated that when an account is introduced to an FCM by an IB, the person or individual opening the account shall be deemed to be a customer of both the FCM and the IB. There were no comments on this portion of the definition, and Treasury and the CFTC have adopted it as proposed.[29]

Section 103.123(a)(6) Federal functional regulator. The final rule adds a definition of "Federal functional regulator." The term is used in the revised definition of "customer" and in a new provision allowing FCMs and IBs to rely on certain other financial institutions to perform procedures of their CIPs.[30] The final rule defines "Federal functional regulator" by reference to § 103.120(a)(2).

Section 103.123(a)(7) Financial institution. The final rule adds a definition of "financial institution." The term is used in the revised definition of "customer" and in a new provision allowing FCMs and IBs to rely on certain other financial institutions to perform procedures of their CIPs.[31] This new definition cross-references the BSA, 31 U.S.C. 5312(a)(2) and (c)(1). This is a more expansive definition of "financial institution" than that in 31 CFR 103.11, and includes entities such as FCMs.

Section 103.123(a)(8) FCM. The proposed rule defined "FCM" as any person registered or required to be registered as an FCM with the CFTC under the CEA, except persons who register pursuant to section 4f(a)(2) of the CEA solely to effect transactions in SFPs. There were no comments on the definition, and Treasury and the CFTC have adopted it as proposed.

Section 103.123(a)(9) IB. The proposed rule defined "IB" as any person registered or required to be registered as an IB with the CFTC under the CEA, except persons who register pursuant to section 4f(a)(2) of the CEA solely to effect transactions in SFPs. There were no comments on the definition, and Treasury and the CFTC have adopted it as proposed with the addition of a U.S.C. citation for section 4f(a)(2) of the CEA, 7 U.S.C. 6f(a)(2).

Section 103.123(a)(10) Option. The final rule adds a definition of "option." The term is used in the definition of "account."[32] The final rule defines "option" as an agreement, contract or transaction described in Section 1a(26) of the CEA, 7 U.S.C. 1a(26).

Section 103.12(a)(11) Taxpayer identification number. The proposed rule defined "taxpayer identification number" (TIN) by reference to the provisions of section 6109 of the Internal Revenue Code of 1986 and the regulations of the Internal Revenue Service (IRS) promulgated thereunder. There were no comments on the definition, and Treasury and the CFTC have adopted it substantially as proposed.

Section 103.123(a)(12) U.S. Person and § 103.123(a)(13) Non-U.S. person. The proposed rule defined "U.S. person" as an individual who is a U.S. citizen, or an entity established or organized under the laws of a State or the United States.[33] A "non-U.S. person" was defined as a person who did not satisfy either of these criteria.[34]

Under these definitions, an FCM or IB will not necessarily need to establish whether a potential customer is a U.S. citizen. As described in greater detail below, the FCM or IB will have to ask each customer for a U.S. TIN (social security number, employer identification number, or individual TIN). If a customer cannot provide one, the FCM or IB may then obtain an identification number from some other form of government-issued document evidencing nationality or residence and bearing a photograph or similar safeguard. There were no comments on these definitions, and Treasury and the CFTC have adopted them as proposed.

Section 103.123(b) Customer Identification Program: Minimum Requirements

Section 103.123(b)(1) In general. Treasury and the CFTC proposed to require that each FCM and IB implement a written CIP as part of its AML program required under 31 U.S.C. 5318(h),[35] and that the procedures of the CIP enable each FCM and IB to form a reasonable belief that it knows the true identity of each customer.[36] The CIP procedures were to be based on the type of identifying information available and on an assessment of relevant risk factors, including the FCM's or IB's size, location and methods of opening accounts, the types of accounts maintained and the types of transactions executed for customers, and the FCM's or IB's reliance on another FCM or IB with which it shares an account relationship.

The NPRM discussed these risk factors and explained that, although the rule would require certain minimum identifying information and suitable verification methods, FCMs and IBs should consider on an ongoing basis whether other information or methods are appropriate, particularly as they become available in the future.[37] Commenters generally supported the risk-based approach of the proposed CIP requirements.

In the final rule, paragraph (b)(1) continues to set forth the general requirement that FCMs and IBs must implement a written CIP as part of their required AML programs. It provides that the CIP should be appropriate for the FCM's or IB's size and business and that, at a minimum, it must contain the requirements set forth in paragraphs (b)(1) through (b)(5), which are discussed below. The final rule has been re-organized to be structurally consistent with the rules being issued by Treasury and the other Federal functional regulators. Thus, requirements that had been set forth in paragraphs (c) through (h) in the proposed rule are now contained in paragraphs (b)(2) through (b)(5) of the final rule to the extent they have been adopted. The rule's structure was changed in order to affirm the intent of Treasury and the Federal functional regulators that all the CIP rules impose the same requirements.

Finally, the reference to risk factors has been moved to paragraph (b)(2) of the final rule, which requires FCMs and IBs to establish identity verification procedures. This change was made to clarify that the risk factors apply only to the identity verification procedures of the CIP, and not to standard requirements, such as procedures for providing notice to customers, recordkeeping, or checking government lists, which may not vary depending upon the perceived risk.

Section 103.123(b)(2) Identity Verification Procedures

Treasury and the CFTC proposed to require that the FCMs' and IBs' CIPs include procedures for verifying the identity of customers, to the extent reasonable and practicable, using information specified in the rule, and that such verification occur within a reasonable time before or after the customer's account is opened.[38] On the whole, commenters supported these general requirements, although they recommended greater use of a risk-based approach.

The final rule continues to strike a balance between flexibility and detailed guidance, and Treasury and the CFTC are adopting the provisions on identity verification procedures substantially as proposed. Under the final rule, an FCM's or IB's CIP must include risk-based procedures for verifying the identity of each customer to the extent reasonable and practicable. Such procedures must enable the FCM or IB to form a reasonable belief that it knows the true identity of each customer. The procedures must be based on the FCM's or IB's assessment of the relevant risks, including those presented by the various types of accounts maintained, the various methods of opening accounts, the various types of identifying information available, and the FCM's or IB's size, location and customer base.

Section 103.123(b)(2)(i) Customer Information Required

The proposed rule provided that an FCM's or IB's CIP must require the firm to obtain certain identifying information about its customers, including, at a minimum: (1) Names; (2) dates of birth, for natural persons; (3) certain addresses;[39] and (4) certain identification numbers.[40] The NPRM further stated that in certain circumstances, an FCM or IB should obtain additional identifying information, and that the CIP should set forth guidelines regarding those circumstances and the additional information that should be obtained.[41]

Treasury and the CFTC are adopting the customer information requirements substantially as proposed, with changes to accommodate individuals who may not have a physical address. Treasury and the CFTC believe that FCMs and IBs, for the most part, already collect the information required by the rule,[42] and that this information not only is necessary for the verification process, but also serves an important law enforcement function.

Accordingly, prior to opening an account, FCMs and IBs must obtain, at a minimum, a customer's (1) Name; (2) date of birth, for an individual; (3) address; and (4) identification number.[43] The address must be: (1) For an individual, a residential or business street address, or for an individual who does not have a residential or business street address, an Army Post Office or Fleet Post Office box number, or the residential or business street address of next of kin or another contact individual; or (2) for a person other than an individual, a principal place of business, local office or other physical location.

Treasury and the CFTC are adopting the identification number requirement substantially as proposed. For a customer that is a U.S. person, the identification number is a TIN (social security number, or employer identification number). For a customer that is not a U.S. person, the identification number is one or more of the following: a TIN, passport number and country of issuance, alien identification card number, or number and country of issuance of any other government-issued document evidencing nationality or residence and bearing a photograph or similar safeguard. This provision provides FCMs and IBs with some flexibility to choose among a variety of identification numbers that they may accept from a non-U.S. person.[44] However, the identifying information the FCM or IB accepts must enable it to form a reasonable belief that it knows the true identity of the customer.[45]

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[26] *See* final rule, 103.123(a)(5)(i)(B).

[27] *See* final rule,103.123(a)(5)(ii)(A)–(B). Section 103.22(d)(2)(iv) exempts such companies only to the extent of their domestic operations. Accordingly, an FCM's or IB's CIP will apply to any foreign offices, affiliates, or subsidiaries of such entities that open new accounts.

[28] The proposed rule provided for similar treatment of existing customers, however, it included this exclusion in a different paragraph of the rule. Whereas the existing customer exclusion appears in the final rule's definition of "customer," this exclusion appeared in the proposed rule's paragraph detailing the required verification procedures. *Compare* 103.123(a)(5)(ii) *with* NPRM, 67 FR at 48338 (proposed 103.123(d)).

[29] Treasury and the CFTC believe that the revisions made to the definition of "customer" in the proposed rule address the suggestion by one commenter that a risk-based approach be taken to determining who is a customer whose identity must be verified.

[30] *See* final rule, 103.123(a)(5) and (b)(6), respectively.

[31] *Id.*

[32] *See* final rule, 103.123(a)(5).

[33] The proposed rule contained a definition of "person" that cross-referenced the definition in 31 CFR 103.11(z). *See* NPRM, 67 FR at 48337. Since the final rule is being codified in 31 CFR Part 103, it will incorporate the definition in § 103.11(z) without the need for a specific cross-reference. Therefore, the definition has been removed from the final rule. The definition of "person" in § 103.11(z) is: "an individual, a corporation, a partnership, a trust or estate, a joint stock company, an association, a syndicate, joint venture, or other unincorporated organization or group, an Indian tribe (as that term is defined in the Indian Gaming Regulatory Act), and all entities cognizable as legal personalities."

[34] *See* NPRM, 67 FR at 48337.

[35] National Futures Association (NFA) Compliance Rule 2–9(c) sets forth minimum requirements for these AML programs.

[36] *See* NPRM, 67 FR at 48337–48338.

[37] *See* NPRM, 67 FR at 48331.

[38] *See* NPRM, 67 FR at 48338.

[39] The proposed rule would have required FCMs and IBs to obtain residence and mailing addresses (if different) for a natural person, or principal place of business and mailing addresses (if different) for a person other than a natural person. *See* NPRM, 67 FR at 48337.

[40] The proposed rule would have required FCMs and IBs to obtain: (1) for a customer that is a U.S. person, a TIN, or (2) for a customer that is not a U.S. person, a TIN, passport number and country of issuance, alien identification card number, or number and country of issuance of any other government-issued document evidencing nationality or residence and bearing a photograph or similar safeguard. *See* NPRM, 67 FR at 48337.

[41] *See* NPRM, 67 FR at 48332.

[42] *See* NPRM, 67 FR at 48335 n.17. *See also* CFTC Rule 1.37(a)(1), 17 CFR 1.37(a)(1), which requires FCMs and IBs to obtain, among other things, the true name and address of the person for whom such account is carried or introduced. Although an FCM or IB can utilize the customer information that is obtained and verified under the final rule to fulfill this obligation under Rule 1.37, an FCM or IB still will need to obtain the principal occupation or business of its customers as well as the name of any other person guaranteeing or exercising trading control with respect to its customers' accounts, because these are among the additional requirements under CFTC Rule 1.37. Further, FCM and IB members of NFA will still need to comply with the additional minimum requirements in NFA Compliance Rule 2–30(c) (requires FCM and IB members to obtain from customers that are natural persons, at least the following: "(2) The customer's current estimated annual income and net worth; (3) the customer's approximate age; and (4) an indication of the customer's previous investment and futures trading experience").

[43] Based on an assessment of the relevant risk factors, the FCM's or IB's CIP may require a customer to provide additional information to enable the firm to form a reasonable belief that it knows the customer's true identity.

[44] The rule provides this flexibility because there is no uniform identification number that non-U.S. persons would be able to provide to an FCM or IB. *See* Treasury Department, "A Report to Congress in Accordance with section 326(b) of the USA PATRIOT Act," October 21, 2002.

[45] Treasury and the CFTC emphasize that the rule neither endorses nor prohibits an FCM or IB from accepting information from particular types of identification documents issued by foreign governments. The FCM or IB must determine, based upon appropriate risk factors, including those discussed above, whether the information presented

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The proposed rule included an exception from the requirement to obtain a TIN from a customer opening a new account.[46] The exception would have allowed an FCM or IB to open an account for a customer that has applied for, but has not yet received, an employer identification number (EIN).[47] Treasury and the CFTC are adopting an expanded version of this exception in the final rule. As proposed, the exception was limited to customers that are not natural persons.[48] On further consideration, Treasury and the CFTC have determined that it is appropriate to expand the exception to include natural persons who have applied for, but have not received, a TIN. Treasury and the CFTC also have modified the exception to reduce the recordkeeping burden. The proposed rule would have required an FCM or IB to retain a copy of the customer's application for a TIN.[49] The FCM's or IB's CIP must include procedures to confirm that the application was filed before the customer opens the account and to obtain the TIN within a reasonable period of time after the account is opened. The final rule permits the FCM or IB to exercise discretion in determining how to confirm that a customer has filed an application.

Section 103.123(b)(2)(ii) Customer Verification

Treasury and the CFTC proposed to require that an FCM's or IB's CIP include procedures for verifying the identity of customers, to the extent reasonable and practicable, using the information obtained under the rule.[50] Treasury and the CFTC also proposed to require such verification to occur within a reasonable time before or after the customer's account is opened. The NPRM stated that an FCM or IB need not establish the accuracy of each piece of identifying information if it is able to form a reasonable belief that it knows the customer's identity after verifying only certain of the information.[51] The NPRM also stated that the flexibility to undertake verification within a reasonable time must be exercised in a reasonable manner.[52]

The sole commenter on this aspect of the proposed rule suggested that the rule should require verification each time the customer opens a new type of account, and not each time the customer establishes a different account at the FCM to trade the same type of product. As discussed above, however, the definition of "customer" in the final rule has been changed to exclude persons who have an existing account, provided the FCM or IB has a reasonable belief that it knows the customer's true identity. Accordingly, FCMs and IBs will not be required to verify the identities of such persons, which may include persons who open successive accounts of either the same type or multiple types to trade either the same or different products.

The final rule adopts the customer verification requirements substantially as proposed. The final rule requires that an FCM's or IB's CIP contain procedures for verifying the identity of the customer, using the customer information obtained in accordance with paragraph (b)(2)(i), within a reasonable time before or after the account is opened. As stated in the NPRM, FCMs and IBs must reasonably exercise the flexibility to undertake verification before or after an account is opened.[53] The appropriate amount of time may depend on various factors, such as the type of account opened, whether the customer opens the account in person, and the type of identifying information that is available.[54]

Although the location of the provision has been moved, the final rule continues to require that an FCM's or IB's CIP include procedures that describe when the firm will use documents, non-documentary methods, or a combination of both to verify customer identities.[55] Depending on the type of customer and the method of opening an account, it may be more appropriate to use either documentary or non-documentary methods, and in some cases it may be appropriate to use both methods. The CIP should set forth guidelines describing when documents, non-documentary methods, or a combination of both will be used. These guidelines should be based on the FCM's or IB's assessment of the relevant risk factors.

Section 103.123(b)(2)(ii)(A) Customer Verification—Through Documents

Treasury and the CFTC proposed to require that an FCM's or IB's CIP describe documents that the firm will use to verify a customer's identity. There were no comments directly addressing the documentary verification provisions of the proposed rule, and the final rule adopts the documentary verification provisions substantially as proposed. Specifically, the final rule requires an FCM's or IB's CIP to contain procedures that set forth the documents that the firm will use to verify a customer's identity. Each FCM or IB will conduct its own risk-based analysis of the types of documents that it believes will enable it to verify the true identities of its customers.

In light of recent increases in identity theft and the availability of fraudulent documents, Treasury and the CFTC believe that the value of documentary verification is enhanced by redundancy. Treasury and the CFTC encourage each FCM and IB to obtain more than one type of documentary verification to ensure that it has a reasonable belief that it knows its customer's true identity. Moreover, Treasury and the CFTC encourage FCMs and IBs to use a variety of methods to verify the identity of a customer, especially when it does not have the ability to examine original documents. The final rule continues to include, without significant change, an illustrative list of identification documents. For an individual, these documents may include unexpired government-issued identification evidencing nationality or residence and bearing a photograph or similar safeguard, such as a driver's license or passport.[56] For a person other than an individual, these documents may include documents showing the existence of the entity, such as certified articles of incorporation, a government-issued business license, a partnership agreement, or a trust instrument.[57] An FCM or IB may use other documents,[58] provided they allow the firm to form a reasonable belief that it knows the true identity of the customer.

In addition to the risk factors described in paragraph (b)(2), the FCM or IB should take into consideration the problems associated with authenticating documents and the inherent limitations of documents as a means of identity verification. These limitations will affect the types of documents that will be necessary to establish a reasonable belief that the FCM or IB knows the true identity of the customer, and may require the use of non-documentary methods of verification in addition to documents.

Once an FCM or IB verifies the identity of a customer through a document, such as a driver's license or passport, it is not required to take steps to determine whether the document has been validly issued. An FCM or IB generally may rely on government-issued identification as verification of a customer's identity; however, if a document shows obvious indications of fraud, the FCM or IB must consider that in determining whether it can form a reasonable belief that it knows the customer's true identity.

Section 103.123(b)(2)(ii)(B) Customer Verification—Through Non-documentary Methods

Treasury and the CFTC proposed to require that an FCM's or IB's CIP describe the non-documentary methods the firm would use to verify customers' identities and when the firm would use these methods in addition to, or instead of, relying on documents.[59] Treasury and the CFTC explained that the proposed rule would allow the exclusive use of non-documentary methods because some accounts are opened by telephone, by mail, or over the Internet.[60] Treasury and the CFTC also noted that, even if a customer presents identification documents, it still might be appropriate to use non-documentary verification methods as well.

The proposed rule provided examples of non-documentary verification methods that an FCM or IB may use. In the NPRM, Treasury and the CFTC observed that FCMs and IBs may wish to analyze whether there is logical consistency between the identifying information provided, such as the customer's name, street address, ZIP code, telephone number (if provided), date of birth, and social security number.[61]

Treasury and the CFTC proposed to require FCMs and IBs to use non-documentary methods when: (1) A customer who is a natural person cannot present an unexpired, government-issued identification document that bears a photograph or similar safeguard; (2) the FCM or IB is presented with unfamiliar documents to verify the identity of a customer; or (3) the FCM or IB does not obtain documents to verify the identity of a customer, does not meet face-to-face with a customer who is a natural person, or is otherwise presented with circumstances that increase the risk the FCM or IB will be unable to verify the true identity of a customer through documents.[62] Treasury and the CFTC recognize that there are many scenarios and combinations of risk factors that FCMs and IBs may encounter, and they have decided to adopt general principles that are illustrated by examples, in lieu of a lengthy and possibly unwieldy regulation that attempts to address a wide variety of situations with particularity.

There were no comments specifically regarding the non-documentary verification provisions of the proposed rule, and thus the final rule adopts them substantially as proposed. Under the final rule, an FCM or IB relying on non-documentary verification methods must describe them in its CIP. The final rule includes an illustrative list of non-documentary verification methods, similar to the list that was included in the proposed rule. These methods may include: (1) Contacting a customer; (2) independently verifying the customer's identity through the comparison of information provided by the customer with information obtained from a consumer reporting agency, public database,[63] or other source; (3) checking references with other financial institutions; and (4) obtaining a financial statement.[64] As Treasury and the CFTC stated in the NPRM, FCMs and IBs may wish to analyze whether there is logical consistency between the identifying information provided, such as the customer's name, street address, ZIP code, telephone number (if provided), date of birth, and social security number.[65]

The final rule also includes a list, again similar to that in the proposal, of circumstances that may require the use of non-documentary verification procedures.[66] Specifically, an FCM's or IB's non-documentary procedures must address situations in which: (1) An individual is unable to present an unexpired government-issued identification document that bears a photograph or similar safeguard; (2) the FCM or IB is not familiar with the documents presented; (3) the account is opened without obtaining documents; (4) the customer opens the account without appearing in person; and (5) the circumstances presented increase the risk that the FCM or IB will be unable to verify the true identity of a customer through documents.

As explained in the NPRM,[67] because identification documents may be obtained illegally and may be fraudulent, and in light of the recent increase in identity theft, Treasury and the CFTC encourage FCMs and IBs to use non-documentary methods even when the customer has provided identification documents.

Section 103.123(b)(2)(ii)(C) Customer Verification—Additional Verification for Certain Customers

As described above, Treasury and the CFTC proposed to require verification of the identity of any person authorized to effect transactions in a customer's account. Commenters objected to this requirement, and it has been omitted from the final rule. For the reasons discussed below, however, the final rule does require that an FCM's or IB's CIP address the circumstances in which it will obtain information about such individuals in order to verify a customer's identity.

Treasury and the CFTC believe that, while FCMs and IBs may be able to verify the identity of the majority of customers through the documentary or non-documentary verification methods described above, there may be circumstances when these methods are inadequate. The risk that an FCM or IB will not know the customer's true identity may be heightened for certain types of accounts, such as an account opened in the name of a corporation, partnership, or trust that is created or conducts substantial business in a jurisdiction that has been designated by the United States as a primary money laundering concern or has been designated as non-cooperative by an international body. Treasury and the CFTC believe that, in order to identify customers that pose a heightened risk of not being properly identified, an FCM's or IB's CIP must prescribe additional measures that may be used to obtain

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by a customer is reliable. Treasury and the CFTC recognize that a foreign business or enterprise may not have an identification number. Therefore the final rule notes that when opening an account for such a customer, the FCM or IB must request alternative government-issued documentation certifying the existence of the business or enterprise.

[46] *See* NPRM, 67 FR at 48337–48338.

[47] This position is analogous to that in regulations issued by the IRS concerning "awaiting—TIN certificates." The IRS permits a taxpayer to furnish an "awaiting—TIN certificate" in lieu of a TIN to exempt the taxpayer from the withholding of taxes owed on reportable payments (*i.e.*, interest and dividends) on certain accounts. *See* 26 CFR 31.3406(g)–3.

[48] In the NPRM, Treasury and the CFTC explained that the exception was for businesses that may need to open an account before they receive an EIN from the IRS. *See* NPRM, 67 FR at 48332–48333.

[49] *See* NPRM, 67 FR at 48338.

[50] *Id.*

[51] *See* NPRM, 67 FR at 48333.

[52] *Id.*

[53] *See* NPRM, 67 FR at 48333.

[54] An FCM or IB member of NFA would violate CFTC Rule 1.37 and NFA Compliance Rule 2–30, however, if it allowed a natural person to transact business before obtaining specified information about the individual's true identity. Moreover, an FCM or IB must also comply with Treasury's Office of Foreign Asset Control's (OFAC) regulations prohibiting transactions involving designated foreign countries or their nationals. *See* 31 CFR Part 500.

[55] *See* final rule, 103.123(b)(2)(ii).

[56] *See* final rule, 103.123(b)(2)(ii)(A)(*1*).

[57] *See* final rule, 103.123(b)(2)(ii)(A)(*2*).

[58] The list of documents in the rule is meant to be illustrative. Other documents, such as trust certificates and legal opinions, also may be appropriate for verification.

[59] *See* NPRM, 67 FR at 48338.

[60] *See* NPRM, 67 FR at 48333.

[61] *See* NPRM, 67 FR at 48334.

[62] *See* NPRM, 67 FR at 48338.

[63] The specific types of databases that would be suitable for verification ultimately will depend on the circumstances and the FCM's or IB's assessment of the relevant risk factors.

[64] *See* final rule, 103.123(b)(ii)(B)(1).

[65] *See* NPRM, 67 FR at 48334.

[66] *See* final rule, 103.123(b)(ii)(B)(2).

[67] *Id.*

information about the identities of the individuals associated with the customer when standard documentary or non-documentary verification methods prove to be insufficient.

The final rule, therefore, includes a new provision requiring that the CIP address situations in which, based on the FCM's or IB's risk assessment of a new account opened by a customer that is not an individual, the firm also will obtain information about individuals with authority or control over the account (*e.g.*, persons authorized to effect transactions in the account) in order to verify the customer's identity. This additional verification method applies only when the FCM or IB cannot adequately verify the customer's identity after using the documentary and non-documentary verification methods described above.[68]

Section 103.123(b)(2)(iii) Lack of Verification

Treasury and the CFTC proposed to require that an FCM's or IB's CIP include procedures for responding to circumstances in which the firm cannot form a reasonable belief that it knows the true identity of the customer.[69] Treasury and the CFTC explained in the NPRM that the CIP should specify the actions to be taken, which could include closing the account or placing limitations on additional trading.[70] Treasury and the CFTC also explained that there should be guidelines for when an account will not be opened (*e.g.*, when the required information is not provided), and that the CIP should address the terms under which a customer may conduct transactions while the customer's identity is being verified.[71]

There were no comments on this aspect of the proposed rule, and Treasury and the CFTC have adopted the provision substantially as proposed. The final rule, however, adds a description of the recommended features of these procedures, similar to the features that were described in the NPRM. Thus, the final rule provides that the CIP's procedures should describe: (1) When an account should not be opened; (2) the terms under which a customer may conduct transactions while the FCM or IB attempts to verify the customer's identity; (3) when the FCM or IB should file a suspicious activity report (SAR) in accordance with applicable law and regulation;[72] and (4) when an account should be closed, after attempts to verify a customer's identity have failed.

Section 103.123(b)(3) Recordkeeping

Section 103.123(b)(3)(i) Required Records. Treasury and the CFTC proposed to require that CIPs of FCMs and IBs include certain recordkeeping procedures.[73–74] First, the proposed rule would have required that an FCM or IB maintain a record of the identifying information provided by customers. Second, if an FCM or IB relied on a document to verify a customer's identity, the proposed rule would have required the firm to maintain a copy of the document. Third, the proposed rule would have required FCMs and IBs to record the methods and results of any additional measures undertaken to verify the identity of customers. Finally, the proposed rule would have required FCMs and IBs to record the resolution of any discrepancy in the identifying information obtained.

Although there were no comments on this aspect of the proposed rule, Treasury and the CFTC have reconsidered and modified the recordkeeping requirements of the rule based on comments received with respect to the parallel recordkeeping provisions in the proposed CIP rules jointly issued by Treasury and the other Federal functional regulators. The final rule provides that an FCM's or IB's CIP must include procedures for making and maintaining records related to verifying the identities of customers. However, the final rule is more flexible than the proposed rule in this regard.

Under the final rule, FCMs and IBs still must make a record of all identifying information obtained about each customer. However, rather than requiring that copies of verification documents be maintained, the final rule requires that an FCM's or IB's records include a description of any document that the firm relied on to verify the identity of the customer, noting the type of document, any identification number contained in the document, the place of issuance, and the issuance and expiration dates, if any. With respect to non-documentary verification, the final rule requires the records to include a description of the non-documentary methods and the results of any additional measures undertaken to verify the identity of the customer. The final rule also requires a description of the resolution of any "substantive discrepancy" discovered when verifying the identifying information obtained. This is intended to make clear that a record would not have to be made in the case of a minor discrepancy, such as one that might be caused by typographical mistakes.

Section 103.123(b)(3)(ii) Record Retention

Treasury and the CFTC proposed to require that an FCM or IB retain all required records for five years after the account is closed.[75] Although there were no comments on this aspect of the proposed rule, commenters on the other Federal functional regulators' proposed CIP rules expressed concern regarding this requirement as costly and overly burdensome, particularly with respect to the length of time that certain records would need to be retained and the requirement that financial institutions retain copies of the documents used to verify customer identities. The final rules adopted by Treasury and the Federal functional regulators address many of these concerns.

Treasury and the Federal functional regulators have, in the final rules, eliminated the requirement that a financial institution retain copies of documents used to verify customer identities. Treasury and the Federal functional regulators also believe that, while the identifying information provided by customers should be retained as proposed, there is little value in requiring financial institutions to retain the remaining records for five years after an account is closed, because this information is likely to grow stale. Therefore, the final rule prescribes a bifurcated record retention schedule that is consistent with a general five-year retention requirement.

Under the final rule, an FCM or IB must retain the information obtained about a customer pursuant to paragraph (b)(3)(i)(A) (*i.e.*, all minimum identifying information obtained under (b)(2)(ii)(A)) for five years after the date the account is closed.[76] The remaining records required under paragraphs (b)(3)(i)(B), (C), and (D) (*i.e.*, descriptions of: any document relied upon to verify identity; methods and results of any measure taken to verify identity; and the resolution of each substantive discrepancy discovered when verifying the identifying information obtained) need only be retained for five years after the record is made. The final rule continues to provide that in all other respects, these records shall be maintained in accordance with the provisions of the CFTC's recordkeeping rule 1.31.[77]

Section 103.123(b)(4) Comparison With Government Lists

Treasury and the CFTC proposed to require that an FCM's or IB's CIP have procedures for determining whether the customer appears on any list of known or suspected terrorists or terrorist organizations prepared by any Federal government agency and made available to the firm.[78] In addition, the proposed rule provided that FCMs and IBs must follow all Federal directives issued in connection with such lists.

Although there were no comments on this aspect of the proposed rule, commenters on the other Federal functional regulators' proposed CIP rulemakings raised a number of concerns regarding this provision. Some commenters were concerned about how a financial institution would be able to determine what lists should be checked and how these lists would be made available. Other commenters suggested that all such lists be consolidated or provided through a designated government agency, such as FinCEN, that would serve as a clearinghouse. Still other commenters suggested that the rule should allow for the lists to be checked after an account is opened.

The final rule provides that an FCM's or IB's CIP must include procedures for determining whether the customer appears on any list of known or suspected terrorists or terrorist organizations issued by any Federal government agency and designated as such by Treasury in consultation with the Federal functional regulators. Because Treasury and the Federal functional regulators have not yet designated any such lists, the final rule cannot be more specific with respect to the lists that FCMs and IBs must check. However, FCMs and IBs will not have an affirmative duty under this rule to seek out all lists of known or suspected terrorists or terrorist organizations compiled by the Federal government. Instead, they will receive notification by way of separate guidance regarding the lists that they must consult for purposes of this provision.

Treasury and the CFTC have modified the proposed rule to provide that the CIP's procedures must require the FCM or IB to determine whether a customer appears on a list "within a reasonable period of time" after the account is opened, or earlier if required by another Federal law or regulation or by a Federal directive issued in connection with the applicable list. The final rule also requires an FCM's or IB's CIP to include procedures that require the firm to follow all Federal directives issued in connection with such lists. Again, because no lists have yet been designated under this provision, the final rule cannot provide more guidance in this area.[79]

Section 103.123(b)(5) Customer Notice

Treasury and the CFTC proposed to require that an FCM's or IB's CIP include procedures for providing customers with adequate notice that the firm is requesting information to verify their identities.[80] The NPRM stated that an FCM or IB could satisfy that notice requirement by generally notifying its customers about the firm's verification procedures.[81] It also stated that if an account is opened electronically, such as through an Internet website, the FCM or IB could provide notice electronically.[82]

Section 326 of the Act provides that the regulations issued "shall at a minimum, require financial institutions to * * * [give] customers * * * adequate notice" of the procedures they adopt concerning customer identification. Based on this statutory requirement, the final rule requires an FCM's or IB's CIP to include procedures for providing customers with adequate notice that the firm is requesting information to verify their identities.

The final rule contains additional guidance regarding what constitutes adequate notice and the timing of the notice requirement. The final rule provides that notice is adequate if the FCM or IB describes the identification requirements of the final rule and provides notice in a manner reasonably designed to ensure that a customer is able to view the notice, or is otherwise given notice, before opening an account. The final rule also provides that, depending on how an account is opened, an FCM or IB may post a notice in the lobby or on its website, include the notice on its account applications, or use any other form of oral or written notice.[83] In addition, the final rule includes sample language that, if appropriate, will be deemed adequate notice to an FCM's or IB's customers when provided in accordance with the requirements of the final rule.

Section 103.123(b)(6) Reliance on Other Financial Institutions

In the proposed rule, Treasury and the CFTC included as a risk factor an FCM's or IB's reliance on another FCM or IB to perform procedures of its CIP.[84] In the NPRM, Treasury and the CFTC stated that this would require an assessment of whether the FCM or IB can rely on another FCM or IB, with which it shares an account relationship, to undertake any of the steps required by the firm's CIP with respect to the shared account.

Treasury and the CFTC have expanded the reliance provision of the proposed rule in recognition that there may be circumstances in which an FCM or IB should be able to rely on the performance by another financial institution of some or all of the elements of the firm's CIP. The final rule provides that an FCM's or IB's CIP may include procedures that specify when the firm will rely on the performance by another financial institution (including an affiliate) of any procedures of the firm's CIP, and thereby satisfy the FCM's or IB's obligations under the rule. Reliance is permitted if a customer of the FCM or IB is opening, or has opened, an account or has established a similar business relationship with the other financial institution to provide or engage in services, dealings, or other financial transactions.

In order for an FCM or IB to rely on the other financial institution: (1) Such reliance must be reasonable under the circumstances; (2) the other financial institution must be subject to a rule implementing the AML compliance program requirements of 31 U.S.C. 5318(h) and be regulated by a Federal functional regulator, and (3) the other financial institution must enter into a contract requiring it to certify annually to the FCM or IB that it has implemented an AML program and that it will perform (or its agent will perform) the specified requirements of

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[68] An FCM or IB need not undertake any additional verification if it chooses not to open an account when it cannot verify the customer's identity after using standard documentary and non-documentary verification methods.

[69] *See* NPRM, 67 FR at 48338.

[70] *See* NPRM, 67 FR at 48334.

[71] *Id.*

[72] FinCEN has not yet published a rule requiring FCMs and IBs to report suspicious activities. These firms may, however, voluntarily file SARs with FinCEN to report suspicious activities.

[73–74] *See* NPRM, 67 FR at 48338.

[75] *See* NPRM, 67 FR at 48338.

[76] The Secretary has determined that the records required to be retained under section 326 of the Act have a high degree of usefulness in criminal, tax, or regulatory investigations or proceedings, or in the conduct of intelligence or counterintelligence activities, to protect against international terrorism.

[77] 17 CFR 1.31.

[78] *See* NPRM, 67 FR at 48338.

[79] This is not to say, however, that FCMs and IBs do not have obligations under other laws to screen their customers against government lists. For example, FCMs and IBs should already have AML compliance programs in place to ensure they comply with OFAC's rules. *See supra* note 54; *see* also OFAC's *Foreign Assets Control Regulations For The Securities Industry (http://www.ustreas.gov/offices/enforcement/ofac/regulations/t11facsc.pdf).*

[80] *See* NPRM, 67 FR at 48338.

[81] *See* NPRM, 67 FR at 48334.

[82] *Id.*

[83] One commenter suggested that a firm's posting of the required notice on its Internet Web site should be deemed sufficient notice for all customers, regardless of how any particular account is opened. Because such posting would not ensure that every customer would be able to view the notice before opening an account, Treasury and the CFTC do not believe that this approach would satisfy the statutory requirement of section 326 of the Act.

[84] *See* NPRM, 67 FR at 48331–48332.

the FCM's or IB's CIP.[85] The contract and certification will provide a standard means for an FCM or IB to demonstrate the extent to which it is relying on another financial institution to perform its CIP, and that the other institution has, in fact, agreed to perform those functions.[86] If it is not clear from these documents, an FCM or IB must be able to otherwise demonstrate when it is relying on another financial institution to perform its CIP with respect to a particular customer.

An FCM or IB will not be held responsible for the failure of the other financial institution to fulfill adequately the FCM's or IB's CIP obligations, provided that the FCM or IB can establish that its reliance was reasonable and that it has the requisite contracts and certifications. Treasury and the CFTC emphasize that the FCM or IB and the other financial institution upon which it relies must satisfy all the conditions for reliance set forth in the final rule. If they do not, then the FCM or IB remains solely responsible for applying its own CIP to each customer in accordance with the rule.

This reliance provision of the final rule does not affect the ability of an FCM or IB to contractually delegate the implementation and operation of its CIP procedures to a service provider. Nor does the final rule alter an FCM's or IB's ability to use an agent to perform services on its behalf. Treasury and the CFTC note, however, that in contrast to the reliance provision in the rule, in these situations the FCM or IB remains solely responsible for assuring compliance with the rule, and therefore must actively monitor the operation of its CIP, assesses its effectiveness, and ensure that examiners are able to obtain information and records relating to the CIP.[87]

All of the Federal functional regulators are adopting comparable provisions in their CIP rules to permit such reliance. Furthermore, the Federal functional regulators expect to share information and cooperate with each other to determine whether the institutions subject to their jurisdiction are in compliance with the reliance provision of the rule.

Section 103.123(c) Exemptions

The proposed rule provided that the CFTC, with the concurrence of the Secretary, may exempt any FCM or IB that registers with the CFTC or any type of account from the requirements of the rule. It excluded from this exemptive authority FCMs or IBs that register pursuant to section 4f(a)(2) of the CEA solely because they deal in transactions involving SFPs. The exemptive authority with respect to these firms will be in the final rule issued jointly by Treasury and the SEC for securities broker-dealers. There were no comments on this provision of the proposed rule, and Treasury and the CFTC have adopted it substantially as proposed.

Section 103.123(d) Other Requirements Unaffected

The final rule adds a provision stating that nothing in § 103.123 shall relieve an FCM or IB of its obligation to comply with any other provision of Part 103, including provisions concerning information that must be obtained, verified, or maintained in connection with any account or transaction. A parallel provision similarly has been included in the final CIP rules issued by Treasury and the other Federal functional regulators.

B. Requirement for CIP Approval Removed

The NPRM required that the CIP be approved by the FCM's or IB's board of directors, managing partners, board of managers or other governing body performing similar functions, or by a person or persons specifically authorized by such bodies to approve the CIP.[88] The final rule requires the CIP to be a part of the overall AML program required of FCMs and IBs under 31 U.S.C. 5318(h). NFA Compliance Rule 2–9(c) requires these AML programs to be approved in writing by a member of the FCM's or IB's senior management.[89]

Treasury and the CFTC have omitted the approval requirement from the final rule because it is unnecessary given the approval requirements for AML programs set forth in NFA Compliance Rule 2–9(c). Treasury and the CFTC note, however, that an FCM or IB with an approved AML program must nonetheless obtain approval of a new CIP because it would constitute a material change to the AML program.

III. Regulatory Analysis

A. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA), 5 U.S.C. 601, *et seq.* (1994 & Supp. II 1996), requires Federal agencies, in proposing rules, to consider the impact of those rules on small businesses. The rules adopted herein would affect FCMs and IBs. The CFTC has previously established certain definitions of "small entities" to be used by the CFTC in evaluating the impact of its rules on small entities in accordance with the RFA.[90] The CFTC has previously determined that FCMs are not small entities for the purposes of the RFA. With respect to IBs, the CFTC has stated that it is appropriate to evaluate within the context of a particular rule proposal whether some or all of the affected entities should be considered small entities and, if so, to analyze the economic impact on them of any rule.[91]

In this regard, the rules being adopted herein would not require any IB significantly to change its current method of doing business. As noted in the NPRM, Treasury and the CFTC believe that IBs already obtain from their customers most, if not all, of the information required under the proposed rule.[92] In addition, FCMs and IBs already must have AML programs that include procedures for customer identification and verification. The flexibility incorporated into the final rule also will permit each IB to tailor its CIP to fit its own size and needs. As a result, Treasury and the CFTC believe that expenditures associated with establishing and implementing a CIP should be commensurate with the size of the firm. If an IB is small, with a limited number of customers, the burden to comply with the rule should be *de minimis*. This position is consistent with the views of one trade association commenter that characterized the expected additional costs for IBs to comply with this new rule as "insubstantial."

Accordingly, pursuant to 5 U.S.C. 605(b), Treasury and the CFTC certify that the action taken herein will not have a significant economic impact on a substantial number of small entities. In this regard, Treasury and the CFTC note that they did not receive any comments expressing concern regarding the implications of the rule for small entities.

B. Paperwork Reduction Act

The collections of information in this rule have been reviewed and approved by the Office of Management and Budget pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)), under control number 1506–0022. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid control number.

Neither Treasury nor the CFTC received any comments on any potential paperwork burden associated with the NPRM. Treasury and the CFTC did receive comments concerning the information that would be collected under the proposed rule. The final rule, which addresses these concerns among others, reduces the paperwork burden of the rule as proposed.[93]

Comments on the burden, and suggestions for how to further reduce it, may be sent (preferably by fax (202–395–6974)) to Desk Officer for the Department of the Treasury, Office of Information and Regulatory Affairs, Office of Management and Budget, Paperwork Reduction Project (1506–0022), Washington, DC 20503 (or by the Internet to *jlackeyj@omb.eop.gov*), with a copy to FinCEN by mail or the Internet at the addresses previously specified.

C. Cost-Benefit Analysis

Section 15(a) of the CEA requires the CFTC to consider the costs and benefits of its action before issuing a new rule. The CFTC understands that, by its terms, section 15(a) does not require the CFTC to quantify the costs and benefits of a new rule or to determine whether the benefits of the rule outweigh its costs. Nor does it require that each rule be analyzed in isolation when that rule is a component of a larger package of rules or rule revisions. Rather, section 15(a) simply requires the CFTC to "consider the costs and benefits" of its action.

Section 15(a) further specifies that the costs and benefits of the rule shall be evaluated in light of five broad areas of market and public concern: (1) Protection of market participants and the public; (2) efficiency, competitiveness, and financial integrity of futures markets; (3) price discovery; (4) sound risk management practices; and (5) other public interest considerations. The CFTC may, in its discretion, give greater weight to any one of the five enumerated areas of concern and may, in its discretion, determine that, notwithstanding its costs, a particular rule is necessary or appropriate to protect the public interest or to effectuate any of the provisions or to accomplish any of the purposes of the CEA.

The NPRM contained an analysis of the CFTC's consideration of these costs and benefits and solicited public comment thereon.[94] The CFTC invited commenters to submit any data that they might have to assist in quantifying the costs and benefits of the proposed rules. The CFTC did not receive any such data or related comments.

After considering the costs and benefits of the proposed rules, the CFTC has decided to adopt these rules, with revisions as discussed above.

D. Executive Order 12866

Treasury has determined that this rule is not a "significant regulatory action" for purposes of Executive Order 12866. As noted above, the final rule parallels the requirements of section 326 of the Act. Accordingly, a regulatory impact analysis is not required.

List of Subjects

17 CFR Part 42

Anti-money laundering, Brokers, Reporting and recordkeeping requirements, Terrorist financing.

31 CFR Part 103

Administrative practice and procedure, Authority delegations (Government agencies), Banks, Banking, Brokers, Currency, Foreign banking, Foreign currencies, Gambling, Investigations, Law enforcement, Penalties, Reporting and recordkeeping requirements, Securities.

Commodity Futures Trading Commission

17 CFR Chapter I

Authority and Issuance

■ For the reasons articulated in the preamble, the CFTC amends chapter I of title 17 of the Code of Federal Regulations by adding a new part 42 to read as follows:

PART 42—ANTI-MONEY LAUNDERING, TERRORIST FINANCING

Subpart A—General Provisions

Sec.
42.1 [Reserved]
42.2 Compliance with Bank Secrecy Act

Authority: 7 U.S.C. 1a, 2, 5, 6, 6b, 6d, 6f, 6g, 7, 7a, 7a–1, 7a–2, 7b, 7b–1, 7b–2, 9, 12, 12a, 12c, 13a, 13a–1, 13c, 16 and 21; 12 U.S.C. 1786(q), 1818, 1829b and 1951–1959; 31 U.S.C. 5311–5314 and 5316–5332; title III, secs. 312–314, 319, 321, 326, 352, Pub. L. 107–56, 115 Stat. 307.

Subpart A—General Provisions

§ 42.1 [Reserved]

§ 42.2 Compliance with Bank Secrecy Act.

Every futures commission merchant and introducing broker shall comply with the applicable provisions of the Bank Secrecy Act and the regulations promulgated by the Department of the Treasury under that Act at 31 CFR Part 103, and with the requirements of 31 U.S.C. 5318(l) and the implementing regulation jointly promulgated by the Commission and the Department of the Treasury at 31 CFR 103.123, which require that a customer identification program be adopted as part of the firm's Bank Secrecy Act compliance program.

Dated: April 28, 2003.

Jean A. Webb,

Secretary of the Commodity Futures Trading Commission.

Department of the Treasury

31 CFR Chapter I

Authority and Issuance

■ For the reasons set forth in the preamble, part 103 of title 31 of the Code of Federal Regulations is amended as follows:

PART 103—FINANCIAL RECORDKEEPING AND REPORTING OF CURRENCY AND FOREIGN TRANSACTIONS

■ 1. The authority citation for part 103 is revised to read as follows:

Authority: 12 U.S.C. 1786(q), 1818, 1829b and 1951–1959; 31 U.S.C. 5311–5314 and 5316–5332; title III, secs. 312, 313, 314, 319, 321, 326, 352, Pub L. 107–56, 115 Stat. 307.

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[85] As discussed in the NPRM, the required contractual commitments in the case of shared accounts involving FCMs and IBs may be made a part of an introducing agreement (in the context of introduced business) or a give-up agreement (in the context of give-up business). *See* NPRM, 67 FR at 48332. And as urged by one commenter, the required annual certification under the final rule may cover all customers for which the two financial institutions share an account relationship, and need not be on a customer-by-customer basis.

[86] FCMs and IBs must obtain annual certifications acknowledging performance of CIP functions from financial institutions that are affiliates as well as those that are non-affiliates. This requirement maintains parity with the CIP rule applicable to securities broker-dealers, many of which are dually registered as FCMs.

[87] Two commenters suggested that the final rule should allow FCMs and IBs to rely upon foreign financial institutions in general, and foreign affiliates in particular to perform CIP procedures. Such a liberalization of the rule, however, could undermine the purpose of the Act in combating international money laundering and the financing of terrorism. Accordingly, the final rule permits reliance only on a financial institution that is subject to a rule requiring an AML program under the Act and that is regulated by a Federal functional regulator, which will exclude foreign entities.

This does not prevent an FCM or IB from utilizing a foreign affiliate or other foreign financial institution to perform procedures of its CIP. Rather, it means only that the FCM's or IB's relationship with the foreign firm will be treated the same as if the firm contractually delegated the implementation and operation of its CIP procedures to a service provider.

[88] *See* NPRM, 67 FR at 48338.

[89] Compliance with NFA Compliance Rule 2–9(c) is deemed to satisfy the requirements of 31 U.S.C. 5318(h)(1). *See* 31 CFR 103.120(c).

[90] 47 FR 18618–21 (Apr. 30, 1982).

[91] *Id.* at 18618–21.

[92] *See* NPRM, 67 FR at 48335 n.17.

[93] *See* NPRM, 67 FR at 48335.

[94] *See* NPRM, 67 FR at 48336–48337.

■ 2. Subpart I of part 103 is amended by adding § 103.123 to read as follows:

§ 103.123 Customer identification programs for futures commission merchants and introducing brokers.

(a) *Definitions.* For the purposes of this section:

(1)(i) *Account* means a formal relationship with a futures commission merchant, including, but not limited to, those established to effect transactions in contracts of sale of a commodity for future delivery, options on any contract of sale of a commodity for future delivery, or options on a commodity.

(ii) *Account* does not include:

(A) An account that the futures commission merchant acquires through any acquisition, merger, purchase of assets, or assumption of liabilities; or

(B) An account opened for the purpose of participating in an employee benefit plan established under the Employee Retirement Income Security Act of 1974.

(2) *Commission* means the United States Commodity Futures Trading Commission.

(3) *Commodity* means any good, article, service, right, or interest described in Section 1a(4) of the Commodity Exchange Act (7 U.S.C. 1a(4)).

(4) *Contract of sale* means any sale, agreement of sale or agreement to sell as described in Section 1a(7) of the Commodity Exchange Act (7 U.S.C. 1a(7)).

(5)(i) *Customer* means:

(A) A person that opens a new account with a futures commission merchant; and

(B) An individual who opens a new account with a futures commission merchant for:

(*1*) An individual who lacks legal capacity; or

(*2*) An entity that is not a legal person.

(ii) *Customer* does not include:

(A) A financial institution regulated by a Federal functional regulator or a bank regulated by a state bank regulator;

(B) A person described in § 103.22(d)(2)(ii) through (iv); or

(C) A person that has an existing account, provided the futures commission merchant or introducing broker has a reasonable belief that it knows the true identity of the person.

(iii) When an account is introduced to a futures commission merchant by an introducing broker, the person or individual opening the account shall be deemed to be a *customer* of both the futures commission merchant and the introducing broker for the purposes of this section.

(6) *Federal functional regulator* is defined at § 103.120(a)(2).

(7) *Financial institution* is defined at 31 U.S.C. 5312(a)(2) and (c)(1).

(8) *Futures commission merchant* means any person registered or required to be registered as a futures commission merchant with the Commission under the Commodity Exchange Act (7 U.S.C. 1 *et seq.*), except persons who register pursuant to Section 4f(a)(2) of the Commodity Exchange Act (7 U.S.C. 6f(a)(2)).

(9) *Introducing broker* means any person registered or required to be registered as an introducing broker with the Commission under the Commodity Exchange Act (7 U.S.C. 1 *et seq.*), except persons who register pursuant to Section 4f(a)(2) of the Commodity Exchange Act (7 U.S.C. 6f(a)(2)).

(10) *Option* means an agreement, contract or transaction described in Section 1a(26) of the Commodity Exchange Act (7 U.S.C. 1a(26)).

(11) *Taxpayer identification number* is defined by section 6109 of the Internal Revenue Code of 1986 (26 U.S.C. 6109) and the Internal Revenue Service regulations implementing that section (*e.g.*, social security number or employer identification number).

(12) *U.S. person* means:

(i) A United States citizen; or

(ii) A person other than an individual (such as a corporation, partnership or trust) that is established or organized under the laws of a State or the United States.

(13) *Non-U.S. person* means a person that is not a *U.S. person.*

(b) *Customer identification program: minimum requirements*—(1) *In general.* Each futures commission merchant and introducing broker must implement a written Customer Identification Program (CIP) appropriate for its size and business that, at a minimum, includes each of the requirements of paragraphs (b)(1) through (b)(5) of this section. The CIP must be a part of each futures commission merchant's and introducing broker's anti-money laundering compliance program required under 31 U.S.C. 5318(h).

(2) *Identity verification procedures.* The CIP must include risk-based procedures for verifying the identity of each customer to the extent reasonable and practicable. The procedures must enable each futures commission merchant and introducing broker to form a reasonable belief that it knows the true identity of each customer. The procedures must be based on the futures commission merchant's or introducing broker's assessment of the relevant risks, including those presented by the various types of accounts maintained, the various methods of opening accounts, the various types of identifying information available, and the futures commission merchant's or introducing broker's size, location and customer base. At a minimum, these procedures must contain the elements described in paragraph (b)(2) of this section.

(i)(A) *Customer information required.* The CIP must include procedures for opening an account that specify identifying information that will be obtained from each customer. Except as permitted by paragraph (b)(2)(i)(B) of this section, each futures commission merchant and introducing broker must obtain, at a minimum, the following information prior to opening an account:

(*1*) Name;

(*2*) Date of birth, for an individual;

(*3*) Address, which shall be:

(*i*) For an individual, a residential or business street address;

(*ii*) For an individual who does not have a residential or business street address, an Army Post Office (APO) or Fleet Post Office (FPO) box number, or the residential or business street address of a next of kin or another contact individual; or

(*iii*) For a person other than an individual (such as a corporation, partnership or trust), a principal place of business, local office or other physical location; and

(*4*) Identification number, which shall be:

(*i*) For a U.S. person, a taxpayer identification number; or

(*ii*) For a non-U.S. person, one or more of the following: a taxpayer identification number, a passport number and country of issuance, an alien identification card number, or the number and country of issuance of any other government-issued document evidencing nationality or residence and bearing a photograph or similar safeguard.

Note to paragraph (b)(2)(i)(A)(*4*)(*ii*): When opening an account for a foreign business or enterprise that does not have an identification number, the futures commission merchant or introducing broker must request alternative government-issued documentation certifying the existence of the business or enterprise.

(B) *Exception for persons applying for a taxpayer identification number.* Instead of obtaining a taxpayer identification number from a customer prior to opening an account, the CIP may include procedures for opening an account for a customer that has applied for, but has not received, a taxpayer identification number. In this case, the CIP must include procedures to confirm that the application was filed before the customer opens the account and to obtain the taxpayer identification number within a reasonable period of time after the account is opened.

(ii) *Customer verification.* The CIP must contain procedures for verifying the identity of each customer, using information obtained in accordance with paragraph (b)(2)(i) of this section, within a reasonable time before or after the customer's account is opened. The procedures must describe when the futures commission merchant or introducing broker will use documents, non-documentary methods, or a combination of both methods, as described in this paragraph (b)(2)(ii).

(A) *Verification through documents.* For a futures commission merchant or introducing broker relying on documents, the CIP must contain procedures that set forth the documents the futures commission merchant or introducing broker will use. These documents may include:

(*1*) For an individual, an unexpired government-issued identification evidencing nationality or residence and bearing a photograph or similar safeguard, such as a driver's license or passport; and

(*2*) For a person other than an individual (such as a corporation, partnership or trust), documents showing the existence of the entity, such as certified articles of incorporation, a government-issued business license, a partnership agreement, or a trust instrument.

(B) *Verification through non-documentary methods.* For a futures commission merchant or introducing broker relying on non-documentary methods, the CIP must contain procedures that set forth the non-documentary methods the futures commission merchant or introducing broker will use.

(*1*) These methods may include contacting a customer; independently verifying the customer's identity through the comparison of information provided by the customer with information obtained from a consumer reporting agency, public database, or other source; checking references with other financial institutions; or obtaining a financial statement.

(*2*) The futures commission merchant's or introducing broker's non-documentary procedures must address situations where an individual is unable to present an unexpired government-issued identification document that bears a photograph or similar safeguard; the futures commission merchant or introducing broker is not familiar with the documents presented; the account is opened without obtaining documents; the customer opens the account without appearing in person at the futures commission merchant or introducing broker; and where the futures commission merchant or introducing broker is otherwise presented with circumstances that increase the risk that the futures commission merchant or introducing broker will be unable to verify the true identity of a customer through documents.

(C) *Additional verification for certain customers.* The CIP must address situations where, based on the futures commission merchant's or introducing broker's risk assessment of a new account opened by a customer that is not an individual, the futures commission merchant or introducing broker will obtain information about individuals with authority or control over such account in order to verify the customer's identity. This verification method applies only when the futures commission merchant or introducing broker cannot verify the customer's true identity after using the verification methods described in paragraphs (b)(2)(ii)(A) and (B) of this section.

(iii) *Lack of verification.* The CIP must include procedures for responding to circumstances in which the futures commission merchant or introducing broker cannot form a reasonable belief that it knows the true identity of a customer. These procedures should describe:

(A) When an account should not be opened;

(B) The terms under which a customer may conduct transactions while the futures commission merchant or introducing broker attempts to verify the customer's identity;

(C) When an account should be closed after attempts to verify a customer's identity have failed; and

(D) When the futures commission merchant or introducing broker should file a Suspicious Activity Report in accordance with applicable law and regulation.

(3) *Recordkeeping.* The CIP must include procedures for making and maintaining a record of all information obtained under procedures implementing paragraph (b) of this section.

(i) *Required records.* At a minimum, the record must include:

(A) All identifying information about a customer obtained under paragraph (b)(2)(i) of this section;

(B) A description of any document that was relied on under paragraph (b)(2)(ii)(A) of this section noting the type of document, any identification number contained in the document, the place of issuance, and if any, the date of issuance and expiration date;

(C) A description of the methods and the results of any measures undertaken to verify the identity of a customer under paragraphs (b)(2)(ii)(B) and (C) of this section; and

(D) A description of the resolution of each substantive discrepancy discovered when verifying the identifying information obtained.

(ii) *Retention of records.* Each futures commission merchant and introducing broker must retain the records made under paragraph (b)(3)(i)(A) of this section for five years after the account is closed and the records made under paragraphs (b)(3)(i)(B), (C), and (D) of this section for five years after the record is made. In all other respects, the records must be maintained pursuant to the provisions of 17 CFR 1.31.

(*4*) *Comparison with government lists.* The CIP must include procedures for determining whether a customer appears on any list of known or suspected terrorists or terrorist organizations issued by any Federal government agency and designated as such by Treasury in consultation with the Federal functional regulators. The procedures must require the futures commission merchant or introducing broker to make such a determination within a reasonable period of time after the account is opened, or earlier if required by another Federal law or regulation or Federal directive issued in connection with the applicable list. The procedures also must require the futures commission merchant or introducing broker to follow all Federal directives issued in connection with such lists.

(5)(i) *Customer notice.* The CIP must include procedures for providing customers with adequate notice that the futures commission merchant or introducing broker is requesting information to verify their identities.

(ii) *Adequate notice.* Notice is adequate if the futures commission merchant or introducing broker generally describes the identification requirements of this section and provides such notice in a manner reasonably designed to ensure that a customer is able to view the notice, or is otherwise given notice, before opening an account. For example, depending upon the manner in which the account is opened, a futures commission merchant or introducing broker may post a notice in the lobby or on its Web site, include the notice on its account applications or use any other form of written or oral notice.

(iii) *Sample notice.* If appropriate, a futures commission merchant or introducing broker may use the following sample language to provide notice to its customers:

Important Information About Procedures For Opening a New Account

To help the government fight the funding of terrorism and money laundering activities, Federal law requires all financial institutions to obtain, verify, and record information that identifies each person who opens an account.

What this means for you: When you open an account, we will ask for your name, address, date of birth and other information that will allow us to identify you. We may also ask to see your driver's license or other identifying documents.

(6) *Reliance on another financial institution.* The CIP may include procedures specifying when the futures commission merchant or introducing broker will rely on the performance by another financial institution (including an affiliate) of any procedures of its CIP, with respect to any customer of the futures commission merchant or introducing broker that is opening an account, or has established an account or similar business relationship with the other financial institution to provide or engage in services, dealings, or other financial transactions, provided that:

(i) Such reliance is reasonable under the circumstances;

(ii) The other financial institution is subject to a rule implementing 31 U.S.C. 5318(h), and is regulated by a Federal functional regulator; and

(iii) The other financial institution enters into a contract requiring it to certify annually to the futures commission merchant or introducing broker that it has implemented its anti-money laundering program, and that it will perform (or its agent will perform) specified requirements of the futures commission merchant's or introducing broker's CIP.

(c) *Exemptions.* The Commission, with the concurrence of the Secretary, may by order or regulation exempt any futures commission merchant or introducing broker that registers with the Commission or any type of account from the requirements of this section. In issuing such exemptions, the Commission and the Secretary shall consider whether the exemption is consistent with the purposes of the Bank Secrecy Act, and in the public interest, and may consider other necessary and appropriate factors.

(d) *Other requirements unaffected.* Nothing in this section relieves a futures commission merchant or introducing broker of its obligation to comply with any other provision of this part, including provisions concerning information that must be obtained, verified, or maintained in connection with any account or transaction.

Dated: April 28, 2003.

James F. Sloan,

Director, Financial Crimes Enforcement Network.

Dated: April 28, 2003.

In concurrence:

Jean A. Webb,

Secretary of the Commodity Futures Trading Commission.

[FR Doc. 03–11016 Filed 5–8–03; 8:45 am]

BILLING CODE 4810–02–P; 6351–01–P

DEPARTMENT OF THE TREASURY

31 CFR Part 103

RIN 1506–AA31

Financial Crimes Enforcement Network; Customer Identification Programs for Certain Banks Lacking a Federal Functional Regulator

AGENCY: The Financial Crimes Enforcement Network ("FinCEN"), Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: FinCEN is issuing a proposed regulation to implement section 326 of the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism (USA PATRIOT ACT) Act of 2001 (the Act) for certain banks lacking a federal functional regulator. The notice would extend to these banks the same section 326 rules as apply both to banks with a federal functional regulator and to credit unions, trust companies, and private banks lacking a federal functional regulator.

DATES: Written comments on the proposed rule may be submitted on or before June 23, 2003.

ADDRESSES: Because paper mail in the Washington area may be subject to delay, commenters are encouraged to e-mail or fax comments. Comments should be sent by one method only.

Comments may be mailed to FinCEN, Section 326 Certain Credit Union and Trust Company Rule Comments, P.O. Box 39, Vienna, VA 22183, or sent to Internet address *regcomments@fincen.treas.gov* with the caption "Attention: Section 326 for Certain Banks Rule Comments" in the body of the text. Comments may be inspected at FinCEN between 10 a.m. and 4 p.m. in the FinCEN Reading Room in Washington, DC. Persons wishing to inspect the comments submitted must request an appointment by telephoning (202) 354–6400 (not a toll-free number).

FOR FURTHER INFORMATION CONTACT: Office of the Chief Counsel (FinCEN), (703) 905–3590.

SUPPLEMENTARY INFORMATION:

I. Background

A. Section 326 of the USA PATRIOT Act

On October 26, 2001, President Bush signed the Act (Pub. L. 107–56) into law. Title III of the Act, captioned "International Money Laundering Abatement and Anti-terrorist Financing Act of 2001," adds several new provisions to the Bank Secrecy Act (BSA), 31 U.S.C. 5311 *et seq.* These provisions are intended to facilitate the prevention, detection, and prosecution of international money laundering and the financing of terrorism.

Section 326 of the Act adds a new subsection (l) to 31 U.S.C. 5318 of the BSA that requires the Secretary to prescribe regulations "setting forth minimum standards for financial institutions and their customers regarding the identity of the customer that shall apply in connection with the opening of an account at a financial institution. Under section 326, the regulations must require, at a minimum, financial institutions to implement reasonable procedures for (1) verifying the identity of any person seeking to open an account, to the extent reasonable and practicable; (2) maintaining records of the information used to verify the person's identity, including name, address, and other identifying information; and (3) determining whether the person appears on any lists of known or suspected terrorists or terrorist organizations provided to the financial institution by any government agency. In prescribing these regulations, the Secretary is directed to take into consideration the various types of accounts maintained by various types of financial institutions, the various methods of opening accounts, and the various types of identifying information available.

B. Proposed Amendment to 31 CFR 103.121

On July 23, 2002, FinCEN and the federal bank regulators jointly issued a proposed rule [1] under section 326 applicable to banks, as defined in 31 CFR 103.11(c), that have a federal functional regulator. At the same time, FinCEN issued a proposed rule under section 326 applicable to credit unions, private banks, and trust companies lacking a federal functional regulator.[2] Elsewhere in today's issue of the **Federal Register**, FinCEN and the federal bank regulators are adopting a final rule, 31 CFR 103.121, based on those proposals. The final rule applies to banks with a federal functional regulator and to credit unions, trust companies, and private banks without a federal functional regulator.

FinCEN believes that 31 CFR 103.121 should apply to all banks regardless of their regulator. For that reason, this notice of proposed rulemaking would amend the final rule to extend its application to all banks without a federal functional regulator. In particular, the proposal would amend 31 CFR 103.121 by revising paragraph (a)(2)(ii) to read "A bank, as set forth in § 103.11(c), that does not have a Federal functional regulator." [3]

The Secretary has determined that the records required to be kept by section 326 of the Act have a high degree of usefulness in criminal, tax, or regulatory investigations or proceedings, or in the conduct of intelligence or counterintelligence activities, to protect against international terrorism.

II. Regulatory Flexibility Act

FinCEN certifies, pursuant to the Regulatory Flexibility Act (5 U.S.C. 602 *et seq.*), that the proposed rule will not have a significant economic impact on a substantial number of small entities. The proposed rule merely extends to all banks without a federal functional regulator the customer identification program requirements in 31 CFR 103.121, which currently apply to banks with a federal functional regulator and to credit unions, private banks, and trust companies without a federal functional regulator.

The customer identification program requirements of 31 CFR 103.121 closely parallel the requirements for customer identification programs mandated by section 326 of the Act. Moreover, FinCEN believes that banks already have implemented prudential business practices and anti-money laundering programs that involve the key controls that would be required in a customer identification program under 31 CFR 103.121. First, all banks already undertake extensive measures to verify the identity of their customers as a matter of good business practice.

Second, banks are already required by other provisions to check lists of known or suspected terrorists and should already have appropriate compliance programs in place. For example, banks are prohibited from engaging in transactions involving certain foreign countries or their nationals under rules issued by the Office of Foreign Assets Control (OFAC). *See* 31 CFR part 500. Banks should already have compliance programs in place to ensure that they do not violate OFAC rules. FinCEN understands that many banks, including small banks, have instituted programs to

[1] *See* 67 FR 48290. For any financial institution engaged in financial activities described in section 4(k) of the Bank Holding Company Act of 1956 (section 4(k) institutions), the Secretary is required to prescribe the regulations issued under section 326 jointly with each of the Federal bank regulators, the SEC, and the CFTC (the Federal functional regulators).

[2] *See* 67 FR 48299.

[3] The amendment will close a potential loophole so that all similarly situated entities that are banks under the BSA rules and subject only to state supervision must comply with 31 CFR 103.121 whether or not they fall within the categories of credit unions, private banks, or trust companies.

check other lists provided to them by the Federal government following the events of September 11, 2001. FinCEN believes that all banks have access to a variety of resources, such as computer software packages, that enable them to check lists provided by the Federal government.

Third, FinCEN believes the provision in 31 CFR 103.121 that requires a bank to provide adequate notice to its customers that it is requesting information to verify their identity will impose minimal costs on banks. Banks may elect to satisfy that requirement through a variety of low-cost measures, such as by posting a sign in the bank's lobby or providing any other form of written or oral notice.

The recordkeeping requirements of 31 CFR 103.121 similarly may impose some costs on banks, if, for example, some of the information that must be maintained as a consequence of implementing customer identification programs is not already retained. FinCEN believes that the compliance burden, if any, is minimized for banks, including small banks, because banks have the discretion to design and implement appropriate recordkeeping procedures, including allowing banks to maintain electronic records in lieu of (or in combination with) paper records.

Finally, FinCEN believes that the flexibility incorporated into the customer identification rules of 31 CFR 103.121 will permit each bank to tailor its customer identification program to fit its own size and needs. In this regard, FinCEN believes that expenditures associated with establishing and implementing a customer identification program will be commensurate with the size of a bank. If a bank is small, the burden to comply with the customer identification requirements should be *de minimis*.

III. Executive Order 12866

Treasury has determined that this proposal is not a "significant regulatory action" under Executive Order 12866.

Lists of Subjects in 31 CFR Part 103

Administrative practice and procedure, Authority delegations (Government agencies), Banks, Banking, Brokers, Currency, Foreign banking, Foreign currencies, Gambling, Investigations, Law enforcement, Penalties, Reporting and recordkeeping requirements, Securities.

Authority and Issuance

For the reasons set forth in the preamble, part 103 of title 31 of the Code of Federal Regulations is proposed to be amended as follows:

PART 103—FINANCIAL RECORDKEEPING AND REPORTING OF CURRENCY AND FOREIGN TRANSACTIONS

1. The authority citation for part 103 continues to read as follows:

Authority: 12 U.S.C. 1829b and 1951–1959; 31 U.S.C. 5311–5314 and 5316–5332; title III, secs. 312, 313, 314, 319, 326, 352, Pub L. 107–56, 115 Stat. 307.

2. Subpart I of part 103 is amended by revising paragraph (a)(2)(ii) of § 103.121 to read as follows:

§ 103.121 Customer Identification Programs for banks, savings associations, credit unions, and certain non-Federally regulated banks.

(a) * * *

(2) * * *

(ii) A bank, as set forth in § 103.11(c), that does not have a Federal functional regulator.

* * * * * *

Dated: April 28, 2003.

James F. Sloan,

Director, Financial Crimes Enforcement Network.

[FR Doc. 03–11015 Filed 5–8–03; 8:45 am]

BILLING CODE 4810–02–P

Federal Register

Friday,
May 9, 2003

Part III

Office of Management and Budget

Draft Report of the Small Business Paperwork Relief Task Force; Notice

OFFICE OF MANAGEMENT AND BUDGET

Draft Report of the Small Business Paperwork Relief Task Force

AGENCY: Office of Management and Budget, Executive Office of the President.

ACTION: Notice and request for comments.

SUMMARY: The Small Business Paperwork Relief Task Force requests comments on the attached Draft Report. In this Draft Report, the Small Business Paperwork Relief Task Force discusses and makes recommendations concerning consolidated information collections, an organized list of information collections, and interactive electronic systems.

DATES: To ensure consideration of comments, comments must be in writing and received by OMB no later than June 4, 2003.

ADDRESSES: Comments on this Draft Report should be addressed to Stanton D. Anderson, Office of E-Government and Information Technology.

You are encouraged to submit these comments by facsimile to (202) 395–0342, or by electronic mail to *smallbiz@omb.eop.gov*.

FOR FURTHER INFORMATION CONTACT: Stanton D. Anderson, Office of Information Technology and E-Government, Office of Management and Budget, Washington, DC 20503. Telephone: (202) 395–0346.

SUPPLEMENTARY INFORMATION: Congress directed the Director of OMB to convene and have a representative chair a Task Force to study the feasibility of streamlining requirements with respect to small business concerns regarding collection of information and strengthening dissemination of information" (44 U.S.C. 3520, Pub. L. 107–198). More specifically, this Small Business Paperwork Relief Task Force is charged with examining five ways to reduce the information collection burden placed by government on small business concerns. They are:

1. Examine the feasibility and desirability of requiring the consolidation of information collection requirements within and across Federal agencies and programs, and identify ways of doing so.

2. Examine the feasibility and benefits to small businesses of having OMB publish a list of data collections organized in a manner by which they can more easily identify requirements with which they are expected to comply.

3. Examine the savings and develop recommendations for implementing electronic submissions of information to the Federal government with immediate feedback to the submitter.

4. Make recommendations to improve the electronic dissemination of information collected under Federal requirements.

5. Recommend a plan to develop an interactive Government-wide Internet program to identify applicable collections and facilitate compliance.

While carrying out its work, the Small Business Paperwork Relief Task Force is asked to consider opportunities for the coordination of Federal and State reporting requirements, and coordination among individuals who have been designated as the small business "point of contact" in their agencies.

The Small Business Paperwork Relief Task Force is required to submit a report of its findings on the first three issues no later than one year after enactment, or June 28, 2003. A second report on the final two issues is required no later than two years after enactment, or June 28, 2004. Both reports must be submitted to the Director of OMB; the Small Business and Agriculture Regulatory Enforcement Ombudsman; and the Senate Committees on Governmental Affairs and Small Business and Entrepreneurship; and, the House Committees on Government Reform and Small Business.

The Director of OMB appointed Dr. John D. Graham, Administrator of the Office of Information and Regulatory Affairs, and Mr. Mark A. Forman, Administrator for E-Government and Information Technology, to co-chair the Small Business Paperwork Relief Task Force.

The Act specifies the following agencies to be represented on the SBPRA Task Force: Department of Labor (including the Bureau of Labor Statistics, and the Occupational Safety and Health Administration); Environmental Protection Agency; Department of Transportation; Office of Advocacy of the Small Business Administration; Internal Revenue Service; Department of Health and Human Services (including the Centers for Medicare and Medicaid Services); Department of Agriculture; Department of Interior; the General Services Administration; and two other participants to be selected by the Director of OMB (who are the Department of Commerce and additional representatives from the Small Business Administration).

The Small Business Paperwork Relief Task Force is now seeking input from all interested parties concerning the findings and recommendations contained in this draft report. All comments will be considered and may result in modifications to the final report. A summary of the public comments with responses of the Task Force will be attached to the final report.

John D. Graham,

Administrator, Office of Information and Regulatory Affairs.

Mark Forman,

Administrator for E-Government and Information Technology.

Draft Report of the Small Business Paperwork Relief Task Force

Introduction: The Problem of Paperwork Burden for Small Businesses

This is the first report of the Task Force created under the Small Business Paperwork Relief Act of 2002 (SBPRA).[1] It contains findings and recommendations intended to reduce the burden imposed on small businesses by Government paperwork information collection requirements.

What Is a "Small Business" and Why Does the Law Focus on the Small Business Community?

For the purposes of SBPRA, "the term 'small business concern' has the meaning given under section 3 of the Small Business Act (15 U.S.C. 632)." This definition includes any firm that is "independently owned and operated" and is "not dominant in its field of operation". The Small Business Administration (SBA) has developed size standards to carry out the purposes of the Small Business Act and those size standards can be found in the Code of Federal Regulations, 13 CFR 121.201.[2] If an industry is not specified in the regulation, the default is (a) 500 or fewer employees, or (b) $6 million or less in receipts.

While SBPRA applies to all small businesses, the Act further specifies that agencies make efforts to "reduce the information collection burden for small business concerns with fewer than 25 employees."

Small businesses have always been the backbone of our economy. They represent 99.7% of all employers. Of the Nation's 22.4 million businesses, only 17,000 are large (with more than 500 employees). That leaves a total of about

[1] 44 U.S.C. 3520, Public Law 107–198, references at Appendix 1.

[2] For more information, visit *http://www.sba.gov/size/*.

22.4 million small businesses.[3] Within this community, 90% have fewer than 20 employees.[4] Given the enormous collective impact that the smallest businesses have on our Nation's overall economy, it is vital that government do all it can to create the climate they need to thrive.

What Is the Government's Paperwork Burden and How Heavily Does It Impact Small Businesses?

The term "paperwork" refers to the traditional method for collecting information, paper forms. However, SBPRA applies to any information collection, including those via the Internet, telephone, or other medium. SBPRA uses the broad definition for "collection of information" in section 3502 of the Paperwork Reduction Act of 1995 (PRA). It means "obtaining, causing to be obtained, soliciting, or requiring the disclosure to third parties or the public, of facts or opinions by or for an agency, regardless of form or format, calling for either—

- Answers to identical questions posed to, or identical reporting or recordkeeping requirements imposed on, ten or more persons, other than agencies, instrumentalities, or employees of the United States; or,
- Answers to questions posed to agencies, instrumentalities, or employees of the United States which are to be used for general statistical purposes."

Burden is also defined in the PRA. It goes beyond the effort required to complete a form and includes "time, effort or financial resources expended by persons to generate, maintain, or provide information to or for a Federal agency, including the resources expended for—

1. Reviewing instructions;

2. Acquiring, installing, and utilizing technology and systems;

3. Adjusting the existing ways to comply with any previously applicable instructions and requirements;

4. Searching data sources;

5. Completing and reviewing the collection of information; and

6. Transmitting or otherwise disclosing the information."

Government agencies must collect information from the public to administer important programs and fulfill their intended missions.

Purpose of government collection	Examples
To obtain or retain a benefit for the business	License and permit applications.
To demonstrate compliance with regulations	Water discharge monitoring reports.
Recordkeeping requirements	Inspection records.
For statistical purposes or rule development	Industry surveys.
For use by third parties	Nutrition labels.

The Office of Management and Budget (OMB) is responsible for reviewing and approving information collections. The Federal government alone now has over 8,000 separate information collection requests authorized by OMB. These OMB approved information collections fall into three categories.

- 38.4% are mandatory where failure to provide the information required can result in civil, even criminal, sanctions;
- 39.7% are required to obtain or retain some kind of benefit for the respondent; and,
- 21.9% are voluntary where a response is entirely discretionary and has no direct effect on any benefit or privilege for the respondent.[5]

This report focuses on the first two categories, which generally evolve from regulations. It is important to note that agencies generally collect, or require those regulated to keep records, as part of their regulatory provisions. The information-related provisions are designed to help the agency ensure compliance with the rule. For example, EPA requires certain businesses to monitor and keep records of pollutants to ensure that certain emission thresholds are not exceeded. The substance (and primary cost) of such a rule is the action the businesses must take to reduce their pollution emissions. The recordkeeping is a secondary requirement, although it may be a significant one. Consequently, when considering reductions of paperwork burden on small businesses, we must also take into account the regulatory provisions that the reporting or recordkeeping are meant to support. It would be misleading to focus attention only on information collection burdens without making clear this connection with the related substantive regulatory provisions.

OMB estimates the cost to provide data required by all approved information collection requests in Fiscal Year 2002 was 8 billion hours and $140 billion.[6] OMB's estimates reflect data provided by the collecting agencies, and may understate the actual burden imposed on the public. Further, information collections are only part of the full impact of the Federal regulatory process. According to a 2001 report, "The Impact of Regulatory Costs on Small Firms" by W. Mark Crain and Thomas D. Hopkins, the total costs of federal regulations were estimated to be $843 billion in 2000, or 8 percent of the U.S. Gross Domestic Product.[7] Of these costs, $497 billion fell on business and $346 billion fell on consumers or other governments.[8]

Government places a heavy and expensive reporting and recordkeeping burden on all businesses, which is most keenly felt in the smallest firms. Additionally, small businesses bear a disproportionate share of the total regulatory burden.[9] For firms employing fewer than 20 employees, the annual regulatory burden is $6,975 per employee—nearly 60 percent more than that for firms with more than 500 employees, at $4,463.[10] Table 1 provides a comparison by sector.

[3] SBA Office of Advocacy Web site, Small Business by the Numbers, at *http://www.sba.gov/advo*.

[4] W. Mark Crain & Thomas D. Hopkins, "The Impact of Regulatory Costs on Small Firms", Report to the Small Business Administration, RFP No. SBAHQ–00–R–0027 (2001), at 2. The opinions and recommendations of the authors of this study do not necessarily reflect official policies of the SBA or other agencies of the U.S. government. For more information, write to the Office of Advocacy at 409 Third Street SW., Washington, DC 20416, or visit the office's Internet site at *http://www.sba.gov/advo*.

[5] The Office of Information and Regulatory Affairs Reports Management System, February 2003.

[6] *Id.* Dollar cost figures do not include the cost represented by the hour burden reported.

[7] Crain & Hopkins, at 1.

[8] Crain & Hopkins, at 25.

[9] Crain & Hopkins, at 2.

[10] Crain & Hopkins, at 3.

TABLE.—THE INCIDENCE OF FEDERAL REGULATIONS BY FIRM SIZE, ALL BUSINESS SECTORS*

Type of regulation	All firms	Cost per employee for firms with:		
		<20 employees	20–499 employees	500 + employees
All Federal Regulations	$4,722	$6,975	$4,319	$4,463
Environmental	1,213	3,328	1,173	717
Economic	2,065	1,616	1,648	2,485
Workplace	779	829	873	695
Tax Compliance	665	1,202	625	562

*Note to Table 1: These aggregate cost data use employment shares to weight the respective business sectors. The estimates are for 2000 and are denominated in 2000 dollars.
Source: The Impact of Regulatory Costs on Small Firms, an Advocacy-funded study by W. Mark Crain and Thomas D. Hopkins.

In a December, 2001, small business poll conducted by the National Federation of Independent Business (NFIB), respondents shared their perspectives on the impacts of the regulatory workload on their firms. When asked "is government regulation a very serious, somewhat serious, not too serious, or not at all serious problem for your business," nearly half, or 43.6 percent, answered "very serious" or "somewhat serious."[11] When asked "which level of government creates the most serious regulatory problems for you," 49 percent chose the Federal government, 35 percent State government and 13 percent local government.[12]

When asked "What is the single greatest problem created for your business by government regulation," the largest percentage of small businesses in three size groups singled out extra paperwork, with the number of votes increasing as the number of employees decreased.[13] The second most frequently selected problems, sharing an equal number of votes, were: (1) difficulty understanding what (a business must do) to comply, and (2) dollars spent to comply.[14] This poll supports the conclusion that SBPRA focuses on issues of importance to small business concerns.

Several factors contribute to the difficulty small businesses experience when trying to find out what they must do to comply with regulations and related information collections:

Volume—It is well known that the Code of Federal Regulations (CFR) continues to expand despite efforts to curtail further growth. The CFR grew from 71,000 pages in 1975 to 135,000 pages in 1998. Annually, there are more than 4,000 regulatory changes introduced by the Federal government alone. Businesses must find ways to navigate the maze of requirements to identify the rules and information collections that apply to them.

Multi-Jurisdictional System—Businesses are regulated by numerous agencies at Federal, State and local levels, all imposing separate requirements on individual businesses—adding to the confusion and time needed to become compliant. For example, for the trucking industry, there are over 40 information collection requirements from 11 federal entities and at least 5 standardized transactions imposed by every state.

Complexity—Many of the laws and regulations are extremely complex and difficult to understand, causing businesses to spend additional money hiring service providers such as attorneys, accountants, and permit agents. Paying taxes, acquiring licenses and permits, and managing employees are reportedly the three most burdensome areas of laws and regulations affecting businesses, particularly for the most regulated industries (*e.g.*, transportation, food, chemicals, auto, and health care).

Inaccessibility—Currently, businesses must search through multiple sources of information, such as the **Federal Register,** Federal/State/local agency and trade Web sites, and trade publications to try to locate all the rules and regulations that affect them. They may also learn of requirements through the media, at professional conferences and from other business persons. Not all sources are accessible 24/7, and many remain informational only, without the kind of compliance assistance many small businesses need.

Two Perspectives on the Regulatory Information

Regulatory agencies and small businesses have different perspectives on information collections associated with regulations. Understandably the regulator views the information burden from the perspective of its role in meeting the goals of each specific regulation, *e.g.*, cleaner air, safer automobiles or workplaces, sounder financial practices. This burden is seen as part of the costs of regulatory compliance and is borne by small business and others who must comply. The analytical framework for reviewing the burden revolves around the regulation—can it be harmonized with other agency regulations, or do the societal benefits justify the societal costs, including the costs of paperwork and compliance efforts? The following chart depicts the regulator-centered point of views. In this case, reduction in burden focuses on individual regulations a, b, c, 1, 2, and 3.

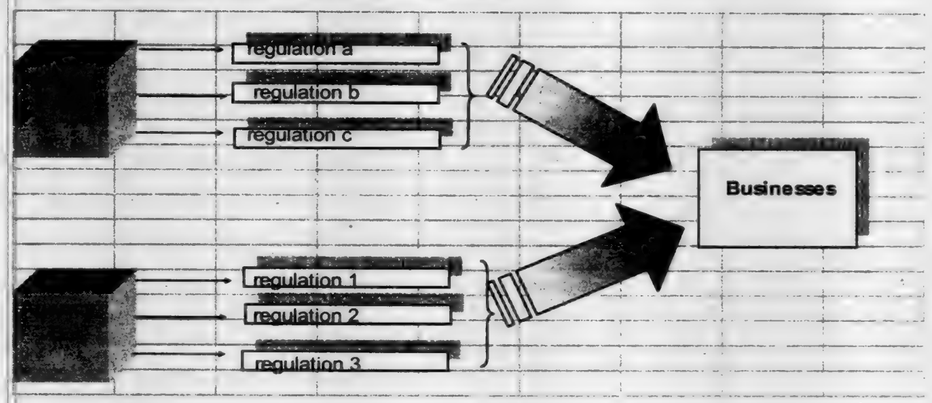
[11] Coping with Regulation, NFIB National Small Business Poll, Volume 1, Issue 5 (2001), ISSN–1534–8326, at 9. The poll is available for viewing at *http://www.nfib.com.*

[12] *Id.*

[13] *Id.*

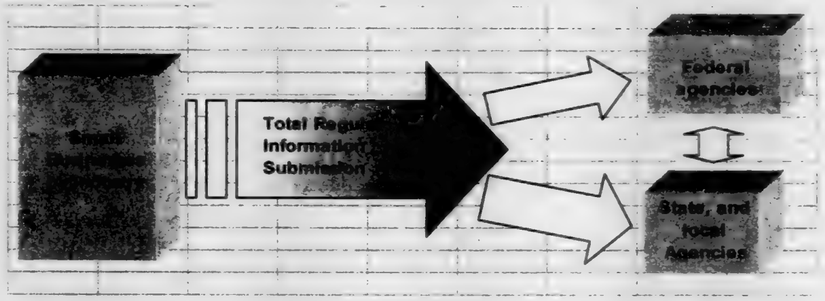
[14] *Id.* It is not clear whether the difficulty in understanding how to comply referred to compliance reporting, compliance with the substantive regulatory standards, or both.

The Regulatory Information Demand Chain



An alternative way of analyzing the regulatory burden is from the perspective of the information supplier, *i.e.*, the regulated businesses. A customer-driven government would analyze the regulatory burden from the point of view of specific businesses or, more practically, from the point of view of clusters of "regulated" communities, and find ways to streamline and harmonize regulatory information collected from these clusters. The graphic below shows the environment from the information provider point of view. In this case, burden reduction focuses on clusters of regulatory requirements from all Federal, State, and local governments that affect a particular regulatory community.

Small Business Regulatory Information Supply Chain



Background: Efforts To Address the Problem

What Prior Efforts Have Been Made To Address the Information Collection Burden?

Federal Reports Act of 1942

The Federal Reports Act of 1942 [15–18] gave OMB's predecessor agency, the Bureau of the Budget, the authority to approve federal information collections. OMB's Division of Statistical Standards was given responsibility for approving Federal forms. After World War II, the Division concentrated mostly on increasing the use of statistical sampling and other techniques to reduce the costs of Federal information collections.

Paperwork Reduction Act of 1980

Congress first passed the Paperwork Reduction Act (PRA) in 1980.[19] The PRA eliminated the exemptions granted under the FRA to the Internal Revenue Service, bank regulatory agencies, and independent regulatory commissions. It also made clear that OMB would approve all Federal information collections, including recordkeeping and reporting requirements contained in regulations.

The PRA also added a "bottom up" component to paperwork review; each agency is required to perform an internal review of each information collection request before submitting it to OMB for approval. The PRA also requires public notice and the opportunity for public comment on proposed information collections.

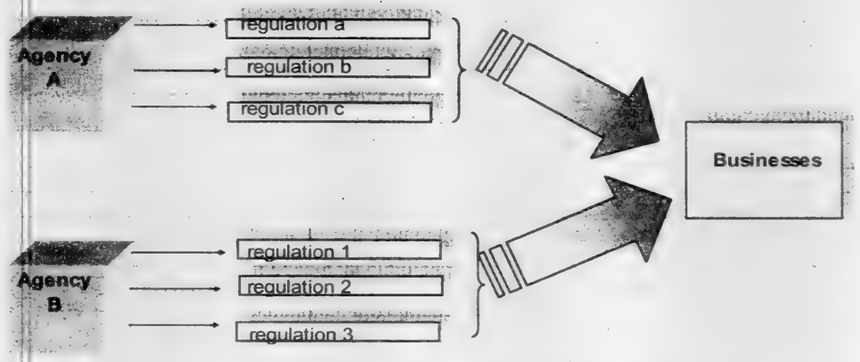
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[19] Pub. L. 96–511.

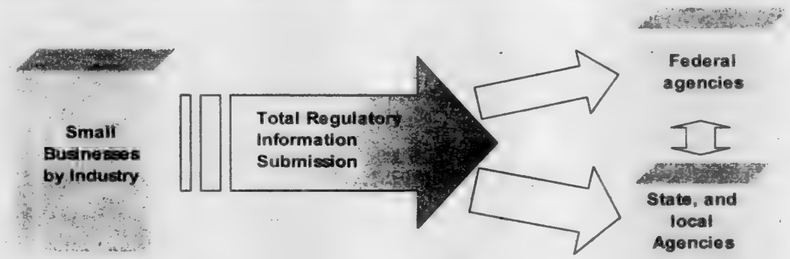
[20] Pub. L. 96–354.

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large entities. The RFA requires agencies to specifically examine the effects on small businesses of rules under consideration, to involve small businesses in the rulemaking process, and to consider alternatives that will reduce the costs imposed or increase the benefits to small businesses.

Paperwork Reduction Act of 1995

In 1995, Congress amended the PRA to emphasize, clarify, and reaffirm several purposes of the original PRA, specifically that—

- The PRA applies to all Federal government-sponsored collections of information, including those that do not require submission of information directly to a Federal agency (*e.g.*, third-party reporting requirement, Federal-sponsored academic research);
- That the fundamental purpose of the PRA is to minimize the burden imposed by Federal paperwork on the public; and
- That each Federal agency is responsible for minimizing its paperwork burden and fostering paperwork reduction.

In addition, the 1995 PRA set a government-wide goal of a 5% annual reduction in paperwork burden and assigned responsibility for agency review of information collections to the agency Chief Information Officer.

Small Business Regulatory Enforcement Fairness Act of 1996

In 1996, Congress amended the RFA and strengthened its protection for small entities. The Small Business Regulatory Enforcement Fairness Act of 1996 [21] (SBREFA) subjected agency RFA determinations to judicial review, subjected agency actions with large impacts on the economy as a whole or a specific sector of the economy to congressional review, and required agencies to provide additional compliance assistance to small entities. In addition, SBREFA required the Occupational Safety and Health Administration (OSHA) and the Environmental Protection Agency (EPA) to convene a panel of agency employees, SBA's Office of Advocacy, and OMB to solicit advice from small businesses before the agency issues a proposed rule that may have a significant economic impact on a substantial number of small entities.

The Government Paperwork Elimination Act of 1998

The Government Paperwork Elimination Act of 1998 [22] requires Federal agencies, by October 21, 2003, to allow individuals or entities that deal with the agencies the option to submit information or transact with the agency electronically, when practicable, and to maintain records electronically, when practicable.

How Does the Small Business Paperwork Relief Act Add to These Prior Efforts?

SBPRA was enacted in June of 2002 in a further effort to help reduce the burden of paperwork on small businesses. It requires the Federal government to (1) publish an annual list of the compliance assistance resources available to small businesses, (2) establish a single point of contact within agencies to interact with small businesses, and (3) establish an interagency Task Force to study and recommend additional means of reducing the burden. This report addresses activities of the Small Business Paperwork Relief Task Force.

The Small Business Paperwork Relief Task Force

What Specific Functions Are Assigned to the Task Force?

SBPRA requires the Director of OMB to convene and chair a Task Force "to study the feasibility of streamlining requirements with respect to small business concerns regarding collection of information and strengthening dissemination of information." More specifically, the Small Business Paperwork Relief Task Force is charged with examining five ways to reduce the information collection burden placed by government on small business concerns. They are:

1. Examine the feasibility and desirability of requiring the consolidation of information collection requirements within and across Federal agencies and programs, and identify ways of doing so.

2. Examine the feasibility and benefits to small businesses of having OMB publish a list of data collections organized in a manner by which they can more easily identify requirements with which they are expected to comply.

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While carrying out its work, the Small Business Paperwork Relief Task Force is asked to consider opportunities for the coordination of Federal and State reporting requirements, and coordination among individuals who have been designated as the small business "point of contact" in their agencies.

The Task Force is required to submit a report of its findings on the first three questions no later than one year after enactment, or June 28, 2003. A second report on the final two questions is required no later than two years after enactment, or June 28, 2004. Both reports must be submitted to—

- The Director of OMB;
- The Small Business and Agriculture Regulatory Enforcement Ombudsman designated under section 30(b) of the Small Business Act (15 U.S.C. 657(b)); and,
- The chairpersons and ranking minority members of:

—The Senate Committees on Governmental Affairs and Small Business and Entrepreneurship; and,

—The House Committees on Government Reform and Small Business.

Which Agencies Are Represented and Who Are the Small Business Paperwork Relief Task Force Members?

Mitchell D. Daniels, the Director of OMB, appointed Dr. John D. Graham, Administrator of the Office of Information and Regulatory Affairs, and Mark A. Forman, Associate Director for Information Technology and E-Government, to co-chair the Small Business Paperwork Relief Task Force. Dr. Graham is responsible for administering the Paperwork Reduction Act and for overseeing the Federal regulatory process. Mr. Forman is responsible for overseeing the government-wide, cross-agency E-Government initiative, including a Government-to-Business Portfolio of projects. Thus, both organizations are equally vested in the Task Force agenda.

The Act specifies the following agencies to be represented on the Task Force:

- Department of Labor (including the Bureau of Labor Statistics, and the Occupational Safety and Health Administration);
- Environmental Protection Agency;
- Department of Transportation;
- Office of Advocacy of the Small Business Administration;
- Internal Revenue Service;
- Department of Health and Human Services (including the Centers for Medicare and Medicaid Services);
- Department of Agriculture;
- Department of Interior;
- General Services Administration;
- Two other participants to be selected by the Director of OMB (the Department of Commerce and additional representation from the Small Business Administration were chosen).

The Small Business Paperwork Relief Task Force members are listed by name at Appendix 2. A list of other participating staff is included at Appendix 3.

What Are the Goals, Objectives, and Operating Principles?

Goal: Identify effective, realistic ways to reduce the burden on small businesses by making it easier to find, understand, and comply with government information collection requirements.

Objective 1: Recommend actions that can make it easier for small businesses to find out what information collections apply to them from individual Federal agencies, across all Federal agencies, and from State and Local governments, where practicable.

Objective 2: Recommend actions that can reduce the difficulty, frequency, redundancy and expense of compliance for small businesses.

Objective 3: Recommend actions that will help small businesses understand why information is being collected and how it benefits them.

Operating Principles

- Recommendations should be consistent with principles of the President's Management Agenda:
- Citizen-centered, not bureaucracy-centered.
- Benefits to small businesses must take precedence over benefits to government.
- Results-oriented. Success should be measured by benefits that are demonstrable.
- Market-based, actively promoting innovation.
- Recommendations must be technically feasible.
- Recommendations should be supportable within existing government agencies and management structures.
- Recommendations must be achievable given existing Agency resources, or sufficient case must be made to support additional costs.
- Recommendations should address both short term and long term remedies.
- Recommendations should leverage and build on efforts underway that address the Task Force's goals.
- Recommendations should be consistent with lessons learned and based on best practices from past efforts.

In developing its recommendations, the Small Business Paperwork Relief Task Force made the assumption that Federal agencies are in compliance with existing legislative requirements that address paperwork burden, including: the Paperwork Reduction Act of 1980 and 1995, the Regulatory Flexibility Act of 1995, and the Small Business Regulatory Flexibility Act of 1996. The Task Force recommendations are intended to build upon, rather than duplicate, the efforts required by these statutes. In addition, the Task Force assumed that Federal agencies collect the minimum information necessary to fulfill statutory or programmatic responsibilities, consistent with the Paperwork Reduction Act. The recommendations concentrate on ways to minimize the burden associated with existing requirements, rather than eliminate requirements.

What Methods Did the Task Force Use To Derive Its Recommendations?

The Small Business Paperwork Relief Task Force began its work with a meeting of the full membership to develop a common understanding of the law, project goals, scope, roles and responsibilities, resource requirements, strategy, timeline and deliverables. A professionally facilitated brainstorming session followed, during which members began looking at the three major tasks for the 2003 report.

After the initial meeting the Task Force divided into three subcommittees to examine the three questions in greater detail. Additional staff experts from the agencies joined the effort. The subcommittees used methods such as:

- Assigning specific questions to experts for research;
- In-person and virtual brainstorming with a wider group of experts;
- Inventorying and investigating activities and projects already underway;
- Studying best practices and lessons learned from prior/current activities; and
- Studying the results of public outreach conducted by the Small Business Administration's (SBA) Office of Advocacy and other reference material intended to provide input from the business community and other stakeholders.

The subcommittee members and staff experts worked together to develop findings and recommendations. The initial drafts were reviewed, modified, and finally adopted by the subcommittees, then presented to the full Task Force for consideration. Again the material was reviewed, modified and adopted for publication in the **Federal Register**.

At the request of the Small Business Paperwork Relief Task Force, SBA's Office of Advocacy held a public meeting on March 4, 2003, to solicit the views of interested persons regarding SBPRA. The Chief Counsel for Advocacy convened the meeting both in his Advocacy role, and as a Task Force member. Following the meeting, written input was accepted, including the results of two surveys conducted about SBPRA by the U.S. Chamber of Commerce and the National Federation of Independent Business. The Office of Advocacy published the written proceedings of its outreach activities which is included at Appendix 4.

The Small Business Paperwork Relief Task Force is now seeking input from all interested parties concerning the findings and recommendations contained in this draft report. All comments will be considered and may result in modifications to the final report. A summary of the public comments with responses of the Task Force will be attached to the final report.

Findings and Recommendations

Task #1: Consolidated Information Collections (See, 44 U.S.C. 3520(c)(1))

Problem Statement

As noted earlier in this report, reporting and recordkeeping requirements place a heavy and expensive burden on businesses, particularly small businesses. Compliance with these requirements is made more difficult by the number and complexity of regulations which impose direct burdens of compliance. Businesses are often subject to regulations enforced by multiple Federal agencies. The need to report information to several different government entities also increases compliance costs, particularly when reporting or recordkeeping requirements are not coordinated across Agencies. Subcommittee 1 has considered ways to reduce the paperwork burden on small businesses by identifying and consolidating similar collections of information across Federal agencies. This section reports our findings and recommendations for accomplishing these goals.

Assumptions

In developing our recommendations, the subcommittee made the following assumptions:

- There are several barriers to burden reduction that must be recognized.

[21] Pub. L. 104–121.

[22] Pub. L. 105–277, Title XVII, 112 Stat. 2681–749.

—*Information Needs.* Federal agencies have specific statutory and programmatic responsibilities, and require information in order to fulfill those responsibilities. Paperwork can only be reduced in ways that will not negatively impact the effectiveness of the laws and regulations to which the Agency is accountable.

—*Expanded Responsibilities.* The need for information increases as new federal programs are created, existing programs are expanded and additional health, safety or environmental protection laws are enacted.

Issues

The Task Force was asked to specifically consider the feasibility of: (1) Synchronized reporting times and frequencies, (2) consolidated reporting requirements within and across agencies, and (3) small business compliance assistance, and submission of information, through a single point of contact within an agency. Subcommittee 1 conducted a brief review, which uncovered a number of federal government initiatives to reduce or streamline reporting requirements for businesses. Several of these initiatives are described in Appendix 5. Our review indicates that while each of these options outlined in the law may be desirable and feasible under the appropriate circumstances, there are several barriers that need to be addressed.

Synchronized Reporting

Synchronized reporting seems to have the least potential for burden reduction. Not all information that businesses are required to report is submitted to the Federal government on a regular basis. Some reporting occurs only at the time of an event, such as admission of a patient to a nursing home, or a chemical spill. Timely submission of this information is critical to fulfill agency responsibilities.

Even for information that is submitted to the government on a regular basis—monthly, quarterly or annually—a synchronized reporting time may not be desirable. In the public meeting held by SBA on March 4, 2003, small businesses expressed concern about synchronized reporting times. A requirement to provide all information required by the federal government on a single date has the potential of creating a greater workload burden for business than when the reporting is spaced throughout the year. Clearly, some small businesses prefer spreading reporting throughout the year.

Further, for many reporting requirements, the reporting frequency is mandated in statute or regulation. Synchronizing reporting frequency would require legislative or regulatory action. To the extent that similar information is required within or across Agencies, such action should be taken, provided changing the reporting frequency would not negatively impact the effectiveness of the underlying law or regulation.

Consolidated Information Collections

The Task Force believes that there is opportunity for improved consolidation of similar information collections and reporting requirements across the Federal Government. We have outlined several recommendations for accomplishing this task. However, we recognize that, given the diversity of federal government activities, no one method or template for reporting would fit all information collections. Seemingly duplicative information collections may not be appropriate for consolidation due to the nature or utility of the data collected. For example, definitions across similar data collections may not be harmonized due to differences across industries or underlying statutes. Consolidation of such reporting requirements may lead to confusion, rather than simplification. There are also barriers to consolidation in many cases, stemming from confidentiality of data and privacy rights. For example, statistical agencies collecting data under a confidentiality pledge cannot share information with enforcement agencies such as OSHA and the IRS.

Single Small-Business Point of Contact

Establishing a single point of contact for small businesses appears to be both feasible and desirable. The Small Business Paperwork Relief Act requires all Federal Agencies to establish a single point of contact for small businesses. Small business participants in the SBA public meeting were very supportive of this measure. The Point of Contact should be able to provide information about regulatory reporting requirements enforced by the Agency, and technical assistance in fulfilling those requirements.

It should be noted that the strategies discussed above are not mutually exclusive. For example, if several forms are consolidated into a single format, then synchronized reporting for information submissions having the same frequency with respect to timing would logically follow. Greatest efficiencies from consolidated reporting are to be found where the same information is being collected more than once. Agencies should focus resources to identify and merge these collections when feasible. Small businesses should also participate in this process, by utilizing existing and planned communication mechanisms to inform Agencies and OMB of duplicative collections.

Recommendations

The subcommittee has developed several recommendations to achieve the SBPRA goals. The recommendations discussed below are consistent with the Operating Principles outlined above. They have been limited to options considered technically feasible, supportable within existing government management structures, and doable given existing Agency resources. We also considered the previous legislative efforts to address paperwork burden, discussed above, when developing the recommendations. While the recommendations listed below do not duplicate these prior efforts, neither do they alleviate the need to continue them. We've determined that more can and should be done within the existing framework created by these Acts to reduce paperwork burden on small businesses. For example, the Paperwork Reduction Act requires agencies to ensure that data collections minimize burden and maximize practical utility. Greater emphasis should be placed on these criteria for collections from small businesses. The following are some examples of opportunities for improvement.

Practical Utility

- Agencies should periodically review laws and regulations to assure the continued usefulness of reporting and recordkeeping requirements.
- Eliminate those requirements found to no longer have practical utility. For example, OSHA does not require certain small businesses in service producing industries with a low frequency of injury and illness to keep worker injury and illness logs.

Minimize Burden

- Review reporting forms and instructions for simplicity and ease of understanding.
- Conduct periodic reviews of existing collections to explore less burdensome ways to obtain data.
- Harmonize definitions across similar data elements and use existing classification systems when feasible.

Based on our analysis of the problem and issues discussed above, we present the following recommendations to reduce paperwork burden on small businesses through simplification and consolidation of reporting requirements. These recommendations should not be viewed as discrete actions; the recommended steps flow toward a final goal.

1. *Agencies Should Develop a SBPRA Plan.* The plan would outline specific steps the Agency would take to reduce paperwork burden on small businesses, set goals and establish timelines for achieving those goals. The Task Force envisions that the initial plan would include steps to develop a complete inventory of Agency recordkeeping and reporting requirements, followed by a detailed mapping of those requirements to the Agency's business lines/programs or underlying regulations. Based on this analysis, Agencies would identify and prioritize opportunities for burden reduction. Additionally, as part of their SBPRA plans, agencies should identify a person or group of persons to serve as the single point of contact for the agency's paperwork requirements. The Task Force envisions that over time the single point of contact would become familiar with the paperwork requirements imposed by the agency, be able to identify duplicative or obsolete requirements, and provide some level of compliance assistance to the public.

2. *Require Agencies To Submit Annual SBPRA Reports To OMB.* Agencies would be required to provide their SBPRA plans, or updated plans, status of implementation, and whether goals have been met. This information would be included in the annual OMB Information Collection Budget.

3. *Improve Outreach To Small Businesses.* Design a simple process for small businesses to comment on pending or active information collections. Although mechanisms exist for the public to comment on new and existing information collections, many small businesses have criticized the existing comment process as overly complex and burdensome. A system should be designed to give the public the ability to see, via the Internet, any active or pending information.

Agencies should also take steps to improve outreach to small businesses, including the conduct of public meetings and announcements of public comment periods in industry publications, on all highly burdensome (defined as over 1,000,000 burden hours) information collections expected to affect small businesses. Additional outreach efforts would significantly improve an Agency's efforts to identify opportunities for burden reduction.

4. *Create Partnerships between Agencies with similar or overlapping regulatory authority.* Identify other agencies, including state and local government agencies, with similar reporting requirements and partner with them to develop consolidated reporting systems. Duplication should be eliminated and data sharing maximized when feasible.

5. *Develop OMB Guidelines to Achieve Burden Reduction through E-Government.* We recommend that the Office of Management and Budget require each agency to incorporate burden reduction as a goal of its E-Government initiative, and issue guidelines to aid Agencies in doing so. All Executive Branch Departments have existing E-Gov working groups which could take the lead in this effort. We envision E-Government as more than allowing electronic submission of existing forms. The E-Gov initiative should be a tool to achieve further burden reduction through process re-engineering when feasible. In this way the E-Gov working groups would compliment, rather than duplicate, other burden reduction efforts within the Agency.

6. *Continue the Business Compliance One Stop initiative.* The Business Compliance One Stop (BCOS) is one of the Administration's 25 E-Government initiatives, located at *http://www.BusinessLaw.gov*. It is designed to ultimately provide small businesses a single point of entry for regulatory compliance information. The Task Force believes BCOS shows promise as a means for achieving the purpose of SBPRA. Since its inception in the Spring of 2002, the BCOS has streamlined a number of paperwork reporting requirements and transactions from a business-centric perspective. However, it is a long-term solution since the project is expected to take years to complete. More information on BCOS is provided in Appendix 6.

Task #2: Organized List of Information Collections (See, 44 U.S.C. 3520(c)(2))

Problem Statement

Small businesses can be unaware of all of the federal regulatory requirements that apply to them and the reports that they must file and records that they must keep in order to demonstrate compliance. Small businesses may not know where to find such information or how to comply or where to go for compliance assistance. As a result, the agency's intent for federal information collection requirements may not be achieved as small businesses are not aware of the information they are required to provide. Ideally, small businesses would have access to a system that enables them to quickly and easily generate a list of all requirements that apply to their operation. Providing this information to small businesses would reduce the burden associated with reporting and recordkeeping requirements.

Assumptions

To be most useful, a tool for meeting small businesses' need for information about reporting and recordkeeping requirements would provide a list that is:

- Tailored to specific industry sectors, (*e.g.*, dry cleaning, printing),
- Comprehensive,
- User-friendly, and
- Up-to-date.

Issues

Creating a tool for identifying applicable requirements for small businesses will require resolving a number of technical, management, and resource issues.

Technical Issues

- *Overcoming the lack of a complete inventory of federal information collections.* One prerequisite for developing a list of applicable reporting and recordkeeping requirements is a complete inventory of all federal information collections. OMB maintains a database called the Reports Management System that stores only generally descriptive information about the clearance packages it reviews. There are three issues that limit its usefulness for small business:

1. *The Reports Management System does not include the reporting and recordkeeping requirements that small businesses are looking for.* The database was built as an internally management tool for use by OMB to document the information collection review process under the Paperwork Reduction Act. It contains information provided by agencies on form OMB 83–I (*see http://www.whitehouse.gov/omb/inforeg/infocoll.html*). Because the system is a management tool for OMB, it is not accessible by other agencies, the public, or small businesses. The system only contains a brief overall title of the information collections or groups of information collections for which OMB grants approval. The system does not contain that actual requirements imposed on small businesses. Small businesses would have to go to the agency or the Code of Federal Regulation (CFR) to learn the details of what is required.

2. *Data quality and accuracy are inconsistent.* Accuracy of the data submitted by agencies on OMB form 83–I varies.

3. *Information collections in the database cannot be sorted by size or sector.* There is no consistent element related to size that would indicate applicability to a small business. Nor are there elements, such as NAICS codes, that would indicate applicability to specific small business sectors. At one time many years ago the Standard Industrial Classifications codes (SIC, a precursor to NAICS) that applied to a clearance package were collected. This information was discontinued because 70 percent or more of the clearance packages were submitted as applying to "10 or more SIC codes" rather than listing a few specific codes. While the form and database do include key words that can help identify applicability, there are no standards to guide their selection.

• *Overcoming the lack of a consistent methodology for identifying a requirement's applicability.* A second prerequisite for developing a list of reporting and recordkeeping requirements is the ability to identify which requirements apply to which businesses. However, there is no federal guidance that addresses how agencies should specify reporting and recordkeeping requirements applicable to a particular business size or sector. Each agency, and in some cases each program within an agency, makes its own decision about whether to include this information. For example, at EPA, some programs identify the NAICS codes in their regulatory development and tracking systems, while others use an industry sector descriptor or nothing at all.

• Members of the Business Compliance One Stop (BCOS) project team have been developing plans for a system capable of identifying regulatory reporting and recordkeeping requirements applicable to specific business sizes and sectors. They have discovered the following issues which need to be addressed:

1. *Multiple NAICS Codes Apply to Individual Businesses:* Many businesses' activities are characterized by multiple NAICS codes. A list of reporting and recordkeeping requirements listed by NAICS codes alone would require many businesses to review multiple requirements listed under several NAICS codes. Such listings would likely include duplicative requirements.

2. *Broadly Applicable Regulations:* OMB has estimated that approximately 70 percent of information collections apply to many, or even all, NAICS codes. For example, all businesses are subject to IRS tax reporting.

3. *Regulation Applicability Based on Other Factors:* In some cases, regulatory applicability is dependent on factors other than business size or sector. For example, IRS bases its requirements on the points in a business life-cycle and other unique criteria.

A complete listing of all reporting and recordkeeping requirements for small businesses can not be based on NAICS codes alone. It will need to take into account not only business type, but also size and other factors that can affect applicability.

• *Resolving complexities affecting ease of use.* Because of the issues described above, having a government-generated list of reporting and recordkeeping requirements by NAICS code alone would not meet small business information needs. Such a list would include every requirement that potentially could apply to a particular NAICS code. The list of potentially applicable requirements for a particular NAICS code would not be significantly shorter than the list of all existing information collection requirements. Moreover, if a small business were listed under more than one NAICS code, the research to determine applicability would be even greater.

• One alternative would be to sort the requirements into multiple categories that could include an industry sector identification and other distinguishing criteria, such as the kinds of businesses subject to environmental or worker safety reporting and recordkeeping requirements. A list organized in this manner would require the user to search under multiple categories and to cross-reference the requirements that appear under each one. It would be time consuming, but would lead to a more accurate result than a listing by NAICS code alone. Even with this more tailored approach, the result would be affected by how knowledgeable the user is about his or her operation. The user would have to know which headings to search. This process would likely be tedious and time consuming. Moreover, even sophisticated users might overlook or miss applicable categories, leading to an incomplete result.

Neither approach—a listing by NAICS code or a listing using multiple categories—would fully meet small business needs. They would still be extremely time-consuming and could complete incomplete results or identify collections that might only apply if other factors were also involved.

• *Building an automated, interactive system that enables small businesses to self-identify requirements that apply.* Recognizing the power of automated search engines, the BCOS team is designing an Internet portal with a sophisticated multi-criteria search capability. This system enables the user to research requirements using multiple screening tools. The user answers questions that relate to business type, size and other factors that enable the search engine to narrow the results. Depending on the answers, the user may be asked for more details to narrow the search. For example, if the user indicates an interest in environmental regulations, he or she may be asked about the hazardous materials used at their operation. While this automated, query-based system is much more reliable and user-friendly than the government-generated lists described in the preceding bullet, it is still under development. The development process is proceeding sequentially. SBA estimates that having a complete system for serving all sectors is a number of years away.

• *Ensuring access to the list.* Providing a list over the Internet would provide the most accessible and cost-effective means of meeting small business information needs. But many small businesses do not have Internet access. SBA estimates that over 10% of small businesses will not use computers in the next five years. Of those that do, owners and employees may not have the time to access and download the information while juggling other on-the-job demands. Providing a list of applicable requirements in a quick, easy to download and printer-friendly format would allow downloading at work or in other places, such as homes or libraries, where Internet access is available. Further, having an order-form of relevant publications that could be downloaded may be helpful for small business owners who do not have time to download and print documents regardless of where they physically conduct their Internet searches.

Management

• *Coordinating with multiple federal agencies.* Thirty-six agencies impose reporting and recordkeeping requirements, and all of them have unique organizational structures, processes, and systems for managing these responsibilities. Reaching agreement on a single system for identifying requirements will require extensive coordination among these agencies.

• *Designating responsibility.* Given the number of agencies involved, a single federal entity would need to be charged with overseeing the development and long-term maintenance of a system that could identify requirements applicable to small businesses.

• *Incorporating identification elements into existing requirements.* Once a methodology for identifying which requirements apply to a small business is developed, all federal information collections will have to be updated to reflect it. Incorporating industry sector identification or other identification elements into requirements all at once would overwhelm most regulatory agencies. However, under federal law, agencies must update their information collection requests—that are associated with those requirements—every three years. There are currently over 8,000 approved information collections. OMB form 83–I could be modified to require the new identification element. The information could be updated in the Reports Management System database on a continual basis as the agencies' information collection requests are submitted. OMB's review help to ensure that all requests include identification elements and agency CIO review could help to ensure the accuracy of the information. In this way, the element (or elements) needed to specify applicability could be added to all information collections and housed in a searchable database within three years.

Note: While this effort could be completed in three years, it could still represent a significant workload for agencies that have to evaluate the applicability of their requirements.

Resources

• *Cost of system development.* To build a functioning profiler or "intelligent agent" that asks the user a number of questions and based on the answers takes one to the appropriate information collection requirement or compliance assistance tool will cost a minimum of $200,000 for developing better accessibility to environmental, employment, taxation, and trucking regulations and compliance assistance information.

• *Cost of system operation and maintenance.* A system that enables users to identify applicable reporting and recordkeeping requirements must be operated and maintained continuously. The BCOS project should provide a basis for estimating the cost of operating and maintaining a more comprehensive system.

• *Staffing needs.* Building, operating, and maintaining a system that could provide a list of requirements will require staff from multiple agencies with reporting and recordkeeping responsibilities.

Options Considered

The Task Force identified and evaluated several federal resources that potentially could be used to generate a list of applicable requirements.

Existing Information Sources Related to Federal Paperwork and Regulatory Requirements

• The Paperwork Requirements Web site: *http://www.whitehouse.gov/omb/inforeg/infocoll.html.*

Managed by OMB; provides an inventory of current approved information collections; listed by agency; not searchable by business size or sector.

RISC/OIRA Consolidated Information System (ROCIS):

OIRA, working with GSA's Regulatory Information Service Center (RISC), is developing ROCIS. ROCIS will provide for electronic submission, review, and approval of information collections. It will also give the public the ability to see, via the Internet, what information collections agencies have submitted to OMB for review, and give the public the ability to comment electronically to OIRA about these information collections. The public will also be able to see precisely what is currently approved under the PRA.

ROCIS also collects basic information about the information collections. While the system will not be sophisticated enough to be able to determine the precise information collections with which a specific business must comply, there will be information about the regulatory provisions with which an information collection is associated.

OIRA intends for ROCIS to be in place before the end of 2003. However, because approvals under the PRA can be good for up to three years, ROCIS will not form a complete database of information collections approved under the PRA until 2006.

• *The Businesslaw.gov* Web site: *http://www.businesslaw.gov.*

Managed by SBA; provides access to a variety of tools and resources related to federal, state, and local requirements. At the federal level, it includes information about the federal regulatory process and access to the U.S. Code, Code of Federal Regulations, and **Federal Register**; offers plain English compliance assistance guides that can be used to help determine requirements.

• The Business Compliance One-Stop (BCOS): *http://www.businesslaw.gov.*

Managed by SBA and under development. Will allow small business sectors to identify what regulations apply to their operation, learn about how to comply, and find useful compliance assistance resources. Initial focus is on providing compliance assistance resources and information. In the long-term, will enable users to identify the requirements that apply to their particular operation and complete transactions online. *Businesslaw.gov,* described in the preceding bullet, is one of the early accomplishments under this initiative, and will be the portal for offering these capabilities.

• The *"Regulation.gov"* Web site: *http://www.regulation.gov.*

Another E-Government initiative; Sponsored by OMB and maintained by GPO; allows searches of regulations by key words; allows businesses to provide comments on Federal regulations in development; and provides links to EPA, E-Gov, the **Federal Register** and FirstGov, which links to *Businesslaw.gov.*

Options (based on the evaluations above):

1. *OMB should publish a list of requirements applicable to small business.* OMB's Reports Management System database contains information about approved information clearance packages. The Web site does not list actual regulatory requirements, nor does it list specific reporting or recordkeeping requirements. The ROCIS tool now under development will enable OMB, other federal agencies, and the public to perform searches on this database. However, there are limitations to this database. Most agencies do not categorize their information collections by business size or type. If OMB required agencies to develop such information and added it to the database, one could search for the identifying information (at least as to the clearance packages that OMB had reviewed). Using the Code of Federal Regulations reference included in the database, users could then look up the underlying regulatory requirement. However, many reporting and recordkeeping requirements are not published in the Code of Federal Regulations. And, ROCIS could not include the interactive functions contemplated under BCOS—it would only be possible to include and search on simple categorization schemes such as industry sector. Additionally, although it would be certified by agency CIOs, information included in ROCIS would still be subject to the same issues of inaccuracy or incompleteness as the information currently reported on the 83–I form.

2. *Support the BCOS project team's efforts to develop an automated, interactive system that enables small businesses to self identify applicable requirements.* This system would

include a powerful search engine—that uses multiple search elements—for identifying requirements for specific small businesses. By searching across all Federal information collections at the time of query, it would provide a complete and up-to-date list.

Recommendations

1. *Designate a federal agency to be in charge of system development.* The Office of Information Technology and E-Government at OMB has a governance structure for E-Government projects under its sponsorship, and has designated SBA to manage BCOS.

2. *Complete the BCOS methodology for identifying regulatory applicability.* If the federal budget allows, expedite development. Consider consulting with private, nonprofit, and/or academic experts with specialized expertise in delivering tailored information to clients. Also evaluate regulatory development and tracking systems managed by individual agencies to determine whether there are good models and/or system features already in use that should be incorporated.

3. *Develop a system that incorporates the BCOS methodology for identifying regulatory applicability and generates a list of applicable requirements.* Design the system with the small business owner in mind, and integrate into the *Businesslaw.gov* Web site.

4. *Issue federal guidance for adding identification elements to all information collection requests.* Once categorization methods are developed under recommendation 2, OMB should consider requiring agencies to report them on the 83–I form and allowing the public to search ROCIS based on the categorization. Because it may be impossible to include some elements of the BCOS categorization in ROCIS, OMB should review each element of the BCOS categorization to ensure that OMB only requires agencies to submit information that will be useful in the simple-search format that ROCIS provides.

5. *Complete ROCIS and link to it in Businesslaw.gov.* Until the system described in recommendation III becomes available, promote ROCIS as a useful tool for researching reporting and recordkeeping requirements. Provide a link on *businesslaw.gov* pointing to the ROCIS system as one way to begin identifying applicable information collection requirements.

Final Note

Identifying requirements for small businesses is only the first step in assuring compliance. Ultimately, any system that is built to identify requirements should also include access to information about how to comply and where to go for compliance assistance. While this recommendation is beyond the scope of this report, it does raise additional technical, management, and resource issues that should be considered in devising a long-term solution to small businesses information and compliance assistance needs (*See* below, and Appendix 7—Compliance Assistance Best Practices).

Expanding the Small Business Reporting and Recordkeeping Requirements System to Include Compliance Information—Additional Issues

Technical

Additional content to identify and incorporate. Providing compliance information would require researching and providing access to compliance assistance resources. This could be limited to federal resources, or broadened to include resources from States, local governments, or other compliance assistance providers.

• *Handling different formats.* Compliance resources may take a variety of forms, such as telephone numbers, compliance checklists, and online expert systems. The system would have to be designed to handle both simple and sophisticated products.

Management

• *Additional coordination required.* Providing compliance information would require working not only with staff that handle information collection requirements, but also with staff that have regulatory compliance responsibilities.

Resources

• *Additional cost.* Expanding this service to include information about compliance resources would significantly increase the cost (in dollars and FTEs). It would mean additional research to incorporate compliance information and identify relevant compliance assistance resources.

Legal

• *Excessive detail.* It is unlikely that compliance aids will be able to provide *all* compliance information for every business. There will likely remain the need for expert assistance to help businesses with compliance details in light of the differences among them.

Task #3: Interactive Electronic Systems (*See*, 44 U.S.C. 3520(c)(3))

Problem

Overview

The cost of finding, understanding and complying with legal and regulatory requirements poses a significant burden on businesses and is a formidable obstacle to success. One costly aspect of compliance with regulatory standards is the related paperwork.

Of the $843 billion dollars spent on Federal regulatory compliance in 2000, $497 billion fell on businesses. This comes to 63 percent of the total regulatory burden.

The Small Business Administration's (SBA's) Office of Advocacy estimates [23] the following paperwork regulatory information burden to businesses, categorized by number of employees:

• Firms with fewer than 20 employees—$2,000 per employee per year.

• Firms with 20–499 employees—cost $1,931 per employee per year.

• Firms with 500 or more—cost $1,086 per employee.

SBA research confirms that these regulatory costs continue to increase and to disadvantage small businesses.

Assumptions

• The Federal Government is firmly committed to reducing the regulatory information burden and will strongly encourage Federal regulatory agencies to make this happen.

• All regulatory agencies have a goal of reducing the regulatory information burden through amending regulations, changing information requirements, and streamlining collection processes, consistent with their mission.

• Important issues of transaction security, privacy, electronic signatures, standards, and architectures will be properly addressed by e-government initiatives and need not be discussed here.

• As time and resources allow, small businesses should help to find ways to significantly reduce the regulatory information burden.

• The Internet is a primary regulatory communication channel as use of the Net by small businesses with employees grew to 67 percent in 2001 and will be nearly 80 percent by 2003, but the Federal Government cannot use it as the sole means of regulatory communication or the sole means of providing compliance assistance.

[23] These figures are derived from impact of Regulatory Costs on Small Firms, an Advocacy-funded study by W. Mark Crain and Thomas D. Hopkins.

Solution

Objectives

To reduce the regulatory burden on small businesses and increase compliance, the Federal Government is focusing on three questions:

• How can we reduce the burden of information collection requirements as part of regulatory compliance *at all levels* of government?

• How can we *use the Internet* to streamline the collection and dissemination of data from regulated small businesses?

• How can we provide user-friendly and cost effective *compliance assistance*?

Governments at all levels must reduce duplication and overlap in its data collection, coordinate data definitions and reporting periods and, of course, determine if data is needed in the first place. Further, it is not enough to improve the information demand chain. It is also necessary to look at the information supply chain, which includes assisting small businesses in identifying reporting and recordkeeping requirements, providing compliance assistance tools, and user friendly submission systems.

Strategies

We can reduce the regulatory burden by:

• Reducing the number of required data elements (by elimination or by standardizing similar elements in an e-forms format).

• Reducing the number of updating cycles (for example, from monthly to quarterly, if possible).

• Reducing the number of separate submission with similar data to different recipients (for example by having a single collection point for one or more agencies).

• Reducing the amount of historical data a respondent must keep.

• Reducing manual efforts through the use of software.

• Introducing intermediaries (professional groups, associations, or government agencies) as collection and dissemination points.

The Business Compliance One Stop Portal

The major vehicle for implementing a regulatory burden reduction solution is the Business Compliance One Stop. Its goal is to reduce the regulatory information burden on business owners by making it easy to find, understand, and comply with governmental laws and regulations. The BCOS solution is to build upon the *businesslaw.gov* platform to provide interactive electronic legal and regulatory information and compliance assistance.

The portal offers the following functionalities to the business community:

(1) *Find:* efficient access to laws and regulations at all levels of government (helps you find what applies to you as a business owner, where you live);

(2) *Understand:* compliance assistance digital guides or expert tools that will help businesses determine if they are in compliance and how to comply;

(3) *Comply:* online transactions, such as allowing businesses to register their business, apply for licenses and permits, and file information electronically.

A number of Federal agencies (*i.e.*, DOT, DOI, DOE, EPA, IRS, DOL, OSHA, INS, and GSA) and seven states (*i.e.*, Illinois, Georgia, Washington, Missouri, Iowa, New Jersey and Texas) are working together with SBA as the managing partner to build this interactive electronic system. The initiative has also enlisted the partnership of several associations to represent the business customer.

During its first year, the BCOS focused on compliance assistance in the areas of environment, workplace health and safety, taxes and employment. For its second and third years, while continuing to focus on creating compliance assistance tools, BCOS will increase the emphasis on reducing the burden that emanates from the 7.7 billion hours created by government paperwork.

Evaluations of modern forms management systems which include interactive, electronic forms as well as streamlining collection processes and harmonizing data requirements across agencies have the potential to reduce by 50 percent agency costs and the small business burden using the following three e-forms strategies:

1. Reduce the information required through analyzing if information is needed, if definitions in different forms and forms in different agencies can be harmonized to reduce overlap;

2. Increase the effectiveness of data collection processes by collecting once and sharing data among programs and agencies;

3. Reduce the work of submitting data by using interactive, electronic, forms that aid the user.

The BCOS initiative will initially concentrate on highly regulated industries such as trucking, health care, food, and mining.

BCOS Results

BCOS has demonstrated that using interactive electronic systems (Internet) is a cost effective way of reducing regulatory burden. Currently there are over 270,000 accesses per week to our BCOS platform, Businesslaw.gov, which features a number of our results, to include:

Created a Single point of contact for legal and regulatory assistance—the BusinessLaw portal: BCOS uses BusinessLaw.gov as its platform for electronic interaction with users. This portal provides nearly 20,000 links to federal and state legal and regulatory information on 39 different topics, where to go to complete transactions such as licenses and permits, and a host of information on rulemaking, compliance assistance, and regulatory fairness. The portal also offers useful information on where to get help, how to contact Congress and associations, and principal considerations in choosing legal help. The site is adding new navigation aids, additional digital guides or expert tools, and user-friendly transactions.

Developing Compliance Assistance Guides: Several guides have been built, including:

• Alien Employee Visa Classification eTool

• Employment Eligibility Verification (I–9) eTool

• OSHA emergency building evacuation procedures eTool

• Choosing a Legal Structure eTool

• Auto Dismantler & Recycler Environmental Audit Advisor

• Motor Vehicle (Class V) Waste Disposal Wells Advisor

Integrated State Registration and Federal Employer Identification Number (EIN) Application: This web services application demonstrates that significant savings can ensue when state and Federal processes are integrated and offered as a single web services. State business registration requires many of the same data elements as the Federal Employer Identification Number (FEIN) submission. This tool permits the user to apply on-line for a state registration and then elect to apply for a FEIN, which is pre-populated with data from the state application. For additional information, the application asks for additional data in an interview format. IRS estimates that more than 2.4 million businesses acquire EINs annually.

Coal Mining Report Harmonization: This BCOS project is an excellent example of an e-forms solution. Agencies worked together to reduce the information burden on nearly 1,000 coal miners who submit reports to DOI, DOE, EPA, DOL, IRS, and State EPAs. Eighty percent of the data in these reports are identical and require about 50,000 hours annually. A tool developed by DOI

provides a one-stop submission of data that is then distributed to participating agencies. Data metrics using different definitions is automatically changed to the metric required by each agency and results in an estimated 25,000 hours saved. As the project has been progressing, agencies have begun to look at streamlining definitions, reporting periods and the need for the information in the first place.

Developing the Profiler: This tool allows the user to provide information based on a profile of factors such as location, size, industry and type of business entity and business life cycle as well as desired assistance. Based on specific answers, the tool then refers the user to compliance assistance resources from five major Federal Regulatory Agencies.

Trucking One-Stop Portal: Trucking is an important industry, contributing one out of every 12 jobs. We have completed the project plan for building an integrated state and federal one stop for trucking, offering an example of how using harmonized data capture, electronic forms and transactions, and offering web services for both Federal and state requirements can work for a specific industry.

The BCOS offers businesses a significant reduction in the Regulatory Information Burden. Estimates of annual savings show savings have already been realized. Examples include:

- The *BusinessLaw.gov* portal reduces the time for users to find, understand and comply with regulations. Estimated annual savings: $56 million.
- The Profiler provides estimated savings of $62 million.
- Each compliance guide provides an estimated savings of $10 million to businesses and $400,000 in agency administrative costs.
- The harmonized coal mine reporting system will reduce the regulatory information burden in half or about $1 million.
- The Integrated State registration and Federal Employer Identification Number Application has estimated savings of $96 million.
- The Bureau of Citizenship and Immigration Services interactive I–9 electronic tool offers an estimated savings of $12 million.
- The planned Trucking one stop industrial portal will have estimated savings of $400 million.

More information on BCOS is provided in Appendix 6.

Recommendations

The team presents the following primary recommendations:

1. Consistent with the President's budget, fund the BCOS as a platform for the Federal government's cross-agency paperwork reduction initiative, focusing on creation of e-forms solutions, additional interactive expert tools, intelligent agent profilers, innovative navigation aids and search engines, and online transactions specific to various industries.
2. Work with industry to develop standards for information collection and dissemination.
3. Work with industry trade associations to determine fruitful areas for streamlining and harmonization of data requirements and look for ways that associations can become viable trusted collection and dissemination points. This includes determining specific forms or industries where the return on investment for using interactive electronic transmission of information is high (*e.g.*, the IRS 2290 for truckers).
4. Implement demonstration projects for these identified high burden areas where Internet technology is used, expert tools are integrated with electronic forms, and business models are developed including the concept of intermediaries or collection/dissemination points (*e.g.*, extend the coal miner application to all miners; implement portals that reduce the information burden for different industries).
5. Partner with the private sector to develop online tools that will do the following:
   - Help specific industries simplify their recordkeeping and extract data to satisfy the demand for regulatory information.
   - Enable electronic transmission of compliance information.

The team has suggested a number of additional activities that, taken together, will help reduce the regulatory burden. They include:

Approach Change Incrementally. Select each year a limited group of stakeholders to provide input on reducing information collection burdens. For example, one could approach reducing the information burden industry-by-industry with clearly established goals set for improvement. Start with the five major industry clusters the first year, and then address the next five industries the following year. This process could involve setting up panels with members from the affected industries to assist in identifying information requirements, as well as members from State governments, other affected stakeholders, the general public, and Federal agencies.

Industrial Classification. BCOS needs to promulgate, in coordination with the regulatory agencies and private sector, an industrial classification nomenclature that will accurately describe the target regulated industries in ways that reflects the structure of regulatory programs and without the detailed complexity of NAICS.

Using BCOS to Identify Duplication. The PRA requires agencies to self-certify that existing and proposed information gathering systems do not duplicate or overlap those of other systems in the same agency/department. Agencies should participate in the BCOS initiative to provide a common front end for regulatory requirements industry-by-industry.

Study Organizational Data Collection Approaches. The ideal organizational system for collecting and disseminating regulatory information among federal, state and local levels is not yet clear. Steps should be taken under the aegis of BCOS to partner with state and local government as well as the private sector to explore innovative approaches to information collection and dissemination industry by industry. New technology holds promise for facilitating collection and transfer of information. Best practices should be studied in industry as well as Federal, state, and local levels and demonstration projects should be carried out and evaluated.

Raise Awareness among Government Employees. All changes in culture and attitude and all transformations of process require training. One cannot simply assume that government agencies will suddenly discover how to do things differently. Sharing best practices and developing good practices would be part of a training effort. Part of this training would include the ways in which small businesses are different from larger businesses and how this affects regulatory compliance.

Develop a Cross-Agency Initiative. Pattern this initiative after the successful E-government initiatives where the significant information gathering agencies would work together to reduce the information required, streamline the collection and dissemination of information, and share best practices.

Provide List Of Laws, Regulations And Compliance Assistance Tools on BusinessLaw.gov. Require Agencies to post and maintain list by industry of applicable regulations and laws as well as compliance assistance tools and publications on *BusinessLaw.gov*.

Publish standards for Electronic Data Streams. Harmonize data elements, business rules and XML standards. In this manner third parties such as software companies and intermediates could where practicable assist small businesses in providing the information in much the same manner that Intuit assists small businesses file their taxes.

Encourage Agencies to Utilize "Smart" Electronic Forms. These forms would include components that provide immediate feedback to assure that data being submitted meets requirements of format and are within the range of acceptable options for each data field. This would be similar to the aforementioned tax preparation software. On these programs, if you enter an illegal value in a blank, you are given an immediate error message. Or, if the program finds that you need to fill out a Schedule C, it automatically pops you over to that schedule, you fill it out, and it pops you back to the your form 1040, and translates the data from the Schedule C onto the form 1040. These programs also have handy pop-up windows that explain terms and definitions, and provide cross-references to the regulations. This should be a model of the user friendliness and efficiency that we should strive to implement in government forms. Agencies should accept electronic submission of forms to avoid errors when paper forms are manually transcribed

To this end, we would recommend an evaluation of the following requirements.

(1) When an agency submits a form to OMB for approval and assignment of an "OMB control number," OMB should review the collection for compliance with GPEA. The agencies should provide web services transactions, not just e-copies of paper forms.

(2) Any computation should be built into the form. Data that appears in more than one field should be copied automatically.

(3) The submitting agency should include form field validation parameters at the time that the electronic form is submitted to ensure valid data entry.

(4) All electronic forms should contain instructions in the form of pop-up windows to explain to the user why the form field is invalid as well as definitions of terms, statutes, reference data, and, where applicable, worksheets for computing entries.

Implementing these improved, "smarter" forms will, of course, cost the government time and money. Agencies will have to spend time designing the electronic forms, and determining the validation parameters. OMB will have to spend additional time in reviewing the forms and verifying the completeness of the validation and pop-up help screens. However, the return on investment will be significant for both governments and businesses.

Critical Success Factors

The Task Force envisions several critical success factors in achieving the desired paperwork burden reduction and user-friendly compliance assistance:

- Effective collaboration among and between the regulators;
- Commitment of the regulated community and their associations;
- Commitment to developing a critical mass of users, infrastructure and tools to ensure rapid implementation of E-forms;
- Public-private partnerships and use of "best practices" to deliver the tools;
- Use of proven, affordable technologies to deliver compliance assistance to small businesses in a one-stop, single format manner;
- Agreement on appropriate business models to illustrate who funds, develops, owns and maintains the web services;
- Agreement on financing strategy that highlights shared services and clarifies who manages the relationship with the user, controls the data, and owns the transaction.

Appendix 1—44 U.S.C. 3520, Public Law 107–198

[*See http://www.acess.gpo.gov*]

APPENDIX 2.—SMALL BUSINESS PAPERWORK RELIEF TASK FORCE MEMBERS

Agency	Member	Title
Office of Management and Budget	Mark A. Forman	Associate Director for Information Technology and E-Government.
Office of Management and Budget	John Graham	Administrator, Office of Information and Regulatory Affairs.
Department of Labor	Dana Barbieri	Associate Assistant Secretary for Policy.
Department of Labor	Lois Orr	Deputy Commissioner, Bureau of Labor Statistics.
Department of Labor	Cheryl Kerr	Special Assistant to the Commissioner, Bureau of Labor Statistics.
Department of Labor	Jeff Koch	Special Assistant to the Assistant Secretary for Administration and Management.
Department of Labor	Steven Witt	Director, Standards and Guidance, Occupational Safety and Health Administration.
Small Business Administration	James M. Van Wert	Expert Advisor to the Chief Operating Officer.
Small Business Administration	David Javdan	General Counsel.
Small Business Administration, Office of Advocacy.	Thomas M. Sullivan	Chief Counsel for Advocacy.
Department of Transportation	Eugene Taylor	Acting Chief Information Officer.
Department of Treasury	Neil Eisner	Assistant General Counsel for Regulations and Enforcement.
Internal Revenue Service	Michael R. Chesman	Director, Tax Payer Burden Reduction.
Internal Revenue Service	Sherrill A. Fields	Deputy Director, Tax Payer Education and Communications.
Department of Health and Human Services.	Daniel Troy	Associate General Counsel.
Department of Health and Human Services.	Ruben King Shaw	Deputy Administrator and Chief Operating Officer, Centers for Medicare and Medicaid Services.
U.S. Department of Agriculture	James E. House	Director, Small and Disadvantaged Business Utilization.
Department of Interior	Robert Faithful	Director, Small and Disadvantaged Business Utilization.
General Services Administration	Mary Mitchell	Acting Deputy Associate Administrator, Electronic Government and Technology.
Environmental Protection Agency	Stephanie Daigle	Acting Deputy Associate Administrator, Policy, Economics and Innovation.
Environmental Protection Agency	Karen Brown	Small Business Ombudsman.
Department of Commerce	Janet Schwalb	Special Assistant to the Chief Financial Officer.
Department of Commerce	Karen Hogan	Deputy Chief Information Officer.

APPENDIX 3.—CONTRIBUTING STAFF

Agency	Member	Title
Office of Management and Budget ..	Donald Arbuckle	Deputy Administrator, Office of Information and Regulatory Affairs (OIRA).
Office of Management and Budget ..	Jefferson Hill	Senior Advisor, OIRA.
Office of Management and Budget ..	Stanton Anderson	G2B Portfolio Manager.
Office of Management and Budget ..	Jo Armstrong	SBPRA Project Manager.
Office of Management and Budget ..	Bryon Allen	EPA Desk Officer, OIRA.
Office of Management and Budget ..	David Rostker	SBA Desk Officer, OIRA.
Office of Management and Budget ..	Cristal Thomas	DOL Desk Officer, OIRA.
Environmental Protection Agency	Joan Crawford	Special Assistant, Office of Policy, Economics and Innovation.
Environmental Protection Agency	Sandy Germann	
Environmental Protection Agency	Doreen Sterling	Associate Director, Collection Strategies Division, Office of Information Collection, Office of Environmental Information.
Environmental Protection Agency	Jim Edward	Director, Compliance Assistance and Sector Programs Division.
Environmental Protection Agency	Tracy Back	
Internal Revenue Service	Margie Kinney	Program Analyst, Office of Tax Payer Burden Reduction.
Internal Revenue Service	Ron Kovatch	Senior Advisor, Office of Tax Payer Burden Reduction.
General Services Administration	Frank McDonough	Director, Office of Intergovernmental Solutions.
Department of Health and Human Services.	David Elizalde	Centers for Medicare and Medicaid Services.
Department of Labor	Jennifer Silk	Deputy Director, Standards and Guidance, Occupational Safety and Health Administration.
Department of Labor	Todd Owens	OSHA Clearance Officer.
Department of Labor	David Gray	Deputy Assistant Secretary of Labor.
Small Business Administration	Shawne McGibbon	Deputy Chief Counsel for Advocacy.
Small Business Administration	Suey Howe	Director, Interagency Affairs, Office of Advocacy.
Small Business Administration	Keith Holman	Assistant Chief Counsel, Office of Advocacy.
Small Business Administration	Ernst Nilsson.	

Appendix 4—Results of SBA Office of Advocacy's Outreach Activities

SBA Office of Advocacy Observations Regarding Implementation of the Small Business Paperwork Relief Act of 2002, Based on Comments Submitted to the Office of Advocacy by Small Business Representatives

1. *Single Point of Contact.* Small business representatives stated that a single point of contact for paperwork/information collection requirements within each agency would be extremely beneficial. They recommend that the single point of contact be the Chief Information Officer (CIO) or an analogous official within each agency who is responsible for compliance with the Paperwork Reduction Act (or that person's representative). Small business representatives believe that the single point of contact needs to have sufficient authority and the resources to be able to truly function as a single point of contact. Finally, they suggest that the single point of contact within each agency be clearly identified to the public and to agency personnel. From the Office of Advocacy's experience in communicating with small businesses, the designation of an effective single point of contact within each agency will be critical in achieving the burden relief objectives of the Act.

2. *Overlapping/Duplicative Reporting.* Small business representatives cited the need to repeatedly submit the same information to a single agency as a major paperwork burden. They suggest that agencies periodically review and eliminate duplicative reporting requirements. The single point of contact for paperwork within each agency would be uniquely situated to identify such overlapping, duplicative reporting requirements and recommend their elimination.

3. *Compliance Assistance.* Small business representatives stated that agencies should provide more effective paperwork compliance assistance to small businesses. Concise, plain-language compliance guides would be helpful. Currently, small business representatives complain about compliance guidance that is complex, outdated, misleading, or voluminous, leaving the small business more confused that when the guidance was first consulted. Small businesses have told the Office of Advocacy that compliance hotlines are also very useful. Certainly, compliance assistance hotlines such as the Internal Revenue Service's Tele-Tax assistance network have proven to be very helpful to regulated entities.

4. *Paperwork Utility Review.* Small business representatives believe that it would be beneficial for agencies to periodically review their information requirements and assess whether the required information is still necessary or even useful.

5. *Catalogue of Required Paperwork Requirements.* Small business representatives stated that a catalogue of reporting requirements would be useful and would enhance their ability to identify and comply with paperwork and information collection requirements. They believe that such a catalogue can and should be categorized by NAICS code. Ultimately, small businesses would like to be able to enter their industry code and see all of the paperwork requirements that apply to them.

6. *Use of Enforcement Discretion.* Small business representatives suggested that agencies waive penalties for first-time paperwork violations, especially where a small business has sought out and followed advice from a hotline or other agency contact. One suggestion is for agencies to develop a mechanism to track calls to hotlines or other compliance assistance requests (*e.g.*, a confirmation number is provided to the small business at the conclusion of the contact), so that the small business can demonstrate that the contact was made. Agencies can use their existing enforcement discretion on a case-by-case basis to respond to these situations.

7. *Paperwork Retention Requirements.* Small business representatives noted their concern with record retention requirements that may add significantly to the overall paperwork burden. They believe that paperwork retention requirements should be periodically evaluated and unnecessarily long retention periods should be shortened where appropriate.

8. *Electronic Paperwork Reporting.* Small business representatives pointed out that many small businesses still rely on paper, and are unlikely to become computerized in the near future. Agencies should not assume that Web-based paperwork filing is a solution to the paperwork burden.

Summary of Public Comments on Implementing the Small Business Paperwork Relief Act of 2002, Excerpted From the Transcript of a Public Meeting Held March 4, 2003, and Written Comments Submitted to the Office of Advocacy

1. Paperwork Retention Requirements

• "Part of the problem with understanding paperwork on small business is * * * the amount of time that [small businesses] have to spend in collecting the data that back those forms for that data, and certainly retaining that data in a manner in which they're able to replicate it for organizations like the IRS." Giovanni Coratolo, U.S. Chamber of Commerce, p. 18

• "[W]e may want to add to the discussion * * * recordkeeping in terms of how long folks have to keep these records. I mean I know it varies whether it's 30 years, by agency, but shoot, I would love to know the compliance rate on that in terms of folks. I think that's something that also needs to be looked at." Susan Eckerly, National Federation of Independent Business, p. 32

• "[O]ne of the things that we frequently hear about, particularly in the tax area, the burden of having to keep those records. And you've got to remember, as I pointed out earlier, not everybody has an empty CD-ROM of all this, which is probably one good way to store it. A lot of people just have huge-you know, think of a tool and die shop, just huge file folders in a dusty corner of a room with all this stuff in it, or think of a gas station, if they even have it anymore." Susan Eckerly, NFIB, p. 83.

• "The House Small Business chairman in 1995 amended the '95 Paperwork Reduction Act to require that the clearance process and the single agency officials put on every single recordkeeping requirement that exists in the system a record retention requirement. That is a matter of law. It reads in 3506(f) now, for each recordkeeping requirement, the length of time a person's required to retain their records specified * * * we would save hundreds of millions of dollars if we could just move to that point. ** * * I think if you go into the existing inventory today, which exists—you can look at it—and count the number of times we have recordkeeping requirements established in law that do not express what the record retention requirement is, you would be in the thousands of specific examples, thousands. * * * They're there now and thousands of examples amounting to hundreds of millions of dollars in burden." Bob Coakley, p. 86–9.

2. Duplicative Paperwork Requirements

• "With the IRS, one area that I thought was very good that had some momentum behind it was the STAWRS [Simplified Tax and Wage Reporting System] program, where the IRS eliminated the duplication of submissions to the IRS and the states and from what I understand, that program's completely—not only has it not gone forward, it is completely erased." Giovanni Coratolo, U.S. Chamber of Commerce, p. 19.

• "I do a lot of OSHA issues and I know OSHA last year had put forward a proposal as part of the Paperwork Reduction Act to get rid of a lot of duplicative and excessively redundant stuff. I think that's a good start they've done, which they need to be commended for doing that." Chris Tampio, National Association of Manufacturers, p. 21–2.

• "I hear a lot about duplicative reporting about EPA. There are four different media offices. They all ask the same questions in different ways and people end up reporting the same data with a slightly different twist and I don't know if this report can address that because many, many of those requirements are statutory. * * *" Fern Abrams, IPC, p. 26.

• "I know with the IRS, they just deleted the requirements of filling out Schedule L and M and when they examined it they found it was not used. Here were millions of hours of paperwork that was being required, plus the data collection by small businesses, and they weren't being used." Giovanni Coratolo, U.S. Chamber of Commerce, p. 34.

• "Another thing with regard to the single electronic reporting system or sort of addressing the duplication, we tried to ask our members what agencies are the worst with regard to duplicative paperwork. The anecdotal information we received, they tend to say that duplications within the agencies * * * if there are two representatives from the Department of Labor, ask them have you ever taken the Wage and Hour paperwork requirements, reporting requirements, matched them up with OSHA? Those are some instances that we hear about. And is there any way you can try and merge that? That would be a suggestion with respect to that." Susan Eckerly, NFIB, p. 82–3.

• "I'd ask if it's within the purview of this Task Force to look at where state regulations can be synched-up more with federal regulations because there's a lot of duplications there, as well." Fern Abrams, IPC, p. 85.

• Examples of Duplicative Reporting in the environmental arena:

—Hazardous waste shipments on both RCRA biennial and annual SARA TRI.

—Annual air emission fees (for those states or air districts that require them) and SARA TRI reports—pound for pound TRI chemicals virtually identical.

—WW discharges for certain pollutants that are SARA TRI reportable. Although most WW reports are concentration based, some are mass based and getting annual totals is a matter of adding.

—Tier II reports and California HMBP were duplicative until Reg. 9 issued July 27, 2001 letter confirming that California facilities submitting HMBP annual reports did not have to file Tier II reports.

—Some states duplicate federal TRI reporting with same chemicals. (Massachusetts and Form S)

—Some states require duplication of hazardous waste quantities for waste min/P2 reports (New York's HWRP and California's SB 14)

—All compiled by Fern Abrams, IPC.

3. Single Point of Contact

• "I think small business people, they want to comply with regulations and paperwork and stuff but the biggest problem they have is compliance assistance. In all the agencies, in IRS, in OSHA, at the Department of Labor, in Wage and Hour and everywhere, I think having more people there to help with compliance assistance is a key that these people want." Chris Tampio, National Association of Manufacturers, p. 20–1.

• "[o]ur members really do need help with some of this paperwork. A lot times it's very—I mean you get down to environmental reporting on very technical issues and they're very specific and what they really need is simplification. They don't need more long written guides or helpful compliance guides where instead of now having 20 pages of forms with 200 pages of directions, we now have 300 pages of guidance on top of that, which is often more regulatory interpretation instead of really being helpful." Fern Abrams, IPC, p. 27.

• "If we create a series of single agency contacts outside the rubric of these chief information officers and their statutory authority and responsibilities, how can we expect them to work? It's either got to be them, a point Susan [Eckerly] alluded to, or it's got to be somebody reporting to them. Then the CIO's have to understand that [information resources management] includes public burden and small business. And if they think about it and if they follow what the president * * * wants done, small business would be pretty high on that list and we will begin to see an ability to attach these problems." Bob Coakley, p. 50.

• "[i]f each [agency] had the list, not only their chief information officer but all the ombudsmen they have or all the points of contact, that potentially small business would go to, that might be a useful exercise, to just get all those, everybody's list together in terms of when you try to figure out who should be the single point of contact." Susan Eckerly, NFIB, p. 73.

• "Not only is there a complex web of who is a small business ombudsmen, and I'm using that as just a general term, but there's no mechanisms for accountability in a lot of agencies * * *. So there's been a long-term problem. Department of Labor I'll use. They have—and I don't even know if this position's filled now because I just ignore it—their small business outreach person or ombudsmen for the entire department and it's always just this office that they'd say hi, we'll send you a brochure. So it never was very useful. And what's important on that point, not only is the person accountable but the agency's accountable * * * " Anita Drummond, ABC, p. 73–4.

• "Imagine being somebody out in Loma Linda, California or whatever, calling Washington, D.C. information and asking for the Department of Labor. They say I'm a small business and I'm trying to comply with the wage and hour laws; who can I talk to? Well, if the personnel operator, the operator who answers that line, I think that's the key thing right there. Those front-line telephone operators need to be able to direct that person, * * * no matter who [is the single point of contact], whether we have them set up as a full department, an ombudsman, or one-stop call * * *" Larry Fineran, National Association of Manufacturers, p. 91.

• "We should examine the possibility of recommending to the agencies the responsibilities this [single point of contact] should be assigned * * * should the appointed small business official report annually to the Office of [Advocacy]?" Jim Tozzi, Center for Regulatory Effectiveness.

• "It's important to establish what the relationship will be between the point of contact identified by the legislation and (1) the chief information officer who is charged with administering the Paperwork Reduction Act; (2) the small business ombudsperson who is appointed by several agencies; and (3) the office of small business that various Cabinet departments have set up. If this provision is to be implemented effectively, it is important that not another overlapping

office be created to meet this requirement in the 2002 law." Susan Eckerly, NFIB.

4. Catalogue of Required Reporting

• "One thing that we * * * consistently argued for is the catalogue of reporting requirements * * * I think that it doesn't make sense to me that you can't go one place, maybe not every single paperwork requirement, but most of them, divided by SIC code. It just doesn't make sense to me that you can't have that." Susan Eckerly, NFIB, p. 81–2.

• "But in addition to that idea of a catalogue, a nifty electronic edition that be (sic) an export system along the lines of Tax Cut, where you put in your SIC code and start answering very basic questions that would then take you to the regulations that would apply to you." Fern Abrams, IPC, p. 84–5.

• "The catalogue of reporting requirements. That system of information, that database already exists. It shouldn't be hard * * * it should not be a task." Bob Coakley, p. 86.

• "The Task Force should clearly identify and recommend that any catalog of regulatory paperwork collection requirements be broken down according to these different manufacturing processes. Creating a catalog in such a manner would greatly enhance the ability of small business owners to comply with underlying laws and regulations on paperwork and information collections." Danielle Waterfield, Screenprinting and Graphic Imaging Association International.

• "The federal government should have in one place a definitive list of the paperwork requirements imposed on small business. * * * Given the paperwork and regulatory demands placed on small business, the federal government should be able to fulfill its end of the bargain and publish a list categorized by the NAICS code. It would be wonderful if businesses could access this via CD–ROM, through their trade association, or off the internet, among other places." Susan Eckerly, NFIB.

5. Agency Accountability/Review of Agency Compliance With Paperwork Laws

• "[w]e really have to look at what the agencies are spending and dedicating their efforts to * * * I know we have a section 610 under SBREFA that asks agencies to review rules. Why shouldn't there be a 610 for paperwork, where they actually have to review the paperwork requirement every so often within the agency? And this should be under the guise of OMB to enforce this." Giovanni Coratolo, U.S. Chamber of Commerce, p. 18–9.

• "I recommend that this Task Force have some sort of recommendation of a 610-like provision where agencies could have a certain period of time where they would have to review their forms * * * so when I refer to 610 I'm not referring to 610 out of SBREFA but something similar that would be recommended by this Task Force to the agencies that every so often they would have to review these forms and have certain assets dedicated to examine whether this information is useful or not or is being used." Giovanni Coratolo, U.S. Chamber of Commerce, p. 33–4.

• "The mantra of the small business community is we don't need new laws, we don't even need new administrative initiatives; what we need is an executive branch to follow up on the laws that exist so that we give integrity to the regulatory process and we can participate meaningfully * * * we need to get rid of the benign neglect and that'll take political leadership * * * we need the president to ask the agencies to make it a priority to follow the procedural requirements of law that we already have won and put in place and that ought to be done." Bob Coakley, p. 45–6.

• "My brother works for the Federal Trade Commission and he was reviewing a regulation one time with one of his colleagues and his colleague—this was before SBREFA was passed, by the way—he said, well what about this Reg Flex review? He said, 'Don't worry about that. It's not enforceable anyway, so we don't have to do that.' I think unfortunately that's the attitude of a lot of federal officials, not all of them certainly, but many of them * * * I would suggest that you look at ways to implement the paperwork requirements that go beyond simply having them review them. Maybe some type of judicial review or maybe you need to create some kind of incentive from the agency's perspective." Brad Frisby, National Mining Association, p. 55–7.

6. Penalty Waivers/First Time Abatement of Penalties

• "I do a lot of OSHA issues and instead of having so many people that are there playing gotcha for a manufacturer that might have a paperwork violation, why not instead have someone go there and try to assist them in not just the recordkeeping but trying to make it a safer workplace instead of giving them a violation for not having their material safety data sheets or something like that * * * let's take some of the resources from a lot of their heavy-handed enforcement to compliance assistance." Chris Tampio, National Association of Manufacturers, p. 23.

• "I also work with OSHA issues * * * and I actually view OSHA as much more of an outreach and helpful to small businesses and the like, and I'd like to see EPA go more that way, that OSHA actually has programs where they reach out and help businesses comply * * * " Fern Abrams, IPC, p. 26.

• "[t]here's a lot of problems with contractor-staffed hotlines where the people answering the questions don't really know the answers. They're making stuff up. And then the agencies, and I believe this is true of the IRS, as well, don't have to be held to the advice that is given out by their hotline. So someone can get advice, take it, and still be slapped later with an enforcement violation." Fern Abrams, IPC, p. 27–8.

• "[w]hat's important * * * not only is the person accountable but the agency's accountable, and this is a problem that came up during the last administration and I can't remember how it was resolved in the Department of Labor but they put out compliance guides and you could follow the compliance guide but you could still be cited if you follow the compliance guide because there was an error in the guide. So the agency was not accountable for having accurate assistance materials. The person wasn't accountable, the person or the program wasn't accountable, and the materials, there was no reliability in them." Anita Drummond, ABC, p. 74–5.

• "I think it's incumbent on the Task Force to actually strengthen [the suggestion of first-time abatement of penalties] and recommend that [agencies] come out on record as saying that they will have a first-time abatement of penalties based on minor paperwork infractions." Giovanni Coratolo, U.S. Chamber of Commerce, p. 75–6.

• "[w]hat is the ultimate goal of the regulatory system? * * * The ultimate goal is voluntary compliance * * * so to the extent that agencies make it easy to comply, then they are furthering their goal, whether it's a safer workplace or whether it's a better environment, what have you. So I think that the agency mindset still needs to be that voluntary compliance is their goal, not how many citations have they made * * * " Larry Fineran, National Association of Manufacturers, p. 90–1.

7. Electronic Paperwork Reporting

• "I'll be the first to say our members are way behind in [technology]. The average size of our membership * * * is very small, less than 10, and a lot of these people are now having computers but they don't use their computers necessarily to be on the Web, so they're not going to get on EPA's Web site and all of a sudden have one magic form and fill all that out." Susan Eckerly, NFIB, p. 29–30.

• "[a]gencies * * * see a great opportunity in making everything electronic, that somehow this is going to achieve the greatest type of reduction and it's also perhaps the most cost-efficient for an agency, but the reality of small business, the reality of those that actually have to go through this if they're going to fill out their own forms, more often than not the electronic option isn't available to them. So although [electronic reporting] is often the main way * * * in which agencies choose to reduce their overall burden numbers * * * it still isn't taking care of those who have the toughest part of the burden, which is those that are still filling out paper."Rosario Palmeri, House Committee on Small Business, p. 533.

• "I think there's still very large problems with the [EPA's] e-docket. I think it was a tool that was established to try to help small business * * * I even find it complicated and I've done this for 15 years, I get lost in it. I can't find some of the e-docket materials that EPA says are on the various dockets." Theresa Pugh, American Public Power Association, p. 65.

• "[t]here are a lot of people who are still on paper, especially in the small businesses who don't have computers or worse yet, have computers but they're dial-up computers and they're on one person's desk and when you start looking at 500 or whatever page things, it could take them hours to download it. So I think we need to look at the high-tech solutions that we didn't have a few years ago but we're not quite ready to replace the paper." Fern Abrams, IPC, p. 84.

• "I wanted to suggest that the Air Office, at least at EPA and perhaps some other agencies, have a bad habit of establishing databases to indicate both paperwork and actual regulatory compliance costs and on some small business areas it's left blank. If you don't know any better and you read that, it look like there's no regulatory requirement * * * it sort of leads one to believe that they're not being regulated when they will be regulated." Theresa Pugh, American Public Power Association, p. 93.

8. Miscellaneous Comments

• " * * * I sat through an IRS paperwork reduction meeting. It was part of their normal review of forms and instructions. This one happened to be on taxes filed by small farmers and they devoted, I think, about 25 minutes of their eight-hour session on this particular set of forms to paperwork reduction * * * But what we found is that the IRS, in figuring out who to put together in terms of a meeting to talk about paperwork reduction, they didn't have a single farmer, they didn't have a single representative from a farm trades or any other small group. They put together a group of practitioners who essentially were accountants * * * they start with the assumption that no small business and no farm is actually going to fill out their own taxes * * * and when they start from that basic assumption, they assume that the types of corrections and the types of things they want to do or make clarifications to are from a practitioner's standpoint rather than from the individual standpoint." Rosario Palmeri, House Committee on Small Business, p. 51–2.

• "If there were some way we could come up with a clever way of rewarding employees in various agencies * * * if there was a way that the regulatory agencies * * * would recognize the leadership of employees for taking a creative approach in trying to reduce regulatory burden in a responsible way * * *." Theresa Pugh, American Public Power Association, p. 66.

• "And I wanted to comment briefly on the same-time reporting option on your list * * * I hear negative feedback about that. Companies like that things are spaced out through the year so that they can spread the workload over the one or two or three people or however many they have who handle the reporting requirements, and that if it were all due at one time of the year, they couldn't have that one person." Fern Abrams, IPC, p. 85.

Appendix 5—Federal Government Initiatives To Reduce or Streamline Reporting Requirements for Businesses

Currently there are a substantial number of Federal government efforts in operation or in development that use one or more of the approaches to reduce paperwork burden for businesses, as described in the task one section of this report. Several examples follow:

1. The Food and Drug Administration (FDA) has harmonized its new drug application and biologics application forms which can be submitted electronically. Previously, there had been 21 different application forms. A second FDA example is its work underway with the European Union and Japan to harmonize product approval application requirements and adverse event reporting. As a result of this work, businesses will be able to collect and submit essentially the same information in the same format to satisfy many countries' pre-approval and post-marketing requirements for drugs and biologics.

2. Below are two examples of cross agency consolidations of reporting requirements are instructive.

(a) The Single Source Coal Reporting project, which involves several Federal agencies plus at least 1 state, consolidate reporting by coal producers on their production activity to a single point; using one form, common data definitions where practical and beneficial, and synchronized reporting with respect to timing.

(b) The Employee Benefits Security Administration (EBSA), the Pension Benefit Guaranty Corporation (PBGC), and the Internal Revenue Service (IRS) jointly collect data from businesses on benefit plan operations using a single form. In the year 2000 the 3 agencies together streamlined the information required to be reported on the form and implemented an electronic filing and processing system. The single report is filed with a contractor who then distributes the appropriate information to each of the 3 agencies.

3. The IRS has expanded the use of the Internet and web-based technology to reduce burden on small businesses. The Small Business Community Web Site provides a variety of information, tools and products to make it easier for small businesses to comply with tax laws.

4. The Social Security Administration for many years has received Forms W–3, Transmittal of Wage and Tax Statements, and Forms W–2, Wage and Tax Statement, on behalf of both SSA and the Internal Revenue Service. SSA collects the data from employers, transcribes the paper documents not filed electronically, posts the data to their own files and provides the data to the IRS.

5. The Occupational Safety and Health Administration (OSHA) and the Bureau of Labor Statistics (BLS) collect occupational injury and illness data from individual employers in annual sample surveys. By law, BLS cannot share micro-data collected from businesses with non-statistical agencies. Although BLS is barred from sharing data with OSHA, the two agencies have developed sampling methodology and reporting procedures designed to reduce the burden on businesses in both surveys by minimizing overlap between the 2 surveys and providing businesses the opportunity to use a single form for reporting if they so choose.

6. The Department of Transportation (DOT) currently has two initiatives for consolidating reporting requirements. The first initiative consolidates reporting requirements for six of its agencies into a 1 page form for businesses to report the results of safety-related drug and alcohol tests for nearly 10 million safety-sensitive employees. This new form also reduces the number of data elements. The Coast Guard will continue to participate in this system after it is transitioned to the Department of Homeland Security.

Another noteworthy effort underway at DOT is the creation of a new application form and uniform reporting requirements for the disadvantaged business enterprise (DBE) program. At this time a business seeking certification as a DBE must fill out a different form for three DOT agencies and for multiple state and local agencies. The new form will be used by federal, state and local agencies.

Appendix 6—The Business Compliance One Stop as a Platform for Regulatory Burden Reduction

Background

SBA is the managing partner for the Business Compliance One Stop (BCOS), an initiative that is a framework for achieving the goals of the (SBPRA) Task Force.

The goal of the BCOS is to reduce the burden on business owners by making it easy to find, understand, and comply with governmental laws and regulations. The BCOS solution is to provide businesses with a single point of access to information and tools that will make it easy for them to comply. The portal offers value to the business community in three areas:

(1) *Find:* efficient access to laws and regulations at all levels of government (helps you find what applies to you as a business owner, where you live);

(2) *Understand:* compliance assistance digital guides that will help businesses determine if they are in compliance and how to comply;

(3) *Comply:* online transactions, such as allowing businesses to register their business, apply for licenses and permits, and file information electronically.

As the advocate and supporter of small businesses, SBA is the managing partner for the following reasons:

• *Core Mission*—Small businesses comprise 99 percent of all business. With its legislative mandate to help small businesses succeed, SBA "owns" the relationship with the intended beneficiaries of the initiative.

• *Outreach*—The intergovernmental scope of the project gives SBA another advantage, as no other federal agency has the breadth and depth of grassroots partnerships and experience with business development entities in over 1500 locations.

• *Relationship with the Regulatory Community*—SBA works more closely with the federal regulatory community than any other agency through its congressionally created offices of Advocacy and National Regulatory Ombudsman. Building appropriate compliance assistance tools is a natural complement to its role of "being a voice" for small businesses.

• *Experience in Cross-Agency Web Portals*—SBA is the creator and manager of Businesslaw.gov, a legal and regulatory information gateway to all 50 states and the platform for BCOS.

• *Focal Point*—SBA is willing and able to forge the necessary partnerships to manage this effort, and offers the Executive and Legislative branches a focal point for cost effective stewardship and accountability for e-government expenditures.

Current Partners

We presently have partnerships with nine Federal agencies, (*i.e.*, DOT, DOI, DOE, EPA,

IRS, DOL, OSHA, INS, and GSA) and seven states (*i.e.*, Illinois, Georgia, Washington, Missouri, Iowa, New Jersey and Texas). We have also enlisted the partnership of several associations to represent the business customer and provide us a true reality check, *e.g.*, NGA, NFIB, NASCIO, ATA, etc. BCOS delivers these capabilities through an Internet portal (*BusinessLaw.gov*) providing content specific to particular industries as well as help for business in general.

BCOS Focus

During its first year the BCOS effort focused on compliance assistance in the areas of environment, workplace health and safety, taxes and employment. For its second and third years, while continuing to make it easy to find, understand, and comply with governmental regulations, with the primary focus on creating compliance assistance tools, the BCOS initiative will place a greater emphasis on reducing the paperwork reduction, *i.e.*, the regulatory burden that emanates from having to comply with government requests for information. OMB estimates that the total federal paperwork burden is 7.7 billion hours annually of which 6.6 billion hours stem from the Department of Treasury. Evaluations of modern forms management systems which include interactive, electronic forms as well as streamlining collection processes and harmonizing data requirements across agencies have the potential to reduce by 50 percent agency costs and the small business burden.

This paperwork reduction emphasis emanates from the Small Business Paperwork Relief Task Force recommendations to reduce the burden using the following three strategies:

4. Reduce the information required through analyzing if information is needed, if definitions in different forms and forms in different agencies can be harmonized to reduce overlap;

5. Increase the effectiveness of data collection processes by collecting once and sharing data among programs and agencies;

6. Reduce the work of submitting data by using interactive, electronic, forms that aid the user.

To get faster results, the BCOS initiative will concentrate on highly regulated industries such as trucking, health care, food, and chemicals. To achieve this, the BCOS will look to a Governance Board made up of senior staff from the key regulatory agencies that can be a decision-making body. Through the guidance from the BCOS project management, the Board will ratify key development teams led by individual regulatory agencies. For instance, DOT will take the lead on reviewing the over 40 Information Collection Reports (ICRs) from 11 federal agencies and the 4 state transactions to determine where E-forms should be applied and including streamlining and harmonizing the data capture processes. Financing for these efforts will be made available by OMB or the regulatory agencies. SBA as the general manager of the BCOS will function as a secretariat for the Governance Board or Steering committee, work with associations and small businesses to analyze the regulatory information burden, hold focus sessions, create the project plans and develop proposals for harmonizing and streamlining information requirements across government as well as providing interactive, electronic forms and suggesting how collection processes can be streamlined. We will also take the lead in building the portal and functioning prototypes or proof of concepts for the burden reduction applications.

BCOS Results

One of the most important outcomes of BCOS is the demonstration that Federal and state agencies can work together to reduce the regulatory burden through a variety of means. It has shown that compliance assistance is possible and effective. The following describes some of the results achieved:

BusinessLaw Portal

BCOS uses BusinessLaw.gov as its foundation and framework. This portal provides nearly 20,000 links to federal and state legal and regulatory information on 39 different topics, where to go to complete transactions such as licenses and permits, and a host of information on rulemaking, compliance assistance, and regulatory fairness. The portal also offers useful information on where to get help, how to contact Congress and associations, and principal considerations in choosing legal help. In concert with the goals of the BCOS team, the site is adding new navigation aids, additional digital guides or expert tools, and user-friendly transactions. Estimated savings: $56 million annually.

Compliance Assistance Guides

- Alien Employee Visa Classification eTool
- Employment Eligibility Verification tool
- OSHA emergency building evacuation procedures e-Tool
- Coal Mining Report Harmonization
- Integrated State Registration and Federal EIN Web Services Application
- Choosing a Legal Structure
- Auto Dismantler & Recycler Environmental Audit Advisor
- Motor Vehicle (Class V) Waste Disposal Wells Advisor

Estimated savings from a total of 30 expert tools: $300 million annually to businesses and $12 million to agencies.

Coal Mining Report Harmonization

This project is an excellent example of agencies working together to reduce the information burden on nearly 1,000 coal miners who submit reports to DOI, DOE, EPA, DOL, IRS, and State EPAs. Eighty percent of the data in these reports are identical and require about 50,000 hours annually. A tool developed by DOI provides a one-stop submission of data that is then distributed to participating agencies. Data metrics using different definitions is automatically changed to the metric required by each agency and results in an estimated 25,000 hours saved. As the project has been progressing, agencies have begun to look at streamlining definitions, reporting periods and the need for the information in the first place. Estimated savings: $1 million annually.

Integrated State Registration and Federal Employer Identification Number Application

This example demonstrates that significant savings can ensue when state and Federal processes are integrated and offered as a single web services. State business registration requires many of the same data elements as the Federal Employer Identification Number (FEIN) submission. This tool permits the user to apply on-line for a state registration and then elect to apply for a FEIN, which is pre-populated with data from the state application. For additional information, the application asks for additional data in an interview format. IRS estimates that more than 2.4 million businesses acquire EINs annually. Estimated savings: $96 million annually.

Bureau of Citizenship and Immigration Services I–9 Interactive, Electronic Tool

All U.S. employers are responsible for completion and retention of Form I–9s for each individual they hire to certify work eligibility in the United States. This includes citizens and non-citizens. On the form, the employer must verify the employment eligibility and identity documents presented by the employee and record the document information on the Form I–9. The U.S. Department of Homeland Security, Bureau of Citizenship and Immigration Services (BCIS), maintains the form. This tool developed by BCOS in cooperation with BCIS, guides the employer using an Intuit-type approach through a set of questions at the end of which the form is completed. Throughout the tool, educational material is provided in terms of instructions and answers to frequently asked questions. Estimated savings: $12 million annually with a substantial increase in the quality of the completed form.

Trucking One-Stop Portal

Trucking is an important industry, contributing to 1 out of every 12 jobs and local economies. A large part of the 900,000 plus trucking firms works interstate and needs to comply with information from the Federal and state governments. The Integrated Truck One-Stop is an example of how using harmonized data capture, electronic forms and transactions and offering web services for both federal and state requirements can work for a specific industry. The planning phase is being completed for this project.

We have developed the data reference model for both federal and state regulatory requirements. With this understanding, we can develop web services that let truckers submit data to a common front end portal that then processes the requests, distributes the data to the participating user states and Federal agencies, and returns credentials, licenses, permits and payment schedules. Additionally the trucking one-stop portal will provide compliance assistance information and tools to reduce the regulatory burden. The development of a trucking one-stop portal with E-forms and streamlining and harmonization of data collection will yield an estimated savings of $400 million annually.

The Profiler—Personalization for Finding Compliance Assistance Resources

This tool allows the user to characterize his firm in terms of where it is located, size, industry as well as what kind of assistance the user is looking for. The tool then locates available compliance assistance resources available from five major Federal agencies. The estimated savings are $62 million annually.

Appendix 7—Compliance Assistance Best Practices

Best practices and lessons learned are shown for three areas:[1] cross-jurisdictional State-wide services, other cross-jurisdictional portal applications and specific compliance and permitting services. In addition, other sites representative of specific navigational practices and assistance tools are included in the discussion of challenges.

Cross-Jurisdictional State Portals

The following sources are examples of State-wide services providing compliance assistance across multiple jurisdictions:

1. The Georgia Technology Authority (GTA) is designing an enterprise portal to integrate information from disparate sources throughout the Georgia State Government. The first to benefit from this portal are the projected 400,000 Georgians a year likely to renew their driver's licenses online. It is one of the first Web services portals based on Simple Object Access Protocol (SOAP) and Extensible Markup Language (XML) to take advantage of cross-jurisdictional transactions.

2. Washington State has implemented a State portal that serves as a one-stop registry for companies to do business in the State by providing relevant information and supporting transactions online. It was developed with a comprehensive understanding of customers and their needs and deployed using a component-based architecture to support its growth and sustainability. It is one of the first and largest Government-to-Business (G2B) transaction sites available in the nation.

3. The Commonwealth of Pennsylvania has implemented a one-stop business services portal that allows businesses to electronically identify, complete and submit all business-specific registration data required to multiple State regulatory agencies. Three State agencies currently participate in the initial phase: the Department of Revenue, the Department of State, and the Department of Labor and Industry. Each agency performs critical approval and oversight functions in registering new enterprises. Fifteen hundred (1,500) businesses have submitted or changed their registrations online without incurring legal and accounting expenses previously required.

4. The State of Virginia Department of Taxation offers the ability for a business to file its sales and withholding tax online. It provides for electronic filing and payments by both individuals and businesses, and is jointly supported by the Virginia Employment Commission and the Virginia Department of Taxation. Future plans call for seamless transactions across State agencies and integration for Federal Internal Revenue Service (IRS) and Social Security Administration (SSA) transactions.

5. The State of Mississippi has embarked upon a three-year initiative to develop a comprehensive State portal to provide e-Government services to its constituencies by building upon a flexible, open, and scalable technology foundation. Occupational license renewals for the Board of Architecture and payment processing were the first applications deployed with the initial release of the new portal in October 2001. Their success is based on a strategy of building a standards-based component architecture at the State level that can provide plug-and-play compatibility and interoperability for future applications.

Other Cross-Jurisdictional Portals

The following sources are examples of other services providing compliance assistance across multiple jurisdictions:

1. Inland Revenue, United Kingdom, Online Tax Filing deployed a tax filing system for employers and agents filing pay-as-you-earn taxes on behalf of employees; and a self assessment filing system for individual taxpayers. This site is an example of the rapid integration of commercial-off-the-shelf (COTS) forms processing, transaction engines and business rules to support businesses filing tax information online.

2. Miami-Dade County, Florida has one of the largest local e-Government transaction-based systems, allowing businesses and individuals to request services, track and review status of service and make payments online. It supports a host of county services from occupational licensing to the payment of parking tickets. They created a component-based architecture that promotes interoperability and enables the easy addition of Web-based transactions and tools.

3. Nova Scotia Atlantic Canada Online electronic business system (in partnership with an industry provider and the provinces of New Brunswick, Nova Scotia, Prince Edward Island and Newfoundland) provides third-party client organizations with secure Internet access to Government information. Electronic access is provided to personal property registries and records, vehicle information, business registries, court filings and documents and more. The business model relies on an industry provider to invest $10M in the development, implementation and management of the business and technical infrastructure that supports the online services. Organizations such as banks and law firms establish online accounts, from which small fees are automatically deducted for each transaction.

Specific Compliance and Permitting Applications

The following sources are examples of services providing specific compliance and permitting transactions for specific jurisdictions:

1. The Illinois Department of Revenue focused on reducing the tax and wage-reporting burden on businesses by providing an integrated capability for electronic registration, simplified tax and wage reporting, and online filing and payments. The department achieved success by developing a solid understanding of its customers' requirements and building the necessary infrastructure to provide secure digital transactions to more than 100,000 businesses. It defined a business model consistent with its mission and relied on a component-based architecture to deliver the needed business services.

2. The Ohio Bureau of Workers Compensation allows injured workers to fill out insurance claims forms electronically. As many as 80 percent of Ohio workers using the new system have been able to file claims within seven days of receiving their job-related injury, as opposed to 25–27 days for paper-based claims. Nine hundred companies have paid their workers compensation premiums online using credit cards. This site demonstrates the ability of individuals and businesses to file forms electronically, make payments online and have transactions synchronized across multiple State agencies within Ohio.

New Jersey's DEPonline is a one-stop environmental information sharing and regulatory compliance portal for business, industry and the public. DEPonline seamlessly interoperates with the New Jersey Environmental Management System (NJEMS), an integrated enterprise regulatory management solution. The portal enables business users to access status of compliance information and up-to-date regulations, apply and pay for (by credit card or check) a variety of permits and licenses and submit compliance reports online.

General Findings

Most cross-jurisdictional portals, particularly those at the State level, are currently in development and are facing similar issues, integrating solutions across multiple jurisdictions, developing common repeatable frameworks and addressing the diverse needs of a large customer base. While most have not achieved their stated goals, they do reveal some useful lessons learned:

Start with a comprehensive understanding of the customers, and address the services that have the largest potential gains in reducing the compliance burden and promoting efficiencies;

- Define an effective business model for delivery of services to customers, consistent with the mission and leveraging agency core competencies;
- Develop a component enterprise architecture that exploits common, repeatable standards and supports continued growth, promotes interagency collaboration and addresses user privacy and security concerns;
- Deploy proven technologies and tools, particularly those currently in use by the more successful implementations from compliance organizations; and
- Achieve interagency and intergovernmental cooperation and collaboration, an essential element in

[1] From a paper titled "One-Stop Business Compliance Proposed Best Practices" prepared for the Federal CIO council and the Business Compliance Assistance One Stop initiative in 2002 by a consortium of consulting firms. The whole paper can be found at *http://www.cio.gov/index.cfm?function=documents&section=best%20practices.*

providing a common, seamless One-Stop Business Compliance capability.

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Part IV

Department of Health and Human Services

Food and Drug Administration

21 CFR Parts 1 and 11
Establishment and Maintenance of Records Under the Public Health Security and Bioterrorism Preparedness and Response Act of 2002; Proposed Rule

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Parts 1 and 11

[Docket No. 02N–0277]

RIN 0910–AC39

Establishment and Maintenance of Records Under the Public Health Security and Bioterrorism Preparedness and Response Act of 2002

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Food and Drug Administration (FDA) is proposing regulations that would require the establishment and maintenance of records by certain domestic persons who manufacture, process, pack, transport, distribute, receive, hold, or import food intended for human and animal consumption in the United States. In addition, these requirements apply to certain foreign facilities that manufacture, process, pack, or hold food for human or animal consumption in the United States. Such records are to allow for the identification of the immediate previous sources and the immediate subsequent recipients of food. The proposed regulations implement the Public Health Security and Bioterrorism Preparedness and Response Act of 2002 (the Bioterrorism Act) and are necessary to properly address credible threats of serious adverse health consequences or death to humans and animals. FDA expects that the requirements the agency is proposing in these regulations, if finalized as proposed, would result in a significant improvement in FDA's ability to respond to and help contain threats of serious adverse health consequences or death to humans or animals from accidental or deliberate contamination of food.

DATES: Submit written or electronic comments by July 8, 2003. Written comments on the information collection provisions should be submitted by June 9, 2003.

ADDRESSES: Submit written comments to the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, Maryland 20852. Submit electronic comments to http://www.fda.gov/dockets/ecomments. The Office of Management and Budget (OMB) is still experiencing significant delays in the regular mail, including first class and express mail, and messenger deliveries are not being accepted. To ensure that comments on the information collection are received, OMB recommends that written comments be electronically mailed to sshapiro@omb.eop.gov or faxed to the Office of Information and Regulatory Affairs, OMB, Attn: Stuart Shapiro, Desk Officer for FDA, FAX: 202–395–6974.

FOR FURTHER INFORMATION CONTACT: Nega Beru, Center for Food Safety and Applied Nutrition (HFS–305), Food and Drug Administration, 5100 Paint Branch Pkwy., College Park, MD 20740, 301–436–1400.

SUPPLEMENTARY INFORMATION:

Table of Contents

I. Background and Legal Authority
A. Public Health Security and Bioterrorism Preparedness and Response Act of 2002
B. Preliminary Stakeholder Comments
C. Highlights of the Proposed Rule
II. Description of the Proposed Regulations
A. General Provisions
1. Who is subject to this subpart? (Proposed § 1.326)
2. Who is excluded from all or part of the regulations in this subpart? (Proposed § 1.327)
3. What definitions apply to this subpart? (Proposed § 1.328)
4. Do other statutory provisions and regulations apply? (Proposed § 1.329)
5. Can existing records satisfy the requirements of this subpart? (Proposed § 1.330)
B. Establishment and Maintenance of Records to Identify the Nontransporter and Transporter Immediate Previous Source of all Food (Proposed § 1.337)
C. Establishment and Maintenance of Records to Identify the Nontransporter and Transporter Immediate Subsequent Recipient of all Food (Proposed § 1.345)
D. Requirements to Establish and Maintain Records to Trace the Transportation of all Food
1. Who is required to establish and maintain records for tracing the transportation of all food? (Proposed § 1.351)
2. What information is required in the transportation records? (Proposed § 1.352)
E. General Requirements
1. What are the record retention requirements? (Proposed § 1.360)
2. What are the record availability requirements? (Proposed § 1.361)
3. What records are excluded from this subpart? (Proposed § 1.362)
4. What are the consequences of failing to establish or maintain records or make them available to FDA? (Proposed § 1.363)
5. What are the compliance dates for this subpart? (Proposed § 1.368)
III. Analysis of Economic Impact
A. Benefit-Cost Analysis
B. Initial Regulatory Flexibility Analysis
C. Unfunded Mandates
D. SBREFA Major Rule
IV. Paperwork Reduction Act of 1995
V. Analysis of Environmental Impact
VI. Federalism
VII. Comments
VIII. References

I. Background and Legal Authority

A. Public Health Security and Bioterrorism Preparedness and Response Act of 2002

The events of September 11, 2001, reinforced the need to enhance the security of the U.S. food supply. Congress responded by passing the Public Health Security and Bioterrorism Preparedness and Response Act of 2002 ("the Bioterrorism Act") (Public Law 107–188), which was signed into law on June 12, 2002. The Bioterrorism Act includes a provision in Title III (Protecting Safety and Security of Food and Drug Supply), Subtitle A—Protection of Food Supply, section 306 (21 U.S.C. 335a), which amends the Federal Food, Drug, and Cosmetic Act (the act) by adding section 414, Maintenance and Inspection of Records (21 U.S.C. 350(c)). Section 414(b) of the act provides, in part, that the Secretary of Health and Human Services (the Secretary), may by regulation establish requirements regarding the establishment and maintenance, for not longer than 2 years, of records by persons (excluding farms and restaurants) who manufacture, process, pack, transport, distribute, receive, hold, or import food. The records that must be kept by these regulations are those that are needed by the Secretary for inspection to allow the Secretary to identify the immediate previous sources and immediate subsequent recipients of food, including its packaging, in order to address credible threats of serious adverse health consequences or death to humans or animals. In section 306(d) of the Bioterrorism Act, Congress directed the Secretary to issue proposed and final regulations establishing recordkeeping requirements under section 414(b) of the act no later than 18 months after enactment of the Bioterrorism Act, that is, by December 12, 2003.

In addition, the Bioterrorism Act adds a new section 414(a) to the act that provides records inspection authority to FDA. Section 414(a) of the act provides that when the Secretary has a reasonable belief that a food is adulterated and presents a threat of serious adverse health consequences or death to humans or animals, persons who manufacture, process, pack, distribute, receive, hold, or import food must provide access to records related to the food that are needed to assist the Secretary in determining whether the food is adulterated and presents a threat of serious adverse health consequences or death to humans or animals. Section 306 of the Bioterrorism Act also amends section 704(a) of the act (21 U.S.C. 374(a)) to specifically authorize FDA inspections of all records and other information described in section 414 of the act, when the Secretary has a reasonable belief that an article of food is adulterated and presents a threat of serious adverse health consequences or death to humans or animals. Also, section 301 of the act (21 U.S.C. 331) is amended to make it a prohibited act to refuse to permit access to, or copying of, any record as required by section 414 or 704(a) of the act; or to fail to establish or maintain any record as required by section 414(b) of the act or to refuse to permit access to or verification or copying of any such required record; or for any person to use to his own advantage, or to reveal, other than to the Secretary or officers or employees of the Department of Health and Human Services, or to the courts when relevant in any judicial proceeding under this act, any information acquired under authority of section 414 of the act.

In addition to section 306 of the Bioterrorism Act, which amends the act as described above, FDA is relying on sections 701(a) of the act (21 U.S.C. 371(a)) in issuing this proposed rule. Section 701(a) of the act authorizes the agency to issue regulations for the efficient enforcement of the act.

B. Preliminary Stakeholder Comments

On July 17, 2002, FDA sent an open letter to the members of the public interested in food issues outlining the four provisions in Title III of the Bioterrorism Act that require FDA to issue regulations in an expedited time period, and FDA's plans for implementing them. In the letter, FDA invited stakeholders to submit comments to FDA by August 30, 2002, for FDA's consideration as it developed this proposed rule. FDA also held meetings with representatives of industry, consumer groups, other Federal agencies, and foreign embassies after sending out the July 17, 2002, letter, to solicit stakeholder comments. In response to these solicitations, FDA received a number of comments regarding section 306 of the Bioterrorism Act.

FDA has considered all the comments received by August 30, 2002. FDA will consider all comments we received so far with the comments we receive during the public comment period on this proposed rule in developing the final rule. Some of the significant comments FDA received on or before August 30, 2002, include:

- The regulations should be performance-based. There is no need to specify the form or manner in which the information must be kept by a person subject to the regulations;
- The regulations should provide flexibility for using existing recordkeeping systems;
- The regulations should give businesses the flexibility they need to store records in the manner they find most efficient;
- The regulations should divide food products into two categories, perishable and nonperishable, and establish separate recordkeeping requirements for each;
- The regulations should not have a 2-year time period for maintenance of records for fresh fruits and vegetables;
- The regulations should not require retailers to maintain records to identify which consumers bought specific food products;
- The regulations should make clear that the transporter of the food and its packaging between sources and recipients should not be considered the "immediate previous source" or the "immediate subsequent recipient" under the Bioterrorism Act;
- The regulations should make the actual physical location of the food the key to identifying the source and recipient, which may differ from ownership (i.e., corporate headquarters);
- The regulations should exclude as farms those engaged in shellfish growing and harvesting in the farm exemption;
- The regulations should define the exemption for restaurants as businesses that prepare food at the same location where such food is sold to individual consumers, and where such food may be eaten;
- The regulations should provide a phase-in period of at least 6 months to allow all businesses to make any needed adjustments to their current practices before implementation of new regulations;
- Although the regulations must take size of business into account, the regulations should not have a general exemption for small businesses;
- The regulations should allow for phasing-in of the requirements based on the size of regulated companies.

C. Highlights of the Proposed Rule

This proposal is just one of several rulemaking activities currently underway as part of the overall implementation of Title III of the Bioterrorism Act that enhance FDA's ability effectively and efficiently to respond to bioterrorist threats and other food-related emergencies in a way that promotes and protects the public health. Our intent in developing these proposed regulations is to provide the proper balance between ensuring that FDA has information it needs to complete a tracing investigation and ensuring adequate and reasonable flexibility for industry to comply with these requirements.

Section 414(b) of the act, as added by section 306(a) of the Bioterrorism Act, provides that the Secretary "may" by regulation establish recordkeeping requirements. Section 306(d) of the Bioterrorism Act, however, provides that the Secretary "shall" issue proposed and final regulations no later than 18 months from the date of enactment. FDA believes that Congress has directed the agency to exercise the authority in section 414(b). However, the agency recognizes that the use of the term "may" in one section of the statute and "shall" in another section creates an ambiguity. We request comments on our interpretation that we are required by section 306(d) of the Bioterrorism Act to exercise the authority in section 414(b) of the act.

In establishing and implementing this proposed rule, FDA will comply fully with its international trade obligations, including the applicable World Trade Organization (WTO) agreements and the North American Free Trade Agreement (NAFTA). For example, FDA believes this proposed rule is not more trade-restrictive than necessary to meet the objectives of the Bioterrorism Act. FDA has endeavored to make the establishment and maintenance of records process as simple as possible for both domestic and foreign facilities.

FDA is proposing to describe the specific information a covered entity must keep, but not specify the form or type of system in which those records must be maintained. Some of the key provisions we are proposing include: (1) Requirements to establish and maintain records to identify the immediate previous source of all food, (2) requirements to establish and maintain records to identify the immediate subsequent recipient of all food, (3) requirements to establish and maintain

records to trace the transportation of all food, (4) record retention requirements, (5) record availability requirements, and (6) compliance dates. Following is an overview of the proposed regulations, which is intended to highlight the content of certain sections and request comment on those sections specifically, including comment on whether certain requirements should be included in the final regulations.

Proposed requirements to establish and maintain records to identify the nontransporter and transporter immediate previous sources of all food (§ 1.337) would require specific persons ("you") to establish and maintain records that identify the sources of all food you receive. The information that we propose as necessary to identify the nontransporter immediate previous sources includes: (1) The name, address, and phone number of the nontransporter immediate previous source; (2) the type of food received; (3) the date you received the food; (4) the lot number or other identifier of the food if available; (5) the quantity; and (6) the name, address, and phone number of the transporters who transported the food to you.

Proposed requirements to establish and maintain records to identify the nontransporter and transporter immediate subsequent recipients of all food (§ 1.345) would require that you keep records that identify the nontransporter recipients of all food you release. The information that we propose as necessary to identify the nontransporter immediate subsequent recipients is similar to that required to identify the nontransporter immediate previous sources.

Proposed requirements to establish and maintain records to trace the transportation of all food (§§ 1.351 and 1.352) would require that you keep records that trace the transportation process of all food you transport. The information that we propose as necessary to trace the transportation process includes: (1) The name, address, and phone number of the person who had the food immediately before you (the transporter's immediate previous source), and the date you received it from that person; (2) the name, address, and phone number of the person who had the food immediately after you (the transporter's immediate subsequent recipient), and the date you delivered it to that person; (3) the type of food transported; (4) the lot number or other identifier of the food if available; (5) the quantity; and (6) identification of each and every mode of transportation used (e.g., company truck, private carrier, rail, air, etc.) from the time you first received the food until the time you delivered it.

Proposed record retention requirements (§ 1.360) would require records for perishable foods not intended to be processed into nonperishable foods to be retained for 1 year after the date the records were created. FDA seeks comment on whether a person subject to these proposed regulations always or usually knows at the time perishable food is released whether or not it is intended to be processed into nonperishable food. For all other food, you would be required to retain the records for 2 years after the date the records were created. You would be required to retain all records at the establishment where the covered activities described in the records occurred (onsite) or at a reasonably accessible location. The maintenance of electronic records would be acceptable. FDA is proposing to exempt electronic records established or maintained to satisfy the requirements of this subpart from the requirement to comply with part 11—Electronic Records; Electronic Signatures (21 CFR part 11) and proposing to amend part 11 to reflect this exemption.

Proposed records availability requirements (§ 1.361) would require that records be made available within 4 hours of an FDA request if the request is made between 8 a.m. and 6 p.m., local standard time, Monday through Friday, or within 8 hours of a request if made at any other time.

In § 1.368, the agency is proposing that firms be in full compliance with these regulations within 6 months of publishing the final regulations. However, these proposed requirements would not be effective for small businesses (those employing fewer than 500 but more than 10 full-time equivalent employees) until 12 months after publishing the final regulations. Very small businesses that employ 10 or fewer full-time equivalent employees would have 18 months to comply.

The Bioterrorism Act directs the Secretary to take appropriate measures to ensure that there are effective procedures to prevent the unauthorized disclosure of any trade secret or confidential information that is obtained by the Secretary under the new regulations. FDA is planning to reemphasize in instructions to FDA personnel the importance of current protections and legal requirements against the unauthorized disclosure of any trade secret or confidential information that is obtained.

Section 306 of the Bioterrorism Act expressly states that FDA has authority to require recordkeeping as to "food, including its packaging." FDA interprets this section as authority to require persons who manufacture, process, pack, transport, distribute, receive, hold, or import food to establish and maintain records to allow for the identification of the immediate previous sources and immediate subsequent recipients of food packaging as well. FDA interprets packaging in section 306 of the Bioterrorism Act to mean the outer packaging of food that bears the label. FDA is not interpreting packaging to include food contact substances, which are included in the definition of "food." Outer packaging would include, for example, the outer cardboard cereal box that bears the label of the cereal, but would not include the inner lining that holds the cereal. Outer packaging would also not include the outer shipping box in which the cereal boxes are shipped.

FDA has tentatively concluded that the risk to human and animal health from contamination of outer food packaging is relatively small compared to the risk from contamination of the immediate packaging that comes in direct contact with food. Therefore, FDA is proposing not to require covered persons to keep records regarding outer food packaging. However, the agency also recognizes that there may be instances where it may be necessary for FDA to be able to investigate agents that could lace outer packaging and could thereby contaminate a food for which the immediate food contact packaging may not provide an adequate barrier. In addition, outer packaging could be intentionally diverted and used to package food that has been tampered with. FDA seeks comment on whether the level of risk to human and animal health from potential contamination of outer packaging is high enough to warrant inclusion of outer packaging in the final regulations.

In addition to the above, we seek comment on all other provisions in the proposed regulations, such as the proposed definitions and exclusions. We also invite comment on whether the final rule should include additional provisions, such as a model form that can be used to record all the required information.

II. Description of the Proposed Regulations

A. General Provisions

1. Who is subject to this subpart? (Proposed § 1.326)

Proposed § 1.326(a) describes the scope of the rule. As required by the Bioterrorism Act, proposed § 1.326(a) would require domestic persons who manufacture, process, pack, transport, distribute, receive, hold or import food intended for human or animal consumption in the United States to comply with the regulations in this subpart, unless you qualify for one of the exclusions proposed in § 1.327. In addition, foreign facilities that manufacture/process, pack, or hold food for human or animal consumption in the United States are subject to these regulations, unless you qualify for one of the exclusions proposed in § 1.327.

However, even if you qualify for one of the exclusions proposed in § 1.327, if you conduct more than one type of activity at a location, and some of that activity is not exempt, you would be required to keep records with respect to the statutorily covered activities. For example, in addition to selling food to consumers, a retail facility may have an onsite restaurant or counter that prepares food it sells to consumers. The restaurant activity is exempt from all of the regulations in this subpart; however, the retail activities are covered by § 1.336. Similarly, a retail facility may sell both food and nonfood products, and may even sell primarily nonfood products. Regardless of what proportion of the retail facility sells nonfood products, these proposed regulations would require the retail facility to keep records of the immediate previous source for all food it receives that is not exempted by an exclusion. The regulations do not apply to the nonfood products the retail facility receives.

Proposed § 1.326(b) would require compliance by persons who engage either in interstate or in intrastate activities involving food. The Bioterrorism Act does not limit the establishment and maintenance of records requirement only to persons directly engaged in interstate commerce. To the contrary, the Bioterrorism Act provides FDA with the authority to require the establishment and maintenance of records by all "persons" who engage in specified activities involving food. Therefore, FDA tentatively concludes that the statute allows FDA to require domestic persons to keep records, whether or not they engage in interstate commerce. Because a bioterrorist threat involving food or other food-related emergency would have the same effect on the public health regardless of whether the food had originated from an out of state source, FDA is proposing in § 1.326(b) that all persons who manufacture, process, pack, transport, distribute, receive, hold, or import food be subject to these regulations, whether or not they directly engage in interstate activities involving food. Nonetheless, because FDA recognizes that this is an important and controversial issue, the agency is seeking comment on whether its tentative conclusion that it has authority to require recordkeeping by persons engaged in only intrastate commerce is correct. FDA also seeks comment on how many intrastate persons are not covered by one of the exemptions from the recordkeeping requirement (e.g., the farm or retail exemption) and we invite recommendations on what screening questions the agency could ask to enable a person to easily determine whether the person is engaged in interstate or intrastate commerce.

Proposed § 1.326(a) would also require compliance by foreign facilities that manufacture/process, pack, or hold food for human or animal consumption in the United States unless the facilities qualify for an exclusion under proposed § 1.327(f). FDA is proposing that the foreign facilities that are required to register under section 305 of the Bioterrorism Act also be required to establish and maintain records under section 306 of the Bioterrorism Act. (The foreign facilities that would be excluded from both the proposed registration and recordkeeping requirements are described in the discussion of proposed § 1.327(f).) FDA believes if these foreign firms were not required to establish and maintain records identifying the immediate previous sources and immediate subsequent recipients of food, trace back of food products from outside the United States would be severely compromised. FDA believes that this approach provides the most efficient and effective strategy for obtaining needed information on food from foreign countries. FDA plans to take the appropriate steps and work closely with foreign governments to obtain access to the needed records if a threat of serious adverse health consequences or death to humans or animals from adulterated food necessitates inspection of records in foreign countries.

The provisions of this proposed rule apply to records of both human food and animal food. FDA believes that some recordkeeping requirements are necessary for food intended for food-producing animals, as well as for certain food for nonfood-producing animals (e.g., pet dogs and cats, horses, and zoo and circus animals). We define food for nonfood-producing animals as pet food. FDA believes, however, that the consequences of a potential terrorist attack or food-related emergency are greater for human food than for animal food. FDA also believes that the consequences of a potential terrorist attack or food-related emergency are greater for food for food-producing animals than for pet food. FDA addressed certain animal food risks in our regulation for animal proteins prohibited in ruminant feed (21 CFR 589.2000), also referred to as the bovine spongiform encephalopathy (BSE) rule.

Although FDA acknowledges that the risk to humans from an attack on the animal food supply is lower than the risk to humans from an attack on the human food supply, there is some risk to both humans and animals from an attack on the animal food supply. Contaminated animal food can be a link to human foodborne illness. (Ref. 32). People could be at risk through direct contact with animal food or through unintentional cross-contamination of cooking surfaces or utensils. Animals may also become infected and serve as a reservoir for exposing other animals and humans. For example, in 1996, an organochlorine pesticide was intentionally introduced into an ingredient used in animal food, including pet food. In 2002, dog chew treats were contaminated with Salmonella and became a vehicle to transmit Salmonella into homes. As a consequence, many pet owners became ill and one person died.

We propose that (1) All entities that manufacture, process, pack, transport, distribute, receive, hold, or import food for food-producing animals must keep records under this proposed rule; and that (2) those entities that manufacture, process, pack, transport, distribute, receive, hold, or import pet food that must keep records under the BSE rule also keep records under this rule. Because of the concern that some pet food is diverted for use for food-producing animals, the BSE rule recordkeeping requirements apply to pet food. We believe this proposal to require recordkeeping under the Bioterrorism Act by pet food entities covered by the BSE rule will provide important safeguards needed to limit the impact of contamination of pet food while minimizing additional costs to industry.

As discussed below, we are proposing to exempt pet food entities that are not subject to the recordkeeping requirements of the BSE rule from the recordkeeping requirements of this proposed rule. We propose that all entities involved in animal food, including the pet food entities exempt from the recordkeeping requirements, remain subject to the proposed records access and availability requirements.

FDA is interested in comments on whether or not the proposal provides adequate tools to trace animal food affected by a terrorist attack or other food related emergency and whether an

alternative approach should be used. Specifically, FDA is soliciting comments on the following questions: (1) Should we exempt all types of animal food entities from all or part of this proposed rule? (2) Should we exempt all pet food entities from all or part of this proposed rule? (3) Should we treat pet food the same as other types of animal food by requiring all pet food entities to meet the recordkeeping requirements under this regulation, not just those subject to the BSE rule? (4) Should we use criteria other than the scope of the BSE rule to determine which pet food entities should be exempt? If so, what should those criteria be?

2. Who is excluded from all or part of the regulations in this subpart? (Proposed § 1.327)

Proposed § 1.327(a) codifies the exemption for farms. This exemption is consistent with and required by the express language of the Bioterrorism Act.

Proposed § 1.327(b) codifies the exemption for restaurants. This exemption is consistent with and required by the express language of the Bioterrorism Act.

Proposed § 1.327(c) would exclude certain fishing vessels from all of the regulations in this subpart, except §§ 1.361 and 1.363. These vessels include those that not only harvest and transport fish, but also engage in practices such as heading, eviscerating, or freezing intended solely to prepare fish for holding on board a harvest vessel. The Bioterrorism Act is silent with respect to exempting fishing vessels in section 306, the "Maintenance and Inspection of Records for Foods" provision, although the "Registration of Food Facilities" provision, section 305, expressly exempts fishing vessels, except such vessels engaged in processing as defined in § 123.3(k) (21 CFR 123.3(k)).

FDA has tentatively concluded that the records of fishing vessels as defined in § 123.3(k), like those of farms, are not a necessary component of an effective traceback investigation. Nevertheless, because the records of "fishing vessels otherwise engaged in processing fish, which for purposes of this subsection means handling, storing, preparing, heading, eviscerating, shucking, freezing, changing into different market forms, manufacturing, preserving, packing, labeling, dockside unloading, or holding" are necessary to an effective traceback investigation, these would still be subject to all of the regulations in this subpart.

Proposed § 1.327(d)(1) would exclude retail facilities from the regulations in § 1.345 of this subpart. This limited exclusion is only from the requirement to establish and maintain records of the immediate subsequent recipients of food when the food is sold directly to consumers. The Bioterrorism Act expressly states that the Secretary may require the establishment and maintenance of records by persons who "distribute" food, and therefore retail facilities could be subject to all other regulations in this subpart if FDA required it. FDA has tentatively concluded that to require retail facilities to keep records of each individual recipient consumer would be too burdensome and not necessary in order to address credible threats of serious adverse health consequences or death to humans or animals.

Proposed § 1.327(d)(2) would exclude retail facilities, such as roadside stands, located in the same general physical location as farms, as defined in proposed § 1.328, that sell unprocessed food grown or raised on those farms directly to consumers. This exclusion only applies to those retail facilities that employ 10 or fewer full-time equivalent employees, which is consistent with the way FDA is proposing to define very small businesses in proposed § 1.368(a)(2). This exclusion applies only to unprocessed food, including fresh fruits and vegetables and other raw agricultural commodities for use as food, such as honeycomb. The exclusion also applies to fish raised on farms. Unprocessed food grown or raised on locations other than farms, or on farms not located in the same general physical location, are not excluded.

This exclusion does not apply to processed food, even if it is sold directly to consumers from a retail facility in the same general location as a farm, unless all of the ingredients in that processed food were grown or raised on that farm. Processed foods include, for example, baked goods, jams, jellies, and maple syrup. Retail facilities would be required to establish and maintain records of the immediate previous sources under proposed § 1.337 for processed food sold directly to consumers if any of the ingredients of that processed food were not grown on that farm.

FDA believes that the burden placed on these retail facilities to establish and maintain records for unprocessed food grown or raised on a nearby farm and sold directly to consumers would likely outweigh the risk to the public health that follows from this proposed exclusion. FDA has tentatively concluded that such records are not needed in order to address credible threats of serious adverse health consequences or death to humans or animals. FDA believes it is necessary to narrow this exemption only to those retail facilities that remain close to the source farm in order to not compromise FDA's ability to trace adulterated food that has been transported over a distance greater than the same general physical location. The agency solicits comments on this proposed exemption.

FDA also is proposing in § 1.327(e) to exempt from all of the regulations in this subpart persons who manufacture, process, pack, transport, distribute, receive, hold, or import food that is regulated exclusively by the U.S. Department of Agriculture (USDA) under the Federal Meat Inspection Act (21 U.S.C. 601 *et seq.*), the Poultry Products Inspection Act (21 U.S.C. 451 *et seq.*), or the Egg Products Inspection Act (21 U.S.C. 1031 *et seq.*). This section complies with section 306(d)(2) of the Bioterrorism Act, which states that section 306 should not be construed to authorize FDA to promulgate regulations for records governing foods within the exclusive jurisdiction of USDA. It also complies with section 315 of the Bioterrorism Act, which states that nothing in Title III of the Bioterrorism Act, or an amendment made by Title III, shall be construed to alter the jurisdiction between USDA and the U.S. Department of Health and Human Services under applicable statutes and regulations.

This exemption is for food within the exclusive jurisdiction of the USDA. Persons who manufacture, process, pack, transport, distribute, receive, hold, or import food that is jointly regulated by FDA and USDA would be required to keep records with regard to the food regulated by FDA. An example of food that is jointly regulated by FDA and USDA is frozen T.V. dinners containing both meat and fish.

Proposed § 1.327(f) would exclude foreign facilities that are also excluded from the requirement to register under section 305 of the Bioterrorism Act. As discussed previously in this document, FDA believes that requiring foreign facilities that must register to also establish and maintain records would be the most efficient and effective way to obtain information on food from foreign countries. Therefore, foreign facilities would not be required to establish and maintain records "if food from these facilities undergoes further manufacturing/processing (including packaging) by another foreign facility outside the United States." In other words, foreign facilities involved in the initial stages of manufacturing/processing food are not required to establish and maintain records if another facility further manufactures/processes or packs the food produced at that facility outside the United States.

This exclusion would not apply to facilities if the "further manufacturing/processing" at the subsequent facility is of a de minimis nature, such as adding labeling to a package or adding plastic rings to the outside of beverage bottles to hold them together. In that case, both the facility conducting the de minimis activity and the facility immediately prior to it would be required to register and, therefore, would also be subject to these regulations. FDA seeks comment on the requirement for facilities conducting de minimis activities to keep records. The following are examples of which foreign facilities would be subject to, or excluded from, these regulations based on the activities they perform. As stated previously, the foreign facilities that are subject to these regulations are the same facilities that would be required to register under section 305 of the Bioterrorism Act.

- A foreign facility would be subject to these regulations if it prepares a finished food and places it into packages suitable for sale and distribution in the United States.
- A foreign facility distributing food to food processors outside the United States for further manufacturing/processing before the food is exported for consumption in the United States would not be subject to these regulations, unless the further manufacturing/processing entails adding labeling or other de minimis activity. If the further manufacturing/processing is of a de minimis nature, both the facility conducting the de minimis activity and the facility immediately prior to it would be subject to these regulations.
- The last foreign facility that manufactures/processes an article of food before it is exported to the United States would be subject to these regulations, even if the food subsequently is held or stored at a different facility outside of the United States.
- Facilities located outside the United States that take possession, custody, or control of finished foods for holding, packing, and/or storage prior to export to the United States are subject to these regulations.

Proposed § 1.327(g) provides that persons who manufacture, process, pack, transport, distribute, receive, hold, or import pet food who are not subject to the recordkeeping provisions of the animal proteins prohibited in ruminant feed regulation (21 CFR 589.2000) would be excluded from the recordkeeping requirements of this proposed rule. However, these entities, like all entities involved in animal food, remain subject to the proposed records access and availability requirements in proposed § 1.361 and § 1.363.

3. What definitions apply to this subpart? (Proposed § 1.328)

Proposed § 1.328 states that the definitions of terms in section 201 of the act (21 U.S.C. 321) apply to such terms when used in this subpart. Section 201 of the act defines various terms that appear throughout the act, including "food" (see section 201(f) of the act). The definitions of such terms apply when we use those terms in these regulations. In addition, proposed § 1.328 defines specific additional terms used in the proposed rule.

Proposed § 1.328 defines "act" as the Federal Food, Drug, and Cosmetic Act.

FDA is proposing in § 1.328 to define "domestic person" consistent with the definition of "State" in section 201(a)(1) of the act. That is, FDA is proposing to define a domestic person as one that is located in any State or Territory of the United States, the District of Columbia, or the Commonwealth of Puerto Rico.

FDA is proposing in § 1.328 to define a "foreign facility" as a facility other than a domestic person that manufactures, processes, packs, or holds food for consumption in the United States.

Proposed § 1.328 defines "farm" as a facility in one general physical location devoted to the growing of crops for food, the raising of animals for food (including seafood), or both. A farm may consist of contiguous parcels of land, ponds located on contiguous parcels of land, or, in the case of netted or penned areas located in large bodies of water, contiguous nets or pens. The term "farm" includes: (a) Facilities that pack or hold food, provided that all food used in such activities is grown or raised on that farm or is consumed on that farm; and (b) facilities that manufacture/process food, provided that all food used in such activities is consumed on that farm or another farm under the same ownership. "Farm" includes such facilities because they are activities incidental to farming that most farms engage in (e.g., holding and packing of harvested crops). Facilities that engage in manufacturing/processing, packing, or holding of food that is not described in the definition of "farm" are subject to these regulations because such activities are not activities that most farms engage in and are thus not included in the definition of "farm." Some examples of farms include: Apple orchards, hog farms, dairy farms, feedlots, and aquaculture facilities.

Persons that engage in more than one type of activity may meet the definition of farm as to some of those activities while not meeting the definition of farm as to other activities. Persons that grow crops and raise animals and also manufacture/process food that is sold for consumption off the premises are not farms for purposes of this subpart and are not exempt. For example, a person who grows oranges and manufactures/processes them into orange juice for sale to a distributor would need to keep records under this subpart of both the immediate previous sources and the immediate subsequent recipients of the orange juice. However, establishing and maintaining records of the immediate previous sources would only be required when persons manufacture/process food from ingredients obtained from other sources than that farm.

Similarly, persons who manufacture/process food from ingredients obtained from other sources only meet the definition of farm if all the food used in such activities is consumed on that farm or another farm under the same ownership. If a person combines oranges grown on his farm with oranges obtained from another source, processes them into orange juice on his premises, and consumes all of the orange juice on those premises, he would not need to keep records regarding those oranges. However, if the person sells that orange juice at a roadside stand directly to consumers, that roadside stand would not meet the definition of farm but would fall within the partial retail exclusion provided in proposed § 1.344. Retailers need only keep records identifying the immediate previous source.

Proposed § 1.328 defines "food" as having the meaning given in section 201(f) of the act, which is: "(1) articles used for food or drink for man or other animals, (2) chewing gum, and (3) articles used for components of any such article." FDA also is proposing to include some examples of products that are considered food under section 201(f) of the act. Examples listed in the proposed rule include: Fruits; vegetables; fish; dairy products; eggs; raw agricultural commodities for use as food or components of food; animal feed, including pet food; food and feed ingredients and additives, including substances that migrate into food from food packaging and other articles that contact food; dietary supplements and dietary ingredients; infant formula; beverages, including alcoholic beverages and bottled water; live food animals (such as hogs and elk); bakery goods;

snack foods; candy; and canned foods. "Substances that migrate into food from food packaging" include immediate food packaging or components of immediate food packaging that are intended for food use. Outer food packaging is not considered a substance that migrates into food.

The provisions of this proposed rule apply to records of both nontransporters and transporters. Section 414(b) of the act provides that FDA may require recordkeeping with regard to records that are needed for inspection to allow the agency to identify the immediate previous sources and the immediate subsequent recipients of food. The proposed rule establishes two sets of immediate previous sources and immediate subsequent recipients, one for nontransporters and one for transporters. For nontransporters, the proposed rule defines immediate previous source as the nontransporter from which the company received the food. The immediate subsequent recipient for nontransporters is the nontransporter to which the company sent the food. The definition of nontransporter immediate previous source and immediate subsequent recipient describes them as persons who own food or who hold, process, pack, import, receive, or distribute food for purposes other than transportation. Nontransporters are also expected to keep records of the transporters that they receive food from and send food with. Nontransporters will thus be required to keep records on both transporters and nontransporters for both previous sources and subsequent recipients.

With respect to transporters (persons who have possession, custody, or control of food for the sole purpose of transporting it), the proposed rule provides for the company to establish and maintain records about its own transportation activities and the person from whom it received the food and the person to whom the food is delivered. The person from whom the food is received by the transporter is the immediate previous source. This could be a nontransporter as described previously or another transporter. The person to whom the food is delivered by the transporter is the immediate subsequent recipient. This person could be another transporter or a nontransporter. These records allow FDA to follow the chain of custody of the food through each transportation step, which may include a variety of forms of transportation (e.g., plane, train, and truck).

Because it is critically important for FDA to have the ability to trace back and trace forward quickly in the event of a terrorist event or other food-related emergency, FDA has defined for nontransporters the immediate previous source and immediate subsequent recipient as the previous nontransporter or next nontransporter. This will allow FDA in most cases to efficiently and effectively determine where the food was contaminated and to locate where the contaminated food was sent. However, the contamination could occur during the transportation process as well. The records of transporters will ensure that FDA has the potential in all cases to determine the source of contamination and trace the food back and forward through the transportation chain. FDA recognizes that requiring nontransporters to keep records on both previous and subsequent transporters and nontransporters is potentially burdensome. FDA is mandating this in order to facilitate the efficient investigation of food related emergencies (records on nontransporters) and to increase the likelihood of a successful traceback by ensuring all those who handle the food are examined (records on transporters).

We also recognize that there could be other interpretations of the statute. The statute could be read to provide that at every step of the movement of the food, the immediate previous source is the person who had the food before they delivered it to the next person. That next person would be the immediate subsequent recipient. Under that reading, if company A processes the food and sends it to company B via several modes of transportation, the chain of custody would be as follows: (1) Company A; (2) Red Truck Co.; (3) train; (4) Blue Truck Co.; and (5) company B. In this scenario, the immediate subsequent recipient for company A is Red Truck Co. The immediate previous source for Red Truck Co. is company A and the immediate subsequent recipient is the train. The immediate previous source for the train is Red Truck Co. and the immediate subsequent recipient is Blue Truck Co. The immediate previous source for Blue Truck Co. is the train and the immediate subsequent recipient is company B. If it is discovered at company B that the food is contaminated, since company B only has records to identify Blue Truck Co. as its immediate previous source, FDA would have to trace back from company B to Blue Truck Co. and from there to the train, then to Red Truck Co., until FDA finally arrives at company A, the source of the contamination. This type of tracing would not allow the agency to efficiently and effectively trace back from company B to company A or get to company A quickly to trace forward other food sent out by company A.

We are requesting comments on whether the approach with two sets of immediate previous sources and immediate subsequent recipients in this proposed rule is a reasonable interpretation of the statute. We also request comments on whether all transporters, including small independent transporters, have the capability to maintain records for the 1 and 2 year record retention periods. FDA also requests comment on the extent to which the recordkeeping burden on nontransporters (previous and subsequent transporters and nontransporters) creates new burdens for firms. We are also interested in suggestions for alternative recordkeeping arrangements that would allow for the complete and efficient investigation of food-related emergencies. In addition, we request comments on whether an approach different from the proposed rule that would require or create incentives for nontransporters to obtain and keep records on all the transporters that transport food between the nontransporters, by obtaining the records from the transporters, would be a reasonable interpretation of the statute.

Proposed § 1.328 defines "manufacturing/processing" as making food from one or more ingredients, or synthesizing, preparing, treating, modifying or manipulating food, including food crops or ingredients. Some examples of manufacturing/processing include, but are not limited to, cutting, peeling, trimming, washing, waxing, eviscerating, rendering, cooking, baking, freezing, cooling, pasteurizing, homogenizing, mixing, formulating, bottling, milling, grinding, extracting juice, distilling, labeling, or packaging. FDA is defining "manufacturing" and "processing" together because the meanings of the terms overlap. For example, combining two materials into a finished product, such as macaroni and cheese, could be considered "manufacturing," "processing," or both. Since both manufacturers and processors are subject to these regulations, FDA does not believe it is necessary to distinguish between manufacturing and processing in the proposed rule.

Proposed § 1.328 defines "nontransporter" as a person who owns food or who holds, processes, packs, imports, receives, or distributes food for purposes other than transportation.

Proposed § 1.328 defines the "nontransporter immediate previous source" as a nontransporter who last had an article of food before transferring it to another nontransporter. Nontransporter immediate previous source includes, but is not limited to, an individual, a partnership, a corporation, a cooperative, an association, or a government entity. Government entities include school systems, public hospitals, prisons, commissaries, etc.

Proposed § 1.328 defines "nontransporter immediate subsequent recipient" as a nontransporter who acquires an article of food from another nontransporter. Nontransporter immediate subsequent recipient also includes, but is not limited to, an individual, a partnership, a corporation, a cooperative, an association, or a government entity.

Proposed §§ 1.337(a)(1) and 1.345(a)(1) would require the name of the firm and responsible individual, address, phone number and, if available, the fax number and e-mail address of the nontransporter immediate previous source and nontransporter immediate subsequent recipient, respectively, whether domestic or foreign. We propose these requirements to mean the address and information of the specific location of where the statutorily covered activity occurred, and not that of a corporate headquarters at another location than where the activities took place. For example, a food product may be processed at a manufacturing plant, shipped to a packing facility, and then transported to a retail store all owned by the same corporation. The proposed requirements would apply to each individual location that received or released the food, even if each facility is owned by the same corporation. This would mean that firms would need to establish and maintain records accessible at each specific plant, packing facility, and retail store. FDA's intention is that these requirements identify the physical location of the food at each step of the way as it travels through the chain of distribution, from the farm or sea to the consumer. FDA requests information on whether this requirement to keep records on intra-corporate transfers will impose new burdens upon firms or whether firms keep these records currently.

Proposed § 1.328 defines "perishable food" as food that is not heat-treated, not frozen, and not otherwise preserved in a manner so as to prevent the quality of the food from being adversely affected if held longer than 7 days under normal shipping and storage conditions. The "perishable food" definition has been modeled after the current Regulatory Procedures Manual definition of "perishable commodity" for purposes of this proposal. Examples include, but are not limited to, fluid milk (but not ultrapasteurized), live fish, lobster, crab, other crustaceans, shellfish, fresh fruits and vegetables. The agency is seeking comment on whether we have best defined "perishable food" for purposes of these regulations.

In addition, FDA is defining "perishable foods" for the purposes of establishing a shorter record retention time for those foods as opposed to nonperishable foods. FDA seeks comments on the proposed definition of perishable foods and whether the agency should use that definition as the basis for establishing record retention times.

Proposed § 1.328 defines "pet food" as food for nonfood-producing animals. Nonfood-producing animals include household pets, such as dogs and cats, and also include other nonfood-producing animals such as horses and circus and zoo animals.

Section 306 of the Bioterrorism Act does not extend to recipes. Proposed § 1.328 defines "recipe" as the quantitative formula used in the manufacturing of the food product, but not the identity of the individual ingredients of the food. If finalized as proposed, FDA would have access to the records containing the ingredients used in a food product, but would not have access to the quantities of the ingredients used to make a product. The act currently requires manufacturers to disclose to the public the ingredients they use on the labels of their food products. It is critical to a tracing investigation that the ingredients and the sources of the ingredients are identified.

Proposed § 1.328 defines "restaurant" as a facility that prepares and sells food directly to consumers for immediate consumption. As with farms, persons who engage in more than one type of activity may meet the definition of restaurant as to some of those activities while not meeting the definition of restaurant as to other activities. Those persons would be required to keep records as to those activities covered by this subsection that do not meet the definition of restaurant.

Some examples of restaurants as defined in the proposed regulations include: Cafeterias, lunchrooms, cafes, bistros, fast food establishments, food stands, saloons, taverns, bars, lounges, catering facilities, hospital kitchens, day care kitchens, and nursing home kitchens.

Due to possible ambiguity in the term "catering facilities," FDA states in the proposed restaurant definition that facilities that provide food to interstate conveyances, such as airplanes, passenger trains, and cruise ships, rather than directly to consumers, are not restaurants. Facilities that provide food to interstate conveyances are not considered restaurants because they do not serve food directly to consumers for immediate consumption. For example, a facility that provides sandwiches to a passenger train for eventual sale to passengers would not be considered a restaurant. However, the snack bar on the train that sells the sandwiches to consumers would be considered a restaurant. FDA has historically inspected these facilities that provide food to interstate conveyances and considers them processors, rather than restaurants.

Because the proposed regulations also apply to persons who manufacture, process, pack, transport, distribute, receive, hold, or import food for animal consumption in the United States, by analogy, the term "restaurant" also includes pet shelters, kennels, and veterinary facilities in which food is provided to animals.

Proposed § 1.328 defines "retail facility" as a facility that sells food products directly to consumers only. The term includes, but is not limited to, grocery and convenience stores, vending machine locations, and commissaries. The limited exclusion from establishing and maintaining records of the immediate subsequent recipient applies only to food sold directly to consumers. A facility that sells food to wholesalers and/or other retailers, in addition to consumers, would have to keep records of the immediate subsequent recipients because wholesalers and retailers are not considered consumers for purposes of these proposed regulations.

Proposed § 1.328 defines "transporter" as a person who has possession, custody, or control of an article of food for the sole purpose of transporting the food. A person who owns food or who holds, processes, packs, imports, receives, or distributes food for purposes other than transportation is not a transporter.

Proposed § 1.328 defines "transporter's immediate previous source" as the person from whom a transporter receives food. This source can be either another transporter or a nontransporter. The transporter's immediate previous source includes, but is not limited to, an individual, a partnership, a corporation, a cooperative, an association, or a government entity.

Proposed § 1.328 defines "transporter's immediate subsequent recipient" as the person to whom a transporter delivered food. This recipient can be either another transporter or a nontransporter. A transporter's immediate subsequent recipient includes, but is not limited to, an individual, a partnership, a corporation, a cooperative, an association, or a government entity.

Proposed § 1.328 defines "you" as a person or facility subject to this subpart under § 1.326. FDA is proposing to use "you" throughout the proposed rule for easier readability.

4. Do other statutory provisions and regulations apply? (Proposed § 1.329)

Proposed § 1.329 would require that in addition to the regulations in this subpart, you must comply with all other applicable statutory provisions and regulations related to the establishment and maintenance of records for foods. Regulations in this subpart are in addition to existing recordkeeping regulations, such as the regulations for low acid canned foods, juice, infant formula, color additives, bottled water, animal feed, and medicated animal feed. (See 21 CFR 113.100(d); 21 CFR 120.12; 21 CFR 106.100(g); 21 CFR 80.39; 21 CFR 129.35; § 589.2000; and 21 CFR 225.102 & 225.110, respectively).

5. Can existing records satisfy the requirements of this subpart? (Proposed § 1.330)

Proposed § 1.330 states that the regulations in this subpart do not require duplication of existing records if those records contain all of the information required by this subpart. If a person subject to the regulations keeps records of all of the information as required by this subpart in compliance with other Federal, State, or local regulations, or for any other reason, e.g., as a result of its own business practices, then those records may be used to meet these requirements. Such records may include, but are not limited to, purchase orders, bills of lading, invoices and shipping documents. Some current FDA regulations require records, including those for low acid canned foods, juice, infant formula, color additives, bottled water, animal feed, and medicated animal feed. (See 21 CFR 113.100(d); 21 CFR 120.12; 21 CFR 106.100(g); 21 CFR 80.39; 21 CFR 129.35; 21 CFR 589.2000; and 21 CFR 225.102 & 225.110, respectively). However, none of the existing FDA regulations are sufficient alone to meet the requirements we are proposing in these regulations. A person who has been complying with these regulations only would have to add records addressing the new elements. The burden is on the person subject to these regulations to ensure it keeps all applicable records. Our intent is to have as little impact as possible on current recordkeeping practices if those records can meet the requirements of these proposed regulations. We are proposing the specific information a covered person must keep, but we will not specify the form or type of system in which those records must be maintained.

B. Establishment and Maintenance of Records to Identify the Nontransporter and Transporter Immediate Previous Source of All Food

What information is required in the records established and maintained to identify the nontransporter and transporter immediate previous source? (Proposed § 1.337)

The Bioterrorism Act authorizes FDA to require by regulation the establishment and maintenance of records "needed" by the Secretary for inspection to allow the Secretary to "identify" the immediate previous sources of food. Based on FDA's interpretation of this statutory authority and what is "needed" to "identify" the immediate previous source, proposed § 1.337(a) would require that you establish and maintain records for all food as follows:

- Proposed § 1.337(a)(1) would require the name of the firm and responsible individual, address, phone number and, if available, the fax number and e-mail address of the nontransporter immediate previous source, whether domestic or foreign;
- Proposed § 1.337(a)(2) would require an adequate description of the type of food received, to include brand name and specific variety (e.g., brand x cheddar cheese, not just cheese; or romaine lettuce, not just lettuce);
- Proposed § 1.337(a)(3) would require the date you received the food;
- Proposed § 1.337(a)(4) would require the lot or code number or other identifier of the food (to the extent this information exists);
- Proposed § 1.337(a)(5) would require the quantity and how the food is packaged (e.g., 6 ct. bunches, 25 lb carton, 12 oz bottle); and
- Proposed § 1.337(a)(6) would require the name of the firm and responsible individual, address, phone number and, if available, the fax number and e-mail address of the transporters who transported the food to you.

Proposed § 1.337(a) would require that you include information reasonably available to you to identify the specific source of each ingredient that was used to make every lot of finished product, so that incoming ingredients can be linked to the outgoing finished products. If FDA cannot immediately narrow the trace back to a specific source, tracing becomes much more difficult, there is an increased risk to consumers, and some food sources are unfairly implicated. FDA believes this is a necessary and beneficial requirement for consumers, and will help conserve FDA's limited resources, by focusing our investigation only on those entities who handled the at-risk food. FDA's investigation of the unaffected sources is time consuming and may have a negative business impact on the incorrectly implicated sources. These sources should not be penalized by exposure to unwarranted scrutiny and perhaps unwarranted adverse publicity because of inadequate recordkeeping by others in the distribution chain. In addition, in a recall situation, a business could limit the economic impact by being able to limit its recall to only a specific group of products instead of having to conduct a broader recall. What is reasonably available may vary from case to case.

FDA recognizes that the food industry often relies on multiple sources of ingredients to make food products, and that it is common practice to commingle ingredients from different sources prior to incorporating them into a finished product. For example, some food processors commonly store raw materials like corn syrup and flour in tanks and silos. In some instances, these tanks and silos are not dedicated by suppliers, but are topped off as supplies run low, resulting in routine commingling of raw ingredients from a number of suppliers. Moreover, it is FDA's understanding that flour or grain silo crowns do not uniformly dissipate, resulting in uneven distribution of ingredients. FDA acknowledges that changing this longstanding system to require dedicated supplier storage to facilitate source specific recordkeeping would involve significant financial costs.

It is not FDA's intent to require the reconfiguration of each manufacturing plant. These proposed regulations, however, would require you to capture the information that is reasonably available to you to connect finished products with the immediate previous source of each of the food products used to make that finished product. FDA understands that in some multiple sourcing contexts this information only may allow for a reduction in the number of potential sources for a specific food product, but may not necessarily identify one specific source of the food product.

For example, a company that bakes cookies may source flour from five different companies rather than depend on a single company as its supplier. The flour from the five companies may be stored in one common silo prior to being used in the manufacture of the cookies. In this scenario, the manufacturer could identify, depending on the date the flour was received from each company and placed in the silo and when the silo was emptied, the various companies that were the sources of the flour. Under this situation, the information is not reasonably available to determine a single source of the flour used in a particular lot of cookies. In this case, the information reasonably available to you would be the identity of all of the potential sources of the flour for each finished lot of cookies.

Conversely, if the manufacturer did have dedicated silos for each supplier of flour, then the information would be reasonably available to the manufacturer to specify the specific source of the flour for each finished product.

Proposed § 1.337(a)(4) would require maintenance of the lot or code number or other identifier of the food (to the extent this information exists) to allow FDA the capability to limit its investigation to the implicated food. For instance, if a company repeatedly and consistently orders a particular food from a supplier, and the threat is associated with a single shipment or some shipments but not others, it is important to have the capability to isolate the shipment or shipments in question from others. This would be more cost effective and less burdensome to FDA. In addition, if the threat affects the transporter, identifying information such as lot numbers or other identifiers would facilitate the location and isolation of the conveyance that may have become contaminated by the implicated food. This cannot readily be done without information that specifically identifies the food.

Proposed § 1.337(a)(5) would require you to record the quantity of the food and how it is packaged to assist FDA in identifying the implicated food and also allow FDA to determine the scope of the threat. With this information contained in the records, FDA would be able to determine the quantity of the potentially adulterated food that is in the stream of commerce, i.e., whether it is one crate or 1,000 crates of tomatoes. In addition, as part of a tracing investigation, FDA would be able to identify at each location whether all of the potentially adulterated food has been accounted for or whether any part of a shipment had been diverted. Both the immediate previous source and immediate subsequent recipient would be required to keep records of the quantity of food received or released to allow FDA to determine that the quantity of food sent was the quantity received. This would ensure that FDA is best able to protect public health by being able to identify and locate adulterated food that presents a threat of serious adverse health consequences or death to humans or animals.

Proposed § 1.337(a)(6) would require you to keep in your records information to identify the transporter who transported the food to you. This requirement to identify the transporter is in addition to proposed § 1.337(a)(1), which requires you to keep in your records information that identifies the nontransporter immediate previous source.

C. Establishment and Maintenance of Records to Identify the Nontransporter and Transporter Immediate Subsequent Recipient of All Food

What information is required in the records established and maintained to identify the nontransporter and transporter immediate subsequent recipient? (Proposed § 1.345)

The Bioterrorism Act authorizes FDA to require by regulation the establishment and maintenance of records "needed" by the Secretary for inspection to allow the Secretary to "identify" the immediate subsequent recipient of food. Based on FDA's interpretation of this statutory authority and what is "needed" to "identify" the immediate subsequent recipient, proposed § 1.345(a) would require that you establish and maintain records for all food you release that identifies information that is substantially similar to that discussed in the requirements to identify the nontransporter immediate previous source.

D. Requirements to Establish and Maintain Records to Trace the Transportation of All Food

1. Who is required to establish and maintain records for tracing the transportation of all food? (Proposed § 1.351)

The Bioterrorism Act expressly states persons who transport food are subject to these regulations. Proposed § 1.351 would require you, if you are a domestic person, to establish and maintain records for tracing those immediately before (transporter's immediate previous source) and immediately after you (transporter's immediate subsequent recipient) in the transportation process if you transport food.

2. What information is required in the transportation records? (Proposed § 1.352)

Proposed § 1.352(a) would require that you establish and maintain the following records for each food you transport:

- Proposed § 1.352(a)(1) would require the name of the firm and responsible individual, address, phone number and, if available, the fax number and e-mail address of the person who had possession, custody, or control of the food immediately before you, and the date you received it from that person;
- Proposed § 1.352(a)(2) would require the name of the firm and responsible individual, address, phone number and, if available, the fax number and e-mail address of the person who had possession, custody, or control of the food immediately after you, and the date you delivered it to that person;
- Proposed § 1.352(a)(3) would require an adequate description of the type of food, including brand name and specific variety (e.g., brand x cheddar cheese, not just cheese; or romaine lettuce, not just lettuce);
- Proposed § 1.352(a)(4) would require the lot or code number or other identifier of the food (to the extent this information exists);
- Proposed § 1.352(a)(5) would require the quantity and how the food is packaged (e.g., 6 ct. bunches, 25 lb carton, 12 oz bottle); and
- Proposed § 1.352(a)(6) would require the identification of each and every mode of transportation (e.g., company truck, private carrier, rail, air, etc.), and the individual responsible, from the time you first received the food until the time you delivered it.

The proposed requirements are intended to provide the necessary information to allow FDA to trace the transportation of all food. In proposed § 1.352(a)(1) and (a)(2), the required information would consist of whoever had the food before you and after you. This person could be either a nontransporter or another transporter. In a multiple transporter situation, you may be receiving the food from another transporter and/or delivering it to another transporter. The proposed requirements in § 1.352(a)(1) and (a)(2) are intended to capture this information regardless of whether you receive food from a nontransporter or another transporter, or deliver it to a nontransporter or another transporter. You would only be responsible for maintaining a record of the required information with respect to the person

from whom you received the food from and the person to whom you gave it. You would not be required to maintain records of transactions to which you were not a party.

Proposed § 1.352(a)(6) would require transportation companies that use several modes of transportation within their company to record when the food was put on which kind of vehicle and who was responsible for it during that leg of the trip. For example, Yellow Transportation Co. may use two different Yellow trucks and a Yellow plane. This section would require Yellow Transportation Co. to keep records of each and every mode of transportation and the individual responsible, from the time the food was first received until the time it was delivered. The "individual responsible" should be the person within the transportation company who is responsible for that vehicle and the food being transported. FDA seeks comments on whether "individual responsible" should be the operator of the conveyance or whether it can be someone within the corporation who has overall responsibility for the vehicle and the food being transported. FDA understands that it is common practice for one transportation company to use several different modes of transportation within that company throughout its possession and control over the food. The food is potentially subject to tampering at each phase of the transportation process. If the transportation company responsible for the food does not have complete records identifying the mode of transportation and who was responsible for the food throughout the entire time that company had possession and control over the food, the tracing chain is broken and it becomes more difficult and time consuming to determine if that shipment of food has been diverted or tampered with. FDA believes this detailed information regarding the food transportation would be necessary to expedite the tracing investigation in situations when FDA has a reasonable belief that food is adulterated and presents a threat of serious adverse health consequences or death to humans or animals.

E. General Requirements

1. What are the record retention requirements? (Proposed § 1.360)

Proposed § 1.360(a) states the records required by these regulations are to be created at the time the statutorily covered activities take place. Proposed § 1.360(b) would require records for perishable foods not intended to be processed into nonperishable foods to be retained for 1 year after the date the records were created. Although perishable foods have a relatively short shelf life, FDA is proposing a 1 year record retention period for these foods. In some situations, the health hazard may not be immediately apparent but may emerge months after the food has been consumed. In other situations, the harm may have been caused by novel contaminants or novel vehicles for known contaminants, and it may take months to identify the sources of contamination. As an example, in 1995, there was an investigation of an outbreak of cyclosporiasis. At the time, FDA did not know that Cyclospora could contaminate raspberries. An investigation concluded that water was the likely vehicle. In 1996, there were numerous additional cyclosporiasis outbreaks in the United States and the link was made to raspberries from Guatemala. Fresh raspberries had been served at the site of the 1995 outbreak and then, a year later, FDA needed to determine their source. The distributor had no records to facilitate the traceback.

The proposed 1-year period would not apply to perishable foods that are intended for processing into nonperishable foods, e.g., jams and jellies made from fruits. In those instances, the longer record retention period of 2 years is needed to ensure the recordkeeping chain for finished food products made using perishable foods is available during tracing investigations. If you are uncertain whether a perishable food is destined or intended for processing into a nonperishable food, the 2-year record retention period applies. FDA seeks comment on the impact of this provision.

Proposed § 1.360(c) would require that you retain records for all foods (except animal foods as discussed below) not covered by proposed § 1.360(b) for 2 years after the date the records were created. This proposed requirement is consistent with the authority given in the Bioterrorism Act. Based on information provided to FDA by the food industry, the minimum time for processed food products to clear the food production and distribution/retail system is 3 years. In addition, the average distribution time between harvesting and final retail sale of frozen fruits and vegetables is approximately 3 to 24 months. These are average times, and individual products may be in commerce for a longer period. FDA believes that allowing anything less than a 2-year record retention period for nonperishable food, as well as perishable foods intended to be processed into nonperishable food, would severely compromise a tracing investigation.

Proposed § 1.360(d) would require that you retain records required by these regulations for animal food, including pet food, for 1 year after the date the records are created. Food for food-producing animals tends to have a faster turnover rate than many kinds of human food. In addition, since pet foods are typically the sole source of food for pets, such foods tend not to be stored as long as many human foods. Therefore we propose that records for all animal food, including pet food, be retained for only one year after the date the records are created. This is consistent with the BSE rule.

Proposed § 1.360(e) would require that you retain all records required by these regulations at the establishment where the covered activities described in the records occurred (onsite) or at a reasonably accessible location. We recognize that there may be more records than available storage space at the location where the covered activities occur. We are therefore proposing that records may be stored offsite, provided you can comply with the record availability requirements in proposed § 1.361.

Proposed § 1.360(f) provides that the maintenance of electronic records is acceptable. In the **Federal Register** of March 20, 1997 (62 FR 13430), FDA issued regulations at part 11 that provide criteria for acceptance by FDA of electronic records under certain circumstances. To minimize the burden of this proposed rule, FDA proposes to exempt electronic records established or maintained to satisfy the requirements of this subpart from the requirement to comply with part 11. FDA believes that a requirement that records kept under this subpart comply with part 11 would hinder the ability of persons subject to these regulations to utilize existing systems and records to satisfy the requirements of these proposed regulations as contemplated in proposed § 1.330. If the agency decided to require all electronic records to satisfy part 11 before they could satisfy these proposed recordkeeping requirements, large numbers of already existing electronic records and recordkeeping systems would have to be recreated and redesigned. This provision would require that records kept for some other statutory or regulatory purpose, but which also may be used to meet the requirements of this subpart, must comply with part 11 as required.

2. What are the record availability requirements? (Proposed § 1.361)

Proposed § 1.361 states that when FDA has a reasonable belief that an article of food is adulterated and presents a threat of serious adverse health consequences or death to humans or animals, any records or other information accessible to FDA under section 414 or 704(a) of the act must be readily available for inspection and photocopying or other means of reproduction. Although the statutory requirements in section 414 and amended section 704(a) of the act regarding records access are self-executing and are currently in effect, FDA is issuing regulations to further refine some aspects of the food records access requirements. Because section 306 of the Bioterrorism Act includes two records inspection authorities, one of which, section 704(a), cross refers to records described in section 414, we request comment on the interconnection between the records access provisions in sections 414 and 704(a) of the act.

Proposed § 1.361 would require records to be made available within 4 hours of a request if the request is made between 8 a.m. and 6 p.m. (local standard time), Monday through Friday, or within 8 hours of a request if made at any other time, by an officer or employee duly designated by the Secretary who presents appropriate credentials and a written notice. In the event of a threat of serious adverse health consequences or death to humans or animals, FDA believes these time limits are necessary to effectively and efficiently perform a tracing investigation.

The most common problem encountered by the FDA in a tracing investigation has been a lack of ready access to records. Records are often stored offsite or are stored in a database where the records are difficult to retrieve. In FDA's experience, rarely do firms make records available within 24 hours. The usual timeline is 2 to 3 days. This delay severely reduces the speed at which FDA can perform a traceback. If every firm were to take 2 days to give FDA the needed records, even with a short traceback (e.g., 3 firms), it could take FDA up to 2 weeks to trace the product to its source, taking into account time for record review and travel to the firms. This time may be increased if the records are incomplete and FDA has to wait for missing records to be retrieved. This possible delay would be a substantial concern if FDA were attempting to remove adulterated food that presents a threat of serious adverse health consequences or death to humans or animals from commerce.

Proposed § 1.361 would also require that if you store the records required by these regulations offsite, you must be able to retrieve and provide the records onsite within the specified time period. Electronic records are considered to be onsite if they are accessible from an onsite location.

3. What records are excluded from this subpart? (Proposed § 1.362)

Proposed § 1.362 would exclude from the proposed regulations recipes for food as defined in proposed § 1.328, financial data, pricing data, personnel data, research data, or sales data (other than shipment data regarding sales). These exclusions are consistent with the express language in the Bioterrorism Act.

4. What are the consequences of failing to establish or maintain records or make them available to FDA? (Proposed § 1.363)

Consistent with the express language in the Bioterrorism Act, proposed § 1.363 states (a) the failure to establish or maintain records as required under section 414(b) of the act or to refuse to permit access to or verification or copying of any such required record is a prohibited act under section 301 of the act (21 U.S.C. 331) and (b) the failure to make records or other information available to FDA as required by section 414 or 704(a) of the act is a prohibited act under section 301 of the act (21 U.S.C. 331).

5. What are the compliance dates for this subpart? (Proposed 1.368)

Under sections 414 and 704(a) of the act, FDA may have access to and copy all records and other information related to an article of food if the Secretary has a reasonable belief that the food is adulterated and presents a threat of serious adverse health consequences or death to humans or animals. The basic requirement that access to records and other information be given under these circumstances is currently in effect and does not require implementing regulations. FDA has chosen to further define access requirements in regulations, but can use its inspectional authority prior to the effective date of these regulations.

FDA carefully considered the size of a business when developing these proposed regulations. FDA found that most products and ingredients pass through at least one small business when moving through the distribution process (see Initial Regulatory Flexibility Analysis discussion in section III.B. of this document). If FDA were to exempt small businesses from these regulations or to permit shorter record retention times for them, the effectiveness of the regulations would be severely compromised due to the breaks in the recordkeeping chain during tracing investigations. Thus, FDA cannot propose totally exempting any business based on size from these requirements. However, FDA does propose to provide small and very small businesses additional time to come into compliance with these regulations.

Thus, proposed § 1.368(a) would require that firms that do not qualify as small businesses be in full compliance with these regulations within 6 months after the publishing date of the final rule. Proposed § 1.368(a)(1) would require that small businesses employing fewer than 500 but more than 10 full-time equivalent employees be in full compliance with these regulations within 12 months after the publishing date of the final rule. Proposed § 1.368(a)(2) would require that very small businesses, defined as those employing 10 or fewer full-time equivalent employees, be in full compliance with these regulations within 18 months after the publishing date of the final rule.

III. Analysis of Economic Impact

A. Benefit-Cost Analysis

FDA has examined the economic implications of this proposed rule as required by Executive Order 12866. Executive Order 12866 directs agencies to assess all costs and benefits of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity). Executive Order 12866 classifies a rule as significant if it meets any one of a number of specified conditions, including: Having an annual effect on the economy of $100 million, adversely affecting a sector of the economy in a material way, adversely affecting competition, or adversely affecting jobs. A regulation is also considered a significant regulatory action if it raises novel legal or policy issues. FDA has determined that this proposed rule is a significant regulatory action as defined by Executive Order 12866.

Need for the regulations: The purpose of these proposed regulations is to enable FDA to respond to, and help contain, adulterated food that presents a threat of serious adverse health consequences or death to humans or

animals. The benefits of these proposed regulations would be realized by accomplishing this purpose.

Reason for the regulations: FDA is proposing several regulations that will work in harmony to improve food safety. Food safety is mostly a private good. Establishments have powerful incentives to ensure that the ingredients they purchase are not contaminated and that their production processes are protected from unintentional and intentional contamination. Deliberate (intentional) contamination of food linked to a particular product or plant—particularly if the plant is considered negligent—would be extraordinarily costly to a firm. Indeed, the private incentives to avoid deliberate contamination should be similar to the private incentives for food safety. Deliberate food contamination events nonetheless differ from ordinary outbreaks of food-borne illness in that they are more likely to be low probability events with severe public health consequences.

Although private incentives lead to the private efforts to protect against deliberate contamination at the plant level, there are external effects associated with privately produced protection. The most important external effect of protection against deliberate contamination is information. Getting food from the farm or sea to the plate involves a complex system of production and distribution. The system works using local knowledge and information; each participant needs to know only as much about the overall system as is necessary for his or her business. Market prices convey most of the information necessary for the ordinary production and distribution of food. In the event of an actual or suspected contamination of the food supply, however, more complete information is needed where it can be centrally used. The suspect food must be traced backward and forward through the distribution chain, both to protect consumers and to find the source and cause of the event.

No individual firm or organization has sufficient financial incentive to establish a central information system relating to food safety for the entire economy. The nation's food producers and importers as a whole would benefit from such a system because it would be easier to uncover and solve problems, but the private costs to create the system would probably be prohibitive for any single firm or third party organization.

We estimate that an effective system of information would require several hundred thousand participants to gather information and provide it to a central system. The private transaction costs to bring all the participants together voluntarily and get them to agree to create such a system would be extraordinarily high. No single organization could capture additional revenue sufficient to cover the cost. Also, because the provision of information by some participants makes it available for all, there would be a tendency for establishments to try to be free riders in the information system. But the more information and participation in the system, the more effective it is.

Another way of looking at the problem of participation is in terms of marginal private benefits and marginal social benefits. By gathering and providing the information used in a food safety system, an individual establishment receives additional private benefits from enhancing the safety of its own food. In addition, participating in the system increases the effectiveness of the entire information system. In other words, the system works better the more establishments participate in it. The individual establishment does not capture this additional social benefit. The marginal private benefit (enhanced safety for individual establishments) is less than the marginal social benefit (the marginal private benefit plus the increased effectiveness of the entire information system). The difference between private and social benefit reduces the incentive for establishments to participate in a voluntary private system.

The events of September 11, 2001, led Congress to conclude that public creation and provision of an information system is necessary. The Bioterrorism Act and its implementing regulations would establish an information system that would allow FDA to have an integrated picture of the food distribution system. This particular regulation addresses one important aspect of this information system: The need to keep product and ingredient distribution records. However, as stated above, FDA is proposing several regulations to address these needs so the costs and benefits of any one regulation will be closely associated with related provisions in other proposed rules. With the regulations in place, the agency would have the additional tools necessary to help deter and respond to deliberate threats to the nation's food supply as well as to other food safety problems.

Baseline: FDA considers the baseline for this analysis the current state of the world, and we assume this baseline has zero costs and benefits. We also consider having no new recordkeeping requirements as option 1 in our analysis. Section 414(b) of the act, as added by section 306(a) of the Bioterrorism Act, provides that the Secretary "may" by regulation establish recordkeeping requirements. Section 306(d) of the Bioterrorism Act, however, provides that the Secretary "shall" issue proposed and final regulations no later than 18 months from the date of enactment. FDA believes that Congress has directed the agency to exercise the authority in section 414(b) of the act, so the current state of the world as considered in option 1 is not legally viable. The agency recognizes, however, that the use of the term "may" in one section of the statute and "shall" in another section creates an ambiguity. We request comments on our interpretation that we are required by section 306(d) of the Bioterrorism Act to exercise the authority in section 414(b) of the act. However, the Office of Management and Budget (OMB) cost-benefit analysis guidelines recommend discussing statutory requirements that affect the selection of regulatory approaches. These guidelines also recommend analyzing the opportunity costs of legal constraints that prevent the selection of the regulatory action that best satisfies the philosophy and principles of Executive Order 12866. Option 1 will serve as the baseline against which other options will be measured for assessing costs and benefits.

Options: The following section analyzes regulatory options that address the need for the recordkeeping regulation:

1. No recordkeeping requirements. Take no new regulatory action.
2. Require all persons that manufacture, process, pack, hold, receive, distribute, transport, or import food destined for consumption or use in the United States to establish and maintain records identifying the immediate previous source and the immediate subsequent recipient of the food, and its outer packaging. Also require all persons that manufacture, process, pack, hold, receive, distribute, transport, or import outer food packaging destined for use in the United States to establish and maintain records identifying the immediate previous source and the immediate subsequent recipient of that outer food packaging. The records requirements apply to both foreign and domestic persons. For domestic persons, this includes those who engage in the specified food-related activity whether or not those activities occur solely intrastate. Persons engaging in more than one type of activity, some of which is covered by this proposed regulation, would be required to keep records pertaining to the covered activity even if they are not required to keep records relating to exempt activity. Records must include information reasonably available to identify the specific source of each ingredient that was used to make every lot of finished product. Required times for record-retention would be 1 year for perishables destined for final consumption in their perishable state, and 2 years for all other foods or food packaging. Upon a written request, records must be made available to FDA in 4 hours, if the request is made during the normal business hours of 8 a.m. to 6 p.m., or 8 hours otherwise.
3. Require all elements of option 2, except exclude persons that manufacture, process, pack, hold, receive, distribute, transport, or import outer food packaging.
4. Require all components of option 3 but do not require persons that are required to establish and maintain records on food to establish and maintain records on the food's outer packaging.
5. Require all components of option 4, but change the required time for responding to an FDA records request to 24 hours.
6. Require all components of option 4, but exempt intrastate businesses.
7. Require all components of option 4, but exempt persons who operate farms, and persons who operate restaurants, who also perform a covered activity.
8. Require all components of option 4, but change the record retention requirement to 1 year for all products.
9. Require all components of option 4, but change the record retention requirement to 2 years for all products.
10. The proposed rule. Require all components of option 4, but only cover foreign facilities also covered by the proposed registration regulation published at 68 FR 5377 (February 3, 2003).
11. Require all components of option 4, but only cover foreign facilities that are the final holder of the product before export to the United States.
12. Require all components of option 4 but cover only domestic persons.
13. Require all components of option 4, but the required information would include the records necessary for facilities to be able to link specific raw ingredients to specific outgoing finished products for all raw ingredients and all products. This option is to analyze the costs and benefits of requiring records that link specific raw ingredients to specific finished products, including ingredients from different sources that are currently commingled before being incorporated into finished products.

In order to clearly identify the marginal cost of each provision specified in the codified, most options represent only one modification of a provision in another option. Option 4 is appropriate to use for comparison with the other options, since it differs by only one provision from almost all other options considered. As the Analysis of Economic Impact section will reflect, FDA has examined the economic implications of this proposed rule by analyzing several regulatory options that address the need for the recordkeeping regulation. FDA is proposing option 10. FDA believes that this option would require creation and maintenance of the records needed to address credible threats of serious adverse health consequences or death to humans or animals while providing adequate flexibility and minimizing industry burden. FDA requests comments on other viable options not considered by this analysis. Note that additional options designed to lower the regulatory burden on small businesses are considered in the initial regulatory flexibility analysis below.

Cost assumptions: The total cost of each of these options will depend on the number of facilities affected and the extra burden these options place on facilities. For all options, FDA would only specify the information a covered entity must keep, but not specify the form or type of system in which those records must be maintained; we expect that for all options, if possible, firms will choose to collect the additional information not currently included in their existing records. Furthermore, FDA assumes that firms will choose to comply with any new requirements by modifying shipping or purchase records such as Bills of Lading, Invoices, or Purchase Orders. In its cost computations, FDA does not take into account other Federal, State, or local regulations that require similar recordkeeping practices for small sectors of the food economy (e.g., "the BSE rule", § 589.2000) because of the relatively large amount of uncertainty in our knowledge of existing State and local recordkeeping requirements, and because the effect on the cost computations from their inclusion is likely to be very small. For this reason the analysis does not distinguish among entities that may be covered by the recordkeeping requirements in "the BSE rule" which may result in a small overstatement of the costs of the proposed rule. The following discussion of facility counts and per facility costs is not tied to any specific option, but describes the data and assumptions we use to analyze the cost of each option.

Number of facilities and number of firms affected: FDA assumes that for the options that do not consider exemptions, approximately 1,230,000 facilities owned by approximately 960,000 firms would be covered. This number includes domestic facilities that manufacture, process, transport, distribute, pack, receive, hold, or import food or food packaging, and foreign facilities performing any of these activities on food or food packaging destined for consumption or use in the United States. Table 1 contains a summary and breakdown of this estimate.

TABLE 1.—AFFECTED FACILITY AND FIRM DETAILS

Type	Facility Estimate	Facility to Firm Adjust. Factor	Firm Estimate	North American Industry Classification System (NAICS) Codes if Applicable
Domestic				
Manufacturers	43,376	1.17	36,948	3111–3119, 3121
Wholesalers/Warehouses	95,745	1.24	76,952	4224, 4225, 4228, 49312, 49313
Packaging[1]	73,813	1.07	69,256	32221, 32222, 326111, 326112, 326130, 326140, 326150, 326160, 3272, 331315, 331316, 332431, 332439, 42261, 323110, 323111, 323112, 323113, 323114, 323115

TABLE 1.—AFFECTED FACILITY AND FIRM DETAILS—Continued

Type	Facility Estimate	Facility to Firm Adjust. Factor	Firm Estimate	North American Industry Classification System (NAICS) Codes if Applicable
Transporters/Packers	16,773	1.11	15,171	481112, 481212, 483111, 483113, 483211, 4841, 48422, 48423, 488320, 488510, 488991
Retail Grocery and Specialty Food	207,657	1.35	153,277	44511, 445220, 445230, 44529, 445310, 446191,
Convenience Stores	128,985	1.87	68,856	44512, 447110
Mixed-Type Facilities that Have Farms	30,497	1.25	24,397	—
Importers	5,036–32,768	1.25	4,029–26,214	—
Total Domestic	601,883–629,615		448,905–471,090	
Foreign				
Final Holders	77,427	1.25	61,942	
Manufacturers	125,450	1.17	106,858	
Other Facility Types	457,836	1.25	366,269	—
Total Foreign	660,713		535,068	

[1] Includes both outer packaging and food contact substances.

Data sources for the number of facilities and firms affected: Except for the firm-to-facility adjustments explained below, the unit of observation for all data used for this analysis is the number of establishments performing a particular activity. To estimate the number of establishments, FDA uses several sources: The 2000 County Business Patterns (Ref. 1) and the 1999 Nonemployer Statistics from the U.S. Census Bureau (Ref. 2), the FDA Field Accomplishments and Compliance Tracking System (FACTS), the FDA Operational and Administrative System for Import Support (OASIS), and the 1997 National Agricultural Statistics Service (NASS) Survey (Ref. 3). All datasets used in this analysis were the latest available as of the time of writing.

The Census Bureau creates the 2000 County Business Patterns (CBP) by analyzing data from the Business Register, the Census Bureau's file of all known single and multiestablishment companies with at least one employee. Data for single-location firms are obtained from the Economic Censuses, the Annual Survey of Manufacturers, Current Business Surveys, and administrative records from the U.S. Internal Revenue Service, Social Security Administration, and the Bureau of Labor Statistics.

Facilities not included in the CBP are counted in the Nonemployer Statistics, also from the Census Bureau. Nonemployer businesses are companies with no paid employees. The Census Bureau primarily obtains data about nonemployer businesses from business income tax returns filed with the Internal Revenue Service.

The FDA FACTS tracking system is an online database designed to monitor compliance related information for each facility that is regulated by FDA. The database contains an updated list of regulated facilities. FACTS and the Census Bureau use different categories for facilities, making a direct comparison of FACTS with the CBP and Nonemployer Statistics difficult. In our estimates, FACTS facility counts are the primary source of data on importers and foreign facilities, and interstate manufacturers, wholesalers, and warehouses.

Manufacturing, warehouses, wholesalers, and packaging facilities: The primary source for the total (both intrastate and interstate) number of manufacturers, warehouses, wholesalers, and packaging facilities is the 2000 CBP and 1999 Nonemployer Statistics for the NAICS codes identified in table 1 of this document. The NAICS codes identify industry groups and subgroups. Often the data are more aggregated in the 1999 Nonemployer Statistics than in the CBP; when the nonemployer statistics only exist for an aggregated NAICS code, we adjust the total number of facilities identified in the aggregated nonemployer category by the ratio of CBP counts in the relevant subcategory and aggregated category. For example, the 1999 Nonemployer Statistics identified 4,700 facilities under code 4931, but does not break the total down further. Our adjustment changes the 4,700 facilities to 964 [4,700 x (1,461/7,123)] facilities in subcategories 49312 and 49313. The sum of the number of facilities under the codes 49312 and 49313 in the CBP is 1,461, and 7,123 is the number of facilities under the aggregated code 4931 in the CBP.

The term "packaging" described by the data used in this analysis varies from FDA's interpretation of "packaging" in section 306 of the Bioterrorism Act because it is broader and includes food contact substances, which fall within the act's definition of food. In this economic analysis, we use the term "manufacturer and distributor" of outer packaging to refer to all persons who manufacture, process, pack, hold, receive, distribute, transport, or import "packaging" as that term is used in the Bioterrorism Act. FDA was unable to find any data that discriminated between outer packaging manufacturers and distributors and those that manufacture or distribute materials that FDA currently regulates as food contact substances, including plastic beverage bottles and inner cereal box liners. The data used for the analyses include the number of manufacturers and distributors of the following types of packaging: Paperboard containers, paper bags and treated paper, plastic bags, bottles, laminated plastics and other plastic materials, polystyrene and urethane foam products, glass products, and metal and aluminum can, sheet, plate, and products. Furthermore, printing services and label producers are included such as lithographic, gravure, flexographic, screen, digital, and quick printing services.

Transporters and packers: Although the CBP and Nonemployer statistics distinguish passenger and nonpassenger transport, they do not separately identify establishments engaged in the transport of food. Based on a comment received through our preliminary outreach activities, FDA assumes that 20 percent of the specialized freight transport industry is engaged in food transport. FDA requests comments on this assumption. The largest category in transport and packing is trucking.

Mixed-type facilities that engage in farming: Firms engaged in covered activities would be required to keep records on these activities as discussed above, even if those firms were mixed-type facilities that engage in farming. Covered activities conducted on mixed-type facilities that engage in farming potentially comprise a large percentage of the activity conducted at these facilities. For example, manufacturing or processing for farms includes canning, freezing, cooking, pasteurization, homogenization, irradiation, milling, grinding, chopping, slicing, cutting, coloring, waxing, shelling of nuts, peeling, labeling, and packaging. Facilities with farms will be considered mixed-type facilities if they alter the general state of the commodity, use any ingredients obtained from another source, and then sell or transfer the product for final use offsite.

To estimate the number of mixed-type facilities that engage in farming that would be affected by this rule, FDA uses the 1997 USDA NASS Census of Agriculture and data obtained from various county level Cooperative Extension Service (CES) offices. The Census of Agriculture provides the total number of farms producing specific commodities. To estimate the number of farms that are part of mixed-type facilities, FDA used a sample of counties with information from their respective CES offices. CES offices from Clay County, Kansas; Monterey, Sonoma, Marin, and San Diego counties in California; Jackson County, Wisconsin; Gillespie and San Saba counties in Texas; Carol County, Maryland; and Berks County, Pennsylvania provide data on the percentage of farms producing specific commodities that could be considered mixed-type facilities (Ref. 4). Table 2 presents the estimated number of mixed-type facilities that engage in farming by type of farm. While some of the facilities described in table 2 may qualify as roadside stands for some of the products that are sold from these facilities (and would not be subject to recordkeeping requirements for those products), we were not able to distinguish between facilities that would qualify as roadside stands and mixed-type facilities that engage in farming. The numbers of mixed-type facilities that engage in farming listed in table 2 may be overstated to the extent that they qualify as roadside stands. The estimated total is 30,497. FDA requests comments on the methods used to estimate the numbers of mixed-type facilities that engage in farming and for identifying the number roadside stand facilities.

TABLE 2.—MIXED-TYPE FACILITIES THAT ENGAGE IN FARMING

Commodity	Total No. of Farms	Percent Mixed-Type	No. of Mixed-Type Facilities that Engage in Farming
Pig Farms (Feed Mixing)	46,353	1.5%	695
Cattle (Feed Mixing)	785,672	1%	7,857
Poultry (Feed Mixing)	36,944	1%	369
Other Animal Production (Feed Mixing)	110,580	1%	1,106
Dairy	86,022	1.1%	903
Grain, Rice, and Beans	462,877	1%	4,629
Apples	10,872	1.5%	163
Oranges	9,321	1.5%	140
Peaches	14,459	1.5%	217
Cherries	8,423	1.5%	126
Pears	8,062	1.5%	121
Other Fruit	29,413	1.5%	441
Nuts	14,500	2%	290
Berries	6,807	1.5%	102
Grapes	11,043	10.5%	1,160
Olives	1,363	3.5%	48
Vegetables and Melons	31,030	0.5%	155
Organic vegetables	6,206	50%	3,103

TABLE 2.—MIXED-TYPE FACILITIES THAT ENGAGE IN FARMING—Continued

Commodity	Total No. of Farms	Percent Mixed-Type	No. of Mixed-Type Facilities that Engage in Farming
Honey	7,688	50%	3,844
Syrup	4,850	100%	4,850
Herbs	1,776	10%	178
Total			30,497

Importers: FDA bases the number of importers on a database collected from shipment records that list all companies that were listed as importers or consignees for a covered product in 2001. These data were collected through FDA's OASIS system, which is an automated system for processing and making admissibility determinations for shipments of FDA-regulated products seeking to enter U.S. domestic commerce. Many of these facilities are of a type that would already be counted in the FDA FACTS or CBP (or nonemployer statistics) data. In order to avoid double counting, FDA assumes the following: (1) Any facility that identifies itself through its name as being a facility type covered by the CBP will already be counted in the CBP; (2) any facility that is a consignee only will already be counted in the CBP since its main business is not simply importing; (3) any facility self-identified as an importer only is not in the CBP; and (4) all other facilities will be considered in an uncertain range of facilities affectetl. Since it is uncertain whether these facilities would already be counted in the CBP, we will use a uniform distribution to assign a probability of double counting in all of our cost estimates. For example, if the uniform distribution generates a probability of 0.5, then we will assume that half of these unclassified facilities are already in the CBP. A uniform distribution implies that any probability from zero to 100 is equally likely. FDA requests comments on these assumptions.

Foreign establishments: FDA estimated the number of foreign manufacturing establishments that will be affected by the regulation from a count of foreign manufacturers identified in the OASIS system. We were unable to find reliable data on the number of foreign nonmanufacturing establishments and made the following assumptions to estimate their numbers: For the final holders of the article before the food or food packaging is imported into the United States, we assumed the same number of facilities as on the domestic side of the importation process, for a total of approximately 77,000 foreign final holders. For other firm types, we assumed that the ratio of foreign to domestic facilities of other types is approximately equal to the ratio of foreign to domestic manufacturers. We also assumed that the facility to firm ratio is the same for both foreign and domestic establishments. We request comments on the assumptions used to arrive at these estimates, as well as on reliable sources of data that would improve these estimates.

Firm adjustment: Even though recordkeeping requirements apply to each facility within a firm, some of the overall burden will be estimated at a firm level in order to better capture the true burden of the regulation. In order to estimate the number of firms affected, we used the 1999 Statistics of U.S. Businesses, also from the U.S. Census Bureau (Ref. 5). This dataset is based on the CBP and Nonemployer Statistics, but calculates both the number of establishments and the number of firms for each NAICS code. The Census Bureau has not updated this dataset for the latest 2000 CBP, so we use the 1999 ratio of establishments to firms to adjust the 2000 CBP and 1999 nonemployer establishment count numbers to firm numbers.

Costs per facility or per firm: Some costs of the regulatory options apply to firms, while other costs apply to individual facilities. FDA assumes that the costs to facilities are the same for transfers within firms as for transfers between firms. We request comments on this assumption. Costs fall into several broad categories:

Additional record information: Any possible new regulation may require more information on the input, output, or source ingredients than is kept in existing food facility records. A limited amount of new information could be accommodated by a simple redesign of existing records, whereas requiring more new information may require a completely new design and collection. The extreme version of this requirement is explored under option 13: requiring all raw ingredients to be connected through records to all final products would cause a substantial change in recordkeeping and other business practices for many commingled commodities.

Information Collection and Maintenance: The burden of maintaining extra information is a direct function of the amount of information required by this proposed regulation that is not normally collected by industry. This burden estimate will be substantially correlated with the redesign burden described previously.

Storage time: A longer storage time may place more of a burden on industry, but will also increase the probability of having records available should an outbreak occur. The major determinant of the impact on costs of storage time requirements is whether the proposed storage times will be longer than normal industry practices. FDA believes that the storage times proposed in option 2 are within normal industry practices. Requiring longer retention times than those proposed in option 2 for records on perishable foods might impose an additional burden. This issue is discussed in more detail below and in options 2, 8, and 9.

Records access time: As in storage time, the major determinant of the impact of any required response time for records access is what firms would reasonably be able to achieve in an emergency situation with current business practices.

Data sources and cost estimates common to options:

Labor costs: For all labor costs, FDA used a wage rate for an administrative worker of $25.10 from the Bureau of Labor Statistics occupational wage rates for the year 2000 (Ref. 6), doubled to include overhead costs. We assume that all labor for all options is by administrative workers. FDA lacks wage data specific to each of the foreign countries that export to the United States, so we used the wage rate for an administrative worker in the United States for the foreign wage rate. We assume that the nature of the worker and the worker's wage would be about the same in foreign countries as in the United States. In open markets where trade takes place, real wage rates tend to be equal for similar work and productivity across countries.

Learning costs: Foreign and domestic facilities will incur administrative costs in order to learn how to comply with any new regulation. Because most of the facilities covered by the proposed registration rule would be covered by this proposed rule, the administrative costs will be shared between the registration and recordkeeping rules. Those establishments covered by both regulations will probably search for information on both regulations at the same time and find information in the same places. Therefore, the learning cost estimates presented here probably overestimate the costs actually incurred by firms covered by both rules since there is the potential for double counting. The potential for double counting occurs in estimates of costs for firms covered by both rules. These include domestic manufacturers, wholesalers, warehouses, mixed-type facilities that engage in farming, foreign final holders, foreign manufacturers, and importers in any of these categories.

Facilities will become aware of these requirements through normal business activities: Reading trade press, reading industry news, FDA outreach, or conversation with other business operators. Because facility operators or owners must be aware of the requirement to change their activity, we assume that becoming aware of the regulations will occur as part of normal business practice and so have no economic costs for the facility. There may be costs incurred, however, by FDA or trade organizations to undertake the outreach.

Once the owner or operator of the facility becomes aware of the regulations, he or she will need to research the requirements of the regulation, which will require searching for a copy of the requirements and reading and understanding them. Owners or operators may search for a copy of these requirements on the Internet or at a library. FDA received comments indicating that many businesses might not have access to the Internet. Searching costs will be higher for facilities that do not have access to the Internet and have to write to FDA or find other sources of information. In the United States, 59.1 percent of the population accessed the Internet at least once in the 3 months prior to being surveyed (Ref. 7). A Small Business Administration (SBA) report cites two studies that report 40 and 47 percent of small businesses had Internet access in 1998 (Ref. 8). An updated report from Dunn and Bradstreet in 2002 reports that 71 percent of small businesses have Internet access (Ref. 9). Therefore, FDA assumes that 71 percent of domestic facilities will search for the requirements for both regulations electronically. FDA estimates it will take domestic facilities with Internet access 1 hour to search for the requirements, and domestic facilities without Internet access 2 hours to search for the requirements. FDA requests comments on these assumptions.

FDA expects foreign establishments to go through the same searching, reading, and comprehending steps as domestic establishments. Costs for searching, reading, and comprehending the regulation requirements will be higher for some foreign establishments than for domestic establishments due to distance and language differences. Costs for searching, reading, and comprehending for some foreign establishments may be so high that, rather than become informed about the requirements before shipping, they learn about the requirements after shipments to the United States have been made. Costs for searching, reading, and comprehending for foreign facilities will vary depending on: (1) Whether the worker researching the regulatory requirements or the person who manufactures, processes, packs, transports, distributes, receives, holds, or imports food or food packaging can read and write in English; and (2) the level of Internet access available in exporting countries.

The percent of foreign facilities with Internet access will be lower than in the United States. Although 71 percent of the small businesses in the United States have Internet access, only 3 percent of the population of China, the country that has the largest number of manufacturers that export to the United States, has access to the Internet (Ref. 7). To get an idea of how many facilities that export to the United States have access to the Internet, FDA looked at Internet access for the 26 countries that represent 80 percent of the manufacturers that export to the United States (OASIS) and the percent of the population that has access to the Internet worldwide for the remaining 20 percent. A weighted average of these 26 countries by the number of manufacturers suggests that 26 percent of the population that exports to the United States has Internet access. Because businesses are more likely to have Internet access than individuals, FDA adjusts the percent of the populations of other countries with Internet access upward by the percent difference in Internet access between individuals and small businesses in the United States. Seventy one percent of small businesses in the United States have Internet access versus 59 percent of the population, or the percent of businesses with Internet access represents a 20 percent increase over the population. Applying this adjustment to Internet access in foreign countries increases the percent of businesses with Internet access from 26 percent to 31 percent. FDA therefore assumes that 31 percent of foreign manufacturers would be able to research the new requirements electronically. Regardless of whether the cost of obtaining Internet access is borne by the facility, or by a third party, for ease of computation FDA estimates the cost per facility. FDA expects that, due to the overall lower level of Internet access in foreign countries, it will be more difficult for foreign facilities without Internet access at their place of business than it will be for domestic facilities to access the Internet elsewhere. FDA assumes it would take foreign facility operators that do not have access to the Internet 5 additional hours to search for the recordkeeping requirements. FDA requests comments on these assumptions.

In addition to search costs, there are costs for reading and comprehending the regulation requirements. Reading costs depend on the length of the document that describes the requirements and the reading speed of the user. Costs for comprehending the regulation requirements are linked to the reading speed of the user. For purposes of simplicity FDA assumes that, on average, the user comprehends the requirements described in the regulation after one reading. FDA requests comments on this assumption.

The online speed-reading training course, TurboRead Speed Reading (Ref. 10), estimates that the average reading speeds for the vast majority of the worlds' readers is between 200 and 250 words per minute. Dividing the approximate length of the current proposal (approximately 44,450 words) by an average speed of 225 words per minute yields an estimate of the time required to read the regulation of about 3 hours and 18 minutes. Because the length of the document may change and the approximate nature of the calculation, FDA rounds up to the nearest half-hour to 3 1/2 hours for the time required for reading and comprehending the requirements of this rule for all English reading users. FDA requests comments on this assumption.

Users who have limited ability to read English may take longer to read and comprehend the requirements. Comments suggest that many foreign manufacturers are limited in their ability to read and write English. Estimates of the number of people outside of countries where English is the primary language who are able to speak English fluently vary widely, ranging from 300 million to 750 million (Ref. 11). To estimate the number of English speakers outside of the United States, FDA adds the number of English speakers in countries where English is the primary language, excluding the United States (151 million), the number of English speakers in countries where English is a secondary language (300 million), and the midpoint (525 million) of the range of the estimate of the number of speakers of English as a foreign language. FDA then divides this total number of English speakers by 5.9 billion—the world population minus the U.S. population (Ref. 11) to tentatively conclude that 16 percent of foreign manufacturers read and write English well enough to research the recordkeeping requirement directly. FDA requests comments on this calculation. Facilities without the capacity to read and write English would have to hire a translator to aid them in comprehending the regulatory requirements. Alternatively, trade groups, distributors, or the government may provide translation services.

Regardless of whether the translation is paid for directly by the registrant or a third party, for ease of computation we assume there is a cost for translation for 84 percent of foreign facilities. FDA assumes it would take foreign facility operators who do not understand English 5 additional hours to read and comprehend the recordkeeping requirements. FDA requests comments on these assumptions.

Table 3 summarizes these cost estimates, which do not differ across any of the options that do not grant exemptions. These include costs for searching, reading, and comprehending the requirements of the rule for English and non-English speaking users, and for users with and without Internet access.

TABLE 3.—LEARNING COSTS

	Firm Count	Cost (at labor rate of $25.10)	Average Learning Costs per Firm
Domestic			
Manufacturers	43,376	$5,215,000	$120
Wholesalers/Warehouses	95,745	$11,511,000	$120
Packaging[1]	73,813	$8,875,000	$120
Transporter/Packer	16,773	$2,017,000	$120
Retail Grocery and Specialty Food	207,657	$24,966,000	$120
Convenience Stores	128,985	$15,508,000	$120
Mixed-Type Facilities that Engage in Farming	30,497	$3,667,000	$120
Importer	5,036	$605,000	$120
Total Domestic	601,883	$72,364,000	$120
Foreign			
Final Holders	77,427	$23,613,000	$305
Manufacturers	125,450	$38,258,000	$305
Other Facility Types	457,836	$139,624,000	$305
Total Foreign	660,713	$201,495,000	$305

[1] Includes both outer packaging material and food contact substances.

New and closing facilities: In future years new businesses will open and existing businesses will close. Since the total number of firms in the food industry remains stable from year to year, we assume that the rate at which new firms enter the industry is the same as the rate at which existing firms leave the industry. The Small Business Administration estimates that in 2000 approximately 10 percent of all businesses were new businesses and 10 percent of all businesses closed (Ref. 31). FDA estimates that new businesses will also have to incur learning costs.

New information collection costs: These costs include the burden of redesigning records to accommodate new information specified in possible options, and the burden of collecting and maintaining that new information within the recordkeeping system.

Records redesign: In order to estimate the cost of adding additional information to a firm's records, we used the Label Cost Model developed for FDA by RTI International (Ref. 13). We modified this model to estimate the graphic design and printing cost for adding information onto existing records such as Bills of Lading, Invoices, and Purchase Orders. We also used the model to estimate the cost of designing an entirely new input-to-output ingredient record for part of option 13.

Based on a sample of bills of lading collected through FDA's early outreach efforts and through the Web sites of companies and trade associations, FDA assumes that firms already collect most of the information necessary to comply with options 2–12. Bills of lading, purchase orders, or invoices typically have the full address of all parties, the transaction date, and descriptions of the relevant food articles. Based on the samples, FDA assumes that firms will have to add a limited amount of new information to their standard documents. This new information principally depends on how the precise definition of "description of the food article" developed in these regulations differs from that commonly used by industry under its current recordkeeping practices. In some of the sample bills of lading the description of the food article being transported did not have the precision required under these proposed regulations. In addition, some bills of lading did not have a design that would allow for the identification of other entities in custody, or control of the transported food articles, or an official spot to record the mode of transportation.

The FDA Labeling Cost Model was designed to estimate the costs of designing and printing new food labels, but many of the design issues should be similar when designing and printing a new food product record. For example, both a label and a document designer must make similar decisions regarding wording and spacing, and both activities should include administrative activity, graphic design, and printing. The model also includes cost categories, such as analytical testing and focus groups that we do not use, since they are not relevant for document redesign. FDA does acknowledge that these estimates are only approximations; we believe the values this model generates are reasonable, and request comments on all assumptions. For the purposes of the analysis of options 2–12, FDA assumes a limited information, one-color redesign of a paper document. For the purposes of option 13, FDA assumes an additional full design of a new paper document.

The model also includes an estimate of central tendency, and a low and a high estimate for each cost category included in the document redesign cost. For each component of cost in this model, FDA's contractor, RTI International, received a range of estimates from food companies. The lowest of these estimates is considered the limit of the low range, and the highest of the estimates is considered the limit of the high range. The low and high range of total cost is calculated by adding together all of the low and high range estimates of each component cost, so the low and high range estimates of this model are unlikely. The estimated cost of a limited information redesign in year 1 is $1,309, with an uncertainty range of between $897 and $2,299. The estimated cost of a full information redesign in year 1 is $6,193, with an uncertainty range of between $4,653 and $11,198. The label cost model estimates an approximately 10 percent efficiency savings in redesign costs incurred by very small firms in year 2.

The cost of redesigning product records will not be borne by all firms. For each step in the chain of custody, copies of the same bills of lading or invoices probably will be used for records of the immediate previous source, records of the immediate subsequent recipient, and transportation records. Consider the following example of a long chain of custody for a food product: (1) Farmer, (2) transporter, (3) bulk collection (e.g. grain silo), (4) transporter, (5) processor, (6) transporter, (7) warehouse, (8) transporter, and (9) retailer. The number of entities in this series is clearly limited by the total number of transporters in the country, so FDA assumes that all transporting firms have to redesign their records. This supply chain should generate four sets of bills of lading and four sets of invoices for all products. Similarly, a six-step supply chain should generate three separate sets of records. Since farmers are exempt under this proposed regulation, the number of records possibly containing new information is roughly equal to the number of facilities in the supply chain, but FDA assumes a substantial number of nontransporters will depend on storing only the redesigned bill of lading to comply with the regulation. Assuming an equal probability of a firm using the bill of lading or redesigning its own documents, FDA assumes that half of the nontransporting firms will incur redesign costs.

We modify this estimate for convenience stores. Individual convenience stores have a small sales volume and—according to a comment received during FDA's early outreach efforts—only 11.4 percent of their average total sales are for food products. In addition, the majority of convenience stores are locally owned franchises of large corporations, and these stores may have access to the parent corporation to assist in redesign. FDA therefore assumes that 90 percent of convenience stores will rely on other parties for records redesign. The total costs for other firm types may also be an overestimate; FDA expects that trade groups may assist in the needed redesign of existing records, further lowering the burden, but we do not estimate the cost savings for this activity.

In addition, we make a further adjustment for foreign facilities: According to comments received, firms exporting from the European Union (EU) are already subject to similar recordkeeping requirements under EU regulation 178/2002. Article 18: *Traceability* of the EU regulation states:

* * *

(1) The traceability of food, feed, food-producing animals, and any other substance intended to be, or expected to be, incorporated into a food or feed shall be established at all stages of production, processing and distribution.

(2) Food and feed business operators shall be able to identify any person from whom they have been supplied with a food, a feed, a food-producing animal, or any substance intended to be, or expected to be, incorporated into a food or feed. To this end, such operators shall have in place systems and procedures, which allow for this information to be made available to the competent authorities on demand.

(3) Food and feed business operators shall have in place systems and procedures to identify the other businesses to which their products have been supplied. This information shall be made available to the competent authorities on demand * * *. (Ref. 14).

Because of these regulations, FDA assumes that the firms from EU member states (31.9 percent of all foreign firms that export to the United States) will already be subject to recordkeeping requirements similar to the requirements of this proposed rule. Therefore these foreign firms would not have to redesign their records and would not incur a redesign burden.

Additional records maintenance: FDA expects that personnel at most facilities will incur a burden in order to collect and maintain a limited amount of additional information. However, as in the redesign section previously discussed in this document, FDA assumes that one set of records can serve as source, transportation, and recipient records, so the estimated burden of collecting and maintaining the additional information will be shared among more than one facility.

FDA does not have a direct estimate of this recordkeeping burden; we rely on a previous analysis of Juice Hazard Analysis and Critical Control Point (HACCP) recordkeeping (Ref. 15) because that analysis also dealt with the costs of additional recordkeeping. In that analysis an estimate of 3 minutes per hour is made of the burden that would be incurred by some food

processing facilities for the additional monitoring of critical control points and keeping HACCP system records that would be required. In this proposed rule the additional monitoring activities required would be negligible since records will likely only need to be modified. Furthermore, compared to the Juice HACCP requirements, there would be less additional information that would need to be maintained in this proposed rule. If the weekly burden for additional monitoring and recordkeeping required for Juice HACCP compliance is 120 minutes (assuming 3 minutes per hour of additional monitoring and recordkeeping for 8 hours a day and 5 days a week) a burden estimate of about 6 minutes per day or 30 minutes per week seems reasonable for this proposed rule. We request comments on this assumption. FDA treats foreign facilities already subject to a similar recordkeeping regulation as already in compliance, and assumes that the burden of additional records maintenance will be shared among an average of two covered entities, including transporters, for an average of 15 minutes per week per facility or 13 hours per year per facility.

Grocery stores, convenience stores, and packaging producers and distributors may have different additional records maintenance burdens. Since, under the proposed rule, grocery stores only have to maintain immediate previous source records, their additional burden may be lower but they also receive many shipment records they would need to maintain. In a comment FDA received during our early outreach efforts, a large retail grocery chain estimated that they received approximately 300 purchase orders per store per year, or approximately 6 purchase orders per week per store. A purchase order could contain many invoices and may be more of a burden to maintain, so FDA considers the estimated additional burden of 15 minutes per week reasonable for grocery stores. We request comments on the assumptions used to derive this estimate.

Convenience stores have a lower records maintenance burden than grocery stores. According to comments received during our early outreach efforts, approximately 50–70 percent of grocery store stock keeping units (SKUs) are food products, while only 11.4 percent of the sales of convenience stores are from food products. SKUs and sales are not equivalent measures of size, but this comparison is a reasonable basis to lower the estimated additional burden for convenience stores relative to grocery stores. Dividing the grocery store burden by the ratio of the percent of food sales for convenience stores and grocery stores (assumed to be 60 percent, or an average between 50 percent and 70 percent of SKU totals) yields an additional records maintenance burden of approximately 2.5 hours per year for convenience stores. We request comments on the assumptions used to derive this estimate.

Finally, the data sources do not distinguish between facilities that produce packaging for food and packaging for other products. Although we assume that all packaging facilities potentially could be producing or handling food packaging, not all of their output would be dedicated in this way. We assume that, for the average packaging facility, 50 percent of the output is for food packaging and that an information collection burden of 50 percent would be required of packaging facilities. We request comments on this assumption.

Storage costs: Although FDA does not believe the marginal burden of storing records to the specified times in any of the options is zero, evidence on record storage times suggests that the burden would be minimal. Since FDA was unable to gather any evidence suggesting the size of this extra burden, however small, and since the specified storage time requirement in these options is well within industry norms, we estimate the cost for extra storage time to be zero.

Many comments received in response to FDA's early outreach supported requirements of either 1 year for perishable products or 2 years for nonperishable products, stating that the maximum allowable 2-year requirement was both reasonable and necessary. In addition, a survey of dietary supplement manufacturing practices conducted by FDA's contractor, RTI International, asked a representative sample of dietary supplement manufacturers how long they kept records of shipped ingredients (Ref. 16). The facilities had a choice of two response types: Keeping records a certain amount of time past the date of expiration, and keeping records a certain amount of time past the manufacturing date. The survey did not distinguish between perishable and nonperishable ingredients. Because of nonresponse weighting, stratification, and deductive disclosure problems, FDA's contractor, RTI International, did not report confidence intervals for these estimates, but the mean number of years that firms kept data records was 2.31 years for facilities that reported retention from the date of the expiration of the ingredient, and 4.57 years for facilities that reported retention from the date of product manufacture. The lowest mean response from any facility category was 1.94 years from the expiration date of the ingredient, which is still probably more than 2 years from the delivery date.

Access costs: For purposes of evaluating the marginal cost of the record access time provision, FDA considered two possible requirements: The combination of 4 hours during normal business hours and 8 hours at other times, or 1-day regardless of when the request was made. Accessing records in a shorter time period than what industry is currently capable of will impose a burden on firms and facilities, and the shorter the required response time the larger the burden. The cost of records access response fall into two categories: Costs that would be incurred only in the event that FDA requests records under this authority, and costs that would be incurred to plan for records access and to change business practices to allow for a rapid response. The latter costs would be incurred regardless of whether or not FDA ever requested records under this authority.

For the first cost, FDA expects that in the event of a records request under this authority, any access requirements less than the current average access time of 2–3 days would impose a burden on businesses involved in providing those records. All other things equal, a 4-hour or 8-hour requirement would probably impose a greater burden than the 1-day requirement. However, we cannot quantify the probability of this burden for the same reason as the lack of quantification in the benefits section: It is impossible to predict when FDA will have to invoke this authority in response to an adulterated food that presents a threat of serious adverse health consequences or death to humans or animals.

For the second cost, FDA assumes that a 1-day records access time requirement is approximately the shortest possible response time that would not compel some firms to change their business practices. The costs for a 1-day records access requirement are considered in option 5. We assume that the 4-hour or 8-hour response time required in all options except option 5 is more likely to compel business practice changes and preemptive emergency planning than is the 1-day response requirement. A 1-day response time is possible with the types of recordkeeping systems currently in use, including automated recordkeeping technology, and offsite storage and paper retrieval. While the average access time for FDA traceback investigations is 2–3 days, we believe the same information could be provided in one day with the types of recordkeeping systems currently in use. Therefore, the difference between the cost of a 2–3 day response time and a 1-day response time is assumed to be negligible. However, the shorter access time requirements of 4 hours or 8 hours would likely impose a new burden on a number of firms.

FDA assumes that regardless of whether or not the firms maintain records electronically, every firm would probably have to devise a predetermined compliance strategy to deal with the situation where FDA requested records under this authority. Furthermore, a comprehensive response plan may allow firms to maintain their current business practices, such as maintaining paper records or maintaining records offsite, and still comply with a request, so it may be the lowest cost solution. Therefore, as a first estimate of the potential impact of this proposed rule, FDA assumes a burden for each firm of devising a response plan that could accommodate a 4-hour or 8-hour access time for an FDA record request. Since European firms are required to supply their tracing records on demand to the appropriate authorities, FDA assumes that they already have in place a plan that would accommodate a 4-hour or 8-hours records required response time. (Ref. 14).

In the analysis of previous regulations, we estimated a related planning cost for food firms. In the juice HACCP rule, (Ref. 15), we estimated a 60-hour labor burden per firm of developing a HACCP plan. Developing a HACCP plan is very complicated and includes the establishment of: (1) Critical control points and critical limits for every hazard identified, (2) protocols on how to manage deviations from these limits, and (3) procedures for verifying and validating all aspects of the plan. By contrast, developing a records access plan requires: (1) Evaluating current recordkeeping practices including records maintenances and records storage practices, which we assume would take on average about 3 hours; and (2) identifying and planning for any changes in recordkeeping practices that would be required, which we assume would also take on average about 3 hours. FDA considers the planning needed to deal with a possible records request under this authority much less complicated than what would be needed in a HACCP plan. If developing a HACCP plan takes 60 hours, then 6 hours of administrative labor per firm (lowered to 3 hours per convenience store firm) is a reasonable estimate of the burden imposed from this planning requirement, which is far more simple than a HACCP plan. We request comments on this assumption. FDA estimates that new businesses will also have to incur records access costs.

FDA requests comments regarding how many firms may need to adopt a new records retention strategy under both the 4-hour or 8-hour, and 1-day records access time requirements, and the additional time and capital needed to comply with these requirements. We plan to conduct further research on all of these burden estimates before publishing the final rule, and expect that the estimates could change.

Option 2: Comprehensive foreign and domestic coverage with 4-hour and 8-hour records access times and 1 and 2 year records retention times.

FDA assumes that facilities currently collect and keep records with most of the information required by this option in their normal business activities. FDA assumes that learning and redesign costs will be incurred per firm, and that the additional records maintenance costs will be incurred per facility. For all options the learning costs are explained in the general cost section above.

Redesign Costs, option 2. Table 4 of this document presents the average redesign cost calculations. For the purposes of presentation, Table 4 only includes calculations for the mean number of exclusive importers affected. FDA assumes that large and small firms incur all redesign costs in the first year following the final rule, while very small firms will incur all redesign costs in the second year following the final rule. The label cost model estimated planning efficiencies of 10 percent for redesign processes further than 1 year in the future, and this savings is included in the categorical totals in table 4.

TABLE 4.—REDESIGN COSTS, OPTION 2

	Firm Count	Middle Estimate	Low Estimate	High Estimate	Average Middle Cost per Firm
Domestic					
Manufacturers	18,474	$22,488,000	$15,402,000	$39,497,000	$1,217
Wholesalers/Warehouses	38,476	$46,601,000	$31,916,000	$81,845,000	$1,211
Packaging[1]	34,633	$42,092,000	$28,827,000	$73,926,000	$1,215
Transporters/Packers	15,171	$18,243,000	$12,494,000	$32,040,000	$1,203
Retail Grocery and Specialty Food	76,639	$92,308,000	$63,220,000	$162,122,000	$1,204
Convenience Stores	6,887	$8,415,000	$5,763,000	$14,779,000	$1,222
Mixed-Type Facilities that Engage in Farming	12,199	$14,786,000	$10,127,000	$25,969,000	$1,212
Importers	7,561	$9,165,000	$6,277,000	$16,096,000	$1,212
Total Domestic	210,038	$254,098,000	$174,026,000	$446,274,000	$1,210
Foreign					
Final Holders	21,091	$25,565,000	$17,509,000	$44,900,000	$1,212
Manufacturers	36,385	$44,103,000	$30,205,000	$77,459,000	$1,212

TABLE 4.—REDESIGN COSTS, OPTION 2—Continued

	Firm Count	Middle Estimate	Low Estimate	High Estimate	Average Middle Cost per Firm
Other Facility Types	124,714	$151,170,000	$103,532,000	$265,500,000	$1,212
Total Foreign	182,191	$220,838,000	$151,246,000	$387,859,000	$1,212

[1] Includes both outer packaging and food contact substances.

Additional records maintenance: Table 5 of this document presents the calculations for additional records maintenance costs. Based on the previous discussion, the annual burden per facility that is assumed in the computation of the cost of additional records maintenance is: 13 hours for most facilities, 2.5 hours for convenience stores, and 6.5 hours for packaging facilities. A $25.10 hourly wage is also assumed in the computation. For example, the additional records maintenance costs for manufacturers reported in the top row of Table 5 is calculated by multiplying the number of facilities (43,376) by the number of hours required (13) and the hourly wage ($25.10).

In Table 5, variation in the number of importers reflects the range of uncertainty in the data on the number of these facilities. Additional records maintenance costs are assumed to be incurred by facility. The estimated average cost per firm for additional records maintenance is also reported in table 5 and is computed using the facilities-to-firm adjustment factor reported in table 1. FDA assumes that facilities will begin to incur the additional records maintenance burden in the second year following the enactment of the final rule. There is considerable nonquantified uncertainty surrounding these estimates; FDA requests comments.

TABLE 5.—ADDITIONAL RECORDS MAINTENANCE COSTS, OPTION 2

	Facility Count	Cost	Average Cost per Firm
Manufacturers	43,376	$14,154,000	$383
Wholesalers/Warehouses	95,745	$31,242,000	$406
Packaging[1]	73,813	$12,043,000	$174
Transporters/Packers	16,773	$5,473,000	$361
Retail Grocery and Specialty Food	207,657	$67,759,000	$442
Convenience Stores	128,985	$8,094,000	$118
Mixed-Type Facilities that Engage in Farming	30,497	$9,951,000	$408
Importers	5,036	$1,643,000	$408
Total Domestic	601,883	$150,359,000	$335
Foreign			
Final Holders	52,728	$17,205,000	$278
Manufacturers	85,431	$27,876,000	$261
Other Facility Types	311,786	$101,736,000	$278
Total Foreign	449,945	$146,817,000	$274

[1] Includes both outer packaging and food contact substances.

Access costs: For the purposes of this analysis, as mentioned above, FDA assumes that the 4-hour or 8-hour records access times in option 2 imply extra planning and may imply a change in record retention practices for many firms. FDA has little information on the possible impact of this requirement, and requests comments. As previously discussed, the computation of the access costs reported in Table 6 of this document assumes a 6-hour burden per firm for developing an access plan and a $25.10 hourly wage. FDA assumes that all access planning costs will be incurred in the first year following the final rule for large and small firms, and in the second year following the final rule for very small firms. Table 6 presents the calculations.

TABLE 6.—ACCESS COSTS OPTION 2

	Firm Count	Cost	Average Cost per Firm
Domestic			
Manufacturers	36,948	$5,564,000	$151
Wholesalers/Warehouses	76,952	$11,589,000	$151
Packaging[1]	69,266	$10,431,000	$151
Transporters/Packers	15,171	$2,285,000	$151
Retail Grocery and Specialty Food	153,277	$23,084,000	$151
Convenience Stores	68,866	$5,186,000	$75
Mixed-Type Facilities that Engage in Farming	24,397	$3,674,000	$151
Importers	4,029	$607,000	$151
Total Domestic	448,905	$62,420,000	$139
Foreign			
Final Holders	42,182	$6,353,000	$151
Manufacturers	72,770	$10,959,000	$151
Other Facility Types	249,429	$37,564,000	$151
Total Foreign	364,381	$54,876,000	$151

[1] Includes both outer packaging and food contact substances.

Total quantified costs for option 2. Table 7 of this document presents the total quantifiable startup and recurring costs for option 2, and a range of uncertainty based on the uncertain number of exclusive importers and the range of uncertainty in design costs. We calculated the range of uncertainty using the 5th and 95th percentiles of the range of costs, with a uniform distribution of importers and a separate triangular distribution of redesign costs for each facility category and size. Both distributions represent the most amount of information implied by the known characteristics of the uncertain ranges. This procedure allows each component of cost uncertainty to vary independently, but this range cannot be interpreted in probabilistic terms.

Table 7 of this document presents the range of undiscounted annual costs of future compliance for option 2. Costs incurred in year 1 are learning costs for all existing firms, redesign costs for large and small firms, and access planning costs for large and small firms. Costs incurred in year 2 are redesign and access planning costs for very small firms. Recurring costs are the additional records maintenance costs incurred by all firms and learning costs and records access costs for new firms. The mean, low, and high cost estimates presented here characterize the known and quantifiable uncertainties as they are defined previously. The cost estimate that is greater than 5 percent of all other estimates generated by the model is reported as the low cost estimate. The cost estimate that is greater than 95 percent of all other estimates generated in the model is reported as the high cost estimate. Table 8 presents the discounted annual costs incurred in future years and the present value of total costs incurred for option 2. The computations are made using the mean costs, and assume no increase in real labor cost and a 7 percent real discount rate. Although the recurring costs reported for year 3 and later years are the same in nominal terms ($341,669,000 reported in Table 7), they are reported in discounted terms for each year in Table 8 to account for the fact that a dollar in 5 years, for example, is worth less than a dollar today. Each cell that contains only the symbol ":" is meant to convey the continuation of the series depicted in the cells that precede it from above. FDA acknowledges considerable nonquantifiable uncertainty in the estimates presented in Table 7 and requests comments.

TABLE 7.—TOTAL ANNUAL COSTS, OPTION 2

	Mean	Low	High	Average Mean Cost per Firm
Year 1	$412,474,000	$389,256,000	$432,307,000	$415
Year 2	$737,595,000	$665,189,000	$816,183,000	$741
Year 3 and later years	$341,669,000	$327,575,000	$355,445,000	$343

TABLE 8.—DISCOUNTED ANNUAL COSTS, OPTION 2

Year 1	$412,474,000
Year 2	$689,341,000
Year 3	$298,427,000
Year 4	$278,904,000
Year 5	$260,658,000
Year 6	$243,605,000
:[1]	:
:	:
Year 15	$132,505,000
:	:
:	:
Year 30	$48,026,000
:	:
:	:
Present Value	$5,663,484,000

[1] Each cell that contains only the symbol ":" is meant to convey the continuation of the series depicted in the cells that precede it from above.

Option 3: Require all elements of option 2 (comprehensive coverage, 4 or 8 hour records access, 1 and 2 year records retention for perishables and all other products) except persons who manufacture, process, pack, hold, receive, distribute, transport, or import outer food packaging are excluded.

FDA identifies the option excluding outer packaging facilities separately because the fundamental risk to the public from contaminated packaging is probably different from the risk associated with contaminated food, including inner materials that are food contact substances.

FDA was unable to find any data that discriminated between outer packaging manufacturers and distributors and those that manufacture or distribute materials that FDA currently regulates as food contact substances, including plastic beverage bottles and inner cereal box liners. The possibility exists that some of these data describe manufacturers and distributors of outer packaging materials only, and the remainder describe manufacturers and distributors of both outer packaging materials and food contact substances. To distinguish between manufacturers and distributors of outer packaging materials and food contact substances, we assume that the data is distributed uniformly over the interval between 0 and 1, and each packaging facility has an equal probability (0.5) of being either one or both types of facilities. Based on this distributional assumption, the expected number of manufacturers and distributors of outer packaging materials exclusive of food contact substances is 36,906.5 (or 73,813 divided by 2). We request comments on this distributional assumption.

The range and discounted costs for option 3 are estimated to be the same as for option 4, as explained in the following paragraphs, and are reported in tables 9 and 10. The discount computations are made using mean costs. Although the recurring costs reported for year 3 and later years are the same in nominal terms (i.e., $334,682,000 reported in table 9), they are reported in discounted terms for each year in table 10. As previously discussed, costs incurred in year 1 are learning costs for all firms and redesign and access planning costs for large and small firms. Costs incurred in year 2 are redesign and access planning costs for very small firms. Recurring costs are the additional records maintenance costs incurred by all firms, and learning costs and records access costs for new firms. The mean, low, and high cost estimates presented here characterize the known and quantifiable uncertainties as they are defined previously. The cost estimate that is greater than 5 percent of all other estimates generated by the model is reported as the low cost estimate. That cost estimate that is greater than 95 percent of all other estimates generated in the model is reported as the high cost estimate.

Option 4: Require all components of option 3 (no outer packagers, 4 or 8 hour records access, 1 and 2 year records retention for perishables and all other products) but do not require persons that are required to establish and maintain records on food to establish and maintain records on the food's outer packaging.

FDA is unable to distinguish between the costs incurred when these persons are required to keep records on the food's outer packaging and when they are not required to keep such records. Persons required to establish and maintain records on foods will also keep records on the food contact substances they use because these substances meet the definition of food. Moreover, we believe that a large portion of outer packaging materials used by persons required to establish records is shipped to that person along with food contact substances. Consequently, persons keeping records on food contact substances are also likely to keep records on the food's outer packaging under current recordkeeping practices. As a result, the cost savings from exempting recordkeeping on outer packaging are assumed to be negligible and the costs of this option are assumed to be the same as option 3. We request comments on this assumption.

Tables 9 and 10 present the range and discounted cost estimates for options 3 and 4:

TABLE 9: TOTAL ANNUAL COSTS, OPTIONS 3 AND 4

	Mean	Low	High	Average Mean Cost per Firm
Year 1	$400,491,000	$318,274,000	$404,529,000	$417
Year 2	$711,860,000	$566,254,000	$738,803,000	$741
Year 3 and later years	$334,682,000	$279,074,000	$334,079,000	$348

TABLE 10.—DISCOUNTED ANNUAL COSTS OF OPTIONS 3 AND 4

Year 1	$400,491,000
Year 2	$665,290,000
Year 3	$292,324,000
Year 4	$273,200,000
Year 5	$255,327,000
Year 6	$238,624,000
:[1]	:
:	:
Year 15	$129,795,000
:	:
:	:
Year 30	$47,044,000
:	:
:	:
Present Value as of Year 1	$5,534,165,000

[1] Each cell that contains only the symbol ":" is meant to convey the continuation of the series depicted in the cells that precede it from above.

Option 5: Require all components of option 4, but change the required records access time to 24 hours.

All costs for this option will be identical to those for option 4 except for the access costs for records detailed in that section. As mentioned previously, FDA believes that 24 hours is the least amount of time allowable that would not cause any firms to need to plan for a rapid response or change their business practices. While the average access time for FDA traceback investigations is 2–3 days, we believe the same information could be provided in 1 day with the types of recordkeeping systems currently in use, including automated recordkeeping technology, and offsite storage and paper retrieval. Therefore, the difference between the cost of a 2–3 day response time and a 1-day response time is assumed to be negligible. However, the shorter response time requirements of 4 hours or 8 hours would likely impose a new burden on a number of firms. Therefore, we assume that the difference between 4 or 8 hours and 24 hours is the difference between having to preplan a response and being able to react with normal personnel in an emergency capacity. In order to estimate this cost difference, FDA assumes that no firm would incur extra planning costs detailed in option 2, and requests comments on this assumption. The marginal cost savings of extending the records access time requirement is approximately $715,355,000.

Table 11 of this document presents the range of undiscounted costs of future compliance and Table 12 of this document presents the discounted annual costs incurred in all future years and the present value of total costs incurred for option 5. In addition, Table 12 reports the marginal savings of option 5 with respect to option 4 as well as the discounted annual costs and the present value of total costs. The marginal savings of option 5 with respect to option 4 reflect the cost savings realized from relaxing the records access requirements from 4 and 8 hours in option 4 to 24 hours in option 5. As discussed earlier in this document, discounted computations are made using mean costs and assume no increase in real labor cost and a 7 percent real discount rate. Costs incurred in year 1 are learning costs for all firms and redesign and access planning costs for large and small firms. Costs incurred in year 2 are redesign and access planning costs for very small firms. Recurring costs are the additional records maintenance costs incurred by all firms, and learning costs and records access costs for new firms. The mean, low, and high cost estimates presented here characterize the known and quantifiable uncertainties as they are defined previously. The cost estimate that is greater than 5 percent of all other estimates generated by the model is reported as the low cost estimate. That cost estimate that is greater than 95 percent of all other estimates generated in the model is reported as the high cost estimate.

TABLE 11.—TOTAL ANNUAL COSTS, OPTION 5

	Mean	Low	High	Average Mean Cost per Firm
Year 1	$338,594,000	$288,569,000	$387,887,000	$387
Year 2	$567,921,000	$481,993,000	$659,106,000	$649
Year 3 and later years	$295,813,000	$258,715,000	$326,509,000	$338

TABLE 12.—DISCOUNTED ANNUAL COSTS, PRESENT VALUE, AND MARGINAL SAVINGS OF OPTION 5

	Discounted Annual Costs of Option 5	Marginal Savings of Option 5 With Respect to Option 4
Year 1	$338,594,000	$61,897,000
Year 2	$530,767,000	$134,523,000
Year 3	$258,375,000	$33,949,000
Year 4	$241,472,000	$31,728,000
Year 5	$225,675,000	$29,652,000
Year 6	$210,911,000	$27,713,000
:[1]	:	:
:	:	:

TABLE 12.—DISCOUNTED ANNUAL COSTS, PRESENT VALUE, AND MARGINAL SAVINGS OF OPTION 5—Continued

	Discounted Annual Costs of Option 5	Marginal Savings of Option 5 With Respect to Option 4
Year 15	$114,722,000	$15,073,000
:	:	:
:	:	:
Year 30	$41,580,000	$5,464,000
:	:	:
:	:	:
Present Value	$4,818,810,000	$715,355,000

[1] Each cell that contains only the symbol ":" is meant to convey the continuation of the series depicted in the cells that precede it from above.

Option 6: Require all components of option 4 (no outer packagers, no recordkeeping on outer packaging, 4 or 8 hour records access, 1 and 2 year records retention for perishables and all other products) except intrastate facilities are excluded.

In the datasets used for this analysis, it is difficult to distinguish between interstate and intrastate facilities. In order to be considered only engaged in intrastate commerce, a food or food packaging facility must obtain all its ingredients and sell its entire product within a single state. Since all food and food ingredients are regulated in a similar manner, even one ingredient in a food not obtained from within a particular state would make the food facility involved in interstate commerce. None of these datasets distinguishes facilities based on interstate or intrastate commerce. It is reasonable to assume, however, that intrastate facilities will be very small and are unlikely to be retailers or transporters.

The FACTS database of currently regulated facilities contains 71,781 facilities possibly engaged in manufacturing, warehousing, and wholesale marketing of foods. Since the FACTS database gives a count of facilities that FDA inspects, this would estimate the total number of manufacturing, warehousing, and wholesale marketing facilities that are engaged in interstate commerce. The count of covered facilities of these types obtained from the CBP and non-employer statistics and presented in table 1, is 139,121 and includes both intrastate and interstate facilities. We estimate the number of intrastate facilities engaged in manufacturing, warehousing, and wholesale marketing by subtracting the number of facilities in FACTS from the number of corresponding facilities reported in table 1. The FACTS database does not track food packaging producers and distributors, so we assume that the ratio of intrastate to total packaging facilities is the same as that of the facility types (48.3 percent) that are tracked by FACTS. This estimate may underestimate the intrastate facilities by the number of mixed-type facilities that engage in farming and other facility types engaged in only intrastate commerce. For the firm estimates, we assume one firm per facility for the facilities not counted in the FACTS data; intrastate firms are likely to be very small, and the average number of facilities to firms for small firms in the Census datasets is almost exactly 1.

Table 13 of this document presents the effects of excluding these intrastate firms on the number of facilities affected, and Tables 14 and 15 of this document present the range of undiscounted costs and the discounted annual costs, present value of total costs, and marginal savings of option 6 with respect to option 4.

TABLE 13.—NUMBER OF FACILITIES AND FIRMS AFFECTED, OPTION 6

Type	Facility Estimate	Firm Estimate
Manufacturers	34,437	28,009
Wholesalers/Warehouses	37,434	30,189
Packaging[1]	17,840	16,741
Transporters/Packers	16,773	15,171
Retail Grocery and Specialty Food	207,657	153,277
Convenience Stores	128,985	68,866
Mixed-Type Facilities that Engage in Farming	30,497	24,397
Importers	18,902	15,122
Total Domestic	492,525	351,772
Foreign		

TABLE 13.—NUMBER OF FACILITIES AND FIRMS AFFECTED, OPTION 6—Continued

Type	Facility Estimate	Firm Estimate
Final Holders	77,427	61,942
Manufacturers	125,450	107,222
Other Facility Types	423,348	338,678
Total Foreign	626,225	507,842

[1] Includes both outer packaging and food contact substances.

TABLE 14.—TOTAL ANNUAL COSTS, OPTION 6

	Mean	Low	High	Average Mean Cost per Firm
Year 1	$376,263,000	$358,454,000	$397,619,000	$424
Year 2	$648,418,000	$583,071,000	$720,849,000	$731
Year 3 and later years	$307,485,000	$286,089,000	$317,845,000	$347

TABLE 15.—DISCOUNTED ANNUAL COSTS, PRESENT VALUE, AND MARGINAL SAVINGS OF OPTION 6

	Discounted Annual Costs of Option 6	Marginal Savings of Option 6 With Respect to Option 4
Year 1	$376,263,000	$24,228,000
Year 2	$605,998,000	$59,292,000
Year 3	$268,569,000	$23,755,000
Year 4	$250,999,000	$22,201,000
Year 5	$234,579,000	$20,748,000
Year 6	$219,233,000	$19,391,000
:[1]	:	:
:	:	:
Year 15	$119,248,000	$10,547,000
:	:	:
:	:	:
Year 30	$43,221,000	$3,823,000
:	:	:
:	:	:
Present Value as of Year 1	$5,087,535,000	$446,630,000

[1] Each cell that contains only the symbol ":" is meant to convey the continuation of the series depicted in the cells that precede it from above.

Option 7: Require all components of option 4 (no outer packagers, no recordkeeping on outer packaging, 4 or 8 hour records access, 1 and 2 year records retention for perishables and all other products) except persons who operate mixed-type facilities that engage in farming are excluded.

This option would exempt from recordkeeping requirements all persons who operate mixed-type facilities that engage in farming. The total number of mixed-type facilities that would be exempt under this option is estimated to be 30,497, and the estimated numbers of such facilities by commodity type are reported in table 2. Tables 16 and 17 of this document summarize the estimated range and impact of this exemption on total costs and marginal savings into the future.

TABLE 16.—TOTAL ANNUAL COSTS, OPTION 7

	Mean	Low	High	Average Cost per Firm
Year 1	$379,977,000	$354,015,000	$406,264,000	$406
Year 2	$689,275,000	$619,484,000	$771,484,000	$736
Year 3 and later years	$322,701,000	$309,635,000	$337,022,000	$345

TABLE 17.—DISCOUNTED ANNUAL COSTS, PRESENT VALUE, AND MARGINAL SAVINGS OF OPTION 7

	Discounted Annual Costs of Option 7	Marginal Savings of Option 7 With Respect to Option 4
Year 1	$379,977,000	$20,514,000
Year 2	$644,182,000	$21,106,000
Year 3	$281,860,000	$10,464,000
Year 4	$263,420,000	$9,780,000
Year 5	$246,187,000	$9,140,000
Year 6	$230,081,000	$8,543,000
:[1]	:	:
:	:	:
Year 15	$125,149,000	$4,646,000
:	:	:
:	:	:
Year 30	$45,360,000	$1,684,000
:	:	:
:	:	:
Present Value	-$5,332,584,000	$201,581,000

[1] Each cell that contains only the symbol ":" is meant to convey the continuation of the series depicted in the cells that precede it from above.

We believe that there is an even smaller number of mixed-type facilities that have restaurants. We have assumed that the costs and marginal savings for these facilities would be negligible. We invite comment and information relating to this assumption.

Options 8 and 9: Require all components of option 4 (no outer packagers, no recordkeeping on outer packaging, 4 or 8 hour records access, 1 and 2 year records retention for perishables and all other products) but change required records-retention times for perishables and all other foods to 1 year (option 8), and 2 years (option 9).

FDA believes that the 1-year record retention requirement for perishable foods not intended for processing into nonperishable foods and the 2-year record retention requirement for all other food products is well within industry norms (see the discussion of evidence supporting provided in a previous section of this document). We do not have enough information to quantify any marginal change in the cost of record storage under a universal 1-year required storage time (option 8) or a universal 2-year required storage time (option 9). All other things equal, FDA assumes that option 8 would be less costly than option 4, which in turn would be less costly than option 9. Because evidence suggests that most firms keep records for 2 years or more, FDA also believes that the marginal difference in storage costs between all of these options is smaller than the marginal difference in cost between other options we consider in this analysis. Therefore, while there may be a benefit from simplifying requirements by requiring the same storage time for both perishable and nonperishable foods, because the increased benefit is negligible, we assume that the marginal cost is zero for both options 8 and 9. We explicitly specify these options principally to request comments, including specific examples where required record retention times may have a large impact on cost.

Option 10: Require all components of option 4 (no outer packagers, no recordkeeping on outer packaging, 4 or 8 hour records access, 1 and 2 year records retention for perishables and all other products) but cover only those foreign facilities also covered by FDA's proposed registration regulation published at 68 FR 5378, February 3, 2003.

The proposed registration regulation (68 FR 5378, February 3, 2003) would require certain foreign facilities that manufacture, process, pack, and hold food for consumption in the United States to register. Therefore, a useful alternative to explore may be to cover the same facilities in both regulations. This exclusion implies that these regulations would not cover most of the category "Other Facility Types" in the last row of Table 1 of this document. Only facilities that do de minimis processing or packaging of food, such as affixing a label, are included in this option from the category of "Other Facility Types". Because the minimal degree of processing that de minimis processing facilities perform, they are not included in the OASIS count of foreign manufacturers.

We assume that domestic packers and repackers are the domestic counterpart to foreign de minimis food processing facilities. This seems reasonable since the amount of processing performed by packers and repackers is minimal. To estimate the number of foreign packers and repackers, FDA takes the number of packers and repackers in the FACTS database, 6,204, and adjusts it by the ratio of foreign manufacturers in OASIS to the number of domestic manufacturers in FACTS. This adjustment of 3.64 (125,450 foreign facilities divided by 34,437 domestic facilities), estimates the total number of foreign packers and repackers (or foreign de minimis processing facilities) as 22,600. The facilities-to-firms adjustment factor of 1.25, used to compute the number of firms in the "Other Facility Types" category, indicated that 18,080 firms were included in the foreign de minimis category. Table 18 reports the numbers of facilities and firms that were used in the cost estimates. FDA requests comments on these estimates.

TABLE 18.—NUMBER OF FACILITIES AND FIRMS AFFECTED. OPTION 10

Type	Facility Estimate	Facility to Firm Adjust. Factor	Firm Estimate
Domestic			
Manufacturers	43,376	1.17	36,948
Wholesalers/Warehouses	95,745	1.24	76,952
Packaging[1]	36,907	1.07	34,633
Transporters/Packers	16,773	1.11	15,171
Retail Grocery and Specialty Food	207,657	1.35	153,277
Convenience Stores	128,985	1.87	68,866
Mixed-Type Facilities that Engage in Farming	30,497	1.25	24,397
Importers	18,902	1.25	15,122
Total Domestic	578,842		425,366
Foreign			
Final Holders	77,427	1.25	61,942
De minimus Processors/Packagers	22,600	1.25	18,080
Manufacturers	125,450	1.17	106,858
Other Facility Types	0	0	0
Total Foreign	225,477		186,879

[1] Includes both outer packaging and food contact substances.

Since "Other Facility Types" is such a large and uncertain category, the exclusion of most of the category has a significant impact on all cost estimates.

The estimated ranges of the costs for learning, records access planning, additional records maintenance, and records redesign, as well as the total for this option are reported in table 19. The costs reported in the table are identified by the applicable Code of Federal Regulations (CFR) section and are expressed in present value terms to account for the fact that some costs are one-time costs while others are recurring costs. The cost estimate that is greater than 95 percent of all other estimates generated by the model is reported as the high value. The cost estimate that is greater than 5 percent of all other estimates generated by the model is reported as the low value.

TABLE 19.—COST DESCRIPTION IN PRESENT VALUE TERMS: OPTION 10

21 CFR Section	Mean	Low	High
1.337, 1.345, and 1.352, (Learning)	$138,357,000	$134,017,000	$142,346,000
1.337, 1.345, and 1.352, (Redesign)	$381,292,000	$326,799,000	$430,439,000
1.361 (Access Planning)	$78,634,000	$73,176,000	$84,179,000

TABLE 19.—COST DESCRIPTION IN PRESENT VALUE TERMS: OPTION 10—Continued

21 CFR Section	Mean	Low	High
1.337, 1.345, and 1.352 (Additional Records Maintenance)	$2,952,309,000	$2,817,570,000	$3,070,891,000
1.337, 1.345, and 1.352, (Learning for New Firms)	$13,836,000	$13,310,000	$14,328,000
1.361 (Access Preparation for New Firms)	$7,883,000	$7,318,000	$8,418,000
Total[1]	$3,660,808,000	$3,478,944,000	$3,833,452,000

[1] The totals reported at the bottom of each column differ slightly from the results that would be obtained by adding together all of the cells in the column. This is because the computation of the totals reported here is made assuming a joint distribution of the cost components, as described elsewhere in the analysis, rather then by adding together the individually computed component costs.

The annual range and discounted costs for option 10 as well as the marginal savings of option 10 with respect to option 4 are detailed in tables 20 and 21 of this document. The mean, low, and high cost estimates presented here characterize the known and quantifiable uncertainties as they are defined previously. The cost estimate that is greater than 5 percent of all other estimates generated by the model is reported as the low cost estimate. That cost estimate that is greater than 95 percent of all other estimates generated in the model is reported as the high cost estimate.

TABLE 20.—TOTAL ANNUAL COSTS, OPTION 10

	Mean	Low	High	Average Mean Cost per Firm
Year 1	$234,425,000	$215,030,000	$252,196,000	$383
Year 2	$507,230,000	$459,345,000	$550,801,000	$828
Year 3 and later years	$221,130,000	$212,313,000	$229,680,000	$361

TABLE 21.—DISCOUNTED ANNUAL COSTS, PRESENT VALUE, AND MARGINAL SAVINGS: OPTION 10

	Discounted Annual Costs: Option 10	Marginal Savings of Option 10 With Respect to Option 4
Year 1	$234,425,000	$166,066,000
Year 2	$474,047,000	$191,243,000
Year 3	$193,144,000	$99,180,000
Year 4	$180,508,000	$92,692,000
Year 5	$168,699,000	$86,628,000
Year 6	$157,663,000	$80,961,000
:[1]	:	:
:	:	:
Year 15	$85,758,000	$44,037,000
:	:	:
:	:	:
Year 30	$31,083,000	$15,961,000
:	:	:
:	:	:
Present Value as of Year 1	$3,660,808,000	$1,873,357,000

[1] Each cell that contains only the symbol ":" is meant to convey the continuation of the series depicted in the cells that precede it from above.

Option 11: Require all components of option 4 (no outer packagers, no recordkeeping on outer packaging, 4 or 8 hour records access, 1 and 2 year records retention for perishables and all other products) except foreign coverage includes only facilities that are the final holders of the product before export to the United States.

We estimate that there would be approximately 62,000 foreign facilities covered under this option. We assumed that the number of foreign final holding facilities is equivalent to the number of domestic importers. Since foreign manufacturing facilities and foreign de minimus processors/packagers would be excluded from recordkeeping requirements, the coverage under this option is more limited than the coverage under option 10. The rationale for specifying this option is that final holders may be the most accessible foreign facilities in the event of an FDA traceback investigation. In addition, foreign final holders may be particularly at risk at this level in the food chain if the food is clearly identified as destined for consumption in the United States.

Tables 22 and 23 of this document present the cost estimates for option 11. As previously discussed, discount computations are made using mean costs and assume no increase in real labor cost and a 7 percent real discount rate. Although the recurring costs reported for year 3 and later years are the same in nominal terms (i.e., $182,429,000 reported in Table 22 of this document), they are reported in discounted terms for each year in Table 23 of this document to account for the fact that a dollar in 5 years, for example, is worth less than a dollar today. Each cell that contains only the symbol ":" is meant to convey the continuation of the series depicted in the cells that precede it from above. Costs incurred in year 1 are learning costs for all firms and redesign and access planning costs for large and small firms. Costs incurred in year 2 are redesign and access planning costs for very small firms. Recurring costs are the additional records maintenance costs incurred by all firms, and learning costs and records access costs for new firms. The mean, low, and high cost estimates presented here characterize the known and quantifiable uncertainties as they are defined previously. The cost estimate that is greater than 5 percent of all other estimates generated by the model is reported as the low cost estimate. That cost estimate that is greater than 95 percent of all other estimates generated in the model is reported as the high cost estimate.

TABLE 22.—TOTAL ANNUAL COSTS, OPTION 11

	Mean	Low	High	Average Mean Cost per Firm
Year 1	$172,973,000	$156,033,000	$190,831,000	$355
Year 2	$413,484,000	$369,335,000	$458,871,000	$849
Year 3 and later years	$182,429,000	$174,474,000	$190,610,000	$374

TABLE 23.—DISCOUNTED ANNUAL COSTS, PRESENT VALUE, AND MARGINAL SAVINGS: OPTION 11

	Discounted Annual Costs: Option 11	Marginal Savings of Option 11 With Respect to Option 4
Year 1	$172,973,000	$227,518,000
Year 2	$386,434,000	$278,856,000
Year 3	$159,341,000	$132,983,000
Year 4	$148,916,000	$124,284,000
Year 5	$139,174,000	$116,153,000
Year 6	$130,069,000	$108,555,000
:[1]	:	:
:	:	:
Year 15	$70,749,000	$59,046,000
:	:	:
:	:	:
Year 30	$25,643,000	$21,401,000
:	:	:
:	:	:
Present Value as of Year 1	$2,995,041,000	$2,539,124,000

[1] Each cell that contains only the symbol ":" is meant to convey the continuation of the series depicted in the cells that precede it from above.

Option 12: Require all components of option 4 (no outer packagers, no recordkeeping on outer packaging, 4 or 8 hour records access, 1 and 2 year records retention for perishables and all other products) except all foreign food facilities are excluded.

This option excludes all foreign firms from recordkeeping requirements and has even less coverage than under option 11. Tables 24 and 25 of this document present the cost estimates. As previously discussed, discount computations are made using mean costs and assume no increase in real labor cost and a 7 percent real discount rate. Although the recurring costs reported for year 3 and later years are the same in nominal terms (i.e., $162,228,000 reported in Table 24), they are reported in discounted terms for each year in Table 25 of this document. Costs incurred in year 1 are learning costs for all firms and redesign and access planning costs for large and small firms. Costs incurred in year 2 are redesign and access planning costs for very small firms. Recurring costs are the additional records maintenance costs incurred by all firms, and learning costs and records access costs for new firms. The mean, low, and high cost estimates presented here characterize the known and quantifiable uncertainties as they are defined previously. The cost estimate that is greater than 5 percent of all other estimates generated by the model is reported as the low cost estimate. That cost estimate that is greater than 95 percent of all other estimates generated in the model is reported as the high cost estimate.

TABLE 24.—TOTAL ANNUAL COSTS, OPTION 12

	Mean	Low	High	Average Mean Cost per Firm
Year 1	$139,947,000	$125,857,000	$152,775,000	$329
Year 2	$376,310,000	$334,230,000	$421,832,000	$885
Year 3 and later years	$162,228,000	$155,337,000	$169,446,000	$381

TABLE 25.—DISCOUNTED ANNUAL COSTS, PRESENT VALUE, AND MARGINAL SAVINGS: OPTION 12

	Discounted Annual Costs: Option 12	Marginal Savings of Option 12 With Respect to Option 4
Year 1	$139,947,000	$260,544,000
Year 2	$351,692,000	$313,598,000
Year 3	$141,696,000	$150,628,000
Year 4	$132,426,000	$140,774,000
Year 5	$123,763,000	$131,564,000
Year 6	$115,666,000	$122,958,000
:[1]	:	:
:	:	:
Year 15	$62,915,000	$66,880,000
:	:	:
:	:	:
Year 30	$22,803,000	$24,241,000
:	:	:
:	:	:
Present Value as of Year 1	$2,657,566,000	$2,876,599,000

[1] Each cell that contains only the symbol ":" is meant to convey the continuation of the series depicted in the cells that precede it from above.

Option 13: Facilities must be able to tie specific input ingredients to specific products.

Most comments FDA received during its early outreach efforts for this proposed rule stated that tying specific raw input ingredients to specific finished products would significantly increase the burden on industry, which would translate into large social costs. Some comments suggested that some facilities have systems in place that can link each lot of raw ingredient to each lot of finished product, but such systems are rare for bulk agricultural commodities. For example, it is common practice in handling agricultural commodities to commingle raw ingredients from several suppliers in a large silo or storage tank. While this business practice would not be required to change under options 2–12, option 13 would add the significant new burden of requiring firms that traditionally commingle raw ingredients from several suppliers to redesign a production or storage strategy that would allow them to identify more precisely the source of all the food products.

Most agricultural crops are traded as bulk commodities; bulk trading operates on the premise that crops produced by different farmers are sufficiently similar to be traded at a common price and with a common grading specification. For various reasons, some firms have put in place identity preservation systems, which they use to track individual lots of products throughout production and distribution. These identity preservations systems exist for organic products, kosher products, and some specialty versions of bulk products. FDA estimated the potential impact of this option by reviewing studies of current identity preservation systems. We assume that the identity preservation systems put in place for specialty versions of traditionally commingled products closely resembles what would be required to comply with the input-to-output requirement of this option. The study we rely on for our estimates (Ref. 17) is for corn and soybeans, the largest crops by value in the United States, but the issues should be similar for other types of bulk products.

The cost of identity preservation consists of: (1) The cost of segregating crops to prevent commingling, and (2) the cost of tracking ingredients. First, commodity suppliers should incur an increase in cost due to their inability to mix commodities in bulk. The Bender et al (Ref. 16) study estimates costs based on responses to a small survey of specialty elevators, grain firms, seed companies, and brokers. On average, 35 percent of the volume handled by these firms is specialty product, so they have ample experience in identifying cost differences, including storage, handling and segregation, risk management, transportation, analysis and testing, and marketing costs. Of the 84 survey responses, 55 estimated the cost of segregating and handling specialty crops. FDA used the overall average across facility types to estimate an average cost premium to be applied to each preprocessed commodity: $0.17 per bushel for corn and $0.48 per bushel for soybeans. The original estimate included a premium paid to farmers, but we subtracted this amount out of the total. Since option 13 would only require the identification of a particular immediate previous source, in this case a farm, we assume no new farming activity would have to take place. At an average price of $1.81 per bushel for corn and $4.60 per bushel for soybeans in 1999 (Ref. 18), the premium estimated for corn is 9.4 percent and for soybeans is 10.4 percent. Due to the small sample, standard errors were not reported in this study, but considerable nonquantified uncertainty exists around these estimates. These estimates may be an overestimate of premiums if economies of scale are possible in identity preservations systems. These estimates may be an underestimate if the reason these specialty product systems exist is that it is easier to preserve identities for corn and soybeans than for other products.

Table 26 of this document presents the calculations of the cost based on these segregation premiums. We apply the premium to the 1999 farm value of commodities, not to the retail values as retail prices include many other aspects of branding and bringing the product to market. These are also the latest data available, and since agricultural prices have been fairly stable, we do not adjust these dollar amounts to 2002. The estimated corn premium from the studies is used for all other bulk grain products, and the estimated soybean premium is also used for nuts, sugarcane and beets, sunflowers, and flaxseeds. Milk is assumed to have a lower cost increase; most milk production is local and already includes a tracking system to allow for the use of expiration dates for the final product. Vegetables destined for final consumption in an unaltered state, vegetables used for production, and eggs are also assumed to have a lower cost of tracking since current commingling practices for these products are limited. The table includes nuts, but we were unable to find a satisfactory price estimate. FDA requests comments on these assumptions.

TABLE 26.—COMMINGLING COSTS BASED ON SPECIALTY PREMIUMS, OPTION 13

Food Type	Count	Unit	$ Farm gate	Premium %	Premium $
Corn (for grain)	9,430,612,000	bushels	$17,103,991,000	9.4%	$1,603,204,000
Soybeans	2,653,758,000	bushels	$12,205,352,000	10.4%	$1,273,804,000
Milk	162,716,000,000	pounds	$23,400,050,000	5.0%	$1,170,003,000
Wheat	2,299,010,000	bushels	$5,593,989,000	9.4%	$524,340,000
Fruits	31,152,000	tons	$9,345,600,000	5.0%	$467,280,000
Fresh Vegetables	22,484,150	tons	$7,610,780,000	5.0%	$380,539,000
Eggs	82,715,000,000	eggs	$4,321,859,000	5.0%	$216,093,000
Sugar beets	33,420,000	tons	$1,242,898,000	10.4%	$129,714,000
Rice	20,602,700,000	pounds	$1,231,207,000	9.4%	$115,404,000
Peanuts	3,829,490,000	pounds	$971,608,000	10.4%	$101,401,000
Sugarcane	35,299,000	tons	$941,791,000	10.4%	$98,290,000
Sorghum	595,166,000	bushels	$937,406,000	9.4%	$87,866,000
Prod. Vegetables	15,476,230	tons	$1,660,051,000	5.0%	$83,003,000
Barley	280,292,000	bushels	$597,038,000	9.4%	$55,962,000
Sunflower	4,341,862,000	pounds	$339,993,000	10.4%	$35,483,000

TABLE 26.—COMMINGLING COSTS BASED ON SPECIALTY PREMIUMS, OPTION 13—Continued

Food Type	Count	Unit	$ Farm gate	Premium %	Premium $
Oats	146,193,000	bushels	$175,172,000	9.4%	$16,419,000
Honey	205,250,000	pounds	$126,075,000	5.0%	$6,304,000
Flaxseed	7,864,000	bushels	$30,098,000	10.4%	$3,141,000
Rye	11,038,000	bushels	$25,084,000	9.4%	$2,351,000
Nuts	1,295,700,000	pounds	$0	5.0%	$0
Total			$87,860,042,000		$6,370,601,000

As the second component of cost, FDA assumes that manufacturers using bulk production processes would have to adopt a new tracking system for their input ingredients. Having identity-preserved input ingredients delivered from their suppliers would help in this task, but the disruption to production practices could be substantial. FDA does not have an estimate of the percentage of producers that may be affected by this option, or the amount of change in production practices that would have to take place, but we assume that a useful lower bound of the increase in production cost would be the increase in information design and collection costs that manufacturers would face in this system.

For redesign costs, FDA used the Labeling Cost Model, assuming a full new document design as opposed to simple addition of information. FDA also assumed a doubling of information collection burden for manufacturers when compared to other options; they would have to track three sets of records (input sources, output sources, and input to output tracking) instead of two, but could not share the information collection burden with others in the production chain for these manufacturing records. As in the other options, we assumed the design costs would be incurred at the firm level and the additional records maintenance costs would be incurred at the facility level. FDA considers these design and records maintenance costs a probable underestimate of the total cost of disruption in manufacturing possible under this option, since it does not consider production process changes or additional tracking costs required in the post-production distribution chain. Table 26 of this document summarizes the redesign and additional records maintenance burden calculations unique to option 13.

TABLE 27.—ADDITIONAL REDESIGN AND RECORDS MAINTENANCE COSTS, OPTION 13.

	Count	Medium	Low	High
Redesign				
Domestic Manufacturing Firms	36,948	$228,816,000	$171,917,000	$413,738,000
Foreign Manufacturing Firms	72,770	$450,666,000	$338,600,000	$814,880,000
Total	109,718	$679,482,000	$510,517,000	$1,228,618,000
Additional Records Maintenance				
Domestic Manufacturing Facilities	43,376	$14,154,000		
Foreign Manufacturing Facilities	85,431	$27,876,000		
Total	128,807	$42,030,000		

Tables 28 and 29 of this document present the estimated range and impact of option 13 on total costs into the future. As the tables indicate, option 13 is much costlier than any of the other regulatory options. The numbers in parentheses in the right hand column of Table 29 reflect a negative marginal cost savings of option 13 with respect to option 4. As previously discussed, discount computations are made using mean costs and assume no increase in real labor cost and a 7 percent real discount rate. Although the recurring costs reported for year 3 and later years are the same in nominal terms (i.e., $6,743,086,000 reported in Table 28), they are reported in discounted terms for each year in Table 29 to account for the fact that a dollar in 5 years, for example, is worth less than a dollar today. Each cell that contains only the symbol ":" is meant to convey the continuation of the series depicted in the cells that precede it from above. Costs incurred in year 1 are learning costs for all firms and redesign and access planning costs for large and small firms. Costs incurred in year 2 are redesign and access planning costs for very small firms. Recurring costs are the additional records maintenance costs incurred by all firms, and learning costs and records access costs for new firms. The mean, low, and high cost estimates presented here characterize the known and quantifiable uncertainties as they are defined previously. The cost estimate that is greater than 5 percent of all other estimates generated by the model is reported as the low cost estimate. That cost estimate that is greater than 95 percent of all other estimates generated in the model is reported as the high cost estimate.

TABLE 28.—ANNUAL TOTAL COSTS, OPTION 13

	Mean	Low	High	Average Mean Cost per Firm
Year 1	$442,970,000	$405,800,000	$484,402,000	$445
Year 2	$2,692,790,000	$2,504,068,000	$2,921,375,000	$2,706
Year 3 and later years	$6,743,086,000	$6,702,239,000	$6,726,422,000	$6,748

TABLE 29.—DISCOUNTED ANNUAL COSTS, PRESENT VALUE, AND MARGINAL SAVINGS: OPTION 13 (NUMBERS IN PARENTHESES ARE NEGATIVE)

	Discounted Annual Costs: Option 13	Marginal Savings of Option 13 With Respect to Option 4
Year 1	$442,970,000	($183,745,000)
Year 2	$2,516,626,000	($1,901,433,000)
Year 3	$5,889,672,000	($5,630,368,000)
Year 4	$5,504,367,000	($5,262,026,000)
Year 5	$5,144,268,000	($4,917,781,000)
Year 6	$4,807,727,000	($4,596,057,000)
:[1]	:	:
:	:	:
Year 15	$2,615,085,000	($2,499,951,000)
:	:	:
:	:	:
Year 30	$947,827,000	($906,097,000)
:	:	:
:	:	:
Present Value as of Year 1	$92,987,447,000	($88,149,370,000)

[1] Each cell that contains only the symbol ":" is meant to convey the continuation of the series depicted in the cells that precede it from above.

Marginal analysis: As a way of comparing the options, Table 30 of this document presents the present values of total costs and the marginal savings of each option compared with option 4. Option 4 was chosen for comparison since it differs by only one provision from almost all the other options considered in the analysis. The marginal savings for all options, except options 2 and 13, are either zero or positive reflecting either a lower total cost or equivalent total cost compared with option 4.

Since option 3 and options 5–12 involve a single modification of the requirements in option 4, the marginal savings expressed for each of those options reflects the cost savings from removing that requirement. Furthermore, while option 2 differs from option 4 by two provisions, rather than one provision (option 4 does not require persons that manufacture, process, pack, hold, receive, distribute, transport, or import outer food packaging to keep records and does not require persons that are required to keep records on foods to keep records on the food's outer packaging), the costs computed for both options are equivalent. As a result, there is no loss in meaning by comparing the costs of all options to option 4 in Table 30. Consequently, for option 10, the marginal savings in present value terms from relaxing the comprehensive foreign coverage requirement in option 4 to the reduced level of coverage specified by the registration rule is $1,873,357,000 as reported in the following table.

TABLE 30.—PRESENT VALUE AND MARGINAL SAVINGS WITH RESPECT TO OPTION 4

	Option	Present Value of Total Cost	Marginal Savings With Respect to Option 4	Description of Option Requirements
2		$5,663,484,000	($129,319,000)[1]	Comprehensive coverage, 4 or 8 hour records-access requirement, 1 and 2-year records-retention requirement

TABLE 30.—PRESENT VALUE AND MARGINAL SAVINGS WITH RESPECT TO OPTION 4—Continued

Option	Present Value of Total Cost	Marginal Savings With Respect to Option 4	Description of Option Requirements
3	$5,534,165,000	$0	Exclude outer packagers
4	$5,534,165,000	$0	Exclude outer packagers and recordkeeping on outer packaging
5	$4,818,810,000	$715,355,000	Same as option 4 except records-access requirement is relaxed to 24 hours
6	$5,087,535,000	$446,630,000	Same as option 4 except intrastate facilities are excluded
7	$5,332,584,000	$201,581,000	Same as option 4 except mixed-type facilities that engage in farming are excluded
8	$5,534,165,000	$0	Same as option 4 except universal records retention of 1 year
9	$5,534,165,000	$0	Same as option 4 except universal records retention of 2 years
10	$3,660,808,000	$1,873,357,000	Proposed. Same as option 4 but limit foreign coverage to be the same as registration.
11	$2,995,041,000	$2,539,124,000	Same as option 4 but limit foreign coverage to the final holders prior to export.
12	$2,657,566,000	$2,876,599,000	Same as option 4 except all foreign facilities are excluded.
13	$93,137,167,000	($87,603,002,000)[1]	Comprehensive coverage. Precise input to output record-keeping requirement.

[1] Numbers in parentheses are negative.

Sensitivity of cost estimates to assumptions: For all the options, FDA attempted to quantify the uncertainty associated with redesign costs and the number firms and facilities exclusively dedicated to imports, but we had no basis for assigning distributions to other uncertain components. By far the largest source of uncertainty is the premium on products that would be subject to new identity preservation under option 13. FDA also tested the sensitivity of other sources of uncertainty under option 10, in order for the reader to compare various sources of uncertainty and submit comments regarding our assumptions. Although the dollar sensitivities to the assumptions specified in Table 31 of this document should be similar across the options, many of the percentage sensitivities would—because of different base costs—differ under other options. FDA believes that the ranking of the costs of these options is not affected by any uncertainty in our estimates.

There is significant uncertainty in the estimate of the number of mixed-type facilities that engage in farming. Based on research described earlier, our estimate of the number of mixed-type facilities that engage in farming that would be covered by this proposed rule is 30,497. To determine the sensitivity of the cost estimates to changes in the numbers of mixed-type facilities that engage in farming, a sensitivity analysis was performed in which the number of these types of facilities was increased by 10 percent.

Table 31 of this document presents the results of the sensitivity analyses that we conducted. For option 13, Table 31 reports the effect of an increase in crop premium for identity preservation of 1 percent for all crops. For option 10, Table 31 reports the effect of a 10 percent increase in the estimate of the number of mixed-type facilities that engage in farming, and 10 percent cost increases for each component cost on the mean first-year total cost estimates. For redesign costs, we assumed a 10 percent increase in the medium cost estimate.

Finally, to be consistent with the analysis conducted for the Registration proposed rule, a sensitivity analysis was conducted that accounted for the possibility that a number of foreign firms would cease to export to the United States because of the burden imposed by these regulations. This is particularly relevant when considering the burden imposed on foreign firms by the Registration proposed rule. In the analysis of the registration proposed rule, it was estimated that approximately 16 percent of small manufacturers and processors (defined in that analysis as those exporting 10 or fewer line items to the United States) would cease exporting to the United States because of the increase in costs due to that proposed rule. Consistent with the analysis of the Registration proposed rule, we analyzed the cost sensitivity of a 16 percent reduction in the number of foreign firms. FDA requests comments on other desired sensitivity analyses.

TABLE 31.—SENSITIVITY ANALYSIS

Test	Option	Effect on Present Value Mean Cost ($)	Percent Effect
10% increase in records maintenance	10	$276,513,000	7.02%
10% increase mixed-type facilities that engage in farming	10	$17,061,000	0.46%
10% decrease in percent European	10	$33,529,000	0.91%
10% increase in redesign	10	$38,006,000	1.03%
10% increase in learning	10	$32,185,000	0.87%
10% increase in access	10	$18,873,000	0.51%
16% decrease in number of foreign firms	10	($138,484,000)[1]	(3.93%)[1]
1% increase in identity preservation premium	13	$490,117,000	0.52%

[1] Numbers in parentheses are negative.

Benefits: These options would improve FDA's ability to address adulterated food and food packaging that presents a threat of serious adverse health consequences or death to humans and animals. FDA is unable to quantify the benefits of these regulations, though we consider them substantial. While the probability of a deliberate contamination of the food supply may be low, the potential cost of a deliberate contamination of the food supply may be high. Below we present some examples to demonstrate what such a contamination may look like. Without having any hypothesis on the likelihood of a deliberate contamination, it is impossible to quantitatively measure the benefits of the reduced impact due to each of these regulatory options.

Further hindering any quantification of benefits is the interactive effect of other regulations that are being developed to implement Title III of the Bioterrorism Act of 2002. The registration (section 305 of the Bioterrorism Act) and recordkeeping regulations would work cooperatively to identify and track possible sources of an outbreak. The prior notice for imported shipments (section 307 of the Bioterrorism Act) would allow the agency time to identify possible sources of risk from adulterated food and its packaging that presents a threat of serious adverse health consequences or death to humans and animals, which could then be investigated with the aid of the new registration and recordkeeping regulations.

To understand possible costs of an intentional attack on the food supply, we examine five outbreaks resulting from accidental and deliberate contamination, and from both domestic and imported foods. It is possible that an intentional attack on the food supply that sought to disrupt the food supply and sicken many U.S. citizens would be much larger. Also, intentional attacks may be fundamentally more difficult to trace than natural outbreaks due to deliberate obfuscation of the source and possible multiple contamination events of different food types and food facilities. We then examine mechanisms through which each regulatory option discussed in this analysis may act and analyze how each of the options affects the mechanisms.

TABLE 32.—SUMMARY OF FIVE FOODBORNE OUTBREAKS

Pathogen	Location and Year	Vehicle	Confirmed or Reported Cases	Estimated Number of Cases	Total Illness Cost (dollars)
Salmonella enteritidis	Minnesota 1994	Ice cream	150 cases; 30 hospitalized	29,100 in MN; 224,00 nationwide	3,187,744,000 to 5,629,792,000
Shigella sonnei	Michigan 1988	Tofu salad	3,175 cases	Not available	45,183,000 to 79,797,000
Outbreaks resulting from deliberate contamination					
Salmonella Typhimurium	Dalles, Oregon 1984	Salad bars	751 cases; 45 hospitalized	Not available	10,687,000 to 18,875,000
Shigella dysentreriae type 2	Texas 1996	Muffins and doughnuts	12 cases; 4 hospitalized	All cases identified	83,000
Outbreaks resulting from imported foods					
Cyclospora cayaetanensis	United States and Canada 1996	Raspberries (probably imported from Guatemala)	1465 cases identified, less than 20 hospitalized	Not available	3,941,000

Salmonella enteritidis in ice cream

In 1994, approximately 224,000 people were sickened by ice cream contaminated with *Salmonella enteritidis*. The source of the contamination appeared to be pasteurized premix that had been contaminated during transport in tanker trailers that carried nonpasteurized eggs. There were 150 confirmed cases of salmonellosis associated with the outbreak in Minnesota. However, ice cream processed during the contamination period was distributed to 48 states. To calculate the total number of illnesses associated with the outbreak, researchers calculated an attack rate of 6.6 percent. This attack rate was extrapolated to the population that consumed the ice cream, giving a total number sickened of 224,000 (Ref. 19).

Salmonellosis most commonly causes gastrointestinal symptoms. Almost 91 percent of cases are mild and cause 1 to 3 days of illness with symptoms including diarrhea, abdominal cramps, and fever. Moderate cases, defined as cases that require a trip to a physician, account for 8 percent of the cases. These cases typically have a duration of 2 to 12 days. Severe cases require hospitalization and last 11 to 21 days. In addition to causing gastroenteritis, salmonellosis also can cause reactive arthritis in a small percentage of cases. Reactive arthritis may be short or long term and is characterized by joint pain. Just over 1 percent of cases develop short-term reactive arthritis and 2 percent of cases develop chronic, reactive arthritis.

FDA estimated the costs associated with salmonellosis, including medical treatment costs and pain and suffering. Table 32 of this document provides a summary of these estimates. Pain and suffering is measured by lost quality adjusted life days (QALDs). QALDs measure the loss of utility associated with an illness. A QALD is measured between zero and one, with one being a day in perfect health. FDA uses the value placed by consumers on the risks to life found in current economic literature (See Refs. 20, 21, 22, and 23). In addition, FDA presents two estimates of values of pain and suffering associated with arithritis, one based on physician estimates (Ref. 24) and another based on a regression analysis approach (Ref. 25). This gives a range of costs for the average case of salmonellosis between $14,231 and $25,133.

To estimate the economic cost due to illness associated with this outbreak, FDA used the range for the average cost per case. For 224,000 people, this is a total cost of between $3,187,744,000 and $5,629,792,000 from this accidental food disaster.

TABLE 33.—THE COST OF A TYPICAL CASE OF SALMONELLOSIS

Severity	Case Breakdown (percent)	Total QALDs Lost per Illness	Health Loss (dollars) per Case (Discounted)	Medical Costs (dollars) per Case (Discounted)	Weighted Dollar Loss per Case
Illness					
Mild	90.7	1.05	660	0	599
Moderate	8.1	3.68	2,310	283	209
Severe	1.2	9.99	6,266	9,250	188
Arthritis					
Regression approach					
Short-term	1.26	5.41	3,391	100	44
Long-term	2.40	2,613.12	452,554	7,322	11,048
Direct survey approach					
Short-term	1.26	10.81	6,778	100	87
Long-term	2.40	5,223.15	904,573	7,322	21,906
Death	0.04		5,000,000		2,143
Total expected loss per case					
Regression approach					14,231
Direct survey approach					25,133

Shigella sonnei in tofu salad

In 1988, a tofu salad at an outdoor music festival was contaminated with Shigella sonnei and sickened an estimated 3,175 people. Over 2,000 volunteer food handlers served communal meals at the festival (Ref. 26). Shigellosis causes similar symptoms and is of similar duration to salmonellosis. It also is associated with short term and chronic reactive arthritis; thus FDA assumed the average case of shigellosis has the same cost as salmonellosis. This gives a total cost of $45,183,000 to $79,797,000.

Salmonella typhimirium in salad bars

During September and October of 1984, two outbreaks of *Salmonella* typhimirium occurred in association with salad bars in restaurants in The Dalles, Oregon. At least 751 people were affected. Members of the local Rajneeshpuram commune intentionally caused the outbreak by spraying *Salmonella* typhimirium on the salad bars in local restaurants. Their apparent motivation was to influence a local election by decreasing voter turnout. Intentional contamination was not suspected immediately and no charges were brought until a year after the attacks (Ref. 27).

The 751 people affected primarily were identified through passive surveillance; thus the true number of people actually sickened is undoubtedly much higher. The Dalles is located on Interstate 84 in Oregon and is a frequent stop for travelers who were unlikely to be identified by passive or active surveillance for salmonellosis. However, since we do not have any estimates of the true size of the outbreak, we estimated the costs associated with known cases, recognizing this is an underestimate of the true cost of the outbreak. We use the cost estimates for salmonellosis as ranging from $14,231 to $25,133. This gives an estimated cost of known cases for the outbreak of $10,687,000 to $18,875,000.

Shigella dysenteriae type 2 among laboratory workers

Twelve people working in a laboratory who consumed muffins left in the labboratory break room contracted shigellosis. Affected workers had diarrhea, nausea, and abdominal discomfort. Investigators concluded that the outbreak likely was the result of deliberate contamination. All twelve affected workers were treated by, or consulted with, a physician. Nine affected workers went to the emergency room, four of whom were hospitalized (Ref. 28).

To estimate the cost of this outbreak, FDA assumed that the eight cases requiring consultation with a doctor, but not requiring hospitalization, had the same cost as a moderate case of salmonellosis. The four cases requiring hospitalization were estimated to have the same cost as a severe case of gastroenteritis resulting from salmonellosis. This gives a cost of $83,000 for illnesses associated with the event.

TABLE 34.—SUMMARY OF COSTS FOR CASES OF SHIGELLOSIS

Severity	Number of cases	Cost per case (dollars)	Total cost (dollars)
Mild	0	0	0
Moderate	8	2,593	21,000
Severe	4	15,516	62,000
Grand total			83,000

Cyclospora cayatanensis in imported raspberries

In 1996, 1,465 cases of cyclosporiasis were linked to consumption of raspberries imported from Guatemala. Nine hundred and seventy eight of these cases were laboratory confirmed. No deaths were confirmed and less than 20 hospitalizations were reported (Ref. 29). Case control studies indicated that raspberries imported from Guatemala were the source of the illnesses. Fifty-five clusters of cases were reported in 20 states, two Canadian provinces, and the District of Columbia (Ref. 30).

Cyclosporiasis typically causes watery diarrhea, loss of appetite, weight loss, and fatigue. Less common symptoms include fever, chills, nausea, and headache. The median duration of illness associated with the outbreak was more than 14 days and the median duration of diarrheal illness was 10 days (Ref. 30). We estimated the cost of a mild case of cyclosporiasis as two and a half times higher than the cost of a mild case of gastroenteritis from salmonellosis due to the longer duration. The reports of cyclosporiasis outbreaks did not include information on the number of physician visits. We assumed that the percentage of total cases that result in physician visits would be larger than the corresponding percentage for salmonellosis illnesses, due to the longer duration of illnesses. We assumed, therefore, that 40 percent of those infected with cyclosporiasis visited a physician. Less than 20 hospitalizations were reported from the cyclosporiasis outbreak (Ref. 29). No deaths were confirmed.

TABLE 35.—SUMMARY OF COSTS FOR CASES OF CYCLOSPORIASIS

Severity	Number of cases	Cost per case (dollars)	Total cost (dollars)
Mild	879	1,650	1,450,000
Moderate	586	3,748	2,196,000
Severe	19	15,516	295,000
Grand total			$3,941,000

Mechanisms: The new recordkeeping provisions we describe in the options section would not only help FDA determine the cause of a particular outbreak by tracing the source, they would also reduce further adverse health effects by enabling FDA to trace forward to locate adulterated food and its packaging that presents a threat of serious adverse health consequences or death to humans and animals. We expect that, working in concert with other regulations, having complete records identifying all links in the chain of custody for a particular product will allow FDA to more efficiently deploy its compliance and regulatory resources in an event of an outbreak. Having complete records increases the probabilities of FDA being able to trace back to the source of an outbreak and of FDA being able to trace forward to locate adulterated food and its packaging. FDA conducts approximately 20 emergency traceback investigations per year. Although no investigation has been completely halted by a lack of adequate records in the past several years, inadequate records have hindered investigations. For example, FDA attempted to conduct approximately 38 tracebacks in a Cyclospora outbreak in 1997. Of those, we were able to complete 33, and the majority of failures were due to the lack of available records. More commonly, incomplete records severely impede the ability of FDA to conduct effective investigations.

Faster required record access times may allow FDA to more rapidly identify the source of an outbreak and limit its effects. Over the past several years of FDA traceback investigations, the normal response time between a request for data and the receipt of the records from the firm is 2–3 days. The response times in these options would greatly speed up the traceback process, which would be critical in limiting a deliberate or accidental major outbreak.

Comparison of benefits under each option: Because we cannot quantify these benefits, we cannot differentiate the benefits of each option in dollar terms. Instead, we explore how effectively each of the two mechanisms, trace back and response, would operate under each of the options. The extent of coverage by each option is one criterion that we use to evaluate the effectiveness of each mechanism since the extent of coverage may influence the effectiveness of both trace-back and response times. Tables 36 and 37 of this document present the numbers of firms covered under each option, and the reduction in the numbers of firms covered under each option when compared to those covered under option 4. As in the costs section, option 4 was chosen for comparison purposes for the sake of consistency. Foreign and domestic coverage are presented separately in Tables 36 and 37 of this document since there may be reason to weigh the benefits from the inclusion of each category differently. Table 38 of this document provides a summary of the expected effects.

TABLE 36.—NUMBER OF FIRMS COVERED BY OPTION

Option	Domestic	Foreign	Total
2	459,998	535,432	995,431
3	425,365	449,676	875,041
4	425,365	449,676	875,041
5	425,365	449,676	875,041
6	351,772	449,676	801,448
7	400,968	449,676	850,644
8	425,365	449,676	875,041
9	425,365	449,676	875,041
10	425,365	186,879	612,245
11	425,365	61,942	487,307
12	425,365	0	425,365
13	459,998	535,432	995,431

TABLE 37.—MARGINAL REDUCTION IN THE NUMBERS OF FIRMS COVERED WITH RESPECT TO OPTION 4

Option	Domestic	Foreign	Total
2	(34,633)[1]	(85,756)[1]	(120,389)[1]
3	0	0	0
4	0	0	0
5	0	0	0
6	73,594	0	73,594
7	24,397	0	24,397
8	0	0	0
9	0	0	0
10	0	262,797	262,797
11	0	387,735	387,735
12	0	449,676	449,676
13	(34,633)[1]	(85,756)[1]	(120,389)[1]

[1] Numbers in parentheses are negative.

Evaluating the benefits by option using two mechanisms: (1) Complete records (which increase the probability of a thorough trace-back investigation), and (2) faster records access times (which may allow for more rapid identification of the source of an outbreak and limit its effects).

Option 1, no action: No impact.

Option 2, comprehensive coverage, 4 or 8 hour records access, 1 and 2 year records retention for perishables and all other products: This option contains no exemptions, so it has the largest coverage of any of the options we consider and ranks high with regard to improving the ability to perform a thorough trace-back investigation. However, option 13 requires even greater additional record information collection, which would aid in trace-back investigations. So, based on mechanism 1, this option has the second highest benefits. With regard to the speed criterion—this option also has the quickest response time specified in any of the options. It is ranked second in overall benefits behind option 13.

Option 3, same as option 2 except outer-packaging manufacturers and distributors are excluded: The exclusion of outer food packagers from recordkeeping requirements reduces the coverage and the potential to perform a thorough trace-back investigation compared with option 2. It is also unclear what the relative risk of outer food packaging is compared with the risk of the food itself (including food contact substances), but FDA assumes that the potential harm through packaging adulteration, although serious, is lower than the potential harm through adulteration of food. This would tend to mitigate the consequences on potential trace-back capability from excluding these facilities. This option also scores relatively well if rated by the speed criterion since the records-access time is the same as in option 2. The exclusion of outer packaging manufacturers and distributors will not reduce benefits by much compared with option 2—especially because the risk of contamination through outer packaging is likely to be small.

Option 4, same as option 3 except recordkeeping on outer-packaging is excluded: The reduction in benefits from not requiring recordkeeping on outer food packaging is assumed to be negligible compared with option 3. Therefore, the benefits from this option are about the same as option 3 using both the complete records criterion and the speed criterion.

Option 5, same as option 4 except records access requirement is relaxed to 24 hours: This option does not differ much from option 4 by this ranking criterion, since it has the same domestic and foreign coverage and record scope requirements. However, this option scores relatively low by the speed criterion, since all other options would require a much faster response time for records access.

Option 6, same as option 4 except intrastate facilities are excluded: This option has lower benefits than many other options since it exempts the largest number of domestic facilities of any option. The relative ranking of options that offer exemptions will be affected by the total number of facilities exempted and the breadth of the supply chain these facilities cross. This intrastate exclusion would affect many different facility types throughout the supply chain, including approximately 91,383 domestic manufacturers, wholesalers, and warehouses. In addition, many facilities involved only in intrastate commerce handle food products that eventually will be introduced into interstate commerce farther along the supply chain. While intrastate facilities are likely to be small, if they are participants in the chain of custody of the food that causes a major outbreak, their exclusion could disrupt FDA's ability to identify the source of an outbreak and limit its effects. The overall ranking of this option is behind option 10.

Option 7, same as option 4 except mixed-type facilities that engage in farming are excluded: There are fewer exempted facilities in this option, owned by approximately 24,397 domestic firms, than in option 6. Furthermore, these exempt firms are mixed-type facilities that engage in farming and would be closer to the beginning of the chain of custody for food products. FDA considers this option to have lower benefits than option 5, since fewer facilities would be required to keep records that may be needed for a traceback investigation, but higher benefits than options 6 and 10–12, since fewer facilities would be exempt and especially since these facilities are closer to the beginning of the supply chain.

Option 8, same as option 4 except there is a universal records-retention requirement of 1 year for perishables and all other products: All other things being equal, the shorter the retention time for records, the more likely that those records would be missing when needed for a trace-back investigation. Most nonperishable products and perishable products that are processed into finished food products may be in the supply chain for longer than a year, but it is very likely that the effects of a contamination of nonperishable goods would be seen within a year of being introduced in the market. FDA considers this option to have higher benefits than options 6 and 7, and higher benefits than the other exemptions offered in options 10–12. Option 8 is ranked lower than option 9 because of the nonzero probability that a nonperishable food is adulterated and that adulteration is not discovered until more than a year after the event.

Option 9, same as option 4 except there is a universal records-retention requirement of 2 years for perishables and all other products: Once again, all other things being equal, the longer the record retention the better, so this option probably has more benefits than option 2. While option 9 has the benefit of simplicity in that there is only one retention requirement for all records, in practical terms the danger from a perishable good will be known soon after that good is consumed. Consequently, keeping records longer than one year for perishable goods that are consumed in an unaltered state would most likely exceed the time period of many tracing investigations. Therefore, based on the ability to conduct a thorough investigation, FDA ranks the benefits of this option as roughly equal to option 4, especially since the longer records-retention requirement should not affect the speed of an investigation.

Option 10, same as option 4 except that foreign coverage is the same as for the registration proposed rule: The proposed option would generate more benefits than other options that exempt foreign facilities. Since the foreign coverage is progressively lower for options 10, 11, and 12, the benefits also decrease for those options accordingly. However, the benefit from improved recordkeeping practices by a given set of facilities also depends on the amount of food produced by those facilities. Because imported food accounts for a small percentage of total domestic food consumption, the average amount of domestically consumed food from foreign facilities is smaller than that from domestic facilities. Under this option, the reduction in the number of foreign facilities that are covered is proportionally greater than the reduction in the amount of food covered. As a result, the incremental reduction in potential costs caused by the exemption of foreign facilities should be larger than the incremental reduction in benefits. The exemption of foreign facilities under this option

would likely hamper trace-back capability by less than an exemption of the same number of domestic facilities.

Moreover, option 10 has the added benefit of simplicity in that the foreign coverage would be the same as that covered under the registration rule. This parallel coverage to the registration rule would make monitoring both recordkeeping and registration practices less costly.

Option 11, same as option 4 except that foreign coverage includes only the final holders before export: In addition to the exemptions in option 10, this option exempts an additional single category in the middle of the foreign supply chain and with a large number of facilities. Consequently, the benefits under this option are lower than under option 10 by both the speed criterion and the thorough investigation criterion. However, as we explained in the discussion of option 10, the proportionally smaller importance of imported foods in the domestic food supply implies that the exemption should have relatively little effect on benefits.

Option 12, same as option 4 except that all foreign facilities are excluded: This option exempts all foreign suppliers from record-keeping requirements. When compared to options 10 and 11, the number of foreign firms covered under this option is the lowest. As such, the benefits of this option, when compared to the other two, are the lowest as well using both the speed criterion and the ability to conduct a thorough investigation.

Option 13, comprehensive coverage that requires facilities to be able to tie specific input ingredients to specific products: This option generates the highest benefits. A complete list of the specific source of all ingredients would be available for all processed and raw foods, greatly aiding traceback and trace forward investigations. In addtion, of all the options, this would allow investigators to most quickly identify candidate traceback facilities, since it would allow FDA to effectively narrow our search to specific entities.

Table 38 of this document presents the overall ranking of each option based on the previous summary. Option 13, requiring input ingredients to be connected to output ingredients through records, has the highest absolute benefits, followed by option 2. The lowest ranked option in terms of absolute benefits is the baseline, option 1, and the lowest benefits of the possible interventions would be the proposed rule with a complete foreign facility exemption, due to the large number of foreign facilities where adulteration might occur. FDA requests comments on this ranking.

TABLE 38.—RANKING OF EFFECTIVENESS OF EACH MECHANISM UNDER EACH OPTION

Option:	Benefit 1	Benefit 2	Overall Ranking
1) No action	13	13	13
2) 4 or 8 hour records access	2	2	2
3) Outer packaging exemption	3	3	3
4) Exclude recordkeeping on outer packaging	3	3	3
5) 24-hour records access	7	9	8
6) Intrastate exemption	10	10	10
7) Mixed-type facilities that engage in farming	5	5	5
8) 1-year record retention	7	7	7
9) 2-year record retention	6	6	6
10) Proposed. Same foreign coverage as Registration	8	8	8
11) Cover only final foreign holders	11	11	11
12) Exempt all foreign suppliers	12	12	12
13) Input to output requirement	1	1	1

B. Initial Regulatory Flexibility Analysis

FDA has examined the economic implications of this proposed rule as required by the Regulatory Flexibility Act (5 U.S.C. 601–612). If a rule has a significant economic impact on a substantial number of small entities, the Regulatory Flexibility Act requires agencies to analyze regulatory options that would lessen the economic effect of the rule on small entities. FDA finds that this proposed rule would have a significant economic impact on a substantial number of small entities.

Impact per firm: We define small as employing fewer than 500 full-time-equivalent workers. The SBA uses several criteria for identifying a small firm based on its NAICS code, but having less than 500 employees is the most common SBA small definition in the food industry (Ref. 31). We also consider two definitions of very small: Less than 20 employees and less than 10 employees. The great majority of firms are considered small when classified by any of these definitions. Table 39 presents the percent of firms in each of these categories. Not included in this table are farm numbers. We calculated farm percentages using the Agricultural census through the NASS, but the Agricultural census only classifies farm size by sales and acreage, not by the number of employees (Ref. 19). Fifty percent of farms have less than $10,000 in annual sales. Neither SBA definitions nor employee data exist for exclusive food importers; we assume that the percentage of small firms in this category is similar to the percentage in other food categories. We do not include foreign firms in this analysis because the Regulatory Flexibility Act does not apply to foreign entities. It is clear from Table 39 of this document that any provision in this regulation that takes the size of the facility into account would cover a significant percent of food businesses.

TABLE 39.—PERCENTAGE OF SMALL AND VERY SMALL FIRMS

Type	< 500 Employees	< 20 Employees	< 10 Employees
Manufacturers	98.0%	85.3%	77.0%
Wholesalers/Warehouses	99.3%	89.4%	82.2%
Packaging[1]	98.6%	87.0%	78.7%
Transporter/Packers	99.5%	94.8%	89.5%
Grocery and other Retail	99.7%	93.9%	87.8%
Convenience Stores	99.6%	88.9%	73.1%
Mixed-Type Facilities that Have Farms	—	—	—
Importers	—	—	—

[1] Includes both outer packaging and food contact substances.

In Tables 40 and 41 of this document, FDA presents the average and maximum possible burden placed on each small and very small firm following the adoption of the final rule. We explain these costs in detail in the preliminary regulatory impact analysis. Costs fall into four categories: learning about the regulation, redesigning records to accommodate new information, collecting and maintaining new information, and planning for a rapid response in the event of a records request from FDA under this authority. The average mean startup costs reported in the table are approximately $888, and the average mean recurring costs reported in the table are approximately $222. Based on our assumptions, average maximum startup costs are approximately $2569 and the average maximum recurring costs reported in the table are $521. We also acknowledge considerable nonquantifiable uncertainty in these estimates, so the true burden of the regulation on small businesses could be higher or lower.

The estimated burden on convenience stores is lower since: (1) We assume that most convenience stores will depend on either a corporate parent or other facility in the supply chain for document redesign, and (2) only a small percentage of convenience stores sales (11.4 percent according to a comment received through FDA's early outreach) is for food products, so the volume of food products for which they would have to collect information and prepare access is relatively small. Transporters and Packing firm costs are larger since we assume that transporting firms would not be able to share records redesign costs with firms up or down the supply chain. We also assumed that packaging producers and distributors would have to maintain relatively less additional information since not all of their products will be used to pack food. In subsequent years, all firms will only incur the additional records maintenance burden.

TABLE 40.—AVERAGE STARTUP AND RECURRING COSTS PER FIRM

Cost	Transporter/ Packer	Convenience Store	Packaging[1]	Other
Startup				
Learning	$120	$120	$120	$120
Redesign	$1,211	$121	$606	$606
Access Preparation	$151	$75	$151	$151
Total Startup	$1,482	$317	$876	$876
Recurring				
Additional Records Maintenance	$326	$63	$163	$326

[1] Includes both outer packaging and food contact substances.

The maximum first year costs per firm are calculated using the following assumptions: First, a firm may not have Internet access, so it may have a 5 1/2 hour learning burden. Next, a firm may incur the largest value in the distribution of redesign costs, and may not be able to share the redesign burden with other facilities. Finally, the firm may not receive records with any additional information previously collected that is required in this proposed rule. Thus they may incur the entire burden of additional records maintenance. We assume access preparation costs do not vary.

TABLE 41.—MAXIMUM STARTUP AND RECURRING COSTS PER FIRM

Cost	Transporter/ Packer	Convenience Store	Packaging[1]	Other
Startup				
Learning	$138	$138	$138	$138
Redesign	$2,299	$2,299	$2,299	$2,299
Access Preparation	$151	$75	$151	$151
Total Startup	$2,588	$2,512	$2,588	$2,588
Recurring				
Additional Records Maintenance	$653	$126	$653	$653

[1] Includes both outer packaging and food contact substances.

In order to get a rough estimate of the impact of higher recordkeeping costs on small businesses, we ran the small business simulation model that was developed by FDA's contractor, RTI International (Ref. 31), for the candy and ready-to-eat food sectors. In the simulation, we used the high annual costs of the second year per-firm recordkeeping costs (about $850) to see the impact on revenues and cash flow. The results from the simulation indicate that when firm size (by number of employees) is assumed to be normally distributed, the recordkeeping costs in the second year would result in pre-tax costs being greater than cash flow for 0.1 percent of firms with fewer than 20 employees in the candy industry. For the ready-to-eat sector, the results indicate that the high second year per-firm recordkeeping costs would not result in pre-tax costs being greater than cash flow for any firms.

Additional flexibility considered: Agencies can consider three basic small business regulatory options: First, if the implementing statute allows, an agency could exempt small businesses from all regulatory requirements. In addition, an agency could modify the regulatory requirements for small businesses, including offering an exemption from part of the regulation. Finally, an agency could specify a longer effective compliance date for small businesses. In this proposed rule, FDA considers each of these possibilities. We designed several provisions to lower the impact on small firms, some of which apply to small firms exclusively, and some of which apply to all firms.

First, FDA proposes a staggered effective compliance date for this regulation. The compliance dates are the following: 6 months for large firms, 12 months for small firms, defined as having less than 500 but more than 10 full-time equivalent employees, and 18 months for very small firms, defined as having 10 or fewer full-time equivalent employees. Only one of the cost estimates we explained in detail in the preliminary regulatory impact analysis directly depends on the compliance date; records redesign cost. We estimated using the FDA Label Cost Model that very small firms would save an average of 10 percent in their redesign costs by having longer than a year to comply. The medium 1-year redesign cost estimate is $1,309 per redesign. We assume this cost is shared between two firms, since a single set of records can serve as source, recipient, and transport records. The average redesign cost per firm is $655 for firm types other than transporters and convenience stores. The median 18-month redesign cost estimate is $1,190 per redesign, for an average cost of $595 per firm. The estimated medium redesign burden would drop by $60 per firm, or 8 percent of the estimated average first startup burden of the regulation. Also, present value considerations will result in reduced future cost estimates. Thus, the later compliance dates specified in the proposed rule will reduce the total cost for all small firms. FDA requests comments regarding these assumptions.

In addition, FDA is proposing to describe the specific information a covered entity must keep, but not specify the form or type of system in which those records must be maintained, which will allow firms to comply with the regulation in a manner that is cost effective. Mandated structural changes to records or required retention technology probably would not be the most cost effective solution for every firm, so not specifying the form or type of system in which the records must be maintained almost certainly would impose a smaller burden on industry, including small businesses. Comments to FDA's preliminary outreach generally agreed with this position. FDA believes that describing the specific information a covered entity must keep, but not specifying the form or type of system in which those records must be maintained is the most flexible means of proposing this regulation for all businesses. However, FDA also believes that each provision in this proposed rule is necessary to tracing investigations, so we do not propose any additional flexibility for small or very small businesses.

Finally, FDA is proposing several exemptions based on facility type. Since the majority of facilities of each type are small businesses, these exemptions will reduce the small business burden of this regulation. In the proposed rule, FDA exempts retail facilities from having to maintain records of final consumers who purchase retail food products. Requiring firms to collect and maintain consumer information would increase the burden on retail facilities by at least the amount of the current redesign burden and current additional records maintenance burden summarized in Table 40 of this document. Without this exemption, retail firms (including small retail firms) would have to design and maintain an entirely new recordkeeping system.

Most other small business exemptions are infeasible for this regulation because we believe records held by these businesses are an important link in the chain of custody for the food products. As shown in Table 39 of this document, a large percentage of the food industry would be exempt under any blanket small business exemption. Even nonemployee businesses (who have no paid employees, the smallest exemption possible) still constitute a substantial proportion of the food industry. Any type of exemption in the middle of the supply chain very likely would make records unavailable and therefore would break the chain of custody of many products during tracing investigations.

The Bioterrorism Act exempts farms and restaurants. Because most farms and restaurants are small businesses, this exemption provides regulatory relief to small entities. In addition, in this proposed rule the term "farm" includes facilities that pack or hold food, provided that all food used in such activities is grown or raised on that farm or is consumed on that farm; "farm" also includes facilities that manufacture or process food, provided that all food used in such activities is consumed on that farm or another farm under the same ownership. Most of these facilities are small entities. The statutory exemptions provide considerable relief to small entities without compromising the purpose of the recordkeeping regulation. FDA will continue to conduct research regarding possible further exemptions, and requests comments regarding possible exemptions that would provide additional relief for small businesses while still accomplishing the goals of the Bioterrorism Act.

C. Unfunded Mandates

Title II of the Unfunded Mandates Reform Act of 1995 (Public Law 104–4) requires cost-benefit and other analyses before any rule making if the rule would include a "Federal mandate that may result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100,000,000 or more (adjusted annually for inflation) in any 1 year." The current inflation-adjusted statutory threshold is $112,300,000. FDA has determined that this proposed rule does constitute a significant rule under the Unfunded Mandates Reform Act.

Most of the requirements of the Unfunded Mandates are fulfilled in the Executive Order 12866 analysis, above. The requirements under the Unfunded Mandates Act of 1995 include assessing the rule's effects on future costs; productivity; particular regions, communities, or industrial sectors; economic growth; full employment; job creation; and exports.

Future costs: The future costs from the recordkeeping rule include the recurring costs, which reach their long-term value in the third year after the proposed rule would become final. These costs would be incurred by domestic facilities that manufacture, process, pack, transport, distribute, receive, hold, or import food, and the foreign facilities that are subject to this proposed rule (foreign manufacturers, processors, packers, and holders of food that would be required to register).

Recurring costs from collecting new information would be incurred in each future year. The estimates of these costs were modeled using the previous analysis of the juice HAACP regulation as a frame of reference. An hourly burden of 30 minutes a week was used for the additional monitoring and recordkeeping that would be required from this proposed rule. This hourly burden estimate was modified for foreign facilities and convenience stores to allow for structural differences assumed in their operations. For a fuller illustration of the future costs of the proposed rule, see Table 20 of this document.

TABLE 42.—FUTURE COSTS

	Mean	Low	High
Year 3 and later years	$221,130,000	$212,313,000	$229,680,000

Particular regions, communities, or industrial sectors: The costs of the recordkeeping requirement will be shared among domestic manufacturers, processors, packers, transporters, receivers, holders, and importers of food, and the foreign facilities that would be subject to this proposed rule (foreign holders, packers, manufacturers, and processors that would be required to register) as well as domestic consumers. The higher costs incurred by domestic and foreign suppliers as a result of these regulations will mostly be passed on to consumers in the form of higher food prices. Since consumer demand for food is highly inelastic almost all of the higher costs incurred by food suppliers will be passed on to consumers. Consequently, higher food prices will reduce real incomes for all consumers. However, we believe that the benefits from these regulations will justify the reduction in real incomes. These benefits are measured as an improved ability by the FDA to respond to and contain threats of serious adverse health consequences from accidental or deliberate contamination of food.

National productivity, economic growth, job creation, and full employment: Although this proposed regulation is costly, we do not expect it to substantially affect national productivity, growth, jobs, or full employment. The total costs will be small relative to the economy, and will be offset by benefits. The improved ability to respond to, and contain, serious adverse health consequences means less illness and fewer sick days taken by employees, and lower adjustment costs by firms that would otherwise need to hire replacement employees.

Exports: This proposed rule would require additional records to be kept throughout the production and distribution chain for food. The additional recordkeeping costs would increase the total costs of production and distribution for all of the regulated products, including products sold within the United States and across national borders. These increased costs will be largely passed on to consumers in the form of higher prices, which will tend to reduce the quantity demanded of the regulated products. The increased prices of U.S. exports could reduce the quantity of U.S. exports demanded, particularly in comparison with exports from countries that do not implement similar recordkeeping regulations. We expect this effect to be insignificant, because under the proposed rule (option 10, described above), the increases in the price of U.S. exports (and resulting decreases in quantity demanded) would be quite small.

D. SBREFA Major Rule

The Small Business Regulatory Enforcement Fairness Act of 1996 (Public Law 104–121) defines a major rule for the purpose of congressional review as having caused or being likely, to cause one or more of the following: An annual effect on the economy of $100 million; a major increase in costs or prices; significant adverse effects on competition, employment, productivity, or innovation; or significant adverse effects on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets. In accordance with the Small Business Regulatory Enforcement Fairness Act, OMB has determined that

this proposed rule, when final, will be a major rule for the purpose of congressional review.

IV. Paperwork Reduction Act of 1995

This proposed rule contains information collection provisions that are subject to review by OMB under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520). A description of these provisions is given below with an estimate of the annual recordkeeping burden. Included in the estimate is the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing each collection of information.

FDA invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of FDA's functions, including whether the information would have practical utility; (2) the accuracy of FDA's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques, when appropriate, and other forms of information technology.

Title: Recordkeeping and Records Access Requirements for Food Facilities

Description: The Bioterrorism Act contains a provision authorizing the Secretary to develop regulations requiring food facilities that manufacture, process, pack, hold, receive, distribute, transport, or import food to establish and maintain records identifying the immediate previous sources and immediate subsequent recipients of food, animal food, or food ingredients. Records for nontransporters must include the name and full contact information of sources, recipients, and transporters, an adequate description of the food including the quantity and the way that it is packaged, and the receipt and shipping dates. Records for transporters must include similar information about the food or food packaging, sources, and recipients, identification of all modes of transportation, and responsible individuals, while the food or food packaging is in the custody of the transporter.

Description of Respondents: Facilities that manufacture, process, pack, hold, receive, distribute, transport, or import food are required to establish and maintain records, including facilities in both interstate and intrastate commerce. Foreign manufacturers, processors, packers, and holders of food that would be required to register are required to maintain records if they ship food to the United States.

Burden: FDA estimates that the paperwork burden of this rule will be incurred by the number and types of firms and facilities listed in Table 43 of this document. FDA assumes that, approximately 841,000 facilities owned by approximately 646,000 firms would be covered. This number includes domestic facilities that manufacture, process, transport, distribute, pack, receive, hold, or import food, and the foreign facilities that manufacture, process, package, or hold food destined for consumption or use in the United States that would be required to register. Some of the recordkeeping burden will be incurred at the firm level and some of the burden will be incurred at the facility level.

TABLE 43.—AFFECTED FACILITY AND FIRM DETAILS

Type	Facility Estimate	Firm Estimate
Manufacturers	43,376	36,948
Wholesalers/Warehouses	95,745	76,952
Packaging[1]	36,907	34,633
Transporters/Packers	16,773	15,171
Retail Grocery and Specialty Food	207,657	153,277
Convenience Stores	128,985	68,866
Mixed-Type Facilities That Have Farms	30,497	24,397
Importers	18,902	15,122
Total Domestic	578,842	425,366
Final Holders	77,427	61,942
De minimus Processors/Packagers	22,600	18,080
Manufacturers	125,450	106,858
Other Facility Types		
Total Foreign	225,477	186,879

[1] Including outer packaging and food contact substances.

The recordkeeping burden for §§ 1.337, 1.345, and 1.352 includes learning about the regulation requirements, the redesign of records, and records maintenance including information collection for these records. The burden for § 1.361 is associated with planning for and executing an FDA request for records. Because it is difficult to estimate with any degree of precision the burden incurred from executing a records access request, we only compute the burden for firms to prepare for a potential records access request from FDA.

The burden for learning the regulatory requirements of this proposed recordkeeping rule may be shared by firms that also need to learn the regulatory requirements of the proposed rule entitled "Registration of Food Facilities" (68 FR 5378, February 3, 2003). The learning burden presented in Table 44 of this document includes the total number of hours needed to learn and understand the records required for compliance. This is a one-time burden that covered firms will incur in the first year following enactment of the final rule.

The records redesign burden presented in Table 44 of this document reflects the burden that some firms will incur by adding a limited amount of new information to their records. Some firms will not already be keeping the required information in a readily accessible form. The records redesign burden includes labor and capital costs associated with modifying existing forms so that they are better suited to meet the recordkeeping requirements. This is assumed to be a one-time burden incurred by each covered firm in the first and second years following implementation of the final rule.

The records access preparation burden presented in Table 44 of this document reflects the burden of preparing a plan for modifying current business practices in order to be able to respond to an FDA records request in the 4-hour or 8-hour required timeframe. The estimate of the records access planning burden is a one-time burden that would be incurred in the first and second years following enactment of the final rule. We assume that this burden will be incurred by each facility.

FDA expects that personnel at most facilities will incur a records maintenance burden due to collecting, recording, and checking for accuracy the limited amount of additional information required by the proposed rule. The burden from this activity is reported in table 45 of this document and is assumed to be incurred by all facilities in each subsequent year following enactment of the final rule. Finally, new firms are assumed to incur burdens from learning and records access preparation in each subsequent year following enactment of the final rule. These burdens for new firms are reported in table 44 of this document.

TABLE 44.—ESTIMATED ANNUAL RECORDKEEPING BURDEN—ONE-TIME BURDEN[1]

21 CFR Section	No. of Recordkeepers	Annual Frequency per Record	Total Annual Records	Hours per Record	Capital Costs	Total Hours
1.337, 1.345, and 1.352, (Learning)	804,319	1	804,319	6.853		5,512,000
1.337, 1.345, and 1.352, (Redesign)	278,858	1	278,858	29.607	$130,582,000	8,256,000
1.361 (Access Preparation)	552,630	1	552,630	5.626		3,109,000
Total						16,877,000

[1] There are no operating and maintenance costs associated with this collection of information.

TABLE 45.—ESTIMATED ANNUAL RECORDKEEPING BURDEN—SUBSEQUENT YEARS[1]

21 CFR Section	No. of Recordkeepers	Annual Frequency per Record	Total Annual Records	Hours per Record	Total Hours
1.337, 1.345, and 1.352 (Additional Records Maintenance)	772,410	1	772,410	10.625	8,207,000
1.337, 1.345, and 1.352, (Learning for New Firms)	80,432	1	80,432	6.853	551,000
1.361 (Access Preparation for New Firms)	55,263	1	55,263	5.626	311,000
Total					9,069,000

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

In compliance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)), the agency has submitted the information collection provisions of this proposed rule to OMB for review. Interested persons are requested to send comments regarding information collection to OMB (see **ADDRESSES**).

V. Analysis of Environmental Impact

The agency has carefully considered the potential environmental effects of this action. FDA has concluded under 21 CFR 25.30(h) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

VI. Federalism

FDA has analyzed this proposed rule in accordance with the principles set forth in Executive Order 13132. FDA has determined that the proposed rule does not contain policies that have substantial direct effects on the States, on the relationship between the National Government and the States, or on the distribution of power and responsibilities among the various levels of government. Accordingly, the agency tentatively concludes that the proposed rule does not contain policies that have federalism implications as defined in the Executive order and, consequently, a federalism summary impact statement is not required.

VII. Comments

Interested persons may submit to the Dockets Management Branch (see **ADDRESSES**) written or electronic comments regarding this document. Submit a single copy of electronic comments or two paper copies of any mailed comments, except that individuals may submit one paper copy. Comments are to be identified with the docket number found in brackets in the

heading of this document. FDA cannot be responsible for addressing comments submitted to the wrong docket or that do not contain a docket number. Received comments may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

FDA notes that the comment period for this document is shorter than the 75-day period that the agency customarily provides for proposed rules that are technical or sanitary or phytosanitary (SPS) measures. FDA believes that a 60-day comment period is appropriate in this instance. Executive Order 12889, "Implementation of the North American Free Trade Agreement" (58 FR 69681, December 30, 1993), states that any agency subject to the Administrative Procedure Act must provide a 75-day comment period for any proposed Federal technical regulation or any Federal SPS measure of general application. Executive Order 12889 provides an exception to the 75-day comment period where the United States considers a technical or SPS measure of general application necessary to address an urgent problem related to the protection of human, plant, or animal health. FDA has concluded that this proposed rule is subject to the exception in Executive Order 12889.

The Bioterrorism Act states that it is intended "[t]o improve the ability of the United States to prevent, prepare for, and respond to bioterrorism and other public health emergencies." In order to meet these objectives, section 306 of the act requires FDA to propose and issue final regulations requiring the establishment and maintenance of records within 18 months of the Bioterrorism Act's enactment, which is by December 12, 2003. This expedited timeframe reflects the urgency of the U.S. Government's need to prepare to respond to bioterrorism and other food-related emergencies. Accordingly, FDA has concluded that the urgency of this matter is sufficient justification for shortening the public comment period for this proposal to 60 days, consistent with Executive Order 12889.

FDA will not consider any comments submitted after the 60-day comment period closes and does not intend to grant any requests for extension of the comment period due to the Bioterrorism Act's December 12, 2003, deadline.

VIII. References

The following references have been placed on display in the Dockets Management Branch (see **ADDRESSES**) and may be seen by interested persons between 9 a.m. and 4 p.m., Monday through Friday. FDA has verified the Web site addresses in this document, but is not responsible for subsequent changes to the Web sites after this document publishes in the **Federal Register**.

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List of Subjects

21 CFR Part 1

Cosmetics, Drugs, Exports, Food labeling, Imports, Labeling, Reporting and recordkeeping requirements.

21 CFR Part 11

Administrative practice and procedure, Computer technology, Reporting and recordkeeping requirements.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, it is proposed that 21 CFR parts 1 and 11 be amended as follows:

PART 1—GENERAL ENFORCEMENT REGULATIONS

1. The authority citation for 21 CFR part 1 continues to read as follows:

Authority: 15 U.S.C. 1453, 1454, 1455; 21 U.S.C. 304, 321, 331, 334, 343, 350c, 350d, 352, 355, 360b, 362, 371, 374, 381, 382, 393; 42 U.S.C. 216, 241, 243, 262, 264.

2. Subpart J is added to part 1 to read as follows:

Subpart J—Establishment, Maintenance, and Availability of Records

General Provisions

Sec.
1.326 Who is subject to this subpart?
1.327 Who is excluded from all or part of the regulations in this subpart?
1.328 What definitions apply to this subpart?
1.329 Do other statutory provisions and regulations apply?
1.330 Can existing records satisfy the requirements of this subpart?

Requirements to Establish and Maintain Records to Identify the Nontransporter and Transporter Immediate Previous Source of All Food

1.337 What information is required in the records you must establish and maintain to identify the nontransporter and transporter immediate previous source?

Requirements to Establish and Maintain Records to Identify the Nontransporter and Transporter Immediate Subsequent Recipient of All Food

1.345 What information is required in the records you must establish and maintain to identify the nontransporter and transporter immediate subsequent recipient?

Requirements to Establish and Maintain Records to Trace the Transportation of All Food

1.351 Who is required to establish and maintain records for tracing the transportation of all food?
1.352 What information is required in the transportation records?

General Requirements

1.360 What are the record retention requirements?
1.361 What are the record availability requirements?
1.362 What records are excluded from this subpart?
1.363 What are the consequences of failing to establish or maintain records or make them available to FDA?

Effective Dates

1.368 What are the compliance dates for this subpart?

Subpart J—Establishment, Maintenance, and Availability of Records

General Provisions

§ 1.326 Who is subject to this subpart?

(a) Domestic persons who manufacture, process, pack, transport, distribute, receive, hold, or import food intended for consumption in the United States are subject to the regulations in this subpart, unless you qualify for one of the exclusions in § 1.327. In addition, foreign facilities that manufacture/process, pack, or hold food for human or animal consumption in the United States are subject to these regulations, unless you qualify for one of the exclusions in § 1.327. If you conduct more than one type of activity at a location, you are required to keep records with respect to those activities covered by this subpart, but are not required by this subpart to keep records with respect to activities that fall within one of the exclusions in § 1.327.

(b) Persons subject to the regulations in this subpart must keep records whether or not the food enters interstate commerce.

§ 1.327 Who is excluded from all or part of the regulations in this subpart?

(a) Farms are excluded from all of the regulations in this subpart;

(b) Restaurants are excluded from all of the regulations in this subpart;

(c) Fishing vessels including those that not only harvest and transport fish but also engage in practices such as heading, eviscerating, or freezing intended solely to prepare fish for holding on board a harvest vessel are excluded from all of the regulations in this subpart, except § 1.361 and § 1.363. However, those fishing vessels otherwise engaged in processing fish, which for purposes of this subsection means handling, storing, preparing, heading, eviscerating, shucking, freezing, changing into different market forms, manufacturing, preserving, packing, labeling, dockside unloading, or holding, are subject to all of the regulations in this subpart;

(d)(1) All retail facilities are excluded from § 1.345 of this subpart;

(2) Retail facilities that employ 10 or fewer full-time equivalent employees that:

(i) Are located in the same general physical location as a farm; and

(ii) Sell unprocessed food grown or raised on that farm or on another farm located in the same general physical location are excluded from all of the regulations in this subpart, except § 1.361 and § 1.363, with respect to that unprocessed food.

(e) Persons who manufacture, process, pack, transport, distribute, receive, hold, or import food that is within the exclusive jurisdiction of the U.S. Department of Agriculture under the Federal Meat Inspection Act (21 U.S.C. 601 *et seq.*), the Poultry Products Inspection Act (21 U.S.C. 451 *et seq.*), or the Egg Products Inspection Act (21 U.S.C. 1031 *et seq.*) are excluded from all of the regulations in this subpart with respect to that food.

(f) Foreign facilities are excluded from all the regulations in this subpart, if food from such facilities undergoes further manufacturing/processing (including packaging) by another foreign facility outside the United States. This exclusion does not apply to a foreign facility if the further manufacturing/processing (including packaging) conducted by the subsequent facility consists of adding labeling or any similar activity of a de minimis nature.

(g) Persons who manufacture, process, pack, transport, distribute, receive, hold, or import pet food who are not subject to the recordkeeping provisions of the animal proteins prohibited in ruminant feed regulation (§ 589.2000 of this chapter) are, with respect to pet food records, excluded from all the regulations in this subpart except for § 1.361 and § 1.363.

§ 1.328 What definitions apply to this subpart?

The definitions of terms in section 201 of the Federal Food, Drug, and Cosmetic Act apply to such terms when used in this subpart.

In addition, for the purposes of this subpart:

Act means the Federal Food, Drug, and Cosmetic Act.

Domestic person means any person located in any State or Territory of the

United States, the District of Columbia, or the Commonwealth of Puerto Rico.

Farm means a facility in one general physical location devoted to the growing of crops for food, the raising of animals for food (including seafood), or both. The term "farm" includes:

(1) Facilities that pack or hold food, provided that all food used in such activities is grown or raised on that farm or is consumed on that farm; and

(2) Facilities that manufacture/process food, provided that all food used in such activities is consumed on that farm or another farm under the same ownership.

Food has the meaning given in section 201(f) of the act (21 U.S.C. 321(f)). Examples of food include, but are not limited to: Fruits; vegetables; fish; dairy products; eggs; raw agricultural commodities for use as food or components of food; animal feed, including pet food; food and feed ingredients and additives, including substances that migrate into food from food packaging and other articles that contact food; dietary supplements and dietary ingredients; infant formula; beverages, including alcoholic beverages and bottled water; live food animals; bakery goods; snack foods; candy; and canned foods.

Foreign facility means a facility other than a domestic person that manufactures/processes, packs, or holds food for consumption in the United States.

Manufacturing/processing means making food from one or more ingredients, or synthesizing, preparing, treating, modifying or manipulating food, including food crops or ingredients. Examples include, but are not limited to: Cutting, peeling, trimming, washing, waxing, eviscerating, rendering, cooking, baking, freezing, cooling, pasteurizing, homogenizing, mixing, formulating, bottling, milling, grinding, extracting juice, distilling, labeling, or packaging.

Nontransporter means a person who owns food or who holds, processes, packs, imports, receives, or distributes food for purposes other than transportation.

Nontransporter immediate previous source means a person that last had an article of food before transferring it to another nontransporter.

Nontransporter immediate subsequent recipient means a nontransporter that acquires an article of food from another nontransporter.

Perishable food means food that is not heat-treated, not frozen, and not otherwise preserved in a manner so as to prevent the quality of the food from being adversely affected if held longer than 7 days under normal shipping and storage conditions.

Pet food means food for nonfood-producing animals.

Recipe means the quantitative formula used in the manufacturing of the food product, but not the identity of the individual ingredients of the food.

Restaurant means a facility that prepares and sells food directly to consumers for immediate consumption. Restaurants include, but are not limited to, cafeterias, lunchrooms, cafes, bistros, fast food establishments, food stands, saloons, taverns, bars, lounges, catering facilities, hospital kitchens, day care kitchens, and nursing home kitchens. Facilities that provide food to interstate conveyances, rather than directly to consumers, are not restaurants.

Retail facility means a facility that sells food products directly to consumers only. The term includes, but is not limited to, grocery and convenience stores, vending machine locations, and commissaries.

Transporter means a person who has possession, custody, or control of an article of food for the sole purpose of transporting the food. A person who owns food or who holds, processes, packs, imports, receives, or distributes food for purposes other than transportation is not a transporter.

Transporter's immediate previous source means a person from whom a transporter received an article of food. This source can be either another transporter or a nontransporter.

Transporter's immediate subsequent recipient means a person to whom a transporter delivered an article of food. This recipient can be either another transporter or a nontransporter.

You means a person or facility subject to this subpart under § 1.326.

§ 1.329 Do other statutory provisions and regulations apply?

(a) In addition to the regulations in this subpart, you must comply with all other applicable statutory provisions and regulations related to the establishment and maintenance of records for foods except as described in paragraph (b) of this section. For example, the regulations in this subpart are in addition to existing recordkeeping regulations for low acid canned foods, juice, seafood, infant formula, color additives, bottled water, animal feed, and medicated animal feed.

(b) Records established or maintained to satisfy the requirements of this subpart that meet the definition of electronic records in § 11.3(b)(6) of this chapter are exempt from the requirements of part 11 of this chapter. Records that satisfy the requirements of this subpart but that are also required under other applicable statutory provisions or regulations remain subject to part 11 of this chapter.

§ 1.330 Can existing records satisfy the requirements of this subpart?

The regulations in this subpart do not require duplication of existing records if those records contain all of the information required by this subpart. If a covered person keeps records of all of the information as required by this subpart in order to comply with other Federal, State, or local regulations, or for any other reason, then those records may be used to meet these requirements.

Requirements to Establish and Maintain Records to Identify the Nontransporter and Transporter Immediate Previous Source of All Food

§ 1.337 What information is required in the records you must establish and maintain to identify the nontransporter and transporter immediate previous source?

(a) If you are a nontransporter, you must establish and maintain the following records for all food you receive. Your records must include information reasonably available to you to identify the specific source of each ingredient that was used to make every lot of finished product.

(1) The name of the firm and responsible individual, address, phone number and, if available, the fax number and e-mail address of the nontransporter immediate previous source, whether domestic or foreign;

(2) An adequate description of the type of food received, to include brand name and specific variety (e.g., brand x cheddar cheese, not just cheese; or romaine lettuce, not just lettuce);

(3) The date you received the food;

(4) The lot or code number or other identifier of the food (to the extent this information exists);

(5) The quantity and how the food is packaged (e.g., 6 ct. bunches, 25 lb carton, 12 oz bottle); and

(6) The name of the firm and responsible individual, address, phone number and, if available, the fax number and e-mail address of the transporters who transported the food to you.

Requirements to Establish and Maintain Records to Identify the Nontransporter and Transporter Immediate Subsequent Recipient of All Food

§ 1.345 What information is required in the records you must establish and maintain to identify the nontransporter and transporter immediate subsequent recipient?

(a) If you are a nontransporter, you must establish and maintain the following records for all food you release:

(1) The name of the firm and responsible individual, address, phone number and, if available, the fax number and e-mail address of the nontransporter immediate subsequent recipient, whether domestic or foreign;

(2) An adequate description of the type of food released, to include brand name and specific variety (e.g., brand x cheddar cheese, not just cheese; or romaine lettuce, not just lettuce);

(3) The date the food was released;

(4) The lot or code number or other identifier of the food (to the extent this information exists);

(5) The quantity and how the food is packaged (e.g., 6 ct. bunches, 25 lb carton, 12 oz bottle); and

(6) The name of the firm and responsible individual, address, phone number and, if available, the fax number and e-mail address of the transporters who transported the food from you.

(b) [Reserved]

Requirements to Establish and Maintain Records to Trace the Transportation of All Food

§ 1.351 Who is required to establish and maintain records for tracing the transportation of all food?

If you are a domestic person and you are a transporter of food, you are required to establish and maintain records containing information not only about your transportation activities but also about the person from whom you received the food (the transporter's immediate previous source) and the person to whom you delivered it (the transporter's immediate subsequent recipient), as specified in § 1.352.

§ 1.352 What information is required in the transportation records?

(a) You must establish and maintain the following records for each food you transport:

(1) The name of the firm and responsible individual, address, phone number and, if available, the fax number and e-mail address of the person who had the food immediately before you, and the date you received it from that person;

(2) The name of the firm and responsible individual, address, phone number and, if available, the fax number and e-mail address of the person who had the food immediately after you, and the date you delivered it to that person;

(3) An adequate description of the type of food, including brand name and specific variety (e.g., brand x cheddar cheese, not just cheese; or romaine lettuce, not just lettuce);

(4) The lot or code number or other identifier of the food (to the extent this information exists);

(5) The quantity and how the food is packaged (e.g., 6 ct. bunches, 25 lb carton, 12 oz bottle);

(6) Identification of each and every mode of transportation (e.g., company truck, private carrier, rail, air, etc.), and the individual responsible, from the time you first received the food until the time you delivered it.

(b) [Reserved]

General Requirements

§ 1.360 What are the record retention requirements?

(a) You must create the required records at the time the activity occurs.

(b) You must retain for 1 year after the date the records were created all required records for perishable foods not intended for processing into nonperishable foods.

(c) You must retain for 2 years after the date the records were created all required records for all other foods, except animal foods.

(d) You must retain for 1 year after the date the records were created all required records for animal food, including pet food.

(e) You must retain all records required by these regulations at the establishment where the covered activities described in the records occurred (onsite) or at a reasonably accessible location.

(f) The maintenance of electronic records is acceptable.

§ 1.361 What are the record availability requirements?

When FDA has a reasonable belief that an article of food is adulterated and presents a threat of serious adverse health consequences or death to humans or animals, any records and other information accessible to FDA under section 414 or 704(a) of the act must be readily available for inspection and photocopying or other means of reproduction. Such records and other information must be made available within 4 hours of a request if the request is made between 8 a.m. and 6 p.m., Monday through Friday, or within 8 hours of a request if made at any other time, by an officer or employee duly designated by the Secretary who presents appropriate credentials and a written notice. If records and other information are stored offsite, the records must be retrieved and provided onsite within the specified time period. Electronic records are considered to be onsite if they are accessible from an onsite location.

§ 1.362 What records are excluded from this subpart?

The establishment and maintenance of records as required by this subpart does not extend to recipes for food, financial data, pricing data, personnel data, research data, or sales data (other than shipment data regarding sales).

§ 1.363 What are the consequences of failing to establish or maintain records or make them available to FDA?

(a) The failure to establish or maintain records as required by section 414(b) of the act or the refusal to permit access to or verification or copying of any such required record is a prohibited act under section 301 of the act (21 U.S.C. 331).

(b) The failure to make records or other information available to FDA as required by section 414 or 704(a) of the act is a prohibited act under section 301 of the act.

Effective Dates

§ 1.368 What are the compliance dates for this subpart?

(a) The regulations in this subpart shall be effective 6 months after the date of publication of the final rule in the **Federal Register**. However, this subpart is not binding on small and very small businesses until the dates listed in paragraphs (a)(1) and (a)(2) of this section.

(1) The regulations in this subpart are binding 12 months after the date of publication of the final rule in the **Federal Register**, for small businesses employing fewer than 500 but more than 10 full-time equivalent employees.

(2) The regulations are binding 18 months after the date of publication of the final rule in the **Federal Register**, for very small businesses that employ 10 or fewer full-time equivalent employees.

(b) [Reserved]

PART 11—ELECTRONIC RECORDS; ELECTRONIC SIGNATURES

3. The authority citation for 21 CFR part 11 continues to read as follows:

Authority: 21 U.S.C. 321–393; 42 U.S.C. 262.

4. Section 11.1 is amended to add paragraph (f) to read as follows:

§ 11.1 Scope.

* * * * *

(f) This part does not apply to records required to be established or maintained by §§ 1.326 through 1.368 of this chapter. Records that satisfy the requirements of Part 1, Subpart J of this chapter but that are also required under other applicable statutory provisions or regulations remain subject to this part.

Dated: May 1, 2003.
Mark B. McClellan,
Commissioner of Food and Drugs.
Dated: May 2, 2003.
Tommy G. Thompson,
Secretary of Health and Human Services.
[FR Doc. 03–11460 Filed 5–5–03; 5:08 pm]
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Federal Register

Friday,
May 9, 2003

Part V

Department of Health and Human Services

Food and Drug Administration

21 CFR Parts 1 and 16
Administrative Detention of Food for Human or Animal Consumption Under the Public Health Security and Bioterrorism Preparedness and Response Act of 2002; Proposed Rule

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Parts 1 and 16

[Docket No. 02N–0275]

RIN 0910–AC38

Administrative Detention of Food for Human or Animal Consumption Under the Public Health Security and Bioterrorism Preparedness and Response Act of 2002

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Food and Drug Administration (FDA) is proposing a regulation that provides procedures for the detention of an article of food, if an officer or qualified employee of FDA has credible evidence or information indicating that such article presents a threat of serious adverse health consequences or death to humans or animals ("administrative detention"). The proposed regulation implements the Public Health Security and Bioterrorism Preparedness and Response Act of 2002 (the Bioterrorism Act), which authorizes the use of administrative detentions and requires regulations establishing procedures for instituting on an expedited basis certain enforcement actions against perishable food subject to a detention order.

DATES: Submit written or electronic comments by July 8, 2003.

ADDRESSES: Submit written comments to the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. Submit electronic comments to http://www.fda.gov/dockets/ecomments.

FOR FURTHER INFORMATION CONTACT: Marquita Steadman, Center for Food Safety and Applied Nutrition (HFS–007), Food and Drug Administration, 5100 Paint Branch Pkwy., College Park, MD 20740, 301–827–6733.

SUPPLEMENTARY INFORMATION:

Table of Contents

I. Background and Legal Authority
II. Preliminary Stakeholder Comments
III. The Proposed Regulation
  A. Highlights of Proposed Rule
  B. General Provisions
  1. What Definitions Apply to This Subpart? (Proposed § 1.377)
  2. What Criteria Does FDA Use to Order a Detention? (Proposed § 1.378)
  3. How Long May FDA Detain an Article of Food? (Proposed § 1.379)
  4. Where and Under What Conditions Must the Detained Article of Food be Held? (Proposed § 1.380)
  5. May a Detained Article of Food be Delivered to Another Entity or Transferred to Another Location? (Proposed § 1.381)
  6. What Labeling or Marking Requirements Apply to a Detained Article of Food? (Proposed § 1.382)
  7. What Expedited Procedures Apply When FDA Initiates a Seizure Action Against a Detained Perishable Food? (Proposed § 1.383)
  8. When Does a Detention Order Terminate? (Proposed § 1.384)
  C. How Does FDA Order a Detention?
  1. Who Approves a Detention Order? (Proposed § 1.391)
  2. Who Receives a Copy of the Detention Order? (Proposed § 1.392)
  3. What Information Must FDA Include in the Detention Order? (Proposed § 1.393)
  D. What is the Appeal Process for a Detention Order?
  1. Who is Entitled to Appeal? (Proposed § 1.401)
  2. What Are the Requirements for Submitting an Appeal? (Proposed § 1.402)
  3. What Requirements Apply to an Informal Hearing? (Proposed § 1.403)
  4. Who Serves as the Presiding Officer at an Informal Hearing? (Proposed § 1.404)
  5. When Does FDA Have to Issue a Decision on an Appeal? (Proposed § 1.405)
  6. How Will FDA Handle Classified Information in an Informal Hearing? (Proposed § 1.406)
IV. Conforming Amendment to 21 CFR Part 16
V. Analysis of Economic Impact
  A. Benefit-Cost Analysis
  B. Initial Regulatory Flexibility Analysis
  C. Unfunded Mandates
  D. SBREFA Major Rule
VI. Paperwork Reduction Act of 1995
VII. Analysis of Environmental Impact
VIII. Federalism
IX. Comments
X. References

I. Background and Legal Authority

The events of September 11, 2001, highlighted the need to enhance the security of the U.S. food supply. Congress responded by passing the Bioterrorism Act (Public Law 107–188), which was signed into law on June 12, 2002. The Bioterrorism Act includes a provision in title III (Protecting Safety and Security of the Food and Drug Supply), Subtitle A (Protection of Food Supply), section 303, which amends section 304 of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 334 *et seq.*) by adding paragraph (h) to provide that an officer or qualified employee of FDA may order the detention of any article of food that is found during an inspection, examination, or investigation under the act if the officer or qualified employee has credible evidence or information indicating that the article of food presents a threat of serious adverse health consequences or death to humans or animals. This provision also requires the Secretary of Health and Human Services (the Secretary) to provide by regulation procedures for instituting on an expedited basis certain enforcement actions against perishable food subject to a detention order. Section 303 of the Bioterrorism Act also amends the act by adding a new prohibited act as paragraph (bb) to section 301 of the act (21 U.S.C. 331)

The major components of section 303 of the Bioterrorism Act are as follows:

- *Criteria used to trigger an administrative detention*: Amends section 304 of the act to authorize an officer or qualified employee of FDA to order the detention of any article of food that is found during an inspection, examination, or investigation under the act, if the officer or qualified employee has credible evidence or information indicating such article presents a threat of serious adverse health consequences or death to humans or animals.
- *Approval required*: The Secretary, or an official designated by the Secretary, must approve the detention order. An "official designated by the Secretary" means the District Director of the district where the detained article of food is located, or an FDA official senior to such director.
- *Period of detention*: The detention period will be for a reasonable period, not to exceed 20 days, unless a greater period, not to exceed 30 days, is necessary to enable the Secretary to institute a seizure or injunction action.
- *Required rulemaking*: The Secretary must by regulation provide for procedures for instituting certain enforcement actions on an expedited basis with respect to perishable food subject to a detention order.
- *Security of detained article of food*: The detention order may require that the detained article of food be labeled or marked as detained. The order must require the removal of the detained article of food to a secure facility, as appropriate.
- *Appeal procedure*: Any person who would be entitled to claim the detained article of food if such article were seized may appeal the detention order to the Secretary. Within 5 days after such appeal is filed, after providing opportunity for an informal hearing, the Secretary must confirm or terminate the detention order. The appeal process terminates if the Secretary institutes an action for seizure or injunction regarding the article of food involved. Confirmation of a detention order is considered a final agency action.
- *Prohibited act*: Amends section 301 of the act making it a prohibited act to transfer a detained article of food in violation of a detention order, or to remove or alter any mark or label required by the detention order to identify the article of food as detained.

Section 303 of the Bioterrorism Act also includes a provision authorizing temporary holds at ports of entry that will not be addressed in this proposed regulation, but through separate guidance that FDA plans to develop and issue. The temporary hold provision authorizes FDA to request the Secretary of Treasury to institute a temporary hold for up to 24 hours on an article of food offered for import at a U.S. port of entry if FDA has credible evidence or information indicating that an article of food presents a threat of serious adverse health consequences or death to humans or animals, and FDA is unable immediately to inspect, examine, or investigate such article. FDA has received comments on the temporary hold provision in the public docket (Docket No. 02N–0275). FDA plans to consider these comments in developing guidance on the temporary hold provision.

FDA is proposing to amend title 21 of the Code of Federal Regulations (CFR) by establishing a new subpart to part 1 (21 CFR part 1) consisting of subpart K entitled "Administrative Detention of Food for Human or Animal Consumption." In this proposed rule, we describe the procedures for how FDA will detain an article of food and the process for appealing a detention order. We also address procedures for instituting on an expedited basis certain enforcement actions with respect to detained perishable foods. This proposed rule also makes a conforming amendment to part 16 (21 CFR part 16) entitled "Regulatory Hearing Before the Food and Drug Administration." Although the statutory requirements in section 304(h) of the act are self-executing and are currently in effect, FDA is issuing this regulation to further refine aspects of the administrative detention requirements.

The administrative detention process described in this proposed rule is modeled after FDA's medical device administrative detention regulation found at § 800.55 (21 CFR 800.55). FDA believes that this process has been effective and efficient for medical device administrative detentions and should also work well for administrative detentions of food. In addition, using the medical device regulations as a model will be helpful to the agency as field offices are familiar with this detention process and training will not need to be as extensive.

Section 303 of the Bioterrorism Act provides for an opportunity for an informal hearing as part of the appeal process. The regulations in part 16 set out FDA's informal hearing procedures and provide that its procedures apply when the act or FDA regulations provide for an opportunity for a hearing and no specific hearing regulations exist (see § 16.1(b)). Proposed § 1.403 states that any informal hearing held on an appeal of a detention order will be conducted in accordance with part 16 except as noted therein.

Although section 303 of the Bioterrorism Act requires FDA only to promulgate regulations establishing procedures for instituting on an expedited basis certain enforcement actions against perishable food subject to a detention order, FDA also is proposing in this regulation to describe the procedures for how FDA will detain both perishable and nonperishable articles of food and the process for appealing a detention order. If FDA did not establish other requirements for the process for appealing a detention order in this proposed regulation, it would be difficult for FDA to meet certain requirements in section 303 of the Bioterrorism Act. For example, section 303 of the Bioterrorism Act requires FDA, after providing an opportunity for an informal hearing, to confirm or terminate a detention order within 5 days after the date of appeal. Two of the requirements in this proposed rule would be to impose a deadline for filing an appeal and a limitation on the length of the informal hearing (see proposed §§ 1.402 and 1.403). These proposed requirements are intended to ensure that FDA meets section 303's timing requirements. FDA is proposing to codify the procedures for how FDA will detain an article of food to clarify our procedures for the public and to follow FDA's model for the administrative detention of medical devices that has its procedures codified at 21 CFR 800.55. FDA is proposing to incorporate these provisions in a regulation instead of a guidance document to make them enforceable since guidance documents are not binding.

FDA wants to make clear that this proposed rule does not implement section 801 of the act (21 U.S.C. 381), despite its use of the term "detention". As explained in this preamble, this proposed rule implements section 303 of the Bioterrorism Act, which amends section 304 of the act. This amendment grants FDA the authority to detain food upon credible evidence or information of a threat of serious adverse health consequences or death to humans or animals. FDA has had similar authority for medical devices under section 304(g) of the act since 1976, and usually refers to this authority as "administrative detention" (§ 800.55). Section 801(a) of the act provides that FDA shall refuse the admission of any article of food that has been imported or offered for import that appears, among other things, to be adulterated or misbranded under the act, based on physical examination or otherwise. Under section 801(a), before FDA refuses admission to an article that appears violative, importers are provided with a notice of hearing on refusal of admission, which notifies them that the article may be subject to refusal of admission, and provides them with an opportunity to introduce testimony and establish that the article is fully in compliance with the act (§ 1.94). FDA refers to this administrative process concerning imports as detention (see "FDA Regulatory Procedures Manual" (RPM), chapter 9). Because of the authorities available to FDA and the U.S. Customs Service to control imported food subject to section 801(a) of the act, FDA does not expect to frequently use administrative detention under section 303 of the Bioterrorism Act to control such imported food.

Section 304(h) of the act, as added by section 303 of the Bioterrorism Act, provides that:

> An officer or qualified employee of the Food and Drug Administration may order the detention, in accordance with this subsection, of any article of food that is found during an inspection, examination, or investigation under this Act conducted by such officer or qualified employee, if the officer or qualified employee has credible evidence or information indicating that such article presents a threat of serious adverse health consequences or death to humans or animals.

This language does not include a limitation similar to that in section 304(g) of the act that provides for administrative detentions of devices during inspections conducted under section 704 of the act, a provision of the act that has an interstate commerce component. In addition, the prohibited act related to administrative detention of food, section 301(bb) of the act, unlike some other prohibited acts in section 301, does not include an interstate commerce component.

Therefore, FDA tentatively concludes that all food would be subject to administrative detention under section 304(h) of the act, whether or not the food enters interstate commerce. Because a bioterrorist threat involving food or other food-related emergencies would have the same effect on the public health regardless of whether the food had originated from an out of State source, FDA believes that administrative detention should apply to all food, whether or not the food was in interstate commerce. FDA recognizes, however, that section 304(h) of the act is not clear in this regard. For example, section 304(h) includes references to certain enforcement provisions of the act, such as section 304(a) of the act, an enforcement provision that includes an interstate commerce requirement. Because this is an important and controversial issue, the agency is seeking comment on whether its tentative conclusion that it has authority to administratively detain food in intrastate commerce is correct and, if so, whether FDA should use that authority. FDA also seeks comments on the amounts and types of food that would only be in intrastate commerce.

This proposed rule complies with section 315 of the Bioterrorism Act entitled "Rule of Construction," which states that nothing in title III of the Bioterrorism Act, or an amendment made by title III, shall be construed to alter the jurisdiction between the U.S. Department of Agriculture (USDA) and the U.S. Department of Health and Human Services under applicable statutes and regulations. Accordingly, this proposed rule does not apply to food regulated exclusively by the USDA under the Federal Meat Inspection Act (21 U.S.C. 601 *et seq.*), the Poultry Products Inspection Act (21 U.S.C. 451 *et seq.*), or the Egg Products Inspection Act (21 U.S.C. 1031 *et seq.*). However, food that is jointly regulated by FDA and USDA would be subject to this proposed rule. An example of a food that is jointly regulated by FDA and USDA is frozen TV dinners containing both meat and fish.

In addition to section 303 of the Bioterrorism Act, which amends the act as described previously in section I of this document, FDA is relying on section 701(a) of the act (21 U.S.C. 371(a)) in issuing this proposed rule. Section 701(a) authorizes the agency to issue regulations for the efficient enforcement of the act.

II. Preliminary Stakeholder Comments

On July 17, 2002, FDA sent an open letter to members of the public interested in food issues outlining the four provisions of title III of the Bioterrorism Act which require FDA to issue regulations in an expedited time period, and FDA's plans for implementing them (see http://www.cfsan.fda.gov/~dms/sec-ltr.html). In the letter, FDA invited stakeholders to submit comments to FDA by August 30, 2002, for FDA's consideration as it developed this proposed rule. FDA also held several meetings with representatives of industry, consumer groups, other Federal agencies, and foreign embassies after sending out the July 17, 2002, letter in order to solicit stakeholder comments. In response to these solicitations, FDA received a number of comments regarding section 303 of the Bioterrorism Act.

FDA has considered all the comments received by August 30, 2002. FDA will consider all comments we have received so far with the comments we receive during the public comment period for this proposed rule in developing the final rule.

Some of the significant comments FDA received on or before August 30, 2002, include the following:

- The regulations should apply to all foods within FDA's jurisdiction, (e.g., processed food, fresh agriculture, and dietary supplement products).
- The written notice of detention should describe the article of food that has been detained, the quantity of the food, its location, and the basis for the detention. A written notice of detention also should include a written explanation of the appeal right and information that will enable a person entitled to appeal to understand how to file such an appeal.
- FDA's regulations should ensure that if a detained article of food is moved to a secure facility, the food will be maintained under temperature, humidity, and other conditions that will maintain the value and quality of the food.
- A period of 24 to 48 hours from the time of request to the time of holding a hearing is the appropriate timeframe given the short life of many perishable foods.
- Any regulations with respect to detention of food should specify how disputes and resolutions will be handled in order to help prevent spoilage of detained food.
- When an appeal against the detention is filed, FDA should deal with it expeditiously within a fixed period of time to minimize the impact on private businesses.
- An appellant should be entitled to file a written statement of his or her position. The findings of the Secretary after the hearing should be set forth in writing since the Bioterrorism Act provides that the Secretary's decision is "final agency action" under the Administrative Procedure Act, which is judicially reviewable.
- A sanction should be imposed if the detained product is moved before the detention period has expired or has been terminated.

III. The Proposed Regulation

This proposed rule implements the administrative detention provision in section 303 of the Bioterrorism Act. If the regulation is made final as proposed, administrative detention, together with the proposed rules implementing section 305 (registration), section 306 (recordkeeping), and section 307 (prior notice) of the Bioterrorism Act, will enable FDA to act quickly in responding to a threatened or actual bioterrorist attack on the U.S. food supply or to other food-related emergencies.

In establishing and implementing this proposed rule, FDA will comply fully with its international trade obligations, including applicable World Trade Organization (WTO) agreements and the North American Free Trade Agreement. For example, FDA believes this proposed rule is not more trade-restrictive than necessary to meet the objectives of the Bioterrorism Act. The criteria FDA would use to order a detention are taken directly from the Bioterrorism Act and are the same for both domestic and foreign articles of food.

A. Highlights of Proposed Rule

The key features of this proposed rule are as follows:

- An officer or qualified employee of FDA may order the detention of domestic or imported food for up to 30 days if FDA has credible evidence or information that the food presents a threat of serious adverse health consequences or death to humans or animals.
- The FDA District Director in the district in which the article of food is located or an FDA official senior to such director must approve a detention order.
- FDA may require that the detained article of food be labeled or marked as detained with official FDA tags or labels. The FDA tag or label will include, among other information, a statement that the article of food must not be consumed, moved, altered, or tampered with in any manner for the period shown, without the written permission of an authorized FDA representative.
- A violation of a detention order or the removal or alteration of the tag or label is a prohibited act.

- FDA will state in the detention order the location and any applicable conditions under which the food is to be held.
- FDA may direct that the article of food be moved to a secure facility, if appropriate. An article of food moved to a secure facility remains under detention before, during, and after such movement.
- FDA may approve a request for a limited conditional release of a detained article of food for purposes of destruction, movement to a secure facility, preservation of the detained article of food, or any other purpose that FDA believes is appropriate. An article of food transferred under a limited conditional release remains under detention before, during, and after the transfer.
- Any transfer of a detained article of food in violation of a detention order is a prohibited act.
- Any person who would be entitled to be a claimant for the article of food, if seized, may appeal a detention order and, as part of that appeals process, may request an informal hearing. If a hearing is granted, an FDA Regional Food and Drug Director (RFDD) or another official senior to an FDA District Director will serve as the presiding officer of the hearing.
- The proposed rule includes appeal and hearing timeframes for both perishable and nonperishable detained articles of food.
- *Perishable food*:
  - An appeal must be filed within 2 calendar days of receipt of the detention order.
  - If a hearing is requested in the appeal, and FDA grants the request, the hearing will be held within 2 calendar days after the date the appeal is filed.
  - FDA's decision on appeal will be issued 5 days after the appeal is filed.
- *Nonperishable food*:
  - A notice of intent to file an appeal and to request a hearing must be filed within 4 calendar days of receipt of the detention order.
  - An appeal must be filed within 10 calendar days of receipt of the detention order.
  - If a hearing is requested in the notice of intent and appeal, and FDA grants the request, the hearing will be held within 3 calendar days after the appeal is filed.
  - FDA's decision on appeal will be issued 5 days after the appeal is filed.
- The proposed expedited procedures for certain enforcement actions with respect to perishable foods require FDA to send a seizure recommendation to the Department of Justice within 4 calendar days after the detention order is issued, unless extenuating circumstances exist.
- Confirmation of a detention order by the FDA presiding officer is considered final agency action.

B. General Provisions

1. What Definitions Apply to This Subpart? (Proposed § 1.377)

Proposed § 1.377 describes the definitions that apply to this subpart and states that the definition of terms that appear in section 201 of the act (21 U.S.C. 321) apply to such terms when used in this subpart.

Proposed § 1.377 also defines specific terms used in the proposal.

- *Act* means the Federal Food, Drug, and Cosmetic Act.
- *Authorized FDA representative* means the FDA District Director in whose district the article of food involved is located or an FDA official senior to such director. FDA's Office of Regulatory Affairs (ORA) is responsible for FDA's field operations and compliance related functions. The ORA field organization is divided into regional offices, which are headed by RFDDs. The regions are broken down into district offices, which are headed by District Directors. An RFDD is an FDA official senior to an FDA District Director.
- *Calendar day* means every day shown on the calendar. This term includes weekend days.
- *Food* has the meaning given in section 201(f) of the act. That definition is: "(1) articles used for food or drink for man or other animals, (2) chewing gum, and (3) articles used for components of any such article." FDA also is proposing to include some examples of products that are considered food under section 201(f) of the act. These examples include, but are not limited to: Fruits; vegetables; fish; dairy products; eggs; raw agricultural commodities for use as food or components of food; animal feed, including pet food; food and feed ingredients and additives, including substances that migrate into food from food packaging and other articles that contact food; dietary supplements and dietary ingredients; infant formula; beverages, including alcoholic beverages and bottled water; live food animals (such as hogs and elk); bakery goods; snack foods; candy; and canned foods. "Substances that migrate into food from food packaging" include immediate food packaging or components of immediate food packaging that are intended for food use. Outer food packaging is not considered a substance that migrates into food.
- *Perishable food* means food that is not heat-treated; not frozen; and not otherwise preserved in a manner so as to prevent the quality of the food from being adversely affected if held longer than 7 days under normal shipping and storage conditions. This perishable food definition has been modeled after the current RPM definition of "perishable commodity". Examples of perishable foods include, but are not limited to, fluid milk (but not ultrapasteurized); live fish, lobster, crab, other crustaceans, shellfish; and fresh fruits and vegetables.

We decided to use the RPM definition of "perishable commodity" as the basis for the definition of "perishable food" because the RPM definition is commonly used and understood by both industry and FDA. Furthermore, we believe this definition is appropriate in light of the 5-day (maximum) deadline for FDA to issue a decision on an appeal of a detention. Under the proposed deadlines for appeals involving the detention of a perishable food, FDA would issue a decision on an appeal prior to the expiration of the 7-day period. We believe the timeframes proposed here offer the best protection to appellants and products.

We invite comments and supporting data on how to best define "perishable food" for the purposes of this proposed rule.

- *We* means the U.S. Food and Drug Administration.
- *Working day* means any day from Monday through Friday, excluding federal holidays.
- *You* means any person who receives the detention order or that person's representative.

2. What Criteria Does FDA Use to Order a Detention? (Proposed § 1.378)

Proposed § 1.378 states the criteria FDA would use to order a detention. These criteria are taken directly from section 303 of the Bioterrorism Act. FDA may order a detention of an article of food that is found during an inspection, examination, or investigation under the act if an officer or qualified employee of FDA has credible evidence or information indicating that an article of food presents a threat of serious adverse health consequences or death to humans or animals.

The Bioterrorism Act articulates a standard of "credible evidence or information" for determinations of whether the evidence or information indicates that an article of food presents a threat of serious adverse health consequences or death to humans or animals. "Credible evidence or information" is an evidentiary standard that in simplest terms means evidence

or information that is "worthy of belief or confidence; trustworthy." See Webster's Unabridged Dictionary (1998 ed.) (definition of "credible"). Although various statutes and regulations use this or a similar standard, and courts have invoked or applied the standard of credible evidence or information in a large number of decisions, no precise definition of the standard exists. Instead, determinations of what constitutes credible evidence or information have been made on a case-by-case basis. Likewise, FDA has administered evidentiary standards under other provisions of the act (see e.g., section 304(g)) on a case-by-case basis without further defining those standards in regulation. We believe that a similar approach here is appropriate. In applying the credible evidence or information standard to administrative detention, FDA may consider a number of factors including, but not limited to, reliability, reasonableness, and the totality of the facts and circumstances.

The officers or qualified employees of FDA who may order a detention include, but are not limited to, FDA field investigators, other government employees commissioned or deputized by FDA, and FDA employees who have security clearance to receive national security information. An "authorized FDA representative" as defined in proposed § 1.377, would have to approve a detention order before the FDA officer or qualified employee may order a detention.

3. How Long May FDA Detain an Article of Food? (Proposed § 1.379)

Proposed § 1.379 sets forth the period of administrative detention, (i.e., the length of time an article of food may be detained), consistent with the requirements of section 303 of the Bioterrorism Act. The period of administrative detention must be a reasonable period that may not exceed 20 calendar days after the detention order is issued, unless it is determined that a greater period is required either to seize the article of food or to institute injunction proceedings. The Bioterrorism Act provides that FDA may detain food for up to 10 additional calendar days if necessary to enable FDA to institute a seizure or an injunction action. Proposed § 1.379 incorporates this authority. An example of when FDA envisions using this authority is when the results of confirmatory testing or other evidentiary development is not complete. The authorized FDA representative, defined in proposed § 1.377, may approve the additional 10 days of detention at the time the detention order is issued, or at any time within the initial 20-calendar-day period, by amending the detention order.

Proposed § 1.379 states that the entire detention period may not exceed 30 calendar days in total. This proposed section also allows the authorized FDA representative, in accordance with proposed § 1.384, to approve the termination of a detention order before the expiration of the detention period. FDA intends to proceed as expeditiously as possible to resolve all issues involved with particular administrative detentions.

4. Where and Under What Conditions Must the Detained Article of Food be Held? (Proposed § 1.380)

Proposed § 1.380(a) requires you to hold the detained article of food in the location and under the conditions specified by FDA in the detention order. Use of appropriate storage conditions, such as temperature, humidity, and other conditions may be necessary to protect the safety and wholesomeness of the detained article of food. This proposed requirement is consistent with the legislative history of the Bioterrorism Act (see H. Conf. Rept. No. 107–481, at 131 (2002)).

In proposing § 1.380(a), we also considered the experience that States have had with embargoes. As described in comments from States familiar with embargoing food on behalf of FDA or on their own initiative, States have ordered food embargoed and have provided requisite conditions that must be maintained while the food is embargoed, e.g., segregation from other products in the same warehouse.

In proposed § 1.380(b), the detained article of food must be moved to a secure facility if FDA determines that such movement is appropriate. FDA's determination of whether it is appropriate to require movement of a detained article will depend, in part, on whether we believe there is danger of the detained article entering the stream of commerce. FDA will make such determinations on a case-by-case basis considering several factors, including the adequacy of security where the detained article is located, and the ability to prevent the movement of the food. For example, if it appears likely that the detained food would be diverted, we would require the food to be moved to a secure facility. However, if the storage conditions are such that there appears to be no danger of the detained article of food moving into the stream of commerce, we would decide to keep the article of food detained at its current location.

There may be instances where we relocate the detained article of food to a secure facility. For example, FDA may not be confident that parties involved will adhere to a detention order. Rather than risk losing control over the detained article of food, FDA would relocate the detained article of food. There may be other situations where FDA decides to relocate the detained article to a secure facility.

Proposed § 1.380(b), also states that a detained article of food remains under detention before, during, and after movement to a secure facility, if FDA has requested such movement. As such, we will also state in the detention order any applicable conditions of transportation of an article of detained food. This may include determinations that the article to be removed to a secure facility must be moved under certain conditions. Similar to determinations of whether to require that food be removed to a secure facility, determinations of the appropriate conditions of transportation will be made on a case-by-case basis.

Proposed § 1.380(c) requires you to have received a limited conditional release under proposed § 1.381(c) before you move the detained article of food to a secure facility.

Proposed § 1.380(d) requires you to ensure that any required tags or labels under § 1.382 accompany the detained article during and after movement to the secure facility. This requirement applies until FDA terminates the detention order or the detention period expires, whichever occurs first, unless otherwise permitted by the authorized FDA representative.

Proposed § 1.380(e) provides that the movement of an article of food in violation of a detention order issued under § 1.393 is a prohibited act under section 301 of the act. This proposed provision is consistent with the statutory language in section 303 of the Bioterrorism Act.

5. May a Detained Article of Food be Delivered to Another Entity or Transferred to Another Location? (Proposed § 1.381)

Proposed § 1.381 describes whether an article of food subject to a detention order can be delivered to another entity or transferred to another location. Proposed § 1.381(a) states that a detained article of food may not be delivered to another entity under the execution of a bond. Similarly, this proposed section also states that an article of food detained under section 303 of the Bioterrorism Act may not be delivered to any of its importers, owners, or consignees under section

801(b) of the act. The provisions found in this proposed paragraph are consistent with section 303 of the Bioterrorism Act, and are designed to keep foods that present a threat of serious adverse health consequences or death from moving in commerce.

Proposed § 1.381(b) prohibits, except as provided in proposed § 1.381(c), the transfer of a detained article of food within or from the place where it has been detained, or from the place to which it was moved, until an authorized FDA representative releases the article of food under proposed § 1.384 or the detention period expires under proposed § 1.379, whichever occurs first. This provision is necessary to ensure that the article of food subject to a detention order is not released into commerce.

Proposed § 1.381(c) provides that an authorized FDA representative may approve, in writing, a request for a limited conditional release of the detained article of food for any of the following purposes:

1. To destroy the article of food,
2. To move the detained article of food to a secure facility as described in the detention order,
3. To maintain or preserve the integrity or quality of the article of food, or
4. For any other purpose that the authorized FDA representative believes is appropriate in that case.

A limited conditional release of a detained article of food will be considered only in rare circumstances and only for the purposes described. We do not envision authorizing a limited conditional release under many circumstances because any movement increases the risk of inappropriate or unauthorized movement of detained articles of food into commerce. In order to decrease the chance of detained articles of food moving into commerce, the food should not be moved unless absolutely necessary. However, we recognize there may be cases where some movement is necessary. For example, it may be necessary to take steps to preserve the article of food until the detention is resolved, e.g., movement of a detained article of food from refrigerated storage to a freezer. This proposed section would allow such action in those limited circumstances that the agency finds appropriate.

As noted below, an article of food subject to a limited conditional release is still subject to detention and the requirements of this proposed rule.

Proposed § 1.381(d) requires you to submit a request for a limited conditional release in writing to the authorized FDA representative who approved the detention order. Your request must state the following:

- Reasons for movement;
- Exact address of and location in the new facility (or the new location within the same facility) where the detained article of food will be transferred;
- Explanation of how the new address and location will be secure, if FDA has directed that the article of food be detained in a secure facility; and
- Explanation of how the article of food will be held under any applicable conditions described in the detention order.

If your request is for the purpose of destroying the detained article of food, you also must submit a verified statement identifying the ownership or proprietary interest you have in the detained article of food. Under "Federal Rules of Civil Procedure," Supplemental Rule C(6)(a), a person who asserts an interest in or right against property that is the subject of a seizure action in federal court must file a verified statement identifying the interest or right. The purpose of this requirement is to minimize the possibility that the detained article of food would be released for destruction to a person without the proper ownership or proprietary interest in the food.

Proposed § 1.381(e) states that a detained article of food remains under detention before, during, and after the transfer under a limited conditional release. Accordingly, we will prescribe applicable transportation conditions to an article transferred under a limited conditional release. This section also provides another security measure to prevent the detained article of food from moving into commerce. That is, we also require FDA supervision of all transfers of detained articles of food made under a limited conditional release, unless FDA declines such supervision in writing. If FDA declines such supervision, you will be required to immediately notify in writing the authorized FDA representative who approved the limited conditional release, that the article of food has reached its new location, and the specific location of the detained article of food within the new location. Such notification may be in the form of a fax, e-mail, or other form agreed to by the authorized FDA representative.

Proposed § 1.381(f) requires you to ensure that any tags or labels required under proposed § 1.382 accompany the detained article of food during and after movement. If FDA labels or marks the detained article of food under proposed § 1.382, this proposed provision would require that the tags or labels remain with the article of food until FDA terminates the detention order or the detention period expires, whichever occurs first, unless otherwise permitted by the approving official.

Proposed § 1.381(g) provides that the transfer of an article of food in violation of a detention order issued under proposed § 1.393 is a prohibited act under section 301 of the act. This proposed provision is consistent with the statutory language in section 303 of the Bioterrorism Act.

6. What Labeling or Marking Requirements Apply to a Detained Article of Food? (Proposed § 1.382)

Proposed § 1.382 describes the labeling or marking requirements that apply to a detained article of food. This proposed section states that the officer or qualified employee of FDA who issues the detention order may label or mark the detained article of food with official FDA tags or labels that include the following information:

- A statement that the article of food is detained by FDA in accordance with section 304(h) of the act;
- A statement that the article of food must not be consumed, moved, altered, or tampered with in any manner for the period shown, without the written permission of an authorized FDA representative;
- A statement, consistent with the statutory language in section 303 of the Bioterrorism Act, that the violation of a detention order or the removal or alteration of the tag or label is a prohibited act under section 301 of the act, punishable by fine or imprisonment or both; and
- The detention order number, the date and hour of the detention order, the detention period, and the name of the officer or qualified employee of FDA who issued the detention order.

Any label or mark of detention will be attached as appropriate given the circumstances. In some instances, the mark or label may be attached to the food container, while in other instances, the mark may be fastened to a packing container. Where the agency cannot mark or label a container or packing container, a mark or label may be attached to accompanying documents. FDA may use other means of marking or labeling as appropriate or necessary. Once the detained article is released, or the detention period expires, FDA would remove, or authorize the removal of, the required labels or tags, as described in proposed § 1.384. Accordingly, we would not expect the proposed labeling and marking provision to impair the future ability to

distribute or market the article of food if the detention order is terminated.

7. What Expedited Procedures Apply When FDA Initiates a Seizure Action Against a Detained Perishable Food? (Proposed § 1.383)

Section 303 of the Bioterrorism Act directs the Secretary to issue procedures for instituting certain judicial enforcement actions on an expedited basis with respect to perishable food subject to a detention order. This provision directs FDA to issue procedures for instituting on an expedited basis seizure actions under section 304(a) of the act, or injunction actions under section 302 of the act (21 U.S.C. 332), or both. We have concluded that it is appropriate to focus on procedures to institute seizure actions on an expedited basis because a seizure is the most efficient judicial action for rapid control of a violative article of perishable food.

Proposed § 1.383 describes FDA's procedure for sending a seizure recommendation under section 304(a) of the act to the Department of Justice (DOJ) for a perishable food (defined in proposed § 1.377) subject to a detention order. We propose to send the seizure recommendation to DOJ within 4 calendar days after the detention order is issued, unless extenuating circumstances exist. If the fourth calendar day is not a working day when the government is open for business, we will advise the DOJ of our plans to recommend a seizure action on the last working day before the fourth calendar day and send the recommendation as soon as practicable on the first working day that follows. For example, if a detention order is issued on a Wednesday, the fourth calendar day would be the following Sunday. Because Sunday is a non-working day, we would advise the DOJ of our plans to recommend a seizure action on Friday and would send the recommendation as soon as practicable on the following Monday.

For purposes of this proposed section, extenuating circumstances include, but are not limited to, instances when the results of confirmatory testing or other evidentiary development require more than 4 calendar days to complete.

Proposed § 1.383 is designed to accelerate the procedure for seizure recommendations and takes into account the 7-day timeframe in the proposed definition of "perishable food." As noted previously in section III.B.7 of this document, we have focused our implementation of this provision of section 303 of the Bioterrorism Act on seizure recommendation procedures. Use of injunctive relief may be appropriate in some circumstances involving detained perishable foods. However, expedited procedures for instituting injunction actions would not accelerate the judicial control of a particular violative article of perishable food as much as expedited procedures for seizure actions.

We invite comment on this or other procedures that would address concerns about expedited enforcement actions with respect to perishable food.

8. When Does a Detention Order Terminate? (Proposed § 1.384)

Under proposed § 1.384, an authorized FDA representative will issue a detention termination notice releasing the detained article of food if FDA decides to terminate a detention order or the detention period expires. FDA will issue the detention termination notice to any person who received the detention order or that person's representative. FDA also will remove, or authorize the removal of, the required labels or tags attached under proposed § 1.382. If FDA fails to issue a detention termination notice and the detention period expires, the detention order is deemed to be terminated.

C. How Does FDA Order a Detention?

1. Who Approves a Detention Order? (Proposed § 1.391)

Proposed § 1.391 requires that an authorized FDA representative approve a detention order. As defined in proposed § 1.377, an "authorized FDA representative" is an FDA District Director in whose district the detained article of food is located or an FDA official senior to such director. For example, an RFDD is an FDA official senior to an FDA District Director. This is consistent with the approval requirements found in section 303 of the Bioterrorism Act. We are proposing that if prior written approval of a detention order is not feasible, prior oral approval must be obtained and confirmed in writing as soon as possible. We believe allowing for oral approval of a detention followed by written confirmation allows for efficient implementation of the administrative detention provisions.

For example, the investigator may be at a manufacturing plant located a great distance away from the district office and may determine that a detention is warranted. Instead of losing valuable time driving back to the district office to get a written signature in cases where a fax machine is not close by, the investigator may telephone the authorized FDA representative to get an oral approval. The authorized FDA representative would subsequently confirm the oral approval in writing by sending written confirmation to the investigator. In other circumstances where there is risk of the product moving to another location, we would want to detain the product immediately and an oral approval of the detention order may be prudent, followed by confirmation in writing. These examples illustrate some situations where oral approval may be necessary, but do not constitute an all inclusive list.

2. Who Receives a Copy of the Detention Order? (Proposed § 1.392)

Proposed § 1.392(a) requires FDA to issue the detention order to the owner, operator, or agent in charge of the place where the article of food is located. If the owner of the article of food is different from the owner, operator, or agent in charge of the location of the food, FDA must provide a copy of the detention order to the owner of the article of food if the owner's identity can be determined readily.

Proposed § 1.392(b) would subject common carriers of articles of food to these administrative detention provisions. If FDA issues a detention order for an article of food located in a vehicle or other carrier used to transport the detained article of food, FDA would be required to provide a copy of the detention order to the shipper of record and the owner and operator of the vehicle or other carrier, if FDA can determine their identities readily.

3. What Information Must FDA Include in the Detention Order? (Proposed § 1.393)

Proposed § 1.393(a) requires FDA to issue the detention order in writing, signed and dated by the officer or qualified employee of FDA who has credible evidence or information indicating that such article of food presents a threat of serious adverse health consequences or death to humans or animals. The written detention order serves as notice of the detention and provides notice that the persons with ownership rights to the detained article of food have the right to request an informal hearing.

Proposed § 1.393(b) requires the detention order to include the following information:

1. The detention order number;
2. The date and hour of the detention order;
3. Identification of the detained article of food;
4. The period of the detention;
5. A statement that the article of food identified in the order is detained for the period shown;
6. A brief, general statement of the reasons for the detention;
7. The address and location where the article of food is to be detained and the appropriate storage conditions;
8. Any applicable conditions of transportation of the detained article of food;
9. A statement that the article of food is not to be consumed, moved, altered, or tampered with in any manner during the detention period, unless subject to a limited conditional release under proposed § 1.381;
10. The text of section 304(h) of the act and §§ 1.401 and 1.402 of this chapter;
11. A statement that any informal hearing on an appeal of a detention order must be conducted as a regulatory hearing under part 16 of this chapter, with certain exceptions described in proposed § 1.403;
12. The mailing address, telephone number, e-mail address, and fax number of the FDA district office and the name of the FDA District Director in whose district the detained article of food is located; and
13. A statement indicating the manner in which approval of the detention order was obtained, i.e., orally or in writing.

D. What Is the Appeal Process for a Detention Order?

1. Who is Entitled to Appeal? (Proposed § 1.401)

Under proposed § 1.401, any person who would be entitled to be a claimant for such article of food, if seized under section 304(a) of the act, would be able to appeal a detention order. Procedures for establishing entitlement to be a claimant for purposes of section 304(a) of the act are governed by Supplemental Rule C(6)(a) to the "Federal Rules of Civil Procedure."

2. What Are the Requirements for Submitting an Appeal? (Proposed § 1.402)

Proposed § 1.402 describes the requirements for submitting an appeal. As required by section 303 of the Bioterrorism Act, as part of your appeal, you may request an opportunity for an informal hearing. Proposed § 1.402(a) will require you to submit your appeal in writing to the FDA District Director in whose district the detained article of food is located using the contact information provided in the detention order. We propose to allow you to submit your appeal in person, by mail, e-mail, or fax.

The timeframe for filing an appeal is determined by whether the detained article of food is perishable or nonperishable. If the detained article of food is perishable, as defined in proposed § 1.377, you would be required to file your appeal and request for a hearing within 2 calendar days of receipt of the detention order.

If the article of food subject to the detention order is nonperishable, you would be required to file a notice of intent to request a hearing within 4 calendar days of receipt of the detention order. The notice of intent would enable the agency to determine whether resources should be allocated to preparing for a regulatory hearing. If you do not file a notice of intent by day four, you do not receive a hearing. However, without filing a notice of intent by day four, you may still file an appeal without a hearing request. Whether or not you are requesting a hearing, your appeal involving a detained nonperishable food must be filed within 10 calendar days of receipt of the detention order.

We are using calendar days for the bifurcated deadlines for filing appeals to provide the most expeditious procedure for perishable food, and to provide a consistent approach for counting days. We are asking for comment on whether there are other ways we should be counting days for filing appeals, while adhering to the statutory deadline of 5 days for FDA to issue a decision on appeal (for both perishable and nonperishable food).

Proposed §1.402(b) provides that your request for an appeal must include a verified statement identifying your ownership or proprietary interest in the detained article of food. Under "Federal Rules of Civil Procedure," Supplemental Rule C(6)(a), a person who asserts an interest in or right against property that is the subject of an action must file a verified statement identifying the interest or right. The meaning of "verified statement" under Supplemental Rule C(6)(a) is governed by the local federal district court rules in which the detention takes place, and usually means that the statement must be accompanied by an oath or affirmation attesting to the statement's veracity.

Proposed § 1.402(c) provides that the appeal process would terminate if FDA institutes either a seizure action under section 304(a) of the act or an injunction under section 302 of the act regarding the detained article of food.

Proposed § 1.402(d) describes the requirements for requesting an informal hearing as part of the appeals process. Your request for a hearing must be in writing and be included with your appeal. You may appeal a detention without requesting an informal hearing; however, if you want an informal hearing, you must include your request when you file your appeal. This proposed section describes the timeframes for holding the hearing if FDA grants your request for an informal hearing (see § 16.26 regarding denial of hearing). If the detained article of food is perishable, the hearing would be held within 2 calendar days after the date the appeal is filed. If the detained article of food is nonperishable, the hearing would be held within 3 calendar days after the date the appeal is filed. The quick timeframes for holding the hearing are necessary to ensure that FDA can adhere to the statutory requirement to issue a decision on appeal within 5 calendar days after the appeal is filed. FDA notes that under this proposal, the timeframes for perishable and nonperishable appeals will not be significantly different in instances where an appeal is filed immediately upon receipt of a detention order. For example, if you file an appeal and request for a hearing on the same calendar day (day one) the detention is ordered for a perishable food, the hearing would be held by calendar day three, and the decision on appeal could be issued as early as calendar day three but no later than calendar day six. If a nonperishable food was detained in the same example, the hearing would be held by calendar day four, and the decision on appeal could be issued as early as calendar day four but no later than calendar day six.

We are requesting comment on the timeframes for holding the informal hearing.

3. What Requirements Apply to an Informal Hearing? (Proposed § 1.403)

If FDA grants a request for an informal hearing on an appeal of a detention order, FDA would conduct the hearing in accordance with part 16, with the following exceptions:

- The detention order under proposed § 1.393, rather than the notice under § 16.22(a) of this chapter, would provide notice of opportunity for a hearing under this section and would be part of the administrative record of the regulatory hearing under § 16.80(a) of this chapter.
- A request for a hearing under this section must be addressed to the FDA District Director in whose district the detained article of food is located in accordance with proposed § 1.402(a).
- The provision in § 16.22(b) of this chapter, providing that a person not be given less than 3 working days after receipt of notice to request a hearing, does not apply to a hearing under this

subpart. Rather, the timeframes in proposed § 1.402(a) apply.

• The provision in § 16.24(e) of this chapter, stating that a hearing may not be required to be held at a time less than 2 working days after receipt of the request for a hearing, does not apply to a hearing under this subpart. Instead, the timeframes in proposed § 1.402(c) apply.

• Proposed §1.406, rather than § 16.24(f) of this chapter, describes the statement that will be provided to an appellant where a detention order is based on classified information.

• Proposed § 1.404, rather than § 16.42(a) of this chapter, describes the FDA employees, i.e., RFDDs or other officials senior to District Directors, who preside at hearings under this subpart.

• Under proposed § 1.403(f), the presiding officer may require that a hearing conducted under this section be completed within 1 day, as appropriate.

• Ordinarily under part 16 hearing procedures, the presiding officer issues a report and recommended decision and the Commissioner of Food and Drugs issues a final decision. However, under proposed § 1.403(g), the presiding officer will issue the final agency decision.

As described previously, the informal hearing requirements in part 16 state that its procedures are to be used when the act or FDA regulations provide for an opportunity for a hearing and no specific hearing regulations exist (see § 16.1(b)). Section 303 of the Bioterrorism Act provides for an informal hearing opportunity, but does not provide specific provisions for the informal hearing. In this proposed rule, we are applying part 16 procedures modified by the noted exceptions, which is consistent with § 16.5(b).

4. Who Serves as the Presiding Officer at an Informal Hearing? (Proposed § 1.404)

Proposed § 1.404 requires the FDA RFDD, or other official senior to a District Director, to act as the presiding officer of an informal hearing on an appeal of a detention order. As presiding officer, the RFDD would issue the decision on appeal. Because a detention must be approved at the District Director level, we believe it is appropriate that appeals of those decisions should be handled by persons in positions senior to the District Directors.

The presiding officer may be an RFDD from a region other than the one in which the detained article of food is located, or another official senior to a District Director.

5. When Does FDA Have to Issue a Decision on an Appeal? (Proposed § 1.405)

Proposed § 1.405 describes when FDA must issue a decision on an appeal. Proposed § 1.405(a) requires the presiding officer to issue a decision confirming or revoking the detention order within 5 calendar days after the appeal is filed. If FDA fails to provide an opportunity for a hearing, or fails to confirm or terminate the detention order within the 5-day period, the detention order is deemed terminated. While the Bioterrorism Act does not define the meaning of "an opportunity for an informal hearing," we interpret this phrase to mean the FDA gives notice of the opportunity for a hearing (see also proposed § 1.403(a), which states that the detention order provides notice of opportunity for a hearing). Under this interpretation, a failure to provide an opportunity for a hearing means a failure to provide you with notice of your opportunity to request a hearing. This provision is consistent with requirements of section 303 of the Bioterrorism Act.

Proposed § 1.405(b) would allow you to appeal the detention order without a request for an informal hearing. Where you appeal without requesting a hearing, the presiding officer is still required to issue a decision on the appeal confirming or revoking the detention within 5 calendar days after the date the appeal is filed. If the presiding officer fails to issue a decision within the 5-day period, the detention order is deemed terminated.

Proposed § 1.405(c) states that if you appeal a detention order and request an informal hearing and your hearing request is denied, the presiding officer is still required to issue a decision on the appeal confirming or revoking the detention within 5 calendar days after the date the appeal is filed. If the presiding officer fails to issue a decision within the 5-day period, the detention order is deemed terminated.

Proposed § 1.405(d) states if the presiding officer confirms a detention order, the article of food would continue to be detained until FDA terminates the detention order under proposed § 1.384 or the detention period expires under proposed § 1.379, whichever occurs first.

Proposed § 1.405(e) states that if the presiding officer terminates a detention order, or the detention period expires, FDA would be required to terminate the detention order as specified under proposed § 1.384 (i.e., FDA would be required to issue a detention termination notice releasing the article of food).

Proposed § 1.405(f) states that confirmation of a detention order by the presiding officer is considered a final agency action for purposes of section 702 of title 5, United States Code (5 U.S.C. 702).

6. How Will FDA Handle Classified Information in an Informal Hearing? (Proposed § 1.406)

FDA expects that consistent with responding to bioterrorist threats, there may be instances where the credible evidence or information supporting a detention order consists of Classified National Security Information ("classified information"). Protection of information critical to our nation's security is a priority (Executive Order 12958, April 17, 1995). While mindful of our duty to protect our national security interest, we are also mindful of our obligation to provide a fair, expeditious, and impartial hearing (see § 16.60 regarding hearing procedure). Proposed § 1.406 provides that FDA will not release classified information. However, if the presiding officer may do so, consistent with safeguarding both the information and the source, the presiding officer will give you notice of the general nature of the information and an opportunity to offer opposing evidence or information. If classified information was used to support the detention, then any confirmation of such detention will state whether it is based in whole or in part on that classified information.

Given the events of September 11, 2001, and the need to quickly respond to actual or threatened bioterrorist attacks, we are contemplating the development of general regulations that address handling classified information on an agency-wide basis for all the products regulated by FDA. We believe, though, that we should go forward with the current proposal in this context at this time.

IV. Conforming Amendment to 21 CFR Part 16

We propose to amend § 16.1(b)(1) to include section 304(h) of the act relating to the administrative detention of food for human or animal consumption to the list of statutory provisions under which regulatory hearings are available.

V. Analysis of Economic Impact

A. Benefit-Cost Analysis

FDA has examined the economic implications of this proposed rule as required by Executive Order 12866. Executive Order 12866 directs agencies to assess all costs and benefits of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity). Executive Order 12866 classifies a rule as a significant regulatory action if it meets any one of a number of specified conditions, including: Having an annual effect on the economy of $100 million, adversely affecting a sector of the economy in a material way, adversely affecting competition, or adversely affecting jobs. Executive Order 12866 also considers a regulatory action significant if it raises novel legal or policy issues. The Office of Management and Budget has determined that this proposed rule is a significant regulatory action under Executive Order 12866, although it is not economically significant.

Need for Regulation

Section 303 of the Bioterrorism Act (Public Law 107–188), gives FDA expanded authority to prevent the distribution of any article of food for which we have credible evidence or information that the food presents a threat of serious adverse health consequences or death to humans or animals. Previously, if we received credible evidence or information indicating that an article of food presented a threat of serious adverse health consequences or death to humans or animals, we would typically have taken one of the following actions: (1) Requested a voluntary recall of the suspected product; (2) developed enough evidence to move directly to seize the food; or (3) referred the matter to the appropriate State authority for most cases involving purely intrastate commerce. Thus, Congress' expansion of our authority to allow administrative detention of food permits us to immediately detain food in commerce, which provides an added measure to ensure the safety of the nation's food supply.

Reason for Regulation

FDA is proposing this regulation to improve food safety. Food safety is mostly a private good. Establishments have powerful incentives to ensure that the ingredients they purchase are not contaminated and that their production processes are protected from unintentional and intentional contamination. Deliberate (intentional) contamination of food linked to a particular product or plant—particularly if the plant is considered negligent—would be extraordinarily costly to a firm. Indeed, the private incentives to avoid deliberate contamination should be similar to the private incentives for food safety. Deliberate food contamination events nonetheless differ from ordinary outbreaks of foodborne illness in that they are more likely to be low probability events with severe public health consequences.

Although private incentives lead to the private efforts to protect against deliberate contamination at the plant level, there are external effects associated with privately produced protection. The economic incentives for firms to engage in food safety activities largely hinges on the ability of consumers to identify and avoid products associated with the responsible party. However, firms can change both their own names and the names of their products, and can also change owners and managers. Therefore, it may be quite costly for consumers to obtain the information that would allow them to avoid products associated with the responsible party. Moreover, some firms might be infiltrated by those who wish to launch attacks on food safety, or might even have been formed by those having that end in mind. Such firms would not be responsive to normal economic incentives to provide food safety.

The events of September 11, 2001, led Congress to conclude that there should be a regulatory mechanism to temporarily remove from commerce potentially violative food that presents a threat of serious adverse health consequences or death to humans or animals, and store it under an appropriate level of security until we can investigate the potential threat and evaluate whether to initiate judicial enforcement action and, if appropriate, initiate such action. This proposed regulation implements this mechanism.

Regulatory Options

We considered several regulatory options or alternatives as follows in developing this proposal:

Option One: Establish a regulatory framework for administratively detaining food, with expedited procedures for instituting certain enforcement actions involving perishable food (i.e. take the proposed action);

Option Two: Take the proposed action, but change the definition of perishable food, the maximum timeframe for administrative detention of perishable food, or both;

Option Three: Take the proposed action, but define the level of security we require for transportation and storage;

Option Four: Issue regulations only to establish expedited procedures for instituting certain enforcement actions involving perishable food (i.e. limit the action to the regulations required by section 303 of the Bioterrorism Act).

We request comments on these options, as well as suggestions on other regulatory options that we should consider. We will address comments on this analysis in the analysis of the final rule.

Baseline: The situation before Congress passed the Bioterrorism Act

Usually, we designate the option of taking no regulatory action as the baseline. We then compare the costs and benefits of the various regulatory options to the current regulatory state of affairs. However, for this rule, we chose the situation that existed before Congress enacted the Bioterrorism Act as the baseline. We chose this baseline rather than the current regulatory state of affairs because our authority to administratively detain food under the Bioterrorism Act already exists, regardless of whether we now promulgate regulations setting out the procedures we will follow when we detain food.

Therefore, in order to analyze the impact of Congress giving us the authority to administratively detain food, we needed to specify a baseline that predated our having received that authority. By convention, we do not attribute costs or benefits to the baseline, per se, but instead capture the impacts of the regulation by comparing the costs and benefits of the other options to the baseline. Prior to Congress passing the Bioterrorism Act, we had other enforcement options available to us in those situations in which we can now use administrative detention, that is, in which we receive credible evidence or information that an article of food presents a threat of serious adverse health consequences or death to humans or animals. We will discuss those enforcement actions as part of the baseline in the following analysis.

In addition, we do not discuss the option of taking no regulatory action as one of the non-baseline options, because that option is not legally feasible. Option Four (establish expedited procedures for instituting certain enforcement actions involving perishable food only) most closely resembles the option of taking no regulatory action, because in that option we would limit ourselves to only the regulatory action that Congress required us to take in the Bioterrorism Act.

Option One: Establish a regulatory framework for administratively

detaining food, with expedited procedures for instituting certain enforcement actions involving perishable food (i.e. take the proposed action)

In the proposed action, we establish a regulatory framework for administratively detaining food.

Costs

The primary costs of the proposed rule arise from differences between administrative detention and other enforcement actions with respect to the following: (1) Cost of transporting and storing food, if necessary; (2) cost of canceling previously scheduled transportation and storage of the affected food when we remove it from commerce, and rescheduling transportation and storage if we later cancel the detention order and release it back into commerce; (3) loss of product value over the detention period, if we later find the food is not violative; and (4) cost of participating in appeals hearings and other enforcement activity.

To analyze the costs of the proposed rule, we first estimate how many times we might use administrative detention. We then estimate the proportion of cases in which we might administratively detain food that we later determine to be not violative. We need to estimate this percentage because we estimate the loss of product value over the detention period for food that we later find to be not violative. (We do not estimate the loss of product value for violative food, because we assume that the violation, not our action, reduces the value of that food.) We then estimate how costs would change if we substituted an administrative detention action for other enforcement actions. We look at the change in costs relative to the baseline of taking these other actions because we probably would have taken some type of enforcement action if we had received the type of information that would allow us to use administrative detention. In other words, we analyze the cost of administrative detention actions in terms of the costs over and above those that would have been associated with the enforcement actions that we would otherwise have taken. We then multiply the changes in costs by the number of times we might substitute an administrative detention action for the other enforcement actions.

Estimate of number of times we might use administrative detention per year

We do not know how often we will receive credible evidence or information that an article of food presents a threat of serious adverse health consequences or death to humans or animals that would allow us to administratively detain food. However, if we had received credible evidence or information that an article of food presented a threat of serious adverse health consequences or death to humans or animals before Congress granted us authority to take administrative detention actions, we would probably have taken one of the following three actions: (1) Requested a voluntary recall of the suspected product; (2) moved directly to seize the food; or (3) referred the matter to State authorities. We specify moving directly to seize food because we could also seize food after taking some other enforcement action, including administrative detentions. To avoid having to describe streams of enforcement actions, we have simplified the situation into two phases, a "preliminary phase," in which we take some action to detain the food in order to investigate it, and a "final phase" in which we take some final action such as seizing the food or referring the matter to State authorities.

We base our estimate on only these three actions because we believe the situations that lead to these types of actions are the most similar to the situations that may lead to administrative detention. Thus, we assume that any administrative detention would replace issuing class I recalls, moving directly to seizure, or referring the matter to State authorities for most cases involving purely intrastate commerce. If we instead assumed that we might substitute administrative detention actions for other types of enforcement actions, including other actions that we subsequently follow with seizure actions, then our estimate of the number of administrative detentions per year could be significantly larger. Examples of other types of enforcement actions include detentions without physical examination (DWPE) and requests to States to embargo food. We assume that the number of administrative detentions might include 0 to 100 percent of the number of class I recalls and instances in which we moved directly to seize food, and 0 to 10 percent of the number of times we referred matters to State authorities. In all cases, we based the low end of the range on the fact that we do not know if we would have used administrative detention, even if we had the authority to do so, and the criteria for using administrative detention had been met. Analyzing all the factors that would lead us to choose one enforcement action over another is beyond the scope of this analysis. We chose 100 percent as the high end of the range for class I recalls because the criteria for class I recalls is quite similar to the criteria for administrative detention. We chose 100 percent as the high end of the range for instances in which we move directly to seize food as a practical expedient because the small number of actions implies that such information would have had little or no impact on our cost estimates. We chose 10 percent as the high end of the range for State referrals because our experience with those actions suggests that only about 10 percent of recent referrals involved concerns or situations that would have met the criteria for administrative detention. The other referrals do not appear to meet the criteria for administrative detention.

In fiscal year (FY) 2002, we initiated 184 class I recalls involving food that posed a risk of serious adverse health consequences or death to humans or animals. In the same year, we initiated 16 seizures that may have involved food products that posed hazards to human or animal health. In the last 12 months, we estimate that we referred 234 of such matters to State authorities.

These numbers are repeated in table 1 of this document. Based on this information, we estimate that we might administratively detain food 0 to 223 times per year.

TABLE 1.—SUBSTITUTIONS PER YEAR

Action	Estimated Number of Substitutions of Administrative Detention for Other Enforcement Actions per Year
Class I recalls	0 to 184
No preliminary action (move directly to seizure)	0 to 16
No preliminary action (refer matter to State authorities)	0 to 23
Total	0 to 223

Estimate of the proportion of cases in which the food subject to administrative detention turns out to be not violative

Some of the costs that we will discuss later are only relevant if we eventually determine that food that we have administratively detained is not violative. We do not know the proportion of cases in which we might administratively detain food that we later determine to be not violative. This rate depends on the type of information we receive, and the level of risk aversion we adopt when we apply the criteria allowing us to use

administrative detentions, including "credible evidence or information" and "threat of serious adverse health consequences or death to humans or animals." If we only administratively detain food when we are certain or nearly certain that it is violative, then we may eliminate administrative detention as an enforcement option for some food that is violative. However, if we administratively detain food when we are less certain that it is violative, then we will increase the rate at which we administratively detain food that we later determine is not violative.

One way of addressing the proportion of cases in which we might administratively detain food that we later determine to be not violative is to look at data from the detention and release of imported food. However, this data cannot be narrowed to situations where we have detained or prepared to detain food and then later determined that the food was not violative. An import detention is different from administrative detention in that imports can be detained for reasons other than adulteration or misbranding. These other reasons give rise to a large percentage of detentions in which the food is found not to be violative. For instance, an import can be detained because the product is coded in the OASIS (Operational and Administrative System for Import Support system) system as a low acid canned food but the importer did not supply the food canning establishment number. The OASIS system is a national database on imports, and related enforcement activities and findings.

In the first three quarters of 2002, we released 48 percent of the shipments of human and animal food that we detained, excluding the shipments that we released because the firm reconditioned the food. The percentage of import shipments released includes all releases recorded in the OASIS system. These data include releases from detentions resulting from:

- DWPE notices;
- Routine FDA field sampling assignments;
- Incorrect or incomplete information provided about the product; and
- Imports released with comment, which means the product technically is misbranded or adulterated but we exercise enforcement discretion.

Because of the factors listed previously, and because import detentions may be based on a lower level of information than that required for an administrative detention, we cannot directly impose these numbers on administrative detentions. Rather, 48 percent is an upper limit that will exceed the nonviolative percentage of administratively detained food.

Another way of addressing this issue is to look at the proportion of enforcement actions against nonfood products that involved products that we later determined were not violative. We have had authority to administratively detain medical devices since 1976. During that time, we have not administratively detained any products that we later found to be not violative. This suggests that the rate at which we administratively detain food that is not violative may also be quite low, because in both cases we would be using similar administrative detention procedures. However, the medical device and food contexts may differ with respect to a number of potentially relevant issues, such as the type and amount of products on the market, the types of problems associated with those products, and the type and level of information that we receive on those problems.

Based on this information, we estimate that 0 to 48 percent of the food that we administratively detain will later turn out to be not violative.

Transportation

Under the proposed rule, we might require a firm to transport food that we administratively detain to a storage facility that is both secure and capable of providing the proper conditions for storing that type of food. In other cases, we might allow firms to hold the food in place, but require them to take various other actions to secure the food, such as physically segregating it, locking the area in which they store it, and possibly posting guards to monitor the area in which they store it. We will determine whether or not to require a firm to transport administratively detained food to another storage facility, and to take other actions to secure that food, on a case-by-case basis.

An example of where transporting detained food might be problematic would be the case of large storage grain bins located at private elevators and farms that hold grain. These bins typically hold several hundred tons per bin. It would be costly to transport grain to another holding area. In addition, transporting contaminated grain might spread biological or chemical agents because of the generation and dispersal of dust from the grain as we remove it from the bin and transport it to another location. In this case, it could be preferable to allow the product to be stored in place, possibly with the addition of onsite security.

We do not have sufficiently detailed information on past enforcement actions to estimate the proportion of administrative detentions in which we might require transportation or any other activity. Therefore, we assume that we would require firms to transport food to a secure facility and store them there in 0 to 100 percent of administrative detention actions. To simplify the analysis, we tentatively assume that the estimated costs of transporting food to a secure facility and storing it there are equal to or greater than the costs of storing the food in place and taking any of the other actions that we might require under our administrative detention authority, except posting additional guards, which we analyze in the discussion of Option Three (take the proposed action, but define the level of security we require for transportation and storage). As we discuss in the section on Option Three, the estimated cost of providing one additional security guard for onsite storage is somewhat higher than the estimated cost of transporting food to a secure facility. Therefore, we have not discussed the cost of providing an additional security guard as part of this option. Nevertheless, providing an additional security guard and storing food in place is consistent with taking the proposed action, and we may take that action in some cases.

The cost of transporting food varies along a number of dimensions, including the following: (1) Type of conveyance used, (2) distance traveled, (3) level of security, (4) type and amount of food involved, and (5) number of trips required. These considerations are interrelated. For example, the appropriate type of conveyance might depend on the level of security, the distance to be traveled, and the amount of food involved. Similarly, the distance to be traveled would depend, in part, on what type of facility meets our security requirements.

Firms may transport food via truck, rail, air, or ship. Based on the distance to be traveled, the level of security we might require, and the type and amount of food involved, we tentatively assume that firms would usually move administratively detained food by truck.

We also assume that when we require firms to transport food to a "secure storage facility," we will usually interpret that term to mean a bonded or third party public warehouse. We assume that these warehouses would provide proper storage conditions to maintain the safety and wholesomeness of the food. Bonded warehouses, refrigerated warehouses, and most types of third-party public warehouse facilities are readily available around ports of entry into the United States. Most metropolitan areas have an international airport that serves as a port

of entry into the United States, and will, therefore, have a variety of warehouses available. Therefore, we assume that the distance that we would require firms to transport administratively detained food would normally be no farther than the distance to the nearest metropolitan area. Firms might undergo additional transportation costs if we later cancel the administrative detention order and release the food back into commerce, because the secure facility might not be as convenient to the subsequent destination as the original location. Therefore, we calculate the transportation costs associated with food that we later release on the basis of round trip travel between its original location and the secure storage facility.

Transportation costs would depend, in part, on the security measures that we direct firms to take. We do not define those measures in this proposed rule. Instead, we will determine the relevant level of security and types of security measures needed on a case-by-case basis. We tentatively assume that a normal or average level of security for transportation of food would be the level associated with bonded or third party carriers. We believe using these types of carriers rather than a firm's own transportation system could provide some additional security because the owner of the bonded or third-party carrier might have a greater financial incentive to monitor and maintain custody of the food than do the owners of the food. In some cases, we might require higher security. In other cases, we might require lower security, such as that associated with a firm's own transportation system.

The cost of transporting food varies widely with the type and quantity of food. Some food requires specialized trucks, such as bulk liquid or refrigerated carriers. We base our estimate of the average transportation costs on the average rates for transporting the "most usual loads" of various fresh fruits and vegetables as reported in the "Agricultural Marketing Service's Fruit and Vegetable Truck Rate Report" for the week ending November 19, 2002 (Ref. 1). These loads of fresh fruits and vegetables do not require specialized trucks. We think that average transportation costs should be similar because the proportion of food that requires specialized trucks is relatively small. However, we request comment on this assumption, and on the cost of specialized transportation. We assume there would be suitable storage facilities in the nearest major metropolitan area. However, we do not know the average distance from any randomly chosen point in the United States to the nearest metropolitan area. Therefore, we tentatively assume that the distance from any location at which we might detain food to the nearest metropolitan area would be between 30 and 200 miles. Most of the trips in the trucking report were much longer than 200 miles. However, the report listed 10 trips under 300 miles. The trucking report included both a low cost and a high cost estimate. Using these estimates gives an average cost per mile for the 10 trips under 300 miles of between $4.26 and $5.13. The actual cost per mile varied from a high of $23.91 for the high cost estimate for the shortest trip (23 miles) to $1.93 per mile for the low estimate for an intermediate length trip (243 miles). Costs per mile are higher for shorter trips because some costs are probably fixed and do not increase with mileage. We use the range for the average cost per mile for all trips under 300 miles because we have insufficient information to estimate a distribution of trips by distance. Based on this assumption, we estimate that the average transportation cost per truckload will be between approximately $100 and $1,000.

In order to use these transportation rates, we need to know the average amount of food that we would administratively detain. The amount of food that we administratively detain could be anything from a few packages, to a lot, a shipment, or a production run. The amount of food involved in class I recalls and seizure actions has ranged from 100 pounds or less, in the case of some seizure actions, to millions of pounds, in the case of some class I recalls. Therefore, we estimate that we will administratively detain between 0 and 1 million pounds of food per administrative detention. We request comments on this assumption.

To apply the information on transportation costs, which was based on the most usual load of produce (as defined by the "Agricultural Marketing Service's Fruit and Vegetable Truck Rate Report"), to our assumption about the amount of food that we might administratively detain, which we expressed in pounds, we need to estimate the average weight in pounds of the most usual loads of produce. One way to do this is to look at the average weight of lines of imported produce, and to assume that the size of an average line of produce is comparable to the size of the most usual load of produce. A line in this context is the unit by which we record information on imported food; it does not refer to a product line. We base the assumption relating the size of the line of produce to the most usual load of produce on the fact that most imported produce arrives by truck, so that the typical unit of imported produce probably corresponds roughly to a usual truckload of that produce. We request comments on this assumption.

In 2001, firms imported approximately 22.6 billion pounds of 48 common types of fresh produce into the United States (Ref. 4). We extrapolated data on the number of lines in the OASIS database for the first three quarters of FY 2002 for all product categories that appear relevant to fresh produce to estimate that the total number of lines will be approximately 1.5 million by the end of FY 2002. If the amount of imports in 2001 were similar to that for FY 2002, then the average line would be about 15,000 pounds. Therefore, we assume that the most usual load of produce would be about the same size as the average line of imported produce, or 15,000 pounds. We have insufficient information to estimate the weight of the average line for any other type of food. Therefore, we assume that the average truckload across all types of food is about 15,000 pounds. Under this assumption, each administrative detention may involve transporting approximately 0 to 67 truckloads of food.

Additional transportation costs might arise if we conditionally released food that we administratively detained, and firms moved the conditionally released food to another location. We have not included these costs because of the voluntary nature of these limited conditional releases. A firm would not request a limited conditional release unless the benefits of doing so outweighed the costs. Therefore, any increase in transportation costs would be at least offset by some form of cost savings. If we were to analyze the impact of the availability of these limited conditional releases, then our estimate of the costs associated with this proposed rule would be somewhat lower. However, the impact would probably be small, because we do not expect many requests for limited conditional release.

We request comments on all assumptions relating to transportation costs, including but not limited to the average amount of food that we might administratively detain, the average amount of food per truck load or per load of other conveyance, the likelihood that firms will use different types of conveyances (i.e. trucks, airplanes, trains, and ships), the costs of using various types of specialized conveyances, and the distances that firms may need to transport food.

As explained earlier in this analysis, we are analyzing the cost of administrative detention actions relative to the baseline of taking the enforcement actions we would have taken prior to having received authority to take administrative detention actions. Therefore, only the costs that go beyond the costs of those other enforcement actions are relevant here. We assume there would be no change in transportation costs if we substituted an administrative detention action for a class I recall, because firms probably already transport food as part of such a recall.

We considered the costs of transportation under class I recalls to be part of the baseline costs, even though such recalls are voluntary, because we have some influence over those decisions. We have influence over those decisions because we could publicize the fact that we requested a firm to recall a product, which might have consequences for that firm's profits. Therefore, those decisions are not purely private market decisions. As such, it is reasonable to classify the costs associated with those recalls as social costs that are comparable to the social costs associated with administrative detention actions for purposes of determining baseline costs. If we did not treat these costs as social costs, then substituting administrative detention for class I recalls would generate additional social costs related to transporting food.

Moving directly to a seizure action or referring a matter to State authorities does not involve any transportation costs prior to the seizure action or referral. Therefore, all transportation costs associated with an administrative detention are relevant in the case of an administrative detention that replaces a case of moving directly to a seizure action or a referral to State authorities. Any transportation costs associated with the actual seizure or State action would not be relevant in this context, because administrative detentions may be followed by seizure actions or State actions, so any transportation associated with the seizure action or State action would take place irrespective of whether it was preceded by an administrative detention or not.

We present transportation costs in table 2 of this document. We calculated these figures by multiplying the number of truckloads that we estimated would be involved in an administrative detention (0 to 67) by the number of times we might use administrative detention in place of class I recall requests, cases of moving directly to seizure, or referring a matter to State authorities. The number of one way trips includes return trips, which we calculated by multiplying the number of trips to secure storage facilities by the estimated percentage of cases in which we might terminate a detention order and allow food back into commerce (0 to 48 percent). In table 2, we estimate the range of additional trips to secure facilities to be 0 to 1,587. The number is based on 0 to 16 seizures (in row 1), a maximum of 67 truckloads per seizure, and a maximum of 48 percent additional trips for those products cleared to enter commerce. We calculate the maximum number of trips as: (16 x 67) + (0.48 x 16 x 67)= 1,587. Again, estimated costs are higher for administrative actions that replace cases of moving directly to seizure actions or referring matters to States than for administrative actions that replace class I recalls because we are using the costs of those other actions as the baseline, and class I recalls already involve transportation, while cases of moving directly to seizure actions or referring matters to States do not.

TABLE 2.—ANNUAL TRANSPORTATION COSTS

Action	Number of Actions (see table 1)	Additional One Way Trips per Year, in Truckloads	Cost per one Way Trip	Total Transportation Cost (in millions)
Administrative Detention that Replaces Case of Moving Directly to Seizure	0 to 16	0 to 1,587	$100 to $1,000	$0 to $2
Administrative Detention that Replaces Class I Recall	0 to 184	0	$100 to $1,000	$0
Administrative Detention that Replaces Referral to States	0 to 23	0 to 2,323	$100 to $1,000	$0 to $2
Total				$0 to $4

Storage

The cost of storing food in secure storage facilities depends on the following factors: (1) Level of security of the facility; (2) type of food; (3) length of time the food is stored; (4) amount of food; and (5) miscellaneous factors, such as geographic location of facility, whether the customer is a regular or repeat customer, volume discounts, etc.

We do not define the security requirements for storage facilities in this rule. Instead, we will determine the relevant level of security on a case-by-case basis. We tentatively assume that the normal or average level of security that we would require is the level associated with bonded or third party public warehouses. Using these warehouses should provide some additional security because the owner of the food relinquishes custody of the food to the warehouse. In some cases, we might require higher security, such as that associated with secure government storage facilities, for example, Customs Examination Stations. In other cases, we might require lower security, such as that associated with a firm's own warehouses. We understand from a discussion with a representative of the International Association of Refrigerated Warehouses that the cost difference between bonded and nonbonded public warehouses is probably quite small (Ref. 2). Therefore, we use the same storage costs for both bonded and nonbonded warehouses.

Storage costs vary with the type of food being stored. However, we were unable to find data on average storage rates for different types of food under different conditions (Ref. 2). One cold storage facility gave us food storage rates that varied from $0.0002 to $0.0006 per pound per month for a range of food types (Ref. 3). Rates for food that does not need to be refrigerated might be lower than the lower bound of the rates for cold storage. However, we do not have information on these rates, and we assume that these rates will fall in the same range. The same source listed

handling rates per shipment of $0.01 to $0.02 per pound. We request comments on these rates. These rates imply storage costs of $0 to $600 per day per administrative detention, and handling rates of $0 to $20,000 per administrative detention, based on a shipment size of 0 to 1 million pounds (67 truckloads per shipment x 15,000 pounds per truckload).

We estimate overall storage costs based on the handling fee per pound, the storage costs per pound per day, the amount of food we might administratively detain, and the change in the maximum number of days that we might require firms to store the food. We assume that there would be no increase in storage costs if we substituted an administrative detention action for a class I recall, because firms probably already store food as part of such a recall. There is no storage associated with taking no preliminary enforcement action prior to a seizure action or a referral of a matter to a State authority. Therefore, any storage associated with an administrative detention would be an additional cost in comparison to moving directly to seizure or referring a matter to a State authority.

Administrative detention involves a maximum storage time of up to 30 days. The actual amount of time that firms would store detained food depends on whether and when they appeal the administrative detention order. Firms would appeal if they expected the costs of doing so would be less than the costs of storing the food until we completed our investigation, or until the detention period expired. We have insufficient information to estimate the percentage of administrative detentions that firms would appeal. Therefore, we use a maximum of 30 days additional storage time for all administrative detentions. We do not know how long firms store food that they voluntarily recall before reconditioning or destroying the food. We tentatively assume that the storage time associated with class I recalls would be similar to the storage time associated with administrative detention.

We provide estimates of annual storage costs, rounded to the nearest million dollars, in table 3.

TABLE 3.—ANNUAL STORAGE COSTS

Action	Number of Actions	Change in Days Storage per Action	Cost per Day (based on average shipment)	Handling Cost per Action	Change in Total Storage Cost (in millions)
Administrative Detention that Replaces Case of Moving Directly to Seizure	0 to 16	0 to 30	$0 to $600	$0 to $20,000	$0 to $1
Administrative Detention that Replaces Class I Recall	0 to 184	0	$0 to $600	$0 to $20,000	$0
Administrative Detention that Replaces Referral to State	0 to 23	0 to 30	$0 to $600	$0 to $20,000	$0 to 1
Total					$0 to $2

Loss of product value over detention period, if we later find the product is not violative

Food may lose some or all of its value during an administrative detention because the food may deteriorate, and because firms would have less time to sell food that has a finite shelf life. Reducing the time available to sell food reduces the value of that food because consumers only desire a given quantity of a particular food in a particular time period. In order to sell additional units of that food during that time period, retailers would need to lower the price of the food to reflect the value consumers place on the additional units. This cost is only relevant if we determine that the food does not present a threat of serious adverse health consequence or death to humans or animals and, therefore, terminate the detention and release the food back into commerce. The loss of product value would not be relevant for detained food found to be violative because such food would have lost its value due to its violative nature, rather than the administrative detention.

We have not estimated costs connected to the marking or labeling food that we administratively detain. As we discussed earlier in this preamble, if we required marking or labeling of food in conjunction with an administrative detention order, and we subsequently cancelled the administrative detention order, then we would remove, or authorize the removal of, the marks or labels. Therefore, we assume there will not be any loss of value from the marking or labeling requirements contained in this proposed rule.

Administrative detention actions might also cause food that we do not administratively detain to lose value if delivery of that food to its final destination were delayed as a result of being packed together with food that we did detain. We have not included the potential loss of value from this source because, based on our experience with other enforcement actions, we expect that we will not cause significant delays in the delivery of food that is packed with food that we administratively detain.

Loss of value over the detention period depends on the following factors: (1) Shelf life of the food under usual storage conditions, (2) rate of value loss over time, and (3) starting value of the food.

The loss of value depends on the shelf life of the food because the longer the shelf life, the less the food will deteriorate during a given time period, and the smaller the proportional reduction in the time remaining to sell the food. For purposes of this analysis, we have designated four shelf life categories:

• *Perishable food.* We define perishable food for purposes of this analysis as food having a shelf life of 7 days or less. This is based on the definition of perishable food discussed earlier in this preamble (i.e. perishable food is food that is not heat-treated; not frozen; and not otherwise preserved in a manner so as to prevent the quality of the food from being adversely affected if held longer than 7 days under normal shipping and storage conditions.) Examples of this type of food include fluid milk that has not been ultra-pasteurized; live fish, lobster, crab, other crustaceans, shellfish; and fresh fruits and vegetables (Ref. 5).

• *Food having a shelf life of between 8 and 30 days.* Food with this shelf life that we regulate include some fresh and processed dairy products, including soft cheeses such as cottage cheese; some bakery items, such as bread, rolls, cakes, pies, and cookies; poultry; and some fruit and vegetable products (Ref. 6). These examples are derived from a list of examples developed by Hurst et al., but do not include products listed as examples in our RPM definition of "perishable commodity."

• *Food having a shelf life of between 30 and 90 days.* These types of food include dairy products, such as butter, margarine, natural hard cheese, processed hard cheese, and ice cream; eggs; some picked food; processed salads; some fruit and vegetable products; cured meats; fatty meats such as luncheon meats, ground beef, lamb and pork; fatty fish such as mackerel; shellfish; giblets; some frozen bakery food, such as cake batter, pie shells, fruit pies, yeast breads and rolls, frozen bread and roll dough; fried snack food such as potato chips; frozen convenience food such as pre-cooked combination dinners and frozen french fries; dried bakery products such as cookies and crackers; beverages such as ground coffee that is not vacuum packed; canned pickled fish; powdered cream; and fats and oils such as mayonnaise, salad dressing, and vegetable shortening (Ref. 6).

• *Food having a shelf life of over 90 days.*

The only type of enforcement action for which we have readily available data on the type of food involved is imported food that we have refused entry into the United States. Therefore, we used these data for analysis, because we expect the distribution of food by type for domestic food to be similar. The food categories in these data do not correspond precisely to the shelf life categories just discussed. If a food category covered more than one shelf life category, we assumed that an equal amount of the product in that category belonged to each relevant shelf life category. Based on these assumptions and definitions, approximately 20 percent of the imported food that we refused entry into the United States from August 2001 through July 2002 was perishable under the definition in this proposed rule, 20 percent of the food had a shelf life of 8 to 30 days, 30 percent had a shelf life of 31 to 90 days, and 30 percent had a shelf life of 91 days and over.

The rate of value loss over time varies with the type of food involved. To simplify our analysis, we assumed that all perishable food (i.e., food with a shelf life of up to 7 days) would lose a fixed amount of its starting value each day, such that its value would drop to zero by the end of day seven. This corresponds to a value loss of about 14 percent of the starting value per day. The comparable rates for products with a shelf life of between 8 and 30 days, and between 31 and 90 days, were 3 percent and 1 percent, respectively. We tentatively assume that products with a shelf life of 91 days or more will not lose value during an administrative detention.

In order to apply these rates of value loss, we need the starting value of the food that we would administratively detain. We previously assumed that we would administratively detain 0 to 1 million pounds of food per administrative detention action. The value of this quantity of food would vary considerably with the type of food involved. To estimate an average value, we used the average value of a line of imported food because those data were readily available. After estimating the average value of a line of imported food, we then divide that value by the previously estimated average size of a line of imported food, which was 15,000 pounds, to get an average value per pound. We then multiply that value by 0 to 1 million pounds to arrive at the average value of the amount of food that we might administratively detain. According to U.S. Commerce Department data, the value of imports of food, feeds, and beverages into the United States in 2001 was approximately $47 billion (Ref. 7). To relate the total value to the value of an average line for those types of food, we extrapolated data on the number of lines in the OASIS system for the three quarters of FY 2002 for human and animal food to estimate a total of approximately 4 million lines for human and animal food by the end of FY 2002. This implies an average value per line of about $11,000. We did not have information on the value of other types of imported food, such as dietary supplements or live animals. Therefore, we assumed that the average value per line for all types of food is approximately $11,000. If an average line is 15,000 pounds, then this corresponds to a value per pound of $0.73. Therefore, the value of 0 to 1 million pounds would be $0 to $730,000. Based on the rates of value loss given earlier, the average loss of value per administrative detention action would be $0 to $102,000 (14 percent loss per day x $730,000) per day for perishable food, and $0 to $22,000 (3 percent loss per day x $730,000) per day for nonperishable food.

We have set the maximum timeframe for all administratively detained food, including perishable food, at 30 days. Therefore, we calculated the loss of value for all food based on 0 to 30 days of additional storage. As we discussed earlier in the preamble, we intend in the case of perishable food to send a seizure recommendation to the DOJ within 4 calendar days after we issue an administrative detention order, unless extenuating circumstances exist. However, we do not know how often extenuating circumstances will exist, or how much time will elapse between our recommendation and the subsequent seizure.

We do not estimate any change in the loss of value if we substitute an administrative detention action for a class I recall request, because we previously assumed that substituting an administrative detention action for a class I recall would not change the amount of time a firm would store the food in question. Therefore, any loss of value resulting from taking action against food that was actually not violative would be the same under either type of action. In contrast, there is no storage associated with moving directly to a seizure action or referring a matter to State authorities. Therefore, any loss of value from storage associated with an administrative detention action would be an additional cost in those cases.

We provide estimates of the value loss for food in table 4 of this document. We estimate the maximum loss of value as the maximum number of actions in which the product is not violative, multiplied by the maximum loss per action: $730,000, the average total value of a shipment.

TABLE 4.—ANNUAL LOSS OF VALUE

Action	Number of Actions in which Product Not Violative	Change in Days Storage per Action	Change in Total Loss of Value (in millions)
Administrative Detention that Replaces Case of Moving Directly to Seizure	0 to 8	0 to 30	$0 to $6
Administrative Detention that Replaces Class I Recall	0 to 88	0	$0
Administrative Detention that Replaces Referral to State	0 to 23	0 to 30	$0 to 9
Total			$0 to $15

Costs of marking or labeling

We might label or mark food that we have administratively detained. If we were to label or mark food that we have administratively detained, we could do so in several ways, including, but not limited to, affixing a tag having a self-locking pin that would be inserted in an appropriate seam, border, flap, or other area of the container or product; taping or tying a tag firmly onto the container or item; or affixing the tag to the accompanying documents, or to the carrier. However, if we subsequently cancelled the administrative detention order, then either we, or the firm, would need to remove the label or mark. Class I recalls do not involve marking or labeling. Moving directly to a seizure action or referring a matter to State authorities also does not involve marking or labeling prior to the seizure action.

In an analysis of another proposed rule that we published in 2001, we discussed the costs of marking cartons of imported food with printed labels that we could affix with label guns (Ref. 8). In that analysis, we assumed that an average shipment of imported food would contain about 300 cartons of containers, and that a worker could attach 100 labels per hour. We estimated that the cost of the labor time necessary to attach the labels would be $53 (three hours at $17.64 per hour), and that the cost of labels would be $13 (300 labels at $0.045 per label). A shipment of imported food can involve any number of lines of imported food. Therefore, we assume that one line could contain between 1 and 300 cartons. We earlier assumed that the average amount of food in a line is 15,000 pounds, so we estimate that a shipment contains 0.02 cartons per pound (300 cartons per shipment/15,000 pounds per shipment). Therefore, an administrative detention action involving between 0 and 1 million pounds would require 0 to 200 hours of labor time (0.02 cartons per pound x 1 million pounds/100 labels per hour), and 0 to 20,000 labels (100 labels per hour x 200 hours). The cost of the labor time necessary to attach the labels to the cartons would be $0 to $3,500 ($17.64 per hour x 200 hours), and the cost of the labels would be $0 to $900 ($0.045 per label x 20,000 labels).

We assume that the costs associated with the type of labeling we would require for administrative detention would be similar to the costs associated with the type of labeling we discussed in the 2001 analysis. We also assume it would take the same amount of labor time to remove the labels, if we canceled the administrative detention order, as it would take us to affix the labels. We request comments on these assumptions. Under the proposed rule, we would attach the labels, and firms, under our supervision, would remove the labels, if we terminated the detention order, or when the detention order expired.

After rounding to the nearest million, we estimate the cost for additional marking or labeling would be $0 to $1 million.

TABLE 5.—MARKING OR LABELING

Action	Number of Actions	Label Cost per Action	Change in Total Loss of Value (Rounded to Nearest Million $)
Administrative Detention that Replaces Case of Moving Directly to Seizure	0 to 16	$4,400 to $7,933	$0
Administrative Detention that Replaces Class I Recall	0 to 184	$4,400 to $7,933	$0 to $1
Administrative Detention that Replaces Referral to State	0 to 23	$4,400 to $7,933	$0
Total			$0 to $1

Costs of Appeals

The appeals process associated with administrative detention actions is another potential source of costs. In order to calculate the costs of administrative detention actions relative to the other baseline enforcement actions, we must first consider the cost of appeals associated with the other actions. There is no formal appeals process associated with class I recalls because these are voluntary. When FDA requests firms to take class I recalls, there is often an informal dialog between those firms and FDA. However, this type of dialog may take place with respect to any enforcement activity, including administrative detentions and seizures. Therefore, we have not included the costs of this informal dialog as part of the baseline costs. Based on these assumptions, our estimate of the appeals costs for administrative detentions that replace class I recalls is simply the total costs associated with appeals of administrative detentions.

There is also no appeals process prior to a seizure action in cases in which we move directly to a seizure action. However, firms can contest seizure actions, once they occur. In addition, firms can appeal federal district court resolutions of contested seizure actions. Most recently, firms have contested approximately 65 percent of our seizure actions involving foods. However, firms rarely appeal federal district court resolutions of contested seizure actions. Previously, we noted that we would not include the costs associated with seizure actions in baseline costs. This is because we might follow an administrative detention with a seizure action, so any costs associated with seizure actions might take place irrespective of whether those seizure actions were preceded by administrative detentions. Instead, we viewed administrative detentions as preliminary enforcement actions that had no counterpart in cases in which we moved directly to a seizure action. However, in this instance, we have included our costs associated with contested seizure actions as part of baseline costs. We have included these costs because firms that appeal an administrative detention, and lose that appeal, are probably less likely to contest a subsequent seizure action, than firms that are involved in a seizure action that was not preceded by an administrative detention. Therefore, the appeals process for administrative detentions may, as a practical matter, replace the process of contesting seizure actions in many cases in which we administratively detain food and then seize it. On the other hand, we have not included the costs associated with appealing federal district court resolutions of contested seizure actions as part of baseline costs. These types of appeals are quite rare, and estimating the costs associated with these types of appeals would have little impact on our cost estimates.

Finally, there is no appeals process associated with referring a matter to State authorities. Of course, if State authorities subsequently take enforcement action, then various appeals processes may be available under State laws or regulations for those actions. However, those methods of appeal would be available irrespective of whether the State actions were preceded by administrative detentions. In addition, the variety of State actions and appeals processes suggests that the probability that a firm will appeal a State action is probably not highly related to whether it has already filed and lost an appeal of an administrative detention. Therefore, we assume that administrative detention will not affect the probability that firms will appeal subsequent State actions.

We estimate that our costs for activity related to appeals of administrative detentions would be approximately $50,000 to $70,000 per administrative detention. We based that estimate on our costs for preparing for possible appeals, which would be generated by all administrative detention actions, and our costs for participating in appeals hearings, which would be generated only by those administrative detentions that result in hearings. In order to calculate an average cost per administrative detention action, we assumed that 65 percent of our administrative detentions would result in an appeals hearing. We based that assumption on the proportion of seizure actions that firms contest. Therefore, the incremental change in appeals costs associated with substituting an administrative detention action for a class I recall is approximately $50,000 to $70,000.

Our costs for activity related to firms contesting our seizures are approximately $10,000 to $20,000 per seizure action. We based that estimate on our costs for participating in a contested seizure case, and a 65 percent chance that firms would contest any given seizure action. Therefore, the incremental change in appeals costs associated with substituting an administrative detention action for a case of moving directly to a seizure action is approximately $30,000 to $60,000. We present the resulting cost estimates for the agency in table 6 of this document.

TABLE 6.—APPEALS

Action	Number of Actions	Label Cost per Action	Change in Total Loss of Value (Rounded to Nearest Million $)
Administrative Detention that Replaces Case of Moving Directly to Seizure	0 to 16	$30,000 to $60,000	$0 to $1
Administrative Detention that Replaces Class I Recall	0 to 184	$50,000 to $70,000	$0 to $13
Administrative Detention that Replaces Referral to State	0 to 23	$50,000 to $70,000	$0 to $2
Total			$0 to $16

A firm's decision to appeal an administrative detention order is voluntary. A firm would only appeal an administrative detention order if the costs of doing so were less than the costs of not doing so. Therefore, a firm's participation in the appeals process would usually reduce the costs that we previously estimated for storage and value loss by more than the cost of participating in the appeals process. Because we have already estimated storage costs and product value loss as a range that goes to zero, we have not attempted to analyze the cost and benefit implications of firms' decisions to appeal administrative detention actions.

The specific characteristics of the proposed appeals process for administrative detentions would affect the cost of the appeals process for us and for affected firms. Examples of specific characteristics include the time frame under which we would allow firms to file an appeal for perishable and nonperishable food, the information we would require in an appeal, the timeframes in which we would respond to an appeal, and the availability of an appeals hearing, as opposed to some other type of appeals process. We request comments on the impacts of the specific requirements of the proposed appeals procedure.

Other Enforcement Costs

Differences in other enforcement costs associated with administrative detention actions, class I recalls, moving

directly to seizure actions, and referring matters to State authorities, are also relevant to this analysis. Both administrative detentions and class I recalls require us to undertake certain types of activity to implement, and we assume that the costs of this activity would be similar for these actions. Although taking no action prior to a seizure action or referring a matter to State authorities requires no activity, the activity that we undertake to move directly to seize food or to provide information on a matter to State authorities probably overlaps to some degree with the activity that we would undertake to implement an administrative detention action. The cost of the additional activity required to seize food following another enforcement action is significantly less than the cost of the activity required to move directly to seize food, because some of the activity of the preliminary action is also relevant to seizing the food. Therefore, we assume that the cost of the activity that we undertake to directly move to seize food is similar to the cost of the activity we undertake to implement an administrative detention action followed by a seizure action. Similarly, we assume that the cost of the activity that we and States undertake when we refer a matter to State authorities is similar to the cost of the activity that we and States undertake to implement an administrative detention action followed by State action.

Cost summary

We present a summary of the costs in table 7 of this document.

TABLE 7.— ANNUAL COSTS FOR OPTION 1: TRANSPORTATION AND PERISHABLE FOODS (PROPOSED RULE)

Type of Cost	Cost (in millions)
Transportation	$0 to $4
Storage	$0 to $2
Loss of Product Value	$0 to $15
Marking or Labeling	$0 to $1
Appeals	$0 to $16
Total	$0 to $38

Benefits

Administrative detention authority improves our ability to respond to outbreaks from accidental and deliberate contamination from food, and deter deliberate contamination. Based on historical evidence, a strike on the food supply has a very low probability, but would be a potentially high cost event. FDA lacks data to estimate the likelihood and resulting costs of a strike occurring. Without knowing the likelihood or cost of an event, we cannot quantitatively measure the reduction in probability of an event occurring or the possible reduction in cost of an event, associated with each regulatory option. Further hindering any quantification of benefits is the interactive effect of the other regulations that are being developed to implement title III of the Bioterrorism Act.

Administrative detention differs from existing enforcement alternatives along the following dimensions: (1) Speed of action, (2) need for collaboration with other agencies, (3) maximum level of security, and (4) timeframes. Actions that we can implement faster will reduce risk more than actions that take longer to implement, because we have a higher probability of removing the product from commerce before it reaches the consumer. We have a higher probability of successfully taking an action that does not require collaboration because actions that require us to collaborate with other agencies involve more than one set of decision criteria and more than one decision maker. Actions that allow us to require higher security transportation and storage reduce risks because such actions reduce the probability that we will lose control of the product, and that adulterated food will reach consumers. Actions with longer time frames reduce risk because we have more time to complete our investigation and a lower probability of releasing food that is violative back into commerce. The relative advantages of the various enforcement actions are provided in table 8 of this document. The expressions "permanent" and "temporary" in the time frames represent the relative time frames under which we can keep a potentially violative food out of the distribution system.

TABLE 8.—COMPARISON OF ENFORCEMENT ACTIONS

Action	Speed	Collaboration	Highest Potential Security	Timeframes
Administrative Detention	High	No	High	Temporary
Seizure	Low	No	High	Permanent
Class I Recall	Low	Yes	Low	Permanent
Referral to State	Low	Yes	Low	Unknown

We have insufficient information to quantify the health benefits of substituting administrative detention for the other enforcement actions. However, to understand the possible costs of an intentional strike on the food supply, table 9 of this document presents information on five outbreaks resulting from accidental and deliberate contamination, involving both domestic and imported foods. These outbreaks do not represent possible forms that a terrorist attack might undertake, but merely illustrate the public health costs of foodborne disasters. It is likely that an intentional attack on the food supply that sought to disrupt the food supply and sicken many U.S. citizens would be much larger. However, the probability of an attack occurring and the exact reduction in risk resulting from administrative detention is unknown.

TABLE 9.—SUMMARY OF FIVE FOODBORNE OUTBREAKS

Pathogen	Location and Year	Vehicle	Confirmed or Reported Cases	Estimated Number of Cases	Total Illness Cost
Salmonella enteritidis	Minnesota, 1994	Ice cream	150 cases; 30 hospitalizations	29,100 in MN; 224,000 Nationwide	$3,187,744,000 to $5,629,792,000
Shigella sonnei	Michigan, 1988	Tofu salad	3,175 cases	Not available	$45,183,000 to $79,795,000
Outbreaks resulting from deliberate contamination					
Salmonella Typhimurium	Dalles, Oregon, 1984	Salad bars	751 cases; 45 hospitalizations	Not available	$10,687,000 to $18,875,000
Shigella dysentreriae type 2	Texas, 1996	Muffins and doughnuts	12 cases; 4 hospitalizations	All cases identified	$83,000
Outbreaks resulting from imported foods					
Cyclospora cayaetanensis	United States and Canada, 1996	Raspberries (probably imported from Guatemala)	1465 cases identified, less than 20 hospitalization	Not available	$3,941,000

Salmonella enteritidis in ice cream

In 1994, approximately 224,000 people were sickened by ice cream contaminated with *Salmonella enteritidis*. The source of the contamination appeared to be pasteurized premix that had been contaminated during transport in tanker trailers that carried nonpasteurized eggs. There were 150 confirmed cases of salmonellosis associated with the outbreak in Minnesota. However, ice cream processed during the contamination period was distributed to 48 states. To calculate the total number of illnesses associated with the outbreak, researchers calculated an attack rate of 6.6 percent. This attack rate was extrapolated to the population that consumed the ice cream, giving a total number sickened of 224,000 (Ref. 9).

Salmonellosis most commonly causes gastrointestinal symptoms. Almost 91 percent of cases are mild and cause 1 to 3 days of illness with symptoms including diarrhea, abdominal cramps, and fever. Moderate cases, defined as cases that require a trip to a physician, account for 8 percent of the cases. These cases typically have a duration of 2 to 12 days. Severe cases require hospitalization and last 11 to 21 days. In addition to causing gastroenteritis, salmonellosis also can cause reactive arthritis in a small percentage of cases. Reactive arthritis may be short or long term and is characterized by joint pain. Just over 1 percent of cases develop short-term reactive arthritis and 2 percent of cases develop chronic, reactive arthritis.

FDA estimated the costs associated with salmonellosis, including medical treatment costs and pain and suffering. Table 10 of this document provides a summary of these estimates. Pain and suffering is measured by lost quality adjusted life days (QALDs). QALDs measure the loss of utility associated with an illness. A QALD is measured between zero and one, with one being a day in perfect health. FDA presents two estimates of values of pain and suffering associated with arthritis, one based on physician estimates (Ref. 10) and another based on a regression analysis approach (Ref. 11). This gives a range of costs for the average case of salmonellosis between $14,231 and $25,133.

TABLE 10.—THE VALUE OF A TYPICAL CASE OF SALMONELLOSIS

Severity	Case Breakdown	Total QALDs Lost per Illness	Health Loss per Case (Discounted)	Medical Costs per Case (Discounted)	Weighted Dollar Loss per Case
Illness					
Mild	90.7%	1.05	$660	$0	$599
Moderate	8.1%	3.68	$2,310	$283	$209
Severe	1.2%	9.99	$6,266	$9,250	$188
Arthritis					
Regression Approach					
Short-Term	1.26%	5.41	$3,391	$100	$44
Long-Term	2.40%	2,613.12	$452,554	$7,322	$11,048
Direct Survey Approach					
Short-Term	1.26%	10.81	$6,778	$100 $87	
Long-Term	2.40%	5,223.15	$904,573	$7,322	$21,906
Death	0.04%		$5,000,000		$2,143

TABLE 10.—THE VALUE OF A TYPICAL CASE OF SALMONELLOSIS—Continued

Severity	Case Breakdown	Total QALDs Lost per Illness	Health Loss per Case (Discounted)	Medical Costs per Case (Discounted)	Weighted Dollar Loss per Case
Total Expected Loss per Case				Regression Approach Direct Survey Approach	$14,231 $25,133

To estimate the economic cost due to illness associated with this outbreak, FDA used the range for the average cost per case. For 224,000 people, this is a total cost of between $3,187,744,000 and $5,629,792,000 from this accidental food disaster.

Shigella sonnei in tofu salad

In 1988, a tofu salad at an outdoor music festival was contaminated with *Shigella sonnei* and sickened an estimated 3,175 people. Over 2,000 volunteer food handlers served communal meals at the festival (Ref. 12). Shigellosis causes similar symptoms and is of similar duration to salmonellosis. It also is associated with short-term and chronic reactive arthritis; thus FDA assumed the average case of shigellosis has the same cost as salmonellosis. This gives a total cost of $45,183,000 to $79,797,000.

Salmonella typhimirium in salad bars

During September and October of 1984, two outbreaks of *S. typhimirium* occurred in association with salad bars in restaurants in The Dalles, Oregon. At least 751 people were affected. Members of the local Rajneeshpuram commune intentionally caused the outbreak by spraying *S. typhimirium* on the salad bars in local restaurants. Their apparent motivation was to influence a local election by decreasing voter turnout. Intentional contamination was not suspected immediately and no charges were brought until a year after the attacks (Ref. 13).

The 751 people affected primarily were identified through passive surveillance; thus the true number of people actually sickened is undoubtedly much higher. The Dalles is located on Interstate 84 in Oregon and is a frequent stop for travelers who were unlikely to be identified by passive or active surveillance for salmonellosis. However, since we do not have any estimates of the true size of the outbreak, we estimated the costs associated with known cases, recognizing this is an underestimate of the true cost of the outbreak. We use the cost estimates for salmonellosis as ranging from $14,231 to $25,133. This gives an estimated cost of known cases for the outbreak of $10,687,000 to $18,875,000.

Shigella dysenteriae type 2 among laboratory workers

Twelve people working in a laboratory who consumed muffins left in the laboratory break room contracted shigellosis. Affected workers had diarrhea, nausea, and abdominal discomfort. Investigators concluded that the outbreak likely was the result of deliberate contamination. All 12 affected workers were treated by, or consulted with, a physician. Nine affected workers went to the emergency room, four of whom were hospitalized (Ref. 14).

To estimate the cost of this outbreak, FDA assumed that the eight cases requiring consultation with a doctor, but not requiring hospitalization, had the same cost as a moderate case of salmonellosis. The four cases requiring hospitalization were estimated to have the same cost as a severe case of gastroenteritis resulting from salmonellosis. This gives a cost of $83,000 for illnesses associated with the event.

TABLE 11.—SUMMARY OF COSTS FOR AN OUTBREAK OF SHIGELLOSIS

Severity	Number of Cases	Cost per Case	Total Cost
Mild	0	$0	$0
Moderate	8	$2,593	$21,000
Severe	4	$15,516	$62,000
Total	12		$83,000

Cyclospora cayatanensis in imported raspberries

In 1996, 1,465 cases of cyclosporiasis were linked to consumption of raspberries imported from Guatemala. Nine hundred and seventy eight of these cases were laboratory confirmed. No deaths were confirmed and less than 20 hospitalizations were reported (Ref. 15). Case control studies indicated that raspberries imported from Guatemala were the source of the illnesses. Fifty-five clusters of cases were reported in 20 States, two Canadian provinces, and the District of Columbia (Ref. 16).

Cyclosporiasis typically causes watery diarrhea, loss of appetite, weight loss, and fatigue. Less common symptoms include fever, chills, nausea, and headache. The median duration of illness associated with the outbreak was more than 14 days and the median duration of diarrheal illness was 10 days (Ref. 16). We estimated the cost of a mild case of cyclosporiasis as two and a half times higher than the cost of a mild case of gastroenteritis from salmonellosis due to the longer duration. The reports of cyclosporiasis outbreaks did not include information on the number of physician visits. We assumed that the percentage of total cases that result in physician visits would be larger than the corresponding percentage for salmonellosis illnesses, due to the longer duration of illnesses. We assumed, therefore, that 40 percent of those infected with cyclosporiasis visited a physician. Less than 20 hospitalizations were reported from the cyclosporiasis outbreak (Ref. 15). No deaths were confirmed.

TABLE 12.—SUMMARY OF COSTS OF AN OUTBREAK OF CYCLOSPORIASIS

Severity	Number of Cases	Cost per Case	Total Cost
Mild	879	$1,650	$1,450,000
Moderate	586	$3,748	$2,196,000
Severe	19	$15,516	$295,000
Total	1,465		$3,941,000

Option Two: Take the proposed action, but change either or both the definition of perishable food and the maximum time frame for administrative detention of perishable food.

Costs

If we established a shorter maximum timeframe for administrative detention of perishable food, then we would reduce the potential storage costs and loss of value associated with administratively detaining that food. If we also broadened the definition of perishable food to include products with a shelf life of over 7 days, then we would further decrease the storage costs and loss of food product value for those additional types of food. One reasonable alternative would be to broaden the definition of perishable food to include any food that might lose all of its value during a 30-day administrative detention period, that is, any food with a shelf life of 30 days or less, and reduce the maximum timeframe for administratively detaining a perishable food to 14 days. We calculated the costs of this option using the same procedures that we used for Option one (take the proposed action). We present these costs in table 13.

TABLE 13.—ANNUAL COSTS FOR OPTION 2: ALTERNATIVE DEFINITION AND MAXIMUM DETENTION PERIOD FOR PERISHABLE FOOD

Type of Cost	Cost (rounded to nearest million $)
Transportation Cost	$0 to $4
Storage Cost	$0 to $1
Loss of Product Value	$0 to $8
Marking or Labeling	$0 to $1
Appeals	$0 to $16
Total	$0 to $30

If we attempted to maintain the same level of investigation under the shorter maximum timeframes for perishable food by using our enforcement resources more intensively, then enforcement costs might also increase. In that case, we would need to compare the cost of using our investigative resources more intensively for a shorter period of time relative to using those resources less intensively for a longer period of time. More intensive use of resources would probably cost more because it would probably require our employees to work overtime and possibly over weekends and holidays. Therefore, this would reduce any cost savings introduced by the shorter maximum timeframes for perishables.

Benefits

Changing the definition of perishable food and the maximum timeframes for administrative detentions of perishable food could also affect the health benefits of this rule. Broadening the definition of perishable food and establishing a shorter maximum timeframe for administratively detaining that food would reduce the maximum timeframes for storage of those products that qualified as perishable food relative to the time frame for nonperishable food. The significance of this change depends on how often we need the full 30 days to complete our investigations. If we usually complete our investigations in the time allowed under the hypothetical shorter maximum detention time we could establish for perishable food, then including more products in the perishable category would have little effect on the risk that we would fail to catch a violative product because of the shorter investigation period. However, if we often need the full 30 days to complete our investigations, then including more products in the perishable category and establishing a shorter maximum detention time for administrative detention of perishable food would increase the risk that we would fail to catch a violative product during the investigation period. We do not have sufficiently detailed information to estimate these changes in health benefits.

We might also be able to maintain the same effect on risk and health benefits under the shorter timeframes by using resources more intensively during the shorter investigation period. For example, if we were to allocate more employees to work on an investigation, or if our employees were to work extra hours, then we might be able to complete the same level of investigation under a shorter timeframe. In that case, this option would have the same health benefits as Option one, but additional costs might be generated by the more intensive use of resources.

Option Three: Take the proposed action, but change the level of security we require for transportation and storage.

Costs

Instead of judging the need for various levels of security on a case-by-case basis, we could require firms to use specified levels of security to transport and store food under specified conditions. In Option one, we assumed, based on information from a trade group, that the costs for using bonded carriers and warehouses were similar to those for using nonbonded carriers and warehouses. However, if we chose a lower security approach and allowed firms to store administratively detained food in place, then we would eliminate the transportation costs. Eliminating transportation costs would reduce total costs to a range of $0 to $34 million.

If we required firms to undertake security operations they would not otherwise have taken, then we would need to add in the cost of that activity. One example of the type of activity we might require is posting additional security guards. The average hourly wage of a security guard in 2000 was about $9.50 (Ref. 17). We doubled this wage to account for overhead, such as health benefits, to get an annual hourly wage of about $17. Therefore, the average cost of posting one additional security guard would be approximately $450 per day. The number of guards would depend on the number of facilities involved. Firms might already have distributed food that we administratively detain. Based on our experience with other enforcement actions, we believe that between 1 and 20 storage facilities might be involved per administrative detention action. Therefore, we calculate the cost of adding 1 guard by multiplying the cost of 1 additional security guard per day,

times a maximum of 30 days storage, times the number of administrative detentions, times the number of facilities involved per administrative detention. Using this approach, we estimate the total costs associated with no transportation and posting one additional guard would be $0 to $45 million.

TABLE 14.—ANNUAL COSTS FOR OPTION 3: NO TRANSPORTATION AND ONE ADDITIONAL GUARD

Type of Cost	Cost (rounded to nearest million $)
One additional guard	$0 to $11
Storage Cost	$0 to $2
Loss of Product Value	$0 to $15
Marking or Labeling	$0 to $1
Appeals	$0 to $16
Total	$0 to $45

We do not have information on the costs of using high security transportation and storage. However, requiring high security transportation and storage would probably substantially increase transportation and storage costs.

Benefits

As discussed in Option one, bonded and third party carriers and warehouses provide some degree of additional security relative to relying on a firm's own transportation system and storage facilities. However, they do not provide the highest level of security because food can be stolen from such facilities, and because the owners of those facilities could, themselves, become involved in deliberately adulterating food. Therefore, requiring a higher level of security for transportation and storage would reduce the probability that an adulterated product might find its way back into commerce during a detention. We have insufficient information to estimate the change in health benefits from more secure transportation and storage.

Option Four: Issue regulations only to establish expedited procedures for instituting certain enforcement actions involving perishable food (i.e., limit the action to that required by section 303 of the Bioterrorism Act).

The Bioterrorism Act requires us to issue regulations establishing expedited procedures for instituting seizure actions, injunction actions, or both against perishable food. Therefore, taking no regulatory action with regard to those procedures would not be a legally viable option. However, we could promulgate a more limited rule that covered only expedited procedures for enforcement actions involving perishable food, rather than a rule that also included general procedures for administrative detention.

Costs

If we were to issue a more limited rule, we would still be able to administratively detain food because Congress has already granted us that authority under the Bioterrorism Act. We would probably administratively detain food in the same situations in which we would have taken this action under the proposed rule. Therefore, the costs we estimated under Option One would also apply to this option. In addition, there could be some additional enforcement cost associated with relying on the language of the act rather than our own regulations when taking this action. These additional costs would be caused by our need to develop and defend our interpretation of the language of the Bioterrorism Act piecemeal in court, rather than through implementing regulations. These court proceedings would probably take longer and be more complicated than they would be if we were enforcing more specific regulatory language. We have insufficient information to estimate this change in costs. Therefore, we can only determine that the lower bound of the range of potential costs for this option would be somewhat greater than $0 million, and the upper bound would be somewhat higher than $38 million, and the costs associated with this option would be somewhat greater than those associated with Option one under any given scenario.

Benefits

Again, even if we did not include the overall framework for administrative detention in this rule, we would probably use administrative detention in the same situations in which we would use administrative detention under the framework developed in this proposed rule. However, we expect we would have somewhat more difficulty using administrative detention if we relied only on the language of the act rather than also on our more detailed regulations. For example, if we needed to develop and defend our interpretation of the language of the Bioterrorism Act piecemeal in court, our ability to pursue administrative detentions while such proceedings are ongoing might be limited or even precluded. Therefore, the benefits of this option might be somewhat lower than those for Option one.

Summary of Options

We summarize the costs and benefits of the various options in table 15.

TABLE 15.—SUMMARY OF ANNUAL COSTS AND BENEFITS

Option	Costs (in millions)	Benefits (in millions)
1—transportation and perishable foods as proposed	$0 to $38	> $0
2—perishable foods alternatives	$0 to $30	> $0, but < Option 1
3—no transportation, but one additional guard	$0 to $45	> $0
4—limited to Act	> $0 to > $38	> $0, but < = Option 1

The ranges generated by the underlying uncertainties in our analysis, particularly concerning benefits, preclude us from drawing any firm conclusions about the relative net benefits of the various regulatory options. The potential costs for Option One (the proposed rule) are lower than those for Option Three, and we are unable to differentiate the potential benefits of these two options. The similarity between the estimated ranges of costs and benefits for these two options suggests that we should determine whether to require transportation or storage in place on a case-by-case basis, as we have proposed. The potential costs for Option One are higher than those for Option Two. However, the estimated benefits of Option One are also higher than those of Option Two. We have insufficient information to quantify the difference in benefits. The potential costs for Option One are lower than those for Option Four, and the benefits of Option One are greater or equal to those of Option Four. Therefore, Option One would lead to higher net benefits than Option Four.

B. Initial Regulatory Flexibility Analysis

We have examined the economic implications of this proposed rule as required by the Regulatory Flexibility Act (5 U.S.C. 601–612). If a rule has a significant economic impact on a substantial number of small entities, the Regulatory Flexibility Act requires us to analyze regulatory options that would lessen the economic effect of the rule on small entities. We find that this proposed rule would not have a significant economic impact on a substantial number of small entities. Nonetheless, we have provided an initial regulatory flexibility analysis under the Regulatory Flexibility Act, which consists of the analysis below with other relevant sections of this document.

This proposed rule may affect firms involved in the production or handling of human food and animal feed such as the following: (1) Food producers such as farms, ranches, fisheries, dairies, bakeries, breweries, distilleries, and manufacturers of processed food, food additives, dietary supplements, infant formula, and food contact substances; (2) food importers; (3) food wholesalers or brokers; (4) food retailers; (5) food service establishments; and (6) food transporters. The rule might affect producers because we could administratively detain food at one of the producer's facilities prior to distribution of that food to wholesalers or brokers. We could also administratively detain food anywhere in the distribution system, from wholesaler and retailer warehouses, to retail store shelves, to food service establishment kitchens or storerooms. The rule might affect transporters because we might detain food that is en route to another location, and the food might be packed together with food that we would not detain. This might cause delays in the deliveries of the other food.

Potentially affected firms fall into a number of different North American Industry Classification System (NAICS) codes, including the following: 111 Crop Production, 112 Animal Production, 1141 Fisheries, 311 Food Manufacturing, 3121 Beverage Manufacturing, 325412 Pharmaceutical Preparation Manufacturing, 4224 Grocery and Related Products Wholesalers, 4225 Farm Product Raw Material Merchant Wholesalers, 4248 Beer, Wine, and Distilled Alcoholic Beverage Merchant Wholesalers, 445 Food and Beverage Stores, 446191 Food (Health) Supplement Stores, 481112 Scheduled Freight Air Transportation, 481212 Nonscheduled Chartered Freight Air Transportation, 482 Rail Transportation, 483111 Deep Sea Freight Transportation, 483113 Coastal and Great Lakes Freight Transportation, 483211 Inland Water Freight Transportation, 484 Truck Transportation (except 48421 Used Household and Office Food Moving, 4842201 Local Hazardous Materials Trucking, 4842203 Dump Trucking, and 4842301 Long Distance Hazardous Materials Trucking), and 722 Food Service and Drinking Places. There is also no NAICS code for manufacturers of food contact material. However, the following NAICS codes cover some of the potentially affected firms: 322215 Non-Folding Sanitary Food Container Manufacturing, 32222 Paper Bag and Coated and Treated Paper Manufacturing, 32611 Plastics Packaging Materials and Unlaminated Film and Sheet Manufacturing, 327213 Glass Container Manufacturing, and 333993 Packaging Machinery Manufacturing. There are no NAICS codes for manufacturers of food additives or for food importers, and we assume these firms are included in the other categories.

The 1997 Economic Census lists 1.6 million establishments in these categories, excluding NAICS codes 111, 112, 1141, and 482, which are not included in the Economic Census. The 2000 County Business Patterns updates some of the numbers from the 1997 Economic Census. However, the County Business Patterns data includes only establishments with employees. In order to obtain another estimate of the number of firms using the updated data, we combined the number of establishments with employees from the 2000 County Business Patterns with an estimate of the number of establishments without employees based on the proportion of firms with and without employees in the 1997 Economic Census. This procedure also led to an estimate of approximately 1.6 million establishments in these categories, excluding NAICS codes 111, 112, 1141, and 482. An establishment without employees is an establishment that is staffed only by the owners of that establishment.

We also used the Dun and Bradstreet Market Identifiers database to get a count of the number of firms in these categories. This database uses Standard Industry Classification (SIC) codes rather than NAICS codes. SIC codes do not correspond exactly to NAICS codes. We based our estimate on all SIC codes that even partially corresponded to relevant NAICS codes. This database allows one to count firms rather than establishments, and also allows one to identify firms by both primary and secondary activities. According to this database, approximately 1.8 million firms could be affected by this rule. However, we would not be able to affect more firms in 1 year than the estimated number of administrative detentions that we might take in 1 year. In the analysis of impacts above, we estimated that we might administratively detain food between 0 and 200 times per year. Therefore, we estimate that this rule may affect between 0 and approximately 200 firms per year.

The Small Business Administration (SBA) publishes definitions of small businesses by six-digit NAICS code (Ref. 18). Some of the NAICS codes listed previously above are less than six digits. In those cases, we used the range of small business definitions for all six-digit subcategories in the relevant NAICS code. The current SBA definitions in terms of either maximum annual average receipts or number of employees are as follows: 111 ($0.75 million), 112 ($0.75 to $10.5 million), 1141 ($3.5 million), 311 (500 to 1,000), 3121 (500 to 750), 322215 (750), 32222 (500), 325412 (750), 32611 (500), 327213 (750), 333993 (100), 4224 (100), 4225 (100), 42251 (100), 4228 (100), 445 ($6 to $23 million), 446191 ($6 million), 481112 (1,500), 481212 (1,500), 482 (500), 483111 (500), 483113 (500), 483211 (500), 484 except 48421, 4842201, 4842203, and 4842301 ($21.5 million), 722 ($6 million to $17.5 million). We applied the relevant range of sizes to the SIC codes that at least partially corresponded to the relevant NAICS codes and found that approximately 84 to 90 percent of the firms that this rule might affect are small businesses under SBA size definitions. Therefore, we estimate that this rule may affect between 0 and 180 small businesses each year.

The potential cost per administrative detention for small entities based on taking the proposed action and the information and assumptions in the preceding impact analysis would be $20,000 to $330,000, depending on the type of product involved and the type of enforcement action that we would replace with an administrative detention, and whether or not the firm appealed the administrative detention order. However, we based this range on a number of assumptions that are probably more reasonable when applied to average or expected costs across a large number of actions than to a single action. Thus, the actual range of potential costs for a single detention action would be much larger. In addition, the cost per firm would depend on the number of times that we

detain that firm's products in a given time period. The most we can say about costs on a per firm basis is that the average expected cost per firm across all potentially affected firms would presumably be quite low, but the cost for a particular firm in a particular year could be significant, depending on a number of variables including the type and amount of product involved. FDA requests comment on the impact of this proposed rule on small entities.

The fact that most of the potentially affected firms are small businesses suggests that the options that would be relevant to small businesses are the same as the options relevant for all firms discussed in the impact analysis above. Options two and three would both reduce the impact on small firms. However, these options would also reduce benefits, and we do not have sufficient information to estimate the change in net benefits.

Administrative detention involves preventing the movement of food upon credible evidence or information that the food presents a threat of serious adverse health consequences or death to humans or animals. This standard is applicable without regard to the size of any business involved. Most of the businesses impacted by this proposed rule are small businesses. To provide an exemption for small businesses under this proposed rule would defeat the purposes of the statute. Accordingly, we are not providing exemptions from the requirements of this regulation to small businesses.

C. Unfunded Mandates

Title II of the Unfunded Mandates Reform Act of 1995 (Public Law 104–4) requires cost-benefit and other analyses before any rule making if the rule would include a "Federal mandate that may result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100,000,000 or more (adjusted annually for inflation) in any 1 year." The current inflation-adjusted statutory threshold is $112.3 million per year. We have estimated that the total cost of the proposed rule would be no more than $38 million per year. Therefore, we have determined that this proposed rule does not constitute a significant rule under the Unfunded Mandates Reform Act.

D. SBREFA Major Rule

The Small Business Regulatory Enforcement Fairness Act of 1996 SBREFA (Public Law 104–121) defines a major rule for the purpose of congressional review as having caused or being likely to cause one or more of the following: an annual effect on the economy of $100 million; a major increase in costs or prices; significant adverse effects on competition, employment, productivity, or innovation; or significant adverse effects on the ability of U.S.-based enterprises to compete with foreign-based enterprises in domestic or export markets. In accordance with SBREFA, the Office of Management are Budget (OMB) has determined that this proposed rule, when final, will not be a major rule for the purpose of congressional review.

VI. Paperwork Reduction Act of 1995

This proposed rule contains information collection provisions that are subject to review by OMB under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

We tentatively conclude that these proposed information collection provisions are exempt from OMB review under 44 U.S.C. 318(c)(1)(B)(ii) and 5 CFR 1320.4(a)(2) as collections of information obtained during the conduct of a civil action to which the United States or any official or agency thereof is a party, or during the conduct of an administrative action, investigation, or audit involving an agency against specific individuals or entities. The regulations in 5 CFR 1320(c) provide that the exception in 5 CFR 1320.4(a)(2) applies during the entire course of the investigation, audit or action, but only after a case file or equivalent is opened with respect to a particular party. We seek comment on our tentative conclusion that these information collections are exempt from OMB review.

VII. Analysis of Environmental Impact

The agency has carefully considered the potential environmental effects of this action. FDA has concluded under 21 CFR 25.30(h) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

VIII. Federalism

FDA has analyzed this proposed rule in accordance with the principles set forth in Executive Order 13132. FDA has determined that the proposed rule does not contain policies that have substantial direct effects on the States, on the relationship between the National Government and the States, or on the distribution of power and responsibilities among the various levels of government. Accordingly, the agency tentatively concludes that the proposed rule does not contain policies that have federalism implications as defined in the Executive order and, consequently, a federalism summary impact statement has not been prepared.

IX. Comments

Interested persons may submit to the Dockets Management Branch (see **ADDRESSES**) written or electronic comments regarding this document. Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. FDA cannot be responsible for addressing comments submitted to the wrong docket or that do not contain a docket number. Received comments may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

FDA notes that the comment period for this document is shorter than the 75-day period that the agency customarily provides for proposed rules that are technical or sanitary or phytosanitary (SPS) measures. FDA believes that a 60-day comment period is appropriate in this instance. Executive Order 12889, "Implementation of the North American Free Trade Agreement" (58 FR 69681, December 30, 1993), states that any agency subject to the Administrative Procedure Act must provide a 75-day comment period for any proposed Federal technical regulation or any Federal SPS measure of general application. Executive Order 12889 provides an exception to the 75-day comment period where the United States considers a technical regulation or SPS measure of general application necessary to address an urgent problem related to the protection of human, plant, or animal health. FDA has concluded that this proposed rule is subject to the exception in Executive Order 12889.

The Bioterrorism Act states that it is intended "[t]o improve the ability of the United States to prevent, prepare for, and respond to bioterrorism and other public health emergencies." The provisions in this proposed rule that describe the procedures for how FDA will detain an article of food, how FDA will expedite certain enforcement actions with respect to perishable food, and the process for appealing a detention order will enhance FDA's ability to prevent distribution of food that presents a threat of serious adverse health consequences or death to humans or animals. The legislative history of the Bioterrorism Act, with respect to the regulation required by section 303 of that act, notes that the "Secretary should promptly complete such rule making" (H. Conf. Rept. No. 107–481, at 131 (2002)). This expedited timeframe reflects the urgency of the U.S. Government's need to prepare to respond to bioterrorism and other food-related emergencies.

FDA has concluded that the urgency of this matter is sufficient justification for shortening the public comment period for this proposal to 60 days, consistent with Executive Order 12889.

FDA will not consider any comments submitted after the 60-day comment period closes. Due to the need to promptly complete this rulemaking, FDA does not intend to grant any requests for extensions of the comment period.

X. References

The following references have been placed on display in the Dockets Management Branch (see **ADDRESSES**) and may be seen by interested persons between 9 a.m. and 4 p.m., Monday through Friday. FDA has verified the Web site addresses, but is not responsible for subsequent changes to the Web sites after this document publishes in the **Federal Register**.

1. "Fruit And Vegetable Truck Rate Report," Agricultural Marketing Service, U.S. Department of Agriculture, week ending Tuesday, November 19, 2002.

2. Memorandum of phone call between Ed Puro, FDA, and Benjamin Milk, International Association of Refrigerated Warehouses, September 30, 2002.

3. Price list from California Refrigerated Services, Inc., received October 3, 2002.

4. Fresh Fruit and Vegetable Shipments for Calendar Year 2001, Agricultural Marketing Service, U.S. Department of Agriculture, table 1, pp. 8–9, available on Internet at http://www.ams.usda.gov/fv/mncs/shipsumm01.PDF, accessed September 22, 2002.

5. "Regulatory Procedures Manual," August 1997. Division of Compliance Policy, Office of Enforcement, Office of Regulatory Affairs, U.S. Food and Drug Administration, U.S. Department of Health and Human Services. chap. 11, p. 497, August, 1997.

6. Hurst, W. C., Reynolds, A. E., Schuler, G. A., and Christian, J. A. Maintaining Food Quality in Storage, The University of Georgia College of Agriculture and Environmental Sciences Cooperate Extension Service, available on the Internet at http://www.ces.uga.edu/pubcd/b914-w.html, accessed January 24, 2003.

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List of Subjects

21 CFR Part 1

Cosmetics, Drugs, Exports, Food labeling, Imports, Labeling, and Reporting and recordkeeping requirements.

21 CFR Part 16

Administrative practice and procedure.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, it is proposed that 21 CFR parts 1 and 16 be amended as follows:

PART 1—GENERAL ENFORCEMENT REGULATIONS

1. The authority citation for 21 CFR part 1 continues to read as follows:

Authority: 15 U.S.C. 1453, 1454, 1455; 21 U.S.C. 304, 321, 331, 334, 343, 350c, 350d, 352, 355, 360b, 362, 371, 374, 381, 382, 393; 42 U.S.C. 216, 241, 243, 262, 264.

2. Subpart K is added to part 1 to read as follows:

Sec.

Subpart K—Administrative Detention of Food for Human or Animal Consumption

General Provisions

1.377 What definitions apply to this subpart?
1.378 What criteria does FDA use to order a detention?
1.379 How long may FDA detain an article of food?
1.380 Where and under what conditions must the detained article of food be held?
1.381 May a detained article of food be delivered to another entity or transferred to another location?
1.382 What labeling or marking requirements apply to a detained article of food?
1.383 What expedited procedures apply when FDA initiates a seizure action against a detained perishable food?
1.384 When does a detention order terminate?

How does FDA order a detention?

1.391 Who approves a detention order?
1.392 Who receives a copy of the detention order?
1.393 What information must FDA include in the detention order?

What is the appeal process for a detention order?

1.401 Who is entitled to appeal?
1.402 What are the requirements for submitting an appeal?
1.403 What requirements apply to an informal hearing?
1.404 Who serves as the presiding officer at an informal hearing?
1.405 When does FDA have to issue a decision on an appeal?
1.406 How will FDA handle classified information in an informal hearing?

Subpart K—Administrative Detention of Food for Human or Animal Consumption

General Provisions

§ 1.377 What definitions apply to this subpart?

The definitions of terms that appear in section 201 of the act (21 U.S.C. 321)

apply when the terms are used in this subpart.

In addition, for the purposes of this subpart:

Act means the Federal Food, Drug, and Cosmetic Act.

Authorized FDA representative means an FDA District Director in whose district the article of food involved is located or an FDA official senior to such director.

Calendar day means every day shown on the calendar.

Food has the meaning given in section 201(f) of the act (21 U.S.C. 321(f)). Examples of food include, but are not limited to, fruits, vegetables, fish, dairy products, eggs, raw agricultural commodities for use as food or components of food, animal feed, including pet food, food and feed ingredients and additives, including substances that migrate into food from food packaging and other articles that contact food, dietary supplements and dietary ingredients, infant formula, beverages, including alcoholic beverages and bottled water, live food animals, bakery goods, snack foods, candy, and canned foods.

Perishable food means food that is not heat-treated; not frozen; and not otherwise preserved in a manner so as to prevent the quality of the food from being adversely affected if held longer than 7 days under normal shipping and storage conditions.

We means the U.S. Food and Drug Administration (FDA).

Working day means any day from Monday through Friday, excluding Federal holidays.

You means any person who received the detention order or that person's representative.

§ 1.378 What criteria does FDA use to order a detention?

An officer or qualified employee of FDA may order the detention of any article of food that is found during an inspection, examination, or investigation under the act if the officer or qualified employee has credible evidence or information indicating that the article of food presents a threat of serious adverse health consequences or death to humans or animals.

§ 1.379 How long may FDA detain an article of food?

(a) FDA may detain an article of food for a reasonable period that may not exceed 20 calendar days after the detention order is issued. However, an article may be detained for 10 additional calendar days if a greater period of time is required to institute a seizure or injunction action. The authorized FDA representative may approve the additional 10 calendar day detention period at the time the detention order is issued or at any time within the 20 calendar day period by amending the detention order.

(b) The entire detention period may not exceed 30 calendar days.

(c) An authorized FDA representative may, in accordance with § 1.384, terminate a detention order before the expiration of the detention period.

§ 1.380 Where and under what conditions must the detained article of food be held?

(a) You must hold the detained article of food in the location and under the conditions specified by FDA in the detention order.

(b) If FDA determines that removal to a secure facility is appropriate, the article of food must be removed to a secure facility. A detained article of food remains under detention before, during, and after movement to a secure facility. FDA will also state in the detention order any conditions of transportation applicable to the detained article.

(c) If FDA directs you to move the detained article of food to a secure facility, you must receive a limited conditional release under § 1.381(c) before you move the detained article of food to a secure facility.

(d) You must ensure that any required tags or labels under § 1.382 accompany the detained article during and after movement. The tags or labels must remain with the article of food until FDA terminates the detention order or the detention period expires, whichever occurs first, unless otherwise permitted by the authorized FDA representative.

(e) The movement of an article of food in violation of a detention order issued under § 1.393 is a prohibited act under section 301 of the act.

§ 1.381 May a detained article of food be delivered to another entity or transferred to another location?

(a) An article of food subject to a detention order under this subpart may not be delivered to another entity under the execution of a bond.

Notwithstanding section 801(b) of the act (21 U.S.C. 381(b)), while any article of food is subject to a detention order under section 304(h) of the act, it may not be delivered to any of its importers, owners, or consignees.

(b) Except as provided in paragraph (c) of this section, no person may transfer a detained article of food within or from the place where it has been ordered detained, or from the place to which it was removed, until an authorized FDA representative releases the article of food under § 1.384 or the detention period expires under § 1.379, whichever occurs first.

(c) The authorized FDA representative may approve, in writing, a request for a limited conditional release of a detained article of food for any of the following purposes:

(1) To destroy the article of food,

(2) To move the detained article of food to a secure facility under the terms of a detention order,

(3) To maintain or preserve the integrity or quality of the article of food, or

(4) For any other purpose that the authorized FDA representative believes is appropriate in the case.

(d) You must submit your request for the limited conditional release of the detained article in writing to the authorized FDA representative who approved the detention order. You must state in your request the reasons for movement; the exact address of and location in the new facility (or the new location within the same facility) where the detained article of food will be transferred; an explanation of how the new address and location will be secure, if FDA has directed that the article be detained in a secure facility; and how the article will be held under any applicable conditions described in the detention order. If you are requesting a limited conditional release for the purpose of destroying the detained article of food, you also must submit a verified statement identifying the ownership or proprietary interest you have in the detained article of food, in accordance with Supplemental Rule C to the "Federal Rules of Civil Procedure."

(e) If FDA approves a request for limited conditional release, the article may be transferred but remains under detention before, during, and after the transfer. FDA will state any conditions of transportation applicable to the detained article. You may not transfer a detained article of food without FDA supervision unless FDA has declined in writing to supervise the transfer. If FDA has declined in writing to supervise the transfer of a detained article, you must immediately notify in writing the authorized FDA representative who approved the limited conditional release of the article of food that the article of food has reached its new location, and the specific location of the detained article within the new location. Such written notification may be in the form of a fax or e-mail or other form as agreed to by the authorized FDA representative.

(f) You must ensure that any required tags or labels under § 1.382 accompany the detained article during and after movement. The tags or labels must remain with the article of food until FDA terminates the detention order or the detention period expires, whichever occurs first, unless otherwise permitted by the authorized FDA representative who approves the limited conditional release of the detained article of food under this section.

(g) The transfer of an article of food in violation of a detention order issued under § 1.393 is a prohibited act under section 301 of the act.

§ 1.382 What labeling or marking requirements apply to a detained article of food?

The officer or qualified employee of FDA issuing a detention order under § 1.393 may label or mark the detained article of food with official FDA tags or labels that include the following information:

(a) A statement that the article of food is detained by FDA in accordance with section 304(h) of the act (21 U.S.C. 334(h));

(b) A statement that the article of food must not be consumed, moved, altered, or tampered with in any manner for the period shown, without the written permission of an authorized FDA representative;

(c) A statement that the violation of a detention order or the removal or alteration of the tag or label is a prohibited act, punishable by fine or imprisonment or both; and

(d) The detention order number, the date and hour of the detention order, the detention period, and the name of the officer or qualified employee of FDA who issued the detention order.

§ 1.383 What expedited procedures apply when FDA initiates a seizure action against a detained perishable food?

If FDA initiates a seizure action under section 304(a) of the act against a perishable food subject to a detention order under this subpart, FDA will send the seizure recommendation to the Department of Justice within 4 calendar days after the detention order is issued, unless extenuating circumstances exist. If the fourth calendar day is not a working day, FDA will advise the Department of Justice of its plans to recommend a seizure action on the last working day before the fourth calendar day and send the recommendation as soon as practicable on the first working day that follows. For purposes of this section, an extenuating circumstance includes, but is not limited to, instances when the results of confirmatory testing or other evidentiary development requires more than 4 calendar days to complete.

§ 1.384 When does a detention order terminate?

If FDA terminates a detention order or the detention period expires, an authorized FDA representative will issue a detention termination notice releasing the article of food to any person who received the detention order or that person's representative and will remove, or authorize in writing the removal of, the required labels or tags. If FDA fails to issue a detention termination notice and the detention period expires, the detention is deemed to be terminated.

How does FDA order a detention?

§ 1.391 Who approves a detention order?

An authorized FDA representative, i.e., the FDA District Director in whose district the article of food involved is located or an FDA official senior to such director, must approve a detention order. If prior written approval is not feasible, prior oral approval must be obtained and confirmed in writing as soon as possible.

§ 1.392 Who receives a copy of the detention order?

(a) FDA must issue the detention order to the owner, operator, or agent in charge of the place where the article of food is located. If the owner of the article of food is different from the owner, operator, or agent in charge of the place where the article is detained, FDA must provide a copy of the detention order to the owner of the article of food if the owner's identity can be determined readily.

(b) If FDA issues a detention order for an article of food located in a vehicle or other carrier used to transport the detained article of food, we also must provide a copy of the detention order to the shipper of record and the owner and operator of the vehicle or other carrier, if their identities can be determined readily.

§ 1.393 What information must FDA include in the detention order?

(a) FDA must issue the detention order in writing, in the form of a detention notice, signed and dated by the officer or qualified employee of FDA who has credible evidence or information indicating that such article of food presents a threat of serious adverse health consequences or death to humans or animals.

(b) The detention order must include the following information:

(1) The detention order number;

(2) The date and hour of the detention order;

(3) Identification of the detained article of food;

(4) The period of the detention;

(5) A statement that the article of food identified in the order is detained for the period shown;

(6) A brief, general statement of the reasons for the detention;

(7) The address and location where the article of food is to be detained and the appropriate storage conditions;

(8) Any applicable conditions of transportation of the detained article of food;

(9) A statement that the article of food is not to be consumed, moved, altered, or tampered with in any manner during the detention period, unless subject to a limited conditional release under § 1.381;

(10) The text of section 304(h) of the act and §§ 1.401 and 1.402;

(11) A statement that any informal hearing on an appeal of a detention order must be conducted as a regulatory hearing under part 16 of this chapter, with certain exceptions described in § 1.403;

(12) The mailing address, telephone number, e-mail address, and fax number of the FDA district office and the name of the FDA District Director in whose district the detained article of food is located; and

(13) A statement indicating the manner in which approval of the detention order was obtained, i.e., orally or in writing.

What is the appeal process for a detention order?

§ 1.401 Who is entitled to appeal?

Any person who would be entitled to be a claimant for the article of food, if seized under section 304(a) of the act, may appeal a detention order as specified in § 1.402. Procedures for establishing entitlement to be a claimant for purposes of section 304(a) of the act are governed by Supplemental Rule C to the "Federal Rules of Civil Procedure."

§ 1.402 What are the requirements for submitting an appeal?

(a) If you want to appeal a detention order, you must submit your appeal in writing to the FDA District Director, in whose district the detained article of food is located, at the mailing address, e-mail address, or fax number identified in the detention order according to the following applicable timeframes:

(1) *Perishable food*: If the detained article is a perishable food, as defined in § 1.377, you must file an appeal within 2 calendar days of receipt of the detention order.

(2) *Nonperishable food*: If the detained article is not a perishable food, as defined in § 1.377, you must file a

notice of an intent to request a hearing within 4 calendar days of receipt of the detention order. If the notice of intent is not filed within 4 calendar days, you will not be granted a hearing. If you have not filed a timely notice of intent to request a hearing, you may file an appeal without a hearing request. Whether or not it includes a request for hearing, your appeal must be filed within 10 calendar days of receipt of the detention order.

(b) Your request for appeal must include a verified statement identifying your ownership or proprietary interest in the detained article of food, in accordance with Supplemental Rule C to the "Federal Rules of Civil Procedure."

(c) The process for the appeal of a detention order under this section terminates if FDA institutes either a seizure action under section 304(a) of the act or an injunction under section 302 of the act regarding the article of food involved in the detention order.

(d) As part of the appeals process, you may request an informal hearing. Your request for a hearing must be in writing and must be included in your request for an appeal specified in paragraph (a) of this section. If you request an informal hearing, as defined in section 201(x) of the act, and FDA grants your request, the hearing will take place according to the following applicable timeframes:

(1) *Perishable food*: If the detained article is a perishable food, as defined in § 1.377, the hearing will be held within 2 calendar days after the date the appeal is filed.

(2) *Nonperishable food*: If the detained article is not a perishable food, as defined in § 1.377, the hearing will be held within 3 calendar days after the date the appeal is filed.

§ 1.403 What requirements apply to an informal hearing?

If FDA grants a request for an informal hearing on an appeal of a detention order, FDA must conduct the hearing in accordance with part 16 of this chapter, except that:

(a) The detention order under § 1.393, rather than the notice under § 16.22(a) of this chapter, provides notice of opportunity for a hearing under this section and is part of the administrative record of the regulatory hearing under § 16.80(a) of this chapter.

(b) A request for a hearing under this section must be addressed to the FDA District Director in whose district the article food involved is located.

(c) The provision in § 16.22(b) of this chapter, providing that a person not be given less than 3 working days after receipt of notice to request a hearing, does not apply to a hearing under this subpart.

(d) The provision in § 16.24(e) of this chapter, stating that a hearing may not be required to be held at a time less than 2 working days after receipt of the request for a hearing, does not apply to a hearing under this subpart.

(e) Section 1.406, rather than §16.24(f) of this chapter, describes the statement that will be provided to an appellant where a detention order is based on classified information.

(f) Section 1.404, rather than § 16.42(a) of this chapter, describes the FDA employees, e.g., regional food and drug directors or other officials senior to a district director, who preside at hearings under this subpart.

(g) The presiding officer may require that a hearing conducted under this section be completed within 1 day, as appropriate.

(h) Provisions of part 16 of this chapter that provide for the presiding officer to issue a report and recommended decision only do not apply. The presiding officer will issue the final agency decision.

§ 1.404 Who serves as the presiding officer at an informal hearing?

The presiding officer of an informal hearing on an appeal of a detention order, who also must decide the appeal, must be an FDA regional food and drug director or another FDA official senior to an FDA district director.

§ 1.405 When does FDA have to issue a decision on an appeal?

(a) The presiding officer must issue a decision confirming or revoking the detention within 5 calendar days after the appeal is filed. If FDA either fails to provide you with an opportunity to request an informal hearing, or fails to confirm or terminate the detention order within the 5-day period, the detention order is deemed terminated.

(b) If you appeal the detention order but do not request an informal hearing, the presiding officer must issue a decision on the appeal confirming or revoking the detention within 5 calendar days after the date the appeal is filed. If the presiding officer fails to confirm or terminate the detention order during such 5-day period, the detention order is deemed terminated.

(c) If you appeal the detention order and request an informal hearing and your hearing request is denied, the presiding officer must issue a decision on the appeal confirming or revoking the detention within 5 calendar days after the date the appeal is filed. If the presiding officer fails to confirm or terminate the detention order during such 5-day period, the detention order is deemed terminated.

(d) If the presiding officer confirms a detention order, the article of food continues to be detained until we terminate the detention under § 1.384 or the detention period expires under § 1.379, whichever occurs first.

(e) If the presiding officer terminates a detention order, or the detention period expires, FDA must terminate the detention order as specified under § 1.384.

(f) Confirmation of a detention order by the presiding officer is considered a final agency action for purposes of 5 U.S.C. 702.

§ 1.406 How will FDA handle classified information in an informal hearing?

Where the credible evidence or information supporting the detention order is classified under the applicable Executive order as requiring protection from unauthorized disclosure in the interest of national security ("classified information"), FDA will not provide you with this information. The presiding officer will give you notice of the general nature of the information and an opportunity to offer opposing evidence or information, if he or she may do so consistently with safeguarding the information and its source. If classified information was used to support the detention, then any confirmation of such detention will state whether it is based in whole or in part on that classified information.

PART 16—REGULATORY HEARING BEFORE THE FOOD AND DRUG ADMINISTRATION

3. The authority citation for 21 CFR part 16 continues to read as follows:

Authority: 15 U.S.C. 1451–1461; 21 U.S.C. 141–149, 321–394, 467f, 679, 821, 1034; 28 U.S.C. 2112; 42 U.S.C. 201–262, 263b, 364.

4. Section 16.1 is amended in paragraph (b)(1) by adding a new statutory provision in numerical order as follows:

§ 16.1 Scope.

* * * * *

(b) * * *

(1) * * *

Section 304(h) of the act relating to the adminstrative detention of food for human or animal consumption (see part 1, subpart k, of this chapter).

* * * * *

Dated: April 30, 2003.

Mark B. McClellan,

Commissioner of Food and Drugs.

Dated: May 5, 2003.

Tommy G. Thompson,

Secretary of Health and Human Services.

[FR Doc. 03–11459 Filed 5–5–03; 5:08 pm]

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Federal Register

Friday,
May 9, 2003

Part VI

The President

Memorandum of May 6, 2003—Delegation of the Functions of the President Under the Heading "Iraq Relief and Reconstruction Fund" in the Emergency Wartime Supplemental Appropriations Act, 2003

Proclamation 7674—Mother's Day, 2003

Federal Register
Vol. 68, No. 90
Friday, May 9, 2003

Presidential Documents

Title 3—

The President

Memorandum of May 6, 2003

Delegation of the Functions of the President Under the Heading "Iraq Relief and Reconstruction Fund" in the Emergency Wartime Supplemental Appropriations Act, 2003

Memorandum for the Secretary of State[,] the Secretary of Defense[, and] the Director of the Office of Managment and Budget

The functions of the President under the heading "Iraq Relief and Reconstruction Fund" in the Emergency Wartime Supplemental Appropriations Act, 2003 (Public Law 108–11), including with respect to apportionment, reimbursement, consultation, transfer of funds, retransfer of funds, and acceptance and crediting of contributions, are assigned to the Director of the Office of Management and Budget (OMB).

In accordance with Presidential direction relating to Iraq relief and reconstruction, multiple agencies are deployed with the Office of Reconstruction and Humanitarian Assistance (ORHA) and are serving as implementing partners or executing agents for programs and projects. These agencies will identify funding requirements for such programs and projects through ORHA. OMB will work with ORHA to transfer funds to the appropriate implementing agency. The Director of OMB shall coordinate with the Secretary of Defense or his designee prior to apportioning funds. With respect to programs administered by the Department of State or the United States Agency for International Development, the Director of OMB shall coordinate with the Secretary of State or his designee prior to apportioning funds.

The Director of the Office of Management and Budget is authorized and directed to publish this Memorandum in the **Federal Register**.

THE WHITE HOUSE,
Washington, May 6, 2003.

[FR Doc. 03–11842
Filed 5–8–03; 10:40 am]
Billing code 3110–01–M

Presidential Documents

Proclamation 7674 of May 7, 2003

Mother's Day, 2003

By the President of the United States of America

A Proclamation

On Mother's Day, we honor the dedicated and caring women who are devoted to their families and committed to improving the world their children will inherit. Our first President, George Washington, said that his mother was "the most beautiful woman I ever saw. All I am I owe to my mother." America owes much of its goodness and strength to mothers, including adoptive mothers, stepmothers, and foster mothers.

Mother's Day began as a day of love and friendship, designed to help heal families divided across battle lines during the Civil War. In 1914, President Woodrow Wilson signed a resolution officially establishing Mother's Day to honor the role of women in the family. On Mother's Day, 2003, we carry on the tradition by recognizing our mothers for their strength and compassion. We also recognize them for showing unconditional love and teaching positive values.

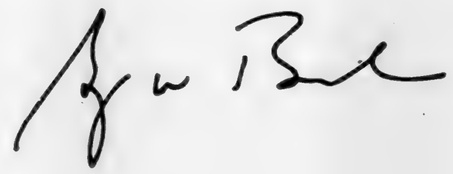
Mothers nurture a child's physical and emotional growth, nurse illness, ease failure, and cheer success. They instill important values in children and help provide the tools they need to make the right choices and grow up to be responsible, compassionate, and successful members of society.

As we honor our mothers on this special day, we celebrate their contributions to the character of our next generation of leaders. And we remember the lessons our mothers have taught us: That it is better to give than to receive, that we must love our neighbors as ourselves, and that service to others brings joy.

The Congress, by a joint resolution approved May 8, 1914, as amended (38 Stat. 770), has designated the second Sunday in May each year as "Mother's Day" and has requested the President to call for its appropriate observance. It is my honor and privilege to do so again.

NOW, THEREFORE, I, GEORGE W. BUSH, President of the United States of America, do hereby proclaim May 11, 2003, as Mother's Day. I encourage all Americans to express their love, respect, and appreciation to mothers everywhere for their contributions to their children, families, communities, and our Nation. I also call upon citizens to observe this day with appropriate programs, ceremonies, and activities.

IN WITNESS WHEREOF, I have hereunto set my hand this seventh day of May, in the year of our Lord two thousand three, and of the Independence of the United States of America the two hundred and twenty-seventh.



[FR Doc. 03–11843
Filed 5–8–03; 10:40 am]
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Federal Register
Vol. 68, No. 90
Friday May 9, 2003

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General Information, indexes and other finding aids	202–741–6000
Laws	741–6000
Presidential Documents	
Executive orders and proclamations	741–6000
The United States Government Manual	741–6000
Other Services	
Electronic and on-line services (voice)	741–6020
Privacy Act Compilation	741–6064
Public Laws Update Service (numbers, dates, etc.)	741–6043
TTY for the deaf-and-hard-of-hearing	741–6086

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FEDERAL REGISTER PAGES AND DATE, MAY

23183–23376	1
23377–23568	2
23569–23884	5
23885–24332	6
24333–24604	7
24605–24858	8
24859–25278	9

CFR PARTS AFFECTED DURING MAY

At the end of each month, the Office of the Federal Register publishes separately a List of CFR Sections Affected (LSA), which lists parts and sections affected by documents published since the revision date of each title.

3 CFR

Proclamations:
7668 23821
7669 23823
7670 23825
7671 23827
7672 23829
7673 24333
7674 25277
Executive Orders:
12865 (Revoked by 13298) 24857
13069 (Revoked by 13298) 24857
13098 (Revoked by 13298) 24857
13298 24857
Administrative Orders
Memorandums:
Memorandum of May 6, 2003 25275

5 CFR

Ch. XIV 23885
213 24605
2424 23885
2429 23885
2471 23885
2472 23885
Proposed Rules:
2601 23876

7 CFR

46 23377
301 ..... 24605, 24613
868 24589
932 23378
985 23569
1410 24830
1424 24596
1710 24335
Proposed Rules:
274 23927
276 23927
278 23927
279 23927
280 23927
360 23425
1530 23230

9 CFR

Proposed Rules:
2 24052

10 CFR

70 23574
71 23574
72 23183
73 23574
Proposed Rules:
20 23618
490 23620

12 CFR

21 25090
208 25090
211 25090
326 25090
563 25090
740 23381
748 25090
Proposed Rules:
613 ..... 23425, 23426

14 CFR

25 ..... 24336, 24338
39 ..... 23183, 23186, 23190, 23384, 23387, 23575, 23886, 24614, 24861
71 ..... 23577, 23579, 23580, 23581, 23682, 24340, 24341, 24342, 24864, 24866, 24868, 24869, 24870, 24871, 24872, 24874
77 23583
97 ..... 23888, 23889
382 24874
Proposed Rules:
3 23808
39 ..... 23231, 23235, 23427, 23620, 24383
71 ..... 23622, 23624, 23625, 23626
119 24810
121 24810
135 24810
145 24810
255 24896
330 23627
399 24896

15 CFR

0 24878
270 24343
902 24615

16 CFR

305 23584
Proposed Rules:
309 24669

17 CFR

42 25149
232 24345
270 25131

18 CFR

Proposed Rules:
35 24679

19 CFR

178 24052

20 CFR

Proposed Rules:
404 ..... 23192, 24896

416.....23192, 24896

21 CFR

Ch. 1.....24879
310.....24347
358.....24347
1300.....23195
1310.....23195
Proposed Rules:
1.....23630, 25242, 25188
11.....25188
16.....25242
101.....23930
1310.....24689

22 CFR

42.....24638
121.....25088
228.....23891

23 CFR

140.....24639
646.....24639
661.....24642
Proposed Rules:
630.....23239, 24384

24 CFR

203.....23370

25 CFR

Proposed Rules:
170.....23631

26 CFR

1.....23586, 24349, 24351, 24644, 24880
301.....24644
602.....24644
Proposed Rules:
1.....23632, 23931, 24404, 24405, 24406, 24898, 24903
54.....24406
602.....24406

27 CFR

Proposed Rules:
4.....24903
5.....24903
7.....24903
13.....24903

29 CFR

Proposed Rules:
1480.....23634
1910.....23528

30 CFR

36.....23892
917.....24644
948.....24355
950.....24647

31 CFR

103.....25090, 25149, 25113, 25163
315.....24794
351.....24794
353.....24794
359.....24794
360.....24794
363.....24794
Proposed Rules:
103.....23640, 23646, 23653, 25163

32 CFR

311.....24880
806B.....24881
Proposed Rules:
701.....24904

33 CFR

117.....23390, 23590, 24882, 24883
165.....23390, 23393, 23399, 23591, 23594, 23595, 23893, 23894, 23896, 24359, 24361, 24883
Proposed Rules:
165.....23935, 24406, 24408

36 CFR

Proposed Rules:
1280.....23430

37 CFR

Proposed Rules:
262.....23241

38 CFR

Proposed Rules:
39.....23249

39 CFR

Proposed Rules:
111.....23937

40 CFR

52.....23206, 23207, 23404, 23597, 23604, 24363, 24365, 24368, 24885
62.....23209
63.....23898, 24582, 24653
80.....24300
81.....24368
180.....24370
271.....23407, 23607
300.....23211
312.....24888
Proposed Rules:
Ch. 1.....24410
52.....23270, 23430, 23661, 23662, 24416, 24417
60.....24692
62.....23272
80.....24311
146.....23666, 23673
300.....23939

44 CFR

64.....23408
67.....23898
Proposed Rules:
67.....23941

45 CFR

32.....24052
148.....23410
1309.....23212

46 CFR

Proposed Rules:
540.....23947

47 CFR

1.....23417
73.....23613, 23900, 23901
Proposed Rules:
1.....23431
15.....23677
73.....24417

48 CFR

511.....24372
516.....24372
532.....24372
538.....24372
546.....24372
552.....24372
1802.....23423
1806.....23423
1815.....23423
1816.....23423
1843.....23423
1845.....23424

49 CFR

107.....23832, 24653
171.....23832, 24653
173.....24653
176.....23832
177.....23832, 24653
180.....24653
209.....24891
383.....23844
384.....23844
571.....23614, 24664
1570.....23852
1572.....23852
Proposed Rules:
193.....23272
572.....24417
1137.....23947

50 CFR

216.....24905
300.....23224, 23901
600.....23901
648.....24914
660.....23901, 23913, 23924
679.....23925, 24615, 24667, 24668
Proposed Rules:
18.....24700
20.....24324
216.....24905
622.....23686
648.....23275, 23948, 23949, 24914

REMINDERS

The items in this list were editorially compiled as an aid to Federal Register users. Inclusion or exclusion from this list has no legal significance.

RULES GOING INTO EFFECT MAY 9, 2003

AGRICULTURE DEPARTMENT
Agricultural Marketing Service
Prunes (dried) produced in—
California; published 4-9-03
AGRICULTURE DEPARTMENT
Commodity Credit Corporation
Loan and purchase programs:
Agricultural Management Assistance Program; published 4-9-03
COMMERCE DEPARTMENT
Employee responsibilities and conduct:
Obsolete regulations removed; published 5-9-03
ENVIRONMENTAL PROTECTION AGENCY
Air quality implementation plans; approval and promulgation; various States:
Indiana; published 4-9-03
HEALTH AND HUMAN SERVICES DEPARTMENT
Food and Drug Administration
Organization, functions, and authority delegations:
Dockets Management Branch; address change; published 5-9-03
HOMELAND SECURITY DEPARTMENT
Coast Guard
Ports and waterways safety:
Chesapeake Bay, Norfolk, VA; safety zone; published 5-6-03
Colorado River, AZ and NV; safety zone; published 5-6-03
INTERIOR DEPARTMENT
Fish and Wildlife Service
Endangered and threatened species:
Critical habitat designations—
Kauai cave wolf spider and amphipod; published 4-9-03
TRANSPORTATION DEPARTMENT
Federal Railroad Administration
Railroad safety enforcement procedures:
Small entities subject to railroad safety laws; policy statement; published 5-9-03
TRANSPORTATION DEPARTMENT
Surface Transportation Board
Practice and procedure:
Rate challenges; expedited resolution under stand-alone cost methodology; published 4-9-03

COMMENTS DUE NEXT WEEK

AGRICULTURE DEPARTMENT
Agricultural Marketing Service
Blueberry promotion, research, and information order:
U.S. Highbush Blueberry Council; name change and membership increase; comments due by 5-12-03; published 3-12-03 [FR 03-05844]
Hazelnuts grown in—
Oregon and Washington; comments due by 5-12-03; published 3-12-03 [FR 03-05843]
Onions grown in—
Texas; comments due by 5-12-03; published 3-11-03 [FR 03-05540]
Pork promotion, research, and consumer information order; comments due by 5-12-03; published 3-13-03 [FR 03-06163]
Spearmint oil produced in Far West; comments due by 5-12-03; published 4-22-03 [FR 03-09844]
AGRICULTURE DEPARTMENT
Animal and Plant Health Inspection Service
Exportation and importation of animals and animal products:
Classical swine fever; disease status change—
East Anglia; comments due by 5-12-03; published 3-13-03 [FR 03-06059]
Noxious weeds:
Kikuyu grass cultivars; comments due by 5-16-03; published 5-2-03 [FR 03-10875]
AGRICULTURE DEPARTMENT
Farm Service Agency
Special programs:
Indian Tribal Land Acquisition Program; revision; comments due by 5-13-03; published 3-14-03 [FR 03-06162]
COMMERCE DEPARTMENT
National Oceanic and Atmospheric Administration
Fishery conservation and management:
Alaska; fisheries of Exclusive Economic Zone—
Crab species license limitation; comments due by 5-14-03; published 4-29-03 [FR 03-10556]
Rock sole and yellowfin sole; comments due by 5-12-03; published 3-28-03 [FR 03-07516]
Rock sole and yellowfin sole; comments due by 5-12-03; published 4-18-03 [FR 03-09618]
ENERGY DEPARTMENT
Federal Energy Regulatory Commission
Practice and procedure:
Critical Energy Infrastructure Information; comments due by 5-16-03; published 4-16-03 [FR 03-09267]
ENVIRONMENTAL PROTECTION AGENCY
Air pollutants, hazardous; national emission standards:
Primary aluminum reduction plants; comments due by 5-16-03; published 3-17-03 [FR 03-06303]
Air pollution control:
State operating permits programs—
District of Columbia; comments due by 5-16-03; published 4-16-03 [FR 03-09343]
District of Columbia; comments due by 5-16-03; published 4-16-03 [FR 03-09344]
Air pollution control; new motor vehicles and engines:
Nonroad diesel engines; nonroad engine definition; comments due by 5-12-03; published 4-11-03 [FR 03-08956]
Air pollution; standards of performance for new stationary sources:
Gas turbines; comments due by 5-14-03; published 4-14-03 [FR 03-08151]
Air programs; approval and promulgation; State plans for designated facilities and pollutants:
Florida; comments due by 5-14-03; published 4-14-03 [FR 03-08954]
West Virginia; comments due by 5-12-03; published 4-11-03 [FR 03-08829]
Air quality implementation plans:
Preparation, adoption, and submittal—
Air Quality Models Guideline; comments due by 5-15-03; published 4-15-03 [FR 03-08542]
Air quality implementation plans; approval and promulgation; various States:
California; comments due by 5-16-03; published 4-16-03 [FR 03-09042]
New York; comments due by 5-12-03; published 4-10-03 [FR 03-08826]
Wisconsin; comments due by 5-12-03; published 4-10-03 [FR 03-08535]
Hazardous waste program authorizations:
Nebraska; comments due by 5-12-03; published 4-10-03 [FR 03-08835]
Tennessee; comments due by 5-12-03; published 4-11-03 [FR 03-08664]
Texas; comments due by 5-15-03; published 4-15-03 [FR 03-09043]
Utah; comments due by 5-12-03; published 4-10-03 [FR 03-08833]
Solid wastes:
Project XL (eXcellence and Leadership) program; site-specific projects—
IBM semiconductor manufacturing facility, Hopewell Junction, NY; comments due by 5-14-03; published 4-14-03 [FR 03-09047]
Water pollution; effluent guidelines for point source categories:
Pharmaceutical manufacturing; comments due by 5-12-03; published 3-13-03 [FR 03-05715]
FEDERAL COMMUNICATIONS COMMISSION
Common carrier services:
Interstate pay-per-call and other information services; toll-free numbers caller charges, etc.; comments due by 5-12-03; published 3-27-03 [FR 03-07319]
Radio frequency devices:
Unlicensed devices operating in additional frequency bands; feasibility; comments due

by 5-16-03; published 4-21-03 [FR 03-09688]
Radio stations; table of assignments:
Alabama and Georgia; comments due by 5-12-03; published 4-10-03 [FR 03-08754]
California; comments due by 5-12-03; published 4-10-03 [FR 03-08753]
Oregon; comments due by 5-12-03; published 4-8-03 [FR 03-08407]
Television broadcasting:
Rural Translator Service; National Translation Association's rulemaking petition; comments due by 5-16-03; published 3-17-03 [FR 03-06274]

HOMELAND SECURITY DEPARTMENT
Customs Service
North American Free Trade Agreement (NAFTA):
Disassembly operations; tariff treatment; comments due by 5-12-03; published 3-13-03 [FR 03-06051]

HOUSING AND URBAN DEVELOPMENT DEPARTMENT
Mortgage and loan insurance programs:
Single family mortgage insurance—
Adjustable rate mortgages; eligibility; comments due by 5-12-03; published 3-11-03 [FR 03-05890]

INTERIOR DEPARTMENT
Fish and Wildlife Service
Endangered and threatened species:
Critical habitat designations—
Bull trout; Klamath River and Columbia River distinct population segments; comments due by 5-12-03; published 2-11-03 [FR 03-03369]
[illegible]d; by 5-13-14-03
establishment, etc.; comments due by 5-15-03; published 5-6-03 [FR 03-11155]
Migratory bird permits:
Double-crested cormorant management; comments due by 5-16-03; published 3-17-03 [FR 03-06174]

INTERIOR DEPARTMENT
Surface Mining Reclamation and Enforcement Office
Permanent program and abandoned mine land reclamation plan submissions:
Texas; comments due by 5-12-03; published 4-10-03 [FR 03-08807]
West Virginia; comments due by 5-14-03; published 4-14-03 [FR 03-09033]

ARTS AND HUMANITIES, NATIONAL FOUNDATION
National Foundation on the Arts and the Humanities
Supplemental standards of ethical conduct for Institute of Museum and Library Sciences employees; comments due by 5-14-03; published 4-14-03 [FR 03-08989]

SECURITIES AND EXCHANGE COMMISSION
Securities and investment companies:
Sarbanes-Oxley Act of 2002; implementation—
Exchange Act reports; disclosure certification; comments due by 5-15-03; published 3-31-03 [FR 03-07310]

TRANSPORTATION DEPARTMENT
Federal Aviation Administration
Aircraft products and parts; certification procedures:
Production Approval Holder's quality system; products and/or parts that have left system, performing work on; policy statement; comments due by 5-12-03; published 3-12-03 [FR 03-05926]
Airworthiness directives:
Aerospatiale; comments due by 5-12-03; published 4-11-03 [FR 03-08891]
Airbus; comments due by 5-12-03; published 4-11-03 [FR 03-08893]
BAE Systems (Operations) Ltd.; comments due by 5-15-03; published 4-15-03 [FR 03-09137]
Boeing; comments due by 5-12-03; published 4-15-03 [FR 03-09138]
Eurocopter France; comments due by 5-13-03; published 3-14-03 [FR 03-06137]
Lockheed Martin; comments due by 5-12-03; published 3-11-03 [FR 03-05582]
Pilatus; comments due by 5-12-03; published 4-4-03 [FR 03-08199]
Raytheon; comments due by 5-17-03; published 4-3-03 [FR 03-08066]
Rolls-Royce Deutschland Ltd. & Co. KG; comments due by 5-12-03; published 3-11-03 [FR 03-05583]
Rolls-Royce plc; comments due by 5-12-03; published 3-11-03 [FR 03-05691]
Titeflex Corp.; comments due by 5-12-03; published 3-13-03 [FR 03-06043]
Class E airspace; comments due by 5-15-03; published 4-4-03 [FR 03-08142]
Class E2 airspace; comments due by 5-15-03; published 4-15-03 [FR 03-09081]

TREASURY DEPARTMENT
Foreign Assets Control Office
Iranian transactions and Iraqi sanctions regulations:
Humanitarian activities by nongovernmental organizations; authorization; comments due by 5-12-03; published 3-12-03 [FR 03-05952]

TREASURY DEPARTMENT
Alcohol and Tobacco Tax and Trade Bureau
Electronic signatures; electronic submission of forms; comments due by 5-12-03; published 4-11-03 [FR 03-08816]

LIST OF PUBLIC LAWS

This is a continuing list of public bills from the current session of Congress which have become Federal laws. It may be used in conjunction with "PLUS" (Public Laws Update Service) on 202–741–6043. This list is also available online at *http://www.nara.gov/fedreg/plawcurr.html*.

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H.R. 1770/P.L. 108–20

Smallpox Emergency Personnel Protection Act of 2003 (Apr. 30, 2003; 117 Stat. 638)

S. 151/P.L. 108–21

Prosecutorial Remedies and Other Tools to end the Exploitation of Children Today Act of 2003 (Apr. 30, 2003; 117 Stat. 650)

Last List April 29, 2003

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5–12–03 Monday
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Contents

Federal Register
Vol. 68, No. 91
Monday, May 12, 2003

Agricultural Marketing Service
RULES
Raisins produced from grapes grown in—
California, 25279–25281
NOTICES
Committees; establishment, renewal, termination, etc.:
Burley Tobacco Advisory Committee, 25315
Flue-Cured Tobacco Advisory Committee, 25315

Agriculture Department
See Agricultural Marketing Service
See Animal and Plant Health Inspection Service
See Commodity Credit Corporation
See Farm Service Agency
See Forest Service
See Rural Business-Cooperative Service

Alcohol and Tobacco Tax and Trade Bureau
NOTICES
Agency information collection activities; proposals, submissions, and approvals, 25408–25410

Alcohol, Tobacco, Firearms, and Explosives Bureau
NOTICES
Agency information collection activities; proposals, submissions, and approvals, 25388–25389

Animal and Plant Health Inspection Service
PROPOSED RULES
User fees:
Veterinary services—
Miami International Airport, FL; animal ramp, 25308–25310
NOTICES
Animal welfare:
Animal fighting venture prohibition, 25315–25316

Centers for Medicare & Medicaid Services
NOTICES
Privacy Act:
Systems of records, 25376–25382

Children and Families Administration
RULES
Personal Responsibility and Work Opportunity Reconciliation Act of 1996; implementation:
Child support enforcement program; revision or elimination of obsolete or inconsistent provisions, 25293–25305

Civil Rights Commission
NOTICES
Meetings; State advisory committees:
West Virginia, 25325–25326

Coast Guard
RULES
Ports and waterways safety:
San Diego Bay, CA; security zones, 25288–25291

Commerce Department
See Economic Analysis Bureau
See International Trade Administration
See National Oceanic and Atmospheric Administration

Commodity Credit Corporation
NOTICES
Agency information collection activities; proposals, submissions, and approvals, 25316–25317
Meetings; Sunshine Act, 25317

Corporation for National and Community Service
NOTICES
Agency information collection activities; proposals, submissions, and approvals, 25350
Meetings; Sunshine Act, 25350–25351

Defense Department
See Navy Department
PROPOSED RULES
Acquisition regulations:
Tangible item marking and valuing; contractor possession of government property, 25313–25314
NOTICES
Meetings:
Women in Services Advisory Committee, 25351
Travel per diem rates, civilian personnel; changes, 25351–25356

Economic Analysis Bureau
NOTICES
Agency information collection activities; proposals, submissions, and approvals, 25326

Education Department
NOTICES
Grants and cooperative agreements; availability, etc.:
Postsecondary education—
Campus-based programs, 25356–25357
Vocational and adult education—
Tech-Prep Demonstration Program, 25467–25474
Regulatory Flexibility Act compliance promotion; procedures and policies, 25357–25359

Employment and Training Administration
NOTICES
Agency information collection activities; proposals, submissions, and approvals, 25390–25392
Grants and cooperative agreements; availability, etc.:
Workforce Investment Act—
National Farmworker Jobs Program, 25392–25396

Energy Department
See Federal Energy Regulatory Commission
See Western Area Power Administration

Environmental Protection Agency
RULES
Air programs; approval and promulgation; State plans for designated facilities and pollutants:
Mississippi, 25291–25293
Air quality implementation plans; approval and promulgation; various States; air quality planning purposes; designation of areas:
Illinois, 25441–25466

Missouri, 25417–25442
Air quality implementation plans; approval and promulgation; various States:
Missouri, 25413–25418
PROPOSED RULES
Air programs; approval and promulgation; State plans for designated facilities and pollutants:
Mississippi, 25313
Small Business Liability Relief and Brownfields Revitalization Act; implementation:
All Appropriate Inquiry Negotiated Rulemaking Committee—
Meetings, 25312–25313
NOTICES
Agency information collection activities; proposals, submissions, and approvals, 25367–25368
Grants and cooperative agreements; availability, etc.:
Mercury lamp recycling outreach program, 25368–25371
Inventions, Government-owned; availability for licensing, 25371
Meetings:
Mobile Sources Technical Review Subcommittee, 25371–25372

Equal Employment Opportunity Commission
NOTICES
Agency information collection activities; proposals, submissions, and approvals, 25372

Executive Office of the President
See Presidential Documents
See Trade Representative, Office of United States

Farm Service Agency
NOTICES
Agency information collection activities; proposals, submissions, and approvals, 25316–25317

Federal Aviation Administration
RULES
Airworthiness directives:
New Piper Aircraft, Inc. [**Editorial Note:** This document, published at 68 FR 24861 in the **Federal Register** of Friday, May 9, 2003, was erroneously listed under **National Park Service** in that issue's Table of Contents.]

Federal Communications Commission
PROPOSED RULES
Common carrier services:
Telecommunications Act of 1996; implementation—
Consumers' long distance carriers; unauthorized changes (slamming); correction, 25313
NOTICES
Agency information collection activities; proposals, submissions, and approvals, 25372–25373

Federal Deposit Insurance Corporation
NOTICES
Meetings; Sunshine Act, 25373

Federal Election Commission
NOTICES
Meetings; Sunshine Act, 25373

Federal Energy Regulatory Commission
NOTICES
Applications, hearings, determinations, etc.:
Black Marlin Pipeline Co., 25360
CMS Trunkline Gas Co., LLC, 25360
CMS Trunkline LNG Co., LLC, 25360–25361
Colorado Interstate Gas Co., 25361
Discovery Gas Transmission LLC, 25361
Dominion Cove Point LNG, LP, 25361–25362
Great Lakes Gas Transmission L.P., 25362
High Island Offshore System, 25362
Kern River Gas Transmission Co., 25362–25363
Natural Gas Pipeline Co. of America, 25363–25364
Northern Natural Gas Co., 25364–25365
Panhandle Eastern Pipe Line Co., 25365
PG&E Gas Transmission, Northwest Corp., 25365
Sea Robin Pipeline Co., 25365–25366
Southern Star Central Gas Pipeline, Inc., 25366
Southwest Gas Storage Co., 25366

Federal Maritime Commission
NOTICES
Investigations, hearings, petitions, etc.:
China Shipping Container Lines Co., Ltd., 25373–25374

Federal Reserve System
NOTICES
Banks and bank holding companies:
Change in bank control, 25374
Formations, acquisitions, and mergers, 25374

Federal Trade Commission
NOTICES
Prohibited trade practices:
Carlsbad Physician Association, Inc., et al., 25374–25376

Food and Drug Administration
RULES
Freedom of Information Act; implementation, 25283–25288

Forest Service
NOTICES
Agency information collection activities; proposals, submissions, and approvals, 25317–25319
Environmental statements; notice of intent:
Caribou-Targhee National Forest, ID, 25319–25320

Health and Human Services Department
See Centers for Medicare & Medicaid Services
See Children and Families Administration
See Food and Drug Administration
See National Institutes of Health
See Substance Abuse and Mental Health Services Administration
NOTICES
Organization, functions, and authority delegations:
Director, Indian Health Service, 25376

Homeland Security Department
See Coast Guard

Housing and Urban Development Department
NOTICES
Agency information collection activities; proposals, submissions, and approvals, 25386–25387
Grants and cooperative agreements; availability, etc.:
HOPE VI Demolition Program; correction, 25387

Interior Department
See Land Management Bureau

Internal Revenue Service
PROPOSED RULES
Income taxes:
Taxpayer accounting method changes; administrative simplification, 25310–25312
NOTICES
Meetings:
Electronic Tax Administration Advisory Committee, 25410–25411
Taxpayer Advocacy Panels, 25411–25412

International Trade Administration
NOTICES
Antidumping:
Granular polytetrafluoroethylene resin from—
Italy, 25327
Gray portland cement and clinker from—
Mexico, 25327–25332
Hydraulic magnetic circuit breakers from—
South Africa, 25332–25335
Small diameter carbon and alloy seamless standard, line, and pressure pipe from—
Romania, 25335–25339
Countervailing duties:
Pure and alloy magnesium from—
Canada, 25339–25341
Export trade certificates of review, 25341–25342

Justice Department
See Alcohol, Tobacco, Firearms, and Explosives Bureau

Labor Department
See Employment and Training Administration
NOTICES
Agency information collection activities; proposals, submissions, and approvals, 25389
International Labor Affairs Bureau:
Forced/indentured child labor in China firecracker industry; final determination, 25389–25390

Land Management Bureau
NOTICES
Coal leases, exploration licenses, etc.:
Wyoming, 25387–25388
Meetings:
Resource Advisory Councils—
John Day/Snake, 25388

National Institutes of Health
NOTICES
Agency information collection activities; proposals, submissions, and approvals, 25382–25383
Grants and cooperative agreements; availability, etc.:
Live attenuated vaccine to prevent West Nile virus infection in humans, 25383–25384
Meetings:
National Institute of Child Health and Human Development, 25384–25385
National Institute of Diabetes and Digestive and Kidney Diseases, 25385
National Institute of General Medical Sciences, 25385–25386

National Oceanic and Atmospheric Administration
RULES
Fishery conservation and management:
Northeastern United States fisheries—
Atlantic bluefish, 25305–25307
NOTICES
Endangered and threatened species:
Anadromous fish take—
U.S. Fish and Wildlife Service; Columbia River basin salmon and steelhead, 25342–25343
Grants and cooperative agreements; availability, etc.:
South Florida Ecosystem Research and Monitoring Program, 25343–25347
Marine mammals:
Incidental taking; authorization letters, etc.—
Vandenberg Air Force Base, CA; 30th Space Wing, U.S. Air Force; rocket launches; seals and sea lions, 25347–25348
Meetings:
New England Fishery Management Council, 25349
Pacific Fishery Management Council, 25349
Permits:
Marine mammals, 25349–25350

National Science Foundation
NOTICES
Meetings:
Proposal review meetings, 25396–25397
Social, Behavioral, and Economic Sciences Advisory Committee, 25397
Meetings; Sunshine Act, 25397

Navy Department
NOTICES
Meetings:
Naval Research Advisory Committee, 25356

Nuclear Regulatory Commission
RULES
Source material; domestic licensing:
Source material holdings; reporting requirements under international agreements
Effective date, 25281
NOTICES
Agency information collection activities; proposals, submissions, and approvals, 25397–25398
Meetings:
Nuclear Waste Advisory Committee, 25398–25399
Reactor Safeguards Advisory Committee, 25399

Office of United States Trade Representative
See Trade Representative, Office of United States

Personnel Management Office
NOTICES
Agency information collection activities; proposals, submissions, and approvals, 25399–25400

Presidential Documents
EXECUTIVE ORDERS
Government agencies and employees:
Interagency Group on Insular Areas; establishment (EO 13299), 25475–25478

Rural Business-Cooperative Service
NOTICES
Grants:
1890 Land Grant Institutions Rural Entrepreneurial Program Outreach Initiative, 25321–25325

Securities and Exchange Commission
RULES
Securities:
Broker-dealer records electronic storage; interpretive guidance, 25281–25283
NOTICES
Self-regulatory organizations; proposed rule changes:
American Stock Exchange LLC, 25400–25402
National Association of Securities Dealers, Inc., 25402–25404

State Department
NOTICES
Presidential permits:
PMI Services North America, Inc.; pipeline construction and maintenance between Mexico and Cameron County, TX, 25404–25407

Substance Abuse and Mental Health Services Administration
NOTICES
Meetings:
Drug Testing Advisory Board, 25386

Trade Representative, Office of United States
NOTICES
Government-funded airport construction projects; list of countries denying fair market opportunities, 25407–25408

Treasury Department
See Alcohol and Tobacco Tax and Trade Bureau
See Internal Revenue Service
See United States Mint
NOTICES
Agency information collection activities; proposals, submissions, and approvals, 25408

United States Mint
NOTICES
Committees; establishment, renewal, termination, etc.:
Citizens Coinage Advisory Committee, 25412

Western Area Power Administration
NOTICES
Floodplain and wetlands protection; environmental review determinations; availability, etc.:
Bernardino County, CA; Headgate Rock to Blythe Transmission Line, 25366–25367

Separate Parts In This Issue

Part II
Environmental Protection Agency, 25413–25466

Part III
Education Department, 25467–25474

Part IV
The President, 25475–25478

Reader Aids
Consult the Reader Aids section at the end of this issue for phone numbers, online resources, finding aids, reminders, and notice of recently enacted public laws.

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CFR PARTS AFFECTED IN THIS ISSUE

A cumulative list of the parts affected this month can be found in the Reader Aids section at the end of this issue.

3 CFR
Executive Orders:
13299 25477

7 CFR
989 25279

9 CFR
Proposed Rules:
130 25308

10 CFR
40 25281
150 25281

17 CFR
241 25281

21 CFR
10 25283
14 25283
20 25283
314 25283
720 25283

26 CFR
Proposed Rules:
1 25310

33 CFR
165 25288

40 CFR
52 (3 documents) 25414, 25418, 25442
62 25291
81 (2 documents) 25418, 25442
Proposed Rules:
Ch. 1 25312
62 25313

45 CFR
301 25293
302 25293
303 25293
304 25293
307 25293

47 CFR
Proposed Rules:
64 25313

48 CFR
Proposed Rules:
245 25313

50 CFR
648 25305

Rules and Regulations

Federal Register
Vol. 68, No. 91
Monday, May 12, 2003

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 989

[Docket No. FV03–989–3 FIR]

Raisins Produced From Grapes Grown in California; Reduction in Production Cap for 2003 Diversion Program

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: The Department of Agriculture (USDA) is adopting, as a final rule, without change, an interim final rule reducing the production cap for the 2003 diversion program (RDP) for Natural (sun-dried) Seedless (NS) raisins from 2.75 to 2.0 tons per acre. The cap is specified under the Federal marketing order for California raisins (order). The order regulates the handling of raisins produced from grapes grown in California and is administered locally by the Raisin Administrative Committee (RAC).

EFFECTIVE DATE: June 11, 2003.

FOR FURTHER INFORMATION CONTACT: Maureen T. Pello, Senior Marketing Specialist, California Marketing Field Office, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 2202 Monterey Street, suite 102B, Fresno, California 93721; telephone: (559) 487–5901, Fax: (559) 487–5906; or George Kelhart, Technical Advisor, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence Avenue SW., STOP 0237, Washington, DC 20250–0237; telephone: (202) 720–2491, Fax: (202) 720–8938.

Small businesses may request information on complying with this regulation by contacting Jay Guerber, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence Avenue SW., STOP 0237, Washington, DC 20250–0237; telephone: (202) 720–2491, Fax: (202) 720–8938, or E-mail: *Jay.Guerber@usda.gov*.

SUPPLEMENTARY INFORMATION: This rule is issued under Marketing Agreement and Order No. 989 (7 CFR part 989), both as amended, regulating the handling of raisins produced from grapes grown in California, hereinafter referred to as the "order." The order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the "Act."

USDA is issuing this rule in conformance with Executive Order 12866.

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. This rule is not intended to have retroactive effect. This rule will not preempt any State or local laws, or policies, unless they present an irreconcilable conflict with this rule.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may file with USDA a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and request a modification of the order or to be exempted therefrom. Such handler is afforded the opportunity for a hearing on the petition. After the hearing USDA would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his or her principal place of business, has jurisdiction to review USDA's ruling on the petition, provided an action is filed not later than 20 days after the date of the entry of the ruling.

This final rule reduces the production cap for the 2003 RDP for NS raisins from 2.75 to 2.0 tons per acre. The cap is specified in the order. Under a RDP, producers receive certificates from the RAC for curtailing their production to reduce burdensome supplies. The certificates represent diverted tonnage. Producers sell the certificates to handlers who, in turn, redeem the certificates with the RAC for raisins from the prior year's reserve pool. The production cap limits the yield per acre that a producer can claim in a RDP. Reducing the cap for the 2003 RDP is expected to bring the figure in line with anticipated 2003 crop yields. This action was recommended by the RAC at a meeting on January 29, 2003.

Volume Regulation Provisions

The order provides authority for volume regulation designed to promote orderly marketing conditions, stabilize prices and supplies, and improve producer returns. When volume regulation is in effect, a certain percentage of the California raisin crop may be sold by handlers to any market (free tonnage) while the remaining percentage must be held by handlers in a reserve pool (reserve) for the account of the RAC. Reserve raisins are disposed of through various programs authorized under the order. For example, reserve raisins may be sold by the RAC to handlers for free use or to replace part of the free tonnage they exported; carried over as a hedge against a short crop the following year; or may be disposed of in other outlets not competitive with those for free tonnage raisins, such as government purchase, distilleries, or animal feed. Net proceeds from sales of reserve raisins are ultimately distributed to producers.

Raisin Diversion Program

The RDP is another program concerning reserve raisins authorized under the order and may be used as a means for bringing supplies into closer balance with market needs. Authority for the program is provided in § 989.56 of the order, and additional procedures are specified in § 989.156 of the order's administrative rules and regulations.

Pursuant to these sections, the RAC must meet each crop year to review raisin data, including information on production, supplies, market demand, and inventories. If the RAC determines that the available supply of raisins, including those in the reserve pool, exceeds projected market needs, it can decide to implement a diversion program, and announce the amount of tonnage eligible for diversion during the subsequent crop year. Producers who wish to participate in the RDP must submit an application to the RAC. Approved producers curtail their production by vine removal or some other means established by the RAC. Such producers receive a certificate from the RAC that represents the quantity of raisins diverted. Producers

sell these certificates to handlers who pay producers for the free tonnage applicable to the diversion certificate minus the established harvest cost for the diverted tonnage. Handlers redeem the certificates by presenting them to the RAC and paying an amount equal to the established harvest cost plus payment for receiving, storing, fumigating, handling, and inspecting the tonnage represented on the certificate. The RAC then gives the handler raisins from the prior year's reserve pool in an amount equal to the tonnage represented on the diversion certificate. The new crop year's volume regulation percentages are applied to the diversion tonnage acquired by the handler (as if the handler had bought raisins directly from a producer).

Production Cap

Section 989.56(a) of the order specifies a production cap of 2.75 tons per acre for any production unit of a producer approved for participation in a RDP. The RAC may recommend, subject to approval by USDA, reducing the 2.75 ton per acre production cap. The production cap limits the yield that a producer can claim. Producers who historically produce yields above the production cap can choose to produce a crop rather than participate in the diversion program. No producer is required to participate in a RDP.

Pursuant to § 989.156, producers who wish to participate in a program must submit an application to the RAC. Producers must specify, among other things, the raisin production and the acreage covered by the application. RAC staff verifies producers' production claims using handler acquisition reports and other available information. However, a producer could misrepresent production by claiming that some raisins produced on one ranch were produced on another, and use an inflated yield on the RDP application. Thus, the production cap limits the amount of raisins for which a producer participating in a RDP may be credited, and protects the program from overstated yields.

RAC Recommendation

The RAC met on January 29, 2003, and recommended allocating 35,000 tons of 2002 NS reserve raisins to a 2003 RDP. The program will be limited to vine removal for complete production units, with a 5-year moratorium on replanting raisin-variety grapes. Damages of $700 per ton of creditable fruit weight represented on the RDP certificate will be imposed on producers who replant prior to July 31, 2008. Harvest costs were established at $340 per ton. The RAC also recommended reducing the production cap from 2.75 to 2.0 tons per acre. With this year's large crop of about 373,000 tons, the RAC believes that the grape vines will produce a smaller crop next year. Thus, the RAC recommended reducing the cap from 2.75 to 2.0 tons per acre to reflect anticipated 2003 crop yields.

The RAC's RDP recommendation passed with 24 members in favor and 21 opposed. Those opposed expressed concern with the RDP as a whole, not the production cap. They believe that many producers have already pulled out their vines, and that attrition should occur naturally in the industry. Concern also was expressed that the tonnage allocated to the diversion program would be added to next year's crop estimate, thereby reducing next year's free tonnage percentage and producer returns. Those in favor of the program contend that, with a 2002 NS crop estimated at about 373,000 tons (deliveries through the week ending March 29, 2003, are at 387,780 tons), and a computed trade demand (comparable to market needs) of 196,185 tons, there would be 176,815 tons of reserve raisins. A diversion program is one avenue authorized under the order to utilize these reserve raisins.

On February 7, 2003, USDA approved the requirements of the RDP recommended by the RAC, with the exception of the production cap, which required informal rulemaking. This rule continues in effect an interim final rule implementing the RAC's recommendation to reduce the 2003 RDP production cap from 2.75 to 2.0 tons per acre. Paragraph (t) in § 989.156 of the order's rules and regulations was revised accordingly.

Final Regulatory Flexibility Analysis

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Agricultural Marketing Service (AMS) has considered the economic impact of this action on small entities. Accordingly, AMS has prepared this final regulatory flexibility analysis.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are approximately 20 handlers of California raisins who are subject to regulation under the order and approximately 4,500 raisin producers in the regulated area. Small agricultural firms are defined by the Small Business Administration (13 CFR 121.201) as those having annual receipts of less that $5,000,000, and small agricultural producers are defined as those having annual receipts of less than $750,000. Thirteen of the 20 handlers subject to regulation have annual sales estimated to be at least $5,000,000, and the remaining 7 handlers have sales less than $5,000,000. No more than 7 handlers, and a majority of producers, of California raisins may be classified as small entities.

This rule continues to revise § 989.156(t) of the order's rules and regulations regarding the RDP. Authority for this action is provided in § 989.56(a) of the order. Under a RDP, producers receive certificates from the RAC for curtailing their production to reduce burdensome supplies. The certificates represent diverted tonnage. Producers sell the certificates to handlers who, in turn, redeem the certificates with the RAC for raisins from the prior year's reserve pool. The order specifies a production cap limiting the yield per acre that a producer can claim in a RDP.

This rule continues to reduce the cap from 2.75 to 2.0 tons per acre to reflect next year's estimated yield. Regarding the impact of this action on affected entities, producers who participate in the 2003 RDP will nonetheless have the opportunity to earn income for not harvesting a 2003–04 crop. Producers who sell the certificates to handlers next fall will be paid for the free tonnage applicable to the diversion certificate minus the harvest cost for the diverted tonnage. Applicable harvest costs for the 2003 RDP were established by the RAC at $340 per ton.

Reducing the production cap will have little impact on raisin handlers. Handlers will pay producers for the free tonnage applicable to the diversion certificate minus the $340 per ton harvest cost. Handlers will redeem the certificates for 2002–03 crop NS reserve raisins and pay the RAC the $340 per ton harvest cost plus payment for receiving, storing, fumigating, handling (currently totaling $46 per ton), and inspecting (currently $9.00 per ton) the tonnage represented on the certificate. Reducing the production cap will have little impact on handler payments for reserve raisins under the 2003 RDP.

Alternatives to the recommended action included leaving the production cap at 2.75 tons per acre or reducing it to another figure besides 2.0 tons per acre. However, the majority of RAC members believe that a cap of 2.0 tons per acre will more accurately reflect anticipated 2003 crop yields.

This rule imposes no additional reporting or recordkeeping requirements on either small or large raisin handlers. In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the information collection requirement referred to in this rule (*i.e.*, the application) has been approved by the Office of Management and Budget (OMB) under OMB Control No. 0581–0178. As with all Federal marketing order programs, reports and forms are periodically reviewed to reduce information requirements and duplication by industry and public sector agencies. Finally, USDA has not identified any relevant Federal rules that duplicate, overlap, or conflict with this rule.

Further, the RAC's meeting on January 29, 2003, and the RAC's Administrative Issues Subcommittee meeting on January 24, 2003, when this action was deliberated were both public meetings widely publicized throughout the raisin industry. All interested persons were invited to attend the meetings and participate in the industry's deliberations.

An interim final rule concerning this action was published in the **Federal Register** on March 19, 2003 (68 FR 13219). Copies of the rule were mailed by RAC staff to all RAC members and alternates, the Raisin Bargaining Association, handlers and dehydrators. In addition, the rule was made available through the Internet by the Office of the Federal Register and USDA. That rule provided for a 15-day comment period that ended on April 3, 2003. No comments were received.

A small business guide on complying with fruit, vegetable, and specialty crop marketing agreements and orders may be viewed at: *http://www.ams.usda.gov/fv/moab.html*. Any questions about the compliance guide should be sent to Jay Guerber at the previously mentioned address in the **FOR FURTHER INFORMATION CONTACT** section.

After consideration of all relevant material presented, including the information and recommendation submitted by the RAC and other available information, it is found that finalizing the interim final rule, without change, as published in the **Federal Register** (68 FR 13219, March 19, 2003) will tend to effectuate the declared policy of the Act.

List of Subjects in 7 CFR Part 989

Grapes, Marketing agreements, Raisins, Reporting and recordkeeping requirements.

PART 989—RAISINS PRODUCED FROM GRAPES GROWN IN CALIFORNIA

■ Accordingly, the interim final rule amending 7 CFR part 989 which was published at 68 FR 13219 on March 19, 2003, is adopted as a final rule without change.

Dated: May 6, 2003.

A.J. Yates,

Administrator, Agricultural Marketing Service.

[FR Doc. 03–11704 Filed 5–9–03; 8:45 am]

BILLING CODE 3410–02–P

NUCLEAR REGULATORY COMMISSION

10 CFR Parts 40 and 150

RIN 3150–AH10

Source Material Reporting Under International Agreements; Confirmation of Effective Date

AGENCY: Nuclear Regulatory Commission.

ACTION: Direct final rule; confirmation of effective date.

SUMMARY: The Nuclear Regulatory Commission (NRC) is confirming the effective date of October 1, 2003, for the direct final rule that appeared in the **Federal Register** of March 5, 2003 (68 FR 10362). This direct final rule amended the NRC's regulations on reporting source material with foreign obligations. This document confirms the effective date.

DATES: The effective date of October 1, 2003, is confirmed for this direct final rule.

ADDRESSES: Documents related to this rulemaking, including comments received, may be examined at the NRC Public Document Room, Room O–1F23, 11555 Rockville Pike, Rockville, MD. These same documents may also be viewed and downloaded electronically via the rulemaking Web site (*http://ruleforum.llnl.gov*). For information about the interactive rulemaking Website, contact Ms. Carol Gallagher (301) 415–5905; e-mail: *CAG@nrc.gov*.

FOR FURTHER INFORMATION CONTACT: Merri Horn, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555; telephone (301) 415–8126; (e-mail: *mlh1@nrc.gov*).

SUPPLEMENTARY INFORMATION: On March 5, 2003 (68 FR 10362), the NRC published in the **Federal Register** a direct final rule amending its regulations in 10 CFR parts 40 and 150 to require licensees to report their holdings of source material with foreign obligations to the agency. In the direct final rule, NRC stated that if no significant adverse comments were received, the direct final rule would become final on the date noted above. The NRC did not receive any comments that warranted withdrawal of the direct final rule. Therefore, this rule will become effective as scheduled.

Dated at Rockville, Maryland, this 6th day of May, 2003.

For the Nuclear Regulatory Commission.

Michael T. Lesar,

Chief, Rules and Directives Branch, Division of Administrative Services, Office of Administration.

[FR Doc. 03–11699 Filed 5–9–03; 8:45 am]

BILLING CODE 7590–01–P

SECURITIES AND EXCHANGE COMMISSION

17 CFR Part 241

[Release No. 34–47806]

Electronic Storage of Broker-Dealer Records

AGENCY: The Securities and Exchange Commission.

ACTION: Interpretation.

SUMMARY: The Securities and Exchange Commission is publishing its views on the operation of its rule permitting broker-dealers to store required records in electronic form. Under the rule, electronic records must be preserved exclusively in a non-rewriteable and non-erasable format. This interpretation clarifies that broker-dealers may employ a storage system that prevents alteration or erasure of the records for their required retention period.

EFFECTIVE DATE: May 12, 2003.

FOR FURTHER INFORMATION: Michael A. Macchiaroli, Associate Director, 202/942–0131; Thomas K. McGowan, Assistant Director, 202/942–4886; or Randall W. Roy, Special Counsel, 202/942–0798, Division of Market Regulation, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–1001.

SUPPLEMENTARY INFORMATION: The Securities and Exchange Commission ("Commission") is publishing guidance with respect to paragraph (f)(2)(ii)(A) of Rule 17a–4, which requires broker-dealers maintaining records electronically to use a digital storage medium or system that "[p]reserve[s]

the records exclusively in a non-rewriteable, non-erasable format."[1]

I. Introduction

Broker-dealers are allowed to preserve records on "electronic storage media."[2] Rule 17a–4 defines that term as "any digital storage medium or system."[3] Paragraph (f)(2)(ii)(A) of Rule 17a–4 requires that the electronic storage media preserve the records exclusively in a non-rewriteable and non-erasable format.[4] The staff has received oral requests from broker-dealers for guidance on whether this requirement limits them to using optical platters, CD–ROMs, DVDs or similar physical mediums to achieve this result.

II. Background

Section 17(a)(1) of the Securities Exchange Act of 1934 ("Exchange Act") authorizes the Commission to issue rules requiring broker-dealers to make and keep for prescribed periods, and furnish copies thereof, such records as necessary or appropriate in the public interest, for the protection of investors or otherwise in furtherance of the purposes of the Exchange Act.[5] Pursuant to this authority, the Commission adopted Rules 17a–3 and 17a–4. Rule 17a–3 requires broker-dealers to make certain records, including trade blotters, asset and liability ledgers, income ledgers, customer account ledgers, securities records, order tickets, trade confirmations, trial balances, and various employment related documents.[6] Rule 17a–4 specifies the manner in which the records created in accordance with Rule 17a–3, and certain other records produced by broker-dealers, must be maintained.[7] It also specifies the required retention periods for these records.[8] For example, many of the records, including communications that relate to the broker-dealer's business as such, must be retained for three years; certain other records must be retained for longer periods.[9]

In combination, Rules 17a–3 and 17a–4 require broker-dealers to create, and preserve in an easily accessible manner, a comprehensive record of each securities transaction they effect and of their securities business in general. These requirements are integral to the Commission's investor protection function because the preserved records are the primary means of monitoring compliance with applicable securities laws, including antifraud provisions and financial responsibility standards. Recent events involving the deletion of emails by broker-dealers have affirmed the need to have measures in place to protect record integrity.

In 1997, the Commission amended paragraph (f) of Rule 17a–4 to allow broker-dealers to store records electronically.[10] The rule, by its terms, does not limit broker-dealers to using a particular type of technology such as optical disk. Instead, it allows them to employ any electronic storage media, subject to certain requirements, including that the media "[p]reserve the records exclusively in a non-rewriteable, non-erasable format."[11] This requirement does not mean that the records must be preserved indefinitely. Like paper and microfilm, electronic records need only be maintained for the relevant retention period specified in the rule.

III. Storing Records in a Non-Rewriteable, Non-Erasable Manner for a Specified Period

Broker-dealers and vendors of electronic record storage systems have asked whether broker-dealers may use, consistent with Rule 17a–4(f), systems they describe as storing records in a manner that prevents the records from being overwritten, erased or otherwise altered without relying solely on the system's hardware features. Specifically, these systems use integrated hardware and software codes that are intrinsic to the system to prevent the overwriting, erasure or alteration of the records. Thus, while the hardware storage medium used by these systems (*e.g.*, magnetic disk) is inherently rewriteable, the integrated codes intrinsic to the system prevent anyone from overwriting the records. Moreover, the codes used by these systems cannot be turned off to remove this feature. Thus, broker-dealers and venders claim these systems achieve the non-rewriteable and non-erasable requirement without relying solely on the systems' hardware features, such as is the case with optical platters, CD–ROMs and DVDs where digital information is permanently written onto the medium and, consequently, can never be changed or deleted.

One method using such a system stores a specified expiry or retention period with each record or file system. The system blocks record deletion or alteration by any manner of intervention until the expiry is reached or the retention period has lapsed. At expiry, or after the retention period, the records may be deleted from the system, thereby freeing space for reuse.

IV. Discussion

It is the view of the Commission that Rule 17a–4 does not require that a particular type of technology or method be used to achieve the non-rewriteable and non-erasable requirement in paragraph (f)(2)(ii)(A). Specifically, when we adopted Rule 17a–4(f), we stated:

> The Commission is adopting a rule today, which, instead of specifying the type of storage technology that may be used, sets forth standards that the electronic storage media must satisfy to be considered an acceptable method of storage under Rule 17a–4.[12]

A broker-dealer would not violate the requirement in paragraph (f)(2)(ii)(A) of the rule if it used an electronic storage system that prevents the overwriting, erasing or otherwise altering of a record during its required retention period through the use of integrated hardware and software control codes. Rule 17a–4 requires broker-dealers to retain records for specified lengths of time. Therefore, it follows that the non-erasable and non-rewriteable aspect of their storage need not continue beyond that period.

The Commission's interpretation does not include storage systems that only mitigate the risk a record will be overwritten or erased. Such systems—which may use software applications to protect electronic records, such as authentication and approval policies, passwords or other extrinsic security controls—do not maintain the records in a manner that is non-rewriteable and non-erasable. The external measures used by these other systems do not prevent a record from being changed or deleted. For example, they might limit access to records through the use of passwords. Additionally, they might create a "finger print" of the record based on its content. If the record is changed, the fingerprint will indicate that it was altered (but the original record would not be preserved). The ability to overwrite or erase records stored on these systems makes them non-compliant with Rule 17a–4(f).

Any system used by a broker-dealer must comply with every requirement in paragraph (f) of the rule. Among other requirements in paragraph (f), the broker-dealer would need to have in place an audit system providing for accountability regarding the inputting of records into the storage system.[13] The audit procedures for a storage system using integrated software and hardware codes to comply with paragraph (f) would need to provide accountability regarding the length of time records are stored in a non-rewriteable and non-erasable manner. This should include senior management level approval of how the system is configured to store records for their required retention periods in a non-rewriteable and non-erasable manner. It would be prudent to configure such a storage system so that records input without an expiry or a retention period, by default, would be assigned a permanent retention period. This would help to ensure the records are maintained in accordance with the retention periods specified in Rule 17a–4 or other applicable Commission rules.

Moreover, there may be circumstances (such as receipt of a subpoena) where a broker-dealer is required to maintain records beyond the retention periods specified in Rule 17a–4 or other applicable Commission rules. Accordingly, a broker-dealer must take appropriate steps to ensure that records are not deleted during periods when the regulatory retention period has lapsed but other legal requirements mandate that the records continue to be maintained, and the broker-dealer's storage system must allow records to be retained beyond the retentions periods specified in Commission rules.

V. Conclusion

For the foregoing reasons, the Commission finds this interpretation to be consistent with section 17 of the Exchange Act and Rule 17a–4 thereunder.

List of Subjects in 17 CFR Part 241

Securities.

Amendment to the Code of Federal Regulations

■ For the reasons set out in the preamble, the Commission is amending title 17, chapter II of the Code of Federal Regulations as set forth below:

PART 241—INTERPRETATIVE RELEASES RELATING TO THE SECURITIES EXCHANGE ACT OF 1934 AND GENERAL RULES AND REGULATIONS THEREUNDER

■ Part 241 is amended by adding Release No. 34–47806 and the release date of May 7, 2003 to the list of interpretive releases.

By the Commission.

Dated: May 7, 2003.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 03–11727 Filed 5–9–03; 8:45 am]

BILLING CODE 8010–01–P

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[1] 17 CFR 240.17a–4(f)(2)(ii)(A).

[2] 17 CFR 240.17a–4(f).

[3] 17 CFR 240.17a–4(f)(1)(ii).

[4] Under the rule, the electronic storage media also must verify automatically the quality and accuracy of the storage media recording process; serialize the original and, if applicable, duplicate units of storage media, and time-date for the required period of retention the information placed on such electronic storage media; and have the capacity to readily download indexes and records preserved on the electronic storage media to any medium acceptable under paragraph (f) as required by the Commission or the self-regulatory organizations of which the member, broker, or dealer is a member.

[5] 15 U.S.C. 78q(a)(1).

[6] 17 CFR 240.17a–3.

[7] 17 CFR 240.17a–4.

[8] Id.

[9] *See e.g.* 17 CFR 240.17a–4(a)–(e).

[10] Exchange Act Release No. 38245 (Feb. 5, 1997), 62 FR 6469 (Feb. 12, 1997) ("Adopting Release").

[11] 17 CFR 240.17a–4(f)(2)(ii)(A).

[12] Adopting Release, 62 FR at 6470.

[13] 17 CFR 240.17a–4(f)(3)(v).

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Parts 10, 14, 20, 314, and 720

[Docket No. 99N–2637]

Public Information Regulations

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is issuing final regulations to comply with the requirements of the Electronic Freedom of Information Amendments of 1996 (EFOIA). EFOIA is designed to broaden public access to Government documents by making them more accessible in electronic form and by streamlining the process by which agencies generally disclose information.

DATES: This rule is effective July 28, 2003.

FOR FURTHER INFORMATION CONTACT: Betty Dorsey, Freedom of Information Staff (HFI–30), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–6567.

SUPPLEMENTARY INFORMATION:

I. Introduction

In the **Federal Register** of November 4, 1999 (64 FR 60143), FDA published a proposed rule that would amend its public information regulations in part 20 (21 CFR part 20) to comply with the requirements of the EFOIA and to clarify and update certain provisions unrelated to EFOIA. EFOIA authorizes, and in some instances requires, agencies to issue regulations implementing certain of its provisions, including provisions regarding the aggregation of Freedom of Information Act (FOIA) requests, the expedited processing of FOIA requests, and the establishment of separate queues for the processing of FOIA requests. In addition, EFOIA amends the time limits for responding to an FOIA request from 10 to 20 working days, the process by which an agency may extend the time for responding to an FOIA request, and the requirements for reporting on FOIA activities. EFOIA also includes provisions regarding the availability of records in electronic form, the establishment of "electronic reading rooms," and provisions requiring agencies to inform requesters about the amount of information not being released to them.

In addition to the changes in the proposed rule, this document also reflects technical changes caused by the redesignation of several provisions and by the revocation of existing § 20.44 for the reasons outlined in the proposed rule.

II. Discussion of Comments on the Proposed Rule

FDA received one comment on the proposed rule from a pharmaceutical research and development organization.

A. Section 20.33—Form or Format of Response

The proposal would revise the agency's regulation by adding a requirement to provide records in any requested form or format if the record is readily reproducible by the agency in the requested form or format. FDA offices responsible for responding to FOIA requests shall make reasonable efforts to maintain their records in forms or formats that are readily reproducible for FOIA purposes. Because of the wide range of possible forms and formats, a specific office responding to a FOIA request may not have means to respond to requests in all requested forms and formats. In its proposal, the agency noted that it is striving toward a common records filing structure that will enhance the agency's ability to respond to requests for records in a particular form or format.

The comment asked whether FDA has requested input from its constituents with regard to a common record filing structure, and, if not, recommended that FDA do so.

FDA has not requested input from its constituents on this matter, but will take this comment into consideration as the agency continues to develop a common records filing structure. However, until such a structure is in place, FDA will respond to requests for records in specified forms or formats based on its existing technological and resource capabilities.

B. Section 20.34—Search for Records

The proposal stated that in responding to a request for records, the agency shall make reasonable efforts to search for records kept in their electronic form or format, except when such efforts would significantly interfere with the operation of the agency's automated information systems.

The comment recommended that the agency provide an example of the kind of requests FDA believes would significantly interfere with the operation of the agency's automated information systems.

It is not readily possible for FDA to provide examples of situations that would significantly interfere with the operation of the agency's automated information systems. Because FDA has a decentralized system for processing FOIA requests, what constitutes significant interference may depend on the technical capabilities and resources of the particular office processing a request. Thus, the agency will be making these decisions on a case by case basis.

C. Section 20.40—Filing a Request for Records

As stated in the proposal, FDA will accept FOI requests via facsimile as well as via mail.

The comment requested that FDA also add e-mail as an acceptable means of filing a FOIA request in light of the common use of e-mail in today's business world. The agency is exploring the possibility of accepting electronic FOI requests, and at some future time may amend its regulations to permit the filing of electronic requests.

D. Section 20.44—Expedited Processing

The proposal implements section 8 of EFOIA, which requires agencies to provide for expedited processing of FOIA requests in cases where the person requesting the records demonstrates a "compelling need" and in other cases as determined by the agency.

The comment expressed concern that the scope of individuals or entities that can demonstrate "compelling need" is too narrow. In particular, the comment stated that the rule should be restructured so that pharmaceutical and other healthcare companies would also be in a position to obtain expedited processing when there is an urgency to inform the public about FDA regulatory activity, such as product recalls.

The definition of "compelling need" is set forth in the EFOIA statute (5 U.S.C. 552(a)(6)(E)) itself and cannot be changed by agency rulemaking. However, because EFOIA also permits agencies to grant expedited processing in other cases as determined by the agency, in those instances where the requester does not meet the statutory definition of "compelling need" but demonstrates a need for expedited processing, the agency has the discretion to grant such requests.

III. Environmental Impact

The agency has determined under 21 CFR 25.30(h) and (i) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

IV. Federalism

FDA has analyzed this final rule in accordance with the principles set forth in Executive Order 13132. FDA has determined that the rule does not contain policies that have substantial direct effects on the States, on the relationship between the National Government and the States, or on the distribution of power and responsibilities among the various levels of government. Accordingly, the agency has concluded that the rule does not contain policies that have federalism implications as defined in the Executive order and, consequently, a federalism summary impact statement is not required.

V. Analysis of Impacts

FDA has examined the impacts of the final rule under Executive Order 12866 and the Regulatory Flexibility Act (5 U.S.C. 601–612), and the Unfunded Mandates Reform Act of 1995 (Public Law 104–4). Executive Order 12866 directs agencies to assess all costs and benefits of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity). The agency believes that this final rule is consistent with the regulatory philosophy and principles identified in the Executive order. In addition, the final rule is not a significant regulatory action as defined by the Executive order and so is not subject to review under the Executive order.

The Regulatory Flexibility Act requires agencies to analyze regulatory options that would minimize any significant impact of a rule on small entities. Because the final rule provides for greater flexibility in making requests, increased access to public information, and in certain cases, a faster agency response, the agency certifies that the final rule will not have a significant economic impact on a substantial number of small entities. Therefore, under the Regulatory Flexibility Act, no further analysis is required.

Section 202 of the Unfunded Mandates Reform Act of 1995 requires that agencies assess anticipated costs and benefits before issuing any rule that may result in expenditure in any 1 year by State, local, or tribal governments, in the aggregate, or by the private sector, of $100 million, adjusted annually for inflation. As noted above, we find that this final rule would not have an effect of this magnitude on the economy.

VI. Paperwork Reduction Act of 1995

The final rule contains no collections of information. Therefore, clearance by the Office of Management and Budget under the Paperwork Reduction Act of 1995 is not required.

List of Subjects

21 CFR Part 10

Administrative practice and procedure, News media.

21 CFR Part 14

Administrative practice and procedure, Advisory committees, Color additives, Drugs, Radiation protection.

21 CFR Part 20

Confidential business information, Courts, Freedom of information, Government employees.

21 CFR Part 314

Administrative practice and procedure, Confidential business information, Drugs, Reporting and recordkeeping requirements.

21 CFR Part 720

Confidential business information, Cosmetics.

■ Therefore, under the Federal Food, Drug, and Cosmetic Act, the Public Health Service Act, and the Freedom of Information Act, and under authority delegated to the Commissioner of Food and Drugs, 21 CFR parts 10, 14, 20, 314, and 720 are amended as follows:

PART 10—ADMINISTRATIVE PRACTICES AND PROCEDURES

■ 1. The authority citation for 21 CFR part 10 continues to read as follows:

Authority: 5 U.S.C. 551–558, 701–706; 15 U.S.C. 1451–1461; 21 U.S.C. 141–149, 321–397, 467f, 679, 821, 1034; 28 U.S.C. 2112, 42 U.S.C. 201, 262, 263b, 264.

§ 10.20 [Amended]

■ 2. Section 10.20 *Submission of documents to Dockets Management Branch; computation of time; availability for public disclosure* is amended in paragraph (c)(6) by removing the last sentence and in paragraph (j)(2)(ii) by removing "§ 20.46" and by adding in its place "§ 20.48".

PART 14—PUBLIC HEARING BEFORE A PUBLIC ADVISORY COMMITTEE

■ 3. The authority citation for 21 CFR part 14 continues to read as follows:

Authority: 5 U.S.C. App. 2; 15 U.S.C. 1451–1461; 21 U.S.C. 41–50, 141–149, 321–394, 467f, 679, 821, 1034; 28 U.S.C. 2112; 42 U.S.C. 201, 262, 263b, 264.

§ 14.61 [Amended]

■ 4. Section 14.61 *Transcripts of advisory committee meetings* is amended in paragraph (d) by removing "§ 20.42" and by adding in its place "§ 20.45" and by removing "§ 20.51" and by adding in its place "§ 20.53".

PART 20—PUBLIC INFORMATION

■ 5. The authority citation for 21 CFR part 20 continues to read as follows:

Authority: 5 U.S.C. 552; 18 U.S.C. 1905; 19 U.S.C. 2531–2582; 21 U.S.C. 321–393, 1401–1403; 42 U.S.C. 241, 242, 242a, 2421, 242n, 243, 262, 263, 263b–263n, 264, 265, 300u–300u–5, 300aa–1.

■ 6. Section 20.20 is amended by adding paragraph (e) to read as follows:

§ 20.20 Policy on disclosure of Food and Drug Administration records.

* * * * *

(e) "Record" and any other term used in this section in reference to information includes any information that would be an agency record subject to the requirements of this part when maintained by the agency in any format, including an electronic format.

■ 7. Section 20.22 is amended by redesignating the existing paragraph as paragraph (a) and by adding paragraph (b) to read as follows:

§ 20.22 Partial disclosure of records.

(a) * * *

(b)(1) Whenever information is deleted from a record that contains both disclosable and nondisclosable information, the amount of information deleted shall be indicated on the portion of the record that is made available, unless including that indication would harm an interest protected by an exemption under the Freedom of Information Act.

(2) When technically feasible, the amount of information deleted shall be indicated at the place in the record where the deletion is made.

■ 8. Section 20.26 is amended by adding paragraph (a)(4) and by revising paragraph (b) to read as follows:

§ 20.26 Indexes of certain records.

(a) * * *

(4) Records that have been released to any person in response to a Freedom of Information request and that the agency has determined have become, or are likely to become, the subject of subsequent requests for substantially the same records.

(b) Each such index will be made available through the Internet at http://www.fda.gov. A printed copy of each index is available by writing to the Freedom of Information Staff (HFI–35), Food and Drug Administration, 5600 Fishers Lane, rm. 12A–16, Rockville, MD 20857, or by visiting the Freedom of Information Public Reading Room in rm. 12A–30 at the same address.

§ 20.27 [Amended]

■ 9. Section 20.27 *Submission of records marked as confidential* is amended by removing the phrase "to review them pursuant to the procedures established in § 20.44,"

§ 20.28 [Amended]

■ 10. *Section 20.28 Food and Drug Administration determinations of confidentiality* is amended by removing the phrase "or by a written determination pursuant to the procedure established in § 20.44".

§ 20.29 [Amended]

■ 11. Section 20.29 *Prohibition on withdrawal of records from Food and Drug Administration files* is amended by removing the phrase "Except pursuant to the procedures established in § 20.44 for presubmission review of records, no" from the first sentence and by adding in its place the word "No".

■ 12. Subpart B is amended by adding §§ 20.33 and 20.34 to read as follows:

§ 20.33 Form or format of response.

(a) The Food and Drug Administration shall make reasonable efforts to provide a record in any requested form or format if the record is readily reproducible by the agency in that form or format.

(b) If the agency determines that a record is not readily reproducible in the requested form or format, the agency may notify the requester of alternative forms and formats that are available. If the requester does not express a preference for an alternative in response to such notification, the agency may provide its response in the form and format of the agency's choice.

§ 20.34 Search for records.

(a) In responding to a request for records, the Food and Drug Administration shall make reasonable efforts to search for records kept in electronic form or format, except when such efforts would significantly interfere with the operation of the agency's automated information systems.

(b) The term "search" means to review, manually or by automated means, agency records for the purpose of locating those records that are responsive to the request.

■ 13. Section 20.40 is amended by revising paragraph (a) to read as follows:

§ 20.40 Filing a request for records.

(a) All requests for Food and Drug Administration records shall be made in writing by mailing or delivering the request to the Freedom of Information Staff (HFI–35), Food and Drug Administration, rm. 12A–16, 5600 Fishers Lane, Rockville, MD 20857, or by faxing it to 301–443–1726. All requests must contain the postal address and telephone number of the requester and the name of the person responsible for payment of any fees that may be charged.

* * * * *

■ 14. Section 20.41 is amended by revising the introductory text of paragraph (b) and paragraph (b)(3), in paragraph (b)(2) by removing "§ 20.45" and by adding in its place "§ 20.47", and by adding paragraph (c) to read as follows:

§ 20.41 Time limitations.

* * * * *

(b) Within 20 working days (excluding Saturdays, Sundays, and legal public holidays) after a request for records is logged in at the Freedom of Information Staff, the agency shall send a letter to the requester providing the agency's determination as to whether, or the extent to which, the agency will comply with the request, and, if any records are denied, the reasons for the denial.

* * * * *

(3) (i) In unusual circumstances, the agency may extend the time for sending the letter for an additional period.

(A) The agency may provide for an extension of up to 10 working days by providing written notice to the requester setting out the reasons for the extension and the date by which a determination is expected to be sent.

(B) The agency may provide for an extension of more than 10 working days by providing written notice to the requester setting out the reasons for the extension. The notice also will give the requester an opportunity to limit the

scope of the request so that it may be processed in a shorter time and/or an opportunity to agree on a timeframe longer than the 10 extra working days for processing the request.

(ii) Unusual circumstances may exist under any of the following conditions:

(A) There is a need to search for and collect the requested records from field facilities or other components that are separate from the agency component responsible for processing the request;

(B) There is a need to search for, collect, and appropriately examine a voluminous amount of separate and distinct records that are demanded in a single request; or

(C) There is need for consultation, which shall be conducted with all practicable speed, with another agency having a substantial interest in the determination of the request, or among two or more components of the Food and Drug Administration having substantial subject-matter interest in the determination.

* * * * *

(c) The Food and Drug Administration shall provide a determination of whether to provide expedited processing within 10 calendar days of receipt by the Freedom of Information Staff of the request and the required documentation of compelling need in accordance with § 20.44(b).

■ 15. Sections 20.45 through 20.53 are redesignated as §§ 20.47 through 20.55, §§ 20.42 and 20.43 are redesignated as §§ 20.45 and 20.46, new §§ 20.42 and 20.43 are added, and § 20.44 is revised, to read as follows:

§ 20.42 Aggregation of certain requests.

The Food and Drug Administration may aggregate certain requests by the same requester, or by a group of requesters acting in concert, if the requests involve clearly related matters and the agency reasonably believes that such requests actually constitute a single request which would otherwise satisfy the unusual circumstances specified in § 20.41(b)(3)(ii)(B). FDA may extend the time for processing aggregated requests in accordance with the unusual circumstances provisions of § 20.41.

§ 20.43 Multitrack processing.

(a) Each Food and Drug Administration component is responsible for determining whether to use a multitrack system to process requests for records maintained by that component. A multitrack system provides two or more tracks for processing requests, based on the amount of work and/or time required for a request to be processed. The availability of multitrack processing does not affect expedited processing in accordance with § 20.44.

(b) If multitrack processing is not adopted by a particular agency component, that component will process all requests in a single track, ordinarily on a first-in, first-out basis.

(c) If a multitrack processing system is established by a particular agency component, that component may determine how many tracks to establish and the specific criteria for assigning requests to each track. Multiple tracks may be established for requests based on the amount of work and/or time required for a request to be processed.

(d) Requests assigned to a given track will ordinarily be processed on a first-in, first-out basis within that track.

(e) If a request does not qualify for the fastest processing track, the requester may be provided an opportunity to limit the scope of the request in order to qualify for faster processing.

§ 20.44 Expedited processing.

(a) The Food and Drug Administration will provide expedited processing of a request for records when the requester demonstrates a compelling need, or in other cases as determined by the agency. A compelling need exists when:

(1) A failure to obtain requested records on an expedited basis could reasonably be expected to pose an imminent threat to the life or physical safety of an individual; or

(2) With respect to a request made by a person primarily engaged in disseminating information, there is a demonstrated urgency to inform the public concerning actual or alleged Federal Government activity.

(b) A request for expedited processing made under paragraph (a)(1) of this section must be made by the specific individual who is subject to an imminent threat, or by a family member, medical or health care professional, or other authorized representative of the individual, and must demonstrate a reasonable basis for concluding that failure to obtain the requested records on an expedited basis could reasonably be expected to pose a specific and identifiable imminent threat to the life or safety of the individual.

(c) A request for expedited processing made under paragraph (a)(2) of this section must demonstrate that:

(1) The requester is primarily engaged in disseminating information to the general public and not merely to a narrow interest group;

(2) There is an urgent need for the requested information and that it has a particular value that will be lost if not obtained and disseminated quickly; however, a news media publication or broadcast deadline alone does not qualify as an urgent need, nor does a request for historical information; and

(3) The request for records specifically concerns identifiable operations or activities of the Federal Government.

(d) All requests for expedited processing shall be filed in writing as provided by § 20.40. Each such request shall include information that demonstrates a reasonable basis for concluding that a compelling need exists within the meaning of paragraph (a) of this section and a certification that the information provided in the request is true and correct to the best of the requester's knowledge and belief. Any statements made in support of a request for expedited processing are subject to the False Reports to the Government Act (18 U.S.C. 1001).

(e) The Assistant Commissioner for Public Affairs (or delegatee) will determine whether to grant a request for expedited processing within 10 days of receipt by the Freedom of Information Staff of all information required to make a decision.

(f) If the agency grants a request for expedited processing, the agency shall process the request as soon as practicable.

(g) If the agency denies a request for expedited processing, the agency shall process the request with other nonexpedited requests.

(h) If the agency denies a request for expedited processing, the requester may appeal the agency's decision by writing to the official identified in the denial letter.

■ 16. Newly redesignated § 20.45 is amended in paragraph (a) introductory text by removing "§ 20.43" and by adding in its place "§ 20.46", by revising the introductory text of paragraph (c), by removing the third sentence in paragraph (c)(1), and by revising paragraph (c)(6) to read as follows:

§ 20.45 Fees to be charged.

* * * * *

(c) *Fee schedule.* The Food and Drug Administration charges the following fees in accordance with the regulations of the Department of Health and Human Services at 45 CFR part 5.

* * * * *

(6) *Sending records by express mail or other special methods.* This service is not required by the Freedom of Information Act. If the Food and Drug Administration agrees to provide this service, the requester will be required to directly pay, or be directly charged by, the courier. The agency will not agree to any special delivery method that does not permit the requester to directly pay or be directly charged for the service.

* * * * *

■ 17. Newly redesignated § 20.46 is amended by revising the introductory text of paragraph (a) to read as follows:

§ 20.46 Waiver or reduction of fees.

(a) *Standard.* The Assistant Commissioner for Public Affairs (or delegatee) will waive or reduce the fees that would otherwise be charged if disclosure of the information meets both of the following tests:

* * * * *

§ 20.48 [Amended]

■ 18. Newly redesignated § 20.48 *Judicial review of proposed disclosure* is amended by removing "§ 20.45" and by adding in its place "§ 20.47".

■ 19. Newly redesignated § 20.49 is amended by revising paragraphs (a) and (c) to read as follows:

§ 20.49 Denial of a request for records.

(a) A denial of a request for records, in whole or in part, shall be signed by the Assistant Commissioner for Public Affairs (or delegatee).

* * * * *

(c) A letter denying a request for records, in whole or in part, shall state the reasons for the denial and shall state that an appeal may be made to the Deputy Assistant Secretary for Public Affairs (Media), Department of Health and Human Services. The agency will also make a reasonable effort to include in the letter an estimate of the volume of the records denied, unless providing such an estimate would harm an interest protected by an exemption under the Freedom of Information Act. This estimate will ordinarily be provided in terms of the approximate number of pages or some other reasonable measure. This estimate will not be provided if the volume of records denied is otherwise indicated through deletions on records disclosed in part.

* * * * *

§ 20.53 [Amended]

■ 20. Newly redesignated § 20.53 is amended by removing "§ 20.42" and by adding in its place "§ 20.45".

§ 20.81 [Amended]

■ 21. Section 20.81 *Data and information previously disclosed to the public* is amended by removing paragraph (b) and by redesignating paragraph (c) as new paragraph (b).

§ 20.83 [Amended]

■ 22. Section 20.83 *Disclosure required by court order* is amended in paragraph (a) by removing "either" and by removing the phrase "or by a written determination pursuant to the procedure established in § 20.44".

■ 23. Section 20.107 is amended by revising paragraph (a) to read as follows:

§ 20.107 Food and Drug Administration manuals.

(a) Food and Drug Administration administrative staff manuals and instructions that affect a member of the public are available for public disclosure. An index of all such manuals is available by writing to the Freedom of Information Staff (HFI–35), Food and Drug Administration, rm. 12A–16, 5600 Fishers Lane, Rockville, MD 20857, or by visiting the Freedom of Information Public Reading Room, located in rm. 12A–30 at the same address. The index and all manuals created by the agency on or after November 1, 1996, will be made available through the Internet at http://www.fda.gov.

* * * * *

§ 20.111 [Amended]

■ 24. Section 20.111 *Data and information submitted voluntarily to the Food and Drug Administration* is amended in paragraph (b) by removing the phrase "or by a written determination pursuant to the procedure established in § 20.44" and in paragraph (c)(4) by removing the last sentence.

■ 25. Section 20.120 is added to subpart F to read as follows:

§ 20.120 Records available in Food and Drug Administration Public Reading Rooms.

(a) The Food and Drug Administration operates two public reading rooms. The Freedom of Information Staff's Public Reading Room is located in rm. 12A–30, Parklawn Bldg., 5600 Fishers Lane, Rockville, MD 20857, the phone number is 301–827–6500. The Dockets Management Branch's Public Reading Room is located in rm. 1061, 5630 Fishers Lane, Rockville, MD 20857; the phone number is 301–827–6860. Both public reading rooms are open from 9 a.m. to 4 p.m., Monday through Friday, excluding legal public holidays.

(b) The following records are available at the Freedom of Information Staff's Public Reading Room:

(1) A guide for making requests for records or information from the Food and Drug Administration;

(2) Administrative staff manuals and instructions to staff that affect a member of the public;

(3) Food and Drug Administration records which have been released to any person in response to a Freedom of Information request and which the agency has determined have become or are likely to become the subject of subsequent requests for substantially the same records;

(4) Indexes of records maintained in the Freedom of Information Staff's Public Reading Room; and

(5) Such other records and information as the agency determines are appropriate for inclusion in the public reading room.

(c) The following records are available in the Dockets Management Branch's Public Reading Room:

(1) Final opinions, including concurring and dissenting opinions, as well as orders, made in the adjudication of cases;

(2) Statements of policy and interpretation adopted by the agency that are still in force and not published in the **Federal Register**;

(3) Indexes of records maintained in the Dockets Management Branch's Public Reading Room; and

(4) Such other records and information as the agency determines are appropriate for inclusion in the public reading room.

(d) The agency will make reading room records created by the Food and Drug Administration on or after November 1, 1996, available electronically through the Internet at the agency's World Wide Web site which can be found at http://www.fda.gov. At the agency's discretion, the Food and Drug Administration may also make available through the Internet such additional records and information it believes will be useful to the public.

PART 314—APPLICATION FOR FDA APPROVAL TO MARKET A NEW DRUG

■ 26. The authority citation for 21 CFR part 314 continues to read as follows:

Authority: 21 U.S.C. 321, 331, 351, 352, 353, 355, 355a, 356, 356a, 356b, 356c, 371, 374, 379e.

§ 314.65 [Amended]

■ 27. Section 314.65 *Withdrawal by the applicant of an unapproved application* is amended by removing "§ 20.42" and by adding in its place "§ 20.45".

§ 314.72 [Amended]

■ 28. Section 314.72 *Change in ownership of an application* is amended in paragraph (a)(2)(iii) by removing "§ 20.42" and by adding in its place "§ 20.45".

PART 720—VOLUNTARY FILING OF COSMETIC PRODUCT INGREDIENT COMPOSITION STATEMENTS

■ 29. The authority citation for 21 CFR part 720 continues to read as follows:

Authority: 21 U.S.C. 321, 331, 361, 362, 371, 374.

§ 720.8 [Amended]

■ 30. Section 720.8 *Confidentiality of statements* is amended by removing from the second sentence of paragraph (a) the phrase "and in § 20.44 of this chapter".

Dated: May 3, 2003.

Jeffrey Shuren,

Assistant Commissioner for Policy.

[FR Doc. 03–11647 Filed 5–9–03; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[COTP San Diego 03–010]

RIN 1625–AA00 [Formerly RIN 2115–AA97]

Security Zones; San Diego Bay, CA

AGENCY: Coast Guard, DHS.

ACTION: Final rule.

SUMMARY: The Coast Guard is expanding the geographical boundaries of the permanent security zones at Naval Base San Diego; Naval Submarine Base, San Diego; and Naval Base Coronado, California at the request of the U.S. Navy. Modification and expansion of these security zones is needed to ensure the physical protection of naval vessels moored within each zone by accommodating the Navy's placement of anti-small boat barrier booms within the zones. Entry into these zones is prohibited unless authorized by the Captain of the Port (COTP) San Diego; Commander, Naval Base San Diego; Commander, Naval Base Point Loma; Commander, Naval Base Coronado; or Commander, Navy Region Southwest.

DATES: The suspension of 33 CFR 165.1101, 165.1103, and 165.1104 (effective from 11:59 p.m. on February 11, 2003 to 11:59 p.m. on May 12, 2003, published in the **Federal Register** at 68 FR 7073–7080, on February 12, 2003) is lifted effective 11:59 p.m. on April 14, 2003. This rule is effective on April 15, 2003.

ADDRESSES: Comments and material received from the public, as well as documents indicated in this preamble as being available in the docket, are part of docket [COTP San Diego 03–010] and are available for inspection or copying at Coast Guard Marine Safety Office San Diego, 2716 North Harbor Drive, San Diego, California, 92101. Marine Safety Office San Diego, Port Operations Department between 8 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Lieutenant Joseph Brown, Port Safety and Security, at (619) 683–6495.

SUPPLEMENTARY INFORMATION:

Regulatory Information

On February 11, 2003, we published a notice of proposed rulemaking (NPRM) entitled [Security Zones; San Diego Bay, CA] in the **Federal Register** (68 FR 6844). We received 0 letters commenting on the proposed rule. No public hearing was requested, and none was held.

Under 5 U.S.C. 553(d)(3), good cause exists for making this rule effective less than 30 days after publication in the **Federal Register**. The Maritime Administration (MARAD) recently issued MARAD Advisory 03–03 (182100Z MAR 03) informing operators of maritime interests of increased threat possibilities to vessels and facilities and a higher risk of terrorist attacks to the maritime community in the United States. Further, national security and intelligence officials warn that future terrorist attacks against United States interests are likely. The measures contemplated by the rule are intended to prevent waterborne acts of sabotage or terrorism, which terrorists have demonstrated a capability to carry out. Any delay in making this regulation effective would be contrary to the public interest because immediate action is necessary to protect U.S. naval interests against the possible loss of life, injury, or damage to property.

Background and Purpose

On September 16th and 17th, 2002, the Coast Guard published three temporary final rules suspending 33 CFR 165.1101, 33 CFR 165.1103, and 33 CFR 165.1104 and implementing temporary security zones at Naval Base San Diego, Naval Base Coronado, and Naval Submarine Base San Diego. See 67 FR 58524, 67 FR 58526, and 67 FR 58333. Modified versions of these zones have been in place since 1998 and the Coast Guard has not received any comments during that time and no negative incidents have been reported.

The U.S. Navy requested that the Coast Guard implement these security zones in coordination with their installation of anti-small boat barrier booms at the three locations. If you would like to obtain information about the U.S. Navy's action, contact the Assistant Chief of Port Operations, Navy Region Southwest at 619–556–2400.

The Coast Guard is modifying the security zones to allow the U.S. Navy to put anti-small boat barrier booms at Naval Base San Diego (33 CFR 165.1101); Naval Submarine Base, San Diego (33 CFR 165.1103); and Naval Base Coronado (33 CFR 165.1104). The modification and expansion of these security zones is needed to ensure the physical protection of naval vessels moored in the area by providing adequate standoff distance. The Coast Guard's action supports the Navy's action and is limited to the expansion of the existing zones.

The modification and expansion of these security zones will also prevent recreational and commercial craft from interfering with military operations involving all naval vessels home-ported at Naval Base Coronado, Naval Submarine Base San Diego, and Naval Base San Diego, and it will protect transiting recreational and commercial vessels, and their respective crews, from the navigational hazards posed by such military operations. It will also safeguard vessels and waterside facilities from destruction, loss, or injury from sabotage or other subversive acts, accidents, or other causes of a similar nature. Entry into, transit through, or anchoring within this security zone is prohibited unless authorized by the Captain of the Port San Diego; Commander, Naval Base San Diego; Commander, Naval Base Point Loma; Commander, Naval Base Coronado; or Commander, Navy Region Southwest.

Discussion of Rule

Specifically, the Coast Guard is expanding the security zone boundaries at the request of the U.S. Navy so that the U.S. Navy can install anti-small boat barrier booms.

In its effort to thwart terrorist activity, the Coast Guard has increased safety and security measures on U.S. ports and waterways. As part of the Diplomatic Security and Antiterrorism Act of 1986 (Pub. L. 99–399), Congress amended section 7 of the Ports and Waterways Safety Act (PWSA), 33 U.S.C. 1226, to allow the Coast Guard to take actions, including the establishment of security and safety zones, to prevent or respond to acts of terrorism against individuals, vessels, or public or commercial structures. The Coast Guard also has authority to establish security zones pursuant to the Act of June 15, 1917, as amended by the Magnuson Act of August 9, 1950 (50 U.S.C. 191 *et seq.*) and implementing regulations promulgated by the President in Subparts 6.01 and 6.04 of Part 6 of Title 33 of the Code of Federal Regulations.

Vessels or persons violating this section will be subject to the penalties

set forth in 33 U.S.C. 1232 and 50 U.S.C. 192. Pursuant to 33 U.S.C. 1232, any violation of the security zone described herein, is punishable by civil penalties (not to exceed $27,500 per violation, where each day of a continuing violation is a separate violation), criminal penalties (imprisonment up to 6 years and a maximum fine of $250,000), and in rem liability against the offending vessel. Any person who violates this section, using a dangerous weapon, or who engages in conduct that causes bodily injury or fear of imminent bodily injury to any officer authorized to enforce this regulation, also faces imprisonment up to 12 years. Vessels or persons violating this section are also subject to the penalties set forth in 50 U.S.C. 192: seizure and forfeiture of the vessel to the United States, a maximum criminal fine of $10,000, and imprisonment up to 10 years, and a civil penalty of not more than $25,000 for each day of a continuing violation.

The Captain of the Port will enforce these zones and may enlist the aid and cooperation of any Federal, State, county, municipal, and private agency to assist in the enforcement of the regulation. This regulation is issued under the authority of 33 U.S.C. 1226 in addition to the authority contained in 50 U.S.C. 191 and 33 U.S.C. 1231.

Regulatory Evaluation

These rules are not a "significant regulatory action" under section 3(f) of Executive Order 12866, Regulatory Planning and Review, and do not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed them under that Order. They are not "significant" under the regulatory policies and procedures of the Department of Homeland Security (DHS).

Due to National Security interests, the implementation of these security zones is necessary for the protection of the United States and its people. The size of the zone is the minimum necessary to provide adequate protection for U.S. Naval vessels, their crews, adjoining areas, and the public. The entities most likely to be affected, if any, are pleasure craft engaged in recreational activities and sightseeing. Any hardships experienced by persons or vessels are considered minimal compared to the national interest in protecting U.S. Naval vessels, their crews, and the public.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), we have considered whether these rules would have a significant economic impact on a substantial number of small entities. The term "small entities" comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000.

The Coast Guard certifies under 5 U.S.C. 605(b) that these rules would not have a significant economic impact on a substantial number of small entities because the expanded zones will still allow sufficient room for vessels to transit the channel unimpeded.

If you think that your business, organization, or governmental jurisdiction qualifies as a small entity and that these rules would have a significant economic impact on it, please submit a comment (see **ADDRESSES**) explaining why you think it qualifies and how and to what degree these rules would economically affect it.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we want to assist small entities in understanding these rules so that they can better evaluate its effects on them and participate in the rulemakings. If the rules would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact LT Joseph Brown, Marine Safety Office San Diego at (619) 683–6495.

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1–888–REG–FAIR (1–888–734–3247).

Collection of Information

This rule calls for no new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

Federalism

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on State or local governments and would either preempt State law or impose a substantial direct cost of compliance on them. We have analyzed this rule under that Order and have determined that it does not have implications for federalism.

Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of $100,000,000 or more in any one year. Though this rule will not result in such expenditure, we do discuss the effects of this rule elsewhere in this preamble.

Taking of Private Property

This rule will not effect a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

Civil Justice Reform

This rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

Protection of Children

We have analyzed this rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and does not create an environmental risk to health or risk to safety that may disproportionately affect children.

Indian Tribal Governments

This rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

Energy Effects

We have analyzed this rule under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. We have determined that it is not a "significant energy action" under that order because it is not a "significant regulatory action" under Executive Order 12866 and is not likely to have a significant adverse effect on the supply, distribution, or use of

energy. It has not been designated by the Administrator of the Office of Information and Regulatory Affairs as a significant energy action. Therefore, it does not require a Statement of Energy Effects under Executive Order 13211.

Environment

We have considered the environmental impact of these rules and concluded that, under figure 2–1, paragraph (34)(g), of Commandant Instruction M16475.1D, these rules are categorically excluded from further environmental documentation because our action is limited to the expansion of existing security zones. The U.S. Navy has separately considered the impact of their proposed project including the placement of anti-small boat barrier booms. While we reviewed the Navy's environmental documentation, our analysis pertains solely to the expanded placement of the small markers designating the security zones already in the waterway. A final "Environmental Analysis Check List" and a final "Categorical Exclusion Determination" are available in the docket where indicated under **ADDRESSES.**

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and record keeping requirements, Security measures, Waterways.

■ For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 165 as follows:

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

■ 1. The authority citation for part 165 continues to read as follows:

Authority: 33 U.S.C. 1231; 50 U.S.C. 191, 33 CFR 1.05–1(g), 6.04–1, 6.04–6, and 160.5; Department of Homeland Security Delegation No. 0170.

§ 165.T11–047 [Removed]

■ 2. Remove 165.T11–047.

■ 3. Revise § 165.1101 to read as follows:

§ 165.1101 Security Zone: San Diego Bay, CA.

(a) *Location.* The following area is a security zone: The water area within Naval Station, San Diego enclosed by the following points: Beginning at 32°41′16.5″ N, 117°08′01″ W (Point A); thence running southwesterly to 32°41′02.5″ N, 117°08′08.5″ W (Point B); to 32°40′55.0″ N, 117°08′00.0″ W (Point C); to 32°40′49.5″ N, 117°07′55.5″ W (Point D); to 32°40′44.6″ N, 117°07′49.3″ W (Point E); to 32°40′37.8 N, 117°07′43.2″ W, (Point F); to 32°40′30.9″ N, 117°07′39.0″ W (Point G); 32°40′24.5″ N, 117°07′35.0″ W (Point H); to 32°40′17.2″ N, 117°07′30.8″ W (Point I); to 32°40′10.6″ N, 117°07′30.5″ W (Point J); to 32°39′59.0″ N, 117°07′29.0″ W (Point K); to 32°39′49.8″ N, 117°07′27.2″ W (Point L); to 32°39′43.0″ N, 117°07′25.5″ W (Point M); 32°39′36.5″ N, 117°07′24.2″ W, (Point N); thence running easterly to 32°39′38.5″ N, 117°07′06.5″ W (Point O); thence running generally northwesterly along the shoreline of the Naval Station to the place of beginning. All coordinates referenced use datum: NAD 1983.

(b) *Regulations.* (1) In accordance with the general regulations in § 165.33 of this part, entry into the area of this zone is prohibited unless authorized by the Captain of the Port San Diego; Commander, Naval Base San Diego; or Commander, Navy Region Southwest.

(2) Persons desiring to transit the area of the security zone may contact the Captain of the Port at telephone number 619–683–6495 or on VHF channel 16 (156.8 MHz) to seek permission to transit the area. If permission is granted, all persons and vessels must comply with the instructions of the Captain of the Port or his or her designated representative.

(c) *Authority.* In addition to 33 U.S.C. 1231 and 50 U.S.C. 191, the authority for this section includes 33 U.S.C. 1226.

(d) *Enforcement.* The U.S. Coast Guard may be assisted in the patrol and enforcement of this security zone by the U. S. Navy.

§ 165.T11–031 [Removed]

■ 4. Remove § 165.T11–031.

■ 5. Revise § 165.1103 to read as follows:

§ 165.1103 Security Zone: San Diego Bay, CA.

(a) *Location.* The following area is a security zone: The water adjacent to the Naval Submarine Base, San Diego, commencing on a point on the shoreline of Ballast Point, at 32° 41′11.2″ N, 117° 13′57.0″ W (Point A), thence northerly to 32° 41′31.8″ N, 117° 14′00.6″ W (Point B), thence westerly to 32° 41′32.7″ N, 117° 14′03.2″ W (Point C), thence southwesterly to 32° 41′30.5″ N, 117° 14′17.5″ W (Point D), thence generally southeasterly along the shoreline of the Naval Submarine Base to the point of beginning, (Point A). All coordinates referenced use datum: NAD 1983.

(b) *Regulations.* (1) In accordance with the general regulations in § 165.33 of this part, entry into the area of this zone is prohibited unless authorized by the Captain of the Port San Diego; Commander, Naval Base Point Loma; or Commander, Navy Region Southwest.

(2) Persons desiring to transit the area of the security zone may contact the Captain of the Port at telephone number 619–683–6495 or on VHF channel 16 (156.8 MHz) to seek permission to transit the area. If permission is granted, all persons and vessels must comply with the instructions of the Captain of the Port or his or her designated representative.

(c) *Authority.* In addition to 33 U.S.C. 1231 and 50 U.S.C. 191, the authority for this section includes 33 U.S.C. 1226.

(d) *Enforcement.* The U.S. Coast Guard may be assisted in the patrol and enforcement of this security zone by the U.S. Navy.

§ 165.T11–049 [Removed]

■ 6. Remove § 165.T11–049.

■ 7. Revise 165.1104 to read as follows:

§ 165.1104 Security Zone: San Diego Bay, CA.

(a) *Location.* The following area is a security zone: on the waters along the northern shoreline of Naval Base Coronado, the area enclosed by the following points: Beginning at 32°42′53.0″ N, 117°11′45.0 W (Point A); thence running northerly to 32°42′55.5″ N, 117°11′45.0″ W, (Point B); thence running easterly to 32°42′57.0″ N, 117°11′31.0″ W, (Point C); thence southeasterly to 32°42′42.0″ N, 117°11′04.0″ W (Point D); thence southeasterly to 32°42′21.0″ N, 117°10′47.0″ W (Point E) thence running southerly to 32°42′13.0″ N, 117°10′51.0″ W (Point F); thence running generally northwesterly along the shoreline of Naval Base Coronado to the place of beginning. All coordinates referenced use datum: NAD 1983.

(b) *Regulations.* (1) In accordance with the general regulations in Sec. 165.33 of this part, entry into the area of this zone is prohibited unless authorized by the Captain of the Port San Diego; Commander, Naval Base Coronado, or Commander, Navy Region Southwest.

(2) Persons desiring to transit the area of the security zone may contact the Captain of the Port at telephone number 619–683–6495 or on VHF channel 16 (156.8 MHz) to seek permission to transit the area. If permission is granted, all persons and vessels must comply with the instructions of the Captain of the Port or his or her designated representative.

(c) *Authority.* In addition to 33 U.S.C. 1231 and 50 U.S.C. 191, the authority for this section includes 33 U.S.C. 1226.

(d) *Enforcement.* The U.S. Coast Guard may be assisted in the patrol and enforcement of this security zone by the U.S. Navy.

Dated: April 15, 2003.

Stephen P. Metruck,

Commander, U.S. Coast Guard, Captain of the Port, San Diego, California.

[FR Doc. 03–11166 Filed 5–9–03; 8:45 am]

BILLING CODE 4910–15–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 62

[MS–200326a; FRL–7497–3]

Approval and Promulgation of State Plan for Designated Facilities and Pollutants: MS

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: The EPA is approving the sections 111(d)/129 plan submitted by the Mississippi Department of Environmental Quality (MDEQ) for the State of Mississippi on August 29, 2002, for implementing and enforcing the Emissions Guidelines (EG) applicable to existing Commercial and Industrial Solid Waste Incineration (CISWI) Units that Commenced Construction On or Before November 30, 1999.

DATES: This direct final rule is effective July 11, 2003, unless EPA receives adverse comments by June 11, 2003. If adverse comments are received, EPA will publish a timely withdrawal of the direct final rule in the **Federal Register** and inform the public that the rule will not take effect.

ADDRESSES: All comments should be addressed to: Joydeb Majumder, EPA Region 4, Air Toxics and Monitoring Branch, 61 Forsyth Street, SW., Atlanta, Georgia 30303–3104. Copies of materials submitted to EPA may be examined during normal business hours at the above listed Region 4 location. Anyone interested in examining this document should make an appointment with the office at least 24 hours in advance.

FOR FURTHER INFORMATION CONTACT: Joydeb Majumder at (404) 562–9121 or Heidi LeSane at (404) 562–9035.

SUPPLEMENTARY INFORMATION:

I. Background

On December 1, 2000, pursuant to sections 111 and 129 of the Clean Air Act (Act), EPA promulgated new source performance standards (NSPS) applicable to new CISWIs and EG applicable to existing CISWIs. The NSPS and EG are codified at 40 CFR part 60, subparts CCCC and DDDD, respectively. Subparts CCCC and DDDD regulate the following: Particulate matter, opacity, sulfur dioxide, hydrogen chloride, oxides of nitrogen, carbon monoxide, lead, cadmium, mercury, dioxins and dibenzofurans.

Section 129(b)(2) of the Act requires States to submit to EPA for approval State Plans that implement and enforce the EG. State Plans must be at least as protective as the EG, and become Federally enforceable upon approval by EPA. The procedures for adoption and submittal of State Plans are codified in 40 CFR part 60, subpart B. EPA originally promulgated the subpart B provisions on November 17, 1975. EPA amended subpart B on December 19, 1995, to allow the subparts developed under section 129 to include specifications that supersede the general provisions in subpart B regarding the schedule for submittal of State Plans, the stringency of the emission limitations, and the compliance schedules.

This action approves the State Plan submitted by MDEQ for the State of Mississippi to implement and enforce subpart DDDD, as it applies to existing CISWI units only.

II. Discussion

MDEQ submitted to EPA on August 29, 2002, the following in their 111(d)/129 State Plan for implementing and enforcing the EG for existing CISWIs under their direct jurisdiction in the State of Mississippi: Public Participation-Demonstration that the Public Had Adequate Notice and Opportunity to Submit Written Comments and Attend the Public Hearing; Emissions Standards and Compliance Schedules; Emission Inventories, Source Surveillance, and Reports; and Legal Authority.

The approval of the Mississippi State Plan is based on finding that: (1) MDEQ provided adequate public notice of public hearings for the EG for CISWIs, and (2) MDEQ also demonstrated legal authority to adopt emission standards and compliance schedules to designated facilities; authority to enforce applicable laws, regulations, standards, and compliance schedules, and authority to seek injunctive relief; authority to obtain information necessary to determine whether designated facilities are in compliance with applicable laws, regulations, standards, and compliance schedules, including authority to require record keeping and to make inspections and conduct tests of designated facilities; and authority to require owners or operators of designated facilities to install, maintain, and use emission monitoring devices and to make periodic reports to the Sate on the nature and amount of emissions from such facilities.

MDEQ cites the following references for the legal authority: The Mississippi Statues § 49–2–4. Department of Environmental Quality; executive director; qualification, § 49–2–5. Commission on Environmental Quality, § 49–2–13. Powers and duties of executive director, § 49–17–17. Powers and duties, § 49–17–43 Penalties, and§ 49–17–21. Inspections and investigations; access to and maintenance of records; testing and sampling; and monitoring equipment.

An enforcement mechanism is a legal instrument by which the MDEQ can enforce a set of standards and conditions. The MDEQ has adopted 40 CFR 60, Subpart DDDD, into Section 13, APC–S–1, of the Mississippi Air Emission Regulations for the Prevention, Abatement, and Control of Air Contaminants. Therefore, MDEQ's mechanism for enforcing the standards and conditions of 40 CFR 60, subpart DDDD, is Rule APC–S–1, Section 13. On the basis of these statutes and rules of the State of Mississippi, the State Plan is approved as being at least as protective as the Federal requirements for existing CISWI units.

MDEQ adopted all emission standards and limitations applicable to existing CISWI units. These standards and limitation have been approved as being at least as protective as the Federal requirements contained in subpart DDDD for existing CISWI units.

MDEQ submitted the compliance schedule for CISWIs under their jurisdiction in the State of Mississippi. This portion of the Plan has been reviewed and approved as being at least as protective as Federal requirements for existing CISWI units.

MDEQ submitted an emissions inventory of all designated pollutants for CISWI units under their jurisdiction in the State of Mississippi. This portion of the Plan has been reviewed and approved as meeting the Federal requirements for existing CISWI units.

MDEQ includes its legal authority to require owners and operators of designated facilities to maintain records and report to their Agency the nature and amount of emissions and any other information that may be necessary to enable their Agency to judge the compliance status of the facilities in Appendix D of the State Plan. In Appendix D, MDEQ also submits its legal authority to provide for periodic inspection and testing and provisions for making reports of CISWI emissions data, correlated with emission standards that apply, available to the general public.

The State Plan outlines the authority to meet the requirements of monitoring, recordkeeping, reporting, and compliance assurance. This portion of the Plan has been reviewed and approved as being at least as protective as Federal requirements for existing CISWI units.

MDEQ will provide progress reports of plan implementation updates to the EPA on an annual basis. These progress reports will include the required items pursuant to 40 CFR part 60, subpart B. This portion of the plan has been reviewed and approved as meeting the Federal requirement for State Plan reporting.

This action approves the State Plan submitted by MDEQ for the State of Mississippi to implement and enforce subpart DDDD, as it applies to existing CISWI units only.

III. Final Action

This action approves the State Plan submitted by MDEQ for the State of Mississippi to implement and enforce subpart DDDD, as it applies to existing CISWI units only. The EPA is publishing this rule without prior proposal because the Agency views this as a noncontroversial submittal and anticipates no adverse comments. However, in the proposed rules section of this **Federal Register** publication, EPA is publishing a separate document that will serve as the proposal to approve the State Plan should adverse comments be filed. This rule will be effective July 11, 2003, without further notice unless the Agency receives adverse comments by June 11, 2003.

If the EPA receives such comments, then EPA will publish a document withdrawing the final rule and informing the public that the rule will not take effect. All public comments received will then be addressed in a subsequent final rule based on the proposed rule. The EPA will not institute a second comment period. Parties interested in commenting should do so at this time. If no such comments are received, the public is advised that this rule will be effective on July 11, 2003, and no further action will be taken on the proposed rule. Please note that if we receive adverse comment on an amendment, paragraph, or section of this rule and if that provision may be severed from the remainder of the rule, we may adopt as final those provisions of the rule that are not the subject of an adverse comment.

IV. Statutory and Executive Order Reviews

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a "significant regulatory action" and therefore is not subject to review by the Office of Management and Budget. For this reason, this action is also not subject to Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use" (66 FR 28355, May 22, 2001). This action merely approves state law as meeting Federal requirements and imposes no additional requirements beyond those imposed by state law. Accordingly, the Administrator certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this rule approves pre-existing requirements under state law and does not impose any additional enforceable duty beyond that required by state law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4).

This rule also does not have tribal implications because it will not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000). This action also does not have Federalism implications because it does not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999). This action merely approves a state rule implementing a Federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. This rule also is not subject to Executive Order 13045 "Protection of Children from Environmental Health Risks and Safety Risks" (62 FR 19885, April 23, 1997), because it is not economically significant.

In reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. In this context, in the absence of a prior existing requirement for the State to use voluntary consensus standards (VCS), EPA has no authority to disapprove a SIP submission for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews a SIP submission, to use VCS in place of a SIP submission that otherwise satisfies the provisions of the Clean Air Act. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 *note*) do not apply. This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

The Congressional Review Act, 5 U.S.C. section 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a "major rule" as defined by 5 U.S.C. section 804(2).

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by July 11, 2003. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (*See* section 307(b)(2).)

List of Subjects in 40 CFR Part 62

Environmental protection, Administrative practice and procedure, Air pollution control, Intergovernmental relations, Reporting and recordkeeping requirements, Sulfur oxides, Sulfuric acid plants, Waste treatment and disposal.

Dated: April 30, 2003.

J.I. Palmer, Jr.,

Regional Administrator, Region 4.

■ Chapter I, title 40 of the Code of Federal Regulation is amended as follows:

PART 62—[AMENDED]

■ 1. The authority citation for part 62 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

Subpart Z—Mississippi

■ 2. Subpart Z is amended by adding an undesignated center heading and § 62.6127 to read as follows:

Air Emissions From Commercial and Industrial Solid Waste Incineration (CISWI) Units—Section 111(d)/129 Plan

§ 62.6127 Identification of Sources.

The Plan applies to existing Commercial and Industrial Solid Waste Incineration Units that Commenced Construction On or Before November 30, 1999.

[FR Doc. 03–11751 Filed 5–9–03; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

45 CFR Parts 301, 302, 303, 304, and 307

RIN 0970–AB81

Child Support Enforcement Program; State Plan Approval and Grant Procedures, State Plan Requirements, Standards for Program Operations, Federal Financial Participation, Computerized Support Enforcement Systems

AGENCY: Office of Child Support Enforcement (OCSE), HHS.

ACTION: Final rule.

SUMMARY: This final rule responds to comments on, and makes technical corrections to, interim final child support enforcement regulations published in the **Federal Register** on February 9, 1999.

The 1999 interim final rule eliminated regulations, in whole or in part, that were rendered obsolete by, or inconsistent with, welfare reform legislation and a series of related laws that followed.

DATES: These regulations are effective on June 11, 2003.

FOR FURTHER INFORMATION CONTACT: Eileen Brooks, Deputy Director, Policy Division, OCSE, (202) 401–5369, *ebrooks@acf.hhs.gov.*

SUPPLEMENTARY INFORMATION:

Statutory Authority

These regulations are published under the authority granted to the Secretary by section 1102 of the Social Security Act (the Act). Section 1102 of the Act requires the Secretary to publish regulations that may be necessary for the efficient administration of the functions for which he is responsible under the Act.

Interim Final Regulatory Provisions

Interim final regulations published on February 9, 1999 (64 FR 6237) amended Child Support Enforcement program regulations throughout 45 CFR chapter III for conformity with statutory changes enacted in concert with welfare reform. The 1999 regulatory document amended: §§ 301.1, 302.12, 302.31, 302.32, 302.34, 302.35, 302.50, 302.51, 302.52, 302.54, 302.70, 302.75, 302.80, 303.3, 303.5, 303.7, 303.8, 303.15, 303.20, 303.30, 303.31, 303.70, 303.71, 303.72, 303.100, 303.101, 303.102, 304.12, 304.20, 304.21, 304.26, 304.29, and 304.40 and made nomenclature edits throughout parts 301, 302, 303, and 304. In addition, the 1999 interim final rule removed §§ 302.57, 303.21, 303.80, 303.103, 303.105, and former part 305, which were wholly rendered obsolete by, or inconsistent with, statutory changes resulting from welfare reform and related follow-up legislation. These statutes are: Public Law 104–193, the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (PRWORA); Public Law 105–33, the Balanced Budget Act of 1997 (BBA); Public Law 105–89, the Adoption and Safe Families Act of 1997 (ASFA); and Public Law 105–200, the Child Support Performance and Incentive Act of 1998 (CSPIA).

Response to Comments and Changes to 1999 Interim Final Rule

We received comments from over 20 representatives of Federal, State and local agencies, national organizations, advocacy groups, and private citizens on the interim final rule published on February 9, 1999 in the **Federal Register** (64 FR 6237). We appreciate the care that commenters took in their reviews. No comments were received on the request for comments on the information collection activity published on July 16, 1999 in the **Federal Register** (64 FR 38444).

This final rule includes changes made throughout Child Support Enforcement regulations in response to comments we received in the 1999 document. It also includes additional technical corrections identified after publication of the 1999 interim final rule that are of a nature that we believe would not require additional comment, such as changes in punctuation or spelling.

General

1. *Comment:* We received one comment recommending that the rule be issued formatted with strikeouts and underlines indicating removals and additions from the current regulation.

Response: The **Federal Register**'s publication policy does not allow issuance of regulations with strikeouts and underlines. The annually-updated version of the Code of Federal Regulations (CFR) contains all final revisions to child support program regulations revised as of October 1 of each year. The Government Printing Office web site at *www.gpo.gov* includes the latest available version of the CFR.

2. *Comment:* We received a comment that we were inconsistent by removing some regulations but adding language in other regulations.

Response: The interim final rule was drafted to minimize restatement of statutory language in Federal regulations. Therefore, we only added language needed for conformity with statutory language. In some cases, the inconsistency between the regulation and PRWORA was so great that the regulation was removed. In response to comments received and to avoid confusion, we have incorporated some statutory requirements in the Federal regulations (*e.g., see* § 303.8, Review and adjustment of child support orders). In addition, because the rule was issued as an Interim Final Rule, instead of a Notice of Proposed Rulemaking, it was limited to those changes that were required by statute and were non-discretionary. Changes involving policy choices will be issued through separate rulemaking.

3. *Comment:* We received several comments indicating that we missed nomenclature changes needed in various sections of the regulations. For example, changes were needed to replace "absent" parent with "noncustodial" parent and to correct "an" noncustodial to "a" noncustodial parent.

Response: We have made these straightforward corrections to the regulations throughout parts 301 through 304 and 307 and will not repeat these comments and responses individually as we discuss each changed regulation.

4. *Comment:* We received comments on several sections of the regulafions that were not included in the interim final rule.

Response: We are unable to address these comments in this final rule, but will retain them for consideration in any future revisions to those sections.

General Definitions—§ 301.1

1. *Comment:* One commenter said that the definitions for "overdue support" and "past-due support" create

confusion and legal problems for the program. "Overdue support means a delinquency * * *" and "Past-due support means the amount of support * * * which has not been paid." Lack of clarity in these definitions and in use of the term "delinquency" in the regulations leaves interpretation of these terms to local courts. The commenter cites court rulings that: (1) Preclude use of Federal income tax refund offset when an individual is current in his court-ordered repayment plan; (2) past-due support is created by default in performance rather than by the existence of outstanding arrears; and (3) arrearages resulting from the retroactive application of the support order do not constitute past-due support subject to the Federal income tax refund intercept.

Response: These regulatory definitions restate the definitions used in the Act and were not changed by any recent amendments to the Act. "Overdue support" is a term defined in section 466(e) of the Act and is applicable to section 466 remedies. It was added when that section on mandatory State enforcement laws was first included in title IV–D by the 1984 amendments to the Act. The term "past-due support" is defined in section 464(c) of the Act and used in sections 454(6) and 454(18) and throughout section 464 to refer to delinquencies qualifying for Federal income tax refund offset. Because these are statutory definitions with particular meanings and applications, we have not altered them. According to Black's Law Dictionary, the term "delinquent" means due and unpaid at the time appointed by law. In the case of child support, a judgment for unpaid support or an arrearage amount would be a delinquency. Delinquency is used in these regulations as a general term to distinguish current support from other support.

2. *Comment:* One commenter suggested that, under definitions, the term "non-title IV–A Medicaid recipient" be amended to "non-IV–A Medicaid recipient".

Response: We agree and have made this revision. The term "Non-title IV–A Medicaid Recipient" is revised by removing "Non-title IV–A" and replacing it with "Non-IV–A".

Single and Separate Organizational Unit—§ 302.12

1. *Comment:* One commenter noted that paragraph (a)(1)(i) deletes reference to § 205.100 although there has been no amendment to that section. The commenter also indicated that the word "other" should be removed from paragraph (a)(1)(ii) for clarity.

Response: Section 205.100 is obsolete with respect to title IV–A as reauthorized under welfare reform. It is still permissible for the IV–D agency to be located within any agency designated to administer title IV–A, but there is no longer a requirement for a single State agency in the Temporary Assistance for Needy Families (TANF) program. Therefore, the word "other" in newly-designated paragraph (a)(1)(ii) is appropriate.

Establishing Paternity and Securing Support—§ 302.31

1. *Comment:* One commenter noted that the preamble to the interim final rule said that we were removing § 302.31(a)(4), but it was not removed. This reference appeared in the discussion of § 303.80.

Response: Reference to removal of § 302.31(a)(4) was incorrect. The content of § 302.31(a)(3) was removed and paragraph (a)(3) was reserved by the interim final rule. Because we have no plans to use the reserved paragraph (a)(3), we are deleting it in this final rule and have made a technical correction redesignating paragraph (a)(4) as (a)(3).

Collection and Disbursement of Support Payments by the IV–D Agency—§ 302.32

1. *Comment:* Two commenters indicated that disbursement timeframes in paragraphs (b)(1), (2) and (3) should start from the date of receipt by the State disbursement unit (SDU), pursuant to section 454B(c) of the Act.

Response: We agree with these comments and have revised the paragraphs, as needed, to make them consistent with the statute. We will revise paragraph (b)(1) by substituting "date" for "initial point". Paragraph (b)(1) already has the language "receipt by the SDU". We will revise paragraphs (b)(2)(ii), (b)(2)(iii) and (b)(3)(i) by changing references to receipt by the State to reference receipt by the SDU.

2. *Comment:* One commenter questioned if the language in § 302.32(b)(2)(i) "(other than payments sent to the family from the State share of assigned collections)" is in reference to States that pass through part of or all of the collection in TANF cases. Another commenter indicated that, regarding paragraph (b)(2)(i), collections in TANF cases cannot be disbursed to the family within 2 business days of receipt by the SDU or of the end of the month of receipt. The County Welfare Department must first determine total assistance paid to the family for the month. The commenter indicated that it is impossible to determine if a pass-through or other support payment is available to the family until the total assistance paid to the family during the month is known. Once the total assistance paid is provided to the IV–D agency after the end of the month, the IV–D agency conducts the welfare payment distribution process to determine if the family is entitled to a pass-through or other support payment. The commenter requests that the regulations be amended so that States be allowed to make these payments within 2 business days of the determination of the amount of support payable to the family after the end of the month.

Response: The language quoted by the first commenter does refer to payments that States pass through to families. Section 454B of the Act, entitled Collection and Disbursement of Support Payments, requires the SDU to "distribute all amounts payable under section 457(a) within 2 business days after receipt from the employer or other source or periodic income, if sufficient information identifying the payee is provided." Addressing the issue raised by the second commenter goes beyond a technical change to the regulations and therefore cannot be dealt with in this document. We will consider these comments in future proposed rulemaking on this section.

3. *Comment:* One commenter asked that, since the SDU does not receive and disburse Federal income tax refund intercepts, could we include reference in paragraph (b)(2)(iv) to other entities (*e.g.*, IV–D agencies) that may receive and disburse them?

Response: The commenter is correct that Federal income tax refund offset collections are not necessarily sent to the SDU; they are sent to an account designated by the State IV–D agency for receipt of these monies. However, payments made to the family from these funds must be disbursed by the SDU, therefore we have not made this change to the regulation.

4. *Comment:* The commenter also asked whether we plan to include in the regulations information from OCSE–AT–98–24 on the definition of "assistance paid to the family".

Response: Since this definition is addressed in existing agency issuances, we do not believe it is necessary to capture it in regulation. Please note that OCSE–AT–99–10 revised the definition of assistance for child support purposes in OCSE–AT–98–24, for consistency with the final TANF regulations.

State Parent Locator Service—§ 302.35

1. *Comment:* One commenter requested that the preamble clarify that reference to the removal of medical support obligations from § 302.35(c)(1), which addresses appropriate requests to the State parent locator service for use of the Federal Parent Locator Service, is merely a technical change because the language is obsolete and that the change has no substantive effect on the use of the SPLS or FPLS to collect medical support.

Response: We agree. The deletion of "or medical support obligations if an agreement is in effect under § 306.2 of this chapter" in § 302.35(c)(1) has no substantive effect on the use of the SPLS or FPLS to collect medical support under the IV–D program. The language was deleted because former Part 306 governing optional cooperative agreements between IV–D and Medicaid agencies is no longer in effect.

2. *Comment:* One commenter requested that in § 302.35(c)(4) the phrase "parental kidnapping or child custody or visitation" cases be used because it is consistent with other sections of the statute and regulations.

Response: We agree and have changed the terminology to reflect the order of wording elsewhere in regulations. We are amending paragraph (c)(4) by removing ", visitation" and adding, "or visitation" after "custody" to conform to changes to section 463(a)(2) of the Act defining persons authorized to access the FPLS for custody or visitation purposes.

3. *Comment:* One commenter suggested that States need more guidance on the role of the SPLS under PRWORA, including the appropriate use of State databases to respond to requests, how to address family violence concerns, and "locate-only" requests in non-IV–D support cases. The commenter indicated that there has been an increase in the number of "locate-only" requests submitted to the SPLS and States have concerns about appropriately verifying and responding to these requests. The commenter suggested that the Secretary provide further guidance to ensure that the vast amount of data now available through the SPLS and FPLS is properly safeguarded.

Response: We agree that these issues are very important and we have already issued guidance. In DCL–00–36, dated March 15, 2000, OCSE published a summary list of current statutory citations, regulatory citations, and OCSE policy documents covering authorized requests for FPLS information and information from statewide child support enforcement systems. Key documents include: AT–99–09, dated June 16, 1999, on safeguarding of FPLS information; AT–98–27, dated September 17, 1998 and DCL–98–122, dated November 25, 1998, on the family violence indicator; AT–98–26, dated August 25, 1998, forwarding final regulations implementing statewide automated systems requirements; PIQ–98–05, dated August 12, 1998, on requests for FPLS information for making or enforcing a child custody or visitation determination; and PIQ–98–02, dated May 18, 1998 on court access to FPLS information. Other important OCSE documents are: The Federal Case Registry Interface Guidance Document, Section 6.7 Request for Locate; and the Automated Systems for Child Support Enforcement: A Guide for States, outlining system certification requirements.

To gather additional information on States' needs in this area, OCSE convened a work group to review current policy on the locate function and safeguarding of information handled by State IV–D agencies. The group met for 7 months in 2001 and provided very useful guidance to OCSE regarding States' concerns. We are currently developing proposed regulations on the SPLS and safeguarding of State information in order to address these issues. We are also developing guidance to States on use of the FPLS in non-IV–D child support cases.

In addition to the above, in reviewing § 302.35, we identified an error in wording in paragraph (c)(2), which refers to "any agency" of a court that may request FPLS information. We are making a technical correction to this paragraph by replacing "agency" with "agent" to reflect the statutory language from which this provision is derived.

Provision of Service in Interstate IV–D Cases—§ 302.36

1. *Comment:* One commenter noted that § 303.7(b)(3) references "Federally-approved interstate forms" and suggested that a provision should be added to § 302.36 to require use of Federally approved interstate forms per section 454(9)(E) of the Act.

Response: We do not generally include statutory references in the regulations except where necessary for understanding the requirements. Since § 302.36 requires the State to provide interstate services in accordance with the requirements of § 303.7, and § 303.7 requires use of the Federally-approved interstate forms, we do not believe that an additional reference to the forms requirement is needed in regulation.

Assignment of Rights—§ 302.50

1. *Comment:* Several commenters suggested we change the title "Assignment of rights" for clarity. One suggested "Obligations with assigned rights" and the other suggested "Assignment of rights to support obligations".

Response: We agree that "Assignment of rights" is confusing and are revising the title of this section to "Assignment of rights to support" because an individual assigns his or her rights to support, not to the support obligation itself. This language is consistent with language used in the regulation section.

In addition, in reviewing this section, we identified misplaced punctuation. To correct this, we are amending paragraph (b)(2) by replacing "; or" at the end of the paragraph with a period.

Distribution of Support Collections—§ 302.51

1. *Comment:* A State commenter raised concerns about revisions to procedures for distribution of State tax intercept collections. The State has a high State income tax and realizes significant collections from State tax intercept. Federal and State tax intercept, while having different thresholds for collection, have previously been distributed to satisfy arrearages. OCSE–AT–97–17 indicated that States can decide distribution order where section 457 of the Act is silent.

Response: Section 457 of the Act only provides one exception to applying collections first to satisfy the current support obligation. Section 457(a)(2)(B)(iv) of the Act requires that Federal income tax refund offset collections must be applied first to satisfy arrearages. Therefore, there is no discretion in Federal law to allow State income tax refund offset collections to be distributed like Federal income tax refund offsets. To clarify, however, OCSE–AT–97–17 states that States may satisfy different categories of assigned arrearages in any order because section 457 is silent in this regard. It does not allow States to choose whether to apply a collection to arrearages rather than current support.

In reviewing this section, we identified an incorrect citation to section 457 of the Act. To correct it, we are amending § 302.51(a)(3) by inserting "B" in the citation so that it reads "section 457(a)(2)(B)(iv)".

2. *Comment:* One commenter suggested that we amend the regulation to be consistent with OCSE–AT–97–17, Q & A 41, to allow States to hold future payments until the due date or immediately pay them to the family in former assistance cases.

Response: Section 302.51(b), which was formerly § 302.51(c), addresses the distribution or allocation of collections to satisfy future support in current assistance cases and prohibits a State from applying or distributing those

collections to satisfy future support unless all assigned current and past-due support is paid. Q & A 41 of OCSE–AT–97–17 is not consistent with disbursement timeframes in section 454B of the Act and will be revised. Any collection in a former or never assistance case that is owed to the family must be sent to the family within 2 business days of receipt in the SDU. This would include future payments owed to the family. The 2-day time frame was required by PRWORA, which also required IV–D agencies to establish SDUs. Since the February 9, 1999 publication of the interim final regulation, implementation of the SDUs has allowed States to comply with the 2-day requirement without difficulty.

3. *Comment:* One commenter indicated that the requirement under paragraph (a)(4)(iii) to contact the employer when the employer fails to report the date of withholding is burdensome and jeopardizes disbursement within 2 days of receipt of the collection. The commenter indicated that the State should use the date of the employer's check or it should be left at State option to contact the employer.

Response: Pursuant to section 454B(c) of the Act, the date of collection for amounts collected and distributed is the date of receipt by the SDU. However, States have the option of deeming the date of withholding to be the date of collection when the current support is withheld by an employer in the month when due and received by the SDU in a month other than the month when due. Therefore, States are not required to use the date of withholding as the date of collection for distribution purposes. If a IV–D agency opts to use the date of withholding and an employer fails to supply that date, § 302.51(a)(4)(iii) allows the State to reconstruct the date either by contacting the employer or comparing the actual amounts collected with the pay schedule in the order. Thus, the State may reconstruct the date of withholding without contacting the employer.

4. *Comment:* Two commenters indicated that the preamble language describing changes to paragraph (a)(4) which defines the date of collection for distribution purposes is not consistent with the change made in the regulation itself.

Response: We agree that there is a discrepancy between the preamble and the regulation in paragraphs (a)(4)(i) and (ii). The preamble omitted the effective date of the new definition of date of collection. The regulatory language is correct: "Effective October 1, 1998 (or October 1, 1999 if applicable) except with respect to those collections addressed under paragraph (a)(3) of this section and except as specified under paragraph (a)(4)(ii) of this section, with respect to amounts collected and distributed under title IV–D of the Act, the date of collection for distribution purposes in all IV–D cases is the date of receipt in the State disbursement unit established under section 454B of the Act."

5. *Comment:* One commenter indicated that former paragraph (b)(5) that read "if the amount collected is in excess of the amounts required to be distributed under paragraph (b)(1) through (4) of this section, such excess shall be paid to the family" should be retained. The commenter suggested that due to revisions to paragraphs (b)(1) and (b)(3), this paragraph needs rewording to retain its original intent.

Response: Section 302.51(b)(5) was deleted because it referred to paragraphs (b)(1) through (4) which were removed because of changes to the distribution rules pursuant to PRWORA. We deleted provisions inconsistent with the new section 457 of the Act and made a conscious decision not to repeat the statutory requirements in the regulations. However, the basic principle of ensuring that the State never retains more assigned support collections than the total amount of assistance paid to the custodial parent is still in effect. This provision is found in section 457(a)(1)(B) of the Act (see also two Action Transmittals on distribution, OCSE–AT–97–17 and OCSE–AT–98–24).

Notice of Collection of Assigned Support—§ 302.54

1. *Comment:* One commenter pointed out some inconsistencies in the interim final rule: paragraph (a)(1) refers to "conditions in paragraph (c)", but former paragraph (c) was deleted; paragraph (b)(1)(ii) refers to "information required under paragraph (b)(2)", but that information is now in paragraph (a); and paragraph (b)(2) refers to paragraphs (b)(1) and (b)(2), which are now paragraphs (a)(1) and (2).

Response: We agree with this commenter. A final rule which eliminated certain regulatory requirements was issued on December 20, 1996 in the **Federal Register** (61 FR 67235). That rule removed paragraph (a) and redesignated paragraphs (b) and (c) as (a) and (b). At that time, we neglected to make corresponding changes in later references to these redesignated paragraphs.

Therefore, we are now making the following technical corrections: in paragraph (a)(1), we are revising "paragraph (c)" to read "paragraph (b)"; in paragraph (b)(1)(ii), we are revising "paragraph (b)(2)" to read "paragraph (a)"; and in paragraph (b)(2), we are revising "(b)(1)" to read "(a)(1)" and "(b)(2)" to read "(a)(2)".

§ 302.65 Withholding of Unemployment Compensation.

In reviewing the regulations for corrections missed in the interim final rule, we found a typographical error in § 302.65. To correct this, we are making a technical change to correct the spelling of "criteria" in paragraph (c)(7).

Required State Laws—§ 302.70

1. *Comment:* Two commenters pointed out that since §§ 303.103 and 303.105 are eliminated, references to them in paragraphs (a)(4) and (7) should be eliminated.

Response: We agree and are deleting these references. In addition to the changes raised by commenters, we are making a similar technical correction to paragraph (c) by replacing "§§ 303.100 through 303.105 of this chapter" with "§§ 303.100 through 303.102 and § 303.104 of this chapter".

2. *Comment:* Two commenters noted that paragraph (a)(5)(ii) refers to obsolete "§§ 232.40 through 232.49 of this title" and should be changed to refer to section 454(29) of the Act.

Response: We have deleted the regulatory references in that clause and added the reference to section 454(29) of the Act.

3. *Comment:* One commenter recommended that we remove paragraphs (a)(1) through (a)(11) as they restate the provisions of the Act but retain introductory language in paragraph (a).

Response: Paragraphs (a)(1) through (11) not only restate provisions in section 466 of the Act, they also cross-reference related requirements in Part 303 of the regulations. We are looking at the best way to present these requirements and will address any needed changes during future revisions to this section.

4. *Comment:* One commenter noted that we should replace "wages" with "income" in paragraph (a)(8).

Response: We have made this technical revision for consistency with section 466(a)(1) and (b) of the Act.

Procedures for the Imposition of Late Payment Fees on Noncustodial Parents Who Owe Overdue Support—§ 302.75

1. *Comment:* A commenter noted that paragraph (b)(6) refers to § 305.50, which no longer exists.

Response: The reference to § 305.50 in the interim final regulation was a typographical error. In paragraph (b)(6), we are correcting the citation by changing "§ 305.50" to "§ 304.50".

Mandatory Computerized Support Enforcement System—§ 302.85

1. *Comment:* A commenter suggested editing paragraph (b)(2), governing the conditions for waiver of certain automated systems requirements, because it refers to 45 CFR part 305 which was removed and reserved by the interim final rule.

Response: Since publication of the interim final rule, a new part 305 was added to the regulations. Section 305.63 of this part contains requirements for determining substantial compliance with title IV–D of the Act as a result of an audit conducted under § 305.60. Thus, we are not changing the reference to part 305 in this section.

Location of Noncustodial Parents—§ 303.3

1. *Comment:* With the expanded Federal Parent Locator Service (FPLS), States submit cases in their State Case Registries to the Federal Case Registry (FCR). When a new case is submitted to the FCR, it is matched proactively with other data in the FPLS and States receive locate information automatically. Now that this proactive matching occurs, the commenter asked if there is still a need for States to submit cases quarterly to the FPLS for locate? Also, is it still necessary to access all appropriate location sources, including the FPLS, within 75 calendar days of determining that location is necessary and to make repeated locate attempts, including transmitting cases to the FPLS, when new information becomes available on a case?

Response: Proactive matching between the FCR and the National Directory of New Hires (NDNH) occurs each time new information is added to an FCR or NDNH record on an individual. The proactive match information is sent electronically to State IV–D agencies daily when a match occurs to link a IV–D case with newly provided information. This is a major enhancement to program locate processes and leads to location of individuals sought in many child support cases. Further location attempts may remain necessary in cases where people are self-employed, employed but not reported, unemployed but not receiving unemployment compensation, or employed outside the United States by entities that do not report to the FPLS. In addition, location efforts are needed to find assets, debts, and other information that enables an agency to proceed with a case even though proactive match information is provided on new hires, quarterly wages and unemployment compensation. OCSE has issued PIQ–01–02, dated February 28, 2001, to address these changes. The PIQ indicates States are not required to submit cases to the FPLS for searches of other locate sources, but OCSE encourages this if the State has reason to believe that an FPLS query may be helpful. States are not required to submit cases to the FPLS quarterly, nor are they required to make repeated locate attempts to the FPLS, when new information becomes available, since constant updating of FCR and NDNH databases and ongoing proactive matching are in place.

Establishment of Paternity—§ 303.5

1. *Comment:* A commenter noted that this section is amended to include administrative orders for genetic testing. As amended, the language eliminates reference to certain paternity actions taken in court. The commenter asked if we intend to drop the requirement for the child support agency to obtain an order for repayment of costs for genetic tests if the tests were ordered as part of a court process.

Response: In § 303.5(d)(2) we deleted "legal" to indicate that a contested paternity case is any action in which the issue of paternity may be raised under State law and one party denies paternity. The action may occur through an administrative or judicial process. The amendment deleting "legal" did not eliminate court actions.

2. *Comment:* Two commenters asked whether the phrase in paragraph (c) which reads "and use through competitive procurement laboratories" is correct.

Response: This phrase is accurate. States must follow competitive procurement practices, consistent with requirements at 45 CFR part 74, and use accredited laboratories that perform legally and medically acceptable genetic tests at reasonable cost, consistent with requirements at section 466(a)(5)(F) of the Act.

3. *Comment:* One commenter noted that the use of the phrase "alleged father who has denied paternity" in paragraph (e)(3) is inconsistent with section 466(a)(5)(B)(ii)(I) of the Act which requires recoupment from the alleged father if paternity is established, whether or not he denies paternity.

Response: Section 466(a)(5)(B)(ii)(I) of the Act provides for recoupment at State option only in contested cases where the agency has to order genetic tests and paternity is established. The commenter raises issues that go beyond the scope of this technical rulemaking. We will consider this comment in future revisions to this section through proposed rulemaking.

Provision of Services in Interstate IV–D Cases—§ 303.7

1. *Comment:* Several commenters noted that the preamble to the interim final rule (64 FR 6241) indicates paragraph (b)(1) is amended to require States to use their long-arm statute to establish paternity, but there is no corresponding requirement in the regulation itself.

Response: We have corrected this error by revising paragraph (b)(1) to read: "Use its long-arm statute to establish paternity, when appropriate." As indicated in the preamble to the interim final rule, all States have long-arm paternity establishment authority under UIFSA.

2. *Comment:* One commenter suggested changing "wage withholding to "income withholding" in paragraph (b)(2).

Response: We agree and have made this change for consistency with section 466(a)(1) and (b) of the Act which refer to income withholding.

3. *Comment:* One commenter noted that the preamble indicated that regulatory references in paragraphs (c)(7)(ii) and (iii) were placed in the correct numerical order, but there was no corresponding change in the regulation itself.

Response: We have made these changes, as intended in the interim final rule. In paragraph (c)(7)(ii) we are correcting "§§ 303.4 and 303.101 of this part and § 303.31 of this chapter" to read "§§ 303.4, 303.31 and 303.101 of this part". Similarly, in paragraph (c)(7)(iii) we are correcting "§§ 303.6 and 303.100 through 303.102 and 303.104 of this part and § 303.31 of this chapter" to read "§§ 303.6, 303.31, 303.100 through 303.102, and 303.104 of this part".

4. *Comment:* Several commenters suggested that § 303.7(c)(7)(iv) be revised to require the IV–D agency to forward payments to the initiating State within 2 business days of the date of receipt in the State Disbursement Unit of the responding State.

Response: We agree that this suggestion is consistent with section 454B of the Act, which requires SDUs to disburse certain amounts within 2 business days of receipt, but it is not required by statute and therefore not included in this rulemaking. The 2-day time frame applies only to collections from employers and collections of other periodic income. Collections that do not result from periodic income, such as tax refund offsets, lottery winning intercept, or levies of assets, are not required to be

distributed within 2 days, as there may be appeals of these types of collections. We will consider changes to time frames applicable to interstate cases in the next revision to § 303.7 under a Notice of Proposed Rulemaking.

Review and Adjustment of Child Support Orders—§ 303.8

1. *Comment:* There were two comments concerning definitions for "review" and "adjustment" that were in the former § 303.8. One commenter suggested that we retain the former definitions of "review" and "adjustment", but rename them as "guidelines review" and "guidelines adjustment". The commenter made this suggestion because most States will continue with guideline reviews.

The second commenter believed that the language for this section might be construed to mandate administrative reviews. The commenter suggested that we amend the regulation by including a process for challenging a proposed adjustment or determination, apart from the review that takes place in the judicial setting. The commenter believes that if their State complies with the new provisions, there would be no proposed order or adjustment. In the commenter's State, a litigant files a motion with the court, the court rules on the motion; and either party can appeal the order.

Response: We agree with these comments. We have reinstated the terms "review" and "adjustment" from the former § 303.8(a)(1) and (3) as applicable to guidelines reviews only.

Reinstating the definition of "review" also clarifies that reviews are not mandated to be conducted only by administrative process. The definition for "review" includes "proceeding before a court, quasi-judicial process, or administrative body".

2. *Comment:* One commenter was concerned that the 15-day timeframe to determine whether to conduct a review was eliminated.

Response: The 15-day timeframe to determine whether or not to conduct a review was removed because it conflicts with the requirement that States review, at least once every 3 years, any case upon receipt of a request for review.

3. *Comment:* We received a few comments about notices. Two commenters questioned whether the requirement to provide the notice of the right to request a review is met by placing such notice in the order. Another commenter asked, in a case with multiple orders, which State sends the notice of the right to request a review and the notice of the results of the review. A fourth commenter asked when to send these notices and how to implement this requirement since each case has a different date of application, different date of review, and States vary in frequency permitted between reviews.

Response: Section 466(a)(10)(C) of the Act requires the State to provide notice to each parent subject to the order not less than once every 3 years informing them of their right to request the State to review and, if appropriate, adjust the order pursuant to this paragraph. The paragraph also states that the notice may be included in the order. Including the notice in the order merely takes care of the first year requirement; the triennial requirement must still be fulfilled.

With respect to cases with multiple orders, the State that is working the case should send the notice of the right to request a review, or if it issues an order, may include the notice in the order. Notice of the right to request a review must be sent every 3 years thereafter if the State continues to work the case. Any State that conducts a review must send the notice of the results of the review. A review conducted in a case with multiple orders would include a determination of the controlling order and reconciliation of all arrearages under the orders in accordance with the Uniform Interstate Family Support Act (UIFSA). Once a controlling order determination is made, UIFSA governs who has jurisdiction to adjust or modify the controlling order.

Since section 466(a)(10)(C) was effective October 1, 1996, States should have notice procedures in place. Each State has authority to meet this requirement in a manner that is most efficient for its system and resources. Notices can be sent all at one time or on a staggered basis according to the State's own procedures.

4. *Comment:* There were two comments regarding the use of thresholds and change of circumstances. One commenter noted that an Office of Inspector General report indicated that 40 States maintained the requirement to meet thresholds showing a substantial change in circumstances before a review is conducted or an adjustment is made, which they use regardless of the frequency of reviews. The commenter asked whether thresholds for the 3-year reviews upon request could be less prohibitive than the thresholds for reviews that are conducted more frequently that require a substantial change of circumstances. Another commenter thought that even the 3-year reviews should require a substantial change in circumstances since it is required by the more frequent reviews.

Response: States may not require proof or a showing of a change in circumstances in a 3-year review upon request. Under section 466(a)(10)(A)(iii) of the Act, and upon request, 3-year reviews, and adjustment, if appropriate, are automatic, without any proof of a change of circumstances. If a party desires a review sooner than once every 3 years, the party must show a substantial change of circumstances for an adjustment of the order, consistent with section 466(a)(10)(B) of the Act.

In reviewing § 303.8 and the comments received, we determined that the changes made by the interim final rule were not fully reflective of the statutory requirements in section 466(a)(10) of the Act and that this was leading to confusion about what States must do to meet the requirements. Therefore, in addition to reinstating the definitions for "review" and "adjustment" from the original regulation in response to comments, we have decided to replace the paragraph (b) language published in the interim final rule with the language in the statute at section 466(a)(10) of the Act. We are revising paragraph (c) to clarify that States may use a quantitative standard only in cases involving the use of automated methods in accordance with section 466(a)(10)(A)(i)(III) of the Act. That section alone refers to orders being "eligible for adjustment," recognizing there might be some standard set to determine eligibility for adjustment. The other two methods of review (guidelines and cost-of-living) do not contain this language. Sections 303.8(a) and (d) through (f) remain as published in the interim final rule. A summary of the changes to this section follows.

We are revising paragraph (b)(1) by restating the requirements of section 466(a)(10)(A)(I)(i) of the Act that the State must have procedures under which reviews are performed every 3 years upon request of either parent or, in the case of an assignment under part A, upon the request of the State agency, taking into account the best interests of the child. For clarity, and consistency with section 466(a)(10) of the Act, paragraph (b)(1)(i) is added to the regulation to explain guideline reviews; paragraph (b)(1)(ii) is added to explain cost of living adjustment (COLA) reviews; and paragraph (b)(1)(iii) is added to explain the automated reviews. These three subparagraphs repeat the statutory requirements of section 466(a)(10)(A)(i)(I)–(III).

Current paragraph (b)(2) of the regulation is redesignated as paragraph (b)(6) and revised to be consistent with the statute, as discussed below.

We are adding a new paragraph (b)(2) which restates section 466(a)(10)(A)(ii) of the Act, to specify that either party may contest an adjustment within 30 days after the date of the notice of the adjustment in the case of a COLA or automated review by making a request for a guideline review, and adjustment, if appropriate.

We are reinstating former definitions for "adjustment" and "review" in a new paragraph (b)(3) for use in guideline reviews only, in response to comments.

We are restating section 466(a)(10)(A)(iii) of the Act in a new paragraph (b)(4), which specifies that adjustments under guideline reviews do not require proof or showing of a change in circumstances.

We are adding new paragraph (b)(5) to restate section 466(a)(10)(B) of the Act regarding making a request for a review outside the 3-year cycle. If the requesting party demonstrates a substantial change in circumstances, the State must adjust the order in accordance with its guidelines.

We are redesignating former paragraph (b)(2) as new paragraph (b)(6) and revising it to restate section 466(a)(10)(C) of the Act regarding notice not less than once every 3 years informing parents of their right to request a review. We have retained the provision in the current regulation that the notice must specify the place and manner in which the request should be made.

Paragraph (c) is amended by adding a paragraph title and the words "using automated methods under paragraph (b)(1)(iii)" to indicate that the reasonable quantitative standard for determining adequate grounds for petitioning for adjustment of the order applies only when the review is done using automated methods, as required under section 466(a)(10)(A)(i)(III) of the Act.

Paragraphs (d) through (f) are unchanged with the exception of the technical changes of adding a title to paragraph (d), changing the words "to petition for" to "initiate an" in paragraph (d) and substituting "must" for "will" in paragraph (f).

Agreements To Use the Federal Parent Locator Service (FPLS) in Parental Kidnapping and Child Custody Cases—§ 303.15

1. *Comment:* One commenter thought that paragraph (a)(1) which defines authorized persons should be revised consistent with changes made by the Adoption and Safe Families Act of 1997 (ASFA).

Response: ASFA amended section 453 of the Act by adding title IV–B and title IV–E agencies to the list of authorized persons to whom FPLS information may be disclosed for the purpose of establishing parentage. Section 302.35(c) already includes these authorized persons, in accordance with ASFA amendments to section 453 of the Act. ASFA did not amend the list of authorized persons in section 463 of the Act, which governs the regulations at § 303.15.

We amended this section, but failed to amend the title. We are revising the section title to reflect the addition of "visitation" determinations as an authorized purpose of the agreements. We are also making technical changes in paragraph (a)(1)(i) by replacing the period at the end with a semicolon and in paragraph (a)(1)(ii) by replacing "visistation" with "visitation" and by adding "or" after the semi-colon.

Minimum Organizational and Staffing Requirements—§ 303.20

1. *Comment:* One commenter noted that paragraph (e)(3) refers to parts 220, 222 and 226 of 45 CFR chapter II, which no longer exist.

Response: We agree with the commenter and have removed the reference to the obsolete regulations.

2. *Comment:* One commenter noted that paragraph (g) remains although it refers to part 305, which was removed.

Response: Requirements governing audits to determine substantial compliance with title IV–D requirements under section 452(a)(4) of the Act were placed back in part 305 by final regulations governing incentives and penalties published December 27, 2000 (*see* OCSE–AT–01–01). Therefore, the reference to part 305 is accurate.

Safeguarding Information—§ 303.21

1. *Comment:* Commenters expressed varied opinions regarding removing, retaining or revising this regulation. One commenter recommended that we retain this regulation as the following will be lost: (1) Paragraphs (a)(1) and (3) limit the sharing of information; (2) paragraph (a)(4) clarifies that information may be shared with officials charged with investigating physical, mental, or sexual abuse; and (3) paragraph (b) prohibits disclosure of case specific identifying information to legislative bodies. The new language of section 454(26) of the Act is not as precise and does not clarify what would be unauthorized. Moreover, the commenter noted that § 307.13 deals only with information in the States' computerized databases. The commenter believes it is important to retain privacy rights of IV–D participants.

Another commenter agreed that the regulation was inconsistent with PRWORA and should be deleted or substantially revised. The commenter encourages the Secretary to issue an updated regulation to replace this regulation as soon as possible. States' access to information has been vastly expanded under PRWORA and States need guidance on use of data and disclosure of information, including dealing with the family violence indicator.

A third commenter indicated that eliminating paragraph (b) while OCSE works on its new regulation might result in broader disclosure to legislative bodies during this time of intensive study of TANF and child support enforcement programs.

Response: We are maintaining our decision to delete this regulation because it was not responsive to the post-welfare reform environment. It protected information only on applicants and recipients of IV–D services. It did not protect information that IV–D agencies have on noncustodial parents and children, nor did it protect information that IV–D agencies now have on persons who may not be involved in a IV–D case, such as new hires, wage earners and individuals receiving unemployment compensation. Section 454(26) of the Act requires States to have safeguards in effect to protect all confidential information handled by the State agency. It further prohibits release of information under certain circumstances such as when there is a protective order in place. The regulation allowed broader disclosure of some information that is no longer permitted under the Act. Release of personal information to legislative bodies is not permitted under section 454(26) of the Act, which requires States to protect confidential information in their possession.

A work group of State and Federal members met in 2001 to discuss the types of issues that need to be addressed in publication of a proposed replacement regulation, which is now under development. We recognize the importance of protecting the privacy of data handled by IV–D agencies. Despite the deletion of § 303.21, certain safeguarding requirements remain in effect that cover States' automated systems. For example, final rules issued August 3, 1998 (63 FR 44795) on Statewide automated systems address safeguarding of information contained in the States' child support databases.

Securing and Enforcing Medical Support Obligations—§ 303.31

1. *Comment:* Several commenters asked whether the IV–D agency is required to enforce an order which requires the noncustodial parent to

provide health insurance in instances where the custodial parent already provides such coverage and does not want the noncustodial parent's coverage. One of the commenters suggested allowing a waiver of the requirement to enforce the noncustodial parent's coverage. The commenter suggested that the waiver could include petitioning the court or administrative authority to include the custodial parent's coverage in the order, and pursuing coverage from the noncustodial parent only if the custodial parent does not have coverage other than Medicaid.

Response: If a support order requires a noncustodial parent to provide health insurance coverage, the only way for a IV–D agency to avoid enforcing that order is a change to the order. There is no authority under sections 466(a)(19) or 452(f) of the Act to waive the requirement to enforce noncustodial parents' health insurance coverage. Section 452(f) requires the Secretary of HHS to issue regulations requiring IV–D agencies to include medical support as part of any child support order and to enforce medical support whenever health care coverage is available to the noncustodial parent at a reasonable cost. Section 466(a)(19) of the Act requires the use of the National Medical Support Notice (NMSN) to enforce an order that contains a requirement for health care coverage. Unless the order allows for alternative coverage, a IV–D agency must send the NMSN to the noncustodial parent's employer, if known, as required in section 466(a)(19) of the Act and § 303.32, published December 27, 2000 and effective March 27, 2001 (*see* OCSE–AT–01–02).

2. *Comment:* Two commenters indicated that regulations should assure that all orders include health insurance, consistent with section 452(f) of the Act. Another commenter recommended that we revise paragraphs (b)(1), (2), and (4) to delete any references to "petition", just as CSPIA deleted the reference to "petition" in section 452(f) of the Act.

Response: We agree that CSPIA required the Secretary, in section 452(f), to issue regulations requiring IV–D agencies to include medical support as part of any child support order. Separate regulations will be issued that offer the public an opportunity for comment.

Requests by the State Parent Locator Service (SPLS) for Information From the Federal Parent Locator Service (FPLS)—§ 303.70

1. *Comment:* One commenter suggested we revise paragraph (d)(1) by replacing "to obtain information or to facilitate the discovery of any individual" with "to obtain information on, or to facilitate the discovery of, the location of any individual". The commenter noted that paragraph (d)(1) does not track section 453(a)(3) of the Act which states that the FPLS may be used for the purpose of enforcing any *Federal* or State law with respect to the unlawful taking or restraint of a child. The commenter expressed concern if the change to paragraph (e)(1)(i), which governs fees for use of the FPLS, means that IV–D agencies will be charged fees for cases other than just non-IV–A, locate only, and parental kidnapping/child custody cases. The commenter indicated that IV–D agencies should not have to pay fees for use of the FPLS in IV–A cases. Finally, the commenter proposed that the paragraph (e)(1)(iii) cite should be to section 453(k)(3) of the Act, not to section 453(k) of the Act.

Response: We did not make the revision described in the first comment. While the regulation language is not exact, we believe it generally covers the requirement. We agree with the commenter's second comment and have added "Federal or" before "State" for consistency with the statute. Regarding the commenter's third concern about being charged additional fees for use of the FPLS, PRWORA changed the requirements on FPLS fees and now States must pay for all information received from the FPLS pursuant to section 453(k)(3) of the Act. (See DCL–00–73, dated June 28, 2000, which explains OCSE's charges to States for using the FPLS.) We agree with the commenter's final point and have revised paragraph (e)(1)(iii) by citing section 453(k)(3) of the Act.

Requests for Collection of Past-Due Support by Federal Tax Refund Offset—§ 303.72

1. *Comment:* One commenter noted three instances of "Secretary of the Treasury" that should be replaced by "Secretary of the U. S. Treasury".

Response: We agree with the comment and made this change throughout the section. In addition, we are making a technical change by revising "an title IV–A" to "a title IV–A" in paragraph (a)(3)(iv). Finally, paragraph (h)(3) is amended to delete the language "fSecretary of the U.S. Treasuryt" which was included in the paragraph in error.

Procedures for Income Withholding—§ 303.100

1. *Comment:* Several commenters noted that some references to "wages" have not been replaced by "income".

Response: We will make these changes in paragraphs (e)(1)(i) and (g).

2. *Comment:* One commenter noted that the preamble does not explain that paragraphs (h)(5)(i) through (iii), (6) and (7) have been deleted or why.

Response: The interim final rule explained that former paragraph (h) was redesignated as paragraph (f) and revised to provide updated standards for program operations for both the traditional two-state interstate income withholding remedy and UIFSA's new one-state direct income withholding remedy. Former paragraphs (h)(5)(i)–(iii) were deleted because PRWORA revised section 466(b)(4) of the Act to remove the requirements for an advance notice in cases of initiated income withholding. We did not intend to delete former paragraphs (h)(6) and (7), which govern due process and which State law governs in interstate withholding situations. Since these paragraphs were inadvertently omitted in the interim final rule, they are reinstated in this regulation and redesignated as paragraphs (f)(4) and (5).

3. *Comment:* One commenter noted that throughout this section the term "wages" is replaced with the term "income", but the term "employer" was not similarly expanded upon. The continued use of the term "employer" seems to limit the impact of the requirements provided in this section to income derived only from employers.

Response: Use of the term "employer" is consistent with its use in section 466(b) of the Act.

4. *Comment:* One commenter asked whether the 14-day implementation time frame has been eliminated in paragraph (e)(1)(ix). If it has been eliminated, can State laws provide a time frame for employers to implement income withholding?

Response: The 14-day time frame was tied to the advance notice to the noncustodial parent that was eliminated by PRWORA. Section 466(b)(6)(A)(i) of the Act and § 303.100(e)(1)(ix) state that employers must pay the withheld amount to the SDU within 7 business days after the date the amount would have been paid or credited to the employee.

5. *Comment:* One commenter noted that Basic Housing Allowances/separate rations are not taxable and should not be included in income withholding; only basic pay should be included.

Response: Our regulations at § 302.56 say that a State shall have procedures for setting guidelines and that the guidelines must take into consideration all earnings and income of the noncustodial parent. Basic housing allowances and rations are not excluded from the definition of income subject to withholding under section 466(b)(8) of the Act.

6. *Comment:* Two commenters pointed out a conflict between § 303.100(e)(2) and (3) that require income withholding notices to employers to be issued within 15 calendar days while Federal law at section 454A(g)(1)(A)(i) of the Act requires notices to be sent to employers within 2 business days. This commenter asked whether there are actually 2 different requirements.

Response: Sections 453A(g)(1) of the Act requires the State to transmit an income withholding notice to an employer within 2 business days after the date information regarding a newly hired employee is entered into the State Directory of New Hires. Section 454A(g)(1)(A)(i) of the Act and implementing regulations at § 307.11(c)(1)(i) require the statewide automated system to transmit income withholding orders and notices to employers and other debtors within 2 business days after receipt of notice of income and the income source subject to withholding from a court, another State, an employer, the Federal Parent Locator Service, or another source recognized by the State. Under these provisions, the 2-day time frame for sending a withholding order or notice applies only to situations in which the State Directory of New Hires or the statewide automated system receives notice of the new hire or income source subject to withholding. We have revised paragraphs (e)(2) and (3) to include reference to the 2-day timeframe for sending the withholding notice as described above and retained the 15-day time frame in the current regulation for other situations where notification is not received by the State Directory of New Hires or the automated system.

7. *Comment:* One commenter noted that the reference to "paragraph (f)(1) of this section" in paragraph (e)(4) is in error. The correct reference should be to "paragraph (e)(1)".

Response: We agree with the commenter and in response to this technical error have made the correction to paragraph (e)(4) by replacing the citation "paragraph (f)(1) of this section" with "paragraph (e)(1) of this section".

Expedited Processes—§ 303.101

1. *Comment:* A commenter recommended that paragraph (b)(2) be revised to reference review and adjustment timeframes at § 303.8(e).

Response: As currently written, § 303.101 provides for expedited processes for establishing and enforcing support orders. The commenter suggests a modification to this section to add expedited review and adjustment of orders. We consider this to be a substantive change that is not appropriate for this technical rulemaking. We will consider this comment in any future revision to this section.

We are making a technical correction in paragraph (a) of this section by inserting a period after "Definition".

Collection of Overdue Support by State Income Tax Refund Offset—§ 303.102

1. *Comment:* One commenter noted in § 303.102(a)(1) the word "or" needs to be inserted following "section 408(a)(3) of the Act".

Response: We agree with this comment. In § 303.102(a)(1), we are making a technical correction by inserting the word "or" following "section 408(a)(3) of the Act". In addition, we are making an editorial change to the language of paragraph (g)(1) because, as it currently reads, subparagraph (ii) is a sentence fragment with no subject.

Procedures for the Imposition of Liens against Real and Personal Property—§ 303.103

1. *Comment:* One commenter suggested that Federal guidance regarding implementing lien requirements is necessary.

Response: To clarify the issue of direct imposition of liens across State lines, we issued OCSE–PIQ–99–06 on August 16, 1999. We believe further guidance in this area is more appropriate through development of technical assistance publications and examples of model practices used by States. Current information on State lien and levy laws may be found on the OCSE Web site at *"www.acf.dhhs.gov/programs/cse"*. Click on "Online Interstate Roster and Referral Guide (IRG)", then click on a particular State, and then click on "View State FIDM Information" for a matrix of lien information specific to each State.

Availability and Rate of Federal Financial Participation—§ 304.20

1. *Comment:* One commenter suggested that paragraph (b)(1)(iii)(C) be revised to include "Indian Tribes or Tribal Organizations" as added in § 302.34. Section 304.20(b)(1)(iii)(C) cross-references § 302.34.

Response: We agree with the commenter. We have revised § 304.20(b)(1)(iii)(C) to read: "Cooperation with courts, law enforcement officials, and Indian Tribes or Tribal organizations pursuant to § 302.34 of this chapter."

2. *Comment:* One commenter indicated that paragraphs (b)(1)(viii)(C) and (ix)(C) were removed because the IV–A agency no longer determines cooperation. The commenter suggests that these paragraphs be reinstated and revised, as there is still an exchange of information between IV–D and IV–A about cooperation determinations made by the IV–D agency. Section 304.20(b)(1)(ix) prior paragraph (D) was removed for the same reasons and it should also be reinstated and revised.

Response: In § 304.20, paragraphs (b)(1)(viii)(C) and (b)(1)(ix)(C) were removed because of the transfer of responsibility for determining cooperation from the IV–A agency and the Medicaid agency to the IV–D agency. Therefore, agreements are no longer necessary. Any activity associated with the IV–D agency's determination of cooperation under section 454(29) of the Act is an allowable cost under the IV–D program.

Determination of Federal Share of Collections—§ 304.26

1. *Comment:* One commenter indicated that regulations for the determination of the Federal share of collections are confusing. The commenter recommends deleting "to the extent of its participation in the financing of the title IV–A and title IV–E payments" in paragraph (a) and indicating that the Federal share be determined pursuant to section 457(c)(2) of the Act.

Response: We agree and revised paragraph (a) by deleting the confusing language and adding that, in computing the Federal share of support collections for assistance made under titles IV–A and IV–E, the State must use the Federal medical assistance percentage (FMAP) in effect for the fiscal year in which the amount is distributed, as defined in section 457(c)(3) of the Act.

2. *Comment:* One commenter notes that the 4th, 5th and 6th sentences of the preamble description are inaccurate and should be replaced with: "Section 457(c)(3)(A) defines the FMAP rate to be 75 percent in the case of Puerto Rico, the Virgin Islands, Guam and American Samoa. Section 457(c)(3)(B) specifies that the FMAP rates as defined at section 1905(b) of the Act be used for any other State." The commenter also suggests that we revise paragraph (a) by removing "to the extent of its participation in the financing of the title IV–A and title IV–E payment" and add "the Federal share of the support collections" in its place and revise the next sentence to read: "In computing the Federal share of support collections for assistance made under titles IV–A

and IV–E, the State shall use the Federal medical assistance percentage (FMAP) in effect for the fiscal year in which the amount is distributed as defined in sections 457(c)(3) and 1905(b) of the Act."

Response: We agree with the commenter and have included these changes with minor editorial modifications. We are revising paragraph (a) of this section to be consistent with the revised language of sections 457(c)(2) and (3) of the Act that specifies the use of the Federal Medical Assistance Percentage (FMAP) formula in calculating the Federal share of child support collections. Section 457(c)(2) specifies that the Federal share of collections is the portion of the amount collected resulting from the application of the FMAP in effect for the fiscal year in which the amount is distributed. Section 457(c)(3)(A) defines the FMAP rate to be 75 percent for Puerto Rico, the Virgin Islands, Guam, and America Samoa. Section 457(c)(3)(B) specifies that the FMAP rates for any other State are as defined in section 1905(b) of the Act, as in effect on September 30, 1995.

Repayment of Federal Funds by Installments—§ 304.40

1. *Comment:* One commenter suggests that in the last sentence of paragraph (b)(3), we delete "Quarterly Statement of Expenditures (SRA–OA–41) reports" and replace it with "Quarterly Report of Expenditures and Estimates".

Response: We agree with the commenter and are updating the reference to the form since the name of the form has changed. We are amending paragraph (b)(3) of this section by removing "Quarterly Statement of Expenditures (SRA–OA–41) reports" and replacing it with "Quarterly Report of Expenditures and Estimates".

Definitions—307.1

In paragraph (c) we are replacing "non-AFDC" with "non-IV–A" to eliminate the obsolete reference to the old AFDC program.

Functional Requirements for Computerized Support Enforcement Systems in Operation by October 1, 1997—§ 307.10

We have made technical corrections in paragraphs (b)(10) and (b)(14)(ii) and (iii) to correct two typographical errors and change "AFDC" to "IV–A".

Paperwork Reduction Act

Information collection requirements of the Paperwork Reduction Act of 1995 (44 U.S.C. 3507 (d)) were fulfilled for this final rule. All required State plan preprints were approved by OMB on March 5, 2003 under OMB No. 0970–0017. Also new forms were approved as OMB Nos. 0970–0085 on December 5, 2000 (Standard Interstate Forms), 0970–0152 on March 27, 2001 (Lien and Subpoena Forms), and 0970–0154 on March 7, 2001 (Income Withholding Form). Technical corrections were made to the Lien Form, which was reissued in May 2002, but no new information collection was required by the change. An additional information collection burden consisted of updating the State plan by removing the State plan preprint page for Section 3.12, Payment of Support through the IV–D agency or Other Entity. This was required because 45 CFR 302.57, Procedures for payment of support through the IV–D agency or other entity, was removed by the interim final rule. OMB approved this information collection burden on September 13, 1999 under OMB No. 0970–0017. Otherwise, this rule does not require information collection activities, and, therefore, no additional approvals are necessary under the Paperwork Reduction Act.

Regulatory Flexibility Analysis

The Secretary certifies, under 5 U.S.C. 605(b), as enacted by the Regulatory Flexibility Act (Pub. L. 96–354), that this rule will not result in a significant impact on a substantial number of small entities. The primary impact is on State governments and individuals and results from restating the provisions of the statute. State governments are not considered small entities under the Act.

Regulatory Impact Analysis

Executive Order 12866 requires that regulations be reviewed to ensure that they are consistent with the priorities and principles set forth in the Executive Order. The Department has determined that this rule is consistent with these priorities and principles. No costs are associated with this rule as it merely ensures consistency between the statute and regulations.

Unfunded Mandates Reform Act of 1995

Section 202 of the Unfunded Mandates Reform Act of 1995 requires that a covered agency prepare a budgetary impact statement before promulgating a rule that includes any Federal mandate that may result in the expenditure by State, local, and Tribal governments, in the aggregate, or by the private sector, of $100 million or more in any one year.

If a covered agency must prepare a budgetary impact statement, section 205 further requires that it select the most cost-effective and least burdensome alternative that achieves the objectives of the rule and is consistent with the statutory requirements. In addition, section 203 requires a plan for informing and advising any small governments that may be significantly or uniquely impacted by the final rule.

We have determined that the final rule will not result in the expenditure by State, local, and Tribal governments, in the aggregate, or by the private sector, of more than $100 million in any one year. Accordingly, we have not prepared a budgetary impact statement, specifically addressed the regulatory alternatives considered, or prepared a plan for informing and advising any significantly or uniquely impacted small governments.

Congressional Review

This final rule is not a major rule as defined in 5 U.S.C. chapter 8.

Assessment of Federal Regulations and Policies on Families

Section 654 of the Treasury and General Government Appropriations Act of 1999 requires Federal agencies to determine whether a proposed policy or regulations may affect family well being. If the agency's determination is affirmative, then the agency must prepare an impact assessment addressing seven criteria specified in the law. These regulations will not have an impact on family well being as defined in the legislation. This regulation merely aligns existing Federal regulations with Federal legislation and, like the Federal legislation, will positively impact families needing support.

Executive Order 13132

Executive Order 13132 on Federalism applies to policies that have Federalism implications, defined as "regulations, legislative comments or proposed legislation, and other policy statements or actions that have substantial direct effects on the States, or on the distributions of power and responsibilities among the various levels of government". This rule does not have Federalism implications for State or local governments as defined in the Executive Order.

List of Subjects

45 CFR Part 301

Child support, Grant programs/social programs.

45 CFR Part 302

Child support, Grant programs/social programs, Reporting and record keeping requirements.

45 CFR Parts 303 and 304

Child support, Grant programs/social programs, Reporting and record keeping requirements.

45 CFR Part 307

Child support, Computer technology, Grant programs/social programs, Reporting and record keeping requirements.

(Catalog of Federal Domestic Assistance Programs No. 93.563, Child Support Enforcement Program)

Dated: October 28, 2002.

Wade F. Horn,

Assistant Secretary for Children and Families.

Approved: January 30, 2003.

Tommy G. Thompson,

Secretary.

■ For the reasons discussed above, we are adopting the interim final rule published at 64 FR 6237, February 9, 1999, amending 45 CFR parts 301, 302, 303, 304, and 307 as a final rule with the following changes:

PART 301—STATE PLAN APPROVAL AND GRANT PROCEDURES

■ 1. The authority citation for part 301 continues to read as follows:

Authority: 42 U.S.C. 651 through 658, 660, 664, 666, 667, 1301, and 1302.

§ 301.1 [Amended]

■ 2. § 301.1 is amended as follows:

(a) In the definition "Non-title IV–A Medicaid recipient", the words "Non-title IV–A" in the heading are revised to read "Non-IV–A";

(b) The definition for "Overdue support" is amended by removing "absent parent's" and adding "noncustodial parent's" in its place; and

(c) The definition for "State PLS" is amended by removing "absent" before "parents".

PART 302—STATE PLAN REQUIREMENTS

■ 3. The authority citation for part 302 is revised to read as follows:

Authority: 42 U.S.C. 651 through 658, 660, 664, 666, 667, 1302, 1396a(a)(25), 1396b(d)(2), 1396b(o), 1396b(p), 1396(k).

§ 302.31 [Amended]

■ 4. In § 302.31, reserved paragraph (a)(3) is removed and paragraph (a)(4) is redesignated as paragraph (a)(3).

§ 302.32 [Amended]

■ 5. In § 302.32:

■ a. Paragraph (b)(1) is amended by revising "initial point" to read "date";

■ b. Paragraph (b)(2)(ii) is amended by revising "initial receipt in the State" to read "receipt by the SDU";

■ c. Paragraph (b)(2)(iii) is amended by revising "initially received in the State" to read "received by the SDU"; and

■ d. Paragraph (b)(3)(i) is amended by revising "initial receipt in the State" to read "receipt by the SDU".

§ 302.35 [Amended]

■ 6. In § 302.35:

■ a. Paragraph (c)(2) is amended by revising "an noncustodial parent" to read "a noncustodial parent and by revising "agency" to read "agent"; and

■ b. Paragraph (c)(4) is amended by removing ", visitation" and adding "or visitation" after "custody".

§ 302.50 Assignment of rights to support.

■ 7. In § 302.50:

■ a. The heading is revised;

■ b. Paragraph (b)(2) is amended by removing "; or" at the end of the paragraph and adding a ".".

§ 302.51 [Amended]

■ 8. In § 302.51, paragraph (a)(3) is amended by revising "section 457(a)(2)(iv) of the Act" to read "section 457(a)(2)(B)(iv) of the Act".

§ 302.54 [Amended]

■ 9. In § 302.54:

■ a. In paragraph (a)(1), the citation "paragraph (c)" is removed and "paragraph (b)" is added in its place;

■ b. In paragraph (b)(1)(ii), "paragraph (b)(2)" is removed and "paragraph (a)" is added in its place; and

■ c. In paragraph (b)(2), "(b)(1)" is removed and "(a)(1)" is added in its place and "(b)(2)" is removed and "(a)(2)" is added in its place.

§ 302.65 [Amended]

■ 10. In § 302.65, paragraph (c)(7) is amended by removing "critieria" and adding "criteria" in its place.

§ 302.70 [Amended]

■ 11. In § 302.70:

■ a. Paragraph (a)(4) is amended by removing "§ 303.103 of this chapter";

■ b. Paragraph (a)(5)(ii) is amended by removing "under §§ 232.40 through 232.49 of this title" or 42 CFR 433.147" and adding "under section 454(29) of the Act";

■ c. Paragraph (a)(6) is amended by removing "an noncustodial parent" and adding "a noncustodial parent";

■ d. Paragraph (a)(7) is amended by removing "an noncustodial parent" and adding "a noncustodial parent" in its place, and by removing ", in accordance with § 303.105 of this chapter";

■ e. Paragraph (a)(8) is amended by removing "wages" and adding "income" in its place;

■ f. Paragraph (c) is amended by removing "§§ 303.100 through 303.105 of this chapter" and adding "§§ 303.100 through 303.102 and § 303.104 of this chapter" in its place.

§ 302.75 [Amended]

■ 12. In § 302.75, paragraph (b)(6) is amended by removing "§ 305.50" and adding "§ 304.50" in its place.

PART 303—STANDARDS FOR PROGRAM OPERATIONS

■ 13. The authority citation for part 303 continues to read as follows:

Authority: 42 U.S.C. 651 through 658, 660, 663, 664, 666, 667, 1302, 1396a(a)(25), 1396b(d)(2), 1396b(o), 1396b(p), and 1396(k).

§ 303.7 [Amended]

■ 14. In § 303.7:

■ a. Paragraph (b)(1) is revised to read as follows:

* * * * *

(b) * * *

■ (1) Use its long arm statute to establish paternity, when appropriate.;

* * * * *

■ b. Paragraph (b)(2) is amended by revising "wage" to read "income";

■ c. Paragraph (c)(7)(ii) is amended by removing "§§ 303.4 and 303.101 of this part and § 303.31 of this chapter" and adding "§§ 303.4, 303.31 and 303.101 of this part" in its place;

■ d. Paragraph (c)(7)(iii) is amended by removing "§§ 303.6 and 303.100 through 303.102 and 303.104 of this part and § 303.31 of this chapter" and adding "§§ 303.6, 303.31, 303.100 through 303.102, and 303.104 of this part" in its place;

■ 15. Section 303.8 is revised to read as follows:

§ 303.8 Review and adjustment of child support orders.

(a) Definition. For purposes of this section, *Parent* includes any custodial parent or noncustodial parent (or for purposes of requesting a review, any other person or entity who may have standing to request an adjustment to the child support order).

(b) Required procedures. Pursuant to section 466(a)(10) of the Act, when providing services under this chapter:

(1) The State must have procedures under which, every 3 years (or such shorter cycle as the State may determine), upon the request of either parent, or, if there is an assignment under part A, upon the request of the State agency under the State plan or of either parent, the State shall with respect to a support order being enforced under this part, taking into account the best interests of the child involved:

(i) Review and, if appropriate, adjust the order in accordance with the guidelines established pursuant to section 467(a) of the Act if the amount of the child support award under the order differs from the amount that would be awarded in accordance with the guidelines;

(ii) Apply a cost-of-living adjustment to the order in accordance with a formula developed by the State; or

(iii) Use automated methods (including automated comparisons with wage or State income tax data) to identify orders eligible for review, conduct the review, identify orders eligible for adjustment, and apply the appropriate adjustment to the orders eligible for adjustment under any threshold that may be established by the State.

(2) If the State elects to conduct the review under paragraph (b)(1)(ii) or (iii) of this section, the State must have procedures which permit either party to contest the adjustment, within 30 days after the date of the notice of the adjustment, by making a request for review and, if appropriate, adjustment of the order in accordance with the child support guidelines established pursuant to section 467(a) of the Act.

(3) If the State conducts a guideline review under paragraph (b)(1)(i) of this section:

(i) *Review* means an objective evaluation, conducted through a proceeding before a court, quasi-judicial process, or administrative body or agency, of information necessary for application of the State's guidelines for support to determine:

(A) The appropriate support award amount; and

(B) The need to provide for the child's health care needs in the order through health insurance coverage or other means.

(ii) *Adjustment* applies only to the child support provisions of the order, and means:

(A) An upward or downward change in the amount of child support based upon an application of State guidelines for setting and adjusting child support awards; and/or

(B) Provision for the child's health care needs, through health insurance coverage or other means.

(4) The State must have procedures which provide that any adjustment under paragraph (b)(1)(i) of this section shall be made without a requirement for proof or showing of a change in circumstances.

(5) The State must have procedures under which, in the case of a request for a review, and if appropriate, an adjustment outside the 3-year cycle (or such shorter cycle as the State may determine) under paragraph (b)(1) of this section, the State shall review and, if the requesting party demonstrates a substantial change in circumstances, adjust the order in accordance with the guidelines established pursuant to section 467(a) of the Act.

(6) The State must provide notice not less than once every 3 years to the parents subject to the order informing the parents of their right to request the State to review and, if appropriate, adjust the order consistent with this section. The notice must specify the place and manner in which the request should be made. The initial notice may be included in the order.

(c) Standard for adequate grounds. The State may establish a reasonable quantitative standard based upon either a fixed dollar amount or percentage, or both, as a basis for determining whether an inconsistency between the existent child support award amount and the amount of support determined as a result of a review using automated methods under paragraph (b)(1)(iii) of this section is adequate grounds for petitioning for adjustment of the order.

(d) Health care needs must be adequate basis. The need to provide for the child's health care needs in the order, through health insurance or other means, must be an adequate basis under State law to initiate an adjustment of an order, regardless of whether an adjustment in the amount of child support is necessary. In no event shall the eligibility for or receipt of Medicaid be considered to meet the need to provide for the child's health care needs in the order.

(e) Timeframes for review and adjustment. Within 180 calendar days of receiving a request for a review or locating the non-requesting parent, whichever occurs later, a State must: Conduct a review of the order and adjust the order or determine that the order should not be adjusted, in accordance with this section.

(f) Interstate review and adjustment. (1) In interstate cases, the State with legal authority to adjust the order must conduct the review and adjust the order pursuant to this section.

(2) The applicable laws and procedures for review and adjustment of child support orders, including the State guidelines for setting child support awards, established in accordance with § 302.56 of this chapter, are those of the State in which the review and adjustment, or determination that there be no adjustment, takes place.

§ 303.15 [Amended]

■ 16. In § 303.15:

■ a. The section heading is amended by adding "or visitation" after "custody".

■ b. Paragraph (a)(1)(i) is amended by removing the period at the end and adding a semicolon.

■ c. Paragraph (a)(1)(ii) is amended by removing "visistation" and adding "visitation", and by adding "or" after ";".

§ 303.20 [Amended]

■ 17. In § 303.20:

■ a. Paragraphs (c)(3), (4) and (5) are amended by removing "an noncustodial parent" and adding "a noncustodial parent" in its place; and

■ b. Paragraph (e)(3) is amended by removing "pursuant to parts 220, 222 and 226 of this title or carried out".

§ 303.31 [Amended]

■ 18. In § 303.31, paragraph (a)(2) is amended by removing "an noncustodial parent" and adding "a noncustodial parent" in its place.

§ 303.70 [Amended]

■ 19. In § 303.70:

■ a. Paragraph (d)(1) is amended by adding "Federal or" after "in accordance with section 453(a)(3) of the Act for enforcing a"; and

■ b. Paragraph (e)(1)(iii) is amended by removing "453(k)" and adding "453(k)(3)" in its place.

§ 303.72 [Amended]

■ 20. In § 303.72:

■ a. Paragraph (a)(3)(iv) is amended by removing "an title IV–A" and adding "a title IV–A" in its place;

■ b. Paragraphs (a)(6), (c)(2), (c)(4), (h)(5) and (h)(6)(i) are amended by removing "Secretary of the Treasury" and adding "Secretary of the U.S. Treasury" in its place;

■ c. Paragraph (e)(1) and (f)(1) are amended by revising "an noncustodial parent" to read "a noncustodial parent"; and

■ d. Paragraph (h)(3) is amended by removing "fSecretary of the U.S. Treasuryt".

§ 303.73 [Amended]

■ 21. In § 303.73, "an noncustodial parent" is revised to read "a noncustodial parent" and "IV7–D" is revised to read "IV–D".

■ 22. In § 303.100:

■ a. Paragraphs (b)(1) and (e)(1)(v) are amended by revising "an noncustodial parent" to read "a noncustodial parent";

■ b. Paragraph (b)(1)(i) is amended by revising "absent" to read "noncustodial" each time it appears;

■ c. Paragraphs (e)(1)(i) and (g) are amended by removing "wages" and adding "income" in its place;

■ d. Paragraph (e)(2) is amended by removing "wage";

■ e. Paragraphs (e)(2) and (e)(3) are amended by removing each occurrence of "15 calendar days" and adding "2 business days of the date the State's computerized support enforcement system receives notice of income and income source from a court, another State, an employer, the Federal Parent Locator Service, or another source recognized by the State, or the date information regarding a newly hired employee is entered into the State Directory of New Hires, or if information is not received by the State's computerized support enforcement system or its State Directory of New Hires, within 15 calendar days" in its place;

■ f. Paragraph (e)(4) is amended by removing "paragraph (f)(1) of this section" and adding "paragraph (e)(1) of this section" in its place; and

■ g. Adding new paragraphs (f)(4) and (5) to read as follows:

§ 303.100 Procedures for income withholding.

* * * * * *

(f) * * *

(4) The withholding must be carried out in full compliance with all procedural due process requirements of the State in which the noncustodial parent is employed.

(5) Except with respect to when withholding must be implemented which is controlled by the State where the support order was entered, the law and procedures of the State in which the noncustodial parent is employed shall apply.

* * * * *

§ 303.101 [Amended]

■ 23. Section 303.101(a) is amended by adding a period after "Definition".

§ 303.102 [Amended]

■ 24. In § 303.102:

■ a. Paragraph (a)(1) is amended by adding "or" following "section 408(a)(3) of the Act";

■ b. Paragraph (c)(1) is amended by revising "an noncustodial parent" to read "a noncustodial parent"; and

■ c. Paragraphs (g)(1), introductory text, and (g)(1)(i) are revised to read as follows:

§ 303.102 Collection of overdue support by State income tax refund offset.

* * * * * *

(g) Distribution of collections. (1) The State must distribute collections received as a result of State income tax refund offset:

(i) In accordance with section 457 of the Act and §§ 302.51 and 302.52 of this chapter; and

* * * * * *

PART 304—FEDERAL FINANCIAL PARTICIPATION

■ 25. The authority citation for part 304 continues to read as follows:

Authority: 42 U.S.C. 651 through 655, 657, 1302, 1396a(a)(25), 1396b(d)(2), 1396b(o), 1396b(p), and 1396(k).

§ 304.20 [Amended]

■ 26. In § 304.20:

■ a. Paragraph (b)(1)(iii)(C) is amended by adding ", and Indian Tribes or Tribal organizations" after "officials"; and

■ b. Paragraph (b)(5)(iv) is amended by revising "an noncustodial parent" to read "a noncustodial parent".

■ 27. Section 304.26(a) is revised to read as follows:

§ 304.26 Determination of Federal share of collections.

(a) From the amounts of support collected by the State and retained as reimbursement for title IV–A payments and foster care maintenance payments under title IV–E, the State shall reimburse the Federal government the Federal share of the support collections. In computing the Federal share of support collections for assistance payments made under titles IV–A and IV–E, the State shall use the Federal medical assistance percentage in effect for the fiscal year in which the amount is distributed. The Federal medical assistance percentage is:

(1) 75 percent for Puerto Rico, the Virgin Islands, Guam, and American Samoa; and

(2) As defined in section 1905(b) of the Act as in effect on September 30, 1995, for any other State.

* * * * * *

§ 304.40 [Amended]

■ 28. In § 304.40, paragraph (b)(3) is amended by removing the phrase, "Quarterly Statement of Expenditures (SRA–OA–41) reports" from the last sentence and adding "Quarterly Report of Expenditures and Estimates" in its place.

PART 307—COMPUTERIZED SUPPORT ENFORCEMENT SYSTEMS

■ 29. The authority citation for part 307 continues to read as follows:

Authority: 42 U.S.C. 652 through 658, 664, 666 through 669A, and 1302.

§ 307.1 [Amended]

■ 30. Section 307.1 is amended in paragraph (c) by revising "non-AFDC" to read "non-IV–A".

§ 307.10 [Amended]

■ 31. In § 307.10:

■ a. In paragraph (b)(10), "AFDC" is revised to read "IV–A";

■ b. In paragraph (b)(14)(ii), "ant" is revised to read "and"; and

■ c. In paragraph (b)(14)(iii), "VI–D" is revised to read "IV–D".

[FR Doc. 03–11223 Filed 5–9–03; 8:45 am]

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[Docket No. 021223329–3112–02; I.D. 121302A]

RIN 0648–AQ26

Fisheries of the Northeastern United States; 2003 Specifications for the Atlantic Bluefish Fishery

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Final rule.

SUMMARY: NMFS issues 2003 specifications for the Atlantic bluefish fishery, including total allowable harvest levels (TAL), state-by-state commercial quotas, and a recreational harvest limit and possession limit for Atlantic bluefish off the east coast of the United States. The intent of the specifications is to conserve and manage the bluefish resource and provide for sustainable fisheries.

DATES: Effective June 11, 2003, through December 31, 2003.

ADDRESSES: Copies of supporting documents, including the Environmental Assessment (EA) and Regulatory Impact Review (RIR), Final Regulatory Flexibility Analysis (FRFA), and Essential Fish Habitat Assessment (EFHA) are available from: Patricia A. Kurkul, Regional Administrator, Northeast Regional Office, NMFS, One Blackburn Drive, Gloucester, MA 01930–2298. The EA/RIR/FRFA/EFHA are accessible via the Internet at *http://www.nero.nmfs.gov*.

FOR FURTHER INFORMATION CONTACT: Paul H. Jones, Fishery Policy Analyst, 978–281–9273, fax 978–281–9135, e-mail paul.h.jones@noaa.gov.

SUPPLEMENTARY INFORMATION: Regulations implementing the FMP prepared by the Mid-Atlantic Fishery Management Council (Council) appear at 50 CFR part 648, subparts A and J. Regulations requiring annual specifications are found at § 648.160. The FMP requires that the Council recommend, on an annual basis, TAL,

which is comprised of a commercial quota and recreational harvest limit. Proposed 2003 initial bluefish specifications were published on January 6, 2003 (68 FR 533), with a comment period ending January 21, 2003. The final specifications are unchanged from those that were proposed.

Final Specifications

2003 TAL

For the 2003 fishery, the stock rebuilding program in the FMP would restrict the fishing mortality rate (F) to 0.41. However, the 2001 fishery (the most recent fishing year for which F can be calculated) produced an F of only 0.246. In accordance with the FMP, the TAL proposed for 2003 is set to achieve F=0.246. The resulting TAC is 39.5 million lb (17.9 million kg). The TAL is calculated by deducting discards, estimated at 2.2 million lb (0.99 million kg) for 2003, from the TAC. Therefore, the TAL for 2003 is 37.293 million lb (16.916 million kg).

2003 Commercial Quotas and Recreational Harvest Limits

If the TAL for the 2003 fishery were allocated based on the percentages specified in the FMP, the commercial quota would be 6.339 million lb (2.875 million kg), with a recreational harvest limit of 30.953 million lb (10.500 million kg). However, recreational landings from the last several years were much lower than the recreational allocation for 2003, ranging between 8.30 and 15.5 million lb (3.74 and 7.05 million kg). Based upon the last several years of landings, it is estimated that the recreational fishery will not land its 30.953 million-lb (12.153 million-kg) harvest limit in 2003 and, therefore, this allows a commercial quota of up to 10.5 million lb (4.76 million kg) to be specified. This action transfers 4.161 million lb (1.887 million kg) from the 2003 recreational allocation of 30.953 million lb (12.153 million kg), resulting in 26.793 million lb (12.153 million kg) for the 2003 recommended recreational harvest limit, and a proposed commercial quota of 10.5 million lb (4.744 million kg). The 2003 commercial quota would be the same amount as was allocated in 2002 and implemented by NMFS and the states under the Atlantic States Marine Fisheries Commission's Interstate Fishery Management Plan for Atlantic Bluefish. Also implemented is a recreational possession limit of 15 fish per person (same as in 2002) and a 141,900–lb (64,365–kg) research set-aside (RSA).

The 2003 state commercial quotas are listed in the table below, based on the percentages specified in the FMP less the RSA allocation.

State	Percent of Quota	2003 Commercial Quota (lb)	2003 Commercial Quota(kg)
ME	0.6685	69,925	31,718
NH	0.4145	43,357	19,667
MA	6.7167	702,570	318,684
RI	6.8081	712,131	323,021
CT	1.2663	132,456	60,082
NY	10.3851	1,086,286	492,736
NJ	14.8162	1,549,782	702,977
DE	1.8782	196,461	89,114
MD	3.0018	313,990	142,425
VA	11.8795	1,242,601	563,640
NC	32.0608	3,353,575	1,521,172
SC	0.0352	3,682	1,670
GA	0.0095	994	451
FL	10.0597	1,052,249	477,297
Total	100.0000	10,460,058	4,744,652

Comments and Responses

One comment was received from a U.S. Congressman from New Jersey on the proposed specifications.

Comment: The commenter opposes the transfer of allocation from the recreational sector to the commercial sector because he believes it is unfair to anglers who endure strict regulations. He believes it fails to reward recreational fishers who do not fully attain their allocation and negates the conservation benefits created by their underharvest of bluefish.

Response: The poundage transfer provision was included in Amendment 1 to the FMP (Amendment 1) to ensure that commercial landings would not be reduced unnecessarily if the recreational fishery is not expected to attain its harvest limit. The FMP stipulates that such a transfer may be made if the recreational fishery is not projected to land its harvest limit for the upcoming year. Recreational landings from the last several years were much lower than the recreational allocation for 2003, ranging between 8.30 and 15.5 million lb (3.74 and 7.05 million kg). Since the recreational fishery is not projected to land its harvest limit in 2003, this allows the specification of a commercial quota of up to 10.5 million lb (4.76 million kg). The TAL for 2003 is 37.293 million lb (16.916 million kg). This is consistent with an F of 0.246 which is actually less than the maximum level of F of 0.410, specified in the FMP as the rebuilding target for 2003. A commercial harvest of 10.5 million lb (4.76 million kg) does not result in overfishing based on the overfishing definition in the FMP. Overfishing occurs when F is greater than F_{msy} = 0.4 (the F that produces maximum sustainable yield). Since the stock condition is improving, and the overall TAL maintains a very low F, there is no reason to reduce allowed landings by the commercial sector. The transfer is not constraining to recreational fishermen, since the remaining recreational harvest limit is more than double the average recreational landings over the last several years.

Classification

This final rule has been determined to be not significant for purposes of Executive Order 12866.

NMFS prepared a FRFA for this action. The FRFA includes a summary of the analyses in support of these specifications. A copy of the FRFA is available from NMFS (see **ADDRESSES**). A summary of the FRFA, which includes the initial regulatory flexibility analysis (IRFA) and applicable sections of the 2003 specifications package, follows:

The reasons why this action is being taken by the agency, and the objectives of this final rule are explained in the preamble to the proposed rule and are not repeated here. This action does not contain any reporting, recordkeeping, or other compliance requirements. This action is taken under authority of the Magnuson-Stevens Act and regulations at 50 CFR part 648.

One comment was submitted on the proposed rule, but it was not specific to the IRFA. NMFS has responded to the comment in the Comments and Responses section of the preamble to this final rule. No changes were made to the proposed rule as a result of the comment received.

Commercial landings for bluefish are reported from Maine through North Carolina through NMFS Northeast dealer reports, and from South Carolina through Florida through a state trip ticket commercial landings reporting program. An active participant in the commercial sector was defined as being any vessel that reported having landed one or more pounds of bluefish during calendar year 2001. All vessels are considered to be small entities. Of the active vessels in 2001, 846 landed bluefish from Maine to North Carolina. The dealer data do not cover vessel activity in the South Atlantic. State trip ticket report data indicate that 1,092 vessels landed bluefish in North Carolina. Bluefish landings in South Carolina and Georgia represented less than 1/10 of 1 percent of total landings. Therefore, the analysis assumed that no vessels from those states would be affected by this proposed action. In addition, 214 vessels landed bluefish to dealers on Florida's east coast in 2001. In recent years, approximately 2,063 party/charter vessels caught bluefish.

The Council analyzed three TAL alternatives. The preferred alternative examined the impacts on the industry that would result from a TAL of 37.293 million lb (16.916 million kg), allocated to the commercial sector (10.460 million lb (4.74 million kg)) and recreational sector (26.691 million lb (12.107 million kg)), with an RSA of 141,900 million lb (64,356 kg). Alternative 2 considered a TAL of 37.293 million lb (16.916 million kg), allocated to the commercial sector (6.315 million lb (2.864 million kg) and recreational sector (30.835 million lb (13.986 million kg)), with an RSA of 141,900 lb (64,365 kg). Alternative 3 provides for a lower commercial quota and higher recreational quota than Alternative 1. Starting from the same TAL of 37.293 million lb (16.916 million kg), the commercial quota in this alternative is 9.546 million lb (4.329 million kg), and the recreational quota is 27.604 million lb (12.521 million kg), with an RSA of 141,900 lb (64,365 kg).

On a coastwide basis, the preferred alternative would allow for less than a 1–percent decrease in total allowable commercial landings for bluefish in 2003 versus the 2002 commercial quota, due to the amount specified for the RSA. The 2003 recreational harvest limit would be 63 percent higher than the estimated recreational landings in 2002. According to dealer data, 650 federally permitted commercial vessels would be expected to incur revenue losses of less than 5 percent and 193 commercial vessels would incur revenue gains of 24 percent. The revenue increase expected in 2003 are primarily due to the fact that the New York quota was adjusted downward in 2002 due to overages in 2001. Thus, New York shows a positive proportional change in quota from 2002 to 2003 (see section 5.1.3 of the RIR/FRFA). In addition, economic analysis of South Atlantic Trip Ticket Report data indicated that changes in quota levels from 2002 to 2003 are expected to result in small reductions in revenue for fishermen that land bluefish in North Carolina (1.44 percent) and minimal reductions for fishermen that land bluefish in Florida (0.07 percent).

Alternative 2 would result in a 40–percent decrease in the total allowable commercial landings for bluefish in 2003 versus 2002. The 2003 recreational harvest limit would be 88 percent higher than the estimated recreational landings in 2002. Under this scenario, according to Northeast dealer data, a total of 103 commercial vessels would incur revenue losses of 5 to 39 percent, and 740 commercial vessels would incur revenue losses of less than 5 percent of their total ex-vessel revenue. Also, evaluation of South Atlantic Trip Ticket Reports indicate an average of 6.1 and 0.03–percent reductions in revenue for fishermen that land bluefish in North Carolina and Florida, respectively.

Alternative 3 would result in a 9–percent decrease in the total allowable commercial landings for bluefish in 2003 versus 2002. The 2003 recreational harvest limit would be 69 percent higher than the estimated recreational landings in 2002. Under this scenario, based on Northeast dealer data, a total of 28 commercial vessels would incur revenue losses from 5 to 10 percent, 626 commercial vessels would incur revenue losses of less than 5 percent and 189 commercial vessels would incur an increase in revenue of 14 percent. The revenue increase for these 189 vessels expected in 2003 is primarily due to the fact that the New York quota was adjusted downward in 2002 due to overages in 2001. Thus, New York shows a positive proportional change in quota from 2002 to 2003 (see section 5.3.3 of the RIR/FRFA). Also, evaluation of South Atlantic Trip Ticket Reports indicate reduction in revenues of 1.44 and 0.07–percent for fishermen that land bluefish in North Carolina and Florida, respectively.

The Council further analyzed the impacts on revenues of the proposed RSA amount for all three alternatives. The social and economic impacts of this proposed RSA are minimal. Assuming the full RSA is allocated for bluefish, the set-aside amount could be worth as much as $45,480 dockside, based on a 2001 price of $0.32 per pound. Assuming an equal reduction among all 834 active dealer reported vessels, this could mean a reduction of about $55 per individual vessel. Changes in the recreational harvest limit would be insignificant (less than 1 percent decrease), if 2 percent of the TAL is used for research. It is unlikely that there would be negative impacts. A copy of this analysis is available from the Regional Administrator (see **ADDRESSES**) and is also available at the following web site: *http://www.nero.noaa.gov*.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: May 6, 2003.

Rebecca Lent,

Deputy Assistant Administrator for Regulatory Programs, National Marine Fisheries Service.

[FR Doc. 03–11739 Filed 5–9–03; 8:45 am]

BILLING CODE 3510–22–S

Proposed Rules

Federal Register
Vol. 68, No. 91
Monday, May 12, 2003

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

9 CFR Part 130

[Docket No. 02–041–1]

Veterinary Services User Fees; Fee for Use of Animal Ramp at Miami International Airport

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Proposed rule.

SUMMARY: We are proposing to establish a user fee for a Government-owned ramp at Miami International Airport used to move animals off of and onto airplanes. Under the present user fee schedule we can recover the cost of labor in supervising and assisting importers and exporters in the ramp's use, but we currently must absorb all other costs associated with the ramp. The proposed new user fee would ensure that we recover costs incurred by the ramp's purchase and use and would shift the cost of the ramp to those who receive benefits from its use.

DATES: We will consider all comments that we receive on or before July 11, 2003.

ADDRESSES: You may submit comments by postal mail/commercial delivery or by e-mail. If you use postal mail/commercial delivery, please send four copies of your comment (an original and three copies) to: Docket No. 02–041–1, Regulatory Analysis and Development, PPD, APHIS, Station 3C71, 4700 River Road Unit 118, Riverdale, MD 20737–1238. Please state that your comment refers to Docket No. 02–041–1. If you use e-mail, address your comment to *regulations@aphis.usda.gov*. Your comment must be contained in the body of your message; do not send attached files. Please include your name and address in your message and "Docket No. 02–041–1" on the subject line.

You may read any comments that we receive on this docket in our reading room. The reading room is located in room 1141 of the USDA South Building, 14th Street and Independence Avenue SW., Washington, DC. Normal reading room hours are 8 a.m. to 4:30 p.m., Monday through Friday, except holidays. To be sure someone is there to help you, please call (202) 690–2817 before coming.

APHIS documents published in the **Federal Register**, and related information, including the names of organizations and individuals who have commented on APHIS dockets, are available on the Internet at *http://www.aphis.usda.gov/ppd/rad/webrepor.html*.

FOR FURTHER INFORMATION CONTACT: For information concerning program operations for Veterinary Services, contact Ms. Inez Hockaday, Director, Management Support Staff, VS, APHIS, 4700 River Road Unit 44, Riverdale, MD 20737–1231, (301) 734–7517. For information concerning rate development of the proposed user fee, contact Ms. Kris Caraher, Accountant, User Fees Section, Financial Management Division, APHIS, 4700 River Road Unit 54, Riverdale, MD 20737–1232, (301) 734–8351.

SUPPLEMENTARY INFORMATION:

Background

User fees to reimburse the Animal and Plant Health Inspection Service (APHIS) for the costs of providing veterinary diagnostic services and import- and export-related services for live animals and birds and animal products are contained in 9 CFR part 130 (referred to below as the regulations). APHIS receives no directly appropriated funds to provide these services; our ability to provide them depends on user fees.

APHIS has purchased a ramp that is used to move animals on and off airplanes at APHIS's Animal Import/Export and Plant Inspection Station at Miami International Airport. The ramp is used to move approximately 5,000 to 6,000 animals per year. Last year, approximately 117 users (brokers or livestock owners) required the aid of the ramp to either load or unload their animals. The animals moved using this ramp were cattle (75 percent), sheep (10 percent), goats (10 percent), and horses and other animals (5 percent).

Both the purchase and maintenance of this ramp are costly; however, because there is no specific user fee for the ramp's use under the current regulations, APHIS can only recover some of the labor costs incurred by its use through its current hourly rate user fee. We are, therefore, proposing to amend the regulations to establish a user fee of $151 per use to importers and exporters who use the animal ramp, so that APHIS may recover its costs. This would ensure that the importers and exporters who use the ramp pay for the benefits they receive.

Calculation of the User Fee

Costs excluded from this calculation. We began our calculation of the appropriate user fee for the APHIS animal ramp at Miami International Airport by identifying the services APHIS provides while the ramp is being used for which we already charge user fees. Under § 130.30, "Hourly rate and minimum user fees," APHIS currently charges for services such as sweeping the ramp, fully cleaning and disinfecting the ramp, supervising the use of the ramp, driving the ramp to and from the service site, and assisting with the use of the ramp. We omitted fees for these services in the calculation of the proposed ramp fee. We are proposing to charge the proposed ramp fee in addition to the fees for the labor associated with the ramp's use that we currently charge. Such labor fees would be charged to the ramp user at the existing applicable hourly rate user fee, or premium hourly rate user fee if the service is provided outside the normal tour of duty of the employee(s), for these services.

Equipment costs. The ramp assembly consists of the ramp itself, a truck on which the ramp is moved, and piston equipment. This assembly costs $45,100 and has an expected useful life of 5 years before it will need to be replaced. The cost of purchasing the ramp was therefore spread over 5 years to arrive at an annual figure for the cost of its purchase. This figure is $9,020.

Labor costs not covered under § 130.30. We estimated that a mechanic at the GS 9, step 5, salary level would spend 7 percent of his or her time maintaining the ramp. The benefit (*e.g.*, health insurance, etc.) costs included in the total cost of this labor were set at 20.42 percent of salary. To arrive at our final figure for the labor cost of maintenance, we used the actual salary figure for fiscal year (FY) 2002 and included cost-of-living salary increases in fiscal years 2003 and 2004, as described in the President's FY 2003 budget. Based on this approach, we estimate the direct labor cost of the maintenance on the ramp to be $3,926.17 per year.

Administrative support costs not covered under § 130.30. Administrative support costs include the cost of local clerical and administrative activities, indirect labor hours, travel and transportation for personnel, supplies, equipment, and other necessary items, training, general office supplies, rent, equipment capitalization, utilities, and contractual services. Indirect labor hours include supervision of personnel and time spent doing work that is not directly connected with use of the ramp but which is nonetheless necessary for its use, such as repairing other equipment. Rent is the cost of using the space required to perform this work. Billing costs are the costs of managing user fee accounts for our customers who wish to receive monthly invoices for the services they receive from APHIS. Collection expenses include the costs of managing customer payments and ensuring that those payments are accurately reflected in our accounting system. Utilities include water, telephone, electricity, gas, and heating oil. Contractual services include security service, maintenance, trash pickup, and other such services. To estimate these costs, we used the standard APHIS administrative support costs rate of 62.31 percent of direct labor costs. Thus, we estimate administrative support costs for this service to be $2,818.49 per year.

Agency overhead not covered under § 130.30. Agency overhead is the pro-rata share, attributable to this service, of the Agency's management and support costs. Management and support costs include the costs of providing budget and accounting services, regulatory services, investigative and enforcement services, debt-management services, personnel services, public information services, legal services, liaison with Congress, and other general program and agency management services provided above the local level. We estimate agency overhead to be $1,089.26 per year.

Departmental charges not covered under § 130.30. Departmental charges are APHIS's share, expressed as a percentage of the total cost, of services provided centrally by the United States Department of Agriculture. Services the Department provides centrally include the Federal Telephone Service, mail, National Finance Center processing of payroll and other money management, unemployment compensation, Office of Workers Compensation Programs, and central supply for storing and issuing commonly used supplies and department forms. The Department notifies APHIS of how much it owes for these services. We estimate the pro-rata share of these departmental charges attributable to these services to be $358.01 per year.

Reserve funds. We added an amount that would provide for a reasonable balance, or reserve, in the Veterinary Services user fee account. All user fees contribute to the reserve proportionately. A reserve ensures that we have sufficient operating funds in cases of bad debt, customer insolvency, and fluctuations in the volume of activity. We intend to monitor the balance of the reserve closely, and we will propose adjustments in our fees as necessary to ensure a reasonable balance. We have included $409.60 per year as this fee's proportional contribution to the reserve.

Conclusion

The sum of the above items, $17,621.53, represents our calculation of the annual cost for the purchase, use, and maintenance of the ramp. The number of importers and exporters expected to use the ramp each year is about 117. Thus, the expected cost per user of the ramp is $17,621.53 divided by 117, or $150.6114; rounded to the nearest whole dollar, this is $151. We are therefore proposing a fee of $151 for use of the animal ramp at Miami International Airport.

This fee would apply regardless of the length of time the ramp is used or the number of animals being transported across it. The fees charged for the hourly labor APHIS provides while the ramp is being used, of course, would vary with the length of time the ramp is used.

We believe that this fee would adequately cover the cost of providing the ramp to importers and exporters of animals. As is the case with all APHIS user fees, we intend to review the user fee proposed in this document on an annual basis. We will publish any necessary adjustments to the fee in the **Federal Register**.

Executive Order 12866 and Regulatory Flexibility Act

This proposed rule has been reviewed under Executive Order 12866. The rule has been determined to be not significant for the purposes of Executive Order 12866 and, therefore, has not been reviewed by the Office of Management and Budget.

This proposed rule would establish a user fee of $151 for the animal ramp APHIS operates at Miami International Airport.

Though the fee is $151 per use regardless of the number of animals being moved across the ramp, in the past clients have moved, on average, approximately 50 animals per ramp use. Thus the average cost per animal for use of the ramp would be approximately $3. This is a negligible fee compared to the market value of the breeding animals and other upper-end livestock that are transported by air and that may be moved using the ramp. For example, the average import/export price per head of purebred cattle in 2001 was $1,186, while the price of purebred horses was $9,653. Our customers, usually brokers, are likely to pass this fee on to their clients.

This proposed user fee is also similar to the fees charged for the use of similar ramps elsewhere. For example, O'Hare International Airport in Chicago charges approximately $150 for use of its ramp, while one private horse-transporting entity charges approximately $800 for the use of the ramp it owns.

Impact on Small Entities

The Regulatory Flexibility Act requires that agencies consider the economic effects of their rules on small entities. The Small Business Administration (SBA) has published criteria for determining which economic entities meet the definition of a small business. The entities affected by this proposed fee are most likely to be brokers and livestock owners importing or exporting animals. The SBA considers an entity engaged in importing and exporting live animals, poultry, and birds to be small if its total sales are less than $5 million annually. The total revenue of livestock brokers who transport animals through Miami International Airport is not available, but we expect that a majority of these brokers can be classified as small entities. While the majority of entities affected by the proposed user fee may be small, this proposed rule is not expected to have a significant impact on them, due to the fact that the average fee per animal is quite small in comparison to the value of the livestock being transported.

Under these circumstances, the Administrator of the Animal and Plant Health Inspection Service has determined that this action would not have a significant economic impact on a substantial number of small entities.

Executive Order 12372

This program/activity is listed in the Catalog of Federal Domestic Assistance under No. 10.025 and is subject to

Executive Order 12372, which requires intergovernmental consultation with State and local officials. (*See* 7 CFR part 3015, subpart V.)

Executive Order 12988

This proposed rule has been reviewed under Executive Order 12988, Civil Justice Reform. If this proposed rule is adopted: (1) All State and local laws and regulations that are inconsistent with this rule will be preempted; (2) no retroactive effect will be given to this rule; and (3) administrative proceedings will not be required before parties may file suit in court challenging this rule.

Paperwork Reduction Act

This proposed rule contains no new information collection or recordkeeping requirements under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

List of Subjects in 9 CFR Part 130

Animals, Birds, Diagnostic reagents, Exports, Imports, Poultry and poultry products, Quarantine, Reporting and recordkeeping requirements, Tests.

Accordingly, we propose to amend 9 CFR part 130 as follows:

PART 130—USER FEES

1. The authority citation for part 130 would continue to read as follows:

Authority: 5 U.S.C. 5542; 7 U.S.C. 1622 and 8301–8317; 21 U.S.C. 136 and 136a; 31 U.S.C. 3701, 3716, 3717, 3719, and 3720A; 7 CFR 2.22, 2.80, and 371.4.

2. Section 130.8 would be amended by adding a new paragraph (b) to read as follows:

§ 130.8 User fees for other services.

* * * * *

(b) The user fee for the transport ramp used to move animals on or off aircraft at APHIS's Animal Import/Export and Plant Inspection Station at Miami International Airport is $151 per use. For labor services associated with the ramp, the hourly user fees in § 130.30 will apply.

* * * * *

Done in Washington, DC, this 6th day of May, 2003.

Peter Fernandez,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 03–11707 Filed 5–9–03; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[REG–142605–02]

RIN 1545–BB47

Administration Simplification of Section 481(a) Adjustment Periods in Various Regulations

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of proposed rulemaking and notice of public hearing.

SUMMARY: This document contains proposed amendments to regulations under sections 263A and 448 of the Internal Revenue Code. The amendments apply to taxpayers changing a method of accounting under the regulations and are necessary to conform the rules governing those changes to the rules provided in general guidance issued by the IRS for changing a method of accounting. Specifically, the amendments will allow taxpayers changing their method of accounting under the regulations to take any adjustment under section 481(a) resulting from the change into account over the same number of taxable years that is provided in the general guidance.

DATES: Written or electronic comments must be received by July 11, 2003. Requests to speak (with outlines of oral comments to be discussed) at the public hearing scheduled for August 13, 2003, at 10 a.m. must be received by July 23, 2003.

ADDRESSES: Send submissions to: CC:PA:RU (REG–142605–02), room 5226, Internal Revenue Service, POB 7604 Ben Franklin Station, Washington, DC 20044. Submissions of comments may also be hand-delivered Monday through Friday between the hours of 8 a.m. and 5 p.m. to: CC:PA:RU (REG–142605–02), Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue, NW., Washington, DC. Alternatively, taxpayers may submit comments electronically via the Internet direct to the IRS Internet site at *http://www.irs.gov/regs*. The public hearing will be held in the Internal Revenue Building, 1111 Constitution Avenue, NW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Concerning the regulations, Christian Wood, 202–622–4930. Concerning the hearing, contact Sonya Cruse, 202–622–7180 (not toll-free numbers).

SUPPLEMENTARY INFORMATION:

Background

This document contains proposed amendments to 26 CFR part 1 under sections 263A and 448. These amendments pertain to the period for taking into account the adjustment required under section 481 to prevent duplications or omissions of amounts resulting from a change in method of accounting under section 263A or 448.

Section 263A (the uniform capitalization rules) generally requires the capitalization of direct costs and indirect costs properly allocable to real property and tangible personal property produced by a taxpayer. Section 263A also requires the capitalization of direct costs and indirect costs properly allocable to real property and personal property acquired by a taxpayer for resale.

Section 448(a) generally prohibits the use of the cash receipts and disbursements method of accounting by C corporations, partnerships with a C corporation partner, and tax shelters. Section 448(b), however, provides exceptions to this general rule in the case of farming businesses, qualified personal service corporations, and entities with gross receipts of not more than $ 5,000,000.

Section 446(e) generally provides that a taxpayer that changes the method of accounting on the basis of which it regularly computes its income in keeping its books must, before computing its taxable income under the new method, secure the consent of the Secretary.

Section 481(a) generally provides that a taxpayer must take into account those adjustments that are determined to be necessary solely by reason of a change in method of accounting in order to prevent amounts from being duplicated or omitted. Sections 481(c) and 1.446–1(e)(3)(ii) and 1.481–4 provide that the adjustment required by section 481(a) shall be taken into account in determining taxable income in the manner and subject to the conditions agreed to by the Commissioner and the taxpayer.

Rev. Proc. 97–27, 1997–1 C.B. 680 (as modified and amplified by Rev. Proc. 2002–19, 2002–13 I.R.B. 696, and modified by Rev. Proc. 2002–54, 2002–35 I.R.B. 432), provides procedures under which taxpayers may apply for the advance consent of the Commissioner to change a method of accounting. Rev. Proc. 2002–9, 2002–3 I.R.B. 327 (as modified and amplified by Rev. Proc. 2002–19, amplified, clarified, and modified by Rev. Proc. 2002–54, and modified and clarified by Announcement 2002–17, 2002–8 I.R.B. 561), provides procedures under which taxpayers may apply for automatic consent of the Commissioner to change a method of accounting. Under both revenue procedures, as modified, adjustments under section 481(a) are taken into account entirely in the year of change (in the case of a net negative adjustment) and over 4 taxable years (in the case of a net positive adjustment), subject to certain exceptions.

Explanation of Provisions

Regulations under sections 263A and 448 currently provide rules for certain changes in method of accounting under those sections, including the number of taxable years over which an adjustment required under section 481(a) to effect the change is to be taken into account. The adjustment periods provided in the regulations may differ from the general 4-year (net positive adjustment) and 1 year (net negative adjustment) adjustment period rule provided in Rev. Proc. 97–27 and Rev. Proc. 2002–9, as modified. In certain cases, the difference creates a disincentive for certain taxpayers to change their method of accounting in the taxable year required by the regulations under section 263A or 448, as applicable.

The IRS and Treasury Department believe it is appropriate to amend the regulations under sections 263A and 448 to provide that the section 481(a) adjustment period for accounting method changes under those regulations be determined under the applicable administrative procedures issued by the Commissioner (namely, Rev. Proc. 97–27 and Rev. Proc. 2002–9, as modified, or successors). As a result of the amendment, the section 481(a) adjustment period for these changes generally will be 4 years for a net positive adjustment and 1 year for a net negative adjustment, unless otherwise provided in the regulations (*see e.g.*, § 1.448–(g)(2)(ii) and (g)(3)(iii) (providing rules for extended or accelerated adjustment periods in certain cases)) or the applicable revenue procedure (*see e.g.*, section 7.03 of Rev. Proc. 97–27 and section 5.04(3) of Rev. Proc. 2002–9 (providing rules for accelerated adjustment periods in certain cases)). The IRS and Treasury Department believe that amending the regulations in this manner will eliminate the disincentive that currently exists and provide flexibility in the event that any future changes are made to the general section 481(a) adjustment periods.

The IRS and Treasury Department further believe it is appropriate to remove the special adjustment period rule for cooperatives in § 1.448–1(g)(3)(ii), thus directing cooperatives to the rules in Rev. Proc. 97–27 or Rev. Proc. 2002–9, as modified, or successors. Currently, Rev. Proc. 97–27 (section 7.03(2)) and Rev. Proc. 2002–9 (section 5.04(3)(b)) provide that the section 481(a) adjustment period in the case of a cooperative (within the meaning of section 1381(a)) generally is 1 year, whether the net adjustment is positive or negative. The IRS and Treasury Department continue to believe that a 1 year adjustment period is appropriate in the case of accounting method changes by cooperatives. *See* Rev. Rul. 79–45, 1979–1 C.B. 284.

The IRS and Treasury Department contemplate issuing separate guidance on accounting method changes under section 381. Comments are requested on issues to be addressed in such guidance, including (1) whether the section 481(a) adjustment should be taken into account by the acquired corporation immediately prior to the transaction or the acquiring corporation immediately after the transaction; (2) whether the general section 481(a) adjustment periods of Rev. Proc. 97–27 and Rev. Proc. 2002–9, as modified, or successors, should apply to accounting method changes under section 381; (3) the method for computing the section 481(a) adjustment; (4) whether accounting method changes under section 381 should be requested by filing a Form 3115 or by requesting a private letter ruling; and (5) any other procedural or technical issues (*e.g.*, filing deadlines, audit protection).

Proposed Effective Date

The proposed regulations are applicable to taxable years ending on or after the date these regulations are published as final regulations. However, taxpayers may rely on the proposed regulations for taxable years ending on or after May 12, 2003, by filing a Form 3115, *Application for Change of Accounting Method*, in the time and manner provided in the regulations (in the case of a change in method of accounting under section 448) or applicable administrative procedure (in the case of a change in method of accounting under section 263A) for such a taxable year that reflects a section 481(a) adjustment period that is consistent with the proposed regulations.

Special Analyses

It has been determined that this notice of proposed rulemaking is not a significant regulatory action as defined in EO 12866. Therefore, a regulatory assessment is not required. It also has been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) and because this proposed rule does not impose a collection of information on small entities, the provisions of the Regulatory Flexibility Act (5 U.S.C. chapter 6) do not apply. Pursuant to section 7805(f) of the Internal Revenue Code, this notice of proposed rulemaking will be submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business.

Comments and Public Hearing

Before these proposed regulations are adopted as final regulations, consideration will be given to any written (a signed original and eight (8) copies) or electronic comments that are submitted timely to the IRS. The IRS and Treasury Department request comments on the clarity of the proposed rules and how they can be made easier to understand. All comments will be available for public inspection and copying.

A public hearing has been scheduled for August 13, 2003 beginning at 10 a.m. in the Internal Revenue Building, 1111 Constitution Avenue, NW., Washington, DC. Due to building security procedures, visitors must enter at the Constitution Avenue entrance. In addition, all visitors must present photo identification to enter the building. Because of access restrictions, visitors will not be admitted beyond the immediate entrance area more than 30 minutes before the hearing starts. For information about having your name placed on the building access list to attend the hearing, *see* the **FOR FURTHER INFORMATION CONTACT** section of this preamble.

The rules of 26 CFR 601.601(a)(3) apply to the hearing. Persons who wish to present oral comments at the hearing must submit electronic or written comments and an outline of the topics to be discussed and the time to be, devoted to each topic (signed original and eight (8) copies) by July 11, 2003.

A period of 10 minutes will be allotted to each person for making comments. An agenda showing the scheduling of the speakers will be prepared after the deadline for receiving outlines has passed. Copies of the agenda will be available free of charge at the hearing.

Drafting Information

The principal authors of these proposed regulations are Christian T. Wood and Grant Anderson of the Office of Associate Chief Counsel (Income Tax and Accounting). However, other personnel from the IRS and Treasury

Department participated in their development.

List of Subjects in 26 CFR Part 1

Income taxes, Reporting and record keeping requirements.

Proposed Amendments to the Regulations

Accordingly, 26 CFR part 1 is proposed to be amended as follows:

PART 1—INCOME TAXES

Paragraph 1. The authority citation for part 1 continues to read in part as follows:

Authority: 26 U.S.C. 7805 * * *

Par. 2. In § 1.263A–7, paragraph (b)(2)(ii) is revised to read as follows:

§ 1.263A–7 Changing a method of accounting under section 263A.

* * * * *

(b) * * *

(2) * * *

(ii) Adjustment required by section 481(a). In the case of any taxpayer required or permitted to change its method of accounting for any taxable year under section 263A and the regulations thereunder, the change will be treated as initiated by the taxpayer for purposes of the adjustment required by section 481(a). The taxpayer must take the net section 481(a) adjustment into account over the section 481(a) adjustment period as determined under the applicable administrative procedures issued under § 1.446–1(e)(3)(ii) for obtaining the Commissioner's consent to a change in accounting method (*e.g.*, Revenue Procedures 97–27 and 2002–9, or successors). This paragraph is effective for taxable years ending on or after the date these regulations are published as final regulations in the **Federal Register**. However, taxpayers may rely on this paragraph for taxable years ending on or after May 12, 2003, by filing, under the applicable administrative procedure, a Form 3115, *Application for Change in Accounting Method*, for such a taxable year that reflects a section 481(a) adjustment period that is consistent with this paragraph.

* * * * *

Par. 3. Section 1.448–1 is amended as follows:

1. Paragraph (g)(2)(i) is revised.
2. Paragraphs (g)(3)(i) and (ii), and (g)(6) are removed.
3. Paragraphs (g)(3)(iii) and (iv) are renumbered as (g)(3)(i) and (ii), respectively.
4. Paragraph (i)(1) is revised.
5. Paragraph (i)(5) is added.

The revisions and addition read as follows:

§ 1.448–1 Limitation on the use of the cash receipts and disbursements method of accounting.

* * * * *

(g) * * *

(2) * * *

(i) In general. Except as otherwise provided in paragraphs (g)(2)(ii) and (g)(3) of this section, a taxpayer required by this section to change from the cash method must take the net section 481(a) adjustment into account over the section 481(a) adjustment period as determined under the applicable administrative procedures issued under section 1.446–1(e)(3)(ii) for obtaining the Commissioner's consent to a change in accounting method (*e.g.*, Revenue Procedures 97–27 and 2002–9, or successors), provided the taxpayer complies with the provisions of paragraph (h)(2) or (h)(3) of this section for its first section 448 year.

* * * * *

(i) * * *

(1) In general. Except as provided in paragraphs (i)(2), (3), (4), and (5) of this section, this section applies to any taxable year beginning after December 31, 1986.

* * * * *

(5) *Effective date.* Paragraph (g)(2)(i) of this section is effective for taxable years ending on or after the date these regulations are published as final regulations in the **Federal Register**. However, taxpayers may rely on paragraph (g)(2)(i) of this section for taxable years ending on or after May 12, 2003, by filing, in the time and manner otherwise provided in this section, a Form 3115, Application for Change in Accounting Method, for such a taxable year that reflects a section 481(a) adjustment period that is consistent with paragraph (g)(2)(i).

David A. Mader,

Assistant Deputy Commissioner of Internal Revenue.

[FR Doc. 03–11765 Filed 5–9–03; 8:45 am]

BILLING CODE 4830–01–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Chapter I

[FRL–7496–5]

Advisory Committee for Regulatory Negotiation Concerning All Appropriate Inquiry; Meeting

AGENCY: Environmental Protection Agency.

ACTION: Notice; Meeting of Negotiated Rulemaking Committee on All Appropriate Inquiry.

SUMMARY: The Environmental Protection Agency, as required by the Federal Advisory Committee Act (Pub. L. 92–463), is announcing the date and location of the next meeting of the Negotiated Rulemaking Committee on All Appropriate Inquiry.

DATES: The next meeting of the Advisory Committee on Regulatory Negotiation for All Appropriate Inquiry is scheduled for June 10 and June 11, 2003.

ADDRESSES: The meeting will take place in Room 1117A of the EPA East Building at 1201 Constitution Ave., NW., Washington, DC. The meeting is scheduled to begin at 8:30 and end at 4:30 both days. Dates and locations of subsequent meetings will be announced in later notices.

FOR FURTHER INFORMATION CONTACT: Persons needing further information should contact Patricia Overmeyer of EPA's Office of Brownfields Cleanup and Redevelopment, 1200 Pennsylvania Ave., NW., Mailcode 5105T, Washington, DC 20460, (202) 566–2774, or *overmeyer.patricia@epa.gov*.

SUPPLEMENTARY INFORMATION: The Federal Advisory Committee meeting is for the purpose of negotiating the contents of a proposed regulation setting federal standards and practices for conducting all appropriate inquiry. Under the Small Business Liability Relief and Brownfields Revitalization Act, EPA is required to develop standards and practices for carrying out all appropriate inquiry. The meeting will commence with a presentation on current public and privately-developed practices for conducting environmental site assessments. After the presentation, the Committee will begin substantive deliberations on the content of the proposed rule. Discussions and deliberations will center on the criteria established by Congress in the Small Business Liability Relief and Brownfields Revitalization Act and that are to be included in the proposed rulemaking.

All meetings of the Negotiated Rulemaking Committee are open to the public. There is no requirement for advance registration for members of the public who wish to attend and observe the meeting. Opportunity for the general public to address the Committee will be provided at the end of the Committee meeting agenda on each of the two days.

Dated: May 5, 2003.

Thomas P. Dunne,

Associate Assistant Administrator, EPA Office of Solid Waste and Emergency Response.

[FR Doc. 03–11755 Filed 5–9–03; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 62

[MS–200326b; FRL–7497–2]

Approval and Promulgation of State Plan for Designated Facilities and Pollutants: Mississippi

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA proposes to approve the section 111(d)/129 State Plan submitted by the Mississippi Department of Environmental Quality (MDEQ) for the State of Mississippi on August 29, 2002, for implementing and enforcing the Emissions Guidelines applicable to existing Commercial and Industrial Solid Waste Incinerators. The Plan was submitted by MDEQ to satisfy Federal Clean Air Act requirements. In the final rules section of this **Federal Register**, the EPA is approving the Mississippi State Plan as a direct final rule without prior proposal because the Agency views this as a noncontroversial plan and anticipates no adverse comments. A detailed rationale for the approval is set forth in the direct final rule. If no adverse comments are received in response to the direct final rule, no further activity is contemplated in relation to this proposed rule. If EPA receives adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this proposed rule. The EPA will not institute a second comment period on this rule. Any parties interested in commenting on this rule should do so at this time.

DATES: Comments must be received in writing by June 11, 2003.

ADDRESSES: All comments should be addressed to: Joydeb Majumder, EPA Region 4, Air Toxics and Monitoring Branch, 61 Forsyth Street, SW, Atlanta, Georgia 30303–3104. Copies of materials submitted to EPA may be examined during normal business hours at the above listed Region 4 location. The interested person wanting to examine this document should make an appointment with the office at least 24 hours in advance.

FOR FURTHER INFORMATION CONTACT: Joydeb Majumder at (404) 562–9121 or Heidi LeSane at (404) 562–9035.

SUPPLEMENTARY INFORMATION: For additional information see the direct final rule which is published in the rules section of this **Federal Register**.

Dated: April 30, 2003.

J.I. Palmer, Jr.,

Regional Administrator, Region 4.

[FR Doc. 03–11752 Filed 5–9–03; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 64

[CC Docket No. 94–129; FCC 03–42]

Implementation of the Subscriber Carrier Selection Changes Provisions of the Telecommunications Act of 1996, Policies and Rules Concerning Unauthorized Changes of Consumers' Long Distance Carriers; Correction

AGENCY: Federal Communications Commission.

ACTION: Proposed rule; correction.

SUMMARY: This document corrects the **SUPPLEMENTARY INFORMATION** section to the proposed rule published in the **Federal Register** of April 18, 2003, regarding Unauthorized Changes of Consumers' Long Distance Carriers. This correction revises the figures initially given in the **SUPPLEMENTARY INFORMATION** section.

FOR FURTHER INFORMATION CONTACT: Nancy Stevenson, 202–418–7039.

Correction

In the proposed rule FR Doc. 03–9119, beginning on page 19176, in the issue of April 18, 2003, make the following corrections, in the **SUPPLEMENTARY INFORMATION** section. On page 19177 in the second column, the first full paragraph, correct the following:

Number of Respondents: 28,414.

Estimated Time Per Response: 3.9 hours.

Frequency of Response: On occasion and biennial reporting requirements.

Total annual Burden: 111,076 hours.

Total Annual Costs: None.

Federal Communications Commission.

William F. Caton,

Deputy Secretary.

[FR Doc. 03–11724 Filed 5–9–03; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF DEFENSE

48 CFR Part 245

Defense Federal Acquisition Regulation Supplement; Government Property/Unique Identification/Item Marking

AGENCY: Department of Defense (DoD).

ACTION: Advance notice of proposed rulemaking and notice of public meeting.

SUMMARY: DoD is soliciting comments from both government and industry regarding potential changes to Defense Federal Acquisition Regulation Supplement (DFARS) policy on government property in the possession of contractors. These changes relate to item marking and valuing (providing cost information) for tangible items (*i.e.*, contractor acquired property and tangible item deliverables). DoD will hold a public meeting to discuss the potential changes and to hear the views of interested parties.

DATES: *Public Meeting:* The public meeting will be held at the address shown below on May 28, 2003, from 8:30 a.m. to 4 p.m., local time.

Submission of Names of Expected Attendees: The names of individuals expected to attend the public meeting should be provided to the point of contact shown below no later than May 21, 2003.

Submission of Comments: Written comments on the potential DFARS changes should be submitted to the address shown below no later than June 9, 2003.

ADDRESSES: *Public Meeting:* The public meeting will be held at Logistics Management Institute (LMI), 2000 Corporate Ridge, McClean, VA 22102–7805; telephone (703) 917–9800. Directions to LMI can be obtained at *http://www.lmi.org*.

Submission of Names of Expected Attendees: The names of individuals expected to attend the public meeting should be provided to Ms. Claudia Low, by telephone at (703) 917–7264; by FAX at (703) 917–7066; by e-mail at *clow@lmi.org*; or by mail at Logistics Management Institute, 2000 Corporate Ridge, McClean, VA 22102–7805. Walk-in attendance will be accommodated. However, pre-registration is preferred. The LMI general phone number is (703) 917–7800.

Submission of Comments: Interested parties should submit written comments to Mr. Michael Canales, by mail at OUSD(AT&L)DPAP(P), 3060 Defense Pentagon, Washington, DC 20301–3060;

by e-mail at *Michael.Canales@osd.mil;* or by FAX at (703) 614–1254.

FOR FURTHER INFORMATION CONTACT: Mr. Michael Canales, telephone (703) 695–8571.

SUPPLEMENTARY INFORMATION:

A. Draft Materials

The potential DFARS changes will be made available in draft form in Microsoft Word 6.0 text format at *http://www.acq.osd.mil/dpap*. The draft changes do not reflect a proposed rule, but are provided for discussion purposes only.

B. Background

During the past 6 months, DoD has issued a series of policy memorandums (available at *http://www.acq.osd.mil/dpap*) and held numerous meetings with government and industry personnel on this particular subject. In addition, DoD continues with its effort to transform the DFARS. As part of this effort, DoD is considering significant changes to DFARS part 245, Government Property. The purpose of this notice is to provide the public with a preliminary indication of changes under consideration, and to solicit public comments on those changes. After consideration of comments received in response to this notice and during the public meeting, DoD plans to publish two proposed DFARS rules, one on item marking and one on item value, for additional public comment.

Michele P. Peterson,

Executive Editor, Defense Acquisition Regulations Council.

[FR Doc. 03–11726 Filed 5–9–03; 8:45 am]

BILLING CODE 5001–08–P

Notices

Federal Register

Vol. 68, No. 91

Monday, May 12, 2003

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

[Docket No. TB–03–01]

Burley Tobacco Advisory Committee—Notice of Reestablishment of Committee

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Notice of reestablishment of committee.

SUMMARY: Notice is hereby given that the Secretary of Agriculture has reestablished the Burley Tobacco Advisory Committee for an additional period of 2 years.

FOR FURTHER INFORMATION CONTACT: John P. Duncan III, Deputy Administrator, Tobacco Programs, Agricultural Marketing Service (AMS), U.S. Department of Agriculture (USDA), STOP 0280, 1400 Independence Avenue, SW., Washington, DC 20250–0280; telephone number (202) 205–0567.

SUPPLEMENTARY INFORMATION: The Committee, which reports to the Secretary through the Under Secretary for Marketing and Regulatory Programs, recommends opening dates and selling schedules for the burley tobacco marketing areas which aid the Secretary in making an equitable apportionment and assignment of tobacco inspectors. The Committee consists of 39 members; 21 producer representatives, 10 receiving station/auction warehouse representatives, and 8 buyer representatives, representing all segments of the burley tobacco industry and meets at the call of the Secretary. The Secretary has determined that reestablishment of this Committee is in the public interest.

To ensure that recommendations of the Committee take into account the needs of diverse groups served by USDA, membership should include, to the extent practicable, persons with demonstrated ability to represent minorities, women, and persons with disabilities.

This notice is given in compliance with the Federal Advisory Committee Act (5 U.S.C. App.).

Dated: May 6, 2003.

Bill Hawks,

Under Secretary, Marketing and Regulatory Program.

[FR Doc. 03–11705 Filed 5–9–03; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

[Docket No. TB–03–05]

Flue-Cured Tobacco Advisory Committee—Notice of Reestablishment of Committee

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Notice of reestablishment of committee.

SUMMARY: Notice is hereby given that the Secretary of Agriculture has reestablished the Flue-Cured Tobacco Advisory Committee for an additional period of 2 years.

FOR FURTHER INFORMATION CONTACT: John P. Duncan III, Deputy Administrator, Tobacco Programs, Agricultural Marketing Service (AMS), U.S. Department of Agriculture (USDA), STOP 0280, 1400 Independence Avenue, SW., Washington, DC 20250–0280; telephone number (202) 205–0567.

SUPPLEMENTARY INFORMATION: The Committee, which reports to the Secretary through the Under Secretary for Marketing and Regulatory Programs, recommends opening dates and selling schedules for the flue-cured tobacco marketing areas which aid the Secretary in making an equitable apportionment and assignment of tobacco inspectors. The Committee consists of 12 producer representatives, 7 buyer representatives, 1 auction warehouse representative, and 1 marketing center representative, representing all segments of the flue-cured tobacco industry and meets at the call of the Secretary. The Secretary has determined that reestablishment of this Committee is in the public interest.

To ensure that recommendations of the Committee take into account the needs of diverse groups served by USDA, membership should include, to the extent practicable, persons with demonstrated ability to represent minorities, women, and persons with disabilities.

This notice is given in compliance with the Federal Advisory Committee Act (5 U.S.C. App.).

Dated: May 6, 2003.

Bill Hawks,

Under Secretary, Marketing and Regulatory Programs.

[FR Doc. 03–11706 Filed 5–9–03; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

[Docket No. 03–012–1]

Animal Welfare; Animal Fighting Venture Prohibition

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Notice.

SUMMARY: The Farm Security and Rural Investment Act of 2002 amended section 26 of the Animal Welfare Act (AWA) by adding specific provisions regarding the sale, purchase, transportation, delivery, or receipt of live birds in commerce for participation in animal fighting ventures in States where the practice is permitted by law. The Animal and Plant Health Inspection Service is publishing this notice in order to increase the public visibility of these additional AWA provisions regarding animal fighting venture prohibitions.

FOR FURTHER INFORMATION CONTACT: Dr. Jerry DePoyster, Senior Veterinary Medical Officer, Animal Care, APHIS, 4700 River Road Unit 84, Riverdale, MD 20737–1234; (301) 734–7586.

SUPPLEMENTARY INFORMATION:

Background

The Animal Welfare Act (7 U.S.C. 2131 *et seq.*, referred to below as the AWA) authorizes the Secretary of Agriculture to promulgate standards and other requirements governing the humane handling, care, treatment, and transportation of certain animals by

dealers, research facilities, exhibitors, carriers and intermediate handlers. The Secretary has delegated responsibility for administering the AWA to the Administrator of the Animal and Plant Health Inspection Service (APHIS). Within APHIS, the responsibility for administration of the AWA has been delegated to Animal Care. Regulations established under the AWA are contained in 9 CFR chapter 1, subchapter A, parts 1, 2, 3, and 4. Part 1 contains definitions for terms used in parts 2, 3, and 4; part 2 contains general requirements for regulated parties; part 3 contains specific requirements for the care and handling of certain animals; and part 4 contains rules of practice for the enforcement of the AWA.

Section 26 of the AWA (7 U.S.C. 2156) concerns animal fighting ventures. Paragraph (a) of that section has provided that "[i]t shall be unlawful for any person to knowingly sponsor or exhibit an animal in any animal fighting venture to which any animal was moved in interstate or foreign commerce." However, the Farm and Security Rural Investment Act of 2002 (Pub. L. 107–171, signed into law on May 13, 2002), revised paragraph (a) to read:

(a) SPONSORING OR EXHIBITING AN ANIMAL IN AN ANIMAL FIGHTING VENTURE.—

(1) IN GENERAL.—Except as provided in paragraph (2), it shall be unlawful for any person to knowingly sponsor or exhibit an animal in an animal fighting venture, if any animal in the venture was moved in interstate or foreign commerce.

(2) SPECIAL RULE FOR CERTAIN STATES.—With respect to fighting ventures involving live birds in a State where it would not be in violation of the law, it shall be unlawful under this subsection for a person to sponsor or exhibit a bird in the fighting venture only if the person knew that any bird in the fighting venture was knowingly bought, sold, delivered, transported, or received in interstate or foreign commerce for the purpose of participation in the fighting venture.

To increase the public visibility of these new AWA provisions, which are to become effective on May 13, 2003, APHIS is publishing this notice pursuant to its authority under the AWA.

Done in Washington, DC, this 6th day of May, 2003.

Peter Fernandez,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 03–11708 Filed 5–9–03; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF AGRICULTURE

Farm Service Agency

Commodity Credit Corporation

Information Collection; Noninsured Crop Disaster Assistance Program

AGENCY: Farm Service Agency, USDA.

ACTION: Notice; request for comment.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, the Farm Service Agency and the Commodity Credit Corporation are seeking comments from all interested individuals and organizations on the extension of a currently approved information collection in support of the Noninsured Crop Disaster Assistance Program (NAP). The information collected is needed to determine eligibility to obtain NAP assistance.

DATES: Comments must be received on or before July 11, 2003 to be assured of consideration. Comments received after that date will be considered to the extent practicable.

ADDRESSES: Comments concerning this notice should be addressed to John Newcomer, Program Specialist, Production, Emergencies and Compliance Division, Noninsured Assistance Program Branch, Farm Service Agency, USDA, Mail Stop 0517, 1400 Independence Avenue, SW., Washington, DC 20250–0522 and to the Desk Officer for Agriculture, Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503. Comments also may be submitted by e-mail to: *John_Newcomer@usda.gov.*

FOR FURTHER INFORMATION CONTACT: John Newcomer, Program Specialist, Noninsured Assistance Program Branch, (202) 720–5172.

SUPPLEMENTARY INFORMATION:

Description of Information Collection

Title: Noninsured Crop Disaster Assistance Program.

OMB Number: 0560–0175.

Expiration Date of Approval: September 30, 2003.

Type of Request: Extension with revision.

Abstract: The Noninsured Crop Assistance Program is authorized under 7 U.S.C. 7333 and implemented under regulations issued at 7 CFR part 1437. The NAP is administered under the general supervision of the Executive Vice-President of CCC (who also serves as Administrator, FSA), and is carried out by FSA State and County committees. The information collected allows CCC to provide assistance under NAP for losses of commercial crops or other agricultural commodities (except livestock) for which catastrophic risk protection under 7 U.S.C. 1508 is not available, and that is produced for food or fiber. Additionally, NAP provides assistance for losses of floriculture, ornamental nursery, Christmas tree crops, turfgrass sod, seed crops, aquaculture (including ornamental fish), sea oats and sea grass, and industrial crops. The information collected is necessary to determine whether a producer and crop or commodity meet applicable conditions for assistance and to determine compliance with existing rules. Producers must annually: (1) Request NAP coverage by completing an application for coverage and paying a service fee by the CCC-established application closing date; (2) file a current crop-year report of acreage for the covered crop or commodity; and (3) certify production of each covered crop or commodity. When damage to a covered crop or commodity occurs, producers must file a notice of loss with the local FSA administrative county office within 15 calendar days of occurrence or 15 calendar days of the date damage to the crop or commodity becomes apparent. Producers must also file an application for payment and certification of income with the local FSA administrative county office.

Estimate of Burden: Public reporting burden for this information collection is estimated to average 0.6 hours per response.

Type of Respondents: Producers of commercial crops or other agricultural commodities (except livestock).

Estimated Annual Number of Respondents: 497,000.

Estimated Annual Number of Responses per Respondent: 3.

Estimated Total Annual Burden on Respondents: 3,521,258.

Comment is invited on: (1) Whether this collection of information is necessary for the stated purposes and the proper performance of the functions of the agency, including whether the information will have practical or scientific utility; (2) the accuracy of the agency's estimate of the burden of the collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including the use of automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

All comments received in response to this notice, including names and addresses when provided, will be a matter of public record. Comments will be summarized and included in the submission for Office of Management and Budget approval.

Signed at Washington, DC, on May 5, 2003.

James R. Little,

Administrator, Farm Service Agency, and Executive Vice-President, Commodity Credit Corporation.

[FR Doc. 03–11692 Filed 5–9–03; 8:45 am]

BILLING CODE 3410–05–P

COMMODITY CREDIT CORPORATION

Sunshine Act Meeting

TIME AND DATE: 3 p.m., May 15, 2003.

PLACE: Room 104–A, Jamie Whitten Building, U.S. Department of Agriculture, Washington, DC.

STATUS: Open.

MATTERS TO BE CONSIDERED:

1. Approval of the Minutes of the Special Open meeting of May 17, 1999.

2. Memorandum re: Update of Commodity Credit Corporation (CCC)—Owned Inventory.

3. Memorandum re: Commodity Credit Corporation Financial Condition Report.

4. Memorandum re: Commodity Credit Corporation Stocks Available for Donation Overseas Under Section 416(b) of the Agricultural Act of 1949, as Amended, for Fiscal Years 1998 through 2003.

5. Docket A–POL–98–007, Revision. 1, re: Commodity Credit Corporation Claims Policy.

6. Briefing re: Status of the Specialty Crop Grant Program, Agricultural Economic Assistance Act (Pub. L. 107–25), which involves authorized Commodity Credit Corporation funding of $169 million to states.

FOR FURTHER INFORMATION CONTACT: Monique B. Randolph, Assistant Secretary, Commodity Credit Corporation, Stop 0571, U.S. Department of Agriculture, 1400 Independence Avenue SW., Washington, DC 20250–0571.

Dated: May 8, 2003.

Thomas B. Hofeller,

Secretary, Commodity Credit Corporation.

[FR Doc. 03–11949 Filed 5–8–03; 3:55 pm]

BILLING CODE 3410–05–P

DEPARTMENT OF AGRICULTURE

Farm Service Agency

Request for Extension of a Currently Approved Information Collection

AGENCY: Farm Service Agency, USDA.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces that the Farm Service Agency (FSA) intends to request an extension for a currently approved information collection in support of the Agricultural Foreign Investment Disclosure Act of 1978 (AFIDA).

DATES: Comments on this notice must be received on or before July 11, 2003 to be assured of consideration.

FOR FURTHER INFORMATION CONTACT: Patricia A. Blevins, Agricultural Foreign Investment Specialist, Natural Resources Analysis Group, Economic and Policy Analysis Staff, USDA, FSA, STOP 0531, 1400 Independence Avenue, SW., Washington, DC 20250–0531, (202) 720–0604.

SUPPLEMENTARY INFORMATION:

Title: Agricultural Foreign Investment Disclosure Act Report.

OMB Control Number: 0560–0097.

Expiration Date of Approval: October 31, 2003.

Type of Request: Extension of a currently approved information collection.

Abstract: AFIDA requires foreign persons who hold, acquire, or dispose of any interest in U.S. agricultural land to report the transactions to the FSA on an 2 AFIDA report. The information so collected is made available to States. Also, although not required by law, the information collected from the AFIDA reports is used to prepare annual report to Congress and the President concerning the effect of foreign investment upon family farms and rural communities so that Congress may review the annual report and decide if further regulatory action is required.

Estimate of Burden: Public reporting burden for this collection of information is estimated to average .5 hours per response.

Respondents: Foreign investors, corporate employees, attorneys or farm managers.

Estimate Number of Respondents: 4,375.

Estimate Number of Responses per Respondent: 1.

Estimated Number of Responses: 4,375.

Estimated Total Annual Burden on Respondents: 2,108 hours.

Proposed topics for comment include: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of burden including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility and clarity of the information collected; or (d) way to minimize the burden of the collection of the information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Comments should be sent to the Desk Officer for Agriculture, Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503 and to Patricia A. Blevins, Agricultural Foreign Investment Specialist, Natural Resources Analysis Group, Economic and Policy Analysis Group, USDA, FSA, STOP 0531, 1400 Independence Avenue, SW., Washington, DC 20250–0531, (202) 720–0604.

All comments to this notice will be summarized and included in the request for OMB approval. All comments will also become a matter of public record.

Signed at Washington, DC, on May 5, 2003.

James R. Little,

Administrator, Farm Service Agency.

[FR Doc. 03–11691 Filed 5–9–03; 8:45 am]

BILLING CODE 3410–05–P

DEPARTMENT OF AGRICULTURE

Forest Service

Information Collection; Advertised Timber for Sale

AGENCY: Forest Service, USDA.

ACTION: Notice; request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, the Forest Service is seeking comments from all interested individuals and organizations on the extension of the currently approved collection for from FS–2400–14, Bid for Advertised Timber, and form, FS–2400–42a, National Forest Timber for Sale (Advertisement and Short-Form Bid). The agency uses the collected information to ensure that National Forest System timber is sold at not less than appraised value; that bidders meet specific criteria when submitting a bid; and that anti-trust violations do not occur during the bidding process.

DATES: Comments must be received in writing on or before July 11, 2003 to be assured of consideration. Comments received after that date will be considered to the extent practicable.

ADDRESSES: Comments concerning this notice should be addressed to the Director, Forest and Rangeland Management Staff, Mail Stop 1105, Forest Service, USDA, 1400 Independence Avenue, SW., Washington, DC 20090–1105. Comments also may be submitted via facsimile to (202) 205–1045 or by e-mail to: *fm/wo@fs.fed.us.*

The public may inspect comments received at the Office of the Director of Forest and Rangelands Management, 201 14th Street, SW., Washington, DC. Callers are urged to call ahead to facilitate entrance into the buildings to (202) 205–0893.

FOR FURTHER INFORMATION CONTACT: Rex Baumback, Forest and Rangelands Management Staff, at (202) 205–0855.

SUPPLEMENTARY INFORMATION:

Background

Pursuant to statutory requirements at 16 U.S.C. 472a, the Secretary of Agriculture must advertise sales of all National Forest System timber or forest products exceeding $10,000 in appraised value, unless (1) extraordinary conditions exist as defined by regulation; (2) select bidding methods ensure open and fair competition; (3) select bidding methods ensure that the Federal Government receives not less than appraised value of the timber or forest product; and (4) bidding patterns are monitored for evidence of unlawful bidding practices.

Pursuant to the Forest Service Small Business Timber Sale Set-Aside Program, development in cooperation with the Small Business Administration, Forest Service regulations at 36 CFR 223.84 require that the Forest Service bid form used by potential timber sale bidders include provisions for small business concerns, such as (1) electing road construction by the Forest Service; (2) certifying as to their small business status; and (3) being informed of other road construction requirements in the bid and/or contract.

FS–2400–14–Bid for Advertised Timber and FS–2400–42a–National Forest Timber Sale implement the same statues, policies, and regulations and collect similar information from the same applicant. The data gathered in this information collection is not available from other sources.

Description of Information Collection

1. *Title:* FS–2400–42a, National Forest Timber for Sale (Advertisement and Short-Form Bid).

OMB Number: 0596–0066.

Expiration Date of Approval: May 31, 2003.

Type of Request: Extension.

Abstract: The data collected are used by the agency to ensure that National Forest System timber is sold at not less than appraised value, that bidders meet specific criteria when submitting a bid, and that anti-trust violations do not occur during the bidding process.

Form FS–2400–42a–National Forest Timber for Sale is used to solicit and receive bids on short-notice timber sales advertised for less than 30 days and for less than $10,000 in advertised value. Respondents are bidders on National Forest System timber sales. Forest Service sale officers mail bid forms to potential bidders, and bidders return the completed forms, dated and signed, to the Forest Service sale officer.

Before submitting a bid, bidders usually, but are not required to, inspect the sale area, review the requirements of the sample contract, and take other steps as may be reasonably necessary to asscertain the location, estimated volumes, and operating costs of the offered timber or forest product. Each bidder must include the following information: The price bid for the timber; the bidder's name, address, and signature; the bidder's tax identification number, certification that the bidder is not debarred, suspended, proposed for debarment, or voluntarily excluded from bidding on Government contracts; and that the bidder has not defaulted on any contracts within the last 3 years.

The tax identification number of each bidder is entered into an automated bid monitoring system, which is used to determine if speculative bidding or unlawful bidding practices are occurring. The tax identification number also is used to facilitate electronic payments to the purchaser. The data gathered in this information collection is not available from other sources.

Estimate of Burden: 130 minutes.

Type of Respondents: Individuals, large and small businesses, and corporations bidding on National Forest timber sales.

Estimated Number of Respondents: 5,000.

Estimated Number of Responses per Respondent: 3.

Estimated Total Annual Burden on Respondents: 32,505 hours.

2. Title: FS–2400–14, Bid For Advertised Timber.

OMB Number: 0596–0066.

Expiration Date of Approval: May 31, 2003.

Type of Request: Extension.

Abstract: The data collected will be used by the agency to ensure that National Forest System timber will be sold at not less than appraised value, that bidders will meet specific criteria when submitting a bid, and that anti-trust violations will not occur during the bidding process. This form will be used for soliciting and receiving bids on sales advertised for 30 days or longer and on sales greater than $10,000 in advertised value.

Respondents will be bidders on National Forest System timber sales. Forest Service sale officers will mail bid forms to potential bidders, and bidders will return the completed forms, dated and signed, to the Forest Service sale officer. Before submitting the bid, the bidder usually will inspect the sale area, review the requirements of the sample contract, and take other steps as may be reasonably necessary to ascertain the location, estimated volumes, and operating costs of the offered timber or forest product.

Each bidder will have to include the following information: (1) The price bid for the timber; (2) the bidder's name, address, and signature; (3) the bidder's tax identification number; (4) the amount and type of the bid guarantee; (5) certification that the bidder has not paid a contingent fee to someone to obtain the contract for him or her, or retained any person or company to secure the contract; (6) certification that the bidder will meet the responsibility requirements at Title 36 of the Code of Federal Regulations (CFR), § 223.101; (7) certification that the bidder will complete the consideration requirements of the contract; (8) certification that the bidder has not been debarred, suspended, proposed for debarment, or voluntarily excluded from conducting business with the government; (9) certification that the bidder has not been indicted or has not had a criminal or civil conviction within a 3-year period; (10) certification that the bidder has not defaulted on a public contract or agreement in the last 3 years; (11) information on whether the bidder has participated in a previous contract covered by section 202 of Executive Order 11246, Non-discrimination in Employment; (12) certification that the bidder has independently determined the bid price; (13) selection of the road construction option; (14) certification of a firm offer; (15) certification that the bidder has expressly adopted the terms of the bid and sample contract; (16) certification that the bidder has inspected the sale area and certifies that he or she understands that the Forest Service does not guarantee the amount or quality of the timber or forest product; (17) certification that the bidder will comply with the Forest Resources Conservation and Shortage Relief Act of 1990 as required by 36 CFR 223.87; (18) certification that the bidder has not been or will not be affiliated with the original purchaser of a contract on a timber sale that is being re-offered, when the original contract was terminated for breach or failure to cut; and (19) a list provided by the bidder of affiliates that control or have the power to control the bidder's company.

The tax identification number of each bidder will be entered into a computerized bid monitoring system. This system will be used to determine if speculative bidding or if unlawful bidding practices are occurring. The tax identification number also will be used to facilitate electronic payments to the purchaser. The data gathered in this information collection are not available from other sources.

Estimate of Burden: 370 minutes.

Type of Respondents: Individuals, large and small businesses, and corporations bidding on National Forest timber sales.

Estimated Number of Respondents: 500.

Estimated Number of Responses per Respondent: 2.0.

Estimated Total Annual Burden on Respondents: 6,167 hours.

Comment Is Invited

The agency invites comments on the following: (a) Whether the proposed collection of information is necessary for the stated purposes or the proper performance of the functions of the agency, including whether the information shall have practical or scientific utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including the use of automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Use of Comments

All comments received in response to this notice, including name and address when provided, will be summarized and included in the request for Office of Management and Budget approval. All comments also will become a matter of public record.

Dated: April 23, 2003.

Abigail R. Kimbell,

Associate Chief, National Forest System.

[FR Doc. 03–11682 Filed 5–9–03; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Forest Service

Caribou-Targhee National Forest, Idaho; Aspen Range Timber Sale/ Vegetation Treatment

AGENCY: Forest Service, USDA.

ACTION: Notice of intent to prepare an environmental impact statement.

SUMMARY: The Soda Springs Ranger District, Caribou-Targhee National Forest will be preparing an Environmental Impact Statement (EIS) to analyze the effects of commercial harvest of conifer trees, prescribed fire, realignment or surface improvement of old roads, and construction of fuel breaks in the Aspen Range analysis area. The legal description for this proposal is T. 8 S., R. 43 E., sections 27, 28, 29, 30, 31, 32, 33 and 34. T. 9 S., R. 43 E., sections 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 17 and 18 of the Boise Meridian, Caribou County.

DATES: Written comments concerning the scope of the analysis must be received within 30 days of the date of publication of this notice in the **Federal Register**. The draft environmental impact statement is expected October 2003 and the final environmental impact statement is expected February 2004.

ADDRESSES: Send written comments to Soda Springs Ranger District, Attn: David Whittekiend, 421 W. 2nd S., Soda Springs, ID 83276.

FOR FURTHER INFORMATION CONTACT: Questions concerning the proposed action and EIS should be directed to Doug Heyrend, Forester, (208) 547–4356.

SUPPLEMENTARY INFORMATION:

Purpose and Need for Action

The primary purpose of the project is to:

- Provide sawtimber on a sustained-yield basis.
- Release aspen from competing conifer and convert back to early seral species.
- Reduce conifer stand densities to improve vigor.
- Reduce fuel loads in the project area and stands bordering residential homes/cabins along the northwest forest boundary of the Trail Canyon area.
- Reduce sediment and maintenance on roads in project area.

Proposed Action

The proposal is to tractor harvest 881 acres of Douglas-fir, aspen/Douglas-fir and lodgepole pine stands using a variety of silviculture prescriptions. The harvest would be followed by 1,350 acres of prescribed fire to increase aspen cover types and reduce fuel loads in the 12,000 acre analysis area. The harvest volume is anticipated to be about 4.5 million board feet from two timber sales.

Irregular shelterwood/aspen regeneration silvicultural treatments proposed for 590 acres would be the dominant harvest prescription. The prescription would provide flexibility for aspen regeneration, snag preservation, remnant old growth retention and old growth replacement in situations of Douglas-fir bark beetle mortality. The objective for aspen regeneration is to incorporate the majority of the aspen clone for treatment. All aspen treatment areas would use prescribed fire for fuels treatment and site preparation to simulate the natural disturbance for aspen vegetative reproduction by suckers. Larger units that utilize coarse woody debris as barriers increase the success of aspen regeneration by having better dispersion of wild and domestic browsing/grazing animals across treated areas. Temporarily fencing portions of treated areas may be required to ensure regeneration.

Stand improving commercial thinnings and shelterwoods are planned for 196 acres. The focus of harvest activity would be on removing suppressed and intermediate trees to provide crown spacing and growing room (15–30 foot spacing) for residual dominant trees. Natural regeneration will occur over time but would not be immediately necessary to meet stocking standards. Machine fuels treatment (piling) would take place in the 55 acres of shelterwood prescription stands closest to the archery range and a 39 acre stand in North Sulfur Canyon. Prescribed broadcast fire would be used for site preparation of early seral vegetation and fuel treatment on the remaining 102 acres.

The only lodgepole stand planned for harvest is behind the archery range (this area is under special use permit to the Caribou Archers).

A seedtree/improvement cut is proposed for the 39 acre stand.

Seedtrees would provide natural regeneration in areas of stand decline and the improvement cut to ensure visual protection along the archery range corridor. Site preparation and fuels treatment (piling) for the stand would be mechanical.

Prescribed broadcast fire would be used in most mechanical treatments as well as some naturally occurring stands to reduce fuels and convert vegetation to early seral species. Standing dead and cull green material is expected to replace down dead woody debris consumed by broadcast burning. Generally the window for burning in this area is late spring and early fall depending on weather patterns. Firelines would be mechanically constructed using as many natural openings, ridge tops, roads and terrain barriers as possible. The stands adjacent to the archery range and residential area would be mechanically treated without a broadcast fire.

A constructed quarter mile fuelbreak along the northwest forest boundary of the analysis area would meander across the north edge of the 56 acre stand using as many natural openings and barriers as possible. The proposal is to remove standing dead, down dead, small diameter trees, dense brush and provide crown spacing between mature trees. Pockets of small-diameter conifer encountered within the fuelbreak would be thinned to 14 to 20 foot spacing, and pruned to remove ladder fuels.

Heavy equipment will only be used on ground less than 40 percent slope. Merchantable logs within the fuelbreak on feasible tractor ground would be skidded up hill to a landing. All unmerchantable material would be hand or machine piled and burned in the fall following substantial snow accumulation. Work in the riparian area would be completed by hand with chainsaws. The stand is not proposed for broadcast burning.

Two miles of existing old system roads (20574, 20126 & 20297) are proposed for realignment to decrease ongoing erosion damage, maintenance costs and to facilitate harvest equipment. Up to 6.2 miles of existing and constructed temporary road would be required for harvest activities. All constructed temporary roads and old road segments that have been replaced with new alignment would be fully obliterated. Road segments that are currently managed as a multiple use trails will be retained. A thumb bucket excavator will be used to obliterate unnecessary roads. Road obliteration would consist of recontouring slopes, channels and incorporating debris across the prism followed by seeding with the appropriate native mix.

Short sections of gravel surface replacement would be needed throughout the sale area.

Responsible Official

The responsible official for this decision is Jerry Reese, Caribou-Targhee National Forest Supervisor.

Nature of Decision To Be Made

Should timber harvest, road construction, road obliteration, fuel treatments, vegetation treatments and road management activities be implemented in the project area at this time, and if so, under what conditions?

From a variety of site-specific alternatives, based on the silvicultural needs for portions of stands or entire stands, one alternative will be selected.

Comment Requested

This notice of intent initiates the scoping process which guides the development of the environmental impact statement. The Forest Service invites written comments and suggestions on the issues related to the proposal and the area being analyzed. Information received will be used in preparation of the draft EIS and Final EIS. For most effective use, comments should be submitted to the Forest Service within 30 days from the date of publication of this Notice in the **Federal Register**.

Agency Representatives and other interested people are invited to visit with Forest Service officials at any time during the EIS process. Two specific time periods are identified for the receipt of formal comments on the analysis. The two comments periods are, (1) during the scoping process, the next 30 days following publication of this Notice in the **Federal Register**, and (2) during the formal review of the Draft EIS.

Early Notice of Importance of Public Participation in Subsequent Environmental Review

A draft environmental impact statement will be prepared for comment. The comment period on the draft environmental impact statement will be 45 days from the date the Environmental Protection Agency publishes the notice of availability in the **Federal Register**.

The Forest Service believes, at this early stage, it is important to give reviewers notice of several court rulings related to public participation in the environmental review process. First, reviewers of draft environmental impact statements must structure their participation in the environmental review of the proposal so that it is meaningful and alerts an agency to the reviewer's position and contentions. *Vermont Yankee Nuclear Power Corp.* v. *NRDC*, 435 U.S. 519, 553 (1978). Also, environmental objections that could be raised at the draft environmental impact statement stage but that are not raised until after completion of the final environmental impact statement may be waived or dismissed by the courts. *City of Angoon* v. *Hodel*, 803 F.2d 1016, 1022 (9th Cir. 1986) and *Wisconsin Heritages, Inc.* v. *Harris*, 490 F. Supp. 1334, 1338 (E.D. Wis. 1980). Because of these court rulings, it is very important that those interested in this proposed action participate by the close of the 45 day comment period so that substantive comments and objections are made available to the Forest Service at a time when it can meaningfully consider them and respond to them in the final environmental impact statement.

To assist the Forest Service in identifying and considering issues and concerns on the proposed action, comments on the draft environmental impact statement should be as specific as possible. It is also helpful if comments refer to specific pages or chapters of the draft statement. Comments may also address the adequacy of the draft environmental impact statement or the merits of the alternatives formulated and discussed in the statement. Reviewers may wish to refer to the Council on Environmental Quality Regulations for implementing the procedural provisions of the National Environmental Policy Act at 40 CFR 1503.3 in addressing these points.

Comments received, including the names and addresses of those who comment, will be considered part of the public record on this proposal and will be available for public inspection.

(Authority: 40 CFR 1501.7 and 1508.22; Forest Service Handbook 1909.15, Section 21)

Dated: March 11, 2003.

Jerry B. Reese,

Caribou-Targhee Forest Supervisor.

[FR Doc. 03–11731 Filed 5–9–03; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Rural Business-Cooperative Service

Request for Proposals; Fiscal Year 2003 Funding Opportunity for 1890 Land Grant Institutions Rural Entrepreneurial Program Outreach Initiative

AGENCY: Rural Business-Cooperative Service, USDA.

ACTION: Notice.

SUMMARY: The Rural Business-Cooperative Service (RBS) announces the availability of approximately $1.5 million in competitive cooperative agreement funds allocated from fiscal year (FY) 2003 budget. RBS hereby requests proposals from the 1890 Land Grant Universities and Tuskegee University (1890 Institutions) interested in applying for competitively awarded cooperative agreements for support of RBS' mission goals and objectives of outreach to small rural communities and to develop programs that will develop future entrepreneurs and businesses in rural America in those communities that have the most economic need. These programs must provide sustainable development that is in keeping with the needs of the community and designed to help overcome current identified economic problems. Proposals in both traditional and nontraditional business enterprises are encouraged. The initiative seeks to create a working partnership between the 1890 Institutions and RBS through cooperative agreements.

Grants will be made for proposals found to be meritorious by a peer review panel to the extent that funds are available. However, there is no commitment by RBS to fund any particular proposal or to make a specific number of awards.

Eligible applicants must provide matching funds in support of this project. Matching funds must equal at least 25 percent of the amount provided by RBS in the cooperative agreement. This notice lists the information needed to submit on application for these funds.

DATES: Cooperative agreement applications must be received by 4 p.m. July 11, 2003. Proposals received after July 11, 2003, will not be considered for funding.

ADDRESSES: Send proposals and other required materials to Mr. Edgar L. Lewis, Program Manager, Rural Business-Cooperative Service, USDA, Stop 3252, Room 4221, 1400 Independence Avenue, SW., Washington, DC 20250–3252. Telephone: (202) 690–3407. e-mail: *edgar.lewis@usda.gov.*

FOR FURTHER INFORMATION CONTACT: Mr. Edgar L. Lewis, Program Manager, Rural Business-Cooperative Service, USDA, Stop 3252, Room 4221, 1400 Independence Avenue, SW., Washington, DC 20250–3252. Telephone: (202) 690–3407. e-mail: *edgar.lewis@usda.gov.*

SUPPLEMENTARY INFORMATION:

General Information

This solicitation is issued pursuant to section 607(b)(4) of the Rural Development Act of 1972, as amended by section 759A of the Federal Agriculture Improvement and Reform Act of 1996. Also, this solicitation is issued pursuant to Executive Order 13256 (February 12, 2002),—"President's Board of Advisors on Historically Black Colleges and Universities."

RBS was established by the Department of Agriculture Reorganization Act of 1994. The mission of RBS is to enhance the quality of life for rural Americans by providing leadership in building competitive businesses including sustainable cooperatives that can prosper in the global marketplace. RBS meets these goals by: investing financial resources and providing technical assistance to businesses and cooperatives located in rural communities and establishing strategic alliances and partnerships that leverage public, private, and cooperative resources to create jobs and stimulate rural economic activity.

The primary purpose of the 1890 Land Grant Institutions Rural Entrepreneurial Program Outreach Initiative is to promote Rural Development programs, provide outreach and technical assistance, and encourage and assist underserved rural community residents to participate in the USDA-Rural Development programs, especially those administered by RBS. This outreach initiative is also designed to develop programs that will develop future entrepreneurs and businesses in rural America in those communities that have the most economic need. These programs must provide sustainable development that is in keeping with the needs of the community and are designed to help overcome current identified economic problems. Proposals in both traditional and nontraditional business enterprises are encouraged. The initiative seeks to create a working partnership through cooperative agreements between 1890 Institutions and RBS, to develop programs to assist future entrepreneurs and businesses.

RBS plans to use cooperative agreements with the 1890 Institutions to strengthen the capacity of these communities to undertake innovative, comprehensive, citizen led, long-term strategies for community and economic development. The cooperative agreements will be for an outreach effort to promote RBS programs in targeted underserved rural communities and shall include, but are not limited to:

(a) Developing a program of business startup and technical assistance for assisting with new business development, business planning, franchise startup and consulting, business expansion studies, marketing analysis, cashflow management, and seminars and workshops for small businesses;

(b) Developing management and technical assistance plans that will:

(1) Assess small business alternatives to traditional agricultural and other natural resource based industries;

(2) Assist in the development of business plans or loan packages, marketing, or bookkeeping;

(3) Assist and train small businesses in customer relations, product development, or business planning and development.

(c) Assessing and conducting feasibility studies of local community weaknesses and strength, feasible alternatives to agricultural production, and the necessary infrastructure to expand or develop new or existing businesses;

(d) Providing community leaders with advice and recommendations regarding best practices in community economic development stimulus programs for their communities;

(e) Conducting seminars to disseminate information to stimulate business and economic development in selected rural communities; and

(f) Developing computer technology outreach and establishing and maintaining a computer network system, linking community leaders and residents to available economic development information.

To obtain application instructions and all required forms, please contact the Cooperative Services Program at (202) 690–3407 or FAX (202) 690–2723. The application forms and instructions may also be requested via e-mail by sending a message with your name, mailing address, and phone number to *edgar.lewis@usda.gov*. The application forms and instructions will be mailed to you (not e-mailed or faxed) as quickly as possible. When calling or e-mailing the Cooperative Services Program,

please indicate that you are requesting application forms and instructions for the FY 2003 1890 Land Grant Institutions Rural Entrepreneurial Program Outreach Initiative. The application forms may also be located on the Rural Business-Cooperative Service website: *http://www.rurdev.usda.gov/rbs/oa/1890.htm.*

Applicants are encouraged to closely examine the evaluation criteria noted in the "Evaluation Criteria and Weights" section of this notice as proposals are prepared.

Use of Funds

Funds may be used to pay up to 75 percent of the costs for carrying out relevant projects. Applicants' contributions may be in cash or in-kind contributions and must be from non-Federal funds. Funds may not be used to: (a) Pay more than 75 percent of relevant project or administrative costs; (b) pay costs of preparing the application package; (c) fund political activities; (d) pay costs prior to the effective date of the cooperative agreement; (e) provide for revolving funds; (f) do construction; (g) conduct any activities where there is or may appear to be a conflict of interest; or (h) purchase real estate.

Based on the Consolidated Appropriations Resolution, 2003, (Pub. L. 108–7, Feb. 20, 2003), "No funds appropriated by this Act may be used to pay indirect cost rates on cooperative agreements or similar arrangements between the United States Department of Agriculture and nonprofit institutions in excess of 10 percent of the total cost of the agreement when the purpose of such cooperative arrangement is to carry out programs of mutual interest between the two parties."

Available Funds and Award Limitations

The total amount of funds available in FY 2003 for support of this program is approximately $1.5 million. Applicants should request a budget commensurate with the project proposed. Total funds to be awarded will be distributed to the 1890 Institutions, competitively, for the purpose of conducting outreach and providing technical assistance to targeted small rural communities. This outreach initiative includes, but is not limited to, technical assistance in economic and community development, feasibility studies, research, market development, loan packaging, conducting workshops and seminars in the area of business and economic development, and developing and providing access to computer technology and website development to the targeted population and communities. The actual number of cooperative agreements funded will depend on the quality of proposals received and the amount of funding requested. Maximum amount of Federal funds awarded for any one proposal will be $150,000. It is anticipated that a typical award would range from $75,000 to $150,000. A larger award may be granted at the RBS Administrator's discretion.

Eligible Applicants and Beneficiaries

Eligible applicants are 1890 Institutions. Eligible applicants must provide matching funds equal to at least 25 percent of the amount provided by RBS in the cooperative agreement. Matching funds must be spend in proportion to the spending of funds received from the cooperative agreement. The applicant and assigned personnel must also have expertise and experience in providing the recommended assistance. Applicants should also have a previous record of successful implementation of similar projects and must have the expertise in the use of electronic network technologies and/or a business information system network website.

Eligible beneficiaries must be located in a rural area as defined in 7 U.S.C. 1991(a)(b) with economic need. Economic need can be demonstrated by the methods delineated in the "Evaluation Criteria and Weights" section of this Notice. Location in an Empowerment Zone, Enterprise Community, Champion Community, Federally-recognized Tribal Indian groups or other Federally declared economic depressed or disaster area is sufficient evidence of economic need. Eligible beneficiaries must also be located in communities that show significant community support for the proposal. Preference will be given for projects that operate in a multi-county service area.

Award recipients may subcontract to organizations not eligible to apply provided such organizations are necessary for the conduct of the project; however, the subcontracted amount may not exceed one-third of the total Federal award.

Methods for Evaluating and Ranking Applications

Each application will be evaluated in a two-part process. First, each application will be screened to ensure that it meets the administrative requirements as set forth in this Notice of Request for Proposals. Second, a number of expert reviewers will conduct a merit review based on the "Evaluation Criteria and Weights" section of this notice. The review of the individual reviewers will be used by RBS to determine which application will be recommended to the RBS Administrator for funding. Evaluated applications will be ranked based on merit. The RBS Administrator will make final approval for those applications recommended for an award. If there is a tie score after the proposals have been rated and ranked, the tie will be resolved by the proposal with the largest matching funds as a percent of the Federal amount of the award.

Evaluation Criteria and Weights

Proposals will be evaluated using the following seven criteria. Each criterion is given the weight value shown with total points equal to 100. The points assigned provide an indication of the relative importance of each section and will be used by the reviewers in evaluating the proposals. Points do not have to be awarded by RBS for each criterion. After all proposals have been evaluated, the Administrator may award an additional 10 discretionary points to any proposal to obtain the broadest geographic dispersion of the funds, insure a broad diversity of project proposals, or insure a broad diversity in the size of the awards.

(a) *Support of Local Community (Up to 10 points)*—Proposals should have the support of local government, educational, community, and business groups. Higher points will be awarded for proposals demonstrating broad support from all components of the communities served. Broad support is demonstrated by tangible contribution, such as volunteering human capital, computers, transportation, and/or co-sponsoring workshops and conferences. Points will be awarded based on the level of tangible contribution in comparison to the size of the award. Tangible support must be stated in letters from supporting entities.

(b) *Matching Funds/Leveraging (Up to 15 points)*—This criteria relates to the extent to which the institution has the capacity to support the project with matching funds and leveraging additional funds and resources to carry out this outreach initiative.

A maximum of 10 points will be awarded based upon the amount the proposal exceeds the minimum 25 percent matching requirement. Applicants will be required to provide matching funds or equivalent in-kind in support of this project. Evidence of matching funds availability must be provided. Funds or equivalent in-kind must be available at the time the cooperative agreement is entered into.

Matching funds points will be awarded as listed below.

25 percent to 35 percent match—2 points
35 percent to 50 percent match—5 points
50 percent to 75 percent match—7 points
75 percent match—10 points

Up to 5 additional points may be awarded based on the applicant's capacity to leverage additional funds and resources from other private and nonprivate sources to support this outreach initiative. Applicants must provide sufficient information on the amount and sources of leveraging activities for the evaluation panel to properly rate this criterion.

(c) *Economic Need of Community (Up to 20 points)*—This criterion will be evaluated based on the economic need of the targeted communities.

A maximum of 7 points will automatically be awarded to proposals with one or more of the following entities in a targeted community(s): Empowerment Zones, Enterprise Communities, Champion Communities, Federally-recognized Indian Tribal groups, and other Federally declared economic depressed or disaster areas. Applicants must provide sufficient information for the panel to properly rate this part of the above criterion. The proposals must state the name and location of the declared economic depressed area.

Rural underserved targeted counties/communities should be the same as the RBS definition for rural eligibility, which is any area other than a city or town that has a population of greater than 50,000 inhabitants and the urbanized area contiguous and adjacent to such a city or town, as defined by the U.S. Bureau of the Census using the latest decennial census of the United States.

Also, for this criterion, a maximum of 8 points will be awarded for demonstrated economic need based on the currently available poverty rate of the targeted local community(s). Applicants may use targeted county/or community poverty rates if available. When multi-communities proposals are submitted, the overall weighted average for all counties or communities will be used. Applicants must use current (2000 Census) poverty data for each targeted county/or community and for their respective State. Points will be awarded based on the differences in the targeted county/or community average poverty from the respective State poverty rate (average targeted county or community poverty rate-State poverty rate) as following. Percents will be rounded to the next whole number.

Less than 3 percent—0 points
3–6 percent—1 point
7–10 percent—2 points
11–15 percent—5 points
Greater than 15 percent—8 points

Up to five additional points may be awarded for this criterion based on the applicant's ability to demonstrate or identify other economic needs of the targeted communities, such as, but not limited to, unemployment rates, education levels, and job availability. The applicant must provide sufficient information for the panel to properly rate this part of the above criterion.

(d) *Previous Accomplishments (Up to 10 points)*—This criterion will be evaluated based on the applicant's previous accomplishments with this outreach initiative and/or demonstrative capacity to conduct similar outreach work.

A point will be awarded to those institutions for each year they have been awarded a cooperative agreement under this program up to 5 years. Applicants must provide evidence of satisfactorily completing the agreement for each year that they claim for credit.

Up to five additional points may be awarded based on the applicant's ability to document the impact of their project upon the targeted underserved rural communities. It is incumbent upon the applicant to provide information as to the type of services delivered, the names of rural communities, and the number of targeted audiences served the last year awarded.

Applicants with zero or less than 5 recent years of awards in this program may receive up to the maximum 10 points by highlighting the institution's commitment and previous performance on this project or projects with similar outreach objectives. The applicant should discuss the potential impact of their project upon the targeted underserved rural communities, as well as describing previous similar outreach work.

(e) *Statement of Work (up to 20 Points)*—This criterion relates to the degree to which the proposed project addresses the major purposes for the "1890 Land Grant Institutions Rural Entrepreneurial Program Outreach Initiative." Points will be awarded according to the degree to which the statement of work reflects innovative strategies for providing outreach and assistance to the targeted underserved rural entrepreneurs, businesses and communities, and the potential for achieving project objectives. To receive the maximum points, proposals must have a clearly and concisely stated work plan showing objectives, goals, timetables, expected results, measurable outcomes, and who will be performing various activities, including RBS involvement.

(f) *Digital Technology Outreach (Up to 10 points)*—This criterion is meant to evaluate the applicant's level of outreach and capacity to provide innovative and effective computer technology outreach to the underserved targeted rural communities.

A maximum of 5 points will be awarded based on the applicant's demonstrated capacity to promote innovations and improvements in the delivery of computer technology benefits to underserved rural communities whose share in these benefits is disproportionably low. Examples of innovations and improvements in this needed area include, but are not limited to, computer-base, decision support systems to assist entrepreneurs and rural community governments in taking advantage of relevant technologies or efficacious delivery systems for business information or resource management assistance for rural underserved entrepreneurs and local governments and providing business information systems network.

Up to five additional points may be awarded based on the qualification and subject skill level of the individuals directly conducting the technology outreach activities. Applicants must provide sufficient information for the evaluation panel to properly rate this technology criterion.

(g) *Coordination and Management of the Project (Up to 15 points)—This criterion will be evaluated based on the applicant's demonstrated capacity to coordinate and manage this type of outreach initiative among the various stakeholders.*

A maximum of 8 points will be awarded for the coordination plan. Applicants will need to describe the role and coordination mechanisms among various participants, including communities, the applicant, and RBS. The nature of the collaborations and benefits to participants must also be described.

By definition, a cooperative agreement requires sufficient involvement by the funding agent in carrying out the project objectives in the project. Therefore, up to 7 additional points may be awarded for this criterion based on demonstration of broad involvement and collaboration with each applicant's respective RBS State Office as related to the outreach project. This involvement and collaboration

should include, but is not limited to: (1) RBS State Office input and review of institution's proposal, (2) invitations to attend and participate in workshops and conferences when needed, (3) on-going monitoring of the outreach project, and (4) directing applicants to the RBS State Office when applicable.

Deliverables

During the term of the negotiated agreements, the recipients will deliver quarterly reports of progress of the work to RBS and prepare and deliver a final report detailing all work done and results accomplished. In addition, all reports forwarded to RBS must be forwarded to the Rural Development State Office. Also, upon request by RBS, the recipient will deliver manuscripts, videotapes, software, or other media, as may be identified in approved proposals. RBS retains those rights delineated in 7 CFR 3019.36. Also, the recipients will deliver project outreach success stories and other project related information requested by RBS for use on the website (*http://bisnet.sus.edu*), or other websites designated by RBS.

Award Amount

In the event that the applicant is to receive an award that is less than the amount requested, the applicant will be required to modify the application to conform to the reduced amount before execution of the cooperative agreement. RBS reserves the right to reduce or de-obligate any award if acceptable modifications are not submitted by the awardees within 10 working days from the date the application is returned to the applicant. Any modification must be within the scope of the original application.

Recipient Requirements

Institutions that are awarded a cooperative agreement will be responsible for the following:

(a) Completing the objectives as defined in the approved proposal.

(b) During the term of the agreement, keep up-to-date records on the project, and on or prior to October 6, January 5, April 5, and July 5, make quarterly reports of the progress of the work to RBS, and prepare a final report detailing all work done and results accomplished. All reports will be forwarded to the RBS National Office and to the final report detailing all work done and results accomplished. All reports will be forwarded to the RBS National Office and to the Rural Development State Office.

(c) Submit to RBS, on a quarterly basis, Form SF–270, "Request for Advance or Reimbursement."

(d) Keep an account of expenditures of the Federal dollars and matching fund dollars and provide to RBS, Form SF–269, "Financial Status Report," with each Form SF–270 submitted, and a final SF–269 within 90 days of the project's completion.

(e) Immediately refund to RBS, at the end of the agreement, any balance of unobligated funds received from RBS.

(f) Provide matching funds or equivalent in-kind in support of the project, at least to the level agreed to in the accepted proposal.

(g) Conduct seminars to disseminate Rural Development program information to stimulate business and economic development in selected rural communities.

(h) Participate in the RBS Entrepreneurship Conferences when planned.

(i) In cooperation with local businesses, develop a program of business startup and technical assistance that will assist with new company development, business planning, new enterprise, franchise startup and consulting, business expansion studies, marketing analysis, cashflow management, and seminars and workshops for small businesses.

(j) Provide office space, equipment, and supplies for all personnel assigned to the project.

(k) Develop management and technical assistance plans in cooperation with RBS State Office that will:

(1) Assess small business alternatives to agricultural and other natural resources-based industries;

(2) Assist in the development of business plans and loan packages, marketing, bookkeeping assistance, and organizational sustainability; and

(3) In cooperation with the RBS State Office, provide technical assistance and training in customer relations, product development, and business planning and development.

(l) Assess the need for and, if necessary, conduct a feasibility study of local community weaknesses and strengths, feasible alternatives to agriculture production, and the needed infrastructure to expand or develop new or existing businesses. The plans for any such studies must be submitted for approval prior to the study being conducted.

(m) In cooperation with the RBS State Office, provide community leaders with advice and recommendations regarding best practices in community economic development stimulus programs for their communities.

(n) Develop technology outreach and establish and maintain a Business Information Network System website, linking community leaders and residents to available economic development information.

(o) Assure and certify that it is in compliance with, and will comply in the course of the agreement with, all applicable laws, regulations, Executive orders, and other generally applicable requirements, including those set out in 7 CFR 3015.205(b) and 7 CFR part 3019.

(p) Federal funds can only be used to pay meeting related travel expenses, if the employees are performing a service of direct benefit to the government directly in furtherance of the objectives of the proposed agreement. Therefore, Federal funds cannot be used to pay non-Federal employees to attend meetings.

(q) Not commingle or use program funds for administrative expenses to operate an Intermediary Relending Program (IRP).

(r) As a cooperative agreement and not a grant, the 1890 Institution will collaborate with the RBS National and State Offices in performing the tasks in the agreement as needed and will provide the RBS National Office with the necessary information for RBS to do the following:

(1) Monitor the program as it is being implemented and operated, including monitoring of financial information to ensure that there is no commingling or use of program funds for administrative expenses to operate an IRP or other unapproved items.

(2) Halt activity, after written notice, if tasks are not met.

(3) Review and approve changes to key personnel.

(4) Provide guidance in the evaluation process and other technical assistance as needed.

(5) Approve the final plans for the community business workshops, business and economic development sessions, and training workshops to be conducted by the Institution.

(6) Provide reference assistance as needed to the Institution for technical assistance given on a one-on-one basis to entrepreneurs and startup businesses.

(7) Review and comment upon strategic plans developed by the Institution for targeted areas.

(8) Review economic assessments made by the Institution for targeted counties so that RBS can indicate which of its programs may be beneficial.

(9) Carefully screen the project to prevent First Amendment violations.

(10) Monitor the program to ensure that a Business Information System Network website link is established and maintained.

(11) Provide technical assistance and training to the Business Information System Network Hub-sites and Wide Area Network (WAN) Team Members at the universities in preparing economic development information for posting on the Internet.

(12) Allow the RBS State Office to conduct a semi-annual on-site review and submit written reports to the National Office.

Content of a Proposal

A proposal should contain an original and two copies of each of the following:

(a) *Completed Forms.*

(1) Form SF–424, "Application for Federal Assistance."

(2) Form SF–424A, "Budget Information—Non-Construction Programs."

(3) Form SF–424B, "Assurances—Non-Construction Programs."

(4) Form AD–1047, "Certification Regarding Debarment, Suspension, and Other Responsibility Matters—Primary Covered Transactions."

(5) Form AD–1049, "Certification Regarding Drug-Free Workplace Requirements."

(6) Form SF–LLL, "Disclosure of Lobbying Activities."

(b) *Table of Contents.* For ease of locating information, each proposal must contain a detailed Table of Contents immediately following the required forms. The Table of Contents should include page numbers for each component of the proposal. Pagination should begin immediately following the Table of Contents.

(c) *Project Executive Summary.* A summary of the Project, not to exceed one page.

(d) *Project Proposal.* The application must contain a narrative statement describing the nature of the proposed outreach initiative. The proposal must include at least the following:

(1) Project Title Page. Should include the following: Title of the project, names of principal investigators, and applicant organization.

(2) Introduction. A concisely worded justification or rationale for the outreach initiative must be presented. Included should be a summarization of social and economical statistical data (income population, employment rate, poverty rate, education attainment, *etc.*), of the target area which substantiates the need for the outreach initiative. Note in this section if the target area includes an Employment Zone/Enterprise Community, Champion Community, Federally-recognized Indian Tribal group or other Federally declared economic disaster area.

(3) Workplan. Discuss the approach (strategy) to be used in carrying out the proposed outreach initiative and accomplishing the objectives. A description of any subcontracting arrangements to be used in carrying out the project must be included. Also, the workplan must include:

(i) Overview of the project objectives and goals: Identify and discuss the specific goals and objectives of the project and the impact of the outreach initiative on end-users;

(ii) Timeframe: Develop a tentative schedule for conducting the major steps of the outreach initiative;

(iii) Milestones: Describe and quantify the expected outcome of the specific outreach objective, including jobs created or assisted, conferences and seminars conducted and number of participants, loans packaged, etc.;

(iv) Recipient involvement: Identify the person(s) who will be performing the activities; and

(v) RBS involvement: Identify RBS staff responsible for assisting and monitoring the activities.

(4) Estimated Budget. Detail budget justification including matching funds.

(5) Leveraging Funds. Other institutional support of this outreach initiative project.

(6) Coordination and Management Plan. Describe how the project will be coordinated among various participants, nature of the collaborations and benefits to participants, the communities, the applicant, and RBS. Describe plans for management of the project to ensure its proper and efficient administration. Describe scope of RBS involvement in the project.

(7) Technology Outreach. The proposal should address the applicant's ability to deliver computer technology to the targeted rural communities and implement and maintain a computer network system linking community leaders and residents to available economic development information.

(8) Key Personnel Support. The proposal should include curriculum vitae for the principal investigator and other key personnel used to carry out the goals and objectives of the proposal.

(9) Facilities or Equipment. Where the project will be located (housed) and what other equipment is needed or already available to carry out the specific objectives of the project.

(10) Previous Accomplishments. Summarize previous accomplishments of outreach work funded by RBS or similar outreach experiences, especially for first-time applicants.

(11) Local Support. Letters of support from the local community such as businesses, educational institutions, local governments, community-based organizations, etc. Letters of support should show support with commitment for tangible resources and or assistance.

(12) Any other information necessary for RBS to approve and rank your proposal.

Additionally, you are encouraged to provide any strategic plan that has been developed to assist business development or entrepreneurship for the targeted communities.

What To Submit

All applicants for the cooperative agreement must submit a completed original, plus two copies of the proposal for this competitive program. Do not bind the original copy.

Other Federal Statutes and Regulations That Apply

Several other Federal statutes and regulations apply to proposals considered for review and to cooperative agreements awarded. These include, but are not limited to:

CFR part 15, subpart A—Nondiscrimination in Federally-Assisted Programs of the Department of Agriculture—Effectuation of Title VI of the Civil Rights Act of 1964.

7 CFR part 3015—Uniform Federal Assistance Regulations.

7 CFR part 3017—Governmentwide Debarment and Suspension (Nonprocurement) and Governmentwide Requirements for Drug-Free Workplace (Grants).

7 CFR part 3018—New Restrictions on Lobbying.

7 CFR part 3019—Uniform Administrative Requirements for Grants and Agreements with Institutions of Higher Education, Hospitals, and Other Non-Profit Organizations.

7 CFR part 3052—Audits of States, Local Governments and Non-Profit Organizations.

Paperwork Reduction Act

The paperwork burden associated with this initiative has been cleared by the Office of Management and Budget under OMB Control Number 0570–0041.

Dated: May 6, 2003

John Rosso,

Administrator, Rural Businesses-Cooperative Service.

[FR Doc. 03–11760 Filed 5–9–03; 8:45 am]

BILLING CODE 341–XY–M

COMMISSION ON CIVIL RIGHTS

Agenda and Notice of Public Meeting of the West Virginia Advisory Committee

Notice is hereby given, pursuant to the provisions of the rules and

regulations of the U.S. Commission on Civil Rights, that a meeting of the West Virginia Advisory Committee to the Commission will convene at 12:30 p.m. and adjourn at 4:45 p.m. on Thursday, May 8, 2003, at the West Virginia University College of Law, Lugar Courtroom, 100A Law Center, Morgantown, West Virginia,26506–6130. The purpose of this meeting is so that the Committee can release its report, Civil Rights Issues in West Virginia. To obtain update information, the Committee will also hold a briefing session with government officials, community leaders, and the public.

Persons desiring additional information, or planning a presentation to the Committee, should contact Ki-Taek Chun, Director of the Eastern Regional Office, 202–376–7533 (TDD 202–376–8116) or Ranjit Majumder, chair, (304) 367–4244. Hearing-impaired persons who will attend the meeting and require the services of a sign language interpreter should contact the Regional Office at least ten (10) working days before the scheduled date of the meeting.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, DC, April 28, 2003.

Ivy L. Davis,

Chief, Regional Programs Coordination Unit.

[FR Doc. 03–11689 Filed 5–9–03; 8:45 am]

BILLING CODE 6335–01–P

DEPARTMENT OF COMMERCE

Bureau of Economic Analysis

Proposal To Collect Information on the Initial Report on a Foreign Person's Direct or Indirect Acquisition, Establishment, or Purchase of the Operating Assets of a U.S. Business Enterprise

ACTION: Proposed collection; comment request.

SUMMARY: The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Pub. L. 104–13 (44 U.S.C. 3506(c)(2)(A)).

DATES: Written comments must be submitted on or before July 11, 2003.

ADDRESSES: Direct all written comments to Diana Hynek, Departmental Paperwork Clearance Officer, Office of the Chief Information Officer, Department of Commerce, Room 6625, 14th and Constitution Avenue, NW., Washington, DC 20230, or via the Internet at *dHynek@doc.gov*, ((202) 482–0266).

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instruments and instructions should be directed to: David H. Galler, U.S. Department of Commerce, Bureau of Economic Analysis, BE–49(NI), Washington, DC 20230, or via the Internet at *David.Galler@bea.gov*, ((202) 606–9835).

SUPPLEMENTARY INFORMATION:

I. Abstract

The Initial Report on a Foreign Person's Direct or Indirect Acquisition, Establishment, or Purchase of the Operating Assets, of a U.S. Business Enterprise, Including Real Estate (Form BE–13) and the Report by a U.S. Person Who Assists or Intervenes in the Acquisition of a U.S. Business Enterprise by, or Who Enters Into a Joint Venture with, a Foreign Person (Form BE–14) obtain initial data on new foreign direct investment in the United States. The surveys collect identification information on the U.S. business being established or acquired and on the new foreign owner, information on the cost of the investment and source of funding, and limited financial and operating data for the newly established or acquired entity. The data are needed to measure the amount of new foreign direct investment in the United States, assess its impact on the U.S. economy, and, based upon this assessment, make informed policy decisions regarding foreign direct investment in the United States.

The BE–13 survey is being revised, to add an item on the number of U.S. affiliates included in the consolidated report that will assist in verifying the accuracy of the reported data. No changes are proposed for Form BE–14.

II. Method of Collection

Form BE–13 must be filed by every U.S. business with over $3 million of assets or cost of investment, or 200 or more acres of U.S. land, that is acquired to the extent of 10 percent or more, or is established, by a foreign investor. It is a one-time report that must be filed within 45 days of the acquisition or establishment. A BE–13 Supplement C—Exemption Claim—must be filed for transactions that do not meet either of the reporting thresholds. Form BE–14 is filed by a person who assists in an investment transaction, such as a real estate broker or attorney, or who enters into a U.S. joint venture with a foreign person. Its purpose is to provide BEA with the name and address of the newly established or acquired U.S. company, so that a BE–13 form can be mailed to it for completion. A BE–14 is not filed, however, if a U.S. person files a BE–13 relating to the establishment or acquisition of the U.S. business enterprise by a foreign person.

III. Data

OMB Number: 0608–0035.

Form Numbers: BE–13/BE–14

Type of Review: Regular submission.

Affected Public: Businesses or other for-profit organizations.

Estimated Number of Respondents: 600 annually.

Estimated Time Per Response: 1½ hours.

Estimated Total Annual Burden: 900 hours.

Estimated Total Annual Cost: $27,000 (based on an estimated reporting burden of 900 hours and an estimated hourly cost of $30).

IV. Request for Comments

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information has practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they also will become a matter of public record.

Dated: May 6, 2003.

Madeleine Clayton,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. 03–11688 Filed 5–9–03; 8:45 am]

BILLING CODE 3510–06–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A-475–703]

Granular Polytetrafluoroethylene Resin from Italy: Final Results of Changed Circumstances Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of Final Results of Antidumping Duty Changed Circumstances Review.

SUMMARY: On March 20, 2003, the Department of Commerce published a notice of initiation and preliminary results of its changed circumstances review of the antidumping duty order on granular polytetrafluoroethylene resin from Italy (PTFE) (*see Antidumping Duty Order; Granular Polytetrafluoroethylene Resin from Italy*, 53 FR 33163 (August 30, 1988)) in which we preliminarily determined that Solvay Solexis SpA and Solvay Solexis, Inc. were the successors-in-interest to Ausimont SpA and Ausimont USA, Inc. We gave interested parties an opportunity to comment on the preliminary results of review, but received no comments. Therefore, the final results do not differ from the preliminary results of review.

EFFECTIVE DATE: May 12, 2003.

FOR FURTHER INFORMATION CONTACT: Vicki Schepker, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone (202) 482–1756.

SUPPLEMENTARY INFORMATION:

Background:

On March 20, 2003, in accordance with Section 751(b) of the Tariff Act of 1930, as amended (the Act), and 19 CFR 351.216 and 351.221(c)(3), the Department initiated a changed circumstances review and published its preliminary results in the **Federal Register**, preliminarily finding Solvay Solexis SpA and Solvay Solexis, Inc. (collectively, Solvay Solexis) to be the successors-in-interest to Ausimont SpA and Ausimont USA, Inc. (collectively, Ausimont). *See Granular Polytetrafluoroethylene Resin from Italy; Initiation and Preliminary Results of Antidumping Duty Changed Circumstances Review*, 68 FR 13672 (March 20, 2003) (Preliminary Results). We invited interested parties to comment on these findings. No comments were received.

Scope of the Review

The product covered by this review is granular PTFE resin, filled or unfilled. This order also covers PTFE wet raw polymer exported from Italy to the United States. *See Final Affirmative Determination; Granular Polytetrafluoroethylene Resin from Italy*, 58 FR 26100 (April 30, 1993). This order excludes PTFE dispersions in water and fine powders. Such merchandise is classified under item number 3904.61.00 of the Harmonized Tariff Schedule of the United States (HTSUS). We are providing this HTSUS number for convenience and customs purposes only. The written description of the scope remains dispositive.

Final Results of Changed Circumstances Review

Because we received no comments on the Preliminary Results and for the reasons stated in the Preliminary Results, we find Solvay Solexis to be the successor-in-interest to Ausimont for antidumping duty cash deposit purposes. In order to make this determination, we examined Ausimont's personnel, operations, supplier/customer relationships, and facilities by reviewing an amended certificate of incorporation, investor presentations, an application for amended certificate of authority, shareholder meeting minutes, press releases discussing the Solvay Group's purchase of Ausimont, management charts, a letter to customers, and product labels. Based on all the evidence reviewed, we find that Solvay Solexis is the successor-in-interest to Ausimont. Solvay Solexis will receive the same antidumping duty cash-deposit rate (*i.e.*, 12.08 percent) with respect to the subject merchandise as Ausimont, its predecessor company. This cash deposit requirement will be effective upon publication of this notice for all shipments of the subject merchandise by Solvay Solexis entered, or withdrawn from warehouse, for consumption, on or after the publication date of this notice. This cash deposit rate shall remain in effect until publication of the final results of the next administrative review in which Solvay Solexis participates.

We are issuing and publishing this finding and notice in accordance with sections 751(b)(1) and 777(i)(1) of the Act and section 351.216 of the Department's regulations.

Dated: May 5, 2003.

Joseph A. Spetrini,

Acting Assistant Secretary for Import Administration.

[FR Doc. 03–11744 Filed 5–9–02; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

[A-201–802]

Preliminary Results and Rescission in Part of Antidumping Duty Administrative Review: Gray Portland Cement and Clinker From Mexico

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of preliminary results and rescission in part of antidumping duty administrative review.

SUMMARY: In response to requests from interested parties, the Department of Commerce is conducting an administrative review of the antidumping duty order on gray portland cement and clinker from Mexico. The review covers exports of subject merchandise to the United States during the period August 1, 2001, through July 31, 2002, and one firm, CEMEX, S.A. de C.V., and its affiliate, GCC Cemento, S.A. de C.V. We have preliminarily determined that sales were made below normal value during the period of review. With respect to Apasco, S.A. de C.V., we are rescinding the antidumping duty administrative review of this company.

We invite interested parties to comment on these preliminary results. Parties who submit arguments in this proceeding are requested to submit with the argument (1) a statement of the issues, and (2) a brief summary of the argument.

EFFECTIVE DATE: May 12, 2003.

FOR FURTHER INFORMATION CONTACT: Hermes Pinilla or Brian Ellman, Office of AD/CVD Enforcement 3, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone (202) 482–3477, (202) 482–4852, respectively.

SUPPLEMENTARY INFORMATION:

Background

On August 6, 2002, the Department published in the **Federal Register** the *Notice of Opportunity to Request Administrative Review concerning the antidumping duty order on gray*

portland cement and clinker from Mexico (67 FR 50856). In accordance with 19 CFR 351.213, the petitioner, the Southern Tier Cement Committee (STCC), requested a review of CEMEX, S.A. de C.V. (CEMEX), CEMEX's affiliate, GCC Cemento, S.A. de C.V. (GCCC), and Apasco, S.A. de C.V. (Apasco). In addition, CEMEX and GCCC requested reviews of their own sales during the period of review. On September 25, 2002, we published in the **Federal Register** the *Notice of Initiation of Antidumping and Countervailing Duty Administrative Reviews* (67 FR 60210). The period of review is August 1, 2001, through July 31, 2002. Our review of Customs Service import data indicates that there were no entries of subject merchandise produced by Apasco during the period of review. See Memorandum from Analyst to the File, dated March 4, 2003. Therefore, in accordance with 19 CFR 351.213(d)(3), we are rescinding the review with respect to this manufacturer/exporter. We are conducting a review of CEMEX and GCCC pursuant to section 751 of the Tariff Act of 1930, as amended (the Act).

Scope of Review

The products covered by this review include gray portland cement and clinker. Gray portland cement is a hydraulic cement and the primary component of concrete. Clinker, an intermediate material product produced when manufacturing cement, has no use other than of being ground into finished cement. Gray portland cement is currently classifiable under *Harmonized Tariff Schedule* (HTS) item number 2523.29 and cement clinker is currently classifiable under HTS item number 2523.10. Gray portland cement has also been entered under HTS item number 2523.90 as "other hydraulic cements." The HTS subheadings are provided for convenience and customs purposes only. Our written description of the scope of the proceeding is dispositive.

Verification

As provided in section 782(i) of the Act, we verified U.S. sales information submitted by CEMEX and GCCC using standard verification procedures, including an examination of relevant sales and financial record and selection of original documentation containing relevant information. Our verification results are outlined in public versions of the verification reports.

Collapsing

Section 771(33) of the Act defines when two or more parties will be considered affiliated for purposes of an antidumping analysis. Moreover, the regulations describe when the Department will treat two or more affiliated producers as a single entity (*i.e.*, "collapse" the firms) for purposes of calculating a dumping margin (see 19 CFR 357.401(f)). In previous administrative reviews of this order, we analyzed the record evidence and collapsed CEMEX and GCCC in accordance with the regulations.[1]

The regulations state that we will treat two or more affiliated producers as a single entity where those producers have production facilities for similar or identical products that would not require substantial retooling of either facility in order to restructure manufacturing priorities and we conclude that there is a significant potential for the manipulation of price or production. In identifying a significant potential for the manipulation of price or production, the factors we may consider include the following: (i) the level of common ownership; (ii) the extent to which managerial employees or board members of one firm sit on the board of directors of an affiliated firm; and (iii) whether operations are intertwined, such as through the sharing of sales information, involvement in production and pricing decisions, the sharing of facilities or employees, or significant transactions between the affiliated producers. See 19 CFR 351.401(f).

Having reviewed the current record, we find that the factual information underlying our decision to collapse these two entities has not changed from previous administrative reviews. CEMEX's indirect ownership of GCCC exceeds five percent; therefore, these two companies are affiliated pursuant to section 771(33)(E) of the Act. In addition, both CEMEX and GCCC satisfy the criteria for treatment of affiliated parties as a single entity described at 19 CFR 351.401(f)(1): both producers have production facilities for similar and identical products such that substantial retooling of their production facilities would not be necessary to restructure manufacturing priorities. Consequently, any minor retooling required could be accomplished swiftly and with relative ease.

We also find that a significant potential for manipulation of prices and production exists as outlined under 19 CFR 351.401(f)(2). CEMEX indirectly owns a substantial percentage of GCCC. Also, CEMEX's managers or directors sit on the board of directors of GCCC and its affiliated companies. Accordingly, CEMEX's percentage ownership of GCCC and the interlocking boards of directors give rise to a significant potential for affecting GCCC's pricing and production decisions. See the Department's memorandum from Analyst to File, Collapsing CEMEX, S.A. de C.V. and GCC Cemento, S.A. de C.V. for the Current Administrative Review, dated January 14, 2003. Therefore, we have collapsed CEMEX and GCCC into one entity and calculated a single weighted-average margin using the information the firms provided in this review.

Constructed Export Price

Both CEMEX and GCCC reported constructed export price (CEP) sales. We calculated CEP based on delivered prices to unaffiliated customers in accordance with section 772(b) of the Act. Where appropriate, we made adjustments to the starting price for discounts, rebates, and billing adjustments. In accordance with section 772(d) of the Act and 19 CFR 351.402(b), we deducted those selling expenses, including inventory carrying costs, that were associated with commercial activities in the United States and related to the sale to an unaffiliated purchaser. We also made deductions for foreign brokerage and handling, foreign inland freight, U.S. inland freight and insurance, U.S. warehousing expenses, U.S. brokerage and handling, and U.S. duties, pursuant to section 772(c)(2)(A) of the Act. Finally, we made an adjustment for CEP profit in accordance with section 772(d)(3) of the Act. No other adjustments to CEP were claimed or allowed.

With respect to subject merchandise to which value was added in the United States prior to sale to unaffiliated U.S. customers (*i.e.*, cement that was imported and further-processed into finished concrete by U.S. affiliates of foreign exporters), we preliminarily determine that the special rule under section 772(e) of the Act for merchandise with value added after importation is applicable.

Section 772(e) of the Act provides that, where the subject merchandise is imported by a person affiliated with the exporter or producer and the value added in the United States by the affiliated person is likely to exceed substantially the value of the subject merchandise, we will determine the CEP for such merchandise using the price of identical or other subject merchandise if there is a sufficient quantity of sales to provide a reasonable basis for comparison and we determine that the use of such sales is appropriate. The regulations at 19 CFR 351.402(c)(2) provide that normally we will determine that the value added in the United States by the affiliated person is likely to exceed substantially the value of the subject merchandise if we estimate the value added to be at least 65 percent of the price charged to the first unaffiliated purchaser for the merchandise as sold in the United States. Normally we will estimate the value added based on the difference between the price charged to the first unaffiliated purchaser for the merchandise as sold in the United States and the price paid for the subject merchandise by the affiliated person. We will base this determination normally on averages of the prices and the value added to the subject merchandise. If there is not a sufficient quantity of such sales or if we determine that using the price of identical or other subject merchandise is not appropriate, we may use any other reasonable basis to determine the CEP. See section 772(e) of the Act.

During the course of this administrative review, the respondent submitted information which allowed us to determine whether, in accordance with section 772(e) of the Act, the value added in the United States by its U.S. affiliates is likely to exceed substantially the value of the subject merchandise. To determine whether the value added is likely to exceed substantially the value of the subject merchandise, we estimated the value added based on the difference between the averages of the prices charged to the first unaffiliated purchaser for the merchandise as sold in the United States and the averages of the prices paid for subject merchandise by the affiliate. Based on this analysis, we estimate that the value added was at least 65 percent of the price the respondent charged to the first unaffiliated purchaser for the merchandise as sold in the United States. Therefore, we preliminarily determine that the value added is likely to exceed substantially the value of the subject merchandise. Also, the record indicates that there is a sufficient quantity of subject merchandise to provide a reasonable and appropriate basis for comparison. Accordingly, for purposes of determining dumping margins for the further-manufactured sales, we have applied the preliminary weighted-average margin reflecting the rate calculated for sales of identical or other subject merchandise sold to unaffiliated purchasers.

Normal Value

A. Comparisons

In order to determine whether there was a sufficient volume of sales in the home market to serve as a viable basis for calculating normal value, we compared the respondent's volume of home-market sales of the foreign like product to the volume of U.S. sales of the subject merchandise in accordance with section 773(a)(1)(C) of the Act. Since the respondent's aggregate volume of home-market sales of the foreign like product was greater than five percent of its aggregate volume of U.S. sales for the subject merchandise, we determined that the home market was viable. Therefore, we have based normal value on home-market sales.

During the period of review, the respondent sold Type II LA and Type V LA cement in the United States. The statute expresses a preference for matching U.S. sales to identical merchandise in the home market. The respondent sold cement produced as CPC 30 R, CPC 40, and CPO 40 cement in the home market. We have attempted to match the subject merchandise to identical merchandise sold in the home market. In situations where identical product types cannot be matched, we have attempted to match the subject merchandise to sales of similar merchandise in the home market. See sections 773(a)(1)(B) and 771(16) of the Act.

We were able to find home-market sales of identical and similar merchandise to which we could match sales of Type II LA and Type V LA cement sold in the U.S. market. In the two most recent administrative reviews of this proceeding, we determined that CPO 40 cement produced and sold in the home market is the identical match to Type V LA cement sold in the United States. See, *e.g.*, *Gray Portland Cement and Clinker From Mexico; Final Results of Antidumping Duty Administrative Review*, 67 FR 12518 (March 19, 2002), and the accompanying Issues and Decision Memorandum at comment 7. We have reviewed the information on the record and have determined that CPO 40 cement produced and sold in the home market is the identical match to Type V LA cement sold in the United States during this review period.

If we could not find an identical match to the cement types sold in the United States in the same month in which the U.S. sale was made or during the contemporaneous period, we based normal value on similar merchandise. During the review period, GCCC had sales of Type II LA in the United States but did not have any sales of this type in the home market. In the 2000/2001 administrative review of this proceeding, we determined that the chemical and physical characteristics of type CPO 40 cement produced and sold in Mexico are most similar to Type II LA cement sold in the United States. We have reviewed the information on the record and have determined that it is appropriate to match sales of CPO 40 cement produced and sold in Mexico to all sales of Type II LA sold in the United States.

Furthermore, in accordance with section 771(16)(B) of the Act, we find that both bulk and bagged cement are produced in the same country and by the same producer as the types sold in the United States, both bulk and bagged cement are like the types sold in the United States in component materials and in the purposes for which used, and both bulk and bagged cement are approximately equal in commercial value to the types sold in the United States. The questionnaire responses submitted by the respondent indicate that, with the exception of packaging, sales of cement in bulk and sales of cement in bags are physically identical and both are used in the production of concrete. Also, since there is no difference in the cost of production between cement sold in bulk or in bagged form, both are approximately equal in commercial value. See CEMEX's and GCCC's responses to the Department's original and supplemental questionnaires. Therefore, we find that matching the U.S. merchandise which is sold in both bulk and bag to the foreign like product sold in bulk is appropriate.

B. Arm's-Length Sales

To test whether sales to affiliated customers were made at arm's length, we compared the prices of sales to affiliated and unaffiliated customers, net of all movement charges, direct selling expenses, discounts, and packing. Where the price to the affiliated party was on average 99.5 percent or more of the price to the unaffiliated parties, we determined that the sales made to the affiliated party were at arm's length. Consistent with 19 CFR 351.403, we included these sales in our analysis.

C. Cost of Production

The petitioner alleged on December 12, 2002, that the respondent sold gray portland cement and clinker in the home market at prices below the cost of production (COP). Because CPO 40 cement sold in the home market is the identical and similar match to sales of

[1] See, *e.g.*, *Preliminary Results and Rescission in Part of Antidumping Duty Administrative Review: Gray Portland Cement and Clinker From Mexico*, 67 FR 57379, 57380 (September 10, 2002). No changes were made in the final results of review (see *Gray Portland Cement and Clinker From Mexico; Final Results of Antidumping Duty Review*, 68 FR 1816 (January 14, 2003)).

Type V LA and Type II LA cement sold in the United States, sales of CPO 40 cement provide the basis for determining normal value and, as such, we determined that there is no reasonable grounds to initiate a sales-below-cost investigation on other cement models produced during this review. Upon examining the allegation, we determined that the petitioner had provided a reasonable basis to believe or suspect that CEMEX was selling CPO 40 cement in Mexico at prices below the COP. Therefore, pursuant to section 773(b)(1) of the Act, we initiated a model-specific COP investigation to determine whether the respondent made home-market sales of CPO 40 cement during the period of review at below-cost prices. See the memorandum from Laurie Parkhill to Susan Kuhbach entitled Gray Portland Cement and Clinker from Mexico: Request to Initiate Cost Investigation in the 2001/2002 Review (February 3, 2003).

In accordance with section 773(b)(3) of the Act, we calculated the COP based on the sum of the costs of materials and fabrication employed in producing CPO 40 cement, plus amounts for home-market selling, general, and administrative (SG&A) expenses. We used the home-market sales data and COP information pertaining to CPO 40 cement provided by CEMEX in its questionnaire response.

After calculating a weighted-average COP, in accordance with section 773(b)(3) of the Act, we tested whether CEMEX's home-market sales of CPO 40 were made at prices below COP within an extended period of time in substantial quantities and whether such prices permitted recovery of all costs within a reasonable period of time. We compared the COP of CPO 40 cement to the reported home-market prices less any applicable direct selling expenses, movement charges, discounts and rebates, indirect selling expenses, and commissions.

Pursuant to section 773(b)(2)(C) of the Act, if less than 20 percent of the respondent's sales of a certain type were at prices less than the COP, we do not disregard any below-cost sales of that product because the below-cost sales were not made in substantial quantities within an extended period of time. If 20 percent or more of the respondent's sales of a certain type during the period of review were at prices less than the COP, such below-cost sales were made in substantial quantities within an extended period of time pursuant to sections 773(b)(2)(B) and (C) of the Act. Based on comparisons of home-market prices of CPO 40 cement to weighted-average COP for the period of review, we determined that below-cost sales of CPO 40 cement were not made in substantial quantities within an extended period of time, and, therefore, we did not disregard any below-cost sales.

D. Adjustments to Normal Value

Where appropriate, we adjusted home-market prices for discounts, rebates, packing, handling, interest revenue, and billing adjustments to the invoice price. In addition, we adjusted the starting price for inland freight, inland insurance, and warehousing expenses. We also deducted home-market direct selling expenses from the home-market price and home-market indirect selling expenses as a CEP-offset adjustment (see Level of Trade/CEP Offset section below). In addition, in accordance with section 773(a)(6) of the Act, we deducted home-market packing costs and added U.S. packing costs.

Section 773(a)(6)(C)(ii) of the Act directs us to make an adjustment to normal value to account for differences in the physical characteristics of merchandise where similar products are compared. The regulations at 19 CFR 351.411(b) direct us to consider differences in variable costs associated with the physical differences in the merchandise. Where we matched U.S. sales of subject merchandise to similar models in the home market, we adjusted for differences in merchandise.

E. Level of Trade/CEP Offset

In accordance with section 773(a)(1)(B) of the Act, to the extent practicable, we determine normal value based on sales in the home market at the same level of trade as the CEP. The home-market level of trade is that of the starting-price sales in the home market or, when normal value is based on constructed value (CV), that of sales from which we derive SG&A expenses and profit. For CEP, it is the level of the constructed sale from the exporter to an affiliated importer after the deductions required under section 772(d) of the Act.

To determine whether home-market sales are at a different level of trade than CEP, we examine stages in the marketing process and selling functions along the chain of distribution between the producer and the unaffiliated customer. If the comparison-market sales are at a different level of trade and the difference affects price comparability, as manifested in a pattern of consistent price differences between the sales on which normal value is based and comparison-market sales at the level of trade of the export transaction, we make a level-of-trade adjustment under section 773(a)(7)(A) of the Act. Finally, for CEP sales, if the normal value level is more remote from the factory than the CEP level and there is no basis for determining whether the difference in the levels between normal value and CEP affects price comparability, we adjust normal value under section 773(a)(7)(B) of the Act (the CEP-offset provision). See *Final Determination of Sales at Less Than Fair Value: Certain Cut-to-Length Carbon Steel Plate from South Africa*, 62 FR 61731, 61732–33 (November 19, 1997).

With respect to U.S. sales, we conclude that CEMEX's and GCCC's sales constituted two separate levels of trade, one CEMEX U.S. level of trade and one GCCC U.S. level of trade. We based our conclusion on our analysis of each company's reported selling functions and sales channels after making deductions for selling expenses under section 772(d) of the Act. We found that CEMEX and GCCC performed different sales functions for sales to their respective U.S. affiliates. For instance, CEMEX reported that it performed technical advice, solicitation of orders/customer visits, account receivable management, warehousing, and communication activities whereas GCCC reported that it did not perform any of these activities.

Based on our analysis of the respondent's reported selling functions and sales channels, we conclude that the respondent's home-market sales to various classes of customers which purchase both bulk and bagged cement constitute one level of trade. We found that, with some minor exceptions, CEMEX and GCCC performed the same selling functions to varying degrees in similar channels of distribution. We also concluded that the variations in the intensities of selling functions performed were not substantial when all selling expenses were considered as a whole. See the memorandum entitled Gray Portland Cement and Clinker from Mexico: Level-of-Trade Analysis for the 01/02 Administrative Review, dated April 11, 2003 (Level-of-Trade Analysis memorandum).

Furthermore, the respondent's home-market sales occur at a different and more advanced stage of distribution than its sales to the United States. For example, the CEMEX U.S. level of trade does not include activities such as market research, after-sales service/warranties, advertising, and packing, whereas the home-market level of trade includes these activities. Similarly, the GCCC U.S. level of trade does not include activities such as market research, technical advice, advertising, customer approval, solicitation of orders, computer/legal/accounting/business systems, sales promotion, sales forecasting, strategic and economic planning, personnel training/exchange, and procurement and sourcing services whereas the home-market level of trade includes these activities.

As a result of our level-of-trade analysis, we could not match U.S. sales at either of the two U.S. levels of trade to sales at the same level of trade in the home market because there are no home-market sales at the same level of trade. In addition, because we found only one home-market level of trade, there is no basis for the calculation of a level-of-trade adjustment based on the collapsed entity's home-market sales of merchandise under review. Therefore, we have determined that the data available do not provide an appropriate basis on which to calculate a level-of-trade adjustment. We determined, however, that the level of trade of the home-market sales is more advanced than the levels of the U.S. sales. Thus, we made a CEP-offset adjustment to normal value in accordance with section 773(a)(7)(B) of the Act. In accordance with section 773(a)(7) of the Act, we calculated the CEP offset as the smaller of the following: (1) the indirect selling expenses on the home-market sale, or (2) the indirect selling expenses deducted from the starting price in calculating CEP. See the Level-of-Trade Analysis memorandum.

Adverse Facts Available

Section 776(a)(2) of the Act, provides that, if, in the course of an antidumping review, an interested party (A) withholds information that has been requested by the Department, (B) fails to provide such information in a timely manner or in the form or manner requested, (C) significantly impedes a proceeding under the antidumping statute, or (D) provides such information but the information cannot be verified, then the Department shall, subject to section 782(d) of the Act, use the facts otherwise available in reaching the applicable determination.

Section 782(e) of the Act provides that the Department "shall not decline to consider information that is submitted by an interested party and is necessary to the determination but does not meet all the applicable requirements established by the administering authority" if (1) the information is submitted by the deadline established for its submission, (2) the information can be verified, (3) the information is not so incomplete that it cannot serve as a reliable basis for reaching the applicable determination, (4) the interested party has demonstrated that it acted to the best of its ability in providing the information and meeting the requirements established by the Department with respect to the information, and (5) the information can be used without undue difficulties. Where these conditions are met, the statute requires the Department to use the information.

The Department determines that, in accordance with section 776(a)(2)(D) of the Act, the use of facts available is an appropriate basis for the calculation of a dumping margin on sales made by GCCC's U.S. affiliate, Rio Grande Materials (RGM).

On March 24, 2003, through March 26, 2003, the Department conducted a verification of the U.S. sales information submitted by GCCC. As discussed in detail in the verification report dated April 24, 2003, the Department was unable to obtain detailed source documentation supporting the quantity and value (Q&V) of RGM's reported sales and expenses. Furthermore, at the onset of the Department's verification, GCCC submitted numerous pre-verification corrections that, among other things, made substantial changes to the expenses GCCC had reported on sales by RGM.

As detailed in the verification report, without the necessary supporting documentation, the Department was unable to verify the information that was reported and/or corrected concerning RGM's sales of subject merchandise during the POR, as required under section 782(i) of the Act. This information is essential to the Department's dumping analysis. Thus, the sales information submitted on behalf of RGM does not comply with section 782(e) of the Act. Therefore, because we could not verify this information, we must resort to facts available.

Use of an Adverse Inference

Section 776(b) of the Act provides that, if the Department finds that an interested party has failed to cooperate by not acting to the best of its ability in complying with a request for information, the Department may use an inference that is adverse to the interests of that party in selecting from among the facts otherwise available. In addition, the *Statement of Administrative Action* accompanying the *Uruguay Round Agreements Act*, H. Doc. 103–316 (1994) (SAA), establishes that the Department may employ an adverse inference "* * * to ensure that the party does not obtain a more favorable result by failing to cooperate than if it had cooperated fully." See SAA at 870. It also instructs the Department, in employing adverse inferences, to consider "* * * the extent to which a party may benefit from its own lack of cooperation." *Id.*

The Department determines that, in accordance with section 776(b) of the Act, an adverse inference is appropriate in selecting from among the facts otherwise available for RGM sales. With respect to sales made by RGM, the main difficulty encountered by the Department at verification was the lack of availability of and access to the original source documentation supporting the information supplied to the Department. The other difficulty stemmed from RGM's unpreparedness to meet the specific requirements that were described in the Department's verification outline.

First, GCCC has been involved in numerous prior reviews of this order which indicates that it has experience with an antidumping proceeding. Second, pursuant to section 782(i)(3)(B) of the Act, the Department was required to verify the information provided by GCCC in this POR, as GCCC had not been verified during the two immediately preceding reviews. Thus, GCCC was aware that all documentation supporting the information it reported for this POR was subject to Departmental verification. Finally, although RGM was sold subsequent to the instant POR, GCCC was in control of the source documentation because it was stored in one of its facilities. Therefore, we have concluded that GCCC did not cooperate to the best of its ability.

In accordance with section 776(b) of the Act, we are making an adverse inference in our application of the facts available. As adverse facts available we have applied the highest published rate we have calculated for companies under review for any segment of this proceeding. Consequently, we preliminarily determine to apply the 73.74 percent rate that we calculated in the final results of the 2000/2001 administrative review to RGM's sales of subject merchandise in the United States during the POR. See *Gray Portland Cement and Clinker From Mexico; Final Results of Antidumping Duty Administrative Review*, 68 FR 1816–1817 (January 14, 2003). We discuss the corroboration of this rate below.

Corroboration of Secondary Information

An adverse inference may include reliance on information derived from the petition, the final determination in the investigation, any previous review, or any other information placed on the

record. See section 776(b) of the Act. Section 776(c) provides, however, that, when the Department relies on secondary information rather than on information obtained in the course of a review, the Department shall, to the extent practicable, corroborate that information from independent sources that are reasonably at its disposal. The SAA states that the independent sources may include published price lists, official import statistics and customs data, and information obtained from interested parties during the particular investigation or review. See SAA at 870. The SAA clarifies that "corroborate" means that the Department will satisfy itself that the secondary information to be used has probative value. *Id.* As discussed in *Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, from Japan, and Tapered Roller Bearings, Four Inches or Less in Outside Diameter, and Components Thereof, from Japan; Preliminary Results of Antidumping Duty Administrative Reviews and Partial Termination of Administrative Reviews*, 61 FR 57391, 57392 (November 6, 1996), to corroborate secondary information, the Department will, to the extent practicable, examine the reliability and relevance of the information used. In the preliminary margin calculation, numerous sales by CEMEX had margins greater than 73.74 percent. Therefore, we find that the adverse facts-available rate is relevant to this POR. Unlike other types of information, such as input costs or selling expenses, there are no independent sources from which the Department can calculate dumping margins. The only source for margins is administrative determinations. Thus, with respect to an administrative review, if the Department chooses as facts available a calculated dumping margin from a prior segment of the proceeding, it is not necessary to question the reliability of the margin for that time period. Thus, the Department finds that the information is reliable. See *Freshwater Crawfish Tail Meat from the People's Republic of China; Final Results of Antidumping Duty Administrative Review*, 68 FR 19504 (April 21, 2003).

Currency Conversion

Pursuant to section 773A(a) of the Act, we made currency conversions into U.S. dollars based on the exchange rates in effect on the dates of U.S. sales as certified by the Federal Reserve Bank.

Preliminary Results of Review

As a result of our review, we preliminarily determine the dumping margin for the collapsed parties, CEMEX and GCCC, for the period August 1, 2001, through July 31, 2002, to be 71.77 percent.

We will disclose calculations performed in connection with these preliminary results to parties within five days of the date of publication of this notice. See 19 CFR 351.224(b). Interested parties may request a hearing within 30 days of publication of this notice. A hearing, if requested, will be held at the main Commerce Department building three business days after submission of rebuttal briefs.

Issues raised in the hearing will be limited to those raised in the respective case and rebuttal briefs. Case briefs from interested parties may be filed no later than 30 days after publication of this notice. Rebuttal briefs, limited to the issues raised in case briefs, may be submitted no later than five days after the deadline for filing case briefs.

Parties who submit case or rebuttal briefs in this proceeding are requested to submit with each argument (1) a statement of the issue and (2) a brief summary of the argument with an electronic version included.

Upon completion of this review, the Department will determine, and the U.S. Bureau of Customs and Border Protection (BCBP) shall assess, antidumping duties on all appropriate entries. In accordance with 19 CFR 351.212(b)(1), we have calculated an importer-specific assessment rate for merchandise subject to this review. If these preliminary results are adopted in the final results of review, we will direct the BCBP to assess the resulting assessment rates against the entered customs values for the subject merchandise on each of the importer's entries during the review period.

Furthermore, the following deposit requirements will be effective for all shipments of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the publication date of the final results of review, as provided by section 751(a)(1) of the Act:

(1) The cash-deposit rate for the respondent will be the rate determined in the final results of review; (2) for previously reviewed or investigated companies not mentioned above, the cash-deposit rate will continue to be the company-specific rate published for the most recent period; (3) if the exporter is not a firm covered in this review, a prior review, or in the original less-than-fair-value (LTFV) investigation, but the manufacturer is, the cash-deposit rate will be the rate established for the most recent period for the manufacturer of the merchandise; and (4) the cash-deposit rate for all other manufacturers or exporters will be 61.35 percent, the all-others rate from the LTFV investigation. These deposit requirements, when imposed, shall remain in effect until publication of the final results of the next administrative review.

In conducting recent reviews of CEMEX/GCCC, the Department has observed a pattern of significant differences between the weighted-average margins and the assessment rates it has determined for this respondent in those reviews. This pattern of differences suggests that the collection of a cash deposit for estimating antidumping duty based on net U.S. price may result in the undercollection of estimated antidumping duties at the time of entry. We are considering whether it would be appropriate in this case to establish a per-unit cash-deposit requirement for CEMEX/GCCC. See preliminary analysis memo dated May 5, 2003. The Department invites interested parties to comment on this issue.

This notice also serves as a preliminary reminder to importers of their responsibility under 19 CFR 351.402(f) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

We are issuing and publishing this notice in accordance with sections 751(a)(1) and 777(i)(1) of the Act.

Dated: May 5, 2003.

Joseph A. Spetrini,

Acting Assistant Secretary for Import Administration.

[FR Doc. 03–11743 Filed 5–9–02; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

[A-791–817]

Initiation of Antidumping Duty Investigation: Hydraulic Magnetic Circuit Breakers from South Africa

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: May 12, 2003.

FOR FURTHER INFORMATION CONTACT: Fred W. Aziz, Thomas Schauer, or Richard Rimlinger, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230; telephone: (202) 482–4023, (202) 482–0410 or (202) 482–4477, respectively.

SUPPLEMENTARY INFORMATION:

The Petition

On April 14, 2003, the Department of Commerce ("the Department") received a petition on imports of hydraulic magnetic circuit breakers ("HMCBs") from South Africa filed in proper form by Airpax Corporation, LLC (referred to hereafter as "the petitioner"). On April 22, 2003, the Department requested additional information and clarification of certain areas of the petition. The petitioner filed a supplement to the petition on April 25, 2003.

In accordance with section 732(b) of the Tariff Act of 1930, as amended ("the Act"), the petitioner alleges that imports of HMCBs from South Africa are being, or are likely to be, sold in the United States at less than fair value within the meaning of section 731 of the Act, and that such imports are materially injuring and threaten to injure an industry in the United States.

The Department finds that the petitioner filed this petition on behalf of the domestic industry because they are interested parties as defined in section 771(9)(c) of the Act. Furthermore, with respect to the antidumping duty investigation the petitioner is requesting the Department to initiate, it has demonstrated sufficient industry support (see "Determination of Industry Support for the Petition" below).

Scope of Investigation

This investigation covers all hydraulic magnetic circuit breakers (sometimes referred to as magnetic hydraulic) circuit breakers ("HMCBs"), incorporating a tripping means of a magnetic coil surrounding a tube and plunger, restrained by air, liquid or spring, whether or not sealed, whether or not of molded case, of any voltage less than 72.5 kilovolts, of any amperage rating, with single or multiple poles, of any mounting or connection means and of any terminal type, whether or not having a magnetic latch, and excluding thermal and thermal magnetic circuit breakers. The subject merchandise is classified under Harmonized Tariff Schedule of the United States ("HTSUS") subheadings 8535.21.00 and 8536.20.00. Although the HTSUS subheadings are provided for convenience and customs purposes, our written description of the scope of this investigation is dispositive.

During our review of the petition, we discussed the scope with the petitioner to ensure that it is an accurate reflection of the products for which the domestic industry is seeking relief. Moreover, as discussed in the preamble to the Department's regulations (62 FR 27296, 27323), we are setting aside a period for interested parties to raise issues regarding product coverage. The Department encourages all interested parties to submit such comments within 20 calendar days of publication of this notice. Comments should be addressed to Import Administration's Central Records Unit at Room 1870, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230. The period of scope consultations is intended to provide the Department with ample opportunity to consider all comments and consult with parties prior to the issuance of the preliminary determination.

Determination of Industry Support for the Petition

Section 732(b)(1) of the Act requires that a petition must be filed on behalf of the domestic industry. Section 732(c)(4)(A) of the Act provides that a petition meets this requirement if the domestic producers or workers who support the petition account for: (1) at least 25 percent of the total production of the domestic like product; and (2) more than 50 percent of the production of the domestic like product produced by that portion of the industry expressing support for, or opposition to, the petition.

Section 732(c)(4)(D) of the Act provides that, if the petition does not establish support of domestic producers or workers accounting for more than 50 percent of the total production of the domestic like product, the administering agency shall: (i) poll the industry or rely on other information in order to determine if there is support for the petition as required by subparagraph (A), or (ii) determine industry support using a statistically valid sampling method.

Section 771(4)(A) of the Act defines the "industry" as the producers as a whole of a domestic like product. Thus, to determine whether the petition has the requisite industry support, the statute directs the Department to look to producers and workers who produce the domestic like product. The International Trade Commission ("the ITC"), which is responsible for determining whether "the domestic industry" has been materially injured, must also determine what constitutes a domestic like product in order to define the industry. While the Department and the ITC must apply the same statutory definition regarding the domestic like product, they do so for different purposes and pursuant to separate and distinct authority. In addition, the Department's determination is subject to time and information limitations. Although this may result in different definitions of the domestic like product, such differences do not render the decision of either agency contrary to law.[1]

Section 771(10) of the Act defines the domestic like product as "a product which is like, or in the absence of like, most similar in characteristics and uses with, the article subject to an investigation under this title." Thus, the reference point from which the domestic-like-product analysis begins is "the article subject to an investigation," *i.e.*, the class or kind of merchandise to be investigated, which normally will be the scope as defined in the petition.

In its April 14th petition, petitioner claims it has industry support. The petitioner states that it compromises virtually all U.S. production of HMCBs. However, the petition identifies three additional U.S. entities engaged in the sale of HMCBs in the domestic market. According to the petition, none of the three maintain commercial production in the United States. The petitioner asserts that virtually all of those firms' manufacturing is done in other countries and that any domestic manufacturing is limited to samples in non-commercial quantities. Based on all available information, we agree that the petitioner compromises virtually all domestic commercial production of HMCBs.

Our review of the data provided in the petition and other information readily available to the Department indicates that the petitioner has established industry support representing over 50 percent of total production of the domestic like product, requiring no further action by the Department pursuant to section 732(c)(4)(D) of the Act. In addition, the Department received no opposition to the petition from domestic producers of the like product. Therefore, the domestic producers or workers who support the petition account for at least 25 percent of the total production of the domestic like product, and the requirements of section 732(c)(4)(A)(i) are met. Furthermore, the domestic producers or workers who support the petition account for more than 50 percent of the production of the domestic like product

[1] See *Algoma Steel Corp. Ltd., v. United States*, 688 F. Supp. 639, 642-44 (CIT 1988); *High Information Content Flat Panel Displays and Display Glass from Japan: Final Determination; Rescission of Investigation and Partial Dismissal of Petition*, 56 FR 32376, 32380-81 (July 16, 1991).

produced by that portion of the industry expressing support for or opposition to the petition. Thus, the requirements of section 732(c)(4)(A)(ii) of the Act also are met. Accordingly, the Department determines that the petition was filed on behalf of the domestic industry within the meaning of section 732(b)(1) of the Act.

With regard to the definition of domestic like product, the petitioner does not offer a definition of domestic like product distinct from the scope of the investigation. On April 30, 2003, Circuit Breaker Industries, Ltd. ("CBI"), a South African producer of the subject merchandise, challenged industry support for the petition pursuant to sections 732(b)(3) and 732(c)(4)(D) of the Act. On May 1, 2003, the petitioner filed its reply to CBI's challenge.

Based on our analysis of the information presented by the petitioner, we have determined that there is a single domestic like product, hydraulic magnetic circuit breakers, which is defined in the "Scope of Investigation" section above, and we have analyzed industry support in terms of this domestic like product. For more information on our analysis and the data upon which we relied, see Import Administration Antidumping Investigation Initiation Checklist ("Initiation Checklist"), Industry Support section and Appendix 1, dated May 5, 2003, on file in the CRU of the main Department of Commerce building.

Period of Investigation

The anticipated period of investigation is April 1, 2002, through March 31, 2003.

Constructed Export Price and Normal Value

The following is a description of the allegation of sales at less than fair value upon which the Department based its decision to initiate this investigation. The sources of data for the deductions and adjustments relating to U.S. price and normal value are discussed in greater detail in the Initiation Checklist dated May 5, 2003. Should the need arise to use any of this information as facts available under section 776 of the Act, we may reexamine the information and revise the margin calculations, if appropriate.

Constructed Export Price

The petitioner identified CBI and its affiliate CBI, Inc. (hereinafter "CBI USA") as the primary producer and importer, respectively, of the subject merchandise. As the sole South African producer of HMCBs, CBI accounts for all exports of HMCBs to the United States from South Africa. Therefore, the petitioner established U.S. price based on constructed exported price ("CEP"). According to the petitioner, CBI's sales in the United States are sold by CBI's subsidiary, CBI USA, which holds inventory in its U.S. warehouse prior to shipment to unaffiliated buyers. In order to obtain ex-factory prices, the petitioner deducted international transportation (by sea) and estimated profit and expense mark-up. Because the petitioner did not provide adequate support for its profit and expense figure, we recalculated the CEPs to not deduct this expense. With this exception, we reviewed the information provided regarding CEP and have determined that it is adequate and accurate and represents information reasonably available to the petitioner (see Initiation Checklist, Re: Less-Than-Fair-Value Allegation).

Because the petitioner provided price quotes for actual products and we determine that these price quotes are sufficient for initiation purposes, we did not use the ITC Dataweb values that petitioner provided to estimate dumping margins. To the extent necessary, we will consider the appropriateness of the petitioner's alternative during the course of this proceeding.

Normal Value

With respect to normal value, the petitioner provided home-market prices at which the foreign like product is offered for sale for consumption in the exporting country, adjusted as required by the statute. These home market prices were obtained directly from CBI, the sole South African producer of the subject merchandise.

In calculating its estimated margins, the petitioner compared prices for single pole B, C, D, and E frame HMCBs sold in the home market with similar products offered for sale in the United States by CBI USA. For purposes of initiation, however, we made an adjustment to the estimated margin calculated for D frame HMCBs. Specifically, the petitioner, in its April 14th petition, compared a home market price for D-frame HMCBs with an amperage rating between 61 and 100 amperes to a U.S. price for D frame HMCBs with an amperage rating between 10 and 50 amperes. Because the petitioner presented the Department with several different home market prices for D frame HMCBs, we have recalculated the estimated margin using the home-market price for D-frame HMCBs with a comparable amperage rating (i.e., between 5 and 60 amperes). See Initiation Checklist, Re: Normal Value.

With this exception, we determined that the information the petitioner used for the calculation of home-market price is adequate and accurate and represents information reasonably available to it.

Fair-Value Comparison

Based on the data provided by the petitioner, there is reason to believe that imports of HMCBs from South Africa are being, or are likely to be, sold in the United States at less than fair value. As a result of the comparison of CEP to normal value, we recalculated estimated dumping margins for imports of HMCBs from South Africa that range from 129.43 percent to 721.95 percent.

Allegations and Evidence of Material Injury and Causation

The petition alleges that the U.S. industry producing the domestic like product is being materially injured and is threatened with material injury by reason of the imports of the subject merchandise sold at less than normal value. The petitioner contends that its injured condition is evidenced by declining trends in market share, pricing, production levels, profits, sales, and utilization of capacity. Furthermore, the petitioner contends that injury and threat of injury is evidenced by negative effects on its cash flow, ability to raise capital, and growth. These allegations are supported by relevant evidence including import data, lost sales, and pricing information. The Department assessed the allegations and supporting evidence regarding material injury and causation and determined that these allegations are supported by accurate and adequate evidence and meet the statutory requirements for initiation (see Initiation Checklist dated May 5, 2003, Re: Material Injury).

Initiation of Antidumping Investigation

Based upon our examination of the petition on HMCBs from South Africa and other information reasonably available to the Department, we find that the petition meets the requirements of section 732 of the Act. Therefore, we are initiating an antidumping duty investigation to determine whether imports of HMCBs from South Africa are being, or are likely to be, sold in the United States at less than fair value. Unless postponed, we will make our preliminary determination no later than 140 days after the date of this initiation.

Distribution of Copies of the Petition

In accordance with section 732(b)(3)(A) of the Act, a copy of the public version of the petition has been provided to the representatives of the government of South Africa. We will attempt to provide a copy of the public version of the petition to each producer named in the petition, as appropriate.

International Trade Commission Notification

We have notified the ITC of our initiation, as required by section 732(d) of the Act.

Preliminary Determination by the ITC

The ITC will preliminarily determine, no later than May 29, 2003, whether there is a reasonable indication that imports of HMCBs are causing material injury, or threatening to cause material injury, to a U.S. industry. A negative ITC determination will result in this investigation being terminated; otherwise, this investigation will proceed according to statutory and regulatory time limits.

This notice is published pursuant to section 777(i) of the Act.

Dated: May 5, 2003.

Joseph A. Spetrini,

Acting Assistant Secretary for Import Administration.

[FR Doc. 03–11745 Filed 5–9–03; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

[A-485–805]

Certain Small Diameter Carbon and Alloy Seamless Standard, Line and Pressure Pipe from Romania: Preliminary Results of Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of Preliminary Results of Antidumping Duty Administrative Review.

SUMMARY: In response to a request by S.C. Silcotub S.A. (Silcotub), a producer/exporter of subject merchandise, the Department of Commerce (the Department) is conducting an administrative review of the antidumping duty order on certain small diameter carbon and alloy seamless standard, line and pressure pipe (seamless pipe) from Romania. The period of review (POR) is August 1, 2001, through July 31, 2002.

We preliminarily find that sales have not been made below normal value (NV). If these preliminary results are adopted in our final results of administrative review, we will instruct the U.S. Bureau of Customs and Border Protection (BCBP) to assess no antidumping duties on the subject merchandise that was exported by Silcotub and entered during the POR.

EFFECTIVE DATE: May 12, 2003.

FOR FURTHER INFORMATION CONTACT: Martin Claessens or Monica Gallardo, Group II, Office 5, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone: (202) 482–5451 or (202) 482–3147, respectively.

SUPPLEMENTARY INFORMATION:

Background

On August 10, 2000, the Department published an antidumping duty order on certain small diameter carbon and alloy seamless standard, line and pressure pipe from Romania. *See Notice of Amended Final Determination of Sales at Less Than Fair Value and Antidumping Duty Order: Certain Small Diameter Carbon and Alloy Seamless Standard, Line and Pressure Pipe From Romania*, 65 FR 48963 (August 10, 2000) (*Amended Final Determination*). On August 29, 2002, Silcotub requested an administrative review. On August 30, 2002, United States Steel Corporation (U.S. Steel), a domestic producer of seamless pipe and an interested party to this proceeding, also requested an administrative review. On September 20, 2002, the Department initiated the current administrative review. *See Notice of Initiation of Antidumping and Countervailing Duty Administrative Reviews, Requests for Revocation in Part and Deferral of Administrative Review*, 67 FR 60210 (September 25, 2002). Since the initiation of this administrative review, the following events have occurred:

On October 21, 2002, we issued an antidumping questionnaire to Silcotub. We received questionnaire responses from Silcotub on November 22 and December 13, 2002. We issued a supplemental questionnaire on January 22, 2003, to which we received responses on February 25 and February 28, 2003. On April 4, 2003, U.S. Steel requested that the Department extend the deadline for the preliminary results. The deadline was not extended.

Scope of the Order

The products covered by the order are seamless carbon and alloy (other than stainless) steel standard, line, and pressure pipes and redraw hollows produced, or equivalent, to the ASTM A-53, ASTM A-106, ASTM A-333, ASTM A-334, ASTM A-335, ASTM A-589, ASTM A-795, and the API 5L specifications and meeting the physical parameters described below, regardless of application. The scope of the order also includes all products used in standard, line, or pressure pipe applications and meeting the physical parameters described below, regardless of specification. Specifically included within the scope of the order are seamless pipes and redraw hollows, less than or equal to 4.5 inches (114.3 mm) in outside diameter, regardless of wall-thickness, manufacturing process (hot finished or cold-drawn), end finish (plain end, beveled end, upset end, threaded, or threaded and coupled), or surface finish.

The seamless pipes subject to the order are currently classifiable under the subheadings 7304.10.10.20, 7304.10.50.20, 7304.31.30.00, 7304.31.60.50, 7304.39.00.16, 7304.39.00.20, 7304.39.00.24, 7304.39.00.28, 7304.39.00.32, 7304.51.50.05, 7304.51.50.60, 7304.59.60.00, 7304.59.80.10, 7304.59.80.15, 7304.59.80.20, and 7304.59.80.25 of the Harmonized Tariff Schedule of the United States (HTSUS).

Specifications, Characteristics, and Uses: Seamless pressure pipes are intended for the conveyance of water, steam, petrochemicals, chemicals, oil products, natural gas and other liquids and gasses in industrial piping systems. They may carry these substances at elevated pressures and temperatures and may be subject to the application of external heat. Seamless carbon steel pressure pipe meeting the ASTM A-106 standard may be used in temperatures of up to 1000 degrees Fahrenheit, at various ASME code stress levels. Alloy pipes made to ASTM A-335 standard must be used if temperatures and stress levels exceed those allowed for ASTM A-106. Seamless pressure pipes sold in the United States are commonly produced to the ASTM A-106 standard.

Seamless standard pipes are most commonly produced to the ASTM A-53 specification and generally are not intended for high temperature service. They are intended for the low temperature and pressure conveyance of water, steam, natural gas, air and other liquids and gasses in plumbing and heating systems, air conditioning units, automatic sprinkler systems, and other related uses. Standard pipes (depending on type and code) may carry liquids at elevated temperatures but must not exceed relevant ASME code requirements. If exceptionally low temperature uses or conditions are anticipated, standard pipe may be manufactured to ASTM A-333 or ASTM A-334 specifications.

Seamless line pipes are intended for the conveyance of oil and natural gas or other fluids in pipe lines. Seamless line pipes are produced to the API 5L specification.

Seamless water well pipe (ASTM A-589) and seamless galvanized pipe for fire protection uses (ASTM A-795) are used for the conveyance of water.

Seamless pipes are commonly produced and certified to meet ASTM A-106, ASTM A-53, API 5L-B, and API 5L-X42 specifications. To avoid maintaining separate production runs and separate inventories, manufacturers typically triple or quadruple certify the pipes by meeting the metallurgical requirements and performing the required tests pursuant to the respective specifications. Since distributors sell the vast majority of this product, they can thereby maintain a single inventory to service all customers.

The primary application of ASTM A-106 pressure pipes and triple or quadruple certified pipes is use in pressure piping systems by refineries, petrochemical plants, and chemical plants. Other applications are in power generation plants (electrical-fossil fuel or nuclear), and in some oil field uses (on shore and off shore) such as for separator lines, gathering lines and metering runs. A minor application of this product is for use as oil and gas distribution lines for commercial applications. These applications constitute the majority of the market for the subject seamless pipes. However, ASTM A-106 pipes may be used in some boiler applications.

Redraw hollows are any unfinished pipe or "hollow profiles" of carbon or alloy steel transformed by hot rolling or cold drawing/hydrostatic testing or other methods to enable the material to be sold under ASTM A-53, ASTM A-106, ASTM A-333, ASTM A-334, ASTM A-335, ASTM A-589, ASTM A-795, and API 5L specifications.

The scope of the order includes all seamless pipe meeting the physical parameters described above and produced to one of the specifications listed above, regardless of application, with the exception of the specific exclusions discussed below, and whether or not also certified to a non-covered specification. Standard, line, and pressure applications and the above-listed specifications are defining characteristics of the scope of the order. Therefore, seamless pipes meeting the physical description above, but not produced to the ASTM A-53, ASTM A-106, ASTM A-333, ASTM A-334, ASTM A-335, ASTM A-589, ASTM A-795, and API 5L specifications shall be covered if used in a standard, line, or pressure application, with the exception of the specific exclusions discussed below.

For example, there are certain other ASTM specifications of pipe which, because of overlapping characteristics, could potentially be used in ASTM A-106 applications. These specifications generally include ASTM A-161, ASTM A-192, ASTM A-210, ASTM A-252, ASTM A-501, ASTM A-523, ASTM A-524, and ASTM A-618. When such pipes are used in a standard, line, or pressure pipe application, with the exception of the specific exclusions discussed below, such products are covered by the scope of the order.

Specifically excluded from the scope of the order is boiler tubing and mechanical tubing, if such products are not produced to ASTM A-53, ASTM A-106, ASTM A-333, ASTM A-334, ASTM A-335, ASTM A-589, ASTM A-795, and API 5L specifications and are not used in standard, line, or pressure pipe applications. In addition, finished and unfinished OCTG are excluded from the scope of the order, if covered by the scope of another antidumping duty order from the same country. If not covered by such an OCTG order, finished and unfinished OCTG are included in this scope when used in standard, line or pressure applications.

With regard to the excluded products listed above, the Department will not instruct BCBP to require end-use certification until such time as petitioner or other interested parties provide to the Department a reasonable basis to believe or suspect that the products are being used in a covered application. If such information is provided, we will require end-use certification only for the product(s) (or specification(s)) for which evidence is provided that such products are being used in covered applications as described above. For example, if, based on evidence provided by petitioner, the Department finds a reasonable basis to believe or suspect that seamless pipe produced to the A-161 specification is being used in a standard, line or pressure application, we will require end-use certifications for imports of that specification. Normally we will require only the importer of record to certify to the end use of the imported merchandise. If it later proves necessary for adequate implementation, we may also require producers who export such products to the United States to provide such certification on invoices accompanying shipments to the United States.

Although the HTSUS subheadings are provided for convenience and BCBP purposes, our written description of the merchandise subject to this scope is dispositive.

Duty Absorption

On October 25, 2002, U.S. Steel requested that the Department determine whether or not antidumping duties had been absorbed during the POR. Section 751(a)(4) of the Tariff Act of 1930, as amended, (the Act) provides for the Department, if requested, to determine during an administrative review initiated two or four years after the publication of the order, whether antidumping duties have been absorbed by a foreign producer or exporter, if the subject merchandise is sold in the United States through an affiliated importer. In this case, Silcotub sold to the United States through an importer that is affiliated with Silcotub within the meaning of section 771(33) of the Act.

Because this review was initiated two years after the publication of the antidumping duty order, we will make a duty absorption determination in this segment of the proceeding. Because we preliminarily find an absence of dumping in this review, there is no basis under the statute for a finding that any antidumping duties have been absorbed by Silcotub or its affiliated U.S. importer.[1] If these results remain unchanged in the final results of this review, we will continue to find that no duties were absorbed by Silcotub or its affiliated U.S. importer during the POR.

Separate Rates

Romania's designation as a NME country remained in effect until January 1, 2003.[2] We are therefore treating Romania as an NME country for purposes of this review.

It is the Department's standard policy to assign all exporters of subject merchandise subject to review in a non-market economy (NME) country a single rate unless an exporter can demonstrate an absence of government control, both in law and in fact, with respect to exports. To establish whether an exporter is sufficiently independent of government control to be entitled to a separate rate, the Department analyzes the exporter in light of the criteria established in the *Final Determination of Sales at Less Than Fair Value: Sparklers from the People's Republic of China*, 56 FR 20588 (May 6, 1991) (*Sparklers*), as amplified in *Final Determination of Sales at Less Than Fair Value: Silicon Carbide from the People's Republic of China*, 59 FR 22585 (May 2, 1994) (*Silicon Carbide*). Under this test, exporters in NME countries are entitled to separate, company-specific margins when they can demonstrate an absence of government control over exports, both in law (*de jure*) and in fact (*de facto*).

Absence of De Jure Control

Evidence supporting, though not requiring, a finding of *de jure* absence of government control over export activities includes: (1) An absence of restrictive stipulations associated with an individual exporter's business and export licenses; (2) Any legislative enactments decentralizing control of companies; and (3) Any other formal measures by the government decentralizing control of companies. *See Sparklers*, 56 FR at 20589.

Absence of De Facto Control

A *de facto* analysis of absence of government control over exports is based on four factors -- whether the respondent: 1) sets its own export prices independently of the government and other exporters; 2) retains the proceeds from its export sales and makes independent decisions regarding the disposition of profits or financing of losses; 3) has the authority to negotiate and sign contracts and other agreements; and 4) has autonomy from the government regarding the selection of management. *See Silicon Carbide*, 59 FR at 22587; *see also Sparklers*, 56 FR at 20589.

We have determined, according to the criteria identified in *Sparklers* and *Silicon Carbide*, that evidence on the record demonstrates an absence of government control, both in law and in fact, with respect to exports by Silcotub. Silcotub is a private joint stock commercial company organized under the Romanian Commercial Companies Law, Law No. 31/1990, as amended. Silcotub is limited only by its articles of incorporation and bylaws. Specifically, the information on the record shows that Silcotub is autonomous in selecting its management, negotiating and signing contracts, setting its own export prices and retaining its own profits. For a complete discussion of the Department's analysis regarding Silcotub's entitlement to a separate rate, *see* the May 5, 2003 memorandum, Assignment of Separate Rates for S.C. Silcotub S.A., which is on file in the Central Record Unit (CRU), Room B-099, U.S. Department of Commerce, Pennsylvania Avenue and 14th Street, NW, Washington, DC 20230.

Constructed Export Price

For all sales made by Silcotub to the United States, we used constructed export price (CEP) in accordance with section 772(b) of the Act because the first sale to an unaffiliated purchaser occurred after importation of the merchandise into the United States. We calculated CEP based on the packed, ex-warehouse or delivered prices from Silcotub's U.S. affiliate to unaffiliated customers. In accordance with section 772(c) of the Act, we made deductions, where appropriate, from the starting price for CEP for foreign inland freight, foreign brokerage and handling, international freight, marine insurance, BCBP duties, U.S. brokerage and handling, and other U.S. transportation expenses such as wharfage, stevedoring, and surveying. For the deductions of foreign inland freight and foreign brokerage and handling, we used Egyptian surrogate values because these services were provided by Romanian companies and paid for in Romanian lei. In accordance with section 772(d)(1) of the Act, we made further deductions for the following selling expenses that related to economic activity in the United States: credit expenses, direct selling expenses (*i.e.*, bank charges), and indirect selling expenses (including inventory carrying costs). In accordance with section 772(d)(3) of the Act, we have deducted from the starting price an amount for profit.

Normal Value

Section 773(c)(1) of the Act provides that the Department shall determine the NV using a factors-of-production methodology if: (1) the merchandise is exported from an NME country; and (2) the information does not permit the calculation of NV using home-market prices, third-country prices, or constructed value (CV) under section 773(a) of the Act.

As noted above, the Department is treating Romania as an NME country for purposes of this review. Furthermore, information available on the record of this review does not permit the calculation of NV using home market prices, third country prices, or CV under section 773(a) of the Act. Thus, the Department calculated NV in this review by valuing the factors of production in a surrogate country.

Surrogate Country

Section 773(c)(4) of the Act requires the Department to value the NME producer's factors of production, to the extent possible, in one or more market economy countries that: (1) are at a level of economic development comparable to that of the NME, and (2) are significant producers of comparable merchandise. We chose Egypt as the surrogate country on the basis of the criteria set out in 19 CFR 351.408(b). For a further discussion of our surrogate selection, see the May 5, 2003, memorandum Selection of Surrogate Country. (This memorandum is on file in the Department's CRU.)

Factors of Production

We used publicly available information from Egypt to value the various factors of production. Because some of the Egyptian data were not contemporaneous with the POR, we adjusted the data, expressed in U.S. dollars, to the POR using the U.S. producer price index published by the International Monetary Fund.

In accordance with section 773(c) of the Act, we valued Silcotub's reported factors of production by multiplying them by publicly available Egyptian values. In selecting the surrogate values, we considered the quality, specificity, and contemporaneity of the data. As appropriate, we adjusted input prices to make them delivered prices. We added to Egyptian surrogate values a surrogate freight cost using the reported distance from each supplier to the factory because this distance was shorter than the distance from the nearest seaport to the factory. This adjustment is in accordance with the decision of the Court of Appeals for the Federal Circuit in *Sigma Corp. v. United States*, 117 F.3d 1401 (Fed. Cir. 1997).

We valued material inputs and packing material (*i.e.*, where applicable, plastic caps, lacquer, and ink) by

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[1] *See Large Newspaper Printing Presses and Components Thereof, Whether Assembled or Unassembled, From Germany: Preliminary Results of Antidumping Duty Administrative Review*, 66 FR 51375 (October 9, 2001).

[2] In *Certain Small Diameter Carbon and Alloy Seamless Standard, Line, and Pressure Pipe from Romania: Final Results of Antidumping Duty Administrative Review*, 68 FR 12672, 12673 (March 17, 2003), the Department reviewed the non-market economy status of Romania and determined to reclassify Romania as a market economy for purposes of antidumping and countervailing duty proceedings, pursuant to section 771(18)(A) of the Act, effective January 1, 2003. *See* Memorandum from Lawrence Norton, Import Policy Analyst, to Joseph Spetrini, Acting Assistant Secretary for Import Administration: Antidumping Duty Administrative Review of Certain Small Diameter Carbon and Alloy Seamless Standard, Line and Pressure Pipe from Romania--Non-Market Economy Status Review (March 10, 2003), placed on the record of this administrative review. The March 10, 2003 decision with respect to Romania's NME status provided that:

This finding will apply to all future administrative proceedings covering periods of investigation or review that fall after January 1, 2003. Where a proceeding's period of investigation or review begins before January 1, 2003, but ends after that date, the Department will use the standard market economy methodology if it determines that a sufficient period of time has passed so that adequate market economy data is available. In addition, the U.S. countervailing duty law will apply now to Romania where the proceeding at issue involves an adequate period of investigation after this effective date.

Harmonized Tariff Schedule (HTS) number, using imports statistics from the Egyptian Central Agency for Public Mobilization and Statistics, National Information Center. Where a material input was purchased in a market economy currency from a market economy supplier (*i.e.*, billet, strap, clips, and tags), we valued the input at the actual purchase price in accordance with section 351.408(c)(1) of the Department's regulations. We note that, although billets were purchased from both a market-economy supplier and non-market-economy supplier, we are valuing all billets based on the price for the market-economy purchase. This methodology is consistent with section 351.408(c)(1) of the Department's regulations in that the Department will normally value the factor using the price paid to the market economy supplier, where a portion of a factor is purchased from a market economy and the remainder is purchased from an NME supplier.

For the cold-drawn products, we have adjusted the amount of billet inputs toaccount more accurately for combined yield loss of the producer. We have adjusted the scrap offset accordingly.[3]

We valued labor using the method described in 19 CFR 351.408(c)(3) of the Department's regulations. For a complete analysis of surrogate values, *see* the May 5, 2003, memorandum, Factors of Production Valuation for Preliminary Results (Valuation Memorandum), on file in the CRU.

To value electricity, we used the 2001 electricity rates for Egypt reported on the website of the International Trade Administration under "Trade Information Center." *See www.web.ita.doc.gov/ticwebsite/neweb.nsf/*. We based the value of natural gas in Egypt on a published article that shows the price at which the Government of Egypt purchased natural gas, also used in the final results of the previous administrative review and placed on the record of this review.[4]

We based our calculation of factory overhead and selling, general and administrative (SG&A) expenses, as well as profit, on 1998/99 financial statements of El-Naser Steel Pipes & Fittings Co., an Egyptian producer of comparable merchandise.

To value truck freight rates, we used a 1999 rate (adjusted for inflation) provided by a trucking company located in Egypt. For rail transportation, we valued rail rates in Egypt using information used in *Titanium Sponge from the Republic of Kazakhstan: Notice of Final Results of Antidumping Duty Administrative Review*, 64 FR 66169 (November 24, 1999), which were initially obtained from a 1999 letter from the Egyptian International House, and have been placed on the record of this review.

For brokerage and handling, we used a 1999 rate (adjusted for inflation) provided by a trucking and shipping company located in Alexandria, Egypt. For further details, see Valuation Memorandum.

Currency Conversion

We made currency conversions in accordance with Section 773(A)(a) of the Act. For currency conversions involving the Egyptian pound, we used exchange rates published by the International Monetary Fund in *International Financial Statistics*. For all other conversions, we used daily exchange rates published by the Federal Reserve Bank.

Preliminary Results of the Review

We preliminarily determine that the following dumping margin exists for the period August 1, 2001, through July 31, 2002.

Exporter/manufacturer	Weighted-average margin percentage
Silcotub	0.00

Within five days of the date of publication of this notice, in accordance with 19 CFR 351.224, the Department will disclose its calculations. Any interested party may request a hearing within 30 days of the date of publication of this notice. Any hearing, if requested, will be held approximately 42 days after the publication of this notice, or the first workday thereafter. Issues raised in hearings will be limited to those raised in the case and rebuttal briefs. Interested parties may submit case briefs within 30 days of the date of publication of this notice, or the first workday thereafter. Rebuttal briefs, which must be limited to issues raised in the case briefs, may be filed not later than 35 days after the date of publication of this notice, or the first workday thereafter. Parties who submit case briefs or rebuttal briefs in this review are requested to submit with each argument (1) a statement of the issue and (2) a brief summary of the argument. Parties are also requested to submit such arguments, and public versions thereof, with an electronic version on a diskette.

Assessment

Upon completion of this administrative review, the Department will determine, and the BCBP shall assess, antidumping duties on all appropriate entries. In accordance with 19 CFR 351.212(b)(1), we have calculated an exporter/importer (or customer)-specific assessment rate for merchandise subject to this review. The Department will issue appropriate assessment instructions to the BCBP within 15 days of publication of the final results of review. If these preliminary results are adopted in the final results of review, we will direct the BCBP to assess no antidumping duties on the merchandise subject to review pursuant to 19 CFR 351.106(c)(2). For the final results, if any importer-specific assessment rate is above *de minimis*, we will instruct BCBP to assess duties accordingly. This rate will be assessed uniformly on all entries of that particular importer made during the POR.

Cash Deposit Requirements

The following deposit requirements will be effective upon completion of the final results of this administrative review for all shipments of seamless pipe from Romania entered, or withdrawn from warehouse, for consumption on or after the publication date, as provided for by section 751(a)(2)(c) of the Act: (1) For subject merchandise exported by Silcotub, which has a separate rate, the cash deposit rate will be zero if Silcotub's rate in the final results of review continues to be less than 0.5 percent and, therefore, *de minimis*; (2) for merchandise exported by companies not covered in this review but covered in the original less than fair value (LTFV) investigation, the cash deposit will continue to be the most recent rate published in the final determination for which the exporter received a company-specific rate; and (3) if the exporter is not a firm covered in this review or the LTFV investigation, the cash deposit rate will be 13.06 percent, the "Romania-Wide" rate established in the LTFV investigation. *See Notice of Amended Final Determination of Sales at Less Than Fair Value and Antidumping Duty Order: Certain Small Diameter Carbon and Alloy Seamless Standard, Line and Pressure Pipe From Romania*, 65 FR 48963 (August 10, 2000). These cash deposit requirements, when imposed, shall remain in effect until publication of the final results of the next administrative review.

This notice also serves as a preliminary reminder to importers of their responsibility to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

This administrative review and notice are issued and published in accordance with sections 751(a)(1) and 777(i)(1) of the Act.

Dated: May 5, 2003.

Joseph Spetrini,

Acting Assistant Secretaryfor Import Administration.

[FR Doc. 03–11746 Filed 5–9–02; 8:45 am]

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[3] *See* Memorandum From Martin Claessens to the File, Analysis Memorandum for Preliminary Results (May 5, 2003).

[4] *See Certain Small Diameter Carbon and Alloy Seamless Standard, Line and Pressure Pipe from Romania: Final Results of Antidumping Administrative Review*, 68 FR 12672 (March 17, 2003) and corresponding Issues and Decisions Memorandum at Comment 3. *See also* Valuation Memorandum.

DEPARTMENT OF COMMERCE

International Trade Administration

[C–122–815]

Pure Magnesium and Alloy Magnesium from Canada: Preliminary Results of Countervailing Duty Administrative Reviews

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of Preliminary Results of Countervailing Duty Administrative Reviews.

SUMMARY: The Department of Commerce is conducting administrative reviews of the countervailing duty orders on pure magnesium and alloy magnesium from Canada for the period January 1, 2001 through December 31, 2001. We preliminarily find that certain producers/exporters have received countervailable subsidies during the period of review. If the final results remain the same as these preliminary results, we will instruct the Customs Service to assess countervailing duties as detailed in the "Preliminary Results of Review" section of this notice. Interested Parties are invited to comment on these preliminary results (*see* the Public Comment section of this notice).

EFFECTIVE DATE: May 12, 2003.

FOR FURTHER INFORMATION CONTACT: Melanie Brown, AD/CVD Enforcement, Group I, Office 1, Import Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230, telephone: (202) 482–4987

SUPPLEMENTARY INFORMATION:

Case History

On August 31, 1992, the Department of Commerce ("the Department") published in the Federal Register the countervailing duty orders on pure magnesium and alloy magnesium from Canada (57 FR 39392). On August 6, 2002, the Department published a notice of "Opportunity to Request Administrative Review" of these countervailing duty orders (67 FR 50856). We received a timely request for review of Norsk Hydro Canada, Inc. ("NHCI") and Magnola Metallurgy, Inc. ("Magnola") from the petitioner, U.S. Magnesium, LLC. On September 25, 2002, we initiated this review covering shipments of subject merchandise from NHCI and Magnola (67 FR 60210).

On December 3, 2002, we published *Pure and Alloy Magnesium from Canada: Correction of Notice of Initiation and Partial Rescission of Countervailing Duty Administrative Review* (67 FR 71936). In that notice, we stated that the correct POR for these administrative reviews is January 1, 2001 through December 31, 2001, and rescinded the reviews with respect to Magnola, because Magnola is currently a party in a new shipper administrative review covering the same POR and the same subject merchandise. Therefore, in accordance with 19 CFR 351.213(b), these reviews cover NHCI, a producer/exporter of the subject merchandise. These reviews cover 16 subsidy programs.

On December 5, 2002, we issued countervailing duty questionnaires to NHCI, the Government of Québec ("GOQ"), and the Government of Canada ("GOC"). We received questionnaire responses from the GOQ and the GOC on January 13, 2003, and from NHCI on January 27, 2003.

Scope of the Reviews

The products covered by these reviews are shipments of pure and alloy magnesium from Canada. Pure magnesium contains at least 99.8 percent magnesium by weight and is sold in various slab and ingot forms and sizes. Magnesium alloys contain less than 99.8 percent magnesium by weight with magnesium being the largest metallic element in the alloy by weight, and are sold in various ingot and billet forms and sizes.

The pure and alloy magnesium subject to review is currently classifiable under items 8104.11.0000 and 8104.19.0000, respectively, of the Harmonized Tariff Schedule of the United States ("HTSUS"). Although the HTSUS subheadings are provided for convenience and customs purposes, the written descriptions of the merchandise subject to the orders are dispositive.

Secondary and granular magnesium are not included in the scope of these orders. Our reasons for excluding granular magnesium are summarized in *Preliminary Determination of Sales at Less Than Fair Value: Pure and Alloy Magnesium From Canada*, 57 FR 6094 (February 20, 1992).

Period of Review

The period of review ("POR") for which we are measuring subsidies is from January 1, 2001 through December 31, 2001.

Subsidies Valuation Information

Discount rate: As noted below, the Department preliminarily finds that NHCI benefitted from one countervailable subsidy program during the POR: Article 7 grants from the Québec Industrial Development Corporation. As in the investigations and previous administrative reviews of these cases, we have used the company's cost of long-term, fixed-rate debt in the year in which this grant was approved as the discount rate for purposes of calculating the benefit pertaining to the POR.

Allocation period: In the investigations and previous administrative reviews of these cases, the Department used as the allocation period for non-recurring subsidies, the average useful life ("AUL") of renewable physical assets in the magnesium industry as recorded in the Internal Revenue Service's 1977 Class Life Asset Depreciation Range System ("the IRS tables"), *i.e.*, 14 years. Pursuant to section 351.524(d)(2) of the countervailing duty regulations, the Department will use the AUL in the IRS tables as the allocation period unless a

party can show that the IRS tables do not reasonably reflect the company-specific AUL or the country-wide AUL for the industry. If a party can show that either of these time periods differs from the AUL in the IRS tables by one year or more, the Department will use the company-specific AUL or the country-wide AUL for the industry as the allocation period.

Neither NHCI nor the petitioner has contested using the AUL reported for the magnesium industry in the IRS tables. Therefore, we continue to allocate non-recurring benefits over 14 years.

Analysis of Programs

I. *Program Preliminarily Determined to Confer Countervailable Subsidies*

A. *Article 7 Grant from the Québec Industrial Development Corporation ("SDI")*

SDI (*Société de Développement Industriel du Québec*) administers development programs on behalf of the GOQ. SDI provides assistance under Article 7 of the SDI Act in the form of loans, loan guarantees, grants, assumptions of costs associated with loans, and equity investments. This assistance is provided for projects that are capable of having a major impact upon the economy of Québec. Article 7 assistance greater than 2.5 million dollars must be approved by the Council of Ministers and assistance over 5 million dollars becomes a separate budget item under Article 7. Assistance provided in such amounts must be of "special economic importance and value to the province." (*See Final Affirmative Countervailing Duty Determinations: Pure Magnesium and Alloy Magnesium from Canada*, 57 FR 30946, 30948 (July 13, 1992) ("*Magnesium Investigation*").)

In 1988, NHCI was awarded a grant under Article 7 to cover a large percentage of the cost of certain environmental protection equipment. In the *Magnesium Investigation*, the Department determined that NHCI received a disproportionately large share of assistance under Article 7. On this basis, we determined that the Article 7 grant was limited to a specific enterprise or industry, or group of enterprises or industries, and, therefore, countervailable. In these reviews, neither the GOQ nor NHCI has provided new information which would warrant reconsideration of this determination.

In the *Magnesium Investigation*, the Department found that the Article 7 assistance received by NHCI constituted a non-recurring grant because it represented a one-time provision of funds. In the *Preliminary Results of First Countervailing Duty Administrative Reviews: Pure Magnesium and Alloy Magnesium From Canada*, 61 FR 11186, 11187 (March 19, 1996), we found this determination to be consistent with the principles enunciated in the Allocation section of the *General Issues Appendix* ("GIA") appended to the *Final Countervailing Duty Determination; Certain Steel Products from Austria*, 58 FR 37225, 37226 (July 9, 1993). In the current review, no new information has been placed on the record that would cause us to depart from this treatment. Therefore, in accordance with section 351.524(b)(2) of our regulations, we continue to allocate the benefit of this grant over time. We used our standard grant methodology as described in section 351.524(d) of the regulations to calculate the countervailable subsidy. We divided the benefit attributable to the POR by NHCI's total sales of Canadian-manufactured products in the POR. On this basis, we preliminarily determine the countervailable subsidy from the Article 7 SDI grant to be 1.68 percent *ad valorem* for NHCI.

II. *Programs Preliminarily Determined To Be Not Used*

We examined the following programs and preliminarily determine that NHCI did not apply for or receive benefits under these programs during the POR:

- St. Lawrence River Environment Technology Development Program
- Program for Export Market Development
- The Export Development Corporation
- Canada-Québec Subsidiary Agreement on the Economic Development of the Regions of Québec
- Opportunities to Stimulate Technology Programs
- Development Assistance Program
- Industrial Feasibility Study Assistance Program
- Export Promotion Assistance Program
- Creation of Scientific Jobs in Industries
- Business Investment Assistance Program
- Business Financing Program
- Research and Innovation Activities Program
- Export Assistance Program
- Energy Technologies Development Program
- Transportation Research and Development Assistance Program

III. *Program Previously Determined To Be Terminated*

- Exemption from Payment of Water Bills

In the administrative reviews covering calendar year 1997, the Department found that this program was terminated during the POR. In our final results, we stated that we, therefore, did not intend to continue to examine this program in the future (see Pure Magnesium and Alloy Magnesium from Canada: Final Results of Countervailing Duty Administrative Reviews, 64 FR 48805, 48806 (September 8, 1999)).

Alleged Over-assessment of Countervailing Duties

In its January 27, 2003 questionnaire response, NHCI contends that the Department should adjust the assessment rate applied to the value of entries made during the POR in order to avoid alleged over-countervailing in connection with cash deposits retained on 1997 entries. NHCI states that the Department issued appropriate liquidation instructions to the Customs Service ("Customs") following the completion of the 1997 administrative review, but that Customs erroneously liquidated hundreds of NHCI entries at the cash deposit rate at the time of entry, rather than at the rate established in the final results of the 1997 administrative review.

The Department does not have the authority to address what is essentially a customs protest issue concerning entries from a prior, completed review in the context of this administrative review. Parties cannot revive an issue for which the deadlines for a proper challenge have already passed by raising it in an on-going administrative proceeding. Therefore, the Department will not address an issue which is not properly before the agency in this review.

Preliminary Results of Review

In accordance with 19 CFR 351.221(b)(4)(I), we calculated a subsidy rate for NHCI, the sole producer/exporter subject to these administrative reviews. For the period January 1, 2001, through December 31, 2001, we preliminarily find the net subsidy rate for NHCI to be 1.68 percent *ad valorem*. We will disclose our calculations to the interested parties in accordance with section 351.224(b) of the regulations.

Assessment Rates

If the final results of these reviews are affirmative, the Department intends to instruct Customs to assess countervailing duties at the net subsidy rate. The Department will issue appropriate assessment instructions directly to the Customs Service within 15 days of publication of the final results of these reviews. For the period January 1, 2001, through December 31, 2001, the assessment rates applicable to all non-reviewed companies covered by these orders are the cash deposit rates in effect at the time of entry, except for Timminco Limited which was excluded from the orders in the original investigations.

Cash Deposit Instructions

The Department also intends to instruct Customs to collect cash deposits of estimated countervailing duties at the rate of 1.68 percent on the f.o.b. value of all shipments of the subject merchandise from NHCI entered, or withdrawn from warehouse, for consumption on or after the date of publication of the final results of these administrative reviews.

We will instruct Customs to continue to collect cash deposits for non-reviewed companies, (except Timminco Limited which was excluded from the orders during the investigations) at the most recent company-specific or country-wide rate applicable to the company. Accordingly, the cash deposit rate that will be applied to non-reviewed companies covered by these orders is that established in *Pure and Alloy Magnesium From Canada; Final Results of the Second (1993) Countervailing Duty Administrative Reviews*, 62 FR 48607 (September 16, 1997) or the company-specific rate published in the most recent final results of an administrative review in which a company participated. These rates shall apply to all non-reviewed companies until a review of a company assigned these rates is requested.

Public Comment

Interested parties may request a hearing within 30 days of the date of publication of this notice. Any hearing, if requested, will be held two days after the scheduled date for submission of rebuttal briefs (*see* below). Interested parties may submit written arguments in case briefs within 30 days of the date of publication of this notice. Rebuttal briefs, limited to issues raised in case briefs, may be filed no later than five days after the date of filing the case briefs. Parties who submit briefs in these proceedings should provide a summary of the arguments not to exceed five pages and a table of statutes, regulations, and cases cited. Copies of case briefs and rebuttal briefs must be served on interested parties in accordance with 19 CFR 351.303(f).

Representatives of parties to the proceeding may request disclosure of proprietary information under administrative protective order no later than 10 days after the representative's client or employer becomes a party to the proceeding, but in no event later than the date the case briefs, under 19 CFR 351.309(c)(1)(ii), are due.

The Department will publish a notice of the final results of these administrative reviews within 120 days from the publication of these preliminary results.

These administrative reviews and notice are in accordance with sections 751(a)(1) and 777(I)(1) of the Act.

Dated: May 5, 2003.

Joseph A. Spetrini,

Acting Assistant Secretary for Import Administration.

[FR Doc. 03–11742 Filed 5–9–02; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

Export Trade Certificate of Review

ACTION: Notice of Issuance of an Export Trade Certificate of Review, Application No. 03–00002.

SUMMARY: The Department of Commerce has issued an Export Trade Certificate of Review to EXIM Services of North America, Inc. ("EXIM"). This notice summarizes the conduct for which certification has been granted.

FOR FURTHER INFORMATION CONTACT: Jeffrey C. Anspacher, Director, Office of Export Trading Company Affairs, International Trade Administration, by telephone at (202) 482–5131 (this is not a toll-free number), or by e-mail at *oetca@ita.doc.gov*.

SUPPLEMENTARY INFORMATION: Title III of the Export Trading Company Act of 1982 (15 U.S.C. Sections 4001–21) authorizes the Secretary of Commerce to issue Export Trade Certificates of Review. The regulations implementing Title III are found at 15 CFR part 325 (2001).

The Office of Export Trading Company Affairs ("OETCA") is issuing this notice pursuant to 15 CFR 325.6(b), which requires the Department of Commerce to publish a summary of the Certificate in the **Federal Register**. Under section 305(a) of the Act and 15 CFR 325.11 (a), any person aggrieved by the Secretary's determination may, within 30 days of the date of this notice, bring an action in any appropriate district court of the United States to set aside the determination on the ground that the determination is erroneous.

Description of Certified Conduct

Export Trade

1. *Products:* All products.
2. *Services:* All services.
3. *Technology Rights:* Technology Rights, including, but not limited to: patents, trademarks, copyrights, and trade secrets that relate to Products and Services.
4. *Export Trade Facilitation Services (as they Relate to the Export of Products, Services, and Technology Rights)*

Export Trade Facilitation Services, including, but not limited to, professional services and assistance relating to government relations; state and federal export programs; foreign trade and business protocol; consulting; market research and analysis; collection of information on trade opportunities; marketing; negotiations; joint ventures; shipping and export management; export licensing; advertising; documentation and services related to compliance with customs requirements; insurance and financing; trade show exhibitions; organizational development; management and labor strategies; transfer of technology; transportation services and the formation of shippers' associations.

Export Markets

The Export Markets include all parts of the world except the United States (the fifty states of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, American Samoa, Guam, the Commonwealth of the Northern Mariana Islands, and the Trust Territory of the Pacific Islands).

Export Trade Activities and Methods of Operation

With respect to the sale of Products and Services, licensing of Technology Rights and provisions of Export Trade Facilitation Services EXIM may:

1. Provide and/or arrange for the provision of Export Trade Facilitation Services;
2. Engage in promotional and marketing activities and collect information on trade opportunities in the Export Markets and distribute such information to clients;
3. Enter into exclusive and/or non-exclusive licensing and/or sales agreements with Suppliers for the export of Products, Services, and/or Technology Rights in Export Markets;
4. Enter into exclusive and/or non-exclusive agreements with distributors and/or sales representatives in Export Markets;
5. Allocate export sales or divide Export Markets among Suppliers for the sale and/or licensing of Products, Services, and/or Technology Rights;
6. Allocate export orders among Suppliers;

7. Establish the price of Products, Services, and/or Technology Rights for sales and/or licensing in Export Markets;

8. Negotiate, enter into, and/or manage licensing agreements for the export of Technology Rights;

9. Enter into contracts for shipping; and

10. Exchange information on a one-on-one basis with individual Suppliers regarding inventories and near-term production schedules for the purpose of determining the availability of Products for export and coordinating export with distributors.

Terms and Conditions of Certificate

1. In engaging in Export Trade Activities and Methods of Operation, EXIM will not intentionally disclose, directly or indirectly, to any Supplier any information about any other Supplier's costs, production, capacity, inventories, domestic prices, domestic sales, or U.S. business plans, strategies, or methods that are not already generally available to the trade or public.

2. EXIM will comply with requests made by the Secretary of Commerce on behalf of the Secretary of Commerce or the Attorney General for information or documents relevant to conduct under the Certificate. The Secretary of Commerce will request such information or documents when either the Attorney General or the Secretary of Commerce believes that the information or documents are required to determine that the Export Trade, Export Trade Activities, and Methods of Operation of a person protected by this Certificate of Review continue to comply with the standards of section 303(a) of the Act.

Definition

1. "Supplier" means a person who produces, provides, or sells Products, Services and/or Technology Rights.

Protection Provided by the Certificate

This Certificate protects EXIM and its directors, officers, and employees acting on its behalf from private treble damage actions and government criminal and civil suits under U.S. federal and state antitrust laws for the export conduct specified in the Certificate and carried out during its effective period in compliance with its terms and conditions.

Effective Period of Certificate

This Certificate continues in effect from the effective date indicated below until it is relinquished, modified, or revoked as provided in the Act and the Regulations.

Other Conduct

Nothing in this Certificate prohibits EXIM from engaging in conduct not specified in this Certificate, but such conduct is subject to the normal application of the antitrust laws.

Disclaimer

The issuance of this Certificate of Review to EXIM by the Secretary of Commerce with the concurrence of the Attorney General under the provisions of the Act does not constitute, explicitly or implicitly, an endorsement or opinion by the Secretary or by the Attorney General concerning either (a) the viability or quality of the business plans of EXIM or (b) the legality of such business plans of EXIM under the laws of the United States (other than as provided in the Act) or under the laws of any foreign country. The application of this Certificate to conduct in export trade where the United States Government is the buyer or where the United States Government bears more than half the cost of the transaction is subject to the limitations set forth in Section V. (D.) of the "Guidelines for the Issuance of Export Trade Certificate of Review (Second Edition)," 50 FR 1786 (January 11, 1985).

A copy of this certificate will be kept in the International Trade Administration's Freedom of Information Records Inspection Facility Room 4102, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230.

Dated: May 5, 2003.

Jeffrey C. Anspacher,

Director, Office of Export Trading Company Affairs.

[FR Doc. 03–11687 Filed 5–9–03; 8:45 am]

BILLING CODE 3510–DR–P

DEPARTMENT OF COMMERCE

[I.D. 050103B]

Endangered and Threatened Species; Take of Anadromous Fish

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of availability and request for comment.

SUMMARY: Notice is hereby given that NMFS has prepared a draft environmental assessment (EA) of the potential effects of approval of 10 Hatchery and Genetic Management Plans (HGMPs) submitted by the United States Fish and Wildlife Service (USFWS) for artificial propagation of salmon and steelhead in the Columbia River basin. The HGMPs specify the future management of hatchery programs that potentially could affect salmon and steelhead listed under the Endangered Species Act. This document serves to notify the public of the availability of the draft EA for public comment before a final decision on whether to issue a Finding of No Significant Impact is made by NMFS.

DATES: Written comments on the draft EA must be received no later than 5 p.m. Pacific daylight time on June 11, 2003.

ADDRESSES: Written comments and requests for copies of the draft EA should be addressed to Richard Turner, Salmon Recovery Division, 525 N.E. Oregon Street, Suite 510, Portland, OR 97232 or faxed to (503) 872–2737. The documents are also available on the Internet at *http://www.nwr.noaa.gov/*. Comments will not be accepted if submitted via e-mail or the Internet.

FOR FURTHER INFORMATION CONTACT: Richard Turner, Portland, OR at phone number (503) 736–4737 or e-mail: *rich.turner@noaa.gov*.

SUPPLEMENTARY INFORMATION: This notice is relevant to the Columbia River chum salmon (*Oncorhynchus keta*), Lower Columbia River chinook salmon (*O. tshawytscha*), Lower Columbia River steelhead (O. mykiss), Upper Willamette River chinook salmon (*O. tshawytscha*), and Middle Columbia River steelhead (*O. mykiss*) Evolutionarily Significant Units.

Background

The USFWS has submitted to NMFS 10 HGMPs for artificial propagation programs that potentially could affect salmon and steelhead listed under the ESA (Table 1).

TABLE 1. HATCHERY AND GENETIC MANAGEMENT PLANS AND LEAD MANAGEMENT AGENCIES.

Hatchery and Genetic Management Plan	Lead Agencies
Little White Salmon/Willard NFH Complex Coho Salmon	USFWS
Little White Salmon/Willard NFH Complex Spring Chinook Salmon	USFWS
Little White Salmon/Willard NFH Complex Upriver Bright Fall Chinook Salmon ENT≤ USFWS	
Carson NFH Spring Chinook Salmon	USFWS
Spring Creek NFH Tule Fall Chinook Salmon	USFWS
Eagle Creek NFH Coho Salmon	USFWS
Eagle Creek NFH Winter Steelhead	USFWS
Warm Springs NFH Warm Springs River Spring Chinook Salmon	USFWS
Touchet River Endemic Summer Steelhead	WDFW/ USFWS
Walla Walla River Summer Steelhead Lyons Ferry Hatchery Stock	WDFW/ USFWS

As specified in the July 10, 2000, ESA 4(d) rule for salmon and steelhead (65 FR 42422), NMFS may approve an HGMP if it meets criteria set forth in § 223.203 (b)(5)(i)(A) through (K). Prior to final approval of an HGMP, NMFS must publish notification announcing its availability for public review and comment. The notice of availability of the ten USFWS HGMPs was published on January 14, 2003 (68 FR 1819) and closed on February 13, 2003.

National Environmental Policy Act requires Federal agencies to conduct an environmental analysis of their proposed actions to determine if the actions may affect the human environment. The proposed action is to approve the 10 HGMPs submitted by the USFWS. The proposed hatchery programs would propagate and release approximately 25.2 million salmon and steelhead in the Columbia River basin. In the draft EA currently available for public comment, NMFS considered the effects of this action on the physical, biological, and socioeconomic environments. NMFS is seeking public input on the scope of the required NEPA analysis, including the range of reasonable alternatives and associated impacts of any alternatives.

Dated: May 6, 2003.

Barbara Schroeder,

Acting Chief, Endangered Species Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 03–11740 Filed 5–9–03; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[Docket No. 000202024–3109–03 I.D. 030303B]

Announcement of Funding Opportunity to submit proposals for the South Florida Ecosystem Research and Monitoring Program (SFP) FY04

AGENCY: National Centers for Coastal Ocean Sciences/Center for Sponsored Coastal Ocean Research/Coastal Ocean Program (NCCOS/CSCOR/COP), National Ocean Service (NOS), National Oceanic and Atmospheric Administration (NOAA), Department of Commerce.

ACTION: Notice of Funding Availability for financial assistance for project grants and cooperative agreements.

SUMMARY: The purpose of this notice is to advise the public that NCCOS/CSCOR/COP is soliciting 1–year and 2–year proposals to support coastal ecosystem studies in South Florida including Florida Bay, Florida Keys, the Florida Keys National Marine Sanctuary (FKNMS), and adjacent coastal waters. It will provide support for the NOAA South Florida Program and the FKNMS. The overall goal of this Announcement is to fund high priority research and long term observational data collection needed to predict the impacts of Everglades restoration on the South Florida coastal ecosystem and to fulfill NOAA commitments to the South Florida Ecosystem Restoration effort and the Comprehensive Everglades Restoration Plan. Funding is contingent upon the availability of Fiscal Year 2004 and 2005 Federal appropriations. It is anticipated that projects funded under this announcement will have a March 1, 2004 start date.

DATES: The deadline for receipt of proposals at the COP office is 3 p.m., local time July 16, 2003. (Note that late-arriving applications provided to a delivery service on or before July 16, 2003, with delivery guaranteed before 3 p.m., local time on July 16,2003, will be accepted for review if the applicant can document that the application was provided to the delivery service with delivery to the address listed below guaranteed by the specified closing date and time; and, in any event, the proposals are received in the NCCOS/CSCOR/COP office by 3 p.m., local time, no later than 2 business days following the closing date.)

ADDRESSES: Submit the original and 15 copies of your proposal to Center for Sponsored Coastal Ocean Research/Coastal Ocean Program (N/SCI 2), National Oceanic and Atmospheric Administration, 1305 East-West Highway, SSMC4, 8th Floor Station 8243, Silver Spring, MD 20910, attention SFP 2004.

NOAA and Standard Form Applications with instructions are accessible on the following COP Internet Site: *http://www.cop.noaa.gov* under the COP Grants Information Section, Part D, Application Forms for Initial Proposal Submission.

Forms may be viewed and, in most cases, filled in by computer. All forms must be printed, completed, and mailed to NCCOS/CSCOR/COP with original signatures. If you are unable to access this information, you may call COP at 301–713–3338 to leave a mailing request.

FOR FURTHER INFORMATION CONTACT: *Technical Information.* Larry Pugh, SFP 2004 Program Manager, NCCOS/CSCOR/COP, 301–713–3338/ext 160, Internet: *larry.pugh@noaa.gov*.

Business Management Information. Leslie McDonald, NCCOS/CSCOR/COP Grants Administrator, 301–713–3338/ext 155, Internet: *Leslie.McDonald@noaa.gov*.

SUPPLEMENTARY INFORMATION:

Electronic Access

Background information on the NOAA South Florida Program, including descriptions of presently funded projects, results, data management, and programmatic infrastructure (including small boat access and policy) can be found at *http://www.aoml.noaa.gov/ocd/sferpm*.

Background information on the Florida Bay and Adjacent Marine Systems Interagency Science Program, including the Program Management Committee (PMC), Scientific Oversight Panel (SOP), copies of the annual science conference abstracts, workshop reports, and present Strategic Science Plan, can be found at *http://www.aoml.noaa.gov/flbay*.

Background information regarding Florida Keys National Marine Sanctuary can be found at *http://www.fknms.nos.noaa.gov*.

Background information regarding South Florida Ecosystem Restoration (SFER) in general can be found at *http://www.sfrestore.org*, while the Comprehensive Everglades Restoration Plan (CERP), Florida Bay/Florida Keys Feasibility Study, and RECOVER's South Estuaries Monitoring and Assessment Plan to which the projects funded herein are anticipated to contribute to can be found at *http://www.evergladesplan.org*.

Background

Program Description

For complete program description and other requirements criteria for the NCCOS/CSCOR/Coastal Ocean Program, see the General Grant Administration Terms and Conditions for the Coastal Ocean Program annual notification in the **Federal Register** November 8, 2002(67 FR 68103) and at the COP home page. Unless stated otherwise, in this notice, the requirements and procedures contained in the November 8, 2002 annual notification are applicable to this solicitation.

This program is one of the Federal and state programs contributing to the Florida Bay and Adjacent Marine Systems Interagency Science Program, which is designed to understand and predict the effects of South Florida ecosystem restoration.

The activities conducted to restore the South Florida ecosystem occur predominantly upstream of Florida Bay, and restoration impacts may not be direct or immediate. Through funding of the research areas identified here, NCCOS/CSCOR/COP will fund an integrated suite of activities to better understand the coastal and marine ecosystem adjacent to the Everglades, comprising Florida Bay and the FKNMS. The Goal of the complete effort is to develop a capability to predict the impacts of proposed Everglades Restoration activities on the coastal system from the mangroves to the coral reefs.

Research Areas

To address the goal of developing a capability to predict changes in coastal ecosystems resulting from Restoration activities, this announcement has five specific areas of interest: nutrient inputs and dynamics, water quality, circulation and physical oceanography, fisheries and protected resources, and Florida Keys habitat characterization and research.

(A) *Nutrient Inputs and Dynamics.* Proposals are solicited to address nutrient cycles within the water column and between the water column and benthos. Priority consideration for selection in this area will be given to nutrient proposals that cover the biogeochemical processes (including the microbial loop) governing the bio-availability of the organic forms of plant nutrients.

(B) *Water Quality.* The health of the coral reef community of the FKNMS depends upon the quality (temperature, salinity, nutrients, inorganic particulate load, light fields, and chemical contaminants) of the waters that flow over them. With Everglades restoration, water quality throughout South Florida coastal waters will be changed. Proposals are now solicited that address the chemical, biological, and optical characteristics of Bay waters that exit Keys passes and potentially reach the reef tract and protected areas in the FKNMS including the Dry Tortugas Ecological Reserve. These should address timely dissemination of information to the Interagency SFER science community and the public. Priority consideration for selection in this area will be given to projects coordinated with and complementary to physical oceanographic field studies.

(C) *Circulation and Physical Oceanography.* In the area of Circulation and Physical Oceanography, emphasis is placed on predicting the impacts of restoration scenarios and actions upstream and along the Keys, in the context of the physical variability of the natural system. Priority consideration for selection in this area will be given to proposals that address the following research topics:

(1) Measuring oceanographic parameters needed to verify and initialize regional and interior Bay circulation models;

(2) Determining the interconnections between the Gulf of Mexico loop and Florida currents and the Dry Tortugas Ecological Reserve (e.g.,quantifying flows entering the Florida Bay interior along its western margin and those intermittently exiting through Keys passages and potentially reaching the reef tract);

(3) Determining basin residence and turnover times, circulation, and flow within the Bay and across the banktops; or

(4) Developing a hydrodynamic model of the coastal seas adjacent to Florida Bay and the Florida Keys for use in providing boundary conditions for coastal limited area models in the region and for evaluating simulations of restoration scenarios.

(D) *Fisheries and Protected Resources.* Ecosystem changes caused by South Florida Ecosystem Restoration activities have ultimate impacts on the sustainability of higher trophic level (HTL) species, including fishery and protected resources, which have widely recognized importance.

Proposals are solicited to build models and provide information to increase predictive capability in linking higher trophic levels to ecosystem restoration activities. Priority consideration for selection in this area will be given to proposals having a modeling component, or interdisciplinary emphasis directed at the following research problems:

(1) Determining human (e.g., water management, fishing, excess nutrients, contaminants) and natural influences on biological processes affecting growth, survival, and recruitment of HTL species;

(2) Determining and modeling the major factors that influence distribution and abundance patterns and community, ecosystem and trophic structure;

(3) Identifying and modeling major pathways, mechanisms, and influencing factors in the transport of pre-settlement stages of offshore-spawning species onto nursery grounds; or

(4) Determining the processes impacting early settlement stage larvae and recruitment of important game fishes such as red drum, snook, tarpon, bone fish, and other estuarine and euryhaline dependent fish and macro invertebrates.

(E) *Florida Keys Habitat Characterization and Research.* Coral reefs, sea grass beds, and hard bottom communities comprise the submerged, biogenic habitats of the FKNMS that support diverse species assemblages. FKNMS management issues concerning these habitats cannot be fully addressed because of limited ecological research. Fully protected zones of the FKNMS, including the Dry Tortugas Ecological Reserve have been created to assist in the protection of biological diversity, disperse resource utilization in order to reduce user conflicts, and lessen the concentrated impact to marine organisms on heavily used reefs.

Emphasis in this area is placed on monitoring and research on sea grass beds, coral reef, and hard bottom communities to provide a basis for detecting potential changes associated with Everglades restoration and other anthropogenic and natural factors and evaluating the ecological benefits of FKNMS fully protected zones. Priority consideration for selection in this area will be given to proposals directed at the following research topics:

(1) Investigating the functional significance of hard bottom communities in the FKNMS ecosystem, particularly the roles of filter-feeding organisms and biogenic habitat structure.

(2) Monitoring and research on commercially important species (e.g. spiny lobster) and key depleted fishery species (e.g. queen conch);

(3) Creating ecosystem models of reef fish communities to predict the effects of zoning on species diversity, abundance, and trophic structure;

(4) Investigating how key ecological processes may be modified by zoning; and

(5) Measuring oceanographic processes impacting upon the Tortugas Ecological Reserve.

Other Participant Requirements

As participants in the Interagency Science Program for Florida Bay and Adjacent Marine Systems, funded principal investigators will be expected to:

(a) Participate in meetings for planning and coordination of the Program. This includes attending and contributing to the annual Interagency Science Conference, Research Team Meetings, and other relevant technical workshops.

(b) Promptly quality control their data and make them readily available through the Coordinating Office in accordance with the data collection policy.

(c) Assist the Coordinating Office in the synthesis and interpretation of research results and the development of products of value to restoration and resource.

(d) Work with the Coordinating Office regarding small boat requirements (if any) to schedule access to the dedicated research vessel (description available on the SFERPM website earlier cited). If your project will have small boat needs that you cannot furnish, please provide description and schedule requirements in your proposal.

(e) If your project uses/relies on data/information from research categories in this Announcement, other than the one you are proposing to study, please describe.

Part I: Schedule and Proposal Submission

This document requests full proposals only. The provisions for proposal preparation provided here are mandatory. Proposals received after the published deadline (refer to DATES) or proposals that deviate from the prescribed format will be returned to the sender without further consideration. Information regarding this announcement, additional background information, and required Federal forms are available on the NCCOS/CSCOR/COP home page.

Full Proposals

Applications submitted in response to this announcement require an original proposal and 15 proposal copies at time of submission. This includes color or high-resolution graphics, unusually sized materials, or otherwise unusual materials submitted as part of the proposal. For color graphics, submit either color originals or color copies. The stated requirements for the number of proposal copies provide for a timely review process and is cleared by OMB control number 0648–0384. (See Collection of information requirements.) Facsimile transmissions and electronic mail submission of full proposals will not be accepted.

Required Elements

For clarity in the submission of proposals, the following definitions are provided for recipient use: (1) Funding and/or Budget Period - the period of time when Federal funding is available for obligation by the recipient. The funding period must always be specified in multi-year awards, using fixed year funds. This term may also be used to mean "budget period". A budget period is typically 12 months. (2) Award and/or Project Period - the period established in the award document during which Federal sponsorship begins and ends. The term "award period" is also referred to as project period in 15 CFR 14.2(cc). Each proposal must also include the following nine elements or it will be returned to sender without further consideration:

(1) *Standard Form 424.* At time of proposal submission, all applicants anticipating direct funding shall submit the Standard Form, SF–424, "Application for Federal Assistance," to indicate the total amount of funding proposed for the whole project period. This form is to be the cover page for the original proposal and all requested copies. Multi-institutional proposals must include signed SF–424 forms from all institutions requesting funding.

(2) *Signed Summary title page.* The title page should be signed by the Principal Investigator (PI). The Summary Title page identifies the project's title starting with the acronym SFP 2004, a short title (less than 50 characters); and the PI's name and affiliation, complete address, phone, FAX and E-mail information. The requested budget for each fiscal year should be included on the Summary Title page. Multi-institution proposals must also identify the lead investigator from each fiscal year for each institution and the requested funding for each fiscal year for each institution on the title page, but no signatures are required on the title page from the additional institutions. Lead investigator and separate budget information is not requested on the title page for institutions that are proposed to receive funds through a subcontractor to the lead institution; however, the COP Summary Proposal Budget Form and accompanying budget justification must be submitted for each contractor. For further details on budget information, please see Section (7) Budget of this Part.

(3) *One-page abstract/project summary.* The Project Summary (Abstract) Form, which is to be submitted at time of application, shall include an introduction of the problem, rationale, scientific objectives and/or hypotheses to be tested, and a brief summary of work to be completed. The prescribed COP format for the Project Summary Form can be found on the NCCOS/CSCOR/COP Internet site under the COP Grants Information section, Part D.

The summary should appear on a separate page, headed with the proposal title, institution(s), investigator(s), total proposed cost and budget period. It should be written in the third person. The summary is used to help compare proposals quickly and allows the respondents to summarize these key points in their own words.

(4) *Project description.* The description of the proposed project must be complete and divided into annual increments of work that include: identification of the problem, scientific objectives, proposed methodology, relevance to the SFP 2004 program goal. The project description section (including relevant results from prior support) should not exceed 15 pages. Page limits are inclusive of figures, other visual materials, and letters of endorsement but exclusive of references, milestone chart, and letters regarding cooperation from unfunded collaborators.

This section should clearly identify project management with a description of the functions of each PI within a team. It should provide a full scientific justification for the research rather than simply reiterating justifications presented in this document; and should also include:

(a) The objective for the period of proposed work and its expected significance;

(b) The relation to the present state of knowledge in the field and relation to previous work and work in progress by the proposing principal investigator(s);

(c) A discussion of how the proposed project lends value to the program goal;

(d) Potential coordination with other investigators.

(5) *References cited.* Reference information is required. Each reference must include the name(s) of all authors in the same sequence in which they appear in the publications, the article title, volume number, page numbers and

year of publications. While there is no established page limitation, this section should include bibliographic citations only and should not be used to provide parenthetical information outside the 15–page project description.

(6) *Milestone chart.* Provide time lines of major tasks covering the 12- to 24-month duration of the proposed project.

(7) *Budget.* At time of proposal submission, all applicants are required to submit a COP Summary Proposal Budget Form for each fiscal year increment. Multi-institution proposals must include a COP Summary Proposal Budget Form for each institution, and multi-investigator proposals using a lead investigator with contractor's/subgrantee's approach must submit a COP Summary Proposal Budget Form for each contractor/subgrantee.

Each contractor or subgrantee should be listed as a separate item. Describe products/services to be obtained and indicate the applicability or necessity of each to the project. Provide separate budgets for each subgrantee or contractor regardless of the dollar value and indicate the basis for the cost estimates. List all subgrantee or contractor costs under line item number 5—Subcontracts on the COP Summary Proposal Budget Form.

The use of this budget form will provide for a detailed annual budget and for the level of detail required by the NCCOS/CSCOR/COP program staff to evaluate the effort to be invested by investigators and staff on a specific project. The COP budget form is compatible with forms in use by other agencies that participate in joint projects with NCCOS/CSCOR/COP and can be found on the CSCOR/COP home page under Grants Information section, Part D.

All applications must include a budget narrative and a justification to support all proposed budget categories. The SF–424A, Budget Information (Non-Construction) Form, will be requested only from those applicants subsequently recommended for award.

Ship time needs should be clearly identified in the proposed budget. The investigator is responsible for requesting ship time and for meeting all requirements to ensure the availability of requested ship time. Copies of relevant ship time request forms should be included with the proposal.

(8) *Biographical sketch.* All principal and co-investigators must provide summaries of up to 2 pages that include the following:

(a) A listing of professional and academic essentials and mailing address;

(b) A list of up to five publications most closely related to the proposed project and five other significant publications.

(c) A list of all persons (including their organizational affiliation) in alphabetical order, with whom the investigator has collaborated on a project or publication within the last 48 months, including collaborators on the proposal and persons listed in the publications. If no collaborators exist, this should be so indicated;

(d) A list of persons (including their organizational affiliation) with whom the individual has had an association like thesis advisor or postdoctoral scholar sponsor;

(e) A list of the names and institutions of the individual's own graduate and postgraduate advisors.

The material presented in (c, d, and e) is used to assist in identifying potential conflicts or bias in the selection of reviewers.

(9) *Current and pending support.* Describe all current and pending federal financial/funding support for all principal and co-investigators, including subsequent funding in the case of continuing grants.

(10) *Proposal format and assembly.* The original proposal should be clamped in the upper left-hand corner, but left unbound. The 15 additional copies can be stapled in the upper left-hand corner or bound on the left edge. The page margin must be one inch (2.5 cm) margins at the top, bottom, left and right, and the typeface standard 12-points size must be clear and easily legible. Proposals should be single spaced.

Part II: Further Supplementary Information

(1) *Funding availability.* Funding is contingent upon receipt of fiscal years 2004–2005 Federal appropriations. NOAA is committed to continual improvement of the grants process and accelerating the award of financial assistance to qualified recipients in accordance with the recommendations of the Program Review Team (Information available at *www.noaa.gov*). In order to fulfill these responsibilities, this solicitation announces that approximately $2.8 million per year is anticipated to be available for FY2004 and FY2005 for SFP projects, in award amounts to be determined by the proposals and available funds.

Applicants are hereby given notice that funds have not yet been appropriated for this SFP program. In no event will NOAA or the Department of Commerce be responsible for proposal preparation costs if this program fails to receive funding or is cancelled because of other agency priorities. For prior fiscal history, for Fiscal years 2002 and 2003, NOAA had approximately $2.8 million available for this program, with approximately $2.1 million of these funds provided by NCCOS/CSCOR/COP and approximately $0.6 million provided by NOAA/NMFS/SEFC.

There is no guarantee that sufficient funds will be available to make awards for all qualified projects. Publication of this notice does not oblige NOAA to award any specific project or to obligate any available funds. If one incurs any costs prior to receiving an award agreement signed by an authorized NOAA official, one would do so solely at one's own risk of these costs not being included under the award.

Publication of this notice does not obligate any agency to any specific award or to obligate any part of the entire amount of funds available. Recipients and subrecipients are subject to all Federal laws and agency policies, regulations and procedures applicable to Federal financial assistance awards.

(2) Project/Award period. Full Proposals can cover a project period from 1 to 2 years, i.e. from date of award up to 24 consecutive months. Multi-year awards may be funded incrementally on an annual basis, but, once awarded, those awards will not compete for funding in subsequent years. Each annual award shall require an Implementation Plan and project description that can be easily divided into annual increments of meaningful work representing solid accomplishments (if prospective funding is not made available, or is discontinued).

The following is a description of Multi-Year Awards for those applicants subsequently recommended for award. This information can also be found on the COP web site under Grants Information. Multi-Year Awards: Multi Year Awards are awards which have an award/project period of more than 12 months of activity. Multi Year Awards are partially funded when the awards are approved, and are subsequently funded in increments. One of the purposes of Multi Year Awards is to reduce the administrative burden on both the applicant and the operating unit. For example, with proper planning, one application can suffice for the entire multi year award period. Funding for each year's activity is contingent upon the availability of funds from Congress, satisfactory performance, and is at the sole discretion of the agency. Multi year funding is appropriate for projects to be funded for 2 to 5 years. Once approved, full applications are not required for the continuations into the out years.

(3) *Additional Evaluation Criteria.* The Evaluation Criteria set out in section(12)(b) of the November 8, 2002 **Federal Register** Notice, under Research Performance Competence, is amended to include the following: The capability of the investigator and collaborators to complete the proposed work in light of present commitments to other projects. Therefore, please discuss the percentage of time investigators and collaborators have devoted to other Federal or non-Federal projects, as compared to the time that will be devoted to the project solicited under this notice.

(4) *Other requirements.* The Department of Commerce Pre-Award Notification Requirements for Grants and Cooperative Agreements contained in the **Federal Register** October 1, 2001 (66 FR 49917), as amended by the **Federal Register** notice published on October 30, 2002 (67 FR 66109), are applicable to this solicitation.

(5) *Intergovernmental review.* Applications under this program are not subject to Executive Order 12372, "Intergovernmental Review of Federal Programs." It has been determined that this notice is not significant for purposes of Executive Order 12866. Pursuant to 5 U.S.C. 553(a) (2), an opportunity for public notice and comment is not required for this notice relating to grants, benefits and contracts. Because this notice is exempt from the notice and comment provisions of the Administrative Procedure Act, a Regulatory Flexibility Analysis is not required, and none has been prepared. It has been determined that this notice does not contain policies with Federalism implications as that term is defined in Executive Order 13132.

(6) *Collection of information requirements.* This notification involves collection-of-information requirements subject to the Paperwork Reduction Act. The use of Standard Forms 424, 424A, has been approved by the Office of Management and Budget (OMB) under control numbers 0348–0043 and 0348–0044.

The following requirements have been approved by OMB under control number 0648–0384; a Summary Proposal Budget Form (30 minutes per response), a Project Summary Form (30 minutes per response), a standardized format for the annual Performance Report (5 hours per response), a standardized format for the Final Report (10 hours per response), and the submission of up to 20 copies of proposals (10 minutes per response). The response estimates include the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding these requirements and the burden estimate, or any other aspect of this collection of information, including suggestions for reducing this burden, to *leslie.mcdonald@noaa.gov*. Copies of these forms and formats can be found on the CSCOR/COP home page under Grant Information sections, Parts D and F.

Notwithstanding any other provision of law, no person is required to respond to, nor shall any person be subject to a penalty for failure to comply with a collection of information subject to the requirements of the Paperwork Reduction Act, unless that collection displays a currently valid OMB control number.

Dated: May 7, 2003.

Ted. I. Lillestolen,

Captain, (NOAA) Associate Deputy Assistant Administrator, National Ocean and Atmospheric Administration, National Ocean Service.

[FR Doc. 03–11741 Filed 5–9–03; 8:45 am]

BILLING CODE 3510–JS–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 052802D]

Taking and Importing Marine Mammals; Taking Marine Mammals Incidental to Rocket Launches

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of issuance of a modification to a letter of authorization.

SUMMARY: In accordance with the Marine Mammal Protection Act (MMPA), as amended, and implementing regulations, notification is hereby given that NMFS has amended the letter of authorization (LOA) to take small numbers of seals and sea lions that was issued on May 31, 2002, to the 30th Space Wing, U.S. Air Force.

DATES: Effective from May 9, 2003, through May 31, 2003.

ADDRESSES: The amended letter of authorization and supporting documentation are available for review during regular business hours in the following offices: Office of Protected Resources, NMFS, 1315 East-West Highway, Silver Spring, MD 20910, and the Southwest Region, NMFS, 501 West Ocean Boulevard, Suite 4200, Long Beach, CA 90802.

FOR FURTHER INFORMATION CONTACT: Kenneth Hollingshead, Office of Protected Resources, NMFS, (301) 713–2322, ext 128, or Christina Fahy, NMFS, (562) 980–4023.

SUPPLEMENTARY INFORMATION: Section 101(a)(5)(A) of the MMPA (16 U.S.C. 1361 *et seq.*) directs NMFS to allow, on request, the incidental, but not intentional, taking of small numbers of marine mammals by U.S. citizens who engage in a specified activity (other than commercial fishing) within a specified geographical region if certain findings are made and regulations are issued. Under the MMPA, the term "taking" means to harass, hunt, capture, or kill or to attempt to harass, hunt, capture or kill marine mammals.

Permission may be granted for periods up to 5 years if NMFS finds, after notification and opportunity for public comment, that the taking will have a negligible impact on the species or stock(s) of marine mammals and will not have an unmitigable adverse impact on the availability of the species or stock(s) for subsistence uses. In addition, NMFS must prescribe regulations that include permissible methods of taking and other means effecting the least practicable adverse impact on the species and its habitat and on the availability of the species for subsistence uses, paying particular attention to rookeries, mating grounds, and areas of similar significance. The regulations must include requirements pertaining to the monitoring and reporting of such taking. Regulations governing the taking of seals and sea lions incidental to missile and rocket launches, aircraft flight test operations, and helicopter operations at Vandenberg Air Force Base, CA (Vandenberg AFB) were published on March 1, 1999 (64 FR 9925), and remain in effect until December 31, 2003.

Summary of Request

In accordance with the MMPA, as amended, and implementing regulations, a 1–year LOA to take small numbers of seals and sea lions was issued on May 31, 2002, to the 30th Space Wing (67 FR 38939, June 6, 2002). On August 22, 2002, the 30th Space Wing, U.S. Air Force at Vandenberg AFB, requested an amendment to this LOA to include launches of the Ground-Based Interceptor (GBI) and Alternative Boost Vehicle (ABV).

The Missile Defense Agency is developing the Ground-Based Midcourse Defense (GMD) Element of the conceptual Ballistic Missile Defense

System (BMDS). The GMD Element is designed to protect the United States in the event of a limited ballistic missile attack by destroying the threat missile in mid-course phase of its flight. The GBI canisterized booster and uncanisterized ABV that make up part of the GMD Element, will be flight-tested from Launch Facility (LF)-21 and 23 on the northern end of north Vandenberg AFB. Previously, pinnipeds rarely used this area, but during recent marine mammal surveys conducted in March and April, 2002 and with the overall increase in the harbor seal populations at Vandenberg AFB, a new harbor seal haul-out site was discovered that is regularly used by harbor seal mothers and their pups. This site, designated as Lions Head, is approximately 2.0 km (1 mi) from LF–21 and LF–23; therefore, the 30th Space Wing, Vandenberg AFB, has requested that the GBI boost vehicle launches be included under the 10 ICBM launches authorized for taking pinipeds incidental to launches at Vandenberg AFB under the regulations (64 FR 9925, March 1, 1999).

In 1999, the potential environmental impacts of the activities associated with two canisterized GBI booster verification test flights from LF–21 in northern Vandenberg AFB were analyzed in the 1999 Booster Verification Test Environmental Assessment (EA). The 1999 EA analyzed the potential environmental impacts of all pre-flight, launch, and post-launch activities. Congressional direction in the Defense Authorization Act for fiscal year 2001 included the development of a backup or alternative booster option involving proven technologies. A decision was made to develop and test a second boost vehicle, the uncanisterized ABV. The proposed ABV test flights are an important step in the development of the GMD Element. The ABV being proposed for launch from LF–23 would consist of the GMD Element. The ABV being proposed for launch from LF–23 would consist of a commercially available, solid propellant booster consisting of three stages and an exo-atmospheric kill vehicle emulator that may contain a divert and attitude control system.

Impacts on Marine Mammals

A detailed description of the pinniped stocks potentially affected by missile and rocket launches from Vandenberg AFB and an assessment of those impacts can be found in the final rule on the taking of marine mammals incidental to these activities (64 FR 9925, March 1, 1999).

The primary potential for impacts to pinnipeds would be from the noise created during the proposed missile launches. Noise from Minuteman launches, which have been previously launched from LF–21 and LF–23, ranges from 98 dBA approximately 4.2 km (2.6 mi) from the launch site to 80 dBA approximately 13 km (8 mi) from the launch site. The level of noise for the ABV during launch and flight is expected to be less and relatively short in duration. At approximately the same distance from LF–21, the previous BVT–2 launch (GBI canisterized vehicle) was 6 dB less than the Minuteman III launch and 17 dB less than Peacekeeper launches. Pacific harbor seals (*Phoca vitulina*), the main pinniped species using north Vandenberg AFB, would normally be at least 2.0 km (1 mi) from the launch site. Other pinnipeds, such as California sea lions (*Zalophus californianus*) and northern elephant seals (*Mirounga angustirostris*), may haul-out temporarily on beaches several kilometers from the launch facilities. Noise from prior launches has not appeared to affect pinniped use of the coastal areas on Vandenberg AFB. Pinniped monitoring has been performed for launches of larger missiles on north Vandenberg AFB, such as the Peacekeeper and Delta II. The effect on harbor seals, which were most susceptible to disturbance, has been limited to a negligible short-term (5–30 min) abandonment of nearby haul-out areas. No pinniped mother-pup separations have been noted at the harbor seal haul-out sites closest to launch site. Recent surveys discovered a new harbor seal haul-out site on north Vandenberg AFB that is regularly used by up to 3 harbor seal mothers and their pups. The 30th Space Wing began monitoring harbor seals at this site for ICBM (Minuteman and Peacekeeper) launches that occurred during the harbor seal pupping season (March-June) in accordance with the small take regulations and LOA.

The GBI canisterized and uncanisterized booster launches would be included in the 10 ICBM launches per year that are currently allowed under the regulations and LOA. The planned 6 GBI launches over the next five years will not cause the number of ICBM launches to go over the authorized 10/year.

Monitoring and Reporting

In accordance with the regulations (64 FR 9925, March 1, 1999) and LOA, acoustic monitoring will be performed during initial launch of each type of vehicle (this would be accomplished for the initial GBI canisterized booster launch) and harbor seal monitoring would be conducted during the pupping season in accordance with Vandenberg AFB guidelines. The intermittent launches planned for the ABV test flights (6 flights over the next 5 years) and the relatively small size (smaller than Minuteman and Peacekeeper missiles) are not expected to have more than a negligible impact on harbor seals at Vandenberg AFB.

National Environmental Policy Act (NEPA)

Under rulemaking conducted in 1999 (64 FR 9925, March 1, 1999), NMFS reviewed this action in accordance with NEPA and the Endangered Species Act (ESA). Please refer to that document for additional information. Because the action discussed in this document is not substantially different from the 1999 action, and because no significant new scientific information or analyses have been developed in the past several years significant enough to warrant new NEPA documentation, this action is categorically excluded from further review under NOAA Administrative Order 216–6.

ESA

This action will not affect listed marine mammal species as these species are not expected to haulout on north Vandenberg AFB and thereby potentially be affected through harassment and fleeing from the haulout. No other species listed under the ESA will be affected by this modification.

Determinations

Because the addition of the GBI and ABV missiles to the launch list at Vandenberg AFB will not result in an increase in the number of missile launches authorized to take pinnipeds by Level B harassment under the LOA, NMFS does not expect additional impacts, individually or cumulatively, to occur and therefore, NMFS has determined that the incidental harassment will remain small and not have more than a negligible impact on the pinniped populations off the Vandenberg AFB coast.

Dated: May 6, 2003.

Laurie K. Allen,

Acting Director, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 03–11737 Filed 5–9–03; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 050603C]

New England Fishery Management Council; Public Meetings

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of public meeting.

SUMMARY: The New England Fishery Management Council (Council) is scheduling a public meeting of its Research Steering Committee in May, 2003. Recommendations from the committee will be brought to the full Council for formal consideration and action, if appropriate.

DATES: The meeting will held on Wednesday, May 28, 2003 at 9:30 a.m.

ADDRESSES: The meeting will be held at the Holiday Inn Peabody, One Newbury Street, Peabody, MA 01960; telephone: (978) 535–4600.

Council address: New England Fishery Management Council, 50 Water Street, Newburyport, MA 01950.

FOR FURTHER INFORMATION CONTACT: Paul J. Howard, Executive Director, New England Fishery Management Council; telephone: (978) 465–0492.

SUPPLEMENTARY INFORMATION: The committee will have a discussion of the results of the recent habitat research scoping meetings and development of habitat priorities for inclusion in a NOAA Fisheries Request for Proposals (RFP). They will further refine the RFP review and evaluation process, including project evaluation criteria. Also on the agenda will be discussion of the status of the Committee's process to incorporate the results of cooperative research into the management arena.

Although non-emergency issues not contained in this agenda may come before this group for discussion, those issues may not be the subject of formal action during this meeting. Action will be restricted to those issues specifically listed in this notice and any issues arising after publication of this notice that require emergency action under section 305(c) of the Magnuson-Stevens Act, provided the public has been notified of the Council's intent to take final action to address the emergency.

Special Accommodations

This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Paul J. Howard (see **ADDRESSES**) at least 5 days prior to the meeting dates.

Dated: May 6, 2003.

Peter H. Fricke,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 03–11736 Filed 5–9–03; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 050603B]

Pacific Fishery Management Council; Public Meeting

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of public meeting.

SUMMARY: The Groundfish Stock Assessment Review (STAR) Panel for cowcod, darkblotched rockfish, and yellowtail rockfish will hold a work session which is open to the public.

DATES: The cowcod, darkblotched rockfish, and yellowtail rockfish STAR Panel will meet beginning at 8 a.m., Wednesday, May 28, 2003. The meeting will continue on Thursday, May 29, 2003 beginning at 8 a.m. The meetings will end at 5 p.m. each day, or as necessary to complete business.

ADDRESSES: The cowcod, darkblotched rockfish, and yellowtail rockfish STAR Panel meeting will be held at NMFS Northwest Fisheries Science Center, Room 370W, 2725 Montlake Blvd. E, Seattle, WA 98112; telephone: 206–860–3200.

Council address: Pacific Fishery Management Council, 7700 NE Ambassador Place, Suite 200, Portland, OR 97220–1384.

FOR FURTHER INFORMATION CONTACT: Mr. John DeVore, Staff Officer; 503–820–2280.

SUPPLEMENTARY INFORMATION: The purpose of the meeting is to review draft updated stock assessment documents and any other pertinent information, work with the Stock Assessment Teams to make necessary revisions, and produce a STAR Panel report for use by the Council family and other interested persons.

Entry to the Northwest Fisheries Science Center requires identification with photograph (such as a student ID, state drivers license, etc.). A security guard will review the identification and issue a Visitor's Badge valid only for the date of the meeting.

Although nonemergency issues not contained in STAR Panel agendas may come before the STAR Panel for discussion, those issues may not be the subject of formal Panel action during this meeting. STAR Panel action will be restricted to those issues specifically listed in this notice, and any issues arising after publication of this notice that require emergency action under section 305(c) of the Magnuson-Stevens Fishery Conservation and Management Act, provided the public has been notified of the Panel's intent to take final action to address the emergency.

Special Accommodations

The meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Ms. Carolyn Porter at 503–820–2280 at least 5 days prior to the meeting date.

Dated: May 6, 2003.

Peter H. Fricke,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 03–11735 Filed 5–9–03; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 042303B]

Marine Mammals; File No. 1045–1713

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Receipt of application.

SUMMARY: Notice is hereby given that Dr. Stephen J. Insley, Hubbs-Sea World Research Institute, 2595 Ingraham St., San Diego, California 92109, has applied in due form for a permit to take northern fur seals (*Callorhinus ursinus*) for purposes of scientific research.

DATES: Written or telefaxed comments must be received on or before June 11, 2003.

ADDRESSES: The application and related documents are available for review upon written request or by appointment in the following office(s):

Permits, Conservation and Education Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13705, Silver Spring, MD 20910; phone (301)713–2289; fax (301)713–0376; and

Alaska Region, NMFS, P.O. Box 21668, Juneau, AK 99802–1668; phone (907)586–7221; fax (907)586–7249.

FOR FURTHER INFORMATION CONTACT: Jennifer Jefferies or Amy Sloan, (301)713–2289.

SUPPLEMENTARY INFORMATION: The subject permit is requested under the authority of the Marine Mammal Protection Act of 1972, as amended (MMPA; 16 U.S.C. 1361 *et seq.*), the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR part 216), and the Fur Seal Act of 1966, as amended (16 U.S.C. 1151 *et seq.*).

This research project is designed to remotely investigate atsea interactions between northern fur seals and ships, particularly the impact of commercial fishing vessels on the northern fur seals. Annually, ten lactating female northern fur seals from the Pribilof Islands in Alaska will be captured, measured, outfitted with datalogging instrumentation, and released. The individuals will be tracked and recaptured, the datalogger removed and the animals subsequently released. Additionally, authorization for Level B Harrassment of northern fur seals is requested for 50 pups, 50 breeding females, 25 mature males, and 50 immature males, annually. These activities will be authorized over five years. The results of this research will provide important information for management decisions regarding northern fur seals.

In compliance with the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*), an initial determination has been made that the activity proposed is categorically excluded from the requirement to prepare an environmental assessment or environmental impact statement.

Written comments or requests for a public hearing on this application should be mailed to the Chief, Permits, Conservation and Education Division, F/PR1, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13705, Silver Spring, MD 20910. Those individuals requesting a hearing should set forth the specific reasons why a hearing on this particular request would be appropriate.

Comments may also be submitted by facsimile at (301)713–0376, provided the facsimile is confirmed by hard copy submitted by mail and postmarked no later than the closing date of the comment period. Please note that comments will not be accepted by e-mail or by other electronic media.

Concurrent with the publication of this notice in the **Federal Register**, NMFS is forwarding copies of this application to the Marine Mammal Commission and its Committee of Scientific Advisors.

Dated: May 6, 2003.

Stephen L. Leathery,

Chief, Permits, Conservation and Education Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 03–11738 Filed 5–9–03; 8:45 am]

BILLING CODE 3510–22–S

CORPORATION FOR NATIONAL AND COMMUNITY SERVICE

Proposed Information Collection; Submission for OMB Review; Comment Request

AGENCY: Corporation for National and Community Service.

ACTION: Notice.

The Corporation for National and Community Service (hereinafter the "Corporation") has submitted the following public information collection request (ICR) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995 (Public Law 104–13, (44 U.S.C. Chapter 35)). Copies of this ICR, with applicable supporting documentation, may be obtained by calling the Corporation for National and Community Service, Shelly Ryan, Program Coordinator, (202) 606–5000, extension 549. Individuals who use a telecommunications device for the deaf (TTY–TDD) may call (202) 565–2799 between 8:30 a.m. and 5 p.m. Eastern time, Monday through Friday.

Comments should be sent to the . Office of Information and Regulatory Affairs (OIRA), New Executive Office Building, Records Management Center, Room 10102, Attn: Ms. Fumie Yokota, OMB Desk Officer for the Corporation for National and Community Service, 725 17th Street, NW., Washington, DC 20503, (202) 395–3147, within 30 days from the date of this publication in the **Federal Register**.

The OMB is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the Corporation, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Propose ways to enhance the quality, utility and clarity of the information to be collected; and
- Propose ways to minimize the burden of the collection of information to those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.* permitting electronic submissions of responses.

Description

The Corporation seeks public comment on the forms, the instructions for the forms, and the instructions for the narrative portion of these application instructions.

Type of Review: Reinstatement with change.

Agency: Corporation for National and Community Service.

Title: AmeriCorps Promise Fellows Continuation Instructions.

OMB Number: 3045–0073.

Agency Number: None.

Affected Public: Eligible applicants to the Corporation for funding.

Total Respondents: 41.

Frequency: Once per year.

Average Time Per Response: Twenty-five (25) hours.

Estimated Total Burden Hours: 1,025 hours.

Total Burden Cost (capital/startup): None.

Total Burden Cost (operating/maintenance): None.

Dated: May 6, 2003.

Nancy Talbot,

Director, Program Planning and Development.

[FR Doc. 03–11734 Filed 5–9–03; 8:45 am]

BILLING CODE 6050–$$–P

CORPORATION FOR NATIONAL AND COMMUNITY SERVICE

Sunshine Act Meeting

The Board of Directors of the Corporation for National and Community Service gives notice of the following meeting:

DATE AND TIME: Tuesday, May 20, 2003; 9:30 a.m.–12:30 p.m.

PLACE: Crawford Hall 13; Case Western Reserve University, 10900 Euclid Avenue, Cleveland, Ohio 44106.

STATUS: Open.

MATTERS TO BE CONSIDERED:

I. Chair's Opening Remarks.

II. Committee Reports.

III. University/City Partnerships in Service to the Community.

IV. Ohio Service Learning Initiatives: Higher Education.

V. Special and Unique Volunteerism and National Service Initiatives in the State of Ohio.

VI. Presentation and Display of Ohio Bi-Centennial Celebration Quilt.

VII. Public Comment.

ACCOMODATIONS: Anyone who needs an interpreter or other accommodation should notify the Corporation's contact person by 5 p.m. Thursday, May 15, 2003.

FOR FURTHER INFORMATION CONTACT: Michele Tennery, Senior Associate, Public Affairs, Corporation for National and Community Service, 8th Floor, Room 8601, 1201 New York Avenue, NW., Washington, DC 20525. Phone (202) 606–5000 ext. 125. Fax (202) 565–2784. TDD: (202) 565–2799. E-mail: *mtennery@cns.gov.*

Dated: May 8, 2003.

Frank R. Trinity,

General Counsel.

[FR Doc. 03–11914 Filed 5–8–03; 2:12 pm]

BILLING CODE 6050–$$–P

DEPARTMENT OF DEFENSE

Office of the Secretary

Committee Meeting of the Defense Department Advisory Committee on Women in the Services (DACOWITS)

AGENCY: Department of Defense, Advisory Committee on Women in the Services.

ACTION: Notice.

SUMMARY: On April 17, 2003, 68 FR 18972, the Department of Defense published a notice concerning the Committee Meeting of the Defense Department Advisory Committee on Women in the Services (DACOWITS). This notice is published to announce that the session to be held on May 8, 2003, from 1:15 to 2:15, will be closed to the public due to the sensitivity of the briefing content. All other information remains unchanged.

Dated: May 5, 2003.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 03–11702 Filed 5–7–03; 12:37 pm]

BILLING CODE 5001–08–M

DEPARTMENT OF DEFENSE

Office of the Secretary

Revised Non-Foreign Overseas Per Diem Rates

AGENCY: DoD, Per Diem, Travel and Transportation Allowance Committee.

ACTION: Notice of revised non-foreign overseas per diem rates.

SUMMARY: The Per Diem, Travel and Transportation Allowance Committee is publishing Civilian Personnel Per Diem Bulletin Number 230. This bulletin lists revisions in the *per diem* rates prescribed for U.S. Government employees for official travel in Alaska, Hawaii, Puerto Rico, the Northern Mariana Islands and Possessions of the United States. AEA changes announced in Bulletin Number 194 remain in effect. Bulletin Number 230 is being published in the **Federal Register** to assure that travelers are paid *per diem* at the most current rates.

EFFECTIVE DATE: May 1, 2003.

FOR FURTHER INFORMATION CONTACT: This document gives notice of revisions in *per diem* rates prescribed by the Per Diem Travel and Transportation Allowance Committee for non-foreign areas outside the continental United States. It supersedes Civilian Personnel Per Diem Bulletin Number 229. Distribution of Civilian Personnel Per Diem Bulletins by mail was discontinued. Per Diem Bulletins published periodically in the **Federal Register** now constitute the only notification of revisions in *per diem* rates to agencies and establishments outside the Department of Defense. For more information or questions about per diem rates, please contact your local travel office. The text of the Bulletin follows:

Dated: April 30, 2003.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

BILLING CODE 5001–08–M

Maximum Per Diem Rates for official travel in Alaska, Hawaii, the Commonwealths of Puerto Rico and the Northern Mariana Islands and Possessions of the United States by Federal Government civilian employees.

LOCALITY	MAXIMUM LODGING AMOUNT (A) +	M&IE RATE (B) =	MAXIMUM PER DIEM RATE (C)	EFFECTIVE DATE
THE ONLY CHANGES IN CIVILIAN BULLETIN 230 ARE UPDATES TO THE RATES FOR HAWAII AND A CHANGE TO THE M&IE RATE FOR ST. GEORGE, ALASKA.				
ALASKA				
ANCHORAGE [INCL NAV RES]				
05/01 - 09/15	170	66	236	04/01/2003
09/16 - 04/30	85	66	151	04/01/2003
BARROW	159	95	254	05/01/2002
BETHEL	129	66	195	05/01/2002
CLEAR AB	80	55	135	09/01/2001
COLD BAY	90	73	163	05/01/2002
COLDFOOT	135	71	206	10/01/1999
COPPER CENTER	99	63	162	05/01/2002
CORDOVA	90	48	138	04/01/2003
CRAIG	100	53	153	04/01/2003
DEADHORSE	95	67	162	05/01/2002
DELTA JUNCTION	79	60	139	04/01/2003
DENALI NATIONAL PARK				
06/01 - 08/31	115	41	156	04/01/2003
09/01 - 05/31	80	38	118	04/01/2003
DILLINGHAM	95	69	164	05/01/2002
DUTCH HARBOR-UNALASKA	120	86	206	04/01/2003
EARECKSON AIR STATION	80	55	135	09/01/2001
EIELSON AFB				
05/01 - 09/15	149	83	232	04/01/2003
09/16 - 04/30	75	76	151	04/01/2003
ELMENDORF AFB				
05/01 - 09/15	170	66	236	04/01/2003
09/16 - 04/30	85	66	151	04/01/2003
FAIRBANKS				
05/01 - 09/15	149	83	232	04/01/2003
09/16 - 04/30	75	76	151	04/01/2003
FOOTLOOSE	175	18	193	06/01/2002
FT. GREELY	79	60	139	04/01/2003
FT. RICHARDSON				
05/01 - 09/15	170	66	236	04/01/2003
09/16 - 04/30	85	66	151	04/01/2003
FT. WAINWRIGHT				
05/01 - 09/15	149	83	232	04/01/2003
09/16 - 04/30	75	76	151	04/01/2003
GLENNALLEN				
05/01 - 09/30	137	61	198	09/01/2001
10/01 - 04/30	89	56	145	09/01/2001
HEALY				
06/01 - 08/31	115	41	156	04/01/2003
09/01 - 05/31	80	38	118	04/01/2003
HOMER				
05/15 - 09/15	109	72	181	04/01/2003
09/16 - 05/14	76	68	144	04/01/2003
JUNEAU	99	75	174	04/01/2003

Maximum Per Diem Rates for official travel in Alaska, Hawaii, the Commonwealths of Puerto Rico and the Northern Mariana Islands and Possessions of the United States by Federal Government civilian employees.

LOCALITY	MAXIMUM LODGING AMOUNT (A) +	M&IE RATE (B) =	MAXIMUM PER DIEM RATE (C)	EFFECTIVE DATE
KAKTOVIK	165	86	251	05/01/2002
KAVIK CAMP	150	69	219	05/01/2002
KENAI-SOLDOTNA				
04/01 - 10/31	110	83	193	04/01/2003
11/01 - 03/31	69	75	144	04/01/2003
KENNICOTT	179	81	260	04/01/2003
KETCHIKAN				
05/01 - 09/30	110	82	192	04/01/2003
10/01 - 04/30	89	80	169	04/01/2003
KING SALMON				
05/01 - 10/01	225	91	316	05/01/2002
10/02 - 04/30	125	81	206	05/01/2002
KLAWOCK	100	53	153	04/01/2003
KODIAK	90	83	173	04/01/2003
KOTZEBUE				
05/01 - 08/31	141	91	232	04/01/2003
09/01 - 04/30	125	89	214	04/01/2003
KULIS AGS				
05/01 - 09/15	170	66	236	04/01/2003
09/16 - 04/30	85	66	151	04/01/2003
MCCARTHY	179	81	260	04/01/2003
METLAKATLA				
05/30 - 10/01	98	48	146	05/01/2002
10/02 - 05/29	78	47	125	05/01/2002
MURPHY DOME				
05/01 - 09/15	149	83	232	04/01/2003
09/16 - 04/30	75	76	151	04/01/2003
NOME	115	91	206	04/01/2003
NUIQSUT	180	53	233	05/01/2002
POINT HOPE	130	70	200	03/01/1999
POINT LAY	105	67	172	03/01/1999
PORT ALSWORTH	135	88	223	05/01/2002
PRUDHOE BAY	95	67	162	05/01/2002
SEWARD				
05/31 - 09/30	189	67	256	04/01/2003
10/01 - 05/30	79	56	135	04/01/2003
SITKA-MT. EDGECUMBE				
05/16 - 09/16	110	81	191	04/01/2003
09/17 - 05/15	99	80	179	04/01/2003
SKAGWAY				
05/01 - 09/30	110	82	192	04/01/2003
10/01 - 04/30	89	80	169	04/01/2003
SPRUCE CAPE	90	83	173	04/01/2003
ST. GEORGE	105	55	160	05/01/2003
TALKEETNA	100	89	189	07/01/2002
TANANA	115	91	206	04/01/2003
TOGIAK	100	39	139	07/01/2002
TOK				
05/01 - 09/30	81	76	157	04/01/2003
10/01 - 04/30	60	74	134	04/01/2003

Maximum Per Diem Rates for official travel in Alaska, Hawaii, the Commonwealths of Puerto Rico and the Northern Mariana Islands and Possessions of the United States by Federal Government civilian employees.

LOCALITY	MAXIMUM LODGING AMOUNT (A) +	M&IE RATE (B) =	MAXIMUM PER DIEM RATE (C)	EFFECTIVE DATE
UMIAT	150	98	248	04/01/2003
UNALAKLEET	79	80	159	04/01/2003
VALDEZ				
05/01 - 10/01	139	91	230	04/01/2003
10/02 - 04/30	79	86	165	04/01/2003
WAINWRIGHT	120	83	203	05/01/2002
WASILLA	99	68	167	04/01/2003
WRANGELL				
05/01 - 09/30	110	82	192	04/01/2003
10/01 - 04/30	89	80	169	04/01/2003
YAKUTAT	110	68	178	03/01/1999
[OTHER]	80	55	135	09/01/2001
AMERICAN SAMOA				
AMERICAN SAMOA	85	67	152	03/01/2000
GUAM				
GUAM (INCL ALL MIL INSTAL)	135	76	211	09/01/2002
HAWAII				
CAMP H M SMITH	112	82	194	05/01/2003
EASTPAC NAVAL COMP TELE AREA	112	82	194	05/01/2003
FT. DERUSSEY	112	82	194	05/01/2003
FT. SHAFTER	112	82	194	05/01/2003
HICKAM AFB	112	82	194	05/01/2003
HONOLULU (INCL NAV & MC RES CTR)	112	82	194	05/01/2003
ISLE OF HAWAII: HILO	100	72	172	05/01/2003
ISLE OF HAWAII: OTHER	89	54	143	05/01/2000
ISLE OF KAUAI	158	88	246	05/01/2003
ISLE OF KURE	65	41	106	05/01/1999
ISLE OF MAUI	159	89	248	06/01/2002
ISLE OF OAHU	112	82	194	05/01/2003
KEKAHA PACIFIC MISSILE RANGE FAC	158	88	246	05/01/2003
KILAUEA MILITARY CAMP	100	72	172	05/01/2003
LANAI	395	138	533	05/01/2003
LUALUALEI NAVAL MAGAZINE	112	82	194	05/01/2003
MCB HAWAII	112	82	194	05/01/2003
MOLOKAI	101	98	199	05/01/2003
NAS BARBERS POINT	112	82	194	05/01/2003
PEARL HARBOR [INCL ALL MILITARY]	112	82	194	05/01/2003
SCHOFIELD BARRACKS	112	82	194	05/01/2003
WHEELER ARMY AIRFIELD	112	82	194	05/01/2003
[OTHER]	72	61	133	01/01/2000
JOHNSTON ATOLL				
JOHNSTON ATOLL	0	14	14	05/01/2002
MIDWAY ISLANDS				
MIDWAY ISLANDS [INCL ALL MILITAR	150	47	197	02/01/2000
NORTHERN MARIANA ISLANDS				
ROTA	149	72	221	10/01/2002
SAIPAN	150	88	238	10/01/2002
TINIAN	85	71	156	10/01/2002
[OTHER]	55	72	127	04/01/2000
PUERTO RICO				

Maximum Per Diem Rates for official travel in Alaska, Hawaii, the Commonwealths of Puerto Rico and the Northern Mariana Islands and Possessions of the United States by Federal Government civilian employees.

LOCALITY	MAXIMUM LODGING AMOUNT (A) +	M&IE RATE (B)	MAXIMUM PER DIEM RATE (C)	EFFECTIVE DATE
BAYAMON				
04/11 - 12/23	155	71	226	01/01/2000
12/24 - 04/10	195	75	270	01/01/2000
CAROLINA				
04/11 - 12/23	155	71	226	01/01/2000
12/24 - 04/10	195	75	270	01/01/2000
FAJARDO [INCL CEIBA & LUQUILLO]	82	54	136	01/01/2000
FT. BUCHANAN [INCL GSA SVC CTR,				
04/11 - 12/23	155	71	226	01/01/2000
12/24 - 04/10	195	75	270	01/01/2000
HUMACAO	82	54	136	01/01/2000
LUIS MUNOZ MARIN IAP AGS				
04/11 - 12/23	155	71	226	01/01/2000
12/24 - 04/10	195	75	270	01/01/2000
MAYAGUEZ	85	59	144	01/01/2000
PONCE	96	69	165	01/01/2000
ROOSEVELT RDS & NAV STA	82	54	136	01/01/2000
SABANA SECA [INCL ALL MILITARY]				
04/11 - 12/23	155	71	226	01/01/2000
12/24 - 04/10	195	75	270	01/01/2000
SAN JUAN & NAV RES STA				
04/11 - 12/23	155	71	226	01/01/2000
12/24 - 04/10	195	75	270	01/01/2000
[OTHER]	62	57	119	01/01/2000
VIRGIN ISLANDS (U.S.)				
ST. CROIX				
04/15 - 12/14	93	72	165	01/01/2000
12/15 - 04/14	129	76	205	01/01/2000
ST. JOHN				
04/15 - 12/14	219	84	303	01/01/2000
12/15 - 04/14	382	100	482	01/01/2000
ST. THOMAS				
04/15 - 12/14	163	73	236	01/01/2000
12/15 - 04/14	288	86	374	01/01/2000
WAKE ISLAND				
WAKE ISLAND	60	32	92	09/01/1998

[FR Doc. 03–11703 Filed 5–9–03; 8:45 am]
BILLING CODE 5001–08–C

DEPARTMENT OF DEFENSE

Department of the Navy

Meeting of the Naval Research Advisory Committee

AGENCY: Department of the Navy, DoD.
ACTION: Notice of closed meeting.

SUMMARY: The Naval Research Advisory Committee (NRAC) Panel on Technology for FORCEnet will meet to define the concepts and science and technology (S&T) initiatives, including those in the space, atmospheric, surface and subsurface environments, required to achieve the visions of FORCEnet and Sea Power 21. From these discussions the panel will recommend appropriate near and far term Naval science and technology investments to enhance FORCEnet. All sessions of the meeting will be closed to the public.

DATES: The meetings will be held on Monday, May 19, 2003, from 8 a.m. to 5 p.m.; Tuesday, May 20, 2003, from 8 a.m. to 5 p.m.; and Wednesday, May 21, 2003, from 8 a.m. to 5 p.m.

ADDRESSES: The meetings will be held at the Space and Naval Warfare Systems Center San Diego, 53560 Hull Street, San Diego, CA.

FOR FURTHER INFORMATION CONTACT: Dennis Ryan, Program Director, Naval Research Advisory Committee, 800 North Quincy Street, Arlington, VA 22217–5660, (703) 696–6769.

SUPPLEMENTARY INFORMATION: This notice of closed meeting is provided in accordance with the provisions of the Federal Advisory Committee Act (5 U.S.C. App. 2). All sessions of the meeting will be devoted to discussions regarding basic and advanced research and associated science and technology opportunities with respect to concepts and science and technology (S&T) initiatives, including those in the space, atmospheric, surface and subsurface environments, required to achieve the visions of FORCEnet and Sea Power 21. These discussions will contain classified information that is specifically authorized under criteria established by Executive Order to be kept secret in the interest of National Defense and are in fact properly classified pursuant to such Executive Order. The classified and non-classified matters to be discussed are so inextricably intertwined as to preclude opening any portion of the meeting. In accordance with 5 U.S.C. App. 2, section 10(d), the Under Secretary of the Navy has determined in writing that the public interest requires that all sessions of the meeting be closed to the public because they will be concerned with matters listed in 5 U.S.C. 552b(c)(1). Due to an unavoidable delay in administrative processing, the normal 15 days notice could not be provided.

Dated: May 7, 2003.

E.F. McDonnell,

Major, U.S. Marine Corps, Federal Register Liaison Officer.

[FR Doc. 03–11865 Filed 5–9–03; 8:45 am]
BILLING CODE 3810–FF–P

DEPARTMENT OF EDUCATION

[CFDA NOs: 84.038, 84.033, and 84.007]

Federal Student Aid

ACTION: Notice of the 2003–2004 award year deadline dates for campus-based programs.

SUMMARY: The Secretary announces the 2003–2004 award year deadline dates for postsecondary institutions to submit various requests and documents for the campus-based programs.

SUPPLEMENTARY INFORMATION: There are three programs that are collectively known as the campus-based programs: The Federal Perkins Loan Program encourages institutions to make low-interest, long-term loans to needy undergraduate and graduate students to help pay for their education.

The Federal Work-Study (FWS) Program encourages the part-time employment of needy undergraduate and graduate students to help pay for their education and to involve the students in community service activities.

The Federal Supplemental Educational Opportunity Grant (FSEOG) Program encourages institutions to provide grants to exceptionally needy undergraduate students to help pay for their cost of education.

The Federal Perkins Loan, FWS, and FSEOG programs are authorized by parts E and C, and part A, subpart 3, respectively, of title IV of the Higher Education Act of 1965, as amended.

Throughout the year, the Department will continue to provide additional information for the individual deadline dates listed in its "Dear Partner' letters and the 2003–2004 Federal Student Aid Handbook via the Information for Financial Aid Professionals (IFAP) Web site at: *http://www.ifap.ed.gov*.

Deadline Dates: The following table provides the deadline dates for the campus-based programs for the 2003–2004 award year. Institutions must meet the established deadline dates to ensure consideration for funding or a waiver, as appropriate.

2003–2004 AWARD YEAR DEADLINE DATES

What does an institution submit?	Where does the institution submit this?	What is the deadline for Submission?
1. A request for a waiver of the minimum FWS Community Service Expenditure Requirement for the 2003–2004 award year.	The FWS Community Service (CS) waiver request and justification must be mailed to the FWS CS Administrator at the following email address: *CBFOB@ED.GOV*.	June 20, 2003.
2. The Campus-Based Reallocation Form designated for the return of 2002–2003 funds and request of supplemental FWS funds.	The Reallocation Form must be submitted electronically and is located in the "Setup" section of the FISAP on the Internet at: *http://www.cbfisap.sfa.ed.gov*.	August 22, 2003.
3. The 2002–2003 Fiscal Operations Report and 2004–2005 Application to Participate (FISAP).	The FISAP is located on the Internet at the following site: *http://www.cbfisap.sfa.ed.gov*. The FISAP form must be submitted electronically via the Internet, and the combined signature page must be mailed to: The FISAP Administrator, INDUS Corporation, 1953 Gallows Road, Suite 300, Vienna, VA 22182.	October 1, 2003.
4. A request for a waiver of the 2004–2005 award year penalty for the underuse of 2002–2003 award year funds.	The request for a waiver can be found in Part II, Section C of the FISAP on the Internet at: *http://www.cbfisap.fsa.ed.gov*. The request and justification must be submitted electronically via the Internet	February 13, 2004.

2003–2004 AWARD YEAR DEADLINE DATES—Continued

What does an institution submit?	Where does the institution submit this?	What is the deadline for Submission?
5. The Institutional Application for Approval to Participate in the Federal Student Financial Aid Programs.	An institution which has not already established eligibility must submit an application to Case Management and Oversight through the ED Web site: *http://www.eligcert.ed.gov*.	February 13, 2004.
6. The Institutional Application and Agreement for Participation in the Work-Colleges Program for the 2004–2005 award year.	The Institutional Application and Agreement for Participation in the Work-Colleges Program can be found in the "Setup" section of the FISAP via the Internet at: *http://www.cbfisap.sfa.ed.gov*.. The application and agreement must be signed and mailed to: Work-Colleges Program Campus-Based Operations U.S. Dept. of Education, 830 First Street, NE., Suite 061J1, Washington, DC 20202–5453.	March 9, 2004.

Proof of Delivery of Request and Supporting Documents

If you submit documents by mail or by a non-U.S. Postal Service courier, we accept as proof one of the following:

(1) A legible mail receipt with the date of mailing stamped by the U.S. Postal Service.

(2) A legibly dated U.S. Postal Service postmark.

(3) A legibly dated shipping label, invoice, or receipt from a commercial courier.

(4) Other proof of mailing or delivery acceptable to the Secretary.

If the request and documents are sent through the U.S. Postal Service, we do not accept either of the following as proof of mailing: (1) A private metered postmark, or (2) a mail receipt that is not dated by the U.S. Postal Service. An institution should note that the U.S. Postal Service does not uniformly provide a dated postmark. Before relying on this method, an institution should check with its local post office. All institutions are encouraged to use certified or at least first-class mail.

The Department accepts commercial couriers or hand deliveries between 8 a.m. and 4:30 p.m., Eastern time, Monday through Friday except Federal holidays.

Sources for Detailed Information on These Requests

A more detailed discussion of each request for funds or waiver is provided in a specific "Dear Partner" letter, which is posted on the Department's Web page at least 30 days before the established deadline date for the specific request. Information on these items is also found in the Federal Student Aid Handbook.

Applicable Regulations: The following regulations apply to these programs:

(1) Student Assistance General Provisions, 34 CFR part 668.

(2) General Provisions for the Federal Perkins Loan Program, Federal Work-Study Program, and Federal Supplemental Educational Opportunity Grant Program, 34 CFR part 673.

(3) Federal Perkins Loan Program, 34 CFR part 674.

(4) Federal Work-Study Program, 34 CFR part 675.

(5) Federal Supplemental Educational Opportunity Grant Program, 34 CFR part 676.

(6) Institutional Eligibility under the Higher Education Act of 1965, as amended, 34 CFR part 600.

(7) New Restrictions on Lobbying, 34 CFR part 82.

(8) Governmentwide Debarment and Suspension (Nonprocurement) and Government wide requirements for Drug-Free Workplace (Grants), 34 CFR part 85.

(9) Drug and Alcohol Abuse Prevention, 34 CFR part 86.

FOR FURTHER INFORMATION CONTACT: Mr. Richard Coppage, Director of Campus-Based Operations at (202) 377–3174 or via Internet: *Richard.Coppage@ed.gov*.

If you use a telecommunications device for the deaf (TDD), you may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

Individuals with disabilities may obtain this document in an alternative format, (e.g. Braille, large print, audiotape, or computer diskette) on request to the contact person listed under **FOR FURTHER INFORMATION CONTACT**.

Electronic Access to This Document

You may view this document, as well as all other Department of Education documents published in the **Federal Register**, in text or Adobe Portable Document Format (PDF) on the Internet at the following site: *http://www.ed.gov/legislation/FedRegister*.

To use PDF you must have Adobe Acrobat Reader, which is available free at this site. If you have questions about using PDF, call the U.S. Government Printing Office (GPO), toll free, at 1–888–293–6498; or in the Washington, DC area at (202) 512–1530.

Note: The official version of this document is the document published in the **Federal Register**. Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available on GPO Access at: *http://www.access.gpo.gov/nara/index.html*.

Program Authority: 20 U.S.C. 1087aa *et seq.*; 42 U.S.C. 2751 *et seq.*; and 20 U.S.C. 1070b *et seq.*

Dated: May 6, 2003.

Theresa S. Shaw,

Chief Operating Officer, Federal Student Aid.

[FR Doc. 03–11761 Filed 5–9–03; 8:45 am]
BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Regulatory Flexibility Act

AGENCY: Department of Education.

ACTION: Notice of procedures and policies.

SUMMARY: This notice announces Department of Education procedures and policies to promote compliance with the Regulatory Flexibility Act. This notice is issued in accordance with Executive Order 13272 on "Proper Consideration of Small Entities in Agency Rulemaking." Executive Order 13272 provides that draft rules must be thoroughly reviewed "to assess and take appropriate account of the potential impact on small businesses, small governmental jurisdictions, and small organizations."

FOR FURTHER INFORMATION CONTACT: Kenneth C. Depew, Office of the General Counsel, U.S. Department of Education, 400 Maryland Avenue, SW., room 6E227, Washington, DC 20202–2241. Telephone: (202) 401–8300.

If you use a telecommunications device for the deaf (TDD), you may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

Individuals with disabilities may obtain this document in an alternative format (*e.g.*, Braille, large print, audiotape, or computer diskette) on request to the contact person listed

under **FOR FURTHER INFORMATION CONTACT**.

SUPPLEMENTARY INFORMATION: The Regulatory Flexibility Act, as amended (Act), 5 U.S.C. 601 *et seq.*, applies, with certain limited exceptions, to any rule for which an agency issues a notice of proposed rulemaking pursuant to 5 U.S.C. 553(b) or any other law, including any rule of general applicability governing Federal grants to State and local governments for which the agency provides an opportunity for notice and public comment.

Except in those cases that the Secretary of Education can certify the rule will not, if promulgated, have a significant economic impact on a substantial number of small entities, the Department must publish an initial regulatory flexibility analysis (IRFA) or a summary of an IRFA in the **Federal Register** with the proposed rule. A final regulatory flexibility analysis (FRFA) or a summary of an FRFA must be published with the final rule.

The IRFA must include the following:

(1) A description of the reasons why action by the Department is being considered;

(2) A succinct statement of the objectives of, and legal basis for, the proposed rule;

(3) A description of and, where feasible, an estimate of the number of small entities to which the proposed rule will apply;

(4) A description of the projected reporting, recordkeeping, and other compliance requirements of the proposed rule, including an estimate of the classes of small entities which will be subject to the requirement and the type of professional skills necessary for preparation of the report or record;

(5) An identification, to the extent practicable, of all relevant Federal rules which may duplicate, overlap or conflict with the proposed rule; and

(6) A description of any significant alternatives to the proposed rule which accomplish the stated objectives of applicable statutes and which minimize any significant economic impact of the proposed rule on small entities.

The FRFA must include the following:

(1) A succinct statement of the need for, and objectives of, the rule;

(2) A summary of the significant issues raised by the public comments in response to the IRFA, a summary of the assessment of the Department of such issues, and a statement of any changes made in the proposed rule as a result of such comments;

(3) A description of and an estimate of the number of small entities to which the rule will apply or an explanation of why no such estimate is available;

(4) A description of the projected reporting, recordkeeping and other compliance requirements of the rule, including an estimate of the classes of small entities which will be subject to the requirement and the type of professional skills necessary for preparation of the report or record; and

(5) A description of the steps the Department has taken to minimize the significant economic impact on small entities consistent with the stated objectives of applicable statutes, including a statement of the factual, policy, and legal reasons for selecting the alternative adopted in the final rule and why each one of the other significant alternatives to the rule considered by the Department which affect the impact on small entities was rejected.

Notice to Public

Semiannually, under section 602 of the Act, the Department publishes an Agenda of Federal Regulatory and Deregulatory Actions, which contains a list of all rules currently under development or review. The purpose of the agenda is to encourage more effective public participation in the regulatory process by providing the public with early information about pending regulatory activities.

For each rule listed, the agenda provides the following information:

- An abstract, which includes a description of the problem to be addressed, any principal alternatives being considered, and potential costs and benefits of the action.
- An indication of whether the planned action is likely to have a significant economic impact on a substantial number of small entities as defined by the Act.
- A reference to where the reader can find any current regulations in the Code of Federal Regulations.
- A citation of legal authority.
- The name, address, and telephone number of the contact person at the Department from whom a reader can obtain additional information regarding the planned regulatory action.

In addition, the Department publishes its Regulatory Plan on an annual basis. The plan contains a statement of the Department's regulatory and deregulatory priorities for the coming year.

In order to provide information and support enhanced exchange, the Department has instituted 1–800–USA–LEARN (1–800–872–5327) to connect our customers to a center for information about departmental programs and initiatives; 1–800–4FED–AID (1–800–433–3243) for information on student aid; and an on-line library of information on education legislation, research, statistics, and promising programs.

The Department has an impressive record of successful communication and shared policy development with affected persons and groups, including parents, students, educators, representatives of State and local governments, neighborhood groups, schools, colleges, special education and rehabilitation service providers, professional associations, advocacy organizations, business, and labor.

In particular, the Department continues to seek greater and more useful customer participation in its rulemaking activities through the use of consensual (negotiated) rulemaking and new technology. When rulemaking is determined to be absolutely necessary, customer participation is essential and sought at all stages—in advance of formal rulemaking, during rulemaking, and after rulemaking is completed—in anticipation of further improvements through statutory or regulatory changes. The Department has expanded its outreach efforts through the use of satellite broadcasts, electronic bulletin boards, and teleconferencing. For example, the Department invites comments on all proposed regulations through the Internet.

The Department is streamlining information collections, reducing burden on information providers involved in our programs, and making information maintained by the Department easily available to the public. To the extent permitted by statute, regulations are being revised to eliminate barriers that inhibit coordination across programs (such as by creating common definitions), to reduce the frequency of reports, and to eliminate unnecessary data requirements.

The Department has also piloted the use of two new Internet-based software applications, e-Application and e-Reports, that enable applicants, grantees, and grant teams to process applications and file performance reports online, and we have received positive feedback from participants in the pilot programs. Our goal over time is to encourage applicants and grantees to make electronic commerce, or the process of conducting business over the Internet, their preferred method of doing business with the Department.

Periodic Review of Rules

Section 610 of the Act requires review of existing rules within 10 years of the effective date of the Act and review of rules adopted after the effective date within 10 years of the adoption of the final rule. The purpose of the reviews is to determine if these rules should be continued without change, or should be amended or rescinded, consistent with the stated objectives of applicable statutes, to minimize any significant economic impact of the rules upon a substantial number of small entities. The Department considers the following factors in reviewing the rules:

- The continued need for the rule.
- The nature of complaints or comments received concerning the rule from the public.
- The complexity of the rule.
- The extent to which the rule overlaps, duplicates, or conflicts with other Federal rules, and to the extent feasible, with State and local governmental rules.
- The length of time since the rule has been evaluated or the degree to which technology, economic conditions, or other factors have changed in the area affected by the rule.

In accordance with section 610, on August 5, 1981 (46 FR 39882), the Department published a notice of its plan for review of its rules that might have a significant economic impact upon a substantial number of small entities. The plan for review established a deadline of January 1, 1991, for completing the review of all rules existing on January 1, 1981, and the Department met this deadline.

The Department has reviewed all rules published after January 1, 1981, prior to publication to determine if the rule would have a significant economic impact upon a substantial number of small entities. Periodic enactment of reauthorizing legislation for Department programs therefore ensures a review of existing regulations under section 610 at least every four or five years.

Review of All Proposed and Final Rules

It is the policy of the Secretary of Education that all proposed and final rules be thoroughly reviewed to assess their impact on small entities. To ensure this review, the Department has established a clearance process for all regulatory documents managed by the Division of Regulatory Services (DRS) in the Office of the General Counsel.

While it is Department policy to regulate only when absolutely necessary and in the least burdensome way possible, it is necessary for the Department to issue a limited number of proposed and final rules each year. Each rule is carefully screened under the Act to determine if it will have an impact on any small entities and, if so, what this impact will be.

In most cases the analysis supports a determination the rule can be certified by the Secretary as not having a significant economic impact upon a substantial number of small entities. The certification and a supporting explanation are then included with both the proposed and final rules.

For a proposed rule with a certification by the Secretary, all of the comments received are carefully screened to determine if any of them specifically address the certification or relate to the consequences of the rule or the alternatives considered by the Department. If comments are received on the certification or the supporting rationale for the certification, the Department analyzes the impact of the rule on small entities in light of the additional information provided by the commenters, prepares an appropriate response to the comments, and certifies the final rule or prepares a regulatory impact analysis, as appropriate.

A significant rule, following Department clearance, is also sent to the Office of Management and Budget (OMB) for further review under Executive Order 12866 (Regulatory Planning and Review). Similarly, a draft rule that has a significant economic impact on a substantial number of small entities under the Act will be sent to the Small Business Administration Office of Advocacy (Advocacy), and Advocacy comments will be given appropriate consideration by the Department, as required by Executive Order 13272. As necessary, OMB may consult with Advocacy on the impact on small entities under the March 29, 2002, Memorandum of Understanding between those offices.

For those rules where a certification is not supported by the analysis of the impact on small entities, the Department prepares an IRFA and FRFA, as appropriate, in accordance with the following procedures.

Procedures for Compliance With the Regulatory Flexibility Act and Executive Order 13272

(1) Determine whether the rule is subject to the Act. Generally, the Act applies in all cases in which the Department is required to publish a notice of proposed rulemaking (NPRM).

(2) If the rule is subject to the Act, prepare an IRFA for the rule incorporating the necessary information. Some of this information will be available from the initial analysis of the proposed rule and the preamble to the NPRM, other information will require identifying the specific actions a small entity must take in order to comply with the rule.

(3) Notify the Chief Counsel for Advocacy of the Small Business Administration (SBA) and provide a copy of the draft NPRM and IRFA a reasonable time prior to publication. This notification will usually occur at the time the draft NPRM is submitted to the Office of Management and Budget for review under Executive Order 12866.

(4) Publish the IRFA or a summary of the IRFA with the NPRM in the **Federal Register**. Unless the IRFA is extremely lengthy or complex, it is preferable to publish the entire analysis rather than a summary.

(5) In preparing the final rule, consider and respond to all comments on the impact of the rule on small entities, including comments from the SBA.

If a determination is made at this time that the rule will not have a significant economic impact on a substantial number of small entities, a certification and statement of factual basis of support may be included with the final rule. Otherwise, a FRFA incorporating the required information must be prepared. Publish the FRFA or a summary in the **Federal Register** with the final rule. Unless the FRFA is extremely lengthy or complex, it is preferable to publish the entire analysis rather than a summary.

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Note: The official version of this document is published in the **Federal Register**. Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available on GPO Access at: *http://www.access.gpo.gov/nara/index.html*.

(Catalog of Federal Domestic Assistance Number does not apply.)

Dated: May 6, 2003.

Rod Paige,

Secretary of Education.

[FR Doc. 03–11762 Filed 5–9–03; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP03–385–000]

Black Marlin Pipeline Company; Notice of Cash-Out Report

May 5, 2003.

Take notice that on April 30, 2003, Black Marlin Pipeline Company (Black Marlin) hereby tendered for filing its annual cash-out report for the calendar year ended December 31, 2002.

Black Marlin states that copy of this filing has been served to its shippers, State Commissions and other interest parties.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed on or before the comment date below. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link.

Comment Date: May 12, 2003.

Magalie R. Salas,

Secretary.

[FR Doc. 03–11661 Filed 5–9–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP03–395–000]

CMS Trunkline Gas Company, LLC; Notice of Proposed Changes in FERC Gas Tariff

May 5, 2003.

Take notice that on April 30, 2003, CMS Trunkline Gas Company, LLC (Trunkline) tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, the following revised tariff sheets to be effective June 1, 2003:

Second Revised Sheet No. 5.
Second Revised Sheet No. 6.
Second Revised Sheet No. 7.
Second Revised Sheet No. 8.
Second Revised Sheet No. 9.

Trunkline states that the purpose of this filing, made in accordance with the provisions of Section 154.106 of the Commission's Regulations, is to revise the tariff maps to reflect changes in the pipeline facilities and the points at which service is provided. Trunkline indicates that it is filing these general location maps as Non-Internet Public documents pursuant to instructions in Order No. 630.

Trunkline states that copies of this filing are being served on all affected customers and applicable state regulatory agencies.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link.

Comment Date: May 12, 2003.

Magalie R. Salas,

Secretary.

[FR Doc. 03–11665 Filed 5–9–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP03–399–000]

CMS Trunkline LNG Company, LLC; Notice of Proposed Changes in FERC Gas Tariff

May 5, 2003.

Take notice that on April 30, 2003, CMS Trunkline LNG Company, LLC (TLNG) tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1, First Revised Sheet No. 4, to be effective June 1, 2003.

TLNG states that the purpose of this filing is to file the tariff map as a Non-Internet Public document pursuant to instructions in Order No. 630.

TLNG states that copies of this filing are being served on all affected customers and applicable state regulatory agencies.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link.

Comment Date: May 12, 2003.

Magalie R. Salas,

Secretary.

[FR Doc. 03–11667 Filed 5–9–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP96–190–024]

Colorado Interstate Gas Company; Notice of Negotiated Rates

May 5, 2003.

Take notice that on April 30, 2003, Colorado Interstate Gas Company (CIG) tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1, the following tariff sheets, with an effective date of May 1, 2003:

First Revised Sheet No. 11E
First Revised Sheet No. 11I

CIG states that the tendered tariff sheets are submitted to update two previously filed negotiated rate transactions involving Western Gas Resources and Williams Energy Marketing & Trading Company and are proposed to become effective on May 1, 2003.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link.

Comment Date: May 12, 2003.

Magalie R. Salas,

Secretary.

[FR Doc. 03–11669 Filed 5–9–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP03–397–000]

Discovery Gas Transmission LLC; Notice of Cash-Out Report

May 5, 2003.

Take notice that on April 28, 2003, Discovery Gas Transmission LLC (Discovery) hereby tendered for filing its annual cash-out report for the calendar year ending on December 31, 2002.

Discovery states that a copy of this filing has been served on shippers, State Commissions, and other interested parties.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed on or before the comment date below. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link.

Comment Date: May 12, 2003.

Magalie R. Salas,

Secretary.

[FR Doc. 03–11666 Filed 5–9–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP03–392–000]

Dominion Cove Point LNG, LP; Notice of Tariff Filing

May 5, 2003.

Take notice that on May 1, 2003, Dominion Cove Point LNG, LP (Dominion Cove Point) tendered for filing to be part of its FERC Gas Tariff, Original Volume No. 1, the following tariff sheets, with an effective date of June 1, 2003:

First Revised Sheet No. 8.
First Revised Sheet No. 21.
First Revised Sheet No. 22.
First Revised Sheet No. 25.
First Revised Sheet No. 26.
First Revised Sheet No. 27.
First Revised Sheet No. 30.
First Revised Sheet No. 31.
First Revised Sheet No. 32.
First Revised Sheet No. 34.
First Revised Sheet No. 35.
First Revised Sheet No. 52.
First Revised Sheet No. 55.
First Revised Sheet No. 57.
Second Revised Sheet No. 71.
Second Revised Sheet No. 226.
Second Revised Sheet No. 228.
Second Revised Sheet No. 229.
First Revised Sheet No. 233.
Original Sheet No. 234.
Original Sheet No. 235.
Original Sheet No. 236.
Original Sheet No. 237.
Sheet No. 238.

Dominion Cove Point states that its filing moves into effect the tariff sheets approved by the Commission between Dominion Cove Point and the Parties involved in the Settlements in January 2003.

Dominion Cove Point states that copies of its letter of transmittal and enclosures have been served upon Dominion Cove Point's customers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. This filing is available for review at the

Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link.

Comment Date: May 13, 2003.

Magalie R. Salas,

Secretary.

[FR Doc. 03–11663 Filed 5–9–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP99–220–014]

Great Lakes Gas Transmission Limited Partnership; Notice of Negotiated Rate Agreement

May 5, 2003.

Take notice that on April 30, 2003, Great Lakes Gas Transmission Limited Partnership (Great Lakes) filed for disclosure, a transportation service agreement pursuant to Great Lakes' Rate Schedule LFT entered into by Great Lakes and Nexen Marketing U.S.A. Inc. (Nexen) (LFT Service Agreement). Great Lakes states that the LFT Service Agreement being filed reflects a negotiated rate arrangement between Great Lakes and Nexen commencing May 1, 2003.

Great Lakes states that the LFT Service Agreement is being filed to implement a negotiated rate contract as required by both Great Lakes' negotiated rate tariff provisions and the Commission's Statement of Policy on Alternatives to Traditional Cost-of-Service Ratemaking for Natural Gas Pipelines and Regulation of Negotiated Transportation Services of Natural Gas Pipelines, issued January 31, 1996, in Docket Nos. RM95–6–000 and RM96–7–000.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with sections 385.314 or 385.211 of the Commission's rules and regulations. All such motions or protests must be filed in accordance with section 154.210 of the Commission's regulations in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link.

Comment Date: May 12, 2003.

Magalie R. Salas,

Secretary.

[FR Doc. 03–11671 Filed 5–9–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. RP00–407–004, RP00–619–005, and RP03–118–001]

High Island Offshore System; Notice of Compliance Filing

May 5, 2003.

Take notice that on April 29, 2003, High Island Offshore System (HIOS), tendered for filing as part of its FERC Gas Tariff, Third Revised Volume No. 1, the tariff sheets referenced in Appendix A to its filing, to become effective May 1, 2003.

HIOS states that it is filing the tariff sheets to comply with the Commission's April 14, 2003, Order in the above-referenced dockets, which relates to compliance with the Commission's Order No. 637.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link.

Protest Date: May 12, 2003.

Magalie R. Salas,

Secretary.

[FR Doc. 03–11656 Filed 5–9–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP00–157–012]

Kern River Gas Transmission Company; Notice of Negotiated Rates

May 5, 2003.

Take notice that on April 30, 2003, Kern River Gas Transmission Company (Kern River) tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, the following tariff sheets, to be effective May 1, 2003:

Sixth Revised Sheet No. 495
Third Revised Sheet No. 496
Second Revised Sheet No. 497

Kern River states that the purpose of this filing is to implement a negotiated rate transaction between Kern River and Coral Energy Resources, LP, in accordance with the Commission's Policy Statement on alternatives to Traditional Cost of Service Ratemaking for Natural Gas Pipelines, and to reference the agreement in Kern River's tariff.

Kern River states that it has served a copy of this filing upon its customers and interested state regulatory commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Sections 385.314 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link.

Comment Date: May 12, 2003.

Magalie R. Salas,

Secretary.

[FR Doc. 03–11655 Filed 5–9–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP03–131–000]

Natural Gas Pipeline Company of America; Notice of Application

May 5, 2003.

Take notice that on April 28, 2003, Natural Gas Pipeline Company of America (Natural), 747 East 22nd Street, Lombard, Illinois 60148, filed in Docket No. CP03–131–000, an application pursuant to Section 7(b) of the Natural Gas Act (NGA) and Parts 157 of the Commission's Rules and Regulations for permission and approval to abandon an inactive injection/withdrawal well and the associated 2,380 foot 8-inch lateral and 6-inch meter facilities located at Natural's North Lansing storage field in Harrison County, Texas, all as more fully set forth in the application. This filing may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* and follow the instructions or toll-free at (866) 208–3676, or for TTY, contact (202) 502–8659.

Any questions or correspondence concerning this application should be addressed to: Bruce H. Newsome, Vice President, Natural Gas Pipeline Company of America, 747 East 22nd Street, Lombard , Illinois 60148, phone (630) 691–3526.

Natural states that the injection/withdrawal well has been plugged and inactive since 1997 when a leak was detected in the production tubing. Natural states further that the Texas Railroad Commission regulations required the well to be plugged. Natural asserts that the lateral that is connected to the well has been inactive since the well was plugged, as has the associated meter, and also asserts that the location of the subject lateral at the storage field is not conducive for future connections to other possible wells.

Natural avers that if the authorization sought herein is approved, the injection/withdrawal well and the lateral would be retired in place, and the meter would be removed from the ground and returned to stock.

There are two ways to become involved in the Commission's review of this project. First, any person wishing to obtain legal status by becoming a party to the proceedings for this project should, on or before the comment date, file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, a motion to intervene in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the NGA (18 CFR 157.10). A person obtaining party status will be placed on the service list maintained by the Secretary of the Commission and will receive copies of all documents filed by the applicant and by all other parties. A party must submit 14 copies of filings made with the Commission and must mail a copy to the applicant and to every other party in the proceeding. Only parties to the proceeding can ask for court review of Commission orders in the proceeding.

However, a person does not have to intervene in order to have comments considered. The second way to participate is by filing with the Secretary of the Commission, as soon as possible, an original and two copies of comments in support of or in opposition to this project. The Commission will consider these comments in determining the appropriate action to be taken, but the filing of a comment alone will not serve to make the filer a party to the proceeding. The Commission's rules require that persons filing comments in opposition to the project provide copies of their protest only to the party or parties directly involved in the protest.

Persons who wish to comment only on the environmental review of this project should submit an original and two copies of their comments to the Secretary of the Commission. Environmental commentors will be placed on the Commission's environmental mailing list, will receive copies of the environmental documents, and will be notified of meetings associated with the Commission's environmental review process. Environmental commentors will not be required to serve copies of filed documents on all other parties. However, the non-party commentors will not receive copies of all documents filed by other parties or issued by the Commission (except for the mailing of environmental documents issued by the Commission) and will not have the right to seek court review of the Commission's final order.

The Commission may issue a preliminary determination on non-environmental issues prior to the completion of its review of the environmental aspects of the project. This preliminary determination typically considers such issues as the need for the project and its economic effect on existing customers of the applicant, on other pipelines in the area, and on landowners and communities. For example, the Commission considers the extent to which the applicant may need to exercise eminent domain to obtain rights-of-way for the proposed project and balances that against the non-environmental benefits to be provided by the project. Therefore, if a person has comments on community and landowner impacts from this proposal, it is important either to file comments or to intervene as early in the process as possible.

Comments, protests and interventions may be filed electronically via the Internet in lieu of paper; *see* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link. The Commission strongly encourages electronic filings.

If the Commission decides to set the application for a formal hearing before an Administrative Law Judge, the Commission will issue another notice describing that process. At the end of the Commission review process, a final Commission order approving or denying a certificate will be issued.

Comment Date: May 27, 2003.

Magalie R. Salas,

Secretary.

[FR Doc. 03–11654 Filed 5–9–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP03–7–003]

Natural Gas Pipeline Company of America; Notice of Compliance Filing

May 5, 2003.

Take notice that on April 30, 2003, Natural Gas Pipeline Company of America (Natural) tendered for filing to become part of its FERC Gas Tariff, Sixth Revised Volume No. 1, the tariff sheets listed on Appendix A to the filing, to be effective June 27, 2003.

Natural states that the purpose of this filing is to comply with the Commission's Order on Technical Conference and Denying Requests for Rehearing (Order) issued on March 31, 2003. This proceeding involves the credit procedures in Natural's Tariff. No tariff changes other than those required by the Order are reflected in this filing.

Natural states that copies of the filing have been mailed to all parties set out on the Commission's official service list in Docket No. RP03–7.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Section 385.211 of the Commission's rules and regulations. All such protests must be filed in accordance with section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link.

Protest Date: May 12, 2003.

Magalie R. Salas,

Secretary.

[FR Doc. 03–11668 Filed 5–9–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP03–393–000]

Northern Natural Gas Company; Notice of Proposed Changes in FERC Gas Tariff

May 5, 2003.

Take notice that on May 1, 2003, Northern Natural Gas Company (Northern) tendered for filing to become part of Northern's FERC Gas Tariff, Fifth Revised Volume No. 1 the following tariff sheets to be effective June 1, 2003:

Seventeenth Revised Sheet No. 54.
Fourth Revised Sheet No. 54A.
Fifteenth Revised Sheet No. 61.
Fifteenth Revised Sheet No. 62.
Fifteenth Revised Sheet No. 63.
Fifteenth Revised Sheet No. 64.

Northern states that the revised tariff sheets are being filed in accordance with section 53 of Northern's Tariff. Northern indicates that this filing establishes the fuel and unaccounted for percentages to be in effect June 1, 2003, based on actual data for the 12 month period that ended March 31, 2003.

Northern further states that copies of the filing have been mailed to each of its customers and interested State Commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link.

Comment Date: May 13, 2003.

Magalie R. Salas,

Secretary.

[FR Doc. 03–11664 Filed 5–9–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP96–272–050]

Northern Natural Gas Company; Notice of Negotiated Rates

May 5, 2003.

Take notice that on April 30, 2003, Northern Natural Gas Company (Northern) tendered for filing to become part of its FERC Gas Tariff, Fifth Revised Volume No. 1, 31 Revised Sheet No. 66, and 27 Revised Sheet No. 66A, proposed to be effective on May 1, 2003.

Northern states that the above sheets are being filed to implement a specific negotiated rate transaction with WPS Energy Services, Inc.(WPS) in accordance with the Commission's Policy Statement on Alternatives to Traditional Cost-of-Service Ratemaking for Natural Gas Pipelines and to delete terminated transactions. In addition, Northern states that this filing deletes certain transactions that have terminated.

Northern further states that copies of the filing have been mailed to each of its customers and interested State Commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with sections 385.314 or 385.211 of the Commission's rules and regulations. All such motions or protests must be filed in accordance with section 154.210 of the Commission's regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link.

Comment Date: May 12, 2003.

Magalie R. Salas,

Secretary.

[FR Doc. 03–11670 Filed 5–9–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP03–382–000]

Panhandle Eastern Pipe Line Company; Notice of Proposed Changes in FERC Gas Tariff

May 5, 2003.

Take notice that on April 30, 2003, Panhandle Eastern Pipe Line Company (Panhandle) tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1, the following revised tariff sheets to be effective June 1, 2003:

Fifth Revised Sheet No. 3.
Fourth Revised Sheet No. 3A.
Sixth Revised Sheet No. 3B.

Panhandle states that the purpose of this filing, made in accordance with the provisions of Section 154.106 of the Commission's Regulations, is to revise the tariff maps to reflect changes in the pipeline facilities and the points at which service is provided. Panhandle indicates that it is filing these general location maps as Non-Internet Public documents pursuant to instructions in Order No. 630.

Panhandle states that copies of this filing are being served on all affected customers and applicable state regulatory agencies.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link.

Comment Date: May 12, 2003.

Magalie R. Salas,

Secretary.

[FR Doc. 03–11659 Filed 5–9–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. RP00–414–002 and RP01–15–003]

PG&E Gas Transmission, Northwest Corporation; Notice of Compliance Filing

May 5, 2003.

Take notice that on April 30, 2003, PG&E Gas Transmission, Northwest Corporation (GTN), tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1–A, the revised tariff sheets listed in Appendix A to the filing, with an effective date of August 29, 2002.

GTN states that the filing is being made to comply with the Commission's Second Order on Compliance with Order No. 637 issued April 9, 2003, in Docket Nos. RP00–414 and RP01–15.

GTN further states that a copy of this filing has been served on GTN's jurisdictional customers and interested state regulatory agencies.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link.

Protest Date: May 12, 2003.

Magalie R. Salas,

Secretary.

[FR Doc. 03–11657 Filed 5–9–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP03–386–000]

Sea Robin Pipeline Company; Notice of Tariff Filing

May 5, 2003.

Take notice that on April 30, 2003, Sea Robin Pipeline Company (Sea Robin) tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1, Third Revised Sheet No. 6, to be effective June 1, 2003.

Sea Robin states that the purpose of this filing, made in accordance with the provisions of Section 154.106 of the Commission's Regulations, is to revise the tariff map to reflect changes in the pipeline facilities and the points at which service is provided. Sea Robin states that it is filing this general location map as a Non-Internet Public document pursuant to instructions in Order No. 630.

Sea Robin states that copies of this filing are being served on all affected customers and applicable state regulatory agencies.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. This filing is available for review at the

Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link.

Comment Date: May 12, 2003.

Magalie R. Salas,

Secretary.

[FR Doc. 03–11662 Filed 5–9–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP03–339–001]

Southern Star Central Gas Pipeline, Inc.; Notice of Tariff Filing

May 5, 2003.

Take notice that on April 30, 2003 Southern Star Central Gas Pipeline, Inc. (Southern Star) tendered for filing as part of its FERC Gas Tariff, Original Volume No. 1, First Revised Sheet No. 214, to become effective May 15, 2003.

Southern Star states that the purpose of this filing is to apply right-of-first-refusal provisions to maximum rate service agreements and to remove the five-year term matching cap from the right-of-first-refusal provisions of the Southern Star Central Gas Pipeline, Inc. Tariff consistent with the Commission's Order on Remand in Docket No. RM98–10–011. The instant filing is an amendment to the initial filing made on April 11, 2003, and is identical except that Southern Star's name designation is now "Inc." instead of "LLC."

Southern Star states that copies the transmittal letter and appendices are being mailed to Southern Star's jurisdictional customers and interested state commissions.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link.

Protest Date: May 12, 2003.

Magalie R. Salas,

Secretary.

[FR Doc. 03–11658 Filed 5–9–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP03–383–000]

Southwest Gas Storage Company; Notice of Tariff Filing

May 5, 2003.

Take notice that on April 30, 2003, Southwest Gas Storage Company (Southwest) tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1, First Revised Sheet No. 4; First Revised Sheet No. 4A; and First Revised Sheet No. 4B to be effective June 1, 2003.

Southwest states that the purpose of this filing is to file the tariff maps as Non-Internet Public documents pursuant to instructions in Order No. 630.

Southwest states that copies of this filing are being served on all affected customers and applicable state regulatory agencies.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Sections 385.314 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link.

Comment Date: May 12, 2003.

Magalie R. Salas,

Secretary.

[FR Doc. 03–11660 Filed 5–9–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Western Area Power Administration

Headgate Rock to Blythe Transmission Line, Bernardino County, CA

AGENCY: Western Area Power Administration, DOE.

ACTION: Notice of floodplain involvement.

SUMMARY: The Western Area Power Administration (Western), a power marketing agency of the U.S. Department of Energy (DOE), proposes to replace existing wood-pole H-frame structures with steel-pole H-frame structures along 52 miles of transmission line between Headgate Rock Substation in Parker, Arizona, and Bylthe Substation in Blythe, California. Western proposes to replace 23 wood structures with light duty steel structures within the 100-year floodplain of the Colorado River, below Parker Dam, in San Bernardino County, California. Western will prepare a floodplain assessment per the DOE floodplain/wetland review requirements.

DATES: Comments on the proposed floodplain action are due to the address below no later than May 27, 2003.

ADDRESSES: Comments should be addressed to Mr. John Holt, Environment Manager, Desert Southwest Customer Service Region, Western Area Power Administration, P.O. Box 6457, Phoenix, AZ 85005–6457, fax (602) 352–2414, e-mail *holt@wapa.gov.*

FOR FURTHER INFORMATION CONTACT: Mr. George R. Perkins, Environmental Specialist, Desert Southwest Customer Service Region, Western Area Power Administration, P.O. Box 6457, Phoenix, AZ 85005–6457, telephone (602) 352–2536, e-mail *Gperkins@wapa.gov.*

SUPPLEMENTARY INFORMATION: Western proposes to replace existing wood-pole H-frame structures with steel-pole H-frame structures along 52 miles of transmission line between Headgate Rock Substation in Parker and Bylthe Substation in Blythe. The transmission line crosses the Colorado River near the town of Parker and Colorado River Indian Tribe administered lands in San Bernardino County, California. The transmission line crosses through riparian vegetation consisting of tamarisk but no wetland vegetation would be impacted. Western proposes to replace the existing wood-pole structures with light-duty steel structures because the existing poles have developed cracks and rot, and are in danger of failing. The project would involve replacing 23 structures and clearing about 1 acre of riparian vegetation for an access road within the boundaries of the 100-year floodplain of the Colorado River. The proposal to replace 23 structures covers a distance of 3 miles. The floodplain area has been subdivided and paved streets have been added. The area currently provides housing and several homes are built in the area.

In accordance with the DOE's Floodplain/Wetland Review Requirements (10 CFR part 1022), Western will prepare a floodplain assessment and will perform the proposed actions in a manner so as to avoid or minimize potential harm to or within the affected floodplain. The floodplain assessment will examine the proposed pole replacement activities. The floodplain action is located in San Bernardino, County, California, in T.1 N., R. 25 E., Sections 23, 24, 26, and 27. Maps and further information are available from the Western contact above.

Dated: May 1, 2003.

Michael S. Hacskaylo,

Administrator.

[FR Doc. 03–11722 Filed 5–9–03; 8:45 am]

BILLING CODE 6450–01–P

ENVIRONMENTAL PROTECTION AGENCY

[OAR–2003–0073, FRL–7496–8]

Agency Information Collection Activities: Proposed Collection; Comment Request; Distribution of Offsite Consequence Analysis Information Under Section 112(r)(7)(H) of the Clean Air Act (CAA)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this document announces that EPA is planning to submit the following continuing Information Collection Request (ICR) to the Office of Management and Budget (OMB): Distribution of Offsite Consequence Analysis Information under section 112(r)(7)(H) of the Clean Air Act (CAA), EPA ICR Number 1981.02, OMB Control Number 2050–0172, expiration date of the *active* ICR is October 31, 2003. Before submitting the ICR to OMB for review and approval, EPA is soliciting comments on specific aspects of the proposed information collection as described below.

DATES: Comments must be submitted on or before July 11, 2003.

ADDRESSES: Follow the detailed instructions in **SUPPLEMENTARY INFORMATION.**

FOR FURTHER INFORMATION CONTACT: Sicy Jacob, Chemical Emergency Preparedness and Prevention Office, Mail Code 5104A, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: (202) 564–8019; fax number: (202) 564–8233; email address: *jacob.sicy@epa.gov.*

SUPPLEMENTARY INFORMATION: EPA has established a public docket for this ICR under Docket ID number OAR–2003–0073, which is available for public viewing at the Air Docket in the EPA Docket Center (EPA/DC), EPA West, Room B102, 1301 Constitution Ave., NW., Washington, DC. The EPA Docket Center Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Reading Room is (202) 566–1744, and the telephone number for the Air Docket is (202) 566–1742. An electronic version of the public docket is available through EPA Dockets (EDOCKET) at *http://www.epa.gov/edocket.* Use EDOCKET to obtain a copy of the draft collection of information, submit or view public comments, access the index listing of the contents of the public docket, and to access those documents in the public docket that are available electronically. Once in the system, select "search," then key in the docket ID number identified above.

Any comments related to this ICR should be submitted to EPA and OMB within 60 days of this notice, and according to the following detailed instructions: (1) Submit your comments to EPA online using EDOCKET (our preferred method), by email to *a-and-r-Docket@epa.gov,* or by mail to: EPA Docket Center, Environmental Protection Agency, Air Docket, Mail Code 6102T, 1200 Pennsylvania Ave., NW., Washington, DC 20460.

EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing in EDOCKET as EPA receives them and without change, unless the comment contains copyrighted material, CBI, or other information whose public disclosure is restricted by statute. When EPA identifies a comment containing copyrighted material, EPA will provide a reference to that material in the version of the comment that is placed in EDOCKET. The entire printed comment, including the copyrighted material, will be available in the public docket. Although identified as an item in the official docket, information claimed as CBI, or whose disclosure is otherwise restricted by statute, is not included in the official public docket, and will not be available for public viewing in EDOCKET. For further information about the electronic docket, *see* EPA's **Federal Register** notice describing the electronic docket at 67 FR 38102 (May 31, 2002), or go to *http://www.epa.gov./edocket.*

Affected entities: Entities potentially affected by this action are State and local agencies and members of the public.

Title: Distribution of Offsite Consequence Analysis Information Under Section 112(r)(7)(H) of the Clean Air Act (CAA), OMB Control Number 2050–0172, EPA ICR Number 1981.02 expiring 10/31/2003.

Abstract: This ICR is the renewal of the ICR developed for the final rule, Accidental Release Prevention Requirements; Risk Management Programs Under the Clean Air Act Section 112(r)(7); Distribution of Off-Site Consequence Analysis Information. CAA section 112(r)(7) required EPA to promulgate reasonable regulations and appropriate guidance to provide for the prevention and detection of accidental releases and for responses to such releases. The regulations include requirements for submittal of a risk

management plan (RMP) to EPA. The RMP includes information on offsite consequence analyses (OCA) as well as other elements of the risk management program.

On August 5, 1999, the President signed the Chemical Safety Information, Site Security, and Fuels Regulatory Relief Act (CSISSFRRA). The Act required the President to promulgate regulations on the distribution of OCA information (CAA section 112(r)(7)(H)(ii)). The President delegated to EPA and the Department of Justice (DOJ) the responsibility to promulgate regulations to govern the dissemination of OCA information to the public. The final rule was published on August 4, 2000 (65 FR 48108). The regulations imposed minimal requirements on the public, State and local agencies that request OCA data from EPA. The State and local agencies who decide to obtain OCA information must send a written request on their official letterhead to EPA certifying that they are covered persons under Public Law 106–40, and that they will use the information for official use only. EPA will then provide paper copies of OCA data to those agencies as requested. The rule authorizes and encourages State and local agencies to set up reading rooms. The local reading rooms would provide read-only access to OCA information for all the sources in the LEPC's jurisdiction and for any source where the vulnerable zone extends into the LEPC's jurisdiction.

Members of the public requesting to view OCA information at Federal reading rooms would be required to sign in and self certify. If asking for OCA information from Federal reading rooms for the facilities in the area where they live or work, they would be required to provide proof that they live or work in that area. Members of the public are required to give their names, telephone number, and the names of the facilities for which OCA information is being requested, when they contact the central office to schedule an appointment to view OCA information.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR part 9 and 48 CFR chapter 15.

The EPA would like to solicit comments to:

(i) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(ii) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(iii) Enhance the quality, utility, and clarity of the information to be collected; and

(iv) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

Burden Statement: For this ICR period, EPA estimates a total of 3,270 hours (annually) for local agencies requesting OCA data from EPA and providing read-only access to the public. For the State agencies, the total annual burden for requesting OCA data from EPA and providing read-only access to the public, is 3,816 hours. For the public to display photo identification, sign a sign-in sheet, certify that the individual has not received access to OCA information for more than 10 stationary sources for that calendar month, and to request information from the vulnerable zone indicator system (VZIS), EPA estimates a total of 8,754 hours annually. The total burden for the members of the public, State and local agencies is 15,840 hours and $413,380 annually (47,520 hours for three years and $1,240,140).

Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

Dated: May 6, 2003.

Deborah Y. Dietrich,

Director, Chemical Emergency Preparedness and Prevention Office.

[FR Doc. 03–11754 Filed 5–9–03; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[RCRA–2003–0011; FRL–7496–6]

Development and Implementation of a Mercury Lamp Recycling Outreach Program

AGENCY: Environmental Protection Agency.

ACTION: Request for Applications (RFA)—Cooperative Agreements.

SUMMARY: In FY 2002 Congress appropriated funds to the Environmental Protection Agency (EPA) for the development and implementation of a lamp (light bulb) recycling outreach program to increase awareness of proper disposal methods among commercial and industrial users of mercury-containing lamps, in compliance with the Universal Waste Rule.

Mercury is a naturally occurring element commonly used by lamp manufacturers to increase the energy efficiency of the lamps they produce. Examples of these mercury-containing lamps include familiar varieties such as the fluorescent lamps commonly found in office buildings, high intensity discharge (HID) lamps, and mercury vapor lamps. While mercury is an essential component allowing lamps to operate more efficiently, it is also hazardous to humans and the environment, thus EPA categorizes spent mercury-containing lamps as hazardous waste under the Resource Conservation and Recovery Act (RCRA).

On July 6, 1999, (*see* 64 FR 36466) mercury-containing lamps were added to EPA's Universal Waste program. This program, created in 1995, (*see* 60 FR 25492, May 11, 1995) eases the regulatory burden on facilities that manage certain widely generated hazardous wastes, known as universal waste. The program was designed to promote the collection and recycling of these wastes. It is important that mercury-containing wastes are properly managed since incorrect disposal of these wastes can seriously threaten the health of citizens, the environment, and wildlife. Repeated exposure to large amounts of mercury can cause kidney, and nerve damage in adults and children, and neurological damage in developing fetuses. Unfortunately, many members of the industrial and commercial community do not realize that the lamps in their buildings pose such a threat, and they are unaware of acceptable methods for disposing of their lamps. As a result, illegal dumping of this hazardous waste is common. To address this issue, EPA's Lamp Recycling Outreach Program was given funds to award to organizations creating and implementing outreach programs that educate the commercial community about the nature of mercury-containing lamps and their proper disposal.

At the end of FY 2002, EPA awarded approximately half of the available funds in cooperative agreements for the development of outreach materials and developing an outreach plan. Today we are requesting applications for funding of the second phase of the program, the implementation of outreach, utilizing the tools and materials developed under the first phase.

Specific materials which are to be developed in the first phase, and which will be available for use during the second phase are as follows:

1. Printed collateral materials for use by government and business organizations about lamp recycling.
2. A searchable database of relevant state agency contacts involved with lamp recycling.
3. A "Frequently Asked Questions" sheet on mercury lamp management.
4. A CD–ROM with Power Point training presentations patterned after the training module produced for, with trainer notes regarding lamp recycling. With a booklet version of training module.
5. Electronic version of the DOE Rebuild America training that is interactive with state links.
6. A Business Lamp Recycling Program Implementation Guide that includes educational materials, handouts, and textual components for setting up a mercury lamp recycling program.
7. Presentation for a Business Lamp Recycling Program Implementation Workshop.
8. Mailers and stickers (or POS materials) for use by local franchise agencies, SW companies, contractors and utilities.
9. Public service announcements targeted at local areas and advertising copy for target media.
10. An advertisement to promote recycling and increase awareness of the *lamprecycle.org* web site.
11. A "Business Lamp Recycling Implementation Program" Web Page.

DATES: Please submit applications on or before July 11, 2003.

ADDRESSES: U.S. EPA, 1200 Pennsylvania Avenue, NW., Washington, DC 20460 (mailing addresses); Crystal Station (7th Floor); 2800 Crystal Drive, Arlington, VA 22202 (building address).

FOR FURTHER INFORMATION CONTACT: Anna Tschursin with EPA's Office of Solid Waste and Emergency Response, Office of Solid Waste: (703) 308–8805 or *tschursin.anna@epa.gov.*

SUPPLEMENTARY INFORMATION:

Proposal Submission and Selection Schedule

(*See: www.epa.gov/ogd/grants/how_to_apply.htm.*) EPA has established an official public docket for this action under Docket ID No. RCRA–2003–0011. The official public docket is the collection of materials that is available for public viewing at the OSWER Docket in the EPA Docket Center (EPA/DC), EPA West, Room B102, 1301 Constitution Ave, NW., Washington, DC. The EPA Docket Center Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the OSWER Docket is (202) 566–0270. Copies cost $0.15 per page.

An electronic version of the public docket is available through EPA's electronic public docket and comment system, EPA Dockets. You may use EPA Dockets at *http://www.epa.gov/edocket/* to view public comments, access the index listing of the contents of the official public docket, and access those documents in the public docket that are available electronically. Although not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the EPA Docket Center. Once in the system, select "search" then key in the appropriate docket ID number.

EPA will accept proposals postmarked or sent to EPA via registered or tracked mail by July 11, 2003. Copies of the Standard Form 424 (SF 424) Application for Federal Assistance may be obtained by following the links to SF forms on the following Web site: *www.gsa.gov/forms.*

Applicants should send one (1) original (clearly labeled as such) and three (3) copies of their proposal to the individual and address shown below:

Anna Tschursin, U.S. Environmental Protection Agency, 1200 Pennsylvania Avenue, NW. (5303W), Washington, DC 20460.

Applicants must clearly mark information they consider confidential, and that EPA will make final confidentiality decisions in accordance with Agency regulations at 40 CFR part 2, subpart B. EPA will offer pre-application assistance by receiving and responding to questions via e-mail. EPA will work with the successful applicant to comply with the Intergovernmental review requirements of Executive Order 12372 and 40 CFR part 29.

Authority

Solid Waste Disposal Act, section 8001 (a) authorizes EPA to render financial and other assistance to appropriate public (whether Federal, State, interstate, or local) authorities, agencies, and institutions, private agencies and institutions, and individuals in the conduct of, and promote the coordination of, research, investigations, experiments, training, demonstrations, surveys, public education programs, and studies. The overall objective of the Lamp Recycling Outreach Program is to increase public awareness and access to resource information by the development of educational material and a mechanism for disseminating this information through a highly visible outreach campaign. The objective of this cooperative agreement directly relates to the coordination of public education programs and training aspect of this statutory authority.

Award Information

Anticipated Type of Award(s): Cooperative Agreement.

Anticipated Total Available Funding Amount: $725,417.

Project Period: September 2003–Sept 2008.

Eligibility for Funding

The term "non-profit" is defined in OMB Circular A–122 and "educational institution" refers to colleges and universities subject to OMB Circular A–21. Groups of two or more eligible applicants may choose to form a coalition and submit a single application for this cooperative agreement. However, one applicant will be accountable to EPA for proper expenditure of funds and any financial transactions between coalition members must comply with 40 CFR part 30.

Per § 501(c)(4) of the Internal Revenue Code, non-profit organizations that engage in lobbying activities—as defined in section 3 of the Lobbying Disclosure Act of 1995—are not eligible to apply or be part of a coalition.

Matching or Cost Sharing Requirements

There are no cost sharing requirements.

Applicable Regulations

The recipient will be subject to EPA regulations applicable to non-profit organizations and institutions of higher education, 40 CFR part 30 and OMB Cost Principles, A–122 or A–21,

respectively. The dispute resolution process will be followed in accordance with 40 CFR 30.63. Executive Order 12372, Intergovernmental Review of Federal Programs is applicable.

Evaluation of Proposals

EPA will conduct the competition consistent with EPA Order 5700.5, Policy on Competition for Assistance Agreements (9/12/02). EPA will assemble a review panel consisting of members familiar with issues related to public outreach, mercury-containing lamps, and the Universal Waste Rule. The review panel will use a point system to rank applications and make recommendations to the Director, Permits and State Programs Division, Office of Solid Waste, Office of Solid Waste and Emergency Response. The Director will make the final selection.

Successful and unsuccessful applicants will be notified of their award status in writing. EPA anticipates awarding the cooperative agreement within 45 days of the application deadline.

EPA reserves the right to reject all applications and make no awards.

Proposal Contents

Proposals must be clear and decisive, strictly follow the criteria, and provide sufficient detail for the panel to compare the merits of each and decide which proposal best supports the intent of the project. Vague descriptions and unnecessary redundancy may reduce the chance of a favorable rating. Proposals providing the best evidence of a quality project and appropriate use of funds will have the best chance of being recommended by the panel. Each proposal must include the following sections, all of which are described in detail further below:

Cover Page (1 page).
Overview (½ page).
Budget (1 page).
Responses to Threshold Criteria (up to 4 pages):
Experience with public outreach on waste related issues; Experience with management of Federal cooperative agreements (or ability to secure such experience).
Responses to Evaluation Criteria (up to 10 pages):
Project Description;
Sustainable, Comprehensive Integrated Outreach Program;
Qualifications and Experience;
Project Partners/Institutionalization;
Use of Existing Materials;
Measurability of Project Results;
Transferability.

To ensure fair and equitable evaluation of the proposals, please do not exceed the single-sided page limitations referenced above. There is no guarantee that pages submitted beyond the limitations will be reviewed by the evaluation panel and doing so could reduce your chances of a favorable rating. In addition, all materials included in the proposal (including attachments) must be printed on letter-sized paper with font sizes no smaller than 12 points. Furthermore, all materials must be printed double-sided on paper with a minimum recycled content of at least 35%.

Cover Page: This page is intended to introduce the applicant and identify a primary point of contact for communication with EPA. The cover page should be on a single page and include the following data elements in the format of your choice:

- Applicant identification—the name of the main implementor of the project.
- Contact—the name of the person who is responsible for the proposal.
- Mailing address/Telephone and Fax numbers/e-mail address of the point of contact for the proposal.
- Submittal Date.

Overview

Briefly summarize the overall goal of the project and how the achievement of that goal can be measured after completion of the project.

Budget

Provide a proposed budget for the project. A clear and concise budget is a critical element of the package. The following budget categories may be useful when presenting your budget in the proposal: personnel, travel, equipment, supplies, contractual, other. EPA defines equipment as items which cost $5,000 or more. Items less than $5,000 are considered supplies. Allowable expenses include direct costs related to organizing and implementing the project and indirect costs authorized under the applicable OMB Circular.

Threshold Criteria

In order to be considered for award of this cooperative agreement, the applicant must meet the threshold criteria described below:

1. Eligibility: Applicants must demonstrate that it is an eligible non-profit organization or an eligible educational institution.

2. Experience with management of Federal cooperative agreements (or ability to secure such experience).

Evaluation Criteria

An applicant's response to each of the following criteria will be the primary basis on which EPA selects or rejects your proposal for the project. The evaluation panel will review the proposals carefully and assess each response based on how well it addresses each criterion. A point system will be used to evaluate the proposals. Next to the title of each evaluation criterion below is the maximum number of points that can be awarded for that criterion (with a total possible score of 100). If a particular criterion is not relevant to your proposal, please acknowledge and explain why it does not apply.

1. Project Description (15 Points)

Provides a complete and clear statement of project goals, activities, budget, and detailed work plan. Budgets should include: how funds will be used, estimated cost of each task, equipment supplies, travel, *etc.*

Work plans should include: the projected time-frame for the outreach program from initiation through completion, as well as a time line of significant milestones and work products to be developed.

2. Sustainable, Comprehensive Integrated Outreach Program (30 Points)

Demonstrates how program will promote lamp recycling by commercial and industrial users of mercury-containing lamps, in compliance with Federal and State Universal Waste Rule provisions. Justifies the work products to be developed. Describes how each product or activity meets the program goals. Describes how your program will deliver long-term national benefit, including how you anticipate assisting the attainment of a national lamp recycling goal of 40% by 2005 and 80% by 2009.

3. Qualifications and Experience (20 Points)

Explains qualifications you have which can be applied to developing this outreach program. Details your interest in recycling. Demonstrates the availability of properly trained staff, facilities, or infrastructure to conduct the program. Demonstrates an understanding of the key audiences that need to be reached. Demonstrates an ability to develop accurate and compelling information for a wide audience. Demonstrates a history of successfully working with the private sector, State, and local government and recycling groups (business and environmental groups). Justifies that you have the capability to develop an outreach program that can continue to encourage long-term improved recycling rates even after your direct involvement is complete.

4. Project Partners/Institutionalization (10 Points)

Demonstrates an awareness of existing programs. Describes efforts to leverage resources from other project partners, including other cooperative agreement awardees (from phase one and phase two of the program), surrounding communities, non-profits, businesses, State and Federal agencies. Describes the possible role of EPA within the program. Describes how you will collaborate with other stakeholders. (10 bonus Points)

Identifies partnering organization(s) and documents the relationship with the applicant. This can be done, for example, through a letter of support, a joint statement, or principles of agreement signed by other parties.

5. Use of existing materials (10 Points)

Explains how existing materials (including those developed in phase one of the program) will be utilized.

6. Measurability of Project Results (5 Points)

Demonstrates the ability to quantitatively measure and document the effectiveness of your program. Explains approach to tracking and reporting results. At the end of the cooperative agreement period, should be able to provide a description of project outcomes—*i.e.*, What, if any was the impact on the recycling rate of your target audience?

7. Transferability (10 Points)

Explains how the information and lessons learned during the project will be transferred to others in order to continue to encourage long-term improved recycling rates even after your direct involvement is complete.

Pre-application Assistance

EPA will provide pre-application assistance by responding to all questions which are submitted by e-mail to *tschursin.anna@epa.gov.*

Terms and Reporting

Grants will include programmatic and administrative terms and conditions. These terms and conditions will describe what is expected from the grant recipient.

The grantee will be required to submit quarterly progress reports. The grantee should only report on activities funded (in whole or in part) via the grant. The narrative should include descriptions of all action items resulting from meetings, site visits, and other activities, as well as milestones achieved and any challenges encountered. The reports should include lists of action items and corresponding milestone dates. In addition, all quarterly reports must be internally reviewed and approved for quality assurance purposes prior to submission. Costs incurred in complying with reporting requirements are an eligible expense under the Solid Waste Disposal Act, section 8001(a).

Dated: April 29, 2003.

Robert Springer,

Director, Office of Solid Waste.

[FR Doc. 03–11756 Filed 5–9–03; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–FRL–7497–1]

Government-Owned Invention: Available for Licensing

AGENCY: Environmental Protection Agency.

ACTION: Notice of availability of invention for licensing.

SUMMARY: The invention named below is owned by the U.S. Government and is available for licensing in the United States in accordance with 35 U.S.C. 207 and 37 CFR Part 404. Pursuant to 37 CFR 404.7, beginning three months after the date of this notice the Government may grant exclusive or partially exclusive licenses on the invention.

Copies of the patent application and 37 CFR Part 404 can be obtained from Laura Scalise, Patent Attorney, U.S. Environmental Protection Agency (EPA) at the address indicated below. Requests for copies of the patent application must include the patent application serial number listed in this notice. Requesters of the patent application will be asked to sign a Confidentiality Agreement before the application is mailed.

A party that is interested in obtaining a license must apply to EPA at the contact address below. The license application must contain the information set forth in 37 CFR 404.8, including the license applicant's plan for development or marketing of the invention.

Prior to granting an exclusive or partially exclusive license on this invention, EPA, pursuant to 37 CFR 404.7, will publish in the **Federal Register** an additional notice identifying the specific invention and the prospective licensee.

FOR FURTHER INFORMATION CONTACT: Laura Scalise, Patent Attorney, Office of General Counsel (2377), Environmental Protection Agency, Washington, DC 20460, telephone (202) 564–8303.

Patent Application

U.S. Patent Application No. 09/866,793: METHODS FOR ISOLATING AND USING FUNGAL HEMOLYSINS; filed May 30, 2001.

Dated: May 6, 2003.

Marla E. Diamond,

Associate General Counsel.

[FR Doc. 03–11757 Filed 5–9–03; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7496–9]

Meeting of the Mobile Sources Technical Review Subcommittee

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of meeting.

SUMMARY: Pursuant to the Federal Advisory Committee Act, Public Act, Pub. L. 92–463, notice is hereby given that the Mobile Sources Technical Review Subcommittee will meet in June 2003. This is an open meeting. The theme of the meeting is future energy legislation and EPA's proposed non-road diesel rule. The meeting will include presentations from outside organizations and EPA. The preliminary agenda for this meeting will be available on the Subcommittee's Web site in May. Draft minutes from the previous meetings are available on the Subcommittee's Web site now at: *http://www.epa.gov/air/caaac/mobile_sources.html.*

DATES: Wednesday, June 11, 2003, from 9 a.m. to 1 p.m. Registration begins at 8:30 a.m.

ADDRESSES: The meeting will be held at the Radisson Hotel Old Town Alexandria, 901 N Fairfax St, Alexandria, VA 22314; (703) 683–6000. Cut-off date to make reservations for discounted rooms associated with this meeting is May 16, 2003.

FOR FURTHER INFORMATION CONTACT: *For technical information:* Mr. Barry Garelick, Technical Staff Contact, Transportation and Regional Programs Division, MC: 6406J, U.S. EPA, 1200 Pennsylvania Ave., NW., Washington, DC 20460; Ph: (202) 564–9028; FAX: (202) 565–2085, e-mail; *garelick.barry@epa.gov.*

For logistical and administrative information: Ms. Kim Derksen, FACA Management Officer, U.S. EPA, 2000 Traverwood Drive, Ann Arbor, Michigan, Ph: 734–214–4272; FAX 734–214–4906, e-mail: *derksen.kimberly@epa.gov.*

Background on the work of the Subcommittee is available at: *http://transaq.ce.gatech.edu/epatac.*

For more current information: *http://epa.gov/air/caaac/mobile_sources.html.*

Individuals or organizations wishing to provide comments to the Subcommittee should submit them to Mr. Garelick at the address above by May 30, 2003. The Mobile Sources Technical Review Subcommittee expects that public statements presented at its meetings will not be repetitive of previously submitted oral or written statements.

SUPPLEMENTARY INFORMATION: During this meeting, the Subcommittee may also hear progress reports from some of its workgroups as well as updates and announcements on activities of general interest to attendees.

Dated: May 5, 2003.

Donald E. Zinger,

Acting Director, Office of Transportation and Air Quality.

[FR Doc. 03–11753 Filed 5–9–03; 8:45 am]

BILLING CODE 6560–50–P

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

RIN 3046–AA58

Agency Information Collection Activities: Proposed Collection; Comments Request

AGENCY: Equal Employment Opportunity Commission.

ACTION: Notice of information collection under review: ADEA waivers.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, the Equal Employment Opportunity Commission (Commission or EEOC) announces that it intends to submit to the Office of Management and Budget (OMB) a request for an extension of the expiration date without change to existing collection requirements under 29 CFR 1625.22, Waivers of rights and claims under the Age Discrimination in Employment Act (ADEA). The Commission is seeking public comments on the proposed extension.

DATES: Written comments on this notice must be submitted on or before July 11, 2003.

ADDRESSES: Comments should be submitted to Frances M. Hart, Executive Officer, Executive Secretariat, Equal Employment Opportunity Commission, 10th Floor, 1801 L Street, NW., Washington, DC 20507. The Executive Secretariat will accept comments transmitted by facsimile ("FAX") machine. The telephone number for the FAX receiver is (202) 663–4114. (This is not a toll-free-number.) Only comments of six or fewer pages will be accepted via FAX transmittal. This limitation is necessary to assure access to the equipment. Receipt of FAX transmittal will not be acknowledged, except that the sender may request confirmation of receipt by calling the Executive Secretariat staff at (202) 663–4070 (voice) or (202) 663–4074 (TDD). (These are not toll-free-telephone numbers.) Copies of comments submitted by the public will be available for review at the Commission's library, Room 6502, 1801 L Street, NW., Washington, DC 20507 between the hours of 9:30 a.m. and 5 p.m.

FOR FURTHER INFORMATION CONTACT: Thomas J. Schlageter, Assistant Legal Counsel, Office of Legal Counsel, at (202) 663–4669 or TTY (202) 663–7026. This notice is also available in the following formats: Large print, braille, audio tape and electronic file on computer disk. Requests for this notice in an alternative format should be made to the Publications Center at 1–800–669–3362.

SUPPLEMENTARY INFORMATION: The EEOC enforces the ADEA of 1967, as amended, 29 U.S.C. 621 *et seq.*, which prohibits discrimination against employees and applicants for employment who are age 40 or older. Congress amended the ADEA by enacting the Older Workers Benefit Protection Act of 1990 (OWBPA), Public Law 101–433, 104 Stat. 983 (1990), to clarify the prohibitions against discrimination on the basis of age. In Title II of OWBPA, Congress addressed waivers of rights and claims under the ADEA, amending section 7 of the ADEA by adding a new subsection (f), 29 U.S.C. 626(f). The provisions of Title II of OWBPA require employers to provide certain information to employees (but not to EEOC) in writing. The regulation at 29 CFR 1625.22 reiterates those requirements. The EEOC seeks extension without change of the information collection requirements contained in this record keeping regulation.

Collective Title: Informational requirements under Title II of the Older Workers Benefit Protection Act of 1990 (OWBPA), 29 CFR Part 1625.

Form Number: None. Frequency of Report: None required.

OMB Control No.: 3046–0042.

Type of Respondent: Business, state or local governments, not for profit institutions.

Description of the Affected Public: Any employer with 20 or more employees that seeks waiver agreements in connection with exit incentive or other employment termination programs (hereinafter, "Programs").

Responses: 13,713.

Reporting Hours: 41,139.

Number of Forms: None.

Abstract: This requirement involves providing adequate information in waiver agreements offered to a group or class of persons in connection with a Program, to satisfy the requirements of the OWBPA.

Burden Statement: The only paperwork burden involved is the inclusion of the relevant data in waiver agreements under the OWBPA. The rule applies to those employers who have 20 or more employees and who offer waivers to a group or class of employees in connection with a Program.

Pursuant to the Paperwork Reduction Act of 1995, 44 U.S.C. Chapter 35, and OMB regulation 5 CFR 1320.8(d)(1), the Commission solicits public comment to enable it to:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the Commission's functions, including whether the information will have practical utility;

(2) Evaluate the accuracy of the Commission's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

Dated: May 1, 2003.

For the Commission.

Cari M. Dominguez,

Chair.

[FR Doc. 03–11686 Filed 5–9–03; 8:45 am]

BILLING CODE 6570–01–P

FEDERAL COMMUNICATIONS COMMISION

Notice of Public Information Collection(s) being Reviewed by the Federal Communications Commission

May 6, 2003.

SUMMARY: The Federal Communications Commission, as part of its continuing effort to reduce paperwork burden invites the general public and other Federal agencies to take this opportunity to comment on the following information collection(s), as required by the Paperwork Reduction Act of 1995, Public Law 104–13. An agency may not conduct or sponsor a collection of information unless it displays a current valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a valid control number. Comments are requested concerning (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

DATES: Written comments should be submitted on or before July 11, 2003. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: Direct all comments to Les Smith, Federal Communications Commission, Room 1–A804, 445 12th Street, SW., Washington, DC 20554, or via the Internet to *lesmith@fcc.gov.*

FOR FURTHER INFORMATION CONTACT: For additional information or copies of the information collection(s) contact Les Smith at 202–418–0217 or via the Internet at *lesmith@fcc.gov.*

SUPPLEMENTARY INFORMATION:

OMB Control Number: 3060–0912.

Title: Cable Attribution Rules, Sections 76.501, 76.503 and 76.504.

Form Number: N/A.

Type of Review: Extension of a currently approved collection.

Respondents: Business and other for-profit entities.

Number of Respondents: 20.

Estimated Time per Response: 4 hours.

Frequency of Response: On occasion reporting requirements.

Total Annual Burden: 80 hours.

Total Annual Costs: $3,200.

Needs and Uses: The FCC uses filings required under 47 CFR sections 76.501, 76.503 and 76.504 of Commission rules to determine the nature of the corporate, financial, partnership, ownership and other business relationships that confer on their holders a degree of ownership or other economic interest, or influence or control over an entity engaged in the provision of communications services such that the holders are subject to the Commission's regulations.

Federal Communications Commission.

William F. Caton,

Deputy Secretary.

[FR Doc. 03–11725 Filed 5–9–03; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL DEPOSIT INSURANCE CORPORATION

Sunshine Act; Meetings

Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C. 552b), notice is hereby given that at 10:45 a.m. on Wednesday, May 7, 2003, the Board of Directors of the Federal Deposit Insurance Corporation met in closed session to consider matters relating to the Corporation's corporate and supervisory activities.

In calling the meeting, the Board determined, on motion of Vice Chairman John M. Reich, seconded by Director James E. Gilleran (Director, Office of Thrift Supervision), concurred in by Director John D. Hawke, Jr. (Comptroller of the Currency), and Chairman Donald E. Powell, that Corporation business required its consideration of the matters on less than seven days' notice to the public; that no notice earlier than May 2, 2003, of the meeting was practicable; that the public interest did not require consideration of the matters in a meeting open to public observation; and that the matters could be considered in a closed meeting by authority of subsections (c)(2), (6), (8), (9)(A)(ii), and (c)(10) of the "Government in the Sunshine Act" (5 U.S.C. 552b(c)(2), (c)(6), (c)(8), (c)(9)(A)(ii), and (c)(10)).

The meeting was held in the Board Room of the FDIC Building located at 500—17th Street, NW., Washington, DC.

Dated: May 7, 2003.

Federal Deposit Insurance Corporation.

Valerie J. Best,

Assistant Executive Secretary.

[FR Doc. 03–11927 Filed 5–08–03; 2:48 pm]

BILLING CODE 6714–01–M

FEDERAL ELECTION COMMISSION

Sunshine Act Notices

DATE AND TIME: Thursday, May 15, 2003 at 10 a.m.

PLACE: 999 E Street, NW., Washington, DC (Ninth Floor).

STATUS: This meeting will be open to the public.

ITEMS TO BE DISCUSSED:

Correction and Approval of Minutes.

Draft Advisory Opinion 2003–07: Virginia Highlands Advancement Fund by Regina Cordle, Treasurer.

Administrative Matters.

FOR FURTHER INFORMATION CONTACT: Mr. Ron Harris, Press Officer, Telephone: (202) 694–1220.

Mary W. Dove,

Secretary of the Commission.

[FR Doc. 03–11892 Filed 5–8–03; 12:26 am]

BILLING CODE 6715–01–M

FEDERAL MARITIME COMMISSION

[Petition No. P1–03]

Petition of China Shipping Container Lines Co., Ltd., for a Limited Exemption From Section 9(C) of the Shipping Act of 1984; Notice of Filing

Notice is hereby given that China Shipping Container Lines Co., Ltd. ("Petitioner") has petitioned, pursuant to section 16 of the Shipping Act of 1984, 46 U.S.C. App. 1715, for a limited exemption from the tariff publishing requirements of section 9 of the Shipping Act, 46 U.S.C. App. 1708(c). Petitioner seeks an exemption so that it can lawfully reduce rates to meet or exceed the published rates of competing ocean common carriers on one day's notice.

In order for the Commission to make a thorough evaluation of the Petition, interested persons are requested to submit views or arguments in reply to the Petition no later than May 27, 2003. Replies shall consist of an original and 15 copies, be directed to the Secretary, Federal Maritime Commission, 800 North Capitol Street, NW., Washington, DC 20573–0001, and be served on Petitioner's counsel: Brett M. Esber, Esquire, Thomas Z. Cheplo, Esquire, Blank Rome LLP, Watergate, Eleventh Floor, 600 New Hampshire Avenue, NW., Washington, DC 20037. It is also requested that a copy of the reply be submitted in electronic form (WordPerfect, Word or ASCII) on diskette or e-mailed to *secretary@fmc.gov.*

Copies of the Petition are available at the Office of the Secretary, Federal Maritime Commission, 800 North Capitol Street, NW., Room 1046. A copy may also be obtained by sending a request to *secetary@fmc.gov* or by calling 202–523–5725. Parties participating in this proceeding may elect to receive service of the

Commission's issuances in this proceeding through e-mail in lieu of service by U.S. mail. A party opting for electronic service shall advise the Office of the Secretary in writing and provide an e-mail address where service can be made.

By the Commission.

Bryant L. VanBrakle,

Secretary.

[FR Doc. 03–11764 Filed 5–9–03; 8:45 am]

BILLING CODE 6730–01–P

FEDERAL RESERVE SYSTEM

Change in Bank Control Notices; Acquisition of Shares of Bank or Bank Holding Companies

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. The notices also will be available for inspection at the office of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than May 27, 2003.

A. Federal Reserve Bank of Kansas City (James Hunter, Assistant Vice President) 925 Grand Avenue, Kansas City, Missouri 64198-0001:

1. Robert Schmucker, Raymond, Nebraska, and Mark Blazek, Valparaiso, Nebraska; to acquire control of Valparaiso Enterprises, Inc., Valparaiso, Nebraska, and thereby indirectly acquire control of Oak Creek Valley Bank, Valparaiso, Nebraska.

Board of Governors of the Federal Reserve System, May 6, 2003.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. 03–11684 Filed 5–9–03; 8:45 am]

BILLING CODE 6210–01–S

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR Part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The application also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States. Additional information on all bank holding companies may be obtained from the National Information Center website at www.ffiec.gov/nic/.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than June 4, 2003.

A. Federal Reserve Bank of St. Louis (Randall C. Sumner, Vice President) 411 Locust Street, St. Louis, Missouri 63166-2034:

1. Guaranty Federal Bancshares, Inc., Springfield, Missouri, to become a bank holding company through the conversion of its subsidiary Guaranty Federal Savings Bank, Springfield, Missouri, from a federally chartered savings bank to a state chartered bank to be named Guaranty Bank.

Board of Governors of the Federal Reserve System, May 6, 2003.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. 03–11683 Filed 5–9–03; 8:45 am]

BILLING CODE 6210–01–S

FEDERAL TRADE COMMISSION

[File No. 031 0002]

Carlsbad Physician Association, Inc., et al.; Analysis To Aid Public Comment

AGENCY: Federal Trade Commission.

ACTION: Proposed consent agreement.

SUMMARY: The consent agreement in this matter settles alleged violations of Federal law prohibiting unfair or deceptive acts or practices or unfair methods of competition. The attached Analysis to Aid Public Comment describes both the allegations in the draft complaint that accompanies the consent agreement and the terms of the consent order—embodied in the consent agreement—that would settle these allegations.

DATES: Comments must be received on or before May 30, 2003.

ADDRESSES: Comments filed in paper form should be directed to: FTC/Office of the Secretary, Room 159–H, 600 Pennsylvania Avenue, NW., Washington, DC 20580. Comments filed in electronic form should be directed to: *consentagreement@ftc.gov,* as prescribed in the **SUPPLEMENTARY INFORMATION** section.

FOR FURTHER INFORMATION CONTACT: Jeffrey Brennan, FTC, Bureau of Competition, 600 Pennsylvania Avenue, NW., Washington, DC 20580, (202) 326–3688.

SUPPLEMENTARY INFORMATION: Pursuant to section 6(f) of the Federal Trade Commission Act, 38 Stat. 721, 15 U.S.C. 46(f), and section 2.34 of the Commission's rules of practice, 16 CFR 2.34, notice is hereby given that the above-captioned consent agreement containing a consent order to cease and desist, having been filed with and accepted, subject to final approval, by the Commission, has been placed on the public record for a period of thirty (30) days. The following Analysis to Aid Public Comment describes the terms of the consent agreement, and the allegations in the complaint. An electronic copy of the full text of the consent agreement package can be obtained from the FTC Home Page (for May 2, 2003), on the World Wide Web, at *http://www.ftc.gov/os/2003/05/index.htm.* A paper copy can be obtained from the FTC Public Reference Room, Room 130–H, 600 Pennsylvania Avenue, NW., Washington, DC 20580, either in person or by calling (202) 326–2222.

Public comments are invited, and may be filed with the Commission in either paper or electronic form. Comments filed in paper form should be directed to: FTC/Office of the Secretary, Room 159–H, 600 Pennsylvania Avenue, NW., Washington, DC 20580. If a comment contains nonpublic information, it must be filed in paper form, and the first page of the document must be clearly labeled "confidential." Comments that do not contain any nonpublic information may instead be filed in electronic form (in ASCII format, WordPerfect, or Microsoft Word) as part of or as an attachment to email messages directed to the following email box: *consentagreement@ftc.gov.* Such comments will be considered by the Commission and will be available for inspection and copying at its principal office in accordance with section 4.9(b)(6)(ii) of the Commission's rules of practice, 16 CFR 4.9(b)(6)(ii)).

Analysis of Agreement Containing Consent Order To Aid Public Comment

The Federal Trade Commission has accepted, subject to final approval, an agreement containing a proposed consent order with the Carlsbad Physician Association (CPA), its executive director, and seven physicians. The agreement settles charges that these parties violated section 5 of the Federal Trade Commission Act, 15 U.S.C. 45, by orchestrating and implementing agreements among members of CPA to fix prices and other terms on which they would deal with health plans, and to refuse to deal with such purchasers except on collectively-determined terms. The proposed consent order has been placed on the public record for 30 days to receive comments from interested persons. Comments received during this period will become part of the public record. After 30 days, the Commission will review the agreement and the comments received, and will decide whether it should withdraw from the agreement or make the proposed order final.

The purpose of this analysis is to facilitate public comment on the proposed order. The analysis is not intended to constitute an official interpretation of the agreement and proposed order, or to modify their terms in any way. Further, the proposed consent order has been entered into for settlement purposes only and does not constitute an admission by any respondent that said respondent violated the law or that the facts alleged in the complaint (other than jurisdictional facts) are true.

The Complaint Allegations

CPA was organized in 1998–1999 to be a vehicle for competing physicians to bargain collectively with health plans, in order to obtain "favorable reimbursement" for its members. Its 38 physician members represent 76 percent of all physicians and 83 percent of the primary care physicians practicing in the Carlsbad area, which is located in southeastern New Mexico.

CPA members have refused to deal with health plans on an individual basis. Instead, CPA's executive director (Glen Moore), its five-member Board of Directors, and a "Contract Committee" consisting of Board members and additional physician members of CPA negotiate with health plans that desire to contract with CPA members. Each of the named physician respondents is or has been a member of CPA's Board of Directors and Contract Committee and actively participated in negotiations with payors.

Contracts that the CPA leadership negotiates are presented to the general membership, and members vote on whether CPA should accept the contract. The Board signs contracts that a majority of CPA members vote to accept. In accordance with this model, respondents have orchestrated collective agreements on fees and other terms of dealing with health plans, have carried out collective negotiations with several health plans, and have orchestrated refusals to deal and threats to refuse to deal with health plans that resisted respondents' desired terms. Although CPA purported to operate as a "messenger"—that is, an arrangement that does not facilitate horizontal agreements on price—it engaged in various actions that reflected or orchestrated such agreements.[1]

Since its inception, CPA has operated solely to exert the collective bargaining power of its members. It engages in no activities or functions other than health plan contracting. Further, in connection with health plan contracting, its members do not engage in any cooperative activities to benefit consumers.

Respondents have succeeded in forcing numerous health plans to raise fees paid to CPA members, and thereby raised the cost of medical care in the Carlsbad area. As a result of the challenged actions of respondents, CPA members receive the highest fees for physician services in New Mexico. By orchestrating agreements among CPA members to deal only on collectively-determined terms, together with actual or threatened refusals to deal with health plans that would not meet those terms, respondents have violated section 5 of the FTC Act.

The Proposed Consent Order

The proposed order is designed to remedy the illegal conduct charged in the complaint and prevent its recurrence. It is similar to many previous consent orders that the Commission has issued to settle charges that physician groups engaged in unlawful agreements to raise fees they receive from health plans, with two exceptions. First, in addition to the core prohibitions, the proposed order in this matter requires that CPA dissolve itself. Such structural relief is not routinely imposed, but has been used in physician price-fixing consent orders in the past when circumstances warrant.[2] Here, the organization is alleged to have had no function other than unlawful collective bargaining activities. Second, the order includes temporary "fencing-in" relief to ensure that the alleged unlawful conduct does not continue through other means. Thus, for three years, it bars the respondents from acting as a messenger or agent in health plan contracting and limits the ability of the individual physician respondents to use the same agent in connection with health plan contracting.

The proposed order's specific provisions are as follows:

Paragraph II.A prohibits the respondents from entering into or facilitating any agreement between or among any physicians: (1) To negotiate with payors on any physician's behalf; (2) to deal, not to deal, or threaten not to deal with payors; (3) on what terms to deal with any payor; or (4) not to deal individually with any payor, or to deal with any payor only through an arrangement involving the respondents.

Other parts of Paragraph II reinforce these general prohibitions. Paragraph II.B prohibits the respondents from facilitating exchanges of information among physicians concerning whether, or on what terms, to contract with a payor. Paragraph II.C bars attempts to engage in any action prohibited by Paragraph II.A or II.B. Paragraph II.D proscribes inducing anyone to engage in any action prohibited by Paragraphs II.A through II.C.

Paragraph II.E contains certain additional, "fencing-in" relief, which is imposed for three years. Under this provision, respondents may not, in connection with physician health plan contracting, either (1) act as an agent for any physicians; or (2) use an agent who represents any other physician with respect to such contracting. Such relief, designed to assure that respondents do not seek to use other arrangements to continue the challenged conduct, is warranted in light of complaint charges that respondents engaged in overt price-fixing behavior and respondents'

[1] An appropriate "messenger model" arrangement that can facilitate and minimize the costs involved in contracting between physicians and payors, without fostering an agreement among competing physicians on fees or fee-related terms, is described in the 1996 Statements of Antitrust Enforcement Policy in Health Care jointly issued by the Federal Trade Commission and U.S. Department of Justice. *See http://www.ftc.gov/reports/hlth3s.htm.*

[2] *See Obstetrics and Gynecology Medical Corporation of Napa Valley,* Docket No. C–4048 (May 14, 2002); *Physician Group, Inc.* 120 F.T.C. 567 (1995); *Southbank IPA, Inc.* 114 F.T.C. 783 (1991).

assertion that their conduct was legitimate "messengering" of health plan contract offers. The prohibition on using the same agent as any other physician in connection with health plan contracting would not apply where respondents are obtaining bona fide legal services (that is, activities undertaken by an attorney that constitute the practice of law as defined by New Mexico law).

As in other orders addressing providers' collective bargaining with health care purchasers, certain kinds of agreements are excluded from the general bar on joint negotiations.

First, respondents would not be precluded from engaging in conduct that is reasonably necessary to form or participate in legitimate joint contracting arrangements among competing physicians, whether a "qualified risk-sharing joint arrangement" or a "qualified clinically-integrated joint arrangement."

As defined in the proposed order, a "qualified risk-sharing joint arrangement" possesses two key characteristics. First, all physician participants must share substantial financial risk through the arrangement, such that the arrangement creates incentives for the participants to control costs and improve quality by managing the provision of services. Second, any agreement concerning reimbursement or other terms or conditions of dealing must be reasonably necessary to obtain significant efficiencies through the joint arrangement.

A "qualified clinically-integrated joint arrangement," on the other hand, need not involve any sharing of financial risk. Instead, as defined in the proposed order, physician participants must participate in active and ongoing programs to evaluate and modify their clinical practice patterns in order to control costs and ensure the quality of services provided, and the arrangement must create a high degree of interdependence and cooperation among physicians. As with qualified risk-sharing arrangements, any agreement concerning price or other terms of dealing must be reasonably necessary to achieve the efficiency goals of the joint arrangement.

Second, because the order is intended to reach agreements among horizontal competitors, Paragraph II would not bar agreements that only involve physicians who are part of the same medical group practice (defined in Paragraph I.E).

Paragraph III, which applies only to CPA, provides for the dissolution of the organization following the expiration or termination of all payor contracts, and in the interim requires that CPA cease all activities except those necessary to comply with the order and the winding down of its affairs. Further, Paragraph III.B requires CPA to distribute the complaint and order to all physicians who have participated in CPA, to payors that negotiated contracts with CPA or indicated an interest in contracting, and to the Carlsbad Medical Center. Paragraph III.C requires CPA, at any payor's request and without penalty, to terminate its current contracts with respect to providing physician services.

In the event that CPA fails to comply with the requirement to send out the notices set forth in Paragraph III.B, Paragraph IV requires Mr. Moore to do so.

Paragraphs V through IX of the proposed order impose various obligations on respondents to report or provide access to information to the Commission to facilitate monitoring respondents' compliance with the order.

The proposed order will expire in 20 years.

By direction of the Commission.

Donald S. Clark,

Secretary.

[FR Doc. 03–11721 Filed 5–9–03; 8:45 am]

BILLING CODE 6750–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Indian Health Service

Delegations of Authority

Notice is hereby given that I have delegated to the Director, Indian Health Service, with authority to redelegate, all the authorities vested in the Secretary of Health and Human Services under Pub. L. 107–63, the Interior and Related Agencies Appropriations Act for Fiscal Year 2002, 115 Stat. 458, to accept land donated by the Tanadgusix Corporation.

This delegation is effective upon date of signature. In addition, I hereby ratify and affirm any actions taken by the Director, Indian Health Service, or his subordinates which involved the exercise of the authorities delegated herein prior to the effective date of this delegation.

Dated: May 2, 2003.

Tommy G. Thompson,

Secretary.

[FR Doc. 03–11685 Filed 5–9–03; 8:45 am]

BILLING CODE 4160–16–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

Privacy Act of 1974; Report of a Modified or Altered System of Records

AGENCY: Department of Health and Human Services (HHS) Centers for Medicare & Medicaid Services (CMS)(formerly the Health Care Financing Administration).

ACTION: Notice of a modified or altered System of Records (SOR).

SUMMARY: In accordance with the requirements of the Privacy Act of 1974, we are proposing to modify or alter an SOR, "1–800 Medicare + Choices Helpline (HELPLINE), System No. 09–70–0535." We are proposing to amend the purpose of the HELPLINE to include maintaining utilization and bill processing data and change the name to read the "1–800–Medicare Helpline" to reflect this amended purpose. Information collected will also be used to update the Enrollment Data Base, System No. 09–70–0502, which is now used to maintain enrollment-related data. The HELPLINE will retrieve utilization data used for bill payment record processing maintained in the "Common Working File," System No. 09–70–0526.

CMS proposes 6 new routine uses to permit release of information to: (1) Another Federal and/or state agency, agency of a state government, an agency established by state law, or its fiscal agent; (2) providers and suppliers of services for administration of Title XVIII of the Social Security Act (the Act); (3) third parties where the contact is expected to have information relating to the individual's capacity to manage his or her own affairs; (4) other insurers, third party administrators (TPA), employers, self-insurers, managed care organizations, other supplemental insurers, non-coordinating insurers, multiple employer trusts, group health plans (*i.e.*, health maintenance organizations (HMOs) or a competitive medical plan (CMP) with a Medicare contract, or a Medicare-approved health care prepayment plan (HCPP)), directly or through a contractor, and other groups providing protection for their enrollees to assist in the processing of individual insurance claims; and (5) combat fraud and abuse in certain health benefits programs.

We are modifying the language in the remaining routine uses to provide an easy to read format to CMS's intention to disclose individual-specific information contained in this system. The routine uses will then be prioritized and reordered according to their proposed usage. We will also take the opportunity to update any sections of the system that were affected by the recent reorganization and to update language in the administrative sections to correspond with language used in other CMS SORs.

The primary purpose of the SOR is to provide general information to beneficiaries and future beneficiaries so that they can make informed Medicare decisions, maintain information on Medicare enrollment for the administration of the Medicare program, including the following functions: Ensuring proper Medicare enrollment, claims payment, Medicare premium billing and collection, coordination of benefits by validating and verifying the enrollment status of beneficiaries, and validating and studying the characteristics of persons enrolled in the Medicare program including their requirements for information. Information retrieved from this SOR will also be disclosed to: (1) Support regulatory, reimbursement, and policy functions performed within the Agency or by a contractor or consultant; (2) another Federal or state agency, agency of a state government, an agency established by state law, or its fiscal agent; (3) providers and suppliers of services for administration of Title XVIII of the Act; (4) third parties where the contact is expected to have information relating to the individual's capacity to manage his or her own affairs; (5) other insurers for processing individual insurance claims; (6) support constituent requests made to a congressional representative; (7) support litigation involving the Agency; and (8) combat fraud and abuse in certain health benefits programs. We have provided background information about the modified system in the **SUPPLEMENTARY INFORMATION** section below. Although the Privacy Act requires only that CMS provide an opportunity for interested persons to comment on the proposed routine uses, CMS invites comments on all portions of this notice. See **EFFECTIVE DATES** section for comment period.

EFFECTIVE DATES: CMS filed a modified system report with the Chair of the House Committee on Government Reform and Oversight, the Chair of the Senate Committee on Governmental Affairs, and the Administrator, Office of Information and Regulatory Affairs, Office of Management and Budget (OMB) on March 13, 2003. To ensure that all parties have adequate time in which to comment, the new SOR, including routine uses, will become effective 40 days from the publication of the notice, or from the date it was submitted to OMB and the Congress, whichever is later, unless CMS receives comments that require alterations to this notice.

ADDRESSES: The public should address comments to: Director, Division of Privacy Compliance Data Development, OIS, CMS, Room N2–04–27, 7500 Security Boulevard, Baltimore, Maryland 21244–1850. Comments received will be available for review at this location, by appointment, during regular business hours, Monday through Friday from 9 a.m.–3 p.m., eastern daylight time.

FOR FURTHER INFORMATION CONTACT: Kenneth Taylor, Health Insurance Specialist, Division of Call Center Operations, Customer Teleservice Operations Group, Center for Beneficiary Choices, CMS, 7500 Security Boulevard, C2–26–20, Baltimore, Maryland 21244–1850. The telephone number is 410–786–6736.

SUPPLEMENTARY INFORMATION:

I. Description of the Modified System

A. Background

The "1–800–Medicare + Choices Helpline, System No. 09–70–0535, was established as a new system to broadly disseminate information to Medicare beneficiaries and prospective Medicare beneficiaries on the coverage options provided under the Medicare + Choice program in order to promote an active, informed selection among such options. The information campaign included, general information, information comparing plan options, information on Medi-gap and Medicare Select. This information is to be provided through toll-free telephone service, Internet site, print, and local education and outreach. Notice of this system was published at 66 **Federal Register** 16679 (Mar 20, 2001).

B. Statutory and Regulatory Basis for System

Authority for maintenance of the system is given under Title 41 Code of Federal Regulation (CFR) Chapter 101–20.302, Conduct on Federal Property, and OMB Circular A–123, Internal Control Systems, and Title 42 United States Code (U.S.C.) section 1395w–21 (d) (Pub. L. 105–3, the Balanced Budget Act of 1997).

II. Collection and Maintenance of Data in the System

A. Scope of the Data Collected

The collected information will contain name, address, telephone number, health insurance claim (HIC) number, geographic location, race/ethnicity, sex, date of birth, as well as, background information relating to Medicare or Medicaid issues. The HELPLINE will also maintain a caller history for purposes of re-contacts by customer service representatives or CMS, contain information related to Medicare enrollment and entitlement, group health plan enrollment data, as well as, background information relating to Medicare or Medicaid issues.

Information is collected on individuals age 65 or over who have been, or currently are, entitled to health insurance (Medicare) benefits under Title XVIII of the Act or under provisions of the Railroad Retirement Act, individuals under age 65 who have been, or currently are, entitled to such benefits on the basis of having been entitled for not less than 24 months to disability benefits under Title II of the Act or under the Railroad Retirement Act, individuals who have been, or currently are, entitled to such benefits because they have ESRD, individuals age 64 and 8 months or over who are likely to become entitled to health insurance (Medicare) benefits upon attaining age 65, and individuals under age 65 who have at least 21 months of disability benefits who are likely to become entitled to Medicare upon the 25th month of their being disabled.

B. Agency Policies, Procedures, and Restrictions on the Routine Use

The Privacy Act permits us to disclose information without an individual's consent if the information is to be used for a purpose that is compatible with the purpose(s) for which the information was collected. Any such disclosure of data is known as a "routine use." The government will only release HELPLINE information that can be associated with an individual as provided for under "Section III. Proposed Routine Use Disclosures of Data in the System." Both identifiable and non-identifiable data may be disclosed under a routine use.

We will only collect the minimum personal data necessary to achieve the purpose of HELPLINE. CMS has the following policies and procedures concerning disclosures of information that will be maintained in the system. Disclosure of information from the SOR will be approved only to the extent necessary to accomplish the purpose of the disclosure and only after CMS:

1. Determines that the use or disclosure is consistent with the reason data is being collected; *e.g.*, maintain a caller history for purposes of re-contacts by customer service representatives or CMS, contain information related to Medicare enrollment and entitlement, group health plan enrollment data, as well as, background information relating to Medicare or Medicaid issues, insuring proper reimbursement for services provided, claims payment, and coordination of benefits provided to patients.

2. Determines that:

a. The purpose for which the disclosure is to be made can only be accomplished if the record is provided in individually identifiable form;

b. The purpose for which the disclosure is to be made is of sufficient importance to warrant the effect and/or risk on the privacy of the individual that additional exposure of the record might bring; and

c. There is a strong probability that the proposed use of the data would in fact accomplish the stated purpose(s).

3. Requires the information recipient to:

a. Establish administrative, technical, and physical safeguards to prevent unauthorized use of disclosure of the record;

b. Remove or destroy at the earliest time all patient-identifiable information; and

c. Agree to not use or disclose the information for any purpose other than the stated purpose under which the information was disclosed.

4. Determines that the data are valid and reliable.

III. Proposed Routine Use Disclosures of Data in the System

A. Entities Who May Receive Disclosures Under Routine Use

These routine uses specify circumstances, in addition to those provided by statute in the Privacy Act of 1974, under which CMS may release information from the HELPLINE without the consent of the individual to whom such information pertains. Each proposed disclosure of information under these routine uses will be evaluated to ensure that the disclosure is legally permissible, including but not limited to ensuring that the purpose of the disclosure is compatible with the purpose for which the information was collected. We are proposing to establish or modify the following routine use disclosures of information maintained in the system:

1. To Agency contractors, or consultants who have been contracted by the Agency to assist in accomplishment of a CMS function relating to the purposes for this SOR and who need to have access to the records in order to assist CMS.

We contemplate disclosing information under this routine use only in situations in which CMS may enter into a contractual or similar agreement with a third party to assist in accomplishing a CMS function relating to purposes for this SOR.

CMS occasionally contracts out certain of its functions when doing so would contribute to effective and efficient operations. CMS must be able to give a contractor or consultant whatever information is necessary for the contractor or consultant to fulfill its duties. In these situations, safeguards are provided in the contract prohibiting the contractor or consultant from using or disclosing the information for any purpose other than that described in the contract and requires the contractor or consultant to return or destroy all information at the completion of the contract.

2. To another Federal or state agency, agency of a state government, an agency established by state law, or its fiscal agent to:

a. Contribute to the accuracy of CMS's proper payment of Medicare benefits,

b. Enable such agency to administer a Federal health benefits program, or as necessary to enable such agency to fulfill a requirement of a Federal statute or regulation that implements a health benefits program funded in whole or in part with Federal funds, and/or

c. Assist Federal/state Medicaid programs within the state.

Other Federal or state agencies in their administration of a Federal health program may require HELPLINE information in order to support evaluations and monitoring of Medicare claims information of beneficiaries, including proper reimbursement for services provided;

In addition, other state agencies in their administration of a Federal health program may require HELPLINE information for the purposes of determining, evaluating and/or assessing cost, effectiveness, and /or the quality of health care services provided in the state;

Disclosure under this routine use shall be used by state Medicaid agencies pursuant to agreements with the HHS for determining Medicaid and Medicare eligibility, for quality control studies, for determining eligibility of recipients of assistance under Titles IV, XVIII, and XIX of the Act, and for the administration of the Medicaid program. Data will be released to the state only on those individuals who are patients under the services of a Medicaid program within the state or who are residents of that state.

We also contemplate disclosing information under this routine use in situations in which state auditing agencies require HELPLINE information for auditing state Medicaid eligibility considerations. CMS may enter into an agreement with state auditing agencies to assist in accomplishing functions relating to purposes for this SOR.

3. To providers and suppliers of services directly or through fiscal intermediaries (FIs) or carriers for the administration of Title XVIII of the Act.

Providers and suppliers of services require HELPLINE information in order to establish the validity of evidence or to verify the accuracy of information presented by the individual, as it concerns the individual's entitlement to benefits under the Medicare program, including proper reimbursement for services provided.

4. To third party contacts in situations where the party to be contacted has, or is expected to have information relating to the individual's capacity to manage his or her affairs or to his or her eligibility for, or an entitlement to, benefits under the Medicare program and,

a. The individual is unable to provide the information being sought (an individual is considered to be unable to provide certain types of information when any of the following conditions exists: The individual is confined to a mental institution, a court of competent jurisdiction has appointed a guardian to manage the affairs of that individual, a court of competent jurisdiction has declared the individual to be mentally incompetent, or the individual's attending physician has certified that the individual is not sufficiently mentally competent to manage his or her own affairs or to provide the information being sought, the individual cannot read or write, cannot afford the cost of obtaining the information, a language barrier exist, or the custodian of the information will not, as a matter of policy, provide it to the individual), or

b. The data are needed to establish the validity of evidence or to verify the accuracy of information presented by the individual, and it concerns one or more of the following: The individual's entitlement to benefits under the Medicare program, the amount of reimbursement, and in cases in which the evidence is being reviewed as a result of suspected fraud and abuse, program integrity, quality appraisal, or evaluation and measurement of activities.

Third parties contacts require HELPLINE information in order to provide support for the individual's entitlement to benefits under the Medicare program; to establish the validity of evidence or to verify the accuracy of information presented by the individual, and assist in the monitoring of Medicare claims information of beneficiaries, including proper reimbursement of services provided.

5. To insurance companies, third party administrators (TPA), employers, self-insurers, managed care organizations, other supplemental insurers, non-coordinating insurers, multiple employer trusts, group health plans (*i.e.*, health maintenance organizations (HMOs) or a competitive medical plan (CMP) with a Medicare contract, or a Medicare-approved health care prepayment plan (HCPP)), directly or through a contractor, and other groups providing protection for their enrollees. Information to be disclosed shall be limited to Medicare entitlement data. In order to receive the information, they must agree to:

a. Certify that the individual about whom the information is being provided is one of its insured or employees, or is insured and/or employed by another entity for whom they serve as a TPA;

b. Utilize the information solely for the purpose of processing the identified individual's insurance claims; and

c. Safeguard the confidentiality of the data and prevent unauthorized access.

Other insurers, TPAs, HMOs, and HCPPs may require HELPLINE information in order to support evaluations and monitoring of Medicare claims information of beneficiaries, including proper reimbursement for services provided.

6. To a Member of Congress or a congressional staff member in response to an inquiry of the congressional office made at the written request of the constituent about whom the record is maintained.

Beneficiaries often request the help of a Member of Congress in resolving some issue relating to a matter before HCFA. The Member of Congress then writes HCFA, and HCFA must be able to give sufficient information tin response to the inquiry.

7. To the Department of Justice (DOJ), court or adjudicatory body when:

a. The Agency or any component thereof, or

b. Any employee of the Agency in his or her official capacity, or

c. Any employee of the Agency in his or her individual capacity where the DOJ has agreed to represent the employee, or

d. The United States Government, is a party to litigation or has an interest in such litigation, and by careful review, CMS determines that the records are both relevant and necessary to the litigation.

Whenever CMS is involved in litigation, or occasionally when another party is involved in litigation and CMS's policies or operations could be affected by the outcome of the litigation, CMS would be able to disclose information to the DOJ, court, or adjudicatory body involved.

8. To a CMS contractor (including, but not limited to FIs and carriers) that assists in the administration of a CMS-administered health benefits program, or to a grantee of a CMS-administered grant program, when disclosure is deemed reasonably necessary by CMS to prevent, deter, discover, detect, investigate, examine, prosecute, sue with respect to, defend against, correct, remedy, or otherwise combat fraud or abuse in such programs.

We contemplate disclosing information under this routine use only in situations in which CMS may enter into a contract or grant with a third party to assist in accomplishing CMS functions relating to the purpose of combating fraud and abuse.

CMS occasionally contracts out certain of its functions when doing so would contribute to effective and efficient operations. CMS must be able to give a contractor or grantee whatever information is necessary for the contractor or grantee to fulfill its duties. In these situations, safeguards are provided in the contract prohibiting the contractor or grantee from using or disclosing the information for any purpose other than that described in the contract and requiring the contractor or grantee to return or destroy all information.

9. To another Federal agency or to an instrumentality of any governmental jurisdiction within or under the control of the United States (including any state or local governmental agency), that administers, or that has the authority to investigate potential fraud or abuse in, a health benefits program funded in whole or in part by Federal funds, when disclosure is deemed reasonably necessary by CMS to prevent, deter, discover, detect, investigate, examine, prosecute, sue with respect to, defend against, correct, remedy, or otherwise combat fraud or abuse in such programs.

Other agencies may require HELPLINE information for the purpose of combating fraud and abuse in such Federally funded programs.

B. Additional Circumstances Affecting Routine Use Disclosures

This system contains Protected Health Information as defined by HHS regulation "Standards for Privacy of Individually Identifiable Health Information" (45 CFR parts 160 and 164, 65 FR 82462 (12–28–00), Subparts A and E. Disclosures of Protected Health Information authorized by these routine uses may only be made if, and as, permitted or required by the "Standards for Privacy of Individually Identifiable Health Information."

In addition, our policy will be to prohibit release even of not directly identifiable, except pursuant to one of the routine uses or if required by law, if we determine there is a possibility that an individual can be identified through implicit deduction based on small cell sizes (instances where the patient population is so small that individuals who are familiar with the enrollees could, because of the small size, use this information to deduce the identity of the beneficiary).

I. Safeguards

A. Administrative Safeguards

The HELPLINE system will conform to applicable law and policy governing the privacy and security of Federal automated information systems. These include but are not limited to: The Privacy Act of 1984, Computer Security Act of 1987, the Paperwork Reduction Act of 1995, the Clinger-Cohen Act of 1996, and the Office and Management and Budget (OMB) Circular A–130, Appendix III, "Security of Federal Automated Information Resources." CMS has prepared a comprehensive system security plan as required by OMB Circular A–130, Appendix III. This plan conforms fully to guidance issued by the National Institute for Standards and Technology (NIST) in NIST Special Publication 800–18, "Guide for Developing Security Plans for Information Technology Systems. Paragraphs A–C of this section highlight some of the specific methods that CMS is using to ensure the security of this system and the information within it.

Authorized users: Personnel having access to the system have been trained in Privacy Act and systems security requirements. Employees and contractors who maintain records in the system are instructed not to release any data until the intended recipient agrees to implement appropriate administrative, technical, procedural, and physical safeguards sufficient to protect the confidentiality of the data and to prevent unauthorized access to the data. In addition, CMS is monitoring

the authorized users to ensure against excessive or unauthorized use. Records are used in a designated work area or workstation and the system location is attended at all times during working hours.

To insure security of the data, the proper level of class user is assigned for each individual user as determined at the Agency level. This prevents unauthorized users from accessing and modifying critical data. The system database configuration includes five classes of database users:

- Database Administrator class owns the database objects; *e.g.*, tables, triggers, indexes, stored procedures, packages, and has database administration privileges to these objects;
- Quality Controls Administrator classes have read and write access to key fields in the database;
- Quality Indicator Report Generator class has read-only access to all fields and tables;
- Policy Research class has query access to tables, but are not allowed to access confidential patient identification information; and
- Submitter classes have read and write access to database objects, but no database administration privileges.

B. Physical Safeguards

All server sites have implemented the following minimum requirements to assist in reducing the exposure of computer equipment and thus achieve an optimum level of protection and security for the HELPLINE system:

Access to all servers is controlled, with access limited to only those support personnel with a demonstrated need for access. Servers are to be kept in a locked room accessible only by specified management and system support personnel. Each server requires a specific log-on process. All entrance doors are identified and marked. A log is kept of all personnel who were issued a security card; key and/or combination that grant access to the room housing the server, and all visitors are escorted while in this room. All servers are housed in an area where appropriate environmental security controls are implemented, which include measures implemented to mitigate damage to Automated Information System resources caused by fire, electricity, water and inadequate climate controls.

Protection applied to the workstations, servers and databases include:

- User Log on—Authentication is performed by the Primary Domain Controller/Backup Domain Controller of the log-on domain.
- Workstation Names—Workstation naming conventions may be defined and implemented at the Agency level.
- Hours of Operation—May be restricted by Windows NT. When activated all applicable processes will automatically shut down at a specific time and not be permitted to resume until the predetermined time. The appropriate hours of operation are determined and implemented at the Agency level.
- Inactivity Log-out—Access to the NT workstation is automatically logged out after a specified period of inactivity.
- Warnings—Legal notices and security warnings display on all servers and workstations.
- Remote Access Services (RAS)—Windows NT RAS security handles resource access control. Access to NT resources is controlled for remote users in the same manner as local users, by utilizing Windows NT file and sharing permissions. Dial-in access can be granted or restricted on a user-by-user basis through the Windows NT RAS administration tool.

C. Procedural Safeguards

All automated systems must comply with Federal laws, guidance, and policies for information systems security as stated previously in this section. Each automated information system should ensure a level of security commensurate with the level of sensitivity of the data, risk, and magnitude of the harm that may result from the loss, misuse, disclosure, or modification of the information contained in the system.

V. Effect of the Modified System on Individual Rights

CMS proposes to establish this system in accordance with the principles and requirements of the Privacy Act and will collect, use, and disseminate information only as prescribed therein. We will only disclose the minimum personal data necessary to achieve the purpose of HELPLINE. Disclosure of information from the SOR will be approved only to the extent necessary to accomplish the purpose of the disclosure. CMS has assigned a proper level of security clearance for the information in this system to provide added security and protection of data in this system.

CMS will monitor the collection and reporting of HELPLINE data. CMS will take precautionary measures to minimize the risks of unauthorized access to the records and the potential harm to individual privacy or other personal or property rights. CMS will collect only that information necessary to perform the system's functions. In addition, CMS will make disclosure from the proposed system only with consent of the subject individual, or his/her legal representative, or in accordance with an applicable exception provision of the Privacy Act.

CMS, therefore, does not anticipate an unfavorable effect on individual privacy as a result of the disclosure of information relating to individuals.

Dated: March 13, 2003.

Thomas A. Scully,

Administrator, Centers for Medicare and Medicaid Services.

09–70–0535

SYSTEM NAME:

1–800 Medicare Helpline (HELPLINE), HHS/CMS/CBC.

SECURITY CLASSIFICATION:

Level Three Privacy Act Sensitive.

SYSTEM LOCATION:

CMS Data Center, 7500 Security Boulevard, North Building, First Floor, Baltimore, Maryland 21244–1850 and at various co-locations of CMS Call Center contractors.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Information is collected on individuals age 65 or over who have been, or currently are, entitled to health insurance (Medicare) benefits under Title XVIII of the Act or under provisions of the Railroad Retirement Act, individuals under age 65 who have been, or currently are, entitled to such benefits on the basis of having been entitled for not less than 24 months to disability benefits under Title II of the Act or under the Railroad Retirement Act, individuals who have been, or currently are, entitled to such benefits because they have ESRD, individuals age 64 and 8 months or over who are likely to become entitled to health insurance (Medicare) benefits upon attaining age 65, and individuals under age 65 who have at least 21 months of disability benefits who are likely to become entitled to Medicare upon the 25th month of their being disabled.

CATEGORIES OF RECORDS IN THE SYSTEM:

The collected information will contain name, address, telephone number, health insurance claim (HIC) number, geographic location, race/ethnicity, sex, and date of birth, as well as, background information relating to Medicare or Medicaid issues. The HELPLINE will also maintain a caller history for purposes of re-contacts by customer service representatives or CMS, contain information related to Medicare enrollment and entitlement, and group health plan enrollment data, as well as, background information relating to Medicare or Medicaid issues.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Authority for maintenance of this system is given under provisions of 41 Code of Federal Regulations (CFR), Chapter 101–20.302, Conduct on Federal Property, Office of Management and Budget (OMB) Circular A–123, Internal Control, and Title 42 United States Code (U.S.C.) section 1395W–21 (d) (Public Law 105–33, the Balanced Budget Act of 1997).

PURPOSE (S):

The primary purpose of the SOR is to provide general information to beneficiaries and future beneficiaries so that they can make informed Medicare decisions, maintain information on Medicare enrollment for the administration of the Medicare program, including the following functions: ensuring proper Medicare enrollment, claims payment, Medicare premium billing and collection, coordination of benefits by validating and verifying the enrollment status of beneficiaries, and validating and studying the characteristics of persons enrolled in the Medicare program including their requirements for information. Information retrieved from this SOR will also be disclosed to: (1) Support regulatory, reimbursement, and policy functions performed within the Agency or by a contractor or consultant; (2) another Federal or state agency, agency of a state government, an agency established by state law, or its fiscal agent; (3) providers and suppliers of services for administration of Title XVIII of the Social Security Act; (4) third parties where the contact is expected to have information relating to the individual's capacity to manage his or her own affairs; (5) other insurers for processing individual insurance claims; (6) support constituent requests made to a congressional representative; (7) support litigation involving the Agency; and (8) combat fraud and abuse in certain health benefits programs.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OR USERS AND THE PURPOSES OF SUCH USES:

These routine uses specify circumstances, in addition to those provided by statute in the Privacy Act of 1974, under which CMS may release information from the HELPLINE without the consent of the individual to whom such information pertains. Each proposed disclosure of information under these routine uses will be evaluated to ensure that the disclosure is legally permissible, including but not limited to ensuring that the purpose of the disclosure is compatible with the purpose for which the information was collected. In addition, our policy will be to prohibit release even of non-identifiable data, except pursuant to one of the routine uses, if there is a possibility that an individual can be identified through implicit deduction based on small cell sizes (instances where the patient population is so small that individuals who are familiar with the enrollees could, because of the small size, use this information to deduce the identity of the beneficiary).

This SOR contains Protected Health Information as defined by HHS regulation "Standards for Privacy of Individually Identifiable Health Information" (45 CFR parts 160 and 164, 65 **Federal Register** (FR) 82462 (12–28–00), subparts A and E. Disclosures of Protected Health Information authorized by these routine uses may only be made if, and as, permitted or required by the "Standards for Privacy of Individually Identifiable Health Information." We are proposing to establish or modify the following routine use disclosures of information maintained in the system:

1. To Agency contractors, or consultants who have been contracted by the Agency to assist in accomplishment of a CMS function relating to the purposes for this SOR and who need to have access to the records in order to assist CMS.

2. To another Federal or state agency, agency of a state government, an agency established by state law, or its fiscal agent to:

a. Contribute to the accuracy of CMS's proper payment of Medicare benefits,

b. Enable such agency to administer a Federal health benefits program, or as necessary to enable such agency to fulfill a requirement of a Federal statute or regulation that implements a health benefits program funded in whole or in part with Federal funds, and/or

c. Assist Federal/state Medicaid programs within the state.

3. To providers and suppliers of services directly or through fiscal intermediaries or carriers for the administration of Title XVIII of the Social Security Act.

4. To third party contacts in situations where the party to be contacted has, or is expected to have information relating to the individual's capacity to manage his or her affairs or to his or her eligibility for, or an entitlement to, benefits under the Medicare program and,

a. The individual is unable to provide the information being sought (an individual is considered to be unable to provide certain types of information when any of the following conditions exists: The individual is confined to a mental institution, a court of competent jurisdiction has appointed a guardian to manage the affairs of that individual, a court of competent jurisdiction has declared the individual to be mentally incompetent, or the individual's attending physician has certified that the individual is not sufficiently mentally competent to manage his or her own affairs or to provide the information being sought, the individual cannot read or write, cannot afford the cost of obtaining the information, a language barrier exist, or the custodian of the information will not, as a matter of policy, provide it to the individual), or

b. The data are needed to establish the validity of evidence or to verify the accuracy of information presented by the individual, and it concerns one or more of the following: The individual's entitlement to benefits under the Medicare program, the amount of reimbursement, and in cases in which the evidence is being reviewed as a result of suspected fraud and abuse, program integrity, quality appraisal, or evaluation and measurement of activities.

5. To insurance companies, third party administrators (TPA), employers, self-insurers, managed care organizations, other supplemental insurers, non-coordinating insurers, multiple employer trusts, group health plans (*i.e.*, health maintenance organizations (HMOs) or a competitive medical plan (CMP) with a Medicare contract, or a Medicare-approved health care prepayment plan (HCPP)), directly or through a contractor, and other groups providing protection for their enrollees. Information to be disclosed shall be limited to Medicare entitlement data. In order to receive the information, they must agree to:

a. Certify that the individual about whom the information is being provided is one of its insured or employees, or is insured and/or employed by another entity for whom they serve as a TPA;

b. Utilize the information solely for the purpose of processing the identified individual's insurance claims; and

c. Safeguard the confidentiality of the data and prevent unauthorized access.

6. To a Member of Congress or a congressional staff member in response to an inquiry of the congressional office made at the written request of the constituent about whom the record is maintained.

7. To the Department of Justice (DOJ), court or adjudicatory body when:

a. The Agency or any component thereof, or

b. Any employee of the Agency in his or her official capacity, or

c. Any employee of the Agency in his or her individual capacity where the DOJ has agreed to represent the employee, or

d. The United States Government, is a party to litigation or has an interest in such litigation, and by careful review, CMS determines that the records are both relevant and necessary to the litigation.

8. To a CMS contractor (including, but not limited to FIs and carriers) that assists in the administration of a CMS-administered health benefits program, or to a grantee of a CMS-administered grant program, when disclosure is deemed reasonably necessary by CMS to prevent, deter, discover, detect, investigate, examine, prosecute, sue with respect to, defend against, correct, remedy, or otherwise combat fraud or abuse in such programs.

9. To another Federal agency or to an instrumentality of any governmental jurisdiction within or under the control of the United States (including any state or local governmental agency), that administers, or that has the authority to investigate potential fraud or abuse in, a health benefits program funded in whole or in part by Federal funds, when disclosure is deemed reasonably necessary by CMS to prevent, deter, discover, detect, investigate, examine, prosecute, sue with respect to, defend against, correct, remedy, or otherwise combat fraud or abuse in such programs.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Information is maintained on paper, computer diskette and on magnetic storage media.

RETRIEVABILITY:

The records are retrieved by name and identification number.

SAFEGUARDS:

CMS has safeguards for authorized users and monitors such users to ensure against excessive or unauthorized use. Personnel having access to the system have been trained in the Privacy Act and systems security requirements. Employees who maintain records in the system are instructed not to release any data until the intended recipient agrees to implement appropriate administrative, technical, procedural, and physical safeguards sufficient to protect the confidentiality of the data and to prevent unauthorized access to the data.

In addition, CMS has physical safeguards in place to reduce the exposure of computer equipment and thus achieve an optimum level of protection and security for the HELPLINE system. For computerized records, safeguards have been established in accordance with the Department of Health and Human Services (HHS) standards and National Institute of Standards and Technology guidelines, *e.g.*, security codes will be used, limiting access to authorized personnel. System securities are established in accordance with HHS, Information Resource Management (IRM) Circular #10, Automated Information Systems Security Program; CMS Automated Information Systems (AIS) Guide, Systems Securities Policies, and OMB Circular No. A–130 (revised), Appendix III.

RETENTION AND DISPOSAL:

Records are maintained for a period of 10 years.

SYSTEM MANAGER(S) AND ADDRESS:

Director, Division of Call Center Operations, Customer Teleservice Operations Group, Center for Beneficiary Choices, CMS, 7500 Security Boulevard, C2–26–20, Baltimore, Maryland 21244–1850.

NOTIFICATION PROCEDURE:

For purpose of access, the subject individual should write to the system manager who will require the system name, health insurance claim number, address, date of birth, and sex, and for verification purposes, the subject individual's name (woman's maiden name, if applicable), and social security number (SSN). Furnishing the SSN is voluntary, but it may make searching for a record easier and prevent delay.

RECORD ACCESS PROCEDURE:

For purpose of access, use the same procedures outlined in Notification Procedures above. Requestors should also reasonably specify the record contents being sought. (These procedures are in accordance with department regulation 45 CFR 5b.5(a)(2)).

CONTESTING RECORD PROCEDURES:

The subject individual should contact the systems manager named above, and reasonably identify the record and specify the information to be contested. State the corrective action sought and the reasons for the correction with supporting justification. (These procedures are in accordance with department regulation 45 CFR 5b.7).

RECORD SOURCE CATEGORIES:

The data contained in these records are furnished by the individual, or in the case of some situations, through third party contacts that make calls to the 1–800 Medicare Helpline. Updating information is also obtained from the Enrollment Data Base, Common Working File, and the Master Beneficiary Record maintained by the Social Security Administration.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

[FR Doc. 03–11748 Filed 5–9–03; 8:45 am]

BILLING CODE 4120–03–U

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Submission for OMB Review; Comment Request; NCCAM Customer Service Data Collection

SUMMARY: Under the provisions of Section 3507(a)(1)(D) of the Paperwork Reduction Act of 1995, the National Center for Complementary and Alternative Medicine (NCCAM), the National Institutes of Health (NIH), will submit to the Office of Management and Budget (OMB) a request for review and approval of the information collection listed below. A notice of this proposed information collection was previously published in the **Federal Register** on February 24, 2003, page 8610–8611, and allowed 60 days for public comment. No public comments were received. The purpose of this notice is to announce a final 30 days for public comment. NIH may not conduct or sponsor, and the respondent is not required to respond to, an information collection that has been extended, revised, or implemented on or after October 1, 1995, unless it displays a currently valid OMB control number.

Proposed Collection

Title: NCCAM Customer Service Data Collection. *Type of Information Collection Request:* New. *Need and Use of Information Collection:* NCCAM provides the public, patients, families, health care providers, complementary and alternative medicine (CAM) practitioners, and others with the latest scientifically based information on CAM and information about NCCAM's programs through a variety of channels including its toll-free telephone information service and its quarterly newsletter. NCCAM wishes to measure customer satisfaction with NCCAM telephone interactions and the NCCAM newsletter and to assess which audiences are being reached through these channels. This effort involves a telephone survey consisting of 9 questions, which will be asked of 50 percent of all callers, for an annual total of approximately 4,059 respondents; and a newsletter survey consisting of 10 questions, which will be sent as a print survey to all newsletter subscribers, for an annual total of approximately 823 respondents. NCCAM will use the data collected from the surveys to help program staff measure the impact of their communication efforts, tailor services to the public and health care providers, measure service use among special populations, and assess the most effective media and messages to reach these audiences. *Frequency of Response:* Once for the telephone survey, and periodically for the newsletter survey (to measure any changes in customer satisfaction). *Affected Public:* Individuals and households. *Type of Respondents:* For the telephone survey, patient, spouse/family/friend of patient, health care providers, physicians, CAM practitioners, or other individuals contacting the NCCAM Clearinghouse; for the newsletter survey, subscribers to the NCCAM newsletter. The annual reporting burden is as follows.

Type of respondents	Estimated number of respondents	Estimated number of responses per respondent	Average burden hours per response	Estimated total annual burden hours requested
Telephone survey				
Individuals or households	4,059	1	0.075	305
Newsletter survey				
Individuals or households	823	2	0.050	82
Annualized totals	4,882			387

The annualized cost to respondents is estimated at $5,545 for the telephone survey and $1,312 for the newsletter survey. There are no Capital Costs to report. There are no Operating or Maintenance Costs to report.

Request for Comments

Written comments and/or suggestions from the public and affected agencies are invited on the following points: (1) Whether the proposed collection of information is necessary for the proper performance of the function of the agency, including whether the information will have practical utility; (2) The accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions; (3) Ways to enhance the quality, utility, and clarity of the information to be collected; and (4) Ways to minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Direct Comments to OMB

Written comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time, should be directed to the Office of Management and Budget, Office of Regulatory Affairs, New Executive Office Building, Room 10235, Washington, DC 20503, Attention: Desk Officer for NIH. To request more information on the proposed project or to obtain a copy of the data collection plans and instruments, contact: Christy Thomsen, Director, Office of Communications and Public Liaison, NCCAM, 6707 Democracy Boulevard, Suite 401, Bethesda, MD 20892–5475; or fax your request to 301–480–3519; or e-mail *thomsenc@mail.nih.gov*. Ms. Thomsen can be contacted by telephone at 301–451–8876.

Comments Due Date

Comments regarding this information collection are best assured of having their full effect if received within 30 days of the date of this publication.

Dated: May 1, 2003.

Christy Thomsen,

Director, Office of Communications and Public Liaison, National Center for Complementary and Alternative Medicine, National Institutes of Health.

[FR Doc. 03–11719 Filed 5–9–03; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Allergy and Infectious Diseases: Licensing Opportunity and Cooperative Research and Development Agreement ("CRADA") Opportunity; Live Attenuated Vaccine To Prevent Disease Caused by West Nile Virus

AGENCY: National Institutes of Health, Public Health Service, HHS.

ACTION: Notice.

SUMMARY: The National Institute of Allergy and Infectious Diseases (NIAID) of the NIH is seeking licensees and/or CRADA partners to further develop, evaluate, and commercialize modified West Nile virus (WNV) chimeras as a live attenuated vaccine against infections of WNV in humans. NIAID is also seeking licensees to commercialize modified WNV chimeras as live attenuated veterinary vaccines against infections of WNV in animals.

DATES: Respondents interested in licensing the invention will be required to submit an "Application for License to Public Health Service Inventions" on or before August 11, 2003, for priority consideration.

Interested CRADA collaborators must submit a confidential proposal summary to the NIAID (attention Richard K. Williams, Ph.D. at the address mentioned below) on or before August 11, 2003, for consideration. Guidelines for preparing full CRADA proposals will be communicated shortly thereafter to all respondents with whom initial confidential discussions will have established sufficient mutual interest. CRADA and PHS License Applications submitted thereafter may be considered if a suitable CRADA collaborator or Licensee(s) has not been selected.

ADDRESSES: Questions about licensing opportunities should be addressed to Peter Soukas, J.D., Technology Licensing Specialist, Office of Technology Transfer, National Institutes of Health, 6011 Executive Boulevard, Suite 325, Rockville, Maryland 20852–

3804, Telephone: (301) 435–4646; Facsimile: (301) 402–0220; E-mail: *ps193c@nih.gov*. Information about Patent Applications and pertinent information not yet publicly described can be obtained under the terms of a Confidential Disclosure Agreement. Respondents interested in licensing the invention will be required to submit an "Application for License to Public Health Service Inventions."

Depending upon the mutual interests of the Licensee(s) and the NIAID, a CRADA to collaborate to develop WNV vaccines in humans may also be negotiated. Proposals and questions about this CRADA opportunity should be addressed to Richard K. Williams, Ph.D., Technology Development Associate, Office of Technology Development, NIAID, 6610 Rockledge Drive, Room 4071, Bethesda, MD 20892–6606, Telephone: (301) 402–0960; E-mail: *rwilliams@niaid.nih.gov*. Respondents interested in submitting a CRADA Proposal should be aware that it may be necessary to secure a license to the above-mentioned patent rights in order to commercialize products arising from a GRADA.

SUPPLEMENTARY INFORMATION: WNV has recently emerged in the U.S. and is considered a significant emerging disease that has embedded itself over a considerable region of the U.S. WNV infections have been recorded in humans as well as in different animals. To date, WNV has killed 294 people in the U.S. and caused severe disease in more than 4222 others. This project is part of NIAID's comprehensive emerging infectious disease program, which supports research on bacterial, viral, and other types of disease-causing microbes.

The methods and compositions of this invention provide a means for prevention of WNV infection by immunization with attenuated, immunogenic viral vaccines against WNV. The invention involves a chimeric virus form consisting of parts of WNV and Dengue virus. Construction of the hybrids and their properties are described in detail in *PNAS*, Pletnev AG *et al.*, 2002; 99(5):3036–3041.

The WNV chimeric vaccine does not target the central nervous system, which would be the case in an infection with wild type WNV. The vaccine stimulates strong anti-WNV immune responses, even following a single dose of the vaccine. When injected into mice, the vaccine protected all of the immunized animals from subsequent exposure to the New York WNV strain. The vaccine was also effective in primates.

Researchers intend to begin human trials in late 2003.

The WNV vaccine may be used to protect the human population, particularly the elderly people, and domestic animals from WNV infection in the affected regions of the U.S. as well as worldwide.

The invention claimed in DHHS Reference No. E–357–01/0, "Construction of West Nile Virus and Dengue Virus Chimeras for Use in a Live Virus Vaccine to Prevent Disease Caused by West Nile Virus" (AG Pletnev *et al.*), PCT/US03/00594 filed Jan 09, 2003, is available for exclusive or non-exclusive licensing for developing a vaccine against WNV for humans or veterinary use in accordance with 35 U.S.C. 207 and 37 CFR part 404. NIAID is also interested in further development of the technology under one or more CRADAs in the human applications described below.

Under the CRADA the production of WNV vaccines for humans will be optimized and the vaccine evaluated in a series of clinical studies in humans as well as initial safety testing in humans. Positive outcomes of these studies will indicate continued clinical development aimed at supporting regulatory approval of a product to be labeled for use in humans. The Public Health Service (PHS) has filed patent applications both in the U.S. and internationally related to this technology. Notice of the availability of the patent application for licensing was first published in the **Federal Register** on May 2, 2002 (67 FR 22093).

NIAID's principal investigator has extensive experience with live attenuated vaccines, their production and testing, and clinical trials. The Collaborator in this endeavor is expected to assist NIAID in evaluating its current system for producing the WNV chimeras claimed in the patent applications and to develop and optimize an alternative production method, if necessary, to manufacture sufficient quantities of the vaccine for clinical testing in humans and initial safety studies in humans. The Collaborator must have experience in the manufacture of live attenuated vaccines according to applicable FDA guidelines and Points to Consider documents to include Good Manufacturing Procedures (GMP). In addition, it is expected that the Collaborator would provide funds to supplement the LID's research budget for the project and to support the initial human testing.

The capability statement should include detailed descriptions of: (1) Collaborator's expertise in the production of live attenuated vaccines, (2) Collaborator's ability to manufacture sufficient quantities of the vaccine according to FDA guidelines and Points to Consider documents, (3) the technical expertise of the Collaborator's principal investigator and laboratory group in preclinical safety testing (*e.g.*, expertise in *in vitro* and *in vivo* toxicity and pharmacology studies) and initial human safety studies, and (4) Collaborator's ability to provide adequate funding to support initial human safety studies required for marketing approval.

Dated: April 25, 2003.

Michael Mowatt,

Director, Office of Technology Development, NIAID.

Dated: May 1, 2003.

Steven M. Ferguson,

Acting Director, Division of Technology Development and Transfer, Office of Technology Transfer.

[FR Doc. 03–11720 Filed 5–9–03; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Child Health and Human Development; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Child Health and Human Development Special Emphasis Panel, Mathematics Cognition and Specific Learning Disabilities.

Date: May 29–30, 2003.

Time: 8:30 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: The Hotel George, 15 E Street NW., Washington, DC 20001.

Contact Person: Norman Chang, PhD, Scientific Review Administrator, Division of Scientific Review, National Institute of Child Health and Human Development, National Institutes of Health, 6100 Executive Blvd., Room 5E03, Bethesda, MD 20892, (301) 496–1485.

The notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.864, Population Research; 93.865, Research for Mothers and Children; 93.929, Center for Medical Rehabilitation Research; 93.209, Contraception and Infertility Loan Repayment Program, National Institutes of Health, HHS)

Dated: May 5, 2003.

Anna P. Snouffer,

Acting Director, Office of Federal Advisory Committee Policy.

[FR Doc. 03–11715 Filed 5–9–03; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Diabetes and Digestive and Kidney Diseases; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Diabetes and Digestive and Kidney Diseases Initial Review Group, Diabetes, Endocrinology and Metabolic Diseases B Subcommittee.

Date: June 17–18, 2003.

Time: 6:30 p.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Hilton Garden Inn, Philadelphia Center City, 1100 Arch Street, Philadelphia, PA 19107.

Contact Person: John F. Connaughton, PhD, Scientific Review Administrator, Review Branch, DEA, NIDDK, National Institutes of Health, Room 757, 6707 Democracy Boulevard, Bethesda, MD 20892, (301) 594–7797, *connaughtonj@extra.niddk.nih.gov*.

(Catalogue of Federal Domestic Assistance Program Nos. 93.847, Diabetes, Endocrinology and Metabolic Research; 93.848, Digestive Diseases and Nutrition Research; 93.849, Kidney Diseases, Urology and Hematology Research, National Institutes of Health, HHS)

Dated: May 5, 2003.

Anna Snouffer,

Acting Director, Office of Federal Advisory Committee Policy.

[FR Doc. 03–11716 Filed 5–9–03; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Diabetes and Digestive and Kidney Diseases; Notice of Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be open to the public as indicated below, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Diabetes and Digestive and Kidney Diseases Initial Review Group Digestive Diseases and Nutrition C Subcommittee DDK–C.

Date: June 12–13, 2003.

Open: June 12, 2003, 8 a.m. to 8:30 a.m.

Agenda: To review procedures and discuss policies.

Place: Ritz-Carlton Hotel at Pentagon City, 1250 South Hayes Street, Arlington, VA 22202.

Closed: June 12, 2003, 8:30 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Ritz-Carlton Hotel at Pentagon City, 1250 South Hayes Street, Arlington, VA 22202.

Closed: June 13, 2003, 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Ritz-Carlton Hotel at Pentagon City, 1250 South Hayes Street, Arlington, VA 22202.

Contact Person: Carolyn Miles, PhD, Scientific Review Administrator, Review Branch, DEA, NIDDK, Room 755, 6707 Democracy Boulevard, National Institutes of Health, Bethesda, MD 20892, (301) 594–7791, *milesc@extra.niddk.nih.gov*.

(Catalogue of Federal Domestic Assistance Program Nos. 93.847, Diabetes, Endocrinology and Metabolic Research; 93.848, Digestive Diseases and Nutrition Research; 93.849, Kidney Diseases, Urology and Hematology Research, National Institutes of Health, HHS)

Dated: May 5, 2003.

Anna Snouffer,

Acting Director, Office of Federal Advisory Committee Policy.

[FR Doc. 03–11717 Filed 5–9–03; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of General Medical Sciences; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of General Medical Sciences Special Emphasis Panel ZGM1 MBRS 7 03.

Date: May 7, 2003.

Time: 2 PM to 5 PM.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Natcher Building, 45 Center Drive, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Richard I. Martinez, PhD., Scientific Review Administrator, Office of Scientific Review, National Institute of General Medical Sciences, National Institutes of Health, Natcher Building, Room 3AN–12B, 45 Center Drive MSC 6200, Bethesda, MD 20892–6200, 301–594–2849, *rm63f@nih.gov*.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.375, Minority Biomedical Research Support; 93.821, Cell Biology and Biophysics Research; 93.859, Pharmacology, Physiology, and Biological Chemistry Research; 93.862, Genetics and

Developmental Biology Research; 93.88, Minority Access to Research Careers; 93.96, Special Minority Initiatives, National Institutes of Health, HHS)

Dated: May 2, 2003.

Anna P. Snouffer,

Acting Director, Office of Federal Advisory Committee Policy.

[FR Doc. 03–11718 Filed 5–9–03; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Substance Abuse and Mental Health Services Administration

Center for Substance Abuse Prevention; Notice of Meeting

Pursuant to Public Law 92–463, notice is hereby given of the meeting of the Center for Substance Abuse Prevention (CSAP) Drug Testing Advisory Board to be held in June 2003.

A portion of the meeting will be open and will include a Department of Health and Human Services drug testing program update, a Department of Transportation drug testing program update, and a discussion of the proposed guidelines for alternative specimen testing and on-site testing. If anyone needs special accommodations for persons with disabilities, please notify the Contact listed below.

The meeting will include an evaluation of sensitive National Laboratory Certification Program (NLCP) internal operating procedures and program development issues. Therefore, a portion of the meeting will be closed to the public as determined by the SAMHSA Administrator in accordance with Title 5 U.S.C. 552b(c)(9)(B) and 5 U.S.C. App.2, section 10(d).

A roster of the board members may be obtained from: Mrs. Giselle Hersh, Division of Workplace Programs, 5600 Fishers Lane, Rockwall II, Suite 815, Rockville, MD 20857, Telephone: (301) 443–6014. The transcript for the open session will be available on the following website: *http://workplace.samhsa.gov*. Additional information for this meeting may be obtained by contacting the individual listed below.

Committee Name: Center for Substance Abuse Prevention, Drug Testing Advisory Board.

Meeting Date: June 3, 2003; 8:30 a.m.–4:30 p.m., June 4, 2003; 8:30 a.m.–Noon.

Place: Residence Inn by Marriott, 7335 Wisconsin Avenue, Bethesda, Maryland 20814.

Type: Open: June 3, 2003; 8:30 a.m.–10:30 a.m., Closed: June 3, 2003; 10:30 a.m.–4:30 p.m., Closed: June 4, 2003; 8:30 a.m.–Noon.

Contact: Donna M. Bush, Ph.D., Executive Secretary, Telephone: (301) 443–6014, and FAX: (301) 443–3031.

Dated: May 2, 2003.

Toian Vaughn,

Committee Management Officer, Substance Abuse and Mental Health Services Administration.

[FR Doc. 03–11500 Filed 5–9–03; 8:45 am]

BILLING CODE 4162–20–U

DEPARTMENT OF HOUSING AND UBRAN DEVELOPMENT

[Docket No.FR–4815–N–25]

Notice of Submission of Proposed Information Collection to OMB: Public Housing Drug Elimination Program: Grantee Reporting

AGENCY: Office of the Chief Information Officer, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below has been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

DATES: Comments Due Date: June 11, 2003.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB approval number (2577–0124) and should be sent to: Lauren Wittenberg, OMB Desk Officer, Office of Management and Budget, Room 10235, New Executive Office Building, Washington, DC 20503; Fax number (202) 395–6974; E-mail *Lauren_Wittenberg@omb.eop.gov*.

FOR FURTHER INFORMATION CONTACT: Wayne Eddins, Reports Management Officer, AYO, Department of Housing and Urban Development, 451 Seventh Street, Southwest, Washington, DC 20410; e-mail *Wayne_Eddins@HUD.gov;* telephone (202) 708–2374. This is not a toll-free number. Copies of the proposed forms and other available documents submitted to OMB may be obtained from Mr. Eddins.

SUPPLEMENTARY INFORMATION: The Department has submitted the proposal for the collection of information, as described below, to OMB for review, as required by the Paperwork Reduction Act (44 U.S.C. Chapter 35). The Notice lists the following information: (1) The title of the information collection proposal; (2) the office of the agency to collect the information; (3) the OMB approval number, if applicable; (4) the description of the need for the information and its proposed use; (5) the agency form number, if applicable; (6) what members of the public will be affected by the proposal; (7) how frequently information submissions will be required; (8) an estimate of the total number of hours needed to prepare the information submission including number of respondents, frequency of response, and hours of response; (9) whether the proposal is new, an extension, reinstatement, or revision of an information collection requirement; and (10) the name and telephone number of an agency official familiar with the proposal and of the OMB Desk Officer for the Department.

This Notice also lists the following information:

Title of Proposal: Public Housing Drug Elimination Program: Grantee Reporting.

OMB Approval Number: 2577–0124.

Form Numbers: None.

Description of the Need for the Information and Its Proposed Use: Recipients of Drugh Elimination Grants submit their semi-annual performance report to HUD on the progress of each grant and use of funding. Reports cover activities funded by, or coordinated through, that specific grant during the reporting period for all developments or areas targeted by that grant. A close-out report is submitted at the end of the grant life-cycle. Grant applications are no longer included in this information collection.

Respondents: Individuals or households, Business or other for-profit, Not-for-profit institutions.

Frequency of Submission: Annually, Semi-annually, at the end of the grant life-cycle.

	Number of respondents	Annual responses	×	Hours per response	=	Burden hours
Reporting Burden	1,600	2		16		51,200

Total Estimated Burden Hours: 51,200.

Status: Reinstatement, with change, of previously approved collection for which approval has expired.

Authority: Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. 35, as amended.

Dated: May 2, 2003.

Wayne Eddins,

Departmental Reports Management Officer, Office of the Chief Information Officer.

[FR Doc. 03–11673 Filed 5–9–03; 8:45 am]

BILLING CODE 4210–72–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4801–C–02]

Notice of Funding Availability for HOPE VI Demolition Grants Fiscal Year 2002; Correction

AGENCY: Office of the Assistant Secretary for Public and Indian Housing, HUD.

ACTION: Notice of Funding Availability for HOPE VI Demolition Grants Fiscal Year 2002; Correction.

SUMMARY: On April 4, 2003, HUD published the Notice of Funding Availability (NOFA) for HOPE VI Demolition Grants Fiscal Year 2002. This document makes six technical corrections to the NOFA.

FOR FURTHER INFORMATION CONTACT: Caroline Clayton, Office of Public Housing Investments, Room 4130, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410, (202) 401–8812, extension 5461 (this is not a toll-free number). Persons with hearing and/or speech challenges may access the above telephone number by TTY (text telephone) by calling the Federal Information Relay Service at 1–800–877–8339 (this is a toll-free number).

SUPPLEMENTARY INFORMATION: On April 4, 2003, HUD published the Notice of Funding Availability (NOFA) for HOPE VI Demolition Grants for Fiscal Year 2002 (68 FR 16672). Subsequent to publication, an error was discovered in the NOFA and appended Application within the description of standard relocation requirements. That error is corrected in this document. In addition, it was discovered that the NOFA incorrectly instructed that applicants should leave blank box 15 of HUD-Form 424; however, it is box 20 that should remain blank. Also, it was determined that the Application section of the NOFA contained an ambiguous requirement that applicants include a list of prior HUD public housing grant assistance used for physical revitalization of the proposed development. This notice removes that requirement. Finally, this notice amends the NOFA to make it consistent with Executive Order 13202, "Preservation of Open Competition and Government Neutrality Towards Government Contractors' Labor Relations on Federal and Federally Funded Construction Projects."

Accordingly, the Notice of Funding Availability (NOFA) for HOPE VI Demolition Grants Fiscal Year 2002, published in the **Federal Register** on April 4, 2003, (68 FR 16672) is corrected as follows:

1. On page 16675, in the first column, paragraph (B)(1) is corrected to read as follows: "Relocation as a result of demolition approved by a section 18 demolition application is subject to section 18 of the 1937 Act."

2. On page 16679, in the first column, insert a new section XV that reads as follows:

XV. Executive Order 13202. Preservation of Open Competition and Government Neutrality Towards Government Contractors' Labor Relations on Federal and Federally Funded Construction Projects.

Consistent with Executive Order 13202, "Preservation of Open Competition and Government Neutrality Towards Government Contractors' Labor Relations on Federal and Federally Funded Construction Projects," as amended, it is a condition of receipt of assistance under this NOFA that neither you nor any subrecipient or program beneficiary receiving funds under an award granted under this NOFA, nor any construction manager acting on behalf of you or any such subrecipient or program beneficiary, may require bidders, offerors, contractors, or subcontractors to enter into or adhere to any agreement with any labor organization on any construction project funded in whole or in part by such award or on any related federally funded construction project; or prohibit bidders, offerors, contractors, or subcontractors from entering into or adhering to any such agreement on any such construction project; or otherwise discriminate against bidders, offerors, contractors, or subcontractors on any such construction project because they become or refuse to become or remain signatories or otherwise to adhere to any such agreements. Contractors and subcontractors are not prohibited from voluntarily entering into such agreements. A recipient or its construction manager may apply to HUD under section 5(c) of the Executive Order for an exemption from these requirements for a project where a construction contract on the project had been awarded as of February 17, 2001, and was subject to requirements that are prohibited under the Executive Order.

3. On page 16679, section "XV. Findings and Certifications" is redesignated as section "XVI. Findings and Certifications."

4. On page 16683, in the paragraph numbered "3," the third sentence is corrected to read as follows: "Do not fill in box 20, as you will report your funding elsewhere in the application."

5. On page 16688, the paragraph numbered "6" is deleted.

6. On page 16690, the second sentence in the paragraph is corrected to read as follows: "In accordance with section IX of the NOFA, you must provide a certification that you have completed a HOPE VI Relocation Plan and that it conforms to the applicable requirements."

Dated: May 6, 2003.

Michael M. Liu,

Assistant Secretary for Public and Indian Housing.

[FR Doc. 03–11763 Filed 5–9–03; 8:45 am]

BILLING CODE 4210–33–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[WY–920–1320–EL, WYW157607]

Coal Lease Exploration License, WY

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of invitation for coal exploration license.

SUMMARY: Pursuant to section 2(b) of the Mineral Leasing Act of 1920, as amended by section 4 of the Federal Coal Leasing Amendments Act of 1976, 90 Stat. 1083, 30 U.S.C. 201 (b), and to the regulations adopted at 43 CFR part 3410, all interested parties are hereby invited to participate with Powder River Coal Company on a pro rata cost sharing basis in its program for the exploration of coal deposits owned by the United States of America in the following-described lands in Campbell and Converse Counties, WY:

T. 41 N., R. 70 W., 6th P.M., Wyoming
Sec. 19: Lots 6–11, 12(S½), 13–20;
Sec. 20: Lots 5(S½), 6(S½), 7(S½), 8(S½), 9–16;
Sec. 21: Lots 5(S½), 6–16;
Sec. 27: Lots 1–16;
Sec. 28: Lots 1–15, NE¼SW¼;
Sec. 29: Lots 1–16;
Sec. 30: Lots 5–12;

Sec. 33: Lots 1–8;
Sec. 34: Lots 1–8;
T. 41 N., R. 71 W., 6th P.M., Wyoming
Sec. 23: Lots 1, 8, 9;
Sec. 24: Lots 1–16;
Sec. 25: Lots 1–4, 9, 10, 12(N½).
Containing 5,426.045 acres, more or less.

All of the coal in the above-described land consists of unleased Federal coal within the Powder River Basin Known Recoverable Coal Resource Area. The purpose of the exploration program is to obtain data for the purpose of delineating the burnlines for the upper and lower splits of the Wyodak-Anderson coal seam and further fine-tune coal quality and structure.

ADDRESSES: The proposed exploration program is fully described and will be conducted pursuant to an exploration plan to be approved by the Bureau of Land Management. Copies of the exploration plan are available for review during normal business hours in the following offices (serialized under number WYW157607): Bureau of Land Management, Wyoming State Office, 5353 Yellowstone Road, P.O. Box 1828, Cheyenne, WY 82003; and, Bureau of Land Management, Casper Field Office, 2987 Prospector Drive, Casper, WY 82604.

SUPPLEMENTARY INFORMATION: This notice of invitation will be published in "The News-Record" of Gillette, WY, and "The Douglas Budget" of Douglas, WY, once each week for two consecutive weeks beginning the week of May 5, 2003, and in the **Federal Register**. Any party electing to participate in this exploration program must send written notice to both the Bureau of Land Management and Powder River Coal Company no later than thirty days after publication of this invitation in the **Federal Register**. The written notice should be sent to the following addresses: Powder River Coal Company, Attn: Les Petersen, P.O. Box 3034, Gillette, WY 82717, and the Bureau of Land Management, Wyoming State Office, Branch of Solid Minerals, Attn: Mavis Love, P.O. Box 1828, Cheyenne, WY 82003.

The foregoing is published in the **Federal Register** pursuant to 43 CFR 3410.2–1(c)(1).

Dated: March 11, 2003.

Alan Rabinoff,

Deputy State Director, Minerals and Lands.

[FR Doc. 03–10434 Filed 5–9–03; 8:45 am]

BILLING CODE 4310–22–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[OR–050–1020–PG: GP03–0160]

Notice of Public Meeting, John Day/Snake Resource Advisory Council Meeting

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of revised public meeting date. (The meeting date has already been published for May 16, 2003. The meeting date should be changed to May 15, 2003.)

SUMMARY: In accordance with the Federal Land Policy and Management Act (FLPMA) and the Federal Advisory Committee Act of 1972 (FACA), the U.S. Department of the Interior, Bureau of Land Management (BLM) John Day Snake Resource Advisory Council (RAC), will meet as indicated below.

DATES: The meeting will be held on Thursday, May 15, 2003 at the Geiser Grand Hotel in Baker City, OR beginning at 8 a.m. The public comment period will begin at approximately 1 p.m. and the meeting will adjourn at approximately 3 p.m.

SUPPLEMENTARY INFORMATION: The 15-member Council advises the Secretary of the Interior, through the Bureau of Land Management, on a variety of planning and management issues associated with public land management in North East Oregon.

Meeting Topics

National Meeting with RAC Chairs

Subcommittee Updates

Meeting Procedures

All meetings are open to the public. The public may present written comments to the Council. Each formal Council meeting will also have time allocated for hearing public comments. Depending on the number of persons wishing to comment and time available, the time for individual oral comments may be limited. Individuals who plan to attend and need special assistance, such as sign language interpretation, tour transportation or other reasonable accommodations, should contact the BLM as provided below.

FOR FURTHER INFORMATION CONTACT: Virginia Gibbons at (541) 416–6700, Prineville Bureau of Land Management, 3050 NE Third Street, Prineville, OR, 97754.

Dated: May 6, 2003.

A. Barron Bail,

District Manager.

[FR Doc. 03–11867 Filed 5–09–03; 8:45 am]

BILLING CODE 4310–33–M

DEPARTMENT OF JUSTICE

Bureau of Alcohol, Tobacco, Firearms and Explosives

Agency Information Collection Activities: Proposed Collection; Comments Requested

ACTION: 60-Day notice of information collection under review: Revision of a currently approved collection; explosives delivery record.

The Department of Justice (DOJ), Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF), has submitted the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995. The proposed information collection is published to obtain comments from the public and affected agencies. Comments are encouraged and will be accepted for "sixty days" until July 11, 2003. This process is conducted in accordance with 5 CFR 1320.10.

If you have comments especially on the estimated public burden or associated response time, suggestions, or need a copy of the proposed information collection instrument with instructions or additional information, please contact Megan Morehouse, Public Safety Branch, 800 K Street, NW., Suite 710, Washington, DC 20001.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agencies estimate of the burden of the proposed collection of information, including the validity of the methology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Overview of this information collection:

(1) *Type of Information Collection:* Revision of a currently approved collection.

(2) *Title of the Form/Collection:* Explosives Delivery Record.

(3) *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection: Form Number:* ATF F 5400.8. Bureau of Alcohol, Tobacco, Firearms and Explosives.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: Individuals or households. Other: Business or other for-profit. The ATF F 5400.8, Explosives Delivery Record, will provide a record of to whom the explosive materials were given, as well as a positive identification verification, for purposes of delivery to a Federal explosive licensee or permittee.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* It is estimated that 25,000 respondents will complete an 18 minute form.

(6) *An estimate of the total public burden (in hours) associated with the collection:* There are an estimated 7,500 annual total burden hours associated with this collection.

If additional information is required contact: Robert B Briggs, Department Clearance Officer, Information Management and Security Staff, Justice Management Division, Department of Justice, Patrick Henry Building, Suite 1600, 601 D Street, NW., Washington, DC 20530.

Dated: May 8, 2003.

Robert B. Briggs,

Department Clearance Officer, Department of Justice.

[FR Doc. 03–11672 Filed 5–9–03; 8:45 am]

BILLING CODE 4410–EB–M

DEPARTMENT OF LABOR

Office of the Secretary

Submission for OMB Review; Comment Request

April 30, 2003.

The Department of Labor (DOL) has submitted the following public information collection request (ICR) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. Chapter 35). A copy of this ICR, with applicable supporting documentation, may be obtained by calling the Department of Labor. To obtain documentation, contract Darrin King on (202) 693–4129 (this is non a toll-free number) of e-mail: *king.darrin@dol.gov.*

Comments should be sent to Office of Information and Regulatory Affairs, Attn: OMB Desk Office for the Mine Safety and Health Administration, Office of Management and Budget, Room 10235, Washington, DC 20503 (202) 395–7316), within 30 days from the date of this publication in the **Federal Register**.

The OMB is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Agency: Mine Safety and Health Administration (MSHA).

Title: Emergency Evacuations and Mine Emergency Evaluation and Fire-fighting Program of Instruction.

Type of Review: Extension of a currently approved collection.

OMB Number: 1219–0137.

Frequency: On occasion and Annually.

Type of Response: Recordkeeping and Reporting.

Affected Public: Business or other for-profit.

Number of Respondents: 664.

Annual Responses: 55,908.

Annual Burden Hours: 5,010.

Average Annual Response Time per Establishment: 7.5 hours.

Total Annualized capital/startup costs: $0.

Total annual costs (operating/maintaining systems or purchasing services): $320.00.

Description: MSHA's Emergency Temporary Standard; Final Rule 67 FR 239, Thursday, December 12, 2002) revises requirements for Emergency Evacuations of underground coal mines (30 CFR parts 48 and 75) by setting forth requirements that allow for miners and mine operators to rapidly and safely respond to emergency situations created by fire, explosion, or gas or water inundation hazards, and initiate an immediate mine evacuation when necessary to protect miners from the grave dangers of remaining underground or re-entering affected areas when hazards and conditions arise that endanger safety.

On December 11, 2002, OMB approved the information collection requirements contained in the Emergency Temporary Standard for the maximum period allowed under 5 CFR 1320.13 ("Emergency Processing"). Since the training, recordkeeping, and reporting requirements contained in the Emergency Temporary Standard are critical to safety of miners, MSHA is seeking to extend OMB approval for these information collection requirements under standard clearance procedures.

Ira L. Mills,

Departmental Clearance Officer.

[FR Doc. 03–11674 Filed 5–9–03; 8:45 am]

BILLING CODE 4510–43–M

DEPARTMENT OF LABOR

Bureau of International Labor Affairs

Notice of Final Determination Regarding Forced/Indentured Child Labor Pursuant to Executive Order 13126

AGENCY: Office of the Secretary, Labor.

ACTION: Notice of final determination regarding forced child labor in the firecracker industry in China.

SUMMARY: This notice sets forth the final determination regarding a May 2001 submission, pursuant to Executive Order 13126 ("Prohibition of Acquisition of Products Produced by Forced or Indentured Child Labor") and alleging forced child labor in the firecracker industry in China. The Department of Labor, in consultation and cooperation with the Departments of Treasury and State, has determined that firecrackers from China should not be added to final list of products prohibited from acquisition under Executive Order 13126, based on the lack of recent, credible and appropriately corroborated information indicating that this product is being manufactured with forced or indentured child labor. The review of this country/

product was conducted pursuant to Executive Order 13126 and the Department's "Procedural Guidelines for Maintenance of the List of Products Requiring Federal Contractor Certification as to Forced or Indentured Child Labor."

SUPPLEMENTARY INFORMATION:

I. Background

Executive Order No. 13126, which was published in the **Federal Register** on June 16, 1999 (64 FR 32383), declared that it was "the policy of the United States Government * * * that the executive agencies shall take appropriate actions to enforce the laws prohibiting the manufacture or importation of goods, wares articles, and merchandise mined, produced or manufactured wholly or in part by forced or indentured child labor". Pursuant to the Executive Order, and following public notice and comment, the Department of Labor published in the January 18, 2001 **Federal Register**, a final list of products, identified by their country of origin, that the Department, in consultation and cooperation with the Departments of State and Treasury, has a reasonable basis to believe might have been mined, produced or manufactured with forced or indentured child labor. In addition to this list, the Department of Labor also published on January 18, 2001, a notice of procedural guidelines for maintaining, reviewing, and, as appropriate, revising the list of products required by Executive Order 13126. (66 FR 5351). The list of products can be accessed on the Internet at *http://www.dol.gov/ilab* or can be obtained from: International Child Labor Program (ICLP), Bureau of International Labor Affairs, Room S–5307, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210; telephone: (202) 693–4843; fax (202) 693–4830. A copy of the Procedural Guidelines is also available from this office.

Pursuant to Section 3 of the Executive Order, the Federal Acquisition Regulatory Councils published a final rule in the **Federal Register** on January 18, 2001, providing that federal contractors who supply products that appear on the list issued by the Department of Labor must certify to the contracting officer that the contractor, or, in the case of an incorporated contractor, a responsible official of the contractor, has made a good faith effort to determine whether forced or indentured child labor was used to mine, produce or manufacture any product furnished under the contract and that, on the basis of those efforts, the contractor is unaware of any such use of child labor. (48 CFR subpart 22.15). The regulation also imposes other requirements with respect to contracts for products on the list of products.

II. China/Firecrackers Executive Order Submission

On June 29, 2001, the Department of Labor accepted for review a submission under Executive Order 13126 regarding the use of forced child labor in the firecracker industry in China. The submission, which was provided by State Department Watch, consisted of a newspaper article with information describing a March 2001 incident in which children in Jiangxi Province, China were allegedly killed while being forced to manufacture firecrackers at their school.

In accordance with the "Procedural Guidelines for Maintenance of the List," the Department initiated a review into the manufacturing of this product using forced or indentured child labor in China. In conducting the review, the Department focused on available information concerning the use of forced or indentured child labor from a variety of sources, including the Departments of State and Treasury, nongovernmental organizations, and international organizations. In addition, as part of its review effort, the Department released a **Federal Register** notice on August 21, 2002, requesting information from the public on the use of forced child labor in the manufacturing of firecrackers in China. The Department of Labor received no responses to the August 2002 notice. Through this review process, insufficient recent and credible evidence was acquired to corroborate the news article and to establish a reasonable basis to believe that this product is being manufactured with forced or indentured child labor in China.

III. Final Determination

In general, the Department of Labor considers and weighs several factors in making determinations under the Executive Order: the nature of the information describing the use of forced or indentured child labor; the source of the information; the date of the information; the extent of corroboration of the information by appropriate resources; and whether the information involved more than an isolated incident. In addition, the Department of Labor also takes into consideration whether recent, credible efforts are being made to address forced or indentured child labor in a particular country or industry.

Based on the lack of recent, credible and appropriately corroborated information found through the review process to establish a reasonable basis to believe that this product is manufactured with forced or indentured child labor, and as the submitted news article is insufficient by itself to establish such a basis, the Department of Labor, after consulting with the Departments of Treasury and State, has determined that firecrackers from China should not be added to the Executive Order 13126 list of products.

Signed at Washington, DC this 30th day of April 2003.

Martha E. Newton,

Acting Deputy Under Secretary for International Labor Affairs.

[FR Doc. 03–11677 Filed 5–9–03; 8:45 am]

BILLING CODE 4510–28–M

DEPARTMENT OF LABOR

Employment and Training Administration

Proposed Collection; Comment Request

ACTION: Notice of proposed data collection.

SUMMARY: The Department of Labor, as part of its continuing effort to reduce paperwork and respondent burden, conducts a preclearance consultation process to provide the general public and Federal agencies with an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA95) [44 U.S.C. 3506(c)(2)(A)]. This process helps to ensure that requested data can be provided in the desired format, reporting burdens are minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed. Currently, the Employment and Training Administration (ETA) is requesting an extension of the Migrant and Seasonal Farmworker (MSFW) Youth Program Planning, Reporting and Performance System forms and related instructions. OMB approved the forms on November 13, 2001 (OMB Control No. 1205–0429, expiring 7/31/2003). A copy of the proposed Information Collection Request (ICR) can be obtained by contacting the office listed below in the addressee section of this notice.

DATES: Written comments must be submitted to the office listed in the addressee section below on or before July 11, 2003.

ADDRESSES: Alina Walker, Acting Chief, Division of Seasonal Farmworker Programs, Employment and Training Administration, U.S. Department of Labor, Room N–4641, 200 Constitution Avenue, NW, Washington, DC 20210. Telephone: 202–693–2706 (this is not a toll-free number) or *walker.alina@dol.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

The Workforce Investment Act (WIA) Final Rule at 20 CFR 667.300 requires annual plans and quarterly performance reports from all "direct grant recipients." The data under WIA 167 MFSW Youth Program is used to provide material reports to the Secretary of Labor, respond to congressional inquiries, support congressional testimony on behalf of the program, and identify areas of technical assistance need and performance improvement.

On November 1, 2002, the MSFW Youth Program began on-line reporting via the Enterprise Information Management System (EIMS) of the Department of Labor. All MSFW Youth Grantees are required to submit quarterly reports through the EIMS.

II. Review Focus

The Department of Labor is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's burden estimate for the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques, *e.g.*, permitting electronic submissions of responses.

III. Current Actions

This proposed ICR will be used by approximately 12 Workforce Investment Act (WIA) MSFW Youth Program grant recipients as the primary reporting and performance measurement vehicle for enrolled youths to indicate their characteristics, training and services provided, outcomes (including job placement and retention, and attainment of basic skills), as well as detailed financial data on program expenditures.

Type of Review: Extension.

Agency: Employment and Training Administration.

Title: Planning, reporting, and performance system for WIA MSFW Youth grant recipients.

OMB Number: 1205–0429.

Catalog of Federal Domestic Assistance Number:

Record Keeping: Grant recipients shall retain supporting and other documents necessary for the compilation and submission of the subject reports for three years after submission of the final financial report for the grant in question [29 CFR 97.42 and/or 29 CFR 95.53].

Affected Public: State agencies; private, non-profit corporations.

Cite/Reference/Form/etc.: The collection instrument is for the MSFW Youth Program Planning, Reporting, and Performance System and related instructions. OMB-approved forms are provided for use in gathering information at the grant recipient field office level.

IV. Total Burden

Required section 167 activity	NFJP Form #	Number of respondents	Responses per year	Total responses	Hours per response	Total burden hrs.
Plan Narrative		12	1	12	5	60
Data Record		12	(1)	5,000	3	15,000
Report from Data Record		12	1	12	2	24
Budget Information Summary	ETA 9096	12	1	12	15	180
Program Planning Summary	ETA 9097	12	1	12	15	180
Program Status Summary	ETA 9098	12	4	48	7	336
Totals		12	B	5,096	47	15,780

(1) On occasion.

Total Respondents: 12.

Frequency: Annually for planning information; quarterly for both financial information and participation and characteristics information.

Total Responses:

Planning—36 (12 times 3).

Participant Reporting—48 (1 Program Status Summary per quarter, per grant recipient per year).

Participant record keeping (MSFW SPIR)—5000 records.

There are four statutorily-required quarterly financial status reports per grant recipient per year, by year of appropriation. For participation and characteristics information, there are four quarterly submissions per year, regardless of the year(s) of funding expended during the program year.

Average Time per Grantee Response:

Annual Plan—2 hours.

Budget Information Summary (BIS)—30 minutes; [ETA 9096].

Program Planning Summary (PPS)—1 hour; [ETA 9097].

Financial Status Report—30 minutes; [ETA 9092, OMB Approval No. 1205–0428, expiring 10/04].

Program Status Summary (PSS)—1 hour; [ETA 9098].

Individual Recordkeeping (Workforce Investment Act Standardized Participant Record)—3 hours (per participant record).

The individual time per response varies widely depending on the degree of automation attained by individual grant recipients. Grant recipients also vary according to the numbers of individuals served in each program year. If the grant recipient has a fully developed and automated Management Information System, the response time is limited to one-time programming, plus processing time for each response.

Estimated Total Burden Hours:

Planning (MSFW)—12 responses times 2 hours per response equals 24 burden hours.

BIS (MSFW)—12 responses times 30 minutes per response equals 6 burden hours.

PPS (MSFW)—12 responses times 1 hour per response equals 12 burden hours.

FSR (MSFW)—48 (12 times 4) responses times 30 minutes per response equals 24 minimum burden hours.

PSS (MSFW)—48 (12 times 4) responses times 1 hour per response equals 48 burden hours.

The use of the term "minimum" refers to the fact that an individual grantee must continue to report on expenditures by year of appropriation until those funds are completely expended. Thus, if more than one year's appropriation is expended in a given quarter, two FSRs (or more) must be submitted for that period.

Total Burden Cost (capital/startup): $-0-.

Total Burden Cost (operating/maintaining):

MSFW Youth Program—(hours times $15.00 per hour).

Costs may vary widely among grantees, from nearly no additional cost to some higher figure, depending on the state of automation attained by each grantee and the wages paid to the staff actually completing the various forms. All costs associated with the submission of these forms are allowable grant expenses.

Comments submitted in response to this request will be summarized and/or included in the Office of Management and Budget request for approval of the information collection. All comments will become a matter of public record.

Signed at Washington, DC, this 2nd day of May 2003.

Emily Stover DeRocco,

Assistant Secretary of Labor, Employment and Training Administration.

[FR Doc. 03–11676 Filed 5–9–03; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

Solicitation for Grant Applications (SGA); National Farmworker Jobs Program; Housing assistance for Migrants and Seasonal Farmworkers

AGENCY: Employment and Training Administration (ETA), Labor.

ACTION: Notice: amendment to SGA/DFA–03–108.

SUMMARY: The Employment and Training Administration published a document in the **Federal Register** dated April 17, 2003, concerning the availability of grant funds for the National Farmworker Jobs Program (NFJP) and Housing for Migrant and Seasonal Farmworkers (MSFWs). The document is being amended to provide clarifications as follows:

- A completed SF 424 along with a Program Planning Summary (ETA 9094/Attachment I) and a Budget Information Summary (ETA 9093/Attachment II) should be included in all National Farmworker Jobs Program applications. Please note that completing the ETA 9094 will not satisfy the requirement to provide estimated numbers for those proposed to receive training services and to receive related assistance services.
- For the purposes of the Farmworker Housing Assistance SGA, applicants should submit the SF 424 and SF 424A.

Dated: Signed at Washington, DC, this 6th day of May, 2003.

Lorraine H. Saunders,

Grant Officer, Employment and Training Administration.

BILLING CODE 4510–30–M

WIA Program Planning Summary - NFJP
Title I-D, Section 167 - Migrant/Seasonal Farmworker Program

U.S. Department of Labor
Employment and Training Administration

F

a. Grantee Name and Address	b. Grant Number	OMB Approval No: 1205-0425 Expires: 12/31/04
	c. Period of Grant From: To:	d. Modification Year ____ No. ____

I. Participation and Termination Summary	B. Cumulative Periods			
	1st	2nd	3rd	4th
A. Total Participants				
1. New Participants				
2. Participants Carried Over				
3. Total Number of Participants Exiting Program				
II. Participant Outcomes				
A. Entered Unsubsidized Employment				
B. Completed Training Services				
C. Total Current Participants (End-of-Period)				

Remarks

Persons are not required to respond to this collection of information unless it displays a currently valid OMB control number. Respondents obligation to reply to these reporting requirements are required to obtain or retain benefits (20 CFR 667.300). Public reporting burden for this collection of information is estimated to average 15 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Office of National Programs, U.S. Department of Labor, 200 Constitution Avenue, N.W., Room N-4641, Washington, D.C. 20210 (Paperwork Reduction Project 1205-0425).

ETA 9094
(July 2001)

Instructions for Completing NFJP, WIA Program Planning Summary (PPS)

General Instructions. The PPS is required to be submitted as part of the annual grant plan. The specific instructions below explain the items on the PPS.

a. Grantee Name and Address - Enter the name and mailing address.

b. Grant Number - FOR GRANT OFFICE'S USE ONLY

c. Period of Grant - Enter the month, day, and year of the program year's starting and ending dates.

d. FOR GRANT OFFICER'S USE ONLY.

Participation and Termination Summary

Section I. describes the planned flow of participants through the program: the number entering, those leaving and those remaining in the program. The plan is cumulative on a quarterly basis, and includes carry over participants.

Line A. Total Participants - Enter for each quarter the cumulative number of participants planned for the program year.

Participant is an inidividual who has received at a minimum the core service of being determined eligible for the program, and enrolled in the program.

Line A.1. New Participants - Enter, for each quarter, the cumulative number of new participants projected to be enrolled in this program year.

Line A.2. Participants Carried Over - Enter for each quarter, the number of participants projected to be in the grantee's program on the last day of the previous program year whose participation will continue in the current program year.

Line B. Total Number of Participants Exiting the Program - Enter, for each quarter, the cumulative number of participants expected to exit the program during the program year.

Participants exit the program after the 6 month follow-up period or when you have determined they should no longer receive Employment and Training services funded under the NFJP.

Section II. Participant Outcomes.

Line II.A. Entered Unsubsidized Employment - Enter, for each quarter, the cumulative number of participants you expect to place in ubsubsidized employment by the end of the program year.

Line II.B. Completed Training Services - Enter, for each quarter, the cumulative number of participants you expect will complete at least one training service by the end of the program year.

Line C. Total Current Participants (End of Period) - Enter, for each quarter, the projected number of participants you expect to be enrolled in the program as of the end of that quarter.

WIA Budget Information Summary - NFJP
Title I-D, Section 167 - National Farmworker Jobs Program (NFJP)

U.S. Department of Labor
Employment and Training Administration

F

a. Grantee Name and Address	b. Grant Number	OMB Approval No: 1205-0425 Expires: 12/31/04
	c. Period of Grant From: To:	d. Modification Year ____ No. ____

I. Cumulative Quarterly Projections of Expenditures by Cost Categories (Report in Whole Dollars ONLY)

A. Grant Program Function and Activity	B. Cumulative Periods			
	1st	2nd	3rd	4th
1. Program Costs				
a. Related Assistance (Emergency Assistance and Supportive Services)				
b. All Other Program Services				
2. Administration				
3. Total Grant Costs				
II. Available Funds in this Grant Year				
A. Balance in Previous Year Grant (available funds in 5th quarter)				
B. New Obligational Authority				
C. Total Available Funds				

Remarks

Persons are not required to respond to this collection of information unless it displays a currently valid OMB control number. Respondents obligation to reply to these reporting requirements are required to obtain or retain benefits (20 CFR 667.300). Public reporting burden for this collection of information is estimated to average 15 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Office of National Programs, U.S. Department of Labor, 200 Constitution Avenue, N.W., Room N-4641, Washington, D.C. 20210 (Paperwork Reduction Project 1205-0425).

ETA 9093
(July 2001)

Instructions for Completing the NFJP Budget Information Summary (BIS)

General Instructions. The BIS is required for each Section 167 grantee's program and is a required part of the annual grant application. Planned expenditures are arrayed cumulatively by program year quarter.

a. Grantee Name and Address - Enter the name and complete mailing address.

b. Grant Number - Enter the grant number for the reporting year of appropriation.

c. Period of Grant - Enter the month, day, and year of the program year's starting and ending dates.

d. Modification - FOR GRANT OFFICER USE ONLY.

SECTION I - Cumulative Quarterly Projections of Expenditures by Cost Categories - Annual projections of costs by quarter. Planning periods correspond to WIA Program Year quarters; for NFJP, the Program Year is from July 1 through June 30. Please round entries on the BIS to the nearest whole dollar. Entries must be listed for all the items below.

Column (A) Grant Program Function and Activity

Line A.1. Program Costs - Enter, for each quarter, the cumulative projected costs for program activities listed below. The entry for Line A.1. for each period is the sum of the entries for Lines A.1.a. amd A.1.b. Program costs are described in 20 CFR 669, subpart C.

Line A.1.a. Related Assistance - These are projected costs of related assistance services as described in Section 669.430.

Line A.1.b. All Other Program Services - All program costs that are not Related Assistance services costs.

Line 2. Administration - Enter, for the quarterly periods, the projected expenditures for administrative costs as described in the regulations at §667.220.

Line 3. Total Grant Costs - Enter the projected sum of Lines A.1. and A.2.

Section II. AVAILABLE FUNDS

Line II.A. Balance in Previous Year Grant - For incumbent grantee only, enter the amount of projected unexpended WIA Section 167 funds remaining from the preceding program year's allocation. The amount listed in this line item is the uncommitted grant funds available for expenditure in the fifth quarter of the previous grant.

Line II.B. New Obligational Authority - Enter the amount of the grant award for the program year covered by this financial planning document.

Line II.C. Total Available Funds - Enter the projected sum of Line II.A and IIB. This amount must equal Section I Line 3, for the 4th quarter.

[FR Doc. 03–11678 Filed 5–9–03; 8:45 am]
BILLING CODE 4510–30–C

NATIONAL SCIENCE FOUNDATION

Proposal Review; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation (NSF) announces its intent to hold proposal review meetings throughout the year. The purpose of these meetings is to provide advice and recommendations concerning proposals submitted to the NSF for financial support. The agenda for each of these meetings is to review and evaluate proposals as part of the selection process for awards. The majority of these meetings will take place at NSF, 4201 Wilson Blvd., Arlington, Virginia 22230.

All of these meetings will be closed to the public. The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c), (4) and (6) of the Government in the Sunshine Act. NSF will continue to review the agenda and merits of each meeting for overall compliance of the Federal Advisory Committee Act.

These closed proposal review meetings will no longer be announced on an individual basis in the **Federal Register**. NSF intends to publish a notice similar to this on a quarterly basis. For an advance listing of the closed proposal review meetings that include the names of the proposal review panel and the time, date, place, and any information on changes, corrections, or cancellations, please visit the NSF Web site: *http://www.nsf.gov/home/pubinfo/advisory.htm*. This information may also be requested by telephoning (703) 292–8182.

Dated: May 6, 2003.

Susanne Bolton,

Committee Management Officer.

[FR Doc. 03–11679 Filed 5–9–03; 8:45 am]
BILLING CODE 7555–01–M

NATIONAL SCIENCE FOUNDATION

Advisory Committee for Social, Behavioral and Economic Sciences; Notices of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting.

Name: Advisory Committee for Social, Behavioral, and Economic Sciences (ACSBE) (#1171).

Date and Time: May 29, 2003, 8:30 a.m.–5 p.m. May 30, 2003, 8:30 a.m.–12:30 p.m.

Place: National Science Foundation, 4201 Wilson Boulevard, Room II–595, Arlington, VA 22230.

Type of Meeting: Open.

Contact Person: Dr. Sally Kane, Senior Advisor, ACSBE, Directorate for Social, Behavioral, and Economic Sciences, National Science Foundation, 4201 Wilson Boulevard, Room 905, Arlington, VA 22230, (703) 292–8741.

Summary Minutes: May be obtained from contact person listed above.

Purpose of Meeting: To provide advice and recommendations to the National Science Foundation on major goals and policies pertaining to Social, Behavioral, and Economic Sciences Directorate programs and activities.

Agenda: Discussion on issues, role and future direction of the Directorate for Social, Behavioral, and Economic Sciences.

Note: Visitors from outside of NSF should call (703) 292–8741 to arrange for a visitor's badge in order to facilitate getting into the building.

Dated: May 6, 2003.

Susanne Bolton,

Committee Management Officer.

[FR Doc. 03–11680 Filed 5–9–03; 8:45 am]
BILLING CODE 7555–01–M

NATIONAL SCIENCE FOUNDATION

Sunshine Act Meeting

AGENCY HOLDING MEETING: National Science Foundation, National Science Board.

DATE AND TIME: May 12, 2003: 1:30 p.m.–2:45 p.m.—Open Session.

PLACE: The National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230, *http://www.nsf.gov/nsb*.

FOR FURTHER INFORMATION CONTACT: Cathy Hines, (703) 292–7000.

STATUS: This meeting will be open to the public.

MATTERS TO BE CONSIDERED:

Monday, May 12, 2003

Open: NSB Subcommittee on S&E Indicators, Teleconference, Room 120.

- Reviewer comments on Chapter 1, K–12 Education

Cathy Hines,

Operations Officer, NSBO.

[FR Doc. 03–11896 Filed 5–8–03; 12:26 pm]
BILLING CODE 7555–01–M

NATIONAL SCIENCE FOUNDATION

Sunshine Act; Meetings

AGENCY HOLDING MEETING: National Science Foundation, National Science Board.

DATE AND TIME: May 14, 2003: 10:30 a.m.–12 Noon—Open Session

PLACE: The National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230, *http://www.nsf.gov/nsb*.

FOR FURTHER INFORMATION CONTACT: Cathy Hines, (703) 292–7000.

STATUS: This meeting will be open to the public.

MATTERS TO BE CONSIDERED:

Wednesday, May 14, 2003.

Open: NSB Subcommittee on S&E Indicators, Teleconference Room 130

- Reviewer comments on Chapter 8, State S&E Indicators

Cathy Hines,

Operations Officer, NSBO.

[FR Doc. 03–11897 Filed 5–8–03; 12:26 pm]
BILLING CODE 7555–01–M

NUCLEAR REGULATORY COMMISSION

Documents Containing Reporting or Recordkeeping Requirements: Office of Management and Budget (OMB) Review

AGENCY: Nuclear Regulatory Commission (NRC).

ACTION: Notice of the OMB review of information collection and solicitation of public comment.

SUMMARY: The NRC has recently submitted to OMB for review the following proposal for the collection of information under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35).

1. *Type of submission, new, revision, or extension:* Revision.

2. *The title of the information collection:* 10 CFR Part 50, "Risk-Informed Categorization and Treatment of Structures, Systems, and Components," proposed rule.

3. *The form number if applicable:* Not applicable.

4. *How often the collection is required:* Information is required to be collected when categorization is performed and when replacement components are designed, procured, installed, and tested by the licensee. Reporting of conditions is required when discovered. A one-time submittal is required for implementation, for those licensees (or applicants) who choose to follow the requirements in section 50.69 in lieu of other requirements.

5. *Who will be required or asked to report:* Power reactor licensees and applicants who voluntarily adopt the provisions of section 50.69.

6. *An estimate of the number of annual responses:* Part 50 would result in 10 responses (6 additional reports and 4 additional records); Part 21 would result in a reduction of 2 responses; and section 50.73 reporting would result in a reduction of 4 responses.

The estimated number of annual respondents: The total number of respondents under part 50 that could potentially be subject to these requirements is 104 reactor licensees and some unknown, but likely small number for applicants. However, the actual number is expected to be considerably smaller. For purposes of this notice, the number assumed is 4 licensees.

8. *An estimate of the total number of hours needed annually to complete the requirement or request:* 4,126 hours (an increase in 1,630 hours for reporting; and an increase of 2,496 hours for recordkeeping, or 1,032 hours per licensee). This estimate includes an annualized one-time burden of 5,600 hours for implementation of the rule through procedures and training of personnel, NRC approval of implementation, and conducting and documenting categorization reviews. The burden depends upon factors such as current development of the probabilistic risk assessment and categorization procedures, existing plant procedures, and the scope and implementation schedule for revised rule requirements.

9. *An indication of whether section 3507(d), Pub. L. 104–13 applies:* Applicable.

10. *Abstract:* The NRC is revising its requirements to permit power reactor licensees and applicants for licenses to implement an alternative regulatory framework with respect to "special treatment," that is, those requirements that provide increased assurance (beyond normal industrial practices) that SSCs perform their design basis functions. Under this framework, licensees or applicants, using a risk-informed process for categorizing SSCs according to their safety-significance, can remove SSCs of low safety-significance from the scope of certain identified special treatment requirements.

Submit, by June 11, 2003, comments that address the following questions:

1. Is the proposed collection of information necessary for the NRC to properly perform its functions? Does the information have practical utility?
2. Is the burden estimate accurate?
3. Is there a way to enhance the quality, utility, and clarity of the information to be collected?
4. How can the burden of the information collection be minimized, including the use of automated collection techniques or other forms of information technology?

A copy of the supporting statement may be viewed free of charge at the NRC Public Document Room, One White Flint North, 11555 Rockville Pike, Room O–1 F21, Rockville, MD 20852. The proposed rule indicated in "The title of the information collection" is or has been published in the **Federal Register** within several days of this **Federal Register** Notice. The OMB clearance package and rule are available at the NRC worldwide Web site: *http://www.nrc.gov/public-involve/doc-comment/omb/index.html* for 60 days after the signature date of this notice and are also available at the rule forum site, *http://ruleforum.llnl.gov*.

Comments and questions should be directed to the OMB reviewer listed below by June 11, 2003:

Bryon Allen, Office of Information and Regulatory Affairs (3150–0011, –0035, and –0104), NEOB–10202, Office of Management and Budget, Washington, DC 20503.

Comments can also be submitted by telephone at (202) 395–3087.

The NRC Clearance Officer is Brenda Jo. Shelton, 301–415–7233.

Dated at Rockville, Maryland, this 24th day of April, 2003.

For the Nuclear Regulatory Commission.

Brenda Jo. Shelton,

NRC Clearance Officer, Office of the Chief Information Officer.

[FR Doc. 03–11698 Filed 5–9–03; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Advisory Committee on Nuclear Waste; Notice of Meeting

The Advisory Committee on Nuclear Waste (ACNW) will hold its 142nd meeting on May 28–30, 2003, 11545 Rockville Pike, Rockville, Maryland. The entire meeting will be open to public attendance. The schedule for this meeting is as follows:

Wednesday, May 28, 2003

1 p.m.–1:10 p.m.: Opening Statement (Open)—The Chairman will open the meeting with brief opening remarks, outline the topics to be discussed, and indicate items of interest.

1:10 p.m.–3 p.m.: Control of Solid Materials (Open)—The Committee will hear presentations by and hold discussions with representatives of the NRC staff on the potential regulation on control of solid materials containing no or very small amounts of radioactivity.

3:15 p.m.–4:45 p.m.: License Termination Rule (LT) (Open)—The Committee will hear presentations by and hold discussions with representatives of the NRC staff on the evaluation of issues related to making the restricted release/alternate criteria provisions of the LTR more available for licensee use.

5 p.m.–6 p.m.: Proposed ACNW Reports (Open)—The Committee will discuss proposed ACNW reports on matters considered during this meeting, as well as proposed ACNW reports on the March 2003 Working Group Meeting on NRC and DOE Performance Assessments. In addition, the Committee will consider proposed reports on presentations made during the April meeting by the State of Nevada on Transportation of Spent Fuel and High Level Waste (HLW) and by representatives of the National Academy on its report "One Step at a Time: The Staged Development of Geologic Repositories for HLW."

Thursday, May 29, 2003

8:30 a.m.–8:35 a.m.: Opening Statement (Open)—The Chairman will make opening remarks regarding the conduct of today's sessions.

8:35 a.m.–9:45 a.m.: Yucca Mountain Review Plan (YMRP) Revision 2 (Open)—The Committee will hear presentations by and hold discussions with representatives of the NRC staff on the changes incorporated in Draft Final Yucca Mountain Review Plan, Revision 2.

10 a.m.–11 a.m.: 2003–04 ACNW Research Report (Open)—An outline and potential plan for the next ACNW Research Report will be discussed.

12:30 p.m.–5 p.m.: Proposed ACNW Reports (Open)—The Committee will continue to discuss proposed ACNW reports.

Friday, May 30, 2003

8:30 a.m.–8:35 a.m.: Opening Statement (Open)—The Chairman will make opening remarks regarding the conduct of today's sessions.

8:35 a.m.–11:45 a.m.: Proposed ACNW Reports (Open)—The Committee will continue its discussion on proposed ACNW reports.

11:45 a.m.–12 Noon: Miscellaneous (Open)—The Committee will discuss matters related to the conduct of Committee activities and matters and specific issues that were not completed during previous meetings, as time and availability of information permit.

Procedures for the conduct of and participation in ACNW meetings were published in the **Federal Register** on October 11, 2002 (67 FR 63459). In accordance with these procedures, oral or written statements may be presented by members of the public. Electronic recordings will be permitted only during those portions of the meeting that are open to the public. Persons

desiring to make oral statements should notify Mr. Howard J. Larson, ACNW (Telephone 301/415–6805), between 7:30 a.m. and 4 p.m. ET, as far in advance as practicable so that appropriate arrangements can be made to schedule the necessary time during the meeting for such statements. Use of still, motion picture, and television cameras during this meeting will be limited to selected portions of the meeting as determined by the ACNW Chairman. Information regarding the time to be set aside for taking pictures may be obtained by contacting the ACNW office prior to the meeting. In view of the possibility that the schedule for ACNW meetings may be adjusted by the Chairman as necessary to facilitate the conduct of the meeting, persons planning to attend should notify Mr. Howard J. Larson as to their particular needs.

Further information regarding topics to be discussed, whether the meeting has been canceled or rescheduled, the Chairman's ruling on requests for the opportunity to present oral statements and the time allotted therefore can be obtained by contacting Mr. Howard J. Larson.

ACNW meeting agenda, meeting transcripts, and letter reports are available through the NRC Public Document Room at *pdr@nrc.gov*, or by calling the PDR at 1–800–397–4209, or from the Publicly Available Records System (PARS) component of NRC's document system (ADAMS) which is accessible from the NRC Web site at *http://www.nrc.gov/reading-rm/adams.html* or *http://www.nrc.gov/reading-rm/doc-collections/* (ACRS & ACNW Mtg schedules/agendas).

Videoteleconferencing service is available for observing open sessions of ACNW meetings. Those wishing to use this service for observing ACNW meetings should contact Mr. Theron Brown, ACNW Audiovisual Technician (301/415–8066), between 7:30 a.m. and 3:45 p.m. ET, at least 10 days before the meeting to ensure the availability of this service. Individuals or organizations requesting this service will be responsible for telephone line charges and for providing the equipment and facilities that they use to establish the videoteleconferencing link. The availability of videoteleconferencing services is not guaranteed.

Dated: May 6, 2003.

Andrew L. Bates,

Advisory Committee Management Officer.

[FR Doc. 03–11700 Filed 5–9–03; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Advisory Committee on Reactor Safeguards

Subcommittee Meeting on Safeguards and Security; Notice of Meeting

The ACRS Subcommittee on Safeguards and Security will hold a closed meeting on May 21–23, 2003, Sandia National Laboratories, Albuquerque, New Mexico.

The entire meeting will be closed to public attendance to protect information classified as national security information pursuant to 5 U.S.C. 552b(c)(1).

The agenda for the subject meeting shall be as follows:

Wednesday, Thursday and Friday, May 21–23, 2003—8:30 a.m. until the conclusion of business

The Subcommittee will hear presentations from representatives of the NRC staff, NRC staff consultants and industry on the performance of risk-informed vulnerability assessments. The purpose of this meeting is to gather information, analyze relevant issues and facts, and formulate proposed positions and actions, as appropriate, for deliberation by the full Committee.

Further information contact: Mr. Richard K. Major (telephone: (301) 415–7366) or Dr. Richard P. Savio (telephone: (301) 415–7363) between 7:30 a.m. and 4:15 p.m. (ET).

Dated: May 5, 2003.

Sher Bahadur,

Associate Director for Technical Support, ACRS/ACNW.

[FR Doc. 03–11701 Filed 5–9–03; 8:45 am]

BILLING CODE 7590–01–P

OFFICE OF PERSONNEL MANAGEMENT

[RI 20–63, RI 20–116, RI 20–117]

Proposed Collection; Comment Request for Review of an Information Collection

AGENCY: Office of Personnel Management.

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (Public Law 104–13, May 22, 1995), this notice announces that the Office of Personnel Management (OPM) intends to submit to the Office of Management and Budget (OMB) a request for review of an information collection. RI 20–63, Survivor Annuity Election for a Spouse, is used by annuitants to elect a reduced annuity with a survivor annuity for their spouse. RI 20–116 is a cover letter for RI 20–63 giving information about the cost to elect less than the maximum survivor annuity. This letter may be used to decline to elect. RI 20–117 is a cover letter for RI 20–63 giving information about the cost to elect the maximum survivor annuity. This letter may be used to ask for more information or to decline to elect.

RI 20–117 is accompanied by RI 20–63A, Information on Electing a Survivor Annuity for Your Spouse, or RI 20–63B, Information on Electing a Survivor Annuity for Your Spouse When You Are Providing a Former Spouse Annuity. Both books explain the election. RI 20–63A is for annuitants who do not have a former spouse who is entitled to a survivor annuity benefit; RI 20–63B is for those who do have a former spouse who is entitled to a benefit. These books do not require OMB clearance. They have been included because they provide the annuitant additional information.

Comments are particularly invited on: whether this collection of information is necessary for the proper performance of functions of the Office of Personnel Management, and whether it will have practical utility; whether our estimate of the public burden of this collection of information is accurate, and based on valid assumptions and methodology; and ways in which we can minimize the burden of the collection of information on those who are to respond, through the use of appropriate technological collection techniques or other forms of information technology.

Approximately 2,200 RI 20–63 forms are returned each year electing survivor annuities and 200 annuitants return the cover letter to ask for information about the cost to elect less than the maximum survivor annuity or to refuse to provide any survivor benefit. It is estimated to take approximately 45 minutes to complete the form with a burden of 1,800 hours and 10 minutes to complete the letter, which gives a burden of 34 hours. The total burden for RI 20–63 is 1,834 hours.

For copies of this proposal, contact Mary Beth Smith-Toomey on (202) 606–8358, FAX (202) 418–3251 or via e-mail to *mbtoomey@opm.gov*. Please include a mailing address with your request.

DATES: Comments on this proposal should be received on or before July 11, 2003.

ADDRESSES: Send or deliver comments to—Ronald W. Melton, Chief, Operations Support Group, Center for Retirement and Insurance Services,

Office of Personnel Management, 1900 E Street, NW., Room 3349, Washington, DC 20415–3540.

FOR INFORMATION REGARDING ADMINISTRATIVE COORDINATION CONTACT: Cyrus S. Benson, Team Leader, Publications Team, RIS Support Services, (202) 606–0623.

Office of Personnel Management.

Kay Coles James,

Director.

[FR Doc. 03–11730 Filed 5–9–03; 8:45 am]

BILLING CODE 6325–50–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–47796; File No. SR–Amex–2003–34]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the American Stock Exchange LLC, Relating to Indications, Openings and Re-Openings

May 5, 2003.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and rule 19b–4 thereunder,[2] notice is hereby given that on April 23, 2003, the American Stock Exchange, LLC ("Amex" or "Exchange"), filed with the Securities and Exchange Commission ("Commission" or "SEC") the proposed rule change as described in items I, II and III below, which items have been prepared by Amex. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to adopt rule 119 to codify and revise the Exchange's policies regarding tape indications and re-openings in stocks that are subject to a trading halt (other than "circuit breaker" or "equipment changeover" halts). Below is the text of the proposed rule change. Although this text is not currently in the Amex rulebook, it was approved by the Commission as Amex policy in 1997.[3] Text that Amex is now proposing to add to the previously approved policy is *italicized*.

* * * * *

INDICATIONS, OPENINGS AND REOPENINGS

Rule 119. Except as provided elsewhere in the Constitution and rules of the Exchange, this rule shall govern indications, openings and (re)openings of securities traded on the Exchange.

(1) Mandatory Indications: When Commencements Is Permitted

A specialist is required to disseminate indications of interest prior to (re)opening trading in a previously halted stock or in the event of a delayed opening as follows:

(a) Regulatory Halts—A specialist may commence disseminating indications of interest in a stock subject to a Regulatory Halt when the Exchange determines that an adequate publication or disclosure of information has occurred so as to permit the termination of the halt and a Floor Official approves the dissemination of indications of interest for the stock. In the case of an inter-day Regulatory Halt (*i.e.*, a halt which remains in effect from the preceding trading day) such approval may include disseminations of interest before the Exchange opens for business.

(b) Non-Regulatory Halts—A specialist may commence disseminating indications of interest in a stock subject to a Non-Regulatory Halt when an Exchange Official or Floor Governor approves such dissemination, in consultation with a Floor Official when appropriate. In the case of an inter-day Non-Regulatory Halt, such approval may include disseminations of interest before the Exchange opens for business.

(c) Delayed Openings—A specialist may commence disseminating indications of interest in a stock subject to delayed opening other than by reason of an inter-day Regulatory Halt, when an Exchange Official or Floor Governor approves.

(d) "Regulatory Halt" Defined—For the purposes of this policy, "Regulatory Halt" has the meaning that the CTA Plan assigns to it.

(e) "Circuit Breaker" Halts—Dissemination of an indication shall be mandatory prior to the reopening of trading following a "circuit breaker" halt under rule 117 if such reopening will result in a price change constituting the lesser of 10% or three points from the last sale reported on the AMEX, or five points if the previous reported last sale is $100 or higher. No indications would be required if the price change is less than one point. If, on any day that rule 117 halt is in effect, trading in a security has not reopened by one-half hour after resumption of trading on the Exchange, the matter should be treated as a delayed opening, and would require an indication as well as a Floor Official's supervision.

(2) Optional Indications

(a) Spin-Offs, IPOs, Etc.—Prior to the commencement of trading in a stock for which there has been no prior public market, the specialist in the stock may disseminate indications of interest for the stock if an Exchange Official or Floor Governor approves. In the case of a spin-off, any Floor Official may approve such dissemination which may include dissemination before the Exchange opens for business.

(b) Other Opening Situations—In any opening situation not specified above, the specialist in the affected stock may disseminate indications of interest for the stock before the Exchange opens for business if an Exchange Official or Floor Governor approves, and thereafter if any Floor Official approves.

(3) Waiting Periods Before (Re)Opening

(a) Periods Specified—The specialist may not (re)open a stock that has been the subject of an indication pursuant to paragraphs (1) and (2) above until:

(i) Ten minutes after an indication is displayed, except that the minimum halt period shall be five minutes after an indication is displayed in the case of an equipment change over halt condition, in each case, unless clause ii applies;

(ii) Five minutes after an indication is displayed if one or more indications preceded it. However, regardless of the number of indications disseminated, the minimum waiting period is ten minutes. For example, if only 3 minutes elapsed from the time of the first indication to the second indication, the minimum waiting period after the second indication would be 7 minutes.

(iii) With respect to a post-opening trading halt, a minimum of five minutes must elapse between the first indication and a stock's reopening. However, where more than one indication is disseminated, a stock may re-open three minutes after the last indication, provided that at least five minutes must have elapsed from the dissemination of the first indication.

In the case of inter-day Non-Regulatory Halts, the Exchange Official or Floor Governor involved may dispense with the waiting period if no unusual situation exists prior to the opening of the affected stock. In the case of indications made pursuant to paragraph 2(b), the Exchange Official or Floor Governor involved may alter the applicable waiting periods to take into account the circumstances of the particular opening situation.

If during an equipment changeover trading halt in a stock, a significant order imbalance develops or a regulatory condition occurs (*i.e.*, news pending or news dissemination) then the nature of the halt condition shall be changed accordingly, and notice of such change shall be disseminated. The minimum halt period prior to the resumption of trading in this case shall be ten minutes following the first indication after the new halt condition is disseminated.

"Significant Order Imbalance" Defined—For purposes of this subparagraph, a "significant order imbalance" is one which would result in a reopening at a price change constituting two points or more away from the last previous sale in a stock selling at $20 or more, one point or more away from the last previous sale in a stock selling at $10 or more (but less than $20), and one/half point or more away from the last previous sale in a stock selling at less than $10.

* * * * *

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, Amex included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in item IV below. Amex has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

In 1997, the Commission approved the Exchange's policies regarding indications, openings and re-openings.[4] The Exchange is now proposing to codify these policies as new rule 119 to make them more accessible to members and member organizations. The Exchange also is proposing to update the Exchange's rules on re-openings to conform them to those in effect at the New York Stock Exchange ("NYSE").

The Exchange's current policy on reopening trading in a stock that has opened and then is halted during a trading day (*i.e.*, a stock that is subject to a "post-opening" trading halt) requires a minimum of 10 minutes to elapse between the first price indication and the reopening of the stock, and a minimum of five minutes to elapse after the last indication, provided in all cases that the minimum 10 minutes has elapsed since the first indication. The Exchange is proposing to compress these minimum time periods before reopening a stock that is subject to a post-opening trading halt to five minutes after the first indication, and three minutes after the last indication, provided that a minimum of five minutes has elapsed since the first price indication.

In developing procedures for openings and re-openings over the years, the Exchange has focused on providing a balance between timeliness and achieving a price that reflects market conditions. As the speed of communications has increased, the Exchange believes that it is important to provide the ability to react more quickly if circumstances permit a reopening of trading in a shorter period of time. Management believes that the newly approved NYSE procedures for reopening after a post-opening trading halt strike the appropriate balance between preserving the price discovery process and providing timely opportunities for investors to participate in the market.[5] Thus, at the end of the five-minute period, if equilibrium has been established, there would be no purpose to extending the halt for a longer period. If, however, at the end of the five minute period, more time is needed to bring supply and demand into balance, then the resumption of trading could be further delayed. Trading halts will continue to be overseen by Floor Officials who will use their judgment to see that the stock reopens at an appropriate time.

2. Statutory Basis

The proposed rule change is consistent with section 6(b) of the Act[6] in general and furthers the objectives of section 6(b)(5)[7] in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest; and is not designed to permit unfair discrimination between customers, issuers, brokers and dealers.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange believes that the proposed rule change will impose no burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve such proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposal is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of Amex. All submissions should refer to File No. SR–Amex–2003–34 and should be submitted by June 2, 2003.

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[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Release No. 34–38549 (April 28, 1997), 62 FR 24519 (1997).

[4] *See* n. 3, *supra*.

[5] *See* Release No. 34–47104 (December 30, 2002), 68 FR 597 (January 6, 2003).

[6] 15 U.S.C. 78f(b).

[7] 15 U.S.C. 78f(b)(5).

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[8]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 03–11728 Filed 5–9–03; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–47801; File No. SR–NASD–2003–76]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the National Association of Securities Dealers, Inc. To Restate the Certificate of Incorporation of The Nasdaq Stock Market, Inc.

May 6, 2003.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and rule 19b–4 thereunder,[2] notice is hereby given that on April 29, 2003, the National Association of Securities Dealers, Inc. ("NASD"), through its subsidiary, The Nasdaq Stock Market, Inc. ("Nasdaq"), filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in items I, II, and III below, which items have been prepared by Nasdaq. Nasdaq has designated this proposal as one concerned solely with the administration of the self-regulatory organization under section 19(b)(3)(A)(iii) of the Act[3] and rule 19b–4(f)(3) thereunder,[4] which renders the rule effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of the Substance of the Proposed Rule Change

Nasdaq is restating (but not substantively amending) its certificate of incorporation. The text of the proposed rule change is below. Proposed new language is italicized; proposed deletions are in brackets.

Restated Certificate of Incorporation of The Nasdaq Stock Market, Inc.

The undersigned, _____, the _____ of The Nasdaq Stock Market, Inc. ("Nasdaq"), a Delaware corporation, does hereby certify:

First: That the name of the corporation is The Nasdaq Stock Market, Inc. The date of the filing of its original Certificate of Incorporation with the Secretary of State of the State of Delaware was November 13, 1979. The name under which Nasdaq was originally incorporated was "NASD Market Services, Inc."

Second: That the *Restated* Certificate of Incorporation of Nasdaq *dated June 27, 2000, as previously amended by the Certificate of Designations, Preferences and Rights of Series A Cumulative Preferred Stock dated March 8, 2002, the Certificate of Designations, Preferences and Rights of Series B Preferred Stock dated March 8, 2002, and the Certificate of Amendment dated August 7, 2002,* is hereby [amended and] restated *and integrated* to read in its entirety as follows:

Article First—Article Third

No change.

Article Fourth

A. No change.

B. The Preferred Stock may be issued from time to time in one or more series. The Board of Directors of Nasdaq (the "Board") is hereby authorized to provide for the issuance of shares of Preferred Stock in one or more series and, by filing a certificate pursuant to the applicable law of the State of Delaware (hereinafter referred to as "Preferred Stock Designation"), to establish from time to time the number of shares to be included in each such series, and to fix the designation, powers, preferences and rights of the shares of each such series and the qualifications, limitations and restrictions thereof. The authority of the Board with respect to each series shall include, but not limited to, determination of the following:

(1) The designation of the series, which may be by distinguishing number, letter or title.

(2) The number of shares of the series, which number the Board may thereafter (except where otherwise provided in the Preferred Stock Designation) increase or decrease (but not below the number of shares thereof then outstanding).

(3) The amounts payable on, and the preferences, if any, of shares of the series in respect of dividends, and whether such dividends, if any, shall be cumulative or noncumulative.

(4) Dates at which dividends, if any, shall be payable.

(5) The redemption rights and price or prices, if any, for shares of the series.

(6) The terms and amount of any sinking fund provided for the purchase or redemption of shares of the series.

(7) The amounts payable on, and the preferences, if any, of shares of the series in the event of any voluntary or involuntary liquidation, dissolution or winding up of the affairs of Nasdaq.

(8) Whether the shares of the series shall be convertible into or exchangeable for shares of any other class or series, or any other security, of Nasdaq or any other corporation, and, if so, the specification of such other class or series or such other security, the conversion or exchange price or prices or rate or rates, any adjustments thereof, the date or dates at which such shares shall be convertible or exchangeable and all other terms and conditions upon which such conversion or exchange may be made.

(9) Restrictions on the issuance of shares of the same series or of any other class or series.

(10) The voting rights, if any, of the holders of shares of the series. *Pursuant to the foregoing authority, the Board has previously authorized the issuance of (i) Series A Cumulative Preferred Stock by filing a Certificate of Designations, Preferences and Rights with the Secretary of State of the State of Delaware on March 8, 2002, and (ii) Series B Preferred Stock by filing a Certificate of Designations, Preferences and Rights with the Secretary of State of the State of Delaware on March 8, 2002. The number of shares included in the Series A Cumulative Preferred Stock, the powers, preferences and rights of the shares of such series, and the qualifications, limitations and restrictions thereof are set forth in Annex A hereto, and the number of shares included in the Series B Preferred Stock, the powers, preferences and rights of the shares of such series, and the qualifications, limitations and restrictions thereof are set forth in Annex B hereto.*

C. No change.

Article Fifth—Article Eleventh

No change.

Third: That such Restated Certificate of Incorporation has been duly adopted by Nasdaq in accordance with the applicable provisions of Section[s 242 and] 245 of the General Corporation Law of the State of Delaware [and in accordance with Section 228 of the General Corporation Law of the State of Delaware (by the written consent of its sole stockholder).];

Fourth: That such Restated Certificate of Incorporation only restates and integrates and does not further amend the provisions of Nasdaq's certificate of incorporation as heretofore amended or supplemented, and that there is no discrepancy between those provisions and the provisions of such Restated Certificate of Incorporation.

In witness whereof, the undersigned has executed this certificate this ____ day of _____, 2003.

The Nasdaq Stock Market, Inc.

By: _____
(signature)

_____
(printed name)

_____
(title)

[Certificate of Designations, Preferences and Rights of Series a Cumulative Preferred Stock of The Nasdaq Stock Market, Inc.]

[Pursuant to section 151 of the Delaware General Corporation Law]

[The Nasdaq Stock Market, Inc., a Delaware corporation (the "Corporation"), certifies that pursuant to the authority contained in its Restated Certificate of Incorporation (the "Certificate of Incorporation") and in accordance with the provisions of section 151 of the General Corporation Law of the State of Delaware, the Board of Directors of the Corporation (the "Board of Directors"), acting by unanimous written consent, adopted the following resolution, which resolution remains in full force and effect as of the date hereof:]

[Does hereby certify that:]

[Resolved, that there is hereby established a series of authorized preferred stock consisting of 1,338,402 shares, which series shall have the following powers, designations, preferences and relative, participating, optional or other rights, and the following qualifications, limitations and restrictions (in addition to any powers, designations, preferences and relative, participating, optional or other rights, and any qualifications, limitations and restrictions, set forth in the Certificate of Incorporation):]

Annex A

Section 1—Section 13. No change.

[In witness whereof, the undersigned has caused this Certificate of Designations to be executed this _____ day of _____, 2002.]

[The Nasdaq Stock Market, Inc.]

[By: _____]

[Name:]

[Title:]

Schedule A

No change.

[Certificate of Designations, Preferences and Rights of Series B Preferred Stock of The Nasdaq Stock Market, Inc.]

[Pursuant to Section 151 of the Delaware General Corporation Law]

[The Nasdaq Stock Market, Inc., a Delaware corporation (the "Corporation"), certifies that pursuant to the authority contained in its Restated Certificate of Incorporation (the "Certificate of Incorporation") and in accordance with the provisions of Section 151 of the General Corporation Law of the State of Delaware, the Board of Directors of the Corporation (the "Board of Directors"), acting by unanimous written consent, adopted the following resolution, which resolution remains in full force and effect as of the date hereof:]

[Does hereby certify that:]

[Resolved, that there is hereby established a series of authorized preferred stock consisting of one share, which series shall have the following powers, designations, preferences and relative, participating, optional or other rights, and the following qualifications, limitations and restrictions (in addition to any powers, designations, preferences and relative, participating, optional or other rights, and any qualifications, limitations and restrictions, set forth in the Certificate of Incorporation):]

ANNEX B

Section 1—Section 13. No change.

[In witness whereof, the undersigned has caused this Certificate of Designations to be executed this__day of __, 2002.]

[The Nasdaq Stock Market, Inc.]

[By: _____]

[Name:]

[Title:]

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, Nasdaq included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in item IV below. Nasdaq has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

Nasdaq is restating its certificate of incorporation as a single document. Nasdaq's certificate of incorporation currently comprises the Restated Certificate of Incorporation dated June 27, 2000,[5] the Certificate of Designations, Preferences and Rights of Series A Cumulative Preferred Stock dated March 8, 2002, and the Certificate of Designations, Preferences and Rights of Series B Preferred Stock dated March 8, 2002,[6] and the Certificate of Amendment dated August 7, 2002.[7] It is necessary to make several non-substantive modifications to the wording of several of these documents, to allow their assembly into a single, internally consistent document with appropriate internal cross-references. Under Delaware corporate law, the integration of a certificate of incorporation into a single restated document, but without substantive amendment, is required to be approved by a corporation's board of directors but not its stockholders.[8] On January 29, 2003, the Nasdaq Board of Directors provided the approval required under Delaware law. Nasdaq will file the restated certificate of incorporation with the Secretary of State of the State of Delaware promptly after the submission of this proposed rule change to the Commission.

2. Statutory Basis

Nasdaq believes that the proposed rule change is consistent with the provisions of section 15A of the Act,[9] in general, and with section 15A(b)(2) of the Act,[10] in particular, in that it is consistent with Nasdaq being so organized and having the capacity to be able to carry out the purposes of the Act and to comply with and enforce compliance with the provisions of the Act.

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[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78S(b)(3)(A)(iii).

[4] 17 CFR 240.19b–4(f)(3).

[5] *See* Securities Exchange Act Release No. 42983 (June 26, 2000), 65 FR 41116 (July 3, 2000) (SR–NASD–00–27).

[6] *See* Securities Exchange Act Release No. 45638 (March 25, 2002), 67 FR 15268 (March 29, 2002) (SR–NASD–2002–36).

[7] *See* Securities Exchange Act Release No. 45135 (December 5, 2001), 66 FR 64327 (December 12, 2001) (SR–NASD–2001–34); Securities Exchange Act Release No. 46060 (June 11, 2002); 67 FR 41558 (June 18, 2002) (SR–NASD–2002–64).

[8] 8 Del. C. 245.

[9] 15 U.S.C. 78o–3.

[10] 15 U.S.C. 78o–(b)(2).

[8] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78S(b)(3)(A)(iii).

[4] 17 CFR 240.19b–4(f)(3).

B. Self-Regulatory Organization's Statement on Burden on Competition

Nasdaq does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act, as amended.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to section 19(b)(3)(A)(iii) of the Act[11] and subparagraph (f)(3) of rule 19b–4 thereunder,[12] because it is concerned solely with the administration of the self-regulatory organization. At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change in consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the NASD. All submissions should refer to file number SR-NASD–2003–76 and should be submitted by June 2, 2003.

[11] 15 U.S.C. 78s(b)(3)(A)(iii).

[12] 17 CFR 240.19b–4(f)(3).

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[13]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 03–11729 Filed 5–9–03; 8:45 am]

BILLING CODE 8010–01–P

DEPARTMENT OF STATE

Office of International Energy and Commodities Policy

[Public Notice 4362]

Finding of No Significant Impact and Summary Environmental Assessment: PMI Services North America, Inc. Pipeline in Cameron County, TX

The proposed action is to issue a Presidential Permit to PMI Services North America, Inc. ("PMI") to construct, connect, operate and maintain a 10⅝-inch outer diameter ("OD") pipeline to convey refined petroleum products and liquid petroleum gas ("LPG") across the border between Mexico and Cameron County, Texas. On behalf of PMI, URS Corporation of Austin, Texas, prepared a draft environmental assessment under the guidance and supervision of the Department of State (the "Department"). The Department placed a notice in the **Federal Register**, 67 FR 65168 (2002), regarding the availability for inspection of PMI's Presidential Permit application and the draft environmental assessment.

Numerous Federal and State agencies independently reviewed the draft environmental assessment. They include: the United States Section of the International Boundary and Water Commission, the Department of Transportation, the Department of the Interior, the U.S. Fish and Wildlife Service, the Environmental Protection Agency, the Federal Emergency Management Administration, the Department of Defense, the Department of Commerce, the Department of Homeland Security, the Council on Environmental Quality, the Texas Railroad Commission, the Texas Historical Commission, the Texas Parks and Wildlife Department, and the Texas Commission on Environmental Quality. Some members of the public also reviewed the draft environmental assessment and submitted comments to the Department.

Comments received from the Federal and State agencies and the public were responded to directly or by incorporation in the analysis contained in the revised draft environmental assessment and/or by developing measures to be undertaken by PMI to prevent or mitigate potentially adverse environmental impacts.

This summary environmental assessment, comments submitted by the Federal and State agencies and the public, responses to those comments, and the final environmental assessment, as amended, together constitute the "Final Environmental Assessment" of the proposed action by the Department.

[13] 17 CFR 200.30–3(a)(12).

Summary of the Environmental Assessment

I. The Proposed Project

The Department is charged with the issuance of Presidential Permits for the construction, connection, operation and maintenance of pipelines crossing international boundaries. *See* Executive Order 11423 of August 16, 1968, 33 FR 11741 (1968), as amended by Executive Order 12847 of May 17, 1993, 58 FR 29511 (1993). PMI has applied for a Presidential Permit to construct, connect, operate and maintain a bi-directional 10⅝-inch OD pipeline ("the MB Pipeline") at the U.S.-Mexico border. The MB Pipeline will connect the Transmontaigne terminal at the Port of Brownsville, Brownsville, Texas, with an existing Petróleos Mexicanos (PEMEX) pipeline in the state of Tamaulipas, Mexico. The U.S. portion of the project consists of approximately 17 miles of new pipeline from the Transmontaigne terminal to a location on the Rio Grande west of the unincorporated town of San Pedro, approximately 9 miles northwest of downtown Brownsville. The Mexican portion consists of approximately 11 miles of new pipeline from the Rio Grande crossing to the PEMEX pipeline at the town of Curva, Texas.

A significant portion of the route of the MB Pipeline will follow the Penn Octane ("POCC") pipeline right of way, for which the Department issued a finding of no significant impact ("FONSI") in 1999 (64 FR 42163 (1999)). The MB Pipeline follows the POCC right of way until it reaches the area of the Resaca de la Palma State Park west of Brownsville. Instead of following the POCC pipeline south to the US/Mexico border, the MB Pipeline angles west-southwest to cross the Rio Grande at a point approximately 4 miles upriver of the POCC crossing. The routing for the MB Pipeline has been designed to avoid, to the maximum extent possible, populated areas of Cameron County and sensitive environmental features, including existing State park lands and Federal nature preserve lands.

Initially, the MB Pipeline will transport less than 100,000 barrels of refined product (motor gasoline, diesel fuel or jet fuel) per day. It is designed, however, to transport up to 100,000 barrels of refined product and may later be used to transport LPG between the United States and Mexico.

II. Alternatives Considered

The Department considered several alternatives to the proposed MB Pipeline. These are described in detail in the final environmental assessment and in a summary fashion below:

Alternative 1: The "no action" alternative would involve continued transportation of refined products to the Brownsville terminal from Matamoros via tanker trucks. While this alternative would avoid the minor or temporary noise and air quality impacts associated with the construction of the MB Pipeline, truck transport is not the better alternative. Up to 50 tanker trucks of refined product might cross the border on a regular basis, resulting in (i) exhaust emissions of NO_X, CO, SO_2, VOC, and particulate matter that exceed that of pipeline transport; (ii) extra loads on busy highways and road bridges, (iii) transportation-related environmental degradation related to operation of a tanker truck fleet, including fueling and maintenance, and (iv) a continuous safety risk in a heavily urbanized area, including increased exposure to emissions, spills, and accidents during truck loading and unloading operations. If, as expected, the demand for cross-border shipments of product were to increase, the need for additional truck transport would result in greater impacts to the transportation infrastructure, public safety, and air quality. The added travel from existing tanker trucks would substantially increase the regional diesel exhaust burden, resulting in 15 to 37.5 tons per year of nitrogen oxides, and smaller amounts of other pollutants compared to the proposed MB Pipeline.

Alternative 2: A second alternative would involve the use of an existing 8⅝-inch OD POCC pipeline to transport refined products. POCC currently transports LPG through this pipeline, which could, however, be used to transport refined products. There is a second POCC pipeline which has a 6⅝-inch outer diameter and which runs parallel to the 8⅝-inch pipeline; this smaller pipeline is not currently being used. Prior to deciding to proceed with its application for authority to construct its own 10⅝-inch OD pipeline, PMI entered into negotiations with POCC on the use of its 8⅝-inch OD pipelines. The parties, however, were unable to reach agreement on a framework for completing due diligence and negotiating a definitive contract.

In addition, PMI has determined that a 10⅝-inch OD pipeline is consistent with and allows for anticipated growth in demand for pipeline transportation in this system. Overall PMI anticipates a need for increased trans-border commerce, to provide better alternatives to manage Mexican product commercial surpluses and shortfalls. In fact, replacement of truck transport with installation of efficient transportation systems such as the proposed MB Pipeline will likely serve to accelerate the increase in trans-border commerce. Thus, the Department has concluded that utilization of the POCC pipeline is not a viable alternative because (i) the parties were not able to reach agreement on commercial terms on its use, and (ii) it would not fulfill the anticipated long-term needs for a more efficient and effective high-volume transportation system.

Other Alternatives: In 1999, the Department issued a FONSI for the POCC pipeline. In that FONSI, the Department considered three alternate routes for the proposed project: Route A ran to the east of Brownsville and Matamoros; Route B ran though downtown Brownsville directly into Matamoros; and Route C ran through the northern and western suburban portions of Brownsville. Each of these alternatives were set aside. Route A was set aside on environmental grounds; Routes B and C were set aside due to their proximity to residences. For these same reasons, these alternate routes are being set aside for the MB Pipeline.

III. Summary of the Assessment of the Potential Environmental Impacts Resulting From the Proposed Action

A. Impacts of Construction and Normal Operation of the Pipeline

i. Environmental Impacts: The final environmental assessment contains detailed information on the environmental effects of the MB Pipeline and the alternatives outlined above. In particular, the final environmental assessment analyzed the impacts of construction and normal operation of the pipeline on air and sound quality, topography, water resources, soils, mineral resources, biological resources, land use, transportation, socioeconomic resources, and recreation and cultural resources. Based on the detailed environmental assessment and information developed by the Department and other Federal and State agencies in the process of reviewing the draft environmental assessment, the Department concluded that there would be (i) no impact to or on, among others, geology and topography, ground water, the Heritage status of the Rio Grande, wetlands, mineral resources, and recreation resources; (ii) insignificant, minor or temporary impact to or on, among others, noise, surface waters and canals, soils, protected biological resources, transportation, and land use; and (iii) net benefits to air quality through the elimination of exhaust emissions of CO, NO_X, VOCs, and particulate matter that are generated when tankers move fuel across the border. A more detailed analysis of each of these factors and their cumulative effects is provided in the final environmental assessment, as amended, to address issues raised by Federal and State agencies and the public.

ii. Environmental Justice/Socio-Economic Concerns: The environmental justice assessment for this project analyzed the impact of the potential human, health, socioeconomic, and environmental effects of the MB Pipeline on minority and low-income populations. The population of Cameron County is heavily minority, with outlying, less dense population areas of the county having higher percentages of minorities than the closer-in suburban areas to Brownsville. To the extent that minority and low-income populations reside in the vicinity of the MB Pipeline, they risk exposure to the insignificant, temporary and/or minor potential human health and environmental effects that are discussed in detail in the final environmental assessment and summarized above. These include temporary, minor construction related noise and threats to human safety due to fire or accidental product release. These risks, however, must be weighed against the benefits that would result from the removal of tanker trucks as the primary mode of refined product transportation. The removal of tanker trucks from roads, particularly border crossings, will increase safety at these highly sensitive locations and route refined products away from more populous areas of town while in transit. Also, emissions of hazardous air pollutants during loading operations within the Brownsville Matamoros airshed will be reduced. It is also worth noting that due to the overall makeup of the Brownsville metropolitan area, all of the alternatives for consideration, including the no-action alternative of tanker truck transport of gasoline and other refined products, will impact primarily low-income and minority

populations. There is no evidence to suggest that minority or low-income populations will experience disproportionate adverse impacts as a result of the construction and operation of the MB Pipeline. To the contrary, since less than 10% of the MB Pipeline will traverse areas where human health and safety could be adversely affected as compared to 50% in the case of truck transport, the MB Pipeline will result in lower risks to the health and safety of minority and low-income populations.

B. Impacts Due to Corrosion of the Pipeline or Damage From an Outside Agent

i. Impacts on Human Health and Safety: Corrosion of the MB Pipeline or damage to it from an outside agent may result in the release of hazardous liquids. Potential human health and safety impacts that may result from such a release include (i) fire or explosion from LPG or refined products, (ii) short-term exposure to hazardous vapors resulting from a refined product or LPG release, (iii) long-term exposure to hazardous vapors resulting from contaminated soils, ground water, or surface water following a release of refined products, and (iv) exposure to toxic constituents of refined product from ingestion.

The potential risks to human health and safety are most concentrated in areas where the MB Pipeline is close to residences, businesses, or transportation corridors. Only three small portions of the MB Pipeline will be located in areas where a pipeline accident could result in risk to nearby residences and businesses. This represents approximately 1¼ miles, or less than 7% of the total pipeline length. These also are the areas—along FM 1847, U.S. 77/83, and U.S. 281—where the greatest potential impact to health and safety of motorists is present.

Any mode of transporting hazardous liquids shares these potential safety impacts. Since accident rates for pipelines on a product mile basis are lower in magnitude (40 to 300 times) than those of rail or tanker transport, the U.S. Department of Transportation considers pipeline transport to be the safest transportation for refined product. As previously discussed, since the MB Pipeline will traverse less areas where impacts to human health and safety are likely to result from a major accident than the no-action alternative, the MB Pipeline should result in substantially lower risks to human health and safety than the "no action" alternative.

Expanding on the comparison of the project with the alternatives: (a) On a product mile transport basis, DOT statistics show that pipeline transport is safer than tanker truck transport by orders of magnitude; (B) less than 10% of the pipeline route will be in areas representing a threat to human health and safety, as indicated by proximity of residences or businesses which may be impacted by an accidental release; however more than 50% of the route used by tanker trucks would be in such areas, because of the natural development patterns along public roadways in urban settings. These two factors combine to make pipeline transport of product much safer than the "no action" alternative. Moreover, at the level where there is sufficient data to perform risk-analyses, it does not matter from a human health and safety standpoint whether product is transported in the MB Pipeline or in the POCC pipeline.

The MB Pipeline project has incorporated many safety features to address human health and safety concerns. These include specifications and maintenance practices to reduce the probability of outside force (third-party) damage, corrosion, or poor construction practices resulting in a release of product. Drilling or boring below waterways reduces the probability that a pipeline release could contaminate valuable water resources. In addition, leak detection systems coupled with 4 remotely-operated valves provide a means for the operator to rapidly respond to any accidents by shutting down the pipeline and isolating the leaky section.

ii. Environmental Impacts: The air quality impacts from an accidental product release from the MB Pipeline would be short term and would not constitute a significant impact. Brownsville is not close to non-attainment for any of the National Ambient Air Quality Standards, and while a major release could result in an increase in ozone formation, environmental engineers advise it is not likely that even this condition would cause non-attainment conditions.

Groundwater contamination from an accidental release is more likely to occur due to a slow refined products leak that goes undetected for a substantial portion of time, so that product might transport through the soil downward to the local aquifer system. Proper cleanup of contaminated soil should prevent long-term impacts to groundwater. The transportation of soil downward to the local aquifer system, however, may also result in contamination of soils in the vadose zone, and stress local vegetation, a symptom that would be detected during the regular pipeline patrols. If such problems were observed, investigations could be commenced in the vicinity of the pipeline where the release is occurring, and remediation, including soil cleanup, could once again proceed. Given the slow transmission capability of the soil types surrounding the MB Pipeline, it is unlikely that substantial volumes of refined product would reach the local aquifer prior to detection and remediation.

Looking at the potential impacts to drinking water from an accidental release, the proposed MB Pipeline routing crosses the Rio Grande substantially upriver of the POCC crossing. This would place it further away from the diversion for the Olmito Water Supply, and from the Brownsville Diversion Point. This distance would be critical in an accident scenario because of the additional time it would take for product to travel downstream to those diversion points.

Most of the MB Pipeline right of way traverses areas characterized either by sparse grassy areas or by agricultural cultivation. An accidental release of product in either area would result only in minor impacts to biological resources. Emergency response and soil remediation should ensure no long-term impacts to the local vegetation. No threatened or endangered vegetative species were identified which might be critically impacted from a release.

In conclusion, the Department finds that impacts on the environment from an accidental release would not be significant.

iii. Probable Adverse Environmental Effects Which Cannot Be Avoided Due to Associated Cumulative Effects: The cumulative effects from an accidental release of product are discussed in detail in the final environmental assessment. In short, there are two important factors to take into consideration with respect to cumulative impacts analysis on human health and safety for the MB Pipeline. The first is the cumulative effect of risks to the MB pipeline, and correspondingly to those living or working near to the MB Pipeline, due to potential accidents on other pipelines in the vicinity. This particularly applies to the POCC pipeline, which shares a common right-of-way for approximately two thirds of the MB Pipeline route. The second is the cumulative effect of the increased overall risk to surrounding populations from an industrial accident occurring along the right-of-way that results in the release of hazardous liquids from the MB Pipeline, industrial sources or both.

A study of U.S. DOT databases has not revealed any cases where a belowground pipeline has had an accidental release due to the effects of an accidental release, fire, or explosion of a nearby buried pipeline. There is at least one known event of an accidental fire on a pipeline causing rupture of a fixture (valve rack) on an adjacent pipeline. This distinction is important, because except for the metering station there are only two aboveground fixtures (valves) along the MB Pipeline from the Transmontaigne Terminal to the Rio Grande, and the metering station is not positioned near to the existing POCC pipeline. Therefore, only a very small portion of the proposed MB Pipeline is susceptible to damage from an accident on the POCC line.

There is insufficient incident data on pipelines in the United States to numerically analyze the cumulative risk of two pipelines occupying the same corridor. However, there remains the presumption that it is possible for a catastrophic event on one pipeline to cause damage to a nearby pipeline. If the MB Pipeline route is utilized, it would result in two pipelines running parallel for approximately 60–70% of the length of the MB Pipeline; alternatively, if the 8⅝ inch OD POCC pipeline alternative is utilized, it would result in two pipelines (the 8⅝ and the 6⅝ POCC lines) running parallel for nearly the entire length of the POCC pipelines. Therefore, there is an unquantifiable (and from an engineering perspective, insignificant) reduction in the risk of "cumulative impacts" from reducing the amount of ROW that PMI product transport will share with POCC LPG transport if the MB Pipeline is used.

Finally, these potential cumulative risks are smaller in magnitude than the overall reduction in risk that would accrue from transporting the same volume of hazardous liquids in pipelines rather than in tanker trucks.

iv. Possible Conflicts Between the MB Pipeline and the Objectives of Federal, Regional, State and Local Use Plans, Policies and Controls for the Area Concerned: The MB Pipeline supports Brownsville's continued development of the Port of Brownsville for industrial uses, and removes hazardous liquids transport from international bridges and populated areas. PMI will be responsible for ensuring that all applicable environmental and construction permits are obtained prior to the implementation of any portion of this project.

IV. Prevention and Mitigation Measures

In order to control risks associated with outside force damage, corrosion and leaks, PMI has undertaken or will undertake the prevention and mitigation measures listed below. PMI has or will:

- Bury the pipeline a minimum of 3 feet below grade;
- Place and maintain prominent warning markers at all crossings and so that two are always in line-of-sight along the pipeline ROW;
- Require the pipeline operator to participate in all applicable one-call notification systems;
- Conduct regular ROW drive-overs or over flights in order to identify potential pipeline encroachments and unauthorized activities;
- Ensure that a PMI representative is physically present anytime there is construction activity within the pipeline ROW;
- Assign, on a permanent basis, a pipeline operator employee to headquarter in the area;
- Require the pipeline operator to participate in on-going public education initiatives stressing pipeline safety and damage prevention;
- Use factory-applied fusion-bonded epoxy coating on all pipes;
- Use field-applied coating on all welded joints;
- Conduct biennial surveys to determine effectiveness of corrosion control;
- Use a certified impressed current cathodic protection system;
- Use a heavy wall pipe in lieu of cased crossings;
- Use high-resolution internal inspection tools (*i.e.*, pigs) at least as frequently as required by 49 CFR 195;
- X-ray all girth welds completely;
- Use pipe manufactured at an ISO 9000-certified mill;
- Hydro test pipe in place to 125% of its maximum allowable operating pressure for 8 hours;
- Require that material specification, design, and construction meet or exceed all applicable standards and codes established by API, ASME, DOT/OPS, and TRC;
- Perform comprehensive construction and installation inspection;
- Provide continuous 24-hour monitoring of the MB Pipeline from a dispatch and control center;
- Use computers to identify significant operational deviations, and to set off appropriate alarms;
- Remotely monitor pressure at the Rio Grande River and always be capable of remotely blocking valve sites along the MB Pipeline;
- Provide on-going training and performance certification of employees responsible for pipeline operations and maintenance, as required by the Operator Qualification regulation of DOT;
- Install a fiber optic communications cable in the ditch to provide rapid and reliable transmission of signals between the pipeline equipment and the control room;
- Establish block valve spacing of less than 7.5 miles through industrial, commercial, or residential areas, as recommended under ASME/ANSI B31.4 standards for transport of LPG; and
- Install check valves with each block valve set to provide auto blockage of reverse flow prior to LPG transport.

V. Conclusion: Analysis of the Environmental Assessment Submitted by the Sponsor

On the basis of the final environmental assessment, the Department's independent review of that assessment, information developed during the review of the application and draft environmental assessment, comments received by the Department from Federal and State agencies and the public, and measures that PMI has or is prepared to undertake to mitigate or prevent potentially adverse environmental impacts, the Department has concluded that issuance of a Presidential Permit authorizing construction of the proposed MB Pipeline would not have a significant impact on the quality of the human environment within the United States. Accordingly, a Finding of No Significant Impact is adopted and an environmental impact statement will not be prepared.

The Final Environmental Assessment addressing this action is on file and may be reviewed by interested parties at the Department of State, 2200 C Street, NW., Room 3535, Washington, DC 20520 (Attn: Mr. Pedro Erviti, Tel. 202–647–1291).

Dated: May 6, 2003.

Stephen J. Gallogly,

Director, Office of Energy and Commodity Policy, Bureau of Economic and Business Affairs, Department of State.

[FR Doc. 03–11732 Filed 5–9–03; 8:45 am]

BILLING CODE 4710–07–P

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

Notice With Respect to List of Countries Denying Fair Market Opportunities for Government-Funded Airport Construction Projects

AGENCY: Office of the United States Trade Representative.

ACTION: Notice with respect to a list of countries denying fair market opportunities for products and suppliers

of the United States in airport construction procurements.

SUMMARY: Pursuant to section 533 of the Airport and Airway Improvement Act of 1982, as amended (49 U.S.C. 50104), the United States Trade Representative ("USTR") has determined not to include any countries on the list of countries that deny fair market opportunities for U.S. products, suppliers, or bidders in foreign government-funded airport construction projects.

DATES: Effective May 1, 2003.

ADDRESSES: Office of the United States Trade Representative, 600 17th Street, NW., Washington, DC 20508.

FOR FURTHER INFORMATION CONTACT: Mélida Hodgson, Associate General Counsel, (202) 395–3582 or Jean Heilman Grier, Senior Procurement Negotiator, (202) 395–5097.

SUPPLEMENTARY INFORMATION: Section 533 of the Airport and Airway Improvement Act of 1982, as amended by section 115 of the Airport and Airway Safety and Capacity Expansion Act of 1987, Pub. L. 100–223, (codified at 49 U.S.C. 50104) ("the Act"), requires USTR to decide by May 1, 2003, whether any foreign countries have denied fair market opportunities to U.S. products, suppliers, or bidders in connection with airport construction projects of $500,000 or more that are funded in whole or in part by the governments of such countries. The list of such countries must be published in the **Federal Register**. For the purposes of the Act, USTR has decided not to include any countries on the list of countries that deny fair market opportunities for U.S. products, suppliers, or bidders in foreign government-funded airport construction projects.

Robert B. Zoellick,

United States Trade Representative.

[FR Doc. 03–11733 Filed 5–9–03; 8:45 am]

BILLING CODE 3190–01–M

DEPARTMENT OF THE TREASURY

Submission for OMB Review; Comment Request

May 5, 2003.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 11000, 1750 Pennsylvania Avenue, NW., Washington, DC 20220.

DATES: Written comments should be received on or before June 11, 2003 to be assured of consideration.

Internal Revenue Service (IRS)

OMB Number: 1545–0195.
Form Number: IRS Form 5213.
Type of Review: Revision.
Title: Election to Postpone Determination as to Whether the Presumption Applies That an Activity is Engaged in for Profit.
Description: This form is used by individuals, partnerships, estates, trusts, and S corporations to make an election to postpone an IRS determination as to whether an activity is engaged in for profit for 5 years (7 years for breeding, training, showing, or racing horses). The data is used to verify eligibility to make the election.
Respondents: Business or other for-profit, Individuals or households.
Estimated Number of Respondents/ Recordkeepers: 10,730.
Estimated Burden Hours Per Respondent/Recordkeeper:
Recordkeeping—6 min.
Learning about the law or the form—10 min.
Preparing the form—9 min.
Copying, assembling, and sending the form to the IRS—20 min.
Frequency of Response: On occasion.
Estimated Total Reporting/ Recordkeeping Burden: 8,370 hours.
OMB Number: 1545–0865.
Form Number: IRS Form 8264.
Type of Review: Revision.
Title: Application for Registration of a Tax Shelter.
Description: Organizers of certain tax shelters are required to register them with the IRS using Form 8264. Other persons may have to register the tax shelter if the organizer doesn't. We use the information to give the tax shelter a registration number. Sellers of interests in the tax shelter furnish the number to investors who report the number on their tax returns.
Respondents: Business or other for-profit, Individuals or households.
Estimated Number of Respondents/ Recordkeepers: 350.
Estimated Burden Hours Per Respondent/Recordkeeper:
Recordkeeping—33 hr., 14 min.
Learning about the law or the form—3 hr., 34 min.
Preparing, copying, assembling, and sending the form to the IRS—4 hr., 16 min.
Frequency of Response: On occasion.
Estimated Total Reporting/ Recordkeeping Burden: 14,382 hours.
Clearance Officer: Glenn Kirkland (202) 622–3428, Internal Revenue Service, Room 6411–03, 1111 Constitution Avenue, NW., Washington, DC 20224.
OMB Reviewer: Joseph F. Lackey, Jr. (202) 395–7316, Office of Management and Budget, Room 10235, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,

Departmental Reports, Management Officer.

[FR Doc. 03–11690 Filed 5–9–03; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Alcohol and Tobacco Tax and Trade Bureau

Proposed Collection; Comment Request

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Pub. L. 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the Alcohol and Tobacco Tax and Trade Bureau, Department of the Treasury, is soliciting comments concerning the Notices Relating to Payment of Firearms and Ammunition Excise Tax.

DATES: Written comments should be received on or before July 11, 2003, to be assured of consideration.

ADDRESSES: Direct all written comments to Linda Barnes, Alcohol and Tobacco Tax and Trade Bureau, 650 Massachusetts Avenue, NW., Washington, DC 20226, telephone (202) 927–8930.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form(s) and instructions should be directed to Kristy Colon, Alcohol and Tobacco Tax and Trade Bureau, Regulations and Procedures Division, 650 Massachusetts Avenue, NW., Washington, DC 20226, telephone (202) 927–8210.

SUPPLEMENTARY INFORMATION:

Title: Notices Relating to Payment of Firearms and Ammunition Excise Tax.
OMB Number: 1513–0097.
Abstract: Excise taxes are collected on the sale or use of firearms and ammunition by firearms or ammunition manufacturers, importers or producers. Taxpayers who elect to pay excise taxes by electronic fund transfer must furnish a written notice upon election and discontinuance. The tax revenue will be protected. The record retention requirement for this information collection is 3 years.
Current Actions: There are no changes to this information collection and it is being submitted for extension purposes only.
Type of Review: Extension.
Affected Public: Business or other for-profit.
Estimated Number of Respondents: 10.
Estimated Total Annual Burden Hours: 1 hour.
Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Dated: May 6, 2003.

Theresa McCarthy,

Deputy Chief, Regulations and Procedures Division.

[FR Doc. 03–11709 Filed 5–9–03; 8:45 am]

BILLING CODE 4810–31–P

DEPARTMENT OF THE TREASURY

Alcohol and Tobacco Tax and Trade Bureau

Proposed Collection; Comment Request

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Pub. L. 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the Alcohol and Tobacco Tax and Trade Bureau, Department of the Treasury, is soliciting comments concerning the Applications, Notices, and Permits Relative to Importation and Exportation of Distilled Spirits, Wine and Beer, Including Puerto Rico and Virgin Islands.

DATES: Written comments should be received on or before July 11, 2003, to be assured of consideration.

ADDRESSES: Direct all written comments to Linda Barnes, Alcohol and Tobacco Tax and Trade Bureau, 650 Massachusetts Avenue, NW., Washington, DC 20226, telephone (202) 927–8930.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form(s) and instructions should be directed to Kristy Colon, Alcohol and Tobacco Tax and Trade Bureau, Regulations and Procedures Division, 650 Massachusetts Avenue, NW., Washington, DC 20226, (202) 927–8210.

SUPPLEMENTARY INFORMATION:

Title: Applications, Notices and Permits Relative to Importation and Exportation of Distilled Spirits, Wine and Beer, Including Puerto Rico and Virgin Islands.
OMB Number: 1513–0100.
Abstract: Beverage alcohol, industrial alcohol, beer and wine are taxed when imported. The taxes on these commodities coming from the Virgin Islands and Puerto Rico are largely returned to these insular possessions. Exports are mainly tax free. These sections ensure that proper taxes are collected and returned according to the law. The record retention requirement for this information collection is 3 years.
Current Actions: There are no changes to this information collection and it is being submitted for extension purposes only.
Type of Review: Extension.
Affected Public: Business or other for-profit.
Estimated Number of Respondents: 20.
Estimated Total Annual Burden Hours: 180.
Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Dated: May 6, 2003.

Theresa McCarthy,

Deputy Chief, Regulations and Procedures Division.

[FR Doc. 03–11710 Filed 5–9–03; 8:45 am]

BILLING CODE 4810–31–P

DEPARTMENT OF THE TREASURY

Alcohol and Tobacco Tax and Trade Bureau

Proposed Collection; Comment Request

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Pub. L. 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the Alcohol and Tobacco Tax and Trade Bureau, Department of the Treasury, is soliciting comments concerning the Information Collected in Support of Small Producer's Wine Tax Credit.

DATES: Written comments should be received on or before July 11, 2003, to be assured of consideration.

ADDRESSES: Direct all written comments to Linda Barnes, Alcohol and Tobacco Tax and Trade Bureau, 650 Massachusetts Avenue, NW., Washington, DC 20226, telephone (202) 927–8930.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form(s) and instructions should be directed to Kristy Colon, Alcohol and Tobacco Tax and Trade Bureau, Regulations and Procedures Division, 650 Massachusetts Avenue, NW., Washington, DC 20226, telephone (202) 927–8210.

SUPPLEMENTARY INFORMATION:

Title: Information Collected in Support of Small Producer's Wine tax Credit.

OMB Number: 1513–0104.

Recordkeeping Requirement ID Number: TTB REC 5120/11.

Abstract: TTB is responsible for the collection of the excise tax on wine. Certain small wine producers are eligible for a credit which may be taken to reduce the tax they pay on wines that they remove from their own premises. The record retention period for all wine premises records is 3 years.

Current Actions: There are no changes to this information collection and it is being submitted for extension purposes only.

Type of Review: Extension.

Affected Public: Business or other for-profit.

Estimated Number of Respondents: 280.

Estimated Total Annual Burden Hours: 1.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Dated: May 6, 2003.

Theresa McCarthy,

Deputy Chief, Regulations and Procedures Division.

[FR Doc. 03–11711 Filed 5–9–03; 8:45 am]

BILLING CODE 4810–31–P

DEPARTMENT OF THE TREASURY

Alcohol and Tobacco Tax and Trade Bureau

Proposed Collection; Comment Request

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Pub. L. 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the Alcohol and Tobacco Tax and Trade Bureau, Department of the Treasury, is soliciting comments concerning the 2000 Floor Stocks Tax Return (Cigarettes) and Recordkeeping Requirements.

DATES: Written comments should be received on or before July 11, 2003, to be assured of consideration.

ADDRESSES: Direct all written comments to Linda Barnes, Alcohol and Tobacco Tax and Trade Bureau, 650 Massachusetts Avenue, NW., Washington, DC 20226, telephone (202) 927–8930.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form(s) and instructions should be directed to Kristy Colon, Regulations and Procedures Division, Alcohol and Tobacco Tax and Trade Bureau, 650 Massachusetts Avenue, NW., Washington, DC 20226, telephone (202) 927–8210.

SUPPLEMENTARY INFORMATION:

Title: 2000 Floor Stocks Tax Return (Cigarettes) and Recordkeeping Requirements.

OMB Number: 1513–0105.

Form Number: TTB F 5000.28T.

Abstract: A floor stocks tax has been imposed on cigarettes. Liability for the floor stocks tax is determined on the basis of an inventory of cigarettes held for sale. All persons who hold for sale any cigarettes on January 1, 2000 must take an inventory. Each person will be required to make either a record of the physical inventory or a book or record inventory supported by the appropriate source records.

Current Actions: This information collection is being submitted for an extension. The only change is a reduction in the number of respondents.

Type of Review: Extension.

Affected Public: Business or other for-profit.

Estimated Number of Respondents: 100.

Estimated Total Annual Burden Hours: 1 hour.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Dated: May 6, 2003.

Theresa McCarthy,

Deputy Chief, Regulations and Procedures Division.

[FR Doc. 03–11712 Filed 5–9–03; 8:45 am]

BILLING CODE 4810–31–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Electronic Tax Administration Advisory Committee (ETAAC)

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of open meeting.

SUMMARY: In 1998 the Internal Revenue Service (IRS) established the Electronic Tax Administration Advisory Committee (ETAAC). The primary purpose of ETAAC is to provide an organized public forum for discussion of electronic tax administration issues in support of the overriding goal that paperless filing should be the preferred and most convenient method of filing tax and information returns. ETAAC offers constructive observations about current or proposed policies, programs, and procedures, and suggests improvements. Listed is a summary of the agenda along with the planned discussion topics.

Summarized Agenda

9 a.m. Meeting Opens
12:30 p.m. Meeting Adjourns

The planned discussion topics are:

(1) Free File Update
(2) Filing Season Update
(3) Tax Exempt and Government Entities Operating Division Update
(4) Preview of Report to Congress

Note: Last-minute changes to these topics are possible and could prevent advance notice.

DATES: There will be a meeting of ETAAC on Tuesday, May 20, 2003. This meeting will be open to the public, and will be in a room that accommodates approximately 40 people, including members of ETAAC and IRS officials. Seats are available to members of the public on a first-come, first-served basis.

ADDRESSES: The meeting will be held in the One Washington Circle Hotel, Crescent Conference Room, One Washington Circle, NW., Washington, DC 20037.

FOR FURTHER INFORMATION CONTACT: To get on the access list to attend this meeting, to have a copy of the agenda faxed to you or to receive general information about ETAAC, contact Kim Logan at (202) 283–1947 by May 15, 2003. Notification of intent should include your name, organization and telephone number. If you leave this information for Ms. Logan in a voice-mail message, please spell out all names. A draft of the agenda will be available via facsimile transmission the week prior to the meeting. Please call Ms. Logan on or after May 13, 2003 to have a copy of the agenda faxed to you. Please note that a draft agenda will not be available until that date.

SUPPLEMENTARY INFORMATION: ETAAC reports to the Director, Electronic Tax Administration, who is the executive responsible for the electronic tax administration program. Increasing participation by external stakeholders in the development and implementation of the Internal Revenue Service's (IRS's) strategy for electronic tax administration will help achieve the goal that paperless filing should be the preferred and most convenient method of filing tax and information returns.

ETAAC members are not paid for their time or services, but consistent with Federal regulations, they are reimbursed for their travel and lodging expenses to attend the public meetings, working sessions, and an orientation each year.

Dated: May 6, 2003.

Susan L. Smoter,

Acting Director, Electronic Tax Administration.

[FR Doc. 03–11766 Filed 5–9–03; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Open Meeting of the Ad Hoc Issue Committee of the Taxpayer Advocacy Panel

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice.

SUMMARY: An open meeting of the Ad Hoc Issue Committee of the Taxpayer Advocacy Panel will be conducted in Edwardsville, Illinois.

DATES: The meeting will be held Friday, June 6, 2003 and Saturday, June 7, 2003.

FOR FURTHER INFORMATION CONTACT: Anne Gruber at 1–888–912–1227, or 206–220–6095.

SUPPLEMENTARY INFORMATION: Notice is hereby given pursuant to Section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. (1988) that an open meeting of the Ad Hoc Issue Committee of the Taxpayer Advocacy Panel will be held Friday, June 6, 2003 from 8:30 a.m. c.d.t. to 4:30 p.m. c.d.t. and Saturday, June 7, 2003 from 8:30 a.m. c.d.t. to 12:30 p.m. c.d.t. Both meetings will be held at B. Barnard Birger Hall on the campus of Southern Illinois University Edwardsville. The public is invited to make oral comments on Friday, June 6 from 1 p.m. c.d.t. to 1:30 p.m. c.d.t. Individual comments will be limited to 5 minutes. If you would like to have the TAP consider a written statement, please call 1–888–912–1227 or 206–220–6095, or write Anne Gruber, TAP Office, 915 2nd Ave, Seattle, WA 98174. Due to limited time and space, notification of intent to participate in the meeting must be made in advance with Anne Gruber. Ms. Gruber can be reached at 1–888–912–1227 or 206–220–6095.

The agenda will include the following: Various IRS issues.

Note: Last minute changes to the agenda are possible and could prevent effective advance notice.

Dated: May 6, 2003.

Tersheia D. Carter,

Acting Director, Taxpayer Advocacy Panel.

[FR Doc. 03–11767 Filed 5–9–03; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Open Meeting of the Area 5 Taxpayer Advocacy Panel (Including the States of Iowa, Kansas, Minnesota, Missouri, Nebraska, North Dakota, Oklahoma, South Dakota, and Texas)

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice.

SUMMARY: An open meeting of the Area 5 Taxpayer Advocacy Panel will be conducted (via teleconference).

DATES: The meeting will be held Monday, June 9, 2003, at 3 p.m., Central Standard Time.

FOR FURTHER INFORMATION CONTACT: Mary Ann Delzer at 1–888–912–1227, or (414) 297–1604.

SUPPLEMENTARY INFORMATION: Notice is hereby given pursuant to Section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. (1988) that an open meeting of the Area 5 Taxpayer Advocacy Panel will be held Monday, June 9, 2003, from 3 to 4 p.m. Central standard time via a telephone conference call. The Taxpayer Advocacy Panel is soliciting public comment, ideas, and suggestions on improving customer service at the Internal Revenue Service. You can submit written comments to the panel by faxing to (414) 297–1623, or by mail to Taxpayer Advocacy Panel, Stop1006MIL, 310 West Wisconsin Avenue, Milwaukee, WI 53203–2221. Public comments will also be welcome during the meeting. Please contact Mary Ann Delzer at 1–888–912–1227 or (414) 297–1604 for more information.

The agenda will include the following: Various IRS issues.

Note: Last minute changes to the agenda are possible and could prevent effective advance notice.

Dated: May 6, 2003.

Tersheia D. Carter,

Acting Director, Taxpayer Advocacy Panel.

[FR Doc. 03–11768 Filed 5–9–03; 8:45 am]

BILLING CODE 4830–01–U

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Open Meeting of the Ad Hoc Issue Committee of the Taxpayer Advocacy Panel

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice.

SUMMARY: An open meeting of the Ad Hoc Issue Committee of the Taxpayer Advocacy Panel will be conducted (via teleconference).

DATES: The meeting will be held Monday, June 2, 2003.

FOR FURTHER INFORMATION CONTACT: Anne Gruber at 1–888–912–1227, or 206–220–6095.

SUPPLEMENTARY INFORMATION: Notice is hereby given pursuant to Section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. (1988) that an open meeting of the Ad Hoc Issue Committee of the Taxpayer Advocacy Panel will be held Monday, June 2, 2003 from 1 p.m. p.s.t. to 3 p.m. p.s.t. via a telephone conference call. The public is invited to make oral

comments. Individual comments will be limited to 5 minutes. If you would like to have the TAP consider a written statement, please call 1–888–912–1227 or 206–220–6095, or write Anne Gruber, TAP Office, 915 2nd Ave., Seattle, WA 98174. Due to limited conference lines, notification of intent to participate in the telephone conference call meeting must be made in advance with Anne Gruber. Ms. Gruber can be reached at 1–888–912–1227 or 206–220–6095.

The agenda will include the following: Various IRS issues.

Note: Last minute changes to the agenda are possible and could prevent effective advance notice.

Dated: May 6, 2003.

Tersheia D. Carter,

Acting Director, Taxpayer Advocacy Panel.

[FR Doc. 03–11769 Filed 5–9–03; 8:45 am]

BILLING CODE 4830–01–U

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Open Meeting of the Area 4 Taxpayer Advocacy Panel (including the States of Illinois, Indiana, Kentucky, Michigan, Ohio, West Virginia, and Wisconsin)

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice.

SUMMARY: An open meeting of the Area 4 Taxpayer Advocacy Panel will be conducted (via teleconference).

DATES: The meeting will be held Wednesday, June 4, 2003.

FOR FURTHER INFORMATION CONTACT: Mary Ann Delzer at 1–888–912–1227, or (414) 297–1604.

SUPPLEMENTARY INFORMATION: Notice is hereby given pursuant to Section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. (1988) that an open meeting of the Area 4 Taxpayer Advocacy Panel will be held Wednesday, June 4, 2003, from 11 a.m. central time to Noon Central daylight time via a telephone conference call. The Taxpayer Advocacy Panel is soliciting public comment, ideas, and suggestions on improving customer service at the Internal Revenue Service. You can submit written comments to the panel by faxing to (414) 297–1623, or by mail to Taxpayer Advocacy Panel, Stop 1006MIL, 310 West Wisconsin Avenue, Milwaukee, WI 53203–2221. Public comments will also be welcome during the meeting. Please contact Mary Ann Delzer at 1–888–912–1227 or (414) 297–1604 for dial-in information.

The agenda will include the following: Various IRS issues

Note: Last minute changes to the agenda are possible and could prevent effective advance notice.

Dated: May 6, 2003.

Tersheia D. Carter,

Acting Director, Taxpayer Advocacy Panel.

[FR Doc. 03–11770 Filed 5–9–03; 8:45 am]

BILLING CODE 4830–01–U

DEPARTMENT OF THE TREASURY

United States Mint

Deadline Extension for CCAC Membership Applications

AGENCY: United States Mint, Treasury.

ACTION: Deadline extension for CCAC membership applications.

SUMMARY: The United States Mint is accepting applications for appointment to the Citizens Coinage Advisory Committee (CCAC) for two positions—an individual who can represent the interests of the general public and an individual specially qualified to serve on the Committee by virtue of his or her education, training, or experience in American history.

The deadline for submitting applications for appointment to the CCAC has been extended from May 9, 2003, to May 23, 2003.

Application Deadline: May 23, 2003.

Receipt of Applications: Any member of the public wishing to be considered for appointment to the Committee should submit a resume or letter describing his or her qualifications for membership by fax to 202–756–6539, or by mail to the United States Mint, 801 9th Street, NW., Washington, DC 20001, Attn: CCAC Membership. Submissions must be postmarked no later than May 23, 2003.

Dated: May 6, 2003.

Henrietta Holsman Fore,

Director, United States Mint.

[FR Doc. 03–11693 Filed 5–9–03; 8:45 am]

BILLING CODE 4810–37–U

Federal Register

Monday,
May 12, 2003

Part II

Environmental Protection Agency

40 CFR Parts 52 and 81

Air Quality Implementation Plans—State of Missouri, St. Louis Area, and State of Illinois; Final Rules

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[MO 181–1181; FRL–7494–6]

Approval and Promulgation of Implementation Plans; State of Missouri

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is announcing approval of a revision to the state implementation plan (SIP) for the vehicle inspection and maintenance (I/M) program operating in the Missouri portion of the St. Louis, Missouri, ozone nonattainment area. Missouri made several amendments to the state-adopted I/M rule to improve performance of the program and requested that the SIP be revised. The effect of this action ensures Federal enforceability of the state air program rules and maintains consistency between the state-adopted rules and the approved SIP. EPA proposed approval of this rule in the **Federal Register** on January 30, 2003 (68 FR 4842). This final action is being published to meet our statutory obligation under the Clean Air Act (CAA or the Act).

DATES: This final rule is effective May 12, 2003.

ADDRESSES: A copy of the state submittal is available at the following address for inspection during normal business hours: EPA, Region 7, Air Planning and Development Branch, 901 North 5th Street, Kansas City, Kansas 66101.

FOR FURTHER INFORMATION CONTACT: Leland Daniels at (913) 551–7651.

SUPPLEMENTARY INFORMATION: Throughout this document whenever "we," "us," or "our" is used, we mean EPA. This section provides additional information by addressing the following questions:

What is a SIP?
What is the Federal approval process for a SIP?
What does Federal approval of a state regulation mean to me?
What is being addressed in this document?
What comments were received on the proposed approval of the I/M SIP revision and what is our response?
What action is EPA taking?
What is the effective date for this rulemaking?

What Is a SIP?

Section 110 of the CAA requires states to develop air pollution regulations and control strategies to ensure that state air quality meets the national ambient air quality standards that we established. These ambient standards are established under section 109 of the CAA, and they currently address six criteria pollutants. These pollutants are carbon monoxide, nitrogen dioxide, ozone, lead, particulate matter, and sulfur dioxide. Each state must submit these regulations and control strategies to us for approval and incorporation into the Federally enforceable SIP. Each Federally-approved SIP protects air quality primarily by addressing air pollution at its point of origin. These SIPs can be extensive, containing state regulations or other enforceable documents and supporting information such as emission inventories, monitoring networks, and modeling demonstrations.

What Is the Federal Approval Process for a SIP?

In order for state regulations to be incorporated into the Federally-enforceable SIP, states must formally adopt the regulations and control strategies consistent with state and Federal requirements. This process generally includes a public notice, public hearing, public comment period, and a formal adoption by a state-authorized rulemaking body.

Once a state rule, regulation, or control strategy is adopted, the state submits it to us for inclusion into the SIP. We must provide public notice and seek additional public comment regarding our proposed action on the state submission. If adverse comments are received, we must address them prior to taking any final action.

All state regulations and supporting information that we approve under section 110 of the CAA are incorporated into the Federally-approved SIP. The record of each SIP approval is maintained in the Code of Federal Regulations (CFR) at Title 40, Part 52, entitled "Approval and Promulgation of Implementation Plans." The actual state regulations which are approved are not reproduced in their entirety in the CFR but are "incorporated by reference," which means that EPA has approved a given state regulation with a specific effective date.

What Does Federal Approval of a State Regulation Mean?

Enforcement of the state regulation before and after it is incorporated into the Federally-approved SIP is primarily a state responsibility. However, after the regulation is Federally approved, we are authorized to take an enforcement action to return a violator to compliance. Citizens are also offered legal recourse to address violations as described in section 304 of the CAA.

What Is Being Addressed in This Document?

This rulemaking addresses a number of submissions from Missouri Department of Natural Resources (MDNR) concerning revisions to the I/M SIP for St. Louis. The content of those submissions is described below.

State statutory amendments in 1999 required an interagency agreement between MDNR and the Missouri Highway Patrol for the administration and enforcement of section 307.366, Missouri Revised Statutes (RSMo); established criteria and procedures for the I/M contract; and provided the residents of Franklin County the option of biennial motor vehicle registration. For vehicles sold by a licensed motor vehicle dealer, any inspection and approval within 120 days preceding the date of the sale is considered timely for the purpose of vehicle registration. Costs for repair work performed by a recognized repair technician only may be included toward reaching the waiver amount. The $5.00 fee reduction for any person required to wait for up to 15 minutes before the inspection begins was deleted. Penalties for longer wait times were retained. The I/M amendments contained in the October 25, 2000, submittal reflected these statutory changes.

The October 25, 2000, submission included revisions made to the I/M rule (10 CSR 10–5.380). These changes removed a fee reduction (otherwise known as a wait time penalty) of $5.00 whenever someone had to wait up to 15 minutes for a test; incorporated a transition program from January 1 through April 4, 2000; and provided another test option for residents of Franklin County.

The June 19, 2002, submittal contained a plan for incorporating the On-Board Diagnostic (OBD) test into the I/M program and a commitment to do so. This was in response to our amendment of the Federal I/M rule that changed the implementation date for use of the OBD test from January 1, 2001, to January 1, 2002, and provided options for other implementation dates. We took no action on this plan as Missouri was involved in amending the I/M rule to incorporate the provisions of the plan. This revision is described below.

The December 13, 2002, submittal contained additional amendments made to the I/M rule. In addition to restructuring the rule, a number of amendments were made to: clarify the meaning of vehicles primarily operated in the area (section 1); clarify existing definitions and include new definitions (section 2); clarify fleet vehicle testing requirements and requirements for Federal facilities, set fee payment methods, station and clean screening testing procedures, emission test standards and waiver requirements (section 3); clarify the vehicle test report requirement for vehicles that fail the OBD test, the clean screening test report requirements and the fleet vehicle reporting requirements (section 4); clarify the test methods for the OBD and the visual test methods; exempt hybrid electric vehicles from tailpipe test methods; include clean screening test methods as valid test methods (section 5), and delete the transition period.

As discussed in the proposed rulemaking (68 FR 4842; January 30, 2003), the state's requirement that the I/M240 test be the deciding test for the retest during the phase-in period for the OBD test is inconsistent with our April 5, 2001, rule which requires only the OBD test be used for the retest. Although the Missouri regulation is not consistent with our requirements for the OBD test during the 2003–2004 phase-in period, the Federal I/M rule (*see* 40 CFR 51.372) provides additional flexibility with regard to as-of-yet unimplemented I/M program elements for basic I/M areas that qualify for redesignation to attainment. Under this additional flexibility, an as-of-yet unimplemented I/M program element may be converted into a contingency measure as part of the area's approved maintenance plan (which, in turn, forms a part of the area's approved redesignation request). We believe that the St. Louis ozone nonattainment area is eligible for redesignation and, in a separate rulemaking today, we are taking final action to find that the area has attained the 1-hour ozone standard and to redesignate the area from nonattainment to attainment for that standard. Thus, the Missouri I/M regulation meets the requirements of 40 CFR 51.372, and we are taking final action to approve the program pursuant to that section.

MDNR's letter of January 17, 2003, informed us that a printing error occurred when the revised rule was first published on November 30, 2002, in the state's official administrative rules publication, the Missouri Code of State Regulations (CSR). Inadvertently, the table containing the final transient emission test standards for Light Duty Vehicles was omitted in subparagraph (3)(G)4.A of the Missouri rule. The table was part of the rule revision which had been adopted by the Missouri Air Conservation Commission (MACC) after notice and public comment. The post-adoption publication of the rule omitted the table, and the December 31, 2002, publication of the Missouri CSR corrected the printing error by reinserting the table. The December 31, 2002, publication was an administrative correction only and did not change the rule as adopted by the MACC nor the effective date of the rule.

Even though MDNR's initial submission did contain an error, which was corrected between our signature of the proposed rule and this final action, we view it as inadvertent and nonsubstantive. In addition, the corrected version of the state rule is the version which was available to the public for comment at the state level and has been included in EPA's docket for this rule since the January 30 publication of the proposal. Therefore, we do not believe that any additional public comment on the corrected rule is necessary and, in this **Federal Register** document, we are taking final action to approve the revisions to the I/M SIP as described in the January 30, 2003, proposed rule.

Elsewhere in today's **Federal Register** publication, we are also taking final action to find that the St. Louis area has attained the 1-hour ozone standard, redesignate the area to attainment, and approve the state's plan for maintaining the 1-hour ozone standard. This final rulemaking on this I/M SIP revision is being done in conjunction with the above rulemaking to fulfill the applicable CAA requirements.

What Comments Were Received on the Proposed Approval of the I/M SIP Revision and What Is Our Response?

Comments were submitted by the Great Rivers Environmental Law Center on behalf of the Sierra Club and the Missouri Coalition for the Environment. Its conclusion was that EPA should disapprove the proposed SIP revision. A summary of the comments and our responses to the comments are provided below.

Comment 1: St. Louis is now a "serious" ozone nonattainment area and, as a result, its I/M program must meet the requirements of section 182(c)(3). EPA acknowledges that the I/M program does not meet these requirements. It should, accordingly, be disapproved, or at most partially approved.

Response 1: On November 25, 2002, the Seventh Circuit Court of Appeals vacated a June 26, 2001, rule extending the St. Louis area's attainment date, and remanded to EPA for "entry of a final rule that reclassifies St. Louis as a serious nonattainment area effective immediately * * *" (*Sierra Club and Missouri Coalition for the Environment v. EPA*, 311 F. 3d 853 (7th Cir. 2002)). In response to the Court's order, and in accordance with section 181(b)(2) of the Act, EPA reinstated the nonattainment determination and reclassification contained in the March 19, 2001, rulemaking (66 FR 15585) in the January 30, 2003, final rule at 68 FR 4838. In addition, the January 30, 2003, final rule established a deadline of January 30, 2004, for submission of SIP revisions to meet the serious nonattainment area requirements. The final rule also explained that EPA was concurrently proposing to redesignate the area to attainment, and that such a redesignation, if done prior to the deadline for submission of the serious area requirements, would eliminate the need for Missouri and Illinois to submit SIP revisions to meet the serious area requirements (68 FR 4836). The final rule, including the serious area submittal deadline, was not challenged within the 60-day period provided in section 307(d) of the CAA. This subsequent rulemaking does not reopen the issue of the submittal deadline or the determination that SIP submissions would not be due should the area be redesignated prior to the due date.

Section 110(k)(3) of the CAA requires EPA to approve a plan submission in full if it meets "all of the applicable requirements" of the Act. Under that section a partial approval is appropriate where only a portion of the plan submission meets all of the applicable requirements of the Act. The commenter asserts that the I/M revision cannot be fully approved because it does not meet the I/M program requirements for serious areas under section 182(c)(3). However, under our interpretation of the statute, these requirements are not applicable, because they are not yet due. (*See also* the response to comment 2 concerning the due date for the serious area requirements.) In addition, because the area is today being redesignated to attainment, it is no longer obligated to meet the I/M requirements of section 182(c)(3). (*See* the September 4, 1992, memorandum from John Calcagni, "Procedures for Processing Requests to Redesignate Areas to Attainment," p. 4, n. 3.) Therefore, the fact that the submittal does not include all of the requirements for an I/M program for a serious area does not require EPA to disapprove or partially approve it. Since, as discussed elsewhere in this notice, the submittal meets all of the applicable requirements of the Act, EPA is fully approving the revisions to the Missouri I/M program.

Comment 2: EPA suggests that because Missouri's SIP revisions to conform to the serious requirement are not yet due, the applicable criteria for approval are those pertaining to "moderate" ozone nonattainment areas. This determination is erroneous because the "serious" SIP submissions have, "as a matter of law", become due. EPA's later rulemakings withdrawing these rules was vacated by the Seventh Circuit, effectively reinstating the withdrawn rules, including the May 18, 2002, SIP submission deadline. In addition, if EPA "had obeyed the law", the revisions would have been due by June 14, 1998.

Response 2: As explained in response to comment 1, on January 30, 2003, EPA reinstated a rule reclassifying the St. Louis area to "serious" nonattainment and established a deadline of January 30, 2004, for the state to submit the serious area requirements. The rationale for the deadline is stated in the January 30, 2003, final rule (68 FR 4838). This redesignation rulemaking does not reopen the January 30 rulemaking, and comments on the appropriate deadline for the serious area requirements are thus beyond the scope of this rule.

With respect to the commenter's assertion that the serious area requirements should have been due by June 14, 1998, this is based on an argument made by the commenter in the U.S. District Court and the Court of Appeals for the District of Columbia that the reclassification of the St. Louis area to serious should have been made retroactive to 1997, with the serious area measures due in 1998. This argument pertaining to the timing of reclassification is not only outside the scope of this rulemaking as explained previously, but it was rejected by both Courts (*See, Sierra Club* v. *Whitman*, 285 F.3d 63, 68 (D.C. Cir.2002)). A detailed discussion of the inapplicability of the serious area requirements to the St. Louis area is also included in the response to comments on the final rule determining the area has attained the ozone national ambient air quality standard (NAAQS) and redesignating the area to attainment, published in today's **Federal Register**.

Comment 3: The proposed revisions, as EPA itself concedes, do not even meet the requirement for a basic I/M program that moderate ozone nonattainment areas must promulgate and implement. Nonetheless, EPA says that "additional flexibility" may be extended to the state under 40 CFR 51.372. This is an arbitrary conclusion. First, the cited regulation does not provide for approval of I/M programs that do not meet federal requirements; it merely permits states to treat otherwise approval programs as contingency measures in their maintenance plans. Second, the regulation's flexibility is contingent upon the following: "A contingency commitment that includes an enforceable schedule for adoption and implementation of the (I/M) program, and appropriate milestones. The schedule shall include the date for submission of a SIP meeting all of the requirements of this subpart. Schedule milestones shall be listed in months from the date EPA notifies the state that it is in violation of the ozone or CO standard or any earlier date specified in the state plan. Unless the state, in accordance with the provisions of the maintenance plan, chooses not to implement I/M, it must submit a SIP revision containing an I/M program no more than 18 months after notification by EPA." Missouri's maintenance plan does not include a contingency commitment that meets these requirements.

Response 3: The commenter is incorrect in the assertion that 40 CFR 51.372 does not authorize EPA to approve I/M SIPs that do not meet all EPA requirements. Section 51.372(c) states as follows: "Any nonattainment area that EPA determines would otherwise qualify for redesignation from nonattainment to attainment *shall receive full approval of a SIP submittal* under sections 182(a)(2)(B) or 182(b)(4)" if the submittal meets the requirements of section 51.372(c)(1) through (4). (Emphasis added.) As explained in detail in the proposal (68 FR 4842, 4844 January 30, 2003), the revision to the I/M program submitted by Missouri meets all of the applicable Federal I/M requirements, with the exception that Missouri does not require the exclusive use of an OBD test for the retest of vehicles which fail the initial OBD emissions test (during the 2003–2004 phase-in of the Missouri OBD rule). (After the 2003–2004 phase-in period, the Missouri rule requires the appropriate OBD test for both the initial test and the retest, which is consistent with EPA's rule.) Because, as explained below, Missouri has included a commitment to consider adoption of the OBD test for the retest as a contingency measure and has met all other requirements of § 51.372(c), that section authorizes EPA to fully approve the Missouri I/M SIP submittal under section 182(b)(4) of the CAA. This conclusion is consistent with the language of the regulation and with the application of the regulation to other I/M program approvals in conjunction with redesignations (*see* 60 FR 12459; March 7, 1995).

The commenter is also incorrect in its assertion that Missouri's submission does not meet the requirements of 40 CFR 51.372(c)(4), which the commenter quotes in its comment. Section 51.372(c)(4) provides that the state must make the following commitments: (1) An enforceable schedule for adoption, submission to EPA, and implementation of the I/M program element; (2) appropriate milestones in months from EPA notification of the violation (or any earlier trigger date provided in the plan); and (3) a commitment to submit the program to EPA within 18 months of the notification of the violation, unless the state elects not to implement the I/M element of its contingency measures. The commenter does not identify any specific elements of this requirement which it believes are not met, but Missouri's maintenance plan contains provisions meeting all of these elements. The plan commits that the state will adhere to the following schedule (pp. 40–43 of the maintenance plan), if the state selects this contingency measure:

1. Three months from notification by EPA of a violation—the state will propose necessary regulatory changes for adoption by the Missouri Air Conservation Commission.
2. Five months from notification—the state will present proposed revisions for public hearing.
3. Six months from notification—the state will request adoption by the Commission.
4. Ten to eighteen months after notification—the state will submit the adopted regulations to EPA as a SIP revision.
5. Eighteen months after notification—the state will implement the contingency measure.

The commenter has not provided any information indicating that these commitments in Missouri's maintenance plan do not meet the requirements of 40 CFR 51.372(c)(4), and EPA finds that the state has met these requirements.

In the January 30, 2003, proposal on the I/M revisions, EPA discussed how Missouri had met the requirements of section 51.372(c)(1)–(3) (68 FR 4842, 4844–4845). EPA did not receive any comments on its proposal with respect to these other requirements. For the reasons stated in the proposal, EPA finds that the requirements of section 51.372(c)(1)–(3) are met.

What Action Is EPA Taking?

EPA's review of the material submitted indicates that the state has revised the I/M program in accordance with the requirements of the CAA and the Federal rule except for one. The state's requirement that the I/M240 test be the deciding test for the retest during the phase-in period for the OBD test is inconsistent with our April 5, 2001, rule which requires only the OBD test be used for the retest (*see* Test Procedures and Standards in the January 30, 2003, proposed rule, page 4844 for further discussion). However, since the St. Louis area is being redesignated to attainment with the 1-hour ozone standard elsewhere in today's **Federal Register**, and as provided for in the Federal I/M rule at 40 CFR 51.372, we are fully approving the Missouri SIP revision for the St. Louis I/M program pursuant to that section and incorporate by reference the state I/M rule, 10 CSR 10–5.380, which was submitted on December 13, 2002.

As noted in the January 30, 2003, proposal, Missouri has revised its regulations to require Federal facilities operating vehicles in the I/M program area to report certification of compliance to the state. These requirements appear to be different from those for other non-Federal groups of Missouri registered vehicles. However, at this time we are not requiring states to implement 40 CFR 51.356(a)(4) dealing with Federal installations within I/M areas. The Department of Justice has recommended to us that this Federal regulation be revised since it appears to grant states authority to regulate Federal installations in circumstances where the Federal government has not waived sovereign immunity. It would not be appropriate to require compliance with this regulation if it is not authorized. We will be revising this provision in the future and will review state I/M SIPs with respect to this issue when this new rule is final.

Therefore, for these reasons, we are neither proposing approval nor disapproval of the specific requirements which apply to Federal facilities at this time.

What Is the Effective Date For This Rulemaking?

To fulfill the requirements of the CAA, this rulemaking is being done in conjunction with another rulemaking published today which finds that the St. Louis area has attained the 1-hour ozone standard, redesignates the area to attainment, and approves the state's plan for maintaining the 1-hour ozone standard. Because these rulemakings are linked, in that the redesignation cannot be completed until this I/M rulemaking is completed, EPA finds that there is good cause for this final rule to become effective immediately upon publication as the redesignation will also become effective immediately for good cause shown. See also the discussion in the referenced rulemaking for additional information. The immediate effective date is authorized under 5 U.S.C. 553(d)(1), which provides that rulemaking actions may become effective less than 30 days after publication if the rule "grants or recognizes an exemption or relieves a restriction." In the January 30, 2003, final rule (68 FR 4836), we reclassified the St. Louis area to a "serious" nonattainment area and established a schedule for submission of SIP revisions fulfilling the requirements for serious ozone nonattainment areas. Upon the effective date of the rule that finds the area has attained, redesignates the area, and approves the maintenance plan (also published today), the state of Missouri will be relieved of the obligation to develop and submit these SIP revisions. Thus, Missouri will not be required to develop a SIP for the implementation of an enhanced I/M program. EPA finds that good cause exists for this final rule being immediately effective since, in conjunction with the redesignation, it relieves the state of Missouri of certain requirements established as a result of the January 30, 2003, reclassification to a serious nonattainment area.

Statutory and Executive Order Reviews

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a "significant regulatory action" and therefore is not subject to review by the Office of Management and Budget. For this reason, this action is also not subject to Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use" (66 FR 28355, May 22, 2001). This action merely approves state law as meeting Federal requirements and imposes no additional requirements beyond those imposed by state law. Accordingly, the Administrator certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this rule approves pre-existing requirements under state law and does not impose any additional enforceable duty beyond that required by state law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4).

This rule also does not have tribal implications because it will not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000). This action also does not have federalism implications because it does not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999). This action merely approves a state rule implementing a Federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the CAA. This rule also is not subject to Executive Order 13045 "Protection of Children from Environmental Health Risks and Safety Risks" (62 FR 19885, April 23, 1997), because it is not economically significant.

In reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the CAA. In this context, in the absence of a prior existing requirement for the state to use voluntary consensus standards (VCS), EPA has no authority to disapprove a SIP submission for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews a SIP submission, to use VCS in place of a SIP submission that otherwise satisfies the provisions of the CAA. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the United States Senate, the United States House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the

Federal Register. This action is not a "major rule" as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by July 11, 2003. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (*See* section 307(b)(2).)

List of Subjects 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Incorporation by reference, Intergovernmental relations, Lead, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

Dated: April 29, 2003.

William W. Rice,

Acting Regional Administrator, Region 7.

■ Chapter I, Title 40 of the Code of Federal Regulations is amended as follows:

PART 52—[AMENDED]

■ 1. The authority citation for Part 52 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

Subpart AA—Missouri

■ 2. In § 52.1320 the table in paragraph (c) is amended by revising the entry for 10–5.380, under Chapter 5, to read as follows:

§ 52.1320 Identification of plan.

* * * * *

(c) * * *

EPA-APPROVED MISSOURI REGULATIONS

Missouri citation	Title	State effective date	EPA approval date	Explanation
Missouri Department of Natural Resources				
. . . . .				
Chapter 5—Air Quality Standards and Air Pollution Control Regulations for the St. Louis Metropolitan Area				
. . . . .				
10–5.380	Motor vehicle emissions inspection.	12/30/02	5/12/03	
. . . . .				

* * * * *

[FR Doc. 03–11186 Filed 5–9–03; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 52 and 81

[MO 182–1182; FRL–7494–5]

Determination of Attainment of Ozone Standard, St. Louis Area; Approval and Promulgation of Implementation Plans, and Redesignation of Areas for Air Quality Planning Purposes, State of Missouri

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is determining that the St. Louis ozone nonattainment area (St. Louis area) has attained the 1-hour ozone National Ambient Air Quality Standard (NAAQS). The St. Louis ozone nonattainment area includes the counties of Franklin, Jefferson, St. Charles, and St. Louis as well as St. Louis City in Missouri and the counties of Madison, Monroe, and St. Clair in Illinois. This determination is based on three years of complete, quality-assured ambient air quality monitoring data for the 2000 through 2002 ozone seasons that demonstrate that the 1-hour ozone NAAQS has been attained in the area. EPA is also determining that certain ozone attainment demonstration requirements, along with certain other related requirements of part D of title I of the Clean Air Act (CAA), are not applicable to the St. Louis area.

EPA is also approving a request from the state of Missouri, submitted on December 6, 2002, to redesignate the St. Louis area to attainment of the 1-hour ozone NAAQS. In approving this request EPA is also approving the state's plan for maintaining the 1-hour ozone NAAQS through 2014, as a revision to the Missouri State Implementation Plan (SIP). EPA is also finding adequate and approving the state's 2014 Motor Vehicle Emission Budgets (MVEBs) for volatile organic compounds (VOCs) and nitrogen oxide compounds (NO_X) in the submitted maintenance plan for transportation conformity purposes. Refer also to a separate rule published today regarding similar approvals for the state of Illinois.

DATES: This rule is effective May 12, 2003.

ADDRESSES: Relevant documents for this rule are available for inspection at the Environmental Protection Agency, Region 7, Air Planning and Development Branch, 901 North 5th Street, Kansas City, Kansas 66101. Interested persons wanting to examine these documents should make an appointment with the appropriate office at least 24 hours in advance.

FOR FURTHER INFORMATION CONTACT: Tony Petruska, (913) 551–7637, (*petruska.anthony@epa.gov*).

SUPPLEMENTARY INFORMATION: Throughout this document whenever "we," "us," or "our" is used, we mean EPA.

Table of Contents

I. What is the background for this action?
II. What actions are we taking and when are they effective?
III. Why are we taking these actions to redesignate the area?
IV. What are the effects of redesignation to attainment of the 1-hour NAAQS?
V. What comments did we receive and what are our responses?
VI. Statutory and Executive Order Reviews.

I. What Is the Background for This Action?

On January 30, 2003, EPA published a final rule and two proposed rules related to the St. Louis ozone nonattainment area (68 FR 4836, 68 FR 4842 and 68 FR 4847). The final rule found at 68 FR 4836 reinstated and made effective a prior EPA finding that the St. Louis ozone nonattainment area did not attain the 1-hour ozone standard by November 15, 1996 (based on 1994–1996 ozone data) and reinstated a reclassification of the area to a serious nonattainment area. In addition, in the January 30, 2003, final rule, EPA established a schedule for submission of state implementation plan revisions and established November 15, 2004, as the date by which the St. Louis area must attain the ozone standard. A correction to this final rule was published on February 13, 2003, which corrected a table entry (68 FR 7410). In the proposed rule found at 68 FR 4847, EPA proposed to determine that the St. Louis ozone nonattainment area has attained the 1-hour ozone standard based on complete, quality-assured monitoring data for 2000 through 2002. In addition, the proposed rule proposed to approve requests from the states of Missouri and Illinois to redesignate the St. Louis area to attainment with the 1-hour ozone NAAQS, proposed to determine that certain requirements of the CAA are not applicable, proposed to approve the states' maintenance plans as revisions to the SIP, and proposed to find adequate and approve the 2014 motor vehicle emission budgets for volatile organic compounds and nitrogen oxide compounds for transportation conformity purposes. In the proposed rule found at 68 FR 4842, EPA proposed to approve a revision to the state implementation plan for the inspection and maintenance (I/M) program operating in the Missouri portion of the St. Louis area.

This rule is EPA's final action finding that the St. Louis ozone nonattainment area has attained the 1-hour ozone standard, as well as EPA's final action on the January 30, 2003, proposal found at 68 FR 4847 as it relates to the Missouri portion of the St. Louis nonattainment area. As noted in the January 30, 2003, proposed rule on page 4848, EPA received separate requests from Missouri and Illinois to redesignate the St. Louis area to attainment. In the January 30, 2003, proposed rule, EPA proposed actions related to both the Missouri and Illinois portions of the nonattainment area. However, EPA stated that it was considering issuance of two separate rules when it took final action on the redesignation requests. We received no comments on this aspect of the proposal. With the exception of the determination of attainment, EPA is taking final action related to the Missouri portion of the nonattainment area and is taking final action on the Illinois portion of the St. Louis nonattainment area in separate rulemaking actions. Section 107(d)(3)(v) provides, as a prerequisite to redesignation, that: "the State containing such area has met all requirements applicable to the area under section 110 and part D." This section plainly shows that Congress meant for EPA to evaluate whether each state requesting redesignation of an area has met the applicable requirements. In addition, each state has authority only to adopt and submit for approval a maintenance plan and a revision of its SIP that are applicable to its territory. Since each state has the authority only to request redesignation for the portion of the area within its boundaries, and EPA evaluated each states' request for redesignation separately, the final rules redesignating each states' portion of the nonattainment area are being published separately. However, EPA has concluded that in determining whether or not a multistate area has attained the standard based upon complete, quality-assured ambient air quality monitoring data, EPA will consider the attainment status of the area as a whole. Therefore, EPA's finding that the area has attained the NAAQS applies to the entire nonattainment area, and we are publishing that finding in this rule. In another rule published today, EPA references this finding and takes separate action on a similar redesignation request and SIP submission by Illinois. *See* 67 FR 49600, July 31, 2002 (Reinstatement of Redesignation of Kentucky Portion of Cincinnati-Hamilton area) for additional discussion of these issues.

The history for this action has been set forth in detail in the proposed rulemaking published January 30, 2003 (68 FR 4847, 4848–4849), and is summarized below.

The Missouri portion of the St. Louis nonattainment area includes Franklin, Jefferson, St. Charles, and St. Louis Counties and St. Louis City. The Illinois portion of the St. Louis nonattainment area includes Madison, Monroe, and St. Clair Counties (collectively referred to as the Metro-East area).

The St. Louis area was designated as an ozone nonattainment area in March 1978 (43 FR 8962). On November 15, 1990, the CAA Amendments of 1990 were enacted. Under section 107(d)(4)(A) of the CAA, on November 6, 1991 (56 FR 56694), the St. Louis area was designated as a moderate ozone nonattainment area as a result of monitored violations of the 1-hour ozone NAAQS during the 1987–1989 period. On January 30, 2003, EPA reclassified the area to a serious nonattainment area, effective January 30, 2003.

The states adopted and implemented emission control programs required under the CAA to reduce emissions of VOC and NO_X. These emission control programs include stationary source reasonably available control technology (RACT), vehicle I/M programs, transportation control measures (TCMs), and other measures (*see* the analysis and discussion of specific emission control measures at 68 FR 4847). As a result of the emission control programs, ozone monitors in the St. Louis area have recorded three years of ozone monitoring data for the 2000–2002 period showing that the area has attained the 1-hour ozone NAAQS.

On December 6, 2002, the Missouri Department of Natural Resources (MDNR) submitted a Redesignation Demonstration and Maintenance Plan for the Missouri Portion of the St. Louis ozone nonattainment area along with a request to redesignate the Missouri portion of the St. Louis nonattainment area to attainment of the 1-hour ozone NAAQS. Included in the Redesignation Demonstration and Maintenance Plan for the Missouri Portion of the St. Louis nonattainment area is a plan to maintain the 1-hour ozone NAAQS for at least the next 10 years, and the 2014 MVEBs for transportation conformity purposes.

II. What Actions Are We Taking and When Are They Effective?

After consideration of the comments received in response to the January 30, 2003, proposal, as described in section V below, we are taking the following actions:

A. Determination of Attainment

EPA is determining that the St. Louis ozone nonattainment area, consisting of both the Missouri and the Illinois portions of the area, has attained the 1-hour ozone standard.

EPA is also determining that certain attainment demonstration requirements (section 172(c)(1) of the CAA), along with certain other related requirements, of part D of title I of the CAA, specifically the section 172(c)(9) contingency measure requirement (measures needed to mitigate a state's

failure to achieve reasonable further progress toward, and attainment of, a NAAQS), the section 182 attainment demonstration and rate of progress (ROP) requirements, and the section 182(j) multi-state attainment demonstration requirement, are not applicable to the St. Louis area.

On January 30, 2003 (68 FR 4847), EPA proposed that the St. Louis area had attained the standard based on 2000–2002 monitoring data. With this finding, EPA also proposed that certain requirements, including an attainment demonstration, were no longer applicable as the area had attained the standard. EPA has explained at length in other actions its rationale for the reasonableness of this interpretation of the CAA and incorporates those explanations by reference. *See* (67 FR 49600) (Cincinnati-Hamilton, Kentucky, July 31, 2002); (66 FR 53095) (Pittsburgh-Beaver Valley, Pennsylvania, October 19, 2001); (65 FR 37879) (Cincinnati-Hamilton, Ohio and Kentucky, June 19, 2000); (61 FR 20458) (Cleveland-Akron-Lorain, Ohio May 7, 1996); (60 FR 36723) (July 18, 1995) Salt Lake and Davis Counties, Utah); (60 FR 37366) (July 20, 1995), (61 FR 31832–31833) (June 21, 1996) (Grand Rapids, MI). The United States Court of Appeals for the Tenth Circuit has upheld EPA's interpretation. *Sierra Club* v. *EPA*, 99 F. 3d 1551 (10th Cir. 1996).

EPA reiterates the position set forth in its prior rulemaking actions and in the January 30, 2003 (68 FR 4847) proposed rulemaking for the St. Louis area. Subpart 2 of part D of title I of the CAA contains various air quality planning and SIP submission requirements for ozone nonattainment areas. EPA believes it is reasonable to interpret the provisions regarding Reasonable Further Progress (RFP) and attainment demonstrations, along with other certain other related provisions, not to require SIP submissions if an ozone nonattainment area subject to those requirements is monitoring attainment of the ozone standard (*i.e.*, attainment of the NAAQS demonstrated with three consecutive years of complete, quality-assured, air quality monitoring data). EPA interprets the general provisions of subpart 1 of part D of title I (sections 171 and 172) not to require the submission of SIP revisions concerning RFP, attainment demonstrations or section 172(c)(9) contingency measures. As explained in a memorandum from John S. Seitz, Director, Office of Air Quality Planning and Standards, entitled "Reasonable Further Progress, Attainment Demonstration, and Related Requirements for Ozone Nonattainment Area Meeting the Ozone National Ambient Air Quality Standard," dated May 10, 1995, EPA believes it is appropriate to interpret the more specific attainment demonstration and related provisions of subpart 2 in the same manner. *See Sierra Club* v. *EPA*, 99 F. 3d. 1551 (10th Cir. 1996).

The attainment demonstration requirements of section 182(b)(1) require that the plan provide for "such specific annual reductions in emissions * * * as necessary to attain the national primary ambient air quality standard by the attainment date applicable under the CAA." If an area has, in fact, monitored attainment of the relevant NAAQS, EPA believes there is no need for an area to make a further submission containing additional measures to achieve attainment. This is also consistent with the interpretation of certain section 172(c) requirements provided by EPA in the General Preamble to Title I. As EPA stated in the General Preamble, no other measures to provide for attainment would be needed by areas seeking redesignation to attainment since "attainment will have been reached" (57 FR 13564). Upon attainment of the NAAQS, the focus of state planning efforts shifts to the maintenance of the NAAQS and the development of a maintenance plan under section 175A.

Similar reasoning applies to other related provisions of subpart 2. The first of these are the contingency measure requirements of section 172(c)(9) of the CAA. EPA has previously interpreted the contingency measure requirements of section 172(c)(9) as no longer being applicable once an area has attained the standard since those "contingency measures are directed at ensuring RFP and attainment by the applicable date" (57 FR 13564).

The state must continue to operate an appropriate network, in accordance with 40 CFR part 58, to verify the attainment status of the area. The air quality data relied upon to determine that the area is attaining the ozone standard must be consistent with 40 CFR part 58 requirements and other relevant EPA guidance and recorded in EPA's Aerometric Information Retrieval System (AIRS).

EPA has reviewed the ambient air monitoring data for ozone (consistent with the requirements contained in 40 CFR part 58 and recorded in EPA's AIRS) for the St Louis ozone nonattainment area from the 2000 to 2002 ozone seasons. EPA has also reviewed the preliminary data collected to date for the 2003 ozone season (for St. Louis, the ozone season is April 1 through October 31 of each year). On the basis of this review, EPA has determined that the area has attained the 1-hour ozone standard during the 2000–2002 period and continues to attain the standard, and therefore is not required to submit an attainment demonstration and a section 172(c)(9) contingency measure plan, nor does it need any other measures to attain the 1-hour ozone standard.

B. Redesignation of Missouri Portion of the St. Louis Area to Attainment

Although EPA is determining that the entire St. Louis nonattainment area has attained the 1-hour ozone standard, EPA has determined that it is appropriate to take final action related to Missouri's request to redesignate the Missouri portion of the St. Louis nonattainment area and take final action related to Illinois' request to redesignate the Illinois portion of the St. Louis nonattainment area in separate rulemaking actions being published today. In the January 30, 2003, proposal, EPA stated that it was considering publishing separate rulemakings for Missouri and Illinois (68 FR 4848). We received one comment in support of publishing separate rulemakings and no adverse comments. In this rulemaking, EPA is taking the following actions with respect to the Missouri portion of the St. Louis nonattainment area:

EPA is approving a request from the state of Missouri to redesignate the Missouri portion of the St. Louis nonattainment area to attainment of the 1-hour ozone NAAQS.

In addition, EPA is taking the following actions:

1. Approving Missouri's plan for maintaining the 1-hour ozone NAAQS through 2014, as a revision to the Missouri SIP;

2. Finding adequate and approving the 2014 MVEBs of 47.14 tons per ozone season weekday for VOC and 68.59 tons per ozone season weekday for NO_X in the submitted maintenance plans for transportation conformity purposes; and,

3. Determining that the attainment demonstration (and related contingency measure requirements) and reasonably available control measure (RACM) requirements of the CAA are not applicable.

C. Effective Date of These Actions

EPA finds that there is good cause for this determination of attainment, redesignation to attainment and SIP revision to become effective immediately upon publication because a delayed effective date is unnecessary due to the nature of a redesignation to attainment which relieves the area from certain CAA requirements that would otherwise apply to it. The immediate effective date for this action is authorized under both 5 U.S.C. 553(d)(1), which provides that rulemaking actions may become effective less than 30 days after publication if the rule "grants or recognizes an exemption or relieves a restriction" and section 553(d)(3) which allows an effective date less than 30 days after publication "as otherwise provided by the agency for good cause found and published with the rule."

In addition, as indicated above, the January 30, 2003, final rule reclassified the St. Louis area to a "serious" nonattainment area and established a schedule for submission of SIP revisions fulfilling the requirements for serious ozone nonattainment areas. Upon the effective date of this rule, the state of Missouri will be relieved of the obligation to develop and submit these SIP revisions. In addition, the Missouri rules adopted to meet the requirements of title V of the CAA, provide that in a "serious" area, stationary sources with potential emissions of VOCs and NO_X greater than 50 tons per year are major sources. As such, these major sources are subject to the title V permit program and are required to submit title V permit applications within twelve months of January 30, 2003. Upon the effective date of this rule, stationary sources which are newly subject to the title V permitting program as a result of the January 30, 2003, reclassification to a serious nonattainment area will be relieved of the requirement to submit title V permit applications. In a separate rulemaking, EPA is redesignating the Illinois portions of the St. Louis area to attainment. Additional requirements specific to the Illinois portion of the St. Louis area are described in that separate rulemaking and are also being lifted as a result of that portion's redesignation to attainment. EPA finds that good cause exists for this final rule being immediately effective since it relieves the state of Missouri as well as stationary sources of certain restrictions which would otherwise apply.

III. Why Are We Taking These Actions To Redesignate the Area?

EPA has determined that the St. Louis area has attained the 1-hour ozone standard. In addition, EPA has determined that the state of Missouri has demonstrated that the criteria for redesignation of the Missouri portion of the area from nonattainment to attainment have been met.

In the January 30, 2003, proposed rule at 68 FR 4847, EPA described the applicable criteria for redesignation to attainment. Specifically, section 107(d)(3)(E) allows for redesignation providing that: (1) The Administrator determines that the area has attained the applicable NAAQS; (2) the Administrator has fully approved the applicable implementation plan for the area under section 110(k); (3) the Administrator determines that the improvement in air quality is due to permanent and enforceable reductions in emissions resulting from implementation of the applicable implementation plan and applicable Federal air pollutant control regulations and other permanent and enforceable reductions; (4) the Administrator has fully approved a maintenance plan for the area as meeting the requirements of section 175A; and, (5) the state containing such area has met all requirements applicable to the area under section 110 and part D.

EPA has determined that the St. Louis area has attained the applicable NAAQS. EPA has fully approved the applicable implementation plan for the Missouri portion of the St. Louis area under section 110(k). EPA has determined that the improvement in air quality is due to permanent and enforceable reductions in emissions resulting from implementation of the applicable implementation plan and applicable Federal air pollutant control regulations and other permanent and enforceable reductions. EPA has fully approved a maintenance plan for the Missouri portion of the area as meeting the requirements of section 175A. Missouri has met all requirements applicable to the Missouri portion of the area under section 110 and part D.

By finding that the maintenance plan provides for maintenance of the NAAQS through 2014, EPA is hereby finding adequate and approving the 2014 MVEBs contained within the maintenance plan. The MVEB for NO_X in the Missouri portion of the St. Louis area is 68.59 tons per ozone season weekday. The MVEB for VOCs in the Missouri portion of the St. Louis area is 47.14 tons per ozone season weekday.

The rationale for these findings is as stated in this rulemaking and the January 30, 2003, proposed rule found at 68 FR 4847.

IV. What Are the Effects of Redesignation to Attainment of the 1-Hour NAAQS?

These actions determine that the area attained the 1-hour ozone standard and that certain other related requirements of part D of title I of the CAA, specifically the section 172(c)(9) contingency measure requirement (measures needed to mitigate a state's failure to achieve reasonable further progress toward, and attainment of, a NAAQS), the section 182 attainment demonstration and rate of progress requirements, and the section 182(j) multi-state attainment demonstration requirement are not applicable to the St. Louis area. EPA's determination that the St. Louis area has met the 1-hour ozone standard relieves the states from the obligation to meet certain additional requirements, which apply to areas not attaining that standard.

EPA notes that the area is likely to be designated nonattainment for the 8-hour ozone standard and would be subject to any additional requirements as a result of such designation. EPA also notes that it is not revoking the 1-hour standard for the St. Louis area.

Approval of the Missouri redesignation request changes the official designation for the 1-hour ozone NAAQS found at 40 CFR part 81 for the Missouri portion of the St. Louis area, including the City of St Louis, and the Counties of Franklin, Jefferson, St. Charles, and St. Louis from nonattainment to attainment. It also incorporates into the Missouri SIP a plan for maintaining the 1-hour ozone NAAQS through 2014. The plan includes contingency measures to remedy any future violations of the 1-hour ozone NAAQS, and includes VOC and NO_X MVEBs for 2014 for the Missouri portion of the St. Louis area.

V. What Comments Did We Receive and What Are Our Responses?

We received five letters regarding the January 30, 2003, proposed rule found at 68 FR 4847. Four of the letters generally supported the rulemaking action. Two of the four letters in support of the rulemaking action raised issues to which EPA is responding in this section. One of the five letters contained adverse comments. A summary of the comments and EPA's responses to them are provided below. This discussion addresses comments relating to the St. Louis area as a whole, and comments specifically relating to the Missouri portion of the area. Comments relating specifically to the Illinois portion of the area are addressed in the final rule for Illinois published elsewhere in this **Federal Register**.

A. Comment Related to Meeting the Criteria for Redesignation to Attainment

Comment 1: The St. Louis area has failed to meet any of the five criteria specified in section 107(d)(3)(E) of the CAA for redesignation to attainment.

Response 1: EPA's determination that the St. Louis area has attained the ozone standard is set forth in section II.A above. EPA has further found that the area has met all of the five criteria

specified in section 107(d)(3)(E) of the CAA for redesignation to attainment. Below are specific comments and responses raised by the commenter regarding each criterion.

B. Comments Related to Criterion 1: The Area Must Be Attaining the 1-Hour Ozone NAAQS

Comment 2: Monitoring data are not representative of air quality conditions. Monitoring data collected on Labor Day weekend in 2002 are "hopelessly contaminated" due to voluntary emission reductions undertaken by industry and others.

Response 2: Section 107(d)(3)(E)(i) of the CAA states that one criterion for redesignation to attainment is that EPA must determine that the NAAQS has been attained. The regulations at 40 CFR part 58 specify data collection and quality assurance procedures. For ozone, an area is attaining the 1-hour ozone NAAQS if there are no violations, as determined in accordance with 40 CFR 50.9 and appendix H. The regulation at 40 CFR 50.9 states "the standard is attained when the expected number of days per calendar year with maximum hourly average concentrations above 0.12 part per million is equal to or less than 1 as determined by appendix H." Appendix H states, "The basic principle in making this determination is relatively straightforward. . . . In its simplest form, the number of exceedances at a monitoring site would be recorded for each calendar year and then averaged over the past 3 calendar years to determine if this average is less than or equal to 1." The monitoring data for the St. Louis nonattainment area demonstrate that the estimated number of exceedances per year averaged over three years (2000 through 2002) is 1.0 or less at all monitoring sites in the area. In the case of St. Louis, all of the data collected are reviewed, quality assured and submitted to EPA's Air Quality System (AQS) database. EPA conducts a number of activities to determine that the data meet the data collection and quality assurance procedures of 40 CFR part 58 including the following:

—EPA ensures that the state (and local agencies) is performing quality assurance/quality control (QA/QC) checks properly through systems audits as required per 40 CFR part 58, appendix A. During these systems audits EPA ensures that states are properly calibrating instruments, properly performing precision and span checks on instruments, and properly conducting audits of the instruments as required in 40 CFR part 58, appendix A.

—EPA chooses several hourly ozone values and tracks those data points from their collection at the monitor through their data handling procedures, including QA/QC procedures, to its final destination in the AQS database.

—To ensure quality data, as required by 40 CFR part 58, appendix A, prior to the start of ozone season each year, EPA certifies at least one primary standard ozone photometer for each of the state and local agencies. These primary ozone photometers stay in the state/local laboratories. Transfer standard photometers are verified against the primary photometer and are used to calibrate the ozone analyzers in the field. Thus, all of the data collected is traceable back to EPA's primary photometer.

—EPA, as well as the quality assurance groups of the state and local agencies, conduct audits on the ozone instruments collecting the data. These audits are required to be performed quarterly as per 40 CFR part 58, appendix A. EPA audits each ozone instrument at least once per ozone season. This ensures that the instrument is operating properly and collecting accurate data, and it also acts as a check on the state and local quality assurance groups to make sure that the audits they have conducted are accurate.

—As required by 40 CFR part 58, appendix A, Precision and Span checks are performed every two weeks by the agency operating the instrument.

EPA believes that any voluntary measures which may have been taken by industry and others over a two- or three-day period in this three-year time period do not render the air quality monitoring data unrepresentative of the air quality. The data would only be "contaminated" if there had been an error with respect to collection and quality assurance of the data, which there was not. The commenter offers no information indicating data collection was improper. In addition, even if these activities by the community were relevant to whether the area had attained, there is no evidence that emissions were actually reduced to an extent which would have a significant effect on ozone levels. See response to comment 18 below regarding further discussion on the "voluntary reductions" during the Labor Day weekend in 2002. In fact, as explained in the January 30, 2003, proposal at 68 FR 4856–4858, and in section V.D. below, the monitored improvements in air quality were due to permanent and enforceable emission reductions. For example, as explained further in response to comment 19, the Missouri centralized motor vehicle inspection and maintenance program began in April 2000, the first year of the 2000–2002 time period. The use of reformulated gasoline began in 1999 and achieved additional reductions during the 2000–2002 time period. The monitoring data accurately reflected actual air quality conditions. See response to comment 19 below regarding EPA's conclusion that improvements in air quality are attributable to permanent and enforceable reductions in ozone precursor emissions.

Comment 3: EPA's proposal ignores the second component discussed in a September 4, 1992, redesignation guidance document from John Calcagni entitled "Procedures for Processing Requests to Redesignate Areas to Attainment" (Calcagni memo) to EPA regional offices, that the determination of attainment should rely not only on monitored values, but on supplemental EPA-approved modeling. For St. Louis, monitored data runs directly counter to air quality modeling. The modeling supported the contention that the NAAQS could be attained only in 2004 after all control measures are adopted. Thus, the monitored attainment is a "fluke" explainable by factors other than the success of the pollution control measures. In addition, based on the Calcagni memo the commenter believes that supplemental ozone modeling may be necessary to determine the representativeness of the monitored data. Without such supplemental modeling, the commenter asserts that the January 30, 2003, proposed rule's implicit conclusion that the St. Louis area ozone data are "representative" is baseless.

Response 3: The commenter cites a policy memorandum entitled "Procedures for Processing Requests to Redesignate Areas to Attainment" dated September 4, 1992 (Calcagni memo), which states that there are two components in determining that an area has met the section 107(d)(3)(E)(i) requirement. This policy states the following:

> The state must show that the area is attaining the applicable NAAQS. There are two components involved in making this demonstration which should be considered interdependently. The first component relies upon ambient air quality data. * * * The second component relies upon supplemental EPA-approved air quality modeling. No such supplemental modeling is required for O_3 (ozone) nonattainment areas seeking redesignation * * * (pages 2 and 3).

This document explains that supplemental modeling may be needed, for example, in sulfur dioxide and carbon monoxide areas, where emissions are localized and a small number of monitors may not be representative of air quality (page 3). In contrast, ozone is not a localized pollutant, and the St. Louis area has an extensive monitoring network consisting of nineteen monitors operating each year from 2000 through 2002 as described in EPA's proposal at 68 FR 4850. Therefore, consistent with the language in the policy and the rationale in calling for modeling in some cases for some pollutants and not in other cases, modeling is not required as part of this redesignation. Neither section 107(d)(3)(E) nor the policy referenced by the commenter requires modeling as a prerequisite to redesignation of an ozone nonattainment area. In addition, no modeling was conducted as part of the redesignation requests submitted by Missouri or Illinois. Therefore, EPA does not believe that the monitored data runs counter to air quality modeling. *See Wall* v. *EPA*, 265 F.3d 426 (6th Cir. 2001), and the redesignations for Pittsburgh (66 FR 53094, October 19, 2001), and Cincinnati (65 FR 37879, June 19, 2000). See response to comments 10, 19, 21, 23, 24, 26, 37 below regarding further discussion of modeling issues.

Commenter's contention that attainment cannot be reached until at least 2004 is addressed below in response to comments 21 and 24.

In addition, the correlation between air quality improvements and permanent and enforceable emission reductions, demonstrating that monitored attainment is not a "fluke" is described in detail in the proposal and section V.D below.

The ozone modeling approaches used do not support any direct comparisons between ozone modeling results and monitored ozone concentrations for years other than a monitored and modeled base period. Although statistical comparisons are made between monitored ozone data and modeled base period ozone concentrations to validate ozone modeling results, ozone models are not designed to explicitly model ozone concentrations at specific locations or to exactly predict future ozone concentrations that can be compared to monitored ozone concentrations on a site-by-site basis. Ozone models are designed to primarily predict the relative impacts of emission changes on future peak ozone levels assuming the same meteorological conditions that are modeled for the base period. Such modeling techniques produce results with considerable uncertainty (relative to time- and location-specific monitored ozone concentrations) when one actually compares future modeled results with monitored ozone concentrations for the same years. The commenter errs in trying to force comparisons not supported by the existing science.

What the modeling results do imply is that, as regional NO_X emission controls are implemented through statewide rules in Illinois, Missouri, and other states, peak ozone levels in the St. Louis area are expected to decrease. This increases the likelihood of maintaining the ozone standard in the St. Louis area, thus supporting the approval of the state's ozone redesignation request. Illinois and Missouri are committed to implement statewide NO_X emission controls regardless of the attainment status of the St. Louis area. Both states are currently implementing statewide NO_X control rules.

Comment 4: The monitored data do not support a conclusion of continued attainment since the trend is toward increases in exceedances because the number of exceedances tripled from 2000 to 2001 and more than doubled from 2001 to 2002 showing an upward trend in peak ozone concentrations. The commenter notes that, if the same number of exceedances that occurred in 2002 occur in 2003 or 2004, the area will again violate the one-hour ozone standard.

Response 4: See response to comment 20 below for our detailed response to the comment relating to air quality trends. The determination of attainment, as explained in the January 30, 2003, proposal, in section II.A. above, and in response to comment 2, is based on the requirements of section 107(d)(3)(E)(i) and EPA's regulation which defines attainment of the ozone standard. The regulatory definition is based on design values over a 3-year period, not on year-to-year trends within the three-year period. It would be inconsistent with the regulation to adopt an additional criterion for determining attainment.

It should be noted that a "worsening" ozone trend for the St. Louis area can only be discerned for the 2000–2002 period by combining the annual number of exceedances for all monitoring sites in the area (by totaling the number of exceedances for each year for all monitoring sites combined). This approach is technically flawed. The ozone standard is based on assessing the peak ozone data for each monitoring site individually not by cumulating the data for all sites. Review of the yearly exceedance data for each monitoring site, as given in Table 1 in the January 30, 2003, proposed rule (68 FR 4850) and in response to comment 20 below, shows that no consistent ozone exceedance rate trend can be established for the individual monitoring sites for this period. For example, the West Alton site experienced one ozone exceedance per year with no up or down trend. The Wood River monitor in Illinois increased from zero exceedances in 2000 to one exceedance in 2001 and back down to zero exceedances in 2002. Many monitors continued to record zero exceedances throughout the 2000–2002 period as noted above. Some monitors, which recorded zero exceedances in 2000 and 2001, recorded one or two exceedances in 2002, hardly a consistent, robust trend. Contrary to the commenter's assertion, on a monitor-by-monitor basis, which is the basis for assessing compliance with the 1-hour ozone standard, there is no consistent "worsening" trend in peak ozone concentrations.

Comment 5: EPA asserts that the data is "quality assured" but provided no explanation. EPA must demonstrate that the data is quality assured. EPA must document the adequacy of the states' quality assurance plan. Also, the commenter questions whether the data relied on for the attainment determination was quality-assured since it was entered in AIRS earlier than usual.

Response 5: As indicated in the response to comment 2 above, the regulations at 40 CFR part 58 specify data collection and quality assurance procedures. The Calcagni memo on page 2 specifies that the data should be collected and quality-assured in accordance with 40 CFR part 58 and recorded in AIRS in order for it to be available to the public for review. The monitoring data for the St. Louis area was quality assured and entered into AIRS in accordance with these requirements.

Appendix A to 40 CFR part 58 specifies the quality assurance requirements for state and local air monitoring stations. The regulation at 40 CFR 58.35(c) requires that the monitoring data be entered into AIRS within 90 days after the end of the calendar quarter in which it is collected. Thus, monitoring data collected through September 2002 must be quality assured and entered into AIRS by December 31, 2002. Monitoring data for October 2002 must be quality assured and entered into AIRS by March 31, 2003.

Monitoring data collected in a calendar quarter can be quality assured and entered into AIRS at any time prior to 90 days after the end of that quarter.

The monitoring data is quality assured and entered into AIRS by the state and local agencies in the St. Louis area. The regulation at 40 CFR 58.20 requires states to adopt and submit to EPA revisions to the SIP which provide for meeting the requirements of appendix A. On September 27, 1984 (49 FR 38103), EPA approved Missouri's Air Quality Monitoring Plan. EPA stated in this September 27, 1984, rulemaking that "the Missouri Air Quality Monitoring Plan satisfies the requirements of 40 CFR 58.20." On March 4, 1981 (46 FR 15136), EPA approved Illinois' Air Quality Surveillance Plan. EPA stated in this March 4, 1981, rulemaking that EPA has reviewed the plan and "it meets the requirements of * * * EPA regulations in 40 CFR part 58." As part of the September 27, 1984, and March 4, 1981, rulemakings the public was provided the opportunity to review and comment on Missouri's and Illinois' quality assurance procedures. Pursuant to the Calcagni memo, page 3, and upheld in *Wall* v. *EPA* (265 F.3d. 426, 437), an EPA action on a redesignation request does not mean that earlier issues with regard to the SIP will be reopened. Thus, there is no requirement to present quality assurance procedures in this rulemaking.

In addition to Missouri's Air Quality Monitoring Plan and Illinois' Air Quality Surveillance Plan, EPA reviewed and approved the States' Quality Management Plans (QMP). Under the states' QMP, the state and local agencies conducting the ambient monitoring develop Quality Assurance Project Plans (QAPP). It is through the QMP and QAPP that EPA reviewed and approved the states' and local agencies' quality assurance procedures. In order to verify that the state and local agencies followed these procedures and that the data meets the data collection and quality assurance procedures of 40 CFR part 58, EPA conducted the actions listed in the response to comment 2 above.

C. Comments Related to Criterion 2: The Area Must Have a Fully Approved SIP Under Section 110(k)

Comment 6: The serious area SIP requirements of the CAA are applicable to the St. Louis area. These requirements have not been promulgated by the states and there is no "claim" that they could not have been submitted with the redesignation request. Thus, the SIPs are not "fully approved." In addition, the Calcagni memo includes procedures suggested by EPA for reducing the stringency of the control measures to become part of the contingency measure. The states have not done these procedures.

Response 6: The SIP which is required to be "fully approved" under criterion 2 is the "applicable" implementation plan (section 107(d)(3)(E)(ii)). This section requires that the SIP must be "fully approved" under section 110(k) rather than partial, conditional, or limited approval (Calcagni memo, page 3). Section 107(d)(3)(E)(v) requires the SIP to include "all requirements applicable to the area under Section 110 and Part D." This comment relates to the issue of which requirements are "applicable," rather than whether the SIP is fully approved. The commenter asserts, without explanation, that the statute requires EPA to determine that the "serious" area requirements are applicable to its consideration of the redesignation request for the area. However, the CAA is not as prescriptive as the commenter assumes. (*See, Wall* v. *EPA*, 265 F.3d 426,438 (6th Cir. 2001) which states: "The statute, however, does not describe how the EPA is to decide which Part D requirements are "applicable" in evaluating a redesignation request.")

EPA has established a policy to provide guidance in determining how to apply the statutory criterion with respect to which requirements are applicable in reviewing a redesignation request. As stated in the January 30, 2003, proposed rule (page 4851), the September 4, 1992, Calcagni memo (*see* "Procedures for Processing Requests to Redesignate Areas to Attainment," Memorandum from John Calcagni, Director, Air Quality Management Division, September 4, 1992) describes EPA's interpretation of the section 107(d)(3)(E) requirement. Under this interpretation, states requesting redesignation to attainment must meet the relevant CAA requirements that come due prior to the submittal of a complete redesignation request. Areas may be redesignated even though they have not adopted measures that come due after the submission of a complete redesignation request. A detailed discussion of EPA's rationale for this interpretation is contained in the rule redesignating Detroit-Ann Arbor, 60 FR 12459, 12465–12466 (March 7, 1995). Pursuant to the January 30, 2003, final rule reclassifying the St. Louis area to "serious" (68 FR 4836), the serious nonattainment area requirements are due on January 30, 2004. The final rule has not been timely challenged under section 307(b)(1) of the CAA. Thus, the serious nonattainment area requirements due date is January 30, 2004. Since the serious area requirements are not yet due, the SIP is not deficient because the serious area requirements have not been included. EPA policy and a reasonable application of sections 107(d)(3)(E)(ii) and (v) allow for an area to be redesignated even though the area has not adopted measures which are not yet due. EPA has consistently applied this policy and interpretation in other redesignations including the Detroit-Ann Arbor redesignation cited above.

In addition, there is no requirement in section 107(d)(3)(E) that states must "claim" (or demonstrate) that they could not have submitted the serious area SIP revisions or any additional revisions at the time of the redesignation requests, if those requirements are not applicable to the area when the request is made. EPA's action to reclassify the area to a serious nonattainment area was published in the **Federal Register** after both states had submitted their redesignation requests to attainment, and it established a deadline for submission of the serious area requirements which had not yet passed, and still remains in the future. Thus, Missouri was not required to include in its request a "claim" that the state cannot complete the serious area requirements.

Finally, the Calcagni memo discusses the statutory requirement that the state must implement all measures included in the SIP prior to redesignation (pages 12–13). (In response to comment 32, EPA discusses how this requirement has been met.) This requirement does not expand the universe of requirements which are "applicable" for purposes of redesignation. Unless the serious area requirements are applicable to an area, and already contained in a SIP prior to redesignation, the discussion in the Calcagni memo does not relate to the issue raised by the commenter.

Because the serious area requirements are not applicable requirements for St. Louis, for the reasons discussed above, and are not included in the SIP for St. Louis, the guidance in the Calcagni memo and in a memorandum entitled "State Implementation Plan (SIP) Requirements for Areas Submitting Requests for Redesignation to Attainment of the Ozone and Carbon Monoxide (CO) National Ambient Air Quality Standards (NAAQS) on or after November 15, 1992" dated September 17, 1993 (Shapiro memo), relating to mechanisms for converting part D measures into contingency measures is not relevant for purposes of this redesignation.

Comment 7: The proposed rulemaking suggests that a SIP meeting the serious area requirements need not be fully approved because such a plan is not yet due. The CAA does not make an exception for SIP revisions that have or have not become due. In fact, the serious area requirements have, as a matter of law, become due. The plans were due by June 14, 1998, and no later than May 18, 2002, pursuant to previous EPA and Court actions. The commenter stated that the May 18, 2002, date was set by EPA in a March 19, 2001, rulemaking, and that the effect of a decision by the Court of Appeals for the Seventh Circuit was to reinstate this submission date.

Response 7: Section 107(d)(3)(E)(ii) requires that the applicable SIP for the area must be fully approved under section 110(k). As discussed in the response to comments 6 and 8, the applicable SIPs for the St. Louis area are fully approved, and the serious area requirements have not yet become due. In making this determination, EPA is not creating an "exception" to the statutory requirements for approved SIPs, but is determining that SIP revisions which are not yet due are not "applicable" for purposes of section 107(d)(3)(E)(ii) and (v). As stated in the January 30, 2003, final rule at 68 FR 4838, on November 25, 2002, the Seventh Circuit Court of Appeals vacated a June 26, 2001, rule extending the St. Louis area's attainment date, and remanded to EPA for "entry of a final rule that reclassifies St Louis as a serious nonattainment area effective immediately * * *" (*Sierra Club and Missouri Coalition for the Environment* v. *EPA*, 311 F. 3d 853 (7th Cir. 2002)). In response to the Court's order, and in accordance with section 181(b)(2) of the CAA, EPA reinstated the nonattainment determination and reclassification contained in the March 19, 2001, rulemaking (66 FR 15585). In the January 30 rule, EPA also established a deadline of 12 months after January 30, 2003, for the states to submit the serious area requirements. The rationale for the deadline is stated in the January 30, 2003, final rule (68 FR 4838). The January 30, 2003, final rule was not challenged and this redesignation rulemaking does not reopen the January 30 rulemaking. Comments on the appropriate deadline for the serious area requirements are beyond the scope of this rule.

With respect to the commenter's assertion that the serious area requirements should have been due by June 14, 1998, this is based on an argument made by the commenter in the U.S. District Court and the Court of Appeals for the District of Columbia that the reclassification of the St. Louis area to serious should have been made retrocative to 1997, with the serious area measures due in 1998. This argument is not only outside the scope of this rulemaking as explained previously, but it was rejected by both Courts (*See, Sierra Club* v. *Whitman*, 285 F.3d, 63, 68 (D.C. Cir. 2002)). The Courts rejected the notion that retroactive SIP submission dates should be imposed because they would have passed before the area had notice and opportunity to meet the deadlines. *See also,* Metropolitan Washington, DC, Maryland and Virginia Determination of Nonattainment (68 FR 3410, January 24, 2003). As explained above, EPA's determination that the serious area requirements are not "applicable" with respect to this redesignation because they are not yet due is consistent with the CAA, with the January 30, 2003, final rule, with applicable EPA policy, with relevant judicial decisions, and with a long history of prior redesignation actions.

Comment 8: There is no "fully approved" or even a partially approved SIP because the June 26, 2001, rule was vacated by the Court of Appeals for the Seventh Circuit.

Response 8: This comment refers to both the Missouri and Illinois portions of the St. Louis area. EPA is hereby providing a response regarding the Missouri portion of the St. Louis area. See the rulemaking in today's **Federal Register** regarding redesignation of the Illinois portion of the St. Louis area for EPA's response to this comment as it pertains to the Illinois portion of the St. Louis area.

In the January 30, 2003, proposed rule at 68 FR 4850 through 4856, EPA described the actions taken by EPA in the June 26, 2001, rule which were vacated by the Court of Appeals for the Seventh Circuit. Also, in the January 30, 2003, proposed rule at 68 FR 4850 through 4856, EPA reproposed to approve some requirements, and explained that certain additional actions vacated by the Court were no longer applicable requirements since the area has attained the NAAQS. As discussed in the January 30, 2003, proposed rule, the additional actions vacated by the Court which are no longer applicable include the contingency measure requirements of section 172(c), additional RACM requirements of section 172(c)(1) and section 182(b), and the attainment demonstration requirements of section 182(b)(1). That discussion is incorporated herein. *See also* the discussion in section II.A concerning the inapplicability of certain requirements. In the June 26, 2001, rule, EPA took the following relevant actions: approved Missouri's and Illinois' 1-hour ozone attainment demonstration; found that the St. Louis ozone nonattainment area met the RACM requirements of the CAA; found that the contingency measures identified by the states of Illinois and Missouri are adequate; approved the Illinois and Missouri MVEBs; approved an exemption from the oxides of nitrogen (NO_X) emission control requirements for RACT and disapproved an exemption from the NO_X new source review (NSR) and NO_X conformity requirements for the Illinois portion of the St. Louis ozone nonattainment area. EPA has determined, for the reasons stated in this rule and in the proposed rule, that the attainment demonstration, and RACM requirements, are no longer applicable requirements since the area has attained the NAAQS. In this rulemaking, EPA is approving contingency measures as part of Missouri's maintenance plan, and approving MVEBs for 2014, for the Missouri portion of the area. In a separate rulemaking in today's **Federal Register**, EPA is approving revisions to Missouri's I/M rule.

To be considered fully approved pursuant to section 110(k), the SIP must not have partial approval, disapproval, or conditional approval of submittals. EPA is not partially approving, disapproving, nor conditionally approving any of the SIP actions contained in the June 26, 2001, rule vacated by the Court. EPA is fully approving the measures submitted by Missouri which are applicable for purposes of section 107(d)(3)(E)(v), and is determining that the other submissions are not applicable.

Therefore, the SIP is "fully approved" for all applicable requirements.

Comment 9: EPA attempted to assert that the Missouri and Illinois SIPs "can be considered to be approved." This is a "pseudo-approval" and an attempt by EPA to escape the simple straightforward statutory requirement to have a fully approved SIP. This effort by EPA fails because of the clear language of the CAA, and because EPA must do a rulemaking to approve the SIP. EPA is also avoiding the requirement for judicial review of its actions.

Response 9: This comment refers to both the Missouri and Illinois portions of the St. Louis area. EPA is hereby providing a response regarding the Missouri portion of the St. Louis area. See the rulemaking in today's **Federal Register** regarding redesignation of the

Illinois portion of the St. Louis area for EPA's response to this comment as it pertains to the Illinois portion of the St. Louis area.

The use of the phrase "can be considered to be approved" (*see* the January 30, 2003, proposed rule at 68 FR 4851, 4852) was merely a statement the SIPs will meet the section 110 requirements and as such "can be considered to be approved" if EPA were to approve certain plan elements, described in the proposed rulemakings. On January 30, 2003, EPA published two proposed rules found at 68 FR 4842 and 68 FR 4847. As part of these proposals, EPA proposed to approve revisions to Missouri's I/M rule. In today's **Federal Register**, EPA is taking final action approving Missouri's I/M rule. By taking these actions, EPA now concludes that Missouri's SIP is approved. The use of the quoted phrase was not intended to escape a statutory requirement. In fact, it recognized EPA's obligation to complete rulemakings in order to approve SIPs, and it recognized that EPA could not determine that the SIP was fully approved until it took final action to approve the remaining SIP elements. All of the SIP elements which are applicable to the St. Louis area for purposes of redesignation have either been approved in previous rulemakings (*see* response to comments 6, 7, 8, 13, 14, 15, and 16 for a discussion of these prior rulemakings) or are approved in rulemakings published today.

The proposed rule at 68 FR 4851 states that on November 25, 2002, the U.S. Court of Appeals for the Seventh Circuit (Court) issued a decision in *Sierra Club and Missouri Coalition for the Environment* v. *EPA*, 311 F. 3d 853 (7th Cir. 2002). In this decision, the Court vacated the June 26, 2001, rule and remanded to EPA for entry of a final rule that reclassifies St Louis as a serious nonattainment area for ozone. Although the Court's opinion addressed only EPA's action extending the attainment date for St. Louis, the Court's order vacated the other EPA actions in the rulemaking as well. EPA has approved all SIP elements that are applicable to the St. Louis area and is determining that certain others are not applicable. This is not a "pseudo-approval" of the SIP elements, but a determination that because certain requirements (*e.g.*, the attainment demonstration and RACM) are not applicable, they need not be approved. (*See* response to comment 8 for more discussion of the requirement for a fully approved SIP.) The applicable requirements which were approved prior to the June 26, 2001, action (*e.g.*, VOC RACT, NO_X RACT, the ROP Plan) were subject to notice and comment rulemaking and judicial review. The measures approved today (the maintenance plan and contingency measures, MVEBs, I/M program revisions) have been subject to notice and comment rulemaking and EPA's action is subject to judicial review. EPA's determination that certain requirements are not applicable has been subject to notice and comment rulemaking and is subject to judicial review. The public has had full opportunity to comment on all of EPA's actions, as evidenced by the numerous comments submitted by the commenter. Therefore, EPA has not avoided any requirement for public comment or judicial review.

In acting upon a redesignation request, EPA may rely on any prior SIP approvals plus any additional approvals it may perform in conjunction with acting on the redesignation. EPA has already taken final action to approve all required SIP elements or is approving them in conjunction with this final action on the redesignation. Therefore, the St. Louis area has a fully approved SIP. *See* "Procedures for Processing Requests to Redesignate Areas to Attainment," John Calcagni, Director, Air Quality Management Division, September 4, 1992, page 3 (Calcagni memo). The Calcagni memo allows for approval of SIP elements and redesignation to occur simultaneously, and EPA has frequently taken this approach in its redesignation actions. *See* (66 FR 53096) (Pittsburgh-Beaver Valley, Pennsylvania, October 19, 2001); (65 FR 37879) (Cincinnati-Hamilton, Ohio, June 19, 2000); (61 FR 20458) (Cleveland-Akron-Lorain, Ohio May 7, 1996); (60 FR 37366) (July 20, 1995), (61 FR 31832–31833) (June 21, 1996) (Grand Rapids, MI).

Comment 10: The SIPs fail to meet the section 110 requirements because the "inapplicable "moderate" area" requirements contained in the SIPs do not provide for implementation, maintenance, and enforcement of the NAAQS because modeling shows that the plan does not provide for attainment until 2004. Furthermore, Missouri has failed to meet the section 110(a)(2)(D) requirements related to the NO_X SIP call.

Response 10: EPA finds that the Missouri SIP meets the section 110 requirements. See the January 30, 2003, proposal and the responses to comments 8 and 9 for further discussion.

Submissions under the NO_X SIP call are not applicable requirements for purposes of evaluating a redesignation request.

At this time, Missouri is not subject to the NO_X SIP call. As explained in the proposal, EPA's determination that Missouri significantly contributes to downwind nonattainment was vacated by the Court of Appeals for the District of Columbia Circuit. EPA is not relying on a SIP to predict attainment but is relying on air quality monitoring data to show that the area has attained. With respect to the assertion that the area must have an approved attainment demonstration SIP in order to meet the requirements of section 110, EPA has addressed this issue in its response to comments on the lack of an approved attainment demonstration for the area. Section 110(a)(1) does not add any additional requirements for compliance with the NAAQS other than those included in section 172(c) and 182, and the commenter does not identify any specific additional requirements. See the responses to comments 3, 21, and 24 with respect to the assertion that the modeling for the area shows that it cannot attain until 2004.

The SIP call budget for Missouri was proposed on February 22, 2002 (67 FR 8396), but has not yet been finalized. For this reason alone, it is not an applicable requirement. In addition, the NO_X SIP call requirements for a state are not linked with a particular nonattainment area's designation and classification in that state. EPA believes that the requirements linked with a particular nonattainment area's designation and classification are the relevant measures to evaluate in reviewing a redesignation request. The NO_X SIP call submittal requirements, where applicable, continue to apply to a state regardless of the designation of any one particular area in the state.

Thus, we do not agree that the NO_X SIP call submission should be construed to be an applicable requirement for purposes of redesignation. The section 110 and part D requirements, which are linked with a particular area's designation and classification, are the relevant measures to evaluate in reviewing a redesignation request. This policy is consistent with EPA's existing conformity and oxygenated fuels requirements, as well as with section 184 ozone transport requirements. See Reading, Pennsylvania, proposed and final rulemakings (61 FR 53174–53176, October 10, 1996), (62 FR 24826, May 7, 1997); Cleveland-Akron-Lorain, Ohio, final rulemaking (61 FR 20458, May 7, 1996); and Tampa, Florida, final rulemaking at (60 FR 62748, December 7, 1995). See also the discussion on this issue in the Cincinnati redesignation (65 FR 37890, June 19, 2000), and in the Pittsburgh redesignation (66 FR 50399, October 19, 2001).

Comment 11: The state SIPs fail to meet the part D requirements of the CAA. EPA asserts that certain requirements of part D are not applicable because monitoring data shows the area has attained. EPA relies on the case of *Sierra Club* v. *EPA* for this conclusion. However, this case has no application here because it was not a "redesignation case." Given the attainment demonstration modeling, it would be impossible to conclude that any of the "part D requirements are not necessary." All part D requirements are applicable unless, prior to redesignation, EPA formally exempts the St. Louis area from the part D requirements.

Response 11: Section II.A of this document, discussing the rationale for EPA's determination of attainment and suspension of certain requirements, addresses the applicability of the part D requirements. The part D requirements specifically include the requirements of sections 172(c) and 176 as well as the applicable requirements of subpart 2. The section 172(c) requirements include General Plan Requirements which to the extent applicable, must provide for the implementation of all RACM as expeditiously as practicable (at a minimum this requires RACT for stationary source), RFP, emissions inventory, identification and quantification of allowable emissions for major new or modified stationary sources, permits for new and modified major stationary sources, other emission control measures needed to assure attainment of the NAAQS, section 110(a)(2) requirements, and contingency measures. Section 110(a)(2) requirements include submittal of a SIP that has been adopted by the state after reasonable public notice and hearing; provisions for establishment and operation of appropriate apparatus, methods, systems, and procedures needed to monitor ambient air quality; implementation of a source permit program; provisions for the implementation of part C requirements (Prevention of Significant Deterioration (PSD)); provisions for the implementation of part D requirements (nonattainment area NSR permit programs); provisions for stationary source emission control measures, source monitoring, and source reporting; provisions for air pollution modeling; and provisions for public and local agency participation in planning and emission control rule development. Subpart 2 requirements include attainment demonstration, 1990 base year inventory and periodic emissions inventories updates, emission statements, rate-of-progress plans, VOC RACT, RACM, stage II vapor recovery, I/M, and NO_X emission controls.

As stated in the response to comment 8 above, the Missouri SIP meets all applicable requirements including section 110 and part D requirements. As stated in the January 30, 2003, proposed rule at 68 FR 4852 and 4853, EPA has approved each state's RFP, permitting programs, and VOC RACT rules as meeting the requirements of part D. Missouri's SIP has regulations requiring annual emission statements from major sources. Missouri has submitted complete emission inventories. Missouri has approved general conformity rules pursuant to section 176. In addition, Missouri has approved transportation conformity rules. EPA is approving in this action Missouri's maintenance plan which includes adequate contingency measures. Thus, Missouri has met the applicable part D requirements of the CAA. Note that also as stated in the response to comment 8, by finding that the St. Louis area has attained the standard, the attainment demonstration and RACM requirements are no longer applicable requirements. *See* also the final rule for Illinois describing how the Metro-East St. Louis area has met the applicable requirements.

As indicated in comment 3 above, neither section 107(d)(3)(E) nor EPA policy referenced by the commenter requires modeling as a prerequisite to redesignation of an ozone nonattainment area. In addition, no modeling was conducted as part of the redesignation requests submitted by Missouri or Illinois. Thus, there is no modeling basis for EPA to make any conclusions regarding the necessity for the part D requirements. (Modeling is not a required element of a redesignation request. *See*, 65 FR 37879—Cincinnati redesignation for additional discussion of this issue. *See, Wall* v. *EPA*, 265 F.3d. 426 upholding this interpretation.) However, as explained in detail in comment 3, the monitoring data collected over the 2000 through 2002 period show that the area has in fact attained the ozone standard. EPA finds no need for further controls to bring about attainment.

With respect to the commenter's assertion that the Tenth Circuit *Sierra Club* case is not applicable because it is not a "redesignation" case, the commenter misses the point of the case as it relates to St. Louis. The Tenth Circuit's endorsement of the interpretation of the CAA in the Seitz memo (that certain "statutory" requirements relating to attainment are not applicable to an area which has attained the standard) was not dependent on the fact that the area was not being redesignated. The case involved a determination by EPA that Salt Lake and Davies Counties, Utah, had attained the standard, and that, therefore, certain additional requirements relating to attainment (such as an attainment demonstration) would not apply so long as the area continued to attain. The Court expressly recognized that the area could be redesignated without having met those requirements, even though the action at issue there was an attainment determination and not a redesignation. The Court stated: "Recall that the Environmental Protection Agency's determination to exempt the Counties from limited ozone requirements is really no more than a suspension of those requirements for so long as the area continues to attain the standard or until the area is formally redesignated to attainment." (*Sierra Club* v. *EPA*, 99 F.3d 1551, 1558 (10th Cir. 1996)). (*See also*, 66 FR 53095 for EPA's redesignation of the Pittsburgh area.) The Court did not say, as the commenter would have it, that the area would have to adopt those measures which had been determined to be unnecessary in order to be redesignated. As it did for the Utah counties, in which EPA redesignated those counties without requiring that they meet the suspended requirements, EPA is here determining that the St. Louis area is attaining the standard and that certain requirements are suspended and do not apply because the area is being redesignated. The basis for this determination and the suspension of certain requirements for the area was explained in detail in the proposal found at 68 FR 4850–4858 and further explained in this response to various comments on the issue. The determination is based on monitored data, not modeling, for reasons explained in this document. Nothing in the Tenth Circuit case prohibits EPA from simultaneously suspending the requirements and redesignating an area, which is what this rulemaking accomplishes. EPA has taken this dual action in a number of areas including Louisville (66 FR 53665), Cincinnati (65 FR 37879), Grand Rapids (61 FR 31831), and Pittsburgh (66 FR 53094). Upon redesignation to attainment, the suspended nonattainment area requirements will no longer apply at all since the area is no long a designated nonattainment area.

Comment 12: EPA asserts that the RACM requirements of section 172(c)(1) need not be adopted because the area has attained the NAAQS, thus, these

measures would not accelerate attainment. This is confoundingly circular reasoning which erases the "fully approved" requirements of the CAA. EPA's assertion is not relevant here.

Response 12: The April 16, 1992, General Preamble (57 FR 13560) states that EPA interprets section 172(c)(1) such that the RACM requirements are a "component" of an area's attainment demonstration. Thus, since the attainment demonstration is not an applicable requirement, RACM is also no longer an applicable requirement. See response to comment 8 for further discussion. Also, EPA has been consistent in this interpretation. See the final rulemaking for Pittsburgh, 66 FR 53096 (October 19, 2001) for additional discussion of this interpretation.

EPA believes that its policy is not "confoundingly circular reasoning" but rather straightforward reasoning. It is reasonable to conclude that states need not develop an attainment demonstration showing how they will attain a NAAQS that they have already attained. Similarly, states need not adopt additional reasonably available control measures as necessary to accelerate attainment when attainment has already been achieved.

As stated in the response to comments 8 and 9, SIPs must be "fully approved" as required by section 107(d)(3)(E)(ii), only with respect to the "applicable" requirements of section 110 and part D, as addressed in section 107(d)(3)(E)(v). If requirements are not "applicable" with respect to those sections, they need not be fully approved.

Comment 13: The RACM and RACT requirements of the CAA are not tied to reasonable further progress but are required by the CAA to be implemented as expeditiously as practicable. This is supported by H.R. Rep. No. 101–490, Part 2, 101st Cong., 2d Sess. at p. 223; *Sierra Club* v. *EPA*, 99 F.3d 1551, 1557 (10th Cir. 1996); *Wall* v. *EPA*, 265 F.3d 426, 441 (6th Cir. 2001); and, EPA's Seitz memo, page 4. EPA's contention that any additional RACM and RACT measures need not be adopted directly repudiates the plain language of the CAA.

Response 13: This comment refers to both the Missouri and Illinois portions of the St. Louis area. EPA is hereby providing a response regarding the Missouri portion of the St. Louis area. See the rulemaking in today's **Federal Register** regarding redesignation of the Illinois portion of the St. Louis area for EPA's response to this comment as it pertains to the Illinois portion of the St. Louis area.

EPA has previously addressed the rationale for its determination that additional RACM is not required for an area attaining the standard. (*See, e.g.,* section II and response to comment 12.) The RFP requirement under section 172(c)(2) is defined as progress that must be made toward attainment. Section 182(b)(1)(A) sets forth the specific requirements for RFP for a moderate nonattainment area which includes a reduction in VOC emissions of at least 15 percent from baseline emissions. As stated in the January 30, 2003, proposed rule at 68 FR 4854, 4855, EPA approved Missouri's 15 percent ROP plan.

RACM is a general requirement of section 172(c)(1) which calls for SIPs to contain "all reasonably available control measures as expeditiously as practicable (including such reductions in emissions from existing sources in the area as may be obtained through the adoption, at a minimum, of reasonably available control technology and shall provide for attainment of the national primary ambient air quality standards." EPA has consistently interpreted this provision to require only implementation of potential RACM measures that could contribute to reasonable progress or attainment. (*See* General Preamble 57 FR 13498, April 16, 1992.) Thus, where an area has already met all applicable requirements for progress and has attained the relevant standard, no additional RACM measures are required.

Section 182(b)(2) specifies the SIP requirements for RACT in moderate nonattainment areas. These requirements include implementation of RACT at each source of VOCs covered by Control Technology Guidelines (CTGs) and all other major sources of VOCs. EPA has never indicated that the area could avoid implementing VOC RACT requirements because the area has attained the standard.

As stated in the January 30, 2003, proposed rule at 68 FR 4855, Missouri has adopted and implemented all required VOC RACT rules. In addition, section 182(f) establishes NO_X RACT requirements for major stationary sources. EPA approved Missouri's NO_X RACT rule into the SIP on May 18, 2000 (65 FR 31482).

The commenter states that H.R. Rep. No. 101–490, Part 2, 101st Cong., 2d Sess. at p. 223 does not tie RACM and RACT measures to RFP. This document is a recitation of the statute, but does not address tying RACM and RACT to RFP.

With respect to the commenter's contention that EPA's position regarding additional RACM and RACT measures was rejected in the Tenth Circuit *Sierra Club* case and in *Wall*, the commenter is incorrect. The *Wall* case involved VOC RACT, which is not an issue here, because, as discussed previously, and in response to comment 14 below, Missouri has adopted all applicable VOC RACT measures. Missouri has also adopted NO_X RACT measures. The Tenth Circuit *Sierra Club* case upheld EPA's determination that RACT was not tied to reasonable further progress, and that case did not address EPA's interpretation of RACM at all. The commenter's Seventh Circuit brief, which it relies on to support its position that RACM requirements must be met for an area to be redesignated, argued that EPA's interpretation of the RACM requirement (that section 172(c)(1) requires only implementation of all RACM which would expedite attainment) is an improper reading of the CAA. That issue was not addressed or decided by the Seventh Circuit. However, the issue of EPA's interpretation of the RACM requirement was raised and upheld in the 5th Circuit (*Sierra Club* v. *EPA*, 314 F.3d 735, 743–745 (5th Cir. 2002)) and the District of Columbia Circuit (*Sierra Club* v. *EPA*, 294 F.3d 155, 162–163 (D.C. Cir. 2002)). Both circuits found that EPA's interpretation that the statute only required implementation of RACM measures that would advance attainment was reasonable.

Comment 14: The rulemaking should identify each VOC RACT rule implemented by the states and identify whether the states have met the VOC RACT requirements.

Response 14: This comment refers to both the Missouri and Illinois portions of the St. Louis area. EPA is hereby providing a response regarding the Missouri portion of the St. Louis area. See the rulemaking in today's **Federal Register** regarding redesignation of the Illinois portion of the St. Louis area for EPA's response to this comment as it pertains to the Illinois portion of the St. Louis area.

The January 30, 2003, proposed rule states at 68 FR 4855 that both states have adopted and implemented all required VOC RACT rules. In addition, the proposed rule provided the following web sites which contain the content of these rules, and references to EPA's rulemakings approving these rules. The Web site for Missouri is: *http://www.epa.gov/region07/programs/artd/air/rules/missouri/chap5.htm.*

The VOC RACT rules listed on this Web site and EPA's rulemakings approving these rules include the following:

10 CSR 10–5.070 Open Burning Restrictions, 37 FR 10842 (5/31/72)

10 CSR 10–5.220 Control of Petroleum Liquid Storage, Loading and Transfer, 37 FR 10842 (5/31/72)
10 CSR 10–5.295 Control of Emissions From Aerospace Manufacturing and Rework Facilities, 65 FR 31489 (5/18/2000)
10 CSR 10–5.300 Control of Emissions from Solvent Metal Cleaning, 45 FR 24140 (4/9/80) and 45 FR 56806 (7/11/80) (correction)
10 CSR 10–5.310 Liquefied Cutback Asphalt Paving Restricted, 45 FR 24140 (4/9/80) and 45 FR 46806 (7/11/80) (correction)
10 CSR 10–5.320 Control of Emissions from Perchloroethylene Dry Cleaning Installations, 46 FR 20172 (4/3/81)
10 CSR 10–5.330 Control of Emissions from Industrial Surface Coating Operations, 45 FR 24140 (4/9/80) and 45 FR 46806 (7/11/80) (correction)
10 CSR 10–5.340 Control of Emissions from Rotogravure and Flexographic Printing Facilities, 46 FR 20172 (4/3/81)
10 CSR 10–5.350 Control of Emissions from Manufacture of Synthesized Pharmaceutical Products, 46 FR 20172 (4/3/81)
10 CSR 10–5.360 Control of Emissions from Polyethylene Bag Sealing Operations, 49 FR 40164 (10/15/84)
10 CSR 10–5.370 Control of Emissions from the Application of Deadeners and Adhesives, 55 FR 7712 (3/5/90)
10 CSR 10–5.390 Control of Emissions from Manufacture of Paints, Varnishes, Lacquers, Enamels and Other Allied Surface Coating Products, 50 FR 14925 (4/16/85)
10 CSR 10–5.410 Control of Emissions from the Manufacture of Polystyrene Resin, 55 FR 7712 (3/5/90)
10 CSR 10–5.420 Control of Equipment Leaks from Synthetic Organic Chemical and Polymer Manufacturing Plants, 53 FR 12417 (4/14/88)
10 CSR 10–5.440 Control of Emissions from Bakery Ovens, 65 FR 8060 (2/17/2000)
10 CSR 10–5.442 Control of Emissions From Offset Lithographic Printing Operations, 65 FR 8060 (2/17/00)
10 CSR 10–5.450 Control of VOC Emissions from Traffic Coatings, 65 FR 8060 (2/17/00)
10 CSR 10–5.451 Control of Emissions from Aluminum Foil Rolling, 65 FR 8060 (2/17/00)
10 CSR 10–5.455 Control of Emissions from Solvent Cleanup Operations, 65 FR 8060 (2/17/00)
10 CSR 10–5.490 Municipal Solid Waste Landfills, 63 FR 20320 (4/24/98)
10 CSR 10–5.500 Control of Emissions From Volatile Organic Liquid Storage, 65 FR 31489 (5/18/00)
10 CSR 10–5.520 Control of Volatile Organic Compound Emissions From Existing Major Sources, 65 FR 31489 (5/18/2000)
10 CSR 10–5.530 Control of Volatile Organic Compound Emissions From Wood Furniture Manufacturing Operations, 65 FR 31489 (5/18/00)
10 CSR 10–5.540 Control of Emissions From Batch Process Operations, 65 FR 31489 (5/18/00)
10 CSR 10–5.550 Control of Volatile Organic Compound Emissions From Reactor Processes and Distillations Operations Processes in the Synthetic Organic Chemical Manufacturing Industry, 65 FR 31489 (5/18/00)

The rationale for approval of each of these rules is described in the respective **Federal Register** document approving each rule. As stated previously, in the response to comment 5, this redesignation rulemaking does not reopen rulemakings regarding prior SIP approvals.

Comment 15: Missouri has not adopted all appropriate NO_X and NO_X RACT rules. Thus, the SIP is not approvable.

Response 15: Missouri has adopted and EPA has approved into Missouri's SIP a NO_X RACT rule meeting the requirements of section 182(f). The Missouri NO_X RACT rule can be found at 10 CSR 10–5.510. *See* comment 13 for further discussion on Missouri's NO_X RACT rule. As described in response to previous comments, pursuant to the Calcagni Memo page 3, and upheld in the *Wall* case cited previously, an EPA action on a redesignation request does not mean that earlier issues with regard to the SIP will be reopened. *See also, Southwestern Pennsylvania Growth Alliance* v. *Browner*, 144 F.3d 984 (6th Cir. 1998). Thus, EPA is not reopening Missouri's NO_X RACT rule as part of this redesignation.

Missouri has adopted and EPA has approved into the SIP a state-wide NO_X rule (10 CSR 10–6.350 Emissions Limitations and Emissions Trading of Oxides of Nitrogen, 65 FR 82285 (12/28/00)).

As stated in comment 10 above, EPA believes that submissions under the NO_X SIP call are not applicable requirements for purposes of evaluating Missouri's redesignation request.

EPA has determined that Missouri has adopted all applicable NO_X and NO_X RACT rules.

Comment 16: The Missouri I/M rule being approved in a separate rulemaking does not meet the requirements for an I/M program. EPA needs to explain how it can approve an I/M rule since it does not meet the I/M requirements for a serious area.

Response 16: EPA is responding to comments regarding Missouri's I/M program in a separate rulemaking published in today's **Federal Register**. EPA's response to comments included in that rulemaking are incorporated here.

The Federal rule at 40 CFR 51.372(c) states that "Any nonattainment area that EPA determines would otherwise qualify for redesignation from nonattainment to attainment shall receive full approval of a SIP submittal under Sections 182(a)(2)(B) or 182(b)(4) if the submittal contains the following elements: (1) Legal authority to implement a basic I/M program (or enhanced if the State chooses to opt up) as required by this subpart. The legislative authority for an I/M program shall allow the adoption of implementing regulations without requiring further legislation. (2) A request to place the I/M plan (if no I/M program is currently in place or if an I/M program has been terminated) or the I/M upgrade (if the existing I/M program is to continue without being upgraded) into the contingency measures portion of the maintenance plan upon redesignation. (3) A contingency measure consisting of a commitment by the Governor or the Governor's designee to adopt or consider adopting regulations to implement the required I/M program to correct a violation of the ozone or CO standard or other air quality problem, in accordance with the provisions of the maintenance plan. (4) A contingency commitment that includes an enforceable schedule for adoption and implementation of the I/M program, and appropriate milestones. The schedule shall include the date for submission of a SIP meeting all of the requirements of this subpart. Schedule milestones shall be listed in months from the date EPA notifies the State that it is in violation of the ozone or CO standard or any earlier date specified in the State plan. Unless the State, in accordance with the provisions of the maintenance plan, chooses not to implement I/M, it must submit a SIP revision containing an I/M program no more than 18 months after notification by EPA."

Regarding item (1) above, as indicated in the response to comment 35, Missouri has the authority to implement an I/M program. Regarding item (2) above, the maintenance plan contains "High Enhanced I/M" as a contingency measure. The plan was accompanied by a request from an authorized Missouri official for EPA to approve the maintenance plan. Regarding item (3) above, section 7.1 of the maintenance plan contains a commitment to adopt or consider adopting the I/M program listed as a contingency measure.

Regarding item (4) above, the SIP contains an enforceable schedule for adoption and implementation of the I/M program. Section 7.1 of the maintenance plan sets for a schedule with milestones for promulgation and implementation of a program meeting the requirements.

This meets the condition imposed by the Federal rule at 40 CFR 51.372(c). Thus, EPA is approving the I/M program in a separate rulemaking. This satisfies the basic I/M requirements for moderate ozone areas. Since EPA is taking final action to approve the redesignation of the St. Louis area prior to the date that the serious area requirement for enhanced I/M would be due, EPA can approve the I/M program as meeting the moderate rather than the serious area I/M requirement, as fully explained in this final rule and in the separate I/M approval action taken elsewhere in today's **Federal Register**.

D. Comments Related to Criterion 3: The Improvement in Air Quality Must Be Due to Permanent and Enforceable Reductions in Emissions

Comment 17: The area cannot meet this requirement since there is not an approved SIP meeting the "serious" area requirements, and there is no applicable implementation plan.

Response 17: This comment refers to both the Missouri and Illinois portions of the St. Louis area. EPA is hereby providing a response regarding the Missouri portion of the St. Louis area. See the rulemaking in today's **Federal Register** regarding redesignation of the Illinois portion of the St. Louis area for EPA's response to this comment as it pertains to the Illinois portion of the St. Louis area.

As described in the response to comments for Criterion 2 above, the SIPs meet the applicable CAA requirements. The applicable SIP requirements are described in the January 30, 2003, proposed rulemaking (68 FR 4850–4856). EPA's approval of previous SIP submittals, this rulemaking and today's rulemaking approving Missouri's I/M rule render Missouri's SIP "fully approved" for all applicable SIP requirements. As stated in response to comments relating to Criterion 2, above, since the serious area requirements are not yet due, the SIP is not deficient because the serious area requirements have not been included.

In any event, this criterion is not dependent on which requirements are applicable or have been approved or implemented. The requirement is that air quality improvements be attributable to permanent and enforceable reductions in emissions which is a separate inquiry from the question of the requirements applicable to the area. Missouri's submission contains a detailed analysis of the air quality improvements in St. Louis and their relation to the permanent and enforceable control measures which are in place in the area. (*See* response to comment 19 for further discussion.) These measures are listed in the proposal at 68 FR 4856–4858. These measures are all part of the applicable SIP. Thus, the commenter is incorrect in its assertion that there is no applicable SIP.

Comment 18: It is impossible to demonstrate that monitored concentrations on the 2002 Labor Day weekend resulted from permanent and enforceable reductions. The reductions were due to voluntary curtailment of operations by large industrial operations.

Response 18: The monitoring data for the St. Louis nonattainment area demonstrate that the estimated number of exceedances per year averaged over three years is 1.0 or less at all monitoring sites in the area. EPA believes that any voluntary measures taken by industry and others over a two- or three-day period in this three-year time period does not render the air quality monitoring data unrepresentative of the air quality. As explained in more detail in response to comment 19 below, ozone levels monitored during 2000–2002 are due to permanent and enforceable measures which are in place (*e.g.*, I/M programs, RACT on VOC and NO_X stationary sources).

In the event that some sources did voluntarily reduce emissions over this two- or three-day period, EPA has no basis to conclude that these voluntary reductions had an effect on the monitored air quality. As the commenter points out, ozone formation occurs through "complex chemistry and meteorology." Voluntary reductions over a short time period may or may not have had an impact on the monitored air quality. (We note that "voluntary" reductions are always a factor, since total emissions at a given point in time depend, for example, on how many people decide to drive on a given day or weekend.) However, the state's demonstration that air quality improvements are due to permanent and enforceable emission reductions is based on its analysis of emission reductions over a ten-year period (*see* response to comment 19), consistent with the CAA requirements and EPA policy including the Calcagni memo at page 4. Also, see the response to comment 2 above for further discussion on this issue. Note that in general, EPA encourages voluntary reductions to reduce emissions. EPA supports programs such as the Air Quality Index which encourages people to voluntarily reduce ozone forming activities such as filling gas tanks, painting, mowing, etc. at times when ozone formation is expected to be high. Although these measures are not enforceable nor measurable, they are encouraged.

Comment 19: EPA cannot demonstrate that permanent and enforceable reductions are responsible for any alleged improvement of air quality. The only way to demonstrate this point is through photochemical grid modeling. No such modeling has been presented. Without modeling, EPA's claim is pure speculation. Emission reductions attributable to the emission controls "could just as easily lead to increases in ozone concentrations." The attainment demonstration modeling shows that attainment was "impossible" in 2003.

Response 19: This comment refers to both the Missouri and Illinois portions of the St. Louis area. EPA is hereby providing a response regarding the Missouri portion of the St. Louis area. See the rulemaking in today's **Federal Register** regarding redesignation of the Illinois portion of the St. Louis area for EPA's response to this comment as it pertains to the Illinois portion of the St. Louis area.

EPA's response to this and other comments on the attainment demonstration modeling is included in the response to comments 21 and 24. In addition, see the response to comment 23 for further discussion regarding the use of modeling in demonstrating maintenance of the NAAQS.

Neither Section 107(d)(3)(E)(iii) nor the Calcagni memo referenced by the commenter require modeling as a prerequisite to redesignation of an ozone nonattainment area. Thus, modeling is not required to demonstrate that the improvement in air quality is due to permanent and enforceable reductions. *See* General Preamble for the Interpretation of Title I of the CAA Amendments of 1990 at 57 FR 13496 (April 16, 1992), supplemented at 57 FR 18070 (April 28, 1992); "Procedures for Processing Requests to Redesignate Areas to Attainment," John Calcagni, Director, Air Quality Management Division, September 4, 1992; "State Implementation Plan (SIP) Requirements for Areas Submitting Requests for Redesignation to Attainment of the Ozone and Carbon Monoxide (CO) National Ambient Air Quality Standards (NAAQS) on or after November 15, 1992," Michael H. Shapiro, Acting Assistant Administrator for Air and Radiation, September 17, 1993; and "Use of Actual Emissions in Maintenance Demonstrations for Ozone and CO Nonattainment Areas," D. Kent Berry, Acting Director, Air Quality Management Division, November 30, 1993. Our guidance provides that an area may meet this requirement by showing how its ozone precursor emissions changed due to permanent and enforceable emissions reductions from when the area was not monitoring attainment of the 1-hour ozone NAAQS to when it reached attainment. See the rationale set forth in the Cincinnati redesignation (65 FR 37879, 37886–37889, June 19, 2000) and the Pittsburgh redesignation (66 FR 53094, October 19, 2001). The Sixth Circuit has recently upheld EPA's interpretation in *Wall* v. *EPA* (265 F.3d 426, 435).

In the January 30, 2003, proposed rule at 68 FR 4856–4858, EPA explained the basis for concluding that the observed air quality improvements are due to the implementation of permanent and enforceable emission reductions. The reasons include, analysis of the emission controls which have resulted in emission reductions, an analysis of meteorological conditions showing a trend toward the reduction of ozone concentrations while the number of days conducive to forming ozone showed no significant trend, and an assessment of emissions in 1990 and 2000 which have shown a substantial decrease in emissions of VOCs and NO_X.

Annual days conducive to ozone formation (those days with relatively clear skies, low wind speeds and southerly wind directions, high peak temperatures exceeding 85 degrees Fahrenheit, and little or no precipitation) have shown no noticeable trend up or down, only yearly variations. The number of conducive days have stayed between approximately 20 and 50 days per year with no increasing or decreasing trend. Meanwhile, exceedances have decreased from over 120 in 1978, over 100 in 1983, over 60 in 1988, to a total of 11 in the three-year period of 2000 to 2002. In addition, year-to-year fluctuation of conducive days cannot be correlated with higher or lower exceedance levels over the last few years. Since 1989, as the number of conducive days fluctuated from year to year, the number of exceedances demonstrated no similar trend. This indicates a disassociation between monitored exceedances and meteorological effects.

During the 1990–2000 period, as the area-wide ozone design values in the St. Louis area were decreasing, the VOC and NO_X emissions in the St. Louis area were also significantly decreasing (see response to comment 20 for further discussion on the area's design values). The following tables list VOC and NO_X emissions in 1990 and 2000 for the Missouri and Illinois portions of the St. Louis ozone nonattainment area. These tables show that the entire nonattainment area experienced a downward trend in VOC and NO_X emissions. This downward trend in emissions and ozone design values, along with no significant trend in the number of days conducive to ozone formation shows that the observed improvements in air quality are due to the implementation of permanent and enforceable emission control measures.

1990 AND 2000 MISSOURI PORTION OF THE ST. LOUIS NONATTAINMENT AREA VOC AND NO_X EMISSIONS

[Emissions in tons per ozone season weekday]

Source category	VOC	NO_X
1990		
Point Sources	81.97	347.61
Area Sources	87.74	29.47
On-Road Mobile Sources	135.42	135.00
Off-Road Mobile Sources	64.30	114.32
1990 Totals	369.43	626.40
2000		
Point Sources	46.59	165.96
Area Sources	57.38	32.27
On-Road Mobile Sources	103.79	181.75
Off-Road Mobile Sources	40.59	73.16
2000 Totals	248.35	453.14

1990 AND 2000 METRO-EAST AREA VOC AND NO_X EMISSIONS

[Emissions in tons per ozone season weekday]

Source category	VOC	NO_X
1990		
Point Sources	74.05	95.85
Area Sources	33.84	1.66
On-Road Mobile Sources	43.27	45.13
Off-Road Mobile Sources	23.49	23.99
1990 Totals	174.65	166.63
2000		
Point Sources	17.91	61.91
Area Sources	28.32	1.18
On-Road Mobile Sources	26.57	54.71
Off-Road Mobile Sources	21.31	23.85
2000 Totals	94.11	141.64

Reductions in ozone precursor (VOC and NO_X) emissions have brought many areas across the country into attainment. EPA has approved many ozone redesignations showing decreases in ozone precursor emissions resulting in attainment of the ozone standard. See redesignations for Pittsburgh (66 FR 53094, October 19, 2001), Cincinnati (65 FR 37879, June 19, 2000), Charleston (59 FR 30326, June 13, 1994; 59 FR 45985, September 6, 1994), Greenbrier County (60 FR 39857, August 4, 1995), Parkersburg (59 FR 29977, June 10, 1994); (59 FR 45978, September 6, 1994), Jacksonville/Duval County (60 FR 41, January 3, 1995), Miami/Southeast Florida (60 FR 10325, February 24, 1995), Tampa (60 FR 62748, December 7, 1995), Lexington (60 FR 47089, September 11, 1995), Owensboro (58 FR 47391, September 9, 1993), Indianapolis (59 FR 35044, July 8, 1994; 59 FR 54391, October 31, 1994), South Bend-Elkhart (59 FR 35044, July 8, 1994; 59 FR 54391, October 31, 1994), Evansville (62 FR 12137, March 14, 1997; 62 FR 64725, December 9, 1997), Canton (61 FR 3319, January 31, 1996), Youngstown-Warren (61 FR 3319, January 31, 1996), Cleveland-Akron-Lorain (60 FR 31433, June 15, 1995; 61 FR 20458, May 7, 1996), Clinton County (60 FR 22337, May 5, 1995; 61 FR 11560, March 21, 1996), Columbus (61 FR 3591, February 1, 1996), Kewaunee County (61 FR 29508, June 11, 1996; 61 FR 43668, August 26, 1996), Walworth County (61 FR 28541, June 5, 1996; 61 FR 43668, August 26, 1996), Point Coupee Parish (61 FR 37833, July 22, 1996; 62 FR 648, January 6, 1997), and Monterey Bay (62 FR 2597, January 7, 1997). Most of the areas that have been redesignated to attainment for the 1-hour ozone standard have continued to attain it. Areas that are not maintaining the 1-hour ozone standard have a maintenance plan to bring them back into attainment.

Between 1990 and 2000, area-wide VOC and NO_X emissions in the St. Louis area decreased by 37 percent and 25 percent, respectively. In Missouri, the VOC and NO_X emissions during this time period decreased by 33 percent and 28 percent, respectively. (*See* the rulemaking redesignating the Illinois portion of the St. Louis area published in today's **Federal Register** for NO_X and VOC reductions for the Metro-East area.) These emissions reductions were due to the implementation of Missouri's 15 percent rate-of-progress plan, including its implementation of a centralized motor vehicle inspection and maintenance program and stationary source controls. Additional reductions

were due to tighter Federal standards for new vehicles, and some were due to requirements for reformulated and low Reid Vapor Pressure (RVP) gasoline for motor vehicles. In addition, Title IV of the CAA resulted in reduced NO_X emissions from utility sources.

The commenter claims that the combination of NO_X and VOC emissions reductions could just as easily have led to increases in ozone. However, the actual monitoring data collected in the area shows that ambient ozone concentrations have dropped when this combination of ozone precursor reductions occurred. In other metropolitan areas, other levels of VOC and NO_X reductions have also resulted in attainment. *See* the areas listed above in first part of this response. The St Louis area's decrease in ozone levels is consistent with what other areas have experienced. The commenter has not provided data showing that decreases in ozone precursor emissions have led to higher levels of ozone.

EPA's conclusion that improvements in air quality are attributable to permanent and enforceable reductions in precursors is not "speculation" but is based on a careful review of the various technical analyses conducted by the states and described above. EPA believes it is reasonable not to require photochemical grid modeling. Three-year averaging addresses variations in meteorological conditions, an analysis of meteorological conditions showed no significant trend in the number of days conducive to ozone formation, and the commenter has presented no evidence that the three-year attainment period was unusually favorable. It is important to note that redesignation is not intended as an absolute guarantee that the area will never monitor future violations. This is what maintenance plan contingency measures are designed to address and correct. *See* the Cincinnati redesignation (65 FR 37879, 37886–37889, June 19, 2000) and the Pittsburgh redesignation (66 FR 53094, October 19, 2001) for additional discussion of this issue.

Comment 20: If improvements in St. Louis air quality were due to permanent and enforceable reductions, the trend in monitored concentrations would be to go down. However, exceedances tripled from 2000 to 2001 and more than doubled from 2001 to 2002.

Response 20: As stated in response to comment 2 above, a violation of the 1-hour ozone NAAQS occurs when the estimated number of exceedances per year averaged over three years is greater than 1.0 at any monitoring site in the area or its downwind environs, using conventional rounding techniques. Although there was an increase in the number of exceedances between 2000 and 2001 as well as between 2001 and 2002, year-to-year trends in exceedances are not used to determine attainment, but rather an average over three years is used. For reasons stated previously, EPA has determined that the St. Louis area is in attainment with the NAAQS.

As indicated in the January 30, 2003, proposal at 68 FR 4850, Table 1 Summarizes the number of expected exceedances at each monitor in the area.

TABLE 1.—1-HOUR OZONE NAAQS EXCEEDANCES IN THE ST. LOUIS, ILLINOIS-MISSOURI AREA FROM 2000 TO 2002

Site name	County or city and state	Estimated exceedances			Average number of estimated exceedances 2000–2002
		2000	2001	2002	
Jerseyville	Jersey, IL	0.0	1.0	1.0	0.7
Alton	Madison, IL	0.0	0.0	0.0	0.0
Maryville	Madison, IL	0.0	0.0	1.0	0.3
Edwardsville	Madison, IL	0.0	0.0	0.0	0.0
Wood River	Madison, IL	0.0	1.0	0.0	0.3
Houston	Randolph, IL	0.0	0.0	0.0	0.0
East St. Louis	St. Clair, IL	0.0	0.0	0.0	0.0
Arnold	Jefferson, MO	0.0	0.0	0.0	0.0
West Alton	St. Charles, MO	1.0	1.0	1.0	1.0
Orchard Farm	St. Charles, MO	0.0	0.0	2.0	0.7
Bonne Terre	St. Genevieve, MO	0.0	0.0	0.0	0.0
South Lindbergh	St. Louis, MO	0.0	0.0	2.0	0.7
Queeny	St. Louis, MO	0.0	0.0	0.0	0.0
Hunter	St. Louis, MO	0.0	0.0	0.0	0.0
Flo Valley	St. Louis, MO	0.0	0.0	0.0	0.0
St. Ann (old)	St. Louis, MO	0.0	n/a	n/a	[1] 0.0
St. Ann (new)	St. Louis, MO	n/a	0.0	0.0	[1] n/a
Broadway	St. Louis City, MO	0.0	0.0	0.0	0.0
Clark	St. Louis City, MO	0.0	0.0	0.0	0.0
Margaretta	St. Louis City, MO	0.0	0.0	0.0	0.0

[1] The owner of the property on which the old St. Ann monitor was located terminated the lease agreement with the Missouri Department of Natural Resources. The new site is 0.7 miles east of the old site. In general, ambient monitors should remain at the same location for the duration of the monitoring period required for demonstrating attainment. However, when three complete, consecutive calendar years of data is not available for a monitoring site, adjustments are made consistent with EPA monitoring criteria, in determining the average number of estimated exceedances per year. The average number of estimated exceedances for 2000–2002 for the old St. Ann monitor is the estimated exceedances for 2000, or 0.0. In addition, where a monitor has been in operation less than three years, the average estimated number of exceedances cannot be determined. Since the new St. Ann monitor has been in operation less than three years, the average number of estimated exceedances for 2000–2002 was not determined.

The area has monitored attainment for the three-year period from 2000–2002. This demonstrates that the current level of emissions is adequate to keep the area in attainment during weather conditions as in past years associated with higher levels of ozone. In addition, the CAA does not presume that the area will always be in attainment. The CAA provides that if the area were to violate the 1-hour ozone standard, then the contingency measures in the maintenance plan would be triggered. This would reduce the ozone precursor emissions and bring the area back into attainment.

One exceedance in the area was monitored in 2000, three in 2001, and seven in 2002. EPA notes that when dealing with numbers as small as one exceedance in 2000, any subsequent increase in the number of exceedances will result in the number of exceedances being at least doubled. In other words, when dealing with a number as small as one, any increase will be at least double that value. Thus, citing a doubling or tripling of exceedances is not necessarily an indicator of significant changes in air quality.

The one-hour ozone NAAQS is based upon a three-year average. For a violation, the estimated number of exceedances per year must exceed 1.0 at any monitoring site. Under this standard, a monitor may record up to three exceedances over a three-year period without causing a violation of the standard. The fourth highest monitored level at a monitor over a three-year period can be used as an indicator of potential violations of the NAAQS. (Note that since other factors, such as missing data, can affect the calculation of the estimated number of exceedances, the fourth highest monitored value is not solely used to determine a violation. See the discussion in the January 30, 2003, proposed rule at 68 FR 4849 and 4850 for an example of how the number of estimated exceedances is determined.) The term "design value" is used to refer to the fourth highest monitored value in a three-year period. For an individual monitor, the design value is the fourth highest monitored value in a three-year period. For an area such as the St. Louis area, the highest of the individual monitor design values over a three-year period is referred to as the "area's design value." The lower an area's design value the more likely the area will meet the standard. Also, an area's design value which decreases over time indicates that the monitored ozone concentrations are generally lowering and the air quality is improving.

The St. Louis area's design value reduced as follows: 0.156 parts per million (ppm) in 1987–1989 (*see* 52 FR 13385–13386 dated March 18, 1999); 0.136 ppm in 1994–1996 (*see* 53 FR 15581 dated March 19, 2001); 0.131 ppm in 1996–1998 (*see* 53 FR 15583 dated March 19, 2001); 0.127 ppm in 1998–2000 (*see* 53 FR 15584 dated March 19, 2001); and, 0.123 ppm in 2000–2002.

This indicates that the monitored air quality improved over this time period.

In the January 30, 2003, proposed rule at 68 FR 4856–4858, and in the response to comment 19, EPA explains the basis for concluding that the observed air quality improvements are due to the implementation of permanent and enforceable emission reductions. The reasons cited include emission controls which have resulted in emission reductions, an analysis of meteorological conditions which has shown a trend in the reduction of ozone from 1989 to the present while the number of days conducive to forming ozone showed no significant trend, and an assessment of emissions in 1990 and 2000 which have shown substantial decreases in emissions of VOCs and NO_X.

Finally, it is noted that the commenter errs in combining the exceedance data from many monitors and concluding, on the basis of the exceedance totals that a worsening ozone trend has occurred. Referring to Table 1 in the January 30, 2003, proposed rule (68 FR 4850) (repeated above), one can see that many monitors, including the worst-case monitor at West Alton, show no consistent trend in exceedance numbers in the 2000–2002 period. The "sudden" increase in exceedances from zero to two at the Orchard Farm and South Lindbergh monitoring sites, although implying a worsening ozone trend, simply point to the instability of considering year-to-year changes within a small time period.

Comment 21: The only modeling which the commenter is aware of was relied upon in the June 26, 2001, rulemaking. This modeling shows that it is impossible to attain the NAAQS in St. Louis in 2002. The significant factor is long-range transport. This suggests that variations in out-of-state transport may account for the monitored improvements in air quality.

Response 21: Previous modeling referred to by the commenter was conducted as part of the attainment demonstration approved by EPA in the June 26, 2001, rulemaking (66 FR 33995). (This approval was vacated by the U.S. Court of Appeals for the Seventh Circuit, as explained previously.) This modeling demonstrated that utilizing planned controls and measures the area will attain the standard by no later than November 15, 2004. EPA disagrees with the commenter's assertion that the modeling demonstrated it was impossible to attain the standard in 2002. The purpose of the modeling was to determine the likelihood of attainment. EPA's approval of the states' attainment demonstrations did not include a determination that attainment or maintenance of the standard prior to 2004 was impossible.

The assumptions used in the modeling for the attainment demonstration approved in the June 26, 2001, rulemaking are described in an April 3, 2001, proposal (66 FR 17649–17652). In this discussion, EPA noted that the states incorporated corrections to the 1996 base year emissions inventory, an assessment of the model's performance by applying statistical tests, and assumptions regarding which states are affected by the NO_X SIP call including NO_X limits on facilities.

As discussed in the April 2001 document, the states had taken measures to revise the emissions inventory to reflect the most current data inputs available. In addition, an evaluation of the model was performed as a measure of the "likelihood" that the standard will be achieved. The June 26, 2001, rulemaking at 66 FR 17652 states:

> The states conclude, and EPA concurs, that the revised modeling system performs at an acceptable level because it satisfactorily reproduces peak ozone concentrations relative to the monitored peak ozone concentrations. The modeling system adequately simulates the observed magnitude and spatial and temporal patterns of monitored ozone concentrations. Furthermore, the modeling results accurately differentiate between days with marginal ozone levels and days with elevated ozone concentrations. Therefore, based on the revised modeling and WOE results presented by the states which confirm the adequacy of the adopted emission control strategy, EPA is approving the states' attainment demonstrations.

The conclusions made regarding the likelihood of attainment based upon the attainment demonstration modeling were the best that could be drawn from the available information. And, it is likely that different conclusions regarding attainment would be drawn if the states were required to conduct modeling as part of the maintenance demonstration. For example, if a prospective maintenance demonstration were performed with an ozone photochemical model following EPA guidance, the modeling would be allowed to use episode days from the 2000–2002 period, not 1991 and 1995 as was used in the attainment demonstration modeling. In addition, the modeling would use a more current base-year inventory (1999 or 2000) rather than the 1996 base-year inventory used in the attainment demonstration modeling. It is highly likely, if not certain, that the outcome would be a conclusion that attainment will be preserved through the required 10-year period.

Ozone models are designed to primarily predict the relative impacts of emission changes on future ozone levels. Thus, it is not uncommon to observe that actual monitored ozone concentrations are different from

modeled values at certain locations. The commenter's assertion that attaining the standard in 2002 is impossible is not supported by the existing science.

The commenter does not provide data to support its hypothesis that variations in out-of-state transport may account for the improvement in air quality. The commenter only speculates that out-of-state transport may account for the improvement in air quality. As described in the response to comments 19 and 20 above, the states demonstrated that improvements in air quality are due to permanent and enforceable emission controls which have resulted in emission reductions, an analysis of meteorological conditions which has shown no significant decrease in the annual number of days conducive to ozone formation, while there has been a significant reduction in monitored ozone concentrations, and an assessment of emissions in 1990 and 2000 which has shown decreased emissions of VOCs and NO_X. Thus, the states have demonstrated the improvements in the St. Louis area are due to permanent enforceable reductions in the St. Louis area.

E. Comments Related to Criterion 4: The Area Must Have a Fully Approved Maintenance Plan Meeting the Requirements of Section 175A

Comment 22: Section 175A(a) of the CAA requires that state maintenance plans must be SIP revisions. Section 110(a)(2)(A) of the CAA requires a SIP to contain enforceable emission limitations. The maintenance plans for each state do not include any enforceable emission limitations. For example, Missouri NO_X controls have not yet been promulgated.

Response 22: This comment refers to both the Missouri and Illinois portions of the St. Louis area. EPA is hereby providing a response regarding the Missouri portion of the St. Louis area. See the rulemaking in today's **Federal Register** regarding redesignation of the Illinois portion of the St. Louis area for EPA's response to this comment as it pertains to the Illinois portion of the St. Louis area.

In this rulemaking, EPA is approving Missouri's maintenance plan as a SIP revision.

The CAA requires the area to have a fully approved SIP and to have met all of the applicable requirements of the CAA. The area's SIP satisfies these requirements as described in this final rule and in EPA's proposed rulemaking published on January 30, 2003 (68 FR 4847). The measures that the states are relying on to maintain the 1-hour ozone standard have been approved into the SIPs and are state and Federally enforceable. This includes Missouri's NO_X RACT rule found at 10 CSR 10–5.510 and the statewide NO_X rule found at 10 CSR 10–6.350. (*See* response to comment 10 above regarding the NO_X SIP Call.) The states must continue to implement these measures as provided for in the Federally-approved SIPs.

The CAA does not require a separate level of enforcement for a maintenance plan as a prerequisite to redesignation. The enforcement program approved for and applicable to the SIPs as a whole also applies to the maintenance plan. See discussion in the Cincinnati redesignation (65 FR 37879, 37881–37882), and the Sixth Circuit decision in *Wall* v. *EPA*, 265 F. 3d at 438, upholding EPA's interpretation of the requirement. As explained below in the response to comment 26, Missouri has committed to continue to implement the measures included in the approved SIP and relied on for maintenance of the standard.

All of the control measures which the states relied upon are SIP-approved measures. EPA cannot withhold its approval of the maintenance plan submitted by the states because of concerns that the states may, at some future time, either submit a SIP revision to amend or remove a program, or that the states may fail to implement these programs in the St. Louis area. The Federally-approved SIP requirements remain in place and enforceable until such time as EPA takes action to approve SIP revisions to amend or remove them. This can only be done via Federal rulemaking, which includes procedures for public comment and review.

Comment 23: Section 182(j), 40 CFR 51.112(b), the Calcagni memo, and the General Preamble require the use of photochemical modeling to demonstrate maintenance. EPA is overruling Congress, EPA regulations and common sense by proposing to predict maintenance for ten years without any modeling. Monitoring is more accurate to show past concentrations, but modeling is required to predict future concentrations. The commenter cites *Ober* v. *U.S.E.P.A.*, 84 F.3d 304 (9th Cir. 1996) in support of its assertion.

Response 23: EPA disagrees with the commenter's assertion that the use of photochemical modeling to demonstrate maintenance is required by the CAA, EPA policy or EPA regulations. The EPA is not overruling Congress, or EPA regulations.

Section 175A requires states to develop and submit, as a SIP revision, a plan for maintaining the NAAQS for at least 10 years after redesignation. The plan shall contain such additional measures, if any, as the Administrator deems necessary to ensure such maintenance. Section 175A does not require modeling.

Section 182(j) contains no reference to maintenance plans. Section 182(j)(1) requires that each state in a multi-state ozone nonattainment area shall "* * * (A) take all reasonable steps to coordinate, substantively and procedurally, the revisions and implementation of State implementation plans applicable to the nonattainment area concerned; and (B) use photochemical grid modeling or any other analytical method determined by the Administrator, in his discretion, to be at least as effective." The language in this section clearly refers to "nonattainment" areas. Thus, EPA believes that Section 182(j) is applicable to attainment demonstrations, not maintenance plans.

Even if the commenter is correct in its assertion that section 182(j) applies to maintenance plans, this section does not necessarily require modeling. EPA has the discretion to use other analytical methods determined to be at least as effective. In the Calcagni memo on page 9 EPA stated "A State may generally demonstrate maintenance of the NAAQS by either showing that future emissions of a pollutant or its precursors will not exceed the level of the attainment inventory, or by modeling to show that the future mix of sources and emission rates will not cause a violation of the NAAQS." By this policy, EPA has, in effect, expressed how its discretion will be utilized regarding the use of emissions in lieu of modeling in demonstrating maintenance. In addition, the Sixth Circuit in *Wall* v. *EPA* (265 F.3d 426, 435) determined that "EPA's actions are completely consistent with its own interpretive memorandum, which allows for NAAQS maintenance to be demonstrated by showing that the future emissions of a pollutant's precursors will not exceed the level that allowed the area to achieve attainment in the first place." *See also* EPA's discussion in its brief in the *Wall* case. The *Ober* case cited by the commenter deals with modeling requirements for approval of a SIP revision in a nonattainment area for particulate matter, and has no relevance to the ozone maintenance plan at issue here.

The regulation at 40 CFR 51.112(a) requires the SIP to demonstrate that the measures, rules and regulations contained in the plan are adequate to provide for the timely attainment and maintenance of the NAAQS. The regulation at 40 CFR 51.112(b) specify

what the demonstration required in 40 CFR 51.112(a) must include. The Sixth Circuit in *Wall* v. *EPA* (265 F.3d 426, 435) determined that EPA's position that the regulation at 40 CFR 51.112(a) applies only to attainment demonstrations and not maintenance plans is "neither impermissible nor in conflict with a statutory mandate * * *. Moreover, EPA's actions are completely consistent with its own interpretive memorandum, which allows for NAAQS maintenance to be demonstrated by showing that the future emissions of a pollutant's precursors will not exceed the level that allowed the area to achieve attainment in the first place."

Lastly, the proposed rule at 68 FR 4858 states that projected emissions of NO_X in Illinois will be reduced from 141.64 to 96.67 tons per ozone season weekday from 2000 to 2014 and in Missouri, they will be reduced from 453.14 to 317.58 tons per ozone season weekday from 2000 to 2014. Projected emissions of VOCs in Illinois will be reduced from 94.11 to 75.98 tons per ozone season weekday from 2000 to 2014 and in Missouri, they will be reduced from 248.35 to 182.57 tons per ozone season weekday from 2000 to 2014. A "common sense" conclusion is that further emission reductions are projected to occur through 2014. Based on past trends of emissions decreases, reduced peak ozone levels will continue from 2000 to 2014. Further modeling would continue to demonstrate attainment. The commenter has not provided any data to indicate that these reductions in ozone precursors would lead to modeled increases in ozone concentrations.

Comment 24: EPA and the states have stated in testimony provided to courts and the public that maintenance of the NAAQS in 2003 is not possible. EPA and the states have stated that, due to upwind emissions, attainment of the NAAQS cannot be achieved until 2004. EPA's modeling demonstrates that it is not possible to assure that the NAAQS would be maintained in 2003.

Response 24: The Commenter uses the same arguments in this comment to state that the attainment of the NAAQS cannot be maintained as were used in comment 21 above to claim that the area cannot attain the NAAQS. See the response to comment 21 for further discussion.

EPA disagrees with the commenter's assertion that the modeling demonstrated it was impossible to maintain the standard in 2003. The purpose of the modeling is to predict the likelihood of attainment. EPA's approval of the states' attainment demonstrations did not include a determination that attainment or maintenance of the standard prior to 2004 was impossible.

The commenter refers to documents submitted by EPA and the states, as well as to language used in various rulemakings stating, in effect, that reductions in upwind emissions are necessary for attainment of the standard and that the earliest attainment date is projected to be November 15, 2004. At the time these documents were developed, EPA and the states were basing their conclusions on the attainment demonstration and the accompanying modeling. The statements made were the best conclusions that could be drawn from the available information.

The conclusion that the maintenance plan will provide for maintenance of the NAAQS for the next ten years as required by section 175A is based, in part, on more recent information than what was relied upon in the attainment demonstration which included the modeling referred to by the commenter. The maintenance plan includes an emission inventory which is more recent than the inventory used in the attainment demonstration. See the response to comment 36 for further discussion.

EPA has no data to support the commenter's hypothesis that variations in out-of-state transport may account for the improvement in air quality. The commenter only speculates that out-of-state transport solely account for the improvement in air quality. EPA concludes that the plan demonstrates maintenance through 2014.

Comment 25: The SIP must provide assurance that the states have adequate personnel, funding and authority to carry out the SIP. The record for this action must provide real evidence of this assurance.

Response 25: This comment refers to both the Missouri and Illinois portions of the St. Louis area. EPA is hereby providing a response regarding the Missouri portion of the St. Louis area. See the rulemaking in today's **Federal Register** regarding redesignation of the Illinois portion of the St. Louis area for EPA's response to this comment as it pertains to the Illinois portion of the St. Louis area.

EPA disagrees with the commenter that this action must include in the record further evidence of resource commitments. The analysis has already been performed in prior rulemakings and need not be reopened here. See the redesignation of Cincinnati (65 FR 37881–37882), Pittsburgh (66 FR 53102), and Cleveland (65 FR 77308, 77315) for additional examples in which EPA has taken this position. *See also, Southwestern Pennsylvania Growth Alliance* v. *Browner*, 144 F.3d 984 (6th Cir. 1998).

In a final rulemaking action published on April 9, 1980 (45 FR 24146), EPA approve Missouri's SIP as meeting the financial and manpower resource commitments of the CAA.

The Sixth Circuit in *Wall* v. *EPA* (265 F.3d 426, 437) determined regarding resource and authority commitments for enforcement that "there is no language in the CAA or in the EPA's regulations that specifically requires that a separate commitment be made within the maintenance plans themselves * * *. Morever, this decision is in accord with the interpretation given to the CAA under the Calcagni Memorandum, advising that 'an EPA action on a redesignation request does not mean that earlier issues with regard to the SIP will be reopened,' an interpretation that has been upheld by this court."

EPA also notes that more recent resource commitment reviews have been performed. For example, in the February 17, 2000, proposed rule at 65 FR 8099 EPA noted that in proposing to approve Missouri's I/M program, the "the SIP includes a detailed budget plan that describes the source of funds for personnel, program administration, program enforcement, and purchase of equipment. * * * The SIP meets the Federal requirements for evidence of adequate tools and resources under 40 CFR.51.372 and 51.354."

Comment 26: EPA policy states that a state may not relax existing controls upon redesignation. However, the states are moving LAER, offsets and NO_X RACT to the contingency plan without a modeling demonstration showing that these control measures are not needed for attainment, contrary to EPA policy.

Response 26: This comment refers to both the Missouri and Illinois portions of the St. Louis area. EPA is hereby providing a response regarding the Missouri portion of the St. Louis area. *See* the rulemaking in today's **Federal Register** regarding redesignation of the Illinois portion of the St. Louis area for EPA's response to this comment as it pertains to the Illinois portion of the St. Louis area.

Missouri has a commitment on page 29 of the maintenance plan which states "The department provides assurance that all of the control measures adopted by state rules and listed in the ROP plan or this document will be enforced to ensure maintenance of the one-hour ozone NAAQS."

The commenter refers to the Calcagni memo at page 10 which states that "the

State will be expected to maintain its implemented control strategy despite redesignation to attainment, unless such measures are shown to be unnecessary for maintenance or are replaced with measures that achieve equivalent reductions."

Section 175A requires that maintenance plans shall contain contingency provisions deemed necessary to assure that the states will promptly correct any violation of the standard which occurs after redesignation of the area as an attainment area. These provisions shall include a requirement that the state will implement "all measures with respect to the control of the air pollutant concerned which were contained in the SIP for the area before redesignation of the area as an attainment area." On page 6 of an October 14, 1994, memorandum entitled, "Part D New Source Review (part D NSR) Requirements for Areas Requesting Redesignation to Attainment" from Mary D. Nichols, assistant Administrator for Air and Radiation, EPA stated its interpretation on the term "measures" used in section 175A does not include part D NSR permitting programs. In accordance with this interpretation, EPA believes that lowest achievable emission rate (LAER) and offsets, which are components of Missouri's part D NSR permitting program, are not required to be retained following redesignation of the St. Louis area as an attainment area.

LAER and offsets are specified in part D and subpart 2 of the CAA applicable to nonattainment areas. Upon redesignation to attainment, these requirements are no longer applicable. Removing the LAER and offsets provision in the states' permitting programs is not contrary to the above-mentioned policy. Upon redesignation to attainment, the LAER requirements included in stationary source permits and the offsets which were obtained by stationary sources at the time when the LAER and offset provisions were in effect, will remain in effect for those facilities. Thus, the LAER and offset measures which were relied upon to attain the NAAQS will remain in effect following redesignation.

Following redesignation, any new facilities subject to the state's permitting requirements will be subject, as a minimum, to the Prevention of Significant Deterioration (PSD) requirements of Part C of Title I of the CAA. (In Missouri, the LAER and offset requirements remain in effect, unless the NSR rules are revised by the state and the revision is approved by EPA.) Under the PSD requirements, the states must ensure that such new facility will not cause a significant deterioration of air quality to the extent that it causes or contributes air pollution in excess of the NAAQS (Section 165). As part of the PSD program sources are required to perform a source-specific air quality demonstration to show no adverse impact on the NAAQS. Thus, maintenance of the NAAQS is an inherent feature of the PSD program, should Missouri choose not to retain its current program for new source permitting in the future.

As for NO_X RACT, Missouri has an approved NO_X RACT rule which will remain in effect following redesignation. Thus, there will be no relaxation of NO_X RACT in Missouri following redesignation.

Regarding modeling, the Shapiro Memo at page 6 states that "States may be able to move SIP measures to the contingency plan upon redesignation if the State can adequately demonstrate that such action will not interfere with maintenance of the standard." As stated above, for Missouri, all control measures established prior to redesignation as a result of the LAER and offset requirements are being retained following redesignation and NO_X RACT is being retained.

Comment 27: The contingency provision of the maintenance plan fall short of those required. All serious area requirements of Section 182(c) of the CAA must be included in the contingency plan and implemented promptly in case of a violation. Virtually none of these provisions are included in the contingency plan and thus cannot be approved.

Response 27: EPA disagrees with the commenter's assertion that all the serious area requirements of section 182(c) are required to be included in the contingency plan and implemented in case of a violation.

The requirements for maintenance plans and contingency measures are set forth in section 175A(d). Section 175A(d) states:

> Each plan revision submitted under this section shall contain such contingency provisions as the Administrator EPA deems necessary to assure that the State will promptly correct any violation of the standard which occurs after the redesignation of the area as an attainment area. Such provisions shall include a requirement that the State will implement all measures with respect to the control of the air pollutant concerned which were contained in the State implementation plan for the area before redesignation of the area as an attainment area.

None of the serious area requirements was an applicable requirement that was contained in the SIP prior to redesignation. The plan must contain contingency measures that the Administrator deems appropriate to assure that the states "will promptly correct any violation of the standard which occurs after the redesignation of the area as an attainment area." As described in response to comment 28 below, EPA believes that this requirement has been met. The statute does not require that all serious area requirements be included in the maintenance plan as contingency measures but rather that all measures included in the SIP prior to redesignation be included in the maintenance plan as contingency measures. As explained previously, certain serious area requirements need not be met in the case of St. Louis since they are not yet due. Since these provisions are not applicable in St. Louis, they do not need to be included in the maintenance plan as contingency measures.

The commenter's assertion that "there is no implementation plan applicable to this 'serious area'" is addressed in other responses in this rulemaking. *See, e.g.*, response to comment 17.

Comment 28: 42 U.S.C. 7505a(d) requires that the states will promptly correct any violation of the standard which occurs after redesignation. However, there is nothing in either contingency plan which assures prompt correction of future violations. The plans contain no adopted measures, and no schedule to adopt specific measures. The plans offer to adopt an unspecified measure within eighteen months of notification of a violation. This is an unreasonably long period. The plans should require adoption in much less than eighteen months and immediate implementation.

Response 28: This comment refers to both the Missouri and Illinois portions of the St. Louis area. EPA is hereby providing a response regarding the Missouri portion of the St. Louis area. See the rulemaking in today's **Federal Register** regarding redesignation of the Illinois portion of the St. Louis area for EPA's response to this comment as it pertains to the Illinois portion of the St. Louis area.

EPA disagrees that Missouri's maintenance plan lacks adequate contingency provisions should the area violate the standard. As stated in the January 30, 2003, proposed rule at 68 FR 4859, the contingency plan portion of the maintenance plans delineated Missouri's planned actions in the event of future 1-hour ozone standard violations, increasing ozone levels threatening a subsequent violation of the ozone standard, and unanticipated increases in ozone precursor emissions threatening a subsequent violation of the ozone standard. Missouri has developed a contingency plan with several levels of triggered actions depending on whether the ozone standard has actually been violated after the redesignation of the area to attainment or whether a subsequent violation of the ozone standard is threatened on the basis of increased ozone concentrations approaching the standard or unanticipated significant increases in ozone precursor emissions. Missouri has also committed to continue to implement all control measures included in the SIP prior to redesignation consistent with section 175A(d) of the CAA.

The action trigger levels and planned corrective actions in the contingency plan are the following:

A Level I Trigger will be exceeded if: (1) The monitored ambient ozone levels exceed 124 parts per billion, one-hour averaged, more than once per year at any monitoring site in the St. Louis maintenance area (the current St. Louis ozone nonattainment area), or more than two exceedances in any two- or three-year period; or (2) the St. Louis maintenance area's VOC or NO_X emissions for 2005 or 2008 increase more than 5 percent above the 2000 attainment levels. In the event one of these action trigger levels are exceeded, Illinois and Missouri will work together to evaluate the situation and determine if adverse emissions trends are likely to continue. If so, the states will determine what and where emission controls may be required to avoid a violation of the 1-hour ozone NAAQS. A study shall be completed within nine months of the determination of the action trigger exceedance.

A Level II Trigger will be exceeded if a violation of the 1-hour ozone NAAQS at any monitoring site in the St. Louis ozone maintenance area is recorded after the area is redesignated to attainment of the standard. If this trigger is exceeded, Illinois and Missouri will work together to conduct a thorough analysis to determine appropriate measures, from those listed below, to address the cause of the ozone standard violation.

The contingency plan for Missouri lists a number of possible contingency measures. The plan calls for the appropriate contingency measures to be adopted and implemented within 18 months of a Level I or Level II trigger being exceeded. The list of possible contingency measures in Missouri's contingency plan include the following:

Point Source Measures

- NO_X SIP Call Phase II (non-utility)
- Apply RACT to smaller existing sources
- Tighten RACT for existing sources covered by EPA Control Techniques Guidelines
- Expanded geographic coverage of current point source measures
- MACT for industrial sources
- New source offsets and Lowest Achievable Emission Rates
- Other measures to be identified

Mobile Source Measures

- Transportation Control Measures, including, but not limited to, area-wide rideshare programs, telecommuting, transit improvements, and traffic flow improvements.
- High Enhanced I/M (OBDII)
- California Engine Standards
- Other measures to be identified

Area Source Measures

- California Architectural/Industrial Maintenance (AIM)
- California Commercial and Consumer Products
- Broader geographic applicability of existing measures
- California Off-road Engine Standards
- Other measures to be identified

As stated in the September 4, 1992, Calcagni memo, page 12, "For purposes of section 175A, a State is not required to have fully adopted contingency measures that will take effect without further action by the State in order for the maintenance plan to be approved. However, the contingency plan is considered to be an enforceable part of the SIP and should ensure that the contingency measures are adopted expediently once they are triggered." Thus, EPA has long interpreted section 175A not to require that contingency measures have already been adopted.

On July 21, 1983 (48 FR 33265), EPA approved Missouri rule 10 CSR 10–1.010, General Organization which set forth the organization, powers and duties of the Missouri Air Conservation Commission. The rule contained a new section (3) which described procedures to be followed by the Air Pollution Control Program for providing public notice and public participation in the rulemaking process.

In order to comply with 10 CSR 10–1.010, and the underlying statute by which Missouri is authorized by the legislature to adopt regulations, Missouri requires time to evaluate potential controls and provide public notice and public participation in the rulemaking process when adopting contingency measures. In addition, selected controls would require a period of time for sources to install the controls (*e.g.*, RACT on smaller sources) or for an implementing agency to fund and establish the new program (*e.g.*, transportation control measures). The commenter provided no rationale for its assertion that an outside date of 18 months for adoption of measures is unreasonable. The statute affords EPA discretion to determine whether the timeframe for implementation of contingency measures is reasonable. EPA finds that 18 months as described in the maintenance plan to adopt and implement contingency measures is a reasonable time period for Missouri to meet its regulatory obligations while meeting the requirement under section 175A to promptly correct any violation of the standard. In addition, this 18-month period to adopt and implement contingency measures is consistent with other redesignations such as Pittsburgh (66 FR 53102) in which a 12- to 24-month time period was specified to adopt and implement contingency measures. See also the Louisville redesignation (66 FR 53665, October 23, 2001) approving an 18-month schedule for implementation of contingency measures, and Northern Kentucky (Cincinnati-Hamilton) (65 FR 37879, June 19, 2000) and (67 FR 49600, July 31, 2002).

Comment 29: Neither maintenance plan provides any procedure for quantifying the reductions needed to correct violations.

Response 29: This comment refers to both the Missouri and Illinois portions of the St. Louis area. EPA is hereby providing a response regarding the Missouri portion of the St. Louis area. See the rulemaking in today's **Federal Register** regarding redesignation of the Illinois portion of the St. Louis area for EPA's response to this comment as it pertains to the Illinois portion of the St. Louis area.

As indicated in the response to comment 28 above, the maintenance plan refers to a violation of the NAAQS as a level II trigger. In the event of a violation, Illinois and Missouri have committed to work together to conduct a thorough analysis to determine appropriate measures to address the cause of the ozone standard violation. It is impossible for a state to determine, before a violation, what reductions are necessary to correct a violation. For example, if Missouri would select tightening RACT for existing sources as a contingency measure, the amount of reductions by implementing this measure is dependent upon the number of sources subject to RACT rules in the

area at the time of the violation. Since the state has no control over when a source ceases operating, it is impossible to determine, at this time, how many sources will be affected by a tightening of RACT which may be implemented at some unspecified time in the future. Thus it is impossible to determine beforehand how much of a reduction will be achieved by implementing this measure. *See* the discussion in the Cuyohoga and Jefferson Counties, Ohio, redesignation for particulate matter (65 FR 77308, December 11, 2000).

The approach taken in the maintenance plan is to conduct a thorough analysis to determine the magnitude of the reductions needed to correct the violation, the types of sources from which reductions must be made (*e.g.*, point, area, or mobile sources), and the mechanisms for achieving the reductions. The list of contingency measures includes a reasonable mix of measures from which to select the measures most suited to address a future violation (a level II trigger), if one occurs, or to alleviate an unanticipated decline in air quality (a level I trigger). EPA finds that this is a reasonable approach which will assure prompt correction of the violation. In addition, consistent with the Calcagni memo, the maintenance plan includes a Level I trigger in which Missouri will evaluate and determine if adverse emissions trends are likely to continue. If so, Missouri will determine what and where emission controls may be required to avoid a violation of the 1-hour ozone NAAQS.

Comment 30: The contingency measures in the maintenance plans are vague and open ended. Neither plan identifies any measures to be adopted. No firm schedule for adoption and implementation is included.

Response 30: This comment refers to both the Missouri and Illinois portions of the St. Louis area. EPA is hereby providing a response regarding the Missouri portion of the St. Louis area. See the rulemaking in today's **Federal Register** regarding redesignation of the Illinois portion of the St. Louis area for EPA's response to this comment as it pertains to the Illinois portion of the St. Louis area.

EPA disagrees with the commenter's assertion that the contingency measures are vague and open ended. In response to comments 28 and 29 above, EPA addressed the procedures contained in the maintenance plan for evaluating which measures are necessary to promptly correct a violation.

In addition, in response to comment 28 above, EPA identified the list of potential contingency measures contained in Missouri's maintenance plan along with a schedule of 18 months to adopt and implement selected contingency measures in the event of a violation (a level II trigger) or a decline in air quality (a level I trigger). EPA has concluded that the maintenance plan satisfies statutory requirements and EPA guidance regarding adoption and implementation of contingency measures consistent with EPA guidance and the CAA. The commenter acknowledges this 18-month time period to adopt and implement contingency measures in the comments.

Comment 31: Each maintenance plan contains inadequate provisions to respond to anticipated violations of the NAAQS. Anticipated violations are based upon inventories exceeding the 2000 inventory or two exceedances at any monitoring site. There is no commitment to adopt any additional controls to address anticipated violations.

Response 31: This comment refers to both the Missouri and Illinois portions of the St. Louis area. EPA is hereby providing a response regarding the Missouri portion of the St. Louis area. *See* the rulemaking in today's **Federal Register** regarding redesignation of the Illinois portion of the St. Louis area for EPA's response to this comment as it pertains to the Illinois portion of the St. Louis area.

As indicated above, a Level I Trigger will be exceeded if: (1) The monitored ambient ozone levels exceed 124 parts per billion, one-hour average, more than once per year at any monitoring site in the St. Louis maintenance area (the current St. Louis ozone nonattainment area), or more than two exceedances in any two-or three-year period; or (2) the St. Louis maintenance area's VOC or NO_X emissions for 2005 or 2008 increase more than 5 percent above the 2000 attainment levels. In the event one of these action trigger levels is exceeded, Illinois and Missouri will work together to evaluate the situation and determine if adverse emissions trends are likely to continue. If so, the states will determine what and where emission controls may be required to avoid a violation of the 1-hour ozone NAAQS. The emission controls will be selected from a list of measures included in the contingency plan. A study shall be completed within nine months of the determination of the action trigger exceedance, and Missouri's maintenance plan contains a commitment to adopt and implement the necessary contingency measures within 18 months of a Level I trigger consistent with the discretion afforded EPA by the statute. The contingency plan meets the requirement of section 175A(d) and the applicable guidance in the Calcagni memo.

Comment 32: The maintenance plans contain no commitment to implement measures in the SIP. EPA cannot approve the maintenance plan without this commitment.

Response 32: This comment refers to both the Missouri and Illinois portions of the St. Louis area. EPA is hereby providing a response regarding the Missouri portion of the St. Louis area. See the rulemaking in today's **Federal Register** regarding redesignation of the Illinois portion of the St. Louis area for EPA's response to this comment as it pertains to the Illinois portion of the St. Louis area.

The commenter is incorrect in its statement that the maintenance plan does not contain a commitment to implement measures in the SIP. Such a commitment was included in Missouri's maintenance plan. Section 5.4 of Missouri's maintenance plan states the following: "The department provides assurance that all of the control measures adopted by state rules and listed in the ROP plan or this document will be enforced to ensure maintenance of the one-hour ozone NAAQS. Any revisions to the control measures included as part of the maintenance plan will be submitted as a SIP revision to EPA for approval." As described in response to comment 28, Missouri is retaining all of the measures contained in its SIP prior to redesignation.

Comment 33: The maintenance plans do not address expected growth in areas adjacent to the nonattainment area such as Ste. Genevieve County. An assessment of this growth should be included. Also, the plan is based on the "irrational assumption" that "if there is no increase in emissions, and no decrease in controls, the standard will be maintained."

Response 33: This comment refers to both the Missouri and Illinois portions of the St. Louis area. EPA is hereby providing a response regarding the Missouri portion of the St. Louis area. See the rulemaking in today's **Federal Register** regarding redesignation of the Illinois portion of the St. Louis area for EPA's response to this comment as it pertains to the Illinois portion of the St. Louis area.

The commenter's characterization of the "basic premise" of the maintenance plan is incorrect. The plan does not simplistically assume that there will be no increase in emissions. The plan carefully projects the growth in emissions which will occur in various source sectors, and the reductions which will occur based on emission control programs which are in place, in order to determine the net change in emissions from 2000–2014. The states are required to and have applied the appropriate techniques to estimate and account for potential emissions changes in the area. These techniques are necessarily based on sector-based growth indicators (positive and negative), *i.e.*, sector-specific economic factors, because the states have no way of predicting specific changes which take place within the emissions inventory.

Specific projects, such as those cited by the commenter, are addressed through mechanisms other than maintenance plans. Missouri implements Prevention of Significant Deterioration and NSR permitting regulations. These regulations address the air quality impacts of new sources and modifications of existing sources both inside and outside the boundaries of the nonattainment area. They are designed to prevent new source construction or existing source expansion which would adversely affect an area's ability to attain or maintain a national standard. The anticipated plant referenced by the commenter is a potential source in Missouri and the state is currently in the process of reviewing construction permit applications under state permitting requirements. This plant has not received the preconstruction permit necessary for construction and operation. Before any such project can be permitted, a permit applicant would be required, among other requirements, to identify specific emission increases and decreases associated with a particular project and demonstrate that the project would not have a significant adverse impact on an ambient air quality standard. Missouri regulation 10 CSR 10–6.060, Missouri's construction permitting rule, is part of the Federally-approved SIP.

EPA believes that it is the function of the state's air permitting rules, rather than the maintenance plan, to ensure that specific potential new sources do not create emissions which would interfere with the maintenance of the ozone standard.

Comment 34: The emission estimates are unreliable. A recent study of flares throws doubt into the St. Louis emission inventory. EPA must consider the significant underestimation of flare emissions in the emission inventory.

Response 34: This comment refers to both the Missouri and Illinois portions of the St. Louis area. EPA is hereby providing a response regarding the Missouri portion of the St. Louis area. See the rulemaking in today's **Federal Register** regarding redesignation of the Illinois portion of the St. Louis area for EPA's response to this comment as it pertains to the Illinois portion of the St. Louis area.

EPA believes that the states used the appropriate emission estimates in developing the emission inventory. The commenter cites a study of emissions from flares reported by the Bay Area Management District which the commenter alleges shows that the states greatly underestimated emissions from flares. EPA does not agree that the study cited by the commenter renders the emission estimates unreliable.

The Bay Area Management Study referenced by the commenter is a draft document and specifically states on the first page "Do not cite or quote." This document is currently undergoing scientific review. Therefore, no conclusions or comparisons should be drawn from this study until it becomes final. This study specifically addresses refinery flare emissions. However, no refineries are located in the Missouri side of the non-attainment area. Further review of the document has shown that methane was included in the emission factor that was used to derive emissions for this study. Methane is not an ozone precursor, and the inclusion of this pollutant could significantly alter the preliminary findings. The study targets the control efficiencies of the flares and states that "efficiency drops approximately by the cube of the speed (wind)". This would suggest that on high wind event days the control efficiencies would be at their lowest. However, in the St. Louis area, high ozone days have been characterized by low wind conditions, which would produce minimal impact on flare control efficiencies during the periods of concern. Lastly, NO_X and VOC emissions from all flares constitute less than one-tenth of one percent of the total inventory for the Missouri side of the St. Louis area. Therefore, any potential changes in calculation methodology from this source category, even if changes were warranted based on this draft study, would still likely produce an insignificant change to the total inventory.

Comment 35: Missouri states that it operates an enhanced I/M program but this has never been authorized by the Missouri legislature.

Response 35: The Missouri Legislature authorized MDNR to develop an I/M program, including a centralized test only program, as necessary to provide for attainment and maintenance of the national ambient air quality standard. That authority is codified in the Missouri Revised Statutes, Sections 643.300—643.355. Missouri's I/M program has incorporated most of the features of an enhanced program, described in our 2000 rulemakings (65 FR 8097, February 17, 2000 and 65 FR 31480, May 18, 2000).

The I/M program operated in the St. Louis, Missouri, area is known as the Gateway Clean Air Program. The Gateway Clean Air Program utilizes transient emission testing, the IM240 test, at centralized testing stations. These features are commonly thought of as being associated with an "enhanced" I/M program, as compared with decentralized, idle test programs. The IM240 test measures the vehicle under various operating conditions, measures NO_X, and makes these measurements in terms of grams per mile, all of which the idle test cannot. Additionally, the Gateway Clean Air Program includes gas cap testing, which addresses evaporative hydrocarbon emissions that a tailpipe test cannot. Thus, Missouri often refers to the Gateway Clean Air Program as an Enhanced I/M program. As seen in Missouri's December 2002 program evaluation, this program is achieving emission reductions beyond those which would be achieved through a decentralized, idle test program. The descriptive terminology is irrelevant in any event. Missouri has assumed emissions reductions for the program it has in place (whatever label is used to describe the program), and the commenter does not provide any information indicating that the assumed reductions are not appropriate.

Comment 36: The emission inventory submitted by Missouri is not an inventory of emissions during the attainment period but is projected emissions drawn from Missouri's old attainment demonstration. EPA cannot conclude that keeping emissions no higher than these projected inventory amounts will ensure maintenance of the NAAQS.

Response 36: Missouri did not use the same inventories in the attainment demonstration as was used in the maintenance plan. Missouri used a 1995/1996 inventory for the attainment demonstration and a 1999 inventory for the maintenance plan.

In the maintenance plan, Missouri selected 2000 as "the attainment year" for purposes of demonstrating attainment of the 1-hour ozone NAAQS. Both point and area source inventories were grown from 1999 emission inventories. To demonstrate maintenance of the ozone standard through a ten-year maintenance period, Missouri projected VOC and NO_X emissions for the St. Louis area to 2007

and 2014 and compared these projected emissions to the 2000 attainment year emissions. The 2007 emission estimates were generated to test a midpoint in the ten-year maintenance period.

In the April 17, 2000, proposed rule at 65 FR 20411 for the attainment demonstration, EPA noted that "The state submittals describe in detail the procedures used to develop, and then project, the base year emission inventories to the 1995/1996 period and to project emission to account for growth and control through 2003." The maintenance plan does not rely on these inventories.

As stated in response to comment 23 above, keeping emissions no higher than those projected in the inventory will ensure maintenance of the NAAQS. The Sixth Circuit in *Wall* v. *EPA* (265 F.3d 426, 435) determined that "EPA's actions are completely consistent with its own interpretive memorandum, which allows for NAAQS maintenance to be demonstrated by showing that the future emissions of a pollutant's precursors will not exceed the level that allowed the area to achieve attainment in the first place."

Comment 37: Neither maintenance plan provides a technical analysis demonstrating that maintenance of the 2000 emission levels will assure maintenance of the NAAQS. Such a demonstration requires photochemical grid modeling.

Response 37: This comment refers to both the Missouri and Illinois portions of the St. Louis area. EPA is hereby providing a response regarding the Missouri portion of the St. Louis area. See the rulemaking in today's **Federal Register** regarding redesignation of the Illinois portion of the St. Louis area for EPA's response to this comment as it pertains to the Illinois portion of the St. Louis area.

EPA disagrees that modeling is required to demonstrate maintenance of the NAAQS. EPA reiterates its response to other comments including comments 23 and 36 in that the Court of Appeals for the Sixth Circuit in *Wall* v. *EPA* (265 F.3d 426, 435) determined that "EPA's actions are completely consistent with its own interpretive memorandum, which allows for NAAQS maintenance to be demonstrated by showing that the future emissions of a pollutant's precursors will not exceed the level that allowed the area to achieve attainment in the first place."

Missouri's maintenance plan includes a technical analysis as described in the response to comment 28 above that demonstrates maintenance of the NAAQS, based on a comparison of base year (attainment year) and projected VOC and NO_X emissions. This analysis meets the requirements of the CAA, is consistent with EPA guidance, and demonstrates maintenance of the NAAQS.

Comment 38: The maintenance plan must include RACM and RACT, for the reasons stated in comment 13 above.

Response 38: EPA incorporates its response to comment 13 in response to this comment.

F. Comments Related to Criterion 5: The Area Must Have Met All Applicable Requirements Under Section 110 and Part D

Comment 39: Neither state has met all the requirements applicable to the area. The serious area requirements of section 182(c) are applicable but none of these requirements have been met. Some of the requirements are applicable and enforceable now, such as the 50 ton per year threshold for permitting and enforcement and paragraphs 7, 8, and 10 of section 182(c).

Response 39: This comment refers to both the Missouri and Illinois portions of the St. Louis area. EPA is hereby providing a response regarding the Missouri portion of the St. Louis area. See the rulemaking in today's **Federal Register** regarding redesignation of the Illinois portion of the St. Louis area for EPA's response to this comment as it pertains to the Illinois portion of the St. Louis area.

As stated in the response to comments 6 through 11 above, the SIPs meet the applicable requirements and the serious area requirements are not applicable for purposes of this redesignation. States requesting redesignation to attainment must meet the relevant CAA requirements that come due prior to the submittal of a complete redesignation request. Areas may be redesignated even though they have not adopted measures that come due after the submission of a complete redesignation request. Upon completion of today's actions, the SIP is fully approved for all applicable regulations. SIP revisions addressing the serious area requirements were required to be submitted by January 30, 2004.

Section 182(c) paragraphs 7 and 8 refer to special rules for modifications of major sources while paragraph 10 refers to 1.2 to 1 offset requirements for serious nonattainment areas. Missouri rule 10 CSR 10–6.020 defines the Missouri portion of the St. Louis area as a moderate ozone nonattainment area. A SIP revision would be required to redefine the Missouri portion of the St. Louis area to a serious nonattainment area. As stated in response to comment 7, EPA established a future date for submission of the serious area requirements, including section 182(c)(7),(8), and (10), and the requirements are not now applicable for purposes of this redesignation.

G. Comments Related to Implementation of Contingency Measures

Comment 40: One commenter requested that in the final rule, EPA expressly state that in the event of a future violation of the NAAQS, Illinois and Missouri will not necessarily be required to evaluate any particular contingency measure nor be required to submit further attainment demonstrations.

Response 40: As stated above, the contingency plan portion of each state's maintenance plans delineate the states' planned actions in the event of future 1-hour ozone standard violations, increasing ozone levels threatening a subsequent violation of the ozone standard, and unanticipated increases in ozone precursor emissions threatening a subsequent violation of the ozone standard. In the event of a level I trigger, Illinois and Missouri will work together to evaluate the situation and determine if adverse emissions trends are likely to continue. If so, the states will determine what and where emission controls may be required to avoid a violation of the 1-hour ozone NAAQS. A study shall be completed within nine months of the determination of the action trigger exceedance. In the event of a Level II trigger, Illinois and Missouri will work together to conduct a thorough analysis to determine appropriate contingency measures. EPA expects that through this process, the states will identify the appropriate measures to implement to maintain the NAAQS. Redesignated areas are not subject to an obligation to meet additional nonattainment area requirements such as attainment demonstrations since they are no longer designated nonattainment areas. Instead, they must implement the contingency measures, which is what Congress provided for in the CAA.

H. Comments Related to Redesignation of a Portion of the St. Louis Area

Comment 41: One commenter requested that in the event the EPA is unable to finalize Missouri's I/M program, as proposed in a separate rulemaking on January 30, 2003, EPA should proceed with the redesignation for the Illinois portion of the St. Louis area.

Response 41: In today's **Federal Register**, EPA is approving Missouri's revised I/M rule. In addition, as explained above, EPA is finalizing its actions on the Missouri and Illinois redesignation requests in separate rulemakings.

I. Comments Related to Interstate Transport

Comment 42: EPA must ensure that the CAA requirements of Section 110(a)(2)(D) pertaining to interstate transport impacts are actively and adequately met through the states' SIPs and through federal control programs such as the NO_X SIP call.

Response 42: This comment refers to both the Missouri and Illinois portions of the St. Louis area. EPA is hereby providing a response regarding the Missouri portion of the St. Louis area. See the rulemaking in today's **Federal Register** regarding redesignation of the Illinois portion of the St. Louis area for EPA's response to this comment as it pertains to the Illinois portion of the St. Louis area.

As stated above, EPA believes that submissions under the NO_X SIP call should not be considered applicable requirements for purposes of evaluating a redesignation request. The NO_X SIP call requirements are not linked with a particular nonattainment area's designation and classification. EPA believes that the requirements linked with a particular nonattainment area's designation and classification are the requirements that are the relevant measures to evaluate in reviewing a redesignation request. The NO_X SIP call submittal requirements continue to apply to a state regardless of the designation of any one particular area in the state.

Thus, we do not believe that the NO_X SIP call submission should be construed to be an applicable requirement for purposes of redesignation. The section 110 and part D requirements, which are linked with a particular area's designation and classification, are the relevant measures to evaluate in reviewing a redesignation request. This policy is consistent with EPA's existing conformity and oxygenated fuels requirements, as well as with section 184 ozone transport requirements. *See* Reading, Pennsylvania, proposed and final rulemakings (61 FR 53174–53176, October 10, 1996), (62 FR 24826, May 7, 1997); Cleveland-Akron-Lorain, Ohio, final rulemaking (61 FR 20458, May 7, 1996); and Tampa, Florida, final rulemaking (60 FR 62748, December 7, 1995). *See also* the discussion on this issue in the Cincinnati redesignation (65 FR 37890, June 19, 2000).

Missouri has adopted and EPA has approved into the SIP a state-wide NO_X rule (10 CSR 10–6.350 Emissions Limitations and Emissions Trading of Oxides of Nitrogen (65 FR 82285, December 28, 2000). This rule will remain as a SIP requirement following redesignation of the area to attainment. EPA is also determining in a separate rulemaking (proposed at 67 FR 8396) whether or not the eastern part of Missouri is to be subject to the NO_X SIP call in response to a court remand.

Comment 43: The expected NO_X emission control programs and emission reductions for the St. Louis area should not be jeopardized due to the absence of continued federal enforceability of the SIPs.

Response 43: The SIPSs will remain Federally enforceable following redesignation of the St. Louis area to attainment. In addition, all of the NO_X emission controls measures which are currently in place will remain as SIP requirements following redesignation to attainment. These emission control measures include NO_X RACT, and the state-wide NO_X rule in Missouri. Any revisions to SIP requirements would have to meet the applicable provisions of the CAA and be approved by EPA.

Comment 44: The redesignation of the St. Louis area to attainment should not weaken the impetus to rapidly address NO_X transport to downwind areas. These efforts are critical to addressing the 8-hour and 1-hour ozone NAAQS in the St. Louis and downwind areas.

Response 44: The St. Louis redesignation to attainment will not delay EPA's decision as to whether or not the eastern portion of Missouri is to be included in the NO_X SIP call. EPA will closely review any proposed changes to the NO_X emission control programs which are currently in place in the St. Louis area to ensure that the proposed changes will not adversely affect the maintenance of the NAAQS.

VI. Statutory and Executive Order Reviews

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a "significant regulatory action" and therefore is not subject to review by the Office of Management and Budget. For this reason, this action is also not subject to Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use" (66 FR 28355, May 22, 2001). This action merely approves state law as meeting Federal requirements and imposes no additional requirements beyond those imposed by state law. Accordingly, the Administrator certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this rule approves pre-existing requirements under state law and does not impose any additional enforceable duty beyond that required by state law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104–4).

This rule also does not have tribal implications because it will not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000). This action also does not have Federalism implications because it does not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999). This action merely approves a state rule implementing a Federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the CAA. This rule also is not subject to Executive Order 13045 "Protection of Children from Environmental Health Risks and Safety Risks" (62 FR 19885, April 23, 1997), because it is not economically significant.

In reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the CAA. In this context, in the absence of a prior existing requirement for the State to use voluntary consensus standards (VCS), EPA has no authority to disapprove a SIP submission for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews a SIP submission, to use VCS in place of a SIP submission that otherwise satisfies the provisions of the CAA. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 *note*) do not apply. This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a

report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a "major rule" as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by July 11, 2003. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (*See* section 307(b)(2).)

List of Subjects

40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Nitrogen dioxide, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

40 CFR Part 81

Environmental protection, Air pollution control, National parks, Ozone, Wilderness areas.

Dated: April 29, 2003.

William W. Rice,

Acting Regional Administrator, Region 7.

■ Chapter I, title 40 of the Code of Federal Regulations is amended as follows:

PART 52—[AMENDED]

■ 1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

Subpart AA—Missouri

■ 2. In § 52.1320(e) the table is amended by adding an entry at the end of the table to read as follows:

§ 52.1320 Identification of Plan.

* * * * *

(e) * * *

EPA APPROVED MISSOURI NONREGULATORY SIP PROVISIONS

Name of nonregulatory SIP provision	Applicable geographic or nonattainment area	State submittal date	EPA approval date	Explanation
.	.	.	.	.
Maintenance Plan for the Missouri Portion of the St. Louis Ozone Nonattainment Area including 2014 On-Road Motor Vehicle Emission Budgets.	St. Louis	12/06/02	5/12/03	

PART 81—[AMENDED]

■ 1. The authority citation for part 81 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

■ 2. In § 81.326 the table entitled "Missouri—Ozone (1–Hour Standard)" is amended by revising the entry for St. Louis Area to read as follows:

§ 81.326 Missouri.

* * * * *

MISSOURI—OZONE

[1-Hour Standard]

Designated area	Designation		Classification	
	Date [1]	Type	Date [1]	Type
.	.	.	.	.
St. Louis Area:				
Franklin County	5/12/03	Attainment.		
Jefferson County	5/12/03	Attainment.		
St. Charles County	5/12/03	Attainment.		
St. Louis	5/12/03	Attainment.		
St. Louis County	5/12/03	Attainment.		

[1] This date is October 18, 2000, unless otherwise noted.

* * * * *

[FR Doc. 03–11187 Filed 5–9–03; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 52 and 81

[IL 216–2;FRL–7496–4]

Approval and Promulgation of Implementation Plans, and Designation of Areas for Air Quality Planning Purposes; State of Illinois

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA has determined, in a separate rule published in today's **Federal Register**, that the St. Louis ozone nonattainment area (St. Louis area) has attained the one-hour ozone National Ambient Air Quality Standard (NAAQS). The St. Louis ozone nonattainment area includes the Counties of Madison, Monroe, and St. Clair in Illinois and the Counties of Franklin, Jefferson, St. Charles, and St. Louis and St. Louis City in Missouri. Based on the determination of attainment, EPA has also determined, in today's separate rule, that certain ozone attainment demonstration requirements along with certain other ozone planning requirements of part D of title I of the Clean Air Act (CAA or Act) are not applicable for the St. Louis ozone nonattainment area.

The EPA is approving a request from the State of Illinois, submitted on December 26, 2002, to redesignate the Metro-East St. Louis area (Madison, Monroe, and St. Clair Counties, Illinois) (the Illinois portion of the St. Louis ozone nonattainment area) to attainment of the one-hour ozone NAAQS. In approving this request, the EPA is also approving the State's plan for maintaining the one-hour ozone NAAQS through 2014 as a revision to the Illinois State Implementation Plan (SIP); and finding as adequate and approving the State's 2014 Motor Vehicle Emission Budgets (MVEBs) for Volatile Organic Compounds (VOC) and Oxides of Nitrogen (NO_X), as contained in the maintenance plan, for transportation conformity purposes. Refer also to a separate rule published today (the attainment determination rule) regarding similar approvals for the State of Missouri.

The EPA is approving an exemption from certain NO_X emission control requirements, as provided for in section 182(f) of the Clean Air Act, for the Metro-East St. Louis area. Because the St. Louis area is currently attaining the one-hour ozone NAAQS, the EPA is granting the Metro-East St. Louis area an exemption from NO_X Reasonably Available Control Technology (NO_X RACT) requirements. However, all NO_X emission controls previously adopted by the State must continue to be implemented.

DATES: For good cause as explained below, this rule is effective May 12, 2003.

ADDRESSES: Copies of the documents relevant to this rule are available for inspection at the offices of the Environmental Protection Agency, Region 5, Regulation Development Section, Air Programs Branch (AR–18J), 77 West Jackson Boulevard, Chicago, Illinois 60604. Interested persons wanting to examine these documents should make an appointment with the appropriate EPA office at least 24 hours in advance before visiting the office. The reference file number is IL 216.

FOR FURTHER INFORMATION CONTACT: Edward Doty, Environmental Scientist, U.S. Environmental Protection Agency, Region 5, Air and Radiation Division (AR–18J), Air Programs Branch, Regulation Development Section, 77 West Jackson Boulevard, Chicago, Illinois 60604, (312) 886–6057, (doty.edward@epa.gov).

SUPPLEMENTARY INFORMATION: In the following, whenever "we," "us," or "our" are used, we mean the U.S. Environmental Protection Agency.

Table of Contents

I. What Is the Background for This Rule?
II. What Actions Are We Taking and When Are They Effective?
III. Why Are We Taking These Actions?
IV. What Are the Effects of These Actions?
V. What Comments Did We Receive and What Are Our Responses?
VI. Statutory and Executive Order Reviews

I. What Is the Background for This Rule?

On January 30, 2003, EPA published a final rule and two proposed rules related to the St. Louis ozone nonattainment area (68 FR 4836, 68 FR 4842, and 68 FR 4847). The final rule (the January 30, 2003 final rule), 68 FR 4836, reinstated and made effective EPA's prior finding that the St. Louis nonattainment area failed to attain the one-hour ozone NAAQS (one-hour ozone standard) by November 15, 1996 (based on 1994–1996 ozone data) and reinstated a reclassification of the area to a serious nonattainment area. In addition, in the January 30, 2003 final rule, EPA established a schedule for submission of SIP revisions for Illinois and Missouri to meet the CAA requirements for a serious ozone nonattainment area and established November 15, 2004 as the date by which the St. Louis area must attain the ozone standard. A correction to this final rule was published on February 13, 2003 (68 FR 7410) which corrected a table entry.

In a January 30, 2003 proposed rule, 68 FR 4847 (the January 30, 2003 proposed rule), EPA proposed to determine that the St. Louis area has attained the one-hour ozone standard (clean air determination) based on complete, quality-assured ozone monitoring data for the period of 2000 through 2002. In addition, in the same proposed rule, EPA proposed to: (a) approve the requests from the States of Missouri and Illinois to redesignate the St. Louis area to attainment of the one-hour ozone NAAQS; (b) determine that certain planning requirements of the CAA are not applicable to the St. Louis area based on the clean air determination; (c) approve an exemption from NO_X RACT requirements in the Metro-East St. Louis area; and (d) find adequate and approve Missouri's and Illinois' 2014 MVEBs for VOC and NO_X, as contained in the States' maintenance plans, for transportation conformity purposes.

In the proposed rule found at 68 FR 4842, EPA proposed to approve a revision to the Missouri SIP for the vehicle inspection and maintenance (I/M) program operating in the Missouri portion of the St. Louis nonattainment area.

This rule is EPA's final action on the January 30, 2003 proposed rule as it relates to the Illinois portion of the St. Louis nonattainment area. A separate rule in today's **Federal Register** is EPA's final action finding that the St. Louis area has attained the 1-hour ozone standard along with EPA's final action on the January 30, 2003 proposed rule as it relates to the Missouri portion of the St. Louis nonattainment area. As noted in the January 30, 2003 proposed rule on page 4848, EPA received separate requests from Missouri and Illinois to redesignate the St. Louis area to attainment. In the January 30, 2003 proposed rule, EPA proposed actions related to both the Missouri and Illinois portions of the nonattainment area. However, EPA stated that it was considering issuance of two separate rules when it took final action on the redesignation requests. We received no comments on this aspect of the proposal. With the exception of the determination of attainment, EPA is taking final action related to the Missouri portion of the nonattainment area, and is taking final action on the Illinois portion of the St. Louis nonattainment area in separate rulemaking actions. Section 107(d)(3)(v) provides, as a prerequisite to redesignation, that: "the State containing such area has met all requirements applicable to the area under section 110 and part D." This section plainly shows that Congress meant for EPA to evaluate whether each State requesting redesignation of an area has met the applicable requirements. In addition, each state has authority only to adopt and submit for approval a maintenance plan and a revision of its SIP that are applicable to its territory. Since each state has the authority only to request redesignation for the portion of the area within its boundaries, and EPA evaluated each states' request for redesignation separately, the final rules redesignating each states' portion of the nonattainment area are being published separately. However, EPA has concluded that in determining whether or not a multistate area has attained the standard based upon complete, quality-assured ambient air quality monitoring data, EPA will consider the attainment status of the area as a whole. Therefore,

EPA's finding that the area has attained the NAAQS applies to the entire nonattainment area, and we are publishing that finding in a separate rule today. See 67 FR 49600, July 31, 2002 (Reinstatement of Redesignation of Kentucky Portion of Cincinnati-Hamilton area) for additional discussion of these issues.

The history for this action has been set forth in detail in the January 30, 2003 proposed rule (68 FR 4847, 4848–4849), and is summarized below.

The St. Louis area was designated as an ozone nonattainment area in March 1978 (43 FR 8962). On November 15, 1990, the Clean Air Act Amendments of 1990 were enacted. Under section 107(d)(4)(A) of the Act, on November 6, 1991 (56 FR 56694), the St. Louis area was designated as a moderate ozone nonattainment area as a result of monitored violations of the one-hour ozone NAAQS during the 1987–1989 period. On January 30, 2003, EPA reclassified the area to a serious ozone nonattainment area, effective January 30, 2003.

Illinois and Missouri adopted and implemented emission control programs required under the Act to reduce emissions of VOC and NO_X. These emission control programs include stationary source RACT (VOC and NO_X in Missouri and VOC only in Illinois), vehicle inspection and maintenance (I/M), transportation control measures (TCMs), and other emission control measures (see the analysis and discussion of specific emission control measures at 68 FR 4847). As a result of the emission control programs, ozone monitors in the St. Louis area have recorded three years of ozone monitoring data for the 2000–2002 period showing that the area has attained the one-hour ozone NAAQS.

On December 26, 2002, the Illinois Environmental Protection Agency (IEPA) submitted an ozone redesignation request and ozone maintenance plan for the Metro-East St. Louis area along with a request for an exemption from NO_X RACT requirements for the Metro-East St. Louis area. Included in this State submittal is a plan to maintain the one-hour ozone NAAQS through 2014 and 2014 VOC and NO_X MVEBs for transportation conformity purposes. The January 30, 2003 proposed rule, in part, addressed this State submittal.

II. What Actions Are We Taking?

Considering the comments on the January 30, 2003 proposed rule, as discussed below and in the separate determination of attainment rule published in today's **Federal Register**, we conclude that it is appropriate to finalize the actions proposed in the January 30, 2003 proposed rule with regard to the Metro-East St. Louis area.

A. Determination of Attainment

In a separate rule in today's **Federal Register**, EPA has determined that the St. Louis ozone nonattainment area, consisting of both the Missouri and the Illinois portions of the area, has attained the one-hour ozone standard. See section II.A of today's determination of attainment rule for further discussion regarding EPA's attainment determination.

Also, in the separate rule in today's **Federal Register**, EPA has determined that certain attainment demonstration requirements (section 172(c)(1) of the Act) along with certain other related requirements of part D of title I of the Act, specifically the section 172(c)(9) contingency measure requirement (measures needed to mitigate a state's failure to achieve reasonable further progress toward, and attainment of, a NAAQS), the section 182 attainment demonstration and Rate-Of-Progress (ROP) requirements, and the section 182(j) multi-state attainment demonstration requirement, are not applicable to the St. Louis area. The discussion contained in the separate rule pertaining to the CAA requirements which are no longer applicable to the St. Louis area is hereby incorporated into this rule.

B. Redesignation of the Metro-East St. Louis Area to Attainment

Although EPA is determining that the entire St. Louis ozone nonattainment area has attained the one-hour ozone standard, EPA has concluded that it is appropriate to take final action related to Illinois' request to redesignate the Metro-East St. Louis area and to Missouri's request to redesignate the Missouri portion of the St. Louis nonattainment area in separate rulemaking actions published today. In this rule, EPA is taking the following actions with respect to the Metro-East St. Louis area:

1. EPA is approving a request from the State of Illinois to redesignate the Metro-East St. Louis area to attainment of the one-hour ozone NAAQS;

2. EPA is approving Illinois' plan for maintaining the one-hour ozone NAAQS through 2014, as a revision to the Illinois SIP;

3. EPA is finding as adequate and approving the 2014 MVEBs for VOC and NO_X in Illinois' ozone maintenance plan for the purposes of transportation conformity; and

4. EPA is approving an exemption (waiver) from NO_X RACT requirements for the Metro-East St. Louis area.

C. Effective Date of These Actions

EPA finds that there is good cause for this redesignation to attainment, SIP revision, and exemption from NO_X RACT requirements to become effective immediately upon publication because a delayed effective date is unnecessary due to the nature of a redesignation to attainment which relieves the area from certain Clean Air Act requirements that would otherwise apply to it. The immediate effective date for this action is authorized under both 5 U.S.C. 553(d)(1), which provides that rulemaking actions may become effective less than 30 days after publication if the rule "grants or recognizes an exemption or relieves a restriction" and section 553(d)(3) which allows an effective date less than 30 days after publication "as otherwise provided by the agency for good cause found and published with the rule". As indicated above, in the January 30, 2003 final rule, EPA reclassified the St. Louis area to a "serious" nonattainment area and established a schedule for submission of SIP revisions fulfilling the requirements for serious ozone nonattainment areas. Upon the effective date of this rule, the State of Illinois will be relieved of the obligation to develop and submit these SIP revisions. In addition, the Illinois rules adopted to meet the requirements of title V of the CAA, provide that in a "serious" area, stationary sources with potential emissions of VOC and NO_X greater than 50 tons per year are major sources. As such, these major sources are subject to the title V permit program and are required to submit title V permit applications within twelve months of January 30, 2003. Upon the effective date of this rule, stationary sources which are newly subject to the title V permitting program as a result of the January 30, 2003 reclassification of the St. Louis area to a serious nonattainment area will be relieved of the requirement to submit title V permit applications to the State of Illinois. EPA finds that good cause exists for this final rule being immediately effective since it relieves the State of Illinois as well as stationary sources of certain requirements established as a result of the January 30, 2003 reclassification to a serious nonattainment area.

III. Why Are We Taking These Actions?

EPA has determined, in a separate rule published in today's **Federal Register**, that the St. Louis area has attained the 1-hour ozone standard. In this rule, we have concluded that Illinois has fully met the requirements for redesignation found at sections 107(d)(3)(E) and 175A of the CAA for redesignation of an area from nonattainment to attainment for ozone. In addition, EPA believes that the State of Illinois has demonstrated that the area has attained, and that the criteria for redesignation have been met.

In the January 30, 2003 proposed rule at 68 FR 4847, EPA described the applicable criteria for redesignation to attainment. Specifically, section 107(d)(3)(E) allows for redesignation providing that: (1) the Administrator determines that the area has attained the applicable NAAQS; (2) the Administrator has fully approved the applicable implementation plan for the area under section 110(k); (3) the Administrator determines that the improvement in air quality is due to permanent and enforceable reductions in emissions resulting from implementation of the applicable SIP and applicable Federal air pollutant control regulations and other permanent and enforceable emission reductions; (4) the Administrator has fully approved a maintenance plan for the area as meeting the requirements of section 175A; and, (5) the state containing such area has met all requirements applicable to the area under section 110 and part D of the Act.

EPA has determined that the St. Louis area has attained the applicable NAAQS. EPA has fully approved the applicable implementation plan for the Illinois portion of the St. Louis area under section 110(k). EPA has determined that the improvement in air quality is due to permanent and enforceable reductions in emissions resulting from implementation of the applicable implementation plan and applicable Federal air pollutant control regulations and other permanent and enforceable reductions. EPA has fully approved a maintenance plan for the Illinois portion of the area as meeting the requirements of section 175A. Illinois has met all requirements applicable to the Metro-East St. Louis area under section 110 and part D of the Act.

By finding that the maintenance plan provides for maintenance of the NAAQS through 2014, EPA is hereby finding adequate and approving the 2014 VOC and NO_X MVEBs contained within the maintenance plan. The MVEB for NO_X in the Metro-East St. Louis area is 18.72 tons per ozone season weekday. The MVEB for VOC in the Metro-East St. Louis area is 10.13 tons per ozone season weekday.

The rationale for these findings is as stated in this rulemaking and the January 30, 2003 proposed rule found at 68 FR 4847.

IV. What Are the Effects of These Actions?

In a separate rule published in today's **Federal Register**, EPA has determined that the St. Louis area attained the 1-hour ozone standard and that certain attainment demonstration requirements (section 172(c)(1) of the Act) along with certain other related requirements of part D of title I of the Act, specifically the section 172(c)(9) contingency measure requirement (measures needed to mitigate a state's failure to achieve reasonable further progress toward, and attainment of, a NAAQS), the section 182 attainment demonstration and ROP requirements, and the section 182(j) multi-state attainment demonstration requirement, are not applicable to the St. Louis area. EPA's determination that the St. Louis area has met the one-hour ozone standard relieves Illinois and Missouri from the obligation to meet certain additional Clean Air Act requirements, which apply to areas not attaining that standard.

EPA notes that the area is likely to be designated nonattainment for the 8-hour ozone standard, and would be subject to any additional requirements as a result of such designation. EPA also notes that it is not revoking the one-hour standard for the St. Louis area.

Approval of the Illinois redesignation request changes the official designation for the one-hour ozone NAAQS found at 40 CFR part 81 for the Illinois portion of the St. Louis area, including Madison, Monroe, and St. Clair Counties, from nonattainment to attainment. It also incorporates into the Illinois SIP a plan for maintaining the one-hour ozone NAAQS through 2014. The plan includes contingency measures to remedy any future violations of the one-hour ozone NAAQS, and includes VOC and NO_X MVEBs for 2014 for the Illinois portion of the St. Louis area.

Approval of an exemption from NO_X RACT requirements for the Metro-East St. Louis area means that Illinois is no longer obligated by the Clean Air Act to adopt and submit NO_X RACT regulations for applicable NO_X stationary sources. This also means that the Illinois SIP can be judged to be complete despite the lack of such regulations in the Metro-East St. Louis area.

V. What Comments Did We Receive and What Are Our Responses?

We received 5 letters containing comments regarding the January 30, 2003 proposed rule. Four of the letters supported the proposed rulemaking action. Two of the four letters in support of the proposed rulemaking action raised issues to which we are responding in this section. One of the five letters contained adverse comments and opposed the proposed rulemaking actions. A summary of the comments and EPA's responses to them are provided below. This discussion addresses comments relating to the St. Louis area as a whole and comments specifically relating to the Illinois portion of the area. Comments relating specifically to the Missouri portion of the area are addressed in a separate final rule for Missouri also published today.

A. Comments Related to Meeting the Criteria for Redesignation to Attainment

Comment 1: The St. Louis area has failed to meet any of the five criteria specified in section 107(d)(3)(E) of the CAA for redesignation to attainment.

Response 1: EPA's determination that the St. Louis area has attained the one-hour ozone standard is contained in a separate rule published in today's **Federal Register**. Further, EPA has found that the area has met all five of the criteria specified in section 107(d)(3)(E) of the CAA for redesignation to attainment. Below are specific comments and responses raised by the commenter regarding each criterion. It should be noted that, although the commenter generally directed comments at issues for both States, Illinois and Missouri, this final rulemaking focuses on the Illinois portion of St. Louis ozone nonattainment area. To that extent, most responses given here focus on that portion of the nonattainment area. For our responses relative to the Missouri portion of the area, please refer to the separate final rulemakings for the State of Missouri also published in today's **Federal Register**.

B. Comments Related to Criterion 1: The Area Must Be Attaining the 1-Hour Ozone NAAQS

Comment 2: Monitoring data are not representative of air quality conditions. Monitoring data collected during the Labor Day weekend in 2002 are "hopelessly contaminated" due to voluntary emission reductions undertaken by industry and others.

Response 2: See the response to comment 2 in the separate rule in today's **Federal Register** regarding the determination of attainment for the St. Louis area. See also the responses to comments 18 and 19 below.

Comment 3: Monitored data run directly counter to air quality modeling.

The modeling supported the contention that the NAAQS could be attained only in 2004 after all control measures are adopted. Thus, the monitored ozone standard attainment during the 2000–2002 period is a "fluke" explainable by factors other than the success of the pollution control measures. In addition, based on a September 4, 1992 EPA policy memorandum ("Procedures for Processing Requests to Redesignate Areas to Attainment," from John Calcagni) (the Calcagni Memo), the commenter believes that supplemental ozone modeling may be necessary to determine the representativeness of the monitored data. Without such supplemental modeling, the commenter asserts that the January 30, 2003 proposed rule's implicit conclusion that the St. Louis area ozone data are "representative" is baseless.

Response 3: See the response to comment 3 in the separate rule in today's **Federal Register** regarding the determination of attainment for the St. Louis area. See also the responses to comments 19, 21, 23, and 24 below.

Comment 4: The monitored data do not support a conclusion of continued attainment since the number of exceedances tripled from 2000 to 2001 and more than doubled from 2001 to 2002, showing an upward trend in peak ozone concentrations. The commenter notes that, if the same number of ozone standard exceedances that occurred in 2002 occur in 2003 or 2004, the area will again violate the one-hour ozone standard.

Response 4: See the response to comment 4 in the separate rule in today's **Federal Register** regarding the determination of attainment for the St. Louis area. See also the response to comment 20 below.

Comment 5: EPA asserts that the data are "quality assured" but provided no explanation. EPA must demonstrate that the data are quality-assured. EPA must document the adequacy of the states' quality-assurance plans. In addition, the commenter questions whether the ozone data relied on for the attainment determination were quality-assured since they were entered into AIRS faster than usual.

Response 5: See the response to comment 5 in the separate rule in today's **Federal Register** regarding the determination of attainment for the St. Louis area. See also the response to comment 2 in the separate rule concerning EPA's actions taken to insure the proper monitoring and quality-assurance of ozone data.

C. Comments Related to Criterion 2: The Area Must Have a Fully Approved SIP Under Section 110(k)

Comment 6: The serious area SIP requirements of the CAA are applicable to the St. Louis area. These requirements have not been met by the States, and there is no "claim" that they could not have been submitted with the redesignation request. Thus, the SIPs are not "fully approved". In addition, the Calcagni Memo includes procedures suggested by EPA for reducing the stringency of the control measures by requiring them to become part of the contingency plan. The states have not done these procedures.

Response 6: The SIP, which is required to be "fully approved" under criterion 2, is the "applicable" implementation plan (section 107(d)(3)(E)(ii)). This section requires that the SIP must be "fully approved" under section 110(k) rather than partially, conditionally, or limitedly approved (Calcagni Memo page 3). Section 107(d)(3)(E)(v) requires the SIP to include "all requirements applicable to the area under section 110 and Part D". The commenter asserts, without explanation, that the statute requires EPA to determine that the "serious" area requirements are applicable to its consideration of the redesignation request for the area. However, the Act is not as prescriptive as the commenter assumes. *See, Wall* v. *EPA*, 265 F.3d 426,438 (6th Cir. 2001) which states "The statute, however, does not describe how the EPA is to decide which Part D requirements are 'applicable' in evaluating a redesignation request."

EPA has established a policy to provide guidance in determining how to apply the statutory criterion with respect to this issue. As stated in the January 30, 2003 proposed rule (68 FR 4851), the Calcagni Memo describes EPA's interpretation of the section 107(d)(3)(E) requirement. Under this interpretation, states requesting redesignation to attainment must meet the relevant CAA requirements that come due prior to the submittal of a complete redesignation request. Areas may be redesignated even though they have not adopted measures that come due after the submission of a complete redesignation request. Pursuant to the January 30, 2003 final rule (68 FR 4836), the emission control measures and plans resulting from serious nonattainment area requirements for the St. Louis area are due on January 30, 2004. Since these emission control measures and plans are not yet due, the Illinois SIP is not deficient. EPA policy and a reasonable application of sections 107(d)(3)(E)(ii) and (v) allow for an area to be redesignated without the area adopting measures which are not yet due. EPA has consistently applied this policy and interpretation in other redesignations, including the Detroit-Ann Arbor redisgnation discussed at 60 FR 12465–12466.

In addition, there is no requirement in section 107(d)(3)(E) that indicates that States must "claim" that they could not have submitted the serious area SIP revisions or any additional revisions at the time of the redesignation requests if those requirements are not applicable to the area when the requests are made. EPA's action to reclassify the St. Louis area to a serious nonattainment area was published in the **Federal Register** after Illinois had submitted its redesignation request, and it established a deadline for submission of the serious area requirements which has not yet passed. Thus, Illinois is not required to include in its request a "claim" that the State cannot complete the serious area requirements.

Finally, the Calcagni Memo (pages 12–13) discusses the statutory requirement that the State must implement all measures included in its SIP prior to redesignation. (In our response to comment 26 below, we discuss how this requirement has been met.) This requirement does not expand the universe of requirements which are "applicable" for purposes of redesignation. Unless the serious area requirements are applicable, and already contained in the SIP prior to redesignation, the discussion in the Calcagni Memo does not relate to the issue raised by the commenter. Because the serious area requirements are not applicable requirements for the Metro-East St. Louis area and Illinois, the guidance in the Calcagni Memo relating to mechanisms for converting part D measures into contingency measures is not applicable for the purposes of this redesignation and assessment of Illinois' ozone maintenance plan.

Comment 7: The January 30, 2003 proposed rule suggests that a SIP meeting the serious area requirements need not be fully approved because such a plan is not yet due. The commenter believes that the CAA does not make an exception for SIP revisions that have or have not become due. In fact, the serious area requirements have, as a matter of law, become due. The plans were due by June 14, 1998, and no later than May 18, 2002 pursuant to previous EPA and Court actions. The commenter stated that the May 18, 2002 date was set by EPA in a March 19, 2001 rulemaking, and that the effect of a

decision by the Court of Appeals for the Seventh Circuit was to reinstate this submission due date.

Response 7: Section 107(d)(3)(E)(ii) of the Act requires that the applicable SIP for the area must be fully approved under section 110(k) of the Act as one of the criteria for redesignation to attainment. As discussed in comments 6 above and 8 below, the applicable SIP for the Illinois portion of the St. Louis area is fully approved, and the serious area emission control measure and plan requirements are not yet due. In making this determination, EPA is not creating an "exception" to the statutory requirements for approved SIPs, but is determining that SIP revisions which are not yet due are not "applicable" for purposes of sections 107(d)(3)(E)(ii) and (v) of the Act (for purposes of assessing the State's ozone redesignation request). As noted in the January 30, 2003 proposed rule at 68 FR 4838, on November 25, 2002, the Court of Appeals for the Seventh Circuit vacated a June 26, 2001 final rule extending the St. Louis area's attainment date to November 15, 2004, and remanded to EPA for "entry of a final rule that reclassifies St Louis as a serious nonattainment area effective immediately * * *" (*Sierra Club and Missouri Coalition for the Environment* v. *EPA*, 311 F. 3d 853 (7th Cir. 2002)). In response to the Court's order, and in accordance with section 181(b)(2) of the Act, EPA reinstated the nonattainment determination and reclassification contained in the March 19, 2001 rulemaking (66 FR 15585), but did not reinstate the state plan revision and regulation due date established in that rulemaking. In the January 30, 2003 final rule, EPA established a deadline of 12 months after January 30, 2003 for the States to submit the serious area requirements. The rationale for the deadline is stated in the January 30, 2003 final rule (68 FR 4838). Today's final redesignation rule does not reopen the January 30, 2003 final rule, and comments on the appropriate deadline for the serious area requirements are beyond the scope of this rule.

With respect to the commenter's assertion that the serious area requirements should have been due by June 14, 1998, this is based on an argument made by the commenter in the U.S. District Court and in the Court of Appeals for the District of Columbia that the reclassification of the St. Louis area to serious should have been made retroactive to 1997, with the serious area measures due in 1998. This argument is not only outside of the scope of this rulemaking as explained previously, but it was also rejected by the Court. (*See, Sierra Club* v. *Whitman*, 285 F.3d, 68 (D.C. Cir. 2002)). As explained above, EPA's determination that the serious area requirements are not "applicable" with respect to this redesignation is consistent with the Act, with the January 30, 2003 final rule, with applicable EPA policy, and with relevant judicial decisions. Additionally, note that the decision made by the Court on November 25, 2002 required the EPA to rulemake to reclassify the St. Louis area to serious nonattainment effective immediately on the date of the rulemaking. The Court did not order the EPA to reinstate the reclassification with an effective date contained in the March 19, 2001 rulemaking, and the Court did not order the EPA to reinstate the May 18, 2002 State plan due date set forth in the March 19, 2001 rulemaking.

Comment 8: There is no "fully approved" or even partially approved SIP because the June 26, 2001 rule was vacated by the Court of Appeals for the Seventh Circuit.

Response 8: This comment refers to both the Missouri and Illinois portions of the St. Louis area. In this rule, EPA is providing a response regarding only the Illinois portion of the St. Louis area. See the separate rule in today's **Federal Register** regarding redesignation of the Missouri portion of the St. Louis area for EPA's response to this comment as it pertains to the Missouri portion of the St. Louis area.

In the January 30, 2003 proposed rule at 68 FR 4850 through 4856, EPA described the actions taken by EPA in the June 26, 2001 rule which were vacated by the Court of Appeals for the Seventh Circuit. Also, in the January 30, 2003 proposed rule at 68 FR 4850 through 4856, EPA reproposed to approve some requirements, and explained that certain additional actions vacated by the Court were no longer applicable requirements since the area has attained the NAAQS. As discussed in the January 30, 2003 proposed rule, the additional actions vacated by the Court which are no longer applicable include the contingency measure requirements of section 172(c), additional RACM requirements of section 172(c)(1) and section 182(b), and the attainment demonstration requirements of section 182(b)(1). That discussion is incorporated by reference herein. See also the discussion in section II.A of the separate rulemaking in today's **Federal Register** concerning the inapplicability of certain requirements.

In the June 26, 2001 rule, EPA took the following applicable actions: approved Missouri's and Illinois' 1-hour ozone attainment demonstration; found that the St. Louis ozone nonattainment area met the reasonably available control measures (RACM) requirements of the Act; found that the contingency measures identified by the States are adequate; approved the Illinois and Missouri motor vehicle emissions budgets (MVEBs); and approved an exemption from the NO_x RACT requirements for and disapproved an exemption from the NO_x new source review (NSR) and NO_x conformity requirements for the Illinois portion of the St. Louis ozone nonattainment area. EPA has determined, for the reasons stated in the proposed rule, that the attainment demonstration, and RACM requirements, are no longer applicable requirements since the area has attained the NAAQS. In this final rule, EPA is approving contingency measures as part of Illinois' maintenance plan, granting an exemption from the NO_x RACT emission control requirements, and approving MVEBs for 2014, for the Illinois portion of the area.

To be considered fully approved pursuant to section 110(k), the SIP must not have partial approval, disapproval, or conditional approval of submittals. EPA is not partially approving, disapproving, nor conditionally approving any of the SIP actions contained in the June 26, 2001 rule vacated by the Court. EPA is fully approving the measures submitted by Illinois which are applicable for purposes of section 107(d)(3)(E)(v), and is determining that the other submissions are not applicable. Therefore, the Illinois SIP is "fully approved" for all applicable requirements.

Comment 9: EPA attempted to assert that the Illinois and Missouri SIPs "can be considered to be approved". This is a "pseudo-approval" and an attempt by EPA to escape the simple straightforward statutory requirement for a fully approved SIP. This effort by EPA fails because of the clear language of the CAA, and because EPA must do a rulemaking to approve the SIPs. EPA is also avoiding the requirement for judicial review of its actions.

Response 9: This comment refers to both the Missouri and Illinois portions of the St. Louis area. In this rule, EPA is providing a response regarding only the Illinois portion of the St. Louis area. See the separate rule in today's **Federal Register** regarding redesignation of the Missouri portion of the St. Louis area for EPA's response to this comment as it pertains to the Missouri portion of the St. Louis area.

The use of the phrase "can be considered to be approved" (See the

January 30, 2003 proposed rule at 68 FR 4851–4852) was merely a statement that the SIP will meet the section 110 requirements and, as such, "can be considered to be approved" if EPA approves certain plan elements, described in the proposed rulemakings. In the January 30, 2003 proposed rule, EPA proposed to grant an exemption to the State of Illinois from the NO_X RACT requirements in the Illinois portion of the St. Louis area under section 182(f) of the Act. In today's final rule, EPA is taking final action exempting the State of Illinois from the NO_X RACT requirements in the Metro-East St. Louis area. By taking this action, EPA now concludes that the Illinois SIP is fully approved. The use of the quoted phrase was not intended to escape a statutory requirement. In fact, it recognized EPA's obligation to complete rulemaking in order to approve the SIP, and it recognized that EPA could not determine that the SIP was fully approved and complete the redesignation of the Illinois portion of the St. Louis area to attainment of the one-hour ozone NAAQS until it took final action to approve the remaining SIP element (an exemption from a RACT requirement, as approved today, eliminates the CAA requirement for NO_X RACT and moots this SIP element). All of the SIP elements which are applicable to the Metro-East St. Louis area for purposes of redesignation have either been approved in previous rulemakings or are approved in today's rule.

The proposed rule at 68 FR 4851 states that on November 25, 2002, the U.S. Court of Appeals for the Seventh Circuit (Court) issued a decision in *Sierra Club and Missouri Coalition for the Environment* v. *EPA*, 311 F.3d. 853 (7th Cir. 2002) ("Sierra Club"). In this decision, the Court vacated the June 26, 2001 final rule and remanded to EPA for entry of a final rule that reclassifies St. Louis as a serious nonattainment area for ozone. Although the Court's decision extensively addressed only EPA's action extending the attainment date for St. Louis providing its rationale for vacating this action, the Court's order also vacated the other EPA actions in the June 26, 2001 final rule. EPA has approved all SIP elements that are applicable to the Metro-East St. Louis area, and is today determining that others are not applicable. This is not a "psuedo-approval" of the SIP elements, but a determination that because certain requirements are not applicable (*e.g.*, the ozone attainment demonstration and RACM), they need not be approved. (See response to comment 8 for more discussion.) The applicable requirements which were approved prior to the vacated June 26, 2001 action (*e.g.*, VOC RACT and the 15 percent ROP plan) were subject to notice and comment rulemaking and judicial review. The measures approved today (the ozone maintenance plan and contingency measures, MVEBs, and NO_X RACT exemption) have been subject to notice and comment rulemaking and this action is subject to judicial review. Our determination that certain requirements are not applicable has been subject to notice and comment rulemaking and is subject to judicial review. The public has had full opportunity to comment on all of our actions, as evidenced by the numerous comments submitted by the commenter. Therefore, EPA has not avoided any requirement for public comment or judicial review.

In acting on a redesignation request, EPA can rely on any prior SIP approvals plus any additional approvals it may perform in conjunction with acting on the redesignation. EPA has already taken final action to approve all required SIP elements or is approving them in conjunction with this final action on the redesignation. Therefore, the Metro-East St. Louis area has a fully approved SIP. See the Calcagni Memo, page 3. The Calcagni Memo allows for approval of SIP elements and redesignation to attainment to occur simultaneously, and EPA has frequently taken this approach in its redesignation actions. See (66 FR 53096) (Pittsburgh-Beaver Valley, Pennsylvania, October 19, 2001); (65 FR 37879) (Cincinnati-Hamilton, Ohio, June 19, 2000); (61 FR 20458) (Cleveland-Akron-Lorain, Ohio, May 7, 1996); (60 FR 37366) (July 20, 1995); and (61 FR 31832–31833) (Grand Rapids, Michigan, June 21, 1996).

Comment 10: The SIP fails to meet the section 110 requirements because the inapplicable "moderate" area requirements contained in the SIP do not provide for implementation, maintenance, and enforcement of the NAAQS; modeling shows that the plan does not provide for attainment until 2004.

Response 10: EPA finds that the Illinois SIP meets the section 110 requirements. See the January 30, 2003 proposed rule and responses to comments 8 and 9 for further discussion. See the responses to comments 19, 21, 23, and 24 below. See also the response to comment 3 in the separate rule published in today's **Federal Register** with regard to the redesignation of the Missouri portion of the St. Louis area.

Comment 11: The SIP fails to meet the part D requirements of the CAA. EPA asserts that certain requirements of part D are not applicable because monitoring data show that the area has attained. EPA relies on the case of Sierra Club v. EPA for this conclusion. However, this case has no application here because it was not a "redesignation case". Given the attainment demonstration modeling, it would be impossible to conclude that any of the "Part D requirements are not necessary". All part D requirements are applicable unless, prior to redesignation, EPA formally exempts the St. Louis area from the Part D requirements.

Response 11: See section II.A of the separate rule published in today's **Federal Register** with regard to the redesignation of the Missouri portion of the St. Louis area for a discussion of the rationale for EPA's determination of attainment and suspension of certain CAA requirements.

The part D requirements applicable to the Metro-East St. Louis area specifically include the requirements of sections 172(c) and 176 as well as the applicable requirements of subpart 2. The section 172(c) requirements include General Plan Requirements which, to the extent applicable, must provide for the implementation of all RACM as expeditiously as practicable (at a minimum, this requires RACT for stationary sources), Reasonable Further Progress (RFP), emissions inventories, identification and quantification of allowable emissions for major new or modified stationary sources, permits for new and modified major stationary source, other emission control measures needed to assure attainment of the NAAQS, section 110(a)(2) requirements, and contingency measures. Section 110(a)(2) requirements include: submittal of a SIP that has been adopted by the state after reasonable public notice and hearing; provisions for establishment and operation of appropriate apparatus, methods, systems, and procedures needed to monitor ambient air quality; implementation of a source permit program; provisions for the implementation of part C requirements (Prevention of Significant Deterioration (PSD)); provisions for the implementation of part D requirements (nonattainment area New Source Review (NSR)) permit programs); provisions for stationary source emission control measures, source monitoring, and source reporting; provisions for air pollution modeling; and provisions for public and local agency participation in planning and emission control rule development.

Subpart 2 requirements include: attainment demonstrations; 1990 base year inventory and periodic emissions inventories updates; emission statements; 15 percent rate-of-progress plans; VOC RACT; RACM; stage II vapor recovery; I/M; and NO_X emission controls.

As stated in the response to comment 8 above, Illinois' SIP meets all applicable requirements, including section 110 and part D requirements. As stated in the January 30, 2003 proposed rule at 68 FR 4852 and 4853, EPA has approved Illinois' RFP plan, permitting programs, and VOC RACT rules as meeting the requirements of part D. Illinois' SIP has regulations requiring annual emission statements from major sources. Illinois has submitted complete emission inventories, which have been approved by the EPA. Illinois has approved general conformity rules pursuant to section 176. In this action, EPA has approved Illinois' maintenance plan, which includes adequate contingency measures. Thus, Illinois has met the applicable part D requirements of the Act. Note also that, as stated in our response to comment 8 above, by finding that the St. Louis area has attained the one-hour ozone standard, the attainment demonstration and RACM requirements are no longer applicable requirements. See also the final rule for Missouri published in today's **Federal Register** describing how the Missouri portion of the area has met the applicable requirements.

Neither Section 107(d)(3)(E) of the Act nor EPA policy referenced by the commenter require modeling as a prerequisite to redesignation of an ozone nonattainment area. In addition, no modeling was conducted as part of the redesignation requests submitted by Missouri or Illinois. Thus, there is no modeling basis for EPA to make any conclusions regarding the necessity for the Part D requirements. (Modeling is not a required element of a redesignation request. See, 65 FR 37879—Cincinnati redesignation for additional discussion of this issue. (*See, Wall* v. *EPA*, 265 F.3d. 426 upholding this interpretation.) However, the monitoring data collected over the 2000 through 2002 period show that the area has in fact attained the ozone standard. EPA finds no need for further controls to bring about attainment.

With respect to the commenter's assertion that the Tenth Circuit Court of Appeals *Sierra Club* v. *USEPA* case is not applicable because it is not a "redesignation" case, the commenter misses the point of the case as it relates to St. Louis. The Tenth Circuit's endorsement of the interpretation of the Act in "Reasonable Further Progress, Attainment Demonstration, and Related Requirements for Ozone Nonattainment Areas Meeting the Ozone National Ambient Air Quality Standard," John S. Seitz, Director, Office of Air Quality Planning and Standards, May 10, 1995 (Seitz Memo), that certain "statutory" requirements relating to attainment are not applicable to an area which has attained the standard, was not dependent on the fact that the area was not being redesignated. The case involved a determination by EPA that Salt Lake and Davies Counties, Utah, had attained the ozone standard, and that, therefore, certain additional requirements relating to attainment (such as an attainment demonstration) would not apply so long as the area continued to attain. The Court expressly recognized that the area could be redesignated without having met those requirements, even though the action at issue there was an attainment determination and not a redesignation. The Court stated: "Recall that the Environmental Protection Agency's determination to exempt the Counties from limited ozone requirements is really no more than a suspension of those requirements for so long as the area continues to attain the standard or until the area is formally redesignated to attainment." (*Sierra Club* v. *USEPA*, 99 F.3d. 1551, 1558 (10th Cir.1996)) (*See also*, 66 FR 53095 for EPA's redesignation of the Pittsburgh area.) The Court did not say, as the commenter would have it, that the area would have to adopt those measures which had been determined to be unnecessary in order to be redesignated. As it did in the Utah Counties, in which EPA redesignated those Counties without requiring that they meet the suspended requirements, EPA is here determining that the St. Louis area is attaining the standard and that certain CAA requirements do not apply. The basis for this determination and the suspension of certain requirements for the area was explained in detail in the January 30, 2003 proposed rule at 68 FR 4850–4858 and further explained in this response to various comments on the issue. The determination is based on monitored data, not modeling, for reasons explained in this notice. Nothing in the Tenth Circuit case prohibits EPA from simultaneously suspending the requirements and redesignating an area, which is what this rulemaking accomplishes. EPA has taken this dual action in a number of areas, including Louisville (66 FR 53665), Cincinnati (65 FR 37879), Grand Rapids (61 FR 31831), and Pittsburgh (66 FR 53094). Upon redesignation to attainment, the suspended nonattainment requirements will no longer apply at all since the area is no longer designated as a nonattainment area.

Comment 12: EPA asserts that the RACM requirements of section 172(c)(1) need not be adopted because the area has attained the NAAQS, thus, these measures would not accelerate attainment. This is confoundingly circular reasoning which erases the "fully approved" requirements of the CAA. EPA's assertion is not relevant here.

Response 12: The April 16, 1992 General Preamble (57 FR 13560) states that EPA interprets section 172(c)(1) such that the RACM requirements are a "component" of an area's attainment demonstration. Thus, since the attainment demonstration is not an applicable requirement, RACM is also no longer an applicable requirement. See our response to comment 8 above for further discussion. EPA has also been consistent in this interpretation. See the final rulemaking for Pittsburgh, 66 FR 53096 (October 19, 2001) for additional discussion of this interpretation.

EPA believes that its policy is not "confoundingly circular reasoning" but rather straightforward reasoning. It is reasonable to conclude that states need not develop an attainment demonstration showing how they will attain a NAAQS that they have already attained. Similarly, states need not adopt additional RACM as necessary to accelerate attainment when attainment has already been achieved.

As stated in the response to comments 8 and 9 above, SIPs must be "fully approved," as required by section 107(d)(3)(E)(ii), only with respect to the "applicable" requirements of section 110 and part D, as addressed in section 107(d)(3)(E)(v) of the Act. If requirements are not "applicable" with respect to those sections, they need not be fully approved.

Comment 13: The RACM and RACT requirements of the CAA are not tied to reasonable further progress but are required by the CAA to be implemented as expeditiously as practicable. This is supported by H.R. Rep. No. 101–490, Part 2, 101st Cong., 2d Sess. at p. 223; Sierra Club v. USEPA, 99 F.3d 1551, 1557 (10th Cir. 1996); Wall v. EPA, 265 F.3d 426, 441 (6th Cir. 2001); and, EPA's Seitz Memo, page 4. EPA's contention that any additional RACM and RACT measures need not be adopted directly repudiates the plain language of the CAA.

Response 13: This comment refers to both the Missouri and the Illinois

portions of the St. Louis area. EPA is hereby providing a response regarding the Illinois portion of the St. Louis area. See the separate rulemaking in today's **Federal Register** regarding the redesignation of the Missouri portion of the St. Louis area for EPA's response to this comment as it pertains to the Missouri portion of the St. Louis area.

The RFP requirement under section 172(c)(2) of the Act is defined via section 171(1) of the Act as an annual incremental reduction in emissions of the relevant air pollutant (VOC and NO_X in this case) that is required to ensure attainment of the applicable standard (here the one-hour ozone standard) by the applicable date. Section 182(b)(1)(A) sets forth the specific requirements for RFP for a moderate nonattainment area which includes a reduction in VOC emissions of at least 15 percent from baseline emissions. As stated in the January 30, 2003 proposed rule at 68 FR 4854, EPA approved Illinois' 15 percent ROP plan on July 14, 1997 (62 FR 37494).

RACM is a general requirement of section 172(c)(1) which calls for SIPs to contain "all reasonably available control measures as expeditiously as practicable (including such reductions in emissions from existing sources in the area as may be obtained through the adoption, at a minimum, of reasonably available control technology and shall provide for attainment of the national primary ambient air quality standards." EPA has consistently interpreted this provision to require only implementation of potential RACM measures that could contribute to reasonable progress or attainment. See General Preamble 57 FR 13498, April 16, 1992. Thus, where an area has already met all applicable requirements for progress and has attained the relevant standard, no additional RACM measures are required.

Section 182(b)(2) specifies the SIP requirements for RACT in moderate nonattainment areas. These requirements include implementation of RACT at each source of VOC covered by Control Technology Guidelines (CTGs) and at all other major sources of VOC. EPA has never indicated that the area could avoid implementing VOC RACT requirements because the area has attained the standard.

As stated in the January 30, 2003 proposed rule at 68 FR 4855, Illinois has adopted and implemented all required VOC RACT rules. In addition, section 182(f) establishes NO_X RACT requirements for major stationary sources. Under the provisions of section 182(f), the EPA is exempting the Illinois portion of the St. Louis ozone nonattainment area from the requirements for NO_X RACT in this rulemaking. With the granting of this exemption, Illinois has met all applicable RACT requirements.

The commenter states that H.R. Rep. No. 101–490, Part 2, 101st Cong., 2d Sess. at p. 223 does not tie RACM and RACT measures to RFP. This document is a recitation of the statute, but does not address tying RACM and RACT to RFP.

With respect to the commenter's contention that EPA's position regarding additional RACM and RACT measures being rejected in the Tenth Circuit Sierra Club case and in Wall v. EPA, the commenter is incorrect. The Wall case involved VOC RACT, which is not an issue here, because, as discussed previously, and in response to comment 14 below, Illinois has adopted all applicable VOC RACT measures. The Tenth Circuit Sierra Club case upheld EPA's determination that RACT was not tied to reasonable further progress, and that case did not address EPA's interpretation of RACM at all. The commenter's Seventh Circuit brief, which it relies on to support its position that RACM requirements must be met for an area to be redesignated, argued that EPA's interpretation of the RACM requirement (that section 172(c)(1) requires only implementation of all RACM which would expedite attainment) is an improper reading of the CAA. That issue was not addressed or decided by the Seventh Circuit. However, the issue of EPA's interpretation of the RACM requirement was raised and upheld in the 5th Circuit (Sierra Club v. EPA, 314 F.3d 735, 743–45 (5th Cir. 2002)) and in the District of Columbia Circuit (Sierra Club v. EPA 294 F.3d 155, 162–63 (D.C. Cir. 2002)). Both circuits found that EPA's interpretation that the statute only required implementation of RACM measures that would advance attainment was reasonable.

Comment 14: The rulemaking should identify each VOC RACT rule implemented by the states and identify whether the states have met the VOC RACT requirements.

Response 14: This comment refers to both the Missouri and the Illinois portions of the St. Louis area. EPA is here providing a response regarding the Illinois portion of the St. Louis area. See a separate rulemaking in today's **Federal Register** regarding redesignation of the Missouri portion of the St. Louis area for EPA's response to this comment as it pertains to the Missouri portion of the St. Louis area.

The January 30, 2003 proposed rule states at 68 FR 4855 that both States have adopted and implemented all required VOC RACT rules. In addition, the proposed rule provided the following Web site which contains the content of Illinois rules: *http://www.epa.gov/region5/air/sips/sips.htm.*

The Illinois VOC RACT rules for the Metro-East St. Louis area listed on this Web site include the following:

Part 219—A General Provisions
Part 219—B Organic Emissions From Storage And Loading Operations
Part 219—C Organic Emissions From Miscellaneous Equipment
Part 219—E Solvent Cleaning
Part 219—F Coating Operations
Part 219—G Use Of Organic Material
Part 219—H Printing And Publishing
Part 219—Q Synthetic Organic Chemical And Polymer Manufacturing Plant
Part 219—R Petroleum Refining And Related Industries; Asphalt Materials
Part 219—S Rubber And Miscellaneous Plastic Products
Part 219—T Pharmaceutical Manufacturing
Part 219—V Socmi: Batch And Air Oxidation Processes
Part 219—W Agriculture
Part 219—X Construction
Part 219—Y Gasoline Distribution
Part 219—Z Dry Cleaners
Part 219—Aa Paint And Ink Manufacturing
Part 219—Bb Polystyrene Plants
Part 219—Gg Marine Terminals
Part 219—Hh Motor Vehicle Refinishing
Part 219—Pp Miscellaneous Manufacturing
Part 219—Qq Misc. Formulation Mfg.
Part 219—Rr Misc. Organic Chemical Mfg.
Part 219—Tt Other Emission Units
Part 219—Appendices.

These VOC control rules have been incorporated into the Illinois SIP by reference at 40 CFR 52.720. As part of the December 26, 2002 redesignation request submittal, the IEPA has confirmed that the State has implemented all RACT rules contained in the SIP.

Comment 15: The January 30, 2003 proposed rule concedes that EPA's waiver of the NO_X RACT requirements for the Illinois portion of the nonattainment area was vacated by the Court of Appeals for the Seventh Circuit. Therefore, the Illinois SIP is not approvable because it fails to meet the NO_X RACT requirements of the Act.

Response 15: As proposed in the January 30, 2003 proposed rule at 68 FR 4847 and as finalized in this rulemaking, the EPA is exempting the Metro-East St. Louis area from the NO_X RACT requirements under section 182(f) of the Act. This NO_X RACT exemption is based on the St. Louis area attaining the one-hour ozone NAAQS without the implementation of these NO_X RACT emission controls. Section 182(f), and in particular section 182(f)(2)(B)(i), of the Act, provides for such an exemption since NO_X RACT emission reductions in this area would be in excess of those emission reductions needed to attain the standard, as evidenced by EPA's determination of attainment finalized in a separate rulemaking for Missouri also published in today's **Federal Register**. The rationale for the exemption is not the same as that stated in the June 26, 2001 final rule vacated by the Court of Appeals for the Seventh Circuit. The vacated NO_X RACT exemption was based on a modeled attainment demonstration indicating that additional NO_X emission reductions in this area would not be needed to attain the one-hour ozone standard. The EPA is not relying on the exemption basis expressed in that earlier, vacated final rule, but rather on a new determination, based on monitored air quality. Attainment of the one-hour standard without the implementation of NO_X RACT rules demonstrates that such rules are not needed to attain the one-hour ozone standard in the St. Louis area. Therefore, the Metro-East St. Louis area qualifies for a NO_X RACT exemption under section 182(f)(2)(B)(i) of the Act.

Comment 16: As the EPA concedes in the January 30, 2003 proposed rule, the Illinois SIP does not include transportation conformity procedures as required by the Act. EPA has no authority to waive this mandatory requirement for SIPs. Therefore, Illinois' SIP is incomplete.

Response 16: Section 176(c) of the Act provides that state conformity provisions must be consistent with Federal transportation conformity regulations that the CAA requires EPA to promulgate. The Federal transportation conformity regulations were finalized on November 24, 1993, amended on August 7, 1995, and amended again on August 15, 1997 (40 CFR parts 51 and 93 Transportation Conformity Rule Amendment: Flexibility and Streamlining). On March 2, 1999, a court decision (Environmental Defense Fund v. EPA, 167 F.3d 641 (D.C. Cir. 1999)) rescinded several sections of the Federal transportation conformity rule, requiring EPA to revise those sections of the Federal rule. Illinois submitted transportation conformity rules on September 23, 1998. The SIP revision was submitted by Illinois in response to the August 1997 changes to the Federal regulations. EPA has not acted on the Illinois transportation conformity rules submittal as it does not address later Federal transportation conformity regulation amendments. Once EPA has completed the revisions to the Federal rule to reflect the 1999 court decision, Illinois will need to revise the State's rule to address the changes.

EPA believes that it is reasonable to interpret the conformity requirements as not applying for purposes of evaluating Illinois' ozone redesignation request under section 107(d) of the Act. The rationale for this is based on a combination of two factors. First, the requirement to submit SIP revisions to comply with the conformity provisions of the Act continues to apply to a nonattainment area after redesignation to attainment, since such an area would be subject to a section 175A maintenance plan. Second, EPA's Federal conformity rules require the performance of conformity analyses in the absence of Federally approved state rules. Therefore, because areas are subject to the conformity requirements regardless of whether they are redesignated to attainment and must implement conformity under Federal rules if state rules are not yet approved, EPA believes it is reasonable to view these requirements as not applying for purposes of evaluating a redesignation request. EPA has explained its rationale and has applied this interpretation in a number of redesignation actions. See redesignations for: Tampa, Florida (60 FR 52748, December 7, 1995); Jacksonville, Florida (60 FR 41, January 3, 1995); Miami, Florida (60 FR 10325, February 24, 1995); Grand Rapids, Michigan (61 FR 31835, June 21, 1996); and Cleveland-Akron-Lorain, Ohio (61 FR 20458, May 7, 1996). The U.S. Court of Appeals for the Sixth Circuit recently upheld this interpretation in *Wall* v. *EPA*, No. 00–4010, Slip Op. at 21–24 (6th Cir. September 11, 2001). The Court upheld EPA's view that failure to submit a revision that meets the part D transportation conformity requirements is not a basis to deny an ozone redesignation request. Therefore, the EPA can redesignate the Illinois portion of the St. Louis ozone nonattainment area to attainment of the one-hour ozone standard notwithstanding the lack of fully approved transportation conformity rules in Illinois' SIP.

D. Comments Related to Criterion 3: The Improvement in Air Quality Must Be Due to Permanent and Enforceable Reductions in Emissions

Comment 17: The St. Louis area cannot meet this requirement since there is not an approved SIP meeting the "serious" area requirements, and there is no applicable implementation plan.

Response 17: This comment refers to both the Missouri and Illinois portions of the St. Louis area. EPA is here providing a response regarding the Illinois portion of the St. Louis area. See a separate rulemaking in today's **Federal Register** regarding redesignation of the Missouri portion of the St. Louis area for EPA's response to this comment as it pertains to the Missouri portion of the St. Louis area.

As described in the response to comments for Criterion (2) above, the Illinois SIP meets the applicable CAA requirements. The applicable SIP requirements are described in the January 30, 2003 proposed rule (68 FR 4850–4856). EPA's approval of previous SIP submittals and this rulemaking, which grants Illinois an exemption from the NO_X RACT requirements, render Illinois' SIP "fully approved" for all applicable SIP requirements. As stated in response to comments 7 and 8 above, since the serious area requirements are not yet due, the SIP is not deficient even though the serious area requirements have not been included.

In any event, this criterion is not dependent on which requirements are applicable or have been approved or implemented. The requirement is that air quality improvements be attributable to permanent and enforceable emissions reductions, which is a separable inquiry from the question of the requirements applicable to the area. Illinois' December 26, 2002 submission contains a detailed analysis of the air quality improvements in the St. Louis area and their relation to the emission reductions resulting from the permanent and enforceable emission control measures which are in place in the St. Louis area. (See response to comment 19 below for further discussion.) These measures and resulting emissions changes are listed in the January 30, 2003 proposed rule at 68 FR 4856–4858. These measures are all part of the applicable SIP. Thus, the commenter is incorrect in its assertion that there is no applicable SIP.

Comment 18: It is impossible to demonstrate that monitored concentrations during and after the 2002 Labor Day weekend resulted from permanent and enforceable emissions reductions. The emissions reductions were due to voluntary curtailment of operations by large industrial operations.

Response 18: The monitoring data for the St. Louis nonattainment area demonstrate that the estimated number of exceedances per year averaged over three years is 1.0 or less at all monitoring sites in the area. EPA

believes that any voluntary measures taken by industry and others over a two or three day period in this three year time period does not render the air quality monitoring data unrepresentative of the air quality. As explained in more detail in response to comment 19 below, ozone levels monitored during 2000–2002 are due to permanent and enforceable emission control measures which are in place (*e.g.* I/M programs, RACT on VOC stationary sources).

In the event that some sources did voluntarily reduce emissions over this two or three day period, EPA has no basis to conclude that these voluntary reductions had a significant effect on the monitored air quality. As the commenter points out, ozone formation occurs through "complex chemistry and meteorology". Voluntary reductions over a short time period may or may not have had an impact on the monitored air quality. (We note that "voluntary" reductions are always a factor, since total emissions at a given point in time depend, for example, on how many people decide to drive on a given day or weekend). However, the State's demonstration that air quality improvements are due to permanent and enforceable emission reductions is based on its analysis of emission reductions over a ten-year period (see response to comment 19), consistent with the guidance in the Calcagni Memo at page 4.

Note that in general, EPA encourages voluntary reductions to reduce emissions. EPA supports programs such as the Air Quality Index which encourages people to voluntarily reduce ozone forming activities such as filling gas tanks, painting, mowing, etc. at times when ozone formation is expected to be high. Although these measures are not enforceable nor measurable, they are encouraged. In addition, EPA does not believe that Congress intended, in enacting section 107(d)(3)(E)(iii) of the Act, that communities and states, acting to protect the health of their residents, should be ineligible for redesignation merely because they encourage voluntary ozone precursor emission reductions during periods when ozone concentrations may be high.

Comment 19: EPA cannot demonstrate that permanent and enforceable emission reductions are responsible for any alleged improvement of air quality. The only way to demonstrate this point is through photochemical grid modeling. No such modeling has been presented. Without modeling, EPA's claim is pure speculation. Emission reductions attributable to the emission controls "could just as easily lead to increases in ozone concentrations." The attainment demonstration modeling shows that attainment was "impossible" in 2003.

Response 19: This comment refers to both the Missouri and Illinois portions of the St. Louis area. EPA is here providing a response regarding the Illinois portion of the St. Louis area. See a separate rulemaking in today's **Federal Register** regarding redesignation of the Missouri portion of the St. Louis area for EPA's response to this comment as it pertains to the Missouri portion of the St. Louis area.

EPA's response to this and other comments on the attainment demonstration modeling is included in the response to comments 21 and 24 below. In addition, see Wall v. EPA (265 F.3d 426, 435) and our response to comment 23 for further discussion regarding the use of modeling in demonstrating maintenance of the NAAQS.

Neither section 107(d)(3)(E)(iii) of the Act nor the Calcagni Memo referenced by the commenter require modeling as a prerequisite to redesignation of an ozone nonattainment area. Thus, modeling is not a necessary prerequisite for demonstrating that the improvement in air quality is due to permanent and enforceable reductions. See the General Preamble for the Interpretation of Title I of the CAA Amendments of 1990, (57 FR 13496) (April 16, 1992), supplemented at 57 FR 18070 (April 28, 1992); "Procedures for Processing Requests to Redesignate Areas to Attainment," John Calcagni, Director, Air Quality Management Division, September 4, 1992; "State Implementation Plan (SIP) Requirements for Areas Submitting Requests for Redesignation to Attainment of the Ozone and Carbon Monoxide (CO) National Ambient Air Quality Standards (NAAQS) on or after November 15, 1992," Michael H. Shapiro, Acting Assistant Administrator for Air and Radiation, September 17, 1993 (Shapiro Memo); and "Use of Actual Emissions in Maintenance Demonstrations for Ozone and CO Nonattainment Areas," D. Kent Berry, Acting Director, Air Quality Management Division, November 30, 1993. Our policies provide that an area may meet this requirement by showing how its ozone precursor emissions changed due to permanent and enforceable emissions reductions from when the area was not monitoring attainment of the 1-hour ozone NAAQS to when it reached attainment. See the rationale set forth in the Cincinnati redesignation (65 FR 37879, 37886–37889) (June 19, 2000) and the Pittsburgh redesignation (66 FR 53094) (October 19, 2001). The Court of Appeals for the Sixth Circuit has recently upheld EPA's interpretation in *Wall* v. *EPA* (265 F.3d 426, 435).

In the January 30, 2003 proposed rule at 68 FR 4856–4858, EPA explains the basis for concluding that the observed air quality improvements are due to the implementation of permanent and enforceable emission reductions. The reasons cited include: emission controls which have resulted in emission reductions; an analysis of meteorological conditions which has shown a downward trend in ozone design values while the annual number of days conductive to forming high ozone concentrations showed no significant trend between 1989 and 2002; and an assessment of emissions in 1990 and 2000 which has shown a substantial decrease in emissions of VOC and NO_X.

Annual days conducive to ozone formation (those days with relatively clear skies, low wind speeds and southerly wind directions, high peak temperatures exceeding 85 degrees Fahrenheit, and little or no precipitation) have shown no noticeable trend up or down, only relatively random year-to-year variations. The annual number of ozone conducive days have stayed between approximately 20 and 50, with no consistent increasing or decreasing trend. Meanwhile, annual site-exceedances have decreased from over 120 in 1978, over 100 in 1983, over 60 in 1988, to a total of 11 in the three year period of 2000 to 2002, showing a significant downward trend and steadily improving peak ozone levels. In addition, the year-to-year fluctuation of annual conducive days cannot be correlated with higher or lower ozone exceedance levels over the last few years. Since 1989, as the annual number of conducive days fluctuated from year-to-year with no significant long term trend, the number of exceedances demonstrated a significant long term downward trend. This indicates a disassociation between monitored exceedances and meteorological effects.

During the 1990–2000 period, as the area-wide worst-case three year ozone design values (see our response to comment 20 for further discussion of the area's ozone design values) in the St. Louis area were decreasing, the VOC and NO_X emissions in the St. Louis area were also significantly decreasing in a downward trend. The following tables list VOC and NO_X emissions in 1990 and 2000 for the Missouri and Illinois portions of the St. Louis ozone nonattainment area. Both sections of the nonattainment area have experienced a downward trend in VOC and NO_X emissions. The downward trend in emissions and ozone design values with no significant trends in days conducive to ozone formation implies that observed improvements in air quality are due to the implementation of permanent and enforceable emission control measures.

1990 AND 2000 MISSOURI PORTION OF THE ST. LOUIS NONATTAINMENT AREA VOC AND NO_X EMISSIONS

[Emissions in Tons Per Ozone Season Weekday]

Source category	VOC	NO_X
1990:		
Point Sources	81.97	347.61
Area Sources	87.74	29.47
On-Road Mobile Sources	135.421	135.00
Off-Road Mobile Sources	64.30	114.32
1990 Totals	369.43	626.40
2000:		
Point Sources	46.59	165.96
Area Sources	57.38	32.27
On-Road Mobile Sources	103.79	181.75
Off-Road Mobile Sources	40.59	73.16
2000 Totals	248.35	453.14

1990 AND 2000 METRO-EAST AREA VOC AND NO_X EMISSIONS

[Emissions in tons per ozone season weekday]

Source category	VOC	NO_X
1990:		
Point Sources	74.05	95.85
Area Sources	33.84	1.66
On-Road Mobile Sources	43.27	45.13
Off-Road Mobile Sources	23.49	23.99
1990 Totals	174.651	166.63
2000:		
Point Sources	17.91	61.91
Area Sources	28.32	1.18
On-Road Mobile Sources	26.57	54.71
Off-Road Mobile Sources	21.31	23.85
2000 Totals	94.11	141.64

Reductions in VOC and NO_X emissions have brought many areas across the Country into attainment. EPA has approved many ozone redesignations showing decreases in ozone precursor emissions resulting in attainment of the ozone standard. See redesignations for Charleston (59 FR 30326, June 13, 1994; 59 FR 45985, September 6, 1994), Greenbrier County (60 FR 39857, August 4, 1995), Parkersburg (59 FR 29977, June 10, 1994); (59 FR 45978, September 6, 1994), Jacksonville/Duval County (60 FR 41, January 3, 1995), Miami/Southeast Florida (60 FR 10325, February 24, 1995), Tampa (60 FR 62748, December 7, 1995), Lexington (60 FR 47089, September 11, 1995), Owensboro (58 FR 47391, September 9, 1993), Indianapolis (59 FR 35044, July 8, 1994; 59 FR 54391, October 31, 1994), South Bend-Elkhart (59 FR 35044, July 8, 1994; 59 FR 54391, October 31, 1994), Evansville (62 FR 12137, March 14, 1997; 62 FR 64725, December 9, 1997), Canton (61 FR 3319, January 31, 1996), Youngstown-Warren (61 FR 3319, January 31, 1996), Cleveland-Akron-Lorain (60 FR 31433, June 15, 1995; 61 FR 20458, May 7, 1996), Clinton County (60 FR 22337, May 5, 1995; 61 FR 11560, March 21, 1996), Columbus (61 FR 3591, February 1, 1996), Kewaunee County (61 FR 29508, June 11, 1996; 61 FR 43668, August 26, 1996), Walworth County (61 FR 28541, June 5, 1996; 61 FR 43668, August 26, 1996), Point Coupee Parish (61 FR 37833, July 22, 1996; 62 FR 648, January 6, 1997), and Monterey Bay (62 FR 2597, January 7, 1997). Most of the areas that have been redesignated to attainment of the one-hour ozone standard have continued to attain it. Areas that are not maintaining the one-hour ozone standard have maintenance plans to bring them back into attainment.

Between 1990 and 2000, area-wide VOC and NO_X emissions in the St. Louis area decreased by 37 percent and 25 percent, respectively (46 percent and 25 percent, respectively, in Metro-East St. Louis). These emissions reductions are due to the use of low volatility gasoline, more stringent Tier I motor vehicle emission standards, implementation of a more stringent vehicle inspection and maintenance (I/M) program, controls on area sources, adoption of tighter emissions limits on existing stationary sources, and requirements for the use of reformulated and low RVP gasoline in motor vehicles. Some of the specific emission control measures implemented in the Metro-East St. Louis area include:

- Basic and Enhanced I/M for Motor Vehicles
- Transportation Control Measures (TCMs)
- Low-Volatility (low Reid Vapor Pressure (RVP)) Gasoline
- Tightened Reasonably Available Control Technology (RACT) Standards for Some Source Categories

- RACT for Sources Covered By New Control Techniques Guidelines (CTGs)
- Architectural Surface Coating Standards
- Volatile Organic Liquids Storage Facility Controls
- Automobile Refinishing Operation Controls
- Marine Vessel Loading Emission Controls.

The commenter claims that the combination of NO_X and VOC emissions reductions could just as easily have led to increases in ozone. However, the actual monitoring data collected in the area show that ambient ozone concentrations have dropped when this combination of ozone precursor emission reductions occurred. In other metropolitan areas, other levels of VOC and NO_X reductions have also resulted in attainment. See the redesignation rules listed above in the first part of this response. The St Louis area's decrease in ozone levels is consistent with what other areas have experienced when ozone precursor emissions have been reduced. The commenter has not provided data showing that decreases in ozone precursor emissions have led to higher levels of ozone. In fact, the available data (as discussed in the January 30, 2003 proposed rule) for the St. Louis area prove just the opposite. Decreases in VOC and NO_X emissions in the St. Louis area are associated with a decrease in peak ozone levels. There is no reason to assume that future reductions in VOC and NO_X emissions will cause just the opposite effect. Therefore, it is appropriate for the EPA to assume that future reductions in VOC and NO_X emissions will lead to lower peak ozone concentrations.

EPA's conclusion that improvements in air quality are attributable to permanent and enforceable reductions in precursors is not "speculation" but is based on a careful review of the various technical analyses conducted by the States and described above. EPA believes it is reasonable not to require photochemical grid modeling. Three-year averaging of annual exceedance rates addresses variations in meteorological conditions. Analysis of meteorological conditions showed no significant trend in the number of days conducive to ozone formation, and the commenter has presented no evidence that the three year attainment period was unusually favorable. It is important to note that, redesignation is not intended as an absolute guarantee that the area will never monitor future standard violations. This is what maintenance plan contingency measures are designed to address and correct. See Cincinnati redesignation (65 FR 37879, 37886–37889) (June 19, 2000) and the Pittsburgh redesignation (66 FR 53094) (October 19, 2001).

Comment 20: If improvements in St. Louis air quality were due to permanent and enforceable emission reductions, the trend in monitored concentrations would be to go down. However, exceedances tripled from 2000 to 2001 and more than doubled from 2001 to 2002.

Response 20: A violation of the 1-hour ozone NAAQS occurs when the estimated number of exceedances per year averaged over three years is greater than 1.0 at any monitoring site in the area or its downwind environs, using conventional rounding techniques. Although there was an increase in the number of exceedances between 2000 and 2001 as well as between 2001 and 2002, year-to-year trends in exceedances are not used to determine attainment, but rather an average over three years at each monitoring site is used. As noted in a separate rulemaking published in today's **Federal Register**, EPA has determined that the St. Louis area is in attainment with the NAAQS.

As indicated in the January 30, 2003 proposed rule at 68 FR 4850, Table 1 Summarizes the number of expected exceedances at each monitor in the area.

TABLE 1.—1-HOUR OZONE NAAQS EXCEEDANCES IN THE ST. LOUIS, ILLINOIS-MISSOURI AREA FROM 2000 TO 2002

Site name	County or city and state	Estimated exceedances			Average number of estimated exceedances 2000–2002
		2000	2001	2002	
Jerseyville	Jersey, IL	0.0	1.0	1.0	0.7
Alton	Madison, IL	0.0	0.0	0.0	0.0
Maryville	Madison, IL	0.0	0.0	1.0	0.3
Edwardsville	Madison, IL	0.0	0.0	0.0	0.0
Wood River	Madison, IL	0.0	1.0	0.0	0.3
Houston	Randolph, IL	0.0	0.0	0.0	0.0
East St. Louis	St. Clair, IL	0.0	0.0	0.0	0.0
Arnold	Jefferson, MO	0.0	0.0	0.0	0.0
West Alton	St. Charles, MO	1.0	1.0	1.0	1.0
Orchard Farm	St. Charles, MO	0.0	0.0	2.0	0.7
Bonne Terre	St. Genevieve, MO	0.0	0.0	0.0	0.0
South Lindbergh	St. Louis, MO	0.0	0.0	2.0	0.7
Queeny	St. Louis, MO	0.0	0.0	0.0	0.0
Hunter	St. Louis, MO	0.0	0.0	0.0	0.0
Flo Valley	St. Louis, MO	0.0	0.0	0.0	0.0
St. Ann (old)	St. Louis, MO	0.0	n/a	n/a	[1] 0.0
St. Ann (new)	St. Louis, MO	n/a	0.0	0.0	[1] n/a
Broadway	St. Louis City, MO	0.0	0.0	0.0	0.0
Clark	St. Louis City, MO	0.0	0.0	0.0	0.0
Margaretta	St. Louis City, MO	0.0	0.0	0.0	0.0

[1] The owner of the property on which the old St. Ann monitor was located terminated the lease agreement with the Missouri Department of Natural Resources. The new site is 0.7 miles east of the old site. In general, ambient monitors should remain at the same location for the duration of the monitoring period required for demonstrating attainment. However, when three complete, consecutive calendar years of data is not available for a monitoring site, adjustments are made consistent with EPA monitoring criteria, in determining the average number of estimated exceedances per year. The average number of estimated exceedances for 2000—2002 for the old St. Ann monitor is the estimated exceedances for 2000, or 0.0. In addition, where a monitor has been in operation less than three years, the average estimated number of exceedances cannot be determined. Since the new St. Ann monitor has been in operation less than three years, the average number of estimated exceedances for 2000—2002 was not determined.

The area has monitored attainment for the three year period from 2000–2002. This indicates that the current level of emissions is adequate to keep the St. Louis area in attainment. In addition, the Act does not presume that the area will always be in attainment. The Act provides that, if the area were to violate the 1-hour ozone standard, then the contingency measures in the maintenance plan would be triggered. This would reduce the ozone precursor emissions and bring the area back into attainment.

One exceedance was monitored in the area in 2000, three in 2001, and seven in 2002. EPA notes that when dealing with numbers as small as one exceedance in 2000, any subsequent increase in the number of exceedances will result in the number of exceedances being at least doubled. Thus, citing a doubling or tripling of exceedances is not necessarily an indicator of significant changes in air quality.

The one-hour ozone NAAQS is based on a three-year average. For a violation, the estimated number of exceedances per year must exceed 1.0 at any monitoring site. Under this standard, a monitor may record up to three exceedances over a three-year period without causing a violation of the standard. The fourth-highest monitored level at a monitor over a three-year period can be used as an indicator of potential violations of the NAAQS. (Note that since other factors, such as missing data, can affect the calculation of the estimated number of exceedances, the fourth highest monitored value is not solely used to determine a violation. See the discussion in the January 30, 2003 proposed rule at 68 FR 4849 and 4850 for an example of how the number of estimated exceedances is determined.) The term "design value" is used to refer to the fourth highest monitored value in a three year period. For an individual monitor, the design value is the fourth-highest monitored value in a three-year period. For an area such as the St. Louis area, the highest of the individual monitor design values over a three-year period is referred to as the "area's design value". The lower an area's design value the more likely the area will meet the standard. Also, an area's design value which decreases over time indicates that the monitored ozone concentrations are generally lowering and the air quality is improving.

The St. Louis area's design value decreased as follows:

0.156 parts per million (ppm) in 1987—1989 (see 52 FR 13385—13386 dated March 18, 1999); 0.136 ppm in 1994—1996 (see 53 FR 15581 dated March 19, 2001); 0.131 ppm in 1996—1998 (see 53 FR 15583 dated March 19, 2001); 0.127 ppm in 1998—2000 (see 53 FR 15584 dated March 19, 2001), and, 0.123 ppm in 2000—2002. This indicates that the monitored air quality improved over this time period.

In the January 30, 2003 proposed rule at 68 FR 4856—4858, and in the response to comment 19, EPA explains the basis for concluding that the observed air quality improvements are due to the implementation of permanent and enforceable emission reductions. The reasons cited include emission controls which have resulted in emission reductions, an analysis of meteorological conditions which has shown a trend in the reduction of ozone from 1989 to the present while the number of days conducive to forming ozone showed no significant trend, and an assessment of emissions in 1990 and 2000 which have shown substantial decreases in emissions of VOCs and NO_X.

Finally, it is noted that the commenter errs in totalling the exceedance numbers from many monitors for each year and concluding, on the basis of the exceedance totals that a worsening ozone trend has occurred. Referring to Table 1 in the January 30, 2003 proposed rule (68 FR 4850) (repeated above), one can see that many monitors, including the worst-case monitor at West Alton, show no consistent trend in exceedance numbers in the 2000–2002 period on a monitor-specific basis. The "sudden" increase in exceedances from zero to two at the Orchard Farm and South Lindbergh monitoring sites, although implying a worsening ozone trend, simply point to the instability of considering year-to-year changes within a small time period.

Comment 21: The only modeling which the commenter is aware of was relied upon in the June 26, 2001 rulemaking. This modeling shows that it is impossible to attain the NAAQS in St. Louis in 2002. The significant factor is long range transport. This suggests that variations in out-of-state transport may account for the monitored improvements in air quality.

Response 21: Previous modeling referenced by the commenter was conducted as part of the attainment demonstration approved by EPA in the June 26, 2001 rulemaking (66 FR 33995). (This approval was vacated by the U.S. Court of Appeals for the Seventh Circuit, as explained previously.) This modeling demonstrated that utilizing planned controls and measures, the area will attain the standard by no later than November 15, 2004. EPA disagrees with the Commenter's assertion that the modeling demonstrated it was impossible to attain the standard in 2002. The purpose of the modeling was to determine the likelihood of attainment. EPA's approval of the States' attainment demonstrations did not include a determination that attainment or maintenance of the standard prior to 2004 was impossible.

The assumptions used in the modeling for the attainment demonstration approved in the June 26, 2001 rulemaking are described in an April 3, 2001 proposed rule (66 FR 17649–52). In this discussion, EPA noted that the States incorporated corrections to the 1996 base year emissions inventory, documented an assessment of the model's performance by applying statistical tests, and discussed assumptions regarding which states are affected by the NO_X SIP call including NO_X limits on facilities.

As discussed in the April 2001 notice, the States had taken measures to revise the emissions inventory to reflect the most current data inputs available. In addition, an evaluation of the model was performed as a measure of the "likelihood" that the standard will be achieved. The June 26, 2001 rulemaking at 66 FR 17652 states:

> The states conclude, and EPA concurs, that the revised modeling system performs at an acceptable level because it satisfactorily reproduces peak ozone concentrations relative to the monitored peak ozone concentrations. The modeling system adequately simulates the observed magnitude and spatial and temporal patterns of monitored ozone concentrations. Furthermore, the modeling results accurately differentiate between days with marginal ozone levels and days with elevated ozone concentrations. Therefore, based on the revised modeling and WOE results presented by the states which confirm the adequacy of the adopted emission control strategy, EPA is approving the states' attainment demonstrations.

The conclusions made regarding the likelihood of attainment based upon the attainment demonstration modeling were the best that could be drawn from the available information. It is likely that different conclusions regarding attainment would be drawn if the State's were required to conduct modeling as part of the maintenance demonstration. For example, if a prospective maintenance demonstration were performed with an ozone photochemical model following EPA guidance, the modeling would be allowed to use episode days from the 2000–2002 period, not 1991 and 1995 as was used in the attainment demonstration modeling. It is highly likely, if not certain, that the outcome would be a conclusion that attainment will be

preserved through the required 10-year period.

Ozone models are designed to primarily predict the relative impacts of emission changes on future ozone levels. Thus, it is not uncommon to observe that actual monitored ozone concentrations are different than modeled values at certain locations. The commenter's assertion that attaining the standard in 2002 is impossible is not supported by the existing science.

The commenter does not provide data to support its hypotheseis that variations in out-of-state transport may account for the improvement in air quality. The commenter only speculates that out-of-state transport may account for the improvement in air quality. As described in the response to comments 19 and 20 above, the States demonstrated that improvements in air quality are due to emission controls which have resulted in emission reductions, an analysis of meteorological conditions which has shown no significant decrease in the annual number of days conducive to ozone formation while there has been a significant reduction in monitored ozone concentrations, and an assessment of emissions in 1990 and 2000 which have shown decreased emissions of VOCs and NO_X. Thus, the states have demonstrated that the air quality improvements in the St. Louis area are due to permanent and enforceable emission reductions in the St. Louis area.

E. Comments Related to Criterion 4: The Area Must Have a Fully Approved Maintenance Plan Meeting the Requirements of Section 175A

Comment 22: Under section 175A(a) of the Act, the state maintenance plans must be a SIP revision. Section 110(a)(2)(A) of the Act requires a SIP to contain enforceable emission limitations. The maintenance plan for each State does not include any enforceable emission limitations.

Response 22: This comment refers to both the Missouri and Illinois portions of the St. Louis area. EPA is here providing a response regarding the Illinois portion of the St. Louis area. See a separate rulemaking in today's **Federal Register** regarding the redesignation of the Missouri portion of the St. Louis area for EPA's response to this comment as it pertains to the Missouri portion of the St. Louis area.

The Act requires the area to have a fully approved SIP and to have met all of the applicable requirements of the Act. The Illinois SIP satisfies this requirement as described in EPA's proposed rulemaking published on January 30, 2003 (68 FR 4847). The measures that the State relies on to maintain the one-hour ozone standard (the emission controls which have been previously implemented plus the statewide NO_X emission control rules now being implemented) have been approved into the SIP and are State and Federally enforceable. This includes Illinois' statewide NO_X rules, approved by the EPA on November 8, 2001 (66 FR 56449 and 66 FR 56454). The State must continue to implement these measures as provided for in the Federally approved SIP.

The Act does not require a separate level of enforcement for a maintenance plan as a prerequisite to redesignation. The enforcement program approved for and applicable to the SIP as a whole also applies to the maintenance plan. See discussion in the Cincinnati redesignation (65 FR 37879, 37881–37882), and Sixth Circuit decision in Wall v. EPA, supra, at 20–21, upholding EPA's interpretation of the requirement.

All of the control measures which the State relied on to attain and maintain the one-hour ozone standard are SIP-approved measures. EPA cannot withhold its approval of the maintenance plan submitted by Illinois because of concerns that the State may, at some future time, either submit a SIP revision to amend or remove a program, or that the State may fail to implement these programs in the Metro-East St. Louis area. The Federally approved SIP requirements remain in place, and remain enforceable until such time as EPA takes action to approve SIP revisions to amend or remove them. This can only be done via Federal rulemaking, which includes procedures for public comment and review.

Comment 23: Section 182(j), 40 CFR 51.112(b), the Calcagni Memo, and the General Preamble require the use of photochemical modeling to demonstrate maintenance. EPA is overruling Congress, EPA regulations, and common sense by proposing to predict maintenance for ten years without any modeling. Monitoring is more accurate to show past concentrations, but modeling is required to predict future concentrations. The commenter cites Ober v. U.S.E.P.A., 84 F.3d 304 (9th Cir. 1996) in support of this assertion.

Response 23: EPA disagrees with the commenter's assertion that the use of photochemical modeling to demonstrate maintenance is required by the Act, EPA policy, or EPA regulations. The EPA is not overruling Congress or EPA regulations.

Section 175A requires States to develop and submit, as a SIP revision, a plan for maintaining the NAAQS for at least 10 years after redesignation. The plan shall contain such additional measures, if any, as the Administrator deems necessary to ensure such maintenance. Section 175A does not require modeling.

Section 182(j) contains no reference to maintenance plans. Section 182(j)(1) requires that each state in a multi-state ozone nonattainment area shall "* * * (A) take all reasonable steps to coordinate, substantively and procedurally, the revisions and implementation of State implementation plans applicable to the nonattainment area concerned; and (B) use photochemical grid modeling or any other analytical method determined by the Administrator, in his discretion, to be at least as effective". The language in this section clearly refers to "nonattainment" areas. Thus, EPA believes that section 182(j) is applicable to attainment demonstrations not maintenance plans.

Even if the commenter is correct in the assertion that section 182(j) applies to maintenance plans, this section does not necessarily require modeling. EPA has the discretion to approve the use of other analytical methods determined to be at least as effective. In the Calcagni Memo, on page 9, EPA stated "A State may generally demonstrate maintenance of the NAAQS by either showing that future emissions of a pollutant or its precursors will not exceed the level of the attainment inventory, or by modeling to show that the future mix of sources and emission rates will not cause a violation of the NAAQS". By this policy, EPA has, in effect, expressed how its discretion will be utilized regarding the use of emissions in lieu of modeling for demonstrating maintenance. In addition, the Sixth Circuit in Wall v. EPA (265 F.3d 426, 435) determined that "EPA's actions are completely consistent with its own interpretive memorandum, which allows for NAAQS maintenance to be demonstrated by showing that the future emissions of a pollutant's precursors will not exceed the level that allowed the area to achieve attainment in the first place." The *Ober* v. U.S.E.P.A. case cited by the commenter deals with modeling requirements for approval of a SIP revision in a nonattainment area for particulate matter, and has no relevance to the ozone maintenance plan at issue here.

The regulation at 40 CFR 51.112(a) requires the SIP to demonstrate that the measures, rules, and regulations contained in it are adequate to provide for the timely attainment and maintenance of the NAAQS. The regulation at 40 CFR 51.112(b) specifies

what the demonstration required in 40 CFR § 51.112(a) must include. The Sixth Circuit in Wall v. EPA (265 F.3d 426, 435) determined that EPA's position that the regulation at 40 CFR 51.112(a) applies only to attainment demonstrations and not to maintenance plans is "neither impermissible nor in conflict with a statutory mandate * * * Moreover, EPA's actions are completely consistent with its own interpretive memorandum, which allows for NAAQS maintenance to be demonstrated by showing that the future emissions of a pollutant's precursors will not exceed the level that allowed the area to achieve attainment in the first place."

Lastly, the January 30, 2003 proposed rule at 68 FR 4858 states that emissions of NO_X in the Metro-East St. Louis area will be reduced from 141.64 to 96.67 tons per ozone season weekday from 2000 to 2014 and in Missouri, they will be reduced from 453.14 to 317.58 tons per ozone season weekday from 2000 to 2014. Emissions of VOCs in the Metro-East St. Louis area will be reduced from 94.11 to 75.98 tons per ozone season weekday from 2000 to 2014 and in Missouri, they will be reduced from 248.35 to 182.57 tons per ozone season weekday from 2000 to 2014. A "common sense" conclusion is that further emission reductions are projected to occur through 2014. Based on past trends of emissions decreases, peak ozone levels will continue to be reduced from 2000 to 2014. Further modeling would continue to demonstrate attainment. The commenter has not provided any data to indicate that these emission reductions would lead to modeled increases in ozone concentrations.

Comment 24: EPA and the States have stated in testimony provided to courts and the public that maintenance of the NAAQS in 2003 is not possible. EPA and the states have stated that, due to upwind emissions, attainment with the NAAQS cannot be achieved until 2004.

Response 24: The commenter uses the same arguments in this comment to state that the attainment with the NAAQS cannot be maintained as was used in comment 21 above to claim that the area cannot attain the NAAQS. See the response to comment 21 for further discussion.

EPA disagrees with the commenter's assertion that the modeling demonstrated it was impossible to maintain the standard in 2003. The evaluation of the modeling is to determine the likelihood of attainment by a future attainment deadline (2004 in this case). EPA's approval of the States' attainment demonstrations did not include a determination that attainment or maintenance of the standard prior to 2004 was impossible.

The commenter references documents submitted by EPA and the States as well as language used in various rulemakings stating, in effect, that reductions in upwind emissions are necessary for attainment of the standard and that the earliest attainment date is November 15, 2004. At the time these documents were developed, EPA and the States were basing their conclusions on the attainment demonstration including the accompanying modeling. The statements made were the best conclusions that could be drawn from the available information.

The conclusion that the maintenance plan will provide for maintenance of the NAAQS for the next ten years as required by section 175A is based, in part, on more recent information than what was relied upon in the attainment demonstration which included the modeling referred to by the commenter. The maintenance plan includes an emission inventory which is more recent than the inventory used in the attainment demonstration. See the response to comment 36 for further discussion.

EPA has no data to support the commenter's hypothesis that variations in out-of-state transport may account for the improvement in air quality. The commenter only speculates that out-of-state transport solely account for the improvement in air quality. EPA concludes that the plan demonstrates maintenance through 2014.

Comment 25: The SIPs must provide assurance that the States have adequate personnel, funding and authority to carry out the SIP. The record for this action must provide real evidence of this assurance. The commenter raises the following specific concerns with regard to Illinois:

a. The Illinois I/M funding expires on June 30, 2003. Illinois has no funding mechanism to replace this funding. Based on this observation, the EPA cannot lawfully find that Illinois has adequate funding to fully implement its SIP;

b. EPA cannot lawfully find that the Illlinois motor vehicle emissions budgets are adequate because they presume full funding for the Illinois I/M program;

c. Illinois is failing to adequately administer and enforce the title V source operating permits program due mainly to a lack of funding. Illinois failed to issue all source permits within three years of receiving interim approval of its title V permits program by the EPA on March 7, 1995 (60 FR 12478). At least 24 of the unpermitted sources are located in Madison and St. Clair Counties, Illinois. Illinois has announced that it will be very difficult to meet a commitment to issue all required source permits by the December 2003 deadline. Illinois is also violating the requirement to act on all source permit applications within 18 months of receipt, violating the requirements of 40 CFR 70.7(a)(2). This is due to a lack of adequate funding; and

d. Illinois is failing to adequately enforce its title V program through regular source inspections.

The commenter expresses the general concern that Illinois lacks the funds to adequately enforce any of the Clean Air Act requirements and to implement its SIP, including NSR, PSD, and RACT rules. Therefore, the commenter believes that EPA should reject Illinois' statement in the maintenance plan that Illinois has the necessary resources to enforce any violations of its rules or source permit provisions.

Response 25: This comment refers to both the Missouri and Illinois portions of the St. Louis area. EPA is here providing a response regarding the Illinois portion of the St. Louis area. *See* a separate rulemaking in today's **Federal Register** regarding the redesignation of the Missouri portion of the St. Louis area for EPA's response to this comment as it pertains to the Missouri portion of the St. Louis area, and as it relates to the general assertion that the Illinois maintenance plan lacks a showing of adequate resources.

With regard to the commenter's Illinois-specific comments, we have the following responses:

a. The Illinois I/M program, in the Metro-East St. Louis area, is currently funded through a combination of fuel taxes and Congestion Mitigation and Air Quality (CMAQ) funds. It is EPA's understanding that Illinois currently has sufficient funding from CMAQ previously appropriated and obligated and from fuel taxes to run this program through December 2003. Meanwhile, Illinois officials are seeking alternative funding sources to replace the expired CMAQ funding, including continuance of CMAQ funding through Congressional reauthorization. The EPA believes at this time that it is reasonable to assume that Illinois will continue to implement this program, for several reasons. First, Illinois is committed to continuing implementation of this program, which it has been operating since 1986. Second, if Illinois fails to maintain this program other than termination through approvable means (for example, by substituting an emissions control measure to achieve

equal or greater emissions reductions), the program remains an enforceable component of the approved SIP. Finally, it is noted that this program is contractor operated, with the contractor operating under a binding contract extending through 2005. This contract, which is on file at EPA as part of the documentation for this portion of the SIP, contains penalty clauses insuring that the State will continue funding the I/M program through the lifetime of the contract (in the event that the State prematurely terminates the contract, the State would still be obligated to reimburse the contractor through 2005 for the estimated value of the contract). Illinois has no financial incentive to discontinue the I/M program;

b. Since, for the reasons described above, EPA can assume that the Illinois I/M program will continue to operate in the Metro-East St. Louis area and since this program is an ozone maintenance measure assumed in Illinois' ozone maintenance demonstration, it is correct to conclude that Illinois' mobile source emissions budgets are acceptable and are not in jeopardy due to a pending termination of the I/M program; and

c–d. As evidenced in the December 23, 2003 maintenance plan, Illinois remains committed to implementing the SIP after redesignation of the area. The Illinois ozone SIP for the Metro-East St. Louis area has been fully approved, and there are no criteria requiring EPA to evaluate and assess title V programs prior to redesignation of the area to attainment. The SIP approval and redesignation criteria do not include evaluating permitting programs to ascertain whether any deficiencies exist in these programs. The maintenance plan is designed to assure that attainment of the one-hour ozone standard is preserved. Whatever deficiencies are confirmed to exist in the source permitting program may be addressed and corrected in other contexts, including a finding of failure to implement under section 173(b) of the Act. Therefore, this comment is not a basis for disapproving Illinois' ozone maintenance plan and the EPA disagrees with the commenter on this issue.

In addition, it should be noted that section 107(d)(3) and section 175A ozone redesignation and ozone maintenance plan requirements require compliance with section 110 and part D requirements under title I of the Act. Title I of the Act itself does not require compliance with title V of the Act for purposes of considering redesignations to attainment of the NAAQS. Therefore, even if the commenter were correct in its assertion that Illinois is not properly implementing its title V permit program, this would not be a basis for disapproval of the redesignation request and concerns with title V compliance and implementation are moot.

The ozone SIP for the Metro-East St. Louis area has been fully approved, and there are no criteria requiring EPA to evaluate and assess title V programs prior to redesignation of the area to attainment. The SIP approval and redesignation criteria do not include evaluating permitting programs to ascertain whether any deficiencies exist in these programs. The maintenance plan is designed to assure that attainment of the one-hour ozone standard is preserved. Whatever deficiencies are confirmed to exist in the source permitting program may be addressed and corrected in other contexts, including a finding of failure to implement under section 173(b) of the Act.

EPA disagrees with the commenter that this action must include in the record further evidence of Illinois resource commitments. Neither this commenter nor any other person has submitted substantive comments that would lead EPA to separately analyze whether it should call on the State to revise its section 110(a)(2) SIP regarding enforcement and funding.

Comment 26: EPA policy indicates that a state may not relax existing controls upon redesignation. However, the States are moving requirements for Lowest Achievable Emissions Rates (LAER), new source emission offsets, and NO_X RACT to the contingency plans without a modeling demonstration showing that these control measures are not needed for attainment, contrary to EPA policy.

Response 26: This comment refers to both the Missouri and Illinois portions of the St. Louis area. EPA is here providing a response regarding the Illinois portion of the St. Louis area. See a separate rulemaking in today's **Federal Register** regarding redesignation of the Missouri portion of the St. Louis area for EPA's response to this comment as it pertains to the Missouri portion of the St. Louis area.

Illinois has a commitment on page 26 of the maintenance plan to maintain all of the emission control measures implemented in the Metro-East St. Louis area to ensure maintenance of the one-hour ozone NAAQS.

The commenter refers to the Calcagni Memo at page 10 which states that "the State will be expected to maintain its implemented control strategy despite redesignation to attainment, unless such measures are shown to be unnecessary for maintenance or are replaced with measures that achieve equivalent reductions".

Section 175A of the Act requires that maintenance plans shall contain contingency provisions deemed necessary to assure that the States will promptly correct any violation of the standard which occurs after redesignation of the area as an attainment area. These provisions shall include a requirement that the State will implement "all measures with respect to the control of the air pollutant concerned which were contained in the SIP for the area before redesignation of the area as an attainment area". On page 6 of an October 14, 1994 memorandum entitled, "Part D New Source Review (part D NSR) Requirements for Areas Requesting Redesignation to Attainment" from Mary D. Nichols, assistant Administrator for Air and Radiation, EPA stated its interpretation that the term "measures" used in section 175A does not include part D NSR permitting programs. In accordance with this interpretation, EPA believes that LAER and offsets, which are components of Illinois' part D NSR permitting program, are not required to be retained following redesignation of the Metro-East St. Louis area as an attainment area.

LAER and new source emissions offsets are specified in part D and subpart 2 of the Act to be applicable to nonattainment areas. Upon redesignation to attainment, these requirements are no longer applicable. Removing the LAER and offsets provision in the State's permitting program is not contrary to the above mentioned policy. Upon redesignation to attainment, the LAER requirements included in stationary source permits and the emissions offsets which were obtained by stationary sources at the time when the LAER and offset provisions were in effect will remain in effect for those facilities. Thus, the LAER and offset measures which were relied upon to attain the NAAQS will remain in effect following redesignation.

Following redesignation, any new facilities subject to the State's permitting requirements will be subject to the PSD requirements of part C of title I of the Act. Under these requirements, the State must ensure that such new facilities will not cause significant deterioration of air quality to the extent that they cause or contribute to peak ozone levels in excess of the NAAQS (see section 165 of the Act). As part of the PSD program, sources are required to perform a source-specific air quality demonstration to show no adverse impact on the NAAQS. This is a more accurate way of predicting impacts than to do generalized modeling which does not consider emissions growth at specific sources.

Illinois' new source rules are structured such that new source requirements, for new sources seeking permits after the area is redesignated to attainment, automatically revert to PSD requirements after an area is redesignated to attainment. This rule is part of Illinois' approved SIP.

For Illinois, it is noted that the State has not relied on NO_X RACT to attain the ozone standard and the Illinois SIP does not contain NO_X RACT rules. Therefore, moving NO_X RACT to the contingency plan is not a relaxation of the Illinois SIP.

Regarding modeling, the Shapiro Memo at page 6 states that "States may be able to move SIP measures to the contingency plan upon redesignation if the State can adequately demonstrate that such action will not interfere with maintenance of the standard * * * for ozone, the State would need to submit an attainment modeling demonstration consistent with EPA's current "Guideline on Air Quality Models." showing that the control measure is not needed to maintain the standard". As stated above, all emission control measures in place as a result of the LAER and Offsets rules are being retained by sources already implementing them following redesignation. For the Illinois portion of the St. Louis area, as noted above, NO_X RACT is not part of Illinois' existing SIP. Thus, no modeling is needed to demonstrate that these measures are not needed since all are being retained or are not parts of existing SIPs.

Comment 27: The contingency provisions of the maintenance plans fall short of those required. All serious area requirements of section 182(c) of the CAA should be included in the contingency plans and implemented promptly in case of a violation. Virtually none of these provisions are included in the contingency plans and, thus, the contingency plans cannot be approved.

Response 27: EPA disagrees with the commenter's assertion that all of the serious area requirements of section 182(c) should be included in the contingency plans and implemented in case of a violation.

The requirements of section 175A(d) are the applicable requirements for contingency measures in maintenance plans. Section 175A(d) states:

> Each plan revision submitted under this section shall contain such contingency provisions as the Administrator deems necessary to assure that the State will promptly correct any violation of the standard which occurs after the redesignation of the area as an attainment area. Such provisions shall include a requirement that the State will implement all measures with respect to the control of the air pollutant concerned which were contained in the State implementation plan for the area before redesignation of the area as an attainment area.

None of the serious area requirements were contained in the SIPs prior to redesignation. The plans must contain contingency measures which assure that the States "will promptly correct any violation of the standard which occurs after the redesignation of the area as an attainment area". As described in response to comment 28 below and in the January 30, 2003 proposed rule, EPA believes that this requirement has been met. The statute does not require that all serious area requirements be included in the maintenance plans as contingency measures, but rather that all measures included in the SIP prior to redesignation be included in the maintenance plans as contingency measures. As explained previously, certain serious area requirements need not be met in the case of the St. Louis area since the area has attained the standard prior to the date that these requirements are due. Since these provisions are not applicable in the St. Louis area, they do not need to be included in the maintenance plans as contingency measures.

The commenter's assertion that there is no implementation plan applicable to this "serious area" is addressed above. See, for example, our response to comment 17.

Comment 28: 42 U.S.C. 7505a(d) requires that the states will promptly correct any violation of the standard which occurs after redesignation. However, there is nothing in either contingency plan which assures prompt correction of future violations. The plans contain no adopted measures, and no schedule to adopt specific measures. The plans offer to adopt an unspecified measure within eighteen months of notification of a violation. This is an unreasonably long period. The plans should require adoption in much less than eighteen months and immediate implementation.

Response 28: This comment refers to both the Missouri and Illinois portions of the St. Louis area. EPA is here providing a response regarding the Illinois portion of the St. Louis area. See a separate rulemaking in today's **Federal Register** regarding redesignation of the Missouri portion of the St. Louis area for EPA's response to this comment as it pertains to the Missouri portion of the St. Louis area.

EPA disagrees that Illinois' maintenance plan lacks adequate contingency provisions should the area violate the standard. As stated in the January 30, 2003 proposed rule at 68 FR 4859, the contingency plan portion of each State's maintenance plan delineates the State's planned actions in the event of future one-hour ozone standard violations, increasing ozone levels threatening a subsequent violation of the ozone standard, and unanticipated increases in ozone precursor emissions threatening a subsequent violation of the ozone standard. Illinois has developed a contingency plan with several levels of triggered actions depending on whether the ozone standard has actually been violated after the redesignation of the area to attainment or whether a subsequent violation of the ozone standard is threatened on the basis of increased ozone concentrations approaching the standard or unanticipated significant increases in ozone precursor emissions. Illinois has also committed to continue to implement all control measures included in the SIP prior to redesignation consistent with section 175A(d) of the Act.

The action trigger levels and planned corrective actions in each contingency plan are the following:

A Level I Trigger will be exceeded if: (1) The monitored ambient ozone levels exceed 124 parts per billion, one-hour averaged, more than once per year at any monitoring site in the St. Louis maintenance area (the current St. Louis ozone nonattainment area), or more than two exceedances in any two-or three-year period; or (2) the St. Louis maintenance area's VOC or NO_X emissions for 2005 or 2008 increase more than 5 percent above the 2000 attainment levels. In the event one of these action trigger levels are exceeded, Illinois and Missouri will work together to evaluate the situation and determine if adverse emissions trends are likely to continue. If so, the States will determine what and where emission controls may be required to avoid a violation of the one-hour ozone NAAQS. A study shall be completed within nine months of the determination of the action trigger exceedance.

A Level II Trigger will be exceeded if a violation of the one-hour ozone NAAQS at any monitoring site in the St. Louis ozone maintenance area is recorded after the area is redesignated to attainment of the standard. If this trigger is exceeded, Illinois and Missouri will work together to conduct a thorough analysis to determine appropriate new emission control measures, from those

listed below, to address the cause of the ozone standard violation.

The contingency plan for Illinois lists a number of possible contingency measures. The plan calls for the appropriate contingency measures to be adopted no later than 18 months of a Level I or Level II trigger being exceeded. The December 23, 2002 maintenance plan for the Metro-East St. Louis area stated that the adopted contingency measures would be implemented as expeditiously as practicable, but generally within 24 months of adoption. However, in a letter dated April 15, 2003 from the IEPA, the State noted that the final maintenance plan was erroneously modified based on a prior comment letter from the EPA addressing the State's October 1, 2002 draft maintenance plan. The State has corrected its contingency implementation deadline commitment to reflect the contingency implementation deadline language contained in the October 1, 2002 draft maintenance plan, which commits the State to implement adopted contingency measures within 18 months of a determination of a violation of the one-hour ozone standard based on quality-assured data. The October 1, 2002 draft maintenance plan was the version of the maintenance plan reviewed by the public in the State's public hearing and during its public review period. The State notes that, in amending its October 1, 2002 draft maintenance plan to the final December 23, 2002 version, the State did not intend to extend the implementation deadline for contingency measures, but to merely address EPA's comment on the October 1, 2002 draft version. With the April 15, 2003 letter, the State of Illinois officially clarifies its commitment to implement contingency measures within 18 months of a determination that a one-hour ozone standard violation has occurred. The April 15, 2003 letter includes a revised contingency measures section, section 6.1, to replace the same section of the December 23, 2002 version of the State's maintenance plan, consistent with its clarification.

The list of possible contingency measures in Illinois' contingency plan include the following:

Point Source Measures

- NO_X SIP call Phase II (non-utility measures)
- Reinstatement of requirements for new source offsets and/or Lowest Achievable Emission Rates
- Apply RACT to smaller existing sources
- Tighten RACT for existing sources covered by Control Techniques Guidelines
- NO_X RACT
- Expand geographic coverage of current point source emission control measures
- Apply Maximum Available Control Technology for industrial sources
- Other point source measures to be identified Mobile Source Measures—
- Transportation Control Measures, including, but not limited to, area-wide rideshare programs, telecommuting, transit improvements, and traffic flow improvements
- High-enhanced vehicle inspection/maintenance (OBDII)
- California engine standards
- Other mobile source measures to be identified

Area Source Measures

- California architectural/industrial maintenance coating emission controls
- California commercial and consumer products coating emission controls
- Broader geographic applicability of existing emission control measures
- California off-road engine standards
- Other area source measures to be identified

As stated in the Calcagni Memo, page 12, "For purposes of section 175A, a State is not required to have fully adopted contingency measures that will take effect without further action by the State in order for the maintenance plan to be approved. However, the contingency plan is considered to be an enforceable part of the SIP and should ensure that the contingency measures are adopted expediently once they are triggered." Thus, according to this policy, the plans need not contain adopted measures.

In order to properly deal with future ozone standard violations and to comply with its own internal rulemaking procedure requirements, Illinois requires time to evaluate potential controls and provide public notice and public participation in the rulemaking process when adopting contingency measures. The commenter provided no rationale for why a time period shorter than 18 months to adopt and implement contingency measures is warranted. EPA finds that 18 months, as described in Illinois' maintenance plan, as amended by the IEPA's April 15, 2003 letter, to adopt and implement contingency measures is a reasonable time period for Illinois to meet its regulatory obligations while meeting the requirement under section 175A to promptly correct any violation of the one-ozone standard after the redesignation of the St. Louis area to attainment. In addition, this 18 month period to adopt and implement contingency measures is consistent with other redesignations, such as that approved for Pittsburgh, Pennsylvania (66 FR 53102), in which a 12 to 24 month time period was specified to adopt and implement contingency measures.

Comment 29: Neither maintenance plan provides any procedure for quantifying the reductions needed to correct violations.

Response 29: This comment refers to both the Missouri and Illinois portions of the St. Louis area. EPA is here providing a response regarding the Illinois portion of the St. Louis area. See a separate rulemaking in today's **Federal Register** regarding redesignation of the Missouri portion of the St. Louis area for EPA's response to comment as it pertains to the Missouri portion of the St. Louis area.

As indicated above, the maintenance plans refer to a violation of the NAAQS as a level II trigger. In the event of a violation, Illinois and Missouri have committed to work together to conduct a thorough analysis to determine appropriate measures to address the cause of the ozone standard violation. It is impossible for a State to determine, before a violation, what emission reductions are necessary to correct a violation. For example, if Illinois would select tightening RACT for existing sources as a contingency measure, the amount of emissions reductions resulting from implementation of this measure is dependent upon the number of sources subject to RACT rules in the area at the time of the violation. Since the State has no control over when a source ceases operating, it is impossible to determine, at this time, how many sources will be affected by a tightening of RACT which may be implemented at some unspecified time in the future. Thus, it is impossible to determine beforehand how much of an emission reduction will be achieved by implementing this measure.

The approach taken in the Illinois maintenance plan is to conduct a thorough analysis to determine the magnitude of the emissions reductions needed to correct an ozone standard violation, the types of sources for which emission reductions must be made, and the mechanisms for achieving the emissions reductions. The list of contingency measures includes a reasonable mix of emission control measures from which to select the emission control measures most suited to address a future ozone standard violation (a level II trigger), if one occurs, or to alleviate an unanticipated worsening of air quality or emissions (a level I trigger). EPA finds that this is a reasonable approach which will assure prompt correction of the air quality problem. In addition, this approach is consistent with EPA guidance contained in the Calcagni Memo.

Comment 30: The contingency measures in the maintenance plans are vague and open ended. Neither plan identifies any measures to be adopted. No firm schedule for adoption and implementation is included.

Response 30: This comment refers to both the Missouri and Illinois portions of the St. Louis area. EPA is here providing a response regarding the Illinois portion of the St. Louis area. See a separate rulemaking in today's **Federal Register** regarding redesignation of the Missouri portion of the St. Louis area for EPA's response to this comment as it pertains to the Missouri portion of the St. Louis area.'

EPA disagrees with the commenters assertion that the contingency measures are vague, and open ended. In response to comments 28 and 29 above, EPA addressed the procedures contained in the maintenance plan for evaluating which measures are necessary to promptly correct a violation.

In addition, in response to comment 28 above, EPA identified the list of potential contingency measures contained in Illinois' maintenance plan along with a schedule of 18 months to adopt and implement selected contingency measures in the event of a violation (a level II trigger) or worsening air quality (a level I trigger). EPA has concluded that the maintenance plan satisfies EPA guidance regarding adoption and implementation of contingency measures consistent with EPA guidance and the Act.

Comment 31: Each maintenance plan contains inadequate provisions to respond to anticipated violations of the NAAQS. Anticipated violations are based on emissions inventories exceeding the 2000 inventory or two exceedances at any monitoring site during a two- or three-year period. There is no commitment to adopt any additional controls to address anticipated violations.

Response 31: This comment refers to both the Missouri and Illinois portions of the St. Louis area. EPA is here providing a response regarding the Illinois portion of the St. Louis area. See a separate rulemaking in today's **Federal Register** regarding redesignation of the Missouri portion of the St. Louis area for EPA's response to this comment as it pertains to the Missouri portion of the St. Louis area.

As indicated above, a Level I Trigger will be exceeded if: (1) the monitored ambient ozone levels exceed 124 parts per billion, one-hour averaged, more than once per year at any monitoring site in the St. Louis maintenance area (the current St. Louis ozone nonattainment area), or more than two exceedances in any two- or three-year period; or (2) the St. Louis maintenance area's 2005 or 2008 VOC or NO_X emissions increase more than 5 percent above the 2000 attainment levels. In the event one of these action trigger levels are exceeded, Illinois and Missouri will work together to evaluate the situation and determine if adverse emissions trends are likely to continue. If so, the States will determine what and where emission controls may be required to avoid a violation of the one-hour ozone NAAQS. A study shall be completed within nine months of the determination of the action trigger exceedance to select emission controls needed to mitigate possible future ozone standard violations. Illinois commits to implement any selected emission controls as expeditiously as practible.

It is true that Illinois has not specified implementation deadlines for implementing new emissions controls in the event of exceedance of a Level I trigger. Illinois has only committed to conduct studies to determine if new emission controls are needed to avert possible future ozone standard violations. These studies could conclude that no additional emission controls are needed to avoid a future ozone standard violation. For example, such a study during 2004 could conclude that statewide NO_X emission controls to be implemented to meet the State's NO_X control SIP will be adequate to prevent a future ozone standard violation. In this case, Illinois may conclude that no additional emission controls are necessary. Given that the study could reach such a conclusion, Illinois is not committing to implement additional emission controls at this time.

In addition, note that section 175A(d) of the Act only requires a state to implement additional emission controls in the event of a standard violation after an area is redesignated to attainment. Under this section of the Act, States are not obligated to implement additional emission controls if an area is "threatened" with a future ozone standard violation. Similarly, EPA does not require such action on the part of the States. EPA does encourage the States to take preventative measures to prevent future ozone standard violations if at all possible, but does not definitively require the States to implement additional emission controls unless a violation of the standard has actually occurred. The commitments of Illinois to respond to Level I triggers go beyond the minimum requirements of section 175A(d) and the EPA.

The contingency plan meets the requirements of section 175A(d) of the Act and applicable guidance in the Calcagni Memo. The Administrator has exercised discretion regarding adoption and implementation of contingency measures consistent with EPA guidance and the Act.

Comment 32: The maintenance plans contain no commitment to implement measures in the SIP. EPA cannot approve the maintenance plan without this commitment.

Response 32: This comment refers to both the Missouri and Illinois portions of the St. Louis area. EPA is here providing a response regarding the Illinois portion of the St. Louis area. See a separate rulemaking in today's **Federal Register** regarding redesignation of the Missouri portion of the St. Louis area for EPA's response to this comment as it pertains to the Missouri portion of the St. Louis area.

The commenter is incorrect in its statement that the maintenance plan does not contain a commitment to implement emission control measures in the SIP. Such a commitment was included in Illinois' maintenance plan. Section 6.1 of Illinois' maintenance plan states the following: "Consistent with this plan, Illinois agrees to adopt and implement the necessary corrective actions in the event that violations of the one-hour ozone NAAQS occur anywhere within the St. Louis maintenance area after redesignation to attainment." In addition, as described in response to comment 28, Illinois is retaining and is continuing to implement all of the emission control measures contained in its SIP prior to redesignation.

Comment 33: The maintenance plans do not address expected growth in areas adjacent to the nonattainment area, such as Ste. Genevieve County. An assessment of this growth should be included. Also, the plans are based on the "irrational assumption" that "if there is no increase in emissions, and no decrease in controls, the standard will be maintained."

Response 33: This comment refers to both the Missouri and Illinois portions of the St. Louis area. EPA is here providing a response regarding the Illinois portion of the St. Louis area. See a separate rulemaking in today's **Federal Register** regarding redesignation of the Missouri portion of the St. Louis area for EPA's response to this comment as it

pertains to the Missouri portion of the St. Louis area.

The commenter's characterization of the "basic premise" of the maintenance plans is incorrect. The plans do not simplistically assume that there will be no increase in emissions. The plans carefully project the growth in emissions that will occur in various source sectors (source categories or types), and the emission reductions which will occur based on emission control programs which are in place, in order to determine the net change in emissions from 2000 through 2014. The States are required to and have applied the appropriate techniques to estimate and account for potential emissions changes in the area. These techniques are necessarily based on source sector-specific growth indicators (positive and negative), *i.e.*, sector-specific economic factors, because the States have no way of predicting specific changes which will take place on a source-by-source basis in the emissions inventory.

Specific new source projects, such as those cited by the commenter, are addressed through mechanisms other than maintenance plans. To implement new source projects, Illinois implements PSD and NSR permitting regulations depending on the attainment status and classification of an area. These regulations address the air quality impacts of new sources and expansion of existing sources both inside and outside the boundaries of nonattainment areas. They are designed to prevent new source construction or existing source expansion which would adversely affect an area's ability to attain or maintain a national standard.

EPA believes that it is the function of the State's air permitting rules, rather than the maintenance plan, to ensure that specific potential new sources do not create emissions which would interfere with the maintenance of the ozone standard. The new source rules in Illinois' address potential new sources both inside and outside of the St. Louis area.

The anticipated plant referenced by the commenter is a potential source in Missouri. See the response to comment 33 in a separate rulemaking in today's **Federal Register** regarding redesignation of the Missouri portion of the St. Louis area for a discussion regarding this facility.

Comment 34: The emission estimates in the maintenance plans are unreliable. A recent study of flares throws doubt into the St. Louis emission inventory. Flares area used extensively in the Metro-East St. Louis area, including at the Conoco Wood River Refinery, two barge loading facilities, Granite City Steel, and three bulk gasoline storage facilities. EPA must consider the significant underestimation of flare emissions in the emission inventory.

Response 34: This comment refers to both the Missouri and Illinoi portions of the St. Louis area. EPA is here providing a response regarding the Illinois portion of the St. Louis area. See a separate rulemaking in today's **Federal Register** regarding redesignation of the Missouri portion of the St. Louis area for EPA's response to this comment as it pertains to the Missouri portion of the St. Louis area.

EPA believes that the States used the appropriate emission estimates in developing the emission inventories. The commenter cites a study of emissions from flares reported by the Bay Area Management District which the commenter alleges shows that the States greatly underestimated emissions from flares. EPA does not agree that the study cited by the commenter renders the emission estimates unreliable.

The Bay Area Air Quality Management District (AQMD) study referenced by the commenter is a "Draft" document, which has the stipulation "Do Not Cite or Quote." In addition, the study was specific to refinery flares and not all flare systems in general. The submitted comment inappropriately extends the applicability of this draft study document to flares at barge loading facilities, steel making operations, and bulk gasoline storage facilities.

IEPA staff reviewed the flare operations at the Conoco Phillips Wood River Refinery, which is the only facility in the Metro-East St. Louis area that the AQMD study findings would possibly apply to, and found a well-designed emissions recovery and control system. The flares at the Wood River refinery function primarily as safety devices and are provided to avoid discharge of raw hydrocarbons to the atmosphere both during upsets and during planned intermittant maintenance activities. Process units' hydrocarbon emissions to flares are kept to a minimum to prevent product loss. Whenever possible, vent gasses are recovered, compressed, and used for firing heaters and boilers rather than being sent to flares. Seal vessels and pressure control systems allow nearly all vent gasses to be recovered by managing the pressure levels during normal operations and upsets.

The Conoco Phillips Wood River Refinery has four refinery flares that the findings of the AQMD study would apply to—the distilling flare, the alkylation flare, the aromatics low-pressure flare, and the aromatics high-pressure flare. The AQMD technical assessment document presented that the primary concern for the 28 flares studied was that refinery flares were being used more often and more routinely than historic emissions data indicated. For the Conoco Phillips Wood River Refinery, this finding is not valid. The Conoco Phillips refinery flares are used only as safety devices and as minimally as possible because loss of product occurs when these devices must be used. When it became necessary to use these safety devices, all upset emissions were reported in the annual emissions reports. Such reports for 2000 were used in the development of the emission inventories developed by the IEPA for the redesignation request and the maintenance plan. Therefore, the Illinois redesignation request and maintenance plan accurately includes these emissions.

Another issue identified in the AQMD refinery flare study was in regards to emissions control efficiency (CE) since its impact has a significant effect on reported emissions. All field studies regarding flare CE, which were referenced in the AQMD technical analysis document, indicate that CEs of greater than 98 percent could be expected for flares. The emissions for the Conoco Phillips flares, as included in Illinois' emissions inventories, uses EPA's recommended CE of 98 percent for all flares except in the lube area, which has a 99 percent CE. Therefore, any impact of inventory emissions from overestimation of CE is considered to be insignificant for the Conoco Phillips Wood River Refinery.

In regards to the impacts of crosswinds, the AQMD technical analyis document references one laboratory scale Canadian study that indicates that CEs may be impacted by crosswinds. The Canadian researchers, however, indicate that applying their laboratory findings after scaling up to the actual sizes of flares that refineries normally use could prove difficult. A referenced study in the AQMD technical analysis document shows that crosswinds with a speed of 18 miles per hour (8 meters per second) are needed before any impact is seen on CEs for flares. In the years of 1999 and 2000, no hourly wind speeds greater than 11 miles per hour was recorded at the Edwardsville monitor, which is located less than 10 miles from Wood River, during high ozone days in the St. Louis area. Therefore, crosswinds are not considered to be an issue that might impact emission estimates for the Metro-East St. Louis area refinery flares.

Further review of the document has shown that methane was included in the emission factor that was used to derive emissions for this study. Methane is not an ozone precursor, and the inclusion of this pollutant could significantly alter the preliminary findings. The study targets the control efficiencies of the flares and states that "efficiency drops approximately by the cube of the speed (wind)". This would suggest that on high wind event days that the control efficiencies would be at their lowest. However, in the St. Louis area, high ozone days have been characterized by low wind conditions, which would produce minimal impact on flare control efficiencies during the periods of concern.

Lastly, NO_X and VOC emissions from all flares constitute less than one-tenth of one percent of the total emissions inventory for the St. Louis ozone nonattainment area. Therefore, any potential changes in calculation methodology from this source category, even if changes were warranted based on this draft study, would still likely produce an insignificant change to the St. Louis area total VOC and NO_X emissions.

Comment 35: The Illinois request for approval of its maintenance plan and revised motor vehicle emissions budgets was submitted under the signature of David Kolaz, Chief, Bureau of Air, Illinois Environmental Protection Agency (IEPA). This submission included the commitment to adopt contingency measures in the event of ozone standard exceedances and/or violations. The IEPA is without authority to make this commitment on behalf of the State of Illinois. During the Illinois public hearing (November 7, 2002), the IEPA stated that it did not have the authority to impose emission control requirements. The IEPA explained that such authority rests with the Illinois Pollution Control Board, a separate and independent State agency. The EPA cannot lawfully approve the maintenance plan submitted by the IEPA if the State is not legally bound to implement the commitments in the plan, including contingency measures.

Response 35: Under the Illinois Environmental Protection Act, the IEPA has authority to develop and submit for EPA approval air quality control plans. Section 4(j) of the Illinois Environmental Protection Act states: "The Agency shall have the duty to represent the State of Illinois in any and all matters pertaining to plans, procedures, or negotiations for interstate compacts or other governmental arrangements relating to environmental protection." In addition, section 4(l) of the Illinois Environmental Protection Act states that "The Agency is hereby designated as * * * air pollution agency for the state for all purposes of the Clean Air Act * * *" These provisions give the IEPA the authority to develop and submit air quality plans to the EPA. Therefore, EPA disagrees with the commenter that the IEPA lacks the authority to submit an ozone maintenance plan that commits the State to certain actions if triggered under the contingency plan.

With regard to adoption of specific emission control measures or rules, the IEPA has the authority and responsibility of developing source emission control regulations, which are subsequently adopted by the Illinois Pollution Control Board. Establishment of a separate rulemaking body is consistent with the process established by many states.

The Calcagni Memo suggests that a procedure for adoption of contingency measures should be in place. However, there is no suggestion that a state must alter or suspend its rulemaking process in order to commit to implementation of contingency measures. If the State is unable to adopt a particular contingency measure as a result of its rulemaking process, it will be required to adopt and implement another equally effective measure (or group of measures) within the same 18-month time frame. The IEPA will continue to be responsible for ensuring that its commitment is met, and the commitment remains enforceable.

Comment 36: EPA cannot conclude that keeping emissions no higher than the projected inventory amounts will ensure maintenance of the ozone NAAQS.

Response 36: As stated in response to comment 23 above, keeping emissions no higher than those that occurred in the attainment period (2000 through 2002) will ensure maintenance of the NAAQS. The Court of Appeals for the Sixth Circuit in *Wall* v. *EPA* (265 F.3d 426, 435) determined that "EPA's actions are completely consistent with its own interpretive memorandum, which allows for NAAQS maintenance to be demonstrated by showing that the future emissions of pollutant's precursors will not exceed the level that allowed the area to achieve attainment in the first place." Also see the response to comment 36 above.

Comment 37: Neither maintenance plan provides a technical analysis demonstrating that maintenance of the 2000 emission levels will assure maintenance of the NAAQS. Such a demonstration requires photochemical grid modeling.

Response 37: This comment refers to both the Missouri and Illinois portions of the St. Louis area. EPA is here providing a response regarding the Illinois portion of the St. Louis area. See a separate rulemaking in today's **Federal Register** regarding redesignation of the Missouri portion of the St. Louis area for EPA's response to this comment as it pertains to the Missouri portion of the St. Louis area.

EPA disagrees that modeling is required to demonstrate maintenance of the NAAQS. EPA reiterates its response to comment 23 in that the Court of Appeals for the Sixth Circuit in *Wall* v. *EPA* (265 F.3d 426, 435) determined that "EPA's actions are completely consistent with its own interpretive memorandum, which allows for NAAQS maintenance to be demonstrated by showing that the future emissions of a pollutant's precursors will not exceed the level that allowed the area to achieve attainment in the first place." Also see the response to comment 36 above.

Illinois' maintenance plan includes a technical analysis, as described in the response to comment 28 above, that demonstrates maintenance of the NAAQS based on a comparison of base year (attainment year) and projected VOC and NO_X emissions. This analysis meets the maintenance requirements of the Act and of EPA guidelines.

Comment 38: EPA announced substantial changes in its PSD program on December 21, 2002. Illinois is required to administer these changes in attainment areas effective March 3, 2003, and three years later for nonattainment areas. 67 FR 80185. Therefore, the new NSR rules will not go into effect in the Metro-East St. Louis area for three years unless EPA redesignates the area to attainment. On February 27, 2003, Illinois announced that it is filing a lawsuit challenging the NSR changes due, in part, to the fact that the State lacks the resources to administer the new NSR rules. On the basis of this admission, EPA cannot lawfully make the finding that Illinois has adequate resources to administer the new NSR program that will only be necessary if EPA redesignates the area to attainment.

Response 38: The Federal revisions to the PSD regulations promulgated on December 31, 2002 became effective on March 3, 2003. States like Illinois, to which EPA had delegated the authority to administer the PSD program, are required to implement the revisions as of their effective date. The commenter does not provide any specific information that the IEPA lacks the resources to administer the revised program in the Metro-East St. Louis area upon redesignation. In addition, the IEPA has not formally notified EPA that it does not have sufficient resources to

administer the PSD program under the revised regulations.

Even if the State is unable to administer the PSD program in the Metro-East St. Louis area, the only consequences would be that EPA would, under this hypothetical situation, withdraw the delegation of the PSD program and administer the program itself. In addition, sources would still be required to obtain a source permits (and demonstrate that they will not adversely impact air quality) prior to construction, regardless of which agency (the IEPA or EPA) is responsible for permit issuance. Therefore, the perceived defect would not result in an inability to maintain the one-hour ozone standard in the area.

Comment 39: The maintenance plan must include RACM and RACT, for the reasons stated in comment 13 above.

Response 39: EPA incorporates its response to comment 13 in response to this comment.

F. Comments Related to Criterion 5: The Area Must Have Met All Applicable Requirements Under Section 110 and Part D

Comment 40: Neither State has met all the requirements applicable to the area. The serious area requirements of section 182(c) are applicable, but none of these requirements have been met. Some of the requirements are applicable and enforceable now, such as the 50 ton per year threshold for permitting and enforcement and paragraphs 7, 8, and 10 of section 182(c).

Response 40: This comment refers to both the Missouri and Illinois portions of the St. Louis area. EPA is here providing a response regarding the Illinois portion of the St. Louis area. See a separate rulemaking in today's **Federal Register** regarding redesignation of the Missouri portion of the St. Louis area for EPA's response to this comment as it pertains to the Missouri portion of the St. Louis area.

As stated in the response to comments 6 through 11 above, the Illinois SIP meets the applicable requirements and the serious area requirements are not applicable for purposes of this redesignation. States requesting redesignation to attainment must meet the relevant CAA requirements that come due prior to the submittal of a complete redesignation request. Areas may be redesignated even though they have not adopted measures that come due after the submission of a complete redesignation request. Upon completion of today's actions, the Illinois SIP is fully approved for all applicable regulations. SIP revisions addressing the serious area requirements are required to be submitted by January 30, 2004, after the submittal of Illinois' complete redesignation request and maintenance plan.

The commenter errs in the conclusion that the 50 ton per year emissions threshold for permitting and enforcement is not in effect in Illinois. As of January 30, 2003, the St. Louis area was classified as a serious nonattainment area (68 FR 4836). At that time, the 50 ton per year emissions threshold for permitting and enforcement immediately became effective in Illinois. However, by redesignating the Metro-East area to attainment in this rulemaking, the 50 ton per year emissions threshold for permitting and enforcement is no longer applicable.

Section 182(c) paragraphs 7 and 8 refer to special rules for modifications of major sources while paragraph 10 refers to a 1.2 to 1 offset requirements for serious nonattainment areas. As stated in response to comment 7, EPA established a future date for submission of the serious area requirements, including section 182(c)(7), (8), and (10), and the requirements are not now applicable for purposes of this redesignation.

G. Comments Related to Implementation of Contingency Measures

Comment 41: A commenter requested that in the final rule, EPA expressly state that, in the event of a future violation of the NAAQS, Illinois and Missouri will not necessarily be required to evaluate any particular contingency measure nor be required to submit further attainment demonstrations.

Response 41: As stated above, the contingency plans delineate the States' planned actions in the event of future one-hour ozone standard violations (Level II trigger in the Illinois and Missouri ozone maintenance plans), multiple ozone standard exceedances at any monitor in a single or two year period (not a violation based on three years of data) (Level I trigger in the Illinois and Missouri ozone maintenance plans), or unanticipated emissions increases threatening a subsequent violation of the one-hour ozone standard (Level I trigger in the Illinois and Missouri ozone maintenance plans). In the event of an exceedance of a Level I trigger, Illinois will work with Missouri to evaluate the situation and to determine if adverse emissions or air quality trends are likely to continue and to threatened maintenance of the one-hour standard. If so, Illinois will determine to what extent, what type, and where (local or regional) emission controls may be required to avoid a violation of the one-hour ozone standard. A study will be completed within nine months of the determination of the action trigger exceedance. If needed to avoid future ozone standard violations, emission control measures and regulations will be adopted within 18 months of the completion of the study and implemented as expeditiously as practicable.

In the event of a Level II trigger (a determination of a violation of the one-hour ozone standard in the St. Louis area), the States will complete an analysis of the air quality issue within six months of the ozone standard violation determination, and Illinois will adopt and implement necessary emission control measures and rules within 18 months of the ozone standard violation determination.

EPA expects that, through this process, the States will identify the appropriate emission control measures to implement in the near term to maintain the ozone NAAQS. The States are not obligated to select any particular emission control measure for study and/or implementation. The States must, however, select those emission control measures that their analyses show are adequate for maintenance of the NAAQS and which can be implemented within the time constraints contained within the maintenance plans.

With regard to the need for new ozone attainment demonstrations, as indicated in the January 30, 2003 proposed rule (68 FR 4847), a final determination of attainment leads to the conclusion by the EPA that Illinois is not obligated to produce new ozone attainment demonstrations for the St. Louis area for purposes of attaining the one-hour ozone standard. The available quality-assured ozone data for the most recent three years demonstrate that the St. Louis area has attained the one-hour ozone standard. This conclusion leads to the conclusion that additional emission reduction in the Metro-East St. Louis area may only be needed for the purposes of maintaining the ozone standard in the St. Louis area and for reducing ozone and ozone precursor transport into downwind areas. Therefore, additional ozone modeling to support a new ozone attainment demonstration is not needed at this time.

Following the redesignation of the St. Louis area to attainment of the one-hour ozone standard (the subject of this final rule and that for the Missouri portion of the St. Louis area also published today), a violation of the one-hour ozone standard will not necessarily trigger the need for Illinois to conduct additional photochemical dispersion modeling for the St. Louis area. In this situation, the maintenance plan requirements place no specific ozone modeling requirements on the State. Illinois is free to choose the types of analyses it deems necessary to determine the levels and types of additional emission controls needed to rectify the ozone attainment problem. Redesignated areas are not subject to an obligation to meet additional nonattainment area requirements, such as attainment demonstrations, since they are no longer as nonattainment areas. Instead, they must implement contingency measures, which is what Congress provided in the Act.

H. Comments Related to Redesignation of a Portion of the St. Louis Area

Comment 42: One commenter requested that in the event the EPA is unable to finalize Missouri's I/M program, as proposed in a separate rulemaking on January 30, 2003, EPA should proceed with the redesignation for the Illinois portion of the St. Louis area.

Response 42: In a separate rule published in today's **Federal Register**, EPA is approving Missouri's revised I/M rule. In addition, as explained above, EPA is finalizing its actions on the Missouri and Illinois redesignation requests in separate rulemakings.

I. Comments Related to Interstate Transport

Comment 43: EPA must ensure that the CAA requirements of section 110(a)(2)(D) pertaining to interstate transport impacts are actively and adequately met through the States' SIP's and through Federal control programs such as the NO_X SIP call.

Response 43: This comment refers to both the Missouri and Illinois portions of the St. Louis area. EPA is here providing a response regarding the Illinois portion of the St. Louis area. See a separate rulemaking in today's **Federal Register** regarding redesignation of the Missouri portion of the St. Louis area for EPA's response to this comment as it pertains to the Missouri portion of the St. Louis area.

As stated above, EPA believes that state obligations under the NO_X SIP call are not applicable requirements for purposes of evaluating a redesignation request. The NO_X SIP call requirements are not linked with a particular area's ozone designation and classification. EPA believes that the requirements linked with a particular nonattainment area's classification are the requirements that are the relevant measures to evaluate in reviewing a redesignation request. The NO_X SIP call submittal requirements continue to apply to a State regardless of the designation of any one particular area in the State.

Thus, we do not believe that the NO_X SIP call submission should be construed to be an applicable requirement for purposes of redesignation. The section 110 and part D requirements, which are linked with a particular area's designation and classification, are the relevant measures to evaluate in reviewing a redesignation request. This policy is consistent with EPA's existing conformity and oxygenated fuels requirements, as well as with section 184 ozone transport requirements. See Reading, Pennsylvania proposed and final rulemakings (61 FR 53174–53176) (October 10, 1996), (62 FR 24826) (May 7, 1997); Cleveland-Akron-Lorain, Ohio final rulemaking (61 FR 20458) (May 7, 1996); and Tampa, Florida final rulemaking at (60 FR 62748, 62741) (December 7, 1995). *See also* the discussion on this issue in the Cincinnati redesignation (65 FR 37890) (June 19, 2000).

Illinois has adopted and EPA has approved statewide NO_X rules into the SIP on November 8, 2001 (66 FR 56449 and 66 FR 56454). These rules will remain in effect and will remain Federally enforceable following the redesignation of the Metro-East St. Louis area to attainment of the one-hour ozone standard.

Comment 44: A commenter notes that the expected NO_X emission control programs and emission reductions for the St. Louis area should not be jeopardized due to the absence of continued Federal enforceability of the SIPs.

Response 44: The SIPs will remain Federally enforceable following redesignation of the St. Louis area to attainment. In addition, NO_X emission control measures (with the exception of NSR, which will be replaced by PSD) which are currently in place will remain as SIP requirements following redesignation to attainment. Illinois will continue to implement and enforce its statewide NO_X emission control regulations adopted to comply with the NO_X SIP call. This rulemaking, however, finalizes a NO_X RACT waiver for the Metro-East St. Louis area. NO_X RACT has never been part of the Illinois SIP. This redesignation does not jeopardize any NO_X emission control regulations expected and part of the SIP for the Metro-East St. Louis area or for the State of Illinois.

Comment 45: The redesignation of the St. Louis area to attainment should not weaken the impetus to rapidly address NO_X transport to downwind areas. These efforts are critical to addressing the 8-hour and 1-hour ozone NAAQS in the St. Louis and downwind areas. Any revisions to SIP requirements would have to meet the applicable provisions of the Act and be approved by the EPA.

Response 45: As noted above, the redesignation of the St. Louis area to attainment of the one-hour ozone standard will have no effect on the implementation of the statewide NO_X control rules in Illinois. In addition, irregardless of the attainment status of the St. Louis area for the one-hour ozone standard, EPA will proceed with making its decision as to whether the eastern portion of Missouri must meet specific NO_X SIP call requirements. EPA will closely review any proposed changes in the NO_X emission control programs which are currently in place in the Metro-East St. Louis area and in Illinois to ensure that the proposed changes will not adversely affect the attainment of the NAAQS in the St. Louis area and in downwind ozone nonattainment areas.

VI. Statutory and Executive Order Reviews

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a "significant regulatory action" and, therefore, is not subject to review by the Office of Management and Budget. For this reason, this action is also not subject to Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use" (66 FR 28355, May 22, 2001). This action merely approves state law as meeting Federal requirements and imposes no additional requirements beyond those imposed by state law. Accordingly, the Administrator certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this rule approves pre-existing requirements under state law and does not impose any additional enforceable duty beyond that required by state law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104–4).

This rule also does not have tribal implications because it will not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified by Executive Order 13175

(65 FR 67249, November 9, 2000). This action also does not have Federalism implications because it does not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999). This action merely approves a state rule implementing a Federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. This rule also is not subject to Executive Order 13045 "Protection of Children from Environmental Health Risks and Safety Risks" (62 FR 19885, April 23, 1997), because it is not economically significant.

In reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. In this context, in the absence of a prior existing requirement for the State to use voluntary consensus standards (VCS), EPA has no authority to disapprove a SIP submission for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews a SIP submission, to use VCS in place of a SIP submission that otherwise satisfies the provisions of the Clean Air Act. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a "major rule" as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by July 11, 2003. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects

40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Intergovernmental relations, Lead, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

40 CFR Part 81

Environmental protection, Air pollution control, National parks, Wilderness areas, Ozone.

Dated: April 30, 2003.

Thomas V. Skinner,

Regional Administrator, Region 5.

■ For the reasons stated in the preamble, chapter I, title 40 of the Code of Federal Regulations is amended as follows:

PART 52—[AMENDED]

■ 1. The authority citation for part 52 continues to read as follows:

Authority: U.S.C. 7401 *et seq.*

Subpart O—Illinois

■ 2. Section 52.726 is amended by adding paragraph (ee) to read as follows:

§ 52.726 Control strategy: Ozone.

* * * * *

(ee) Approval of the Maintenance Plan for the Illinois Portion of the St. Louis Area—On December 30, 2002 Illinois submitted Maintenance Plan for the Illinois portion of the St. Louis Nonattainment Area. The plan includes 2014 On-Road Motor Vehicle Emission Budget of 10.13 tons per ozone season weekday of VOCs and 18.72 tons per ozone season weekday NO_X to be used in transportation conformity.

PART 81—[AMENDED]

■ 1. The authority citation for part 81 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

■ 2. In § 81.314 the table entitled "Illinois–Ozone (1-Hour Standard)" is amended by revising the entry for St. Louis Area to read as follows:

§ 81.314 Illinois.

* * * * *

ILLINOIS—OZONE (1-HOUR STANDARD)

Designated area	Designation		Classification	
	Date [1]	Type	Date [1]	Type
. . . . .				
St. Louis Area:				
Madison County	May 12, 2003	Attainment		
Monroe County	May 12, 2003	Attainment		
St. Clair County	May 12, 2003	Attainment		
. . . . .				

[1] This date is October 18, 2000, unless otherwise noted.

* * * * *

[FR Doc. 03–11524 Filed 5–9–03; 8:45 am]

BILLING CODE 6560–50–P

Federal Register

Monday,
May 12, 2003

Part III

Department of Education

Tech-Prep Demonstration Program; Notice Inviting Applications for New Awards in Fiscal Year 2003; Notices

DEPARTMENT OF EDUCATION

[CFDA No: 84.353]

Office of Vocational and Adult Education, Tech-Prep Demonstration Program (TPDP); Notice Inviting Applications for New Awards in Fiscal Year (FY) 2003

Purpose of Program: The Tech-Prep Demonstration Program (TPDP) provides grants to enable consortia described in section 204(a) of the Carl D. Perkins Vocational and Technical Education Act of 1998 (Perkins III) to carry out tech-prep education projects authorized by section 207 of Perkins III that involve the location of a secondary school on the site of a community college, a business as a member of the consortium, and the voluntary participation of secondary school students. Following an initial recruitment period, funded projects would enroll a new student cohort in each year of the project, in addition to continuing support for each previous TPDP student cohort.

Eligible Applicants: To be eligible for funding under the TPDP, a consortium must include at least one member in each of the following three categories:

(1) A local educational agency, an intermediate educational agency, an area vocational and technical education school serving secondary school students, or a secondary school funded by the Bureau of Indian Affairs;

(2)(a) A nonprofit institution of higher education that offers a two-year associate degree, two-year certificate, or two-year postsecondary apprenticeship program, or (b) a proprietary institution of higher education that offers a two-year associate degree program; and

(3) A business. Under the provisions of section 204(a)(1) of Perkins III, to be eligible for consortium membership both nonprofit and proprietary institutions of higher education must be qualified as institutions of higher education pursuant to section 102 of the Higher Education Act of 1965 (HEA), including institutions receiving assistance under the Tribally Controlled College or University Assistance Act of 1978 (25 U.S.C. 1801 *et seq.*) and tribally controlled postsecondary vocational and technical institutions.

In addition, nonprofit institutions of higher education are eligible only if they are not prohibited from receiving assistance under HEA, title IV, part B (20 U.S.C. 1071 *et seq.*), pursuant to the provisions of HEA section 435(a)(3) (20 U.S.C. 1083(a)). Proprietary institutions of higher education are eligible only if they are not subject to a default management plan required by the Secretary.

Applicants must submit a signed consortium agreement, to provide evidence that each of the required categories of membership has been satisfied. Under the provisions of section 204(a)(2), consortia also may include one or more: (1) institutions of higher education that award baccalaureate degrees; (2) employer organizations; or (3) labor organizations.

Note: Eligible consortia seeking to apply for funds should read and follow the regulations in 34 CFR 75.127–75.129, which apply to group applications.

Applications Available: May 12, 2003.

Deadline for Transmittal of Applications: June 26, 2003.

Deadline for Intergovernmental Review: August 25, 2003.

Estimated Available Funds: $9,968,000.

Estimated Range of Awards: $600,000 to $700,000 for the 60-month project period.

Estimated Average Size of Awards: $650,000.

Estimated Number of Awards: 14.

Note: The Department is not bound by any estimates in this Notice.

Project Period: 60 months. Applicants under this competition are required to provide detailed budget information for each year of the proposed project and for the total grant. The Department will negotiate funding levels for each 12-month period of the grant at the time of the award.

Note: The Secretary has concluded that entire, multi-year projects funded by five-year awards will be necessary for TPDP grantees to fully meet the statutory purposes of section 207 and the requirements of this notice. By definition, tech-prep programs combine at least two years of secondary education with a minimum of two years of postsecondary education in a nonduplicative, sequential course of study, and result in the attainment of a postsecondary degree or certificate. As outlined in this notice, five-year funding will: (a) Allow funded projects to engage in a lengthy recruitment effort and meet their enrollment goals; (b) enable the first cohort of students to complete the full four years of the tech-prep program and attain the necessary postsecondary degree or certificate; and (c) enable subsequent cohorts of students to complete a significant portion of the tech-prep program, thus increasing the likelihood that they will persist in their efforts to attain the necessary postsecondary degree or certificate. In addition, by enabling funded projects to conduct the full four-year tech-prep program, five-year funding will allow grantees and the Department to evaluate the effectiveness of the funded programs more thoroughly.

Applicable Regulations: (a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 74, 75, 77, 80, 81, 82, 85, 86, 97, 98, and 99; and (b) the regulations in the Notice of Final Requirements, Priorities, and Selection Criteria published elsewhere in this issue of the **Federal Register**.

Priorities: This competition gives competitive priority to applicants that meet the conditions outlined in the Notice of Final Requirements, Priorities, and Selection Criteria for this program, which is published elsewhere in this issue of the **Federal Register**.

Instructions for Transmittal of Applications:

Note: Some of the procedures in these instructions for transmitting applications differ from those in the Education Department General Administrative Regulations (EDGAR) (34 CFR 75.102). Under the Administrative Procedure Act (5 U.S.C. 553) the Department generally offers interested parties the opportunity to comment on proposed regulations. However, these amendments make procedural changes only and do not establish new substantive policy. Therefore, under 5 U.S.C. 553(b)(A), the Secretary has determined that proposed rulemaking is not required.

Pilot Project for Electronic Submission of Applications

In FY 2003, the U.S. Department of Education is continuing to expand its pilot project for electronic submission of applications to include additional formula grant programs and additional discretionary grant competitions. The TPDP (CFDA #84.353) is one of the programs included in the pilot project. If you are an applicant under the TPDP, you may submit your application to us in either electronic or paper format.

The pilot project involves the use of the Electronic Grant Application System (e-Application) portion of the Grant Administration and Payment System (GAPS). Users of e-Application will be entering data on-line while completing their applications. You may not e-mail a soft copy of a grant application to us. If you participate in this voluntary pilot project by submitting an application electronically, the data you enter on-line will be saved into a database. We request your participation in e-Application. We shall continue to evaluate its success and solicit suggestions for improvement.

If you participate in e-Application, please note the following:

- Your participation is voluntary.
- You will not receive any additional point value because you submit a grant application in electronic format, nor will we penalize you if you submit an application in paper format. When you enter the e-Application system, you will find information about its hours of operation.
- You may submit all documents electronically, including the Application for Federal Assistance (ED 424), Budget Information—Non-Construction Programs (ED 524), and all necessary assurances and certifications.
- After you electronically submit your application, you will receive an automatic acknowledgement, which will include a PR/Award number (an identifying number unique to your application).
- Within three working days after submitting your electronic application, fax a signed copy of the Application for Federal Assistance (ED 424) to the Application Control Center after following these steps:

(1) Print ED 424 from the e-Application system.

(2) The institution's Authorizing Representative must sign this form.

(3) Place the PR/Award number in the upper right hand corner of the hard copy signature page of the ED 424.

(4) Fax the signed ED 424 to the Application Control Center at (202) 260–1349.

- We may request that you give us original signatures on all other forms at a later date.
- *Closing Date Extension in Case of System Unavailability:* If you elect to participate in the e-Application pilot for the TPDP and you are prevented from submitting your application on the closing date because the e-Application system is unavailable, we will grant you an extension of one business day in order to transmit your application electronically, by mail, or by hand delivery. For us to grant this extension—

(1) You must be a registered user of e-Application, and have initiated an e-Application for this competition; and

(2)(a) The e-Application system must be unavailable for 60 minutes or more between the hours of 8:30 and 3:30 p.m., Washington, DC time, on the deadline date; or (b) The e-Application system must be unavailable for any period of time during the last hour of operation (that is, for any period of time between 3:30 and 4:30 p.m., Washington, DC time) on the deadline date.

The Department must acknowledge and confirm these periods of unavailability before granting you an extension. To request this extension you must contact either (1) the person listed elsewhere in this notice under **FOR FURTHER INFORMATION CONTACT** or (2) the e-GRANTS help desk at 1–888–336–8930.

You may access the electronic grant application for the TPDP at: *http://e-grants.ed.gov.*

We have included additional information about the e-Application pilot project (*see* Parity Guidelines between Paper and Electronic Applications) in the TPDP application package.

FOR FURTHER INFORMATION CONTACT: For information on the program and to download a TPDP application package, you may access the Department's Web site at: *http://www.ed.gov/GrantApps/.*

If you need further assistance and need to speak with someone regarding TPDP, or to request a paper application package, you may contact Karen Stratman Clark, by phone at (202) 205–3779, or by mail at 330 C Street, SW., Room 5523, Washington, DC 20202. Requests for applications may also be sent by fax to (202) 401–4079.

Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339. Individuals with disabilities may obtain this notice in an alternate format (*e.g.*, Braille, large print, audiotape, or computer diskette) on request to the contact person listed in the preceding paragraph.

Electronic Access to This Document

You may view this document, as well as all other Department of Education documents published in the **Federal Register**, in text or portable document format (PDF) on the Internet at the following site: *http://www.ed.gov/legislation/FedRegister.*

To use PDF you must have the Adobe Acrobat Reader, which is available free at this site. If you have questions about using PDF, call the U.S. Government Printing Office (GPO) toll free at 1–888–293–6498, or in the Washington, DC area at (202) 512–1530.

Note: The official version of this document is the document published in the **Federal Register**. Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available on GPO Access at: *http://www.access.gpo.gov/nara/index.html.*

Program Authority: 20 U.S.C. 2376.

Dated: May 7, 2003.

Carol D'Amico,

Assistant Secretary for Vocational and Adult Education.

[FR Doc. 03–11899 Filed 5–9–03; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Tech-Prep Demonstration Program

AGENCY: Office of Vocational and Adult Education, Department of Education.

ACTION: Notice of final requirements, final priorities and final selection criteria for new awards in Fiscal Year (FY) 2003 and subsequent years.

SUMMARY: The Assistant Secretary for Vocational and Adult Education announces requirements, priorities, and selection criteria under the Tech-Prep Demonstration Program (TPDP). The Assistant Secretary will use these requirements, priorities, and selection criteria for new awards made in FY 2003, and may use them in later years. We intend these requirements, priorities, and selection criteria to support the four basic education reform principles underlying the No Child Left Behind Act of 2001 (NCLB): Stronger accountability for results, increased flexibility and local control, expanded options for parents, and an emphasis on teaching methods that have been proven to work. We take this action to clarify the Department's expectations regarding this program, so that TPDP-funded projects will help students, schools, and teachers in their efforts to improve student achievement, meet high standards for high school graduation, and increase transition and persistence rates in postsecondary education.

EFFECTIVE DATE: These requirements, priorities and selection criteria are effective June 11, 2003.

FOR FURTHER INFORMATION CONTACT: Karen Stratman Clark, U.S. Department of Education, OVAE, MES Room 5223, 400 Maryland Avenue, SW., Washington DC 20202–7100. Telephone: (202) 205–3779 or via Internet: *karen.clark@ed.gov.*

If you use a telecommunications device for the deaf (TDD), you may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

Individuals with disabilities may obtain this document in an alternative format (*e.g.*, Braille, large print, audiotape, or computer diskette) on request to the contact person listed under **FOR FURTHER INFORMATION CONTACT.**

SUPPLEMENTARY INFORMATION: This final notice establishes program requirements, priorities, and selection criteria for the TPDP, which is authorized by section 207 of the Carl D. Perkins Vocational and Technical Education Act of 1998 (Perkins III). TPDP provides grants to consortia to carry out tech-prep education projects

that involve the location of a secondary school on the site of a community college, a business as a member of the consortium, and the voluntary participation of secondary school students. We intend to fund projects that, following an initial recruitment period, will enroll a new student cohort in each year of the project, in addition to continuing support for each previous TPDP student cohort.

We published a notice of proposed requirements, proposed priorities and proposed selection criteria in the **Federal Register** on Friday, January 24, 2003 (68 FR 3517). In that notice, we discussed (on pages 3517 though 3519) the proposed requirements, priorities, and selection criteria for this year's TPDP competition and subsequent competitions.

Analysis of Comments and Changes

In response to our invitation in the notice of proposed requirements, proposed priorities, and proposed selection criteria, six parties submitted comments. An analysis of the comments, and of any changes made as a result of comments submitted, follows.

We have grouped major issues by subject. Generally, we do not address technical or other minor, non-substantive changes, or suggested changes, which the applicable statutory authority does not authorize us to make. Specifically, we have made technical changes to Priority 3 to clarify when we will award points for this priority.

Project Period

Comment: Three commenters were concerned with the proposal to extend the TPDP project period from three to five years. They expressed concern that this extension of the project period, coupled with the plan to fund the entire grant award from FY 2002 funds, would reduce the amount of funds available per year and reduce the number of grants to be funded.

Discussion: The decision to extend the project period from three to five years is based on a number of factors. By statutory definition, under section 202(a)(3) of Perkins III, tech-prep programs combine at least two years of secondary education with a minimum of two years of postsecondary education in a nonduplicative, sequential course of study. Federal funding of three-year projects under the first TPDP competition was not intended to support entire four-year tech-prep projects. With an expanded five-year project period, grantees will have both a lengthy tech-prep recruitment phase, and sufficient time for the first cohort of students to complete the entire four-year tech-prep program. Furthermore, five-year funding will allow the grantees funded under this year's competition and the Department to fully evaluate the effectiveness of the funded projects. The Department believes the estimated average size of awards accurately reflects what are likely to be relatively low costs of the first year's recruitment efforts, as well as costs associated with the four-year instructional program. While the expanded project period may serve to reduce the number of grants to be awarded, the Department believes that funding fewer projects to implement complete tech-prep programs serving significant numbers of students is preferable to funding a greater number of projects that would implement only partial tech-prep programs. However, regarding the estimated amount of funds available per year, the Department has also decided to use both the FY 2002 and the FY 2003 TPDP appropriations for this year's competition, which will serve to almost double the estimated amount of TPDP funds available for grant awards. See the "Estimated Available Funds" section in the notice inviting applications published elsewhere in this issue of the **Federal Register**.

Changes: None.

Assurance Regarding Start of Classes

Comment: Three commenters were concerned with the proposed grant schedule. If TPDP grants were to be awarded in August of 2003, the commenters were concerned that grantees would have insufficient time to launch their projects by September of 2003.

Discussion: Requirement 3 states that successful applicants must enroll the first student cohort and must begin classes "no later than September of the calendar year after the year in which the grant award is made." For this year's competition, this would mean September of 2004. This proposed time frame will allow funded projects a full year's time to recruit their first cohort of students and begin classes by September of 2004. Indeed, as is discussed in response to an earlier comment, providing sufficient recruitment time was one of the reasons we proposed to expand the project period.

Changes: None.

Full-Time Enrollment Requirement

Comment: Three commenters were concerned about the requirement that eligible applicants enroll students full time in the program. They argued that this "guideline" would eliminate applicants with part-time programs from the applicant pool as well as significantly expand the scope of the currently funded TPDP projects.

Discussion: The requirement for full-time enrollment is based on the statutory language in section 207 of Perkins III, which specifically requires that funds be used to "enable eligible consortia to carry out tech-prep education projects that involve the location of a secondary school on the site of a community college." For purposes of the TPDP program, the Department does not consider part-time programs to be "secondary schools" and has concluded that the full-time enrollment requirement is necessary in order to fund programs under this competition that meet fully the intent of section 207. This will not, however, alter the scope of currently funded TPDP projects. Rather, it applies only to new projects funded under this year's competition and perhaps in future competitions.

Changes: None.

Evaluation Requirement

Comment: One commenter recommended enhancing the program evaluation and outcomes assessment.

Discussion: The Department believes that the TPDP evaluation requirement, which is now more rigorous than that in the first TPDP competition, is sufficient for the program. The evaluation requirement now provides that a funded TPDP project must use an experimental or quasi-experimental design in the evaluation of the project. It further stipulates that funded TPDP projects also must carry out an evaluation to determine the impact of the project on a comprehensive set of student outcomes, including academic and technical skills achievement, high school graduation, enrollment and completion of postsecondary education, postsecondary remedial coursework, and labor market entry.

Change: None.

Comment: Three commenters were concerned about the proposed data reporting requirements regarding postsecondary persistence and completion, and labor market entry. They felt that greater resources should be allocated to support this data collection effort.

Discussion: The Department recognizes that by undertaking this data collection and reporting effort, some projects may incur additional costs. Consequently, the projected range of awards has been increased from the last competition.

Changes: None.

Proposed Priority 1—Highly Qualified Teachers

Comment: Three commenters were concerned that, as proposed, Priority 1 would require community colleges seeking TPDP funds to meet the teacher quality standards of the Elementary and Secondary Education Act (ESEA), as amended by the NCLB, Federal legislation that does not govern postsecondary institutions. They believed the use of this proposed priority would extend NCLB into an inappropriate arena.

Discussion: By its nature, the TPDP is a collaborative effort between secondary and postsecondary education. For this reason, it is appropriate to include priorities that reflect the focus of NCLB with respect to a component of a TPDP project taught by a secondary teacher. Our examination of currently funded TPDP projects revealed two different models for providing core academic classes—one in which secondary teachers taught core academic classes on the campus of the community college and another in which postsecondary instructors taught core academic classes for dual high school and community college credit. However, as it was not the Department's intent to expand the applicability of NCLB's provisions beyond elementary and secondary education and into the arena of community college hiring, the proposed priority has been revised.

Change: Under Priority 1 as revised, we will give competitive preference by awarding up to five additional points to applications that: (a) Require all secondary teachers teaching core academic subjects to be highly qualified, as such term is defined by section 9101(23) of the ESEA, as amended by NCLB; and (b) require all postsecondary teachers teaching core academic subjects to meet State standards for community college faculty.

Eligibility Requirements

Comment: One commenter urged the Department to allow technical centers to apply for TPDP funding. This individual believed that technical centers have both the resources and the expertise to house a successful tech-prep high school.

Discussion: Section 207 provides that funds are to be used to "enable eligible consortia to carry out tech-prep education projects that involve the location of a secondary school on the site of a community college." In light of this statutory requirement, a technical center that serves students on a full-time basis may be a TPDP site only if it is located on the campus of a community college.

Change: None.

Comment: One commenter recommended that community colleges play a greater role in tech-prep programs.

Discussion: The TPDP already places community colleges in a pivotal role in the development and implementation of tech-prep programs, given that the statute requires eligible consortia to implement tech-prep education projects that involve the location of a secondary school on the site of a community college.

Change: None.

Comment: One commenter recommended that community-based organizations (CBOs) be encouraged to play a greater role in tech-prep programs.

Discussion: While section 207 does not identify CBOs as required members of eligible consortia, it does not preclude their participation. Thus, CBOs are eligible for consortium membership, or may serve some other function in a TPDP project, should an applicant choose to include them.

Change: None.

Comment: One commenter thought that four-year colleges and universities should be involved in tech-prep curriculum reform efforts.

Discussion: Under the provisions of section 207(d), tech-prep articulation agreements with four-year institutions cannot be supported with TPDP funds. However, section 207 does not preclude the participation of four-year colleges and universities in a TPDP project. They are eligible for consortium membership if an applicant chooses to include them, and they can participate in curriculum reform efforts within the context of the TPDP project.

Change: A change has been made. For information purposes, "Allowable Costs" and "Unallowable Costs" sections have been added to this notice immediately following the "Requirements" section. These sections indicate, among other things, that articulation agreements with four-year institutions cannot be funded under the TPDP and discuss the allowability of several other types of costs about which we frequently receive questions.

Comment: One commenter recommended that one of the required partners in the grant application be a tech-prep consortium.

Discussion: The requirements for membership in a TPDP consortium are taken from the statutory language in section 204(a) and section 207(b) of Perkins III. A tech-prep consortium under section 204, which receives funds under the State Tech-Prep Education Program, would not necessarily be eligible for funding under the TPDP because section 204 does not require inclusion of a business member. In contrast, section 207 specifically states that TPDP funds may only be awarded to a consortium that includes a business member.

Change: None.

Academic Preparation for Postsecondary Education

Comments: One commenter stated that tech-prep programs should be academically rigorous in order to support the transition from high school to college for more students, and that tech-prep programs should avoid tracking and serve a diverse student population. The commenter also recommended that recruitment and retention strategies be geared toward minority students.

Discussion: All students participating in TPDP projects should be expected to meet or exceed State academic standards and to enroll in postsecondary education. This expectation is reflected in the "Project Design" and "Project Evaluation" selection criteria. As to the commenter's recommendations that TPDP recruitment and retention strategies be geared toward minority students, the TPDP has several provisions related to special populations aimed at assisting students to overcome barriers that might interfere with recruitment or retention, or otherwise prevent them from succeeding in a TPDP project. While minority students are not necessarily special population students, minority students would be included in the definition of "special populations" to the extent that they are economically disadvantaged or single parents, face other barriers to educational achievement, including limited English proficiency, or otherwise meet the definition of "special populations" in section 3(23) of Perkins III. There are already several criteria factors in this notice that are intended to address the needs of all special population students. In addition, section 207(d)(3) of Perkins III requires the Secretary to give "special consideration" to consortia submitting applications that meet the requirements of paragraphs (1), (3), (4), and (5) of section 205(d). Specifically, section 205(d)(3) addresses dropout prevention and the needs of special populations. Also, section 205(d)(5) addresses how tech-prep programs will help students meet high academic and employability competencies. In order to more fully implement the statutory requirement that special consideration be provided

to certain applications—including applications addressing dropout prevention and special populations—and in response to this comment, in addition to the points to be awarded to applicants based on the selection criteria and Priorities 1–3, the Department will award five additional points to applications that address, among other things, dropout prevention and the needs of special population students. Also, in response to the commenter's additional concerns, we note that in section 204(c)(5) of Perkins III, recruitment and counseling activities are stated to be key tech-prep components that must be geared to meeting the needs of participating students.

Changes: A change has been made. A "Special Considerations" section has been added to this notice, immediately before the "Selection Criteria" section, wherein we state that, in addition to the points to be awarded to applicants based on the selection criteria and Priorities 1–3, the Department will award five additional points to applications that: (1) Provide for effective employment placement activities; (2) Effectively address the issues of school dropout prevention and reentry, as well as the needs of special populations; (3) Provide education and training in career areas or skills in which there are significant workforce shortages, including the information technology industry; and (4) Demonstrate how tech-prep programs will help students meet high academic and employability competencies.

Uses of Funds

Comment: One commenter requested funds to survey workplace literacy, English as a Second Language (ESL), General Educational Development (GED), and basic education programs in Milwaukee, Wisconsin.

Discussion: Since the programs identified appear to be adult literacy programs rather than tech-prep education programs, the proposed activity would not be allowable under TPDP.

Change: None.

Project Period

We have concluded that funding multi-year projects for a project period of five years entirely from the FY 2002 and FY 2003 appropriations is necessary for TPDP grantees to meet fully the statutory purposes of section 207 and the requirements of this notice. Such a funding arrangement will enable projects to engage in an adequate recruitment effort to meet their enrollment goals, and to implement both the full, two-year secondary component and the full, two-year postsecondary component of the TPDP project for the first student cohort during the grant award period.

Requirements

To achieve the purposes of section 207 of Perkins III, we establish the following requirements. These requirements will apply to all applicants seeking funding under this competition.

(1) Each applicant must submit a signed Consortium Agreement (Agreement), providing evidence that each of the categories of membership required under section 207 has been satisfied, and that each of the required members is eligible for membership under the provisions of Perkins III. The Agreement must contain a signature of commitment from any participating secondary school, community college, and business member, affirming that those entities have formed a consortium to develop, implement, and sustain a TPDP project as described under section 207 of Perkins III. The Agreement also must describe the roles and responsibilities of each consortium member within the proposed project. The format for the Agreement will be included in the application package.

(2) Each applicant must submit enrollment goals for the number of students in each student cohort to be enrolled in each year of the TPDP project.

(3) Each applicant must provide an assurance that it will enroll its first student cohort and begin classes no later than September of the calendar year after the year in which the grant award is made, and enroll its second, third, and fourth student cohorts by September of each subsequent year of the proposed project.

(4) Each applicant must submit a complete Proposed Project Course Sequence Plan (Plan) to demonstrate how the proposed instructional program represents a sequential, four-year program of study that meets the specific criteria set forth in sections 202(a)(3) and 204(c) of Perkins III. The Plan must list the course sequences for each program of study within the proposed TPDP project, describing the specific academic and technical coursework required for all four years of the program. The Plan also must summarize program entrance requirements and specify the associate degree or postsecondary certificate to be earned upon completion of the program. The format for the Plan will be included in the application package.

(5) Each TPDP-funded project must involve a secondary school physically located on the site of a community college and provide a complete program of academic and technical coursework at the community college that, at a minimum, meets State requirements for high school graduation. Students must be enrolled full-time in the high school on the community college campus. However, enrolled students may participate in extracurricular activities at their original high school. Proposed projects that involve only the "virtual" location of a secondary school on the site of a community college, and projects that involve only satellite community college sites located on the premises of secondary schools, are not eligible for support under this competition.

(6) Each TPDP-funded project must carry out an evaluation to determine the impact of the project on a comprehensive set of student outcomes, including: Academic and technical skills achievement; high school graduation; enrollment and completion of postsecondary education; postsecondary remedial coursework; labor market entry; and, to the extent feasible, earnings or earnings increase after program completion. In conducting this evaluation, each TPDP project must use either an experimental design, in which students are randomly assigned to the demonstration program or another program, or a quasi-experimental design, in which each program participant is matched with a non-participant possessing similar pre-program characteristics, such as test scores on State academic assessments, grade point average, class rank, technical coursework or course of study, and socioeconomic status.

(7) Each TPDP project must submit annual reports of anticipated enrollment. The reports of anticipated enrollment must include the number of students in each cohort enrolled for the coming year and, if that differs from the enrollment goals stated in the approved application, the reasons. The reports of anticipated enrollment will be due at the end of April of each project year.

(8) Each TPDP project must submit annual project performance reports and a final project performance report. Both the annual and final performance reports must summarize the TPDP project's progress and significant accomplishments, with respect to both the process of implementation and the outcomes of student participation; provide data regarding enrollment, persistence, and program completion for each student cohort; identify barriers to continued progress and outline solutions; include a progress report on and an analysis of the findings of the project evaluation; and review prospects for sustained operations after the cessation of Federal support. The annual and final performance reports will be due within 90 days of the end of each project year and of the end of the project, respectively.

Funded projects will be required to comply with all requirements adopted in this notice. Failure to comply with any applicable program requirement may subject a grantee to special conditions, withholding, or termination.

Allowable Costs

Allowable activities and expenditures for TPDP projects include, but are not limited to: Recruitment and enrollment of students; staff hiring; updating of articulation agreements; curriculum revision; professional development for secondary and postsecondary faculty, counselors, and administrators; and development and maintenance of business and industry partnerships. In addition, section 207(b)(2) specifies that TPDP projects may provide summer internships at a business for students or teachers.

Section 207 gives applicants latitude for innovation. For example, although tech-prep education by definition includes at least two years of education at the secondary level preceding high school graduation and two years of postsecondary education or apprenticeship training, section 204(c)(3)(B) authorizes tech-prep programs that allow students to concurrently complete both secondary and postsecondary courses, and simultaneously satisfy requirements for a high school diploma and an associate degree or other postsecondary credential.

Unallowable Costs

(1) *Supplanting.* In accordance with section 311(a) of Perkins III, funds under this program may not be used to supplant non-Federal funds used to carry out vocational and technical education activities and tech-prep activities. Further, the prohibition against supplanting also means that grantees are required to use their negotiated restricted indirect cost rate under this program. (34 CFR 75.563.)

Because of the statutory prohibition against supplanting, we caution applicants not to plan to use Federal funds awarded under section 207 to replace non-Federal funding that is already, or that otherwise would be, available for support of the TPDP projects to be assisted. Further, we are concerned that TPDP funds may be used to replace Federal student financial aid. We wish to highlight the fact that the statute does not authorize us to fund projects that serve primarily as entities through which students may apply for and receive tuition and other financial assistance.

(2) *Construction.* Under EDGAR (34 CFR 75.533), TPDP grants cannot be used for the acquisition of real property or construction.

(3) *Articulation Agreements with Four-Year Institutions.* Under the provisions of section 207(d), tech-prep articulation agreements with four-year institutions cannot be supported with funds awarded under section 207. However, articulation agreements with four-year institutions can be developed using other resources by applicants who wish to establish "open-ended" tech-prep career pathways. Also, the inclusion of institutions of higher education that award baccalaureate degrees in TPDP consortia is allowable under section 204(a)(2)(A).

Special Considerations

In addition to the points to be awarded to applicants based on the selection criteria and Priorities 1–3, under section 207(d)(3) of Perkins III, we award five additional points to applications that:

(1) Provide for effective employment placement activities;

(2) Effectively address the issues of school dropout prevention and reentry, as well as the needs of special populations;

(3) Provide education and training in career areas or skills in which there are significant workforce shortages, including the information technology industry; and

(4) Demonstrate how tech-prep programs will help students meet high academic and employability competencies.

Note: This notice does *not* solicit applications. In any year in which we choose to use one or more of these proposed priorities, we invite applications through a notice in the **Federal Register**. (A notice inviting applications under this program is published elsewhere in this issue of the **Federal Register**.) When inviting applications, we designate each priority as absolute, competitive preference, or invitational. The effect of each type of priority follows:

Absolute priority: Under an absolute priority we consider only applications that meet the priority (34 CFR 75.105(c)(3)).

Competitive preference priority: Under a competitive preference priority we give competitive preference to an application by either (1) awarding additional points, depending on how well or the extent to which the application meets the competitive preference priority (34 CFR 75.105(c)(2)(i); or (2) selecting an application that meets the competitive priority over an application of comparable merit that does not meet the priority (34 CFR 75.105(c)(2)(ii)).

Invitational priority: Under an invitational priority we are particularly interested in applications that meet the invitational priority. However, we do not give an application that meets the invitational priority a competitive or absolute preference over other applications (34 CFR 75.105(c)(1)).

Priorities

Priority 1

Under this priority, we will give competitive preference by awarding up to five additional points to applications that: (a) Require all secondary teachers teaching core academic subjects to be highly qualified, as such term is defined by section 9101(23) of the ESEA, as amended by NCLB; and (b) require all postsecondary teachers teaching core academic subjects to meet State standards for community college faculty.

Note: ESEA defines the term "core academic subjects" as English, reading or language arts, mathematics, science, foreign languages, civics and government, economics, arts, history, and geography.

Priority 2

Under this priority, we will give competitive preference by awarding up to five additional points to applications that require each participating student, as a condition of high school graduation, to pass at least one high school-level test (either a comprehensive test covering a variety of courses in a subject area or a high school end-of-course test) in each of English or language arts, mathematics, and science. To receive any points under this priority, applicants must describe their specific high school graduation requirements.

Priority 3

Under this priority, we will give competitive preference by awarding up to five additional points to applications that offer the proposed TPDP project as an additional alternative for students attending high schools that have not met adequate yearly progress (AYP) for two or more consecutive years, as defined by section 1111 of the ESEA, as amended by NCLB, and 34 CFR 200.13. To receive any points under this priority, applicants must: (a) Provide evidence that at least one high school served by a consortium member (under 204(a)(1)(A) of Perkins III) has not met AYP for at least two consecutive years; and (b) provide an assurance that eligible students that are transferring

from this high school will be given a genuine opportunity to enroll in the TPDP project.

Note: Each State published a list of "school improvement" schools for the 2001–02 school year last summer or early fall. Based on the transition language in the ESEA, these schools are also in school improvement for the 2002–03 school year. Applications from consortia that have a member (under 204(a)(1)(A) of Perkins III) serving at least one school on the list for the 2002–03 school year, will be eligible for a competitive preference under Priority 3.

Selection Criteria

We establish the following selection criteria to evaluate applications for new grants under this year's competition and perhaps subsequent competitions. The maximum score for all of the following criteria is 100 points. The maximum score for each criterion and sub-criterion is indicated in parentheses.

(a) *Quality of the project design.* (40 points)

In determining the quality of the design of the proposed project, we consider the following factors:

(1) The extent to which the applicant demonstrates its readiness to implement a complete, career-oriented, four-year program of study, as evidenced by a formal articulation agreement concerning the structure, content and sequence of all academic and technical courses to be offered in the proposed tech-prep program and, if applicable, the conditions under which dual credit will be awarded. (8 points)

(2) The extent to which the proposed instructional program will meet high academic standards that equal or exceed those established by the State. (4 points)

(3) The extent to which the applicant has aligned its secondary academic and technical course offerings and requirements for program completion with the entrance requirements for the corresponding postsecondary degree or certificate program. (4 points)

(4) The extent to which the applicant presents a detailed student recruitment plan that is likely to be effective in fulfilling the project's enrollment goals for each year of the project. (8 points)

(5) The extent to which the proposed project will provide comprehensive academic and career counseling and other support services to participating students at both the secondary and postsecondary levels, to ensure their persistence in the program and attainment of a postsecondary degree or certificate. (8 points)

(6) The extent to which the proposed project will provide high-quality, sustained, and intensive professional development for instructors, counselors, and administrators involved in the program. (8 points)

(b) *Quality of the management plan.* (15 points)

In determining the quality of the management plan for the proposed project, we consider the following factors:

(1) The extent to which the management plan outlines specific, measurable goals, objectives, and outcomes to be achieved by the proposed project. (5 points)

(2) The extent to which the management plan assigns responsibility for the accomplishment of project tasks to specific project personnel, and provides timelines for the accomplishment of project tasks. (5 points)

(3) The extent to which the time commitments of the project director and other key personnel are appropriate and adequate to achieve the objectives of the proposed project. (5 points)

(c) *Quality of project personnel.* (15 points)

In determining the quality of project personnel, we consider the following factors:

(1) The extent to which the applicant encourages applications for employment from members of groups that have traditionally been underrepresented based on race, color, national origin, gender, age, or disability. (5 points)

(2) The qualifications, including relevant training and experience, of the project director. (5 points)

(3) The qualifications, including relevant training and experience, of key project personnel, including teachers, counselors, administrators, and project consultants. (5 points)

(d) *Adequacy of resources.* (10 points)

In determining the adequacy of resources for the proposed project, we consider the following factors:

(1) The adequacy of support, including facilities, equipment, supplies, and other resources, from the participating institutions. (5 points)

(2) The extent to which the budget is adequate and costs are reasonable in relation to the objectives and design of the proposed project. (5 points)

(e) *Quality of the project evaluation.* (20 points)

In determining the quality of the evaluation, we consider the following factors:

(1) The extent to which the application presents a feasible, credible plan for project evaluation and includes: the type of design to be used; outcomes to be examined; and how participants will be assigned to the program or matched for comparison to non-program participants. (10 points)

(2) The extent to which the evaluation will provide reports or other documents at appropriate intervals to be used for continuous program improvement. (4 points)

(3) The extent to which the proposed evaluation will be conducted by an independent evaluator with the necessary background and technical expertise to carry out the evaluation. (6 points)

Note: With points awarded under "Special Considerations," Priorities 1–3, and the selection criteria an application may receive a maximum of 120 points.

Intergovernmental Review

This program is subject to Executive Order 12372 and the regulations in 34 CFR part 79. One of the objectives of the Executive Order is to foster intergovernmental partnership and a strengthened federalism. The Executive Order relies on processes developed by State and local governments for coordination and review of proposed Federal financial assistance.

This document provides early notification of our specific plans and actions for this program.

Applicable Program Regulations: 34 CFR parts 74–79.

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Catalog of Federal Domestic Assistance Number: 84.353.

Program Authority: 20 U.S.C. 2376.

Dated: May 7, 2003.

Carol D'Amico,

Assistant Secretary for Vocational and Adult Education.

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Federal Register

Monday,
May 12, 2003

Part IV

The President

Executive Order 13299—Interagency Group on Insular Areas

Federal Register
Vol. 68, No. 91
Monday, May 12, 2003

Presidential Documents

Title 3—

The President

Executive Order 13299 of May 12, 2003

Interagency Group on Insular Areas

By the authority vested in me as President by the Constitution and the laws of the United States of America, it is hereby ordered as follows:

Section 1. *Interagency Group on Insular Areas.* (a) There is established, within the Department of the Interior for administrative purposes, the Interagency Group on Insular Areas (IGIA). The group shall consist exclusively of:

(i) the heads of the executive departments; and

(ii) the heads of such agencies as the Secretary of the Interior may designate.

(b) The Secretary of the Interior, or the Secretary's designee under section 1(c) of this order, shall convene and preside at the meetings of the IGIA, determine its agenda, direct its work and, as appropriate to deal with particular subject matters, establish and direct subgroups of the IGIA that shall consist exclusively of members of the IGIA.

(c) A member of the IGIA may designate, to perform the IGIA or IGIA subgroup functions of the member, any person who is a part of the member's department or agency (agency) and who is either an officer of the United States appointed by the President or a member of the Senior Executive Service.

Sec. 2. *Functions of the IGIA.* The IGIA shall:

(a) provide advice on establishment or implementation of policies concerning American Samoa, Guam, the United States Virgin Islands, and the Commonwealth of Northern Mariana Islands (Insular Areas) to:

(i) the President, through the Office of Intergovernmental Affairs in the White House Office, in written reports, at least once each year; and

(ii) the Secretary of the Interior;

(b) obtain information and advice concerning Insular Areas from governors and other elected officials in the Insular Areas (including through a meeting at least once each year with such governors of the Insular Areas who may wish to attend) in a manner that seeks their individual advice and does not involve collective judgment or consensus advice or deliberation;

(c) obtain information and advice concerning Insular Areas, as the IGIA determines appropriate, from representatives of entities or other individuals in a manner that seeks their individual advice and does not involve collective judgment or consensus advice or deliberation; and

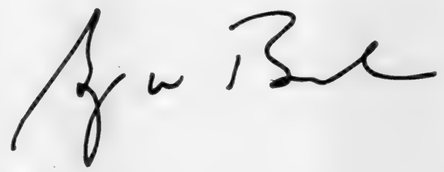
(d) at the request of the head of any agency who is a member of the IGIA, unless the Secretary of the Interior declines the request, promptly review and provide advice on a policy or policy implementation action affecting one of the Insular Areas proposed by that agency.

Sec. 3. *General Provisions.* (a) The Secretary of the Interior may, as the Secretary determines appropriate, make recommendations to the President, or to the heads of agencies, regarding policy or policy implementation actions of the Federal Government affecting the Insular Areas.

(b) Nothing in this order shall be construed to impair or otherwise affect the functions of the Director of the Office of Management and Budget relating to budget, administrative, or legislative proposals.

Sec. 4. *Judicial Review.* This order is intended only to improve the internal management of the Federal Government and is not intended to, and does

not, create any right or benefit, substantive or procedural, enforceable at law or equity by a party against the United States, its departments, agencies, instrumentalities or entities, its officers or employees, or any other person.



THE WHITE HOUSE,
May 8, 2003.

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Federal Register
Vol. 68, No. 91
Monday May 12, 2003

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Laws	741–6000
Presidential Documents	
Executive orders and proclamations	741–6000
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Privacy Act Compilation	741–6064
Public Laws Update Service (numbers, dates, etc.)	741–6043
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FEDERAL REGISTER PAGES AND DATE, MAY

23183–23376	1
23377–23568	2
23569–23884	5
23885–24332	6
24333–24604	7
24605–24858	8
24859–25278	9
25279–25478	12

CFR PARTS AFFECTED DURING MAY

At the end of each month, the Office of the Federal Register publishes separately a List of CFR Sections Affected (LSA), which lists parts and sections affected by documents published since the revision date of each title.

3 CFR

Proclamations:
7668 23821
7669 23823
7670 23825
7671 23827
7672 23829
7673 24333
7674 25277
Executive Orders:
12865 (Revoked by 13298) 24857
13069 (Revoked by 13298) 24857
13098 (Revoked by 13298) 24857
13298 24857
13299 25477
Administrative Orders
Memorandums:
Memorandum of May 6, 2003 25275

5 CFR

Ch. XIV 23885
213 24605
2424 23885
2429 23885
2471 23885
2472 23885
Proposed Rules:
2601 23876

7 CFR

46 23377
301 ..... 24605, 24613
868 24589
932 23378
985 23569
989 25279
1410 24830
1424 24596
1710 24335
Proposed Rules:
274 23927
276 23927
278 23927
279 23927
280 23927
360 23425
1530 23230

9 CFR

Proposed Rules:
2 24052
130 25308

10 CFR

40 25281
70 23574
71 23574
72 23183
73 23574
150 25281
Proposed Rules:
20 23618
490 23620

12 CFR

21 25090
208 25090
211 25090
226 25090
563 25090
740 23381
748 25090
Proposed Rules:
613 ..... 23425, 23426

14 CFR

25 ..... 24336, 24338
39 ..... 23183, 23186, 23190, 23384, 23387, 23575, 23886, 24614, 24861
71 ..... 23577, 23579, 23580, 23581, 23682, 24340, 24341, 24342, 24864, 24866, 24868, 24869, 24870, 24871, 24872, 24874
77 23583
97 ..... 23888, 23889
382 24874
Proposed Rules:
3 23808
39 ..... 23231, 23235, 23427, 23620, 24383
71 ..... 23622, 23624, 23625, 23626
119 24810
121 24810
135 24810
145 24810
255 24896
330 23627
399 24896

15 CFR

0 24878
270 24343
902 24615

16 CFR

305 23584
Proposed Rules:
309 24669

17 CFR

42 25149
232 24345
241 25281
270 25131

18 CFR

Proposed Rules:
35 24679

19 CFR
178.....24052

20 CFR
Proposed Rules:
404.....23192, 24896
416.....23192, 24896

21 CFR
Ch. 1.....24879
10.....25283
14.....25283
20.....25283
310.....24347
314.....25283
358.....24347
720.....25283
1300.....23195
1310.....23195
Proposed Rules:
1.....23630, 25242, 25188
11.....25188
16.....25242
101.....23930
1310.....24689

22 CFR
42.....24638
121.....25088
228.....23891

23 CFR
140.....24639
646.....24639
661.....24642
Proposed Rules:
630.....23239, 24384

24 CFR
203.....23370

25 CFR
Proposed Rules:
170.....23631

26 CFR
1.....23586, 24349, 24351, 24644, 24880
301.....24644
602.....24644
Proposed Rules:
1.....23632, 23931, 24404, 24405, 24406, 24898, 24903, 25310
54.....24406
602.....24406

27 CFR
Proposed Rules:
4.....24903
5.....24903
7.....24903
13.....24903

29 CFR
Proposed Rules:
1480.....23634
1910.....23528

30 CFR
36.....23892
917.....24644
948.....24355
950.....24647

31 CFR
103.....25090, 25149, 25113, 25163
315.....24794
351.....24794
353.....24794
359.....24794
360.....24794
363.....24794
Proposed Rules:
103.....23640, 23646, 23653, 25163

32 CFR
311.....24880
806B.....24881
Proposed Rules:
701.....24904

33 CFR
117.....23390, 23590, 24882, 24883
165.....23390, 23393, 23399, 23591, 23594, 23595, 23893, 23894, 23896, 24359, 24361, 24883, 25288
Proposed Rules:
165.....23935, 24406, 24408

36 CFR
Proposed Rules:
1280.....23430

37 CFR
Proposed Rules:
262.....23241

38 CFR
Proposed Rules:
39.....23249

39 CFR
Proposed Rules:
111.....23937

40 CFR
52.....23206, 23207, 23404, 23597, 23604, 24363, 24365, 24368, 24885, 25414, 25418, 25442
62.....23209, 25291
63.....23898, 24562, 24653
80.....24300
81.....24368, 25418, 25442
180.....24370
271.....23407, 23607
300.....23211
312.....24888
Proposed Rules:
Ch. 1.....24410, 25312
52.....23270, 23430, 23661, 23662, 24416, 24417
60.....24692
62.....23272, 25313
80.....24311
146.....23666, 23673
300.....23939

44 CFR
64.....23408
67.....23898
Proposed Rules:
67.....23941

45 CFR
32.....24052
148.....23410
301.....25293
302.....25293
303.....25293
304.....25293
307.....25293
1309.....23212

46 CFR
Proposed Rules:
540.....23947

47 CFR
1.....23417
73.....23613, 23900, 23901
Proposed Rules:
1.....23431
15.....23677
64.....25313
73.....24417

48 CFR
511.....24372
516.....24372
532.....24372
538.....24372
546.....24372
552.....24372
1802.....23423
1806.....23423
1815.....23423
1816.....23423
1843.....23423
1845.....23424
Proposed Rules:
245.....25313

49 CFR
107.....23832, 24653
171.....23832, 24653
173.....24653
176.....23832
177.....23832, 24653
180.....24653
209.....24891
383.....23844
384.....23844
571.....23614, 24664
1570.....23852
1572.....23852
Proposed Rules:
193.....23272
572.....24417
1137.....23947

50 CFR
216.....24905
300.....23224, 23901
600.....23901
648.....24914, 25305
660.....23901, 23913, 23924
679.....23925, 24615, 24667, 24668
Proposed Rules:
18.....24700
20.....24324
216.....24905
622.....23686
648.....23275, 23948, 23949, 24914

REMINDERS

The items in this list were editorially compiled as an aid to Federal Register users. Inclusion or exclusion from this list has no legal significance.

RULES GOING INTO EFFECT MAY 12, 2003

AGRICULTURE DEPARTMENT
Agricultural Marketing Service
Prunes (dried) produced in—
California; published 4-10-03
COMMERCE DEPARTMENT
National Oceanic and Atmospheric Administration
Endangered and threatened species:
Right whale nomenclature and taxonomy; technical revision; published 4-10-03
Fishery conservation and management:
Alaska; fisheries of Exclusive Economic Zone-
Yellowfin sole; published 5-8-03
ENVIRONMENTAL PROTECTION AGENCY
Air programs; approval and promulgation; State plans for designated facilities and pollutants:
Indiana; published 3-11-03
New York; published 3-13-03
Air quality implementation plans; approval and promulgation; various States; air quality planning purposes; designation of areas:
Illinois; published 5-12-03
Missouri; published 5-12-03
Air quality implementation plans; approval and promulgation; various States:
Missouri; published 5-12-03
Hazardous waste program authorizations:
Virginia; published 3-13-03
HOMELAND SECURITY DEPARTMENT
Coast Guard
Ports and waterways safety:
Commencement Bay, Tacoma, WA; Olympic View Resource Area Superfund Cleanup Site; regulated navigation area; published 4-11-03
SECURITIES AND EXCHANGE COMMISSION
Securities:
Broker-dealer records electronic storage; interpretive guidance; published 5-12-03
TRANSPORTATION DEPARTMENT
Federal Aviation Administration
Airworthiness directives:
Boeing; published 4-25-03
McDonnell Douglas; published 4-25-03
Pilatus Aircraft Ltd.; published 4-8-03

COMMENTS DUE NEXT WEEK

AGRICULTURE DEPARTMENT
Agricultural Marketing Service
Hass avocado promotion, research, and information order; comments due by 5-19-03; published 3-18-03 [FR 03-06510]
AGRICULTURE DEPARTMENT
Animal and Plant Health Inspection Service
Plant related quarantine; domestic:
Fire ant, imported; methoprene, authorized treatment; comments due by 5-20-03; published 3-21-03 [FR 03-06799]
User fees:
Export certificates for ruminants; comments due by 5-20-03; published 3-21-03 [FR 03-06797]
AGRICULTURE DEPARTMENT
Foreign Agricultural Service
Farmers; trade adjustment assistance; comments due by 5-23-03; published 4-23-03 [FR 03-10050]
COMMERCE DEPARTMENT
National Oceanic and Atmospheric Administration
Fishery conservation and management:
West Coast States and Western Pacific fisheries—
Pacific Coast groundfish; correction; comments due by 5-22-03; published 5-6-03 [FR 03-11084]
West Coast salmon; comments due by 5-21-03; published 5-6-03 [FR 03-11083]
EDUCATION DEPARTMENT
Elementary and secondary education:
Disadvantaged children; academic achievement improvement; comments due by 5-19-03; published 3-20-03 [FR 03-06653]
ENVIRONMENTAL PROTECTION AGENCY
Air pollution control:
Interstate ozone transport reduction—
Nitrogen oxides budget trading program; Section 126 petitions; findings of significant contribution and rulemaking; withdrawal provision; comments due by 5-24-03; published 4-4-03 [FR 03-08152]
ENVIRONMENTAL PROTECTION AGENCY
Air quality implementation plans; approval and promulgation; various States; air quality planning purposes; designation of areas:
Wisconsin; comments due by 5-19-03; published 4-17-03 [FR 03-09347]
ENVIRONMENTAL PROTECTION AGENCY
Air quality implementation plans; approval and promulgation; various States; air quality planning purposes; designation of areas:
Wisconsin; comments due by 5-19-03; published 4-17-03 [FR 03-09348]
ENVIRONMENTAL PROTECTION AGENCY
Air quality implementation plans; approval and promulgation; various States:
Louisiana; comments due by 5-21-03; published 4-21-03 [FR 03-09619]
ENVIRONMENTAL PROTECTION AGENCY
Air quality implementation plans; approval and promulgation; various States:
Louisiana; comments due by 5-21-03; published 4-21-03 [FR 03-09620]
Superfund program:
Toxic chemical release reporting; community right-to-know—
North American Industry Classification System; comments due by 5-20-03; published 3-21-03 [FR 03-06582]
GOVERNMENT ETHICS OFFICE
Government ethics:
Post-employment conflict of interest restrictions; comments due by 5-19-03; published 2-18-03 [FR 03-03043]
Correction; comments due by 5-19-03; published 3-31-03 [FR 03-07539]
HEALTH AND HUMAN SERVICES DEPARTMENT
Food and Drug Administration
Human drugs:
Ophthalmic products for emergency first aid use (OTC); final monograph; amendment; comments due by 5-20-03; published 2-19-03 [FR 03-03927]
HOMELAND SECURITY DEPARTMENT
Coast Guard
Drawbridge operations:
Florida; comments due by 5-19-03; published 3-19-03 [FR 03-06637]
New Jersey; comments due by 5-19-03; published 3-20-03 [FR 03-06638]
Ports and waterways safety:
Lond Island Sound Marine Inspection and Captain of Port Zone, CT; regulated navigation area and safety and security zones; comments due by 5-19-03; published 3-20-03 [FR 03-06642]
HOMELAND SECURITY DEPARTMENT
Customs Service
Articles conditionally free, subject to reduced rates, etc.:
African Growth and Opportunity Act; sub-Saharan Africa trade benefits; textile and apparel provisions; comments due by 5-20-03; published 3-21-03 [FR 03-06760]
Caribbean Basin Economic Recovery Act; textile and apparel provisions; comments due by 5-20-03; published 3-21-03 [FR 03-06755]
HOMELAND SECURITY DEPARTMENT
Customs Service
Merchandise, special classes, and financial and accounting procedures:
Patent Survey Program; discontinuation; comments due by 5-19-03; published 3-20-03 [FR 03-06756]
INTERIOR DEPARTMENT
Surface coal mining hearings and appeals; special rules;

comments due by 5-19-03; published 3-20-03 [FR 03-06555]

LABOR DEPARTMENT
Mine Safety and Health Administration
Coal mine safety and health:
Underground mines—
Sanitary toilets; standards; comments due by 5-21-03; published 4-21-03 [FR 03-09656]

LABOR DEPARTMENT
Mine Safety and Health Administration
Coal mine safety and health:
Underground mines—
Sanitary toilets; standards; comments due by 5-21-03; published 4-21-03 [FR 03-09655]

LABOR DEPARTMENT
Mine Safety and Health Administration
Metal and nonmetal mine safety and health:
Seat belts for off-road work machines and wheeled agricultural tractors; comments due by 5-21-03; published 4-21-03 [FR 03-09658]

LABOR DEPARTMENT
Mine Safety and Health Administration
Metal and nonmetal mine safety and health:
Seat belts for off-road work machines and wheeled agricultural tractors; comments due by 5-21-03; published 4-21-03 [FR 03-09657]

LIBRARY OF CONGRESS
Copyright Office, Library of Congress
Copyright Arbitration Royalty Panel rules and procedures:
Digital performance of sound recordings; reasonable rates and terms determinations; comments due by 5-21-03; published 4-21-03 [FR 03-09783]

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION
Space flight:
Astronaut candidates; recruitment and selection; comments due by 5-23-03; published 4-23-03 [FR 03-10002]

NUCLEAR REGULATORY COMMISSION
Byproduct material; medical use:
Clarifications and amendments; comments due by 5-21-03; published 4-21-03 [FR 03-09601]

NUCLEAR REGULATORY COMMISSION
Byproduct material; medical use:
Clarifications and amendments; comments due by 5-21-03; published 4-21-03 [FR 03-09602]

PERSONNEL MANAGEMENT OFFICE
Health and counseling programs, Federal employees:
Child care costs for lower income employees; agency use of appropriated funds; comments due by 5-23-03; published 3-24-03 [FR 03-06887]

TRANSPORTATION DEPARTMENT
Procedural regulations:
Air carriers; compensation procedures; adjustment; comments due by 5-19-03; published 5-5-03 [FR 03-11185]

TRANSPORTATION DEPARTMENT
Federal Aviation Administration
Airworthiness directives:
Bell; comments due by 5-19-03; published 3-18-03 [FR 03-06136]

TRANSPORTATION DEPARTMENT
Federal Aviation Administration
Airworthiness directives:
Bombardier; comments due by 5-23-03; published 4-23-03 [FR 03-09690]

TRANSPORTATION DEPARTMENT
Federal Aviation Administration
Airworthiness directives:
General Electric Co.; comments due by 5-19-03; published 3-18-03 [FR 03-06044]

TRANSPORTATION DEPARTMENT
Federal Aviation Administration
Airworthiness directives:
Short Brothers and Harland Ltd.; comments due by 5-19-03; published 4-10-03 [FR 03-08750]
Airworthiness standards:
Special conditions—
Embraer Model ERJ-170 series airplanes; comments due by 5-23-03; published 4-23-03 [FR 03-10045]
Class E airspace; comments due by 5-19-03; published 4-3-03 [FR 03-08143]

TRANSPORTATION DEPARTMENT
Federal Aviation Administration
Class E airspace; comments due by 5-19-03; published 4-17-03 [FR 03-09506]

TRANSPORTATION DEPARTMENT
National Highway Traffic Safety Administration
Insurer reporting requirements:
Insurers required to file reports; list; comments due by 5-20-03; published 3-21-03 [FR 03-05629]

TREASURY DEPARTMENT
Foreign Assets Control Office
Cuban assets control regulations:
Family and educational travel transactions, remittances, support for Cuban people and humanitarian projects; technical amendments; comments due by 5-23-03; published 3-24-03 [FR 03-06808]

TREASURY DEPARTMENT
Internal Revenue Service
Excise taxes:
Structured settlement factoring transactions; cross-reference; comments due by 5-20-03; published 2-19-03 [FR 03-03865]

TREASURY DEPARTMENT
Currency and foreign transactions; financial reporting and recordkeeping requirements:
USA PATRIOT Act; implementation—
Nauru; special measures imposition due to designation as primary money laundering concern; comments due by 5-19-03; published 4-17-03 [FR 03-09410]
Terrorism Risk Insurance Program
State residual market insurance entities and State workers' compensation funds; comments due by 5-19-03; published 4-18-03 [FR 03-09613]

TREASURY DEPARTMENT
Terrorism Risk Insurance Program
Statutory conditions for Federal payment; comments due by 5-19-03; published 4-18-03 [FR 03-09611]

TREASURY DEPARTMENT
Terrorism Risk Insurance Program
Statutory conditions for Federal payment; cross-reference; comments due by 5-19-03; published 4-18-03 [FR 03-09612]

VETERANS AFFAIRS DEPARTMENT
Grants and cooperative agreements; availability, etc.:
Homeless Providers Grant and Per Diem Program; comments due by 5-19-03; published 3-19-03 [FR 03-06329]

LIST OF PUBLIC LAWS

This is a continuing list of public bills from the current session of Congress which have become Federal laws. It may be used in conjunction with "PLUS" (Public Laws Update Service) on 202–741–6043. This list is also available online at *http://www.nara.gov/fedreg/plawcurr.html.*

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H.R. 1770/P.L. 108–20
Smallpox Emergency Personnel Protection Act of 2003 (Apr. 30, 2003; 117 Stat. 638)

S. 151/P.L. 108–21
Prosecutorial Remedies and Other Tools to end the Exploitation of Children Today Act of 2003 (Apr. 30, 2003; 117 Stat. 650)

Last List April 29, 2003

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Title	Stock Number	Price	Revision Date
1, 2 (2 Reserved)	(869-050-00001-6)	9.00	[4]Jan. 1, 2003
3 (1997 Compilation and Parts 100 and 101)	(869-050-00002-4)	32.00	[1]Jan. 1, 2003
4	(869-050-00003-2)	9.50	Jan. 1, 2003
5 Parts:			
1-699	(869-050-00004-1)	57.00	Jan. 1, 2003
700-1199	(869-050-00005-9)	46.00	Jan. 1, 2003
1200-End, 6 (6 Reserved)	(869-050-00006-7)	58.00	Jan. 1, 2003
7 Parts:			
1-26	(869-050-00007-5)	40.00	Jan. 1, 2003
27-52	(869-050-00008-3)	47.00	Jan. 1, 2003
53-209	(869-050-00009-1)	36.00	Jan. 1, 2003
210-299	(869-050-00010-5)	59.00	Jan. 1, 2003
300-399	(869-050-00011-3)	43.00	Jan. 1, 2003
400-699	(869-050-00012-1)	39.00	Jan. 1, 2003
700-899	(869-050-00013-0)	42.00	Jan. 1, 2003
900-999	(869-050-00014-8)	57.00	Jan. 1, 2003
1000-1199	(869-050-00015-6)	23.00	Jan. 1, 2003
1200-1599	(869-050-00016-4)	56.00	Jan. 1, 2003
1600-1899	(869-050-00017-2)	61.00	Jan. 1, 2003
1900-1939	(869-050-00018-1)	29.00	[4]Jan. 1, 2003
1940-1949	(869-050-00019-9)	47.00	Jan. 1, 2003
1950-1999	(869-050-00020-2)	45.00	Jan. 1, 2003
2000-End	(869-050-00021-1)	46.00	Jan. 1, 2003
8	(869-050-00022-9)	58.00	Jan. 1, 2003
9 Parts:			
1-199	(869-050-00023-7)	58.00	Jan. 1, 2003
200-End	(869-050-00024-5)	56.00	Jan. 1, 2003
10 Parts:			
1-50	(869-050-00025-3)	58.00	Jan. 1, 2003
51-199	(869-050-00026-1)	56.00	Jan. 1, 2003
200-499	(869-050-00027-0)	44.00	Jan. 1, 2003
500-End	(869-050-00028-8)	58.00	Jan. 1, 2003
11	(869-050-00029-6)	38.00	Jan. 1, 2003
12 Parts:			
1-199	(869-050-00030-0)	30.00	Jan. 1, 2003
200-219	(869-050-00031-8)	38.00	Jan. 1, 2003
220-299	(869-050-00032-6)	58.00	Jan. 1, 2003
300-499	(869-050-00033-4)	43.00	Jan. 1, 2003
500-599	(869-050-00034-2)	38.00	Jan. 1, 2003
600-899	(869-050-00035-1)	54.00	Jan. 1, 2003
900-End	(869-050-00036-9)	47.00	Jan. 1, 2003
13	(869-050-00037-7)	47.00	Jan. 1, 2003
14 Parts:			
1-59	(869-050-00038-5)	60.00	Jan. 1, 2003
60-139	(869-050-00039-3)	58.00	Jan. 1, 2003
140-199	(869-050-00040-7)	28.00	Jan. 1, 2003
200-1199	(869-050-00041-5)	47.00	Jan. 1, 2003
1200-End	(869-050-00042-3)	43.00	Jan. 1, 2003
15 Parts:			
0-299	(869-050-00043-1)	37.00	Jan. 1, 2003
300-799	(869-050-00044-0)	57.00	Jan. 1, 2003
800-End	(869-050-00045-8)	40.00	Jan. 1, 2003
16 Parts:			
0-999	(869-050-00046-6)	47.00	Jan. 1, 2003
1000-End	(869-050-00047-4)	57.00	Jan. 1, 2003
17 Parts:			
*1-199	(869-050-00049-1)	50.00	Apr. 1, 2003
200-239	(869-048-00049-6)	55.00	Apr. 1, 2002
240-End	(869-048-00050-0)	59.00	Apr. 1, 2002
18 Parts:			
*1-399	(869-050-00052-1)	62.00	Apr. 1, 2003
400-End	(869-048-00052-6)	24.00	Apr. 1, 2002
19 Parts:			
1-140	(869-048-00053-4)	57.00	Apr. 1, 2002
141-199	(869-048-00054-2)	56.00	Apr. 1, 2002
200-End	(869-048-00055-1)	29.00	Apr. 1, 2002
20 Parts:			
1-399	(869-048-00056-9)	47.00	Apr. 1, 2002
400-499	(869-048-00057-7)	60.00	Apr. 1, 2002
500-End	(869-048-00058-5)	60.00	Apr. 1, 2002
21 Parts:			
1-99	(869-050-00060-1)	40.00	Apr. 1, 2003
100-169	(869-048-00060-7)	46.00	Apr. 1, 2002
170-199	(869-048-00061-5)	47.00	Apr. 1, 2002
200-299	(869-048-00062-3)	16.00	Apr. 1, 2002
300-499	(869-048-00063-1)	29.00	Apr. 1, 2002
500-599	(869-048-00064-0)	46.00	Apr. 1, 2002
600-799	(869-048-00065-8)	16.00	Apr. 1, 2002
800-1299	(869-048-00066-6)	56.00	Apr. 1, 2002
1300-End	(869-048-00067-4)	22.00	Apr. 1, 2002
22 Parts:			
1-299	(869-048-00068-2)	59.00	Apr. 1, 2002
300-End	(869-048-00069-1)	43.00	Apr. 1, 2002
23	(869-048-00070-4)	40.00	Apr. 1, 2002
24 Parts:			
0-199	(869-048-00071-2)	57.00	Apr. 1, 2002
200-499	(869-048-00072-1)	47.00	Apr. 1, 2002
500-699	(869-048-00073-9)	29.00	Apr. 1, 2002
700-1699	(869-048-00074-7)	58.00	Apr. 1, 2002
1700-End	(869-048-00075-5)	29.00	Apr. 1, 2002
25	(869-048-00076-3)	68.00	Apr. 1, 2002
26 Parts:			
§§ 1.0-1-1.60	(869-048-00077-1)	45.00	Apr. 1, 2002
§§ 1.61-1.169	(869-048-00078-0)	58.00	Apr. 1, 2002
*§§ 1.170-1.300	(869-050-00080-6)	57.00	Apr. 1, 2003
§§ 1.301-1.400	(869-048-00080-1)	44.00	Apr. 1, 2002
§§ 1.401-1.440	(869-048-00081-0)	60.00	Apr. 1, 2002
§§ 1.441-1.500	(869-048-00082-8)	47.00	Apr. 1, 2002
§§ 1.501-1.640	(869-048-00083-6)	44.00	[6]Apr. 1, 2002
§§ 1.641-1.850	(869-048-00084-4)	57.00	Apr. 1, 2002
§§ 1.851-1.907	(869-048-00085-2)	57.00	Apr. 1, 2002
§§ 1.908-1.1000	(869-048-00086-1)	56.00	Apr. 1, 2002
§§ 1.1001-1.1400	(869-048-00087-9)	58.00	Apr. 1, 2002
§§ 1.1401-End	(869-048-00088-7)	61.00	Apr. 1, 2002
2-29	(869-048-00089-5)	57.00	Apr. 1, 2002
30-39	(869-048-00090-9)	39.00	Apr. 1, 2002
40-49	(869-048-00091-7)	26.00	Apr. 1, 2002
50-299	(869-048-00092-5)	38.00	Apr. 1, 2002
300-499	(869-048-00093-3)	57.00	Apr. 1, 2002
500-599	(869-048-00094-1)	12.00	[5]Apr. 1, 2002
600-End	(869-048-00095-0)	16.00	Apr. 1, 2002
27 Parts:			
1-199	(869-048-00096-8)	61.00	Apr. 1, 2002

Title	Stock Number	Price	Revision Date
200-End	(869-048-00097-6)	13.00	Apr. 1, 2002
28 Parts:			
0-42	(869-048-00098-4)	58.00	July 1, 2002
43-end	(869-048-00099-2)	55.00	July 1, 2002
29 Parts:			
0-99	(869-048-00100-0)	45.00	[8]July 1, 2002
100-499	(869-048-00101-8)	21.00	July 1, 2002
500-899	(869-048-00102-6)	58.00	July 1, 2002
900-1899	(869-048-00103-4)	35.00	July 1, 2002
1900-1910 (§§ 1900 to 1910.999)	(869-048-00104-2)	58.00	July 1, 2002
1910 (§§ 1910.1000 to end)	(869-048-00105-1)	42.00	[8]July 1, 2002
1911-1925	(869-048-00106-9)	29.00	July 1, 2002
1926	(869-048-00107-7)	47.00	July 1, 2002
1927-End	(869-048-00108-5)	59.00	July 1, 2002
30 Parts:			
1-199	(869-048-00109-3)	56.00	July 1, 2002
200-699	(869-048-00110-7)	47.00	July 1, 2002
700-End	(869-048-00111-5)	56.00	July 1, 2002
31 Parts:			
0-199	(869-048-00112-3)	35.00	July 1, 2002
200-End	(869-048-00113-1)	60.00	July 1, 2002
32 Parts:			
1-39, Vol. I		15.00	[2]July 1, 1984
1-39, Vol. II		19.00	[2]July 1, 1984
1-39, Vol. III		18.00	[2]July 1, 1984
1-190	(869-048-00114-0)	56.00	July 1, 2002
191-399	(869-048-00115-8)	60.00	July 1, 2002
400-629	(869-048-00116-6)	47.00	July 1, 2002
630-699	(869-048-00117-4)	37.00	July 1, 2002
700-799	(869-048-00118-2)	44.00	July 1, 2002
800-End	(869-048-00119-1)	46.00	July 1, 2002
33 Parts:			
1-124	(869-048-00120-4)	47.00	July 1, 2002
125-199	(869-048-00121-2)	60.00	July 1, 2002
200-End	(869-048-00122-1)	47.00	July 1, 2002
34 Parts:			
1-299	(869-048-00123-9)	45.00	July 1, 2002
300-399	(869-048-00124-7)	43.00	July 1, 2002
400-End	(869-048-00125-5)	59.00	July 1, 2002
35	(869-048-00126-3)	10.00	[7]July 1, 2002
36 Parts			
1-199	(869-048-00127-1)	36.00	July 1, 2002
200-299	(869-048-00128-0)	35.00	July 1, 2002
300-End	(869-048-00129-8)	58.00	July 1, 2002
37	(869-048-00130-1)	47.00	July 1, 2002
38 Parts:			
0-17	(869-048-00131-0)	57.00	July 1, 2002
18-End	(869-048-00132-8)	58.00	July 1, 2002
39	(869-048-00133-6)	40.00	July 1, 2002
40 Parts:			
1-49	(869-048-00134-4)	57.00	July 1, 2002
50-51	(869-048-00135-2)	40.00	July 1, 2002
52 (52.01-52.1018)	(869-048-00136-1)	55.00	July 1, 2002
52 (52.1019-End)	(869-048-00137-9)	58.00	July 1, 2002
53-59	(869-048-00138-7)	29.00	July 1, 2002
60 (60.1-End)	(869-048-00139-5)	56.00	July 1, 2002
60 (Apps)	(869-048-00140-9)	51.00	[8]July 1, 2002
61-62	(869-048-00141-7)	38.00	July 1, 2002
63 (63.1-63.599)	(869-048-00142-5)	56.00	July 1, 2002
63 (63.600-63.1199)	(869-048-00143-3)	46.00	July 1, 2002
63 (63.1200-End)	(869-048-00144-1)	61.00	July 1, 2002
64-71	(869-048-00145-0)	29.00	July 1, 2002
72-80	(869-048-00146-8)	59.00	July 1, 2002
81-85	(869-048-00147-6)	47.00	July 1, 2002
86 (86.1-86.599-99)	(869-048-00148-4)	52.00	[8]July 1, 2002
86 (86.600-1-End)	(869-048-00149-2)	47.00	July 1, 2002
87-99	(869-048-00150-6)	57.00	July 1, 2002
100-135	(869-048-00151-4)	42.00	July 1, 2002
136-149	(869-048-00152-2)	58.00	July 1, 2002
150-189	(869-048-00153-1)	47.00	July 1, 2002
190-259	(869-048-00154-9)	37.00	July 1, 2002
260-265	(869-048-00155-7)	47.00	July 1, 2002
266-299	(869-048-00156-5)	47.00	July 1, 2002
300-399	(869-048-00157-3)	43.00	July 1, 2002
400-424	(869-048-00158-1)	54.00	July 1, 2002
425-699	(869-048-00159-0)	59.00	July 1, 2002
700-789	(869-048-00160-3)	58.00	July 1, 2002
790-End	(869-048-00161-1)	45.00	July 1, 2002
41 Chapters:			
1, 1-1 to 1-10		13.00	[3]July 1, 1984
1, 1-11 to Appendix, 2 (2 Reserved)		13.00	[3]July 1, 1984
3-6		14.00	[3]July 1, 1984
7		6.00	[3]July 1, 1984
8		4.50	[3]July 1, 1984
9		13.00	[3]July 1, 1984
10-17		9.50	[3]July 1, 1984
18, Vol. I, Parts 1-5		13.00	[3]July 1, 1984
18, Vol. II, Parts 6-19		13.00	[3]July 1, 1984
18, Vol. III, Parts 20-52		13.00	[3]July 1, 1984
19-100		13.00	[3]July 1, 1984
1-100	(869-048-00162-0)	23.00	July 1, 2002
101	(869-048-00163-8)	43.00	July 1, 2002
102-200	(869-048-00164-6)	41.00	July 1, 2002
201-End	(869-048-00165-4)	24.00	July 1, 2002
42 Parts:			
1-399	(869-048-00166-2)	56.00	Oct. 1, 2002
400-429	(869-048-00167-1)	59.00	Oct. 1, 2002
430-End	(869-048-00168-9)	61.00	Oct. 1, 2002
43 Parts:			
1-999	(869-048-00169-7)	47.00	Oct. 1, 2002
1000-end	(869-048-00170-1)	59.00	Oct. 1, 2002
44	(869-048-00171-9)	47.00	Oct. 1, 2002
45 Parts:			
1-199	(869-048-00172-7)	57.00	Oct. 1, 2002
200-499	(869-048-00173-5)	31.00	[9]Oct. 1, 2002
500-1199	(869-048-00174-3)	47.00	Oct. 1, 2002
1200-End	(869-048-00175-1)	57.00	Oct. 1, 2002
46 Parts:			
1-40	(869-048-00176-0)	44.00	Oct. 1, 2002
41-69	(869-048-00177-8)	37.00	Oct. 1, 2002
70-89	(869-048-00178-6)	14.00	Oct. 1, 2002
90-139	(869-048-00179-4)	42.00	Oct. 1, 2002
140-155	(869-048-00180-8)	24.00	[9]Oct. 1, 2002
156-165	(869-048-00181-6)	31.00	[9]Oct. 1, 2002
166-199	(869-048-00182-4)	44.00	Oct. 1, 2002
200-499	(869-048-00183-2)	37.00	Oct. 1, 2002
500-End	(869-048-00184-1)	24.00	Oct. 1, 2002
47 Parts:			
0-19	(869-048-00185-9)	57.00	Oct. 1, 2002
20-39	(869-048-00186-7)	45.00	Oct. 1, 2002
40-69	(869-048-00187-5)	36.00	Oct. 1, 2002
70-79	(869-048-00188-3)	58.00	Oct. 1, 2002
80-End	(869-048-00189-1)	57.00	Oct. 1, 2002
48 Chapters:			
1 (Parts 1-51)	(869-048-00190-5)	59.00	Oct. 1, 2002
1 (Parts 52-99)	(869-048-00191-3)	47.00	Oct. 1, 2002
2 (Parts 201-299)	(869-048-00192-1)	53.00	Oct. 1, 2002
3-6	(869-048-00193-0)	30.00	Oct. 1, 2002
7-14	(869-048-00194-8)	47.00	Oct. 1, 2002
15-28	(869-048-00195-6)	55.00	Oct. 1, 2002
29-End	(869-048-00196-4)	38.00	[9]Oct. 1, 2002
49 Parts:			
1-99	(869-048-00197-2)	56.00	Oct. 1, 2002
100-185	(869-048-00198-1)	60.00	Oct. 1, 2002
186-199	(869-048-00199-9)	18.00	Oct. 1, 2002
200-399	(869-048-00200-6)	61.00	Oct. 1, 2002
400-999	(869-048-00201-4)	61.00	Oct. 1, 2002
1000-1199	(869-048-00202-2)	25.00	Oct. 1, 2002

Title	Stock Number	Price	Revision Date
1200-End	(869-048-00203-1)	30.00	Oct. 1, 2002
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1-17	(869-048-00204-9)	60.00	Oct. 1, 2002
18-199	(869-048-00205-7)	40.00	Oct. 1, 2002
200-599	(869-048-00206-5)	38.00	Oct. 1, 2002
600-End	(869-048-00207-3)	58.00	Oct. 1, 2002
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[1] Because Title 3 is an annual compilation, this volume and all previous volumes should be retained as a permanent reference source.

[2] The July 1, 1985 edition of 32 CFR Parts 1-189 contains a note only for Parts 1-39 inclusive. For the full text of the Defense Acquisition Regulations in Parts 1-39, consult the three CFR volumes issued as of July 1, 1984, containing those parts.

[3] The July 1, 1985 edition of 41 CFR Chapters 1-100 contains a note only for Chapters 1 to 49 inclusive. For the full text of procurement regulations in Chapters 1 to 49, consult the eleven CFR volumes issued as of July 1, 1984 containing those chapters.

[4] No amendments to this volume were promulgated during the period January 1, 2002, through January 1, 2003. The CFR volume issued as of January 1, 2002 should be retained.

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Contents

Federal Register
Vol. 68, No. 92
Tuesday, May 13, 2003

Agency for Toxic Substances and Disease Registry
NOTICES
Grants and cooperative agreements; availability, etc.:
Public Health Conference Support Program, 25615

Agricultural Marketing Service
RULES
Shell eggs, voluntary grading:
USDA "Produced From" grademark requirements, 25484–25485
Spearmint oil produced in Far West, 25486
Tobacco inspection:
Flue-Cured Tobacco Advisory Committee; membership regulations amendments, 25484

Agriculture Department
See Agricultural Marketing Service
See Farm Service Agency
See Food and Nutrition Service
See Forest Service
See Rural Business-Cooperative Service
See Rural Utilities Service
RULES
Import quotas and fees:
Dairy tariff-rate quota licensing, 25479–25484

American Battle Monuments Commission
NOTICES
Senior Executive Service:
Performance Review Board; membership, 25567

Centers for Disease Control and Prevention
NOTICES
Grant and cooperative agreement awards:
University of Malawi, College of Medicine, 25612–25613
Grants and cooperative agreements; availability, etc.:
Medical-specialty specific antimicrobial resistance educational materials development; Internet-based educational module, 25613–25615
Public Health Conference Support Program, 25615
Meetings:
National Vaccine Advisory Committee, 25615–25616

Civil Rights Commission
NOTICES
Meetings:
Rocky Mountain Regional Office Advisory Committee, 25567
Meetings; State advisory committees:
Arkansas, 25567
Maine, 25567–25568

Coast Guard
RULES
Anchorage regulations:
Texas, 25496–25498
Ports and waterways safety:
Mission Creek Waterway, China Basin, San Francisco Bay, CA; safety zone, 25500–25503
Port Everglades Harbor, Fort Lauderdale, FL; regulated navigation area, 25498–25500

Commerce Department
See International Trade Administration
See National Oceanic and Atmospheric Administration

Defense Department
See Navy Department

Education Department
NOTICES
Privacy Act:
Computer matching programs, 25585–25586

Employment and Training Administration
NOTICES
Grants and cooperative agreements; availability, etc.:
Workforce Investment Act—
State incentive awards (2001 PY), 25640–25643

Energy Department
See Energy Information Administration
See Federal Energy Regulatory Commission

Energy Information Administration
NOTICES
Agency information collection activities; proposals, submissions, and approvals, 25587–25588

Environmental Protection Agency
RULES
Air pollution control:
Federal operating permit programs—
California agricultural sources; fee payment deadlines, 25507–25512
Air quality implementation plans:
Preparation, adoption, and submittal—
Air Quality Models Guideline; correction, 25684
Air quality implementation plans; approval and promulgation; various States:
Illinois, 25504–25507
Water pollution; effluent guidelines for point source categories:
Metal products and machinery, 25685–25745
PROPOSED RULES
Air pollution control:
Federal operating permit programs—
California agricultural sources; fee payment deadlines, 25548–25550
Air quality implementation plans; approval and promulgation; various States:
Illinois, 25547–25548
Solid wastes:
Project XL (eXcellence and Leadership) program; site-specific projects—
Anne Arundel County Millersville Landfill, Severn, MD, 25550–25561
NOTICES
Meetings:
Environmental Policy and Technology National Advisory Council, 25605
National Tribal Conference on Environmental Management; correction, 25684

Toxic and hazardous substances control:
New chemicals—
Receipt and status information, 25605–25608

Executive Office of the President
See Presidential Documents

Farm Service Agency
NOTICES
Agency information collection activities; proposals, submissions, and approvals, 25562

Federal Aviation Administration
RULES
Airworthiness directives:
General Electric Co., 25488–25489
Class C and Class D airspace, 25489–25491
Class D and Class E airspace, 25491–25492
Class E airspace, 25492–25495
Class E airspace; correction, 25684
Definitions:
Public aircraft; technical amendment, 25486–25488
Restricted areas, 25495–25496
PROPOSED RULES
Airworthiness directives:
Kidde Aerospace, 25543–25545
NOTICES
Advisory circulars; availability, etc.:
Data communications in crash survivable memory; onboard recording, 25673
Material procurement and polymer matrix composite systems; acceptance guidance and process specifications, 25673
Exemption petitions; summary and disposition, 25673–25674
Meetings:
Aviation Weather Technology Transfer Board; user input, 25675
In-flight Icing/Ground De-icing International Conference, 25675–25676

Federal Communications Commission
RULES
Radio broadcasting:
World Radiocommunication Conferences; frequency bands below 28 MHz, 25512–25542
Radio stations; table of assignments:
Oklahoma, 25542
NOTICES
Agency information collection activities; proposals, submissions, and approvals, 25608–25609
Common carrier services:
Telecommunications relay services—
COMSAT Corp.; application for review; TRS Fund contributions refunded, 25609–25611

Federal Deposit Insurance Corporation
NOTICES
Meetings; Sunshine Act, 25611

Federal Emergency Management Agency
NOTICES
Disaster and emergency areas:
Mississippi, 25618–25619
Ohio, 25619
Virginia, 25619

Federal Energy Regulatory Commission
NOTICES
Electric rate and corporate regulation filings:
Katahdin Paper Co. LLC et al., 25598–25599
New Hampshire Electric Cooperative, Inc., et al., 25599–25601
Hydroelectric applications, 25601–25602
Meetings; Sunshine Act, 25602–25605
Applications, hearings, determinations, etc.:
Algonquin Gas Transmission Co. et al., 25588–25589
ANR Pipeline Co., 25589–25590
ANR Storage Co., 25590
Blue Lake Gas Storage Co., 25590–25591
CenterPoint Energy Gas Transmission Co., 25591
Cogen Technologies Linden Venture, L.P., et al., 25591
Columbia Gulf Transmission Co., 25591–25592
Crossroads Pipeline Co., 25592
Dominion Cove Point LNG, LP, 25592
Dominion Transmission, Inc., 25592–25593
Energy West Development, Inc., 25593
Granite State Gas Transmission Co., 25593–25594
Gulfstream Natural Gas System, L.L.C., 25594
Midwestern Gas Transmission Co., 25595
Northern Natural Gas Co., 25595–25596
PG&E Gas Transmission, Northwest Corp., 25596
Portland Natural Gas Transmission System, 25596–25597
Questar Pipeline Co., 25597–25598
Southern Star Central Gas Pipeline, Inc., 25598

Federal Highway Administration
NOTICES
Environmental statements; notice of intent:
Strafford and Rockingham Counties, NH, 25676
Reports and guidance documents; availability, etc.:
Red light camera systems, 25677

Federal Railroad Administration
NOTICES
Railroad Safety Advisory Committee; working group activity update, 25677–25679

Federal Reserve System
NOTICES
Banks and bank holding companies:
Formations, acquisitions, and mergers, 25611
Meetings; Sunshine Act, 25611

Federal Transit Administration
NOTICES
Grants and cooperative agreements; availability, etc.:
Transit assistance programs; apportionments, allocations, and program information; correction, 25679–25682

Fish and Wildlife Service
NOTICES
Endangered and threatened species and marine mammal permit applications. 25620–25621

Food and Drug Administration
NOTICES
Agency information collection activities; proposals, submissions, and approvals, 25616–25617
Reports and guidance documents; availability, etc.:
Mass spectrometry for confirmation of identity of animal drug residues, 25617–25618

Food and Nutrition Service
NOTICES
Agency information collection activities; proposals, submissions, and approvals, 25562–25563

Forest Service
PROPOSED RULES
National Forest System lands; special uses:
Cabin User Fee Fairness Act—
Recreation residence lots appraisal procedures and recreation residence uses management, 25750–25785
Recreation residences management and fee assessment, 25747–25751
NOTICES
Meetings:
Eastern Washington Cascades Provincial and Yakima Provincial Advisory Committees, 25563

Geological Survey
NOTICES
Meetings:
Scientific Earthquake Studies Advisory Committee, 25621

Health and Human Services Department
See Agency for Toxic Substances and Disease Registry
See Centers for Disease Control and Prevention
See Food and Drug Administration
NOTICES
Meetings:
Emergency Public Information and Communications Advisory Committee, 25612

Homeland Security Department
See Coast Guard
See Federal Emergency Management Agency
NOTICES
Agency information collection activities; proposals, submissions, and approvals, 25618

Housing and Urban Development Department
NOTICES
Meetings:
Manufactured Housing Consensus Committee, 25620

Interior Department
See Fish and Wildlife Service
See Geological Survey
See Land Management Bureau
See Minerals Management Service
See National Park Service
See Reclamation Bureau
NOTICES
Meetings:
Exxon Valdez Oil Spill Public Advisory Committee, 25620

International Trade Administration
NOTICES
Antidumping:
Honey from—
Argentina, 25568

International Trade Commission
NOTICES
Import investigations:
Color television receivers from—
China and Malaysia, 25627–25628
Machine vision systems, parts and components, and products containing same, 25628–25629

Justice Department
See Prisons Bureau

Labor Department
See Employment and Training Administration
NOTICES
Grants and cooperative agreements; availability, etc.:
Combating child labor, etc., through education in—
Various countries, 25629–25640

Land Management Bureau
NOTICES
Meetings:
Resource Advisory Councils—
Western Montana, 25621

Minerals Management Service
NOTICES
Agency information collection activities; proposals, submissions, and approvals, 25622–25625

National Aeronautics and Space Administration
NOTICES
Meetings:
Advisory Council
Planetary Protection Advisory Committee, 25643
Aerospace Safety Advisory Panel, 25643

National Archives and Records Administration
NOTICES
Agency information collection activities; proposals, submissions, and approvals, 25643–25644

National Highway Traffic Safety Administration
NOTICES
Reports and guidance documents; availability, etc.:
Red light camera systems, 25677

National Oceanic and Atmospheric Administration
NOTICES
Endangered and threatened species:
Anadromous fish take—
Cressey & Associates, El Cerrito, CA; salmonids, 25568–25569
Thompson, Lisa, Ph.D.; Southern Oregon/Northern California Coasts coho salmon, 25569
Grants and cooperative agreements; availability, etc.:
Environmental education projects—
Chesapeake Bay Watershed, CT and RI, 25570–25574
Monterey Bay Watershed, CA, 25574–25578
Gulf of Mexico and off U.S. South Atlantic Coastal States; research and development projects, 25578–25584
National Sea Grant College Program—
Dean John A. Knauss Marine Policy Fellowship; correction, 25584–25585

National Park Service
NOTICES
Meetings:
Great Sand Dunes National Park Advisory Council, 25625
National Register of Historic Places:
Pending nominations, 25625–25626
Reports and guidance documents; availability, etc.:
Historic Residential Suburbs in U.S. (1830-1960); multiple property documentation form, 25626

National Science Foundation
NOTICES
Senior Executive Service:
Performance Review Board; membership, 25644

Navy Department
NOTICES
Meetings:
Naval Academy, Board of Visitors, 25585

Nuclear Regulatory Commission
NOTICES
Meetings:
Nuclear Waste Advisory Committee, 25647–25648
Meetings; Sunshine Act, 25648
Operating licenses, amendments; no significant hazards considerations; biweekly notices, 25648–25664
Reports and guidance documents; availability, etc.:
Babcock and Wilcox Reactors; post accident sampling requirements elimination; technical specification improvement, 25664–25667
Applications, hearings, determinations, etc.:
Exelon Generation Co., LLC, 25645–25647
Exelon Generation Co., LLC, et al., 25644–25645

Presidential Documents
EXECUTIVE ORDERS
Government agencies and employees:
Courts, Federal; facilitating the nomination and appointment of judges (EO 13300), 25805–25807

Prisons Bureau
PROPOSED RULES
Freedom of Information Act and Privacy Act; implementation:
Removal of rules, 25545–25546

Reclamation Bureau
NOTICES
Meetings:
California Bay-Delta Public Advisory Committee, 25626–25627
Glen Canyon Dam Adaptive Management Work Group, 25627

Research and Special Programs Administration
NOTICES
Meetings:
Pipeline Safety Advisory Committee; correction, 25682

Rural Business-Cooperative Service
NOTICES
Grants and cooperative agreements; availability, etc.:
Rural Cooperative Development Program, 25563–25566

Rural Utilities Service
NOTICES
Agency information collection activities; proposals, submissions, and approvals, 25566–25567

Saint Lawrence Seaway Development Corporation
PROPOSED RULES
Seaway regulations and rules:
Stern anchors and navigation underway, 25546–25547

Securities and Exchange Commission
RULES
Securities, etc.:
Electronic filing and website posting for Forms 3, 4, and 5; statutory mandate, 25787–25803
NOTICES
Agency information collection activities; proposals, submissions, and approvals, 25667
Self-regulatory organizations; proposed rule changes:
Chicago Stock Exchange, Inc., 25667–25669
Philadelphia Stock Exchange, Inc., 25669–25671

Small Business Administration
NOTICES
Disaster loan areas:
Kansas, 25671
Missouri, 25671–25672

State Department
NOTICES
Agency information collection activities; proposals, submissions, and approvals, 25672
Foreign terrorists and terrorist organizations; designation:
Real IRA, 25672

Toxic Substances and Disease Registry Agency
See Agency for Toxic Substances and Disease Registry

Transportation Department
See Federal Aviation Administration
See Federal Highway Administration
See Federal Railroad Administration
See Federal Transit Administration
See National Highway Traffic Safety Administration
See Research and Special Programs Administration
See Saint Lawrence Seaway Development Corporation
NOTICES
Aviation proceedings:
Agreements filed; weekly receipts, 25672
Certificates of public convenience and necessity and foreign air carrier permits; weekly applications, 25672–25673

Veterans Affairs Department
RULES
Organization, functions, and authority delegations:
Regulation Policy and Management Office, 25503–25504
NOTICES
Meetings:
Professional Certification and Licensure Advisory Committee, 25682
Veterans Affairs Department Facilities Structural Safety Advisory Committee, 25683

Separate Parts In This Issue

Part II
Environmental Protection Agency, 25685–25745

Part III
Agriculture Department, Forest Service, 25747–25785

Part IV
Securities and Exchange Commission, 25787–25803

Part V
Executive Office of the President, Presidential Documents, 25805–25807

Reader Aids
Consult the Reader Aids section at the end of this issue for phone numbers, online resources, finding aids, reminders, and notice of recently enacted public laws.

To subscribe to the Federal Register Table of Contents LISTSERV electronic mailing list, go to http://listserv.access.gpo.gov and select Online mailing list archives, FEDREGTOC-L, Join or leave the list (or change settings); then follow the instructions.

CFR PARTS AFFECTED IN THIS ISSUE

A cumulative list of the parts affected this month can be found in the Reader Aids section at the end of this issue.

3 CFR
Executive Orders:
13300 25807

7 CFR
6 25479
29 25484
56 25484
985 25486

14 CFR
1 25486
11 25486
39 25488
71 (13 documents) 25489, 25491, 25492, 25493, 25494, 25495, 25684
73 25495
Proposed Rules:
39 25543

17 CFR
230 25788
232 25788
239 25788
240 25788
249 25788
250 25788
259 25788
260 25788
269 25788
274 25788

28 CFR
Proposed Rules:
513 25545

33 CFR
110 25496
165 (2 documents) 25498, 25500
Proposed Rules:
401 25546

36 CFR
Proposed Rules:
251 (2 documents) 25748, 25751

38 CFR
2 25503

40 CFR
51 25684
52 25504
71 25507
438 25686
Proposed Rules:
52 25547
71 25548
258 25550

47 CFR
2 25512
73 (2 documents) 25512, 25542
74 25512
80 25512
90 25512
97 25512

Rules and Regulations

Federal Register
Vol. 68, No. 92
Tuesday, May 13, 2003

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

DEPARTMENT OF AGRICULTURE

Office of the Secretary

7 CFR Part 6

Adjustment of Appendices to the Dairy Tariff-Rate Import Quota Licensing Regulation for the 2003 Tariff-Rate Quota Year

AGENCY: Office of the Secretary, USDA.

ACTION: Final rule.

SUMMARY: This document sets forth the revised appendices to the Dairy Tariff-Rate Import Quota Licensing Regulation for the 2003 quota year reflecting the cumulative annual transfers from Appendix 1 to Appendix 2 for certain dairy product import licenses permanently surrendered by licensees or revoked by the Licensing Authority.

EFFECTIVE DATE: May 13, 2003.

FOR FURTHER INFORMATION CONTACT: Michael I. Hankin, Dairy Import Quota Manager, Import Policies and Programs Division, STOP 1021, U.S. Department of Agriculture, 1400 Independence Avenue, SW., Washington, DC 20250–1021 or telephone at (202) 720–9439.

SUPPLEMENTARY INFORMATION: The Foreign Agricultural Service, under a delegation of authority from the Secretary of Agriculture, administers the Dairy Tariff-Rate Import Quota Licensing Regulation codified at 7 CFR 6.20–6.37 that provides for the issuance of licenses to import certain dairy articles under tariff-rate quotas (TRQs) as set forth in the Harmonized Tariff Schedule of the United States. These dairy articles may only be entered into the United States at the low-tier tariff by or for the account of a person or firm to whom such licenses have been issued and only in accordance with the terms and conditions of the regulation.

Licenses are issued on a calendar year basis, and each license authorizes the license holder to import a specified quantity and type of dairy article from a specified country of origin. The Import Policies and Programs Division, Foreign Agricultural Service, U.S. Department of Agriculture, issues these licenses and, in conjunction with the U.S. Customs Service, monitors their use.

The regulation at 7 CFR 6.34(a) states: "Whenever a historical license (Appendix 1) is not issued to an applicant pursuant to the provisions of § 6.23, is permanently surrendered, or is revoked by the Licensing Authority, the amount of such license will be transferred to Appendix 2." Section 6.34(b) provides that the cumulative annual transfers will be published in the **Federal Register**. Accordingly, this document sets forth the revised Appendices for the 2003 tariff-rate quota year.

List of Subjects in 7 CFR Part 6

Agricultural commodities, Cheese, Dairy products, Imports, Reporting and record keeping requirements.

Michael I. Hankin,
Licensing Authority.

■ Accordingly, 7 CFR Part 6 is amended as follows:

PART 6—IMPORT QUOTAS AND FEES

■ 1. The authority citation for Part 6, Subpart—Dairy Tariff-Rate Import Quota Licensing continues to read as follows:

Authority: Additional U.S. Notes 6, 7, 8, 12, 14, 16–23 and 25 to Chapter 4 and General Note 15 of the Harmonized Tariff Schedule of the United States (19 U.S.C. 1202), Pub. L. 97–258, 96 Stat. 1051, as amended (31 U.S.C. 9701), and secs. 103 and 404, Pub. L. 103–465, 108 Stat. 4819 (19 U.S.C. 3513 and 3601).

■ 2. Appendices 1, 2 and 3 to Subpart—Dairy Tariff-Rate Import Quota Licensing are revised to read as follows:

BILLING CODE 3410–10–P

Appendices 1, 2 and 3 to Subpart--Dairy Tariff-Rate Import Quota Licensing

Articles Subject to: Appendix 1, Historical Licenses; Appendix 2, Nonhistorical Licenses; and Appendix 3, Designated Importer Licenses for Quota Year 2003
(quantities in kilograms)

Article by Additional U.S. Note Number and Country of Origin NON-CHEESE ARTICLES	Appendix 1	Appendix 2	Appendix 3	
			Tokyo Round	Uruguay Round
BUTTER (NOTE 6)	**5,465,951**	**1,511,049**		
EU-15	75,918	20,243		
New Zealand	118,082	32,511		
Other Countries	62,639	11,296		
Any Country	5,209,312	1,446,999		
DRIED SKIM MILK (NOTE 7)	**600,076**	**4,660,924**		
Australia	600,076			
Canada		219,565		
Any Country		4,441,359		
DRIED WHOLE MILK (NOTE 8)	**3,175**	**3,318,125**		
New Zealand	3,175			
Any Country		3,318,125		
DRIED BUTTERMILK/WHEY (NOTE 12)	**63,820**	**161,161**		
Canada		161,161		
New Zealand	63,820			
BUTTER SUBSTITUTES CONTAINING OVER 45 PERCENT OF BUTTERFAT AND/OR BUTTER OIL (NOTE 14)		**6,080,500**		
Any Country		6,080,500		
TOTAL: NON-CHEESE ARTICLES	***6,133,022***	***15,731,759***		

Article by Additional U.S. Note Number and Country of Origin CHEESE ARTICLES	Appendix 1	Appendix 2	Appendix 3	
			Tokyo Round	Uruguay Round
CHEESE AND SUBSTITUTES FOR CHEESE (EXCEPT: SOFT RIPENED COW'S MILK CHEESE; CHEESE NOT CONTAINING COW'S MILK; CHEESE (EXCEPT COTTAGE CHEESE) CONTAINING 0.5 PERCENT OR LESS BY WEIGHT OF BUTTERFAT; AND, ARTICLES WITHIN THE SCOPE OF OTHER IMPORT QUOTAS PROVIDED FOR IN THIS SUBCHAPTER) (NOTE 16)	**23,548,526**	**7,921,205**	**9,661,128**	**7,496,000**
Argentina	7,690		92,310	
Australia	535,628	5,542	758,830	1,750,000
Canada	1,031,946	109,054		
Costa Rica				1,550,000
Czech Republic				200,000
EU-15	15,386,005	6,945,427	1,132,568	2,346,000
Of which Portugal is:	127,536	1,773	223,691	
Israel	79,696		593,304	
Iceland	294,000		29,000	
New Zealand	4,461,713	353,759	6,506,528	
Norway	124,982	25,018		
Poland	917,497	18,727		300,000
Slovak Republic				600,000
Switzerland	597,513	73,899	548,588	500,000
Uruguay				250,000
Other Countries	111,856	89,779		
Any Country		300,000		
BLUE-MOLD CHEESE (EXCEPT STILTON PRODUCED IN THE UNITED KINGDOM) AND CHEESE AND SUBSTITUTES FOR CHEESE CONTAINING, OR PROCESSED FROM, BLUE-MOLD CHEESE (NOTE 17)	**2,290,547**	**190,454**		**430,000**
Argentina	2,000			
EU-15	2,288,546	190,454		300,000
Chile				80,000
Czech Republic				50,000
Other Countries	1			

Article by Additional U.S. Note Number and Country of Origin CHEESE ARTICLES	Appendix 1	Appendix 2	Appendix 3	
			Tokyo Round	Uruguay Round
CHEDDAR CHEESE, AND CHEESE AND SUBSTITUTES FOR CHEESE CONTAINING, OR PROCESSED FROM, CHEDDAR CHEESE (NOTE 18)	**3,659,803**	**624,053**	**519,033**	**7,620,000**
Australia	937,721	46,778	215,501	1,250,000
Chile				220,000
Czech Republic				50,000
EU-15	57,168	205,832		1,000,000
New Zealand	2,539,040	257,428	303,532	5,100,000
Other Countries	125,874	14,015		
Any Country		100,000		
AMERICAN-TYPE CHEESE, INCLUDING COLBY, WASHED CURD AND GRANULAR CHEESE (BUT NOT INCLUDING CHEDDAR) AND CHEESE AND SUBSTITUTES FOR CHEESE CONTAINING OR PROCESSED FROM SUCH AMERICAN-TYPE CHEESE (NOTE 19)	**2,842,435**	**323,118**	**357,003**	
Australia	830,124	50,874	119,002	
EU-15	186,222	167,778		
New Zealand	1,662,224	99,775	238,001	
Other Countries	163,865	4,691		
EDAM AND GOUDA CHEESE, AND CHEESE AND SUBSTITUTES FOR CHEESE CONTAINING, OR PROCESSED FROM, EDAM AND GOUDA CHEESE (NOTE 20)	**5,276,970**	**329,432**		**1,210,000**
Argentina	119,003	5,997		110,000
Czech Republic				100,000
EU-15	5,018,248	270,752		1,000,000
Norway	114,318	52,682		
Other Countries	25,401	1		
ITALIAN-TYPE CHEESES, MADE FROM COW'S MILK, (ROMANO MADE FROM COW'S MILK, REGGIANO, PARMESAN, PROVOLONE, PROVOLETTI, SBRINZ, AND GOYA-NOT IN ORIGINAL LOAVES) AND CHEESE AND SUBSTITUTES FOR CHEESE CONTAINING, OR PROCESSED FROM, SUCH ITALIAN-TYPE CHEESES, WHETHER OR NOT IN ORIGINAL LOAVES (NOTE 21)	**6,502,444**	**1,018,103**	**795,517**	**5,165,000**
Argentina	3,956,114	169,369	367,517	1,890,000
EU-15	2,535,930	846,070		700,000
Poland				1,325,000
Romania				500,000
Uruguay			428,000	750,000
Other Countries	10,400	2,664		

Article by Additional U.S. Note Number and Country of Origin CHEESE ARTICLES	Appendix 1	Appendix 2	Appendix 3	
			Tokyo Round	Uruguay Round
SWISS OR EMMENTHALER CHEESE OTHER THAN WITH EYE FORMATION, GRUYERE-PROCESS CHEESE AND CHEESE AND SUBSTITUTES FOR CHEESE CONTAINING, OR PROCESSED FROM, SUCH CHEESES (NOTE 22)	**5,735,723**	**915,591**	**823,519**	**380,000**
EU-15	4,336,501	815,493	393,006	380,000
Switzerland	1,324,462	95,025	430,513	
Other Countries	74,760	5,073		
CHEESE AND SUBSTITUTES FOR CHEESE, CONTAINING 0.5 PERCENT OR LESS BY WEIGHT OF BUTTERFAT (EXCEPT ARTICLES WITHIN THE SCOPE OF OTHER TARIFF-RATE QUOTAS PROVIDED FOR IN THIS SUBCHAPTER), AND MARGARINE CHEESE (NOTE 23)	**3,825,265**	**599,643**	**1,050,000**	
EU-15	3,662,021	587,979		
Israel			50,000	
New Zealand			1,000,000	
Poland	163,243	11,664		
Other Countries	1			
SWISS OR EMMENTHALER CHEESE WITH EYE FORMATION (NOTE 25)	**18,228,931**	**4,068,400**	**9,557,945**	**2,620,000**
Argentina		9,115	70,885	
Australia	209,698		290,302	
Canada			70,000	
Czech Republic				400,000
Hungary				800,000
EU-15	13,236,214	3,240,614	4,003,172	1,220,000
Iceland	149,999		150,001	
Israel	27,000			
Norway	3,206,405	448,905	3,227,690	
Switzerland	1,314,340	369,765	1,745,895	200,000
Other Countries	85,275	1		
TOTAL: CHEESE ARTICLES	***71,910,644***	***15,989,999***	***22,764,145***	***24,921,000***

[FR Doc. 03–11888 Filed 5–12–03; 8:45 am]
BILLING CODE 3410–10–C

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 29

[Doc. No. TB–02–14]

RIN 0581–AC11

Flue-Cured Tobacco Advisory Committee; Amendment to Regulations

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: The U.S. Department of Agriculture (USDA) is adopting, as a final rule, without change, an interim final rule that amended the regulations for the Flue-Cured Tobacco Advisory Committee (FCTAC) by removing the sections which specify composition of the committee. The interim final rule allowed greater flexibility in responding to changing marketing conditions.

EFFECTIVE DATE: June 12, 2003.

FOR FURTHER INFORMATION CONTACT: John P. Duncan III, Deputy Administrator, Tobacco Programs, AMS, USDA, STOP 0280, 1400 Independence Avenue, SW., Washington, DC 20250–0280; telephone number (202) 205–0567.

SUPPLEMENTARY INFORMATION: Since 1935, upon enactment of the Tobacco Inspection Act, the USDA has provided mandatory inspection services at designated tobacco auction markets. In 2002, based on results of referenda conducted among producers eligible for price support, regulations were amended to provide mandatory inspection at places other than designated tobacco auction markets. The USDA has always sought the input of the industry in implementing legislative authority concerning marketing due to the large geographic areas involved and the different procedure in individual types of tobacco such as size and weight of packages used to display the product, the number of designated markets, the number of sets of buyers present, the number of sales days, and other matters that directly impact on the operation of the auction markets and, therefore, the Federal presence necessary to provide the level of service desired by producers and industry.

In 1974, at the request of the industry, the USDA established the Flue-Cured Tobacco Advisory Committee (FCTAC) to provide a mechanism for consultation with flue-cured producers, warehouse representatives, and buying interests on the problems peculiar to that type of tobacco with particular emphasis on the grower designation program. The composition of the committee was specified in regulations although it was not necessary and is not customary. The FCTAC recommended that the regulations referencing its composition and representation be removed. Removal of these regulations will not alter the FCTAC's purpose nor direction for an orderly marketing of tobacco but will allow the USDA more flexibility in making structural changes in its composition as a result of new marketing changes. Historically, almost all flue-cured tobacco was sold at auction. In recent years, most flue-cured tobacco has been sold under contract.

The USDA published in the **Federal Register** on October 1, 2002 (67 FR 61467), an interim final rule amending the regulations for the FCTAC by removing the sections which specify composition of the committee. In that action, paragraphs (b), (c), (d), and (e), of § 29.9403, were removed. The USDA requested comments on the interim final rule and the comment period expired on October 31, 2002. No comments were received.

Executive Order 12866 and 12988

This rule has been determined to be not significant for purposes of Executive Order 12866, and, therefore, has not been reviewed by the Office of Management and Budget.

This rule has been reviewed under Executive order 12988, Civil Justice Reform. This action is not intended to have retroactive effect. The rule will not exempt any State of local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule. There are no administrative procedures which must be exhausted prior to any judicial challenge to the provisions of this rule.

Regulatory Flexibility Act

In conformance with the provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), full consideration has been given to the potential economic impact upon small business. All tobacco warehouses and producers fall within the confines of "small business" which are defined by the Small Business Administration (13 CFR 121.201) as those having annual receipts of less than $750,000, and small agricultural service firms are defined as those whose annual receipts are less than $3,500,000. There are approximately 190 tobacco warehouses and approximately 450,000 tobacco producers and most warehouses and producers may be classified as small entities. The AMS has determined that this action will not have a significant economic impact on a substantial number of small entities. This final rule will not substantially affect the normal movement of the commodity into the marketplace. Compliance with this final rule will not impose substantial direct economic cost, recordkeeping, or personnel workload changes on small entities, and will not alter the market share of competitive positions of small entities relative to the large entities and will in no way affect normal competition in the marketplace. This rule merely removes section of the regulations that specify composition of the FCTAC.

List of Subjects in 7 CFR Part 29

Administrative practice and procedure, Advisory committees, Government publications, Imports, Pesticides and pests, Reporting and recordkeeping procedures, Tobacco.

■ For the reasons set forth in the preamble, 7 CFR part 29 is amended as follows:

PART 29—TOBACCO INSPECTION

■ Accordingly, the interim final rule amending 7 CFR part 29 which was published at 67 FR 61467 on October 1, 2002, is adopted as a final rule without change.

Dated: May 7, 2003.

Kenneth C. Clayton,

Acting Administrator, Agricultural Marketing Service.

[FR Doc. 03–11890 Filed 5–12–03; 8:45 am]
BILLING CODE 3410–02–P

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 56

[Docket No. PY–02–007]

RIN 0581–AC24

Requirements for the USDA "Produced From" Grademark for Shell Eggs

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: The Agricultural Marketing Service (AMS) is clarifying the requirements for using the "Produced From" grademark for shell eggs. Use of this grademark began in April 1998. Since then, questions have arisen regarding the regulatory language. This amendment clarifies the language of the "Produced From" grademark requirements by removing the reference to continuous supervision. This action is to ensure the integrity of the USDA quality consumer grademark.

EFFECTIVE DATE: June 12, 2003.

FOR FURTHER INFORMATION CONTACT: Rex A. Barnes, Chief, Grading Branch, (202) 720–3271.

SUPPLEMENTARY INFORMATION:

Background

AMS administers a voluntary grading program for shell eggs under the Agricultural Marketing Act of 1946, as amended (7 U.S.C. 1621 *et seq.*). Any interested person, commercial firm, or government agency that applies for service must comply with the terms and conditions of the regulations and must pay for the services rendered. AMS graders monitor processing operations and verify the grade and size of eggs packed into packages bearing the USDA grademark.

Current regulations allow for the use of several different grademarks to identify consumer-pack USDA graded shell eggs or products prepared from them. The regulations also include the eligibility requirements for eggs to be identified with an official grademark. One requirement is that only eggs produced under the continuous supervision of a grader may be identified as U.S. Consumer Grade AA or A.

A "Produced From" grademark was added to the regulations, effective April 20, 1998 (63 FR 13329, March 19, 1998). As currently written, the regulations state that "the "Produced From" grademark "may be used to identify products for which there are no official U.S. grade standards (*e.g.*, pasteurized shell eggs), provided that these products are approved by the Agency and are prepared from U.S. Consumer Grade AA or A shell eggs under the continuous supervision of a grader."

The intent of the regulations was to ensure that the eggs used to produce the products were U.S. Consumer Grade AA or A. However, the regulations could also be interpreted to mean that the products produced from the U.S. Consumer Grade AA or A shell eggs must be produced under continuous supervision. However, this was not the Department's intent nor is it a requirement.

The Agency determined that the reference to both U.S. Consumer AA and A and to continuous supervision was redundant and confusing. Therefore, to clarify the regulatory language, the reference to continuous supervision is removed.

Proposed Rule and Comments

The proposed rule was published in the **Federal Register** January 9, 2003 (68 FR 1169). The comment period ended March 10.

Two comments were received, each from a group of students taking the same course in an accelerated university business curriculum. Both groups discussed research they conducted among vendors, consumers, and local agricultural interests about shell egg grading. Both groups supported the proposed amendment.

Executive Order 12866

This final rule has been determined to be not significant for purposes of Executive Order 12866 and, therefore, has not been reviewed by the Office of Management and Budget (OMB).

Regulatory Flexibility

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA)(5 U.S.C. 601 *et seq.*), the AMS has considered the economic impact of this rule on small entities and has determined that its provisions would not have a significant economic impact on a substantial number of small entities.

The purpose of the RFA is to fit regulatory actions to the scale of businesses subject to such actions in order that small businesses will not be unduly or disproportionately burdened. The Small Business Administration defines small entities that produce and process chicken eggs as those whose annual receipts are less than $9,000,000 (13 CFR 121.201). Approximately 625,000 egg laying hens are needed to produce enough eggs to gross $9,000,000.

Currently, the Agricultural Marketing Act of 1946, as amended (7 U.S.C. 1621 *et seq.*) authorizes a voluntary grading program for shell eggs. Shell egg processors that apply for service must pay for the services rendered. These user fees are proportional to the volume of shell eggs graded, so that costs are shared by all users. Plants in which these grading services are performed are called official plants. Shell egg processors who do not use USDA's grading service may not use the USDA grade shield. There are about 625 shell egg processors registered with the Department that have 3,000 or more laying hens. Of these, 175 are official plants that use USDA's grading service and would be subject to this proposed rule. Of these 175 official plants, 57 meet the small business definition.

This rule will benefit large and small processors in the industry. It is intended to clarify a regulatory provision which has caused some confusion and involves no additional costs.

Executive Order 12988

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. It is not intended to have retroactive effect. This rule will not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule. There are no administrative procedures that must be exhausted prior to any judicial challenge to the provisions of this rule.

Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), OMB has approved the information collection and recordkeeping requirements included in this rule, and there are no new requirements. The assigned OMB control number is 0581–0128.

List of Subjects in 7 CFR Part 56

Eggs and egg products, Food grades and standards, Food labeling, Reporting and recordkeeping requirements.

■ For reasons set forth in the preamble, 7 CFR part 56 is amended as follows:

PART 56—VOLUNTARY GRADING OF SHELL EGGS

■ 1. The authority citation for part 56 continues to read as follows:

Authority: 7 U.S.C. 1621–1627.

■ 2. In § 56.36, paragraph (a)(3) is amended by adding a period after the word "eggs" the second time it appears in the paragraph and by removing the words "under the continuous supervision of a grader."

Dated: May 7, 2003.

Kenneth C. Clayton,

Acting Administrator, Agricultural Marketing Service.

[FR Doc. 03–11889 Filed 5–12–03; 8:45 am]
BILLING CODE 3410–02–P

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 985

[Docket No. FV03–985–3 C]

Marketing Order Regulating the Handling of Spearmint Oil Produced in the Far West; Revision of Administrative Rules and Regulations Governing Issuance of Additional Allotment Base to New and Existing Producers; Correction

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Correcting amendment.

SUMMARY: The Agricultural Marketing Service (AMS) is adding provisions to the Code of Federal Regulations governing the issuance of additional allotment base to existing spearmint oil producers under the marketing order regulating the handling of spearmint oil grown in the Far West. These provisions were inadvertently removed in May 2000 when additional allotment base provisions for new producers were modified.

EFFECTIVE DATE: May 14, 2003.

FOR FURTHER INFORMATION CONTACT: Robert J. Curry, Northwest Marketing Field Office, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1220 SW Third Avenue, suite 385, Portland, Oregon 97204; telephone: (503) 326–2724, Fax: (503) 326–7440; or George Kelhart, Technical Advisor, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence Avenue SW., STOP 0237, Washington, DC 20090–0237; telephone: (202) 720–2491, Fax: (202) 720–8938.

SUPPLEMENTARY INFORMATION:

Background

AMS discovered that an error exists in § 985.153 of the codified regulations. A final rule published in the **Federal Register** on Thursday, May 11, 2000 (65 FR 30341), was intended to revise provisions in § 985.153(c)(1) governing issuance of additional allotment base to new spearmint oil producers in the Far West and to leave the provisions in § 985.153(c)(2) on additional allotment base for existing producers unchanged. However, the editing instructions specified in the final rule resulted in the provisions for existing producers being removed from the codified regulations.

Need for Correction

The codified provisions in paragraph (c) of § 985.153 do not include additional allotment base procedures for existing producers. This correction document adds such provisions. The provisions added are the same as those that were in paragraph (c)(2) prior to the issuance of the final rule in May 2000.

List of Subjects in 7 CFR Part 985

Marketing agreements, Oils and fats, Reporting and recordkeeping requirements, Spearmint oil.

■ Accordingly, 7 CFR Part 985 is corrected by making the following amendment:

PART 985—MARKETING ORDER REGULATING THE HANDLING OF SPEARMINT OIL PRODUCED IN THE FAR WEST

■ 1. The authority citation for 7 CFR Part 985 continues to read as follows:

Authority: 7 U.S.C. 601–674.

§ 985.153 [Corrected]

■ 2. In § 985.153, paragraph (c)(2) is added to read as follows:

§ 985.153 Issuance of additional allotment base to new and existing producers.

* * * * *

(c) * * *

(2) *Existing producers.* (i) The Committee shall review all requests from existing producers for additional allotment base.

(ii) Each existing producer of a class of spearmint oil who requests additional allotment base and who has the ability to produce additional quantities of that class of spearmint oil, shall be eligible to receive a share of the additional allotment base for that class of oil. Additional allotment base to be issued by the Committee for a class of oil shall be distributed equally among the eligible producers for that class of oil. The Committee shall immediately notify each producer who is to receive additional allotment base by issuing that producer an allotment base in the appropriate amount.

Dated: May 7, 2003.

A.J. Yates,

Administrator, Agricultural Marketing Service.

[FR Doc. 03–11891 Filed 5–12–03; 8:45 am]

BILLING CODE 3410–02–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Parts 1 and 11

[Docket No. FAA–2003–15134, Amdt. Nos. 1–51 and 11–48] [Docket No. DOT 20860]

Revision of Public Aircraft Definition

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule; technical amendment.

SUMMARY: The Federal Aviation Administration is amending its regulations to conform them to the statutory definition of "public aircraft," as revised by the Wendell H. Ford Aviation Investment and Reform Act for the 21st Century. This amendment is necessary to make the definition and requirements in the regulations consistent with those in the statute. This amendment also restores to the regulation a description of the statutory requirements for units of government to obtain exemptions for their civil aircraft.

EFFECTIVE DATE: May 13, 2003.

FOR FURTHER INFORMATION CONTACT: David Catey, (AFS–220), Flight Standards Service; Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591, (202) 267–8094.

SUPPLEMENTARY INFORMATION:

Availability of Rulemaking Documents

You can get an electronic copy using the Internet by:

(1) Searching the Department of Transportation's electronic Docket Management System (DMS) Web page (*http://dms.dot.gov/search*);

(2) Visiting the Office of Rulemaking's Web page at *http://www.faa.gov/avr/arm/index.cfm; or*

(3) Accessing the Government Printing Office's Web page at *http://www.access.gpo.gov/su_docs/aces/aces140.html.*

You can also get a copy by submitting a request to the Federal Aviation Administration, Office of Rulemaking, ARM–1, 800 Independence Avenue, SW., Washington, DC 20591, or by calling (202) 267–9680. Make sure to identify the amendment number or docket number of this rulemaking.

Anyone is able to search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act statement in the **Federal Register** published on April 11, 2000 (Volume 65, Number 70; Pages 19477–78) or you may visit *http://dms.dot.gov.*

Background

On April 5, 2000, the Wendell H. Ford Aviation Investment and Reform Act for the 21st Century (AIR–21) was signed into law as Public Law 106–181. Among other provisions, the law revised the statutory definition of the term "public aircraft." This technical amendment revises the definition of "public aircraft" in title 14 of the Code of Federal Regulations to conform to the statutory definition in Public Law 106–181.

The distinction between civil and public aircraft is that public aircraft are excepted from many FAA regulations. The changes enacted in AIR–21 did not substantively change the definition of public aircraft. Rather, Congress sought to clarify an overly complex statutory definition: "[t]he purpose and intent of Congress in adding section 702 to H.R. 1000 [AIR–21] is solely to replace old convoluted language (laden with multiple negatives) with positive language that states existing law in terms that are readily understood by both the nation's aviation community and the general public. Nothing in section 702 should be interpreted as a change in current public policy relating to public aircraft." (H.R. Rep. No. 106–167, pt. 1, at 91 (1999)). This technical amendment involves no exercise of agency discretion, as the statutory definition is already the controlling legal authority.

Disposition of Comments to Previous Revision

Prior to the enactment of AIR–21, Congress revised the definition of "public aircraft" in the Independent Safety Board Act Amendments of 1994 (Pub. L. 103–411, enacted on October 25, 1994). Public Law 103–411 substantively changed the definition of public aircraft, and further, it gave the Administrator of the FAA the authority to grant exemptions to government entities whose operations lost public aircraft status as a result of Public Law 103–411 (Pub. L. 103–411, section 3(b)).

In 1995, the FAA issued a final rule amending the definition of public aircraft in 14 CFR 1.1 (60 FR 5074, January 25, 1995). The FAA also requested comments from the public on this action. The FAA received 14 comments on the rule, with the majority expressing concern over exemptions rather than the definition of "public aircraft."

The National Association of State Aviation Officials and a county law enforcement agency commented that new requirements on "compensation" and "commercial purpose" would severely impair law enforcement agencies' ability to cooperate and respond to disasters properly. These comments are no longer applicable because of the statutory revision in 2000.

The Professional Aviation Maintenance Association supported the rule without further comment. All other commenters were air carriers that supported the rule but opposed allowing an excessive number of exemptions under the then-new statutory authority.

Revised Definition of Public Aircraft

This technical amendment changes the definition of "public aircraft" to adopt the statutory definition in Public Law 106–181 and as codified in 49 U.S.C. 40102. The amended definition also contains the qualifications for public aircraft status from Public Law 106–181 and as codified in 49 U.S.C. 40125. This technical amendment also restores to 14 CFR part 11 the language of Public Law 103–411 concerning statutory exemptions for government entities whose aircraft lost public aircraft status as a result of that revision. This language was omitted in the revision of part 11 in 2000.

No Notice—Immediate Adoption of Change

The FAA has not conducted notice and comment procedures for this rule. Notice and comment are not required when it would be "impracticable, unnecessary, or contrary to the public interest." *See* 5 U.S.C. 553(b). This technical amendment will make the regulations consistent with the statute and will have no substantive legal effect. Therefore, the FAA finds that notice and comment are unnecessary. This amendment will take effect immediately, as it is not a substantive amendment that requires a 30-day period between publication in the **Federal Register** and the effective date. *See* 5 U.S.C. 553(d).

Rulemaking Analyses

This regulation imposes no additional burden or requirement on the regulated industry, any person, or organization. Therefore, we have determined the action is not a significant rule under Executive Order 12866 or under Department of Transportation Regulatory Policy and Procedures. Also, because this regulation is editorial in nature, the FAA expects minimal impact and finds that a full regulatory evaluation is not required since the regulation will simply conform to the statute. In addition, the FAA certifies that the rule will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects

14 CFR Part 1

Air transportation.

14 CFR Part 11

Administrative practice and procedure, Reporting and recordkeeping requirements.

■ In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR parts 1 and 11 as follows:

PART 1—DEFINITIONS AND ABBREVIATIONS

■ 1. The authority citation for part 1 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

■ 1. In § 1.1 revise the definition of "public aircraft" to read as follows:

§ 1.1 General definitions.

* * * * *

Public aircraft means any of the following aircraft when not being used for a commercial purpose or to carry an individual other than a crewmember or qualified non-crewmenber:

(1) An aircraft used only for the United States Government; an aircraft owned by the Government and operated by any person for purposes related to crew training, equipment development, or demonstration; an aircraft owned and operated by the government of a State, the District of Columbia, or a territory or possession of the United States or a political subdivision of one of these governments; or an aircraft exclusively leased for at least 90 continuous days by the government of a State, the District of Columbia, or a territory or possession of the United States or a political subdivision of one of these governments.

(i) For the sole purpose of determining public aircraft status, *commercial purposes* means the transportation of persons or property for compensation or hire, but does not include the operation of an aircraft by the armed forces for reimbursement when that reimbursement is required by any Federal statute, regulation, or directive, in effect on November 1, 1999, or by one government on behalf of another government under a cost reimbursement agreement if the

government on whose behalf the operation is conducted certifies to the Administrator of the Federal Aviation Administration that the operation is necessary to respond to a significant and imminent threat to life or property (including natural resources) and that no service by a private operator is reasonably available to meet the threat.

(ii) For the sole purpose of determining public aircraft status, *governmental function* means an activity undertaken by a government, such as national defense, intelligence missions, firefighting, search and rescue, law enforcement (including transport of prisoners, detainees, and illegal aliens), aeronautical research, or biological or geological resource management.

(iii) For the sole purpose of determining public aircraft status, *qualified non-crewmember* means an individual, other than a member of the crew, aboard an aircraft operated by the armed forces or an intelligence agency of the United States Government, or whose presence is required to perform, or is associated with the performance of, a governmental function.

(2) An aircraft owned or operated by the armed forces or chartered to provide transportation to the armed forces if—

(i) The aircraft is operated in accordance with title 10 of the United States Code;

(ii) The aircraft is operated in the performance of a governmental function under title 14, 31, 32, or 50 of the United States Code and the aircraft is not used for commercial purposes; or

(iii) The aircraft is chartered to provide transportation to the armed forces and the Secretary of Defense (or the Secretary of the department in which the Coast Guard is operating) designates the operation of the aircraft as being required in the national interest.

(3) An aircraft owned or operated by the National Guard of a State, the District of Columbia, or any territory or possession of the United States, and that meets the criteria of paragraph (2) of this definition, qualifies as a public aircraft only to the extent that it is operated under the direct control of the Department of Defense.

* * * * *

PART 11—GENERAL RULEMAKING PROCEDURES

■ 3. The authority citation for part 11 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40101, 40103, 40105, 40109, 40113, 44110, 44502, 44701–44702, 44711, and 46102.

■ 4. Add new § 11.103 to read as follows:

§ 11.103 What exemption relief may be available to federal, state, and local governments when operating aircraft that are not public aircraft?

The Federal Aviation Administration may grant a federal, state, or local government an exemption from part A of subtitle VII of title 49 United States Code, and any regulation issued under that authority that is applicable to an aircraft as a result of the Independent Safety Board Act Amendments of 1994, Public Law 103–411, if—

(a) The Administrator finds that granting the exemption is necessary to prevent an undue economic burden on the unit of government; and

(b) The Administrator certifies that the aviation safety program of the unit of government is effective and appropriate to ensure safe operations of the type of aircraft operated by the unit of government.

Issued in Washington, DC on May 5, 2003.

Donald P. Byrne,

Assistant Chief Counsel, Regulations Division.

[FR Doc. 03–11922 Filed 5–12–03; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2002–NE–24–AD; Amendment 39–13144; AD 2003–10–01]

RIN 2120–AA64

Airworthiness Directives; General Electric Company CF6–6 Series Turbofan Engines

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), that is applicable to General Electric (GE) CF6–6 series turbofan engines. This amendment requires a reduction of the cyclic life limit for certain high pressure turbine rotor (HPTR) rear shafts, and requires removing certain HPTR rear shafts from service before exceeding the new, lower cyclic life limit. In addition, this amendment requires removing from service certain HPTR rear shafts that currently exceed, or will exceed, the new, lower cyclic life limit according to the compliance schedule described in this AD. This amendment is prompted by an updated low-cycle-fatigue (LCF) analysis performed by the manufacturer that resulted in a lower cyclic life limit for certain HPTR rear shaft part numbers (PNs) installed in CF6–6 engines. The actions specified by this AD are intended to prevent cracks in HPTR rear shafts that could result in uncontained engine failure and damage to the airplane.

DATES: Effective June 17, 2003.

ADDRESSES: Information regarding this action may be examined, by appointment, at the Federal Aviation Administration (FAA), New England Region, Office of the Regional Counsel, 12 New England Executive Park, Burlington, MA.

FOR FURTHER INFORMATION CONTACT: Karen Curtis, Aerospace Engineer, Engine Certification Office, FAA, Engine and Propeller Directorate, 12 New England Executive Park, Burlington, MA 01803–5299; telephone: 781–238–7192; fax 781–238–7199.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an AD that is applicable to GE CF6–6 series turbofan engines was published in the **Federal Register** on January 8, 2003 (68 FR 1016). That action proposed to require a reduction of the cyclic life limit for certain HPTR rear shafts, and to require removing certain HPTR rear shafts from service before exceeding the new, lower cyclic life limit. In addition, that action proposed to require removing from service certain HPTR rear shafts that currently exceed, or will exceed, the new, lower cyclic life limit according to the compliance schedule described in that proposal.

Comments

Interested persons have been afforded an opportunity to participate in the making of this amendment. No comments were received on the proposal or the FAA's determination of the cost to the public. The FAA has determined that air safety and the public interest require the adoption of the rule as proposed.

Economic Analysis

There are approximately 55 GE CF6–6 series turbofan engines of the affected design in the domestic fleet that would be affected by this AD. There are no foreign registered engines. There are no labor or parts costs associated with the implementation of this AD. Based on these figures, the total cost of the AD to U.S. operators is estimated to be $41,690 per engine, which is the cost of new rear shafts.

Regulatory Analysis

This final rule does not have federalism implications, as defined in Executive Order 13132, because it would not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Accordingly, the FAA has not consulted with state authorities prior to publication of this final rule.

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

Adoption of the Amendment

■ Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

■ 1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

■ 2. Section 39.13 is amended by adding a new airworthiness directive to read as follows:

2003–10–01 General Electric Company: Amendment 39–13144. Docket No. 2002–NE–24–AD.

Applicability: This airworthiness directive (AD) is applicable to General Electric Company CF6–6 series turbofan engines. These engines are installed on, but not limited to McDonnell Douglas DC–10 series airplanes.

Note 1: This AD applies to each engine identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For engines that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (e) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Compliance with this AD is required as indicated, unless already done.

To prevent cracks in high pressure turbine rotor (HPTR) rear shafts, which could result in uncontained engine failure and damage to the airplane, do the following:

(a) Remove from service HPTR rear shafts, part numbers (P/Ns) 9137M13G01/G02/G03, 9138M22G01/G02/G09/G10, 9138M25G02, and 9687M22G04/G07/G10 in accordance with Table 1 as follows:

TABLE 1.—HPTR REAR SHAFT REMOVAL SCHEDULE

If the rear shaft cycles-since-new (CSN) on the effective date of this AD are:	Then remove the rear shaft
(1) Fewer than 5,000 CSN	Before exceeding 8,950 CSN.
(2) 5,000 CSN or more, but fewer than 8,950 CSN	Within 3,950 additional cycles-in-service (CIS) from the effective date of this AD or before 11,550 CSN, whichever occurs earlier.
(3) 8,950 CSN or more	At next HPTR rear shaft piece part exposure, or within 2,600 additional CIS, whichever occurs earlier.

(b) After the effective date of this AD, do not install any HPTR rear shaft, P/Ns 9137M13G01/G02/G03, 9138M22G01/G02/G09/G10, 9138M25G02, or 9687M22G04/G07/G10, that has 8,950 or more CSN into an engine.

(c) Except as provided in paragraph (a) of this AD, this action establishes a new, cyclic life limit of 8,950 CSN for HPTR rear shaft P/Ns 9137M13G01/G02/G03, 9138M22G01/G02/G09/G10, 9138M25G02, and 9687M22G04/G07/G10 which is published in Chapter 05–11–03 of CF6–6 Engine Shop Manual, GEK 9266.

Definition

(d) For the purpose of this AD, HPTR rear shaft piece-part exposure is defined as complete disassembly of the rear shaft from the HPTR structure using the manufacturer's engine manual.

Alternative Methods of Compliance

(e) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Engine Certification Office (ECO). Operators must submit their request through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, ECO.

Note 2: Information concerning the existence of approved alternative methods of compliance with this airworthiness directive, if any, may be obtained from the ECO.

Special Flight Permits

(f) Special flight permits may be issued in accordance with §§ 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be done.

Effective Date

(g) This amendment becomes effective on June 17, 2003.

Issued in Burlington, Massachusetts, on May 5, 2003.

Jay J. Pardee,

Manager, Engine and Propeller Directorate, Aircraft Certification Service.

[FR Doc. 03–11864 Filed 5–12–03; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2002–13514; Airspace Docket No. 02–AWA–4]

RIN 2120–AA66

Establishment of Class C Airspace and Revocation of Class D Airspace, Fayetteville (Springdale), Northwest Arkansas Regional Airport; AR

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action establishes a Class C airspace area and revokes the existing Class D airspace area at the Northwest Arkansas Regional Airport (XNA), Fayetteville (Springdale), AR. The FAA is taking this action due to the increase in aircraft operations at XNA and the potential for a midair collision between aircraft arriving and departing XNA and other aircraft operating close to the

existing Class D airspace area. The establishment of this Class C airspace area requires pilots to establish and maintain two-way radio communications with air traffic control (ATC) when operating in the Class C airspace area, and operate with an altitude encoding transponder while in and above the Class C airspace area. This action promotes the efficient use of airspace and reduces the risk of midair collision in the northwest Arkansas terminal area.

EFFECTIVE DATE: 0901 UTC, July 10, 2003.

FOR FURTHER INFORMATION CONTACT: Steve Rohring, Airspace and Rules Division, ATA–400, Office of Air Traffic Airspace Management, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone: (202) 267–8783.

SUPPLEMENTARY INFORMATION:

Background

On January 27, 2003, the FAA proposed (68 FR 3837) to establish a Class C airspace area and revoke the existing Class D airspace area at XNA. The FAA proposed this action due to an increase in aircraft operations at XNA and a study indicating an increased potential for a midair collision in the XNA terminal area. With the current Class D airspace area, aircraft operating in the Northwest Arkansas terminal area may fly as close as 4.4 nautical miles from XNA without communicating with ATC. These aircraft are frequently operating at altitudes that may conflict with aircraft arriving or departing XNA. Establishing a Class C airspace area will reduce the potential for midair collisions and increase the level of safety in the Northwest Arkansas terminal area by requiring aircraft to establish and maintain 2-way radio communication with ATC when operating in the proposed Class C airspace area, and to operate with an altitude encoding transponder when in and above the proposed area. The study also identified the need for improved communications in the XNA terminal area. In response to that need, the FAA has taken action to install a remote transmitter and receiver (RTR) that will enable pilots to contact ATC prior to entering terminal airspace.

Discussion of Comment

In response to the notice of proposed rulemaking, the FAA received one comment. The Aircraft Owner's and Pilots Association did not oppose the proposed establishment of a Class C airspace area provided an RTR is installed to improve the ability of pilots to communicate with ATC prior to entering the Class C airspace area. The FAA agrees that an RTR is needed and as stated above, has taken action to acquire and install an RTR that is scheduled to be operational on or before the effective date of this airspace action (barring any reduction of funding).

The Rule

This amendment to part 71 of the Federal Aviation Regulations (14 CFR part 71) establishes a Class C airspace area and revokes the existing Class D airspace area at XNA. The FAA is taking this action due to an increase in aircraft operations and an increased potential for a midair collision in the Northwest Arkansas terminal area. Establishing this Class C airspace area will require pilots to maintain two-way radio communications with ATC when operating in the Class C airspace area and to operate with an altitude encoding transponder while in or above the Class C airspace. Additionally, this Class C airspace area will promote the safe and efficient use of airspace, and reduce the risk of a midair collision in the Northwest Arkansas terminal area.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore, this proposed action: (1) Is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this proposed rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

The coordinates for this airspace docket are based on North American Datum 83. Class C airspace designations are published in paragraph 4000 of FAA Order 7400.9K, dated August 30, 2002, and effective September 16, 2002, which is incorporated by reference in 14 CFR 71.1. The Class C airspace designation listed in this document would be published subsequently in the order.

Regulatory Evaluation Summary

Changes to Federal regulations must undergo several economic analyses. First, Executive Order 12866 directs that each Federal agency shall propose or adopt a regulation only upon a reasoned determination that the benefits of the intended regulation justify its costs. Second, the Regulatory Flexibility Act of 1980 requires agencies to analyze the economic effect of regulatory changes on small entities. Third, the Office of Management and Budget directs agencies to assess the effect of regulatory changes on international trade. In conducting these analyses, the FAA has determined that this proposed rule is not "a significant regulatory action" as defined in the Executive Order and the Department of Transportation Regulatory Policies and Procedures. This final rule will not have a significant impact on a substantial number of small entities, will not constitute a barrier to international trade, and does not contain any Federal intergovernmental or private sector mandate. These analyses, available in the docket, are summarized below.

The final rule will revoke the Class D airspace area currently surrounding the Northwest Arkansas Regional Airport and will establish a Class C airspace area there. The FAA will incur costs of approximately $500 in order to send a "Letter To Airmen" to pilots within a 50-mile radius of the Northwest Arkansas Regional Airport informing them of the airspace change. The FAA will not incur any other costs for air traffic control staffing, training, or equipment. Changes to sectional charts will occur during the chart cycle and will cause no additional costs beyond the normal update of the charts. Any public meeting and safety seminar will not result in costs to the aviation community because they will occur regardless of whether or not this rule becomes final. Aircraft owners and operators will incur minimal equipment costs to operate in the Class C airspace area. Most of the air traffic comes from a mix of air taxi and commuter aircraft. These aircraft should already have the necessary equipment to transition Class C airspace area.

The FAA contends that establishing the Class C airspace area surrounding the Northwest Arkansas Regional Airport will increase the level of safety for the operations that occur at the airport. Therefore, the FAA has determined the final rule to be cost-beneficial.

Final Regulatory Flexibility Determination

The Regulatory Flexibility Act of 1980 establishes "as a principle of regulatory issuance that agencies shall endeavor, consistent with the objective of the rule and of applicable statutes, to fit regulatory and informational requirements to the scale of the business, organizations, and governmental jurisdictions subject to regulation." To achieve that principal, the Act requires agencies to solicit and consider flexible regulatory proposals and to explain the rational for their actions. The Act covers a wide-range of small entities, including small businesses, not-for-profit organizations and small governmental jurisdictions.

Agencies must perform a review to determine whether a proposed or final rule will have a significant economic impact on a substantial number of small entities. If the determination is that it will, the agency must prepare a regulatory flexibility analysis (RFA) as described in the Act.

However, if an agency determines that a proposed or final rule is not expected to have a significant economic impact on a substantial number of small entities, section 605(b) of the 1980 act provides that the head of the agency may so certify and an RFA is not required. The certification must include a statement providing the factual basis for this determination, and the reasoning should be clear.

Most commercial and most general aviation (GA) operators who presently use the Northwest Arkansas Airport should be currently equipped to use the Class C airspace area. Though it is currently surrounded by Class D airspace, most of its air traffic comes from air taxi and commuter aircraft. These aircraft already have the necessary equipment to transition Class C airspace area. Those GA operators who currently transit the Northwest Arkansas terminal area without Mode C transponders can circumnavigate the Northwest Arkansas Class C airspace area at negligible cost, without significantly deviating from their regular flight paths. Accordingly, pursuant to the Regulatory Flexibility Act, 5 U.S.C. 605(b), the Federal Aviation Administration has determined that this final rule will not have a significant economic impact on a substantial number of small entities.

International Trade Impact Assessment

This final rule is a domestic airspace rulemaking and will not constitute a barrier to international trade, including the export of U.S. goods and services to foreign countries or the import of foreign goods and services into the United States.

Unfunded Mandates Assessment

Title II of the Unfunded Mandates Reform Act of 1995 (the Act), enacted as Public Law 104–4 on March 22, 1995, requires each Federal agency, to the extent permitted by law, to prepare a written assessment of the effects of any Federal mandate in a proposed or final agency rule that may result in the expenditure of $100 million or more (when adjusted annually for inflation) in any one year by State, local, and tribal governments in the aggregate, or by the private sector. Section 204(a) of the Act, 2 U.S.C. 1534(a), requires the Federal agency to develop an effective process to permit timely input by elected officers (or their designees) of State, local, and tribal governments on a proposed "significant intergovernmental mandate." A "significant intergovernmental mandate" under the Act is any provision in a Federal agency regulation that would impose an enforceable duty upon State, local, and tribal governments in the aggregate of $100 million (adjusted annually for inflation) in any one year. Section 203 of the Act, 2 U.S.C. 1533, which supplements section 204(a), provides that, before establishing any regulatory requirements that might significantly or uniquely affect small governments, the agency shall have developed a plan, which, among other things, must provide for notice to potentially affected small governments, if any, and for a meaningful and timely opportunity for those small governments to provide input in the development of regulatory proposals.

This final rule does not contain any Federal intergovernmental or private sector mandates. Therefore, the requirements of Title II of the Unfunded Mandates Reform Act of 1995 do not apply.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Amendment

■ In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A, CLASS B, CLASS C, CLASS D, AND CLASS E AIRSPACE AREAS; AIRWAYS; ROUTES; AND REPORTING POINTS

■ 1. The authority citation for part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§ 71.1 [Amended]

■ 2. The incorporation by reference in 14 CFR 71.1 of FAA Order 7400.9K, Airspace Designations and Reporting Points, dated August 30, 2002, and effective September 16, 2002, is amended as follows:

Paragraph 4000—Subpart C—Class C Airspace

* * * * *

ASW AR C Northwest Arkansas Regional Airport, AR [New]

Northwest Arkansas Regional Airport, AR
(Lat. 36°16′55″ N., long. 94°18′25″ W.)

That airspace extending upward from the surface to and including 5,300 feet MSL within a 5-mile radius of the Northwest Arkansas Regional Airport, excluding that airspace east of a line from lat. 36°21′06″ N., long. 94°15′03″ W.; to lat. 36°15′30″ N., long. 94°12′28″ W.; and that airspace extending upward from 2,500 feet MSL to and including 5,300 feet MSL within a 10-mile radius of the Northwest Arkansas Regional Airport excluding that airspace east of a line from lat. 36°26′53″ N., long. 94°17′42″ W.; to lat. 36°09′43″ N., long. 94°09′49″ W.; and that airspace extending upward from 2,900 feet MSL to and including 5,300 feet MSL within a 10-mile radius of the Northwest Arkansas Regional Airport beginning at lat. 36°26′53″ N., long. 94°17′42″ W.; thence clockwise on the 10-mile radius of the airport to lat. 36°09′43″ N., long. 94°09′49″ W.; thence to the point of beginning. This Class C airspace area is effective during the specific dates and times established in advance by a Notice to Airmen. The effective date and time will thereafter be continuously published in the Airport/Facility Directory.

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Paragraph 5000—Subpart D—Class D Airspace

* * * * *

ASW AR D Fayettville (Springdale), Northwest Arkansas Regional Airport, AR [Removed]

* * * * *

Issued in Washington, DC, on May 5, 2003.

Reginald C. Matthews,

Manager, Airspace and Rules Division.

[FR Doc. 03–11920 Filed 5–12–03; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2003–14463; Airspace Docket No. 03–ACE–16]

Modification of Class D Airspace; and Modification of Class E Airspace; Dubuque, IA

AGENCY: Federal Aviation Administration, DOT.

ACTION: Direct final rule; confirmation of effective date

SUMMARY: This document confirms the effective date of the direct final rule

which revises Class D and Class E airspace at Dubque, IA.

DATES: 0901 UTC, July 10, 2003.

FOR FURTHER INFORMATION CONTACT: Kathy Randolph, Air Traffic Division, Airspace Branch, ACE–520C, DOT, Regulation Headquarters Building, Federal Aviation Administration, 901 Locust, Kansas City, MO 64106; telephone: (816) 329–2525.

SUPPLEMENTARY INFORMATION: The FAA published this direct final rule with a request for comments in the **Federal Register** on March 5, 2003 (68 FR 10367). The FAA uses the direct final rulemaking procedure for a non-controversial rule where the FAA believes that there will be no adverse public comment. This direct final rule advised the public that no adverse comments were anticipated, and that unless a written adverse comment, or a written notice of intent to submit such an adverse comment, were received within the comment period, the regulation would become effective on July 10, 2003. No adverse comments were received, and thus this notice confirms that this direct final rule will become effective that date.

Issued in Kansas City, MO on May 2, 2003.

Herman J. Lyons, Jr.,

Manager, Air Traffic Division, Central Region.

[FR Doc. 03–11793 Filed 5–12–03; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2003–14549; Airspace Docket No. 03–ACE–17]

Modification of Class D and Class E Airspace; St. Louis, Spirit of St. Louis Airport, MO

AGENCY: Federal Aviation Administration, DOT.

ACTION: Direct final rule; confirmation of effective date.

SUMMARY: This document confirms the effective date of the direct final rule which revises Class D and Class E airspace at St. Louis, Spirit of St. Louis Airport, MO.

EFFECTIVE DATE: 0901 UTC, July 10, 2003.

FOR FURTHER INFORMATION CONTACT: Brenda Mumper, Air Traffic Division, Airspace Branch, ACE–520A, DOT Regional Headquarters Building, Federal Aviation Administration, 901 Locust, Kansas City, MO 64106; telephone: (816) 329–2524.

SUPPLEMENTARY INFORMATION: The FAA published this direct final rule with a request for comments in the **Federal Register** on March 12, 2003 (68 FR 11736). The FAA uses the direct final rulemaking procedure for a non-controversial rule where the FAA believes that there will be no adverse public comment. This direct final rule advised the public that no adverse comments were anticipated, and that unless a written adverse comment, or a written notice of intent to submit such an adverse comment, were received within the comment period, the regulation would become effective on July 10, 2003. No adverse comments were received, and thus this notice confirms that this direct final rule will become effective on that date.

Issued in Kansas City, MO on May 2, 2003.

Herman J. Lyons, Jr.,

Manager, Air Traffic Division, Central Region.

[FR Doc. 03–11792 Filed 5–12–03; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2003–14597; Airspace Docket No. 03–ACE–20]

Modification of Class E Airspace; Hampton, IA

AGENCY: Federal Aviation Administration, DOT.

ACTION: Direct final rule; confirmation of effective date.

SUMMARY: This document confirms the effective date of the direct final rule which revises Class E airspace at Hampton, IA.

EFFECTIVE DATE: 0901 UTC, July 10, 2003.

FOR FURTHER INFORMATION CONTACT: Kathy Randolph, Air Traffic Division, Airspace Branch, ACE–520C DOT Regional Headquarters Building, Federal Aviation Administration, 901 Locust, Kansas City, MO 64106; telephone: (816) 329–2525.

SUPPLEMENTARY INFORMATION: The FAA published this direct final rule with a request for comments in the **Federal Register** on March 31, 2003 (68 FR 15349). The FAA uses the direct final rulemaking procedure for a non-controversial rule where the FAA believes that there will be no adverse public comment. This direct final rule advised the public that no adverse comments were anticipated, and that unless a written adverse comment, or a written notice of intent to submit such an adverse comment, were received within the comment period, the regulation would become effective on July 10, 2003. No adverse comments were received, and thus this notice confirms that this direct final rule will become effective on that date.

Issued in Kansas City, MO on May 2, 2003.

Herman J. Lyons, Jr.,

Manager, Air Traffic Division, Central Region.

[FR Doc. 03–11791 Filed 5–12–03; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2003–14195; Airspace Docket No. 03–ACE–1]

Modification of Class E Airspace; Fairmont, NE

AGENCY: Federal Aviation Administration, DOT.

ACTION: Direct final rule; confirmation of effective date.

SUMMARY: This document confirms the effective date of the direct final rule which revises Class E airspace at Fairmont, NE.

EFFECTIVE DATE: 0901 UTC, July 10, 2003.

FOR FURTHER INFORMATION CONTACT: Brenda Mumper, Air Traffic Division, Airspace Branch, ACE–520A, DOT Regional Headquarters Building, Federal Aviation Administration, 901 Locust, Kansas City, MO 64106; telephone: (816) 329–2524.

SUPPLEMENTARY INFORMATION: The FAA published this direct final rule with a request for comments in the **Federal Register** on March 31, 2003 (68 FR 15343). The FAA uses the direct final rulemaking procedure for a non-controversial rule where the FAA believes that there will be no adverse public comment. This direct final rule advised the public that no adverse comments were anticipated, and that unless a written adverse comment, or a written notice of intent to submit such an adverse comment, were received within the comment period, the regulation would become effective on July 10, 2003. No adverse comments were received, and thus this notice confirms that this direct final rule will become effective on that date.

Issued in Kansas City, MO on May 2, 2003.

Herman J. Lyons, Jr.,

Manager, Air Traffic Division, Central Region.

[FR Doc. 03–11790 Filed 5–12–03; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2003–14595; Airspace Docket No. 03–ACE–18]

Modification of Class E Airspace; Emmetsburg, IA

AGENCY: Federal Aviation Administration, DOT.

ACTION: Direct final rule; confirmation of effective date.

SUMMARY: This document confirms the effective date of the direct final rule which revises Class E airspace at Emmetsburg, IA.

EFFECTIVE DATE: 0901 UTC, July 10, 2003.

FOR FURTHER INFORMATION CONTACT: Kathy Randolph, Air Traffic Division, Airspace Branch, ACE–520C DOT Regional Headquarters Building, Federal Aviation Administration, 901 Locust, Kansas City, MO 64106; telephone: (816) 329–2525.

SUPPLEMENTARY INFORMATION: The FAA published this direct final rule with a request for comments in the **Federal Register** on March 21, 2003 (68 FR 13811). The FAA uses the direct final rulemaking procedure for a non-controversial rule where the FAA believes that there will be no adverse public comment. This direct final rule advised the public that no adverse comments were anticipated, and that unless a written adverse comment, or a written notice of intent to submit such an adverse comment, were received within the comment period, the regulation would become effective on July 10, 2003. No adverse comments were received, and thus this notice confirms that this direct final rule will become effective on that date.

Issued in Kansas City, MO on May 25, 2003.

Herman J. Lyons, Jr.

Manager, Air Traffic Division, Central Region.

[FR Doc. 03–11789 Filed 5–12–03; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2003–14598; Airspace Docket No. 03–ACE–21]

Modification of Class E Airspace; Independence, IA

AGENCY: Federal Aviation Adminsitration, DOT.

ACTION: Direct final rule; confirmation of effective date.

SUMMARY: This document confirms the effective date of the direct final rule which revises Class E airspace at Independence, IA.

EFFECTIVE DATE: 0901 UTC, July 10, 2003.

FOR FURTHER INFORMATION CONTACT: Kathy Randolph, Air Traffic Division, Airspace Branch, ACE–520C DOT Regional Headquarters Building, Federal Aviation Administration, 901 Locust, Kansas City, MO 64106; telephone: (816) 329–2525.

SUPPLEMENTARY INFORMATION: The FAA published this direct final rule with a request for comments in the **Federal Register** on March 31, 2003 (68 FR 15345). The FAA uses the direct final rulemaking procedure for a non-controversial rule where the FAA believes that there will be no adverse public comment. This direct final rule advised the public that no adverse comments were anticipated, and that unless a written adverse comment, or a written notice of intent to submit such an adverse comment, were received within the comment period, the regulation would become effective on July 10, 2003. No adverse comments were received, and thus this notice confirms that this direct final rule will become effective on that date.

Dated: May 2, 2003.

Herman J. Lyons, Jr.,

Manager, Air Traffic Division, Central Region.

[FR Doc. 03–11788 Filed 5–12–03; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2003–14462; Airspace Docket No. 03–ACE–15]

Modification of Class E Airspace; Denison, IA

AGENCY: Federal Aviation Administration, DOT.

ACTION: Direct final rule; confirmation of effective date.

SUMMARY: This document confirms the effective date of the direct final rule which revises Class E airspace at Denison, IA.

EFFECTIVE DATE: 0901 UTC, July 10, 2003.

FOR FURTHER INFORMATION CONTACT: Kathy Randolph, Air Traffic Division, Airspace Branch, ACE–520C, DOT Regional Headquarters Building, Federal Aviation Administration, 901 Locust, Kansas City, MO 64106; telephone: (816) 329–2525.

SUPPLEMENTARY INFORMATION: The FAA published this direct final rule with a request for comments in the **Federal Register** on February 28, 2003 (68 FR 9527). The FAA uses the direct final rulemaking procedure for a non-controversial rule where the FAA believes that there will be no adverse public comment. This direct final rule advised the public that no adverse comments were anticipated, and that unless a written adverse comment, or a written notice of intent to submit such an adverse comment, were received within the comment period, the regulation would become effective on July 10, 2003. No adverse comments were received, and thus this notice confirms that this direct final rule will become effective on that date.

Issued in Kansas City, MO on May 2, 2003.

Herman J. Lyons, Jr.,

Manager, Air Traffic Division, Central Region.

[FR Doc. 03–11787 Filed 5–12–03; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No FAA–2003–14460; Airspace Docket No. 03–ACE–13]

Modification of Class E Airspace; Clinton, IA

AGENCY: Federal Aviation Administration, DOT.

ACTION: Direct final rule; confirmation of effective date.

SUMMARY: This document confirms the effective date of the direct final rule which revises Class E airspace at Clinton, IA.

EFFECTIVE DATE: 0901 UTC, July 10, 2003.

FOR FURTHER INFORMATION CONTACT: Kathy Randolph, Air Traffic Division, Airspace Branch, ACE–520C, DOT Regional Headquarters Building, Federal Aviation Administration, 901 Locust, Kansas City, MO 64106; telephone: (816) 329–2525.

SUPPLEMENTARY INFORMATION: The FAA published this direct final rule with a request for comments in the **Federal Register** on February 27, 2003 (68 FR 8999). The FAA uses the direct final rulemaking procedure for a not-controversial rule where the FAA believes that there will be no adverse public comment. This direct final rule advised the public that no adverse comments were anticipated, and that unless a written adverse comment, or a written notice of intent to submit such an adverse comment, were received within the comment period, the regulation would become effective on July 10, 2003. No adverse comments were received, and thus this notice confirms that this direct final rule will become effective on that date.

Issued in Kansas City, MO on May 2, 2003.

Herman J. Lyons, Jr.,

Manager, Air Traffic Division, Central Region

[FR Doc. 03–11786 Filed 5–12–03; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2003–14596; Airspace Docket No. 03–ACE–19]

Modification of Class E Airspace; Greenfield, IA

AGENCY: Federal Aviation Administration, DOT.

ACTION: Direct final rule; confirmation of effective date.

SUMMARY: This document confirms the effective date of the direct final rule which revises Class E airspace at Greenfield, IA.

EFFECTIVE DATE: 0901 UTC, July 10, 2003.

FOR FURTHER INFORMATION CONTACT: Kathy Randolph, Air Traffic Division, Airspace Branch, ACE–520C DOT Regional Headquarters Building, Federal Aviation Administration, 901 Locust, Kansas City, MO 64106; telephone: (816) 329–2525.

SUPPLEMENTARY INFORMATION: The FAA published this direct final rule with a request for comments in the **Federal Register** on March 25, 2003 (68 FR 14314). The FAA uses the direct final rulemaking procedure for a non-controversial rule where the FAA believes that there will be no adverse public comment. This direct final rule advised the public that no adverse comments were anticipated, and that unless a written adverse comment, or a written notice of intent to submit such an adverse comment, were received within the comment period, the regulation would become effective on July 10, 2003. No adverse comments were received, and thus this notice confirms that this direct final rule will become effective on that date.

Issued in Kansas City, MO on May 2, 2003.

Herman J. Lyons, Jr.,

Manager, Air Traffic Division, Central Region.

[FR Doc. 03–11785 Filed 5–12–03; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2003–14599; Airspace Docket No. 03–ACE–22]

Modification of Class E Airspace; Keokuk, IA

AGENCY: Federal Aviation Administration, DOT.

ACTION: Direct final rule; confirmation of effective date.

SUMMARY: This document confirms the effective date of the direct final rule which revises Class E airspace at Keokuk, IA.

EFFECTIVE DATE: 0901 UTC, July 10, 2003.

FOR FURTHER INFORMATION CONTACT: Kathy Randolph, Air Traffic Division, Airspace Branch, ACE–520C DOT Regional Headquarters Building, Federal Aviation Administration, 901 Locust, Kansas City, MO 64106; telephone: (816) 329–2525.

SUPPLEMENTARY INFORMATION: The FAA published this direct final rule with a request for comments in the **Federal Register** on March 31, 2003 (68 FR 15346). The FAA uses the direct final rulemaking procedure for a non-controversial rule where the FAA believes that there will be no adverse public comment. This direct final rule advised the public that no adverse comments were anticipated, and that unless a written adverse comment, or a written notice of intent to submit such an adverse comment, were received within the comment period, the regulation would become effective on July 10, 2003. No adverse comments were received, and thus this notice confirms that this direct final rule will become effective on that date.

Issued in Kansas City, MO on May 2, 2003.

Herman J. Lyons, Jr.,

Manager, Air Traffic Division, Central Region.

[FR Doc. 03–11784 Filed 5–12–03; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2003–14461; Airspace Docket No. 03–ACE–14]

Modification of Class E Airspace; Davenport, IA

AGENCY: Federal Aviation Administration, DOT.

ACTION: Direct final rule; confirmation of effective date.

SUMMARY: This document coinfirms the effective date of the direct final rule which revises Class E airspace at Davenport, IA.

EFFECTIVE DATE: 0901 UTC, July 10, 2003.

FOR FURTHER INFORMATION CONTACT: Kathy Randolph, Air Traffic Division, Airspace Branch, ACE–520C, DOT Regional Headquarters Building, Federal Aviation Administration, 901 Locust, Kansas City, MO 64106; telephone: (816) 329–2525.

SUPPLEMENTARY INFORMATION: The FAA published this direct final rule with a request for comments in the **Federal Register** on February 27, 2003 (68 FR 8998). The FAA uses the direct final rulemaking procedure for a non-controversial rule where the FAA believes that there will be no adverse public comment. This direct final rule advised the public that no adverse comments were anticipated, and that unless a written adverse comment, or a written notice of intent to submit such an adverse comment, were received within the comment period, the regulation would become effective on July 10, 2003. No adverse comments were received, and thus this notice confirms that this direct final rule will become effective on that date.

Issued in Kansas City, MO on May 2, 2003.

Herman J. Lyons, Jr.,

Manager, Air Traffic Division, Central Region.

[FR Doc. 03–11783 Filed 5–12–03; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 73

[Docket No. FAA–2003–14184; Airspace Docket No. 02–AWP–12]

RIN 2120–AA66

Amendment of Restricted Area R–2303A and R–2303B, Fort Huachuca, AZ

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action amends the designated time of use for Restricted area 2303A (R–2303A) and 2303B (R–2303B), Fort Huachuca, AZ. Specifically, this action amends the designated time of use from "Monday–Friday, 0700–1600 local time; other times by NOTAM at least 24 hours in advance," to "Monday–Friday, 0700–1700 local time; other times by NOTAM at least 24 hours in advance." Increased training requirements at Fort Huachuca have resulted in a continued need for restricted airspace usage up to 1700 hours, Monday through Friday. This action will not change the current boundaries or activities conducted in the airspace area.

EFFECTIVE DATE: 0901 UTC, September 4, 2003.

FOR FURTHER INFORMATION CONTACT: Ken McElroy, Airspace and Rules Division, ATA–400, Office of Air Traffic Airspace Management, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone: (202) 267–8783.

SUPPLEMENTARY INFORMATION:

History

On January 23, 2003, the FAA published in the **Federal Register** a notice proposing to amend R–2303A and R–2303B (68 FR 3198). Interested parties were invited to participate in this rulemaking effort by submitting written comments on the proposal. No comments were received regarding this rulemaking. Except for editorial changes, this amendment is the same as that proposed in the notice. These rulemaking actions "are necessary in the interest of national defense," as required under 49 U.S.C. 40103(b)(3)(A).

The Rule

Based on the U.S. Army's request, this action amends Title 14 Code of Federal Regulations (14 CFR) part 73 (part 73) to change the designated time of use for R–2303A and R–2303B. Specifically, this action modifies the designated time of use from "Monday–Friday, 0700–1600 local time; other times by NOTAM at least 24 hours in advance," to "Monday–Friday, 0700–1700 local time; other times by NOTAM at least 24 hours in advance." Increased training requirements at Fort Huachuca have resulted in a need for restricted airspace usage up to 1700 hours, Monday through Friday. This action will not change the current boundaries or activities conducted in the airspace area.

Section 73.48 of part 73 of the Federal Aviation Regulations was republished in FAA Order 7400.8K, dated September 26, 2002.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore, this regulation: (1) Is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

Environmental Review

The FAA has determined that this action qualifies for categorical exclusion under the National Environmental Policy Act in accordance with FAA Order 1050.1D, Policies and Procedures for Considering Environmental Impacts. This airspace action is not expected to cause any potentially significant environmental impacts, and no extraordinary circumstances exist that warrant preparation of an environmental assessment.

List of Subjects in 14 CFR Part 73

Airspace, Navigation (air).

Adoption of the Amendment

■ In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 73, as follows:

PART 73—SPECIAL USE AIRSPACE

■ 1. The authority citation for part 73 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§ 73.23 [Amended]

■ 2. § 73.23 is amended as follows:

* * * * *

R–2303A, AZ [Amended]

By removing "Time of designation. Monday–Friday, 0700–1600 local time; other times by NOTAM at least 24 hours in advance," and substituting "Time of designation. Monday–Friday, 0700–1700 local time; other times by NOTAM at least 24 hours in advance."

R–2303B, AZ [Amended]

By removing "Time of designation. Monday–Friday, 0700–1600 local time; other times by NOTAM at least 24 hours in advance," and substituting "Time of designation. Monday–Friday, 0700–1700 local time; other times by NOTAM at least 24 hours in advance."

* * * * *

Issued in Washington, DC, May 6, 2003.

Reginald C. Matthews,

Manager, Airspace and Rules Division.

[FR Doc. 03–11781 Filed 5–12–03; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 110

[CGD08–02–018]

RIN 1625–AA01 [Formerly RIN 2115–AA98]

Anchorage Regulation; Bolivar Roads, Galveston, TX

AGENCY: Coast Guard, DHS.

ACTION: Final rule.

SUMMARY: The Coast Guard is creating a new anchorage area in Bolivar Roads near Galveston, Texas. The establishment of this new anchorage area will enhance navigational safety, support regional maritime security needs, and contribute to the free flow of commerce in the Houston/Galveston area.

DATES: This rule is effective June 12, 2003.

ADDRESSES: Comments and material received from the public, as well as documents indicated in this preamble as being available in the docket, are part of docket [CGD08–02–018] and are available for inspection or copying at Commander, Eighth Coast Guard District (m), Hale Boggs Federal Bldg., 501 Magazine Street, New Orleans, LA 70130, between 8 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Lieutenant (LT) Karrie Trebbe, Project Manager for Eighth Coast Guard District Commander, telephone (504) 589–6271.

SUPPLEMENTARY INFORMATION:

Regulatory Information

On January 28, 2003, the Coast Guard published a notice of proposed rule making (NPRM) entitled "Anchorage Regulation; Bolivar Roads, Galveston, TX", in the **Federal Register** (68 FR 4130). We received no comments on the proposed rule. No public hearing was requested, and none was held.

Background and Purpose

At its February 2002 meeting, the Houston/Galveston Navigation Safety Advisory Committee (HOGANSAC) recommended establishment of a third anchorage area in the Galveston Bay area. HOGANSAC, a Congressionally-chartered Federal advisory committee, is responsible for advising, consulting with, and making recommendations to the Secretary of Transportation on matters relating to the transit of vessels to and from the ports of Galveston, Houston and Texas City and the safety of maritime navigation in the Galveston Bay area. Participants at the February 2002 HOGANSAC meeting noted that a third anchorage in the Bolivar Roads area was necessary to address port security and navigation safety concerns. After extensive discussion, including the observations of and comments from members of the public in attendance, HOGANSAC recommended that the Coast Guard establish a third anchorage area in Bolivar Roads.

Based on the recommendation of HOGANSAC the Coast Guard proposed a third anchorage area, anchorage area (C), in Bolivar Roads. This new anchorage area, located inside the Galveston Bay Entrance Jetties, will provide a sheltered location for vessels to anchor during heavy weather or reduced visibility conditions. The existing anchorages, anchorage area (A) and anchorage area (B), are generally full during these same periods and there is no alternative sheltered anchorage in Bolivar Roads. The location of anchorage area (C), abuts the western edge of anchorage area (B), is in a naturally deep portion of Bolivar Roads, and is outside any heavily traveled section of the waterway.

This third anchorage area is also necessary because port security-related initiatives adopted by various terminals and facilities in the Galveston Bay area have restricted pier side operations critical to the efficient flow of maritime commerce. For example, bunkering, provisions deliveries, and personnel transfer operations are restricted or prohibited by numerous facilities in the ports of Galveston, Houston and Texas City. The nature of those activities requires that they be accomplished in calm water conditions and relatively close to shore. As a result, vessel operators and ship owners rely upon the existing anchorage areas (anchorage areas (A) and (B)) in Galveston Bay to conduct these operations. Increasingly, anchorage space in those areas is in high demand. A third designated anchorage area would relieve congestion and provide anchorage space to accommodate the ever-increasing volumes of traffic in the Galveston Bay area.

Discussion of Comments and Changes

We received no comments on the proposed rule. Therefore, we have made no substantial changes to the provisions of the proposed rule.

Minor changes were made to the Regulatory Evaluation and authority sections due to the Coast Guard's transfer from the Department of Transportation to the Department of Homeland Security on March 1, 2003.

Regulatory Evaluation

This rule is not a "significant regulatory action" under section 3(f) of Executive Order 12866, Regulatory and Planning and Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that Order. It is not "significant" under the regulatory policies and procedures of the Department of Homeland Security.

The anchorage area will not unnecessarily restrict traffic as it is located outside the established navigable channel. Vessels will be able to maneuver in, around and through the anchorage. Operators who choose to maneuver their vessels around the limits of the anchorage area will not be significantly impacted because the total route deviation to cross from one side of the anchorage to the other following the perimeter of the anchorage is only 1.4 nautical miles.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), we considered whether this rule would have a significant economic impact on a substantial number of small entities. The term "small entities" comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000.

The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities. The rule may potentially affect the following entities, some of which may be small entities: the owners or operators of vessels intending to fish or anchor in, or transit through the anchorage area (C) in Bolivar Roads.

The number of small entities impacted and the extent of the impact, if any, is expected to be minimal. The anchorage is located in an area of Bolivar Roads that is not a popular or productive fishing location. Further, the location is in an area not routinely transited by vessels heading to, or returning from, known fishing grounds. Finally, the anchorage is located in an area that is not currently used by small entities, including small vessels, for anchoring due to the depth of water naturally present in the area.

If you are a small business entity and are significantly affected by this regulation please contact Lieutenant (LT) Karrie Trebbe, Project Manager for Eighth Coast Guard District Commander, telephone (504) 589–6271.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we offered to assist small entities in understanding the rule so they could better evaluate its effects on them and participate in the rulemaking processes.

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1–888–REG–FAIR (1–888–734–3247).

Collection of Information

This rule calls for no new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

Federalism

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on State or local governments and would either preempt State law or impose a substantial direct cost of compliance on them. We have analyzed this rule under that Order and have determined that it does not have implications for federalism.

Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of $100,000,000 or more in any one year. Though this rule will not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

Taking of Private Property

This rule will not effect a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

Civil Justice Reform

This rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

Protection of Children

We have analyzed this rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and would not create an environmental risk to health or risk to safety that might disproportionately affect children.

Indian Tribal Governments

This rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

Energy Effects

We have analyzed this rule under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. We have determined that it is not a "significant energy action" under that Order because it is not a "significant regulatory action" under Executive Order 12866 and is not likely to have a significant adverse effect on the supply, distribution, or use of energy. The Administrator of the Office of Information and Regulatory Affairs has not designated it as a significant energy action. Therefore, it does not require a Statement of Energy Effects under Executive Order 13211.

Environment

We have analyzed this rule under Commandant Instruction M16475.1D, which guides the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4370f), and have concluded that there are no factors in this case that would limit the use of categorical exclusion under section 2.B.2 of the Instruction. Therefore, this rule is categorically excluded, under figure 2–1 paragraph (34)(f), of the instruction, from further environmental documentation because this rule is not expected to result in any significant environmental impact as described in NEPA. A final "Environmental Analysis Check List" and a final "Categorical Exclusion Determination" are available where indicated under **ADDRESSES.**

List of Subjects in 33 CFR Part 110

Anchorage grounds.

■ For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 110 as follows:

PART 110—ANCHORAGE REGULATIONS

■ 1. The authority citation for part 110 continues to read as follows:

Authority: 33 U.S.C. 471, 1221 through 1236, 2030, 2035, and 2071; Department of Homeland Security Delegation No. 0170 and 33 CFR 1.05–1(g).

■ 2. Amend § 110.197 to add paragraph (a)(3) and revise paragraph (b) to read as follows:

§ 110.197 Galveston Harbor, Bolivar Roads Channel, Texas.

(a) * * *

(3) Anchorage area (C). The water bounded by a line connecting the following points:

Latitude	Longitude
29°20'39.0" N	94°46'07.5" W.
29°21'06.1" N	94°47'00.2" W.
29°21'24.0" N	94°46'34.0" W.
29°21'14.5" N	94°45'49.0" W.

and thence to the point of beginning.

(b) *The regulations.* (1) The anchorage area is for the temporary use of vessels of all types, but especially for vessels awaiting weather and other conditions favorable to the resumption of their voyages.

(2) Except when stress of weather makes sailing impractical or hazardous, vessels shall not anchor in anchorage areas (A) or (C) for more than 48 hours unless expressly authorized by the Captain of the Port Houston-Galveston. Permission to anchor for longer periods may be obtained through Coast Guard Vessel Traffic Service Houston/Galveston on VHF–FM channels 12 (156.60 MHz) or 13 (156.65 MHz).

(3) No vessel with a draft of less than 22 feet may occupy anchorage (A) without prior approval of the Captain of the Port.

(4) No vessel with a draft of less than 16 feet may anchor in anchorage (C) without prior approval of the Captain of the Port Houston-Galveston.

(5) Vessels shall not anchor so as to obstruct the passage of other vessels proceeding to or from other anchorage spaces.

(6) Anchors shall not be placed in the channel and no portion of the hull or rigging of any anchored vessel shall extend outside the limits of the anchorage area.

(7) Vessels using spuds for anchors shall anchor as close to shore as practicable, having due regard for the provisions in paragraph (b)(5) of this section.

(8) Fixed moorings, piles or stakes, and floats or buoys for marking anchorages or moorings in place, are prohibited.

(9) Whenever the maritime or commercial interests of the United States so require, the Captain of the Port, or his authorized representative, may direct the movement of any vessel anchored or moored within the anchorage areas.

Dated: April 21, 2003.

Roy J. Casto,

Rear Admiral, U.S. Coast Guard, Commander, Eighth Coast Guard District.

[FR Doc. 03–11810 Filed 5–12–03; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[CGD07–03–069]

RIN 1625–AA11

Regulated Navigation Area; Port Everglades Harbor, Fort Lauderdale, FL

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule; request for comments.

SUMMARY: The Coast Guard is establishing a temporary regulated navigation area in Port Everglades Harbor, Fort Lauderdale, Florida to improve national security and safety of the harbor and increase the safety of law enforcement officers and high-risk vessels in the vicinity of Port Everglades Harbor. This temporary final rule establishes a slow speed zone in the harbor to control vessel speed and allow law enforcement vessels to control vessel movement in this waterway.

DATES: This rule is effective from 12:01 a.m. on Monday, April 28, 2003, until 12:01 a.m. on Monday, September 1, 2003. Comments and related material must be received on or before June 12, 2003.

ADDRESSES: You may mail comments and related material to Commanding Officer, U.S. Coast Guard, Marine Safety Office, 100 MacArthur Causeway, Miami, FL 33139. The Captain of the Port Miami maintains the public docket for this rulemaking. Comments and material received from the public, as well as documents indicated in this preamble as being available in the docket, will become part of this docket and will be available for inspection or copying at the above address between 8 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: LTJG Jennifer Sadowski, Coast Guard Marine Safety Office Miami, Waterways Management at (305) 535–8701.

SUPPLEMENTARY INFORMATION:

Request for Comments

We encourage you to participate in this rulemaking by submitting comments and related material. If you do so, please include your name and address, identify the docket number for this rulemaking [CGD07–03–069], indicate the specific section of this document to which each comment applies, and give the reason for each comment. Please submit all comments and related material in an unbound format, no larger than 8½ by 11 inches, suitable for copying. If you would like to know they reached us, please enclose a self-addressed postcard or envelope. We will consider all comments and material received during the comment period. We may change this temporary rule in view of them.

Regulatory Information

We did not publish a notice of proposed rulemaking (NPRM) for this regulation. Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing a NRPM. Publishing a NPRM and delaying the rule's effective date is contrary to national security and public safety, because immediate action is necessary to protect the public, ports, and waters of the United States.

For the same reasons, under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the **Federal Register**.

Background and Purpose

The terrorist attacks of September 2001 killed thousands of people and heightened the need for development of various security measures throughout the seaports of the United States. The President declared national emergencies following the September 11, 2001 terrorist attacks and has continued them, specifically: the continuing national emergency with respect to terrorist attacks, at 67 FR 58317 (Sep. 13, 2002); and continuing national emergency with respect to persons who commit, threaten to commit, or support terrorism, at 67 FR 59447 (Sep. 20, 2002). The President found pursuant to law, including the Magnuson Act (50 U.S.C. 191 *et seq.*), that the security of the United States is and continues to be endangered since the terrorist attacks on the United States of September 11, 2001, and that such disturbances continue to endanger the Security of the United States, at Executive Order 13,273, 67 FR 56215 (Aug. 21, 2002). Following the attacks of well-trained and clandestine terrorists, national security and intelligence officials warned that future terrorist attacks are likely.

The Captain of the Port (COTP) of Miami has determined that there is an increased risk that subversive activity could be launched by vessels or persons in close proximity to Port Everglades because of the numerous high-capacity passenger vessels, vessels carrying hazardous cargo, critical infrastructure facilities including propane and petroleum processing facilities, and U.S. military vessels that utilize the port. Implementation of a port-wide slow speed regulated navigation area will greatly aid law enforcement officers in managing vessel traffic as any vessels not complying with the slow speed zone will quickly draw attention giving law enforcement more time to assess the situation and take appropriate action in protecting vessels within the port and port facilities. Prior to the creation of this temporary final rule, vessels were able to enter the harbor from sea at a high rate of speed and maintain a high rate of speed into the harbor until coming within close proximity of high capacity passenger vessels, vessels carrying hazardous cargo, critical infrastructure facilities and U.S. military vessels that are often moored within an existing security zone. Law enforcement officers did not have sufficient time to react to vessels that failed to slow their speed prior to reaching the limits of the existing security zone. This regulated navigation area is necessary to protect the public, port, law enforcement officials, and waterways of the United States from potential subversive acts.

Nothing in this rule relieves vessels or operators from complying with all state and local laws in the regulated area, including manatee slow speed zones.

The Coast Guard intends to evaluate the need for making this temporary rule a permanent rule. We will consider comments solicited by this temporary rule and evaluate the effectiveness of this temporary rule in making that determination. The Coast Guard also anticipates publishing a notice of proposed rulemaking in the **Federal Register** to solicit additional comments. The notice and comment rulemaking process may be lengthy so this temporary rule is designed to be in effect until a final determination is made on whether a permanent rule is needed.

Discussion of Rule

The rule requires all vessels within the regulated navigation area to proceed at slow speed. Slow speed is defined as the speed at which a vessel proceeds when it is fully off plane, completely settled into the water and not creating excessive wake. This rule will minimize the potential national security hazards that could result from a vessel being permitted to transit through the harbor, in the vicinity of high capacity passenger vessels, vessels carrying hazardous cargo, critical infrastructure facilities and U.S. military vessels, at a high rate of speed and will facilitate law enforcement control of vessel movement.

The regulated navigation area is in the vicinity of Port Everglades Harbor, Fort Lauderdale, Florida, and includes all waters of the Atlantic Intracoastal Waterway and Port Everglades Harbor, from shore to shore, south of the 17th Street Bridge (at a line connecting 26°06.04′N, 080°07.17′W and 26°06.04′N, 080°07.05′W), north of the intersection of the Dania Cut Off Canal and the Intracoastal Waterway (latitude 26° 04.72′N) and west of a north-south line connecting red day board # 6 and green day board #7 at the entrance to Port Everglades Harbor (longitude 080°06.30′W).

Regulatory Evaluation

This rule is not a "significant regulatory action" under section 3(f) of Executive Order 12866, Regulatory Planning and Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that Order. It is not "significant" under the regulatory policies and procedures of the Department of Homeland Security (DHS). The Coast Guard expects the economic impact of this rule to be so minimal that a full regulatory evaluation under the regulatory policies and procedures of DHS is unnecessary. The regulated navigation area is narrowly tailored to protect the public, ports, and waterways of the United States, and watercraft are still permitted to transit through the regulated navigation area but must proceed at slow speed.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), we considered whether this rule would have a significant economic impact upon a substantial number of small entities. The term "small entities" comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000.

The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities. The regulated navigation area is narrowly tailored to protect the public, ports, and waterways of the United States, and vessels are still permitted to transit through the regulated navigation area but must proceed at slow speed.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we want to assist small entities in understanding this rule so that they can better evaluate its effects on them and participate in the rulemaking. If the rule will affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact LTJG Jennifer Sadowski at (305) 535–8701 for assistance in understanding and participating in this rulemaking.

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1–888–REG–FAIR (1–888–734–3247).

Collection of Information

This rule calls for no new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

Federalism

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on State or local governments and would either preempt State law or impose a substantial direct cost of compliance on them. We have analyzed this rule under that Order and have determined that this rule does not have implications for federalism.

Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of $100,000,000 or more in any one year. Although this rule will not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

Taking of Private Property

This rule will not effect a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

Civil Justice Reform

This rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

Protection of Children

We have analyzed this rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and does not create an environmental risk to health or risk to safety that may disproportionately affect children.

Environment

We have analyzed this rule under Commandant Instruction M16475.1D, which guides the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4370f), and have concluded that there are no factors in this case that would limit the use of a categorical exclusion under section 2.B.2 of the Instruction. Therefore, this rule is categorically excluded, under figure 2–1, paragraph (34)(g), of the Instruction, from further environmental documentation. A final "Environmental Analysis Check List" and a final "Categorical Exclusion Determination" are available in the docket where indicated under **ADDRESSES**.

Indian Tribal Governments

This rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it will not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

Energy Effects

We have analyzed this rule under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. We have determined that it is not a "significant energy action" under that order because it is not a "significant regulatory action" under Executive Order 12866 and is not likely to have a significant adverse effect on the supply, distribution, or use of energy. The Administrator of the Office of Information and Regulatory Affairs has not designated it as a significant energy action. Therefore, it does not require a Statement of Energy Effects under Executive Order 13211.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, Waterways.

■ For the reasons discussed in the preamble, the Coast Guard amends 33 CFR Part 165, as follows:

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

■ 1. The authority citation for Part 165 continues to read as follows:

Authority: 33 U.S.C. 1231; 50 U.S.C. 191; 33 CFR 1.05–1(g), 6.04–1, 6.04–6, and 160.5; Department of Homeland Security Delegation No. 0170.

■ 2. Add temporary § 165.T07–069 to read as follows:

§ 165.T07–069 Regulated Navigation Area; Port Everglades Harbor, Fort Lauderdale, Florida.

(a) *Location.* The following area in the vicinity of Port Everglades Harbor is a regulated navigation area: all waters of the Atlantic Intracoastal Waterway and Port Everglades Harbor, from shore to shore, south of the 17th Street Bridge (at a line connecting 26° 06.04′N, 080°07.17′W and 26°06.04′N, 080°07.05′W), north of the intersection of the Dania Cut Off Canal and the Intracoastal Waterway (latitude 26° 04.72′N) and west of a north-south line connecting red day board #6 and green day board #7 at the entrance to Port Everglades Harbor (longitude 080° 06.30′W).

(b) *Regulations.* Vessels entering and transiting through the regulated navigation area shall proceed at a slow speed. Nothing in this section alleviates vessels or operators from complying with all state and local laws in the area, including manatee slow speed zones.

(c) *Definition.* As used in this section, *slow speed* means the speed at which a vessel proceeds when it is fully off plane, completely settled in the water and not creating excessive wake. Due to the different speeds at which vessels of different sizes and configurations may travel while in compliance with this definition, no specific speed is assigned to slow speed. A vessel is not proceeding at slow speed if it is:

(1) On a plane;

(2) In the process of coming up on or coming off of plane; or

(3) Creating an excessive wake.

(d) *Effective period.* This rule is effective from 12:01 a.m. on Monday, April 28, 2003, until 12:01 a.m. on Monday, September 1, 2003.

Dated: April 25, 2003.

James S. Carmichael,

Rear Admiral, U.S. Coast Guard, Commander, Seventh Coast Guard District.

[FR Doc. 03–11811 Filed 5–12–03; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[COTP San Francisco Bay 03–004]

RIN 1625–AA00

Safety Zone; Mission Creek Waterway, China Basin, San Francisco Bay, CA

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary safety zone in the navigable waters of the Mission Creek Waterway in China Basin surrounding the construction site of the Fourth Street Bridge, San Francisco, California. This temporary safety zone is necessary to protect persons and vessels from hazards associated with bridge construction activities. The safety zone will temporarily prohibit usage of the Mission Creek Waterway surrounding the Fourth Street Bridge; specifically, no persons or vessels will be permitted to come within 100 yards of either side of the bridge or pass beneath the bridge during construction, unless authorized by the Captain of the Port, or his designated representative.

DATES: This rule is effective from 1 a.m. (PDT) on May 1, 2003, to 1 a.m. (PDT) on September 1, 2004.

ADDRESSES: Comments and material received from the public, as well as documents indicated in this preamble as being available in the docket, are part of the docket [COTP San Francisco Bay 03–004] and are available for inspection or copying at Coast Guard Marine Safety Office San Francisco Bay, Coast Guard Island, Alameda, California, 94501, between 9 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Lieutenant Diana J. Cranston, U.S. Coast Guard Marine Safety Office San Francisco Bay, at (510) 437–3073.

SUPPLEMENTARY INFORMATION:

Regulatory Information

On March 19, 2003, we published a notice of proposed rulemaking (NPRM) entitled Safety Zone; Mission Creek Waterway, China Basin, San Francisco Bay, California in the **Federal Register** (68 FR 13244). The effective date for the safety zone for the first phase of this project was published as commencing on April 15, 2003, and lasting for 6 weeks. Due to a project delay, the safety zone for the first phase of this project will now commence on May 1, 2003, lasting for an 8-week period. The second phase of this project remains as previously published, commencing April 1, 2004, lasting for a 5-month period. Both periods will be enforced 24 hours a day. We received one letter commenting on the rule which will be discussed further in the section of Discussion of Comments and Changes. No public hearing was requested, and none was held. Under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the **Federal Register**. Details regarding this project were not finalized in time to allow for this rule to be published a full 30 days prior to making this rule effective. The rulemaking process began in March 2003 which allowed enough time to publish an NPRM and allow for a public comment period. Accordingly, since timely rehabilitation to the bridge (as discussed in the Background and Purpose section) is crucial to the safety of this bridge, the channel closures must begin on May 1, 2003, less than 30 days after the publication of this rule.

Background and Purpose

The San Francisco Department of Public Works requested a waterway closure on Mission Creek for the purpose of performing significant work to the Fourth Street Bridge. The Fourth Street Bridge was erected across the Mission Creek Waterway at the China Basin in 1917, and was determined eligible for listing in the National Register of Historic Places in 1985 as part of the California Department of Transportation (Caltrans) Historic Bridge Inventory. Caltrans, Division of Structures, evaluated the Fourth Street Bridge and recommended that the bridge be brought up to current seismic safety standards. In view of extensive corrosion to the steel components and concrete approaches of the bridge, Caltrans has also placed traffic load limitations over this bridge. Three primary objectives are to be met in rehabilitating the Fourth Street Bridge: (i) Seismically retrofit the structure while not significantly altering the historical appearance of the bridge; (ii) Repair the damage to the concrete approaches and several steel and concrete members of the movable span, and (iii) Reinitiate light rail service across the bridge.

The first phase of this project will entail the removal of the lift span, which will take approximately 8 weeks, scheduled to begin May 1, 2003. During this period, the channel will be closed at the Fourth Street Bridge to boating traffic. The second phase of this project will entail the construction of the north and south approaches, the new counterweight and its enclosing pit; but for the most part, boating traffic will not be affected during this phase. The last phase of this project will entail the replacement of the lift span and aligning the bridge to accept the light rail track system, which will take approximately five months, scheduled to begin April 1, 2004. During this period, the channel will be closed at the Fourth Street Bridge to boating traffic.

The Fourth Street Bridge Project is funded by Federal Highway Administration and State of California. The state funding restricts the construction to a start date before August 2003 and completion by September 2005. Any delays or deferrals in construction will impact the secured funding for the project.

There are two major environmental issues that restricts the construction in the channel, namely the annual pacific hearing-spawning season that runs from December 1st to March 31st and noise constraint in the water for steelhead from December 1st to June 1st. Any demolition, pile driving and excavation in the water during those time periods will be monitored and restricted for possible impact on the fish.

The Fourth Street Bridge Project is part of the larger Third Street Light Rail Project and many public presentations on the project's components, channel closure schedules, impacts to surrounding uses and project duration have been made by the City and Port of San Francisco. The Third Street Light Rail Advisory Group was created as a forum to keep the public informed on the progress being made on the Third Street Light rail project. Also, this project has been presented at several Mission Bay Citizen Advisory Committee meetings. At these meetings, the public was notified of the project components, impacts and the need to temporarily close the waterway. Specific to the Fourth Street Bridge project, an Environmental Assessment, required by the Federal Highway Administration and Caltrans, (under the National Environmental Protection Act) was conducted by the City of San Francisco. A public hearing regarding the Environmental Assessment was held on January 17, 2002 at San Francisco Arts College, Timken Lecture Hall, 1111 8th Street in San Francisco California, and was well attended.

In January 2003, the City of San Francisco advised the Coast Guard Captain of the Port that two channel closures would be necessary in order to accomplish the Fourth Street Bridge project. The Coast Guard met with various City and Port officials to ensure that there would be minimal impacts on involved and potentially involved entities.

This temporary safety zone in the navigable waters of Mission Creek surrounding the construction site of the Fourth Street Bridge will be enforced during the course of an 8-week period, starting May 1, 2003 and again for a 5-month period, starting April 1, 2004.

Discussion of Comments and Changes

We received one letter commenting on this rule. The Mission Creek Harbor Association, an organization of boaters that have both permanent and temporary moorings at Mission Creek Harbor, are in favor of the first closure as it is relatively short in duration and all affected boaters have been provided alternate moorings outside of the affected closure area by the city. The association is concerned about the second closure that will commence on April 1, 2004 and last for 5 months. This closure is much longer than the first closure and will last the full duration of the boating season in 2004. The Mission Creek Harbor Association and city officials have resolved their issue for the first closure and they are currently working on resolving this issue for the closure in 2004. The Mission Creek Harbor Association is pleased with this form of resolution and understands that no changes will be made to this rule as a result of their comments.

A discussed before, a minor change to the effective date for the safety zone has changed since the NPRM was published on March 19, 2003, entitled "Safety Zone; Mission Creek Waterway, China Basin, San Francisco Bay, CA" in the **Federal Register** (68 FR 13244). The first phase of this project was published as commencing on April 15, 2003, and lasting for 6 weeks. Due to a project delay, the safety zone for the first phase of this project will now commence on May 1, 2003, lasting for an 8-week period. The second phase of this project remains as previously published, commencing April 1, 2004, lasting for a 5-month period.

Regulatory Evaluation

This rule is not a "significant regulatory action" under section 3(f) of Executive Order 12866, Regulatory Planning and Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that Order. It is not "significant" under the regulatory policies and procedures of the Department of Homeland Security (DHS).

Although this safety zone does restrict boating traffic past the fourth street bridge, the effect of this regulation will not be significant as this waterway is very small with limited boating traffic.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), we have considered whether this rule would have a significant economic impact on a substantial number of small entities. The term "small entities" comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000. For the same reasons set forth in the above Regulatory Evaluation, the Coast Guard certifies under 5 U.S.C. 605(b) that this rule is not expected to have a significant economic impact on any substantial number of entities, regardless of their size.

This safety zone will not have a significant impact on a substantial number of small entities for the following reasons. Although the channel closure will restrict water access to a small number of boats, including houseboats who have moorings in Mission Creek Harbor, the channel closure will not impact land access to these houseboats during the bridge closures. The City of San Francisco, Department of Public Works and the Port of San Francisco have been in close consultation with the Mission Creek Harbor Association to assist boat owners affected by this project. As a result, the Mission Creek Harbor Association has a lease agreement with the Port of San Francisco for both houseboats and pleasure boats to moor outside of the affected closure area for the duration of the first channel closure that commences on May 1, 2003. Similar resolutions are being discussed for the second closure that is scheduled to commence on April 1, 2004.

Assistance For Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we offer to assist small entities in understanding the rule so that they could better evaluate its effects on them and participate in the rulemaking process. If the rule will affect your small business, organization, or government jurisdiction and you have questions concerning its provisions or options for compliance, please contact the person listed under **FOR FURTHER INFORMATION CONTACT** for assistance in understanding this rule.

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1–888–REG–FAIR (1–888–734–3247).

Collection of Information

This rule contains no collection of information requirements under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

Federalism

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on State or local governments and would either preempt State law or impose a substantial direct cost of compliance on them. We have analyzed this rule under that Order and have determined that it does not have implications for federalism.

Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of $100,000,000 or more in any one year. Though this rule will not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

Taking of Private Property

This rule will not effect a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

Civil Justice Reform

This rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

Protection of Children

We have analyzed this rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and does not create an environmental risk to health or risk to safety that may disproportionately affect children.

Indian Tribal Governments

This rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

Energy Effects

We have analyzed this rule under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. We have determined that it is not a "significant energy action" under that order because it is not a "significant regulatory action" under Executive Order 12866 and is not likely to have a significant adverse effect on the supply, distribution, or use of energy. It has not been designated by the Administrator of the Office of Information and Regulatory Affairs as a significant energy action. Therefore, it does not require a Statement of Energy Effects under Executive Order 13211.

Environment

We have analyzed this rule under Commandant Instruction M16475.lD, which guides the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA)(42 U.S.C. 4321–4370f), and have concluded that there are no factors in this case that would limit the use of a categorical exclusion under section 2.B.2 of the Instruction. Therefore, this rule is categorically excluded, under figure 2–1, paragraph (34)(g), of the Instruction, from further environmental documentation because we are establishing a safety zone.

A final "Environmental Analysis Check List" and a final "Categorical Exclusion Determination" are available in the docket where indicated under **ADDRESSES**.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reports and record keeping requirements, Security measures, Waterways.

■ For the reasons discussed in the preamble, the Coast Guard proposes to amend 33 CFR part 165 as follows:

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

■ 1. The authority citation for part 165 continues to read as follows:

Authority: 33 U.S.C. 1231; 50 U.S.C. 191; 33 CFR 1.05–1(g), 6.04–1, 6.04–6, and 160.5; Department of Homeland Security Delegation No. 0170.

■ 2. From 1 a.m. (PDT) on May 1, 2003, to 1 a.m. (PDT) on September 1, 2004 add a new temporary § 165.T11–079 to read as follows:

§ 165.T11–079 Safety Zone; Mission Creek Waterway, China Basin, San Francisco Bay, California.

(a) *Location.* One hundred yards to either side of the Fourth Street Bridge, encompassing the navigable waters, from the surface to the bottom, within two lines; one line drawn from a point on the north shore of Mission Creek [37°46′29″ N, 122°23′36″ W] extending southeast to a point on the opposite shore [37°46′28″ N, 122°23′34″ W], and the other line drawn from a point on the north shore of Mission Creek [37°46′34″ N, 122°23′30″ W] extending southeast to a point on the opposite shore [37°46′33″ N, 122°23′28″ W]. [Datum: NAD 83].

(b) *Dates.* (1) This section is effective from 1 a.m. (PDT) on May 1, 2003, to 1 a.m. (PDT) on September 1, 2004.

(2) The zone in paragraph (a) of this section will be enforced from 1 a.m. (PDT) on May 1, 2003, to 1 a.m. (PDT) on June 28, 2003, and from 1 a.m. (PST) on April 1, 2004 to 1 a.m. (PDT) on September 1, 2004.

(3) If the need for enforcement of the safety zone ends, the Captain of the Port may cease enforcement of the safety zone and announce that fact via Broadcast Notice to Mariners.

(c) *Regulations.* In accordance with the general regulations in § 165.23 of this part, entry into, transit through, or anchoring within this zone by all vessels is prohibited, unless authorized by the Captain of the Port, or a designated representative thereof.

(d) *Enforcement.* All persons and vessels shall comply with the instructions of the Coast Guard Captain of the Port or the designated on-scene patrol personnel. Patrol personnel comprise commissioned, warrant, and petty officers of the Coast Guard onboard Coast Guard, Coast Guard Auxiliary, local, state, and Federal law enforcement vessels. Upon being hailed by U.S. Coast Guard patrol personnel by siren, radio, flashing light, or other means, the operator of a vessel shall proceed as directed.

Dated: April 25, 2003.

Gerald M. Swanson,

Captain, U.S. Coast Guard, Captain of the Port, San Francisco Bay, California.

[FR Doc. 03–11809 Filed 5–12–03; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF VETERANS AFFAIRS

38 CFR Part 2

RIN 2900–AL61

Delegations of Authority; Office of Regulation Policy and Management (ORPM)

AGENCY: Department of Veterans Affairs.

ACTION: Final rule.

SUMMARY: This document sets forth a delegation of authority to the Assistant to the Secretary for Regulation Policy and Management to manage and coordinate the Department of Veterans Affairs' (VA) rulemaking process. The delegation is necessary to transfer certain rulemaking responsibilities to the newly-formed Office of Regulation Policy and Management in the Office of the Secretary. The delegation of authority is intended to improve the organization, clarity, and timeliness of VA regulations through centralized management and control. This document also makes minor technical amendments to a current delegation of authority that concerns the provision of relief on account of administrative error.

DATES: *Effective Date:* May 13, 2003.

FOR FURTHER INFORMATION CONTACT: Robert C. McFetridge, Director, Regulations Management (00REG1), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC, 20420 telephone (202) 273–9215.

SUPPLEMENTARY INFORMATION: The Secretary of Veterans Affairs has established an Office of Regulation Policy and Management (ORPM) to provide centralized management and coordination of the Department of Veterans Affairs' (VA) rulemaking process. The office is led by an Assistant to the Secretary for Regulation Policy and Management (ASRPM), who is responsible for improving existing VA regulations and establishing procedures to ensure future regulations can be more easily read, understood, and applied. The delegation of authority contained in this final rule will permit the ASRPM to manage and coordinate the VA's rulemaking process.

The ASRPM is performing two major functions for the Department. First, he is leading the VA's Regulation Rewrite Project. The Regulation Rewrite Project (the Project) is a comprehensive effort to improve the clarity and consistency of existing VA regulations. Currently, the Project is reviewing, reorganizing, and redrafting over 275 regulations in 38 CFR Part 3. These Compensation and Pension regulations are among the most difficult VA regulations for readers to understand and apply. Approximately 15 VA employees, temporarily detailed to the Project from the Office of General Counsel; Veterans Benefits Administration, Compensation and Pension Service; and Board of Veterans Appeals, are working in rotating teams seeking to complete this assignment over a 2-year period. The Secretary created the Project to respond to the Secretary's VA Claims Processing Task Force (Task Force) recommendation that Compensation and Pension regulations needed to be rewritten and reorganized in order to improve the VA's claims process. The Task Force found that "the problems identified 20 years ago remain today, and the promise to correct them is unfulfilled." The Task Force further recommended that the task of reorganizing and simplifying VA regulations "should be an immediate priority." Consequently, the Secretary is delegating responsibility to the ASRPM to manage the Department's revision and reorganization of VA regulations.

Second, the ASRPM is responsible for devising and implementing new procedures to centralize control and improve Secretarial oversight, management, drafting efficiency, policy resolution, impact analysis, and coordination of diverse VA regulations. In the past, VA rulemaking procedures have varied among the Department's three major administrations, the Veterans Health Administration, the Veterans Benefits Administration, and the National Cemetery Administration, and among the Department's staff offices. The Secretary approved the creation of ORPM to serve as the centralized rulemaking policy and management structure in the Office of the Secretary. In this document, the Secretary is delegating authority to the ASRPM to manage and coordinate the Department's rulemaking activities.

As an Assistant to the Secretary, the ASRPM will help the Secretary integrate and resolve significant policy issues affecting VA regulations early in the drafting process. The ASRPM will serve as the Executive Secretary to the Secretary's Regulatory Policy Council (the Council), which will ensure that the Department's rulemaking proposals support the Secretary's priorities for assisting America's veterans. The Council will consist of the Secretary, the

Deputy Secretary, the Under Secretary for Health, the Under Secretary for Benefits, the Under Secretary for Memorial Affairs, and other senior officials who will serve as advisory members on an ad hoc basis when necessary to address specific issues.

The Secretary also is designating the ASRPM as the Department's Regulatory Policy Officer in accordance with Executive Order 12866. Section 6(a) of the Executive Order requires Federal agencies to designate a Regulatory Policy Officer who shall report to the agency head. The Regulatory Policy Officer is to be involved in each stage of the regulatory process to foster the development of effective, innovative, and least burdensome regulations and to further the principles set forth in the Executive Order. With the establishment of ORPM, the ASRPM is assuming those responsibilities from the General Counsel.

This document also makes minor technical amendments to 38 CFR 2.7, which is a delegation of authority that concerns the provision of relief on account of administrative error.

Administrative Procedure Act

This document is being published as a final rule pursuant to 5 U.S.C. 553, which excepts matters pertaining to internal agency management and personnel from its notice, comment, and delayed effective date requirements.

Unfunded Mandates

The Unfunded Mandates Reform Act requires, at 2 U.S.C. 1532, that agencies prepare an assessment of anticipated costs and benefits before developing any rule that may result in an expenditure by State, local, or tribal governments, in the aggregate, or by the private sector, of $100 million or more in any given year. This final rule will have no consequential effect on State, local, or tribal governments.

Paperwork Reduction Act

This document contains no provisions constituting a collection of information under the Paperwork Reduction Act (44 U.S.C. 3501–3521).

Regulatory Flexibility Act

The Secretary hereby certifies that this regulatory amendment will not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act, 5 U.S.C. 601–612. This amendment would not directly affect any small entities. Only individuals could be directly affected. Therefore, pursuant to 5 U.S.C. 605(b), this amendment is exempt from the initial and final regulatory flexibility analysis requirements of sections 603–604.

Catalog of Federal Domestic Assistance

There are no Catalog of Federal Domestic Assistance program numbers for this rule.

List of Subjects in 38 CFR Part 2

Authority delegations (Government agencies).

Approved: May 2, 2003.

Anthony J. Principi,

Secretary of Veterans Affairs.

■ For the reasons set forth in the preamble, 38 CFR part 2 is amended as follows:

PART 2—DELEGATIONS OF AUTHORITY

■ 1. The authority citation for part 2 continues to read as follows:

Authority: 5 U.S.C. 302, 552a; 38 U.S.C. 501, 512, 515, 1729, 1729A, 5711; 44 U.S.C. 3702, unless otherwise noted.

■ 2. Section 2.6 is amended by adding paragraph (l) and an authority citation at the end of the section to read as follows:

§ 2.6 Secretary's delegations of authority to certain officials (38 U.S.C. 512).

* * * * *

(l) *Assistant to the Secretary, Office of Regulation Policy and Management.* The Assistant to the Secretary for Regulation Policy and Management (ASRPM) is delegated authority:

(1) To act on all matters assigned to the Office of Regulation Policy and Management, except such matters as require the personal attention or action of the Secretary or the Secretary's Regulatory Policy Council.

(2) To manage and coordinate the Department's rulemaking activities, including the revision and reorganization of regulations.

(3) To serve as the Regulatory Policy Officer for the Department's rulemaking activities in accordance with Executive Order 12866.

(Authority: 38 U.S.C. 501, 512)

■ 3. Section 2.7 is amended by:

■ A. In the first sentence of paragraph (b), removing "210(c)(3)" and adding, in its place, "503(b)" and removing "widow" and adding, in its place, "surviving spouse".

■ B. Adding an authority citation at the end of the section.

The addition reads as follows:

§ 2.7 Delegation of authority to provide relief on account of administrative error.

* * * * *

(Authority: 38 U.S.C. 503, 512)

[FR Doc. 03–11844 Filed 5–12–03; 8:45 am]

BILLING CODE 8320–01–U

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[IL 184–1a; FRL–7481–3]

Approval and Promulgation of Implementation Plan; Illinois New Source Review Amendments

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is approving a requested revision to the Illinois State Implementation Plan (SIP), affecting air permit rules, submitted on August 31, 1998. The submittal revises provisions for major modifications to stationary sources to align more closely with the Clean Air Act (CAA).

DATES: This rule is effective on July 14, 2003, without further notice, unless EPA receives written adverse comments by June 12, 2003. If adverse comment is received, EPA will publish a timely withdrawal of this direct final rule in the **Federal Register** and inform the public that the rule will not take effect.

ADDRESSES: Copies of the State's submittal and other supporting information used in developing the proposed approval are available for inspection during normal business hours at the following location: EPA Region 5, 77 West Jackson Boulevard, AR–18J, Chicago, Illinois 60604. Please contact Steve Marquardt at (312) 353–3214 to arrange a time to inspect the submittal.

FOR FURTHER INFORMATION CONTACT: Steve Marquardt, AR–18J, 77 West Jackson Boulevard, Chicago, Illinois 60604, Telephone Number: (312) 353–3214, E-Mail Address: *marquardt.steve@epa.gov.*

SUPPLEMENTARY INFORMATION: This section addresses the following questions:

What does this document address?
What is the legal basis of the changes that EPA is approving?
What is the impact of these changes on the Emission Reductions Market System (ERMS)?
What is involved in this final action?

What Does This Document Address?

Illinois' rules for nonattainment New Source Review (NSR), 35 Ill. Adm. Code 203, are designed to ensure that the construction of a major new source of air pollution or a large increase of emissions at an existing source does not interfere with the attainment demonstration and does not delay timely achievement of the ambient air quality standards. There are four substantive requirements imposed upon owners or operators of major projects, as set forth in part 203. The first of these is the imposition of Lowest Achievable Emission Rate (LAER) or for certain existing sources, Best Available Control Technology (BACT) on emissions of the nonattainment pollutant from the major project. Appropriate limits are established on a case by case basis in the permitting process. The second requirement is that the emissions of the nonattainment pollutant from a major project must be accompanied by emission offsets from other sources in the nonattainment area. This assures that the total emissions of the nonattainment pollutant will remain within the levels accommodated by the State's attainment demonstration. The third requirement is compliance by other sources in the State which are under common ownership or control with the person proposing the project. The final requirement is an analysis of alternatives to the particular project, to determine whether the benefits of the project outweigh the environmental and social costs.

The amendments to 35 Ill. Adm. Code 203 are intended to better track the language of sections 182(c)(6), (7), and (8) of the CAA, and to make other revisions consistent with this effort. These changes deal with how one determines whether a proposed change at a source is a major modification. Tracking the language of these sections more closely allows Illinois to better accommodate EPA guidance on interpretation of these provisions of the CAA. In particular, Illinois has amended part 203 so that it does not conflict with EPA's "Notice of Proposed Rulemaking, Prevention of Significant Deterioration (PSD) and Nonattainment New Source Review (NSR)," 61 FR 38249 (July 23, 1996). One topic addressed by EPA in this 1996 proposed rulemaking was sections 182(c)(6), (7) and (8) of the CAA (61 FR 38298–38302).

When the EPA finalizes its NSR rulemaking establishing guidance on these sections of the CAA, Illinois' NSR rules will have to be reevaluated. The Illinois EPA has committed to undertaking such a review of Illinois' NSR rules upon final EPA NSR rulemaking (Illinois EPA comments filed to the Pollution Control Board, November 6, 1997).

What Is the Legal Basis of the Changes That EPA Is Approving?

The statutory basis for the changes to part 203 is sections 182(c)(6), (7) and (8) of the CAA. These provisions establish criteria for determining the applicability of nonattainment NSR for modifications in serious and severe ozone nonattainment areas.

The De Minimis Rule: Section 182(c)(6) of the CAA

The "*de minimis* rule," section 182(c)(6) of the CAA, specifies the basic approach for determining whether proposed modifications in serious and severe ozone nonattainment areas are subject to nonattainment NSR. In these areas, the determination whether a project at a source is a major modification must consider other projects at the source over the last five calendar years. If the sum of the particular projects' emissions of an ozone precursor, (*e.g.*, volatile organic material), and increases and decreases in emissions from other "contemporaneous" projects is significant, *i.e.*, more than a "*de minimis*" threshold of 25 tons per year, the particular project is major and subject to the requirements of NSR. The State of Illinois has adopted this provision and is making no changes to it. (Refer to 35 Ill. Adm. Code 203.209(b)).

In addition, Illinois had adopted NSR rules that restricted the role of contemporaneous emission decreases at a source in certain circumstances. In particular, Illinois' NSR rules allowed applicability of NSR to be triggered for a discrete operation, unit or other pollutant emitting activity irrespective of decreases elsewhere at the source, if a proposed project would result in a significant increase in emissions at such operation or unit. For this purpose, other emission increases and decreases at the discrete operation or unit during the contemporaneous time period could be considered, but not decreases elsewhere at the source. As a result, projects with significant increases in emissions at individual units or operations could trigger nonattainment NSR even if the overall net change in emissions at a source was not significant. This was a consequence of Illinois' historic interpretation of the language of sections 182(c)(7) and (8) of the CAA.

The various amendments to 35 Ill. Adm. Code part 203, which EPA is approving, remove provisions that could trigger NSR applicability for individual units or operations in the manner explained above. The amendments also make related changes to the rules. These amendments allow Illinois to follow the proposed interpretation of section 182(c)(6), (7) and (8) of the CAA published by EPA in the **Federal Register** in July 1996. By making the language of 35 Ill. Adm. Code part 203 more consistent with the language of the CAA, Illinois can accommodate EPA's published interpretation. As stated above, the Illinois EPA has committed to reevaluate part 203 upon EPA finalization of its federal rules establishing guidance on these sections of the CAA.

Special Rules for Modifications: Sections 182(c)(7) and (8) of the CAA

Section 182(c)(7) and (8) of the CAA are the "Special Rule for Modifications of Sources Emitting Less Than 100 Tons" and the "Special Rule for Modifications of Sources Emitting 100 Tons or More." These provisions contain additional applicability provisions for major modifications in serious and severe ozone nonattainment areas. In general, they provide that a discrete operation, unit, or other pollutant emitting activity at a source with a significant emission increase (*i.e.*, more than a *de minimis* increase) shall be considered a major modification unless the owner or operator of the source elects to offset the emissions from other operations, units, or activities within the source at an internal offset ratio of 1.3 to 1. If a source elects to provide internal offsets, a proposed modification may be excused from some or all of the NSR requirements. Illinois' NSR rules at 35 Ill. Adm. Code 203.207 and 203.301 generally provided and continue to provide the relief offered by sections 182(c)(7) and (8) of the CAA. However, as explained above, provisions were also included in Illinois' NSR rules that allowed a major modification to be triggered by proposed increases in emissions at an individual emission unit.

The interpretation of section 182(c)(7) and (8) of the CAA published by EPA in 1996 recognizes that a source may not have enough emissions decreases to internally "net out" an entire proposed modification to 25 tons or less so that the modification is *de minimis*. However, where a proposed modification involves more than one discrete unit, the source may have sufficient creditable internal decreases that could be applied at a 1.3 to 1 offset ratio against the emissions increase at particular units. In such circumstances, sections 182(c)(7) and (8) of the CAA function to allow a source to use creditable internal decreases that are

insufficient to avoid nonattainment NSR for an entire project to still avoid NSR requirements for certain units involved in a major modification. Illinois has made changes to its NSR rules so as to be able to follow this interpretation.

Review of Individual Amendments to Illinois' NSR Rules

The first change made by Illinois was to revise 35 Ill. Adm. Code 203.207(d), the applicability criteria for major modifications in serious and severe ozone nonattainment areas. The amendment better follows the wording of section 182(c)(6) of the CAA. Accordingly, 35 Ill. Adm. Code 203.207(d) no longer provides that changes at a discrete operation or unit can be subject to NSR when the source as a whole would not experience a *de minimis* increase in emissions as a result of the proposed modification.

A related change was made to 35 Ill. Adm. Code 203.206(d), a provision in the applicability criteria for major sources dealing with reconstruction of a source. Illinois deleted this provision, which allowed reconstruction of a source to be treated as a major new source. This provision applied in Illinois when changes at an individual operation or unit could trigger nonattainment NSR independent of emission decreases elsewhere at the source. This provision is no longer considered relevant by Illinois under the amended NSR rules with source-wide netting of contemporaneous emissions increases and decreases available to determine whether a proposed project would be a major modification.

Illinois also made a related change to 35 Ill. Adm. Code 203.207(c)(1), in the applicability criteria for major modifications. Illinois deleted the specific exclusion for replacements since the term reconstruction was no longer available to govern this exclusion.

Illinois added 35 Ill. Adm. Code 203.207(e) and revised 35 Ill. Adm. Code 203.301(e) to better follow the language of section 182(c)(7) of the CAA, the "Special Rule for Modifications of Sources Emitting Less Than 100 Tons." As allowed by this special rule for modifications at smaller sources, Illinois' NSR rules do not apply the requirements of nonattainment NSR to a discrete operation or unit involved in a major modification for which the source elects and is able to provide internal offsets at a ratio of 1.3 to 1. In addition, major modifications at these smaller major sources are only required to comply with Best Available Control Technology, rather than the Lowest Achievable Emission Rate.

Finally, Illinois added 35 Ill. Adm. Code 203.301(f), replacing previous 35 Ill. Adm. Code 203.301(e)(2), to better follow the language of section 182(c)(8) of the CAA, the "Special Rule for Modifications of Sources Emitting 100 Tons or More." As allowed by this special rule, for modifications at larger major sources, Illinois' NSR rules do not apply the LAER requirement of nonattainment NSR to a discrete operation or unit involved in a major modification for which the source elects and is able to provide internal offsets at a ratio of 1.3 to 1.

What Is the Impact of These Changes on the Emissions Reductions Market System (ERMS)?

The ERMS, which is codified in 35 Ill. Adm. Code Part 205, is a program adopted by Illinois for the Northeastern Illinois ozone nonattainment area to reduce emissions of volatile organic material (VOM) from major stationary sources. Illinois' amendments to 35 Ill. Adm. Code 203 may have an effect on the calculation of certain sources' baselines and allocations of allotment trading units (ATUs) under the ERMS. ERMS required subject sources to determine their baseline levels of volatile organic material emissions. Generally, sources receive annual allotments of ATUs equivalent to their baseline emissions less 12%. At the end of each calendar year, sources "turn in" ATUs in an amount not less that their volatile organic material emissions during the preceding ozone season. When a sources' emissions exceed its allotment of ATUs, the source must buy ATUs from other sources that have been able to reduce their emissions below their allotments.

Under the amendments to 35 Ill. Adm. Code 203, a source that has a modification to a discrete unit would have the option to net out on a source-wide basis which would mean that the modification would not be subject to requirements of NSR. This would allow sources to potentially have a larger baseline under ERMS because they are now subject to less stringent requirements pursuant to nonattainment NSR.

This final rule is not anticipated to significantly effect the ERMS baselines that have already been set. Those baselines were set generally using the average of the two seasonal allotments periods with the highest VOM emissions during 1994, 1995, and 1996. The sources that set their baselines under this requirement did so prior to the approval of this rule change and were processed according to the rules that applied at that time. Any change requested by a source to its baseline would entail a significant revision to the source's CAAPP permit and can be evaluated on an individual basis.

What Is Involved in This Final Action?

EPA is approving a requested revision to Illinois SIP affecting the nonattainment NSR rules at 35 Ill. Adm. Code 203, submitted on August 31, 1998. The amendments to 35 Ill. Adm. Code 203 are intended to better track the language of sections 182(c)(6), (7) and (8) of the CAA, and to make other revisions consistent with this effort. Tracking of these sections more closely allows Illinois to accommodate EPA guidance these provisions of the CAA.

Statutory and Executive Order Reviews

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a "significant regulatory action" and therefore is not subject to review by the Office of Management and Budget. For this reason, this action is also not subject to Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use" (66 FR 28355, May 22, 2001). This action merely approves state law as meeting Federal requirements and imposes no additional requirements beyond those imposed by state law. Accordingly, the Administrator certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this rule approves pre-existing requirements under state law and does not impose any additional enforceable duty beyond that required by state law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4).

This rule also does not have tribal implications because it will not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal government and Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000). This action also does not have federalism implications because it does not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999). This action merely approves a State rule implementing a Federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. This rule also is not subject to Executive Order 13045 "Protection of Children from Environmental Health Risks and Safety Risks" (62 FR 19885, April 23, 1997), because it is not economically significant.

In reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. In this context, in the absence of a prior existing requirement for the State to use voluntary consensus standards (VCS), EPA has no authority to disapprove a SIP submission for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews a SIP submission, to use VCS in place of a SIP submission that otherwise satisfies the provisions of the Clean Air Act. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a "major rule" as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by July 14, 2003. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (*See* section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Air pollution control, Environmental protection, Incorporation by reference, Carbon monoxide, Intergovernmental relations, Lead, Nitrogen dioxide, Ozone, Particulate matter, Sulfur oxides, Volatile organic compounds.

Dated: April 2, 2003.

Bharat Mathur,

Acting Regional Administrator, Region 5.

■ For the reasons stated in the preamble, part 52, chapter I, title 40 of the Code of Federal Regulations is amended as follows:

PART 52—[AMENDED]

■ 1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

Subpart O—Illinois

■ 2. Section 52.720 is amended by adding paragraph (c)(167) to read as follows:

§ 52.720 Identification of plan.

* * * * *

(c) * * *

(167) On August 31, 1998, Illinois submitted revisions to its major stationary sources construction and modification rules (NSR Rules) as a State Implementation Plan revision request. These revisions apply only in areas in Illinois that have been designated as being in serious or severe nonattainment with the national ambient air quality standards for ozone.

(i) Incorporation by reference. Illinois Administrative Code, Title 35: Environmental Protection, Subtitle B: Air Pollution, Chapter I: Pollution Control Board, Subchapter A: Permits and General Provisions, Part 203 Major Stationary Sources Construction and Modification, Subpart B: Major Stationary Sources in Nonattainment Areas, Section 203.206 Major Stationary Source and Section 203.207 Major Modification of a Source; and, Subpart C: Requirements for Major Stationary Sources in Nonattainment Areas, Section 203.301 Lowest Achievable Emissions Rate. Amended in R98–10 at 22 Ill. Reg. 5674, effective March 10, 1998.

[FR Doc. 03–11749 Filed 5–12–03; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 71

[FRL–7497–4]

Revisions to Federal Operating Permits Program Fee Payment Deadlines for California Agricultural Sources

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is taking direct final action to amend the Federal Operating Permits Program under title V of the Clean Air Act (Act) to extend the date by which State-exempt major agricultural sources in California must pay fees and to allow their permit applications to be considered complete even though fees may not have been paid on or before the date that applications are due. This action allows EPA to process the applications and issue permits while the Agency computes a fee amount based on the cost of administering the permits program for these sources. The amendments extend the due date for submitting operating permit fees to EPA until May 14, 2004, for agricultural sources that are major sources subject to title V but are not being permitted by 35 local air districts in the State of California. We are issuing the amendments as a direct final rule, without prior proposal, because we view the revisions as noncontroversial and anticipate no significant adverse comments.

DATES: This direct final rule will be effective on June 27, 2003 unless significant adverse comments are received by June 12, 2003. If significant adverse comments are received, we will publish a timely withdrawal in the **Federal Register** informing the public that this rule will not take effect.

ADDRESSES: Comments may be submitted by mail to: EPA Docket Center (Air Docket), U.S. EPA West (MD–6102T), Room B–108, 1200 Pennsylvania Avenue, NW., Washington, DC 20460, Attention Docket ID No. OAR–2003–0047. By hand delivery/courier, comments may be submitted to EPA Docket Center, Room B–108, U.S. EPA West, 1301 Constitution Avenue, NW., Washington, DC, 20460, Attention Docket ID No. OAR–2003–00047.

FOR FURTHER INFORMATION CONTACT: For further information, contact Ms. Candace Carraway, U.S. EPA, Information Transfer and Program

Implementation Division, C304–04, Research Triangle Park, North Carolina 27711, telephone number (919) 541–3189, facsimile number (919) 541–5509, electronic mail address: *carraway.candace@epa.gov*.

SUPPLEMENTARY INFORMATION: Throughout this document, "we," "us," or "our" means EPA.

Regulated Entities

Categories and entities potentially affected by this action include agricultural sources that are major sources subject to title V but are not being permitted by any of the following 35 local air districts in the State of California: Amador County Air Pollution Control District (APCD), Antelope Valley APCD, Bay Area Air Quality Management District (AQMD), Butte County AQMD, Calaveras County APCD, Colusa County APCD, El Dorado County APCD, Feather River AQMD, Glenn County APCD, Great Basin Unified APCD, Imperial County APCD, Kern County APCD, Lake County AQMD, Lassen County APCD, Mariposa County APCD, Mendocino County APCD, Modoc County APCD, Mojave Desert AQMD, Monterey Bay Unified APCD, North Coast Unified AQMD, Northern Sierra AQMD, Northern Sonoma County APCD, Placer County APCD, Sacramento Metro AQMD, San Diego County APCD, San Joaquin Valley Unified APCD, San Luis Obispo County APCD, Santa Barbara County APCD, Shasta County APCD, Siskiyou County APCD, South Coast AQMD, Tehama County APCD, Tuolumne County APCD, Ventura County APCD, and Yolo-Solano AQMD.

Direct Final Rule

We are publishing this direct final rule without prior proposal because we view this as noncontroversial and do not anticipate adverse comments. However, in the Proposed Rule section of this **Federal Register**, we are publishing a separate document that will serve as the proposal in the event that adverse comments are filed.

If we receive any significant adverse comments, we will publish a timely withdrawal in the **Federal Register** informing the public that this direct final rule will not take effect. We will address all public comments in a subsequent final rule based on the proposed rule. We will not institute a second comment period on this direct final rule. Any parties interested in commenting must do so at this time.

Docket

EPA has established an official public docket for this action under Docket ID No. OAR–2003–0047. The official public docket consists of the documents specifically referenced in this action, any public comments received, and other information related to this action. Although a part of the official docket, the public docket does not include confidential business information or other information whose disclosure is restricted by statute. The official public docket is the collection of materials that is available for public viewing at the Air Docket in the EPA Docket Center, (EPA/DC) EPA West, Room B102, 1301 Constitution Avenue, NW., Washington, DC. The EPA Docket Center Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the Air Docket is (202) 566–1742.

Electronic Access

You may access this **Federal Register** document electronically through the EPA Internet under the **Federal Register** listings at *http://www.epa.gov/fedrgstr/*. An electronic version of the public docket is available through EPA's electronic public docket and comment system, EPA Dockets. You may use EPA Dockets at *http://www.epa.gov/edocket/* to view public comments, access the index listing of the contents of the official public docket, and to access those documents in the public docket that are available electronically. Although not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the docket facility identified in this document. Once in the system, select "search," then key in the appropriate docket identification number.

World Wide Web (WWW)

After signature, the final rule will be posted on the policy and guidance page for newly proposed or final rules of EPA's Technology Transfer Network (TTN) at *http://www.epa.gov/ttn/oarpg/t5.html*. For more information, call the TTN Help line at (919) 541–5384.

Outline

The contents of the preamble are listed in the following outline:

I. Background
II. Revisions to the Fee Payment Requirements
III. Direct Final Rule
IV. Administrative Requirements
A. Executive Order 12866—Regulatory Planning and Review
B. Paperwork Reduction Act
C. Regulatory Flexibility Act
D. Unfunded Mandates Reform Act
E. Executive Order 13132: Federalism
F. Executive Order 13175: Consultation and Coordination with Indian Tribal Governments
G. Executive Order 13045: Protection of Children from Environmental Health Risks and Safety Risks
H. Executive Order 13211: Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use
I. National Technology Transfer and Advancement Act
J. Congressional Review Act
K. Judicial Review

I. Background

Title V of the Clean Air Act (Act) requires all State permitting authorities to develop operating permits programs that meet certain Federal criteria codified at 40 CFR part 70. Pursuant to title V, EPA promulgated final regulations at 40 CFR part 71 to establish EPA's program for issuing Federal operating permits to sources located in areas lacking an EPA-approved or adequately administered operating permits program. See 61 FR 34202 (July 1, 1996).

On November 30, 2001, we promulgated final full approval of 34 California districts' title V operating permits programs. See 66 FR 63503 (December 7, 2001).[1] Our final rulemaking was challenged by several environmental and community groups alleging that the full approval was unlawful based, in part, on an exemption in section 42310(e) of the California Health and Safety Code which precluded local districts from requiring title V permits for major agricultural sources. EPA entered into a settlement of this litigation which required, in part, that the Agency propose to partially withdraw approval of the 34 fully approved title V programs in California.

We partially withdrew approval of the title V programs for the 34 local air districts listed above and began administering the part 71 program for the State-exempt agricultural sources (herein also referred to as "agricultural sources") located in the 34 local air districts on November 14, 2002.[2] See 67 FR 63551 (October 15, 2002). Consistent with the settlement agreement and our final rule for these 34 districts, State-exempt major agricultural sources subject to the part 71 program due to diesel engine emissions must submit their permit applications by May 14, 2003, while all other major stationary agricultural sources must submit part 71 applications to EPA no later than August 1, 2003. On January 21, 2003, EPA began implementation of the part 71 program for major stationary sources in the Antelope Valley APCD as a result of the expiration of the program's interim approval.

[1] Antelope Valley APCD was not included in our final action because its initial interim approval status, granted on December 19, 2000(65 FR 79314), had not yet expired. On January 21, 2003, however, Antelope Valley's interim approval status expired.

[2] "State-exempt agricultural source" refers to those stationary agricultural sources in California that are presently exempt from all air permitting requirements under California Health and Safety Code 42310(e).

II. Revisions to the Fee Payment Requirements

Part 71 requires that permit applicants submit permit fees with their applications in order for the application to be deemed complete. See § 71.5(a)(2). If a source fails to submit a timely and complete application, it may be subject to an enforcement action for operating without a permit. See § 71.7(b). Also, a source that fails to submit fees within 30 days of the due date is subject to a 50 percent penalty. See § 71.9(l)(2).

We are deferring the fee payment due date for State-exempt agricultural sources in California that are subject to the part 71 program because we believe the standard part 71 fee may significantly exceed the actual cost of administering a program for agricultural sources, and we do not have the information to complete a rulemaking to establish a different fee prior to the May 14, 2003, application deadline. The part 71 fee schedule in § 71.9(c) is designed to cover the cost of permitting more complex, industrial sources. We need additional time to evaluate the likely costs of permitting the State-exempt agricultural sources. Also, as we gain experience with the program, we will be in a better position to establish a cost-based fee. For these reasons, we are amending § 71.9(f) to extend the due date for permit fees for State-exempt agricultural sources until May 14, 2004. Unless we set a different fee amount through rulemaking before that extended date, the fee schedule in § 71.9(c)(1) would apply.

At this time the Agency has no experience with or data on the cost of permitting agricultural sources, but we expect that agricultural sources will have fewer applicable requirements and associated monitoring requirements, and they will require simpler permits than do most industrial sources. One key difference, for example, is that no State-exempt agricultural source has been issued a permit to construct emission sources associated with its agricultural operation, whereas most, if not all, nonagricultural major stationary sources of air pollution in the State have been issued preconstruction permits. Requirements and conditions in preconstruction permits are applicable requirements that must be folded into a title V permit. In addition, State implementation plan-approved stationary source prohibitory rule requirements are mostly directed at nonagricultural operations. Similarly, few, if any, State-exempt agricultural sources would be subject to maximum achievable control technology standards. For an example of the type and complexity of nonagricultural title V permits, please see certain district permits posted on the California Air Resources Board webpage at: *http://www.arb.ca.gov/fcaa/tv/tvinfo/permits/permits.htm*.

Based on this difference in the number of applicable requirements, we believe that at every stage of the permit process, permitting agricultural sources will on average be less complex and time consuming than permitting industrial sources. For agricultural sources, the technical review of the application will be less time consuming because it will be easier to determine if all the applicable requirements are referenced in the application. Similarly, it will be easier to determine whether the source is in compliance with all of its applicable requirements and whether a compliance schedule needs to be developed in the permit. Permits that have fewer applicable requirements will require less time to develop with respect to monitoring issues which typically involves a review of the monitoring proposed by the permit applicant for each applicable requirement and a justification in the permit's statement of basis for the monitoring required in the permit. There will be fewer recordkeeping and reporting requirements tied to applicable requirements to include in the permits. Finally, because there are fewer applicable requirements and reports required by the permit, these permits should be easier for EPA to implement and enforce compared to the typical industrial source permit.

EPA also expects to develop some general permits for some State-exempt agricultural sources which would be less resource intensive to develop and implement than permits that are issued on a case-by-case basis. Although EPA has not issued any general permits, we estimate that it takes on average 328 hours to develop and issue an individual permit and 80 hours to develop and issue a general permit that would apply to many sources. See Information Collection Request for Part 70 Operating Permit Regulations, EPA Number 1587.05. One reason for the difference in the estimates is that general permits are only appropriate for less complex sources with few applicable requirements.

Once a general permit is developed, EPA would not make individual judgements relative to the permit terms for the sources covered by the permit. The monitoring, recordkeeping, and reporting requirements of the general permit would not vary from source to source. Once the general permit has been issued after an opportunity for public participation and affected State review, EPA may grant or deny a source's request to be covered by a general permit without further public participation or affected State review. Thus, EPA would bear the cost of one public hearing at most on the permit, as opposed to the individual public hearings that can be requested for permits that are developed individually.

Once we have determined where it is appropriate to develop general permits, we will be in a position to add those costs to other data on the cost of implementing the program for agricultural sources.

In order to implement the later fee payment due date, we are also amending § 71.9(f) to remove the requirement that fees be paid at the time of the permit application in order for the applications from State-exempt agricultural sources to be considered complete.

Absent these amendments, State-exempt agricultural sources would have been required to pay fees that may substantially exceed the cost of administering the part 71 program or become subject to enforcement actions for operating without a title V permit and for failure to pay fees.

III. Direct Final Rule

EPA believes this direct final rule is necessary because the standard part 71 fee that is based on costs of permitting industrial sources may substantially exceed the cost of permitting the simpler agricultural sources, and many of these sources must submit applications and fees by May 14, 2003. Even with a direct final rulemaking, this rule will not be effective by the date permit applications are due for certain agricultural sources. Thus, applications submitted on May 14, 2003, without a payment of fees will be temporarily incomplete while this rulemaking is conducted. Once this rulemaking is completed and effective, however, applications otherwise meeting the requirements of part 71 that are submitted without fees can be deemed complete without further action by the applicant.

IV. Administrative Requirements

A. Executive Order 12866: Regulatory Planning and Review

Under Executive Order 12866 (58 FR 51735, October 4, 1993), we must determine whether a regulatory action is "significant" and therefore subject to Office of Management and Budget (OMB) review and the requirements of the Executive Order. The Order defines a "significant regulatory action" as one that is likely to result in a rule that may:

1. Have an annual effect on the economy of $100 million or more, adversely affecting in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety in State, local, or tribal governments or communities;

2. Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

3. Materially alter the budgetary impact of entitlement, grants, user fees, or loan programs of the rights and obligations of recipients thereof; or

4. Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

Under Executive Order 12866, EPA has determined that this direct final rule is not a "significant regulatory action" because it simply defers, rather than imposes, one regulatory requirement and raises no novel legal or policy issues. Therefore, this action is not subject to OMB review.

B. Paperwork Reduction Act

This direct final rule does not impose any new information collection burden. The action merely defers the fee payment deadline for certain agricultural sources that are subject to the action. However, OMB has previously approved the information collection requirements contained in the existing regulations, 40 CFR part 71, under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*, and has assigned OMB control number 2060–0336 (EPA ICR No. 1713.04). Burden means the total time, effort, or financial resources expended by person to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

An Agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR part 9 and 48 CFR chapter 15.

C. Regulatory Flexibility Act

The RFA generally requires an agency to prepare a regulatory flexibility analysis of any rule subject to notice-and-comment rulemaking requirements under the Administrative Procedure Act or any other statute unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small organizations, and small governmental jurisdictions.

For purposes of assessing the impacts of today's rule on small entities, small entity is defined as (1) a small business that meets the Small Business Administration size standards for small businesses found in 13 CFR 121.201; (2) a small governmental jurisdiction that is a government of a city, country, town, school district, or special district with a population of less than 50,000; and (3) a small organization that is a not-for-profit enterprise which is independently owned and operated and is not dominant in its field.

After considering the economic impacts of today's final rule on small entities, I certify that this action will not have a significant economic impact on a substantial number of small entities. In determining whether a rule has significant economic impact on a substantial number of small entities, the impact of concern is any significant adverse economic impact on small entities since the primary purpose of the regulatory flexibility analyses is to identify and address regulatory alternatives "which minimize any significant economic impact of the proposed rule on small entities" (5 U.S.C. 603 and 604). Thus, an agency may certify that a rule will not have a significant economic impact on a substantial number of small entities if the rule relieves regulatory burden, or otherwise has a positive economic effect on all of the small entities subject to the rule. The amendments in today's final rule would merely defer the deadline for paying permit fees for sources affected by the final rule, thereby giving them more flexibility and reducing the burden on these sources. We have therefore concluded that today's final rule will relieve regulatory burden for all small entities.

D. Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act (UMRA), Public Law 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. Under section 202 of the UMRA, 2 U.S.C. 1532, EPA generally must prepare a written statement, including a cost-benefit analysis, for any proposed or final rule with "Federal mandates" that may result in expenditures by State, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more in any one year.

Before promulgating a rule for which a written statement is needed, section 205 of the UMRA generally requires EPA to identify and consider a reasonable number of regulatory alternatives and adopt the least-costly, most cost-effective, or least-burdensome alternative that achieves the objectives of the rule. The provisions of section 205 do not apply where they are inconsistent with applicable law. Moreover, section 205 allows EPA to adopt an alternative other than the least-costly, most cost-effective, or least-burdensome alternative if the Administrator publishes with the final rule an explanation why that alternative was not adopted. Before EPA establishes any regulatory requirements that may significantly or uniquely affect small governments, including tribal governments, EPA must have developed under section 203 of the UMRA a small government agency plan. The plan must provide for notifying potentially affected small governments, enabling officials of affected small governments to have meaningful and timely input in the development of our regulatory proposals with significant Federal intergovernmental mandates, and informing, educating, and advising small governments on compliance with the regulatory requirements.

Today's rule contains no Federal mandates (under the regulatory provisions of title II of the UMRA)for State, local, or tribal governments, or the private sector. Today's direct final rule imposes no enforceable duty on any State, local, or tribal governments and merely defers the payment of permit fees for certain permit applicants. Accordingly, no additional costs to State, local, or tribal governments, or to the private sector, result from this action. Thus, today's action is not subject to sections 202 and 205 of the UMRA.

In addition, EPA has determined that this direct final contains no regulatory requirements that might significantly or uniquely affect small governments because it imposes no new requirements and imposes no additional obligations beyond those of existing regulations. Therefore, today's direct final rule is not subject to the requirements of section 203 of the UMRA.

E. Executive Order 13132: Federalism

Executive Order 13132, entitled "Federalism" (64 FR 43255, August 10, 1999), requires EPA to develop an accountable process to ensure "meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications." "Policies that have federalism implications" is defined in the Executive Order to include regulations that have "substantial direct effects on the States, or on the distribution of power and responsibilities among the various levels of government."

This direct final rule does not have federalism implications. It will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132. Today's rule will not impose any new requirements but rather will defer payment of fees for certain permit applicants. Accordingly, it will not alter the overall relationship or distribution of powers between governments for part 71 operating permits programs. Thus, Executive Order 13132 does not apply to this direct final rule.

F. Executive Order 13175: Consultation and Coordination With Indian Tribal Governments

Executive Order 13175, "Consultation and Coordination with Indian Tribal Governments" (65 FR 67249, November 6, 2000), requires EPA to develop an accountable process to ensure "meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications."

This direct final rule does not have tribal implications because it will not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal government and Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes, as specified in Executive Order 13175. Today's action does not significantly or uniquely affect the communities of Indian tribal governments. As discussed above, today's action imposes no new requirements and merely defers fee payment for certain permit applicants. Thus, Executive Order 13175 does not apply to this rule.

G. Executive Order 13045: Protection of Children From Environmental Health Risks and Safety Risks

Executive Order 13045, "Protection of Children from Environmental Health Risks and Safety Risks" (62 FR 19885, April 23, 1997), applies to any rule that the EPA determines is (1) "economically significant" as defined under Executive Order 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency.

EPA interprets Executive Order 13045 as applying only to those regulatory actions that are based on health or safety risk such that the analysis required under section 5–501 of the Order has the potential to influence the regulation. This direct final rule is not subject to Executive Order 13045 because it is not "economically significant" under Executive Order 12866, and it does not establish an environmental standard intended to mitigate health and safety risks.

H. Executive Order 13211: Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use

This direct final rule is not subject to Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use" (66 FR 28355, May 22, 2001), because it is not a significant regulatory action under Executive Order 12866.

I. National Technology Transfer and Advancement Act

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law 104–113, directs EPA to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (*e.g.*, materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by voluntary consensus bodies. The NTTAA directs EPA to provide Congress, through OMB, explanations when the Agency decides not to use available and applicable voluntary consensus standards.

The NTTAA does not apply to this direct final rule because it does not involve technical standards. Therefore, EPA did not consider the use of any voluntary consensus standards.

J. Congressional Review Act

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the United States Senate, the United States House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This direct final rule is not a "major rule" as defined by 5 U.S.C. 804(2). This rule will be effective on June 27, 2003 unless significant adverse comments are received by June 12, 2003.

K. Judicial Review

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by July 14, 2003. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. See section 307(b)(2).

List of Subjects in 40 CFR Part 71

Environmental protection, Administrative practice and procedure, Air pollution control, Intergovernmental relations, Reporting and recordkeeping requirements.

Dated: May 7, 2003.

Christine Todd Whitman,

Administrator.

■ For the reasons set out in the preamble, chapter I of title 40 of the Code of Federal Regulations is amended as follows:

PART 71—[AMENDED]

■ 1. The authority citation for part 71 continues to read as follows:

Authority: 42 U.S.C. 7401, *et seq.*

Subpart A—[Amended]

■ 2. Section 71.9 is amended by adding paragraph (f)(5) to read as follows:

§ 71.9 Permit fees.

* * * * *

(f) * * *

(5) Notwithstanding the above and § 71.5(a)(2), initial fee payments for sources that are subject to the part 71 program for State-exempt agricultural sources in California local air districts are due on May 14, 2004. Before May 14, 2004, initial applications from these sources that are timely and otherwise complete shall not be deemed incomplete due to the fact that fees are not submitted with the applications.

* * * * *

[FR Doc. 03–11910 Filed 5–12–03; 8:45 am]

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FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 2, 73, 74, 80, 90, and 97

[ET Docket No. 02–16; FCC 03–39]

Below 28 MHz

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: In this document, the Commission amends its rules to implement domestically various allocation decisions from International Telecommunication Union ("ITU") World Radiocommunication Conferences concerning the frequency bands below 28 MHz. The rules update the Commission's rules so they are more consistent with international regulations, update various rule parts to affect the allocation changes, and update rules that were not recently reviewed.

DATES: Effective June 12, 2003.

FOR FURTHER INFORMATION CONTACT: Shameeka Parrott, Office of Engineering and Technology, (202) 418–2062, email: *sparrott@fcc.gov*.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's *Report and Order*, ET Docket No. 02–16, FCC 03–39, adopted February 25, 2003, and released March 3, 2003. The full text of this Commission decision is available on the Commission's Internet site at *www.fcc.gov*. It is available for inspection and copying during normal business hours in the FCC Reference Information Center, Room CY–A257, 445 12th Street, SW., Washington, DC 20554. The complete text of this document also may be purchased from the Commission's copy contractor, Qualex International, Room CY–B402, 445 12th Street, SW., Washington, DC 20554. Alternate formats are available to persons with disabilities by contacting Brian Millin at (202) 418–7426 or TTY (202) 418–7365.

Summary of the Report and Order

1. In the *Report and Order*, the Commission amended parts 2, 73, 74, 80, 90, and 97 of the Commission's rules to implement domestically various allocation decisions from ITU World Radiocommunication Conferences concerning the frequency bands below 28 MHz.

2. *International Broadcast Frequencies.* The Commission found that implementing allocation changes from World Administration Radiocommunication Conference ("WARC") 1979 and WARC–92 concerning high frequency broadcast ("HFBC") would significantly increase the amount of spectrum available for HFBC, and conform to international regulations. The Commission states that implementing these allocation changes would promote national interest around the world and increase the international communications provided by HFBC.

3. To provide more effective use of the WARC–79 HFBC bands, the Commission deleted the fixed service allocation from the WARC–79 bands to make these bands available exclusively to the broadcasting service. These bands are also added to the Commission's rules for international broadcast stations, which provide an additional 850 kilohertz of exclusive spectrum for international broadcasters. Federal government agencies are permitted to operate existing fixed stations in the bands 9775–9900 kHz, 11650–11700 kHz, and 11975–12050 kHz on a non-harmful interference basis to the international broadcast stations.

4. Until the transition of the WARC–92 HFBC bands to exclusive broadcasting service use becomes effective on April 1, 2007, the Commission allocated the 790 kilohertz of spectrum to the broadcasting service on a shared primary basis with existing fixed and mobile services. Consistent with changes being made to the allocation of the WARC–92 HFBC bands, the Commission ceased to issue licenses for new non-Federal government stations in the fixed and mobile services on April 1, 2001. The Commission added informational notes to part 80 (the maritime service rules) stating that radioprinter use of the bands 5900–5950 kHz and 7300–7350 kHz and Alaska private-fixed station use of the frequency 11601.5 kHz is on the condition that harmful interference is not caused to HFBC.

5. The Broadcasting Board of Governors ("BBG") filed comment in reference to limiting WARC–92 HFBC bands to single-sideband ("SSB") technology, which BBG believed would limit flexibility and increase costs. The Commission agreed with BBG that international broadcasters would not use SSB techniques because recent ITU studies demonstrated extremely limited availability of SSB receivers.

6. Finally, the Commission amended rules that would update the international broadcasting rules to reflect current practices and make them consistent with ITU *Radio Regulations*. The Commission revised the frequency tolerance of 0.0015 percent of the assigned frequency to the current ITU standard of 10 hertz in § 73.756(c). Given that there are few HFBC stations and many are non-profit, the Commission is grandfathering existing stations that do not meet this new standard. Also, the HFBC definitions in § 73.701 of the rules are revised to reflect international requirements as specified in the *WRC–97 Final Acts*. Currently, the band 25600–25670 kHz is used by radio astronomy service and not by HFBC stations. Therefore, the Commission deleted this band from the list of frequencies available to HFBC stations in part 73 of the rules. With the Commission's rules now agreeing with the ITU Table of Frequency Allocations, domestic radio astronomy observations are protected in this range. The Commission also clarified the manner in which the 7100–7300 kHz band is to be used by international broadcast stations by adding cross references to the rules, and replacing the target zone map in § 73.703 with the current ITU target zone map. Finally, the last sentence in § 73.766 is modified by changing the highest modulating frequency from 5 kilohertz to 4.5 kilohertz to reflect a long-standing international provision.

7. *AM Expanded Band.* The Commission found that the public interest would be served providing additional cleared spectrum in the band 1605–1705 kHz for the AM broadcast service to improve the technical integrity of the service and to remove conflicting regulations from the Commission's rules. Obsolete service rules and frequency references for parts 74 and 90 in this band are removed in order to prevent incompatible frequency authorizations. This decision followed the Commission's deletion of the land mobile allocation from the band 1605–1705 kHz in 1983, in which frequencies within this band were inadvertently left in parts 74 and 90 of the rules. Specifically, the Commission removed the frequencies 1606 kHz, 1622 kHz, and 1646 kHz from § 74.402(a)(1); the frequency 1630 kHz from § 90.20(c)(3); the frequencies 1614 kHz, 1628 kHz, 1652 kHz, 1676 kHz, and 1700 kHz from § 90.35 (b)(3); and the band 1605–1705 kHz from § 90.263. Consistent with removing frequencies 1606 kHz, 1622 kHz, and 1646 kHz from § 74.402(a)(1), the Commission also eliminated all reference to those frequencies from §§ 74.402(a) and 74.402(e)(1) and section 74.462(b). Also, mobile travelers' information stations ("TIS") continue to be authorized throughout the AM Expanded Band as specified in part 90 and Federal government TIS stations operating on 1610 kHz have primary status.

8. With four Industrial/Business Pool and two non-Federal government radiolocation licensees operating in the AM Expanded Band, these licensees are permitted to continue operation on a non-interference basis to AM radio and TIS stations, until the end of their current license term with no provision for renewal. If an Industrial/Business Pool or radiolocation service operation is causing interference to either an AM radio or TIS station, they will have to immediately cease transmission. The Commission found that there is sufficient alternative spectrum to meet the needs of licensees affected by this change and the Commission's staff will work with those licensees to help them find suitable alternative channels if the licensee desires. Also, no application fee will be charged to licensees of affected stations that apply for a modification to obtain alternative channels before the end of their license term.

9. In order to protect the technical integrity of the AM Expanded Band, the Commission deleted from the U.S. Table the Federal government and non-Federal government secondary radiolocation allocation in the band 1605–1705 kHz. The Commission found that these radiolocation operations can be relocated to the band 1900–2000 kHz without significant impact to current operations. Consistent with this decision, the Commission removed the band 1605–1705 kHz from the Radiolocation Service Frequency Table in § 90.103 of the rules and deleted unneeded assignment limitations. The Commission had conversations with NTIA concerning the Federal government's radiolocation assignments in the sub-band 1615–1705 kHz. NTIA agreed to relocate all Federal government stations currently operating in the AM Expanded Band within one year of the adoption date of this Report and Order (February 25, 2004). In response to this, the Commission is allowing the Federal government radiolocation stations to continue to operate during this one-year transition period on the condition that harmful interference is not caused to AM or TIS stations.

10. *Continued Use of Frequencies by Broadcast Auxiliary Remote Pickup Stations.* The Commission is allowing broadcast auxiliary stations to continue using the band 26100–26175 kHz because use of this band by such stations is significant and their secondary status will ensure that their operation will not hinder public coast stations. A review of the Commission's licensing database showed that there were currently no public coast stations making use of the four maritime frequencies (26110 kHz, 26130 kHz, 26150 kHz, and 26170 kHz). Therefore, remote pickup stations will not impact maritime mobile operations and will allow for greater use of the radio spectrum.

11. *Maritime Services.* The band 285–325 kHz is allocated for use in the United States to the maritime radionavigation service on a primary basis, limited to radiobeacons. These operations were authorized by NTIA through footnote G121 of its Manual, but this footnote was not previously coordinated with the Commission. Since this spectrum is Federal government/non-Federal government shared spectrum and both entities benefit from the use of differential global positioning system ("DGPS") systems, the Commission reclassified this footnote as a U.S. footnote.

12. The Commission adopted international footnote 5.131 domestically, authorizing NAVTEX systems to use the 4209.5 kHz frequency exclusively for the transmission by coast stations of meteorological and navigational warnings and urgent information to ships by means of narrow-band direct-printing techniques. Since there are no incumbent users operating in this frequency, the United States Coast Guard ("USCG") can operate NAVTEX with unencumbered access as a means to improving maritime safety broadcast service to mariners. Also, at the request of NTIA, the Commission adopted international footnote 5.79A domestically so that the operating characteristics of established stations in the NAVTEX service can be coordinated by the Federal government with other administrations consistent with the procedures of the International Maritime Organization.

13. After the ITU reduced the guard band for the distress and calling frequency at 500 kHz from 20 kilohertz to 10 kilohertz, the Commission deleted the 500 kHz from its maritime rules as a distress and safety frequency, but kept this frequency available for Morse radiotelegraph functions. At WRC–03 Member States will consider whether non-Global Maritime Distress and Safety System ("GMDSS") requirements should be maintained in the ITU *Radio Regulations*, and until such time the Commission renumbered international footnote 472 as 5.83 in the U.S. Table. Also, until WRC–03 makes a decision, the Commission renumbered international footnotes 472a and 474 as 5.82 and 5.84, respectively, in the U.S. Table to reflect ITU changes.

14. Although, WARC–79 implementation transitioned the bands 4000–4063 kHz and 8100–8195 kHz to the maritime mobile service, these bands are equally or primarily used by the fixed service. Also, the ITU removed the resolution that facilitated the change of these bands to the maritime mobile service and its radio regulations maintain the fixed and maritime mobile service allocations in these bands on a co-primary basis. Therefore, the Commission removed US236 and reinstated the direct U.S. Table fixed service allocation for these bands on a primary basis to match the ITU table.

15. *Aeronautical Fixed Service.* In response to WRC–95, the Commission removed the limitation in footnote 459 on use of the 160–190 kHz band to aeronautical fixed use and allows all eligible fixed services to access this band. This brings our domestic rules in line with the ITU *Radio Regulations* and opens the band for utilization by other potential users. It is noted that the limitation only affects Region 2 polar areas and that Power Line Carrier ("PLC") uses will be coordinated with fixed use of the band; therefore, the Commission found that lifting the aeronautical limitation will not harm the nation's power network.

16. The Federal Aviation Administration ("FAA") indicated that they do not intend to implement an aircraft safety service in the band

21870–21924 kHz. Also, the Commission found no apparent domestic support for adopting international footnote 5.155B, which limits most fixed use of the band to the provision of services related to aircraft flight safety. Therefore, the Commission did not implement footnote 5.155B domestically, but maintains the footnote in the International Table for informational purposes.

17. *Amateur Service.* Because ITU Resolution No. 640 and international footnote 5.120 have been removed from the ITU *Radio Regulations*, the Commission removed footnote 5.120 and § 97.401(b) from the Commission's rules. The Commission did not think this would have an impact on the amateur stations to communicate with foreign stations in disaster areas, making the provisions based on the former ITU Resolution No. 640 unnecessary.

18. *Frequencies Available for Forest Products Licensees.* The Commission revised footnote US298 to agree with terminology now used in part 90 of the Commission's rules and added the frequencies indicated in the footnote to the Industrial/Business Radio Pool Frequency Table in § 90.35, with an appropriate note describing the limited use that is permitted. This decision does not change any regulatory requirements, but merely makes the Commission's rules easier to understand.

19. *Ministerial Conforming Actions.* The Commission made many non-substantive changes to update and correct the U.S. Table with regards to frequency allocations below 28 MHz, while the Commission also changed U.S. footnotes to conform to previous decisions and to update material in certain rule parts. These changes were made to remove unnecessary material from the Commission's rules and to reflect WRC–2000 Final Acts with regard to the International Table of Frequency Allocations within the Rules.

20. The Commission removed international footnote 5.60 from the bands 70–90 kHz and 110–130 kHz because this footnote addressed a limitation on an allocation that was never made domestically. Further, the Commission removed the superfluous international footnote 5.80 from the band 415–435 kHz because it addressed limitations that did not apply to this band. The Commission also removed the secondary direct U.S. Table allocation for the space research service in the band 19990–19995 kHz because this allocation was contained in footnote G106, which was recently added to the band 19990–20010 kHz. The Commission updated footnote US82 by removing maritime channels that were reallocated for other purposes in 1991, thus indicating clearly the channels that are available for ship and coast station operations.

21. Further, the Commission added an informational note to § 90.35 stating that the use of frequencies 25120 kHz, 25140 kHz, 25160 kHz, 25180 kHz, and 25200 kHz were on a secondary basis to stations in the maritime mobile service (part 80). In footnote US281, the Commission changed the band "25.07–25.11 MHz" to "25070–25210 kHz" and updated "industrial radio service" and "Forest Products Radio Service" to "Industrial/Business Pool." Limitation 9 in 47 CFR 90.35 states this fact about footnote US281 and was added to the frequencies 25120 kHz, 25140 kHz, 25160 kHz, 25180 kHz, and 25200 kHz.

22. Additionally, the Commission updated rule part cross reference in the U.S. Table. Specifically, the Commission deleted approximately 50 cross references to the International Fixed Public Radiocommunication Services ("IFPRS") that no longer existed. Finally, the Commission updated 18 international country footnotes for informational purposes because they did not apply to Region 2.

Final Regulatory Flexibility Analysis

As required by the Regulatory Flexibility Act ("RFA"),[1] the Commission incorporated an Initial Regulatory Flexibility Analysis ("IRFA") in the Notice of Proposed Rulemaking and Order ("*Notice*"), ET Docket No. 02–16.[2] The Commission sought written public comments on the proposals in the *Notice*, including the IRFA. The Final Regulatory Flexibility Analysis ("FRFA") in the *Report and Order* conforms to the RFA, as amended by the Contract With America Advancement Act of 1996 ("CWAAA"), Public Law 104–121, 110 Stat. 847 (1996).

By this action, the Commission reallocated 1640 kilohertz of spectrum from the fixed and mobile services to the broadcasting service. This action provides exclusive availability to broadcasting service in the HFBC bands. The Commission made consequential changes to various service rules that updated the rules for bands below 28000 kHz, so that they better comport with international regulations. Finally, this action clarifies the status of services in the AM Expanded Band (1605–1705 kHz).

The RFA directs agencies to provide a description of, and, where feasible, an estimate of the number of small entities that may be affected by the action taken.[3] The RFA generally defines the term "small entity" as having the same meaning as the terms "small business," "small organization," and "small governmental jurisdiction."[4] In addition, the term "small business" has the same meaning as the term "small business concern" under the Small Business Act.[5] A small business concern is one that: (1) Is independently owned and operated; (2) is not dominant in its field of operation; and (3) meets any additional criteria established by the Small Business Administration ("SBA").[6] A small organization is generally "any not-for-profit enterprise which is independently owned and operated and is not dominant in its field."[7] Nationwide, as of 1992, there were approximately 275,801 small organizations.[8] Finally, "small governmental jurisdiction" generally means "governments of cities, counties, towns, townships, villages, school districts, or special districts, with a population of less than 50,000."[9]

Fixed Service. It is noted that there are 162 fixed assignments authorized under section 90.266 for long distance communications,[10] Alaska private-fixed assignments,[11] and 5 aeronautical fixed station assignments [12] that operate in the bands that were reallocated pursuant this Report and Order. Using the small business size standard, the Commission believed that most of the section 90.266 licensees are telephone, gas, and power companies that are not small businesses. Because the Commission estimated that most of these fixed service licensees would not qualify as small entities under the SBA definition, it is estimated that fewer than 184 small entities will be impacted by the reallocation.

Maritime Service. The Commission noted that there are four public coast stations and four private coast stations licensees that operate in the bands being reallocated, and it is estimated that almost all of them qualify as small under the SBA size standard.

International Broadcast Stations. The transmissions of international broadcast stations are intended to be received directly by the general public in foreign countries.[13] There are 24 international broadcast licensees, and the Commission estimated that almost all of them qualify as small under the SBA size standards.

Private Land Mobile Radio Services. The Commission has not adopted a special small business size standard for private land mobile radio service licensees.[14] Therefore the size standards and census data small business breakouts are utilized. This means that such entities are considered small if they employ no more than 1,500 persons. There are 4 Industrial/Business Pool licensees and 2 radiolocation licensees in the AM Expanded Band, and the Commission believed that none of them qualify as small under the SBA size standards.

One significant alternative that the Commission considered was whether or not to allow the few high frequency broadcast ("HFBC") stations, many of which are non-profit, a longer time to transition from outdated equipment. This transition relief will be necessary in instances in which equipment cannot maintain the stringent tolerance required by the amended rule. This Commission determined to grandfather existing international broadcast stations at their current frequency tolerance.[15] This will assist such non-profits, including small entities, by providing relief from the rule as revised. Also, with regard to small entities and others operating in the AM Expanded Band, Commission staff will work with affected licensees to help them find suitable alternative channels if the licensee desires.[16] No fee will be charged to licensees of affected stations that apply for modification for alternative channels before the end of their license term.

The Commission will send a copy of this Final Regulatory Flexibility Analysis, along with this Report and Order, in a report to be sent to Congress pursuant to the Congressional Review Act, 5 U.S.C. 801(a)(1)(A). In addition, the Commission will send a copy of this Report and Order, including this FRFA, to the Chief Counsel for Advocacy of the Small Business Administration.

List of Subjects

47 CFR Parts 2, 73, 74, 90, 97

Radio.

47 CFR Part 80

Alaska, Radio.

Federal Communications Commission.

William F. Caton,

Deputy Secretary.

Rule Changes

■ For the reasons discussed in the preamble, the Federal Communications Commission amends 47 CFR parts 2, 73, 74, 80, 90, and 97 as follows:

PART 2—FREQUENCY ALLOCATIONS AND RADIO TREATY MATTERS; GENERAL RULES AND REGULATIONS

■ 1. The authority citation for part 2 continues to read as follows:

Authority: 47 U.S.C. 154, 302a, 303, and 336, unless otherwise noted.

■ 2. Amend § 2.106 as follows:

■ a. Revise pages 1 through 21 of the Table.

■ b. In the list of International Footnotes in the Old Numbering Scheme, remove footnotes 459, 471, 472, 472A, 474, and 480.

■ c. In the list of United States Footnotes, revise footnotes US18, US25, US82, US104, US225, US231, US238, US281, US282, US283, US298, US321, US340, and US342. Remove footnotes US235 and US236. Add footnotes US364, US366, and US367.

The additions and revisions read as follows:

§ 2.106 Table of Frequency Allocations.

* * * * *

BILLING CODE 6712–01–P

[1] *See* 5 U.S.C. 603. The RFA, *see* 5 U.S.C. 601 *et seq.*, has been amended by the Contract With America Advancement Act of 1996, Public Law 104–121, 110 Stat. 847 (1996) (CWAAA). Title I of the CWAAA is the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA).

[2] *See Notice of Proposed Rule Making and Order*, 17 FCC Rcd 2789 (2002).

[3] 5 U.S.C. 603(b)(3).

[4] *Id.* 601(6).

[5] 5 U.S.C. 601(3) (incorporating by reference the definition of "small business concern" in 15 U.S.C. 632). Pursuant to the RFA, the statutory definition of a small business applies "unless an agency, after consultation with the Office of Advocacy of the Small Business Administration and after opportunity for public comment, establishes one or more definitions of such term which are appropriate to the activities of the agency and publishes such definition(s) in the **Federal Register**." 5 U.S.C. 601(3).

[6] Small Business Act, 15 U.S.C. 632.

[7] 5 U.S.C. 601(4)

[8] 1992 Economic Census, U.S. Bureau of the Census, Table 6 (special tabulation of data under contract to Office of Advocacy of the U.S. Small Business Administration).

[9] 5 U.S.C. 601(5).

[10] 47 CFR 90.266.

[11] 47 CFR 80, subpart O—Alaska Fixed Stations.

[12] 47 CFR 87.275, 87.277, 87.279.

[13] *See* 47 CFR 73.701.

[14] The service is defined in part 90 of the Commission's rules, 47 CFR 90.

[15] *See Report and Order* ¶ 15.

[16] *See Report and Order* ¶ 19.

0-130 kHz (VLF/LF) — Page 1

International Table			United States Table		FCC Rule Part(s)
Region 1	Region 2	Region 3	Federal Government	Non-Federal Government	
Below 9 (Not Allocated) 5.53 5.54			Below 9 (Not Allocated) 5.53 5.54		
9-14 RADIONAVIGATION			9-14 RADIONAVIGATION US18 US294		
14-19.95 FIXED MARITIME MOBILE 5.57 5.55 5.56			14-19.95 FIXED MARITIME MOBILE 5.57 US294	14-19.95 Fixed US294	
19.95-20.05 STANDARD FREQUENCY AND TIME SIGNAL (20 kHz)			19.95-20.05 STANDARD FREQUENCY AND TIME SIGNAL (20 kHz) US294		
20.05-70 FIXED MARITIME MOBILE 5.57 5.56 5.58			20.05-59 FIXED MARITIME MOBILE 5.57 US294	20.05-59 FIXED US294	
			59-61 STANDARD FREQUENCY AND TIME SIGNAL (60 kHz) US294		
			61-70 FIXED MARITIME MOBILE 5.57 US294	61-70 FIXED US294	
70-72 RADIONAVIGATION 5.60 5.56	70-90 FIXED MARITIME MOBILE 5.57 MARITIME RADIONAVIGATION 5.60 Radiolocation	70-72 RADIONAVIGATION 5.60 Fixed Maritime mobile 5.57 5.59	70-90 FIXED MARITIME MOBILE 5.57 Radiolocation	70-90 FIXED Radiolocation	Private Land Mobile (90)
72-84 FIXED MARITIME MOBILE 5.57 RADIONAVIGATION 5.60 5.56		72-84 FIXED MARITIME MOBILE 5.57 RADIONAVIGATION 5.60			

84-86 RADIONAVIGATION 5.60		84-86 RADIONAVIGATION 5.60 Fixed Maritime mobile 5.57 5.59			
86-90 FIXED MARITIME MOBILE 5.57 RADIONAVIGATION 5.56	5.61	86-90 FIXED MARITIME MOBILE 5.57 RADIONAVIGATION 5.60	US294	US294	
90-110 RADIONAVIGATION 5.62 Fixed 5.64			90-110 RADIONAVIGATION 5.62 US18 US104 US294		Aviation (87) Private Land Mobile (90)
110-112 FIXED MARITIME MOBILE RADIONAVIGATION 5.64	110-130 FIXED MARITIME MOBILE MARITIME RADIONAVIGATION 5.60 Radiolocation	110-112 FIXED MARITIME MOBILE RADIONAVIGATION 5.60 5.64	110-130 FIXED MARITIME MOBILE Radiolocation		Maritime (80) Private Land Mobile (90)
112-115 RADIONAVIGATION 5.60		112-117.6 RADIONAVIGATION 5.60 Fixed Maritime mobile			
115-117.6 RADIONAVIGATION 5.60 Fixed Maritime mobile 5.64 5.66		5.64 5.65			
117.6-126 FIXED MARITIME MOBILE RADIONAVIGATION 5.60 5.64		117.6-126 FIXED MARITIME MOBILE RADIONAVIGATION 5.60 5.64			
126-129 RADIONAVIGATION 5.60		126-129 RADIONAVIGATION 5.60 Fixed Maritime mobile 5.64 5.65			
See next page for 129-130 kHz	5.61 5.64	See next page for 129-130 kHz	5.64 US294		

130-505 kHz (LF/MF) — Page 3

International Table			United States Table		FCC Rule Part(s)
Region 1	Region 2	Region 3	Federal Government	Non-Federal Government	
129-130 FIXED MARITIME MOBILE RADIONAVIGATION 5.60 5.64	See previous page for 110-130 kHz	129-130 FIXED MARITIME MOBILE RADIONAVIGATION 5.60 5.64	See previous page for 110-130 kHz		See previous page for 110-130 kHz
130-148.5 FIXED MARITIME MOBILE 5.64 5.67	130-160 FIXED MARITIME MOBILE 5.64	130-160 FIXED MARITIME MOBILE RADIONAVIGATION 5.64	130-160 FIXED MARITIME MOBILE 5.64 US294		Maritime (80)
148.5-255 BROADCASTING	160-190 FIXED	160-190 FIXED Aeronautical radionavigation	160-190 FIXED MARITIME MOBILE US294	160-190 FIXED US294	
	190-200 AERONAUTICAL RADIONAVIGATION		190-200 AERONAUTICAL RADIONAVIGATION US18 US226 US294		Aviation (87)
5.68 5.69 5.70	200-275 AERONAUTICAL RADIONAVIGATION Aeronautical mobile	200-285 AERONAUTICAL RADIONAVIGATION Aeronautical mobile	200-275 AERONAUTICAL RADIONAVIGATION US18 Aeronautical mobile US294		
255-283.5 BROADCASTING AERONAUTICAL RADIONAVIGATION 5.70 5.71	275-285 AERONAUTICAL RADIONAVIGATION Aeronautical mobile Maritime radionavigation (radiobeacons)		275-285 AERONAUTICAL RADIONAVIGATION Aeronautical mobile Maritime radionavigation (radiobeacons) US18 US294		
283.5-315 AERONAUTICAL RADIONAVIGATION MARITIME RADIONAVIGATION (radiobeacons) 5.73 5.72 5.74	285-315 AERONAUTICAL RADIONAVIGATION MARITIME RADIONAVIGATION (radiobeacons) 5.73		285-325 MARITIME RADIONAVIGATION (radiobeacons) 5.73 Aeronautical radionavigation (radiobeacons)		

315-325 AERONAUTICAL RADIONAVIGATION Maritime radionavigation (radiobeacons) 5.73 5.72 5.75	315-325 MARITIME RADIONAVIGATION (radiobeacons) 5.73 Aeronautical radionavigation	315-325 AERONAUTICAL RADIONAVIGATION MARITIME RADIONAVIGATION (radiobeacons) 5.73	US18 US294 US364	
325-405 AERONAUTICAL RADIONAVIGATION	325-335 AERONAUTICAL RADIONAVIGATION Aeronautical mobile Maritime radionavigation (radiobeacons)	325-405 AERONAUTICAL RADIONAVIGATION Aeronautical mobile	325-335 AERONAUTICAL RADIONAVIGATION (radiobeacons) Aeronautical mobile Maritime radionavigation (radiobeacons) US18 US294	Aviation (87)
5.72	335-405 AERONAUTICAL RADIONAVIGATION Aeronautical mobile		335-405 AERONAUTICAL RADIONAVIGATION (radiobeacons) US18 Aeronautical mobile US294	
405-415 RADIONAVIGATION 5.76 5.72	405-415 RADIONAVIGATION 5.76 Aeronautical mobile		405-415 RADIONAVIGATION 5.76 US18 Aeronautical mobile US294	Maritime (80) Aviation (87)
415-435 MARITIME MOBILE 5.79 AERONAUTICAL RADIONAVIGATION 5.72	415-495 MARITIME MOBILE 5.79 5.79A Aeronautical radionavigation 5.80		415-435 MARITIME MOBILE 5.79 AERONAUTICAL RADIONAVIGATION US294	
435-495 MARITIME MOBILE 5.79 5.79A Aeronautical radionavigation 5.72 5.82	5.77 5.78 5.82		435-495 MARITIME MOBILE 5.79 5.79A Aeronautical radionavigation 5.82 US231 US294	435-495 MARITIME MOBILE 5.79 5.79A 5.82 US231 US294	Maritime (80)
495-505 MOBILE (distress and calling) 5.83			495-505 MOBILE (distress and calling) 5.83		Maritime (80) Aviation (87)

Page 4

505-2107 kHz (MF) — Page 5

International Table			United States Table		FCC Rule Part(s)
Region 1	Region 2	Region 3	Federal Government	Non-Federal Government	
505-526.5 MARITIME MOBILE 5.79 5.79A 5.84 AERONAUTICAL RADIONAVIGATION	505-510 MARITIME MOBILE 5.79	505-526.5 MARITIME MOBILE 5.79 5.79A 5.84 AERONAUTICAL RADIONAVIGATION Aeronautical mobile Land mobile	505-510 MARITIME MOBILE 5.79		Maritime (80)
	510-525 MOBILE 5.79A 5.84 AERONAUTICAL RADIONAVIGATION		510-525 MARITIME MOBILE (ships only) 5.79A 5.84 AERONAUTICAL RADIONAVIGATION (radiobeacons) US18 US14 US225		Maritime (80) Aviation (87)
5.72	525-535 BROADCASTING 5.86 AERONAUTICAL RADIONAVIGATION	526.5-535 BROADCASTING Mobile 5.88	525-535 AERONAUTICAL RADIONAVIGATION (radiobeacons) US18 MOBILE US221 US239		Aviation (87) Private Land Mobile (90)
526.5-1606.5 BROADCASTING	535-1605 BROADCASTING	535-1606.5 BROADCASTING	535-1605 US321	535-1605 BROADCASTING US321 NG128	Radio Broadcast (AM) (73) Auxiliary Broadcast (74) Alaska Fixed (80)
5.87 5.87A	1605-1625 BROADCASTING 5.89	1606.5-1800 FIXED MOBILE RADIOLOCATION RADIONAVIGATION	1605-1615 MOBILE US221 US321	1605-1705 BROADCASTING 5.89	
1606.5-1625 FIXED MARITIME MOBILE 5.90 LAND MOBILE 5.92	5.90		1615-1705		
1625-1635 RADIOLOCATION 5.93	1625-1705 FIXED MOBILE BROADCASTING 5.89 Radiolocation				
1635-1800 FIXED MARITIME MOBILE 5.90 LAND MOBILE	5.90		US238 US299 US321	US238 US299 US321 NG128	

	1705-1800 FIXED MOBILE RADIOLOCATION AERONAUTICAL RADIONAVIGATION		1705-1800 FIXED MOBILE RADIOLOCATION US240		Maritime (80) Private Land Mobile (90)
5.92 5.96		5.91			
1800-1810 RADIOLOCATION 5.93	1800-1850 AMATEUR	1800-2000 AMATEUR FIXED MOBILE except aeronautical mobile RADIONAVIGATION Radiolocation	1800-1900	1800-1900 AMATEUR	Amateur (97)
1810-1850 AMATEUR 5.98 5.99 5.100 5.101					
1850-2000 FIXED MOBILE except aeronautical Mobile	1850-2000 AMATEUR FIXED MOBILE except aeronautical mobile RADIOLOCATION RADIONAVIGATION		1900-2000 RADIOLOCATION		Private Land Mobile (90) Amateur (97)
5.92 5.96 5.103	5.102	5.97	US290		
2000-2025 FIXED MOBILE except aeronautical mobile (R) 5.92 5.103	2000-2065 FIXED MOBILE		2000-2065 FIXED MOBILE	2000-2065 MARITIME MOBILE NG19	Maritime (80)
2025-2045 FIXED MOBILE except aeronautical mobile (R) Meteorological aids 5.104 5.92 5.103			US340	US340	
2045-2160 FIXED MARITIME MOBILE LAND MOBILE	2065-2107 MARITIME MOBILE 5.105		2065-2107 MARITIME MOBILE 5.105		
5.92	5.106		US296 US340		
	See next page for 2107-2170 kHz		See next page for 2107-2170 kHz		See next page

2107-3230 kHz (MF/HF) Page 7

International Table			United States Table		FCC Rule Part(s)
Region 1	Region 2	Region 3	Federal Government	Non-Federal Government	
See previous page for 2045-2160 kHz	2107-2170 FIXED MOBILE		2107-2170 FIXED MOBILE US340	2107-2170 FIXED LAND MOBILE MARITIME MOBILE NG19 US340	Maritime (80) Private Land Mobile (90)
2160-2170 RADIOLOCATION 5.93 5.107					
2170-2173.5 MARITIME MOBILE			2170-2173.5 MARITIME MOBILE (telephony) US340	2170-2173.5 MARITIME MOBILE US340	Maritime (80)
2173.5-2190.5 MOBILE (distress and calling) 5.108 5.109 5.110 5.111			2173.5-2190.5 MOBILE (distress and calling) 5.108 5.109 5.110 5.111 US279 US340		Maritime (80) Aviation (87)
2190.5-2194 MARITIME MOBILE			2190.5-2194 MARITIME MOBILE (telephony) US340	2190.5-2194 MARITIME MOBILE US340	Maritime (80)
2194-2300 FIXED MOBILE except aeronautical mobile (R) 5.92 5.103 5.112	2194-2300 FIXED MOBILE 5.112		2194-2495 FIXED MOBILE US340	2194-2495 FIXED LAND MOBILE MARITIME MOBILE NG19 US340	Maritime (80) Aviation (87) Private Land Mobile (90)
2300-2498 FIXED MOBILE except aeronautical mobile (R) BROADCASTING 5.113 5.103	2300-2495 FIXED MOBILE BROADCASTING 5.113				
2498-2501 STANDARD FREQUENCY AND TIME SIGNAL (2500 kHz)	2495-2501 STANDARD FREQUENCY AND TIME SIGNAL (2500 kHz)		2495-2501 STANDARD FREQUENCY AND TIME SIGNAL (2500 kHz) US340		

2501-2502 STANDARD FREQUENCY AND TIME SIGNAL Space research		2501-2502 STANDARD FREQUENCY AND TIME SIGNAL US340 G106	2501-2502 STANDARD FREQUENCY AND TIME SIGNAL US340	
2502-2625 FIXED MOBILE except aeronautical mobile (R) 5.92 5.103 5.114	2502-2505 STANDARD FREQUENCY AND TIME SIGNAL	2502-2505 STANDARD FREQUENCY AND TIME SIGNAL US340		
2625-2650 MARITIME MOBILE MARITIME RADIONAVIGATION 5.92	2505-2850 FIXED MOBILE	2505-2850 FIXED MOBILE US285 US340	2505-2850 FIXED LAND MOBILE MARITIME MOBILE US285 US340	Maritime (80) Aviation (87) Private Land Mobile (90)
2650-2850 FIXED MOBILE except aeronautical mobile (R) 5.92 5.103				
2850-3025 AERONAUTICAL MOBILE (R) 5.111 5.115		2850-3025 AERONAUTICAL MOBILE (R) 5.111 5.115 US283 US340		Aviation (87)
3025-3155 AERONAUTICAL MOBILE (OR)		3025-3155 AERONAUTICAL MOBILE (OR) US340		
3155-3200 FIXED MOBILE except aeronautical mobile (R) 5.116 5.117		3155-3230 FIXED MOBILE except aeronautical mobile (R) US340		Maritime (80) Private Land Mobile (90)
3200-3230 FIXED MOBILE except aeronautical mobile (R) BROADCASTING 5.113 5.116				

Page 8

3230-5060 kHz (HF) — Page 9

International Table			United States Table		FCC Rule Part(s)
Region 1	Region 2	Region 3	Federal Government	Non-Federal Government	
3230-3400 FIXED MOBILE except aeronautical mobile BROADCASTING 5.113 5.116 5.118			3230-3400 FIXED MOBILE except aeronautical mobile Radiolocation US340		Maritime (80) Aviation (87) Private Land Mobile (90)
3400-3500 AERONAUTICAL MOBILE (R)			3400-3500 AERONAUTICAL MOBILE (R) US283 US340		Aviation (87)
3500-3800 AMATEUR FIXED MOBILE except aeronautical mobile 5.92	3500-3750 AMATEUR 5.119	3500-3900 AMATEUR FIXED MOBILE	3500-4000	3500-4000 AMATEUR	Amateur (97)
3800-3900 FIXED AERONAUTICAL MOBILE (OR) LAND MOBILE	3750-4000 AMATEUR FIXED MOBILE except aeronautical mobile (R)				
3900-3950 AERONAUTICAL MOBILE (OR) 5.123		3900-3950 AERONAUTICAL MOBILE BROADCASTING			
3950-4000 FIXED BROADCASTING		3950-4000 FIXED BROADCASTING			
	5.122 5.125	5.126	US340	US340	
4000-4063 FIXED MARITIME MOBILE 5.127 5.126			4000-4063 FIXED MARITIME MOBILE US340		Maritime (80)
4063-4438 MARITIME MOBILE 5.79A 5.109 5.110 5.130 5.131 5.132 5.128 5.129			4063-4438 MARITIME MOBILE 5.79A 5.109 5.110 5.130 5.131 5.132 US82 US296 US340		Maritime (80) Aviation (87)

4438-4650 FIXED MOBILE except aeronautical mobile (R)		4438-4650 FIXED MOBILE except aeronautical Mobile	4438-4650 FIXED MOBILE except aeronautical mobile (R) US340		Maritime (80) Aviation (87) Private Land Mobile (90)
4650-4700 AERONAUTICAL MOBILE (R)			4650-4700 AERONAUTICAL MOBILE (R) US282 US283 US340		Aviation (87)
4700-4750 AERONAUTICAL MOBILE (OR)			4700-4750 AERONAUTICAL MOBILE (OR) US340		
4750-4850 FIXED AERONAUTICAL MOBILE (OR) LAND MOBILE BROADCASTING 5.113	4750-4850 FIXED MOBILE except aeronautical mobile (R) BROADCASTING 5.113	4750-4850 FIXED BROADCASTING 5.113 Land mobile	4750-4850 FIXED MOBILE except aeronautical mobile (R) US340		Maritime (80)
4850-4995 FIXED LAND MOBILE BROADCASTING 5.113			4850-4995 FIXED MOBILE US340	4850-4995 FIXED US340	Aviation (87)
4995-5003 STANDARD FREQUENCY AND TIME SIGNAL (5000 kHz)			4995-5003 STANDARD FREQUENCY AND TIME SIGNAL (5000 kHz) US340		
5003-5005 STANDARD FREQUENCY AND TIME SIGNAL Space research			5003-5005 STANDARD FREQUENCY AND TIME SIGNAL US340 G106	5003-5005 STANDARD FREQUENCY AND TIME SIGNAL US340	
5005-5060 FIXED BROADCASTING 5.113			5005-5060 FIXED US340		Maritime (80) Aviation (87) Private Land Mobile (90)

Page 10

5060-9040 kHz (HF) — Page 11

International Table			United States Table		FCC Rule Part(s)
Region 1	Region 2	Region 3	Federal Government	Non-Federal Government	
5060-5250 FIXED Mobile except aeronautical mobile 5.133			5060-5450 FIXED Mobile except aeronautical mobile		Maritime (80) Aviation (87) Private Land Mobile (90)
5250-5450 FIXED MOBILE except aeronautical mobile			US212 US340		
5450-5480 FIXED AERONAUTICAL MOBILE (OR) LAND MOBILE	5450-5480 AERONAUTICAL MOBILE (R)	5450-5480 FIXED AERONAUTICAL MOBILE (OR) LAND MOBILE	5450-5680 AERONAUTICAL MOBILE (R)		Aviation (87)
5480-5680 AERONAUTICAL MOBILE (R) 5.111 5.115			5.111 5.115 US283 US340		
5680-5730 AERONAUTICAL MOBILE (OR) 5.111 5.115			5680-5730 AERONAUTICAL MOBILE (OR) 5.111 5.115 US340		
5730-5900 FIXED LAND MOBILE	5730-5900 FIXED MOBILE except aeronautical mobile (R)	5730-5900 FIXED Mobile except aeronautical mobile (R)	5730-5900 FIXED MOBILE except aeronautical mobile (R) US340		Maritime (80) Aviation (87)
5900-5950 BROADCASTING 5.134 5.136			5900-5950 BROADCASTING FIXED MOBILE except aeronautical mobile (R) US340 US366		Radio Broadcast (HF) (73) Maritime (80) Aviation (87)
5950-6200 BROADCASTING			5950-6200 BROADCASTING US340		Radio Broadcast (HF) (73)
6200-6525 MARITIME MOBILE 5.109 5.110 5.130 5.132 5.137			6200-6525 MARITIME MOBILE 5.109 5.110 5.130 5.132 US82 US296 US340		Maritime (80)
6525-6685 AERONAUTICAL MOBILE (R)			6525-6685 AERONAUTICAL MOBILE (R) US283 US340		Aviation (87)

6685-6765 AERONAUTICAL MOBILE (OR)			6685-6765 AERONAUTICAL MOBILE (OR) US340		
6765-7000 FIXED Land mobile 5.139 5.138			6765-7000 FIXED Mobile 5.138 US340		ISM Equipment (18)
7000-7100 AMATEUR AMATEUR-SATELLITE 5.140 5.141			7000-7100 US340	7000-7100 AMATEUR AMATEUR-SATELLITE US340	Amateur (97)
7100-7300 BROADCASTING	7100-7300 AMATEUR 5.142	7100-7300 BROADCASTING	7100-7300 US340	7100-7300 AMATEUR 5.142 US340	
7300-7350 BROADCASTING 5.134 5.143			7300-7350 BROADCASTING FIXED Mobile US340 US366		Radio Broadcast (HF) (73) Maritime (80) Private Land Mobile (90)
7350-8100 FIXED Land mobile 5.144			7350-8100 FIXED Mobile US340		Maritime (80) Aviation (87) Private Land Mobile (90)
8100-8195 FIXED MARITIME MOBILE			8100-8195 FIXED MARITIME MOBILE US340		Maritime (80)
8195-8815 MARITIME MOBILE 5.109 5.110 5.132 5.145 5.111			8195-8815 MARITIME MOBILE 5.109 5.110 5.132 5.145 US82 5.111 US296 US340		Maritime (80) Aviation (87)
8815-8965 AERONAUTICAL MOBILE (R)			8815-8965 AERONAUTICAL MOBILE (R) US340		Aviation (87)
8965-9040 AERONAUTICAL MOBILE (OR)			8965-9040 AERONAUTICAL MOBILE (OR) US340		

Page 12

9040-13410 kHz (HF) — Page 13

International Table			United States Table		FCC Rule Part(s)
Region 1	Region 2	Region 3	Federal Government	Non-Federal Government	
9040-9400 FIXED			9040-9400 FIXED US340		Maritime (80)
9400-9500 BROADCASTING 5.134 5.146			9400-9500 BROADCASTING FIXED US340 US366		Radio Broadcast (HF) (73) Maritime (80)
9500-9900 BROADCASTING 5.147			9500-9900 BROADCASTING 5.147 US340 US367		Radio Broadcast (HF) (73)
9900-9995 FIXED			9900-9995 FIXED US340		
9995-10003 STANDARD FREQUENCY AND TIME SIGNAL (10000 kHz) 5.111			9995-10003 STANDARD FREQUENCY AND TIME SIGNAL (10000 kHz) 5.111 US340		
10003-10005 STANDARD FREQUENCY AND TIME SIGNAL Space research 5.111			10003-10005 STANDARD FREQUENCY AND TIME SIGNAL 5.111 US340 G106	10003-10005 STANDARD FREQUENCY AND TIME SIGNAL 5.111 US340	
10005-10100 AERONAUTICAL MOBILE (R) 5.111			10005-10100 AERONAUTICAL MOBILE (R) 5.111 US283 US340		Aviation (87)
10100-10150 FIXED Amateur			10100-10150 US247 US340	10100-10150 AMATEUR US247 US340	Amateur (97)
10150-11175 FIXED Mobile except aeronautical mobile (R)			10150-11175 FIXED Mobile except aeronautical mobile (R) US340		
11175-11275 AERONAUTICAL MOBILE (OR)			11175-11275 AERONAUTICAL MOBILE (OR) US340		

11275-11400 AERONAUTICAL MOBILE (R)	11275-11400 AERONAUTICAL MOBILE (R) US283 US340	Aviation (87)
11400-11600 FIXED	11400-11600 FIXED US340	
11600-11650 BROADCASTING 5.134 5.146	11600-11650 BROADCASTING FIXED US340 US366	Radio Broadcast (HF) (73)
11650-12050 BROADCASTING 5.147	11650-12050 BROADCASTING US340 US367	
12050-12100 BROADCASTING 5.134 5.146	12050-12100 BROADCASTING FIXED US340 US366	
12100-12230 FIXED	12100-12230 FIXED US340	
12230-13200 MARITIME MOBILE 5.109 5.110 5.132 5.145	12230-13200 MARITIME MOBILE 5.109 5.110 5.132 5.145 US82 US296 US340	Maritime (80)
13200-13260 AERONAUTICAL MOBILE (OR)	13200-13260 AERONAUTICAL MOBILE (OR) US340	
13260-13360 AERONAUTICAL MOBILE (R)	13260-13360 AERONAUTICAL MOBILE (R) US283 US340	Aviation (87)
13360-13410 FIXED RADIO ASTRONOMY 5.149	13360-13410 RADIO ASTRONOMY US342 G115	13360-13410 RADIO ASTRONOMY US342

Page 14

13410-17900 kHz (HF) — Page 15

International Table			United States Table		FCC Rule Part(s)
Region 1	Region 2	Region 3	Federal Government	Non-Federal Government	
13410-13570 FIXED Mobile except aeronautical mobile (R) 5.150			13410-13570 FIXED Mobile except aeronautical mobile (R) 5.150 US340	13410-13570 FIXED 5.150 US340	ISM Equipment (18)
13570-13600 BROADCASTING 5.134 5.151			13570-13600 BROADCASTING FIXED Mobile except aeronautical mobile (R) US340 US366	13570-13600 BROADCASTING FIXED US340 US366	Radio Broadcast (HF) (73)
13600-13800 BROADCASTING			13600-13800 BROADCASTING US340		
13800-13870 BROADCASTING 5.134 5.151			13800-13870 BROADCASTING FIXED Mobile except aeronautical mobile (R) US340 US366	13800-13870 BROADCASTING FIXED US340 US366	
13870-14000 FIXED Mobile except aeronautical mobile (R)			13870-14000 FIXED Mobile except aeronautical mobile (R) US340	13870-14000 FIXED US340	
14000-14250 AMATEUR AMATEUR-SATELLITE			14000-14350	14000-14250 AMATEUR AMATEUR-SATELLITE US340	Amateur (97)
14250-14350 AMATEUR 5.152			 US340	14250-14350 AMATEUR US340	
14350-14990 FIXED Mobile except aeronautical mobile (R)			14350-14990 FIXED Mobile except aeronautical mobile (R) US340	14350-14990 FIXED US340	

14990-15005 STANDARD FREQUENCY AND TIME SIGNAL (15000 kHz) 5.111	14990-15005 STANDARD FREQUENCY AND TIME SIGNAL (15000 kHz) 5.111 US340		
15005-15010 STANDARD FREQUENCY AND TIME SIGNAL Space research	15005-15010 STANDARD FREQUENCY AND TIME SIGNAL US340 G106	15005-15010 STANDARD FREQUENCY AND TIME SIGNAL US340	
15010-15100 AERONAUTICAL MOBILE (OR)	15010-15100 AERONAUTICAL MOBILE (OR) US340		
15100-15600 BROADCASTING	15100-15600 BROADCASTING US340		Radio Broadcast (HF) (73)
15600-15800 BROADCASTING 5.134 5.146	15600-15800 BROADCASTING FIXED US340 US366		
15800-16360 FIXED 5.153	15800-16360 FIXED US340		
16360-17410 MARITIME MOBILE 5.109 5.110 5.132 5.145	16360-17410 MARITIME MOBILE 5.109 5.110 5.132 5.145 US82 US296 US340		Maritime (80)
17410-17480 FIXED	17410-17480 FIXED US340		
17480-17550 BROADCASTING 5.134 5.146	17480-17550 BROADCASTING FIXED US340 US366		Radio Broadcast (HF) (73) Aviation (87)
17550-17900 BROADCASTING	17550-17900 BROADCASTING US340		Radio Broadcast (HF) (73)

Page 16

17900-22855 kHz (HF) — Page 17

International Table			United States Table		FCC Rule Part(s)
Region 1	Region 2	Region 3	Federal Government	Non-Federal Government	
17900-17970 AERONAUTICAL MOBILE (R)			17900-17970 AERONAUTICAL MOBILE (R) US283 US340		Aviation (87)
17970-18030 AERONAUTICAL MOBILE (OR)			17970-18030 AERONAUTICAL MOBILE (OR) US340		
18030-18052 FIXED			18030-18068 FIXED		Maritime (80)
18052-18068 FIXED Space research			US340		
18068-18168 AMATEUR AMATEUR-SATELLITE			18068-18168 US340	18068-18168 AMATEUR AMATEUR-SATELLITE US340	Amateur (97)
5.154					
18168-18780 FIXED Mobile except aeronautical mobile			18168-18780 FIXED Mobile US340		Maritime (80)
18780-18900 MARITIME MOBILE			18780-18900 MARITIME MOBILE US82 US296 US340		
18900-19020 BROADCASTING 5.134			18900-19020 BROADCASTING FIXED US340 US366		Radio Broadcast (HF) (73)
5.146					
19020-19680 FIXED			19020-19680 FIXED US340		
19680-19800 MARITIME MOBILE 5.132			19680-19800 MARITIME MOBILE 5.132 US340		Maritime (80)
19800-19990 FIXED			19800-19990 FIXED US340		

19990-19995 STANDARD FREQUENCY AND TIME SIGNAL Space research	19990-20010 STANDARD FREQUENCY AND TIME SIGNAL (20000 kHz)	19990-20010 STANDARD FREQUENCY AND TIME SIGNAL (20000 kHz)	
5.111			
19995-20010 STANDARD FREQUENCY AND TIME SIGNAL (20000 kHz)			
5.111	5.111 US340 G106	5.111 US340	
20010-21000 FIXED Mobile	20010-21000 FIXED Mobile US340	20010-21000 FIXED US340	
21000-21450 AMATEUR AMATEUR-SATELLITE	21000-21450 US340	21000-21450 AMATEUR AMATEUR-SATELLITE US340	Amateur (97)
21450-21850 BROADCASTING	21450-21850 BROADCASTING US340		Radio Broadcast (HF) (73)
21850-21870 FIXED 5.155A	21850-21924 FIXED		Aviation (87)
5.155			
21870-21924 FIXED 5.155B	US340		
21924-22000 AERONAUTICAL MOBILE (R)	21924-22000 AERONAUTICAL MOBILE (R) US340		
22000-22855 MARITIME MOBILE 5.132	22000-22855 MARITIME MOBILE 5.132 US82 US296 US340		Maritime (80)
5.156			

Page 18

22855-26175 kHz (HF) — Page 19

International Table			United States Table		FCC Rule Part(s)
Region 1	Region 2	Region 3	Federal Government	Non-Federal Government	
22855-23000 FIXED 5.156			22855-23000 FIXED US340		
23000-23200 FIXED Mobile except aeronautical mobile (R) 5.156			23000-23200 FIXED Mobile except aeronautical mobile (R) US340	23000-23200 FIXED US340	
23200-23350 FIXED 5.156A AERONAUTICAL MOBILE (OR)			23200-23350 AERONAUTICAL MOBILE (OR) US340		
23350-24000 FIXED MOBILE except aeronautical mobile 5.157			23350-24890 FIXED MOBILE except aeronautical mobile US340	23350-24890 FIXED US340	
24000-24890 FIXED LAND MOBILE					
24890-24990 AMATEUR AMATEUR-SATELLITE			24890-24990 US340	24890-24990 AMATEUR AMATEUR-SATELLITE US340	Amateur (97)
24990-25005 STANDARD FREQUENCY AND TIME SIGNAL (25000 kHz)			24990-25005 STANDARD FREQUENCY AND TIME SIGNAL (25000 kHz) US340		
25005-25010 STANDARD FREQUENCY AND TIME SIGNAL Space research			25005-25010 STANDARD FREQUENCY AND TIME SIGNAL US340 G106	25005-25010 STANDARD FREQUENCY AND TIME SIGNAL US340	
25010-25070 FIXED MOBILE except aeronautical mobile			25010-25070 US340	25010-25070 LAND MOBILE US340 NG112	Private Land Mobile (90)

25070-25210 MARITIME MOBILE			25070-25210 MARITIME MOBILE US82 US281 US296 US340	25070-25210 MARITIME MOBILE US82 US281 US296 US340 NG112	Maritime (80) Private Land Mobile (90)
25210-25550 FIXED MOBILE except aeronautical mobile			25210-25330 US340	25210-25330 LAND MOBILE US340	Private Land Mobile (90)
			25330-25550 FIXED MOBILE except aeronautical mobile US340	25330-25550 US340	
25550-25670 RADIO ASTRONOMY 5.149			25550-25670 RADIO ASTRONOMY US74 US342		
25670-26100 BROADCASTING			25670-26100 BROADCASTING US25 US340		Radio Broadcast (HF) (73) Remote Pickup (74D)
26100-26175 MARITIME MOBILE 5.132			26100-26175 MARITIME MOBILE 5.132 US25 US340		Remote Pickup (74D) Maritime (80)

Page 20

26175-28000 kHz (HF)					Page 21
United States Table				FCC Rule Part(s)	
Federal Government		Non-Federal Government			
26175-26480		26175-26480		Remote Pickup (74D)	
		LAND MOBILE			
US340		US340			
26480-26950		26480-26950			
FIXED					
MOBILE except aeronautical mobile					
US10 US340		US10 US340			
26950-27410		26950-26960		ISM Equipment (18)	
		FIXED			
		5.150 US340			
		26960-27230		ISM Equipment (18)	
		MOBILE except aeronautical mobile		Personal Radio (95)	
		5.150 US340			
		27230-27410		ISM Equipment (18)	
		FIXED		Private Land Mobile (90)	
		MOBILE except aeronautical mobile		Personal Radio (95)	
5.150 US340		5.150 US340			
27410-27540		27410-27540		Private Land Mobile (90)	
		FIXED			
		LAND MOBILE			
US340		US340			
27540-28000		27540-28000			
FIXED					
MOBILE					
US298 US340		US298 US340			

International Table			
Region 1	Region 2	Region 3	
26175-27500			
FIXED			
MOBILE except aeronautical mobile			
5.150			
27500-28000			
METEOROLOGICAL AIDS			
FIXED			
MOBILE			

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* * * * *

United States (US) Footnotes

* * * * *

US18 Navigation aids in the U.S. and its insular areas in the bands 9–14 kHz, 90–110 kHz, 190–415 kHz, 510–535 kHz, and 2700–2900 MHz are normally operated by the Federal Government. However, authorizations may be made by the FCC for non-Federal Government operations in these bands subject to the conclusion of appropriate arrangements between the FCC and the Federal agencies concerned and upon special showing of need for service which the Federal Government is not yet prepared to render.

* * * * *

US25 The use of frequencies 26110 kHz, 26130 kHz, 26151 kHz, and 26172 kHz may be authorized to non-Federal Government remote pickup broadcast base and mobile stations on the condition that harmful interference is not caused to the reception of either international broadcast stations transmitting in the band 25850–26100 kHz or to coast stations transmitting in the band 26100–26175 kHz.

* * * * *

US82 The assignable frequencies in the bands 4146–4152 kHz, 6224–6233 kHz, 8294–8300 kHz, 12353–12368 kHz, 16528–16549 kHz, 18825–18846 kHz, 22159–22180 kHz, and 25100–25121 kHz may be authorized on a shared non-priority basis to Federal and non-Federal Government ship and coast stations (SSB telephony, with peak envelope power not to exceed 1 kW).

* * * * *

US104 The LORAN Radionavigation System has priority in the band 90–110 kHz in the United States and its insular areas. Radiolocation land stations making use of LORAN-type equipment may be authorized to both Federal and non-Federal Government licensees on a secondary basis for offshore radiolocation activities only at specific locations and subject to such technical and operational conditions (*e.g.*, power, emission, pulse rate and phase code, hours of operation), including on-the-air testing, as may be required on a case-by-case basis to ensure protection of the LORAN radionavigation system from harmful interference and to ensure mutual compatibility among radiolocation operators. Such authorizations to stations in the radiolocation service are further subject to showing of need for service which is not currently provided and which the Federal Government is not yet prepared to render by way of the radionavigation service.

* * * * *

US225 In addition to its present Federal Government use, the band 510–525 kHz is available to Federal and non-Federal Government aeronautical radionavigation stations inland of the Territorial Base Line as coordinated with the military services. In addition, the frequency 510 kHz is available for non-Federal Government ship-helicopter operations when beyond 100 nautical miles from shore and required for aeronautical radionavigation.

* * * * *

US231 When an assignment cannot be obtained in the bands between 200 kHz and 525 kHz, which are allocated to aeronautical radionavigation, assignments may be made to aeronautical radiobeacons in the maritime mobile band 435–490 kHz, on a secondary basis, subject to the coordination and agreement of those agencies having assignments within the maritime mobile band which may be affected. Assignments to Federal Government aeronautical radionavigation radiobeacons in the band 435–490 kHz shall not be a bar to any required changes to the maritime mobile radio service and shall be limited to non-voice emissions.

* * * * *

US238 On the condition that harmful interference is not caused to the reception of AM broadcast stations or to travelers' information stations, Federal Government stations in the band 1615–1705 kHz may continue operations until February 25, 2004.

* * * * *

US281 In the band 25070–25210 kHz, non-Federal Government stations in the Industrial/Business Pool shall not cause harmful interference to, and must accept interference from, stations in the maritime mobile service operating in accordance with the Table of Frequency Allocations.

US282 In the band 4650–4700 kHz, frequencies may be authorized for non-Federal Government communication with helicopters in support of off-shore drilling operations on the condition that harmful interference will not be caused to services operating in accordance with the Table of Frequency Allocations.

US283 In the bands 2850–3025 kHz, 3400–3500 kHz, 4650–4700 kHz, 5450–5680 kHz, 6525–6685 kHz, 10005–10100 kHz, 11275–11400 kHz, 13260–13360 kHz, and 17900–17970 kHz, frequencies may be authorized for non-Federal Government flight test purposes on the condition that harmful interference will not be caused to services operating in accordance with the Table of Frequency Allocations.

* * * * *

US298 Channels 27555 kHz, 27615 kHz, 27635 kHz, 27655 kHz, 27765 kHz, and 27860 kHz are available for use by forest product licensees on a secondary basis to Federal Government operations including experimental stations. Non-Federal Government operations on these channels will not exceed 150 watts output power and are limited to the states of Washington, Oregon, Maine, North Carolina, South Carolina, Tennessee, Georgia, Florida, Alabama, Mississippi, Louisiana, and Texas (eastern portion).

* * * * *

US321 The band 535–1705 kHz is also allocated to the non-Federal Government mobile service on a secondary basis for the distribution of public service information from Travelers' Information Stations operating in accordance with the provisions of 47 CFR 90.242 on 10 kilohertz spaced channels from 540 kHz to 1700 kHz.

* * * * *

US340 The band 2–30 MHz is available on a non-interference basis to Federal and non-Federal Government maritime and aeronautical stations for the purposes of measuring the quality of reception on radio channels. *See* 47 CFR 87.149 for the list of protected frequencies and bands within this frequency range. Actual communications shall be limited to those frequencies specifically allocated to the maritime mobile and aeronautical mobile services.

* * * * *

US342 In making assignments to stations of other services to which the following bands:

13360–13410 kHz,
25550–25670 kHz,
37.5–38.25 MHz,
322–328.6 MHz*,
1330–1400 MHz*,
1610.6–1613.8 MHz*,
1660–1670 MHz,
3260–3267 MHz*,
3332–3339 MHz*,
3345.8–3352.5 MHz*,
4825–4835 MHz*,
14.47–14.5 GHz*,
22.01–22.21 GHz*,
22.21–22.5 GHz,
22.81–22.86 GHz*,
23.07–23.12 GHz*,
31.2–31.3 GHz,
36.43–36.5 GHz*,
42.5–43.5 GHz,
48.94–49.04 GHz*,
93.07–93.27 GHz*,
97.88–98.08 GHz*,
140.69–140.98 GHz*,
144.68–144.98 GHz*,
145.45–145.75 GHz*,
146.82–147.12 GHz*,
150–151 GHz*,
174.42–175.02 GHz*,
177–177.4 GHz*,
178.2–178.6 GHz*,
181–181.46 GHz*,
186.2–186.6 GHz*,
250–251 GHz*,
257.5–258 GHz*,
261–265 GHz,
262.24–262.76 GHz*,
265–275 GHz,
265.64–266.16 GHz*,
267.34–267.86 GHz*,
271.74–272.26 GHz*

are allocated (* indicates radio astronomy use for spectral line observations), all practicable steps shall be taken to protect the radio astronomy service from harmful interference. Emissions from spaceborne or air-borne stations can be particularly serious sources of interference to the radio astronomy service (*see* Nos. 4.5 and 4.6 and Article 29 of the ITU Radio Regulations).

* * * * *

US364 Consistent with US18, stations may be authorized on a primary basis in the band 285–325 kHz for the specific purpose of transmitting differential global positioning system information.

US366 On April 1, 2007, the bands 5900–5950 kHz, 7300–7350 kHz, 9400–9500 kHz, 11600–11650 kHz, 12050–12100 kHz, 13570–13600 kHz, 13800–13870 kHz, 15600–15800 kHz, 17480–17550 kHz, and 18900–19020 kHz shall be allocated exclusively to the broadcasting service. Beginning April 1, 2007, frequencies in these bands may be used by stations in the fixed and mobile services, communicating only within the United States and its insular areas, on the condition that harmful interference is not caused to the broadcasting service. When using frequencies

for fixed and mobile services, licensees shall be limited to the minimum power needed to achieve communications and shall take account of the seasonal use of frequencies by the broadcasting service published in accordance with Article 12 of the ITU *Radio Regulations*.

US367 On the condition that harmful interference is not caused to the broadcasting service, frequencies in the bands 9775–9900 kHz, 11650–11700 kHz, and 11975–12050 kHz may be used by Federal Government stations in the fixed service communicating within the United States and its insular areas that are authorized as of [effective date of the Report and Order published in the **Federal Register**]. Each such station shall be limited to a total radiated power of 24 dBW.

* * * * *

PART 73—RADIO BROADCAST SERVICES

■ 3. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303, 334 and 336.

■ 4. Section 73.701 is amended by revising paragraphs (a), (e), (g), (h), (i), (j), and (l) to read as follows:

§ 73.701 Definitions.

* * * * *

(a) *International broadcast stations.* A broadcasting station employing frequencies allocated to the broadcasting service between 5900 and 26100 kHz, the transmissions of which are intended to be received directly by the general public in foreign countries. (A station may be authorized more than one transmitter.) There are both Federal and non-Federal Government international broadcast stations; only the latter are licensed by the Commission and are subject to the rules of this subpart.

* * * * *

(e) *Coordinated Universal Time (UTC).* Time scale, based on the second (SI), as defined in Recommendation ITU–R TF.460–5. UTC is equivalent to mean solar time at the prime medjan (0° longitude), formerly expressed as GMT.

* * * * *

(g) *Day.* Any twenty-four hour period beginning 0100 UTC and ending 0100 UTC.

(h) *Schedule A.* That portion of any year commencing at 0100 UTC on the last Sunday in March and ending at 0100 UTC on the last Sunday in October.

(i) *Schedule B.* That portion of any year commencing at 0100 UTC on the last Sunday in October and ending at 0100 UTC on the last Sunday in March.

(j) [Reserved]

* * * * *

(l) *Reference month.* That month of a season which is used for determining predicted propagation characteristics for the season. The reference month for Schedule A is July and the reference month for Schedule B is December.

* * * * *

■ 5. Sections 73.702 is amended by revising paragraph (f) introductory text, (f)(1), (f)(2) introductory text, and (f)(3) to read as follows:

§ 73.702 Assignment and use of frequencies.

* * * * *

(f) Assigned frequencies shall be within the following bands, which are allocated on an exclusive basis to the broadcasting service:

(1) 5950–6200 kHz, 9500–9900 kHz, 11650–12050 kHz, 13600–13800 kHz, 15100–15600 kHz, 17550–17900 kHz, 21450–21850 kHz, and 25670–26100 kHz.

(2) In addition, the band 7100–7300 kHz is allocated on an exclusive basis to the broadcasting service in International Telecommunication Union (ITU) Regions 1 and 3 as defined in 47 CFR. 2.104(b). Assignments in the band 7100–7300 kHz shall be limited to international broadcast stations located in ITU Region 3 insular areas (as defined in 47 CFR. 2.105(a), note 4) that transmit to zones and areas of reception in ITU Region 1 or 3. In addition, during the hours of 0800–1600 UTC (Coordinated Universal Time) antenna gain with reference to an isotropic radiator in any easterly direction that would intersect any area in Region 2 shall not exceed 2.15 dBi, except in the case where a transmitter power of less than 100 kW is used. In this case, antenna gain on restricted azimuths shall not exceed that which is determined in accordance with equation below. Stations desiring to operate in this band must submit sufficient antenna performance information to ensure compliance with these restrictions. Permitted Gain for Transmitter powers less than 100 kW:

* * * * *

(3) In addition, frequencies within the following bands are assignable to the broadcasting service on an exclusive basis after April 1, 2007: 5900–5950 kHz, 7300–7350 kHz, 9400–9500 kHz, 11600–11650 kHz, 12050–12100 kHz, 13570–13600 kHz, 13800–13870 kHz, 15600–15800 kHz, 17480–17550 kHz, and 18900–19020 kHz (WARC–92 HFBC bands).

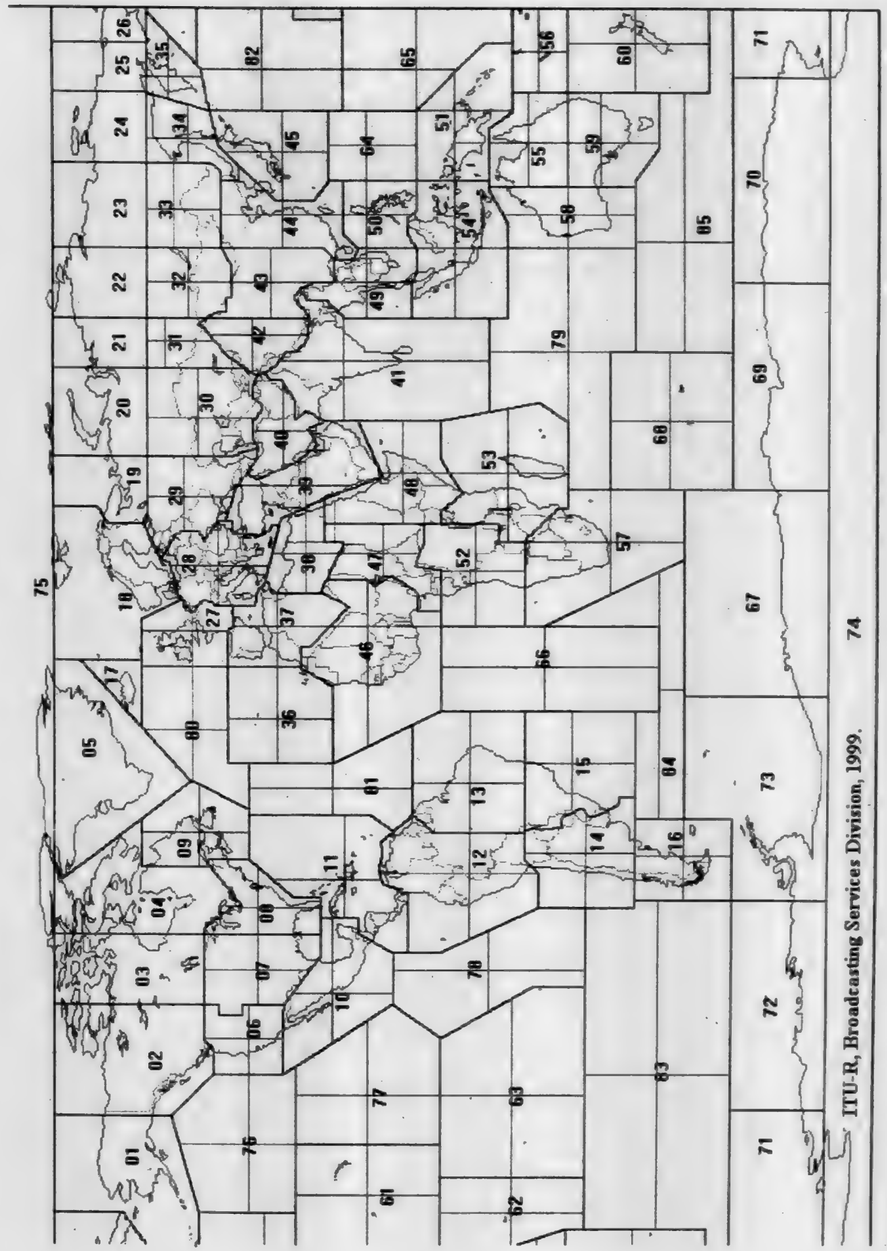
* * * * *

■ 6. Section 73.703 is amended by revising the map to read as follows:

§ 73.703 Geographical zones and areas of reception.

* * * * *

BILLING CODE 6712–01–P



BILLING CODE 6712–01–C

■ 7. Section 73.756 is amended by revising paragraph (c) to read as follows:

§ 73.756 Transmission system requirements.

* * * * *

(c) *Frequency tolerance.* The transmitter shall maintain the operating frequency within 10 Hz of the assigned frequency.

■ 8. Section 73.766 is revised to read as follows:

§ 73.766 Modulation and bandwidth.

The percentage of modulation shall be maintained as high as possible consistent with good quality of transmission and good broadcast practice. In no case shall it exceed 100 percent on positive or negative peaks of frequent recurrence. It should not be less than 85 percent on peaks of frequent recurrence. The range of modulation frequencies shall be so controlled that the authorized bandwidth of the emission shall not be exceeded under all conditions of modulation. The highest modulating frequency shall not exceed 4.5 kHz.

PART 74—EXPERIMENTAL RADIO, AUXILIARY, SPECIAL BROADCASTING AND OTHER PROGRAM DISTRIBUTIONAL SERVICES

■ 9. The authority citation for part 74 continues to read as follows:

Authority: 47 U.S.C. 154, 303, 307, 336(f), 336(h), and 554.

■ 10. Section 74.402 is amended by revising paragraph (a) introductory text and by removing and reserving paragraphs (a)(1) and (e)(1) to read as follows:

§ 74.402 Frequency assignment.

(a) The following channels may be assigned for use by broadcast remote pickup stations using any emission (other than single sideband or pulse) that will be in accordance with the provisions of § 74.462.

* * * * *

§ 74.462 [Amended]

■ 11. Section 74.462 is amended by removing the entry containing the single text "kHz" in the Frequencies column and the entry for frequencies 1606, 1622, and 1646 from the table in paragraph (b).

§ 74.464 [Amended]

■ 12. Section 74.464 is amended by removing the entry for frequency range 1.6 to 2 MHz, the entry for 200 W or less, the entry for over 200 W, and footnote 1 from the table.

PART 80—STATIONS IN THE MARITIME SERVICES

■ 13. The authority citation for part 80 continues to read as follows:

Authority: Secs. 4, 303, 307(e), 309, and 332, 48 Stat. 1066, 1082, as amended; 47 U.S.C. 154, 303, 307(e), 309, and 332, unless otherwise noted. Interpret or apply 48 Stat. 1064–1068, 1081–1105, as amended; 47 U.S.C. 151–155, 301–609; 3 UST 3450, 3 UST 4726, 12 UST 2377.

■ 14. Section 80.373 is amended by revising paragraph (d)(1) and by revising the first seven entries in column 1 of the table in paragraph (i) to read as follows:

§ 80.373 Private communications frequencies.

* * * * *

(d) * * *

(1) The following table describes the bands available for radioprinter simplex communications between ship and private coast stations:

Frequency Bands (kHz)

2107–2170	4750–4850
2194–2495	5060–5450
2505–2850	5700–5950 [1]
3155–3400	7300–8100 [1]
4438–4650	

[1] After April 1, 2007, use of the sub-bands 5900–5950 kHz and 7300–7350 kHz shall be on the condition that harmful interference is not caused to HF broadcasting.

* * * * *

(i) * * *

Private Communications in Alaska Carrier Frequencies (kHz)

1619.0 [3] * * *		
1622.0 [3]		
1643.0 [3]		
1646.0 [3]		
1649.0 [3]		
1652.0 [3]		
1705.0 [3]		
* * *		

* * * * *

[3] Use of these frequencies is on a secondary basis to Region 2 broadcasting.

* * * * *

■ 15. Section 80.387 is amended by revising the table in paragraph (b) to read as follows:

§ 80.387 Frequencies for Alaska fixed stations.

(b) *Alaska private-fixed station frequencies:*

CARRIER FREQUENCIES (kHz)

1643.0 [4]	2430.0	2773.0
1646.0 [4]	2447.0	3164.5
1649.0 [4]	2450.0	3183.0
1652.0 [4]	2463.0	3196.0
1657.0 [4]	2466.0	3201.0
1660.0 [1 4]	2471.0	3258.0
1705.0 [4]	2479.0	3261.0
1709.0	2482.0	3303.0
1712.0	2506.0	3365.0
2003.0	2509.0	4035.0
2006.0	2512.0	5164.5
2115.0	2535.0	[3] 5167.5
2118.0	2538.0	5204.5
2253.0	2563.0	[2] 6948.5
2400.0	2566.0	[2] 7368.5
2419.0	2601.0	8067.0
2422.0	2616.0	8070.0
2427.0	2691.0	[2] 11437.0
		[2 5] 11601.5

[1] Use of 1660.0 kHz must be coordinated to protect radiolocation on adjacent channels.

[2] Peak envelope power must not exceed 1 kW for radiotelephony. Teleprinter use is authorized.

[3] The frequency 5167.5 kHz is available for emergency communications in Alaska. Peak envelope power of stations operating on this frequency must not exceed 150 watts. When a station in Alaska is authorized to use 5167.5 kHz, such station may also use this frequency for calling and listening for the purpose of establishing communications.

[4] Use of these frequencies is on a secondary basis to Region 2 broadcasting.

[5] After April 1, 2007, use of the frequency 11601.5 kHz shall be on the condition that harmful interference is not caused to HF broadcasting.

* * * * *

PART 90—PRIVATE LAND MOBILE RADIO SERVICES

■ 16. The authority citation for part 90 continues to read as follows:

Authority: Sections 4(i), 11, 303(g), 303(r), and 332(c)(7) of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), 161, 303(g), 303(r), 332(c)(7).

§ 90.20 [Amended]

■ 17. Section 90.20 is amended by removing the frequency entry for "1630" in paragraph (c)(3).

■ 18. Amend § 90.35 as follows:

■ a. In paragraph (b)(3), remove the frequency entries for 1614, 1628, 1652, 1676, and 1700 kHz.

■ b. In paragraph (b)(3), revise the frequency entries for 25.12, 25.14, 25.16, 25.18, and 25.20 MHz.

■ c. In paragraph (b)(3), add the frequency entries in numerical order for 27.555, 27.615, 27.635, 27.655, 27.765, and 27.86 MHz.

■ d. Remove and reserve paragraph (c)(2).

■ e. Add paragraph (c)(82).

The additions and revisions read as follows:

§ 90.35 Industrial/Business Pool.

* * * * *

(b) * * *

INDUSTRIAL/BUSINESS POOL FREQUENCY TABLE

Frequency or band	Class of station(s)	Limitations	Coordinator
Kilohertz			
2000 to 25000	Fixed, base or mobile	1.	
2292	Base or mobile	4, 5, 7	
2398	do	5, 7	
4637.5	do	5, 7	
Megahertz			
* * * * * * *			
25.12	do	9	IP
25.14	do	3, 4, 9	IP
25.16	do	9	IP
25.18	do	3, 4, 9	IP
25.20	do	9	IP
* * * * * * *			
27.555	Base or mobile	82	
27.615	do	82	
27.635	do	82	
27.655	do	82	
27.765	do	82	
27.86	do	82	
29.71	do.		
* * * * * * *			

(c) * * *

(82) The frequency may be assigned only to entities meeting the definition of a forest product licensee (*see* § 90.7). Operations are on a secondary basis to Federal Government operations including experimental stations, will not exceed 150 watts output power, and are limited to the states of Washington, Oregon, Maine, North Carolina, South Carolina, Tennessee, Georgia, Florida, Alabama, Mississippi, Louisiana, and Texas (eastern portion).

* * * * *

19. Section 90.103 is amended by revising the kilohertz section of the table in paragraph (b), by revising paragraph (c)(4), by removing paragraphs (c)(28) and (c)(29), and by redesignating paragraphs (c)(30) and (c)(31) as paragraphs (c)(28) and (c)(29) to read as follows:

§ 90.103 Radiolocation Service.

* * * * *

(b) * * *

RADIOLOCATION SERVICE FREQUENCY TABLE

Frequency or band	Class of station(s)	Limitations
Kilohertz		
70 to 90	Radiolocation land or mobile	1
90 to 110	Radiolocation land	2
110 to 130	Radiolocation land or mobile	1
1705 to 1715	do	4, 5, 6
1715 to 1750	do	5, 6
1750 to 1800	do	5, 6, 7
1900 to 1950	do	6, 25, 26, 27, and 30
1950 to 2000	do	6, 25, 27, and 30
3230 to 3400	do	6, 8
* * * * * * *		

(c) * * *

(4) The non-Federal Government radiolocation service in this band is on a secondary basis to stations in the aeronautical radionavigation service operating on 1708 kHz.

* * * * *

■ 20. Section 90.263 is revised to read as follows:

§ 90.263 Substitution of frequencies below 25 MHz.

Frequencies below 25 MHz when shown in the radio pool frequency listings under this part will be assigned to base or mobile stations only upon a satisfactory showing that, from a safety of life standpoint, frequencies above 25 MHz will not meet the operational requirements of the applicant. These frequencies are available for assignment in many areas; however, in individual cases such assignment may be impracticable due to conflicting frequency use authorized to stations in other services by this and other countries. In such cases, a substitute frequency, if found to be available, may be assigned from the following bands: 1705–1750 kHz, 2107–2170 kHz, 2194–

2495 kHz, 2506–2850 kHz, 3155–3400 kHz, or 4438–4650 kHz. Since such assignments are in certain instances subject to additional technical and operation limitations, it is necessary that each application also include precise information concerning transmitter output power, type and directional characteristics, if any, of the antenna, and the minimum necessary hours of operation. (This section is not applicable to the Radiolocation Radio Service, subpart F.)

PART 97—AMATEUR RADIO SERVICE

■ 21. The authority citation for part 97 continues to read as follows:

Authority: 48 Stat. 1066, 1082, as amended; 47 U.S.C. 154, 303. Interpret or apply 48 Stat. 1064–1068, 1081–1105, as amended; 47 U.S.C. 151–155, 301–609, unless otherwise noted.

§ 97.401 [Amended]

■ 22. Section 97.401 is amended by removing paragraph (b) and by redesignating paragraphs (c) and (d) as (b) and (c).

[FR Doc. 03–11723 Filed 5–12–03; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 03–435; MB Docket No. 02–300, RM–10576; MB Docket No. 02–296, RM–10571; MB Docket No. 02–298, RM–10574; MB Docket No. 02–299, RM–10575; MB Docket No. 02–297, RM–10572; MB Docket No. 02–302, RM–10579]

Radio Broadcasting Services; Colorado City, O'Brien, Panhandle, Shamrock, Stamford, TX, and Taloga, OK

AGENCY: Federal Communications Commission.

ACTION: Final rule, correction.

SUMMARY: The Federal Communications Commission published in the **Federal Register** of March 6, 2003, a document allotting six FM channels to various communities in Oklahoma and Texas. The document number was inadvertently listed as DA 03–345 in lieu of DA 03–435. This document corrects the document number.

DATES: Effective on May 13, 2003.

FOR FURTHER INFORMATION CONTACT: Victoria M. McCauley, Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: The FCC published a document in the **Federal Register** of March 6, 2003, (68 FR 10665) allotting six FM channels to various communities in Oklahoma and Texas. In FR Doc. 03–5338, the document number was listed incorrectly. This document changes the document number to DA 03–435.

■ In rule FR Doc. 03–5338 published on March 6, 2003, (68 FR 10665) make the following correction. On page 10665, in the first column, line 4, correct the document number to DA 03–435.

Federal Communications Commission.

John A. Karousos,

Assistant Chief, Audio Division, Media Bureau.

[FR Doc. 03–11816 Filed 5–12–03; 8:45 am]

BILLING CODE 6712–01–P

Proposed Rules

Federal Register

Vol. 68, No. 92

Tuesday, May 13, 2003

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2003–CE–19–AD]

RIN 2120–AA64

Airworthiness Directives; Kidde Aerospace Part Number (P/N) 898052 Hand-held Halon Fire Extinguishers

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes to adopt a new airworthiness directive (AD) that would apply to certain Kidde Aerospace P/N 898052 hand-held halon fire extinguishers that are utilized on aircraft. This proposed AD would require you to remove the affected fire extinguishers from service and would prevent you from using them in the future. This proposed AD is the result of information that shows that the discharge time of the affected fire extinguishers exceeds the maximum allowable discharge time. The problem is due to incomplete crimping of the siphon tube. The actions specified by this proposed AD are intended to remove from service fire extinguishers that had this incomplete crimping of the siphon tube. If not removed from service, these fire extinguishers could function at diminished levels and compromise the level of safety in an emergency situation.

DATES: The Federal Aviation Administration (FAA) must receive any comments on this proposed rule on or before July 14, 2003.

ADDRESSES: Submit comments to FAA, Central Region, Office of the Regional Counsel, Attention: Rules Docket No. 2003–CE–19–AD, 901 Locust, Room 506, Kansas City, Missouri 64106. You may view any comments at this location between 8 a.m. and 4 p.m., Monday through Friday, except Federal holidays. You may also send comments electronically to the following address: *9-ACE-7-Docket@faa.gov*. Comments sent electronically must contain "Docket No. 2003–CE–19–AD" in the subject line. If you send comments electronically as attached electronic files, the files must be formatted in Microsoft Word 97 for Windows or ASCII text.

You may get service information that applies to this proposed AD from Kidde Aerospace, Kidde Technologies, Inc., 4200 Airport Drive, NW., Wilson, North Carolina 27896; telephone: (252) 237–7004. You may also view this information at the Rules Docket at the address above.

FOR FURTHER INFORMATION CONTACT: Charles H. Bowser, Flight Test Engineer, FAA, Atlanta Aircraft Certification Office, One Crown Center, 1895 Phoenix Boulevard, Suite 450, Atlanta, Georgia 30349; telephone: (770) 703–6047; facsimile: (770) 703–6097.

SUPPLEMENTARY INFORMATION:

Comments Invited

How Do I Comment on This Proposed AD?

The FAA invites comments on this proposed rule. You may submit whatever written data, views, or arguments you choose. You need to include the proposed rule's docket number and submit your comments to the address specified under the caption **ADDRESSES**. We will consider all comments received on or before the closing date. We may amend this proposed rule in light of comments received. Factual information that supports your ideas and suggestions is extremely helpful in evaluating the effectiveness of this proposed AD action and determining whether we need to take additional rulemaking action.

Are There Any Specific Portions of This Proposed AD I Should Pay Attention To?

The FAA specifically invites comments on the overall regulatory, economic, environmental, and energy aspects of this proposed rule that might suggest a need to modify the rule. You may view all comments we receive before and after the closing date of the rule in the Rules Docket. We will file a report in the Rules Docket that summarizes each contact we have with the public that concerns the substantive parts of this proposed AD.

How Can I Be Sure FAA Receives My Comment?

If you want FAA to acknowledge the receipt of your mailed comments, you must include a self-addressed, stamped postcard. On the postcard, write "Comments to Docket No. 2003–CE–19–AD." We will date stamp and mail the postcard back to you.

Discussion

What Events Have Caused This Proposed AD?

The FAA has received information of problems with certain Kidde Aerospace P/N 898052 hand-held halon fire extinguishers that are utilized on aircraft. This information shows that the discharge time of the affected fire extinguishers exceeds the maximum allowable discharge time.

The problem is due to incomplete crimping of the siphon tube. Specifically, worn crimping tools were used to crimp the siphon tube. This is causing leakage between the siphon tube and the valve.

The fire extinguishers in question were manufactured from 1995 through 2002 and have a serial number of W–389653 or lower.

What Are the Consequences If the Condition Is Not Corrected?

If these fire extinguishers that had this incomplete crimping of the siphon tube are not removed from service, then the fire extinguishers could function at diminished levels and compromise the level of safety in an emergency situation.

Is There Service Information That Applies To This Subject?

Kidde Aerospace has issued Service Bulletin 898052–26–449, dated October 7, 2002.

What Are the Provisions of This Service Information?

The service bulletin describes the problem discussed in this proposed AD and includes procedures for identifying and returning the affected hand-held halon fire extinguishers.

The FAA's Determination and an Explanation of the Provisions of This Proposed AD

What Has FAA Decided?

After examining the circumstances and reviewing all available information

related to the incidents described above, we have determined that:

—The unsafe condition referenced in this document exists or could develop on type design aircraft that utilize Kidde Aerospace P/N 898052 hand-held halon fire extinguishers that were manufactured from 1995 through 2002 and have a serial number of W–389653 or lower;

—The problem fire extinguishers should be removed from service; and

—AD action should be taken in order to correct this unsafe condition.

What Would This Proposed AD Require?

This proposed AD would require you to remove the affected fire extinguishers from service and would prevent you from using any affected fire extinguisher in the future.

How Does the Revision To 14 CFR Part 39 Affect This Proposed AD?

On July 10, 2002, FAA published a new version of 14 CFR part 39 (67 FR 47997, July 22, 2002), which governs FAA's AD system. This regulation now includes material that relates to special flight permits, alternative methods of compliance, and altered products. This material previously was included in each individual AD. Since this material is included in 14 CFR part 39, we will not include it in future AD actions.

Cost Impact

How Many Fire Extinguishers Would This Proposed AD Impact?

We estimate that this proposed AD could affect 38,695 fire extinguishers.

What Would Be the Cost Impact of This Proposed AD On Owners/Operators of the Affected Airplanes?

We estimate the following costs to remove the affected fire extinguishers from service (including replacing with another unit):

Labor cost	Parts cost	Total cost per airplane
2 workhours × $60 per hour = $120	No cost for parts. Allow 5 days or more to ship the defective fire extinguishers to Kidde Aerospace.	$120.

Compliance Time of This Proposed AD

What Would Be the Compliance Time of This Proposed AD?

The compliance time of this proposed AD would be "within the next 6 months after the effective date of this AD."

Why Is This Proposed Compliance Time Presented in Calendar Time Instead of Hours Time-in-Service (TIS)?

Although the slow discharge of the fire extinguishers is only a problem during flight, the unsafe condition is not a result of aircraft operation. Therefore, FAA has determined that a compliance based on calendar time should be utilized in this AD in order to ensure that the unsafe condition is addressed on all aircraft in a reasonable time period.

Regulatory Impact

Would This Proposed AD Impact Various Entities?

The regulations proposed herein would not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this proposed rule would not have federalism implications under Executive Order 13132.

Would This Proposed AD Involve a Significant Rule or Regulatory Action?

For the reasons discussed above, I certify that this proposed action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action has been placed in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, under the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. FAA amends § 39.13 by adding a new airworthiness directive (AD) to read as follows:

Kidde Aerospace: Docket No. 2003–CE–19–AD.

(a) *What products are affected by this AD?* This AD affects part number (P/N) 898052 hand-held halon fire extinguishers that were manufactured from 1995 through 2002 and have a serial number of W–389653 or lower.

(b) *Who must comply with this AD?* Anyone who wishes to operate any aircraft that is certificated in any category and utilizes one of the fire extinguishers identified in paragraph (a) of this AD must comply with this AD.

(c) *What problem does this AD address?* The actions specified by this AD are intended to remove from service fire extinguishers that have incomplete crimping of the siphon tube. If not removed from service, these fire extinguishers could function at diminished levels and compromise the level of safety in an emergency situation.

(d) *What actions must I accomplish to address this problem?* To address this problem, you must accomplish the following:

Actions	Compliance	Procedures
(1) Remove from service any P/N 898052 hand-held halon fire extinguisher that was manufactured from 1995 through 2002 and has a serial number of W–389653 or lower. You may not operate any aircraft without the applicable fire extinguishing equipment per FAA regulation.	Within the next 6 months after the effective date of this AD.	Kidde Aerospace Service Bulletin 898052–26–449, dated October 7, 2002, specifies procedures for identifying the affected fire extinguishers. It also includes procedures for shipping and exchanging the fire extinguishers.
(2) The owner/operator holding at least a private pilot certificate as authorized by section 43.7 of the Federal Aviation Regulations (14 CFR 43.7) may remove the fire extinguisher specified in paragraph (d)(1) of this AD. Make an entry into the aircraft records showing compliance with this portion of the AD in accordance with section 43.9 of the Federal Aviation Regulations (14 CFR 43.9).	Within the next 6 months after the effective date of this AD.	Not Applicable.
(3) Do not install, on any aircraft, a Kidde Aerospace P/N 898052 hand-held halon fire extinguisher that was manufactured from 1995 through 2002 and has a serial number of W–389653 or lower.	As of the effective date of this AD	Not Applicable.

(e) *Can I comply with this AD in any other way?* To use an alternative method of compliance or adjust the compliance time, follow the procedures in 14 CFR 39.19. Send these requests to the Manager, Atlanta Aircraft Certification Office. For information on any already approved alternative methods of compliance, contact Charles H. Bowser, Flight Test Engineer, FAA, Atlanta Aircraft Certification Office, One Crown Center, 1895 Phoenix Boulevard, Suite 450, Atlanta, Georgia 30349; telephone: (770) 703–6047; facsimile: (770) 703–6097.

(f) *How do I get copies of the documents referenced in this AD?* You may get copies of the documents referenced in this AD from Kidde Aerospace, Kidde Technologies, Inc., 4200 Airport Drive, NW, Wilson, North Carolina 27896; telephone: (252) 237–7004. You may view these documents at FAA, Central Region, Office of the Regional Counsel, 901 Locust, Room 506, Kansas City, Missouri 64106.

Issued in Kansas City, Missouri, on May 7, 2003.

David R. Showers,

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 03–11874 Filed 5–12–03; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF JUSTICE

Bureau of Prisons

28 CFR Part 513

[BOP–1100–P]

RIN 1120–AA96

Freedom of Information Act and Privacy Act Requests: Removal of Rules

AGENCY: Bureau of Prisons, Justice.

ACTION: Proposed rule.

SUMMARY: The Bureau of Prisons (Bureau) proposes to revise its Freedom of Information Act and Privacy Act regulations. We propose to eliminate rules pertaining to inmate requests to institutions for information, as these regulations pertain to internal agency practice and procedure and do not directly relate to the Freedom of Information Act (FOIA) or the Privacy Act (PA). We also propose to remove the remainder of our regulations regarding PA and FOIA requests for information. These rules merely reiterate and paraphrase general Department of Justice FOIA/PA regulations in 28 CFR part 16 and are therefore unnecessary in Bureau regulations.

DATES: Comments due by July 14, 2003.

ADDRESSES: Rules Unit, Office of General Counsel, Bureau of Prisons, 320 First Street, NW., Washington, DC 20534.

FOR FURTHER INFORMATION CONTACT: Sarah Qureshi, Office of General Counsel, Bureau of Prisons, phone (202) 307–2105.

SUPPLEMENTARY INFORMATION: The Bureau proposes to amend its regulations on the Freedom of Information Act and Privacy Act (28 CFR part 513, subpart D). We published current regulations on this subject in the **Federal Register** on December 9, 1996 (61 FR 64950).

We now propose to eliminate our regulations regarding PA and FOIA requests for information (28 CFR 513.30–513–36 and 513.50–68). These rules merely reiterate and paraphrase general Department of Justice FOIA/PA regulations in 28 CFR part 16 and are not, therefore, necessary in Bureau regulations.

Further, we also propose to eliminate rules pertaining to inmate requests (28 CFR 513.40–513.44) to institutions for information, as these regulations pertain to internal agency practice and procedure and do not directly relate to the Freedom of Information Act (FOIA) or the Privacy Act (PA).

Sections 513.40–513.44 of our current regulations are under the undesignated subheading "Inmate Requests to Institutions for Information." In this proposed rule, we removed these regulations because (1) they largely relate to internal agency procedures and directions to institution staff, (2) they cover procedures which are and will remain part of current Bureau policy, and (3) by removing them, we do not remove an inmate's ability to request information from institution staff without filing a FOIA request.

You can send written comments on this proposed rule to the Rules Unit, Office of General Counsel, Bureau of Prisons, 320 First Street, NW., Washington, DC 20534.

We will consider comments we get during the comment period before we take final action. If we can, we will try to consider comments we get after the end of the comment period. In light of comments we get, we may change the proposed rule.

We do not plan to have oral hearings on this proposed rule. All the comments we get remain on file for public inspection at the above address.

Executive Order 12866

We drafted and reviewed this regulation reviewed in accordance with Executive Order 12866, "Regulatory Planning and Review", section 1(b), Principles of Regulation. The Director has determined that this rule is not a "significant regulatory action" under Executive Order 12866, section 3(f), and accordingly this rule was not reviewed by the Office of Management and Budget.

Executive Order 13132

This regulation will not have substantial direct effects on the States, on the relationship between the national government and the States, or on distribution of power and responsibilities among the various levels of government. Under Executive Order 13132, this rule does not have sufficient federalism implications for which we would prepare a Federalism Assessment.

Regulatory Flexibility Act

The Director of the Bureau of Prisons, under the Regulatory Flexibility Act (5 U.S.C. 605(b)), reviewed this regulation. By approving it, the Director certifies that it will not have a significant economic impact upon a substantial number of small entities because: This rule is about the correctional management of offenders committed to the custody of the Attorney General or the Director of the Bureau of Prisons, and its economic impact is limited to the Bureau's appropriated funds.

Unfunded Mandates Reform Act of 1995

This rule will not cause State, local and tribal governments, or the private sector, to spend $100,000,000 or more in any one year, and it will not significantly or uniquely affect small governments. We do not need to take action under the Unfunded Mandates Reform Act of 1995.

Small Business Regulatory Enforcement Fairness Act of 1996

This rule is not a major rule as defined by § 804 of the Small Business Regulatory Enforcement Fairness Act of 1996. This rule will not result in an annual effect on the economy of $100,000,000 or more; a major increase in costs or prices; or significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based companies to compete with foreign-based companies in domestic and export markets.

List of Subjects in 28 CFR Part 513

Prisoners.

Harley G. Lappin,

Director, Bureau of Prisons.

Under the rulemaking authority of the Attorney General in 5 U.S.C. 552(a) and delegated to the Director of the Bureau of Prisons, we propose to amend 28 CFR part 513, subpart D, as follows.

SUBCHAPTER A—GENERAL MANAGEMENT AND ADMINISTRATION

PART 513—ACCESS TO RECORDS

1. Revise the authority citation for 28 CFR part 513 to read as follows:

Authority: 5 U.S.C. 301; 13 U.S.C.; 18 U.S.C. 3621, 3622, 3624, 4001, 4942, 4081, 4082 (Repealed in part as to conduct occurring on or after November 1, 1987), 5006–5024 (Repealed October 12, 1984, as to conduct occurring after that date), 5039; 28 U.S.C. 509, 510; 31 U.S.C. 3711(f); 5 CFR part 297.

§§ 513.30–513.68 (Subpart D) [Removed and reserved]

2. Remove and reserve Subpart D (§§ 513.30–513.68).

[FR Doc. 03–11539 Filed 5–12–03; 8:45 am]

BILLING CODE 4410–05–U

DEPARTMENT OF TRANSPORTATION

Saint Lawrence Seaway Development Corporation

33 CFR Part 401

[Docket No. SLSDC 2003–15136]

RIN 2135–AA18

Seaway Regulations and Rules: Stern Anchors and Navigation Underway

AGENCY: Saint Lawrence Seaway Development Corporation, DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Saint Lawrence Seaway Development Corporation (SLSDC) and the St. Lawrence Seaway Management Corporation (SLSMC) of Canada, under international agreement, jointly publish and presently administer the St. Lawrence Seaway Regulations and Rules (Practices and Procedures in Canada) in their respective jurisdictions. Under agreement with the SLSMC, the SLSDC is proposing to amend the joint regulations by making requirement for stern anchors applicable to large tug and barge combinations and by adding new requirements for manning of the wheelhouse for vessels underway.

DATES: Any party wishing to present views on the proposed amendments may file comments with the Corporation on or before June 12, 2003.

ADDRESSES: Signed, written comments should refer to the docket number appearing at the top of this document and must be submitted to the Docket Clerk, U.S. DOT Dockets, Room PL–401, 400 Seventh Street, SW., Washington, DC 20590–0001. Written comments may also be submitted electronically at *http://dmses.dot.gov/submit/BlankDSS.asp*. All comments received will be available for examination between 9 a.m. and 5 p.m., E.T., Monday through Friday, except Federal holidays. Those desiring notification of receipt of comments must include a self-addressed, stamped envelope or postcard.

FOR FURTHER INFORMATION CONTACT: Marc C. Owen, Chief Counsel, Saint Lawrence Seaway Development Corporation, 400 Seventh Street, SW., Washington, DC 20590, (202) 366–6823.

SUPPLEMENTARY INFORMATION: The Saint Lawrence Seaway Development Corporation (SLSDC) and the St. Lawrence Seaway Management Corporation (SLSMC) of Canada, under international agreement, jointly publish and presently administer the St. Lawrence Seaway Regulations and Rules (Practices and Procedures in Canada) in their respective jurisdictions. Under agreement with the SLSMC, the SLSDC is proposing to amend the joint regulations by making requirement for stern anchors applicable to new tug and barge combinations. Some tug and barge combinations that transit the Seaway carry dangerous or hazardous cargo and are just as large, 110 meters or more in combination, as the commercial vessels to which the requirement now applies. Accordingly, the SLSDC is proposing to make the requirement that a vessel be equipped with a stern anchor also applicable to these large tug and barge combinations. This will provide increased safety through greater control. Specifically, § 401.15, "Stern anchors", would be amended by adding a new subsection to read, "Every integrated tug and barge or articulated tug and barge unit greater than 110 m in overall length which is constructed after January 1, 2003, shall be equipped with a stern anchor."

In addition, the SLSDC is proposing changes to the manning requirements for navigation underway to ensure greater safety for all vessels, which includes tugs and tug and barge combinations as well. The rule already requires adequate manning and operation of the propulsion machinery. Inadequate manning of the wheelhouse and during mooring and other essential duties also poses serious environmental and safety risks. Accordingly, it is proposed to amend § 401.35, "Navigation underway", by adding two new subsections (c) and (d) to read as follows: "(c) man the wheelhouse of the vessel at all times by either the master or certified deck officer and by another qualified crewmember and (d) have sufficient well rested crewmembers available for mooring operations and other essential duties."

Regulatory Evaluation

This proposed regulation involves a foreign affairs function of the United States and therefore Executive Order 12866 does not apply and evaluation under the Department of Transportation's Regulatory Policies and Procedures is not required.

Regulatory Flexibility Act Determination

The Saint Lawrence Seaway Development Corporation certifies that this proposed regulation will not have a significant economic impact on a substantial number of small entities. The St. Lawrence Seaway Regulations and Rules primarily relate to commercial users of the Seaway, the vast majority of whom are foreign vessel operators. Therefore, any resulting costs will be borne mostly by foreign vessels.

Environmental Impact

This proposed regulation does not require an environmental impact statement under the National Environmental Policy Act (49 U.S.C. 4321, *et reg.*) because it is not a major federal action significantly affecting the quality of human environment.

Federalism

The Corporation has analyzed this proposed rule under the principles and criteria in Executive Order 13132, dated August 4, 1999, and has determined that this proposal does not have sufficient federalism implications to warrant a Federalism Assessment.

Unfunded Mandates

The Corporation has analyzed this proposed rule under title II of the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4, 109 Stat. 48) and determined that it does not impose unfunded mandates on State, local, and tribal governments and the private sector requiring a written statement of economic and regulatory alternatives.

Paperwork Reduction Act

This proposed regulation has been analyzed under the Paperwork Reduction Act of 1995 and does not contain new or modified information collection requirements subject to the Office of Management and Budget review.

List of Subjects in 33 CFR Part 401

Hazardous materials transportation, Navigation (water), Penalties, Radio, Reporting and recordkeeping requirements, Vessels, Waterways.

Accordingly, the Saint Lawrence Seaway Development Corporation proposes to amend 33 CFR part 401 as follows:

PART 401—SEAWAY REGULATIONS AND RULES

Subpart A—[Amended]

1. The authority citation for subpart A of part 401 would continue to read as follows:

Authority: 33 U.S.C. 983(a) and 984(a)(4), as amended; 49 CFR 1.52, unless otherwise noted.

2. § 401.15 would be revised to read as follows:

§ 401.15 Stern anchors.

(a) Every ship of more than 110 m in overall length, the keel of which is laid after January 1, 1975, shall be equipped with a stern anchor.

(b) Every integrated tug and barge or articulated tug and barge unit greater than 110 m in overall length which is constructed after January 1, 2003, shall be equipped with a stern anchor.

2. In § 401.35, two new paragraphs (c) and (d) would be added to read as follows:

§ 401.35 Navigation underway.

* * * * *

(c) Man the wheelhouse of the vessel at all times by either the master or certified deck officer and by another qualified crewmember; and

(d) Have sufficient well rested crewmembers available for mooring operations and other essential duties.

Issued at Washington, DC on May 8, 2003.
Saint Lawrence Seaway Development Corporation.

Marc C. Owen,

Chief Counsel.

[FR Doc. 03–11895 Filed 5–12–03; 8:45 am]

BILLING CODE 4910–61–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[IL 184–1b; FRL–7481–4]

Approval and Promulgation of Implementation Plan; Illinois New Source Review Amendments

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The EPA is proposing to approve a requested revision to the Illinois State Implementation Plan (SIP), affecting air permit rules, submitted on August 31, 1998. The submittal revises provisions for major modifications to stationary sources to align more closely with the Clean Air Act (CAA).

In the "Rules and Regulations" section of this **Federal Register**, EPA is approving the State's request as a direct final rule without prior proposal because EPA views this action as noncontroversial and anticipates no adverse comments. The rationale for approval is set forth in the direct final rule. If EPA receives no written adverse comments, EPA will take no further action on this proposed rule. If EPA receives written adverse comment, we will publish a timely withdrawal of the direct final rule in the **Federal Register** and inform the public that the rule will not take effect. In that event, EPA will address all relevant public comments in a subsequent final rule based on this proposed rule. In either event, EPA will not institute a second comment period on this action. Any parties interested in commenting must do so at this time.

DATES: Comments on this action must be received by June 12, 2003.

ADDRESSES: Copies of the documents relevant to this action are available for inspection during normal business hours at the following location:

EPA Region 5, 77 West Jackson Boulevard, AR–18J, Chicago, Illinois 60604. Please contact Steve Marquardt at (312) 353–3214 to arrange a time to inspect the submittal.

Written comments should be sent to: Pamela Blakley, Chief, Permits and Grants Section, Air Programs Branch, (AR–18J), U.S. Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604.

FOR FURTHER INFORMATION CONTACT: Steve Marquardt, AR–18J, 77 West Jackson Boulevard, Chicago, Illinois 60604, Telephone Number: (312) 353–

3214, E-Mail Address: *marquardt.steve@epa.gov.*

SUPPLEMENTARY INFORMATION:
Throughout this document whenever "we," "us," or "our" are used we mean the EPA.

I. What action is EPA taking today?
II. Where can I find more information about this proposal and corresponding direct final rule?

I. What Action Is EPA Taking Today?

The EPA is proposing to approve a requested revision to the Illinois SIP, affecting air permit rules, submitted on August 31, 1998. The submittal revises provisions for major modifications to stationary sources to align more closely with the Clean Air Act (CAA). The CAA sets forth the criteria for determining the applicability of the nonattainment NSR requirements in a serious or severe ozone nonattainment area.

II. Where Can I Find More Information About This Proposal and Corresponding Direct Final Rule?

For additional information see the direct final rule published in the rules and regulations section of this **Federal Register**.

Authority: 42 U.S.C. 4201 *et seq.*

Dated: April 2, 2003.

Bharat Mathur,

Regional Administrator, Region 5.

[FR Doc. 03–11750 Filed 5–12–03; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 71

[FRL–7497–5]

Revisions to Federal Operating Permits Program Fee Payment Deadlines for California Agricultural Sources

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to amend the Federal Operating Permits Program under title V of the Clean Air Act (Act) to extend the date by which State-exempt major agricultural sources in California must pay fees and to allow their permit applications to be considered complete even though fees may not have been paid on or before the date that applications are due. This action would allow EPA to process the applications and issue permits while the Agency computes a fee amount based on the cost of administering the permits program for these sources. The proposed amendments would extend the due date for submitting operating permit fees to EPA until May 14, 2004, for agricultural sources that are major sources subject to title V but are not being permitted by 35 local air districts in the State of California. In the "Rules and Regulations" section of today's **Federal Register,** we are issuing the amendments as a direct final rule, without prior proposal, because we view the revisions as noncontroversial and anticipate no significant adverse comments. We have explained our reasons for this approval in the preamble to the direct final rule. If we receive no adverse comment, we will not take further action on this proposed rule. If we receive adverse comment, we will withdraw the direct final rule and it will not take effect. We will address all public comments in a subsequent final rule based on this proposed rule. We will not institute a second comment period on this action. Any parties interested in commenting must do so at this time.

DATES: Written comments must be received by June 12, 2003.

ADDRESSES: Comments may be submitted by mail to EPA Docket Center (Air Docket), U.S. EPA West (MD–6102T), Room B–108, 1200 Pennsylvania Avenue, NW., Washington, DC, 20460, Attention Docket ID No. OAR–2003–0047.

Comments may also be submitted electronically, by facsimile, or through hand delivery/courier. Follow the detailed instructions as provided in the **SUPPLEMENTARY INFORMATION** section.

FOR FURTHER INFORMATION CONTACT: For further information, contact Ms. Candace Carraway, U.S. EPA, Information Transfer and Program Implementation Division, C304–04, Research Triangle Park, North Carolina 27711, telephone number (919) 541–3189, facsimile number (919) 541–5509, electronic mail address: *carraway.candace@epa.gov.*

SUPPLEMENTARY INFORMATION:
Throughout this document, "we," "us," or "our" means EPA.

This document concerns revisions to Federal Operating Permits Program fee payment deadlines for California agricultural sources. For further information, please see the information provided in the direct final action that is located in the "Rules and Regulations" section of this **Federal Register** publication.

Regulated Entities

Categories and entities potentially affected by this action include agricultural sources that are major sources subject to title V but are not being permitted by any of the following 35 local air districts in the State of California: Amador County Air Pollution Control District (APCD), Antelope Valley APCD, Bay Area Air Quality Management District (AQMD), Butte County AQMD, Calaveras County APCD, Colusa County APCD, El Dorado County APCD, Feather River AQMD, Glenn County APCD, Great Basin Unified APCD, Imperial County APCD, Kern County APCD, Lake County AQMD, Lassen County APCD, Mariposa County APCD, Mendocino County APCD, Modoc County APCD, Mojave Desert AQMD, Monterey Bay Unified APCD, North Coast Unified AQMD, Northern Sierra AQMD, Northern Sonoma County APCD, Placer County APCD, Sacramento Metro AQMD, San Diego County APCD, San Joaquin Valley Unified APCD, San Luis Obispo County APCD, Santa Barbara County APCD, Shasta County APCD, Siskiyou County APCD, South Coast AQMD, Tehama County APCD, Tuolumne County APCD, Ventura County APCD, and Yolo-Solano AQMD.

Docket

The EPA has established an official public docket for this action under Docket ID No. OAR–2003–0047. The official public docket consists of the documents specifically referenced in this action, any public comments received, and other information related to this action. Although a part of the official docket, the public docket does not include confidential business information (CBI) or other information whose disclosure is restricted by statute. The official public docket is the collection of materials that is available for public viewing at the Air Docket in the EPA Docket Center, (EPA/DC) EPA West, Room B102, 1301 Constitution Ave, NW., Washington, DC. The EPA Docket Center Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the Air Docket is (202) 566–1742.

Electronic Access

You may access this **Federal Register** document electronically through the EPA Internet under the "**Federal Register**" listings at *http://www.epa.gov/fedrgstr/.*

An electronic version of the public docket is available through EPA's electronic public docket and comment system, EPA Dockets. You may use EPA Dockets at *http://www.epa.gov/edocket/* to submit or view public comments, access the index listing of the contents of the official public docket, and to access those documents in the public docket that are available electronically. Once in the system, select "search," then key in the appropriate docket identification number.

Certain types of information will not be placed in the EPA Dockets. Information claimed as CBI and other information whose disclosure is restricted by statute, which is not included in the official public docket, will not be available for public viewing in EPA's electronic public docket. The EPA's policy is that copyrighted material will not be placed in EPA's electronic public docket but will be available only in printed, paper form in the official public docket. Although not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the docket facility identified above.

For public commenters, it is important to note that EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing in EPA's electronic public docket as EPA receives them and without change unless the comment contains copyrighted material, CBI, or other information whose disclosure is restricted by statute. When EPA identifies a comment containing copyrighted material, EPA will provide a reference to that material in the version of the comment that is placed in EPA's electronic public docket. The entire printed comment, including the copyrighted material, will be available in the public docket.

Public comments submitted on computer disks that are mailed or delivered to the docket will be transferred to EPA's electronic public docket. Public comments that are mailed or delivered to the Docket will be scanned and placed in EPA's electronic public docket. Where practical, physical objects will be photographed and the photograph will be placed in EPA's electronic public docket along with a brief description written by the docket staff.

Comments

You may submit comments electronically, by mail, by facsimile, or through hand delivery/courier. To ensure proper receipt by EPA, identify the appropriate docket identification number in the subject line on the first page of your comment. Please ensure that your comments are submitted within the specified comment period. Comments received after the close of the comment period will be marked "late." EPA is not required to consider these late comments.

Electronically

If you submit an electronic comment as prescribed below, EPA recommends that you include your name, mailing address, and an e-mail address or other contact information in the body of your comment. Also include this contact information on the outside of any disk or CD ROM you submit and in any cover letter accompanying the disk or CD ROM. This ensures that you can be identified as the submitter of the comment and allows EPA to contact you in case EPA cannot read your comment due to technical difficulties or needs further information on the substance of your comment. EPA's policy is that EPA will not edit your comment, and any identifying or contact information provided in the body of a comment will be included as part of the comment that is placed in the official public docket and made available in EPA's electronic public docket. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment.

EPA Dockets

Your use of EPA's electronic public docket to submit comments to EPA electronically is EPA's preferred method for receiving comments. Go directly to EPA Dockets at *http://www.epa.gov/edocket,* and follow the online instructions for submitting comments. To access EPA's electronic public docket from the EPA Internet Home Page, select "Information Sources," "Dockets," and "EPA Dockets." Once in the system, select "search," and then key in Docket ID No. OAR–2003–0047. The system is an "anonymous access" system, which means EPA will not know your identity, e-mail address, or other contact information unless you provide it in the body of your comment.

E-mail

Comments may be sent by electronic mail (e-mail) to *air-and-r-docket@epa.gov,* Attention Docket ID No. OAR–2003–0047. In contrast to EPA's electronic public docket, EPA's e-mail system is not an "anonymous access" system. If you send an e-mail comment directly to the Docket without going through EPA's electronic public docket, EPA's e-mail system automatically captures your e-mail address. E-mail addresses that are automatically captured by EPA's e-mail system are included as part of the comment that is placed in the official public docket and made available in EPA's electronic public docket.

Disk or CD ROM

You may submit comments on a disk or CD ROM that you mail to the mailing address identified in the next paragraph. These electronic submissions will be accepted in WordPerfect or ASCII file format. Avoid the use of special characters and any form of encryption.

By Mail

Send your comments to: EPA Docket Center (Air Docket), U.S. EPA West (MD–6102T), Room B–108, 1200 Pennsylvania Avenue, NW, Washington, DC, 20460, Attention Docket ID No. OAR–2003–0047.

By Hand Delivery or Courier

Deliver your comments to: EPA Docket Center (Air Docket), Room B–108, U.S. EPA West, 1301 Constitution Avenue, NW, Washington, DC 20460, Attention Docket ID No. OAR–2003–0047. Such deliveries are only accepted during the Docket's normal hours of operation as identified in this document.

By Facsimile

Fax your comments to: (202) 566–1741, Attention Docket ID. No. OAR–2003–0047.

World Wide Web (WWW)

After signature, the final rule will be posted on the policy and guidance page for newly proposed or final rules of EPA's Technology Transfer Network (TTN) at *http://www.epa.gov/ttn/oarpg/t5.html.* For more information, call the TTN Help line at (919) 541–5384.

What Are the Administrative Requirements for This Action?

Regulatory Flexibility Act (RFA), as amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), 5 U.S.C. 601 et seq.

The RFA generally requires an agency to prepare a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements under the Administrative Procedure Act or any other statute unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small organizations, and small governmental jurisdictions.

For purposes of assessing the impacts of today's rule on small entities, small entity is defined as (1) a small business that meets the Small Business Administration size standards for small

businesses found in 13 CFR 121.201; (2) a small governmental jurisdiction that is a government of a city, country, town, school district or special district with a population of less than 50,000; and (3) a small organization that is a not-for-profit enterprise which is independently owned and operated and is not dominant in its field.

After considering the economic impacts of today's proposed rule on small entities, I certify that this action will not have a significant economic impact on a substantial number of small entities. In determining whether a rule has significant economic impact on a substantial number of small entities, the impact of concern is any significant adverse economic impact on small entities, since the primary purpose of the regulatory flexibility analyses is to identify and address regulatory alternatives "which minimize any significant economic impact of the proposed rule on small entities' (5 U.S.C. 603 and 604). Thus, an agency may certify that a rule will not have a significant economic impact on a substantial number of small entities if the rule relieves regulatory burden, or otherwise has a positive economic effect on all of the small entities subject to the rule. The amendments in today's proposed rule would merely defer the deadline for paying permit fees for sources affected by the proposed rule, thereby giving them more flexibility and reducing the burden on these sources. We have therefore concluded that today's proposed rule will relieve regulatory burden for all small entities. We continue to be interested in the potential impacts of the proposed rule on small entities and welcome comments on issues related to such impacts.

For information regarding other administrative requirements for this action, please see the direct final rule action that is located in the Rules and Regulations section of this **Federal Register**.

List of Subjects in 40 CFR Part 71

Environmental protection, Administrative practice and procedure, Air pollution control, Intergovernmental relations.

Dated: May 7, 2003.

Christine Todd Whitman,

Administrator.

[FR Doc. 03–11911 Filed 5–12–03; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 258

[FR–7497–6]

RIN 2090–AA25

Project XL Site-specific Rulemaking for Anne Arundel County Millersville Landfill, Severn, MD

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is publishing this proposed site-specific rule to implement a project under the Project eXcellence and Leadership (Project XL) program, an EPA initiative which encourages regulated entities to achieve better environmental results at decreased costs at their facilities. Today's proposal would provide site specific regulatory flexibility under the Resource Conservation and Recovery Act (RCRA), for the Anne Arundel County Millersville Landfill and Resource Recovery Facility, Severn, Maryland (the Landfill). The Landfill is owned and operated by Anne Arundel County (the County).

The County, the State of Maryland, and EPA signed a Final Project Agreement (FPA) for this project, which would allow for the addition of liquids to this landfill. The addition of liquids to landfills accelerates the biodegradation of landfill waste and is allowed for certain prescribed liner designs under current RCRA municipal solid waste landfill (MSWLF) regulations. The principal objective of this XL project to demonstrate that the alternative liner design at the Landfill is as protective as the liner prescribed in current RCRA municipal solid waste landfill regulations over which leachate recirculation is allowed under existing RCRA regulations.

The County Landfill is one of several landfills, located in different geographic and climatic regions across the country, that under Project XL are testing this bioreactor technology over alternative liner designs. In order to carry out this project, the Landfill needs relief from certain requirements in EPA regulations which set forth design and operating criteria for MSWLFs, requirements which would otherwise preclude the addition of liquids at this landfill. If promulgated, today's proposed rule would allow the addition of Landfill leachate and onsite storm water to a designated (approximately 160 by 200 foot) portion of Cell 8.4 at the Landfill. Expected benefits of this project include accelerated biodegradation of the Landfill waste, decreased time for the waste to reach stabilization and improved management of leachate and storm water.

DATES: *Public Comments:* Comments on this proposal must be received on or before June 12, 2003. All comments should be submitted according to the detailed directions below in the **SUPPLEMENTARY INFORMATION** section.

Public Hearing: Commenters may request a public hearing on or before May 27, 2003, and such requests should specify the basis for their request. If EPA determines that there is sufficient reason to hold a public hearing, it will do so by June 3, 2003, during the last week of the public comment period. Requests for a public hearing should be submitted to the address below.

ADDRESSES: Written comments should be mailed to the RCRA Docket Clerk (5305T), U.S. Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460. Please submit an original and two copies of all comments and refer to Docket Number RCRA–2002–0032. A copy should also be sent to Mr. Steven Donohue at the U.S. Environmental Protection Agency, Region 3, 1650 Arch Street, Philadelphia, PA 19103–2029. More detailed instructions for submitting comments in writing, electronically, by facsimile, or through hand delivery/courier are provided below in I.B. of the **SUPPLEMENTARY INFORMATION** section.

Request for a Hearing: Requests for a hearing should be mailed to the Environmental Protection Agency, EPA Docket Center (EPA/DC), RCRA Docket (5305T), 1200 Pennsylvania Ave. NW, Washington, D.C. 20460. Please send an original and two copies of all comments, and refer to Docket Number RCRA–2002–0032. A copy should also be sent to Mr. Steven Donohue at the U.S. EPA Region 3 office. Mr. Donohue may be contacted at the following address: U.S. Environmental Protection Agency, Region 3, 1650 Arch Street, Philadelphia, PA 19103–2029, (215) 814–3215. If a public hearing is scheduled, the date, time, and location will be available through a **Federal Register** notice or by contacting Mr. Steven Donohue at the U.S. EPA Region 3 office.

FOR FURTHER INFORMATION CONTACT: Mr. Steven Donohue at the U.S. Environmental Protection Agency, Region 3, (3EI00), 1650 Arch Street, Philadelphia, Pennsylvania 19103–2029 at (215) 814–3215 (or *donohue.steven@epa.gov*). Further information on today's action may also be obtained on the world wide web at *http://www.epa.gov/projectxl/*.

SUPPLEMENTARY INFORMATION:

Outline of Today's Document

The information presented in this preamble is arranged as follows:

I. General Information
A. How Can I Get Copies of This Document and other Related Information?
B. How and To Whom Do I Submit Comments?
C. How Should I Submit CBI to the Agency?
D. What Should I Consider as I Prepare My Comments for EPA?
II. Authority
III. Background
A. What is Project XL?
B. What Are Bioreactor Landfills?
IV. The Anne Arundel County Millersville Landfill and Resource Recovery Facility
A. Overview
B. Description of the XL Project
C. What Kind of Liner Is Required by Current EPA Regulations?
D. How Were the Liners at the Landfill Constructed?
E. What Are the Environmental Benefits Expected Through This XL Project?
F. How Have Various Stakeholders Been Involved in this Project?
G. How Long Will this Project Last and When Will it Be Complete?
H. Will This Project Result in Cost Savings and Paperwork Reduction?
V. What Regulatory Changes Are Being Proposed to Implement this Project?
A. Existing Liquid Restrictions for MSWLFs (40 CFR 258.28)
B. Proposed Site-Specific Rule
VI. Statutory and Executive Order Reviews
A. Executive Order 12866: Regulatory Planning and Review
B. Paperwork Reduction Act
C. Regulatory Flexibility Act
D. Unfunded Mandates Reform Act
E. Executive Order 13132: Federalism
F. Executive Order 13175: Consultation and Coordination with Indian Tribal Governments
G. Executive Order 13045: Protection of Children from Environmental Health and Safety Risks
H. Executive Order 13211: Actions that Significantly Affect Energy Supply, Distribution, or Use
I. National Technology Transfer and Advancement Act of 1995
J. Executive Order 12898: Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations

I. General Information

A. How Can I Get Copies of This Document and Other Related Information?

1. Docket

EPA has established an official public docket for this action under Docket ID No. RCRA–2002–0032. The official public docket consists of the documents specifically referenced in this action and other information related to this action. Although a part of the official docket, the public docket does not include Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. The official public docket is the collection of materials that is available for public viewing at the RCRA Docket in the EPA Docket Center, (EPA/DC) EPA West, Room B102, 1301 Constitution Ave., NW, Washington, DC. The EPA Docket Center Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Reading Room is (202) 566–1742, and the telephone number for the RCRA Docket is (202) 566–0270. The public may copy a maximum of 100 pages from any regulatory docket at no charge. Additional copies cost 15 cents per page.

2. Electronic Access

You may access this **Federal Register** document electronically through the EPA Internet under the "**Federal Register**" listings at *http://www.epa.gov/fedrgstr/*.

An electronic version of the public docket is available through EPA's electronic public docket and comment system, EPA Dockets. You may use EPA Dockets at *http://www.epa.gov/edocket/* to submit or view public comments, access the index listing of the contents of the official public docket, and to access those documents in the public docket that are available electronically. Once in the system, select "search," then key in the appropriate docket identification number.

Certain types of information will not be placed in EPA Dockets. Information claimed as CBI and other information whose disclosure is restricted by statute, which is not included in the official public docket, will not be available for public viewing in EPA's electronic public docket. EPA's policy is that copyrighted material will not be placed in EPA's electronic public docket but will be available only in printed, paper form in the official public docket. To the extent feasible, publicly available docket materials will be made available in EPA's electronic public docket. When a document is selected from the index list in EPA Dockets, the system will identify whether the document is available for viewing in EPA's electronic public docket. Although not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the docket facility identified in I.A above.

For public commenters, it is important to note that EPA's policy is that public comments, whether submitted electronically or on paper, will be made available for public viewing in EPA's electronic public docket as EPA receives them and without change, unless the comment contains copyrighted material, CBI, or other information whose disclosure is restricted by statute. When EPA identifies a comment containing copyrighted material, EPA will provide a reference to that material in the version of the comment that is placed in EPA's electronic public docket. The entire printed comment, including the copyrighted material, will be available in the public docket. Public comments submitted on computer disks that are mailed or delivered to the docket will be transferred to EPA's electronic public docket. Public comments that are mailed or delivered to EPA's Docket will be scanned and placed in EPA's electronic public docket. Where practical, physical objects will be photographed, and the photograph will be placed in EPA's electronic public docket along with a brief description written by the docket staff.

For additional information about EPA's electronic public docket visit EPA Dockets online or see a description of the EPA Dockets System at 67 FR 38102, May 31, 2002.

B. How and To Whom Do I Submit Comments?

You may submit comments electronically, by mail, by facsimile, or through hand delivery/courier. To ensure proper receipt by EPA, identify the appropriate docket identification number in the subject line on the first page of your comment. Please ensure that your comments are submitted within the specified comment period. Comments received after the close of the comment period will be marked "late." EPA is not required to consider these late comments. If you wish to submit CBI or information that is otherwise protected by statute, please follow the instructions in I.B.2 and I.C. below. Do not use EPA Dockets or e-mail to submit CBI or information protected by statute.

1. Electronically

If you submit an electronic comment as prescribed below, EPA recommends that you include your name, mailing address, and an e-mail address or other contact information in the body of your comment. Also include this contact information on the outside of any disk or CD ROM you submit, and in any

cover letter accompanying the disk or CD ROM. This ensures that you can be identified as the submitter of the comment and allows EPA to contact you in case EPA cannot read your comment due to technical difficulties or needs further information on the substance of your comment. It is EPA's policy not to edit comments, and any identifying or contact information provided in the body of a comment will be included as part of the comment that will be placed in the official public docket, and made available in EPA's electronic public docket. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment.

A. *EPA Dockets.* Your use of EPA's electronic public docket to submit comments to EPA electronically is EPA's preferred method for receiving comments. Go directly to EPA Dockets at *http://www.epa.gov/edocket,* and follow the online instructions for submitting comments. To access EPA's electronic public docket from the EPA Internet Home Page, select "Information Sources," "Dockets," and "EPA Dockets." Once in the system, select "search," and then key in Docket ID No. RCRA–2002–0032. The system is an "anonymous access" system, which means EPA will not know your identity, e-mail address, or other contact information unless you provide it in the body of your comment.

B. E-mail. Comments may be sent by electronic mail (e-mail) to *rcra-docket@epa.gov,* Attention Docket ID No. RCRA–2002–0032. In contrast to EPA's electronic public docket, EPA's e-mail system is not an "anonymous access" system. If you send an e-mail comment directly to the Docket without going through EPA's electronic public docket, EPA's e-mail system automatically captures your e-mail address. E-mail addresses that are automatically captured by EPA's e-mail system are included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket.

C. Disk or CD ROM. You may submit comments on a disk or CD ROM that you mail to the mailing address identified below. These electronic submissions will be accepted in WordPerfect or ASCII file format. Avoid the use of special characters and any form of encryption.

2. By Mail

Send two (2) copies of your comments to the RCRA Docket, Environmental Protection Agency, Mailcode: 5305T, 1200 Pennsylvania Ave., NW., Washington, DC 20460, Attention Docket ID No. RCRA–2002–0032.

3. By Hand Delivery or Courier

Deliver your comments to: Environmental Protection Agency, EPA Docket Center, 1301 Constitution Avenue, NW., Washington, DC 20004, Attention Docket ID No. RCRA–2002–0032. Such deliveries are only accepted during the Docket's normal hours of operation as identified in A.1 above.

4. By Facsimile

Fax your comments to: 202–566–0272, Attention Docket ID. No. RCRA–2002–0032.

C. How Should I Submit CBI to the Agency?

Do not submit information that you consider to be CBI electronically through EPA's electronic public docket or by e-mail. Send or deliver information identified as CBI only to the following address: Environmental Protection Agency, EPA Docket Center (EPA/DC), RCRA Docket, 1301 Constitution Avenue, NW., Washington, DC 20004, Attention Docket ID No. RCRA–2002–0032. You may claim information that you submit to EPA as CBI by marking any part or all of that information as CBI (if you submit CBI on disk or CD ROM, mark the outside of the disk or CD ROM as CBI and then identify electronically within the disk or CD ROM the specific information that is CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

In addition to one complete version of the comment that includes any information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket and EPA's electronic public docket. If you submit the copy that does not contain CBI on disk or CD ROM, mark the outside of the disk or CD ROM clearly that it does not contain CBI. Information not marked as CBI will be included in the public docket and EPA's electronic public docket without prior notice. If you have any questions about CBI or the procedures for claiming CBI, please consult the person identified in Summary section above.

D. What Should I Consider as I Prepare My Comments for EPA?

You may find the following suggestions helpful for preparing your comments:

1. Explain your views as clearly as possible.

2. Describe any assumptions that you used.

3. Provide any technical information and/or data you used that support your views.

4. If you estimate potential burden or costs, explain how you arrived at your estimate.

5. Provide specific examples to illustrate your concerns.

6. Offer alternatives.

7. Make sure to submit your comments by the comment period deadline identified.

8. To ensure proper receipt by EPA, identify the appropriate docket identification number in the subject line on the first page of your response. It would also be helpful if you provided the name, date, and **Federal Register** citation related to your comments.

II. Authority

This rule is proposed under the authority of Sections 1008, 2002, 4004, and 4010 of the Solid Waste Disposal Act of 1970, as amended by the Resource Conservation and Recovery Act, as amended (42 U.S.C. 6907, 6912, 6945, and 6949a).

III. Background

A. What Is Project XL?

Project XL is an EPA initiative developed to encourage regulated entities to achieve better environmental results at less cost. Project XL—"eXcellence and Leadership"—was announced by EPA on March 16, 1995 (*see* 60 FR 27282, May 23, 1995). Detailed descriptions of Project XL have been published previously in numerous public documents which are generally available electronically via the Internet at *http://www.epa.gov/projectxl/.* Briefly, Project XL gives a limited number of regulated entities the opportunity to develop their own pilot projects and alternative strategies to achieve superior environmental performance compared to what would be achieved through compliance with current and reasonably anticipated future regulations. These efforts are crucial to the Agency's ability to test new regulatory strategies that reduce regulatory burden and promote economic growth while achieving better environmental and public health protection. The Agency intends to evaluate the results of this and other XL projects to determine which specific elements of the projects, if any, should be more broadly applied to other regulated entities for the benefit of both the economy and the environment.

Project XL is intended to allow EPA to experiment with new or pilot projects that provide alternative approaches to regulatory requirements, to assess whether these alternative approaches provide benefits at the specific facility affected, and determine whether these projects should be considered for wider application. Such pilot projects allow EPA to proceed more quickly than would be possible when undertaking changes on a nationwide basis. EPA may modify rules, on a site- or State-specific basis, that represent one of several possible policy approaches within a more general statutory directive, so long as the alternative being used is permissible under the statute.

On September 18, 2000, EPA published a notice in the **Federal Register** requesting comments on the draft Final Project Agreement (FPA) for the Anne Arundel County Millersville Landfill XL project (65 FR 56308). The FPA was signed by EPA on December 7, 2000. A copy of the FPA is available in the docket and on the world wide web at *http://www.epa.gov/projectxl/.* The FPA is a non-binding written agreement between the project sponsor and regulatory agencies which describes the project in detail, discusses criteria to be met, identifies performance goals and indicators, and outlines how the agreement will be managed.

B. What Are Bioreactor Landfills?

A bioreactor landfill is generally defined as a landfill operated to transform and stabilize the readily and moderately decomposable organic constituents of the waste stream by purposeful control to enhance microbiological processes. Bioreactor landfills generally employ the addition of liquids such as leachate. A byproduct of the waste decomposition process is landfill gas, which includes methane, carbon dioxide, hazardous air pollutants and volatile organic compounds (VOCs). Landfill gases are produced sooner and faster in a bioreactor than in a conventional landfill. Therefore, bioreactors typically incorporate landfill gas collection systems to collect and control landfill gas upon start up of the liquid addition process.

On April 6, 2000, EPA published a document in the **Federal Register** requesting information on bioreactor landfills, because the Agency is considering whether and to what extent the Criteria for Municipal Solid Waste Landfills (MSWLFs), 40 CFR part 258, should be revised to allow for leachate recirculation over alternative liners in MSWLFs (65 FR 18015). EPA is seeking information about liquid additions and leachate recirculation in MSWLFs to the extent currently allowed, *i.e.*, in MSWLFs designed and constructed with a composite liner as specified in 40 CFR 258.40(a)(2).

Proponents of bioreactor technology believe that operating MSWLFs as bioreactors provides a number of environmental benefits, including an increased rate of waste decomposition, which in turn would extend the operating life of the landfill and lessen the need for additional landfill space or other disposal options. Bioreactors are also believed to decrease, or at times eliminate, the quantity of leachate requiring treatment and offsite disposal. Several studies have shown that leachate quality improves over time when leachate is recirculated on a regular basis. Based on these reasons, bioreactors are expected to decrease potential environmental risks and costs associated with leachate management, treatment and offsite disposal. Additionally, use of bioreactor techniques are believed to shorten the length of time the liner will be exposed to leachate and lower the long term potential for leachate migration into the subsurface environment. Bioreactors may reduce post-closure care costs and risks, due to the accelerated, controlled settlement of the solid waste during landfill operation.

Several additional related XL pilot projects involving operation of landfills with alternative liners as bioreactors are being implemented throughout the country. These additional bioreactor projects will enable EPA to evaluate benefits of different alternative liners and leachate recirculation systems under various climatic and operating conditions. As expressed in the above referenced April 2000 **Federal Register** document, EPA is interested in assessing the performance of landfills operated as bioreactors with alternative liners, and these XL projects are expected to produce valuable data.

The Anne Arundel County Millersville Landfill XL Project and the other related XL projects will provide additional information on the performance of MSWLFs when liquids are added to the landfill. The Agency is also interested in assessing how different types of alternative liners perform when liquids are added to the landfill, including maintaining a hydraulic head at acceptable levels. Additional information on bioreactor landfills is available at EPA's Web site at *http://www.epa.gov/epaoswer/non-hw/muncpl/landfill/bioreactors.htm.*

IV. The Anne Arundel County Millersville Landfill and Resource Recovery Facility

A. Overview

The Landfill is located approximately 15 miles south of Baltimore on 565 acres in Severn, Maryland. The Landfill, which began operations in 1975, is owned and operated by the County and is the only active MSWLF in the County. Since 1975, Cells 1 through 7 at the Landfill were opened, filled and closed. Cells 1 through 7 were constructed before the current solid waste disposal laws and regulations and were not lined. With the exception of Cell 1 West and Cell 3, all of these Cells are now capped. In 1995 and 1997 respectively, Cell 3 and Cell 1 West were "mined" by the County, *i.e.*, all the waste and underlying soil was excavated and either recycled, disposed of or used as cover in Cell 8. The footprint where Cell 1 West was located was graded and seeded and the footprint where Cell 3 was located is now a storm water infiltration basin.

Active landfilling is occurring in portions of Cell 8 at the Landfill. Cell 8 is approximately 1200 feet by 2400 feet in size and is divided into 8 subcells. Subcells 8.1 through 8.6 have been constructed with a geomembrane double-liner system, with primary leachate collection and leak detection (secondary collection) layers. Subcells 8.7 and 8.8 have not been constructed. Subcell 8.4, where the proposed bioreactor test area is located, has not received any waste in approximately two years. Subcell 8.6, where the proposed control area is located, is currently receiving waste.

In 2000 the Landfill accepted approximately 390 tons per day (tpd) of municipal solid waste (MSW), of which 1/3 (approximately 130 tpd) was recovered for reuse and recycling and the remaining amount (approximately 260 tpd) was landfilled. The Landfill serves on average 660 customers (residents and businesses combined) per day, 7 days per week. There are approximately 5,800 residents within a 1-mile radius of the Landfill; approximately 2,750 residents within a 0.5-mile radius; and approximately 900 residents within a 0.25-mile radius.

The Landfill presently generates approximately 8,000 gallons of leachate per day. Leachate is collected and pumped to a 305,000 gallon influent tank. The leachate then flows to a pretreatment plant at the Landfill where it is treated in controlled batches. From there it is discharged into a 305,000 gallon effluent tank and ultimately discharged to the sanitary sewer and

into a publicly operated wastewater treatment works.

The leachate collection system in Subcell 8.4 of the Landfill consists of a two foot thick sand layer, a geonet that covers the entire bottom of the Subcell and a system of perforated high density polyethylene (HDPE) pipes placed in gravel blankets that overlay the geonet. Leachate is conveyed by the geonet and/or pipes to a sump, from which leachate is pumped and conveyed to an on-site leachate pretreatment facility. The leachate collection system in Subcell 8.4 is designed specifically to keep a very shallow depth of liquid on the top liner, and in any event less than the maximum 30 cm allowed under 40 CFR 258.40(a)(2) at all locations within the Subcell. In the sump areas, the liner system is enhanced by the addition of layers of geosynthetic clay liner (GCL) below both top and bottom geomembranes. The GCLs have saturated hydraulic conductivities of less than 1×10^{-9} cm/s. The GCLs together with the other liner components result in a double synthetic liner system beneath the sump. To monitor the integrity of the top liner, the quantity of leachate removed from the subcell sumps above the bottom liner (detection zone) is monitored on a continual basis. (The accumulation of some liquid due to condensation is expected and is considered a normal condition.) The number calculated and established as a "not to exceed guideline" is 100 gallons per acre of subcell floor per day. Daily monitoring of the liquid above the bottom liner will continue throughout the life of Subcell 8.4. To protect the drainage and liner system, the initial eight-foot lift of waste in Subcell 8.4 consisted of soft trash. Soft trash is solid waste that is collected from residential curbside trash pickups. No curbside waste may exceed four feet in length. Curbside household waste in general is softer than waste streams from commercial facilities or sources from homeowners self-hauling materials from their home or yard. This initial eight-foot lift of waste was compacted to six feet in thickness.

Forty-three groundwater and 29 Landfill Gas (LFG) monitoring wells are installed at the Landfill. The groundwater monitoring wells are installed within each water-bearing zone in the subsurface beneath the Landfill. The groundwater wells are sampled semi-annually, and the LFG monitoring wells are monitored quarterly. The County submits ground water sampling data to the Maryland Department of the Environment (MDE) for their review. Starting in 1995, the County has replaced a total of 14 private home wells to address the detection of landfill leachate contaminants in the upper aquifer or water bearing zone. The County replaced these wells with deeper double cased wells into a deeper aquifer when they had confirmed the detection of landfill contaminants in two consecutive sampling rounds. The County also samples 8 other private home wells in the area twice a year to check for possible contamination. The groundwater contamination is believed to have originated from the older unlined cells at the Landfill that are now either capped or have been mined by the County. The County has proposed to MDE that monitoring well TW–20, that is directly down gradient from Cell 8, be designated as the groundwater point of compliance well for the XL Project. Landfill leachate contaminants have not been detected in TW–20 (acetone, which is a common laboratory reagent, and carbon disulfide have been detected three times and one time respectively but neither has been detected since April of 1999) .

This XL project is part of Anne Arundel County's larger efforts to further improve the management of its solid waste. In 1995, the County adopted a comprehensive Solid Waste Management Strategy (Strategy), the main objective of which is to extend the life of the Landfill. The Strategy comprises an integrated system involving waste reduction, recycling, reuse and innovative technologies that provides for a multi-faceted approach for meeting the County's future solid waste management needs. Thus far, this Strategy has reduced the waste entering the Landfill from 800 tons/day in 1994 to 260 tons/day in 2000. The County has an approximately 30% recycling rate. The County operates three "convenience centers", including one at the Landfill, where residents can bring in and drop off, at no cost, a wide variety of materials for recycling including: Oil, anti-freeze, lead-acid batteries, appliances, metal, wood, cardboard, paper, plastic and yard waste. The County manages a total of approximately 320,600 tons of waste per year. Approximately 75% of this total is either exported for disposal outside the County or recycled. The remaining 25% is disposed of at the Landfill. When the Landfill opened in 1975 it had a projected life of 25 years, or until the year 2000. As a result of the County's Solid Waste Management Strategy, the Landfill is now projected to be able to accept waste until 2063.

B. Description of the XL Project

The County's bioreactor pilot project will involve injecting a controlled amount of liquids through injection devices into a 160 foot by 200 foot (approximately 3/4 of an acre) test area located within the southwestern portion of Subcell 8.4. The XL project will last for up to a seven-year period (depending on effectiveness), and will involve the monitoring of settlement, production of LFG and improvement of leachate quality. The objectives of the project are as follows: To design and construct a bioreactor test area in Subcell 8.4 of the Landfill; perform liquid injection in a controlled manner using different injection methods; monitor surface settlement, injection rates and related parameters over a period of time; evaluate results and ultimately identify the method that will most effectively increase the Landfill's waste capacity; and evaluate cost effectiveness of bioreactor techniques as a method of capacity creation.

The following discussion provides information on the proposed pilot design. The drawings of the test area location, proposed system layout, and details of the supplemental LFG collection system (if required) were provided in the FPA Attachments IV, V, and VIII.

1. Proposed Test Area

The proposed test area measures 160 feet by 200 feet and is located within the southwestern portion of Subcell 8.4. The test area is centered in a trapezoidal shaped plateau that gradually slopes to the northwest at an approximately 2 percent slope. Subcell 8.4 is bounded on three sides by other existing subcells. The fourth side is adjacent to the side slope of the cell. The distance from the test area to the side slope varies from approximately 50 to 100 feet. The side slopes in Cell 8 are constructed at a 3:1 slope. The test area is adjacent to an existing haul road which makes it accessible to tank trucks for easier liquid injection. The waste volume in this area is approximately 95,500 cubic yards (waste depth from surface to liner is approximately 80 to 85 feet).

Subcell 8.4 began accepting MSW in October 1992. Subcell 8.4 has accepted only small quantities of curbside MSW since 1997; it last accepted primarily construction debris about two years ago. Thus, the lowermost portion of the waste in Subcell 8.4 contains typical MSW, while the uppermost portion contains waste that is proportionately higher in construction debris and lower in decomposable organic materials. Several lifts of typical MSW in the lowermost portion of the Subcell 8.4 were involved in a County "mauler" project. The mauler was used to grind the waste into a relatively homogeneous and small particle size that has an increased surface area. In 1999, the County completed a waste composition study to provide more detailed information about recent waste placement in the area of the proposed test. Additional information is in a March 1995 County waste sort report.

The County used soil as a daily cover at the site until March 1993. Since then, the County has primarily used removable and reusable tarpaulins (tarps) throughout Cell 8 as the cover (approximately 97 percent of the time, depending on weather conditions). Previous use of tarps (rather than soil cover, for example) presents good conditions for a bioreactor study, as there is less potential for the creation of barriers (*e.g.*, compacted soil cover) to limit vertical penetration of liquid into the waste mass. Subcell 8.4 currently has an interim soil cover and an approximately 12 inch thick layer of shredded wood mulch generated from tree and yard waste.

2. Liquid Injection

To improve the evaluation of different infiltration systems, the proposed test area will include two vertical injection wells and two horizontal injection trenches. The two trenches are proposed to be constructed parallel to the nearest side slope and excavated so that they slope back toward the middle of the Cell 8.4 (southeast) at a 1 percent grade in order to minimize excavation depths, promote gravity drainage, and eliminate possible (landfill) side-slope seepage. The horizontal trenches would consist of 6-inch diameter perforated or slotted pipe centered in a 2 x 1.5-foot trench, backfilled with high permeability stone or gravel. Proprietary leachate pipe products that are relatively new to the waste industry may also be considered.

Plans for the two vertical wells consist of slotted or perforated 6-inch diameter pipe centered in a 3-foot diameter borehole and backfilled with high permeability stone. The well depths would be selected to penetrate between one-third and one-half the overall waste depth.

Design spacing for the wells and trenches minimizes overlapping areas of influence and will reduce uncertainties that may be introduced by overlapping influences. The injection devices are designed to maximize the amount of liquid that can be injected; however, actual injection rates will be varied in response to information learned from the degree of infiltration and resulting settlement. Design details of the proposed vertical wells and horizontal trenches are shown in Attachment V of the FPA and were submitted by the County to MDE and EPA in an April 17, 2001 letter with enclosed drawings.

3. Settlement Plates

Prior to system startup, the County will install monuments (settlement plates) to monitor settlement caused by the degradation of the waste. These settlement plates will be strategically located around wells and trenches to measure surface movements during the study. The top elevation of each plate will be surveyed prior to liquid injection. The County plans to monitor these settlement plates at least monthly, but will do so more frequently if information suggests that settlement is occurring at a rapid rate. At least one plate will be located in a control area that is adjacent to the test area and outside the zone of influence for the liquid injection system. This control area will measure normal settlement rates as a comparison. Additionally, a stable elevation benchmark will be established to ensure that all readings are based on the same baseline elevation. Annual aerial topographic surveys will also be performed to aid in the evaluation of settlement and the effectiveness of the leachate recirculation.

4. Landfill Gas

The design capacity of the entire Landfill exceeds the New Source Performance Standard (NSPS) thresholds, and thus the Landfill must comply with 40 CFR part 60, subpart WWW. Cell 8 currently operates under an Alternate Operating Scenario (AOS) approved by the State of Maryland under its NSPS Program, and the County has included the AOS in its application for a Part 70 Permit (also known as a Title V permit) under the Clean Air Act (CAA). The Title V Permit for the Landfill was signed on August 29, 2001. The AOS provides that at Cell 8 LFG is collected via existing leachate collection system components, rather than from separate LFG extraction wells and/or trenches. The AOS also postpones the requirement for quarterly measurement of surface methane emissions under 40 CFR part 60, subpart WWW. The AOS applies to Cell 8 only. Each of the other Cells is part of an active LFG collection system comprising separate extraction wells and/or trenches, and are monitored quarterly for LFG.

Recognizing that the addition of liquids enhances the generation of LFG, the County has agreed to take all necessary steps to control and monitor LFG in the area of the bioreactor experiment. To accomplish these steps, and as further detailed below, the County has: (1) Requested an amendment to its AOS under which it will be required to conduct quarterly surface methane emissions monitoring, beginning with a baseline measurement taken prior to the first introduction of liquids, and (2) in accord with the requested amendment, as the project progresses, evaluate the need to install supplemental LFG control devices, in the area of the bioreactor project in accordance with the NSPS for municipal landfills, 40 CFR part 60, subpart WWW. A copy of the County's proposed requested amendment was included in the FPA as Attachment IV. The County will undertake supplemental LFG response measures in accord with 40 CFR part 60, subpart WWW if methane surface emissions exceed 500 ppm or if significant odors from the test area are observed. The potential for surface emissions is likely to be greatest in the immediate area of liquids injection.

In addition, the County believes that there would be a reduced potential for LFG emissions at the landfill side slope because the slope is covered with an intermediate cap that consists of a vegetative layer over a two foot soil layer that has a permeability ranging from 10^{-4} to 10^{-5} centimeters per second. The existing LFG collection system for Cell 8 is designed to apply a continuous vacuum to the leachate collection pipe network under the waste in order to induce a pressure gradient to draw the LFG toward the collection network. Collected LFG is piped to an enclosed flare for destruction. If necessary, supplemental LFG collection and control may be implemented in the test area, based on results of quarterly methane surface emissions monitoring and observations of odors.

A. LFG Monitoring. Monitoring, record keeping and reporting requirements for LFG agreed to in the FPA signed by the County, EPA and MDE are contained in the Title V permit for the Landfill issued on August 29, 2001 pursuant to the CAA, 42 U.S.C. 7401 *et seq.* The Title V permit specifies that the LFG monitoring and reporting in the test area will be done according to the requirements of 40 CFR part 60, subpart WWW. The County will perform quarterly monitoring for surface emissions over the entire plateau area that includes the test area of Subcell 8.4. The plateau area measures approximately 180 feet by 300 feet and the test area is essentially centered on the plateau. Based on the results of the quarterly monitoring for surface emissions supplemental LFG monitoring and control may be required by the County's Title V permit,

including semi-annual testing for non-methane organic compounds and weekly testing at the well heads for methane, carbon dioxide, carbon monoxide, oxygen and nitrogen. Also, if the County undertakes such supplemental LFG collection measures, the County will continuously collect the LFG flow rate from Cell 8 and on a weekly basis determine the LFG flow rate in the plateau area of Subcell 8.4.

B. LFG Control. If any quarterly surface monitoring shows a surface methane concentration that exceeds 500 ppm over the test area plateau or if significant odors are found to be emanating from the test area, the County will take corrective actions (which may include installation and operation of supplemental LFG collection and control technology) as provided in 40 CFR 60.755. Such supplemental LFG collection and control technology may include either passive LFG collection technology (*i.e.* using candlestick flares independent of the existing active LFG collection system) or active LFG collection technology (*i.e.* connected to the existing active LFG collection system). In any event, the LFG collection and control measures (including any supplemental measures undertaken in the area of the Test Area) will be run continuously if sufficient gas is present to sustain combustion, and shall otherwise be operated in accordance with 40 CFR part 60, subpart WWW. If and when the County undertakes such supplemental LFG collection measures, the County will continuously collect the LFG flow rate from Cell 8 and on a weekly basis determine the LFG flow rate in the plateau area of Subcell 8.4.

5. Liquids Monitoring

Each injection device will be fed from a centrally located 6,500 gallon tank truck through a single hose connection. A flow meter will be installed to allow measurement of liquid flow to each injection device. Four control valves will be installed to allow independent flow regulation to each of the injection ports. A central feed location will be used to ease system operations and reduce truck traffic that may affect settlement rates. Finally, precipitation will be recorded via a rain gauge to allow for adjustments to the injection rate. As noted above, at no time will more than 30 centimeters (cm) of leachate be permitted to collect over the liner. The quantity of leachate, and supplemental storm water (if required), added back to the landfill will be measured throughout the life of the project. The County expects to measure recirculation quantities using flow meters installed on the leachate receptacle just prior to the distribution system piping and valves.

The leachate collection/drainage layer constructed in each subcell consists of two feet of high permeability sand over a geonet drainage layer. Due to the internal subcell slopes and high permeability of the drainage layer, the County expects that there will be very little pressure or "head" buildup on the liner notwithstanding the increased levels of liquids. As noted above, the leachate collection system is designed to maintain a depth of leachate over the liner at all locations within a subcell, significantly less than the prescribed maximum 30 cm depth in a MSWLF constructed with a composite liner under 40 CFR 258.28(a)(2)). Leachate recirculation will be suspended if there appears to be head build-up, and in any event the head would not be allowed to exceed 30 cm under today's proposed rule.

The primary liner system of the Landfill is underlain by a secondary liner and leachate collection system. Sumps are located at the low point of each subcell and are monitored for the depth of liquid on a continual basis. There are double risers extending about 200 feet from the sump in the primary leachate collection layer up to the toe of the side slopes of the Landfill. The double risers provide redundant access to the leachate collection layer. As needed and required, liquid in the sumps is collected and controlled as leachate. Samples are collected to evaluate the characteristics of the liquids. If the test results from the sampled liquid or the monitoring of the leachate level indicate that there is a potential leak in the primary liner system, then the need for a larger pump will be evaluated and the liquid level in the primary system will be further evaluated and monitored to minimize the liquid depth above the primary liner. The liner leakage rate will be evaluated and the leachate injection rate may be reduced, if necessary, to control the rate of flow into the secondary leachate collection system.

Since leachate is pumped from each subcell individually, during the proposed project the County intends to sample the leachate from Subcells 8.4 (test cell) and 8.6 (control cell) semi-annually for parameters that will help establish whether or not leachate quality is improving in Subcell 8.4.

6. Protection Against Landfill Fires

Fires in landfills are usually caused by poorly designed or operated active LFG collection systems that allow ambient air into the waste. For this project, the LFG collection system will be carefully operated to handle excess gas generated while minimizing the potential for landfill fires. The potential for landfill fires will also be minimized for this project since it is based on the anaerobic bioreactor concept. If quarterly monitoring for surface methane emissions triggers supplemental LFG controls, the County will test any Landfill gas extraction wells installed in the test area on a weekly basis for gases including: methane, carbon dioxide, carbon monoxide, oxygen and nitrogen. The County will carefully monitor for and manage the oxygen concentration in the LFG to reduce the potential occurrence of a landfill fire. The County, MDE and EPA acknowledge that a portion of the closed and capped Cell 5–6–7 has had a landfill fire in the past and have agreed to monitor and control the anaerobic bioreactor testing to ensure this does not occur as a result of this project.

C. What Kind of Liner Is Required by Current EPA Regulations?

Currently, the EPA's regulations outline two methods for complying with liner requirements for municipal solid waste landfills. The first method is a performance standard set forth at 40 CFR 258.40(a)(1). This standard allows installation of any liner configuration provided the liner design is approved by the director of an approved State (defined in 40 CFR 258.2) and the design ensures that certain constituent concentrations are not exceeded in the uppermost aquifer underlying the landfill facility at the point of compliance.

The second method is set forth at 40 CFR 258.40(a)(2) and (b). 40 CFR 258.40(b) specifies a liner design which consists of two components: (1) An upper component comprising a minimum of 30 mil flexible membrane liner (60 mil if High Density Polyethylene (HDPE) is used), and (2) a lower component comprising at least two feet of compacted soil with a hydraulic conductivity no greater than 1×10^{-7} cm/sec.

D. How Were the Liners at the Landfill Constructed?

The liner in the test area at the Landfill was constructed to meet or exceed the performance standard set forth in 40 CFR 258.40(a)(1). The base liner system for each constructed Subcell in Cell 8 is a double synthetic system consisting of the following, from top to bottom:

1. 2-foot protective sand cover over geotextile filter;

2. Leachate collection geonet drainage layer;
3. 60-mil high density polyethylene (HDPE) geomembrane top liner;
4. Leakage detection geonet drainage layer;
5. 60-mil HDPE geomembrane bottom liner; and
6. 1.5-foot low permeability (1×10^{-7}, cm/s, demonstrated by construction QA/QC) soil subbase.

Attachment VI in the FPA contains a detailed drawing of the base liner system currently constructed in the subcells in Cell 8. This liner system exceeds the performance requirements of MDE and EPA for MSW landfills, and incorporates two geomembranes providing for leak detection, features typically associated with stricter hazardous waste landfill designs.

E. What Are the Environmental Benefits Expected Through This XL Project?

The expected environmental benefits of this XL project include: (1) Accelerated biodegradation of waste, resulting in increased space for new waste in the Landfill (air space) and therefore longer Landfill life; (2) decreased concentration of most leachate constituents; (3) reduced amount of leachate requiring pretreatment; (4) reduced amount of leachate that the Landfill discharges to the local wastewater treatment plant, with subsequent discharge of effluent to the Patuxent River, and (5) reduced post-closure care, maintenance and risk (since the controlled settlement of the solid waste will occur during Landfill operation, there will be lower potential for leachate migration into the subsurface environment, and more LFG will be produced during operation). Additional information on the potential environmental benefits of bioreactor landfills is discussed in Section III.B. and is available on EPA's Web site at *http://www.epa.gov/epaoswer/non-hw/muncpl/landfill/bioreactors.htm* and at *http://www.epa.gov/ProjectXL/*.

To adequately measure the environmental and other benefits of the proposed bioreactor pilot project, the County will establish a baseline that records the environmental impacts of the Landfill without the proposed bioreactor project. Without the project, Subcell 8.4 would be filled until it reaches its capacity, and then covered. The remainder of the subcells in Cell 8 would also be filled until they reach capacity and Cell 8 will be closed and the County would develop Cell 9.

Without this project, it is assumed, Cell 8 would also continue to generate the same levels of leachate for disposal to the local Publicly Owned Treatment Works (POTW). Treatment of leachate outside the Landfill necessitates the use of equipment, chemicals and ultimately results in the discharge of effluent to surface water. If all the leachate is managed inside the Landfill there will be no discharge to surface water and it is expected to result in cost savings to the County.

The superior environmental performance for this XL Project would be measured using the baseline against the actual results of the project for the following areas: The amount of landfill settlement, the additional air space created in the Cell 8.4 and the amount and concentration of leachate disposed at the local POTW. Specific monitoring parameters are listed in the proposed rule following this preamble.

F. How Have Various Stakeholders Been Involved in This Project?

The County has a history of involving stakeholders in projects at its solid waste acceptance or disposal facilities. This philosophy has proved to be beneficial to all involved parties. The County has divided the stakeholders into three groups. The groups are identified as primary stakeholders, potential interested parties, and members of the general public.

The primary stakeholders are the regulatory agencies involved with solid waste disposal facilities or other activities at the Landfill. The primary stakeholders include:

- U.S. Environmental Protection Agency (EPA)
- Maryland Department of the Environment, Solid Waste Program
- Anne Arundel County Health Department, Environmental Health Bureau
- Anne Arundel County, Planning and Code Enforcement
- Anne Arundel County, Soil Conservation District

Other potentially interested stakeholders have expressed an interest in the project and have had some involvement in the project. It is not anticipated that all stakeholders would play an active and ongoing role in the project. If they do not actively participate in the project, they will be kept informed of the project's progress at appropriate milestones. Their input will be welcomed in verbal or written form.

In May of 2001, after the FPA was signed, the County sent newsletters to approximately 130 nearby residents and concerned citizens with information on the bioreactor testing under project XL.

During implementation of this XL project, the stakeholder involvement program agreed to in the FPA would ensure that: (1) Stakeholders are apprised of the status of project implementation; and (2) stakeholders have access to information sufficient to judge the success of this XL project. Anticipated stakeholder involvement during the term of the project may include other general public meetings to present periodic status reports, availability of data and other information generated. Anne Arundel County plans to convene periodic meetings for interested stakeholders to brief them on progress during the duration of the XL project. In addition to the reporting requirements of today's proposed rule, the FPA includes provisions whereby the County will make copies of project reports available to all interested parties.

A public file on this XL project has been maintained at the Web site throughout project development, and the EPA will continue to update it as the project is implemented. Additional information is available at EPA's Web site at URL *http://www.epa.gov/projectxl*.

G. How Long Will This Project Last and When Will It Be Complete?

As with all XL projects testing alternative environmental protection strategies, the term of this XL project is limited. Today's proposed rule would be in effect for seven (7) years. In the event that EPA determines that this project should be terminated before the end of the seven year period and that the site-specific rule should be rescinded, the Agency may withdraw this rule through a subsequent rulemaking. This will allow all interested persons and entities the opportunity to comment on the proposed termination and withdrawal of regulatory authority. In the event of an early termination of the project term, EPA or the State will establish an interim compliance period, not to exceed six months, such that the County will be returned to full compliance with the existing requirements of 40 CFR part 258.

The FPA allows any party to the agreement to withdraw from the agreement at any time before the end of the seven year period. It also sets forth several conditions that could trigger an early termination of the project, as well as procedures to follow in the event that EPA, the State or local agency seeks to terminate the project.

For example, an early conclusion will be warranted if the project's environmental benefits do not meet the Project XL goal for the achievement of superior environmental results. In

addition, new laws or regulations may become applicable during the project term which might render the project impractical, or might contain regulatory requirements that supersede the superior environmental benefits that are being achieved under this XL project.

H. Will This Project Result in Cost Savings and Paperwork Reduction?

EPA did not prepare an economic estimate of the cost of today's proposed rule or an estimate of any paperwork reduction. EPA notes, however, that the County volunteered for this pilot project which will affect only one facility and is expected to result in an overall cost savings by: Accelerating the decomposition of waste placed in Cell 8.4 of the Landfill, which is expected to extend the life of this cell and improving the quality and management of leachate generated at the landfill, both of which are expected to decrease leachate treatment and disposal costs.

V. What Regulatory Changes Are Being Proposed To Implement This Project?

A. Existing Liquids Restriction for MSWLFs (40 CFR 258.28)

This proposed site specific rule would grant regulatory relief from certain requirements of RCRA that restrict application of liquids in MSWLFs, because, as previously described, Subcell 8.4 of the Landfill was constructed with an alternative liner pursuant to 40 CFR 258.40(a)(1). When the FPA for this project was signed, RCRA regulations, 40 CFR 258.28(a) allowed bulk or non-containerized liquid waste to be added to a MSWLF only if the following two conditions were met:

—The liquids comprise household waste (other than septic waste), or leachate from the Landfill itself, or gas condensate derived from the Landfill, and

—The MSWLF has been built with a liner as prescribed in the design standard set forth in 40 CFR 258.40 (a)(2) (*i.e.*, not the performance standard set forth in 40 CFR 258.40(a)(1)).

Since then, EPA promulgated a site-specific rule for the Yolo County, CA, bioreactor landfill project under Project XL, which amended 40 CFR 258.28(a). The amendment allows bulk liquid wastes to be added to a MSWLF if, "the MSWLF unit is a Project XL MSWLF and meets the applicable requirements of 40 CFR 258.41" (66 FR 42441–42449, August 13, 2001). Therefore, the regulatory relief needed for the Anne Arundel County XL Project is a site-specific amendment to 40 CFR 258.41. With the exception of those specific provisions modified by this proposed rule, all other applicable existing and future regulatory requirements in part 258 and elsewhere continue to apply to the Anne Arundel County Millersville Landfill.

B. Proposed Site-Specific Rule

This proposed rule would allow the operator of the Landfill to add liquids, primarily consisting of leachate from the Landfill and possibly supplemental storm water ("liquids") to a portion of Subcell 8.4 of the Landfill, as long as the maintenance, operational, monitoring and other requirements set forth in 40 CFR 258.41(d) are met. This proposed rule would add a new subsection to the rules in 40 CFR 258.41. New 40 CFR 258.41(d) would specifically apply to the Anne Arundel County Millersville Landfill, in Severn, Anne Arundel County, Maryland, and would allow liquids to be applied to a portion of Subcell 8.4 in this Landfill. This proposed rule would impose certain minimum monitoring, reporting, and control requirements on the County, which, among other things, would ensure that the project is protective of human health and the environment and facilitate EPA's evaluation of the project.

The CAA Title V Permit for the Landfill was signed by MDE on August 29, 2001. Monitoring, record keeping and reporting requirements for LFG previously agreed to in the FPA (Sections II. B. and III. G. and Tables 4 and 5) which was signed by the County, EPA and MDE are contained in the Title V permit for the Landfill. The Title V permit specifies that the LFG monitoring and reporting in the test area will be performed according to the requirements of 40 CFR part 60, subpart WWW. The County will perform quarterly monitoring for surface emissions over the entire plateau area that includes the test area of Subcell 8.4. The plateau area measures 180 feet by 300 feet and the test area is essentially centered on the plateau. Based on the results of the quarterly monitoring supplemental LFG monitoring and control may be required by the County's Title V permit, including semi-annual testing for non-methane organic compounds and weekly testing at the well heads for methane, carbon dioxide, carbon monoxide, oxygen and nitrogen. Also, if the County undertakes such supplemental LFG collection measures, the County will continuously collect the LFG flow rate from Cell 8 and on a weekly basis determine the LFG flow rate in the plateau area of Subcell 8.4.

Existing regulation allowing leachate recirculation over a composite liner (40 CFR 258.28(a)(2)) requires a leachate collection system as specified in 40 CFR 258.40(a)(2) to ensure that contaminant migration to the aquifer is controlled. (56 FR 50978–51056, Oct. 9, 1991). This proposed rule would also require that a leachate collection system (as described in 40 CFR 258.40(a)(2)) be in place in order for leachate to be recirculated in the Subcell 8.4, and the County would be required to ensure that the leachate collection systems maintains the leachate head over the liner at a depth of less than 30 cm in Subcell 8.4.

Today's proposed rule would not provide any regulatory flexibility with respect to monitoring requirements; rather it adds monitoring to that which would be required for this Landfill if it continued operating as a conventional MSWLF. In addition to the monitoring required in part 258, for example, the County would be required to monitor and report whether surface seeps are occurring and determine whether they are attributable to operation of the liquid application system; perform a semi-annual analysis of leachate quality in both test and control areas; and at least monthly, monitor the gas temperature at well heads. EPA believes this additional information will provide the necessary indicators of any increased risk to human health or the environment in a timely manner and will enable the County, MDE and/or EPA to take whatever steps are necessary, including suspension or termination of the project to reduce or eliminate any such risk. EPA also believes that this additional information will be valuable in assessing the benefits of bioreactor operation.

VI. Statutory and Executive Order Reviews

A. Executive Order 12866: Regulatory Planning and Review

Under Executive Order 12866 (58 FR 51735), the Agency must determine whether this regulatory action is "significant" and therefore subject to formal review by the Office of Management and Budget (OMB) and to the requirements of the Executive Order, which include assessing the costs and benefits anticipated as a result of this regulatory action. The Order defines "significant regulatory" action as one that is likely to result in a rule that may: (1) Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or

state, local, or tribal governments or communities; (2) create a serious inconsistency or otherwise interfere with an action taken or planned by another agency; (3) materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or (4) raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order. Because this proposed rule affects only one facility, it is not a rule of general applicability and therefore not subject to OMB review under Executive Order 12866. In addition, after consultation OMB has determined that review of proposed site-specific rules under Project XL is not necessary.

B. Paperwork Reduction Act

This action does not impose an information collection burden under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*, since it applies to only one facility. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

An Agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR part 9 and 48 CFR chapter 15.

C. Regulatory Flexibility Act

Pursuant to the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*, as amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), whenever an Agency is required to publish a notice for any proposed or final rule, it must prepare and make available for public comment a regulatory flexibility analysis that describes the effect of the proposed rule on small entities (*i.e.*, small businesses, small organizations, and small governmental jurisdictions). However, no regulatory flexibility analysis is required if the head of an agency certifies that the proposed rule will not have a significant economic impact on a substantial number of small entities. SBREFA amended the Regulatory Flexibility Act to require federal agencies to provide a statement of the factual basis for certifying that a proposed rule will not have a significant economic impact on a substantial number of small entities. This proposed rule will not have a significant impact on a substantial number of small entities because it affects only one facility, the Anne Arundel County Millersville Landfill, and it is not a small entity.

Based on the foregoing discussion, I hereby certify that this proposed rule will not have a significant adverse economic impact on a substantial number of small entities. Consequently, the Agency has determined that preparation of a formal Regulatory Flexibility Analysis is unnecessary.

D. Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104–4, establishes requirements for federal agencies to assess the effects of their regulatory actions on state, local, and tribal governments and the private sector. Under section 202 of the UMRA, EPA generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with "federal mandates" that may result in expenditures by state, local, and tribal governments, in the aggregate, or to the private sector, of $100 million or more in any one year. Before promulgating a rule for which a written statement is needed, section 205 of the UMRA generally requires EPA to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective or least burdensome alternative that achieves the objectives of the rule. The provisions of section 205 do not apply when they are inconsistent with applicable law. Moreover, section 205 allows EPA to adopt an alternative other than the least costly, most cost-effective, or least burdensome alternative if the Administrator publishes with the final rule an explanation why that alternative was not adopted.

Before EPA establishes any regulatory requirements that may significantly or uniquely affect small governments, including tribal governments, it must have developed under section 203 of the UMRA a small government agency plan. The plan must provide for notifying potentially affected small governments, enable officials of affected small governments to have meaningful and timely input in the development of EPA regulatory proposals with significant federal intergovernmental mandates, and informing, educating, and advising small governments on compliance with the regulatory requirements.

As noted above, this proposed rule is applicable only to one facility in Maryland. EPA has determined that this proposed rule contains no regulatory requirements that might significantly or uniquely affect small governments. EPA has also determined that this proposed rule does not contain a federal mandate that may result in expenditures of $100 million or more for State, local, and tribal governments, in the aggregate, or the private sector in any one year. Thus, today's proposed rule is not subject to the requirements of sections 202 and 205 of the UMRA.

E. Executive Order 13132: Federalism

Executive Order 13132, entitled "Federalism" (64 FR 43255, August 10, 1999), requires EPA to develop an accountability process that would ensure meaningful and timely input by state and local officials in the development of regulatory policies that have federalism implications. "Policies that have federalism implications" are defined in the Executive Order to include regulations that have "substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government."

Today's proposal does not have federalism implications. It will not have a substantial direct effect on States, on the relationship between the national government and the States, nor on the distribution of powers and responsibilities among the various levels of government, as specified in Executive Order 13132. Today's proposal will only affect one facility, providing regulatory flexibility applicable to this specific site. Thus, Executive Order 13132 does not apply to this proposed rule.

F. Executive Order 13175: Consultation and Coordination With Indian Tribal Governments

Executive Order 13175, entitled "Consultation and Coordination with Indian Tribal Governments" (65 FR 67249, November 6, 2000), requires EPA to develop an accountability process that would ensure "meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications." "Policies that have tribal implications" is defined in the Executive Order to include

regulations that have "substantial direct effects on one or more Indian tribes, on the relationship between the federal government and the Indian tribes, or on the distribution of power and responsibilities between the federal government and Indian tribes." Today's proposal does not have tribal implications. It will not have substantial direct effects on tribal governments, on the relationship between the Federal government and Indian tribes, nor on the distribution of power and responsibilities between the Federal government and Indian tribes, as specified in Executive Order 13175. EPA is currently unaware of any Indian tribes located in the vicinity of the facility. Thus, Executive Order 13175 does not apply to this proposed rule.

G. Executive Order 13045: Protection of Children From Environmental Health and Safety Risks

"Protection of Children From Environmental Health Risks and Safety Risks" (62 FR 19885, April 23, 1997) applies to any rule that EPA determines (1) "economically significant" as defined under Executive Order 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children and explain why the planned regulation is preferable to other potential effective and reasonably feasible alternatives considered by the Agency. This proposed rule is not subject to Executive Order 13045 because it is not an economically significant rule as defined by Executive Order 12866.

H. Executive Order 13211: Actions That Significantly Affect Energy Supply, Distribution, or Use

This proposed rule is not a "significant energy action" as defined in Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use" (66 FR 28355, May 22, 2001) because it is not likely to have a significant adverse effect on the supply, distribution, or use of energy. It will not result in increased energy prices, increased cost of energy distribution, or an increased dependence on foreign supplies of energy.

I. National Technology Transfer and Advancement Act of 1995

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 ("NTTAA," Pub. L. 104–113, section 12(d) (15 U.S.C. 272 *note*) directs EPA to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (*e.g.*, materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by voluntary consensus standards bodies. The NTTAA directs EPA to provide Congress, through OMB, explanations when the Agency decides not to use available and applicable voluntary consensus standards. Today's proposal does not establish technical standards. Therefore, EPA did not consider the use of any voluntary consensus standards.

J. Executive Order 12898: Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations

Executive Order 12898, "Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations" (February 11, 1994) is designed to address the environmental and human health conditions of minority and low-income populations. EPA is committed to addressing environmental justice concerns and has assumed a leadership role in environmental justice initiatives to enhance environmental quality for all citizens of the United States. The Agency's goals are to ensure that no segment of the population, regardless of race, color, national origin, income, or net worth bears disproportionately high and adverse human health and environmental impacts as a result of EPA's policies, programs, and activities. In response to Executive Order 12898, EPA's Office of Solid Waste and Emergency Response (OSWER) formed an Environmental Justice Task Force to analyze the array of environmental justice issues specific to waste programs and to develop an overall strategy to identify and address these issues (OSWER Directive No. 9200.3–17). Potential environmental justice impacts are identified consistent with the EPA's Environmental Justice Strategy and the OSWER Environmental Justice Action Agenda.

Today's proposal applies to one facility in Maryland. Overall, no disproportional impacts to minority or low income communities are expected.

List of Subjects in 40 CFR Part 258

Environmental protection, Landfill, Solid waste.

Dated: May 7, 2003.

Christine Todd Whitman,

Administrator.

For the reasons set forth, part 258 of chapter I of title 40 of the Code of Federal Regulations is proposed to be amended as follows:

PART 258—CRITERIA FOR MUNICIPAL SOLID WASTE LANDFILLS

1. The authority citation for part 258 continues to read as follows:

Authority: 33 U.S.C. 1345(d) and (e); 42 U.S.C. 6902(a), 6907, 6912(a), 6944, 6945(c), and 6949a(c).

Subpart D—Design Criteria

3. Amend § 258.41 to add a new paragraph (d) to read as follows:

§ 258.41 Project XL Bioreactor Landfill Projects.

* * * * *

(d) *Anne Arundel County, Millersville Landfill Requirements.* Paragraph (d) of this section applies solely to the Anne Arundel County, Millersville Landfill, owned and operated by the Anne Arundel County Department of Public Works, or its successors, located in Severn, Anne Arundel County, Maryland ("Landfill"). The Landfill is allowed to Landfill leachate and onsite storm water, hereinafter, "liquid or liquids", to a test area contained in portion of Subcell 8.4 of the Landfill under the following conditions:

(1) The operator of the Landfill shall maintain the liner underlying Subcell 8.4, which was designed and constructed with an alternative liner in accordance with § 258.40(a)(1), and a leachate collection system, in order to maintain the integrity of the liner system and keep it and the leachate collection system in good operating order. From top to bottom the base liner underlying the waste in Cell 8 consists of: 2-feet of sand cover, a geotextile filter, a leachate collection layer, a 60-mil high density polyethylene (HDPE) top liner, a leakage detection layer; a 60-mil HDPE bottom liner and 1.5-feet of a low permeability soil subbase. The operator of the Landfill shall ensure that the addition of any liquids does not result in an increased leakage rate, and does not result in liner or waste slippage, or otherwise compromise the integrity of the Landfill and its liner system, as determined by the Director of the Maryland Department of the Environment (State Director). In addition, the leachate collection system shall be operated, monitored and maintained to ensure that less than 30 cm depth of leachate is maintained over the liner.

(2) The operator of the Landfill shall ensure that the concentration values listed in Table 1 of § 258.40 are not exceeded in the uppermost aquifer at the relevant point of compliance for Cell 8 of the Landfill, as specified by the State Director, under section § 258.40(d).

(3) The operator of the Landfill shall monitor and report whether surface seeps are occurring and determine whether they are attributable to operation of the liquid application system. EPA and the Maryland Department of the Environment (MDE) shall be notified in the semi-annual report of the occurrence of any seeps.

(4) The operator of the Landfill shall determine on a semi-annual basis the leachate quality by analyzing samples of the Landfill leachate, from the sumps in Subcell 8.4 (where the test area is located) and 8.6 (where the control area is located), for the following parameters: dissolved oxygen, dissolved solids, biochemical oxygen demand, chemical oxygen demand, organic carbon, nutrients (ammonia, nitrogen, total nitrogen, and total phosphorus), nitrate, nitrite, total alkalinity, ortho phosphate, total suspended solids, cyanide, chloride, total dissolved solids, RCRA hazardous metals, volatile organic compounds and semi-volatile organic compounds by Method SW–846. The operator of the Landfill shall collect weekly samples of Landfill leachate, from the sumps in Subcell 8.4 and Subcell 8.6, and analyze them for the following parameters: pH and conductivity. The depth of liquid in the sumps shall be monitored on a continual basis and the leachate flow rate shall be calculated on a monthly basis.

(5) The operator of the Landfill shall determine on a semi-annual basis: The total quantity of leachate collected in Subcell 8.4 and Subcell 8.6; the total quantity of liquids applied in the test areas; any changes in the application rate or quantity and any leachate taken for offsite disposal.

(6) Prior to the addition of any liquid to the Landfill, the operator of the Landfill shall perform an initial characterization of the liquid and notify EPA and MDE of the liquid proposed to be added. The parameters for the initial characterization of liquids shall be the same as the semi-annual parameters for the Landfill leachate specified in paragraph (d)(4) of this section. The operator shall annually test all liquids, other than leachate, added to the Landfill for the semi-annual parameters specified in paragraph (d)(4) of this section and compare these results to the initial characterization.

(7) The operator of the Landfill shall ensure that Subcell 8.4 is operated in such a manner so as to prevent any landfill fires from occurring. If quarterly monitoring for surface methane emissions triggers supplemental LFG controls, the County will test any Landfill gas extraction wells installed in the test area on a weekly basis for LFG flow rate and gases including: methane, carbon dioxide, carbon monoxide, oxygen and nitrogen. The County will carefully monitor for and manage the oxygen concentration in the LFG to reduce the potential occurrence of a landfill fire.

(8) The operator of the Landfill shall determine on a semi-annual basis the settlement of the test area based on measurements of the elevation of monuments installed for this purpose. The operator of the Landfill shall determine on a annual basis the settlement of the test and control areas based on topographic surveys.

(9) The operator of the Landfill shall monitor the frequency of odor complaints during and after liquid application events. EPA and MDE shall be notified of the occurrence of any odor complaints in the semi-annual report.

(10) The operator of the Landfill shall report to the EPA Regional Administrator and the State Director on the information described in paragraphs (d)(1) through (9) of this section on a semi-annual basis. The first report is due within 6 months after [THE EFFECTIVE DATE OF THE FINAL RULE]. These reporting provisions shall remain in effect for the duration of the project term.

(11) Application of this site-specific rule to the Landfill is conditioned upon the Landfill being subject to an approved Title V permit issued pursuant to the Clean Air Act, 42 U.S.C. 7401 *et seq.* (CAA) that provides for compliance with the requirements of 40 CFR Part 60, Subpart WWW in the plateau area of Subcell 8.4 that is impacted by the recirculation activities.

(12) This section will remain in effect until [DATE SEVEN YEARS FROM EFFECTIVE DATE OF FINAL RULE]. By [DATE SEVEN YEARS FROM EFFECTIVE DATE OF FINAL RULE], the Landfill must return to compliance with the regulatory requirements which would have been in effect absent the flexibility provided through this section. If EPA Region 3's Regional Administrator, the State of Maryland and Anne Arundel County agree to an amendment of the project term, the parties must enter into an amended or new Final Project Agreement for any such amendment.

(13) The authority provided by this section may be terminated before the end of the 7 year period in the event of noncompliance with the requirements of paragraph (d) of this section. The determination by the EPA Region 3's Regional Administrator that the project has failed to achieve the expected level of environmental performance, or the promulgation of generally applicable requirements that apply instead of this section may also result in termination of the authority provided by this section. In the event of early termination EPA, in consultation with the State of Maryland, will determine an interim compliance period to provide sufficient time for the owner or operator to return the Landfills to compliance with the regulatory requirements which would have been in effect absent the authority provided by this section. The interim compliance period shall not exceed six months.

[FR Doc. 03–11909 Filed 5–12–03; 8:45 am]
BILLING CODE 6560–50–P

Notices

Federal Register
Vol. 68, No. 92
Tuesday, May 13, 2003

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Farm Service Agency

Information Collection; Secretarial Disaster Designations

AGENCY: Farm Service Agency, USDA.

ACTION: Notice; request for comment.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, the Farm Service Agency is seeking comments from all interested individuals and organizations on the extension of a currently approved information collection in support of the Secretarial disaster designation process. The information collection is needed to identify disaster areas and establish eligible FSA counties for the purpose of making emergency loans available to eligible and qualified farmers and ranchers.

DATES: Comments must be received on or before July 14, 2003, to be assured of consideration. Comments received after that date will be considered to the extent practicable.

ADDRESSES: Comments concerning this notice should be addressed to Diane Sharp, Director, Production, Emergencies and Compliance Division, to Farm Service Agency, USDA, Mail Stop 0517, 1400 Independence Avenue, SW., Washington, DC 20250–0517 and to the Desk Officer for Agriculture, Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503. Comments also may be submitted by e-mail to: *Diane_Sharp@wdc.usda.gov.*

FOR FURTHER INFORMATION CONTACT: Lynn Tjeerdsma, Branch Chief, (202) 720–6602.

SUPPLEMENTARY INFORMATION:

Description of Information Collection

Title: Disaster Assistance Program.

OMB Number: 0560–0170.

Expiration Date of Approval: June 30, 2003.

Type of Request: Extension with no revision.

Abstract: The information collection is necessary for FSA to effectively administer the regulations relating to identifying disaster areas for the purpose of making emergency loans available to qualified and eligible farmers and ranchers who have suffered weather-related physical or production losses or both. Before making emergency loans available to farmers and ranchers, the collected information is used to determine whether the disaster areas meet the qualifying loss criteria in order to be considered as an eligible FSA County.

Estimate of Burden: Average 0.420 hour per response.

Type of Respondents: Farmers and Ranchers.

Estimated Annual Number of Respondents: 2,454.

Estimated Annual Number of Responses per Respondent: 1.

Estimated Total Annual Burden on Respondents: 1,032.

Comment is invited on: (1) Whether this collection of information is necessary for the stated purposes and the proper performance of the functions of the agency, including whether the information will have practical or scientific utility; (2) the accuracy of the agency's estimate of the burden of the collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including the use of automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

All comments received in response to this notice, including names and addresses when provided, will be a matter of public record. Comments will be summarized and included in the submission for Office of Management and Budget approval.

Signed at Washington, DC, on May 6, 2003.

James R. Little,

Administrator, Farm Service Agency.

[FR Doc. 03–11894 Filed 5–12–03; 8:45 am]

BILLING CODE 3410–05–P

DEPARTMENT OF AGRICULTURE

Food and Nutrition Service

Agency Information Collection Activities: Proposed Collection; Comment Request—The Integrity Profile (TIP)

AGENCY: Food and Nutrition Service, USDA.

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces the intent of the Food and Nutrition Service (FNS) to request Office of Management and Budget (OMB) review of The Integrity Profile data collection and reporting system.

DATES: Comments on this notice must be received or postmarked by July 14, 2003.

ADDRESSES: Send comments and requests for copies of this information collection to: Patricia N. Daniels, Director, Supplemental Food Programs Division, Food and Nutrition Service, U.S. Department of Agriculture, 3101 Park Center Drive, Alexandria, VA 22302.

Pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3507), comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

All responses to this notice will be summarized and included in the request for OMB approval, and will become a matter of public record.

FOR FURTHER INFORMATION CONTACT: Patty Davis, (703) 305–2728.

SUPPLEMENTARY INFORMATION:

Title: The Integrity Profile (TIP).

OMB Number: 0584–0401.

Expiration Date: 6–30–04.

Type of Request: Revisions to the Currently Approved Collection.

Abstract: State agencies administering the Special Supplemental Nutrition Program for Women, Infants and Children (WIC Program) are required by 7 CFR 246.12(j)(5) to submit to FNS an annual summary of the results of their vendor monitoring efforts in order to provide Congress, senior FNS officials, as well as the general public, assurance that every reasonable effort is being made to ensure integrity in the WIC Program. Since 1989, WIC Program State agencies have been required to submit The Integrity Profile (TIP) data annually. FNS compiles the data to produce a national report, which shows the level of monitoring and investigation conducted by WIC State agencies to detect and eliminate, or substantially reduce, vendor fraud and abuse. Most State agencies download the data from their automated system and transmit it electronically to FNS.

Estimate of Burden: Public reporting burden for this collection of information is estimated to average 43.5 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

Respondents: The Program Director of each WIC State agency, which is generally a State Health Department or an Indian Tribal Organization official.

Estimated Number of Respondents: 88 respondents.

Estimated Number of Responses Per Respondent: One.

Estimated Total Annual Burden on Respondents: 3,827.50 hours.

Dated: April 30, 2003.

Roberto Salazar,

Administrator, Food and Nutrition Service.

[FR Doc. 03–11893 Filed 5–12–03; 8:45 am]

BILLING CODE 3410–30–P

DEPARTMENT OF AGRICULTURE

Forest Service

Eastern Washington Cascades Provincial Advisory Committee and the Yakima Provincial Advisory Committee

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The Eastern Washington Cascades Provincial Advisory Committee and the Yakima Provincial Advisory Committee will meet on Wednesday, June 11, 2003, at the Best Western Icicle Inn, 505 Highway 2, Leavenworth, Washington. The meeting will begin at 9 a.m. and continue until 3 p.m. During this meeting we will discuss noxious weed management and prevention, Northwest Forest Plan project monitoring, and updates on implementation of the Northwest Forest Plan. All Eastern Washington Cascades and Yakima Province Advisory Committee meetings are open to the public. Interested citizens are welcome to attend.

FOR FURTHER INFORMATION CONTACT: Direct questions regarding this meeting to Paul Hart, Designated Federal Official, USDA, Wenatchee National Forest, 215 Melody Lane, Wenatchee, Washington 98801, 509–662–4335.

Dated: May 5, 2003.

Paul Hart,

Designated Federal Official, Okanogan and Wenatchee National Forests.

[FR Doc. 03–11876 Filed 5–12–03; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Rural Business-Cooperative Service

Notice of Funds Availability (NOFA) Inviting Applications for Rural Cooperative Development Grants

AGENCY: Rural Business-Cooperative Service, USDA.

ACTION: Notice.

SUMMARY: The Rural Business-Cooperative Service (RBS) announces the availability of approximately $6.5 million in competing Rural Cooperative Development Grant (RCDG) funds for fiscal year (FY) 2003. Of this amount, approximately $1.5 million will be reserved for applications that focus on assistance to small, minority producers through their cooperative businesses. This action will comply with legislation which authorizes grants for establishing and operating centers for rural cooperative development. The intended effect of this notice is to solicit applications for FY 2003 and award grants before September 1, 2003.

DATES: The deadline for receipt of an application is June 27, 2003. Applications received after that date will not be considered. Applications should be sent to the Rural Development State offices. State offices will forward the applications to the National office by July 14, 2003.

ADDRESSES: Entities wishing to apply for assistance should contact their USDA Rural Development State Office to receive further information and copies of the application package. A list of state offices is provided at the end of this Notice.

FOR FURTHER INFORMATION CONTACT: Inquiries are directed to the applicable USDA Rural Development State Office. Information is also available on the RBS Web site at *www.rurdev.usda.gov/rbs/coops/rcdg.htm.* You may also contact Marc Warman, Program Leader, Cooperative Services, Rural Business-Cooperative Service, U.S. Department of Agriculture, Stop 3250, Room 4016, South Agriculture Building, 1400 Independence Avenue, SW., Washington, DC 20250–3250. Telephone (202) 690–1431.

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1995, the information collection requirements continued in this regulation were previously approved by the Office of Management and Budget [OMB) and were assigned OMB control number 0570–0006.

General Information

Rural Cooperative Development Grants (RCDG) are authorized by section 310B(e) of the Consolidated Farm and Rural Development Act (7 U.S.C. 1932). Regulations are contained in 7 CFR part 4284, subpart F. The primary objective of the RCDG program is to improve the economic condition of rural areas through cooperative development. The program is administered through USDA Rural Development State Offices acting on behalf of RBS.

Section 310B(e) of the Consolidated Farm and Rural Development Act was amended by Public Law 107–171 (Mar 13, 2002) to modify the matching requirement required of RCDG grant applicants that are "1994 Institutions" (as defined in section 532 of the Equity in Educational Land-Grant Status Act of 1994 (7 U.S.C. 301 note; Pub. L. 103–382). 1994 Institutions are not required to provide non-Federal financial support (matching funds) greater than 5 percent of the grant awarded. In the case of all applicants, preference points will be awarded where applicants commit to providing greater than the minimum 25 percent matching contribution. A current list of 1994 Institutions may be obtained from RBS.

Grant Selection Criteria

Grants will be awarded on a competitive basis to nonprofit corporations and institutions of higher education based on the following selection criteria. The priorities described in this paragraph will be used by RBS to rate applications. RBS review

of applications will include the complete application package submitted to the Rural Development State Office. Points will be ranked as compared with other applications on hand. Points will be awarded to each factor on a 5, 4, 3, 2, 1 basis depending on the applicant's ranking compared to other applicants. Each factor will receive equal weight.

Preference will be given to applications that:

(1) Demonstrate a proven track record in administering a nationally coordinated, regionally or State-wide operated project;

(2) Demonstrate previous expertise in providing technical assistance to cooperatives in rural areas;

(3) Demonstrate the ability to assist in the retention of business, facilitate the establishment of cooperatives and new cooperative approaches, and generate employment opportunities that will improve the economic conditions of rural areas;

(4) Demonstrate the ability to create horizontal linkages among cooperative businesses within and among various sectors in rural areas of the United States and vertical linkages to domestic and international markets;

(5) Commit to providing technical assistance and other services to underserved and economically distressed rural areas of the United States;

(6) Commit to providing greater than a 25 percent matching contribution (5 percent in the case of 1994 Institutions) with private funds and in-kind contributions;

(7) Demonstrate transferability or demonstration value to assist rural areas outside of project area; and

(8) Demonstrate that any cooperative development activity is consistent with positive environmental stewardship.

Fiscal Year 2003 Application Submission

Applications must include a clear statement of the goals and objectives of the project and a plan which describes the proposed project as required by the statute and 7 CFR part 4284, subpart F. Each application received in the State Office will be reviewed to determine if the application is consistent with the eligible purposes outlined in 7 CFR part 4284, subpart F. Applications without supportive data to address selection criteria will not be considered. All submissions must conform to the required standard Times New Roman, 12 point font.

Since the primary objective of the cooperative center concept is to provide technical assistance services, including feasibility analysis, applications that do not propose development or continuation of the cooperative center concept will not be considered. Also, applications that focus on assistance to only one cooperative within the project area will not be considered. To enhance the long-term viability of cooperative development centers, strengthening of technical assistance capacity within new and existing centers is strongly encouraged.

Copies of 7 CFR part 4284, subpart F, will be provided to any interested applicant by making a request to the Rural Development State office or RBS National office.

Applications must be completed and submitted to the State Rural Development Office as soon as possible, but no later than June 27, 2003. Applications received after this date will not be considered. Electronic submission of proposals as an email attachment is strongly encouraged.

Each application must contain the information required under 7 CFR 4284.528(a) and (b)(1) (copies of which may be obtained from the Agency) in addition to the following information which is required under 7 CFR 4284.528(b)(2):

(1) A detailed Table of Contents containing page numbers for each component of the application.

(2) A project summary of 250 words or less on a separate page. This page must include the title of the project and the names of the primary project contacts and the applicant organization, followed by the summary. The summary should be self-contained and should describe the overall goals, relevance of the project, and a listing of all organizations involved in the project. The project summary should immediately follow the Table of Contents.

(3) A separate one-page information sheet which lists each of the eight evaluation criteria followed by the page numbers of all relevant material and documentation contained in the application which supports that criteria. This page should immediately follow the project summary.

(4) Description of the applicant's experience with similar projects, pursuant to 7 CFR 4284.528(a)(2)(vii). Applicants who have received funding under the Rural Cooperative Development Grant program in Fiscal Years 2001 or 2002 must provide a summation, not to exceed three pages, of progress and results for all projects funded fully or partially by the RCDG program in those years. This summary should include the status of cooperative businesses organized and all eligible grant purpose activities listed under 7 CFR 4284.515. The summary should immediately follow the page described above in item (3) documenting the location of evaluation criteria supporting material.

(5) A work plan that describes the specific tasks to be completed using grant and matching funds, pursuant to 7 CFR 4284.528(b)(1). The work plan should describe how customers will be identified (7 CFR 4284.528(a)(2)(vi)), key personnel to be involved (7 CFR 4284.528(a)(2)(vii) and the evaluation methods to be used to determine the success of specific tasks and overall objectives of Center operations (7 CFR 4284.528(a)(2)(xi)). A detailed budget must be submitted as part of the work plan and is required pursuant to 7 CFR 4284.528(a)(2)(iv). The budget must present a breakdown of the estimated costs associated with cooperative development activities as well as the operation of the Center and allocate these costs to each of the tasks to be performed in the work plan (7 CFR 4284.528(a)(2)(iii)). Matching funds as well as grant funds must be accounted for in the budget and estimate of total costs. The work plan, budget and estimate of costs, should not exceed 10 pages.

(6) The eight grant selection criteria in 7 CFR 4284.528(a)(2)(xiii)(G) must be addressed individually and in specific detail. This discussion should be in narrative form, should not exceed 40 pages, and should include all citations to supporting documentation. Do not include the referenced supporting documentation in the application package until and unless requested to do so by USDA.

Applications requesting Federal funds in excess of $350,000 will not be considered.

The National Office will score applications based on the grant selection criteria contained in 7 CFR part 4284, subpart F, and will select awardees subject to the availability of funds and the applicant's satisfactory submission of a formal application and related materials in accordance with subpart F. Entities submitting applications that are selected for awards will be invited by the Rural Development State office to submit all referenced supporting documentation and other required materials prior to September 1. As part of the award process, the State Office will review the referenced supporting documentation. Monitoring officials from the State Office must be satisfied as to the completeness and validity of any referenced documentation before grant funds will be obligated. It is anticipated that formal grant awards will be made by September 30, 2003.

In the event that the applicant is awarded a grant that is less than the amount requested, the applicant will be required to modify its application to conform to the reduced amount before execution of the grant agreement. The Agency reserves the right to reduce or de-obligate the award, if acceptable modifications are not submitted by the awardees within 15 working days from the date the application is returned to the applicant. Any modifications must be within the scope of the original application.

All applicants and grants must be in compliance with the requirements of 7 CFR parts 3015 and 3019.

Dated: May 5, 2003.

John Rosso,

Administrator, Rural Business-Cooperative Services.

List of Rural Development State Offices

Note: Telephone numbers shown are not toll free.

Alabama

State Director, USDA Rural Development, Sterling Center, Suite 601, 4121 Carmichael Road, Montgomery, AL 36106–3683, (334) 279–3400, *steve.pelham@al.usda.gov.*

Alaska

State Director, USDA Rural Development, 800 West Evergreen, Suite 201, Palmer, AK 99645, (907) 761–7705, *nhayes@rdmail.rural.usda.gov.*

Arizona

State Director, USDA Rural Development, 3003 North Central Avenue, Suite 900, Phoenix, AZ 85012, (602) 280–8700, *eddie.browning@az.usda.gov*

Arkansas

State Director, USDA Rural Development, 700 West Capitol Avenue, Room 3416, Little Rock, AR 72201–3225, (501) 301–3200, *john.allen@ar.usda.gov.*

California

State Director, USDA Rural Development, 430 G Street, Agency 4169, Davis, CA 95616, (530) 792–5800, *paul.venosdel@ca.usda.gov.*

Colorado

State Director, USDA Rural Development, 655 Parfet Street, Lakewood, CO 80215, (720) 544–2903, *gigi.dennis@co.usda.gov.*

Delaware-Maryland

State Director, USDA Rural Development, 4607 South DuPont Highway, Camden, DE 19934, (302) 697–4300, *marlene.elliott@de.usda.gov.*

Florida/Virgin Islands

State Director, USDA Rural Development, 4440 NW. 25th Place, Gainesville, FL 32606, (352) 338–3400, *charles.clemons@fl.usda.gov.*

Georgia

State Director, USDA Rural Development, Stephens Federal Building, 355 E. Hancock Avenue, Athens, GA 30601, (706) 546–2162, *stone.workman@ga.usda.gov.*

Hawaii

State Director, USDA Rural Development, Federal Building, Room 311, 154 Waianuenue Avenue, Hilo, HI 96720, (808) 933–8380, *lorraine.shin@hi.usda.gov.*

Idaho

State Director, USDA Rural Development, 9173 West Barnes Drive, Suite A1, Boise, ID 83709, (208) 378–5600, *mike.field@id.usda.gov.*

Illinois

State Director, USDA Rural Development, 2118 West Park Court, Suite A, Champaign, IL 61821, (217) 403–6200, *Douglas.wilson@il.usda.gov.*

Indiana

State Director, USDA Rural Development, 5975 Lakeside Boulevard, Indianapolis, IN 46278, (317) 290–3100, *Robert.white@in.usda.gov.*

Iowa

State Director, USDA Rural Development, Federal Building, Room 873, 210 Walnut Street, Des Moines, IA 50309, (515) 284–4663, *nancy.orth@ia.usda.gov.*

Kansas

State Director, USDA Rural Development, 1303 S.W. First American Place, Suite 100, Topeka, KS 66604, (785) 271–2700, *chuck.banks@ks.usda.gov.*

Kentucky

State Director, USDA Rural Development, 771 Corporate Drive, Suite 200, Lexington, KY 40503, (859) 224–7300, *ken.slone@ky.usda.gov.*

Louisiana

State Director, USDA Rural Development, 3727 Government Street, Alexandria, LA 71302, (318) 473–7920, *Michael.taylor@la.usda.gov.*

Maine

State Director, USDA Rural Development, 967 Illinois Avenue, Suite 4, Bangor, ME 04402, (207) 990–9106, *m.aube@me.usda.gov.*

Massachusetts/Rhode Island/Connecticut

State Director, USDA Rural Development, 451 West Street, Suite 2, Amherst, MA 01002, (413) 253–4300 *david.tutle@ma.usda.gov.*

Michigan

State Director, USDA Rural Development, 3001 Coolidge Road, Suite 200, East Lansing, MI 48823, (517) 324–5200, *Harry.brumer@mi.usda.gov.*

Minnesota

State Director, USDA Rural Development, 375 Jackson Street, Suite 410, St. Paul, MN 55101–1853, (651) 602–7800 *steve.wenzel@mn.usda.gov.*

Mississippi

State Director, USDA Rural Development, Federal Building, Suite 831, 100 West Capitol Street, Jackson, MS 39269, (601) 965–4316, *nick.walters@ms.usda.gov.*

Missouri

State Director, USDA Rural Development, 601 Business Loop 70 West, Parkade Center, Suite 235, Columbia, MO 65203, (573) 876–0976, *greg.branum@mo.usda.gov.*

Montana

State Director, USDA Rural Development, 900 Technology Blvd., Suite B, Bozeman, MT 59718, (406) 585–2580, *tim.ryan@mt.usda.gov.*

Nebraska

State Director, USDA Rural Development, Federal Building, Room 152, 100 Centennial Mall N, Lincoln, NE 68508, (402) 437–5551, *jim.barr@ne.usda.gov.*

Nevada

State Director, USDA Rural Development, 1390 South Curry Street, Carson City, NV 89703, (775) 887–1222 *larry.smith@nv.usda.gov.*

New Jersey

State Director, USDA Rural Development, 5th Floor North Tower, Suite 500, 8000 Midlantic Drive, Mount Laurel, NJ 08054, (856) 787–7700, *Andrew.law@nj.usda.gov.*

New Mexico

State Director, USDA Rural Development, 6200 Jefferson Street, NE, Room 255, Albuquerque, NM 87109, (505) 761–4950, *jeff.condrey@nm.usda.gov.*

New York

State Director, USDA Rural Development, The Galleries of Syracuse, 441 South Salina Street, Suite 357, Syracuse, NY, 13202, (315) 477–6400, *Patrick.brennan@ny.usda.gov.*

North Carolina

State Director, USDA Rural Development State Office, 4405 Bland Road, Suite 260, Raleigh, NC 27609, (919) 873–2000, *john.cooper@nc.usda.gov.*

North Dakota

State Director, USDA Rural Development, Federal Building, Room 208, 220 East Rosser Avenue, Bismarck, ND 58502–1737, (701) 530–2037, *jane.grant@nd.usda.gov.*

Ohio

State Director, USDA Rural Development, Federal Building, Room 507, 200 North High Street, Columbus, OH 43215, (614) 255–2400, *randall.hunt@oh.usda.gov.*

Oklahoma

State Director, USDA Rural Development, 100 USDA, Suite 108, Stillwater, OK 74074, (405) 742–1000, *brent.kisling@ok.usda.gov.*

Oregon

State Director, USDA Rural Development, 101 SW Main Street, Suite 1410, Portland, OR 97204, (503) 414–3300, *lynn.schoessler@or.usda.gov.*

Pennsylvania

State Director, USDA Rural Development, One Credit Union Place, Suite 330, Harrisburg, PA 17110–2996, (717) 237–2299, *byron.ross@pa.usda.gov.*

Puerto Rico

State Director, USDA Rural Development State Office, 654 Munoz Rivera Avenue, IBM Plaza, Suite 601, Hato Rey, Puerto Rico 00918, (787) 766–5095, *jose.otero@pr.usda.gov.*

South Carolina

State Director, USDA Rural Development State Office, Strom Thurmond Federal Building, 1835 Assembly Street, Suite 1007, Columbia, SC 29201, (803) 765–5163 *charles.sparks@sc.usda.gov.*

South Dakota

State Director, USDA Rural Development, Federal Building, Room 210, 200 4th Street, SW., Huron, SD 57350, (605) 352–1100, *lynn.jensen@sd.usda.gov.*

Tennessee

State Director, USDA Rural Development, 3322 West End Avenue, Suite 300, Nashville, TN 37203, (615) 783–1300, *peggy.rose@tn.usda.gov.*

Texas

State Director, USDA Rural Development, Federal Building, Suite 102, 101 South Main, Temple, TX 76501, (254) 742–9700, *bryan.daniel@tx.usda.gov.*

Utah

State Director, USDA Rural Development, Wallace F. Bennett Federal Building, 125 South State Street, Room 4311, Salt Lake City, UT 84138, (801) 524–4320, *jack.cox@ut.usda.gov.*

Vermont/New Hampshire

State Director, USDA Rural Development, City Center, 3rd Floor, 89 Main Street, Montpelier, VT 05602, (802) 828–6000, *marie.ferris@vt.usda.gov.*

Virginia

State Director, USDA Rural Development, Culpeper Building, Suite 238, 1606 Santa Rosa Road, Richmond, VA 23229, (804) 287–1550, *joe.newbill@va.usda.gov.*

Washington

State Director, USDA Rural Development, 1835 Black Lake Blvd., SW, Suite B, Olympia, WA 98512, (360) 704–7740, *misha.divens@wa.usda.gov.*

West Virginia

State Director, USDA Rural Development, Federal Building, 75 High Street, Room 320, Morgantown, WV 26505, (304) 284–4860, *jenny.phillips@wv.usda.gov.*

Wisconsin

State Director, USDA Rural Development, 4949 Kirschling Court, Stevens Point, WI 54481, (715) 345–7600, *frank.frassetto@wi.usda.gov.*

Wyoming

State Director, USDA Rural Development, 100 East B Street, Room 1005, Casper, WY 82601, (307) 261–6300, *john.cochran@wy.usda.gov.*

[FR Doc. 03–11830 Filed 5–12–03; 8:45 am]
BILLING CODE 3410–XY–U

DEPARTMENT OF AGRICULTURE

Rural Utilities Service

Information Collection Activity; Comment Request

AGENCY: Rural Utilities Service, USDA.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35, as amended), the Rural Utilities Service (RUS) invites comments on this information collection for which RUS intends to request approval from the Office of Management and Budget (OMB).

DATES: Comments on this notice must be received by July 14, 2003.

FOR FURTHER INFORMATION CONTACT: F. Lamont Heppe, Jr., Director, Program Development and Regulatory Analysis, Rural Utilities Service, 1400 Independence Ave., SW., STOP 1522, Room 4036 South Building, Washington, DC 20250–1522. Telephone: (202) 720–9550. FAX: (202) 720–4120.

SUPPLEMENTARY INFORMATION: The Office of Management and Budget's (OMB) regulation (5 CFR 1320) implementing provisions of the Paperwork Reduction Act of 1995 (Pub. L. 104–13) requires that interested members of the public and affected agencies have an opportunity to comment on information collection and recordkeeping activities (*see* 5 CFR 1320.8(d)). This notice identifies an information collection that RUS is submitting to OMB for extension.

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the Agency, including whether the information will have practical utility; (b) the accuracy of the Agency's estimate of the burden of the proposed collection of information including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology. Comments may be sent to: F. Lamont Heppe, Jr., Director, Program Development and Regulatory Analysis, Rural Utilities Service, U.S. Department of Agriculture, STOP 1522, 1400 Independence Ave., SW., Washington, DC 20250–1522. FAX: (202) 720–4120.

Title: Request for Release of Lien and/or Approval of Sale.

OMB Control Number: 0572–0041.

Type of Request: Extension of a currently approved information collection.

Abstract: The Rural Utilities Service (RUS) makes mortgage loans and loan guarantees to electric and telecommunications systems to provide and improve electric and telecommunications service in rural areas pursuant to the Rural Electrification Act of 1936, as amended (7 U.S.C. 901 *et seq.,*) (RE Act). All current and future capital assets of RUS borrowers are ordinarily mortgaged or pledged to the Federal Government as security for RUS loans. Assets include tangible and intangible utility plant, non-utility property, construction in progress, and materials, supplies, and equipment normally used in a telecommunications system. The RE Act and the various security instruments, *e.g.,* the RUS mortgage, limit the rights of a RUS borrower to dispose of its capital assets. The RUS Form 793, Request for Release of Lien and/or Approval of Sale, allows the telecommunications program borrower to seek agency permission to sell some of its assets. The form collects detailed information regarding the proposed sale of a portion of the borrower's system. RUS telecommunications borrowers fill out the form to request RUS approval in order to sell capital assets.

Estimate of Burden: Public reporting burden for this collection of information is estimated to average 2.75 hours per response.

Respondents: Business or other for-profit; not-for-profit organizations.

Estimated Number of Respondents: 75.

Estimated Number of Responses per Respondent: 1.

Estimated Total Annual Burden on Respondents: 206.

Copies of this information collection can be obtained from MaryPat Daskal, Program Development and Regulatory Analysis, at (202) 720–7853. FAX: (202) 720–4120.

All responses to this notice will be summarized and included in the request for OMB approval. All comments will also become a matter of public record.

Dated: May 2, 2003.

Hilda Gay Legg,

Administrator, Rural Utilities Service.

[FR Doc. 03–11825 Filed 5–12–03; 8:45 am]
BILLING CODE 3410–15–P

AMERICAN BATTLE MONUMENTS COMMISSION

SES Performance Review Board

AGENCY: American Battle Monuments Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given of the appointment of members of the ABMC Performance Review Board.

FOR FURTHER INFORMATION CONTACT: Theodore Gloukhoff, Director of Personnel and Administration, American Battle Monuments Commission, Courthouse Plaza II, Suite 500, 2300 Clarendon Boulevard, Arlington, Virginia, 22201–3367, Telephone Number: (703) 696–6908.

SUPPLEMENTARY INFORMATION: Section 4314(c) of Title 5, U.S.C., requires each agency to establish, in accordance with regulations prescribed by the Office of Personnel Management, one or more SES performance review boards.

The following have been designated as regular members of the American Battle Monuments Commission SES Performance Review Board:

Mr. Donald Basham, Chief, Engineering and Construction Division, Directorate of Civil Works, U.S. Army Corps of Engineers

Mr. Stephen Coakley, Director of Resource Management, U.S. Army Corps of Engineers

Ms. Patricia Rivers, Chief, Environmental Division, Directorate of Military Programs, U.S. Army Corps of Engineers

Theodore Gloukhoff,

Director, Personnel and Administration.

[FR Doc. 03–11821 Filed 5–12–03; 8:45 am]
BILLING CODE 6120–01–P

COMMISSION ON CIVIL RIGHTS

Agenda and Notice of Public Meeting of the Rocky Mountain Regional Office Advisory Committees

Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights, that a conference call of the Rocky Mountain Regional Office Advisory Committee to the Commission will convene at 12 p.m. and adjourn at 1:15 p.m. on Monday, May 12, 2003. The purpose of the conference call is to discuss individual Advisory Committee activities and plans that followed the January 9, 2003 meeting in Albuquerque.

This conference call is available to the public through the following call-in number: 1–800–659–8294, access code 16702460. Any interested member of the public may call this number and listen to the meeting. Callers can expect to incur charges for calls not initiated using the supplied call-in number or made over wireless lines, and the Commission will not refund any incurred charges. Callers will incur no charge for calls using the call-in number over landline connections. Persons with hearing impairments may also follow the proceedings by first calling the Federal Relay Service at 1–800–977–8339 and providing the Service with the conference call number and access code.

To ensure that the Commission secures an appropriate number of lines for the public, persons are asked to register by contacting, John Dulles, Director of the Rocky Mountain Regional Office, 303–866–1040 (TDD 303–866–1049), by 4 p.m. on Friday May 9, 2003.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, DC, April 28, 2003.

Ivy L. Davis,

Chief, Regional Programs Coordination Unit.

[FR Doc. 03–11883 Filed 5–12–03; 8:45 am]
BILLING CODE 6335–01–P

COMMISSION ON CIVIL RIGHTS

Agenda and Notice of Public Meeting of the Arkansas Advisory Committee

Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights, that a conference call of the Arkansas Advisory Committee to the Commission will convene at 1:30 p.m. and adjourn at 3 p.m. (CTD) on Thursday May 15, 2003. The purpose of the conference call is to plan future projects and have a discussion of the hate crime bill that recently failed.

This conference call is available to the public through the following call-in number: 1–888–532–5130, access code: 16753157. Any interested member of the public may call this number and listen to the meeting. Callers can expect to incur charges for calls not initiated using the supplied call-in number or made over wireless lines, and the Commission will not refund any incurred charges. Callers will incur no charge for calls using the call-in number over landline connections. Persons with hearing impairments may also follow the proceedings by first calling the Federal Relay Service at 1–800–977–8339 and providing the Service with the conference call number and access code.

To ensure that the Commission secures an appropriate number of lines for the public, persons are asked to register by contacting Aonghas St. Hilaire of the Eastern Regional Office, 202–376–7533 (TDD 202–376–8116), by 4 p.m. on Wednesday 14, 2003.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Agenda and Notice of Public Meeting of the Maine Advisory Committee

Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights, that a conference call of the Maine Advisory Committee to the Commission will convene at 2 p.m. and adjourn at 3:30 p.m. on Thursday, May 15, 2003. The purpose of the conference call is to plan for future SAC activities.

This conference call is available to the public through the following call-in number: 1–800–556–3005, access code: 16536732. Any interested member of the public may call this number and listen to the meeting. Callers can expect to incur charges for calls not initiated using the supplied call-in number or made over wireless lines, and the Commission will not refund any incurred charges. Callers will incur no charge for calls using the call-in number over landline connections. Persons with hearing impairments may also follow the proceedings by first calling the Federal Relay Service at 1–800–977–8339 and providing the Service with the conference call number and access code.

To ensure that the Commission secures an appropriate number of lines for the public, persons are asked to register by contacting Aonghas St. Hilaire of the Eastern Regional Office, 202–376–7533 (TDD 202–376–8116), by 4 p.m. on Wednesday 14, 2003.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, DC, April 24, 2003.

Ivy L. Davis,

Chief, Regional Programs Coordination Unit.

[FR Doc. 03–11885 Filed 5–12–03; 8:45 am]

BILLING CODE 5335–01–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–357–812]

Honey From Argentina: Notice of Partial Rescission of Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of partial rescission of antidumping duty administrative review.

SUMMARY: On January 22, 2003, the Department of Commerce (the Department) published in the **Federal Register** (68 FR 3009) a notice announcing the initiation of the administrative review of the antidumping duty order on honey from Argentina. The period of review (POR) is May 11, 2001, to November 30, 2002. This review has now been partially rescinded with respect to Compania Apicola Argentina S.A. (CAA) and Mielar S.A. (Mielar) because all parties requesting the review withdrew their request.

EFFECTIVE DATE: May 13, 2003.

FOR FURTHER INFORMATION CONTACT: Phyllis Hall or Donna Kinsella, Enforcement Group III, Office 8, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Room 7866, Washington, DC 20230; telephone (202) 482–1398 or (202) 482–0194, respectively.

Scope of the Review

The merchandise under review is honey from Argentina. For purposes of this review, the products covered are natural honey, artificial honey containing more than 50 percent natural honey by weight, preparations of natural honey containing more than 50 percent natural honey by weight, and flavored honey. The subject merchandise includes all grades and colors of honey whether in liquid, creamed, comb, cut comb, or chunk form, and whether packaged for retail or in bulk form. The merchandise under review is currently classifiable under subheadings 0409.00.00, 1702.90.90, and 2106.90.99 of the *Harmonized Tariff Schedule of the United States* (HTSUS). Although the HTSUS subheadings are provided for convenience and Customs (as of March 1, 2003, renamed the U.S. Bureau of Customs and Border Protection) purposes, the Department's written description of the merchandise under this order is dispositive.

Background

On December 30, 2002, CAA and Mielar requested an administrative review of the antidumping duty order (*See Notice of Antidumping Duty Order: Honey from Argentina*, 66 FR 63672 (December 10, 2001)) on honey from Argentina in response to the Department's notice of opportunity to request a review published in the **Federal Register**. On December 31, 2002, the American Honey Producers Association and the Sioux Honey Association (collectively petitioners) requested an administrative review of Mielar S.A. On January 22, 2003, the Department initiated the review. *See Initiation of Antidumping and Countervailing Duty Administrative Reviews and Requests for Revocation in Part*, 68 FR 3009 (January 22, 2003).

On March 18, 2003, CAA submitted a withdrawal of request for review stating that it did not have any sales that entered into the United States during the POR. On March 26, 2003, Mielar submitted a letter of withdrawal from the proceeding citing lack of experience since Mielar was not represented by legal counsel. On April 4, 2003, Mielar obtained legal counsel and requested that its request for review be reinstated as it was not aware of the possible consequences of its withdrawal at the time of the March 26, 2003, letter. On April 15, 2003, petitioners submitted a withdrawal of their request for review of Mielar. On April 15, 2003, Mielar submitted a withdrawal of its request for review. The applicable regulation, 19 CFR 351.213(d)(1), states that if a party that requested an administrative review withdraws the request within 90 days of the publication of the notice of initiation of the requested review, the Secretary will rescind the review. Respondents and petitioners withdrew their requests for review within the 90-day deadline, in accordance with 19 CFR 351.213(d)(1). As a result, we have accepted the withdrawal requests. Therefore, we are rescinding this review of CAA and Mielar of the antidumping duty order on honey from Argentina covering the period May 11, 2001, through November 30, 2002.

This notice is issued and published in accordance with sections 751 and 777(i) of the Act and 19 CFR 351.213(d)(4) of the Department's regulations.

Dated: May 6, 2003.

Joseph A. Spetrini,

Acting Assistant Secretary for Import Administration.

[FR Doc. 03–11903 Filed 5–12–03; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 050203B]

Endangered and Threatened Species; Take of Anadromous Fish

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Receipt of an application to modify an existing scientific research/enhancement permit (1097) and request for comment.

SUMMARY: Notice is hereby given that NMFS has received an application for a permit modification from Cressey and Associates in El Cerrito, CA (1097). The permit modification would affect three Evolutionarily Significant Units (ESUs) of salmonids identified in Supplementary Information following. This document serves to notify the public of the availability of the permit modification application for review and comment before a final approval or disapproval is made by NMFS.

DATES: Written comments on the permit application must be received no later than 5 p.m. Pacific Standard Time on June 12, 2003.

ADDRESSES: Written comments on the modification request should be sent to Daniel Logan, Protected Species Division, NMFS, 777 Sonoma Avenue, Room 325, Santa Rosa, CA 95404 6528 (ph: 707 575 6053, fax: 707 578 3435). Comments may also be sent via fax. Comments will not be accepted if submitted via e-mail or the Internet. The applications and related documents are available for review by appointment at the Protected Species Division, NMFS, 777 Sonoma Avenue, Room 325, Santa Rosa, CA 95404 6528 (ph: 707 575 6053, fax: 707 578 3435) and at the Office of Protected Resources, F/PR3, NMFS, 1315 East-West Highway, Silver Spring, MD 20910 3226 (301 713 1401).

FOR FURTHER INFORMATION CONTACT: Daniel Logan at phone number 707–575–6053, or e-mail: *dan.logan@noaa.gov*.

SUPPLEMENTARY INFORMATION:

Authority

Issuance of permits and permit modifications, as required by the Endangered Species Act of 1973 (16 U.S.C. 1531 1543) (ESA), is based on a finding that such permits/modifications: (1) are applied for in good faith; (2) would not operate to the disadvantage of the listed species which are the subject of the permits; and (3) are consistent with the purposes and policies set forth in section 2 of the ESA. Authority to take listed species is subject to conditions set forth in the permits. Permits and modifications are issued in accordance with and are subject to the ESA and NMFS regulations governing listed fish and wildlife permits (50 CFR parts 222 226).Those individuals requesting a hearing on an application listed in this notice should set out the specific reasons why a hearing on that application would be appropriate (see **ADDRESSES**). The holding of such a hearing is at the discretion of the Assistant Administrator for Fisheries, NOAA. All statements and opinions contained in the permit action summaries are those of the applicant and do not necessarily reflect the views of NMFS.

Species Covered in This Notice

This notice is relevant to the following three threatened salmonid ESUs: threatened Central California Coast (CCC) coho salmon (*Oncorhynchus kisutch*), threatened CCC steelhead (*O. mykiss*), and threatened California Coastal chinook salmon (*O. tshawytscha*).

Modification Request Received

Cressey and Associates requests a modification to permit 1097 for takes of juvenile ESA-listed coho salmon, steelhead, and chinook salmon associated with a study assessing the impacts to salmonids of a proposed summer dam on Austin Creek, a tributary of the Russian River in Sonoma County, CA. Cressey and Associates has proposed using electrofishing and snorkel surveys. Cressey and Associates is requesting non-lethal take of 10 juvenile CCC coho salmon, 500 juvenile CCC steelhead and 5 juvenile California Coastal chinook salmon for this project. Presently, permit 1097 authorizes take of adult and juvenile CCC coho salmon, Southern Oregon/Northern California Coasts coho salmon, and Southern California steelhead associated with various scientific research projects in CA. This requested modification would add intentional takes of threatened CCC coho salmon, threatened CCC steelhead, and threatened California Coastal chinook salmon to Cressey and Associates' permit.

Dated: May 8. 2003.

Susan Pultz,

Acting Chief, Endangered Species Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 03–11915 Filed 5–12–03; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 050203A]

Endangered and Threatened Species; Take of Anadromous Fish

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Receipt of an application for a scientific research/enhancement permit (1435) and request for comment.

SUMMARY: Notice is hereby given that NMFS has received an application for a permit from Lisa Thompson, Ph.D. at UC Davis, CA (1435). The permit would affect the Southern Oregon/Northern California Coasts coho salmon (*Oncorhynchus kisutch*) Evolutionarily Significant Unit (ESU). This document serves to notify the public of the availability of the permit application for review and comment before a final approval or disapproval is made by NMFS.

DATES: Written comments on the permit application must be received no later than 5 p.m. Pacific Standard Time on June 12, 2003.

ADDRESSES: Written comments on the permit request should be sent to Diana Hines, Protected Species Division, NMFS, 777 Sonoma Avenue, Room 325, Santa Rosa, CA 95404–6528 (ph: 707–575–6057, fax: 707–578–3435). Comments will not be accepted if submitted via e-mail or the Internet. The applications and related documents are available for review by appointment at the Protected Species Division, NMFS, 777 Sonoma Avenue, Room 325, Santa Rosa, CA 95404–6528 (ph: 707–575–6057, fax: 707–578–3435) and at the Office of Protected Resources, F/PR3, NMFS, 1315 East-West Highway, Silver Spring, MD 20910–3226 (301 713 1401).

FOR FURTHER INFORMATION CONTACT: Diana Hines at phone number 707–575–6057, or e-mail: *diana.hines@noaa.gov*.

SUPPLEMENTARY INFORMATION:

Authority

Issuance of permits and permit modifications, as required by the Endangered Species Act of 1973 (16 U.S.C. 1531–1543) (ESA), is based on a finding that such permits/modifications: (1) are applied for in good faith; (2) would not operate to the disadvantage of the listed species which are the subject of the permits; and (3) are consistent with the purposes and policies set forth in section 2 of the ESA. Authority to take listed species is subject to conditions set forth in the permits. Permits and modifications are issued in accordance with and are subject to the ESA and NMFS regulations governing listed fish and wildlife permits (50 CFR parts 222–226).

Those individuals requesting a hearing on an application listed in this notice should set out the specific reasons why a hearing on that application would be appropriate (see **ADDRESSES**). The holding of such a hearing is at the discretion of the Assistant Administrator for Fisheries, NOAA. All statements and opinions contained in the permit action summaries are those of the applicant and do not necessarily reflect the views of NMFS.

Species Covered in This Notice

This notice is relevant to the threatened Southern Oregon/Northern California Coasts (SONCC) coho salmon (*Oncorhynchus kisutch*) ESU.

Permit Request Received

Lisa Thompson, Ph.D. requests a permit for takes of juvenile ESA-listed SONCC coho salmon associated with studies of presence, distribution and fish habitat use in the Shasta River, CA. Lisa Thompson, Ph.D. requests non-lethal take of 952 juvenile SONCC coho salmon for this project.

Dated: May 8, 2003.

Susan Pultz,

Acting Chief, Endangered Species Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 03–11916 Filed 5–12–03; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[Docket No. 030502111–3111–01; I.D. 031103C]

RIN 0648–ZB43

Financial Assistance for Environmental Education Projects in Connecticut and Rhode Island

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Department of Commerce.

ACTION: Notice of availability of funds.

SUMMARY: The purpose of this notice is to invite the public to submit proposals for available funding to implement environmental education projects in the following two areas of interest: "Meaningful" Outdoor Experiences for Students and Professional Development in the Area of Environmental Education for Teachers. Potential recipients may submit separate proposals for each area. Funds are available to institutions of higher education, community-based and nonprofit organizations, state or local government agencies, interstate agencies, and Indian tribal governments. This notice describes the conditions under which project proposals will be accepted and criteria under which proposals will be evaluated for funding consideration. Depending upon the level of Federal involvement in individual projects, selected recipients will enter into either a cooperative agreement or a grant.

DATES: Applications must be received by 5 p.m. eastern daylight savings time on June 12, 2003. Applications received after that time will not be considered for funding. Applications will not be accepted electronically nor by facsimile machine submission.

ADDRESSES: You can obtain an application package from and send completed proposals to: Seaberry J. Nachbar, NOAA Chesapeake Bay Office, 410 Severn Avenue, Suite 107A, Annapolis, MD 21403. You can also obtain the application package from the NOAA Chesapeake Bay Office Education Home Page *http://noaa.chesapeakebay.net/education.htm.*

FOR FURTHER INFORMATION CONTACT: Seaberry J. Nachbar, Education Coordinator, NOAA Chesapeake Bay Office, telephone: (410) 267–5664, or e-mail: *seaberry.nachbar@noaa.gov.*

SUPPLEMENTARY INFORMATION:

I. Introduction

A. Authority

The Fish and Wildlife Coordination Act, as amended, at 16 USC 661, authorizes the Secretary of Commerce to provide assistance to, and cooperate with, Federal, State, and public or private agencies and organizations in the development, protection, rearing, and stocking of all species of wildlife, resources thereof, and their habitat, in controlling losses of the same from disease or other causes, and in minimizing damages from overabundant species. Under 15 U.S.C. 1540, the Secretary of Commerce, acting through the Under Secretary of Commerce for Oceans and Atmosphere, is authorized to enter into cooperative agreements and other financial agreements with any nonprofit organization to aid and promote scientific and educational activities to foster public understanding of the National Oceanic and Atmospheric Administration or its programs.

B. Catalog of Federal Domestic Assistance (CFDA)

The projects to be funded are in support of the Chesapeake Bay Studies (CFDA 11.457), under the Chesapeake Bay Watershed Education and Training Program.

C. Program Description

As a Federal agency that is committed to the stewardship of our Nation's coastal and marine resources, NOAA can and should play a major role in creating an environmentally literate and informed citizenry. The NOAA Bay Watershed Education and Training (B-WET) Program was established in 2002 to improve the understanding of environmental stewardship of students and teachers. The B-WET Program has an opportunity to create a population that is knowledgeable about the environment by supporting organizations that use the environment as the context for learning. Using the environment, a bay, stream, or the surrounding landscape, provides the opportunity to teach students about their connection to the greater environment. This has been shown to increase a student's academic achievement performance, enthusiasm and engagement for learning, and encourages greater pride and ownership in the environment. The environment can provide a platform upon which educators can create a curriculum that interests learners and revitalizes teachers. Environmentally educated individuals can become effective future workers, problem solvers, and thoughtful community leaders and participants.

II. Areas of Interest

Proposals should address one of the two areas of interest: (1) "Meaningful" Outdoor Experiences for Students; or (2) Professional Development in the Area of Environmental Education for Teachers. Potential recipients may submit separate proposals for each area.

A. "Meaningful" Outdoor Experiences

The B-WET Program seeks proposals for projects that provide opportunities for students in Connecticut or Rhode Island (K through 12) to participate in a "meaningful" outdoor experience. The environment provides an excellent opportunity for education. In many cases, tidal and non-tidal waters and the surrounding landscape can provide "hands-on" laboratories where students can see, touch, and learn about the environment. In other cases, the environment can be brought alive to the classroom through a strong complement of outdoor and classroom experiences. The environment can provide a genuine, locally relevant source of knowledge that can be used to help advance student learning skills and problem-solving abilities across the entire school curriculum. The B-WET Program is strongly committed to expanding the knowledge and participation of a diverse student population in marine and environmental education. This population my include, for example, disabled or minority students, or students who are from rural communities in Connecticut or Rhode Island.

Proposals submitted under this area should address the following elements and types of activities:

1. *"Meaningful" outdoor experiences should make a direct connection to the marine or estuarine environment*: Experiences should demonstrate to students that local actions can impact the greater water environment(i.e., Connecticut's Long Island Sound and Rhode Island's Narragansett Bay). Experiences do not have to be water-based activities as long as there is an intentional connection made to water quality, the watershed, and the larger marine or estuarine system, outdoor experiences may include terrestrial activities.

2. *"Meaningful" outdoor experiences are hands-on and investigative or project-oriented*: Experiences should include activities where questions, problems, and issues are investigated through data collection, observation, and hands-on activities. Experiences should stimulate observation, motivate critical thinking, develop problem-solving skills, and instill confidence in students. Experiences should not be limited to tours, museum visits, simulations, demonstrations, or "nature" walks but should encourage the student to assist, share, communicate, and connect directly with the outdoors. Experiences can include the following kinds of activities: (1) Investigative or experimental design activities where students or groups of students use equipment, take measurements, and make observations for the purpose of making interpretations and reaching conclusions; (2) Project-oriented experiences, such as restoration, monitoring, and protection projects, that are problem solving in nature and involve many investigative skills; and (3) Social, economic, historical, and archaeological questions, problems, and issues that are directly related to Rhode Island or Connecticut peoples and cultures. These experiences should involve fieldwork, data collection, and analysis.

3. *"Meaningful" outdoor experiences are part of a sustained activity*: Experiences should consist of more than just the outdoor experience. Though an outdoor experience itself may occur as one specific event, occurring in 1 day, the total duration leading up to and following the experience should involve a significant investment of instructional time. An experience should consist of three general parts, not necessarily occurring in this order- a preparation phase; an outdoor phase; and an analysis, reporting phase. Projects should provide teachers with the support, materials, resources, and information needed to conduct these three parts. The preparation phase should focus on a question, problem, or issue and involve students in discussions about it. The action phase should include one or more outdoor experiences sufficient to conduct the project, make the observations, or collect the data required. The reflection phase should refocus on the question, problem, or issue; analyze the conclusions reached; evaluate the results; and assess the activity and the learning.

4. *"Meaningful≥ outdoor experiences are an integral part of the instructional program*: Experiences should not be considered ancillary, peripheral, or enrichment only, but clearly part of what is occurring concurrently in the classroom. The outdoor experiences should be part of the division curriculum and be aligned with state learning standards (i.e., Connecticut or Rhode Island). Experiences should make appropriate connections among subject areas and reflect an integrated approach to learning. Experiences should occur where and when they fit into the instructional sequence.

5. *Projects demonstrate partnerships*: Project proposals should include partners involving any of the eligible applicants. Partnerships refers to the forming of a collaborative working relationship between two or more organizations. The B-WET Program strongly encourages applicants to partner with schools and/or school systems. All partners should be actively involved in the project, not just supply equipment or curricula.

B. Professional Development in the Area of Environmental Education for Teachers

The B-WET Program seeks proposals for projects that provide K-through–12 teachers in Connecticut or Rhode Island opportunities for professional development in the area of environmental education. As the purveyors of education, teachers can ultimately make meaningful environmental education experiences for students by weaving together classroom and field activities within the context of their curriculum and of current critical issues that impact the environment. Systematic, long-term professional development opportunities will reinforce a teacher's ability to teach, inspire, and lead young people toward thoughtful stewardship of our natural resources. The B-WET Program is strongly committed to expanding the knowledge and participation of a diverse teacher population in marine and environmental education. This population may include, for example, disabled or minority teachers, or teachers who are from rural communities in Connecticut or Rhode Island.

Proposals submitted under this area should address the following elements and types of activities:

1. *Professional development courses follow the teaching of a "meaningful" outdoor experience and encourage the teacher to conduct an experience in his/her classroom*: Professional development courses for teachers should ultimately benefit the student. Projects should be structured so that the teacher learns how to conduct a "meaningful" outdoor experience in his/her classroom (see section II (A) for details on "meaningful" outdoor experiences). Projects should provide teachers with the background information, materials and resources needed to conduct an experience. Projects can include implementation grants for teachers to carry out a "meaningful" outdoor experience in their classrooms.

2. *Projects involve external sharing and communication*: Projects should promote peer-to-peer sharing and emphasize the need for external sharing and communication. Projects should include a mechanism that encourages teachers to share their experiences with other teachers and with the environmental education community.

3. *Projects demonstrate partnerships*: Project proposals should include partners involving any of the eligible applicants. Partnerships refers to the forming of a collaborative working relationship between two or more organizations. The B-WET Program strongly encourages applicants to partner with schools and/or school systems. All partners should be actively involved in the project, not just supply equipment or curricula.

III. Funding

A. Funding Availability

This solicitation announces that approximately $250,000 will be made available for environmental education projects in Connecticut and Rhode Island in FY 2003. About $125,000 will be for proposals that provide opportunities for students (K through 12) in Connecticut or Rhode Island to participate in a "Meaningful" Outdoor Experience. Of the amount available for this priority area, about $75,000 will be awarded to eligible applicants in Connecticut and about $50,000 will be awarded to eligible applicants in Rhode Island. About $125,000 will be for proposals that provide opportunities for Professional Development in the area of Environmental Education for Teachers in Connecticut or Rhode Island. Of this amount, $75,000 will be available to eligible applicants in Connecticut and $50,000 will be available to eligible applicants in Rhode Island.

There is no guarantee that sufficient funds will be available to make awards for all qualified projects. The exact amount of funds that may be awarded will be determined in pre-award negotiations between the applicant and NOAA representatives. Publication of this notice does not oblige NOAA to award any specific project or to obligate any available funds. If applicants incur any costs prior to an award being made, they do so at their own risk of not being reimbursed by the government. Notwithstanding verbal or written assurance that may have been received, there is no obligation on the part of NOAA to cover pre-award costs unless

approved by the Grants Officer as part of the terms when the award is made.

B. Award Limits

The B-WET Program anticipates that typical project awards for "Meaningful" Outdoor Experiences for Students and Professional Development in the Area of Environmental Education for Teachers will range from $20,000 to $50,000. Proposals will be considered for funds greater than the specified ranges.

C. Funding Instrument

Whether the funding instrument is a grant or a cooperative agreement will be determined by the amount of NOAA's involvement in the project. A cooperative agreement will be used if NOAA shares responsibility for management, control, direction, or performance of the project with the recipient. Specific terms regarding substantial involvement will be contained in special award conditions.

D. Cost-sharing Requirements

The NOAA strongly encourages applicants applying for either area of interest to share as much of the costs of the award as possible. Funds from other Federal awards may not be considered matching funds. The nature of the contribution (cash versus in-kind) and the amount of matching funds will be taken into consideration in the final selection process. Priority selection will be given to proposals that propose cash rather than in-kind contributions.

IV. Instructions for Application

A. Eligible Applicants

Eligible applicants for both areas of interest include state, local and Indian tribal governments, institutions of higher education, other non-profit organizations and commercial organizations. These may include K-through–12 public and independent schools and school systems and community-based organizations.

The Department of Commerce/National Oceanic and Atmospheric Administration (DOC/NOAA) is strongly committed to broadening the participation of historically black colleges and universities, Hispanic serving institutions, tribal colleges and universities, and institutions that work in undeserved areas. The NOAA encourages proposals involving any of the above institutions.

B. Project Award Period

The B-WET Program will make awards for a period of one year. Projects should begin no later than October 1, 2003.

C. Format and Requirements

Proposals must be complete and must follow the format described in this notice. Potential recipients may submit separate proposals for each area of interest (i.e., "Meaningful" Outdoor Experiences for Students or Professional Development in the Area of Environmental Education for Teachers). Applicants should not assume prior knowledge on the part of the NOAA as to the relative merits of the project described in the application.

1. *Proposal format*: Applicants are required to submit one signed original and two copies of the full proposal (submission of five additional hard copies is encouraged to expedite the review process, but it is not required). Proposal format must be in at least a 10–point font, double-spaced, unbound, and one-sided. Brevity will assist reviewers and program staff in dealing effectively with proposals. Therefore, the Project Description may not exceed 15 pages. Tables and visual materials, including charts, graphs, maps, photographs, and other pictorial presentations are not included in the 15–page limitation. Appendices may be included but must not exceed a total of 10–pages in length. Appendices may include information such as curriculum, resumes, and/or letters of endorsement. Additional informational material will be disregarded. Proposals must include the following information:

a. *Project summary (1–page limit)*: It is recommended that each proposal contain a summary of no more than one page that provides the following:

(1) Organization title.

(2) Address, telephone number, and email address of applicant.

(3) Area of interest for which you are applying (i.e., "Meaningful" Outdoor Experiences for Students; Professional Development in the Area of Environmental Education for Teachers).

(4) Project title.

(5) Project duration (1–year project period beginning to end dates, starting on the first of the month and ending on the last day of the month).

(6) Principal Investigator(s) (PI).

(7) Project objectives.

(8) Summary of work to be performed (include number of teachers and/or students that will be involved in your project).

(9) Total Federal funds requested.

(10) Cost-sharing to be provided from non-Federal sources, if any. Specify whether contributions are project-related cash or in-kind.

(11) Total project cost.

b. *Project description (15–page limit)*: Describe precisely what your project will achieve why, how, who, and where.

(1) Why: Explain the purpose of your project. This should include a clear statement of the work to be undertaken and include the following:

-Explain which area of interest your project addresses (i.e., (1)"Meaningful" Outdoor Experiences for Students;(2) Professional Development in the Area of Environmental Education for Teachers).

-Specifically describe how your project addresses each of the elements and types of activities relating to the project's particular area of interest (i.e., Section II.A for the "Meaningful" Outdoor Experience for Students area or Section II.B for the Professional Development in the area of Environmental Education for Teachers area).

(2) How: Outline a plan of action pertaining to the scope and detail of how the proposed work will be accomplished. Explain your strategy, objectives, activities, delivery methods, and accomplishments to establish for reviewers that you have realistic goals and objectives and that you will use effective methods to achieve them. When accomplishments cannot be quantified, list the activities in chronological order to show the schedule of accomplishments and target completion dates.

-Project Objectives: Objectives should be simple and understandable; as specific and quantitative as possible; clear as to the "what and when," but should avoid the "how and why." Projects should be accomplishment oriented and identify specific performance measures.

(3) Who: Explain who will conduct the project. Include the following:

-List each organization, cooperator, or other key individuals who will work on the project, along with a short description of the nature of their effort or contribution.

-Identify the target audience and demonstrate an understanding of the needs of that audience (include specifically how many students and/or teachers are involved in your project).(4) Where: Give a precise location of the project and area(s) to be served.

c. *Need for government financial assistance*: Demonstrate the need for assistance. Explain why other funding sources cannot fund all the proposed work.

d. *Benefits or results expected*: Identify and document the results or benefits to be derived from the proposed activities.

e. *Project valuation*: Explain how you will ensure that you are meeting the goals and objectives of your project. Evaluation plans may be quantitative and/or qualitative and may include, for example, evaluation tools, observation, or outside consultation.

f. *Total project costs*: Total project costs are the amount of funds required to accomplish what is proposed in the Project Description and include contributions and donations.

Explain the calculations and provide a narrative to support specific items or activities, such as personnel/salaries, fringe benefits, travel, equipment, supplies, contract costs, and indirect costs. The budget detail and narrative submitted with the application should match the dollar amounts on all required forms. Additional cost detail may be required prior to a final analysis of overall cost allowability, allocability, and reasonableness. Please Note the following funding restrictions:

-The budget may include an amount for indirect costs if the applicant has an established indirect cost rate with the Federal government, see Administrative Requirements, Section VI, B.

-Funds for salaries and fringe benefits may be requested only for those personnel who are directly involved in implementing the proposed project and whose salaries and fringe benefits are directly related to specific products or outcomes of the proposed project. NOAA strongly encourages applicants to request reasonable amounts of funding for salaries and fringe benefits to ensure that your proposal is competitive.

g. *Letters of support from partners*: Letters of support should be included for partners that are making a significant contribution to the project, if applicable.

Federal forms: Applicants may obtain required Federal forms from the NOAA Chesapeake Bay Office Web site (see ADDRESSES) or from the NOAA Grants Web site: *http://www.rdc.noaa.gov/grants/index.html*.

1. *Cover sheet*: All applicants must use Office of Management and Budget (OMB) Standard Form 424 (revised 7/97) as the cover sheet for each project.

2. *Budget form*: All applicants must use a Standard Budget Form (SF–424A) required for all Federal grants.

3. *Form CD–511*: All applicants must submit a CD–511, "Certification Regarding Debarment, Suspension and Other Responsibility Matters; Drug-Free Workplace Requirements and Lobbying".

4. *SF–424B*: All applicants must submit a SF–424B, "Assurances of Non-Construction Programs".

5. *CD–346 "Applicant for Funding Assistance"*: Required for the following individuals- Sole Proprietorship, Partnerships, Corporations, Joint Venture, Non-profit Organizations.

D. Evaluation Criteria

1. *Project Design/Conceptual Approach*: Projects will be evaluated on your conceptual approach and how you have integrated this into the project design. In particular, the extent to which you have addressed the project elements and activities under Sections II.A, 1–4 and/or II.B, 1–2, and have complied with the instructions in IV.C.1.b. Project description, c. Need for government financial assistance, and d. Benefits or results expected will be evaluated under this criterion. (50 points)

2. *Project evaluation*: Projects will be evaluated based on your explanation of how you will ensure that you are meeting the goals and objectives of your project, as required in Section IV.C.1.e, so that results may be reported in performance reports. (15 points)

3. *Projects demonstrate partnerships*: Project proposals will be evaluated based on the degree to which they include partners involving any of the eligible applicants, as provided in Sections II.A.5 or II.B.3, and whether letters of support from partners have been included, as required in Section IV.C.1.g. Partnerships refers to the forming of a collaborative working relationship between two or more organizations. The B-WET Program strongly encourages applicants to partner with schools and/or school systems. All partners should be actively involved in the project, not just supply equipment or curricula. (15 points)

4. *Justification and allocation of the proposed budget*: Proposals will be evaluated on the reasonableness, allowability, and allocability of the proposed budget, as set forth in Section IV.C.1.f. (20 points)

V. Selection Procedures

A. Initial Evaluation of the Applications

NOAA will review all applications to assure that they meet all the requirements of this announcement, including eligibility and relevance to the Bay Watershed Education and Training (B-WET) Program.

B. Technical Review

Applications meeting the requirements of this solicitation will undergo an external technical review. This review will normally involve individuals in the field of environmental education from both NOAA and non-NOAA organizations. Proposals will be scored based on the evaluation criteria as defined in Section IV.D. Reviewers will be asked to review independently and to provide a score and comments on each proposal. No consensus advice will be given by the technical reviewers.

C. Funding Decision

Scores for each proposal will then be averaged and the proposals will be ranked numerically for funding based upon the technical review scores. After the proposals have been ranked, the Chief of the NOAA Chesapeake Bay Office, in consultation with Program staff, will determine which projects will be recommended for funding.

Numerical ranking will be the primary consideration for deciding which of the proposals will be selected for funding. However, duplication with other projects, geographic diversity, program goals, and matching leverage, may also be taken into consideration in making the final selections. Priority selection will be given to proposals that contribute cash rather than in-kind funding to their projects. Accordingly, numerical ranking is not the sole factor in deciding which new proposals will be selected for funding. A written justification will be prepared for any recommendations for funding that fall outside the ranking order, or any cost adjustments. The exact amount of funds awarded to each project will be determined in pre-award negotiations among the applicant, the Grants Office, and the NCBO staff. Potential grantees should not initiate projects in expectation of Federal funding until an award document signed by an authorized NOAA official has been received.

Unsuccessful applications will be kept on file in the Program office for a period of at least 12 months, then destroyed.

VI. Administrative Requirements

A. Pre-award Notification Requirements

The Department of Commerce Pre-Award Notification of Requirements for Grants and Cooperative Agreements contained in the **Federal Register** Notice of October 1, 2001 (66 FR 49917), as amended by the **Federal Register** Notice published October 30, 2002 (67 FR 66109), is applicable to this solicitation.

B. Indirect Cost Rates

Regardless of any approved indirect cost rate applicable to the award, the maximum dollar amount of allocable indirect costs for which the Department of Commerce will reimburse the recipient shall be the lesser of the line item amount for the Federal share of indirect costs contained in the approved budget of the award, or the Federal share of the total allocable indirect costs of the award based on the indirect cost

rate approved by an oversight or cognizant Federal agency and current at the time the cost was incurred, provided the rate is approved on or before the award end date. However, the Federal share of the indirect costs may not exceed 25 percent of the total proposed direct costs for this Program. Applicants with indirect costs above 25 percent may use the amount above the 25 percent level as cost sharing. If the applicant does not have a current negotiated rate and plans to seek reimbursement for indirect costs, documentation necessary to establish a rate must be submitted within 90 days of receiving an award.

C. Allowable Costs

Funds awarded cannot necessarily pay for all the costs that the recipient might incur in the course of carrying out the project. Allowable costs are determined by reference to the Office of Management and Budget Circulars A–122, "Cost Principles for Nonprofit Organizations"; A–21, "Cost Principles for Education Institutions"; and A–87, "Cost Principles for State, Local and Indian Tribal Governments." Generally, costs that are allowable include salaries, equipment, supplies, and training, as long as these are "necessary and reasonable."

Classification

This action has been determined to be "not significant" for purposes of Executive Order 12866. Applications under this program are subject to Executive Order 12372, "Intergovernmental Review of Federal Programs."

Under section 553 (a)(2) of the Administrative Procedure Act, prior notice and an opportunity for public comment are not required for this notice concerning grants, benefits, and contracts. Therefore, a regulatory flexibility analysis is not required for the purposes of the Regulatory Flexibility Act.

This notice contains collection-of-information requirements subject to the Paperwork Reduction Act. The use of Standard Forms 424, 424A, 424B, and CD–346 has been approved by OMB under the respective control numbers 0348–0044, 0348–0044, 0348–0040, and 0605–0001.

Notwithstanding any other provision of the law, no person is required to respond to, nor shall any person be subject to a penalty for failure to comply with a collection of information subject to the requirements of the Paperwork Reduction Act unless that collection displays a currently valid OMB control number.

Dated: May 7, 2003.

John Oliver,

Deputy Assistant Administrator for Operations for Fisheries, National Marine Fisheries Service.

[FR Doc. 03–11913 Filed 5–12–03; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[Docket No. 030502110–3110–01; I.D. 031103B]

RIN 0648–ZB42

Financial Assistance for Environmental Education Projects in the Monterey Bay (CA) Watershed

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Department of Commerce.

ACTION: Notice of availability of funds.

SUMMARY: The purpose of this notice is to invite the public to submit proposals for available funding to implement environmental education projects in the following two areas of interest: "Meaningful" Outdoor Experiences for Students in the Monterey Bay Watershed and Professional Development in the Area of Environmental Education for Teachers in the Monterey Bay Watershed. Potential recipients may submit separate proposals for each area. Funds are available to K-through–12 public and independent schools and school systems, institutions of higher education, community-based and nonprofit organizations, state or local government agencies, interstate agencies, and Indian tribal governments. This notice describes the conditions under which project proposals will be accepted and criteria under which proposals will be evaluated for funding consideration. Depending upon the level of Federal involvement in individual projects, selected recipients will enter into either a cooperative agreement or a grant.

DATES: Applications must be received by 5 p.m. eastern daylight savings time on June 12, 2003. Applications received after that time will not be considered for funding. Applications will not be accepted electronically nor by facsimile machine submission.

ADDRESSES: You can obtain an application package from, and send completed proposals to: Seaberry J. Nachbar, NOAA Chesapeake Bay Office, 410 Severn Avenue, Suite 107A, Annapolis, MD 21403. You can also obtain the application package from the NOAA Chesapeake Bay Office Education Home Page *http://noaa.chesapeakebay.net/education.htm.*

FOR FURTHER INFORMATION CONTACT: Seaberry J. Nachbar, Education Coordinator, NOAA Chesapeake Bay Office, telephone: (410) 267–5664, or e-mail: *seaberry.nachbar@noaa.gov.*

SUPPLEMENTARY INFORMATION:

I. Introduction

A. Authority

The Fish and Wildlife Coordination Act, as amended, at 16 USC 661, authorizes the Secretary of Commerce to provide assistance to, and cooperate with, Federal, State, and public or private agencies and organizations in the development, protection, rearing, and stocking of all species of wildlife, resources thereof, and their habitat, in controlling losses of the same from disease or other causes, and in minimizing damages from overabundant species. Under 15 U.S.C. 1540, the Secretary of Commerce, acting through the Under Secretary of Commerce for Oceans and Atmosphere, is authorized to enter into cooperative agreements and other financial agreements with any nonprofit organization to aid and promote scientific and educational activities to foster public understanding of the National Oceanic and Atmospheric Administration or its programs.

B. Catalog of Federal Domestic Assistance (CFDA)

The projects to be funded are in support of the Chesapeake Bay Studies (CFDA 11.457), under the Chesapeake Bay Watershed Education and Training Program.

C. Program Description

As a Federal agency that is committed to the stewardship of our Nation's coastal and marine resources, NOAA can and should play a major role in creating an environmentally literate and informed citizenry. The NOAA Bay Watershed Education and Training (B-WET) Program was established in 2002 to improve the understanding of environmental stewardship of students and teachers. The B-WET Program has an opportunity to create a population that is knowledgeable about the environment by supporting organizations that use the environment as the context for learning. Using the environment, a bay, stream, or the surrounding landscape, provides the opportunity to teach students about their connection to the greater

environment. This has been shown to increase a student's academic achievement performance, enthusiasm and engagement for learning, and encourages greater pride and ownership in the environment. The environment can provide a platform upon which educators can create a curriculum that interests learners and revitalizes teachers. Environmentally educated individuals can become effective future workers, problem solvers, and thoughtful community leaders and participants.

II. Areas of Interest

Proposals should address one of the two areas of interest: (A) "Meaningful" Outdoor Experiences for Students; or (B) Professional Development in the Area of Environmental Education for Teachers. Potential recipients may submit separate proposals for each area.

A. "Meaningful" Outdoor Experiences

The B-WET Program seeks proposals for projects that provide opportunities for students (K through 12) in the Monterey Bay (CA) watershed to participate in a "meaningful" outdoor experience. The environment provides an excellent opportunity for education. In many cases, tidal and non-tidal waters and the surrounding landscape can provide "hands-on" laboratories where students can see, touch, and learn about the environment. In other cases, the environment can be brought alive to the classroom through a strong complement of outdoor and classroom experiences. The environment can provide a genuine, locally relevant source of knowledge that can be used to help advance student learning skills and problem-solving abilities across the entire school curriculum. The B-WET Program is strongly committed to expanding the knowledge and participation of a diverse student population in marine and environmental education. This population may include, for example, disabled or minority students, or students who are from rural communities in the Monterey Bay (CA) watershed.

Proposals submitted under this area should address the following elements and types of activities:

1. *"Meaningful" outdoor experiences should make a direct connection to the marine or estuarine environment:* Experiences should demonstrate to students that local actions can impact the greater water environment(i.e., Monterey Bay). Experiences do not have to be water-based activities as long as there is an intentional connection made to water quality, the watershed, and the larger ecological system, outdoor experiences may include terrestrial activities.

2. *"Meaningful" outdoor experiences are hands-on and investigative or project-oriented:* Experiences should include activities where questions, problems, and issues are investigated through data collection, observation, and hands-on activities. Experiences should stimulate observation, motivate critical thinking, develop problem-solving skills, and instill confidence in students. Experiences should not be limited to tours, museum visits, simulations, demonstrations, or "nature" walks but should encourage the student to assist, share, communicate, and connect directly with the outdoors. Experiences can include the following kinds of activities: (1) Investigative or experimental design activities where students or groups of students use equipment, take measurements, and make observations for the purpose of making interpretations and reaching conclusions; (2) Project-oriented experiences, such as restoration, monitoring, and protection projects, that are problem solving in nature and involve many investigative skills; and (3) Social, economic, historical, and archaeological questions, problems, and issues that are directly related to California peoples and cultures. These experiences should involve fieldwork, data collection, and analysis.

3. *"Meaningful" outdoor experiences are part of a sustained activity:* Experiences should consist of more than just the outdoor experience. Though an outdoor experience itself may occur as one specific event, occurring in 1 day, the total duration leading up to and following the experience should involve a significant investment of instructional time. An experience should consist of three general parts, not necessarily occurring in this order- a preparation phase; an outdoor phase; and an analysis, reporting phase. Projects should provide teachers with the support, materials, resources, and information needed to conduct these three parts. The preparation phase should focus on a question, problem, or issue and involve students in discussions about it. The action phase should include one or more outdoor experiences sufficient to conduct the project, make the observations, or collect the data required. The reflection phase should refocus on the question, problem, or issue; analyze the conclusions reached; evaluate the results; and assess the activity and the learning.

4. *"Meaningful" outdoor experiences are an integral part of the instructional program:* Experiences must be clearly part of what is occurring concurrently in the classroom. The outdoor experiences should be part of the division curriculum and be aligned with the California academic learning standards. Experiences should make appropriate connections among subject areas and reflect an integrated approach to learning. Experiences should occur where and when they fit into the instructional sequence.

5. *Projects demonstrate partnerships:* Project proposals should include partners involving any of the eligible applicants. Partnerships refers to the forming of a collaborative working relationship between two or more organizations. The B-WET Program strongly encourages applicants to partner with schools and/or school systems. All partners should be actively involved in the project, not just supply equipment or curricula.

B. Professional Development in the Area of Environmental Education for Teachers

The B-WET Program seeks proposals for projects that provide K-through–12 teachers in the Monterey Bay (CA) watershed opportunities for professional development in the area of environmental education. As the purveyors of education, teachers can ultimately make meaningful environmental education experiences for students by weaving together classroom and field activities within the context of their curriculum and of current critical issues that impact the environment. Systematic, long-term professional development opportunities will reinforce a teacher's ability to teach, inspire, and lead young people toward thoughtful stewardship of our natural resources. The B-WET Program is strongly committed to expanding the knowledge and participation of a diverse teacher population in marine and environmental education. This population may include, for example, disabled or minority teachers, or teachers who are from rural communities in the Monterey Bay (CA) watershed.

Proposals submitted under this area should address the following elements and types of activities:

1. *Professional development courses follow the teaching of a "meaningful" outdoor experience and encourage the teacher to conduct an experience in his/her classroom:* Professional development courses for the teacher should ultimately benefit the student. Projects should be structured so that the

teacher learns how to conduct a "meaningful" outdoor experience in his/her classroom (see Section II (A) for details on "meaningful" outdoor experiences). Projects should provide teachers with the background information, materials and resources needed to conduct an experience. Proposals may include implementation grants for the teachers to carry out a "meaningful" outdoor experience in their classrooms.

2. *Projects involve external sharing and communication:* Projects should promote peer-to-peer sharing and emphasize the need for external sharing and communication. Projects should include a mechanism that encourages teachers to share their experiences with other teachers and with the environmental education community.

3. *Projects demonstrate partnerships:* Project proposals should include partners involving any of the eligible applicants. Partnerships refers to the forming of a collaborative working relationship between two or more organizations. The B-WET Program strongly encourages applicants to partner with schools and/or school systems. All partners should be actively involved in the project, not just supply equipment or curricula.

III. Funding

A. Funding Availability

This solicitation announces that approximately $250,000 will be made available for environmental education projects in the Monterey Bay (CA) watershed in FY 2003. About $125,000 will be for proposals that provide opportunities for students (K through 12) in the Monterey Bay (CA) watershed to participate in a "Meaningful" Outdoor Experience. About $125,000 will be for proposals that provide opportunities for Professional Development in the area of Environmental Education for Teachers in the Monterey Bay (CA) watershed.

There is no guarantee that sufficient funds will be available to make awards for all qualified projects. The exact amount of funds that may be awarded will be determined in pre-award negotiations between the applicant and NOAA representatives. Publication of this notice does not oblige NOAA to award any specific project or to obligate any available funds. If applicants incur any costs prior to an award being made, they do so solely at their own risk of not being reimbursed by the government. Notwithstanding verbal or written assurance that may have been received, there is no obligation on the part of NOAA to cover pre-award costs unless approved by the Grants Officer as part of the terms when the award is made.

B. Award Limits

The B-WET Program anticipates that typical project awards for "Meaningful" Outdoor Experiences for Students and Professional Development in the Area of Environmental Education for Teachers will range from $10,000 to $50,000. Proposals will be considered for funds greater than the specified ranges.

C. Funding Instrument

Whether the funding instrument is a grant or a cooperative agreement will be determined by the whether there is substantial NOAA involvement in the project. A cooperative agreement will be used if NOAA shares responsibility for management, control, direction, or performance of the project with the recipient. Specific terms regarding substantial involvement will be contained in special award conditions.

D. Cost-sharing Requirements

The NOAA strongly encourages applicants applying for either area of interest to share as much of the costs of the award as possible. Funds from other Federal awards may not be considered matching funds. The nature of the contribution (cash versus in-kind) and the amount of matching funds will be taken into consideration in the final selection process. Priority selection will be given to proposals that propose cash rather than in-kind contributions.

IV. Instructions for Application

A. Eligible Applicants

Eligible applicants for both areas of interest include state, local and Indian tribal governments, institutions of higher education, other non-profit organizations and commercial organizations. These may include K-through–12 public and independent schools and school systems and community-based organizations.

The Department of Commerce/ National Oceanic and Atmospheric Administration (DOC/NOAA) is strongly committed to broadening the participation of historically black colleges and universities, Hispanic serving institutions, tribal colleges and universities, and institutions that work in undeserved areas. The NOAA encourages proposals involving any of the above institutions.

B. Project Award Period

The B-WET Program will make awards for a period of one year. Projects should begin no later than October 1, 2003.

C. Format and Requirements

Proposals must be complete and must follow the format described in this notice. Potential recipients may submit separate proposals for each area of interest (i.e., "Meaningful" Outdoor Experiences for Students or Professional Development in the Area of Environmental Education for Teachers). Applicants should not assume prior knowledge on the part of the NOAA as to the relative merits of the project described in the application.

1. *Proposal format:* Applicants are required to submit one signed original and two copies of the full proposal (submission of five additional hard copies is encouraged to expedite the review process, but it is not required). Proposal format must be in at least a 10–point font, double-spaced, unbound, and one-sided. Brevity will assist reviewers and program staff in dealing effectively with proposals. Therefore, the Project Description may not exceed 15 pages. Tables and visual materials, including charts, graphs, maps, photographs, and other pictorial presentations are not included in the 15–page limitation. Appendices may be included but must not exceed a total of 10–pages in length. Appendices may include information such as curriculum, resumes, and/or letters of endorsement. Additional informational material will be disregarded. Proposals must include the following information:

a. Project summary (1–page limit): It is recommended that each proposal contain a summary of no more than one page that provides the following:

(1) Organization title.

(2) Address, telephone number, and email address of applicant.

(3) Area of interest for which you are applying (i.e., "Meaningful" Outdoor Experiences for Students; Professional Development in the Area of Environmental Education for Teachers).

(4) Project title.

(5) Project duration (1 year project period beginning to end dates, starting on the first of the month and ending on the last day of the month).

(6) Principal Investigator(s) (PI).

(7) Project objectives.

(8) Summary of work to be performed (include number of teachers and/or students that will be involved in your project).

(9) Total Federal funds requested.

(10) Cost-sharing to be provided from non-Federal sources, if any. Specify whether contributions are cash or in-kind.

(11) Total project cost.

b. Project description (15–page limit): Describe precisely what your project will achieve why, how, who, and where.(1) Why: Explain the purpose of your project. This should include a clear statement of the work to be undertaken and include the following:

-Explain which area of interest your project addresses (i.e., (1)"Meaningful" Outdoor Experiences for Students;(2) Professional Development in the Area of Environmental Education for Teachers).

-Specifically describe how your project addresses each of the elements and types of activities relating to the project's particular area of interest (i.e., Section II.A for the "Meaningful" Outdoor Experience for Students area or Section II.B for the Professional Development in the area of Environmental Education for Teachers area).

(2) How: Outline a plan of action pertaining to the scope and detail of how the proposed work will be accomplished. Explain your strategy, objectives, activities, delivery methods, and accomplishments to establish for reviewers that you have realistic goals and objectives and that you will use effective methods to achieve them. When accomplishments cannot be quantified, list the activities in chronological order to show the schedule of accomplishments and target completion dates.

-Project Objectives: Objectives should be simple and understandable; as specific and quantitative as possible; clear as to the "what and when," but should avoid the "how and why." Projects should be accomplishment oriented and identify specific performance measures.

(3) Who: Explain who will conduct the project. Include the following:

-List each organization, cooperator, or other key individuals who will work on the project, along with a short description of the nature of their effort or contribution.

-Identify the target audience and demonstrate an understanding of the needs of that audience (include specifically how many students and/or teachers are involved in your project).

(4) Where: Give a precise location of the project and area(s) to be served.

c. *Need for government financial assistance:* Demonstrate the need for assistance. Explain why other funding sources cannot fund all the proposed work.

d. *Benefits or results expected:* Identify and document the results or benefits to be derived from the proposed activities.

e. *Project Evaluation:* Explain how you will ensure that you are meeting the goals and objectives of your project. Evaluation plans may be quantitative and/or qualitative and may include, for example, evaluation tools, observation, or outside consultation.

f. *Total project costs:* Total project costs are the amount of funds required to accomplish what is proposed in the Project Description and include contributions and donations.

Explain the calculations and provide a narrative to support specific items or activities, such as personnel/salaries, fringe benefits, travel, equipment, supplies, contract costs, and indirect costs. The budget detail and narrative submitted with the application should match the dollar amounts on all required forms. Additional cost detail may be required prior to a final analysis of overall cost allowability, allocability, and reasonableness. Please Note the following funding restrictions:

-The budget may include an amount for indirect costs if the applicant has an established indirect cost rate with the Federal Government, see Administrative Requirements, Section VI, B.

-Funds for salaries and fringe benefits may be requested only for those personnel who are directly involved in implementing the proposed project and whose salaries and fringe benefits are directly related to specific products or outcomes of the proposed project. NOAA strongly encourages applicants to request reasonable amounts of funding for salaries and fringe benefits to ensure that your proposal is competitive.

g. *Letters of support from partners:* Letters of support should be included for partners that are making a significant contribution to the project, if applicable.

Federal forms: Applicants may obtain required Federal forms from the NOAA Chesapeake Bay Office Web site (see **ADDRESSES**) or from the NOAA Grants Web site: *http://www.rdc.noaa.gov/grants/index.html.*

1. Cover sheet: All applicants must use Office of Management and Budget (OMB) Standard Form 424 (revised 7/97) as the cover sheet for each project.

2. Budget form: All applicants must use a Standard Budget

Form (SF–424A) required for all federal grants.

3. Form CD–511: All applicants must submit a CD–511,

"Certification Regarding Debarment, Suspension and Other Responsibility Matters; Drug-Free Workplace Requirements and Lobbying".

4. SF–424B: All applicants must submit a SF–424B, "Assurances of Non-Construction Programs".

5. CD–346 "Applicant for Funding Assistance": Required for the following individuals- Sole Proprietorship, Partnerships, Corporations, Joint Venture, Non-profit Organizations.

D. Evaluation Criteria

1. *Project Design/Conceptual Approach:* Projects will be evaluated on your conceptual approach and how you have integrated this into the project design. In particular, the extent to which you have addressed the project elements and activities under Sections II.A, 1 4 and/or II.B, 1 2, and have complied with the instructions in IV.C.1.b. *Project description*, c. *Need for government financial assistance*, and d. *Benefits or results expected* will be evaluated under this criterion. (50 points)

2. *Project evaluation:* Projects will be evaluated based on your explanation of how you will ensure that you are meeting the goals and objectives of your project, as required in Section IV.C.1.e, so that results may be reported in performance reports. (15 points)

3. *Projects demonstrate partnerships:* Project proposals will be evaluated based on the degree to which they include partners involving any of the eligible applicants, as provided in Sections II.A.5 or II.B.3, and whether letters of support from partners have been included, as required in Section IV.C.1.g. Partnerships refers to the forming of a collaborative working relationship between two or more organizations. The B-WET Program strongly encourages applicants to partner with schools and/or school systems. All partners should be actively involved in the project, not just supply equipment or curricula. (15 points)

4. *Justification and allocation of the proposed budget:* Proposals will be evaluated on the reasonableness, allowability, and allocability of the proposed budget, as set forth in Section IV.C.1.f. (20 points)

V. Selection Procedures

A. Initial Evaluation of the Applications

NOAA will review all applications to assure that they meet all the requirements of this announcement, including eligibility and relevance to the Bay Watershed Education and Training (B-WET) Program.

B. Technical Review

Applications meeting the requirements of this solicitation will undergo an external technical review. This review will normally involve individuals in the field of environmental education from both NOAA and non-NOAA organizations. Proposals will be scored based on the evaluation criteria as defined in Section

IV.D. Reviewers will be asked to review independently and to provide a score and comments on each proposal. No consensus advice will be given by the technical reviewers.

C. Funding Decision

Scores for each proposal will then be averaged and the proposals will be ranked numerically for funding based upon the technical review scores. After the proposals have been ranked, the Chief of the NOAA Chesapeake Bay Office, in consultation with the Superintendent of the Monterey Bay National Marine Sanctuaries and Program staff, will determine which projects will be recommended for funding.

Numerical ranking will be the primary consideration for deciding which of the proposals will be selected for funding. However, duplication with other projects, geographic diversity, program goals, and the cost share contribution may also be taken into consideration in making the final selections. Priority selection will be given to proposals that contribute cash rather than in-kind funding to their projects. Accordingly, numerical ranking is not the sole factor in deciding which proposals will be selected for funding. A written justification will be prepared for any recommendations for funding that fall outside the ranking order. The exact amount of funds awarded to each project will be determined in pre-award negotiations among the applicant, the Grants Office, and the Program staff. Potential grantees should not initiate projects in expectation of Federal funding until an award document signed by an authorized NOAA official has been received.

Unsuccessful applications will be kept on file in the Program office for a period of at least 12 months, then destroyed.

VI. Administrative Requirements

A. Pre-award Notification Requirements

The Department of Commerce Pre-Award Notification of Requirements for Grants and Cooperative Agreements contained in the **Federal Register** notice of October 1, 2001 (66 FR 49917), as amended by the **Federal Register** Notice published October 30, 2002 (67 FR 66109), is applicable to this solicitation.

B. Indirect Cost Rates

Regardless of any approved indirect cost rate applicable to the award, the maximum dollar amount of allocable indirect costs for which the Department of Commerce will reimburse the recipient shall be the lesser of the line item amount for the Federal share of indirect costs contained in the approved budget of the award, or the Federal share of the total allocable indirect costs of the award based on the indirect cost rate approved by an oversight or cognizant Federal agency and current at the time the cost was incurred, provided the rate is approved on or before the award end date. However, the Federal share of the indirect costs may not exceed 25 percent of the total proposed direct costs for this Program. Applicants with indirect costs above 25 percent may use the amount above the 25 percent level as cost sharing. If the applicant does not have a current negotiated rate and plans to seek reimbursement for indirect costs, documentation necessary to establish a rate must be submitted within 90 days of receiving an award.

C. Allowable Costs

Funds awarded cannot necessarily pay for all the costs that the recipient might incur in the course of carrying out the project. Allowable costs are determined by reference to the Office of Management and Budget Circulars A–122, "Cost Principles for Nonprofit Organizations"; A–21, "Cost Principles for Education Institutions"; and A–87, "Cost Principles for State, Local and Indian Tribal Governments." Generally, costs that are allowable include salaries, equipment, supplies, and training, as long as these are "necessary and reasonable."

Classification

This action has been determined to be "not significant" for purposes of Executive Order 12866. Applications under this program are subject to Executive Order 12372, "Intergovernmental Review of Federal Programs."

Under section 553 (a)(2) of the Administrative Procedure Act, prior notice and an opportunity for public comment are not required for this notice concerning grants, benefits, and contracts. Therefore, a regulatory flexibility analysis is not required for the purposes of the Regulatory Flexibility Act.

This notice contains collection-of-information requirements subject to the Paperwork Reduction Act. The use of Standard Forms 424, 424A, 424B, and CD–346 has been approved by OMB under the respective control numbers 0348–0044, 0348–0044, 0348–0040, and 0605–0001.

Notwithstanding any other provision of the law, no person is required to respond to, nor shall any person be subject to a penalty for failure to comply with a collection of information subject to the requirements of the Paperwork Reduction Act unless that collection displays a currently valid OMB control number.

Dated: May 7, 2003.

John Oliver,

Deputy Administrative Assistant for Operations for Fisheries, National Marine Fisheries Service.

[FR Doc. 03–11912 Filed 5–12–03; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[Docket No.021127290–3113–02; I.D. 033103C]

RIN 0648–ZB44

Financial Assistance for Research and Development Projects in the Gulf of Mexico and Off the U.S. South Atlantic Coastal States; Marine Fisheries Initiative (MARFIN)

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of solicitation for applications.

SUMMARY: The MARFIN program provides financial assistance for research and development projects that optimize the use of fisheries in the Gulf of Mexico and off the South Atlantic States of North Carolina, South Carolina, Georgia, and Florida involving the U.S. fishing industry (recreational and commercial), including fishery biology, resource assessment, socio-economic assessment, management and conservation, selected harvesting methods, and fish handling and processing.

DATES: We must receive your application by close of business (5 p.m. eastern standard time on June 27, 2003. Applications received after that time will not be considered for funding. The earliest start date of awards is about 200 days after the date of publication of this notice. Applicants should consider this processing time in developing requested start dates for their applications.

ADDRESSES: You can obtain an application package from, and send your completed applications(s) to: National Marine Fisheries Service, State/Federal Liaison office, 9721 Executive Center Drive N., St. Petersburg, FL 33702. You may also obtain the application package from the MARFIN Home Page at: *http://caldera.sero.nmfs.gov/grants/grants.htm.*

FOR FURTHER INFORMATION CONTACT: Ellie Francisco Roche, Chief, State/Federal Liaison Office at 727–570–5324.

SUPPLEMENTARY INFORMATION:

I. Funding Opportunity Description

MARFIN is a competitive Federal assistance program that funds projects seeking to optimize research and development benefits from U.S. marine fishery resources through cooperative efforts involving the best research and management talents to accomplish priority activities. Projects funded under MARFIN provide answers for fishery needs covered by the NMFS Strategic Plan, available from the Southeast Regional Office (see **ADDRESSES**), particularly those goals relating to: rebuilding over-fished marine fisheries, maintaining currently productive fisheries, and integrating conservation of protected species and fisheries management. Funding priorities for MARFIN are formulated from recommendations received from non-Federal scientific and technical experts and from NMFS' research and operations officials.

Your proposal must address one of the funding priorities listed below as they pertain to federally managed species or species relevant to Federal fisheries management. If you select more than one priority, you should list first on your application the priority that most closely reflects the objectives of your proposal.

Highest consideration is given to funding projects that have the greatest probability of recovering, maintaining, improving, or developing fisheries; improving the understanding of factors affecting recruitment success; and/or generating increased values and recreational opportunities for fisheries. Projects are evaluated as to the likelihood of achieving these objectives, with consideration of the magnitude of the eventual economic or social benefits that may be realized. Priority is given to funding projects in the subject areas listed in this section, but proposals in other areas are considered on a funds-available basis. There is no preference between short-term and long-term projects.

A. Bycatch

The bycatch of biological organisms (including interactions with sea turtles and marine mammals) by various fishing gears can have wide-reaching impacts from a fishery's management and an ecological standpoint, with the following major concerns:

1. Shrimp trawl fisheries. Studies are needed to contribute to the regional shrimp trawl bycatch program (including the southern U.S. Atlantic rock shrimp fishery) being conducted by NMFS in cooperation with state fisheries management agencies, commercial and recreational fishing organizations and interests, environmental organizations, universities, Councils, and Commissions. Specific guidance and research requirements are contained in the Cooperative Bycatch Plan for the Southeast, available from NMFS (see **ADDRESSES**). In particular, the studies should address:

(a) Data collection and analyses to expand and update current bycatch estimates, temporally and spatially emphasizing areas of greatest impact by shrimping. Sampling effort should include estimates of numbers, weight, and random samples of size (age) structure of associated bycatch complex, with emphasis on those overfished species under the jurisdiction of the Councils. Date collection should also include mortality, age, and length information for red drum in both inshore and offshore shrimp fisheries.

(b) Assessment of the status and condition of fish stocks significantly impacted by shrimp trawler bycatch, with emphasis given to overfished species under the jurisdiction of the Councils. Other sources of fishing and nonfishing mortality should be considered and quantified as well.

(c) Identification, development, and evaluation of gear, non-gear, and tactical fishing options to reduce bycatch.

(d) Improved methods for communicating with and improving technology and information transfer to the shrimp industry.

(e) Development and evaluation of statistical methods to estimate the bycatch of priority management species in the Gulf and South Atlantic shrimp trawl fisheries.

2. Pelagic longline fisheries. Several pelagic longline fisheries exist in the Gulf and South Atlantic, targeting highly migratory species, such as tunas, sharks, and swordfish. Priority areas include:

(a) Development and evaluation of gear and fishing tactics to minimize bycatch of undersized and unwanted species, including sea turtles, marine mammals, billfish, and overfished finfish species/stocks.

(b) Assessment of the biological impact of longline bycatch on related fisheries.

3. Reef fish fisheries. The reef fish complex is exploited by a variety of fishing gear and tactics. The following research on bycatch of reef fish species is needed: Characterization and assessment of the impact of bycatch of undersized target species, including release mortality, during recreational fishing and during commercial longline, bandit gear and trap fishing.

4. Finfish trawl fisheries. Studies are needed on quantification and qualification of the bycatch in finfish trawl fisheries, such as the flounder and fly-net fisheries in the South Atlantic.

B. Reef Fish

Some species within the reef fish complex are exhibiting signs of being overfished, either because of directed efforts or because of being the bycatch of other fisheries. The ecology of reef fish makes them vulnerable to overfishing, because they tend to concentrate over specific types of habitat with patchy distribution. This behavior pattern can make traditional fishery statistics misleading. Priority research areas include:

1. Collection of basic biological data for species in commercially and recreationally important fisheries. (a) Age and growth of reef fish. (1) Description of age and growth patterns, especially for vermilion, gray, and cubera snappers; gray triggerfish; gag; black grouper; hogfish; red porgy; and other less dominant forms in the management units for which data are lacking.

(2) Collect otoliths on groupers, snappers and other reef fish according to Gulf States Marine Fisheries Commission (GSMFC) otolith manual. If proposal is selected for funding, coordinate studies and design of sampling systems to provide production-style aging programs for the reef fish fishery with Steve VanderKooy at GSMFC (228) 875–5912.

(b) Reproduction studies of reef fish. (1) Maturity schedules, fecundity, and sex ratios of commercially and recreationally important reef fish, especially gag and other groupers in the Gulf and South Atlantic.

(2) Studies of all species to characterize the actual reproductive contribution of females by age.

(3) Identification and characterization of spawning aggregations by species, area, size group and season, especially for gag and other groupers.

(4) Effects of fishing on changes of sex ratios for gag, red grouper, and scamp, and disruption of aggregations.

(5) Investigations of the reproductive biology of gag, red grouper and other grouper species.

(c) Recruitment of reef fish. (1) Source of recruitment in Gulf and South Atlantic waters, especially for snappers, groupers, amberjacks, and other reef fish.

(2) Annual estimation of the absolute or relative recruitment of juvenile gag, gray snapper, and lane snapper to estuarine habitats off the west coast of Florida and to similar estuarine nursery habitats along the South Atlantic Bight; development of an index of juvenile gag recruitment for the South Atlantic based on historical databases and/or field studies.

(3) The contribution of live-bottom habitat and habitat areas of particular concern (Oculina banks) off Fort Pierce, Florida and off west central Florida to reef fish recruitment.

(d) Stock structure of reef fish. (1) Movement and migration patterns of commercially and recreationally valuable reef fish species, especially gag in the Gulf and South Atlantic and greater amberjack between the South Atlantic and Gulf.

(2) Stock structure of greater amberjack in the Gulf and South Atlantic.

(3) Fishery dependent and fishery independent data of wreakfish from the eastern North Atlantic.

2. Population assessment of reef fish. (a) Effect of reproductive mode and sex change (protogynous hermaphroditism) on population size and characteristics, with reference to sizes of fish exploited in the fisheries and the significance to proper management.

(b) Determination of the habitat and limiting factors for important reef fish resources in the Gulf and South Atlantic.

(c) Description of habitat and fish populations in the deep reef community and the prey distributions supporting the community.

(d) Development of statistically valid indices of abundance for important reef fish species in the South Atlantic and Gulf, especially red grouper, Goliath grouper, speckled hind, red porgy, Warsaw grouper and Nassau grouper.

(e) Stock assessments to establish the status of major recreational and commercial species. Innovative methods are needed for stock assessments of aggregate species, including the effect of fishing on genetic structure and the incorporation of sex change for protogynous hermaphrodites into stock assessment models.

3. Management of reef fish. (a) Research in direct support of management, including catch-and-release mortalities, by gear and depth.

(b) Characterization and evaluation of biological impacts (e.g., changes in age or size structure of reef fish populations in response to management strategies).

C. Red Snapper Research

1. Red snapper bycatch. The bycatch of red snapper can have significant impacts from a fisheries management and ecological standpoint. Research on bycatch of red snapper should focus on the following:

(a) Directed red snapper fisheries. The reef fish fishery is exploited by a variety of fishing gear and tactics. The following research on regulatory discards is needed to better evaluate the effectiveness of management measures such as minimum size limits and closed seasons:

(1) Development and evaluation of gear and fishing tactics to minimize the bycatch of or increase the survival of discarded red snapper and other reef fish species.

(2) Characterization and assessment of the impact of bycatch of undersized reef fish species, including release mortality, during recreational and commercial fishing. Research on the catch-and-release mortality of red snapper and other reef fish species, by gear (e.g., capture by commercial bandit rigs that are electrically or hydraulically powered), fishery (e.g., headboat, private boat, charter boat, commercial), and depth. Studies are needed to specifically relate "sink or swim" data, which can be obtained through observer programs, with long-term survival rates.

(3) Research to document predation rates on discarded red snapper and other reef fish species.

3. Red snapper population assessment. (a) Determination of the habitat and limiting factors for important red snapper populations in the Gulf.

(b) Estimates of red snapper abundance, age structure and population dynamics on oil platforms and other artificial structures.

4. Management of red snapper. (a) Characterization and evaluation of biological impacts (e.g., changes in age or size structure of red snapper populations in response to management strategies).

(b) Research to evaluate the use of minimum size limits as a management tool in the red snapper fishery.

D. Coastal Migratory Pelagic Fisheries

The commercial and recreational demand for migratory coastal pelagics has led to overfishing for certain species. Additionally, some are transboundary with Mexico and other countries and may ultimately demand international management attention. Current high priorities include:

1. Recruitment indices for king and Spanish mackerel, cobia, dolphin, wahoo, and bluefish, primarily from fishery-independent data sources.

2. Fishery-independent methods of assessing stock abundance of king and Spanish mackerel, dolphin and wahoo.

3. Release mortality data for all coastal pelagic species.

4. Improved catch statistics for all species in Mexican waters, with special emphasis on king mackerel, dolphin, and wahoo. This includes length-frequency and life history information.

5. Information on populations of coastal pelagics overwintering off the Gulf of Mexico and the South Atlantic States of North Carolina, South Carolina, Georgia, and Florida, especially concerning population size, age, and movement patterns; and for dolphin and wahoo during the entire year throughout their migratory patterns. Calculate the mixing rates for Atlantic/Gulf king mackerel on an annual basis.

6. Development of a practical method for aging dolphin.

7. Basic biostatistics for cobia, dolphin, and wahoo to develop age-length keys and maturation schedules for stock assessments and to evaluate stock structures.

8. Impact of bag limits on total catch and landings of king and Spanish mackerel, dolphin, wahoo, and cobia.

E. Groundfish and Estuarine Fishes

Substantial stocks of groundfish and estuarine species occur in the Gulf and South Atlantic. Most of the database for assessments comes from studies conducted by NMFS and state fishery management agencies. Because of the historical and current size of these fish stocks, of their importance as predator and prey species, and of their current or potential use as commercial and recreational fisheries, more information on their biology and life history is needed. General research needs are:

1. Red drum. (a) Size and age structure of the offshore adult stock in the Gulf and South Atlantic.

(b) Catch-and-release mortality rates from inshore and nearshore waters.

(c) Estimates of absolute abundance of red drum in the Gulf of Mexico and the Atlantic.

2. Life history and stock structure for weakfish, menhaden, spot, croaker, flounder, sheepshead, black drum, mullet, and white trout in the Gulf and the South Atlantic: Migratory patterns, long-term changes in abundance, growth rates, and age structure and comparisons of the inshore and offshore components of recreational and commercial fisheries.

F. Essential Fish Habitat

1. Determine the effects of fishing gears (e.g., trawls and traps) and practices (e.g., gear retrieval and anchoring) on essential fish habitat (EFH), with emphasis on benthic habitats within the EEZ of the Caribbean, southern U.S. Atlantic, and Gulf of Mexico regions.

2. Develop scientific data to allow the identification and refinement, as appropriate, of EFH designations for the various life stages of Federally managed species.

3. Develop scientific data to allow the identification and refinement, as appropriate, of Habitat Areas of Particular Concern (HAPC) designation for the various life stages of Federally managed species.

4. Develop GIS mapping protocols and tools to allow the presentation of EFH, HAPC, fishery distribution information, and other relevant data for the southeastern United States, including Puerto Rico and the U.S. Virgin Islands.

G. Economic and Sociocultural Studies

1. Development and application of models to evaluate the economic impacts of bycatch reduction. The models should explicitly consider the impacts on the directed fishery and gains to the bycatch fishery. The models should be developed for fisheries in general and for major fisheries (e.g., shrimp and red snapper). The models should describe criteria for determining the economically and socially efficient level of bycatch reduction.

2. Development of economic incentives and other innovative alternatives, including bycatch quotas, to gear and season/area restrictions as ways to reduce bycatch. The project should contrast the relative costs, potential gains, and level of bycatch reduction associated with traditional methods and any innovative alternatives addressed by the project.

3. Evaluation of vessel logbook data for monitoring fishery performance and providing economic information for management.

4. Estimation of demand models for recreational fishing trips when the target species include a single species, an aggregate of related species, or all species combined. Studies using new data from the Southeast economics add-ons to Marine Recreational Fisheries Statistics Survey are highly encouraged. Studies can be proposed on species such as, red drum, king mackerel, Spanish mackerel, red grouper, gag, black grouper, dolphin, wahoo, vermilion snapper, yellowtail snapper, and Atlantic black sea bass. Fishing quality (stock size, catch per unit effort, average fish size) as a determinant of fishing demand should be emphasized.

5. Identification of the motivational factors behind the selection of specific charter types by recreational anglers. These include but are not limited to cost, duration (half day versus full day), time of day, size of the charter (number of passengers), services offered, etc.

6. Determination of the value and economic impact of recreational angling in the headboat fishery. This will require the collection of data to generate recreational trip demand equations for fishing in general and for various key species. Economic impact assessment will require the collection of appropriate expenditure data and imputation using standard impact assessment software.

7. Design and evaluation of limited access options for recreational fisheries with specific emphasis on modes of fishing and jurisdictional issues. Key species of emphasis are red snapper, king mackerel, red grouper, gag and black grouper.

8. Estimation of fishing behavioral models, and effort supply and production functions for the commercial and for-hire sectors. Specific attention should be given to species target behavior, time and space decisions, and whether profit maximization is an appropriate motivational assumption for the supply of fishing effort. This intent of this research is to determine the basis upon which fishermen make their fishing related decisions (e.g., when to fish, where to fish, how much to fish, what species to target, what gear to use, etc.)

9. Description of the social, cultural, and /or economic aspects of establishing fishery reserves. Studies should employ accepted data collection methods. Various management alternatives should be considered in the studies, e.g., exclude all users, all consumptive users, varying the size of the reserve, anchoring rules, and other relevant management tools.

10. Comparison of the expected economic and social impacts of previously implemented fisheries regulations with realized impact for all regulated species. Attempts should be made to identify and isolate behavioral causes of divergence as opposed to environmental causes.

11. In-depth community profiles of communities previously identified by NOAA Fisheries as fishing communities in the South Atlantic. Profiles to include descriptions of the community, commercial and recreational fishing-related activities and businesses, historical information on fishing related activities, community structure and social ties based on fishing, and changes in the community due to federal regulations on the fisheries. The project should also focus on demographics of people in the community to determine the relative income and poverty index for the community and potential of employment outside the fishing industry.

12. Non-market valuation of protected species and other marine resources.

13. Examination of the feasibility and efficacy of vessel and/or license buy-back programs. Key fisheries are the shrimp and reef fish fisheries (red snapper, vermilion snapper, king mackerel, red grouper, gag).

14. Evaluation of alternative effort control management measures in federally managed commercial fisheries. Analyses should include a comparison of potential economic, social, cultural, and ecological impacts at the vessel, individual, and community level, and examine the desirability of single species versus multiple species approaches. Depending on the fishery and its current management structure, possible alternatives include but are not limited to: control dates for permits; limited entry; transferable or non-transferable individual catch, individual effort, community catch, or community effort quotas; and cooperatives or other forms of co-management. For catch and effort quotas, the efficacy of initially allocating and segmenting quota markets by gear, vessel fishing power capacity, and by state or community should be explicitly addressed.

15. Evaluation of the extent and impact of recreational sales (all species, by species) on recreational harvests, commercial closures and demand for recreational fishing.

16. Evaluation of the transference of fishing opportunity between commercial, recreational, and conservation sectors under a transferable rights program. Key fisheries are the red snapper, vermilion snapper, king mackerel, Spanish mackerel, red grouper, and gag fisheries.

17. Development of improved methods and procedures for transferring technology and educating constituency groups concerning fishery management and conservation programs. Of special importance are programs concerned with controlled access and introduction of conservation gear.

18. Research that examines the effects of factors other than fishery management on the welfare of the Southeast's fishermen and fishing communities, including but not necessarily limited to: domestic and

foreign trade policies, macroeconomic conditions, energy policies/prices, insurance rates, foreign aid policies (e.g. World Bank, IMF, OECD, etc.), and coastal economic development (including both land use and water use, with a particular focus on pollution generating activities and gentrification).

19. A comparative analysis of management/regulation in the seafood industry relative to other food producing industries that operate under the USDA's control.

20. Development of methodologies to accurately assess the cumulative economic and social impacts of fishery management regulations on fishermen and fishing communities, and to separate such from the impacts of non-fishery management factors.

21. An empirically based assessment of how and to what extent "demand side" policies and programs are likely to affect the welfare of domestic fishermen and fishing communities, as well as domestic consumers. Analyses should specifically include estimation of supply and consumer demand elasticities by product form and type, explicitly taking the role of imports into account. Such policies and programs would include: product and quality standards (similar to those employed in the beef, pork, and poultry industries), eco-labeling, country of origin labeling, and marketing of domestically produced seafood (i.e. "Buy U.S."). This research should specifically address the magnitude and distribution of costs and benefits for providing additional product information to seafood consumers.

22. Development of point of sales materials (recipes, posters, etc. to be used in retail establishments) to promote sales of domestic wild harvested shrimp.

23. Evaluation of the economic effects of hypoxia on Gulf of Mexico fisheries.

II. Award Information

We are soliciting applications for Federal assistance pursuant to 15 U.S.C. 713c–3(d). This document describes how to apply for funding under the MARFIN Grant Program and how we will determine which applications we will fund.

Approximately $2.2 million may be available in fiscal year (FY) 2004 for projects. This amount includes possible in-house projects and $500,000 for 1–year projects for red snapper research. (See I. Funding Opportunities.) Publication of this notice does not obligate NMFS to fund an award or any parts of an award since funds will be contingent upon availability of funding.

Project proposals accepted for funding with a project period over 1 year do not have to compete for the additional years of funding. However, funding for the additional years, is contingent upon the availability of funds and satisfactory performance and is at the sole discretion of the agency.

This program is described in the "Catalog of Federal Domestic Assistance" under program number 11.433, Marine Fisheries Initiative (MARFIN).

III. Eligibility Information

1. Eligible applicants include institutions of higher education, hospitals, other nonprofits, commercial organizations, and state, local and Indian tribal governments. Federal agencies or institutions are not eligible. Foreign governments, organizations under the jurisdiction of foreign governments, and international organizations are excluded for purposes of this solicitation since the objective of the MARFIN program is to optimize research and development benefits from U.S. marine fishery resources.

We are strongly committed to broadening the participation of Historically Black Colleges and Universities, Hispanic Serving Institutions; and Tribal Colleges and Universities in its educational and research programs. DOC/NOAA's goals are to achieve full participation by Minority Serving Institutions (MSI) in order to advance the development of human potential, to strengthen the nation's capacity to provide high-quality education, and to increase opportunities for MSIs to participate in and benefit from Federal financial assistance programs. DOC/NOAA encourages all applicants to include meaningful participation of MSIs.

2. Cost Sharing: Cost-sharing is not required for the MARFIN program. Applications must provide the total budget necessary to accomplish the project, including contributions and/or donations. Because 15 U.S.C. 713c–3(c)(4)(B) provides that the amount of Federal funding must be at least 50 percent of the estimated cost of the project, the total costs shown in the proposal will be evaluated for appropriateness according to the administrative rules, including 15 CFR 14.23 and 15 CFR 24.24, as appropriate. If an applicant chooses to cost-share, and if that application is selected for funding, the applicant is bound by the percentage of the cost share reflected in the grant or cooperative agreement award. Note: Costs incurred in either the development of a project or the financial assistance application, or time expended in any subsequent discussions or negotiations prior to the award, are neither reimbursable nor recognizable as part of the recipient's cost share.

IV. Application and Submission Information

1. Address to Request Application Package: You can obtain an application package from, and send your completed applications(s) to: Ellie Francisco Roche, Chief, State/Federal Liaison Office, Southeast Regional Office, NMFS, 9721 Executive Center Drive, N., St. Petersburg, FL 33702. You may also obtain the application package from the MARFIN Home Page at: *http://caldera.sero.nmfs.gov/grants/grants.htm*.

You must submit one signed original and nine signed copies of the completed application (including supporting information). We will accept neither facsimile applications, nor electronically forwarded applications.

2. Content and Form of Application Submission - We will award grants or cooperative agreements for a maximum period of up to 3 years, consisting of one, two, or three budget periods. The award period depends upon the duration of funding requested in the application, the decision of the NMFS selecting official on the amount of funding, the results of post-selection negotiations between the applicant and NOAA officials, and pre-award review of the application by NOAA and Department of Commerce (DOC) officials. Normally, each project budget period is 12 months in duration.

The Department of Commerce Pre-Award Notification Requirements for Grants and Cooperative Agreements contained in the **Federal Register** notice of October 1, 2001 (66 FR 49917), as amended by the **Federal Register** notice. published on October 30, 2002 (67FR 55109), is applicable to this solicitation. The standard forms in a MARFIN application include the MARFIN Project Budget and the MARFIN Project Summary. Applicants should contact the NMFS Southeast Regional Office for a copies of this solicitation's MARFIN application forms (see **ADDRESSES**). You may also obtain the application package from the MARFIN Home Page at: *http://caldera.sero.nmfs.gov/grants/grants.htm*.

Project applications must identify the principal participants, and include copies of any agreements describing the specific tasks to be performed by participants. Project applications should give a clear presentation of the proposed work, the methods for carrying out the project, its relevance to managing and enhancing the use of Gulf of Mexico and/or South Atlantic fishery resources, and cost estimates as they relate to specific aspects of the project. Budgets must include a detailed breakdown, by category of expenditures, with appropriate justification for both the Federal and non-Federal shares.

Applications should exhibit familiarity with related work that is completed or ongoing. Where appropriate, proposals should be multi-disciplinary. In addition to referencing specific area(s) of special interest, proposals should state whether the research applies to the Gulf of Mexico only, the South Atlantic only, or to both areas. Successful applicants may be required to collect and manage data in accordance with standardized procedures and formats approved by NMFS and to participate with NMFS in specific cooperative activities that are determined by consultations between NMFS and successful applicants before project grants are awarded. All applications must include funding for the principal investigator to participate in an annual MARFIN Conference in the southeast regional area at the completion of the project.

Applications must be one-sided and unbound. Incomplete applications will be returned to the applicant. Ten copies (one original and nine copies) of each application are required and should be submitted to the NMFS Southeast Regional Office, State/Federal Liaison Office (see **ADDRESSES**). The Office of Management and Budget (OMB) has approved 10 copies, under OMB Control No. 0648–0175.

3. Submission Dates and Times - We must receive your application by close of business (5 p.m. eastern daylight time on June 27, 2003. Applications received after that time will not be considered for funding. The earliest start date of awards is about 200 days after the date of publication of this notice. Applicants should consider this processing time in developing requested start dates for their applications.

When we receive applications we will screen them to ensure that they were received by the deadline date (see **DATES**); include SF 424 signed and dated by an authorized representative; were submitted by an eligible applicant; address one of the funding priorities for federally managed species; and include a budget, statement of work, and milestones, and identify the principal investigator. We do not have to screen applications before the submission deadline in order to identify deficiencies that would cause your application to be rejected so that you would have an opportunity to correct them. However, should we do so and provide you information about deficiencies, or should you independently decide it is desirable to do so, you may correct any deficiencies in your application before the deadline. After the deadline, the application must remain as submitted; no changes can be made to it. If your application does not conform to these requirements and the deadline for submission has passed, the application will be returned without further consideration.

4. Intergovernmental Review - Applications under this program are subject to the provisions of Executive Order 12372, "Intergovernmental Review of Federal Programs." Applicants must contact their State's Single Point of Contact (SPOC) to find out about and comply with the State's process under EO 12372. The names and addresses of the SPOCs are listed in the Office of Management and Budget's home page at *http://www.whitehouse.gov/omb/grants/spoc.html*.

5. Funding Restrictions - Construction is not an allowable activity under this program. Therefore, applications will not be accepted for construction projects.

Indirect Costs - If you have a negotiated rate with a Federal agency, the total dollar amount of the indirect costs awarded under this program will not exceed the indirect cost rate negotiated and approved by a cognizant Federal agency prior to the proposed effective date of the award or 25 percent of the Federal share of the total proposed direct costs dollar amount in the application, whichever is less. A copy of the current negotiated Indirect Cost Agreement with the Federal Government must be included with the application. If the applicant does not have a negotiated cost rate, then they may direct cost all charges, or submit a request to establish a rate.

6. Other Submission Requirements - You must meet all application requirements and provide all information necessary for the evaluation of the proposal, including one signed original and nine signed copies of the application to the NMFS Southeast Regional Office, State/Federal Liaison Office (see **ADDRESSES**). You must also be available to respond to questions during the review and evaluation of the proposal(s).

V. Application Review Information

1. Criteria - Applications responsive to this solicitation will be evaluated by three or more appropriate private and/or public sector experts to determine their technical merit. These reviewers will provide individual evaluations of the proposals. No consensus advice will be given. These reviewers provide comments and assign scores to the applications based on the following criteria, with the weights shown in parentheses:

a. Does the proposal have a clearly stated goal(s) with associated objectives that meet the needs outlined in the project narrative? (30 points maximum)

b. Does the proposal clearly identify and describe, in the project outline and statement of work, scientific methodologies and analytical procedures that will adequately address project goals and objectives? (30 points maximum)

c. Do the principal investigators provide a realistic timetable to enable full accomplishment of all aspects of the research? (20 points maximum)

d. How effective are the proposed methods in enabling the principal investigators to maintain stewardship of the project performance, finances, cooperative relationships, and reporting requirements? (10 points maximum)

e. Does the budget appropriately allocate and justify costs? (10 points maximum)

2. Review and Selection Process - Following the technical review, we will determine the weighted score for each individual review and average the individual technical review scores to determine the final technical score for each application. Then, we will rank applications in descending order by their final technical scores. A "cutoff" score of 70% will be used and those applications that scored below the cutoff will be eliminated from further consideration.

MARFIN Panel. Those applications at or above the cutoff technical evaluation score will be presented to a panel of non-NOAA fishery experts known as the MARFIN Panel. Each member of the MARFIN Panel individually considers if needs of the Agency are addressed in each proposal, if the project assists industry, and if the project addresses issues that are important to regional fisheries management. The individuals on the MARFIN Panel provide comments and rate each of these proposals as either "Recommended for Funding" or "Not Recommended for Funding." No consensus advice will be given by the panel. The Program Manager ranks the proposals in the order of preferred funding, based on the number of MARFIN Panel members recommending the proposal for funding.

Regional Administrator. The ranked proposals are provided to the Regional Administrator, who is the selecting official, in the order of preferred

funding, based on the number of MARFIN Panel members recommending the proposal for funding. If there are ties in the rankings, those ties will be distinguished by the peer review score. The Regional Administrator also receives the MARFIN Panel members' individual comments.

The Regional Administrator, in consultation with the Assistant Administrator for Fisheries, determines the projects to be recommended for funding. Though rarely used, the Regional Administrator has an option to make a selection that falls outside the MARFIN Panel's order of preferred funding on the following grounds: for geographic diversity, if not enough projects have addressed a priority, or because of duplication with other funded grants within NOAA. The Regional Administrator will justify in writing any such selection.

The exact amount of funds awarded, the final scope of activities, the project duration, and specific NMFS cooperative involvement with the activities of each project are determined in pre-award negotiations between the applicant, the NOAA Grants Office and the NMFS Program Office. Projects must not be initiated by recipients until a signed award is received from the NOAA Grants Office. Substantial involvement is described as collaboration, participation, or intervention by NMFS in the management of the project. Whether the funding instrument is a grant or a cooperative agreement will be determined by whether there is substantial involvement in the project. A cooperative agreement will be used if NOAA shares responsibility for management, control, or direction with the recipient.

VI. Award Administration Information

1. Award Notices - Successful applications generally are recommended within 150 days from the date of publication of this notice. The earliest start date of awards average 90 days after each project is selected and after all NMFS/applicant negotiations of cooperative activities have been completed. The earliest start date of awards is about 200 days after the date of publication of this notice. Applicants should consider this selection and processing time in developing requested start dates for their applications. Unsuccessful applications will be returned to the applicant.

2. Administrative Requirements - If you are selected to receive a grant or cooperative agreement, you must:

- Manage the day-to-day operations of the project, be responsible for the performance of all activities for which funds are granted, and be responsible for the satisfaction of all administrative and managerial conditions imposed by the award.

- Keep records sufficient to document any costs incurred under the award, and allow access to these records for audit and examination by the Secretary of Commerce, the Comptroller General of the United States, or their authorized representatives; and, submit financial status reports (SF 269) to NOAA Grants in accordance with the award conditions.

3. Reporting - Successful applicants will be required to:

- Submit semiannual project status reports on the use of funds and progress of the project to us within 30 days after the end of each 6–month period. You will submit these reports to the individual identified as the NMFS Program Officer in the funding agreement.

- Submit a final report within 90 days after completion of each project to the NMFS Program Officer. The final report must describe the project and include an evaluation of the work you performed and the results and benefits in sufficient detail to enable us to assess the success of the completed project. We will provide you with formats for the semiannual and final reports.

- In addition to the final report, we request that you submit any publications printed with grant funds (such as manuals, surveys, etc.) To the NMFS Program Officer for dissemination to the public.

We are committed to using available technology to achieve the timely and wide distribution of final reports to those who would benefit from this information. Therefore, you are encouraged to submit final reports in electronic format, in accordance with the award terms and conditions, for publication on the NMFS MARFIN Home Page. You may charge the costs associated with preparing and transmitting your final reports in electronic format to the grant award.

This notice contains collection-of-information requirements subject to the Paperwork Reduction Act. The use of Standard Forms 424 and 269 has been approved by OMB under the respective control numbers 0348–0043 and 0348–0039. The use of the MARFIN Project Budget and MARFIN Project Summary have been approved under the control number 0648–0175.

Public reporting burden for each of the two MARFIN forms is estimated to average 1 hour per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the NMFS Southeast Regional Office, State/Federal Liaison Office (see **ADDRESSES**).

Notwithstanding any other provision of law, no person is required to respond to, nor shall any person be subject to a penalty for failure to comply with, a collection of information subject to the Paperwork Reduction Act, unless that collection displays a currently valid OMB control number.

VII. Agency Contact(s)

For questions regarding the application process, you may contact: Ellie Francisco Roche, Chief, State/Federal Liaison Office, (727) 570–5324, or at *Ellie.Roche@noaa.gov*.

Authority: 15 U.S.C. 713c–3(d).

Dated: May 7, 2003.

John Oliver,

Deputy Assistant Administrator for Operations, National Marine Fisheries Service.

[FR Doc. 03–11917 Filed 5–12–03; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[Docket No. 000522149–3099–05]

RIN 0648–ZA

Dean John A. Knauss Marine Policy Fellowship, National Sea Grant College Program

AGENCY: Office of Oceanic and Atmospheric Research, National Oceanic and Atmospheric Administration, Commerce.

ACTION: Notice; correction.

SUMMARY: The National Sea Grant College Program published a document in the **Federal Register** of March 26, 2003, concerning applications to be submitted for a Fellowship program initiated by the National Sea Grant Office (NSGO), National Oceanic and Atmospheric Administration (NOAA). The document contained incomplete information. The full notice can be found at: *http://www.nsgo.seagrant.org/Knauss/2004/FRN.html*.

FOR FURTHER INFORMATION CONTACT: Ms. Nikola Garber, 301–713–2431 ext. 124; e-mail: *nikola.garber@noaa.gov*.

Corrections

In the **Federal Register** of March 26, 2003, in FR Doc. 03–7251, on page 14583 in the first column, correct the **SUMMARY** caption to read:

SUMMARY: This notice announces that applications may be submitted for a Fellowship program which was initiated by the National Sea Grant Office (NSGO), National Oceanic and Atmospheric Administration (NOAA), in fulfilling its broad educational responsibilities and legislative mandate of the Sea Grant Act, to provide educational experience in the policies and processes of the Legislative and Executive Branches of the Federal Government to graduate students in marine and aquatic-related fields. This notice announces that the **Federal Register** notice that solicited applications for the program for FY 2002, published on November 14, 2001 (66 FR 57039), is amended to allow excess funds to be used for Fellowship related expenses.

In the **Federal Register** of March 26, 2003, in FR Doc. 03–7251, on page 14583 in the first column, correct the **DATES** caption to read:

DATES: Deadlines vary from program to program, but applications from respective fellows to Sea Grant Colleges are generally due early to mid-April. Contact your state's Sea Grant program for specific deadlines (see list below). Selected applications from the sponsoring Sea Grant program (one original and two copies) are to be received in the NSGO no later than 5:00 p.m. e.d.t. on May 14, 2003. Awards are anticipated to start on February 1, 2004. Applications may be modified to reflect the amended items while the March 26, 2003 notice should be consulted for all other requirements necessary for submitting an application.

In the **Federal Register** of March 26, 2003, in FR Doc. 03–7251, on page 14584 in the first column, the following caption should be inserted immediately before the "How To Apply" caption:

Length of Assignment: The length of the assignment is for one year and is non-renewable. The inclusive dates of the official fellowship are February 1 through January 31; however, these dates can be slightly adjusted to accommodate academic semester needs.

In the **Federal Register** of March 26, 2003, in FR Doc. 03–7251, on page 14584 in the first column, insert the following sentence at the end of the second paragraph of the "How To Apply" caption:

All unsuccessful applications will be destroyed one year after submission date.

In the **Federal Register** of March 26, 2003, in FR Doc. 03–7251, on page 14584 in the first column, sentences 3 and 4 of the "Stipend and Expenses" caption should be corrected to read:

The additional $6,000 will be used to cover mandatory health insurance for the Fellow and moving expenses; any remaining funds shall be used during the Fellowship year, first to satisfy academic degree-related activities, and second for Fellowship-related activities.

In the **Federal Register** of March 26, 2003, in FR Doc. 03–7251, on page 14584 in the second column, sentence 7 of the "Selection" caption should be corrected to read:

Once all applications have been discussed and scored, a numerical ranking will be created based on the average of the panel member scores by the Knauss program manager or designee.

In the **Federal Register** of March 26, 2003, in FR Doc. 03–7251, on page 14584 in the third column, the following sentence should be inserted directly following the first sentence of the "Federal Policies and Procedures" caption:

Therefore, fellows are not employees of their host agency or NOAA.

In the **Federal Register** of March 26 2003, in FR Doc. 03–7251, on page 14584 in the third column at the second sentence of the "Federal Policies and Procedures" caption the word "Hence" should be removed and the sentence should begin with "The Department of Commerce. * * *"

In the **Federal Register** of March 26, 2003, in FR Doc. 03–7251, on page 14585 in the first column, immediately after the first sentence of the "Classification" caption the following sentence should be inserted:

This program is excluded under E.O. 12372.

Dated: May 7, 2003.

Daniel L. Albritton,

Acting Assistant Administrator, Office of Oceanic and Atmospheric Research.

[FR Doc. 03–11822 Filed 5–12–03; 8:45 am]

BILLING CODE 3510–KA–P

DEPARTMENT OF DEFENSE

Department of the Navy

Meeting of the U.S. Naval Academy Board of Visitors

AGENCY: Department of the Navy, DOD.

ACTION: Notice of partially closed meeting.

SUMMARY: The U.S. Naval Academy Board of Visitors will meet to make such inquiry, as the board shall deem necessary into the state of morale and discipline, the curriculum, instruction, physical equipment, fiscal affairs, and academic methods of the Naval Academy. During this meeting inquiries will relate to the internal personnel rules and practices of the Academy, may involve on-going criminal investigations, and include discussions of personal information the disclosure of which would constitute a clearly unwarranted invasion of personal privacy. The executive session of this meeting will be closed to the public.

DATES: The Open Session of the meeting will be held on Monday, June 2, 2003, from 8:30 a.m. to 11 a.m. The closed Executive Session will be held on Monday, June 2, 2003, from 11 a.m. to 12 p.m.

ADDRESSES: The meeting will be held at the U.S. Naval Academy, Annapolis, Maryland in the Bo Coppedge dining room of Alumni Hall.

FOR FURTHER INFORMATION CONTACT: Lieutenant Commander Domenick Micillo, Executive Secretary to the Board of Visitors, Office of the Superintendent, U.S. Naval Academy, Annapolis, MD 21402–5000, (410) 293–1503.

SUPPLEMENTARY INFORMATION: This notice of meeting is provided per the Federal Advisory Committee Act (5 U.S.C. App. 2). The executive session of the meeting will consist of discussions of information, which pertain to the conduct of various midshipmen at the Naval Academy and internal Board of Visitors matters. Discussion of such information cannot be adequately segregated from other topics, which precludes opening the executive session of this meeting to the public. In accordance with 5 U.S.C. App. 2, section 10(d), the Secretary of the Navy has determined in writing that the special committee meeting shall be partially closed to the public because they will be concerned with matters as outlined in section 552(b)(2), (5), (6), (7) and (9) of title 5, United States Code.

Dated: May 7, 2003.

E.F. McDonnell,

Major, U.S. Marine Corps, Federal Register Liaison Officer.

[FR Doc. 03–11866 Filed 5–12–03; 8:45 am]

BILLING CODE 3810–FF–P

DEPARTMENT OF EDUCATION

Privacy Act of 1974; Computer Matching Program

AGENCY: Department of Education.

ACTION: Notice—Computer Matching between the Department of Education and the Department of Justice.

SUMMARY: Section 5301(a)(1) of the Anti-Drug Abuse Act of 1988 (now designated as section 421(a)(1) of the Controlled Substances Act (21 U.S.C. 862(a)(1))) includes provisions regarding the judicial denial of Federal benefits. Section 5301 authorizes Federal and State judges to deny certain Federal benefits (including student financial assistance under Title IV of the Higher Education Act of 1965, as amended) to individuals convicted of drug trafficking or possession.

In order to ensure that Title IV student financial assistance is not awarded to individuals subject to denial of benefits under court orders issued pursuant to section 5301, the Department of Justice and the Department of Education implemented a computer matching program. The 18-month computer matching agreement (CMA) was recertified for an additional 12 months on June 18, 2002. The 12-month recertification of the CMA will automatically expire on June 18, 2003.

The Department of Education must continue to obtain from the Department of Justice identifying information regarding individuals who are the subject of section 5301 denial of benefits court orders. The purpose of this notice is to announce the continued operation of the computer matching program and to provide certain required information concerning the computer-matching program.

In accordance with the Privacy Act of 1974 (5 U.S.C. 552a), as amended by the Computer Matching and Privacy Protection Act of 1988 (Pub. L. 100–503), Office of Management and Budget (OMB) Guidelines on the Conduct of Matching Programs (*see* 54 FR 25818, June 19, 1989), and OMB Circular A–130, the following information is provided:

1. Names of Participating Agencies

The Department of Education (ED)(recipient agency) and the Department of Justice (DOJ)(source agency).

2. Purpose of the Match

This matching program is designed to assist ED in enforcing the sanctions imposed under section 5301 of the Anti-Drug Abuse Act of 1988 (Pub. L. 100–690).

3. Authority for Conducting the Matching Program

Under section 5301 of the Anti-Drug Abuse Act of 1988, as amended (21 U.S.C. 862), ED must deny Federal benefits to any individual upon whom a Federal or State court order has imposed a penalty denying eligibility for those benefits. Student financial assistance under Title IV of the Higher Education Act of 1965, as amended (HEA) is a Federal benefit under section 5301 and ED must, in order to meet its obligations under the HEA, have access to information about individuals who have been declared ineligible under section 5301.

Section 5301 and the Procedures for Implementation of section 5301 (Pub. L. 100–690), transmitted to the Congress on August 30, 1989, direct DOJ to act as an information clearinghouse for Federal agencies. While DOJ provides information about section 5301 individuals who are ineligible for Federal benefits to the General Services Administration (GSA) for inclusion in GSA's List of Parties Excluded from Federal Procurements and Nonprocurement Programs, DOJ and ED have determined that matching against the DOJ database is more efficient and effective than access to the GSA List. The DOJ database has specific information about the Title IV, HEA programs for which individuals are ineligible as well as the expiration of the debarment period, making the DOJ database more complete than the GSA List. Both of these elements are essential for a successful match.

4. Categories of Records and Individuals Covered by the Match

ED will submit for verification, records from its Central Processing System files (Federal Student Aid Application File (18–11–01)), the social security number (SSN) and other identifying information for each applicant for Title IV student financial assistance. ED will use the SSN and the first two letters of an applicant's last name for the match.

The DOJ Denial of Federal Benefits Clearinghouse System (DEBAR)(OJP–0013) contains the names, social security numbers, dates of birth, and other identifying information regarding individuals convicted of Federal or State offenses involving drug trafficking or possession of a controlled substance who have been denied Federal benefits by Federal or State courts. This system of records also contains information concerning the specific program or programs for which benefits have been denied, as well as the duration of the period of ineligibility. DOJ will make available for the matching program the records of only those individuals who have been denied Federal benefits under one or more of the Title IV, HEA programs.

5. Effective Dates of the Matching Program

The matching program will become effective on June 19, 2003; or 40 days after a copy of the agreement, as approved by the Data Integrity Board of each agency, is sent to Congress and OMB unless OMB objects to some or all of the agreement; or 30 days after publication of this notice in the **Federal Register**, whichever date is last. The matching program will continue for 18 months after the effective date and may be extended for an additional 12 months thereafter, if the conditions specified in 5 U.S.C. 552a(o)(2)(D) have been met.

6. Address for Receipt of Public Comments or Inquiries

Ms. Edith Bell, Management and Program Analyst, U.S. Department of Education, Federal Student Aid, Union Center Plaza, 830 First Street, NE., Washington, DC 20202–5454. Telephone: (202) 377–3231. If you use a telecommunications device for the deaf (TDD), you may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

Individuals with disabilities may obtain this document in an alternative format (*e.g.*, Braille, large print, audiotape or computer diskette) on request to the contact person listed in the preceding paragraph.

Electronic Access to This Document

You may view this document, as well as all other Department of Education documents published in the **Federal Register** in text or Adobe Portable Document Format (PDF) on the Internet at the following site: *http://www.ed.gov/legislation/FedRegister.*

To use PDF you must have Adobe Acrobat Reader, which is available free at this site. If you have questions about using PDF, call the U.S. Government Printing Office (GPO), toll free at 1–888–293–6498, or in the Washington, DC, area at (202) 512–1530.

Note: The official version of this document is the document published in the **Federal Register.** Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available on GPO access at: *http://www.access.gpo.gov/nara.index.html*

Authority: 21 U.S.C. 862(a)(1); 5 U.S.C. 552a; Pub. L. No. 100–503.

Dated: May 8, 2003.

Theresa S. Shaw,

Chief Operating Officer, Federal Student Aid.

[FR Doc. 03–11898 Filed 5–12–03; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Energy Information Administration

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Energy Information Administration (EIA), Department of Energy (DOE).

ACTION: Agency information collection activities: Proposed collection; comment request.

SUMMARY: The EIA is soliciting comments on the proposed three-year extensions to the Oil and Gas Reserves Survey Forms EIA–23, EIA–23P and EIA–64A. Form titles are "Annual Survey of Domestic Oil and Gas Reserves" (EIA–23), "Oil and Gas Well Operator List Update Report" (EIA–23P) and "Annual Report of the Origin of Natural Gas Liquids Production" (EIA–64A), respectively.

DATES: Comments must be filed by July 14, 2003. If you anticipate difficulty in submitting comments within that period, contact the person listed below as soon as possible.

ADDRESSES: Send comments to Rafi Zeinalpour. To ensure receipt of the comments by the due date, submission by FAX (214–720–6155) or e-mail *rafi.zeinalpour@eia.doe.gov* is recommended. The mailing address is U. S. Department of Energy, Energy Information Administration, Reserves and Production Division, 1999 Bryan Street, Suite 1110, Dallas, Texas 75201–6801. Alternatively, Mr. Zeinalpour may be contacted by phone at (214) 720–6191.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of any forms and instructions should be directed to Rafi Zeinalpour at the address listed above.

SUPPLEMENTARY INFORMATION:

I. Background
II. Current Actions
III. Request for Comments

I. Background

The Federal Energy Administration Act of 1974 (Pub. L. 93–275, 15 U.S.C. 761 et seq.) and the DOE Organization Act (Pub. L. 95–91, 42 U.S.C. 7101 et seq.) require the EIA to carry out a centralized, comprehensive, and unified energy information program. This program collects, evaluates, assembles, analyzes, and disseminates information on energy resource reserves, production, demand, technology, and related economic and statistical information. This information is used to assess the adequacy of energy resources to meet near and longer term domestic demands.

The EIA, as part of its effort to comply with the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. Chapter 35), provides the general public and other Federal agencies with opportunities to comment on collections of energy information conducted by or in conjunction with the EIA. Any comments received help the EIA to prepare data requests that maximize the utility of the information collected, and to assess the impact of collection requirements on the public. Also, the EIA will later seek approval by the Office of Management and Budget (OMB) under Section 3507(a) of the Paperwork Reduction Act of 1995.

Operators of crude oil and natural gas wells are the target respondents of Forms EIA–23 and EIA–23P who should report volumes of crude oil, associated-dissolved natural gas, non-associated natural gas and lease condensate production and reserves along with revisions to previous year reports, discoveries, extensions, sales and acquisitions, and non-producing reserves for each operated field without regard to interest ownership. Individual fields are requested from large and intermediate size producers on Form EIA–23. Samples of small operators are requested to submit less detailed information on a different version of the form. The majority of small operators are not asked to report annually on Form EIA–23. The selected sample of small operators provide production and available reserves information for crude oil, natural gas and lease condensate at a State or geographic sub-division level on the Form EIA–23. Form EIA–23P is a postcard form used to collect information on possible oil and gas well operators that may be included in future EIA–23 surveys. Information obtained from Form EIA–23P is used to confirm and/or update general operator information, primarily about small companies with which no contact has been made in the last few years.

Operators of natural gas plants are the target respondents of the Form EIA–64A. The amount of natural gas processed, natural gas liquids produced, resultant shrinkage of the natural gas and natural gas used in processing are requested of all natural gas plant operators.

In response to Public Law 95–91 Section 657, estimates of U.S. oil and gas reserves are to be reported annually. This a unique estimate report that is utilized by many entities. These estimates are essential to the development, implementation, and evaluation of energy policy and legislation. Data are used directly in the EIA annual publication, U.S. Crude Oil, Natural Gas and Natural Gas Liquids Reserves, and are incorporated in a number of other publications and analyses. Secondary publications, which use the data, include EIA's Annual Energy Review, Annual Energy Outlook, Petroleum Supply Annual and Natural Gas Annual.

II. Current Actions

This notice is for a proposed three-year extension of Form EIA–23, "Annual Survey of Domestic Oil and Gas Reserves", Form EIA–23P, "Oil and Gas Well Operator List Update Report", and Form EIA–64A, "Annual Report of the Origin of Natural Gas Liquids Production."

Form EIA–23P will be extended without modification. Currently available reliable State and other sources will be used to confirm and/or update operator information thereby reducing the number of Form EIA–23P mail-outs and thus the burden on respondents.

Form EIA–64A will also be extended without modification. Maintaining the list of currently active gas plants will be aided by reliable State and other sources thereby reducing the number of needed contacts with plant operators.

Form EIA–23 will also be extended without modification. Large and intermediate operators are provided a CD–ROM of the RIGS (Reserves Information Gathering System) to aid in reducing the time needed to complete the Field Level Survey form. Field description information and ending reserves values from last years report can be maintained electronically and automatically loaded into the current survey. In addition, new field description information (State, Subdivision, County Code, Field Code, MMS Code and Field Name) is available on a drop down menu using only the field name thereby further reducing the number of potential errors and the response time of these operators. The RIGS program also has automatic error messages to aid in the accurate completion of the survey data and reducing the time needed to check the response submission for errors. In addition, the completed survey may now be submitted electronically via e-mail further reducing the handling and response time of operators.

Sampled small operators can now complete the survey using an electronic version of the Summary Survey form potentially reducing their response time. In addition, they can also submit the completed survey electronically via

e-mail further reducing the handling and response time of the operators.

Many U. S. government agencies have an interest in the definitions of proved oil and gas reserves and the quality, reliability and usefulness of estimates of reserves. Among these are the Energy Information Administration (EIA), Department of Energy; Minerals Management Service (MMS), Department of Interior; Internal Revenue Service (IRS), Department of the Treasury; and the Securities and Exchange Commission (SEC). Each of these organizations has specific purposes for collecting, using, or estimating proved reserves. The EIA has a congressional mandate to provide accurate annual estimates of U.S. proved crude oil, natural gas and natural gas liquids reserves and publishes an annual reserves report to meet this requirement. The MMS is second only to the IRS in generating Federal revenue. The MMS maintains estimates of proved reserves to carry out their responsibilities in leasing, collecting royalty payments and regulating the activities of oil and gas companies on Federal lands and water. For the IRS, proved reserves and occasionally probable reserves are an essential component of calculating taxes for companies owning or producing oil and gas. The SEC requires publicly traded petroleum companies to annually file a reserves statement as part of their 10–K filing. The basic purpose of the 10–K filing is to give the investing public a clear and reliable financial basis to assess the relative value, as a financial asset, of a company's reserves, especially in comparison to other similar oil and gas companies.

Respondents should use the same methods when estimating reserves for the EIA as they do for the SEC. If there is an apparent conflict in requirements and assumptions, give precedence to the methods used for the SEC. Operators should note in the footnotes whether end of year or annual average prices were used and whether probabilistic or deterministic methods were utilized at the field level.

III. Request for Comments

Prospective respondents and other interested parties should comment on the actions discussed in item II. The following guidelines are provided to assist in the preparation of comments. Please indicate to which form(s) your comments apply.

General Issues

A. Is the proposed collection of information necessary for the proper performance of the functions of the agency and does the information have practical utility? Practical utility is defined as the actual usefulness of information to or for an agency, taking into account its accuracy, adequacy, reliability, timeliness, and the agency's ability to process the information it collects.

B. What enhancements can be made to the quality, utility, and clarity of the information to be collected?

As a Potential Respondent to the Request for Information

A. What actions could be taken to help ensure and maximize the quality, objectivity, utility, and integrity of the information to be collected?

B. Are the instructions and definitions clear and sufficient? If not, which instructions need clarification?

C. Can the information be submitted by the due date?

D. Public reporting burden for this collection is estimated to average 4 hours for small operators, 32 hours for intermediate operators, and 160 hours for large operators on Form EIA–23. For operators reporting on Form EIA–23P, reporting burden is estimated at 15 minutes. For natural gas plant operators reporting on Form EIA–64A, the reporting burden is estimated at 6 hours. The estimated burden includes the total time necessary to provide the requested information. In your opinion, how accurate is this estimate?

E. The agency estimates that the only cost to a respondent is for the time it will take to complete the collection. Will a respondent incur any start-up costs for reporting, or any recurring annual costs for operation, maintenance, and purchase of services associated with the information collection?

F. What additional actions could be taken to minimize the burden of this collection of information? Such actions may involve the use of automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

G. Does any other Federal, State, or local agency collect similar information? If so, specify the agency, the data element(s), and the methods of collection.

As a Potential User of the Information To Be Collected

A. What actions could be taken to help ensure and maximize the quality, objectivity, utility, and integrity of the information disseminated?

B. Is the information useful at the levels of detail to be collected?

C. For what purpose(s) would the information be used? Be specific.

D. Are there alternate sources for the information and are they useful? If so, what are their weaknesses and/or strengths?

Issued in Washington, DC, on May 7, 2003.

Nancy J. Kirkendall,

Director, Statistics and Methods Group, Energy Information Administration.

[FR Doc. 03–11886 Filed 5–12–03; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RM96–1–024]

Standards for Business Practices of Interstate Natural Gas Pipelines

May 6, 2003.

Algonquin Gas Transmission Company [Docket No. RP03–457–000]; Alliance Pipeline L.P. [Docket No. RP03–432–000]; ANR Storage Company [Docket No. RP03–415–000]; ANR Pipeline Company [Docket No. RP03–441–000]; Black Marlin Pipeline Company [Docket No. RP03–351–000]; Blue Lake Gas Storage Company [Docket No. RP03–406–000]; Canyon Creek Compression Company [Docket No. RP03–424–000]; Central New York Oil and Gas Company, LLC [Docket No. RP03–412–000]; CenterPoint Energy Gas Transmission Company [Docket No. RP03–407–000]; CenterPoint Energy-Mississippi River Transmission Corporation [Docket No. RP03–466–000]; CMS Trunkline Gas Company, LLC [Docket No. RP03–450–000]; CMS Trunkline LNG Company, LLC [Docket No. RP03–448–000]; Colorado Interstate Gas Company [Docket No. RP03–410–000]; Columbia Gas Transmission Corporation [Docket No. RP03–455–000]; Columbia Gulf Transmission Company [Docket No. RP03–447–000]; Crossroads Pipeline Company [Docket No. RP03–456–000]; Dauphin Island Gathering Partners [Docket No. RP03–453–000]; Destin Pipeline Company, L.L.C. [Docket No. RP03–371–000]; Discovery Gas Transmission LLC [Docket No. RP03–348–000]; Dominion Cove Point LNG, LP [Docket No. RP03–379–000]; Dominion Transmission, Inc. [Docket No. RP03–377–000]; East Tennessee Natural Gas Company [Docket No. RP03–430–000]; Eastern Shore Natural Gas Company [Docket No. RP03–388–000]; Egan Hub Partners, L.P. [Docket No. RP03–454–000]; El Paso Natural Gas Company [Docket No. RP03–394–000]; Florida Gas Transmission Company [Docket No. RP03–361–000]; Garden Banks Gas Pipeline, LLC [Docket No. RP03–443–000]; Granite State Gas Transmission Company [Docket No. RP03–458–000]; Great Lakes Gas Transmission Limited Partnership [Docket No. RP03–368–000]; Guardian Pipeline, L.L.C. [Docket No. RP03–434–000]; Gulf States Transmission Corporation [Docket No. RP03–416–000]; Gulf South Pipeline Company, LP [Docket No. RP03–413–000]; Gulfstream Natural Gas System [Docket No. RP03–439–000]; High Island Offshore System, L.L.C. [Docket No. RP03–418–000]; Horizon Pipeline Company, L.L.C. [Docket No. RP03–396–000] Iroquois Gas Transmission System LP [Docket No. RP03–420–000]; KeySpan LNG, L.P. [Docket No. RP03–408–000]; Kern River Gas Transmission Company [Docket No. RP03–374–000]; Kinder Morgan Interstate Gas Transmission LLC [Docket No. RP03–372–000]; KO Transmission Company [Docket No. RP03–421–000]; Maritimes & Northeast Pipeline, L.L.C. [Docket No. RP03–431–000]; Midwestern Gas Transmission Company [Docket No. RP03–400–000]; Mississippi Canyon Gas Pipeline, LLC Docket No. RP03–442–000]; Mojave Pipeline Company [Docket No. RP03–426–000]; National Fuel Gas Supply Corporation [Docket No. RP03–370–000]; Natural Gas Pipeline Company of America [Docket No. RP03–423–000]; Nautilus Pipeline Company, L.L.C. [Docket No. RP03–444–000]; North Baja Pipeline, LLC [Docket No. RP03–384–000]; Northern Natural Gas Company [Docket No. RP03–350–000]; Northern Border Pipeline Company [Docket No. RP03–414–000]; Northwest Pipeline Corporation [Docket No. RP03–436–000]; Overthrust Pipeline Company [Docket No. RP03–390–000]; Ozark Gas Transmission, L.L.C. [Docket No. RP03–405–000]; Paiute Pipeline Company [Docket No. RP03–404–000]; Panhandle Eastern Pipe Line Company [Docket No. RP03–449–000]; Petal Gas Storage, L.L.C. [Docket No. RP03–425–000]; PG&E Gas Transmission, Northwest Corporation [Docket No. RP03–403–000]; Pine Needle LNG Company, LLC [Docket No. RP03–428–000]; Portland Natural Gas Transmission System [Docket No. RP03–446–000]; Questar Southern Trails Pipeline Company [Docket No. RP03–391–000]; Questar Pipeline Company [Docket No. RP03–402–000]; Sabine Pipe Line LLC [Docket No. RP03–367–000]; Sea Robin Pipeline Company [Docket No. RP03–452–000]; Southern Star Central Gas Pipeline, Inc. [Docket No. RP03–419–000]; Southern LNG Inc. [Docket No. RP03–401–000]; Southern Natural Gas Company [Docket No. RP03–381–000]; Southwest Gas Storage Company [Docket No. RP03–451–000]; Steuben Gas Storage Company [Docket No. RP03–417–000]; Stingray Pipeline Company, L.L.C. [Docket No. RP03–445–000]; Tennessee Gas Pipeline Company [Docket No. RP03–389–000]; Texas Gas Transmission Corporation [Docket No. RP03–435–000]; Texas Eastern Transmission, LP [Docket No. RP03–438–000]; Trailblazer Pipeline Company [Docket No. RP03–422–000]; TransColorado Gas Transmission Company [Docket No. RP03–376–000]; Transcontinental Gas Pipe Line Corporation [Docket No. RP03–429–000]; Transwestern Pipeline Company [Docket No. RP03–360–000]; Tuscarora Gas Transmission Company [Docket No. RP03–373–000]; USG Pipeline Company [Docket No. RP03–369–000]; Vector Pipeline L.P. [Docket No. RP03–440–000]; Viking Gas Transmission Company [Docket No. RP03–387–000]; WestGas InterState, Inc. [Docket No. RP03–437–000]; Williston Basin Interstate Pipeline Company [Docket No. RP03–375–000]; Wyoming Interstate Company, Ltd [Docket No. RP03–411–000]; Young Gas Storage Company, Ltd. [Docket No. RP03–427–000]; (Not Consolidated)

Take notice that the above-referenced pipelines filed revised tariff sheets to comply with Order No. 587–R, Docket No. RM96–1–024 issued by the Commission on March 12, 2003.[1] These revised tariff sheets are to be effective July 1, 2003.

On March 12, 2003, the Commission issued Order No. 587-R, which among other things, amended 18 CFR 284.12 of its regulations to incorporate by reference the most recent version of the standards promulgated by the Wholesale Gas Quadrant of the North American Energy Standards Board (NAESB), *i.e.*, NAESB Standards Version 1.6, and the Wholesale Gas Quadrant's standards governing partial day recalls (Recommendations R02002 and R02002–2), adopted October 31, 2002.

In Order No. 587–R, the Commission required pipelines to file revised tariff sheets to reflect the changed standards by May 1, 2003, with an effective date of July 1, 2003. The Commission directed the pipelines incorporating the Version 1.6 standards into their tariffs to include the standard number and Version 1.6. Pipelines incorporating by reference the partial day recall standards must refer to the standard number (*e.g.*, 3.3.z2) and the Recommendation number (R02002 and R02002–2) in which the standard is adopted. Each of the pipelines has filed to comply with Order No. 587–R.

Due to the large number of pipelines that have filed to comply with Order No. 587–R, any party filing a motion to intervene or protest, must file a separate motion for each docket.

Any person desiring to be heard or to protest said filings should file motions to intervene or protests with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with § 385.214 or 385.211 of the Commission's Rules and Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Pursuant to § 154.210, interventions and protests are due 12 days after the date of the filing in each docket. These filings are available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link.

Magalie R. Salas,

Secretary.

[FR Doc. 03–11796 Filed 5–12–03; 8:45 am]

BILLING CODE 6717–01–P

[1] Standards for Business Practices of Interstate Natural Gas Pipelines, Order No. 587–R, 102 FERC § 61,273, 68 FR 13813 (March 21, 2003), III FERC Stats. & Regs. Regulations, § 31,141 (March 12, 2003).

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP99–301–075]

ANR Pipeline Company; Notice of Negotiated Rate Filing

May 6, 2003.

Take notice that on May 1, 2003, ANR Pipeline Company (ANR), tendered for filing and approval a negotiated rate letter agreement between ANR and NJR Energy Services. ANR requests that the Commission accept and approve the negotiated rate to be effective May 1, 2003.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with § 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with § 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link.

Comment Date: May 13, 2003.

Magalie R. Salas,

Secretary.

[FR Doc. 03–11807 Filed 5–12–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP03–465–000]

ANR Pipeline Company; Notice of Tariff Filing

May 7, 2003.

Take notice that on May 1, 2003, ANR Pipeline Company (ANR) tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, the revised tariff sheets listed in Appendix A to the filing, with an effective date of June 1, 2003.

ANR states that the purpose of the filing is to change the existing imbalance cashout mechanism found in section 15 of the General Terms and Conditions of the tariff. Specifically, the revised tariff sheets implement (1) an in-kind mechanism for resolving imbalances on a prospective basis; and (2) a transitional mechanism to recover (or refund) the gas and cash imbalances that exist as of the date that ANR switches to the new in-kind mechanism.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with sections 385.214 or 385.211 of the Commission's rules and regulations. All such motions or protests must be filed in accordance with section 154.210 of the Commission's regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link.

Comment Date: May 13, 2003.

Magalie R. Salas,

Secretary.

[FR Doc. 03–11937 Filed 5–12–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP03–378–000]

ANR Storage Company; Notice of Tariff Filing

May 6, 2003.

Take notice that on April 30, 2003, ANR Storage Company (ANR Storage), tendered for filing as part of its FERC Gas Tariff, Original Volume No. 1, the revised tariff sheets identified in ANR Storage's filing, with an effective date of April 1, 2003.

ANR Storage states that the revised tariff sheets are being filed to incorporate the changes approved in ANR Storage's Order 587–O compliance filing and the Commission's order on gas storage transfer rights into the Commission approved Order 637 tariff sheets.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with § 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with § 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link.

Comment Date: May 12, 2003.

Magalie R. Salas

Secretary.

[FR Doc. 03–11798 Filed 5–12–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP03–380–000]

Blue Lake Gas Storage Company; Notice of Tariff Filing

May 6, 2003.

Take notice that on April 30, 2003, Blue Lake Gas Storage Company (Blue Lake), tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1, the revised tariff sheets identified in Blue Lake's filing with an effective date of April 1, 2003.

Blue Lake states that the revised tariff sheets are being filed to incorporate the changes approved in Blue Lake's Order No. 587–O compliance filing into the Commission approved Order No. 637 tariff sheets.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with §§ 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with § 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link.

Comment Date: May 12, 2003.

Magalie R. Salas,

Secretary.

[FR Doc. 03–11799 Filed 5–12–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP96–200–101]

CenterPoint Energy Gas Transmission Company; Notice of Negotiated Rates

May 6 , 2003.

Take notice that on May 1, 2003, CenterPoint Energy Gas Transmission Company (CEGT) tendered for filing as part of its FERC Gas Tariff, Sixth Revised Volume No. 1, the following tariff sheets to be effective May 1, 2003:

Original Sheet No. 892
Sheet Nos. 893—1999

CEGT states that the purpose of this filing is to reflect implementation of a new negotiated rate transaction.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with §§ 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with § 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link.

Comment Date: May 13, 2003.

Magalie R. Salas,

Secretary.

[FR Doc. 03–11804 Filed 5–12–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos.EL03–117–000, QF90–65–008, QF90–87–008, and QF86–972–006]

Investigation of Certain Enron-Affiliated QFs: Cogen Technologies Linden Venture, L.P., Camden Cogen L.P., and Cogen Technologies NJ Venture; Notice of Initiation of Proceeding and Establishment of Intervention Date

May 6, 2003.

On May 2, 2003, the Commission issued an "Order Initiating Investigation, Establishing Hearing Procedures, and Consolidating Dockets" (Order) in reference to the above-captioned proceeding. Ordering Paragraph B of the Order directed the Secretary to publish, in the **Federal Register**, a Notice announcing the Commission's initiation of the proceeding and establishing a date for the filing of interventions.

By this notice, the date for filing motions to intervene in the above-captioned proceeding is May 23, 2003.

Magalie R. Salas,

Secretary.

[FR Doc. 03–11795 Filed 5–12–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP03–464–000]

Columbia Gulf Transmission Company; Notice of Proposed Changes in FERC Gas Tariff

May 7, 2003.

Take notice that on May 1, 2003, Columbia Gulf Transmission Company (Columbia Gulf) tendered for filing to its FERC Gas Tariff, Second Revised Volume No. 1, the following revised tariff sheets, bearing a proposed effective date of June 1, 2003:

Third Revised Sheet No. 197
Third Revised Sheet No. 392

Columbia Gulf states that it is submitting this filing to incorporate into its tariff the Commission's pronouncements in *Tenaska Marketing Ventures* v. *Northern Border Pipeline Company*, 99 FERC ¶ 61,182 (2002) (Tenaska), and to clarify the treatment in limited situations in which a replacement shipper's service agreement may be terminated when the associated primary contract (*i.e.* the releasing shipper's contract) has been terminated. Columbia Gulf states that in Tenaska the Commission clarified that unless the pipeline's tariff explicitly provides for termination, a capacity release contract will remain in force following termination of the underlying contract through which the released capacity was made available. Columbia Gulf states that copies of its filing have been mailed to all firm customers, interruptible customers, and affected state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with sections 385.214 or 385.211 of the Commission's rules and regulations. All such motions or protests must be filed in accordance with section 154.210 of the Commission's regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number

field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link.

Comment Date: May 13, 2003.

Magalie R. Salas,

Secretary.

[FR Doc. 03–11936 Filed 5–12–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP03–463–000]

Crossroads Pipeline Company; Notice of Proposed Changes in FERC Gas Tariff

May 7, 2003.

Take notice that on May 1, 2003, Crossroads Pipeline Company (Crossroads) tendered for filing as part its FERC Gas Tariff, First Revised Volume No. 1, the following revised tariff sheets bearing a proposed effective date of June 1, 2003:

First Revised Sheet No. 186
First Revised Sheet No. 586

Crossroads states that it is submitting this filing to incorporate into its tariff the Commission's pronouncements in Tenaska Marketing Ventures v. Northern Border Pipeline Company, 99 FERC ¶ 61,182 (2002), (Tenaska), and to clarify the treatment in limited situations in which a replacement shipper's service agreement may be terminated when the associated primary contract (*i.e.* the releasing shipper's contract) has been terminated. Crossroads states that in Tenaska, the Commission clarified that unless the pipeline's tariff explicitly provides for termination, a capacity release contract will remain in force following termination of the underlying contract through which the released capacity was made available.

Crossroads states that copies of its filing have been mailed to all firm customers, interruptible customers, and affected state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with sections 385.214 or 385.211 of the Commission's rules and regulations. All such motions or protests must be filed in accordance with section 154.210 of the Commission's regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link.

Comment Date: May 13, 2003.

Magalie R. Salas,

Secretary.

[FR Doc. 03–11935 Filed 5–12–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP03–467–000]

Dominion Cove Point LNG, LP.; Notice of Tariff Filing

May 7, 2003.

Take notice that on May 2, 2003, Dominion Cove Point LNG, LP (Cove Point) tendered for filing as part of its FERC Gas Tariff, Original Volume No. 1, the following tariff sheets, with an effective date of June 1, 2003:

First Revised Sheet No. 23
First Revised Sheet No. 72
First Revised Sheet No. 92

Cove Point states that the purpose of this filing is to change the timing of the billing of reservation charges under Rate Schedules LTD–1, FPS–1, FPS–2, FPS–3 and FTS.

Cove Point states that copies of the filing are being mailed to Cove Point's customers and all interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with sections 385.214 or 385.211 of the Commission's rules and regulations. All such motions or protests must be filed in accordance with section 154.210 of the Commission's regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link.

Comment Date: May 14, 2003.

Magalie R. Salas,

Secretary.

[FR Doc. 03–11938 Filed 5–12–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP03–459–000]

Dominion Transmission, Inc.; Notice of Proposed Changes in FERC Gas Tariff

May 6, 2003.

Take notice that on May 1, 2003, Dominion Transmission, Inc. (DTI) tendered for filing as part of its FERC Gas Tariff, Third Revised Volume No. 1, Twentieth Revised Sheet No. 32, with an effective date of July 1, 2003.

DTI states that the purpose of the filing is to update DTI's products extraction retainage percentage in compliance with Docket Nos. RP97–406–025 and RP01–74–000.

DTI states that copies of its letter of transmittal and enclosures have been served upon DTI 's customers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with §§ 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with § 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link.

Comment Date: May 13, 2003.

Magalie R. Salas,

Secretary.

[FR Doc. 03–11802 Filed 5–12–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP96–383–050]

Dominion Transmission, Inc.; Notice of Negotiated Rates

May 6, 2003.

Take notice that on May 1, 2003, Dominion Transmission, Inc. (DTI) tendered for filing as part of its FERC Gas Tariff, Third Revised Volume No. 1, the following tariff sheets, with an effective date of June 1, 2003:

Original Sheet No. 1404
Original Sheet No. 1414

DTI states that the filing is being filed for the disclosure of a recently negotiated rate transaction.

DTI states that copies of its letter of transmittal and enclosures have been served upon DTI's customers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with §§ 385.314 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with § 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link.

Comment Date: May 13, 2003.

Magalie R. Salas,

Secretary.

[FR Doc. 03–11805 Filed 5–12–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP03–433–000]

Energy West Development, Inc.; Notice of Compliance Filing

May 7, 2003.

Take notice that on May 1, 2003, Energy West Development, Inc. (Energy West), tendered for filing as part of FERC Gas Tariff, Original Volume No. 1, Original Tariff Sheet Nos. 1 to 116.

Energy West asserts that the purpose of this filing is to comply with the Commission's Order issued on April 2, 2003, in Docket Nos. CP03–2–000, CP03–3–000, and CP03–4–000.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with sections 385.214 or 385.211 of the Commission's rules and regulations. All such motions or protests must be filed in accordance with section 154.210 of the Commission's regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link.

Comment Date: May 13, 2003.

Magalie R. Salas,

Secretary.

[FR Doc. 03–11933 Filed 5–12–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP03–462–000]

Granite State Gas Transmission Company; Notice of Proposed Changes in FERC Gas Tariff

May 7, 2003.

Take notice that on May 1, 2003, Granite State Gas Transmission Company (Granite State) tendered for filing to its FERC Gas Tariff, Third Revised Volume No.1, First Revised Sheet No. 309A, bearing a proposed effective date of June 1, 2003.

Granite State states that it is submitting this filing to incorporate into its tariff the Commission's pronouncements in *Tenaska Marketing Ventures* v. *Northern Border Pipeline Company*, 99 FERC ¶ 61,182 (2002) (Tenaska), and to clarify the treatment in limited situations in which a replacement shipper's service agreement may be terminated when the associated primary contract (*i.e.* the releasing shipper's contract) has been terminated. Granite State states that in Tenaska, the Commission clarified that unless the pipeline's tariff explicitly provides for termination, a capacity release contract will remain in force following termination of the underlying contract through which the released capacity was made available.

Granite State states that copies of its filing have been mailed to all firm customers, interruptible customers, and affected state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC

20426, in accordance with sections 385.214 or 385.211 of the Commission's rules and regulations. All such motions or protests must be filed in accordance with section 154.210 of the Commission's regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link.

Comment Date: May 13, 2003.

Magalie R. Salas,

Secretary.

[FR Doc. 03–11934 Filed 5–12–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP03–409–000]

Gulfstream Natural Gas System, L.L.C.; Notice of Proposed Changes in FERC Gas Tariff

May 6, 2003.

Take notice that on May 1, 2003, Gulfstream Natural Gas System, L.L.C. (Gulfstream) tendered for filing as part of its FERC Gas Tariff, Original Volume No. 1, the following tariff sheets, to be effective June 1, 2003:

First Revised Sheet No. 7
Second Revised Sheet No. 164
First Revised Sheet No. 165

Gulfstream states that it proposes to increase its fuel percentage for Transporter's Use in its tariff to 2.0 percent and defer the implementation of the System Balance Adjustment charge and the filing of future changes to the fuel percentage until 2005. Gulfstream states that this is necessary to permit average throughput levels to ramp up and permit the planned efficient operation of Gulfstream's compressors and to provide fuel rate certainty for the next two years.

Gulfstream states that copies of this filing have been mailed to all of its affected customers and interested state commissions.

Any person desiring to be heard or to protest this filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with §§ 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's website at *http://www.ferc.gov* using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For Assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll free at (866) 208–3676, or TTY, contact (202) 502–8659. Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link.

Comment Date: May 13, 2003.

Magalie R. Salas,

Secretary.

[FR Doc. 03–11801 Filed 5–12–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. CP00–6–009 and RP03–173–001]

Gulfstream Natural Gas System, L.L.C.; Notice of Compliance Filing

May 7, 2003.

Take notice that on April 30, 2003, Gulfstream Natural Gas System, L.L.C. (Gulfstream) tendered for filing as part of its FERC Gas Tariff, Original Volume No. 1, the following tariff sheets, to be effective May 1, 2003:

First Revised Sheet No. 20
First Revised Sheet No. 106
Sub First Revised Sheet No. 128
Sub First Revised Sheet No. 130
Sub First Revised Sheet No. 131
Sub Second Revised Sheet No. 137
Sub First Revised Sheet No. 137A
First Revised Sheet No. 155
First Revised Sheet No. 159
First Revised Sheet No. 178

Gulfstream states that it is filing these tariff sheets to comply with the Commission's April 15, 2003, order in these dockets. Gulfstream states that these revisions primarily reflect changes to the tariff making firm Maximum Hourly Quantity rights applicable to both primary and secondary points and changes deleting charges for transportation involved in the netting and trading of imbalances on the system, as well as assorted minor changes and clarifications.

Gulfstream states that copies of its filing have been mailed to all affected customers of Gulfstream and interested state commissions, and all parties on the Commission's Official Service List in this proceeding.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with section 385.211 of the Commission's rules and regulations. All such protests must be filed in accordance with section 154.210 of the Commission's regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link.

Protest Date: May 12, 2003.

Magalie R. Salas,

Secretary.

[FR Doc. 03–11929 Filed 5–12–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP97–14–015]

Midwestern Gas Transmission Company; Notice of Negotiated Rates

May 6, 2003.

Take notice that on May 1, 2003, Midwestern Gas Transmission Company (Midwestern) tendered for filing to become part of its FERC Gas Tariff, Third Revised Volume No. 1, Seventh Revised Sheet No. 273, to become effective May 1, 2003.

Midwestern states that it has entered into two Negotiated Rate Agreements with Northern Illinois Gas Company, d/b/a Nicor Gas (Nicor): Contract No. FA0167 and FA0168. Midwestern explains that these contracts provide the following information: (1) The exact legal name of the shipper; (2) the total charges (the negotiated rate and all applicable charges); (3) the receipt and delivery points; (4) the volume of gas to be transported; and (5) the applicable rate schedule for the service. In addition, Midwestern is filing Sheet No. 273 to reflect that the Negotiated Rates contain non-conforming terms. Midwestern states that Sheet No. 273 also contains a minor housekeeping change, and that contract numbers have been added to identify each non-conforming agreement that is listed on Sheet No. 273.

Midwestern states that copies of this filing have been sent to all of Midwestern's contracted shippers and interested state regulatory commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with § 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with § 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link.

Comment Date: May 13, 2003.

Magalie R. Salas

Secretary.

[FR Doc. 03–11806 Filed 5–12–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP03–468–000]

Midwestern Gas Transmission Company; Notice of Proposed Changes in FERC Gas Tariff

May 7, 2003.

Take notice that on May 2, 2003, Midwestern Gas Transmission Company (Midwestern) tendered for filing to become part its FERC Gas Tariff, Third Revised Volume No. 1, the following tariff sheets to become effective on June 1, 2003:

Fourth Revised Sheet Number 201
Second Revised Sheet Number 270

Midwestern states that it is filing revised tariff sheets to allow Rate Schedule FT-A Shippers entering into a new transportation agreement, or extensions of the initial term of their transportation agreement, the right to reduce their Transportation Quantity under specified circumstances as proposed in section 26 of the General Terms and Conditions of Midwestern's FERC Gas Tariff.

Midwestern states that copies of this filing have been sent to all of Midwestern's contracted shippers and interested State regulatory commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with sections 385.214 or 385.211 of the Commission's rules and regulations. All such motions or protests must be filed in accordance with section 154.210 of the Commission's regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link.

Comment Date: May 14, 2003.

Magalie R. Salas,

Secretary.

[FR Doc. 03–11939 Filed 5–12–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP03–398–000]

Northern Natural Gas Company; Notice of Proposed Changes in FERC Gas Tariff

May 6, 2003.

Take notice that on May 1, 2003, Northern Natural Gas Company (Northern) tendered for filing as part of its FERC Gas Tariff, Fifth Revised Volume No. 1 and Original Volume No. 2, revised tariff sheets set forth in Appendix A to the filing, with an effective date of June 1, 2003.

Northern states that the filing is being made to effectuate changes in the rates and terms applicable to Northern's jurisdictional services. Northern indicates that the effect of the rate case is an overall increase in revenues of approximately $55 million above the Base Period revenues, as proposed to be effective.

Northern states that the changes reflected in the Revised Tariff Sheets are required to effectuate the rate increase and to make certain changes to Northern's tariff. In addition, Northern proposes Pro Forma Tariff Sheets which reflect further changes to become effective on a prospective basis following a Commission order on the merits or a settlement of this proceeding.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with § 385.214 or 385.211 of the Commission's Rules and

Regulations. All such motions or protests must be filed in accordance with § 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link.

Comment Date: May 13, 2003.

Magalie R. Salas,

Secretary.

[FR Doc. 03–11800 Filed 5–12–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP03–460–000]

Northern Natural Gas Company; Notice of Proposed Changes in FERC Gas Tariff

May 6, 2003.

Take notice that on May 1, 2003, Northern Natural Gas Company (Northern) tendered for filing to become part of its FERC Gas Tariff, Fifth Revised Volume No. 1, and Original Volume No. 1, the following tariff sheets to be effective June 1, 2003:

Fifth Revised Volume No. 1

Sixty-Fourth Revised Sheet No. 50
Sixty-Fifth Revised Sheet No. 51
Thirtieth Revised Sheet No. 52
Sixty-Third Revised Sheet No. 53
Twenty-First Revised Sheet No. 59
Fifth Revised Sheet No. 59A
Twenty-Fourth Revised Sheet No. 60
Fifth Revised Sheet No. 60A

Original Volume No. 1

170 Revised Sheet No. 1C

Northern states that it is filing to adjust its rates effective June 1 to reflect the rate impact of the return and tax components associated with the System Levelized Account (SLA) balance as of March 31, 2003.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with § 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with § 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link.

Comment Date: May 13, 2003.

Magalie R. Salas,

Secretary.

[FR Doc. 03–11803 Filed 5–12–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP99–518–042]

PG&E Gas Transmission, Northwest Corporation; Notice of Negotiated Rates

May 6, 2003.

Take notice that on May 1, 2003, PG&E Gas Transmission, Northwest Corporation (GTN) tendered for filing to be part of its FERC Gas Tariff, Second Revised Volume No. 1–A., Eleventh Revised Sheet No. 15 and Third Revised Sheet No. 18, with an effective date of May 1, 2003.

GTN states that these sheets are being filed to reflect the implementation of one new negotiated rate agreement and to update the termination dates of two existing negotiated rate agreements.

GTN further states that a copy of this filing has been served on GTN's jurisdictional customers and interested state regulatory agencies.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with § 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with § 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link.

Comment Date: May 13, 2003.

Magalie R. Salas,

Secretary.

[FR Doc. 03–11808 Filed 5–12–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP02–13–008]

Portland Natural Gas Transmission System; Notice of Report of Refunds

May 6, 2003.

Take notice that on April 11, 2003, Portland Natural Gas Transmission System (PNGTS), tendered for filing a refund report in the above captioned proceeding.

PNGTS states that the report documents refunds made to customers in accordance with section 2.2 of a Stipulation and Settlement Agreement filed with the Commission on October 25, 2002 in Docket No. RP02–13, and approved by the Commission's Order issued on January 14, 2002. PNGTS states that it completed the refunds on March 26, 2003.

PNGTS states that copies of the filing have been served to the affected Shippers and the State Commission's of affected Shippers.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with § 385.211 of the Commission's Rules and Regulations. All such protests must be filed on or before the comment date below. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link.

Comment Date: May 13, 2003.

Magalie R. Salas,

Secretary.

[FR Doc. 03–11797 Filed 5–12–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP03–469–000]

Questar Pipeline Company; Notice of Tariff Filing

May 7, 2003.

Take notice that on May 2, 2003, Questar Pipeline Company (Questar) tendered for filing as part of its FERC Gas Tariff First Revised Volume No. 1 the following tariff sheets to be effective June 1, 2003.

Original Sheet Nos. 99.01 and 99.02
Third Revised Sheet No. 110
Second Revised Sheet No. 122
Fourth Revised Sheet No. 160
Second Revised Sheet No. 174

Questar states that it is proposing new tariff provisions that describe specific types of discounts that may be offered to its transportation and storage customers on a non-discriminatory basis so that such discounts will not be considered material deviations from Questar's forms of service agreements. Questar states that the discounts will be between Questar's maximum and minimum rates under the applicable rate schedules of its tariff. Questar asserts that approval of these discount provisions will enhance Questar's flexibility to provide a variety of discounts for its shippers without the need and administrative burden of filing individual agreements with the Commission as non-conforming service agreements.

Questar states that within the proposed categories of eligible discounts, it is also seeking authority to provide it and its shippers with the ability to adjust rate components in transportation service agreements under certain circumstances in order to preserve the agreed upon overall rate, as long as all rate components remain within the applicable minimum and maximum rates.

Questar states that a copy of this filing has been served upon its customers, the Public Service Commission of Utah and the Public Service Commission of Wyoming.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with sections 385.214 or 385.211 of the Commission's rules and regulations. All such motions or protests must be filed in accordance with section 154.210 of the Commission's regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link.

Comment Date: May 14, 2003.

Magalie R. Salas,

Secretary.

[FR Doc. 03–11940 Filed 5–12–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP99–513–027]

Questar Pipeline Company; Notice of Negotiated Rates

May 7, 2003.

Take notice that on May 1, 2003, Questar Pipeline Company (Questar) tendered for filing a tariff filing to reflect a new negotiated-rate contract with BP Energy Company.

Questar states that its negotiated-rate contract provisions were authorized by Commission orders issued October 27, 1999, and December 14, 1999, in Docket Nos. RP99–513, *et al.* Questar states that the Commission approved Questar's request to implement a negotiated-rate option for Rate Schedules T–1, NNT, T–2, PKS, FSS and ISS shippers. Questar states that it submitted its negotiated-rate filing in accordance with the Commission's Policy Statement in Docket Nos. RM95–6–000 and RM96–7–000 issued January 31, 1996.

Questar states that a copy of this filing has been served upon all parties to this proceeding, Questar's customers, the Public Service Commission of Utah and the Public Service Commission of Wyoming.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with sections 385.214 or 385.211 of the Commission's rules and regulations. All such motions or protests must be filed in accordance with section 154.210 of the Commission's regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online

Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link.

Comment Date: May 13, 2003.

Magalie R. Salas,

Secretary.

[FR Doc. 03–11942 Filed 5–12–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP03–470–000]

Southern Star Central Gas Pipeline, Inc.; Notice of Proposed Changes in FERC Gas Tariff

May 7, 2003.

Take notice that on May 2, 2003, Southern Star Central Gas Pipeline, Inc. (Southern Star) tendered for filing as part of its FERC Gas Tariff, Original Volume No. 1, the tariff sheets listed below to become effective May 15, 2003:

First Revised Sheet No. 153
Second Revised Sheet No. 244
Second Revised Sheet No. 246

Southern Star states that the tariff sheets filed herewith are being submitted to provide an alternative cash-out pricing index in the event that Inside FERC's Gas Market Report does not publish a price for Southern Star.

Southern Star states that this filing provides an alternative to the Inside FERC Gas Market Report, to be used only when necessary. Southern Star asserts that no other change in the terms and conditions under which cash-out may occur are tendered.

Southern Star states that copies of the tariff sheets are being mailed to Southern Star's jurisdictional customers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with sections 385.214 or 385.211 of the Commission's rules and regulations. All such motions or protests must be filed in accordance with section 154.210 of the Commission's regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link.

Comment Date: May 14, 2003.

Magalie R. Salas,

Secretary.

[FR Doc. 03–11941 Filed 5–12–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EC03–83–000, et al.]

Katahdin Paper Company LLC, et al.; Electric Rate and Corporate Filings

May 6, 2003.

The following filings have been made with the Commission. The filings are listed in ascending order within each docket classification.

1. Katahdin Paper Company LLC, Great Northern Paper, Inc.

[Docket No. EC03–83–000]

Take notice that on April 30, 2003, Katahdin Paper Company LLC (Katahdin) and Great Northern Paper, Inc. (GNP) submitted for filing with the Federal Energy Regulatory Commission (Commission), pursuant to section 203 of the Federal Power Act, and part 33 of the Commission's regulations, an application for authorization for GNP to sell steam generation and appurtenant facilities to Katahdin.

Comment Date: May 21, 2003.

2. Citizens Communications Company

[Docket No. ER03–548–001]

The notice of filing issued by the Commission on April 17, 2003, in the above-referenced proceeding is hereby rescinded.

3. Citizens Communications Company

[Docket No. ER03–584–001]

Take notice that on April 11, 2003, Citizens Communications Company (Citizens) tendered for filing a Notice of Cancellation of Rate Schedule 46, applicable to sales-for-resale service to Mohave Electric Cooperative.

Citizens states that copies of this filing have been served to Mohave Electric Cooperative and Arizona Corporation Commission.

Comment Date: May 16, 2003.

4. PJM Interconnection, L.L.C.

[Docket No. ER03–807–000]

Take notice that on May 1, 2003, PJM Interconnection, L.L.C. (PJM), submitted for filing amendments to the PJM Open Access Transmission Tariff and the Amended and Restated Operating Agreement of PJM Interconnection, L.L.C. to increase the megawatt limit for participation in the Non-Hourly Metered Customer Pilot programs of the PJM Emergency Load Response Program and PJM Economic Load Response Program from an aggregate of 25 MW for both programs to an aggregate of 100 MW for both programs.

PNM states that copies of this filing have been served on all PJM members and each state electric utility regulatory commission in the PJM region.

Comment Date: May 22, 2003.

5. PJM Interconnection, L.L.C.

[Docket No. ER03–808–000]

Take notice that on May 1, 2003, PJM Interconnection, L.L.C. (PJM) filed additional conforming changes to the Amended and Restated Operating Agreement of PJM Interconnection, L.L.C. (Operating Agreement) and the PJM Open Access Transmission Tariff (Tariff) to further reflect the elimination of the "available capacity" approach from PJM West and its replacement with an "unforced capacity" approach for the entire PJM region, as requested by PJM in Docket No. ER03–703–000.

PJM states that it proposes an effective date of June 1, 2003, for the Tariff revisions, to conform with the requested effective date in ER03–703–000, and July 1, 2003, for the Operating Agreement revisions. PJM further states that copies of its filing were served upon all PJM members and each state electric utility regulatory commission in the PJM region.

Comment Date: May 22, 2003.

6. FPL Energy New England Transmission, LLC

[Docket No. ER03–809–000]

Take notice that on May 2, 2003, FPL Energy New England Transmission, LLC (FPLE NET) tendered for filing with the Federal Energy Regulatory Commission (Commission), pursuant to section 205 of the Federal Power Act, an executed Interconnection and Operating Agreement between FPLE NET and FPL Energy Seabrook, LLC (FPLE Seabrook) that sets forth the terms and conditions governing the interconnection of FPLE Seabrook's generating facility to FPLE NET's 345 kV substation.

Comment Date: May 23, 2003.

7. New York Independent System Operator, Inc.

[Docket No. ER03–810–000]

Take notice that on May 2, 2003, the New York Independent System Operator, Inc. (NYISO) filed revisions to its Market Administration and Control Area Services (Services Tariff) to introduce certain enhancements to its Incentivized Day-Ahead Economic Load Curtailment Program, more commonly known as the Day-Ahead Demand Reduction Program.

The NYISO has requested an effective date of July 1, 2003, for the filing.

The NYISO states that it has served a copy of this filing upon all parties that have executed service agreements under the NYISO's Open Access Transmission Tariff or Market Administration and Control Area Services Tariff.

Comment Date: May 23, 2003.

8. Entergy Services, Inc.

[Docket No. ER03–811–000]

Take notice that on May 2, 2003, Entergy Services, Inc. (Entergy), on behalf of Entergy Louisiana, Inc. (Entergy Louisiana), tendered for filing an unexecuted, amended and restated Interconnection and Operating Agreement and an updated Generator Imbalance Agreement with Occidental Chemical Corporation (Occidental).

Comment Date: May 23, 2003.

9. William L. Cyr

[Docket No. ID–3872–000]

Take notice that on April 25, 2003, William L. Cyr filed with the Federal Energy Regulatory Commission (Commission) an application for authority to hold interlocking positions between Northern Maine Independent System Administrator, Inc. and Maine Public Service Company.

Comment Date: May 27, 2003.

Standard Paragraph

Any person desiring to intervene or to protest this filing should file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with rules 211 and 214 of the Commission's rules of practice and procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. All such motions or protests should be filed on or before the comment date, and, to the extent applicable, must be served on the applicant and on any other person designated on the official service list. This filing is available for review at the Commission or may be viewed on the Commission's Web site at *http://www.ferc.gov*, using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or for TTY, contact (202) 502–8659. Protests and interventions may be filed electronically via the Internet in lieu of paper; *see* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link. The Commission strongly encourages electronic filings.

Magalie R. Salas,

Secretary.

[FR Doc. 03–11930 Filed 5–12–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER00–1858–002, et al.]

New Hampshire Electric Cooperative, Inc., et al.; Electric Rate and Corporate Filings

May 2, 2003.

The following filings have been made with the Commission. The filings are listed in ascending order within each docket classification.

1. New Hampshire Electric Cooperative, Inc.

[Docket No. ER00–1858–002]

Take notice that on April 30, 2003, New Hampshire Electric Cooperative, Inc. tendered for filing an updated market analysis and report of changes in status in compliance with the Commission's Order, issued April 25, 2000, in New Hampshire Electric Cooperative, Inc., 91 FERC § 61,073.

New Hampshire Electric Cooperative, Inc., states that copies of this filing have been served to all parties in Docket No. ER00–1858–000.

Comment Date: May 21, 2003.

2. Midwest Independent Transmission System Operator, Inc.

[Docket No. ER03–265–002]

Take notice that on April 29, 2003, Midwest Independent Transmission System Operator, Inc., submitted a compliance filing in accordance with the Federal Energy Regulatory Commission's Order issued January 29, 2003, in Docket No. ER03–265–000 regarding refunds made on March 28, 2003, to certain Transmission Customers.

Comment Date: May 20, 2003.

3. Northern Indiana Public Service Company

[Docket No. ER03–640–001]

Take notice that on April 30, 2003, Northern Indiana Public Service Company (Northern Indiana) filed a Power Service Agreement with the Town of Argos, Indiana (Argos). Northern Indiana has requested an effective date of March 1, 2003.

Northern Indiana states that copies of this filing have been sent to Argos, the Indiana Utility Regulatory Commission, and the Indiana Office of Utility Consumer Counselor.

Comment Date: May 21, 2003.

4. Northern Indiana Public Service Company

[Docket No. ER03–786–000]

Take notice that on April 30, 2003, Northern Indiana Public Service Company (Northern Indiana) filed a Service Agreement pursuant to its Wholesale Market-Based Rate Tariff with Split Rock Energy, L.L.C. (Split Rock). Northern Indiana has requested an effective date of April 30, 2003.

Northern Indiana states that copies of this filing have been sent to Split Rock, the Indiana Utility Regulatory Commission, and the Indiana Office of Utility Consumer Counselor.

Comment Date: May 21, 2003.

5. Midwest Independent Transmission System Operator, Inc.

[Docket No. ER03–787–000]

Take notice that on April 23, 2003, the Midwest Independent Transmission System Operator, Inc. (Midwest ISO) pursuant to section 205 of the Federal Power Act and section 35.12 of the Commission's regulations, submitted for filing an unexecuted Interconnection and Operating Agreement among Interstate Power and Light Company, a wholly owned subsidiary of Alliant Energy Corporation and Flying Cloud Power Partners, LLC.

Midwest ISO states that a copy of this filing was sent to Interstate Power and

Light Company and Flying Cloud Power Partners, LLC.

Comment Date: May 21, 2003.

6. Midwest Independent Transmission System Operator, Inc.

[Docket No. ER03–788–000]

Take notice that on April 30, 2003, the Midwest Independent Transmission System Operator, Inc. (Midwest ISO) pursuant to section 205 of the Federal Power Act and section 35.12 of the Commission's regulations, submitted for filing an Interconnection Agreement among Cinergy Services, Inc. and The City of Hamilton, Ohio.

Midwest ISO states that a copy of this filing was sent to Cinergy Services, Inc. and The City of Hamilton, Ohio.

Comment Date: May 21, 2003.

7. Tampa Electric Company

[Docket No. ER03–789–000]

Take notice that on April 30, 2003, Tampa Electric Company (Tampa Electric) tendered for filing revised rate schedule sheets containing updated rates for emergency interchange service and scheduled/short-term firm interchange service under its interchange contracts with each of 17 other utilities. Tampa Electric indicates that it also tendered for filing revised sheets for inclusion in its open access transmission tariff (OATT) that contain an updated system average transmission loss percentage.

Tampa Electric requests that the revised rate schedule and tariff sheets be made effective on May 1, 2003, and therefore requests waiver of the Commission's notice requirement.

Tampa Electric states that a copy of the filing has been served upon each of the parties to the affected interchange contracts and each customer under its OATT, as well as the Florida and Georgia Public Service Commissions.

Comment Date: May 21, 2003.

8. Tampa Electric Company

[Docket No. ER03–790–000]

Take notice that on April 30, 2003, Tampa Electric Company (Tampa Electric) tendered for filing revised rate schedule sheets containing updated transmission service rates under its agreements to provide qualifying facility transmission service for Cargill Fertilizer, Inc. (Cargill) and Auburndale Power Partners, Limited Partnership (Auburndale).

Tampa Electric proposes that the revised sheets containing the updated transmission service rates be made effective on May 1, 2003, and therefore requests waiver of the Commission's notice requirement. Tampa Electric states that copies of the filing have been served on Cargill, Auburndale, and the Florida Public Service Commission.

Comment Date: May 21, 2003.

9. California Power Exchange Corporation

[Docket No. ER03–791–000]

Take notice that on April 30, 2003, the California Power Exchange Corporation (CalPX) tendered for filing its Rate Schedule for the period July 1, 2003 through December 31, 2003. CalPX states that it files this Rate Schedule pursuant to the Commission's Orders of August 8, 2002 (100 FERC § 61,178), in Docket No. ER02–2234–000, and April 1, 2003 (103 FERC § 61,001) issued in Docket Nos. EC03–20–000 and EC03–20–001, which require CalPX to make a new rate filing every six months to recover current expenses. CalPX indicates that the Rate Schedule covers expenses projected for the period July 1 through December 31, 2003, and CalPX requests an effective date of July 1, 2003.

CalPX states that it has served copies of the filing on its participants, on the California ISO, and on the California Public Utilities Commission.

Comment Date: May 21, 2003.

10. Tampa Electric Company

[Docket No. ER03–792–000]

Take notice that on April 30, 2003, Tampa Electric Company (Tampa Electric) tendered for filing revised rate schedule sheets containing updated caps on energy charges for emergency assistance service under its interchange service contract with Alabama Power Company, Georgia Power Company, Gulf Power Company, Mississippi Power Company, and Savannah Electric and Power Company, as represented by agent Southern Company Services, Inc., (collectively, Southern Companies).

Tampa Electric requests that the revised rate schedule sheets be made effective on May 1, 2003, and therefore requests waiver of the Commission's notice requirement. Tampa Electric states that a copy of the filing has been served upon Southern Companies and the Florida and Public Service Commissions.

Comment Date: May 21, 2003.

11. New England Power Company

[Docket No. ER03–793–000]

Take notice that on April 30, 2003, New England Power Company (NEP) submitted for filing a revised service agreement between NEP and AES Londonderry, L.L.C. (AES) for firm local generation delivery service under NEP's FERC Electric Tariff, Second Revised Volume No. 9, First Revised Service Agreement No. 204.

NEP states that copies of the filing were served upon AES and the New Hampshire Public Utilities Commission.

Comment Date: May 21, 2003.

12. Duke Energy Fayette, LLC

[Docket No. ER03–794–000]

Take notice that on April 30, 2003, Duke Energy Fayette, LLC (Duke Fayette) tendered for filing its proposed tariff and supporting cost data for its Monthly Revenue Requirement (Fayette Tariff) under PJM Interconnection, L.L.C.'s (PJM) Schedule 2—Reactive Supply and Voltage Control from Generation Sources Service. Duke Fayette requests an effective date of the first day of the month immediately following the Commission's acceptance of this filing to correspond to PJM's billing cycle.

Duke Fayette states that it has served copies of the filing on the Pennsylvania Public Utilities Commission, PJM and Allegheny Power.

Comment Date: May 21, 2003.

13. Southern California Edison Company

[Docket No. ER03–795–000]

Take notice that on April 30, 2003, Southern California Edison Company (SCE) tendered for filing revised rate sheets (Revised Sheets) to the Agreement For Interconnection Service and the Interconnection Facilities Agreement between SCE and Harbor Cogeneration Company (Harbor), Service Agreement Nos. 2 and 9 under SCE's FERC Electric Tariff, First Revised Volume No. 6. SCE respectfully requests an effective date of April 30, 2003.

SCE states that the Revised Sheets to these agreements reflect an extension of their terms and conditions to provide interconnection service to Harbor's 110 MW generating facility through June 30, 2003. SCE also states that copies of this filing were served upon the Public Utilities Commission of the State of California and Harbor.

Comment Date: May 21, 2003.

14. Katahdin Paper Company LLC

[Docket No. ER03–796–000]

Take notice that on April 30, 2003, Katahdin Paper Company LLC (Katahdin) submitted for filing, pursuant to section 205 of the Federal Power Act, and part 35 of the Commission's regulations, an application for market-based rate authorization to sell energy, capacity and specified ancillary services, waivers and exemption. Katahdin requests an effective date of May 30, 2003, for its market-based rate authorization.

Comment Date: May 21, 2003.

15. Ohio Edison Company

[Docket No. ER03–797–000]

Take notice that on April 30, 2003, FirstEnergy Service Company, on behalf of Ohio Edison Company, tendered for filing a Notice of Cancellation of Ohio Edison Company Rate Schedule FPC No. 67, a June 20, 1968, resale agreement with Ohio Power Company that was originally filed with the Commission on June 24, 1968. FirstEnergy requests an effective date of June 30, 2003.

Ohio Edison Company states that a copy of this filing has been served on Ohio Power Company, the counterparty to the agreement, and the Public Utilities Commission of Ohio.

Comment Date: May 21, 2003.

16. The Toledo Edison Company

[Docket No. ER03–798–000]

Take notice that on April 30, 2003, FirstEnergy Service Company on behalf of The Toledo Edison Company filed a Notice of Cancellation for The Toledo Edison Company Rate Schedule FPC No. 2, a January 1, 1968, Power Delivery Agreement with Buckeye Power, Inc. (Buckeye), which was originally accepted in FPC Docket No. E–7355. FirstEnergy requests an effective date of June 30, 2003.

The Toledo Edison Company states that a copy of this filing has been served on Buckeye, American Electric Power Service Corporation, on behalf of Ohio Power Company and Columbus Southern Power Company, The Cincinnati Gas & Electric Company, Dayton Power & Light Company, Monongahela Power Company, the counterparties to the agreement, and the Public Utilities Commission of Ohio.

Comment Date: May 21, 2003.

Standard Paragraph

Any person desiring to intervene or to protest this filing should file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with rules 211 and 214 of the Commission's rules of practice and procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. All such motions or protests should be filed on or before the comment date, and, to the extent applicable, must be served on the applicant and on any other person designated on the official service list. This filing is available for review at the Commission or may be viewed on the Commission's Web site at *http://www.ferc.gov*, using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or for TTY, contact (202) 502–8659. Protests and interventions may be filed electronically via the Internet in lieu of paper; *see* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link. The Commission strongly encourages electronic filings.

Magalie R. Salas,

Secretary.

[FR Doc. 03–11931 Filed 5–12–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Scoping Meeting and Soliciting Scoping Comments for an Applicant Prepared Environmental Assessment Using the Alternative Licensing Process

May 7, 2003.

a. *Type of Application:* Alternative Licensing Process.

b. *Project No.:* 2545–075.

c. *Applicant:* Avista Corporation.

d. *Name of Project:* Spokane River Hydroelectric Project.

e. *Location:* On the Spokane River, in Spokane, Stevens, and Lincoln Counties, Washington and Kootenai and Benewah Counties, Idaho. The project occupies tribal lands of the Coeur d'Alene Indian Reservation. The project does not occupy any federal lands.

f. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)–825(r).

g. *Applicant Contact:* Bruce Howard, Spokane River License Manager, Avista Corporation, 1411 E. Mission Street, P.O. Box 3727, MSC–1, Spokane, Washington 99220, (509) 495–2941, or e-mail: *bruce.howard@avistacorp.com.*

h. *FERC Contact:* Nan Allen at (202) 502–6128, or e-mail: *nan.allen@ferc.gov.*

j. *Deadline for filing scoping comments:* 60 days from the date of this notice.

All documents (original and eight copies) should be filed with: Magalie R. Salas, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

Scoping comments may be filed electronically via the Internet in lieu of paper. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site (*http://www.ferc.gov*) under the "e-Filing" link.

The Commission's rules of practice and procedure require all interveners filing documents with the Commission to serve a copy of that document on each person on the official service list for the project. Further, if an intervener files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

k. The project consists of five developments and appurtenant facilities. The Post Falls development consists of the 48,000-acre Coeur d'Alene Lake with a useable storage capacity of 223,100 acre-feet; a 431-foot-long and 31-foot-high spillway dam across the north channel, a 127-foot-long and 25-foot-high spillway dam across the south channel, and a 215-foot-long and 64-foot-high dam across the middle channel and forming the east wall of the powerhouse; six 56-foot-long penstocks; and a powerhouse with an installed capacity of 15 megawatts (MW).

The Upper Falls development consists of a 366-foot-long, 39-foot-high dam at 1,871 feet elevation; an 800-acre-foot reservoir; a channel leading to an intake structure; a 350-foot-long penstock, and a powerhouse with an installed capacity of 10 MW.

The Monroe Street development consists of a 240-foot-long, 24-foot-high dam with crest elevation of 1,806 feet; a 30-acre-foot reservoir; a 435-foot-long penstock; and an underground powerhouse with an installed capacity of 14.82 MW.

The Nine Mile development consists of a 464-foot-long, 58-foot-high dam with a crest elevation of 1596.6 feet without flashboards and 1606.6 feet with flashboards; a reservoir with 4,600 acre-feet of storage capacity; and a powerhouse with an installed capacity of 26 MW.

The Long Lake development consists of a 593-foot-long, 247-foot-high dam; a 108,080-acre-foot reservoir with a normal pool elevation of 1,536 feet; four 216-foot-long penstocks, and a powerhouse with an installed capacity of 71 MW.

l. *Scoping Process:* Avista Corporation (Avista) is using the Federal Energy Regulatory Commission's (Commission) alternative licensing process (ALP). Under the ALP, Avista will prepare an Applicant Prepared Environmental

Assessment (APEA) and license application for the Spokane River Hydroelectric Project.

Avista expects to file with the Commission, the APEA and the license application for the Spokane River Hydroelectric Project by July 31, 2005. Although Avista's intent is to prepare an EA, there is the possibility that an Environmental Impact Statement (EIS) will be required. Nevertheless, this meeting will satisfy the NEPA scoping requirements, irrespective of whether an EA or EIS is issued by the Commission.

The purpose of this notice is to inform you of the opportunity to participate in the upcoming scoping meetings identified below, and to solicit your scoping comments.

Scoping Meetings

Avista will hold two scoping meetings, one in the daytime and one in the evening, to help us identify the scope of issues to be addressed in the APEA.

The daytime scoping meeting will focus on resource agency concerns, while the evening scoping meeting is primarily for public input. All interested individuals, organizations, and agencies are invited to attend one or both of the meetings, and to assist the staff in identifying the environmental issues that should be analyzed in the APEA. The times and locations of these meetings are as follows:

Daytime meeting	Evening meeting
Tuesday, June 3, 2003, 2 p.m. Avista Corporation, 1411 E. Mission St., Spokane, Washington.	Tuesday, June 3, 2003, 6:30 p.m. Avista Corporation, 1411 E. Mission St., Spokane, Washington.

To help focus discussions, Scoping Document 1 was mailed on about May 6, 2003, outlining the subject areas to be addressed in the APEA to the parties on the mailing list. Copies of the SD1 also will be available at the scoping meetings. SD1 is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at 1–866–208–3676, or for TTY, (202) 502–8659.

Register online at *http://www.ferc.gov* /esubscribenow.htm to be notified via email of new filings and issuances related to this or other pending projects. For assistance, contact FERC Online Support.

Based on all written comments received, a Scoping Document 2 (SD2) may be issued. SD2 will include a revised list of issues, based on the scoping sessions.

Objectives

At the scoping meetings, Avista will: (1) Summarize the environmental issues tentatively identified for analysis in the APEA; (2) solicit from the meeting participants all available information, especially quantifiable data, on the resources at issue; (3) encourage statements from experts and the public on issues that should be analyzed in the APEA, including viewpoints in opposition to, or in support of, the staff's preliminary views; (4) determine the resource issues to be addressed in the APEA; and (5) identify those issues that require a detailed analysis, as well as those issues that do not require a detailed analysis.

Procedures

The meetings will be recorded by a stenographer and will become part of the formal record of the Commission proceeding on the project.

Individuals, organizations, and agencies with environmental expertise and concerns are encouraged to attend the meetings and to assist Avista in defining and clarifying the issues to be addressed in the APEA.

Magalie R. Salas,

Secretary.

[FR Doc. 03–11932 Filed 5–12–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Sunshine Act Meeting; Notice of Vote, Explanation of Action Closing Meeting and List of Persons to Attend

May 7, 2003.

The following notice of meeting is published pursuant to section 3(a) of the Government in the Sunshine Act (Pub. L. 94–409), 5 U.S.C. 552b:

AGENCY HOLDING MEETING: Federal Energy Regulatory Commission.

DATE AND TIME: May 14, 2003, (within a relatively short time before or after the regular Commission meeting).

PLACE: Room 3M 4A/B, 888 First Street, NE., Washington, DC 20426.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Non-public investigations and inquiries and enforcement related matters.

CONTACT PERSON FOR MORE INFORMATION: Magalie R. Salas, Secretary, Telephone (202) 502–8400.

Chairman Wood and Commissioners Massey and Brownell voted to hold a closed meeting on May 14, 2003. The certification of the General Counsel explaining the action closing the meeting is available for public inspection in the Commission's Public Reference Room at 888 First Street, NE., Washington, DC 20426.

The Chairman and the Commissioners, their assistants, the Commission's Secretary and her assistant, the General Counsel and members of her staff, and a stenographer are expected to attend the meeting. Other staff members from the Commission's program offices who will advise the Commissioners in the matters discussed will also be present.

Magalie R. Salas,

Secretary.

[FR Doc. 03–11950 Filed 5–8–03; 4:37 pm]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Sunshine Act Meeting

May 7, 2003.

The following notice of meeting is published pursuant to section 3(a) of the government in the Sunshine Act (Pub. L. 94–409), 5 U.S.C 552B:

Agency Holding Meeting: Federal Energy Regulatory Commission.

Date and Time: May 14, 2003. 10 a.m.

Place: Room 2C, 888 First Street, NE., Washington, DC 20426.

Status: Open.

Matters to be Considered: Agenda.

*Note—Items listed on the agenda may be deleted without further notice.

Contact Person for more Information: Magalie R. Salas, Secretary, Telephone (202) 502–8400. For a recording listing items stricken from or added to the meeting, call (202) 502–8627.

This is a list of matters to be considered by the Commission. It does not include a listing of all papers relevant to the items on the agenda; however, all public documents may be examined in the Reference and Information Center.

Administrative Agenda

A–1.
Docket#, AD02–1, 000, Agency Administrative Matters.

A–2.
Docket#, AD02–7, 000, Customer Matters, Reliability, Security and Market Operations.

A–3.
Docket#, AD03–9, 000, Regional Market Monitor State of the Market Presentations.

Markets, Tariffs and Rates—Electric

E–1.
Omitted

E–2.
Omitted

E–3.
Docket#, ER03–421, 000, PPL Wallingford Energy LLC.
Other#s, ER03–421, 001, PPL Wallingford Energy LLC.

E–4.
Omitted

E–5.
Docket#, ER03–432, 000, SP Newsprint Co.
Other#s, ER03–432, 001, SP Newsprint Co.

E–6.
Omitted

E–7.
Docket#, ER03–549, 000, Southern California Edison Company.
Other#s, ER03–549, 001, Southern California Edison Company.

E–8.
Docket#, ER03–573, 000, Midwest Independent Transmission System Operator, Inc.

E–9.
Docket#, ER03–689, 000, WPS Canada Generation, Inc.
Other#s, ER03–689, 001, WPS Canada Generation, Inc.

E–10.
Docket#, ER03–688, 000, Michigan Electric Transmission Company, LLC.

E–11.
Docket#, ER03–704, 000, Yankee Atomic Electric Company.

E–12.
Omitted

E–13.
Docket#, ER02–2189, 000, Southern California Edison Company.

E–14.
Docket#, ER03–452, 000, Conjunction LLC.

E–15.
Docket#, ER02–2314, 000, RockGen Energy, LLC.
Other#s, ER02–2314, 001, RockGen Energy, LLC.

E–16.
Docket#, ER03–574, 000, Midwest Independent Transmission System Operator, Inc.

E–17.
Omitted

E–18.
Docket#, ER02–290, 002, Midwest Independent Transmission System Operator, Inc.

E–19.
Docket#, EL02–18, 001, NEO California Power LLC.

E–20.
Docket#, ER01–2099, 002, Neptune Regional Transmisson System, LLC.

E–21.
Docket#, ER02–107, 001, Midwest Independent Transmission System Operator, Inc.
Other#s, ER02–107, 002, Midwest Independent Transmission System Operator, Inc.

E–22.
Docket#, ER01–1807, 005, Carolina Power and Light Company and Florida Power Corporation.
Other#s, ER01–1807, 006, Carolina Power and Light Company and Florida Power Corporation.
ER01–2020, 002, Carolina Power and Light Company and Florida Power Corporation.
ER01–2020, 003, Carolina Power and Light Company and Florida Power Corporation.

E–23.
Docket#, RT01–87, 005, Midwest Independent Transmission System Operator, Inc.
Other#s, RT01–87, 006, Midwest Independent Transmission System Operator, Inc.
ER02–108, 004, Midwest Independent Transmission System Operator, Inc.
ER02–108, 002, Midwest Independent Transmission System Operator, Inc.
ER02–106, 001, Midwest Independent Transmission System Operator, Inc.

E–24.
Docket#, EC02–71, 001, American Transmission Systems, Inc., and PJM Interconnection, L.L.C.
Other#s, ER02–1865, 001, American Transmission Systems, Inc., and PJM Interconnection, L.L.C.

E–25.
Docket#, ER02–111, 006, Midwest Independent Transmission System Operator, Inc.
Other#s, ER02–111, 007, Midwest Independent Transmission System Operator, Inc.
ER02–652, 004, Midwest Independent Transmission System Operator, Inc.

E–26.
Docket#, EC03–14, 001, Ameren Services Company, First Energy Corp., Northern Indiana Public Service Company, National Grid USA, and Midwest Independent Transmission System Operator, Inc.
Other#s, ER02–2233, 002, Ameren Services Company, First Energy Corp., Northern Indiana Public Service Company, National Grid USA, and Midwest Independent Transmission System Operator, Inc.
ER02–2233, 003, Ameren Services Company, First Energy Corp., Northern Indiana Public Service Company, National Grid USA, and Midwest Independent Transmission System Operator, Inc.

E–27.
Docket#, ER03–86, 001, Midwest Independent Transmission System Operator, Inc.
Other#s, ER03–86, 002, Midwest Independent Transmission System Operator, Inc.
EL03–122, 000, Midwest Independent Transmission System Operator, Inc.

E–28.
Docket#, ER03–265, 001, Midwest Independent Transmission System Operator, Inc.

E–29.
Docket#, EL03–35, 002, Midwest Independent Transmission System Operator, Inc.

E–30.
Docket#, ER02–1326, 003, PJM Interconnection, L.L.C.
Other#s, ER02–1326, 004, PJM Interconnection, L.L.C.
ER02–1326, 005, PJM Interconnection, L.L.C.

E–31.
Docket#, OA97–261, 004, Pennsylvania-New Jersey-Maryland Interconnection.
Other#s, EC96–28, 005, Atlantic City Electric Company, Baltimore. Gas and Electric Company, Delmarva Power & Light Company, Jersey Central Power & Light Company, Metropolitan Edison Company, Pennsylvania Electric Company, Pennsylvania Power & Light Company, Potomac Electric Power Company, and Public Service Electric and Gas Company.
EC96–28, 006, Atlantic City Electric Company, Baltimore Gas and Electric Company, Delmarva Power & Light Company, Jersey Central Power & Light Company, Metropolitan Edison Company, Pennsylvania Electric Company, Pennsylvania Power & Light Company, Potomac Electric Power Company, and Public Service Electric and Gas Company.
EC96–29, 005, PECO Energy Company.
EC96–29, 006, PECO Energy Company.
EL96–69, 005, Atlantic City Electric Company, Baltimore Gas and Electric Company, Delmarva Power & Light Company, Jersey Central Power & Light Company, Metropolitan Edison Company, Pennsylvania Electric Company, Pennsylvania Power & Light Company, Potomac Electric Power Company, and Public Service Electric and Gas Company.
EL96–69, 006, Atlantic City Electric Company, Baltimore Gas and Electric Company, Delmarva Power & Light Company, Jersey Central Power & Light Company, Metropolitan Edison Company, Pennsylvania Electric Company, Pennsylvania Power & Light Company, Potomac Electric Power Company, and Public Service Electric and Gas Company.
ER96–2516, 005, Atlantic City Electric Company, Baltimore Gas and Electric Company, Delmarva Power & Light Company, Jersey Central Power & Light Company, Metropolitan Edison Company, Pennsylvania Electric Company, Pennsylvania Power & Light Company, Potomac Electric Power Company, and Public Service Electric and Gas Company.
ER96–2516, 006, Atlantic City Electric Company, Baltimore Gas and Electric Company, Delmarva Power & Light Company, Jersey Central Power & Light Company, Metropolitan Edison Company, Pennsylvania Electric

Company, Pennsylvania Power & Light Company, Potomac Electric Power Company, and Public Service Electric and Gas Company.
ER96–2668, 005, PECO Energy Company.
ER96–2668, 006, PECO Energy Company.
EC97–38, 003, Pennsylvania Electric Company, Pennsylvania Power & Light Company, Potomac Electric Power Company, Public Service Electric and Gas Company, Atlantic City Electric Company, Baltimore Gas and Electric Company, Delmarva Power & Light Company, Jersey Central Power & Light Company, and Metropolitan Edison Company.
EC97–38, 004, Pennsylvania Electric Company, Pennsylvania Power & Light Company, Potomac Electric Power Company, Public Service Electric and Gas Company, Atlantic City Electric Company, Baltimore Gas and Electric Company, Delmarva Power & Light Company, Jersey Central Power & Light Company, and Metropolitan Edison Company.
EL97–44, 003, Pennsylvania-New Jersey-Maryland Interconnection Restructuring.
EL97–44 004, Pennsylvania-New Jersey-Maryland Interconnection Restructuring.
OA97–261, 005, Pennsylvania-New Jersey-Maryland Interconnection.
OA97–678, 003, PJM Interconnection, L.L.C.
OA97–678, 004, PJM Interconnection, L.L.C.
ER97–1082, 006, Pennsylvania-New Jersey-Maryland Interconnection.
ER97–1082, 007, Pennsylvania-New Jersey-Maryland Interconnection.
ER97–3189, 032, Atlantic City Electric Company, Baltimore Gas and Electric Company, Delmarva Power & Light Company, Jersey Central Power & Light Company, and Metropolitan Edison Company.
ER97–3189, 033, Atlantic City Electric Company, Baltimore Gas and Electric Company, Delmarva Power & Light Company, Jersey Central Power & Light Company, and Metropolitan Edison Company.
ER97–3273, 003, Pennsylvania Electric Company, Pennsylvania Power & Light Company, Potomac Electric Power Company, Public Service Electric and Gas Company, and Pennsylvania-New Jersey-Maryland Interconnection Restructuring.
ER97–3273, 004, Pennsylvania Electric Company, Pennsylvania Power & Light Company, Potomac Electric Power Company, Public Service Electric and Gas Company, and Pennsylvania-New Jersey-Maryland Interconnection Restructuring.
E–32.
Docket#, ER02–2234, 009, California Power Exchange Corporation.
Other#s
ER02–2234, 008, California Power Exchange Corporation.
ER03–139, 004, California Power Exchange Corporation.
ER03–139, 005, California Power Exchange Corporation.
E–33.
Omitted
E–34.
Docket#, EL03–118, 000, Wilbur Power LLC.
Other#s,
QF83–168, 005, Wilbur Power LLC.
E–35.
Docket#, EL02–77, 000, Puget Sound Energy, Inc.
E–36.
Docket#. NJ03–2, 000, Southern Illinois Power Cooperative.
E–37.
Docket#, EL03–38, 000, Cargill Power Markets, LLC.
E–38.
Docket#, EL98–6, 001, Old Dominion Electric Cooperative v. Public Service Electric and Gas Company.
E–39.
Omitted
E–40.
Docket#, EG03–50, 000, FPL Energy New England Transmission, LLC.
E–41.
Docket#, ER03–83, 001, TRANSLink Development Company, LLC.

Miscellaneous

M–1.
Reserved

Markets, Tariffs and Rates—Gas

G–1.
Docket#, RP03–339, 000, Southern Star Central Gas Pipeline, Inc.
Other#s, RP03–339, 001, Southern Star Central Gas Pipeline, Inc.
G–2.
Omitted
G–3.
Docket#, RP03–343, 000, Northern Natural Gas Company.
G–4.
Docket#, PR03–6, 000, EPGT Texas Pipeline, LP.
G–5.
Docket#, RP98–39, 000, Northern Natural Gas Company.
Other#s, SA98–101, 000, Continental Energy.
G–6.
Docket#, RP02–361, 006, Gulfstream Natural Gas System, L.L.C.
G–7.
Docket#, RP00–337, 005, Kern River Gas Transmission Company.
G–8.
Docket#, RP00–495, 003, Texas Gas Transmission Corporation.
Other#s, RP00–495, 004, Texas Gas Transmission Corporation.
RP01–97, 002, Texas Gas Transmission Corporation.
RP01–97, 003, Texas Gas Transmission Corporation.
RP03–211, 000, Texas Gas Transmission Corporation.
G–9.
Docket#, RP03–162, 002, Trailblazer Pipeline Company.
Other#s,
RP03–162, 000, Trailblazer Pipeline Company.
G–10.
Docket#, RP99–301, 027, ANR Pipeline Company.
Other#s, RP99–301, 031, ANR Pipeline Company.
GT01–25, 002, ANR Pipeline Company.
G–11.
Docket#, RP00–343, 004, Kinder Morgan Interstate Gas Transmission, LLC.
Other#s
RP00–343, 005, Kinder Morgan Interstate Gas Transmission, LLC.
RP00–629, 001, Kinder Morgan Interstate Gas Transmission, LLC.
G–12.
Docket#, RP00–469, 002, East Tennessee Natural Gas Company.
Other#s, RP00–469, 003, East Tennessee Natural Gas Company.
RP01–22, 004, East Tennessee Natural Gas Company.
RP01–22, 005, East Tennessee Natural Gas Company.
RP03–177, 000, East Tennessee Natural Gas Company.
G–13.
Docket#, RP00–333, 002, Crossroads Pipeline Company.
Other#s, RP00–333, 003, Crossroads Pipeline Company.
RP01–51, 002, Crossroads Pipeline Company.
G–14.
Docket#, RP02–99, 006, Shell Offshore Inc. v. Transcontinental Gas Pipe Line Corporation, Williams Gas Processing-Gulf Coast Company, L.P., Williams Field Services Company and Williams Gulf Coast Gathering Company, L.L.C.
G–15.
Docket#, RP02–309, 001, Sunoco, Inc. (R&M) v. Transcontinental Gas Pipe Line Corporaton.
G–16.
Docket#, RP02–456, 001, Discovery Gas Transmission LLC.
Other#s, RP02–456, 002, Discovery Gas Transmission LLC.
RP02–456, 003, Discovery Gas Transmission LLC.
G–17.
Docket#, RP03–12, 001, Kinder Morgan Interstate Gas Transmission LLC.
G–18.
Docket#, RP00–409, 002, Natural Gas Pipeline Company of America.
Other#s, RP00–409, 003, Natural Gas Pipeline Company of America.
RP00–631, 003, Natural Gas Pipeline Company of America.
RP00–631, 004, Natural Gas Pipeline Company of America.
G–19.
Omitted
G–20.
Docket#, RP96–200, 098, CenterPoint Energy Gas Transmission Company.
Other#s, RP96–200, 099, CenterPoint Energy Gas Transmission Company.
G–21.
Docket#, RP98–54, 036, Colorado Interstate Gas Company.
Other#s, RP98–54, 037, Colorado Interstate Gas Company.
G–22.
Docket#, RP00–533, 007, Algonquin Gas Transmission Company.
G–23.
Docket#, RP00–535, 007, Texas Eastern Transmission, LP.
G–24.
Docket#, IS01–482, 002, Mid-America Pipeline Company.
G–25.
Docket#, OR02–4, 002, Chevron Products Company v. SFPP, L.P.
G–26.
Docket#, RP03–243, 000, Nicole Energy Services, Inc.
G–27.
Omitted
G–28.
Docket#, RP01–208, 000, Amoco Production Company, BP Exploration & Oil, Inc., Chevron U.S.A. Inc., ExxonMobil Gas Marketing Company, a division of Exxon Mobil Corporation, and Shell Offshore Inc.
G–29.
Docket#, RP02–356, 000, Canyon Creek Compression Company.
Other#s, RP02–356, 002, Canyon Creek Compression Company.
RP02–356, 001, Canyon Creek Compression Company.
G–30.
Omitted
G–31.
Docket#, OR02–10, 000, Shell Pipeline Company LP.

Energy Projects—Hydro

H–1.
Docket#, P–7115, 034, Homestead Energy Resources, LLC.
H–2.
Docket#, P–12154, 001, Canada Creek Corporation.

Energy Projects—Certificates

C–1.
Docket#, CP02–430, 001, Saltville Gas Storage Company, L.L.C.
Other#s, CP02–430, 002, Saltville Gas Storage Company, L.L.C.
C–2.
Docket#, RM03–4, 000, Emergency Reconstruction of Interstate Natural Gas Facilities Under the Natural Gas Act.
Other#s, AD02–14, 000, Conference on Emergency Reconstruction of Interstate Natural Gas Infrastructure.
C–3.
Docket#, CP01–153, 004, Tuscarora Gas Transmission Company.
C–4.
Docket#, CP03–11, 000, Jupiter Energy Corporation.

Magalie R. Salas,
Secretary.
[FR Doc. 03–11951 Filed 5–8–03; 4:37 pm]
BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7497–7]

National Advisory Council on Environmental Policy and Technology (NACEPT) Superfund Subcommittee Meeting

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notification of public advisory NACEPT subcommittee on Superfund; open meeting.

SUMMARY: Pursuant to the Federal Advisory Committee Act, Pub. L. 92–463, notice is hereby given that the Superfund Subcommittee, a subcommittee of the National Advisory Council on Environmental Policy and Technology (NACEPT), will meet on the date and time described below. The meeting is open to the public. Seating will be on a first-come basis and limited time will be provided for public comment on each day.

DATES: The meeting will be held from 1 p.m. to 6 p.m. on June 17, 2003; from 8 a.m. to 6 p.m. on June 18, 2003.

ADDRESSES: The meeting will take place at the New Bedford Holiday Inn Express, 110 Middle Street, Fairhaven, MA 02719.

FOR FURTHER INFORMATION CONTACT: Angelo Carasea, Designated Federal Officer for the NACEPT Superfund Subcommittee, Office of Emergency and Remedial Response, Office of Solid Waste and Emergency Response, MC 5204G, 1200 Pennsylvania Ave., NW., Washington, DC, (703) 603–8828.

SUPPLEMENTARY INFORMATION:

Agenda

This fifth meeting of the Superfund Subcommittee will involve reports from the Subcommittee's working groups about their activities since the last Subcommittee meeting in March 2003. The agenda for the meeting will be available one week prior to the meeting's occurrence.

Public Attendance

The public is welcome to attend all portions of the meeting. Members of the public who plan to file written statements and/or make brief (suggested 5-minute limit) oral statements at the public sessions are encouraged to contact the Designated Federal Official. Each day will have one public comment period.

Dated: May 7, 2003.
Angelo Carasea,
Designated Federal Officer, NACEPT Superfund Subcommittee.
[FR Doc. 03–11908 Filed 5–12–03; 8:45 am]
BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[OPPT–2003–0021; FRL–7308–5]

Certain New Chemicals; Receipt and Status Information

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: Section 5 of the Toxic Substances Control Act (TSCA) requires any person who intends to manufacture (defined by statute to include import) a new chemical (i.e., a chemical not on the TSCA Inventory) to notify EPA and comply with the statutory provisions pertaining to the manufacture of new chemicals. Under sections 5(d)(2) and 5(d)(3) of TSCA, EPA is required to publish a notice of receipt of a premanufacture notice (PMN) or an application for a test marketing exemption (TME), and to publish periodic status reports on the chemicals under review and the receipt of notices of commencement to manufacture those chemicals. This status report, which covers the period from March 31, 2003 to April 4, 2003, consists of the PMNs pending or expired, and the notices of commencement to manufacture a new chemical that the Agency has received under TSCA section 5 during this time period.

DATES: Comments identified by the docket ID number OPPT–2003–0021 and the specific PMN number or TME number, must be received on or before June 12, 2003.

ADDRESSES: Comments may be submitted electronically, by mail, or through hand delivery/courier. Follow the detailed instructions as provided in Unit I. of the **SUPPLEMENTARY INFORMATION**.

FOR FURTHER INFORMATION CONTACT: Barbara Cunningham, Director, Environmental Assistance Division, Office of Pollution Prevention and Toxics (7408M), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC20460–0001; telephone number: (202) 554–1404; e-mail address: *TSCA-Hotline@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

This action is directed to the public in general. As such, the Agency has not attempted to describe the specific entities that this action may apply to. Although others may be affected, this action applies directly to the submitter of the premanufacture notices addressed in the action. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

B. How Can I Get Copies of This Document and Other Related Information?

1. *Docket.* EPA has established an official public docket for this action under docket identification (ID) number OPPT–2003–0021. The official public docket consists of the documents specifically referenced in this action, any public comments received, and other information related to this action. Although a part of the official docket, the public docket does not include Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. The official public docket is the collection of materials that is available for public viewing at the EPA Docket Center, Rm. B102-Reading Room, EPA West, 1301 Constitution Ave., NW., Washington, DC. The EPA Docket Center is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The EPA Docket Center Reading Room telephone number is (202) 566–1744 and the telephone number for the OPPT Docket, which is located in EPA Docket Center, is (202) 566–0280.

2. *Electronic access.* You may access this **Federal Register** document electronically through the EPA Internet under the "**Federal Register**" listings at *http://www.epa.gov/fedrgstr/*.

An electronic version of the public docket is available through EPA's electronic public docket and comment system, EPA Dockets. You may use EPA Dockets at *http://www.epa.gov/edocket/* to submit or view public comments, access the index listing of the contents of the official public docket, and to access those documents in the public docket that are available electronically. Although not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the docket facility identified in Unit I.B.1. Once in the system, select "search," then key in the appropriate docket ID number.

Certain types of information will not be placed in the EPA Dockets. Information claimed as CBI and other information whose disclosure is restricted by statute, which is not included in the official public docket, will not be available for public viewing in EPA's electronic public docket. EPA's policy is that copyrighted material will not be placed in EPA's electronic public docket but will be available only in printed, paper form in the official public docket. To the extent feasible, publicly available docket materials will be made available in EPA's electronic public docket. When a document is selected from the index list in EPA Dockets, the system will identify whether the document is available for viewing in EPA's electronic public docket. Although not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the docket facility identified in Unit I.B.1. EPA intends to work towards providing electronic access to all of the publicly available docket materials through EPA's electronic public docket.

For public commenters, it is important to note that EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing in EPA's electronic public docket as EPA receives them and without change, unless the comment contains copyrighted material, CBI, or other information whose disclosure is restricted by statute. When EPA identifies a comment containing copyrighted material, EPA will provide a reference to that material in the version of the comment that is placed in EPA's electronic public docket. The entire printed comment, including the copyrighted material, will be available in the public docket.

Public comments submitted on computer disks that are mailed or delivered to the docket will be transferred to EPA's electronic public docket. Public comments that are mailed or delivered to the docket will be scanned and placed in EPA's electronic public docket. Where practical, physical objects will be photographed, and the photograph will be placed in EPA's electronic public docket along with a brief description written by the docket staff.

C. How and To Whom Do I Submit Comments?

You may submit comments electronically, by mail, or through hand delivery/courier. To ensure proper receipt by EPA, identify the appropriate docket ID number and specific PMN number or TME number in the subject line on the first page of your comment. Please ensure that your comments are submitted within the specified comment period. Comments received after the close of the comment period will be marked "late." EPA is not required to consider these late comments. If you wish to submit CBI or information that is otherwise protected by statute, please follow the instructions in Unit I.D. Do not use EPA Dockets or e-mail to submit CBI or information protected by statute.

1. *Electronically.* If you submit an electronic comment as prescribed in this unit, EPA recommends that you include your name, mailing address, and an e-mail address or other contact information in the body of your comment. Also include this contact information on the outside of any disk or CD ROM you submit, and in any cover letter accompanying the disk or CD ROM. This ensures that you can be identified as the submitter of the comment and allows EPA to contact you in case EPA cannot read your comment due to technical difficulties or needs further information on the substance of your comment. EPA's policy is that EPA will not edit your comment, and any identifying or contact information provided in the body of a comment will be included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment.

i. *EPA Dockets.* Your use of EPA's electronic public docket to submit comments to EPA electronically is EPA's preferred method for receiving comments. Go directly to EPA Dockets at *http://www.epa.gov/edocket*, and follow the online instructions for submitting comments. Once in the system, select "search," and then key in docket ID number OPPT–2003–0021. The system is an "anonymous access" system, which means EPA will not know your identity, e-mail address, or other contact information unless you provide it in the body of your comment.

ii. *E-mail.* Comments may be sent by e-mail to *oppt.ncic@epa.gov*, Attention: Docket ID Number OPPT–2003–0021 and PMN Number or TME Number. In contrast to EPA's electronic public docket, EPA's e-mail system is not an "anonymous access" system. If you send an e-mail comment directly to the docket without going through EPA's electronic public docket, EPA's e-mail system automatically captures your e-mail address. E-mail addresses that are automatically captured by EPA's e-mail system are included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket.

iii. *Disk or CD ROM.* You may submit comments on a disk or CD ROM that you mail to the mailing address identified in Unit I.C.2. These electronic submissions will be accepted in WordPerfect or ASCII file format. Avoid the use of special characters and any form of encryption.

2. *By mail.* Send your comments to: Document Control Office (7407M), Office of Pollution Prevention and Toxics (OPPT),Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001.

3. *By hand delivery or courier.* Deliver your comments to: OPPT Document Control Office (DCO) in EPA East Building Rm. 6428, 1201 Constitution Ave., NW., Washington, DC. Attention: Docket ID Number OPPT–2003–0021 and PMN Number or TME Number. The DCO is open from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The telephone number for the DCO is (202) 564–8930.

D. How Should I Submit CBI To the Agency?

Do not submit information that you consider to be CBI electronically through EPA's electronic public docket or by e-mail. You may claim information that you submit to EPA as CBI by marking any part or all of that information as CBI (if you submit CBI on disk or CD ROM, mark the outside of the disk or CD ROM as CBI and then identify electronically within the disk or CD ROM the specific information that is CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

In addition to one complete version of the comment that includes any information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket and EPA's electronic public docket. If you submit the copy that does not contain CBI on disk or CD ROM, mark the outside of the disk or CD ROM clearly that it does not contain CBI. Information not marked as CBI will be included in the public docket and EPA's electronic public docket without prior notice. If you have any questions about CBI or the procedures for claiming CBI, please consult the technical person listed under **FOR FURTHER INFORMATION CONTACT**.

E. What Should I Consider as I Prepare My Comments for EPA?

You may find the following suggestions helpful for preparing your comments:

1. Explain your views as clearly as possible.

2. Describe any assumptions that you used.

3. Provide copies of any technical information and/or data you used that support your views.

4. If you estimate potential burden or costs, explain how you arrived at the estimate that you provide.

5. Provide specific examples to illustrate your concerns.

6. Offer alternative ways to improve the notice or collection activity.

7. Make sure to submit your comments by the deadline in this document.

8. To ensure proper receipt by EPA, be sure to identify the docket ID number assigned to this action and the specific PMN number you are commenting on in the subject line on the first page of your response. Youmay also provide the name, date, and **Federal Register** citation.

II. Why is EPA Taking this Action?

Section 5 of TSCA requires any person who intends to manufacture (defined by statute to include import) a new chemical (i.e., a chemical not on the TSCA Inventory to notify EPA and comply with the statutory provisions pertaining to the manufacture of new chemicals. Under sections 5(d)(2) and 5(d)(3) of TSCA, EPA is required to publish a notice of receipt of a PMN or an application for a TME and to publish periodic status reports on the chemicals under review and the receipt of notices of commencement to manufacture those chemicals. This status report, which covers the period from March 31, 2003 to April 4, 2003, consists of the PMNs pending or expired, and the notices of commencement to manufacture a new chemical that the Agency has received under TSCA section 5 during this time period.

III. Receipt and Status Report for PMNs

This status report identifies the PMNs both pending or expired, and the notices of commencement to manufacture a new chemical that the Agency has received under TSCA section 5 during this time period. If you are interested in information that is not included in the following tables, you may contact EPA as described in Unit II. to access additional non-CBI information that may be available.

In Table I of this unit, EPA provides the following information (to the extent that such information is not claimed as CBI) on the PMNs received by EPA during this period: the EPA case number assigned to the PMN; the date the PMN was received by EPA; the projected end date for EPA's review of the PMN; the submitting manufacturer; the potential uses identified by the manufacturer in the PMN; and the chemical identity.

I. 18 PREMANUFACTURE NOTICES RECEIVED FROM: 03/31/03 TO 04/18/03

Case No.	Received Date	Projected Notice End Date	Manufacturer/Importer	Use	Chemical
P–03–0451	04/01/03	06/30/03	Dow Corning Corporation	(S) Foam control agent for coatings	(G) Silicone polyether
P–03–0452	04/01/03	06/30/03	CBI	(G) Open, non-dispersive use.	(G) Water dispersible polyurethane
P–03–0453	04/01/03	06/30/03	CBI	(G) Open, non-dispersive use.	(G) Water dispersible polyurethane
P–03–0454	04/01/03	06/30/03	CBI	(G) Open, non-dispersive use.	(G) Water dispersible polyurethane
P–03–0455	04/01/03	06/30/03	CBI	(G) Open, non-dipersive use.	(G) Water dispersible polyurethane
P–03–0456	04/01/03	06/30/03	CBI	(G) Open, non-dipersive use.	(G) Water dispersible polyurethane
P–03–0457	04/01/03	06/30/03	CBI	(G) Open, non-dipersive use.	(G) Water dispersible polyurethane
P–03–0458	04/01/03	06/30/03	CMP Coatings, Inc.	(S) Binder polymer in paints	(S) 2-propenoic acid, 2-methyl-, methyl ester, polymer with butyl 2-propenoate, ethyl 2-propenoate, zinc bis(2-methyl-2-propenoate) and zinc di-2-propenoate, 2,2'-azobis[2-methylbutanenitrile]- and 2,2'-azobis[2-methylpropanenitrile]-initiated

I. 18 PREMANUFACTURE NOTICES RECEIVED FROM: 03/31/03 TO 04/18/03—Continued

Case No.	Received Date	Projected Notice End Date	Manufacturer/Importef	Use	Chemical
P–03–0459	04/02/03	07/01/03	CBI	(G) Polymeric admixture for cements	(G) Carboxylated modified poly(oxyalkylenediyl), calcium salt
P–03–0460	04/03/03	07/02/03	CBI	(G) Additive	(G) Modified polyester
P–03–0461	04/03/03	07/02/03	CBI	(G) Petroleum additive	(G) Fatty acid reaction products with alkanolamine
P–03–0462	04/03/03	07/02/03	CBI	(G) An open non-dispersive use	(G) Bisphenol a type epoxy resin, salt
P–03–0463	04/03/03	07/02/03	Cytec Industries Inc.	(G) Ultraviolet stabilizer in plastics	(G) Aromatic ultraviolet light stabilizer
P–03–0464	04/03/03	07/02/03	Cytec Industries Inc.	(G) Ultraviolet stabilizer in plastics	(G) Aromatic ultraviolet absorber
P–03–0465	04/03/03	07/02/03	Cytec Industries Inc.	(G) Ultraviolet stabilizer in plastics	(G) Aromatic ultraviolet light absorber
P–03–0466	04/03/03	07/02/03	Cytec Industries Inc.	(G) Ultraviolet stabilizer in plastics	(G) Ultraviolet light absorber
P–03–0467	04/03/03	07/02/03	Cytec Industries Inc.	(G) Ultraviolet stabilizer in plastics	(G) Ultraviolet light absorber
P–03–0468	04/03/03	07/02/03	Cytec Industries Inc.	(G) Ultraviolet stabilizer in plastics	(G) Aromatic ultraviolet light absorber

In Table II of this unit, EPA provides the following information (to the extent that such information is not claimed as CBI) on the Notices of Commencement to manufacture received:

II. 11 NOTICES OF COMMENCEMENT FROM:03/31/03 TO 04/04/03

Case No.	Received Date	Commencement/ Import Date	Chemical
P–02–0075	04/02/03	03/14/03	(G) Polyalkylene-vinyldimethoxymethylsilane polymer
P–02–0788	03/31/03	03/04/03	(G) Urethane acrylate ester
P–02–0839	04/02/03	03/11/03	(G) Modified acrylic polymer
P–02–0842	04/03/03	03/17/03	(G) Solid ultraviolet-curable resin
P–02–0849	03/31/03	03/06/03	(G) Fluoroalkene copolymer
P–02–0991	04/03/03	03/25/03	(G) Isocyanate terminated urethane polymer
P–03–0069	04/01/03	03/21/03	(G) Alkylaminoethylcarboxylic acid ester
P–03–0079	04/02/03	03/18/03	(G) Sulphonated azo dye
P–03–0088	03/31/03	03/25/03	(G) Amines, polyethylenepoly-, reaction products with (5 or 6)-carboxy-4-hexyl-2-cyclohexene-1-octanoic acid, pentaethylenehexamine and substituted polyamines
P–03–0188	04/01/03	03/28/03	(G) Fatty acids, tall-oil, reaction products with substituted ethyleneamines
P–97–0722	04/02/03	03/14/03	(G) Amino-functional siloxane

List of Subjects

Environmental protection, Chemicals, Premanufacturer notices.

Dated: May 6, 2003.

Sandra R. Wilkins,

Acting Director, Information Management Division, Office of Pollution Prevention and Toxics.

[FR Doc. 03–11907 Filed 5–12–03; 8:45 am]

BILLING CODE 6560–50–S

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collection(s) Being Reviewed by the Federal Communications Commission

April 24, 2003.

SUMMARY: The Federal Communications Commission, as part of its continuing effort to reduce paperwork burden invites the general public and other Federal agencies to take this opportunity to comment on the following information collection(s), as required by the Paperwork Reduction Act of 1995, Pub. L. 104–13. An agency may not conduct or sponsor a collection of information unless it displays a current valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a valid control number. Comments are requested concerning (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

DATES: Written comments should be submitted on or before July 14, 2003. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: Direct all comments to Les Smith, Federal Communications Commission, Room 1–A804, 445 12th Street, SW., Washington, DC 20554, or via the Internet to *Leslie.Smith@fcc.gov*.

FOR FURTHER INFORMATION CONTACT: For additional information or copies of the information collection(s) contact Les Smith at 202–418–0217 or via the Internet at *Leslie.Smith@fcc.gov*.

SUPPLEMENTARY INFORMATION:

OMB Control Number: 3060–0924.

Title: Report and Order in MM Docket No. 99–25—Creation of Low Power Radio Service.

Form Number: N/A.

Type of Review: Extension of currently approved collection.

Respondents: Business or other for-profit entities; State, local or tribal governments.

Number of Respondents: 1,200 (multiple responses).

Estimated Time per Response: 0.0003 to 6 hours.

Frequency of Response: Recordkeeping; On occasion reporting requirements; Third party disclosure.

Total Annual Burden: 27,450 hours.

Total Annual Cost: $9,000.

Needs and Uses: The information collection requirements contained in MM Docket No. 99–25, Report and Order, will ensure that the integrity of the FM spectrum is not compromised. It will also ensure that unacceptable interference will not be caused to existing radio services and that the statutory requirements are met. These rules will ensure that the stations are operated in the public interest.

Federal Communications Commission.

William F. Caton,

Deputy Secretary.

[FR Doc. 03–11849 Filed 5–12–03; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collection(s) Being Reviewed by the Federal Communications Commission

April 25, 2003.

SUMMARY: The Federal Communications Commission, as part of its continuing effort to reduce paperwork burden invites the general public and other Federal agencies to take this opportunity to comment on the following information collection(s), as required by the Paperwork Reduction Act of 1995, Pub. L. 104–13. An agency may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a valid control number. Comments are requested concerning (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

DATES: Written comments should be submitted on or before June 12, 2003. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: Direct all Paperwork Reduction Act (PRA) comments to Judith B. Herman, Federal Communications Commission, Room 1–C804, 445 12th Street, SW., DC 20554 or via the Internet to *Judith-B.Herman@fcc.gov*.

FOR FURTHER INFORMATION CONTACT: For additional information or copies of the PRA information collection(s), contact Judith B. Herman at 202–418–0214 or via the Internet at *Judith-B.Herman@fcc.gov*.

SUPPLEMENTARY INFORMATION:

OMB Control No.: 3060–0804.

Title: Universal Service—Health Care Providers Universal Service Program.

Form Nos.: FCC Forms 465, 466, 466–A, and 467.

Type of Review: Revision of a currently approved collection.

Respondents: Business or other for-profit, not-for-profit institutions.

Number of Respondents: 4,804 respondents; 5,605 responses.

Estimated Time Per Response: 1–2 hours.

Frequency of Response: On occasion reporting requirement, third party disclosure requirement.

Total Annual Burden: 8,805 hours.

Total Annual Cost: N/A.

Needs and Uses: In an effort to streamline the application process the reduce redundancy, the Commission is revising this information collection to merge the FCC Form 468 with the FCC Form 466. This will reduce the application burden for applicants to the rural health care universal service support mechanism, thereby eliminating the requirement for service providers to complete the FCC Form 468. The principal information previously obtained from the FCC Form 468 was the rural rate for telecommunications services for which applicants seek support. The Commission has determined that this can be obtained from existing information that applicants otherwise have in their possession (telephone bills, service ordering confirmation, or bid submitted by service provider) and provided directly on FCC Form 466. To implement this revised FCC Form 466 by July 1, 2003, we are requesting OMB approval by June 1, 2003.

Federal Communications Commission.

William F. Caton,

Deputy Secretary.

[FR Doc. 03–11850 Filed 5–12–03; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

[CC Docket No. 90–571; FCC 03–92]

Petition for Declaratory Ruling That the Provision of INTELSAT Space Segment by COMSAT Is Not an Interstate Service for Purposes of the TRS Fund

AGENCY: Federal Communications Commission.

ACTION: Notice.

SUMMARY: In this document, the Commission grants an Application for Review filed by COMSAT Corporation, acting through its business unit COMSAT World Systems (COMSAT). The Commission finds that, because the lease of space segment capacity does not constitute a telecommunications service, COMSAT was not required to contribute to the Telecommunications Relay Services (TRS) Fund on the basis of such services. The Commission therefore grants the application for review, and orders that COMSAT be refunded its prior TRS Fund contributions based on the provision of leased satellite space segment capacity.

DATES: Effective June 12, 2003.

FOR FURTHER INFORMATION CONTACT: Diane Law-Hsu, Deputy Division Chief, Wireline Competition Bureau, Telecommunications Access Policy Division, (202) 418–7400, TTY (202) 418–0484.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Order in CC Docket No. 90–571 released on April 24, 2003. The full text of this document is available for public inspection during regular business hours in the FCC Reference Center, Room CY–A257, 445 12th Street, SW., Washington, DC 20554.

I. Introduction

1. The Commission grants an Application for Review filed by COMSAT Corporation, acting through its business unit COMSAT World Systems (COMSAT). COMSAT challenges a ruling by the former Common Carrier Bureau (Bureau), which concluded that COMSAT is required to contribute to the TRS Fund a portion of its revenues from the lease of satellite space segment capacity. COMSAT also seeks a refund of its prior TRS Fund contributions based upon

revenues from the lease of satellite space segment capacity. The Commission finds that, because the lease of space segment capacity does not constitute a telecommunications service, COMSAT was not required to contribute to the TRS Fund on the basis of such services. The Commission therefore grants the application for review, and order that COMSAT be refunded its prior TRS Fund contributions based on the provision of leased satellite space segment capacity.

II. Discussion

2. Before reaching the substantive issues before us, the Commission addresses procedural issues raised by COMSAT's Application for Review Supplement. Section 1.115(c) of our rules bars a party from presenting questions of law in an application for review that it did not raise in its pleading below. In its initial Petition, COMSAT only argued that its service was not an interstate service. Because it did not argue before the Bureau that the service did not qualify as telecommunications or a telecommunications service, § 1.115(c) of the Commission's rules would ordinarily act as a bar to raising the argument now. In addition, COMSAT failed to raise the argument in its original Application for Review, presenting it only in the supplement that was filed in 1999, long after the time for filing such supplements had expired.

3. The Commission has authority, however, to consider COMSAT's argument that its service did not constitute telecommunications or a telecommunications service on our own motion. In particular, the Commission has previously noted that it may use the pendency before it of a timely petition filed by a party as a basis for considering on the Commission's own motion arguments belatedly raised by the party. That circumstance is present here. COMSAT filed a timely application for review of the Bureau Decision. In addition, COMSAT reiterated its position when it submitted its TRS payments. Further, because the legal question of whether leased space segment is telecommunications has already been presented to and resolved by the full Commission, applying that ruling here is straightforward, consistent with the policy of not addressing arguments that have not previously been reviewed, and, as set forth, clearly dispositive of the pending matter. By contrast, were the Commission to ignore this issue, we would have to reach the legal question of whether COMSAT's lease of transponder capacity should be deemed an "interstate" service. The Commission therefore exercises our discretion to consider the "telecommunications'/ "telecommunications service" argument.

4. Turning to the merits of COMSAT's Application for Review, the lease of bare space segment capacity can not constitute a "telecommunications service," because the Commission previously determined that it is not "telecommunications" and does not involve the transmission of information. Section 64.604(c)(5)(iii)(A) of the Commission's rules states that "[e]very carrier providing interstate telecommunications services shall contribute to the TRS Fund on the basis of interstate end user telecommunications revenues." In the *TRS III Order*, 58 FR 39671, July 26, 1993, the Commission explained this rule by stating that "[o]ur general approach is to identify all interstate common carrier services and to assess a contribution factor against the revenues from those services." Although the Act did not define "common carrier services" at that time, section 225 of the Communications Act, which governs TRS services, defines "common carrier," in relevant part, as "any common carrier engaged in interstate communication by wire or radio as defined in section 3 * * *" Section 3, in turn, defines "communication by radio" as "the transmission by radio of writing, signs, signals, pictures, and sounds of all kinds, including all instrumentalities, facilities, apparatus, and services * * * incidental to such transmission."

5. Applying these definitions to the facts at hand, the Commission finds that, leasing bare space segment capacity, under these circumstances, does not constitute a common carrier service, because the satellite operator "merely provid[es] its customer with the exclusive right to transmit to a specified piece of hardware on the satellite." Therefore, entities, including COMSAT, are not required to include revenues derived from leasing bare space segment capacity in determining their TRS contributions. This would normally end our inquiry and the refunds in issue could be ordered.

6. But because Congress mandated that COMSAT be regulated as a common carrier pursuant to section 401 of the Communications Satellite Act of 1962 (Satellite Act), a question exists about COMSAT's eligibility for refunds. All of the services COMSAT provides, even though some or all of them may involve the leasing of bare space segment capacity, are regulated as common carrier (*i.e.*, telecommunications) services under Title II of the Act. Does this fact mean that revenues from COMSAT's lease of bare space segment capacity, which is treated as common carriage due to section 401 of the Satellite Act, must be included in COMSAT's TRS contribution calculations? For the reasons given, the Commission concludes that section 401 does not require that COMSAT include revenues derived from leasing bare space segment capacity in determining its TRS contributions.

7. The Satellite Act authorized the formation of COMSAT and generally tasked it with the establishment of a single global telecommunications satellite system, which came to be known as INTELSAT. The Commission, in turn, was generally tasked by Congress to oversee COMSAT's implementation of the Satellite Act. Section 401 makes clear that the Commission was to exercise its statutory authority under the Communications Act to assure that COMSAT carried out the obligations imposed on it by Congress. The Commission was also to ensure "nondiscriminatory use of, and equitable access to" INTELSAT space segment "under just and reasonable charges, classifications, practices, regulations, and other conditions." The common carrier regulation implemented pursuant to authority of section 401 over services COMSAT provides (even those such as lease of bare space segment capacity) afforded an effective and proven means to oversee COMSAT's special role and further the goals of the Satellite Act.

8. By contrast, a decision to treat COMSAT's lease of bare space segment capacity as common carriage (telecommunications service) for the purpose of contributions to the TRS Fund, does not even pertain to COMSAT's special role or advance any goals of the Satellite Act. Therefore, it would be unreasonable to read into section 401 or any other Satellite Act provision a requirement that the contributions in issue be made to the TRS Fund. Because COMSAT's TRS contributions, paid under protest subject to the pending challenge, were not, in fact, required by the Communications Act, Satellite Act, or the Commission's rules, the Commission grants COMSAT's request for a refund and direct NECA to refund the full amount of COMSAT's prior contributions based on the provision of leased bare space segment capacity.

III. Ordering Clause

9. It is ordered, pursuant to section 5(c)(5) of the Communications Act of 1934, as amended, 47 U.S.C. 155(c)(5), and § 1.115 of the Commission's rules, that the Application for Review filed on March 17, 1995 by COMSAT Corporation, through its business unit, COMSAT World Systems, is granted.

10. *It is further ordered that* NECA refund to COMSAT World Systems its contributions to the Telecommunications Relay Services fund in the amount of $503,201.51.

Federal Communications Commission.

William F. Caton,

Deputy Secretary.

[FR Doc. 03–11848 Filed 5–12–03; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL DEPOSIT INSURANCE CORPORATION

Sunshine Act; Notice of Agency Meeting

Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C. 552b), notice is hereby given that at 5:02 p.m. on Thursday, May 8, 2003, the Board of Directors of the Federal Deposit Insurance Corporation met in closed session to consider matters relating to the Corporation's resolution activities.

In calling the meeting, the Board determined, on motion of Vice Chairman John M. Reich, seconded by Director John D. Hawke, Jr. (Comptroller of the Currency), concurred in by Director James E. Gilleran (Director, Office of Thrift Supervision), and Chairman Donald E. Powell, that Corporation business required its consideration of the matters on less than seven days' notice to the public; that no earlier notice of the meeting was practicable; that the public interest did not require consideration of the matters in a meeting open to public observation; and that the matters could be considered in a closed meeting by authority of subsections (c)(4), (c)(6), (c)(8), (c)(9)(A)(ii), and (c)(9)(B) of the "Government in the Sunshine Act" (5 U.S.C. 552b(c)(4), (c)(6), (c)(8), (c)(9)(A)(ii), and (c)(9)(B)).

The meeting was held in the Board Room of the FDIC Building located at 550—17th Street, NW., Washington, DC.

Dated: May 8, 2003.

Federal Deposit Insurance Corporation.

Robert E. Feldman,

Executive Secretary.

[FR Doc. 03–11983 Filed 5–4–03; 11:24 am]

BILLING CODE 6714–01–M

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR Part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The application also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States. Additional information on all bank holding companies may be obtained from the National Information Center Web site at *www.ffiec.gov/nic/*.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than June 6, 2003.

A. Federal Reserve Bank of Richmond (A. Linwood Gill, III, Vice President) 701 East Byrd Street, Richmond, Virginia 23261-4528:

1. Tidelands Bancshares, Inc., Mount Pleasant, South Carolina; to become a bank holding company by acquiring 100 percent of the voting shares of Tidelands Bank, Mount Pleasant, South Carolina (in organization).

B. Federal Reserve Bank of Atlanta (Sue Costello, Vice President) 1000 Peachtree Street, N.E., Atlanta, Georgia 30303:

1. Central Georgia Banking Company, Cochran, Georgia; to become a bank holding company by acquiring 100 percent of the voting shares of State Bank of Cochran, Cochran, Georgia.

C. Federal Reserve Bank of Dallas (W. Arthur Tribble, Vice President) 2200 North Pearl Street, Dallas, Texas 75201-2272:

1. First Crockett Bancshares, Inc., Crockett, Texas, and Crockett Delaware Bancshares, Inc., Wilmington, Delaware; to become bank holding companies by acquiring 100 percent of the voting shares of First National Bank of Crockett, Crockett, Texas.

Board of Governors of the Federal Reserve System, May 7, 2003.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. 03–11826 Filed 5–12–03; 8:45 am]

BILLING CODE 6210–01–S

FEDERAL RESERVE SYSTEM

Sunshine Act Meeting Notice

Agency Holding the Meeting: Board of Governors of the Federal Reserve System.

TIME AND DATE: 11 a.m., Monday, May 19, 2003.

PLACE: Marriner S. Eccles Federal Reserve Board Building, 20th and C Streets, NW., Washington, DC 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.

2. Any items carried forward from a previously announced meeting.

FOR FURTHER INFORMATION CONTACT: Michelle A. Smith, Assistant to the Board; 202–452–2955.

SUPPLEMENTARY INFORMATION: You may call 202–452–3206 beginning at approximately 5 p.m. two business days before the meeting for a recorded announcement of bank and bank holding company applications scheduled for the meeting; or you may contact the Board's Web site at *http://www.federalreserve.gov* for an electronic announcement that not only lists applications, but also indicates procedural and other information about the meeting.

Dated: May 9, 2003.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. 03–12005 Filed 5–9–03; 12:23 pm]

BILLING CODE 6210–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

Emergency Public Information and Communications Advisory Committee; Notice of Meetings

Pursuant to section 10(a) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is given of series of three meetings of the Emergency Public Information and Communications Advisory Committee.

The purpose of these public meetings is to convene the Committee to discuss issues related to the appropriate ways to communicate public health information regarding bioterrorism and other public health emergencies to the nation. Major areas to be considered by the Committee at these meetings may include the following: an assessment of current practices within the public health community for communicating with the public regarding threats posed by bioterrorism and other public health emergencies, identification of those particular practices that warrant broad use and how such use might best be encouraged within the nation's public health community, and determination of where new or improved communication strategies and methods are needed and how they might best be developed.

Name of Committee: Emergency Public Information and Communications Advisory Committee.

Dates: June 2–3, 6 and 9.

Times:

June 2—10 a.m.–5:30 p.m. EDT
June 3—9 a.m.–3:30 p.m. EDT
June 6—1 p.m.–4 p.m. EDT
June 10—1 p.m.–4 p.m. EDT

Place: U.S. Department of Health and Human Services, Hubert H. Humphrey Building, 200 Independence Ave. SW., Washington, DC 20201.

Conference Call Number: June 6 and 10, dial 888–942–8131, password: EPIC.

Contact Person: Shellie Abramson, Office of the Assistant Secretary for Public Emergency Preparedness, 200 Independence Ave. Room 625G, Washington, DC 20201, 202–205–4729.

SUPPLEMENTARY INFORMATION:

Emergency Public Information and Communications Advisory Committee was established on March 26, 2003 by the Secretary of Health and Human Services under the authorization of Public Law 107–188 section 104(a) dated June 12, 2002, which amended section 319F of the Public Health Services Act. The purpose of the Emergency Public Information and Communications Advisory Committee will be to advise the Secretary on the appropriate ways to communicate public health information regarding bioterrorism and other public health emergencies to the nation. The function of the Committee is to advise the Secretary regarding steps the U.S. Department of Health and Human Services can take to improve communications with the public regarding threats posed by bioterrorism and other public health emergencies.

Public Participation

The meetings are open to the public with attendance limited by the availability of space on a first come, first served basis. Members of the public who wish to attend the meeting may register by emailing *EPIC@hhs.gov* no later than close of business, day, May 23, 2003.

Opportunities for oral statements by the public will be provided on June 2, 2003, from 5 p.m.–5:30 p.m. (Time approximate). Oral comments will be limited to 5 minutes, three minutes to make a statement and two minutes to respond to questions from Council members. Due to time constraints, only one representative from each organization will be allotted time for oral testimony. The number of speakers and the time allotment may also be limited by the number of registrants. Members of the public who wish to present oral comments at the meeting may register by emailing *EPIC@hhs.gov* no later than close of business, day, May 23, 2003. All requests to present oral comments should include the name, address, telephone number, and business or professional affiliation of the interested party, and should indicate the areas of interest or issue to be addressed.

Any person attending the meeting who has not registered to speak in advance of the meeting will be allowed to make a brief oral statement during the time set aside for public comment if time permits and at the Chairperson's discretion. Individuals unable to attend the meeting, or any interested parties, may send written comments by e-mail to *EPIC@hhs.gov* for inclusion in the public record no later than close of business, day, May 23, 2003.

When mailing written comments, please provide your comments, if possible, as an electronic version or on a diskette. Persons needing special assistance, such as sign language interpretation or other special accommodations, should contact staff at the address and telephone number listed above no later than close of business, day, May 23, 2003.

The public can gain access to the conference call meetings by dialing toll-free, 888–942–8131 and using the conference call password EPIC. At the end of the committee conference calls, the line will be opened 30 minutes to take questions or brief comments from the public.

Jerome M. Hauer,

Assistant Secretary for Public Health Emergency Preparedness (Acting).

[FR Doc. 03–11819 Filed 5–12–03; 8:45 am]

BILLING CODE 4168–17–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[Program Announcement 03127]

Cooperative Agreement With the University of Malawi College of Medicine; Notice of Intent To Fund Single Eligibility Award

A. Purpose

The Centers for Disease Control and Prevention (CDC) announces the intent to fund fiscal year (FY) 2003 funds for a cooperative agreement program with the University of Malawi, College of Medicine, located in Blantyre, Malawi. The Catalog of Federal Domestic Assistance number for this program is 93.283.

B. Eligible Applicant

Assistance will be provided only to the University of Malawi, College of Medicine. The University of Malawi, College of Medicine is the only institution that possesses the requisite scientific and technical expertise, the infrastructure capacity and experience in conducting the described operations research topics, and which has collaborative relationships within Malawi and internationally to ensure that all aspects of this agreement can be fulfilled.

C. Funding

Approximately $125,000 is available in FY 2003 to fund this award. It is expected that the award will begin on or before September 1, 2003, and will be made for a 12-month budget period within a project period of up to five years. Funding estimates may change.

D. Where To Obtain Additional Information

For general comments or questions about this announcement, contact: Technical Information Management, CDC Procurement and Grants Office, 2920 Brandywine Road, Atlanta, GA 30341–4146, *Telephone:* (770) 488–2700.

For technical questions about this program, contact: Carl Campbell, Program Manager, Blantyre Integrated Malaria Initiative, Blantyre District Health Office, Blantyre, Malawi, *Telephone:* (265) 167–6071 or (265) 883–2614, *Email address: cdc@malawi.net.*

Dated: May 7, 2003.

Sandra R. Manning, CGFM,

Director, Procurement and Grants Office, Centers for Disease Control and Prevention.

[FR Doc. 03–11870 Filed 5–12–03; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[Program Announcement 03128]

Development of Medical-Specialty Specific Antimicrobial Resistance Educational Materials—Internet-Based Educational Module; Notice of Availability of Funds

Application Deadline: June 27, 2003.

A. Authority and Catalog of Federal Domestic Assistance Number

This program is authorized under section 301(a) and 317(k)(2) of the Public Health Service Act, (42 U.S.C. 241(a) and 247b(k)(2)), as amended. The Catalog of Federal Domestic Assistance number is 93.283.

B. Purpose

The Centers for Disease Control and Prevention (CDC) announces the availability of fiscal year (FY) 2003 funds for a cooperative agreement program for the Development of Medical-Specialty Specific Antimicrobial Resistance Educational Materials—Internet-Based Educational Module. This program addresses the "Healthy People 2010" focus area Immunization and Infectious Diseases.

The purpose of the program is to develop and evaluate a comprehensive educational program for the medical specialty of Hospitalists that will employ multiple delivery methods, including an electronic educational module, sessions at national meetings, and publications in a specialty-related journal.

Measurable outcomes of the program will be in alignment with the following performance goal for the National Center for Infectious Diseases (NCID): Reduce the spread of antimicrobial resistance.

C. Eligible Applicants

Applications may be submitted by public and private nonprofit organizations and by governments and their agencies, that is:

- Public nonprofit organizations.
- Private nonprofit organizations.
- Small, minority, women-owned businesses.
- Universities.
- Colleges.
- Research institutions.
- Hospitals.
- Community-based organizations.
- Faith-based organizations.
- Federally recognized Indian tribal governments.
- Indian tribes.
- Indian tribal organizations.
- State and local governments or their bona fide agents (this includes the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, the Commonwealth of the Northern Marianna Islands, American Samoa, Guam, the Federated States of Micronesia, the Republic of the Marshall Islands, and the Republic of Palau).
- Political subdivisions of States (in consultation with States).

Note: Title 2 of the United States Code section 1611 states that an organization described in section 501(C)(4) of the Internal Revenue Code that engages in lobbying activities is not eligible to receive Federal funds constituting an award, grant or loan.

D. Funding

Availability of Funds

Approximately $70,000 is available in FY 2003 to fund one award. It is expected that the award will begin on or about September 15, 2003 and will be made for a 12-month budget period within a project period of one year. The funding estimate may change.

Recipient Financial Participation

Matching funds are not required for this program.

Funding Preferences

Due to the scope of the project, which seeks to apply effective interventions on a large scale, develop educational materials specifically for Hospitalists, and distribute materials to Hospitalists in an effective manner, funding preference will be given to national organizations that have the medical specialty of Hospitalists as their primary audience.

E. Program Requirements

In conducting activities to achieve the purpose of this program, the recipient will be responsible for the activities listed in 1. Recipient Activities, and CDC will be responsible for the activities listed in 2. CDC Activities.

1. Recipient Activities

a. Recruit and assemble an advisory board.

b. Conduct a needs assessment to determine information gaps among Hospitalists related to antimicrobial resistance.

c. Review existing educational materials and tools on antimicrobial resistance, and modify or create new tools for Hospitalists (with learning objectives) based on needs assessment results.

d. Develop a quality improvement "toolbox" of interventions shown to be successful.

e. Distribute educational materials and the quality improvement "toolbox" through a variety of avenues, including web-based, annual meetings, and journals.

f. Monitor and evaluate the impact of the educational materials and interventions from the "toolbox". Collect follow up data on the problems of implementing the educational program and "toolbox" interventions, the lessons learned, acceptability to Hospitalists, and antimicrobial resistance incidence at intervention institutions.

g. Assist with data analysis, and preparation of a report or manuscript related to the overall project.

2. CDC Activities

a. Provide the funding recipient with existing CDC antimicrobial resistance educational materials for inclusion in development of educational materials for Hospitalists.

b. Actively participate in the advisory board that oversees the creation and approval of content for the "toolbox" and educational materials.

c. Actively participate in the development of survey and other data collection tools for both the educational materials and the "toolbox" interventions.

d. Assist with data analysis and preparation of a report or manuscript related to the overall project.

e. Assist in the development of a research protocol for Institutional Review Board (IRB) review by all cooperating institutions participating in the research project. The CDC IRB will review and approve the protocol initially and on at least an annual basis until the research project is completed.

F. Content

Applications

The Program Announcement title and number must appear in the application.

Use the information in the Program Requirements, Other Requirements, and Evaluation Criteria sections to develop the application content. Your application will be evaluated on the criteria listed, so it is important to follow them in laying out your program plan. The narrative should be no more than 25 pages, double-spaced, printed on one side, with one-inch margins, and unreduced 12-point font.

The narrative should consist of, at a minimum, a Plan, Objectives, Methods, Evaluation and Budget. Additionally, include a one page, single spaced, typed abstract. The heading should include the title of the cooperative agreement, project title, organization, name and address, project director, and telephone number. This abstract should include a work plan identifying activities to be developed, activities to be completed, and a time line for completion of these activities.

G. Submission and Deadline

Application Forms

Submit the signed original and two copies of PHS 5161–1 (OMB Number 0920–0428). Forms are available at the following Internet address: *http://www.cdc.gov/od/pgo/forminfo.htm*.

If you do not have access to the Internet, or if you have difficulty accessing the forms on-line, you may contact the CDC Procurement and Grants Office Technical Information Management Section (PGO–TIM) at: 770–488–2700. Application forms can be mailed to you.

Submission Date, Time, and Address

The application must be received by 4 p.m. Eastern Time June 27, 2003. Submit the application to: Technical Information Management—PA#03128, CDC Procurement and Grants Office, 2920 Brandywine Road, Atlanta, GA 30341–4146.

Applications may not be submitted electronically.

CDC Acknowledgment of Application Receipt:

A postcard will be mailed by PGO–TIM, notifying you that CDC has received your application.

Deadline

The applications shall be considered as meeting the deadline if they are received before 4 p.m. Eastern Time on the deadline date. Any applicant who sends their application by the United States Postal Service or commercial delivery services must ensure that the carrier will be able to guarantee delivery of the application by the closing date and time. If an application is received after closing due to (1) carrier error, when the carrier accepted the package with a guarantee for delivery by the closing date and time, or (2) significant weather delays or natural disasters, CDC will upon receipt of proper documentation, consider the application as having been received by the deadline.

Any application that does not meet the above criteria will not be eligible for competition, and will be discarded. The applicant will be notified of their failure to meet the submission requirements.

H. Evaluation Criteria

Application

Applicants are required to provide measures of effectiveness that will demonstrate the accomplishment of the various identified objectives of the cooperative agreement. Measures of effectiveness must relate to the performance goals stated in the purpose section of this announcement. Measures must be objective and quantitative and must measure the intended outcome. These measures of effectiveness must be submitted with the application and will be an element of evaluation.

An independent review group appointed by CDC will evaluate the application against the following criteria:

1. *Operational Plan* (40 total points)

a. The extent to which the applicant presents clear, time-phased objectives that are consistent with the stated program goal and a detailed operational plan outlining specific activities that are likely to achieve the objective. The extent to which the plan clearly outlines the responsibilities of each of the key personnel. (35 points)

b. Does the applicant adequately address the CDC Policy requirements regarding the inclusion of women, ethnic, and racial groups in the proposed research. This includes: (1) The proposed plan for the inclusion of both sexes and racial and ethnic minority populations for appropriate representation; (2) the proposed justification when representation is limited or absent; (3) a statement as to whether the design of proposed studies is adequate to measure differences when warranted; and (4) a statement as to whether the plans for recruitment and outreach for study participants include the process of establishing partnerships with community/ies and recognition of mutual benefits. (5 points)

2. *Background and Need* (30 points)

The extent to which the applicant demonstrates a strong understanding of developing, distributing, and evaluating educational and interventional tools specifically for the medical specialty of Hospitalists. The extent to which the applicant illustrates the need for this cooperative agreement program. The extent to which the applicant presents a clear goal for this cooperative agreement that is consistent with the described need.

3. *Capacity* (15 points)

The extent to which the applicant demonstrates that it has the expertise, facilities, and other resources necessary to accomplish the program requirements, including curricula vitae of key personnel and letters of support from any participating organizations/institutions.

4. *Evaluation Plan* (10 points)

The extent to which the applicant presents a plan for monitoring progress toward the stated goals and objectives.

5. *Measures of Effectiveness* (5 points)

Does the applicant provide Measures of Effectiveness that will demonstrate the accomplishment of the various identified objectives of the cooperative agreement? Are the measures objective/quantitative and do they adequately measure the intended outcome.

6. *Protection of Human Subjects* (Not scored)

The extent to which the application adequately addresses the requirements of Title 45 CFR Part 46 for the protection of human subjects. (Not scored; however, an application can be disapproved if the research risks are sufficiently serious and protection against risks is so inadequate as to make the entire application unacceptable.)

7. *Budget* (Not scored)

The extent to which the applicant presents a detailed budget with a line-item justification and any other information to demonstrate that the request for assistance is consistent with the purpose and objectives of this cooperative agreement program.

I. Other Requirements

Technical Reporting Requirements

Provide CDC with original plus two copies of:

1. Interim progress report, nd less than 90 days before the end of the budget period. The progress report will serve as your non-competing continuation application, and must contain the following elements:

a. Current Budget Period Activity Objectives.

b. Current Budget Period Financial Progress.

c. New Budget Period Program Proposed Activity Objectives.

d. Detailed Line-Item Budget and Justification.

e. Additional Requested Information.

2. Financial status report, no more than 90 days after the end of the budget period.

3. Final financial and performance reports, no more than 90 days after the end of the project period.

Send all reports to the Grants Management Specialist identified in the "Where to Obtain Additional Information" section of this announcement.

Additional Requirements

The following additional requirements are applicable to this program. For a complete description of each, *see* Attachment I of the program announcement, as posted on the CDC Web site.

AR–1 Human Subjects Requirements.
AR–2 Requirements for Inclusion of Women and Racial and Ethnic Minorities in Research.
AR–7 Executive Order 12372.
AR–9 Paperwork Reduction Act Requirements.
AR–10 Smoke Free Work Place Requirements.
AR–11 Healthy People 2010.
AR–12 Lobbying Restrictions.
AR–15 Proof of Non-Profit Status.

J. Where To Obtain Additional Information

This and other CDC announcements, the necessary applications, and associated forms can be found on the CDC Web site, Internet address: *http://www.cdc.gov*. Click on "Funding" then "Grants and Cooperative Agreements."

For general questions about this announcement, contact: Technical Information Management, CDC Procurement and Grants Office, 2920 Brandywine Road, Atlanta, GA 30341–4146, *Telephone:* 770–488–2700.

For business management and budget assistance, contact: Deborah Workman, Contract Specialist, Procurement and Grants Office, Centers for Disease Control and Prevention, 2920 Brandywine Road, Atlanta, GA 30341–4146, *Telephone:* 770–488–2085, *E-mail Address: atl7@cdc.gov*.

For program technical assistance, contact: Rachel Lawton, Division of Healthcare Quality Promotion, National Center for Infectious Diseases, Centers for Disease Control and Prevention, 57 Executive Park Drive South, Room 4048, Atlanta, GA 30333, *Telephone:* 404–498–1261, Fax: 404–498–1244, *E-mail: Rlawton@cdc.gov*.

Dated: May 6, 2003.

Sandra R. Manning,

Director, Procurement and Grants Office, Centers for Disease Control and Prevention.

[FR Doc. 03–11868 Filed 5–12–03; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Agency for Toxic Substances and Disease Registry

[Program Announcement 03012]

Public Health Conference Support Cooperative Agreement; Notice of Availability of Funds Amendment

A notice announcing the availability of Fiscal Year 2003 funds for a cooperative agreement program to support public health conferences was published in the **Federal Register** dated January 10, 2003, Volume 68, Number 7, pages 1463–1467. The notice is amended as follows: Page 1466, first column, section "G. Submission and Deadline," remove the Application due date of May 1, 2003, and replace with an application due date of May 22, 2003.

Dated: May 7, 2003.

Sandra R. Manning,

Director, Procurement and Grants Office, Centers for Disease Control and Prevention.

[FR Doc. 03–11863 Filed 5–12–03; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

National Vaccine Advisory Committee, Subcommittee on Future Vaccines, Subcommittee on Immunization Coverage, and Subcommittee on Vaccine Safety and Communication: Meetings

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), the Centers for Disease Control and Prevention (CDC) announces the following Federal advisory committee and subcommittee meetings.

Name: National Vaccine Advisory Committee (NVAC).

Times and Dates: 9 a.m.–2:15 p.m., June 3, 2003; 8:30 a.m.–3 p.m., June 4, 2003.

Place: Hubert H. Humphrey Building, Room 705A, 200 Independence Avenue, SW., Washington, DC 20201.

Status: Open to the public, limited only by the space available.

Notice: In the interest of security, the Department has instituted stringent procedures for entrance to the Hubert H. Humphrey Building by non-government employees. Thus, persons without a government identification card should plan to arrive at the building each day either between 8 a.m. and 8:30 a.m. or 12:30 p.m. and 1 p.m. Entrance to the meeting at other times during the day cannot be assured.

Purpose: This committee advises and makes recommendations to the Director of the National Vaccine Program on matters related to the Program responsibilities.

Matters to be Discussed: Agenda items will include: a report from the National Vaccine Program Office (NVPO); an update on the Smallpox Vaccination Program; a report from the Acting Assistant Secretary for Health; an update on vaccine supply issues; a report from the polio vaccine stockpile workgroup; a report on the Institute of Medicine (IOM) Vaccine Safety Review Committee; a report from the IOM on their review of the Smallpox Vaccination Program; a report from the Influenza Immunization Summit; an update on pandemic influenza planning; a report from the Immunization Coverage Subcommittee, the Future Vaccines Subcommittee, and the Vaccine Safety and Communication Subcommittee; a discussion of compensation for vaccine administration; a discussion on Enhancing Public Participation in Immunization Decision-Making; a report from the Workgroup on Public Health Options for Implementing Immunization Recommendations; a report from the Polio Laboratory Containment Workgroup; a discussion of monitoring anthrax vaccine adverse events using the Department of Defense Medical Surveillance System; reports from the Advisory Commission on Childhood Vaccines/Division of Vaccine Injury Compensation, the Vaccine Related Biological Products Advisory Committee/Food and Drug Administration, and the Advisory Committee on Immunization Practices/National Immunization Program/National Center for Infectious Diseases.

Name: Subcommittee on Future Vaccines.

Time and Date: 2:30 p.m.–5 p.m., June 3, 2003.

Place: Hubert H. Humphrey Building, Room 405A, 200 Independence Avenue, SW., Washington, DC 20201.

Status: Open to the public, limited only by the space available.

Purpose: This subcommittee develops policy options and guides national activities that lead to accelerated development, licensure, and the best use of new vaccines in the simplest possible immunization schedules.

Matters to be Discussed: Agenda items will include an update on the proposed pneumococcal meeting; an update on the newborn vaccination meeting; CMV status report; and a presentation on Group A Steptococcus vaccines.

Name: Subcommittee on Immunization Coverage.

Time and Date: 2:30 p.m.–5 p.m., June 3, 2003.

Place: Hubert H. Humphrey Building, Room 705A, 200 Independence Avenue, SW., Washington, DC 20201.

Status: Open to the public, limited only by the space available.

Purpose: This subcommittee identifies and proposes solutions that provide a multifaceted and holistic approach to

reducing barriers that result in low immunization coverage for children.

Matters to be Discussed: Agenda items will include an update on publication of the newly revised Adult and Pediatric Immunization Standards; a discussion of adolescent immunization; Immunization Registries—Updates on the use of VFC funds for registry development standards of excellence; PCV7 update on impact of shortage on coverage and active bacterial core surveillance; a discussion of the draft report from the Workgroup on Public Health Options for Implementing Immunization Recommendations; updates on pneumococcal and influenza coverage; and a review of data on the burden of pneumococcal disease.

Name: Subcommittee on Vaccine Safety and Communication.

Time and Date: 2:30 p.m.–5 p.m., June 3, 2003.

Place: Hubert H. Humphrey Building, Room 425A, 200 Independence Avenue, SW., Washington, DC 20201.

Status: Open to the public, limited only by the space available.

Purpose: This subcommittee reviews issues relevant to vaccine safety and adverse reactions to vaccines.

Matters to be Discussed: Next Steps in Risk Communication: Reviews of IOM Immunization Safety Review Committee Recommendations, and of NVPO Workshop Recommendations; a discussion of the influenza communications programs; a discussion of next topics for the IOM Safety Review Committee; a review of the National Immunization Program Website; and, an update on thimerosal-related litigation.

Agenda items are subject to change as priorities dictate.

Contact Person for More Information: Gloria Sagar, Committee Management Specialist, NVPO, CDC, 4700 Buford Highway M/S K–77, Chamblee, Georgia 30341, telephone 770/488–2040.

The Director, Management Analysis and Services Office, has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities, for both CDC and the Agency for Toxic Substances and Disease Registry.

Dated: May 7, 2003.

Alvin Hall,

Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.

[FR Doc. 03–11877 Filed 5–12–03; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 97N–0449]

Agency Information Collection Activities; Announcement of OMB Approval; Revisions to the General Safety Requirements for Biological Products

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that a collection of information entitled "Revisions to the General Safety Requirements for Biological Products" has been approved by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995.

FOR FURTHER INFORMATION CONTACT: JonnaLynn P. Capezzuto, Office of Information Resources Management (HFA–250), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–4659.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of March 4, 2003 (68 FR 10157), the agency announced that the proposed information collection had been submitted to OMB for review and clearance under 44 U.S.C. 3507. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. OMB has now approved the information collection and has assigned OMB control number 0910–0504. The approval expires on April 30, 2006. A copy of the supporting statement for this information collection is available on the Internet at http://www.fda.gov/ohrms/dockets.

Dated: May 6, 2003.

Jeffrey Shuren,

Assistant Commissioner for Policy.

[FR Doc. 03–11772 Filed 5–12–03; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 03N–0034]

Agency Information Collection Activities; Submission for OMB Review; Comment Request; FDA Safety Alert/Public Health Advisory Readership Survey

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that the proposed collection of information listed below has been submitted to the Office of Management and Budget (OMB) for review and clearance under the Paperwork Reduction Act of 1995.

DATES: Fax written comments on the information collection by June 12, 2003.

ADDRESSES: OMB is still experiencing significant delays in the regular mail, including first class and express mail, and messenger deliveries are not being accepted. To ensure that comments on the information collection are received, OMB recommends that written comments be electronically mailed to sshapiro@omb.eop.gov or faxed to the Office of Information and Regulatory Affairs, OMB, Attn: Stuart Shapiro, Desk Officer for FDA, FAX: 202–395–6974.

FOR FURTHER INFORMATION CONTACT: Peggy Robbins, Office of Information Resources Management (HFA–250), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–1223.

SUPPLEMENTARY INFORMATION: In compliance with 44 U.S.C. 3507, FDA has submitted the following proposed collection of information to OMB for review and clearance.

FDA Safety Alert/Public Health Advisory Readership Survey (OMB Control Number 0910–0341)—Extension

Section 705(b) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 375(b)) authorizes FDA to disseminate information concerning imminent danger to public health by any regulated product. The Center for Devices and Radiological Health (CDRH) communicates these risks to user communities through two publications: (1) The FDA Safety Alert and (2) the Public Health Advisory. Safety alerts and advisories are sent to organizations such as hospitals, nursing homes, hospices, home health care agencies, manufacturers, retail pharmacies, and other health care providers. Subjects of previous alerts included spontaneous combustion risks in large quantities of patient examination gloves, hazards associated with the use of electric heating pads, and retinal photic injuries from operating microscopes during cataract surgery.

Section 1701(a)(4) of the Public Health Service Act (42 U.S.C. 300u(a)(4)) authorizes FDA to conduct research relating to health information. FDA seeks to evaluate the clarity, timeliness, and impact of safety alerts and public health advisories by surveying a sample of recipients. Subjects will receive a questionnaire to be completed and returned to FDA. The information to be collected will address how clearly actions for reducing risk are explained, the timeliness of the information, and whether the reader has taken any action to eliminate or reduce risk as a result of information in the alert. Subjects will also be asked whether they wish to receive future alerts electronically, as well as how the safety alert program might be improved.

The information collected will be used to shape FDA's editorial policy for the safety alerts and public health advisories. Understanding how target audiences view these publications will aid in deciding what changes should be considered in their content, format, and method of dissemination.

FDA estimates the burden of this collection of information as follows:

TABLE 1.—ESTIMATED ANNUAL RECORDKEEPING BURDEN[1]

No. of Respondents	Annual Frequency per Response	Total Annual Records	Hours per Response	Total Hours
308	3	924	.17	157

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

Based on the history of the safety alert and public health advisory program, it is estimated that an average of three collections will be conducted a year. The total burden of response time is estimated at 10 minutes per survey. This was derived by CDRH staff completing the survey and through discussions with the contacts in trade organizations.

Dated: May 6, 2003.

Jeffrey Shuren,

Assistant Commissioner for Policy.

[FR Doc. 03–11773 Filed 5–12–03; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 01D–0224]

Guidance for Industry: Mass Spectrometry for Confirmation of the Identity of Animal Drug Residues; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of a guidance (#118) entitled "Guidance For Industry: Mass Spectrometry for Confirmation of the Identity of Animal Drug Residues." This guidance describes the basic principles the agency recommends for development, evaluation, or application of qualitative mass spectrometric methods for confirming the identity of new animal drug residues. This guidance document is intended for technical professionals familiar with mass spectrometry. A glossary at the end of the guidance defines key terms used throughout the document.

DATES: Submit written or electronic comments on agency guidances at any time.

ADDRESSES: Submit written requests for single copies of the guidance document to the Communications Staff (HFV–12), Center for Veterinary Medicine, Food and Drug Administration, 7519 Standish Pl., Rockville, MD 20855. Send one self-addressed adhesive label to assist that office in processing your requests. Submit written comments on the guidance document to the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. Submit electronic comments to http://www.fda.gov/dockets/ecomments. Once on this site, select "Docket No. 01D–0224 Guidance for Industry: Mass Spectrometry for Confirmation of the Identity of Animal Drug Residues" and follow the directions. Comments should be identified with the full title of the guidance document and the docket number found in the heading of this document. See the **SUPPLEMENTARY INFORMATION** section for electronic access to the guidance document.

FOR FURTHER INFORMATION CONTACT: David N. Heller, Center for Veterinary Medicine (HFV–510), Food and Drug Administration, 8401 Muirkirk Rd., Laurel, MD 20708, 301–827–8156, e-mail: dheller@cvm.fda.gov.

SUPPLEMENTARY INFORMATION:

I. Background

In the **Federal Register** of June 13, 2001 (66 FR 31938), FDA published a notice of availability for a draft guidance entitled "Draft Guidance for Industry: Mass Spectrometry for Confirmation of the Identity of Animal Drug Residues" giving interested persons until September 11, 2001, to submit comments. FDA considered all comments received and, where appropriate, incorporated them into the guidance. The guidance differs from the draft guidance in the following ways:

- There is further clarification of interference testing, control samples, system suitability, minimum signal strength in full scan analysis, recommended rate of false negatives, and number of residue-incurred samples for validation. (The recommendation in the 1994 revision of CVM Guidance #3 for a smaller number of incurred samples for interlaboratory method trials has not been CVM's practice for some years. CVM is currently revising Guidance #3.)
- Additional definitions were provided for comparison standard, control sample exact mass measurement, false positive rate, false negative rate, limit of confirmation, and validation. Other revisions in the glossary definitions were made to make the definitions consistent with definitions in existing regulations.
- Use of the terms "acceptability range" and "precursor ion" is now consistent.
- General recommendations on the subject of exact mass measurements have been added. Until specific standards for exact mass measurements in animal drug residue analysis are generally accepted, their use will be evaluated on a case-by-case basis. The Center for Veterinary Medicine (CVM) of FDA may modify this document if a more generally accepted standard for confirmation of animal drug residues using exact mass measurements is developed in the future.

The purpose of this guidance document is to facilitate and expedite coordination between CVM and sponsors so the development, evaluation, and application of qualitative mass spectrometric methods will be completed in a consistent and timely manner. This guidance document is intended for technical professionals familiar with mass spectrometry. A glossary at the end of the guidance defines key terms used throughout the document.

This guidance should be used: (1) In the development of new methods, (2) the review of methods submitted to

CVM, and (3) in the laboratory trial of methods submitted to CVM. The document should also help in making decisions about appropriate methodology in various regulatory situations and ensuring consistency in work done for CVM's purposes.

Information collection provisions described in this guidance have been approved under OMB control numbers 0910–0032 and 0910–0325.

II. Significance of Guidance

This level 1 guidance is being issued consistent with FDA's good guidance practices regulation (21 CFR 10.115). The guidance represents the agency's animal drug residues. The document does not create or confer any rights for or on any person and does not operate to bind FDA or the public. Alternative methods may be used as long as they satisfy the requirements of the applicable statutes and regulations.

III. Comments

As with all of FDA's guidance, the public is encouraged to submit written or electronic comments with new data or other new information pertinent to this guidance. FDA periodically will review the comments in the docket and, where appropriate, will amend the guidance. The public will be notified of any such amendments through a notice in the **Federal Register**.

Interested persons may submit to the Dockets Management Branch (see **ADDRESSES**) written or electronic comments on the guidance at any time. Two copies of mailed comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. The guidance and received comments are available for public examination in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

IV. Electronic Access

Persons with access to the Internet may obtain the document at http://www.fda.gov/cvm.

Dated: May 5, 2003.

Jeffrey Shuren,

Assistant Commissioner for Policy.

[FR Doc. 03–11771 Filed 5–12–03; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HOMELAND SECURITY

Submission for OMB Emergency Review; Comment Request

AGENCY: Office of the Under Secretary for Management, Homeland Security.

DATES: May 7, 2003.

SUMMARY: The Department of Homeland Security (DHS) has submitted the following (*see* below) information collection request (ICR), utilizing emergency review procedures, to the Office of Management and Budget (OMB) for review and clearance in accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. chapter 35), as amended by the Clinger-Cohen Act (Pub. L. 104–106). OMB approval has been requested by May 13, 2003. A copy of this ICR, with applicable supporting documentation, may be obtained by calling the Department of Homeland Security, Theresa M. O'Mally ((202) 722–9686).

Comments: Comments and questions about the ICR listed below should be forwarded to the Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for Homeland Security, Office of Management and Budget, Room 10235, Washington, DC 20503 ((202) 395–7316). The Office of Management and Budget is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarify of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submissions of responses.

Analysis

Agency: Department of Homeland Security, Under Secretary of Management, Office of the Chief Information Officer.

Title: Vendor Information Site.

OMB Number: 1600—new collection.

Frequency: On occasion.

Affected Public: Individuals or households; businesses or other for-profit; not-for-profit institutions; farms; State, local or tribal government.

Number of Respondents: 20,000.

Estimated Time Per Respondent: 30 minutes for startup; 30 minutes for maintaining.

Total Burden Hours: 20,000.

Total Burden Cost (capital/startup): $25.00 per respondent; $500,000 annually.

total Burden Cost (operating/maintaining): $25.00 per respondent, $500,000 annually.

Description: This web-based Vendor Information Site information collection will provide a uniform voluntary way companies can provide descriptions of their product-and-service ideas to DHS for enhancing homeland security.

Steve I. Cooper,

Chief Information Officer.

[FR Doc. 03–11855 Filed 5–8–03; 12:16 pm]

BILLING CODE 4410–10–M

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[FEMA–1459–DR]

Mississippi; Major Disaster and Related Determinations

AGENCY: Federal Emergency Management Agency, Emergency Preparedness and Response Directorate, Department of Homeland Security

ACTION: Notice.

SUMMARY: This is a notice of the Presidential declaration of a major disaster for the State of Mississippi (FEMA–1459–DR), dated April 24, 2003, and related determinations.

EFFECTIVE DATE: April 24, 2003.

FOR FURTHER INFORMATION CONTACT: Magda Ruiz, Recovery Division, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–2705.

SUPPLEMENTARY INFORMATION: Notice is hereby given that, in a letter dated April 24, 2003, the President declared a major disaster under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121–5206 (the Stafford Act), as follows:

I have determined that the damage in certain areas of the State of Mississippi, resulting from severe storms, tornadoes, and flooding on April 6–14, 2003, is of sufficient severity and magnitude to warrant a major disaster declaration under the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121–5206 (the Stafford Act). I, therefore, declare that such a major disaster exists in the State of Mississippi.

In order to provide Federal assistance, you are hereby authorized to allocate from funds available for these purposes, such amounts as you find necessary for Federal disaster assistance and administrative expenses.

You are authorized to provide Individual Assistance and Public Assistance in the designated areas, and Hazard Mitigation throughout the State. Consistent with the requirement that Federal assistance be supplemental, any Federal funds provided under the Stafford Act for Public Assistance, Hazard Mitigation, and the Other Needs Assistance under section 408 of the Stafford Act will be limited to 75 percent of the total eligible costs.

Further, you are authorized to make changes to this declaration to the extent allowable under the Stafford Act.

The time period prescribed for the implementation of section 310(a), Priority to Certain Applications for Public Facility and Public Housing Assistance, 42 U.S.C. 5153, shall be for a period not to exceed six months after the date of this declaration.

The Federal Emergency Management Agency (FEMA) hereby gives notice that pursuant to the authority vested in the Undersecretary for Emergency Preparedness and Response, Department of Homeland Security, under Executive Order 12148, as amended, Carlos Mitchell, of FEMA is appointed to act as the Federal Coordinating Officer for this declared disaster.

I do hereby determine the following areas of the State of Mississippi to have been affected adversely by this declared major disaster:

Amite, Attala, Claiborne, Clarke, Copiah, Franklin, Hinds, Holmes, Issaquena, Jasper, Jefferson, Kemper, Lauderdale, Lawrence, Leake, Lincoln, Madison, Neshoba, Newton, Pike, Rankin, Scott, Simpson, Smith, Walthall, Warren, Wayne, and Yazoo Counties for Individual Assistance.

Clarke, Hinds, Lauderdale, Lincoln, Madison, Newton, Scott, Warren, and Yazoo Counties for Public Assistance.

All counties within the State of Mississippi are eligible to apply for assistance under the Hazard Mitigation Grant Program.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 83.537, Community Disaster Loans; 83.538, Cora Brown Fund Program; 83.539, Crisis Counseling; 83.540, Disaster Legal Services Program; 83.541, Disaster Unemployment Assistance (DUA); 83.556, Fire Management Assistance; 83.558, Individual and Household Housing; 83.559, Individual and Household Disaster Housing Operations; 83.560 Individual and Household Program-Other Needs, 83.544, Public Assistance Grants; 83.548, Hazard Mitigation Grant Program)

Michael D. Brown,

Undersecretary Emergency Preparedness and Response.

[FR Doc. 03–11832 Filed 5–12–03; 8:45 am]

BILLING CODE 6718–02–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[FEMA–1453–DR]

Ohio; Amendment No. 6 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency, Emergency Preparedness and Response Directorate, Department of Homeland Security.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster declaration for the State of Ohio, (FEMA–1453–DR), dated March 14, 2003, and related determinations.

EFFECTIVE DATE: April 29, 2003.

FOR FURTHER INFORMATION CONTACT: Magda Ruiz, Recovery Division, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–2705.

SUPPLEMENTARY INFORMATION: The notice of a major disaster declaration for the State of Ohio is hereby amended to include the following area among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of March 14, 2003:

Miami County for emergency protective measures (Category B) under the Public Assistance program for a period of 48 hours.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 83.537, Community Disaster Loans; 83.538, Cora Brown Fund Program; 83.539, Crisis Counseling; 83.540, Disaster Legal Services Program; 83.541, Disaster Unemployment Assistance (DUA); 83.556, Fire Management Assistance; 83.558, Individual and Household Housing; 83.559, Individual and Household Disaster Housing Operations; 83.560, Individual and Household Program-Other Needs; 83.544, Public Assistance Grants; 83.548, Hazard Mitigation Grant Program)

Michael D. Brown,

Undersecretary, Emergency Preparedness and Response.

[FR Doc. 03–11834 Filed 5–12–03; 8:45 am]

BILLING CODE 6718–02–U

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[FEMA–1458–DR]

Virginia; Amendment No. 2 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency, Emergency Preparedness and Response Directorate, Department of Homeland Security.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster declaration for the Commonwealth of Virginia (FEMA–1458–DR), dated March 27, 2003, and related determinations.

EFFECTIVE DATE: April 28, 2003.

FOR FURTHER INFORMATION CONTACT: Magda Ruiz, Recovery Division, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–2705.

SUPPLEMENTARY INFORMATION: The Federal Emergency Management Agency (FEMA) hereby gives notice that pursuant to the authority vested in the Undersecretary for Emergency Preparedness and Response, Department of Homeland Security, under Executive Order 12148, as amended, Thomas Costello, of FEMA is appointed to act as the Federal Coordinating Officer for this declared disaster.

This action terminates my appointment of Justo Hernandez as Federal Coordinating Officer for this disaster.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 83.537, Community Disaster Loans; 83.538, Cora Brown Fund Program; 83.539, Crisis Counseling; 83.540, Disaster Legal Services Program; 83.541, Disaster Unemployment Assistance (DUA); 83.556, Fire Management Assistance; 83.558, Individual and Household Housing; 83.559, Individual and Household Disaster Housing Operations; 83.560 Individual and Household Program-Other Needs, 83.544, Public Assistance Grants; 83.548, Hazard Mitigation Grant Program)

Michael D. Brown,

Undersecretary, Emergency Preparedness and Response.

[FR Doc. 03–11833 Filed 5–12–03; 8:45 am]

BILLING CODE 6718–02–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4665–N–08]

Fourth Meeting of the Manufactured Housing Consensus Committee

AGENCY: Office of the Assistant Secretary for Housing—Federal Housing Commissioner, HUD.

ACTION: Notice of upcoming meeting.

SUMMARY: This notice sets forth the schedule and proposed agenda of an upcoming meeting of the Manufactured Housing Consensus Committee (the Committee). The meeting is open to the public and the site is accessible to individuals with disabilities.

DATES: The meetings will be held on Wednesday, May 28, 2003, from 8 a.m. to 5 p.m., Thursday, May 29, 2003, from 8 a.m. to 5 p.m., and Friday, May 30, 2003, 8 a.m. to 2 p.m.

ADDRESSES: These meetings will be held at the Radisson Hotel "Old Town", 901 North Fairfax Street, Alexandria, Virginia, telephone (703) 683–6000.

FOR FURTHER INFORMATION CONTACT: William W. Matchneer III, Administrator, Office of Manufactured Housing Programs, Office of Deputy Assistant Secretary for Regulatory Affairs and Manufactured Housing, Department of Housing and Urban Development, 451 7th Street SW., Washington, DC 20410, telephone (202) 708–6409 (this is not a toll-free number). Persons who have difficulty hearing or speaking may access this number via TTY by calling the toll-free Federal Information Relay Service at (800) 877–8339.

SUPPLEMENTARY INFORMATION: Notice of this meeting is provided in accordance with section 10(a)(2) of the Federal Advisory Committee Act (5 U.S.C. App.2) and 41 CFR 102–3.150. The Manufactured Housing Consensus Committee was established under section 604(a)(3) of the National Manufactured Housing Construction and Safety Standards Act of 1974, 42 U.S.C. 4503(a)(3). The Consensus Committee is charged with providing recommendations to the Secretary to adopt, revise, and interpret manufactured housing construction and safety standards and procedural and enforcement regulations, and with developing proposed model installation standards. The purpose of this meeting is to begin the development of proposed model manufactured home installation standards.

Tentative Agenda

A. Welcome and Opening Remarks
B. Presentation on In-plant Construction
C. Presentation on Installation
D. Installation Standards
E. Reports to Full Committee
  —Dispute Resolution
  —Standards up-date
  —On-site Completion
  —Installation Standards and Program Status
F. Public Testimony
G. Full Committee meeting
H. Adjournment

Dated: May 6, 2003.

Sean Cassidy,

General Deputy Assistant Secretary for Housing.

[FR Doc. 03–11904 Filed 5–12–03; 8:45 am]

BILLING CODE 4210–27–P

DEPARTMENT OF THE INTERIOR

Office of the Secretary

Exxon Valdez Oil Spill Trustee Council; Notice of Meeting

AGENCY: Office of the Secretary, Department of the Interior.

ACTION: Notice of meeting.

SUMMARY: The Department of the Interior, Office of the Secretary is announcing a public meeting of the *Exxon Valdez* Oil Spill Public Advisory Committee.

DATES: June 7, 2003, at 4 p.m.

ADDRESSES: Public Library, 201 Adams Street, Cordova, Alaska.

FOR FURTHER INFORMATION CONTACT: Douglas Mutter, Department of the Interior, Office of Environmental Policy and Compliance, 1689 "C" Street, Suite 119, Anchorage, Alaska, (907) 271–5011.

SUPPLEMENTARY INFORMATION: The Public Advisory Committee was created by Paragraph V.A.4 of the Memorandum of Agreement and Consent Decree entered into by the United States of America and the State of Alaska on August 27, 1991, and approved by the United States District Court for the District of Alaska in settlement of *United States of America* v. *State of Alaska*, Civil Action No. A91–081 CV. The meeting agenda will feature discussions about the status of the Gulf of Alaska Ecosystem Monitoring and Research program.

Willie R. Taylor,

Director, Office of Environmental Policy and Compliance.

[FR Doc. 03–11812 Filed 5–12–03; 8:45 am]

BILLING CODE 4310–RG–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Receipt of Applications for Permit

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of Receipt of Applications for Permit.

SUMMARY: The public is invited to comment on the following applications to conduct certain activities with endangered species and/or marine mammals.

DATES: Written data, comments or requests must be received by June 12, 2003.

ADDRESSES: Documents and other information submitted with these applications are available for review, subject to the requirements of the Privacy Act and Freedom of Information Act, by any party who submits a written request for a copy of such documents within 30 days of the date of publication of this notice to: U.S. Fish and Wildlife Service, Division of Management Authority, 4401 North Fairfax Drive, Room 700, Arlington, Virginia 22203; fax 703/358–2281.

FOR FURTHER INFORMATION CONTACT: Division of Management Authority, telephone 703/358–2104.

SUPPLEMENTARY INFORMATION:

Endangered Species

The public is invited to comment on the following application(s) for a permit to conduct certain activities with endangered species. This notice is provided pursuant to Section 10(c) of the Endangered Species Act of 1973, *as amended* (16 U.S.C. 1531, *et seq.*). Written data, comments, or requests for copies of these complete applications should be submitted to the Director (address above).

Applicant: New York State Museum, Albany, NY, PRT–059244.

The applicant requests a permit to import biological samples from ocelot (*Leopardus pardalis*), margay (*Leopardus wiedii*), jaguar (*Panthera onca*), and Costa Rican puma (*Puma concolor costaricensis*) collected in the wild in central Panama, for scientific research. This notification covers activities to be conducted by the applicant over a five year period.

Applicant: Albuquerque Biological Park, Albuquerque, NM, PRT–067101.

The applicant requests a permit to import two male captive-born Asian elephants (*Elephas maximus*) from African Lion Safari, Ontario, Canada for the purpose of enhancement of the species through captive propagation and conservation education.

Endangered Marine Mammals and Marine Mammals

The public is invited to comment on the following application(s) for a permit to conduct certain activities with endangered marine mammals and/or marine mammals. The application(s) was/were submitted to satisfy requirements of the Endangered Species Act of 1973, *as amended* (16 U.S.C. 1531, *et seq.*) and/or the Marine Mammal Protection Act of 1972, *as amended* (16 U.S.C. 1361 *et seq.*), and the regulations governing endangered species (50 CFR part 17) and/or marine mammals (50 CFR part 18). Written data, comments, or requests for copies of the complete applications or requests for a public hearing on these applications should be submitted to the Director (address above). Anyone requesting a hearing should give specific reasons why a hearing would be appropriate. The holding of such a hearing is at the discretion of the Director.

Applicant: Paul L. Van Dam, Hamilton, MI, PRT–070875.

The applicant requests a permit to import a polar bear (*Ursus maritimus*) sport hunted from the Lancaster Sound polar bear population in Canada for personal use.

Applicant: Stanley D. Jager, Byron Center, MI, PRT–070876.

The applicant requests a permit to import a polar bear (*Ursus maritimus*) sport hunted from the Lancaster Sound polar bear population in Canada for personal use.

Applicant: Wayne F. Manis, Hayden Lake, ID, PRT–070952.

The applicant requests a permit to import a polar bear (*Ursus maritimus*) sport hunted from the Southern Beaufort Sea polar bear population in Canada for personal use.

Applicant: John J. Michelotti, Billings, MT, PRT–070954.

The applicant requests a permit to import a polar bear (*Ursus maritimus*) sport hunted from the Lancaster Sound polar bear population in Canada for personal use.

The U.S. Fish and Wildlife Service has information collection approval from OMB through March 31, 2004, OMB Control Number 1018–0093. Federal Agencies may not conduct or sponsor and a person is not required to respond to a collection of information unless it displays a current valid OMB control number.

Dated: April 25, 2003.

Michael S. Moore,

Senior Permit Biologist, Branch of Permits, Division of Management Authority.

[FR Doc. 03–11831 Filed 5–12–03; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Geological Survey

Scientific Earthquake Studies Advisory Committee

AGENCY: Geological Survey.

ACTION: Notice of meeting.

SUMMARY: Pursuant to Pub. L. 106–503, The Scientific Earthquake Studies Advisory Committee (SESAC) will hold its fourth meeting. The meeting location is the University of Southern California, 167 North Science Hall, Southern California Earthquake Center Board Room, Los Angeles, California 90089. The Committee is comprised of members from academia, industry, and State government. The Committee shall advise the Director of the U.S. Geological Survey (USGS) on matters relating to the USGS's participation in the National Earthquake Hazards Reduction Program.

The Committee will review the U.S. Geological Survey's National Earthquake Hazards Reduction Program earthquake hazard assessment activities in California. This will include a critique of the goals and objectives of the Program in California over the next 5 years in earthquake hazards assessments and in research on earthquake processes and effects.

Meetings of the Scientific Earthquake Studies Advisory Committee are open to the public.

DATES: June 11, 2003, commencing at 9 a.m. and adjourning at 4:30 p.m. on June 12, 2003.

FOR FURTHER INFORMATION CONTACT: Dr. John R. Filson, U.S. Geological Survey, 12202 Sunrise Valley Drive, Reston, Virginia 20192, (703) 648–6785.

Dated: April 29, 2003.

R.K. Kotra,

Acting Associate Director for Geology.

[FR Doc. 03–11923 Filed 5–12–03; 8:45 am]

BILLING CODE 4310–Y7–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[MT–070–03–1020–PG]

Notice of Public Meeting, Western Montana Resource Advisory Council Meeting

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of public meeting.

SUMMARY: In accordance with the Federal Land Policy and Management Act (FLPMA) and the Federal Advisory Committee Act of 1972 (FACA), the U.S. Department of the Interior, Bureau of Land Management (BLM), Western Montana Resource Advisory Council will meet as indicated below.

DATES: A meeting will be held July 9, 2003 at the BLM Butte Field Office, 106 North Parkmont, Butte, Montana beginning at 9 a.m. The public comment period will begin at 11:30 a.m. and the meeting will adjourn at noon to allow for an afternoon field trip.

SUPPLEMENTARY INFORMATION: The 15-member Council advises the Secretary of the Interior, through the Bureau of Land Management, on a variety of planning and management issues associated with public land management in western Montana. At the July 9 meeting, topics we plan to discuss include: an update on the Dillon Resource Management Plan, special recreation uses on the Blackfoot River, and proposed grazing regulation changes.

All meetings are open to the public. The public may present written comments to the Council. Each formal Council meeting will also have time allocated for hearing public comments. Depending on the number of persons wishing to comment and time available, the time for individual oral comments may be limited. Individuals who plan to attend and need special assistance, such as sign language interpretation, or other reasonable accommodations, should contact the BLM as provided below.

FOR FURTHER INFORMATION CONTACT: Marilyn Krause, Resource Advisory Council Coordinator, at the Butte Field Office, 106 North Parkmont, Butte, Montana 59701, telephone 406–533–7617 or Richard Hotaling, Field Manager, Butte Field Office, telephone 406–533–7600.

Dated: May 5, 2003.

Richard Hotaling,

Field Manager.

[FR Doc. 03–11862 Filed 5–12–03; 8:45 am]

BILLING CODE 4310–$$–P

DEPARTMENT OF THE INTERIOR

Minerals Management Service

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Minerals Management Service (MMS), Interior.

ACTION: Notice of an extension of a currently approved information collection (OMB Control Number 1010–0140).

SUMMARY: To comply with the Paperwork Reduction Act (PRA) of 1995, we are inviting comments on a collection of information that we will submit to the Office of Management and Budget (OMB) for review and approval. The information collection request (ICR) is titled "30 CFR part 210—Forms and Reports and Part 206—Product Valuation (Form MMS–2014, Report of Sales and Royalty Remittance)."

DATES: Submit written comments on or before July 14, 2003.

ADDRESSES: Submit written comments to Sharron L. Gebhardt, Regulatory Specialist, Minerals Management Service, Minerals Revenue Management, P.O. Box 25165, MS 320B2, Denver, Colorado 80225. If you use an overnight courier service, our courier address is Building 85, Room A–614, Denver Federal Center, Denver, Colorado 80225. You may also email your comments to us at *mrm.comments@mms.gov*. Include the title of the information collection and the OMB control number in the "Attention" line of your comment. Also include your name and return address. Submit electronic comments as an ASCII file avoiding the use of special characters and any form of encryption. If you do not receive a confirmation we have received your email, contact Ms. Gebhardt at (303) 231–3211.

FOR FURTHER INFORMATION CONTACT: Sharron L. Gebhardt, telephone (303) 231–3211, FAX (303) 231–3781 or email *sharron.gebhardt@mms.gov*.

SUPPLEMENTARY INFORMATION: *Title:* 30 CFR part 206—Product Valuation (Form MMS–2014, Report of Sales and Royalty Remittance).

OMB Control Number: 1010–0140.

Bureau Form Number: Form MMS–2014.

Abstract: The Secretary of the U.S. Department of the Interior (DOI) is responsible for collecting royalties from lessees who produce minerals from leased Federal and Indian lands. The Secretary is required by various laws to manage mineral resources production on Federal and Indian lands, collect the royalties due, and distribute the funds in accordance with those laws. The Secretary also has an Indian trust responsibility to manage Indian lands and seek advice and information from Indian beneficiaries. MMS performs the royalty management functions and assists the Secretary in carrying out DOI's Indian trust responsibility.

The Federal Oil and Gas Royalty Management Act (FOGRMA) of 1982, 30 U.S.C. 1701 *et seq.*, states in section 101(a) that the Secretary "* * * shall establish a comprehensive inspection, collection, and fiscal and production accounting and auditing system to provide the capability to accurately determine oil and gas royalties, interest, fines, penalties, fees, deposits, and other payments owed, and collect and account for such amounts in a timely manner." The persons or entities described at 30 U.S.C. 1713 are required to make reports and provide reasonable information as defined by the Secretary.

Form MMS–2014, Report of Sales and Royalty Remittance, is the only document used for reporting oil and gas royalties, certain rents, and other lease-related transactions to MMS (*e.g.*, transportation and processing allowances, lease adjustments, and quality and location differentials). These transactions represent only a few of the transactions identified for this form.

MMS is requesting OMB's approval to continue to collect information using Form MMS–2014. No proprietary information will be submitted to MMS under this collection. No items of a sensitive nature are collected. The requirement to respond is mandatory.

Frequency of Response: Monthly.

Estimated Number and Description of Respondents: 1,600 payors

Estimated Annual Reporting and Recordkeeping "Hour" Burden: 125,856 hours.

The following chart shows the breakdown of the estimated burden hours by CFR section and paragraph:

RESPONDENT ANNUAL BURDEN HOUR CHART

30 CFR Section Parts 210 and 206	Reporting requirement	Burden hours per response	Annual number of responses	Annual burden hours
210.20(a); 210.21(c)(1); 210.50; and 210.52(a)(1), (2), (b), (c), and (d); 210.354	You must submit Form MMS–2014 * * * to MMS electronically. * * * You must submit an electronic sample of your report for MMS approval * * * Records may be maintained in microfilm, microfiche, or other recorded media * * * You must submit a completed Form MMS–2014 (Report of Sales and Royalty Remittance) to MMS with (1) All royalty payments; and (2) Rents on nonproducing leases, . . . When you submit Form MMS–2014 data electronically, you must not submit the form itself; Completed Forms MMS–2014 for royalty payments are due by the end of the month following the production month; . . . completed Forms MMS–2014 for rental payments are due no later than the anniversary date of the lease. . . . . A completed Report of Sales and Royalty Remittance (Form MMS–2014) must be submitted each month once sales or utilization of production occur, . . . This report is due on or before the last day of the month following the month in which production was sold or utilized, . . .	.1167 (Manual 1%) ..... .05 (Electronic 99%)	24,840 2,459,160	2,898 122,958
206.55(c)(4)	Transportation allowances must be reported as a separate line item on Form MMS–2014.	Burden hours included in hours above.		
206.55(e)(2)	For lessees transporting production from Indian leases, the lessee must submit a corrected Form MMS–2014 to reflect actual costs, . . .	Burden hours included in hours above.		
206.110(c)(1) and 206.111(l)(2).	You may use your proposed procedure to calculate a transportation allowance until MMS accepts or rejects your cost allocation. If MMS rejects your cost allocation, you must amend your Form MMS–2014 for the months that you used the rejected method . . .	Burden hours included in hours above.		
206.114 and 206.115(a)	You or your affiliate must use a separate entry on Form MMS–2014 to notify MMS of an allowance based on transportation costs you or your affiliate incur.	Burden hours included in hours above.		
206.157(a)(1)(i); 206.157(b)(1).	Arm's-length transportation contracts and non-arm's length or no contract. The lessee must claim a transportation allowance by reporting it as a separate line entry on the Form MMS–2014.	Burden hours included in hours above.		
206.157(c)(1)(i) and (c)(2)(i); 206.159(c)(1)(i) and (c)(2)(i).	Arm's-length contracts and non-arm's length or no contract. The lessee must notify MMS of an allowance based on incurred costs by using a separate line entry on the Form MMS–2014.	Burden hours included in hours above.		
206.157(e)(2)	For lessees transporting production from onshore Federal leases, the lessee must submit a corrected Form MMS–2014 to reflect actual costs, . . .	Burden hours included in hours above.		

RESPONDENT ANNUAL BURDEN HOUR CHART—Continued

30 CFR Section Parts 210 and 206	Reporting requirement	Burden hours per response	Annual number of responses	Annual burden hours
206.157(e)(3)	For lessees transporting gas production from leases on the OCS, . . . the lessee must submit a corrected Form MMS–2014 to reflect actual costs.	Burden hours included in hours above.		
206.157(f)(1); 206.178(f)(1) ...	You must modify the Form MMS–2014 by the amount received or credited for the affected reporting period.	Burden hours included in hours above.		
206.159(a)(1)(i) and (b)(1)	Arm's-length processing contracts and non-arm's-length or no contract. The lessee must claim a processing allowance by reporting it as a separate line entry on the Form MMS–2014.	Burden hours included in hours above.		
206.159(e)(3)	For lessees processing pas production from leases on the OCS, . . . the lessee must submit a corrected Form MMS–2014 to reflect actual costs, . . .	Burden hours included in hours above.		
206.172(e)(6)(ii)	You must pay and report on Form MMS–2014 additional royalties due . . .	Burden hours included in hours above.		
206.174(a)(4)(ii)	If the major portion value is higher, you must submit an amended Form MMS–2014 to MMS . . .	Burden hours included in hours above.		
206.178(d)(2)	You must report transportation allowances as a separate line item on Form MMS–2014.	Burden hours included in hours above.		
206.180(c)(2)	You must report gas processing allowances as a separate line item on Form MMS–2014.	Burden hours included in hours above.		
206.353(d)(2); 206.354(d)(2)	Lessees must submit corrected Forms MMS–2014 to reflect adjustments to royalty payments . . .	Burden hours included in hours above.		
Total	.....	.....	2,484,000	125,856

Estimated Annual Reporting and Recordkeeping "Non-hour Cost": We have identified no "non-hour" cost burdens.

Comments: The PRA (44 U.S.C. 3501, *et seq.*) provides an agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. Before submitting an ICR to OMB, PRA Section 3506(c)(2)(A) requires each agency "* * * to provide notice * * * and otherwise consult with members of the public and affected agencies concerning each proposed collection of information * * *." Agencies must specifically solicit comments to: (a) Evaluate whether the proposed collection of information is necessary for the agency to perform its duties, including whether the information is useful; (b) evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) enhance the quality, usefulness, and clarity of the information to be collected; and (d) minimize the burden on the respondents, including the use of automated collection techniques or other forms of information technology.

The PRA also requires agencies to estimate the total annual reporting "non-hour cost" burden to respondents or recordkeepers resulting from the collection of information. We have not identified non-hour cost burdens for this information collection. If you have costs to generate, maintain, and disclose this information, you should comment and provide your total capital and startup cost components or annual operation, maintenance, and purchase of service components. You should describe the methods you use to estimate major cost factors, including system and technology acquisition, expected useful life of capital equipment, discount rate(s), and the period over which you incur costs. Capital and startup costs include, among other items, computers and software you purchase to prepare for collecting information; monitoring, sampling, testing equipment; and record storage facilities. Generally, your estimates should not include equipment or services purchased: (i) Before October 1, 1995; (ii) to comply with requirements not associated with the information collection; (iii) for reasons other than to provide information or keep records for the Government; or (iv) as part of customary and usual business or private practices.

We will summarize written responses to this notice and address them in our ICR submission for OMB approval, including appropriate adjustments to the estimated burden. We will provide a copy of the ICR to you without charge upon request and the ICR will also be posted on our Web site at *http://www.mrm.mms.gov/Laws_R_D/FRNotices/FRInfColl.htm*.

Public Comment Policy: We will post all comments in response to this notice on our Web site at *http://www.mrm.mms.gov/Laws_R_D/FRNotices/FRInfColl.htm*. We will also make copies of the comments available for public review, including names and addresses of respondents, during regular business hours at our offices in Lakewood, Colorado. Individual respondents may request we withhold their home address from the public record, which we will honor to the extent allowable by law. There also may be circumstances in which we would withhold from the rulemaking record a respondent's identity, as allowable by law. If you request that we withhold your name and/or address, state this prominently at the beginning of your comment. However, we will not consider anonymous comments. We will make all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, available for public inspection in their entirety.

MMS Information Collection Clearance Officer: Jo Ann Lauterbach, (202) 208–7744.

Dated: May 6, 2003.

Lucy Querques Denett,

Associate Director for Minerals Revenue Management.

[FR Doc. 03–11815 Filed 5–12–03; 8:45 am]

BILLING CODE 4310–MR–U

DEPARTMENT OF THE INTERIOR

National Park Service

Great Sand Dunes National Park Advisory Council Meeting

AGENCY: National Park Service, Interior.

ACTION: Announcement of meetings.

SUMMARY: Great Sand Dunes National Monument and Preserve announces dates for meetings of the Great Sand Dunes National Park Advisory Council, which was established to provide guidance to the Secretary on long-term planning for Great Sand Dunes National Monument and Preserve.

DATES: The meeting dates are:

1. May 29, 2003, 1 p.m.–8 p.m., Alamosa, Colorado.
2. June 26, 2003, 1 p.m.–8 p.m., Crestone, Colorado.

ADDRESSES: The meeting locations are:

1. Alamosa, Colorado—Alamosa County Services Center, 8900 Independence Way, Alamosa, CO 81101
2. Crestone, Colorado—Crestone Community Building, 242 No. Cottonwood St., Crestone, CO 81131.

FOR FURTHER INFORMATION CONTACT: Steve Chaney, 719–378–2314.

SUPPLEMENTARY INFORMATION: The meetings announced with this notice are the first meetings of the Great Sand Dunes National Park Advisory Council which was established pursuant to Public Law 106–530, the Great Sand Dunes National Park and Preserve Act of 2000. At these meetings, the council will receive an orientation/information session on Great Sand Dunes National Monument operations, an update regarding redesignation of the Monument to a national park, and information regarding the general management planning process, and will discuss these matters and other business.

John Crowley,

Acting Regional Director.

[FR Doc. 03–11858 Filed 5–12–03; 8:45 am]

BILLING CODE 4310–CL–P

DEPARTMENT OF THE INTERIOR

National Park Service

National Register of Historic Places; Notification of Pending Nominations

Nominations for the following properties being considered for listing in the National Register were received by the National Park Service before April 19, 2003. Pursuant to section 60.13 of 36 CFR part 60 written comments concerning the significance of these properties under the National Register criteria for evaluation may be forwarded by United States Postal Service, to the National Register of Historic Places, National Park Service, 1849 C St. NW., 2280, Washington, DC 20240; by all other carriers, National Register of Historic Places, National Park Service, 1201 Eye St. NW., 8th floor, Washington DC 20005; or by fax, (202) 343–1836. Written or faxed comments should be submitted by May 28, 2003.

Carol D. Shull,

Keeper of the National Register of Historic Places.

ARIZONA

Yavapai County

Hassayampa Historic District, 1089–1112 Old Hassayampa Ln., 1106 Country Club Dr., Prescott, 03000469

ARKANSAS

Carroll County

Quigley's Castle, 274 Quigley's Castle Rd., Eureka Springs, 03000467

Hempstead County

Oak Grove Missionary Baptist Church, Cty Rd. 16, Blevins, 03000463

Hot Spring County

Hot Springs Railroad Roundhouse, 132 Front St., Malvern, 03000462

Lincoln County

Rice Family Cemetery, Jct. of U.S. 65 and AR 388, Varner, 03000464

Marion County

Berry's, J.C., Dry Goods Store, 331 Old South Main St., Yellville, 03000468

Monroe County

Memphis to Little Rock Road—Henard Cemetery Road Segment, (Cherokee Trail of Tears MPS), Henard Cemetery Rd., Zent, 03000470

Sebastian County

Maness Schoolhouse, 8801 Wells Lake Rd., Barling, 03000466

Washington County

Fitzgerald Station and Farmstead, 2327 Old Wire Rd. and 1567 Dodd Ave., Springdale, 03000465

CALIFORNIA

Contra Costa County

Atchison Village Defense Housing Project, Cal. 4171-X, Roughly bounded by MacDonald Ave., Ohio St., First St., and Garrard Blvd., Richmond, 03000473

San Bernardino County

Maloof, Sam and Alfreda, Compound, 5131 Carnelian St., Alta Loma, 03000471

San Diego County

Rosecroft, 530 Silvergate Ave., San Diego, 03000472

GEORGIA

Monroe County

State Teachers and Agricultural College for Negroes Women's Dormitory and Teachers' Cottage, Martin Luther King Dr., Forsyth, 03000475.

IOWA

Linn County

Grant Wood's "Fall Plowing" Rural Historic Landscape District, 0.5 mi. N of jct. of Matsell Ln. and Stone City Rd., Viola, 03000476

KANSAS

Marshall County

Robidoux Creek Pratt Truss Bridge, (Metal Truss Bridges in Kansas 1861—1939 MPS) Sunflower Rd., 0.8 mi. W of jct. with 21st Rd., NW., of Frankfort, Frankfort, 03000474

MISSOURI

St. Louis Independent City, Building at 3910–12 Laclede Ave., 3910–12 Laclede Ave., St. Louis (Independent City), 03000478

Gerhart Block, 3900–08 Laclede Ave., 1–17 Vandeventer, St. Louis (Independent City), 03000477

NEW JERSEY

Bergen County

Maywood Railroad Station, 271 Maywood Ave., Maywood, 03000487

NEW MEXICO

McKinley County

Southwestern Range and Sheep Breeding Laboratory Historic District, Fort Wingate

Work Center, Cibola National Forest, Fort Wingate, 03000488

NEW YORK

Niagara County

Conkey House, (Stone Buildings of Lockport, New York MPS), 202 Akron St., Lockport, 03000479
Dole House, (Stone Buildings of Lockport, New York MPS), 74 Niagara St., Lockport, 03000485
Gibbs House, (Stone Buildings of Lockport, New York MPS), 98 N. Transit St., Lockport, 03000482
Hopkins House, (Stone Buildings of Lockport, New York MPS), 83 Monroe St., Lockport, 03000480
Maloney House, (Stone Buildings of Lockport, New York MPS), 279 Caledonia St., Lockport, 03000481
Stickney House, (Stone Buildings of Lockport, New York MPS), 133 Lock St., Lockport, 03000483
Watson House, (Stone Buildings of Lockport, New York MPS), 129 Outwater Dr., Lockport, 03000486
White—Pound House, (Stone Buildings of Lockport, New York MPS), 140 Pine St., Lockport, 03000484

PENNSYLVANIA

Bedford County

Everett Historic District, (Lincoln Highway Heritage Corridor Historic Resources: Franklin to Westmoreland Counties MPS), Roughly bounded by W. Fifth, Borough, Hill Sts., River Ln., South St. Barndollar Ave., Everett, 03000492

Butler County

Butler Historic District, (Oil Industry Resources in Western Pennsylvania MPS), Roughly bounded by N. Church St., Walnut St., Franklin St. and Wayne St., Butler, 03000490

Jefferson County

Brockwayville Passenger Depot, Buffalo, Rochester and Pittsburgh Railroad, Alexander Street at Fourth Ave., Brockway, 03000489

Mercer County

First Universalist Church of Sharpsville, 131 N. Mercer Ave., Sharpsville, 03000491

Perry County

Lupfer, Israel and Samuel, Tannery Site and House, Black Hollow Rd., SW of Toboyne/Jackson Townships, Toboyne, 03000493

RHODE ISLAND

Providence County

Summit Historic District, Summit Ave., Rochambeau Ave., Camp St., Memorial Rd., Creston Way, Providence, 03000495
Westminster Street Historic District, Roughly along Westminster St. bet. Stewart St. and Sawins Ln., Providence, 03000494

SOUTH DAKOTA

Buffalo County

Talking Crow Archeological Site, Address Restricted, Fort Thompson, 03000505

Gregory County

Herrick Elevator, US 18, Herrick, 03000498

Lawrence County

Walsh Barn, 0.5 mi. W of jct. of Upper Redwater Rd. and 104th Ave., Spearfish, 03000500

Lincoln County

Norway Center Store, 29339 SD 11, Hudson, 03000496

Lyman County

Dinehart Village Archeological Site, Address Restricted, Oacoma, 03000501
King Archeological Site, Address Restricted, Oacoma, 03000502

Minnehaha County

Cherry Rock Park Bridge, (Historic Bridges in South Dakota MPS AD), Cherry Rock Park, Sioux Falls, 03000499
Willow Grove Farm, (Federal Relief Construction in South Dakota MPS), 47480 258th Ave., Renner, 03000497

Stanley County

Breeden Village, Address Restricted, Fort Pierre, 03000503

Sully County

Cooper Village Archeological Site, Address Restricted, Onida, 03000504

WISCONSIN

Waupaca County

Mead Bank, 215 Jefferson St., Waupaca, 03000506

[FR Doc. 03–11860 Filed 5–12–03; 8:45 am]

BILLING CODE 4312–51–P

DEPARTMENT OF THE INTERIOR

National Park Service

National Register of Historic Places; Notice of Draft Multiple Property Documentation Form: Historic Residential Suburbs in the United States, 1830–1960

The National Register is soliciting comments on a draft multiple property form, Historic Residential Suburbs in the United States, 1830–1960, which was developed in conjunction with the National Register bulletin, Historic Residential Suburbs: Guidelines for Evaluation and Documentation for the National Register of Historic Places (available on the Web at: *http://www.cr.nps.gov/nr/publications/bulletins/suburbs*). Researched and written by Dr. David L. Ames of the Center for Historic Architecture and Engineering at the University of Delaware and Linda McClelland of the National Register staff, this proposed Multiple Property Submission is intended to facilitate future nominations of historic subdivisions and neighborhoods to the National Register. Historic Residential Suburbs in the United States, 1830–1960 is available on the National Register Web site at: *<www.nr.nps.gov/multiples/64500838.pdf>*.

Comments on the proposed Historic Residential Suburbs in the United States, 1830–1960 multiple property form will be received for 45 days from the date of this notice. Please address comments to Carol D. Shull, Keeper of the National Register of Historic Places, National Register, History and Education, National Park Service, 1849 C Street, NW. (2280), Washington, DC 20240, Attention: Linda McClelland (phone: 202–354–2258; e-mail: *linda_mcclelland@nps.gov*).

Carol D. Shull,

Keeper of the National Register of Historic Places.

[FR Doc. 03–11859 Filed 5–12–03; 8:45 am]

BILLING CODE 4312–51–P

DEPARTMENT OF THE INTERIOR

Bureau of Reclamation

California Bay-Delta Public Advisory Committee Public Meeting

AGENCY: Bureau of Reclamation, Interior.

ACTION: Notice of meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, the California Bay-Delta Public Advisory Committee will meet on June 5, 2003. The agenda for the Committee meeting will include discussion on the Bay-Delta Program Plans and related recommendations, summary of water operations issues and integrated key milestones, Colorado River negotiations and related legal and water transfers issues, Committee priorities for 2003, and implementation of the CALFED Bay-Delta Program with State and Federal officials.

DATES: The meeting will be held Thursday, June 5, 2003, from 9 a.m. to 6 p.m. If reasonable accommodation is needed due to a disability, please contact Pauline Nevins at (916) 445–7297 or TDD (800) 735–2929 at least 1 week prior to the meeting.

ADDRESSES: The meeting will be held at the John E. Moss Federal Building located at 650 Capitol Mall, 5th Floor, Sacramento, California.

FOR FURTHER INFORMATION CONTACT: Eugenia Laychak, California Bay-Delta Authority, at (916) 445–0524, or Diane Buzzard, U.S. Bureau of Reclamation, at (916) 978–5022.

SUPPLEMENTARY INFORMATION: The Committee was established to provide assistance and recommendations to Secretary of the Interior Gale Norton and California Governor Gray Davis on implementation of the CALFED Bay-Delta Program. The Committee will advise on annual priorities, integration of the eleven Program elements, and overall balancing of the four Program objectives of ecosystem restoration, water quality, levee system integrity, and water supply reliability. The Program is a consortium of 23 State and Federal agencies with the mission to develop and implement a long-term comprehensive plan that will restore ecological health and improve water management for beneficial uses of the San Francisco/Sacramento and San Joaquin Bay Delta.

Committee and meeting materials will be available on the CALFED Bay-Delta Web site: *http://calwater.ca.gov* and at the meeting. This meeting is open to the public. Oral comments will be accepted from members of the public at the meeting and will be limited to 3–5 minutes.

(Authority: The Committee was established pursuant to the Department of the Interior's authority to implement the Fish and Wildlife Coordination Act, 16 U.S.C. 661 *et seq.*, the Endangered Species Act, 16 U.S.C. 1531 *et seq.*, and the Reclamation Act of 1902, 43 U.S.C. 371 *et seq.*, and the acts amendatory thereof or supplementary thereto, all collectively referred to as the Federal Reclamation laws, and in particular, the Central Valley Project Improvement Act, Title 34 of Pub. L. 102–575.)

Dated: April 24, 2003.

Nan M. Yoder,

Acting Special Projects Officer, Mid-Pacific Region.

[FR Doc. 03–11875 Filed 5–12–03; 8:45 am]

BILLING CODE 4310–MN–M

DEPARTMENT OF THE INTERIOR

Bureau of Reclamation

Glen Canyon Dam Adaptive Management Work Group (AMWG), Notice of Meeting

AGENCY: Bureau of Reclamation, Interior.

ACTION: Notice of public meeting.

SUMMARY: The Adaptive Management Program (AMP) was implemented as a result of the Record of Decision on the Operation of Glen Canyon Dam Final Environmental Impact Statement to comply with consultation requirements of the Grand Canyon Protection Act (Pub. L. 102–575) of 1992. The AMP provides an organization and process to ensure the use of scientific information in decision making concerning Glen Canyon Dam operations and protection of the affected resources consistent with the Grand Canyon Protection Act. The AMP has been organized and includes a federal advisory committee (AMWG), a technical work group (TWG), a monitoring and research center, and independent review panels. The TWG is a subcommittee of the AMWG and provides technical advice and information for the AMWG to act upon.

Date and Location: The AMWG will conduct the following public meeting:

Phoenix, Arizona—May 29, 2003. The meeting will begin at 9:30 a.m. and conclude at 5 p.m. The meeting will be held at the Bureau of Indian Affairs—Western Regional Office, 2 Arizona Center, 400 N. 5th Street, Conference Rooms A and B (12th Floor), Phoenix, Arizona.

Agenda: The purpose of the meeting will be to address the critical status of the humpback chub in the Colorado River. At the AMWG Meeting held on January 28–29, 2003, the following motion was passed: "AMWG meet in special session on or about April 1, 2003, to consider actions to implement a comprehensive research and management program for the HBC, and in the interim an ad hoc committee of AMWG, TWG, GCMRC, and science advisors develop recommendations and report to AMWG at the special session." In conjunction with that motion, the HBC Ad Hoc Group was formed and will present their report to the AMWG at the meeting. Additional ad hoc group reports may also be presented as appropriate.

Time will be allowed for any individual or organization wishing to make formal oral comments (limited to 5 minutes) at the meeting.

Date and Location: The TWG will conduct the following public meeting:

Phoenix, Arizona—May 28, 2003. The meeting will begin at 1 p.m. and conclude at 5 p.m. It will resume again on Friday, May 30, 2003 at 8 a.m. and conclude at noon. The meeting will be held at the Bureau of Indian Affairs—Western Regional Office, 2 Arizona Center, 400 N. 5th Street, Conference Rooms A and B (12th Floor), Phoenix, Arizona.

Agenda: The purpose of the meeting will be to discuss the Humpback Chub Ad Hoc Group Report, FY04 and FY05 Work Plans, GCMRC Survey Protocol Evaluation Panel Report, Oracle database, Tribal Consultation Plan, basin hydrology, environmental compliance, and other administrative and resource issues pertaining to the AMP.

To allow full consideration of information by the AMWG or TWG members, written notice must be provided to Dennis Kubly, Bureau of Reclamation, Upper Colorado Regional Office, 125 South State Street, Room 6107, Salt Lake City, Utah, 84138; telephone (801) 524–3715; faxogram (801) 524–3858; e-mail at *dkubly@uc.usbr.gov* (5) days prior to the meeting. Any written comments received will be provided to the AMWG and TWG members prior to the meeting.

FOR FURTHER INFORMATION CONTACT: Dennis Kubly, telephone (801) 524–3758; faxogram (801) 524–3858; or via e-mail at *dkubly@uc.usbr.gov*.

Dated: April 28, 2003.

Dennis Kubly,

Chief, Adaptive Management Group, Environmental Resources Division, Upper Colorado Regional Office.

[FR Doc. 03–11861 Filed 5–12–03; 8:45 am]

BILLING CODE 4310–MN–P

INTERNATIONAL TRADE COMMISSION

[Investigations Nos. 731–TA–1034–1035 (Preliminary)]

Certain Color Television Receivers From China and Malaysia

AGENCY: International Trade Commission.

ACTION: Institution of antidumping investigations and scheduling of preliminary phase investigations.

SUMMARY: The Commission hereby gives notice of the institution of investigations and commencement of preliminary phase antidumping duty investigations 731–TA–1034–1035 (Preliminary) under section 733(a) of the Tariff Act of 1930 (19 U.S.C. 1673b(a)) (the Act) to determine whether there is a reasonable indication that an industry in the United States is materially injured or threatened with material injury, or the establishment of an industry in the United States is materially retarded, by reason of imports from China and Malaysia of certain color television receivers,[1] provided for in subheadings 8528.12.28, 8528.12.32, 8528.12.36, 8528.12.40, 8528.12.44, 8528.12.48,

[1] The imported products subject to these investigations, as defined in the petition, are complete and incomplete direct view or projection type cathode-ray tube color television receivers, with video display diagonal exceeding 52 centimeters (in effect, 21 inches and above), whether or not combined with video recording or reproducing apparatus (VCR and DVD "combos"). The products subject to these investigations are those which are capable of receiving a broadcast television signal and producing a video image.

8548.12.52, and 8528.12.56 of the Harmonized Tariff Schedule of the United States, that are alleged to be sold in the United States at less than fair value. Unless the Department of Commerce extends the time for initiation pursuant to section 732(c)(1)(B) of the Act (19 U.S.C. 1673a(c)(1)(B)), the Commission must reach preliminary determinations in antidumping investigations in 45 days, or in this case by June 16, 2003. The Commission's views are due at Commerce within five business days thereafter, or by June 23, 2003.

For further information concerning the conduct of these investigations and rules of general application, consult the Commission's Rules of Practice and Procedure, part 201, subparts A through E (19 CFR part 201), and part 207, subparts A and B (19 CFR part 207).

EFFECTIVE DATE: May 2, 2003.

FOR FURTHER INFORMATION CONTACT: Woodley Timberlake (202–205–3188), Office of Investigations, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its internet server (*http://www.usitc.gov*). The public record for these investigations may be viewed on the Commission's electronic docket (EDIS) at *http://edis.usitc.gov*.

SUPPLEMENTARY INFORMATION:

Background.—These investigations are being instituted in response to a petition filed on May 2, 2003, on behalf of Five Rivers Electronic Innovations, LLC, Greenville, TN; the International Brotherhood of Electrical Workers, Washington, DC; and the IUE–CWA, the Industrial Division of the Communications Workers of America, Washington, DC.

Participation in the investigations and public service list.—Persons (other than petitioners) wishing to participate in the investigations as parties must file an entry of appearance with the Secretary to the Commission, as provided in §§ 201.11 and 207.10 of the Commission's rules, not later than seven days after publication of this notice in the **Federal Register**. Industrial users and (if the merchandise under investigation is sold at the retail level) representative consumer organizations have the right to appear as parties in Commission countervailing duty and antidumping investigations. The Secretary will prepare a public service list containing the names and addresses of all persons, or their representatives, who are parties to these investigations upon the expiration of the period for filing entries of appearance.

Limited disclosure of business proprietary information (BPI) under an administrative protective order (APO) and BPI service list.—Pursuant to § 207.7(a) of the Commission's rules, the Secretary will make BPI gathered in these investigations available to authorized applicants representing interested parties (as defined in 19 U.S.C. 1677(9)) who are parties to the investigations under the APO issued in the investigations, provided that the application is made not later than seven days after the publication of this notice in the **Federal Register**. A separate service list will be maintained by the Secretary for those parties authorized to receive BPI under the APO.

Conference.—The Commission's Director of Operations has scheduled a conference in connection with these investigations for 9:30 a.m. on May 23, 2003, at the U.S. International Trade Commission Building, 500 E Street SW., Washington, DC. Parties wishing to participate in the conference should contact Woodley Timberlake (202–205–3188) not later than May 20, 2003, to arrange for their appearance. Parties in support of the imposition of antidumping duties in these investigations and parties in opposition to the imposition of such duties will each be collectively allocated one hour within which to make an oral presentation at the conference. A nonparty who has testimony that may aid the Commission's deliberations may request permission to present a short statement at the conference.

Written submissions.—As provided in §§ 201.8 and 207.15 of the Commission's rules, any person may submit to the Commission on or before May 29, 2003, a written brief containing information and arguments pertinent to the subject matter of the investigations. Parties may file written testimony in connection with their presentation at the conference no later than three days before the conference. If briefs or written testimony contain BPI, they must conform with the requirements of §§ 201.6, 207.3, and 207.7 of the Commission's rules. The Commission's rules do not authorize filing of submissions with the Secretary by facsimile or electronic means, except to the extent permitted by § 201.8 of the Commission's rules, as amended, 67 FR 68036 (November 8, 2002).

In accordance with §§ 201.16(c) and 207.3 of the rules, each document filed by a party to the investigations must be served on all other parties to the investigations (as identified by either the public or BPI service list), and a certificate of service must be timely filed. The Secretary will not accept a document for filing without a certificate of service.

Authority: These investigations are being conducted under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to § 207.12 of the Commission's rules.

By order of the Commission.

Issued: May 7, 2003.

Marilyn R. Abbott,

Secretary to the Commission.

[FR Doc. 03–11828 Filed 5–12–03; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 337–TA–484]

In the Matter of Certain Machine Vision Systems, Parts and Components Thereof and Products Containing Same; Notice of a Commission Determination Not To Review an Initial Determination Terminating the Investigation on the Basis of a Settlement Agreement

AGENCY: International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has determined not to review the presiding administrative law judge's ("ALJ's") initial determination ("ID") granting a joint motion to terminate the above-captioned investigation on the basis of a settlement agreement.

FOR FURTHER INFORMATION CONTACT: Timothy P. Monaghan, Esq., Office of the General Counsel, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436, telephone 202–205–3152. Copies of all nonconfidential documents filed in connection with this investigation are or will be available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436, telephone 202–205–2000. Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202–205–1810. General information concerning the Commission may also be obtained by accessing its Internet server (*http://www.usitc.gov*). The public record for this investigation may be viewed on the Commission's electronic docket (EDIS) at *http://edis.usitc.gov*.

SUPPLEMENTARY INFORMATION: The Commission instituted this investigation, which concerns allegations of unfair acts in violation of section 337 of the Tariff Act of 1930 in the importation and sale of certain machine vision systems, parts and components thereof and products containing same on January 13, 2003, based on a complaint filed by Cognex Corporation of Natick Massachusetts. 68 FR 1640. The respondents named in the notice of investigation are Nikon Corporation of Japan, Nikon Precision, Inc. of Belmont, CA, and Aval Data Corporation of Japan. Cognex's complaint alleged that respondents' products infringed claims of four patents held by Cognex.

On March 17, 2003, Cognex and respondents entered into a settlement agreement and on April 3, 2002, Cognex and respondents filed a joint motion to terminate the investigation on the basis of the settlement agreement. The Commission investigative attorney supported the joint motion.

On April 17, 2003, the presiding ALJ issued the subject ID (Order No. 5) granting the joint motion of Cognex and respondents to terminate the investigation on the basis of the settlement agreement. No party filed a petition to review the subject ID.

The authority for the Commission's determination is contained in section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337), and in section 210.42 of the Commission's Rules of Practice and Procedure (19 CFR 210.42).

By order of the Commission.

Issued: May 7, 2003.

Marilyn R. Abbott,

Secretary.

[FR Doc. 03–11827 Filed 5–12–03; 8:45 am]

BILLING CODE 7020–02–P

DEPARTMENT OF LABOR

Office of the Secretary

Combating Child Labor Through Education in Brazil; Combating Child Trafficking and Commercial Sexual Exploitation Through Education in Cambodia; Combating Child Trafficking Through Education in Benin, Burkina Faso and Mali

AGENCY: Bureau of International Labor Affairs, Department of Labor.

ACTION: Notice of availability of funds and solicitation for cooperative agreement applications (SGA 03–05).

SUMMARY: This notice contains all of the necessary information and forms needed to apply for cooperative agreement funding. The U.S. Department of Labor, Bureau of International Labor Affairs will award up to U.S. $16 million through one or more cooperative agreements to an organization or organizations to improve access to quality education programs as a means to combat child labor in Brazil ($5 million), Cambodia ($3 million), and the West African countries of Benin ($2 million), Burkina Faso ($3 million) and Mali ($3 million). The activities funded will complement and expand upon existing projects and programs to improve basic education in these countries, and provide access to basic education to children in areas of high incidence of exploitative child labor. In Brazil the activities will strengthen the quality of existing child labor and education programs. The special focus in Cambodia will be to provide education to victims of, and children at risk of entering, child trafficking and commercial sexual exploitation, and in West Africa to victims of, and children at risk of entering, child trafficking.

Applicants must submit a separate application for each country. If applications for countries are combined, they will not be considered.

DATES: The closing date for receipt of application is June 20, 2003. As discussed in section II.B and C, applications must be received by 4:45 p.m. (eastern time) at the address below. No exceptions to the mailing, delivery, and hand-delivery conditions set forth in this notice will be granted. Applications that do not meet the conditions set forth in this notice will not be honored. Telegram, facsimile (FAX), and e-mail applications will not be honored.

ADDRESSES: Application forms will not be mailed. They are published as part of this **Federal Register** notice, and in the **Federal Register**, which may be obtained from your nearest U.S. Government office or public library or online at *http://www.archives.gov/federal_register/index.html*. Applications must be delivered to: U.S. Department of Labor, Procurement Services Center, 200 Constitution Avenue, NW., Room N–5416, Attention: Lisa Harvey, Reference: SGA 03–05, Washington, DC 20210. Applications sent by e-mail, telegram, or facsimile (FAX) will not be accepted. Applications sent by other delivery services, such as Federal Express, UPS, etc., will be accepted; however, the applicant bears the responsibility for timely submission.

FOR FURTHER INFORMATION CONTACT: Lisa Harvey. E-mail address: *harvey.lisa@dol.gov*. All applicants are advised that U.S. mail delivery in the Washington DC area has been slow and erratic due to concerns involving anthrax contamination. All applicants must take this into consideration when preparing to meet the application deadline. It is recommended that you confirm receipt of your application with your delivery service. *See* section II.C for additional information.

SUPPLEMENTARY INFORMATION: The U.S. Department of Labor (USDOL), Bureau of International Labor Affairs (ILAB), announces the availability of funds to be granted by cooperative agreement (hereafter referred to as "grant") to one or more qualifying organizations for the purpose of promoting school attendance in areas of high and exploitative child labor in Brazil, Cambodia, and the West African countries of Benin, Burkina Faso, and Mali. The grant or grants awarded under this initiative will be managed by ILAB's International Child Labor Program to assure achievement of the stated goals. Applicants are encouraged to be creative in proposing cost-effective interventions that will have a demonstrable impact in promoting school attendance in areas of those countries where children are engaged in or are most at risk of working in the worst forms of child labor, and for child victims of trafficking.

I. Authority

ILAB is authorized to award and administer this program by Departments of Labor, Health and Human Services, and Education and Related Agencies Appropriations Act, 2002, Pub.L. No. 107–116, 115 Stat. 2177 (2002).

II. Application Process

A. Eligible Applicants

Any commercial, international, educational, or non-profit organization capable of successfully developing and

implementing education programs for child laborers or children at risk in the countries of interest is eligible to apply. Partnerships of more than one organization are also eligible, and applicants are strongly encouraged to work with organizations already undertaking projects in the countries of interest, particularly local NGOs and faith based-organizations. (All applicants are requested to complete the Survey on Ensuring Equal Opportunity for Applicants (OMB No. 1225–0083), which is available online at *http://www.dol.gov/ILAB/grants/education/sga0305/bkgrdSGA0305.htm.*) In the case of partnerships, a lead organization to sign the agreement must be identified. The capability of an applicant or applicants to perform necessary aspects of this solicitation will be determined under Section V.B Rating Criteria and Selection.

Please note that eligible grant applicants must not be classified under the Internal Revenue Code as a 501(c)(4) entity. *See* 26 U.S.C. 501(c)(4). According to the Lobbying Disclosure Act of 1995, as amended by 2 U.S.C. 1611, an organization, as described in section 501(c)(4) of the Internal Revenue Code of 1986, that engages in lobbying activities will not be eligible for the receipt of federal funds constituting an award, grant, or loan.

B. Submission of Applications

One (1) blue ink-signed original, complete application in English plus two (2) copies (in English) of the application, must be submitted to the U.S. Department of Labor, Procurement Services Center, 200 Constitution Avenue, NW., Room N–5416, Washington, DC 20210, not later than 4:45 p.m. eastern time, June 20, 2003. Applicants may submit applications for one or more countries. In the case where an applicant is interested in applying for a grant in more than one country, a separate application must be submitted for each country.

The application must consist of two (2) separate parts. Part I of the application must contain the Standard Form (SF) 424, "Application for Federal Assistance" and sections A–F of the Budget Information Form SF 424A, available from ILAB's Web site at *http://www.dol.gov/ILAB/grants/education/sga0305/bkgrdSGA0305.htm.* Copies of these forms are also available online from the GSA Web site at *http://contacts.gsa.gov/webforms.nsf/0/B835648D66D1B8F985256A72004C58C2/$file/sf424.pdf* and *http://contacts.gsa.gov/webforms.nsf/0/5AEB1FA6FB3B832385256A72004C8E77/$file/Sf424a.pdf.* Part II must contain a technical application that demonstrates capabilities in accordance with the Statement of Work (section IV.A) and Rating Criteria (section V.B).

To be considered responsive to this solicitation, the application must consist of the above-mentioned separate sections not to exceed 45 single-sided (8–1/2" x 11"), double-spaced, 10 to 12 pitch typed pages for each country, following the format presented in the Statement of Work (section V.B Rating Criteria and Selection). This requirement includes a project document submitted in the format shown in Appendix A. *Any applications that do not conform to these standards may be deemed non-responsive to this solicitation and may not be evaluated.* Standard forms and attachments are *not* included in the page limit. Each application must include a table of contents and an abstract summarizing the application in not more that two (2) pages. These pages are also *not* included in the page limits.

The individual signing the SF 424 on behalf of the Applicant must be authorized to bind the Applicant.

C. Acceptable Methods of Submission

The grant application package must be received at the designated place by the date and time specified or it will not be considered. Any application received at Procurement Services Center after 4:45 p.m. eastern time, June 20, 2003, will not be considered unless it is received before the award is made and:

1. It is determined by the government that the late receipt was due solely to mishandling by government after receipt at the U.S. Department of Labor at the address indicated;

2. It was sent by registered or certified mail not later than the fifth calendar day before June 20, 2003; or

3. It was sent by U.S. Postal Service Express Mail Next Day Service-Post Office to Addressee, not later than 5 p.m. at the place of mailing two (2) working days, excluding weekends and Federal holidays, prior to June 20, 2003.

The only acceptable evidence to establish the date of mailing of a late application sent by registered or certified mail is the U.S. Postal Service postmark on the envelope or wrapper and on the original receipt from the U.S. Postal Service. If the postmark is not legible, an application received after the above closing time and date shall be processed as if mailed late. "Postmark" means a printed, stamped, or otherwise placed impression (not a postage meter machine impression) that is readily identifiable without further action as having been applied and affixed by an employee of the U.S. Postal Service on the date of mailing. Therefore, applicants should request that the postal clerk place a legible hand cancellation "bull's-eye" postmark on both the receipt and the envelope or wrapper.

The only acceptable evidence to establish the date of mailing of a late application sent by U.S. Postal Service Express Mail Next Day Service-Post Office to Addressee is the date entered by the Post Office receiving clerk on the "Express Mail Next Day Service-Post Office to Addressee" label and the postmark on the envelope or wrapper on the original receipt from the U.S. Postal Service. "Postmark" has the same meaning as defined above. Therefore, applicants should request that the postal clerk place a legible hand cancellation "bull's-eye" postmark on both the receipt and the envelope or wrapper.

The only acceptable evidence to establish the time of receipt at the U.S. Department of Labor is the date/time stamp of the Procurement Service Center on the application wrapper or other documentary evidence or receipt maintained by that office.

Applications sent by e-mail, telegram, or facsimile (FAX) will not be accepted. Applications sent by other delivery services, such as Federal Express, UPS, etc., will be accepted, however the applicant bears the responsibility for timely submission. Confirmation of receipt can be made with Lisa Harvey, U.S. Department of Labor, Procurement Services Center, telephone (202) 693–4570 (this is not a toll-free-number) or e-mail: *harvey.lisa@dol.gov.*

D. Funding Levels

Up to U.S. $16 million is available under this solicitation, with up to $5 million for Brazil, up to $3 million for Cambodia, up to $2 million for Benin, up to $3 million for Burkina Faso, and up to $3 million for Mali. USDOL may award one or more grants to one, several, or a partnership of more than one organization which may apply to implement the program. Any subcontractor must be approved by USDOL.

E. Program Duration

The duration of the projects funded by this SGA is for four (4) years. The start date of program activities will be negotiated upon awarding of the grant, but no later than September 30, 2003.

III. Background and Program Scope

A. USDOL Support of Global Elimination of Child Labor

The International Labor Organization (ILO) estimated that 211 million children between the ages of five and 14 were working around the world in 2000. Full-time child workers are generally unable to attend school, and part-time child laborers balance economic survival with schooling from an early age, often to the detriment of their education. Since 1995, the U.S. Congress has provided USDOL with funds to support worldwide technical assistance programs implemented by the ILO's International Program on the Elimination of Child Labor (ILO/IPEC). To date, USDOL has contributed U.S. $157 million to ILO/IPEC, making the United States the program's largest donor and a leader in global efforts to combat child labor.

Programs funded by USDOL have evolved from targeted action programs in specific sectors to more comprehensive efforts that target the worst forms of child labor as defined by ILO Convention 182. Convention 182 lists four categories of the worst forms of child labor, and calls for their immediate elimination:

- All forms of slavery or practices similar to slavery, such as the sale and trafficking of children; debt bondage and serfdom and forced or compulsory labor; including forced or compulsory recruitment of children for use in armed conflict;
- The use, procurement or offering of a child for prostitution, production of pornography or pornographic performances;
- The use, procurement or offering of a child for illicit activities, in particular for the production and trafficking of drugs as defined in the relevant international treaties;
- Work which by its nature or by the circumstances by which it is carried out, is likely to harm the health, safety, and morals of children.

In determining the types of work likely to harm the health, safety and morals of children, Convention 182 considers the following: Work which exposes a child to physical, psychological or sexual abuse; work underground, underwater, at dangerous heights or in confined workplaces; work with dangerous machinery, equipment and tools or handling or transporting heavy loads; work in an unhealthy environment including exposure to hazardous substances, agents or processes, or to temperatures, noise levels or vibrations damaging to the health; work for long hours or night work where the child is unreasonably confined to the premises.

Children who are trafficked are among the most exploited, and qualify as victims of the worst forms of child labor equivalent to slavery under ILO Convention 182. Trafficked children who work full-time are generally unable to attend school. Furthermore, children who are trafficked have often dropped out of school early or have never attended school at all.

The existence of child labor and the trafficking of children for exploitative employment have many implications for a country. In source communities from which children are trafficked, sending a child to be employed far from home influences others to do likewise. The negative effects of trafficking include poorly educated children with low skills who return to their communities traumatized, in ill health (*e.g.*, HIV/AIDS, sexually transmitted diseases, drug addiction), and susceptible to premature death. It is often challenging to reintegrate these children into communities that are already resource-poor and overburdened with social problems. Contrary to the belief that migration of children is a solution to poverty, it often reproduces it and leads to other social problems.

It is important to undertake education initiatives for children involved in child labor and their at-risk siblings. It is also important to educate children who are victims of or susceptible to trafficking, because their lack of schooling hinders their personal development, as well as that of a modern workforce, overall labor market reform, poverty reduction and social progress. Education is a key investment that has been linked to the acceleration of a nation's productivity and socioeconomic development. Poorly educated workers tend to earn less, live in poverty, and may in turn send their own children to work at a young age. Consequently, it is important to keep children in educational settings instead of in workplaces. Further, keeping children in school protects them from the abuses of child labor and trafficking.

From FY 2001 to FY 2003, in addition to U.S. $135 million earmarked for ILO/IPEC efforts, U.S. $111 million was appropriated to USDOL for a Child Labor Education Initiative to fund programs aimed at increasing access to quality, basic education in areas with a high incidence of abusive and exploitative child labor. The grant(s) awarded under this solicitation will be funded through this initiative.

USDOL's Child Labor Education Initiative seeks to nurture the development, health, safety and enhanced future employability of children around the world by increasing access to basic education for children removed from work or at risk of entering into labor. Child labor elimination depends in part on improving access to, quality of, and relevance of education.

The Child Labor Education Initiative has four goals:

1. Raise awareness of the importance of education for all children and mobilize a wide array of actors to improve and expand education infrastructures;

2. Strengthen formal and transitional education systems that encourage working children and those at risk of working to attend school;

3. Strengthen national institutions and policies on education and child labor; and

4. Ensure the long-term sustainability of these efforts.

B. Barriers to Education for Working Children and Country Background

1. Child Labor and Barriers of Access to Education

Throughout the world there are complex causes to child labor as well as barriers to education for children engaged in or at risk of child labor. These include:

- *Poverty*—when families need children's income for survival, there is a high opportunity cost to enrolling a child in school, and the direct and indirect costs of schooling are unaffordable.
- *Education system barriers*—which include low quality and relevance of education and curricula; low teacher training/preparation of school personnel to address education of children with special needs, such as child laborers; poor teaching methods; lack of or weak systems to address reintegration of dropouts, or to provide equivalency and/or bridge programs between non-formal and formal or vocational education.
- *Infrastructure barriers*—which include distance to school; inadequate school buildings (too small, too few primary, secondary or vocational schools); overcrowded schools; lack of open spaces for physical activity and related facilities; lack of transportation; lack of latrines, water, electricity and other basic infrastructure.
- *Legal and policy barriers*—which include policies that discourage school enrollment and retention, weak law enforcement, or non-existent, inconsistent or inadequate education policies for working children.
- *Resource gaps*—which include either overall low level of resources within the country, or a low allocation of existing resources relative to the needs of working children, or to child labor eradication or education goals set by government policies.
- *Institutional barriers*—which include weaknesses that hamper an

organization's ability to effectively implement programs, and/or limited coordination among social partners (various level of government, NGOs, private sector) to match existing resources to education gaps and needs of working children.

• *Informational gaps*—which include lack of information on the education needs of child laborers or their educational performance so as to develop relevant and targeted programs; lack of available relevant social indicator data to identify, target and map families with working children; lack of consistent monitoring and evaluation of programs to draw lessons learned, or limited awareness on the part of different actors of the benefits of education for working children.

• *Demographic characteristics of children and/or families*—which include factors that put a child at higher risk of child labor and lack of access to education, such as belonging to an ethnic group, gender or social class, family composition (*e.g.*, single head of household or polygamous household, multiple siblings, etc.), being overage relative to grade.

• *Cultural and traditional practices*—which include community attitudes that children should work and help the family, and attitudes and practices towards gender and social roles.

• *Weak labor markets* and lack of employment for those more educated, which diminish the perceived value of an education, and increases the value of early entry into the labor market.

Although these elements and characteristics tend to exist throughout the world in areas of high child labor, they manifest themselves and/or combine in particular ways in each country of interest in this solicitation. In their response to the solicitation, applicants should be able to identify the specific barriers to education and the education needs of specific children targeted in their project (*e.g.*, children withdrawn from work, children at high risk of drop out into the labor force, children still working in a particular sector, etc.). Short background information on education and child labor in each of the countries of interest is provided below. For additional information on child labor in these countries, applicants are referred to The Department of Labor's 2001 Findings on the Worst Forms of Child Labor available at *http://www.dol.gov/ILAB/media/reports/iclp/tda2001/overview.htm* or in hard copy from Lisa Harvey, U.S. Department of Labor, Procurement Services Center, telephone (202) 693–4570 (this is not a toll-free-number) or e-mail: *harvey.lisa@dol.gov*.

2. Country Background

Brazil

In 2000, the ILO estimated that 14.4 percent of children of between the ages of 10 and 14 in Brazil were working. The major sectors where children work are agriculture, mining and charcoal industries, domestic service, scavenging in garbage dumps, prostitution, pornography, and drug trafficking. Child labor is most frequent in northern and northeastern Brazil where it is estimated that there are over 700,000 children and adolescents working in farming and agriculture alone.

Most child laborers in Brazil come from families whose per capita income is less than one minimum monthly wage. Throughout the 1990s improving family income and breaking the cycle of poverty through education have been at the core of Brazil's policies to fight child labor. At the Federal level, Brazil administers various programs implemented by different ministries, and has developed commissions to address issues related to child labor. Each state has a group designated to report to the Ministry of Labor and Employment on local activities and initiatives aimed to eliminate child labor.

Brazil's most widespread and innovative child labor prevention and elimination initiatives are the Bolsa Escola Program (school scholarship) and PETI (Child Labor Elimination Program). The Ministry of Education oversees the Bolsa Escola program, which benefits over eight million children and provides mothers with a monetary stipend in return for children's school attendance. The program is the largest of its kind in the world. The PETI program, administered by the Ministry of Social Assistance and Advancement, gives stipends to families that remove children from the worst forms of child labor and keep them in school. Approximately 800,000 children under the program attend public school and a Jornada Ampliada (extended school day) program, to discourage them from working before or after school.

At the core of these programs is the notion that work has a negative effect on the educational development of children and adolescents. In Brazil, the illiteracy rate among child workers is 20 percent compared to 8 percent for children who do not work. Providing education to child workers or children at risk of working supports objectives of Brazil's Education for All (EFA) Ten-Year Plan (1994–2003), and implementation of compulsory attendance policies for ages seven to 14 (grades one through eight). Basic education through grade eight is free. Prompted by the Word Conference on Education for All in 1990, Brazil set its goals to achieve equity through quality education for all by the year 2003. Implementation of Brazil's EFA Plan has attempted to address a number of the country's core objectives, which are: (1) Universal access to basic education; (2) education expansion; (3) valorization of the teaching profession; and (4) improvement of the quality of public education.

Although access to basic education in Brazil has increased tremendously in the last ten years, the quality of education, particularly in rural areas, has suffered. In many cases, schools do not offer classes above the fourth grade, and when they do, curricula are often not contextual to students' lives and teachers are poorly motivated. In addition, the minimum age for work (16) and the age at which compulsory schooling ends (14) are not harmonized. As a result, adolescents have few options and, out of economic need, often choose to work illegally beginning at age 14. These adolescents often engage in hazardous activities without social benefits or legal recourse. All of the factors above, combined with real economic needs of students, contribute to the high dropout rates of youth who leave school to work.

As a result of improved education policy and practice, Brazil has achieved many educational successes over the past decade, including for working children. Yet numerous barriers to the education of working children in Brazil, particularly in rural and peri-urban areas in the north and northeast regions, still remain. The most important gaps/needs for improving the education of children removed from child labor include: (1) Poor quality of education for both classroom and extended day programs; (2) lack of job and skills training for older children; (3) need for improved coordination of programs and services between federal, state, municipal governments, and civil society in the delivery of educational programs at the community level; and (4) gaps in data collection, knowledge management and evaluation of educational initiatives that allow for improved identification of target populations, and performance evaluation and assessment of impact. The project funded by this solicitation will contribute to efforts already underway to prevent and eliminate hazardous child labor by addressing specific barriers to education, and by expanding and improving the impact of existing programs.

Cambodia

A 2001 child labor study conducted by the Cambodian National Institute of Statistics found that over 1.5 million children aged five to 14, or about 45 percent of the age group, were working, almost one-fourth of them more than 35 hours per week. Rates of labor participation by gender were relatively equal. Many working children appear particularly vulnerable to exploitation, such as the 20,000 working children under the age of 15 who reported living away from home during the survey period. In addition, Cambodian children are engaged in some of the worst forms of child labor, such as commercial sexual exploitation (CSE). Cambodia is reported to be a country of origin, transit and destination for trafficking in persons, including children, for the purposes of CSE and various forms of work, including labor and begging. Internal trafficking of children also occurs. Children, primarily girls, also work as domestic servants, and many of them do not attend school.

In this context, the Government of Cambodia has made significant efforts to improve access to quality education for children. In May 2001, the Ministry of Education, Youth and Sports (MOEYS) published its Education Strategic Plan 2001–2005, which established priorities to expand access to quality education opportunities, and to increase the institutional capacity of local schools and communities for involvement in educational decision-making. The plan includes multiple targets that are of relevance to working and/or vulnerable children, including efforts to increase enrollment at the primary and secondary levels; mainstreaming children back into school; improving gender parity; improving educational quality; and increasing persistence and retention indicators.

The government's abolition of start-of-year primary school entry fees in 2001 reportedly led to a large increase in gross and net enrollment rates. Marked progress has also been made in extending access to education through secondary school construction and primary school expansion. NGOs are also active in improving access to and quality of education, and work at the grassroots level with local government officials and communities. Several scholarship programs, including a new large-scale effort by the government, target vulnerable girls to ensure that they enroll in secondary schools, particularly since the dropout rate is disproportionately higher for girls. A Non-Formal Education (NFE) Department within MOEYS focuses on delivering tailored education services to meet the needs of people of all ages, including working children and children out of school.

As a result of these efforts, access to education has improved, as have efficiency indicators such as recent reductions in repetition rates. However, there are still large educational disparities at the provincial and district levels, and serious gender and rural-urban gaps remain. Dropout continues to be a problem. Furthermore, significant numbers of children are effectively barred from returning to the formal school system if they drop out temporarily, as children above the age of 12 are unable to enter grades 1–3. The government has developed an NFE strategy, but implementation of many aspects of it, including providing NFE with a view to mainstreaming recipients, is still in the early stages.

Banteay Meanchey, Otdar Meanchey, Battambang, Siem Reap, Prey Veng, Svay Rieng, and Kampong Cham have been identified as provinces containing significant numbers of children at risk of the worst forms of child labor, particularly trafficking and CSE. Applicants are requested to select up to three provinces in which to focus interventions in selected areas where there is high risk to children of being trafficked and/or becoming engaged in CSE. The areas selected should demonstrate the applicant's clear understanding of risk factors that constitute barriers to the education of children engaged in or at risk of child labor. Applicants are strongly encouraged to focus activities on the primary school level and on the transition to secondary school for two main populations: children who have dropped out of school (or never enrolled) who wish to return and reintegrate into the formal school or pursue alternative education, and children in primary school who are at risk of dropping out.

Applicants are also strongly encouraged to demonstrate how project activities can inform policies to develop a replicable and sustainable strategy that can be brought to scale for larger numbers of working children. This approach would include identification of common factors causing children to drop out and/or fail to enroll in the formal schools, barriers to re-entry for children engaged in or at risk of child labor, and successful models for mainstreaming children from NFE to the formal education system. In particular, proposals should demonstrate how activities will complement, extend and reinforce the objectives of existing national and NGO efforts and the plans of the government of Cambodia. Proposals may also link with other U.S. government-funded or international donor efforts.

West Africa

Benin

In 2000, the ILO estimated that 26.5 percent of children between the ages of 10 and 14 in Benin were working. Children as young as seven years old work on family farms, as domestic servants, on urban construction sites, in public markets, and in other small enterprise-based jobs. In addition, children are trafficked within Benin to the urban areas of Cotonou, Parakou and Porto Novo. There is also the traditional practice of vidomegon, which involves poor rural families placing children (typically daughters) in the homes of wealthier families, often relatives, so that the children may work and receive an education. However, the practice often degenerates into exploitation as children are forced to work as domestic servants, for long hours and with little or no access to education or wages.

Benin is also a source, destination and transit country for the cross-border trafficking of children. Beninese children are usually trafficked into Nigeria, Cameroon, Côte d'Ivoire, Gabon, and Niger, and the country receives children from Burkina Faso, Niger and Togo. Trafficked children are often employed as agricultural workers, domestic servants, and commercial sex workers. More than half of internally trafficked children are girls, while the majority of externally trafficked children are boys. Boys who are trafficked internationally often go to work on cocoa, coffee or cotton plantations in Côte d'Ivoire, or for fishing or manual labor in informal workshops. Many girls who are victims of cross-border trafficking are brought to Gabon to work as domestic servants.

Most victims of child labor and child trafficking originate from rural areas and tend to have little, if any, education even though primary education in Benin is free and compulsory for children between the ages of six and 11 years. Indirect and opportunity costs of attending school are two major barriers that keep children out of school. The gross primary enrollment rate in 1998 was 84.2 percent, although there was a significant gap in boys' and girls' enrollment rates. There is also a considerable disparity between the genders in attendance rates.

A 1997 conference identified and prioritized weaknesses in the education system. Among the top concerns listed were a shortage of trained teachers,

inadequate school infrastructure, and illiteracy (particularly among parents), all of which contribute to high dropout rates. Exacerbating this problem is the lack of education alternatives for children who have returned home or who have been removed from hazardous labor situations.

Furthermore, their communities are not organized to receive them and provide them with an education.

In response to these challenges, in 1999 the Ministry of Family, Social Protection and Solidarity established a unit for Family and Childhood that works on a variety of programs to combat child trafficking, including creating village vigilance committees and building crisis centers for children. The Ministry of Family also works to provide educational spaces for child laborers, particularly those engaged in domestic service and vidomegons.

The National Commission on Child Rights, an inter-ministerial committee headed by the Ministry of Justice, Legislation and Human Rights that includes representatives from NGOs, religious organizations and Parent-Teacher Associations, was established in 2000. The international media attention attracted in 2001 as a result of the Etireno, a ship that was believed to have originated in Benin and was reported to be transporting trafficked children, prompted the Government of Benin to increase its efforts to combat child trafficking and child labor. These efforts included the development of a two-year action plan (2001–2003) by the National Commission on Child Rights to combat trafficking. Benin is also one of nine countries participating in a USDOL-funded project to combat the trafficking of children for exploitative labor in West and Central Africa, described at *http://www.dol.gov/ILAB/grants/education/sga0305/bkgrdSGA0305.htm.*

In October 2002, the government of Benin developed a rapid response plan (plan d'urgence) to combat child trafficking, which includes activities to improve legislation and strengthen child protection efforts. Also in 2002, the National Committee against Child Trafficking was formed.

Benin has already made strides in fighting child trafficking and promoting education, particularly within the formal system. In order to foster sustainability and build on existing activities and achievements, applications should take into account existing programs and seek to fill gaps that have not already been addressed. Applicants should especially consider the need for and availability of formal versus non-formal, transitional or vocational education programs in proposed target areas, and tailor approaches accordingly. USDOL would also like to ensure that the EI project complements efforts in Benin already funded by the U.S. government without duplicating them.

Burkina Faso

In 2000, the ILO estimated that 43.5 percent of children between the ages of 10 and 14 in Burkina Faso were working. Most working children in the country are found in agriculture, gold mining and washing, and informal sector activities including domestic service. Children often start working in the mining sector as-part of households, at ages as young as six. The HIV/AIDS epidemic has also orphaned numerous children, thereby increasing the population of street children, an at-risk group for child labor, in Ouagadougou and Bobo-Dioulasso.

Due in part to its geographic location, Burkina Faso is a sending, receiving and transit country for trafficked children. Yet few statistics are available on the phenomenon. Furthermore, there is low public recognition of child trafficking as a problem and there is a perception that sending a child to work through trafficking increases family income. The salaries or promised salaries, albeit small, give villagers cause to believe that money is to be made in exodus. In reality, the middlemen who recruit, transport, and place children generally live off the earnings, each receiving a portion of the money promised to the child or family.

External, or cross-border, trafficking represents roughly one-quarter of intercepted children, and the countries most believed to receive children are Côte d'Ivoire, Nigeria, and Mali, with smaller numbers going to Gabon and Niger. The majority of externally trafficked children tend to be boys whose primary destination is Côte d'Ivoire. Foreign children working in Côte d'Ivoire are at greater risk considering the current political unrest in that country.

Seventy-four percent of trafficked children intercepted between September 2001 and May 2002 were moving internally. Of these children, 65 percent were girls. In general, children are trafficked from rural areas such as Tougan, Gaoua, and Diebougou into Bobo-Dioulasso, Ouagadougou and Ouahigouya where they work as domestic servants, street vendors, and in prostitution. An ILO study estimated that more than 81,000 children in Bobo-Dioulasso and Ouagadougou have been internally trafficked and placed in work situations by an intermediary.

Elsewhere children are moved from the northern and central villages, especially in the Dedougou and Boromo regions, for agricultural work in the regions of Bobo-Dioulasso and Banfora. Both boys and girls work in cotton production, an especially arduous and dangerous job considering the hours of work, the intensive physical labor, and the use of pesticides. Cotton producers in Kompienga and the provinces of N'Gourma, Tapoa and Gnagna also hire migrant children. Since this work is seasonal, children may return home at the end of the season.

Many codes in the penal system regulate children's work and protection, but child trafficking itself is not illegal. The Ministry of Social Action and National Solidarity has drafted a National Action Plan on Child Trafficking, and is working with the Ministry of Justice to revise national legislation to address child trafficking. The Ministry of Social Action has also established Vigilance and Surveillance Committees that involve representatives from the Ministry of Employment, police, local authorities and NGOs, employers and transport companies, among others. The government of Burkina Faso has drafted an agreement with Côte d'Ivoire to address child trafficking between the two countries, but the process has stalled due to the current political situation in Côte d'Ivoire. Burkina Faso is one of nine countries participating in a USDOL-funded project to combat the trafficking of children for exploitative labor in West and Central Africa, described at *http://www.dol.gov/ILAB/grants/education/sga0305/bkgrdSGA0305.ht_.*

Studies of repatriated children who have been trafficked show that most have received little, if any, schooling. Many are from rural, illiterate households. Nationwide, adult literacy rates hover around 24 percent, with less than 15 percent of the adult female population qualifying as literate.

Although education in Burkina Faso is compulsory from ages six to 16, the minimum age to work is 14. In 1998, the gross primary enrollment rate was 42.3 percent, and the gap between boys' and girls' enrollment was significant (50 percent for boys and 34.5 percent for girls). School enrollment is also lower in rural areas (especially in the eastern region of the country), and girls are particularly affected. Other problems that plague the education system include a shortage of trained teachers, high teacher absenteeism, inadequate infrastructure, a French-only system of instruction, and a perception that education is not beneficial (especially in the case of girls). Inaccessibility of schools in rural areas is exacerbated by a predominance of male teachers, which also reduces girls' attendance.

In order to extend the reach of the education system, the Burkinabe government has opened bilingual satellite schools in several communities where full cycle schools are too far away for younger children, or where older children were unable to attend school at the appropriate age. Upon completing three years at these schools, children can travel longer distances to the nearest primary school. The government has also established non-formal basic education centers for older children who have not gone to school. Education at these centers is bilingual and includes vocational training.

In September of 2002, the government of Burkina Faso launched a 10-Year Basic Education Development Plan (2001–2010), which forms part of the country's poverty reduction strategy. Among the goals that the plan (commonly referred to as PDDEB) to be achieved by 2010 are: 70 percent school enrollment, 40 percent literacy, 3000 satellite schools, and 3000 centers for non-formal basic education. The two primary focus areas of PDDEB are to increase educational access and to improve the quality and efficiency of schooling. PDDEB also envisions increasing girls' enrollment to 65 percent, addressing regional educational disparities, and strengthening the capacity of the educational system.

Given the low rates of literacy and school enrollment in Burkina Faso and the widespread extent of child labor and trafficking, applicants should be strategic in selecting underserved areas with high rates of child labor or trafficking, and inadequate educational options. Applications should be as specific as possible in terms of the population to be targeted and services to be provided, taking care that proposed goals and objectives are realistic and achievable in the given timeframe. More importantly, in view of the fact that PDDEB addresses many of the concerns outlined above and has the commitment of key stakeholders, activities proposed should support PDDEB goals and work within its framework. Applications should clearly explain how proposed activities fit into the 10-year plan, and the contribution they will make to achieving its goals.

Mali

In 2000, the ILO estimated that 51.1 percent of children between the ages of 10 and 14 in Mali were working. Children work in the agricultural sector, in gold mining and gold washing, and as domestic servants in urban areas. Children who are under the tutelage of religious teachers have also been found begging on the streets. Although details vary, it is often reported that Malian children, the majority of them boys, are trafficked outside of the country, predominantly to Côte d'Ivoire, to work on coffee, cotton and cocoa farms. It is also reported that girls are trafficked to Côte d'Ivoire to work as domestic servants. Children are trafficked by agents from organized networks who promise parents to provide the children with paid employment abroad. Commercial farm owners reportedly pay traffickers between U.S. $22 and $43 per child.

Since 1998 Mali has been building its capacity to combat child labor at the national and regional levels. It is one of nine countries participating in a USDOL-funded project to combat the trafficking of children for exploitative labor in West and Central Africa, described at *http://www.dol.gov/ILAB/grants/education/sga0305/bkgrdSGA0305.htm_.* In collaboration with various private organizations, the president of Mali launched an awareness raising campaign on child labor in January 2002. In March 2002, the Government of Mali ratified ILO Convention 138 on the Minimum Age for Work. The government also has plans to implement a national child labor survey to measure the nature and extent of child labor. In addition, the governments of Mali and Côte d'Ivoire signed a cooperative agreement in 2000 to control cross-border trafficking. The strategy includes the monitoring and prevention of child trafficking, and the repatriation and rehabilitation of children who have been trafficked.

A large number of returned trafficked children are ethnically Dogon. These children come from the impoverished, rural areas of Koulikoro and Mopti. Their families traditionally raise petit-millet crops, which have short harvests from June until September. Since the harvest is managed mostly by women, the Dogon men, well-known for their physical labor, tend to migrate to other rural and urban areas in search of seasonal work. This tradition extends to Dogon children and allows for the early migration of boys, girls and young men to other regions in search of work. Some are trafficked externally from Sikasso, while others find work in the southern cotton-growing regions, or as domestic servants in urban areas.

The Senoufo, an ethnic group found in southern Mali, have extensive family networks that cross into neighboring countries. In addition, the Senoufo have a tradition of traveling to find work. It is reported that unconfirmed numbers of Malian Senoufo boys are trafficked to work on the plantations of Côte d'Ivoire.

In Mali, three kinds of schools exist and they all follow a similar basic structure: government public schools, the religious Madrasas, and community schools. Many parents in Mali, the majority of whom are Muslim, choose to send their children (mostly boys) to Madrasas, or schools that offer Arabic and religious study in addition to basic subjects. However, Madrasas are either too expensive or do not exist in rural areas, so many parents compromise by sending their sons to study religion and literacy with the local Imam. Imams, not associated with the Madrasas, rely on payments from parents for their livelihood.

In Mali, primary education is compulsory and free until the age of 13, however students must pay for their own uniforms and school supplies to attend public schools. About 20 percent fewer girls than boys attend primary school, despite the overall higher population of girls.

In the public schools, success at the primary level is based on a child's ability to use French rather than transferable thinking skills in local languages. The government of Mali recognized the community school model in 1992 in response to locally identified needs for literacy, numeracy, health care, agriculture and other life skills. Community schools teach the first few years of primary school in local languages and are designed to prevent large masses of children from migrating in search of work. To assist community schools, the Malian government has equipped and renovated classrooms, recruited teachers and produced new teaching materials.

Obstacles to quality education for child workers and at risk children still exist, however, and low enrollment and attendance rates, drop outs and failures are partially attributed to parental decisions related to family work load, prohibitive school distances, school fees and other school-related costs. Rural areas also tend to have fewer vocational or literacy programs for working children.

Applicants interested in working in Mali should design a project that addresses the gaps to quality basic education for child workers, trafficked children and at risk children, in areas with a high incidence or culture of child labor, by complementing, but not duplicating, already existing efforts.

IV. Requirements

A. Statement of Work

Taking into account the challenges to educating working children in each country of interest, the applicant shall propose and implement creative and innovative approaches to provide educational opportunities to children engaged in or removed from child labor, particularly the worst forms. The expected outcomes/results of the project are to: (1) increase educational opportunities (enrollment) for children who are engaged in, at risk of, and/or removed from child labor, particularly its worst forms; (2) encourage retention in, and completion of educational programs; and (3) expand the successful transition of children in non-formal education into formal schools or vocational programs.

In the course of implementation, each project shall promote the goals of USDOL's Child Labor Education Initiative listed in section III.A above. Because of the limited available resources under this award, applicants should implement programs that complement existing efforts and, where appropriate, replicate or enhance successful models to serve expanded numbers of children and communities. In order to avoid duplication, enhance collaboration, expand impact, and develop synergies, the grant awardee (hereafter referred to as "Grantee") should work cooperatively with national stakeholders in developing project interventions.

Although USDOL is open to all proposals for innovative solutions to address the challenges of providing increased access to education to the children targeted, the applicant must, at a minimum, prepare responses following the outline of a preliminary project document presented in Appendix A. This response will be the foundation for the final project document that will be approved after award of the grant.

Note to All Applicants

The Grantee is expected to consult with and work cooperatively with stakeholders in the countries, including the Ministries of Education and Labor, NGOs, national steering/advisory committees on child labor education, faith and community-based organizations, and working children and their families. Where practical, there should be efforts to collaborate with existing projects, particularly those funded by USDOL.

B. Deliverables

In addition to meeting the above requirements, the Grantee will be expected to monitor the implementation of the program, report to USDOL on a quarterly basis, and undergo evaluation of program results. Guidance on USDOL procedures and management requirements will be provided to the Grantee in written Management Procedures and Guidelines (MPG) after award. The project budget must include funds to plan, implement and evaluate programs and activities, conduct various studies pertinent to project implementation, to establish education baselines to measure program results, and travel to meet with USDOL officials in Washington DC at yearly intervals. Applicants based both within and outside the United States should also budget for travel to Washington DC at the beginning for a post-award meeting with USDOL. Indicators of performance will also be developed by the Grantee and approved by USDOL. Unless otherwise indicated, the Grantee must submit copies of all required reports to ILAB by the specified due dates. Specific deliverables are the following:

1. Project Design Document

The Grantee will prepare a preliminary project document in the format described in Appendix A, with design elements linked to a logical framework matrix. *See http://www.dol.gov/ILAB/grants/education/sga0305/bkgrdSGA0305.htm* for a worked example. The project document will include a background/justification section, project strategy (goal, purpose, outputs, activities, indicators, means of verification, assumptions), project implementation timetable and project budget. The narrative will address the criteria/themes described in section V.B.1 below Program Design/Budget-Cost Effectiveness. The final project design document will be based on the application written in response to this solicitation, but will include the results of additional consultation with stakeholders, partners, and ILAB. The document will also include sections that address coordination strategies, project management and sustainability. The final project document will be delivered three months after the time of the award.

2. Technical and Financial Progress Reports

The format for the technical progress report will be provided in the MPG distributed after the award. The Grantee must furnish a typed technical report to ILAB on a quarterly basis by 31 March, 30 June, 30 September, and 31 December. Technical reports will include:

a. For each project objective, an accurate account of activities carried out under that objective during the reporting period;

b. A description of current problems that may impede performance, and proposed corrective action;

c. Future actions planned in support of each project objective;

d. Aggregate amount of costs incurred during the reporting period relative to each objective; and

e. Progress on common Government Performance and Results Act (GPRA) indicators (to be reported *semi-*annually) to be provided to Grantees after award.

The Grantee must also furnish separate financial reports (SF 272 and 269) to ILAB on the quarterly basis mentioned above.

3. Annual Work Plan

An annual work plan will be developed within three months of project award and approved by ILAB so as to ensure coordination with other relevant social actors in the country. Subsequent annual work plans will be delivered no later than one year after the previous one.

4. Performance Monitoring and Evaluation Plan

A performance monitoring and evaluation plan will be developed, in collaboration with ILAB, including beginning and ending dates for the project, planned and actual dates for mid-term review, and final end of project evaluations. The performance monitoring plan will be developed in conjunction with the logical framework project design and common indicators for GPRA reporting selected by ILAB. Baseline data collection will be tied to the indicators of the project design document and the performance monitoring plan. A draft monitoring and evaluation plan will be submitted to ILAB within four months of project award.

5. Project Evaluation

The Grantee and the Grant Officer's Technical Representative (GOTR) will determine on a case-by-case basis whether mid-term evaluations will be conducted by an internal or external evaluation team. All final evaluations will be external in nature. The Grantee must respond in writing to any comments and recommendations resulting from the review of the mid-term report. The budget must include the projected cost of mid-term and final evaluations.

C. Production of Deliverables

1. Materials Prepared Under the Cooperative Agreement

The Grantee must submit to ILAB all media-related and educational materials developed by it or its sub-contractors before they are reproduced, published, or used. ILAB considers that education materials include brochures, pamphlets, videotapes, slide-tape shows, curricula, and any other training materials used in the program. ILAB will review materials for technical accuracy. The Grantee must obtain prior approval from the Grant's Officer Technical Representative for all materials developed or purchased under this grant. All materials produced by the Grantee must be provided to ILAB in digital format for possible publication by ILAB.

2. Acknowledgement of USDOL Funding

In all circumstances, the following must be displayed on printed materials:

• "Preparation of this item was funded by the United States Department of Labor under Cooperative Agreement No. E–9–X–X–XXXX."

When issuing statements, press releases, requests for proposals, bid solicitations, and other documents describing projects or programs funded in whole or in part with Federal money, all Grantees receiving Federal funds, including State and local governments and recipients of Federal research grants, must clearly state:

a. The percentage of the total costs of the program or project that will be financed with Federal money;

b. The dollar amount of Federal funds for the project or program; and

c. The percentage and dollar amount of the total costs of the project or program that will be financed by non-governmental sources.

In consultation with ILAB, USDOL will be acknowledged in one of the following ways:

a. The USDOL logo may be applied to USDOL-funded material prepared for worldwide distribution, including posters, videos, pamphlets, research documents, national survey results, impact evaluations, best practice reports, and other publications of global interest. The Grantee must consult with USDOL on whether the logo may be used on any such items prior to final draft or final preparation for distribution. In no event will the USDOL logo be placed on any item until USDOL has given the Grantee written permission to use the logo on the item.

b. If ILAB determines that the use of the logo is not appropriate and written permission is not given, the following notice must appear on the document: "This document does not necessarily reflect the views or policies of the U.S. Department of Labor, nor does mention of trade names, commercial products, or organizations imply endorsement by the U.S. government."

D. Administrative Requirements

1. General

Grantee organizations are subject to applicable U.S. Federal laws (including provisions of appropriations law) and the applicable Office of Management and Budget (OMB) Circulars. Determinations of allowable costs will be made in accordance with the applicable U.S. Federal cost principles. The Grantee will also be required to submit to a bi-annual independent audit, and costs for such an audit should be included in direct or indirect costs, whichever is appropriate.

The grant awarded under this SGA is subject to the following administrative standards and provisions, if applicable:

29 CFR Part 36—Federal Standards for Nondiscrimination on the Basis of Sex in Education Programs or Activities Receiving Federal Financial Assistance.

29 CFR Part 93—New Restrictions on Lobbying.

29 CFR Part 95—Uniform Administrative Requirements for Grants and Agreements with Institutions of Higher Education, Hospitals and Other Non-Profit Organizations, and with Commercial Organizations, Foreign Governments, Organizations Under the Jurisdiction of Foreign Governments and International Organizations.

29 CFR Part 96—Federal Standards for Audit of Federally Funded Grants, Contracts and Agreements.

29 CFR Part 98—Federal Standards for Government-wide Debarment and Suspension (Nonprocurement) and Government-wide Requirements for Drug-Free Workplace (Grants).

29 CFR Part 99—Federal Standards for Audits of States, Local Governments, and Non-Profit Organizations.

Applicants are reminded to budget for compliance with the administrative requirements set forth. This includes the cost of performing administrative activities such as financial audit, closeout, evaluation, document preparation, as well as compliance with procurement and property standards. Copies of all regulations referenced in this SGA are available at no cost, on-line, at *http://www.dol.gov.*

2. Sub-Contracts

Sub-contracts must be awarded in accordance with 29 CFR 95.40–48. In compliance with Executive Orders 12876, as amended, 13230, 12928 and 13021, as amended, the Grantee is strongly encouraged to provide sub-contracting opportunities to Historically Black Colleges and Universities, Hispanic-Serving Institutions and Tribal Colleges and Universities.

3. Key Personnel

The applicant shall list an individual(s) who has been designated as having primary responsibility for the conduct and completion of all project work. The applicant must submit written proof that key personnel will be available to begin work on the project no later than three weeks after award. The Grantee agrees to inform the GOTR whenever it appears impossible for this individual(s) to continue work on the project as planned. The Grantee may nominate substitute personnel and submit the nominations to the GOTR; however, the Grantee must obtain prior approval from the Grant Officer for all key personnel. If the Grant Officer is unable to approve the personnel change, he/she reserves the right to terminate the grant.

4. Encumbrance of Grant Funds

Grant funds may not be encumbered/obligated by the Grantee before or after the period of performance. Encumbrances/obligations outstanding as of the end of the grant period may be liquidated (paid out) after the end of the grant period. Such encumbrances/obligations shall involve only specified commitments for which a need existed during the grant period and which are supported by approved contracts, purchase orders, requisitions, invoices, bills, or other evidence of liability consistent with the Grantee's purchasing procedures and incurred within the grant period. All encumbrances/obligations incurred during the grant period shall be liquidated within 90 days after the end of the grant period, if practicable.

5. Site Visits

USDOL, through its authorized representatives, has the right, at all reasonable times, to make site visits to review project accomplishments and management control systems and to provide such technical assistance as may be required. If USDOL makes any site visit on the premises of the Grantee or a sub-contractor(s) under this grant, the Grantee shall provide and shall require its sub-contractors to provide all reasonable facilities and assistance for

the safety and convenience of government representatives in the performance of their duties. All site visits and evaluations shall be performed in a manner that will not unduly delay the work.

V. Review and Selection of Applicants for Award

A. The Review Process

USDOL will screen all applications to determine whether all required elements are present and clearly identifiable. Each complete application will be objectively rated by a technical panel against the criteria described in this announcement. Applicants are advised that panel recommendations to the Grant Officer are advisory in nature. The Grant Officer may elect to select a Grantee on the basis of the initial application submission; or, the Grant Officer may establish a competitive or technically acceptable range for the purpose of selecting qualified applicants. If deemed appropriate, following the Grant Officer's call for the preparation and receipt of final revisions of applications, the evaluations process described above will be repeated to consider such revisions. The Grant Officer will make final selection determinations based on panel findings and consideration of factors that may be most advantageous to the government, such as geographic distribution of the competitive applications, cost, the availability of funds and other factors. The Grant Officer's determinations for awards under this SGA are final.

Note: Selection of an organization as a grant recipient does not constitute approval of the grant application as submitted. Before the actual grant is awarded, USDOL may enter into negotiations about such items as program components, funding levels, and administrative systems in place to support grant implementation. If the negotiations do not result in an acceptable submission, the Grant Officer reserves the right to terminate the negotiation and decline to fund the application. Award is also contingent upon signature of a letter of agreement between USDOL and relevant ministries in target countries.

B. Rating Criteria and Selection

The technical panel will review applications written in the specified format (*see* section III.B and Appendix A) against the various criteria on the basis of 100 points. Five additional points will be given for non-Federal or leveraged resources. Applicants are requested to prepare their written response (45 page maximum) on the basis of the following rating factors, which are presented in the order of emphasis that they will receive.

Program Design/Budget-Cost Effectiveness: 45 points
Organizational Capacity: 30 points
Management Plan/Key Personnel/ Staffing: 25 points
Leveraging: 5 extra points

1. Project/Program Design/Budget—Cost Effectiveness (45 points)

This part of the application constitutes the preliminary project document described in section IV.B.1 and outlined in Appendix A. (**Note:** The supporting logical framework matrix will not count in the 45-page limit but should be included as an annex to the project document. To guide applicants, a sample logical framework matrix for a hypothetical child labor education project is available at *http://www.dol.gov/ILAB/grants/education/sga0305/bkgrdSGA0305.htm*.) The applicant should describe in detail the proposed approach to comply with each requirement in section IV.A of this solicitation.

This component of the application should demonstrate the applicant's thorough knowledge and understanding of the issues, barriers and challenges involved in providing education to children engaged in or at risk of engaging in child labor, particularly its worst forms; best-practice solutions to address their needs; and the implementing environment in the selected country. When complying with the project document outline, the applicant should at minimum include a description of:

- *Children Targeted*—The applicant will identify which and how many children will benefit from the project, including the sectors in which they work, geographical location, and other relevant characteristics.
- *Needs/Gaps/Barriers*—The applicant will describe the specific gaps/educational needs of the children targeted that the project will address.
- *Proposed Strategy*—The applicant will discuss the proposed strategy to address gaps/needs/barriers and its rationale.
- *Description of Activities*—The applicant will provide a detailed description of proposed activities that relate to the gaps/needs/barriers to be addressed including training and technical assistance to be provided to project staff, host country nationals, and community groups involved in the project. Ideally, the proposed approach should build upon existing activities, and government policies and plans and avoid needless duplication.
- *Work Plan*—The applicant will provide a detailed work plan and timeline for the proposed project, preferably with a visual such as a Gantt chart.
- *Program Management and Performance Assessment*—The applicant will describe: (1) How management will ensure that the goals and objectives will be met; (2) how information and data will be collected and used to demonstrate the impacts of the project; and (3) what systems will be put in place for self-assessment, evaluation and continuous improvement. USDOL has already developed common indicators and a database system for monitoring children's educational progress that can be used and adapted by Grantees after award so that they do not need to set up this type of system from scratch.
- *Budget/Cost Effectiveness*—The applicant will show how the budget reflects program goals and design in a cost-effective way so as to reflect budget/performance integration. The budget should be linked to the activities and outputs of the implementation plan listed above. This section of the application should explain the costs for performing all of the requirements presented in this solicitation, and for producing all required reports and other deliverables. Costs must include labor, equipment, travel, audits, evaluations, and other related costs. Preference may be given to applicants with low administrative costs, and all costs should be reported as they will become part of the cooperative agreement upon award. In their cost proposal, applicants must reflect a breakdown of the total administrative costs into direct administrative costs and indirect administrative costs. This section will be evaluated in accordance with applicable Federal laws and regulations. The budget must comply with Federal cost principles (which can be found in the applicable OMB Circulars) and with ILAB budget requirements contained in the application instructions in section III of this solicitation. Applicants are advised that customs and Value Added Tax (VAT) exemptions may not be allowed, and should take into account such costs in budget preparation. If major costs are omitted, the Grantee may not be allowed to include them later.

2. Organizational Capacity (35 points)

The applicant should present the qualifications of the organization(s) implementing the program/project. The evaluation criteria in this category are as follows:

a. *International Experience*—The organization applying for the award has international experience implementing basic, transitional, non-formal or vocational education programs that address issues of access, quality, and policy reform for vulnerable children including children engaged in or at risk of child labor, preferably in the country of interest or neighboring countries.

b. *Country Presence*—An applicant must demonstrate a country presence, or the capability to establish a country presence, independently or through a relationship with another organization(s) with country presence, which gives it the capability to work directly with government ministries, educators, civil society leaders, and other local faith-based or community organizations. Applicants without country presence must provide evidence that legal country presence can be established within 90 days of award. For applicants that do not have independent country presence, documentation of the relationship with the organization(s) with such a presence must be provided, or the capacity to establish such a relationship within 90 days of award.

c. *Fiscal Oversight*—The organization shows evidence of a sound financial system. The results of the most current independent financial audit must accompany the application, and applicants without one will not be considered.

d. *Coordination*—If two or more organizations are applying for the award in the form of a partnership, they must demonstrate an approach to ensure the successful collaboration including clear delineation of respective roles and responsibilities. The applicants must also identify the lead organization (Grantee) and submit the partnership agreement. Partners of the Grantee will be designated as contractors or sub-contractors.

e. *Experience*—The application must include information about previous grant or contracts of the applicant and partners that are relevant to this solicitation including:

1. The organizations for which the work was done;
2. A contact person in that organization with their current phone number;
3. The dollar value of the grant, contract, or cooperative agreement for the project;
4. The time frame and professional effort involved in the project;
5. A brief summary of the work performed; and
6. A brief summary of accomplishments.

This information on previous grants and contracts held by the applicant and partners shall be provided in appendices and will *not* count in the maximum page requirement.

3. Management/Plan/Key Personnel/ Staffing (25 points)

Successful performance of the proposed work depends heavily on the management skills and qualifications of the individuals committed to the project. Accordingly, in its evaluation of each application, USDOL will place emphasis on the applicant's management approach and commitment of personnel qualified for the work involved in accomplishing the assigned tasks. This section of the application must include sufficient information to judge management and staffing plans, and the experience and competence of program staff proposed for the project to assure that they meet the required qualifications. Information provided on the experience and educational background of personnel should include the following:

a. The identity of key personnel assigned to the project. "Key personnel" are staff who are essential to the successful operation of the project and completion of the proposed work and, therefore, may not be replaced or have hours reduced without the approval of the Grant Officer.

b. The educational background and experience of all staff to be assigned to the project.

c. The special capabilities of staff that demonstrate prior experience in organizing, managing and performing similar efforts.

d. The current employment status of staff and availability for this project. The applicant must also indicate whether the proposed work will be performed by persons currently employed or is dependent upon planned recruitment or sub-contracting.

Note that management and professional technical staff members comprising the applicant's proposed team should be individuals who have prior experience with organizations working in similar efforts, and are fully qualified to perform work specified in the Statement of Work. Where sub-contractors or outside assistance are proposed, organizational control should be clearly delineated to ensure responsiveness to the needs of USDOL. Key personnel must sign letters of agreement to serve on the project, and indicate availability to commence work within three weeks of grant award.

In this section, the following information must be furnished:

a. *Key personnel*—For each country for which an application is submitted, the applicant must designate the key personnel listed below. If key personnel are not designated, the application will not be considered.

i. A Project Director (Key Personnel) to oversee the project and be responsible for implementation of the requirements of the grant. The Program Director must have a minimum of three years of professional experience in a leadership role in implementation of complex basic education programs in developing countries in areas such as education policy; improving educational quality and access; educational assessment of disadvantaged students; development of community participation in the improvement of basic education for disadvantaged children, and monitoring and evaluation of basic education projects. Points will be given for candidates with additional years of experience including experience working with officials of ministries of education and/or labor. Preferred candidates will also have knowledge of child labor issues, and experience in the development of transitional, formal, and vocational education of children removed from child labor and/or victims of the worst forms of child labor. Fluency in English is required and working knowledge of the official language(s) spoken in the target countries is preferred.

ii. An Education Specialist (Key Personnel) who will provide leadership in developing the technical aspects of this project in collaboration with the Project Director. This person must have at least three years experience in basic education projects in developing countries in areas including student assessment, teacher training, educational materials development, educational management, and educational monitoring and information systems. This person must have experience in working successfully with ministries of education, networks of educators, employers' organizations and trade union representatives or comparable entities. Additional experience with child labor/education policy and monitoring and evaluation is an asset. Working knowledge of English preferred, as is a similar knowledge of official language(s) spoken in the target country.

b. *Other Personnel*—The applicant must identify other program personnel proposed to carry out the requirements of this solicitation.

c. *Management Plan*—The management plan must include the following:

i. A description of the functional relationship between elements of the project's management structure;

ii. The identity of the individual responsible for project management and the lines of authority between this individual and other elements of the project.

d. *Staff loading Plan*—The staff loading plan must identify all key tasks and the person-days required to complete each task. Labor estimated for each task must be broken down by individuals assigned to the task, including sub-contractors and consultants. All key tasks should be charted to show time required to perform them by months or weeks.

e. *Roles and Responsibilities*—The applicant must include a resume and description of the roles and responsibilities of all personnel proposed. Resumes must be attached in an appendix. At a minimum, each resume must include: the individual's current employment status and previous work experience, including position title, duties, dates in position, employing organizations, and educational background. Duties must be clearly defined in terms of role performed, *e.g.*, manager, team leader, consultant, etc. Indicate whether the individual is currently employed by the applicant, and (if so) for how long.

4. Leverage of Grant Funding (5 points)

The Department will give up to five (5) additional rating points to applications that include non-Federal resources that significantly expand the dollar amount, size and scope of the application. These programs will not be financed by the project, but can complement and enhance project objectives. Applicants are also encouraged to leverage activities such as micro-credit or income generation projects for adults that are not directly allowable under the grant. To be eligible for the additional points, the applicant must list the source(s) of funds, the nature, and possible activities anticipated with these funds under this grant and any partnerships, linkages or coordination of activities, cooperative funding, etc.

Signed in Washington, DC, this 6th day of May, 2003.

Daniel P. Murphy,

Grant Officer.

Appendix A: Project Document Format

Executive Summary

1. Background and Justification

2. Target Groups

3. Program Approach and Strategy

3.1 Narrative of Approach and Strategy (and linked to Logical Framework matrix).
3.2 Project Implementation Timeline (Gantt Chart of Activities linked to Logical Framework).
3.3 Budget (with cost of Activities linked to Outputs for Budget Performance Integration).

4. Project Monitoring and Evaluation

4.1 Indicators and Means of Verification.*
4.2 Baseline Data Collection Plan.

5. Institutional and Management Framework

5.1 Institutional Arrangements for Implementation.
5.2 Collaborating and Implementing Institutions (Partners) and Responsibilities.
5.3 Other Donor or International Organization Activity and Coordination.
5.4 Project Management Organizational Chart.

6. Inputs

6.1 Inputs provided by the DOL.
6.2 Inputs provided by the Grantee.
6.3 National and/or Other Contributions.

7. Sustainability

Annex A: Full presentation of the Logical Framework matrix.

[A worked example of a Logical Framework matrix and other background documentation for this SGA are available from the ILAB Web site at *http://www.dol.gov/ILAB/grants/education/sga0305/bkgrdSGA0305.htm.*)

[FR Doc. 03–11857 Filed 5–12–03; 8:45 am]
BILLING CODE 4510–28–P

DEPARTMENT OF LABOR

Employment and Training Administration

Workforce Investment Act of 1998 (WIA); Notice of Incentive Funding Availability for Program Year (PY) 2001 Performance

AGENCY: Employment and Training Administration (ETA), Labor.

ACTION: Notice.

SUMMARY: The Department of Labor, in collaboration with the Department of Education, announces that 16 states are eligible to apply for Workforce Investment Act (WIA) (Pub. L. 105–220, 29 U.S.C. 2801 *et seq.*) incentive awards under the WIA Regulations.

DATES: The 16 eligible states must submit their applications for incentive funding to the Department of Labor by June 27, 2003.

ADDRESSES: Submit applications to the Employment and Training Administration, Performance and Results Office, 200 Constitution Avenue NW., Room N–5306, Washington, DC 20210, Attention: Karen Staha, 202–693–2917 (phone), 202–693–3991 (fax), e-mail: *Staha.Karen@dol.gov.* Please be advised that mail delivery in the Washington, D.C. area has been inconsistent because of concerns about anthrax contamination. States are encouraged to submit applications via e-mail.

FOR FURTHER INFORMATION CONTACT: The Performance and Results Office: Karen Staha (phone: 202–693–2917 or e-mail: *Staha.Karen@dol.gov).* (This is not a toll-free number.) Information may also be found at the Web site: *http://www.doleta.gov/usworkforce/.*

SUPPLEMENTARY INFORMATION: 16 states (*see* list below) have qualified to receive a share of the $29.8 million available for incentive grant awards under WIA section 503. These funds are available to the states through June 30, 2005, to support innovative workforce development and education activities that are authorized under title I (Workforce Investment Systems) or title II (the Adult Education and Family Literacy Act (AEFLA)) of WIA, or under the Perkins Act (Pub. L. 105–332, 20 U.S.C. 2301 *et seq.*). In order to qualify for a grant award, a state must have exceeded performance levels, agreed to by the Secretaries, Governor, and State Education Officer, for outcomes in WIA title I, adult education (AEFLA), and vocational education (Perkins Act) programs. The goals included placement after training, retention in employment, and improvement in literacy levels, among other measures. After review of the performance data submitted by states to the Department of Labor and to the Department of Education, each Department determined which states would qualify for incentives for its program(s). (See below for a list of the states that qualified under all three Acts.) These lists of eligible states were compared, and states that qualified under all three programs are eligible to receive an incentive grant award. The amount that each state is eligible to receive was determined by the Department of Labor and the Department of Education and is based on WIA section 503(c)(20 U.S.C. 9273(c)), and is proportional to the total funding received by these states for the three Acts.

The states eligible to apply for incentive grant awards, and the amounts they are eligible to receive, are listed below:

State	Amount of award
1. Colorado	$1,138,334
2. Florida	3,000,000
3. Illinois	3,000,000
4. Kentucky	2,074,242
5. Louisiana	3,000,000
6. Maryland	1,944,845
7. Montana	750,000
8. North Dakota	750,000
9. Nebraska	750,000
10. Oklahoma	1,382,134
11. South Carolina	1,866,263
12. South Dakota	750,000
13. Tennessee	2,604,604
14. Texas	3,000,000
15. Washington	3,000,000
16. Wyoming	750,000

These eligible states must submit their applications for incentive funding to the Department of Labor by (insert date 45 days after date of publication), 2003. As set forth in the provisions of WIA section 503(b)(2) (20 U.S.C. 9273(b)(2)), 20 CFR 666.220(b) and Training and Employment Guidance Letter (TEGL) No. 20–01, Change 1, Application Process for Workforce Investment Act (WIA) Section 503 Incentive Grants, Program Year 2001 Performance, which is available at *http://www.doleta.gov/usworkforce/*, the application must include assurances that:

A. The legislature of the state was consulted with respect to the development of the application.

B. The application was approved by the Governor, the eligible agency for adult education (as defined in section 203(4) of WIA (20 U.S.C. 9202(4))) and the state agency responsible for vocational and technical education programs (as defined in section 3(9) of Perkins III (20 U.S.C. 2302(9)).

C. The state and the eligible agency, as appropriate, exceeded the state adjusted levels of performance for WIA title I, the state adjusted levels of performance for the AEFLA, and the performance levels established for Perkins Act programs.

In addition, states are requested to provide a description of the planned use of incentive grants as part of the application process, to ensure that the state's planned activities are innovative and are otherwise authorized under the WIA title I, the AEFLA, and/or the Perkins Act as amended, as required by WIA Section 503(a). TEGL No. 20–01, Change 1 provides the specific application process that states must follow to apply for these funds.

The applications may take the form of a letter from the governor, or designee, to the Assistant Secretary of Labor, Emily Stover DeRocco, Attention: Karen Staha, 200 Constitution Avenue NW, Room N–5306, Washington, D.C. 20210. In order to expedite the application process, states are encouraged to submit their applications electronically to Karen Staha at *Staha.Karen@dol.gov.* The states will receive their incentive awards by June 30, 2003.

Signed at Washington, D.C., this 7th day of May, 2003.

Emily Stover DeRocco,

Assistant Secretary for Employment and Training.

BILLING CODE 4510–30–P

* Initial choice of and justification of indicators and means of verification can be refined and/or adapted after baseline collection and development of Monitoring and Evaluation Plan.

State	PY2001 Performance Qualifies State for Incentives			
	WIA (title I).	AEFLA (Adult Education)	Perkins Act (Vocational Education)	WIA title I; AEFLA; Perkins Act
1. Alaska		X	X	
2. Alabama			X	
3. Arkansas		X	X	
4. Arizona		X	X	
5. California		X	X	
6. Colorado	X	X	X	X
7. Connecticut		X	X	
8. District of Columbia		X	X	
9. Delaware		X	X	
10. Florida	X	X	X	X
11. Georgia		X	X	
12. Hawaii		X	X	
13. Iowa		X	X	
14. Idaho	X		X	
15. Illinois	X	X	X	X
16. Indiana		X	X	
17. Kansas	X	X		
18. Kentucky	X	X	X	X
19. Louisiana	X	X	X	X
20. Massachusetts		X	X	
21. Maryland	X	X	X	X
22. Maine		X	X	
23. Michigan		X	X	
24. Minnesota	X		X	
25. Missouri		X	X	
26. Mississippi		X	X	
27. Montana	X	X	X	X
28. North Carolina		X	X	
29. North Dakota	X	X	X	X
30. Nebraska	X	X	X	X
31. New Hampshire		X	X	
32. New Jersey		X	X	
33. New Mexico		X		
34. Nevada			X	
35. New York	X		X	
36. Ohio		X	X	
37. Oklahoma	X	X	X	X
38. Oregon		X	X	
39. Pennsylvania		X	X	
40. Puerto Rico	X		X	
41. Rhode Island		X	X	
42. South Carolina	X	X	X	X
43. South Dakota	X	X	X	X
44. Tennessee	X	X	X	X
45. Texas	X	X	X	X
46. Utah			X	
47. Virginia		X	X	
48. Vermont			X	
49. Washington	X	X	X	X
50. Wisconsin		X	X	
51. West Virginia		X	X	
52. Wyoming	X	X	X	X

[FR Doc. 03–11856 Filed 5–12–03; 8:45 am]
BILLING CODE 4510–30–C

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice (03–050)]

Aerospace Safety Advisory Panel (ASAP); Meeting

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, Public Law 92–463, as amended, the National Aeronautics and Space Administration announces a forthcoming meeting of the Aerospace Safety Advisory Panel.

DATES: Wednesday, May 28, 2003, 1 p.m. to 2 p.m. Eastern Time.

ADDRESSES: National Aeronautics and Space Administration Headquarters, 300 E Street, SW., Room 6H46A, Washington, DC 20546.

FOR FURTHER INFORMATION CONTACT: Mr. Leonard B. Sirota, Executive Director, Aerospace Safety Advisory Panel, Code Q–1, National Aeronautics and Space Administration, Washington, DC 20546, 202/358–0914.

SUPPLEMENTARY INFORMATION: This meeting will be conducted via telecon with Panel members and consultants. This meeting will be open to the public up to the seating capacity of the room (45). The Aerospace Safety Advisory Panel is performing an evaluation of the safety upgrades for the T–38 aircraft. Visitors will be requested to sign a visitor's register and asked to comply with NASA security requirements, including the presentation of a valid picture ID before receiving an access badge. Foreign Nationals attending this meeting will be required to provide the following information: Full name; gender; date/place of birth; citizenship; Green card/via information (number, type, expiration date); passport information (number, country, expiration date); employer/affiliation information (name of institution, address, country, phone); and title/position of visitor. To expedite admittance, attendees can provide identifying information in advance by contacting Ms. Michele Dodson via e-mail at *Michele.D.Dodson@nasa.gov* or by telephone at (202) 358–0914.

June W. Edwards,

Advisory Committee Management Officer, National Aeronautics and Space Administration.

[FR Doc. 03–11817 Filed 5–12–03; 8:45 am]
BILLING CODE 7510–01–U

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice (03–051)]

NASA Advisory Council, Planetary Protection Advisory Committee; Meeting

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, Public Law 92–463, as amended, the National Aeronautics and Space Administration announces a forthcoming meeting of the NASA Advisory Council (NAC), Planetary Protection Advisory Committee (PPAC).

DATES: Thursday, May 29, 2003, 6:30 p.m. to 9:15 p.m., Friday, May 30, 2003, 8:30 a.m. to 5 p.m., and Saturday, May 31, 2003, 8:30 a.m. to 2:30 p.m.

ADDRESSES: Hilton Cocoa Beach, 1550 North Atlantic Avenue, Cocoa Beach, Florida 32931.

FOR FURTHER INFORMATION CONTACT: Ms. Marian Norris, Code SB, National Aeronautics and Space Administration, Washington, DC 20546, 202/358–4452.

SUPPLEMENTARY INFORMATION: The meeting will be closed to the public on Friday, May 30, 2003, 11 a.m. to noon, in accordance with the Government Sunshine Act, 5 U.S.C. 552b(c)(3), to hear a briefing on Mars Planetary Protection issues associated with an ongoing procurement. All other times of the meeting will be open to the public up to the capacity of the room. The agenda for the meeting includes the following topics:

—Planetary Protection Program Status/Plans

—Mars Planetary Protection and Current Standards

—Communications Issues in Planetary Protection

—Solar System Exploration Planetary Protection Status

It is imperative that the meeting be held on these dates to accommodate the scheduling priorities of the key participants. Visitors will be requested to sign a visitor's register.

June W. Edwards,

Advisory Committee Management Officer, National Aeronautics and Space Administration.

[FR Doc. 03–11901 Filed 5–12–03; 8:45 am]
BILLING CODE 7510–01–P

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

Agency Information Collection Activities: Submission for OMB Review; Comment Request

AGENCY: National Archives and Records Administration (NARA).

ACTION: Notice.

SUMMARY: NARA is giving public notice that the agency has submitted to OMB for approval the information collections described in this notice. The public is invited to comment on the proposed information collections pursuant to the Paperwork Reduction Act of 1995.

DATES: Written comments must be submitted to OMB at the address below on or before June 12, 2003 to be assured of consideration.

ADDRESSES: Comments should be sent to: Office of Information and Regulatory Affairs, Office of Management and Budget, Attn: Ms. Brooke Dickson, Desk Officer for NARA, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the proposed information collection and supporting statement should be directed to Tamee Fechhelm at telephone number 301–837–1694 or fax number 301–837–3213.

SUPPLEMENTARY INFORMATION: Pursuant to the Paperwork Reduction Act of 1995 (Pub. L. 104–13), NARA invites the general public and other Federal agencies to comment on proposed information collections. NARA published a notice of proposed collection for this information collection on February 12, 2003 (68 FR 7149 and 7150). No comments were received. NARA has submitted the described information collections to OMB for approval.

In response to this notice, comments and suggestions should address one or more of the following points: (a) Whether the proposed collection informations are necessary for the proper performance of the functions of NARA; (b) the accuracy of NARA's estimate of the burden of the proposed information collections; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including the use of information technology. In this notice, NARA is soliciting comments concerning the following information collections:

1. *Title*: Request to Microfilm Records.
OMB number: 3095–0017.

Agency form number: None.
Type of review: Regular.
Affected public: Companies and organizations that wish to microfilm archival holdings in the National Archives of the United States or a Presidential library for micropublication.
Estimated number of respondents: 5.
Estimated time per response: 10 hours.
Frequency of response: On occasion (when respondent wishes to request permission to microfilm records).
Estimated total annual burden hours: 50
Abstract: The information collection is prescribed by 36 CFR 1254.92. The collection is prepared by companies and organizations that wish to microfilm archival holdings with privately-owned equipment. NARA uses the information to determine whether the request meets the criteria in 36 CFR 1254.94, to evaluate the records for filming, and to schedule use of the limited space available for filming.

2. *Title*: Request to film, photograph, or videotape at a NARA facility for news purposes.
OMB number: 3095–0040.
Agency form number: None.
Type of review: Regular.
Affected public: Business or other for-profit, not-for-profit institutions.
Estimated number of respondents: 660.
Estimated time per response: 10 minutes.
Frequency of response: On occasion.
Estimated total annual burden hours: 110
Abstract: The information collection is prescribed by 36 CFR 1280.48. The collection is prepared by organizations that wish to film, photograph, or videotape on NARA property for news purposes. NARA needs the information to determine if the request complies with NARA's regulation, to ensure protections of archival holdings, and to schedule the filming appointment.

3. *Title*: Request to use NARA facilities for events.
OMB number: 3095–0043.
Agency form number: NA 16008.
Type of review: Regular.
Affected public: Not-for-profit institutions, individuals or households, business or other for-profit, Federal government.
Estimated number of respondents: 52.
Estimated time per response: 30 minutes.
Frequency of response: On occasion.
Estimated total annual burden hours: 26
Abstract: The information collection is prescribed by 36 CFR 1280.74. The collection is prepared by organizations that wish to use NARA public areas for an event. NARA uses the information to determine whether or not we can accommodate the request and to ensure that the proposed event complies with NARA regulations.

Dated: May 5, 2003.

L. Reynolds Cahoon,

Assistant Archivist for Human Resources and Information Services.

[FR Doc. 03–11774 Filed 5–12–03; 8:45 am]

BILLING CODE 7515–01–U

NATIONAL SCIENCE FOUNDATION

Membership of National Science Foundation's Senior Executive Service Performance Review Board

AGENCY: National Science Foundation.

ACTION: Announcement of membership of the National Science Foundation's Senior Executive Service Performance Review Board.

SUMMARY: This announcement of the membership of the National Science Foundation's Senior Executive Service Performance Review Board is made in compliance with 5 U.S.C. 4314(c)(4).

ADDRESSES: Comments should be addressed to Director, Division of Human Resource Management, National Science Foundation, Room 315, 4201 Wilson Boulevard, Arlington, VA 22230.

FOR FURTHER INFORMATION CONTACT: Mr. Joseph F. Burt at the above address or (703) 292–8180.

SUPPLEMENTARY INFORMATION: The membership of the National Science Foundation's Senior Executive Service Performance Review Board is as follows: Joseph Bordogna, Deputy Director, Chairperson; Mary E. Clutter, Assistant Director for Biological Sciences; Deborah L. Crawford, Deputy Assistant Director for Computer and Information Science and Engineering; Anthony A. Arnolie, Director, Office of Information and Resource Management.

Dated: May 6, 2003.

Joseph F. Burt,

Acting Director, Division of Human Resource Management.

[FR Doc. 03–11820 Filed 5–12–03; 8:45 am]

BILLING CODE 7555–01–M

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50–277 and 50–278]

Exelon Generation Company, LLC, PSEG Nuclear, LLC, Peach Bottom Atomic Power Station, Unit Nos. 2 and 3; Notice of Issuance of Renewed Facility Operating License Nos. DPR–44, and DPR–56 for an Additional 20-Year Period

Notice is hereby given that the U.S. Nuclear Regulatory Commission (the Commission) has issued Renewed Facility Operating License Nos. DPR–44, and DPR–56 to Exelon Generation Company, LLC (Exelon) and PSEG Nuclear, LLC (the licensees) of the Peach Bottom Atomic Power Station, Units 2 and 3 (Peach Bottom, Units 2 and 3). Exelon is the operator of Peach Bottom, Units 2 and 3. Renewed Facility Operating License No. DPR–44 authorizes operation of Peach Bottom, Unit 2, by Exelon at reactor core power levels not in excess of 3514 megawatts thermal in accordance with the provisions of the Peach Bottom, Unit 2, renewed license and the Technical Specifications. Renewed Facility Operating License No. DPR–56 authorizes operation of Peach Bottom, Unit 3, by Exelon at reactor core power levels not in excess of 3514 megawatts thermal in accordance with the provisions of the Peach Bottom, Unit 3, renewed license and the Technical Specifications.

Peach Bottom, Units 2 and 3, are boiling water nuclear reactors located partly in Peach Bottom Township, York County, partly in Drumore Township, Lancaster County and partly in Fulton Township, Lancaster County in southeastern Pennsylvania.

The applications for the renewed licenses complied with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's regulations. As required by the Act and the Commission's regulations in 10 CFR Chapter I, the Commission has made appropriate findings, which are set forth in each license. Prior public notice of the action involving the proposed issuance of these renewed licenses and of an opportunity for a hearing regarding the proposed issuance of these renewed licenses was published in the **Federal Register** on August 31, 2001 (66 FR 46036).

For further details with respect to this action, see (1) the Exelon Generation Company's license renewal applications for Peach Bottom, Units 2 and 3, dated July 2, 2001, as supplemented by letters dated November 26 and December 19, 2002, and January 14, January 29, January 31, and February 5, 2003; (2) the Commission's Safety Evaluation Report (SER), dated February 5, 2003 (NUREG–1769); (3) the licensee's Updated Final Safety Analysis Report; and (4) the Commission's Final Environmental Impact Statement, NUREG–1437, Supplement 10, dated January 22, 2003. These documents are available at the NRC's Public Document Room, One White Flint North, Public File Area 01 F21, 11555 Rockville Pike (first floor), Rockville, Maryland. Publicly available records will be available electronically from the Agency wide Documents Access and Management System (ADAMS). Public Electronic Reading Room on the internet at the NRC Web site *http://www.nrc.gov/reading-rm/adams.html*. Persons who do not have access to ADAMS or who encounter problems in accessing the documents located in ADAMS, should contact the NRC PDR Reference Staff by telephone at 1–800–397–4209, 301–415–4737 or by e-mail to *pdr@nrc.gov*.

Copies of Renewed Facility Operating License Nos. DPR–44 and DPR–56 may be obtained by writing to the U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Director, Division of Regulatory Improvement Programs. Copies of the Safety Evaluation Report, NUREG–1769, and the Final Environmental Impact Statement, NUREG–1437, Supplement 10) may be purchased from the National Technical Information Service, Springfield, Virginia 22161–0002 (*http://www.ntis.gov*), 1–800–553–6847, or the Superintendent of Documents, U.S. Government Printing Office, P.O. Box 371954, Pittsburgh, PA 15250–7954 (*http://www.access.gpo.gov/su_docs*), 202–512–1800. All orders should clearly identify the NRC publication number and the requestor's Government Printing Office deposit account number or VISA or MasterCard number and expiration date.

Dated at Rockville, Maryland, this 7th day of May 2003.

For the Nuclear Regulatory Commission.

Pao-Tsin Kuo,

Program Director, License Renewal and Environmental Impacts, Division of Regulatory Improvement Programs, Office of Nuclear Reactor Regulation.

[FR Doc. 03–11839 Filed 5–12–03; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50–254 and 50–265]

Exelon Generation Company, LLC; Notice of Consideration of Issuance of Amendment to Facility Operating License, Proposed No Significant Hazards Consideration Determination, and Opportunity for a Hearing

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Facility Operating License Nos. DPR–29 and DPR–30, issued to Exelon Generation Company, LLC (the licensee), for operation of the Quad Cities Nuclear Power Station (QCNPS), Units 1 and 2, located in Rock Island County, Illinois.

The proposed amendments would modify Technical Specification Surveillance Requirements to provide an alternative means of testing the Unit 1 main steam electromatic relief valves (ERVs), including those that provide the automatic depressurization and the low set relief functions, and provide an alternative means for testing the Units 1 and 2 dual function Target Rock safety/relief valves (S/RVs).

In its application for the exigent amendment, the licensee stated that on Unit 1, the 3A S/RV and 3C and 3D ERVs are currently leaking as evidenced by elevated tailpipe temperatures. The high tailpipe temperatures are indicative of steam leakage past the pilot valves or main valve seats. Leakage from ERVs and S/RVs is discharged to a point below the minimum water level in the suppression pool. Thus, the steam leakage can result in increasing suppression pool temperature. In addition, leakage past the pilot valves of S/RVs could cause an inadvertent opening of the main valve. Experience in the industry and at QCNPS indicates that manual actuation of main steam relief valves during plant operation can lead to increased seat leakage. As a result, the licensee plans as part of a maintenance outage previously scheduled for May 20, 2003, to replace the 3A S/RV. In addition, the 3C and 3D ERVs may also be replaced during the maintenance outage, pending results of additional testing to be performed at the start of the outage. This is being done based on the potential for steam leakage past the ERVs and S/RVs to result in increased suppression pool temperature. In addition, the alternative testing proposed for the 3A S/RV will reduce the potential for pilot valve leakage which can cause an inadvertent opening of the S/RV and impair the ability to re-close the valve. The need for this license amendment was identified shortly following an inadvertent opening of a relief valve on Unit 2 that occurred April 16, 2003, and the S/RV and ERV work was added to the scope of the planned maintenance outage on April 23, 2003. The licensee states that it has used its best efforts to make a timely application for the amendment. To support plant startup following the outage, efforts to minimize the potential for increased suppression pool temperature caused by leaking relief valves, and the desire to minimize an inadvertent opening of an S/RV, the licensee requested NRC approval of the proposed changes by May 29, 2003. This need date precludes use of the normal 30-day notice period. Accordingly, as described above, the basis for an exigent amendment request exists and the current situation could not have been avoided.

Before issuance of the proposed license amendment, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act) and the Commission's regulations.

Pursuant to 10 CFR 50.91(a)(6) for amendments to be granted under exigent circumstances, the NRC staff must determine that the amendment request involves no significant hazards consideration. Under the Commission's regulations in 10 CFR 50.92, this means that operation of the facility in accordance with the proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the proposed change involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

The proposed changes modify Technical Specification (TS) Surveillance Requirement (SR) 3.4.3.2, SR 3.5.1.10, and SR 3.6.1.6.1 to provide an alternative means for testing the main steam line relief valves, automatic depressurization system valves, and low set relief valves. Accidents are initiated by the malfunction of plant equipment, or the catastrophic failure of plant structures, systems, or components. The performance of relief valve testing is not a precursor to any accident previously evaluated and does not change the manner in which the valves are operated. The proposed testing requirements will not contribute to the failure of the relief

valves nor any plant structure, system, or component. Exelon Generation Company, LLC (EGC) has determined that the proposed change in testing methodology provides an equivalent level assurance that the relief valves are capable of performing their intended safety functions. Thus, the proposed changes do not affect the probability of an accident previously evaluated.

The performance of relief valve testing provides confidence that the relief valves are capable of depressurizing the reactor pressure vessel (RPV). This will protect the reactor vessel from overpressurization and allowing the combination of the Low Pressure Coolant Injection and Core Spray systems to inject into the RPV as designed. The low set relief logic causes two low set relief valves to be opened at a lower pressure than the relief mode pressure setpoints and causes the low set relief valves to stay open longer, such that reopening of more than one valve is prevented on subsequent actuations. Thus, the low set relief function prevents excessive short duration relief valve cycles with valve actuation at the relief setpoint, which avoids induced thrust loads on the relief valve discharge line for subsequent actuations of the relief valve. The proposed changes do not affect any function related to the safety mode of the dual function safety/relief valves. The proposed changes involve the manner in which the subject valves are tested, and have no affect [sic] on the types or amounts of radiation released or the predicted offsite doses in the event of an accident. The proposed testing requirements are sufficient to provide confidence that the relief valves are capable of performing their intended safety functions. In addition, a stuck open relief valve accident is analyzed in the QCNPS Updated Final Safety Analysis Report. Since the proposed testing requirements do not alter theassumptions for the stuck open relief valve accident, the radiological consequences of any accident previously evaluated are not increased.

Therefore, the proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the proposed change create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

The proposed changes do not affect the assumed accident performance of the main steam relief valves, nor any plant structure, system, or component previously evaluated. The proposed changes do not install any new equipment, and installed equipment is not being operated in a new or different manner. The proposed change in test methodology will ensure that the valves remain capable of performing their safety functions due to meeting the testing requirements of the American Society of Mechanical Engineers Boiler and Pressure Vessel Code, with the exception of opening the valve following installation or maintenance for which a relief request has been submitted, proposing an acceptable alternative. No setpoints are being changed which would alter the dynamic response of plant equipment. Accordingly, no new failure modes are introduced.

Therefore, the proposed change does not create the possibility of a new or different kind of accident from any previously evaluated.

3. Does the proposed change involve a significant reduction in a margin of safety?

Response: No.

The proposed changes will allow testing of the valve actuation electrical circuitry, including the solenoid, and mechanical actuation components, without causing the relief valve to open. The relief valves will be manually actuated prior to installation in the plant. Therefore, all modes of relief valve operation will be tested prior to entering the mode of operation requiring the valves to perform their safety functions. The proposed changes do not affect the valve setpoint or the operational criteria that directs the relief valves to be manually opened during plant transients. There are no changes proposed which alter the setpoints at which protective actions are initiated, and there is no change to the operability requirements for equipment assumed to operate for accident mitigation.

Therefore, the proposed changes do not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

The Commission is seeking public comments on this proposed determination. Any comments received within 14 days after the date of publication of this notice will be considered in making any final determination.

Normally, the Commission will not issue the amendment until the expiration of the 14-day notice period. However, should circumstances change during the notice period, such that failure to act in a timely way would result, for example, in derating or shutdown of the facility, the Commission may issue the license amendment before the expiration of the 14-day notice period, provided that its final determination is that the amendment involves no significant hazards consideration. The final determination will consider all public and State comments received. Should the Commission take this action, it will publish in the **Federal Register** a notice of issuance. The Commission expects that the need to take this action will occur very infrequently.

Written comments may be submitted by mail to the Chief, Rules and Directives Branch, Division of Administrative Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and should cite the publication date and page number of this **Federal Register** notice. Written comments may also be delivered to Room 6D59, Two White Flint North, 11545 Rockville Pike, Rockville, Maryland, from 7:30 a.m. to 4:15 p.m. Federal workdays. Documents may be examined, and/or copied for a fee, at the NRC's Public Document Room, located at One White Flint North, 11555 Rockville Pike (first floor), Rockville, Maryland.

The filing of requests for hearing and petitions for leave to intervene is discussed below.

By June 12, 2003, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for a hearing and a petition for leave to intervene. Requests for a hearing and a petition for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR part 2. Interested persons should consult a current copy of 10 CFR 2.714, which is available at the Commission's Public Document Room, located at One White Flint North, 11555 Rockville Pike (first floor), Rockville, Maryland, and available electronically on the Internet at the NRC Web site *http://www.nrc.gov/reading-rm/doc-collections/cfr/*. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition; and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) the nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene.

Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to 15 days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than 15 days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter. Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner shall provide a brief explanation of the bases of the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner intends to rely in proving the contention at the hearing. The petitioner must also provide references to those specific sources and documents of which the petitioner is aware and on which the petitioner intends to rely to establish those facts or expert opinion. Petitioner must provide sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the amendment under consideration. The contention must be one which, if proven, would entitle the petitioner to relief. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

If the amendment is issued before the expiration of the 30-day hearing period, the Commission will make a final determination on the issue of no significant hazards consideration. If a hearing is requested, the final determination will serve to decide when the hearing is held.

If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it immediately effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment.

If the final determination is that the amendment request involves a significant hazards consideration, any hearing held would take place before the issuance of any amendment.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemakings and Adjudications Staff, or may be delivered to the Commission's Public Document Room, located at One White Flint North, Public File Area O1 F21,11555 Rockville Pike (first floor), Rockville, Maryland, by the above date. Because of continuing disruptions in delivery of mail to United States Government offices, it is requested that petitions for leave to intervene and requests for hearing be transmitted to the Secretary of the Commission either by means of facsimile transmission to 301–415–1101 or by e-mail to *hearingdocket@nrc.gov*. A copy of the request for hearing and petition for leave to intervene should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and because of continuing disruptions in delivery of mail to United States Government offices, it is requested that copies be transmitted either by means of facsimile transmission to 301–415–3725 or by e-mail to *OGCMailCenter@nrc.gov*. A copy of the request for hearing and petition for leave to intervene should also be sent to Mr. Edward J. Cullen, Deputy General Counsel, Exelon BSC—Legal, 2301 Market Street, Philadelphia, PA 19101, attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the presiding Atomic Safety and Licensing Board that the petition and/or request should be granted based upon a balancing of the factors specified in 10 CFR 2.714(a)(1)(i)–(v) and 2.714(d).

For further details with respect to this action, see the application for amendment dated May 1, 2003, as supplemented May 2, 2003, which is available for public inspection at the Commission's Public Document Room (PDR), located at One White Flint North, Public File Area O1 F21, 11555 Rockville Pike (first floor), Rockville, Maryland. Publicly available records will be accessible electronically from the Agencywide Documents Access and Management System's (ADAMS) Public Electronic Reading Room on the Internet at the NRC Web site *http://www.nrc.gov/reading-rm/adams.html*. Persons who do not have access to ADAMS or who encounter problems in accessing the documents located in ADAMS, should contact the NRC PDR Reference staff by telephone at 1–800–397–4209, 301–415–4737, or by e-mail to *pdr@nrc.gov*.

Dated at Rockville, Maryland, this 6th day of May, 2003.

For the Nuclear Regulatory Commission.

Carl F. Lyon,

Project Manager, Section 2, Project Directorate III, Division of Licensing Project Management, Office of Nuclear Reactor Regulation.

[FR Doc. 03–11841 Filed 5–12–03; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Advisory Committee on Nuclear Waste Meeting on Planning and Procedures; Notice of Meeting

The ACNW will hold a Planning and Procedures meeting on May 28, 2003, Room T–2B1, 11545 Rockville Pike, Rockville, Maryland.

The entire meeting will be open to public attendance, with the exception of a portion that may be closed pursuant to 5 U.S.C. 552b(c) (2) and (6) to discuss organizational and personnel matters that relate solely to internal personnel rules and practices of ACNW, and information the release of which would constitute a clearly unwarranted invasion of personal privacy.

The agenda for the subject meeting shall be as follows:

Wednesday, May 28, 2003—8:30 a.m.–11 a.m.

The Committee will discuss proposed ACNW activities and related matters. The purpose of this meeting is to gather information, analyze relevant issues and facts, and formulate proposed positions and actions, as appropriate, for deliberation by the full Committee.

Members of the public desiring to provide oral statements and/or written comments should notify the Designated Federal Official, Mr. Howard J. Larson (Telephone: 301/415–6805) between 7:30 a.m. and 4:15 p.m. (ET) five days prior to the meeting, if possible, so that appropriate arrangements can be made. Electronic recordings will be permitted only during those portions of the meeting that are open to the public.

Further information regarding this meeting can be obtained by contacting the Designated Federal Official between 7:30 a.m. and 4:15 p.m. (ET). Persons planning to attend this meeting are urged to contact the above named individual at least two working days

prior to the meeting to be advised of any potential changes in the agenda.

Dated: May 6, 2003.

Sher Bahadur,

Associate Director for Technical Support, ACRS/ACNW.

[FR Doc. 03–11838 Filed 5–12–03; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Sunshine Act, Meeting

DATE: Weeks of May 12, 19, 26, June 2, 9, 16, 2003.

PLACE: Commissioners' Conference Room, 11555 Rockville Pike, Rockville, Maryland.

STATUS: Public and Closed.

MATTERS TO BE CONSIDERED:

Week of May 12, 2003

Wednesday, May 14, 2003

1:30 p.m. Discussion of Security Issues (Closed—Ex. 1)

Thursday, May 15, 2003

9:30 a.m. Briefing on Results of Agency Action Review Meeting (Public Meeting) (Contact: Robert Pascarelli, 301–415–1245). Morning session.

12:30 p.m. Briefing on Results of Agency Action Review Meeting (Public Meeting) (Contact: Robert Pascarelli, 301–415–1245). Afternoon session.

This meeting will be webcast live at the Web address—*www.nrc.gov.*

Week of May 19, 2003—Tentative

There are no meetings scheduled for the Week of May 19, 2003.

Week of May 26, 2003—Tentative

Wednesday, May 28, 2003

9:30 a.m. Meeting with Advisory Committee on the Medical Uses of Isotopes (ACMUI) (Public Meeting) (Contact: Angela Williamson, 301–415–5030)

This meeting will be webcast live at the Web address—*www.nrc.gov.*

2:45 p.m. Discussion of Management Issues (Closed—Ex. 2)

Thursday, May 29, 2003

9:30 a.m. Briefing on Status of Revisions to the Regulatory Framework for Steam Generator Tube Integrity (Public Meeting) (Contact: Louise Lund, 301–415–3248)

This meeting will be webcast live at the Web address—*www.nrc.gov.*

2 p.m. Briefing on Equal Employment Opportunity Program (Public Meeting) (Contact: Corenthis Kelley, 301–415–7380)

Week of June 2, 2003—Tentative

There are no meetings scheduled for the Week of June 2, 2003.

Week of June 9, 2003—Tentative

Wednesday, June 11, 2003

10:30 a.m. All Employees Meeting.
1:30 p.m. All Employees Meeting.

Week of June 16, 2003—Tentative

There are no meetings scheduled for the Week of June 16, 2003.

*The schedule for Commission meetings is subject to change on short notice. To verify the status of meetings call (recording)—(301) 415–1292. Contact person for more information: David Louis Gamberoni (301) 415–1651.

* * * * *

ADDITIONAL INFORMATION: By a vote of 4–0 on April 28, the Commission determined pursuant to U.S.C. 552b(e) and § 9.107(a) of the Commission's rules that "Affirmation of Nuclear Fuel Services, Inc. (Erwin, Tennessee)" be held on April 29, and on less than one week's notice to the public.

* * * * *

The NRC Commission Meeting Schedule can be found on the Internet at: *www.nrc.gov/what-we-do/policy-making/schedule.html.*

* * * * *

This notice is distributed by mail to several hundred subscribers; if you no longer wish to receive it, or would like to be added to the distribution, please contact the Office of the Secretary, Washington, DC 20555 (301–415–1969). In addition, distribution of this meeting notice over the Internet system is available. If you are interested in receiving this Commission meeting schedule electronically, please send an electronic message to *dkw@nrc.gov.*

Dated: May 8, 2003.

D.L. Gamberoni,

Technical Coordinator, Office of the Secretary.

[FR Doc. 03–11962 Filed 5–9–03; 10:07 am]

BILLING CODE 7590–01–M

NUCLEAR REGULATORY COMMISSION

Applications and Amendments to Facility Operating Licenses Involving No Significant Hazards Considerations; Biweekly Notice

I. Background

Pursuant to Public Law 97–415, the U.S. Nuclear Regulatory Commission (the Commission or NRC staff) is publishing this regular biweekly notice. Public Law 97–415 revised section 189 of the Atomic Energy Act of 1954, as amended (the Act), to require the Commission to publish notice of any amendments issued, or proposed to be issued, under a new provision of section 189 of the Act. This provision grants the Commission the authority to issue and make immediately effective any amendment to an operating license upon a determination by the Commission that such amendment involves no significant hazards consideration, notwithstanding the pendency before the Commission of a request for a hearing from any person.

This biweekly notice includes all notices of amendments issued, or proposed to be issued from, April 18, 2003, through May 1, 2003. The last biweekly notice was published on April 29, 2003 (68 FR 22744).

Notice of Consideration of Issuance of Amendments to Facility Operating Licenses, Proposed No Significant Hazards Consideration Determination, and Opportunity for a Hearing

The Commission has made a proposed determination that the following amendment requests involve no significant hazards consideration. Under the Commission's regulations in 10 CFR 50.92, this means that operation of the facility in accordance with the proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. The basis for this proposed determination for each amendment request is shown below.

The Commission is seeking public comments on this proposed determination. Any comments received within 30 days after the date of publication of this notice will be considered in making any final determination.

Normally, the Commission will not issue the amendment until the expiration of the 30-day notice period. However, should circumstances change during the notice period such that failure to act in a timely way would result, for example, in derating or shutdown of the facility, the Commission may issue the license amendment before the expiration of the 30-day notice period, provided that its final determination is that the amendment involves no significant hazards consideration. The final determination will consider all public and State comments received before action is taken. Should the Commission

take this action, it will publish in the **Federal Register** a notice of issuance and provide for opportunity for a hearing after issuance. The Commission expects that the need to take this action will occur very infrequently.

Written comments may be submitted by mail to the Chief, Rules and Directives Branch, Division of Administrative Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and should cite the publication date and page number of this **Federal Register** notice. Written comments may also be delivered to Room 6D22, Two White Flint North, 11545 Rockville Pike, Rockville, Maryland, from 7:30 a.m. to 4:15 p.m. Federal workdays. Copies of written comments received may be examined at the Commission's Public Document Room (PDR), located at One White Flint North, Public File Area 01F21, 11555 Rockville Pike (first floor), Rockville, Maryland. The filing of requests for a hearing and petitions for leave to intervene is discussed below.

By June 12, 2003, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for a hearing and a petition for leave to intervene. Requests for a hearing and a petition for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR part 2. Interested persons should consult a current copy of 10 CFR 2.714, which is available at the Commission's PDR, located at One White Flint North, Public File Area 01F21, 11555 Rockville Pike (first floor), Rockville, Maryland. Publicly available records will be accessible from the Agencywide Documents Access and Management System's (ADAMS) Public Electronic Reading Room on the Internet at the NRC Web site, *http://www.nrc.gov/reading-rm/doc-collections/cfr/.* If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition; and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of a hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to 15 days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than 15 days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter. Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner shall provide a brief explanation of the bases of the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner intends to rely in proving the contention at the hearing. The petitioner must also provide references to those specific sources and documents of which the petitioner is aware and on which the petitioner intends to rely to establish those facts or expert opinion. Petitioner must provide sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the amendment under consideration. The contention must be one which, if proven, would entitle the petitioner to relief. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

If a hearing is requested, the Commission will make a final determination on the issue of no significant hazards consideration. The final determination will serve to decide when the hearing is held.

If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it immediately effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment.

If the final determination is that the amendment request involves a significant hazards consideration, any hearing held would take place before the issuance of any amendment.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemaking and Adjudications Staff, or may be delivered to the Commission's PDR, located at One White Flint North, Public File Area 01F21, 11555 Rockville Pike (first floor), Rockville, Maryland, by the above date. Because of continuing disruptions in delivery of mail to United States Government offices, it is requested that petitions for leave to intervene and requests for hearing be transmitted to the Secretary of the Commission either by means of facsimile transmission to 301–415–1101 or by e-mail to *hearingdocket@nrc.gov.* A copy of the request for hearing and petition for leave to intervene should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and because of continuing disruptions in delivery of mail to United States Government offices, it is requested that copies be transmitted either by means of facsimile transmission to 301–415–3725 or by e-mail to *OGCMailCenter@nrc.gov.* A copy of the request for hearing and petition for leave to intervene should also be sent to the attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for a hearing will not be entertained absent a determination by the Commission, the presiding officer or the Atomic Safety and Licensing Board that the petition and/or request should be granted based upon a balancing of factors specified in 10 CFR 2.714(a)(1)(i)–(v) and 2.714(d).

For further details with respect to this action, see the application for amendment which is available for public inspection at the Commission's PDR, located at One White Flint North,

Public File Area 01F21, 11555 Rockville Pike (first floor), Rockville, Maryland. Publicly available records will be accessible from the Agencywide Documents Access and Management System's (ADAMS) Public Electronic Reading Room on the Internet at the NRC Web site, *http://www.nrc.gov/reading-rm/adams.html*. If you do not have access to ADAMS or if there are problems in accessing the documents located in ADAMS, contact the NRC PDR Reference staff at 1–800–397–4209, 301–415–4737 or by e-mail to *pdr@nrc.gov*.

AmerGen Energy Company, LLC, Docket No. 50–461, Clinton Power Station, Unit 1, DeWitt County, Illinois

Date of amendment request: April 2, 2001, as supplemented by letters dated January 15, August 23, 2002, and March 28, 2003.

Description of amendment request: The proposed amendment would add operational restrictions when the inclined fuel transfer system (IFTS) blind flange is removed during Modes 1, "Power Operation," 2, "Startup," or 3, "Hot Shutdown." The proposed changes would (1) include a limitation on the duration that the IFTS blind flange can be removed while primary containment integrity is required, (2) include a limitation on the duration that the IFTS blind flange can remain in the unbolted configuration, (3) specify the need to install the steam dryer pool to reactor cavity pool gate prior to opening the blind flange, and (4) provide the flexibility to remove the IFTS blind flange for other than maintenance and testing purposes only.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration which is presented below:

1. Does the change involve a significant increase in the probability or consequences of an accident previously evaluated?

The proposed changes allow operation of the IFTS while primary containment operability is required. The proposed changes result in a change to the primary containment boundary. A loss of primary containment integrity is not an accident initiator. The proposed changes do not involve any modifications to plant systems or design parameters or conditions that contribute to the initiation of any accidents previously evaluated. Therefore, the proposed changes do not increase the probability of any accident previously evaluated.

The proposed changes potentially affect the allowable leakage of the containment structure which is designed to mitigate the consequences of a loss-of-coolant accident (LOCA). The function of the primary containment is to maintain functional integrity during and following the peak transient pressures and temperatures that result from any LOCA. The primary containment is designed to limit fission product leakage following the design basis LOCA. Because the proposed changes do not alter the plant design, only the extent of the boundaries that provide primary containment isolation for the IFTS penetration, the proposed changes do not result in an increase in primary containment leakage. In addition, a time limit for IFTS blind flange removal of 40 days per cycle and a 12 hour limit for the unbolted configuration of the IFTS flange have been established as conservative measures to limit the associated risk to the containment boundary for all accident conditions. Once the blind flange is removed the IFTS transfer tube and its appurtenances become part of the primary containment boundary. As part of the primary containment boundary these subject components would be exposed to LOCA pressures. While these components have not been fabricated or installed to meet the acceptance criteria for a containment penetration, they have been built to withstand the rigors of a commercial nuclear application. This includes, but is not limited to, consideration of adequate seismic support, inertial forces imparted to the fuel, appropriate cooling and shielding for the spent nuclear fuel, integrity of the fluid system pressure boundary, and a safety analysis, including a failure modes and effects evaluation which assumes that credible events and credible combinations of events have been considered and mitigated against by either a fail safe design or redundancy. They are judged to be an acceptable barrier to prevent the uncontrolled release of post-accident fission products for the purposes of this amendment request.

Further, it has been shown that the largest potential leakage pathway, the IFTS transfer tube itself, would remain sealed by the depth of water required by the proposed [technical specification] TS change to be maintained in the fuel building fuel transfer pool. The transfer tube drain line constitutes the other possible leakage pathway, and will be required to be capable of being isolated via administrative control of the manual isolation valve in the drain line. Additionally, due to the physical relationships of the buildings and components involved, any leakage from either of these pathways is fully contained within the boundaries of the secondary containment and would be filtered by the Standby Gas Treatment System prior to release to the environment.

Leakage from the containment upper pool through the open IFTS transfer tube could potentially result in the excessive loss of water from the volume intended to provide post-LOCA makeup water to the suppression pool. The upper pool dump volume is maintained by requiring the installation of the steam dryer pool to reactor cavity pool gate with the seal inflated and a backup air supply provided. Maintaining the upper pool dump volume ensures proper suppression pool level can be achieved following a LOCA which provides for long-term steam condensation.

Based on the above, the proposed changes do not increase the consequences of an accident previously evaluated.

In summary, the proposed changes do not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the change create the possibility of a new or different kind of accident from any accident previously evaluated?

The proposed changes do not involve a change to the plant design or operation except for when IFTS is operated. As a result, the proposed changes do not affect any of the parameters or conditions that could contribute to the initiation of any accidents. No new accident modes or equipment failure modes are created by these changes. Extending the primary containment boundary to include portions of the IFTS has no influence on, nor does it contribute to the possibility of a new or different kind of accident or malfunction from those previously evaluated. Furthermore, operation of IFTS is unrelated to the operation of the reactor. There is no mishap in the process that can lead or contribute to the possibility of losing any coolant in the reactor or introducing the chance for positive or negative reactivity or other accidents different from and not bounded by those previously evaluated. Therefore, these proposed changes do not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Does the change involve a significant reduction in a margin of safety?

The proposed changes only affect the extent of a portion of the primary containment boundary. The time that the IFTS is in the seismically indeterminate configuration with the flange unbolted will be limited to 12 hours per operating cycle. The time the IFTS blind flange will be removed will be limited to 40 days per operating cycle. These restrictions will limit the risk from the potential leakage through the primary containment boundary. Having IFTS in operation does not affect the reliability of equipment used for core cooling. In addition, precautions will be taken to administratively control the IFTS transfer tube drain path so that the proposed change will not increase the probability that an increase in leakage from the primary containment to the secondary containment could occur. Precautions will also be taken to ensure that the steam dryer pool to reactor cavity pool gate is installed prior to removing the IFTS flange when primary containment is required to be operable. Installation of this gate will ensure that an adequate containment upper pool dump volume is maintained to support post-LOCA suppression pool makeup water volume requirements.

The margin of safety that has the potential of being impacted by the proposed changes involve the offsite dose consequences of postulated accidents which are directly related to containment leakage rate. The containment isolation system is designed to limit leakage to L_a which is defined by the [Clinton Power Station] CPS TS to be 0.65% of primary containment air weight per day at the design basis LOCA maximum peak containment pressure (*i.e.*, P_a). The limitation on containment leakage rate is designed to ensure that total leakage volume will not exceed the volume assumed in the accident analyses at P_a. The margin of safety for the offsite dose consequences of postulated accidents directly related to the containment leakage rate is maintained by meeting the L_a acceptance criteria during operation. The L_a value is not being modified by this proposed TS change. The IFTS will continue to provide an acceptable barrier to prevent unacceptable containment leakage during a LOCA, and therefore these changes will not create a situation causing the containment leakage rate acceptance criteria to be violated.

Therefore, the proposed changes do not involve a significant reduction in the margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Edward J. Cullen, Deputy General Counsel Exelon BSC—Legal, 2301 Market Street, Philadelphia, PA 19101.

NRC Section Chief: Anthony J. Mendiola.

Calvert Cliffs Nuclear Power Plant, Inc., Docket Nos. 50–317 and 50–318, Calvert Cliffs Nuclear Power Plant, Unit Nos. 1 and 2, Calvert County, Maryland

Date of amendments request: March 28, 2003.

Description of amendments request: The amendment would remove the post-accident hydrogen monitoring and control requirements from the Calvert Cliffs Nuclear Power Plant, Unit Nos. 1 and 2 Technical Specifications.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

The proposed change to the Technical Specifications has been evaluated against the standards in 10 CFR 50.92. The proposed amendment revises Technical Specification 3.3.10, Post-Accident Monitoring Instrumentation, and Technical Specification Table 3.3.10–1, Post-Accident Monitoring Instrumentation to delete references to the containment hydrogen analyzers. Additionally, the proposed amendment will delete Technical Specification 3.6.7, Hydrogen Recombiners. The proposed change has been determined to not involve a significant hazards consideration, in that operation of the facility in accordance with the proposed amendments:

1. Would not involve a significant increase in the probability or consequences of any accident previously evaluated.

Components used in the control of hydrogen in the Containment (consisting of hydrogen recombiners, a hydrogen vent, and hydrogen detectors) are not considered accident initiators. Therefore, this change does not increase the probability of an accident previously evaluated.

The purpose of the Hydrogen Control System is to ensure that hydrogen concentration is maintained below 4.0 volume percent so that Containment integrity is not challenged following a design basis loss-of-coolant accident (LOCA). The Calvert Cliffs Nuclear Power Plant Individual Plant Examination analyzed the probability of Containment failure under a variety of conditions. This proposed amendment does not alter the conclusions or assumptions of the Individual Plant Examination. The Calvert Cliffs Nuclear Power Plant Containment provides a safety margin against hydrogen burn following a design basis accident, such that the Containment will not fail even without hydrogen control equipment. Therefore, this change does not increase the consequences of accidents previously evaluated.

Therefore, this change does not involve a significant increase in the probability or consequences of any accident previously evaluated.

2. Would not create the possibility of a new or different [kind] of accident from any accident previously evaluated.

The proposed change does not change the configuration of the plant beyond the Hydrogen Control System. Hydrogen generation following a design basis LOCA has been evaluated. Deletion of the Hydrogen Control System from the plant design basis and Technical Specifications does not alter the generation of hydrogen post-LOCA.

Therefore, this change does not create the possibility of a new or different [kind] of accident from any accident previously evaluated.

3. Would not involve a significant reduction in [a] margin of safety.

The margin of safety in this case is the ability of Containment to withstand a pressure increase caused by the deflagration of hydrogen in the Containment. Industry experience and experimentation has shown that large, dry, well-ventilated Containments such as those at Calvert Cliffs can withstand pressures generated by ignition of hydrogen resulting from a LOCA. The Calvert Cliffs Nuclear Power Plant Containment provides a safety margin against hydrogen burn following a design basis accident, such that the Containment will not fail even without hydrogen control equipment.

Therefore, this change does not significantly reduce [a] margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendments request involves no significant hazards consideration.

Attorney for licensee: Jay E. Silberg, Esquire, Shaw, Pittman, Potts and Trowbridge, 2300 N Street, NW., Washington, DC 20037.

NRC Section Chief: Richard J. Laufer.

Entergy Operations, Inc., Docket No. 50–313, Arkansas Nuclear One, Unit No. 1, Pope County, Arkansas

Date of amendment request: April 2, 2003.

Description of amendment request: The proposed amendment would change the spent fuel pool loading restrictions by redefining the regions, inserting Metamic® poison panels in a portion of the spent fuel pool, and increasing the minimum boron concentration.

Basis for no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the proposed change involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

The three fuel handling accidents described below can be postulated to increase reactivity. However, for these accident conditions, the double contingency principle of ANS [American Nuclear Society] N16.1–1975 is applied. This states that it is unnecessary to assume two unlikely, independent, concurrent events to ensure protection against a criticality accident. Thus, for accident conditions, the presence of soluble boron in the storage pool water can be assumed as a realistic initial condition since its absence would be a second unlikely event.

Three types of drop accidents have been considered: a vertical drop accident, a horizontal drop accident, and an inadvertent drop of an assembly between the outside periphery of the rack and the pool wall:

- A vertical drop directly upon a cell will cause damage to the racks in the active fuel region. The current 1600 ppm soluble boron concentration TS limit will ensure that K_{eff} does not exceed 0.95.
- A fuel assembly dropped on top of the rack horizontally will not deform the rack structure such that criticality assumptions are invalidated. The rack structure is such that an assembly positioned horizontally on top of the rack results in a separation distance from the upper end of the active fuel region of the stored assemblies. This distance is sufficient to preclude interaction between the dropped assembly and the stored fuel.
- An inadvertent drop of an assembly between the outside periphery of the rack and the pool wall is bounded by the worst case fuel misplacement accident condition.

The fuel assembly misplacement accident was considered for all storage configurations. An assembly with high reactivity is assumed

to be placed in a storage location which requires restricted storage based on initial U–235 loading, cooling time, and burnup. The presence of boron in the pool water assumed in the analysis has been shown to offset the worst case reactivity effect of a misplaced fuel assembly for any configuration. This boron requirement is less than the 1600 ppm currently required by the ANO–1 TS. Thus, a five percent subcriticality margin can be easily met for postulated accidents, since any reactivity increase will be much less than the negative worth of the dissolved boron.

For fuel storage applications, water is usually present. An "optimum moderation" accident is not a concern in spent fuel pool storage racks because the rack design prevents the preferential reduction of water density between the cells of a rack (*e.g.*, boiling between cells). An "optimum moderation" accident in the new fuel pit was previously evaluated and the conclusions of that evaluation have not changed as a result of the fuel enrichment.

Therefore, the proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the proposed change create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

The proposed changes will define a portion of the current Region 2 as Region 3. The new region will contain Metamic® poison panel inserts and will allow unrestricted storage of fuel assemblies with various enrichments and burnup. To support the proposed change, new criticality analyses have been performed. The analyses resulted in new loading restrictions in Region 1 and Region 2. The presence of boron in the pool water assumed in the analysis is less than the 1600 ppm currently required by the ANO–1 TSs.

Thus, a five percent subcriticality margin can be easily met for postulated accidents, since any reactivity increase will be much less than the negative worth of the dissolved boron.

No new or different types of fuel assembly drop scenarios are created by the proposed change. During the installation of the Metamic® panels, the possible drop of a panel is bounded by the current fuel assembly drop analysis. No new or different fuel assembly misplacement accidents will be created. Administrative controls currently exist to assist in assuring fuel misplacement does not occur.

Therefore, the proposed change does not create the possibility of a new or different kind of accident from any previously evaluated.

3. Does the proposed change involve a significant reduction in a margin of safety?

Response: No.

With the presence of a nominal boron concentration, the SFP storage racks will be designed to assure that fuel assemblies of less than or equal to five weight percent U–235 enrichment when loaded in accordance with the proposed loading restrictions will be maintained within a subcritical array with a five percent subcritical margin (95% probability at the 95% confidence level). This has been verified by criticality analyses.

Credit for soluble boron in the SFP water is permitted under accident conditions. The proposed modification that will allow insertion of Metamic® poison panels does not result in the potential of any new misplacement scenarios. Criticality analyses have been performed to determine the required boron concentration that would ensure the maximum K_{eff} does not exceed 0.95. The ANO–1 TS for the minimum SFP boron concentration is greater than that required to ensure K_{eff} does not exceed 0.95. Therefore, the margin of safety currently defined by taking credit for soluble boron will be maintained.

The structural analysis of the spent fuel racks, along with the evaluation of the SFP structure, showed that the integrity of these structures will be maintained with the addition of the poison inserts. The structural requirements were shown to be satisfied, so the safety margins were maintained.

Therefore, the proposed change does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Nicholas S. Reynolds, Esquire, Winston and Strawn, 1400 L Street, NW., Washington, DC 20005–3502.

NRC Section Chief: Robert A. Gramm.

Entergy Operations, Inc., System Energy Resources, Inc., South Mississippi Electric Power Association, and Entergy Mississippi, Inc., Docket No. 50–416, Grand Gulf Nuclear Station, Unit 1, Claiborne County, Mississippi

Date of amendment request: March 19, 2003.

Description of amendment request: The proposed amendment deletes requirements from the technical specifications (TS) and other elements of the licensing bases to maintain a Post Accident Sampling System (PASS). Licensees were generally required to implement PASS upgrades as described in NUREG–0737, "Clarification of TMI [Three Mile Island] Action Plan Requirements," and Regulatory Guide 1.97, "Instrumentation for Light-Water-Cooled Nuclear Power Plants to Assess Plant and Environs Conditions During and Following an Accident." Implementation of these upgrades was an outcome of the lessons learned from the accident that occurred at TMI Unit 2 (TMI–2). Requirements related to PASS were imposed by Order for many facilities and were added to or included in the TS for nuclear power reactors currently licensed to operate. Lessons learned and improvements implemented over the last 20 years have shown that the information obtained from PASS can be readily obtained through other means or is of little use in the assessment and mitigation of accident conditions.

The changes are based on U.S. Nuclear Regulatory Commission (NRC)-approved Technical Specification Task Force (TSTF) Standard Technical Specification Change Traveler, TSTF–413, "Elimination of Requirements for a Post Accident Sampling System (PASS)." The NRC staff issued a notice of opportunity for comment in the **Federal Register** on December 27, 2001 (66 FR 66949), on possible amendments concerning TSTF–413, including a model safety evaluation and model no significant hazards consideration (NSHC) determination, using the consolidated line item improvement process. The NRC staff subsequently issued a notice of availability of the models for referencing in license amendment applications in the **Federal Register** on March 20, 2002 (67 FR 13027). The licensee affirmed the applicability of the following NSHC determination in its application dated March 19, 2003.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), an analysis of the issue of no significant hazards consideration is presented below:

Criterion 1—The Proposed Change Does Not Involve a Significant Increase in the Probability or Consequences of an Accident Previously Evaluated.

The PASS was originally designed to perform many sampling and analysis functions. These functions were designed and intended to be used in post accident situations and were put into place as a result of the TMI–2 accident. The specific intent of the PASS was to provide a system that has the capability to obtain and analyze samples of plant fluids containing potentially high levels of radioactivity, without exceeding plant personnel radiation exposure limits. Analytical results of these samples would be used largely for verification purposes in aiding the plant staff in assessing the extent of core damage and subsequent offsite radiological dose projections. The system was not intended to and does not serve a function for preventing accidents and its elimination would not affect the probability of accidents previously evaluated.

In the 20 years since the TMI–2 accident and the consequential promulgation of post accident sampling requirements, operating experience has demonstrated that a PASS provides little actual benefit to post accident mitigation. Past experience has indicated that there exists in-plant instrumentation and methodologies available in lieu of a PASS for collecting and assimilating information needed to assess core damage following an accident. Furthermore, the implementation of Severe Accident Management Guidance (SAMG) emphasizes accident management strategies based on in-plant instruments. These strategies provide guidance to the plant staff for mitigation and recovery from a severe accident. Based on current severe accident management strategies and guidelines, it is determined that the PASS provides little benefit to the plant staff in coping with an accident.

The regulatory requirements for the PASS can be eliminated without degrading the plant emergency response. The emergency response, in this sense, refers to the methodologies used in ascertaining the condition of the reactor core, mitigating the consequences of an accident, assessing and projecting offsite releases of radioactivity, and establishing protective action recommendations to be communicated to offsite authorities. The elimination of the PASS will not prevent an accident management strategy that meets the initial intent of the post–TMI–2 accident guidance through the use of the SAMGs, the emergency plan (EP), the emergency operating procedures (EOP), and site survey monitoring that support modification of emergency plan protective action recommendations (PARs).

Therefore, the elimination of PASS requirements from Technical Specifications (TS) (and other elements of the licensing bases) does not involve a significant increase in the consequences of any accident previously evaluated.

Criterion 2—The Proposed Change Does Not Create the Possibility of a New or Different Kind of Accident from any Previously Evaluated.

The elimination of PASS related requirements will not result in any failure mode not previously analyzed. The PASS was intended to allow for verification of the extent of reactor core damage and also to provide an input to offsite dose projection calculations. The PASS is not considered an accident precursor, nor does its existence or elimination have any adverse impact on the pre-accident state of the reactor core or post accident confinement of radioisotopes within the containment building.

Therefore, this change does not create the possibility of a new or different kind of accident from any previously evaluated.

Criterion 3—The Proposed Change Does Not Involve a Significant Reduction in the Margin of Safety.

The elimination of the PASS, in light of existing plant equipment, instrumentation, procedures, and programs that provide effective mitigation of and recovery from reactor accidents, results in a neutral impact to the margin of safety. Methodologies that are not reliant on PASS are designed to provide rapid assessment of current reactor core conditions and the direction of degradation while effectively responding to the event in order to mitigate the consequences of the accident. The use of a PASS is redundant and does not provide quick recognition of core events or rapid response to events in progress. The intent of the requirements established as a result of the TMI–2 accident can be adequately met without reliance on a PASS.

Therefore, this change does not involve a significant reduction in the margin of safety.

The NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Nicholas S. Reynolds, Esquire, Winston and Strawn, 1400 L Street, NW., 12th Floor, Washington, DC 20005–3502.

NRC Section Chief: Robert A. Gramm.

Entergy Operations, Inc., System Energy Resources, Inc., South Mississippi Electric Power Association, and Entergy Mississippi, Inc., Docket No. 50–416, Grand Gulf Nuclear Station, Unit 1, Claiborne County, Mississippi

Date of amendment request: April 3, 2003.

Description of amendment request: The proposed changes will revise the Updated Final Safety Analysis Report to change the Reactor Vessel Material Surveillance Program. The change will reflect participation in the Boiling Water Reactor Vessel and Internals Project (BWRVIP) Integrated Surveillance Program (ISP).

Basis for proposed no significant hazards consideration determination: As required by Section 50.91(a) of Title 10 of the Code of Federal Regulations (10 CFR), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the proposed change involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

Changes in the fracture toughness properties of reactor vessel beltline materials, resulting from the neutron irradiation and the thermal environment, are monitored by a surveillance program in compliance with the requirements of 10CFR50, Appendix H. The proposed change implements an integrated surveillance program that has been evaluated by the NRC [U.S. Nuclear Regulatory Commission] staff as meeting the requirements of paragraph III.C of Appendix H to 10 CFR 50. The BWRVIP's ISP surveillance material selection process adequately ensures that materials in the program effectively provide meaningful information to monitor changes in fracture toughness for GGNS [Grand Gulf Nuclear Station, Unit 1, or Grand Gulf] RPV [Reactor Pressure Vessel] materials. In addition, the ISP program requires participants to acquire and evaluate relevant ISP test data from the program which may affect RPV integrity evaluations in a timely manner. One advantage of participating in the BWRVIP ISP is that surveillance test data applicable to the Grand Gulf RPV will be available sooner than under the current plant specific program.

The proposed change will not affect current RPV performance and will not cause the RPV or interfacing systems to be operated outside of their design or testing limits. The proposed change will not alter any assumptions previously made in evaluating the radiological consequences of accidents.

Therefore, the proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the proposed change create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

The change does not affect the design, function, reliability, or operation of any plant structure, system or component. The purpose of the reactor vessel material surveillance program is to monitor neutron embrittlement and thermal environment effects in order to predict the behavioral characteristics of materials of pressure retaining components of the reactor coolant pressure boundary and to ensure that reactor vessel fracture toughness and integrity requirements are not violated. The ISP is an approved alternate monitoring program that meets the regulatory requirements in Appendix H to 10 CFR 50. As an acceptable alternate monitoring program, the ISP cannot create a new failure mode involving the possibility of a new or different kind of accident.

Therefore, the proposed changes do not create the possibility of a new or different kind of accident from that previously evaluated.

3. Does the proposed change involve a significant reduction in a margin of safety?

Response: No.

The reactor material surveillance program required by 10 CFR 50, Appendix H, is designed to ensure that adequate margins of safety are provided for the reactor coolant pressure boundary during any condition of normal operation, including anticipated operational occurrences and hydrostatic tests. Monitoring changes in the fracture toughness of reactor vessel materials ensures that material changes due to radiation embrittlement are adequately considered for safe reactor operations. Paragraph III.C of Appendix H to 10 CFR 50 delineates the regulatory requirements for an ISP. The BWRVIP ISP meets these requirements and has been approved by the NRC.

One of the uses of the material surveillance data obtained through the proposed ISP is to ensure the reactor coolant system P/T [Pressure/Temperature] limits established by the Technical Specifications are conservative. The material surveillance data obtained through the proposed Integrated Surveillance Program will provide new information that will be evaluated to ensure that the P/T limits are conservative. In addition, a neutron fluence calculation methodology which has been approved by the NRC staff and is consistent with the attributes identified in U.S. Nuclear Regulatory Commission Regulatory Guide 1.190, "Calculational and Dosimetry Methods for Determining Pressure Vessel Neutron Fluence," will be used for the determination of reactor vessel and surveillance capsule neutron fluence values to ensure quality of the method and compatibility between ISP results.

Therefore, the proposed changes do not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Nicholas S. Reynolds, Esquire, Winston and Strawn, 1400 L Street, NW., 12th Floor, Washington, DC 20005–3502.

NRC Section Chief: Robert A. Gramm.

Exelon Generation Company, LLC, Docket Nos. 50–237 and 50–249, Dresden Nuclear Power Station, Units 2 and 3, Grundy County, Illinois

Docket Nos. 50–254 and 50–265, Quad Cities Nuclear Power Station, Units 1 and 2, Rock Island County, Illinois

Date of application for amendment request: February 14, 2003.

Description of amendment request: The proposed amendments would relax the Technical Specifications (TSs) surveillance requirement (SR) for reactor instrumentation line excess flow check valves (EFCVs). Currently, TSs require testing of each reactor instrumentation line EFCV on a 24-month frequency. The proposed TS SR would require that a representative sample of reactor instrumentation line EFCVs be tested every 24 months, such that each EFCV will be tested nominally once every 10 years.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. The proposed TS change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

The current Technical Specification (TS) Surveillance Requirement (SR) frequency requires each reactor instrumentation line excess flow check valve (EFCV) to be tested every 24 months. The EFCVs at Dresden Nuclear Power Station (DNPS) and Quad Cities Nuclear Power Station (QCNPS) are designed to remain open during normal operation, but will close automatically in the event of an instrument line break downstream of the valve. The proposed change allows a reduced number of reactor instrumentation line EFCVs to be tested every 24 months. Industry operating experience demonstrates a high level of reliability for these EFCVs. A failure of an EFCV to isolate cannot initiate previously evaluated accidents (*i.e.*, a break in a reactor coolant pressure boundary (RCPB) instrument line outside containment). Therefore, there is no increase in the probability of an accident as a result of this proposed change.

The postulated break of an instrument line connected to the RCPB is discussed and evaluated in the Updated Final Safety Analysis Reports (UFSARs) for DNPS and QCNPS. The integrity and functional performance of the secondary containment and standby gas treatment system are not impaired by this event, and the calculated potential offsite exposures are below the guidelines of 10 CFR 100, "Reactor Site Criteria." The NRC approved General Electric Nuclear Energy Licensing Topical Report, NEDO–32977–A, "Excess Flow Check Valve Testing Relaxation," discusses through operating experience that there is a high degree of reliability with the EFCVs and that there are little radiological consequences resulting from an EFCV failure. The radiological consequences for an instrument line break do not credit the EFCVs for isolating the break. Therefore, the consequences of an instrument line break are not impacted by the proposed level of testing. Based on the above, the proposed TS change does not involve a significant increase in the consequences of an accident previously evaluated.

In summary, the proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. The proposed TS change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed change allows a reduced number of reactor instrumentation line EFCVs to be tested every 24 months. No other changes in requirements are being proposed. Industry operating experience as documented in NEDO–32977–A, provides supporting evidence that the reduced testing will not affect the high reliability of these valves. The potential failure of an EFCV to isolate as a result of the proposed reduction in testing is bounded by the evaluation of an instrument line break described in the UFSARs for DNPS and QCNPS. The proposed changes do not physically alter the plant and will not alter the operation of structures, systems, and components as described in the UFSARs. Therefore, a new or different kind of accident from any accident previously evaluated will not be created.

3. The proposed TS change does not involve a significant reduction in a margin of safety.

The consequences of an unisolable rupture of a RCPB instrument line outside containment has been previously evaluated in the UFSARs for DNPS and QCNPS. That evaluation assumed a continuous discharge of reactor coolant for the duration of the detection and cooldown sequence (*i.e.*, no credit was assumed for isolating the break by the associated EFCV in the ruptured instrument line). Since a continuous discharge was assumed in this evaluation, any potential failure of the associated EFCV to isolate postulated by the reduced testing frequency is bounded. Therefore, the proposed change does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Mr. Edward J. Cullen, Vice President, General Counsel, Exelon Generation Company, LLC, 300 Exelon Way, Kennett Square, PA 19348.

NRC Section Chief: Anthony J. Mendiola.

Exelon Generation Company, LLC, Docket Nos. 50–373 and 50–374, LaSalle County Station, Units 1 and 2, LaSalle County, Illinois

Date of amendment request: March 31, 2003.

Description of amendment request: The proposed amendments would revise Appendix A, Technical Specifications (TS), of Facility Operating License Nos. NPF–11 and NPF–18. Specifically, the proposed change will increase the upper limit associated with TS Table 3.3.5.1–1, "Emergency Core Cooling System Instrumentation," Function 3.e, "HPCS System Flow Rate—Low (Bypass)," Allowable Value from less than or equal to (≤) 1704 gallons per minute (gpm) to ≤ 2194 gpm. The proposed change increases the Allowable Value band to account for instrumentation deadband, as-left setting tolerances and setpoint drift, and resolves historical difficulties during calibration. The current Allowable Value was initially provided in the LaSalle County Station TS during conversion to Improved Technical Specifications (ITS) format. This value was based on vendor supplied data and believed at the time to adequately account for these parameters. The upper Allowable Value limit is being increased based on historical performance data for the High Pressure Core Spray (HPCS) system flow switches. The increase in the allowed bypass flow rate does not affect the capability of the HPCS system in performing its intended safety function.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. The proposed change does not involve a significant increase in probability or consequences of an accident previously evaluated.

The proposed change to LaSalle County Station Technical Specifications (TS) Table 3.3.5.1–1, "Emergency Core Cooling System Instrumentation," Function 3.e, "HPCS System Flow Rate—Low (Bypass)," request an increase in the Allowable Value from less than or equal to ≤ 1704 gpm to ≤ 2194 gpm. The operation of High Pressure Core Spray (HPCS) System Flow Rate—Low (Bypass) function is not a precursor to any accident previously evaluated. Thus, the proposed change does not have any effect on the probability of an accident previously evaluated.

The LaSalle County Station Emergency Core Cooling Systems (ECCS) are designed, in conjunction with the primary and secondary containments, to limit the release of radioactive material to the environment following a loss of coolant accident (LOCA). The ECCS uses two independent methods, flooding and spraying, to cool the reactor core following a LOCA. The HPCS is one of the core spray systems. The evaluation of the proposed change concluded that the HPCS will operate as assumed in accidents previously evaluated. Thus, the radiological consequences of any accident previously evaluated are not increased.

Therefore, the proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. The proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed change does not affect the control parameters governing unit operation and does not introduce any new equipment, modes of system operation or failure mechanisms. Calculations have been performed which evaluated the performance of the HPCS system without the closure of the minimum flow bypass valve. The calculations determined that the Unit 1 and Unit 2 HPCS pump capacity with the minimum flow bypass valve open will support HPCS System injection flow into the reactor pressure vessel (RPV) over the full range of RPV pressures above the requirements for HPCS in the Loss of Coolant Accident (LOCA) analyses.

Therefore, the proposed change does not create the possibility of a new or different kind of accident from any previously evaluated.

3. The proposed changes do not involve a significant reduction in a margin of safety.

The HPCS System Flow Rate—Low (Bypass) Function is one of the inputs to the logic that controls the opening and closing of the minimum flow bypass valve. The current Allowable Values for this function are greater than or equal to (≥)1380 gpm and ≤1704 gpm. The lower Allowable Value limit (*i.e.*, 1380 gpm) ensures that the minimum flow bypass valve opens when pump flow is too low for adequate cooling of the pump while the pump is operating. This limit is not affected by the proposed change.

The upper Allowable Value limit (*i.e.*, 1704 gpm) ensures that the minimum flow bypass valve automatically closes to allow maximum flow to the RPV spray sparger. The proposed change increases the value to ≤ 2194 gpm. LaSalle County Station has evaluated the effect of this change and concluded the following:

• The proposed change to increase the upper Allowable Value limit from ≤ 1704 gpm to ≤ 2194 gpm will provide further assurance that the minimum flow bypass valve remains full open until the HPCS pump flow to the RPV spray sparger is sufficient to prevent overheating of the pump, and

• The upper Allowable Value ensures that the HPCS minimum flow bypass valve closes to allow maximum flow to the RPV spray sparger. The proposed change will delay the initiation of valve closure from ≤ 1704 gpm to ≤ 2194 gpm. The calculations determined that the Unit 1 and Unit 2 HPCS pump capacity with the minimum flow bypass valve open will support HPCS system injection flow into the RPV over the full range of RPV pressures above the requirements for HPCS in the Loss of Coolant Accident (LOCA) analysis up to the maximum assumed injection flow of 5400 gpm. The margin to the flow requirements of the LOCA analysis varies from approximately 200 gpm at very low RPV pressures to greater than 1000 gpm at higher RPV pressures. Since the HPCS system injection flow requirement to the RPV spray sparger assumed in the LOCA analysis is met with the minimum flow bypass valve open, the LOCA analysis results are not adversely affected by increasing the value of flow when the minimum flow bypass valve starts to close. Although the calculations show that closure of the HPCS minimum flow bypass valve is not necessary to meet the HPCS system injection flow requirements assumed in the LOCA analyses, LaSalle County Station has chosen to retain the upper Allowable Value in the TS to provide additional margin to the assumed injection flow of the analyses.

Thus, increasing the TS upper Allowable Value limit for the HPCS System Flow Rate—Low (Bypass) Function from ≤ 1704 gpm to ≤ 2194 gpm will not affect the capability of the HPCS system in performing its intended safety function.

Therefore, the proposed changes do not involve a significant reduction in a margin of safety.

Based upon the above, Exelon Generation Company concludes that the proposed amendment presents no significant hazards consideration under the standards set forth in 10 CFR 50.92(c), and, accordingly, a finding of "no significant hazards consideration" is justified.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the requested amendments involve no significant hazards consideration.

Attorney for licensee: Mr. Edward J. Cullen, Deputy General Counsel, Exelon BSC—Legal, 2301 Market Street, Philadelphia, PA 19101.

NRC Section Chief: Anthony J. Mendiola.

Nuclear Management Company, LLC, Docket No. 50–263, Monticello Nuclear Generating Plant, Wright County, Minnesota

Date of amendment request: March 19, 2003.

Description of amendment request: The proposed amendment would delete requirements from the Technical Specifications (TSs) and other elements of the licensing bases related to the post-accident sampling system (PASS) at the Monticello Nuclear Generating Plant. Licensees were generally required to implement PASS upgrades as described in NUREG–0737, "Clarification of TMI [Three Mile Island] Action Plan Requirements," and Regulatory Guide 1.97, "Instrumentation for Light-Water-Cooled Nuclear Power Plants to Assess Plant and Environs Conditions During and Following an Accident." Implementation of these upgrades was an outcome of the lessons learned from the accident that occurred at TMI Unit 2. Requirements related to PASS were imposed by Order for many facilities and were added to or included in the TSs for nuclear power reactors currently licensed to operate. Lessons learned and improvements implemented over the last 20 years have shown that the information obtained from PASS can be readily obtained through other means or is of little use in the assessment and mitigation of accident conditions.

The proposed changes are based on NRC-approved Technical Specification Task Force (TSTF) Standard Technical Specification Change Traveler, TSTF–413, "Elimination of Requirements for a Post Accident Sampling System (PASS)." The NRC staff issued a notice of opportunity for comment in the **Federal Register** on December 27, 2001 (66 FR 66949), on possible amendments concerning TSTF–413. The notice included a model safety evaluation and model no significant hazards consideration determination, using the consolidated line-item improvement process. The NRC staff subsequently issued a notice of availability of the models for referencing in license amendment applications in the **Federal Register** on March 20, 2002 (67 FR 13027). The licensee affirmed the applicability of the following no significant hazards consideration determination in its application dated March 19, 2003.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), an analysis of the issue of no significant hazards consideration is presented below:

Criterion 1—The Proposed Change Does Not Involve a Significant Increase in the Probability or Consequences of an Accident Previously Evaluated

The PASS was originally designed to perform many sampling and analysis functions. These functions were designed and intended to be used in post accident situations and were put into place as a result of the TMI–2 accident. The specific intent of the PASS was to provide a system that has the capability to obtain and analyze samples of plant fluids containing potentially high levels of radioactivity, without exceeding plant personnel radiation exposure limits. Analytical results of these samples would be used largely for verification purposes in aiding the plant staff in assessing the extent of core damage and subsequent offsite radiological dose projections. The system was not intended to and does not serve a function for preventing accidents and its elimination would not affect the probability of accidents previously evaluated.

In the 20 years since the TMI–2 accident and the consequential promulgation of post accident sampling requirements, operating experience has demonstrated that a PASS provides little actual benefit to post accident mitigation. Past experience has indicated that there exists in-plant instrumentation and methodologies available in lieu of a PASS for collecting and assimilating information needed to assess core damage following an accident. Furthermore, the implementation of Severe Accident Management Guidance (SAMG) emphasizes accident management strategies based on in-plant instruments. These strategies provide guidance to the plant staff for mitigation and recovery from a severe accident. Based on current severe accident management strategies and guidelines, it is determined that the PASS provides little benefit to the plant staff in coping with an accident.

The regulatory requirements for the PASS can be eliminated without degrading the plant emergency response. The emergency response, in this sense, refers to the methodologies used in ascertaining the condition of the reactor core, mitigating the consequences of an accident, assessing and projecting offsite releases of radioactivity, and establishing protective action recommendations to be communicated to offsite authorities. The elimination of the PASS will not prevent an accident management strategy that meets the initial intent of the post-TMI–2 accident guidance through the use of the SAMGs, the emergency plan (EP), the emergency operating procedures (EOP), and site survey monitoring that support modification of emergency plan protective action recommendations (PARs).

Therefore, the elimination of PASS requirements from Technical Specifications (TS) (and other elements of the licensing bases) does not involve a significant increase in the consequences of any accident previously evaluated

Criterion 2—The Proposed Change Does Not Create the Possibility of a New or Different Kind of Accident from any Previously Evaluated.

The elimination of PASS related requirements will not result in any failure mode not previously analyzed. The PASS was intended to allow for verification of the extent of reactor core damage and also to provide an input to offsite dose projection calculations. The PASS is not considered an accident precursor, nor does its existence or elimination have any adverse impact on the pre-accident state of the reactor core or post accident confinement of radioisotopes within the containment building.

Therefore, this change does not create the possibility of a new or different kind of accident from any previously evaluated.

Criterion 3—The Proposed Change Does Not Involve a Significant Reduction in the Margin of Safety

The elimination of the PASS, in light of existing plant equipment, instrumentation, procedures, and programs that provide effective mitigation of and recovery from reactor accidents, results in a neutral impact to the margin of safety. Methodologies that are not reliant on PASS are designed to provide rapid assessment of current reactor core conditions and the direction of degradation while effectively responding to the event in order to mitigate the consequences of the accident. The use of a PASS is redundant and does not provide quick recognition of core events or rapid response to events in progress. The intent of the requirements established as a result of the TMI–2 accident can be adequately met without reliance on a PASS.

Therefore, this change does not involve a significant reduction in the margin of safety.

The NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Jay E. Silberg, Esq., Shaw, Pittman, Potts and Trowbridge, 2300 N Street, NW., Washington, DC 20037.

NRC Section Chief: L. Raghavan.

Nuclear Management Company, LLC, Docket Nos. 50–266 and 50–301, Point Beach Nuclear Plant, Units 1 and 2, Town of Two Creeks, Manitowoc County, Wisconsin

Date of amendment request: March 27, 2003.

Description of amendment request: **The proposed amendment would approve a selective scope application of an alternative source term (AST) for fuel handling accidents (FHAs). Specifically, the amendments would revise Technical Specification (TS) 3.9.3, "Containment Penetrations," to (1) change the Applicability statement to "During movement of recently irradiated fuel assemblies within containment," and (2) modify the Required Action for Condition A to eliminate the requirement to suspend core alterations and add the requirement to suspend movement of recently irradiated fuel assemblies within containment if one or more containment penetrations are not in the required status.**

Basis for proposed no significant hazards consideration determination: **As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration which is presented below:**

1. Operation of the Point Beach Nuclear Plant in accordance with the proposed amendments does not result in a significant increase in the probability or consequences of any accident previously evaluated.

Selective implementation of the Alternative Source Term (AST) and those plant systems affected by implementing the proposed changes to the TS are not accident initiators and cannot increase the probability of an accident. The AST does not adversely affect the design or operation of the facility in a manner that would create an increase in the probability of an accident. Rather, the AST is a methodology used to evaluate the dose consequences of a postulated accident.

The fuel handling accident analysis has demonstrated that the dose consequences of a postulated fuel handling accident remain within the limits provided sufficient decay has occurred prior to the movement of irradiated fuel without taking credit for certain mitigation features such as ventilation filter systems and containment closure. Irradiated fuel that has not undergone the required decay period of 65 hours is defined as recently irradiated fuel and the currently approved TS requirements are applicable when this recently irradiated fuel is being handled.

This amendment does not alter the methodology or equipment used directly in fuel handling operations. Neither ventilation filter system (*i.e.*, the containment purge or drumming area vent stack) is used to actually handle fuel. Neither of these systems is an accident initiator. Similarly, neither the equipment hatch, personnel air locks, any other containment penetrations, nor any component thereof is an accident initiator. No other accident initiator is affected by the proposed changes.

The TEDE [total effective dose equivalent] doses from the analysis supporting this amendment request have been compared to equivalent TEDE doses estimated with the guidelines of RG [Regulatory Guide] 1.183 ["Alternative Radiological Source Terms for Evaluating Design Basis Accidents at Nuclear Power Reactors"] Footnote 7. The new values are shown to be comparable to the results of the previous analysis.

Based on the aforementioned reasons, the proposed amendment does not involve a significant increase in the probability or consequences of a FHA as previously analyzed.

2. Operation of the Point Beach Nuclear Plant in accordance with the proposed amendments does not result in a new or different kind of accident from any accident previously evaluated.

The evaluation of the effects of the proposed changes indicates that all design standards and applicable safety criteria limits are met. The proposed amendment would increase the time during which the equipment hatch and personnel air locks could be open during core alterations and movement of irradiated fuel. The proposed amendment does not involve changes in the operations of these containment penetrations. Having these penetrations open does not create the possibility of a new accident.

Therefore, operation of the Point Beach Nuclear Plant in accordance with the proposed amendments will not create the possibility of a new or different type of accident from any accident previously evaluated.

3. Operation of the Point Beach Nuclear Plant in accordance with the proposed amendments does not result in a significant reduction in a margin of safety.

The assumptions and input used in the analysis are conservative as noted below. The design basis FHA has been defined to identify conservative conditions. The source term and radioactivity releases have been calculated pursuant to RG 1.183, Appendix B and with conservative assumptions concerning prior reactor operations. The control room atmospheric dispersion factor has been calculated with conservative assumptions associated with the release. The conservative assumptions and input noted above ensure that the radiation doses cited in the amendment request are the upper bound to radiological consequences of a FHA either in containment or in the spent fuel pool. The analysis shows that there is a significant margin between the TEDE radiation doses calculated for the postulated FHA using the AST and acceptance limits of 10 CFR 50.67 and RG 1.183. The proposed changes will not degrade the plant protective boundaries, will not cause a release of fission products to the public, and will not degrade the performance of any Structures, Systems, and Components important to safety. Therefore, there is no significant reduction in the margin of safety as a result of the proposed changes.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: John H. O'Neill, Jr., Shaw, Pittman, Potts, and Trowbridge, 2300 N Street, NW., Washington, DC 20037.

NRC Section Chief: L. Raghavan.

Southern Nuclear Operating Company, Inc, Docket No. 50–364, Joseph M. Farley Nuclear Plant, Unit 2, Houston County, Alabama

Date of amendment request: February 11, 2003.

Description of amendment request: **The proposed amendments would allow a 40-month inspection interval for Farley, Unit 2 after the completion of the first post-replacement in-service inspection, rather than the completion of two consecutive inspections resulting in a classification of C–1.**

Basis for proposed no significant hazards consideration determination: **As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:**

1. Does the proposed change involve a significant increase in the probability or consequences of an accident previously evaluated?

The proposed one-time change revises the steam generator (SG) inspection interval requirements in TS [technical specification] 5.5.9.3, "Inspection Frequencies," for the FNP [Farley Nuclear Plant] Unit 2 Spring 2004 refueling outage, to allow a 40[-]month inspection frequency after one inspection, rather than after two consecutive inspections with results that are within the C–1 category. C–1 category is defined as "less than 5% of the total tubes inspected are degraded tubes and none of the inspected tubes are defective."

The proposed one-time extension of the FNP Unit 2 SG tube inservice inspection interval does not involve changing any structure, system, or component, or affect reactor operations. It is not an initiator of an accident and does not change any existing safety analysis previously analyzed in the FNP's Final Safety Analysis Report (FSAR). As such, the proposed change does not involve a significant increase in the probability of an accident previously evaluated.

Since the proposed change does not alter the plant design, there is no direct increase in SG leakage. Industry experience indicates that the probability of increased SG tube degradation would not go undetected. Additionally, steps described below will further minimize the risk associated with this extension. For example, the scope of inspections performed during the last FNP Unit 2 refueling outage (*i.e.*, the first refueling outage following SG replacement) exceeded the TS requirements for the first two refueling outages after SG replacement. That is, more tubes were inspected than were required by TS. Currently, FNP Unit 2 does not have a SG damage mechanism, and will meet the current industry examination guidelines without performing SG inspections during the next refueling outage. Additionally, as part of the FNP SG Program, both a Condition Monitoring Assessment and an Operational Assessment are performed after each inspection and compared to the Nuclear Energy Institute (NEI) 97–06, "Steam Generator Program Guidelines," performance criteria. The results of the Condition Monitoring Assessment demonstrated that all performance criteria were met during the FNP Unit 2 Fall 2002 refueling outage, and the results of the Operational Assessment show that all performance criteria will be met over the proposed operating period. Considering these actions, along with the improved SG design and reliability of Westinghouse replacement SGs, extending the SG tube inspection frequency does not involve a significant increase in the consequences of an accident previously evaluated.

2. Does the proposed change create the possibility of a new or different kind of accident from any accident previously evaluated?

The proposed change revises the SG inspection frequency requirements in TS 5.5.9.3.a for the FNP Unit 2 Spring 2004 refueling outage, to allow a 40[-]month inspection interval after one inspection, rather than after two consecutive inspections, with inspection results within the C–1 category.

The proposed change will not alter any plant design basis or postulated accident resulting from potential SG tube degradation. The scope of inspections performed during the last FNP Unit 2 refueling outage (*i.e.*, the first refueling outage following SG replacement) significantly exceeded the TS requirements for the scope of the first two refueling outages after SG replacement.

Primary-to-secondary leakage that may be experienced during all plant conditions is expected to remain within current accident analysis assumptions. The proposed change does not affect the design of the SGs, the method of SG operation, or reactor coolant chemistry controls. No new equipment is being introduced, and installed equipment is not being operated in a new or different manner. The proposed change involves a one-time extension to the SG tube inservice inspection frequency and therefore will not give rise to new failure modes. In addition, the proposed change does not impact any other plant systems or components.

3. Does the proposed change involve a significant reduction in a margin of safety?

The SG tubes are an integral part of the Reactor Coolant System (RCS) pressure boundary that are relied upon to maintain the RCS pressure and inventory. The SG tubes isolate the radioactive fission products in the reactor coolant from the secondary system. The safety function of the SGs is maintained by ensuring the integrity of the SG tubes. In addition, the SG tubes comprise the heat transfer surface between the primary and secondary systems such that residual heat can be removed from the primary system.

SG tube integrity is a function of the design, environment, and current physical condition. Extending the SG tube inservice inspection frequency by one operating cycle will not alter the function or design of the SGs. SG inspections conducted during the first refueling outage following SG replacement demonstrated that the SGs do not have an active damage mechanism, and the scope of those inspections significantly exceeded the scope required by the TS. These inspection results were comparable to similar inspection results for second generation alloy 690 models of replacement SGs installed at other plants, and subsequent inspections at those plants yielded results that support this extension request. The improved design of the replacement SGs also provides reasonable assurance that significant tube degradation is not likely to occur over the proposed operating period.

The NRC staff has reviewed the licensee's analysis and, based on this

review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: M. Stanford Blanton, Esq., Balch and Bingham, Post Office Box 306, 1710 Sixth Avenue North, Birmingham, Alabama 35201.

NRC Section Chief: John A. Nakoski.

Southern Nuclear Operating Company, Inc, Docket No. 50–364, Joseph M. Farley Nuclear Plant, Unit 2, Houston County, Alabama

Date of amendment request: March 31, 2003.

Description of amendment request: The proposed amendments would modify Surveillance Requirement (SR) 3.4.11.1, for Farley, Unit 2 only by the addition of the following note that states, "Not required to be performed for Unit 2 for the remainder of operating cycle 16 for Q2B31MOV800B." In addition, a temporary Technical Specification SR 3.4.11.4 is added to provide compensatory action for this block valve while SR 3.4.11.1 is suspended. Further, this SR requires that power to the Farley, Unit 2 Power Operated Relief Valve Q2B31MOV800B be checked at least every 24 hours for the remainder of operating cycle 16.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. The proposed changes do not involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed change to Surveillance Requirement (SR) 3.4.11.1 suspends the requirement to cycle test the Unit Two pressurizer power operated relief valve (PORV) block valve Q2B31MOV8000B for the remainder of operating cycle 16. This change will eliminate the remaining scheduled cycle tests for the PORV block valve during operating cycle 16. SR 3.4.11.4 is added to provide compensatory measures for verifying power available to the block valve at least every 24 hours. At the end of cycle 16, the proposed changes will no longer be in effect. Suspension of the cycle tests for the PORV block valve Q2B31MOV8000B may result in a small decrease in assurance that the block valve would cycle if required to isolate a stuck open PORV. However, experience with these valves has shown them to be very reliable and suspension of the remaining tests will not appreciably reduce reliability of the valve. There is no relationship between packing leakage on the PORV block valve and a postulated stuck open PORV. The proposed compensatory measure of verifying block valve power available on a 24 hour basis adds additional assurance that the block valve will close if demanded. Therefore, the probability of a previously evaluated accident remains acceptable is not significantly increased.

The proposed changes do not affect the consequences of a previously analyzed accident since the magnitude and duration of analyzed events are not impacted by this change. The dose consequences of the proposed change are bounded by LOCA [loss-of-coolant accident] analyses. Therefore, the consequences of a previously evaluated accident are unchanged.

2. The proposed changes do not create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed changes involve no change to the physical plant. They allow for suspension of the PORV block valve Q2B31MOV8000B cycle tests for a limited time and provide for compensatory action to verify power to the PORV block valve. This valve provides an isolation function for a postulated stuck open or leaking pressurizer PORV. This condition is an analyzed event since it is bounded by the FNP [Farley Nuclear Plant] LOCA analyses. In addition to the isolation function, the block valve is required to remain open to allow the associated PORV to function automatically to control reactor coolant system (RCS) pressure. These changes do not impact the open function of the block valve since the normal position is open.

3. The proposed changes do not involve a significant reduction in a margin of safety.

The physical plant is unaffected by these changes. The proposed changes do not impact accident offsite dose, containment pressure or temperature, emergency core cooling system (ECCS) or reactor protection system (RPS) settings or any other parameter that could affect a margin of safety. The elimination of cycle testing of the PORV block valve Q2B31MOV8000B for the remainder of the Unit Two operating cycle and the addition of the proposed compensatory action that enhances assurance of valve operation are somewhat offsetting.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: M. Stanford Blanton, Esq., Balch and Bingham, Post Office Box 306, 1710 Sixth Avenue North, Birmingham, Alabama 35201.

NRC Section Chief: John A. Nakoski.

Southern Nuclear Operating Company, Inc., et al., Docket Nos. 50–424 and 50–425, Vogtle Electric Generating Plant, Units 1 and 2, Burke County, Georgia

Date of amendment request: February 26, 2003.

Description of amendment request: The proposed amendments would revise Technical Specifications Section 5.5.17, "Containment Leakage Rate Testing Program," to reflect a one time deferral of the Type-A Containment Integrated Leak Rate Test (ILRT). The 10-year interval between ILRTs is to be extended to 15 years from the previous ILRTs that were completed in March 2002 for Unit 1 and March 1995 for Unit 2.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. The proposed Technical Specifications change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed revision to Technical Specifications 5.5.17, "Containment Leakage Rate Testing Program," involves a one-time extension to the current interval for Type A containment leak testing. The current test interval of ten (10) years would be extended on a one-time basis to no longer than fifteen (15) years from the last Type A test. The proposed Technical Specifications change does not involve a physical change to the plant or a change in the manner in which the plant is operated or controlled. The reactor containment is designed to provide an essentially leak tight barrier against the uncontrolled release of radioactivity to the environment for postulated accidents. As such, the reactor containment itself and the testing requirements invoked to periodically demonstrate the integrity of the reactor containment exist to ensure the plant's ability to mitigate the consequences of an accident, and do not involve the prevention or identification of any precursors of an accident.

The proposed change involves only the extension of the interval between Type A containment leakage tests. Type B and C containment leakage tests will continue to be performed at the frequency currently required by plant Technical Specifications. Industry experience has shown, as documented in NUREG–1493 ["Performance-Based Containment Leak-Test Program"], that Type B and C containment leakage tests have identified a very large percentage of containment leakage paths and that the percentage of containment leakage paths that are detected only by Type A testing is very small. VEGP [Vogtle Electric Generating Plant] test history supports this conclusion. NUREG–1493 concluded, in part, that reducing the frequency of Type A containment leak tests to once per twenty (20) years leads to an imperceptible increase in risk. The integrity of the reactor containment is subject to two types of failure mechanism which can be categorized as (1) activity based and (2) time based. Activity based failure mechanisms are defined as degradation due to system and/or component modifications or maintenance. Local leak rate test requirements and administrative controls such as design change control and procedural requirements for system restoration ensure that containment integrity is not degraded by plant modifications or maintenance activities. The design and construction requirements of the reactor containment itself combined with the containment inspections performed in accordance with ASME Section XI, the Maintenance Rule, and the containment coatings program serve to provide a high degree of assurance that the containment will not degrade in a manner that is detectable only by Type A testing.

2. The proposed Technical Specifications change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed revision to Technical Specifications involves a one-time extension to the current interval for Type A containment leak testing. The reactor containment and the testing requirements invoked to periodically demonstrate the integrity of the reactor containment exist to ensure the plant's ability to mitigate the consequences of an accident and do not involve the prevention or identification of any precursors of an accident. The proposed Technical Specifications change does not involve a physical change to the plant or the manner in which the plant is operated or controlled.

3. The proposed Technical Specifications change does not involve a significant reduction in a margin of safety.

The proposed revision to Technical Specifications involves a one-time extension to the current interval for Type A containment leak testing. The proposed Technical Specifications change does not involve a physical change to the plant or a change in the manner in which the plant is operated or controlled. The specific requirements and conditions of the Containment Leakage Rate Testing Program, as defined in Technical Specifications, exist to ensure that the degree of reactor containment structural integrity and leak tightness that is considered in the plant safety analysis is maintained. The overall containment leakage rate limit specified by Technical Specifications is maintained. The proposed change involves only the extension of the interval between Type A containment leakage tests. Type B and C containment leakage tests will continue to be performed at the frequency currently required by plant Technical Specifications.

VEGP and industry experience strongly support the conclusion that Type B and C testing detects a large percentage of containment leakage paths and that the percentage of containment leakage paths that are detected only by Type A testing is small. The containment inspections performed in accordance with ASME Section XI, the Maintenance Rule, and the containment coatings program serve to provide a high degree of assurance that the containment will not degrade in a manner that is detectable only by Type A testing.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Mr. Arthur H. Domby, Troutman Sanders, NationsBank Plaza, Suite 5200, 600 Peachtree Street, NE., Atlanta, Georgia 30308–2216.

NRC Section Chief: John A. Nakoski.

Previously Published Notices of Consideration of Issuance of Amendments to Facility Operating Licenses, Proposed No Significant Hazards Consideration Determination, and Opportunity for a Hearing

The following notices were previously published as separate individual notices. The notice content was the same as above. They were published as individual notices either because time did not allow the Commission to wait for this biweekly notice or because the action involved exigent circumstances. They are repeated here because the biweekly notice lists all amendments issued or proposed to be issued involving no significant hazards consideration.

For details, see the individual notice in the **Federal Register** on the day and page cited. This notice does not extend the notice period of the original notice.

Tennessee Valley Authority, Docket No. 50–390 Watts Bar Nuclear Plant, Unit 1, Rhea County, Tennessee

Date of application for amendments: April 8, 2003 as supplemented April 22, 2003.

Brief description of amendments: To revise, for one time only, a portion of Surveillance Requirement 3.5.2.3 of the Technical Specifications for the emergency core cooling system (ECCS). The revision will extend, until the refueling outage in the fall of 2003, the verification that the ECCS safety injection hot leg injection lines are full of water.

*Date of publication of individual notice in the **Federal Register:*** April 16, 2003 (68 FR 18712).

Expiration date of individual notice: May 1, 2003

Notice of Issuance of Amendments to Facility Operating Licenses

During the period since publication of the last biweekly notice, the Commission has issued the following amendments. The Commission has determined for each of these amendments that the application complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR Chapter I, which are set forth in the license amendment.

Notice of Consideration of Issuance of Amendment to Facility Operating License, Proposed No Significant Hazards Consideration Determination, and Opportunity for A Hearing in connection with these actions was published in the **Federal Register** as indicated.

Unless otherwise indicated, the Commission has determined that these amendments satisfy the criteria for categorical exclusion in accordance with 10 CFR 51.22. Therefore, pursuant to 10 CFR 51.22(b), no environmental impact statement or environmental assessment need be prepared for these amendments. If the Commission has prepared an environmental assessment under the special circumstances provision in 10 CFR 51.12(b) and has made a determination based on that assessment, it is so indicated.

For further details with respect to the action see (1) the applications for amendment, (2) the amendment, and (3) the Commission's related letter, Safety Evaluation and/or Environmental Assessment as indicated. All of these items are available for public inspection at the Commission's Public Document Room, located at One White Flint North, Public File Area 01F21, 11555 Rockville Pike (first floor), Rockville, Maryland. Publicly available records will be accessible from the Agencywide Documents Access and Management Systems (ADAMS) Public Electronic Reading Room on the Internet at the NRC Web site, *http://www.nrc.gov/reading-rm/adams.html*. If you do not have access to ADAMS or if there are problems in accessing the documents located in ADAMS, contact the NRC Public Document Room (PDR) Reference staff at 1–800–397–4209, 301–415–4737 or by e-mail to *pdr@nrc.gov*.

Detroit Edison Company, Docket No. 50–341, Fermi 2, Monroe County, Michigan

Date of application for amendment: September 26, 2002.

Brief descri, tion of amendment: The amendment revises Technical Specification 3.9.1, "Refueling Equipment Interlocks," to allow in-vessel fuel movement to continue if the refueling interlocks become inoperable. Specifically, the amendment adds Required Action A.2.1 to immediately block control rod withdrawal and Required Action A.2.2 to perform a verification that all of the control rods are fully inserted.

Date of issuance: April 28, 2003.

Effective date: As of the date of issuance and shall be implemented within 60 days.

Amendment No.: 154.

Facility Operating License No. NPF–43: Amendment revises the Technical Specifications.

Date of initial notice in **Federal Register:** November 26, 2002 (67 FR 70764).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated April 28, 2003.

No significant hazards consideration comments received: No.

Duke Energy Corporation, Docket Nos. 50–269, 50–270, and 50–287, Oconee Nuclear Station, Units 1, 2, and 3, Oconee County, South Carolina

Date of application of amendments: December 4, 2002.

Brief description of amendments: The amendments revised the Technical Specification 3.7.6 to require a minimum combined inventory of 155,000 gallons and remove the Condensate Storage Tank as a source of the combined inventory.

Date of Issuance: April 30, 2003.

Effective date: As of the date of issuance and shall be implemented within 30 days from the date of issuance.

Amendment Nos.: 330, 330 & 331.

Renewed Facility Operating License Nos. DPR–38, DPR–47, and DPR–55: Amendments revised the Technical Specifications.

Date of initial notice in ***Federal Register:*** January 31, 2003 (68 FR 2801).

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated April 30, 2003.

No significant hazards consideration comments received: No

Entergy Nuclear Operations, Inc., Docket No. 50–333, James A. FitzPatrick Nuclear Power Plant, Oswego County, New York

Date of application for amendment: December 6, 2002.

Brief description of amendment: The amendment increased the surveillance interval of the local power range monitor calibrations from 1000 megawatt-days/ton to 200 megawatt-days/ton.

Date of issuance: May 1, 2003.

Effective date: As of the date of issuance to be implemented within 30 days.

Amendment No.: 277.

Facility Operating License No. DPR–59: Amendment revised the Technical Specifications.

Date of initial notice in ***Federal Register:*** February 4, 2003 (68 FR 5674).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated May 1, 2003.

No significant hazards consideration comments received: No.

Entergy Nuclear Operations, Inc., Docket No. 50–293, Pilgrim Nuclear Power Station, Plymouth County, Massachusetts

Date of application for amendment: August 16, 2002, as supplemented on March 26, April 16, and April 19, 2003.

Brief description of amendment: The amendment modified Technical Specification (TS) 3/4.10.A, "Refueling Interlocks," and TS 3/4.10.D, "Multiple Control Rod Removal," to provide an alternative required action if the refueling interlocks became inoperable during fuel movements in the reactor vessel. The amendment allowed fuel movements to continue in the reactor vessel should the refueling equipment interlocks become inoperable.

Date of issuance: April 21, 2003.

Effective date: As of the date of issuance, and shall be implemented within 60 days.

Amendment No.: 199.

Facility Operating License No. DPR–35: Amendment revised the TSs.

Date of initial notice in ***Federal Register:*** December 10, 2002 (67 FR 75872).

The March 26, April 16, and April 19, 2003, letters provided clarifying information that did not change the initial proposed no significant hazards consideration determination. The Commission's related evaluation of the amendment is contained in a Safety' Evaluation dated April 21, 2003.

No significant hazards consideration comments received: No.

Entergy Nuclear Operations, Inc., Docket No. 50–293, Pilgrim Nuclear Power Station, Plymouth County, Massachusetts

Date of application for amendment: January 23, 2003, as supplemented February 24, and April 17, 2003.

Brief description of amendment: This amendment modifies the Pilgrim Nuclear Power Station Technical Specification (TS) requirements for the Emergency Core Cooling System (ECCS) during shutdown conditions. The amendment changes the Core Spray and Low Pressure Coolant Injection System's TS requirements to be applicable during the Run, Startup, and Hot Shutdown Modes. The amendment also modifies the High Drywell Pressure Instrumentation TSs to require the instrumentation to be Operable during the Run, Startup and Hot Shutdown Modes. Unnecessary TS requirements are removed based on the plant's operating Mode. Other changes are administrative in nature.

Date of issuance: April 22, 2003.

Effective date: As of the date of issuance, and shall be implemented within 60 days.

Amendment No.: 200.

Facility Operating License No. DPR–35: Amendment revised the TSs.

Date of initial notice in ***Federal Register:*** March 18, 2003 (68 FR 12952).

The supplements dated February 24, and April 17, 2003, provided additional information that clarified the application, and did not expand the scope of the application or change the staff's original proposed no significant hazards consideration determination. The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated April 22, 2003.

No significant hazards consideration comments received: No.

Entergy Operations, Inc., System Energy Resources, Inc., South Mississippi Electric Power Association, and Entergy Mississippi, Inc., Docket No. 50–416, Grand Gulf Nuclear Station, Unit 1, Claiborne County, Mississippi

Date of application for amendment: September 18, 2002.

Brief description of amendment: The amendment revises several Technical Specifications Limiting Conditions for Operations and Administrative sections to correct or clarify certain requirements and information.

Date of issuance: April 23, 2003.

Effective date: As of the date of issuance and shall be implemented within 60 days of issuance.

Amendment No: 157.

Facility Operating License No. NPF–29: The amendment revises the Technical Specifications.

Date of initial notice in ***Federal Register:*** December 10, 2002 (67 FR 75871).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated April 23, 2003.

No significant hazards consideration comments received: No.

Exelon Generation Company, LLC, Docket Nos. 50–237, Dresden Nuclear Power Station, Unit 2, Grundy County, Illinois

Date of application for amendment: January 31, 2003, as supplemented March 7, 2003.

Brief description of amendment: The amendment revises the safety limit minimum critical power ratio for Unit 2 for two loop operation and for single loop operation.

Date of issuance: April 22, 2003.

Effective date: As of the date of issuance and shall be implemented within 30 days.

Amendment No.: 199.

Facility Operating License No. DPR–19: The amendment revised the Technical Specifications.

Date of initial notice in ***Federal Register:*** March 4, 2003 (68 FR 10279). The supplement dated March 7, 2003, provided additional information that clarified the application, did not expand the scope of the application as originally noticed, and did not change the staff's original proposed no significant hazards consideration determination.

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated April 22, 2003.

No significant hazards consideration comments received: No.

Exelon Generation Company, LLC, Docket Nos. 50–352 and 50–353, Limerick Generating Station, Units 1 and 2, Montgomery County, Pennsylvania

Date of application for amendments: April 10, 2002, as supplemented March 10, 2003.

Brief description of amendments: The amendments revised the Technical Specifications to relocate emergency diesel generator maintenance inspection requirements from Section 4.8.1.1.2.e.1 to the Technical Requirements Manual.

Date of issuance: April 18, 2003.

Effective date: As of the date of issuance and shall include the relocation of the emergency diesel generator maintenance requirements of Technical Specification 4.8.1.1.2.e.1 to the Technical Requirements Manual within 30 days.

Amendment Nos.: 165 and 128.

Facility Operating License Nos. NPF–39 and NPF–85: The amendments revised the Technical Specifications.

Date of initial notice in ***Federal Register:*** May 28, 2002 (67 FR 36926). The supplement dated March 10, 2003, provided additional information that clarified the application, did not expand the scope of the application as originally noticed, and did not change the staff's original proposed no significant hazards consideration determination.

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated April 18, 2003.

No significant hazards consideration comments received: No.

Exelon Generation Company, LLC, Docket Nos. 50–352 and 50–353, Limerick Generating Station, Units 1 and 2, Montgomery County, Pennsylvania

Date of application for amendments: November 27, 2002.

Brief description of amendments: These amendments deleted TS 6.8.4.c, "Post-accident Sampling," and thereby eliminated the requirements to have and maintain the post accident sampling system for Limerick Generating Station, Units 1 and 2. The amendments also addressed related changes to TS 6.8.4.a, "Primary Coolant Sources Outside Containment."

Date of issuance: April 25, 2003.

Effective date: As of date of issuance and shall be implemented within 180 days.

Amendment Nos.: 166 and 129.

Facility Operating License Nos. NPF–39 and NPF–85. The amendments revised the Technical Specifications.

Date of initial notice in ***Federal Register:*** January 21, 2003 (68 FR 2802).

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated April 25, 2003.

No significant hazards consideration comments received: No.

FirstEnergy Nuclear Operating Company, Docket No. 50–440, Perry Nuclear Power Plant, Unit 1, Lake County, Ohio

Date of application for amendment: June 4, 2002.

Brief description of amendment: This amendment revises the pressure temperature limits for 22- and 32-effective full power years for Perry Nuclear Power Plant. The June 4, 2002, application also contained a request for exemption from applying Appendix G of the 1995 American Society of Mechanical Engineers Boiler and Pressure Vessel Code and approval for using Code Case N–640, which permits the use of the plain strain fracture toughness (KIc) curve instead of the crack arrest fracture toughness (KIa) curve for reactor pressure vessel materials in determining the P–T limits.

Date of issuance: April 29, 2003.

Effective date: As of the date of issuance and shall be implemented within 90 days.

Amendment No.: 127.

Facility Operating License No. NPF–58: This amendment revised the Technical Specifications.

Date of initial notice in ***Federal Register:*** December 10, 2002 (67 FR 75878).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated April 29, 2003.

No significant hazards consideration comments received: No.

Florida Power and Light Company, Docket No. 50–389, St. Lucie Plant, Unit No. 2, St. Lucie County, Florida

Date of amendment request: October 15, 2002, as supplemented February 28, 2003.

Description of amendment request: The amendment modifies the reactor coolant system flow rate from 363,000 gallons per minute (gpm) to 355,000 gpm in Technical Specifications (TSs) Table 3.3–2 and in a footnote for Table 2.2–1.

Date of Issuance: April 18, 2003.

Effective Date: As of the date of issuance and shall be implemented within 60 days of issuance.

Amendment No.: 131.

Facility Operating License No. NPF–16: Amendment revised the TSs.

Date of initial notice in ***Federal Register:*** November 12, 2002 (67 FR 68737).

The February 28, 2003, supplement did not affect the original proposed no significant hazards determination, or expand the scope of the request as noticed in the **Federal Register**.

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated April 18, 2003.

No significant hazards consideration comments received: No.

Indiana Michigan Power Company, Docket Nos. 50–315 and 50–316, Donald C. Cook Nuclear Plant, Units 1 and 2, Berrien County, Michigan

Date of application for amendments: July 23, 2002.

Brief description of amendments: The amendments revise certain 18-month surveillance requirements by eliminating the condition that testing be conducted "during shutdown," or "during the COLD SHUTDOWN or REFUELING MODE" (*i.e.*, shutdown conditions).

Date of issuance: April 22, 2003.

Effective date: As of the date of issuance and shall be implemented within 45 days.

Amendment Nos.: 275 and 257.

Facility Operating License Nos. DPR–58 and DPR–74: Amendments revised the Technical Specifications.

Date of initial notice in ***Federal Register:*** September 17, 2002 (67 FR 58647).

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated April 22, 2003.

No significant hazards consideration comments received: No.

Indiana Michigan Power Company, Docket Nos. 50–315 and 50–316, Donald C. Cook Nuclear Plant, Units 1 and 2, Berrien County, Michigan

Date of application for amendments: January 14, 2003.

Brief description of amendments: The amendments modify Technical Specification (TS) 3.7.5.1 to add an exception to Limiting Condition for Operation 3.0.4 for the control room emergency ventilation system (CREVS). This exception allows movement of irradiated fuel assemblies to begin while one of the two CREVS pressurization trains is inoperable, provided the appropriate TS action requirements are implemented. The amendments are consistent with the standard TSs for Westinghouse plants (NUREG 1431, Revision 2, "Standard Technical Specifications, Westinghouse Plants," dated April 30, 2001).

Date of issuance: April 25, 2003.

Effective date: As of the date of issuance and shall be implemented within 30 days.

Amendment Nos.: 276 and 258.

Facility Operating License Nos. DPR–58 and DPR–74: Amendments revised the Technical Specifications.

Date of initial notice in ***Federal Register:*** March 4, 2003 (68 FR 10280).

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated April 25, 2003.

No significant hazards consideration comments received: No.

Nine Mile Point Nuclear Station, LLC, Docket No. 50–220, Nine Mile Point Nuclear Station, Unit No. 1, Oswego County, New York

Date of application for amendment: October 26, 2001, as supplemented by letters dated June 7 and November 22, 2002.

Brief description of amendment: The amendment revised Section 6.0, "Administrative Controls," of the Technical Specifications (TSs) to clarify and relocate existing requirements, make wording improvements, and make the TSs consistent with the Unit 2 TSs. The revised Section 6.0 is consistent with the "Standard Technical Specifications for General Electric plants, BWR [Boiling Water Reactor]/4" (NUREG–1433, Revision 2).

Date of issuance: April 23, 2003.

Effective date: April 23, 2003, to be implemented within 90 days of issuance.

Amendment No.: 181.

Facility Operating License No. DPR–63: Amendment revised the Technical Specifications.

Date of initial notice in ***Federal Register:*** January 8, 2002 (67 FR 928).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated April 23, 2003.

No significant hazards consideration comments received: No.

Nuclear Management Company, LLC, Docket No. 50–305, Kewaunee Nuclear Power Plant, Kewaunee County, Wisconsin

Date of application for amendment: July 26, 2002, as supplemented February 27, March 14, March 19, March 21 (2 letters), and April 3, 2003.

Brief description of amendment: The amendment revises technical specifications for use of Westinghouse 422 VANTAGE + nuclear fuel with PERFORMANCE + features.

Date of issuance: April 4, 2003.

Effective date: As of the date of issuance and shall be implemented within 30 days.

Amendment No.: 167.

Facility Operating License No. DPR–43: Amendment revised the Technical Specifications.

Date of initial notice in ***Federal Register:*** September 3, 2002 (67 FR 56322).

The supplemental letters contained clarifying information and did not change the initial no significant hazards consideration determination and did not expand the scope of the original **Federal Register** notice.

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated April 4, 2003.

No significant hazards consideration comments received: No.

Nuclear Management Company, LLC, Docket No. 50–263, Monticello Nuclear Generating Plant, Wright County, Minnesota

Date of application for amendment: September 19, 2002, as supplemented February 28, 2003.

Brief description of amendment: The amendment relocates TS Surveillance Requirement (SR) 4.6.B.2, "Reactor Vessel Temperature and Pressure," and the associated TS Bases to Section 4.2 of the Updated Safety Analysis Report. It also implements the Boiling Water Reactor Vessel and Internals Project reactor pressure vessel integrated surveillance program at Monticello and demonstrates compliance with the requirements of Title 10 of the Code of Federal Regulations, Part 50, Appendix H, "Reactor Vessel Material Surveillance Program Requirements."

Date of issuance: April 22, 2003

Effective date: As of the date of issuance and shall be implemented within 60 days.

Amendment No.: 135.

Facility Operating License No. DPR–22: Amendment revised the Technical Specifications.

Date of initial notice in ***Federal Register:*** October 29, 2002 (67 FR 66012).

The supplement of February 28, 2003, provided additional information that clarified the application, did not expand the scope of the application as originally noticed, and did not change the Nuclear Regulatory Commission staff's original proposed no significant hazards consideration determination.

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated April 22, 2003.

No significant hazards consideration comments received: No.

Omaha Public Power District, Docket No. 50–285, Fort Calhoun Station, Unit No. 1, Washington County, Nebraska

Date of amendment request: October 8, 2002, and its supplements dated December 3, 2002, and March 4, 2003.

Brief description of amendment: The amendment modifies Technical Specification 2.3.a, "Emergency Core Cooling System," to extend *the* allowed outage time for a single low pressure safety injection pump from the existing 24 hours to 7 days. In addition, the word "pump" has been replaced with the word "train."

Date of issuance: April 29, 2003

Effective date: April 29, 2003, and shall be implemented within 60 days from the date of issuance.

Amendment No.: 217.

Facility Operating License No. DPR–40: Amendment revised the Technical Specifications.

Date of initial notice in ***Federal Register:*** November 12, 2002 (67 FR 68740).

The supplemental letters dated December 3, 2002, and March 4, 2003, provided additional information that clarified the application, did not expand the scope of the application as originally noticed or revise the proposed technical specification changes and did not change the staff's original proposed no significant hazards consideration determination.

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated April 29, 2003.

No significant hazards consideration comments received: No.

Saxton Nuclear Experimental Corporation (SNEC) and GPU Nuclear, Inc., Docket No. 50–146 Saxton Nuclear Experimental Facility (SNEF), Bedford County, Pennsylvania

Date of application for amendment: February 2, 2000, as supplemented on June 23, August 11, September 18 and December 4, 2000; January 30, February 14, March 15 and 19, June 20, July 2 and September 4, 2001; and January 11 and 24, February 4, May 22 and 28, July 11, August 20, September 17, 23, 24, and 26, October 10, and December 16, 2002.

Brief description of amendment: The amendment revises Amended Facility License No. DPR–4 for the SNEF to annotate approval of the SNEF License Termination Plan.

Date of issuance: March 28, 2003.

Effective date: Date of issuance to be implemented no later than 30 days from the date of issuance.

Amendment No.: 18.

Amended Facility License No. DPR–4: Amendment added a new license condition to require the licensees to implement and maintain in effect all provisions of the approved SNEF License Termination Plan.

Date of initial notice in ***Federal Register:*** November 29, 2000.

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated March 28, 2003.

No significant hazards consideration comments received: No.

STP Nuclear Operating Company, Docket Nos. 50–498 and 50–499, South Texas Project, Units 1 and 2, Matagorda County, Texas

Date of amendments request: November 5, 2001, as supplemented by letters dated October 23, 2002, and January 15, 2003.

Brief description of amendments: The proposed amendments convert the current Technical Specification (TS) Section 6.0 of the STP, Units 1 and 2, TS to the Improved Technical Specifications based on NUREG–1431, "Standard Technical Specification for Westinghouse Plants."

Date of issuance: April 24, 2003.

Effective date: As of its date of issuance and shall be implemented within 6 months from the date of issuance.

Amendment Nos.: Unit 1–151; Unit 2–139.

Facility Operating License Nos. NPF–76 and NPF–80: The amendments revised the Technical Specifications.

Date of initial notice in ***Federal Register:*** February 5, 2002 (67 FR 5335).

The October 23, 2002, and January 15, 2003, supplemental letters provided clarifying information that was within the scope of the original **Federal Register** notice (67 FR 5335) and did not change the initial no significant hazards consideration determination.

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated April 24, 2003.

No significant hazards consideration comments received: No.

Tennessee Valley Authority, Docket No. 50–327, Sequoyah Nuclear Plant, Unit 1, Hamilton County, Tennessee

Date of application for amendment: February 28, 2003.

Brief description of amendment: The amendment approves the use of an alternate methodology using a through-bolted connection frame to restore the steam generator (SG) compartment roof after replacement of the SGs, and a revision of the Updated Safety Analysis Report (UFSAR) to reflect the approval of the methodology.

Date of issuance: April 25, 2003.

Effective date: As of the date of issuance, to be incorporated into the UFSAR at the time of its next update.

Amendment No.: 184.

Facility Operating License No. DPR–77: Amendment revises the UFSAR.

Date of initial notice in ***Federal Register:*** March 14, 2003 (68 FR 12382).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated April 25, 2003.

No significant hazards consideration comments received: No

Tennessee Valley Authority, Docket No. 50–327, Sequoyah Nuclear Plant (SQN), Unit 1, Hamilton County, Tennessee

Date of application for amendment: February 28, 2003.

Description of amendment: The amendment approves a revision of the SQN Updated Final Safety Analysis (UFSAR) to include a change to the methodology for connecting reinforcing steel bars during restoration of the Unit 1 concrete shield building dome as part of the steam generator replacement project. This modification to the shield building concrete dome is necessary to support removal of the original steam generators and installation of the replacement steam generators.

Date of issuance: April 24, 2003.

Effective date: As of the date of issuance to be incorporated into the UFSAR at the time of its next update.

Amendment No.: 283.

Facility Operating License No. DPR–77: Amendment revises the Operating License.

Date of initial notice in **Federal Register**: March 17, 2003 (68 FR 12718).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated April 24, 2003.

No significant hazards consideration comments received: No.

Tennessee Valley Authority, Docket No. 50–390, Watts Bar Nuclear Plant, Unit 1, Rhea County, Tennessee

Date of application for amendment: April 8, 2003, as supplemented April 22, 2003.

Brief description of amendment: The amendment revises, for one time only, a portion of Surveillance Requirement (SR) 3.5.2.3 of the Watts Bar Technical Specifications for the emergency core cooling system (ECCS). The revision extends, until the refueling outage in the fall of 2003, the verification that the ECCS safety injection hot leg injection lines are full of water. SR 3.5.2.3 currently requires a verification frequency of 31 days.

Date of issuance: May 1, 2003.

Effective date: As of the date of issuance and shall be implemented within 30 days of issuance.

Amendment No.: 43.

Facility Operating License No. NPF–90: Amendment revises the Technical Specifications.

Public comments requested as to proposed no significant hazards consideration: Yes. (68 FR 18712 dated April 16, 2001). That notice provided an opportunity to submit comments on the Commission's proposed no significant hazards consideration determination. No comments have been received. The notice also provided for an opportunity to request a hearing by May 16, 2003, but indicated that if the Commission makes a final no significant hazards consideration determination, any such hearing would take place after issuance of the amendment. The April 22, 2003, letter provided clarifying information that did not change the initial proposed no significant hazards consideration determination or expand the scope of the original request.

The Commission's related evaluation of the amendments, finding of exigent circumstances, and final no significant hazards consideration determination are contained in a Safety Evaluation dated May 1, 2003.

Attorney for licensee: General Counsel, Tennessee Valley Authority, 400 West Summit Hill Drive, ET 11A, Knoxville, Tennessee 37902.

NRC Section Chief: Allen G. Howe.

Union Electric Company, Docket No. 50–483, Callaway Plant, Unit 1, Callaway County, Missouri

Date of application for amendment: October 3, 2002.

Brief description of amendment: The amendment revises Limiting Condition for Operation 3.1.8, "Physics Tests Exceptions—Mode 2," to reduce the required number of channels from four

to three channels for certain functions in Table 3.3.1–1, "Reactor Trip System Instrumentation."

Date of issuance: April 21, 2003.

Effective date: April 21, 2003, and shall be implemented within 60 days of the date of issuance.

Amendment No.: 154.

Facility Operating License No. NPF–30: The amendment revised the Technical Specifications.

Date of initial notice in ***Federal Register:*** November 26, 2002 (67 FR 70771).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated April 21, 2003.

No significant hazards consideration comments received. No.

Wolf Creek Nuclear Operating Corporation, Docket No. 50–482, Wolf Creek Generating Station, Coffey County, Kansas

Date of amendment request: October 1, 2002.

Brief description of amendment: The amendment revises Limiting Condition for Operation 3.1.8, "Physics Tests Exceptions—Mode 2," to reduce the required number of channels from four to three channels for certain functions in Table 3.3.1–1, "Reactor Trip System Instrumentation."

Date of issuance: April 21, 2003.

Effective date: April 21, 2003, and shall be implemented within 90 days of the date of issuance.

Amendment No.: 151.

Facility Operating License No. NPF–42. The amendment revised the Technical Specifications.

Date of initial notice in ***Federal Register:*** November 12, 2002 (67 FR 68746).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated April 21, 2003.

No significant hazards consideration comments received: No.

Yankee Atomic Electric Co., Docket No. 50–29, Yankee Nuclear Power Station (YNPS) Franklin County, Massachusetts

Brief description of amendment: The amendment revises the YNPS License and Technical Specifications to delete operational and administrative requirements that would no longer be required once the spent nuclear fuel has been transferred from the spent fuel pool to the Independent Spent Fuel Storage Installation.

Date of issuance: April 17, 2003.

Effective date: April 17, 2003.

Amendment No.: 157.

Facility Operating License No. DPR–3. Amendment revises the License and Technical Specifications.

Date of initial notice in ***Federal Register:*** February 18, 2003 (68 FR 7823).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated April 17, 2003.

No significant hazards consideration comments received: No.

Dated at Rockville, Maryland, this 5th day of May 2003.

For the Nuclear Regulatory Commission.

John A. Zwolinski,

Director, Division of Licensing Project Management, Office of Nuclear Reactor Regulation.

[FR Doc. 03–11697 Filed 5–12–03; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Notice of Availability of Model Application Concerning Technical Specification Improvement To Eliminate Post Accident Sampling Requirements for Babcock and Wilcox Reactors Using the Consolidated Line Item Improvement Process

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of availability.

SUMMARY: Notice is hereby given that the staff of the Nuclear Regulatory Commission (NRC) has prepared a model application relating to the elimination of post accident sampling requirements for Babcock and Wilcox (B&W) Reactors. The purpose of this model is to permit the NRC to efficiently process amendments that propose to remove requirements for Post Accident Sampling Systems (PASS) from Technical Specifications (TS). Licensees of nuclear power reactors to which the model applies may request amendments utilizing the model application.

DATES: The NRC staff issued a **Federal Register** Notice (68 FR 10052, March 3, 2003) which provided a model safety evaluation (SE) and a model no significant hazards consideration (NSHC) determination relating to elimination of requirements for PASS for B&W Reactors. The NRC staff hereby announces that the model SE and NSHC determination may be referenced in plant-specific applications to eliminate requirements for post accident sampling. The staff has posted a model application on the NRC web site to assist licensees in using the consolidated line item improvement process (CLIIP) to eliminate PASS-related TS. The NRC staff can most efficiently consider applications based upon the model application if the application is submitted within a year of this **Federal Register** Notice.

FOR FURTHER INFORMATION CONTACT: Robert Dennig, Mail Stop: O–12H4, Division of Regulatory Improvement Programs, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, telephone 301–415–1156.

SUPPLEMENTARY INFORMATION:

Background

Regulatory Issue Summary 2000–06, "Consolidated Line Item Improvement Process for Adopting Standard Technical Specification Changes for Power Reactors," was issued on March 20, 2000. The CLIIP is intended to improve the efficiency of NRC licensing processes. This is accomplished by processing proposed changes to the standard technical specifications (STS) in a manner that supports subsequent license amendment applications. The CLIIP includes an opportunity for the public to comment on proposed changes to the STS following a preliminary assessment by the NRC staff and finding that the change will likely be offered for adoption by licensees. The CLIIP directs the NRC staff to evaluate any comments received for a proposed change to the STS and to either reconsider the change or to proceed with announcing the availability of the change for proposed adoption by licensees. Those licensees opting to apply for the subject change to TS are responsible for reviewing the staff's evaluation, referencing the applicable technical justifications, and providing any necessary plant-specific information. Each amendment application made in response to the notice of availability will be processed and noticed in accordance with applicable rules and NRC procedures.

This notice involves the elimination of requirements for PASS and related administrative controls in TS for B&W Reactors. This proposed change was proposed for incorporation into the STS by the B&W Owners Group (BWOG) participants in the Technical Specification Task Force (TSTF) and is designated TSTF–442. TSTF–442 is supported by the NRC staff's SE dated November 14, 2002 (ADAMS Accession Number ML0225601190), for the BWOG topical report BAW–2387, "Justification for the Elimination of the Post Accident Sampling System (PASS) from the Licensing Basis of Babcock and Wilcox Plants," which was submitted to the NRC on June 25, 2001. The BWOG request followed the staff's approval of similar requests for elimination of PASS requirements from the Combustion Engineering Owners Group (CEOG), the Westinghouse Owners Group (WOG), and the Boiling Water Reactor Owners Group (BWROG). TSTF–442 can be viewed on the NRC Web site: (*www.nrc.gov/reactors/operating/licensing/techspecs/changes-issued-for-adoption.html*).

Applicability

This proposed change to remove requirements for PASS from TS (and other elements of the licensing bases) is applicable to B&W Reactors.

To efficiently process the incoming license amendment applications, the staff requests each licensee applying for the changes addressed by TSTF–442 using the CLIIP to address the following plant-specific verifications and regulatory commitments. The CLIIP does not prevent licensees from requesting an alternative approach or proposing the changes without the requested verifications and regulatory commitments. Variations from the approach recommended in this notice may, however, require additional review by the NRC staff and may increase the time and resources needed for the review. In making the requested regulatory commitments, each licensee should address: (1) That the subject capability exists (or will be developed) and will be maintained; (2) where the capability or procedure will be described (*e.g.*, severe accident management guidelines, emergency operating procedures, emergency plan implementing procedures); and (3) a schedule for implementation. The amendment request need not provide details about designs or procedures.

Each licensee should verify that it has, and make a regulatory commitment to maintain (or make a regulatory commitment to develop and maintain):

a. A capability for classifying fuel damage events at the Alert level threshold (typically this is 300 μCi/ml dose equivalent iodine). This capability may use a normal sampling system or correlations of letdown line dose rates to coolant concentrations;

b. Contingency plans for obtaining and analyzing highly radioactive samples from the reactor coolant system, containment sump, and containment atmosphere; and

c. Offsite capability to monitor radioactive iodines.

Public Notices

In a notice in the **Federal Register** dated March 3, 2003 (68 FR 10052), the staff requested comment on the use of the CLIIP to process requests to delete post-accident sampling requirements from B&W Reactors. The staff had previously issued notices of availability on the use of the CLIIP to process requests to delete post-accident sampling requirements from plants with Westinghouse and Combustion Engineering designs (65 FR 65018, October 31, 2000) and BWR designs (67 FR 13027, March 20, 2002). The notice of availability for Westinghouse and Combustion Engineering plants followed the staff's disposition of comments received in response to a notice requesting comment (65 FR 49271, August 11, 2000). The notice of availability for BWR plants followed the staff's disposition of comments received in response to a notice requesting comment (66 FR 66949, December 27, 2001). Each request to eliminate PASS requirements by licensees for Westinghouse, CE, and BWR plants using the CLIIP has also included notices prior to issuance of the subject license amendments and upon issuance.

TSTF–442, as well as the NRC staff's safety evaluation and model application, may be examined, and/or copied for a fee, at the NRC's Public Document Room, located at One White Flint North, 11555 Rockville Pike (first floor), Rockville, Maryland. Publicly available records are accessible electronically from the ADAMS Public Library component on the NRC Web site, (the Electronic Reading Room).

The staff did not receive comments following the notice soliciting comments about modifying the TS requirements regarding post accident sampling for B&W Reactors.

As described in the model application prepared by the staff, licensees may reference in their plant-specific applications to eliminate PASS-related TS the SE and NSHC determination previously published in the **Federal Register** (68 FR 10052, March 3, 2003).

Dated at Rockville, Maryland, this 6th day of May 2003.

For the Nuclear Regulatory Commission.

Robert L. Dennig,

Section Chief, Technical Specifications Section, Operating Reactor Improvements Program, Division of Regulatory Improvement Programs, Office of Nuclear Reactor Regulation.

Enclosure for Inclusion on Technical Specification Web Page

The following example of an application was prepared by the NRC staff to facilitate the use of the consolidated line item improvement process (CLIIP). The model provides the expected level of detail and content for an application to eliminate pass requirements using CLIIP. Licensees remain responsible for ensuring that their actual application fulfills their Administrative requirements as well as NRC regulations.

U.S. Nuclear Regulatory Commission,
Document Control Desk, Washington, DC 20555

Subject:
Plant Name
Docket No. 50–
Application for Technical Specification Improvement to Eliminate Requirements for Post Accident Sampling System for Babcock and Wilcox Reactors Using the Consolidated Line Item Improvement Process

Gentlemen: In accordance with the provisions of 10 CFR 50.90, [LICENSEE] is submitting a request for an amendment to the technical specifications (TS) for [PLANT NAME, UNIT NOS.].

The proposed amendment would delete Technical Specification (TS) 5.5.3, "Post Accident Sampling," and thereby eliminate the requirements to have and maintain the post accident sampling system at [PLANT]. The changes are consistent with NRC approved Industry/Technical Specification Task Force (TSTF) Standard Technical Specification Change Traveler, TSTF–442, "Elimination of Requirements for a Post Accident Sampling System (PASS)." The availability of this technical specification improvement was announced in the **Federal Register** on [DATE OF NOTICE OF AVAILABILITY] as part of the consolidated line item improvement process (CLIIP).

Attachment 1 provides a description of the proposed change, the requested confirmation of applicability, and plant-specific verifications. Attachment 2 provides the existing TS pages marked-up to show the proposed change. Attachment 3 provides revised clean technical specification pages. Attachment 4 provides a summary of the regulatory commitments made in this submittal. [IF APPLICABLE: Attachment 5 provides the existing TS Bases pages marked-up to show the proposed change (for information only).]

[LICENSEE] requests approval of the proposed License Amendment by [DATE], with the amendment being implemented [BY DATE OR WITHIN X DAYS].

In accordance with 10 CFR 50.91, a copy of this application, with attachments, is being provided to the designated [STATE] Official.

I declare under penalty of perjury under the laws of the United States of America that I am authorized by [LICENSEE] to make this request and that the foregoing is true and correct. [Note that request may be notarized in lieu of using this oath or affirmation statement].

If you should have any questions regarding this submittal, please contact [ ].

Sincerely,

Name,
Title

Attachments:
1. Description and Assessment
2. Proposed Technical Specification Changes
3. Revised Technical Specification Pages
4. Regulatory Commitments
5. Proposed Technical Specification Bases Changes (if applicable)

cc:

NRR Project Manager
Regional Office
Resident Inspector
State Contact

Attachment 1—Description and Assessment

1.0 DESCRIPTION

The proposed License amendment deletes the program requirements of TS (5.5.3), "Post Accident Sampling."

The changes are consistent with NRC approved Industry/Technical Specification Task Force (TSTF) Standard Technical Specification Change Traveler, TSTF–442. The availability of this technical specification improvement was announced in the **Federal Register** on [DATE] as part of the consolidated line item improvement process (CLIIP).

2.0 ASSESSMENT

2.1 Applicability of Published Safety Evaluation

[LICENSEE] has reviewed the safety evaluation published on March 3, 2003 (68 FR 10052) as part of the CLIIP. This verification included a review of the NRC staff's evaluation as well as the supporting information provided to support TSTF–442 (*i.e.*, BAW -2387, "Justification for the Elimination of the Post Accident Sampling System (PASS) from the Licensing Basis of Babcock and Wilcox-Designed Plants," which was submitted to the NRC on June 25, 2001, and the associated NRC safety evaluation dated November 14, 2002). [LICENSEE] has concluded that the justifications presented in the TSTF proposal and the safety evaluation prepared by the NRC staff are applicable to [PLANT, UNIT NOS.] and justify this amendment for the incorporation of the changes to the [PLANT] Technical Specifications.

2.2 Optional Changes and Variations

[LICENSEE] is not proposing any variations or deviations from the technical specification changes described in TSTF–442 or the NRC staff's model safety evaluation published on March 3, 2003.

Plant-specific submittals may also include one or more of the following:

(1) Requirements for installing and maintaining PASS were included in a confirmatory order for [PLANT] issued on [DATE]. This amendment request includes superseding the requirements imposed by that confirmatory order.

(2) As described in the model safety evaluation published on March 3, 2003, the elimination of the TS and other regulatory requirements for PASS result in additional changes to the TS. These changes are [DESCRIBE ADDITIONAL CHANGES]. The changes are necessary due to the removal of the TS section on PASS. The changes do not revise technical requirements beyond that addressed by the NRC staff in the model safety evaluation published on March 3, 2003. [Note that these changes could involve the deletion or modification of license conditions in addition to other TS.]

(3) The elimination of PASS results in changes to the TS Bases. The revised Bases are provided in Attachment 5. [LICENSEE] will formally address the changes to the Bases in accordance with [the Bases Control Program or administrative procedure for revising Bases] and will provide the actual revised Bases pages in a future submittal.

3.0 REGULATORY ANALYSIS

3.1 No Significant Hazards Determination

[LICENSEE] has reviewed the proposed no significant hazards consideration determination published on March 3, 2003 (68 FR 10052) as part of the CLIIP. [LICENSEE] has concluded that the proposed determination presented in the notice is applicable to [PLANT] and the determination is hereby incorporated by reference to satisfy the requirements of 10 CFR 50.91(a).

3.2 Verification and Commitments

As discussed in the model SE published in **Federal Register** on March 3, 2003 for this technical specification improvement, plant-specific verifications were performed as follows:

1. [LICENSEE] [verified that it has or is making a regulatory commitment to develop] contingency plans for obtaining and analyzing highly radioactive samples from the RCS, containment sump, and containment atmosphere. The contingency plans will be contained in [specified document or program] and implementation [is complete, will be completed with the implementation of the License amendment, or will be completed within X days (<6 months) after the implementation of the License amendment]. Establishment and maintenance of contingency plans is considered a regulatory commitment.

2. The capability for classifying fuel damage events at the Alert level threshold [has been or will be] established for [PLANT] at radioactivity levels of [300 mCi/cc dose equivalent iodine]. This capability will be described in [specified document or program] and implementation [is complete, will be completed with the implementation of the License amendment, or will be completed within X days (<6 months) after the implementation of the License amendment]. The capability for classifying fuel damage events is considered a regulatory commitment.

3. [LICENSEE] [verified that it has or is making a regulatory commitment to develop] an ability to assess radioactive iodines released to offsite environs. The capability for monitoring iodines will be maintained within the [specified document or program]. Implementation of this commitment [is complete, will be completed with the implementation of the License amendment, or will be completed within X days (<6 months) after the implementation of the License amendment]. The capability to monitor radioactive iodines is considered a regulatory commitment.

4.0 ENVIRONMENTAL EVALUATION

[LICENSEE] has reviewed the environmental evaluation included in the model safety evaluation published on March 3, 2003 (68 FR 10052) as part of the CLIIP. [LICENSEE] has concluded that the staff's findings presented in that evaluation are applicable to [PLANT] and the evaluation is hereby incorporated by reference for this application.

Attachment 2—Proposed Technical Specification Changes (Mark-Up)

Attachment 3—Proposed Technical Specification Pages

Attachment 4—List of Regulatory Commitments

The following table identifies those actions committed to by [LICENSE] in this document. Any other statements in this submittal are provided for information purposes and are not considered to be regulatory commitments. Please direct questions regarding these commitments to [ ].

Regulatory commitments	Due date/event
[LICENSEE] [verified that it has or is making a regulatory commitment to develop] contingency plans for obtaining and analyzing highly radioactive samples from the RCS, containment sump, and containment atmosphere. The contingency plans will be contained in [specified document or program] and implementation [is complete, will be completed with the implementation of the License amendment, or will be completed within x days (< 6 months) after the implementation of the License amendment]. Establishment and maintenance of contingency plans is considered a regulatory commitment.	[Complete, implemented with amendment OR within X days of implementation of amendment].
The capability for classifying fuel damage events at the Alert level threshold [has been or will be] established for [PLANT] at radioactivity levels of [300 mCi/cc dose equivalent iodine]. This capability will be described in [specified document or program] and implementation [is complete, will be completed with the implementation of the License amendment, or will be completed within x days (< 6 months) after the implementation of the License amendment]. The capability for classifying fuel damage events is considered a regulatory commitment.	[Complete, implemented with amendment OR within X days of implementation of amendment].
[LICENSEE] [verified that it has or is making a regulatory commitment to develop] an ability to assess radioactive iodines released to offsite environs. The capability for monitoring iodines will be maintained within the [specified document or program]. Implementation of this commitment [is complete, will be completed with the implementation of the License amendment, or will be completed within x days (< 6 months) after the implementation of the License amendment]. The capability to monitor radioactive iodines is considered a regulatory commitment.	[Complete, implemented with amendment OR within X days of implementation of amendment].

Attachment 5—Possible Changes to TS Bases Pages

[FR Doc. 03–11840 Filed 5–12–03; 8:45 am]

BILLING CODE 7590–01–P

SECURITIES AND EXCHANGE COMMISSION

Proposed Collection; Comment Request

Upon Written Request, Copies Available From:
Securities and Exchange Commission, Office of Filings and Information Services, Washington, DC 20549.

Extension: Rule 17a–25 SEC File No. 270–482, OMB Control No. 3235–0504.

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission ("Commission") is soliciting comments on the collection of information summarized below. The Commission plans to submit this existing collection of information to the Office of Management and Budget for extension and approval.

Rule 17a–25 (17 CFR 240.17a–25) requires registered broker-dealers to electronically submit securities transaction information, including identifiers for prime brokerage arrangements, average price accounts, and depository institutions, in a standardized format when requested by the Commission staff. In addition, the rule also requires broker-dealers to submit, and keep current, contact person information for electronic blue sheets ("EBS") requests. The Commission uses the information for enforcement inquiries or investigations and trading reconstructions, as well as for inspections and examinations.

The Commission estimates that it sends approximately 14,000 electronic blue sheet requests per year. Accordingly, the annual aggregate hour burden for electronic and manual response firms is estimated to be 1,820 hours and 525 hours, respectively. In addition, the Commission estimates that it will request 1,400 broker-dealers to supply the contact information identified in Rule 17a–25(c) and estimates the total aggregate burden hours to be 350. Thus, the annual aggregate burden for all respondents to the collection of information requirements of Rule 17a–25 is estimated at 2,695 hours.

Written comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted in writing within 60 days of this publication.

Direct your written comments to Kenneth A. Fogash, Acting Associate Executive Director/CIO, Office of Information Technology, Securities and Exchange Commission, 450 5th Street, NW., Washington, DC 20549.

Dated: May 2, 2003.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 03–11882 Filed 5–12–03; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–47800; File No. SR–CHX–2003–08]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the Chicago Stock Exchange, Incorporated Relating to Execution of Resting Limit Orders Following a Primary Market Block Trade-Through

May 6, 2003.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act"),[1] and rule 19b–4 thereunder,[2] notice hereby is given that on March 24, 2003, the Chicago Stock Exchange, Incorporated ("CHX" or "Exchange") filed with the Securities and Exchange Commission (the "Commission") the proposed rule change as described in items I, II and III below, which items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

[1] 15 U.S.C. 78s(b)(1).
[2] 17 CFR 240.19b–4.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed P ıle Change

The Exchange is proposing to amend Article XX, rule 37 of the CHX rules, which governs, among other things, execution of resting limit orders following a block trade-through in the primary market. The text of the proposed rule change is available at the Commission or the CHX.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received regarding the proposed rule change. The text of these statements may be examined at the places specified in item IV below. The Exchange has prepared summaries, set forth in sections A, B and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange is proposing to amend Article XX, rule 37 of the CHX rules, which governs, among other things, execution of resting limit orders following a block trade-through in the primary market. Under existing Exchange rules relating to listed securities, whenever a block trade[3] in the primary market trades through a CHX specialist's quote, the specialist must execute all limit orders in the book (that are priced at the block price or better) at the block price.[4]

The CHX believes that this requirement was likely instituted as a marketing tool to attract new customers when trading occurred in much larger variations and trading on regional exchanges was somewhat less common. Today, trading on regional exchanges is not a new phenomenon. Moreover, the CHX represents that because the vast majority of block trades are not identified as such when they occur, it is impossible for a specialist to know, at the time of a particular block-size trade-through, whether or not limit orders must be filled at the block price. As a result, the specialist often fills the orders at the limit price and adjusts them to the better block price when it is confirmed that a block trade occurred. The Exchange represents that the practice of manually correcting execution prices is a large inconvenience to some key CHX order-sending firms, which must send out two trade confirmations to each customer " one that is generated as soon as the trade occurs and a second to reflect the corrected execution price.

The delays associated with confirming the appropriate execution price for orders subject to this requirement are not appropriate in the fast-paced, automated markets that exist today. Therefore, the CHX is proposing to eliminate the requirement that a CHX specialist fill resting limit orders at the block price following a block trade trade-through in the primary market.[5] Recognizing that many specialists may wish to continue filling such limit orders at the block price as a customer service accommodation, however, the proposed rule change would permit a CHX specialist to continue to have the option to engage an existing functionality of the Exchange's MAX automatic execution system that automatically executes designated limit orders at the block price when a block size trade-through occurs in the primary market.[6]

2. Statutory Basis

The proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder that are applicable to a national securities exchange, and, in particular, with the requirements of section 6(b) of the Act.[7] In particular, the proposed rule is consistent with section 6(b)(5) of the Act[8] in that it is designed to promote just and equitable principles of trade, to remove impediments and to perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest.

B. Self-Regulatory Organization's Statement of Burden on Competition

The Exchange does not believe that the proposed rule change will impose any inappropriate burden on competition.

C. Self-Regulatory Organization's Statement on Comments Regarding the Proposed Rule Change Received From Members, Participants or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve the proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the Exchange. All submissions should refer to File No. SR–CHX–2003–08 and should be submitted by June 3, 2003.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[9]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 03–11881 Filed 5–12–03; 8:45 am]

BILLING CODE 8010–01–P

[3] A block trade is a trade that involves (a) a trade of "block size" (10,000 shares or more, or with a market value of $200,000 or more); and (b) either (i) a cross of block size (where a single firm represents all of one side of the transaction and all or a portion of the other side) or (ii) any other transaction where a single firm represents an order of block size on only one side of the transaction, so long as the transaction does not occur at the Exchange's current bid or offer. At the time a transaction occurs on another market, the CHX can determine whether it is a *block size trade;* the CHX does not yet know, however, which firms were on which sides of the transaction and therefore cannot then determine whether it meets the other requirements of a *block trade.*

[4] *See* CHX Article XX, rule 37(a)(3).

[5] If, however, a specialist is representing an order in his or her quote that is traded through by a block trade from another market, and the specialist receives satisfaction from the other market, the specialist must give the higher price to the customer order.

[6] This functionality was approved by the Commission and implemented in early January of 2003. *See* Securities Exchange Act Release No. 47068 (December 20, 2002), 67 FR 79671 (December 30, 2002).

[7] 15 U.S.C. 78f(b).

[8] 15 U.S.C. 78f(b)(5).

[9] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–47805; File No. SR–Phlx–2003–34]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the Philadelphia Stock Exchange, Inc. Relating to the Payment for Order Flow Fees for the Top 120 Options

May 6, 2003.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1], and Rule 19b–4 thereunder,[2] notice is hereby given that on April 25, 2003, the Philadelphia Stock Exchange, Inc. ("Phlx") filed with the Securities and Exchange Commission the proposed rule change as described in Items I, II, and III below, which the Phlx has prepared. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Phlx proposes to establish its options payment for order flow fees imposed on the transactions of Phlx Registered Options Traders ("ROTs") for the period from May through July 2003 for the top 120 options based on volume statistics from January, February, and March 2003,[3] as set forth on the ROT Equity Option Payment for Order Flow Charges Schedule.[4] The rate levels have remained unchanged: The top-ranked option is charged a fee of $1.00 per contract, the next 49 options are charged a fee of $0.50 per contract, and the fee for the remaining options in the top 120 is set at $0.00.

The Phlx's ROT Equity Option Payment for Order Flow Charges Schedule is available at the Phlx and at the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Phlx included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it had received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Phlx has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The Phlx recently filed with the Commission to reinstate its payment for order flow program.[5] Pursuant to the Phlx's current program, Phlx ROTs are assessed a payment for order flow fee on the top 120 most actively traded equity options, on a per-contract, per-options issue basis, as set forth on Phlx's ROT Equity Option Payment for Order Flow Charges Schedule, subject to certain exceptions.[6]

1. Purpose

The purpose of the proposed rule change is to establish the payment for order flow fees for trades settling on or after May 1, 2003 through July 31, 2003 for the applicable top 120 options. The Phlx will file with the Commission a proposed rule change to address changes to the Phlx's fee schedule for subsequent time periods. No other changes to the Phlx's payment for order flow program are being made at this time.

2. Statutory Basis

The Phlx believes that its proposal to amend its schedule of dues, fees and charges is consistent with section 6(b) of the Act[7] and in particular furthers the objectives of section 6(b)(4) of the Act[8] in that it is an equitable allocation of reasonable fees among Phlx members.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Phlx does not believe that the proposed rule change will impose any inappropriate burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Phlx neither solicited nor received written comments with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing proposed rule change has been designated as a fee change pursuant to section 19(b)(3)(A)(ii) of the Act[9] and Rule 19b–4(f)(2) thereunder.[10] Accordingly, the proposal will take effect upon filing with the Commission. At any time within 60 days after the filing of the proposed rule change, the Commission may summarily abrogate the rule change if it appears to the Commission that the action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] The Phlx's payment for order flow fee is assessed on ROTs on the top 120 most actively traded equity options in terms of the total number of contracts that are traded nationally based on volume statistics provided by the Options Clearing Corporation. The measuring periods for the top 120 options are calculated every three months. *See* Securities Exchange Act Release No. 47424 (February 28, 2003), 68 FR 11168 (March 7, 2003) (SR–Phlx–2003–04). This cycle is scheduled to continue every three months, with a separate proposed rule change filed for each three-month trading period.

[4] To avoid confusion, the ROT Equity Option Payment for Order Flow Charges Schedule reflects only those options being charged more than $0.00

[5] *See* Securities Exchange Act Release No. 47090 (December 23, 2002), 68 FR 141 (January 2, 2003) (SR–Phlx–2002–75).

[6] The payment for order flow fee does not apply to transactions between: (1) a ROT and a specialist; (2) a ROT and a ROT; (3) a ROT and a firm; and (4) a ROT and a broker-dealer. Indeed, because the primary focus of the program is to attract order flow from customers, the payment for order flow fee is not imposed on the above-specified transactions. Also, the payment for order flow fee does not apply to index or foreign currency options.

[7] 15 U.S.C. 78f(b).

[8] 15 U.S.C. 78f(b)(4).

[9] 15 U.S.C. 78(s)(b)(3)(A)(ii).

[10] 17 CFR 240.19b–4(f)(2).

available for inspection and copying in the Commission's Public Reference Room. Copies of the filing will also be available for inspection and copying at the principal office of the Phlx. All submissions should refer to File No. SR–Phlx–2003–34 and should be submitted by June 3, 2003.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[11]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 03–11879 Filed 5–12–03; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–47799; File No. SR–Phlx–2003–28]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the Philadelphia Stock Exchange, Inc. To Retroactively Apply Its Broker-Dealer Transaction Fee for Equity Option Transactions for the Period From April 1, 2003 to April 10, 2003

May 6, 2003.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (Act or Exchange Act),[1] and rule 19b–4 thereunder,[2] notice is hereby given that on April 28, 2003, the Philadelphia Stock Exchange, Inc. ("Phlx" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in items I, II, and III below, which items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend its schedule of dues, fees and charges to apply the following reduced broker-dealer transaction fee for block equity option transactions retroactively to equity options transactions settling from April 1, 2003, to April 10, 2003: Broker/Dealer[3] (non-AUTO–X)

Up to 2,000 contracts	$.35 per contract
Between 2,001 and 3,000 contracts.	$.25 per contract (for all contracts)
Residual above 3,000 contracts.	$.20 per contract above 3,000 contracts (with the first 3,000 contracts charged $.25 per contract)

This fee is applied per transaction (not per month).[4] This revised fee became effective for trades settling on or after April 11, 2003. The Exchange now proposes to implement this fee on transactions that have settled from April 1, 2003, to April 10, 2003.[5] All other equity option transaction charges will remain unchanged. The text of the proposed rule change is available upon request from the Office of the Secretary, the Commission, and the Exchange.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

On April 11, 2003, the Exchange filed a proposed rule change that amended its schedule of dues, fees and charges to adopt decreases in its broker-dealer transaction fee for equity option transactions.[6] This fee change became effective for transactions settling on or after April 11, 2003. This current proposal seeks to apply theses decreases to the broker-dealer transaction fee to transactions that settled from April 1, 2003, to April 10, 2003.[7] The purpose of the proposed rule change is to provide equivalent fee decreases to those broker-dealers whose transactions would have qualified for discounted broker-dealer transaction fees during the above-referenced ten-day period.

This proposal seeks to apply the current transaction levels set forth above per to applicable broker-dealer transactions for trades settling from April 1, 2003, to April 10, 2003. For example, under the proposal (i) a transaction of 1,700 option contracts will be charged $0.35 per contract, (ii) a transaction of 2,500 contracts will be charged $0.25 per contract for all contracts, and (iii) a transaction of 3,500 contracts will be charged $0.25 for each of the first 3,000 contracts and $0.20 for each of the remaining 500 contracts.[8]

2. Statutory Basis

The Exchange believes that its proposal to amend its schedule of dues, fees and charges is consistent with section 6(b) of the Act[9] in general, and furthers the objectives of section 6(b)(4) of the Act[10] in particular, in that it is an equitable allocation of reasonable dues, fees, and other charges among Exchange members. The Exchange believes the proposal is reasonable and equitable because it applies the same fee decreases for broker-dealers executing equity options transactions on the Exchange settling from April 1, 2003, to April 10, 2003, as those applicable to broker-dealers whose transactions settle on or after April 11, 2003.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Phlx does not believe that the proposed rule change will impose any inappropriate burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

No written comments were solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding, or (ii) as to which the Exchange consents, the Commission will:

A. By order approve such proposed rule change; or

B. Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the Exchange. All submissions should refer to File No. SR–Phlx–2003–28 and should be submitted by June 3, 2003.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[11]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 03–11880 Filed 5–12–03; 8:45 am]

BILLING CODE 8010–01–P

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] This charge applies to members for transactions, received from other than the floor of the Exchange, for any account (i) in which the holder of beneficial interest is a member or non-member broker-dealer or (ii) in which the holder of beneficial interest is a person associated with or employed by a member or non-member broker-dealer. This includes transactions for the account of an ROT entered from off-floor.

[4] Member organizations may need to file a form with the Exchange to identify eligible block trades.

[5] This fee will continue to be eligible for the monthly credit of up to $1,000 to be applied against certain fees, dues and charges and other amounts owed to the Exchange by certain members. *See* Securities Exchange Act Release No. 44292 (May 11, 2001), 66 FR 27715 (May 28, 2001)(SR–Phlx–2002–32).

[6] *See* Securities Exchange Act Release No. 47715 (April 22, 2003), 68 FR 22446 (April 28, 2003)(SR–Phlx–2003–26).

[7] The Phlx stated that from April 1, 2003, to April 10, 2003, there were approximately seven transactions that would have qualified for the lower "block" broker-dealer transaction fee.

[8] Of course, the contra-side to a transaction may also be subject to transaction and other charges.

[9] 15 U.S.C. 78f(b).

[10] 15 U.S.C. 78f(b)(4).

[11] 17 CFR 200.03–(a)(12).

SMALL BUSINESS ADMINISTRATION

[Declaration of Disaster #3496]

State of Kansas

As a result of the President's major disaster declaration on May 6, 2003, I find that Cherokee, Crawford, Labette, Leavenworth, Miami, Neosho and Wyandotte Counties in the State of Kansas constitute a disaster area due to damages caused by severe storms, tornadoes and flooding occurring on May 4, 2003 and continuing. Applications for loans for physical damage as a result of this disaster may be filed until the close of business on July 7, 2003 and for economic injury until the close of business on February 6, 2004 at the address listed below or other locally announced locations:

Small Business Administration, Disaster Area 3 Office, 4400 Amon Carter Blvd., Suite 102, Fort Worth, TX 76155.

In addition, applications for economic injury loans from small businesses located in the following contiguous counties may be filed until the specified date at the above location: Allen, Anderson, Atchison, Bourbon, Douglas, Franklin, Jefferson, Johnson, Linn, Montgomery, Wilson and Woodson in the State of Kansas; Barton, Bates, Cass, Clay, Jackson, Jasper, Newton, Platte and Vernon counties in the State of Missouri; and Craig, Nowata and Ottawa counties in the State of Oklahoma.

The interest rates are:

	Percent
For Physical Damage:	
Homeowners with credit available elsewhere	5.625
Homeowners without credit available elsewhere	2.812
Businesses with credit available elsewhere	5.906
Businesses and non-profit organizations without credit available elsewhere	2.953
Others (including non-profit organizations) with credit available elsewhere	5.500
For Economic Injury:	
Businesses and small agricultural cooperatives without credit available elsewhere	2.953

The number assigned to this disaster for physical damage is 349612. For economic injury the number is 9V1500 for Kansas; 9V1600 for Missouri; and 9V1700 for Oklahoma.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008)

Dated: May 6, 2003.

Herbert L. Mitchell,

Associate Administrator for Disaster Assistance.

[FR Doc. 03–11835 Filed 5–12–03; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[Declaration of Disaster #3497]

State of Missouri

As a result of the President's major disaster declaration on May 6, 2003, I find that Barry, Barton, Bates, Benton, Buchanan, Camden, Cass, Cedar, Christian, Clay, Clinton, Cooper, Dade, Dallas, Douglas, Greene, Henry, Hickory, Jackson, Jasper, Johnson, Laclede, Lafayette, Lawrence, McDonald, Miller, Morgan, Newton, Pettis, Platte, Polk, Pulaski, Ray, Saline, St. Clair, Stone, Taney, Vernon and Webster Counties in the State of Missouri constitute a disaster area due to damages caused by severe storms, tornadoes and flooding occurring on May 4, 2003 and continuing. Applications for loans for physical damage as a result of this disaster may be filed until the close of business on July 7, 2003 and for economic injury until the close of business on February 6, 2004 at the address listed below or other locally announced locations:

Small Business Administration, Disaster Area 3 Office, 4400 Amon Carter Blvd., Suite 102, Fort Worth, TX 76155.

In addition, applications for economic injury loans from small businesses located in the following contiguous counties may be filed until the specified date at the above location: Andrew, Boone, Caldwell, Carroll, Chariton, Cole, De Kalb, Howard, Howell, Maries, Moniteau, Osage, Ozark, Phelps, Texas and Wright in the State of Missouri; Benton, Boone, Carroll and Marion counties in the State of Arkansas; Atchison, Bourbon, Cherokee, Crawford, Doniphan, Johnson, Leavenworth, Linn, Miami and Wyandotte counties in the State of Kansas; and Delaware and Ottawa counties in the State of Oklahoma.

The interest rates are:

	Percent
For Physical Damage:	
Homeowners with credit available elsewhere	5.625
Homeowners without credit available elsewhere	2.812
Businesses with credit available elsewhere	5.906
Businesses and non-profit organizations without credit available elsewhere	2.953
Others (including non-profit organizations) with credit available elsewhere	5.500
For Economic Injury:	
Businesses and small agricultural cooperatives without credit available elsewhere	2.953

The number assigned to this disaster for physical damage is 349712. For economic injury the number is 9V1800 for Missouri; 9V1900 for Arkansas; 9V2000 for Kansas; and 9V2100 for Oklahoma.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008)

Dated: May 6, 2003.

Herbert L. Mitchell,

Associate Administrator for Disaster Assistance.

[FR Doc. 03–11836 Filed 5–12–03; 8:45 am]

BILLING CODE 8025–01–P

DEPARTMENT OF STATE

[Public Notice 4364]

Office of Visa Services; 60-Day Notice of Proposed Information Collection: Form DS–1648, Application for A, G, or NATO Visa; OMB Control Number 1405–0100

AGENCY: Department of State.

ACTION: Notice.

SUMMARY: The Department of State is seeking Office of Management and Budget (OMB) approval for the information collection described below. The purpose of this notice is to allow 60 days for public comment in the **Federal Register** preceding submission to OMB. This process is conducted in accordance with the Paperwork Reduction Act of 1995.

The following summarizes the information collection proposal to be submitted to OMB:

Type of Request: Extension of currently approved collection.

Originating Office: Bureau of Consular Affairs, Department of State (CA/VO).

Title of Information Collection: Application for A, G, or NATO Visa.

Frequency: Once per respondent.

Form Number: DS–1648.

Respondents: Aliens applying for A, G, or NATO visa.

Estimated Number of Respondents: 20,000 per year.

Average Hours Per Response: 30 minutes.

Total Estimated Burden: 10,000 hours per year.

Public comments are being solicited to permit the agency to:

- Evaluate whether the proposed information collection is necessary for the proper performance of the functions of the agency.
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection, including the validity of the methodology and assumptions used.
- Enhance the quality, utility, and clarity of the information to be collected.
- Minimize the reporting burden on those who are to respond, including through the use of automated collection techniques or other forms of technology.

FOR FURTHER INFORMATION CONTACT: Public comments, or requests for additional information regarding the collection listed in this notice should be directed to Brendan Mullarkey of the Office of Visa Services, U.S. Department of State, 2401 E St. NW., RM L–703, Washington, DC 20520, who may be reached at 202–663–1163.

Dated: April 29, 2003.

Janice L. Jacobs,

Deputy Assistant Secretary of State for Visa Services, Bureau of Consular Affairs, Department of State.

[FR Doc. 03–11905 Filed 5–12–03; 8:45 am]

BILLING CODE 4710–06–U

DEPARTMENT OF STATE

[Public Notice 4363]

Foreign Terrorists and Terrorist Organizations; Designation: Real IRA

In the Matter of the Redesignation of the "Real IRA" also Known as the "Real Irish Republican Army" also Known as "RIRA" also Known as the "32 County Sovereignty Committee" also Known as the "32 County Sovereignty Movement" also Known as the "Real Oglaigh na hEireann" also Known as the "Irish Republican Prisoners Welfare Association" as a Foreign Terrorist Organization Pursuant to Section 219 of the Immigration and Nationality Act

Based upon a review of the Administrative Record assembled in this matter and in consultation with the Attorney General and the Secretary of the Treasury, the Secretary of State has concluded that there is a sufficient factual basis to find that the relevant circumstances described in section 219 of the Immigration and Nationality Act, as amended (hereinafter "INA"), exist with respect to the Real IRA.

The "Real IRA" is also known as the "Real Irish Republican Army," also known as "RIRA," also known as the "32 County Sovereignty Committee," also known as the "32 County Sovereignty Movement," also known as the "Real Oglaigh na hEireann," also known as the "Irish Republican Prisoners Welfare Association." Therefore, the Secretary of State hereby redesignates, effective May 16, 2003, that organization as a foreign terrorist organization pursuant to section 219(a) of the INA.

Dated: May 5, 2003.

Cofer Black,

Coordinator for Counterterrorism, Department of State.

[FR Doc. 03–11902 Filed 5–12–03; 8:45 am]

BILLING CODE 4710–10–U

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

Aviation Proceedings, Agreements Filed the Week Ending May 2, 2003

The following Agreements were filed with the Department of Transportation under the provisions of 49 U.S.C. 412 and 414. Answers may be filed within 21 days after the filing of the application.

Docket Number: OST–2003–15088.

Date Filed: May 1, 2003.

Parties: Members of the International Air Transport Association.

Subject:

PTC2 EUR 0517 dated May 2, 2003, Mail Vote 298—Resolution 010m, TC2 Within Europe Special Passenger Amending Resolution from Tunisia to Europe,

Intended effective date: May 10, 2003.

Dorothy Y. Beard,

Chief, Docket Operations & Media Management, Federal Register Liaison.

[FR Doc. 03–11775 Filed 5–12–03; 8:45 am]

BILLING CODE 4910–62–U

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

Notice of Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits Filed Under Subpart B (Formerly Subpart Q) During the Week Ending May 2, 2003

The following Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits were filed under Subpart B (formerly Subpart Q) of the Department of Transportation's Procedural Regulations (*See* 14 CFR 301.201 *et seq.*). The due date for Answers, Conforming Applications, or Motions to Modify Scope are set forth below for each application. Following the Answer period DOT may process the application by expedited procedures. Such procedures may consist of the adoption of a show-cause order, a tentative order, or in appropriate cases a final order without further proceedings.

Docket Number: OST–2003–15095.

Date Filed: May 1, 2003.

Due Date for Answers, Conforming Applications, or Motion to Modify Scope: May 22, 2003.

Description: Application of Sun D'or International Airlines Ltd., pursuant to 49 U.S.C. 41302 *et seq.*, and subpart B, requesting a foreign air carrier permit to engage in charter foreign air transportation of persons, property, and mail between a point or points in Israel, on the one hand, and Orlando, FL or Las Vegas, NV, on the other.

Dorothy Y. Beard,

Chief, Docket Operations & Media Management, Federal Register Liaison.

[FR Doc. 03–11776 Filed 5–12–03; 8:45 am]

BILLING CODE 4910–62–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Docket No. FAA–2003–15104]

Proposed Advisory Circular for Onboard Recording of Data Communications In Crash Survivable Memory

AGENCY: Federal Aviation Administration (FAA), (DOT).

ACTION: Cancellation of notice of availability and request for public comment.

SUMMARY: This notice announcing the availability of and request for comments on a revised proposed Advisory Circular (AC) for onboard recording of voice and data link messages in crash-survivable memory is cancelled.

DATES: The cancellation of this request for comments is effective on May 6, 2003.

FOR FURTHER INFORMATION CONTACT: Mr. Gregory Frye, Avionics Systems Branch, AIR–130, Aircraft Certification Service, Aircraft Engineering Division, AIR–130, 470 L'Enfant Plaza SW., Suite 4102, Washington, DC 20025; Telephone (202) 385–4630; Fax (202) 385–4651. E-mail comments to: *Gregory.E.Frye@faa.gov.*

SUPPLEMENTARY INFORMATION:

Background

The primary purposes of an advisory circular (AC) are: (1) Provide an acceptable means by which an Aircraft Certification Office project engineer can effectively evaluate an applicant's compliance to a specific Federal Aviation Regulation (FAR); and (2) provide an acceptable means that an applicant may comply with a specific FAR. In the case of this proposed AC, the regulatory requirements (FAR) to equip an aircraft with a system for an onboard recording to voice and data communications in a crash survivable memory, has not completed the rulemaking process. Therefore, the offering of the proposed advisory circular to the public for comments is premature.

Issued in Washington, DC, on May 6, 2003.

Susan J.M. Cabler,

Deputy Manager, Aircraft Engineering Division, Aircraft Certification Service.

[FR Doc. 03–11794 Filed 5–12–03; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Proposed Advisory Circular, AC 23–XX, Acceptance Guidance on Material Procurement and Process Specifications for Polymer Matrix Composite Systems

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of availability of proposed advisory circular AC 23–XX, and request for comments.

SUMMARY: This notice announces the availability of and requests comments on a proposed advisory circular that provides information and guidance on material and process specifications, or other documents, used to ensure sufficient control of composite prepreg materials in normal, utility, acrobatic, and commuter category airplanes. This notice is necessary to give all interested persons an opportunity to present their views on the proposed advisory circular.

DATES: Comments must be received on or before June 12, 2003.

ADDRESSES: Send all comments on the proposed advisory circular to: Federal Aviation Administration, Attention: Lester Cheng, Regulations and Policy, ACE–111, 901 Locust, Kansas City, Missouri 64106. Comments may be inspected at the above address between 7:30 a.m. and 4 p.m. weekdays, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Lester Cheng, telephone: 316–946–4111; e-mail: *lester.cheng@faa.gov.*

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to comment on the proposed advisory circular by submitting such written data, views, or arguments as they may desire. Commenters should identify advisory circular 23–XX and submit comments, in duplicate, to the address specified above. All communications received on or before the closing date for comments will be considered by the Small Airplane Directorate before issuing the final advisory circular. The proposed advisory circular can be found and downloaded from the Internet at *http://www.faa.gov/certification/aircraft/sadProposed.htm* or a paper copy of the proposed advisory circular may be obtained by contacting the person named above under the caption **FOR FURTHER INFORMATION CONTACT.**

Discussion

The proposed advisory circular has been developed with the help of industry to ensure adequate composite material control and to promote standardization of material and process specifications. It presents procedural and technical information for the user from the regulatory perspective.

Issued in Kansas City, Missouri, on April 29, 2003.

Michael Gallagher,

Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 03–11919 Filed 5–12–03; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Summary Notice No. PE–2003–27]

Petitions for Exemption; Dispositions of Petitions Issued

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of dispositions of prior petitions.

SUMMARY: Pursuant to FAA's rulemaking provisions governing the application, processing, and disposition of petitions for exemption part 11 of Title 14, Code of Federal Regulations (14 CFR), this notice contains a summary of certain dispositions of certain petitions previously received. The purpose of this notice is to improve the public's awareness of, and participation in, this aspect of FAA's regulatory activities.

FOR FURTHER INFORMATION CONTACT: Denise Emrick (202) 267–5174, Sandy Buchanan-Sumter (202) 267–7271, or Timothy R. Adams (202) 267–8033, Office of Rulemaking (ARM–1), Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20594.

This notice is published pursuant to 14 CFR 11.85 and 11.91.

Issued in Washington, DC, on May 7, 2003.

Donald P. Byrne,

Assistant Chief Counsel for Regulations.

Dispositions of Petitions

Docket No.: FAA–2003–15027.

Petitioner: Liberty Aviation Service, LLC.

Section of 14 CFR Affected: 14 CFR 135.143(c)(2).

Description of Relief Sought/ Disposition: To permit Liberty Aviation Service, LLC, to operate certain aircraft under part 135 without a TSO–C112 (Mode S) transponder installed on those aircraft. *Grant, 4/29/2003, Exemption No. 8035*

Docket No.: FAA–2001–9232.
Petitioner: Blatti Aviation, Inc.
Section of 14 CFR Affected: 14 CFR 135.143(c)(2).
Description of Relief Sought/ Disposition: To permit Blatti Aviation, Inc., to operate certain aircraft under part 135 without a TSO–C112 (Mode S) transponder installed on those aircraft. *Grant, 4/28/2003, Exemption No. 6957B*

Docket No.: FAA–2001–9141.
Petitioner: Business Aviation Courier.
Section of 14 CFR Affected: 14 CFR 135.143(c)(2).
Description of Relief Sought/ Disposition: To permit Business Aviation Courier to operate certain aircraft under part 135 without a TSO-C112 (Mode S) transponder installed on those aircraft. *Grant, 4/28/2003, Exemption No. 7488A*

Docket No.: FAA–2001–8861.
Petitioner: MCIWORLDCOM Management Company, Inc.
Section of 14 CFR Affected: 14 CFR 91.611.
Description of Relief Sought/ Disposition: To permit MCIWORLDCOM Management Company, Inc. (MCI), to conduct ferry flights with one engine inoperative in MCI's Falcon Trijet airplane, Model No. 900, without obtaining a special flight permit for each flight. *Grant, 4/29/2003, Exemption No. 5332F*

Docket No.: FAA–2002–11840.
Petitioner: Davis Aerospace Technical High School.
Section of 14 CFR Affected: 14 CFR 135.251, 135.255, and 135.353, and appendices I and J to part 121.
Description of Relief Sought/ Disposition: To permit Davis Aerospace Technical High School and Back Pilots of America to conduct local sightseeing flights at the Detroit City Airport, for its annual open house on May 18, 2003, for compensation or hire, without complying with certain anti-drug and alcohol misuse prevention requirements of part 135. *Grant, 4/29/2003, Exemption No. 8036*

Docket No.: FAA–2003–14795.
Petitioner: Eagle Helicopter, Inc., d.b.a. Kachina Aviation.
Section of 14 CFR Affected: 14 CFR 135.152(a).
Description of Relief Sought/ Disposition: To permit Kachina Aviation to operate two Bell 212 helicopters (registration Nos. N215KA and N73HJ) under part 135 without each helicopter being equipped with an approved digital flight data recorder. *Grant, 4/28/2003, Exemption No. 8037*

Docket No.: FAA–2000–8222.
Petitioner: Mesa Airlines, Inc.
Section of 14 CFR Affected: 14 CFR 121.434(c)(1)(ii).
Description of Relief Sought/ Disposition: To permit Mesa Airlines, Inc., to substitute a qualified and authorized check airman for an FAA inspector to observe a qualifying pilot in command who is completing initial or upgrade training specified in § 121.424 during at least one flight leg that includes a takeoff and a landing. *Grant, 4/29/2003, Exemption No. 7495A*

Docket No.: FAA–2001–9350.
Petitioner: TWA Airlines LLC, d.b.a. American Airlines.
Section of 14 CFR Affected: 14 CFR 121.434(c)(1)(ii).
Description of Relief Sought/ Disposition: To permit TWA Airlines, LLC, doing business as American Airlines, to substitute a qualified and authorized check airman for an FAA inspector to observe a qualifying pilot in command who is completing initial or upgrade training specified in § 121.424 during at least one flight leg that includes a takeoff and landing. *Grant, 4/29/2003, Exemption No. 7479A*

Docket No.: FAA–2000–7991.
Petitioner: American Trans Air, Inc., d.b.a. ATA.
Section of 14 CFR Affected: 14 CFR § 121.434(c)(1)(ii).
Description of Relief Sought/ Disposition: To permit ATA to substitute a qualified and authorized check airman for an FAA inspector to observe a qualifying pilot in command who is completing initial or upgrade training specified in § 121.424 during at least one flight leg that includes a takeoff and landing. *Grant, 4/29/2003, Exemption No. 7491A*

Docket No.: FAA–20001–9512.
Petitioner: Peninsula Airways, Inc., d.b.a. PenAir.
Section of 14 CFR Affected: 14 CFR 121.344(a).
Description of Relief Sought/ Disposition: To permit PenAir to operate its two Fairchild Aerospace SA227–DC Metro 23 aircraft without being equipped with an approved digital flight data recorder. *Grant, 4/28/2003, Exemption No. 7603A*

Docket No.: FAA–2003–14497.
Petitioner: Red Baron Flyers, Inc.
Section of 14 CFR Affected: 14 CFR 135.251, 135.255, and 135.353, and appendices I and J to part 121.
Description of Relief Sought/ Disposition: To permit Red Baron Flyers, Inc., to conduct local sightseeing flights at the Houston County Airport, Caledonia, Minnesota, on June 29, 2003, for compensation or hire, without complying with certain anti-drug and alcohol misuse prevention requirements of part 135. *Grant, 4/28/2003, Exemption No. 8034*

Docket No.: FAA–2002–13930.
Petitioner: Pinnacle Airlines, Inc., d.b.a. Northwest Airlink.
Section of 14 CFR Affected: 14 CFR 121.434(c)(1)(ii).
Description of Relief Sought/ Disposition: To permit Northwest Airlink to substitute a qualified and authorized check airman for an FAA inspector to observe a qualifying pilot in command who is completing initial or upgrade training specified in § 121.424 during at least one flight leg that includes a takeoff and a landing. *Grant, 4/29/2003, Exemption No. 7504A*

Docket No.: FAA–2002–11992.
Petitioner: Kent State University Flight Operations.
Section of 14 CFR Affected: 14 CFR 135.251, 135.255, and 135.353, and appendices I and J to part 121.
Description of Relief Sought/ Disposition: To permit Kent State University Flight Operations to conduct local sightseeing flights at the Kent State University Airport, Stow, Ohio, on September 6 and 7, 2003, for compensation or hire, without complying with certain anti-drug and alcohol misuse prevention requirements of part 135. *Grant, 4/28/2003, Exemption No. 8033*

Docket No.: FAA–2001–9513.
Petitioner: Big Sky Transportation Co., d.b.a. Big Sky Airlines.
Section of 14 CFR Affected: 14 CFR 121.344(a).
Description of Relief Sought/ Disposition: To permit Big Sky Airlines to operate its six Fairchild Aerospace SA–227–DC Metro 23 aircraft after August 20, 2001, without each aircraft being equipped with an approved digital flight data recorder. *Grant, 4/30/2003, Exemption No. 7596A*

Docket No.: FAA–2001–9166.
Petitioner: North American Airlines, Inc.
Section of 14 CFR Affected: 14 CFR 119.67(a)(1).
Description of Relief Sought/ Disposition: To permit Edward F. Dascoli to act as the Director of Operations for North American Airlines, Inc., without holding an airline transport pilot certificate. *Grant, 4/30/2003, Exemption No. 7510A*

[FR Doc. 03–11782 Filed 5–12–03; 8:45 am]
BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

User Input to the Aviation Weather Technology Transfer (AWTT) Board

AGENCY: Federal Aviation Administration (FAA), Department of Transportation (DOT).

ACTION: Notice of public meeting.

SUMMARY: The FAA will hold an informal public meeting to seek aviation weather user input. Details: June 11, 2003; Federal Aviation Administration, 800 Independence Ave., SW., Washington, DC; 9 a.m. to 12 p.m. in Conference Room 8A. The objective of this meeting is to provide an opportunity for interested aviation weather users to provide input on FAA's plans for implementing new weather products.

DATES: The meeting will be held in Conference Room 8A at the Federal Aviation Administration, 800 Independence, Ave., SW., Washington, DC 20591. Times: 9 a.m.–12 p.m. on June 11, 2003.

FOR FURTHER INFORMATION CONTACT: Debi Bacon, Aerospace Weather Policy Division, ARS–100, Federal Aviation Administration, 800 Independence Ave., SW., Washington, DC 20591; telephone number (202) 385–7705; Fax: (202) 385–7701; e-mail: *debi.bacon@faa.gov*. Internet address *http://www.debi.bacon@faa.gov*.

SUPPLEMENTARY INFORMATION:

History

In 1999, the FAA established an Aviation Weather Technology Transfer (AWTT) Board to manage the orderly transfer of weather capabilities and products from research and development into operations. The Director of the Aerospace Weather Policy and Standards Staff, ARS–20, chairs the AWTT Board. The board is composed of stakeholders in Air Traffic Services, ATS: Regulation and Certification, AVR; and Research and Acquisitions, ARA in the Federal Aviation Administration and the Office of Climate, Water and Weather Services, OS and the Office of Science and Technology, OST in the National Weather Service.

The AWTT Board meets semi-annually or as needed, to determine the readiness of weather research and development (R&D) products for experimental use, full operational use for meteorologists or full operational use for end users. The board's determinations will be based upon criteria in the following areas: users needs; benefits; costs; risks; technical readiness; operational readiness and budget requirements.

The user interface process is designed to allow FAA to both report progress and receive feedback from industry users. Each AWTT board meeting will be preceded by a half-day industry review session approximately one month prior to each board meeting. These industry review sessions will be announced in the **Federal Register** and open to all interested parties.

This meeting is the industry review session intended to receive feedback on a weather R&D product that will be presented for consideration at the July 2003 AWTT Board meeting. The products to be considered are the Forecast Inflight Icing Potential (FIP) and the Graphic Area Forecast (GFA).

Meeting Procedures

(a) The meeting will be informal in nature and will be conducted by representatives of the FAA Headquarters.

(b) The meeting will be open to all persons on a space-available basis. Every effort was made to provided a meeting site with sufficient seating capacity for the expected participation. There will be neither admission fee nor other charge to attend and participate. Any person attending must present picture identification to the building security guards for admission. Person with government-issued identification cards will be directed to conference room 8A. Persons without government-issued identification cards will be admitted but must be escorted by FAA personnel while within the building.

(c) FAA headquarters personnel will conduct an overview briefing on how the AWTT system works and changes to the process made in the last year. Any person will be allowed to ask questions during the presentation and FAA personnsel will clarify any part of the process that is not clear.

(d) FAA personnel, will present a briefing on the specific products to be review at the July 2003 AWTT Board Meeting. Any person will be allowed to ask questions during the presentation and FAA personnel will clarify any part of the presentation that is not clear.

(e) Any person present may give feedback on the products to be presented. Feedback on the proposed products will be captured through discussion between FAA personnel and any persons attending the meeting. The meeting will not be formally recorded. However, informal tape recordings may be made of the presentations to ensure that each respondent's comments are noted accurately.

(f) An official verbatim transcript of minutes of the informal meeting will not be made. However, a list of the attendees, a digest of discussions during the meeting and an action item list will be produced. Any person attending may receive a copy of the written information upon request to the information contact, above.

(g) Every reasonable effort will be made to hear each person's feedback consistent with a reasonable closing time for the meeting. Written feedback may also be submitted to FAA personnel for up to seven (7) days after the close of the meeting.

Agenda

(a) Opening Remarks and Discussion of Meeting Procedures
(b) Briefing on AWTT Process
(c) Briefing on Weather Products
(d) Request for User Input
(e) Closing Comments

* * * * *

Issued in Washington, DC on May 5, 2003.

David Whatley,

Staff Director, Aerospace Weather Policy Standard Staff.

[FR Doc. 03–11918 Filed 5–12–03; 8:45 am]
BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

In-flight Icing/Ground De-icing International Conference

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of conference.

SUMMARY: The FAA issues this notice to advise the public of an In-flight Icing/ Ground De-icing International Conference to present information and receive comments on: (1) Aircraft de/ anti-icing during ground operations; (2) In-flight icing; (3) Icing environment meteorology; (4) Rotorcraft; (5) Ice detectors and airplane performance monitors; (6) Training for in-flight icing and aircraft de/anti-icing during ground operations; and (7) Regulations and guidance material development. This notice announces the dates, times, location, and registration information for the conference.

DATES: The conference is scheduled for June 16 through June 20, 2003, starting at 1 p.m. on June 16, and 8:30 a.m. on June 17 through June 20. The conference will end at 5:30 p.m. daily, except for the last day when the conference will end at 12 p.m.

ADDRESSES: The conference will be held at the Palmer House Hilton Hotel, 17 E.

Monroe Street, Chicago, Illinois 60603, USA, Telephone: (312) 726–7500, fax (312) 917–1707.

FOR FURTHER INFORMATION CONTACT: Mr. Eugene G. Hill, FAA Certification, ANM–11N, 1601 Lind Avenue, SW., Renton, Washington 98055–4058; e-mail *eugene.hill@faa.gov;* telephone (425) 227–1293; fax (425) 917–6590.

SUPPLEMENTARY INFORMATION: This 2003 conference is a collaborative effort of the FAA, the Joint Aviation Authorities, Transport Canada, the National Aeronautics and Space Administration Glenn Research Center, the American Helicopter Society, the Meteorological Service of Canada, the National Center for Atmospheric Research, QINETIQ, and the Society of Automotive Engineers (SAE).

The agenda for the conference includes presentations of the seven (7) topics identified in the Summary section of this notice, as well as a SAE sponsored exhibition of icing-related equipment and services on open display throughout the conference.

Persons planning to attend this conference may register at the conference or via the Internet at: *http://www.sae.org/icing-deicing/*. The registration fee is US $265, which includes the lunches on June 17 through June 19, and beverages during the technical session breaks.

A block of rooms is being held until May 31, at the Palmer House Hilton Hotel, 17 E. Monroe Street, Chicago, Illinois 60603. You may make reservations by calling the hotel at (312) 726–7500, and reference the SAE/FAA In-flight Icing/Ground De-icing International Conference, or by mailing or faxing (312–917–1707) a completed registration form provided at: *http://www.sae.org/icing-deicing/*, directly to the hotel.

Issued in Washington, DC, on May 7, 2003.

David W. Hempe,

Manager, Aircraft Engineering Division, Aircraft Certification Service.

[FR Doc. 03–11921 Filed 5–12–03; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Environmental Impact Statement: Strafford and Rockingham Counties, New Hampshire

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of intent.

SUMMARY: The FHWA is issuing this notice to advise the public that an environmental impact statement (EIS) is being prepared for a proposed highway project in Strafford and Rockingham Counties, New Hampshire.

FOR FURTHER INFORMATION CONTACT: Mr. William F. O'Donnell, P.E., Environmental Program Manager, Federal Highway Administration, 279 Pleasant Street, Suite 204, Concord, New Hampshire 03301–7502, Telephone: (603) 228–3057, x 145, or Mr. William R. Hauser, Administrator, Bureau of Environment, New Hampshire Department of Transportation, P.O. Box 483, John O. Morton Building, Concord, New Hampshire 03302–0483, Telephone: (603) 271–3226.

SUPPLEMENTARY INFORMATION: The FHWA, in cooperation with the New Hampshire Department of Transportation (NHDOT), will prepare an environmental impact statement (EIS) for a proposal for construction on an approximate 3.5-mile section of an existing highway facility (Spaulding Turnpike, NH Route 16, extending north from the Gosling Road/Pease Boulevard Interchange (Exit 1) in the Town of Newington, across the Little Bay Bridges, to a point just south of the existing toll facility in the City of Dover) that serves as a major north-south transportation link for the State of New Hampshire.

The proposed action would improve safety and increase transportation efficiency by relieving traffic congestion and reducing travel time, and accommodate projected increases in traffic demand.

Alternatives to be considered include (1) taking no action; (2) upgrading the existing route (approximately 3.5 miles in length) to add capacity; (3) applying Transportation Demand Management (TDM) measures, such as carpool parking lots, high occupancy vehicle lanes, etc.; (4) applying Transportation System Management (TSM) improvements to selected interchange locations on existing roads; and (5) combinations of these alternatives. Various options for bridge rehabilitation, widening, and/or replacement of the Little Bay Bridges, final disposition of the historic General Sullivan Bridge, consolidation of the interchanges, and various designs of grade, alignment, and geometry will be evaluated.

Public informational, community and Advisory Task Force meetings will be held in the study area as the project progresses to include public input in the project development process. A public hearing will be held following distribution of the Draft Environmental Impact Statement (DEIS). Public notice will be given regarding the time and location of this hearing. The DEIS will be available for review and comment by the public and interested agencies prior to the public hearing.

A formal scoping meeting has been scheduled and will be held at 4 p.m. on June 25, 2003, at the Newington Town Hall, 205 Nimble Hill Road in Newington, New Hampshire. At this session, an overview of the project area will be presented and the purpose and need of the project will be discussed. The purpose of this meeting is to (1) reaffirm the limits of the project study area; (2) refine the study framework and the impacts to be analyzed; and (3) define a reasonable range of alternatives to be considered.

Agencies, requested to become cooperating agencies, are the U.S. Army Corps of Engineers (ACOE), the U.S. Environmental Protection Agency (EPA), the new Hampshire State Historic Preservation Office (SHPO), the New Hampshire Department of Environmental Services (NHDES), the New Hampshire Fish & Game Department (NHF&GD), the New Hampshire Office of State Planning (OSP), the United States Coast Guard (USCG), the United States Fish & Wildlife Service (USFWS), and the National Marine Fishery Service (NMFS).

To ensure the full range of issues related to this proposed action are addressed and all significant issues identified, comments and suggestions are invited from all interested parties. Comments or questions concerning this proposal and the EIS should be directed to the FHWA or the NHDOT at the addresses provided above.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on federal programs and activities apply to this program.)

Issued on: May 5, 2003.

Kathleen O. Laffey,

Division Administrator, Concord, New Hampshire.

[FR Doc. 03–11873 Filed 5–12–03; 8:45 am]

BILLING CODE 4910–22–M

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

National Highway Traffic Safety Administration

Guidance on Red Light Camera Systems

AGENCIES: Federal Highway Administration (FHWA), National Highway Traffic Safety Administration (NHTSA), DOT.

ACTION: Notice; issuance of guidance.

SUMMARY: This notice announces that the FHWA and the NHTSA have issued guidance on the installation and use of red light camera systems. The guidance, "Guidance for Using Red Light Cameras," is available at the following URLs: *http://safety.fhwa.dot.gov/rlcguide/index.htm* and *http://www.nhtsa.dot.gov/people/injury/enforce/guidance03/introduction.htm*. As the use of cameras to issue citations to motorists running red lights is becoming increasingly widespread throughout the United States, the installation and operation of these cameras has been inconsistent. The agencies intend for this guide to provide relevant information on implementation and operational concerns of red light camera systems to State and local agencies in order to promote consistency nationwide.

FOR FURTHER INFORMATION CONTACT: For FHWA: Mr. Hari Kalla, Office of Safety, HSA–10, (202) 366–5915, or Mr. Raymond Cuprill, Office of the Chief Counsel, HCC–30, (202) 366–0761. FHWA office hours are from 7:45 a.m. to 4:15 p.m., Monday through Friday, except Federal holidays. For NHTSA: Mr. Earl Hardy, Office of Traffic Injury Control. NTI–122, (202) 366–4295. NHTSA office hours are from 8:30 a.m. to 5 p.m., Monday through Friday, except Federal holidays. Both offices are located at 400 Seventh Street, SW., Washington, DC 20590.

SUPPLEMENTARY INFORMATION:

Electronic Access

An electronic copy of this notice may be downloaded using a computer, modem and suitable communications software from the Government Printing Office's Electronic Bulletin Board Service at (202) 512–1661. Internet users may reach the Office of the Federal Register's home page at *http://www.archives.gov* and the Government Printing Office's Web site at *http://www.access.gpo.gov*. An electronic version of the guidance document may be downloaded by accessing the FHWA Web site at *http://safety.fhwa.dot.gov/rlcguide/index.htm* and/or the NHTSA Web site at *http://www.nhtsa.dot.gov/people/injury/enforce/guidance03/introduction.htm*.

Background

The use of red light cameras for the enforcement of red light running violations at signalized intersections is becoming increasingly widespread in the United States, beginning with the first U.S. installation in New York City in 1992, and reaching more than 75 jurisdictions by the end of 2002.[1] State and local agencies have found that the use of red light cameras can reduce red light running violations by motorists from 20 percent to over 50 percent.[2] The rapid deployment of red light cameras across the United States has been viewed by some as a single, fix-all, solution to the growing concerns about red light running and crashes attributable to red light running. This belief may lead to the inappropriate use of red light camera systems and inaccurate assessment of actual intersection safety problems.

Appearance of fairness in the use of red light cameras, in a broader perspective, can provide support for other forms of technology used to improve transportation operations and safety. Therefore, the FHWA and NHTSA have developed guidance on the implementation and operation of red light camera systems in the United States. Although not a regulatory requirement, the guidance is intended to provide relevant information on implementation and operational concerns of red light camera systems to State and local agencies in order to promote consistency nationwide and to ensure that this effective tool, and other forms of technology, remain available to transportation agencies around the nation.

The guidance is designed to assist State and local agency managers, transportation engineers, and law enforcement officials in identifying and addressing safety problems resulting from red light running within their jurisdictions. The guidance provides proven and effective practices that have been implemented throughout the United States, and generally provides procedures that can be followed to ensure that effective, efficient and fair solutions are implemented.

Conclusion

The FHWA and the NHTSA provide this guidance as a tool for those jurisdictions interested in implementing red light camera systems. This guidance identifies the recommended circumstances and methods by which red light cameras should be installed. The guidance, "Red Light Camera System Guidance" is available electronically at the following URLs: *http://safety.fhwa.dot.gov/rlrcguide.htm* and *http://www.nhtsa.dot.gov/people/injury/enforce/guidance03/introduction.htm* and it is available for copying and inspection at the U.S. Department of Transportation Library, Room 2200, 400 Seventh Street, SW., Washington, DC 20590.

Authority: 23 U.S.C. 401; 49 CFR 1.48(n); 49 CFR 1.50(b).

Issued on: May 2, 2003.

Jeffrey W. Runge,

Administrator, National Highway Traffic Safety Administration.

J. Richard Capka,

Deputy Federal Highway Administrator.

[FR Doc. 03–11780 Filed 5–12–03; 8:45 am]

BILLING CODE 4910–22–P

[1] Insurance Institute of Highway Safety, Red Light Camera in Action, is available at the following URL: *http://www.hwysafety.org/safety%5Ffacts/rlc_cities.htm*.

[2] Public Technology, Inc. "Is Photo Enforcement For You? A White Paper for Public Officials", is available for purchase at the following URL: *http://www.pti.org*.

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

[Docket No. FRA–2000–7257; Notice No. 29]

Railroad Safety Advisory Committee ("RSAC"); Working Group Activity Update

AGENCY: Federal Railroad Administration (FRA), Department of Transportation (DOT).

ACTION: Announcement of Railroad Safety Advisory Committee (RSAC) working group activities.

SUMMARY: FRA is updating its announcement of RSAC's working group activities to reflect their current status.

FOR FURTHER INFORMATION CONTACT: Trish Butera or Lydia Leeds, RSAC Coordinators, FRA, 1120 Vermont Avenue, NW., Mailstop 25, Washington, DC 20590, (202) 493–6213 or Grady Cothen, Deputy Associate Administrator for Safety Standards and Program Development, FRA, 1120 Vermont Avenue, NW., Mailstop 25, Washington, DC 20590, (202) 493–6302.

SUPPLEMENTARY INFORMATION: This notice serves to update FRA's last announcement of working group activities and status reports on

September 3, 2002, (67 FR 56341). The 20th full Committee meeting was held September 19, 2002, at the Almas Temple Club in Washington, DC. The 21st meeting is scheduled for May 20, 2003.

Since its first meeting in April of 1996, the RSAC has accepted 17 tasks. An additional task, Amendments to the Passenger Equipment Safety Standards (49 CFR part 238) and the Passenger Train Emergency Preparedness (49 CFR part 239) will be proposed at the next meeting. Status for each of the tasks is provided below:

Task 96–1—(Completed) Revising the Freight Power Brake Regulations. The final rule was published on January 17, 2001 (66 FR 4104). An amendment extending the effective date of the final rule until May 31, 2001, was published on February 12, 2001 (66 FR 9905). Amendments to subpart D of the final rule were published August 1, 2001 (66 FR 36983). Amendments responding to the remaining issues raised in petitions for reconsideration were published in the **Federal Register** on April 10, 2002 (67 FR 17556).

Task 96–2—(Completed) Reviewing and recommending revisions to the Track Safety Standards (49 CFR part 213). The final rule was published in the **Federal Register** on June 22, 1998 (63 FR 33991). The effective date of the rule was September 21, 1998. A task force was established to address Gage Restraint Measurement System (GRMS) technology applicability to the Track Safety Standards. The GRMS final rule amendment was published January 10, 2001 (66 FR 1894). On January 31, 2001, FRA published a notice extending the effective date of the GRMS amendment to April 10, 2001 (66 FR 8372). On February 8, 2001, FRA published a notice delaying the effective date until June 9, 2001, in accordance with the Regulatory Review Plan (66 FR 9676).

Task 96–3—(Completed) Reviewing and recommending revisions to the Radio Standards and Procedures (49 CFR part 220). The final rule was published on September 4, 1998 (63 FR 47182), and was effective on January 2, 1999.

Task 96–4—Reviewing the appropriateness of the agency's current policy regarding the applicability of existing and proposed regulations to tourist, excursion, scenic, and historic railroads. This Task was accepted on April 2, 1996, and a Working Group was established. The Working Group monitored the steam locomotive regulations task. Planned future activities involve the review of other regulations for possible adaptation to the safety needs of tourist and historic railroads. Contact: Grady Cothen (202) 493–6302.

Task 96–5—(Completed) Reviewing and recommending revisions to Steam Locomotive Inspection Standards (49 CFR part 230). The final rule was published on November 17, 1999 (64 FR 62828), and became effective January 18, 2000.

Task 96–6—(Completed) Reviewing and recommending revisions to miscellaneous aspects of the regulations addressing Locomotive Engineer Certification (49 CFR part 240). The final rule was published November 8, 1999 (64 FR 60966).

Task 96–7—Developing Roadway Maintenance Machine (On-Track Equipment) Safety Standards. This task was assigned to the existing Track Standards Working Group on October 31, 1996, and a Task Force was established. The Task Force finalized a proposed rule which was approved by the full RSAC in a mail ballot in August 2000. The NPRM was published January 10, 2001 (66 FR 1930). The Task Force met to review comments on February 27–March 1, 2002, and agreed to the disposition of the comments for the final rule. A Ballot was issued to the Working Group and all responders concurred. The RSAC approved the recommendations at the full RSAC meeting on May 29, 2002. The next step is to complete and publish the final rule. Contact: Al MacDowell (202) 493–6236.

Task 96–8—(Completed) This Planning Task evaluated the need for action responsive to recommendations contained in a report to Congress entitled, Locomotive Crashworthiness & Working Conditions. This Planning Task was accepted on October 31, 1996. A Planning Group was formed and reviewed the report, grouping issues into categories, and prepared drafts of the task statements for Tasks 97–1 and 97–2.

Task 97–1—Developing crashworthiness specifications to promote the integrity of the locomotive cab in accidents resulting from collisions. This Task was accepted on June 24, 1997. A Task Force on engineering issues was established by the Working Group on Locomotive Crashworthiness to review collision history and design options and additional research was commissioned. The Working Group reviewed results of the research and is drafting performance-based standards for freight and passenger locomotives to present to the RSAC for consideration. An accident review task force has evaluated the potential effectiveness of suggested improvements. The Working Group reached tentative agreement for a proposed rule. The NPRM and Regulatory Impact Analysis are being revised to reflect the changes. The next step is the Working Group review of the final NPRM draft. Contact: Sean Mehrvazi (202) 493–6108.

Task 97–2—Evaluating the extent to which environmental, sanitary, and other working conditions in locomotive cabs affect the crew's health and the safe operation of locomotives, proposing standards where appropriate. This Task was accepted June 24, 1997.

(Sanitation). (Completed) The final rule was published on April 4, 2002, with an effective date of July 3, 2002 (67 FR 16032). One petition for reconsideration was filed and is under review by FRA.

(Noise exposure.) The Cab Working Conditions Working Group met most recently in Chicago, November 12–14, 2002. A tentative consensus was reached on the draft rule text. Next steps are Working Group, then full RSAC approval of the NPRM in the spring.

The Cab Working Group has also considered issues related to cab temperature, and is expected to consider additional issues (such as vibration) in the future. No further action is planned at this time. Contact: Jeffrey Horn (202) 493–6283.

Task 97–3—Developing event recorder data survivability standards. This Task was accepted on June 24, 1997. The Event Recorder Working Group met actively in 2002, reviewing draft language for an NPRM. In mid-2003 a revised draft NPRM will be circulated to the Working Group for review and approval. Contact: Edward Pritchard (202) 493–6247.

Task 97–4 and Task 97–5—Defining Positive Train Control (PTC) functionalities, describing available technologies, evaluating costs and benefits of potential systems, and considering implementation opportunities and challenges, including demonstration and deployment.

Task 97–6—Revising various regulations to address the safety implications of processor-based signal and train control technologies, including communications-based operating systems. These three tasks were accepted on September 30, 1997, and assigned to a single Working Group.

(Report to the Administrator.) A Data and Implementation Task Force, formed to address issues such as assessment of costs and benefits and technical readiness, completed a report on the future of PTC systems. The report was accepted as RSAC's Report to the Administrator at the September 8, 1999, meeting. FRA enclosed the report with a letter Report to Congress signed May 17, 2000.

(Report to Congress.) The Appropriations Conferees included in their report on the FY 2003 DOT Appropriations Act a requirement for a second review of the costs and benefits of PTC. FRA will request the RSAC to comment on the draft report when available.

(Regulatory development.) The Standards Task Force, formed to develop PTC standards assisted in developing draft recommendations for performance-based standards for processor-based signal and train control systems. The NPRM was approved by consensus at the full RSAC meeting held on September 14, 2000. The NPRM was published in the **Federal Register** on August 10, 2001. A meeting of the Working Group was held December 4–6, 2001, in San Antonio, Texas to formulate recommendations for resolution of issues raised in the public comments. Agreement was reached on most issues raised in the comments. A meeting was held May 14–15, 2002, in Colorado Springs, Colorado at which the working group approved creation of teams to further explore issues related to the "base case" issue. Briefing of the full RSAC on the "base case" issue was completed on May 29, 2002, and consultations continue within the working group. The full Working Group met October 22–23, 2002, and again March 4–6, 2003. The Risk2 Team is meeting to develop a resolution to the base case issue; and the Accident Review Team is meeting to update the review of preventable accidents. The next full Working Group meeting is July 8–9, 2003.

(Other program development activities.) Task forces on Human Factors and the Axiomatic Safety-Critical Assessment Process (risk assessment) continue to work toward development of a risk assessment toolkit, and the Working Group continues to meet to monitor the implementation of PTC and related projects. Contact: Grady Cothen (202) 493–6302.

Task 97–7—(Completed) Determining damages qualifying an event as a reportable train accident. This Task was accepted on September 30, 1997, and a group was formed to address this task. A statistical analysis, using the survey data about damages to railroad equipment, was done to see if the method could be used to calculate property damages. After reviewing the options, the Working Group agreed to terminate action on this task. The Working Group reviewed a draft close-out report which was approved by the full RSAC on February 13, 2002, terminating this task.

Task 00–1—Determining the need to amend regulations protecting persons who work on, under, or between rolling equipment and persons applying, removing or inspecting rear end marking devices (Blue Signal Protection). The working group held its first meeting on October 16–18, 2000, and six meetings have been held since then. The Working Group has reached tentative consensus on several issues. FRA is preparing documents and planning a meeting in an effort to assist in moving toward resolution of several remaining issues. Contact: Doug Taylor (202) 493–6255.

Task 01–1—(Completed) Developing conformity of FRA's regulations for accident/incident reporting (49 CFR part 225) to revised regulations of the Occupational Safety and Health Administration (OSHA), U.S. Department of Labor, and to make appropriate revisions to the FRA Guide for Preparing Accident/Incident Reports (Reporting Guide). The Final Rule was published March 3, 2003 (68 FR 10108), and will become effective May 1, 2003.

Task 03–01—(Proposed) Amendments to the Passenger Equipment Safety Standards (49 CFR part 238) and the Passenger Train Emergency Preparedness (49 CFR part 239). FRA announces its intent that any further amendments to the Passenger Equipment Safety Standards (49 CFR part 238) and the Passenger Train Emergency Preparedness (49 CFR part 239) regulations be made under the auspices of the RSAC. Both rules arose from rulemakings FRA initiated pursuant to the Federal Railroad Safety Authorization Act of 1994 (the Act). *See* Pub. L. 103–440, 108 Stat. 4619, 4623–4624, November 2, 1994). The Act mandated the establishment of minimum standards for the safety of cars used by railroad carriers to transport passengers, taking into account the (i) crashworthiness of the cars, (ii) safety of interior features, (iii) maintenance and inspection of the cars, (iv) emergency response procedures and equipment, (v) and any operating rules and conditions directly affecting safety not otherwise governed by regulations. *See* 49 U.S.C. 20133. Pursuant to the Act, FRA published the Passenger Train Emergency Preparedness final rule on May 4, 1998. *See* 63 FR 24630. Thereafter, FRA published the Passenger Equipment Safety Standards final rule on May 12, 1999 (*see* 64 FR 25540), and subsequently amended the regulation three times in response to petitions for reconsideration (*see* 65 FR 41284, July 3, 2000; 67 FR 19970, April 23, 2002; and 67 FR 42892; June 25, 2002).

With publication of these regulations, FRA believes it has complied with the statutory mandate to establish minimum standards for the safety of cars used by railroad carriers to transport passengers. These regulations constitute a comprehensive set of standards that address both the safety concerns expressly identified in the statute and others affecting passenger and employee safety. FRA recognizes that these regulations can be refined and improved, especially to take advantage of advancing technologies. FRA intends that further amendments to the Passenger Equipment Safety Standards and the Passenger Train Emergency Preparedness regulations be made under the auspices of RSAC. Both regulations benefitted from consultations with working groups specially authorized by the Act to assist FRA in their development. FRA desires that that consultative process continue through RSAC to assist FRA in making any necessary amendments to the regulations. FRA will request the establishment of a new Passenger Safety Working Group to assist in providing overall direction for this effort. Contact: Grady Cothen (202) 493–6302.

Please refer to the notice published in the **Federal Register** on March 11, 1996 (61 FR 9740), for more information about the RSAC.

Issued in Washington, DC on May 5, 2003.

George A. Gavalla,

Associate Administrator for Safety.

[FR Doc. 03–11777 Filed 5–12–03; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF TRANSPORTATION

Federal Transit Administration

FTA Fiscal Year 2003 Apportionments, Allocations and Program Information; Notice of Supplemental Information, Changes, and Corrections

AGENCY: Federal Transit Administration (FTA), DOT.

ACTION: Notice; supplemental information, changes, and corrections.

SUPPLEMENTARY INFORMATION: The "Emergency Wartime Supplemental Appropriations Act, 2003" (Pub. L. 108–11) was signed by President Bush on April 16, 2003. The Act contains four general provisions that affect the Federal Transit Administration (FTA) Fiscal Year (FY) 2003 appropriations and programs. This notice identifies these provisions and also notes corrections to the FTA Notice entitled

"FTA Fiscal Year 2003 Apportionments, Allocations and Program Information; Notice," published in the **Federal Register** on March 12, 2003.

FOR FURTHER INFORMATION CONTACT: The appropriate FTA Regional Administrator or Mary Martha Churchman, Director, Office of Resource Management and State Programs, (202) 366–2053.

I. FTA FY 2003 Job Access and Reverse Commute Program Allocations

In the **Federal Register** Notice of FTA Fiscal Year 2003 Apportionments, Allocations and Program Information, published March 12, 2003, FTA noted that project selections for the Job Access and Reverse Commute program would be published separately.

Of the $150,000,000 made available for the Job Access and Reverse Commute (JARC) program by Public Law 108–7, the Department of Transportation (DOT) and Related Agencies Appropriations Act for Fiscal Year 2003, (FY 2003 DOT Appropriations Act) Congress directed that $45,000,000 be used for new fixed guideway systems under FTA's Capital Investment Grants program, leaving $105,000,000 for the JARC program. Section 601 of Title VI of the Consolidated Appropriations Resolution, 2003, requires an across-the-board .65 percent reduction proportionately applied to the discretionary budget authority and obligation limitation, and to each program, project and activity. When the .65 percent is taken from $105,000,000, a total of $104,317,500 remains available for JARC projects. The FY 2003 DOT Appropriations Act also permitted FTA to make up to $300,000 available for technical assistance and support and performance reviews of the JARC program. FTA reduced this amount by .65 percent and reserved $298,050 for program evaluation. Of the total $104,317,500 FY 2003 JARC funding, $104,019,450 remains available for allocation to projects. Congress designated projects totaling $104,999,000 in the Conference report accompanying the FY 2003 DOT Appropriations Act.

Section 2706(a) of Title II, Chapter 7 of Public Law 108–11, the Emergency Wartime Supplemental Appropriations Act, 2003, states, "projects and activities on pages 1303 through 1307 (of the Joint Explanatory Statement of the Committee of Conference for Public Law 108–7) shall be awarded those grants upon receipt of an application." To apply for JARC funds, all applicants must submit an application through FTA's electronic grant-making system, TEAM, for projects that meet JARC program requirements as set forth in Part II of the solicitation notice for fiscal years 2002 and 2003, published in the **Federal Register** on April 8, 2002. Applicants should contact the appropriate regional offices for assistance with project development and grant application procedures. A list of all FTA regional offices is included at Appendix B of the April 8 **Federal Register** notice. This notice can be found at: [*http://www.fta.dot.gov/library/legal/federalregister/2002/fr4802a.pdf.*]

The table below provides the amount available for each project after subtraction of the funds for technical assistance and performance review and the across-the-board .65 percent reduction proportionately applied to all JARC projects.

FEDERAL TRANSIT ADMINISTRATION

[FY 2003 job access and reverse commute program allocations]

State	Project and description	Allocation
AK	Alaska Mobility Coalition	$495,335
AK	Kenai Peninsula Transit Planning	495,335
AK	MASCOT Matanuska-Susitna Valley	198,134
AL	Jefferson County	2,972,013
AZ	AJO to Phoenix Rural Express Bus Service	198,134
AZ	Maricopa County Worklinks Project	247,668
AZ	Southwest Transit Assessment & Review Team Bus Route 131	297,201
AZ	Valley Metro (RPTA), City of Phoenix	1,089,738
CA	AC Transit—CalWORKS	1,981,342
CA	County of Santa Clara Guaranteed Ride Home Program	495,335
CA	East Palo Alto Shuttle Service	693,470
CA	LA County UTRANS	495,335
CA	Los Angeles County; MTA Ride Share Program	866,837
CA	Low-Income LIFT Program SF MTC	990,671
CA	SACOG Sacramento Region	743,003
CA	Sacramento Area	1,486,006
CA	Southern California Regional Rail Authority, Metrolink Double Tracking	990,671
CO	Colorado Statewide—Colorado Association of Transit Agencies (CASA)	792,537
CT	Connecticut Statewide	3,467,348
DC	Georgetown Metro Connection—Washington, DC	1,089,738
DC	WMATA (DC, Maryland, and Virginia)	2,105,176
DE	Delaware Welfare to Work Initiative	743,003
FL	HART Access to Jobs Program	693,470
FL	Jacksonville Trans. Authority Choice Ride Program	1,609,840
FL	Key West	990,671
FL	LYNX Central Florida Regional	198,134
GA	Chatham	433,914
GA	Macon—Bibb County Reverse Commute Program	767,770
IA	Iowa Statewide	990,671
IL	DuPage County Coordinated Paratransit Program	495,335
IL	Illinois Ways to Work	495,335
IL	Rock Island County Mass Transit District (MetroLink)	178,321
IL	Ways-to-Work—IL—MO	990,671
IN	Fort Wayne's Hanna Creighton Transit Center	743,003
IN	IndyGo Service	990,671
KS	KW Paratransit Vehicle	29,720

FEDERAL TRANSIT ADMINISTRATION—Continued

[FY 2003 job access and reverse commute program allocations]

State	Project and description	Allocation
KS	Mid America Regional Council (MARC)	495,335
KS	Wyandotte County	1,139,271
LA	Lafayette Ways to Work Program	99,067
MA	Brockton Area Transit Authority	222,901
MA	Community Transportation Association of America	990,671
MA	Northern Tier Dial-A-Ride	396,268
MA	Transportation Services of Northern Berkshire, Inc.	396,268
MD	Maryland Statewide (Montgomery County, $600,000)	4,953,354
MI	Flint Mass Transportation Authority	1,040,204
MI	Grands Rapids/Kent County Job Access Plan	929,249
MN	Minneapolis/St. Paul, Met Council	990,671
MO	Metrolink Corridor Access to Jobs	2,972,013
MO	Metropolitan Kansas City Job Access Partnership	990,671
MO	Missouri Statewide	1,386,939
MO	Ways to Work Missouri	222,901
NC	Community Transportation Association of America's Joblinks Employment Transportation Initiative	990,671
NC	Wake County Coordinated Transportation System	767,770
NH	Lancaster—Littleton Transit Project	49,534
NJ	New Jersey Statewide	4,953,354
NY	Broome County Transit—Binghamton, NY	247,668
NY	Capital District Transportation Authority Albany	272,434
NY	Central NY Regional Transportation Authority	495,335
NY	Chautauqua Area Rural Transportation System	49,534
NY	Chemung County transit	74,300
NY	Columbia County	99,067
NY	Franklin County Expansion of Hour Service	74,300
NY	Homell Trans. Alternatives for NY	49,534
NY	Ithaca Service	74,300
NY	MTA—Long Island Bus	247,668
NY	New York State DOT	495,335
NY	Orange County	99,067
NY	Rochester-Genesee Regional Transportation Authority (RGRTA)	594,403
NY	Tompkins Consolidated Area Transit, Tompkins County	297,201
OH	Central Ohio Transit Authority (COTA)—Mobility Management	594,403
OH	Greater Cleveland Regional Transit Authority	495,335
OH	Northwest Ohio Commuter LINK Toledo	371,502
OH	STEP-UP Job Access Project Dayton	123,834
OK	Oklahoma Transit Association	4,953,354
OR	Jackson-Josephine County	198,134
OR	Oregon Ways to Work Loan Program	247,668
OR	Portland Metropolitan Region	2,129,942
OR	Salem Area Transit	495,335
PA	Port Authority of Allegheny County Access to Jobs	3,962,683
PA	SEPTA	5,518,041
RI	Rhode Island Deployment of Flexible Services	743,003
RI	Rhode Island Public Transit	1,981,342
TN	Chattanooga	495,335
TN	Knoxville	743,003
TN	State of Tennessee	1,486,006
TX	Abilene Citylink Program	99,067
TX	Austin Capital Metros Access	2,476,677
TX	Citibus, Lubbock	227,854
TX	Corpus Christi	1,213,572
TX	East Texas Just Transportation Alliance (ETJTA): Tyler Transit	198,134
TX	El Paso	247,668
TX	Galveston	594,403
TX	San Antonio Access to Jobs Program	1,077,850
VA	City of Charlottesville	371,502
VA	Fairfax County, Short-Term Transit Improvements	1,585,073
VA	Virginia Regional Transportation Association, Route 7 Service/Dulles Corridor	198,134
VA	Community Transportation Association of America	148,601
WA	WA WorkFirst Initiative	4,705,687
WA	Ways to Work—EPIC Yakima	495,335
WI	Wisconsin Statewide	5,151,488
WV	West Virginia Statewide	990,671
	Total Allocations	104,019,450

II. FY 2003 Operating Assistance for Eligible 1990 Census Nonurbanized Areas

Section 2707 of Title II, Chapter 7 of Public Law 108–11 states: "Notwithstanding any other provision of law, funds made available under the heading "Federal Transit Administration Formula Grants" for fiscal year 2003 shall be available to finance the operating cost of equipment and facilities for use in public transportation in an urbanized area with a population of at least 200,000 as determined under the 2000 Federal decennial census of population for a portion of the area that was not designated as an urbanized area as determined under the 1990 Federal decennial census of population if that portion of the area received assistance under section 5311 of title 49, United States Code."

A grant applicant for an area eligible to receive operating assistance under this provision that wants to make use of this provision must so state in the grant application. The application must identify the previously nonurbanized portion of the urbanized area that qualifies (*i.e.*, that portion of the area that was not designated as urbanized under the 1990 census and received assistance under section 5311). Please contact the appropriate FTA regional office for additional information or guidance if you intend to make use of this provision.

III. Section 336 of FY 2003 DOT Appropriations Act Amended

Section 336 of FY 2003 DOT Appropriations Act directed that the city of Norman, OK shall be considered part of the Oklahoma City Transportation Management Area. Section 2701 of Title II, Chapter 7 of Public Law 108–11 amends Section 336 of the FY 2003 DOT Appropriations Act by striking "Transportation Management" and inserting "Urbanized" in lieu thereof. In the table on page 11911 of the FTA Fiscal Year 2003 Apportionments, Allocations and Program Information, Notice, published March 12, 2003, the reference to Oklahoma City, OK and Norman, Oklahoma are no longer appropriate and should be deleted.

IV. Section 626 of Title VI, Public Law 108–7 Amended

Section 626 of Title VI, Public Law 108–7 provides that "Any amounts previously appropriated for the Port of Anchorage for an intermodal marine facility and access thereto shall be transferred to and administered by the Administrator for Maritime Administration * * *." Section 2709 of Title II, Chapter 7 of Public Law 108–11 amends Section 626 by striking 'previously.' Accordingly, FY 2002 and FY 2003 Section 5309 Bus and Bus-Related allocations for the Port of Anchorage Intermodal Facility project will be transferred to the Maritime Administration.

V. Corrections

In the table on page 11911 of the FTA Fiscal Year 2003 Apportionments, Allocations and Program Information, Notice, published March 12, 2003, the following corrections are noted to information in the "Designated TMA" column: "Philadelphia, PA–NJ–DENJ–MD" should read "Philadelphia, PA–NJ–DE–MD"; and "Washington, DCNJ–VANJ–MD" should read "Washington, DC–VA–MD".

Issued on: May 2, 2003.

Jennifer L. Dorn,

Administrator.

[FR Doc. 03–11778 Filed 5–12–03; 8:45 am]

BILLING CODE 4910–57–U

DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration (RSPA)

[Docket No. RSPA–98–4470]

Pipeline Safety: Meetings of the Pipeline Safety Advisory Committee

AGENCY: Office of Pipeline Safety, Research and Special Programs Administration, DOT.

ACTION: Notice, correction.

SUMMARY: In the **Federal Register** Notice of May 1, 2003, (68 FR 23357) the Research and Special Programs Administration's Office of Pipeline Safety (OPS) published a notice document regarding a meeting of the Technical Pipeline Safety Standards Committee. The **DATES** section of this notice should be corrected to read as follows:

DATES: The meetings will be held on Wednesday, May 28 from 1:30 p.m. to 5 p.m., Thursday, May 29 from 9 a.m. to 5 p.m., and Friday, May 30 from 9 a.m. to 4 p.m.

EFFECTIVE DATE: This correction takes effect May 1, 2003.

FOR FURTHER INFORMATION CONTACT: Cheryl Whetsel, OPS, (202) 366–4431, or Richard Huriaux, OPS, (202) 366–4565.

Issued in Washington, DC on May 6, 2003.

Stacey L. Gerard,

Associate Administrator for Pipeline Safety.

[FR Doc. 03–11779 Filed 5–12–03; 8:45 am]

BILLING CODE 4910–60–U

DEPARTMENT OF VETERANS AFFAIRS

Professional Certification and Licensure Advisory Committee Notice of Meeting

The Department of Veterans Affairs (VA) gives notice under Public Law 92–463 (Federal Advisory Committee Act) that the Professional Certification and Licensure Advisory Committee has scheduled a meeting on Wednesday, June 11, 2003, at the Department of Veterans Affairs, Veterans Benefits Administration Education Conference Room 601V, 1800 G Street, NW., Washington, DC, from 8:30 a.m. to 4 p.m. The meeting is open to the public.

The purpose of the Committee is to advise the Secretary of Veterans Affairs on the requirements of organizations or entities offering licensing and certification tests to individuals for which payment for such tests may be made under Chapters 30, 32, 34, or 35 of Title 38, United States Code.

The meeting will begin with opening remarks and an overview by Ms. Sandra Winborne, Committee Chair. During the morning session, the Committee will receive a presentation on licensure and certification usage, and a progress report on improvements to the Licensing and Certification Approval System (LACAS). The afternoon session will include discussion on any old or new business.

Interested person may file statements with the Committee, in written form, before the meeting or within 10 days after the meeting to Mr. Giles Larrabee, Designated Federal Officer, Department of Veterans Affairs, Veterans Benefits Administration (225B), 810 Vermont Avenue, NW., Washington, DC. Oral statements from the public will be heard at 1 p.m. Any member of the public wishing to attend the meeting should contact Mr. Giles Larrabee or Mr. Michael Yunker at (202) 273–7187.

Dated: April 6, 2003.

By Direction of the Secretary:

E. Philip Riggin,

Committee Management Officer.

[FR Doc. 03–11846 Filed 5–12–03; 8:45 am]

BILLING CODE 8320–01–M

DEPARTMENT OF VETERANS AFFAIRS

Advisory Committee on Structural Safety of Department of Veterans Affairs Facilities, Notice of Meeting

The Department of Veterans Affairs (VA) gives notice under Public Law 92–463 (Federal Advisory Committee Act) that a meeting of the Advisory Committee on Structural Safety of Department of veterans Affairs Facilities will be held on Thursday, June 5, 2003, from 10 a.m. until 5 p.m., and on Friday, June 6, 2003, from 9 a.m. until 12:30 p.m., in Room 442, Export Import Bank, 811 Vermont Avenue, NW., Washington DC. The meeting is open to the public.

The purpose of the Committee is to advise the Secretary of Veterans Affairs on matters of structural safety in the construction and remodeling of VA facilities and to recommend standards for use by VA in the construction and alteration of facilities as prescribed under section 8105 of Title 38, United States Code.

On June 5, the Committee will review developments in the filed of structural design, as they relate to seismic safety of buildings, and fire safety issues. One June 6, the Committee will vote on structural and fire safety issues for inclusion in VA's standards.

No time will be allocated for receiving oral presentations from the public. However, the Committee will accept written comments. Comments can be sent to Mr. Krishna K. Banga, Senior Structural Engineer, Facilities Quality Service, Office of Facilities Management (181A), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420. Those wishing to attend should contact Mr. Banga at (202) 565–9370.

Dated: April 2, 2003.

By Direction of the Secretary:

E. Phillip Riggin,

Committee Management Officer.

[FR Doc. 03–11845 Filed 5–12–03; 8:45 am]

BILLING CODE 8320–01–M

Corrections

Federal Register
Vol. 68, No. 92
Tuesday, May 13, 2003

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 51

[AH–FRL–7478–3]

RIN 2060–AF01

Revision to the Guideline on Air Quality Models: Adoption of a Preferred Long Range Transport Model and Other Revisions

Correction

In rule document 03–8542 beginning on page 18440 in the issue of Tuesday, April 15, 2003, make the following correction:

On the same page, in the first column, under the **DATES** heading, in the second line, "April 15, 2003" should read, "April 15, 2004."

[FR Doc. C3–8542 Filed 5–12–03; 8:45 am]

BILLING CODE 1505–01–D

ENVIRONMENTAL PROTECTION AGENCY

[OPPT–2003–0018; FRL–7303–4]

National Tribal Conference on Environmental Management; Notice of Proposal Solicitation

Correction

In notice document 03–10168 beginning on page 20142 in the issue of Thursday, April 24, 2003, make the following correction:

On page 20142, in the third column, under the heading **DATES**, in the second line, "June 23, 2003" should read, "July 23, 2003".

[FR Doc. C3–10168 Filed 5–12–03; 8:45 am]

BILLING CODE 1505–01–D

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2003–14932; Airspace Docket No. 03–ACE–35]

Modification of Class E Airspace; Hays, KS

Correction

In rule document 03–11033 beginning on page 23581 in the issue of Monday, May 5, 2003, make the following correction:

§71.1 [Corrected]

On page 23582, in the second column, under the heading **ACE KS E2 Hays, KS**, in the first full paragraph, in the fourth line, "7 miles" should read, "6 miles."

[FR Doc. C3–11033 Filed 5–12–03; 8:45 am]

BILLING CODE 1505–01–D

Federal Register

Tuesday,
May 13, 2003

Part II

Environmental Protection Agency

40 CFR Part 438
Effluent Limitations Guidelines and New Source Performance Standards for the Metal Products and Machinery Point Source Category; Final Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 438

[FRL–7453–6]

RIN 2040–AB79

Effluent Limitations Guidelines and New Source Performance Standards for the Metal Products and Machinery Point Source Category

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is publishing final regulations establishing Clean Water Act (CWA) technology-based effluent limitations guidelines for the metal products and machinery (MP&M) point source category. The metal products and machinery point source category includes facilities that manufacture, rebuild, or maintain metal products, parts, or machines. EPA is promulgating limitations and standards only for facilities that directly discharge wastewaters from oily operations in the Oily Wastes subcategory.

EPA expects compliance with this regulation to reduce the discharge of conventional pollutants by approximately 500,000 pounds per year. EPA estimates the annual cost of the rule will be $13.8 million (pre-tax $2001). EPA estimates that the annual benefits of the rule to be approximately $1.5 million ($2001).

DATES: This regulation shall become effective June 12, 2003.

ADDRESSES: The administrative record is available for inspection and copying at the Water Docket, located at the EPA Docket Center (EPA/DC) in the basement of the EPA West Building, Room B–102, 1301 Constitution Ave., NW., Washington, DC. The rule and key supporting materials are also electronically available via EPA Dockets (Edocket) at *http://www.epa.gov/edocket/* under Edocket number OW–2002–0033 or at *http://www.epa.gov/guide/mpm/*.

FOR FURTHER INFORMATION CONTACT: For technical information concerning today's final rule, contact Mr. Carey A. Johnston at (202) 566–1014 or Ms. Shari Z. Barash at (202) 566–0996. For economic information contact Mr. James Covington at (202) 566–1034.

SUPPLEMENTARY INFORMATION:

What Entities Are Potentially Regulated by This Final Rule?

Entities potentially regulated by this action include facilities that directly discharge wastewaters from oily operations and include the following types:

Category	Examples of regulated entities
Industry	Facilities that discharge wastewater from oily operations and manufacture, maintain, or rebuild metal parts, products or machines used in the following sectors: Aerospace, Aircraft, Bus & Truck, Electronic Equipment, Hardware, Household Equipment, Instruments, Mobile Industrial Equipment, Motor Vehicles, Office Machines, Ordnance, Precious Metals and Jewelry, Railroad, Ships and Boats, Stationary Industrial Equipment, and Miscellaneous Metal Products.
Government	State and local government facilities that discharge wastewater from oily operations and manufacture, maintain, or rebuild metal parts, products or machines in one of the sectors previously listed (*e.g.*, a town that operates its own bus, truck, and/or snow removal equipment maintenance facility). Federal facilities that discharge wastewater from oily operations and manufacture, maintain, or rebuild metal parts, products or machines.

Note: The term "oily operations" is defined at 40 CFR 438.2(f) and appendix B of part 438.
Note: See Appendix A of the TDD for a list of example NAICS and SIC codes that may apply to facilities regulated by MP&M.

EPA does not intend the preceding table to be exhaustive, but rather it provides a guide for readers regarding entities likely to be regulated by this action. This table lists the types of entities that EPA is now aware could potentially be regulated by this action. Other types of entities not listed in the table could also be regulated. To determine whether your facility is regulated by this action, you should carefully examine the applicability criteria listed at 40 CFR 438.1 and 438.10 of today's rule. If you still have questions regarding the applicability of this action to a particular entity, consult one of the persons listed for technical information in the preceding **FOR FURTHER INFORMATION CONTACT** section.

How Can I Get Copies of This Document and Other Related Information?

EPA has established an official public docket for this action under Docket ID. No. OW–2002–0033. The official public docket is the collection of materials that is available for public viewing at the Water Docket in the EPA Docket Center (EPA/DC) in the basement of EPA West, Room B102, 1301 Constitution Ave., NW., Washington DC. The EPA Docket Center Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the Water Docket is (202) 566–2426. For access to the docket materials, please call ahead to schedule an appointment. A reasonable fee may be charged for photocopying.

An electronic version of the public docket is available through EPA's electronic public docket and comment system, EPA Dockets. You may use EPA Dockets at *http://www.epa.gov/edocket/* to view public comments, access the index listing of the contents of the official public docket, and to access those documents in the public docket that are available electronically. Although not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the docket facility previously identified. Once in the system, select "search," then key in the appropriate docket identification number (OW–2002–0033).

Major supporting documents are also available in hard copy from the National Service Center for Environmental Publications (NSCEP), U.S. EPA/NSCEP, PO Box 42419, Cincinnati, Ohio, USA 45242–2419, (800) 490–9198, *http://www.epa.gov/ncepihom/*. You can obtain electronic copies of this preamble and rule as well as major supporting documents at EPA Dockets at *http://www.epa.gov/edocket/* and *http://www.epa.gov/guide/mpm*. The two major documents supporting the final regulations are:

- *"Development Document for the Final Effluent Limitations Guidelines and Standards for the Metal Products & Machinery Point Source Category"* [EPA–821–B–03–001] referred to in the preamble as the Technical Development Document (TDD): This document presents the technical information that formed the basis for EPA's decisions in today's final rule. The TDD describes, among other things, the data collection activities, the wastewater treatment technology options considered by the Agency as the basis for effluent limitations guidelines and standards, the pollutants found in MP&M wastewaters, and the estimation of pollutant removals associated with certain pollutant control options.
- *"Economic, Environmental, and Benefits Analysis of the Final Metal Products & Machinery Rule"* [EPA–821–B–03–002] referred to in the preamble as the Economic, Environmental, and Benefits Analysis (EEBA): This document presents the methodology employed to assess economic impacts and environmental impacts and benefits of the final rule and the results of the analysis.

What Process Governs Judicial Review for Today's Final Rule?

In accordance with 40 CFR 23.2, today's rule is considered promulgated for the purposes of judicial review as of 1 p.m. Eastern Daylight Time, May 27, 2003. Under section 509(b)(1) of the Clean Water Act (CWA), judicial review of today's effluent limitations guidelines and standards may be obtained by filing a petition in the United States Circuit Court of Appeals for review within 120 days from the date of promulgation of these guidelines and standards. Under section 509(b)(2) of the CWA, the requirements of this regulation may not be challenged later in civil or criminal proceedings brought by EPA to enforce these requirements.

What Are the Compliance Dates for Today's Final Rule?

Existing direct dischargers must comply with today's limitations based on the best practicable control technology currently available (BPT) and the best conventional pollutant control technology (BCT) as soon as their National Pollutant Discharge Elimination System (NPDES) permits include such limitations. New direct discharging sources must comply with applicable new source performance standards (NSPS) on the date the new sources begin discharging. For purposes of NSPS, a source is a new source if it commences construction after June 12, 2003.

How Does EPA Protect Confidential Business Information (CBI)?

EPA notes that certain information and data in the record supporting the final rule have been claimed as CBI and, therefore, EPA has not included these materials in the record that is available to the public in the Water Docket. Further, the Agency has withheld from disclosure some data not claimed as CBI because release of this information could indirectly reveal information claimed to be confidential. To support the rulemaking while preserving confidentiality claims, EPA is presenting in the public record certain information in aggregated form or, alternatively, is masking facility identities or employing other strategies. This approach assures that the information in the public record explains the basis for today's final rule without compromising CBI claims.

How Is This Preamble Organized?

The following outline is for the preamble to the final rule. It is written in plain language designed to help the reader understand the information in the final rule. This preamble contains a short summary of what was proposed, the key comments that the Environmental Protection Agency (EPA) received on the proposed rule, and the principal bases for EPA's decisions.

I. Legal Authority
II. Legislative Background
  A. Clean Water Act
  B. Pollution Prevention Act
  C. Section 304(m) Requirements
III. Metal Products & Machinery Effluent Guidelines Rulemaking History
  A. 1995 and 2001 Proposed Regulations
  B. June 2002 Notice of Data Availability
IV. Summary of Significant Decisions
  A. Decisions Regarding the Content of the Regulation
  B. Decisions Regarding Methodology
V. Scope/Applicability of the Final Regulation
  A. General Overview and Wastewaters Covered
  B. Subcategorization
VI. The Final Regulation
  A. General Metals Subcategory
  B. Metal Finishing Job Shops Subcategory
  C. Printed Wiring Board Subcategory
  D. Non-Chromium Anodizing Subcategory
  E. Steel Forming & Finishing Subcategory
  F. Oily Wastes Subcategory
  G. Railroad Line Maintenance Subcategory
  H. Shipbuilding Dry Dock Subcategory
VII. Pollutant Reduction and Compliance Cost Estimates
  A. Pollutant Reductions
  B. Regulatory Costs
VIII. Economic Analyses
  A. Introduction and Overview
  B. Economic Costs of Technology Options by Subcategory
  C. Facility Level Economic Impacts of the Final Rule by Subcategory
  D. Firm Level Impacts
  E. Impacts on Government-Owned Facilities
  F. Community Level Impacts
  G. Foreign Trade Impacts
  H. Administrative Costs
  I. Social Costs
  J. Cost and Removal Comparison Analysis
  K. Cost-Effectiveness Analysis
IX. Water Quality Analysis and Environmental Benefits
  A. Introduction and Overview
  B. Reduced Human Health Risk
  C. Improved Ecological Conditions and Recreational Uses
  D. Effect on POTW Operations
  E. Summary of Benefits
  F. National Cost-Benefit Comparison
  G. Ohio Case Study
X. Non-Water Quality Environmental Impacts
  A. Air Pollution
  B. Solid Waste
  C. Energy Requirements
XI. Regulatory Implementation
  A. Implementation of the Limitations and Standards for Direct Dischargers
  B. Upset and Bypass Provisions
  C. Variances and Modifications
XII. Statutory and Executive Order Reviews
  A. Executive Order 12866: Regulatory Planning and Review
  B. Paperwork Reduction Act
  C. Regulatory Flexibility Act (RFA)
  D. Unfunded Mandates Reform Act
  E. Executive Order 13132: Federalism
  F. Executive Order 13175: Consultation and Coordination With Indian Tribal Governments
  G. Executive Order 13045: Protection of Children From Environmental Health & Safety Risks
  H. Executive Order 13211: Actions That Significantly Affect Energy Supply, Distribution, or Use
  I. National Technology Transfer and Advancement Act
  J. Executive Order 12898: Federal Actions to Address Environmental Justice in Minority Populations and Low Income Populations
  K. Congressional Review Act
Appendix A To The Preamble: Abbreviations, Acronyms, and Other Terms Used in Today's Final Rule

I. Legal Authority

The U.S. Environmental Protection Agency is promulgating these regulations under the authority of sections 301, 304, 306, 307, 308, 402, and 501 of the Clean Water Act, 33 U.S.C. 1311, 1314, 1316, 1317, 1318, 1342, and 1361 and under authority of the Pollution Prevention Act of 1990 (PPA), 42 U.S.C. 13101 *et seq.*, Public Law 101–508, November 5, 1990.

II. Legislative Background

A. Clean Water Act

Congress adopted the Clean Water Act (CWA) to "restore and maintain the chemical, physical, and biological integrity of the Nation's waters" (section 101(a), 33 U.S.C. 1251(a)). To achieve this goal, the CWA prohibits the discharge of pollutants into navigable waters except in compliance with the statute. The Clean Water Act confronts the problem of water pollution on a number of different fronts. Its primary reliance, however, is on establishing restrictions on the types and amounts of pollutants discharged from various industrial, commercial, and public sources of wastewater.

Congress recognized that regulating only those sources that discharge effluent directly into the nation's waters would not be sufficient to achieve the CWA's goals. Consequently, the CWA requires EPA to promulgate nationally applicable pretreatment standards that restrict pollutant discharges from facilities that discharge wastewater through sewers flowing to publicly-owned treatment works (POTWs) (section 307(b) and (c), 33 U.S.C. 1317(b) and (c)). National pretreatment standards are established for those pollutants in wastewater from indirect dischargers which pass through, interfere with, or are otherwise incompatible with POTW operations. Generally, pretreatment standards are designed to ensure that wastewater from direct and indirect industrial dischargers are subject to similar levels of treatment. In addition, POTWs are required to develop and enforce local pretreatment limits applicable to their industrial indirect dischargers to satisfy any local requirements (*see* 40 CFR 403.5).

Direct dischargers must comply with effluent limitations in National Pollutant Discharge Elimination System (NPDES) permits; indirect dischargers must comply with pretreatment standards. These limitations and standards are established by regulation for categories of industrial dischargers and are based on the degree of control that can be achieved using various levels of pollution control technology.

1. Best Practicable Control Technology Currently Available (BPT)—Section 304(b)(1) of the CWA

In the regulations, EPA defines BPT effluent limitations for conventional, toxic, and non-conventional pollutants. Section 304(a)(4) designates the following as conventional pollutants: biochemical oxygen demand (BOD^5), total suspended solids (TSS), fecal coliform, pH, and any additional pollutants defined by the Administrator as conventional. The Administrator designated oil and grease (O&G) as an additional conventional pollutant on July 30, 1979 (*see* 44 FR 44501). EPA has identified 65 pollutants and classes of pollutants as toxic pollutants, of which 126 specific substances have been designated priority toxic pollutants (*see* Appendix A to part 403, reprinted after 40 CFR 423.17). All other pollutants are considered to be non-conventional.

In specifying BPT, EPA looks at a number of factors. EPA first considers the total cost of applying the control technology in relation to the effluent reduction benefits. The Agency also considers the age of the equipment and facilities, the processes employed and any required process changes, engineering aspects of the control technologies, non-water quality environmental impacts (including energy requirements), and such other factors as the EPA Administrator deems appropriate (CWA 304(b)(1)(B)). Traditionally, EPA establishes BPT effluent limitations based on the average of the best performances of facilities within the industry of various ages, sizes, processes or other common characteristics. Where existing performance is uniformly inadequate, BPT may reflect higher levels of control than currently in place in an industrial category if the Agency determines that the technology can be practically applied.

2. Best Conventional Pollutant Control Technology (BCT)—Section 304(b)(4) of the CWA

The 1977 amendments to the CWA required EPA to identify effluent reduction levels for conventional pollutants associated with BCT for discharges from existing industrial point sources. In addition to the other factors specified in section 304(b)(4)(B), the CWA requires that EPA establish BCT limitations after consideration of a two part "cost-reasonableness" test. EPA explained its methodology for the development of BCT limitations in July 1986 (*see* 51 FR 24974).

3. Best Available Technology Economically Achievable (BAT)—Section 304(b)(2) of the CWA

In general, BAT effluent limitations guidelines represent the best available economically achievable performance of plants in the industrial subcategory or category. The factors considered in assessing BAT include the cost of achieving BAT effluent reductions, the age of equipment and facilities involved, the process employed, potential process changes, and non-water quality environmental impacts, including energy requirements. The Agency retains considerable discretion in assigning the weight to be accorded these factors. BAT limitations may be based on effluent reductions attainable through changes in a facility's processes and operations. Where existing performance is uniformly inadequate, BAT may reflect a higher level of performance than is currently being achieved within a particular subcategory based on technology transferred from a different subcategory or category. BAT may be based upon process changes or internal controls, even when these technologies are not common industry practice.

4. New Source Performance Standards (NSPS)—Section 306 of the CWA

NSPS reflect effluent reductions that are achievable based on the best available demonstrated control technology. New sources have the opportunity to install the best and most efficient production processes and wastewater treatment technologies. As a result, NSPS should represent the most stringent controls attainable through the application of the best available demonstrated control technology for all pollutants (*i.e.*, conventional, non-conventional, and priority pollutants). In establishing NSPS, EPA is directed to take into consideration the cost of achieving the effluent reduction and any non-water quality environmental impacts and energy requirements.

5. Pretreatment Standards for Existing Sources (PSES)—Section 307(b) of the CWA

PSES are designed to prevent the discharge of pollutants that pass through, interfere with, or are otherwise incompatible with the operation of publicly-owned treatment works (POTWs), including sludge disposal methods at POTWs. Pretreatment standards for existing sources are technology-based and are analogous to BAT effluent limitations guidelines.

The General Pretreatment Regulations, which set forth the framework for the implementation of national pretreatment standards, are found at 40 CFR 403.

6. Pretreatment Standards for New Sources (PSNS)—Section 307(c) of the CWA

Like PSES, PSNS are designed to prevent the discharges of pollutants that pass through, interfere with, or are otherwise incompatible with the operation of POTWs. PSNS are to be issued at the same time as NSPS. New indirect dischargers have the opportunity to incorporate into their plants the best available demonstrated technologies. The Agency considers the same factors in promulgating PSNS as it considers in promulgating NSPS.

B. Pollution Prevention Act

The Pollution Prevention Act of 1990 (PPA) (42 U.S.C. 13101 *et seq.*, Public Law 101–508, November 5, 1990) "declares it to be the national policy of the United States that pollution should be prevented or reduced whenever feasible; pollution that cannot be prevented should be recycled in an environmentally safe manner, whenever feasible; pollution that cannot be prevented or recycled should be treated in an environmentally safe manner whenever feasible; and disposal or release into the environment should be employed only as a last resort * * *" (Sec. 6602; 42 U.S.C. 13101 (b)). In short, preventing pollution before it is created is preferable to trying to manage, treat or dispose of it after it is created. The PPA directs the Agency to, among other things, "review regulations of the Agency prior and subsequent to their proposal to determine their effect on source reduction" (Sec. 6604; 42 U.S.C. 13103(b)(2)). EPA reviewed this effluent guideline for its incorporation of pollution prevention.

According to the PPA, source reduction reduces the generation and release of hazardous substances, pollutants, wastes, contaminants, or residuals at the source, usually within a process. The term source reduction "include[s] equipment or technology modifications, process or procedure modifications, reformulation or redesign of products, substitution of raw materials, and improvements in housekeeping, maintenance, training or inventory control. The term 'source reduction' does not include any practice which alters the physical, chemical, or biological characteristics or the volume of a hazardous substance, pollutant, or contaminant through a process or activity which itself is not integral to or necessary for the production of a product or the providing of a service." 42 U.S.C. 13102(5). In effect, source reduction means reducing the amount of a pollutant that enters a waste stream or that is otherwise released into the environment prior to out-of-process recycling, treatment, or disposal.

In these final regulations, EPA supports pollution prevention technology by including pollution prevention in its technology basis for today's limitations and new source performance standards. This includes water conservation and re-use of lubricants and solvents.

C. Section 304(m) Requirements

Section 304(m) of the CWA, added by the Water Quality Act of 1987, requires EPA to establish schedules for: (1) Reviewing and revising existing effluent limitations guidelines and standards; and (2) promulgating new effluent guidelines. On January 2, 1990, EPA published an Effluent Guidelines Plan (*see* 55 FR 80), in which schedules were established for developing new and revised effluent guidelines for several industry categories, including the metal products and machinery industry. Natural Resources Defense Council, Inc., and Public Citizen, Inc., challenged the Effluent Guidelines Plan in a suit filed in the U.S. District Court for the District of Columbia, (*NRDC et al.*, v. *Browner*, Civ. No. 89–2980). On January 31, 1992, the Court entered a consent decree (the "304(m) Decree"), which establishes schedules for, among other things, EPA's proposal and promulgation of effluent guidelines for a number of point source categories. The consent decree, as amended, requires EPA to take final action on the Metal Products and Machinery effluent guidelines by February 14, 2003.

III. Metal Products & Machinery Effluent Guidelines Rulemaking History

A. 1995 and 2001 Proposed Regulations

On May 30, 1995, EPA published a proposal entitled, "Effluent Limitations Guidelines, Pretreatment Standards, and New Source Performance Standards: Metal Products and Machinery" (*see* 60 FR 28210). Throughout today's preamble, EPA refers to this 1995 proposal as the "Phase I" or the "1995" proposal for the Metal Products and Machinery industry. To make the regulation more manageable, EPA initially divided the industry into two phases based on industrial sectors. The Phase I proposal included the following industry sectors: Aerospace; Aircraft; Electronic Equipment; Hardware; Mobile Industrial Equipment; Ordnance; and Stationary Industrial Equipment. At that time, EPA planned to propose a rule for the Phase II sectors approximately three years after the MP&M Phase I proposal. Phase II sectors included: Bus & Truck, Household Equipment, Instruments, Job Shops, Motor Vehicles, Office Machines, Precious Metals and Jewelry, Printed Wiring Boards, Railroad, Ships and Boats, and Miscellaneous Metal Products.

EPA received over 350 public comments on the Phase I proposal. One area where commentors from all stakeholder groups (*i.e.*, industry, environmental groups, regulators) were in agreement was that EPA should not divide the industry into two separate regulations. Commentors raised concerns regarding the regulation of similar facilities with different compliance schedules and potentially different limitations solely based on whether they were in a Phase I or Phase II MP&M industrial sector. Furthermore, many facilities performed work in multiple sectors. In such cases, permit writers and control authorities (*e.g.*, POTWs) would need to decide which MP&M rule (Phase I or II) applied to a facility. EPA's responses to comments can be found in section 20.3 of the docket for the rule.

Based on these comments, EPA published a new proposal on January 3, 2001 (*see* 66 FR 424) which completely replaced the 1995 proposal. Throughout this preamble, EPA refers to this proposal as the "2001" proposal for the Metal Products and Machinery industry. In that notice, EPA proposed to establish new limitations and standards for approximately 10,000 facilities in the 18 industrial sectors (without any designation of "Phase I" or "Phase II"). EPA also divided the industry into eight regulatory subcategories: General Metals, Metal Finishing Job Shops, Printed Wiring Board, Non-Chromium Anodizing, Steel Forming & Finishing, Oily Wastes, Railroad Line Maintenance, and Shipbuilding Dry Docks (*see* 66 FR 439 for a discussion on the development of EPA's proposed subcategorization scheme).

EPA found two basic types of waste streams in the industry: (1) Wastewater with high metals content (metal-bearing); and (2) wastewater with low concentration of metals, and high oil and grease content (oil-bearing). When looking at facilities generating metal-bearing wastewater (with or without oil-bearing wastewater), EPA identified five groups of facilities that could potentially be subcategorized by dominant product, raw materials used, and/or nature of the waste generated (*i.e.*, General Metals, Metal Finishing Job Shops, Printed Wiring Board, Non-Chromium Anodizing, and Steel Forming & Finishing). When evaluating facilities with only oil-bearing wastewater for potential further subcategorization, EPA identified two types of facilities (*i.e.*, Railroad Line Maintenance and Shipbuilding Dry Docks) that were different from the other facilities in the Oily Wastes subcategory based on size, location, and dominant product or activity. This subcategorization scheme allowed EPA to more accurately assess various technology options in terms of compliance costs, pollutant reductions, benefits, and economic impacts.

EPA proposed new limitations and standards for direct dischargers in all eight MP&M subcategories and proposed pretreatment standards for all indirect dischargers in three subcategories (*i.e.*, Metal Finishing Job Shops, Printed Wiring Board, and Steel Forming & Finishing); pretreatment standards for facilities above a certain wastewater flow volume in two subcategories (*i.e.*, General Metals and Oily Wastes); and no national pretreatment standards for facilities in three subcategories (*i.e.*, Non-Chromium

Anodizing, Railroad Line Maintenance, and Shipbuilding Dry Docks). EPA received over 1500 comment letters on the 2001 proposal. EPA's responses to the comments can be found in section 20.3 of the rulemaking.

B. June 2002 Notice of Data Availability

On June 5, 2002, EPA published a Notice of Data Availability (NODA) at 67 FR 38752. In the NODA, EPA discussed major issues raised in comments on the 2001 proposal; suggested revisions to the technical and economic methodologies used to estimate compliance costs, pollutant loadings, and economic and environmental impacts; presented the results of these suggested methodology changes and incorporation of new (or revised) data; and summarized the Agency's thinking on how these results could affect the Agency's final decisions.

The NODA also included a discussion of possible alternative options for certain subcategories based on comments, including an Environmental Management System (EMS) alternative in lieu of part 438 limitations and standards, and a discussion of "upgrading" facilities currently regulated under the Electroplating regulations (40 CFR part 413) to meet the Metal Finishing regulations (40 CFR part 433) (*see* 67 FR 38797). Finally, the NODA included preliminary revised effluent limitations and pretreatment standards for all eight proposed subcategories. EPA received over 300 comment letters on the NODA. EPA's responses to the comments can be found in section 20.3 of the docket for the rule.

IV. Summary of Significant Decisions

As the previous discussion of the development of this regulation explains, EPA proposed regulating discharges associated with a number of different operations in the MP&M industry. Thus, EPA proposed regulations that would have established new limitations and standards for approximately 10,000 facilities in 18 industrial sectors that EPA subcategorized in eight subcategories. Following its consideration of comments submitted to EPA as well as intensive scrutiny of the data used to develop the proposal, EPA has determined that it should only finalize regulations for the Oily Wastes subcategory. These regulations would affect approximately 2,400 facilities. The following material explains EPA's decisions underlying today's regulation. It discusses significant issues considered by EPA or raised by commentors on the May 1995 and January 2001 proposed rules and June 2002 NODA, and how EPA has resolved these issues in today's final rule.

A. Decisions Regarding the Content of the Regulation

The following discussion describes how EPA has subcategorized this industry in developing limitations and standards, and EPA's decisions about whether to subject particular subcategories to limitations and standards. It also identifies the pollution control technology EPA used as the basis for establishing limitations and standards. Next, this section discusses the applicability of the rule to iron and steel operations and to "oily operations." The section also looks at the regulated pollutants and describes EPA decisions concerning the use of a "pollution prevention" alternative for complying with the final rule.

1. Subcategorization Structure

The CWA requires EPA, in developing effluent limitations guidelines and pretreatment standards that reflect the best available technology economically achievable to consider a number of different factors. Among others, these include the age of the equipment and facilities in the category, manufacturing processes employed, types of treatment technology to reduce effluent discharges, and the cost of effluent reductions (section 304(b)(2)(b) of the CWA, 33 U.S.C. 1314(b)(2)(B)). The statute also authorizes EPA to take into account other factors that the Administrator deems appropriate.

One way in which the Agency has taken some of these factors into account is by breaking down categories of industries into separate classes of similar characteristics. This recognizes the major differences among companies within an industry that may reflect, for example, different manufacturing processes or wastewater characteristics. One result of subdividing an industry by subcategories is to safeguard against overzealous regulatory standards, increase the confidence that the regulations are practicable, and diminish the need to address variations between facilities through a variance process (*Weyerhaeuser Co.* v. *Costle,* 590 F.2d 1011, 1053 (D.C. Cir. 1978)).

As discussed in section III.A of today's final rule, in 2001 EPA proposed to divide the MP&M industry into eight regulatory subcategories based on the manufacturing, maintenance or rebuilding operations performed at a facility (called "unit operations" in this preamble): General Metals, Metal Finishing Job Shops, Printed Wiring Board, Non-Chromium Anodizing, Steel Forming & Finishing, Oily Wastes, Railroad Line Maintenance, and Shipbuilding Dry Docks. Based on comments submitted on the proposed rule and NODA, EPA has refined today's final subcategorization structure for the analyses performed to support today's final rule. For the purposes of analyzing issues in developing the final rule, EPA retained the eight subcategory structure, but altered the placement of some operations within certain subcategories. For example, the subcategorization approach that EPA has used for analyses supporting today's final rule incorporates printed wiring board job shops in the Printed Wiring Board subcategory (as opposed to the Metal Finishing Job Shop subcategory, as proposed) and places printed wiring assembly facilities in the General Metals subcategory (*see* 67 FR 38756).

As discussed in the NODA, EPA also considered an additional subcategory for facilities that primarily perform zinc electroplating ("zinc platers"). Depending on whether or not these facilities operate as a captive or a job shop, EPA had proposed to include them as part of the General Metals or Metal Finishing Job Shop subcategories, respectively. The NODA explained that EPA was also considering: (1) Creating a separate subcategory for zinc platers; (2) segmenting zinc platers within the General Metals and Metal Finishing Job Shop subcategories for zinc platers; or (3) retaining the proposed subcategory structure and establishing numerical limitations and standards for zinc that would be achievable by zinc platers (*see* 67 FR 38756). Commentors on the NODA supported retaining the proposed subcategories as long as the record demonstrated that zinc platers could achieve the zinc numerical limitations and standards. They raised concerns that creating a separate subcategory or segment to address the limitations for one pollutant would be confusing and difficult to implement. EPA did not create a separate subcategory or segment for zinc platers in evaluating the data for the final rule. These zinc platers remain subject to parts 413 and/or 433.

Also, as discussed in the NODA, EPA considered establishing the Steel Forming and Finishing subcategory for wastewater discharges resulting from: (1) Steel forming and finishing operations (*e.g.,* cold forming on steel wire, rod, bar, pipe, and tube); and (2) continuous electroplating of flat steel products (*e.g.,* strip, sheet, and plate). EPA re-examined its database for facilities that perform continuous steel electroplating, and found that, contrary to its initial finding, continuous electroplaters do not perform operations similar to other facilities in this subcategory (*i.e.,* steel forming and finishing facilities performing cold forming on steel wire, rod, bar, pipe, and tube). Thus, EPA included continuous electroplaters performing electroplating and coating operations in the General Metals subcategory for analyses supporting today's final rule.

Finally, as explained in section IV.B, based on comments and revisions to analytical databases, the Agency re-evaluated its technical and economic analyses for the final rule. EPA performed its re-evaluation of all proposed subcategories. As a result of this assessment, EPA decided to only establish effluent guidelines for the Oily Wastes subcategory.

2. Summary of Regulatory Decisions

The analyses for today's final rule incorporate database changes, additional data, and methodological changes as discussed in the NODA and in section IV.B of today's preamble. Based on EPA's analyses for today's final rule, EPA is establishing limitations and standards for one of the subcategories listed in the January 2001 proposed rule. For others, EPA has concluded that national limitations and standards are not warranted. In addition, EPA is not establishing pretreatment standards for existing or new sources for any of the subcategories in today's rule. Some of today's limitations and standards are based on the technology options that formed the basis for the proposal while others are based on modified technology options.

Table IV–1 Summarizes EPA's decisions for each subcategory considered for today's final rule and each regulatory level. Each of these decisions is further detailed in section VI of today's final rule.

TABLE IV–1.—SUMMARY OF FINAL REGULATORY DECISIONS

Subcategory considered	Final regulation		Section of today's final rule
	Discharger status (regulatory level)	Selected technology option	
General Metals	Direct Dischargers (BPT/BCT/BAT/NSPS)	No new or revised limitations or standards established.	VI.A.1–4
Metal Finishing Job Shop	Indirect Dischargers (PSES/PSNS)	No new or revised standards established	VI.A.5–6
	Direct Dischargers (BPT/BCT/BAT/NSPS)	No revised limitations or standards established.	VI.B.1–2
Printed Wiring Board	Indirect Dischargers (PSES/PSNS)	No revised standards established	VI.B.3–4
	Direct Dischargers (BPT/BCT/BAT/NSPS)	No revised limitations or standards established.	VI.C.1–2
Non-Chromium Anodizing	Indirect Dischargers (PSES/PSNS)	No revised standards established	VI.C.3–4
	Direct Dischargers (BPT/BCT/BAT/NSPS)	No revised limitations or standards established.	VI.D.1–2
Steel Forming & Finishing	Indirect Dischargers (PSES/PSNS)	No revised standards established	VI.D.3
	Direct Dischargers (BPT/BCT/BAT/NSPS)	No revised limitations or standards established.	VI.E.1–2
Oily Wastes	Indirect Dischargers (PSES/PSNS)	No revised standards established	VI.E.3–4
	Direct Dischargers (BPT/BCT/NSPS)	Pollution Prevention + Chemical Emulsion Breaking + Oil-Water Separation (Option 6).	VI.F.1–4
Railroad Line Maintenance	Indirect Dischargers (PSES/PSNS)	No standards established	VI.F.5–6
	Direct Dischargers (BPT/BCT/BAT/NSPS)	No limitations or standards established	VI.G.1–4
Shipbuilding Dry Dock	Indirect Dischargers (PSES/PSNS)	No standards established	VI.G.5
	Direct Dischargers (BPT/BCT/BAT/NSPS)	No limitations or standards established	VI.H.1
	Indirect Dischargers (PSES/PSNS)	No standards established	VI.H.2

3. Summary of Significant Applicability Decisions

a. Applicability of MP&M to Certain Iron and Steel Operations

EPA received comment regarding the inclusion of certain operations now subject to the Iron & Steel effluent guidelines (40 CFR part 420) within the proposed MP&M effluent guidelines. In the proposed MP&M rule, EPA refers to facilities with these operations as the Steel Forming & Finishing subcategory. Specifically, EPA proposed to move operations that produce finished products such as bars, wire, pipe and tubes, nails, chain link fencing, and steel rope into the MP&M rule (as the Steal Forming & Finishing subcategory) from stand-alone facilities, as well as from facilities that also have other operations that are currently regulated by the Iron & Steel effluent guidelines (*i.e.,* facilities that are making steel and producing wire and wire products and are subject to both ELGs through the combined wastestream formula).

Commentors stated that these operations and resulting wastewaters are comparable to those at facilities subject to the Iron and Steel Manufacturing effluent guidelines and that these discharges should remain subject to part 420 rather than today's rule. In addition, commentors stated that part 420 adequately protects the environment from discharges associated with these activities. Based on its analyses for this final rule, EPA has determined that limitations and standards for the proposed Steel Forming & Finishing subcategory based on MP&M Option 2 technology are not economically achievable. Therefore, today's final rule does not establish a Steel Forming & Finishing subcategory and accompanying limitations and standards. Thus, wastewaters generated by these operations remain subject to the Iron & Steel Manufacturing effluent limitations guidelines and standards (40 CFR part 420). Also, as discussed in section IV.A.1, EPA included continuous electroplaters in the General Metals subcategory for analyses supporting today's final rule.

b. Applicability to Certain Oily Operations

Today's final rule revises the proposed definition of "oily operations" by including additional operations (*see* 67 FR 38765). EPA is incorporating into the definition of "oily operations" the following unit operations and any associated rinses:

- Abrasive blasting;
- Adhesive bonding;
- Alkaline treatment without cyanide;
- Assembly/disassembly;

- Burnishing;
- Calibration;
- Electrical discharge machining;
- Iron phosphate conversion coating;
- Painting-spray or brush (including water curtains);
- Polishing;
- Thermal cutting;
- Tumbling/barrel finishing/mass finishing/vibratory finishing;
- Washing (finished products);
- Welding; and
- Wet air pollution control for organic constituents

EPA notes that this revision to the oily operations definition has the effect of moving 1,550 facilities from the General Metals subcategory to the Oily Wastes subcategory. See section V.B for the complete list of oily operations subject to regulation in today's final rule.

In addition, as discussed in the NODA, EPA is removing "laundering" from the definition of oily operations (*see* 67 FR 38766). EPA does not consider wastewater discharges from laundering (*e.g.*, uniforms) at MP&M facilities to be process wastewater under the MP&M final rule. The inclusion of laundering in the proposed definition of oily operations was an oversight which the Agency has now corrected for the final rule.

At proposal, EPA excluded bilge water (or any other wastewater) from ships that are afloat from the scope of the rule; however, bilge water was inadvertently included in the oily operations definition in the NODA (*see* 67 FR 38765). Today's final rule corrects this and removes bilge water from the definition of oily operations. Because EPA is not promulgating limitations and standards for the Shipbuilding Dry Dock subcategory, EPA also does not consider bilge water from ships in a dry dock or similar structure (*e.g.*, graving docks, building ways, marine railways and lift barges) a MP&M process wastewater.

c. Applicability to Certain Metal Drum Reconditioning and Cleaning Operations

At proposal EPA considered whether it should include wastewater generated from unit operations performed by drum reconditioners/cleaners to prepare metal drums for resale, reuse, or disposal in this rulemaking. These operations include chaining, caustic washing, acid cleaning, acid etching, impact deformation, leak testing, corrosion inhibition, shot blasting, and painting. In EPA's "Preliminary Data Summary for Industrial Container and Drum Cleaning Industry" (EPA–821–R–02–011), EPA did not identify any metal drum reconditioning or cleaning facilities that discharge directly to surface waters. The Agency estimates that the drum reconditioning facilities are either indirect or zero or alternative dischargers.

EPA solicited comment on whether these facilities would be more appropriately covered under the MP&M rule or under a new industrial category of effluent guidelines for drum reconditioners (*see* 66 FR 434). Commentors stated that these operations should not be subject to MP&M because drum reconditioning/cleaning wastewaters are more variable than MP&M wastewaters. EPA reviewed its database on drum reconditioning operations and wastewater characteristics. EPA found that its database is insufficient to evaluate the technical and economic achievability of the options considered for today's final rule. Therefore, EPA is not including drum reconditioning and cleaning operations as within the scope of this final rule.

4. Environmental Management Systems and the Pollution Prevention Alternative

In the proposed rule, EPA discussed the use of a compliance alternative (*i.e.*, the Pollution Prevention Alternative) for indirect dischargers in the Metal Finishing Job Shop (MFJS) subcategory (*see* 66 FR 511). The Pollution Prevention (P2) Alternative would act as a voluntary incentive for MFJS indirect dischargers that agreed to perform specific best management/pollution prevention practices. These MFJS indirect dischargers would be allowed to meet the pretreatment standards of part 433 in lieu of meeting the more stringent pretreatment standards of the proposed MP&M rule. Because EPA is not promulgating pretreatment standards that are more stringent than those in part 433 or part 413 for those facilities covered by part 413 pretreatment standards, EPA is not promulgating today the use of a compliance alternative for metal finishing job shops. EPA notes that many metal finishing jobs shops are currently employing best management/pollution prevention practices similar to those described in the proposal as part of the National Metal Finishing Strategic Goals Program.

As discussed in the NODA (*see* 67 FR 38798), EPA also considered an industry suggested alternative for the General Metals subcategory based on the use of an Environmental Management System (EMS) to mitigate economic impacts associated with today's rule. Similar in concept to the Pollution Prevention Alternative previously discussed, the EMS compliance alternative would act as a voluntary incentive for facilities that implemented an EMS which would include specific monitoring, controls, and recordkeeping. These facilities would be allowed to meet the limitations and standards of part 433 in lieu of meeting the more stringent limitations and standards of the proposed MP&M rule.

EPA received several comments on the EMS compliance alternative. Some commentors were in favor of the EMS compliance alternative and stated that: (1) The EMS compliance alternative is an innovative tool for continually enhancing environmental regulation; (2) an EMS does not replace the need for regulatory enforcement, but can be used as a tool to enhance a facility's environmental performance; and (3) requiring ISO 14001 adds another level of compliance assurance due to independent third party auditing. Other commentors were not in favor of this EMS compliance alternative and stated that: (1) The administrative and enforcement burden for pretreatment control authorities would be excessive as it could result in protracted discussions regarding the adequacy of the EMS; and (2) the EMS compliance alternative is overly restrictive and does not allow for variability found among MP&M industries and the POTWs to which they discharge. In particular, commentors noted that requiring ISO 14001 certification is extremely expensive and would have the effect of rendering this option untenable for any small business and many larger businesses as well.

EPA encourages the wide spread use of EMSs across a range of organizations and settings, with particular emphasis on adoption of EMSs to achieve improved environmental performance and compliance, pollution prevention through source reduction, and continual improvement (*see* EPA Position Statement on Environmental Management Systems, May 15, 2002, DCN 17848, section 24.4). However, EPA is not promulgating an EMS-based compliance alternative for facilities in the General Metals subcategory as EPA is not promulgating limitations and standards for the General Metals subcategory (*see* section VI.A).

B. Decisions Regarding Methodology

Sections 11 and 12 of the TDD provide detailed description of the methodologies used to develop compliance cost estimates and pollutant reductions for this final MP&M regulation. In addition, the EEBA for the final rule provides a detailed description of the economic impacts and environmental benefits analyses and methodologies. This section of today's final rule summarizes the changes to the EPA Cost & Loadings Model and the changes in the economic impacts and benefits analyses methodologies. This section also discusses EPA's decisions regarding selection of facilities with "BAT" treatment technologies.

1. Changes to the EPA Cost & Loadings Methodology for MP&M Options

a. General Methodology Changes

Based on comments to the proposed rule and considerations discussed in the NODA (*see* 67 FR 38756), EPA made significant changes to the EPA Cost & Loadings Model used to estimate compliance costs and pollutant reductions at the national level for the technology options considered for today's final rule. EPA included all of the changes identified in the NODA (*e.g.*, review of survey discharge status and reviewed additional industry-supplied data) into the analyses for the final rule. EPA also stated in the NODA that we would also examine other potential changes in response to comments after publication of the NODA but before the final rule (*see* DCN 17804, section 16.0). This section provides additional information on EPA's final analyses with respect to these potential changes and any changes identified by NODA comments.

b. Assignment of Treatment-in-Place (TIP) Credit

EPA developed a computerized Cost & Loadings Model to estimate compliance costs and pollutant loadings for the various technology options. EPA estimates the baseline pollutant loadings (*i.e.*, pollutant loading prior to compliance with the MP&M regulations) from model facilities based on actual TIP at those facilities as determined by the site's response to EPA's questionnaire. EPA calculates the pollutant loads removed by the technology option under consideration as the difference between the pollutant loadings estimated for the option and the pollutant loadings estimated for the baseline conditions.

In general, commentors stated that EPA failed to extend proper TIP credit to facilities in the MP&M survey questionnaire database and overestimated pollutant discharge loadings. Based on comments received on the proposal and NODA, EPA has re-evaluated its assignment of TIP credit used for estimating baseline pollutant loadings for the final rule and has concluded that additional technologies are equivalent (or better than) the BAT technology options in the proposal and the NODA.

In the NODA, EPA assumed that end-of-pipe ion exchange would achieve cyanide removals equivalent to alkaline chlorination, a proposed BAT technology basis. Therefore, EPA set cyanide treatment credit for process lines with ion exchange as equivalent to alkaline chlorination. Commentors requested that EPA also provide credit for in-process ion exchange for cyanide removal and for metals removal. EPA reviewed the information supporting these comments and concluded that ion exchange, whether in-process or end-of-pipe would provide pollutant reductions that are equivalent to the corresponding BAT technology option. Therefore, for the analyses supporting the final rule, EPA provided TIP credit for all streams receiving end-of-pipe or in-process ion exchange treatment for cyanide and metals.

EPA also reviewed its NODA assumptions regarding TIP credit for gravity thickening and filter presses. In the NODA, EPA assumed that facilities with sludge thickening or a filter press had both components in place. Upon closer review of the survey questionnaires, EPA finds that facilities may pump their sludge directly from a clarifier to a filter press without using a sludge thickening step. Consequently, EPA no longer assumes all facilities using filter presses also operate gravity thickeners. EPA notes that it is equating "sludge thickening tanks" and "sludge dryers" with gravity thickening. For facilities indicating only gravity thickening or filter press, EPA has estimated costs associated with the addition of the necessary equipment.

At proposal EPA did not assume that facilities that indicated some form of oily wastewater treatment (*e.g.*, oil-water separator) would be performing chemical emulsion breaking (and receive TIP credit for chemical emulsion breaking) prior to oil water separation if they have emulsified oils. For the final rule analyses, EPA reviewed all questionnaires to ensure that the same TIP assignments were given to Phase I and Phase II questionnaire facilities. Based on this review, EPA is assuming for the final rule that facilities that indicated some form of oily wastewater treatment (*e.g.*, oil-water separator) are performing chemical emulsion breaking prior to oil-water separation if they have emulsified oils.

c. Pollutant Loadings Baseline for MP&M Options for Metal-Bearing Wastewater Subcategories

EPA received many comments on its estimation of baseline pollutant loadings and reductions for the various options. For treated streams, EPA estimated zero pollutant removals for pollutants that are already present in low concentrations (*i.e.*, are present at a concentration below the technology option long term average (LTA). For untreated streams, EPA estimated baseline loadings and pollutant removals based on unit operation pollutant concentrations, and did not adjust for local or Federal regulatory limits on the facility. Many commentors were concerned that EPA's use of unit operation-specific average concentrations to model the concentration of untreated wastewater streams would overestimate current pollutant loadings at facilities, particularly those currently regulated by parts 413 or 433 and at facilities that do not treat their wastewaters due to low initial concentrations. In the NODA, EPA presented information on corrections and other revisions made to the costs and pollutant loadings model, and solicited comment on a sensitivity analysis which assumed at baseline that all MP&M facilities currently regulated by existing effluent guidelines (*i.e.*, 40 CFR parts 413 and 433) are not discharging pollutant concentrations above their applicable effluent limitations guidelines and standards (*see* 67 FR 38762).

For the final rule, EPA implemented two strategies to estimate baseline loadings and removals more accurately for untreated, low concentration streams at model facilities. First, EPA evaluated discharge monitoring report (DMR) data available for direct discharger model facilities. If all pollutant concentrations measured, as indicated from the DMR data, were below the technology option limits, EPA estimated zero pollutant removals for the model facility. Second, EPA considered regulatory limits on the model facility. EPA assumed the pollutant concentrations discharged from each stream at sites regulated under part 433 were at least meeting the monthly average limits set by part 433.

Table IV–2 summarizes the new method and how EPA estimated baseline pollutant concentrations for its pollutant reduction estimates associated with the final rule MP&M technology options.

TABLE IV–2.—CURRENT POLLUTANT CONCENTRATIONS USED TO ESTIMATE POLLUTANT REDUCTIONS ASSOCIATED WITH THE MP&M TECHNOLOGY OPTIONS

	433 regulated parameters	433 unregulated parameters
Treated Wastewater Streams	LTAs from part 433	LTAs from Technology Option 2 of Today's rule.
Untreated Wastewater Streams Regulated by 413 or 433.	Monthly Average Limitations from part 433	Concentrations from Subcategory-Specific Unit Operations Data.
Untreated Wastewater Not Regulated by 413 or 433.	Concentrations from Subcategory-Specific Unit Operations Data.	Concentrations from Subcategory-Specific Unit Operations Data.

Note: See Section VI and Section 9 of the TDD for further discussion of Technology Option 2.
Note: EPA assigns Option 2 LTAs to all wastewater streams for all pollutant to model facilities TIP equal to or greater than BAT treatment

For the final rule, EPA assumed that facilities currently treating their wastewater discharges (regardless of their regulatory status) operate their wastewater treatment systems to achieve the long-term average concentrations of the part 433 regulations. Furthermore, in the case of pollutants of concern not regulated in part 433, EPA made the conservative assumption that facilities with wastewater treatment operate their wastewater treatment systems to achieve the long-term average concentrations for such pollutants from MP&M Option 2 (*see* section VI and section 9 of the TDD for further discussion of Technology Option 2).

For untreated streams at facilities currently regulated by parts 413 or 433 for the parameters regulated by part 433, EPA assumed for its evaluations for the final rule that facilities achieve the monthly average limitation of part 433. As discussed in the NODA, EPA concluded it is appropriate to use the monthly average limitation, as opposed to the long-term average concentration, for streams that are not being treated or for parameters that are not being targeted for treatment. Finally, for untreated streams (regardless of regulatory status) for the parameters not regulated by part 433, and for regulated parameters for untreated streams at facilities not subject to parts 413 or 433, EPA has assumed the baseline concentrations are equivalent to the raw waste load using subcategory-specific unit operations data.

For all direct discharging facilities in the General Metals subcategory, EPA has assumed the facilities achieve permit limits for non-conventional pollutants Chemical Oxygen Demand (COD), Total Kjeldahl Nitrogen (TKN), and Ammonia as Nitrogen (NH_3-N). EPA received several comments that the Agency overestimated concentrations of COD. While this parameter is not regulated by Parts 413 or 433, comments stated that it is typically regulated in National Pollutant Discharge Elimination System (NPDES) permits. Additionally, EPA notes that COD removals had a significant impact on the cost and removal comparison ratio ($/lb-removed) for the General Metals subcategory. While these parameters are also not regulated by Parts 413 or 433, limits for these parameters are found in EPA's Permit Compliance System (PCS). To reduce overestimation of pollutant removals for COD, TKN, and NH_3-N, EPA did not allow the pollutant concentrations discharged from the facility to exceed permit limits. EPA modeled the limits based on data from EPA's Permit Compliance System (PCS) for these types of facilities. Because EPA could not determine which sites in PCS were MP&M sites, for the purposes of this analysis, EPA calculated the average permit limit concentrations for process wastewater discharged from each facility in the 3000 series of SIC codes. Based on these data, EPA set the maximum concentration for the commingled MP&M wastewater discharged from each model site at 175, 35.67, and 19.3 milligrams per liter (mg/L) for COD, TKN, and NH_3-N, respectively (*see* DCN 17846, section 24.7).

d. Unit Operations Data

EPA used unit operations data from the questionnaires, sampling episodes, and commentors data, to estimate baseline pollutant loading for some untreated wastewaters at certain facilities. As described in section IV.B.1, and as discussed in the NODA (*see* 67 FR 38756), in response to proposal commentors, EPA changed its proposal methodology to account for subcategory-specific differences in pollutant concentrations for the same unit operations. EPA received additional comments on the unit operations data from commentors on the NODA. In particular, comments on the NODA focused on three specific areas: (1) Requests to subdivide the "testing" unit operation to better reflect various types of testing wastewaters; (2) requests to remove additional "outliers" from the data set used to estimate the average pollutant concentrations for certain unit operation; and (3) requests to re-evaluate the ratio of pollutant concentrations in unit operation baths and the corresponding rinse. For direct dischargers, EPA also compared the baseline pollutant loadings from the pollutant loading model to available Discharge Monitoring Report (DMR) data (*see* section IV.B.2.b).

For the proposed rule, EPA combined testing unit operations from wastewater sampling of hydraulic testing, hydrostatic testing, dye penetrant testing, and alpha-case detection into a single pollutant concentration set for the "testing" unit operation (UP–42). Commentors explained that EPA should not group all testing operations together because these operations produce non-similar wastewaters. For example, commentors noted that dye penetrant testing produces wastewater with high pollutant concentrations while hydrostatic testing produces wastewater with low pollutant concentrations, but very large flows.

For today's final rule, EPA re-evaluated its data sets. EPA has concluded that it should divide the testing unit operations into subcategory-specific unit operations. Furthermore, EPA found no clear indication that facilities continue to perform alpha-case detection. Consequently, EPA's final database included separate, subcategory-specific data for two testing operations: Hydrostatic and dye penetrant. EPA reviewed each survey questionnaire and made a case-by-case determination of which of the two types of testing is being performed at a site (if any). See section 12 of the TDD for more information.

EPA has also addressed commentors concerns regarding the ratio of pollutant concentrations in unit operation baths (*e.g.*, electroplating baths) and their corresponding rinses. EPA has reviewed all bath-rinse pairs and ensured for the final analysis that the data used do not include any cases where a rinse is more concentrated than its bath.

e. Site-Specific Data Revisions for Survey Facilities

EPA revised its questionnaire database to reflect detailed comments provided about specific facilities in EPA's questionnaire database. EPA uses information about facilities in the questionnaire database to estimate various costs and benefits (*e.g.*, compliance costs, pollutant reductions, economic impacts, non-water quality environmental impacts). For example, in some cases facilities that did not provide flow or production data for certain wastestreams at the time they submitted their questionnaire provided such information in their comments on the proposal or NODA. In other cases, facilities provided updated information about their: (1) Unit operations (*e.g.*, whether they currently have these UPs); (2) regulatory status (*e.g.*, whether they were currently covered by parts 413 or 433 regulations); (3) wastewater discharge status (*i.e.*, direct, indirect, or zero discharger); and (4) wastewater treatment technology.

As noted in section 3 of the TDD, EPA conducted several surveys, with the two major surveys occurring in 1990 and 1996. For proposal and NODA analyses EPA used both 1990 and 1996 as reference years to estimate costs and benefits associated with the various regulatory options. These two survey efforts provided information about the MP&M industry at two different times (*i.e.*, 1990 and 1996). Commentors suggested that EPA rely on more recent information and gave specific comments updating information concerning some facilities surveyed in the Phase I survey effort. EPA is using the later survey year, 1996, as the base year for the questionnaire database to more accurately reflect current conditions in the MP&M industry. EPA incorporated information about specific facilities from commentors into the questionnaire database when the information reflected facility conditions at or prior to 1996.

EPA did not incorporate information from commentors into its questionnaire database when the information reflected facility conditions post-1996. When commentors provided post-1996 information, EPA did, however, use this information for a sensitivity analysis for all subcategories where it is promulgating limitations or new source standards to assess recent trends in the industry. See DCN 17843, section 24.6.2, of the record for results and discussion of this sensitivity analysis.

f. Site Discharge Destination

EPA solicited comment in the NODA on its methodology for categorizing a facility as either a direct discharger (to surface water), an indirect discharger (to a POTW), or a zero or alternative discharger (no wastewater is discharged) based on its questionnaire database. Facilities that are zero or alternative dischargers do not incur costs to comply with the regulation. For the January 2001 proposal and NODA, EPA identified direct dischargers as facilities that discharge any MP&M process wastewater to surface waters and calculated compliance costs and pollutant loadings and reductions for all MP&M process wastewaters as direct discharges. Commentors said that EPA should alter its methodology to allow facilities multiple discharge destinations rather than only assign a facility to a single category or discharge destination (*i.e.*, allow facilities with some streams discharging to a POTW and other streams to surface waters). Commentors also noted that EPA had misclassified some indirect dischargers as direct dischargers and provided examples.

EPA agrees with commentors that its methodology should address facilities with multiple wastewater discharge destinations. Consequently, EPA revised its methodology for the final rule to allow facilities that have multiple discharge destinations to be "split." For the purposes of estimating compliance costs and pollutant reductions, "splitting" a site means that EPA runs only those process wastewater streams that are discharged to the POTW through the EPA Cost & Loadings Model for indirect dischargers and runs only those process wastewater (not stormwater) streams that are discharged directly to surface waters through the model for direct dischargers. In addition to those facilities identified by commentors, EPA reviewed survey questionnaires for all facilities with multiple discharge destinations to determine if they should be designated as direct, indirect, or split (*see* DCN 17825, section 24.6.2).

In addition, in response to the comments that EPA incorrectly classified some facilities as direct dischargers, EPA also reviewed survey questionnaires for all facilities it had previously designated as direct to confirm their discharge status (*see* DCN 17826, section 24.6.2). This review altered the discharge status of a number of facilities (*see* section 11 of the final TDD for additional discussion of EPA's review). EPA's databases for the final rule reflects these changes. EPA also reviewed all direct discharges to ensure that EPA did not consider stormwater as a MP&M process wastewater in its analysis of compliance costs and pollutant loadings.

g. Monitoring Costs

EPA revised its monitoring cost estimate for today's final rule to reflect the final list of regulated pollutants and monitoring frequencies. For example, as discussed in section IV.B of the NODA (*see* 67 FR 38767) and section 7 of the TDD, EPA is not regulating total sulfide, molybdenum, manganese, tin, or toxic organics. See section 11 of the TDD for today's final rule for a detailed discussion of EPA's monitoring cost estimates for each subcategory.

2. Methodology for Determining Cost & Loadings for the 433 Upgrade Options

In the NODA, EPA also discussed alternative options, "413 to 433 Upgrade Option" and "All to 433 Upgrade Option," and an associated simplified cost and loadings analysis for these upgrade options. EPA provided estimates of compliance costs, pollutant reductions, economic impacts and cost-effectiveness based on this simplified analysis. For today's final rule, EPA revised its upgrade option methodology and performed a more detailed analysis of compliance costs and pollutant reductions, incorporating many of the comments received on the NODA as previously discussed.

a. Determining Regulatory Status

EPA reviewed the regulatory status for each survey questionnaire (*i.e.*, to confirm whether a given facility was currently regulated by part 413, part 433, both, or neither). Based on the applicability section of part 413 and 433 (*see* 40 CFR 413.01 and 433.11(c) and (d)), EPA concluded that currently all surveyed facilities included in the database for the proposed Metal Finishing Job Shop and Printed Wiring Board subcategories are regulated by part 413 and/or part 433. EPA first used the date operations began at the facility (as reported in the survey questionnaire) to identify the appropriate regulation. EPA assumed a facility was subject to part 433 if it began operations after 1982 because part 413 only applies to indirect discharging facilities operating before 1982. Next, EPA reviewed effluent discharge data from the remaining facilities to determine if the facility was discharging MP&M process wastewater. Finally, for facilities for which EPA does not have effluent discharge data, EPA called the site or its control authority to determine the regulatory status.

b. Revised Methodology for Estimating Pollutant Loadings and Reductions: Upgrade Options

EPA developed a methodology to estimate the baseline pollutant loadings at facilities that would be affected by the upgrade: (1) facilities currently regulated by 413 only; and (2) facilities regulated by local limits or general pretreatment standards only (*i.e.*, "local limits" facilities). EPA also performed a sensitivity analyses on facilities regulated by both parts 413 and 433. Facilities "regulated by local limits and general pretreatment standards only" also include facilities regulated by other effluent guidelines except parts 413 or 433. EPA notes that facilities currently regulated by only part 433 would not be affected by the upgrade and EPA did not project pollutant removals or compliance costs for them.

EPA's pollutant loadings methodology also distinguishes between "small" and "large" platers currently regulated by part 413. Part 413 defines small platers as facilities discharging less than 10,000 gallons/day of process wastewater. When the part 413 regulations were promulgated, EPA made provisions to accommodate the economic condition of "small" platers by reducing the numbers of regulated metals and allowing an alternative requirements for cyanide, as amenable to alkaline chlorination instead of total cyanide. Consequently, EPA adjusted its pollutant loadings methodology for the upgrade options to account for the additional parameters that small platers would need to treat (*see* section 9 of the final TDD for details on EPA's methodology for small platers).

For treated streams at affected facilities, EPA revised methodology assumes the facilities operate their wastewater treatment systems to achieve the LTAs from part 413. This is consistent with EPA's guidance that facilities use LTAs (rather than limitations or standards) as a "target" to design their treatment systems. For untreated streams at affected facilities, EPA used the 4-day average limit for part 413. As discussed in the NODA, EPA concludes this is appropriate because these facilities are complying with existing standards at the end-of-pipe. In estimating toxic pollutant reductions for the upgrade options, EPA compared the baseline loadings for affected facilities to the resulting loadings if these affected facilities treated their wastewater to achieve the long-term average concentrations (for existing sources) for part 433.

For facilities in the General Metals subcategory that are not regulated by either part 413 or part 433 (*i.e.*, "local limits facilities"), EPA altered its NODA methodology to incorporate actual local limits data and to include analysis of other pollutant parameters (*e.g.*, COD). Although EPA could not obtain actual local limits for all facilities, EPA gathered local limits data from 213 POTWs in 7 EPA Regions to develop national median local limit values. *See* DCN 17844, section 24.7, of the record for a listing of the data and the median value for each parameter. EPA used half the national median local limit values to approximate long-term average concentrations for all treated streams. EPA used the national median for all parameters regulated by part 413 in untreated streams. EPA applied the raw waste load based on the subcategory-specific unit operations data for all other parameters in-untreated streams. EPA then estimated the pollutant loading reductions as described in the previous paragraph.

In the NODA, EPA considered two different upgrade options for indirect dischargers in the General Metals, Printed Wiring Boards, and Metal Finishing Job Shop subcategories. The first option upgrades all facilities regulated by part 413 (including both large and small platers) to meet part 433 standards. The second option upgrades only large platers regulated by part 413 and facilities not regulated by parts 413 or 433 (regulated by local limits) to meet part 433 standards. EPA rejected these upgrade options for existing indirect dischargers as: (1) Greater than 10% of existing indirect dischargers not covered by part 433 are projected to close at the upgrade option; or (2) the incremental compliance costs of the upgrade options were too great in terms of toxic removals (cost-effectiveness values (in 1981$) in excess of $420/PE). See section VI for further discussion on these upgrade options for the General Metals, Printed Wiring Boards, and Metal Finishing Job Shop subcategories.

For direct dischargers, EPA also compared the baseline pollutant loadings from the pollutant loading model to available Discharge Monitoring Report (DMR) data reflecting the measured values for the permitted parameters. EPA obtained DMR data for eighteen surveyed direct discharging facilities in EPA's questionnaire database for the General Metals subcategory. The MP&M model approach utilizing the revised baseline method used for the final rule, calculates lower baseline loadings for twelve of these eighteen direct discharging facilities than the loadings reported in DMR data (*see* DCN 17851, section 24.7). Based on this analysis, EPA has concluded that the MP&M model approach utilizing the revised baseline method used for the final rule does not excessively over- or underestimate baseline pollutant loadings and EPA's use of this model approach for today's final rule is a reasonable and appropriate basis for today's regulatory determinations.

c. TIP Changes for Upgrade

In evaluating the upgrade options analyzed for the final rule, EPA also provided TIP credit for hydroxide precipitation and clarification treatments for metal-bearing facilities that use dissolved air flotation (DAF) for metals removal (*e.g.*, settling). However, EPA notes that TIP credit for hydroxide precipitation and clarification credit to metal-bearing facilities using DAF for metals removal was not provided in evaluating options to achieve the more stringent proposed MP&M limits. EPA is concerned that DAF alone would not achieve the long-term average concentrations associated with the limitations and standards considered for the subcategories discharging metal-bearing wastewaters. Therefore, EPA included costs associated with installing hydroxide precipitation and clarification at these facilities for the final rule.

d. Revised Compliance Cost Estimates for Upgrade Analyses

Based on comments to the NODA and subsequent discussions with industry representatives, EPA revised its analysis for estimating the cost of compliance for upgrading facilities to meet the part 433 existing source limitations and standards. Section 11 of the final TDD describes EPA's final methodology in detail. In addition to the costs included in the NODA analysis, EPA's final methodology also includes costs to:

- Increase the size of the treatment train (*e.g.*, holding tanks, clarifier, gravity thickening, filter press) to treat additional wastewater (which had pollutant concentrations below the part 413 standards but not low enough to meet the option limits without treatment);
- Increase the amount of treatment chemicals to account for treating additional wastewaters and more stringent LTAs;
- Increase sludge handling and disposal costs due to the treatment of additional streams as well as the more stringent long-term averages in part 433;
- Install and operate additional automated controls such as ORP meters and pH meters;
- Provide additional operator training; and
- Increase analytical monitoring costs for small platers to monitor for the additional pollutants covered by part 433.

3. Revisions to Economic & Benefits Methodologies

For the final rule, EPA incorporated several important revisions to the economic impact and benefits methodologies from the NODA. Section V of the NODA provides a detailed discussion of all changes incorporated in the economic impact and benefits analyses after publication of the proposed MP&M rule (*see* 67 FR 38752). In addition, based on NODA comments the Agency further refined the moderate impact analysis. As previously discussed, the Economic, Environmental, and Benefits Analysis (EEBA) for the final rule provides a complete discussion of economic impact and benefits methodologies used in the final rule analyses.

a. Revisions Incorporated in the Economic Impact Methodology From the NODA

The major changes to the economic impact analyses incorporated from the NODA include: (1) Use of sector-specific thresholds for the moderate impact analysis tests (redefined in part c of this section); (2) use of a single test, based on net present value, to assess the potential for closures (this test excludes consideration of liquidation values for all MP&M facilities, including the 219 facilities that reported them in their response to the MP&M survey); and (3) use of estimated baseline capital outlays in the calculation of cash flow for the net present value test. Other changes to the economic impact methodology include: (1) Use of revised cost pass-through coefficients; (2) use of sector-specific price indices in updating survey data; (3) adjusting labor costs for facilities that report abnormally high labor costs; and (4) limiting post-compliance tax shields to no greater than reported baseline taxes.

b. Using Multiple Years of Data To Estimate Sector-Specific Moderate Impact Threshold Values

As part of its facility impact analysis, the Agency assesses whether facilities may incur moderate financial impacts—financial stress short of closure—from regulatory compliance. To assess the occurrence of moderate impacts, the Agency analyzes the change in two financial measures—(1) Pre-Tax Return on Assets (PTRA); and (2) Interest Coverage Ratio (ICR)—against threshold values (*e.g.*, after-tax compliance costs as a percentage of annual revenues) indicating weak, but still viable, financial performance.

At proposal, EPA used single threshold values of the financial measures for all MP&M sectors. Commentors argued that EPA used thresholds without providing any supporting information regarding their predictive value, the threshold values chosen, or their applicability. EPA finds that using threshold values that vary by industry better reflects the differences in business risks and operating circumstances by industry, and will provide more robust analysis of moderate impacts. In response to comments, EPA revised this approach for the NODA to use threshold values that varied by MP&M sector. For the NODA, EPA also considered using an alternative financial measure—Pre-Tax Operating Margin—instead of PTRA for the moderate impact analysis. Since the NODA, EPA continued to review its moderate impact analysis methodology, and for the final rule analysis, decided to retain the financial impact measures used at proposal: PTRA and ICR. Pre-tax return on assets provides stronger insight into operating financial performance and is a better indicator of a business' ability to attract capital and remain viable than operating margin. However, in contrast to the NODA, EPA decided to use multiple years of data for developing the threshold values for the final rule. Using multiple years of data increases the number of observations on which the moderate impact thresholds are based and reduces the likelihood that threshold values will reflect anomalous conditions that could arise from using only a single year of data.

EPA calculated the thresholds using income and financial structure information by 4-digit SIC code from the Risk Management Association (RMA) *Annual Statement Studies* for eight years from 1994 to 2001. The RMA data set provides quartile values derived from statements of commercial bank borrowers and loan applicants for firms having less than $250 million in total assets. EPA used the lowest 25 percentile values, by industry, from the RMA data set as the basis for the moderate impact thresholds. The RMA data set captures a limited industry segment, because the data set likely omits firms with too weak financial performance to seek bank loans and also omits firms that use the public securities markets or other non-bank sources to obtain capital. However, it is difficult to know what kind of bias, if any, is introduced into the analysis by these limitations. On balance, because EPA used impact thresholds based on the 25th percentile of values reported for borrowers and loan applicants, EPA estimates that the basis for the moderate impact thresholds is conservative—*i.e.*, we are more likely to err in finding that a business is in moderate financial stress than in finding that a facility is not in moderate financial stress.

EPA notes that RMA did not provide data for all 4-digit SIC codes associated with an MP&M sector. Therefore, for sectors with missing data for some 4-digit SIC codes, EPA calculated the weighted average of threshold values based only on those 4-digit SIC codes for which data were provided. This treatment assumes that the financial characteristics of the omitted SIC code segments are the same as the weighted average of SIC code segments that were included in the analysis for a given MP&M sector. *See* Chapter 5 of the EEBA for the final rule for a detailed discussion of the analysis of moderate impacts.

c. Revisions Incorporated in the Benefits Methodology from the NODA

Major revisions to the benefits methodology incorporated from the NODA include: (1) Changes to the human health methodology; (2) use of a weight-of-evidence approach in evaluating national benefit estimates; and (3) use of revised models in the Ohio case study analysis. EPA also uses revised data on characteristics of POTWs receiving discharges from the sample MP&M facilities, as discussed in the NODA.

Two revisions to the human health benefits methodology incorporated from the NODA include: (1) Use of revised assumptions and updated model parameters in the analysis of neurological effects from lead exposure in preschool children; and (2) use of a revised drinking water intake database for estimating human health effects from consumption of contaminated drinking water. The Agency did not incorporate cancer effects from exposure to lead in the final rule analysis because these effects appeared negligible.

The use of the weight-of-evidence approach for estimating national benefits is one of the most important revisions to the benefits methodology incorporated from the NODA. As discussed in the NODA, EPA traditionally estimates national level costs and benefits by extrapolating analytic results from sample facilities to the national level using sample facility survey weights. These sample facility weights are based on sample facility characteristics only and do not account for characteristics of water bodies receiving discharges from the sample MP&M facilities or for the size of the

population residing in the vicinity of the sample MP&M facilities. These additional variables, however, are likely to affect the occurrence and size of benefits associated with reduced discharges from MP&M facilities. Omission of benefit-related characteristics in designing the original sample frame may lead to conditional bias in benefit estimates. To validate the general conclusions that EPA draws from its main analysis based on the traditional benefit estimation method, EPA also estimated national level benefits for the final rule using two alternative extrapolation methods. Detailed discussion of the alternative extrapolation methods can be found in the NODA (*see* 67 FR 38752), section IX.E and F of this preamble, and in the EEBA for the final rule.

As discussed in the NODA, EPA submitted its case study analysis of recreational benefits for an official peer review. The peer review was favorable and concluded that EPA had done a competent job. Peer reviewers, however, provided several suggestions for further improvements in the analysis. The Agency made most of the recommended changes to the Ohio model, as discussed in the NODA (*see* 67 FR 38752). This revised model is used in the analysis supporting today's final rule.

However, EPA did not include multiple day trips in the benefit estimates from improvements in recreational opportunities due to reduced MP&M discharges, as it was suggested by the peer reviewers. The Ohio case study focuses on single day trips because data for single day trips are more complete and because the majority of recreational trips are single day trips. Thus, EPA estimated changes in per trip values from improved water quality for single day trips only. The Agency decided not to approximate welfare gain to participants in multi-day recreational trips based on the single-day trip values because multi-day recreational trips are likely to differ from single day trips for a number of reasons: overnight trips may include multiple purposes and destinations; the individual chooses not only to take a trip and the trip's destination, but the length of the trip; and the length of stay has costs that are not connected to travel costs. The Agency acknowledges that excluding multiple day trips from this analysis is likely to result in understatement of benefits from water quality improvements. Detailed discussion of the Ohio case study can be found in the EEBA for the final rule.

EPA did not incorporate changes to the recreational benefits methodology used in the national-level analysis from the NODA. In estimating benefits from improved boating and wildlife viewing opportunities for the final rule, EPA considers only individuals taking single day trips due to insufficient data on per multi-day trip benefits from water quality improvements. Both individuals taking single day trips and those who take multiple day trips to local water bodies were considered in the NODA analysis of recreational benefits. Similarly to the Ohio case study, excluding multiple day trips from the national analysis is likely to result in understatement of recreational benefits from water quality improvements.

d. POTW Administrative Cost and POTW Benefits Analyses

EPA received several comments to the proposal on the use of EPA's 1997 POTW survey in the analysis of POTW administrative costs and benefits from improved quality of sewage sludge. Commentors stated that EPA overestimated pollutant loadings, economic benefits, and environmental benefits associated with improved sludge quality. Commentors also stated that EPA underestimated the administrative costs associated with implementing the rule. They provided new information on POTW characteristics which EPA used to revise assumptions and its analysis of POTW administrative costs and benefits for the final rule. Specifically, the Association of Metropolitan Sewerage Agencies (AMSA) provided EPA with comments on the proposed MP&M rule and supplemented these comments with a spreadsheet database. The database contains data from an AMSA formulated survey and covers responses from 176 POTWs, representing 66 pretreatment programs. The AMSA survey was conducted to verify data from EPA's survey of POTWs, and therefore, included similar, although fewer, variables compared to EPA's survey.

EPA used some of the data provided in AMSA's survey to revise its own analyses of POTW administrative costs of the proposed MP&M rule. Elements of the administrative cost analysis include: (1) The estimated number of indirect dischargers; and (2) the unit costs of certain permitting activities, including permit implementation, sampling, and sample analysis. EPA found that although AMSA estimates of the number of indirect dischargers and the unit costs of permitting activities are consistent with the EPA's estimates used for the proposed rule analysis, their estimate neglected to take into account that not all MP&M indirect discharging facilities would have been required to meet the proposed standards. DCN 37500, section 25.4.1, provides comparisons between AMSA's and EPA's estimates. EPA added to its analysis using the AMSA data include: (1) Screening costs for POTWs that do not currently operate under a pretreatment program; and (2) oversight costs associated with implementing various regulatory options. The revised methodology for POTW administrative costs analysis is presented in EEBA Appendix F.

EPA also used the AMSA data to revise the POTW benefits methodology. Elements of the POTW benefits analysis EPA verified using the AMSA survey include: (1) Percentage of metal loadings contributed by MP&M facilities; and (2) the number of MP&M facilities served by POTWs.

AMSA also provided additional information on the number of POTWs (and percentage of total annual dry metric tons of POTW biosolids) currently meeting metals limitations in the "Standards for the Use or Disposal of Sewage Sludge," (40 CFR part 503), and reasons why POTWs may choose to not land apply biosolids. These nationally-applicable standards set the general requirements, management practices, operational standards and monitoring and reporting requirements for the final use and disposal of biosolids. AMSA's survey data includes the following reasons for not land applying qualifying biosolids: (1) Land was not available for application of sewage biosolids; (2) other biosolids use/disposal practices were less expensive than land application; (3) pathogen/vector reduction requirements could not be met at an acceptable cost; and (4) local regulations or opposition to land application. EPA revised the POTW benefits methodology according to the results of the joint analysis of the EPA and AMSA surveys. The revised methodology for POTW benefits analyses is presented in EEBA Chapter 16.

4. Determining POTW Percent Removal Estimates

As discussed in the proposed rule, EPA solicited comment on potential changes to the methodology for estimating the pollutant reduction (*i.e.*, percent removal) used in EPA's pass through analysis for identifying pollutants requiring pretreatment standards (*see* 66 FR 476). For today's final rule, EPA has not changed the POTW pass-through analysis because EPA is not promulgating any new pretreatment standards for indirect dischargers.

V. Scope/Applicability of the Final Regulation

A. General Overview and Wastewaters Covered

As previously explained, today's final rule only applies to directly discharged wastewaters generated from oily operations at existing or new industrial facilities (including Federal, State and local government facilities). These facilities are engaged in manufacturing, rebuilding, or maintenance of metal parts, products or machines to be used in one of the following industrial sectors:

- Aerospace;
- Aircraft;
- Bus and Truck;
- Electronic Equipment;
- Hardware;
- Household Equipment;
- Instruments;
- Miscellaneous Metal Products;
- Mobile Industrial Equipment;
- Motor Vehicle;
- Office Machine;
- Ordnance;
- Precious Metals and Jewelry;
- Railroad;
- Ships and Boats; and
- Stationary Industrial Equipment.

EPA identified sixteen industrial sectors as comprising the MP&M category. These sectors manufacture, maintain and rebuild metal products under more than 200 different SIC codes (*see* the TDD for a listing of typical SIC codes and NAICs codes). EPA is not revising limitations and standards for three proposed industrial sectors (*e.g.*, Job Shops, Printed Wiring Board, and Steel Forming & Finishing).

Facilities in any one of the sixteen industrial sectors in the MP&M category are subject to this rule only if they directly discharge process wastewaters resulting from one or more of the following oily operations: Abrasive blasting; adhesive bonding; alkaline cleaning for oil removal; alkaline treatment without cyanide; aqueous degreasing; assembly/disassembly; burnishing; calibration; corrosion preventive coating (as specified at 40 CFR 438.2(c) and appendix B of part 438); electrical discharge machining; floor cleaning (in process area); grinding; heat treating; impact deformation; iron phosphate conversion coating; machining; painting-spray or brush (including water curtains); polishing; pressure deformation; solvent degreasing; steam cleaning; testing (*e.g.*, hydrostatic, dye penetrant, ultrasonic, magnetic flux); thermal cutting; tumbling/barrel finishing/mass finishing/vibratory finishing; washing (finished products); welding; wet air pollution control for organic constituents; and numerous sub-operations within those listed in this paragraph. In addition, process wastewater also results from associated rinses that remove materials that the preceding processes deposit on the surface of the workpiece. These oily operations are defined in section 4 of the TDD and appendix B of today's final rule. In addition, today's final rule does not apply to direct discharges of wastewaters that are otherwise covered by other effluent limitations guidelines.

As was the case at proposal, EPA defines process wastewater for the final rule to include wastewater discharges from the following activities: (1) Wastewater from air pollution control devices; and (2) washing vehicles only when it is a preparatory step prior to performing an oily operation (*e.g.*, prior to disassembly to perform engine maintenance or rebuilding). EPA has adopted this approach for the final rule due to the potential of these unit operations to produce significant quantities of pollutants in wastewaters (*see* 66 FR 433 to 434).

Not subject to this final rule are non-process wastewater discharges which include the following: Sanitary wastewater, non-contact cooling wastewater, laundering wastewater, and non-contact storm water. In addition, non-process wastewater also includes wastewater discharges from non-industrial sources such as residential housing, schools, churches, recreational parks, shopping centers, and wastewater discharges from gas stations, utility plants, and hospitals.

In addition to non-process wastewater, the final rule does not apply to wastewater generated from: (1) Gravure cylinder and metallic platemaking conducted within or for printing and publishing facilities; (2) bilge water on ships afloat; (3) electroplating-type operations during semiconductor wafer manufacturing or wafer fabrication processes occurring in a "clean room" environment; (4) the washing of cars, aircraft or other vehicles when it is performed only for aesthetic/cosmetic purposes; (5) MP&M operations at gasoline stations (SIC code 5541) or vehicle rental facilities (SIC code 7514 or 7519); or (6) unit operations performed by drum reconditioners/refurbishers to prepare metal drums for reuse. The final rule does not include these non-process wastewaters within the scope of the rule for the reasons explained in the preamble to the proposed rule (*see* 66 FR 433). EPA received no comments on the proposal or NODA that have caused the Agency to change its mind about the approach it proposed and has now adopted.

EPA is also not promulgating limitations and standards for facilities in the Shipbuilding Dry Dock subcategory. Today's final rule does not cover wastewater generated on-board ships and boats when they are afloat (that is, not in dry docks or similar structures), flooding water, and dry dock ballast water (*see* 66 FR 445). For U.S. military ships, EPA is in the process of establishing standards to regulate discharges of wastewater generated on-board these ships when they are in U.S. waters and are afloat under the Uniform National Discharge Standards (UNDS) pursuant to section 312(n) of the CWA (*see* 64 FR 25125, May 10, 1999).

Finally, today's rule does not apply to maintenance or repair of metal parts, products, or machines that takes place only as ancillary activities at facilities not included in the sixteen MP&M industrial sectors. EPA estimates that these ancillary repair and maintenance activities would typically discharge *de minimis* quantities of process wastewater. For example, wastewater discharges from repair of metal parts at oil and gas extraction facilities are not subject to today's final rule. The Agency finds that permit writers will establish limits using best professional judgment (BPJ) to regulate wastewater discharges from ancillary waste streams for direct dischargers (*see* 66 FR 433). EPA has not received any information during the rulemaking that would contradict this conclusion.

B. Subcategorization

For today's final rule, EPA is subcategorizing the MP&M point source category based on the unit operations described in more detail in section 4 of the TDD, and is establishing limitations and standards for direct dischargers in the Oily Wastes subcategory (subpart A).

The Oily Wastes subcategory applies to wastewaters generated from "oily operations" that are not otherwise covered by other effluent limitations guidelines. EPA has previously defined "oily operations" in section V.A and at 40 CFR 438.2(f) and appendix B of today's final rule.

Facilities engaged in the manufacture, overhaul or heavy maintenance of railroad engines, cars, car-wheel trucks, or similar parts or machines ("railroad overhaul or heavy maintenance facilities") typically perform different unit operations than railroad line maintenance facilities. Railroad line maintenance facilities only perform one or more of the following unit operations including; Assembly/disassembly, floor

cleaning, maintenance machining (wheel truing), touch-up painting, and washing. Railroad overhaul or heavy maintenance facilities typically perform the following unit operations: Assembly/disassembly, floor cleaning, maintenance machining (wheel truing), touch-up painting, washing, abrasive blasting, alkaline cleaning, aqueous degreasing, corrosion preventive coating, electrical discharge machining, grinding, heat treating, impact deformation, painting, plasma arc machining, polishing, pressure deformation, soldering/brazing, stripping (paint), testing, thermal cutting, and welding. Wastewater discharges from railroad line maintenance facilities (as defined at 40 CFR 438.2(h)) are not subject to today's final rule. Wastewater discharges from railroad overhaul or heavy maintenance facilities (as defined at 40 CFR 438.2(i)) may be covered by subpart A of this part, the Metal Finishing Point Source Category (40 CFR part 433), or by other effluent limitations guidelines, as applicable.

VI. The Final Regulation

This section describes, by subcategory, the option(s) considered and selected for today's final rule. For each subcategory, EPA provides a discussion, as applicable, for the regulatory levels that EPA considered for regulation (*i.e.*, BPT, BCT, BAT, NSPS, PSES, PSNS). For a detailed discussion of all technology options considered in the development of today's final rule, see the proposal (*see* 66 FR 447), the NODA (*see* 67 FR 38797) or section 9 of the TDD for today's final rule.

Based on the record of information supporting the final MP&M rule, EPA has determined that the selected technology for the Oily Wastes subcategory is technically available. EPA used the appropriate technologies for developing today's limitations for existing direct dischargers (BPT and BCT) in one MP&M subcategory listed in the January 2001 proposal (Oily Wastes). EPA has also determined that each technology it selected as the basis for the final limitations or standards has effluent reductions commensurate with compliance costs and is economically achievable for the applicable subcategory. EPA also considered the age, size, processes, and other engineering factors pertinent to facilities in the scope of the final regulation for the purpose of evaluating the technology options. None of these factors provides a basis for selecting different technologies from those EPA has selected as its technology options for today's rule (*see* section 6 of the TDD for the final rule for further discussion of EPA's analyses of these factors).

EPA considered the use of a low-flow cutoff as the principal means for reducing economic impacts on small businesses and administrative burden for control authorities associated with certain treatment technologies it considered. EPA did not identify any regulatory scheme incorporating a low-flow cutoff for direct dischargers that would assist EPA in meeting these objectives. EPA notes that all direct dischargers require a NPDES discharge permit regardless of wastewater discharge flow volume.

The new source performance standards (NSPS) EPA is today establishing represent the greatest degree of effluent reduction achievable through the best available technology. In selecting its technology basis for today's new source standards (NSPS) for the Oily Wastes subcategory being promulgated today, EPA considered all of the factors specified in CWA section 306, including the cost of achieving effluent reductions. EPA used the appropriate technology option for developing today's standards for new direct dischargers in the Oily Wastes subcategory. The new source technology basis for the Oily Wastes subcategory is equivalent to the technology bases upon which EPA is setting BPT and BCT (*see* Chapter 9 of the EEBA). EPA has thoroughly reviewed the costs of such technologies and has concluded that such costs do not present a barrier to entry. The Agency also considered energy requirements and other non-water quality environmental impacts for the new source technology basis and found no basis for any different standards from those selected for NSPS. Therefore, EPA concluded that the NSPS technology basis chosen for the Oily Wastes subcategory constitute the best available demonstrated control technology. For a discussion on the compliance date for new sources, see section XI of today's final rule.

EPA decided not to establish limitations for existing sources for seven subcategories listed in the January 2001 proposal (General Metals, Metal Finishing Job Shops, Printed Wiring Boards, Non-Chromium Anodizers, Steel Forming & Finishing, Railroad Line Maintenance, and Shipbuilding Dry Dock). EPA also decided not to establish standards for new sources for the same seven subcategories. Finally, EPA decided not to establish standards for new and existing indirect dischargers (PSES and PSNS) for all eight subcategories listed in the January 2001 proposal. EPA's bases for not promulgating revised limitations and standards for these subcategories are explained in the following sections.

A. General Metals Subcategory

EPA is not revising or establishing any limitations or standards for facilities that would have been subject to this subcategory. Such facilities will continue to be regulated by the General Pretreatment Standards (part 403), local limits, permit limits, and parts 413 and/or 433, as applicable.

1. Best Practicable Control Technology Currently Available (BPT)

EPA proposed to establish BPT limitations for existing direct dischargers in the General Metals subcategory based on the Option 2 technology. EPA evaluated the cost of achieving effluent reductions, pollutant reductions, and the economic achievability of compliance with BPT limitations based on the Option 2 technology and the level of the pollutant reductions resulting from compliance with such limitations. EPA has decided not to establish BPT limitations for existing direct dischargers in the proposed General Metals subcategory. The 2001 proposal also contains detailed discussions on why EPA rejected BPT limitations based on other BPT technology options (*see* 66 FR 452). The information in the record for today's final rule provides no basis for EPA to change this conclusion.

EPA proposed Option 2 as a basis for establishing BPT limitations for the General Metals subcategory. Option 2 technology includes the following: (1) In-process flow control and pollution prevention; (2) segregation of wastewater streams; (3) preliminary treatment steps as necessary (including oils removal using chemical emulsion breaking and oil-water separation, alkaline chlorination for cyanide destruction, reduction of hexavalent chromium, and chelation breaking); (4) chemical precipitation using sodium hydroxide; (5) sedimentation using a clarifier; and (6) sludge removal (*i.e.*, gravity thickening and filter press). See section 9 of the TDD for today's final rule for additional technical details on the Option 2 technology.

Those facilities potentially regulated in the General Metals subcategory include facilities that are currently subject to effluent limitations guideline regulation under part 433 as well as facilities not currently subject to national regulation. Approximately 263 of the 266 existing General Metals direct dischargers (estimated from survey weights for 31 surveyed facilities) are currently covered by the Metal Finishing effluent guidelines at part 433. The remaining three facilities (estimated from a survey weight for one surveyed facility) are currently directly discharging metal-bearing wastewaters (*e.g.*, salt bath descaling, UP–37) but are not covered by existing Metal Finishing effluent guidelines. EPA's review of discharge monitoring data and unit operations for this surveyed non-433 General Metals facility (with a survey weight of approximately three) indicates that this facility is already achieving part 433 limitations because this facility has discharges that closely mirror those required by part 433.

The facilities that are currently subject to part 433 regulations and those facilities achieving part 433 discharge levels, in most cases, have already installed effective pollution control technology that includes many of the components of the Option 2 technology. Approximately 30 percent of the direct discharging facilities in the General Metals subcategory currently employ chemical precipitation followed by a clarifier. Further, EPA estimates that compliance with BPT limitations based on the Option 2 technology would result in no closures of the existing direct dischargers in the General Metals subcategory. EPA also notes that the adoption of this level of control would also represent a further reduction in pollutants discharged into the environment by facilities in this subcategory. For facilities in the General Metals subcategory at Option 2, EPA estimates an annual compliance cost of $23.7 million (2001$). Using the method described in Table IV–2 to estimate baseline pollutant loadings, EPA estimates Option 2 pollutant removals of 417,477 pounds of conventional pollutants and 33,716 pounds of priority metal and organic pollutants from current discharges into the Nation's waters.

Evaluated under its traditional yardstick, EPA calculated that the effluent reductions are achieved at a cost of $18.1/pound-pollutant removed (2001$) for the General Metals subcategory at Option 2. To estimate all pounds of pollutant removed by Option 2 technology for direct dischargers in the General Metals subcategory, EPA used the method described in Table IV–2 to estimate baseline pollutant loadings, and the sum of Chemical Oxygen Demand (COD) pounds removed plus the sum of all metals pounds removed to measure the pollutant removal as compared to compliance costs. EPA used the combination of COD pounds removed plus the sum of all metals pounds removed to avoid any significant double counting of pollutants.

As previously stated, EPA received many comments on its estimation of baseline pollutant loadings and reductions for the various options presented in the January 2001 proposal. In response to these comments, EPA solicited comment in the June 2002 NODA on alternative methods to estimate baseline pollutant loadings. Commentors on the NODA were generally supportive of EPA's alternative methods to estimate baseline pollutant loadings. In particular, commentors noted that more accurate estimates of baseline pollutant loadings could be achieved by using DMR data. In response to these NODA comments, EPA combined the alternative methods in the NODA into the EPA Cost & Loadings Model for the final rule (*see* Table IV–2).

EPA also received comment on the parameter or parameters it should use for estimating total pounds removed by the selected technology option. EPA selected the sum of COD and all metals pounds removed for the final rule to compare effluent reductions and compliance costs. This approach avoided any significant double counting of pollutants and also provided a reasonable estimate of total pounds removed by Option 2 for the General Metals subcategory. As more fully described in the TDD, Option 2 technology segregates wastewaters into at least five different waste streams, each of which have one or two treatment steps. For example, segregated oily wastewaters have two treatment steps under Option 2 technology as they are first treated by chemical emulsion breaking/oil water separation and then by chemical precipitation and sedimentation. These segregated wastestreams can be loosely grouped together as either oily wastewaters or metal-bearing wastewaters. EPA use of COD pounds removed for Option 2 technology generally represents the removal of pollutants from the segregated oily wastewaters. EPA use of total metals pounds removed for Option 2 technology generally represents the removal of pollutants from the segregated metal-bearing wastewaters.

EPA also considered alternative parameters for calculating total pounds removed by Option 2 for the comparison of effluent reductions and compliance costs for the General Metals subcategory. In particular, EPA calculated a ratio of less than $14/pound-pollutant removed (2001$) for the General Metals subcategory at Option 2 when EPA used the highest set of pollutants removed per facility with no significant double counting of pollutants (*i.e.*, highest per facility pollutant removals of: (1) COD plus total metals; (2) oil and grease (as HEM) plus total metals; or (3) oil and grease (as HEM) plus TSS). EPA used the highest per facility pollutant removals as a confirmation of its primary method for calculating baseline pollutant loadings (*see* Table IV–2) and Option 2 for General Metals subcategory.

Based on the revisions and corrections to the EPA Cost & Loadings Model discussed in the NODA and in section IV.B.1 of today's final rule, EPA has decided not to adopt BPT limitations based on Option 2 technology. A number of factors supports EPA's conclusion that BPT limitations based on Option 2 technology do not represent effluent reduction levels attainable by the best practicable technology currently available. As previously noted, a substantial number of facilities that would be subject to limitations as General Metals facilities are already regulated by BPT/BAT part 433 limitations and other facilities are *de facto* part 433 facilities if characterized by their discharges. Thus, establishing BPT limitations for a new General Metals subcategory would effectively revise existing BPT/BAT limitations with respect to those facilities. In the circumstances presented here where EPA, for a significant portion of an industry, is revising existing BPT/BAT limitations, further review of the character and cost of the effluent reductions achieved by Option 2 is warranted in deciding what is BPT technology. Such an examination shows that, while the Option 2 technology would remove additional pollutants at costs in the middle of the range EPA has traditionally determined are reasonable, the costs of the additional removals of toxic pollutants are substantially greater. EPA has now determined that, in the circumstances of this rulemaking, where a substantial portion of a subcategory is already subject to effluent limitations guidelines that achieve significant removal, it should not promulgate BPT limitations under consideration here because the limitations would achieve additional toxic removals at a cost ($1,000/PE in 1981$) substantially greater than that EPA has typically imposed for BAT technology in other industries (generally less than $200/PE in 1981$).

EPA also considered transferring limitations from existing Metal Finishing effluent guidelines (40 CFR part 433) to the General Metals subcategory. The technology basis for part 433 includes the following: (1)

Segregation of wastewater streams; (2) preliminary treatment steps as necessary (including oils removal using chemical emulsion breaking and oil-water separation, alkaline chlorination for cyanide destruction, reduction of hexavalent chromium, and chelation breaking); (3) chemical precipitation using sodium hydroxide; (4) sedimentation using a clarifier; and (5) sludge removal (*i.e.*, gravity thickening and filter press). *See* section 9 of the TDD for today's final rule for additional technical details on the part 433 technology basis.

Approximately 99% of the existing direct dischargers in the General Metals subcategory are currently covered by existing Metal Finishing effluent guidelines. The remaining 1% (an estimated three facilities nationwide based on the survey weight associated with one surveyed facility) are currently permitted to discharge metal-bearing wastewaters but are not covered by existing Metal Finishing effluent guidelines. EPA's review of discharge monitoring data and unit operations for this surveyed non-433 General Metals facility (with a survey weight of approximately three) indicates that this facility is subject to permit limitations established on a BPJ basis that are equivalent or more stringent than part 433 limitations. Transferring limitations from existing Metal Finishing effluent guidelines would likely result in no additional pollutant load reductions. Therefore, based on the lack of additional pollutant removals that are estimated, EPA is not promulgating BPT limitations transferred from existing Metal Finishing effluent limitations guidelines for the General Metals subcategory.

EPA is not revising or establishing BPT limitations for any facilities in this subcategory. Direct dischargers in the General Metals subcategory will remain regulated by permit limits and part 433, as applicable.

2. Best Conventional Pollutant Control Technology (BCT)

In deciding whether to adopt more stringent limitations for BCT than BPT, EPA considers whether there are technologies that achieve greater removals of conventional pollutants than adopted for BPT, and whether those technologies are cost-reasonable under the standards established by the CWA. EPA generally refers to the decision criteria as the "BCT cost test." For a more detailed description of the BCT cost test and details of EPA's analysis, see Chapter 4 of the EEBA.

As EPA is not establishing any BPT limitations for the General Metals subcategory, EPA did not evaluate any technologies for the final rule that can achieve greater removals of conventional pollutants. Consequently, EPA is not establishing BCT limitations for the General Metals subcategory.

3. Best Available Technology Economically Achievable (BAT)

EPA proposed to establish BAT limitations for existing direct dischargers in the General Metals subcategory based on the Option 2 technology. As previously noted, EPA has decided not to establish BPT limitations based on Option 2 technology. The same reasons support not establishing BAT limitations based on the same technology. EPA evaluated the cost of effluent reductions, pollutant reductions, and the economic achievability of compliance with BAT limitations based on the Option 2 technology.

Based on the revisions and corrections to the EPA Cost & Loadings Model discussed in the NODA and in section IV.B.1 of today's final rule, EPA determined that the costs of Option 2 are disproportionate to the toxic pollutant reductions (measured in pound-equivalents (PE)). The cost of achieving the effluent reduction (in 1981$) for Option 2 for direct dischargers in the General Metals subcategory is over $1,000/PE removed (*see* the EEBA and DCN 37900, section 26.0, for a discussion of the cost-effectiveness analysis). The costs associated with this technology are, as previously noted, substantially greater than the level EPA has traditionally determined are associated with available toxic pollutant control technology. EPA has determined that Option 2 technology is not the best available technology economically achievable for existing direct dischargers in the General Metals subcategory. EPA is not revising or establishing BAT limitations for this subcategory based Option 2 technology.

EPA also considered transferring BAT limitations from existing Metal Finishing effluent guidelines (40 CFR 433.14) to the General Metals subcategory. EPA's reviewed existing General Metals facilities and found that all are currently achieving part 433 BAT limitations. Transferring BAT limitations from existing Metal Finishing effluent guidelines would likely result in no additional pollutant load reductions and minimal incremental compliance costs (*see* section VI.A.1). Therefore, based on the lack of additional pollutant removals that are estimated, EPA is not promulgating BAT limitations transferred from existing Metal Finishing effluent limitations guidelines for the General Metals subcategory.

EPA is not revising or establishing BAT limitations for any facilities in this subcategory. Direct dischargers in the General Metals subcategory will remain regulated by permit limits and part 433, as applicable.

4. New Source Performance Standards (NSPS)

EPA proposed NSPS for the General Metals subcategory based on Option 4 technology. Option 4 technology is similar to Option 2 (including Option 2 flow control and pollution prevention) but includes oils removal using ultrafiltration and solids separation by a microfilter (instead of a clarifier). Commentors stated that EPA had under-costed the Option 4 technology and that the compliance costs would be a barrier to entry for new facilities. In addition, commentors questioned the completeness of EPA's database on microfiltration, noting that EPA transferred standards for several pollutants from the Option 2 technology, based on lack of data. EPA reviewed its database for the Option 4 technology and agrees that its microfiltration database is insufficient to support a determination that the Option 4 limitations are technically achievable.

EPA also evaluated setting General Metals NSPS based on the Option 2 technology and assessed the financial burden to new General Metals direct dischargers. Specifically, EPA's "barrier to entry" analysis identified whether General Metals NSPS based on the Option 2 technology would pose sufficient financial burden as to constitute a material barrier to entry of new General Metals establishments into the MP&M point source category. Additionally, EPA reviewed its database for establishing General Metals NSPS based on the Option 2 technology as commentors indicated the proposed standards were not technically achievable.

In response to these comments, EPA reviewed all the information currently available on General Metals facilities employing the Option 2 technology basis. This review demonstrated that process wastewaters at General Metals facilities contain a wide variety of metals in significant concentrations. Commentors stated that single stage precipitation and solids separation step may not achieve sufficient removals for wastewaters that contain significant concentrations of a wide variety of metals—especially if the metals preferentially precipitate at disparate pH ranges. Consequently, to address concerns raised by commentors, EPA also costed new sources to operate two separate chemical precipitation and solids separation steps in series. Two-stage chemical precipitation and solids separation allows General Metals facilities with multiple metals to control metal discharges to concentrations lower than single-stage chemical precipitation and solids separation over a wider pH range.

Applying this revised costing approach, EPA projects a barrier to entry for General Metals NSPS based on the Option 2 technology as 14% of General Metals direct dischargers have after-tax compliance costs between 1 to 3% of revenue, 22% have after-tax compliance costs between 3 to 5% of revenue, and 2% have after-tax compliance costs greater than 5% of revenue. Consequently, based on the compliance costs of the modified Option 2 technology EPA is today rejecting Option 2 technology as the basis for NSPS in the General Metals subcategory. See section 11 of the TDD for a description of how these new source compliance costs were developed and Chapter 9 of the EEBA for a description of the framework EPA used for the barrier to entry analysis and general discussion of the results.

EPA also considered transferring NSPS from existing Metal Finishing effluent guidelines (40 CFR 433.16) to the General Metals subcategory. EPA reviewed existing General Metals direct dischargers and found that all are currently either covered by or have permits based on the Metal Finishing limitations at 40 CFR part 433. EPA has no basis to conclude that new General Metals facilities would have less stringent requirements than existing facilities, particularly since, in the absence of promulgated NSPS, it is likely that permit writers would consult the part 433 requirements to establish BPJ limits. In addition, those new facilities which meet the applicability criteria for part 433 will be subject to the NSPS for that category. Therefore, transferring standards from these existing Metal Finishing effluent limitations guidelines would likely result in no additional pollutant load reductions.

Therefore, based on the lack of additional pollutant removals that are estimated, EPA is not promulgating NSPS for the General Metals subcategory. EPA is not revising or establishing NSPS for any facilities in this subcategory. Direct dischargers in the General Metals subcategory will remain regulated by permit limits and part 433, as applicable.

5. Pretreatment Standards for Existing Sources (PSES)

EPA proposed to establish PSES for existing indirect dischargers in the General Metals subcategory based on the Option 2 technology (*i.e.*, the same technology basis that EPA considered for BPT/BCT/BAT for this subcategory) with a "low-flow" exclusion of 1 million gallons per year (MGY) to reduce economic impacts on small businesses and administrative burden for control authorities. Based on the revisions and corrections to the EPA Cost & Loadings Model discussed in the NODA and in section IV.B.1 of today's final rule, EPA rejected promulgating PSES for existing indirect dischargers in the General Metals subcategory based on the Option 2 technology for the following reasons: (1) Many General Metals indirect dischargers are currently regulated by existing effluent guidelines (parts 413 or 433 or both, as applicable); (2) EPA estimates that compliance with PSES based on the Option 2 technology will result in the closure of approximately 4% of the existing indirect dischargers in this subcategory; and (3) EPA determined that the incremental toxic pollutant reductions are very expensive per pound removed (the cost-effectiveness value (in 1981$) for Option 2 for indirect dischargers in the General Metals subcategory is $432/PE).

This suggests to EPA that the identified technology is not truly "available" to this industry because it would remove a relatively small number of additional toxic pounds at a cost significantly greater than that EPA has typically determined is appropriate for other industries. EPA has determined that Option 2 technology is not the best available technology economically achievable for existing indirect dischargers in the General Metals subcategory. Therefore, EPA is not establishing PSES for this subcategory based on the Option 2 technology.

As discussed in the June 2002 NODA (*see* 67 FR 38798), EPA also considered a number of alternative options whose economic impacts would be less costly than Option 2 technology. These options potentially have compliance costs more closely aligned with toxic pollutant reductions. EPA considered the following alternative options for today's final rule:

Option A: No change in current regulation;

Option B: Option 2 with a higher low-flow exclusion;

Option C: Upgrading facilities currently covered by part 413 to the PSES of part 433; and

Option D: Upgrading all facilities covered by part 413, and those facilities covered by "local limits only" that discharge greater than a specified wastewater flow (*e.g.*, 1, 3, or 6.25 MGY) of process wastewater to the part 433 pretreatment standards for existing sources. Note that facilities regulated by "local limits only" are also regulated by the General Pretreatment Regulations (40 CFR part 403).

As discussed in section IV.B.1 of today's final rule, based on comments, EPA has revised its methodology for estimating compliance costs and pollutant loadings for Option 2, higher low-flow exclusions (Option B); and the "upgrade" options (Options C and D) previously described. Using information from this revised analysis, EPA concludes that all of these alternative options (Options B, C, and D) are either not available or not economically achievable. EPA rejected Options B, C, and D as: (1) Greater than 10% of existing indirect dischargers not covered by part 433 close at the upgrade option; or (2) toxic removals of the upgrade options are quite expensive (cost-effectiveness values (in 1981$) in excess of $420/PE), suggesting that these options are not truly available technologies for this industry segment. EPA consequently determined that none of the treatment options represented best available technology economically achievable. Therefore, EPA is not revising or establishing PSES for existing indirect dischargers in the General Metals subcategory (Option A). Wastewater discharges to POTWs from facilities in this subcategory will remain regulated by local limits, general pretreatment standards (part 403), and parts 413 and/or 433, as applicable. EPA also notes that facilities regulated by parts 413 and/or 433 PSES must comply with part 433 PSNS if the changes to their facilities are determined to make them new sources.

6. Pretreatment Standards for New Sources (PSNS)

In 2001, EPA proposed pretreatment standards for new sources based on the Option 4 technology basis. Option 4 technology is similar to Option 2 (including Option 2 flow control and pollution prevention) but includes oils removal using ultrafiltration and solids separation by a microfilter (instead of a clarifier). As explained in section VI.A.4, EPA concluded its database is insufficient to support a determination that the Option 4 standards are technically achievable. As a result, for the final rule EPA considered

establishing PSNS in the General Metals subcategory based on the Option 2 technology (*i.e.*, the same technology basis that was considered for BPT/BCT/BAT for this subcategory) along with the same "low-flow" exemption of 1 MGY considered for existing sources.

For today's final rule EPA evaluated setting General Metals PSNS based on the Option 2 technology and assessed the financial burden to new General Metals indirect dischargers. Specifically, EPA's "barrier to entry" analysis identified whether General Metals PSNS based on the Option 2 technology would pose sufficient financial burden on new General Metals facilities to constitute a material barrier to entry into the MP&M point source category.

EPA projects a barrier to entry for General Metals PSNS based on the Option 2 technology as 14% of General Metals indirect dischargers have after-tax compliance costs between 1 to 3% of revenue and 20% have after-tax compliance costs between 3 to 5% of revenue. Consequently, EPA is today rejecting Option 2 technology as the basis for PSNS in the General Metals subcategory. EPA has selected "no further regulation" for new General Metals indirect dischargers and is not revising PSNS for new General Metals indirect dischargers. Wastewater discharges to POTWs from facilities in this subcategory will remain regulated by local limits, general pretreatment standards (part 403), and part 433, as applicable. See section 11 of the TDD for a description of how these new source compliance costs were developed and Chapter 9 of the EEBA for a description of the framework EPA used for the barrier to entry analysis and general discussion of the results.

B. Metal Finishing Job Shops Subcategory

EPA is not revising any limitations or standards for facilities that would have been subject to this subcategory. Such facilities will continue to be regulated by the General Pretreatment Standards (part 403), local limits, permit limits, and parts 413 and/or 433, as applicable.

1. BPT/BCT/BAT

EPA proposed to establish BPT/BCT/BAT for existing direct dischargers in the MFJS subcategory based on the Option 2 technology (*see* section VI.A for a description of Option 2). EPA evaluated the cost of effluent reductions, pollutant reductions, and the economic achievability of compliance with BPT/BCT/BAT limitations based on the Option 2 technology. Based on the revisions and corrections to the EPA Cost & Loadings Model discussed in the NODA and in section IV.B.1 of today's final rule, EPA determined that the compliance costs of the Option 2 technology are not economically achievable. EPA estimates that compliance with BPT/BCT/BAT limitations based on the Option 2 technology will result in the closure of 50% of the existing direct dischargers in this subcategory (12 of 24 existing MFJS direct dischargers). Consequently, EPA concludes that for existing direct dischargers in the MFJS subcategory, Option 2 is not the best practicable control technology, best conventional pollutant control technology, or best available technology economically achievable. EPA has decided not to establish new BPT, BCT, or BAT limitations for existing MFJS direct dischargers based on the Option 2 technology, which will remain subject to part 433.

2. New Source Performance Standards (NSPS)

EPA proposed to establish NSPS for new direct dischargers in the MFJS subcategory based on the Option 4 technology. Option 4 technology is similar to Option 2 (including Option 2 flow control and pollution prevention) but includes oils removal using ultrafiltration and solids separation by a microfilter (instead of a clarifier). As explained in section VI.A.4, EPA concluded its database is insufficient to support a determination that the Option 4 standards are technically achievable. Consequently, EPA rejected Option 4 technology as the basis for NSPS in the MFJS subcategory.

For today's final rule EPA evaluated setting MFJS NSPS based on the Option 2 technology and assessed the financial burden to new MFJS direct dischargers. Specifically, EPA's "barrier to entry" analysis identified whether MFJS NSPS based on the Option 2 technology would pose sufficient financial burden so as to constitute a material barrier to entry into the MP&M point source category. Additionally, EPA reviewed its database for establishing MFJS NSPS based on the Option 2 technology as commentors indicated the proposed standards were not technically achievable.

In response to these comments, EPA reviewed all the information currently available on MFJS facilities employing the Option 2 technology basis. This review demonstrated that process wastewaters at MFJS facilities contain a wide variety of metals in significant concentrations. Commentors stated that single stage precipitation and solids separation may not achieve sufficient removals for wastewaters that contain significant concentrations of a wide variety of metals—especially if the metals preferentially precipitate at disparate pH ranges. Consequently, to address concerns raised by commentors, EPA also costed new sources to operate two separate chemical precipitation and solids separation steps in series. Two-stage chemical precipitation and solids separation allows MFJS facilities with multiple metals to control metal discharges to concentrations lower than single-stage chemical precipitation and solids separation over a wider pH range.

Applying this revised costing approach, EPA projects a barrier to entry for MFJS NSPS based on the Option 2 technology as all MFJS direct dischargers have new source compliance costs that are greater than 5% of revenue. Consequently, EPA is today rejecting Option 2 technology as the basis for NSPS in the MFJS subcategory, and is not revising NSPS for new MFJS direct dischargers. Wastewater discharges from these facilities in this subcategory will remain regulated by local limits and part 433 NSPS as applicable. See section 11 of the TDD for a description of how these new source compliance costs were developed and Chapter 9 of the EEBA for a description of the framework EPA used for the barrier to entry analysis and general discussion of the results.

3. Pretreatment Standards for Existing Sources (PSES)

EPA proposed to establish PSES for existing indirect dischargers in the MFJS subcategory based on the Option 2 technology. Based on the revisions and corrections to the EPA Cost & Loadings Model discussed in the NODA and in section IV.B.1 of today's final rule, EPA determined that the costs of Option 2 are not economically achievable for existing indirect dischargers in the MFJS subcategory. EPA estimates that compliance with PSES based on the Option 2 technology will result in the closure of 46% of the existing indirect dischargers in this subcategory (589 of 1,270 existing MFJS indirect dischargers), which EPA considers to be too high. EPA has determined that Option 2 technology is not the best available technology economically achievable for existing indirect dischargers in the MFJS subcategory. Therefore, EPA is not establishing PSES for this subcategory based on the Option 2 technology.

As discussed in the January 2001 proposal (*see* 66 FR 551) and June 2002 NODA (*see* 67 FR 38801), EPA also considered a number of alternative options whose economic impacts would be less costly than Option 2 technology. These options potentially have compliance costs more closely aligned with toxic pollutant reductions. EPA considered the following alternative options for today's final rule:

Option A: No change in current regulation;

Option B: Option 2 with a low-flow exclusion; and

Option C: Upgrading facilities currently covered by part 413 to the PSES of part 433.

Option D: Pollution Prevention Option. All facilities in the MFJS subcategory are currently subject to part 413, part 433 or both.

As discussed in section IV.B.1 of today's final rule, based on comments, EPA has revised its methodology for estimating compliance costs and pollutant loadings for Option 2, low-flow exclusions (Option B), and the "upgrade" option (Option C) previously described. Using information from this revised analysis, EPA concludes that neither of these alternative options (Options B or C) are economically achievable. EPA rejected Options B and C as greater than 10% of existing indirect dischargers not covered by part 433 close at the upgrade option.

EPA also solicited comment in the January 2001 proposal on a pollution prevention alternative for indirect dischargers in this subcategory (Option D). Commentors supported option D and stated that the pollution prevention practices identified by EPA in the January 2001 proposal represent environmentally sound practices for the metal finishing industry. The commentors also stated that Option D should, however, be implemented on a voluntary basis similar to the National Metal Finishing Strategic Goals Program (*see* 66 FR 511). Control authorities also commented that Option D may increase their administrative burden because of additional review of facility operations and compliance with the approved pollution prevention plan, and enforcement of Option D may be more difficult than other options considered. EPA is not promulgating Option D for facilities in the MFJS subcategory for the final rule due to the increased administrative burden on pretreatment control authorities and potential problems enforcing Option D. Section 15 of the TDD describes many of the pollution prevention practices that were considered for Option D. These pollution prevention practices may be useful in helping facilities lower operating costs, improve environmental performance, and foster other important benefits.

EPA is not establishing PSES for existing indirect dischargers in the MFJS subcategory. Wastewater discharges to POTWs from facilities in this subcategory will remain regulated by general pretreatment standards (part 403), and parts 413 and/or 433, as applicable. EPA also notes that facilities regulated by parts 413 and/or 433 PSES must comply with part 433 PSNS if the changes to their facilities are determined to make them new sources.

4. Pretreatment Standards for New Sources (PSNS)

EPA proposed to establish PSNS for indirect dischargers in the MFJS subcategory based on the Option 4 technology. Option 4 technology is similar to Option 2 (including Option 2 flow control and pollution prevention) but includes oils removal using ultrafiltration and solids separation by a microfilter (instead of a clarifier). As explained in section VI.A.4, EPA concluded its database is insufficient to support a determination that the Option 4 standards are technically achievable. Consequently, EPA is today rejecting Option 4 technology as the basis for PSNS in the MFJS subcategory.

For today's final rule EPA evaluated setting MFJS PSNS based on the Option 2 technology and assessed the financial burden to new MFJS indirect dischargers. Specifically, EPA's 'barrier to entry' analysis identified whether MFJS PSNS based on the Option 2 technology would pose sufficient financial burden on new MFJS facilities to constitute a material barrier to entry into the MP&M point source category.

EPA projects a barrier to entry for MFJS PSNS based on the Option 2 technology as 8% of MFJS indirect dischargers have after-tax compliance costs between 1–3% of revenue, 5% have after-tax compliance costs between 3–5% of revenue, and 6% have after-tax compliance costs greater than 5% of revenue. Consequently, EPA is today rejecting Option 2 technology as the basis for PSNS in the MFJS subcategory, and is not revising PSNS for new MFJS indirect dischargers. Wastewater discharges to POTWs from facilities in this subcategory will remain regulated by local limits, general pretreatment standards (part 403), and part 433, as applicable. See section 11 of the TDD for a description of how these new source compliance costs were developed and Chapter 9 of the EEBA for a description of the framework EPA used for the barrier to entry analysis and general discussion of the results.

C. Printed Wiring Board Subcategory

EPA is not revising any limitations or standards for facilities that would have been subject to this subcategory. Such facilities will continue to be regulated by the General Pretreatment Standards (part 403), local limits, permit limits, and parts 413 and/or 433, as applicable.

1. BPT/BCT/BAT

EPA proposed to establish BPT/BCT/BAT for direct dischargers in the PWB subcategory based on the Option 2 technology (*see* section VI.A for a description of Option 2). EPA evaluated the cost of effluent reductions, pollutant reductions, and the economic achievability of compliance with BPT/BCT/BAT limitations based on the Option 2 technology. Based on revisions and corrections to the EPA Cost & Loadings Model discussed in the NODA and in section IV.B.1 of today's final rule, EPA has concluded that revision of the national regulation is not warranted for this subcategory.

Based on MP&M survey information, EPA estimates that compliance with BPT/BCT/BAT limitations based on the Option 2 technology results in no closures of the existing eight direct dischargers in the PWB subcategory. However, EPA decided not to establish BPT/BAT limitations based on the Option 2 technology for the PWB subcategory for the following reasons: (1) EPA identified only eight existing PWB direct dischargers and all of these PWB direct dischargers are currently regulated by existing effluent guidelines (part 433); and (2) the costs of Option 2 are disproportionate to the estimated toxic pollutant reductions. EPA estimates compliance cost of $0.3 million (2001$) with only 186 toxic pound-equivalents (PE) being removed. This equates to a cost-effectiveness value (in 1981$) of approximately $900/PE. EPA concludes that for existing direct dischargers in the PWB subcategory, Option 2 is not the best practicable control technology, best conventional pollutant control technology, or best available technology economically achievable. EPA has decided not to establish new BPT, BCT, or BAT limitations for existing PWB direct dischargers based on the Option 2 technology, which will remain subject to part 433.

2. New Source Performance Standards (NSPS)

EPA proposed to establish NSPS for new direct dischargers in the PWB subcategory based on the Option 4 technology. Option 4 technology is similar to Option 2 (including Option 2 flow control and pollution prevention) but includes oils removal using ultrafiltration and solids separation by a microfilter (instead of a clarifier). As explained in section VI.A.4, EPA

concluded its database is insufficient to support a determination that the Option 4 standards are technically achievable. Consequently, EPA is today rejecting Option 4 technology as the basis for NSPS in the PWB subcategory.

For today's final rule EPA evaluated setting PWB NSPS based on the Option 2 technology. EPA reviewed its database for establishing PWB NSPS based on the Option 2 technology as commentors indicated the proposed standards were not technically achievable. In response to these comments, EPA reviewed all the information currently available on PWB facilities employing the Option 2 technology basis. EPA now concludes that the PWBs Option 2 database can only be used to establish limitations for copper, nickel, and tin. In order to assess the difference between current NSPS requirements (from part 433) for PWB facilities and those under consideration here, EPA estimated the incremental quantities of copper, nickel, and tin that would be reduced if a new PWB facility were required to meet NSPS based on the Option 2 technology rather than NSPS based on 433. EPA analysis shows minimal amounts of pollutant reductions based on more stringent requirements on copper, nickel, and tin.

Consequently, EPA is today rejecting Option 2 technology as the basis for NSPS in the PWB subcategory based on the small incremental quantity of toxic pollutants that would be reduced in relation to existing requirements. EPA is not establishing NSPS for new PWB direct dischargers and is not revising existing NSPS for new PWB direct dischargers. Wastewater discharges from these facilities in this subcategory will remain regulated by permit limits and part 433 as applicable. *See* section 11 of the TDD for a description of how these new source compliance costs were developed and Chapter 9 of the EEBA for a description of the framework EPA used for the barrier to entry analysis and general discussion of the results.

3. Pretreatment Standards for Existing Sources (PSES)

EPA proposed to establish PSES for existing indirect dischargers in the PWB subcategory based on the Option 2 technology. Based on the revisions and corrections to the EPA Cost & Loadings Model discussed in the NODA and in section IV.B.1 of today's final rule, EPA rejected promulgating PSES for existing indirect dischargers in the PWB subcategory based on the Option 2 technology for the following reasons: (1) All PWB indirect dischargers are currently regulated by existing effluent guidelines (parts 413 or 433 or both, as applicable); (2) EPA estimates that compliance with PSES based on the Option 2 technology will result in the closure of 6.5% of the existing indirect dischargers in this subcategory (55 of 840 existing PWB indirect dischargers); and (3) EPA determined that the toxic pollutant reductions are very expensive per pound removed (the cost-effectiveness value (in 1981$) is $455/PE). EPA has determined that Option 2 technology is not the best available technology economically achievable for existing indirect dischargers in the PWB subcategory, therefore is not establishing PWB PSES based on the Option 2 technology.

As discussed in the June 2002 NODA (*see* 67 FR 38802), EPA also considered a number of alternative options whose economic impacts would be less costly than Option 2 technology. These options potentially have compliance costs more closely aligned with toxic pollutant reductions. EPA considered the following alternative options for today's final rule:

Option A: No change in current regulation;

Option B: Option 2 with a higher low-flow exclusion; and

Option C: Upgrading facilities currently covered by part 413 to the PSES of part 433

EPA notes that all facilities in the PWB subcategory are currently subject to part 413, part 433 or both.

As discussed in section IV.B.1 of today's final rule, based on comments, EPA has revised its methodology for estimating compliance costs and pollutant loadings for Option 2, higher low-flow exclusions (Option B); and the "upgrade" option (Options C) previously described. Using information from this revised analysis, EPA rejected Options B and C as: (1) Greater than 10% of existing indirect dischargers not covered by part 433 close at the upgrade option; or (2) the incremental compliance costs of the upgrade options were too great in terms of toxic removals (cost-effectiveness values (in 1981$) in excess of $833/PE). Therefore EPA is not revising PSES for existing indirect dischargers in the PWB subcategory. Wastewater discharges to POTWs from facilities in this subcategory will remain regulated by general pretreatment standards (part 403) and parts 413 and/or 433, as applicable. EPA also notes that facilities regulated by parts 413 and/or 433 PSES must comply with part 433 PSNS if the changes to their facilities are determined to make them new sources.

4. Pretreatment Standards for New Sources (PSNS)

EPA proposed to establish PSNS for indirect dischargers in the PWB subcategory based on the Option 4 technology. Option 4 technology is similar to Option 2 (including Option 2 flow control and pollution prevention) but includes oils removal using ultrafiltration and solids separation by a microfilter (instead of a clarifier). As explained in section VI.A.4, EPA concluded its database is insufficient to support a determination that the Option 4 standards are technically achievable. Consequently, EPA is today rejecting Option 4 technology as the basis for PSNS in the PWB subcategory.

For today's final rule EPA evaluated setting PWB PSNS based on the Option 2 technology and assessed the financial burden to new PWB indirect dischargers. Specifically, EPA's 'barrier to entry' analysis identified whether PWB PSNS based on the Option 2 technology would pose sufficient financial burden on new PWB facilities to constitute a material barrier to entry into the MP&M point source category.

EPA projects a barrier to entry for PWB PSNS based on the Option 2 technology as 3% of PWB indirect dischargers have after-tax compliance costs between 1 to 3% of revenue and 4% have after-tax compliance costs greater than 5% of revenue. Consequently, EPA is today rejecting Option 2 technology as the basis for PSNS in the PWB subcategory. EPA has selected "no further regulation" for new PWB indirect dischargers and is not revising PSNS for new PWB indirect dischargers. Wastewater discharges to POTWs from facilities in this subcategory will remain regulated by local limits, general pretreatment standards (part 403), and part 433, as applicable. See section 11 of the TDD for a description of how these new source compliance costs were developed and Chapter 9 of the EEBA for a description of the framework EPA used for the barrier to entry analysis and general discussion of the results.

D. Non-Chromium Anodizing Subcategory

EPA is not revising limitations or standards for any facilities that would have been subject to this subcategory. Such facilities will continue to be regulated by the General Pretreatment Standards (part 403), local limits, permit limits, and parts 413 and/or 433, as applicable.

1. BPT/BCT/BAT

As previously discussed, after publication of the June 2002 NODA EPA conducted another review of all NCA facilities in the MP&M questionnaire database to determine the destination of discharged wastewater (*i.e.*, either directly to surface waters or indirectly to POTWs or both) and the applicability of the final rule to discharged wastewaters. As a result of this review, EPA did not identify any NCA direct discharging facilities or NCA facilities that do not discharge wastewater (*i.e.*, zero discharge or contract haulers) or do not use process water (dry facilities) in its rulemaking record. All of the NCA facilities in EPA's database are indirect dischargers. Therefore, EPA cannot evaluate treatment systems at direct dischargers. As a result, EPA transferred cost and pollutant loading data from the best performing indirect facilities in order to evaluate direct discharging limitations in this subcategory.

In 2001, EPA proposed to establish BPT/BCT/BAT limitations for direct dischargers in the NCA subcategory based on the Option 2 technology. EPA evaluated the cost of effluent reductions, quantity of pollutant reductions, and the economic achievability of compliance with BPT/BCT/BAT limitations based on the Option 2 technology. Based on the revisions and corrections to the EPA Cost & Loadings Model discussed in the NODA and in section IV.B.1 of today's final rule, the costs of the Option 2 technology were disproportionate to the projected toxic pollutants reductions (cost-effectiveness values (in 1981$) in excess of $1,925/PE).

EPA decided not to establish BPT/BCT/BAT limitations based on the Option 2 technology for the NCA subcategory for following reasons: (1) EPA identified no NCA direct dischargers; and (2) the costs of Option 2 are disproportionate to the estimated toxic pollutant reductions (*i.e.*, $1,925/PE). EPA concludes that for existing direct dischargers in the NCA subcategory, Option 2 is not the best practicable control technology, best conventional pollutant control technology, or best available technology economically achievable. EPA has decided not to establish new BPT, BCT, or BAT limitations for existing NCA direct dischargers based on the Option 2 technology. EPA identified no NCA direct dischargers through its survey efforts. However, if such facilities do exist, they would be subject to part 433.

2. New Source Performance Standards (NSPS)

EPA proposed to establish NSPS for direct dischargers in the NCA subcategory based on the Option 2 technology. For today's final rule EPA evaluated setting NCA NSPS based on the Option 2 technology and assessed the financial burden to new NCA direct dischargers. Specifically, EPA's 'barrier to entry' analysis identified whether NCA NSPS based on the Option 2 technology would pose sufficient financial burden on new NCA facilities to constitute a material barrier to entry into the MP&M point source category.

EPA projects a barrier to entry for NCA NSPS based on the Option 2 technology as approximately 26% of NCA direct dischargers have new source compliance costs that are between 3% and 5% of revenue. Consequently, EPA is today rejecting Option 2 technology as the basis for NSPS in the NCA subcategory. EPA has selected "no further regulation" for new NCA direct dischargers and is not revising NSPS for new NCA direct dischargers, which will remain subject to part 433. See section 11 of the TDD for a description of how these new source compliance costs were developed and Chapter 9 of the EEBA for a description of the framework EPA used for the barrier to entry analysis and general discussion of the results.

3. Pretreatment Standards for Existing and New Sources (PSES/PSNS)

EPA proposed "no further regulation" for existing and new indirect dischargers in the NCA subcategory. EPA based this decision on the economic impacts to indirect dischargers associated with Option 2 and the small quantity of toxic pollutants discharged by facilities in this subcategory, even after a economically-achievable flow cutoff is applied (*see* 66 FR 467). For the reasons set out in the 2001 proposal, EPA has decided not to establish new regulations and is not establishing PSES or PSNS in the NCA subcategory. These facilities remain subject to parts 413 or 433, or both, as applicable. EPA also notes that facilities regulated by parts 413 and/or 433 PSES must comply with part 433 PSNS if the changes to their facilities are determined to make them new sources.

E. Steel Forming & Finishing Subcategory

EPA is not revising limitations or standards for any facilities that would have been subject to this subcategory. Such facilities will continue to be regulated by the General Pretreatment Standards (part 403), local limits, permit limits, and Iron & Steel effluent limitations guidelines (part 420) as applicable.

1. BPT/BCT/BAT

EPA proposed to establish BPT/BCT/BAT for existing direct dischargers in the SFF subcategory in this part (40 CFR part 438) based on the Option 2 technology (*see* section VI.A for a description of Option 2). For the final rule, EPA evaluated the cost of effluent reductions, pollutant reductions, and the economic achievability of compliance with BPT/BCT/BAT limitations based on the Option 2 technology. Based on the revisions and corrections to the EPA Cost & Loadings Model discussed in the NODA and in section IV.B.1 of today's final rule, EPA determined that the compliance costs of Option 2 are not economically achievable. EPA estimates that compliance with BPT/BCT/BAT limitations based on the Option 2 technology will result in the closure of 17% of the existing direct dischargers in this subcategory (7 of 41 existing SFF direct dischargers). EPA concludes that for existing direct dischargers in the SFF subcategory, Option 2 is not the best practicable control technology, best conventional pollutant control technology, or best available technology economically achievable, and therefore, EPA is not establishing new BPT, BCT, or BAT limitations for existing SFF direct dischargers based on the Option 2 technology. These facilities will remain subject to part 420.

2. New Source Performance Standards (NSPS)

EPA proposed to establish NSPS for new direct dischargers in the SFF subcategory based on the Option 4 technology. Option 4 technology is similar to Option 2 (including Option 2 flow control and pollution prevention) but includes oils removal using ultrafiltration and solids separation by a microfilter (instead of a clarifier). As explained in section VI.A.4, EPA concluded its database is insufficient to support a determination that the Option 4 standards are technically achievable. Consequently, EPA is today rejecting Option 4 technology as the basis for NSPS in the SFF subcategory. EPA has selected "no further regulation" for new SFF direct dischargers and is not revising NSPS for new SFF direct dischargers, which will remain subject to part 420.

3. Pretreatment Standards for Existing Sources (PSES)

EPA proposed to establish PSES for existing indirect dischargers in the SFF subcategory based on the Option 2 technology. Based on the revisions and corrections to the EPA Cost & Loadings

Model discussed in the NODA and in section IV.B.1 of today's final rule, EPA estimates that compliance with PSES based on the Option 2 technology will result in the closure of 9% of the existing indirect dischargers in this subcategory (10 of 112 existing SFF indirect dischargers). Option 2 technology is not economically achievable.

EPA has determined that Option 2 technology is not the best available technology economically achievable for existing indirect dischargers in the SFF subcategory, and therefore EPA is not revising PSES for this subcategory based on the Option 2 technology. Wastewater discharges to POTWs from these facilities will remain regulated by general pretreatment standards (part 403) and part 420.

4. Pretreatment Standards for New Sources (PSNS)

EPA proposed to establish PSNS for indirect dischargers in the SFF subcategory based on the Option 4 technology. Option 4 technology is similar to Option 2 (including Option 2 flow control and pollution prevention) but includes oils removal using ultrafiltration and solids separation by a microfilter (instead of a clarifier). As explained in section VI.A.4, EPA concluded its database is insufficient to support a determination that the Option 4 standards are technically achievable. Consequently, EPA is today rejecting Option 4 technology as the basis for PSNS in the SFF subcategory. EPA has selected "no further regulation" for new SFF indirect dischargers and is not revising PSNS for new SFF indirect dischargers. These facilities will remain subject to part 420.

F. Oily Wastes Subcategory

EPA is promulgating limitations and standards for existing and new direct dischargers in the Oily Wastes subcategory based on the proposed Option 6 technology (*see* section VI.F.1). EPA is not promulgating pretreatment standards for existing or new indirect dischargers in this subcategory.

1. Best Practicable Control Technology (BPT)

EPA is establishing BPT pH limitations and daily maximum limitations for two pollutants, oil and grease as hexane extractable material (O&G (as HEM)) and total suspended solids (TSS), for direct dischargers in the Oily Wastes subcategory based on the proposed technology option (Option 6). Option 6 technology includes the following treatment measures: (1) in-process flow control and pollution prevention; and (2) chemical emulsion breaking followed by oil water separation (*see* section 9 of the TDD for today's final rule for additional details on the Option 6 technology).

The Agency concluded that the Option 6 treatment technology represents the best practicable control technology currently available and should be the basis for the BPT Oily Wastes limitations for the following reasons. First, this technology is available technology readily applicable to all facilities in the Oily Wastes subcategory. Approximately 42% of the direct discharging facilities in the Oily Wastes subcategory currently employ the Option 6 technology. Second, the cost of compliance with these limitations in relation to the effluent reduction benefits is not wholly disproportionate. None of these wastewater discharges are currently subject to national effluent limitations guidelines and the final rule will control wastewater discharges from a significant number of facilities (2,382 facilities).

EPA estimates that compliance with BPT limitations based on Option 6 technology will result in no closures of the existing direct dischargers in the Oily Wastes subcategory. Moreover, the adoption of this level of control will represent a significant reduction in pollutants discharged into the environment by facilities in this subcategory. For facilities in the Oily Wastes subcategory at Option 6, EPA estimates an annual compliance cost of $13.8 million (pre-tax, 2001$) and 480,325 pounds of conventional pollutants removed from current discharges into the Nation's waters at a cost of $28.73/pound-pollutant removed (2001$) (*see* Table VII–1). EPA has, therefore, determined the total cost of effluent reductions employing the Option 6 technology are reasonable in relation to the effluent reduction benefits. (In estimating the pounds of pollutant removed by implementing Option 6 technology for direct dischargers in the Oily Wastes subcategory, EPA used the sum of O&G (measured as HEM) and TSS pounds removed to avoid any significant double counting of pollutants).

The 2001 proposal also contains detailed discussions explaining why EPA rejected BPT limitations based on other BPT technology options (*see* 66 FR 457). The information in the record for today's final rule provides no basis for EPA to change this conclusion.

In the 2001proposal, in addition to pH, O&G (as HEM), and TSS, EPA also proposed to regulate sulfide. In today's final rule, EPA has not established a sulfide limitation because it may serve as a treatment chemical (*see* TDD). EPA also proposed three alternatives to control discharges of toxic organics in MP&M process wastewaters: (1) Meet a numerical limit for the total sum of a list of specified organic pollutants (similar to the Total Toxic Organic (TTO) parameter used in the Metal Finishing Effluent Limitations Guidelines); (2) meet a numerical limit for Total Organic Carbon (TOC) as an indicator parameter; or (3) develop and certify the implementation of an organic chemicals management plan. EPA evaluated the analytical wastewater and treatment technology data from OWS facilities and concluded it should not establish a separate indicator parameter or control mechanism for toxic organics. Optimizing the separation of oil and grease from wastewater using the Option 6 technology will similarly optimize the removal of toxic organic pollutants amenable to this treatment technology. Consequently, EPA is effectively controlling toxic organics and other priority and non-conventional pollutant discharges in OWS process wastewaters by regulating O&G (as HEM).

In its analyses, EPA estimated that facilities will monitor once per month for O&G (as HEM) and TSS. EPA expects that 12 data points for each pollutant per year will yield a meaningful basis for establishing compliance with the promulgated limitations through long-term trends and short-term variability in O&G (as HEM) and TSS pollutant discharge loading patterns.

Although EPA is not changing the technology basis from that proposed, EPA is revising all of the proposed Oily Wastes subcategory BPT limitations. This is a result of a recalculation of the limitations after EPA revised the data sets used to calculate the promulgated limitations to reflect changes including corrections and additional data (*see* 67 FR 38754).

2. Best Conventional Pollutant Control Technology (BCT)

In deciding whether to adopt more stringent limitations for BCT than BPT, EPA considered whether there are technologies that achieve greater removals of conventional pollutants than adopted for BPT, and whether those technologies are cost-reasonable under the standards established by the CWA. EPA generally refers to the decision criteria as the "BCT cost test." EPA is promulgating effluent limitations for conventional parameters (*e.g.*, pH, TSS, O&G) equivalent to BPT for this subcategory because it identified no technologies that can achieve greater removals of conventional pollutants than the selected BPT technology basis that also pass the BCT cost test. EPA evaluated the addition of ultrafiltration technology to the BPT technology basis as a means to obtain further O&G reductions. However, this technology option failed the BCT cost test. For a more detailed description of the BCT cost test and details on EPA's analysis, see Chapter 4 of the EEBA.

3. Best Available Technology Economically Achievable (BAT)

EPA proposed to control toxic and non-conventional pollutants by establishing BAT limitations based on Option 6 technology. EPA has now decided not to establish BAT toxic and non-conventional limitations based on the Option 6 technology. As described in section VI.F.1, the BPT technology basis is readily available, and the limitations are cost reasonable. However the additional costs associated with compliance with Option 6-generated BAT limitations are not warranted. EPA has determined that these costs—primarily monitoring costs—are not warranted in view of the small quantity of additional effluent reduction (if any) the BAT limitations would produce. As explained above, EPA has determined that, the BPT limitation on O&G (measured as HEM) will effectively control toxic and non-conventional discharges in OWS process wastewaters. EPA has not identified any more stringent economically-achievable treatment technology option beyond BPT technology (Option 6) which it considered to represent BAT level of control applicable to Oily Wastes subcategory facilities.

For the reasons explained above, EPA has concluded that it should not establish BAT limitations for specific pollutant parameters for Oily Waste operations. EPA notes that permit writers retain the authority to establish, on a case-by-case basis under section 301(b)(1)(C) of the CWA, toxic effluent limitations that are necessary to meet State water quality standards.

4. New Source Performance Standards (NSPS)

EPA is promulgating NSPS that would control pH and the same conventional pollutants controlled at the BPT and BCT levels. The selected technology basis for NSPS for this subcategory for today's final rule is Option 6. This is unchanged from the proposal. EPA projects no barrier to entry for new source direct dischargers associated with Option 6 as: (1) Option 6 technology is currently used at existing direct dischargers (*i.e.*, Option 6 technology is technically available); and (2) there is no barrier to entry for new sources.

EPA evaluated the economic impacts for existing direct dischargers associated with compliance with limitations based on Option 6 and found Option 6 to be economically achievable (no closures projected). EPA expects compliance costs to be lower for new sources as new sources can use Option 6 technology without incurring retrofitting costs (as is required for some existing sources). Additionally, EPA projects no barrier to entry for OWS NSPS based on the Option 6 technology as approximately 97% of OWS direct dischargers have after-tax compliance costs less than 1% of revenue and 3% have after-tax compliance costs between 1 to 3% of revenue.

Consequently, EPA selected Option 6 technology as the basis for NSPS in the OWS. See section 11 of the TDD for a description of how these new source compliance costs were developed and Chapter 9 of the EEBA for a description of the framework EPA used for the barrier to entry analysis and general discussion of the results.

In addition, EPA also evaluated and rejected more stringent technology options for OWS NSPS (*i.e.*, Options 8 and 10). EPA reviewed its database for the Option 8 and 10 technologies and found that the database for Option 8 and 10 technologies is insufficient (*i.e.*, no available data) or the costs are not commensurate with the pollutant removals (*see* 66 FR 457). Since EPA's database did not contain Option 10 treatability data from oily subcategory facilities, EPA considered transferring limitations for Option 10 from the Shipbuilding Dry Docks or Railroad Line Maintenance subcategories. EPA ultimately rejected this approach, however, because influent wastewaters in the Shipbuilding Dry Docks or Railroad Line Maintenance subcategories are generally less concentrated and contain less pollutants than wastewaters discharged by OWS facilities.

5. Pretreatment Standards for Existing Sources (PSES)

EPA proposed to establish PSES for existing indirect dischargers in the Oily Wastes subcategory based on the Option 6 technology (*i.e.*, the same technology basis that is being promulgated for BPT/BCT/NSPS for this subcategory) with a "low-flow" exclusion of 2 MGY to reduce economic impacts on small businesses and administrative burden for control authorities. Based on the revisions and corrections to the EPA Cost & Loadings Model discussed in the NODA and in section IV.B.1 of today's final rule, and previously discussed, EPA determined that the toxic pollutant reductions are very expensive in dollars per toxic pounds removed. The cost-effectiveness value (in 1981$) for Option 6 for indirect dischargers in the Oily Wastes subcategory is in excess of $3,500/PE removed. This suggests that the technology is not truly "available." EPA has determined that Option 6 technology with a 2 MGY low-flow cutoff is not the best available technology economically achievable for existing indirect dischargers in the OWS. Therefore, EPA is not establishing PSES for this subcategory based on Option 6 technology with a 2 MGY low-flow cutoff.

As discussed in the June 2002 NODA (*see* 67 FR 38804), EPA also considered alternative options for which economic impacts could be less costly than Option 6 technology with a 2 MGY low-flow cutoff. These options potentially have compliance costs more closely align with toxic pollutant reductions. EPA considered the following alternative options for today's final rule:

Option A: No regulation;
Option B: Option 6 with a higher low-flow exclusion;

As discussed in section IV.B.1 of today's final rule, based on comments, EPA has revised its methodology for estimating compliance costs and pollutant loadings for Option 6, and higher low-flow exclusions (Option B) previously described. Using information from this revised analysis, EPA concludes that none of the alternative low-flow exclusions (even as high as 6.25 MGY) represented "available technology" because the costs associated with these alternatives were not commensurate with the projected toxic pollutants reductions. Therefore, EPA is not establishing PSES for existing indirect dischargers in the Oily Wastes subcategory (Option A). Since EPA did not identify another technology basis that was more cost-effective, EPA is not promulgating PSES for existing indirect dischargers in the Oily Wastes subcategory. These facilities remain subject to the General Pretreatment regulations (40 CFR part 403) and local limits, as applicable.

6. Pretreatment Standards for New Sources (PSNS)

EPA proposed to establish PSNS for indirect dischargers in the Oily Wastes subcategory based on the Option 6 technology (*i.e.*, the same technology basis that is being promulgated for NSPS for this subcategory) with a "low-flow" exclusion of 2MGY to reduce economic impacts on small businesses

and reduce administrative burden to POTWs.

For today's final rule EPA evaluated setting OWS PSNS based on Option 6 technology and assessed the financial burden of OWS PSNS based on Option 6 technology on new OWS indirect dischargers. Specifically, EPA's 'barrier to entry' analysis identified whether OWS PSNS based on Option 6 technology would pose sufficient financial burden on new OWS facilities to constitute a material barrier to entry into the MP&M point source category.

EPA projects a barrier to entry for OWS PSNS based on Option 6 technology as approximately as 1% of OWS indirect dischargers have after-tax compliance costs between 1 to 3% of revenue and 5% have after-tax compliance costs between 3 to 5% of revenue. Consequently, EPA is today rejecting Option 6 technology as the basis for PSNS in the OWS. EPA has selected "no further regulation" for new OWS indirect dischargers and is not revising PSNS for new OWS indirect dischargers. Wastewater discharges to POTWs from facilities in this subcategory will remain regulated by local limits and general pretreatment standards (part 403), as applicable. See section 11 of the TDD for a description of how these new source compliance costs were developed and Chapter 9 of the EEBA for a description of the framework EPA used for the barrier to entry analysis and general discussion of the results.

G. Railroad Line Maintenance Subcategory

EPA is not establishing limitations or standards for any facilities that would have been subject to this subcategory. Permit writers and control authorities will establish controls using BPJ to regulate wastewater discharges from these facilities.

1. Best Practicable Control Technology (BPT)

For today's final rule EPA evaluated setting BPT limitations for two pollutants, TSS and O&G (as HEM), for direct dischargers in the RRLM subcategory based on a different technology basis from that proposed in 2001. EPA proposed Option 10 technology (*see* section VI.H.1 for a description) as the technology basis for BPT. However, as discussed in the NODA, EPA considered promulgating limitations for the final rule based on the Option 6 technology for the RRLM subcategory (*see* 67 FR 38804). Option 6 technology includes the following: (1) in-process flow control and pollution prevention; and (2) chemical emulsion breaking followed by oil water separation (*see* section 9 of the TDD for today's final rule for additional details on the Option 6 technology).

For the RRLM subcategory, EPA changed the technology basis considered for the final rule and eliminated consideration of regulating BOD_5 based on comments and data submitted by the American Association of Railroads (AAR). This organization is a trade association which currently represents all facilities in this subcategory. As discussed in the NODA (*see* 67 FR 38755), for each RRLM direct discharging facility known to them, AAR provided current permit limits, treatment-in-place, and summarized information on each facility's measured monthly average and daily maximum values. AAR also provided a year's worth of long-term monitoring data for each facility (*see* section 15.1 of the public record for the AAR surveys). This data shows that, contrary to EPA's initial findings in the 2001 proposal, most RRLM direct dischargers treat their wastewater by chemical emulsion breaking/oil water separation (Option 6). Based on this updated information, EPA is today rejecting Option 10 as the technology basis for BPT. The 2001 proposal also contains detailed discussions on why EPA rejected BPT limitations based on other BPT technology options (*see* 66 FR 451). The information in the record for today's final rule provides no basis for EPA to change this conclusion.

As previously discussed, after publication of the June 2002 NODA EPA also conducted another review of all RRLM facilities in the MP&M questionnaire database to determine the destination of discharged wastewater (*i.e.*, either directly to surface waters or indirectly to POTWs or both) and the applicability of the final rule to discharged wastewaters. As a result of this review, EPA determined its questionnaire database did not accurately represent direct dischargers in this subcategory. Consequently, for today's final rule EPA used the information supplied by AAR as a basis for its analyses and conclusions on direct dischargers in this subcategory.

AAR provided information on 27 facilities. EPA reviewed the information on each of these facilities to ensure they were direct dischargers, discharged wastewaters resulting from operations subject to this final rule, and discharged "process" wastewaters as defined by the final rule. As a result of this review, EPA concluded 18 of the facilities for which AAR provided information do not directly discharge wastewaters exclusively from oily operations (*see* section V.A). Therefore, EPA's final database consists of 9 direct discharging RRLM facilities. EPA considered promulgating BPT limitations for these 9 direct discharging RRLM facilities based on the Option 6 technology. The Agency made the following conclusions during its evaluation of Option 6 for this subcategory.

First, this technology is readily applicable to all facilities in the RRLM subcategory. All direct discharging facilities in the RRLM subcategory currently employ wastewater treatment equivalent or better than chemical emulsion breaking/oil water separation (Option 6). Second, EPA estimates that compliance with BPT limitations based on Option 6 technology will result in no closures of the existing direct dischargers in the RRLM subcategory. Moreover, none of the facilities identified by AAR are small businesses as defined by the Small Business Administration (SBA). Third, most of the RRLM facilities identified by AAR have NPDES daily maximum permit limitations for O&G (as HEM) and TSS as 15 and 45 mg/L, respectively. Based on AAR survey information, EPA concludes that these O&G (as HEM) and TSS daily maximum limits represent the average of the best performances of facilities utilizing Option 6 technology.

EPA evaluated the compliance costs and load reductions associated with establishing BPT daily maximum limitations equivalent to 15 and 45 mg/L for O&G (as HEM) and TSS, respectively. EPA concluded that all of the facilities identified by AAR currently meet a daily maximum oil and grease limit of 15 mg/L and most currently monitor once per month. Therefore, EPA estimates no pollutant load reductions and minimal incremental annualized compliance costs for the monitoring associated with a BPT daily maximum limitation equivalent to 15 mg/L for O&G (as HEM). For TSS, with the exception of one facility, all RRLM facilities identified by AAR currently meet a daily maximum limit of 45 mg/L. For this one facility, EPA estimates the TSS pollutant loadings reductions associated with a BPT daily maximum limitation equivalent to 45 mg/L to be less than 1 pound of TSS per day. Given the fact that the few facilities in this subcategory are already essentially achieving the limitations under consideration, EPA has determined that additional national regulation is not warranted. As a result of this analysis, EPA concludes that it is more appropriate to address permits limitations for this industry on a case-by-case basis and that additional national regulation of direct discharges in the RRLM subcategory at this time is unwarranted.

2. Best Conventional Pollutant Control Technology (BCT)

In deciding whether to adopt more stringent limitations for BCT than BPT, EPA considers whether there are technologies that achieve greater removals of conventional pollutants than adopted for BPT, and whether those technologies are cost-reasonable under the standards established by the CWA. EPA generally refers to the decision criteria as the "BCT cost test." For a more detailed description of the BCT cost test and details of EPA's analysis, see Chapter 4 of the EEBA.

For the reasons discussed above, EPA is not establishing BCT limitations for the RRLM subcategory.

3. Best Available Technology Economically Achievable (BAT)

As proposed, EPA is not establishing BAT regulations for the RRLM subcategory. EPA did not propose BAT regulations because the Agency concluded that facilities in this subcategory discharge very few pounds of toxic pollutants. EPA estimates that six facilities discharge 34 PE per year to surface waters, or about 6 PE per year per facility. The Agency based the loadings calculations on EPA sampling data, which found very few priority toxic pollutants at treatable levels in raw wastewater. EPA has received no data or information during the rulemaking that contradicts these conclusions. Therefore, nationally-applicable regulations for toxic and nonconventional pollutants are unnecessary at this time and direct dischargers will remain subject to permit limitations for toxic and nonconventional pollutants established on a case-by-case basis using BPJ.

4. New Source Performance Standards (NSPS)

EPA proposed setting NSPS based on Option 10 technology for this subcategory. For today's final rule EPA considered setting RRLM NSPS based on Option 10 technology and assessed the financial burden of RRLM NSPS based on Option 10 technology on new RRLM direct dischargers. Specifically, EPA's "barrier to entry" analysis identified whether RRLM NSPS based on Option 10 technology would pose sufficient financial burden as to constitute a material barrier to entry into the MP&M point source category.

EPA projects no barrier to entry for RRLM NSPS based on Option 10 technology as: (1) Option 10 technology is currently used at existing RRLM direct dischargers (*i.e.*, Option 10 technology is technically available); and (2) all RRLM direct dischargers have new source compliance costs that are less than 1% of revenue. However, EPA is not promulgating RRLM NSPS based on the Option 10 technology as EPA concludes that it is more appropriate to address limitations for this industry on a case-by-case basis and that national regulation of direct discharges in the RRLM subcategory at this time is unwarranted. *See* section 11 of the TDD for a description of how these new source compliance costs were developed and Chapter 9 of the EEBA for a description of the framework EPA used for the barrier to entry analysis and general discussion of the results.

5. Pretreatment Standards for Existing and New Sources (PSES/PSNS)

EPA proposed not to establish pretreatment standards for existing and new indirect dischargers in the RRLM subcategory based on the small quantity of toxic pollutants discharged to the environment (after POTW treatment) by facilities in this subcategory (*i.e.*, approximately 2 PE removed annually per facility (*see* 66 FR 470–471)). For the same reasons set out in the 2001 proposal, EPA is not promulgating pretreatment standards for existing or new indirect dischargers in this subcategory. These facilities remain subject to the General Pretreatment regulations (40 CFR part 403) and local limits.

H. Shipbuilding Dry Dock Subcategory

EPA is not establishing limitations or standards for any facilities that would have been subject to this subcategory. Permit writers and control authorities will establish controls using BPJ to regulate wastewater discharges from these facilities.

1. BPT/BCT/BAT/NSPS

At the time of the 2001 proposal, EPA identified 6 direct discharging shipbuilding dry dock facilities with multiple discharges. Based on the information in the database at that time, discharges from these facilities contained minimal concentrations of toxic organic and metals pollutants (<9 PE/facility), but substantial quantities of conventional pollutants, particularly oil and grease. Consequently, EPA proposed to establish BPT limitations and NSPS for only two pollutants, TSS and O&G (as HEM), for direct dischargers in the SDD subcategory based on Option 10 technology. This technology includes the following: (1) in-process flow control and pollution prevention; and (2) oil-water separation by chemical emulsion breaking and oil-water separation by dissolved air flotation (*see* section 9 of the TDD for today's final rule for additional details on the Option 10 technology). EPA proposed this technology basis because some existing SDD facilities use this technology and it projected significant reductions in conventional pollutants and determined these reductions were cost reasonable.

Following proposal, EPA received comments and supporting data indicating that its estimates of current pollutant discharges from this subcategory were overestimated. In particular, commentors claimed that current discharges of oil and grease were minimal and that national regulation was not warranted for this subcategory.

For today's final rule, EPA incorporated the additional information provided by commentors into its analysis. EPA continues to conclude that there are six direct discharging shipbuilding dry dock facilities. However, EPA now concludes that direct discharges from these facilities generally contain minimal levels of all pollutants. In particular, EPA's database indicates that regulation of oil and grease in direct discharges from shipbuilding dry docks is unwarranted because current oil and grease discharges from these facilities are not detectable (<5 mg/L) or nearly not detectable. EPA has similarly determined that it should not establish nationally applicable limitations and standards for TSS because TSS discharges are, on average, minimal. The data show that TSS discharges may increase episodically, particularly when the dry dock is performing abrasive blasting operations cleaning. However, EPA has concluded that these episodic discharges from six facilities do not warrant national regulation.

Therefore, nationally-applicable regulations for new and existing SDD direct dischargers are unnecessary at this time and these facilities will remain subject to permit limitations established on a case-by-case basis using BPJ.

2. Pretreatment Standards for Existing and New Sources (PSES/PSNS)

EPA proposed not to establish pretreatment standards for existing and new indirect dischargers in the SDD subcategory based on the small number of facilities in this subcategory and on the small quantity of toxic pollutants removed by the technology options evaluated by EPA at proposal (*i.e.*, less than 26 PE removed annually per facility (*see* 66 FR 471)). For the same reasons set out in the 2001 proposal,

EPA is not promulgating pretreatment standards for existing or new indirect dischargers in this subcategory. These facilities remain subject to the General Pretreatment regulations (40 CFR part 403) and local limits.

VII. Pollutant Reduction and Compliance Cost Estimates

A. Pollutant Reductions

Presented in this section are the pollutant reductions obtainable through the application of Option 6 technology that form the basis of the effluent limitations guidelines for the Oily Wastes subcategory promulgated today. This section summarizes these estimated reductions. Section 12 of the TDD includes the estimated pollutant reductions for options considered but not promulgated, and discusses the loadings determination methodology in detail.

Today's final rule does not establish PSES for any dischargers to POTWs in the MP&M point source category. Therefore, EPA does not project any pollutant reductions from POTWs as a result of today's rule. The following pollutant reductions are related to direct dischargers in the Oily Wastes subcategory.

1. Conventional Pollutant Reductions

The Agency estimates that this regulation will reduce discharges of TSS and O&G (as HEM) by approximately 500,000 pounds per year (*see* Table VII–1).

TABLE VII–1.—REDUCTION IN DIRECT DISCHARGE OF CONVENTIONAL POLLUTANTS AFTER IMPLEMENTATION OF BPT/BCT REGULATIONS PROMULGATED TODAY

Subcategory	Oil and grease pounds/year	Total suspended solids pounds/year	Oil and grease and total suspended solids pounds/year
Oily Wastes	396,079	84,246	480,325

2. Priority and Non-conventional Pollutant Reductions

The Agency did not estimate the reductions in priority and non-conventional metals and organic pollutants because the Agency did not have sufficient COD or other non-conventional data to estimate baseline pollutant discharges. The Agency does expect some non-conventional pollutant removals at OWS facilities complying with limitations and standards based on Option 6 technology.

B. Regulatory Costs

Presented in this section are the regulatory costs EPA projects through the application of Option 6 technology that form the basis of the effluent limitations guidelines for the Oily Wastes subcategory promulgated today. This section summarizes these estimated costs. Section 11 of the TDD includes the estimated regulatory costs for options considered but not promulgated, and discusses the costing methodology in detail.

This preamble, TDD, and EEBA express all cost estimates in this section in terms of 2001 dollars. The cost components reported in this section represent estimates of the investment cost of purchasing and installing equipment, the annual operating and maintenance costs associated with that equipment, additional land requirement costs associated with new equipment, and additional costs for discharge monitoring.

1. Direct Discharge Facilities

Table VII–2 shows the costs EPA estimated for existing direct dischargers in the Oily Wastes subcategory to comply with the BPT/BCT limitations promulgated today.

TABLE VII–2.—ESTIMATED COSTS FOR BPT/BCT

Subcategory	Number of facilities	Total capital and land costs (2001$, millions)	Annual O&M costs (2001$, millions)	Annualized compliance costs (2001$, millions)
Oily Wastes	2,382	6.5	13.1	13.8

2. Indirect Discharge Facilities

Because today's final rule does not establish PSES for any dischargers in the MP&M industry, EPA has not projected compliance costs for facilities that discharge indirectly to POTWs.

VIII. Economic Analyses

A. Introduction and Overview

This section of the preamble presents EPA's estimates of the private and social costs of the regulation, and the expected economic impacts of compliance with the regulation. Measures of economic impact include facility closures and associated losses in employment, firm-level impacts, impacts on government-owned facilities, local community impacts, and international trade. An analysis of impacts on small businesses supports EPA's compliance with the Regulatory Flexibility Act (RFA) as amended by the Small Business Regulatory Enforcement Fairness Act (SBREFA). Section XII.C of this preamble discusses RFA/SBREFA issues. EPA's complete assessment of costs and economic impacts including results for the alternative regulatory options can be found in "*Economic, Environmental, & Benefit Analysis of the Final Metal Products & Machinery Rule*" (hereafter referred to as the "EEBA").

EPA based its regulatory decisions for the final MP&M rule in part on the findings from the facility impact analyses reported in the EEBA and discussed in this section. The economic impact analyses assess how facilities will be affected financially by the final MP&M rule. Key outputs of the facility impact analysis include expected facility closures in the MP&M industries, associated losses in employment, and the number of facilities experiencing financial stress short of closure ("moderate impacts"). The findings from the facility impact analysis also provide the basis for the following analyses:

- A firm-level analysis, which assesses the impact on the financial performance and condition of firms owning MP&M facilities;
- An analysis of impacts on government-owned facilities, which assesses the impact on the financial performance and condition of government entities that own and operate at least one MP&M site;
- An employment effects analysis, which assesses the increase in employment associated with compliance activities, the loss of employment due to facility closures, and the net effect on overall employment;
- A community impact analysis, which assesses the potential impact of employment changes in communities where MP&M facilities are located; and
- A foreign trade analysis, which assesses the effect of the regulation on the U.S. balance of trade.

EPA performed economic impact analyses for three groups of facilities, using different methodologies to evaluate impacts on each group. The three groups are:

- Privately-owned MP&M Facilities, including privately-owned facilities that do not perform railroad line maintenance and are not owned by governments. This major category includes privately-owned businesses in a wide range of sectors or industries, including the segment of facilities that manufacture and rebuild railroad equipment.
- Railroad line maintenance facilities that maintain and repair railroad track, equipment and vehicles.
- Government-owned MP&M facilities operated by municipalities, State agencies and other public sector entities such as State universities and Federal facilities. Many of these facilities repair, rebuild, and maintain buses, trucks, cars, utility vehicles (*e.g.*, snow plows and street cleaners), and light machinery.

The facility impact analysis starts with compliance cost estimates from the EPA engineering analysis and then calculates how these compliance costs would affect the financial condition of MP&M facilities. EPA made several changes to the facility impact methodology between proposal (*see* 66 FR 424) and final regulation. The NODA (*see* 67 FR 38752) and section IV.B.3 of this preamble document these changes, which to a large degree address comments on the proposal impact methodology. The major changes to the economic impact analyses include: (1) Using sector-specific thresholds for the moderate impact analysis tests; (2) using a single financial test, based on net present value, to assess the potential for closures (this test excludes consideration of liquidation values for all MP&M facilities, including the 219 facilities that reported them in their response to the MP&M survey); and (3) using estimated baseline capital outlays in the calculation of cash flow for the net present value test. Other changes to the economic impact methodology include: (1) Using revised cost pass-through coefficients; (2) using sector-specific price indices in updating survey data; and (3) limiting post-compliance tax shields to no greater than reported baseline taxes.

In conducting the facility impact analysis, EPA first eliminated from the analysis those facilities showing materially inadequate financial performance in the baseline, that is, in the absence of the rule. EPA judged these facilities, which are referred to as baseline closures, to be at substantial risk of financial failure regardless of any financial burdens that may result from the MP&M rule. Second, for the remaining facilities, EPA evaluated how compliance costs would likely affect facility financial health. In this analysis of compliance cost impact, EPA accounted for potential price increases that may help facilities cover the cost of compliance. EPA based its estimate of potential price increases on a cost pass-through analysis that estimates how prices might change in response to regulation-induced production cost increases. EPA identified a facility as a regulatory closure if it would have operated under baseline conditions but would fall below an acceptable financial performance level under the new regulatory requirements.

EPA also identified facilities that would likely incur moderate impacts from the rule but that are not expected to close as a result of the rule. EPA used a different methodology to assess moderate impacts for each of three types of MP&M facilities: privately-owned MP&M facilities, railroad line maintenance facilities, and government-owned facilities. EPA established thresholds for two measures of financial performance—interest coverage ratio and pre-tax return on assets—and compared the facilities' performance before and after compliance under each regulatory option with these thresholds. EPA attributes incremental moderate impacts to the rule if both financial ratios exceeded threshold values in the baseline (*i.e.*, there were no moderate impacts in the baseline), but at least one financial ratio fell below the threshold value in the post-compliance case. EPA refers the reader to the full EEBA report for a detailed discussion of the economic impact methodology used for each of these types of MP&M facilities.

B. Economic Costs of Technology Options by Subcategory

The TDD for the final rule presents EPA's engineering estimates of costs that will be incurred by facilities to comply with the final regulation, and the costs for other regulatory options. EPA adjusted the engineering costs from 1996 to 2001 dollars using the *Engineering News-Record* Construction Cost Index (CCI), and adjusted the costs to reflect the effect of taxes using a combined Federal/State corporate income tax rate of 39 percent. EPA calculated the annual equivalent of capital and other one-time costs by annualizing costs at a seven percent discount rate over an estimated 15-year equipment life.

The compliance costs of the rule are the costs incurred by those facilities that EPA estimates will continue to operate in compliance with the rule. Aggregate compliance costs presented in this section differ from the costs presented in sections VI and VII because they exclude costs for facilities that are baseline closures or that close due to regulatory requirements (*see* section VIII.D for estimates of baseline and post-compliance closures). Therefore, they represent only the compliance outlays of facilities that are estimated to continue operations. Section VIII.I presents EPA's estimates of social costs, which include costs for regulatory closures. Table VIII–1 shows the total annualized compliance costs by subcategory for the 2,382 OWS direct dischargers that are: (1) Subject to requirements; (2) make the necessary investments to meet the requirements; and (3) continue operating under the regulation. Facilities in all other subcategories are excluded from the final rule and have no incremental compliance costs.

Total annualized costs are the sum of the annual operating and maintenance costs and the annualized equivalent of capital and other one-time costs. Annualized pre-tax compliance costs in 2001 dollars are estimated at $13.8 million per year for the final rule.

TABLE VIII–1.—TOTAL ANNUALIZED FACILITY* COMPLIANCE COSTS FOR THE OILY WASTES SUBCATEGORY

[pre-tax, million $2001]

Subcategory	Final rule
Oily Wastes	$13.8

TABLE VIII–1.—TOTAL ANNUALIZED FACILITY* COMPLIANCE COSTS FOR THE OILY WASTES SUBCATEGORY—Continued

[pre-tax, million $2001]

Subcategory	Final rule
All Categories: Number of Facilities Operating in the Baseline**	2,382

*This table includes facility compliance costs only. Section VIII.I discusses the social costs of the rule. The estimates in this table exclude baseline and regulatory closures.

**This estimate can be found in section VIII.B.

C. Facility Level Economic Impacts of the Final Rule by Subcategory

1. Baseline Closure Analysis

Table VIII–2 summarizes the estimated baseline closures for direct dischargers. Based on its evaluation, EPA determined that 3,593 facilities (or 8.2 percent) of the estimated 43,858 discharging facilities are baseline closures. The 3,593 baseline closures include 3,511 indirect dischargers (97.7 percent) and 98 direct dischargers (2.7 percent). The total number of facilities classified as indirect and direct dischargers does not equal the total number of dischargers. Some facilities operate in more than one subcategory and have an indirect and direct discharging operation within the same facility. The facilities estimated to close in the baseline analysis are at substantial risk of financial failure independent of the regulation. These facilities were excluded from the post-compliance analysis of regulatory impacts. Data on facility start-ups and closures from the Census *Statistics of U.S. Businesses* indicate that between 6 and 12 percent of facilities in the major metal products manufacturing industries close in any given year. Therefore, EPA's analysis of baseline closures is consistent with this data.

TABLE VIII–2.—SUMMARY OF BASELINE CLOSURES

Subcategory	Total number of dischargers	Number of baseline closures	Percent of baseline closures %	Operating in baseline
General Metals	11,364	880	7.7	10,484
Metal Finishing Job Shops	1,542	50	3.2	1,491
Non-Chromium Anodizer	122	29	23.8	93
Oily Wastes	29,185	2,409	8.3	26,776
Printed Wiring Boards	848	239	28.2	609
Railroad Line Maintenance	826	0	0.0	831
Shipbuilding Dry Dock	14	0	0.0	14
All Subcategories*	43,858	3,593	8.2	40,265

***Note:** The reported total of facilities over all subcategories does not equal the sum of facilities by subcategory because some facilities operate in more than one subcategory and have an indirect and direct discharging operation within the same facility.

2. Facilities Subject to Regulatory Requirements

Of the estimated 40,265 discharging facilities open in the baseline, EPA estimates that 37,880 facilities (or 94 percent) will not be subject to the rule's requirements due to subcategory exclusions. The subcategory exclusions exempt 37,652 indirect dischargers in all subcategories and 259 direct dischargers in seven subcategories from the final rule.

TABLE VIII–3.—SUMMARY FACILITIES SUBJECT TO FINAL RULE

Subcategory	Operating in baseline	Number of facilities excluded	Percent of facilities excluded	Number of facilities subject to final rule
General Metals	10,484	10,484	100.0	0
Metal Finishing Job Shops	1,491	1,491	100.0	0
Non-Chromium Anodizer	93	93	100.0	0
Oily Wastes	26,776	24,394	91.1	2,382
Printed Wiring Boards	609	609	100.0	0
Railroad Line Maintenance	829	829	100.0	0
Shipbuilding Dry Dock	14	14	100.0	0
All Subcategories*	40,265	37,883	94.0	2,382

***Note:** The reported total of facilities over all subcategories does not equal the sum of facilities by subcategory because some facilities operate in more than one subcategory and have an indirect and direct discharging operation within the same facility.

3. Post-Compliance Impact Analysis

EPA estimates that none of the direct discharging facilities operating in the baseline regulation will close as a result of the MP&M rule. With no predicted facility closures, EPA expects no employment losses from the rule. EPA also expects that none of the 2,382 direct discharging facilities operating in the baseline and subject to regulatory requirements will experience moderate financial impacts due to the rule. Chapter 5 of the EEBA includes impact analysis results for alternative regulatory options that EPA considered in developing the final rule.

4. Summary of Facility Impacts

Table VIII–4 summarizes the results of the economic impact analysis for the final rule. EPA estimates that no facilities will close or experience moderate financial impacts. The table presents the annualized compliance cost on both a pre-tax and after-tax basis. The after-tax value represents the cost that privately-owned firms would incur in complying with the regulation because some of the costs are borne by the general tax-paying public through the tax deduction permitted on privately-owned firms' compliance outlays. EPA's after-tax analyses (1) use a combined Federal/State tax rate of 39 percent, and (2) limit tax offsets to compliance costs to not exceed facility-level tax payments as reported in facility questionnaire responses.

TABLE VIII–4.—FACILITY IMPACTS FOR ALL FACILITIES

Number of Facilities Operating in Baseline	40,265
Number of facilities excluded from regulatory requirements	37,883
Number of facilities operating subject to regulatory requirements	2,382
Number of Closures (Severe Impacts)	0
Percent Closing (%)	0.0
Number of Additional Facilities with Moderate Impacts	0
Percent with Moderate Impacts (%)	0.0
Annualized Compliance Costs (pre-tax, million $2001)	$13.8
Annualized Compliance Costs (after tax, million $2001)	$11.9

D. Firm Level Impacts

EPA examined the impacts of the final rule on firms that own MP&M facilities, as well as on the financial condition of the facilities themselves. A firm that owns multiple MP&M facilities could experience adverse financial impacts at the firm level if its facilities are among those that incur significant impacts at the facility level. EPA also uses the firm-level analysis to compare impacts on small versus large firms, as required by the Regulatory Flexibility Act and the Small Business Regulatory Enforcement Fairness Act. Section XII.C of this preamble discusses RFA/SBREFA issues.

EPA compared compliance costs with revenue at the firm level as a measure of the relative burden of compliance costs. EPA applied this analysis only to MP&M facilities owned by privately-owned entities. (Section VIII.E discusses impacts on governments that own MP&M facilities.) EPA estimated firm-level compliance costs by summing costs for all facilities owned by the same firm that responded to the survey plus estimated compliance costs for additional facilities for which respondents submitted information.

The Agency was not able to estimate precisely at the national level the number of firms that own MP&M facilities, because the sample weights based on the survey design represent numbers of facilities rather than firms. Most privately-owned MP&M facilities that remain open in the baseline are single-facility firms, however. These firms can be analyzed using the survey weights. In addition, 278 survey respondents report being owned by a firm that owns more than one MP&M facility. For the firm-level analysis, EPA assigned these facilities, and their owning firms, a sample weight of one, since it is not known how many firms these 278 sample facilities represent. Chapter 9 of the EEBA presents EPA's analysis of firm-level impacts.

Table VIII–5 shows the results of the firm-level analysis. The results represent a total of 26,750 MP&M firms (26,472 + 278), owning 37,424 facilities (26,472 owned by single-facility firms plus 10,953 owned by multi-facility firms).

TABLE VIII–5.—FIRM LEVEL AFTER TAX ANNUAL COMPLIANCE COSTS AS A PERCENT OF ANNUAL REVENUES FOR PRIVATELY-OWNED BUSINESSES: SELECTED REGULATORY OPTION

Number of firms in the analysis*	Number and percent with after tax annual compliance costs/annual revenues equal to:					
	Less than 1%		1 to 3%		Over 3%	
	Number	Percent	Number	Percent	Number	Percent
26,750	26,750	100.0	0	0.0	0	0.0

*Single-site firms whose only MP&M facilities close in the baseline are excluded from the firm count. To be conservative, EPA included compliance costs for facilities that are owned by multi-site firms but predicted to be baseline closures in the facility impact analysis.

EPA's analysis shows that none of the firms in the analysis incur after-tax compliance costs equal to one percent or more of annual revenues. All firms incur compliance costs less than one percent of annual revenues.

This analysis is likely to overstate costs at the firm level because it does not account for actions a multi-facility firm might take to reduce its compliance costs under the regulation. These include consolidating and/or transferring functions among facilities to consolidate wet processes and take advantage of scale economies in wastewater treatment. In some instances, such compliance responses may result in loss of employment in some facilities and possible increases in employment in others. As discussed in Chapter 5 of the EEBA report, EPA is unable to account for and analyze the full range of possible compliance actions that a firm may consider and implement in response to regulation.

E. Impacts on Government-Owned Facilities

EPA surveyed government-owned MP&M facilities to assess the cost of the regulation on these facilities and the government entities that own them (*see* 66 FR 437). A government is judged to experience major budgetary impacts if it has: (1) One or more facilities with compliance costs exceeding one percent of the baseline cost of service; (2) total debt service costs (including costs to finance MP&M capital costs entirely with debt) exceeding 25 percent of baseline revenue; and (3) post-compliance total annualized pollution control costs per household exceeding one percent of median household income. EPA discusses the methodology for assessing impacts on government-owned facilities in more detail in Chapter 7 of the EEBA report (this methodology and the impact thresholds were also used to support EPA's analysis under the Unfunded Mandates Reform Act, discussed at section XII.D of this preamble). Table VIII–6 provides national estimates of the number of MP&M facilities operated by governments that are potentially subject to the regulation, by type and size of government.

Table VIII–7 summarizes the status of government-owned facilities, their compliance costs and measures of impacts on government that own MP&M facilities.

TABLE VIII–6.—NUMBER OF GOVERNMENT-OWNED FACILITIES BY TYPE AND SIZE OF GOVERNMENT ENTITY

Size of government	Municipal government	State government	County government	Regional governmental authority	Total
Large Governments (population >50,000)	618	377	781	46	1,823
Small Governments (population <= 50,000)	1,750	.....	212	.....	1,962
All Governments	2,368	377	993	46	3,785

TABLE VIII–7.—NUMBER OF REGULATED GOVERNMENT-OWNED FACILITIES, COMPLIANCE COSTS AND BUDGETARY IMPACTS BY REGULATORY OPTION

Total Number of Government-Owned Facilities	3,785
Number of Facilities exempted by subcategory exclusions	3,327
Number of Facilities subject to regulation	458
Compliance costs ($2001 million)	$8.99
Number of Facilities with compliance costs > one percent of baseline cost of service*	162
Number of Governments failing the "impact on taxpayers" criterion**	0
Number of Governments failing the "impacts on government debt" criterion***	0
Number of Governments failing all three impacts criteria†	0

*Annualized compliance costs as a percent of total facility costs and expenditures, including operating, overhead and debt service costs and expenses.

**Based on comparison of compliance costs for all facilities owned by the government to the income of households that are served by the relevant government. A government is judged to experience impacts if the regulation results in a ratio of total annualized pollution control costs per household to median household income that exceeds one percent, post-compliance. Includes existing pollution control costs plus the compliance costs due to the MP&M rule.

***Based on comparison of total debt service costs (including costs to finance MP&M capital costs entirely with debt) with baseline government revenue. A government is judged to experience impacts if the rule causes its total debt service payments to exceed 25% of baseline revenue.

†A government is judged to experience major budgetary impacts if it has one or more facilities with costs of compliance above 1% of baseline cost of service and fails both the taxpayers impact and government debt impact tests.

Under the final rule, an estimated 162 government-owned facilities (4.3 percent of the total) would incur costs exceeding one percent of their baseline cost of service. The residual 95.7 percent of government-owned facilities incur no costs or incur costs so low as to be readily absorbed within existing budgets. None of the governments incur costs that cause them to exceed the thresholds for impacts on taxpayers or for government debt burden. EPA therefore concludes that the regulation will not impose major budgetary burdens on any of the governments that own MP&M facilities.

F. Community Level Impacts

EPA considered the potential impacts of changes in employment due to the regulation on the communities where MP&M facilities are located. EPA does not expect any adverse community employment effects because it anticipates no rule-driven facility closures and accordingly no job losses from the rule.

G. Foreign Trade Impacts

The foreign trade impacts analysis allocates the value of changes in output, for each facility that is projected to close, to exports, imports or domestic sales, based on the dominant source of competition in each market as reported in the surveys. EPA does not expect any material foreign trade impacts as a result of the final rule because no facility closures are expected. See Chapter 8 in the EEBA for a more detailed discussion of the foreign trade impact analysis and the resulting impacts of the alternative regulatory options on foreign trade.

H. Administrative Costs

EPA also assessed the costs incurred by governments to administer the rule. The final rule only regulates direct dischargers; therefore, EPA does not expect increases in administrative costs because the National Pollution Discharge Elimination System (NPDES) permit program requires that these facilities already hold permits. However, EPA did estimate costs to POTWs for alternative options that would have regulated indirect dischargers. See Chapter 7 in the EEBA for a discussion of these estimates.

I. Social Costs

1. Components of Social Costs

The social costs of regulatory actions are the opportunity costs to society of employing scarce resources in pollution control activity. The largest component of economic costs to society is the cost incurred by MP&M facilities for the labor, equipment, material, and other economic resources needed to comply with the regulation. EPA accounts for these costs on a pre-tax basis.

Social costs may also include lost producers' and consumers' surplus that result when the quantity of goods and services produced decreases as a result of the rule. Lost producers' surplus is measured as the difference between revenues earned and the cost of production for the lost production. Lost consumers' surplus is the difference between the price paid by consumers for the lost production and the maximum amount they would have been willing to pay for those goods and services. To accurately calculate lost producers' and consumers' surplus requires knowledge of the characteristics of market supply and demand for each affected industry. EPA instead calculated an upper-bound estimate of social compliance costs using the simplifying assumption that all facilities continue operating in compliance with the rule, and pay the associated compliance costs (*i.e.*, assuming that there are no regulation-related closures.) This framework provides an upper-bound estimate of social costs, because, for facilities predicted to close, continuing to operate and to incur compliance costs is more costly than closing the facility with associated lost producers' and consumers' surplus. For the final regulation, EPA estimated that no facilities would close because of the rule. As a result, the potential effect of consumers' and producers' surplus should not be of consequence in assessing social costs.

In addition to the resource costs to society associated with compliance, the estimated social cost also includes two other elements: the cost to local governments of implementing the rule and the cost of any unemployment that may result from the regulation. The government administration costs include the costs to POTWs of permitting and compliance monitoring and enforcement activities. The unemployment-related costs include the cost of administering unemployment programs for workers who would lose employment, and an estimate of the amount that workers would be willing to pay to avoid involuntary unemployment.

2. Resource Cost of Compliance

The resource costs of compliance are the value of society's productive resources—including labor, equipment, and materials—consumed to achieve the reductions in effluent discharges required by the final rule. On the basis of a 7 percent discount rate, EPA estimates the annualized cost of compliance at $13.8 million (2001$). This value exceeds the cost that privately-owned firms would incur in complying with the regulation because: (1) Some of the costs are borne by the general tax-paying public through the tax deduction permitted on privately-owned firms' compliance outlays and (2) some costs are passed onto consumers in the form of price increases. Although these two categories of cost are not part of the financial burden on regulated industries, they are part of the regulation's overall cost to society. EPA also estimated the annualized cost of compliance using a 3 percent discount rate and, in conjunction, an assumed 3 percent opportunity cost of capital to society. At the 3 percent discount rate, EPA estimates the annualized cost of compliance at $13.7 million (2001$).

3. Cost of Administering the Regulation

As discussed in section VIII.I of this preamble, since the final rule only regulates direct dischargers, EPA does not expect increases in administrative costs because all direct dischargers already hold permits.

4. Social Cost of Unemployment

The loss of jobs associated with any facility closures would represent a social cost of the regulation. However, from its facility impact analysis, EPA estimates that no facilities will close as a result of the regulation. Accordingly, EPA estimates a zero cost of unemployment for the final regulation. The results of this analysis for alternative regulatory options where closures are predicted can be found in Chapter 6 of the EEBA.

5. Total Social Costs

Summing across all social costs results in a total annualized social cost estimate of $13.8 million ($2001), at a 7 percent discount rate, and $13.7 million, at a 3 percent discount rate, as shown in Table VIII–8.

TABLE VIII–8.—ANNUAL SOCIAL COSTS OF THE REGULATION

[Pre-tax, million $2001]

Social cost category	Annualized @ 3%	Annualized @ 7%
Resource Value of Compliance Costs (before-tax)	$13.7	$13.8
Government Administrative Costs	$0	$0
Social Costs of Unemployment	$0	$0
Total Social Costs	$13.7	$13.8

J. Cost and Removal Comparison Analysis

The Agency is promulgating BPT limitations for the Oily Wastes subcategory. Among the factors EPA must consider when promulgating BPT limitations, section 304(b)(1)(B) of the CWA directs EPA to consider the total incremental compliance costs of the BPT technology in relation to the effluent reductions achieved by the technology. This inquiry does not limit EPA's broad discretion to adopt BPT limitations based on available technology unless the required additional reductions are wholly out of proportion to the costs of achieving the additional effluent reduction.

One cost and removal comparison ratio used by EPA is the average cost per pound of pollutant removed by a BPT regulatory option. EPA measures the cost component as pre-tax total annualized costs ($2001). For the Oily Wastes subcategory, EPA measures the effluent reduction benefits as the summation of O&G (as HEM) and TSS to avoid significant double counting of pollutants. EPA analyses show that OWS facilities largely discharge conventional pollutants. Table VIII–9 shows the incremental compliance costs, the incremental pollutant reductions, and the resulting cost and removal comparison ratio.

TABLE VIII–9.—COST AND REMOVAL COMPARISON FOR THE OILY WASTES SUBCATEGORY

[$2001/lb pollutant removed]

Subcategory	Annualized cost ($2001) (millions)	Annual pounds of pollutant removed	Cost and removal comparison ($2001/lb pollutant removed)
Oily Wastes	13.8	480,325	28.73

K. Cost-Effectiveness Analysis

In the development of best available technology effluent limitations guidelines for removals of toxic pollutants, EPA evaluates the relative efficiency of alternative regulatory options in removing toxic pollutants from the effluent discharges to the nation's waters. Because EPA is today not promulgating Oily Wastes subcategory BAT limitations based on a more stringent technology than BPT technology, EPA is not providing a cost-effectiveness analysis for the final rule, which contains only BPT limitations (*see* section VIII.J for the cost and removal comparison analysis). EPA did perform a cost-effectiveness analysis for the alternative regulatory options that would have regulated indirect dischargers; the results of this analysis are reported in the EEBA and DCN 37900, section 26.0.

IX. Water Quality Analysis and Environmental Benefits

A. Introduction and Overview

This section presents EPA's estimates of the national environmental benefits of the final MP&M effluent guidelines. The benefits occur due to the reduction in facility discharges described in section VII. The methodologies used in the estimation of benefits of the final rule are largely similar to those used for estimating benefits of the proposed rule (*see* 66 FR 424). The Notice of Data Availability (*see* 67 FR 38752) and section IV.B of today's final rule discuss revisions made to these methodologies after the publication of the proposed rule. The EEBA provides EPA's complete benefit assessment for the final rule.

EPA estimated national benefits from the regulation on the basis of sample facility data. The Agency extrapolated findings from the sample facility analyses to the national level using two alternative extrapolation methods: (1) traditional extrapolation and (2) post-stratification extrapolation. Section A.2 of today's final rule and Appendix G of the EEBA discuss the extrapolation methods used in the benefits analysis in detail.

To supplement the national level analysis performed for the final MP&M regulation, EPA also conducted a detailed case study of the expected State-level costs and benefits of the MP&M rule in Ohio. For several important reasons, EPA judges that the Ohio case study is more robust than the national benefit analyses that EPA undertakes in support of effluent guideline development. These reasons include: (1) Use of more detailed data on MP&M facilities than is possible at the national level; (2) use of more detailed and accurate water quality data than are usually available; (3) more accurate accounting for the presence and effect of multiple discharges to the same reach; (4) inclusion of data on non-MP&M discharges in the baseline and post compliance; (5) use of a first-order decay model to estimate in-stream concentrations in downstream water bodies; and (6) inclusion of an additional recreational benefit category (swimming) in the analysis.

Sections B through G of today's final rule discuss the national level benefits analyses; section H presents the Ohio case study. These sections include results only for the final rule; however, the EEBA presents results for additional options evaluated.

1. Benefit Overview

Table IX–1 summarizes the benefits categories associated with the regulation and notes which categories EPA was able to quantify and monetize. The benefits include three broad classes: human health, ecological, and economic productivity benefits. Within these three broad classes, EPA was able to assess benefits with varying degrees of completeness and rigor. Where possible, EPA quantified the expected effects and estimated monetary values. Data limitations and limited understanding of how society values certain water quality changes prevented monetizing some benefit categories.

TABLE IX–1.—BENEFIT CATEGORIES ASSOCIATED WITH WATER QUALITY IMPROVEMENTS RESULTING FROM THE METAL PRODUCTS AND MACHINERY EFFLUENT GUIDELINE

Benefit Category	Quantified and monetized	Quantified and nonmonetized	Nonquantified and nonmonetized
Human Health Benefits:			
Reduced cancer risk due to ingestion of chemically-contaminated fish and unregulated pollutants in drinking water	X		
Reduced non-cancer adverse health effects (*e.g.*, reproductive, immunological, neurological, circulatory, or respiratory toxicity) due to ingestion of chemically-contaminated fish and unregulated pollutants in drinking water		X	
Reduced non-cancer adverse health effects from exposure to lead from consumption of chemically-contaminated fish	X		
Reduced health hazards from exposure to contaminants in waters used recreationally (*e.g.*, swimming)			X
Ecological Benefits:			
Reduced risk to aquatic life		X	
Enhanced water-based recreation, including fishing, boating, and near-water (wildlife viewing) activities	X		
Other enhanced water-based recreation, such as swimming, waterskiing, and white water rafting			X
Increased aesthetic benefits, such as enhancement of adjoining site amenities (*e.g.*, residing, working, traveling, and owning property near the water)			X
Non-user value (*i.e.*, existence, option, and bequest value)	X		
Reduced contamination of sediments			X
Economic Productivity Benefits: [a]			
Benefits to tourism industries from increased participation in water-based recreation			X
Improved commercial fisheries yields			X
Reduced water treatment costs for municipal drinking water, irrigation water, and industrial process and cooling water			X

[a] The final rule regulates direct dischargers only. Therefore the selected option does not affect POTW operation. EPA, however, includes this benefit category when analyzing alternative options which considered the regulation of indirect dischargers (See Chapter 19 of the EEBA for the benefits analysis of alternative options).

2. Extrapolation Methods

EPA traditionally estimates national level costs and benefits by extrapolating analytic results from sample facilities to the national level using sample facility weights. EPA's traditional sampling approach relies on information about the economic and technical characteristics of the regulated community. Although important for understanding the technical requirements and costs of a regulation, this sampling approach does not incorporate information that could significantly affect the occurrence and distribution of regulatory benefits, such as characteristics of the receiving water body and the size of population that may benefit from reduced pollutant discharges. As a result, the traditional sampling approach likely yields benefit estimates that are less accurate than those that could be obtained by using a sampling framework that accounts for such benefit-receptor characteristics.

EPA recognizes that using a traditional extrapolation method to estimate national level benefits may lead to a large degree of uncertainty in benefits estimates. Therefore, in addition to the traditional extrapolation method used in the proposed rule (*see* 66 FR 424), EPA has estimated national level benefits for the final rule using an alternative extrapolation method as discussed in the NODA (*see* 67 FR 38752).

In this alternative extrapolation method, post-stratification sample weighting, EPA adjusted the original sample weights using two variables that are likely to affect the occurrence and size of benefits associated with reduced discharges from sample MP&M facilities: (1) receiving water body type and size; and (2) the size of the population residing in the vicinity of the sample facility. The Agency utilized a commonly used post-stratification method calling "raking" to adjust original sample weights to reflect these benefit pathway characteristics. EPA used data from three data sources—EPA's Permit Compliance System database (PCS), EPA's Reach File 1, and Census Data—to develop the adjusted weights. Because of data limitations, EPA restricted the re-weighting effort only to direct dischargers and excluded indirect dischargers. Therefore, EPA performed this alternative analysis for only the selected option.

EPA used the alternative benefit estimate to validate general conclusions that EPA drew from its main analysis based on the traditional extrapolation method. Appendix G of the EEBA provides detailed discussion of this alternative extrapolation method.

In the NODA, EPA also sought public comment on a proposed second alternative extrapolation method. In this extrapolation method, EPA proposed the extrapolation of the Ohio case study results to the national level based on three key factors that affect the occurrence and magnitude of benefits: (1) The estimated change in MP&M pollutant loadings; (2) the level of recreational activities on the reaches affected by MP&M discharges; and (3) income of the affected population. The Agency recognizes that this method is not rigorous for extrapolation to the national level. Therefore, EPA used this method only as a sensitivity analysis.

Sections IX.B through IX.E of this preamble present national level benefits that are estimated based on both sample facility weights used in the engineering and economic impact analysis (traditional extrapolation method) and sample facility weights adjusted by water body and population (post-stratification extrapolation). National level benefits estimated from the Ohio case study analysis are not presented in today's final rule. These estimates can be found in Appendix G of the EEBA report.

B. Reduced Human Health Risk

EPA estimates that the final rule will prevent discharge of 18 pounds per year of carcinogens and 119 pounds per year of lead. Also, the final rule will prevent discharge of an additional 6,900 pounds of 76 pollutants of concern that are known to cause adverse non-cancer human health effects. These reduced pollutant discharges from MP&M facilities generate human health benefits in a number of ways. The most important human health benefits stem from reduced risk of illness from consumption of contaminated fish, shellfish, and water.

EPA analyzed the following measures of human health-related benefits: reduced cancer risk from fish and water consumption; reduced risk of non-cancer adverse health effects from fish and water consumption; reduced lead-related adverse health effects in children and adults; and reduced occurrence of in-waterway pollutant concentrations in excess of levels of concern. The levels of concern include human health-based ambient water quality criteria (AWQC) or documented toxic effect levels for those chemicals not covered by AWQC. The Agency monetized only two of these health benefits: (1) Changes in the incidence of cancer resulting from reduced exposure to carcinogens in fish and drinking water and (2) changes in adverse non-cancer health effects in children and adults resulting from reduced exposure to lead in fish. EPA monetized human health benefits by estimating the change in the expected number of individuals experiencing adverse human health effects in the populations exposed to MP&M discharges. For carcinogens that have linear dose-response relationships, it is feasible to estimate the incremental cancer incidence in a population from the estimate of mean individual risk for the population and the number of individuals in the population. However, for health effects with non-linear dose-response relationships and thresholds (*e.g.*, non-cancer health effects), estimating population risk is computationally more complex and was not proposed (*see* Table IX–1).

The national-level analysis of human health benefits finds negligible monetized benefits from the final rule. However, because of significant simplifications in the national level analysis, this finding should be recognized as potentially having substantial error and should therefore be interpreted with caution. In particular, the national-level analysis: (1) Is based only on limited information on MP&M facilities at the national level; (2) accounts in only a very limited way for the presence and effect of joint discharges on the same reach; (3) omits data on non-MP&M discharges in the baseline and post compliance; and (4) omits consideration of the downstream effects of pollutant discharges.

In contrast to the national-level analysis, and as discussed in section IX.A. of today's final rule and Chapter 21 of the EEBA report, the methods and data used for the Ohio case study address a number of these analytic weaknesses. This more site-specific and detailed analysis finds that the final regulation would achieve $0.5 million (2001$) in health-related benefits in the State of Ohio alone. EPA estimates that this analysis provides a more accurate, albeit lower-bound, estimate of health-related benefits than indicated by the simpler national-level analysis. Moreover, given (1) that Ohio represents only about 6 percent of the total MP&M facility population and (2) that a substantial share of the total MP&M facility population is located in other States with similar water body and population characteristics (*e.g.*, the States of Illinois, Indiana, Michigan, Pennsylvania), it is reasonable to expect that additional human health benefits would be estimated for the remainder of the country if EPA were able to apply this more rigorous approach at the national level. Accordingly, EPA judges that the final rule's human health benefits are higher than its social costs.

1. Benefits From Reduced Incidence of Cancer

EPA assessed changes in the incidence of cancer cases from consumption of MP&M pollutants in fish tissue and drinking water. The Agency valued changes in incidence of cancer cases using a willingness-to-pay (WTP) of $6.5 million (2001$) for avoiding premature mortality. This estimate of the value of a statistical life saved is recommended in EPA's Guidelines for Preparing Economic Analysis. This estimate does not include

estimates of WTP to avoid morbidity prior to death.

EPA estimated aggregate cancer risk from contaminated drinking water for populations served by drinking water intakes on water bodies to which MP&M facilities discharge. EPA based this analysis on six carcinogenic pollutants for which drinking water criteria have not been published. This analysis excludes seven carcinogens for which drinking water criteria have been published. EPA assumed that public drinking water treatment systems will remove these seven pollutants from the public water supply. To the extent that treatment for these seven pollutants may cause incidental removals of the six pollutants without criteria, the analysis may overstate cancer-related benefits.

Calculated in-stream concentrations serve as a basis for estimating changes in cancer risk for populations served by affected drinking water intakes. EPA estimates that baseline MP&M discharges from in-scope facilities are associated with virtually zero annual cancer cases. The national-level analysis finds that the final regulation would lead to a marginal reduction in these cancer cases resulting from consumption of contaminated drinking water; correspondingly, monetary benefits estimated from reduced consumption of contaminated drinking water are essentially zero.

EPA also estimated cancer risk from the consumption of contaminated fish for recreational and subsistence anglers and their families. EPA based this analysis on thirteen carcinogenic pollutants found in MP&M effluent discharges. Estimated contaminant concentrations in fish tissue are a function of predicted in-stream pollutant concentrations and pollutant bioconcentration factors. EPA used data on numbers of licensed fishermen by state and county, presence of fish consumption advisories, number of fishing trips per person per year, and average household size to estimate the affected population of recreational and subsistence anglers and their families. The analysis uses different fish consumption rates for recreational and subsistence anglers to estimate the change in cancer risk among these populations.

EPA estimated that baseline MP&M discharges from in-scope facilities are associated with 0.03 annual cancer cases. The national-level analysis shows that final option would lead to a marginal reduction in cancer cases among recreational and subsistence angler populations. The monetary benefits estimated from consumption of less contaminated fish by these populations are essentially negligible.

The previous findings from the national analysis of changes in cancer risk associated with the final rule differ from the Ohio case study results. Based on the Ohio case study, the final option is expected to eliminate less than 0.01 cancer cases annually in the State of Ohio (*see* section IX.H of today's final rule for a detail). This reduction translates into approximately $14,500 (2001$) in annual benefits due to reduced cancer risk from consumption of contaminated fish tissue and drinking water. The difference in the findings of the national- and Ohio analyses results primarily from more comprehensive information on MP&M and non-MP&M facility discharges used in the Ohio case study analysis (*see* section IX.A. of today's final rule for additional details). The national-level analysis accounts only for the pollutant exposures from MP&M sample facilities. In contrast, the Ohio case study approach accounts for a broader baseline of pollutant exposure, including more thorough and detailed coverage of discharges from MP&M facilities and also estimated exposures from non-MP&M sources. As a result, this analysis more accurately reflects baseline health risk conditions.

2. Reductions in Non-Cancer Adverse Human Health Effects Other Than Those Related to Lead Exposure

The final rule can potentially generate non-cancer human health benefits (*e.g.*, reduction in systemic effects, reproductive toxicity, and developmental toxicity) from reduced contamination of fish tissue and drinking water sources. The common approach for assessing the risk of non-cancer health effects from the ingestion of a pollutant is to calculate a hazard quotient by dividing an individual's oral exposure to the pollutant, expressed as a pollutant dose in milligrams per kilogram body weight per day (mg/kg-day), by the pollutant's oral reference dose (RfD). An RfD is defined as an estimate (with uncertainty spanning perhaps an order of magnitude) of a daily oral exposure that likely would not result in the occurrence of adverse health effects in humans, including sensitive individuals, during a lifetime. Toxicologists typically establish an RfD by applying uncertainty factors to the lowest-or no-observed-adverse-effect level for the critical toxic effect of a pollutant.[1] A hazard quotient less than one means that the pollutant dose to which an individual is exposed is less than the RfD, and, therefore, presumed to be without appreciable risk of adverse human health effects. A hazard quotient greater than one means that the pollutant dose is greater than the RfD. Further, EPA guidance for assessing exposures to mixtures of pollutants recommends calculating a hazard index (HI) by summing the individual hazard quotients for those pollutants in the mixture that affect the same target organ or system (*e.g.*, the kidneys, the respiratory system).[2] HI values are interpreted similarly to hazard quotients; values below one are generally considered to suggest that exposures are not likely to result in appreciable risk of adverse health effects during a lifetime, and values above one are generally cause for concern, although an HI greater than one does not necessarily suggest a likelihood of adverse effects.

To evaluate the potential benefits of reducing the in-stream concentrations of 76 pollutants that cause non-cancer health effects, EPA estimated target organ-specific HIs for drinking water and fish ingestion exposures in both the baseline and post-compliance scenarios. Specifically, EPA calculated target-organ specific HIs for pollutants predicted in each MP&M discharge reach, such that one HI was calculated for each target organ/exposure pathway (fish consumption and drinking water)/reach combination. EPA then combined estimates of the numbers of individuals in the exposed populations with the HIs for the populations to determine how many individuals might be expected to realize reduced risk of non-cancer health effects in the post-compliance scenario. This analysis was limited in two primary ways. First, hazard indices estimated in this analysis may understate the actual potential for adverse health effects because possible additional sources of pollutants, such as background pollutants and MP&M pollutants from upstream dischargers, were not considered in the analysis. Second, EPA used mean individual exposure parameters and not the distribution of exposure parameters to estimate hazard indices for the populations affected by MP&M dischargers.

The results of EPA's analysis suggest that hazard indices for individuals in the exposed populations may decrease after facilities comply with today's rule. Increases in the percentage of exposed populations that would be exposed to no risk of non-cancer adverse human health effects due to the MP&M discharges occur in both the fish and drinking water analyses. The shift to lower hazard indices should be considered in conjunction with the finding that the hazard indices for incremental exposures to pollutants discharged by MP&M facilities (for which reference doses are available) are less than one in the baseline analysis for the entire population associated with sample facilities. Whether the incremental shifts in hazard indices are significant in reducing absolute risks of non-cancer adverse human health effects is uncertain and will depend on the magnitude of contaminant exposures for a given population from risk sources not accounted for in this analysis.

3. Benefits From Reduced Exposure to Lead

EPA performed a separate analysis of benefits from reduced exposure to lead. This analysis differs from the analysis of non-cancer adverse human health effects from exposure to other MP&M pollutants because it is based on dose-response functions tied to specific health endpoints to which monetary values can be applied.

Many lead-related adverse health effects are relatively common and are chronic in nature. These effects include, but are not limited to, hypertension, coronary heart disease, and impaired cognitive function. Lead is harmful to individuals of all ages, but the effects of lead on children are of particular concern. Children's rapid rate of development makes them more susceptible to neurobehavioral effects from lead exposure. The neurobehavioral effects on children from lead exposure include hyperactivity, behavioral and attention difficulties, delayed mental development, and motor and perceptual skill deficits.

This analysis assessed benefits of reduced lead exposure from consumption of contaminated fish tissue to three sensitive populations: (1) Preschool age children; (2) pregnant women; and (3) adult men and women. This analysis uses blood-lead levels as a biomarker of lead exposure. EPA estimated baseline and post-compliance blood lead levels in the exposed populations and then used changes in these levels to estimate benefits in the form of avoided health damages.

EPA assessed neurobehavioral effects on children based on a dose response relationship for IQ decrements. Avoided neurological and cognitive damages are expressed as changes in overall IQ levels, including reduced incidence of extremely low IQ scores (<70, or two standard deviations below the mean) and reduced incidence of blood-lead levels above 20 µg/dL. The analysis uses the value of compensatory education that an individual would otherwise need and the impact of an additional IQ point on individuals' future earnings to value the avoided neurological and cognitive damages. The national-level analyses shows that implementation of the final option would not result in any changes in IQ loss across all exposed children. The final option does not reduce occurrences of extremely low IQ scores (<70) or incidences of blood-lead levels above 20 µg/dL.

Prenatal exposure to lead is an important route of exposure. Fetal exposure to lead in utero due to maternal blood-lead levels may result in several adverse health effects, including decreased gestational age, reduced birth weight, late fetal death, neurobehavioral deficits in infants, and increased infant mortality. To assess benefits to pregnant women, EPA estimated changes in the risk of infant mortality due to changes in maternal blood-lead levels during pregnancy. The national-level analysis shows that the final option does not result in changes in maternal blood lead levels during pregnancy and as a result does not reduce neonatal mortality.

The national-level analysis finds no benefits to children from reduced exposure to lead. However, as for the cancer risk analysis previously discussed, these findings differ from the more comprehensive analysis used in the Ohio case study. Using the case study approach, EPA estimates that the final regulation will yield annual lead-related benefits for children in Ohio of $422,113 (2001$). This benefit value includes three components. First, reduced lead exposure is estimated to reduce neonatal mortality by 0.024 cases annually with an annual value of $162,094 (2001$). Second, reduced lead exposure will avoid the loss of an estimated 26.96 IQ points among preschool children in Ohio, which translates into $253,934 (2001$) per year in benefits. Third, the annually avoided costs of compensatory education from incidence of IQ below 70 and blood-lead levels above 20 µg/dL among children amounts to approximately $5,345 (2001$).

Lead exposure has been shown to have adverse effects on the health of adults as well as children. The health effects in adults that EPA quantified all derive from lead's effects on blood pressure. Quantified health effects include increased incidence of hypertension (estimated for males only), initial coronary heart disease (CHD), strokes (initial cerebrovascular accidents and atherothrombotic brain infarctions), and premature mortality. This analysis does not include other health effects associated with elevated blood pressure and other adult health effects of lead, including nervous system disorders in adults, anemia, and possible cancer effects. EPA used cost of illness estimates (*i.e.*, medical costs and lost work time) to estimate monetary value of reduced incidence of hypertension, initial CHD, and strokes. EPA then used the value of a statistical life saved to value changes in risk of premature mortality. The national level analysis finds that the final rule will achieve no lead-related health benefits among adults.

Again, the national analysis results differ from the Ohio case study results. Using the case study approach, EPA estimates that the final regulation will achieve total lead-related benefits among Ohio adults of $117,393 (2001$). This value includes benefits from reduced hypertension among adult males: a reduction of an estimated 9.4 cases annually, with benefits of approximately $10,670 (2001$). In addition, reducing the incidence of initial CHD, strokes, and premature mortality among adult males and females in Ohio would result in estimated benefits of $963, $2,115, and $103,645, respectively.

Based on the national-level benefits analysis, EPA found that total benefits from reduced exposure to lead, for both children and adults, are negligible under the final rule. However, based on the Ohio case study findings, benefits for children and adults from reduced lead-related health effects to the final rule are estimated to total approximately $0.5 million (2001$) annually in the State of Ohio alone (*see* section H of today's final rule for detail). As in the cancer risk analysis, the difference in the national and Ohio-based results is primarily due to more comprehensive information on MP&M and non-MP&M facility discharges used in Ohio.

4. Reduced Exceedances of Health-Based AWQC

EPA also estimated the effect of MP&M facility discharges on the occurrence of pollutant concentrations in affected waterways that exceed human health-based AWQCs. In a conceptual sense, this analysis and its findings are not additive to the preceding analyses of change in cancer or lead-related health risks but are

[1] U.S. EPA, 1993, "Reference Dose (RfD): Description and Use in Health Risk Assessments, Background Document 1A," *http://www/epa.gov/iris/rfd.htm.*

[2] "Supplementary Guidance for Conducting Health Risk Assessment of Chemical Mixtures. Risk Assessment Forum Technical Panel," EPA/630/R–00/002. U.S. EPA, August 2000. *http://www.epa.gov/nceawww1/pdfs/chem mix/chem mix 08 2001.pdf.*

another way of quantitatively characterizing the same possible benefit categories. This analysis compares the estimated baseline and post compliance in-stream pollutant concentrations in affected waterways to ambient water criteria for protection of human health. The comparison included AWQC for protection of human health through consumption of organisms and for consumption of organisms and water. Pollutant concentrations in excess of these values indicate potential risks to human health. Table IX–2 presents results of this analysis.

TABLE IX–2.—ESTIMATED MP&M DISCHARGE REACHES WITH MP&M POLLUTANT CONCENTRATIONS IN EXCESS OF AWQC LIMITS FOR PROTECTION OF HUMAN HEALTH

Regulatory status	Number of reaches with MP&M pollutant concentrations exceeding human health-based AWQC limits		Number of benefitting reaches			
			All AWQC exceedances eliminated		Number of AWQC exceedances reduced	
	For consumption of water and organisms	For consumption of organisms only	For consumption of water and organisms	For consumption of organisms only	For consumption of water and organisms	For consumption of organisms only
Selected Option: Traditional Extrapolation						
Baseline	78	21	N/A	N/A	N/A	N/A
Post-Compliance	78	21	0	0	0	0
Selected Option: Post-Stratification Extrapolation						
Baseline	112	21	N/A	N/A	N/A	N/A
Post-Compliance	112	21	0	0	0	0

Source: U.S. Environmental Protection Agency.

EPA estimates that in-stream concentrations of 4 pollutants (*i.e.*, arsenic, iron, manganese, and n-nitrosodimethylamine) will exceed human health criteria for consumption of water and organisms in 78 receiving reaches nationwide as the result of baseline MP&M pollutant discharges. EPA estimates that there are human health AWQC exceedances caused by n-nitrosodimethylamine (NDMA). However EPA did not consider NDMA pollutant reductions in its national benefits analyses because of the low number of detected values for that pollutant (*See* Chapter 7 of the TDD). EPA estimates that the final rule will not eliminate the occurrence of pollutant concentrations in excess of human health criteria for consumption of water and organisms and for consumption of organisms on any of the reaches on which baseline discharges are estimated to cause pollutant concentrations in excess of AWQC values.

5. Uncertainties and Assumptions of the Human Health Benefits Analysis

Because of the uncertainties and assumptions of EPA's analysis, the estimates of benefits presented in this section may either overstate or understate the benefits to recreational fishers, subsistence fishers, and members of the general population who consume drinking water obtained from intakes located downstream of MP&M discharges. Some of the major uncertainties and assumptions of EPA's analysis include the following:

- In estimating cancer risks and evaluating the risk of non-cancer health effects other than those related to lead exposure, EPA did not consider the potential for interactions between pollutants. EPA estimated cancer risk or non-cancer hazard attributable to each pollutant and summed the pollutant-specific estimates as appropriate (that is, EPA summed all pollutant-specific cancer risk estimates for each pathway of exposure, and summed pollutant-specific hazard quotients across target organs for each pathway of exposure). This approach does not account for the possibility that pollutants may interact synergistically or antagonistically such that the cancer potency or non-cancer hazard of the mixture of the pollutants is more or less than that calculated from the cancer potencies or RfDs of the individual pollutants.
- Population risk for cancer is based on mean exposure. Using mean exposure parameters for non-cancer could either over- or under-estimate HI exceedences.
- EPA's estimates of cancer cases were calculated using cancer potency factors that are upper bound estimates of cancer potency, potentially leading to overestimation of cancer risk.
- The analysis benefits from reduced incidence of cancer did not account for a cessation-lag, the time between when exposures are reduced and when reduction in risk occurs. Ignoring a cessation lag may lead to overestimation of cancer-related benefits.
- EPA assumed that the number of subsistence fishers would be an additional 5% of the licensed fishing population. This could be either an overestimate or underestimate of the actual number of subsistence fishers.
- Hazard indices estimated in this analysis may understate actual health risk because possible additional sources of pollutants, such as background pollutants and MP&M pollutants from upstream dischargers, were not considered in the analysis.

Additional details on methodology and the uncertainties and limitations of EPA's analysis of human health risk from the final effluent guidelines, particularly assumptions related to exposure parameters, are presented in Chapter 13 and Chapter 14 of the EEBA report.

C. Improved Ecological Conditions and Recreational Uses

EPA expects the final regulation to provide ecological benefits by improving the habitats or ecosystems (aquatic and terrestrial) affected by the MP&M industry's effluent discharges. Benefits associated with changes in aquatic life may include restoration of sensitive species, recovery of diseased species, changes in taste- and odor-producing algae, changes in dissolved oxygen (DO), increased assimilative capacity of affected waterways, and improved related recreational activities. These activities include swimming, fishing, boating and wildlife observation that may be enhanced when risks to aquatic life are reduced and where perceivable water quality efforts associated with MP&M pollutants, such as turbidity, are reduced. Among these ecological benefits, EPA was able to estimate dollar values for improved recreational opportunities and for non-user benefits.

EPA expects the MP&M rule to improve aquatic species habitats by reducing concentrations of toxic contaminants such as aluminum, cadmium, copper, lead, mercury, silver, and zinc in water. These improvements may enhance the quality and value of water-based recreation, such as fishing, swimming, wildlife viewing, camping, waterfowl hunting, and boating. The benefits from improved water-based recreation would be seen as increases in the increased value participants derive from a day of recreation and the increased number of days that consumers of water-based recreation choose to visit the cleaner waterways. This analysis measures the economic benefit to society from water quality improvements based on the increased monetary value of recreational opportunities resulting from those improvements.

EPA assessed recreational benefits of reduced occurrence of pollutant concentrations exceeding aquatic life and human health AWQC values. EPA estimates that baseline in-stream concentrations of 9 pollutants (*i.e.*, aluminum, cadmium, copper, lead, manganese, mercury, nickel, silver, and zinc) will exceed the acute and chronic criterion for aquatic life in 353 reaches nationwide. The final rule eliminates concentrations in excess of aquatic life-based AWQCs on nine of these reaches. Section IX.4 of this preamble presents EPA's analysis of the effect of MP&M discharges on occurrence of pollutant concentrations in affected waterways in excess of human health-based AWQCs.

The analysis of recreational benefits combined the findings from the aquatic life benefits analysis and the human health AWQC exceedance analysis described previously. These analyses found that 394 stream reaches exceed chronic or acute aquatic life AWQC and/or human health AWQC values at the baseline discharge levels (*see* Table IX–3). EPA expects the final rule will eliminate exceedances on nine of these discharge reaches.

TABLE IX–3.—ESTIMATED MP&M DISCHARGE REACHES WITH MP&M POLLUTANT CONCENTRATIONS IN EXCESS OF AWQC LIMITS FOR PROTECTION OF HUMAN HEALTH OR AQUATIC SPECIES

Regulatory status	Number of reaches with MP&M pollutant concentrations exceeding AWQC limits					Number of benefitting reaches	
	Aquatic life		Human health		Total	All AWQC exceedances eliminated	AWQC exceedances reduced
	Chronic	Acute	H_2O and organisms	Organisms only			
Selected Option: Traditional Extrapolation							
Baseline	353	18	78	21	394	N/A	N/A
Post-Compliance	344	9	78	21	386	9	0
Selected Option: Post-Stratification Extrapolation							
Baseline	350	15	112	21	426	N/A	N/A
Post-Compliance	344	9	112	21	420	6	0

Removing water quality impairments would increase services provided by water resources to recreational users. EPA expects potential recreational users to benefit from improved recreational opportunities, including an increased number of available choices of recreational sites. For example, some of the streams that were not usable for recreation under the baseline discharge conditions may be newly included in the site choice set for recreational users from nearby counties. Streams that have been used for recreation under the baseline conditions can become more attractive for users making recreational trips more enjoyable. Individuals may also take trips more frequently if they enjoy their recreational activities more.

EPA attached a monetary value to these reduced exceedances based on increased values for three water-based recreation activities—fishing, boating, and wildlife viewing—and for non-user values. Because most benefitting reaches are close to densely populated areas, potential recreational users may also benefit from lower travel costs to the recreational sites in the vicinity of their home towns that were not previously suitable to water-based recreation. EPA applied a benefits transfer approach to estimate the total WTP, including both use and non-use values, for improvements in surface water quality. This approach builds upon a review and analysis of the surface water valuation literature.

EPA first estimated the baseline value of each recreational activity (*i.e.*, fishing, boating, and wildlife viewing) corresponding to the benefitting reach by multiplying the estimated annual person-days per reach by the estimated per-day values of water-based recreation. The baseline per-day values of water-based recreation are based on studies by Walsh *et. al* (1992) and Bergstrom and Cordell (1991) (*see* DCN 20444 and DCN 20427, section 8.5.2.4). The studies provide values per recreation day for a wide range of water-based activities, including fishing, boating, wildlife viewing, waterfowl hunting, camping, and picnicking. The mean values per recreational fishing, boating, and wildlife viewing day used in this analysis are $42.12, $48.30 and $26.28 (2001$) respectively. Applying facility weights and assuming over all benefitting reaches provides a total baseline value for a given recreational activity for MP&M reaches expected to benefit from the elimination of pollutant concentrations in excess of AWQC limits.

EPA then applied the percentage change in the recreational value of water resources implied by surface water valuation studies to estimate changes in values for all MP&M reaches in which the regulation eliminates AWQC exceedances by one or more MP&M pollutants. The Agency selected eight of the most comparable studies and calculated the changes in recreation values from water quality improvements (as percentage of the baseline) implied

by those studies. Sources of estimates included Lyke (1993), Jakus *et al.* (1997), Montgomery and Needleman (1997), Paneuf *et al.* (1998), Desvousges *et al.* (1987), Lant and Roberts (1990), Farber and Griner (2000), and Tudor *et al.* (2000) (*see* section 8.5.2.4 of the rulemaking record). EPA's reasoning for selecting each study is discussed in detail in Chapter 15 of the EEBA report. EPA took a simple mean of point estimates from all applicable studies to derive a central tendency value for percentage change in the water resource values due to water quality improvements. These studies yielded estimates of increased recreational value from water quality improvements expected from reduced MP&M discharges of 12, 9, and 18 percent for fishing, boating, and wildlife-viewing respectively. Using all possible applicable valuation studies in developing a benefit transfer approach to valuing changes in the recreational value of water resources from reduced MP&M discharges, makes unit values more likely to be nationally representative, and avoids the potential bias inherent in using a single study to make estimates at the national level.

Table IX–4 presents the estimated national recreational benefits of the final rule (2001$). *See* EEBA Chapter 15 for estimated recreational benefits for alternative regulatory options. The estimated increased value of recreational activities to users of water-based recreation is $537,197, $202,691, and $259,949 annually for fishing, boating, and wildlife viewing respectively. The recreational activities considered in this analysis are stochastically independent; EPA calculated the total user value of enhanced water-based recreation opportunities by summing over the three recreation categories. The estimated increase in the total user value is $999,838 annually.

EPA also estimated non-market non-user benefits. These non-market non-user benefits are not associated with current use of the affected ecosystem or habitat; instead, they arise from the value society places on improved water quality independent of planned uses or based on expected future use. Past studies have shown that non-user values are a sizable component of the total economic value of water resources. EPA estimated average changes in non-user value to equal one-half of the recreational use benefits (*see* Fisher, A. and R. Raucher, 1984; DCN 20431, section 8.5.2.4). The estimated increase in non-use value is $499,919 (2001$).

A recent literature review finds that non-use benefits are, on average, 1.9 to 2.5 times *all* use values, rather than 0.5 times *recreational benefits alone* as EPA has traditionally assumed for its non-use benefit estimates (*see* T. Brown, 1993; DCN 20426, section 8.5.2.4). EPA's method for estimating non-use benefits from water quality improvements resulting from reduced MP&M dischargers is therefore likely to understate the true value of non-use benefits.

TABLE IX–4.—ESTIMATED RECREATIONAL AND NON-USE BENEFITS FROM REDUCED MP&M DISCHARGES

[Thousands of 2001$]

Benefit type	Traditional extrapolation	Post-stratification extrapolation
Recreational Fishing	$537.20	$349.98
Recreational Boating	$202.69	$132.05
Recreational Wildlife Viewing	$259.95	$169.36
Non-Use Benefits (½ Recreational Benefits)	$499.92	$325.70
Total Recreational Benefits	$1,499.76	$977.09

Note: Categories may not sum to totals due to rounding of individual estimates for presentation purposes.

EPA calculated the total value of enhanced water-based recreation opportunities by summing over the three recreation categories and non-user value. The resulting increase in value of water resources to consumers of water-based recreation and non-users is $1,449,756 (2001$) annually.

Findings from the Ohio-case study analysis suggest that the benefits to consumers of water-based recreation may be substantially underestimated at the national level. EPA estimates recreational and non-use benefits to Ohio residents alone are $376,400 (2001$) annually. See section IX.H of today's final rule and Chapter 21 of the EEBA for a detailed discussion of the case study of recreational benefits in Ohio. Given that the in-scope MP&M facilities located in the State of Ohio account only for six percent of the total number of in-scope facilities, it is reasonable to expect that the benefits to Ohio residents do not account for such a large proportion of recreational benefits from the final rule nationwide. In addition to more accurately account for the presence and effect of MP&M and non-MP&M dischargers in Ohio, the following factors are likely to result in more comprehensive estimates of recreational benefits under the case study approach: (1) Use of an original travel cost study to value four recreational activities affected by the regulation: fishing, swimming, boating, and wild life viewing; (2) use of a first-order decay model to estimate in-stream concentrations in downstream water bodies; (3) ability to estimate welfare gain to recreational users from reduced discharges of nutrients such as Total Kjeldahl Nitrogen (TKN).

D. Effect on POTW Operations

The final rule only regulates direct dischargers. Therefore, the selected option does not affect POTW operation. For the alternative policy options that consider both direct and indirect dischargers, EPA evaluated two productivity measures associated with MP&M pollutants. The first measure is the reduction in pollutant interference at publicly-owned treatment works (POTWs). The second measure is pass-through of pollutants into the sludge, which limits options for POTW disposal of sewage sludge. These analyses are presented in EEBA Chapter 16.

E. Summary of Benefits

Using the national-level analysis approach, EPA estimates total benefits for the five monetized categories of approximately $1,500,000 (2001$) annually (*see* Table IX–5). EPA's complete benefit assessment can be found in EEBA for the final rule. The monetized benefits of the rule likely underestimates the total benefits of the rule because they omit various sources of benefits to society from reduced MP&M effluent discharges. Examples of benefit categories not reflected in these estimates include non-cancer health benefits other than benefits from reduced exposure to lead; other water-dependent recreational benefits, such as swimming and waterskiing benefits to recreational users from reduced concentration of conventional pollutants and nonconventional pollutants such as TKN; and reduced cost of drinking water treatment for the pollutants with drinking water criteria. In addition, as noted in the prior discussion, although the national-level benefits analysis finds negligible benefits from reduced health risk, the more rigorous analytic approach used for the Ohio case study found more benefits—approximately $0.5 million.

TABLE IX–5.—ESTIMATED BENEFITS FROM REDUCED MP&M DISCHARGES

[Annual Benefits—Thousands of 2001$]

Benefit category	Traditional extrapolation	Post-stratification extrapolation
1. Reduced Cancer Risk: Fish Consumption	$0.09	$0.13
Water Consumption	$0	$0
2. Reduced Risk from Exposure to Lead: Children	$0	$0
Adults	$0	$0
3. Avoided Sewage Sludge Disposal Costs [a]	N/A	N/A
4. Enhanced Fishing	$537.20	$349.98
5. Enhanced Boating	$202.69	$132.05
6. Enhanced Wildlife Viewing	$259.95	$169.36
7. Non-Use benefits (½ of Recreational Use Benefits)	$499.92	$325.70
Total monetized benefits	$1,499.85	$977.22

[a] Not applicable to the final rule.

F. National Cost-Benefit Comparison

The comparison of costs and benefits for the final rule is inevitably incomplete because EPA cannot value all of the benefits resulting from the final rule in dollar terms. A comparison of costs and benefits is thus limited by the lack of a comprehensive benefits valuation and also by uncertainties in the estimates. Bearing these limitations in mind, EPA presents a summary comparison of costs and benefits for the final rule in Table IX–6. The estimated social cost of the final rule is $13.8 million annually (2001$). The total benefits that can be valued in dollar terms in the categories traditionally analyzed for effluent guidelines range from around $977,000 to $1,500,000 annually (2001$), based on the alternative extrapolation methods.

As previously noted, EPA used more detailed information and a more comprehensive analytic method to estimate expected benefits of the final rule for the State of Ohio. This more rigorous analysis was undertaken to address certain issues in the national-level analysis and to supplement the national-level analysis performed for the final rule. The following section presents this analysis. The Ohio case study showed that the more rigorous analytic approach leads to a different conclusion from that found in the simpler, national-level analysis approach—in particular, that the estimated State-level benefits exceed the estimated State-level cost. As previously discussed, given (1) that Ohio accounts for only about 6 percent of total MP&M facilities, and (2) that other States with substantial numbers of MP&M facilities have similar population and water body characteristics to Ohio, EPA believes that use of the more rigorous approach nationally would yield a higher estimate of national benefits. On this basis, the Agency estimates that national benefits from the final rule may be comparable to its social costs.

TABLE IX–6.—COST-BENEFIT COMPARISON [THOUSANDS OF 2001$]

Category	Traditional extrapolation	Post-stratification extrapolation*
Social Cost of Regulation	$13,824.56	$13,824.56
Monetized Benefits	$1,499.85	$977.22
Net Benefits	(−$12,324.72)	(−$12,847.34)

*Post-Stratification extrapolation is applied to benefits estimates only.

G. Ohio Case Study

1. Overview

The Ohio Case Study Report presents a detailed case study of the expected State-level costs and benefits of the MP&M rule in Ohio. The case study assesses the costs and benefits of the final rule for facilities and water bodies located in Ohio. Ohio is among the ten States with the largest numbers of MP&M facilities. The State has a diverse water resource base and a more extensive water quality ecological database than many other States. EPA gathered data on MP&M facilities and on Ohio's baseline water quality conditions and water-based recreation activities to support the case study analysis. These data characterize current water quality conditions, water quality changes expected from the regulation, and the expected welfare changes from water quality improvements at water bodies affected by MP&M discharges. The case study also estimates the social costs of the final rule for facilities in Ohio and compares estimated social costs and benefits for the State.

The case study analysis supplements the national level analysis performed for the final MP&M regulation in two important ways. First, the analysis used improved data and methods to determine MP&M pollutant discharges from both MP&M facilities and other sources. In particular, EPA administered 1,600 screener questionnaires to augment information on the Ohio's MP&M facilities. The Agency also used information from the sampled MP&M facilities to estimate discharge characteristics of non-sampled MP&M facilities, as described in Appendix H of the EEBA report. The Agency assigned discharge characteristics to all non-MP&M industrial direct discharges based on the information provided in PCS. Second, the analysis used an original travel cost study to value four recreational uses of water resources affected by the regulation: swimming, fishing, boating, and near-water activities. The added detail provides a more complete and reliable analysis of water quality changes from reduced MP&M discharges. The study provides more complete estimates of changes in human welfare resulting from reduced health risk, enhanced recreational opportunities, and improved economic productivity.

EPA estimated human health benefits from reduced MP&M dischargers in Ohio using similar methodologies to those used for the national-level analysis. Section IX.B of this preamble summarizes these methodologies. Uncertainties and assumptions of EPA's

analysis of human health benefits are presented in section IX.B.5. Additional details on methodology and the uncertainties and limitations of EPA's analysis of reduced human health risk from the final effluent guidelines are presented in Chapter 13 and 14 of the EEBA report.

The case study analysis of recreational benefits combines water quality modeling with a random utility model (RUM) to assess how changes in water quality from the regulation will affect consumers' valuation of water resources. The RUM analysis addresses a wide range of pollutant types and effects, including water quality measures not often addressed in past recreational benefits studies. In particular, the model supports a more complete analysis of recreational benefits from reductions in nutrients and toxic pollutants (*i.e.*, priority pollutants and nonconventional pollutants with toxic effects).

EPA subjected this study to a formal peer review by experts in the natural resource valuation field. The peer review concluded that EPA had done a competent job, especially given the available data. As requested by the Agency, peer reviewers provided suggestions for further improvements in the analysis. Since the proposed rule analysis, the Agency made changes to the Ohio model and conducted additional sensitivity analyses suggested by the reviewers. The peer review report and EPA's response to peer reviewers' comments, along with the revised model, are in the docket for the rule.

2. Benefits for Ohio Case Study

The use of an original RUM in this case study allows the Agency to address limitations inherent in benefits transfer used in the analysis of recreational benefits at the national level. The use of benefits transfer often requires additional assumptions because water quality changes evaluated in the available recreation demand studies are only roughly comparable with the water quality measures evaluated for a particular rule. The RUM model estimates the effects of the specific water quality characteristics analyzed for the final MP&M regulation, such as presence of AWQC exceedances and concentrations of the nonconventional pollutant Total Kjeldahl Nitrogen (TKN). EPA estimates that this direct link between the water quality characteristics analyzed for the rule and the characteristics valued in the RUM analysis reduces uncertainty in benefit estimates and makes the analysis of recreational benefits more robust.

The final MP&M regulation affects a broad range of pollutants, some of which are toxic to human and aquatic life but are not directly observable (*i.e.*, priority and non-conventional pollutants). These unobservable toxic pollutants may degrade aquatic habitats, decrease the size and abundance of fish and other aquatic species, increase fish deformities, and change watershed species composition. Changes in toxic pollutant concentrations may therefore affect recreationists' valuation of water resources, even if consumers are unaware of changes in ambient pollutant concentrations.

The study used data from the National Demand Survey for Water-Based Recreation (NDS), conducted by U.S. EPA and the National Forest Service, to examine the effects of in-stream pollutant concentrations on consumers' decisions to visit a particular water body. The analysis estimated baseline and post-compliance water quality at recreation sites actually visited by the surveyed consumers and at all other sites within the consumers' choice set, visited or not. The RUM analysis of consumer behavior then estimated the effect of ambient water quality and other site characteristics on the total number of trips taken for different water-based recreation activities and the allocation of these trips among particular recreational sites. The RUM analysis is a travel cost model, in which the cost to travel to a particular recreational site represents the "price" of a visit.

EPA modeled two consumer decisions: (1) How many water-based recreational trips to take during the recreational season (the trip participation model); and (2) which recreation site to choose (the site choice model). Combining the trip frequency model's prediction of trips under the baseline and post-compliance scenarios and the site choice model's per-trip welfare measure provides a measure of total welfare. EPA calculated each individual's seasonal welfare gain for each recreation activity from post-compliance water quality changes, and then used Census data to aggregate the estimated welfare change to the State level. The sum of estimated welfare changes over the four recreation activities yielded estimates of total welfare gain.

EPA estimated other components of benefits in Ohio using similar methodologies to those used for the national-level analysis. In addition to the RUM study of recreational benefits, other analytical improvements included the following: (1) Use of more detailed data on MP&M facilities, obtained from the 1,600 additional surveys; (2) use of data on non-MP&M discharges to estimate current baseline conditions in the State; and (3) use of a first-order decay model to estimate in-stream concentrations in the Ohio water bodies in the baseline and post-compliance.

Appendix H of the EEBA Report describes the water quality model used in this analysis and the approach and data sources used to estimate total pollutant loadings from all industrial and municipal sources to Ohio's water bodies. The Agency has concluded that the added level of detail results in more robust benefit estimates.

Summing the monetary values over all benefit categories yields total monetized benefits of $930,400 (2001$) annually for the final rule, as shown in Table IX–7. Although more comprehensive than the national benefits analysis, the case study benefit estimates still omit important mechanisms by which society is likely to benefit from the final rule. Examples of benefit categories not reflected in the monetized benefits include non-cancer health benefits (other than lead-related benefits) and reduced costs of drinking water treatment.

TABLE IX–7.—ESTIMATED BENEFITS FROM REDUCED MP&M DISCHARGES FROM OHIO FACILITIES

[Annual benefits—thousands of 2001$]

Benefit category	Selected option
1. Reduced Cancer Risk:	
Fish Consumption:	$14.5
Water Consumption:	$0.00
2. Reduced Risk from Exposure to Lead:	
Children:	$422.11
Adults:	$117.39
3. Avoided Sewage Sludge Disposal Costs	$0.00
4. Enhanced Fishing	$153.10
5. Enhanced Swimming	$9.78
6. Enhanced Boating	$0.00
7. Enhanced Wildlife Viewing	$88.05
8. Non-Use benefits (½ of Recreational Use Benefits)	$125.47
Total Monetized Benefits	$930.4

3. Social Costs for Ohio Case Study

EPA also estimated the social costs of the final rule for MP&M facilities in Ohio. EPA relied on the results of the national analysis to predict the number of Ohio facilities that would close in the baseline and due to the final rule.

The MP&M regulations will not affect facilities that are baseline closures. Predicting the number of regulatory closures is necessary to estimate the costs and impacts of the regulation on industry and water quality. The screener data collected for Ohio facilities did not provide financial data to perform facility financial impact analyses, as was done in the national analysis. EPA therefore used data from the national analysis to estimate the percentage of facilities that would close in the baseline and post-compliance. EPA assumed the ratio of facilities that close in the national analysis with the same discharge status, subcategory, and flow category would be comparable to closures for facilities in Ohio. For example, two percent of direct Oily Waste facilities discharging less than one MGY close in the baseline in the national data set.

EPA developed engineering estimates of compliance costs for each Ohio facility and annualized costs using a seven percent discount rate over a 15-year period. As in the national social cost analysis, EPA included compliance costs for facilities that close due to the rule and costs for facilities that continue to operate subject to the final regulation. Including costs for regulatory closures in effect calculates the social costs of compliance that would be incurred if every facility continued to operate post-regulation. In fact, some facilities may find it more economical to close, and calculating costs as if all facilities continue operating provides an upper bound estimate of social costs.

EPA used the same methods as used in the national social cost analysis to estimate other components of social costs for the Ohio case study. Section VIII of this preamble and Chapter 11 of the EEBA describe the methods used to estimate government administrative costs and the social costs of unemployment.

Table IX–8 shows the total estimated social costs of the final rule for Ohio facilities.

TABLE IX–8.—ANNUAL SOCIAL COSTS FOR OHIO FACILITIES: PROPOSED OPTION

[Thousands 2001$, costs annualized at 7%]

Component of social costs	Selected option
Resource value of compliance costs	$62.23
Government administrative costs	$0.00
Social cost of unemployment	$0.00
Total social cost	$62.23

4. Comparison of Monetized Benefits and Costs for Ohio Case Study

The Ohio case study shows substantial net positive benefits associated with the MP&M regulation. EPA estimates the social cost in Ohio of the final regulation to be $62,232 annually (2001$). The sum total of benefits that can be valued in dollar terms is $930,408 annually (2001$). Comparing the midpoint estimate of social costs ($62,232) with the midpoint estimate of monetizable benefits ($930,408) results in a net social benefit of $868,178. This represents a partial cost-benefit comparison because not all of the benefits resulting from the regulation can be valued in dollar terms (*e.g.*, changes in systemic health risk).

For the reasons previously discussed, EPA judges that the analytic approach and detailed data used for the Ohio case study provide a more robust and accurate benefits estimate than the data and approach used for the national-level analysis.

X. Non-Water Quality Environmental Impacts

Sections 304(b) and 306 of the Act require EPA to consider non-water quality environmental impacts (including energy requirements) associated with effluent limitations guidelines and standards. In accordance with these requirements, EPA has considered the potential impact of today's final regulation on air emissions, solid waste generation, and energy consumption.

While it is difficult to balance environmental impacts across all media and energy use, the Agency has determined that the benefits associated with compliance with the limitations and standards justify the multi-media impacts identified in this section (*see* section IX for a discussion on the environmental benefits associated with this regulation). For additional information on non-water quality impacts associated with today's regulation, *see* section 13 of the TDD.

A. Air Pollution

MP&M facilities generate wastewater that contain organic compounds. These organic compounds may be volatile organic compounds (VOCs), which contribute to the formation of ambient ozone, or hazardous air pollutants (HAPs) listed in section 112(b) of the Clean Air Act (CAA). These wastewaters often pass through a series of collection and treatment units that are open to the atmosphere and allow wastewater containing organic compounds to contact ambient air. Atmospheric exposure of the organic-containing wastewaters may result in the release of VOCs or organic HAPs from the wastewater.

The use of halogenated hazardous air pollutant solvent (methylene chloride, perchloroethylene, trichloroethylene, 1,1,1 trichloroethane, carbon tetrachloride and chloroform) for cleaning in the MP&M industry can create hazardous air pollutant emissions. The Agency has concluded that this regulation will not affect the use of halogenated hazardous air pollutant solvent in the MP&M industry. This regulation neither requires nor discourages the use of aqueous cleaners in lieu of halogenated hazardous air pollutant solvent.

Because today's final rule would not allow any less stringent control of VOCs or organic HAPs than is currently in place at MP&M facilities, EPA does not predict any net increase in air emissions from volatilization of organic pollutants due to today's action. As such, EPA expects no adverse air impacts are expected to occur as a result of today's regulation.

The Agency notes that it is developing National Emission Standards for Hazardous Air Pollutants (NESHAPs) under section 112 of the CAA to address air emissions of HAPs. Current and upcoming NESHAPs that may potentially affect HAP emitting activities at MP&M facilities considered during the development of this rule include:

- Chromium Emissions from Hard and Decorative Chromium Electroplating and Chromium Anodizing Tanks;
- Halogenated Solvent Cleaning;
- Aerospace Manufacturing;
- Shipbuilding and Ship Repair (Surface Coating);
- Large Appliances (Surface Coating);
- Metal Furniture (Surface Coating);
- Automobile and Light-Duty Truck Manufacturing (Surface Coating); and
- Miscellaneous Metal Parts and Products (Surface Coating).

Finally, EPA notes that the energy requirements discussed in this section may result in increased emissions of combustion byproducts associated with energy production. Given the relatively small projected increases in energy use, EPA does not anticipate that this effect would be significant.

B. Solid Waste

As shown in Table X–1, EPA anticipates that waste oil generation will increase as a result of today's rule. The estimated increase of waste oil generation as a result of today's rule reflects better removal of oil and grease by the selected technology than is currently achieved.

TABLE X–1.—WASTE OIL GENERATION FOR OILY WASTES SUBCATEGORY

Option	Waste Oil Generated (million gallons/year)
Baseline (or current) Technology [1]	13.5
Option 6 Technology	15.9

Source: U.S. Environmental Protection Agency.
[1] EPA calculated the baseline sludge and waste oil generation using responses to the 1989 MP&M Phase I Questionnaire and the 1996 MP&M Phase II Detailed Questionnaires.

MP&M facilities usually either recycle waste oil on-site or off-site, or contract haul it for disposal as either a hazardous or nonhazardous waste. However, EPA notes that the inclusion of water conservation and pollution prevention in the technology basis for the Oily Wastes subcategory results in the generation of less waste oil than a technology basis that did not incorporate pollution prevention. EPA finds the overall increase in waste oil generation as acceptable.

C. Energy Requirements

EPA estimates that compliance with this regulation will result in a net increase in energy consumption at MP&M facilities. EPA presents the estimates of energy usage for the selected option in Table X–2.

TABLE X–2.—ENERGY REQUIREMENTS BY OPTION

Option	Energy required (kilowatt hrs/yr)
Baseline [1]	6,883,774
Selected Options	7,234,450

Source: U.S. Environmental Protection Agency.
[1] EPA calculated the baseline sludge and waste oil generation using responses to the 1989 MP&M Phase I Questionnaire and the 1996 MP&M Phase II Detailed Questionnaires. The final regulation does not include indirect discharging facilities.

By comparison, electric power generation facilities generated 3,123 billion kilowatt hours of electric power in the United States in 1997 (The Energy Information Administration, Electric Power Annual 1998 Volume 1, Table A1). Additional energy requirements for EPA's selected options are trivial (*i.e.*, significantly less than 0.01 percent of national requirements).

XI. Regulatory Implementation

The purpose of this section is to provide assistance and direction to permit writers and MP&M facilities to aid in their implementation of this regulation. This section also discusses the relationship of upset and bypass provisions, and variances and modification to the final limitations and standards. For additional implementation information, *see* section 15 of the TDD for today's final rule.

A. Implementation of the Limitations and Standards for Direct Dischargers

Effluent limitations and new source performance standards act as one of the primary mechanisms to control the discharges of pollutants to waters of the United States. Authorized States may also set permit limitations based on the capabilities of the treatment installed to ensure proper operation and maintenance of the treatment technology. These limitations and standards are applied to individual facilities through NPDES permits issued by the EPA or authorized States under section 402 of the Act.

In specific cases, the NPDES permitting authority may elect to establish permit limits for pollutants not covered by this regulation based on the capabilities of on-site treatment technologies. In addition, if State water quality standards or other provisions of State or Federal law require limits on pollutants not covered by this regulation (or require more stringent limits or standards on covered pollutants in order to achieve compliance), the permitting authority must apply those limitations or standards. *See* CWA section 301(b)(1)(C).

1. Compliance Dates for Existing and New Sources

New and reissued Federal and State NPDES permits to direct dischargers must include the effluent limitations promulgated today. The permits must require immediate compliance with such limitations. If the permitting authority wishes to provide a compliance schedule, it must do so through an enforcement mechanism.

New sources must comply with the new source standards (NSPS) of the MP&M rule at the time they commence discharging MP&M process wastewater. Because the final rule was not promulgated within 120 days of the proposed rule, the Agency considers a discharger a new source if its construction commences after June 12, 2003.

2. Applicability

In section V of this preamble and section 15 of the TDD, EPA provides details information on the applicability of this rule to various operations. Permit writers should closely examine all metal products and machinery operations and compare these operations against the applicability statement for today's rule (*see* 40 CFR 438.1) and section 1 of the TDD to determine if they are subject to the provisions of this rule.

3. Implementation for Facilities Subject to Multiple Effluent Limitations Guidelines

The regulations in today's final rule do not apply to wastewater discharges which are subject to the limitations and standards of other effluent limitations guidelines (*e.g.*, Metal Finishing (40 CFR part 433) or Iron and Steel Manufacturing (40 CFR part 420)).

4. Waiver for Pollutants Not Present

In May 2000, EPA promulgated a regulation to streamline the NPDES regulations ("Amendments to Streamline the National Pollutant Discharge Elimination System Program Regulations: Round Two" (*see* 65 FR 30886; May 15, 2000)) which includes a monitoring waiver for direct dischargers subject to effluent guidelines. Direct discharge facilities may forego sampling of a guideline-limited pollutant if that discharger "has demonstrated through sampling and other technical factors that the pollutant is not present in the discharge or is present only at background levels from intake water and without any increase in the pollutant due to activities of the discharger," (*see* 65 FR 30908; 40 CFR 122.44). EPA noted in the preamble to the final NPDES streamlining rule that it is providing a waiver from monitoring requirements, but not a waiver from the limit. In addition, the revision does not waive monitoring for any pollutants for which there are limits based on water quality standards. The waiver for direct dischargers lasts for the term of the NPDES permit and is not available during the term of the first permit issued to a discharger. Any request for this waiver must be submitted when applying for a reissued permit or modification of a reissued permit. Therefore, EPA is not including a monitoring waiver in today's final regulations for direct dischargers. When authorized by their permit writer, direct discharge facilities covered by any effluent guidelines (including today's rule) will be able to use the monitoring waiver contained in the NPDES streamlining final rule.

5. Compliance with the Limitations and Standards

The same basic procedures apply to the calculation of all limitations and standards for the OWS, regardless of whether the control level is BPT, BCT, or NSPS. For simplicity, the following discussion refers only to effluent limitations guidelines; however, the discussion also applies to new source standards.

a. Definitions

The limitations for pollutants for the OWS, as presented in today's final rule, are provided as maximum daily discharge limitations. Definitions provided at 40 CFR 122.2 state that the "maximum daily discharge limitation" is the "highest allowable 'daily discharge.'" Daily discharge is defined as the "'discharge of a pollutant' measured during a calendar day or any 24-hour period that reasonably represents the calendar day for purposes of sampling." Section 10 of the TDD describes the data selection and calculations used to develop today's limitations.

b. Percentile Basis for Limits, Not Compliance

EPA promulgates limitations that facilities are capable of complying with at all times by properly operating and maintaining their processes and treatment technologies. EPA established these limitations on the basis of percentiles estimated using data from facilities with well-operated and controlled processes and treatment systems. However, because EPA uses a percentile basis, the issue of exceedances (*i.e.*, values that exceed the limitations) or excursions is often raised in public comments on limitations. For example, comments often suggest that EPA include a provision that allows a facility to be considered in compliance with permit limitations if its discharge exceeds the specified daily maximum limitations one day out of 100. As explained in section 10.4 of the TDD, these limitations were never intended to have the rigid probabilistic interpretation implied by such comments. The following discussion provides a brief overview of EPA's position on this issue.

EPA expects that all facilities subject to the limitations will design and operate their treatment systems to achieve the long-term average performance level on a consistent basis because facilities with well-designed and operated model technologies have demonstrated that this can be done. Facilities that are designed and operated to achieve the long-term average effluent levels used in developing the limitations should be capable of compliance with the limitations at all times, because the limitations incorporate an allowance for variability in effluent levels about the long-term average. The allowance for variability is based on control of treatment variability demonstrated in normal operations.

EPA recognizes that, as a result of today's rule, some dischargers may need to improve treatment systems, process controls, and/or treatment system operations in order to consistently meet limitations and standards in the final MP&M effluent guidelines. EPA finds that this consequence is consistent with the Clean Water Act statutory framework, which requires that discharge limitations reflect best practicable control technology currently available (BPT).

c. Limitations

EPA did not establish monthly average limitations for O&G (as HEM) and TSS because a monthly average limitation would be based on the assumption that a facility would be required to monitor more frequently than once a month. For the reasons set forth in section VI.F.1, EPA estimates that one monthly monitoring event is sufficient; however, if permitting authorities choose to require more frequent monitoring for O&G (as HEM) and TSS, they may set monthly average limitations and standards based on their BPJ (*see* 40 CFR 430.24(a)(1), footnote b).

d. Requirements of Laboratory Analysis

The permittee is responsible for communicating the requirements of the analysis to the laboratory, including the sensitivity required to meet the regulatory limits associated with each analyte of interest. In turn, the laboratory is responsible for employing the appropriate set of method options and a calibration range in which the concentration of the lowest non-zero standard represents a sample concentration lower than the regulatory limit for each analyte. It is the responsibility of the permittee to convey to the laboratory the required sensitivity to comply with the limitations (*see Sierra Club* v. *Union Oil*, 813 F.2d 1480, page 1492 (9th Cir. 1987)).

B. Upset and Bypass Provisions

A "bypass" is an intentional diversion of the streams from any portion of a treatment facility. An "upset" is an exceptional incident in which there is unintentional and temporary noncompliance with technology-based permit effluent limitations because of factors beyond the reasonable control of the permittee. EPA's regulations concerning bypasses and upsets for direct dischargers are set forth at 40 CFR 122.41(m) and (n) and for indirect dischargers at 40 CFR 403.16 and 403.17.

C. Variances and Modifications

The CWA requires application of effluent limitations established pursuant to section 301 to all direct dischargers. However, the statute provides for the modification of these national requirements in a limited number of circumstances. Moreover, the Agency has established administrative mechanisms to provide an opportunity for relief from the application of the national effluent limitations guidelines for categories of existing sources for toxic, conventional, and nonconventional pollutants.

1. Fundamentally Different Factors Variances

EPA will develop effluent limitations or standards different from the otherwise applicable requirements if an individual discharging facility is fundamentally different with respect to factors considered in establishing the limitation of standards applicable to the individual facility. Such a modification is known as a "fundamentally different factors" (FDF) variance.

Early on, EPA, by regulation provided for the FDF modifications from the BPT effluent limitations, BAT limitations for toxic and nonconventional pollutants and BPT limitations for conventional pollutants for direct dischargers. For indirect dischargers, EPA provided for modifications from pretreatment standards. FDF variances for toxic pollutants were challenged judicially and ultimately sustained by the Supreme Court. (*Chemical Manufacturers Assn* v. *NRDC*, 479 U.S. 116 (1985)).

Subsequently, in the Water Quality Act of 1987, Congress added a new section 301(n) explicitly authorizing modifications of the otherwise applicable BAT effluent limitations or categorical pretreatment standards for existing sources if a facility is fundamentally different with respect to the factors specified at section 304 (other than costs) considered by EPA in establishing the effluent limitations or pretreatment standards. Section 301(n) also defined the conditions under which EPA may establish alternative requirements. Under section 301(n), an application for approval of FDF variance must be based solely on: (1) Information submitted during rulemaking raising the factors that are fundamentally different; or (2) information the applicant did not have an opportunity to submit. The alternate limitation or standard must be no less stringent than justified by the difference and must not result in

markedly more adverse non-water quality environmental impacts than the national limitation or standard.

EPA regulations at 40 CFR part 125 subpart D, authorizing the Regional Administrators to establish alternative limitations and standards, further detail the substantive criteria used to evaluate FDF variance requests for direct dischargers. Thus, 40 CFR 125.31(d) identifies six factors (*e.g.*, volume of process wastewater, age and size of a discharger's facility) that may be considered in determining if a facility is fundamentally different. The Agency must determine whether, on the basis of one or more of these factors, the facility in question is fundamentally different from the facilities and factors considered by EPA in developing the nationally applicable effluent guidelines. The regulation also lists four other factors (*e.g.*, infeasibility of installation within the time allowed or a discharger's ability to pay) that may not provide a basis for an FDF variance. In addition, under 40 CFR 125.31(b)(3), a request for limitations less stringent than the national limitation may be approved only if compliance with the national limitations would result in either: (a) A removal cost wholly out of proportion to the removal cost considered during development of the national limitations; or (b) a non-water quality environmental impact (including energy requirements) fundamentally more adverse than the impact considered during development of the national limits. The conditions for approval of a request to modify applicable pretreatment standards and factors considered are the same as those for direct dischargers.

The legislative history of section 301(n) underscores the necessity for the FDF variance applicant to establish eligibility for the variance. EPA's regulations at 40 CFR 125.32(b)(1) are explicit in imposing this burden upon the applicant. The applicant must show that the factors relating to the discharge controlled by the applicant's permit which are claimed to be fundamentally different are, in fact, fundamentally different from those factors considered by the EPA in establishing the applicable guidelines. The pretreatment regulations incorporate a similar requirement at 40 CFR 403.13(h)(9).

Facilities must submit all FDF variance applications to the appropriate Director (as defined at 40 CFR 122.2) no later than 180 days from the date the limitations or standards are established or revised (*see* CWA § 301(n)(2) and 40 CFR 122.21(m)(1)(i)(B)(2)). EPA regulations clarify that effluent limitations guidelines are "established" or "revised" on the date those effluent limitations guidelines are published in the **Federal Register** (*see* 40 CFR 122.21(m)(1)(i)(B)(2)). Therefore all facilities requesting FDF variances from the effluent limitations guidelines in today's final rule must submit all FDF variance applications to their Director (as defined at 40 CFR 122.2) no later than November 10, 2003.

An FDF variance is not available to a new source subject to NSPS.

2. Water Quality Variances

Section 301(g) of the CWA authorizes a variance from BAT effluent guidelines for certain non-conventional pollutants due to localized environmental factors so long as the discharge does not violate any water quality-based effluent limitations. These pollutants include ammonia, chlorine, color, iron, and phenols (as measured by the colorimetric 4-aminoantipyrine (4AAP) method). Dischargers subject to new or revised BAT limitations promulgated today for those pollutants may be eligible for a section 301(g) variance. Please note that section 301(g)(4)(c) requires the filing of section 301(g) variance applications pertaining to the new or revised limits not later than February 9, 2004. Existing section 301(g) variances for limitations not being revised today are not affected by today's action. This variance is not applicable to today's final rule as none of these parameters are regulated by today's final rule.

3. Permit Modifications

Even after EPA (or an authorized State) has issued a final permit to a direct discharger, the permit may still be modified under certain conditions. (When a permit modification is under consideration, however, all other permit conditions remain in effect.) A permit modification may be triggered in several circumstances. These could include a regulatory inspection or information submitted by the permittee which reveals the need for modification. Any interested person may request that a permit modification be made. There are two classifications of modifications: Major and minor. From a procedural standpoint, they differ primarily with respect to the public notice requirements. Major modifications require public notice while minor modifications do not. Virtually any modification that results in less stringent conditions is treated as a major modifications, with provisions for public notice and comment. Conditions that would necessitate a major modification of a permit are described at 40 CFR part 122.62. Minor modifications are generally non-substantive changes. The conditions for minor modification are described at 40 CFR part 122.63.

XII. Statutory and Executive Order Reviews

A. Executive Order 12866: Regulatory Planning and Review

Under Executive Order 12866, (*see* 58 FR 51735 (October 4, 1993)) the Agency must determine whether the regulatory action is "significant" and therefore subject to OMB review and the requirements of the Executive Order. The Order defines "significant regulatory action" as one that is likely to result in a rule that may:

(1) Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities;

(2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or

(4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

It has been determined that this rule is not a "significant regulatory action" under the terms of Executive Order 12866 and is therefore not subject to OMB review.

B. Paperwork Reduction Act

This action does not impose an information collection burden under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* This rule merely establishes technology-based discharge limitations and standards.

Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

An Agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed at 40 CFR part 9 and 48 CFR chapter 15.

C. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) generally requires an agency to prepare a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements under the Administrative Procedure Act or any other statute unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small organizations, and small governmental jurisdictions.

For assessing the impacts of today's rule on small entities, a small entity is defined as: (1) A small business according to the regulations of the Small Business Administration (SBA) at 13 CFR part 121.201, which define small businesses for Standard Industrial Classification (SIC) codes; (2) a small governmental jurisdiction that is a government of a city, county, town, school district or special district with a population of less than 50,000; and (3) a small organization that is any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.

To assess the potential economic impact of today's rule on small entities, EPA drew on: (1) A comparison of compliance costs to revenue; and (2) the firm and facility impact analyses discussed in section VIII of this preamble. First, EPA performed an analysis comparing annualized compliance costs to revenue for small entities at the firm level. EPA found that none of the small firms are estimated to incur compliance costs equaling or exceeding one percent of annual revenue. Second, EPA drew on the facility impact analysis, which estimated facility closures and other adverse changes to financial condition (referred to as "moderate impacts"). See section VIII.D of today's rule for details of EPA's analysis of closures and moderate impacts for privately-owned businesses. This analysis indicated that the final rule would cause no regulated facilities owned by small entities to close or to incur moderate impacts. From these analyses, EPA determined that the final rule will not have a significant economic impact on a substantial number of small entities. See Chapter 10 of the final rule EEBA for a more detailed discussion of the economic impacts on small entities.

After considering the economic impacts of today's final rule on small entities, I certify that this action will not have a significant economic impact on a substantial number of small entities.

In accordance with section 603 of the RFA, EPA prepared an initial regulatory flexibility analysis (IRFA) for the proposed rule and convened a Small Business Advocacy Review Panel to obtain advice and recommendations of representatives of the regulated small entities in accordance with section 609(b) of the RFA (*see* 66 FR 519). The January 2001 proposed rule (*see* 66 FR 523) presents a summary of the Panel's recommendations and the full Panel Report (*see* DCN 16127, section 11.2) presents a detailed discussion of the Panel's advice and recommendations.

D. Unfunded Mandates Reform Act

1. UMRA Requirements

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. Under UMRA section 202, EPA generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with "Federal mandates" that may result in expenditures to State, local, and tribal governments, in the aggregate, or to the private sector, of $100 million or more in any one year.

Before promulgating an EPA rule for which a written statement is needed, UMRA section 205 generally requires EPA to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective or least burdensome alternative that achieves the objectives of the rule. The provisions of section 205 do not apply when they are inconsistent with applicable law. Moreover, section 205 allows EPA to adopt an alternative other than the least costly, most cost-effective or least burdensome alternative if the Administrator publishes with the final rule an explanation why that alternative was not adopted.

EPA is required by UMRA section 203 to develop a small government agency plan before it establishes any regulatory requirements that may significantly or uniquely affect small governments, including tribal governments. The plan must provide for notifying potentially affected small governments, enabling officials of affected small governments to have meaningful and timely input in the development of EPA regulatory proposals with significant Federal intergovernmental mandates, and informing, educating, and advising small governments on compliance with the regulatory requirements.

EPA determined that this rule does not contain a Federal mandate that may result in expenditures of $100 million or more for State, local, and tribal governments, in the aggregate, or the private sector in any one year. The estimated total annualized before-tax costs of compliance are $13.8 million ($2001). On an after-tax basis the costs total $11.9 million ($2001), of which the private sector incurs $3.0 million ($2001) and state and local governments that perform MP&M activities incur $9.0 million ($2001). Thus, today's rule is not subject to the requirements of UMRA sections 202 and 205.

EPA also determined that this rule contains no regulatory requirements that might significantly or uniquely affect small governments. The final regulation imposes no new administrative costs on small governments owning POTWs because the regulations does not establish pretreatment standards for POTWs with indirectly discharging government-owned facilities. With respect to the 280 small government-owned facilities, EPA determined that the costs of the final rule are not significant for small governments. Of these facilities, 140 incur no compliance costs under the final rule and the remaining 140 incur annualized costs that average approximately $25,000 per facility. The total compliance cost for all the small government-owned facilities incurring costs under the regulation is $3.5 million. EPA concluded that these compliance costs will have no significant budgetary impacts for any of the governments owning these facilities. In addition, EPA concluded that the final rule does not uniquely affect small governments because small and large governments are affected by the rule in the same way. Thus, today's rule is not subject to the requirements of UMRA section 203.

Although today's final rule does not contain a Federal mandate under UMRA, EPA did undertake an assessment of the impacts of the final rule on State and local governments as part of its decision-making process. The following section discusses some of the results of EPA's review. More detail may be found in the EEBA.

2. Analysis of Impacts on Government Entities

EPA estimates that the costs to government-owned facilities to comply

with today's final rule are approximately $9.0 million annually ($2001), which is below the threshold specified in § 202. EPA, nevertheless, assessed the impacts on State and local governments during the course of development of the rule. Generally, governments may incur two types of costs as a result of the proposed regulation: (1) Direct costs to comply with the rule for facilities owned by government entities; and (2) administrative costs to implement the regulation. Both types of costs are discussed below.

a. Compliance Costs for Government-Owned MP&M Facilities

As previously explained, EPA surveyed government-owned facilities to assess the cost of the regulation on these facilities and the government entities that own them. The survey responses support EPA's analysis of the budgetary impacts of the regulation. Survey information includes: The size and income of the populations served by the affected government entities; the government's current revenues by source, taxable property, debt, pollution control spending, and bond rating; and the costs, funding sources, and other characteristics of the MP&M facilities owned by each government entity. Table XII–1 provides national estimates of the government entities that operate MP&M facilities potentially subject to the regulation by size.

Table XII–2 summarizes the annualized compliance costs incurred by government entities by size.

TABLE XII–1.—NUMBER OF GOVERNMENT-OWNED FACILITIES BY TYPE AND SIZE OF GOVERNMENT ENTITY

Size of government and status under final option	Municipal government	State government	County government	Regional government authority	Total
Large Governments (population >50,000)					
Number of regulated government entities	26	129	23	0	178
Number of government entities with exclusions	592	248	758	46	1,645
Small Governments (population <=50,000)					
Number of regulated government entities	280	0	0	0	280
Number of government entities with exclusions	1,470	0	212	0	1,682
All Governments					
Number of regulated government entities	306	129	23	0	458
Number of government entities with exclusions	2,062	248	970	46	3,327
Total	2,368	377	993	46	3,785

TABLE XII–2.—NUMBER OF REGULATED GOVERNMENT-OWNED FACILITIES AND COMPLIANCE COSTS BY SIZE OF GOVERNMENT

[million, 2001$]

	Number of facilities	Costs
Regulated Facilities Owned by Large Governments	178	$5.5
Regulated Facilities Owned by Small Governments	280	$3.5
All Regulated Government-Owned Facilities	458	$9.0

The table shows that 280 regulated facilities (or 61 percent) of the regulated government entities are owned by small governments. These facilities incur $3.5 million annually in compliance costs with an average cost of $12,575 per facility. Larger governmental entities own the remaining 178 regulated facilities (or 39 percent). EPA estimates that facilities owned by the larger governmental entities incur $5.5 million in annual compliance costs with an average cost of $30,700 per facility.

EPA used the analysis described in Section VIII.E to estimate the impacts on government owned facilities. EPA judged a government to experience significant budgetary impacts if: (1) One or more facilities incur compliance costs exceeding 1% of the baseline cost of service, (2) total debt service costs—post-compliance, and including costs to finance MP&M capital costs entirely with debt—exceed 25% of baseline revenue, *and* (3) total annualized pollution control costs per household, post-compliance, exceed one percent of median household income. EPA estimated no significant impacts for any of these facilities, based on these budgetary criteria. Thus, EPA concluded that none of the affected governments are expected to incur significant budgetary impacts as a result of the regulation. However, EPA also considered whether the MP&M regulation may significantly or uniquely affect small governments.

b. Small Government Impacts

EPA estimates that small governments (*i.e.*, governments with a population of less than 50,000) own 1,962 MP&M facilities. The decision not to regulate indirect facilities will exclude 1,682 small government-owned MP&M facilities from additional requirements. Thus, the final regulation covers 280 small government-owned facilities. Of these facilities, 140 incur no compliance costs under the final rule, and the remaining 140 incur annualized costs that average approximately $25,000 per facility. The total compliance cost for all the small-government-owned facilities incurring costs under this regulation is $3.5 million. Of the 280 facilities owned by small governments, 140 have costs greater than 1 percent of baseline cost of service (measured as total facility costs and expenditures, including operating, overhead and debt service costs and expenses). None of the affected governments incur costs that cause them to exceed the thresholds for impacts on taxpayers or for government debt burden. EPA therefore estimated no significant budgetary impacts for any of the governments owning these facilities. In accordance with this finding, EPA determined that this rule contains no regulatory requirements that might significantly or uniquely affect small governments.

c. POTW Administrative Costs

Since all indirect dischargers are excluded from the final rule, EPA expects the rule to impose no new POTW administrative costs.

3. Consultation

In addition to private industry, stakeholders affected by this rule include State and local government regulators. During development of the proposed and final rule, EPA consulted with all of these stakeholder groups on topics such as options development, cost models, pollutants to be regulated, cost of the regulation, and compliance alternatives. Some stakeholders provided helpful comments on the cost models, technology options, pollution prevention techniques, and monitoring alternatives.

Because many MP&M facilities in the proposed rule were indirect dischargers, the Agency involved POTWs as they would have had to implement the rule. EPA consulted with POTWs individually and through the Association of Municipal Sewerage Agencies (AMSA). In addition, EPA consulted with Regional pretreatment coordinators and State and local regulators. However, EPA is not promulgating new or revised pretreatment standards in today's final rule. See the proposed rule preamble (*see* 66 FR 519) for a summary of these consultation activities.

E. Executive Order 13132: Federalism

Executive Order 13132, entitled "Federalism" (*see* 64 FR 43255, August 10, 1999), requires Federal agencies to develop an accountable process to ensure "meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications." "Policies that have federalism implications" is defined in the Executive Order to include regulations that have "substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government."

This final rule does not have federalism implications. It will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132. The rule establishes effluent limitations imposing requirements that apply to metal product and machinery facilities, as defined by this final rule, when they discharge wastewater. The rule applies to States and localities if they own and operate in-scope MP&M facilities that discharge directly to surface waters. EPA estimates that 458 facilities subject to the regulation are owned and operated by state and local governments. EPA estimates that these facilities will experience an impact of $0 to $125,000, with an average impact of $20,000 per year ($2001).

In addition, the final rule will affect State governments responsible for administering CWA permitting programs. The final rule, at most, imposes minimal administrative costs on States that have an authorized NPDES program. (These States must incorporate the new limitations and standards in new and reissued NPDES permits). This rule does not change the current status of this administrative burden because this rule does not impose any further regulation on any indirect dischargers. The total cost of today's final rule to state and local governments is $9.0 million ($2001). Thus, Executive Order 13132 does not apply to this rule.

Although Executive Order 13132 does not apply to this rule, EPA did consult with State and local government representatives in developing this rule. See 66 FR 525 for a discussion of consultation activities.

F. Executive Order 13175: Consultation and Coordination With Indian Tribal Governments

Executive Order 13175, entitled "Consultation and Coordination with Indian Tribal Governments" (*see* 65 FR 67249, November 9, 2000), requires EPA to develop an accountable process to ensure "meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications." "Policies that have tribal implications" is defined in the Executive Order to include regulations that have "substantial direct effects on one or more Indian tribes, on the relationship between the Federal government and the Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes."

This final rule does not have tribal implications. It will not have substantial direct effects on tribal governments, on the relationship between the Federal government and Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes, as specified in Executive Order 13175. Based on the information collection efforts for this industry category, EPA does not expect any Indian tribal governments to own or operate in-scope MP&M facilities. In addition, EPA estimates few, if any, new facilities subject to the rule will be owned by tribal governments. Thus, Executive Order 13175 does not apply to this rule.

G. Executive Order 13045: Protection of Children From Environmental Health & Safety Risks

1. Executive Order 13045 Requirements

Executive Order 13045, "Protection of Children from Environmental Health Risks and Safety Risks" (*see* 62 FR 19885, April 23, 1997) applies to any rule that: (1) is determined to be "economically significant" as defined under Executive Order 12866; and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate affect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency.

This final rule is not subject to Executive Order 13045 because it is not economically significant as defined in Executive Order 12866. Nevertheless, since the final rule is expected to reduce numerous pollutants, including lead, in fish tissue and drinking water that exceed human health criteria, EPA performed an analysis of children's health impacts reduced by the final rule.

2. Analysis of Children's Health Impacts

EPA assessed whether the final regulation will benefit children, including reducing health risk from exposure to MP&M pollutants from consumption of contaminated fish tissue and drinking water and improving recreational opportunities. The Agency was able to quantify only one category of benefits specific to children: avoided health damages to

pre-school age children from reduced exposure to lead. This analysis considered several measures of children's health benefits associated with lead exposure for children up to age six. Avoided neurological and cognitive damages were expressed as changes in three metrics: (1) Overall IQ levels; (2) the incidence of low IQ scores (<70); and (3) the incidence of blood-lead levels above 20 µg/dL. The Agency also assessed changes in the incidence of neonatal mortality from reduced maternal exposure to lead. EPA's methodology for assessing lead-related benefits to children is presented in the EEBA, Chapter 14. The Ohio case study analysis showed that the final rule is expected to yield $422,000 (2001$) in annual benefits to children in the State of Ohio from reduced neurological and cognitive damages and reduced incidence of neonatal mortality. On the other hand, the national-level analysis shows that benefits to children from reduced lead discharges are negligible nationwide. As noted in section IX of today's final rule, different findings from these two analyses are likely to be due to insufficient data and a more simplistic approach used in the national level analysis.

Children over age seven are also likely to benefit from reduced neurological and cognitive damages from reduced exposure to lead. Giedd *et al.* (1999) studied brain development among 10- to 18-year-old children and found substantial growth in brain development, mainly in the early teenage years (*see* DCN 20385, section 8.5.2.3). This research suggests that older children may be hypersensitive to lead exposure, as are children aged 0 to 7.

Additional benefits to children from reduced exposure to lead not quantified in this analysis may include prevention of the following adverse health effects: slowed or delayed growth, delinquent and anti-social behavior, metabolic effects, impaired heme synthesis, anemia, impaired hearing, and cancer (*see* DCN 20416, section 8.5.2.3).

H. Executive Order 13211: Actions That Significantly Affect Energy Supply, Distribution, or Use

This rule is not subject to Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use" (*see* May 22, 2001; 66 FR 28355) because it is not a significant regulatory action under Executive Order 12866.

I. National Technology Transfer and Advancement Act

As noted in the proposed rule, section 12(d) of the National Technology Transfer and Advancement Act of 1995 ("NTTAA"), Public Law 104–113, section 12(d) (15 U.S.C. 272 note) directs EPA to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (*e.g.*, materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by voluntary consensus standards bodies. The NTTAA directs EPA to provide Congress, through OMB, explanations when the Agency decides not to use available and applicable voluntary consensus standards.

Today's final rule does not establish any technical standards, thus NTTAA does not apply to this rule. It should be noted, however, that this rulemaking requires direct dischargers to monitor for pH, TSS, and O&G (as HEM). All of these analytes can be measured by EPA methods that are specified in the tables at 40 CFR part 136.3.

J. Executive Order 12898: Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations

1. Executive Order 12898 Requirements

Executive Order 12898 requires that, to the greatest extent practicable and permitted by law, each Federal agency must make achieving environmental justice part of its mission. Executive Order 12898 requires that each Federal agency conduct its programs, policies, and activities that substantially affect human health or the environment in a manner that ensures that such programs, policies, and activities do not exclude persons (including populations) from participation in, deny persons (including populations) the benefits of, or subject persons (including populations) to discrimination under, such programs, policies, and activities because of their race, color, or national origin.

2. Environmental Justice Analysis

EPA examined whether the final regulation will promote environmental justice in the areas affected by MP&M discharges. EPA analyzed the demographic characteristics of the populations residing in the counties affected by MP&M discharges to determine whether minority and or low-income populations are subject to disproportionally high environmental impacts. This analysis is based on information on the race, national origin, and income level of populations residing in counties traversed by reaches receiving discharges from the 32 sample MP&M facilities. EPA performed this analysis at the sample level only. The 32 sample facilities discharge to 32 unique reaches and are located in 46 counties in 12 States.

EPA compared demographic data from the 1990 Census for counties traversed by sample MP&M reaches with corresponding State-level data. The demographic characteristics that EPA analyzed include: percent African Americans, percent Native American, Eskimo, or Aleut, percent Asian of Pacific Islander, the percent of the population below the poverty level, and median income. This analysis shows that the socioeconomic characteristics of populations residing in counties abutting MP&M discharge reaches reflect corresponding State averages. As a result, EPA expects that environmental benefits resulting from the MP&M rule will not accrue to populations disproportionally based on race or national origin, and therefore will neither promote nor discourage environmental justice.

EPA also analyzed the human health impacts of the final regulation, including changes in cancer and systemic health risk to subsistence anglers. EPA determined that the reductions in these health risks resulting from the final regulation are negligible (*see* Chapter 17 of the EEBA for a detailed discussion of environmental justice analyses and alternative regulatory options).

K. Congressional Review Act

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a "major rule" as defined by 5 U.S.C. 804(2). This rule will be effective after June 12, 2003.

Appendix A To The Preamble: Abbreviations, Acronyms, and Other Terms Used in Today's Final Rule

Act—The Clean Water Act
Agency—U.S. Environmental Protection Agency
AWQC—Ambient Water Quality Criteria
BAT—Best available technology economically achievable, as defined by section 304(b)(2)(B) of the Act.
BCT—Best conventional pollutant control technology, as defined by section 304(b)(4) of the Act.
BMP—Best management practices, as defined by section 304(e) of the Act.
BPJ—Best professional judgment
BPT—Best practicable control technology currently available, as defined by section 304(b)(1) of the Act.
CAA—Clean Air Act (42 U.S.C. 7401 *et seq.*, as amended)
CBI—Confidential Business Information
CWA—Clean Water Act (33 U.S.C 1251 *et seq.*, as amended)
Conventional Pollutants—Constituents of wastewater as determined by section 304(a)(4) of the Act and the regulations thereunder 40 CFR 401.16, including pollutants classified as biochemical oxygen demand, suspended solids, oil and grease, fecal coliform, and pH.
CE—Cost-effectiveness (ratio of compliance costs (in 1981$) to the toxic pounds of pollutants removed (in terms of pound-equivalents (PE))
DAF—Dissolved Air Flotation
Direct Discharger—An industrial discharger that introduces wastewater to a water of the United States with or without treatment by the discharger.
EEBA—Economic, Environmental, and Benefits Analysis of the Final Metal Products & Machinery Rule (EPA–821–B–03–002)
Effluent Limitation—A maximum amount, per unit of time, production, volume or other unit, of each specific constituent of the effluent from an existing point source that is subject to limitation. Effluent limitations may be expressed as a mass loading or as a concentration in milligrams of pollutant per liter discharged.
End-of-Pipe Treatment—Refers to those processes that treat a plant waste stream for pollutant removal prior to discharge.
FTE—Full Time Equivalents (related to the number of employees)
HAP—Hazardous Air Pollutant
HEM—Hexane Extractable Material
Indirect Discharger—An industrial discharger that introduces wastewater into a publicly owned treatment works.
MACT—Maximum Achievable Control Technology (applicable to NESHAPs)
MFJS—Metal Finishing Job Shops subcategory
MGY—Million gallons per year
MP&M—Metal Products and Machinery point source category
NAICS—North American Industry Classification System
NCA—Non-Chromium Anodizers subcategory
NCEPI—EPA's National Center for Environmental Publications
NESHAP—National Emission Standards for Hazardous Air Pollutants
NODA—Notice of Data Availability (June 5, 2002; 67 FR 38752)
NRMRL—EPA's National Risk Management Research Laboratory (formerly RREL—EPA's Risk Reduction Engineering Laboratory)
Nonconventional Pollutants—Pollutants that have not been designated as either conventional pollutants or priority pollutants
NPDES—National Pollutant Discharge Elimination system, a Federal Program requiring industry dischargers, including municipalities, to obtain permits to discharge pollutants to the nation's water, under section 402 of the Act
OCPSF—Organic chemicals, plastics, and synthetic fibers manufacturing point source category (40 CFR part 414)
OMB—Office of Management and Budget
ORP—Oxidation-Reduction Potential
OWS—Oily Wastes subcategory
PE—Pound-equivalents (the units used to weight toxic pollutants)
POTW—Publicly owned treatment works
Priority Pollutants—The 126 pollutants listed at 40 CFR part 423, appendix A
PPA—Pollutant Prevention Act of 1990 (42 U.S.C. 13101 *et seq.*, Public Law 101–508, November 5, 1990)
PSES—Pretreatment Standards for existing sources of indirect discharges, under section 307(b) of the Act
PSNS—Pretreatment standards for new sources of indirect discharges, under sections 307(b) and (c) of the Act
PWB—Printed Wiring Board subcategory
RRLM—Railroad Line Maintenance subcategory
SBA—U.S. Small Business Administration
SIC—Standards Industrial Classification, a numerical categorization scheme used by the U.S. Department of Commerce to denote segments of industry
SFF—Steel Forming & Finishing subcategory
SGT—HEM—Silica Gel Treated—Hexane Extractable Material refers to the freon-free oil and grease method (EPA Method 1664) used to measure the portion of oil and grease that is similar to total petroleum hydrocarbons
SDD—Shipbuilding Dry Dock subcategory
SIU—Significant Industrial User as defined in the General Pretreatment Regulations (40 CFR part 403)
TDD—Development Document for the Final Effluent Limitations Guidelines and Standards for the Metal Products & Machinery Point Source Category (EPA–821–B–03–001)
TOC—Total Organic Carbon (EPA Method 415.1)
TOP—Total Organics Parameter
TRI—Toxic Release Inventory
TTO—Total Toxic Organics
TWF—Toxic Weighting Factor
VOC—Volatile Organic Compound

List of Subjects in 40 CFR Part 438

Environmental protection; Metal products and machinery; Waste treatment and disposal; Water pollution control.

Dated: February 14, 2003.
Christine Todd Whitman,
Administrator.

■ For the reasons set forth in this preamble, title 40, chapter I of the Code of Federal Regulations is amended as follows:

■ 1. A new part 438 is added to read as follows:

PART 438—METAL PRODUCTS AND MACHINERY POINT SOURCE CATEGORY

Sec.
438.1 General applicability.
438.2 General definitions.

Subpart A—Oily Wastes

438.10 Applicability.
438.12 Effluent limitations attainable by the application of the best practicable control technology currently available (BPT).
438.13 Effluent limitations attainable by application of the best control technology for conventional pollutants (BCT).
438.15 New source performance standards (NSPS).

Appendix A to part 438—Typical Products in Metal Products & Machinery Sectors

Appendix B to part 438—Oily Operations Definitions

Appendix C to part 438—Metal-Bearing Operations Definitions

Authority: 33 U.S.C. 1311, 1314, 1316, 1317, 1318, 1342 and 1361.

§ 438.1 General applicability.

(a) As defined more specifically in subpart A, except as provided in paragraphs (b) through (e) of this section, this part applies to process wastewater discharges from oily operations (as defined at § 438.2(f) and appendix B of this part) to surface waters from existing or new industrial facilities (including facilities owned and operated by Federal, State, or local governments) engaged in manufacturing, rebuilding, or maintenance of metal parts, products, or machines for use in the Metal Product & Machinery (MP&M) industrial sectors listed in this section. The MP&M industrial sectors consist of the following:

Aerospace;
Aircraft;
Bus and Truck;
Electronic Equipment;
Hardware;
Household Equipment;
Instruments;
Miscellaneous Metal Products;
Mobile Industrial Equipment;
Motor Vehicle;
Office Machine;

Ordnance;
Precious Metals and Jewelry;
Railroad;
Ships and Boats; or
Stationary Industrial Equipment.

(b) The regulations in this part do not apply to process wastewaters from metal-bearing operations (as defined at § 438.2(d) and appendix C of this part) or process wastewaters which are subject to the limitations and standards of other effluent limitations guidelines (*e.g.*, Metal Finishing (40 CFR part 433) or Iron and Steel Manufacturing (40 CFR part 420)). The regulations in this part also do not apply to process wastewaters from oily operations (as defined at § 438.2(f) and appendix B of this part) commingled with process wastewaters already covered by other effluent limitations guidelines or with process wastewaters from metal-bearing operations. This provision must be examined for each point source discharge at a given facility.

(c) Wastewater discharges resulting from the washing of cars, aircraft or other vehicles, when performed only for aesthetic or cosmetic purposes, are not subject to this part. Direct discharges resulting from the washing of cars, aircraft or other vehicles, when performed as a preparatory step prior to one or more successive manufacturing, rebuilding, or maintenance operations, are subject to this part.

(d) Wastewater discharges from railroad line maintenance facilities (as defined at § 438.2(h)) are not subject to this part. Wastewater discharges from railroad overhaul or heavy maintenance facilities (as defined at § 438.2(i)) may be covered by subpart A of this part, the Metal Finishing Point Source Category (40 CFR part 433), or by other effluent limitations guidelines, as applicable.

(e) The following wastewater discharges are not subject to this part:

(1) Non-process wastewater as defined at § 438.2(e).

(2) Wastewater discharges introduced into a Publicly Owned Treatment Works (POTW) or a Federally owned and operated Treatment Works Treating Domestic Sewage (TWTDS), as defined at 40 CFR 122.2.

(3) Process wastewater generated by maintenance and repair activities at gasoline service stations, passenger car rental facilities, or utility trailer and recreational vehicle rental facilities.

(4) Wastewater discharges generated from gravure cylinder preparation or metallic platemaking conducted within or for printing and publishing facilities.

(5) Wastewater discharges in or on dry docks and similar structures, such as graving docks, building ways, marine railways, lift barges at shipbuilding facilities (or shipyards), and ships that are afloat.

(6) Wastewater generated by facilities primarily performing drum reconditioning and cleaning to prepare metal drums for resale, reuse, or disposal.

§ 438.2 General definitions.

As used in this part:

(a) The general definitions and abbreviations at 40 CFR part 401 shall apply.

(b) The regulated parameters are listed with approved methods of analysis in Table 1B at 40 CFR 136.3, and are defined as follows:

(1) *O&G (as HEM)* means total recoverable oil and grease measured as n-hexane extractable material.

(2) *TSS* means total suspended solids.

(c) *Corrosion preventive coating* means the application of removable oily or organic solutions to protect metal surfaces against corrosive environments. Corrosion preventive coatings include, but are not limited to: petrolatum compounds, oils, hard dry-film compounds, solvent-cutback petroleum-based compounds, emulsions, water-displacing polar compounds, and fingerprint removers and neutralizers. Corrosion preventive coating does not include electroplating, or chemical conversion coating operations.

(d) *Metal-bearing operations* means one or more of the following: abrasive jet machining; acid pickling neutralization; acid treatment with chromium; acid treatment without chromium; alcohol cleaning; alkaline cleaning neutralization; alkaline treatment with cyanide; anodizing with chromium; anodizing without chromium; carbon black deposition; catalyst acid pre-dip; chemical conversion coating without chromium; chemical milling (or chemical machining); chromate conversion coating (or chromating); chromium drag-out destruction; cyanide drag-out destruction; cyaniding rinse; electrochemical machining; electroless catalyst solution; electroless plating; electrolytic cleaning; electroplating with chromium; electroplating with cyanide; electroplating without chromium or cyanide; electropolishing; galvanizing/hot dip coating; hot dip coating; kerfing; laminating; mechanical and vapor plating; metallic fiber cloth manufacturing; metal spraying (including water curtain); painting-immersion (including electrophoretic, "E-coat"); photo imaging; photo image developing; photoresist application; photoresist strip; phosphor deposition; physical vapor deposition; plasma arc machining; plastic wire extrusion; salt bath descaling; shot tower—lead shot manufacturing; soldering; solder flux cleaning; solder fusing; solder masking; sputtering; stripping (paint); stripping (metallic coating); thermal infusion; ultrasonic machining; vacuum impregnation; vacuum plating; water shedder; wet air pollution control; wire galvanizing flux; and numerous sub-operations within those listed in this paragraph. In addition, process wastewater also results from associated rinses that remove materials that the preceding processes deposit on the surface of the workpiece. These metal-bearing operations are defined in appendix C of this part.

(e) *Non-process wastewater* means sanitary wastewater, non-contact cooling water, water from laundering, and non-contact storm water. Non-process wastewater for this part also includes wastewater discharges from non-industrial sources such as residential housing, schools, churches, recreational parks, shopping centers as well as wastewater discharges from gas stations, utility plants, and hospitals.

(f) *Oily operations* means one or more of the following: abrasive blasting; adhesive bonding; alkaline cleaning for oil removal; alkaline treatment without cyanide; aqueous degreasing; assembly/disassembly; burnishing; calibration; corrosion preventive coating (as defined in paragraph (c) of this section); electrical discharge machining; floor cleaning (in process area); grinding; heat treating; impact deformation; iron phosphate conversion coating; machining; painting-spray or brush (including water curtains); polishing; pressure deformation; solvent degreasing; steam cleaning; testing (*e.g.*, hydrostatic, dye penetrant, ultrasonic, magnetic flux); thermal cutting; tumbling/barrel finishing/mass finishing/vibratory finishing; washing (finished products); welding; wet air pollution control for organic constituents; and numerous sub-operations within those listed in this paragraph. In addition, process wastewater also results from associated rinses that remove materials that the preceding processes deposit on the surface of the workpiece. These oily operations are defined in appendix B of this part.

(g) *Process wastewater* means wastewater as defined at 40 CFR parts 122 and 401, and includes wastewater from air pollution control devices.

(h) *Railroad line maintenance facilities* means facilities specified at § 438.1 that only perform routine cleaning and light maintenance on railroad engines, cars, car-wheel trucks, or similar parts or machines, and discharge wastewater exclusively from oily operations (as defined in paragraph (f) of this section and appendix B of this part). These facilities only perform one or more of the following operations: assembly/disassembly, floor cleaning, maintenance machining (wheel truing), touch-up painting, and washing.

(i) *Railroad overhaul or heavy maintenance facilities* means facilities engaged in the manufacture, overhaul, or heavy maintenance of railroad engines, cars, car-wheel trucks, or similar parts or machines. These facilities typically perform one or more of the operations in paragraph (h) of this section and one or more of the following operations: abrasive blasting, alkaline cleaning, aqueous degreasing, corrosion preventive coating, electrical discharge machining, grinding, heat treating, impact deformation, painting, plasma arc machining, polishing, pressure deformation, soldering/brazing, stripping (paint), testing, thermal cutting, and welding.

Subpart A—Oily Wastes

§ 438.10 Applicability.

(a) This subpart applies to process wastewater directly discharged from facilities specified at § 438.1.

(b) This subpart applies to process wastewater discharges from oily operations (as defined at § 438.2(f) and appendix B of this part).

(c) This subpart does not apply to process wastewater discharges from metal-bearing operations (as defined at § 438.2(d) and appendix C of this part).

§ 438.12 Effluent limitations attainable by the application of the best practicable control technology currently available (BPT).

Except as provided at 40 CFR 125.30 through 125.32, any existing point source subject to this subpart must achieve the following effluent limitations representing the application of BPT. Discharges must remain within the pH range 6 to 9 and must not exceed the following:

EFFLUENT LIMITATIONS
[BPT]

Regulated parameter	Maximum daily [1]
1. TSS	62
2. O&G (as HEM)	46

[1] mg/L (ppm).

§ 438.13 Effluent limitations attainable by application of the best control technology for conventional pollutants (BCT).

Except as provided at 40 CFR 125.30 through 125.32, any existing point source subject to this subpart must achieve the following effluent limitation representing the application of BCT: Limitations for TSS, O&G (as HEM) and pH are the same as the corresponding limitation specified at § 438.12.

§ 438.15 New source performance standards (NSPS).

New point sources subject to this subpart must achieve the new source performance standards (NSPS) for TSS, O&G (as HEM), and pH, which are the same as the corresponding limitation specified at § 438.12. The performance standards apply with respect to each new point source that commences discharge after June 12, 2003.

Appendix A to Part 438—Typical Products in Metal Products and Machinery Sectors

AEROSPACE	AIRCRAFT	BUS & TRUCK
Guided Missiles & Space Vehicle	Aircraft Engines & Engine Parts	Bus Terminal & Service Facilities
Guided Missile & Space Vehicle Prop	Aircraft Frames Manufacturing	Courier Services, Except by Air Freight Truck Terminals, W/ or W/O Maintenance.
Other Space Vehicle & Missile Parts	Aircraft Parts & Equipment	Intercity & Rural Highways (Buslines)
	Airports, Flying Fields, & Services	Local & Suburban Transit (Bus & subway)
		Local Passenger. Trans. (Lim., Amb., Sight See)
		Local Trucking With Storage
		Local Trucking Without Storage
		Motor Vehicle Parts & Accessories
		School Buses
		Trucking
		Truck & Bus Bodies
		Truck Trailers

ELECTRONIC EQUIPMENT
Communications Equipment
Connectors for Electronic Applications
Electric Lamps
Electron Tubes
Electronic Capacitors
Electronic Coils & Transformers
Electronic Components
Radio & TV Communications Equipment
Telephone & Telegraph Apparatus

INSTRUMENTS
Analytical Instruments
Automatic Environmental Controls
Coating, Engraving, & Allied Services
Dental Equipment & Supplies
Ophthalmic Goods
Fluid Meters & Counting Devices
Instruments to Measure Electricity
Laboratory Apparatus & Furniture Manufacturing Industries
Measuring & Controlling Devices
Optical Instruments & Lenses
Orthopedic, Prosthetic, & Surgical Supplies
Pens, Mechanical Pencils, & Parts
Process Control Instruments
Search & Navigation Equipment
Surgical & Medical Instruments & Apparatus
Watches, Clocks, Associated Devices & Parts

INSTRUMENTS OFFICE MACHINE
Calculating & Accounting Equipment
Computer Maintenance & Repair
Computer Peripheral Equipment
Computer Related Services
Computer Rental & Leasing
Computer Storage Devices
Computer Terminals
Electrical & Electronic Repair
Electronic Computers
Office Machines
Photographic Equipment & Supplies

HARDWARE
Architectural & Ornamental Metal Work
Bolts, Nuts, Screws, Rivets & Washers
Crowns & Closures
Cutlery
Fabricated Metal Products
Fabricated Pipe & Fabricated Pipe Fittings
Fabricated Plate Work (Boiler Shops)
Fabricated Structural Metal
Fasteners, Buttons, Needles & Pins
Fluid Power Values & Hose Fittings
Hand & Edge Tools
Hand Saws & Saw Blades
Hardware
Heating Equipment, Except Electric
Industrial Furnaces & Ovens
Iron & Steel Forgings
Machine Tool Accessories & Measuring Devices
Machine Tools, Metal Cutting Types
Machine Tools, Metal Forming Types
Metal Shipping Barrels, Drums, Kegs, Pails
Metal Stampings
Power Driven Hand Tools
Prefabricated Metal Buildings & Components
Screw Machine Products
Sheet Metal Work
Special Dies & Tools, Die Sets, Jigs, Etc.
Steel Springs
Valves & Pipe Fittings
Wire Springs

MOBILE INDUSTRIAL EQUIPMENT
Construction Machinery & Equipment
Farm Machinery & Equipment
Garden Tractors & Lawn & Garden Equipment
Hoist, Industrial Cranes & Monorails
Industrial Trucks, Tractors, Trailers, Tanks & Tank Components
Mining machinery & equipment, except oil field

ORDNANCE
Ammunition
Ordnance & Accessories
Small Arms
Small Arms Ammunition

HOUSEHOLD EQUIPMENT
Commercial, Ind. & Inst. Elec. Lighting Fixtures
Current-Carrying Wiring Devices
Electirc Housewares & Fans
Electric Lamps
Farm Freezers
Household Appliances
Household Cooking Equipment
Household Refrig. & Home & Farm Freezers
Household Laundry Equipment
Household Vacuum Cleaners
Lighting Equipment
Noncurrent-Carrying Wiring Devices
Radio & Television Repair Shops
Radio & Television Sets Except Commn. Types
Refrig. & Air Cond. Serv. & Repair Shops
Residential Electrical Lighting Fixtures

MOTOR VEHICLE
Auto Exhaust System Repair Shops
Automobile Dealers (new & used)
Auto. Dealers (Dunebuggy, Go-cart, Snowmobile)
Automobile Service (includes Diag. & Insp. Cntrs.)
Automotive Equipment
Automotive Glass Replacement Shops
Automotive Repairs Shops
Automotive Stampings
Automotive Transmission Repair Shops
Carburetors, Pistons Rings, Values
Electrical Equipment for Motor
General Automotive Repair Shops
Mobile Homes
Motor Vehicle & Automotive Bodies
Motor Vehicle Parts & Accessories
Motorcycle Dealers
Motorcycles
Passenger Car Leasing
Recreational & Utility Trailer Dealers
Taxicabs
Top & Body Repair & Paint Shops
Travel Trailers & Campers
Vehicles
Vehicular Lighting Equipment
Welding Shops (includes Automotive)

PRECIOUS METALS & JEWELRY
Costume Jewelry
Jewelers' Materials & Lapidary Work
Jewelry, Precious Metal
Musical Instruments
Silverware, Plated Ware, & Stainless

RAILROAD
Line-Haul Railroads
Railcars, Railway Systems
Switching & Terminal Stations

SHIPS & BOATS
Boat Building & Repairing
Deep Sea Domestic Transportation of Freight
Deep Sea Passenger Transportation, Except by Ferry
Freight Transportation on the Great Lakes
Marinas
Ship Building & Repairing
Towing & Tugboat Service
Water Passenger Transportation Ferries
Water Transportation of Freight
Water Transportation Services

STATIONARY INDUSTRIAL EQUIPMENT
Air & Gas Compressors
Automatic Vending Machines
Ball & Roller Bearings
Blowers & Exhaust & Ventilation Fans
Commercial Laundry Equipment
Conveyors & Conveying Equipment
Electric Industrial Apparatus
Elevators & Moving Stairways
Equipment Rental & Leasing
Food Product Machinery
Fluid Power Cylinders & Actuators
Fluid Power Pumps & Motors
General Industrial Machinery
Heavy Construction Equipment Rental
Industrial Machinery
Industrial Patterns
Industrial Process Furnaces & Ovens
Internal Combustion Engines
Measuring & Dispensing Pumps
Mechanical Power Transmission Equipment
Metal Working Machinery
Motors & Generators
Oil Field Machinery & Equipment
Packaging Machinery
Paper Industries Machinery
Printing Trades Machinery & Equipment
Pumps & Pumping Equipment
Refrigeration & Air & Heating Equipment
Relays & Industrial Controls
Rolling Mill Machinery & Equipment
Scales & Balances, Except Laboratory
Service Industry Machines
Special Industry Machinery
Speed Changers, High Speed Drivers & Gears
Steam, Gas, Hydraulic Turbines, Generator Units
Switchgear & Switchboard Apparatus
Textile Machinery
Transformers
Welding Apparatus
Woodworking Machinery

MISCELLANEOUS METAL PRODUCTS
Miscellaneous Fabricated Wire Products
Miscellaneous Metal Work
Miscellaneous Repair Shops & Related Services
Miscellaneous Transportation Equipment

Appendix B to Part 438—Oily Operations Definitions

Note: The definitions in this appendix shall not be used to differentiate between the six "core" metal finishing operations (*i.e.*, Electroplating, Electroless Plating, Anodizing, Coating (chromating, phosphating, and coloring), Chemical Etching and Milling, and Printed Circuit Board Manufacture) and forty "ancillary" process operations listed at 40 CFR 433.10(a).

Abrasive Blasting involves removing surface film from a part by using abrasive directed at high velocity against the part. Abrasive blasting includes bead, grit, shot, and sand blasting, and may be performed either dry or with water. The primary applications of wet abrasive blasting include: Removing burrs on precision parts; producing satin or matte finishes; removing fine tool marks; and removing light mill scale, surface oxide, or welding scale. Wet blasting can be used to finish fragile items such as electronic components. Also, some aluminum parts are wet blasted to achieve a fine-grained matte finish for decorative purposes. In abrasive blasting, the water and abrasive typically are reused until the particle size diminishes due to impacting and fracture.

Adhesive Bonding involves joining parts using an adhesive material. Typically, an organic bonding compound is used as the adhesive. This operation usually is dry; however, aqueous solutions may be used as bonding agents or to contain residual organic bonding materials.

Alkaline Cleaning for Oil Removal is a general term for the application of an alkaline cleaning agent to a metal part to remove oil and grease during the manufacture, maintenance, or rebuilding of a metal product. This unit operation does not include washing of the finished products after routine use (as defined in "Washing (Finished Products)" in this appendix), or applying an alkaline cleaning agent to remove nonoily contaminants such as dirt and scale (as defined in "Alkaline Treatment Without Cyanide" in this appendix and "Alkaline Treatment With Cyanide" in appendix C of this part). Wastewater generated includes spent cleaning solutions and rinse waters.

(1) Alkaline cleaning is performed to remove foreign contaminants from parts. This operation usually is done prior to finishing (*e.g.*, electroplating).

(2) Emulsion cleaning is an alkaline cleaning operation that uses either complex chemical enzymes or common organic solvents (*e.g.*, kerosene, mineral oil, glycols, and benzene) dispersed in water with the aid of an emulsifying agent. The pH of the solvent usually is between 7 and 9, and, depending on the solvent used, cleaning is performed at temperatures from room temperature to 82 °C (180 °F). This operation often is used as a replacement for vapor degreasing.

Alkaline Treatment Without Cyanide is a general term used to describe the application of an alkaline solution not containing cyanide to a metal surface to clean the metal surface or prepare the metal surface for further surface finishing.

Aqueous Degreasing involves cleaning metal parts using aqueous-based cleaning chemicals primarily to remove residual oils and greases from the part. Residual oils can be from previous operations (*e.g.*, machine coolants), oil from product use in a dirty environment, or oil coatings used to inhibit corrosion. Wastewater generated by this operation includes spent cleaning solutions and rinse waters.

Assembly/Disassembly involves fitting together previously manufactured or rebuilt parts or components into a complete metal product or machine or taking a complete metal product or machine apart. Assembly/disassembly operations are typically dry; however, special circumstances can require water for cooling or buoyancy. Also, rinsing may be necessary under some conditions.

Burnishing involves finish sizing or smooth finishing a part (previously machined or ground) by displacing, rather than removing, minute surface irregularities with smooth point or line-contact, fixed or rotating tools. Lubricants or soap solutions can be used to cool the tools used in burnishing operations. Wastewater generated during burnishing include process solutions and rinse water.

Calibration is performed to provide reference points for the use of a product. This unit operation typically is dry, although water may be used in some cases (*e.g.*, pumping water for calibration of a pump). Water used in this unit operation usually does not contain additives.

Corrosion Preventive Coating involves applying removable oily or organic solutions to protect metal surfaces against corrosive environments. Corrosion preventive coatings include, but are not limited to: Petrolatum compounds, oils, hard dry-film compounds, solvent-cutback petroleum-based compounds, emulsions, water-displacing polar compounds, and fingerprint removers and neutralizers. Corrosion preventive coating does not include electroplating, or chemical conversion coating operations. Many corrosion preventive materials also are formulated to function as lubricants or as a base for paint. Typical applications include: Assembled machinery or equipment in standby storage; finished parts in stock or spare parts for replacement; tools such as drills, taps, dies, and gauges; and mill products such as sheet, strip, rod and bar. Wastewater generated during corrosion preventive coating includes spent process solutions and rinses. Process solutions are discharged when they become contaminated with impurities or are depleted of constituents. Corrosion preventive coatings typically do not require an associated rinse, but parts are sometimes rinsed to remove the coating before further processing.

Electrical Discharge Machining involves removing metals by a rapid spark discharge between different polarity electrodes, one the part and the other the tool, separated by a small gap. The gap may be filled with air or a dielectric fluid. This operation is used primarily to cut tool alloys, hard nonferrous alloys, and other hard-to-machine materials. Most electrical discharge machining processes are operated dry; however, in some cases, the process uses water and generates wastewater containing dielectric fluid.

Floor Cleaning (in Process Area) removes dirt, debris, and process solution spills from process area floors. Floors can be cleaned using wet or dry methods, such as vacuuming, mopping, dry sweeping, and hose rinsing. Non-process area floor cleaning in offices and other similar non-process areas is not included in this unit operation.

Grinding involves removing stock from a part by using abrasive grains held by a rigid or semirigid binder. Grinding shapes or deburrs the part. The grinding tool usually is a disk (the basic shape of grinding wheels), but can also be a cylinder, ring, cup, stick, strip, or belt. The most commonly used abrasives are aluminum oxide, silicon carbide, and diamond. The process may use a grinding fluid to cool the part and remove debris or metal fines. Wastewater generated during grinding includes spent coolants and rinses. Metal-working fluids become spent for a number of reasons, including increased biological activity (*i.e.*, the fluids become rancid) or decomposition of the coolant additives. Rinse waters typically are assimilated into the working fluid or treated on site.

Heat Treating involves modifying the physical properties of a part by applying controlled heating and cooling cycles. This operation includes tempering, carburizing, cyaniding, nitriding, annealing, aging, normalizing, austenitizing, austempering, siliconizing, martempering, and malleablizing. Parts are heated in furnaces or molten salt baths, and then may be cooled by quenching in aqueous solutions (*e.g.*, brine solutions), neat oils (pure oils with little or no impurities), or oil/water emulsions. Heat treating typically is a dry operation, but is considered a wet operation if aqueous quenching solutions are used. Wastewater includes spent quench water and rinse water.

Impact Deformation involves applying impact force to a part to permanently deform or shape it. Impact deformation may include mechanical processes such as hammer forging, shot peening, peening, coining, high-energy-rate forming, heading, or stamping. Natural and synthetic oils, light greases, and pigmented lubricants are used in impact deformation operations. Pigmented lubricants include whiting, lithapone, mica, zinc oxide, molybdenum disulfide, bentonite, flour, graphite, white lead, and soap-like materials. These operations typically are dry, but wastewater can be generated from lubricant discharge and from rinsing operations associated with the operation.

Iron Phosphate Conversion Coating is the process of applying a protective coating on the surface of a metal using a bath consisting of a phosphoric acid solution containing no metals (*e.g.*, manganese, nickel, or zinc) or a phosphate salt solution (*i.e.*, sodium or potassium salts of phosphoric acid solutions) containing no metals (*e.g.*, manganese, nickel, or zinc) other than sodium or potassium. Any metal concentrations in the bath are from the substrate.

Machining involves removing stock from a part (as chips) by forcing a cutting tool against the part. This includes machining processes such as turning, milling, drilling, boring, tapping, planing, broaching, sawing, shaving, shearing, threading, reaming, shaping, slotting, hobbing, and chamfering. Machining processes use various types of metal-working fluids, the choice of which depends on the type of machining being performed and the preference of the machine shop. The fluids can be categorized into four groups: Straight oil (neat oils), synthetic, semisynthetic, and water-soluble oil. Machining operations generate wastewater from working fluid or rinse water discharge. Metal-working fluids periodically are discarded because of reduced performance or development of a rancid odor. After machining, parts are sometimes rinsed to remove coolant and metal chips. The coolant reservoir is sometimes rinsed, and the rinse water is added to the working fluid.

Painting-Spray or Brush (Including Water Curtains) involves applying an organic coating to a part. Coatings such as paint, varnish, lacquer, shellac, and plastics are applied by spraying, brushing, roll coating, lithographing, powder coating, and wiping. Water is used in painting operations as a solvent (water-borne formulations) for rinsing, for cleanup, and for water-wash (or curtain) type spray booths. Paint spray booths typically use most of the water in this unit operation. Spray booths capture overspray (*i.e.*, paint that misses the product during application), and control the introduction of pollutants into the workplace and environment.

Polishing involves removing stock from a part using loose or loosely held abrasive grains carried to the part by a flexible support. Usually, the objective is to achieve a desired surface finish or appearance rather then to remove a specified amount of stock. Buffing is included in this unit operation, and usually is performed using a revolving cloth or sisal buffing wheel, which is coated with a suitable compound. Liquid buffing compounds are used extensively for large-volume production on semiautomated or automated buffing equipment. Polishing operations typically are dry, although liquid compounds and associated rinses are used in some polishing processes.

Pressure Deformation involves applying force (other than impact force) to permanently deform or shape a part. Pressure deformation may include rolling, drawing, bending, embossing, sizing, extruding, squeezing, spinning, necking, forming, crimping or flaring. These operations use natural and synthetic oils, light greases, and pigmented lubricants. Pigmented lubricants include whiting, lithapone, mica, zinc oxide, molybdenum disulfide, bentonite, flour, graphite, white lead, and soap-like materials. Pressure deformation typically is dry, but wastewater is sometimes generated from the discharge of lubricants or from rinsing associated with the process.

Solvent Degreasing removes oils and grease from the surface of a part using organic solvents, including aliphatic petroleum (*e.g.*, kerosene, naphtha), aromatics (*e.g.*, benzene, toluene), oxygenated hydrocarbons (*e.g.*, ketones, alcohol, ether), and halogenated hydrocarbons (*e.g.*, 1,1,1-trichloroethane, trichloroethylene, methylene chloride). Solvent cleaning takes place in either the liquid or vapor phase. Solvent vapor degreasing normally is quicker than solvent liquid degreasing. However, ultrasonic vibration is sometimes used with liquid solvents to decrease the required immersion time of complex shapes. Solvent cleaning often is used as a precleaning operation prior to alkaline cleaning, as a final cleaning of precision parts, or as surface preparation for some painting operations. Solvent degreasing operations typically are not followed by rinsing, although rinsing is performed in some cases.

Steam Cleaning removes residual dirt, oil, and grease from parts after processing though other unit operations. Typically, additives are not used in this operation; the hot steam removes the pollutants. Wastewater is generated when the cleaned parts are rinsed.

Testing (e.g., hydrostatic, dye penetrant, ultrasonic, magnetic flux) involves applying thermal, electrical, mechanical, hydraulic, or other energy to determine the suitability or functionality of a part, assembly, or complete unit. Testing also may include applying surface penetrant dyes to detect surface imperfections. Other examples of tests frequently performed include electrical testing, performance testing, and ultrasonic testing; these tests typically are dry but may generate wastewater under certain circumstances. Testing usually is performed to replicate some aspect of the working environment. Wastewater generated during testing includes spent process solutions and rinses.

Thermal Cutting involves cutting, slotting, or piercing a part using an oxy-acetylene oxygen lance, electric arc cutting tool, or laser. Thermal cutting typically is a dry process, except for the use of contact cooling waters and rinses.

Tumbling/Barrel Finishing/Mass Finishing/Vibratory Finishing involves polishing or deburring a part using a rotating or vibrating container and abrasive media or other polishing materials to achieve a desired surface appearance. Parts to be finished are placed in a rotating barrel or vibrating unit with an abrasive media (*e.g.*, ceramic chips, pebbles), water, and chemical additives (*e.g.*, alkaline detergents). As the barrel rotates, the upper layer of the part slides toward the lower side of the barrel, causing the abrading or polishing. Similar results can be achieved in a vibrating unit, where the entire contents of the container are in constant motion, or in a centrifugal unit, which compacts the load of media and parts as the unit spins and generates up to 50 times the force of gravity. Spindle finishing is a similar process, where parts to be finished are mounted on fixtures and exposed to a rapidly moving abrasive slurry. Wastewater generated during barrel finishing includes spent process solutions and rinses. Following the finishing process, the contents of the barrel are unloaded. Process wastewater is either discharged continuously during the process, discharged after finishing, or collected and reused. The parts are sometimes given a final rinse to remove particles of abrasive media.

Washing (Finished Products) involves cleaning finished metal products after use or storage using fresh water or water containing a mild cleaning solution. This unit operation applies only to the finished products that do not require maintenance or rebuilding.

Welding involves joining two or more pieces of material by applying heat, pressure, or both, with or without filler material, to produce a metallurgical bond through fusion or recrystallization across the interface. This includes gas welding, resistance welding, arc welding, cold welding, electron beam welding, and laser beam welding. Welding typically is a dry process, except for the occasional use of contact cooling waters or rinses.

Wet Air Pollution Control for Organic Constituents involves using water to remove organic constituents that are entrained in air streams exhausted from process tanks or production areas. Most frequently, wet air pollution control devices are used with cleaning and coating processes. A common type of wet air pollution control is the wet packed scrubber consisting of a spray chamber that is filled with packing material. Water is continuously sprayed onto the packing and the air stream is pulled through the packing by a fan. Pollutants in the air stream are absorbed by the water droplets and the air is released to the atmosphere. A single scrubber often serves numerous process tanks.

Appendix C to Part 438—Metal-Bearing Operations Definitions

Note: The definitions in this appendix shall not be used to differentiate between the six "core" metal finishing operations (*i.e.*, Electroplating, Electroless Plating, Anodizing, Coating (chromating, phosphating, and coloring), Chemical Etching and Milling, and Printed Circuit Board Manufacture) and forty "ancillary" process operations listed at 40 CFR 433.10(a).

Abrasive Jet Machining includes removing stock material from a part by a high-speed stream of abrasive particles carried by a liquid or gas from a nozzle. Abrasive jet machining is used for deburring, drilling, and cutting thin sections of metal or composite material. Unlike abrasive blasting, this process operates at pressures of thousands of pounds per square inch. The liquid streams typically are alkaline or emulsified oil solutions, although water also can be used.

Acid Pickling Neutralization involves using a dilute alkaline solution to raise the pH of acid pickling rinse water that remains on the part after pickling. The wastewater from this operation is the acid pickling neutralization rinse water.

Acid Treatment With Chromium is a general term used to describe any application of an acid solution containing chromium to a metal surface. Acid cleaning, chemical etching, and pickling are types of acid treatment. Chromic acid is used occasionally to clean cast iron, stainless steel, cadmium and aluminum, and bright dipping of copper and copper alloys. Also, chromic acid solutions can be used for the final step in acid cleaning phosphate conversion coating systems. Chemical conversion coatings formulated with chromic acid are defined at "Chromate Conversion Coating (or Chromating)" in this appendix. Wastewater generated during acid treatment includes spent solutions and rinse waters. Spent solutions typically are batch discharged and treated or disposed of off site. Most acid treatment operations are followed by a water rinse to remove residual acid.

Acid Treatment Without Chromium is a general term used to describe any application of an acid solution not containing chromium to a metal surface. Acid cleaning, chemical etching, and pickling are types of acid treatment. Wastewater generated during acid treatment includes spent solutions and rinse waters. Spent solutions typically are batch discharged and treated or disposed of off site. Most acid treatment operations are followed by a water rinse to remove residual acid.

Alcohol Cleaning involves removing dirt and residue material from a part using alcohol.

Alkaline Cleaning Neutralization involves using a dilute acid solution to lower the pH of alkaline cleaning rinse water that remains on the part after alkaline cleaning. Wastewater from this operation is the alkaline cleaning neutralization rinse water.

Alkaline Treatment With Cyanide is the cleaning of a metal surface with an alkaline solution containing cyanide. Wastewater generated during alkaline treatment includes spent solutions and rinse waters. Alkaline treatment solutions become contaminated from the introduction of soils and dissolution of the base metal. They usually are treated and disposed of on a batch basis. Alkaline treatment typically is followed by a water rinse that is discharged to a treatment system.

Anodizing With Chromium involves producing a protective oxide film on aluminum, magnesium, or other light metal, usually by passing an electric current through an electrolyte bath in which the metal is immersed. Anodizing may be followed by a sealant operation. Chromic acid anodic coatings have a relatively thick boundary layer and are more protective than are sulfuric acid coatings. For these reasons, chromic acid is sometimes used when the part cannot be rinsed completely. These oxide coatings provide corrosion protection, decorative surfaces, a base for painting and other coating processes, and special electrical and mechanical properties. Wastewaters generated during anodizing include spent anodizing solutions, sealants, and rinse waters. Because of the anodic nature of the process, anodizing solutions become contaminated with the base metal being processed. These solutions eventually reach an intolerable concentration of dissolved metal and require treatment or disposal. Rinse water following anodizing, coloring, and sealing typically is discharged to a treatment system.

Anodizing Without Chromium involves applying a protective oxide film to aluminum, magnesium, or other light metal, usually by passing an electric current through an electrolyte bath in which the metal is immersed. Phosphoric acid, sulfuric acid, and boric acid are used in anodizing. Anodizing also may include sealant baths. These oxide coatings provide corrosion protection, decorative surfaces, a base for

painting and other coating processes, and special electrical and mechanical properties. Wastewater generated during anodizing includes spent anodizing solutions, sealants, and rinse waters. Because of the anodic nature of the process, anodizing solutions become contaminated with the base metal being processed. These solutions eventually reach an intolerable concentration of dissolved metal and require treatment or disposal. Rinse water following anodizing, coloring, and sealing steps typically is discharged to a treatment systems.

Carbon Black Deposition involves coating the inside of printed circuit board holes by dipping the circuit board into a tank that contains carbon black and potassium hydroxide. After excess solution dips from the circuit boards, they are heated to allow the carbon black to adhere to the board.

Catalyst Acid Pre-Dip uses rinse water to remove residual solution from a part after the part is processed in an acid bath. The wastewater generated in this unit operation is the rinse water.

Chemical Conversion Coating without Chromium is the process of applying a protective coating on the surface of a metal without using chromium. Such coatings are applied through phosphate conversion (except for "Iron Phosphate Conversion Coating," see appendix B of this part), metal coloring, or passivation. Coatings are applied to a base metal or previously deposited metal to increase corrosion protection and lubricity, prepare the surface for additional coatings, or formulate a special surface appearance. This unit process includes sealant operations that use additives other than chromium.

(1) In phosphate conversion, coatings are applied for one or more of the following reasons: to provide a base for paints and other organic coatings; to condition surfaces for cold forming operations by providing a base for drawing compounds and lubricants; to impart corrosion resistance to the metal surface; or to provide a suitable base for corrosion-resistant oils or waxes. Phosphate conversion coatings are formed by immersing a metal part in a dilute solution of phosphoric acid, phosphate salts, and other reagents.

(2) Metal coloring by chemical conversion coating produces a large group of decorative finishes. Metal coloring includes the formation of oxide conversion coatings. In this operation, the metal surface is converted into an oxide or similar metallic compound, giving the part the desired color. The most common colored finishes are used on copper, steel, zinc, and cadmium.

(3) Passivation forms a protective coating on metals, particularly stainless steel, by immersing the part in an acid solution. Stainless steel is passivated to dissolve embedded iron particles and to form a thin oxide film on the surface of the metal. Wastewater generated during chemical conversion coating includes spent solutions and rinses (*i.e.*, both the chemical conversion coating solutions and post-treatment sealant solutions). These solutions commonly are discharged to a treatment system when contaminated with the base metal or other impurities. Rinsing normally follows each process step, except when a sealant dries on the part surface.

Chemical Milling (or Chemical Machining) involves removing metal from a part by controlled chemical attack, or etching, to produce desired shapes and dimensions. In chemical machining, a masking agent typically is applied to cover a portion of the part's surface; the exposed (unmasked) surface is then treated with the chemical machining solution. Wastewater generated during chemical machining includes spent solutions and rinses. Process solutions typically are discharged after becoming contaminated with the base metal. Rinsing normally follows chemical machining.

Chromate Conversion Coating (or Chromating) involves forming a conversion coating (protective coating) on a metal by immersing or spraying the metal with a hexavalent chromium compound solution to produce a hexavalent or trivalent chromium compound coating. This also is known as chromate treatment, and is most often applied to aluminum, zinc, cadmium or magnesium surfaces. Sealant operations using chromium also are included in this unit operation. Chromate solutions include two types: (1) those that deposit substantial chromate films on the substrate metal and are complete treatments themselves, and (2) those that seal or supplement oxide, phosphate, or other types of protective coatings. Wastewater generated during chromate conversion coating includes spent process solutions (*i.e.*, both the chromate conversion coating solutions and post-treatment sealant solutions) and rinses. These solutions typically are discharged to a treatment system when contaminated with the base metal or other impurities. Also, chromium-based solutions, which are typically formulated with hexavalent chromium, lose operating strength when the hexavalent chromium reduces to trivalent chromium during use. Rinsing normally follows each process step, except for sealants that dry on the surface of the part.

Chromium Drag-out Destruction is a unit operation performed following chromium-bearing operations to reduce hexavalent chromium that is "dragged out" of the process bath. Parts are dipped in a solution of a chromium-reducing chemical (*e.g.*, sodium metabisulfite) to prevent the hexavalent chromium from contaminating subsequent process baths. This operation typically is performed in a stagnant drag-out rinse tank that contains concentrated chromium-bearing wastewater.

Cyanide Drag-out Destruction involves dipping part in a cyanide oxidation solution (*e.g.*, sodium hypochloride) to prevent cyanide that is "dragged out" of a process bath from contaminating subsequent process baths. This operation typically is performed in a stagnant drag-out rinse tank.

Cyaniding Rinse is generated during cyaniding hardening of a part. The part is heated in a molten salt solution containing cyanide. Wastewater is generated when excess cyanide salt solution is removed from the part in rinse water.

Electrochemical Machining is a process in which the part becomes the anode and a shaped cathode is the cutting tool. By pumping electrolyte between the electrodes and applying a current, metal is rapidly but selectively dissolved from the part. Wastewater generated during electrochemical machining includes spent electrolytes and rinses.

Electroless Catalyst Solution involves adding a catalyst just prior to an electroless plating operation to accelerate the plating operation.

Electroless Plating involves applying a metallic coating to a part using a chemical reduction process in the presence of a catalysis. An electric current is not used in this operations. The metal to be plated onto a part typically is held in solution at high concentrations using a chelating agent. This plates all areas of the part to a uniform thickness regardless of the configuration of the part. Also, an electroless-plated surface is dense and virtually nonporous. Copper and nickel electroless plating operations are the most common. Sealant operations (*i.e.*, other than hot water dips) following electroless plating are considered separate unit operations if they include any additives. Wastewater generated during electroless plating includes spent process solutions and rinses. The wastewater contains chelated metals, which require separate preliminary treatment to break the metal chelates prior to conventional chemical precipitation. Rinsing follows most electroless plating processes to remove residual plating solution and prevent contamination of subsequent process baths.

Electrolytic Cleaning involves removing soil, scale, or surface oxides from a part by electrolysis. The part is one of the electrodes and the electrolyte is usually alkaline. Electrolytic alkaline cleaning and electrolytic acid cleaning are the two types of electrolytic cleaning.

(1) Electrolytic alkaline cleaning produces a cleaner surface than do nonelectrolytic methods of alkaline cleaning. This operation uses strong agitation, gas evolution in the solution, and oxidation-reduction reactions that occur during electrolysis. In addition, dirt particles become electrically charged and are repelled from the part surface.

(2) Electrolytic acid cleaning sometimes is used as a final cleaning before electroplating. Sulfuric acid is most frequently used as the electrolyte. As with electrolytic alkaline cleaning, the mechanical scrubbing effect from the evolution of gas enhances the effectiveness of the process.

Wastewater generated during electrolytic cleaning includes spent process solutions and rinses. Electrolytic cleaning solutions become contaminated during use due to the dissolution of the base metal and the introduction of pollutants. The solutions typically are batch discharged for treatment or disposal after they weaken. Rinsing following electrolytic cleaning removes residual cleaner to prevent contamination of subsequent process baths.

Electroplating with Chromium involves producing a chromium metal coating on a surface by electrodeposition. Electroplating provides corrosion protection, wear or erosion resistance, lubricity, electrical conductivity, or decoration. In electroplating, metal ions in acid, alkaline, or neutral solutions are reduced on the cathodic surfaces of the parts being plated. Metal salts or oxides typically are added to replenish the solutions. Chromium trioxide often is added as a source of chromium. In addition to water and the metal being deposited, electroplating solutions often contain agents that form complexes with the metal being deposited, stabilizers to prevent hydrolysis, buffers for pH control, catalysts to assist in deposition, chemical aids to dissolve anodes, and miscellaneous ingredients that modify the process to attain specific properties. Sealant operations performed after this operation are considered separate unit operations if they include any additives (*i.e.*, other than hot water dips). Wastewater generated during electroplating includes spent process solutions and rinses. Electroplating solutions occasionally become contaminated during use due to the base metal dissolving and the introduction of other pollutants, diminishing the effectiveness of the electroplating solutions diminishes. Spent concentrated solutions typically are treated to remove pollutants and reused, processed in a wastewater treatment system, or disposed of off site. Rinse waters, including some drag-out rinse tank solutions, typically are treated on site.

Electroplating with Cyanide involves producing metal coatings on a surface by electrodeposition using cyanide. Electroplating provides corrosion protection, wear or erosion resistance, electrical conductivity, or decoration. In electroplating, metal ions in acid, alkaline, or neutral solutions are reduced on the cathodic surfaces of the parts being plated. The metal ions in solution typically are replenished by dissolving metal from anodes contained in inert wire or metal baskets. Sealant operations performed after this operation are considered separate unit operations if they include any additives (*i.e.*, any sealant operations other than hot water dips). In addition to water and the metal being deposited, electroplating solutions often contain agents that form complexes with the metal being deposited, stabilizers to prevent hydrolysis, buffers to control pH, catalysts to assist in deposition, chemical aids to dissolve anodes, and miscellaneous ingredients that modify the process to attain specific properties. Cyanide, usually in the form of sodium or potassium cyanide, frequently is used as a complexing agent for zinc, cadmium, copper, and precious metal baths. Wastewater generated during electroplating includes spent process solutions and rinses. Electroplating solutions occasionally become contaminated during use due to dissolution of the base metal and the introduction of other pollutants, diminishing the performance of the electroplating solutions. Spent concentrated solutions typically are treated to remove pollutants and reused, processed in a wastewater treatment system, or disposed of off site. Rinse waters, including some drag-out rinse tank solutions, typically are treated on site.

Electroplating without Chromium or Cyanide involves the production of metal coatings on a surface by electrodeposition, without using chromium or cyanide. Commonly electroplated metals include nickel, copper, tin/lead, gold, and zinc.

Electroplating provides corrosion protection, wear or erosion resistance, lubricity, electrical conductivity, or decoration. In electroplating, metal ions in acid, alkaline, or neutral solutions are reduced on the cathodic surfaces of the parts being plated. The metal ions in solution typically are replenished by dissolving metal from anodes contained in inert wire or metal baskets. Sealant operations performed after this operation are considered separate unit operations if they include any additives (*i.e.*, any sealant operations other than hot water dips). In addition to water and the metal being deposited, electroplating solutions often contain agents that form complexes with the metal being deposited, stabilizers to prevent hydrolysis, buffers to control pH, catalysts to assist in deposition, chemical aids to dissolve anodes, and miscellaneous ingredients that modify the process to attain specific properties. Wastewater generated during electroplating without chromium or cyanide includes spent process solutions and rinses. Electroplating solutions occasionally become contaminated during use due to dissolution of the base metal and the introduction of other pollutants, diminishing the effectiveness of the electroplating solutions. Spent concentrated solutions typically are treated for pollutant removal and reused, processed in a wastewater treatment system, or disposed of off site. Rinse waters, including some drag-out rinse tank solutions, typically are treated on site.

Electropolishing involves producing a highly polished surface on a part using reversed electrodeposition in which the anode (part) releases some metal ions into the electrolyte to reduce surface roughness. When current is applied, a polarized film forms on the metal surface, through which metal ions diffuse. In this operation, areas of surface roughness on parts serve as high-current density areas and are dissolved at rates greater than the rates for smoother portions of the metal surface. Metals are electropolished to improve appearance, reflectivity, and corrosion resistance. Base metals processed by electropolishing include aluminum, copper, zinc, low-alloy steel, and stainless steel. Common electrolytes include sodium hydroxide and combinations of sulfuric acid, phosphoric acid, and chromic acid. Wastewater generated during electropolishing includes spent process solutions and rinses. Eventually, the concentration of dissolved metals increases to the point where the process becomes ineffective. Typically, a portion of the bath is decanted and either fresh chemicals are added or the entire solution is discharged to treatment and replaced with fresh chemicals. Rinsing can involve several steps and can include hot immersion or spray rinses.

Galvanizing/Hot Dip Coating involves using various processes to coat an iron or steel surface with zinc. In hot dipping, a base metal is coated by dipping it into a tank that contains a molten metal.

Hot Dip Coating involves applying a metal coating (usually zinc) to the surface of a part by dipping the part in a molten metal bath. Wastewater is generated in this operation when residual metal coating solution is removed from the part in rinse water.

Kerfing uses a tool to remove small amounts of metal from a product surface. Water and synthetic coolants may be used to lubricate the area between the tool and the metal, to maintain the temperature of the cutting tool, and to remove metal fines from the surface of the part. This operation generates oily wastewater that contains metal fines and dust.

Laminating involves applying a material to a substrate using heat and pressure.

Mechanical and Vapor Plating involves applying a metallic coating to a part. For mechanical plating, the part is rotated in a drum containing a water-based solution, glass beads, and metal powder. In vapor plating, a metallic coating is applied by atomizing the metal and applying an electric charge to the part, which causes the atomized (vapor phase) metal to adhere to the part. Wastewater generated in this operation includes spent solutions from the process bath and rinse water. Typically, the wastewater contains high concentrations of the applied metal.

Metallic Fiber Cloth Manufacturing involves weaving thin metallic fibers to create a mesh cloth.

Metal Spraying (Including Water Curtain) involves applying a metallic coating to a part by projecting molten or semimolten metal particles onto a substrate. Coatings can be sprayed from rod or wire stock or from powdered material. The process involves feeding the material (*e.g.*, wire) into a flame where it is melted. The molten stock then is stripped from the end of the wire and atomized by a high-velocity stream of compressed air or other gas that propels the material onto a prepared substrate or part. Metal spraying coatings are used in a wide range of special applications, including: insulating layers in applications such as induction heating coils; electromagnetic interference shielding; thermal barriers for rocket engines; nuclear moderators; films for hot isostatic pressing; and dimensional restoration of worn parts. Metal spraying is sometimes performed in front of a "water curtain" (a circulated water stream used to trap overspray) or a dry filter exhaust hood that captures the overspray and fumes. With water curtain systems, water is recirculated from a sump or tank. Wastewater is generated when the sump or tank is discharged periodically. Metal spraying typically is not followed by rinsing.

Painting-Immersion (Including Electrophoretic, "E-coat") involves applying an organic coating to a part using processes such autophoretic and electrophoretic painting.

(1) Autophoretic Painting involves applying an organic paint film by electrophoresis when a part is immersed in a suitable aqueous bath.

(2) Electrophoretic Painting is coating a part by making it either anodic or cathodic in a bath that is generally an aqueous emulsion of the organic coating material.

(3) Other Immersion Painting includes all other types of immersion painting such as dip painting.

Water is used in immersion paint operations as a carrier for paint particles and to rinse the part. Aqueous painting solutions

and rinses typically are treated through an ultrafiltration system. The concentrate is returned to the painting solution, and the permeate is reused as rinse water. Sites typically discharge a bleed stream to treatment. The painting solution and rinses are batch discharged periodically to treatment.

Photo Imaging is the process of exposing a photoresist-laden printed wiring board to light to impact the circuitry design to the board. Water is not used in this operation.

Photo Image Developing is an operation in which a water-based solution is used to develop the exposed circuitry in a photoresist-laden printed wiring board. Wastewater generated in this operation includes spent process solution and rinse water.

Photoresist Application is an operation that uses heat and pressure to apply a photoresist coating to a printed wiring board. Water is not used in this operation.

Photoresist Strip involves removing organic photoresist material from a printed wiring board using an acid solution.

Phosphor Deposition is the application of a phosphorescent coating to a part. Wastewater generated in this unit operation includes water used to keep the parts clean and wet while the coating is applied, and rinse water used to remove excess phosphorescent coating from the part.

Physical Vapor Deposition involves physically removing a material from a source through evaporation or sputtering, using the energy of the vapor particles in a vacuum or partial vacuum to transport the removed material, and condensing the removed material as a film onto the surface of a part or other substrate.

Plasma Arc Machining involves removing material or shaping a part by a high-velocity jet of high-temperature, ionized gas. A gas (nitrogen, argon, or hydrogen) is passed through an electric arc, causing the gas to become ionized, and heated to temperatures exceeding 16,650 °C (30,000 °F). The relatively narrow plasma jet melts and displaces the material in its path. Because plasma arc machining does not depend on a chemical reaction between the gas and the part, and because plasma temperatures are extremely high, the process can be used on almost any metal, including those that are resistant to oxygen-fuel gas cutting. The method is used mainly for profile cutting of stainless steel and aluminum alloys. Although plasma arc machining typically is a dry process, water is used for water injection plasma arc torches. In these cases, a constricted swirling flow of water surrounds the cutting arc. This operations also may be performed immersed in a water bath. In both cases, water is used to stabilize the arc, to cool the part, and to contain smoke and fumes.

Plastic Wire Extrusion involves applying a plastic material to a metal wire through an extrusion process.

Salt Bath Descaling involves removing surface oxides or scale from a part by immersing the part in a molten salt bath or hot salt solution. Salt bath descaling solutions can contain molten salts, caustic soda, sodium hydride, and chemical additives. Molten salt baths are used in a salt bath-water quench-acid dip sequence to remove oxides from stainless steel and other corrosion-resistant alloys. In this process, the part typically is immersed in the molten salt, quenched with water, and then dipped in acid. Oxidizing, reducing, or electrolytic salt baths can be used depending on the oxide to be removed. Wastewater generated during salt bath descaling includes spent process solutions, quenches, and rinses.

Shot Tower—Lead Shot Manufacturing involves dropping molten lead from a platform on the top of a tower through a sieve-like device and into a vat of cold water.

Soldering involves joining metals by inserting a thin (capillary thickness) layer of nonferrous filler metal into the space between them. Bonding results from the intimate contact produced by the metallic bond formed between the substrate metal and the solder alloy. The term soldering is used where the melting temperature of the filler is below 425 °C (800 °F). Some soldering operations use a solder flux, which is an aqueous or nonaqueous material used to dissolve, remove, or prevent the formation of surface oxides on the part. Except for the use of aqueous fluxes, soldering typically is a dry operation; however, a quench or rinse sometimes follows soldering to cool the part or remove excess flux or other foreign material from its surface. Recent developments in soldering technology have focused on fluxless solders and fluxes that can be cleaned off with water.

Solder Flux Cleaning involves removing residual solder flux from a printed circuit board using either an alkaline or alcohol cleaning solution.

Solder Fusing involves coating a tin-lead plated circuit board with a solder flux and then passing the board through a hot oil. The hot oil fuses the tin-lead to the board and creates a solder-like finish on the board.

Solder Masking involves applying a resistive coating to certain areas of a circuit board to protect the areas during subsequent processing.

Sputtering is a vacuum evaporation process in which portions of a coating material are physically removed from a substrate and deposited a thin film onto a different substrate.

Stripping (Paint) involves removing a paint (or other organic) coating from a metal basis material. Stripping commonly is performed as part of the manufacturing process to recover parts that have been improperly coated or as part of maintenance and rebuilding to restore parts to a usable condition. Organic coatings (including paint) are stripped using thermal, mechanical, and chemical means. Thermal methods include burn-off ovens, fluidized beds of sand, and molten salt baths. Mechanical methods include scraping and abrasive blasting (as defined in "Abrasive Blasting" in appendix B of this part). Chemical paint strippers include alkali solutions, acid solutions, and solvents (*e.g.*, methylene chloride). Wastewater generated during organic coating stripping includes process solutions (limited mostly to chemical paint strippers and rinses).

Stripping (Metallic Coating) involves removing a metallic coating from a metal basis material. Stripping is commonly part of the manufacturing process to recover parts that have been improperly coated or as part of maintenance and rebuilding to restore parts to a usable condition. Metallic coating stripping most often uses chemical baths, although mechanical means (*e.g.*, grinding, abrasive blasting) also are used. Chemical stripping frequently is performed as an aqueous electrolytic process. Wastewater generated during metallic coating stripping includes process solutions and rinses. Stripping solutions become contaminated from dissolution of the base metal. Typically, the entire solution is discharged to treatment. Rinsing is used to remove the corrosive film remaining on the parts.

Thermal Infusion uses heat to infuse metal powder or dust onto the surface of a part. Typically, thermal infusion is a dry operation. In some cases, however, water may be used to remove excess metal powder, metal dust, or molten metal.

Ultrasonic Machining involves forcing an abrasive liquid between a vibrating tool and a part. Particles in the abrasive liquid strike the part, removing any microscopic flakes on the part.

Vacuum Impregnation is used to reduce the porosity of the part. A filler material (usually organic) is applied to the surface of the part and polymerized under pressure and heat. Wastewater is generated in this unit operation when rinse water is used to remove residual organic coating from the part.

Vacuum Plating involves applying a thin layer of metal oxide onto a part using molten metal in a vacuum chamber.

Water Shedder involves applying a dilute water-based chemical compound to a part to accelerate drying. This operation typically is used to prevent a part from streaking when excess water remains on the part.

Wet Air Pollution Control involves using water to remove chemicals, fumes, or dusts that are entrained in air streams exhausted from process tanks or production areas. Most frequently, wet air pollution control devices are used with electroplating, cleaning, and coating processes. A common type of wet air pollution control is the wet packed scrubber consisting of a spray chamber that is filled with packing material. Water is continuously sprayed onto the packing and the air stream is pulled through the packing by a fan. Pollutants in the air stream are absorbed by the water droplets and the air is released to the atmosphere. A single scrubber often serves numerous process tanks; however, the air streams typically are segregated by source into chromium, cyanide, and acid/alkaline sources. Wet air pollution control can be divided into several suboperations, including:

(1) Wet Air Pollution Control for Acid Alkaline Baths;

(2) Wet Air Pollution Control for Cyanide Baths;

(3) Wet Air Pollution Control for Chromium-Bearing Baths; and

(4) Wet Air Pollution Control for Fumes and Dusts.

Wire Galvanizing Flux involves using flux to remove rust and oxide from the surface of steel wire prior to galvanizing. This provides

long-term corrosion protection for the steel wire.

[FR Doc. 03–4258 Filed 5–12–03; 8:45 am]
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Federal Register

Tuesday,
May 13, 2003

Part III

Department of Agriculture

Forest Service

36 CFR Part 251

Special Uses; Managing Recreation Residences and Assessing Fees Under Cabin User Fee Fairness Act; Proposed Rule

DEPARTMENT OF AGRICULTURE

Forest Service

36 CFR Part 251

RIN 0596–AB83

Special Uses; Managing Recreation Residences and Assessing Fees Under Cabin User Fee Fairness Act

AGENCY: Forest Service, USDA.

ACTION: Notice of proposed rulemaking; request for comment.

SUMMARY: The Cabin User Fee Fairness Act of 2000 directs the Forest Service to promulgate regulations and adopt policies for carrying out provisions of the act. Accordingly, the Forest Service is proposing changes to its special uses regulations and also to the related agency directives published elsewhere in this issue of the **Federal Register**. The proposed rule and agency directives set out requirements and provide direction to agency personnel for managing recreation residence uses and assessing fees for those uses of National Forest System lands pursuant to the act. Public comment is invited and will be considered in the development of the final rule and directives.

DATES: Comments must be received in writing by August 11, 2003.

ADDRESSES: Send written comments to Forest Service, USDA, Attn: Director of Lands, Mail Stop 1104, Washington, DC 20250–1104; by electronic mail to the World Wide Web/Internet site at *http://www2.srs.fs.fed.us/cuffa/cuffa.html* or by fax to (202) 205–1604. If comments are sent by electronic mail or fax, the public is requested not to send duplicate written comments via regular mail. In addition, only one response is required to address provisions contained in this proposed rule and the proposed directives published elsewhere in this part of today's **Federal Register**. Please confine written comments to issues pertinent to the proposed rule and directives; explain the reasons for any recommended changes; and where possible, reference the specific section or paragraph being addressed. Those responding to the proposed rule, directives, and appraisal guidelines may want to review the provisions of the Cabin User Fee Fairness Act of 2000 before formulating their response. A copy of the act may be viewed and downloaded from the World Wide Web/Internet site previously listed. The Forest Service may not include in the administrative record for the proposed rule and proposed directives those comments it receives after the comment period closes (see **DATES**) or comments delivered to an address other than those listed in this **ADDRESSES** section.

All comments, including the names, street addresses, and other contact information about respondents, will be available for public review at the office of the Director, Lands Staff, Forest Service, USDA, 4th Floor South, Sidney R. Yates Federal Building, 1400 Independence Ave., SW., Washington, DC, during regular business hours (8:30 a.m. to 4:30 p.m.), Monday through Friday, except holidays. Those wishing to inspect comments are encouraged to call ahead (202) 205–1256 or (202) 205–1064, to facilitate access to the building.

FOR FURTHER INFORMATION CONTACT: Randy Karstaedt, Lands Staff (202) 205–1256, Forest Service, USDA.

SUPPLEMENTARY INFORMATION:

Table of Contents

1. Background
2. Major Provisions of the Cabin User Fee Fairness Act of 2000 (CUFFA)
3. Section-by-Section Explanation of Proposed Revisions to 36 CFR part 251, subpart B
4. Regulatory Certifications

1. Background

On August 16, 1988 (53 FR 30924), the Forest Service adopted a policy that set forth procedures for administering term special use permits that authorize privately owned recreation residences on National Forest System (NFS) lands. The 1988 policy included direction concerning the tenure and renewal of recreation residence term special use permits, and described procedures to be followed when a recreation residence site was needed for a higher public purpose. The 1988 policy also established a new procedure for assessing fair market value fees for this type of use and occupancy. In the 1988 policy the Forest Service designated as "base fees" those annual fees for recreation residence special uses permits that had previously been established during the years 1978 through 1982. Those base fees were determined as a result of appraisals of the fee simple fair market value of lots that were completed during that time period. The year of the appraisal during the years 1978 through 1982 served as "year 1" in a 20-year appraisal cycle in the 1988 policy.

That policy was appealed to the Secretary of Agriculture on September 15, 1988. In general, the appellants alleged that certain aspects of the policy were flawed, in that they exceeded limitations in the statute authorizing recreation residence uses of the National Forests. In a decision dated February 15, 1989, the Assistant Secretary of Agriculture for Natural Resources and Environment remanded the 1988 policy to the Forest Service for restudy and reformulation, and stayed the implementation of those specific provisions in the policy that were the subject of the appeal. None of the appeal or remand issues involved provisions in the 1988 policy concerning the appraisals of recreation residence lots, nor the determination and assessment of land use fees generally. Rather, the remand directed the agency to reconsider: (1) Nonrenewal provisions in recreation residence special use permits that would be applied when the agency determined a need to convert the use of a recreation residence site to a higher, or alternative, public purpose; (2) the policy's provisions requiring an automatic permit renewal 10 years prior to expiration (unless procedures for nonrenewal had been established); (3) provisions requiring the offering of an in-lieu lot to those permit holders who received nonrenewal notices pursuant to the agency's finding to convert the use of a recreation residence site to some alternative public purpose; and (4) provisions weighted against consideration of commercial uses for sites when nonrenewal of the recreation residence use was contemplated.

A final revised policy for recreation residences was adopted on June 2, 1994 (59 FR 28713). It revised the 1988 policy with new provisions identified in the appeal and remand concerning tenure, and clarified policy for determining the annual fee for recreation residences. However, those provisions that were revised and clarified in 1994 pertained only to annual fees for those permits affected by notices of nonrenewal for an alternative public purpose.

As previously stated, the 1988 policy established base fees pursuant to recreation residence lot appraisals conducted during the years 1978 through 1982. Those base fee amounts were then indexed annually, using the annualized change in the economic indexing factor known as the Implicit Price Deflator-Gross National Product (IPD–GNP) as provided in the 1988 policy. The 1988 policy also established a 20-year appraisal cycle for keeping recreation residence fees current with changes in fair market value.

In accordance with the provisions of the 1988 and 1994 policies, the Forest Service began to appraise recreation residence tracts in 1996, which was year 18 of the 20-year appraisal cycle for those lots appraised in 1978. Appraisals completed in 1997 revealed varying degrees of increases in the fair market value of recreation residence lots since they were last appraised in the late 1970's and early 1980's. In some locations and markets the increase in value was dramatic. Because annual land use fees are calculated on the basis of 5 percent of the fee simple value of each lot, increases in the appraised fee simple values of some lots exceeded the cumulative effect of 18 to 20 years of annual IPD–GNP indexing of fees, which resulted in corresponding increases in land use fees. Some of the more dramatic fee increases as a result of new appraisals were of significant concern to recreation residence permit holders, and to State and national associations that represent them. In response, recreation residence permit holders and associations of holders began to contact their Congressional representatives, requesting relief from the increased fees.

Congress initially responded to these concerns on November 14, 1997, in the Department of the Interior and Related Agencies Appropriations Act for Fiscal Year 1998, Public Law 105–83 (Pub. L. 105–83). Section 343 of this act provided for a three-year phase-in of recreation residence fee increases when a new appraisal of a recreation residence lot results in fees that exceeded 100 percent of the previous land use fees.

In fiscal year 1999, Congress responded to the concerns of recreation residence permit holders on the Sawtooth National Forest in Idaho by directing the Forest Service not to increase recreation residence fees on the Sawtooth National Forest in fiscal year 1999 by more than 25 percent of the fee paid during the prior fiscal year.

In fiscal year 2000, Congress provided additional relief to recreation residence permit holders in section 342 of Public Law 106–113 (Consolidated Appropriations for Fiscal Year Ending September 30, 2000); which directed that recreation residence permit fees assessed during fiscal year 2000 could not exceed the fiscal year 1999 fee amount by more than $2000.

Congress further addressed concerns with fee assessments for recreation residence uses with the October 12, 2000, passage of the Cabin User Fee Fairness Act of 2000 (CUFFA). One of the primary purposes of CUFFA is to establish a consistent and fair process for appraising the fee simple value of recreation residence lots on NFS lands.

2. Major Provisions of the Cabin User Fee Fairness Act of 2000 (CUFFA)

The Cabin User Fee Fairness Act of 2000 (CUFFA) directs the Secretary of Agriculture to promulgate regulations and policies to implement the provisions of the act within two years of its passage. The major provisions of CUFFA include: (1) Establishment of a base annual fee for recreation residence special use permits that is 5 percent of the appraised fee simple value of the lot; (2) direction for the establishment of new guidelines for conducting appraisals of recreation residence lots; (3) an appraisal cycle shortened from the current 20 years to 10 years; and (4) the right of appeal and judicial review of a base cabin user fee determination.

Section 608 of CUFFA provides for annual adjustments to recreation residence fees based on changes to the Index of Agricultural Land Prices, published by the Department of Agriculture. Currently, the Forest Service adjusts annual fees for recreation residence using the 2nd quarter to 2nd quarter change in the Implicit Price Deflator, Gross Domestic Product (IPD–GDP) with a 10 percent increase cap in any one-year billing period. During the transition period identified in section 614 of CUFFA, the Forest Service is continuing to use the IPD–GDP as the means for annually indexing fees. This direction was provided to agency managers on February 20, 2003, in interim directive 2709.11–2003–1, issued to the Forest Service Handbook (FSH) 2709.11, chapter 30 (68 FR 8197). The Forest Service shall, however, limit annual increases using the IPD–GDP to 5 percent in any one year during the transition period as provided in section 608(d) of CUFFA. When the transition period ends, the Forest Service will use the Index of Agricultural Land Prices to index annual fees as provided in section 608 of CUFFA.

Section 606(a)(3) of CUFFA directs the Secretary to contract with a professional appraisal organization to develop appraisal guidelines for determining fees for recreation residences. The Forest Service contracted with The Appraisal Foundation (TAF) to assist in the development and review of the proposed appraisal guidelines. TAF is the single authority in the United States for development and interpretation of appraisal standards, such as those referenced in CUFFA. In addition, TAF is the only Congressionally recognized appraisal organization responsible for developing and interpreting the Uniform Standards of Professional Appraisal Practice (USPAP) as provided by the Financial Institutions Reform, Recovery, and Enforcement Act of 1989.

TAF assisted the Forest Service in the development of the proposed appraisal guidelines. In its report dated October 8, 2002, TAF also documented that the proposed appraisal guidelines the Forest Service developed are in conformance with section 606 of CUFFA by stating: "* * * they (draft appraisal guidelines) follow exactly the directions in the act." TAF did recommend minor, mostly editorial changes to the draft of the proposed appraisal guidelines. The revised draft appraisal guidelines are found in the proposed directives to Forest Service Handbook (FSH) 5409.12, Appraisal Handbook, section 6.9, exhibit 06, published elsewhere in this part of today's **Federal Register**.

Section 611 of CUFFA provides for the right of appeal and judicial review for recreation residence permit holders. The Department has reviewed this requirement and has determined that current regulations at Title 36, Code of Federal Regulations, part 251, Land Uses, subpart C, Appeal of Decisions Relating to Occupancy and Use of National Forest System Lands (36 CFR part 251, subpart C) provide all holders of recreation residence term permits the right to appeal a written decision by an authorized officer regarding the issuance, approval, and administration of their permits. The authorized officer's implementation of a new base fee, pursuant to provisions outlined in the proposed rule and directives published elsewhere in this part of today's **Federal Register**, constitutes a written decision subject to these appeal regulations. Therefore, existing regulations at 36 CFR part 251, subpart C, already provide the right of appeal identified in section 611 of CUFFA, and the Department is not proposing any new or amended appeal regulations for implementing that section of CUFFA.

Section 614 of CUFFA provides for a transition period during which the recreation residence fees in place on September 30, 1995, could not be increased by more than $3,000 from the amount of the annual fee in effect on October 1, 1996, excluding annual indexing. The transition period ends for a recreation residence permit holder when a base fee for their recreation residence is established through guidelines contained in final regulations, directives, and appraisal guidelines developed pursuant to CUFFA. The Forest Service issued an interim directive implementing these transition provisions for fee determinations on February, 20, 2003 (68 FR 8197) (ID 2709.11–2003–1 to FSH 2709.11).

Pursuant to the provisions of CUFFA previously outlined, the Forest Service is proposing revisions to its special uses regulations at 36 CFR part 251, subpart B, as set out in this notice, and also is

proposing new appraisal guidelines and revisions to administrative procedures set out in proposed directives published elsewhere in this part of today's **Federal Register**.

3. Section-by-Section Explanation of Proposed Revisions to 36 CFR Part 251, Subpart B

Section 251.51—Definitions. This section of the current regulation defines many of the terms and phrases used in subpart B. The proposed rule would add a definition for a recreation residence lot as described in section 604 of CUFFA. Consistent with the act, a recreation residence lot includes all National Forest System (NFS) land on which a cabin owner is authorized to build, use, occupy, and maintain a cabin and related improvements. Therefore, a recreation residence lot is not necessarily confined to the plotted boundaries as shown on a tract map, but may include all of the area occupied by the recreation residence and its related improvements.

Section 251.57—Rental Fees. This section of the current regulation describes how fees for special use authorizations are determined. Proposed paragraph (a)(3) would provide that the base fee for recreation residences would be established by appraisal or other sound business management principles pursuant to the provisions in CUFFA. Proposed paragraph (a)(3) would also state that the base cabin user fee is established as being 5 percent of the market value of the recreation residence lot. Proposed paragraph (i) would require that permits and term permits authorizing recreation residence uses state that the Forest Service shall recalculate the base cabin user fee at least once every 10 years by use an appraisal or other sound business management principles to calculate that fee as provided for in paragraph (a)(3).

4. Regulatory Requirements

Environmental Impact

These proposed revisions establish administrative procedures for determining market value for recreation residences on National Forest System lands. Section 31.1b of Forest Service Handbook (FSH) 1909.15 (57 FR 43180, September 18, 1992) excludes from documentation in an environmental assessment or impact statement "rules, regulations, or policies to establish Service-wide administrative procedures, program processes, or instructions." The agency's preliminary assessment is that this proposed rule falls within this category of actions and that no extraordinary circumstances exist which would require preparation of an environmental assessment or environmental impact statement.

Regulatory Impact

This proposed rule has been reviewed under USDA procedures and Executive Order 12866 on Regulatory Planning and Review. It has been determined that this is not a significant rule. This proposed rule would not have an annual effect of $100 million or more on the economy, or adversely affect productivity, competition, jobs, the environment, public health or safety, or State or local governments. This proposed rule would not interfere with an action taken or planned by another agency, or raise new legal or policy issues. Finally, this proposed rule would not alter the budgetary impacts of entitlements, grants, or loan programs or the rights and obligations of recipients of such programs.

No Takings Implications

This proposed rule has been analyzed in accordance with the principles and criteria contained in Executive Order 12630. It has been determined that the proposed rule does not pose the risk of a taking of Constitutionally protected private property.

Civil Justice Reform

This proposed rule has been reviewed under Executive Order 12988, Civil Justice Reform. The agency has not identified any State or local laws or regulations that are in conflict with this proposed rule or that would impede full implementation of the proposed rule. Nonetheless, in the event that such a conflict were to be identified, the proposed rule, if implemented, would preempt the State and local laws or regulations found to be in conflict. However, in that case, (1) no retroactive effect would be given to this proposed rule; and (2) the Department would not require the use of administrative proceedings before parties may file suit in court challenging its provisions.

Unfunded Mandates

Pursuant to Title II of the Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538), which the President signed into law on March 22, 1995, the agency has assessed the effects of this proposed rule on State, local, and tribal governments and the private sector. This proposed rule would not compel the expenditure of $100 million or more by any State, local, or tribal government or anyone in the private sector. Therefore, a statement under section 202 of the act is not required.

Federalism and Consultation and Coordination With Indian Tribal Governments

The agency has considered this proposed rule under the requirements of Executive Order 13132 on federalism, and has made an assessment that the proposed rule conforms with the federalism principles set out in this Executive order; would not impose any compliance costs on the States; and would not have substantial direct effects on the States, on the relationship between the Federal government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, the agency has determined that no further assessment of federalism implications is necessary at this time.

Moreover, this proposed rule does not have tribal implications as defined by Executive Order 13175, Consultation and Coordination With Indian Tribal Governments, and, therefore, advance consultation with tribes is not required.

Energy Effects

This proposed rule has been reviewed under Executive Order 13211 of May 18, 2001, "Actions Concerning Regulations That Significantly Affect Energy Supply." It has been determined that this proposed rule does not constitute a significant energy action as defined in the Executive order.

Controlling Paperwork Burdens on the Public

This proposed rule does not contain any record-keeping or reporting requirements or other information collection requirements as defined in 5 U.S.C. part 1320 that are not already required by law or not already approved for use. Any information collected from the public as a result of this action has been approved by the Office of Management and Budget under control number 0596–0082. Accordingly, the review provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*) and its implementing regulations at 5 CFR part 1320 do not apply.

List of Subjects in 36 CFR Part 251

Electric power, Mineral resources, National forests, Rights-of-way, and Water resources.

For the reasons set forth in the preamble, the Forest Service proposes to amend part 251 of title 36 of the Code of Federal Regulations as follows:

PART 251—LAND USES

Subpart B—Special Uses

1. The authority citation for part 251 is revised to read as follows:

Authority: 16 U.S.C. 472, 479b, 551, 1134, 3210, 6201–13; 30 U.S.C. 1740, 1761–1771.

2. In § 251.51 add a definition for "recreation residence lot" in the appropriate alphabetical order to read as follows:

§ 251.51 Definitions

* * * * *

Recreation Residence Lot—a parcel of National Forest System land on which a holder is authorized to build, use, occupy, and maintain a recreation residence and related improvements. A recreation residence lot is considered to be in its natural, native state at the time when the Forest Service first permitted its use for a recreation residence. A recreation residence lot is not necessarily confined to the platted boundaries shown on a tract map or permit area map. A recreation residence lot includes the physical area of all National Forest System land being used or occupied by a recreation residence permit holder, including, but not limited to, land being occupied by ancillary uses such as septic systems, water systems, boat houses and docks, major vegetative modifications, and so forth.

* * * * *

3. In § 251.57 add new paragraphs (a)(3) and (i) to read as follows:

§ 251.57 Rental fees

(a) * * *

(3) A base cabin user fee for a recreation residence use shall be 5 percent of the market value of the recreation residence lot, established by an appraisal or other sound business management principles conducted in accordance with the Act of October 12, 2000 (16 U.S.C. 6201–13).

* * * * *

(i) Each permit or term permit for a recreation residence use shall include a clause stating that the Forest Service shall recalculate the base cabin user fee at least every 10 years and shall use an appraisal or other sound business management principles to recalculate that fee as provided in paragraph (a)(3) of this section.

Dated: May 3, 2003.

Dale N. Bosworth,

Chief.

[FR Doc. 03–11694 Filed 5–12–03; 8:45 am]

BILLING CODE 3410–11–P

DEPARTMENT OF AGRICULTURE

Forest Service

36 CFR Part 251

RIN 0596–AB83

Procedures for Appraising Recreation Residence Lots and for Managing Recreation Residence Uses Under Cabin User Fee Fairness Act

AGENCY: Forest Service, USDA.

ACTION: Notice of proposed directives; request for comment.

SUMMARY: In conjunction with a proposed rule published elsewhere in this part of today's **Federal Register**, the Forest Service is proposing changes to its directives for managing recreation residence special use permits and for determining land use fees for recreation residences as required by the Cabin User Fee Fairness Act of 2000. Guidance to forest officers in the administration of recreation residences and the determination of land use fees is issued in the Forest Service Manual (FSM) Title 2300, Recreation, Wilderness, and Related Resource Management; FSM Title 2700, Special Uses Management; Forest Service Handbook (FSH) 2709.11, Special Uses Handbook; and FSH 5409.12, Appraisal Handbook. Numerous revisions to these directives are necessary to address the changes in administering and determining fees for recreation residence lots pursuant to the act. Comments received in response to this notice will be considered in development of the final directives and final rule.

DATES: Comments must be received in writing by August 11, 2003.

ADDRESSES: Send written comments to Forest Service, USDA, Attn: Director of Lands, Mail Stop 1104, Washington, DC 20250–1140; by electronic mail to the World Wide Web/Internet site at *http://www2.srs.fs.fed.us/cuffa/cuffa.html* or by fax to (202) 205–1604. If comments are sent by electronic mail or by fax, the public is requested not to send duplicate written comments via regular mail. Only one response is required to address provisions contained in these proposed directives and in the proposed rule published elsewhere in this part of today's **Federal Register**. Please confine written comments to issues pertinent to the proposed directives and proposed rule; explain the reasons for any recommended changes; and, where possible, reference the specific section or paragraph being addressed. Those responding to the proposed rule, directives, and appraisal guidelines may want to review the provisions of the Cabin User Fee Fairness Act of 2000 before formulating their response. A copy of the act may be viewed and downloaded from the World Wide Web/Internet site previously listed. The Forest Service may not include in the administrative record for the proposed directives and the proposed rule those comments it receives after the comment period closes (see **DATES**) or comments delivered to an address other than those listed in this **ADDRESSES** section.

All comments, including names and addresses when provided, are placed in the record and are available for public inspection and copying. The public may inspect comments received on these proposed directives in the Office of the Director, Lands Staff, Forest Service, USDA, 4th Floor-South, Sidney R. Yates Federal Building, 1400 Independence Avenue, SW., Washington, DC, between the hours of 8:30 a.m. to 4 p.m. on business days. Those wishing to inspect comments are encouraged to call ahead to (202) 205–1248 or (202) 205–1064 to facilitate entry into the building.

FOR FURTHER INFORMATION CONTACT: Randy Karstaedt, Lands Staff, (202) 205–1256, Forest Service, USDA.

SUPPLEMENTARY INFORMATION:

Table of Contents

1. Background
2. Regulatory Certifications
   - Environmental Impact
   - Regulatory Impact
   - No Taking Implications
   - Civil Justice Reform
   - Unfunded Mandates
   - Federalism and Consultation and Coordination with Indian Tribal Governments
   - Energy Effects
   - Controlling Paperwork Burdens on the Public
3. Proposed Revisions to Recreation Residence Directives
   - Forest Service Manual
   - Chapter 2340, Privately Provided Recreation Opportunities (text of proposed directive)
   - Chapter 2720, Special Uses Administration (text of proposed directive)
   - Forest Service Handbook 2709.11—Special Uses
   - Chapter 30—Fee Determination (text of proposed directive)
   - Forest Service Handbook 5409.12—Appraisal Handbook
   - Chapter 6—Appraisal Contracting (text of proposed directive)
- Table I—Section-by-Section Comparison Between the Current and Proposed Recreation Residence Directives

1. Background

An analysis of the history and development of policy and regulations

for the administration of recreation residences is found in the notice of proposed rulemaking to Title 36, Code of Federal Regulations, part 251, subpart B (36 CFR part 251, subpart B) published elsewhere in this part of today's **Federal Register**.

Most of the changes required by the Cabin User Fee Fairness Act of 2000 (CUFFA) affect current recreation residence policy contained in the Forest Service Manual (FSM) and Forest Service Handbook (FSH) directives. Accordingly, the changes to recreation residence management identified in CUFFA will be implemented through revisions to the FSM and FSH pursuant to CUFFA. Table I at the end of this notice has been prepared as an aid to understanding the directive changes being proposed. Table I displays the recreation residence policy provision, its reference to the appropriate section of CUFFA, and a section-by-section comparison of the current and the proposed policy provisions.

2. Regulatory Certifications

Environmental Impact

These proposed directives revise the administrative procedures for determining market value for recreation residences on National Forest System lands. Section 31.1b of Forest Service Handbook (FSH) 1909.15 (57 FR 43180, September 18, 1992) excludes from documentation in an environmental assessment or impact statement "rules, regulations, or policies to establish Service-wide administrative procedures, program processes, or instructions." The agency's preliminary assessment is that these proposed directives fall within this category of actions and that no extraordinary circumstances exist which would require preparation of an environmental assessment or environmental impact statement.

Regulatory Impact

These proposed directives have been reviewed under USDA procedures and Executive Order 12866 on Regulatory Planning and Review. It has been determined that this is not a significant action. The proposed directives would not have an annual effect of $100 million or more on the economy, or adversely affect productivity, competition, jobs, the environment, public health or safety, or State or local governments. The proposed directives would not interfere with an action taken or planned by another agency, or raise new legal or policy issues. Finally, these proposed directives would not alter the budgetary impacts of entitlements, grants, or loan programs or the rights and obligations of recipients of such programs.

No Takings Implications

These proposed directives have been analyzed in accordance with the principles and criteria contained in Executive Order 12630. It has been determined that the proposed directives do not pose the risk of a taking of constitutionally protected private property.

Civil Justice Reform

These proposed directives have been reviewed under Executive Order 12988, Civil Justice Reform. The agency has not identified any State or local laws or regulations that are in conflict with these proposed directives or that would impede full implementation of the proposed directives. Nonetheless, in the event that such a conflict were to be identified, the proposed directives, if implemented, would preempt the State and local laws or regulations found to be in conflict. However, in that case, (1) no retroactive effect would be given to these proposed directives; and (2) the Department would not require the use of administrative proceedings before parties may file suit in court challenging its provisions.

Unfunded Mandates

Pursuant to Title II of the Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538), which the President signed into law on March 22, 1995, the agency has assessed the effects of these proposed directives on State, local, and tribal governments and the private sector. These proposed directives would not compel the expenditure of $100 million or more by any State, local, or tribal government or anyone in the private sector. Therefore, a statement under section 202 of the act is not required.

Federalism and Consultation and Coordination With Indian Tribal Governments

The agency has considered these proposed directives under the requirements of Executive Order 13132 on federalism, and has made an assessment that the proposed directives conform with the federalism principles set out in this Executive order; would not impose any compliance costs on the States; and would not have substantial direct effects on the States, on the relationship between the Federal government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, the agency has determined that no further assessment of federalism implications is necessary at this time.

Moreover, these proposed directives do not have tribal implications as defined by Executive Order 13175, Consultation and Coordination With Indian Tribal Governments, and, therefore, advance consultation with tribes is not required.

Energy Effects

These proposed directives have been reviewed under Executive Order 13211 of May 18, 2001, "Actions Concerning Regulations That Significantly Affect Energy Supply." It has been determined that these proposed directives do not constitute a significant energy action as defined in the Executive order.

Controlling Paperwork Burdens on the Public

These proposed directives do not contain any record-keeping or reporting requirements or other information collection requirements as defined in 5 U.S.C. part 1320 that are not already required by law or not already approved for use. Any information collection requested as a result of these directives have been approved by the Office of Management and Budget under control number 0596–0082. Accordingly, the review provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*) and its implementing regulations at 5 CFR part 1320 do not apply.

Dated: April 3, 2003.

Dale N. Bosworth,

Chief.

3. Proposed Revisions to Recreation Residence Directives

Note: The Forest Service organizes its Directive System by alphanumeric codes and subject headings. Only those sections of the Forest Service Manual and Handbook that are the subject of this notice are set out here. The intended audience for this direction is Forest Service employees charged with issuing and administering recreation residence special use authorizations.

Forest Service Manual

Chapter 2340—Privately Provided Recreation Opportunities

2340.05—Definitions

* * * * *

Caretaker Cabin. A residence occupying a lot within a recreation residence tract that is being used to provide caretaker services and security to the recreation residences within that tract.

* * * * *

2347.1—Recreation Residences

(For further direction, *see* FSM 2721.23 and FSH 2709.11.) Recreation residences are a valid use of National Forest System lands. They provide a unique recreation experience to a large number of owners of recreation residences, their families, and guests. To the maximum extent practicable, the recreation residence program shall be managed to preserve the opportunity it provides for individual and family-oriented recreation. It is Forest Service policy to continue recreation residence use and to work in partnership with holders of these permits to maximize the recreational benefits of recreation residences.

* * * * *

2347.12—Caretaker Cabins

2347.12a—Authorization

Authorize caretaker cabin use of a recreation residence lot with an annual permit, Form FS–2700–4, under the Act of June 4, 1897. Require applicants who currently have a recreation residence term special use permit to request that the Forest Service revoke their recreation residence permit, as a condition for qualifying for a caretaker cabin authorization. A caretaker cabin may be owned by a tract association, and the authorization may be issued in the name of the head of that association.

2347.12b—Caretaker Cabin Use

The need for a caretaker cabin rarely can be justified where yearlong occupancy is already authorized in the tract. The Forest Supervisor may authorize a caretaker cabin in limited cases where it is demonstrated that caretaker services are needed for the security of a recreation residence tract and alternative security measures are not feasible or reasonably available. The annual fees for a caretaker cabin special use permit shall not be greater than the fee charged for the use of the lot as a recreation residence, as determined by the fee for a typical lot representative of the group of lots that includes the lot upon which the caretaker cabin use is authorized.

* * * * *

Chapter 2720—Special Uses Administration

* * * * *

2721.23—Recreation Residences

* * * * *

2721.23d—Fee Determination

1. Use market value as determined by appraisal in determining the base annual fees for recreation residence lots. Determine a new base fee at 10-year intervals.

Forest Service Handbook (FSH) 2709.11—Special Uses Handbook

Chapter 30—Fee Determination

* * * * *

33—Recreation Residence Lot Fees

Recreation residence lot fees shall be assessed and paid annually.

33.05—Definitions

Cabin. A privately owned structure that is authorized to occupy National Forest System land for use as a recreation residence.

Market Value. The amount in cash, or on terms reasonably equivalent to cash, for which in all probability the property would have sold on the effective date of the appraisal, after a reasonable exposure time on the open competitive market, from a willing and reasonably knowledgeable seller to a willing and reasonably knowledgeable buyer, with neither acting under any compulsion to buy or sell, giving due consideration to all available economic uses of the property at the time of the appraisal.

Natural, Native State. The condition of a lot or site, free of any improvements, at the time at which the lot or site was first authorized for recreation residence use by the Forest Service.

Recreation Residence. A privately owned, noncommercial residence, and its auxiliary buildings and improvements, located upon National Forest System lands and authorized by a recreation residence term special use permit. A recreation residence is maintained by the permit holder for personal, family, and guest use and enjoyment. A recreation residence shall not serve as a permanent residence.

Recreation residence lot. (For this definition, *see* 36 CFR 251.51.)

Simple Majority. More than 50 percent.

Term Permit. (For this definition, see 36 CFR 251.51 and FSM 2705.)

Tract. An established location within a National Forest containing one or more cabins authorized in accordance with the recreation residence program.

Typical Lot. A recreation residence lot in a tract that is selected for appraisal purposes as being representative of value characteristics similar to other recreation residence lots within the tract. All recreation residence lots represented by a typical lot shall be characterized as a group for appraisal purposes. A tract may have one or more groups of lots, with each group represented by a typical lot. A typical lot may be the only recreation residence lot in a group, and may be appraised to represent only itself, when it has unique value characteristics unlike any other recreation residence lot in a tract.

33.1—Base Fees and Annual Adjustments

33.11—Establishing New Base Fee

The base fee for a recreation residence special use permit shall be equal to 5 percent of the market value of the recreation residence lot as determined by appraisal. The base fee shall be recalculated at least once every 10 years.

The authorized officer shall notify the holder in writing at least one (1) year in advance of implementation that a new base fee has been determined by appraisal conducted in accordance with procedures contained in section 33.4 of this Handbook. If a second appraisal, secured by the holder (sec. 33.7) and approved by the agency, prompts the authorized officer to reconsider the new base fee amount, the revision to the base fee may be implemented at any time after the end of the one-year period following the initial notification.

The date of a billing for payment of a new base fee, or the date of a billing for the first payment of a phase-in amount (sec. 33.12) of a new base fee, shall constitute the date of implementation of the new base fee.

33.12—Phase-In of Base Fee

Require the holder to pay the full amount of a new base fee if that new base fee results in an increase of 100 percent or less from the amount of the most recent annual fee assessed the holder.

When the new base fee is greater than a 100 percent increase from the amount of the most recent annual fee assessed the holder, implement the new base fee increase in three (3) equal increments over a 3-year period. Annual adjustments (sec. 33.13) shall be included in the calculation of fees that are incrementally phased-in over the 3-year period.

The following example illustrates the manner in which a new base fee would be phased in when the new base fee results in an increase of more than 100 percent from the most recent annual fee assessed the holder:

2002 Fee amount	2003 New base fee	Increase
$700	$1,600	[1] $900

2003 Phase-in Fee: $700 (2002 fee) + $300 (⅓ of fee increase > 100%) = $1,000
2004 Phase-in Fee: $1,000 (2003 fee) + $300 (⅓ of fee increase > 100%) x 1.03* (annual IPD–GDP increase of 3%) = $1,339

2002 Fee amount	2003 New base fee	Increase
2005 Phase-in Fee: $1,339 (2004 fee) + $300 (⅓ of fee increase > 100%) × 1.03* (annual IPD–GDP increase of 3%) = $1,688		
2006 Phase-in Fee $1,688 (2005 fee) × 1.03* (annual IPD–GDP increase of 3%) = $1,739		

[1] >100% increase.

*3% annual IPD–GDP adjustment is used for illustrative purposes only. The actual annual IPD–GDP rate would be used for each of the phase-in amounts in years 2004 through 2006.

33.13—Annual Adjustment of Recreation Residence Fee

Recreation residence fees shall be adjusted annually using the 2nd quarter to 2nd quarter change in the Implicit Price Deflator, Gross Domestic Product (IPD–GDP).

An annual adjustment to the base fee shall be no more than 5 percent in any single year. When the annual change to the IPD–GDP results in an annual adjustment of more than 5 percent, apply the amount of the adjustment in excess of 5 percent to the annual fee payment for the next year in which the change in the index factor is less than 5 percent.

The following two examples illustrate how annual fees are adjusted in years during which the annual change in the IPD–GDP index exceeds 5 percent:

Example 1: Only 1 year in which the IPD–GDP adjustment exceeds 5%.

2004 Fee = $700
2005 IPD–GDP adjustment = 7%* ($700 × .07 = $49)
Maximum adjustment/year = 5% ($35)
2005 carryover adjustment = 2% ($14)
2005 Fee = $700 (2004 fee) × .05 (max. adj/yr.) = $735
2006 IPD–GDP adjustment = 3%*
Carryover adjustment from 2005 = $14
2006 Fee = $735 (2005 fee) + $14 (2005 carryover) × 1.03 = $771

Example 2: Multiple-year IPD–GDP adjustments exceeding 5%.

2004 Fee = $700
2005 IPD–GDP adjustment = 7%* ($700 × .07 = $49)
Maximum adjustment/year = 5% ($35)
2005 carryover adjustment = 2% ($14)
2005 Fee = $700 (2004 fee) × 1.05 (max. adj/yr.) = $735
2006 IPD–GDP adjustment = 7%* ($735 × .07 = $51)
Maximum adjustment/year = 5% ($37)
2006 carryover adjustment = 2% ($14)
Total carryover (2005 & 2006) = $28
2006 Fee = $735 (2005 fee) × 1.05 (max. adj/yr.) = $772
2007 IPD–GDP adjustment = 3%* (<max.adj/yr.)
Total 2006 & 2007 carryover = $28
2007 Fee = $772 (2006 fee) + $28 (2005 & 2006 carryover) × 1.03 = $824

(*Annual IPD–GDP adjustments used are for illustrative purposes only)

33.2—Fees When Determination Is Made To Place Recreation Residence on Tenure

A recreation residence use is placed on "tenure" when the authorized officer notifies the holder of the officer's decision to discontinue the use of the lot for recreation residence purposes and to convert the use of the recreation residence lot to some alternative public purpose. When a decision is made to discontinue the recreation use, the authorized officer shall provide the holder a minimum of 10 years notice prior to the date of converting the use and occupancy to an alternative public purpose. If the holder's 20-year term special use permit expires during that 10-year period, a new annual special use permit shall be issued with an expiration date that coincides with the specified date for converting the recreation residence lot to an alternative public purpose.

When a recreation residence use had been put on tenure, the fee for the tenth year prior to the date of converting the recreation residence use to an alternative public use becomes the base fee for the remaining life of the use. The fee for each year during the last ten years of the authorization shall be one-tenth of the base fee multiplied by the number of years remaining prior to the date of conversion. For example, charge a holder with nine years remaining, 90 percent of the base fee; with eight years, 80 percent; and so forth. Do not apply annual adjustments to fees when a recreation residence has been put on tenure notice.

Use the following schedule to calculate the holder's fee during the 10-year period:

Years remaining prior to date of conversion	Percent of base fee to charge
10	100
9	90
8	80
7	70
6	60
5	50
4	40
3	30
2	20
1	10

Use one of the following fee determination procedures when a review of a decision to convert the recreation residence lot to an alternative public use shows that changed conditions warrant continuation of the recreation residence use beyond the determined date of conversion:

1. If a new 20-year term permit is issued, recover the amount of fees forgone while the previous permit was under notice that the recreation residence lot would be converted to an alternative public purpose. Collect this amount evenly over a 10-year period in addition to the annual fee due under the new permit. The obligation runs with the recreation residence lot and shall be charged to any subsequent purchaser of the recreation residence. The annual fee under the newly issued 20-year permit shall be the annually-indexed fee computed as though no limit on tenure had existed, plus the amount as specified in this paragraph until paid in full.

2. Do not recover past fees when a 20-year term permit is not issued and the occupancy of the recreation residence lot will be authorized for less than 10 years past the originally identified date of conversion. Determine the fee for a new permit in these situations by computing the fee as if notice that a new permit would not be issued had not been given, reduced by the appropriate percentage for the number of years of the extension. For example, a new permit with a 6-year tenure period results in a fee equal to 60 percent of the base fee.

3. When a 20-year term permit is not issued, and the occupancy of the subject recreation residence lot will be allowed to continue for more than 10 years, but less than 20 years, recover fees as outlined in the preceding paragraph 1, computed for the most recent 10-year period in which the term of the permit was limited.

33.3—Fee When Recreation Residence Use Is Terminated or Revoked as Result of Acts of God or Other Catastrophic Events

When the authorized officer determines that the recreation residence lot cannot be safely occupied because of an act of God or other catastrophic event, the fee obligation of the recreation residence owner shall terminate effective on the date of the occurrence of the act or event.

A prorated portion of the annual fee, reflecting the remainder of the current billing period from the date of the occurrence of the act or event, shall be refunded to the holder. In the event that the holder is authorized to occupy an in-lieu lot (sec. 41.23d), the refund amount may instead be credited to the annual fee identified in a new permit for the in-lieu lot.

33.4—Establishing the Market Value of Recreation Residence Lot

The market value of a recreation residence lot shall be established by appraisal (FSH 5409.12, ch. 6).

1. Appraisals shall be conducted and prepared by either a contract or staff appraiser who is licensed to practice in the State within which the recreation residence lot(s) to be appraised are located. Select private contract or Forest Service staff who have adequate training through professional appraisal organizations and who have satisfactorily completed the basic courses necessary to demonstrate competence for the appraisal assignment. Require appraisers to sign an Assignment Agreement (FSH 5409.12, sec. 6.9, ex. 07). The appraisal must evaluate the market value of the fee simple estate of the National Forest System land underlying the typical lot or lots in a natural native state. However, access, utilities, and facilities that service a typical lot and which have been determined by the authorized officer to have been paid for or provided by the Forest Service or a third party, shall be included as features of the typical lot to be appraised (sec. 33.42).

Do not appraise individual recreation residence lots within a grouping or tract. Appraise the typical lot or lots that have been selected from within a group of recreation residence lots that all have essentially the same or similar value characteristics, pursuant to the direction in section 33.41. Adjustments may be made for measurable differences among recreation residence lots within a grouping.

2. The appraiser shall conduct and prepare the appraisal in compliance with:

a. The edition of the "Uniform Standards of Professional Appraisal Practice" in effect on the date of the appraisal;

b. The edition of the "Uniform Appraisal Standards for Federal Land Acquisitions" in effect on the date of the appraisal;

c. The appraisal sections for recreation residence lots found in the FSH 5409.12, section 6.9, exhibit 06; and

d. Any other case-specific appraisal guidelines provided to the appraiser by the Forest Service.

3. The appraiser shall ensure that appraised values are based on comparable market sales of sufficient quality and quantity. The appraiser shall recognize that the typical lot will not usually be equivalent to a legally subdivided lot.

The appraiser shall not select sales of land within developed urban areas, and in most circumstances, should not select a sale of comparable land that includes land that is encumbered by a conservation easement or recreational easement held by a government or institution. Sales of land encumbered by an easement may be used in situations in which the comparable sale is a single home site and is sufficiently comparable to the recreation residence lot or lots being appraised.

The appraiser shall also consider, and adjust as appropriate, the prices of comparable sales for typical value influences, which include, but are not limited to:

a. Differences in the locations of the parcels.

b. Accessibility, including limitations on access attributable to weather, the condition of roads and trails, restrictions imposed by the agency, and so forth.

c. The presence of marketable timber.

d. Limitations on, or the absence of, services such as law enforcement, fire control, road maintenance, or snow plowing.

e. The condition and regulatory compliance of any site improvements.

f. Any other typical value influences described in standard appraisal literature.

4. When an appraisal of the market value of a recreation residence lot in a tract is scheduled to occur, the authorized officer, or the authorized representative, and the appraiser shall, with a minimum 30-day written advance notice, arrange a meeting with the affected permit holders and provide them with information concerning the pending appraisal. At the meeting, holders shall be advised of the appraisal process, the method of appraisal, and selection of typical lots. Permit holders shall be afforded the opportunity to meet the appraiser individually, or as a group, concerning the selection of a typical lot or lots.

5. The appraiser shall provide the recreation residence permit holders with a minimum 30-day advance written notice (certified mail, return receipt requested) of the date and approximate time of the recreation residence lot visit. Documentation of the notification shall be included in the addenda of the appraisal report. At the recreation residence lot meeting, permit holders shall be given the opportunity to provide the appraiser with factual or market information pertinent to the valuation of the typical lot or lots. This information must be submitted in writing and shall be accounted for in the appraisal report.

33.41—Selection and Appraisal of Typical Lot

The appraiser shall appraise only the typical lot(s) selected within a tract. Before an appraisal is initiated, the authorized officer must make every effort to obtain the concurrence of the permit holders concerning the composition of the group or groupings of lots, which are essentially the same or which have similar economic value characteristics, and the selection of a typical lot(s). A representative typical lot shall be identified as economically typical of the recreation residence lots in each group. Exercise care in identifying and selecting a typical lot that is economically competitive with all of the recreation residence lots within the group it represents. The selection process shall be documented in a permanent case file for the tract.

With the advice of the appraiser, the authorized officer shall determine the composition of the group or groupings of recreation residence lots and the selection of a typical lot(s) when concurrence with the holders cannot be achieved. The inability to obtain concurrence with the holders on selection of the group or grouping of recreation residence lots and the selection of a typical lot(s) shall be documented and included in the permanent case file for the tract.

33.42—Inventorying Utilities, Access, and Facilities

The authorized officer is responsible for identifying, documenting, and inventorying all utilities, access, and facilities that service each of the typical lots within a recreation residence tract and providing that information to the appraiser as part of the appraisal assignment.

The inventory must include the authorized officer's determination of who paid for the capital costs of those utilities, access, or facilities. In doing so, the authorized officer shall presume that the permit holder, or the holder's predecessor, paid for the capital costs of the utility, access, or facility serving the typical lot, unless the authorized officer can document that either the Forest Service or a third party paid for those capital costs.

The types of utilities, access, and facilities that should be inventoried for each typical lot include, but are not limited to:

1. Potable water systems;

2. Roads, trails, air strips, boat docks, and water routes used to access the recreation residence lot or tract;

3. Waste disposal facilities; and

4. Utility lines, such as, telephone lines, fiber optic cable, electrical lines, cable TV, and so forth.

33.42a—Utilities Provided by Holder

Utilities shall be considered as provided by the holder when the holder, or the holder's predecessor:

1. Directly paid for the material and installation of the utility or road, or

2. Was assessed a lump sum fee for the installation, or was assessed a temporary surcharge to the utility or service that was in addition to the base rates assessed to all of the customers in the provider's rate base.

Hook-up fees or tap fees charged by a utility provider to connect to an existing facility do not constitute a payment of the capital costs of those facilities. The capital costs of those existing facilities are commonly assumed to be neighborhood-enhancing developments, if they were paid for and attributable to the entire service base, and the costs for installing them were borne by the provider of such service or utility.

33.42b—Utilities Provided by Forest Service or Third Party

The following evidence, when documented, shall serve as the basis for determining that the capital costs to construct a facility, utility, or access were provided by the Forest Service, or a third party:

1. A third party, such as a for-profit utility company, a not-for-profit cooperative, a water or sewer district, a municipality, and so forth, installed the utility service or facility, and that the third party provided the corresponding service to the subject lot without any lump sum or surcharge to base rates assessed to the holder or the holder's predecessor.

2. The roads providing access to a typical lot were built by a State, county, or local road agency, and were paid for from the general tax base or tax revenues used by that agency for road construction, without a specific lump sum or tax rate surcharge to the holder or the holder's predecessor.

3. Forest Service appropriations were used to construct the road, trail, or facility that provides access and/or service to the recreation residence lot.

4. The access to the recreation residence lot was built by a cooperator (pursuant to road or transportation cost-share agreement), or the access was indirectly paid by the Forest Service in the form of "purchaser (road) credits" pursuant to a timber sale contract.

5. The road, trail, utility, or facility that provides access or service to the subject recreation residence lot existed prior to the time when the recreation residence lot(s) within the tract was (were) first authorized for recreation residence use by the Forest Service. Such documentation shall be prima facie evidence that the capital costs to install the road, trail, utility, or facility were not paid for by the holder or the holder's predecessor.

33.5—Appraisal Specifications

Direction pertaining to appraisal specifications is found in FSH 5409.12, section 6.53, Recreation Residence Lots, and section 6.9, exhibits 06 and 07.

33.6—Review and Acceptance of Appraisal Report

The assigned Forest Service review appraiser shall review the appraisal report to ensure that it conforms to the Uniform Standards of Professional Appraisal Practice, the Uniform Appraisal Standards for Federal Land Acquisition, and appraisal guidelines found in the FSH 5409.12, chapter 6.

If the appraisal meets the standards as described in this section and as documented in an appraisal review report prepared by the assigned Forest Service review appraiser, the authorized officer may accept the estimated market value of the typical lot or lots in the appraisal for establishing a new base fee for that recreation residence lot or lots.

33.7—Holder Notification of Accepted Appraisal Report and the Right of Second Appraisal

The authorized officer shall notify the affected holder or holders that the Forest Service has accepted the appraisal report (sec. 33.6) and has determined a new base fee based on that appraisal. Upon written request, the authorized officer shall:

1. Provide the holder with a copy of the appraisal report and supporting documentation.

2. Advise the holder that the holder has 60 days after receipt of this notification to notify the authorized officer in writing of the holder's intent to obtain a second appraisal.

3. Inform the holder that if a request for a second appraisal is submitted, the holder has one year following receipt of the notice to prepare, at the holder's expense, an agency-approved second appraisal of the typical lot on which the initial appraisal was conducted, using the same date of value as the original appraisal.

33.71—Standards for Second Appraisal

33.71a—Appraiser Qualifications

The appraiser selected by the holder or holders to conduct a second appraisal must:

1. Meet the same general State certification requirements as the original appraiser;

2. Have experience in appraising vacant, recreational use lands;

3. Have the same or similar qualifications as the appraiser who prepared the first appraisal; and

4. Be approved in advance by the assigned Forest Service review appraiser.

33.71b—Appraisal Guidelines

The second appraiser shall use the appraisal guidelines used in the initial appraisal (FSH 5409.12, sec. 6.9, ex. 06), as prescribed in a pre-work meeting that includes the holder's appraiser, the Forest Service review appraiser, and the holder or holders, or their authorized representative. Prior to starting the second appraisal, the appraiser shall sign an Assignment Agreement as provided in FSH 5409.12, section 6.9, exhibit 07. After completion of the second appraisal, and in a separate document, the appraiser shall notify the assigned Forest Service review appraiser of any material differences of fact or opinion between the initial appraisal conducted for or by the agency and the second appraisal. If the second appraiser identifies the "material differences" assignment as a conflict of interest, the appraiser may request that the "material differences" assignment be completed by another qualified appraiser approved by the Forest Service review appraiser. The second appraisal shall be submitted to the appraiser's client. The document that cites material differences of fact or opinion shall be submitted directly to the assigned Forest Service review appraiser.

33.72—Reconsideration of Recreation Residence Base Fee

Reconsideration of the recreation residence base fee shall be based solely on the results of the second appraisal. The authorized officer shall inform the holder that they must submit to the authorized officer a request for reconsideration of the base fee within 60 days of receipt of the second appraisal report.

Within 60 days of receipt of the request for reconsideration of the base fee, the authorized officer shall:

1. Review the initial appraisal and appraisal review report.

2. Review the results and commentary of the second appraisal and appraisal review report.

3. Establish a new base fee in an amount that is equal to the base fee established by the initial or the second appraisal or is within the range of values, if any, between the initial and second appraisals.

4. Notify the holder or holders of the amount of the new base fee.

33.8—Establishing Recreation Residence Lot Value During Transition Period of Cabin User Fee Fairness Act

The transition period, as identified in section 614 of the Cabin User Fee Fairness Act (CUFFA), is that period of time between the date of enactment of CUFFA (Oct. 12, 2000) and the date upon which a base cabin user fee for a recreation residence is established as a result of implementing the final regulations, policies, and appraisal guidelines established pursuant to CUFFA.

The authorized officer shall, upon adoption of regulations, policies, and appraisal guidelines established pursuant to CUFFA, notify all recreation residence permit holders whose recreation residence lots have been appraised since September 30, 1995, that they may request the Forest Service to take one of the following actions:

1. Conduct a new appraisal pursuant to regulations, policies, and appraisal guidelines established pursuant to CUFFA (sec. 33.82).

2. Commission a peer review of an existing appraisal of the typical lot completed since September 30, 1995 (sec. 33.83).

3. Establish a new base fee using the market value of the typical lot identified in an existing appraisal completed on or after September 30, 1995 (sec. 33.81).

A request to act on one of these options must be made by a simple majority of the holders within the group of recreation residence lots represented by the typical lot. To facilitate this process, the authorized officer shall provide each permit holder with the names and addresses of all of the other permit holders within the group of recreation residence lots that are represented by the typical lot, so that the holders within the group have the opportunity to collectively determine whether to exercise one of the options identified above.

33.81—Use of Appraisal Completed Since September 30, 1995

1. Establish a new base fee using 5 percent of the fee simple value, indexed to the current year, of a Forest Service approved appraisal of a typical lot completed since September 30, 1995, when:

a. Within two years following the adoption of regulations, policies, and appraisal guidelines established pursuant to CUFFA, a request for a new base fee is submitted in writing to the authorized officer by a majority of the holders within the group of recreation residence lots represented by a typical lot included in the appraisal (sec. 33.8, para. 3).

b. A majority of permit holders in a group of recreation residence lots fail to submit, within two years following the adoption of regulations, policies, and appraisal guidelines established pursuant to CUFFA, a request for one of the three options identified in section 33.8.

c. A peer review is requested and completed (sec. 33.8, para. 2), and the review determines that the appraisal completed since September 30, 1995, is consistent with the regulations, policies, and appraisal guidelines adopted pursuant to CUFFA.

2. Implement the new base fee at the time of the next regularly scheduled annual billing cycle, subject to the phase-in provisions established pursuant to CUFFA.

33.82—Request for New Appraisal Conducted Under Regulations, Policies, and Appraisal Guidelines Established Pursuant to CUFFA

A request for a new appraisal must be made within two years following the adoption of regulations, directives, and appraisal guidelines for recreation residences established pursuant to CUFFA. The authorized officer shall inform the holders that a request for a new appraisal must be submitted in writing to the authorized officer and must be signed by a majority of the recreation residence holders within the group of recreation residence lots represented by the typical lot to be appraised. The authorized officer shall also inform those holders requesting a new appraisal that in their request they must agree to collectively pay for one-half the cost to conduct the new appraisal. In addition, holders whose previous appraisal indicated that a base fee would increase more than $3,000 from the annual fee being assessed on October 1, 1996, shall be notified that they must include the following statement as a part of their request for a new appraisal:

We hereby agree that, if the new base fee established by the new appraisal that we are hereby requesting results in an amount that is 90 percent or more of the fee determined by the previously completed appraisal of this typical lot (specifically, that appraisal dated _____, with an estimated fee simple value of $_____, and an indicated annual fee of $_____), each of the permit holders within this group of recreation residence lots shall be obligated to pay to the United States the following:

1. The base fee that shall be established using the results of the new appraisal being requested, subject to the phase-in provisions of section 609 of CUFFA; and

2. The difference between (a) the annual fee that was paid during calendar years _____, _____, _____, (enter each calendar year beginning with that year when a new base fee based upon the above-referenced appraisal would have otherwise been implemented), and ending with calendar year _____ (enter the calendar year the request for a new appraisal is made), and (b) the amount that the annual fee for each of those identified calendar years would otherwise have been had a new base fee been assessed as a result of the above-referenced appraisal, pursuant to the phase-in provisions in effect and applicable during that time. This difference for those calendar years cumulatively totals $_____, as itemized on the enclosed worksheet (enter the cumulative difference and attach a worksheet showing how it was calculated, itemized for each of the calendar years identified above).

We agree that the cumulative amount identified in Item #2 (above) shall be assessed as a premium fee amount, in three (3) equal annual installments, in addition to the phase-in of the new base user fee established by the results of the new appraisal.

The authorized officer shall, upon receipt of a formal request, initiate a new appraisal of the typical lot in accordance with the regulations, policies, and appraisal guidelines adopted pursuant to CUFFA. The date of value of the new appraisal shall be the same date of value as that identified in the appraisal it is intended to replace.

33.83—Request for Peer Review Conducted Under Regulations, Policies, and Appraisal Guidelines Established Pursuant to CUFFA

A request for a peer review of an existing appraisal completed since September 30, 1995, shall be made within two years following the adoption of regulations, policies, and appraisal guidelines for recreation residences pursuant to CUFFA. The request shall be submitted in writing to the authorized officer and must be signed by a majority of the recreation residence holders within the group of recreation residence lots represented by the typical lot that was appraised. The holders requesting the peer review shall, in their request, agree to collectively pay for one-half the cost to commission the

review. In addition, holders requesting a peer review where the appraisal to be reviewed established a base fee that was more than a $3,000 annual increase to the fee being assessed the holders on October 1, 1996, shall include the following statement as a part of their request:

We hereby agree that, if the new base fee resulting from the peer review that we are hereby requesting results in an amount that is 90 percent or more of the fee determined by the previously completed appraisal of this typical lot (specifically, that appraisal dated _____, with an estimated fee simple value of $_____, and an indicated annual fee of $_____), then each of the permit holders within this group of recreation residence lots shall be obligated to pay to the United States the following:

1. The base fee that shall be established pursuant to this peer review, subject to the phase-in provisions of section 609 of CUFFA; and

2. The difference between (a) the annual fee that was paid during calendar years _____, _____, _____ (enter each calendar year beginning with that year when a new base fee based upon the above-referenced appraisal would have otherwise been implemented), and ending with calendar year_____ (insert the calendar year in which the request for a peer review is made), and (b) the amount that the annual fee for each of those identified calendar years would otherwise have been, had a new base fee been assessed as a result of the above-referenced appraisal, pursuant to the phase-in provisions in effect and applicable during that time. This difference for those calendar years cumulatively totals $ _____, as itemized on the enclosed worksheet (enter the cumulative difference, and include an attached worksheet showing how it was calculated, itemized for each of the calendar years identified above). We agree that the cumulative amount identified in Item #2 (above) will be assessed as a premium fee amount, in three (3) equal annual installments, in addition to the phase-in of the new base user fee established by the results of the peer review.

The authorized officer shall commission a peer review of the existing appraisal upon receipt of a written request to do so and upon submission of the appropriate documentation that shows that the request is being made by a majority of the holders affected. The manner in which the peer review is conducted shall be based upon the membership in a professional organization of the appraiser who conducted that appraisal as follows:

1. *Appraisals Prepared by an Appraiser Who Is a Member of a Single Appraisal Sponsor Organization of The Appraisal Foundation.* If the appraiser who prepared the appraisal that will be reviewed is a member of a single appraisal sponsor organization of The Appraisal Foundation, the authorized officer shall submit the appraisal report, appraisal review report, and peer review report instructions to that appraisal sponsor organization for assignment to a member of an established panel of accredited or designated members selected by the sponsor organization for the purpose of peer review. In consultation with the accredited or designated panel member, the sponsor organization shall provide the authorized officer an estimate of total cost for the peer review. The authorized officer shall consult with a representative of the permit holders requesting the peer review to determine if the holders wish to proceed with the review, based on the estimated cost. If a peer review is conducted, the review report shall be prepared in compliance with the review instructions provided with the existing appraisal. The peer review report shall be confined to an evaluation of whether the original appraisal report includes provisions or procedures that were implemented or conducted in a manner that is inconsistent with regulations, policies, or appraisal guidelines adopted pursuant to CUFFA and, if so, which provisions and to what effect. The peer review report is not intended to be a formal technical appraisal review report in compliance with Standards Rule 3–2 of the Uniform Standards of Professional Appraisal Practice.

2. *Appraisals Prepared by an Appraiser Who Is Not a Member of a Sponsor Organization, or is a Member of Two or More Sponsor Organizations of The Appraisal Foundation.* If the appraiser who prepared the appraisal that will be reviewed is not a member of a sponsor organization of The Appraisal Foundation, or is a member of two or more sponsor organizations of The Appraisal Foundation, the authorized officer shall submit the appraisal report, appraisal review report, and peer review report instructions, after consultation with the requesting permit holders, to a sponsor organization that has established a panel for peer review of recreation residence lot appraisals. If the authorized officer and a majority of the requesting permit holders cannot agree on which sponsor organization to solicit for the peer review, the authorized officer shall make the decision based upon a recommendation from the Regional Appraiser. The authorized officer shall request the selected appraisal sponsor organization to assign a member of the established panel of accredited or designated members to conduct the peer review. The authorized officer shall also request the sponsor organization to provide the authorized officer, in consultation with the accredited or designated panel member, an estimate of total cost for the peer review. The authorized officer shall consult with a representative of the requesting permit holders to determine if the holders want to proceed with the review, based on the estimated costs. If a peer review is conducted, the review report shall be prepared in compliance with the review instructions provided with the existing appraisal. The peer review report shall be confined to evaluation of whether the original appraisal report includes provisions or procedures that were implemented or conducted in a manner that is inconsistent with regulations, policies, or appraisal guidelines adopted pursuant to CUFFA and, if so, which provisions and to what effect. The peer review report is not intended to be a formal technical appraisal review report in compliance with Standard Rule 3–2 of the Uniform Standards of Professional Appraisal Practice.

a. If the peer review shows that the appraisal is consistent with the regulations, policies, and appraisal guidelines adopted pursuant to CUFFA, the authorized officer shall establish a new base fee using 5 percent of the fee simple value of the typical lot identified in the appraisal.

b. If the peer review results in a determination that the appraisal was not conducted in a manner consistent with the regulations, policies, and appraisal guidelines adopted pursuant to CUFFA, the authorized officer shall either

(1) Establish a new base fee to reflect consistency with the regulations, policies, and appraisal guidelines adopted pursuant to CUFFA, or

(2) Conduct a new appraisal in accordance with the provisions of CUFFA if requested by a majority of the affected holders.

* * * * *

FSH 5409.12—Appraisal Handbook

Chapter 6—Appraisal Contracting

6.5—Appraisals for Special Purposes

6.53—Recreation Residence Lots

The standard specifications for recreation residence lot appraisals shall be used Service-wide (sec. 6.9, ex.06). Do not modify or deviate from these specifications without the approval of the Washington Office, Director of Lands.

Require all appraisers conducting a second appraisal for a recreation residence lot to submit an Assignment Agreement (sec. 6.9, ex. 07).

6.9—Exhibits

Exhibit 06—Required Specifications for Appraisal of Recreation Residence Lots

Exhibit 07—Assignment Agreement for Appraisal of Recreation Residence Lots

BILLING CODE 3410–11–P

6.9 - Exhibit 06

REQUIRED SPECIFICATIONS
FOR APPRAISAL OF RECREATION RESIDENCE LOTS

These specifications replace Section C of the Basic Specifications for Real Property Appraisal in total. They are intended for use in the appraisal of recreation residence lots. The procedures for identifying, inventorying, and preparing for the appraisal of these lots are included in FSH 2709.11, Chapter 30.

SECTION C-2 BASIC SPECIFICATIONS FOR REAL PROPERTY APPRAISALS

SECTION C-2.1 - GENERAL SPECIFICATIONS

C-2.1(a) - Scope of Service. The Contractor shall furnish all materials, supplies, tools, equipment, personnel, travel (except those to be furnished by the Government as listed in Section I), and shall complete all requirements of this contract including performance of the professional services listed herein.

The project consists of one or more self-contained appraisal report(s) per bid item for the specified property(ies). For the purposes of these specifications ". . . . any appraisal report, whether identified by the appraiser as a self-contained report or a summary report, will be considered as meeting the "Uniform Standards of Professional Appraisal Practice" (USPAP) requirements for a 'self-contained' report if it has been prepared in accordance with . . ." the "Uniform Appraisal Standards for Federal Land Acquisitions" (UASFLA, 2000; Section A). The report shall provide an estimate of market value for the estate to be appraised, and shall conform to the current edition of USPAP, published by The Appraisal Foundation, as well as UASFLA.
The Contractor may be provided a pre-determined date of value for the entire project; otherwise, the date of the value estimate shall be the last date the appraiser inspected the appraised property.

If clarification of these specifications is needed, and/or to arrange for the site inspection and pre-work meeting, the appraiser shall contact the assigned Forest Service review appraiser.

_____ (Review Appraiser)
_____ (Address)
_____ (Phone Number)

C-2.1(b) - Appraisal Report. The appraiser selected for the assignment shall make a detailed field inspection of the subject property as identified in Exhibit __, and shall make such investigations and studies as are necessary to derive sound conclusions and to

6.9 - Exhibit 06--Continued

prepare the appraisal report.

C-2.1(c) – Pre-Work Conference: At the request of the assigned Forest Service review appraiser, the appraiser will be required to attend a pre-work conference for discussion and understanding of these instructions. The pre-work conference may be held in conjunction with the property examination [C-2.1(d)].

C-2.1(d) - Examination Notice. The authorized Forest Service officer, assigned Forest Service review appraiser, and Contractor shall offer to meet with the affected permit holders to provide them with information concerning the appraisal. The Contractor shall provide the permit holders at least a 30-day written notice in advance of the meeting. At the meeting, holders will be advised of the appraisal process, the method of appraisal, and selection of typical lots. The holders shall be given the opportunity and invited to provide the appraiser with factual or market information pertinent to the valuation of the typical lot or lots. This information must be submitted to the Contractor in writing, and shall be accounted for in the appraisal report. Permit holders will be afforded the opportunity to meet the Contractor individually, or as a group.

The Contractor shall provide the 30-day advance meeting notification by certified mail, return receipt requested, of the date and approximate time of the meeting. Documentation of notification shall be contained in the addenda of the appraisal report. The holders shall be given the opportunity to accompany the Contractor during the scheduled permitted recreation residence lot property examination. The Contractor shall certify that the signer of the report has personally visited the appraised property and all of the comparable transactions used in the comparative analyses.

C-2.1(e) - Updating of Report. Upon the request of the Government, the Contractor shall, during a two-year period following the date of the appraisal report, update the value as of a specified date. The updated report shall be submitted in original and _____ copies (number of copies to be determined) and shall include sales data or other evidence to substantiate the updated conclusion of value. Suggested format shown under Section C-2.3.

C-2.1(f) - Testimony. Upon the request of the United States Attorney or the Department of Justice, the Contractor shall, in any judicial proceedings, testify as to the value of any and all property included in the appraisal report as of the valuation date.

C-2.1(g) - Definition of Terms. Unless specifically defined herein or in either USPAP or UASFLA, definitions of all terms are the same as those found in "The Dictionary of Real Estate Appraisal" (Appraisal Institute), current edition. UASFLA shall take precedence in any differences among definitions.

6.9 - Exhibit 06--Continued

SECTION C-2.2 - TECHNICAL SPECIFICATIONS

Application of These Specifications. These technical specifications reflect the standards for the appraisal of property to be authorized for occupancy as a recreation residence lot by the Forest Service. The typical lot(s) to be appraised for this assignment are described in Exhibit ___.

Federal Law Controls. Federal law differs in some important aspects from the law of some states. Accordingly, it is incumbent upon the appraiser to understand the applicable Federal law as it affects the appraisal process in the estimation of market value.

The Federal law is reflected in UASFLA. These specifications follow UASFLA format, with emphasis on issues of special concern to the Forest Service. It should not be construed that the appraiser is to consider only the emphasized items. Appraisal reports shall be prepared in compliance with UASFLA standards and Forest Service appraisal instructions provided by the assigned review appraiser.

One aspect of the UASFLA that the appraiser should be aware of is the "unit rule." The unit rule requires valuing property as a whole rather than by the sum of the values of the various interests into which it may have been carved. A second aspect of the unit rule is that different elements or components of a tract of land are not to be separately valued and added together. Follow direction in UASFLA, Section B-13.

Jurisdictional Exception Rule. Conflicts between UASFLA and USPAP are minimal. When there is conflict, UASFLA takes precedence. It may be necessary to invoke the Jurisdictional Exception Rule (USPAP) to meet certain standards of the UASFLA and the "Cabin User Fee Fairness Act of 2000" (CUFFA). Invocation of the Jurisdictional Exception Rule must include citation of the over-riding Federal policy, rule, regulation, or law that requires it. The planned use of Jurisdictional Exception Rule of the USPAP shall be discussed with the assigned Forest Service review appraiser no later than the pre-work meeting.

Comprehensive Review. Federal law requires review of all appraisals by a qualified review appraiser to assure they meet applicable appraisal requirements, including those in UASFLA, Forest Service policy, and these specifications. Compliance with USPAP will also be reviewed. Findings of deficiency shall be discussed and corrections requested once the appraisal report has been delivered. A value estimate is acceptable for agency use only after the assigned Forest Service staff review appraiser has approved the appraisal report. (Forest Service Manual 5411)

Freedom of Information Act. Freedom of Information Act and CUFFA provisions will result in release of all or part of the appraisal report to the public. Prepare the report

6.9 - Exhibit 06--Continued

accordingly:

1. Analytical methods and techniques shall be explained (in so far as possible) in a manner understandable to the public, as well as the reviewer.

2. If providers of information request confidentiality, such information shall not be included in the report. Confidential information shall be made available to the reviewer upon request, but shall not be incorporated in a Forest Service system of records.

Unit of Comparison. The final estimate of value shall be on the basis of fee simple value for the typical lot, rather than a unit price expressed as a value per square foot, per acre, per front foot, or similar unit. Normally, the unit of comparison in the appraisal of recreation residence lots shall be the lot. Price per front foot for waterfront lot may be appropriate where it is demonstrated similar lots are bought and sold on a front-foot basis. However, the final estimate of value for the typical recreation lot shall be in terms of total fee simple value for the lot.

Lot. The appraiser shall identify the lot to be appraised in a manner that is consistent with the definition of a lot as identified at 36 CFR 251.51. When recreation residence uses and facilities occur beyond the platted boundaries displayed on a recreation residence tract map or beyond "lot" boundaries marked on the ground, the lot to be appraised shall extend beyond those plotted or marked boundaries to include all National Forest System land and related improvements being used or occupied by the permit holder.

Examples of uses or facilities that, in addition to the recreation residence itself, are considered related improvements may include, but are not limited to:

1. Ancillary structures, such as guest cabins, sleeping cabins, a second residence, and so forth.

2. Boat docks and boathouses (not including marinas).

3. Constructed pathways, boardwalks, sidewalks, stepping stones, brick pavers, and developed trails.

4. Woodpiles, picnic tables, and campfires sites.

5. Areas of vegetative manipulation and management conducted primarily for recreation residence purposes, such as landscaping, mowing, mulching, lawns, shoreline stabilization, and so forth.

6.9 - Exhibit 06--Continued

Physical Capacity of the Lot to Accommodate Essential Infrastructure. The physical capacity of the lot and appurtenant area to support essential infrastructure associated with recreation residence use, such as an appropriate septic system, domestic water source (well and pump) in conformance with local health and safety requirements, shall be documented in the appraisal and reflected in the value conclusion.

C-2.2(a) - Format. The report shall be typewritten on bond paper sized 8 1/2 by 11 inches with all parts of the report legible and shall be bound with a durable cover. The face of the report shall be labeled to identify the appraised property and to show the contract number, appraiser's name and address, and the date of the appraisal. All pages of the report, including the exhibits, shall be numbered.

C-2.2(b) - Contents. Following is a suggested format, based on UASFLA. Although it is not required that the appraiser strictly adhere to it, all items must be addressed. It should be noted that in most instances, these specifications reference UASFLA without reprinting them here. Important items are noted below, but are not all-inclusive. It is incumbent upon the appraiser to read, understand, and comply with UASFLA and these specifications.

C-2.2(b)(1) - PART I – INTRODUCTION. Follow the UASFLA format.

1. Title Page

2. Letter of Transmittal

3. Table of Contents

4. Appraiser's Certification: Follow the UASFLA (A-4) and USPAP guidelines, but include the following:

> "I have made a personal inspection of the appraised property which is the subject of this report and all comparable sales used in developing the estimate of value. The date(s) of inspection was _____, and the method of inspection was _____. (If more than one person signs the report, this certification must clearly specify which individuals did and which individuals did not make a personal inspection of the appraised property.)
>
> "The landowner and/or permit holder or the landowner's and/or permit holder's representative jointly inspected the property with the appraiser on (date)." (or the landowner and permit holder were invited to jointly inspect the property and declined).

6.9 - Exhibit 06--Continued

> "In my opinion, the market value (or other value as required) is $ as of (date)_____."
>
> By (Appraiser's signature)_____
> Printed Name
> *State Certification #*

5. Summary of Salient Facts and Conclusions. The summary of Salient Facts and Conclusions is a brief recital of the principal facts and conclusions contained in the appraisal report. The purpose is to offer convenient reference to the reader. In addition to the reporting requirements found in UASFLA, items which must be included in the summary are:

a. Name of recreation residence tract.

b. Size range of lots.

c. Authorized use, which is the highest and best use.

d. Improvements furnished by the Forest Service (or any other entity who is or was not a cabin owner) included in the appraised value.

e. Estimated value of each typical lot.

f. Other pertinent facts and conclusions to provide ease of use of the report by the reader, including any hypothetical conditions, extraordinary assumptions, limiting conditions, or special instructions.

g. Effective date of appraisal.

6. Photographs of Subject. Provide original color photographs or high quality color copies of photographs of the appraised property. Photographs may be a separate exhibit in the addenda or included with the narrative description of the appraised property and comparable sales. Show the following information with each photograph:

a. Identify the photographed scene. Indicate direction of view, vantage point, and other pertinent information. A map may be used to show some of this information.

b. The name of the photographer.

c. The date the photograph was taken.

6.9 - Exhibit 06--Continued

7. Statement of Assumptions and Limiting Conditions. Note the following:

All appraisal reports submitted to the Forest Service for review become the property of the United States and may be used for any legal and proper purpose. Therefore, a condition that limits distribution of the report is not permitted.

If the appraisal has been made subject to any encumbrances against the property, such as easements, that shall be stated. It is unacceptable to state that the property has been appraised as if free and clear of all encumbrances, except as stated in the body of the report; the encumbrances must be identified in this section of the report.

The adoption of an uninstructed assumption or hypothetical condition that results in other than "as is" market value will invalidate the appraisal. Include only factors relating to the appraisal problem. Assumptions and limiting conditions that are speculative in nature are inappropriate. Do not include limiting conditions that significantly restrict the application of the appraisal.

In this section of the specifications, or in separate written instructions, the contractor must be instructed as to necessary hypothetical conditions or extraordinary assumptions. The Contractor shall recognize that the typical lot will not usually be equivalent to a legally subdivided lot. The Contractor shall not select sales of land within developed urban areas and, in most circumstances, should not select a sale of comparable land that includes land that is encumbered by a conservation easement or recreational easement held by a government or institution. Sales of land encumbered by an easement may be used in situations in which the comparable sale is a single home site and is sufficiently comparable to the lot or lots being appraised.

> "An appraiser cannot make an assumption or accept an instruction that is unreasonable or misleading. Agency instructions and/or legal instructions must have a sound foundation, must be in writing, and must be included in the appraisal report." (UASFLA D-3)

All cabin-owner-provided improvements on and to the lot are excluded from consideration in the value conclusion.

All utilities, access, or facilities that, in accordance with the inventory of those improvements, are identified as having been provided by the cabin owner, or a predecessor of the cabin owner, are to be excluded from consideration in the value conclusion.

The lot is appraised as if held in private ownership.

6.9 - Exhibit 06--Continued

The highest and best use of the lot is its authorized use, a recreation residence lot.

Lot size shall conform with all local zoning requirements in effect on the date of the original authorization and all applicable "grandfathering" provisions in effect on the date of value.

8. Scope of the Appraisal: This section shall fully describe the extent of investigation and analysis. The scope of work should be consistent with the intended use of the appraisal.

9. Purpose of the Appraisal: Note the following:

A description of the property rights appraised is to be included under factual data rather than in the Purpose section.

Use the following definition: "Market value is the amount in cash, or terms reasonably equivalent to cash, for which in all probability the property would have sold on the effective date of the appraisal, after a reasonable exposure time on the open competitive market, from a willing and reasonably knowledgeable seller to a willing and reasonably knowledgeable buyer, with neither acting under any compulsion to buy or sell, giving due consideration to all available economic uses of the property at the time of the appraisal." (UASFLA A-9)

This definition makes no linkage between the estimated market value and exposure time. A specific exposure time shall not be cited in an appraisal report prepared under UASFLA standards. Invoke the Jurisdictional Exception Rule to avoid a violation of USPAP standards, which require a specific exposure time.

The purpose of the appraisal is to determine market value of the fee simple estate of a typical lot or lots. The appraisal will be used by the Forest Service to determine the base cabin user fee required by the "Cabin User Fee Fairness Act of 2000." Intended users of the appraisal are the Forest Service and affected cabin owners.

10. Summary of Appraisal Problem

C-2.2(b)(2) - Part II - FACTUAL DATA

1. Legal Description. Note the following: The legal description is provided to the appraiser in the appraisal assignment. If a lengthy description would disrupt the narrative flow, it may be placed in the addenda and referenced in the text.

2. Property Rights. The estate appraised is fee simple title to the typical lot considered to be in a natural, native state. Utilities, access, or facilities serving the lot

6.9 - Exhibit 06--Continued

that are provided by the agency shall be included as features of the lot being appraised. Utilities, access, or facilities serving the lot that are provided by the cabin owner (or predecessor of the cabin owner) shall not be included as a feature of the lot being appraised. Utilities, access, or facilities serving the lot that are provided by a third party shall not be included as a feature of the lot being appraised, unless the Forest Service determines that the capital costs have not been paid by the cabin owner (or predecessor of the cabin owner). Discuss the effect on value of identified reservations, outstanding rights, and other encumbrances.

3. Area, City and Neighborhood Data. The use of boilerplate demographic and economic data is unnecessary and undesirable. Report only those data that directly impact the market analysis.

a. Area Map. Include a small-scale map showing the general location of the appraised property. It can be placed here or in the addenda.

b. Neighborhood Map. Show the appraised property and its immediate neighborhood. The map may be placed here or in the addenda.

4. Property Data. Include a narrative description of the significant land features of the property being appraised. Briefly describe the typical recreation residence lot and group within the tract including the following:

a. Site Description: Dimensions, size, shape, vegetative cover, soil types, topography, elevations, wetlands, flood plains, view, timber, water rights, effect of encumbrances, livestock forage, access, road frontage, utilities, location, or other characteristics that may affect value. A statement must be made concerning the existence or absence of mineral deposits having a commercial value. Evidence, if any, of hazardous substances shall be described by the appraiser. The typical lot is to be appraised as though in a natural, native state, defined by CUFFA as being free of any improvements at the time the lot or site was first authorized for recreation residence use by the agency.

b. Improvements: Note that the recreation residence is owned by the permit holder and that only the underlying National Forest System land is being appraised. The Contractor shall be provided applicable information contained in the inventory of improvements relating to the lot being appraised.

c. Fixtures

d. Use History: Ten-year history required.

e. Sales History: Include a ten-year record of all sales of the appraised property and, if the information is available, offers to buy or sell. If no sale has

6.9 - Exhibit 06--Continued

occurred in the past ten years, the appraiser shall report the last sale of the property, irrespective of date.

f. Zoning and Other Land-use Restrictions: Federal lands must be appraised under the assumption that they are already in non-Federal ownership and zoned consistent with similar non-Federal properties in the market area. The appraiser shall identify, in addition to zoning, all other land-use and environmental regulations, outstanding rights, and reservations that have an impact on the highest and best use and value of the property.

g. Appraised Property Map or Plat: Show the dimensions and topography of the appraised property in detail on a large-scale topographic map, at least 2 inches to the mile. The map may be placed here or in the addenda.

C-2.2(b)(3) - Part III – DATA ANALYSES AND CONCLUSIONS

1. Analysis of Highest and Best Use. The identified highest and best use shall be the authorized use; a lot suitable for use as a recreation residence site. No other potential highest and best use shall be considered or discussed in the appraisal report. Most recreation residence sites were authorized prior to all forms of local zoning in their respective market areas. "Grandfathering" requirements recognized by local zoning authorities shall represent the capacity of the lot to meet current State and local government zoning and land use requirements.

2. Value Estimate by the Sales Comparison Approach. Nearby arms length transactions, comparable to the land under appraisement, reasonably current, are the best evidence of market value. The Federal courts recognize the sales comparison approach as being normally the best evidence of market value..

Analyze the last sale of the subject property, if relevant. If not used, explain why. An unsupported claim that a sale of the subject property was a forced sale, or is not indicative of its current value, is unacceptable. (UASFLA B-5)

When supportable by market evidence, the use of quantified adjustments is preferred. Percentage and dollar adjustments may, and often should, be combined. Resort to qualitative adjustments only when there is inadequate market data to support quantitative adjustments. Factors that cannot be quantified are dealt with in qualitative analysis. When quantitative and qualitative adjustments are both used in the adjustment process, all quantitative adjustments should be made first.

Include a sales adjustment chart summarizing the adjustments and showing the final adjusted sale prices and how the sales compare with the subject property. Utilities, access, or facilities serving a lot that are provided by the agency shall be included as features of the lot being appraised. Utilities, access, or facilities serving a lot that are

6.9 - Exhibit 06--Continued

provided by the cabin owner (recreation residence permit holder) shall not be included as a feature of the lot being appraised. Utilities, access, or facilities serving a lot that are provided by a third party shall not be included as a feature of the lot being appraised unless the agency determines that the capital costs have not been or are not being paid by the cabin owner (or a predecessor or the cabin owner).

In a case where any comparable sale includes utilities, access, or facilities that are to be excluded in the appraisal of the subject lot, the price of the comparable sale shall be adjusted, as appropriate.

In selecting comparable sales, the appraiser shall recognize that the typical lot will not usually be equivalent to a legally subdivided lot. The appraiser shall not select sales of comparable land that are within developed urban areas and should not, in most circumstances, select a sale of comparable land that includes land that is encumbered by a conservation or recreational easement that is held by a government or institution, except land that is limited to use as a site for one home.

The Contractor shall use the following adjustment process outlined in Section 606(b)(4)(C) of CUFFA:

The appraiser shall consider, and adjust as appropriate, the price comparable sales for typical lot value differences which include, but are not limited to:

a. Differences in the locations of the parcels.

b. Accessibility, including limitations on access attributable to weather, the conditions of roads and trails, restrictions imposed by the agency, or other factors.

c. The presence of marketable timber.

d. Limitations on, or the absence of, services such as law enforcement, fire control, road maintenance, or snow plowing.

e. The condition and regulatory compliance of any site improvements.

f. Any other typical value influences described in standard appraisal literature.

The documentation of each comparable sale shall include:

- Parties to the transaction
- Date of transaction
- Confirmation of the transaction with buyer, seller, broker, or other person having knowledge of the price, terms, and conditions of sale (all transactions must be verified with a party to the sale)

6.9 - Exhibit 06--Continued

- Market exposure
- Buyer motivation
- Location
- Size
- Legal description
- Property rights conveyed
- Consideration
- Financing terms
- Sale conditions, such as arm's length or distressed
- Improvements, including their condition and regulatory compliance
- Physical description (accessibility, including limitations on access attributable to weather, road or trail condition, and restrictions on use; topography; vegetative cover and the presence of marketable timber; water influence; and other characteristics)
- Limitation on, or the absence of, services such as law enforcement, fire control, road maintenance, or snow plowing
- Non-realty items
- Economic characteristics
- Zoning, including setback requirements
- Subdivision covenants
- Current use
- Intended use
- Photographs

Include a list of the sales considered, but not actually used, in the addenda. Cite pertinent facts such as date, size, buyer and seller, price, terms, location, and explain why each sale was not used.

The appraiser shall adhere to UASFLA direction pertaining to comparable sales requiring extraordinary verification and weighting considerations. These include sales to governmental agencies, sales to environmental organizations, sales to parties desiring to exchange the land to the government, distressed sales, and other atypical or non-arm's length sales. (UASFLA Sections B-4, D-9)

The appraiser must interpret the foregoing data, analyses, and estimates and state the reasons why the conclusion is the best indication of the market value for the typical lot. The indications given by the various sales cited and compared shall be analyzed individually to reach the final estimate of value showing which sale or sales were considered most comparable and provided the most reliable estimate of value for the typical lot.

6.9 - Exhibit 06--Continued

C-2.2(b)(4) - Part IV – EXHIBITS AND ADDENDA

Include the following items as applicable to the appraisal problem if not included in the body of the report:

1. Maps. Maps shall clearly identify the properties and be of sufficient quality to enable the reviewer to locate the properties on the ground. Maps shall be dated, include a legend, scale, and north arrow. The original copy of the report MUST contain original maps or vivid color copies.

a. Area Map - Small scale map showing the general location of the subject market area.

b. Neighborhood Map - This map shall show the appraised property and its immediate neighborhood.

c. Tract Map or Plat - This shall be a large-scale (2-inch/mile) USGS or similar quality map that clearly shows the appraised property and pertinent physical features such as roads, streams, and improvements.

d. Recreation Residence Tract Plat – This map will be furnished by the Forest Service, if available. The map generally depicts tract groupings and typical lot(s) within a grouping.

e. Comparable Sales Location Map - This map shall show the location of the appraised property and the sales. Delineate the boundaries of the appraised properties and comparable sales when the map is of sufficient scale to be meaningful. If all pertinent comparable sales cannot be shown on the same map as the appraised property, a smaller-scale map (such as a state road map) may be included in addition to the larger scale map.

2. Sale Transaction Forms. Include a completed form showing all information for each comparable transaction used in the appraisal. Include a plat (if available), a USGS topographic map (if appropriate), and color photo(s) of each sale. The transaction number must match the number of the transaction listed in the report.

3. Legal Description. Include a full legal description of the property appraised if not shown in the narrative section of the report.

4. Title Information. Include a copy of the statement of interest (status report) for the Federal land, if provided.

5. Photographs. Provide quality color photographs of the appraised property and all comparables in the original and all copies of the final report. Photographs may be a

6.9 - Exhibit 06--Continued

separate exhibit in the addenda or included with the narrative description of the appraised property and comparable sales. Show the following information with each photograph:

a. Identify the photographed scene. Indicate direction of view, vantage point, and other pertinent information. A map may be used to show some of this information.

b. The name of the photographer.

c. The date the photograph was taken.

6. Authorization. A copy of the recreation residence permit for each typical lot included in the appraisal report. In the case of multiple permits, the face page only may be included so long as at least one set of standard clauses is included.

7. Records. Copies of written communications with the Forest Service and with cabin owners. Include meeting notices, receipt of meeting notification, record of attendance at meetings with the appraiser, notes regarding participation by cabin owners at site inspections, and other correspondence from/to cabin owners or the Forest Service.

8. References. List sources of data, including documents and individuals.

9. Qualifications of the Appraiser. Include the qualifications of all appraisers or technicians who made significant contributions to the completion of the appraisal assignment. The appraiser(s) must provide evidence of compliance with the certification requirements of the state(s) where the properties are located.

10. Assignment Agreement. Include a copy of the Assignment Agreement provided by the Forest Service and executed by the appraiser. (ex. 07)

SECTION E - INSPECTION AND ACCEPTANCE

E-1. Agriculture Acquisition Regulation (48 CFR Chapter 1), Clause 52.246-4, Inspection of Services - Fixed Price (Apr 84) (FSH 6309.32-AGAR 52.246-4) shall be the basis of inspection and acceptance.

SECTION F - DELIVERIES OR PERFORMANCE

F-1. Time for Contract Performance.

The Contractor shall submit to the assigned Forest Service staff review appraiser, ___ original and ____ copy(ies) of the original appraisal report for approval within ____ days of the Notice to Proceed. The review appraiser will then review the final appraisal report for acceptance or recommend revisions. If revisions are necessary, the revised

6.9 - Exhibit 06--Continued

report shall be submitted within ___ days of notification.

F-2. Contract time will proceed according to the following phases. Upon the completion of one phase remaining contract time shall not be carried forward.

PHASE 1 - ____ Calendar days - The Contractor shall submit to the Government copy(ies) of the appraisal report. The appraisal report shall be submitted to the Contracting Officer (CO) within 30 calendar days after the date of value, unless otherwise specified in writing by the CO or Contracting Officer's Representative (COR), who is usually the assigned Forest Service review appraiser.

PHASE 2 - ____ Calendar days - The Government shall review the original appraisal report for acceptance.

PHASE 3 - ____ Calendar days - The Contractor shall correct any deficiencies, if any, and submit the revised appraisal report to the Government.

PHASE 4 - ____ Calendar days - The Government shall review the revised appraisal report for acceptance.

F-3. Pre-work Conference. A pre-work meeting between the assigned Forest Service review appraiser and the Contractor is required, preferably during the site examination with the permit holder present.

SECTION G - CONTRACT ADMINISTRATION DATA

G-1. Method of Measurement. The unit of measurement is designated in the Schedule of Items, Section B of the Contract.

G-2. Measurement shall be made for each item or unit of work as shown in the Schedule of Items, completed as described in the Specifications and Supplements thereto.

G-3. Payment for contract work shall be made only for items listed in the Schedule of Items. All other work shall be considered incidental and included in the payment of the items listed in the Schedule of Items.

G-4. Payment shall be made upon receipt and approval of the final appraisal report. Typically, no progress payments shall be made. However, partial payments in an amount not less than 50 percent of the total price may be authorized if the technical review period shall be extensive due to the complexity of the appraisal problem.

G-5. Payment for updating shall be at a fixed fee that may be agreed upon at the time the updating is requested.

6.9 - Exhibit 06--Continued

G-6. Payment for testimony shall be at a fixed fee to be negotiated at the time the testimony is requested. Travel expenses shall be paid at a rate not to exceed Federal Government travel allowances.

G-7. At the Contractor's request, the COR and the Contractor shall jointly prepare Form 6300-30, Contract Payment Estimate and Invoice, for the signature of the Contracting Officer for payment. It is not necessary for the Contractor to submit any other Invoice or Statement.

G-8. Basis of Payment. The accepted quantities shall be paid for at the contract unit price for the items shown in the Schedule of Items.

G-9. All submitted appraisal reports become the property of the United States and may be used for any legal and proper purpose.

The Government shall furnish the following at the Supervisor's Office in _____, at the Contractor's request after the award:

I-1. Use of aerial photographs of the appraised property and of such other aerial photographs as are available. (To be returned to the COR upon completion of the appraisal, if not included as an exhibit to the report).

I-2. Copies of pertinent Forest Service administrative maps as available for use in the appraisal report.

I-3. Current Forest Service Land Status Reports covering the Federal lands, if not previously furnished.

I-4. Copies of pertinent documents relevant to the assignment from the special-use folder not previously provided.

6.9 – Exhibit 07

ASSIGNMENT AGREEMENT FOR THE APPRAISAL OF RECREATION RESIDENCE LOTS

Typical Lot __
__(Name)__ Summer Home Group or Tract

I, *(Name of contract appraiser)*, of *(Address)*, have received a written copy of the recreation residence lot appraisal instructions for the *(Name)* National Forest. These instructions were prepared by assigned Forest Service staff review appraiser *(Name and accreditation)*. My work in compliance with those instructions will be reviewed by her/him for compliance with the appraisal standards cited below. She/he will apply the same review requirements to my appraisal that was applied to the original appraisal of the typical lot. (Last sentence applicable only with second appraisals.)

I agree to abide by the written instructions, including the format in which my appraisal must be documented.

I understand that the date of value for this assignment is *(Date)*.

I understand the full, complete, and accurate definition of the appraisal problem.

I shall abide by the *Uniform Standards of Professional Appraisal Practice*, the *Uniform Appraisal Standards for Federal Land Acquisitions*, the applicable sections of the *Cabin User Fee Fairness Act of 2000*, the laws of the State of *(State)*, under which I am certified as a general appraiser, and the code of professional ethics and standards of professional practice of those appraisal organizations to which I belong.

I accept the requirements of this appraisal assignment that are imposed by Federal statutes and regulations, Forest Service policies and procedures, and instructions unique to this assignment.

_____ _____
(Signature of Contractor) (date)

(typed name and accreditation of Contractor)
(State appraiser certification information)

Note: The following table will not appear in the Forest Service Manual or Forest Service Handbook.

Table I - Section-by-Section Comparison Between the Current and Proposed Recreation Residence Directives

CUFFA Reference	*Forest Service Manual or Handbook Directive*	*Current Direction*	*Proposed Direction*
Section 604	FSM 2340.5 – *Definitions*	None	Adds definition for "caretaker cabin." A caretaker cabin is a residence occupying a lot within a recreation residence tract that is being used to provide caretaker services and security to the recreation residences within that tract.
Sections 602 and 603	FSM 2347.1- *Recreation Residences*	This section provides that recreation residences are a valid use of National Forest System lands and an important component of the overall National Forest recreation program.	Maintains existing language, but adds direction that the Forest Service shall, to the maximum extent practicable, manage the recreation residence program to preserve the opportunity for individual and family-oriented recreation.
Sections 604 and 607(b)	FSM 2347.12 – *Caretaker Cabin*	This section is currently titled "Caretaker Residences" and provides that land fees for a caretaker residence is 25 percent more than the fee for a recreation residence.	Changes section caption to "Caretaker Cabins," and retains direction for authorizing a caretaker cabin. FSM 2347.12b provides that a fee for a caretaker cabin is the same as a fee for use of the same lot as a recreation residence.
Section 606	FSM 2721.23d – *Fee Determination*	This section establishes a 20-year appraisal cycle.	Establishes a 10-year appraisal cycle.
	FSH 2709.11, Section 33	This section is currently titled "Recreation Residence Fees."	Changes caption to "Recreation Residence Lot Fees."
Section 604	FSH 2709.11, Section 33.05 – *Definitions*	None	Adds a section that defines "cabin," "recreation residence lot," "market value," "tract," "typical lot," "recreation residence," and "natural, native state."
Sections 606 through 608	FSH 2709.11, Section 33.1 – *Base Fees and Annual Adjustments*	This section, currently "Base Fees and Indexing," provides for: (1) appraisals conducted between 1978 and 1982 to be used as the basis for establishment of the base fee and adjusted forward using the Implicit Price Deflator- Gross National Product (IPD-GNP); (2) a phase-in upon adoption of the 1988 recreation	Changes the caption to "Base Fees and Annual Adjustments," and references appraisal procedures addressed in proposed sections 33.11 through 33.13.

CUFFA Reference	*Forest Service Manual or Handbook Directive*	*Current Direction*	*Proposed Direction*
		residence policy; (3) annual indexing using IPD-GNP; (4) maximum annual adjustments based on indexing of 10 percent; (5) adding to the base fee for additional structures on the recreation residence; and (6) appraisal cycles established every 20 years. Direction in this would either be removed or moved to other proposed sections, including direction on: (1) base fees (sec. 33.11); (2) phase-in provisions (sec. 33.12); (3) annual indexing (sec. 33.13); (4) maximum annual adjustments (sec. 33.13); (5) establishing the appraisal cycle (sec. 33.11); and (6) direction for additional sleeping structures on the recreation residence (sec. 33.11).	
Sections 606(b)(4)(D) and 607(a)	FSH 2709.11, Section 33.11 – *Establishing New Base Fee*	This section, currently "Fee Credit," provides for a fee reduced by the amount of any unused or remaining credits due holders under provisions of the Appropriations Acts for fiscal years 1983 through 1986. The current direction in section 33.11 would be removed, since fee credits have long since been depleted because they were applied in the billing years immediately after adoption of the 1988 policy.	This section replaces the now obsolete direction concerning fee credit, and instead provides that the base fee for a recreation residence lot shall be 5 percent of the market value of the lot as determined by appraisal. It eliminates direction (currently found in sec. 33.1, para. 5) directing that a premium of 25 percent of the base fee or $100 whichever is greater, be added to the base fee for each sleeping structure on a recreation residence (in addition to the recreation residence). This section also provides that the base fee shall be recalculated once every 10 years.
Section 609	FSH 2709.11, Section 33.12 – *Phase-in of Base Fee*	Current policy provides for only a one-time phase-in of the fees when the recreation residence policy was adopted in 1988 (sec. 33.1).	This new section would provide direction for implementing the phase-in provision of CUFFA, directing a phase-in of fees whenever the establishment of a new base fee results in an increase of more than 100 percent to a holder's most recent annual fee. The section includes an example to demonstrate

CUFFA Reference	*Forest Service Manual or Handbook Directive*	*Current Direction*	*Proposed Direction*
			how the phase-in would be applied when a base fee results in more than a 100 percent increase of an annual fee.
Section 608(d)	FSH 2709.11, Section 33.13 – *Annual Adjustments of Recreation Residence Fees*	Current direction on annual adjustments to recreation residence fees is contained in section 33.1 and provides that the base fee is adjusted annually using the IPD-GNP, with a 10 percent annual maximum increase cap	The Forest Service will continue to use existing policy for annually indexing recreation residence rental fees, using the 2nd quarter to 2nd quarter change in the IPD-GDP. However, this section directs the implementation of a maximum adjustment of 5 percent in those years in which the annual change in the IPD-GDP index exceeds 5 percent, as provided in section 608(d) of CUFFA. Whenever the annualized change in the IPD-GDP exceeds 5 percent, then the maximum annual adjustment in the rental fee for such years will be 5 percent, and that part of the adjustment in excess of 5 percent will be applied in the next annual rental fee payment when the index change is less than 5 percent. This section includes two examples to demonstrate how rental fee increases in excess of 5 percent would be applied when the annualized change in the IPD-GDP exceeds 5 percent. (NOTE: Approximately two years after adopting the proposed rule and proposed directives in this notice, the Forest Service will develop policy to annually adjust recreation residence rental fees using the rolling 5-year average of the "Index of Agriculture Land Prices" published by the Department of Agriculture, as directed in section of 608 (a) and (b) of CUFFA.)

CUFFA Reference	*Forest Service Manual or Handbook Directive*	*Current Direction*	*Proposed Direction*
Section 607 (c) and (d)	FSH 2709.11, Section 33.2 – *Fees When Determination is Made To Place Recreation Residence on Tenure*	The section, currently "Fees on Nonrenewal," provides direction on determining fees for recreation residences when a decision is made to discontinue that use.	This section clarifies current direction on fees when a decision is made to discontinue the recreation residence use by providing specific instructions for the assessment of land use fees after a holder has been provided with a minimum 10 years of advance notice of the agency's decision to discontinue the holder's recreation residence use. The proposed directive includes a table that demonstrates how the fee is reduced by 10 percent each year during the last ten years of the permit term. This section also provides a process for recapturing fees that were forgone, should a subsequent decision is made by the agency not to discontinue the recreation use but allow it to continue
Section 607(e)	FSH 2709.11, Section 33.3 –*Fee When Recreation Residence Use Is Terminated or Revoked as Result of Acts of God or other Catastrophic Events*	This section currently "Appraisals," provides direction on appraiser qualifications (sec. 33.31) and establishing a recreation residence lot value (sec. 33.32). Direction currently contained in sections 33.3 through 33.32 would be revised and incorporated in proposed sections 33.4 through 33.72, with considerably more detail than the current direction in this section.	This section provides agency direction concerning fee obligations of the holder in the event of a catastrophe or an "act of God" that precludes the recreation residence from being safely used and occupied for recreation residence purposes. It directs that in such an event, the fee obligations of the holder shall terminate as of the date of the event or occurrence, and provides for a refund of a prorated portion of the fee that has already been paid for the billing year in which the catastrophic event occurred.
Section 606	FSH 2709.11, Section 33.4 – *Establishing Fair Market Value of Recreation Residence Lot*	Current direction concerning the qualifications of an appraiser, conducting appraisals, and establishing the value of a recreation residence lot is contained in sections 33.3 through 33.32.	This section provides technical considerations and the procedures to be followed when appraising a recreation residence lot. Paragraph 1 directs that appraisals be conducted by either a staff or contract appraiser who is licensed to practice in the State in which the recreation residence(s) to be appraised are located. It directs that the selection of a staff or contract appraiser be based on the individual's having had adequate training and demonstrated competence to conduct the appraisal assignment. It also directs that the

CUFFA Reference	*Forest Service Manual or Handbook Directive*	*Current Direction*	*Proposed Direction*
			appraiser sign an "Assignment Agreement" as provided in FSH 5409.12, section 6.9, exhibit 07(see below). Paragraph 2 directs that the appraiser evaluate the market value of the fee simple estate of the lot, and that the access, utilities, and facilities that service the lot to be appraised that had been paid for by either the Forest Service or a third party, be included as features of the lot. Paragraph 3 directs that only previously selected typical lots be appraised, pursuant to section 33.41. Paragraph 4 directs that the authorized officer shall provide the appraiser with an inventory of utilities, access, and facilities servicing each typical lot to be appraised, as provided in section 33.42. Paragraph 5 includes an itemized listing of the standards and provisions for which compliance is required in conducting and preparing the appraisal. Paragraphs 6 and 7 provide direction for identifying and selecting sales of comparable land in appraising the value of a typical lot. Paragraph 8 includes a listing of typical value influences that the appraiser must consider in adjusting the prices of comparable sales in the appraisal of a typical lot. Paragraph 9 directs that the authorized officer and the appraiser initiate a meeting with all affected permit holders prior to conducting an appraisal, specifies how to notify the holders of such a meeting, and what to advise the holders at the meeting. This paragraph also directs the appraiser to give affected holders

CUFFA Reference	*Forest Service Manual or Handbook Directive*	*Current Direction*	*Proposed Direction*
			advance notice of the appraiser's field visit to the recreation residence (or lots) being appraised, and that the holders be given the opportunity to be present during that lot visit.
Section 606	FSH 2709.11, Section 33.41 – *Selection and Appraisal of Typical Lot*	Current direction concerning typical lot selections is contained in general direction for determining the fair market value of a recreation residence in sections 33.3 through 33.32.	This section proposes a more detailed process than current direction for identifying and selecting typical lots, with strong emphasis on working with the affected holders in the selection of a typical lot or lots. Authorized officers are directed to seek the concurrence of affected permit holders in identifying recreation residence groupings and in selecting the typical lot(s) to be appraised.
Section 606(a)(1)	FSH 2709.11, Section 33.42 – *Inventorying of Utilities, Access and Facilities*	Current direction for determining the fair market value of a recreation residence is contained in sections 33.3 through 33.32. That direction contains only general language regarding the effect on the appraised value of a recreation residence when a road, water system, or other utility is provided by a nonholder entify.	This section directs the authorized officer to identify and inventory utilities, access, and facilities that provide service to each typical lot within a recreation residence tract. It also provides criteria or guidelines for the authorized officer to use in making a determination as to who paid for the capital costs to construct those utilities, access, and other facilities servicing each typical lot.
Section 606	FSH 2709.11, Section 33.5 – *Appraisal Specifications*	Current direction for determining the fair market value of a recreation residence is contained in sections 33.3 through 33.32.	This section makes reference to FSH 5409.12, section 6.5; section 6.9, exhibit 06, Specifications for Conducting an Appraisal for Recreation Residences; and section 6.9, exhibit 07, Assignment Agreement for the Appraisal of Recreation Residence Lots.
Section 606	FSH 2709.11, Section 33.6 – *Review and Acceptance of Appraisal Report*	Current direction for determining the fair market value of a recreation residence is contained in sections 33.3 through 33.32.	This section provides direction concerning the manner in which a Forest Service Review Appraiser shall review an appraisal report and approve it for the authorized officer's acceptance and use in establishing a new base fee.
Section 610(a)	FSH 2709.11, Section 33.7 – *Holder Notification of Accepted Appraisal Report and Right of Second Appraisal*	Current direction concerning the authorized officer's acceptance of an appraisal report for establishment of a new base fee is only briefly addressed in section 33.32.	This section provides more detailed direction concerning the authorized officer's obligation to notify the affected holder or holders of the agency's acceptance of an appraisal report for the purpose of establishing a new base fee. It directs that if the holder intends to secure a second

CUFFA Reference	*Forest Service Manual or Handbook Directive*	*Current Direction*	*Proposed Direction*
			appraisal, the holder must formally notify the Forest Service of that intent within 60 days. This direction also provides that if the holder chooses to exercise the option to secure a second appraisal, the holder must provide the authorized officer with a second appraisal report within one year of the date of the holder's receipt of the notice from the authorized officer.
Section 610(b)	FSH 2709.11, Section 33.71 – *Standards for Second Appraisal*	Current direction concerning the qualifications of an appraiser conducting a second appraisal, and the standards that a second appraisal must meet, is only briefly addressed in section 33.32.	This section proposes more detailed direction concerning the qualifications of an appraiser selected by the holder to conduct a second appraisal, and the standards that must be followed for conducting a second appraisal. The direction proposes that the second appraiser also sign an Assignment Agreement, pursuant to FSH 5409.12, section 6.9, exhibit 07.
Section 610(c) and (d)	FSH 2709.11, Section 33.72- *Reconsideration of Recreation Residence Base Fee*	Current direction in section 33.32 is vague with respect to procedures by which the holder can request a reconsideration of the authorized officer's establishment of a new base fee, pursuant to the completion of a second appraisal.	This section provides detailed, time-certain procedures, for the reconsideration of a new base fee pursuant to a second appraisal. It directs that the holder shall be provided with no more than 60 days following the authorized officer's receipt of a second appraisal report, within which to formally request a reconsideration of the new base fee, based on the findings of the second appraisal. It also directs that the authorized officer, within 60 days following receipt of that request from the holder, review the agency's initial appraisal and the holder's second appraisal, and establish a new base fee pursuant to the results of either appraisal, or somewhere within the range of values established by both appraisals.
Section 614	FSH 2709.11, Section 33.8 – *Establishing Recreation Residence Lot Value During Transition Period of Cabin User Fee Fairness Act*	Not Applicable.	This section requires the authorized officer to notify recreation residence permit holders that when the agency adopts final regulations, policies, and appraisal guidelines pursuant to CUFFA they may request either: (1) a new appraisal; (2) a peer review of an exiting appraisal completed since September 30, 1995; or (3) a base fee using the value established by an

CUFFA Reference	*Forest Service Manual or Handbook Directive*	*Current Direction*	*Proposed Direction*
			appraisal completed since September 30, 1995.
Section 614	FSH 2709.11, Section 33.81 – *Use of Appraisal Completed Since September 30, 1995*	Not Applicable.	This section provides direction for situations in which an appraisal completed since September 30, 1995, would be used to establish a new base fee.
Section 614	FSH 2709.11, Section 33.82 – *Request for New Appraisal Conducted Under Regulations, Policies, and Appraisal Guidelines Established Pursuant to CUFFA*	Not Applicable.	This section provides guidance and procedures for requesting a new appraisal conducted under regulations, policies, and appraisal guidelines established pursuant to CUFFA.
Section 614	FSH 2709.11 Section 33.83 – *Request for Peer Review Conducted Under Regulations, Policies, and Appraisal Guidelines Established Pursuant to CUFFA*	Not Applicable.	This section provides guidance and procedures for requesting a peer review conducted under regulations, policies, and appraisal guidelines established pursuant to CUFFA.
Section 606	FSH 5409.12, Section 6.53 – *Recreation Residence Lots*	This section provides that the appraisal direction contained in exhibit 06, section 6.9, be used Service-wide and cannot be modified without approval of the Washington Office, Director of Lands.	This section revises appraisal contracting direction by replacing use of the current terminology for appraising "Recreation Residence Sites" to "Recreation Residence Lots," to be consistent with the terminology used in CUFFA. This section also directs that the appraisal guidelines for recreation residence lots, included in FSH 5409.12, section 6.9, exhibit 06, Required Specifications for Appraisal of Recreation Residence Lots, be used agency-wide, and that they can not be modified without the approval of the Director of Lands. The section requires that the appraiser execute an Assignment Agreement, as provided in FSH 5409.12, section 6.9, exhibit 07.

CUFFA Reference	*Forest Service Manual or Handbook Directive*	*Current Direction*	*Proposed Direction*
Section 606	FSH 5409.12, Section 6.9— *Exhibit 06*	Current contracting specifications (which were in use prior to the enactment of CUFFA) for appraising the fee simple value of a recreation residence site are contained in section 6.9, exhibit 06.	This section revised exhibit 06, which contains all the technical appraisal provisions and appraisal guidelines enumerated in section 606 of CUFFA. These technical specifications must be included in an appraisal contract for an appraisal conducted by a contract appraiser, and Forest Service staff appraisers must adhere to these provisions and procedures when conducting an appraisal of a recreation residence lot.
	FSH 5409.12, Section 6.9— *Exhibit 07*	There are no provisions in the current policy for documenting the appraiser's commitment to comply with appraisal instructions.	Exhibit 07, Assignment Agreement, requires both Forest Service staff appraisers and contract appraisers to document their intention to comply with the appraisal instructions (ex. 06), the provisions of CUFFA, the *Uniform Standards of Professional Appraisal Practice*, and the *Uniform Appraisal Standards for Federal Land Acquisitions*, prior to conducting an appraisal or a second appraisal of recreation residence lot.

[FR Doc. 03–11695 Filed 5–12–03; 8:45 am]
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Federal Register

Tuesday,
May 13, 2003

Part IV

Securities and Exchange Commission

17 CFR Parts 230, 232, 239, et al.
Mandated Electronic Filing and Web Site Posting for Forms 3, 4 and 5; Final Rule

SECURITIES AND EXCHANGE COMMISSION

17 CFR Parts 230, 232, 239, 240, 249, 250, 259, 260, 269 and 274

[Release Nos. 33–8230, 34–47809, 35–27674, IC–26044; File No. S7–52–02]

RIN 3235–AI26

Mandated Electronic Filing and Web Site Posting for Forms 3, 4 and 5

AGENCY: Securities and Exchange Commission.

ACTION: Final rule.

SUMMARY: We are adopting rule and form amendments to mandate the electronic filing, and Web site posting by issuers with corporate Web sites, of beneficial ownership reports filed by officers, directors and principal security holders under section 16(a) of the Securities Exchange Act of 1934, generally as required by section 403 of the Sarbanes-Oxley Act of 2002. We have implemented changes to the EDGAR system in order to facilitate electronic filing. In addition, we are adopting rule changes to eliminate magnetic cartridges as a means of electronic filing. The rule and form amendments generally are adopted as proposed. However, we adopt additional rule amendments that permit section 16 forms submitted by direct transmission on or before 10 p.m. Eastern time to be deemed filed on the same business day and make a temporary hardship exemption unavailable to these forms. The intended general effect of the proposals is to facilitate compliance with the will of Congress, as reflected in amended section 16(a), and to facilitate the more efficient transmission, dissemination, analysis, storage and retrieval of insider ownership and transaction information in a manner that will benefit investors, filers and the Commission.

DATES: Effective Date: June 30, 2003.

Compliance Dates: Reporting persons must comply with the electronic filing requirements for beneficial ownership reports filed on or after June 30, 2003. Issuers must comply with the Web site posting requirements as to beneficial ownership reports filed on or after June 30, 2003. Magnetic cartridges may not be used as a means of electronic filing after June 27, 2003.

FOR FURTHER INFORMATION CONTACT: For assistance with questions about the rule and form amendments in general, contact Mark W. Green, Senior Special Counsel (Regulatory Policy), at (202) 942–1940, or Anne M. Krauskopf, Special Counsel, at (202) 942–2900, Division of Corporation Finance, U.S. Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20459–0301. For assistance with technical questions about EDGAR or to request access codes, call the EDGAR Filer Support Office at (202) 942–8900.

SUPPLEMENTARY INFORMATION: We are adopting [1] amendments that will revise Rules 13,[2] 101,[3] 104[4] and 201[5] under Regulation S–T [6] and Rule 16a–3(h) [7] and Forms 3, 4 and 5 [8] under the Securities Exchange Act of 1934 ("Exchange Act").[9] We also are adopting an amendment that will add new Rule 16a–3(k) under the Exchange Act. Finally, we are adopting amendments that will rescind Form ET [10] and revise Rule 12 of Regulation S–T,[11] Rule 110 [12] under the Securities Act of 1933 ("Securities Act"),[13] the description of Form 144 contained in the Code of Federal Regulations,[14] Rule 0–2 [15] under the Exchange Act, Rule 21 [16] under the Public Utility Holding Company Act of 1935 ("Public Utility Act"),[17] and Rule 0–5 [18] under the Trust Indenture Act of 1939 ("Trust Indenture Act").[19]

I. Background

Section 16 [20] applies to every person who is the beneficial owner of more than 10% of any class of equity security registered under section 12 of the Exchange Act [21] and each officer and director (collectively, "reporting persons" or "insiders") of the issuer of the security. Upon becoming a reporting person, or upon the section 12 registration of that class of securities, section 16(a) [22] requires a reporting person to file an initial report [23] with the Commission disclosing the amount of his or her beneficial ownership of all equity securities of the issuer.[24] To keep this information current, section 16(a) also requires reporting persons to report to the Commission [25] changes in this ownership, or the purchase or sale of a security-based swap agreement [26] involving these equity securities.[27]

Before the effective date of the amendments adopted in this release, insiders may file reports on Forms 3, 4 and 5 either in paper or electronically on the Commission's Electronic Data Gathering, Analysis and Retrieval System ("EDGAR").[28] On July 30, 2002, the Sarbanes-Oxley Act of 2002 (the "Sarbanes-Oxley Act") [29] was enacted. The Sarbanes-Oxley Act amended section 16(a) to require, not later than July 30, 2003, insiders to file these forms electronically, and the Commission and issuers with corporate Web sites to post change in beneficial ownership reports on their Web sites.[30]

The legislative mandate is consistent with our own progress, since 1993, toward requiring electronic filing of Forms 3, 4 and 5. In 1993, we adopted rules, primarily Regulation S–T,[31] that required domestic issuers to file most documents electronically but did not permit electronic filing of Forms 3, 4 and 5. In 1995, we revised Regulation S-T to permit voluntary electronic filing of Forms 3, 4 and 5.[32] In 1996, we asked for comment on whether to require EDGAR filing of any documents then allowed to be filed electronically on a voluntary basis.[33] Early in 2000, we announced that we intended to propose mandated electronic filing of Forms 3, 4 and 5 and asked for comments.[34] Later in 2000, we reiterated our expectation of proposing these requirements and stated that we would consider the comments received in connection with future rulemaking.[35]

In accordance with the will of Congress, on December 20, 2002, we proposed rule and form amendments that would mandate the electronic filing and Web site posting of Forms 3, 4 and 5. In the Proposing Release, we also proposed to eliminate magnetic cartridges as a means of electronic filing. We received 22 comment letters relating to the Proposing Release. Commenters that provided a general view on the proposals supported them as a means of achieving earlier public notification of insiders' transactions and wider public availability of information about those transactions. We address specific comments received where applicable in this release.[36]

In implementing Congress' directive to require Forms 3, 4 and 5 to be filed on EDGAR, we seek to achieve the same benefits for investors, filers and the Commission that we sought when we first mandated electronic filing for most documents. Since its inception, the primary goals of our EDGAR system have been to facilitate the rapid dissemination of financial and business information about companies and other parties participating in U.S. capital markets while making the transmission and the Commission's processing of filings more efficient.

Mandated electronic filing benefits members of the investing public and the financial community by making information contained in Commission filings available to them minutes after receipt by the Commission. Information concerning insiders' transactions in issuer equity securities will be publicly accessible substantially sooner and more broadly than it was before. In addition, the electronic format of the information facilitates research and data analysis. The accelerated section 16(a) filing requirement that took effect in August, 2002 makes electronic filing even more valuable.[37] Finally, investors clearly want electronic access to these forms.[38] Many investors believe that reports of directors' and executive officers' transactions in company equity securities provide useful information as to management's views of the performance or prospects of the company and that more timely and transparent access to reports will be even more useful.

Filers will benefit from changes to the electronic filing system specifically designed to make electronic filing easier while continuing to provide speedy, secure and reliable transmission, as discussed below. We note that many companies help their insiders or submit the insiders' filings on their behalf. We encourage this practice to facilitate accurate and timely filing. Our objective, however, is to create a system that insiders can use relatively easily themselves, particularly as an insider is legally responsible for filing regardless of who submits a filing on the insider's behalf.[39]

The use of EDGAR also will facilitate more efficient storage, retrieval and analysis of ownership and transaction information than paper filing. Quicker access to ownership and transaction information should not only facilitate review of the information but also enhance the Commission's ability to study and address issues that relate to this information.

Web site posting of Forms 3, 4 and 5 by issuers with corporate Web sites will provide a convenient, rapidly disseminated electronic source in addition to EDGAR that is conducive to research and data analysis. One objective of the amendments is to encourage availability of this information in a variety of locations, so that it is broadly accessible.

Following adoption of these electronic filing and Web site posting requirements, insiders will continue to be required to report the same transactions and holdings as before. In particular, section 16(a) requires insiders to report all security-based swap agreements [40] and transactions involving derivative securities,[41] including those in the form of over-the-counter options contracts, forwards, collars,[42] and security futures.[43] The Commission will take action for failure to report these transactions.

II. The Amendments

A. Required Electronic Filing of Forms 3, 4 and 5

We are adopting as proposed the amendments to Regulation S–T [44] to require insiders to file Forms 3, 4 and 5 with us on EDGAR.[45] As noted above, Rule 101(b)(4) of Regulation S–T currently permits reporting persons to file Forms 3, 4 and 5 on EDGAR. The amendments revise Rule 101 by:

- Removing subparagraph (4) from paragraph (b) (the voluntary EDGAR filing paragraph); and
- adding a reference to forms filed under section 16(a) to subparagraph (a)(1)(iii) (located in the mandated EDGAR filing paragraph).

Regulation S–T also requires the electronic filing of any related

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[1] The amendments were proposed in Release No. 33–8170 (Dec. 27, 2002) [67 FR 79466] ("Proposing Release").

[2] 17 CFR 232.13.

[3] 17 CFR 232.101.

[4] 17 CFR 232.104.

[5] 17 CFR 232.201.

[6] 17 CFR 232.10 *et seq.*

[7] 17 CFR 240.16a–3(h).

[8] 17 CFR 249.103, 249.104 and 249.105. Forms 3 and 4 also are authorized under the Investment Company Act of 1940 ("Investment Company Act") [15 U.S.C. 80a–1 *et seq.*] under 17 CFR 274.202 and 274.203.

[9] 15 U.S.C. 78 *et seq.*

[10] 17 CFR 239.62, 249.445, 259.601, 269.6 and 274.401.

[11] 17 CFR 232.12.

[12] 17 CFR 230.110.

[13] 15 U.S.C. 77a *et seq.*

[14] 17 CFR 239.144.

[15] 17 CFR 240.0–2.

[16] 17 CFR 250.21.

[17] 15 U.S.C. 79a *et seq.*

[18] 17 CFR 260.0–5.

[19] 15 U.S.C. 77aaa *et seq.*

[20] 15 U.S.C. 78p.

[21] 15 U.S.C. 78*l*.

[22] 15 U.S.C. 78p(a).

[23] Insiders file initial reports on Form 3.

[24] Rule 3a12–3 [17 CFR 240.3a12–3] provides that securities registered by a foreign private issuer, as defined in Rule 3b–4 [17 CFR 240.3b–4], are exempt from section 16. The legislative and regulatory actions addressed in this release do not change this exemption.

[25] Section 16(a) also requires reporting persons to file their initial and transactional reports with each national securities exchange on which the issuer lists its equity securities. For classes of securities listed on the New York Stock Exchange, the American Stock Exchange and the Chicago Stock Exchange, filing section 16(a) reports on EDGAR satisfies the requirements of section 16(a)(1) (as amended) and Rule 16a–3(c) to file the reports with the exchange on which the securities are listed. *See* staff no-action letters to New York Stock Exchange (Jul. 22, 1998), American Stock Exchange (Jul. 22, 1998) and Chicago Stock Exchange (Jan. 18, 1998).

[26] As defined in section 206B of the Gramm-Leach-Bliley Financial Modernization Act of 1999, as amended by H.R. 4577, Pub. L. 106–554, 114 Stat. 2763.

[27] Insiders file transaction reports on Forms 4 and 5.

[28] Rule 101(b)(4) of Regulation S–T [17 CFR 232.101(b)(4)]. The percentage of Forms 3, 4 and 5 filed electronically on the current EDGAR system increased from approximately 8% in June 2002 (the last month before the Sarbanes-Oxley Act was enacted) to approximately 15% in August 2002 (the month the accelerated filing deadline took effect). The percentage held at approximately 15% in September 2002 but increased to approximately 25% in October 2002 and remained at that level in November 2002. The percentage subsequently increased to approximately 31% in December 2002, approximately 35–36% in January and February 2003, and approximately 38% in March 2003.

[29] Pub. L. No. 107–204, 116 Stat. 745.

[30] Section 16(a)(4), as amended by section 403 of the Sarbanes-Oxley Act.

[31] Release No. 33–6977 (Feb. 23, 1993) [58 FR 14628].

[32] Release No. 33–7241 (Nov. 13, 1995) [60 FR 57682].

[33] Release No. 33–7369 (Dec. 5, 1996) [61 FR 65440].

[34] Release No. 33–7803 (Feb. 25, 2000) [65 FR 11507].

[35] Release No. 33–7855 (Apr. 27, 2000) [65 FR 24788]. We generally have addressed the electronic filing of Form 144 [17 CFR 239.144] in the same releases as we have addressed the electronic filing of Forms 3, 4 and 5. Although the adopted amendments do not address the electronic filing of Form 144, we may in the future propose to require that form also to be filed electronically.

[36] The comment letters and a summary of comments are available for public inspection and copying in our Public Reference Room, 450 Fifth Street, NW., Washington, DC 20549, in File No. S7–52–02. Public comments submitted electronically and the summary of comments are available on our Web site at *http://www.sec.gov.*

[37] Before enactment of the Sarbanes-Oxley Act, section 16(a) generally required insiders to file a transaction report within 10 days of the close of the month in which the transaction occurred. The Sarbanes-Oxley Act amended section 16(a), effective for transactions on or after August 29, 2002, to require insiders to file a transaction report "before the end of the second business day following the day on which the subject transaction has been executed, or at such other time as the Commission shall establish, by rule, in any case in which the Commission determines that such 2-day period is not feasible" [section 16(a)(2)(C) (15 U.S.C. 78p(a)(2)(C)), as amended by section 403 of the Sarbanes-Oxley Act]. On August 27, 2002, we adopted rule and form amendments to implement the accelerated filing deadline [Release No. 34–46421 (Sept. 3, 2002) [56 FR 56462]].

[38] The commenters on the Proposing Release that primarily represent investor interests and the one individual commenter all supported required electronic access.

[39] *Cf.* In the Matter of Bettina Bancroft, Release No. 34–32033 (Mar. 23, 1993).

[40] Section 16(a)(2)(C), as amended by section 403 of the Sarbanes-Oxley Act.

[41] Rule 16a–1(c) [17 CFR 240.16a–1(c)].

[42] *See* Section II.G of Release No. 34–34514 (Aug. 10, 1994) [59 FR 42449] and Section IV.H of Release No. 34–37260 (May 31, 1996) [61 FR 30376], addressing section 16(a) reporting of equity swaps and instruments with similar characteristics.

[43] Release No. 33–8107 (Jun. 21, 2002) [67 FR 43234].

[44] Regulation S–T is the general regulation governing EDGAR filing. In addition to complying with Regulation S–T, filers must submit electronic documents in accordance with the instructions in the EDGAR Filer Manual.

[45] We also are adopting an amendment to Rule 104(a) of Regulation S–T to make it clear that unofficial PDF copy submissions are unavailable to Forms 3, 4 and 5.

correspondence and supplemental information pertaining to a document that is the subject of mandated EDGAR.[46] These materials are not disseminated publicly but are available to the Commission staff. This requirement will apply to persons who file Forms 3, 4 and 5 on or after the effective date of the amendments.

B. Required Web Site Posting of Forms 3, 4 and 5

We also are adopting as proposed the amendment to Rule 16a–3[47] to add a new paragraph (k) to require an issuer that maintains a corporate Web site to post on its Web site all Forms 3, 4 and 5 filed with respect to its equity securities by the end of the business day after filing. One commenter asked us to clarify the term "corporate Web site," stating that the term does not distinguish between public (internet) and private (intranet) sites. We clarify that the term "corporate Web site" refers to public (internet) sites, reflecting the legislative purpose of providing broader dissemination of this information to investors.

As we stated in the Proposing Release, an issuer can satisfy this requirement whether it provides access directly or by hyperlinking[48] to reports via a third-party service instead of maintaining the forms itself if the following conditions are met: [49]

- The forms are made available in the required time frame;
- access to the reports is free of charge to the user;
- the display format allows retrieval of all information in the forms; [50]
- the medium to access the forms is not so burdensome that the intended users cannot effectively access the information provided; [51]
- the access includes any exhibits or attachments;
- access to the forms is through the issuer Web site address the issuer normally uses for disseminating information to investors; [52] and
- any hyperlink is directly to the section 16 forms (or to a list of the section 16 forms) relating to the posting issuer instead of just to the home page or general search page of the third-party service.[53]

Three commenters addressed where hyperlinks must lead. Two of the commenters urged that we not require a hyperlink to each individual section 16 form because such a requirement would be unduly burdensome. The third commenter asked whether the hyperlink could be to a site with all Commission filings related to the issuer or whether it had to be to a site that contained only section 16 forms or a list of them. As stated in the list of conditions above, the hyperlink must lead directly to the section 16 forms or to a list of them. It is possible, for example, to link to the section 16 forms relating to an issuer in the EDGAR database on our Web site in a manner that does not require an update each time another section 16 form is filed as to that issuer.[54]

Two commenters addressed hyperlink captions. One of these commenters asked how specific the caption should be and the other suggested that we clarify that the link must be displayed clearly. We clarify that the link caption must indicate clearly that the link leads to the issuer's insiders' section 16 forms.

Two commenters questioned whether an issuer always could post section 16 filings by the end of the business day after filing. The commenters noted that, even where an insider complies with the Rule 16a–3(e) [55] requirement to send or deliver a duplicate of a section 16 form to the issuer not later than the time the form is transmitted for filing with the Commission, the issuer still may receive the filing after the Web site posting deadline, for example when the insider sends the form by certified mail. We recognize that issuers may need to coordinate more closely with their insiders to avoid this concern, but that such coordination may not always be practicable, particularly with more than 10% beneficial owners.

Rule 16a–3(e) requires the insider to send or deliver the duplicate to the person designated by the issuer to receive such statements, or, in the absence of such designation, to the issuer's corporate secretary or person performing equivalent functions. In making this designation, we would expect an issuer also to designate an electronic transmission medium compatible with the issuer's own systems, so that a form sent via that medium at the time specified by Rule 16a–3(e) would be received by the issuer in time to satisfy the Web site posting deadline. To assure that insiders are aware of the designated person and electronic transmission medium, we encourage issuers to post this information on their Web sites together with the section 16 filings. Of course, issuers also may consult EDGAR to obtain notice of new filings. We also note that the concern about obtaining an electronic copy of the filing would not arise for issuers that rely on a hyperlink (for example, to EDGAR) instead of, or in addition to, direct Web site posting.

Two commenters addressed posting duration. One favored a one-year period and the other favored at least a one-year period (noting that we might want to lengthen the period to allow investors to spot trends). As adopted, Rule 16a-3(k) requires each form to remain accessible on the issuer's Web site for at least a 12-month period. We believe that a 12-month period that begins when the form is posted strikes the right balance between the issuer effort needed to post and the investor benefit from having access to the section 16 forms through the additional source of the issuer's Web site. In this regard, we note that the section 16 forms will be available indefinitely in the EDGAR database on our Web site.

One commenter addressed rule-mandated Form 3 posting in the absence of a statutory requirement. The commenter favored our proposal to mandate Form 3 posting on the basis that it would provide timely and complete disclosure regarding initial ownership positions and, therefore, prove useful in assessing changes. We also conclude that mandated posting of Form 3 is appropriate. We believe that the benefits of wider dissemination of the fact that a person is an insider and that person's initial ownership will outweigh the marginal additional effort required to post these forms. Accordingly, we adopt this requirement as proposed.

The Web site posting requirement will become effective at the same time as the electronic filing requirement. However, we continue to encourage issuers to post section 16(a) reports on their Web sites before the implementation date.

The Commission is modifying proposed Rule 16a–3(k) with respect to investment companies.[56] One commenter noted that a Web site that contains information about an investment company typically would be maintained by a separate entity, such as its investment adviser, and recommended that we tailor the rule to reflect this. We agree that this is appropriate and are modifying Rule 16a–3(k) to clarify that the requirement to post Forms 3, 4, and 5 applies to an investment company that does not maintain its own Web site if the company's investment adviser, sponsor, depositor, trustee, administrator, principal underwriter, or any affiliated person of the investment company maintains a Web site that includes the name of the investment company. If there is more than one such Web site, the investment company would be required to post its Forms 3, 4, and 5 on one such Web site. We would expect the investment company to use the same Web site to post all of its Forms 3, 4 and 5.

C. Rule 16a–3(h)

As proposed, we are deleting as no longer necessary the deemed timely filed provision in Rule 16a–3(h) under the Exchange Act, effective at the same time the Forms 3, 4 and 5 electronic filing requirement becomes effective. Rule 16a–3(h) will continue to state that the date of filing is the date of receipt by the Commission.[57] The deletion applies only to the rule's provision that a Form 3, 4 or 5 will be deemed timely filed if the filing person establishes that the form was timely delivered to a third party entity providing delivery services in the ordinary course of business that guaranteed delivery of the filing to the Commission no later than the required filing date. Because the "deemed timely filed" provision was designed for and applies only to paper filings, we believe it no longer will be needed once the electronic filing requirement is effective.

One commenter suggested that we retain the "deemed timely filed" provision for guaranteed electronic filings, reasoning that a filer should not be considered delinquent when a third-party service provider fails to fulfill its filing guarantee. We believe, however, that in light of the improvements to EDGAR for section 16 form filing discussed below, electronic filing can be readily accomplished and there will be no need for the "deemed timely filed" provision in the electronic context.

D. Hardship Exemptions and Adjustments of Filing Dates

Rules 201 and 202 of Regulation S–T [58] address hardship exemptions from EDGAR filing requirements and Rule 13(b) of Regulation S–T [59] addresses the related issue of filing date adjustments.

A filer may obtain a temporary hardship exemption under Rule 201 if it experiences unanticipated technical difficulties that prevent the timely preparation and submission of an electronic filing by filing a properly legended paper copy [60] of the filing under cover of Form TH.[61] A filer who files in paper under the temporary hardship exemption must submit an electronic format copy of the filed paper document within six business days of the filing of the paper format document.[62]

A filer may apply for a continuing hardship exemption under Rule 202 if it cannot file all or part of a filing without undue burden or expense.[63] In contrast to the self-executing temporary hardship exemption process, a filer can obtain a continuing hardship exemption only by submitting a written application, upon which the Commission staff must then act under delegated authority.

Instead of pursuing a hardship exemption, a filer may request a filing date adjustment under Rule 13(b) of Regulation S–T.[64] This rule addresses circumstances where an electronic filer attempts in good faith to file a document with the Commission in a timely manner but the filing is delayed due to technical difficulties beyond the filer's control. In those instances, the filer may request an adjustment of the document's filing date. The staff may grant the request if it appears that the adjustment is appropriate and consistent with the public interest and the protection of investors.

In the Proposing Release, we asked questions regarding temporary hardship exemptions relating to whether to shorten electronic follow-up periods or, alternatively, eliminate the ability to use the temporary hardship exemption for section 16 filings. Three commenters addressed hardship exemptions, urging us to keep the temporary hardship exemption available for section 16 filings to accommodate the infrequent, deserving circumstances that arise or to adopt a tolerant attitude toward hardship exemption availability at least during the first 12 months of mandated electronic filing of section 16 forms.

After considering these comments, we have nonetheless decided to amend Rule 201(a) of Regulation S–T to make temporary hardship exemptions unavailable to Forms 3, 4 and 5 for the following reasons:

- The relative ease of using the new on-line filing system;
- the extended 10 p.m. Eastern time filing deadline;[65]
- the limited value to the public of paper filings; and
- the availability of a filing date adjustment under the same circumstances a temporary hardship exemption would have been available.

We agree with the commenters that relief should be available when appropriate circumstances arise, no matter how infrequent. We believe, however, that this relief will be more appropriate if provided through a filing date adjustment rather than through a temporary hardship exemption. The temporary hardship exemption is best suited for use in connection with a transactional filing that must reach the Commission on a specific date in order for some action to be taken. For example, if a company must file a pre-effective amendment to a Securities Act registration statement in order to request immediate acceleration of effectiveness, technical difficulties may justify filing the registration statement in paper under a temporary hardship exemption. In contrast, when the filing is a section 16 form, the public would be better served by having the document in electronic format. We believe an

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[46] Regulation S–T Rule 101(a)(1) [17 CFR 232.101(a)(1)].

[47] 17 CFR 240.16a–3.

[48] In Release No. 33–7856 (Apr. 28, 2000) [65 FR 25843] (the "2000 Release"), we provided interpretive guidance on the possible effects of hyperlinking to a third-party Web site. *See* the 2000 Release, at n. 48 and the accompanying text.

[49] Hyperlinking to these Forms in the EDGAR database on the Commission's Web site will satisfy the posting requirement if the conditions in this section otherwise are met. EDGAR currently displays Forms 3, 4 and 5 filed electronically and will do so under the contemplated on-line system, in both cases shortly after filing and within the period required by section 16(a)(4)(B) (by the end of the business day after filing).

[50] In this regard, we note that some third-party service providers publish only Table I information, which would not satisfy this condition. The third-party display format would need to publish all form information in order for a hyperlink to satisfy the issuer's Web site posting requirement.

[51] *See*, for example, Release No. 33–7233 (Oct. 6, 1995) [60 FR 53458], at n. 24 and the accompanying text.

[52] If the issuer has a corporate Web site but does not normally disseminate information to investors through the Web site, it must provide access to the forms through a location on its Web site that it reasonably believes will facilitate user access to the forms.

[53] An issuer could present the viewer with an intermediate screen stating that the visitor is leaving the issuer's Web site. Also, a disclaimer of responsibility for the accuracy of the third-party service would not make the Web site posting ineffective for purposes of the posting requirement. *See* generally regarding issuer Web site posting Release No. 33–8128 (Sept. 16, 2002) [67 FR 58480], at n. 132 and accompanying text.

[54] For example, an issuer could use a link such as the following where the issuer's Central Index Key (CIK) code is 0000906648: *http://www.sec.gov/cgi-bin/browse-edgar?company=&CIK=0000906648&owner=only&action=getcompany.*

[55] 17 CFR 240.16a–3(e).

[56] Insiders of exchange-traded investment companies are subject to section 16. *See* section 16(a) of the Exchange Act (requiring filing of section 16 reports with respect to equity securities registered under section 12 of the Exchange Act); section 12(b) of the Exchange Act (registration of securities traded on a national securities exchange); section 12(g) of the Exchange Act and Exchange Act Rule 12g–1 [17 CFR 240.12g–1] (requirement for registration of securities of issuers held by at least 500 persons and having total assets exceeding $10 million, with exclusion for any securities issued by a registered investment company). Further, section 30(h) of the Investment Company Act [15 U.S.C. 80a–29(h)] specifies insiders of registered closed-end funds who are subject to the same duties and liabilities as those imposed by section 16.

[57] The rule's equating date of filing with date of receipt was subject to the deemed timely filed provision before its deletion.

[58] 17 CFR 232.201 and 232.202.

[59] 17 CFR 232.13(b).

[60] *See* 17 CFR 232.201(a).

[61] 17 CFR 239.65, 249.447, 259.604 and 269.10.

[62] *See* 17 CFR 232.201(b).

[63] *See* 17 CFR 232.202(a).

[64] 17 CFR 232.13(b).

[65] See Section II.H below.

electronic section 16 form is likely to arrive sooner where a filing date adjustment is used than it would were it to come in as a confirming copy after a temporary hardship exemption was used.

Filing date adjustments, as would have been true of temporary hardship exemptions, should be few in number given the relative brevity of section 16 forms, the relative ease of electronically filing them through EDGAR's new on-line feature and the strong interest in timely and readily available disclosure of section 16 forms. A failure to obtain timely an identification number or access codes will not justify a filing date adjustment.[66] Moreover, as is also the case with other forms required to be filed on EDGAR, upon effectiveness of the rules we adopt today, our filing desk will not accept in paper format any Form 3, 4 or 5[67] except in the highly unlikely event that the filing satisfies the requirements for a continuing hardship exemption under Regulation S–T.[68] A filing date adjustment will, however, be available in appropriate circumstances.[69]

E. Item 405 of Regulation S–K

Recognizing that insiders may experience temporary difficulties in transitioning to mandated electronic filing, one commenter suggested that we provide issuers limited, temporary relief from disclosing section 16 reporting delinquencies pursuant to Item 405 of Regulations S–K and S–B.[70] This disclosure is required in the issuer's proxy or information statement,[71] for the annual meeting at which directors are elected, and its Form 10–K[72], 10–KSB[73] or N–SAR.[74] We are persuaded that temporary limited relief from Item 405 disclosure is appropriate for a Form 4 that is:

- Filed not later than one business day following the regular due date, and
- Filed during the first 12 months following the effective date of mandated electronic filing.

We believe that this temporary relief will be helpful to issuers and insiders, without removing issuers' incentive to assist insiders with timely filing. Eligibility for this disclosure relief does not change the fact that any Form 3, 4 or 5 filed later than the applicable due date violates section 16(a).

F. Forms 3, 4 and 5

We are adopting with minor revisions the proposed amendments to Forms 3, 4 and 5 mainly to facilitate the electronic filing provisions, as follows:

1. Amend the introductory section before the General Instructions of Forms 3, 4 and 5 to delete the reference to IRS identification numbers. Consistent with that deletion, we amend each of the forms to delete Item 3 (before Table I), which provides a space for a filer that is an entity, at its option, to include an IRS identification number.[75] We believe this information is unnecessary in this context. An IRS identification number has not proved useful for tracking because only some filers provide it. Only non-natural person filers have been permitted to provide it and even they could choose whether to do so.

2. Amend the General Instructions to Forms 3, 4 and 5 to:

- Delete the references to the deemed timely filed provision in Rule 16a–3(h);[76]
- Delete the statement that electronic filing is optional;[77]
- Add a statement clarifying that electronic filing is mandatory absent a hardship exemption, referencing Regulation S–T, and describing how to obtain staff assistance in electronic filing;[78]
- Revise the joint filer provisions to cross-reference the signature rule and separate out paper-only requirements; [79] and
- Add a note providing instructions for filing in paper pursuant to a hardship exemption.[80]

3. Amend General Instruction 6 to Forms 3, 4, and 5 to indicate that if a filer runs out of space on the electronic form, the filer should put the additional information in a footnote, and if there is not enough room in the space provided for a footnote, the footnote should refer to an exhibit to the form [81] that contains the additional information.[82] Revised General Instruction 6 also adopts a numbering system for exhibits.[83]

4. Add General Instruction 8 to Form 3 and General Instruction 9 to Forms 4 and 5 explaining how to present information in amendments to previously filed forms.[84]

5. Amend Item 4 of the items before Table I of Form 4 to clarify that it requires the date of the earliest transaction required to be reported.

6. Amend Item 6 of the items before Table I of Form 3 and Item 5 of the items before Table I of Forms 4 and 5 to require an amended form to specify the date the original form was filed.

7. Amend the heading of Form 5 to clarify it by adding at the end "of Securities."

8. Amend Items 4 and 5 of the items before Table I of Form 5 to require that, when addressing the date as to which the form is filed, a day be specified in addition to, as previously required, a month and year. Adding a day requirement will result in a full date that will ease processing and searches.

9. Amend Item 4 of the items before Table I of Form 5 to clarify that it requires the issuer's fiscal year end date.

10. Amend Form 5 by adding, in the space immediately below Table I and immediately above the sentence regarding multiple reporting persons, a reminder regarding separate line reporting of different securities classes and forms of ownership.

11. Amend the heading of column 9 of Table II of Form 5 to clarify that the reference to "year" is a reference to the issuer's fiscal year, which will make the heading consistent with the heading of column 5 of Table I of Form 5.

12. Amend the heading of column 10 of Table II of Form 5 to add the word "form" to clarify that the column requires disclosure of ownership form (*i.e.*, direct or indirect) and conform the heading with its counterparts in Table I of Form 5 and Tables I and II of Forms 3 and 4.[85]

13. Remove the reference to Social Security Numbers from the description of Securities Act Form 144.[86] This was inadvertently retained in previous rulemaking.[87]

G. Form ET

We are making one change to the EDGAR system and the rules that affects all filings, not just section 16(a) reports. Electronic filers have been permitted to make electronic submissions either as direct transmissions, via dial-up modem or Internet, or on magnetic cartridge.[88] However, the number of filers using magnetic cartridges is minimal. In the current calendar year, no filer has used magnetic cartridge transmission. During 2002, one filer filed one magnetic cartridge containing a single form. The filer apparently used the magnetic cartridge approach solely to avoid a temporary problem with direct transmission. Therefore, as proposed, we are eliminating [89] magnetic cartridges as a transmission medium and Form ET,[90] the transmittal form that must accompany all magnetic cartridge submissions.[91]

H. Filing Hours

Rule 13(a) of Regulation S–T addresses electronic submission acceptance. Currently, persons can file by direct electronic transmission between the hours of 8 a.m. and 10 p.m., Washington, DC time on weekdays that are not federal holidays. An accepted filing for which transmission begins before 5:30 p.m. Eastern time is deemed filed on the same day. Generally, an accepted filing that begins after 5:30 p.m. is deemed filed on the next business day.[92] However, a post-effective amendment or registration statement filed to increase the number of securities registered as permitted by Securities Act Rule 462(b)[93] is deemed filed on the same business day (as long as it is received before 10 p.m.).[94]

In the Proposing Release, we requested comment on amending Rule 13(a) to treat an accepted Form 3, 4 or 5 filing in the same manner as a Rule 462(b) filing for purposes of the deemed filing date. More commenters addressed filing hours than anything else. Eleven commenters supported the extension to 10 p.m. Two of those commenters also expressed support for an extension to midnight. Finally, four commenters expressed support for the ability to file 24 hours a day.

The commenters supporting a Rule 462(b) type extension to 10 p.m. or midnight generally took the view that

- The extension would ease administrative burdens, especially for filers that are natural persons or located in the western part of the U.S., particularly in light of the rapid Form 4 filing deadline; and
- Form dissemination still would occur no later than before the market opens the next business day, as is currently true for forms filed after market close but before 5:30 p.m. on a business day.

Commenters supporting 24-hour-a-day filing cited essentially the same views. In addition, two commenters stated their belief that the Commission would not need to be open 24 hours a day because forms filed when the Commission was closed could be held in a queue until re-opening. One commenter added its belief that the Commission should be able to perform maintenance and back-up without disrupting 24 hour-a-day filing.

We agree that extended filing hours would ease filers' administrative burdens, without impairing prompt public availability of the filed information. Accordingly, we have amended Rule 13(a) to provide that any Form 3, 4 or 5 submitted by direct transmission on or before 10 p.m. Eastern time is deemed filed on the same business day.[95] However, filer support hours will not be correspondingly extended, so filer support will remain available only until 7 p.m. Eastern time. We encourage filers to submit their filings as early in the day as practicable, notwithstanding the 10 p.m. deadline, to avoid the risk that last-minute difficulties will result in a late filing.

The EDGAR system will be programmed to provide that a form filed between 5:30 p.m. and 10 p.m. Eastern time is assigned a filing date on the same business day and disseminated that evening. We expect this programming to be completed around the end of July 2003. Until then, EDGAR will continue to assign the next business day to these filings as their filing date and disseminate them on the next business day. However, from the effective date of the amendments until the programming is completed, we will apply amended Rule 13(a) to consider a Form 3, 4 or 5 to be timely filed based on the time of receipt displayed on our Web site. A form with a time of receipt on or before 10 p.m. will be deemed to be filed on the date of receipt.

III. The New Electronic Filing System

The Proposing Release discussed our plans for a new on-line filing system to make it easier to file Forms 3, 4 and 5 and easier to locate and search for the data in these forms. In March 2003, the Commission made the new system available for testing. In its initial version, insiders and those who acted on their behalf were able to access our Web site to fill out and submit test forms. On May 5, 2003, EDGAR Release 8.5 became effective and the new system went live and began to provide the method for insiders to file

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[66] *See* the note to Rule 10 of Regulation S–T [17 CFR 232.10] ("The Commission strongly urges any person or entity about to become subject to the disclosure and filing requirements of the federal securities laws to submit a Form ID [(through which an identification number and access codes are obtained)] well in advance of the first required [(electronic)] filing, * * *, in order to facilitate electronic filing on a timely basis").

[67] Rule 14 of Regulation S–T [17 CFR 232.14]. Paper filings under hardship exemptions must include the appropriate legend on the cover page so the file desk does not return the filing.

[68] It is unlikely that a continuing hardship exemption would be granted with respect to Forms 3, 4 or 5 given the nature of the information that appears in these forms and the expected ease of electronic filing.

[69] The staff generally does not grant filing date adjustments over extended periods of time. If technical difficulties prevent the filing from being made on the due date, it is important to address these difficulties as quickly as possible and request the filing date adjustment promptly after the filing is made.

[70] 17 CFR 229.405 and 17 CFR 228.405.

[71] 17 CFR 240.14a–101, Item 7.

[72] 17 CFR 249.310.

[73] 17 CFR 249.310b.

[74] 17 CFR 274.101.

[75] We have renumbered the items that follow the deleted item. In this release, however, references to pre-Table I form items are to their numbers before renumbering.

[76] *See* former General Instruction 2(a) to Form 3, and former General Instruction 1(a) to Forms 4 and 5. These minor changes, not previously proposed, are needed to conform to the previously proposed and now adopted deletion of the deemed timely filed provision from Rule 16a–3(h).

[77] *See* former General Instruction 3(a) to Form 3, and former General Instruction 2(a) to Forms 4 and 5.

[78] *See* revised General Instruction 3(a) to Form 3 and revised General Instruction 2(a) to Forms 4 and 5. The adopted note omits the proposed language relating to temporary hardship exemptions.

[79] *See* revised General Instruction 5(b)(v) to Form 3 and revised General Instruction 4(b)(v) to Forms 4 and 5.

[80] *See* revised notes to General Instruction 3 of Form 3 and General Instruction 2 of Forms 4 and 5. The adopted note contains the proposed language with two exceptions. The adopted note omits the proposed language relating to temporary hardship exemptions. The adopted note includes a statement that at least one copy must be signed.

[81] Ownership and transaction information must be disclosed to the greatest extent possible in the forms' Tables I and II rather than in footnotes and attachments in order to maximize the value of EDGAR's tagging the data in the tables, and thus facilitate analysis.

[82] One commenter claimed that this amendment to General Instruction 6 would reduce disclosure and clarity by dispersing information to as many as three different places. We believe the amendment will not reduce disclosure and that filers can maintain clarity through cross-references. Further, we believe that the electronic forms provide adequate space on the forms and in the footnotes for almost all situations. It should be unusual for filers to need to provide additional explanatory material in a separate attachment.

[83] *See* revised General Instruction 6(c) to Forms 3, 4 and 5. The specified amendments to General Instruction 6 relating to exhibits are minor, clarifying amendments not previously proposed. We note that no exhibit, including, for example, a power of attorney, may be filed in paper, absent a hardship exemption, or on a stand-alone basis.

[84] This amendment as well as the amendments described in items 5, 6, 7, 9, 10, 12 and 13 of this Section II.D, are minor, clarifying amendments not previously proposed.

[85] We did not adopt the proposed amendment, appearing in the proposed regulatory text only, to modify the heading of Table II of Form 5 because the current heading of the form already reads as proposed.

[86] *See* 17 CFR 239.144, as amended.

[87] Release No. 33–7424 (July 1, 1997) [62 FR 35,338].

[88] *See* current Rules 12(b) and 12(c) of Regulation S–T [17 CFR 232.12(b) and 232.12(c)].

[89] *See* related amendments we are adopting, as proposed, to Securities Act Rule 110 [17 CFR 230.110], Rule 12 of Regulation S–T [17 CFR 232.12 and 232.103], Exchange Act Rule 0–2 [17b CFR 240.0–2], Public Utility Act Rule 21 [17 CFR 250.21], and Trust Indenture Act Rule 0–5 [17 CFR 260.0–5]. We also are adopting amendments we did not propose to revise a subauthority cite for part 239 of Chapter 17 of the Code of Federal Regulations to reflect the deletion of Form ET and to add a previously omitted cite to the United States Code.

[90] 17 CFR 239.62, 249.445, 259.601, 269.6 and 274.401.

[91] The one commenter to address magnetic cartridge transmission and Form ET favored their elimination.

[92] Rule 13(a)(2) of Regulation S–T [17 CFR 232.13(a)(2)].

[93] 17 CFR 230.462(b).

[94] Rule 13(a)(3) of Regulation S–T [17 CFR 232.13(a)(3)].

[95] 17 CFR 232.13(a)(4).

electronically.[96] As a result, EDGARLink filing no longer is available for these forms.[97]

Users of the test site commented that the new system was easy to use and intuitive. They identified some improvements that would be beneficial to filers. Most of these changes will be implemented in EDGAR Release 8.6, currently scheduled for the end of July.[98]

Some filers, either directly or through agents, may wish to create a customized form and file it as a reduced content filing. A reduced content filing is a filing that provides header information (*e.g.*, form type) and the data for mandatory fields that we specify and otherwise complies with specified technical filing requirements. In March 2003, we announced the necessary reduced content specifications, including, mandatory fields and technical filing requirements, to provide adequate preparation time before the new system's implementation.[99] Reduced content filings will enable issuers and insiders to use third-party service providers for filings, if they wish to do so, just as they do today.

In order to file, persons will need the same codes as are required to file on EDGARLink. Persons can acquire the codes only by submitting a Form ID.[100] We urge Form ID filers to keep the information they provide up to date by revising the information on-line through our Web site as necessary. Companies and other third party filing agents with appropriate access codes will continue to be able to submit forms on behalf of insiders.[101] We expect to introduce enhanced verification procedures in the future.

Under the new system, if a filing is made on behalf of multiple insiders, each insider will be required to have a Central Index Key (CIK) and CIK Confirmation Code (CCC) for validation.[102] Multiple insiders will be allowed to report on a single form only if they all have an interest in a transaction or holding reported.

To access and file the forms through our Web site, filers must begin by having valid EDGAR access codes and logging on to the site. A button on the menu will give filers the option to create an on-line Form 3, 4 or 5, or an amendment to any of these forms. The filer should have all the necessary information available before going on-line to file. Due to cost and technical limitations, data entry must be performed quickly enough to avoid time-outs that end the session. A time-out will occur one hour following the user's last activity on the system. The system will not be able to provide a way to save an incomplete form on-line from session to session. The system will validate as many fields as possible for data type and required fields while the filer fills in the form. Filers will have the chance to correct errors and verify the accuracy of the information before submitting the filing. An on-line help function will be available.

The filer will be able to download and print the filing and add attachments before submission.[103] Once the filing is submitted, the system will display the accession number of the filing or a message that says the accession number will follow in a return notification.[104] A filer will be able to obtain a return copy of the form shortly after filing, and also will be able to see the filing on our Web site. Filers who submit their forms directly by entering information into the on-line templates must click on the "Transmit Submission" button on or before 10 p.m. Eastern time on a Commission business day for the submission to be completed that day. Similarly, a reduced content filing must begin transmission on or before 10 p.m. Eastern time to be completed the same day.

Summarized below are comments we received regarding the system relating to access codes, filing options and system features, and our responses.

Four commenters asked us to address the situation where a Form ID is filed to obtain a new CCC access code for an insider who already has a CCC code. Two commenters stated that this can happen, for example, where an insider serves on multiple boards and more than one issuer arranges Form ID filing. The situation cited is that a new CCC is issued, which cancels the previous CCC. As a result, an attempt to file arranged by a person unaware of the change could result in an error message, delay and extra effort. As potential alternative resolutions, commenters suggested that the Commission:

- In response to a repeat Form ID, either provide the existing codes and permission to use them or return the Form ID to the insider with a notice that the insider already has access codes;
- Provide a mechanism to allow filers to determine whether the insider already has access codes;[105]
- Provide separate access code sets with respect to each issuer as to which the person files reports;[106] or
- Take the position that a good faith attempt to obtain and use codes that results in mishandling or termination of existing codes constitutes a valid basis for a temporary hardship exemption.[107]

We are sensitive to the concerns expressed regarding granting access codes to individuals. In some cases, an individual is an insider of more than one issuer. The staff takes care to assign only one CIK code to each individual, regardless of the number of issuers as to which the person files reports. When multiple issuers request CIK codes for the same individual, however, occasionally new access codes are assigned in error. Often one issuer tells the staff that the original codes have been lost or compromised when, in fact, the insider is using them when submitting filings as to another issuer. When new codes are generated for the same person, as identified by the unique CIK code, the previously generated codes become invalid.

[96] Each new EDGAR release represents an updated version of the EDGAR system. *See* the draft Filer Manual for Release 8.5 on our Web site at *http://www.sec.gov/info/edgar/filermanual85.htm*.

[97] As previously discussed, unofficial PDF copy submissions are unavailable to Forms 3, 4 and 5.

[98] The principal needed improvement relates to modifying mandatory field requirements for certain holdings and types of transactions. On May 1, 2003, we released interim guidance on how to report the affected items before this improvement is made. The interim guidance is available on our Web site at *http://www.sec.gov/divisions/corpfin/sec16faq.htm*.

[99] The mandatory fields and technical filing requirements are available on our Web site at *http://www.sec.gov/info/edgar/edgar85xmlspec.htm*.

[100] 17 CFR 239.63, 249.446, 259.602, 269.7 and 274.402.

[101] Companies and other third party filing agents will need, in addition to their own access codes, the CIK and CCC codes of the insiders on whose behalf they file.

[102] In contrast, on EDGARLink, only one of the insiders needed a CIK and CCC.

[103] Filers should reference attachments in the form as exhibits and number them for clarity. As described above, a new General Instruction to each form specifies how exhibits should be numbered. In the rare event that a filer files an exhibit separately in paper under a continuing hardship exemption, the filer should place a Form SE [17 CFR 239.64, 249.444, 259.603, 269.8 and 274.403] cover on the exhibit. Use of Form SE for this purpose will help assure the exhibit is linked to the form.

[104] An "accession number" is a unique number generated by EDGAR for each electronic submission. Assignment of an accession number does not mean that EDGAR has accepted a submission.

[105] We assign to every person that requests access codes a CIK code unique identifier that is available publicly, for persons that have used their CIK code in making a filing, on our Web site under the "Companies and Other Filers" search at *http://www.sec.gov/edgar/searchedgar/companysearch.html*.

[106] Providing separate access codes as to each issuer would make it more difficult to find all the filings of a given insider and, thereby, undermine our goals of facilitating rapid and easy access to information.

[107] As previously discussed, temporary hardship exemptions will be unavailable to Forms 3, 4 and 5. One commenter claimed that sometimes delays in obtaining codes prevent timely filing. We are making strong efforts to provide codes timely, especially as more and more persons seek codes in connection with the implementation of mandated electronic filing.

We are exploring potential methods for the system to identify uniquely each insider and enable an insider, or an issuer or other third party acting on the insider's behalf, to manage the access codes more effectively and arrange new access codes, if necessary, on a real-time basis. Ultimately, we may address the situation even more broadly (*i.e.*, not only in the context of section 16 filings). For the time being, however, we urge

- Insiders to file Forms ID well in advance of when they expect to need codes, to keep track of their codes and to advise issuers for which they later become insiders of their existing codes; and
- Issuers and other third parties involved in the filing process to inquire whether an insider already has codes before submitting a Form ID filing on the insider's behalf.[108]

Five commenters addressed alternatives to limiting electronic filing of insider reports to the new on-line system. All five commenters suggested that insiders remain able to file through the current EDGARLink system during at least the initial few months of the new on-line system. Among their reasons were to provide more time for third-party software development, facilitate a smoother transition and enable filers to prepare a submission in advance (and thereby ease proofreading).

We have considered the commenters' suggestions and concerns regarding alternate methods of filing. However, due to technical and resource limitations, we cannot maintain parallel systems, such as EDGARLink and the new on-line system.

A significant number of commenters addressed the operation of the new on-line system. They addressed input features generally, the relationship between reduced content filings and on-line filing, and technical issues regarding data format and tagging.

Commenters suggested input features that are user-friendly in general and, in particular, allow users to

- Save incomplete forms for the next on-line session;
- Complete forms off-line and file them on-line;
- Use an unlimited number of lines in each transaction table;
- Receive a warning before a time-out;
- Avoid separately converting attachments into an EDGAR format;
- Avoid the need to input data manually into fields automatically populated based on, for an initial report, information in the Form ID and, for a subsequent report, information in the last previous report;
- Access instructions from the related part of the on-line template; and
- Use pull-down menus for a variety of items.

The system allows users to avoid separately converting attachments into an EDGAR form[109] and allows users to use pull-down menus in responding to some items. As the Commission staff and filers develop operational experience with the on-line filing system, we plan to consider whether pull-down menus would be feasible for additional items.

Due to cost and storage limitations, the system currently does not allow users to:

- Save incomplete forms for the next on-line session (but the system does allow users to print their incomplete forms and, thereby, retain a hard copy);
- Complete forms off-line and file them on-line except by using a third party or other reduced content filing process;
- Use an unlimited number of lines in each transaction table (but we believe the number of lines available adequate);
- Receive a warning before a time-out;
- Avoid the need to input data manually into fields automatically populated based on, for a Form 4 or Form 5, information in the last previous report (but some fields will be populated automatically based on information in the Form ID (*e.g.*, the insider's name)); or
- Access instructions from the related part of the on-line template.

We plan to consider these features and other improvements in connection with potential future system enhancements. We encourage system users to continue to provide their comments and suggestions to the staff.

Six commenters asked questions or cited concerns about data tagging and the format selected for information filed and displayed. The system requires that information be filed in the standard format of XML. We will disseminate that information on our website in two formats—viewable through a form and XML tagged. Users can take the XML tagged information and download it into an existing application or create an application to use the information. We believe that our approach to filing and dissemination formats makes it relatively easy to file, access and analyze insider beneficial ownership information.

Some commenters requested that we put Forms 3, 4 and 5 and their amendments in a separate area of our website. They stated that this would provide easy access to the information for members of the public interested in these forms. We believe that the same effect has been accomplished by providing the ability on our Web site to make a search limited to these forms, as well as the ability to search for company filings excluding these forms.[110]

IV. Paperwork Reduction Act

The amendments contain "collection of information" requirements within the meaning of the Paperwork Reduction Act of 1995 ("PRA").[111] We published a notice requesting comment on the collection of information requirements in the Proposing Release, and submitted these requirements to the Office of Management and Budget ("OMB") for review.[112] These requests are pending before the OMB. When we receive OMB clearance, we will publish notice in the **Federal Register**. We did not receive any comments on the Paperwork Reduction Act analysis contained in the Proposing Release.

Consistent with the will of Congress, the amendments that affect all of these information collections, except for Form ET, generally conform the amended rules and forms to the mandated electronic filing requirements provided by the amendments to section 16(a) enacted in section 403 of the Sarbanes-Oxley Act.

Compliance with the adopted amendments will be mandatory. The information required by the amendments will not be kept confidential by the Commission except that the information required by Form ID will be kept confidential, subject to a request under the Freedom of Information Act.[113]

An agency may not conduct or sponsor, and a person is not required to respond to, an information collection unless it displays a currently valid OMB control number. The titles of the

[108] As previously noted, this can be done for persons that have used their CIK code in making a filing by using the "Companies and Other Filers" search on our Web site at *http://www.sec.gov/edgar/searchedgar/companysearch.html*.

[109] Attachments must be in HTML or ASCII format.

[110] See the latest version of the "EDGAR Company Search," which allows site visitors to choose to include Forms 3, 4 and 5 with other company filings in their search results, exclude them entirely or display only Forms 3, 4 and 5. This search may be found on our website at *http://www.sec.gov/edgar/searchedgar/companysearch.html*.

[111] 44 U.S.C. 3501 *et seq.*

[112] Publication and submission were in accordance with 44 U.S.C. 3507(d) and 5 CFR 1320.11.

[113] 5 U.S.C. 552. The Commission's regulations that implement the act are at 17 CFR 200.80 *et seq.*

affected information collections are the EDGAR Forms ID, ET, SE and TH, and Exchange Act Forms 3, 4 and 5. The changes made to the proposed amendments would not increase the burden estimates for Forms ID, ET, SE and TH previously submitted to the OMB.[114] We expect that the adopted amendments will obligate reporting persons to disclose on Forms 3, 4 and 5 essentially the same information that they are required to disclose today.[115]

V. Cost-Benefit Analysis

The adopted amendments relating to mandated electronic filing and Web site posting largely represent the implementation of a Congressional mandate. As we stated in the Proposing Release, we expect these amendments will achieve the same benefits for investors and filers that we sought when we first adopted mandated EDGAR rules for most filings.[116]

We solicited comment on the expected benefits and costs and on any others that could result from adoption of mandated electronic filing and Web site posting requirements. We also requested data as to what percentage of filings are done by or with the help of the issuer. We discuss the responses below.

A. Benefits

We expect the adopted amendments regarding mandated electronic filing and Web site posting to benefit investors and filers.

Mandated electronic filing should benefit members of the investing public and financial community by making information contained in Commission filings easily available to them minutes after receipt by the Commission and, thereby, make them more likely to access and act quickly on the information. The electronic format of the information should facilitate research and data analysis. The new accelerated section 16(a) filing requirement described above should make quick electronic access even more valuable.

Filers should benefit from changes to the electronic filing system specifically designed to make electronic filing easier while continuing to provide speedy, secure and reliable delivery.

The use of EDGAR also will facilitate more efficient storage, retrieval and analysis of ownership and transaction information than filing in paper. Quicker access to ownership and transaction information should not only facilitate review of the information but also enhance the Commission's ability to study and address issues that relate to this information.

Website posting by issuers with corporate Web sites will provide a convenient, rapidly disseminated electronic source in addition to EDGAR that is conducive to research and data analysis. In general, Web site posting will help to make ownership and transaction information more broadly accessible.

Of the commenters that expressed support for some or all of the proposed amendments, three cited benefits among those we stated we expected to result. All three commenters cited more timely access to information. Two commenters cited easier access to information. No commenter provided data to quantify the value of benefits identified.

B. Costs

We expect that the adopted amendments regarding mandated electronic filing and Web site posting will result in some costs to insiders and issuers. However, we expect that many insiders and issuers will not bear the full range of costs resulting from the adoption of these amendments for the reasons described below.

The expected costs of mandated electronic filing consist of both initial and ongoing costs. Initial costs are those associated with obtaining, completing and sending to the Commission a Form ID to obtain filing credentials, and the purchase of compatible computer equipment and software. Initial costs further include those associated with learning about the electronic filing system, placing the filing data in electronic format for the initial electronic filing and subscribing to an Internet service provider. Ongoing costs are those associated with maintaining the framework developed through the initial costs (for example, updating information required by Form ID) and any additional costs arising from each subsequent filing (for example, placing the new filing data in electronic format).[117]

We expect that many insiders will incur few, if any, additional costs from electronic filing. We understand that many issuers help their insiders or submit the insiders' filings on their behalf. To the extent insiders do not receive this assistance, we believe many already will have the necessary computer equipment and Internet access to enable them to file using the templates that will appear on the Commission's Web site. Finally, some insiders already have filed Forms ID and gained experience in arranging electronic filing. As previously noted, approximately 38% of the Forms 3, 4 and 5 filed in March 2003 were filed electronically.

Even issuers that help their insiders to file electronically, whether to a greater or lesser extent, are not likely to incur additional costs. These issuers already are required to file on EDGAR and generally have the needed computer equipment and Internet service provider access to enable them to facilitate filing using the templates that will appear on the Commission's website.

Issuers should incur relatively few direct costs from the Web site posting requirement. Because the requirement applies only to issuers that already have a corporate Web site, issuers will not need to incur the costs associated with creating or maintaining a Web site. In addition, issuers could limit their additional costs associated with posting by hyperlinking to a third-party Web site such as EDGAR.[118]

Of the commenters expressing concerns in terms of cost or burden, most expressed concern about filing hours. Five commenters essentially stated that a 5:30 p.m. Eastern time filing deadline would be overly burdensome.[119] As we noted earlier, we are extending the filing deadline to 10:00 p.m. Eastern time.

Two commenters expressed concern about the burden on issuers that satisfy their Web site posting requirement by hyperlinks if we require the hyperlinks to be updated with each section 16 report filing. As we noted earlier, it is possible, for example, to link to the section 16 reports relating to an issuer in the EDGAR database on our Web site in a manner that does not require an update each time another section 16 report is filed as to that issuer.

One commenter stated that a failure to maintain EDGARLink as a filing option once the new system is in place would require third-party software providers to implement the new requirements outside the normal development cycle and, as a result, could place a considerable strain on their resources.[120] As we noted earlier, due to technical and resource limitations, we cannot maintain parallel systems.

One commenter suggested that we make minor changes to the current EDGARLink approach rather than provide a new system in order to avoid overly burdensome costs to disseminators. We believe that approach would be inconsistent with our goal of establishing a user-friendly system. One commenter stated that if the new system is not user-friendly, we should not underestimate the costs.

VI. Effect on Efficiency, Competition and Capital Formation

Section 23(a)(2) of the Exchange Act[121] requires us, when adopting rules under the Exchange Act, to consider the impact that any new rule would have on competition. In addition, section 23(a)(2) prohibits us from adopting any rule that would impose a burden on competition not necessary or appropriate in furtherance of the purposes of the Exchange Act. Furthermore, section 2(b) of the Securities Act,[122] section 3(f) of the Exchange Act[123] and section 2(c) of the Investment Company Act require us, when engaging in rulemaking where we are required to consider or determine whether an action is necessary or appropriate in the public interest, to consider, in addition to the protection of investors, whether the action will promote efficiency, competition, and capital formation.

The adopted amendments regarding mandated electronic filing and Web site posting are intended to facilitate the more efficient transmission, dissemination, analysis, storage and retrieval of insider ownership and transaction information.[124] This should improve investors' ability to make informed investment and voting decisions. Informed investment and voting decisions generally promote market efficiency and capital formation.

In the Proposing Release, we considered the amendments in light of the standards set forth in the above statutory sections. We solicited comment on whether, if adopted, the proposed amendments would impose a burden on competition. We also requested comment on whether, if adopted, the proposed amendments would promote efficiency, competition and capital formation. Finally, we requested commenters to provide empirical data and other factual support for their views if possible.

While several commenters stated that various aspects of the proposed amendments would result in undue burdens, only one commenter addressed anti-competitive effects. According to this commenter, the new on-line filing system would curtail the private sector business that provides software programs that facilitate insider filings. This commenter further asserted that this private sector business would innovate if not given an early disincentive from developing efficient filing systems. We believe that it is very important for insiders to have a user-friendly system that they can use relatively easily to fulfill their filing obligations. We further believe that such a system will not discourage significantly private sector businesses that develop filing software because these businesses can provide features the new on-line system does not.

VII. Final Regulatory Flexibility Act Analysis

This Final Regulatory Flexibility Analysis or FRFA, has been prepared in accordance with the Regulatory Flexibility Act.[125] This FRFA relates to amendments regarding mandated electronic filing and Web site posting of Forms 3, 4 and 5.[126]

A. Need for the Amendments

An issuer's insiders use Forms 3, 4 and 5 to report beneficial ownership of and trading in equity securities of the issuer. Consistent with the will of Congress, the adopted mandated electronic filing and Web site posting amendments generally conform the amended rules and forms to the mandated electronic filing and Web site posting requirements provided by the amendments to section 16(a) enacted in section 403 of the Sarbanes-Oxley Act. In addition, we believe the proposed amendments will benefit investors, filers and the Commission.

B. Significant Issues Raised by Public Comment

The Initial Regulatory Flexibility Act Analysis ("IRFA") appeared in the Proposing Release. We requested comment on any aspect of the IRFA, including the number of small entities that would be affected by the proposals, the nature of the impact, and how to quantify the impact of the proposals. We received no comment letters responding to the request.

C. Small Entities Subject to the Amendments

The mandated electronic filing and Web site posting amendments will affect small entities that either are insiders that are not natural persons or are issuers with a corporate Web site that have a class of equity securities registered under Exchange Act section 12.

Exchange Act Rule 0–10(a)[127] defines an entity, other than an investment company, to be a "small business" or "small organization" if it had total assets of $5 million or less on the last day of its most recent fiscal year. As of March 30, 2003, we estimated that there were approximately 8840 insiders[128] and fewer than 2500 issuers that have a class of equity securities registered under Exchange Act section 12, other than investment companies, that may be considered small entities. The mandated electronic filing amendments will apply to all of these insiders. The mandated Web site posting amendments will apply to all of these issuers with corporate Web sites.

For purposes of the Regulatory Flexibility Act, an investment company is a small entity if it, together with other investment companies in the same group of related investment companies, has net assets of $50 million or less as of the end of its most recent fiscal year. As of June, 2002, we estimate that there were 36 closed-end investment companies, and 29 business development companies, that are "small entities" for purposes of the Regulatory Flexibility Act that possibly could be affected by the amendments.

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[114] *See* Proposing Release, Part V for a description of, and the burden estimates for, Forms ID, ET, SE and TH. The change to the proposed amendments that makes temporary hardship exemptions unavailable to section 16 reports would reduce the burden estimate for Form TH because no additional respondents would file Form TH as a result of the adopted amendments. Consequently, the estimated annual number of respondents to Form TH and estimated total annual hour burden for Form TH would remain at 70 and 23.1, respectively.

[115] The addition to Forms 3, 4 and 5 of requirements to reference exhibits and amend the forms in a specified manner creates an additional burden that is so small it is not quantifiable. The other changes to Forms 3, 4 and 5 are minor and do not add any collection of information burden.

[116] The expected benefits and costs to those outside the Commission from the adopted amendments relating to eliminating Form ET and magnetic cartridge transmission are expected to be *de minimis*. Magnetic cartridge transmission rarely is used.

[117] Other minor costs could include, for example, preparing a filing date adjustment request.

[118] As previously noted, the expected costs to those outside the Commission from the adopted amendments relating to eliminating Form ET and magnetic cartridge transmission are expected to be *de minimis*. Magnetic cartridge transmission rarely is used.

[119] Twelve commenters supported an extension of the filing deadline beyond 5:30 p.m.

[120] As noted earlier, five commenters suggested that insiders remain able to file through the EDGARLink system during at least the initial few months of the new system.

[121] 15 U.S.C. 78w(a)(2).

[122] 15 U.S.C. 77b(b).

[123] 15 U.S.C. 78c(f).

[124] We believe there will be a *de minimis* impact from adoption of the proposed amendments regarding the elimination of magnetic cartridge transmission and Form ET.

[125] 5 U.S.C. 603.

[126] As previously noted, we believe there will be a *de minimis* impact from adoption of the proposed amendments regarding the elimination of magnetic cartridge transmission and Form ET.

[127] 17 CFR 240.0–10(a).

[128] We estimated the number of small entity non-investment company insiders based on our estimates of the total number of insiders; the percentage of these insiders that are greater than ten percent holders; the percentage of these greater than ten percent holders that are non-natural persons; and the percentage of these non-natural persons that are small entities.

D. Projected Reporting, Recordkeeping, and Other Compliance Requirements

Before the effective date of the rule and form amendments adopted in this release, insiders may file Forms 3, 4 and 5 in paper or electronically and issuers with corporate websites need not post Forms 3, 4 and 5 as to their equity securities on their Web sites. The amendments require insiders to file these forms electronically and issuers with corporate Web sites to post these forms. Because insiders already file these forms in paper, the only additional professional skills insiders will need will be those required to file electronically. Because the website posting requirements apply only to issuers that already have corporate Web sites, we believe these issuers will need no additional professional skills to post these forms on their Web sites. We expect that filing electronically and Web site posting will increase costs incurred by some small entities. However, we expect that many small entity insiders and small entity issuers will not bear the full range of costs resulting from the adoption of these amendments for the reasons described below.

The expected costs of mandated electronic filing consist of both initial and ongoing costs. Initial costs are those associated with obtaining, completing and sending to the Commission a Form ID to obtain filing credentials, and the purchase of compatible computer equipment and software. Initial costs further include those associated with learning about the electronic filing system, placing the filing data in electronic format for the initial electronic filing and subscribing to an Internet service provider. Ongoing costs are those associated with maintaining the framework developed through the initial costs (for example, updating information required by Form ID) and any additional costs arising from each subsequent filing (for example, placing the new filing data in electronic format).[129]

We expect that many small entity insiders will need to incur few, if any, additional costs from electronic filing. Some issuers may help their small entity insiders or submit the small entity insiders' filings on their behalf. To the extent small entity insiders do not receive this assistance, we believe many already will have the necessary computer equipment and Internet access to enable them to file using the templates that will appear on the Commission's Web site. Finally, some small entity insiders already may have filed Forms ID and gained experience in arranging electronic filing.[130]

Even those small entity issuers that assist their insiders to file electronically, whether to a greater or lesser extent, are not likely to incur additional costs. Small entity issuers already are required to file on EDGAR and generally have the necessary computer equipment and Internet service provider access to enable them to facilitate filing using the templates that will appear on the Commission's Web site.

Small entity issuers should incur relatively few direct costs from the website posting requirement. Because the requirement applies only to those small entity issuers that already have a corporate Web site, small entity issuers will not need to incur the costs associated with creating or maintaining a Web site. In addition, small entity issuers could limit their additional costs associated with posting by hyperlinking to a third-party Web site such as EDGAR.

E. Agency Action To Minimize Effect on Small Entities

As required by the Regulatory Flexibility Act, we have considered alternatives that would accomplish our stated objectives, while minimizing any significant adverse impact on small entities. In connection with the amendments, we considered the following alternatives:

- The establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities;
- The clarification, consolidation, or simplification of filing or posting requirements;
- The use of performance rather than design standards; and
- An exemption from the electronic filing and Web site posting requirements, or any part of them, for small entities.

We believe that differing compliance or reporting requirements or timetables for small entities (or a partial or complete exemption) would be inconsistent with the will of Congress as reflected in amended section 16(a) and the more efficient transmission, dissemination, analysis, storage and retrieval of insider ownership and transaction information in a manner that will benefit investors, filers and the Commission. We did not receive any response to our solicitation of comment on whether differing compliance or reporting requirements or timetables for small entities would be consistent with the statutory mandate and described goals. We believe that the adopted electronic filing and web site posting requirements are clear and straightforward. We have attempted to design an electronic filing system for these forms that will be simple for all filers to use. Therefore, it does not seem necessary to develop separate requirements for small entities. We have used design rather than performance standards in connection with the electronic filing and Web site posting requirements because we want investors to know where to find the information, and want both investors and the Commission to be readily able to analyze, store and retrieve the information involved. We also want the information disseminated to be in a comparable form for both large and small issuers. We do not believe that performance standards for small entities would be consistent with the purpose of the statutory amendments.

VIII. Statutory Basis

We are adopting the amendments to Regulation S–T, the Code of Federal Regulations description of Form 144, Rule 16a–3, and Forms 3, 4 and 5, and the removal of Form ET under the authority in section 19(a) of the Securities Act, sections 3(b), 16, 23(a) and 35A of the Exchange Act, section 17(a) of the Public Utility Act, section 319 of the Trust Indenture Act, section 30(h) of the Investment Company Act, and section 3(a) of the Sarbanes-Oxley Act.

Text of Rule Amendments

List of Subjects in 17 CFR Parts 230, 232, 239, 240, 249, 250, 259, 260, 269 and 274

Reporting and recordkeeping requirements, Securities.

■ For the reasons set forth above, we amend title 17, chapter II of the Code of Federal Regulations as follows.

PART 230—GENERAL RULES AND REGULATIONS, SECURITIES ACT OF 1933

■ 1. The authority citation for Part 230 continues to read in part as follows:

Authority: 15 U.S.C. 77b, 77c, 77d, 77f, 77g, 77h, 77j, 77r, 77s, 77sss, 77z–3, 78c, 78d, 78*l*, 78m, 78n, 78o, 78t, 78w, 78*ll*(d), 78mm, 79t, 80a–8, 80a–24, 80a–28, 80a–29, 80a–30, and 80a–37, unless otherwise noted.

* * * * *

■ 2. Amend § 230.110 by revising paragraph (b) to read as follows:

§ 230.110 Business hours of the Commission.

* * * * *

(b) *Submissions made in paper.* Paper documents filed with or otherwise furnished to the Commission may be submitted each day, except Saturdays, Sundays and federal holidays, from 8 a.m. to 5:30 p.m., Eastern Standard Time or Eastern Daylight Saving Time, whichever is currently in effect.

* * * * *

■ 3. The authority citation for Part 232 continues to read, in part as follows:

Authority: 15 U.S.C. 77f, 77g, 77h, 77j, 77s(a), 77sss(a), 78c(b), 78*l*, 78m, 78n, 78o(d), 78w(a), 78*ll*(d), 79t(a), 80a–8, 80a–29, 80a–30 and 80a–37.

* * * * *

■ 4. Amend § 232.12 by revising paragraph (b) to read as follows:

§ 232.12 Business hours of the Commission.

* * * * *

(b) *Submissions made in paper.* Filers may submit paper documents filed with or otherwise furnished to the Commission each day, except Saturdays, Sundays and federal holidays, from 8 a.m. to 5:30 p.m., Eastern Standard Time or Eastern Daylight Saving Time, whichever is currently in effect.

* * * * *

■ 5. Amend § 232.13 by adding paragraph (a)(4) before the Note to read as follows:

§ 232.13 Date of filing; Adjustment of filing date.

(a) *General.*

* * * * *

(4) Notwithstanding paragraph (a)(2) of this section, a Form 3, 4 or 5 (§§ 249.103, 249.104 and 249.105 of this chapter) submitted by direct transmission on or before 10 p.m. Eastern Standard Time or Eastern Daylight Saving Time, whichever is currently in effect, shall be deemed filed on the same business day.

Note: * * *

* * * * *

■ 6. Amend § 232.101 by:

■ a. Revising paragraph (a)(1)(iii) (the Notes following the paragraph are unchanged);

■ b. Removing paragraph (b)(4); and

■ c. Redesignating paragraphs (b)(5) through (b)(10) as paragraphs (b)(4) through (b)(9).

The revision reads as follows:

§ 232.101 Mandated electronic submissions and exceptions.

(a) * * *

(1) * * *

(iii) Statements, reports and schedules filed with the Commission pursuant to sections 13, 14, 15(d) or 16(a) of the Exchange Act (15 U.S.C. 78m, 78n, 78o(d) and 78p(a)), and proxy materials required to be furnished for the information of the Commission in connection with annual reports on Form 10–K (§ 249.310 of this chapter), or Form 10–KSB (§ 249.310b of this chapter) filed pursuant to section 15(d) of the Exchange Act.

* * * * *

■ 7. Amend § 232.104 by revising paragraph (a) to read as follows:

§ 232.104 Unofficial PDF Copies Included in an Electronic Submission.

(a) An electronic submission, other than a Form 3 (§ 249.103 of this chapter), a Form 4 (§ 249.104 of this chapter) or a Form 5 (§ 249.105 of this chapter), may include one unofficial PDF copy of each electronic document contained within that submission, tagged in the format required by the EDGAR filer manual.

* * * * *

■ 8. Amend § 232.201 by revising paragraph (a) introductory text to read as follows:

§ 232.201 Temporary hardship exemption.

(a) If an electronic filer experiences unanticipated technical difficulties preventing the timely preparation and submission of an electronic filing, other than a Form 3 (§ 249.103 of this chapter), a Form 4 (§ 249.104 of this chapter) or a Form 5 (§ 249.105 of this chapter), the electronic filer may file the subject filing, under cover of Form TH (§§ 239.65, 249.447, 259.604, 269.10 and 274.404 of this chapter), in paper format no later than one business day after the date on which the filing was to be made.

* * * * *

PART 239—FORMS PRESCRIBED UNDER THE SECURITIES ACT OF 1933

9. The authority citation for Part 239 is amended by revising the subauthority for "Secs. 239.62, 239.63 and 239.64" to read as follows:

Authority: 15 U.S.C. 77f, 77g, 77h, 77j, 77s, 77z–2, 77sss, 78c, 78*l*, 78m, 78n, 78o(d), 78u–5, 78w(a), 78*ll*(d), 79(e), 79f, 79g, 79j, 79*l*, 79m, 79n, 79q, 79t, 80a–8, 80a–24, 80a–26, 80a–29, 80a–30 and 80a–37, unless otherwise noted.

* * * * *

Secs. 239.63 and 239.64 also issued under secs. 6, 7, 8, 10 and 19(a) of the Securities Act (15 U.S.C. 77f, 77g, 77h, 77j and 77s(a)); secs. 3(b), 12, 13, 14, 15(d) and 23(a) of the Exchange Act (15 U.S.C. 78c(b), 78*l*, 78m, 78n, 78o(d) and 78w(a)); secs. 5, 6, 7, 10, 12, 13, 14, 17 and 20 of the Holding Company Act (15 U.S.C. 79e, 79f, 79g, 79j, 79*l*, 79m, 79n, 79q and 79t); sec. 319(a) of the Trust Indenture Act (15 U.S.C. 77sss(a)) and secs. 8, 24, 30 and 38 of the Investment Company Act (15 U.S.C. 80a–8, 80a–24, 80a–29 and 80a–37).

§ 239.62 [Removed and Reserved]

■ 10. Remove and reserve § 239.62.

§ 239.144 [Amended]

■ 11. Amend § 239.144 by removing the seventh sentence in paragraph (c).

PART 240—GENERAL RULES AND REGULATIONS, SECURITIES EXCHANGE ACT OF 1934

■ 12. The authority citation for Part 240 continues to read, in part, as follows:

Authority: 15 U.S.C. 77c, 77d, 77g, 77j, 77s, 77z–2, 77z–3, 77eee, 77ggg, 77nnn, 77sss, 77ttt, 78c, 78d, 78e, 78f, 78g, 78i, 78j, 78j–1, 78k, 78k–1, 78*l*, 78m, 78n, 78o, 78p, 78q, 78s, 78u–5, 78w, 78x, 78*ll*, 78mm, 79q, 79t, 80a–20, 80a–23, 80a–29, 80a–37, 80b–3, 80b–4 and 80b–11, unless otherwise noted.

■ 13. Amend § 240.0–2 by revising paragraph (b) to read as follows:

§ 240.0–2 Business hours of the Commission.

* * * * *

(b) *Submissions made in paper.* Paper documents filed with or otherwise furnished to the Commission may be submitted to the Commission each day, except Saturdays, Sundays and federal holidays, from 8 a.m. to 5:30 p.m., Eastern Standard Time or Eastern Daylight Saving Time, whichever is currently in effect.

* * * * *

■ 14. Amend § 240.16a–3 by revising paragraph (h) and adding paragraph (k) to read as follows:

§ 240.16a–3 Reporting transactions and holdings.

* * * * *

(h) The date of filing with the Commission shall be the date of receipt by the Commission.

* * * * *

(k) Any issuer that maintains a corporate Web site shall post on that Web site by the end of the business day after filing any Form 3, 4 or 5 filed under section 16(a) of the Act as to the equity securities of that issuer. Each such form shall remain accessible on such issuer's Web site for at least a 12-month period. In the case of an issuer that is an investment company and that does not maintain its own Web site, if

[129] Other minor costs could include, for example, preparing a filing date adjustment request.

[130] Approximately 38% of the Forms 3, 4 and 5 filed in March 2003 were filed electronically.

any of the issuer's investment adviser, sponsor, depositor, trustee, administrator, principal underwriter, or any affiliated person of the investment company maintains a Web site that includes the name of the issuer, the issuer shall comply with the posting requirements by posting the forms on one such Web site.

PART 249—FORMS, SECURITIES EXCHANGE ACT OF 1934

■ 15. The authority citation for Part 249 continues to read in part as follows:

Authority: 15 U.S.C. 78a *et seq.*, unless otherwise noted.

§ 249.445 [Removed and Reserved]

■ 16. Remove and reserve § 249.445.

PART 250—GENERAL RULES AND REGULATIONS, PUBLIC UTILITY HOLDING COMPANY ACT OF 1935

■ 17. The authority citation for Part 250 continues to read as follows:

Authority: 15 U.S.C. 79c, 79f(b), 79i(c)(3), 79t, unless otherwise noted.

■ 18. Amend § 250.21 by revising paragraph (b)(1) to read as follows:

§ 250.21 Filing of documents.

(a) * * *

(b) *Electronic filings.* (1) All documents required to be filed with the Commission under the Act or the rules and regulations thereunder must be filed at the principal office in Washington, DC via EDGAR by delivery to the Commission by direct transmission, via dial-up modem or Internet.

* * * * *

PART 259—FORMS PRESCRIBED UNDER THE PUBLIC UTILITY HOLDING COMPANY ACT OF 1935

■ 19. The authority citation for Part 259 continues to read as follows:

Authority: 15 U.S.C. 79e, 79f, 79g, 79j, 79*l*, 79m, 79n, 79q, 79t.

§ 259.601 [Removed and Reserved]

■ 20. Remove and reserve § 259.601.

PART 260—GENERAL RULES AND REGULATIONS, TRUST INDENTURE ACT OF 1939

■ 21. The authority citation for Part 260 continues to read as follows:

Authority: 15 U.S.C. 77eee, 77ggg, 77nnn, 77sss, 78*ll*(d), 80b–3, 80b–4, and 80b–11.

■ 22. Amend § 260.0–5 by revising paragraph (b) to read as follows:

§ 260.0–5 Business hours of the Commission.

* * * * *

(b) *Submissions made in paper.* Paper documents filed with or otherwise furnished to the Commission may be submitted to the Commission each day, except Saturdays, Sundays and federal holidays, from 8 a.m. to 5:30 p.m., Eastern Standard Time or Eastern Daylight Saving Time, whichever is currently in effect.

* * * * *

PART 269—FORMS PRESCRIBED UNDER THE TRUST INDENTURE ACT OF 1939

■ 23. The authority citation for Part 269 continues to read as follows:

Authority: 15 U.S.C. 77ddd(c), 77eee, 77ggg, 77hhh, 77iii, 77jjj, 77sss, 78*ll*(d), unless otherwise noted.

§ 269.6 [Removed and Reserved]

■ 24. Remove and reserve § 269.6.

PART 274—FORMS PRESCRIBED UNDER THE INVESTMENT COMPANY ACT OF 1940

25. The authority citation for Part 274 continues to read in part as follows:

Authority: 15 U.S.C. 77f, 77g, 77h, 77j, 77s, 78c(b), 78*l*, 78m, 78n, 78o(d), 80a–8, 80a–24, 80a–26, and 80a–29, unless otherwise noted.

■ 26. Amend Form 3 (referenced in § 249.103 and § 274.202) by:
■ a. Revising General Instruction 3(a);
■ b. Adding a note following General Instruction 3;
■ c. Revising General Instruction 5(b)(v);
■ d. Revising General Instruction 6;
■ e. Adding a new General Instruction 8;
■ f. Removing Item 3 and redesignating Items 4, 5, 6 and 7 to the information preceding Table I as Items 3, 4, 5 and 6 to the information preceding Table I; and
■ g. Revising newly redesignated Item 5 to the information preceding Table I.

The revisions and additions read as follows:

Note: The text of Form 3 does not and this amendment will not appear in the Code of Federal Regulations.

Form 3 Initial Statement of Beneficial Ownership of Securities

* * * * *

General Instructions

* * * * *

3. Where Form Must Be Filed

(a) A reporting person must file this Form in electronic format via the Commission's Electronic Data Gathering Analysis and Retrieval System (EDGAR) in accordance with EDGAR rules set forth in Regulation S–T (17 CFR Part 232), except that a filing person that has obtained a hardship exception under Regulation S–T Rule 202 (17 CFR 232.202) may file the Form in paper. For assistance with technical questions about EDGAR or to request an access code, call the EDGAR Filer Support Office at (202) 942–8900. For assistance with questions about the EDGAR rules, call the Office of EDGAR and Information Analysis at (202) 942–2940.

* * * * *

Note: If filing pursuant to a hardship exception under Regulation S–T Rule 202 (17 CFR 232.202), file three copies of this Form or any amendment, at least one of which is signed, with the Securities and Exchange Commission, 450 5th Street, NW., Washington, DC 20549. (Acknowledgement of receipt by the Commission may be obtained by enclosing a self-addressed stamped postcard identifying the Form or amendment filed.)

* * * * *

5. Holdings Required To Be Reported

* * * * *

(b) Beneficial Ownership Reported (Pecuniary Interest).

* * * * *

(v) Where more than one person beneficially owns the same equity securities, such owners may file Form 3 individually or jointly. Joint and group filings may be made by any designated beneficial owner. Holdings of securities owned separately by any joint or group filer are permitted to be included in the joint filing. Indicate only the name and address of the designated filer in Item 1 of Form 3 and attach a list of the names and addresses of each other reporting person. Joint and group filings must include all required information for each beneficial owner, and such filings must be signed by each beneficial owner, or on behalf of such owner by an authorized person.

If this Form is being filed in paper pursuant to a hardship exemption and the space provided for signatures is insufficient, attach a signature page. If this Form is being filed in paper, submit any attached listing of names or signatures on another Form 3, copy of Form 3 or separate page of 8½ by 11 inch white paper, indicate the number of pages comprising the report (Form plus attachments) at the bottom of each report page (*e.g.*, 1 of 3, 2 of 3, 3 of 3), and include the name of the designated filer and information required by Items 2 and 3 of the Form on the attachment.

See Rule 16a–3(i) regarding signatures.

* * * * *

6. Additional Information

(a) If the space provided in the line items on the electronic Form is insufficient, use the space provided for footnotes. If the space provided for footnotes is insufficient, create a footnote that refers to an exhibit to the form that contains the additional information.

(b) If the space provided in the line items on the paper Form or space provided for additional comments is insufficient, attach another Form 3, copy of Form 3 or separate 8½ by 11 inch white paper to Form 3, completed as appropriate to include the additional comments. Each attached page must include information required in Items 1, 2 and 3 of the Form. The number of pages comprising the report (Form plus attachments) shall be indicated at the bottom of each report page (*e.g.*, 1 of 3, 2 of 3, 3 of 3).

(c) If one or more exhibits are included, whether due to a lack of space or because the exhibit is, by nature, a separate document (*e.g.*, a power of attorney), provide a sequentially numbered list of the exhibits in the Form. Use the number "24" for any power of attorney and the number "99" for any other exhibit. If there is more than one of either such exhibit, then use numerical subparts. If the exhibit is being filed as a confirming electronic copy under Regulation S–T Rule 202(d) (17 CFR 232.202(d)), then place the designation "CE" (confirming exhibit) next to the name of the exhibit in the exhibit list. If the exhibit is being filed in paper pursuant to a hardship exception under Regulation S–T Rule 202 (17 CFR 232.202), then place the designation "P" (paper) next to the name of the exhibit in the exhibit list.

(d) If additional information is not reported as provided in paragraph (a), (b) or (c) of this instruction, whichever apply, it will be assumed that no additional information was provided.

* * * * *

8. Amendments

(a) If this Form is filed as an amendment in order to add one or more lines of ownership information to Table I or Table II of the Form being amended, provide each line being added, together with one or more footnotes, as necessary, to explain the addition of the line or lines. Do not repeat lines of ownership information that were disclosed in the original Form and are not being amended.

(b) If this Form is filed as an amendment in order to amend one or more lines of ownership information that already were disclosed in Table I or Table II of the Form being amended, provide the complete line or lines being amended, as amended, together with one or more footnotes, as necessary, to explain the amendment of the line or lines. Do not repeat lines of ownership information that were disclosed in the original Form and are not being amended.

(c) If this Form is filed as an amendment for any purpose other than or in addition to the purposes described in paragraphs (a) and (b) of this General Instruction 8, provide one or more footnotes, as necessary, to explain the amendment.

* * * * *

Form 3

* * * * *

5. If Amendment, Date Original Filed (Month/Day/Year)

* * * * *

Table I— Non-Derivative Securities Beneficially Owned

* * * * *

■ 27. Amend Form 4 (referenced in § 249.104 and § 274.203) by:
■ a. Revising General Instruction 2(a);
■ b. Adding a note following General Instruction 2;
■ c. Revising General Instruction 4(b)(v);
■ d. Revising General Instruction 6;
■ e. Adding new General Instruction 9;
■ f. Revising the form heading;
■ g. Removing Item 3 and redesignating Items 4, 5, 6 and 7 to the information preceding Table I as Items 3, 4, 5 and 6 to the information preceding Table I; and
■ h. Revising newly redesignated Items 3 and 4 to the information preceding Table I.

The revisions and additions read as follows:

Note: The text of Form 4 does not and this amendment will not appear in the Code of Federal Regulations.

Form 4 Statement of Changes in Beneficial Ownership of Securities

* * * * *

General Instructions

* * * * *

2. Where Form Must Be Filed

(a) A reporting person must file this Form in electronic format via the Commission's Electronic Data Gathering Analysis and Retrieval System (EDGAR) in accordance with EDGAR rules set forth in Regulation S–T (17 CFR Part 232), except that a filing person that has obtained a hardship exception under Regulation S–T Rule 202 (17 CFR 232.202) may file the Form in paper. For assistance with technical questions about EDGAR or to request an access code, call the EDGAR Filer Support Office at (202) 942–8900. For assistance with questions about the EDGAR rules, call the Office of EDGAR and Information Analysis at (202) 942–2940.

Note: If filing pursuant to a hardship exception under Regulation S–T Rule 202 (17 CFR 232.202), file three copies of this Form or any amendment, at least one of which is signed, with the Securities and Exchange Commission, 450 5th Street, NW., Washington, DC 20549. (Acknowledgement of receipt by the Commission may be obtained by enclosing a self-addressed stamped postcard identifying the Form or amendment filed.)

* * * * *

4. Transactions and Holdings Required To Be Reported

* * * * *

(b) Beneficial Ownership Reported (Pecuniary Interest).

* * * * *

(v) Where more than one beneficial owner of the same equity securities must report the same transaction on Form 4, such owners may file Form 4 individually or jointly. Joint and group filings may be made by any designated beneficial owner. Transactions with respect to securities owned separately by any joint or group filer are permitted to be included in the joint filing. Indicate only the name and address of the designated filer in Item 1 of Form 4 and attach a list of the names and addresses of each other reporting person. Joint and group filings must include all required information for each beneficial owner, and such filings must be signed by each beneficial owner, or on behalf of such owner by an authorized person.

If this Form is being filed in paper pursuant to a hardship exemption and the space provided for signatures is insufficient, attach a signature page. If this Form is being filed in paper, submit any attached listing of names or signatures on another Form 4, copy of Form 4 or separate page of 8½ by 11 inch white paper, indicate the number of pages comprising the report (Form plus attachments) at the bottom of each report page (*e.g.*, 1 of 3, 2 of 3, 3 of 3), and include the name of the designated filer and information required by Items 2 and 3 of the Form on the attachment.

See Rule 16a–3(i) regarding signatures.

* * * * *

6. Additional Information

(a) If the space provided in the line items on the electronic Form is insufficient, use the space provided for footnotes. If the space provided for

footnotes is insufficient, create a footnote that refers to an exhibit to the form that contains the additional information.

(b) If the space provided in the line items on the paper Form or space provided for additional comments is insufficient, attach another Form 4, copy of Form 4 or separate 8½ by 11 inch white paper to Form 4, completed as appropriate to include the additional comments. Each attached page must include information required in Items 1, 2 and 3 of the Form. The number of pages comprising the report (Form plus attachments) shall be indicated at the bottom of each report page (*e.g.*, 1 of 3, 2 of 3, 3 of 3).

(c) If one or more exhibits are included, whether due to a lack of space or because the exhibit is, by nature, a separate document (*e.g.*, a power of attorney), provide a sequentially numbered list of the exhibits in the Form. Use the number "24" for any power of attorney and the number "99" for any other exhibit. If there is more than one of either such exhibit, then use numerical subparts. If the exhibit is being filed as a confirming electronic copy under Regulation S–T Rule 202(d) (17 CFR 232.202(d)), then place the designation "CE" (confirming exhibit) next to the name of the exhibit in the exhibit list. If the exhibit is being filed in paper pursuant to a hardship exception under Regulation S–T Rule 202 (17 CFR 232.202), then place the designation "P" (paper) next to the name of the exhibit in the exhibit list.

(d) If additional information is not reported as provided in paragraph (a), (b) or (c) of this instruction, whichever apply, it will be assumed that no additional information was provided.

* * * * *

9. Amendments

(a) If this Form is filed as an amendment in order to add one or more lines of transaction information to Table I or Table II of the Form being amended, provide each line being added, together with one or more footnotes, as necessary, to explain the addition of the line or lines. Do not repeat lines of transaction information that were disclosed in the original Form and are not being amended.

(b) If this Form is filed as an amendment in order to amend one or more lines of transaction information that already were disclosed in Table I or Table II of the Form being amended, provide the complete line or lines being amended, as amended, together with one or more footnotes, as necessary, to explain the amendment of the line or lines. Do not repeat lines of transaction information that were disclosed in the original Form and are not being amended.

(c) If this Form is filed as an amendment for any purpose other than or in addition to the purposes described in paragraphs (a) and (b) of this General Instruction 9, provide one or more footnotes, as necessary, to explain the amendment.

Form 4 Statement of Changes in Beneficial Ownership of Securities

Item 3. Date of Earliest Transaction Required to be Reported (Month/Day/Year)

Item 4. If Amendment, Date Original Filed (Month/Day/Year)

Table I—Non-Derivative Securities Acquired, Disposed of, or Beneficially Owned

■ 28. Amend Form 5 (referenced in § 249.105) by:

■ a. Revising General Instruction 2(a);

■ b. Adding a note following General Instruction 2;

■ c. Revising General Instruction 4(b)(v);

■ d. Revising General Instruction 6;

■ e. Adding a new General Instruction 9;

■ f. Revising the form heading;

■ g. Removing Item 3 and redesignating Items 4, 5, 6 and 7 to the information preceding Table I as Items 3, 4, 5 and 6;

■ h. Revising newly redesignated Items 3 and 4 to the information preceding Table I;

■ i. Adding a sentence immediately below Table I;

■ j. Revising the heading for columns 9 and 10 in Table II.

The revisions and additions read as follows:

Note: The text of Form 5 does not and this amendment will not appear in the Code of Federal Regulations.

Form 5 Annual Statement of Beneficial Ownership of Securities

* * * * *

General Instructions

* * * * *

2. Where Form Must Be Filed

(a) A reporting person must file this Form in electronic format via the Commission's Electronic Data Gathering Analysis and Retrieval System (EDGAR) in accordance with EDGAR rules set forth in Regulation S–T (17 CFR part 232), except that a filing person that has obtained a hardship exception under Regulation S–T Rule 202 (17 CFR 232.202) may file the Form in paper. For assistance with technical questions about EDGAR or to request an access code, call the EDGAR Filer Support Office at (202) 942–8900. For assistance with questions about the EDGAR rules, call the Office of EDGAR and Information Analysis at (202) 942–2940.

* * * * *

Note: If filing pursuant to a hardship exception under Regulation S–T Rule 202 (17 CFR 232.202), file three copies of this Form or any amendment, at least one of which is signed, with the Securities and Exchange Commission, 450 5th Street, NW., Washington, DC 20549. (Acknowledgement of receipt by the Commission may be obtained by enclosing a self-addressed stamped postcard identifying the Form or amendment filed.)

* * * * *

4. Transactions and Holdings Required To Be Reported

* * * * *

(b) Beneficial Ownership Reported (Pecuniary Interest).

* * * * *

(v) Where more than one beneficial owner of the same equity securities must report the same transaction or holding on Form 5, such owners may file Form 5 individually or jointly. Joint and group filings may be made by any designated beneficial owner. Transactions and holdings with respect to securities owned separately by any joint or group filer are permitted to be included in the joint filing. Indicate only the name and address of the designated filer in Item 1 of Form 5 and attach a list of the names and addresses of each other reporting person. Joint and group filings must include all required information for each beneficial owner, and such filings must be signed by each beneficial owner, or on behalf of such owner by an authorized person.

If this Form is being filed in paper pursuant to a hardship exemption and the space provided for signatures is insufficient, attach a signature page. If this Form is being filed in paper, submit any attached listing of names or signatures on another Form 5, copy of Form 5 or separate page of 8½ by 11 inch white paper, indicate the number of pages comprising the report (Form plus attachments) at the bottom of each report page (*e.g.*, 1 of 3, 2 of 3, 3 of 3), and include the name of the designated filer and information required by Items 2 and 3 of the Form on the attachment.

See Rule 16a–3(i) regarding signatures.

* * * * *

6. Additional Information

(a) If the space provided in the line items on the electronic Form is insufficient, use the space provided for footnotes. If the space provided for footnotes is insufficient, create a footnote that refers to an exhibit to the form that contains the additional information.

(b) If the space provided in the line items on the paper Form or space provided for additional comments is insufficient, attach another Form 5, copy of Form 5 or separate 8½ by 11 inch white paper to Form 5, completed as appropriate to include the additional comments. Each attached page must include information required in Items 1, 2 and 3 of the Form. The number of pages comprising the report (Form plus attachments) shall be indicated at the bottom of each report page (*e.g.*, 1 of 3, 2 of 3, 3 of 3).

(c) If one or more exhibits are included, whether due to a lack of space or because the exhibit is, by nature, a separate document (*e.g.*, a power of attorney), provide a sequentially numbered list of the exhibits in the Form. Use the number "24" for any power of attorney and the number "99" for any other exhibit. If there is more than one of either such exhibit, then use numerical subparts. If the exhibit is being filed as a confirming electronic copy under Regulation S–T Rule 202(d) (17 CFR 232.202(d)), then place the designation "CE" (confirming exhibit) next to the name of the exhibit in the exhibit list. If the exhibit is being filed in paper pursuant to a hardship exception under Regulation S-T Rule 202 (17 CFR 232.202), then place the designation "P" (paper) next to the name of the exhibit in the exhibit list.

(d) If additional information is not reported as provided in paragraph (a), (b) or (c) of this instruction, whichever apply, it will be assumed that no additional information was provided.

* * * * *

9. Amendments

(a) If this Form is filed as an amendment in order to add one or more lines of transaction or ownership information to Table I or Table II of the Form being amended, provide each line being added, together with one or more footnotes, as necessary, to explain the addition of the line or lines. Do not repeat lines of transaction or ownership information that were disclosed in the original Form and are not being amended.

(b) If this Form is filed as an amendment in order to amend one or more lines of transaction or ownership information that already were disclosed in Table I or Table II of the Form being amended, provide the complete line or lines being amended, as amended, together with one or more footnotes, as necessary, to explain the amendment of the line or lines. Do not repeat lines of transaction or ownership information that were disclosed in the original Form and are not being amended.

(c) If this Form is filed as an amendment for any purpose other than or in addition to the purposes described in paragraphs (a) and (b) of this General Instruction 9, provide one or more footnotes, as necessary, to explain the amendment.

* * * * *

Form 5 Annual Statement of Changes in Beneficial Ownership of Securities

* * * * *

3. Statement for Issuer's Fiscal Year Ended (Month/Day/Year)

4. If Amendment, Date Original Filed (Month/Day/Year)

* * * * *

Table I—Non-Derivative Securities Acquired, Disposed of, or Beneficially Owned

* * * * *

Reminder: Report on a separate line for each class of securities beneficially owned directly or indirectly.

*If the form is filed by more than one reporting person, see instruction 4(b)(v).

Table II—Derivative Securities Acquired, Disposed of, or Beneficially Owned (*e.g.*, puts, calls, warrants, options, convertible securities)

* * * * *

9. Number of Derivative Securities Beneficially Owned at End of Issuer's Fiscal Year (Instr. 4)

10. Ownership Form of Derivative Securities: Direct (D) or Indirect (I) (Instr. 4)

* * * * *

§ 274.401 [Removed and Reserved]

■ 29. Remove and reserve § 274.401.

By the Commission.

Dated: May 7, 2003.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 03–11824 Filed 5–12–03; 8:45 am]

BILLING CODE 8010–01–P

Federal Register

Tuesday,
May 13, 2003

Part V

The President

Executive Order 13300—Facilitating the Administration of Justice in the Federal Courts

Federal Register
Vol. 68, No. 92
Tuesday, May 13, 2003

Presidential Documents

Title 3—

The President

Executive Order 13300 of May 9, 2003

Facilitating the Administration of Justice in the Federal Courts

By the authority vested in me as President by the Constitution and the laws of the United States of America, and in order to promote the prompt appointment of judges to the Federal courts, it is hereby ordered as follows:

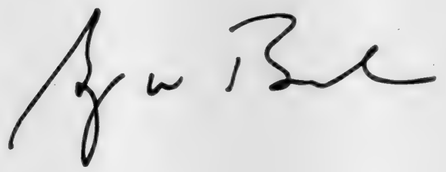
Section 1. *Policy.* The Federal courts play a central role in the American justice system. For the Federal courts to function effectively, judicial vacancies in those courts must be filled in a timely manner with well-qualified candidates.

Sec. 2. *Plan.* The presidential plan announced on October 30, 2002, calls for timely consideration of judicial nominees, with the President submitting a nomination to fill a vacancy in United States courts of appeals and district courts within 180 days after the President receives notice of a vacancy or intended retirement, absent extraordinary circumstances.

Sec. 3. *Responsibilities.* The Counsel to the President shall take all appropriate steps to ensure that the President is in a position to make timely nominations for judicial vacancies consistent with this plan. All Federal departments and agencies shall assist, as requested and permitted by law, in the implementation of this order.

Sec. 4. *Reservation of Authority.* Nothing in this order shall be construed to affect the authority of the President to fill vacancies under clause 3 of section 2 of article II of the Constitution.

Sec. 5. *Judicial Review.* This order is intended only to improve the internal management of the Federal Government and is not intended to, and does not, create any right or benefit, substantive or procedural, enforceable at law or in equity by a party against the United States, its departments, agencies, instrumentalities or entities, its officers or employees, or any other person.



THE WHITE HOUSE,
May 9, 2003.

[FR Doc. 03–12071
Filed 5–12–03; 9:24 am]
Billing code 3195–01–P

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Federal Register

Vol. 68, No, 92

Tuesday May 13, 2003

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Presidential Documents	
Executive orders and proclamations	**741–6000**
The United States Government Manual	**741–6000**
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FEDERAL REGISTER PAGES AND DATE, MAY

23183–23376	1
23377–23568	2
23569–23884	5
23885–24332	6
24333–24604	7
24605–24858	8
24859–25278	9
25279–25478	12
25479–25808	13

CFR PARTS AFFECTED DURING MAY

At the end of each month, the Office of the Federal Register publishes separately a List of CFR Sections Affected (LSA), which lists parts and sections affected by documents published since the revision date of each title.

3 CFR

Proclamations:
7668 23821
7669 23823
7670 23825
7671 23827
7672 23829
7673 24333
7674 25277

Executive Orders:
12865 (Revoked by 13298) 24857
13069 (Revoked by 13298) 24857
13098 (Revoked by 13298) 24857
13298 24857
13299 25477
13300 25807

Administrative Orders:
Memorandums:
Memorandum of May 6, 2003 25275

5 CFR

213 24605
Ch. XIV 23885
2424 23885
2429 23885
2471 23885
2472 23885

Proposed Rules:
2601 23876

7 CFR

6 25479
29 25484
46 23377
56 25484
301 ..... 24605, 24613
868 24589
932 23378
985 ..... 23569, 25486
989 25279
1410 24830
1424 24596
1710 24335

Proposed Rules:
274 23927
276 23927
278 23927
279 23927
280 23927
360 23425
1530 23230

9 CFR

Proposed Rules:
2 24052
130 25308

10 CFR

40 25281
70 23574
71 23574
72 23183
73 23574
150 25281

Proposed Rules:
20 23618
490 23620

12 CFR

21 25090
208 25090
211 25090
326 25090
563 25090
740 23381
748 25090

Proposed Rules:
613 ..... 23425, 23426

14 CFR

1 25486
11 25486
25 ..... 24336, 24338
39 ..... 23183, 23186, 23190, 23384, 23387, 23575, 23886, 24614, 24861, 25488
71 ..... 23577, 23579, 23580, 23581, 23682, 24340, 24341, 24342, 24864, 24866, 24868, 24869, 24870, 24871, 24872, 24874, 25489, 25491, 25492, 25493, 25494, 25495, 25684
73 25495
77 23583
97 ..... 23888, 23889
382 24874

Proposed Rules:
3 23808
39 ..... 23231, 23235, 23427, 23620, 24383, 25543
71 ..... 23622, 23624, 23625, 23626
119 24810
121 24810
135 24810
145 24810
255 24896
330 23627
399 24896

15 CFR

0 24878
270 24343
902 24615

16 CFR

305 23584

Proposed Rules:
309 24669

17 CFR

42 25149

230 25788
232 ..... 24345, 25788
239 25788
240 25788
241 25281
249 25788
250 25788
259 25788
260 25788
269 25788
270 25131
274 25788

18 CFR

Proposed Rules:
35 24679

19 CFR

178 24052

20 CFR

Proposed Rules:
404 ..... 23192, 24896
416 ..... 23192, 24896

21 CFR

Ch. 1 24879
10 25283
14 25283
20 25283
310 24347
314 25283
358 24347
720 25283
1300 23195
1310 23195

Proposed Rules:
1 ..... 23630, 25242, 25188
11 25188
16 25242
101 23930
1310 24689

22 CFR

42 24638
121 25088
228 23891

23 CFR

140 24639
646 24639
661 24642

Proposed Rules:
630 ..... 23239, 24384

24 CFR

203 23370

25 CFR

Proposed Rules:
170 23631

26 CFR

1 ..... 23586, 24349, 24351, 24644, 24880
301 24644
602 24644

Proposed Rules:
1 ..... 23632, 23931, 24404, 24405, 24406, 24898, 24903, 25310
54 24406
602 24406

27 CFR

Proposed Rules:
4 24903
5 24903
7 24903
13 24903

28 CFR

Proposed Rules:
513 25545

29 CFR

Proposed Rules:
1480 23634
1910 23528

30 CFR

36 23892
917 24644
948 24355
950 24647

31 CFR

103 ..... 25090, 25149, 25113, 25163
315 24794
351 24794
353 24794
359 24794
360 24794
363 24794

Proposed Rules:
103 ..... 23640, 23646, 23653, 25163

32 CFR

311 24880
806B 24881

Proposed Rules:
701 24904

33 CFR

110 25496
117 ..... 23390, 23590, 24882, 24883
165 ..... 23390, 23393, 23399, 23591, 23594, 23595, 23893, 23894, 23896, 24359, 24361, 24883, 25288, 25498, 25500

Proposed Rules:
165 ..... 23935, 24406, 24408
401 25546

36 CFR

Proposed Rules:
251 ..... 25748, 25751
1280 23430

37 CFR

Proposed Rules:
262 23241

38 CFR

2 25503

Proposed Rules:
39 23249

39 CFR

Proposed Rules:
111 23937

40 CFR

51 25684
52 ..... 23206, 23207, 23404, 23597, 23604, 24363, 24365, 24368, 24885, 25414, 25418, 25442, 25504
62 ..... 23209, 25291
63 ..... 23898, 24562, 24653
71 25507
80 24300
81 ..... 24368, 25418, 25442
180 24370
271 ..... 23407, 23607
300 23211
312 24888
438 25686

Proposed Rules:
Ch. 1 ..... 24410, 25312
52 ..... 23270, 23430, 23661, 23662, 24416, 24417, 25547
60 24692
62 ..... 23272, 25313
71 25548
80 24311
146 ..... 23666, 23673
258 25550
300 23939

44 CFR

64 23408
67 23898

Proposed Rules:
67 23941

45 CFR

32 24052
148 23410
301 25293
302 25293
303 25293
304 25293
307 25293
1309 23212

46 CFR

Proposed Rules:
540 23947

47 CFR

1 23417
2 25512
73 ..... 23613, 23900, 23901, 25512, 25542
74 25512
80 25512
90 25512
97 25512

Proposed Rules:
1 23431
15 23677
64 25313
73 24417

48 CFR

511 24372
516 24372
532 24372
538 24372
546 24372
552 24372
1802 23423
1806 23423
1815 23423
1816 23423
1843 23423
1845 23424

Proposed Rules:
245 25313

49 CFR

107 ..... 23832, 24653
171 ..... 23832, 24653
173 24653
176 23832
177 ..... 23832, 24653
180 24653
209 24891
383 23844
384 23844
571 ..... 23614, 24664
1570 23852
1572 23852

Proposed Rules:
193 23272
572 24417
1137 23947

50 CFR

216 24905
300 ..... 23224, 23901
600 23901
648 ..... 24914, 25305
660 ..... 23901, 23913, 23924
679 ..... 23925, 24615, 24667, 24668

Proposed Rules:
18 24700
20 24324
216 24905
622 23686
648 ..... 23275, 23948, 23949, 24914

REMINDERS

The items in this list were editorially compiled as an aid to Federal Register users. Inclusion or exclusion from this list has no legal significance.

RULES GOING INTO EFFECT MAY 13, 2003

AGRICULTURE DEPARTMENT

Import quotas and fees:
- Dairy tariff-rate quota licensing; published 5-13-03

FEDERAL COMMUNICATIONS COMMISSION

Radio stations; table of assignments:
- Oklahoma; published 5-13-03

TRANSPORTATION DEPARTMENT

Federal Aviation Administration

Airworthiness directives:
- Raytheon; published 5-5-03

Definitions:
- Public (Government-owned) aircraft; amendment; published 5-13-03

VETERANS AFFAIRS DEPARTMENT

Organization, functions, and authority delegations:
- Regulation Policy and Management Office; published 5-13-03

COMMENTS DUE NEXT WEEK

AGRICULTURE DEPARTMENT

Agricultural Marketing Service

Hass avocado promotion, research, and information order; comments due by 5-19-03; published 3-18-03 [FR 03-06510]

AGRICULTURE DEPARTMENT

Animal and Plant Health Inspection Service

Plant related quarantine; domestic:
- Fire ant, imported; methoprene, authorized treatment; comments due by 5-20-03; published 3-21-03 [FR 03-06799]

User fees:
- Export certificates for ruminants; comments due by 5-20-03; published 3-21-03 [FR 03-06797]

AGRICULTURE DEPARTMENT

Foreign Agricultural Service

Farmers; trade adjustment assistance; comments due by 5-23-03; published 4-23-03 [FR 03-10050]

COMMERCE DEPARTMENT

National Oceanic and Atmospheric Administration

Fishery conservation and management:
- West Coast States and Western Pacific fisheries—
  - Pacific Coast groundfish; correction; comments due by 5-22-03; published 5-6-03 [FR 03-11084]
  - West Coast salmon; comments due by 5-21-03; published 5-6-03 [FR 03-11083]

EDUCATION DEPARTMENT

Elementary and secondary education:
- Disadvantaged children; academic achievement improvement; comments due by 5-19-03; published 3-20-03 [FR 03-06653]

ENVIRONMENTAL PROTECTION AGENCY

Air pollution control:
- Interstate ozone transport reduction—
  - Nitrogen oxides budget trading program; Section 126 petitions; findings of significant contribution and rulemaking; withdrawal provision; comments due by 5-24-03; published 4-4-03 [FR 03-08152]

Air quality implementation plans; approval and promulgation; various States; air quality planning purposes; designation of areas:
- Wisconsin; comments due by 5-19-03; published 4-17-03 [FR 03-09347]

Air quality implementation plans; approval and promulgation; various States:
- Louisiana; comments due by 5-21-03; published 4-21-03 [FR 03-09619]

Superfund program:
- Toxic chemical release reporting; community right-to-know—
  - North American Industry Classification System; comments due by 5-20-03; published 3-21-03 [FR 03-06582]

GOVERNMENT ETHICS OFFICE

Government ethics:
- Post-employment conflict of interest restrictions; comments due by 5-19-03; published 2-18-03 [FR 03-03043]
- Correction; comments due by 5-19-03; published 3-31-03 [FR 03-07539]

HEALTH AND HUMAN SERVICES DEPARTMENT

Food and Drug Administration

Human drugs:
- Ophthalmic products for emergency first aid use (OTC); final monograph; amendment; comments due by 5-20-03; published 2-19-03 [FR 03-03927]

HOMELAND SECURITY DEPARTMENT

Coast Guard

Drawbridge operations:
- Florida; comments due by 5-19-03; published 3-19-03 [FR 03-06637]
- New Jersey; comments due by 5-19-03; published 3-20-03 [FR 03-06638]

Ports and waterways safety:
- Lond Island Sound Marine Inspection and Captain of Port Zone, CT; regulated navigation area and safety and security zones; comments due by 5-19-03; published 3-20-03 [FR 03-06642]

HOMELAND SECURITY DEPARTMENT

Customs Service

Articles conditionally free, subject to reduced rates, etc.:
- African Growth and Opportunity Act; sub-Saharan Africa trade benefits; textile and apparel provisions; comments due by 5-20-03; published 3-21-03 [FR 03-06760]
- Caribbean Basin Economic Recovery Act; textile and apparel provisions; comments due by 5-20-03; published 3-21-03 [FR 03-06755]

Merchandise, special classes, and financial and accounting procedures:
- Patent Survey Program; discontinuation; comments due by 5-19-03; published 3-20-03 [FR 03-06756]

INTERIOR DEPARTMENT

Surface coal mining hearings and appeals; special rules; comments due by 5-19-03; published 3-20-03 [FR 03-06555]

LABOR DEPARTMENT

Mine Safety and Health Administration

Coal mine safety and health:
- Underground mines—
  - Sanitary toilets; standards; comments due by 5-21-03; published 4-21-03 [FR 03-09656]
  - Sanitary toilets; standards; comments due by 5-21-03; published 4-21-03 [FR 03-09655]

Metal and nonmetal mine safety and health:
- Seat belts for off-road work machines and wheeled agricultural tractors; comments due by 5-21-03; published 4-21-03 [FR 03-09658]

LIBRARY OF CONGRESS

Copyright Office, Library of Congress

Copyright Arbitration Royalty Panel rules and procedures:
- Digital performance of sound recordings; reasonable rates and terms determinations; comments due by 5-21-03; published 4-21-03 [FR 03-09783]

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

Space flight:
- Astronaut candidates; recruitment and selection; comments due by 5-23-03; published 4-23-03 [FR 03-10002]

NUCLEAR REGULATORY COMMISSION

Byproduct material; medical use:
- Clarifications and amendments; comments due by 5-21-03; published 4-21-03 [FR 03-09601]

PERSONNEL MANAGEMENT OFFICE

Health and counseling programs, Federal employees:
- Child care costs for lower income employees; agency use of appropriated funds; comments due by 5-23-03; published 3-24-03 [FR 03-06887]

TRANSPORTATION DEPARTMENT

Procedural regulations:

Air carriers; compensation procedures; adjustment; comments due by 5-19-03; published 5-5-03 [FR 03-11185]

TRANSPORTATION DEPARTMENT
Federal Aviation Administration
Airworthiness directives:
Bell; comments due by 5-19-03; published 3-18-03 [FR 03-06136]
Bombardier; comments due by 5-23-03; published 4-23-03 [FR 03-09690]
General Electric Co.; comments due by 5-19-03; published 3-18-03 [FR 03-06044]
Short Brothers and Harland Ltd.; comments due by 5-19-03; published 4-10-03 [FR 03-08750]
Airworthiness standards:
Special conditions—
Embraer Model ERJ-170 series airplanes; comments due by 5-23-03; published 4-23-03 [FR 03-10045]
Class E airspace; comments due by 5-19-03; published 4-3-03 [FR 03-08143]

TRANSPORTATION DEPARTMENT
National Highway Traffic Safety Administration
Insurer reporting requirements:
Insurers required to file reports; list; comments due by 5-20-03; published 3-21-03 [FR 03-05629]

TREASURY DEPARTMENT
Foreign Assets Control Office
Cuban assets control regulations:
Family and educational travel transactions, remittances, support for Cuban people and humanitarian projects; technical amendments; comments due by 5-23-03; published 3-24-03 [FR 03-06808]

TREASURY DEPARTMENT
Internal Revenue Service
Excise taxes:
Structured settlement factoring transactions; cross-reference; comments due by 5-20-03; published 2-19-03 [FR 03-03865]

TREASURY DEPARTMENT
Currency and foreign transactions; financial reporting and recordkeeping requirements:
USA PATRIOT Act; implementation—
Nauru; special measures imposition due to designation as primary money laundering concern; comments due by 5-19-03; published 4-17-03 [FR 03-09410]
Terrorism Risk Insurance Program
State residual market insurance entities and State workers' compensation funds; comments due by 5-19-03; published 4-18-03 [FR 03-09619]
Statutory conditions for Federal payment; comments due by 5-19-03; published 4-18-03 [FR 03-09611]
Statutory conditions for Federal payment; cross-reference; comments due by 5-19-03; published 4-18-03 [FR 03-09612]

VETERANS AFFAIRS DEPARTMENT
Grants and cooperative agreements; availability, etc.:
Homeless Providers Grant and Per Diem Program; comments due by 5-19-03; published 3-19-03 [FR 03-06329]

LIST OF PUBLIC LAWS

This is a continuing list of public bills from the current session of Congress which have become Federal laws. It may be used in conjunction with "PLUS" (Public Laws Update Service) on 202–741–6043. This list is also available online at *http://www.nara.gov/fedreg/plawcurr.html*.

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H.R. 1770/P.L. 108–20

Smallpox Emergency Personnel Protection Act of 2003 (Apr. 30, 2003; 117 Stat. 638)

S. 151/P.L. 108–21

Prosecutorial Remedies and Other Tools to end the Exploitation of Children Today Act of 2003 (Apr. 30, 2003; 117 Stat. 650)

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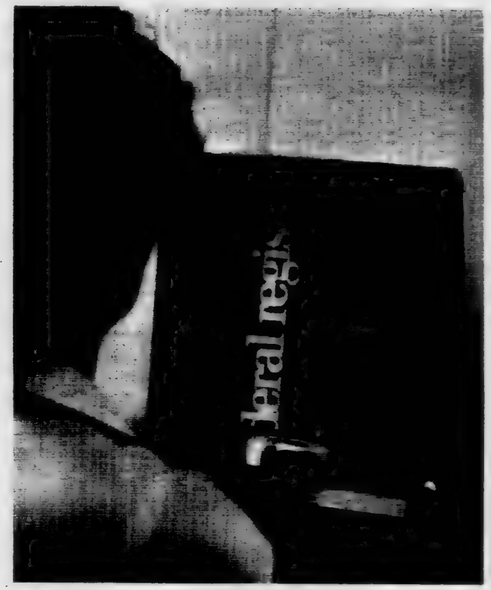
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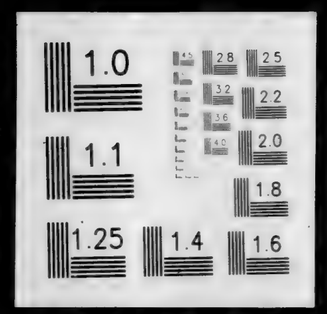
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68
SS
93
IY
14
03
II



Federal Register

5–14–03 Wednesday
Vol. 68 No. 93 May 14, 2003

Pages 25809–26200

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Contents

Federal Register
Vol. 68, No. 93
Wednesday, May 14, 2003

Agency for Toxic Substances and Disease Registry
NOTICES
Grants and cooperative agreements; availability, etc.:
Exposure-Dose Reconstruction Research Program, 25890–25894

Agriculture Department
See Forest Service

Alcohol and Tobacco Tax and Trade Bureau
PROPOSED RULES
Alcohol; viticultural area designations:
San Bernabe and San Lucas, Monterey County, CA, 25851–25855

Antitrust Division
NOTICES
National cooperative research notifications:
DVD Copy Control Association, 25905–25906
National Center for Manufacturing Sciences, Inc., 25906
VSI Alliance, 25906

Army Department
RULES
Privacy Act; implementation, 25816–25817

Centers for Disease Control and Prevention
NOTICES
Meetings:
Children and Terrorism National Advisory Committee, 25894

Civil Rights Commission
NOTICES
Meetings; State advisory committees:
Idaho, 25860
New Jersey, 25860

Coast Guard
RULES
Drawbridge operations:
Massachusetts, 25818
Ports and waterways safety:
Prince William Sound, AK; vessel movement reporting system, 25818–25821
Regattas and marine parades:
Harvard-Yale Regatta, 25817–25818
U.S. Naval Academy Blue Angels Airshow, 25818
PROPOSED RULES
Navigation aids:
Technical information affecting buoys, sound signals, international rules at sea, communications procedures, and large navigational buoys; revision, 25855–25859
NOTICES
Agency information collection activities; proposals, submissions, and approvals, 25893
Reports and guidance documents; availability, etc.:
Great Lakes Pilotage Bridge-Hour Standards for American Pilots on Great Lakes; review, 25899

Commerce Department
See Economic Development Administration
See International Trade Administration

Committee for the Implementation of Textile Agreements
NOTICES
Cotton, wool, and man-made textiles:
Taiwan, 25864–25865

Consumer Product Safety Commission
NOTICES
Agency information collection activities; proposals, submissions, and approvals, 25865–25866

Defense Department
See Army Department
NOTICES
Environmental statements; availability, etc.:
Pentagon Memorial, 25866
Federal Acquisition Regulation (FAR):
Agency information collection activities; proposals, submissions, and approvals, 25866–25867

Economic Development Administration
NOTICES
Grants and cooperative agreements; availability, etc.:
National technical assistance, training, research, and evaluation, 26167–26169

Education Department
RULES
Postsecondary education:
Federal Perkins Loan, Federal Direct Loan, and Federal Family Education Loan Programs; waivers and modifications, 25821–25822
NOTICES
Agency information collection activities; proposals, submissions, and approvals, 25867–25868
Grants and cooperative agreements; availability, etc.:
Special education and rehabilitative services—Disability and Rehabilitation Research Projects Program, 26171–26192

Energy Department
See Federal Energy Regulatory Commission

Environmental Protection Agency
RULES
Air pollution control; new motor vehicles and engines:
Nonroad diesel engines; nonroad engine definition Withdrawn, 25823–25824
Pesticides; tolerances in food, animal feeds, and raw agricultural commodities:
Indoxacarb, 25824–25831
Pyriproxyfen, 25831–25837
NOTICES
Air programs; State authority delegations:
Washington, 25875–25881
Confidential business information and data transfer, 25881–25882
Meetings:
Science Advisory Board, 25882–25883
Pesticide, food, and feed additive petitions:
Dow AgroSciences, 25883–25888

Executive Office of the President
See Presidential Documents
See Science and Technology Policy Office
See Trade Representative, Office of United States

Federal Aviation Administration
RULES
Airworthiness directives:
Raytheon, 25811–25814

Federal Bureau of Investigation
NOTICES
Agency information collection activities; proposals, submissions, and approvals, 25907

Federal Communications Commission
RULES
Common carrier services:
International call-back service, uncompleted call signaling configuration; other nations' prohibitions enforcement; policy statement, 25840–25841
Numbering resource optimization; correction, 25843
Repetitious or conflicting applications, 25841–25843

Federal Election Commission
NOTICES
Meetings; Sunshine Act, 25888–25889

Federal Emergency Management Agency
NOTICES
Meetings:
Emergency Medical Services Federal Interagency Committee, 25899–25900

Federal Energy Regulatory Commission
RULES
Organization, functions, and authority delegations:
Market Oversight and Investigations Office, 25814–25816
NOTICES
Electric rate and corporate regulation filings:
Empire District Electric Co. et al., 25868–25869
Environmental statements; availability, etc.:
FPL Energy Maine Hydro, LLC, 25870
Williston Basin Interstate Pipeline Co., 25870–25871
Hydroelectric applications, 25871–25874
Meetings:
Open access transmission service and standard electricity market design; remedying undue discrimination; technical conference, 25874
Preliminary permits surrender:
Green River 3 Associates, 25874
Green River 5 Associates, 25875
Quantum Energy Solutions, 25875
Applications, hearings, determinations, etc.:
Alliance Pipeline L.P., 25868

Federal Maritime Commission
NOTICES
Agreements filed, etc., 25889
Ocean transportation intermediary licenses:
Air 7 Seas Transport Logistics, Inc., et al., 25889
Global Ocean Agency Lines, L.L.C., et al., 25889–25890
International Shipping Co. et al., 25890

Fish and Wildlife Service
RULES
Endangered and threatened species:
Critical habitat designations—
Plant species from Maui and Kahoolawe, HI, 25933–26165
NOTICES
Endangered and threatened species permit applications, 25900
Marine mammal permit applications, 25900–25901

Food and Drug Administration
NOTICES
Agency information collection activities; proposals, submissions, and approvals, 25894–25897
Reports and guidance documents; availability, etc.:
Photosafety testing; photoirritation and ultraviolet-associated skin carcinogenesis; correction, 25897
West Nile Virus infection, known or suspected; donor suitability and blood and blood product safety; recommendations for assessment, 25897–25898

Forest Service
NOTICES
Meetings:
Deschutes Provincial Advisory Committee, 25860
Resource Advisory Committees—
Shasta County, 25860

General Services Administration
NOTICES
Federal Acquisition Regulation (FAR):
Agency information collection activities; proposals, submissions, and approvals, 25866–25867

Health and Human Services Department
See Agency for Toxic Substances and Disease Registry
See Centers for Disease Control and Prevention
See Food and Drug Administration
RULES
Testimony by employees and production of documents in proceedings where U.S. is not party, 25838–25840

Homeland Security Department
See Coast Guard
See Federal Emergency Management Agency

Interior Department
See Fish and Wildlife Service
See Land Management Bureau
See Minerals Management Service

Internal Revenue Service
PROPOSED RULES
Income taxes:
Private activity bonds; definition, 25845–25850

International Trade Administration
NOTICES
Antidumping:
Brake rotors from—
China, 25861–25863

Justice Department
See Antitrust Division
See Federal Bureau of Investigation

Land Management Bureau
NOTICES
Closure of public lands:
Montana, 25901
Disclaimer of interest applications:
Iowa, 25901
Meetings:
Wild horse management; helicopters and motor vehicles use—
Montana and Wyoming, 25901–25902

Legal Services Corporation
NOTICES
Meetings; Sunshine Act, 25907

Minerals Management Service
NOTICES
Agency information collection activities; proposals, submissions, and approvals, 25902–25905

National Aeronautics and Space Administration
NOTICES
Federal Acquisition Regulation (FAR):
Agency information collection activities; proposals, submissions, and approvals, 25866–25867

Nuclear Regulatory Commission
NOTICES
Environmental statements; availability, etc.:
Carolina Power & Light Co., 25907–25908
Meetings:
Reactor Safeguards Advisory Committee, 25908
West Valley Citizen Task Force, 25908–25909
Reports and guidance documents; availability, etc.:
Generic letters—
Steam generator tube inspections; requirements, 25909–25912

Office of United States Trade Representative
See Trade Representative, Office of United States

Presidential Documents
PROCLAMATIONS
Special observances:
National Defense Transportation Day and National Transportation Week (Proc. 7676), 26197–26198
National Safe Boating Week (Proc. 7677), 26199–26200
Peace Officers Memorial Day and Police Week (Proc. 7675), 26193–26196
ADMINISTRATIVE ORDERS
Serbia and Montenegro; determination on eligibility to receive defense articles and services (Presidential Determination No. 2003-22 of May 6, 2003), 25809

Science and Technology Policy Office
NOTICES
High End Computing Task Force; information request, 25888

Securities and Exchange Commission
NOTICES
Agency information collection activities; proposals, submissions, and approvals, 25912–25913
Self-regulatory organizations; proposed rule changes:
Chicago Stock Exchange, Inc., 25916–25917
Municipal Securities Rulemaking Board, 25917–25923
New York Stock Exchange, Inc., 25923–25924
Philadelphia Stock Exchange, Inc., 25924–25927
Applications, hearings, determinations, etc.:
Public utility holding company filings, 25913–25916

State Department
NOTICES
Meetings:
Overseas Schools Advisory Council, 25927

Surface Transportation Board
NOTICES
Railroad operation, acquisition, construction, etc.:
Huron & Eastern Railway Co., Inc., 25929–25930

Textile Agreements Implementation Committee
See Committee for the Implementation of Textile Agreements

Toxic Substances and Disease Registry Agency
See Agency for Toxic Substances and Disease Registry

Trade Representative, Office of United States
NOTICES
World Trade Organization:
Dispute settlement panel establishment requests—
Brazil; processed orange and grapefruit products; Florida-imposed excise tax equalizing, 25928–25929
Canada; softwood lumber; U.S. International Trade Commission final determination of threat of material injury, 25927–25928

Transportation Department
See Federal Aviation Administration
See Surface Transportation Board
PROPOSED RULES
Computer reservation systems, carrier-owned; public hearing, 25844–25845
Practice and procedure:
Rate procedures—
Railroad divisions of revenue; removal of regulations; correction, 25859

Treasury Department
See Alcohol and Tobacco Tax and Trade Bureau
See Internal Revenue Service
See United States Mint
NOTICES
Agency information collection activities; proposals, submissions, and approvals, 25930–25931

United States Mint
NOTICES
Meetings:
Citizens Coinage Advisory Committee, 25931

Veterans Affairs Department
RULES
Disabilities rating schedule:
Tinnitus, 25822–25823

Separate Parts In This Issue

Part II
Interior Department, Fish and Wildlife Service, 25933–26165

Part III
Commerce Department, Economic Development Administration, 26167–26169

Part IV
Education Department, 26171–26192

Part V
Executive Office of the President, Presidential Documents, 26193–26200

Reader Aids
Consult the Reader Aids section at the end of this issue for phone numbers, online resources, finding aids, reminders, and notice of recently enacted public laws.

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CFR PARTS AFFECTED IN THIS ISSUE

A cumulative list of the parts affected this month can be found in the Reader Aids section at the end of this issue.

3 CFR
Proclamations:
7675 26195
7676 26197
7677 26199
Administrative Orders:
Presidential Determinations:
No. 2003-22 of May 6, 2003 25809

14 CFR
39 25811
Proposed Rules:
255 25844
399 25844

18 CFR
375 25814
376 25814

26 CFR
Proposed Rules:
1 25845

27 CFR
Proposed Rules:
9 25851

32 CFR
505 25816

33 CFR
100 (2 documents) 25817, 25818
117 25818
165 25818
Proposed Rules:
62 25855
66 25855
67 25855
72 25855

34 CFR
674 25821
682 25821
685 25821

38 CFR
4 25822

40 CFR
89 25823
180 (2 documents) 25824, 25831

45 CFR
2 25838

47 CFR
Ch. I 25840
1 25841
52 25843

49 CFR
Proposed Rules:
1137 25859

50 CFR
17 25934

Federal Register
Vol. 68, No. 93
Wednesday, May 14, 2003

Presidential Documents

Title 3—

The President

Presidential Determination No. 2003–22 of May 6, 2003

Presidential Determination on Eligibility of Serbia and Montenegro to Receive Defense Articles and Services Under the Foreign Assistance Act of 1961, as Amended, and the Arms Export Control Act

Memorandum for the Secretary of State

Pursuant to the authority vested in me by the Constitution and laws of the United States, including by section 503(a) of the Foreign Assistance Act of 1961, as amended, and section 3(a)(1) of the Arms Export Control Act, I hereby find that the furnishing of defense articles and services to Serbia and Montenegro will strengthen the security of the United States and promote world peace.

You are hereby authorized and directed to report this finding to the Congress and to publish it in the **Federal Register**.

THE WHITE HOUSE,
Washington, May 6, 2003.

[FR Doc. 03–12160
Filed 5–13–03; 8:45 am]
Billing code 4710–10–P

Rules and Regulations

Federal Register
Vol. 68, No. 93
Wednesday, May 14, 2003

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

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DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 93–CE–37–AD; Amendment 39–13147; AD 94–20–04 R2]

RIN 2120–AA64

Airworthiness Directives; Raytheon Aircraft Company Beech Models C35, D35, E35, F35, G35, H35, J35, K35, M35, N35, P35, S35, V35, V35A, and V35B Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment revises Airworthiness Directive (AD) 94–20–04 R1, which currently requires ruddervator inspections and modifications on certain Raytheon Aircraft Company (Raytheon) Beech Models C35, D35, E35, F35, G35, H35, J35, K35, M35, N35, P35, S35, V35, V35A, and V35B airplanes. This AD maintains the actions of AD 94–20–04 R1, but makes the repetitive visual inspection of the empennage, aft fuselage, and ruddervator control system with any subsequent repair and the setting of the elevator controls, rudder and tab system controls, cable tensions, and rigging a one time action; and adds repetitive inspections of the fuselage bulkheads that were required by AD 94–20–04. This AD is the result of the need to add a repetitive inspection of the fuselage bulkheads and change other inspections from a repetitive to a one-time action. The actions specified by this AD are intended to prevent structural failure of the V-tail, which could result in loss of control of the airplane.

DATES: This AD becomes effective on June 27, 2003.

The Director of the Federal Register previously approved the incorporation by reference of certain publications listed in the regulations as of November 28, 1994 (59 FR 49785, September 30, 1994).

ADDRESSES: You may get the service information referenced in this AD from Raytheon Aircraft Company, PO Box 85, Wichita, Kansas 67201–0085; telephone: (800) 625–7043 or (316) 676–4556. You may view this information at the Federal Aviation Administration (FAA), Central Region, Office of the Regional Counsel, Attention: Rules Docket No. 93–CE–37–AD, 901 Locust, Room 506, Kansas City, Missouri 64106; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Mr. T.N. Baktha, Aerospace Engineer, FAA, Wichita Aircraft Certification Office, 1801 Airport Road, Mid-Continent Airport, Wichita, Kansas 67209; telephone: (316) 946–4155; facsimile: (316) 946–4107.

SUPPLEMENTARY INFORMATION:

Discussion

Has FAA taken any related action on the Raytheon airplane ruddervator system to this point? On October 15, 2002, FAA issued AD 94–20–04 R1, Amendment 39–12919 (67 FR 64794, October 22, 2002), to require ruddervator inspections and modifications on certain Raytheon Aircraft Company (Raytheon) Beech Models C35, D35, E35, F35, G35, H35, J35, K35, M35, N35, P35, S35, V35, V35A, and V35B airplanes.

The intent of this AD was to maintain the inspection and modification requirements of AD 94–20–04, Amendment 39–9032 (59 FR 49785, September 30, 1994), but condense and clarify the information presented in AD 94–20–04.

What has happened since AD 94–20–04 R1 to initiate this action? Comments from the public since issuance of AD 94–20–04 R1 indicate a need for a revision to that AD. Specifically, the visual inspection of the empennage, aft fuselage, and ruddervator control system with any subsequent repair and the setting of the elevator controls, rudder and tab system controls, cable tensions, and rigging should all be a one time action. Currently, they are to be accomplished repetitively at 100-hour time-in-service (TIS) intervals.

In addition, we inadvertently did not include the 100-hour TIS interval repetitive inspections of the fuselage bulkheads that were required by AD 94–20–04.

Has FAA taken any action to this point? We issued a proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an AD and incorporate the above-referenced comments. This proposal was published in the **Federal Register** as a notice of proposed rulemaking (NPRM) on January 27, 2003 (68 FR 3829). The NPRM proposed to:

—maintain the actions of AD 94–20–04 R1, but would make the repetitive visual inspection of the empennage, aft fuselage, and ruddervator control system with any subsequent repair and the setting of the elevator controls, rudder and tab system controls, cable tensions, and rigging a one time action; and

—add repetitive inspections of the fuselage bulkheads that were required by AD 94–20–04.

What is the potential impact if FAA took no action? This condition, if not corrected, could result in structural failure of the V-tail. Such failure could result in loss of control of the airplane.

Was the public invited to comment? The FAA encouraged interested persons to participate in the making of this amendment. The following presents the comments received on the proposal and FAA's response to each comment:

Comment Issue No. 1: Provide Credit for Previously Accomplished Actions

What is the commenter's concern? A commenter points out that FAA left off the phrase "unless already accomplished" for the initial actions of the proposed AD. The commenter believes that this phrase should be added based on FAA's inclusion of the phrase in other ADs.

What is FAA's response to the concern? We concur that this phrase should be added to the initial actions of the proposed AD. We are changing the final rule AD action accordingly.

Comment Issue No. 2: The Inspection of the Empennage, Aft Fuselage, and Ruddervator Control System Should Be Repetitive

What is the commenter's concern? Raytheon recommends that the

repetitive inspections of the empennage, aft fuselage, and ruddervator control system continue. This would include the setting of the elevator controls, rudder and tab system controls, cable tensions, and rigging. Raytheon states that "these items can change with wear and usage and need to be maintained at specification to prevent unsafe conditions from developing."

What is FAA's response to the concern? The FAA does not concur. The intent of AD 94–20–04 R1 was to maintain the actions of AD 94–20–04 on the affected airplanes. The inspections of the empennage, aft fuselage, and ruddervator control system were a one-time action in AD 90–20–04. We inadvertently made them repetitive in AD 90–20–04 R1. This action will incorporate FAA's intent. We will continue to monitor the service history of these airplanes. If necessary, we will initiate future rulemaking to address this subject.

We are not changing the final rule AD action based on this comment.

FAA's Determination

What is FAA's final determination on this issue? We carefully reviewed all available information related to the subject presented above and determined that air safety and the public interest require the adoption of the rule as proposed except for the changes discussed above and minor editorial corrections. We have determined that these changes and minor corrections:

—provide the intent that was proposed in the NPRM for correcting the unsafe condition; and

—do not add any additional burden upon the public than was already proposed in the NPRM.

Cost Impact

How many airplanes does this AD impact? We estimate that this AD affects 10,200 airplanes in the U.S. registry.

What is the cost impact of this AD on owners/operators of the affected airplanes? We estimate the following costs to accomplish the initial inspections:

Labor cost	Parts cost	Total cost per airplane	Total cost on U.S. operators
40 workhours at $60 per hour = $2,400	Not Applicable	$2,400 per airplane	$24,480,000.

These cost figures are exactly the same as what is currently required by AD 94–20–04 R1. Although we are adding the inspection of the fuselage bulkheads to this AD, we had already incorporated the costs of this inspection into the Cost Impact of AD 94–20–04 R1. Therefore, this AD presents no new costs upon the public.

The above figures are based only on the initial inspections and do not take into account the cost of repetitive inspections or adjustments, repairs, or replacements that may be necessary based on the results of the inspections. We have no way of determining the number of repetitive inspections each owner/operator of the affected airplanes will incur or what adjustments, repairs, or replacements may be necessary based on the results of the inspections.

Regulatory Impact

Does this AD impact various entities? The regulations adopted herein will not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this final rule does not have federalism implications under Executive Order 13132.

Does this AD involve a significant rule or regulatory action? For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the final evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

■ Accordingly, under the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

■ 1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

■ 2. FAA amends § 39.13 by removing Airworthiness Directive 94–20–04 R1, Amendment 39–12919 (67 FR 64794, October 22, 2002), and by adding a new AD to read as follows:

94–20–04 R2 Raytheon Aircraft Company (Beech Aircraft Corporation formerly held Type Certificate (TC) No. A–777 and TC No. 3A15): Amendment 39–13147; Docket No. 93–CE–37–AD; Revises AD 94–20–04 R1, Amendment 39–12919, which revised AD 94–20–04, Amendment 39–9032.

(a) *What airplanes are affected by this AD?* This AD affects the following airplanes that are certificated in any category:

(1) Beech Models C35, D35, E35, F35, G35, H35, J35, K35, M35, N35, and P35 airplanes, all serial numbers; and

(2) Beech Models S35, V35, V35A, and V35B airplanes, all serial numbers, that do not have the straight tail conversion modification incorporated in accordance with Supplemental Type Certificate (STC) SA2149CE.

Note 1: Beech Models 35, 35R, A35, B35 airplanes were included in the Applicability of AD 94–20–04. We have removed Beech Models 35, 35R, A35, and B35 airplanes from the Applicability section of this AD and incorporated the actions applicable to these airplanes into another AD action. Part of this other AD action is the incorporation of Raytheon Service Raytheon Service Bulletin 27–3358.

(b) *Who must comply with this AD?* Anyone who wishes to operate any of the airplanes identified in paragraphs (a)(1) and (a)(2) of this AD must comply with this AD.

(c) *What problem does this AD address?* The actions specified by this AD are intended to prevent structural failure of the V-tail, which could result in loss of control of the airplane.

(d) *What actions must I accomplish to address this problem?* To address this problem, you must accomplish the following:

Actions	Compliance	Procedures
(1) Verify that the ruddervator balance is within the manufacturer's specified limits as defined in the applicable shop or maintenance manual. If the ruddervator is outside the specified limits, balance the ruddervator control surfaces.	Accomplish the verification within the next 100 hours time-in-service (TIS) after November 28, 1994 (the effective the date of AD 94–20–04), unless already accomplished, and thereafter prior to further flight after the ruddervators are repaired or repainted (even if the stripes are added or paint is touched up). Accomplish the balancing prior to further flight after the ruddervator is found outside the specified limits.	Verify in accordance with the applicable shop or maintenance manual. Balance the ruddervator control surfaces in accordance with Section 3 of Beech Shop Manual 35–590096B19, or subsequent revisions.
(2) Visually inspect the empennage, aft fuselage, and ruddervator control system for damage. (i) Repair or replace any damaged parts; and (ii) Set the elevator controls, rudder and tab system controls, cable tensions, and rigging.	Inspect and set the controls, tension, and rigging within the next 100 hours TIS after November 28, 1994 (the effective date of AD 94–20–04), unless already accomplished. Accomplish any repairs and replacements prior to further flight after the inspection.	In accordance with the procedures and as specified in the instructions Beech Kit 35–4017–1 "Kit Information Empennage and Aft Fuelsage Inspection", as specified in Beech Service Bulletin No. 2188, dated May, 1987.
(3) Accomplish the following actions: (i) Visually inspect the fuselage bulkheads at Fuselage Station (FS) 256.9 and FS 272 for damage (cracks, distortion, loose rivets, etc.); (ii) Visually inspect the fuselage skin around the bulkhead for damage (wrinkles or cracks); and (iii) Repair or replace damaged parts.	Initially inspect within the next 100 hours TIS after June 27, 2003 (the effective date of this AD). Repetitively inspect thereafter at intervals not to exceed 100 hours TIS. Repair or replace prior to further flight after the inspection where damage is found.	In accordance with the procedures in the instructions to Beech Kit 35–4017–1 "Kit Information Empennage & Aft Fuselage Inspection", as specified in Beech SB 2188, dated May 1987.
(4) Remove all external stabilizer reinforcements installed during the incorporation of either Supplemental Type Certificate (STC) SA845GL, STC SA846GL, STC SA1650CE, STC SA2286NM, or STC SA2287NM, as applicable. (i) Seal or fill any residual holes accomplished with appropriate size rivets. (ii) The internal stub spar incorporated through STC SA1649CE and STC SA1650CE may be retained. (iii) The external angles incorporated through STC SA1649CE may also be retained by properly trimming the leading edges section to permit installation of the stabilizer reinforcement referenced in paragraph (d)(5)(i) of this AD. (iv) For the Beech Models S35, V35, V35A, and V35B airplanes, you may retain and use the tail-safe external angles that were installed in accordance with STC SA1649CE instead of the stabilizer reinforcement specified in paragraph (d)(5)(i) of this AD.	Within the next 100 hours TIS after November 28, 1994 (the effective date of AD 94–20–04), unless already accomplished.	In accordance with the applicable maintenance information.
(5) Accomplish the following: (i) Install stabilizer reinforcements; (ii) Set the elevator nose-down trim; and (iii) Replace the ruddervator tab control cables with larger diameter cables.	Within the next 100 hours TIS after November 28, 1994 (the effective date of AD 94–20–04), unless already accomplished.	In accordance with the instructions to RAC Kit Nos. 35–4016–3, 35–4016–5, 35–4016–7, or 35–4016–9, as applicable and as specified in Beech SB No. 2188, dated May, 1987.
(6) Verify the accuracy of the airplane basic weight and balance information and correct any discrepancies.	Accomplish the airplane basic weight and balance accuracy verification within the next 100 hours TIS after November 28, 1994 (the effective date of AD 94–20–04), unless already accomplished. Correct any discrepancies prior to further flight after the verification.	Use the procedures contained in the Appendix to this AD.

(e) *Can I comply with this AD in any other way?*

(1) You may use an alternative method of compliance or adjust the compliance time if:

(i) Your alternative method of compliance provides an equivalent level of safety; and

(ii) The Manager, Wichita Aircraft Certification Office (ACO), approves your alternative. Submit your request through an FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager Wichita ACO.

(2) Alternative methods of compliance approved in accordance with AD 94–20–04 R1 or AD 94–20–04 are approved as alternative methods of compliance with this AD.

Note 2: This AD applies to each airplane identified in paragraphs (a)(1) and (a)(2) of

this AD, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (e) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if you have not eliminated the unsafe condition, specific actions you propose to address it.

(f) *Where can I get information about any already-approved alternative methods of compliance?* Contact Mr. T.N. Baktha, Aerospace Engineer, FAA, Wichita Aircraft Certification Office, 1801 Airport Road, Mid-Continent Airport, Wichita, Kansas 67209; telephone: (316) 946–4155; facsimile: (316) 946–4107.

(g) *What if I need to fly the airplane to another location to comply with this AD?* The FAA can issue a special flight permit under sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate your airplane to a location where you can accomplish the requirements of this AD.

(h) *Are any service bulletins incorporated into this AD by reference?* Actions required by this AD must be done in accordance with Beech Kit Nos. 35–4016–3, 35–4016–5, 35–4016–7, or 35–4016–9, and the instructions to Beech Kit 35–4017–1 "Kit Information Empennage & Aft Fuselage Inspection", as applicable and specified in Beech Service Bulletin No. 2188, dated May 1987. The Director of the Federal Register previously approved this incorporation by reference under 5 U.S.C. 552(a) and 1 CFR part 51 as of November 28, 1994 (59 FR 49785, September 30, 1994). You may get copies from Raytheon Aircraft Company, PO Box 85, Wichita, Kansas 67201–0085. You may view copies at the FAA, Central Region, Office of the Regional Counsel, 901 Locust, Room 506, Kansas City, Missouri, or at the Office of the Federal Register, 800 North Capitol Street, NW, suite 700, Washington, DC.

(i) *Does this AD action affect any existing AD actions?* This amendment revises AD 94–20–04 R1, Amendment 39–12919.

Appendix to AD 94–20–04 R2

Weight and Balance Accuracy Method No. 1

1. Review existing weight and balance documentation to assure completeness and accuracy of the documentation from the most recent FAA-approved weighing or from factory delivery to date of compliance with this AD.

2. Compare the actual configuration of the airplane to the configuration described in the weight and balance documentation.

3. If equipment additions or deletions are not reflected in the documentation or if modifications affecting the location of the center of gravity (*e.g.*, paint or structural repairs) are not documented, determine the accuracy of the airplane weight and balance data in accordance with Method No. 2.

Weight and Balance Information Accuracy Method No. 2

1. Determine the basic empty weight and center of gravity (CG) of the empty airplane using the Weighing Instructions in the Weight and Balance section of the airplane flight manual/pilot's operating handbook (AFM/POH).

2. Record the results in the airplane records, and use these new values as the basis for computing the weight and CG information as specified in the Weight and Balances section of the AFM/POH.

(j) *When does this amendment become effective?* This amendment becomes effective on June 27, 2003.

Issued in Kansas City, Missouri, on May 8, 2003.

David R. Showers,

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 03–11977 Filed 5–13–03; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Parts 375 and 376

[Docket No. RM03–7–000; Order No. 632]

Delegations of Authority

Issued May 7, 2003.

AGENCY: Federal Energy Regulatory Commission, DOE.

ACTION: Final rule.

SUMMARY: The Federal Energy Regulatory Commission (Commission) is amending its regulations on delegations of authority to reflect changes in the Commission's internal structure. Specifically, the Commission is duplicating existing authorities delegated to the Offices of Markets, Tariffs and Rates and General Counsel for the newly formed Office of Market Oversight and Investigations (OMOI). Granting such delegations of authority to OMOI will better enable it to perform its market monitoring responsibilities.

EFFECTIVE DATE: This final rule is effective May 7, 2003.

FOR FURTHER INFORMATION CONTACT: Arlene T. McCarthy, Office of the General Counsel, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, (202) 502–8567.

SUPPLEMENTARY INFORMATION:

Before Commissioners: Pat Wood, III, Chairman; William L. Massey, and Nora Mead Brownell.

1. The Federal Energy Regulatory Commission (Commission) is amending 18 CFR Parts 375 and 376 to duplicate certain existing delegations to two Commission office directors for a third office director and to make related changes in connection with changes in the Commission's internal structure. These changes came about as a result of the formation of the Office of Market Oversight and Investigations (OMOI). By this order, the Commission is not revising or expanding existing delegations of authority.[1]

2. In order to better understand natural gas, oil and power markets and to swiftly remedy market rule violations and abuse of market power, the Commission created OMOI, which became a formal, functioning office within the Commission in August 2002. OMOI serves as an early warning system to alert the Commission when market problems develop, and allows the Commission to analyze and address any problems more quickly. OMOI has begun an aggressive program of outreach to a wide variety of entities including other federal, state and provincial regulatory agencies, state consumer advocates, industry participants, academic institutions and think tanks, financial institutions (such as rating agencies), and Market Monitoring Units at Regional Transmission Organizations and Independent System Operators.

3. The formation of the new office implicates certain functions currently being performed under delegated authority by the Office of Market, Tariffs and Rates (OMTR) or by the Office of General Counsel (OGC). For example, currently the Director of OMTR has

[1] Existing delegations of authority were promulgated in a series of rulemakings initiated in 1978. *See* Delegations to Various Office Directors of Certain Commission Authority, 43 FR 36433 (Aug. 17, 1978), FERC Stats. & Regs. Preambles 1977–1981 ¶ 30,016 (1978); Chief Accountant, *et al.*, Delegation of Authority; Final Regulation, Order No. 38, 44 FR 45449 (Aug. 8, 1979), FERC Stats. & Regs. Preambles 1977–1981 ¶ 30,068 (1979), reh'g denied , 8 FERC ¶ 61,299 (1979); Delegation of the Commission's Authority to the Directors of Office of Electric Power Regulation, Office of the Chief Accountant, and Office of Pipeline and Producer Regulation, Order No. 147, 46 FR 29700 (June 3, 1981), FERC Stats. & Regs. Preambles 1977–1981 ¶ 30,259 (1981); Delegation of Authority, Order No. 224, 47 FR 17806 (April 26, 1982), FERC Stats. & Regs. Preambles 1982–1985 ¶ 30,356 (1982); Regulations Delegating Authority, Order No. 492, 53 FR 16058 (May 5, 1988), FERC Stats. & Regs. Preambles 1986–1990 ¶ 30,814 (1988); Streamlining Commission Procedures for Review of Staff Action, Order No. 530, 55 FR 50677 (May 5, 1988), FERC Stats. & Regs. Preambles 1986–1990 ¶ 30,906 (1990), *reh'g denied*, Order No. 530–A, 56 FR 4719 (Feb. 6, 1991), FERC Stats. & Regs.] Preambles 1991–1996 ¶ 30,914 (1991); Delegation of Authority to the Secretary, the Director of the Office of Electric Power Regulation, and the General Counsel, Order No. 585, 60 FR 62326 (Dec. 6, 1995), FERC Stats. & Regs. Preambles January 1991–June 1996 ¶ 31,030 (1995); Delegation of Authority, Order No. 613, 64 FR 73403 (Dec. 30, 1991), FERC Stats. & Regs. Preambles July 1996–December 2000 ¶ 31,087 (1999).

delegated authority to sign non-financial audit reports of jurisdictional companies, a function which the Director of OMOI may also need so that OMOI employees are able to perform their market monitoring duties. Likewise, the General Counsel is currently authorized to terminate any informal non-public investigation, a function which the director of OMOI needs so that his enforcement staff may handle their workload efficiently. This rule duplicates those authorities by adding Section 314 to Part 375 of Title 18 of the Code of Federal Regulations, and, as noted, creates no new delegations. In addition, this rule corrects the structure of § 375.303(a), corrects a reference to paragraph numbers in § 375.307(f), changes the nomenclature of the Office of Finance and Accounting in § 375.312, and revises § 376.204(b)(2) to include the Director of OMOI on the list of Commission staff delegations of authority during an emergency.

4. Specifically, the existing delegations are being revised as follows:

Part 375

Office of the Chief Accountant (existing § 375.303). The paragraph structure of this section is corrected.

Office of Markets, Tariffs and Rates (existing § 375.307). Delegations in paragraphs (a), (c), (d), (g)(4), (h)(1), (i)(8) and (n)(3) are duplicated in paragraphs (i), (j), (k), (g), (e), (f) and (h) of new § 375.314, respectively. A reference to paragraph numbers "(b)(1) or (b)(2)" is corrected to read "(f)(1) or (f)(2)."

Office of the General Counsel (existing § 375.309). Delegations in paragraphs (a), (b), (c) and (d) are duplicated in paragraphs (b), (c), (d), and (b) of new § 375.314, respectively.

Office of the Finance, Accounting and Operations (existing § 375.312). The nomenclature for this office is changed to the Office of the Executive Director.

Part 376

Part 376 governs the Commission's organization and its operations during emergency conditions. This rule making amends the list of officials authorized to conduct operations during emergency conditions to include the position of Director, OMOI, and replaces references to the former position of Director, OFAO, with the Executive Director in § 376.204(b)(2).

5. The Commission is issuing this order as a final rule without a period for public comment or delay in the effective date. Under 5 U.S.C. 553(b), notice and comment procedures are unnecessary where a rulemaking concerns only agency procedure and practice, or where the agency finds that notice and comment is unnecessary. This rule concerns only matters of internal agency procedure and will not affect regulated entities or the general public. Therefore, the Commission finds notice and comment procedures to be unnecessary.

Information Collection Statement

6. Office of Management and Budget (OMB) regulations require OMB to approve certain information collection requirements imposed by agency rule. 5 CFR 1320.12. This rule making contains no information collections and OMB review is therefore not required.

Environmental Analysis

7. The Commission is required to prepare an Environmental Assessment or an Environmental Impact Statement for any action that may have a significant adverse effect on the human environment.[2] The Commission has categorically excluded certain actions from this requirement as not having a significant effect on the human environment. Among these are rules that are clarifying, corrective, or procedural, or that do not substantively change the effect of the regulations being amended. 18 CFR 380.4(a)(2)(ii). This rule is procedural in nature and therefore falls under this exception; consequently, no environmental consideration is necessary.

Regulatory Flexibility Act Certification

8. The Regulatory Flexibility Act of 1980 (RFA) generally requires a description and analysis of final rules that will have significant economic impact on a substantial number of small entities. 5 U.S.C. 601–612. The Commission is not required to make such analysis if a rule would not have such an effect. Because this rule concerns only matters of internal agency procedure, the Commission certifies that it will have no impact upon any entity other than the Commission.

Document Availability

9. In addition to publishing the full text of this document in the **Federal Register**, the Commission provides all interested persons an opportunity to view or print the contents of this document via the Internet through FERC's Home Page (*http://www.ferc.gov*) and in FERC's Public Reference Room during normal business hours (8:30 a.m. to 5 p.m. Eastern time) at 888 First Street, NE., Room 2A, Washington, DC 20426.

10. From FERC's Home Page on the Internet, this information is available in the Federal Energy Regulatory Records Information System (FERRIS). The full text of this document is available on FERRIS in PDF and WordPerfect format for viewing, printing, or downloading. To access this document in FERRIS, type the docket number excluding the last three digits of this document in the docket number field.

11. User assistance is available for FERRIS and the FERC's Web site during normal business hours from FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or for TTY, contact (202) 502–8659.

Effective Date and Congressional Notification

12. These regulations are effective on issuance. The Commission has determined that a delayed effective date for this final rule is unnecessary pursuant to 5 U.S.C. 553(d). Because the rule concerns only matters of internal agency procedure, the immediate implementation of the rule imposes no consequences to regulated entities or the general public, and any further delay could compromise the effective operation of the new office. Therefore, the Commission finds good cause for waiving the 30-day delay before the effective date of this final rule.

13. The Small Business Regulatory Enforcement Fairness Act of 1996 requires agencies to report to Congress on the promulgation of certain final rules prior to their effective dates. 5 U.S.C. 801. Rules of agency procedure and practice are excluded from this notification requirement. 5 U.S.C. 804(3)(C). Therefore, this final rule will not be submitted to Congress.

List of Subjects

18 CFR Part 375

Authority delegations (Government agencies), Seals and insignia, Sunshine Act.

18 CFR Part 376

Civil defense, Organization and functions (Government agencies).

By the Commission.

Magalie R. Salas,

Secretary.

In consideration of the foregoing, the Commission amends Parts 375 and 376, Chapter I, Title 18, *Code of Federal Regulations*, as follows:

[2] Regulations Implementing the National Environmental Policy Act, Order No. 486, 52 FR 47897 (Dec. 17, 1987), FERC Stats. & Regs. Preambles 1986–1990 ¶ 30,783 (1987).

PART 375—THE COMMISSION

■ 1. The authority citation for part 375 continues to read as follows:

Authority: 5 U.S.C. 551–557; 15 U.S.C. 717–717w, 3301–3432; 16 U.S.C. 791–825r, 2601–2645; 42 U.S.C. 7101–7352.

■ 2. In § 375.303, introductory text is added and paragraph (a) is revised to read as follows:

§ 375.303 Delegations to the Chief Accountant.

The Commission authorizes the Chief Accountant or the Chief Accountant's designee to:

(a) Issue interpretations of the Uniform System of Accounts for public utilities, licensees, natural gas companies and oil pipeline companies.

* * * * *

■ 3. In § 375.307, paragraph (f)(3) is revised to read as follows:

§ 375.307 Delegations to the Director of the Office of Markets, Tariffs and Rates.

* * * * *

(f) * * *

(3) Advise the filing party of any actions taken under paragraph (f)(1) or (f)(2) of this section and designate rate schedules, rate schedule changes, and notices of changes in rates, and the effective date hereof.

* * * * *

■ 4. In § 375.312, the title and the introductory text are revised to read as follows:

§ 375.312 Delegations to the Office of the Executive Director.

The Commission authorizes the Executive Director or the Executive Director's designee to:

* * * * *

■ 5. Section 375.314 is added to read as follows:

§ 375.314 Delegations to the Director of the Office of Market Oversight and Investigation.

The Commission authorizes the Director or the Director's designee to:

(a) Request information for purposes of a preliminary investigation under Part 1b of this chapter, or for purposes of conducting market surveillance from an entity whose activities may affect energy markets, and from state or federal agencies that monitor or regulate such entities, whether or not subject to the Commission's jurisdiction.

(b) Designate, and terminate the authority of, officers empowered to administer oaths and affirmations, subpoena witnesses, compel their attendance and testimony, take evidence, compel the filing of special reports and responses to interrogatories, gather information, and require the production of any books, papers, correspondence, memoranda, contracts, agreements, or other records, in the course of formal investigations conducted by the Office of Market Oversight and Investigation, to the extent the Commission's order of investigation expressly provides for the exercise of such investigative powers.

(c) Grant or deny requests of persons pursuant to § 1b.12 of this chapter to procure copies of the transcripts of their testimony taken during non-public investigations conducted by the Office of Market Oversight and Investigation.

(d) Terminate any informal non-public investigation conducted by the Office of Market Oversight and Investigation.

(e) Issue reports for public information purposes. Any report issued without Commission approval must

(1) Be of a non-controversial nature, and

(2) Contain the statement, "This report does not necessarily reflect the view of the Commission," in bold-face type on the cover.

(f) Deny or grant, in whole or in part, requests for waiver of the requirements for particular forms, including Electric Quarterly Reports required under § 35.10b of this chapter.

(g) Take appropriate action on applications for extensions of time to file required reports, data and information, and to perform other acts required at or within a specific time by any rule, regulation, license, permit, certificate, or by order of the Commission.

(h) Undertake the following action with respect to data and reports submitted pursuant to Commission opinions or orders:

(1) Accept for filing data and reports that are in compliance and, when appropriate, notify the filing party of such acceptance;

(2) Reject for filing any data and reports which are not in compliance or not required and, when appropriate, notify the filing party of such rejection, or

(3) Issue deficiency letters regarding such data or reports.

(i) Sign all correspondence on behalf of the Commission with state regulatory commissions and agencies in connection with non-financial auditing matters.

(j) Sign non-financial audit reports of jurisdictional companies,

(1) If the company agrees with the audit report, or

(2) If the company does not agree with the audit report, provided that any notification of the opportunity for a hearing required under section 301(a) of the Federal Power Act or section 8(a) of the Natural Gas Act accompanies the audit report.

(k) Act upon requests by state and federal agencies to review staff audit working papers in connection with non-financial audits if the company agrees to the release of the audit working papers, and provided that:

(1) The papers are examined at the Commission; and

(2) The requester

(i) Only makes general notes concerning the contents of the audit working papers,

(ii) Does not make copies of the audit working papers, and

(iii) Does not remove the audit working papers from the area designated by the Director.

PART 376—ORGANIZATION, MISSION, AND FUNCTIONS; OPERATIONS DURING EMERGENCY CONDITIONS

■ 6. The authority citation for part 376 continues to read as follows:

Authority: 5 U.S.C. 553; 42 U.S.C. 7101–7352; E.O. 12009, 3 CFR 1978 Comp., p. 142.

■ 7. In § 376.204, paragraphs (b)(2)(i), and (b)(2)(v) and (b)(2)(x) are revised to read as follows:

§ 376.204 Delegation of Commission's authority during emergency conditions.

* * * * *

(b) * * *

(2) * * *

(i) the Executive Director;

* * * * *

(v) Director of the Office of Market Oversight and Investigations;

* * * * *

(x) Assistant Directors and Division heads, Office of Markets, Tariffs and Rates; Assistant Directors and Division heads, Office of Energy Projects; Assistant General Counsels; and Assistant Directors and Division heads, Office of Market Oversight and Investigations; in order of seniority.

* * * * *

[FR Doc. 03–11952 Filed 5–13–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF DEFENSE

Department of the Army

32 CFR Part 505

Privacy Act; Implementation

AGENCY: Department of the Army, DoD.

ACTION: Final rule.

SUMMARY: The Department of the Army is amending an existing exemption rule for the system of records A0025–55 TAPC, entitled 'Freedom of Information Act Program Files'. The amendments being made to the rule are administrative, *i.e.*, amending the system identifier, the system name, and revising the reasons for claiming the exemptions. No additional exemptions are being claimed.

EFFECTIVE DATE: This rule becomes effective May 14, 2003.

FOR FURTHER INFORMATION CONTACT: Ms. Janice Thornton at (703) 806–7137/DSN 656–7137.

SUPPLEMENTARY INFORMATION:

Executive Order 12866, "Regulatory Planning and Review"

It has been determined that Privacy Act rules for the Department of Defense are not significant rules. The rules do not (1) Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy; a sector of the economy; productivity; competition; jobs; the environment; public health or safety; or State, local, or tribal governments or communities; (2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another Agency; (3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs, or the rights and obligations of recipients thereof; or (4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in this Executive order.

Public Law 96–354, "Regulatory Flexibility Act" (5 U.S.C. Chapter 6)

It has been determined that Privacy Act rules for the Department of Defense do not have significant economic impact on a substantial number of small entities because they are concerned only with the administration of Privacy Act systems of records within the Department of Defense.

Public Law 96–511, "Paperwork Reduction Act" (44 U.S.C. Chapter 35)

It has been determined that Privacy Act rules for the Department of Defense impose no information requirements beyond the Department of Defense and that the information collected within the Department of Defense is necessary and consistent with 5 U.S.C. 552a, known as the Privacy Act of 1974.

Section 202, Public Law 104–4, "Unfunded Mandates Reform Act"

It has been determined that the Privacy Act rulemaking for the Department of Defense does not involve a Federal mandate that may result in the expenditure by State, local and tribal governments, in the aggregate, or by the private sector, of $100 million or more and that such rulemaking will not significantly or uniquely affect small governments.

Executive Order 13132, "Federalism"

It has been determined that the Privacy Act rules for the Department of Defense do not have federalism implications. The rules do not have substantial direct effects on the States, on the relationship between the National Government and the States, or on the distribution of power and responsibilities among the various levels of government.

List of Subjects in 32 CFR Part 505

Privacy.

■ Accordingly 32 CFR part 505 is amended to read as follows:

PART 505—THE ARMY PRIVACY PROGRAM

■ 1. The authority citation for 32 CFR part 505 continues to read as follows:

Authority: Pub. L. 93–579, 88 Stat. 1896 (5 U.S.C. 552a).

■ 2. Section 505.5, paragraph (e)(3) is revised to read as follows:

§ 505.5 Exemptions.

* * * * *

(e) *Exempt Army Records.* * * *

(3) *A0025–55 TAPC.*

(i) *System name:* Freedom of Information Act Program Files.

(ii) *Exemption:* During the processing of Freedom of Information Act (FOIA) requests exempt materials from other systems of records may in turn become part of the case record in this system. To the extent that copies of exempt records from those "other" systems of records are entered into this system, the Department of the Army claims the same exemptions for the records from those "other" systems that are entered into this system, as claimed for the original primary system of which they are a part.

(iii) *Authority:* 5 U.S.C. 552a(j)(2), (k)(1), (k)(2), (k)(3), (k)(4), (k)(5), (k)(6), and (k)(7).

(iv) *Reasons:* Records are only exempt from pertinent provisions of 5 U.S.C. 552a to the extent such provisions have been identified and an exemption claimed for the original record and the purposes underlying the exemption for the original record still pertain to the record which is now contained in this system of records. In general, the exemptions were claimed in order to protect properly classified information relating to national defense and foreign policy, to avoid interference during the conduct of criminal, civil, or administrative actions or investigations, to ensure protective services provided the President and others are not compromised, to protect the identity of confidential sources incident to Federal employment, military service, contract, and security clearance determinations, to preserve the confidentiality and integrity of Federal testing materials, and to safeguard evaluation materials used for military promotions when furnished by a confidential source. The exemption rule for the original records will identify the specific reasons why the records are exempt from specific provisions of 5 U.S.C. 552a.

* * * * *

Dated: April 30, 2003.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 03–12004 Filed 5–13–03; 8:45 am]

BILLING CODE 5001–08–M

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 100

[CGD01–03–030]

Special Local Regulation: Harvard-Yale Regatta, Thames River, New London, CT

AGENCY: Coast Guard, DHS.

ACTION: Notice of implementation of regulations.

SUMMARY: This notice implements the permanent regulations for the annual Harvard-Yale Regatta, a rowing competition held on the Thames River in New London, CT. The regulation is necessary to control vessel traffic within the immediate vicinity of the event due to the confined nature of the waterway and anticipated congestion at the time of the event, thus providing for the safety of life and property on the affected navigable waters.

DATES: The regulations in 33 CFR 100.101 are effective on June 7, 2003, from 9:30 a.m. to 5 p.m. If the regatta is canceled due to weather, this section will be in effect on the following day, Sunday, June 8, 2003, during the same hours.

FOR FURTHER INFORMATION CONTACT: Petty Officer Austin Nagle, Office of Search and Rescue, First Coast Guard District, (617) 223–8460.

SUPPLEMENTARY INFORMATION: This notice implements the permanent special local regulation governing the 2003 Harvard-Yale Regatta. A portion of the Thames River in New London, Connecticut will be closed during the effective period to all vessel traffic except participants, official regatta vessels, and patrol craft. The regulated area is that area of the river between the Penn Central drawbridge and Bartlett's Cove. Additional public notification will be made via the First Coast Guard District Local Notice to Mariners and marine safety broadcasts. The full text of this regulation is found in 33 CFR 100.101.

Dated: April 25, 2003.

Vivien S. Crea,

Rear Admiral, U.S. Coast Guard, Commander, First Coast Guard District.

[FR Doc. 03–11989 Filed 5–13–03; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 100

[CGD05–03–038]

RIN 1625–AA08

Special Local Regulations for Marine Events; Severn River, College Creek, and Weems Creek, Annapolis, MD

AGENCY: Coast Guard, DHS.

ACTION: Notice of implementation.

SUMMARY: The Coast Guard is implementing the special local regulations at 33 CFR 100.518 for the U.S. Naval Academy Blue Angels Airshow to be held May 20 and 21, 2003, over the waters of the Severn River at Annapolis, Maryland. These special local regulations are necessary to control vessel traffic due to the confined nature of the waterway and expected vessel congestion during the events. The effect will be to restrict general navigation in the regulated area for the safety of spectators and vessels transiting the event area.

EFFECTIVE DATES: 33 CFR 100.518 is effective from 10:30 a.m. to 4 p.m. on May 20 and 21, 2003.

FOR FURTHER INFORMATION CONTACT: Ron Houck, Marine Information Specialist, Commander, Coast Guard Activities Baltimore, 2401 Hawkins Point Road, Baltimore, MD 21226–1971, (410) 576–2674.

SUPPLEMENTARY INFORMATION: The U.S. Naval Academy will sponsor the Blue Angels Airshow over the waters of the Severn River at Annapolis, Maryland. The events will consist of low flying, high performance aircraft performing precision maneuvers and aerial stunts. A fleet of spectator vessels is expected to gather near the event site to view the event. In order to ensure the safety of participants, spectators and transiting vessels, 33 CFR 100.518 will be in effect for the duration of the event. Under provisions of 33 CFR 100.518, vessels may not enter the regulated area without permission from the Coast Guard Patrol Commander. Spectator vessels may anchor outside the regulated area but may not block a navigable channel. Because these restrictions will only be in effect for a limited period, they should not result in a significant disruption of maritime traffic.

Dated: April 22, 2003.

Sally Brice-O'Hara,

Rear Admiral, U.S. Coast Guard, Commander, Fifth Coast Guard District.

[FR Doc. 03–11986 Filed 5–13–03; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 117

[CGD01–03–040]

Drawbridge Operation Regulations: Cape Cod Canal, MA

AGENCY: Coast Guard, DHS.

ACTION: Notice of temporary deviation from regulations.

SUMMARY: The Commander, First Coast Guard District, has issued a temporary deviation from the drawbridge operation regulations that govern the Conrail Railroad Bridge across Cape Cod Canal, mile 0.7, at Bourne, Massachusetts. This temporary deviation will allow the bridge to remain in the closed position from 6 a.m. through 1 p.m. on May 22, 2003 and May 27, 2003. This temporary deviation is necessary to facilitate scheduled structural repairs at the bridge.

DATES: This deviation is effective from May 22, 2003 through May 27, 2003.

ADDRESSES: Materials referred to in this document are available for inspection or copying at the First Coast Guard District, Bridge Branch Office, 408 Atlantic Avenue, Boston, Massachusetts, 02110, between 7 a.m. and 3 p.m., Monday through Friday, except Federal holidays. The telephone number is (617) 223–8364. The First Coast Guard District Bridge Branch maintains the public docket for this temporary deviation.

FOR FURTHER INFORMATION CONTACT: Mr. John McDonald, Project Officer, First Coast Guard District Bridge Branch, (617) 223–8364.

SUPPLEMENTARY INFORMATION: The vertical clearance under the Conrail Railroad Bridge in the open position is 135 feet at mean high water and 139 feet at mean low water. The draw is normally in the fully open position except for the passage of rail traffic. The existing regulations are listed at 33 CFR 117.589.

The owner of the bridge, the U. S. Army Corps of Engineers (USACE), requested a temporary deviation from the Drawbridge Operation Regulations to facilitate scheduled maintenance, the replacement of the rail tracks, at the bridge. This work must be performed with the bridge in the closed position.

The mariners who normally use this waterway were advised about the necessary repairs at the bridge and the temporary closures that will be required in order to facilitate the repairs. No objections were received.

Under this temporary deviation the Conrail Railroad Bridge, mile 0.7, may remain in the closed position from 6 a.m. through 1 p.m. on May 22, 2003 and May 27, 2003.

Mariners may contact the U.S. Army Corps of Engineers Marine Traffic Controller 24-hour telephone line at (508) 759–4431 for the operational status of the bridge.

This deviation from the operating regulations is authorized under 33 CFR 117.35, and will be performed with all due speed in order to return the bridge to normal operation as soon as possible.

Dated: May 7, 2003.

Vivien S. Crea,

Rear Admiral, U.S. Coast Guard, Commander, First Coast Guard District.

[FR Doc. 03–11990 Filed 5–13–03; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[CGD17–03–001]

RIN 1625–AA11

Vessel Movement Reporting System; Prince William Sound, AK

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary regulation requiring all commercial and fishing vessels, regardless of length, to participate in the Vessel Movement Reporting System while operating within the Prince William Sound. This action is being taken to safeguard vessels, ports and waterfront facilities from sabotage or terrorist acts and incidents by providing the Coast Guard with the enhanced ability to track vessel traffic in the Prince William Sound. This action is necessary to ensure public safety and prevent sabotage, terrorist acts or incidents, and to facilitate the efforts of emergency services and law enforcement officers responding to terrorist incidents or attacks.

DATES: This rule is effective from April 3, 2003, through May 18, 2003.

ADDRESSES: Documents indicated in this preamble as being available in the docket, are part of docket CGD17–03–001 and are available for inspection or copying at U.S. Coast Guard Marine Safety Office, 105 Clifton Street, Valdez, Alaska 99686 between 9 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: LT C.L. Huot, U.S. Coast Guard Marine Safety Office, 105 Clifton Street, Valdez, Alaska 99686, (907) 835–7262.

SUPPLEMENTARY INFORMATION:

Regulatory Information

Pursuant to 5 U.S.C. 553, we did not publish a notice of proposed rulemaking (NPRM) for this regulation. Under 5 U.S.C. 553 (b)(B), the Coast Guard finds that good cause exists for not publishing an NPRM. The Coast Guard operates under a three-tiered system of Maritime Security (MARSEC) conditions that are aligned with the color coded Homeland Security Advisory System Conditions (HSAS). The port of Valdez has been elevated to the second highest level of alert MARSEC II/HSAS ORANGE based on the conflict with Iraq and, as such, vessel control measures for the Coast Guard to establish heightened deterrence and detection of terrorist activities in the port are necessary.

Additionally, the Maritime Administration recently issued MARAD Advisory 03–01 (071900Z FEB 03) informing operators of maritime interests of increased threat possibilities to vessels and facilities and a higher risk of terrorist attack to the transportation community in the United States. Further, the heightened security posture of the country and U.S. maritime interests, described below, continues. The publication of an NPRM is contrary to the public interest insofar as urgent action is required to address the ongoing threat to U.S. maritime transportation interests.

For the same reasons, under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the **Federal Register**. The measures contemplated by the rule are intended to prevent waterborne acts of sabotage or terrorism, which terrorists have demonstrated a capability to carry out. Immediate action is needed to defend against and deter these terrorist acts. Any delay in the effective date of this rule is impracticable and contrary to the public interest.

Background and Purpose

Terrorist attacks on September 11, 2001, inflicted catastrophic human casualties and property damage. These attacks highlighted the terrorists' ability and desire to utilize multiple means in different geographic areas to increase their opportunities to successfully carry out their mission, thereby maximizing destruction using multiple terrorist acts.

Since the September 11, 2001, terrorist attacks on the World Trade Center in New York, the Pentagon in Arlington, Virginia and Flight 93, the Federal Bureau of Investigation (FBI) has issued several warnings concerning the potential for additional terrorist attacks within the United States. The threat of maritime attacks is real as evidenced by the October 2002 attack on a tank vessel off the coast of Yemen and the prior attack on the USS *Cole*. These attacks manifest a continuing threat to U.S. assets as described in the President's finding in Executive Order 13273 of August 21, 2002 (67 FR 56215, September 3, 2002), that the security of the U.S. is endangered by the September 11, 2001, attacks and that such disturbances continue to endanger the international relations of the United States. *See also Continuation of the National Emergency with Respect to Certain Terrorist Attacks*, (67 FR 58317, September 13, 2002); *Continuation of the National Emergency With Respect To Persons Who Commit, Threaten To Commit, Or Support Terrorism*, (67 FR 59447, September 20, 2002). The U.S. Maritime Administration (MARAD) in Advisory 02–07 advised U.S. shipping interests to maintain a heightened state of alert against possible terrorist attacks. MARAD more recently issued Advisory 03–01 informing operators of maritime interests of increased threat possibilities to vessels and facilities and a higher risk of terrorist attack to the transportation community in the United States. The ongoing hostilities in Afghanistan and conflict in Iraq have made it prudent for U.S. ports and waterways to be on a higher state of alert because the al Qaeda organization and other similar organizations have declared an ongoing intention to conduct armed attacks on U.S. interests worldwide.

The conflict in Iraq has caused the Attorney General in consultation with the Secretary of the Department for Homeland Security to elevate the HSAS threat condition to High/Orange and accordingly the Coast Guard has established MARSEC II in the port of Valdez. The Coast Guard will follow the guidance for the Department of Homeland Security and implement the following general measures: Coordinate necessary security efforts with Federal, State, and local law enforcement agencies or any National Guard or other appropriate armed forces organizations; take additional precautions at public events and possibly considering alternative venues or even cancellation; and restrict threatened facility access to essential personnel only. The measures contemplated by this rule are intended to prevent future terrorist attacks against critical maritime infrastructure including the Trans-Alaska Pipeline System's Valdez Marine Terminal, and the shipping lanes leading to and from it. This terminal supplies approximately half of the crude oil needs of the U.S. West Coast.

To address the aforementioned security concerns and to take steps to prevent the catastrophic impact that a terrorist attack against a major crude oil loading terminal or other critical infrastructure in the port of Valdez would have on the public interest, the 17th Coast Guard District Commander is establishing vessel movement reporting requirements for all commercial and fishing vessels. These amendments to the existing rules for the Prince William Sound Regulated Navigation Area will help to prevent vessels or persons from engaging in terrorist actions against petroleum terminals, petroleum tankers, or other critical port facilities by providing the Coast Guard with the enhanced ability to track vessel movement in the Prince William Sound.

The Coast Guard is establishing these vessel movement reporting requirements within Prince William Sound, Alaska in order to safeguard vessels, ports and waterfront facilities from sabotage or terrorist acts or incidents. These requirements apply to commercial and fishing vessels operating within the boundaries of the Regulated Navigation Area defined in 33 CFR 165.1704. The Regulated Navigation Area is coextensive with the VTS Area and consists of the navigable waters of the United States north of a

line drawn from Cape Hinchinbrook Light to Schooner Rock Light, comprising that portion of Prince William Sound between 146° 30′ W and 147° 20′ W and includes Valdez Arm, Valdez Narrows, and Port Valdez. In accordance with 33 CFR 161.19, at least 15 minutes before navigating in a VTS Area, a vessel must report its name and type, position, destination and ETA, intended route, time and point of entry, and dangerous cargo on board. In accordance with 33 CFR 161.20, vessels underway in the VTS Area must report their name and position upon entry, at designated reporting points, and upon direction from the Coast Guard Vessel Traffic Service. The designated reporting points for VTS Prince William Sound are set forth in 33 CFR Table 161.60(d) and in the *VTS Prince William Sound User's Manual*. We will issue Broadcast Notices to Mariners to further publicize the reporting requirements and any revisions to requirements. This regulation is issued under authority contained in 33 U.S.C. 1226 and 50 U.S.C. 191.

This rule temporarily requires all commercial and fishing vessels to participate in the Vessel Movement Reporting System. However, the COTP may, in his/her discretion grant waivers or exemptions to this rule, either on a case by case basis or categorically to a particular class of vessel or facility that otherwise is subject to adequate control measures. Vessels may be granted exemptions from the reporting requirements when, in the opinion of the Captain of the Port, position reporting would impede safe navigation of a vessel or would disclose sensitive information which requires protection in the interests of national security. Recreational vessels have been exempted in order to limit the burden on the public. However, recreational boaters are still highly encouraged to file float plans.

Additionally, these reporting requirements are temporary in nature and vessels and facilities can appeal to the Captain of the Port for a waiver of the reporting requirements. Any hardships experienced by persons or vessels are outweighed by the national interest in protecting the public, vessels, and vessel crews from the devastating consequences of acts of terrorism, and from sabotage or other subversive acts, accidents, or other causes of a similar nature.

Regulatory Evaluation

This rule is not a "significant regulatory action" under section 3(f) of Executive Order 12866, Regulatory Planning and Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that Order. It is not "significant" under the regulatory policies and procedures of the Department of Homeland Security. These operational restrictions are tailored to provide the minimal interruption of vessel operations necessary to provide immediate, improved security for the public, vessels, and the port of Valdez. Vessels may be exempted from the reporting requirements when, in the opinion of the Captain of the Port, reporting would impede safe navigation of a vessel or disclose information which requires protection in the interests of national security.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), we have considered whether this rule would have a significant economic impact on a substantial number of small entities. The term "small entities" comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000.

The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities. This rule will affect the following entities, some of which may be small entities: the owners or operators of commercial and fishing vessels intending to operate or transit in the Prince William Sound Regulated Navigation Area. This rule will not have a significant economic impact on a substantial number of small entities for the following reasons: The short duration of the temporary rule does not coincide with major fishing openers in the Prince William Sound; further, a vessel's ability to transit the Prince William Sound will not be significantly impaired by the reporting requirements; finally, vessels with compelling interests that outweigh the port's security needs may be granted waivers from the reporting requirements.

Assistance for Small Entities

Under subsection 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), the Coast Guard wants to assist small entities in understanding this final rule so that they can better evaluate its effects on them and participate in the rulemaking. If your small business or organization would be affected by this final rule and you have questions concerning its provisions or options for compliance, please contact one of the points of contact listed under **FOR FURTHER INFORMATION CONTACT.**

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comments on actions by employees of the Coast Guard, call 1–888–REG–FAIR (1–888–734–3247).

Collection of Information

This rule calls for no new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

Federalism

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on State or local governments and would either preempt State law or impose a substantial direct cost of compliance on them. We have analyzed this rule under that Order and have determined that it does not have implications for federalism.

Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of $100,000,000 or more in any one year. Though this rule will not result in such expenditure, we do discuss the effects of this rule elsewhere in this preamble.

Taking of Private Property

This rule will not affect a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

Civil Justice Reform

This rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

Protection of Children

We have analyzed this rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and does not create an environmental risk to health or risk to safety that may disproportionately affect children.

Indian Tribal Governments

This rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal government and Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes.

Energy Effects

We have analyzed this rule under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. We have determined that it is not a "significant energy action" under that order because it is not a "significant regulatory action" under Executive Order 12866 and is not likely to have a significant adverse effect on the supply, distribution, or use of energy. It has not been designated by the Administrator of the Office of Information and Regulatory Affairs as a significant energy action. Therefore, it does not require a Statement of Energy Effects under Executive Order 13211.

Environment

We have considered the environmental impact of this rule and concluded that under figure 2–1, paragraph 34(g) of Commandant Instruction M16475.lD, this rule is categorically excluded from further environmental documentation. A "Categorical Exclusion Determination" is available in the docket for inspection or copying where indicated under **ADDRESSES.**

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, Vessels, Waterways.

■ For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 165 as follows:

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

■ 1. The authority citation for part 165 continues to read as follows:

Authority: 33 U.S.C. 1231; 50 U.S.C. 191, 33 CFR 1.05–1(g), 6.04–1, 6.04–6, and 160.5; Department of Homeland Security Delegation No. 0170.

■ 2. From April 3 through May 18, 2003, in § 165.1704, add temporary paragraphs (d), (e), (f) and (g) to read as follows:

§ 165.1704 Prince William Sound, Alaska—regulated navigation area.

* * * * *

(d) In addition to the requirements set forth in § 161.13 and § 161.60(c) of this chapter, all vessels, regardless of length, engaged in commercial service and all fishing vessels navigating or intending to navigate in the Prince William Sound VTS Area must participate in the Vessel Movement Reporting System as defined in 33 CFR part 161, subpart B and must make the voice reports required by 33 CFR 161.19, 33 CFR 161.20, and 33 CFR 161.21.The COTP may waive any of the requirements of this rule for any person, vessel or class of vessel or waterfront facility upon finding that circumstances are such that application of the reporting requirements is unnecessary for national or port security, or are contrary to the interests of navigational safety. Reports and requests for waivers to the COTP required by this section must be made by telephone to (907) 835–7205 or by radio call on VHF–FM Channel 13 to U.S. COAST GUARD VALDEZ TRAFFIC. These numbers are operational 24 hours a day, 7 days a week.

(e) The reporting exemptions set forth in 33 CFR 161.16 do not apply to this section and this section is applicable to all sizes and classes of vessels engaged in commercial service and fishing vessels.

(f) In this section, consistent with 46 U.S.C. 2101(5), *commercial service* means any type of trade or business involving the transportation of goods or individuals, except service performed by a combatant vessel.

(g) In this section, consistent with 46 U.S.C. 2101(11a), *fishing vessel* means a vessel that commercially engages in the catching, taking, or harvesting of fish or an activity that can reasonably be expected to result in the catching, taking, or harvesting of fish.

Dated: April 3, 2003.

J.W. Underwood,

Rear Admiral, USCG, Commander, Seventeenth Coast Guard District.

[FR Doc. 03–11988 Filed 5–13–03; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF EDUCATION

34 CFR Parts 674, 682, and 685

Federal Student Aid Programs (Federal Perkins Loan Program, Federal Direct Loan Program, Federal Family Education Loan Program)

ACTION: Notice of waivers and modifications of statutory and regulatory provisions.

SUMMARY: The Secretary of Education announces waivers and modifications of statutory and regulatory provisions that are appropriate to assist students and borrowers under the Federal Perkins Loan Program, Federal Direct Loan Program, and Federal Family Education Loan Program who are members of the reserve components of the Armed Forces under Title 10 of the United States Code called or ordered to active duty for a period of more than 30 days, or who are regular active duty members of the Armed Forces reassigned to a different duty station for more than 30 days as a result of a military mobilization. The Secretary is issuing these waivers and modifications under the authority of Section 2(a) of the Higher Education Relief Opportunities for Students Act of 2001, Pub. L. 107–122. Section 2(b) of Pub. L. 107–122 requires the Secretary to publish a notice in the **Federal Register** specifying the waivers or modifications of statutory or regulatory provisions applicable to the student financial aid programs under title IV of the Higher Education Act of 1965, as amended (HEA), that the Secretary believes are appropriate to assist affected individuals so that they are not placed in a worse position financially, in relation to their loans, by their service. Section 2(b)(1) of Pub. L. 107–122 further provides that section 437 of the General Education Provisions Act (20 U.S.C. 1232) and Section 553 of the Administrative Procedures Act (5 U.S.C. 553) do not apply to the contents of this notice.

Section 2(c) of Pub. L. 107–122 requires the Secretary to provide an impact report to the Committee on Education and the Workforce of the House of Representatives and the Committee on Health, Education, Labor and Pensions of the Senate not later than 15 months after first exercising any authority to issue a waiver or modification under section 2(a) of Pub. L. 107–122. The report will describe the impact of any waivers or modifications issued pursuant to section 2(a) of Pub. L. 107–122 on affected individuals and the programs under title IV of the HEA, and the basis for such determination,

and will include the Secretary's recommendations for changes to the statutory or regulatory provisions that were the subject of the waivers or modifications.

EFFECTIVE DATE: May 14, 2003.

FOR FURTHER INFORMATION CONTACT: Mr. George Harris, Senior Program Specialist, Office of Postsecondary Education, U.S. Department of Education, 1990 K Street, NW, (8th Floor) Washington, DC 20006. Telephone: (202) 502–7521.

If you use a telecommunications device for the deaf (TDD), you may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

Individuals with disabilities may obtain this document in an alternative format (*e.g.*, Braille, large print, audiotape, or computer diskette) on request to the program contact persons listed under **FOR FURTHER INFORMATION CONTACT.**

SUPPLEMENTARY INFORMATION: The Secretary is waiving or modifying the following provisions of the HEA and regulations:

Federal Perkins Loan Program

Under 34 CFR 674.33(d)(2) and section 464(e) of the HEA, there is a 3-year cumulative limit on the length of forbearances that a Perkins loan borrower can receive. To assist Perkins Loan borrowers described in the **SUMMARY** section of this notice, the Secretary is waiving these statutory and regulatory requirements so that any forbearance based on a borrower's military service is excluded from this 3-year cumulative limit.

Federal Family Education Loan (FFEL) Program, Federal Direct Loan Program, and Federal Perkins Loan Program

Depending on the loan program, borrowers may qualify for loan cancellation if they are employed full-time in specified occupations, such as teachers, childcare providers, or law enforcement officers, pursuant to sections 428J(b)(1), 428K(d)(1), 460(b)(1), and 465(a)(2)(A)-(I) and (a)(3) of the HEA, 34 CFR 674.53(d), 674.55(a)(2), 674.55(b)(5), 674.55(c)(2), 674.56(d)(1), 674.57(b)(1), 674.58(b), 674.60(b), 34 CFR 682.215(d)(1), and 34 CFR 685.217(d)(1). Generally, borrowers must perform uninterrupted, otherwise qualifying service for a specified length of time (for example, one year) or for consecutive periods of time, such as 5 consecutive years, to be eligible for loan cancellation. For all borrowers described in the **SUMMARY** section of this notice, the Secretary is waiving the requirements in the various loan cancellation provisions that such periods of service be uninterrupted and/or consecutive. Loan holders should not consider the time that these borrowers are on active duty as an interruption in the required service for the borrower to receive a loan cancellation.

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(Catalog of Federal Domestic Assistance Numbers: 84.032 Federal Family Education Loan Program; 84.038 Federal Perkins Loan Program; and 84.268 William D. Ford Federal Direct Loan Program)

Program Authority: 20 U.S.C. 1071. 1087a, 1087aa.

Dated: May 8, 2003.

Sally L. Stroup,

Assistant Secretary, Office of Postsecondary Education.

[FR Doc. 03–11982 Filed 5–13–03; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF VETERANS AFFAIRS

38 CFR Part 4

RIN 2900–AK86

Schedule for Rating Disabilities: Evaluation of Tinnitus

AGENCY: Department of Veterans Affairs.

ACTION: Final rule.

SUMMARY: This document amends the Department of Veterans Affairs (VA) Schedule for Rating Disabilities to state more explicitly the method of evaluation of tinnitus under diagnostic code 6260 in the portion of the rating schedule that addresses evaluation of disabilities of the ear. The intended effect of this action is to codify current standard VA practice by stating that recurrent tinnitus will be assigned only a single 10-percent evaluation whether it is perceived in one ear, both ears, or somewhere in the head.

EFFECTIVE DATE: This amendment is effective June 13, 2003.

FOR FURTHER INFORMATION CONTACT: Audrey Tomlinson, Medical Officer, Regulations Staff (211A), Compensation and Pension Service, Veterans Benefits Administration, Department of Veterans Affairs, 810 Vermont Ave., NW., Washington DC 20420, (202) 273–7215.

SUPPLEMENTARY INFORMATION: On September 19, 2002, VA published in the **Federal Register** (67 FR 59033) a proposal to amend diagnostic code 6260 in 38 CFR 4.87, in order to codify current standard VA practice concerning the evaluation of tinnitus. It states that recurrent tinnitus will be assigned only a single ten-percent evaluation, whether it is perceived in one ear, both ears, or somewhere in the head. Interested persons were invited to submit written comments on or before November 18, 2002. We received two comments, one from the American Legion and one from a concerned individual.

One commenter felt that limiting tinnitus to a single ten-percent evaluation is arbitrary and inconsistent with other provisions of VA's Schedule for Rating Disabilities that deal with bilateral disabilities, such as those providing separate evaluations for each ear with hearing impairment. The same commenter felt that the proposed rule document offered no substantive rationale for maintaining the current assignment of a single evaluation for tinnitus, regardless of whether it is perceived in one or both ears.

We disagree. VA's Audiology and Speech Pathology Service recently wrote a booklet titled *Hearing Impairment*, an Independent Study Course for health care providers. The section on tinnitus states that the fact that most tinnitus appears to be coming from the ear led to a belief that tinnitus was generated in the inner ear, but this is not the case. It further states that damage in the inner ear may be a precursor for subjective tinnitus, but that subjective tinnitus is generated within the central auditory pathways. Comparing tinnitus, a central nervous condition, to hearing loss, a disability from damage to an organ of special sense (the ear) is not a valid comparison. We have made no change in response to this comment. Because over 200,000 veterans are currently rated for tinnitus under diagnostic code 6260 under Diseases of the Ear, for administrative efficiency, and because many are accustomed to looking in that section of the rating schedule, the current placement of tinnitus within the rating schedule will remain unchanged.

The **SUPPLEMENTARY INFORMATION** section of the proposed regulatory amendment explained that tinnitus is a single disability arising in the brain and that it consists of the perception of sound in the absence of an external stimulus. This definition applies whether the tinnitus is perceived in one ear, both ears, or somewhere undefined in the head. The commenter provided no information that would refute this medical explanation. The degree of disability, that is, the degree to which tinnitus impairs the veteran's earning capacity, is the same regardless of how the tinnitus is perceived. To rate each ear separately for this single disability would violate the prohibition on pyramiding, 38 CFR 4.14. Similarly, to rate each ear separately would be a violation of the principle of 38 CFR 4.25(b) that a "single disease entity" is to be given a single rating. A single evaluation for a single disability is appropriate. We have made no change based on this comment.

A second commenter suggested that we adopt measurable time and duration standards for the term "recurrent." Because a substantive change to define the term "recurrent" is beyond the scope of this rulemaking, we have made no change based on this comment.

VA appreciates the comments submitted in response to the proposed rule. Based on the rationale stated in the proposed rule and in this document, the proposed rule is adopted without change.

Paperwork Reduction Act

This document contains no provisions constituting a collection of information under the Paperwork Reduction Act (44 U.S.C. 3501–3521).

Regulatory Flexibility Act

The Secretary hereby certifies that this regulatory amendment will not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act (RFA), 5 U.S.C. 601–612. The reason for this certification is that this amendment would not directly affect any small entities. Only VA beneficiaries could be directly affected. Therefore, pursuant to 5 U.S.C. 605(b), this amendment is exempt from the initial and final regulatory flexibility analysis requirements of sections 603 and 604.

Executive Order 12866

This regulatory amendment has been reviewed by the Office of Management and Budget under the provisions of Executive Order 12866, Regulatory Planning and Review, dated September 30, 1993.

Unfunded Mandates

The Unfunded Mandates Reform Act requires, at 2 U.S.C. 1532, that agencies prepare an assessment of anticipated costs and benefits before developing any rule that may result in an expenditure by State, local, or tribal governments, in the aggregate, or by the private sector of $100 million or more in any given year. This rule would have no consequential effect on State, local, or tribal governments.

Catalog of Federal Domestic Assistance Numbers

The Catalog of Federal Domestic Assistance program numbers are 64.104 and 64.109.

List of Subjects in 38 CFR Part 4

Disability benefits, Individuals with disabilities, Pensions, Veterans.

Approved: April 14, 2003.

Anthony J. Principi,

Secretary of Veterans Affairs.

■ For the reasons set out in the preamble, 38 CFR part 4, subpart B, is amended as set forth below:

PART 4—SCHEDULE FOR RATING DISABILITIES

Subpart B—Disability Ratings

■ 1. The authority citation for part 4 continues to read as follows:

Authority: 38 U.S.C. 1155, unless otherwise noted.

■ 2. In § 4.87, diagnostic code 6260 is revised to read as follows:

§ 4.87 Schedule of ratings—ear.

DISEASES OF THE EAR

	Rating
. . . . .	
6260 Tinnitus, recurrent	10

Note (1): A separate evaluation for tinnitus may be combined with an evaluation under diagnostic codes 6100, 6200, 6204, or other diagnostic code, except when tinnitus supports an evaluation under one of those diagnostic codes.

Note (2): Assign only a single evaluation for recurrent tinnitus, whether the sound is perceived in one ear, both ears, or in the head.

Note (3): Do not evaluate objective tinnitus (in which the sound is audible to other people and has a definable cause that may or may not be pathologic) under this diagnostic code, but evaluate it as part of any underlying condition causing it.

(Authority: 38 U.S.C. 1155).

[FR Doc. 03–12038 Filed 5–13–03; 8:45 am]

BILLING CODE 8320–01–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 89

[AMS–FRL–7498–2]

Control of Emissions From New Nonroad Diesel Engines: Amendments to the Nonroad Engine Definition; Withdrawal of Direct Final Rule

AGENCY: Environmental Protection Agency (EPA).

ACTION: Withdrawal of direct final rule.

SUMMARY: Due to receipt of adverse comments, EPA is withdrawing amendments that were included in the direct final rule published on April 11, 2003 (68 FR 17741), amending the definition of nonroad engines to also include all engines certified as part of a nonroad engine family if used in agricultural applications in the State of California. Because this amendment is being withdrawn, the existing definition regarding nonroad engines remains in effect. We will address the adverse comments in a subsequent final action based on the parallel proposal published on April 11, 2003 (68 FR 17763).

DATES: The following provision of the direct final rule published at 68 FR 17741 (April 11, 2003) is withdrawn as of May 14, 2003:

(1) The revision to 40 CFR 89.2, definition of "Nonroad engine", paragraph (1)(iv).

ADDRESSES: All comments and materials relevant to today's action are contained in Public Docket No. OAR–2003–0046 at the following address: U.S. Environmental Protection Agency (EPA), EPA Docket Center (EPA/DC), Air and Radiation Docket, Mail Code 6102T, 1200 Pennsylvania Avenue, NW., Washington, DC 20460.

Docket: Materials relevant to this rulemaking are contained in Public Docket Number OAR–2003–0046 at the following address: EPA Docket Center (EPA/DC), Public Reading Room, Room B102, EPA West Building, 1301

Constitution Avenue, NW., Washington DC. The EPA Docket Center Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, except on government holidays. You can reach the Reading Room by telephone at (202) 566–1742, and by facsimile at (202) 566–1741. The telephone number for the Air Docket is (202) 566–1742. You may be charged a reasonable fee for photocopying docket materials, as provided in 40 CFR part 2.

FOR FURTHER INFORMATION CONTACT: Robert Larson, U.S. EPA, National Vehicle and Fuel Emissions Laboratory, Transportation and Regional Programs Division, 2000 Traverwood Drive, Ann Arbor, MI 48105; telephone (734) 214–4277, fax (734) 214–4956, e-mail *larson.robert@epa.gov.*

SUPPLEMENTARY INFORMATION: We stated in the direct final rule published at 68 FR 17741 (April 11, 2003) that if we received adverse comment on the amendment, by May 12, 2003, we would publish a timely withdrawal in the **Federal Register**. We have received adverse comments on the amendments to 40 CFR 89.2.

As a result of the adverse comments received, we are withdrawing the amendment to § 89.2. We intend to consider the issues raised by the comments in a final action based on the concurrent notice of proposed rulemaking (68 FR 17763).

List of Subjects in 40 CFR Part 89

Environmental protection, Administrative practice and procedure, Motor vehicle pollution.

Jeffrey R. Holmstead,

Assistant Administrator for Office of Air and Radiation.

[FR Doc. 03–12021 Filed 5–13–03; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[OPP–2003–0173; FRL–7307–6]

Indoxacarb; Time-Limited Pesticide Tolerance

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation establishes a time-limited tolerance for residues/combined residues of Indoxacarb, (S)-methyl 7-chloro-2,5-dihydro-2-[[(methoxycarbonyl) [4-(trifluoromethoxy) phenyl] amino] carbonyl] indeno[1,2-e][1,3,4]oxadiazine- 4a(3H)-carboxylate] + its R-enantiomer [(R)-methyl 7-chloro-2,5-dihydro-2- [[(methoxycarbonyl) [4-(trifluoromethoxy)phenyl] amino]carbonyl]indeno[1,2-e] [1,3,4]oxadiazine-4a (3H)-carboxylate in or on peaches. This action is in response to university extension specialists, DuPont, and EPA's combined efforts to generate the information necessary for registration of the reduced risk pesticide, Indoxacarb, on peaches for control of oriental fruit moth and plum cuculio. This temporary tolerance supports a non-crop destruct experimental use permit (EUP) under section 5 of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) authorizing use of Indoxacarb on peaches in Georgia, Michigan, New Jersey, Pennsylvania, South Carolina, and West Virginia. This regulation establishes a maximum permissible level for residues of Indoxacarb in this food commodity pursuant to section 408(e) of Federal Food Drug and Cosmetic Act (FFDCA), as amended by the Food Quality Protection Act of 1996 (FQPA). The tolerance will expire on May 15, 2006.

DATES: This regulation is effective May 14, 2003. Objections and requests for hearings, identified by docket ID number OPP–2003–0173, must be received on or before July 14, 2003.

ADDRESSES: Written objections and hearing requests may be submitted electronically, by mail, or through hand delivery/courier. Follow the detailed instructions as provided in Unit VI. of the **SUPPLEMENTARY INFORMATION.**

FOR FURTHER INFORMATION CONTACT: Rita Kumar, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 308–8291; e-mail address: kumar.rita@epa.gov.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

You may be potentially affected by this action if you are an agricultural producer, food manufacturer, or pesticide manufacturer. Potentially affected entities may include, but are not limited to:

- Crop production (NAICS code 111)
- Animal production (NAICS code 112)
- Food manufacturing (NAICS code 311)
- Pesticide manufacturing (NAICS 32532)

This listing is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in this unit could also be affected. The North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether this action might apply to certain entities. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT.**

B. How Can I Get Copies of this Document and Other Related Information?

1. *Docket.* EPA has established an official public docket for this action under docket identification (ID) number OPP–2003–0173. The official public docket consists of the documents specifically referenced in this action, any public comments received, and other information related to this action. Although a part of the official docket, the public docket does not include Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. The official public docket is the collection of materials that is available for public viewing at the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA. This docket facility is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The docket telephone number is (703) 305–5805.

2. *Electronic access.* You may access this **Federal Register** document electronically through the EPA Internet under the "**Federal Register**" listings at *http://www.epa.gov/fedrgstr/.* A frequently updated electronic version of 40 CFR part 180 is available at *http://www.access.gpo.gov/nara/cfr/cfrhtml_00/Title_40/40cfr180_00.html,* a beta site currently under development.

An electronic version of the public docket is available through EPA's electronic public docket and comment system, EPA Dockets. You may use EPA Dockets at *http://www.epa.gov/edocket/* to submit or view public comments, access the index listing of the contents of the official public docket, and to access those documents in the public docket that are available electronically. Although not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the docket facility identified in Unit I.B.1. Once in the system, select "search," then key in the appropriate docket ID number.

II. Background and Statutory Findings

In the **Federal Register** of April 16, 2003 (68 FR 18582) (FRL–7302–3), EPA issued a proposed rule pursuant to section 408 of the FFDCA, 21 U.S.C. 346a, as amended by the FQPA (Public Law 104–170), EPA, in cooperation with university extension specialists, and DuPont Pont Crop Protection, pursuant to sections 408(e) and (r) of FFDCA, proposed to establish a tolerance for combined residues of the reduced risk pesticide, Indoxacarb in or on peaches. This temporary tolerance supports a non-crop destruct EUP under section 5 of FIFRA authorizing use of Indoxacarb on peaches in Georgia, Michigan, New Jersey, Pennsylvania, South Carolina, and West Virginia. Section 5 of FIFRA authorizes EPA to issue an experimental use permit for a pesticide. This provision was not amended by FQPA. EPA has established regulations governing such experimental use permits in 40 CFR part 172. Section 408(r) of FFDCA authorizes EPA to issue time-limited tolerances for pesticide residues from FIFRA experimental use permits.

The proposed rule requested that 40 CFR 180.564 be amended by establishing a tolerance for combined residues of the insecticide, Indoxacarb, (S)-methyl 7-chloro-2,5- dihydro-2-[[(methoxycarbonyl) [4-(trifluoromethoxy)phenyl] amino]carbonyl] indeno[1,2-e] [1,3,4] oxadiazine-4a(3H)-carboxylate] + its R-enantiomer [(R)-methyl 7-chloro-2,5-dihydro-2- [[(methoxycarbonyl)[4-(trifluoromethoxy)phenyl] amino] carbonyl]indeno[1,2-e] [1,3,4] oxadiazine-4a(3H)-carboxylate, in or on peaches at 10.0 parts per million (ppm). The tolerance will expire on May 15, 2006.

Section 408(b)(2)(A)(i) of the FFDCA allows EPA to establish a tolerance (the legal limit for a pesticide chemical residue in or on a food) only if EPA determines that the tolerance is "safe." Section 408(b)(2)(A)(ii) of the FFDCA defines "safe" to mean that "there is a reasonable certainty that no harm will result from aggregate exposure to the pesticide chemical residue, including all anticipated dietary exposures and all other exposures for which there is reliable information." This includes exposure through drinking water and in residential settings, but does not include occupational exposure. Section 408(b)(2)(C) of the FFDCA requires EPA to give special consideration to exposure of infants and children to the pesticide chemical residue in establishing a tolerance and to "ensure that there is a reasonable certainty that no harm will result to infants and children from aggregate exposure to the pesticide chemical residue. * * *"

EPA performs a number of analyses to determine the risks from aggregate exposure to pesticide residues. For further discussion of the regulatory requirements of section 408 of the FFDCA and a complete description of the risk assessment process, see the final rule on Bifenthrin Pesticide Tolerances (62 FR 62961, November 26, 1997) (FRL–5754–7).

III. Aggregate Risk Assessment and Determination of Safety

Consistent with section 408(b)(2)(D) of the FFDCA, EPA has reviewed the available scientific data and other relevant information in support of this action. EPA has sufficient data to assess the hazards of and to make a determination on aggregate exposure, consistent with section 408(b)(2) of the FFDCA, for a tolerance for combined residues of Indoxacarb, (S)-methyl 7-chloro-2,5-dihydro-2-[[(methoxycarbonyl) [4-(trifluoromethoxy)phenyl] amino] carbonyl] indeno[1,2-e] [1,3,4]oxadiazine-4a(3H)- carboxylate] + its R-enantiomer [(R)-methyl 7-chloro-2,5-dihydro-2- [[(methoxycarbonyl)[4-(trifluoromethoxy)phenyl] amino] carbonyl] indeno[1,2-e] [1,3,4]oxadiazine-4a(3H)-carboxylate on peaches at 10 ppm. EPA's assessment of exposures and risks associated with establishing the tolerance follows.

A. Toxicological Profile

EPA has evaluated the available toxicity data and considered its validity, completeness, and reliability as well as the relationship of the results of the studies to human risk. EPA has also considered available information concerning the variability of the sensitivities of major identifiable subgroups of consumers, including infants and children. The nature of the toxic effects caused by Indoxacarb are discussed in the proposed rule, as well as the no observed adverse effect level (NOAEL) and the lowest observed adverse effect level (LOAEL) from the toxicity studies reviewed.

Refer to the April 16, 2003, **Federal Register** document (68 FR, 18582) for a detailed discussion of the aggregate risk assessments and determination of safety. EPA relies upon that risk assessment and the findings made in the **Federal Register** document in support of this action. Below is a brief summary of the aggregate risk assessment, including this use on peaches.

B. Exposure Assessment

1. *Dietary exposure from food and feed uses.* Tolerances have been established (40 CFR 180.564) for the combined residues of Indoxacarb, in or on a variety of raw agricultural commodities. Including tolerances already established for: Apple at 1.0 ppm, apple, wet pomace at 3.0 ppm, brassica, head and stem, subgroup at 5.0 ppm, cattle, goat, horse, sheep, and hog fat at 0.75 ppm, cattle, goat, horse, sheep, and hog meat at 0.03 ppm, cattle, goat, horse, sheep, and hog meat byproducts at 0.02 ppm, corn, sweet, forage at 10 ppm, corn, sweet, kernel plus cob with husk removed at 0.02 ppm, corn, sweet stover at 15 ppm, cotton gin byproducts at 15 ppm, cotton, undelinted seed at 2.0 ppm, lettuce, head at 4.0 ppm, lettuce, leaf at 10.0 ppm, milk at 0.10 ppm, and milk, fat at 3.0 ppm, pear at 0.20 ppm, and vegetables, fruiting, group at 0.50 ppm. Risk assessments were conducted by EPA to assess dietary exposures from Indoxacarb in food as follows:

An acute dietary endpoint for females 13 years and older and for the general population, including infants and children has been identified. The acute population adjusted dose (aPAD) for females is 0.02 milligrams/kilogram/day (mg/kg/day). The acute dietary endpoint for the general population including infants and children is 0.12 mg/kg/day. The chronic population adjusted dose (cPAD) for all populations is 0.02 mg/kg/day. Indoxacarb has been classified as a "not likely" to be carcinogenic to humans. It has been determined that the FQPA safety factor could be reduced to 1X for Indoxacarb. There is no indication of quantitative or qualitative increased susceptibility of rats or rabbits to *in utero* and/or postnatal exposure. Currently, indoxacarb is not registered for use in residential settings.

For the chronic exposure estimates, it was assumed that all commodities had tolerance level residues and 100% of all RACs were treated with indoxacarb. Refined processing factors were used in the chronic analysis for several commodities, in place of the Dietary Exposure Evaluation Model (DEEM®) default processing factors. The Pesticide Root Zone/Exposure Analysis Modeling System (PRZM/EXAMS) and Screening Concentration in Ground Water (SCI-GROW) models provided the estimated environmental concentrations (EECs) of indoxacarb. The EECs for acute exposures are estimated to be 13.7 parts per billion (ppb) for surface water and 0.02 ppb for ground water. The EECs for chronic exposures are estimated to be

3.7 ppb for surface water and 0.02 ppb for ground water.

i. *Acute exposure.* Acute dietary risk assessments are performed for a food-use pesticide if a toxicological study has indicated the possibility of an effect of concern occurring as a result of a 1–day or single exposure. The DEEM® analysis evaluated the individual food consumption as reported by respondents in the USDA 1989—1992 nationwide Continuing Surveys of Food Intake by Individuals (CSFII) and accumulated exposure to the chemical for each commodity. The following assumptions were made for the acute exposure assessments: An acute Tier II (partially refined analysis) dietary assessment was performed with use of anticipated residues (ARs) from field trial data, processing factors (where applicable), assumed 100% crop treated (CT) for all crops other than peaches, and 1% CT for the peach EUP (300 acres). ARs for meat, milk, poultry, and eggs (MMPE) raw agricultural commodities (RACs) were calculated also.

ii. *Chronic exposure.* In conducting this chronic dietary risk assessment the DEEM® analysis evaluated the individual food consumption as reported by respondents in the USDA 1989—1992 nationwide CSFII and accumulated exposure to the chemical for each commodity. The following assumptions were made for the chronic exposure assessments: Chronic exposure estimates are expressed in mg/kg body weight (bw)/day and as a percent of the cPAD. The chronic dietary assessment assumed tolerance level residues, DEEM® default processing factors, assumed 100% CT for all crops other than peaches, and 1% CT for the peach EUP (300 acres) (Tier I).

iii. *Cancer.* There is no evidence for mutagenicity and there is no evidence of carcinogenicity in either the rat or mouse. Indoxacarb has been classified as "not likely to be carcinogenic in humans" by the Agency; therefore, no carcinogenic dietary risk analysis was performed.

Section 408(b)(2)(E) of the FFDCA authorizes EPA to use available data and information on the anticipated residue levels of pesticide residues in food and the actual levels of pesticide chemicals that have been measured in food. If EPA relies on such information, EPA must require that data be provided 5 years after the tolerance is established, modified, or left in effect, demonstrating that the levels in food are not above the levels anticipated. Following the initial data submission, EPA is authorized to require similar data on a time frame it deems appropriate. As required by section 408(b)(2)(E) of the FFDCA, EPA will issue a data call-in for information relating to ARs to be submitted no later than 5 years from the date of issuance of this tolerance.

Section 408(b)(2)(F) of the FFDCA states that the Agency may use data on the actual percent of food treated for assessing chronic dietary risk only if the Agency can make the following findings: Condition 1, that the data used are reliable and provide a valid basis to show what percentage of the food derived from such crop is likely to contain such pesticide residue; Condition 2, that the exposure estimate does not underestimate exposure for any significant subpopulation group; and Condition 3, if data are available on pesticide use and food consumption in a particular area, the exposure estimate does not understate exposure for the population in such area. In addition, the Agency must provide for periodic evaluation of any estimates used. To provide for the periodic evaluation of the estimate of percent crop treated (PCT) as required by section 408(b)(2)(F) of the FFDCA, EPA may require registrants to submit data on PCT.

Dietary exposure estimates were based on 1% PCT for peaches. This PCT of 1% was based on the fact that the 2–year experimental use permit was issued for only 300 acres of peaches to be treated annually, which amounts to 0.2% of the total peach acreage in the United States. The reason for using 1% instead of 0.2% is to allow for any uncertainties in the residue evaluation. Before making this tolerance permanent, reevaluation of dietary exposure will be performed using all available information. Other commodities were assumed to be 100% treated.

The Agency believes that the three conditions previously discussed have been met. With respect to Condition 1, EPA finds that the PCT information described 1% for Indoxacarb used on peaches is reliable and has a valid basis. A 2–year EUP has been issued for this use, which will allow for use of Indoxacarb on 300 acres of peaches in some eastern states. Before the use can be expanded for treatment of greater than 300 acres per year, permission from the Agency must be obtained. As to Conditions 2 and 3, regional consumption information and consumption information for significant subpopulations is taken into account through EPA's computer-based model for evaluating the exposure of significant subpopulations including several regional groups. Use of this consumption information in EPA's risk assessment process ensures that EPA's exposure estimate does not understate exposure for any significant subpopulation group and allows the Agency to be reasonably certain that no regional population is exposed to residue levels higher than those estimated by the Agency. Other than the data available through national food consumption surveys, EPA does not have available information on the regional consumption of food to which Indoxacarb may be applied in a particular area.

2. *Dietary exposure from drinking water.* The Agency lacks sufficient monitoring exposure data to complete a comprehensive dietary exposure analysis and risk assessment for Indoxacarb in drinking water. Because the Agency does not have comprehensive monitoring data, drinking water concentration estimates are made by reliance on simulation or modeling taking into account data on the physical characteristics of Indoxacarb.

The Agency uses the Generic Estimated Environmental Concentration (GENEEC) or the PRZM/EXAMS to estimate pesticide concentrations in surface water and SCI-GROW, which predicts pesticide concentrations in ground water. In general, EPA will use GENEEC (a Tier I model) before using PRZM/EXAMS (a Tier II model) for a screening-level assessment for surface water. The GENEEC model is a subset of the PRZM/EXAMS model that uses a specific high-end runoff scenario for pesticides. GENEEC incorporates a farm pond scenario, while PRZM/EXAMS incorporate an index reservoir environment in place of the previous pond scenario. The PRZM/EXAMS model includes a percent crop area factor as an adjustment to account for the maximum percent crop coverage within a watershed or drainage basin.

None of these models include consideration of the impact processing (mixing, dilution, or treatment) of raw water for distribution as drinking water would likely have on the removal of pesticides from the source water. The primary use of these models by the Agency at this stage is to provide a coarse screen for sorting out pesticides for which it is highly unlikely that drinking water concentrations would ever exceed human health levels of concern.

Since the models used are considered to be screening tools in the risk assessment process, the Agency does not use EECs from these models to quantify drinking water exposure and risk as a %RfD or %PAD. Instead drinking water levels of comparison (DWLOCs) are calculated and used as a point of comparison against the model estimates of a pesticide's concentration in water. DWLOCs are theoretical upper limits on a pesticide's concentration in drinking water in light of total aggregate exposure to a pesticide in food, and from residential uses. Since DWLOCs address total aggregate exposure to Indoxacarb they are further discussed in the aggregate risk sections below.

Based on the PRZM/EXAMS and SCI-GROW models the estimated EECs of Indoxacarb for acute exposures are estimated to be 13.7 parts per billion (ppb) for surface water and 0.02 ppb for ground water. The EECs for chronic exposures are estimated to be 3.7 ppb for surface water and 0.02 ppb for ground water.

3. *From non-dietary exposure.* The term "residential exposure" is used in this document to refer to non-occupational, non-dietary exposure (e.g., for lawn and garden pest control, indoor pest control, termiticides, and flea and tick control on pets). Indoxacarb is not registered for use on any sites that would result in residential exposure.

4. *Cumulative exposure to substances with a common mechanism of toxicity.* Section 408(b)(2)(D)(v) of the FFDCA requires that, when considering whether to establish, modify, or revoke a tolerance, the Agency consider "available information" concerning the cumulative effects of a particular pesticide's residues and "other substances that have a common mechanism of toxicity."

EPA does not have, at this time, available data to determine whether Indoxacarb has a common mechanism of toxicity with other substances or how to include this pesticide in a cumulative risk assessment. Unlike other pesticides for which EPA has followed a cumulative risk approach based on a common mechanism of toxicity, Indoxacarb does not appear to produce a toxic metabolite produced by other substances. For the purposes of this tolerance action, therefore, EPA has not assumed that Indoxacarb has a common mechanism of toxicity with other substances. For information regarding EPA's efforts to determine which chemicals have a common mechanism of toxicity and to evaluate the cumulative effects of such chemicals, see the final rule for Bifenthrin Pesticide Tolerances (62 FR 62961, November 26, 1997) (FRL–5754–7).

C. Safety Factor for Infants and Children

1. *In general.* Section 408 of the FFDCA provides that EPA shall apply an additional tenfold margin of safety for infants and children in the case of threshold effects to account for prenatal and postnatal toxicity and the completeness of the data base on toxicity and exposure unless EPA determines that a different margin of safety will be safe for infants and children. Margins of safety are incorporated into EPA risk assessments either directly through use of a MOE analysis or through using uncertainty (safety) factors in calculating a dose level that poses no appreciable risk to humans.

2. *Prenatal and postnatal sensitivity.* There is no evidence for either qualitative or quantitative susceptibility. In all developmental studies, the developmental endpoint occurs at the maternal LOAEL or above. Although there is no rabbit developmental toxicity study with indoxacarb, a study is not required since:

i. Studies-both using methyl cellulose-comparing JW062 in the rabbit and rat demonstrate that the toxicity profiles for the rat and rabbit are similar and that the rat is the more sensitive species;

ii. Range finding studies in the rat comparing indoxacarb and JW062 indicate that the maternal and external developmental toxicity are comparable;

iii. A dietary developmental toxicity study in the rat with JW062 had comparable toxicity to the gavage indoxacarb rat developmental toxicity study. Developmental toxicity only occurred at levels at or above maternal toxicity.

The reproduction toxicity study with JW062 can be used to satisfy the requirement for an indoxacarb study because:

iv. Systemic toxicity is at similar doses and of similar magnitude to that observed in subchronic feeding studies with both indoxacarb and JW062;

v. based on the data base, the HIARC determined that there was support for using data from dietary studies conducted with JW062 to satisfy the data requirements for indoxacarb.

The Agency has required a developmental neurotoxicity study as confirmatory data due to:

- Clinical signs of neurotoxicity in several studies, males and females, mice and rats, at some doses that do not cause mortality;
- Signs of neurotoxicity in the acute neurotoxicity study-rat with indoxacarb (males and females), no mortality in males at neurotoxic doses;
- Clinical signs of neurotoxicity in the 90-day toxicity study-rat indoxacarb (females), mortality;
- Clinical signs of neurotoxicity in the 90-day toxicity study-mouse with the racemic mixture, JW062 (males and females), no mortality in females at neurotoxic doses, mortality in males;
- Clinical signs of neurotoxicity in the 18 month carcinogenicity study-mouse with JW062 (males and females) high and mid dose, mortality at the high but no mortality at the mid dose; and
- Clinical signs of neurotoxicity in the developmental toxicity study-rat with JW062 (using methyl cellulose as the vehicle), at doses causing mortality.

3. *Conclusion.* The Agency concluded that the FQPA safety factor could be reducecd to 1X for Indoxacarb because:

- There is no indication of quantitative or qualitative increased susceptibility of rats or rabbits to *in utero* and/or postnatal exposure;
- The requirement of a developmental neurotoxicity study is not based on the criteria reflecting special concern for the developing fetuses or young which are generally used for requiring a DNT study—and a safety factor (e.g.: neuropathy in adult animals; CNS malformations following prenatal exposure; brain weight or sexual maturation changes in offspring; and/or functional changes in offspring)—and therefore does not warrant an FQPA safety factor; and
- The dietary (food and drinking water) exposure assessments will not underestimate the potential exposures for infants and children
- There are no registered residential uses at the current time.

D. Aggregate Risks and Determination of Safety

To estimate total aggregate exposure to a pesticide from food, drinking water, and residential uses, the Agency calculates DWLOCs which are used as a point of comparison against the model estimates of a pesticide's concentration in water (EECs). DWLOC values are not regulatory standards for drinking water. DWLOCs are theoretical upper limits on a pesticide's concentration in drinking water in light of total aggregate exposure to a pesticide in food and residential uses. In calculating a DWLOC, the Agency determines how much of the acceptable exposure (i.e., the PAD) is available for exposure through drinking water (e.g., allowable chronic water exposure (mg/kg/day) = cPAD - (average food + residential exposure)). This allowable exposure through drinking water is used to calculate a DWLOC.

A DWLOC will vary depending on the toxic endpoint, drinking water consumption, and body weights. Default body weights and consumption values as used by EPAs Office of Water are used to calculate DWLOCs: 2 liter (L)/70 kg (adult male), 2L/60 kg (adult female), and 1L/10 kg (child). Default

body weights and drinking water consumption values vary on an individual basis. This variation will be taken into account in more refined screening-level and quantitative drinking water exposure assessments. Different populations will have different DWLOCs. Generally, a DWLOC is calculated for each type of risk assessment used: acute, short-term, intermediate-term, chronic, and cancer.

When EECs for surface water and ground water are less than the calculated DWLOCs, EPA concludes with reasonable certainty that exposures to the pesticide in drinking water (when considered along with other sources of exposure for which EPA has reliable data) would not result in unacceptable levels of aggregate human health risk at this time. Because EPA considers the aggregate risk resulting from multiple exposure pathways associated with a pesticide's uses, levels of comparison in drinking water may vary as those uses change. If new uses are added in the future, EPA will reassess the potential impacts of residues of the pesticide in drinking water as a part of the aggregate risk assessment process.

1. *Acute risk.* Using the exposure assumptions discussed in this unit for acute exposure, the acute dietary exposure from food to Indoxacarb will occupy 12% of the aPAD for the U.S. population, 64% of the aPAD for females 13 years and older, 67% of the aPAD for infants less than 1 year old and 79% of the aPAD for children 1 to 2 years old. In addition, there is potential for acute dietary exposure to Indoxacarb in drinking water. After calculating DWLOCs and comparing them to the EECs for surface and ground water, EPA does not expect the aggregate exposure to exceed 100% of the aPAD, as shown in Table 1 of this Unit:

TABLE 1.—AGGREGATE RISK ASSESSMENT FOR ACUTE EXPOSURE TO INDOXACARB

Population Subgroup	aPAD (mg/kg)	% aPAD (Food)	Surface Water EEC (ppb)	Ground Water EEC (ppb)	Acute DWLOC (ppb)
U.S. Population	0.12	12	13.7	0.02	3,700
Females 13+	0.12	64	13.7	0.02	218
All infants less than 1 year	0.12	67	13.7	0.02	400
Children 1 to 2	0.12	79	13.7	0.02	760

2. *Chronic risk.* Using the exposure assumptions described in this unit for chronic exposure, EPA has concluded that exposure to Indoxacarb from food will utilize 30% of the cPAD for the U.S. population, 29% of the cPAD for infants less than 1 year and 79% of the cPAD for children 1 to 2 years old. There are no residential uses for Indoxacarb that result in chronic residential exposure to Indoxacarb. Based on the use pattern, chronic residential exposure to residues of Indoxacarb is not expected. In addition, there is potential for chronic dietary exposure to Indoxacarb in drinking water. After calculating DWLOCs and comparing them to the EECs for surface and ground water, EPA does not expect the aggregate exposure to exceed 100% of the cPAD, as shown in Table 2 of this unit:

TABLE 2.—AGGREGATE RISK ASSESSMENT FOR CHRONIC (NON-CANCER) EXPOSURE TO INDOXACARB

Population Subgroup	cPAD mg/kg/day	% cPAD (Food)	Surface Water EEC (ppb)	Ground Water EEC (ppb)	Chronic DWLOC (ppb)
U.S. Population	0.02	30	3.7	0.02	490
All infants less than 1 year old	0.02	29	3.7	0.02	65
Children 1 to 2	0.02	79	3.7	0.02	80

3. *Short-term risk.* Short-term aggregate exposure takes into account residential exposure plus chronic exposure to food and water (considered to be a background exposure level). Indoxacarb is not registered for use on any sites that would result in residential exposure. Therefore, the aggregate risk is the sum of the risk from food and water, which do not exceed the Agency's level of concern.

4. *Intermediate-term risk.* Intermediate-term aggregate exposure takes into account residential exposure plus chronic exposure to food and water (considered to be a background exposure level). Indoxacarb is not registered for use on any sites that would result in residential exposure. Therefore, the aggregate risk is the sum of the risk from food and water, which do not exceed the Agency's level of concern.

5. *Aggregate cancer risk for U.S. population.* There is no evidence for mutagenicity and there is no evidence of carcinogenicity in either rat or mouse. Indoxacarb has been classified as "not likely to be carcinogenic in humans" by the Agency; therefore Indoxacarb is is not expected to pose carcinogenic risk when used as directed.

6. *Determination of safety.* Based on these risk assessments, EPA concludes that there is a reasonable certainty that no harm will result to the general population, and to infants and children from aggregate exposure to Indoxacarb residues.

IV. Other Considerations

A. Analytical Enforcement Methodology

Adequate enforcement methodology (high performance liquid chromatography HPLC/UV Method AMR 2712–93) is available to enforce the tolerance expression. The method may be requested from: Calvin Furlow, PIRIB, IRSD (7502C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Avenue., NW, Washington D.C. 20460; Telephone Number: (703) 305–5229; e-mail address: furlow.calvin@epa.gov.

B. International Residue Limits

There are no established or proposed Codex, Canadian, or Mexican maximum residue limits (MRLs) for residues of Indoxacarb; therefore, international harmonization is not an issue at this time.

V. Conclusion

Therefore, the time-limited tolerance is established for combined residues of Indoxacarb, (S)-methyl 7-chloro-2,5-dihydro-2- [[(methoxycarbonyl) [4-(trifluoromethoxy)phenyl] amino]carbonyl] indeno[1,2-e][1,3,4]oxadiazine-4a(3H)- carboxylate] + its R-enantiomer [(R)-methyl 7-chloro-2,5-dihydro-2- [[(methoxycarbonyl)[4-(trifluoromethoxy)phenyl] amino]carbonyl]indeno[1,2-e][1,3,4]oxadiazine-4a(3H)- carboxylate, in or on peaches at 10 ppm. This tolerance will expire and is revoked on May 15, 2006.

VI. Objections and Hearing Requests

Under section 408(g) of the FFDCA, as amended by the FQPA, any person may file an objection to any aspect of this regulation and may also request a hearing on those objections. The EPA procedural regulations which govern the submission of objections and requests for hearings appear in 40 CFR part 178. Although the procedures in those regulations require some modification to reflect the amendments made to the FFDCA by the FQPA, EPA will continue to use those procedures, with appropriate adjustments, until the necessary modifications can be made. The new section 408(g) of the FFDCA provides essentially the same process for persons to "object" to a regulation for an exemption from the requirement of a tolerance issued by EPA under new section 408(d), as was provided in the old sections 408 and 409 of the FFDCA. However, the period for filing objections is now 60 days, rather than 30 days.

A. What Do I Need to Do to File an Objection or Request a Hearing?

You must file your objection or request a hearing on this regulation in accordance with the instructions provided in this unit and in 40 CFR part 178. To ensure proper receipt by EPA, you must identify docket ID number OPP–2003–0173 in the subject line on the first page of your submission. All requests must be in writing, and must be mailed or delivered to the Hearing Clerk on or before July 14, 2003.

1. *Filing the request.* Your objection must specify the specific provisions in the regulation that you object to, and the grounds for the objections (40 CFR 178.25). If a hearing is requested, the objections must include a statement of the factual issues(s) on which a hearing is requested, the requestor's contentions on such issues, and a summary of any evidence relied upon by the objector (40 CFR 178.27). Information submitted in connection with an objection or hearing request may be claimed confidential by marking any part or all of that information as CBI. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the information that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice.

Mail your written request to: Office of the Hearing Clerk (1900C), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001. You may also deliver your request to the Office of the Hearing Clerk in Rm.104, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA. The Office of the Hearing Clerk is open from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Office of the Hearing Clerk is (703) 603–0061.

2. *Tolerance fee payment.* If you file an objection or request a hearing, you must also pay the fee prescribed by 40 CFR 180.33(i) or request a waiver of that fee pursuant to 40 CFR 180.33(m). You must mail the fee to: EPA Headquarters Accounting Operations Branch, Office of Pesticide Programs, P.O. Box 360277M, Pittsburgh, PA 15251. Please identify the fee submission by labeling it "Tolerance Petition Fees."

EPA is authorized to waive any fee requirement "when in the judgement of the Administrator such a waiver or refund is equitable and not contrary to the purpose of this subsection." For additional information regarding the waiver of these fees, you may contact James Tompkins by phone at (703) 305–5697, by e-mail at tompkins.jim@epa.gov, or by mailing a request for information to Mr. Tompkins at Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001.

If you would like to request a waiver of the tolerance objection fees, you must mail your request for such a waiver to: James Hollins, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001.

3. *Copies for the Docket.* In addition to filing an objection or hearing request with the Hearing Clerk as described in Unit VI.A., you should also send a copy of your request to the PIRIB for its inclusion in the official record that is described in Unit I.B.1. Mail your copies, identified by docket ID number OPP–2003–0173, to: Public Information and Records Integrity Branch, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001. In person or by courier, bring a copy to the location of the PIRIB described in Unit I.B.1. You may also send an electronic copy of your request via e-mail to: opp-docket@epa.gov. Please use an ASCII file format and avoid the use of special characters and any form of encryption. Copies of electronic objections and hearing requests will also be accepted on disks in WordPerfect 6.1/8.0 or ASCII file format. Do not include any CBI in your electronic copy. You may also submit an electronic copy of your request at many Federal Depository Libraries.

B. When Will the Agency Grant a Request for a Hearing?

A request for a hearing will be granted if the Administrator determines that the material submitted shows the following: There is a genuine and substantial issue of fact; there is a reasonable possibility that available evidence identified by the requestor would, if established resolve one or more of such issues in favor of the requestor, taking into account uncontested claims or facts to the contrary; and resolution of the factual issues(s) in the manner sought by the requestor would be adequate to justify the action requested (40 CFR 178.32).

VII. Statutory and Executive Order Reviews

This final rule establishes a tolerance under section 408(d) of the FFDCA in response to a petition submitted to the Agency. The Office of Management and Budget (OMB) has exempted these types of actions from review under Executive Order 12866, entitled *Regulatory Planning and Review* (58 FR 51735, October 4, 1993). Because this rule has been exempted from review under Executive Order 12866 due to its lack of significance, this rule is not subject to Executive Order 13211, *Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use* (66 FR 28355, May 22, 2001). This final rule does not contain any information collections subject to OMB approval under the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq.*, or impose any enforceable duty or contain any unfunded mandate as described under Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) (Public Law 104–4). Nor does it require any

special considerations under Executive Order 12898, entitled *Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations* (59 FR 7629, February 16, 1994); or OMB review or any Agency action under Executive Order 13045, entitled *Protection of Children from Environmental Health Risks and Safety Risks* (62 FR 19885, April 23, 1997). This action does not involve any technical standards that would require Agency consideration of voluntary consensus standards pursuant to section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law 104–113, section 12(d) (15 U.S.C. 272 note). Since tolerances and exemptions that are established on the basis of a petition under section 408(d) of the FFDCA, such as the tolerance in this final rule, do not require the issuance of a proposed rule, the requirements of the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*) do not apply. In addition, the Agency has determined that this action will not have a substantial direct effect on States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132, entitled *Federalism* (64 FR 43255, August 10, 1999). Executive Order 13132 requires EPA to develop an accountable process to ensure "meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications." "Policies that have federalism implications" is defined in the Executive order to include regulations that have "substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government." This final rule directly regulates growers, food processors, food handlers and food retailers, not States. This action does not alter the relationships or distribution of power and responsibilities established by Congress in the preemption provisions of section 408(n)(4) of the FFDCA. For these same reasons, the Agency has determined that this rule does not have any "tribal implications" as described in Executive Order 13175, entitled *Consultation and Coordination with Indian Tribal Governments* (65 FR 67249, November 6, 2000). Executive Order 13175, requires EPA to develop an accountable process to ensure "meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications." "Policies that have tribal implications" is defined in the Executive order to include regulations that have "substantial direct effects on one or more Indian tribes, on the relationship between the Federal Government and the Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes." This rule will not have substantial direct effects on tribal governments, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified in Executive Order 13175. Thus, Executive Order 13175 does not apply to this rule.

VIII. Congressional Review Act

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of this final rule in the **Federal Register**. This final rule is not a "major rule" as defined by 5 U.S.C. 804(2).

List of Subjects in 40 CFR Part 180

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: April 30, 2003.

Debra Edwards

Director, Registration Division, Office of Pesticide Programs.

■ Therefore, 40 CFR chapter I is amended as follows:

PART 180—[AMENDED]

■ 1. The authority citation for part 180 continues to read as follows:

Authority: 21 U.S.C. 321(q), 346(a) and 371.

■ 2. Section 180.564 is amended by redesignating the existing text in paragraph (a) following the heading "General" as paragraph (a)(1) and by adding a new paragraph (a)(2) to read as follows:

§ 180.564 Indoxacarb; tolerances for residues.

(a) * * *

(1) * * *

(2) Time-limited tolerances are established for combined residues of Indoxacarb, (S)-methyl 7-chloro-2,5-dihydro-2-[[(methoxycarbonyl) [4-(trifluoromethoxy) phenyl] amino] carbonyl] indeno[1,2-e][1,3,4]oxadiazine-4a(3H)-carboxylate] + its R-enantiomer [(R)-methyl 7-chloro-2,5-dihydro-2- [[(methoxycarbonyl)[4-(trifluoromethoxy) phenyl] amino] carbonyl]indeno[1,2-e] [1,3,4]oxadiazine-4a(3H)- carboxylate, in connection with use of the pesticide under FIFRA section 5 experimental use permit granted by EPA. The tolerances are specified in the following table, and will expire and are revoked on the dates specified.

Commodity	Parts per million	Expiration/revocation date
Peach	10	May 15, 2006

[FR Doc. 03–11758 Filed 5–13–03; 8:45 am]
BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[OPP–2003–0109; FRL–7305–9]

Pyriproxyfen; Pesticide Tolerances

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation establishes a tolerance for residues of pyriproxyfen in or on atemoya, biriba, cherimoya, custard apple, ilama, soursop, and sugar apple at 0.20 parts per million (ppm); avocado, black sapote, canistel, mamey sapote, mango, papaya, sapodilla and star apple at 1.0 ppm; okra at 0.02 ppm; fig at 0.30 ppm; and fig, dried at 1.0 ppm. The Interregional Research Project Number 4 (IR-4) requested these tolerances under the Federal Food, Drug, and Cosmetic Act (FFDCA), as amended by the Food Quality Protection Act of 1996 (FQPA).

DATES: This regulation is effective May 14, 2003. Objections and requests for hearings, identified by docket ID number OPP–2003–0109, must be received on or before July 14, 2003.

ADDRESSES: Written objections and hearing requests may be submitted electronically, by mail, or through hand delivery/courier. Follow the detailed instructions as provided in Unit VI. of the **SUPPLEMENTARY INFORMATION**.

FOR FURTHER INFORMATION CONTACT: Hoyt Jamerson, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW.,Washington, DC 20460–0001; telephone number: (703) 308–9368; e-mail address: *jamerson.hoyt@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

You may be potentially affected by this action if you are an agricultural producer, food manufacturer, or pesticide manufacturer. Potentially affected entities may include, but are not limited to:

- Crop production (NAICS 111)
- Animal Production (NAICS 112)
- Food manufacturing (NAICS 311)
- Pesticide manufacturing (NAICS 32532)

This listing is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in this unit could also be affected. The North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether this action might apply to certain entities. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

B. How Can I Get Copies of this Document and Other Related Information?

1. *Docket.* EPA has established an official public docket for this action under docket identification (ID) number OPP–2003–0109. The official public docket consists of the documents specifically referenced in this action, any public comments received, and other information related to this action. Although a part of the official docket, the public docket does not include Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. The official public docket is the collection of materials that is available for public viewing at the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA. This docket facility is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The docket telephone number is (703) 305–5805.

2. *Electronic access.* You may access this **Federal Register** document electronically through the EPA Internet under the "**Federal Register**" listings at *http://www.epa.gov/fedrgstr/*. A frequently updated electronic version of 40 CFR part 180 is available at *http://www.access.gpo.gov/nara/cfr/cfrhtml_00/Title_40/40cfr180_00.html*, a beta site currently under development. To access the OPPTS Harmonized Guidelines referenced in this document, go directly to the guidelines at *http://www.epa.gov/opptsfrs/home/guidelin.htm*.

An electronic version of the public docket is available through EPA's electronic public docket and comment system, EPA Dockets. You may use EPA Dockets at *http://www.epa.gov/edocket/* to submit or view public comments, access the index listing of the contents of the official public docket, and to access those documents in the public docket that are available electronically. Although not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the docket facility identified in Unit I.B.1. Once in the system, select "search," then key in the appropriate docket ID number.

II. Background and Statutory Findings

In the **Federal Register** of March 7, 2003 (68 FR 11093) (FRL–7289–8), EPA issued a notice pursuant to section 408 of FFDCA, 21 U.S.C. 346a, as amended by FQPA (Public Law 104–170), announcing the filing of pesticide petitions (PP) 2E6416, 2E6425, 2E6428, and 2E6436) by IR-4, 681 US Highway #1 South, North Brunswick, NJ 08902–3390. That notice included a summary of the petitions prepared by Valent U.S.A. Corporation, the registrant. There were no comments received in response to the notice of filing.

The petition requested that 40 CFR 180.510 be amended by establishing tolerances for residues of the insecticide pyriproxyfen, 2-[1-methyl-2-(4-phenoxyphenoxy)ethoxy]pyridine, in or on atemoya, biriba, cherimoya, custard apple, ilama, soursop, and sugar apple at 0.20 ppm (PP 2E6416); avocado, black sapote, canistel, mamey sapote, mango, papaya, sapodilla and star apple at 1.0 ppm (PP 2E6428); okra at 0.02 ppm (PP 2E6436); fig at 0.30 ppm (PP 2E6425); and fig, dried at 1.0 ppm (2E6425).

Section 408(b)(2)(A)(i) of the FFDCA allows EPA to establish a tolerance (the legal limit for a pesticide chemical residue in or on a food) only if EPA determines that the tolerance is "safe." Section 408(b)(2)(A)(ii) of the FFDCA defines "safe" to mean that "there is a reasonable certainty that no harm will result from aggregate exposure to the pesticide chemical residue, including all anticipated dietary exposures and all other exposures for which there is reliable information." This includes exposure through drinking water and in residential settings, but does not include occupational exposure. Section 408(b)(2)(C) of the FFDCA requires EPA to give special consideration to exposure of infants and children to the pesticide chemical residue in establishing a tolerance and to "ensure that there is a reasonable certainty that no harm will result to infants and children from aggregate exposure to the pesticide chemical residue. . . ."

EPA performs a number of analyses to determine the risks from aggregate exposure to pesticide residues. For further discussion of the regulatory requirements of section 408 of the FFDCA and a complete description of the risk assessment process, *see* the final rule on Bifenthrin Pesticide Tolerances (62 FR 62961, November 26, 1997) (FRL–5754–7).

III. Aggregate Risk Assessment and Determination of Safety

Consistent with section 408(b)(2)(D) of the FFDCA, EPA has reviewed the available scientific data and other relevant information in support of this action. EPA has sufficient data to assess the hazards of and to make a determination on aggregate exposure, consistent with section 408(b)(2) of the FFDCA, for tolerances for residues of pyriproxyfen on atemoya, biriba, cherimoya, custard apple, ilama, soursop, and sugar apple at 0.20 ppm (PP 2E6416); avocado, black sapote, canistel, mamey sapote, mango, papaya, sapodilla and star apple at 1.0 ppm (PP 2E6428); okra at 0.02 ppm (PP 2E6436); fig at 0.30 ppm (PP 2E6425); and fig, dried at 1.0 ppm (2E6425). EPA's assessment of exposures and risks associated with establishing the tolerances follows.

A. Toxicological Profile

EPA has evaluated the available toxicity data and considered its validity, completeness, and reliability as well as the relationship of the results of the studies to human risk. EPA has also considered available information concerning the variability of the sensitivities of major identifiable subgroups of consumers, including infants and children. The no observed adverse effect level (NOAEL) and the lowest observed adverse effect level (LOAEL) from the toxicity studies reviewed as well as the nature of the toxic effects caused by pyriproxyfen are discussed in Unit III.A. of the **Federal Registers** of June 5, 2001 (66 FR 30065) (FRL–6782–5), August 28, 2002 (67 FR 55150) (FRL–7195–7), and March 7, 2003 (68 FR 10972) (FRL–7289–6).

B. Toxicological Endpoints

The dose at which the NOAEL from the toxicology study identified as appropriate for use in risk assessment is used to estimate the toxicological level of concern (LOC). However, the LOAEL is sometimes used for risk assessment if no NOAEL was achieved in the toxicology study selected. An uncertainty factor (UF) is applied to reflect uncertainties inherent in the extrapolation from laboratory animal data to humans and in the variations in sensitivity among members of the human population as well as other unknowns. An UF of 100 is routinely used, 10X to account for interspecies differences and 10X for intraspecies differences.

For dietary risk assessment (other than cancer) the Agency uses the UF to calculate an acute or chronic reference dose (acute RfD or chronic RfD) where the RfD is equal to the NOAEL divided by the appropriate UF (RfD = NOAEL/UF). Where an additional safety factor (SF) is retained due to concerns unique to the FQPA, this additional factor is applied to the RfD by dividing the RfD by such additional factor. The acute or chronic Population Adjusted Dose (aPAD or cPAD) is a modification of the RfD to accommodate this type of FQPA SF.

For non-dietary risk assessments (other than cancer) the UF is used to determine the LOC. For example, when 100 is the appropriate UF (10X to account for interspecies differences and 10X for intraspecies differences) the LOC is 100. To estimate risk, a ratio of the NOAEL to exposures (margin of exposure (MOE) = NOAEL/exposure) is calculated and compared to the LOC.

The linear default risk methodology (Q^*) is the primary method currently used by the Agency to quantify carcinogenic risk. The Q^* approach assumes that any amount of exposure will lead to some degree of cancer risk. A Q^* is calculated and used to estimate risk which represents a probability of occurrence of additional cancer cases (e.g., risk is expressed as 1×10^{-6} or one in a million). Under certain specific circumstances, MOE calculations will be used for the carcinogenic risk assessment. In this non-linear approach, a "point of departure" is identified below which carcinogenic effects are not expected. The point of departure is typically a NOAEL based on an endpoint related to cancer effects though it may be a different value derived from the dose response curve. To estimate risk, a ratio of the point of departure to exposure (MOE_{cancer} = point of departure/exposures) is calculated. A summary of the toxicological endpoints for pyriproxyfen used for human risk assessment is shown in Unit III.B. of the **Federal Register** of March 7, 2003 (68 FR 10972).

C. Exposure Assessment

1. *Dietary exposure from food and feed uses.* Tolerances have been established (40 CFR 180.510) for the residues of pyriproxyfen, in or on a variety of raw agricultural commodities. There are no significant livestock feed items associated this action, thus the proposed uses will not result in the transfer of additional pyriproxyfen residues to livestock. Risk assessments were conducted by EPA to assess dietary exposures from pyriproxyfen in food as follows:

i. *Acute exposure.* Acute dietary risk assessments are performed for a food-use pesticide if a toxicological study has indicated the possibility of an effect of concern occurring as a result of a one day or single exposure. An acute dietary exposure analysis was not conducted since no acute doses or toxicological endpoints were selected for the general U.S. population (including infants and children) or the females 13–50 years old population subgroup.

ii. *Chronic exposure.* In conducting this chronic dietary risk assessment EPA used the Dietary Exposure Evaluation Model software with the Food Commodity Intake Database (DEEM-FCID®) which incorporates food consumption data as reported by respondents in the USDA 1994–1996 and 1998 nationwide Continuing Surveys of Food Intake by Individuals (CSFII) and accumulated exposure to the chemical for each commodity. The following assumptions were made for the chronic exposure assessments: The chronic dietary exposure assessment was performed using published and proposed tolerance levels, DEEM® default processing factors, and 100% crop treated (PCT) assumptions for all commodities. Some of the crops (atemoya, custard apple, ilama, birba, sapodilla, black and white sapote, star apple, and ugli fruit) considered in this risk assessment are not included in the present version of DEEM-FCID® due to their low consumption. In these cases, the DEEM-FCID® program underestimates the exposure to pyriproxyfen residues from these crops; however, because the consumption levels of these crops is so low (on a national basis), inclusion of these crops in a future version of DEEM-FCID® would likely make no difference in the overall predicted exposures to pyriproxyfen residues.

iii. *Cancer.* Pyriproxyfen was classified by the EPA (June, 1995) as a "Group E" chemical - no evidence of carcinogenicity to humans based on the absence of carcinogenicity in mice and rats.

2. *Dietary exposure from drinking water.* The Agency lacks sufficient monitoring exposure data to complete a comprehensive dietary exposure analysis and risk assessment for pyriproxyfen in drinking water. Because the Agency does not have comprehensive monitoring data, drinking water concentration estimates are made by reliance on simulation or modeling taking into account data on the physical characteristics of pyriproxyfen.

The Agency uses the FQPA Index Reservoir Screening Tool (FIRST) or the Pesticide Root Zone Model/Exposure Analysis Modeling System (PRZM/EXAMS), to produce estimates of pesticide concentrations in an index reservoir. The screening concentration in ground water (SCI-GROW) model is used to predict pesticide concentrations in shallow ground water. For a screening-level assessment for surface water EPA will use FIRST (a Tier I model) before using PRZM/EXAMS (a Tier II model). The FIRST model is a subset of the PRZM/EXAMS model that uses a specific high-end runoff scenario for pesticides. FIRST and PRZM/EXAMS incorporate an index reservoir environment, and a percent crop area factor as an adjustment to account for the maximum percent crop coverage within a watershed or drainage basin.

Since the models used are considered to be screening tools in the risk assessment process, the Agency does not use estimated environmental concentrations (EECs) from these models to quantify drinking water exposure and risk as a percent reference dose (%RfD) or percent population adjusted dose (%PAD). Instead drinking water levels of comparison (DWLOCs) are calculated and used as a point of comparison against the model estimates of a pesticide's concentration in water. DWLOCs are theoretical upper limits on a pesticide's concentration in drinking water in light of total aggregate exposure to a pesticide in food, and from residential uses. Since DWLOCs address total aggregate exposure to pyriproxyfen they are further discussed in the aggregate risk sections in Unit III.E.

EPA determined that the residue of concern in water is pyriproxyfen *per se.* Drinking water estimates include surface water EECs based on the linked PRZM/EXAMS models and the SCI-GROW regression model, which was developed from studies with different hydrology and study conditions. Both models assumed a maximum seasonal application rate of 0.11 lb active ingredient per acre, applied 3 times per year. (The registered use for citrus). Based on the PRZM/EXAMS and SCI-GROW models the EECs of pyriproxyfen for acute exposures are estimated to be 2.15 parts per billion (ppb) for surface water and 0.006 ppb for ground water. The EECs for chronic exposures are estimated to be 0.40 ppb for surface water and 0.006 ppb for ground water.

3. *From non-dietary exposure.* The term "residential exposure" is used in this document to refer to non-occupational, non-dietary exposure (e.g., for lawn and garden pest control, indoor pest control, termiticides, and flea and tick control on pets).

Pyriproxyfen is currently registered for use on the following residential non-dietary sites: Residential sites for flea and tick control products (home environment and pet treatments) as well as products for ant and roach control (indoor and outdoor applications). Formulations include carpet powders, foggers, aerosol sprays, liquids (shampoos, sprays, and pipettes), granules, bait (indoor and outdoor), and impregnated materials (pet collars).

The risk assessment was conducted using the following residential exposure assumptions: There is a potential for short-term dermal and inhalation exposures to pet owners and homeowners who apply products containing pyriproxyfen (handlers); however, EPA did not identify any short-term dermal or inhalation endpoints. Because no short-term dermal or inhalation endpoints could be identified, EPA expects no short-term dermal or inhalation risks from exposure to pyriproxyfen. There is also a potential for non-dietary oral exposures (hand-to-mouth exposures) and dermal exposure following applications around the home and on pets for flea and tick control (carpet powder and pet shampoo). Short- and intermediate-term non-dietary oral and long-term dermal exposure assessments were included for toddlers since EPA selected toxicology endpoints for these exposures and toddlers are expected to have higher exposures than adults from treated home environments and pets due to their behavior patterns. Although EPA did not select a long-term non-dietary oral endpoint for pyriproxyfen, EPA used the chronic endpoint for the chronic (long-term) aggregate risk assessment.

Toddlers could potentially be exposed to pyriproxyfen residues on treated carpets, floors, furniture, and pets as follows: (i). Hand-to-Mouth: Short-, intermediate, and long-term hand-to-mouth exposures by toddlers from treated carpets, flooring (the efficacy of carpet powders is approximately 365 days); (ii). Hand-to-mouth: Short- and intermediate-term hand-to-mouth exposures by toddlers from petting treated animals (shampoos, sprays, spot-on treatments and collars). Long-term hand-to-mouth exposures by toddlers from petting treated animals (pet collars; efficacy of pet collars up to 395 days); (iii). Dermal: Long-term dermal exposures from treated carpets, flooring, and pets. (iv). Ingestion of granules or bait by toddlers (acute, episodic event): For the granular ingestion scenario, the Agency believes that if a toddler were to be exposed to a pellet/granular formulation (i.e., ant bait), the event is most likely to be "episodic," that is, a one time occurrence and not likely to be repeated. It is not likely that a toddler would repeatedly locate and ingest very small, sand colored granules. For pyriproxyfen, EPA did not select an acute dietary endpoint, since an appropriate endpoint could not be attributed to a single oral dose; therefore, no granular assessment was performed.

Exposure and risk estimates from post-application exposure to indoor crack and crevice treatments are not presented in this assessment as indoor broadcast treatments (i.e., carpet powders and sprays) are anticipated to have a higher exposure potential. Additionally, the Agency acknowledges that pet owners could retreat the home environment and/or the pet near the end of the efficacy period identified on the product labels. However, there are no chemical-specific residue data for pyriproxyfen to determine the dissipation rate of residues or whether residues may be additive upon retreatment. Therefore, a Tier I assessment was performed based on Day 0 residues without accounting for daily residue dissipation. EPA anticipates that this assessment is protective as pyriproxyfen residues would be expected to dissipate from Day 0 residue values.

4. *Cumulative exposure to substances with a common mechanism of toxicity.* Section 408(b)(2)(D)(v) of the FFDCA requires that, when considering whether to establish, modify, or revoke a tolerance, the Agency consider "available information" concerning the cumulative effects of a particular pesticide's residues and "other substances that have a common mechanism of toxicity."

EPA does not have, at this time, available data to determine whether [pyriproxyfen] has a common mechanism of toxicity with other substances. Unlike other pesticides for which EPA has followed a cumulative risk approach based on a common mechanism of toxicity, EPA has not made a common mechanism of toxicity finding as to pyriproxyfen and any other substances and pyriproxyfen does not appear to produce a toxic metabolite produced by other substances. For the purposes of this tolerance action, therefore, EPA has not assumed that pyriproxyfen has a common mechanism of toxicity with other substances. For information regarding EPA's efforts to determine which chemicals have a common mechanism of toxicity and to evaluate the cumulative effects of such chemicals, *see* the policy statements released by EPA's Office of Pesticide Programs concerning common mechanism determinations and procedures for cumulating effects from substances found to have a common

mechanism on EPA's website at *http://www.epa.gov/pesticides/cumulative/*.

D. Safety Factor for Infants and Children

1. *In general.* Section 408 of the FFDCA provides that EPA shall apply an additional tenfold margin of safety for infants and children in the case of threshold effects to account for prenatal and postnatal toxicity and the completeness of the data base on toxicity and exposure unless EPA determines that a different margin of safety will be safe for infants and children. Margins of safety are incorporated into EPA risk assessments either directly through use of a MOE analysis or through using uncertainty (safety) factors in calculating a dose level that poses no appreciable risk to humans.

2. *Prenatal and postnatal sensitivity.* Based on the available data, there is no quantitative and qualitative evidence of increased susceptibility observed following *in utero* pyriproxyfen exposure to rats and rabbits or following pre/post natal exposure in the 2-generation reproduction study.

3. *Conclusion.* There is a complete toxicity data base for pyriproxyfen and exposure data are complete or are estimated based on data that reasonably accounts for potential exposures. EPA determined that the 10X safety factor to protect infants and children should be reduced to 1X because there was no evidence of prenatal or postnatal extra sensitivity or increased susceptibility in developmental studies in rats and rabbits, and in reproduction studies in rats. Likewise, there was no quantitative or qualitative evidence of increased susceptibility to rat or rabbit fetuses identified in the guideline prenatal developmental toxicity studies for rats and rabbits. Additionally, in the 2 non-guideline studies that evaluated perinatal and prenatal development, there was no evidence of quantitative or qualitative increased susceptibility. In 1–study, when pregnant rats were treated from gestation day 17 to lactation day 20, the resulting toxicity was comparable between adults (clinical signs, decreased body weight gain and food consumption) and offspring (decreased body weight and dilation of the renal pelvis) at the same dose. In the other study, when rats were exposed to pyriproxyfen prior to and in the early stages of pregnancy, no developmental toxicity was seen at the limit dose. Lastly, in the reproduction toxicity study, offspring toxicity (decreased body weight on pups during lactation days 14 to 21) occurred only in the presence of decreases in body weight in parental animals at the same dose level (i.e., comparable toxicity in adults and offspring).

E. Aggregate Risks and Determination of Safety

To estimate total aggregate exposure to a pesticide from food, drinking water, and residential uses, the Agency calculates DWLOCs which are used as a point of comparison against the model estimates of a pesticide's concentration in water (EECs). DWLOC values are not regulatory standards for drinking water. DWLOCs are theoretical upper limits on a pesticide's concentration in drinking water in light of total aggregate exposure to a pesticide in food and residential uses. In calculating a DWLOC, the Agency determines how much of the acceptable exposure (i.e., the PAD) is available for exposure through drinking water (e.g., allowable chronic water exposure milligrams/kilogram/day (mg/kg/day) = cPAD − (average food + residential exposure)). This allowable exposure through drinking water is used to calculate a DWLOC.

A DWLOC will vary depending on the toxic endpoint, drinking water consumption, and body weights. Default body weights and consumption values as used by EPAs Office of Water are used to calculate DWLOCs: 2 liter (L)/70 kg (adult male), 2L/60 kg (adult female), and 1L/10 kg (child). Default body weights and drinking water consumption values vary on an individual basis. This variation will be taken into account in more refined screening-level and quantitative drinking water exposure assessments. Different populations will have different DWLOCs. Generally, a DWLOC is calculated for each type of risk assessment used: Acute, short-term, intermediate-term, chronic, and cancer.

When EECs for surface water and ground water are less than the calculated DWLOCs, EPA concludes with reasonable certainty that exposures to the pesticide in drinking water (when considered along with other sources of exposure for which EPA has reliable data) would not result in unacceptable levels of aggregate human health risk at this time. Because EPA considers the aggregate risk resulting from multiple exposure pathways associated with a pesticide's uses, levels of comparison in drinking water may vary as those uses change. If new uses are added in the future, EPA will reassess the potential impacts of residues of the pesticide in drinking water as a part of the aggregate risk assessment process.

1. *Acute risk.* An acute dietary RfD for females 13–50 and the general U.S. population, including infants and children, was not selected because an acute oral endpoint attributable to a single-dose exposure could not be identified; therefore, acute dietary risk is not expected.

2. *Chronic aggregate risk.* Using the exposure assumptions described in this unit for chronic (long-term) exposure, EPA has concluded that exposure to pyriproxyfen from food will utilize 1.1% of the cPAD for the U.S. population, 2% of the cPAD for all infants, less than 1 year old and 3.9% of the cPAD for children 1 to 2 years old, the subpopulation at greatest exposure. Pyriproxyfen is an active ingredient in pesticide products registered for residential use. Based on the use patterns, the residential risk assessment was performed for toddlers since they are anticipated to have the higher chronic residential exposure to residues of pyriproxyfen. EPA considered background chronic-dietary exposure (food + water), long-term, residential non-dietary oral exposures (hand-to-mouth exposures by toddlers following applications around the home and on pets for flea and tick control-carpet powder and pet shampoo), and long-term dermal exposure to toddlers. The total chronic food and residential aggregate MOEs were calculated. As these MOEs are greater than 100, the chronic aggregate risk does not exceed EPA's level of concern. In addition, there is potential for chronic dietary exposure to pyriproxyfen in drinking water. After calculating DWLOCs and comparing them to the EECs for surface and ground water, EPA does not expect the aggregate chronic exposure to exceed the Agency's level of concern, as shown in Table 1 of this unit:

TABLE 1.—AGGREGATE RISK ASSESSMENT FOR CHRONIC (NON-CANCER) EXPOSURE TO PYRIPROXYFEN

Population Subgroup	Aggregate MOE (Food + Residential)	Aggregate Level of Concern (LOC)	Surface Water EEC (ppb)	Ground Water EEC (ppb)	Short-Term DWLOC (ppb)
U.S. Population	9,200	100	0.4	0.006	12,000
All infants < 1 year	1,000	100	0.4	0.006	3,200
Children 1–2 years	860	100	0.4	0.006	3,100
Children 3–5 years	940	100	0.4	0.006	3,100
Females 13–49 years	13,000	100	0.4	0.006	10,000

3. *Short-term aggregate risk.* Short-term aggregate exposure takes into account residential exposure plus chronic exposure to food and water (considered to be a background exposure level). Pyriproxyfen is currently registered for use that could result in short-term residential exposure and the Agency has determined that it is appropriate to aggregate chronic food and water and short-term exposures for pyriproxyfen. EPA considered background chronic-dietary exposure (food + water) and short-term, residential non-dietary oral exposures (hand-to-mouth exposures by toddlers following applications around the home and on pets for flea and tick control-carpet powder and pet shampoo).

Using the exposure assumptions described in this unit for short-term exposures, EPA has concluded that food and residential exposures aggregated result in aggregate MOEs for toddlers ranging from 1,600 for children 1 to 2 years old to 1,800 for children less than 1 year old. These aggregate MOEs do not exceed the Agency's level of concern for aggregate exposure to food and residential uses. In addition, short-term DWLOCs were calculated and compared to the EECs for chronic exposure of pyriproxyfen in ground water and surface water. After calculating DWLOCs and comparing them to the EECs for surface and ground water, EPA does not expect short-term aggregate exposure to exceed the Agency's level of concern, as shown in Table 2 of this unit:

TABLE 2.—AGGREGATE RISK ASSESSMENT FOR SHORT-TERM EXPOSURE TO PYRIPROXYFEN

Population Subgroup	Aggregate MOE (Food + Residential)	Aggregate Level of Concern (LOC)	Surface Water EEC (ppb)	Ground Water EEC (ppb)	Sh ort-Term DWLOC (ppb)
All infants (<1 year)	1,800	100	0.4	0.006	9,400
Children 1–2 years	1,600	100	0.4	0.006	9,400
Children 3–5 years	1,700	100	0.4	0.006	9,400

4. *Intermediate-term aggregate risk.* Intermediate-term aggregate exposure takes into account residential exposure plus chronic exposure to food and water (considered to be a background exposure level).

Pyriproxyfen is currently registered for use(s) that could result in intermediate-term residential exposure and the Agency has determined that it is appropriate to aggregate chronic food and water and intermediate-term exposures for pyriproxyfen. EPA considered background chronic-dietary exposure (food + water) and intermediate-term, residential non-dietary oral exposures (hand-to-mouth exposures by toddlers following applications around the home and on pets for flea and tick control-carpet powder and pet shampoo).

Using the exposure assumptions described in this unit for intermediate-term exposures, EPA has concluded that food and residential exposures aggregated result in aggregate MOEs for toddlers ranging from 580 for children 1 to 2 years old to 650 for infants less than 1 year old. These aggregate MOEs do not exceed the Agency's level of concern for aggregate exposure to food and residential uses. In addition, intermediate-term DWLOCs were calculated and compared to the EECs for chronic exposure of pyriproxyfen in ground water and surface water. After calculating DWLOCs and comparing them to the EECs for surface and ground water, EPA does not expect intermediate-term aggregate exposure to exceed the Agency's level of concern, as shown in Table 3 of this Unit:

TABLE 3.—AGGREGATE RISK ASSESSMENT FOR INTERMEDIATE-TERM EXPOSURE TO PYRIPROXYFEN

Population Subgroup	Aggregate MOE (Food + Residential)	Aggregate Level of Concern (LOC)	Surface Water EEC (ppb)	Ground Water EEC (ppb)	Inter-mediate-Term DWLOC (ppb)
All infants < 1 year	650	100	0.4	0.006	3,000
Children 1–2 years	580	100	0.4	0.006	2,900
Children 3–5 years	620	100	0.4	0.006	2,900

5. *Aggregate cancer risk for U.S. population.* There is no evidence of carcinogenicity to humans based on carcinogenicity studies in male and female rats and mice. The Agency concludes that pesticidal uses of

pyriproxyfen are not likely to pose a carcinogenic hazard to humans.

6. *Determination of safety.* Based on these risk assessments, EPA concludes that there is a reasonable certainty that no harm will result to the general population, and to infants and children from aggregate exposure to pyriproxyfen residues.

IV. Other Considerations

A. Analytical Enforcement Methodology

Adequate enforcement methodology (gas chromotography/nitrogen phosphorous detector method (RM-33P-1,-3a)) is available to enforce the tolerance expression. The method may be requested from: Chief, Analytical Chemistry Branch, Environmental Science Center, 701 Mapes Rd., Ft. Meade, MD 20755–5350; telephone number: (410) 305–2905; e-mail address: *residuemethods@epa.gov.*

B. International Residue Limits

There are no Codex, Canadian, or Mexican maximum residue limits established for residues of pyriproxyfen in or on the subject food commodities.

V. Conclusion

Therefore, the tolerance is established for residues of pyriproxyfen, [2-[1-methyl-2-(4-phenoxyphenoxy)ethoxy]pyridine], in or on atemoya, biriba, cherimoya, custard apple, ilama, soursop, and sugar apple at 0.20 parts per million (ppm); avocado, black sapote, canistel, mamey sapote, mango, papaya, sapodilla and star apple at 1.0 ppm; okra at 0.02 ppm; fig at 0.30 ppm; and fig, dried at 1.0 ppm.

VI. Objections and Hearing Requests

Under section 408(g) of the FFDCA, as amended by the FQPA, any person may file an objection to any aspect of this regulation and may also request a hearing on those objections. The EPA procedural regulations which govern the submission of objections and requests for hearings appear in 40 CFR part 178. Although the procedures in those regulations require some modification to reflect the amendments made to the FFDCA by the FQPA, EPA will continue to use those procedures, with appropriate adjustments, until the necessary modifications can be made. The new section 408(g) of the FFDCA provides essentially the same process for persons to "object" to a regulation for an exemption from the requirement of a tolerance issued by EPA under new section 408(d) of FFDCA, as was provided in the old sections 408 and 409 of the FFDCA. However, the period for filing objections is now 60 days, rather than 30 days.

A. What Do I Need to Do to File an Objection or Request a Hearing?

You must file your objection or request a hearing on this regulation in accordance with the instructions provided in this unit and in 40 CFR part 178. To ensure proper receipt by EPA, you must identify docket ID number OPP–2003–0109 in the subject line on the first page of your submission. All requests must be in writing, and must be mailed or delivered to the Hearing Clerk on or before July 14, 2003.

1. *Filing the request.* Your objection must specify the specific provisions in the regulation that you object to, and the grounds for the objections (40 CFR 178.25). If a hearing is requested, the objections must include a statement of the factual issues(s) on which a hearing is requested, the requestor's contentions on such issues, and a summary of any evidence relied upon by the objector (40 CFR 178.27). Information submitted in connection with an objection or hearing request may be claimed confidential by marking any part or all of that information as CBI. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the information that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice.

Mail your written request to: Office of the Hearing Clerk (1900C), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001. You may also deliver your request to the Office of the Hearing Clerk in Rm.104, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA. The Office of the Hearing Clerk is open from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Office of the Hearing Clerk is (703) 603–0061.

2. *Tolerance fee payment.* If you file an objection or request a hearing, you must also pay the fee prescribed by 40 CFR 180.33(i) or request a waiver of that fee pursuant to 40 CFR 180.33(m). You must mail the fee to: EPA Headquarters Accounting Operations Branch, Office of Pesticide Programs, P.O. Box 360277M, Pittsburgh, PA 15251. Please identify the fee submission by labeling it "Tolerance Petition Fees."

EPA is authorized to waive any fee requirement "when in the judgement of the Administrator such a waiver or refund is equitable and not contrary to the purpose of this subsection." For additional information regarding the waiver of these fees, you may contact James Tompkins by phone at (703) 305–5697, by e-mail at tompkins.*jim@epa.gov*, or by mailing a request for information to Mr. Tompkins at Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001.

If you would like to request a waiver of the tolerance objection fees, you must mail your request for such a waiver to: James Hollins, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001.

3. *Copies for the Docket.* In addition to filing an objection or hearing request with the Hearing Clerk as described in Unit VI.A., you should also send a copy of your request to the PIRIB for its inclusion in the official record that is described in Unit I.B.1. Mail your copies, identified by docket ID number OPP–2003–0109, to: Public Information and Records Integrity Branch, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001. In person or by courier, bring a copy to the location of the PIRIB described in Unit I.B.1. You may also send an electronic copy of your request via e-mail to: *opp-docket@epa.gov.* Please use an ASCII file format and avoid the use of special characters and any form of encryption. Copies of electronic objections and hearing requests will also be accepted on disks in WordPerfect 6.1/8.0 or ASCII file format. Do not include any CBI in your electronic copy. You may also submit an electronic copy of your request at many Federal Depository Libraries.

B. When Will the Agency Grant a Request for a Hearing?

A request for a hearing will be granted if the Administrator determines that the material submitted shows the following: There is a genuine and substantial issue of fact; there is a reasonable possibility that available evidence identified by the requestor would, if established resolve one or more of such issues in favor of the requestor, taking into account uncontested claims or facts to the contrary; and resolution of the factual issues(s) in the manner sought by the requestor would be adequate to justify the action requested (40 CFR 178.32).

VII. Statutory and Executive Order Reviews

This final rule establishes a tolerance under section 408(d) of the FFDCA in response to a petition submitted to the Agency. The Office of Management and Budget (OMB) has exempted these types of actions from review under Executive Order 12866, entitled *Regulatory Planning and Review* (58 FR 51735, October 4, 1993). Because this rule has been exempted from review under Executive Order 12866 due to its lack of significance, this rule is not subject to Executive Order 13211, *Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use* (66 FR 28355, May 22, 2001). This final rule does not contain any information collections subject to OMB approval under the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq.*, or impose any enforceable duty or contain any unfunded mandate as described under Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) (Public Law 104–4). Nor does it require any special considerations under Executive Order 12898, entitled *Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations* (59 FR 7629, February 16, 1994); or OMB review or any Agency action under Executive Order 13045, entitled *Protection of Children from Environmental Health Risks and Safety Risks* (62 FR 19885, April 23, 1997). This action does not involve any technical standards that would require Agency consideration of voluntary consensus standards pursuant to section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law 104–13, section 12(d) (15 U.S.C. 272 note). Since tolerances and exemptions that are established on the basis of a petition under section 408(d) of the FFDCA, such as the tolerance in this final rule, do not require the issuance of a proposed rule, the requirements of the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*) do not apply. In addition, the Agency has determined that this action will not have a substantial direct effect on States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132, entitled *Federalism*(64 FR 43255, August 10, 1999). Executive Order 13132 requires EPA to develop an accountable process to ensure "meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications." "Policies that have federalism implications" is defined in the Executive Order to include regulations that have "substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government." This final rule directly regulates growers, food processors, food handlers and food retailers, not States. This action does not alter the relationships or distribution of power and responsibilities established by Congress in the preemption provisions of section 408(n)(4) of the FFDCA. For these same reasons, the Agency has determined that this rule does not have any "tribal implications" as described in Executive Order 13175, entitled *Consultation and Coordination with Indian Tribal Governments* (65 FR 67249, November 6, 2000). Executive Order 13175, requires EPA to develop an accountable process to ensure "meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications." "Policies that have tribal implications" is defined in the Executive Order to include regulations that have "substantial direct effects on one or more Indian tribes, on the relationship between the Federal Government and the Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes." This rule will not have substantial direct effects on tribal governments, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified in Executive Order 13175. Thus, Executive Order 13175 does not apply to this rule.

VIII. Congressional Review Act

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of this final rule in the **Federal Register**. This final rule is not a "major rule" as defined by 5 U.S.C. 804(2).

List of Subjects in 40 CFR Part 180

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: May 6, 2003.

Debra Edwards,

Director, Registration Division, Office of Pesticide Programs.

■ Therefore, 40 CFR chapter I is amended as follows:

PART 180—[AMENDED]

■ 1. The authority citation for part 180 continues to read as follows:

Authority: 21 U.S.C. 321(q), 346(a) and 371.

■ 2. Section 180.510 is amended by alphabetically adding commodities to the table in paragraph (a) to read as follows:

§ 180.510 Pyriproxyfen: tolerances for residues.

(a) * * *

Commodity	Parts per million
* * *	* *
Atemoya	0.20
Avocado	1.0
Biriba	0.20
Black sapote	1.0
* * *	* *
Canistel	1.0
Cherimoya	0.20
* * *	* *
Custard apple	0.20
* * *	* *
Fig	0.30
Fig, dried	1.0
* * *	* *
Ilama	0.20
* * *	* *
Mamey sapote	1.0
Mango	1.0
* * *	* *
Okra	0.02
* * *	* *
Papaya	1.0
* * *	* *
Sapodilla	1.0
* * *	* *
Soursop	0.20
* * *	* *
Star apple	1.0
* * *	* *
Sugar apple	0.20
* * *	* *

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[FR Doc. 03–12022 Filed 5–13–03; 8:45 am]

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DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

45 CFR Part 2

Testimony by Employees and the Production of Documents in Proceedings Where the United States Is Not a Party

AGENCY: Department of Health and Human Services.

ACTION: Final rule.

SUMMARY: This rule amends regulations which provide that employees and former employees of the Department of Health and Human Services may not provide testimony as part of their official duties in litigation where the United States or a Federal agency is not a party, without the approval of the head of the agency. The purpose of these amendments is to modify provisions which provide that subpoenas *duces tecum* and other requests for documents from third parties shall be treated as requests for documents under the Freedom of Information Act ("FOIA"). Under these amendments, the FOIA shall not apply to a subpoena when the Department is subject to the jurisdiction of the issuing Federal court or other Federal tribunal and the subpoena is properly served. The regulation provides that where there is no jurisdiction over the Department, as in the case of subpoenas issuing out of State, local and tribal courts, the FOIA will apply to such subpoenas.

EFFECTIVE DATE: June 13, 2003.

FOR FURTHER INFORMATION CONTACT: Katherine M. Drews, Associate General Counsel, General Law Division, Office of the General Counsel, at (202) 619–0150.

SUPPLEMENTARY INFORMATION: In 1987, the Department of Health and Human Services published regulations which addressed the issue of the increasing number of requests for the testimony of Department employees in litigation involving only private parties and not the United States. The regulation addresses this matter by generally prohibiting both voluntary appearances and compliance with subpoenas for testimony as part of an employee's official duties, except where the relevant agency head or his or her designee determines that the appearance would promote the objectives of the Department. In addition, the regulation provides that subpoenas for the production of documents would be processed under the Freedom of Information Act, 5 U.S.C. 552.

These amendments are designed to address cases in which a Federal court has jurisdiction to issue a subpoena for DHHS documents. In such cases, the current regulation may infringe on the power of the court by allowing greater authority to withhold a document under the FOIA than would be the case under the rules governing disclosure of documents in court. *See FTC* versus *Grolier, Inc.*, 462 U.S. 19, 27–28 (1983). Because it is not the intention of the Department to create or broaden a Federal litigation privilege through this part, we are amending the regulation to limit the applicability of the FOIA to situations in which the issuing tribunal has no jurisdiction over the Department.

Accordingly, we are amending §§ 2.1, 2.3, and 2.5 to provide that when the Office of the General Counsel determines that a subpoena is "legally sufficient," including when the issuing court has jurisdiction over the Department or its employee(s), the Department will follow the applicable procedural and substantive rules relating to the production of information and documents by a non-party. In cases of informal requests for documents, and where the tribunal issuing the subpoena does not have jurisdiction over the Department—such as is the case in most subpoenas issuing out of State, local and tribal courts, *see, e.g., Boron Oil Co.* versus *Downie*, 873 F.2d 67, 70 (4th Cir. 1989); *Environmental Enterprises, Inc.* versus *EPA*, 664 F. Supp. 585, 586 (D.D.C. 1987); *Reynolds Metals Co.* versus *Crowther*, 572 F. Supp. 288, 290–91 (D. Mass. 1982)—the regulation provides that we will continue to treat the request as a request made pursuant to the FOIA.

The amendments also include examples following the text of § 2.1 which illustrate the applicability of this regulation to situations in which the regulation may or may not apply.

The amendments also reflect changes in the organizational structure in the Department. The references in § 2.2 to the Assistant Secretary for Human Development Services and the Assistant Secretary for Family Support are deleted and replaced by references to the Assistant Secretary for Children and Families as the Agency Head for requests involving the Administration for Children and Families and by the Assistant Secretary for Aging for requests involving the Administration on Aging. In addition, reference to the Commissioner of Social Security is deleted, due to the March 31, 1995, independence of the Social Security Administration.

These amendments also modify § 2.6 to delete the reference to the Freedom of Information Act regulations, 45 CFR part 5, to reflect the policy that the Department will certify any disclosed documents upon request, not just those disclosed pursuant to part 5.

Public Participation: This rule is published as a final rule. It is exempt from public comment, pursuant to 5 U.S.C. 553(b)(A) as a rule of "agency organization, procedure, or practice."

Paperwork Reduction Act: This regulation is not subject to the Paperwork Reduction Act because it deals solely with internal rules governing Department of Health and Human Services personnel.

Cost/Regulatory Analysis: In accordance with Executive Order 12291, the Secretary has determined that these amendments will not constitute a "major" rule and therefore are not subject to the regulatory impact and analysis requirements of the Order. Major rules are those which impose a cost on the economy of $100 million or more a year and have certain other economic impacts.

These amendments will not have a significant impact on small businesses; therefore, preparation of a regulatory flexibility analysis is not required.

List of Subjects in 45 CFR Part 2

Administrative practice and procedure, Freedom of Information, Government employees.

■ Accordingly, for the reasons set forth in the preamble, 45 CFR part 2 is amended as follows:

PART 2—[AMENDED]

■ 1. The authority citation continues to read as follows:

Authority: 5 U.S.C. 301, 5 U.S.C. 552.

■ 2. Section 2.1 is amended by revising paragraphs (a), (b), (c), (d)(4), (d)(6), and adding Examples (1) through (5) to paragraph (d)(7) to read as follows:

§ 2.1 Scope, purpose, and applicability.

(a) This part sets forth rules to be followed when an employee or former employee of the Department of Health and Human Services ("DHHS" or "Department"), other than an employee of the Food and Drug Administration, is requested or subpoenaed to provide testimony in a deposition, trial, or other similar proceeding concerning information acquired in the course of performing official duties or because of such person's official capacity with DHHS. This part also sets forth procedures for the handling of subpoenas duces tecum and other requests for any document in the possession of DHHS, other than the Food and Drug Administration, and for the processing of requests for certification of copies of documents. Separate regulations, 21 CFR part 20, govern the Food and Drug Administration, and those regulations are not affected by this part.

(b) It is the policy of the DHHS to provide information, data, and records to non-federal litigants to the same extent and in the same manner that they are *made* available to the general public *and*, when subject to the jurisdiction of a court or other tribunal presiding over non-federal party litigation, to follow all applicable procedural and substantive rules relating to the production of information, data, and records by a non-party. The availability of Department employees to testify in litigation not involving federal parties is governed by the Department's policy to maintain strict impartiality with respect to private litigants and to minimize the disruption of official duties.

(c) This part applies to state, local and tribal judicial, administrative, and legislative proceedings, and to federal judicial and administrative proceedings.

(d) This part does not apply to:

* * * * *

(4) Employees serving as expert witnesses in connection with professional and consultative services as approved outside activities in accordance with 5 CFR 2635.805 and 5 CFR 5501.106. (In cases where employees are providing such outside services, they must state for the record that the testimony represents their own views and does not necessarily represent the official position of the DHHS.)

* * * * *

(6) Any matters covered in 21 CFR part 20, involving the Food and Drug Administration.

* * * * *

(7) * * *

Example (1): While on duty, an employee of the Department witnesses an incident in which a fellow employee trips on a loose piece of carpeting and sustains an injury. The injured employee brings a private tort action against the contractor installing the carpeting and the private landlord maintaining the building. The employee/witness is served with a subpoena to appear at a deposition to testify about the incident. The person seeking the testimony would not be required to obtain Agency head approval prior to requesting the testimony, because the subject of the testimony does not "relate to" the Department, within the meaning of § 2.1(d)(5).

Example (2): While on duty, an employee of the Department witnesses a mugging while looking out the window to check the weather, and then notifies the local police of what she observed. She is subsequently subpoenaed to testify in a criminal proceeding. The local prosecutor would not be required to obtain Agency head approval prior to requiring the employee to testify, because the subject of the testimony does not "relate to" the Department, within the meaning of § 2.1(d)(5).

Example (3): A nurse on duty at an Indian Health Service hospital emergency room treats a child who is brought in following a report of domestic violence. The nurse is subsequently served with a subpoena to testify in a criminal proceeding against one of the child's parents concerning the injuries to the child which he observed. The local prosecutor would be required to obtain Agency head approval prior to requiring the nurse to testify, because the subject of the testimony involves "information acquired in the course of performing official duties or because of the person's official capacity," within the meaning of § 2.1(a).

Example (4): A personnel specialist working for the Department is subpoenaed to testify concerning the meaning of entries on time and attendance records of an employee, which the requesting party received from the employee pursuant to discovery in a personal injury action brought by the employee. The party requesting the personnel specialist to appear would be required to obtain Agency head approval prior to compelling the personnel specialist to testify, because the testimony sought involves "information acquired in the course of performing official duties or because of the person's official capacity," within the meaning of § 2.1(a).

Example (5): A National Institutes of Health physician is subpoenaed in a private medical malpractice action to provide expert testimony in her specialty. The party requesting her testimony would be required to obtain Agency head approval prior to her testifying in response to the subpoena, because the expert testimony sought involves "information acquired in the course of performing official duties or because of the person's official capacity," within the meaning of § 2.1(a).

■ 3. Section 2.2 is revised to read as follows:

§ 2.2 Definitions.

Agency head refers to the head of the relevant operating division or other major component of the DHHS, or his or her delegatee. *Agency head* for the purposes of this part means the following officials for the components indicated:

(1) Office of the Secretary—Assistant Secretary for Administration and Management;

(2) Administration on Aging—Assistant Secretary for Aging;

(3) Administration for Children and Families—Assistant Secretary for Children and Families;

(4) Agency for Healthcare Research and Quality—Administrator;

(5) Agency for Toxic Substances and Disease Registry—Administrator;

(6) Centers for Disease Control and Prevention—Director;

(7) Centers for Medicare and Medicaid Services—Administrator;

(8) Health Resources and Services Administration—Administrator;

(9) Indian Health Service—Director;

(10) National Institutes of Health—Director;

(11) Substance Abuse and Mental Health Services Administration—Administrator;

(12) Office of Inspector General—Inspector General.

Employee includes:

(1) Commissioned officers in the Public Health Service Commissioned Corps, as well as regular and special DHHS employees (except employees of the Food and Drug Administration), when they are performing the duties of their regular positions, as well as when they are performing duties in a temporary assignment at DHHS or another organization.

(2) Any employees of health insurance intermediaries and carriers performing functions under agreements entered into pursuant to sections 1816 and 1842 of the Social Security Act, 42 U.S.C. 1395h, 1395u; *and*

(3) Current and former employees and contractors of entities covered under the Federally Supported Health Centers Assistance Act of 1992, as amended, 42 U.S.C § 233 (FSHCAA), provided that the requested testimony or information relates to the performance of medical, surgical, dental or related functions which were performed at a time when the DHHS deemed the entity to be covered by the FSHCAA.

Certify means to authenticate under seal, pursuant to 42 U.S.C 3505, official documents of the Department.

Testify and testimony includes both in-person, oral statements before a court, legislative or administrative body and statements made pursuant to depositions, interrogatories, declarations, affidavits, or other formal participation.

■ 4. Section 2.3 is revised to read as follows:

§ 2.3 Policy on Presentation of testimony and production of documents.

No employee or former employee of the DHHS may provide testimony or produce documents in any proceedings to which this part applies concerning information acquired in the course of performing official duties or because of the person's official relationship with the Department unless authorized by the Agency head pursuant to this part based on a determination by the Agency head, after consultation with the Office of the General Counsel, that compliance with

the request would promote the objectives of the Department.

■ 5. Section 2.4 is revised to read as follows:

§ 2.4 Procedures when voluntary testimony is requested or when an employee is subpoenaed.

(a) All requests for testimony by an employee or former employee of the DHHS in his or her official capacity and not subject to the exceptions set forth in § 2.1(d) of this part must be addressed to the Agency head in writing and must state the nature of the requested testimony, why the information sought is unavailable by any other means, and the reasons why the testimony would be in the interest of the DHHS or the federal government.

(b) If the Agency head denies approval to comply with a subpoena for testimony, or if the Agency head has not acted by the return date, the employee will be directed to appear at the stated time and place, unless advised by the Office of the General Counsel that responding to the subpoena would be inappropriate (in such circumstances as, for example, an instance where the subpoena was not validly issued or served, where the subpoena has been withdrawn, or where discovery has been stayed), produce a copy of these regulations, and respectfully decline to testify or produce any documents on the basis of these regulations.

■ 6. Section 2.5 is revised to read as follows:

§ 2.5 Subpoenas duces tecum.

(a) Whenever a subpoena duces tecum has been served upon a DHHS employee or former employee commanding the production of any record, such person shall refer the subpoena to the Office of the General Counsel (including regional chief counsels) for a determination of the legal sufficiency of the subpoena, whether the subpoena was properly served, and whether the issuing court or other tribunal has jurisdiction over the Department.) If the General Counsel or his designee determines that the subpoena is legally sufficient, the subpoena was properly served, and the tribunal has jurisdiction, the terms of the subpoena shall be complied with unless affirmative action is taken by the Department to modify or quash the subpoena in accordance with Fed. R. Civ. P. 45 (c).

(b) If a subpoena duces tecum served upon a DHHS employee or former employee commanding the production of any record is determined by the Office of the General Counsel to be legally insufficient, improperly served, or from a tribunal not having jurisdiction, such subpoena shall be deemed a request for records under the Freedom of Information Act and shall be handled pursuant to the rules governing public disclosure established in 45 CFR part 5.

■ 7. Section 2.6 is revised to read as follows:

§ 2.6 Certification and authentication of records.

Upon request, DHHS agencies will certify, pursuant to 42 U.S.C. 3505, the authenticity of copies of records that are to be disclosed. Fees for copying and certification are set forth in 45 CFR 5.43.

Dated: May 6, 2003.

Tommy G. Thompson,

Secretary.

[FR Doc. 03–11818 Filed 5–13–03; 8:45 am]

BILLING CODE 4120–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Ch. I

[IB Docket No. 02–18, FCC 03–63]

Enforcement of Other Nations' Prohibitions Against the Uncompleted Call Signaling Configuration of International Call-back Service

AGENCY: Federal Communications Commission.

ACTION: Policy Statement.

SUMMARY: This document is a summary of the Commission's decision to eliminate the comity-based prohibitions on call-back and the policy that allowed a foreign government or entity to make use of the enforcement mechanisms of the FCC to enforce foreign government prohibitions against U.S. carriers from offering call0singaling abroad. The FCC determined that the policy is no longer necessary in today's pro-competitive environment.

DATES: Effective March 24, 2003.

FOR FURTHER INFORMATION CONTACT: David Krech, International Bureau, (202) 418–1460.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Order (Order), FCC 03–63, adopted on March 24, 2003, and released on March 28, 2003. The full text of this document is available for inspection and copying during normal business hours in the Consumer and Government Affairs Bureau's Reference Information Center, (Room CY–A257) of the Federal Communications Commission, 445 12th Street, SW., Washington, DC 20554. The document is also available for download over the Internet at *http://hraunfoss.fcc.gov/edocs_public/attachmatch/FCC–03–63A1.pdf*. The complete text of this document also may be purchased from the Commission's copy contractor, Qualex, Portals II, 445 12th St., SW., Room CY–B402, Washington, DC 20054, telephone (202) 863–2893.

Summary of Order

1. On January 30, 2002, the Commission released a Notice of Proposed Rulemaking (67 FR 10656, March 9, 2002) to review the Commission's international call-back enforcement policy. International call-back arrangements allow foreign callers to take advantage of low U.S. international services rates, many of which are significantly lower than the rates available in their home countries. Specifically, the Commission's international call-back policy extends to the uncompleted call signaling configuration of call-back. Uncompleted call signaling involves a foreign caller who dials the call-back provider's switch in the United States, waits a predetermined number of rings, and hangs up before the switch answers. The switch then automatically returns the call, and upon completion, provides the caller in the foreign country with a U.S. dialtone.

2. In a 1994 order, the Commission authorized U.S. carriers to provide call-back service. The Commission concluded that the provision of call-back does not violate U.S. law or international law or regulations. In 1995, the Commission reconsidered its decision in light of international comity. The Commission adopted a policy prohibiting U.S. carriers from offering international call-back using the completed call signaling configuration to countries where it has been expressly prohibited. Foreign governments were invited to notify the Commission of the legality of call-back within their territory, and the Commission maintains a public file containing the submitted material from foreign governments.

3. Since adopting its call-back policy in 1995, the Commission has taken significant steps to open the U.S. international market to competition and to enhance consumer benefits on U.S. international routes. In this Order, the Commission concluded that the policy is no longer necessary in today's pro-competitive environment. Thus, the Commission decided to eliminate its comity-based call-back policy and discontinue the policy that allows a foreign government or entity to make use of the enforcement mechanisms of the Commission to prohibit the U.S. carriers from offering one form of call-back abroad.

4. The Commission continues to maintain that its policy allowing the uncompleted call signaling configuration of call-back is consistent with international law.

5. Further, the Commission finds that this change to its policy on call-back services is also consistent with the ITU Plenipotentiary 2002 Resolution 21 and the 1994 Kyoto Declaration.

6. The Commission will continue to maintain a public file to inform call-back providers about the legality of call-back in foreign nations. Also, the FCC will continue to maintain its policies prohibiting call-back configurations that degrade the network or constitute fraudulent activity.

Final Regulatory Flexibility Certification

The Regulatory Flexibility Act (RFA), 5 U.S.C. 6013612, as amended by the Small Business Regulatory Enforcement Fairness Act of 1996, Public Law 104–121, Title II, 110 Stat. 957, requires a final regulatory flexibility analysis in notice-and-comment proceedings, unless the agency certifies that "the rule will not, if promulgated, have a significant economic impact on a substantial number of small entities." The policy change adopted in this Order does not impose any additional compliance burden on small entities dealing with the Commission. The RFA generally defines the term "small entity" as having the same meaning as the terms "small business," "small organization," and "small governmental jurisdiction." In addition, the term "small business" has the same meaning as the term "small business concern" under the Small Business Act. Accordingly, we certify, pursuant to Section 605(b) of the RFA, that the policy change adopted in this Order does not have a significant economic impact on a substantial number of small business entities, as defined by the RFA. The Commission's Consumer and Government Affairs Bureau, Reference Information Center, shall send a copy of this Order, including the Final Regulatory Flexibility Certification, to the Chief Counsel for Advocacy of the Small Business Administration in accordance with section 605(b) of the RFA. This final certification will also be published in the **Federal Register**.

In this Order, the Commission eliminated the comity-based prohibitions on call-back and the policy that allowed a foreign government or entity to make use of the enforcement mechanisms of the FCC to enforce foreign government prohibitions against U.S. carriers from offering call-signaling aboard. After careful consideration, the Commission concluded that eliminating the policy will foster competition for both small and large entities.

The Commission does not know the precise number of small entities that may be affected by this Order because it does not maintain statistical data on the size and scope of call-back providers. However, the Commission believes that most, if not all, of the call-back providers would not be considered small entities because many of these entities are wireline carriers with more than 1500 employees (*see* NAICS Code 517110, 13 CFR parts 121–201). Thus, very few, if any, small entities would be affected by this Order. Elimination of the call-back policy will be beneficial for both large and small entities. The Commission's Order is pro-competitive and will provide, for both large and small entities, lower prices, new and better products and services, and greater consumer choices. In addition, the Commission will maintain an on-going public file to inform both large and small carriers about the legality of call-back in foreign countries. The public file will enable all entities to note which foreign governments have notified the Commission that call-back is illegal in their countries.

Therefore, we certify that eliminating the call-back policy will not have a significant economic effect on a substantial number of small entities.

Ordering Clauses

7. Accordingly, pursuant to sections 1, 4 (j)(–j), 201(b), 214, 303(r), and 403 of the Communications Act of 1934, as amended, 47 U.S.C. 151, 154(i)(j), 201(b), 214, 303(r), and 403, this Order *is hereby adopted*.

8. The condition placed on international Section 214 authorizations regarding the provision of international call-back services through the use of uncompleted call-signaling, *is hereby removed* from all existing Section 214 authorizations.

9. The Commission's Consumer and Government Affairs Bureau's Reference Information Center, shall send a copy of this Order including the final regulatory flexibility certification, to the Chief Counsel for Advocacy of the Small Business Administration.

Federal Communications Commission.

William F. Caton,

Deputy Secretary.

[FR Doc. 03–11847 Filed 5–13–03; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 1

[WT Docket No. 02–57; FCC 03–79]

Repetitious or Conflicting Applications

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: In this document the Federal Communications Commission (FCC) amends its rules to prohibit the filing of any repetitious license application in the Wireless Radio Services within twelve months of the denial or dismissal with prejudice of a substantially similar application. This amendment simplifies and clarifies the prohibition against repetitious applications. This action is intended to promote the most efficient use of the FCC's resources by preventing the filing of repetitious applications and barring applicants from initiating reexamination of such matters within a short time after a final decision.

DATES: Effective June 13, 2003.

FOR FURTHER INFORMATION CONTACT: Peter Waltonen, Esq., Policy and Rules Branch, Public Safety and Private Wireless Division, Wireless Telecommunications Bureau, (202) 418–0680.

SUPPLEMENTARY INFORMATION: This is a summary of the FCC's Report and Order, FCC 03–79, adopted on April 9, 2003, and released on April 16, 2003. The full text of this document is available for inspection and copying during normal business hours in the FCC Reference Center, 445 12th Street, SW., Washington, DC 20554. The complete text may be purchased from the FCC's copy contractor, Qualex International, 445 12th Street, SW., Room CY–B402, Washington, DC 20554. The full text also may be downloaded at: *http://www.fcc.gov*. Alternative formats are available to persons with disabilities by contacting Brian Millin at (202) 418–7426 or TTY (202) 418–7365 or at *bmillin@fcc.gov*.

1. In this *Report and Order*, the FCC amends § 1.937 of its rules to prohibit the filing of any repetitious license application in the Wireless Radio Services within twelve months of the denial or dismissal with prejudice of a substantially similar application. It also streamlines rule barring repetitious applications by combining § 1.937(a) and (b). The amendment of § 1.937 will simplify and clarify prohibition against repetitious applications. The FCC believes that this action will promote the most efficient use of it's resources by

preventing the filing of such applications and barring applicants from initiating reexamination of such matters within a short time after final decision.

Background

2. The Commission's Rules have long prevented the filing of repetitious license applications. Prior to 1998, the rules barring repetitious license applications were set forth in separate rule parts pertaining to each of the Wireless Radio Services. These rules generally prohibited the filing of a repetitious application within twelve months of the denial or dismissal with prejudice of a substantially similar application. In 1998, the Commission consolidated its licensing rules for all Wireless Radio Services, and enacted § 1.937 to replace its prior service-specific rules on the filing of repetitious or conflicting applications. Section 1.937 provides,

(a) Where the Commission has, for any reason, dismissed an application for a new station or for any modification of services or facilities with prejudice, or revoked the license for a radio station in the Wireless Radio Services, the Commission will not consider a like or new application involving service of the same kind to substantially the same area by substantially the same applicant, its successor or assignee, or on behalf of or for the benefit of the original parties in interest, until after the lapse of 12 months from the effective date of final Commission action.

(b) If an applicant has been afforded an opportunity for a hearing with respect to an application for a new station or an enlargement of service area, and the Commission has, after hearing or default, denied the application or dismissed it with prejudice, the Commission will not consider a like application for service of the same type to the same area by that applicant, or by its successor or assignee, or on behalf of or for the benefit of the parties in interest to the original application, until after the lapse of 12 months from the effective date of final Commission action on the original application.

(c) If an appeal has been taken from the action of the Commission denying a particular application, a like application for service of the same type to the same area, in whole or in part, filed by that applicant or by its successor or assignee, or on behalf of or for the benefit of the parties in interest to the original application, will not be considered until the final disposition of such appeal.

(d) While an application is pending, any subsequent inconsistent or conflicting application submitted by, on behalf of, or for the benefit of the same applicant, its successor or assignee will not be accepted for filing. Section 1.937 and its antecedents were adopted to achieve sound administrative process by barring applicants from immediately re-litigating matters already decided.

3. On March 20, 2002, the Commission released a *Notice of Proposed Rule Making*, 67 FR 34651, May 15, 2002, in which it proposed to amend § 1.937 to clarify that the prohibition on repetitive applications applies to all types of license applications (*i.e.*, new applications and renewal applications), and applies equally to all dispositive actions, including dismissals with prejudice, denials, and revocations. Comments were filed by the American Mobile Telecommunications Association, Inc. (AMTA). AMTA supports the Commission's effort to simplify its rules, but cautions the Commission to do so carefully so as not to apply the sanction to applications dismissed without prejudice.

Procedural Matters

A. Regulatory Flexibility Act Analyses

4. The FCC, pursuant to 5 U.S.C. 605(b) certifies that the rule will not have a significant economic impact on a substantial number of small entities. The purpose of this *Report and Order* is to prohibit the filing of applications for radio station licenses within twelve months of the denial of a substantially similar application. This change is made to promote the most efficient use of the FCC's resources by preventing the immediate filing of repetitious applications. The FCC has analyzed the information submitted during the comment period and the proposed rule change does not impose any additional compliance burden on small entities regulated by the FCC. Accordingly, we certify, pursuant to section 605(b) of the Regulatory Flexibility Act (RFA), that the rule change established in this *Report and Order* will not have a significant economic impact upon a substantial number of small entities, as that term is defined by the RFA. The FCC's Office of Public Affairs, Reference Operations Division, shall send a copy of this *Report and Order*, including this certification, to the Chief Counsel for Advocacy of the Small Business Administration in accordance with the RFA. We shall also publish a copy of this certification in the **Federal Register**.

B. Paperwork Reduction Act

5. This *Report and Order* does not contain either a proposed or modified information collection.

Ordering Clauses

6. Pursuant to sections 4(i), 303(r), and 403 of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), 303(r), 403, this *Report and Order is hereby adopted.*

7. The rules set forth in the rule changes *will become effective* June 13, 2003.

8. The Commission's Consumer and Governmental Affairs Bureau, Reference Information Center, *shall send* a copy of this *Report and Order* including the Regulatory Flexibility Certification, to the Chief Counsel for Advocacy of the Small Business Administration.

List of Subjects in 47 CFR Part 1

Administrative practice and procedure, Radio, and Reporting and recordkeeping requirements.

Federal Communications Commission.

William F. Caton,

Deputy Secretary.

Rule Changes

■ For the reasons discussed in the preamble the FCC amends 47 CFR part 1 as follows:

■ 1. The authority citation for part 1 continues to read as follows:

Authority: 47 U.S.C. 151, 154(i), 154(j), 155, 225, 303(r), 309 and 325(e).

■ 2. Section 1.937 is amended by revising paragraph (a), removing and reserving paragraph (b) and revising paragraph (c) to read as follows:

§ 1.937 Repetitious or conflicting applications.

(a) Where the Commission has, for any reason, dismissed with prejudice or denied any license application in the Wireless Radio Services, or revoked any such license, the Commission will not consider a like or new application involving service of the same kind to substantially the same area by substantially the same applicant, its successor or assignee, or on behalf of or for the benefit of the original parties in interest, until after the lapse of 12 months from the effective date of final Commission action.

(b) [Reserved]

(c) If an appeal has been taken from the action of the Commission dismissing with prejudice or denying any application in the Wireless Radio Services, or if the application is subsequently designated for hearing, a like application for service of the same type to the same area, in whole or in part, filed by that applicant or by its successor or assignee, or on behalf of or for the benefit of the parties in interest to the original application, will not be considered until the final disposition of such appeal.

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[FR Doc. 03–11964 Filed 5–13–03; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 52

[CC Docket No. 99–200; CC Docket No. 96–98; FCC 00–104]

Numbering Resource Optimization; Correction

AGENCY: Federal Communications Commission.

ACTION: Correcting amendments.

SUMMARY: This document contains a correction to a final regulation (47 CFR 52.15(f)(1)(ii)) published in the **Federal Register** on June 16, 2000 (65 FR 37703). The regulation related to the maximum amount of days that numbers previously assigned to business and residential customers could be aged. Inadvertently, the number "360," instead of "365," was included in that regulation as the maximum amount of days that numbers previously assigned to business customers could be aged.

DATES: Effective May 14, 2003.

FOR FURTHER INFORMATION CONTACT: Jennifer Gorny, Attorney-Advisor, Telecommunications Access Policy Division, Wireline Competition Bureau, (202) 418–7400 or e-mail at *jgorny@fcc.gov.*

SUPPLEMENTARY INFORMATION:

Background

On June 16, 2000, the Federal Communications Commission published in the **Federal Register** (65 FR 37703) a document amending section 52.15(f) of its rules to include new information collection requirements. Inadvertently, the number "360," instead of "365," was placed in section 52.15(f)(1)(ii) as the maximum amount of days that a number previously assigned to a business customer could be aged. This document corrects paragraph (f)(1)(ii) of that rule.

List of Subjects in 47 CFR Part 52

Communications common carriers, Telecommunications, Telephone.

■ Accordingly, 47 CFR part 52 is corrected by making the following correcting amendment:

PART 52—NUMBERING

■ 1. The authority citation for part 52 continues to read as follows:

Authority: Sections 1, 2, 4, 5, 48 Stat. 1066, as amended; 47 U.S.C. 151, 152, 154, 155 unless otherwise noted. Interpret or apply Secs. 3, 4, 201–05, 207–09, 218, 225–7, 251–2, 271 and 332, 48 Stat. 1070, as amended, 1077; 47 U.S.C. 153, 154, 201–205, 207–09, 218, 225–7, 251–2, 271 and 332 unless otherwise noted.

§ 52.15 [Corrected]

■ 2. In § 52.15, paragraph (f)(1)(ii), in the last sentence, remove the number "360" and add, in its place, "365."

Federal Communications Commission.

William F. Caton,

Deputy Secretary.

[FR Doc. 03–11963 Filed 5–13–03; 8:45 am]

BILLING CODE 6712–01–P

Proposed Rules

Federal Register
Vol. 68, No. 93
Wednesday, May 14, 2003

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

14 CFR Parts 255 and 399

[Docket Nos. OST–97–2881, OST–97–3014, OST–98–4775, and OST–99–5888]

RIN 2105–AC65

Computer Reservations System (CRS) Regulations; Statements of General Policy

AGENCY: Office of the Secretary, Department of Transportation.

ACTION: Notice of public hearing.

SUMMARY: On Thursday, May 22, 2003, at 9:30 a.m., the Department will conduct a public hearing on its pending rulemaking on computer reservations systems (CRSs). The public hearing will be held at the Marriott at Metro Center, 775 12th Street, NW., Washington, DC.

DATES: The hearing will be held on Thursday, May 22, 2003 at 9:30 a.m. Notices from those who wish to participate in the hearing must be submitted as soon as possible.

ADDRESSES: The hearing will be held at the Mariott at Metro Center, 775, 12th St. NW., Washington, DC. Notices of intent to participate must be marked with the docket number, OST–97–2881, and should be submitted by only one of the following means:

(1) By hand delivery to room PL–401 on the Plaza level of the Nassif Building, 400 Seventh Street, SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The telephone number is 202–366–9329.

(2) Electronically through the Web site for the Docket Management System at *http://dms.dot.gov*.

(3) By mail to the Docket Management Facility, U.S. Department of Transportation, room PL–401, 400 Seventh Street, SW., Washington, DC 20590–0001.

FOR FURTHER INFORMATION CONTACT: Thomas Ray, Office of the General Counsel, 400 Seventh St., SW., Washington, DC 20590, (202) 366–4731.

SUPPLEMENTARY INFORMATION: The Department is conducting a rulemaking to determine whether its rules governing CRS operations, 14 CFR Part 255, remain necessary and, if so, whether the current rules are effective. We issued a notice of proposed rulemaking that set forth our tentative proposals regarding the existing rules and our tentative belief that we should not extend the rules to cover the sale of airline tickets through the Internet. 67 FR 69366 (November 15, 2002). We have given all interested persons the opportunity to file comments and reply comments and established a lengthy comment period totaling more than six months. However, we have decided that a public hearing where interested persons may express their views on the major issues would also be useful. We are therefore holding such a hearing on May 22. We have chosen to hold the hearing before the end of the comment period, which we have extended to June 9, so that interested persons can address points raised at the hearing in their reply comments. 98 FR 24896 (May 9, 2003). In addition, holding the hearing before the end of the comment period will enable us to invite both participants in the hearing and other commenters to discuss specific points in their reply comments.

The presiding official will be Michael Reynolds, the Deputy Assistant Secretary for Aviation and International Affairs. Participants will have the opportunity to present a statement of their views on the issues. Our presiding officer may ask questions on factual, policy, and legal issues. If a participant appearing on behalf of a firm or organization is not familiar with all of the issues, that person can bring someone who can answer questions. The hearing will not serve as a forum where speakers may cross-examine other commenters or Department officials and staff members. We have previously explained why a hearing with cross-examination would be neither particularly useful nor consistent with our intent to complete this rulemaking as promptly as possible. 68 FR 12883, 12884 (March 18, 2003).

Persons who wish to speak at the hearing should submit requests to us as soon as possible in Docket OST–97–2881, the principal docket for this proceeding. To help us organize the hearing, each notice should state generally which issues the person plans to address. Each person should also provide an E-mail address or phone number so that if necessary we may provide additional information on procedures during the last few days before the hearing.

In view of our decision to limit the hearing to one day and the likelihood that a number of persons will wish to speak, we are limiting the time for each speaker and the number of persons who may speak. We currently plan to allow people to speak on a first-come, first-served basis, based on the time of our receipt of their submission of their notice of their wish to participate. Only one person from each individual firm, trade association, or other group will be allowed to speak, except as necessary to answer questions from the presiding official. To ensure a balance of views and interests, we may choose to include some persons with divergent views in addition to the first requesters. Persons who are unable to speak at the hearing may, of course, present their views on the issues (and on statements made at the hearing) in their reply comments.

After we obtain the notices from persons wishing to participate, we will provide more detailed information on the procedures for the hearing and the time available for each speaker.

The hearing will be most beneficial to us if participants focus on the following specific issues:

Whether rules governing system operations are still necessary, and, if so, whether they should cover all systems, only systems owned or marketed by airlines, or both systems and Internet distribution channels that may be comparable to the systems.

Whether the mandatory participation rule and the rule prohibiting discriminatory booking fees (sections 255.6(a) and 255.7 of the current rules) should be eliminated or modified.

Whether the rules should restrict which marketing and booking data generated by the systems can be obtained by airlines.

Whether and how rules should restrict the systems' travel agency contract practices.

Each participant at the hearing, however, may choose which issues to discuss and may address other issues if he or she wishes.

Seating is restricted to about 150 people. If more people appear than can be accommodated, the first ones to arrive will be seated. We plan to prepare a record of the hearing and place it in the docket for this rulemaking, so that anyone who is unable to attend the hearing can learn what was said.

Any person who wishes to have a sign language interpreter present at the hearing should so advise us by Monday, May 19, so that we may make the necessary arrangements.

Finally, Sabre on its own initiative has filed a document stating its views on when a hearing should be held and how it should be organized. Other commenters have filed responses supporting or opposing Sabre's proposals. We have reviewed these documents and determined that the hearing procedures and timing set forth in this notice will best suit our purpose of supplementing the record without delaying a final decision. The opportunity to submit comments and reply comments will give all interested persons the ability to set forth in detail their positions on the factual, legal, and policy issues presented in this proceeding. As some of the commenters requested, however, we have extended the reply comment period to June 9. That will give interested persons additional time for their preparation of reply comments and their participation in the hearing.

Issued in Washington, DC, on May 9, 2003.

Read C. Van de Water,

Assistant Secretary for Aviation and International Affairs.

[FR Doc. 03–12072 Filed 5–12–03; 2:32 pm]

BILLING CODE 4910–62–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[REG–113007–99]

RIN 1545–AU98

Obligations of States and Political Subdivisions

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of proposed rulemaking and notice of public hearing.

SUMMARY: This document contains proposed regulations on the definition of private activity bond applicable to tax-exempt bonds issued by State and local governments. These regulations affect issuers of tax-exempt bonds and provide needed guidance for applying the private activity bond restrictions to refunding issues. This document also contains a notice of public hearing on these proposed regulations.

DATES: Written or electronic comments must be received by August 19, 2003. Outlines of topics to be discussed at the public hearing scheduled for September 9, 2003, at 10 a.m., must be received by August 19, 2003.

ADDRESSES: Send submissions to CC:PA:RU (REG–113007–99), room 5226, Internal Revenue Service, POB 7604, Ben Franklin Station, Washington, DC 20044. Submissions may be hand delivered Monday through Friday between the hours of 8 a.m. and 4 p.m. to CC:PA:RU (REG–113007–99), Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue, NW., Washington, DC. Alternatively, taxpayers may submit comments electronically to the IRS Internet site at *www.irs.gov/regs*. The public hearing will be held in the IRS Auditorium, Internal Revenue Building, 1111 Constitution Avenue, NW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Concerning the regulations, Gary W. Bornholdt, (202) 622–3980; concerning submissions and the hearing, Treena Garrett, (202) 622–7180 (not toll-free numbers).

SUPPLEMENTARY INFORMATION:

Background

In general, under section 103 of the Internal Revenue Code (Code), gross income does not include the interest on any State or local bond. However, this exclusion does not apply to private activity bonds (other than certain qualified bonds). Section 141(a) defines a private activity bond as any bond issued as part of an issue that meets either (1) the private business use test in section 141(b)(1) and the private security or payment test in section 141(b)(2) (the private business tests) or (2) the private loan financing test in section 141(c) (the private business tests and the private loan financing test are referred to collectively as the "private activity bond tests").

The private business use test is met if more than 10 percent of the proceeds of an issue are to be used for any private business use. Section 141(b)(6) defines private business use as use directly or indirectly in a trade or business that is carried on by any person other than a governmental unit.

The private security or payment test is met if the payment of the principal of, or the interest on, more than 10 percent of the proceeds of an issue is directly or indirectly (1) secured by an interest in property used or to be used for a private business use, (2) secured by an interest in payments in respect of such property, or (3) to be derived from payments, whether or not to the issuer, in respect of property, or borrowed money, used or to be used for a private business use.

The private loan financing test is satisfied if more than the lesser of $5 million or 5 percent of the proceeds of an issue are to be used to make or finance loans to persons other than governmental units.

In 1994, proposed regulations (FI–72–88) were published in the **Federal Register** (59 FR 67658) (the 1994 Proposed Regulations) to provide guidance under the Code with respect to the application of the private activity bond tests. Generally, the 1994 Proposed Regulations provide that the private business use of a facility is equal to the greatest percentage of private business use of that facility for any one year period during the term of the bonds. The amount of private security or private payments is determined by comparing the present value of the private security or private payments to the present value of the debt service to be paid over the term of the issue, using the bond yield as the discount rate.

With respect to refunding issues, the 1994 Proposed Regulations provide that the determination of whether a refunding issue satisfies either the private business tests or the private loan financing test is made without regard to whether the prior issue satisfied those tests. In general, under the 1994 Proposed Regulations, the private business tests and the private loan financing test are applied to a refunding issue by treating the proceeds of the refunding issue as used for the same purposes as the proceeds of the prior issue, but disregarding any use of the property financed with the prior issue that occurred before the issue date of the refunding issue. In addition, in applying the private business tests to a refunding issue under the 1994 Proposed Regulations, an issuer may treat the refunding issue as a continuation of the prior issue.

On January 16, 1997, final regulations (TD 8712) relating to the definition of private activity bond and related rules under sections 103, 141, 142, 144, 145, 147, 148, and 150 were published in the **Federal Register** (62 FR 2275) (the Final Regulations). Under the Final Regulations, the amount of private business use of property financed by an issue is equal to the average percentage of private business use of that property during a defined measurement period. The measurement period begins on the later of the issue date of the issue or the

date that the property is placed in service and ends on the earlier of the last date of the reasonably expected economic life of the property or the latest maturity date of any bond of the issue financing the property (determined without regard to any optional redemption dates). The Final Regulations retain the basic approach in the 1994 Proposed Regulations relating to the measurement of private security and private payments.

The Final Regulations reserve § 1.141–13 for rules regarding the application of the private business tests and the private loan financing test to refunding issues. This document amends the Income Tax Regulations (26 CFR part 1) under section 141 by proposing rules on the application of the private business tests and the private loan financing test to refunding issues. This document also amends the Income Tax Regulations under sections 145, 149 and 150 by proposing rules on certain related matters. These regulations are published as proposed regulations (the proposed regulations) to provide an opportunity for public review and comment.

Explanation of Provisions

A. Application of Private Activity Bond Tests to Refunding Issues

1. In General

The proposed regulations provide that, in general, a refunding issue and a prior issue are tested separately under section 141. Thus, the determination of whether a refunding issue consists of private activity bonds generally does not depend on whether the prior issue consists of private activity bonds.

The proposed regulations apply to determine whether a refunding issue satisfies the private business tests or the private loan financing test, but do not impact the methodology used to determine whether the prior issue satisfies those tests. For example, following a refunding, the private business use test continues to apply to a prior issue based on the measurement period for the prior issue.

2. Allocation of Proceeds

The proposed regulations provide that, in applying the private business tests and the private loan financing test to a refunding issue, the proceeds of the refunding issue are allocated to the same purpose investments (including any private loan under section 141(c)) and expenditures as the proceeds of the prior issue.

3. Measurement of Private Business Use

The proposed regulations generally provide that the amount of private business use of a refunding issue is determined based on the separate measurement period for the refunding issue under § 1.141–3(g) (for example, without regard to any private business use that occurred before the issue date of the refunding issue). Thus, for instance, if an issuer refunds a taxable bond or an exempt facility bond, any private business use of the refinanced facilities before the issue date of the refunding issue is disregarded in applying the private business use test to the refunding issue.

In the case of a refunding issue that refunds a prior issue of governmental bonds, however, the amount of private business use is generally determined based on a combined measurement period. For purposes of the proposed regulations, a governmental bond is any bond that, when issued, purported to be either a governmental bond, as defined in § 1.150–1(b), or a qualified 501(c)(3) bond, as defined in section 145(a). The combined measurement period is the period that begins on the first day of the measurement period (as defined in § 1.141–3(g)) for the prior issue (or the first issue of governmental bonds in the case of a series of refundings of governmental bonds) and ends on the last day of the measurement period for the refunding issue.

As an alternative to the combined measurement period approach, the proposed regulations permit issuers to measure private business use based on the separate measurement period of the refunding issue, but only if the prior issue of governmental bonds does not satisfy the private business use test during a shortened measurement period. The shortened measurement period begins on the first day of the measurement period of the prior issue (or the first issue of governmental bonds in the case of a series of refundings of governmental bonds) and ends on the issue date of the refunding issue. Whether a prior issue satisfies the private business use test during the shortened measurement period is determined based on the actual use of proceeds, without regard to the reasonable expectations test of § 1.141–2(d).

4. Measurement of Private Security and Private Payments

If the amount of private business use is determined based on the separate measurement period for the refunding issue, then the amount of private security and private payments allocable to the refunding issue is determined under § 1.141–4 by treating the refunding issue as a separate issue. On the other hand, if the amount of private business use is determined based on a combined measurement period, then the amount of private security and private payments allocable to the refunding issue is determined under § 1.141–4 by treating the refunding issue and all earlier issues taken into account in determining the combined measurement period as a combined issue. The proposed regulations contain specific rules for determining the present value of the debt service on, and the private security and private payments allocable to, a combined issue.

The proposed regulations also permit an issuer to use the yield on a prior issue of governmental bonds to determine the present value of private security or private payments under arrangements that were not entered into in contemplation of the refunding issue. For this purpose, any arrangement that was entered into more than one year before the issue date of the refunding issue will be treated as not entered into in contemplation of the refunding issue.

5. Multipurpose Issue Allocations

Section 1.148–9(H) permits an issuer to treat the portion of a multipurpose issue allocable to a separate purpose as a separate issue for certain of the arbitrage provisions of section 148. The proposed regulations allow an issuer to apply § 1.148–9(h) to a multipurpose issue for certain purposes under section 141. An allocation will not be reasonable for this purpose if it achieves more favorable results under section 141 than could be achieved with actual separate issues. In addition, allocations under the proposed regulations and § 1.148–9(h) must be consistent for purposes of sections 141 and 148. The proposed regulations do not permit allocations for purposes of section 141(c)(1) (relating to the private loan financing test) or section 141(d)(1) (relating to certain restrictions on acquiring nongovernmental output property).

6. Application of Reasonable Expectations Test to Certain Refunding Bonds

Section 1.141–2(d) of the Final Regulations provides that an issue consists of private activity bonds if the issuer (1) reasonably expects, as of the issue date, that the issue will meet either the private business tests or the private loan financing test, or (2) takes a deliberate action, subsequent to the issue date, that causes the conditions of either the private business tests or the private loan financing test to be satisfied. In general, a deliberate action is any action taken by the issuer that is within its control.

The proposed regulations provide that an action that would otherwise cause a refunding issue to satisfy the private business tests or the private loan financing test is not taken into account under the reasonable expectations test of § 1.141–2(d) if (1) the action is not a deliberate action within the meaning of § 1.141–2(d)(3), and (2) the weighted average maturity of the refunding bonds is not greater than the remaining weighted average maturity of the prior bonds.

B. Treatment of Issuance Costs Financed by Prior Issue of Qualified 501(c)(3) Bonds

Under the Final Regulations, the use of proceeds of an issue of qualified 501(c)(3) bonds to pay issuance costs of the issue is treated as a private business use. The proposed regulations provide that, solely for purposes of applying the private business use test to a refunding issue, the use of proceeds of the prior issue (or any earlier issue in a series of refundings) to pay issuance costs of the prior issue (or the earlier issue) is treated as a government use.

C. Limitation on Advance Refundings of Private Activity Bonds

Under section 149(d)(2), interest on a bond is not excluded from gross income if any portion of the issue of which the bond is a part is issued to advance refund a private activity bond (other than a qualified 501(c)(3) bond). The proposed regulations provide that, for purposes of section 149(d)(2), the term private activity bond includes a qualified bond described in section 141(e) (other than a qualified 501(c)(3) bond), regardless of whether the refunding issue consists of private activity bonds under the proposed regulations. The proposed regulations also provide that, for purposes of section 149(d)(2), the term private activity bond does not include a taxable bond.

Proposed Effective Date

The proposed regulations will apply to bonds that are (1) sold on or after the date of publication of final regulations under § 1.141–13 in the **Federal Register** and (2) subject to the Final Regulations.

Special Analyses

It has been determined that this notice of proposed rulemaking is not a significant regulatory action as defined in Executive Order 12866. Therefore, a regulatory assessment is not required. It has also been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to these regulations, and because the regulations do not impose a collection of information on small entities, the Regulatory Flexibility Act (5 U.S.C. chapter 6) does not apply. Pursuant to section 7805(f) of the Code, this notice of proposed rulemaking will be submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business.

Comments and Public Hearing

Before these proposed regulations are adopted as final regulations, consideration will be given to any written comments that are submitted timely (preferably a signed original and eight copies) to the IRS. All comments will be available for public inspection and copying.

A public hearing has been scheduled for September 9, 2003, at 10 a.m. in the IRS Auditorium, Internal Revenue Building, 1111 Constitution Avenue, NW., Washington, DC. Because of access restrictions, visitors will not be admitted beyond the lobby more than 30 minutes before the hearing starts.

The rules of 26 CFR 601.601(a)(3) apply to the hearing.

Persons who wish to present oral comments at the hearing must submit written comments by August 19, 2003 and submit an outline of the topics to be discussed and the amount of time to be devoted to each topic by August 19, 2003.

A period of 10 minutes will be allotted to each person for making comments.

An agenda showing the scheduling of the speakers will be prepared after the deadline for receiving outlines has passed. Copies of the agenda will be available free of charge at the hearing.

Comments are requested on all aspects of the proposed regulations. In addition, comments are specifically requested on the application of the private loan financing test to refunding issues.

Drafting Information

The principal authors of these regulations are Bruce M. Serchuk and Gary W. Bornholdt, Office of Chief Counsel (Tax-exempt and Government Entities), Internal Revenue Service and Stephen J. Watson, Office of Tax Legislative Counsel, Department of the Treasury. However, other personnel from the IRS and Treasury Department participated in their development.

List of Subjects in 26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

Proposed Amendments to the Regulations

Accordingly, 26 CFR part 1 is proposed to be amended as follows:

PART 1—INCOME TAXES

1. The authority citation for part 1 continues to read in part as follows:

Authority: 26 U.S.C. 7805 * * *

2. Section 1.141–0 is amended by adding entries to the table in numerical order for §§ 1.141–13 and 1.141–15(j) to read as follows:

§ 1.141–0 Table of contents

* * * * *

§ 1.141–13 Refunding issues.

(a) In general.

(b) Application of private business use test and private loan financing test.

(1) Allocation of proceeds.

(2) Determination of amount of private business use.

(c) Application of private security or payment test.

(1) Separate issue treatment.

(2) Combined issue treatment.

(3) Special rule for arrangements not entered into in contemplation of the refunding issue.

(d) Multipurpose issue allocations.

(1) In general.

(2) Exceptions.

(e) Application of reasonable expectations test to certain refunding bonds.

(f) Examples.

* * * * *

§ 1.141–15 Effective dates.

* * * * *

(j) Effective dates for certain regulations relating to refundings.

* * * * *

3. In § 1.141–1, paragraph (b) is amended by revising the definition of governmental bond to read as follows:

§ 1.141–1 Definitions and rules of general application.

* * * * *

Governmental bond has the same meaning as in § 1.150–1(b), except that, for purposes of § 1.141–13, governmental bond is defined in § 1.141–13(b)(2)(iv).

* * * * *

4. Section 1.141–13 is added to read as follows:

§ 1.141–13 Refunding issues

(a) *In general.* Except as provided in this section, a refunding issue and a

prior issue are tested separately under section 141. Thus, the determination of whether a refunding issue consists of private activity bonds generally does not depend on whether the prior issue consists of private activity bonds.

(b) *Application of private business use test and private loan financing test*— (1) *Allocation of proceeds.* In applying the private business use test and the private loan financing test to a refunding issue, the proceeds of the refunding issue are allocated to the same expenditures and purpose investments as the proceeds of the prior issue.

(2) *Determination of amount of private business use*—(i) *In general.* Except as provided in paragraph (b)(2)(ii) of this section, the amount of private business use of a refunding issue is determined under § 1.141–3(g), based on the measurement period for that issue (for example, without regard to any private business use that occurred prior to the issue date of the refunding issue).

(ii) *Refundings of governmental bonds.* In applying the private business use test to a refunding issue that refunds a prior issue of governmental bonds, the amount of private business use of the refunding issue is the amount of private business use—

(A) During the combined measurement period; or

(B) At the option of the issuer, during the period described in paragraph (b)(2)(i) of this section, but only if, without regard to the reasonable expectations test of § 1.141–2(d), the prior issue does not satisfy the private business use test, based on a measurement period that begins on the first day of the combined measurement period and ends on the issue date of the refunding issue.

(iii) *Combined measurement period.* For purposes of this section, the *combined measurement period* is the period that begins on the first day of the measurement period (as defined in § 1.141–3(g)) for the prior issue (or, in the case of a series of refundings of governmental bonds, the first issue of governmental bonds in the series) and ends on the last day of the measurement period for the refunding issue.

(iv) *Governmental bond.* For purposes of this section, the term governmental bond means any bond that, when issued, purported to be a governmental bond, as defined in § 1.150–1(b), or a qualified 501(c)(3) bond, as defined in section 145(a).

(v) *Special rule for refundings of qualified 501(c)(3) bonds with governmental bonds.* For purposes of applying this paragraph (b)(2) to a refunding issue that refunds a qualified 501(c)(3) bond, any use of the property refinanced by the refunding issue before the issue date of the refunding issue by a 501(c)(3) organization with respect to its activities that do not constitute an unrelated trade or business under section 513(a) is treated as government use.

(c) *Application of private security or payment test*—(1) Separate issue treatment. If the amount of private business use of a refunding issue is determined based on the measurement period for that issue in accordance with paragraph (b)(2)(i) or (b)(2)(ii)(B) of this section, then the amount of private security and private payments allocable to the refunding issue is determined under § 1.141–4 by treating the refunding issue as a separate issue.

(2) *Combined issue treatment.* If the amount of private business use of a refunding issue is determined based on the combined measurement period for that issue in accordance with paragraph (b)(2)(ii)(A) of this section, then the amount of private security and private payments allocable to the refunding issue is determined under § 1.141–4 by treating the refunding issue and all earlier issues taken into account in determining the combined measurement period as a combined issue. For this purpose, the present value of the private security and private payments is compared to the present value of the debt service on the combined issue (other than debt service paid with proceeds of any refunding bond). Present values are computed as of the issue date of the earliest issue taken into account in determining the combined measurement period (the earliest issue). Except as provided in paragraph (c)(3) of this section, present values are determined by using the yield on the combined issue as the discount rate. The yield on the combined issue is determined by taking into account payments on the refunding issue and all earlier issues taken into account in determining the combined measurement period (other than payments made with proceeds of any refunding bond), and based on the issue price of the earliest issue. In the case of a partial refunding, the unrefunded debt service is not taken into account in determining the yield on the combined issue.

(3) *Special rule for arrangements not entered into in contemplation of the refunding issue.* In applying the private security or payment test to a refunding issue that refunds a prior issue of governmental bonds, the issuer may use the yield on the prior issue to determine the present value of private security and private payments under arrangements that were not entered into in contemplation of the refunding issue. For this purpose, any arrangement that was entered into more than 1 year before the issue date of the refunding issue is treated as not entered into in contemplation of the refunding issue.

(d) *Multipurpose issue allocations*— (1) *In general.* For purposes of section 141, unless the context clearly requires otherwise, § 1.148–9(h) applies to allocations of multipurpose issues (as defined in § 1.148–1(b)), including allocations involving the refunding purposes of the issue. An allocation is not reasonable under this paragraph (d) if it achieves more favorable results under section 141 than could be achieved with actual separate issues. Allocations made under this paragraph (d) and § 1.148–9(h) must be consistent for purposes of section 141 and section 148.

(2) *Exceptions.* This paragraph (d) does not apply for purposes of sections 141(c)(1) and 141(d)(1).

(e) *Application of reasonable expectations test to certain refunding bonds.* An action that would otherwise cause a refunding issue to satisfy the private business tests or the private loan financing test is not taken into account under the reasonable expectations test of § 1.141–2(d) if—

(1) The action is not a deliberate action within the meaning of § 1.141–2(d)(3); and

(2) The weighted average maturity of the refunding bonds is not greater than the remaining weighted average maturity of the prior bonds.

(f) *Examples.* The following examples illustrate the application of this section.

Example 1. Measuring private business use. In 2002, Authority A issues tax-exempt bonds that mature in 2032 to acquire an office building. The measurement period for the 2002 bonds under § 1.141–3(g) is 30 years. At the time A acquires the building, it enters into a 10-year lease with a nongovernmental person under which the nongovernmental person will use 5 percent of the building in its trade or business during each year of the lease term. In 2007, A issues bonds to refund the 2002 bonds. The 2007 bonds mature on the same date as the 2002 bonds and have a measurement period of 25 years under § 1.141–3(g). Under paragraph (b)(2)(ii)(A) of this section, the amount of private business use of the proceeds of the 2007 bonds is 1.67 percent, which equals the amount of private business use during the combined measurement period (5 percent of 1/3rd of the 30-year combined measurement period). In addition, the 2002 bonds do not satisfy the private business use test, based on a measurement period beginning on the first day of the measurement period for the 2002 bonds and ending on the issue date of the 2007 bonds, because only 5 percent of the proceeds of the 2002 bonds are used for a private business use during that period. Thus, under paragraph (b)(2)(ii)(B) of this section, A may treat the amount of private business use of the 2007 bonds as 1 percent (5 percent of 1/5th of the 25-year measurement period for the 2007 bonds). The 2007 bonds do not satisfy the private business use test.

Example 2. Combined issue yield computation. (i) On January 1, 2000, County B issues 20-year bonds with an interest rate of 8% and an issue price of $100 million. The debt service payments on the 2000 bonds are as follows:

Date	Debt service
1/1/01	$10,306,800
1/1/02	10,306,800
1/1/03	10,306,800
1/1/04	10,306,800
1/1/05	10,306,800
1/1/06	10,306,800
1/1/07	10,306,800
1/1/08	10,306,800
1/1/09	10,306,800
1/1/10	10,306,800
1/1/11	10,306,800
1/1/12	10,306,800
1/1/13	10,306,800
1/1/14	10,306,800
1/1/15	10,306,800
1/1/16	10,306,800
1/1/17	10,306,800
1/1/18	10,306,800
1/1/19	10,306,800
1/1/20	10,306,800
	$206,136,000

(ii) On January 1, 2005, B issues 15-year bonds to refund all of the outstanding 2000 bonds. The 2005 bonds have an interest rate of 6% and an issue price of $93,250,000. The debt service payments on the 2005 bonds are as follows:

Date	Debt service
1/1/06	$9,657,800
1/1/07	9,657,800
1/1/08	9,657,800
1/1/09	9,657,800
1/1/10	9,657,800
1/1/11	9,657,800
1/1/12	9,657,800
1/1/13	9,657,800
1/1/14	9,657,800
1/1/15	9,657,800
1/1/16	9,657,800
1/1/17	9,657,800
1/1/18	9,657,800
1/1/19	9,657,800
1/1/20	9,657,800
	$144,867,000

(iii) For purposes of determining the amount of private security and private payments with respect to the 2005 bonds, the 2005 bonds and the 2000 bonds are treated as a combined issue under paragraph (c)(2) of this section. The yield on the combined issue is 7.5036 percent per year compounded semiannually, computed as follows:

Date	Unrefunded new money debt service	Refunding debt service	Total debt service	Present value on 1/1/00
1/1/00				($100,000,000.00)
1/1/01	$10,306,800		$10,306,800	9,574,857.71
1/1/02	10,306,800		10,306,800	8,894,894.64
1/1/03	10,306,800		10,306,800	8,263,219.48
1/1/04	10,306,800		10,306,800	7,676,403.02
1/1/05	10,306,800		10,306,800	7,131,259.62
1/1/06		$9,657,800	9,657,800	6,207,676.64
1/1/07		9,657,800	9,657,800	5,766,835.53
1/1/08		9,657,800	9,657,800	5,357,300.97
1/1/09		9,657,800	9,657,800	4,976,849.70
1/1/10		9,657,800	9,657,800	4,623,416.36
1/1/11		9,657,800	9,657,800	4,295,082.25
1/1/12		9,657,800	9,657,800	3,990,064.95
1/1/13		9,657,800	9,657,800	3,706,708.59
1/1/14		9,657,800	9,657,800	3,443,474.92
1/1/15		9,657,800	9,657,800	3,198,934.91
1/1/16		9,657,800	9,657,800	2,971,761.03
1/1/17		9,657,800	9,657,800	2,760,720.01
1/1/18		9,657,800	9,657,800	2,564,666.17
1/1/19		9,657,800	9,657,800	2,382,535.18
1/1/20		9,657,800	9,657,800	2,213,338.32
	$51,534,000	$144,867,000	$196,401,000	0.00

Example 3. Refunding taxable bonds and qualified bonds. (i) In 1999, City C issues taxable bonds to finance the construction of a facility for the furnishing of water. The bonds are secured by revenues from the facility. The facility is managed pursuant to a management contract with a nongovernmental person that gives rise to private business use. In 2007, C terminates the management contract and takes over the operation of the facility. In 2009, C issues bonds to refund the 1999 bonds. On the issue date of the 2009 bonds, C reasonably expects that the facility will not be used for a private business use during the term of the 2009 bonds. In addition, during the term of the 2009 bonds, the facility is not used for a private business use. Under paragraph (b)(2)(i) of this section, the 2009 bonds do not satisfy the private business use test because the amount of private business use is based on the measurement period for those bonds and therefore does not take into account any private business use that occurred pursuant to the management contract.

(ii) The facts are the same as in paragraph (i) of this *Example 3*, except that the 1999 bonds are issued as exempt facility bonds under section 142(a)(4). The 2009 bonds do not satisfy the private business use test.

Example 4. Multipurpose issue. In 2001, State D issues bonds to finance the construction of two office buildings, Building 1 and Building 2. D expends an equal amount of the proceeds on each building. D enters into arrangements that result in 8 percent of Building 1 and 12 percent of Building 2 being used for a private business use during the measurement period under § 1.141–3(g). These arrangements result in a total of 10 percent of the proceeds of the 2001 bonds being used for a private business use. In 2006, D purports to allocate, under paragraph (d) of this section, an equal amount of the outstanding 2001 bonds to Building 1 and Building 2. D also enters into another private business use arrangement with respect to Building 1 that results in 10 percent of Building 1 being used for a private business use during the measurement period. An allocation is not reasonable under paragraph (d) of this section if it achieves more favorable results under section 141 than could be achieved with actual separate

issues. D's allocation is unreasonable because, if permitted, would result in more that 10 percent of the proceeds of the 2001 bonds being used for a private business use.

5. Section 1.141–15 is amended by revising paragraphs (b)(1), (c), (d) and (h) and adding paragraph (j) to read as follows:

§ 1.141–15 Effective dates.

* * * * *

(b) *Effective Dates*—(1) *In general.* Except as otherwise provided in this section, §§ 1.141–0 through 1.141–6(a), 1.141–9 through 1.141–12, 1.141–14, 1.145–1 through 1.145–2(c), and the definition of bond documents contained in § 1.150–1(b) (the 1997 regulations contained in 26 CFR Part 1, revised as of April 1, 2003) apply to bonds issued on or after May 16, 1997, that are subject to section 1301 of the Tax Reform Act of 1986 (100 Stat. 2602).

* * * * *

(c) *Refunding bonds.* Except as otherwise provided in this section, the 1997 regulations (contained in 26 CFR Part 1, revised as of April 1, 2003) do not apply to any bonds issued on or after May 16, 1997, to refund a bond to which those regulations do not apply unless—

(1) The refunding bonds are subject to section 1301 of the Tax Reform Act of 1986 (100 Stat. 2602); and

(2)(i) The weighted average maturity of the refunding bonds is longer than—

(A) The weighted average maturity of the refunded bonds; or

(B) In the case of a short-term obligation that the issuer reasonably expects to refund with a long-term financing (such as a bond anticipation note), 120 percent of the weighted average reasonably expected economic life of the facilities financed; or

(ii) A principal purpose for the issuance of the refunding bonds is to make one or more new conduit loans.

(d) *Permissive application of regulations.* Except as provided in paragraph (e) of this section, the 1997 regulations (contained in 26 CFR Part 1, revised as of April 1, 2003) may be applied in whole, but not in part, to actions taken before February 23, 1998, with respect to—

(1) Bonds that are outstanding on May 16, 1997 and subject to section 141; or

(2) Refunding bonds issued on or after May 16, 1997 that are subject to 141.

* * * * *

(h) *Permissive retroactive application.* Except as provided in paragraphs (d), (e) or (i) of this section, §§ 1.141–1 through 1.141–6(a), 1.141–7 through 1.141–14, 1.145–1 through 1.145–2, 1.149(d)–1(g), 1.150–1(a)(3), the definition of bond documents contained in § 1.150–1(b) and § 1.150–1(c)(3)(ii) may be applied by issuers in whole, but not in part, to—

(1) Outstanding bonds that are sold before the date of publication of final regulations in the **Federal Register**, and subject to section 141; or

(2) Refunding bonds that are sold on or after the date of publication of final regulations in the **Federal Register**, and subject to section 141.

* * * * *

(j) *Effective dates for certain regulations relating to refundings.* Except as otherwise provided in this section, §§ 1.141–13, 1.145–2(d), 1.149(d)–1(g), 1.150–1(a)(3) and 1.150–1(c)(3)(ii) apply to bonds that are sold on or after the date of publication of final regulations in the **Federal Register** and that are subject to the 1997 regulations (contained in 26 CFR Part 1, revised as of April 1, 2003).

6. Section 1.145–0 is amended by adding an entry to the table in numerical order for § 1.145–2(d) to read as follows:

§ 1.145–0 Table of contents.

* * * * *

§ 1.145–2 Application of private activity bond regulations.

* * * * *

(d) Issuance costs financed by prior issue.

* * * * *

7. In § 1.145–2, paragraph (d) is added to read as follows:

§ 1.145–2 Application of private activity bond regulations.

* * * * *

(d) *Issuance costs financed by prior issue.* Solely for purposes of applying the private business use test to a refunding issue under § 1.141–13, the use of proceeds of the prior issue (or any earlier issue in a series of refundings) to pay issuance costs of the prior issue (or the earlier issue) is treated as a government use.

8. Section 1.149(d)–1 is amended by revising paragraph (g) and adding paragraph (h) to read as follows:

§ 1.149(d)–1 Limitations on advance refundings.

* * * * *

(g) *Limitation on advance refundings of private activity bonds.* Under section 149(d)(2) and this section, interest on a bond is not excluded from gross income if any portion of the issue of which the bond is a part is issued to advance refund a private activity bond (other than a qualified 501(c)(3) bond). For this purpose, the term private activity bond—

(1) Includes a qualified bond described in section 141(e) (other than a qualified 501(c)(3) bond), regardless of whether the refunding issue consists of private activity bonds under § 1.141–13; and

(2) Does not include a taxable bond.

(h) *Effective dates*—(1) *In general.* Except as provided in this paragraph (h), this section applies to bonds issued after June 30, 1993, to which §§ 1.148–1 through 1.148–11 apply, including conduit loans that are treated as issued after June 30, 1993, under paragraph (b)(4) of this section. In addition, this section applies to any issue to which the election described in § 1.148–11(b)(1) is made.

(2) *Special effective date for paragraph (b)(3).* Paragraph (b)(3) of this section applies to any advance refunding issue issued after May 28, 1991.

(3) *Special effective date for paragraph (f)(3).* Paragraph (f)(3) of this section applies to bonds sold on or after July 8, 1997 and to any issue to which the election described in § 1.148–11(b)(1) is made. See § 1.148–11A(i) for rules relating to certain bonds sold before July 8, 1997.

(4) *Special effective date for paragraph (g).* See § 1.141–15 for the applicability date of paragraph (g) of this section.

9. Section 1.150–1 is amended by revising paragraphs (a)(3) and (c)(3)(ii) to read as follows:

§ 1.150–1 Definitions.

(a) * * *

(3) *Exceptions to general effective date. See* § 1.141–15 for the applicability date of the definition of bond documents contained in paragraph (b) of this section and the effective date of paragraph (c)(3)(ii) of this section.

* * * * *

(c) * * *

(3) * * *

(ii) *Exceptions.* This paragraph (c)(3) does not apply for purposes of sections 141, 144(a), 148, 149(d) and 149(g).

* * * * *

David A. Mader,

Assistant Deputy Commissioner of Internal Revenue.

[FR Doc. 03–11926 Filed 5–9–03; 11:31 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Alcohol and Tobacco Tax and Trade Bureau

27 CFR Part 9

RIN 1512–AC60

[TTB Notice No. 8]

San Bernabe and San Lucas Viticultural Areas (2001R–170P)

AGENCY: Alcohol and Tobacco Tax and Trade Bureau (TTB), Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Alcohol and Tobacco Tax and Trade Bureau proposes the establishment of the San Bernabe viticultural area (the proposed area) and the realignment of the adjacent San Lucas viticultural area. Both viticultural areas exist entirely within the Central Coast and Monterey viticultural areas and within Monterey County, California. The proposed San Bernabe viticultural area consists of 24,796 acres that the petitioner states are predominantly rolling hills of sandy soils. The realignment would transfer 1,281 acres of rolling, sandy land from the northwest San Lucas area to the south San Bernabe area. This proposed realignment would avoid splitting a large vineyard between two viticultural areas and prevent overlapping of viticultural areas. Claude Hoover of Delicato Family Vineyards, Monterey, California, filed both petitions.

DATES: We must receive written comments by July 14, 2003.

ADDRESSES: You may send comments to any of the following addresses—

- Chief, Regulations and Procedures Division, Alcohol and Tobacco Tax and Trade Bureau, PO Box 50221, Washington, DC 20091–0221 (Attn: Notice No. 8);
- 202–927–8525 (facsimile);
- *nprm@ttb.gov* (e-mail); or
- *http://www.ttb.gov* (An online comment form is posted with this notice on our Web site).

You may view copies of this notice and any comments received at *http://www.ttb.gov* or by appointment at the ATF Reference Library, 650 Massachusetts Avenue, NW., Washington, DC 20226; phone 202–927–7890.

See the Public Participation section of this notice for specific instructions and requirements, and for information on how to request a public hearing.

FOR FURTHER INFORMATION CONTACT: N. A. Sutton, Specialist, Regulations and Procedures Division (California), TTB, PO Box 4644, Petaluma, California 94955–4644; telephone 415–271–1254.

SUPPLEMENTARY INFORMATION:

TTB Background

What Is the Impact of the Homeland Security Act on Rulemaking?

Effective January 24, 2003, the Homeland Security Act of 2002 divided the Bureau of Alcohol, Tobacco and Firearms (ATF) into two new agencies, the Alcohol and Tobacco Tax and Trade Bureau in the Department of the Treasury and the Bureau of Alcohol, Tobacco, Firearms and Explosives in the Department of Justice. Regulation of wine labeling, including viticultural area designations, is the responsibility of the new TTB. References to ATF in this document relate to events that occurred prior to January 24, 2003, or to functions that the Bureau of Alcohol, Tobacco, Firearms and Explosives continues to perform.

Background on Viticultural Areas

What Is TTB's Authority To Establish a Viticultural Area?

The Federal Alcohol Administration Act (FAA Act) at 27 U.S.C. 205(e) requires that alcohol beverage labels provide the consumer with adequate information regarding a product's identity, while prohibiting the use of deceptive information on such labels. The FAA Act also authorizes TTB to issue regulations to carry out the Act's provisions.

Regulations in 27 CFR part 4, Labeling and Advertising of Wine, allow the establishment of definitive viticultural areas and the use of their names as appellations of origin on wine labels and in wine advertisements. Title 27 CFR Part 9, American Viticultural Areas, contains the list of approved viticultural areas.

What Is the Definition of an American Viticultural Area?

Title 27 CFR 4.25a(e)(1) defines an American viticultural area as a delimited grape-growing region distinguishable by geographic features whose boundaries have been delineated in subpart C of part 9. These designations allow consumers and vintners to attribute a given quality, reputation, or other characteristic of wine made from grapes grown in an area to its geographical origin.

What Is Required To Establish a Viticultural Area?

Section 4.25a(e)(2) outlines the procedure for proposing an American viticultural area. Anyone interested may petition TTB to establish a grape-growing region as a viticultural area. The petition must include—

- Evidence of local and/or national name recognition of the proposed viticultural area as the area specified in the petition;
- Historical or current evidence that the proposed viticultural area's boundaries are as specified in the petition;
- Evidence of geographical characteristics, such as climate, soil, elevation, physical features, etc., that distinguish the proposed area from surrounding areas;
- A description of the specific boundaries of the viticultural area, based on features reflected on United States Geological Survey (USGS) approved maps of the largest applicable scale; and
- A copy (or copies) of the USGS-approved map(s) with the boundaries prominently marked.

Will This Proposal Impact on Current Wine Labels?

If this proposed viticultural area is established, bottlers who use brand names like the name of the viticultural area may be affected. If you do use a brand name like San Bernabe, you must ensure that your existing products are eligible to use the name of the viticultural area as an appellation of origin. For a wine to be eligible, at least 85 percent of the grapes in the wine must have been grown within the viticultural area.

If the wine is not eligible to use the appellation, you must change the brand name of that wine and obtain approval of a new label. Different rules apply if you label a wine in this category with a label approved before July 7, 1986. *See* 27 CFR 4.39(i) for details. Additionally, where the name of a viticultural area is presented on a wine label in a context other than as the claimed appellation of origin, then the use of such a viticultural area name is subject to the general prohibitions against misleading representation in part 4 of the regulations.

San Bernabe and San Lucas Petitions

We received two petitions proposing (1) the establishment of a new viticultural area to be named San Bernabe and (2) a realignment of the adjacent, established San Lucas viticultural area. Both areas are located in central Monterey County, California. The proposed San Bernabe viticultural area encompasses 24,796 acres, of which 7,636 acres are vineyard. The petitioned realignment of the San Lucas viticultural area would transfer 1,281 acres to the proposed San Bernabe

viticultural area, create a common boundary line between the two areas, and avoid overlapping of the viticultural areas. Claude Hoover of Delicato Family Vineyards, Monterey, California, filed both petitions.

What Name Evidence Related to San Bernabe Has Been Provided?

According to the 1991 publication of "Monterey County Place Names, A Geographical Dictionary," by Donald Thomas Clark, Father Pedro Font, a member of the California expedition of Spanish explorer DeAnza, documented the initial reference to San Bernabe on March 8, 1776. He wrote in his diary, "we had passed a spur of the Sierra de Santa Lucia * * * The road at first runs through a spur of mountains, until it descends to a wide valley called the Cañada de San Bernabe." Eventually the area became known as "Rancho San Bernabe."

The Thompson Canyon and San Lucas USGS quadrangle maps prominently identify the area as San Bernabe. The relevant Thomas Guide labels this area Rancho San Bernabe. The TopoZone map Web site identifies this rural area as San Bernabe.

The 13,000-acre San Bernabe vineyard, with 7,636 acres planted to grapes, sits almost entirely within the proposed new and realignment viticultural areas. The petitioner explains that the small portion of the vineyard estate outside these proposed boundaries is unplanted and unsuitable for grape cultivation. The San Bernabe vineyard estate is recognized as the largest continuous vineyard estate under a single ownership in the free world, according to the petitioner.

What Historical/Current Evidence Supports the Boundaries as Specified?

According to the 1991 "Monterey County Place Names, A Geographical Dictionary," the San Bernabe area land grants were given to Jesus Molina in 1841 and in 1842 to Petronillo Rios. In 1842 Rios bought the Molina land grant and the Rios family began raising cattle and crops on this land and producing wine from their own grapes. The Rios ranch, known as Rancho San Bernabe, eventually became a successful vineyard and wine producing property.

According to the petitioner, in the 1970s Prudential-Southdown purchased the San Bernabe acreage for vineyard development. The petitioner explains that in 1988 the Delicato family bought the San Bernabe vineyard for its premium and super-premium wine market potential. The San Bernabe vineyard estate occupies 52 percent of the proposed viticultural area of the same name.

The petitioner defines the proposed San Bernabe viticultural area boundaries on USGS maps by connecting benchmarks, mountain peaks, and other geographical features with straight lines and by using several existing roads that follow the hilly terrain and soil changes.

The proposed San Bernabe viticultural area shares portions of its west and southwest boundary lines with the surrounding Monterey viticultural area, which is also surrounded by the Central Coast viticultural area. If the petitioned realignment is approved, the proposed San Bernabe area will share its southeast boundary with the San Lucas viticultural area. According to the petitioner, the transfer of 1,281 acres of the San Lucas viticultural area to the San Bernabe proposed viticultural area would better define the geographical differences between the established San Lucas and the proposed San Bernabe viticultural areas and avoid splitting an existing vineyard between viticultural areas.

What Geographical Features Distinguish San Bernabe From Other Areas?

The proposed San Bernabe viticultural area is located immediately south of King City in the long Salinas Valley. The approximately 9-mile-long and 7-mile-wide proposed viticultural area occupies the valley floor and rolling foothills from the Salinas River west to the Santa Lucia Mountains. The petitioner explains the unique qualities of the San Bernabe area include its climate, water quality, wind-produced eolian soils, and rolling hills. The petitioner claims that the 1,281 acres proposed for realignment possess the similar eolian soils, rolling hills topography, and the same irrigation water quality of the petitioned San Bernabe viticultural area.

Soil

Grapes grow below the 700-foot elevation level on rolling hills in wind-produced eolian soils, according to the petition. The Oceano, Garey, and Garey-Oceano complex eolian soil types, which are well to excessively well-drained, dominate the petitioned San Bernabe viticultural area. The petitioner states that small niches of alluvial soils, derived from the shale-based Santa Lucia Mountains, lie within the petitioned area and immediately to the north and south of the proposed boundary lines.

The surrounding, larger Monterey viticultural area consists of only 1.6 percent eolian soils, and the alluvial Lockwood series soils dominate the adjacent San Lucas viticultural area, according to the petitioner. The proposed realignment area possesses a predominance of the wind-produced eolian soils that contrast to the alluvial type soils of the San Lucas area. Above and west of the 700-foot contour line, the soils are derived from the shale-based Santa Lucia Mountains. The bench soils along the east boundary are common to the Salinas River area. East of the proposed viticultural area, the Gabilan Mountain Range includes calcareous sandstone, shale, and siltstone, which come from a different source material, according to the petitioner.

Climate

The petitioner explains that the Salinas Valley forms a broad funnel for the strong, cool, afternoon marine winds coming off Monterey Bay during the warm months. The winds are drawn inland and south through the Salinas Valley by rising, warm air and moderate the valley's high and low temperatures to varying degrees, which produces a graduated effect within the Salinas Valley. As a result, the proposed San Bernabe area is warmer than viticultural areas to the north and that are closer to Monterey Bay and cooler than the adjoining San Lucas viticultural area to the immediate south, according to the petition.

The moderating effect dissipates as the winds travel inland, creating a series of temperature-unique, grape-growing areas within the long Salinas Valley. San Bernabe, at 60 miles south of the Monterey Bay, averages a 30-degree daily temperature variation, while Salinas, at 17 miles from the Monterey Bay, averages an 18-degree daily temperature variation, according to the petition.

The cool night air helps retain the grapes' acid and color, while the daily heat encourages ripeness and flavor. The petition states that the San Bernabe area averages 30 frost-days annually, while Salinas, closer to Monterey Bay, averages only four frost-days.

According to the petitioner, most rain falls at the Salinas Valley's extreme north and south ends. Less rain falls in between, including the proposed viticultural area. The petition states that the San Bernabe area averages 13 inches annual rainfall, while Salinas at the north end averages 17.5 inches, and Paso Robles at the south end averages 19 inches.

Water Resources

The petitioner explains that irrigation water is used extensively in the vineyards. The water comes from area reservoirs and contains small amounts of carbonates and nitrates, which benefits the grapevines and soil. Toward the Monterey Bay, water quality declines as nitrate and carbonate levels increase, according to the petitioner.

What San Lucas Boundary Descriptions Have Been Provided?

We are considering the San Bernabe petition and a revision of the north boundary of the San Lucas viticultural area as defined in 27 CFR 9.56 at the same time. The proposed revision would reduce the San Lucas viticultural area from 34,642 to 33,361 acres, a loss of 3.5 percent, or 1,281 acres, which would be incorporated into the proposed San Bernabe viticultural area. A series of high elevation boundary points establishes the San Lucas area north border and currently overlaps the south boundary line of the proposed San Bernabe viticultural area. The San Lucas north boundary line bisects seven of the petitioner's vineyard blocks. Ninety percent of the large San Bernabe vineyard estate is within the proposed San Bernabe viticultural area, and ten percent is within the San Lucas viticultural area, according to the petitioner. Approval of the San Lucas realignment would avoid a division of this vineyard.

In support of the San Lucas boundary revision, the petitioner indicates that the soils in this area closely reflect the sandy loam soils of the San Bernabe area. The 1972 U.S. Department of Agriculture, Soil Conservation Service, Soil Survey of Monterey County map documents a change from the Oceano loamy sand and Garey sandy loam soils that dominate the San Bernabe area to the Greenfield, Lockwood, and Metz soils that dominate the San Lucas area. The petitioner explains that the same climate and irrigation factors exist in the proposed 1,281-acre realignment area and the proposed new San Bernabe viticultural area, as is demonstrated by the petitioner's uniform viticulture practices within the 13,000-acre vineyard estate.

What Maps Reflect the Boundaries of the Proposed San Bernabe Viticultural Area and the Boundary Revision of the San Lucas Viticultural Area?

The petitioned new San Bernabe viticultural area and the established San Lucas viticultural area are located in Monterey County, California. Four USGS-published, 1:24,000 scale topographic maps define the boundaries of the proposed San Bernabe viticultural area. The maps are—

(1) Thompson Canyon Quadrangle, California-Monterey County, 7.5 Minute Series, 1949 edition (photorevised 1984);

(2) San Lucas Quadrangle, California-Monterey County, 7.5 Minute Series, 1949 edition (photorevised 1984);

(3) Espinosa Canyon Quadrangle, California-Monterey County, 7.5 Minute Series, 1949 edition (photorevised 1979); and

(4) Cosio Knob Quadrangle, California-Monterey County, 7.5 Minute Series, 1949 edition (photorevised 1984).

The USGS publishes the two maps used to mark the boundaries of the San Lucas viticultural area's proposed realignment. The scale is 1:24,000, and the maps are—

(1) Espinosa Canyon Quadrangle, California-Monterey County, 7.5 Minute Series, 1949 edition (photorevised 1979); and

(2) San Lucas Quadrangle, California-Monterey County, 7.5 Minute Series, 1949 edition (photorevised 1984).

This proposed realignment area is an angular strip of land in the northwest San Lucas viticultural area, adjacent to the proposed San Bernabe viticultural area.

Public Participation

Who May Comment on This Notice?

We request comments from anyone interested. TTB is particularly interested in whether the adjustment of the San Lucas viticultural area boundaries will impact other vineyards or wineries. Please support your comments with specific information about the proposed area's name, growing conditions, or boundaries. All comments must include your name and mailing address, reference this notice number, and be legible and written in language acceptable for public disclosure.

Although we do not acknowledge receipt, we will consider your comments if we receive them on or before the closing date. We will consider comments received after the closing date if we can. We regard all comments as originals.

Will TTB Keep My Comments Confidential?

We do not recognize any submitted material as confidential. All comments are part of the public record and subject to disclosure. Do not enclose in your comments any material you consider confidential or inappropriate for disclosure.

How Can I Get Information About This Notice?

You may view copies of the petition, the proposed regulation, the appropriate maps, and any comments received by appointment at the ATF Reference Library, 650 Massachusetts Avenue, NW., Washington, DC 20226. You may also obtain copies at 20 cents per 8.5 11-inch page. Contact the ATF Librarian at the above address or telephone 202–927–7890 to schedule an appointment or to request copies of comments.

For your convenience, we will post this notice and the comments received on the TTB Web site. All posted comments will show the names of commenters but not street addresses, telephone numbers, or e-mail addresses. We may also omit voluminous attachments or material that we consider unsuitable for posting. In all cases, the full comment will be available in the ATF Reference Library. To access the online copy of this notice, visit *http://www.ttb.gov* and select "Alcohol," then "Rules and Regulations," then "Notices of proposed rulemaking (Alcohol)." Select the "View Comments" link under this notice number to view the posted comments.

How Should I Submit Comments?

You may submit comments in any of four ways.

- *By mail:* You may send written comments to TTB at the address listed in the **ADDRESSES** section.
- *By facsimile:* You may submit comments by facsimile transmission to 202–927–8525. Faxed comments must—

(1) Be on 8.5-by 11-inch paper;

(2) Contain a legible, written signature; and

(3) Be five or less pages long. This limitation assures electronic access to our equipment. We will not accept faxed comments that exceed five pages.

- *By e-mail:* You may e-mail comments to *nprm@ttb.gov*. Comments transmitted by electronic-mail must—

(1) Contain your e-mail address;

(2) Reference this notice number on the subject line; and

(3) Be legible when printed on 8.5-by 11-inch paper.

- *By online form:* We provide a comment form with the online copy of this notice on our Web site at *http://www.ttb.gov*. Select "Alcohol," then "Rules and Regulations," then Notices of proposed rulemaking (Alcohol)." Select the "Send comments via email" link under this notice number.

You may also write to the Administrator before the comment closing date to ask for a public hearing. The Administrator reserves the right to

determine, in light of all circumstances, whether a public hearing will be held.

Regulatory Analyses and Notices

Does the Paperwork Reduction Act Apply to This Proposed Rule?

We propose no requirement to collect information. Therefore, the provisions of the Paperwork Reduction Act of 1995, 44 U.S.C. 3507, and its implementing regulations, 5 CFR part 1320, do not apply.

Does the Regulatory Flexibility Act Apply to This Proposed Rule?

We certify that this regulation, if adopted, will not have a significant economic impact on a substantial number of small entities, including small businesses. The proposal imposes no new reporting, recordkeeping, or other administrative requirements.

The establishment of viticultural areas represents neither our endorsement nor approval of the quality of wine made from grapes grown in the areas. Rather, it is a system that identifies areas distinct from one another. In turn, identifying viticultural areas lets wineries describe more accurately the origin of their wines to consumers and helps consumers identify the wines they purchase. Thus, any benefit derived from using a viticultural area name results from the proprietor's efforts and consumer acceptance of wines from that area. Therefore, no regulatory flexibility analysis is required.

Is This Proposed Rule a Significant Regulatory Action?

This proposed rule is not a "significant regulatory action" as defined by Executive Order 12866. Therefore, no regulatory assessment is required.

Drafting Information

The principal author of this document is N. A. Sutton (California), and the editor is Jane R. Stefanik (Washington, DC), Regulations and Procedures Division, Alcohol and Tobacco Tax and Trade Bureau.

List of Subjects in 27 CFR Part 9

Wine.

Authority and Issuance

Title 27, Code of Federal Regulations, Part 9, American Viticultural Areas, is proposed to be amended as follows:

PART 9—AMERICAN VITICULTURAL AREAS

1. The authority citation for part 9 continues to read as follows:

Authority: 27 U.S.C. 205.

2. Subpart C is amended by adding Section 9.____ to read as follows:

Subpart C—Approved American Viticultural Areas

§ 9.____ San Bernabe

(a) *Name.* The name of the viticultural area described in this section is "San Bernabe".

(b) *Approved Maps.* The appropriate maps for determining the boundary of the San Bernabe viticultural area are four 1:24,000 scale, USGS-published topographic maps. They are titled:

(1) Thompson Canyon Quadrangle, California-Monterey County, 1949 (photorevised 1984).

(2) San Lucas Quadrangle, California-Monterey County, 1949 (photorevised 1984).

(3) Espinosa Canyon Quadrangle, California-Monterey County, 1949 (photorevised 1979).

(4) Cosio Knob Quadrangle, California-Monterey County, 1949 (photorevised 1984).

(c) *Boundary.* The proposed viticultural area is located in central Monterey County, south of King City, California, and west of highway 101. The point of beginning is benchmark 304, located one-half mile southwest of King City, along the Salinas River, in Township 20 South (T20S) and Range 8 East (R8E) (Thompson Canyon Quadrangle); then

(1) Proceed southeast in a straight line for 2.35 miles to benchmark 304, at the intersection of a trail and the 300-foot contour line, between highway 101 and the Salinas River, in T20S and R8E (San Lucas Quadrangle); then

(2) Proceed southeast in a straight line for 2.9 miles to benchmark 336, between highway 101 and the Salinas River, in T20S and R8E (San Lucas Quadrangle); then

(3) Proceed southeast in a straight line for 3 miles to benchmark 340, between U.S. highway 101 and the Salinas River, in T21S and R9E (San Lucas Quadrangle); then

(4) Proceed south in a straight line for 0.8 mile to the intersection of the Salinas River and the highway 198 bridge, in T21S and R9E (Espinosa Canyon Quadrangle); then

(5) Proceed southwest along highway 198 for 0.6 mile to its intersection with an unnamed light duty road, in T21S and R9E (Espinosa Canyon Quadrangle); then

(6) Proceed northwest, followed by southwest, about 1.2 miles along the meandering, unnamed, light duty road to its intersection with the fork of an intermittent stream, in T21S and R8E (Espinosa Canyon Quadrangle); then

(7) Proceed southwest in a straight line for 0.6 mile to the 595-foot peak, Section 13, in T21S and R8E (Espinosa Canyon Quadrangle); then

(8) Proceed southwest in a straight line for 1.3 miles to the 788-foot peak, section 23, in T21S and R8E (Espinosa Canyon Quadrangle); then

(9) Proceed southwest in a straight line for 0.7 mile to the intersection of the unimproved road and jeep trail, east of the 73-degree longitudinal line, section 26, in T21S and R8E (Espinosa Canyon Quadrangle); then

(10) Proceed northwest in a straight line for 3.2 miles to the northwest corner of section 16, in T21S and R8E (Espinosa Canyon Quadrangle); then

(11) Proceed southwest in a straight line for 1.5 miles to the northeast corner of section 19, in T21S and R8E (Cosio Knob Quadrangle); then

(12) Proceed southwest in a straight line for 2.2 miles to the southwest corner of section 24, in T21S and R7E (Cosio Knob Quadrangle); then

(13) Proceed north in a straight line for 2 miles to the northwest corner of section 13, in T21S and R7E (Cosio Knob Quadrangle); then

(14) Proceed east in a straight line for 1 mile to the northeast corner of section 13, in T21S and R7E (Cosio Knob Quadrangle); then

(15) Proceed north in a straight line for 2 miles, along the R7E and R8E common boundary line, to the northwest corner of section 6, in T21S and R8E (Thompson Canyon Quadrangle); then

(16) Proceed east in a straight line for 0.1 mile to the southwest corner of section 31 and continue diagonally to the northeast corner of section 31, in T20S and R8E (Thompson Canyon Quadrangle); then

(17) Proceed west in a straight line for 2 miles to the southwest corner of section 25, in T20S and R7E (Thompson Canyon Quadrangle); then

(18) Proceed due north in a straight line for 0.1 mile to the intersection with a light duty road, named Pine Canyon Road, in section 25, and continue northeast along that road for 3.2 miles to its intersection with an unnamed secondary highway, north of benchmark 337, section 18, in T20S and R8E (Thompson Canyon Quadrangle); then

(19) Proceed northwest along the unnamed secondary highway for 0.3 mile to its intersection with highway 101, in T20S and R8E (Thompson Canyon Quadrangle); then

(20) Proceed northeast along highway 101 for 0.7 mile to benchmark 304, returning to the point of beginning. (Thompson Canyon Quadrangle).

3. Amend section 9.56, San Lucas viticultural area, to revise paragraphs (c)(24) and (c)(25) and add paragraphs (c)(26) and (c)(27) to read as follows:

§ 9.56 San Lucas

* * * * *

(c) *Boundary.* * * *

(24) Then northeasterly approximately 1.3 miles to the 595-foot promontory, section 13, T. 21 S., R. 8 E. (Espinosa Canyon Quadrangle);

(25) Then northeasterly approximately 0.6 mile to the intersection of a meandering, unnamed, light duty road and the fork of an intermittent stream, then continues meandering northeasterly, followed by southeasterly, approximately 1.1 miles to its intersection with an unnamed, light duty road south of the windmill, T. 21 S., R. 8 E. (Espinosa Canyon Quadrangle);

(26) Then northeasterly along the unnamed road approximately 0.6 mile to its intersection with the Salinas River, then continues 0.8 mile north in a straight line to benchmark 340, between highway 101 and the Salinas River, in T. 21 S., R. 9 E. (San Lucas Quadrangle);

(27) Then approximately 0.4 mile northwesterly in a straight line to the intersection with a water tank, then continues northeasterly in a straight line approximately 0.7 mile, and returns to the point of beginning in the northwest corner of section 5, in T. 21 S., R. 9 E. (San Lucas Quadrangle).

Signed: April 29, 2003.

Arthur J. Libertucci,

Administrator.

[FR Doc. 03–11970 Filed 5–13–03; 8:45 am]

BILLING CODE 4810–31–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Parts 62, 66, 67, and 72

[USCG–2001–10714]

RIN 1625–AA34 (Formerly RIN 2115–AG25)

Update of Rules on Aids to Navigation Affecting Buoys, Sound Signals, International Rules at Sea, Communications Procedures, and Large Navigational Buoys

AGENCY: Coast Guard, DHS.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard proposes to revise its aids to navigation and maritime information regulations by updating technical information concerning buoys, sound signals, international rules at sea, communications procedures, and large navigational buoys, and by rewriting some regulations to make them clearer and gender-neutral. The proposed changes would update existing rules to reflect current practices and make them easier to understand.

DATES: Comments and related material must reach the Docket Management Facility on or before August 12, 2003.

ADDRESSES: To make sure that your comments and related material are not entered more than once in the docket, please submit them by only one of the following means:

(1) By mail to the Docket Management Facility (USCG–2001–10714), U.S. Department of Transportation, room PL–401, 400 Seventh Street, SW., Washington, DC 20590–0001.

(2) By delivery to room PL–401 on the Plaza level of the Nassif Building, 400 Seventh Street, SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The telephone number is 202–366–9329.

(3) By fax to the Docket Management Facility at 202–493–2251.

(4) Electronically through the Web site for the Docket Management System at *http://dms.dot.gov*.

The Docket Management Facility maintains the public docket for this rulemaking. Comments and material received from the public, as well as documents mentioned in this preamble as being available in the docket, will become part of this docket and will be available for inspection or copying at room PL–401 on the Plaza level of the Nassif Building, 400 Seventh Street, SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. You may also find this docket on the Internet at *http://dms.dot.gov*.

FOR FURTHER INFORMATION CONTACT: If you have questions on this proposed rule, contact Mr. Dan Andrusiak, Project Manager, Program Management Division, Office of Short-Range Aids to Navigation (G–OPN), Coast Guard, telephone 202–267–0327 (email: *dandrusiak@comdt.uscg.mil*).

If you have questions on viewing or submitting material to the docket, call Ms. Dorothy Beard, Chief, Dockets, Department of Transportation, telephone 202–366–5149.

SUPPLEMENTARY INFORMATION:

Request for Comments

We encourage you to participate in this rulemaking by submitting comments and related material. If you do so, please include your name and address, identify the docket number for this rulemaking (USCG–2001–10714), indicate the specific section of this document to which each comment applies, and give the reason for each comment. You may submit your comments and material by mail, hand delivery, fax, or electronic means to the Docket Management Facility at the address under **ADDRESSES;** but please submit your comments and material by only one means. If you submit them by mail or hand delivery, submit them in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. If you submit them by mail and would like to know that they reached the Facility, please enclose a stamped, self-addressed postcard or envelope. We will consider all comments and material received during the comment period. We may change this proposed rule in view of them.

Public Meeting

We do not now plan to hold a public meeting. But you may submit a request for one to the Docket Management Facility at the address under **ADDRESSES** explaining why one would be beneficial. If we determine that one would aid this rulemaking, we will hold one at a time and place announced by a later notice in the **Federal Register**.

Background and Purpose

The Coast Guard's Office of Short-Range Aids to Navigation frequently reviews the rules on Aids to Navigation. During our most recent review, we found that many rules do not reflect current technologies and practices. For example, what we formerly called "fog signals," we now call "sound signals." Also, we want to inform users that certain safety information, such as "Notice to Mariners" can now be found on the World Wide Web. Therefore, the Assistant Commandant for Operations proposes to update our aids to navigation rules and to eliminate any ambiguous or confusing language in them.

Discussion of Proposed Rule

The regulations we propose to revise are in 33 CFR parts 62, 66, 67 and 72. Our discussion of our proposed revisions are presented below under the four corresponding subject area headings: United States Aids to Navigation System, Private Aids to Navigation, Aids to Navigation on Artificial Islands and Fixed Structures, and Marine Information.

United States Aids to Navigation System

Large navigational buoys. We propose to remove § 62.39 because the Coast Guard no longer uses the large navigational buoys described in that section. We now use the Differential Global Positioning System (DGPS) for navigational assistance.

Maritime radiobeacon system. We propose to remove subpart C (Maritime Radiobeacons) of 33 CFR part 62. The sections in it, §§ 62.55, 62.57, 62.59, and 62.61, describe a radiobeacon system that has been replaced by DGPS.

Procedures for reporting defects and discrepancies. We propose to revise § 62.65(c)(2) by removing the last sentence that allows the use of collect calls. Because there are so many ways to reach the Coast Guard, this collect call option is no longer necessary.

Private Aids to Navigation

Application procedure. In § 66.01–5(g) we propose to remove the term "fog signals" and add, in its place, the term "sound signals" to reflect current usage. These signals alert operators to many environmental conditions besides fog that reduce visibility—for example, mist, rain, falling snow, smoke, and dust.

State waters for private aids to navigation; designations; revisions, and revocations. We propose to make the language in § 66.05–10 gender-neutral.

Change and modification of State aids to navigation. We propose to make the language in § 66.05–25 gender-neutral. We also propose to remove the word "preferably" to give a definitive deadline for the State Administrator to inform the District Commander of the need for a change in the State aids to navigation.

Notice to Mariners. We propose to make § 66.05–30 gender-neutral.

Designation of navigable waters as State waters for private aids to navigation. In § 66.05–100(e), for clarity, we propose to change the reference to "Each navigable water" to simply "Navigable waters".

Uniform State waterway aids to navigation. In § 66.10–15, we propose to make paragraphs (b), (c), (e)(1), and (e)(3) gender-neutral. And we propose to remove the editorial note for § 66.10–15. This note points out that the heading of amendatory instruction no. 16 at 63 FR 33574, June 19, 1998, referred to a non-existent § 66.19–15; the heading should have read "*§ 66.10–15 Aids to navigation.*" This NPRM serves to document that error and eliminate the need for maintaining this distracting note in the CFR.

Aids to Navigation on Artificial Islands and Fixed Structures

Throughout 33 CFR part 67, we propose to replace the term "fog signals" with "sound signals" to reflect current usage. These signals alert operators to many environmental conditions, not just fog.

General requirements. We propose to make §§ 67.01–10, 67.01–15, 67.01–20, and 67.05–1 gender-neutral. In addition, we proposed to revise the first three of these sections to clarify the roles of agency personnel.

Classification of structures. As part of our proposed clarification of § 67.01–15, classification of structures, we plan to consolidate common language repeated in six district regulations in subpart 67.50 into this one section applicable to all of part 67. By moving this commonly-shared classification of structures language to § 67.01–15, we will be able to delete this repetitive language from §§ 67.50–5, 67.50–15, 67.50–20, 67.50–30, 67.50–45, and 67.50–50.

Lights and signals on attendant vessels. We propose to revise § 67.15–1 by correcting a U.S. Code citation and adding new authority references.

Spoil Banks, artificial islands, and dredged channels marking requirements. We propose to revise § 67.15–10(b) to establish that the District Commander would both review applications and issue permits.

Class A and B requirements. We propose to make the language in §§ 67.20–10 and 67.25–10 gender-neutral and to change the term "fog signal" to "sound signal".

Obstruction lights. We propose to revise § 67.30–5(a) to replace an old address with a current one.

Fog Signals. We propose to revise § 67.30–10, including its heading, to change the term "fog signal" to "sound signal".

Notification to District Commander. We propose to make the language in § 67.40–1 gender-neutral. We also propose to allow those constructing structures an additional means of notifying the District Commander that construction has commenced. We currently require notice by telegram. We propose to add the option of notification via overnight mail.

Notification waivers. We propose to make the language in § 67.40–5 gender-neutral.

Charges for marking structures invoiced to owner. We propose to revise § 67.40–20 to change the term "fog signal" to "sound signal".

Marine Information

Local Notice to Mariners. We propose to add a note to § 72.01–5 to inform the reader of a Web address where an electronic version of "Local Notice to Mariners" can be located.

Notice to Mariners. We propose to add a Web address note to § 72.01–10 to inform the reader where an electronic version of "Notice to Mariners" can be located.

Free distribution of Light List. We propose to add a note to § 72.05–10 to inform the reader of a Web address where an electronic version of Coast Guard Light List data may be obtained.

Regulatory Evaluation

This proposed rule is not a "significant regulatory action" under section 3(f) of Executive Order 12866, Regulatory Planning and Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that Order. It is not "significant" under the regulatory policies and procedures of the Department of Homeland Security (DHS).

Cost of Rule. The proposed rule would impose no costs either on owners and operators of aids to navigation or on owners and operators of vessels on waters subject to the jurisdiction of the United States. Some owners and operators, however, may need to update contact information in their files, which is a normal business practice and therefore the cost is negligible.

Benefits of the Rule. The proposed rule would update various technical references to incorporate improvements in technology and practices. The rule would also rewrite some sections to make them easier to understand and to reflect gender-neutral language. We expect that this proposed rule would improve operational efficiency and boater's safety.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), we have considered whether this proposed rule would have a significant economic impact on a substantial number of small entities. The term "small entities" comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000. This proposed rule would update technical information to reflect current practices and to rewrite some sections for clarity.

Therefore, the Coast Guard certifies under 5 U.S.C. 605(b) that this proposed rule would not have a significant economic impact on a substantial number of small entities. If you think that your business, organization, or governmental jurisdiction qualifies as a small entity and that this rule would have a significant economic impact on it, please submit a comment to the Docket Management Facility at the address under **ADDRESSES.** In your comment, explain why you think it qualifies and how and to what degree this rule would economically affect it.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we want to assist small entities in understanding this proposed rule so that they can better evaluate its effects on them and participate in the rulemaking. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please consult Dan Andrusiak, Program Management Division, Office of Aids to Navigation, Coast Guard, telephone 202–267–0327 (email: *dandrusiak@comdt.uscg.mil*).

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1–888–REG–FAIR (1–888–734–3247).

Collection of Information

This proposed rule would call for no new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

Federalism

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on State or local governments and would either preempt State law or impose a substantial direct cost of compliance on them. We have analyzed this proposed rule under that Order and have determined that it does not have implications for federalism.

Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of $100,000,000 or more in any one year. Though this proposed rule would not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

Taking of Private Property

This proposed rule would not effect a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

Civil Justice Reform

This proposed rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

Protection of Children

We have analyzed this proposed rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and would not create an environmental risk to health or risk to safety that might disproportionately affect children.

Indian Tribal Governments

This proposed rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it would not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal government and Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes.

Energy Effects

We have analyzed this proposed rule under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. We have determined that it is not a "significant energy action" under that order because it is not a "significant regulatory action" under Executive Order 12866 and is not likely to have a significant adverse effect on the supply, distribution, or use of energy. It has not been designated by the Administrator of the Office of Information and Regulatory Affairs as a significant energy action. Therefore, it does not require a Statement of Energy Effects under Executive Order 13211.

Environment

We have considered the environmental impact of this proposed rule and concluded under figure 2–1, paragraph (34)(a), of Commandant Instruction M16475.1D, this rule is categorically excluded from further environmental documentation. A "Categorical Exclusion Determination" is available in the docket where indicated under **ADDRESSES.**

List of Subjects

33 CFR Part 62

Navigation (water).

33 CFR Part 66

Intergovernmental relations, Navigation (water), Reporting and recordkeeping requirements.

33 CFR Part 67

Continental shelf, Navigation (water), Reporting and recordkeeping requirements.

33 CFR Part 72

Government publications, Navigation (water).

For the reasons discussed in the preamble, the Coast Guard proposes to amend 33 CFR parts 62, 66, 67, and 72 as follows:

PART 62—UNITED STATES AIDS TO NAVIGATION SYSTEM

1. The authority citation for part 62 continues to read as follows:

Authority: 14 U.S.C. 85; 33 U.S.C. 1233; 43 U.S.C. 1333; Department of Homeland Security Delegation No. 0170.

§ 62.39 [Removed]

2. Remove § 62.39.

§§ 62.55–62.61 (Subpart C) [Removed and Reserved]

3. Remove and reserve subpart C, consisting of §§ 62.55 through 62.61.

§ 62.65 [Amended]

4. In § 62.65, in paragraph (c)(2), remove the last sentence.

PART 66—PRIVATE AIDS TO NAVIGATION

5. The authority citation for part 66 continues to read as follows:

Authority: 14 U.S.C. 83, 85; 43 U.S.C. 1333; Pub. L. 107–296, 116 Stat. 2135; Department of Homeland Security Delegation No. 0170.

§ 66.01–5 [Amended]

6. In § 66.01–5(g), remove the word "fog," and add in its place, the word "sound."

§ 66.05–10 [Amended]

7. In § 66.05–10—

(a) In paragraph (c), wherever the word "his" appears, remove it; and

(b) In paragraph (e), in the first sentence, add the words "or her" immediately after the word "his", and add the word "or her" immediately after the words "by him."

§ 66.06–25 [Amended]

8. Amend § 66.05–25 to read as follows:

§ 66.05–25 Change and modification of State aids to navigation.

Wherever a State Administrator determines the need for change in State aids to navigation, he or she must inform the District Commander of the nature and extent of the changes, as soon as possible, but not less than 30 days in advance of making the changes.

§ 66.05–30 [Amended]

9. In § 66.05–30 revise paragraph (a) to read as set forth below.

§ 66.05–30 Notice to Mariners.

(a) To improve public safety, the District Commander may publish information concerning State aids to navigation, including regulatory markers, in the Coast Guard Local Notices to Mariners.

* * * * *

§ 66.05–100 [Amended]

10. In § 66.05–100, in paragraph (e), remove the words "Each navigable water" and add, in their place, the words "Navigable waters."

§ 66.10–15 [Amended]

11. In § 66.10–15—

a. In paragraphs (b) and (c), in the last sentence, remove the word "he" and add, in its place, the words "the user",

b. In paragraphs (e)(1), (e)(2) and (e)(3), remove the word "he" and add, in its place, the words "the operator".

PART 67—AIDS TO NAVIGATION ON ARTIFICIAL ISLANDS AND FIXED STRUCTURES

12. The authority citation for part 67 continues to read as follows:

Authority: 14 U.S.C. 85, 633; 43 U.S.C. 1333; Department of Homeland Security Delegation No. 0170.

PART 67—[AMENDED]

13. In part 67, remove the words "fog signal" and "fog signals" and add, in their place, respectively, the words "sound signal" and "sound signals" in the following places:

a. Section 67.01–1 (a);

b. Section 67.01–5 (e) and (f), including the section heading for (f);

c. Subpart 67.10, subpart heading;

d. Sections 67.10–1 introductory text;

e. Section 67.10–5 introductory text;

f. Section 67.10–10 (a) introductory text, (a)(3) and (b);

g. Section 67.10–15, section heading, paragraphs (a) introductory text, (a)(1), (a)(2), and (b);

h. Section 67.10–20, section heading, paragraphs (a) introductory text, and (a)(3);

i. Section 67.10–25 introductory text and (a)(2);

j. Section 67.10–30;

k. Section 67.10–35(a) and (b);

l. Section 67.10–40, section heading and text;

m. Section 67.20–10, section heading, and paragraphs (a)(1), (a)(2) and (b);

n. Section 67.25–10, section heading, paragraphs (a)(1), (a)(2), (b) introductory text, (b)(2), and (c)(1);

o. Section 67.30–10, section heading, paragraphs (a) introductory text, (b), (c), (d) introductory text and (d)(2); q

p. Section 67.35–1(b);

q. Section 67.35–5(b);

r. Section 67.40–1(a);

s. Section 67.40–5(b);

t. Section 67.40–20; and

u. Section 67.50–25(f).

§ 67.01–10 [Amended]

14. Amend § 67.01–10 to read as follows:

§ 67.01–10 Delegation of functions.

The Coast Guard District Commander may delegate the authority for performing inspections, enforcement, and administration of regulations to any civilian or military position in the Coast Guard.

§ 67.01–15 [Amended]

15. Amend § 67.01–15 to read as follows:

§ 67.01–15 Classification of structures.

(a) *When will structures be assigned to a Class?* The District Commander will assign structures to Class A, B, or C as part of processing an application for a permit to establish and operate lights and sound signals.

(b) *In general, where will the different classes of structures be located?* Specific criteria in paragraph (c) of this section may create exceptions, but in general structures the farthest from shore are likely to be assigned to Class A and required to have obstruction lights and sound signals that can be detected from the farthest distance. Structures closest to shore are likely to be assigned to Class C and, while subject to requirements to ensure that they are also detectable from a safe distance away, will be required to have the least powerful obstruction lights or sound signals. The location and standards for Class B structures will generally be in between Class A and C structures.

(c) *What criteria will be used to classify structures?* When assigning a structure to a class, the District Commander will take into consideration whether a line of demarcation has been prescribed, and matters concerning, but not necessarily limited to, the dimensions of the structure and the depth of water in which it is located, the proximity of the structure to vessel routes, the nature and amount of vessel traffic, and the effect of background lighting.

(1) If a line of demarcation has been prescribed, the District Commander will assign those structures seaward of the line of demarcation to Class A. He or she will assign all structures shoreward of the line of demarcation to either Class B or Class C, unless the District Commander determines under § 67.05–25 that the structure should be assigned to Class A because of the structure's proximity to a navigable channel, fairway or line of demarcation.

(2) If a line of demarcation has not been prescribed, the District Commander will assign a structure to Class A, B, or C as he or she deems appropriate.

16. Amend § 67.01–20 to read as follows:

§ 67.01–20 Prescribing lines of demarcation.

The District Commander sends recommendations for establishing or changing lines of demarcation to the Commandant. For the purposes of this part, when the Commandant approves of additions to or changes in prescribed lines of demarcation, such additions or changes will be published in the **Federal Register** and will become effective on the date specified in that publication.

§ 67.05–1 [Amended]

17. In § 67.05–1(f), immediately after the words, "the angle of the approach, until", remove the word "he", and add, in its place, the words, "the mariner".

§ 67.10–10 [Amended]

18. In addition to amendments set forth in the nomenclature instruction above, in § 67.10–10, remove the third word ("fog") in paragraph (a)(3).

§ 67.15–1 [Amended]

19. Amend § 67.15–1 to read as follows:

§ 67.15–1 Lights and signals on attendant vessels.

The requirements prescribed by this part apply to structures. The barges, vessels, and other miscellaneous floating plants in attendance must display lights and signals under the International Navigational Rules Act of 1977 (33 U.S.C. 1601–1608) that adopted the International Regulations for Preventing Collisions at Sea, 1972 (72 COLREGS), or the Inland Navigational Rules Act of 1980 (33 U.S.C. 2001–2038). When vessels are fixed to or submerged onto the seabed, however, they become structures as described in § 67.01–5.

§ 67.15–10 [Amended]

20. Amend § 67.15–10(b) to read as follows:

§ 67.15–10 Spoil banks, artificial islands, and dredged channels.

* * * * *

(b) To receive a permit to establish and maintain a private aid to navigation for the purposes described in paragraph (a) of this section, submit your application to the District Commander. The District Commander will review all applications and issue all permits.

21. In addition to amendments set forth in the nomenclature instruction above, in § 67.20–10, in paragraph (b), add the words "or she" immediately after the words "of this section, if he".

22. In addition to amendments set forth in the nomenclature instruction above, in § 67.25–10, in the introductory text of paragraph (c), add the words "or she" immediately after the words "of this section, if he".

§ 67.30–5 [Amended]

23. In § 67.30–5, in paragraph (a), remove the address "Naval Supply Depot, 5801 Tabor Avenue, Philadelphia, Pa. 19120." and add, in its place, the following address: "Document Automation and Production Service, 700 Robbins Avenue, Building 4, Section D, Philadelphia, PA 19111–5091."

§ 67.40–1 [Amended]

24. In addition to amendments set forth in the nomenclature instruction above, in § 67.40–1(a), remove the second sentence, and add, in its place, the two following sentences: "Persons constructing structures must notify the District Commander by either telegram or overnight mail on the day they begin construction. Within this notice, they must inform him or her of the lights and sound signals they will use during construction."

§ 67.40–5 [Amended]

25. In addition to amendments set forth in the nomenclature instruction above, in § 67.40–5—

a. In paragraph (a), add the words "or her" immediately after the words "whenever, in his", and

b. In paragraph (b), add the words "or she" immediately after the words "marine navigation, he" and add the words "or her" immediately after the words "revoke or revise his".

26. In §§ 67.50–5 (b), 67.50–15 (b), 67.50–20 (b), 67.50–30 (b), 67.50–35 (b), 67.50–45 (b), and 67.50–50 (b), remove the sentences: "The District Commander shall assign structures to classes as he deems appropriate at the time of application for a permit to establish and operate lights and fog signals. In so doing, he shall take into consideration matters concerning, but not necessarily limited to, the dimensions of the structure and the depth of water in which it is located; the proximity of the structure to vessel routes; the nature and amount of vessel traffic; and the effect of background lighting."

CHAPTER I—COAST GUARD, DEPARTMENT OF HOMELAND SECURITY

PART 72—MARINE INFORMATION

27. The authority citation for part 72 continues to read as follows:

Authority: 14 U.S.C. 85, 633; 43 U.S.C. 1333; Department of Homeland Security Delegation No. 0170.

§ 72.01–5 [Amended]

28. In § 72.01–5, add a note at the end of the section that reads as follows:

§ 72.01–5 Local Notice to Mariners.

* * * * *

Note to § 72.01–5: You may also access Local Notice to Mariners free of charge on the Internet from the Coast Guard Navigation website (*http://www.navcen.uscg.gov/*); look for "Local Notice to Mariners".

§ 72.01–10 [Amended]

29. In § 72.01–10, add a note at the end of the section that reads as follows:

§ 72.01–10 Notice to Mariners.

* * * * *

Note to § 72.01–10: You may also access Notice to Mariners through the National Imagery and Mapping Agency website (*http://pollux.nss.nima.mil/*); look for "U.S. Notice to Mariners".

30. In § 72.05–10, add a note at the end of the section that reads as follows:

§ 72.05–10 Free Distribution.

* * * * *

Note to § 72.05–10: You may also access Coast Guard Light List data through the following National Imagery and Mapping Agency Web site (*http://pollux.nss.nima.mil/pubs/USCGLL/pubs_j_uscgll_list.*)

Dated: May 5, 2003.

David S. Belz,

Rear Admiral, U.S. Coast Guard, Assistant Commandant for Operations.

[FR Doc. 03–11987 Filed 5–13–03; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

49 CFR Part 1137

[STB Ex Parte No. 637 (Sub–No. 1)]

Removal of Divisions of Revenue Regulations

AGENCY: Surface Transportation Board, DOT.

ACTION: Notice of proposed rulemaking; correction of prior document.

SUMMARY: The Surface Transportation Board (Board) is correcting its prior document by adding an **ADDRESSES** caption.

DATES: Comments are due June 5, 2003.

ADDRESSES: Send an original and 10 copies of comments referring to "Ex Parte No. 637 (Sub-No. 1)" to: Surface Transportation Board, 1925 K Street, NW., Washington, DC 20423–0001.

FOR FURTHER INFORMATION CONTACT: John Sado, (202) 565–1661. [Federal Information Relay Service for the hearing impaired: 1–800–877–8339.]

SUPPLEMENTARY INFORMATION: On May 6, 2003, at 68 FR 23947–23948, the Board published a notice of proposed rulemaking in this proceeding seeking comments but inadvertently omitting the **ADDRESSES** caption. The Board is here correcting that omission by including the relevant address information.

Dated: May 8, 2003.

By the Board, Vernon A. Williams, Secretary.

Vernon A. Williams,

Secretary.

[FR Doc. 03–12001 Filed 5–13–03; 8:45 am]

BILLING CODE 4915–00–P

Notices

Federal Register
Vol. 68, No. 93
Wednesday, May 14, 2003

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Forest Service

Deschutes Provincial Advisory Committee (DPAC); Meeting

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The Deschutes Advisory Committee will meet on June 11th, 2003 starting at 9 a.m. at the Jefferson County Firehall on the corner of Adam and "J" Street in Madras, Oregon. Agenda items will include a presentation on the Deschutes National Forest Recreation Initiative, Update on the status of the Aquatic Conservation Strategy and Survey and Management Supplemental EISs, Update on the Upper Deschutes Resource Management Plan and Metolious Basin Subcommittees, Rechartering, Wrap up of the 2002 NWFP monitoring, and a briefing on the new Stewardship Contract authority. The remainder of the day will include info sharing and a Public Forum from 4 p.m. till 4:30 pm. All Deschutes Province Advisory Committee Meetings are open to the public.

FOR FURTHER INFORMATION CONTACT: Chris Mickle, Province Liaison, Deschutes NF, Crescent RD, P.O. Box 208, Crescent, OR 97754, Phone (541) 433–3216.

Dated: May 7, 2003.

Leslie A.C. Weldon,

Deschutes National Forest Supervisor.

[FR Doc. 03–11869 Filed 5–13–03; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Forest Service

Shasta County Resource Advisory Committee (RAC)

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The Shasta County Resource Advisory Committee (RAC) will meet on May 28, 2003, in Anderson, CA. The purpose of the meeting will be to receive updates about funded projects, to form working committees, and the future of RAC appointments.

DATES: The meeting will be held on May 28, 2003, from 8 a.m. to noon.

ADDRESSES: The meeting will be held at Sierra Pacific Industries, 19794 Riverside Avenue, Anderson, CA—off Oxyoke Road between Interstate-5 and Highway 273.

FOR FURTHER INFORMATION CONTACT: Deb Romberger, Designated Federal Official, USDA Forest Service, (530) 336–5521. E-mail: *dromberger@fs.fed.us.*

SUPPLEMENTARY INFORMATION: The meeting is open to the public. Discussion is limited to Forest Service staff and committee members. However, time will be provided for public input, giving individuals the opportunity to address the committee.

Dated: May 7, 2003.

J. Sharon Heywood,

Forest Supervisor.

[FR Doc. 03–11973 Filed 5–13–03; 8:45 am]

BILLING CODE 3410–11–M

COMMISSION ON CIVIL RIGHTS

Agenda and Notice of Public Meeting of the Idaho Advisory Committee

Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights, that a conference call of the Idaho Advisory Committee to the Commission will convene at 11 a.m. and adjourn at 12 p.m. (m.d.t.) on Wednesday May 21, 2003.

This conference call is available to the public through the following call-in number: 1–800–659–1088, access code: 16702259. Any interested member of the public may call this number and listen to the meeting. Callers can expect to incur charges for calls not initiated using the supplied call-in number or made over wireless lines, and the Commission will not refund any incurred charges. Callers will incur no charge for calls using the call-in number over land-line connections. Persons with hearing impairments may also follow the proceedings by first calling the Federal Relay Service at 1–800–977–8339 and providing the Service with the conference call number and access code.

To ensure that the Commission secures an appropriate number of lines for the public, persons are asked to register by contacting Phillip Montez, of the Western Regional Office, (213) 894–3437, by 3 p.m. on Tuesday, May 20, 2003.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated in Washington, DC, April 24, 2003.

Ivy L. Davis,

Chief, Regional Programs Coordination Unit.

[FR Doc. 03–11968 Filed 5–13–03; 8:45 am]

BILLING CODE 6335–01–P

COMMISSION ON CIVIL RIGHTS

Agenda and Notice of Public Meeting of the New Jersey Advisory Committee

Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights, that a meeting of the New Jersey Advisory Committee to the Commission will convene at 10 a.m. and adjourn at 4:30 p.m. on Tuesday, May 13, 2003, at the New Jersey State House, 125 W. State Street, Room 1, Trenton, NJ 08625. The purpose of this meeting is to review status of current activity, plan new projects, and receive briefings from invited speakers on civil rights developments in the state.

Persons desiring additional information, or planning a presentation to the Committee, should contact Ki-Taek Chun, Director of the Eastern Regional Office, 202–376–7533 (TDD 202–376–8116). Hearing-impaired persons who will attend the meeting and require the services of a sign language interpreter should contact the Regional Office at least ten (10) working days before the scheduled date of the meeting.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated in Washington, DC, May 6, 2003.

Ivy L. Davis,

Chief, Regional Programs Coordination Unit.

[FR Doc. 03–11967 Filed 5–13–03; 8:45 am]

BILLING CODE 6335–01–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–846]

Brake Rotors From the People's Republic of China: Final Results and Partial Rescission of the Fifth Antidumping Duty Administrative Review and Final Results of the Seventh New Shipper Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of final results and partial rescission of the fifth antidumping duty administrative review and final results of the seventh new shipper review.

SUMMARY: On January 8, 2003, the Department of Commerce published the preliminary results and preliminary partial rescission of the fifth antidumping duty administrative review and preliminary results of the seventh new shipper review of the antidumping duty order on brake rotors from the People's Republic of China. *See Brake Rotors from the People's Republic of China: Preliminary Results and Preliminary Partial Rescission of the Fifth Antidumping Duty Administrative Review and Preliminary Results of the Seventh New Shipper Review*, 68 FR 1031 (January 8, 2003) (*"Preliminary Results"*). These reviews examined 18 exporters [1] ("the respondents"), five of which are exporters included in three exporter/producer combinations and two of which are new shippers. The period of review is April 1, 2001, through March 31, 2002 ("POR"). We gave interested parties an opportunity to comment on our preliminary results.

Based on the additional publicly available information used in these final results and the comments received from the interested parties, we have made changes in the margin calculations for the respondents in these reviews. The final weighted-average dumping margins for the reviewed firms are listed below in the section entitled "Final Results of Reviews."

EFFECTIVE DATE: May 14, 2003.

FOR FURTHER INFORMATION CONTACT: Terre Keaton or Brian Smith, Import Administration, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230; telephone: (202) 482–1280, or (202) 482–1766, respectively.

SUPPLEMENTARY INFORMATION:

Background

On January 8, 2003, the Department published in the **Federal Register** the *Preliminary Results* (*see* 68 FR 1031).

On January 28, 2003, we placed on the record information obtained from the U.S. Customs Service (now the U.S. Bureau of Customs and Border Protection ("BCBP")) then known as the, for the six outstanding entries noted in the December 31, 2002, memorandum titled, "Results of Request for Assistance from the U.S. Customs Service to Further Examine U.S. Entries Made by the Exporter/Producer Combinations-Preliminary Results" (*see*—"Partial Rescission of Administrative Review" section below for further discussion). Also on January 28, 2003, and in accordance with 19 CFR 351.301(c)(3)(ii), the respondents submitted additional publicly available information for consideration in the final results.

On February 5, 2003, the Department published in the **Federal Register** an amended preliminary results of the seventh new shipper review of the antidumping duty order on brake rotors from the People's Republic of China ("PRC") to reflect its intention to assign exporter/producer combination cash deposit rates to the new shipper companies in the final results. *See Brake Rotors from the People's Republic of China: Amended Preliminary Results of the Seventh New Shipper Review*, 68 FR 5867. On February 21, 2003, the petitioner [2] and the respondents submitted case briefs, and on February 28, 2003, they submitted rebuttal briefs.

On February 4, and 25, 2003, we placed on the record additional publicly available information on electricity, pallet wood and brokerage and handling for consideration in the final results. On March 7, 2003, the petitioner submitted comments on the publicly available information we had placed on the record on February 25, 2003.

Scope of Order

The products covered by this order are brake rotors made of gray cast iron, whether finished, semifinished, or unfinished, ranging in diameter from 8 to 16 inches (20.32 to 40.64 centimeters) and in weight from 8 to 45 pounds (3.63 to 20.41 kilograms). The size parameters (weight and dimension) of the brake rotors limit their use to the following types of motor vehicles: automobiles, all-terrain vehicles, vans and recreational vehicles under "one ton and a half," and light trucks designated as "one ton and a half."

Finished brake rotors are those that are ready for sale and installation without any further operations. Semi-finished rotors are those on which the surface is not entirely smooth, and have undergone some drilling. Unfinished rotors are those which have undergone some grinding or turning.

These brake rotors are for motor vehicles, and do not contain in the casting a logo of an original equipment manufacturer ("OEM") which produces vehicles sold in the United States (*e.g.*, General Motors, Ford, Chrysler, Honda, Toyota, Volvo). Brake rotors covered in this order are not certified by OEM producers of vehicles sold in the United States. The scope also includes composite brake rotors that are made of gray cast iron, which contain a steel plate, but otherwise meet the above criteria. Excluded from the scope of this order are brake rotors made of gray cast iron, whether finished, semifinished, or unfinished, with a diameter less than 8 inches or greater than 16 inches (less than 20.32 centimeters or greater than 40.64 centimeters) and a weight less than 8 pounds or greater than 45 pounds (less than 3.63 kilograms or greater than 20.41 kilograms).

Brake rotors are classifiable under subheading 8708.39.5010 of the *Harmonized Tariff Schedule of the United States* ("HTSUS"). Although the HTSUS subheading is provided for convenience and customs purposes, our written description of the scope of this order is dispositive.

[1] The names of the respondents in the fifth administrative review are as follows: (1) China National Industrial Machinery Import & Export Corporation ("CNIM"); (2) Laizhou Automobile Brake Equipment Company, Ltd. ("LABEC"); (3) Longkou Haimeng Machinery Co., Ltd. ("Haimeng"); (4) Laizhou Hongda Auto Replacement Parts Co., Ltd. ("Hongda"); (5) Hongfa Machinery (Dalian) Co., Ltd. ("Hongfa"); (6) Qingdao Gren (Group) Co. ("GREN"); (7) Qingdao Meita Automotive Industry Company, Ltd. ("Meita"); (8) Shandong Huanri (Group) General Company ("Huanri General"); (9) Yantai Winhere Auto-Part Manufacturing Co., Ltd. ("Winhere"); and (10) Zibo Luzhou Automobile Parts Co., Ltd. ("ZLAP"); (11) Beijing Concord Auto Technology Inc. ("Beijing Concord"); (12) China National Machinery and Equipment Import & Export (Xinjiang) Corporation ("Xinjiang"); (13) China National Automotive Industry Import & Export Corporation ("CAIEC"); (14) Laizhou CAPCO Machinery Co., Ltd. ("Laizhou CAPCO"); (15) Laizhou Luyuan Automobile Fittings Co. ("Laizhou Luyuan"); and (16) Shenyang Honbase Machinery Co., Ltd. ("Shenyang"). (The exporter/producer combinations excluded from the antidumping duty order are: Xinjiang/Zibo Botai Manufacturing Co. Ltd ("Zibo"); CAIEC or Laizhou CAPCO/Laizhou CAPCO; and Laizhou Luyuan or Shenyang/Laizhou Luyuan or Shenyang). The names of the respondents in the seventh new shipper review are as follows: (17) Shanxi Fengkun Metallurgical Ltd. Co. ("Shanxi Fengkun"); and (18) Zibo Golden Harvest Machinery Limited Company ("Golden Harvest").

[2] The petitioner is the Coalition for the Preservation of American Brake Drum and Rotor Aftermarket Manufacturers.

Partial Rescission of Administrative Review

Pursuant to 19 CFR 351.213(d)(3), we have determined that, during the POR, the exporters which are part of the three exporter/producer combinations which received zero rates in the less-than-fair-value ("LTFV") investigation did not make shipments of subject merchandise to the United States during the POR. Specifically, we have determined that during the POR, (1) neither CAIEC nor Laizhou CAPCO exported brake rotors to the United States that were manufactured by producers other than Laizhou CAPCO; (2) neither Shenyang Honbase nor Laizhou Luyuan exported brake rotors to the United States that were manufactured by producers other than Shenyang Honbase or Laizhou Luyuan; and (3) Xinjiang did not export brake rotors to the United States that were manufactured by producers other than Zibo.

In order to make this determination, we first examined POR subject merchandise shipment data furnished by the Customs Service by performing a data query. Because the data from our initial query was voluminous, we randomly selected 31 entries from the data query results for further examination by the Customs Service (*see* Memorandum dated October 3, 2002, from Davina Hashmi, Senior Analyst, to the File, titled, "Request for Assistance: Shipments of Brake Rotors from the People's Republic of China Which Were Manufactured and/or Exported by Five PRC Companies during the Period April 1, 2001, Through March 31, 2002").

Specifically, we requested the Customs Service to examine further the documentation filed at the U.S. port for each of those selected entries made by the exporters at issue to determine the manufacturer of the merchandise. In response to our request for information, the Customs Service was only able to provide us with information on 25 entries made by these respondents. After a review of the data we received from the Customs Service in response to our data query, we found no evidence that any of the exporter/producer combinations subject to this administrative review made shipments of the subject merchandise during the POR (*see* Memoranda dated December 31, 2002, from Davina Hashmi, Senior Analyst, and January 28, 2003, from Terre Keaton, Analyst, to the File, both titled, "Results of Request for Assistance from the U.S. Customs Service to Further Examine U.S. Entries Made By Exporter/Producer Combinations"). Therefore, we are rescinding this review with respect to CAIEC, Laizhou CAPCO, Shenyang Honbase, Laizhou Luyuan, and Xinjiang. *See* Issues and Decision Memorandum ("*Decision Memo*") from Jeffrey May, Deputy Assistant Secretary for Import Administration, to Joseph A. Spetrini, Acting Assistant Secretary for Import Administration at Comment 1 for further discussion.

Facts Available

In the *Preliminary Results*, 68 FR at 1033, the Department determined that the use of facts available was warranted in accordance with section 776(b) of the Tariff Act of 1930, as amended ("the Act") to calculate the dumping margin for Beijing Concord. Because Beijing Concord failed to provide requested information and did not properly notify the Department of its difficulty in meeting our requirements in accordance with section 782(©) of the Act, we determined that Beijing Concord did not cooperate to the best of its ability. Since the preliminary results nothing has changed to reverse our preliminary decision regarding Beijing Concord. Therefore, for the final results of this review we continue to find that Beijing Concord is not eligible to receive a separate rate and thus it continues to be part of the PRC non-market economy ("NME") entity, subject to the PRC-wide rate.

Analysis of Comments Received

All issues raised in the case briefs are addressed in the *Decision Memo*, which is hereby adopted by this notice. A list of the issues raised, all of which are in the *Decision Memo*, is attached to this notice as an Appendix. Parties can find a complete discussion of all issues raised in the briefs and the corresponding recommendations in this public memorandum which is on file in the Central Records Unit, room B–099 of the main Department building. In addition, a complete version of the *Decision Memo* can be accessed directly on the Web at *http://ia.ita.doc.gov*. The paper copy and electronic version of the *Decision Memo* are identical in content.

Changes Since the Preliminary Results

Based on the use of additional publicly available information and the comments received from the interested parties, we have made changes in the margin calculation for each respondent. For a discussion of these changes, *see* the "Margin Calculations" section of the *Decision Memo*.

For the final results, we calculated average surrogate percentages for factory overhead, selling, general and administrative expenses, and profit using the 2000–2001 financial data of Kalyani Brakes Limited ("Kalyani"), Mando Brake Systems India Limited ("Mando"), and Rico Auto Industries Limited ("Rico"). *See Decision Memo* at Comment 3.

To value direct, indirect, and packing labor, we used the updated value from the International Trade Administration Web site at *http://ia.ita.doc.gov/wages/index.html*.

To value electricity, we used the 2000–2001 "revised estimate" average rate for industrial consumption as published in the *Annual Report (2001–02) on the Working of State Electricity Boards & Electricity Departments* by the Government of India's Planning Commission (Power & Energy Division).

To value pallet wood, we used the April 2000–March 2001 average import values from *Monthly Statistics of the Foreign Trade of India* ("*Monthly Statistics*").

For those respondents which reported in their responses that they used non-alloy pig iron to produce the subject merchandise, we used the April 2001–December 2001 average import values for the appropriate non-alloy pig iron HTS subcategory from *Monthly Statistics* to value this input. *See Decision Memo* at Comment 2.

To value foreign brokerage and handling expenses, we relied on public information reported in the 1998–1999 antidumping duty administrative and new shipper reviews of stainless steel bar from India.

We corrected a calculation error which affected the surrogate value used for marine insurance.

We deducted an amount for foreign brokerage and handling expenses from the U.S. starting prices reported by Golden Harvest which we inadvertently did not do in the preliminary results.

We corrected a programming error which affected the direct labor per-unit amounts for certain brake rotor models reported by Golden Harvest.

We corrected a programming error which affected the marine insurance calculation for U.S. sales with C.I.F. terms of sale reported by LABEC. In addition, based on data contained in LABEC's response, we subtracted an amount for marine insurance for certain sales which LABEC had indicated it incurred this expense which we inadvertently did not do in the preliminary results.

We corrected a programming error by adding an amount for loading fees to Huanri General's coal freight cost instead of its carton freight cost.

We corrected a calculation error which affected the entered values derived for GREN.

Final Results of Reviews

We determine that the following weighted-average margin percentages exist for the following companies during the period April 1, 2001, through March 31, 2002:

Manufacturer/producer/exporter	Margin percent
PRC NME entity (which includes Beijing Concord)	43.32
China National Industrial Machinery Import & Export Corporation	* 0.08
Hongfa Machinery (Dalian) Co., Ltd.	0.00
Laizhou Automobile Brake Equipment Company, Ltd.	* 0.22
Longkou Haimeng Machinery Co., Ltd.	* 0.05
Laizhou Hongda Auto Replacement Parts Co., Ltd.	0.00
Qingdao Gren (Group) Co.	* 0.06
Qingdao Meita Automotive Industry Company, Ltd.	* 0.09
Shanxi Fengkun Metallurgical Ltd. Co.	0.00
Shandong Huanri (Group) General Company	0.00
Yantai Winhere Auto-Part Manufacturing Co., Ltd.	0.00
Zibo Golden Harvest Machinery Limited Company	0.00
Zibo Luzhou Automobile Parts Co., Ltd.	* 0.14

*De minimis.

Assessment Rates

The Department shall determine, and the BCBP shall assess, antidumping duties on all appropriate entries. Pursuant to 19 CFR 351.212(b)(1), we calculated importer-specific ad valorem duty assessment rates based on the ratio of the total amount of the dumping margins calculated for the examined sales to the total entered value of those same sales. In order to estimate the entered value for those sales where this information was unavailable, we subtracted applicable movement expenses from the gross sales value. In accordance with 19 CFR 351.106(c)(2), we will instruct the BCBP to liquidate without regard to antidumping duties all entries of subject merchandise during the POR for which the importer-specific assessment rate is zero or *de minimis* (*i.e.*, less than 0.50 percent). The Department will issue appropriate assessment instructions directly to the BCBP within 15 days of publication of these final results of review. For entries of the subject merchandise during the POR from companies not subject to this review, we will instruct the BCBP to liquidate them at the cash deposit rate in effect at the time of entry.

Cash Deposit Requirements

Bonding will no longer be permitted to fulfill security requirements for shipments from Golden Harvest or Shanxi Fengkun of brake rotors from the PRC entered, or withdrawn from warehouse, for consumption on or after the publication date of the final results of the new shipper review.

The following deposit rates shall be required for merchandise subject to the order entered, or withdrawn from warehouse, for consumption on or after the publication date of these final results, as provided by section 751(a)(1) and (a)(2)(B) of the Act: (1) The cash deposit rate for CNIM, GREN, Haimeng, Hongda, Hongfa, Huanri General, LABEC, Meita, Winhere, ZLAP, Golden Harvest (*i.e.*, for subject merchandise manufactured and exported by Golden Harvest) and Shanxi Fengkun (*i.e.*, for subject merchandise manufactured and exported by Shanxi Fengkun) will be the rate indicated above; (2) the cash deposit rate for PRC exporters who received a separate rate in a prior segment of the proceeding will continue to be the rate assigned in that segment of the proceeding; (3) the cash deposit rate for the PRC NME entity (including Beijing Concord) and for subject merchandise exported by either Golden Harvest or Shanxi Fengkun but not manufactured by them will continue to be the PRC-wide rate (*i.e.*, 43.32 percent); and (4) the cash deposit rate for non-PRC exporters of subject merchandise from the PRC will be the rate applicable to the PRC exporter that supplied that exporter. These deposit requirements shall remain in effect until publication of the final results of the next administrative review.

This notice also serves as a final reminder to importers of their responsibility under 19 CFR 351.402(f)(2) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of doubled antidumping duties.

This notice also serves as the only reminder to parties subject to administrative protective orders ("APO") of their responsibility concerning the return or destruction of proprietary information disclosed under APO in accordance with 19 CFR 351.305. Timely written notification of the return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and terms of an APO is a violation which is subject to sanction.

We are issuing and publishing this determination and notice in accordance with sections 751(a)(1), 751(a)(2)(B), and 777(i) of the Act and 19 CFR 351.213 and 351.214.

Dated: May 8, 2003.

Joseph A. Spetrini,

Acting Assistant Secretary for Import Administration.

Appendix—Issues in Decision Memo

Comments

1. Whether to Reverse the Preliminary Results With Respect to the Exporter/Producer Combinations
2. Whether We Should Have Requested a Respondent to Submit Revised Databases Based on Our Verification Findings
3. Whether to Use Data Contained in the Financial Statements Submitted for Two Additional Indian Producers of Subject and/or Comparable Merchandise
4. Surrogate Value Selection for Pig Iron
5. Whether the Respondents' Case Brief Complies With the Department's Filing and Service Requirements

[FR Doc. 03–12031 Filed 5–13–03; 8:45 am]

BILLING CODE 3510–DS–P

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Adjustment of Import Limits for Certain Cotton, Wool, Man-Made Fiber, Silk Blend and Other Vegetable Fiber Textiles and Textile Products Produced or Manufactured in Taiwan

May 8, 2003.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner, Bureau of Customs and Border Protection.

EFFECTIVE DATE: May 14, 2003.

FOR FURTHER INFORMATION CONTACT: Ross Arnold, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port, call (202) 927–5850, or refer to the Bureau of Customs and Border Protection Web site at *http://www.customs.gov*. For information on embargoes and quota re-openings, refer to the Office of Textiles and Apparel Web site at *http://otexa.ita.doc.gov*.

SUPPLEMENTARY INFORMATION:

Authority: Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Executive Order 11651 of March 3, 1972, as amended.

The current limits for certain categories are being adjusted for carryforward used, swing, special swing, and special shift.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 68 FR 1599, published on January 13, 2003). Also see 67 FR 68577, published on November 12, 2002.

D. Michael Hutchinson,

Acting Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

May 8, 2003.

Commissioner,
Bureau of Customs and Border Protection, Washington, DC 20229.

Dear Commissioner: This directive amends, but does not cancel, the directive issued to you on November 1, 2002, by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports of certain cotton, wool, man-made fiber, silk blend and other vegetable fiber textiles and textile products, produced or manufactured in Taiwan and exported during the twelve-month period which began on January 1, 2003 and extends through December 31, 2003.

Effective on May 14, 2003, you are directed to adjust the current limits for the following categories, as provided for under the Uruguay Round Agreement on Textiles and Clothing:

Category	Twelve-month limit [1]
Group I	
200–220, 224, 225/317/326, 226, 227, 300/301, 313–315, 360–363, 369–S [2], 369–O [3], 400–414, 469pt [4], 603, 604, 611, 613/614/615/617, 618, 619/620, 624, 625/626/627/628/629 and 666pt [5], as a group.	228,318,899 square meters equivalent.
Sublevels in Group I	
225/317/326	46,009,868 square meters.
619/620	17,031,646 square meters.
625/626/627/628/629	22,162,195 square meters.
Group II	
237, 239pt [6], 331pt. [7], 332, 333/334/335, 336, 338/339, 340–345, 347/348, 351, 352/652, 359–C/659–C [8], 659–H [9], 359pt. [10], 433–438, 440, 442, 443, 444, 445/446, 447/448, 459pt. [11], 631pt. [12], 633/634/635, 636, 638/639, 640, 641–644, 645/646, 647/648, 651, 659–S [13], 659pt. [14], 846 and 852, as a group.	602,836,385 square meters equivalent.
Sublevels in Group II	
336	156,723 dozen.
338/339	1,071,224 dozen.
347/348	1,514,317 dozen of which not more than 1,288,567 dozen shall be in Categories 347–W/348–W [15].
435	27,866 dozen.
436	5,497 dozen.
438	31,020 dozen.
445/446	146,174 dozen.
638/639	6,468,061 dozen.
642	748,171 dozen.
647/648	5,351,981 dozen of which not more than 5,088,804 dozen shall be in Categories 647–W/648–W [16].
659–S	1,713,821 kilograms.
Within Group II Subgroup	
342	261,378 dozen.
351	285,837 dozen.
447/448	22,874 dozen.
636	383,919 dozen.
651	560,432 dozen.

[1] The limits have not been adjusted to account for any imports exported after December 31, 2002.
[2] Category 369–S: only HTS number 6307.10.2005.

[3] Category 369–O: all HTS numbers except 6307.10.2005 (Category 369–S); 4202.12.4000, 4202.12.8020, 4202.12.8060, 4202.22.4020, 4202.22.4500, 4202.22.8030, 4202.32.4000, 4202.32.9530, 4202.92.0505, 4202.92.1500, 4202.92.3016, 4202.92.6091, 5601.10.1000, 5601.21.0090, 5701.90.1020, 5701.90.2020, 5702.10.9020, 5702.39.2010, 5702.49.1020, 5702.49.1080, 5702.59.1000, 5702.99.1010, 5702.99.1090, 5705.00.2020, 5805.00.3000, 5807.10.0510, 5807.90.0510, 6301.30.0010, 6301.30.0020, 6302.51.1000, 6302.51.2000, 6302.51.3000, 6302.51.4000, 6302.60.0010, 6302.60.0030, 6302.91.0005, 6302.91.0025, 6302.91.0045, 6302.91.0050, 6302.91.0060, 6303.11.0000, 6303.91.0010, 6303.91.0020, 6304.91.0020, 6304.92.0000, 6305.20.0000, 6306.11.0000, 6307.10.1020, 6307.10.1090, 6307.90.3010, 6307.90.4010, 6307.90.5010, 6307.90.8910, 6307.90.8945, 6307.90.9882, 6406.10.7700, 9404.90.1000, 9404.90.8040 and 9404.90.9505 (Category 369pt.).

[4] Category 469pt.: all HTS numbers except 5601.29.0020, 5603.94.1010, 6304.19.3040, 6304.91.0050, 6304.99.1500, 6304.99.6010, 6308.00.0010 and 6406.10.9020.

[5] Category 666pt.: all HTS numbers except 5805.00.4010, 6301.10.0000, 6301.40.0010, 6301.40.0020, 6301.90.0010, 6302.53.0010, 6302.53.0020, 6302.53.0030, 6302.93.1000, 6302.93.2000, 6303.12.0000, 6303.19.0010, 6303.92.1000, 6303.92.2010, 6303.92.2020, 6303.99.0010, 6304.11.2000, 6304.19.1500, 6304.19.2000, 6304.91.0040, 6304.93.0000, 6304.99.6020, 6307.90.9884, 9404.90.8522 and 9404.90.9522.

[6] Category 239pt.: only HTS number 6209.20.5040 (diapers).

[7] Category 331pt.: all HTS numbers except 6116.10.1720, 6116.10.4810, 6116.10.5510, 6116.10.7510, 6116.92.6410, 6116.92.6420, 6116.92.6430, 6116.92.6440, 6116.92.7450, 6116.92.7460, 6116.92.7470, 6116.92.8800, 6116.92.9400 and 6116.99.9510.

[8] Category 359–C: only HTS numbers 6103.42.2025, 6103.49.8034, 6104.62.1020, 6104.69.8010, 6114.20.0048, 6114.20.0052, 6203.42.2010, 6203.42.2090, 6204.62.2010, 6211.32.0010, 6211.32.0025 and 6211.42.0010; Category 659–C: only HTS numbers 6103.23.0055, 6103.43.2020, 6103.43.2025, 6103.49.2000, 6103.49.8038, 6104.63.1020, 6104.63.1030, 6104.69.1000, 6104.69.8014, 6114.30.3044, 6114.30.3054, 6203.43.2010, 6203.43.2090, 6203.49.1010, 6203.49.1090, 6204.63.1510, 6204.69.1010, 6210.10.9010, 6211.33.0010, 6211.33.0017 and 6211.43.0010.

[9] Category 659–H: only HTS numbers 6502.00.9030, 6504.00.9015, 6504.00.9060, 6505.90.5090, 6505.90.6090, 6505.90.7090 and 6505.90.8090.

[10] Category 359pt.: all HTS numbers except 6103.42.2025, 6103.49.8034, 6104.62.1020, 6104.69.8010, 6114.20.0048, 6114.20.0052, 6203.42.2010, 6203.42.2090, 6204.62.2010, 6211.32.0010, 6211.32.0025 and 6211.42.0010 (Category 359–C); 6115.19.8010, 6117.10.6010, 6117.20.9010, 6203.22.1000, 6204.22.1000, 6212.90.0010, 6214.90.0010, 6406.99.1550, 6505.90.1525, 6505.90.1540, 6505.90.2060 and 6505.90.2545.

[11] Category 459pt.: all HTS numbers except 6115.19.8020, 6117.10.1000, 6117.10.2010, 6117.20.9020, 6212.90.0020, 6214.20.0000, 6405.20.6030, 6405.20.6060, 6405.20.6090, 6406.99.1505 and 6406.99.1560.

[12] Category 631pt.: all HTS numbers except 6116.10.1730, 6116.10.4820, 6116.10.5520, 6116.10.7520, 6116.93.8800, 6116.93.9400, 6116.99.4800, 6116.99.5400 and 6116.99.9530.

[13] Category 659–S: only HTS numbers 6112.31.0010, 6112.31.0020, 6112.41.0010, 6112.41.0020, 6112.41.0030, 6112.41.0040, 6211.11.1010, 6211.11.1020, 6211.12.1010 and 6211.12.1020.

[14] Category 659pt.: all HTS numbers except 6103.23.0055, 6103.43.2020, 6103.43.2025, 6103.49.2000, 6103.49.8038, 6104.63.1020, 6104.63.1030, 6104.69.1000, 6104.69.8014, 6114.30.3044, 6114.30.3054, 6203.43.2010, 6203.43.2090, 6203.49.1010, 6203.49.1090, 6204.63.1510, 6204.69.1010, 6210.10.9010, 6211.33.0010, 6211.33.0017, 6211.43.0010 (Category 659–C); 6112.31.0010, 6112.31.0020, 6112.41.0010, 6112.41.0020, 6112.41.0030, 6112.41.0040, 6211.11.1010, 6211.11.1020, 6211.12.1010 and 6211.12.1020 (Category 659–S); 6115.11.0010, 6115.12.2000, 6117.10.2030, 6117.20.9030, 6212.90.0030, 6214.30.0000, 6214.40.0000, 6406.99.1510 and 6406.99.1540.

[15] Category 347–W: only HTS numbers 6203.19.1020, 6203.19.9020, 6203.22.3020, 6203.22.3030, 6203.42.4005, 6203.42.4010, 6203.42.4015, 6203.42.4025, 6203.42.4035, 6203.42.4045, 6203.42.4050, 6203.42.4060, 6203.49.8020, 6210.40.9033, 6211.20.1520, 6211.20.3810 and 6211.32.0040; Category 348–W: only HTS numbers 6204.12.0030, 6204.19.8030, 6204.22.3040, 6204.22.3050, 6204.29.4034, 6204.62.3000, 6204.62.4005, 6204.62.4010, 6204.62.4020, 6204.62.4030, 6204.62.4040, 6204.62.4050, 6204.62.4055, 6204.62.4065, 6204.69.6010, 6204.69.9010, 6210.50.9060, 6211.20.1550, 6211.20.6810, 6211.42.0030 and 6217.90.9050.

[16] Category 647–W: only HTS numbers 6203.23.0060, 6203.23.0070, 6203.29.2030, 6203.29.2035, 6203.43.2500, 6203.43.3500, 6203.43.4010, 6203.43.4020, 6203.43.4030, 6203.43.4040, 6203.49.1500, 6203.49.2015, 6203.49.2030, 6203.49.2045, 6203.49.2060, 6203.49.8030, 6210.40.5030, 6211.20.1525, 6211.20.3820 and 6211.33.0030; Category 648–W: only HTS numbers 6204.23.0040, 6204.23.0045, 6204.29.2020, 6204.29.2025, 6204.29.4038, 6204.63.2000, 6204.63.3000, 6204.63.3510, 6204.63.3530, 6204.63.3532, 6204.63.3540, 6204.69.2510, 6204.69.2530, 6204.69.2540, 6204.69.2560, 6204.69.6030, 6204.69.9030, 6210.50.5035, 6211.20.1555, 6211.20.6820, 6211.43.0040 and 6217.90.9060.

The limits set forth above are subject to adjustment pursuant to the provisions of the ATC and administrative arrangements notified to the Textiles Monitoring Body.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception of the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,
D. Michael Hutchinson,
Acting Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 03–11957 Filed 5–13–03; 8:45 am]

BILLING CODE 3510–DR–S

CONSUMER PRODUCT SAFETY COMMISSION

Submission for OMB Review; Comment Request—Safety Standard for Cigarette Lighters

AGENCY: Consumer Product Safety Commission.

ACTION: Notice.

SUMMARY: In the **Federal Register** of March 4, 2003 (68 FR 10210), the Consumer Product Safety Commission published a notice in accordance with provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) to announce the agency's intention to seek extension of approval of the collection of information in the Safety Standard for Cigarette Lighters (16 CFR part 1210). No comments from members of the public were received in response to the **Federal Register** notice. By publication of this notice, the Commission announces that it has submitted to the Office of Management and Budget (OMB) a request for extension of approval of that collection of information without change for three years from the date of approval.

The Safety Standard for Cigarette Lighters requires disposable and novelty lighters to be manufactured with a mechanism to resist operation by children younger than five years of age. Certification regulations implementing the standard require manufacturers and importers to submit to the Commission a description of each model of lighter, results of prototype qualification tests for compliance with the standard, and a physical specimen of the lighter before the introduction of each model of lighter in commerce.

The Commission uses the records of testing and other information required by the certification regulations to determine that disposable and novelty lighters have been tested and certified for compliance with the standard by the manufacturer or importer. The Commission also uses this information to obtain corrective actions if disposable or novelty lighters fail to comply with the standard in a manner that creates a substantial risk of injury to the public.

Additional Information About the Request for Extension of Approval of a Collection of Information

Agency address: Consumer Product Safety Commission, Washington, DC 20207.

Title of information collection: Safety Standard for Cigarette Lighters, 16 CFR part 1210.

Type of request: Extension of approval without change.

General description of respondents: Manufacturers and importers of disposable and novelty cigarette lighters.

Estimated number of respondents: 60.

Estimated average number of hours per respondent: 175 per year.

Estimated number of hours for all respondents: 10,500 per year.

Estimated cost of collection for all respondents: $951,000 to $1,900,000 per year.

Comments: Comments on this request for extension of approval of information collection requirements should be submitted by June 13, 2003 to (1) the Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for CPSC, Office of Management and Budget, Washington DC 20503; telephone: (202) 395–7340, and (2) the Office of the Secretary, Consumer Product Safety Commission, Washington, DC 20207. Written comments may also be sent to the Office of the Secretary by facsimile at (301) 504–0127 or by e-mail at *cpsc-os@cpsc.gov*.

Copies of this request for extension of the information collection requirements and supporting documentation are available from Linda Glatz, management and program analyst, Office of Planning and Evaluation, Consumer Product Safety Commission, Washington, D.C. 20207; telephone: (301) 504–7671.

Dated: May 7, 2003.

Todd A. Stevenson,

Secretary, Consumer Product Safety Commission.

[FR Doc. 03–12007 Filed 5–13–03; 8:45 am]

BILLING CODE 5355–01–P

DEPARTMENT OF DEFENSE

Office of the Secretary

Notice of Availability of the Supplemental Environmental Assessment for the Pentagon Memorial

AGENCY: Washington Headquarters Services, DoD.

ACTION: Notice of availability.

SUMMARY: The Department of Defense (DoD) Washington Headquarters Services (WHS) announces that a Supplemental Environmental Assessment (SEA) for the Pentagon Memorial is available for public review and comment within 30 days of the date of this publication. The Memorial is planned for the Pentagon Reservation.

The SEA documents an evaluation of the environmental effects of the proposed Memorial in accord with the National Environmental Policy Act of 1969, as amended (NEPA, 42 U.S.C. 4321 to 4370b), Council of Environmental Quality (CEQ) implementing regulations (Title 40 Code of Federal Regulations, Parts 1500–1508), and DoD Instruction 4715.9, Environmental Planning and Analysis. The SEA is tiered to the Pentagon Reservation Master Plan Final Report of May 28, 1991 and the Final Environmental Assessment of May 28, 1991, developed for the comprehensive renovation of the Pentagon. The SEA identifies the purpose and need for the proposed action, alternative analysis of potential sites, and environmental consequences of the proposed action. Environmental consequences examined include potential impacts on air quality, noise, hazardous materials, natural/ecological features, land use and socio-economics, transportation, urban systems, and cultural resources.

The proposed action associated with the Pentagon Memorial involves construction of a Memorial Park commemorating the September 11, 2001 terrorist attack on the Pentagon and the 184 lives lost in the Pentagon and on American Airlines Flight 77. The proposed action, as directed by Congress, will be constructed within the limits of the Pentagon Reservation.

The SEA is available on the Internet at *http://memorial.pentagon.mil/*

For those with access or escort, copies are also available in the FOB2 Building Managers Office, Room 1030, and in the Pentagon Library Reference Center on the Pentagon Concourse.

DATES: Public comments are invited and must be either e-mailed or postmarked on or before June 13, 2003.

ADDRESSES: To request a copy of the SEA or provide comments, contact Michael Yopp at telephone: 703–693–8954, e-mail: *yoppm@army.pentagon.mil*, or mail: Pentagon Renovation Program, 100 Boundary Channel Drive, Arlington, VA 22202. Individuals also may download the SEA from the Web site.

FOR FURTHER INFORMATION CONTACT: For additional information on the SEA, contact Michael Yopp at telephone: 703–693–8954, or e-mail: *yoppm@army.pentagon.mil*.

Dated: May 7, 2003.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 03–11971 Filed 5–13–03; 8:45 am]

BILLING CODE 5001–08–M

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[OMB Control No. 9000–0147]

Federal Acquisition Regulation; Submission for OMB Review; Pollution Prevention and Right-to-Know Information

AGENCIES: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Notice of request for public comments regarding an extension to an existing OMB clearance (9000–0147).

SUMMARY: Under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35), the Federal Acquisition Regulation (FAR) Secretariat has submitted to the Office of Management and Budget (OMB) a request to review and approve an extension of a currently approved information collection requirement concerning pollution prevention and right-to-know information. A request for public comments was published in the **Federal Register** at 68 FR 15155 on March 28, 2003. No comments were received.

Public comments are particularly invited on: Whether this collection of information is necessary for the proper performance of functions of the FAR, and whether it will have practical utility; whether our estimate of the public burden of this collection of information is accurate, and based on valid assumptions and methodology; ways to enhance the quality, utility, and clarity of the information to be collected; and ways in which we can minimize the burden of the collection of information on those who are to respond, through the use of appropriate technological collection techniques or other forms of information technology.

DATES: Submit comments on or before June 13, 2003.

ADDRESSES: Submit comments, including suggestions for reducing this burden to: FAR Desk Officer, OMB, Room 10102, NEOB, Washington, DC 20503, and a copy to the General Services Administration, FAR Secretariat (MVA), 1800 F Street, NW., Room 4035, Washington, DC 20405.

FOR FURTHER INFORMATION CONTACT: Craig Goral, Acquisition Policy Division, GSA, 501–3856.

SUPPLEMENTARY INFORMATION:

A. Purpose

Executive Order 12856 of August 3, 1993, "Federal Compliance With Right-to-Know Laws and Pollution Prevention Requirements," requires that Federal facilities comply with the planning and reporting requirements of the Pollution Prevention Act of 1990 and the Emergency Planning Community Right-to-Know Act of 1986. The executive order requires that contracts to be performed on a Federal facility provide for the contractor to supply to the Federal agency all information the Federal agency deems necessary to comply with these reporting requirements.

B. Annual Reporting Burden

Number of Respondents: 2,550.
Responses Per Respondent: 7.647.
Annual Responses: 19,500.
Average Burden Per Response: 45 minutes.
Total Burden Hours: 14,500.
Obtaining Copies of Proposals: Requesters may obtain a copy of the information collection documents from the General Services Administration, FAR Secretariat (MVA), Room 4035, Washington, DC 20405, telephone (202) 501–4755. Please cite OMB Control No. 9000–0147, Pollution Prevention and Right-to-Know Information in all correspondence.

Dated: May 8, 2003.

Ralph J. Destefano,

Acting Director, Acquisition Policy Division.

[FR Doc. 03–11946 Filed 5–13–03; 8:45 am]

BILLING CODE 6820–EP–P

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[OMB Control No. 9000–0076]

Federal Acquisition Regulation; Submission for OMB Review; Novation/Change of Name Requirements

AGENCIES: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Notice of request for public comments regarding an extension to an existing OMB clearance (9000–0076).

SUMMARY: Under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35), the Federal Acquisition Regulation (FAR) Secretariat has submitted to the Office of Management and Budget (OMB) a request to review and approve an extension of a currently approved information collection requirement concerning novation/change of name requirements. A request for public comments was published in the **Federal Register** at 68 FR 10212, on March 4, 2003. No comments were received.

Public comments are particularly invited on: Whether this collection of information is necessary for the proper performance of functions of the FAR, and whether it will have practical utility; whether our estimate of the public burden of this collection of information is accurate, and based on valid assumptions and methodology; ways to enhance the quality, utility, and clarity of the information to be collected; and ways in which we can minimize the burden of the collection of information on those who are to respond, through the use of appropriate technological collection techniques or other forms of information technology.

DATES: Submit comments on or before June 13, 2003.

ADDRESSES: Submit comments including suggestions for reducing this burden to: FAR Desk Officer, OMB Room 10102, NEOB, Washington, DC 20503, and a copy to the General Services Administration, FAR Secretariat (MVA), 1800 F Street, NW., Room 4035, Washington, DC 20405.

FOR FURTHER INFORMATION CONTACT: Linda Klein, Acquisition Policy Division, GSA (202) 501–3775.

SUPPLEMENTARY INFORMATION:

A. Purpose

When a firm performing under Government contracts wishes the Government to recognize (1) a successor in interest to these contracts or (2) a name change, it must submit certain documentation to the Government.

B. Annual Reporting Burden

Respondents: 1,000.
Responses Per Respondent: 1.
Annual Responses: 1,000.
Hours Per Response: .458.
Total Burden Hours: 458.
Obtaining Copies of Proposals: Requesters may obtain a copy of the information collection documents from the General Services Administration, FAR Secretariat (MVA), Room 4035, Washington, DC 20405, telephone (202) 501–4755. Please cite OMB Control No. 9000–0076, Novation/Change of Name Requirements, in all correspondence.

Dated: May 8, 2003.

Ralph J. Destefano,

Acting Director, Acquisition Policy Division.

[FR Doc. 03–11947 Filed 5–13–03; 8:45 am]

BILLING CODE 6820–EP–P

DEPARTMENT OF EDUCATION

Notice of Proposed Information Collection Requests

AGENCY: Department of Education.

SUMMARY: The Acting Leader, Regulatory Management Group, Office of the Chief Information Officer, invites comments on the proposed information collection requests as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before July 14, 2003.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Acting Leader, Regulatory Management Group, Office of the Chief Information Officer, publishes that notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, *e.g.* new, revision, extension, existing or reinstatement; (2) title; (3) summary of the collection; (4) description of the need for, and proposed use of, the information; (5) respondents and frequency of collection; and (6) reporting and/or recordkeeping burden. OMB invites public comment.

The Department of Education is especially interested in public comment addressing the following issues: (1) Is this collection necessary to the proper functions of the Department; (2) will this information be processed and used

in a timely manner; (3) is the estimate of burden accurate; (4) how might the Department enhance the quality, utility, and clarity of the information to be collected; and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology.

Dated: May 8, 2003.

Joseph Schubart,

Acting Leader, Regulatory Management Group, Office of the Chief Information Officer.

Federal Student Aid

Type of Review: Extension.

Title: Lender's Request for Payment of Interest and Special Allowance—LaRS.

Frequency: Quarterly, annually.

Affected Public: State, local, or tribal gov't, SEAs or LEAs; businesses or other for-profit.

Reporting and Recordkeeping Hour Burden:

Responses: 14,184.

Burden Hours: 34,573.

Abstract: The Lender's Request for Payment of Interest and Special Allowance—LaRS (ED Form 799) is used by approximately 3,546 lenders participating in the title IV, part B loan programs. The ED Form 799 is used to pay interest and special allowance to holders of the part B loans; and to capture quarterly data from lender's loan portfolio for financial and budgetary projections.

Requests for copies of the proposed information collection request may be accessed from *http://edicsweb.ed.gov*, by selecting the "Browse Pending Collections" link and by clicking on link number 2273. When you access the information collection, click on "Download Attachments" to view. Written requests for information should be addressed to Vivian Reese, Department of Education, 400 Maryland Avenue, SW., Room 4050, Regional Office Building 3, Washington, DC 20202–4651 or to the e-mail address *vivian_reese@ed.gov*. Requests may also be electronically mailed to the internet address *OCIO_RIMG@ed.gov* or faxed to 202–708–9346. Please specify the complete title of the information collection when making your request.

Comments regarding burden and/or the collection activity requirements should be directed to Joe Schubart at (202) 708–9266 or via his e-mail address *Joe.Schubart@ed.gov*. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

[FR Doc. 03–11979 Filed 5–13–03; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP03–461–000]

Alliance Pipeline L.P.; Notice of Compliance Filing

May 8, 2003.

Take notice that on April 30, 2003, Alliance Pipeline L.P. (Alliance) tendered for filing a cost and revenue study. Alliance states that the purpose of the filing is to comply with Ordering Paragraph (F) of the certificate order issued by the Federal Energy Regulatory Commission (Commission) on September 17, 1998, in Docket No. CP97–168–000, *et al.* Ordering Paragraph (F) required Alliance to make a filing within three years of the pipeline's in-service date, either justifying its existing recourse rates or proposing alternative rates to be effective no later than three years after the in-service date.

Alliance's in-service date was December 1, 2000. Alliance states that its filing justifies the continued use of the existing recourse rates.

Alliance states that copies of its filing have been mailed to all customers, state commissions, and other interested parties.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with § 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed on or before the comment date below. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link.

Comment Date: May 14, 2003.

Magalie R. Salas,

Secretary.

[FR Doc. 03–12020 Filed 5–13–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER99–1757–004, et al.]

The Empire District Electric Company, et al.; Electric Rate and Corporate Filings

May 5, 2003.

The following filings have been made with the Commission. The filings are listed in ascending order within each docket classification.

1. The Empire District Electric Company

[Docket No. ER99–1757–004]

Take notice that on May 1, 2003, Empire District Electric Company (Empire) submitted certain information intended to supplement the Supply Margin Assessment submitted March 25, 2003, in support of Empire's February 4, 2003, updated market power analysis. Empire also submitted a correction to the revised version of market-based rate tariff that was included as part of the March 25 Filing.

Comment Date: May 22, 2003.

2. ISO New England Inc.

[Docket No. ER01–316–009]

Take notice that on May 1, 2003, ISO New England Inc. (the ISO) submitted for filing its Index of Customers for first quarter of 2003 under the ISO's FERC Tariff for Transmission Dispatch and Power Administration Services.

The ISO states that copies have been served on all parties in Docket No. ER01–316–000.

Comment Date: May 22, 2003.

3. New England Power Pool

[Docket No. ER03–562–001]

Take notice that on May 1, 2003, the New England Power Pool (NEPOOL) Participants Committee filed a Report of Compliance with respect to the April 4, 2003, letter order, issued in Docket No. ER03–562–000. NEPOOL submitted revised tariff sheets to the Ninety-Fifth Agreement Amending Restated NEPOOL Agreement. NEPOOL states that the revised tariff sheets reflect a modification to the discussion of Excepted Transactions 21 and 23 in the Addendum to Attachment G to the NEPOOL Open Access Transmission Tariff requested by intervenors MASSPOWER and Pittsfield Generating LLP.

NEPOOL states that copies of these materials were sent to the NEPOOL participants, non-participant transmission customers and the New England State governors and regulatory commissions.

Comment Date: May 22, 2003.

4. Aquila Piatt County Power L.L.C.

[Docket No. ER03–725–001]

Take notice that on May 1, 2003, Aquila Piatt County Power L.L.C. filed a supplement to its application in Docket No. ER03–725–000 revising the language in its proposed rate schedule.

Comment Date: May 22, 2003.

5. Oncor Electric Delivery Company

[Docket No. ER03–799–000]

Take notice that on May 1, 2003, Oncor Electric Delivery Company (Oncor) tendered for filing four transmission service agreements entered into between Oncor and Cargill Power Markets, LLC, Calpine Energy Service, L.P., Constellation Power Source, Inc., and TXU Portfolio Management Company LP under Oncor's Tariff for Transmission Service To, From and Over Certain Interconnections (TFO Tariff).

Oncor seeks waiver of the Commission's notice requirements to permit the transmission service agreements to be effective on the date of the commencement of service. Oncor states that this filing has been served upon each customer taking service under the agreements and the Public Utility Commission of Texas.

Comment Date: May 22, 2003.

6. Southern California Edison Company

[Docket No. ER03–800–000]

Take notice that on May 1, 2003, Southern California Edison Company (SCE) tendered for filing a Letter Agreement between SCE and the Mountainview Power Company L.L.C. (Mountainview) to supplement the terms of the Interconnection Facilities Agreement between SCE and Mountainview, Service Agreement No. 6 under SCE's Transmission Owner Tariff (TO Tariff).

SCE states that copies of this filing were served upon the Public Utilities Commission of the State of California and Mountainview.

Comment Date: May 22, 2003.

7. Ohio Power Company

[Docket No. ER03–801–000]

Take notice that on May 1, 2003, American Electric Power Service Corporation (AEPSC) tendered for filing pursuant to section 35.15 of the Federal Energy Regulatory Commission's Regulations, a notice of cancellation of Ohio Power Company FERC Electric Rate Schedule No. 71 consisting of an agreement between Ohio Power Company and the Ohio Edison Company. AEPSC requests an effective date of June 30, 2003, for the cancellation.

AEPSC served copies of the filing upon the Ohio Edison Company and upon the Public Utilities Commission of Ohio.

Comment Date: May 22, 2003.

8. Black Hills Wyoming, Inc.

[Docket No. ER03–802–000]

Take notice that on April 30, 2003, Black Hills Wyoming, Inc. (Black Hills Wyoming), submitted to the Federal Energy Regulatory Commission (FERC or Commission) a notice of succession notifying the Commission that is has succeeded, by reason of name change, to the market-based rate wholesale power sales rate schedule (the Rate Schedule) of Black Hills Generation, Inc., Rate Schedule FERC No. 1. In addition, Black Hills Wyoming states that it filed the Rate Schedule, updated as appropriate and in conformance with Order Nos. 614 and 2001, as Black Hills Wyoming, Inc., Rate Schedule FERC No. 1.

Comment Date: May 21, 2003.

9. Panda Guadalupe Power Marketing, LLC

[Docket No. ER03–803–000]

Take notice that on May 1, 2003, Panda Guadalupe Power Marketing, LLC tendered for filing in Docket No. ER03–803–000, a Notice of Termination and a Notice of Cancellation of Rate Schedule FERC No. 1.

Comment Date: May 22, 2003.

10. Virginia Electric and Power Company

[Docket No. ER03–804–000]

Take notice that May 1, 2003, Virginia Electric and Power Company, doing business as Dominion Virginia Power (Dominion Virginia Power) tendered for filing an executed First Revised Network Integration Transmission Service Agreement (NITSA) including an executed revised Network Operating Agreement (collectively, Revised NITSA) between Dominion Virginia Power and Old Dominion Electric Cooperative (ODEC).

Dominion Virginia Power requests that the Commission accept the Revised NITSA for filing and make it effective on April 1, 2003. Dominion Virginia Power states that copies of the filing were served upon ODEC and the Virginia State Corporation Commission.

Comment Date: May 22, 2003.

11. Sierra Pacific Power Company Nevada Power Company

[Docket No. ER03–806–000]

Take notice that on May 1, 2003, Sierra Pacific Power Company and Nevada Power Company (collectively, Applicants) tendered for filing pursuant to section 205 of the Federal Power Act and section 35 of the Commission's regulations, a revised Attachment K (Sheet Nos. 254–57) to Sierra Pacific Resources Operating Companies FERC Electric Tariff, Third Revised Volume No. 1. The Applicants state that the revision is being filed to establish distribution loss factors in connection with their implementation of retail access in Nevada.

Comment Date: May 22, 2003.

Standard Paragraph

Any person desiring to intervene or to protest this filing should file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with rules 211 and 214 of the Commission's rules of practice and procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. All such motions or protests should be filed on or before the comment date, and, to the extent applicable, must be served on the applicant and on any other person designated on the official service list. This filing is available for review at the Commission or may be viewed on the Commission's Web site at *http://www.ferc.gov*, using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or for TTY, contact (202) 502–8659. Protests and interventions may be filed electronically via the Internet in lieu of paper; *see* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link. The Commission strongly encourages electronic filings.

Magalie R. Salas,

Secretary.

[FR Doc. 03–11943 Filed 5–13–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 2552–058]

FPL Energy Maine Hydro, LLC; Notice of Availability of Final Environmental Assessment

May 8, 2003.

In accordance with the National Environmental Policy Act of 1969 and the Federal Energy Regulatory Commission's (Commission) regulations, 18 CFR part 380 (Order No. 486, 52 FR 47897), Office of Energy Projects staff reviewed the application for surrender of project license for the Fort Halifax Project, located on the Sebasticook River, Kennebec County, Maine, and prepared a final environmental assessment (EA) for the project. In the final EA, staff analyze the potential environmental effects of the surrender of license and conclude that the surrender, or any other alternative considered, would not constitute a major federal action significantly affecting the quality of the human environment.

Copies of the final EA can be viewed at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. To be notified via email of new filings and issuances related to this or other pending projects, register online at *http://www.ferc.gov/esubscribenow.htm*. For assistance, contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at 1–866–208–3676, or for TTY, (202) 502–8659.

Magalie R. Salas,

Secretary.

[FR Doc. 03–12016 Filed 5–13–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP02–37–000]

Williston Basin Interstate Pipeline Company; Notice of Availability of the Final Environmental Impact Statement for the Proposed Grasslands Pipeline Project

May 8, 2003.

The staff of the Federal Energy Regulatory Commission (FERC or Commission) has prepared a Final Environmental Impact Statement (FEIS) on the natural gas pipeline facilities proposed by Williston Basin Interstate Pipeline Company (WBI), the Grasslands Pipeline Project, in the above-referenced docket.

The FEIS was prepared to satisfy the requirements of the National Environmental Policy Act. The staff concludes that approval of the proposed project with the appropriate mitigating measures as recommended, would have limited adverse environmental impact. The FEIS also evaluates alternatives to the proposal, including a system alternative; major route alternatives; and route variations.

The U.S. Department of the Interior, Bureau of Land Management (BLM) is participating as a cooperating agency in the preparation of this FEIS because the project would cross Federal land under the jurisdiction of two field offices in Wyoming and Montana. The U.S. Department of Agriculture, Forest Service (USFS) is also a cooperating agency in the preparation of this document because the Little Missouri National Grasslands would be crossed by the project. The FEIS will be used by the BLM to consider issuance of a right-of-way grant for the portion of the project on all Federal lands.

The FEIS addresses the potential environmental effects of the construction and operation of the following facilities:

- Approximately 223 miles of new 16-inch-diameter pipeline from near Belle Creek, Montana, to the proposed Manning Compressor Station in Dunn County, North Dakota;
- Approximately 28 miles of 16-inch-diameter pipeline loop [1] adjacent to WBI's existing Bitter Creek supply lateral pipeline in Wyoming;
- Maximum allowable operating pressure (MAOP) upgrade on approximately 28 miles of existing 8-inch-diameter Bitter Creek supply lateral pipeline in Wyoming from 1,203 pounds per square inch gauge (psig) to 1,440 psig, and abandonment in-place of segments of existing pipe at three road crossings and replacement with heavier walled pipe;
- MAOP upgrade on approximately 40 miles of existing 8-inch-diameter Recluse-Belle Creek supply lateral pipeline in Wyoming and Montana from 1,203 psig to 1,440 psig, and abandonment in-place of segments of existing pipe at eight road crossings and replacement with heavier walled pipe;
- 4,180 horsepower (hp) of gas fired compression (comprised of two 2,090 hp compressors) at one new compressor station located in Dunn County, North Dakota (Manning Compressor Station), and electric coolers installation at this station;
- An additional transmission compressor unit (1,200 hp) at the existing Cabin Creek Compressor Station in Fallon County, Montana;
- 0.9 mile of 12-inch-diameter pipeline from the proposed mainline to the existing Cabin Creek Compressor Station in Fallon County, Montana;
- 1.0 mile of 16-inch-diameter pipeline from the proposed Manning Compressor Station to interconnect with Northern Border Pipeline Company's Compressor Station 5 in Dunn County, North Dakota; and
- Various additional facilities, including 14 mainline valves, 6 cathodic protection units, 8 pig launchers/receivers, 5 metering stations, and 3 regulators.

The purpose of the proposed facilities would be to provide an additional outlet for the increased production of natural gas in the Powder River Basin, allowing transportation of about 80 million cubic feet per day of natural gas; provide access to WBI's storage facilities to shippers of gas produced in the Powder River Basin and elsewhere; and provide access to and from WBI's storage facilities to and from the facilities of Northern Border Pipeline Company for delivery to Midwestern and other national markets.

The FEIS has been placed in the public files of the FERC and is available for public inspection at: Federal Energy Regulatory Commission, Public Reference and Files Maintenance Branch, 888 First Street, NE., Room 2A, Washington, DC 20426, (202) 502–8371.

Copies of the FEIS have been mailed to Federal, state and local agencies, public interest groups, individuals who have requested the FEIS, newspapers, and parties to this proceeding.

[1] A loop is a segment of pipeline that is usually installed adjacent to an existing pipeline and connected to it at both ends. The loop allows more gas to be moved through the system.

In accordance with the Council on Environmental Quality's (CEQ) regulations implementing the National Environmental Policy Act, no agency decision on a proposed action may be made until 30 days after the U.S. Environmental Protection Agency publishes a notice of availability of an FEIS. However, the CEQ regulations provide an exception to this rule when an agency decision is subject to a formal internal appeal process which allows other agencies or the public to make their views known. In such cases, the agency decision may be made at the same time the notice of the FEIS is published, allowing both periods to run concurrently. The Commission decision for this proposed action is subject to a 30-day rehearing period.

Additional information about the project is available from the Commission's Office of External Affairs, at 1–866–208-FERC or on the FERC Internet Web site (*http://www.ferc.gov*) using the FERRIS link. Click on the FERRIS link, enter the docket number excluding the last three digits in the Docket Number field. Be sure you have selected an appropriate date range. For assistance with FERRIS, the FERRIS helpline can be reached at 1–866–208–3676, TTY (202) 502–8659 or *FERCOnlineSupport@ferc.gov*. The FERRIS link on the FERC Internet Web site also provides access to the texts of formal documents issued by the Commission, such as orders, notices, and rulemakings.

In addition, the Commission now offers a free service called eSubscription which allows you too keep track of all formal issuances and submittals in specific dockets. This can reduce the amount of time you spend researching proceedings by automatically providing you with notification of these filings, document summaries and direct links to the documents. Go to *http://www.ferc.gov/esubscribenow.htm*.

Magalie R. Salas,

Secretary.

[FR Doc. 03–12008 Filed 5–13–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Application for Amendment of Exemption and Soliciting Comments, Motions To Intervene, and Protests

May 8, 2003.

Take notice that the following application has been filed with the Commission and is available for public inspection:

a. *Application Type:* Amendment of Exemption to Increase its Authorized Nameplate Capacity.

b. *Project No:* 12094–004.

c. *Date Filed:* April 11, 2003.

d. *Applicant:* Hydro Technology Systems Inc.

e. *Name of Project:* Meyers Falls 1910 Hydroelectric Project.

f. *Location:* The project is located on the Colville River, in Stevens County, Washington.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791a–825r.

h. *Applicant Contact:* Michael Johnson, President, Hydro Technology Systems Inc., P.O. 683 Kettle Falls, WA 99141 (509) 738–6544.

i. *FERC Contact:* Any questions on this notice should be addressed to Mr. Robert Shaffer at (202) 502–8944, or e-mail address: *robert.shaffer@ferc.gov*.

j. *Deadline for filing comments and or motions:* June 9, 2003.

k. *Description of Request:* The exempt project has an authorized capacity of 300 kW (one generating unit) with a hydraulic capacity of 50 cfs. Now the exemptee is planning to install two units instead of one but with the same authorized installed and hydraulic capacity. In addition, the exemptee is proposing to add a small 65–kW generating unit with a hydraulic capacity of 12 cfs. The exemptee states this proposal would improve the operations efficiency of the project by utilizing low flows (0 to 12 cfs) that are available for generation but fall below the minimum hydraulic capacity of the bigger generating units.

l. *Locations of the Application:* A copy of the application is available for inspection and reproduction at the Commission's Public Reference Room, located at 888 First Street, NE., Room 2A, Washington, DC 20426, or by calling (202) 502–8371. This filing may also be viewed on the Commission's Web site at *http://www.ferc.gov* using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, call 1–866–208–3676 or e-mail *FERCOnlineSupport@ferc.gov*. For TTY, call (202) 502–8659. A copy is also available for inspection and reproduction at the address in item (h) above.

m. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

n. *Comments, Protests, or Motions to Intervene:* Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, 385.211, 385.214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

o. *Filing and Service of Responsive Documents:* Any filings must bear in all capital letters the title "COMMENTS", "RECOMMENDATIONS FOR TERMS AND CONDITIONS", "PROTEST", OR "MOTION TO INTERVENE", as applicable, and the Project Number of the particular application to which the filing refers. All documents (original and eight copies) should be filed with: Magalie R. Salas, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. A copy of any motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

p. *Agency Comments:* Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

q. Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site at *http://www.ferc.gov* under the "e-Filing" link.

Magalie R. Salas,

Secretary.

[FR Doc: 03–12009 Filed 5–13–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Application Ready for Environmental Analysis and Soliciting Comments, Recommendations, Terms and Conditions, and Prescriptions

May 8, 2003.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection.

a. *Type of Application:* Subsequent License.
b. *Project No.:* 1273–009.
c. *Date Filed:* November 15, 2002.
d. *Applicant:* Parowan City.
e. *Name of Project:* Center Creek Hydroelectric Project.
f. *Location:* At the confluence of Center Creek (aka Parowan Creek) and Bowery Creek (a tributary to Parowan Creek) near the City of Parowan, in Iron County, Utah. The project occupies 21.43 acres of land managed by the U.S. Department of the Interior, Bureau of Land Management.
g. *Filed Pursuant to:* Federal Power Act 16 U.S.C. 791 (a)–825(r).
h. *Applicant Contact:* Alden C. Robinson, P.E., Sunrise Engineering, Inc., 25 East 500 North, Fillmore, Utah 84631, (435) 743–6151 and/or Clark Gates II, City Manager, Parowan City, P.O. Box 576, Parowan, Utah 84761, (435) 477–3331.
i. *FERC Contact:* Gaylord Hoisington, (202) 502–8163, *gaylord.hoisington@FERC.gov.*
j. Deadline for filing comments, recommendations, terms and conditions, and prescriptions is 60 days from the issuance date of this notice. Reply comments are due 105 days from the issuance date of this notice.

All documents (original and eight copies) should be filed with: Magalie R. Salas, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

The Commission's Rules of Practice require all intervenors filing documents with the Commission to serve a copy of that document on each person on the official service list for the project. Further, if an intervenor files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

Comments, recommendations, terms and conditions, and prescriptions may be filed electronically via the Internet in lieu of paper. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site (*http://www.ferc.gov*) under the "e-Filing" link.

k. This application has been accepted, and is ready for environmental analysis at this time.

l. The existing Center Creek Hydroelectric Project consists of: (1) A 15-foot-high, 54-foot-long concrete overflow type diversion dam; (2) a radial gate; (3) trash racks; (4) a 19.9 acre-foot de-silting pond; (5) an 18 to 26-inch-diameter, 18,825-foot-long steel penstock; (5) a 600-kilowatt powerhouse; and (6) appurtenant facilities.

m. A copy of the application is on file with the Commission and is available for public inspection. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676 or for TTY, (202) 502–8659. A copy is also available for inspection and reproduction at the address in item h above.

All filings must (1) bear in all capital letters the title "COMMENTS", "REPLY COMMENTS", "RECOMMENDATIONS," "TERMS AND CONDITIONS," or "PRESCRIPTIONS;" (2) set forth in the heading the name of the applicant and the project number of the application to which the filing responds; (3) furnish the name, address, and telephone number of the person submitting the filing; and (4) otherwise comply with the requirements of 18 CFR 385.2001 through 385.2005. All comments, recommendations, terms and conditions or prescriptions must set forth their evidentiary basis and otherwise comply with the requirements of 18 CFR 4.34(b). Agencies may obtain copies of the application directly from the applicant. Each filing must be accompanied by proof of service on all persons listed on the service list prepared by the Commission in this proceeding, in accordance with 18 CFR 4.34(b), and 385.2010.

You may also register online at *http://www.ferc.gov/esubscribenow.htm* to be notified via email of new filings and issuances related to this or other pending projects. For assistance, contact FERC Online Support.

Magalie R. Salas,

Secretary.

[FR Doc. 03–12014 Filed 5–13–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 2210–089]

Notice of Application for Amendment of License and Soliciting Comments, Motions To Intervene, and Protests

May 8, 2003.

Take notice that the following application has been filed with the Commission and are available for public inspection:

a. *Application Types:* Non-Project Use of Project Lands.
b. *Project Nos:* 2210–089.
c. *Date Filed:* April 11, 2003.
d. *Applicant:* Appalachian Power Company (APC).
e. *Name of Project:* Smith Mountain.
f. *Location:* The project is located on the Roanoke River, in Bedford, Pittsylvania, Franklin, and Roanoke Counties, Virginia.
g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791 (a) 825(r) and 799 and 801.
h. *Applicant Contact:* Teresa P. Rogers, Hydro Generation Department, American Electric Power, P.O. Box 2021, Roanoke, VA 24022–2121, (540) 985–2451.
i. *FERC Contact:* Any questions on this notice should be addressed to Mrs. Heather Campbell at (202) 502–6182, or e-mail address: *heather.campbell@ferc.gov.*
j. *Deadline for filing comments and or motions:* June 9, 2003.

All documents (original and eight copies) should be filed with: Ms. Magalie Roman Salas, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington DC 20426. Please include the project number (P–2210–089) on any comments or motions filed. Comments, protests, and interventions may be filed electronically via the internet in lieu of paper. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link. The Commission strongly encourages e-filings.

k. *Description of Request:* APC is requesting Commission approval to permit J.W. Holdings, Inc. (permittee) to install and operate 3 stationary docks for a total of one hundred seventeen (117) covered stationary slips and nineteen (19) floating courtesy docks. The facilities would be constructed along the Roanoke River at an area known as the Bridge Club. No dredging is planned as part of this proposal.

l. *Location of the Application:* This filing is available for review at the Commission in the Public Reference Room 888 First Street, NE., Room 2A, Washington, DC 20426 or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, call toll-free 1–866–208–3676 or e-mail *FERCOnlineSupport@ferc.gov.* For TTY, call (202) 502–8659. A copy is also available for inspection and reproduction at the address in item h above.

m. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

n. *Comments, Protests, or Motions to Intervene:* Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, 385.211, 385.214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

o. *Filing and Service of Responsive Documents:* Any filings must bear in all capital letters the title "COMMENTS", "RECOMMENDATIONS FOR TERMS AND CONDITIONS", "PROTEST", OR "MOTION TO INTERVENE", as applicable, and the Project Number of the particular application to which the filing refers. A copy of any motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

p. *Agency Comments:* Federal, state, and local agencies are invited to file comments on the described applications. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

Magalie R. Salas,

Secretary.

[FR Doc. 03–12015 Filed 5–13–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Application for Amendment of License and Soliciting Comments, Motions To Intervene, and Protests

May 8, 2003.

Take notice that the following application has been filed with the Commission and is available for public inspection:

a. *Application Type:* Shoreline Management Plan.
b. *Project No:* 271–068.
c. *Date Filed:* April 14, 2003.
d. *Applicant:* Entergy Arkansas, Inc. (Entergy).
e. *Name of Project:* Carpenter-Remmel Hydroelectric Project.
f. *Location:* On the Ouachita River, a navigable waterway of the United States, in Garland and Hot Springs Counties, Arkansas. There are 34.3 acres of federally owned lands within the project boundary around Lake Hamilton which are under the supervision of the U.S. Army Corps of Engineers (Corps).
g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)–825(r).
h. *Applicant Contact:* Mr. Douglas R. Sikes, Manager, Hydro Operations, Entergy Arkansas, Inc., 141 West County Line Road, Malvern, AR 72104. Phone: (501) 844–2148.
i. *FERC Contact:* Any questions on this notice should be addressed to Shana High at (202) 502–8674, or e-mail address: *shana.high@ferc.gov.*
j. *Deadline for filing comments and/or motions:* June 9, 2003.

All documents (original and eight copies) should be filed with: Magalie R. Salas, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington DC 20426. Please include the project number (271–068) on any comments or motions filed.

Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link.

k. *Description of Proposal:* Entergy developed a Shoreline Management Plan (SMP) to comply with article 408 of the project license. The SMP is a comprehensive plan to manage the multiple resources and uses of the project's shorelines in a manner that is consistent with license requirements and project purposes, and to address the needs of the local public. The SMP introduces some new strategies regarding the management and permitting of shoreline activities and facilities, but is based on management practices established over the years. The SMP designates multiple classifications of the shoreline and specifies what shoreline facilities and activities will be allowed in each of the classifications to help manage non-project uses of shoreline lands within the project boundary.

l. *Locations of the Application:* This filing is available for review and reproduction at the Commission's Public Reference Room, located at 888 First Street, NE., Room 2A, Washington, DC 20426, or by calling (202) 502–8371. This filing may also be viewed on the Commission's Web site at *http://www.ferc.gov* using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or call toll-free 1–866–208–3676, or for TTY, contact (202) 502–8659. A copy is also available for inspection and reproduction at the address in item (h) above.

m. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

n. *Comments, Protests, or Motions to Intervene:* Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, 385.211, 385.214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

o. *Filing and Service of Responsive Documents:* Any filings must bear in all capital letters the title "COMMENTS", "RECOMMENDATIONS FOR TERMS AND CONDITIONS", "PROTEST", OR "MOTION TO INTERVENE", as applicable, and the Project Number of the particular application to which the filing refers. A copy of any motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

p. *Agency Comments:* Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for

filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

Magalie R. Salas,

Secretary.

[FR Doc. 03–12017 Filed 5–13–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RM01–12–000]

Remedying Undue Discrimination Through Open Access Transmission Service and Standard Electricity Market Design; Notice of Technical Conference

May 8, 2003.

Take notice that a technical conference will be held on June 11, 2003, from 1 p.m. to 5 p.m. at the Doubletree Hotel, 1616 Dodge Street, Omaha, Nebraska. Members of the Commission will attend and participate in the discussions.

This conference shall be one of a series of regional technical conferences announced in the White Paper issued in this docket on April 28, 2003. The Commission intends to use these conferences to discuss with states and market participants in each region reasonable timetables for addressing wholesale market design issues discussed in the White Paper and ways to tailor the final rule in this proceeding to benefit customers within the region. The Commission will issue notices of subsequent conferences at a later time.

The Commission is inviting selected panelists to participate in this conference; it is not entertaining requests to make presentations. Further details of the conference, including the agenda, will be specified in a subsequent notice. All interested persons may attend the conference, and registration is not required. However, in-person attendees are asked to register on-line at *http://www.ferc.gov/home/conferences.asp.*

Transcripts of the conference will be immediately available from Ace Reporting Company (202–347–3700 or 1–800–336–6646) for a fee. They will be available for the public on the Commission's FERRIS system seven calendar days after FERC receives the transcript. Additionally, Capitol Connection offers the opportunity for remote listening of the conference via Real Audio or a Phone Bridge Connection for a fee. Persons interested in making arrangements should contact David Reininger or Julia Morelli at the Capitol Connection (703–993–3100) as soon as possible or visit the Capitol Connection Web site at *http://www.capitolconnection.org* and click on "FERC."

For more information about the conference, please contact Sarah McKinley at (202) 502–8004 or *sarah.mckinley@ferc.gov.*

Magalie R. Salas,

Secretary.

[FR Doc. 03–12018 Filed 5–13–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RM01–12–000]

Remedying Undue Discrimination Through Open Access Transmission Service and Standard Electricity Market Design; Notice of Technical Conference

May 8, 2003.

Take notice that a technical conference will be held on May 20, 2003, from approximately 10 a.m. to 4 p.m., at the Boston Marriott Copley Place, 110 Huntington Avenue, Boston, Massachusetts. Members of the Commission will attend and participate in the discussions.

This conference shall be the first of a series of regional technical conferences announced in the White Paper issued in this docket on April 28, 2003. The Commission intends to use these conferences to discuss with states and market participants in each region reasonable timetables for addressing wholesale market design issues discussed in the White Paper and ways to tailor the final rule in this proceeding to benefit customers within the region. The Commission will issue notices of subsequent conferences at a later time.

The Commission is inviting selected panelists to participate in this conference; it is not entertaining requests to make presentations. Further details of the conference, including the agenda, will be specified in a subsequent notice. All interested persons may attend the conference, and registration is not required. However, in-person attendees are asked to register on-line at *http://www.ferc.gov/home/conferences.asp.*

Transcripts of the conference will be immediately available from Ace Reporting Company (202–347–3700 or 1–800–336–6646) for a fee. They will be available for the public on the Commission's FERRIS system seven calendar days after FERC receives the transcript. Additionally, Capitol Connection offers the opportunity for remote listening of the conference via Real Audio or a Phone Bridge Connection for a fee. Persons interested in making arrangements should contact David Reininger or Julia Morelli at the Capitol Connection (703–993–3100) as soon as possible or visit the Capitol Connection Web site at *http://www.capitolconnection.org* and click on "FERC."

For more information about the conference, please contact Sarah McKinley at (202) 502–8004 or *sarah.mckinley@ferc.gov.*

Magalie R. Salas,

Secretary.

[FR Doc. 03–12019 Filed 5–13–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 12097–001]

Green River 3 Associates; Notice of Surrender of Preliminary Permit

May 8, 2003.

Take notice that Green River 3 Associates, permittee for the proposed Green River Dam 3 Project, has requested that its preliminary permit be terminated. The permit was issued on November 26, 2001, and would have expired on October 31, 2004. The project would have been located on the Green River in Ohio County, Kentucky.

The permittee filed the request on April 7, 2003, and the preliminary permit for Project No. 12097 shall remain in effect through the thirtieth day after issuance of this notice unless that day is a Saturday, Sunday, or holiday as described in 18 CFR 385.2007, in which case the permit shall remain in effect through the first business day following that day. New applications involving this project site, to the extent provided for under 18 CFR part 4, may be filed on the next business day.

Magalie R. Salas,

Secretary.

[FR Doc. 03–12011 Filed 5–13–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 12096–001]

Green River 5 Associates; Notice of Surrender of Preliminary Permit

May 8, 2003.

Take notice that Green River 5 Associates, permittee for the proposed Green River Dam 5 Project, has requested that its preliminary permit be terminated. The permit was issued on November 26, 2001, and would have expired on October 31, 2004. The project would have been located on the Green River in Butler County, Kentucky.

The permittee filed the request on April 7, 2003, and the preliminary permit for Project No. 12096 shall remain in effect through the thirtieth day after issuance of this notice unless that day is a Saturday, Sunday, or holiday as described in 18 CFR 385.2007, in which case the permit shall remain in effect through the first business day following that day. New applications involving this project site, to the extent provided for under 18 CFR part 4, may be filed on the next business day.

Magalie R. Salas,

Secretary.

[FR Doc. 03–12010 Filed 5–13–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 12123–001]

Quantum Energy Solutions; Notice of Surrender of Preliminary Permit

May 8, 2003.

Take notice that Quantum Energy Solutions, permittee for the proposed Columbia River Jetty Project, has requested that its preliminary permit be terminated. The permit was issued on April 22, 2002, and would have expired on March 31, 2005. The project would have been located on the existing Columbia River Jetty in Clatsop County, Oregon.

The permittee filed the request on April 2, 2003, and the preliminary permit for Project No. 12123 shall remain in effect through the thirtieth day after issuance of this notice unless that day is a Saturday, Sunday, or holiday as described in 18 CFR 385.2007, in which case the permit shall remain in effect through the first business day following that day. New applications involving this project site, to the extent provided for under 18 CFR part 4, may be filed on the next business day.

Magalie R. Salas,

Secretary.

[FR Doc. 03–12012 Filed 5–13–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 12124–001]

Quantum Energy Solutions; Notice of Surrender of Preliminary Permit

May 8, 2003.

Take notice that Quantum Energy Solutions, permittee for the proposed Tillamook River Jetty Project, has requested that its preliminary permit be terminated. The permit was issued on March 13, 2002, and would have expired on February 28, 2005. The project would have been located on the existing Tillamook River Jetty in Tillamook County, Oregon.

The permittee filed the request on April 2, 2003, and the preliminary permit for Project No. 12124 shall remain in effect through the thirtieth day after issuance of this notice unless that day is a Saturday, Sunday, or holiday as described in 18 CFR 385.2007, in which case the permit shall remain in effect through the first business day following that day. New applications involving this project site, to the extent provided for under 18 CFR part 4, may be filed on the next business day.

Magalie R. Salas,

Secretary.

[FR Doc. 03–12013 Filed 5–13–03; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7498–4]

Partial Delegation of Authority for Prevention of Significant Deterioration of Air Quality; Washington Department of Ecology

AGENCY: Environmental Protection Agency (EPA).

ACTION: Information notice.

SUMMARY: The State of Washington Department of Ecology (Ecology) has requested partial delegation of authority to implement and enforce the Federal prevention of significant deterioration of air quality (PSD) permit program regulations, as revised in amendments published on December 31, 2002 (federal PSD regulations). The Clean Air Act (CAA) authorizes EPA to delegate its authority to implement and enforce the federal PSD regulations to any state that has submitted a demonstration that it possesses adequate implementation and enforcement resources and procedures. After thorough consideration of Ecology's request and other available information, EPA has determined that such delegation of authority is appropriate consistent with the conditions set forth in the delegation agreement reproduced below.

DATES: The delegation agreement granting authority to Ecology for the Federal PSD program is effective March 28, 2003.

ADDRESSES: Copies of information relevant to the partial delegation are available for inspection during normal business hours at the following location: EPA, Region 10, Office of Air Quality (OAQ–107), 1200 Sixth Avenue, Seattle, Washington 98101.

FOR FURTHER INFORMATION CONTACT: Dan Meyer, EPA, Region 10, Office of Air Quality, (206) 553–4150.

SUPPLEMENTARY INFORMATION:

I. Background

EPA granted Ecology full delegation to implement and enforce the federal PSD regulations in a delegation agreement dated February 7, 2002. The PSD program covers any new construction or any major modification of a major stationary air emission source in an area which has air quality better than the national ambient air quality standards. The program requires the issuance of permits prior to construction or modification of certain sources. EPA recently promulgated revisions to the federal PSD regulations found in 40 CFR 52.21. *See* 67 FR 80186 (December 31, 2002). In general, these changes affect the applicability of the federal PSD program to modifications to existing major stationary sources.

Ecology has requested authority to continue to implement the federal PSD regulations, as published on December 31, 2002, to the extent possible while Ecology determines how to revise the State PSD regulations to meet the new federal requirements. EPA has reviewed the States' current statutory and regulatory authority and has determined that Ecology has authority to implement and enforce the federal PSD regulations, as published on December 31, 2002, except for applications for PAL

increases under 40 CFR 52.21(aa)(11), subject to the conditions set forth in the Agreement for Partial Delegation of the Federal Prevention of Significant Deterioration (PSD) Program by the United States Environmental Protection Agency, Region 10 to the State of Washington Department of Ecology dated March 28, 2003.

II. Terms of Delegation of Authority

A copy of the Delegation Agreement can be viewed or downloaded from the Internet at *http://www.ecy.wa.gov/programs/air/psd/PSD_EPA_Final03.pdf*. The Delegation of the federal PSD regulations to Ecology is subject to the conditions set forth in the following agreement:

Agreement for Partial Delegation of the Federal Prevention of Significant Deterioration (PSD) Program by the United State Environmental Protection Agency, Region 10 to the State of Washington Department of Ecology

Through this agreement, the Washington State Department of Ecology (Ecology) and the Environmental Protection Agency (EPA) establish the legal and procedural bases for Ecology to conduct new source review and to implement and enforce portions of the federal PSD regulations found in 40 CFR 52.21 (effective March 3, 2003).

I. Introduction

Ecology has adopted by reference, with certain minor changes, the federal PSD regulations found in 40 CFR 52.21, as in effect on July 1, 2000. See WAC 173–400–117, –141, 113 and –171 (effective September 15, 2001). The provisions of WAC 173–400–117, –141, and –171 as in effect on September 15, 2001, shall hereafter be referred to as the "State PSD regulations."

Based on those changes, EPA granted Ecology full delegation to implement and enforce the federal PSD regulations in a delegation agreement dated February 7, 2002.

EPA recently promulgated revisions to the federal PSD regulations found in 40 CFR 52.21. *See* 67 FR 80186, (December 31, 2002). In general, these changes affect the applicability of the federal PSD program to modifications to existing major stationary sources. The provisions of 40 CFR 52.21, as revised on March 3, 2003 shall hereafter be referred to as the "federal PSD regulations."

Ecology and EPA desire to continue to have Ecology implement and enforce the federal PSD regulations to the extent possible while Ecology determines how to revise the State PSD regulations to meet the new federal requirements. Accordingly, EPA and Ecology are entering into this partial Delegation Agreement.

As part of the transition process for implementing the new provisions, Ecology and EPA intend to allow permit applicants to withdraw any PSD permit applications submitted prior to March 3, 2003, and currently under review to afford permit applicants the opportunity to re-evaluate their projects in light of the revised federal PSD requirements if they so choose.

II. Legal Authority

A. Pursuant to 40 CFR 52.21(u), EPA may delegate to a State full or partial responsibility for conducting new source review pursuant to the federal PSD regulations found in 40 CFR 52.21.

B. As discussed above, Ecology has adopted by reference, with certain minor changes, the federal PSD regulations found in 40 CFR 52.21, as in effect on July 1, 2000. *See* WAC 173–400–117, –141, and –171.

C. EPA has determined that Chapter 43.05 of the Revised Code of Washington (RCW), often referred to as "House Bill 1010," conflicts with the delegation requirements of 40 CFR 52.21(u). Based on this determination, Ecology has determined that Chapter 43.05 RCW does not apply to permit to construct requirements of Chapter 173–400 WAC, including the State PSD regulations.

D. The Ecology Division of the Washington Attorney General's Office has issued an opinion [1] stating that the provisions of RCW 70.94.035, "Air Technical Assistance Visits by Ecology," do not prevent enforcement actions, but only require Ecology to wait until the end of the correction period to determine whether enforcement action is appropriate. Based on that opinion letter, EPA has determined that RCW 70.94.035 does not impermissibly interfere with Washington's enforcement authority. *See* 59 FR 42552 (August 18, 1994) (proposed interim approval of Washington's title V program).

E. Ecology and EPA agree that requirements issued in PSD permits under the authority of WAC 173–400–110, –113 and –141 are federally enforceable requirements of the State Implementation Plan even in cases where a federal PSD permit is not required under 40 CFR 52.21. For purposes of incorporating all applicable requirements into the Title V permit, the components of the PSD permit applicable to State PSD requirements remains federally enforceable as a component of the SIP notice of construction approval.

III. Scope of Delegation

A. Pursuant to 40 CFR 52.21(u), EPA hereby delegates to Ecology partial responsibility for conducting federal new source review and for implementing and enforcing the federal PSD regulations for all sources located in the State of Washington as follows, subject to the terms and conditions of this Delegation Agreement:

1. Ecology has full delegation to conduct federal new source review and to implement and enforce the federal PSD regulations for all new major stationary sources.

2. Ecology has partial delegation to conduct federal new source review and to implement and enforce the federal PSD regulations for all physical or operational changes to existing stationary sources [2] as follows:

a. Except for applications for PAL increases under 40 CFR 52.21(aa)(11), Ecology is delegated authority to receive all permit applications, requests for applicability determination, notifications, reports, notices and other documents required under or that relate to the federal PSD regulations.

b. Ecology is delegated authority to process, issue, and enforce PSD permits for any physical or operational change to an existing stationary source that Ecology determines is subject to the State PSD regulations and the federal PSD regulations, provided, however, that Ecology will note in the permit record any instance where Ecology determines that an emission unit or pollutant is subject to the State PSD regulations but not the federal PSD regulations.

c. Ecology is delegated authority to conduct applicability determinations that relate to the applicability of the federal PSD regulations to physical or operational changes to existing stationary sources, provided, however, that the following additional conditions apply in the circumstances described below. For purposes of this Delegation Agreement, an applicability determination includes a written determination in a preliminary decision or permit.

(i) *Determining the Emissions Increase*

(A) *Applicability Test for Physical or Operational Changes to Existing Electric Utility Steam Generating Units (EUSGUs) and Construction of Replacement EUSGUs.*

(I) Determination—Applicability. Ecology is delegated the authority to act upon requests from sources to determine whether a significant emissions increase will result from a physical or operational change to an EUSGU or the construction of a replacement EUSGU, and to determine whether a significant net emissions increase will occur at the stationary source. Upon issuance of the determination, Ecology will provide to EPA and the Title V permitting authority a copy of Ecology's determination along with a copy of the request.

(II) Determination—Baseline Actual Emissions [3]. Ecology is delegated the authority to act upon requests from sources to use a different time period than that specified in 40 CFR 52.21(b)(48)(i) to calculate baseline actual emissions. Upon issuance of the determination, Ecology will provide to EPA and the Title V permitting authority a copy of the determination along with a copy of the request.

(III) Reporting—Projected Actual Emissions. Ecology is delegated the authority to receive from sources the information required under 40 CFR 52.21(r)(6)(ii) to calculate an EUSGU's projected actual emissions at a stationary source.[4] Ecology will forward a copy of the information to EPA and the Title V permitting authority upon receipt of the information.

(IV) Reporting—Actual Annual Emissions. Ecology is delegated the authority to receive from sources the annual emissions report required under 40 CFR 52.21(r)(6)(iv) for an EUSGU at a stationary source.[5] Ecology will forward a copy of any emission report to EPA and the Title V permitting authority upon receipt of the report.

(B) *Applicability Test for Physical or Operational Changes to Existing Units (non-EUSGUs) and Construction of Replacement Units (non-EUSGUs).*[6]

(I) Determination—Applicability. Ecology is delegated the authority to act upon requests from sources to determine whether a significant emissions increase will result from a physical or operational change to an emissions unit or the construction of a replacement emissions unit, and to determine whether a significant net emissions increase will occur at the stationary source. Upon issuance of the determination, Ecology will provide to EPA and the Title V permitting authority a copy of the determination along with a copy of the request.

(II) Reporting—Actual Annual Emissions. Ecology is delegated the authority to receive from sources the annual emissions report under 40 CFR 52.21(r)(6)(v) for an emissions unit at a stationary source.[7] Ecology will forward a copy of the emissions report to EPA and the Title V permitting authority upon receipt of the report.

(ii) *Clean Units*

(A) *Clean Unit I—Units which Automatically Qualify as a Clean Unit.*

(I) Original Designation. The provisions of 40 CFR 52.21(x) for automatic Clean Unit designation are self-implementing for emissions units that have been issued a BACT determination in a federal or SIP-approved major new source review permit within the last 10 years.

(a) Coordination with Title V Permitting Authority. Ecology will coordinate with the Title V permitting authority to ensure that the terms and conditions required by 40 CFR 52.21(x)(6)(i)–(vi) related to the Clean Unit are included in the Title V permit for the source.

(b) Reporting. Ecology is delegated the authority to receive from sources the notices required under 40 CFR 52.21(x)(6)(ii) and (iii) specifying the effective date and expiration date, respectively, of the Clean Unit designation.[8] Ecology will forward a copy of the notices to EPA and the Title V permitting authority upon receipt of the notices.

(II) Re-designation. Ecology is delegated the authority to act upon requests from sources to re-designate an emissions unit as a Clean Unit pursuant to 40 CFR 52.21(x)(3)(iii) or 40 CFR 52.21(y)(3)(iv).[9] Upon issuance of the final permit or order, Ecology will provide to EPA and the Title V permitting authority a copy of the final permit or order along with a copy of the request.

(a) Coordination with Title V Permitting Authority. Ecology will coordinate with the Title V permitting authority to ensure that the terms and conditions required under 40 CFR 52.21(x)(6)(i)–(vi) or 40 CFR 52.21(y)(8)(i)–(vi), as applicable, related to the Clean Unit are included in the Title V permit for the source.

(b) Reporting. Ecology is delegated the authority to receive from sources the notices required under 40 CFR 52.21(x)(6)(ii) and (iii) or 40 CFR 52.21(y)(8)(ii) and (iii), as applicable, specifying the effective date and expiration date, respectively, of the Clean Unit designation.[10] Ecology will forward a copy of the notices to EPA and the Title V permitting authority upon receipt of the notices.

(B) *Clean Unit II—Units which Do Not Automatically Qualify as a Clean Unit.*

(I) Original Designation. Ecology is delegated the authority to act upon requests from sources to designate an emissions unit as a Clean Unit pursuant to 40 CFR 52.21(y)(3).[11] Upon issuance of the final permit or order, Ecology will provide to EPA and the Title V permitting authority a copy of the permit or order along with a copy of the request.

(a) Coordination with Title V Permitting Authority. Ecology will coordinate with the Title V permitting authority to ensure that the terms and conditions required by 40 CFR 52.21(y)(8)(i)–(vi) related to the Clean Unit are included in the Title V permit for the source.

(b) Reporting. Ecology is delegated the authority to receive from sources the notices required under 40 CFR 52.21(y)(8)(ii) and (iii) specifying the effective date and expiration date, respectively, of the Clean Unit designation.[12] Ecology will forward a copy of the notices to EPA and the Title V permitting authority upon receipt of the notices.

(II) Re-designation. Ecology is delegated the authority to act upon requests from sources to re-designate an emissions unit as a Clean Unit pursuant to 40 CFR 52.21(y)(3)(iv).[13] Upon issuance of the final permit or order, Ecology will provide to EPA and the Title V permitting authority a copy of the permit or order along with a copy of the request.

(a) Coordination with Title V Permitting Authority. Ecology will coordinate with the Title V permitting authority to ensure that the terms and conditions required under 40 CFR 52.21(y)(8)(i)–(vi) related to the Clean Unit are included in the Title V permit for the source.

(b) Reporting. Ecology is delegated the authority to receive from sources the notices required under 40 CFR 52.21(y)(8)(ii) and (iii) specifying the effective date and expiration date, respectively, of the Clean Unit designation.[14] Ecology will forward a copy of the notices to EPA and the Title V permitting authority upon receipt of the notices.

(iii) *Pollution Control Projects*

(A) *PCP I. Projects presumed to be environmentally beneficial.*

(I) The provisions of 40 CFR 52.21(z) for projects listed as PCPs under 40 CFR 52.21(b)(32)(i)–(vi) are self-implementing. Ecology is delegated authority to receive from sources the notices required by 40 CFR 52.21(z)(1) and to request additional information necessary to evaluate the suitability of the project for the PCP exemption as provided in 40 CFR 52.21(z)(4). Ecology will forward a copy of the notice to EPA and the Title V permitting authority upon receipt of the notice.

(II) Coordination with Title V Permitting Authority. Ecology will coordinate with the Title V permitting authority to ensure that the terms and conditions required under 40 CFR 52.21(z)(6) are included in the Title V permit for the source.

(B) *PCP II. Projects not presumed to be environmentally beneficial.*

(I) For projects not listed as PCPs under 40 CFR 52.21(b)(32)(i)–(vi), Ecology is delegated the authority to act upon requests from sources for approval to use the PCP exclusion as provided in 40 CFR 52.21(z)(1) and (5).[15] Upon issuance of the final permit or order, Ecology will provide to EPA and the Title V permitting authority a copy of the permit or order along with a copy of the request.

(II) Coordination with Title V Permitting Authority. Ecology will coordinate with the Title V permitting authority to ensure that the terms and conditions required under 40 CFR 52.21(z)(6) are included in the Title V permit for the source.

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[1] Letter from Mary Sue Wilson, Assistant Attorney General, to Chuck Clarke, Regional Administrator, dated June 7, 1994, regarding Supplement to October 27, 1993 and December 30, 1993 Attorney General Opinion Letters for Washington State Department of Ecology.

[2] The reference to "physical or operational changes to existing stationary sources" covers both (a) any physical or operational change to an existing major stationary source and (b) any physical or operational change that would occur at a stationary source not otherwise qualifying under 40 CFR 52.21(b)(1) as a major stationary source if the change would constitute a major stationary source by itself.

[3] Sources are required to obtain this determination from Ecology prior to beginning actual construction.

[4] EUSGUs opting to use the actual-to-projected-actual applicability test are required to submit this information to Ecology prior to beginning actual construction.

[5] EUSGUs opting to utilize the actual-to-projected-actual applicability test are required to submit this report to Ecology within 60 days after the end of each year during which records must be generated under 40 CFR 52.21(r)(6)(iii).

[6] For a discussion regarding the treatment of replacement units, please refer to 67 FR 80194.

[7] Non-EUSGUs opting to utilize the actual-to-future-actual applicability test are required to submit this report to Ecology if annual emissions exceed baseline actual emissions by a significant amount and if such emissions differ from the preconstruction projection. The report is to be submitted within 60 days after the end of each year during which records must be generated under 40 CFR 52.21(r)(6)(iii).

[8] Sources are required to submit notices to Ecology only if the effective date and expiration date are not known when the Clean Unit designation is recorded in the Title V permit.

[9] Sources have the option of requesting Clean Status re-designation pursuant to the requirements of 40 CFR 52.21(x)(3)(iii) or 40 CFR 52.21(y)(3)(iv). For requests seeking approval under 40 CFR 52.21(x)(3)(iii), Ecology intends to use its authority under WAC 173–400–141. For requests seeking approval under 40 CFR 52.21(y)(3)(iv), Ecology intends to use its authority under WAC 173–400–091.

[10] Sources are required to submit notices to Ecology only if the effective date and expiration date are not known when the Clean Unit designation is recorded in the Title V permit.

[11] For requests seeking approval under 40 CFR 52.21(y)(3), Ecology intends to use its authority under WAC 173–400–091.

[12] Sources are required to submit notices to Ecology only if the effective date and expiration date are not known when the Clean Unit designation is recorded in the Title V permit.

[13] For requests seeking approval under 40 CFR 52.21(y)(3), Ecology intends to use its authority under WAC 173–400–091.

[14] Sources are required to submit notices to Ecology only if the effective date and expiration date are not known when the Clean Unit designation is recorded in the Title V permit.

[15] For requests seeking approval under 40 CFR 52.21(z)(5), Ecology intends to use its authority under WAC 173–400–091 and –110 as appropriate.

(iv) *Plantwide Applicability Limitations*

(A) Ecology PALs.

(I) Ecology is delegated the authority to act upon an application from a source for a PAL pursuant to 40 CFR 52.21(aa)(1)[16].

(a) Upon issuance of the final permit or order, Ecology will provide to EPA and the Title V permitting authority a copy of the permit along with a copy of the request.

(b) Coordination with Title V Permitting Authority. Ecology will coordinate with the Title V permitting authority to ensure that the terms and conditions required in the PAL permit or order are included in the Title V permit for the source.

(II) Ecology is delegated the authority to act upon an application from a source to renew a PAL pursuant to 40 CFR 52.21(aa)(10).[17]

(a) Upon issuance of the final permit or order, Ecology will provide to EPA and the Title V permitting authority a copy of the permit or order along with a copy of the request.

(b) Coordination with Title V Permitting Authority. Ecology will coordinate with the Title V permitting authority to ensure that the terms and conditions required in the PAL permit or order are included in the Title V permit for the source.

(III) Ecology is delegated the authority to reopen a PAL pursuant to 40 CFR 52.21(aa)(8).[18]

(a) Upon issuance of the final permit or order, Ecology will provide to EPA and the Title V permitting authority a copy of the permit or order.

(b) Coordination with Title V Permitting Authority. Ecology will coordinate with the Title V permitting authority to ensure that the terms and conditions required in the PAL permit or order are included in the Title V permit for the source.

(B) EPA PALs.

(I) Ecology is not delegated the authority to act upon an application from a source to increase a PAL pursuant to 40 CFR 52.21(aa)(11). Applications for PAL increases shall be submitted directly to EPA and EPA shall approve PAL increases through the issuance of a permit under the federal PSD regulations.

(a) Upon issuance of the final permit, EPA will provide to Ecology and the Title V permitting authority a copy of the permit along with a copy of the request.

(b) Coordination with Title V Permitting Authority. EPA will coordinate with the Title V permitting authority to ensure that the terms and conditions required in the PAL permit are included in the Title V permit for the source.

3. Notwithstanding the provisions of subjection III.A.2., Ecology is not delegated authority for any change to a source that is a major modification to an existing stationary source under the federal PSD regulations but not under the State PSD regulations. All permit applications, notices, and reports relating to such changes received by Ecology shall be promptly forwarded to EPA or the applicant shall be directed to submit the application materials directly to EPA.

4. The parties acknowledge that under certain circumstances the State PSD regulations and federal PSD regulations have different applicability criteria and that obtaining an exemption under one set of PSD regulations does not relieve a facility from compliance with the other PSD regulations.

B. Ecology's delegation to conduct new source review and to implement and enforce the federal PSD regulations under this Delegation Agreement does not extend to sources or activities located in Indian Country, as defined in 18 U.S.C. 1151. Consistent with previous federal program approvals or delegations, EPA will continue to implement the federal PSD program in Indian Country in Washington because Ecology did not adequately demonstrate its authority over sources and activities located within the exterior boundaries of Indian reservations and in other areas of Indian Country. The one exception is within the exterior boundaries of the Puyallup Indian Reservation, also known as the 1873 Survey Area. Under the Puyallup Tribe of Indians Settlement Act of 1989, 25 U.S.C. 1773, Congress explicitly provided State and local agencies in Washington authority over activities on non-trust land within the 1873 Survey Area. After consulting with the Puyallup Tribe of Indians, EPA's delegation in this agreement applies to sources and activities on non-trust lands within the 1873 Survey Area. Therefore, Ecology will implement and enforce the federal PSD requirements on these non-trust lands of the 1873 Survey Area as provided in this Delegation Agreement.

C. Ecology's delegation to conduct new source review and to implement and enforce the federal PSD regulations under this Delegation Agreement does not extend to sources or activities under the jurisdiction of the State of Washington Energy Facilities Site Evaluation Council (EFSEC).

D. The EPA Administrator has delegated to the Director of the Region 10 Office of Air Quality, the authority to delegate the federal PSD regulations to any State or local agency. The State or local agency that receives delegation from EPA Region 10 does not have the authority under the federal Clean Air Act to further delegate the federal PSD regulations.

IV. Requirements

A. The responsibility for conducting new source review for all regulated sources as provided by this Delegation Agreement, including those under the jurisdiction of the Industrial Section, the Nuclear and Mixed Waste Program, and local air authorities in the State of Washington, rests with Ecology's Air Quality Program. EPA is relying on the technical and programmatic expertise of the Technical, Information, and Engineering Section (TIES) of Ecology's Air Quality Program in the implementation of this Delegation Agreement on Ecology's behalf. The processing, issuance, and enforcement of PSD permits, Clean Unit Designations, Pollution Control Project Approvals, and PALs shall be conducted in consultation and coordination with TIES. All applicability determinations under this Delegation Agreement will be made by the Manager of TIES or a higher level manager within Ecology. In no event will an applicability determination be made at a level lower than the Manager of TIES. Ecology will ensure that other Ecology offices and local air authorities are aware that all PSD applicability determinations under this Delegation Agreement must be made by the Manager of TIES or a higher level manager within Ecology.

B. Ecology will ensure that there are adequate resources and trained personnel within the TIES to implement an effective PSD permit program. As requested, EPA will provide technical assistance related to the federal PSD requirements, including without limitation, PSD applicability determinations, Best Available Control Technology (BACT) determinations, air quality monitoring network design, and modeling procedures. EPA will provide PSD training for Ecology staff to meet needs identified by EPA or Ecology.

C. Where the rules or policies of Ecology are more stringent than the federal PSD program, Ecology may elect to include such requirements in the PSD permit along with the EPA requirements.

D. If both a state or local regulation and a federal regulation apply to the same source, both must be complied with, regardless of whether one is more stringent than the other, subject to the requirements of section 116 of the Clean Air Act.

E. Ecology will follow all PSD policy, guidance, and determinations issued by EPA for implementing the federal PSD program as provided in this Delegation Agreement. EPA will provide Ecology with copies of EPA policies, guidance, and determinations through the Region 7 NSR database and/or hard copies where appropriate. Where no current EPA policy or guidance clearly covers a specific situation, Ecology shall consult with the EPA Office of Air Quality on its proposed interpretation of the EPA regulations.

F. Ecology will at no time grant a waiver to the requirements of 40 CFR 52.21 or to the requirements of an issued PSD permit.

G. Ecology shall consult with the appropriate State and local agency primarily responsible for managing land use as provided in 40 CFR 52.21(u)(2)(i) prior to making any preliminary or final determination under this Delegation Agreement.

H. In order to assist EPA in carrying out its responsibilities under Section 7 of the Endangered Species Act (ESA), 16 U.S.C. 1531 *et seq.*, and 50 CFR part 402, subpart B ("Consultation Procedures"), and with Section 305(b)(2) of the Magnuson-Stevens Fishery and Conservation Act ("Magnuson-Stevens Act"), 16 U.S.C. 1801 *et seq.*, and 50 CFR part 600, subpart K ("EFH Coordination, Consultation, and Recommendations"), for federal PSD permits, regarding essential fish habitat, Ecology shall:

1. Within 5 working days of receipt of a complete PSD permit application, notify the U.S. Fish and Wildlife Service (FWS) and/or the National Marine Fisheries Service (NMFS), as appropriate, of the permit application, and to provide a copy of the permit application if requested.

2. Notify applicants of the potential need for consultation between EPA and FWS and/or NMFS if the project may affect an endangered species, or if the project may affect essential fish habitat.

3. Refrain from issuing a final PSD permit until EPA has notified Ecology that EPA has satisfied its obligations, if any, under the ESA and/or the Magnuson-Stevens Act.

V. Permit Issuance, Modification, and Appeals

A. All preliminary and final determinations issued by Ecology under this Delegation Agreement shall indicate that an appeal to the EPA Administrator is available pursuant to 40 CFR part 124.

B. The permit provisions in 40 CFR 124.19 shall apply to all appeals to the EPA Administrator on PSD permits issued by Ecology under this Delegation Agreement, including those permits co-signed by EPA. For purposes of implementing the Federal permit appeal provisions under this delegation, if there is a public comment requesting a change in a preliminary determination or proposed permit condition, the final permit issued by Ecology is required to state that for federal PSD purposes and in accordance with 40 CFR 124.15 and 124.19:

1. The effective date of the permit is 30 days after service of notice to the applicant and commentors of the final decision to issue, modify, or revoke and reissue the permit, unless review is requested on the permit under 40 CFR 124.19 within the 30 day period.

2. If an appeal is made to the EPA Administrator, the effective date of the permit is suspended until such time as the appeal is resolved.

C. A PSD permit (or a portion of a PSD permit) for a change to a facility that is a major modification under the State PSD regulations but not the federal PSD regulations shall be enforceable under State law only and shall not be appealable to the EPA Environmental Appeals Board.

D. Modifications to existing PSD permits, except for administrative amendments, shall be processed in accordance with all of the substantive and procedural requirements applicable to new permits.

E. Failure by Ecology to comply with the requirements of 40 CFR part 124 related to PSD permits and this Section V. of the Delegation Agreement shall render the subject permit invalid for federal PSD purposes.

VI. Enforcement

A. Ecology or the local air authority with jurisdiction over the source will have the primary responsibility for enforcing the federal PSD regulations for sources subject to this Delegation Agreement, provided, however, that:

1. In the case of any requirement of the federal PSD regulations that is not also a requirement of the State PSD regulations, EPA retains primary enforcement authority.

2. Ecology shall have the responsibility under this Delegation Agreement to enforce the federal PSD regulations in the event that a local air authority does not.

3. In all cases, EPA retains authority pursuant to section 113 of the Clean Air Act with respect to sources that are subject to the federal PSD requirements, including federal PSD permits issued by Ecology.

B. In delegated programs, the role of the State and local agencies is that of primary enforcer or "front line" agency in program implementation. This includes helping to define EPA's role in the regulated community for a given program. EPA's principal role is "back up" for the State/local program. However, EPA will initiate an enforcement action, as appropriate, under the following circumstances:

1. At the State or local air agency's request;

2. If a State or local air agency action is determined to be inadequate, or the State/local agency fails to carry out action in a timely or appropriate manner (in this situation, the parties will adhere to the "no surprises" principle and will follow the conflict resolution process described in Section IX of the *Washington State Compliance Assurance Agreement for Air Programs (October 1999)*); and/or

3. As part of EPA's role established in the collaborative planning process, which includes those situations where national, regional, or sector initiatives warrant an EPA lead.

C. PSD enforcement actions under this Delegation Agreement will be undertaken by qualified inspectors or trained enforcement staff in Ecology's Regional Offices, the Ecology's Industrial Section, Ecology's Air Quality Program Headquarters, Ecology's Nuclear and Mixed Waste Program, or local air authorities.

D. Enforcement of the federal PSD regulations is subject to the *Washington State Compliance Assurance Agreement for Air Programs (October 1999)*, signed by both the State and local agencies. This clearly defines roles and responsibilities, including timely and appropriate enforcement response and the maintenance of the Aerometric Information Retrieval System/Aerometric Facility Subsystem (AIRS/AFS).

VII. EPA and Ecology Communications

A. Ecology shall submit to EPA copies of the following documents, within the timeframes indicated, for sources or activities subject to this Delegation Agreement:

Action	Submittal to EPA	Timeframe
Written applicability determination that a proposed source or activity is subject to or exempt from federal PSD regulations.	Copy of request and final determination	Within five working days after signature.
Receipt of PSD permit application*	Copy of application and cover letter	Within five working days after receipt.
Completeness determination or letter of deficiencies*.	Copy of letter to applicant	Within five working days after signature.
Transmittal to Federal Land Manager (FLM) of PSD application*.	Copy of letter	Within five working days after signature.
Receipt of comments from FLM*	Copy of comment letter	Within five working days of receipt.
Preliminary determination, proposed PSD permit, public notice.	Copy .of preliminary determination, proposed PSD permit, and public notice.	Within five working days after completion of preliminary determination.
Public notice of hearing (see 52.21(u)(2)(ii))*	Copy of notice	Prior to publication.
Receipt of comments from public*	Copy of public comment letter(s)	Within five working days of the close of the public comment period.
Final determination, PSD permit and transmittal letter.	Copy of final determination PSD permit and transmittal letter.	Within five working days after final signature on PSD permit.
BACT determination submittal to RACT/BACT/LAER Clearinghouse.	Electronic or paper submittal of required information.	Within 20 working days of final signature on PSD permit.
Receipt of EUSGU projected actual emissions information (see Section III.A.2(i)(A)(III)).	Copy of information	Within five working days after receipt.
Receipt of EUSGU actual annual emissions report (see Section III.A.2 (i)(A)(IV)).	Copy of report	Within five working days after receipt.
Receipt of non-EUSGU actual annual emissions report (see Section III.A.2 (i)(B)(II)).	Copy of report	Within five working days after receipt.
Issuance of Clean Unit I Re-designation through WAC 173–400–141 (see Section III.A.2 (ii)(A)(II)).	Copy of request and final action	Within five working days after issuance.

[16] For requests seeking PALs, Ecology intends to use its authority under WAC 173–400–091, –110 and –141 as appropriate.

[17] For requests seeking PAL renewals, Ecology intends to use its authority under WAC 173–400–091, –110 and –141 as appropriate.

[18] Except for those PAL reopenings under 40 CFR 52.21(aa)(8)(ii)(a)(1), Ecology intends to reopen PALs using its authority under WAC 173–400–091 and –110 as appropriate.

Action	Submittal to EPA	Timeframe
Issuance of Clean Unit II Designation or Re-designation (see Sections III.A.2 (ii)(A)(II), III.A.2(ii)(B)(I), III.A.2(ii)(B(II)).	Copy of request and final action	Within five working days after issuance.
Receipt of notices for effective dates and expiration dates for Clean Unit I & II designation and re-designations (see Sections III.A.2(ii)(A)(I)(b), III.A.2(ii)(A)(II)(b), III.A.2(ii)(B)(I)(b), III.A.2(ii)(B)(II)(b).	Copy of notice	Within five working days after receipt.
Receipt of PCP I exclusion notice (see Section III.A.2 (iii)(A)(I)).	Copy of notice	Within five working days after receipt.
Issuance of PCP II exclusion (see Section III.A.2 (iii)(B)(I)).	Copy request and final action	Within five working days after issuance
Issuance of PAL permit (see Section III.A.2 (iv)(A)(I)).	Copy of request and final action	Within five working days after issuance.
Issuance of PAL permit (renewal) (see Section III.A.2 (iv)(A)(II)).	Copy of request and final action	Within five working days after issuance.
Issuance of PAL permit (reopening) (*see* Section III.A.2 (iv)(A)(III)).	Copy of final action	Within five working days after issuance.

*Only required when one or more pollutants are subject to federal PSD requirements.

B. EPA shall submit to Ecology copies of the following documents within the timeframes indicated.

EPA action	Submittal to Ecology	Timeframe
Issuance of PAL permit (increase) under 40 CFR 52.21(aa)(11)(*see* Section III.A.2 (iv)(B)(I)).	Copy of PAL permit	Within five working days after issuance.

C. Ecology and EPA should communicate sufficiently to guarantee that each is fully informed and current regarding interpretation of federal PSD regulations (including any unique questions about PSD applicability). Any records or reports relating to PSD permitting or compliance with PSD requirements that are provided to or otherwise obtained by Ecology and are not identified in the Table in Section VII.A. above should be made available to EPA upon request.

D. Ecology will work with owners and operators of sources and activities subject to the federal PSD regulations to ensure all required information is submitted to Ecology. Ecology will ensure that the information set forth in paragraphs VII. A. and B. is provided to EPA as set forth in those paragraphs and that all other information is submitted to EPA upon request.

E. Ecology will ensure that all relevant source information, notifications and reports are entered into the EPA AIRS/AFS national database system in order to meet its record keeping and reporting requirements. In addition to the National Minimal Data Requirements (MDRs) (attached), Ecology shall enter the following information or activities:

1. The Air Program Code for PSD;
2. The date the PSD permit is issued or modified;
3. The final effective date of the PSD permit (or modified permit);
4. The date that the new source or modification begins construction; and
5. The date that the new source or modification begins operation.

F. Correspondence from EPA to Ecology will be sent to: Alan Newman, Senior Engineer, Department of Ecology, Air Quality Program, PO Box 47600, Olympia, WA 98504–7600.

Correspondence from Ecology to EPA will be sent to: Dan Meyer, Office of Air Quality, Environmental Protection Agency, Region 10, OAQ–107, 1200 Sixth Avenue, Seattle, WA 98101.

VIII. Future EPA Regulation Revisions

A. Ecology's delegation to conduct new source review and to implement and enforce the federal PSD regulations does not extend to revisions to 40 CFR 52.21 that occur, or have occurred, after March 3, 2003.

B. A new request for delegation will be required for any changes to 40 CFR Part 52.21 promulgated after March 3, 2003. Implementation and enforcement of new or revised requirements after March 3, 2003 will remain the sole responsibility of EPA until this Delegation Agreement is revised.

IX. Administrative

A. This delegation supersedes the previously delegated authority contained in the September 30, 1983 letter to Ecology from the EPA Regional Administrator and the February 7, 2002 and June 4, 1992 Agreements for Delegation.

B. If, after consultation with Ecology, EPA makes any of the following determinations, this delegation may be revoked in whole or in part. As part of the consultation, the parties will adhere to the "no surprises" principle and will follow the conflict resolution process described in Section IX of the *Washington State Compliance Assurance Agreement for Air Programs (October 1999)*. Any such revocation shall be effective as of the date specified in a *Notice of Revocation*.

1. Ecology's legal authority, rules and regulations, and/or procedures for implementing or enforcing the federal PSD requirements as provided in this Delegation Agreement are inadequate;
2. Ecology is not adequately implementing or enforcing the federal PSD program; or
3. Ecology has not implemented the requirements or guidance with respect to a specific permit in accordance with the terms and conditions of this delegation, the requirements of 40 CFR 52.21, 40 CFR 124, or the Clean Air Act.

C. In the event that Ecology is unwilling or unable to implement or enforce the federal PSD regulations as provided in this Delegation Agreement with respect to a source or activity subject to the federal PSD regulations, Ecology will immediately notify the Director of the Office of Air Quality. Failure to notify the Director of the Office of Air Quality does not preclude EPA from exercising its enforcement authority.

D. EPA may review the state PSD permitting program as part of the review of the Performance Partnership Agreement (PPA) or any other appropriate agreement. EPA may review State procedures and recommend changes as necessary. All recommendations will be in writing.

E. In the event that EPA or Ecology regulations or policies change, this delegation shall either be amended to ensure the continued implementation of EPA's PSD regulations or the delegation shall be revoked.

X. Signatures

On behalf of the Environmental Protection Agency, I grant partial delegation of the federal PSD program, 40 CFR 52.21, to the Washington Department of Ecology pursuant to the terms and conditions of this delegation agreement and the requirements of the Clean Air Act. Date: March 28, 2003. Betty A. Wiese, Director, Office of Air Quality, Environmental Protection Agency, Region 10.

On behalf of the State of Washington and the Department of Ecology, I accept partial delegation of the federal Prevention of Significant Deterioration program, 40 CFR 52.21, pursuant to the terms and conditions of this delegation agreement and the requirements of the Clean Air Act. Date: March 28, 2003. Mary E. Burg, Manager, Air Quality Program, State of Washington, Department of Ecology.

III. Conclusion

Subject to the conditions of the Partial Delegation Agreement, Ecology is delegated authority to implement and enforce the federal PSD regulations, as published on December 31, 2002, except for applications for PAL increases under 40 CFR 52.21(aa)(11) and except as otherwise provided in the Delegation Agreement. Except for applications for PAL increases under 40 CFR 52.21(aa)(11), all applications and other information required pursuant to the federal PSD regulations at 40 CFR 52.21 from sources located or locating in the State of Washington,[10] shall continue to be submitted to the Ecology at the following address: Department of Ecology, Air Quality Program, PO Box 47600, Olympia, WA 98504–7600. Applications for PAL increases under 40 CFR 52.21(aa)(11) shall be submitted to EPA Region 10 at the following address: Office of Air Quality, Environmental Protection Agency, Region 10, OAQ–107, 1200 Sixth Avenue, Seattle, WA 98101.

IV. Statutory and Executive Order Reviews

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this information notice is not a "significant regulatory action" and therefore is not subject to review by the Office of Management and Budget. For this reason, this information notice is also not subject to Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use" (66 FR 28355, May 22, 2001). This information notice imposes no additional requirements beyond those imposed by state law. Accordingly, the Administrator certifies that this information notice will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this information notice delegates pre-existing requirements under Federal law and does not impose any additional enforceable duty beyond that required by Federal law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4). This information notice also does not have tribal implications because it will not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal government and Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000). This information notice also does not have federalism implications because it does not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999). This information notice merely delegates the implementation of a Federal program, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. This information notice also is not subject to Executive Order 13045 "Protection of Children from Environmental Health Risks and Safety Risks" (62 FR 19885, April 23, 1997), because it is not economically significant.

In reviewing delegation requests, EPA's role is to approve state capabilities, provided that they meet the criteria of the Clean Air Act. In this context, in the absence of a prior existing requirement for the State to use voluntary consensus standards (VCS), EPA has no authority to disapprove a delegation request for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews a delegation request, to use VCS in place of a delegation request that otherwise satisfies the provisions of the Clean Air Act. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 *note*) do not apply. This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). This information notice granting partial delegation of the Federal PSD program to Ecology is issued under the authority of sections 101, 110, and 301 of the Clean Air Act, as amended (42 U.S.C. 7401, 7410, 7601).

Dated: May 1, 2003.

Ronald Kreizenbeck,

Acting Regional Administrator, Region 10.

[FR Doc. 03–12029 Filed 5–13–03; 8:45 am]

BILLING CODE 6560–50–P

[10] Except in Indian Country, as provided in paragraph III.B. of the Delegation Agreement, and sources subject to EFSEC's jurisdiction.

ENVIRONMENTAL PROTECTION AGENCY

[OPPT–2003–0004; FRL–7305–6]

Access to Confidential Business Information by Solutions by Design II

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has authorized its contractor Solutions by Design II (SBD) of McLean, VA access to information which has been submitted to EPA under sections 5 and 8 of the Toxic Substances Control Act (TSCA). Some of the information may be claimed or determined to be Confidential Business Information (CBI).

FOR FURTHER INFORMATION CONTACT: Barbara A. Cunningham, Director, Environmental Assistance Division (7408M), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: (202) 554–1404; e-mail address: TSCA-Hotline@.epa.gov.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does This Notice Apply to Me?

This action is directed to the public in general. This action may, however, be of interest to those persons who are or may be required to conduct testing of chemical substances under TSCA. Since other entities may also be interested, the Agency has not attempted to describe all the specific entities that may be affected by this action. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

B. How Can I Get Copies of This Document and Other Related Documents?

1. *Docket.* EPA has established an official public docket for this action under docket identification (ID) number OPPT–2003–0004. The official public docket consists of the documents specifically referenced in this action, any public comments received, and other information related to this action. Although a part of the official docket,

the public docket does not include CBI or other information whose disclosure is restricted by statute. The official public docket is the collection of materials that is available for public viewing at the EPA Docket Center, Rm. B102-Reading Room, EPA West, 1301 Constitution Ave., NW., Washington, DC. The EPA Docket Center is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The EPA Docket Center Reading Room telephone number is (202) 566–1744 and the telephone number for the OPPT Docket, which is located in EPA Docket Center, is (202) 566–0280.

2. *Electronic access.* You may access this **Federal Register** document electronically through the EPA Internet under the "**Federal Register**" listings at *http://www.epa.gov/fedrgstr/*.

An electronic version of the public docket is available through EPA's electronic public docket and comment system, EPA Dockets. You may use EPA Dockets at http://www.epa.gov/edocket/ to submit or view public comments, access the index listing of the contents of the official public docket, and to access those documents in the public docket that are available electronically. Although not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the docket facility identified in Unit I.B.1. Once in the system, select "search," then key in the appropriate docket ID number.

II. What Action Is the Agency Taking?

Under contract number GS35F–4717G, Solutions by Design II, of 1420 Spring Hill Road, Suite 325, McLean, Virginia, will assist EPA in designing and developing Lotus Notes PMN Development and Storage Applications. SBD will also assist in developing the TSCA Data Transmittal System to transmit PMNs and other TSCA data.

In accordance with 40 CFR 2.306(j), EPA has determined that under contract number GS35F–4717G, SBD will require access to CBI submitted to EPA under sections 5 and 8 of TSCA, to perform successfully the duties specified under the contract.

SBD personnel will be given access to information submitted to EPA under sections 5 and 8 of TSCA. Some of the information may be claimed or determined to be CBI.

EPA is issuing this notice to inform all submitters of information under sections 5 and 8 of TSCA, that the Agency may provide SBD access to these CBI materials on a need-to-know basis only. All access to TSCA CBI under this contract will take place at EPA Headquarters and Chemical Abstracts Service's site located at 2540 Olentangy River Road, Columbus, Ohio.

SBD personnel will be required to adhere to all provisions of EPA's *TSCA Confidential Business Information Security Manual.* SBD's personnel will be required to sign nondisclosure agreements and will be briefed on appropriate security procedures before they are permitted access to TSCA CBI.

Clearance for access to TSCA CBI under Contract number GS35F–4717G may continue until July 30, 2007.

List of Subjects

Environmental protection, Confidential business information.

Dated: April 30, 2003.

Robin L. Gonzalez,

Director, Information Management Division, Office of Pollution Prevention and Toxics.

[FR Doc. 03–11906 Filed 5–13–03; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7498–3]

Science Advisory Board; Advisory Council on Clean Air Compliance Analysis; Notification of an Upcoming Public Meeting and Three Planning Teleconferences

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The EPA Advisory Council on Clean Air Compliance Analysis (Council) is announcing a public meeting and a public planning teleconference. It is also announcing planning teleconferences for its two subcommittees, the Air Quality Modeling Subcommittee (AQMS) and the Health Effects Subcommittee (HES).

DATES:

May 28, 2003: The planning teleconference call meeting for the Council will be held from 12 to 2 p.m. (eastern time).

May 29, 2003: The planning teleconference call meeting for the HES will be held from 12 to 1:30 p.m. (eastern time).

May 30, 2003: The planning teleconference call meeting for the AQMS will be held from 2 to 3:30 p.m. (eastern time).

June 11–13, 2003: The public meeting for the Council will begin June 11, at 9 a.m. and adjourn on June 13, 2003, no later than 2 p.m. (eastern time) on that day. The meeting agenda will be posted on the SAB Web site, *http://www.epa.gov/sab/agendas.htm,* one week before the meeting.

ADDRESSES: The public meeting of the Council will be held in Washington, DC. The meeting location will be announced on the SAB Web site, *http://www.epa/sab.* For further information concerning the public meeting, please contact Dr. Angela Nugent, DFO (see contact information below). Participation in the teleconference call meetings will be by teleconference only.

FOR FURTHER INFORMATION CONTACT: Any member of the public wishing further information regarding the public meeting may contact Dr. Angela Nugent, Designated Federal Officer (DFO), U.S. EPA Science Advisory Board by telephone/voice mail at (202) 564–4562 or via e-mail at *nugent.angela@epa.gov.* Members of the public who wish to obtain the call-in number and access code to participate in any of the teleconference meetings must contact Ms. Sandra Friedman, EPA Science Advisory Board Staff, at telephone/voice mail: (202) 564–2526, via e-mail at: *Friedman.Sandra@epa.gov.* General information about the SAB can be found in the SAB Web site at *http://www.epa.gov/sab.*

SUPPLEMENTARY INFORMATION:

Summary: Pursuant to the Federal Advisory Committee Act, Pub. L. 92–463, notice is hereby given that the Council will hold a public meeting to provide advice to the EPA on the Agency's plan to develop the third in a series of statutorily mandated comprehensive analyses of the total costs and total benefits of programs implemented pursuant to the Clean Air Act, and that the Council and its two subcommittees will also hold public teleconferences to plan for the public meeting. The dates and times for both the meeting and teleconference are provided above.

Background: Background on the Council, its subcommittees, and on the advisory project that will be the focus of the meeting and teleconferences described in this notice was provided in a **Federal Register** notice published on February 14, 2003 (68 FR 7531–7534).

In forming the Health and Ecological Effects Subcommittee discussed in that **Federal Register** notice, the Science Advisory Board Staff Office received nominations for health effects experts. It has therefore decided to rename the Subcommittee as the "Health Effects Subcommittee" of the Council and to work with the Council to form a new subcommittee to focus on ecological effects or to develop another appropriate mechanism to consider and give due attention to ecological effects, including coordination with a new SAB Committee on "Valuing the Protection of Ecological Systems and Services."

Meeting Accommodations: Individuals requiring special accommodation to access the public meetings listed above, should contact the DFO at least five business days prior to the meeting so that appropriate arrangements can be made.

Dated: May 8, 2003.

Robert Flaak,

Acting Deputy Director, EPA Science Advisory Board Staff Office.

[FR Doc. 03–12028 Filed 5–13–03; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[OPP–2003–0118; FRL–7301–3]

Fluroxypyr; Notice of Filing a Pesticide Petition to Establish a Tolerance for a Certain Pesticide Chemical in or on Food

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces the initial filing of a pesticide petition proposing the establishment of regulations for residues of a certain pesticide chemical in or on various food commodities.

DATES: Comments, identified by docket ID number OPP– 2003–0118, must be received on or before June 13, 2003.

ADDRESSES: Comments may be submitted electronically, by mail, or through hand delivery/courier. Follow the detailed instructions as provided in Unit I. of the **SUPPLEMENTARY INFORMATION.**

FOR FURTHER INFORMATION CONTACT: Joanne I. Miller, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 305–6224; e-mail address: *miller.joanne@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does This Action Apply to Me?

You may be potentially affected by this action if you an agricultural producer, food manufacturer or pesticide manufacturer. Potentially affected entities may include, but are not limited to:

- Crop production (NAICS Code 111)
- Animal production (NAICS Code 112)
- Food manufacturing (NAICS Code 311)
- Pesticide manufacturing (NAICS Code 32532)

This listing is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in this unit could also be affected. The North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether this action might apply to certain entities. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT.**

B. How Can I Get Copies of This Document and Other Related Information?

1. *EPA Docket.* EPA has established an official public docket for this action under docket ID number OPP–2003–0118. The official public docket consists of the documents specifically referenced in this action, any public comments received, and other information related to this action. Although, a part of the official docket, the public docket does not include Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. The official public docket is the collection of materials that is available for public viewing at the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA. This docket facility is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The docket telephone number is (703) 305–5805.

2. *Electronic access.* You may access this **Federal Register** document electronically through the EPA Internet under the "**Federal Register**" listings at *http://www.epa.gov/fedrgstr/.*

An electronic version of the public docket is available through EPA's electronic public docket and comment system, EPA dockets. You may use EPA Dockets at *http://www.epa.gov/edocket/* to submit or view public comments, access the index listing of the contents of the official public docket, and to access those documents in the public docket that are available electronically. Although, not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the docket facility identified in Unit I.B.1. Once in the system, select "search," then key in the appropriate docket ID number.

Certain types of information will not be placed in the EPA dockets. Information claimed as CBI and other information whose disclosure is restricted by statute, which is not included in the official public docket, will not be available for public viewing in EPA's electronic public docket. EPA's policy is that copyrighted material will not be placed in EPA's electronic public docket but will be available only on printed, paper form in the official public docket. To the extent feasible, publicly available docket materials will be made available in EPA's electronic public docket. When a document is selected from the index list in EPA dockets, the system will identify whether the document is available for viewing in EPA's electronic public docket. Although, not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the docket facility identified in Unit I.B. EPA intends to work towards providing electronic access to all of the publicly available docket materials through EPA's electronic public docket.

For public commenters, it is important to note that EPA's policy is that public comments, whether submitted electronically or on paper, will be made available for public viewing in EPA's electronic public docket as EPA receives them and without change, unless the comment contains copyrighted material, CBI, or other information whose disclosure is restricted by statute. When EPA identifies a comment containing copyrighted material, EPA will provide a reference to that material in the version of the comment that is placed in EPA's electronic public docket. The entire printed comment, including the copyrighted material, will be available in the public docket.

Public comments submitted on computer disks that are mailed or delivered to the docket will be transferred to EPA's electronic public docket. Public comments that are mailed or delivered to the docket will be scanned and placed in EPA's electronic public docket. Where practical, physical objects will be photographed, and the photograph will be placed in EPA's electronic public docket along with a brief description written by the docket staff.

C. How and to Whom Do I Submit Comments?

You may submit comments electronically, by mail, or through hand delivery/courier. To ensure proper receipt by EPA, identify the appropriate docket ID number in the subject line on

the first page of your comment. Please ensure that your comments are submitted within the specified comment period. Comments received after the close of the comment period will be marked "late." EPA is not required to consider these late comments. If you wish to submit CBI or information that is otherwise protected by statute, please follow the instructions in Unit I.D. Do not use EPA dockets or e-mail to submit CBI or information protected by statute.

1. *Electronically.* If you submit an electronic comment as prescribed in this unit, EPA recommends that you include your name, mailing address, and an e-mail address or other contact information in the body of your comment. Also, include this contact information on the outside of any disk or CD ROM you submit, and in any cover letter accompanying the disk or CD ROM. This ensures that you can be identified as the submitter of the comment, and allows EPA to contact you in case EPA cannot read your comment due to technical difficulties or needs further information on the substance of your comment. EPA's policy is that EPA will not edit your comment, and any identifying or contact information provided in the body of a comment will be included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment.

i. *EPA Dockets.* Your use of EPA's electronic public docket to submit comments to EPA electronically is EPA's preferred method for receiving comments. Go directly to EPA dockets at *http://www.epa.gov/edocket,* and follow the online instructions for submitting comments. Once in the system, select "search," and then key in docket ID number OPP–2003–0118. The system is an "anonymous access" system, which means EPA will not know your identity, e-mail address, or other contact information unless you provide it in the body of your comment.

ii. *E-mail.* Comments may be sent by e-mail to *opp-docket@epa.gov,* Attention: Docket ID number OPP–2003–0118. In contrast to EPA's electronic public docket, EPA's e-mail system is not an "anonymous access" system. If you send an e-mail comment directly to the docket without going through EPA's electronic public docket, EPA's e-mail system automatically captures your e-mail address. E-mail addresses that are automatically captured by EPA's e-mail system are included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket.

iii. *Disk or CD ROM.* You may submit comments on a disk or CD ROM that you mail to the mailing address identified in Unit I.C.2. These electronic submissions will be accepted in WordPerfect or ASCII file format. Avoid the use of special characters and any form of encryption.

2. *By mail.* Send your comments to: Public Information and Records Integrity Branch (PIRIB) (7502C), Office of Pesticide Programs (OPP), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001, Attention: Docket ID Number OPP–2003–0118.

3. *By hand delivery or courier.* Deliver your comments to: Public Information and Records Integrity Branch (PIRIB), Office of Pesticide Programs (OPP), Environmental Protection Agency, Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA, Attention: Docket ID Number OPP–2003–0118. Such deliveries are only accepted during the docket's normal hours of operation as identified in Unit I.B.1.

D. How Should I Submit CBI to the Agency?

Do not submit information that you consider to be CBI electronically through EPA's electronic public docket or by e-mail. You may claim information that you submit to EPA as CBI by marking any part or all of that information as CBI (if you submit CBI on disk or CD ROM, mark the outside of the disk or CD ROM as CBI and then identify electronically within the disk or CD ROM the specific information that is CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

In addition to one complete version of the comment that includes any information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket and EPA's electronic public docket. If you submit the copy that does not contain CBI on disk or CD ROM, mark the outside of the disk or CD ROM clearly that it does not contain CBI. Information not marked as CBI will be included in the public docket and EPA's electronic public docket without prior notice. If you have any questions about CBI or the procedures for claiming CBI, please consult the person listed under **FOR FURTHER INFORMATION CONTACT.**

E. What Should I Consider as I Prepare My Comments for EPA?

You may find the following suggestions helpful for preparing your comments:

1. Explain your views as clearly as possible.

2. Describe any assumptions that you used.

3. Provide copies of any technical information and/or data you used that support your views.

4. If you estimate potential burden or costs, explain how you arrived at the estimate that you provide.

5. Provide specific examples to illustrate your concerns.

6. Make sure to submit your comments by the deadline in this notice.

7. To ensure proper receipt by EPA, be sure to identify the docket ID number assigned to this action in the subject line on the first page of your response. You may also provide the name, date, and **Federal Register** citation.

II. What Action Is the Agency Taking?

EPA has received a pesticide petition as follows proposing the establishment and/or amendment of regulations for residues of a certain pesticide chemical in or on various food commodities under section 408 of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a. EPA has determined that this petition contains data or information regarding the elements set forth in FFDCA section 408(d)(2); however, EPA has not fully evaluated the sufficiency of the submitted data at this time or whether the data support granting of the petition. Additional data may be needed before EPA rules on the petition.

List of Subjects

Environmental protection, Agricultural commodities, Feed additives, Food additives, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: April 30, 2003.

Debra Edwards,

Director, Registration Division, Office of Pesticide Programs.

Summary of Petition

The petitioner's summary of the pesticide petition is printed below as required by FFDCA section 408(d)(3). The summary of the petition was prepared by Dow AgroSciences and represents the view of the petitioner. The petition summary announces the availability of a description of the analytical methods available to EPA for the detection and measurement of the pesticide chemical residues or an explanation of why no such method is needed.

Dow AgroSciences

PP 9F6050

EPA has received a pesticide petition (9F6050) from Dow AgroSciences, 9330 Zionsville Road, Indianapolis, IN 46268 proposing, pursuant to section 408(d) of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a(d), to amend 40 CFR part 180 by establishing tolerances for residues of fluroxypyr in or on the raw agricultural commodities as follows: tolerances for residues of fluroxypyr 1-methylheptyl ester (MHE) in or on sweet corn are being proposed in support of this registration as follows: 0.02 parts per million (ppm) for kernels plus cob with husk removed, and 1.0 ppm for forage. Tolerances for residues of fluroxypyr MHE in or on field corn are being proposed in support of this registration as follows: 0.02 ppm for grain; 1.0 ppm for forage; and 0.5 ppm for stover. Tolerances for residues of fluroxypyr MHE in or on sorghum are being proposed as follows: Sorghum grain, 0.02 ppm; sorghum forage, 2.0 ppm; sorghum stover, 4.0 ppm. Tolerances for residues of fluroxypyr MHE in or on grasses are proposed as follows: grass forage, 120 ppm; grass hay, 160 ppm; and grass silage, 100 ppm. Based on the above tolerances and an animal feeding study, increased tolerances are also proposed for fluroxypyr MHE and fluroxypyr, expressed as combined residues of total fluroxypyr, in or on the following animal commodities: milk of cattle, goats, hogs, horses and sheep, 0.3 ppm; and kidney of cattle, goats, hogs, horses and sheep, 1.5 ppm. EPA previously received a pesticide petition (9F6050) for fluroxypyr and the Notice of Filing was published in the **Federal Register** on January 15, 2003. The notice of filing erroneously omitted tolerances proposed for residues of fluroxypyr on corn. Thus, this notice will supercede the previously published notice of filing.

A. Residue Chemistry

1. *Plant metabolism.* Fluroxypyr is a systemic herbicide that is readily translocated and rapidly converts to the acid form following absorption. Fluroxypyr moves readily throughout the plant via the phloem (nutrient transporting) system and to a lesser extent through the xylem (water transporting). Fluroxypyr is distributed throughout the entire plant, including the meristems and other developing plant parts.

2. *Analytical method.* There is a practical method gas chromatography (GC) with mass spectrometry detection (MSD) for measuring levels of fluroxypyr MHE in or on food with a limit of detection that allows monitoring of food with residues at or above the levels set for the proposed tolerances. Fluroxypyr has been tested through the Food and Drug Administration's (FDA's) Multi residue Methodology, Protocols C, D, and E. The results have been published in the FDA Pesticide Analytical Manual, Volume I.

3. *Magnitude of residues.* The metabolism of fluroxypyr MHE in plants and animals (goats and poultry) is adequately understood for the purposes of these tolerances. Magnitudes of residue studies were conducted for field corn, sweet corn, sorghum and grasses. A process products study was not conducted in field corn since residues of fluroxypyr MHE were not detected in corn grain at 5X the application rate. In addition, processing of sorghum was not conducted since residue data for flour are not required at this time, because sorghum flour is used exclusively in the United States as a component for drywall, and not as either a human food or a feedstuff. No residues of fluroxypyr are expected in root or leafy vegetable crops grown in rotation to fluroxypyr-treated field corn, sweet corn, sorghum, and grasses, after a 30–day plant-back interval at the maximum allowable label rate of 8 oz. active ingredient/Acre (a.i./A). Field corn, sweet corn, sorghum and grasses grown in rotation may contain low levels of fluroxypyr residues; however, the tolerance values proposed for these crops will adequately assure compliance with the labeled use patterns.

B. Toxicological Profile

1. *Acute toxicity.* Fluroxypyr MHE has low acute toxicity. The rat oral LD_{50} is >5,000 milligrams/kilogram (mg/kg), the rabbit dermal LD_{50} is >2,000 mg/kg, and the rat inhalation LC_{50} is > 1.0 milligrams/per liter (mg/l) 1,000 mg/cubic meter. In addition, fluroxypyr MHE is not a skin sensitizer in guinea pigs, has no dermal irritation in rabbits, and shows mild ocular irritation in rabbits. The end use formulation of fluroxypyr MHE has a similar low acute toxicity profile.

2. *Genotoxicty.* Short term assays for genotoxicity consisting of a bacterial reverse mutation assay (Ames test), an *in vitro* assay for cytogenetic damage using the Chinese hamster ovary cells, an *in vitro* chromosomal aberration assay using rat lymphocytes, and an *in vivo* cytogenetic assay in the mouse bone marrow (micronucleus test) have been conducted with fluroxypyr MHE. These studies show a lack of genotoxicity. In addition, short term assays for genotoxicity consisting of an Ames metabolic activation test, possible induction of point mutations at the hypoxanthine guanine phophoribosyl transferase (HGPRT)-Locus of Chinese hamster ovary cells, *in vivo* and *in vitro* chromosomal aberrations in the Chinese hamster ovary cells, unscheduled DNA synthesis in human embryonic cells, and an assay in mouse lymphoma cells have been conducted with fluroxypyr. These studies also show a lack of genotoxicity.

3. *Reproductive and developmental toxicity.* Developmental studies in rats and rabbits were conducted with both fluroxypyr MHE and fluroxypyr. Studies with fluroxypyr MHE showed maternal and fetal no observed adverse effect levels (NOAELs) of 300 mg/kg/day (rat) and 500 mg/kg/day (rabbit). Studies with fluroxypyr showed NOAELs in the rat of 250 mg/kg/day for maternal effects and 500 mg/kg/day for fetal effects and a NOAEL in the rabbit of 250 mg/kg/day for both maternal and fetal effects. These studies show that fluroxypyr and fluroxypyr MHE are not teratogenic nor will they interfere with *in utero* development. Two multi-generation reproduction studies were conducted with fluroxypyr in rats. The first in Wistar rats showed no effect on fertility or reproductive performance and had a NOAEL of 500 mg/kg/day (highest dose tested). The second study in Sprague-Dawley rats showed a parental NOAEL for systemic effects of 100 mg/kg/day in male rats and 500 mg/kg/day in female rats. The NOAEL for reproductive effects was 750 mg/kg/day for males and 1,000 mg/kg/day for females (highest dose tested). The NOAEL for neonatal effects was 500 mg/kg/day.

4. *Subchronic toxicity.* Fluroxypyr MHE showed a NOAEL of 1,000 mg/kg/day in a 90–day rat dietary study and a 21–day rabbit dermal study. Ninety day feeding studies with fluroxypyr showed NOAELs of 80 mg/kg/day (Wistar rats), 700 mg/kg/day (Fischer 344 rats), 1,342 mg/kg/day (male mice), and 1,748 mg/kg/day (female mice). In a 4–week dietary, range finding study with fluroxypyr in dogs the NOAEL found was > 50 mg/kg/day.

5. *Chronic toxicity.* Based on chronic testing with fluroxypyr in the mouse, dog, and rat (two studies), a reference dose (RfD) of 0.8 mg/kg/day is proposed for fluroxypyr and fluroxypyr MHE. The RfD has incorporated a 100-fold safety factor to the NOAEL found in the rat chronic test. NOAELs found in the chronic dietary studies are as follows: 150 mg/kg/day (dog), 300 mg/kg/day

(mouse), 80 mg/kg/day (Wistar rats), 100 mg/kg/day (male Fischer 344 rats), and 500 mg/kg/day (female Fischer 344 rats).

6. *Animal metabolism.* Both fluroxypyr and fluroxypyr MHE have been evaluated in rat metabolism studies. In summary, these studies show that fluroxypyr MHE is rapidly hydrolyzed and the fate of the hydrolysis products, fluroxypyr and 1-methylheptanol, are independent of whether they were given as the ester or the acid. Fluroxypyr, per se, was extensively absorbed and rapidly excreted principally unchanged in the urine; 1-methylheptanol also was rapidly absorbed and rapidly eliminated. Repeated administration of fluroxypyr MHE was not associated with accumulation in tissues. Also, the metabolism and pharmacokinetics of 1-methylheptanol are comparable to that of the methylheptyl portion of fluroxypyr MHE.

7. *Metabolite toxicology.* Administration of fluroxypyr, as the acid or methylheptyl ester in a variety of toxicological studies, has produced similar effects. The principal response to sufficiently high dosages, whether administered over the short-term or, in some cases, over a lifetime, was nephrosis. Fluroxypyr is an organic acid that is actively excreted into the urine by the kidney. Thus, the target organ and dose response relationship for fluroxypyr toxicity is entirely consistent with the data on the toxicokinetics of fluroxypyr. Metabolism studies have shown that fluroxypyr MHE is rapidly and completely hydrolyzed to fluroxypyr acid and methylheptanol.

8. *Endocrine disruption.* There is no evidence to suggest that fluroxypyr and fluroxypyr MHE have an effect on any endocrine system.

C. Aggregate Exposure

1. *Dietary exposure*—i. *Food.* Tier I dietary risk assessments were conducted for acute, short-term, and chronic exposures. Very conservative assumptions were made in these risk assessments. The dietary exposure assessments were based on all commodities with tolerances for fluroxypyr established at 40 CFR 180.535 together with proposed tolerances for field corn, sweet corn, grain sorghum, and forage grass and hay, including revised tolerances for milk and meat. It was assumed that fluroxypyr residues were present at tolerance or proposed tolerance levels and that 100% of the crops were treated. Potential dietary exposure and risk was estimated using DEEM™ software (Dietary Exposure Evaluation Model, Version 7.075, Novigen Sciences, Inc., Washington, DC).

Developmental toxicity was not observed in the absence of maternal toxicity and there was no indication of increased susceptibility in young animals to prenatal or postnatal exposure to fluroxypyr in the toxicology studies. Therefore, an additional Food Quality Protection Act (FQPA) safety factor for infants and children was not included in this assessment. Acute dietary risk was assessed using an acute RfD of 1.25 mg/kg/day, based on a maternal NOAEL of 125 mg/kg/day from a rat developmental toxicity study and an uncertainty factor of 100 (10X for interspecies extrapolation and 10X for intraspecies variation). EPA previously established the maternal NOAEL for this study at 125 mg/kg/day and it was used here for a very conservative assessment of potential developmental toxicity. Pregnant females are estimated to have acute dietary exposure of 0.006582 mg/kg/day, which occupies only 0.53% of the acute RfD. Adverse effects are not expected for exposures occupying 100% or less of the RfD. Therefore, acute dietary exposure and risk are well within acceptable levels.

Chronic dietary exposure estimates along with a short-term oral NOAEL were used to assess short-term dietary exposure and risk. The assessment of chronic dietary exposure and risk is discussed below. The chronic exposure values reported for the total U.S. population and for children 1–6 years old was used to estimate dietary exposure for adults and toddlers, respectively. A 90–day dietary study in rats with a NOAEL of 80 mg/kg/day was selected for establishing a short-term oral toxicity endpoint. A 90–day subchronic study was selected for evaluating risk from short-term oral exposure since the 90–day exposure interval is more appropriate than chronic exposure for assessing short-term risk. Of the 90–day subchronic studies conducted with fluroxypyr, the one selected provided the lowest NOAEL. The short-term oral NOAEL (80 mg/kg/day) was divided by the estimated dietary exposure for adults and toddlers to calculate the respective short-term margins of exposure (MOEs). A conservative Tier I estimate of chronic dietary exposure to fluroxypyr estimated exposure at 0.003160 mg/kg/day and 0.010321 mg/kg/day for the total U.S. population and for children 1–6 years old, respectively. A short-term dietary (food) MOE was calculated by dividing the short-term oral NOAEL (80 mg/kg/day) by the estimated exposure (0.003160 mg/kg/day). The resulting food MOE for adults and toddlers was calculated to be 25,316 and 7,751, respectively. Since the MOE is substantially greater than 100, risk is estimated to be well within acceptable levels.

Tolerances for fluroxypyr exist for several raw agricultural commodities and as discussed previously, tolerances for additional commodities have been proposed. Chronic dietary exposure to fluroxypyr is possible due to the potential presence of fluroxypyr residue in certain foods. Therefore, a chronic dietary risk assessment was conducted. The assessment used a chronic RfD of 0.8 mg/kg/day based on a NOAEL of 80 mg/kg/day from a combined chronic toxicity and carcinogenicity study in rats and an uncertainty factor of 100 (10X for interspecies extrapolation and 10X for intraspecies variation). A Tier I chronic dietary exposure and risk assessment was conducted. It was assumed that fluroxypyr residues were present at tolerance or proposed tolerance levels and that 100% of the crops were treated. DEEM™ estimates dietary exposure and the percent of the chronic RfD that is occupied by the input residue values for several population subgroups in the United States. Chronic dietary exposure for the general U.S. population was estimated to be 0.003160 mg/kg/day, which occupies 0.4% of the RfD. Children 1–6 years old comprise the population subgroup predicted to have the highest potential level of dietary exposure. Children 1–6 years old are estimated to have a chronic dietary exposure of 0.010321 mg/kg/day, which occupies 1.3% of the RfD. Adverse effects are not expected for exposures occupying 100% or less of the RfD. Therefore, chronic dietary exposure and risk for both the general U.S. population and children 1–6 years old are well within acceptable levels.

ii. *Drinking water.* There are no established maximum contaminant levels for residues of fluroxypyr in drinking water and health advisory levels for fluroxypyr in drinking water have not been established. Guidance from EPA has indicated that Tier I screening level models, such as GENEEC and SCI-GROW, may be used to estimate upper-bound pesticide residues in surface water and ground water when assessing potential exposure through drinking water. Estimated concentrations of a pesticide in surface water or ground water are then compared to a drinking water level of comparison (DWLOC) as a surrogate estimate of exposure and risk. The DWLOC is the concentration of a pesticide in drinking water that would be acceptable as an upper limit in light of total aggregate exposure to that pesticide. Potential drinking water concentrations of fluroxypyr were estimated in ground water and surface water using the screening concentration in ground water (SCI-GROW) and the generic expected environmental concentration (GENEEC) models, respectively. Both SCI-GROW are Tier I screening level models that use conservative assumptions.

The estimated concentration of fluroxypyr in ground water according to SCI-GROW is 0.16 mg/L. EPA has indicated that peak concentrations of a pesticide in surface water should be used in an acute assessment for comparison with DWLOC values. The estimated peak concentration of fluroxypyr in surface water using GENEEC is 20.88 mg/L. The upperbound estimated fluroxypyr concentrations in ground water (0.16 mg/L) and surface water (20.88 mg/L) are substantially below the acute DWLOC of 37,303 mg/L for pregnant females. Therefore, even with the numerous conservative assumptions included in this assessment, aggregated acute fluroxypyr exposure for pregnant females resulting from dietary exposure and upper-bound drinking water exposure is well within acceptable limits of exposure and risk.

As indicated above, the estimated concentration of fluroxypyr in ground water according to SCI-GROW is 0.16 mg/L. EPA has indicated that the 56–day value from GENEEC should be divided by 3 for comparison to short-term, intermediate-term and chronic DWLOC values. The estimated 56–day concentration of fluroxypyr in surface water using GENEEC is 7.08 mg/L. Therefore, the surface water concentration used in this assessment is 2.36 mg/L (7.08 mg/L / 3). Potential residential exposure resulting from fluroxypyr use on turf was included along with potential dietary exposure when calculating the short-term DWLOC for adults and toddlers. The short-term DWLOC for toddlers and the general population of adults was calculated to be 7,843 mg/L and 27,450 mg/L, respectively. The DWLOCs are substantially greater than high-end estimated exposure from surface water or ground water, indicating risk from potential drinking water exposure is well within acceptable levels.

As indicated above with short-term exposure, Tier I screening level estimates of potential fluroxypyr concentrations in ground water and surface water are 0.16 mg/L and 2.36 mg/L, respectively. Chronic DWLOCs for children 1–6 years old and for the general population of adults are 7,896 mg/L and 27,889 mg/L, respectively. Since the chronic DWLOCs are substantially greater than potential exposure through ground water or surface water, risk from potential chronic exposure through drinking water is well within acceptable levels.

2. *Non-dietary exposure.* The proposed use of fluroxypyr on residential turf presents the potential for short-term residential exposure. Homeowners may have dermal and inhalation exposure to fluroxypyr during application to turf and also may have dermal exposure due to post-application activity on the treated turf. Toddlers may have dermal and oral exposure to fluroxypyr due to post-application activity on treated turf. Transferable residue of fluroxypyr from turf was found to range from 0.03 to 0.74% (used as a high end stimate) of the fluroxypyr applied and to dissipate with a half-life ranging from 1.4 to 2.5 days. Exposure was estimated based on equations and default values given in the Standard Operating Procedures (SOPs) for Residential Exposure Assessment. Risk from short-term dermal exposure was assessed using a NOAEL of 1,000 mg/kg/day from a 21–day rabbit dermal study. Short-term oral and inhalation exposure was assessed using a NOAEL of 80 mg/kg/day from a 90–day rat feeding study.

A high-end estimate of exposure for adults was developed by combining dermal exposure from application of fluroxypyr to turf with post-application dermal exposure also on the day of treatment (day 0). Homeowner exposure during the application of fluroxypyr to turf includes both dermal and inhalation exposure. Surrogate dermal and inhalation exposure data from Pesticide Handlers Exposure Data base (PHED V1.1) was used in estimating applicator exposure. The PHED surrogate data used to estimate exposure assumes residential applicator attire to include short pants, shortsleeve shirt, and no gloves. The applicator exposure estimate was based on a broadcast application using a garden hose end sprayer. Margin of exposure (MOE) values for dermal and inhalation exposures were calculated using the toxicity endpoints previously described. Based on these Tier I screening-level estimates, the general population of adults was estimated to have potential dermal and inhalation exposures resulting in MOE values of 8,635 and 2,666,667, respectively. These MOEs are substantially greater than 100, indicating that risk from these potential exposures is well within acceptable levels.

Toddlers may have exposure to fluroxypyr due to post-application activity on treated turf. When a pesticide in liquid formulation is applied to turfgrass toddlers may experience post-application exposure through dermal exposure and also, through oral exposure due to hand-to-mouth transfer of pesticide residue and ingestion of treated turfgrass from treated areas. Based on Tier I screening-level estimates, the MOE values for dermal exposure and oral exposures are 34,722 and 26,667, respectively. Even with conservative Tier I estimates the MOEs are well above 100, indicating that risk from these potential exposures is well within acceptable levels.

D. Cumulative Effects

The potential for cumulative effects of fluroxypyr MHE and fluroxypyr and other substances that have a common mechanism of toxicity is also considered. There is no reliable information to indicate that toxic effects produced by fluroxypyr MHE and fluroxypyr would be cumulative with those of any other pesticide chemical. Thus, it is appropriate to consider only the potential risks of fluroxypyr MHE and fluroxypyr in an aggregate exposure assessment.

E. Safety Determination

1. *U.S. population.* Acute dietary exposure for pregnant females to residues of fluroxypyr from current and proposed uses was estimated to occupy only 0.53% of the acute RfD, which is well below levels expected to pose any appreciable risk to human health. Additionally, the acute DWLOC was calculated to be over 1,700–fold greater than potential fluroxypyr residue in drinking water predicted by conservative screening level models. Thus, aggregated acute exposure to fluroxypyr resulting from current and proposed uses is well within acceptable levels of risk.

Use of fluroxypyr on turf results in potential short-term residential exposure for adults. Potential short-term dietary and residential exposures were combined into an aggregate MOE. Potential exposure through drinking water was not included in the aggregate MOE, but was evaluated in aggregate through use of a DWLOC calculated for short-term exposure. The short-term aggregate MOE for the general population of adults was calculated to be 6,423. Additionally, the short-term DWLOC for the general population of adults was over 10,000-fold greater than potential fluroxypyr residues in drinking water predicted by conservative screening level models.

Therefore, aggregate short-term exposure and risk for adults is expected to be well within acceptable levels.

Using conservative exposure assumptions previously described, chronic dietary exposure to residues of fluroxypyr from current and proposed uses was estimated to occupy only 0.4% of the RfD for the general U.S. population. The chronic DWLOC for adults was calculated to be over 10,000 fold greater than potential fluroxypyr residue in drinking water predicted by conservative screening-level models.

Thus, based on the completeness and reliability of the toxicity data and the conservative exposure assessment it is concluded that there is a reasonable certainty that no harm will result to the general U.S. population, pregnant females, or developing young from acute, short-term, or chronic aggregate exposures to fluroxypyr residues from current and proposed uses.

2. *Infants and children.* FFDCA Section 408 provides that EPA may apply an additional safety factor for infants and children in the case of threshold effects to account for prenatal and postnatal toxicity and the completeness of the data base. Based on the current toxicological data requirements, the data base for fluroxypyr MHE relative to prenatal and postnatal effects for children is complete. There were no indications of neurotoxicity and developmental toxicity was not observed in the absence of maternal toxicity. It is concluded that there is no indication of increased sensitivity of infants and children relative to adults and that an additional FQPA safety factor is not required.

The acute and short-term exposures were assessed for pregnant females to evaluate the risk for developmental toxicity and it was concluded that, there was reasonable certainty of no harm from aggregate exposures resulting from current and proposed uses of fluroxypyr.

Toddlers may experience short-term dermal and oral exposure to fluroxypyr as a result of postapplication activities on treated residential turf. Additionally, there is the potential for exposure to fluroxypyr through residue in food and drinking water. Tier I assessments were conducted to develop very conservative estimates of potential short-term exposure through residential, dietary and drinking water pathways. Potential dietary and residential exposures were combined into an aggregate MOE value. The aggregate MOE was 5,120, well above 100, indicating risk is well within acceptable levels. Additionally, the short-term DWLOC for toddlers was greater than potential fluroxypyr residue in drinking water predicted by conservative screening level models.

Based on a conservative Tier I assessment, chronic dietary exposure to residues of fluroxypyr from current and proposed uses was estimated to occupy only 1.3% of the RfD for children 1–6 years old, the population subgroup predicted to be most highly exposed. Additionally, the DWLOC was calculated to be over 3,000–fold greater than potential fluroxypyr residue in drinking water predicted by conservative screening level models.

Thus, based on the completeness and reliability of the toxicity data and the conservative exposure assessment it is concluded, that there is a reasonable certainty that no harm will result to infants and children from acute, short term, and chronic aggregate exposures to fluroxypyr residues from current and proposed uses.

F. International Tolerances

There are no Codex maximum residue levels established for residues of fluroxypyr MHE and fluroxypyr on any food or feed crop.

[FR Doc. 03–11759 Filed 5–13–03; 8:45 am]

BILLING CODE 6560–50–S

OFFICE OF SCIENCE AND TECHNOLOGY POLICY

Task Force on High End Computing; Notice of Request for Information

AGENCY: Office of Science and Technology Policy.

ACTION: Request for information.

SUMMARY: A task force on high end computing, through the National Coordination Office for Information Technology Research and Development under the National Science and Technology Council, invites the public to submit white papers relative to the task force's charge. The task force was established in March 2003 to implement planning activities in high end computing, as set forth in the President's 2004 budget. Additional information on the task force's charge is provided below. Details on the invitation to submit white papers on high end computing, can be found at: *http://www.itrd.gov/hecrtf-outreach/.*

DATES: Information must be received by May 21, 2003.

ADDRESSES: Responses to this request for information should be addressed to High End Computing Revitalization Task Force, National Coordination Office for Information Technology Research and Development, 4201 Wilson Blvd, Suite II–405, Arlington, VA 22230, PH: (703) 292-ITRD (4873), FAX: (703) 292–9097, *hecrtf-outreach@nitrd.gov.*

FOR FURTHER INFORMATION CONTACT: Dave Nelson at (703) 292–4873.

SUPPLEMENTARY INFORMATION: The High Computing Revitalization Task Force (HECRTF) was established in March 2003 to perform the tasks described in the following text that appears on page 177 in the Research and Development chapter of the FY 2004 Budget of the U.S. Government Analytical Perspectives:

"Due to its impact on a wide range of federal agency missions ranging from national security and defense to basic science, high end computing—or supercomputing—capability is becoming increasingly critical. Through the course of 2003, agencies involved in developing or using high end computing will be engaged in planning activities to guide future investments in this area, coordinated through the NSTC. The activities will include the development of interagency R&D roadmap for high-end computing core technologies, a federal high-end computing capacity and accessibility improvement plan, and a discussion of issues (along with recommendations where applicable) relating to federal procurement of high-end computing systems. The knowledge gained for this process will be used to guide future investments in this area. Research and software to support high end computing will provide a foundation for future federal R&D by improving the effectiveness of core technologies on which next-generation high-end computing systems will rely."

Stanley S. Sokul,

Counsel, Office of Science and Technology Policy.

[FR Doc. 03–12177 Filed 5–13–03; 8:45 am]

BILLING CODE 3170–01–P

FEDERAL ELECTION COMMISSION

Sunshine Act Meeting Notice

DATE AND TIME: Tuesday, May 20, 2003 at 10 a.m.

PLACE: 999 E Street, NW., Washington, DC.

STATUS: This meeting will be closed to the public.

ITEMS TO BE DISCUSSED:

Compliance matters pursuant to 2 U.S.C. 437g.

Audits conducted pursuant to 2 U.S.C. 437g, 438(b), and Title 26, U.S.C.

Matters concerning participation in civil actions or proceedings or arbitration.

Internal personnel rules and procedures or matters affecting a particular employee.

PERSON TO CONTACT FOR INFORMATION: Mr. Ron Harris, Press Officer, Telephone: (202) 694–1220.

Mary W. Dove,

Secretary of the Commission.

[FR Doc. 03–12143 Filed 5–12–03; 12:24 pm]

BILLING CODE 6715–01–M

FEDERAL MARITIME COMMISSION

Notice of Agreement(s) Filed

The Commission hereby gives notice of the filing of the following agreement(s) under the Shipping Act of 1984. Interested parties can review or obtain copies of agreements at the Washington, DC offices of the Commission, 800 North Capitol Street, NW., Room 940. Interested parties may submit comments on an agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days of the date this notice appears in the **Federal Register**.

Agreement No.: 011737–010.

Title: The MCA Agreement.

Parties: Atlantic Container Line AB; Alianca Navegacao e Logistica LTDA; A.P. Moller-Maersk Sealand; Antillean Marine Shipping Corporation; Bernuth Lines; CMA CGM, S.A.; Companhia Libra De Navegacao; Compania Sud Americana De Vapores S.A.; CP Ships (UK) Limited, d/b/a ANZDL and d/b/a Contship Containerlines; Crowley Liner Services, Inc.; Hamburg-Sud; Dole Ocean Cargo Express, Inc.; Great White Fleet (US) Ltd.; Hapag-Lloyd Container Linie GmbH; Italia Di Navegazione S.P.A. King Ocean Central America S.A.; King Ocean Service De Colombia S.A.; King Ocean Service De Venezuela S.A.; Lykes Lines Limited, LLC; Montemar Maritima S.A.; Norasia Container Line Limited; P&O Nedlloyd Limited; Safmarine Container Lines N.V.; TMM Lines Limited, LLC; Tropical Shipping & Construction Co., Ltd.; and Wallenius Wilhelmsen Lines AS.

Synopsis: The amendment modifies the membership of the agreement by adding Bernuth Lines, Ltd and Italia Di Navegazione S.P.A. and deleting Network Shipping Ltd. and Nippon Yusen Kaisha.

Agreement No.: 011799–001.

Title: Evergreen/Lloyd Triestino/Hatsu Marine Alliance—TSA Bridging Agreement.

Parties: Evergreen Marine Corp. (Taiwan) Ltd.; Lloyd Triestino di Navegazione S.p.A.; Hatsu Marine Limited; American President Lines, Ltd. and APL Co. Pte Ltd. (operating as one carrier); A.P. Moller-Maersk Sealand; CMA CGM S.A.; COSCO Container Lines Ltd.; Hanjin Shipping Co., Ltd.; Hapag-Lloyd Container Linie GmbH; Hyundai Merchant Marine Co., Ltd.; Kawasaki Kisen Kaisha, Ltd.; Mitsui O.S.K. Lines, Ltd.; Nippon Yusen Kaisha; Orient Overseas Container Line Limited; P&O Nedlloyd B.V.; P&O Nedlloyd Limited; Yangming Marine Transport Corp.

Synopsis: The proposed amendment would extend the duration of the agreement through June 15, 2004. The parties request expedited review because the agreement is due to expire on June 8, 2003.

Agreement No.: 011802–002.

Title: Evergreen/Lloyd Triestino/Hatsu Marine Alliance—WTSA Bridging Agreement.

Parties: Evergreen Marine Corp. (Taiwan) Ltd.; Lloyd Triestino di Navegazione S.p.A.; Hatsu Marine Limited; American President Lines, Ltd. and APL Co. Pte Ltd. (operating as one carrier); China Shipping Container Lines Co., Ltd.; COSCO Container Lines Ltd.; Hanjin Shipping Co., Ltd.; Hapag-Lloyd Container Linie GmbH; Hyundai Merchant Marine Co., Ltd.; Kawasaki Kisen Kaisha, Ltd.; Mitsui O.S.K. Lines, Ltd.; Nippon Yusen Kaisha; Orient Overseas Container Line Limited; P&O Nedlloyd B.V.; P&O Nedlloyd Limited; Yangming Marine Transport Corp.

Synopsis: The proposed amendment would extend the duration of the agreement through June 15, 2004. The parties request expedited review because the agreement is due to expire on June 15, 2003.

Agreement No.: 011853.

Title: CCNI/Lykes/Maruba Transpacific Vessel Sharing Agreement.

Parties: Maruba S.C.A., Lykes Lines Limited, LLC, Compania Chilena de Navegacion Interoceanica.

Synopsis: The agreement authorizes the parties to operate a weekly container liner service between Long Beach, California, and the PRC and sets forth the allocation of space and other matters related to the service. The parties request expedited review.

By Order of the Federal Maritime Commission.

Dated: May 9, 2003.

Bryant L. VanBrakle,

Secretary.

[FR Doc. 03–12032 Filed 5–13–03; 8:45 am]

BILLING CODE 6730–01–P

FEDERAL MARITIME COMMISSION

Ocean Transportation Intermediary License Revocations

The Federal Maritime Commission hereby gives notice that the following Ocean Transportation Intermediary licenses have been revoked pursuant to section 19 of the Shipping Act of 1984 (46 U.S.C. app. 1718) and the regulations of the Commission pertaining to the licensing of Ocean Transportation Intermediaries, effective on the corresponding date shown below:

License Number: 2724NF.
Name: Air 7 Seas Transport Logistics, Inc.
Address: 1815 Houret Court, Milpitas, CA 95035–6823.
Date Revoked: April 23, 2003.
Reason: Failed to maintain valid bonds.

License Number: 7399N.
Name: Air Van Lines International Inc.
Address: 1230 116th Avenue, NE., Bellevue, WA 98004.
Date Revoked: April 7, 2003.
Reason: Surrendered license voluntarily.

License Number: 4607F.
Name: Jolaco Maritime Services, Inc.
Address: 3620 Willowbend, Suite 1120, Houston, TX 77054.
Date Revoked: April 21, 2003.
Reason: Failed to maintain a valid bond.

License Number: 16974N.
Name: Sea-Logix, Inc.
Address: Metro Office Park, Compaq Bldg-400, San Juan, Puerto Rico 00936.
Date Revoked: February 21, 2003.
Reason: Surrendered license voluntarily.

Sandra L. Kusumoto,

Director, Bureau of Consumer Complaints and Licensing.

[FR Doc. 03–12033 Filed 5–13–03; 8:45 am]

BILLING CODE 6730–01–P

FEDERAL MARITIME COMMISSION

Ocean Transportation Intermediary License Applicants

Notice is hereby given that the following applicants have filed with the Federal Maritime Commission an application for license as a Non-Vessel Operating Common Carrier and Ocean Freight Forwarder—Ocean Transportation Intermediary pursuant to section 19 of the Shipping Act of 1984 as amended (46 U.S.C. app. 1718 and 46 CFR part 515).

Persons knowing of any reason why the following applicants should not

receive a license are requested to contact the Office of Transportation Intermediaries, Federal Maritime Commission, Washington, DC 20573.

Non-Vessel Operating Common Carrier Ocean Transportation Intermediary Applicants:

Global Ocean Agency Lines, L.L.C., 258 Fawn Drive, Sedona, AZ 86336, Officer: Timothy J. Cummings, Managing Director, (Qualifying Individual).

Amerasia Line, Inc., 28815 King Arthur Court, Rancho Palos Verdes, CA 90275, Officers: Shally Liang, President/CEO, (Qualifying Individual), Victor Lin, Secretary.

K & S Freight Systems Inc., 17099 SW 54 Court, Miramar, FL 33027, Officer: Nelson Solano, President, (Qualifying Individual).

Select Air Cargo Services, Inc. dba PAC, International Logistics Company, 12801 South Figueroa Street, Officers: Thomas W. Young, Vice President, (Qualifying Individual), Chee Tao Tsui, President/CEO.

Express Freight International, Inc., 7833 NW 72nd Avenue, Miami, FL 33166, Officer: Roberto Lopez, President, (Qualifying Individual).

Laufer Air Inc. dba Laufer Air Line Inc., SO International Unlimited, 20 Vessey Street S. 601, New York, NY 10007, Officer: Mark Laufer, President, (Qualifying Individual).

Omni Logistics, Inc., 3340 Greens Road Bldg., C #450, Houston, TX 77032, Officers: Mark Andrew McDowell, Treasurer, (Qualifying Individual), Jason Smith, President.

Non-Vessel Operating Common Carrier and Ocean Freight Forwarder Transportation Intermediary Applicants:

GII International, Inc., 47 West 34th Street, Suite 412, New York, NY 10001, Officers: Juanita Geronimo, President, (Qualifying Individual), May Soriano, Vice President.

Meyer's Van Lines, 370 Concord Avenue, Bronx, NY 10454, Officers: Yorah Eshel,Vice President, (Qualifying Individual), Ofer Prori, CEO.

Bates, Inc. dba Bates Shipping and Trading, 399 Koscluszko Street, Suite 10, Brooklyn, NY 11221, Officer: Donna Bates, President, (Qualifing Individual).

Asain Link Logistics LLC dba A.L.L., 829 Graves Street, Kernersville, NC 27284, Officer: David W. Reich, Jr., Member Manager, (Qualifying Individual).

Ocean Freight Forwarder—Ocean Transportation Intermediary Applicants:

New England Household Moving & Storage, Inc., 104 Bartzak Drive, Holliston, MA 01746, Officer: Jeanine Patricia Kelly-Coburn, President, (Qualifying Individual).

ABS–CBN International dba The Filipino Channel, 859 Cowan Road, Burlingame, CA 94010, Officers: Enrico Gatchalian, Manager, (Qualifying Individual), Eugenio L. Lopez, III, Chairman.

Global U.S.A., Inc., 32 Broadway, Suite 1718, New York, NY 10004, Officers: Mei Li, Vice President, (Qualifying Individual), Malvern Kaye, President.

Odyssey International, Inc., 39 Old Ridgebury Road, Danbury, CT 06817, Officers: Robert H. Shellman, CEO, (Qualifying Individual), Douglas A. Johnston, Director.

Dated: May 9, 2003.

Bryant L. VanBrakle,

Secretary.

[FR Doc. 03–12034 Filed 5–13–03; 8:45 am]

BILLING CODE 6730–01–P

FEDERAL MARITIME COMMISSION

Ocean Transportation Intermediary License Reissuance

Notice is hereby given that the following Ocean Transportation Intermediary licenses has been reissued by the Federal Maritime Commission pursuant to section 19 of the Shipping Act of 1984, as amended by the Ocean Shipping Reform Act of 1998 (46 U.S.C. app. 1718) and the regulations of the Commission pertaining to the licensing of Ocean Transportation Intermediaries, 46 CFR 515.

License No.	Name/Address	Date reissued
1803N	Blue Sky Blue Sea, Inc. dba American Export Lines dba International Shipping Company, 12919 S. Figueroa Street, Los Angeles, CA 90061.	March 29, 2003.
17663N	Data Cargo Co., Inc., 8757 NW 35th Lane, Miami, FL 33172	December 8, 2002.
4622N	E & M International L.L.C. dba Worldwide Transport, 5304 W. 135th Street, Hawthorne, CA 90250.	March 23, 2003.
11296N	Master Air Cargo, Inc., 8030 NW 29th Street, Miami, FL 33122	March 27, 2003.
16887F	Promax Automotive, Inc., 6722 Orangethorpe Avenue, Suite 175, Buena Park, CA 90622	April 9, 2003.

Sandra L. Kusumoto,

Director, Bureau of Consumer Complaints and Licensing.

[FR Doc. 03–12035 Filed 5–13–03; 8:45 am]

BILLING CODE 6730–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Agency for Toxic Substances and Disease Registry

[Program Announcement 03059]

Cooperative Agreement for a Research Program on Exposure-Dose Reconstruction Notice of Availability of Funds

Application Deadline: June 30, 2003.

A. Authority and Catalog of Federal Domestic Assistance Number

This program is authorized under section 104(i)(1)(E) of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) of 1980, as amended by the Superfund Amendments and Reauthorization Act (SARA) of 1986 (42 U.S.C. 9604(i)(1)(E)) and section 3019 of the Resource Conservation and Recovery Act (RCRA), as amended (Hazardous and Solid Waste Amendments of 1984) (42 U.S.C. 6939a(b) and (c)). The Catalog of Federal Domestic Assistance number is 93.161.

B. Purpose

The Agency for Toxic Substances and Disease Registry (ATSDR) announces the availability of fiscal year (FY) 2003 funds for a cooperative agreement research program for exposure-dose reconstruction. This program addresses the "Healthy People 2010" focus area of Environmental Health.

The purpose of the program is to develop and evaluate methods to reconstruct, estimate, predict, and evaluate exposures to widely varying contaminant concentrations, exposure frequencies, and exposure durations, with widely varying emission characteristics that can be found at National Priorities List (NPL) sites, Resource Conservation and Recovery Act (RCRA) facilities, and other sites or facilities where a hazardous substance has been released into the environment. The program will advance the development, evaluation, application, and maintenance of computational methodologies and decision support systems for estimating exposure-dose relations from contaminated environmental media and hazardous substances.

A critical aspect of assessing human health effects associated with hazardous waste sites is the evaluation of past, current, and future human exposures to hazardous substances. In order to accurately and meaningfully evaluate such exposures, more sensitive, media specific, and integrated methods must be developed through a program of research coordinated across multiple relevant, intra-related environmental, geochemical, and biomedical disciplines. No human subjects are involved.

Hazardous waste sites present a number of unique circumstances and problems for ATSDR's public health assessment process. Chief among these is the widespread occurrence of a number of hazardous chemicals and mixed hazardous chemical compounds. In addition, some of the more complex hazardous waste sites may contain multiple waste disposal areas within a single site. Thus, the health assessor may be confronted with the need to evaluate exposures to widely varying contaminant concentrations, exposure frequencies, and exposure durations, with widely varying geochemical and toxicological characteristics. More novel, reliable, and expedient exposure-dose assessment methods must be developed in order to adequately address site-specific issues.

Measurable outcomes of the program will be in alignment with the following performance goal for ATSDR: evaluate the human health risk from toxic sites and releases.

C. Eligible Applicants

Applications may be submitted by:

- State and local governments or their bona fide agents (this includes the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, the Commonwealth of the Northern Marianna Islands, American Samoa, Guam, the Federated States of Micronesia, the Republic of the Marshall Islands, and the Republic of Palau).
- Political subdivisions of states (in consultation with states), which may include state universities, state colleges, and state research institutions.

Note: Title 2 of the United States Code section 1611 states that an organization described in section 501c(4) of the Internal Revenue Code that engages in lobbying activities is not eligible to receive Federal funds constituting an award, grant or loan.

D. Funding

Availability of Funds

Approximately $300,000 is available in FY 2003 to fund one award. It is expected that the award will begin on or about September 15, 2003, and will be made for a 12-month budget period within a project period of up to 5 years. Funding estimates may change.

Continuation awards within an approved project period will be made on the basis of satisfactory progress as evidenced by required reports and the availability of funds.

Use of Funds

Funds may be expended for reasonable program purposes, such as personnel, travel, supplies and services. Funds for contractual services may be requested. However, the awardee, as the direct and primary recipient of ATSDR cooperative agreement funds, must perform a substantive role in carrying out project activities and not merely serve as a conduit for an award to another party or provide funds to an ineligible party. If contractors are proposed, justification must be provided along with the following: (1) Name of contractor; (2) method of selection; (3) period of performance; (4) detailed budget; (5) justification for use of contractor; and (6) assurance of non-conflict of interest.

Equipment may be purchased with cooperative agreement funds. However, the equipment proposed should be appropriate and reasonable for the activity to be conducted. The applicant, as part of the application process, should provide: (1) A justification for the need to acquire the equipment; (2) the description of the equipment; (3) the intended use of the equipment; and (4) the advantages/disadvantages of purchase versus lease of the equipment (if applicable). Requests for equipment purchases will be reviewed and approved only under the following conditions: (1) ATSDR retains the right to request return of all equipment purchased (in operable condition) with cooperative agreement funds at the conclusion of the project period, and (2) equipment purchased must be compatible with CDC/ATSDR hardware.

Recipient Financial Participation

Matching funds are not required for this program.

E. Program Requirements

In conducting activities to achieve the purpose of this program, the recipient will be responsible for the activities under 1. Recipient Activities, and ATSDR will be responsible for the activities listed under 2. ATSDR Activities.

1. Recipient Activities

a. Identify, pursue, and enhance where appropriate, emerging technical advances in exposure-dose reconstruction to encompass reconstruction of exposure histories and determination of biologically effective doses. These advances should include, but are not limited to, assessment of methods such as: (1) Environmental multi-media exposure (including such pathways as groundwater, surface water, air, soil, and biota); (2) assessment of exposure and dose through bioavailability, accumulation, and transformation; (3) delivery of past, current, or potential future exposure and related dose through water-distribution systems; (4) kinetic networks; (5) genetic algorithms; (6) dose reconstruction; and (7) spatial analysis techniques integrated with (1) through (6) above, as a means to bridge the gap between the release of hazardous substances into the environment, potential dose (exposure), and resulting health effects.

b. Reconstruct exposure and potential dose histories and determine potential for future exposure resulting from hazardous substances in the environment for populations in the environs around hazardous waste sites by use of methodology driven environmental assessment tools. These tools must include, at a minimum, simulators such as: (a) Analytical contaminant transport analysis system (ACTS); (b) steady flow in layered aquifer media and spatial analysis interface (SLAM–GIS); (c) contaminant transport in layered aquifer media and spatial analysis interface (CLAM–GIS); and (d) water distribution system network hydraulic and water-quality simulators integrated with spatial analysis interface and progressive optimality genetic algorithm (POGA) optimization. These tools must be compatible with the desktop computing devices and operating systems currently in use by the agency and its exposure-dose reconstruction computational laboratory. The generalized description of the theory of these assessment tools can be found in the public domain literature.

c. Identify, characterize, and integrate uncertainty analysis techniques, such as

Monte Carlo simulation into environmental assessment simulator tools, so that environmental exposures and health-based risk assessment analyses can be conducted. This combined deterministic-probabilistic computational methodology must include a user-friendly interface and should not rely on third-party or proprietary software programs or licensing to accomplish this task.

d. Serve as a leading technical resource that provides information and assists in developing methodologies and setting the standard for use of methods for incorporating fuzzy system mathematics and modeling in the area of exposure assessment and exposure-dose reconstruction.

e. Provide technical consultation and assistance in the development of a user friendly decision support system that considers, but is not limited to, the following:

(1) Site characterization and exposure scenario data.

(2) Environmental-media fate and transport computations.

(3) Exposure-route analysis and computations.

(4) Chemical-compound intake and exposure-dose computations.

(5) Probability distributions and uncertainty analyses.

(6) Spatial analysis computations and a geographic information systems interface.

(7) Access to the decision support system by means of desktop computational devices available throughout the agency and in its exposure-dose reconstruction computational laboratory.

f. Provide technical consultation and assistance in applying innovative and emerging exposure-dose reconstruction methodologies and computational analyses, described above, to areas characterized by contaminated environmental media that may pose potential health risks to the public.

g. Provide information on development of methodologies related to exposure-dose reconstruction by submitting, as progress warrants, manuscripts to symposia, conferences, and peer-reviewed scientific journals on the developments and methodology describing aspects of the research on exposure-dose reconstruction.

h. Organize and conduct workshops, conferences, or symposia to publicize and promote benefits of methodologies developed and to transfer technology as part of the research program on exposure-dose reconstruction.

i. When the project is completed, recipient will summarize activities in a written report that includes the methodology describing the exposure-dose reconstruction process as applied to the public health assessment process.

2. ATSDR Activities

a. Collaborate with and assist in the development of plausible exposure-dose methodologies, relations, and criteria for the selection and application of computational tools, and define appropriate assumptions.

b. Serve as a direct conduit for accessing environmental and exposure data and hazardous waste site information that would be of value to recipient organization to test and validate the acceptability of the environmental assessment simulator tools developed as part of the exposure-dose reconstruction research program.

c. Collaborate with and assist recipient organization with benchmarking, testing, and evaluation of methodology driven exposure-dose reconstruction assessment computational tools by providing recipient organization with results derived from application of methodology driven exposure-dose reconstruction assessment computational tools when applied to hazardous waste sites.

d. Collaborate with and assist recipient with identifying and pursuing emerging disciplines related to advances in assessment of exposure to hazardous chemicals and mixed wastes typically associated with hazardous waste sites.

e. Provide technical assistance to recipient organization to extend the appropriate use of novel exposure characterization and dose relations protocols to hazard characterization and communication efforts.

f. Assist recipient organization in communicating information on development of methodologies related to exposure-dose reconstruction by submitting, as progress warrants, manuscripts to symposia, conferences, and peer-reviewed scientific journals on the developments and methodology describing aspects of the research on exposure-dose reconstruction.

g. Assist in the development and dissemination of advances in the areas of exposure-dose reconstruction methodologies to all relevant scientific and technical groups and communities including state and local governments and the public.

h. Assist in the planning, organization, and conduct of workshops, conferences, or symposia to publicize and promote benefits of methodologies developed; and assist with the transfer of technology, as part of the research program on exposure-dose reconstruction.

i. Collaborate with recipient to summarize program activities in a written report that includes the methodology describing the exposure-dose reconstruction process as applied to the public health assessment process.

F. Content

Applications

The Program Announcement title and number must appear in the application. Use the information in the Program Requirements, Other Requirements, and Evaluation Criteria sections to develop the application content. Your application will be evaluated on the criteria listed, so it is important to follow them in laying out your program plan. The narrative should be no more than 50 pages, single spaced, printed on one side, with one inch margins, and unreduced 12-point font.

The narrative should consist of, at a minimum, a Plan, Objectives, Methods, Evaluation and Budget. The objectives must include a project schedule for the entire five-year project. (See evaluation criteria 1.d.) The application must include a 200-word or less abstract of the proposal. The application pages must be clearly numbered, and a complete index to the application and its appendices must be included.

G. Submission and Deadline

Application Forms

Submit the signed original and two copies of PHS 398 (OMB number 0925–0001). Adhere to the instructions on the Errata Instruction Sheet (posted on the CDC web site) for PHS 398. Forms are available at the following Internet address: *http://www.cdc.gov/od/pgo/forminfo.htm*.

If you do not have access to the Internet, or if you have difficulty accessing the forms on-line, you may contact the CDC Procurement and Grants Office Technical Information Management Section (PGO–TIM) at: 770–488–2700. Application forms can be mailed to you.

Submission Date, Time, and Address

The application must be received by 4 p.m. Eastern Time on June 30, 2003. Submit the application to: Technical Information Management-PA #03059, CDC Procurement and Grants Office, 2920 Brandywine Road, Atlanta, GA 30341–4146.

Applications may not be submitted electronically.

CDC Acknowledgement of Application Receipt

A postcard will be mailed by PGO–TIM, notifying you that CDC has received your application.

Deadline

Applications shall be considered as meeting the deadline if they are received before 4 p.m. Eastern Time on the deadline date. Any applicant who sends their application by the United States Postal Service or commercial delivery services must ensure that the carrier will be able to guarantee delivery of the application by the closing date and time. If an application is received after closing due to (1) carrier error, when the carrier accepted the package with a guarantee for delivery by the closing date and time, or (2) significant weather delays or natural disasters, CDC will, upon receipt of proper documentation, consider the application as having been received by the deadline.

Any application that does not meet the above criteria will not be eligible for competition, and will be discarded. The applicant will be notified of their failure to meet the submission requirements.

H. Evaluation Criteria

Application

Applicants are required to provide measures of effectiveness that will demonstrate the accomplishment of the various identified objectives of the cooperative agreement. Measures of effectiveness must relate to the performance goals stated in the purpose section of this announcement. Measures must be objective and quantitative and must measure the intended outcome. These measures of effectiveness must be submitted with the application and will be an element of evaluation.

An independent review group appointed by ATSDR will evaluate each application against the following criteria:

1. Scientific and Technical Review Criteria of Application

a. Methods (45 percent total). The extent to which the applicant's proposal fully and adequately addresses: (1) Experience in methods of reconstruction of exposure histories through the identification and pursuit of technical advances such as environmental multi-media exposure, kinetic networks, progressive optimality genetic algorithm (POGA) optimization and water-distribution system operations, uncertainty analysis, fuzzy mathematics, dose reconstruction, and spatial analysis techniques (20 percent); (2) the familiarity, qualifications, knowledge, and experience of the principal investigator in his/her ability to utilize and apply methodology driven environmental assessment tools to reconstruct exposure histories (10 percent); (3) the ability of the principal investigator to modify these tools in order to meet the program objective as described in the Purpose section of this announcement (5 percent); and (4) the demonstrated ability of the principal investigator to integrate the aforementioned computational tools into existing computational tools and platforms so as to develop, maintain, or enhance a decision support system in order to support ATSDR's public health assessment process (10 percent).

b. Evaluation (25 percent total). The extent to which the applicant has fully and adequately described how it will demonstrate its effectiveness in meeting all objectives in the evaluation of its work plan, including: (1) The qualifications, experience, and commitment of the principal investigator, and his/her ability to devote adequate time and effort to provide effective leadership (10 percent); (2) the competence of associate investigators to accomplish the proposed study, their commitment, and the time they will devote to the project (5 percent); and (3) the adequacy and commitment of institutional resources to administer the program and the adequacy of facilities, such as the availability of a multimedia environmental simulations laboratory, as they impact on performance of the proposed project (10 percent).

c. Proposed Plan (20 percent total). The extent to which the applicant's proposal fully and adequately addresses: (1) the development and implementation of methods designed to characterize exposure-dose relations associated with hazardous waste sites (10 percent); and (2) the applicant's experience and past performance in assisting ATSDR in methods development, conducting exposure assessments, and exposure-dose reconstruction analyses (10 percent).

d. Objectives (10 percent total). The extent to which the applicant's proposal fully and adequately addresses: (1) the proposed project schedule, including clearly established and obtainable project objectives for which progress toward attainment can and will be measured: (5 percent); and (2) experience and past performance in meeting project objectives (5 percent).

e. Program Budget (Reviewed, but not scored). The extent to which the budget is reasonable, clearly justified, and consistent with the intended use of cooperative agreement funds. If applicant's proposed budget exceeds the availability of funds, their application will be funded at the level of availability of funds.

f. Performance goals (Reviewed, but not scored). The extent to which the applicant's proposal adequately addresses the following performance goal for ATSDR: evaluate the human health risk from toxic sites and releases.

2. Continuation Awards Within the Project Period Will Be Made on the Basis of the Following Criteria

a. Satisfactory progress has been made in meeting project objectives.

b. Objectives for the new budget period are realistic, specific, and measurable.

c. Proposed changes in described long-term objectives, methods of operation, need for cooperative agreement support, and/or evaluation procedures will lead to achievement of project objectives.

d. The budget request is clearly justified and consistent with the intended use of cooperative agreement funds.

I. Other Requirements

Technical Reporting Requirements

Provide CDC with original plus two copies of:

1. Interim progress report, no less than 90 days before the end of the budget period. The progress report will serve as your non-competing continuation application, and must contain the following elements:

a. Current Budget Period Activities Objectives.

b. Current Budget Period Financial Progress.

c. New Budget Period Program Proposed Activity Objectives.

d. Detailed Line-Item Budget and Justification.

e. Additional Requested Information.

2. Financial status report, no more than 90 days after the end of the budget period.

3. Final financial and performance reports, no more than 90 days after the end of the project period.

Send all reports to the Grants Management Specialist identified in the "Where to Obtain Additional Information" section of this announcement.

Additional Requirements

The following additional requirements are applicable to this program. For a complete description of each, see Attachment I of the program announcement, as posted on the CDC website.

AR–9 Paperwork Reduction Act Requirements
AR–10 Smoke-Free Workplace Requirements
AR–11 Healthy People 2010
AR–12 Lobbying Restrictions
AR–19 Third Party Agreements—ATSDR
AR–22 Research Integrity

Executive Order 12372 does not apply to this program.

J. Where To Obtain Additional Information

This and other CDC announcements, the necessary applications, and associated forms can be found on the CDC web site, Internet address: *http://www.cdc.gov*. Click on "Funding" then "Grants and Cooperative Agreements".

For general questions about this announcement, contact: Technical Information Management, CDC Procurement and Grants Office, 2920 Brandywine Road, Atlanta, GA 30341–4146, Telephone: 770–488–2700.

For business management and budget assistance, contact: Edna Green, Grants Management Specialist, Procurement and Grants Office, Centers for Disease Control and Prevention, 2920 Brandywine Road, Atlanta, GA 30341–4146, Telephone: 770–488–2743, E-mail address: *EGreen@cdc.gov*.

For business management and budget assistance in the territories, contact: Julie Grace, Contract Specialist, CDC Procurement and Grants Office, 2920 Brandywine Road, Atlanta, GA 30341–4146, Telephone: 770–488–2782, E-mail: *amn3@cdc.gov*.

For program technical assistance, contact: Morris L. Maslia, P.E., Project Officer, Agency for Toxic Substances and Disease Registry, 1825 Century Boulevard, Room 3094, Mail Stop E–32, Atlanta, Georgia 30345, Telephone number: (404) 498–0415, E-mail address: *mmaslia@cdc.gov*.

Dated: May 8, 2003.

Sandra R. Manning,

Director, Procurement and Grants Office, Centers for Disease Control and Prevention.

[FR Doc. 03–11975 Filed 5–13–03; 8:45 am]

BILLING CODE 4163–70–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

National Advisory Committee on Children and Terrorism: Conference Call Meeting and Advisory Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), the Centers for Disease Control and Prevention (CDC) announces the following Federal advisory committee conference call meeting.

Name: National Advisory Committee on Children and Terrorism (NACCT).

Time and Date: 10:30 a.m.–12 p.m., May 16, 2003.

Place: The conference call will originate at the Office of Terrorism Preparedness and Emergency Response (OTPER), in Atlanta, Georgia. Please *see* **SUPPLEMENTARY INFORMATION** for details on accessing the conference call.

Status: Open to the public, limited only by the availability of telephone ports.

Purpose: The committee is charged with advising the Secretary, Health and Human Services, on (a) the preparedness of the health care system to respond to bioterrorism as it relates to children; (b) needed changes to the health care and emergency medical service systems and emergency medical services protocols to meet the special needs of children; and (c) changes, if necessary, to the National Strategic Stockpile under section 121 of the Public Health Security and Bioterrorism Preparedness and Response Act of 2002 to meet the emergency health security of children.

Matters to be Discussed: The National Advisory Committee on Children and Terrorism will convene by conference call to discuss the draft report to the Secretary.

Due to programmatic issues that had to be resolved, the **Federal Register** notice is being published less than fifteen days before the meeting.

SUPPLEMENTARY INFORMATION: This conference call is scheduled to begin at 10:30 a.m., Eastern Standard Time. To participate in the conference call, please dial (404) 639–3277 or (800) 311–3437 and enter conference code 864530. You will then be automatically connected to the call.

Contact Person for More Information: Victor Balaban, Office of Terrorism Preparedness and Emergency Response, CDC, 1600 Clifton Road, NE., (D–44), Atlanta, Georgia 30333, telephone (404) 639–7428, fax (404) 639–7977.

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), the Centers for Disease Control and Prevention (CDC) announces the following Advisory Committee meeting.

Name: National Advisory Committee on Children and Terrorism, HHS, CDC.

Time and Date: 8 a.m.–5 p.m., May 21, 2003.

Place: Doubletree Hotel National Airport, 300 Army Navy Drive, Arlington, Virginia 22202 telephone: 1–800–222–TREE.

Status: Open to the public, limited only by the space available. The meeting room accommodates approximately 50 people.

Purpose: The committee will make recommendations to the Secretary of HHS on matters related to bioterrorism and its impact on children.

Matters to be Discussed: Agenda items will include from the chairperson of the committee an introduction of committee members and discussion of the Secretary priorities with discussions of recommendations regarding, (a) the preparedness of the health care system to respond to bioterrorism as it relates to children; (b) needed changes to the health care and emergency medical service systems and emergency medical services protocols to meet the special needs of children; and (c) changes, if necessary to the National Strategic Stockpile under section 121 of the Public Health Security and Bioterrorism Preparedness and Response Act of 2002 to meet the emergency health security of children.

Agenda items are subject to change as priorities dictate.

Contact Person for More Information: Victor Balaban, Office of Terrorism Preparedness and Emergency Response, CDC, 1600 Clifton Road, NE., (D–44), Atlanta, Georgia 30333, telephone (404) 639–7428, fax (404) 639–7977.

The Director, Management Analysis and Services Office, has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities, for both CDC and the Agency for Toxic Substances and Disease Registry.

Dated: May 6, 2003.

Diane Allen,

Acting Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.

[FR Doc. 03–11872 Filed 5–13–03; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 02N–0486]

Agency Information Collection Activities; Submission for OMB Review; Comment Request; Prescription Drug Marketing Act of 1987; Administrative Procedures, Policies, and Requirements

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that the proposed collection of information listed below has been submitted to the Office of Management and Budget (OMB) for review and clearance under the Paperwork Reduction Act of 1995.

DATES: Fax written comments on the information collection provisions by June 13, 2003.

ADDRESSES: The Office of Management and Budget (OMB) is still experiencing significant delays in the regular mail, including first class and express mail, and messenger deliveries are not being accepted. To ensure that comments on the information collection are received, OMB recommends that written comments be electronically mailed to *sshapiro@omb.eop.gov* or faxed to the Office of Information and Regulatory Affairs, OMB, Attn: Stuart Shapiro, Desk Officer for FDA, FAX: 202–395–6974.

FOR FURTHER INFORMATION CONTACT: Karen L. Nelson, Office of Information Resources Management (HFA–250), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–1482.

SUPPLEMENTARY INFORMATION: In compliance with 44 U.S.C. 3507, FDA has submitted the following proposed collection of information to OMB for review and clearance.

Prescription Drug Marketing Act of 1987; Administrative Procedures, Policies, and Requirements—21 CFR Part 3 (OMB Control Number 0910–0435)—Extension

The Food and Drug Administration (FDA) is requesting OMB approval under the Paperwork Reduction Act (44 U.S.C. 3507) for the reporting and recordkeeping requirements contained in the regulations implementing the Prescription Drug Marketing Act of 1987 (PDMA) (Public Law 100–293). PDMA was intended to ensure that drug products purchased by consumers are safe and effective and to avoid an unacceptable risk of counterfeit, adulterated, misbranded, subpotent, or expired drugs being sold.

PDMA was enacted by Congress because there were insufficient safeguards in the drug distribution system to prevent the introduction and retail sale of substandard, ineffective, or counterfeit drugs, and that a wholesale drug diversion submarket had developed that prevented effective control over the true sources of drugs.

Congress found that large amounts of drugs had been reimported into the United States as U.S. goods returned causing a health and safety risk to U.S. consumers because the drugs may become subpotent or adulterated during foreign handling and shipping. Congress also found that a ready market for prescription drug reimports had been the catalyst for a continuing series of frauds against U.S. manufacturers and had provided the cover for the importation of foreign counterfeit drugs.

Congress also determined that the system of providing drug samples to physicians through manufacturers' representatives had resulted in the sale to consumers of misbranded, expired, and adulterated pharmaceuticals.

The bulk resale of below-wholesale priced prescription drugs by health care entities for ultimate sale at retail also helped to fuel the diversion market and was an unfair form of competition to wholesalers and retailers who had to pay otherwise prevailing market prices.

FDA is requesting OMB approval for the following reporting and recordkeeping requirements:

TABLE 1.—REPORTING REQUIREMENTS

21 CFR Section	Reporting and Recordkeeping Requirements
203.11	Applications for re-importation to provide emergency medical care.
203.30(a)(1) and (b)	Drug sample requests for drug samples distributed by mail or common carrier.
203.30(a)(3), (a)(4), and (c)	Drug sample receipts for drug samples distributed by mail or common carrier.
203.31(a)(1) and (b)	Drug sample requests for drug samples distributed by means other than the mail or a common carrier.
203.31(a)(3), (a)(4), and (c)	Drug sample receipts for drug samples distributed by means other than the mail or a common carrier.
203.37(a)	Investigation of falsification of drug sample records.
203.37(b)	Investigation of a significant loss or known theft of drug samples.
203.37(c)	Notification that a representative has been convicted of certain offenses involving drug samples.
203.37(d)	Notification of the individual responsible for responding to a request for information about drug samples.
203.38(a)	Printing lot or control numbers on the drug sample unit label.
203.39(g)	Preparation by a charitable institution of a reconciliation report for donated drug samples.
203.50(a)	Drug origin statement.
203.23(a) and (b)	Credit memorandom for returned drugs.
203.23(c)	Documentation of proper storage, handling, and shipping conditions of returned drugs.
203.30(a)(2) and 203.31(a)(2)	Verification that a practitioner requesting a drug sample is licensed or authorized to prescribe the product.
203.31(d)(4)	Investigation of apparent discrepancies and significant losses revealed through the reconciliation report.
203.31(e)	Lists of manufacturers' and distributors' representatives.
203.34	Written policies and procedures describing administrative systems.
203.37(a)	Report of investigation of falsification of drug sample records.
203.37(b)	Report of investigation of significant loss or known theft of drug samples.
203.38(b)	Records of drug sample distribution identifying lot or control numbers of samples distributed.
203.39(d)	Records of drug samples destroyed or returned by a charitable institution.

TABLE 1.—REPORTING REQUIREMENTS—Continued

21 CFR Section	Reporting and Recordkeeping Requirements
203.39(e)	Record of drug samples donated to a charitable institution.
203.39(f)	Records of donation and distribution or other disposition of donated drug samples.
203.39(g)	Inventory and reconciliation of drug samples donated to charitable institutions.
203.50(a)	Drug origin statement.
203.50(b)	Retention of drug origin statement for 3 years.
203.50(d)	List of authorized distributors of record.

The reporting and recordkeeping requirements are intended to help achieve the following goals:

1. To ban the reimportation of prescription drugs produced in the United States, except when reimported by the manufacturer or under FDA authorization for emergency medical care;
2. To ban the sale, purchase, or trade, or the offer to sell, purchase, or trade, of any drug sample;
3. To limit the distribution of drug samples to practitioners licensed or authorized to prescribe such drugs or to pharmacies of hospitals or other health care entities at the request of a licensed or authorized practitioner;
4. To require licensed or authorized practitioners to request samples in writing;
5. To mandate storage, handling, and recordkeeping requirements for drug samples;
6. To prohibit, with certain exceptions, the sale, purchase, or trade of, or the offer to sell, purchase, or trade, prescription drugs that were purchased by hospitals or other health care entities, or which were donated or supplied at a reduced price to a charitable organization;
7. To require unauthorized wholesale distributors to provide, prior to the wholesale distribution of a prescription drug to another wholesale distributor or retail pharmacy, a statement identifying each prior sale, purchase, or trade of the drug.

In the **Federal Register** of December 2, 2002 (67 FR 71572), FDA requested comments on the proposed collection of information. FDA received one comment requesting that it be deemed an "other health care entity" and be permitted to receive and dispense samples to its patients. This comment does not pertain to the information collection estimates in the December 2, 2002, notice, and has been forwarded to the appropriate office in FDA that reviews these types of requests.

TABLE 2.—ESTIMATED ANNUAL REPORTING BURDEN

21 CFR Section	No. of Respondents	No. of Responses per Respondent	Total Annual Responses	Hours per Response	Total Hours
203.11	12	1	12	.5	6
203.30(a)(1) and (b)	61,961	12	743,532	.06	44,612
203.30(a)(3), (a)(4), and (c)	61,961	12	743,532	.06	44,612
203.31(a)(1) and (b)	232,355	135	31,367,925	.04	1,254,717
203.31(a)(3), (a)(4) and (c)	232,355	135	31,367,925	.03	941,038
203.37(a)	25	1	25	6.00	150
203.37(b)	200	1	200	6.00	1,200
203.37(c)	50	1	50	1.00	50
203.37(d)	2,208	1	2,208	.08	177
203.38(a)	2,208	1	2,208	3.00	6,624
203.39(g)	3,221	1	3,221	2.00	6,442
203.50(a)	125	100	12,500	.08	1,000
Total Reporting Burden Hours					2,300,628

TABLE 3.—ESTIMATED ANNUAL RECORDKEEPING BURDEN[1]

21 CFR Section	No. of Recordkeepers	Annual Frequency per Recordkeeping	Total Annual Records	Hours per Recordkeeper	Total Hours
203.23(a) and (b)	31,676	5	158,380	.25	39,595
203.23(c)	31,676	5	158,380	.08	12,670
203.30(a)(2) and 203.31(a)(2)	2,208	100	220,800	.50	110,400
203.31(d)(1) and (d)(2)	2,208	1	2,208	40.00	88,320
203.31(d)(4)	442	1	442	24.00	10,608
203.31(e)	2,208	1	2,208	1.00	2,208
203.34	2,208	1	2,208	40.00	88,320
203.37(a)	25	1	25	18.00	450
203.37(b)	200	1	200	18.00	3,600
203.38(b)	2,208	14,543	32,111,457	.02	642,229
203.39(d)	65	1	65	1.00	65
203.39(e)	3,221	1	3,221	.50	1,610
203.39(f)	3,221	1	3,221	8.00	25,768

TABLE 3.—ESTIMATED ANNUAL RECORDKEEPING BURDEN[1]—Continued

21 CFR Section	No. of Recordkeepers	Annual Frequency per Recordkeeping	Total Annual Records	Hours per Recordkeeper	Total Hours
203.39(g)	3,221	1	3,221	8.00	25,768
203.50(a)	125	100	12,500	.17	2,125
203.50(b)	125	100	12,500	.50	6,250
203.50(d)	691	1	691	2.00	1,382
Total Recordkeeping Burden Hours					1,061,368

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

Dated: May 2, 2003.

Jeffrey Shuren,

Assistant Commissioner for Policy.

[FR Doc. 03–11925 Filed 5–13–03; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 99D–5435]

Guidance for Industry on Photosafety Testing; Availability; Correction

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice; correction.

SUMMARY: The Food and Drug Administration is correcting a notice that appeared in the **Federal Register** of May 7, 2003 (68 FR 24487). The document announced the availability of a guidance for industry entitled "Photosafety Testing." The document was published with an inadvertent error. This document corrects that error.

FOR FURTHER INFORMATION CONTACT: Joyce Strong, Office of Policy and Planning (HF–27), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–7010.

SUPPLEMENTARY INFORMATION: In FR Doc. 03–11216, appearing on page 24487 in the **Federal Register** of Wednesday, May 7, 2003, the following correction is made:

1. On page 24487, in the first column, in the heading of the document, "[Docket No. 99D–5453]" is corrected to read "[Docket No. 99D–5435]".

Dated: May 7, 2003.

Jeffrey Shuren,

Assistant Commissioner for Policy.

[FR Doc. 03–11924 Filed 5–13–03; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 02D–0467]

"Guidance for Industry: Revised Recommendations for the Assessment of Donor Suitability and Blood and Blood Product Safety in Cases of Known or Suspected West Nile Virus Infection;" Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of a document entitled "Guidance for Industry: Revised Recommendations for the Assessment of Donor Suitability and Blood and Blood Product Safety in Cases of Known or Suspected West Nile Virus Infection" dated May 2003. The guidance provides our revisions to the guidance of the same title dated October 2002 in which FDA provided its recommendations for assessing donor suitability and product safety for donors with proven recent West Nile Virus (WNV) infections or with illness potentially due to WNV. The guidance is intended to recommend deferral of donors infected or potentially infected with WNV, and to recommend quarantine of blood and blood products previously collected from such donors. These measures are intended to reduce the possibility of WNV transmission by blood and blood products and are for immediate implementation. This guidance supersedes the guidance of the same title dated October 2002.

DATES: Submit written or electronic comments on agency guidances at any time.

ADDRESSES: Submit written or electronic requests for single copies of this guidance to the Office of Communication, Training, and Manufacturers Assistance (HFM–40), Center for Biologics Evaluation and Research (CBER), Food and Drug Administration, 1401 Rockville Pike, Rockville, MD 20852–1448. Send one self-addressed adhesive label to assist the office in processing your requests. The guidance may also be obtained by mail by calling the CBER Voice Information System at 1–800–835–4709 or 301–827–1800 or by fax by calling the FAX Information System at 1–888–CBER–FAX or 301–827–3844. See the **SUPPLEMENTARY INFORMATION** section for electronic access to the guidance document.

Submit written comments on the guidance document to the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. Submit electronic comments to *http://www.fda.gov/dockets/ecomments*.

FOR FURTHER INFORMATION CONTACT: Nathaniel L. Geary, Center for Biologics Evaluation and Research (HFM–17), Food and Drug Administration, 1401 Rockville Pike, Rockville, MD 20852–1448, 301–827–6210.

SUPPLEMENTARY INFORMATION:

I. Background

FDA is announcing the availability of a document entitled "Guidance for Industry: Revised Recommendations for the Assessment of Donor Suitability and Blood and Blood Product Safety in Cases of Known or Suspected West Nile Virus Infection" dated May 2003. The guidance document provides information related to the possible risk of WNV transmission by blood or blood products. The presence of WNV in blood components and transfusion transmission from blood components has been documented. FDA developed this guidance in consultation with other Public Health Service agencies of the Department of Health and Human Services. The guidance supersedes the guidance of the same title dated October 2002.

This guidance is being issued consistent with FDA's good guidance practices regulation (21 CFR 10.115). This guidance document represents the agency's current thinking on this topic.

It does not create or confer any rights for or on any person and does not operate to bind FDA or the public. An alternative approach may be used if such approach satisfies the requirements of the applicable statutes and regulations.

II. Comments

The agency is soliciting public comment, and is recommending the implementation of the guidance by June 1, 2003, because of public health concerns related to the possible risk of transfusion transmitted WNV.

Interested persons may, at any time, submit written or electronic comments to the Dockets Management Branch (see **ADDRESSES**) regarding this guidance document. Two copies of mailed comments are to be submitted, except individuals may submit one copy. Comments should be identified with the docket number found in the brackets in the heading of this document. A copy of the document and received comments are available for public examination in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

III. Electronic Access

Persons with access to the Internet may obtain the document at either *http://www.fda.gov/cber/guidelines.htm* or *http://www.fda.gov/ohrms/dockets/default.htm*.

Dated: May 6, 2003.

Jeffrey Shuren,

Assistant Commissioner for Policy.

[FR Doc. 03–11980 Filed 5–13–03; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

[USCG 2003–15096]

Collection of Information under Review by Office of Management and Budget (OMB): OMB Control Numbers 1625–0046 and 1625–0071

AGENCY: Coast Guard, DHS.

ACTION: Request for comments.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995, the Coast Guard intends to seek the approval of OMB for the renewal of two Information Collection Requests (ICRs). The ICRs comprise (1) Financial Responsibility for Water Pollution (Vessels), and (2) Boat Owner's Report, Possible Safety Defect. Before submitting the ICRs to OMB, the Coast Guard is inviting comments on them as described below.

DATES: Comments must reach the Coast Guard on or before July 14, 2003.

ADDRESSES: To make sure that your comments and related material do not enter the docket [USCG 2003–15096] more than once, please submit them by only one of the following means:

(1) By mail to the Docket Management Facility, U.S. Department of Transportation (DOT), room PL–401, 400 Seventh Street SW., Washington, DC 20590–0001. Caution: Because of recent delays in the delivery of mail, your comments may reach the Facility more quickly if you choose one of the other means described below.

(2) By delivery to room PL–401 on the Plaza level of the Nassif Building, 400 Seventh Street SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The telephone number is 202–366–9329.

(3) By fax to the Facility at 202–493–2251.

(4) Electronically through the Web Site for the Docket Management System at *http://dms.dot.gov*.

The Facility maintains the public docket for this Notice. Comments and material received from the public, as well as documents mentioned in this Notice as being available in the docket, will become part of this docket and will be available for inspection or copying at room PL–401 on the Plaza level of the Nassif Building, 400 Seventh Street SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. You may also find this docket on the Internet at *http://dms.dot.gov*.

Copies of the complete ICRs are available through this docket on the Internet at *http://dms.dot.gov*, and also from Commandant (G–CIM–2), U.S. Coast Guard Headquarters, room 6106 (Attn: Barbara Davis), 2100 Second Street SW., Washington, DC 20593–0001. The telephone number is 202–267–2326.

FOR FURTHER INFORMATION CONTACT: Barbara Davis, Office of Information Management, 202–267–2326, for questions on this document; or Dorothy Beard, Chief, Documentary Services Division, U.S. Department of Transportation, 202–366–5149, for questions on the docket.

Request for Comments

The Coast Guard encourages interested persons to submit comments. Persons submitting comments should include their names and addresses, identify this document [USCG 2003–15096], and give the reasons for the comments. Please submit all comments and attachments in an unbound format no larger than 8½ by 11 inches, suitable for copying and electronic filing. Persons wanting acknowledgment of receipt of comments should enclose stamped self-addressed postcards or envelopes.

Information Collection Requests

1. *Title:* Financial Responsibility for Water Pollution (Vessels).

OMB Control Number: 1625–0046.

Summary: The collection of information requires operators of vessels over 300 gross tons to submit to the U.S. Coast Guard evidence of their financial responsibility to meet the maximum amount of liability in case of a spill of either oil or hazardous substances.

Need: Under 33 U.S.C. 2716 and 42 U.S.C. 9608, the Coast Guard has the authority to ensure that those persons directly subject to these rules are in compliance with the provisions.

Respondents: Operators or owners of vessels over 300 gross tons.

Frequency: On occasion.

Burden: The estimated burden is 2,162 hours a year.

2. *Title:* Boat Owner's Report, Possible Safety Defect.

OMB Control Number: 1625–0071.

Summary: The collection of information provides a form for consumers who believe their recreational boats or designated associated equipment either contains substantial-risk defects or fails to comply with Federal safety standards to report the deficiencies to the Coast Guard for investigation and possible remedy.

Need: 46 U.S.C. 4310 gives the Coast Guard the authority to require manufacturers of recreational boats and certain items of designated associated equipment to notify owners and remedy (1) defects that create a substantial risk of personal injury to the public and (2) failures to comply with applicable Federal safety standards.

Respondents: Owners and users of recreational boats and of items of designated associated equipment.

Frequency: One time.

Burden: The estimated burden is 10 hours a year.

Dated: May 5 2003.

Nathaniel S. Heiner,

Acting Director of Information & Technology.

[FR Doc. 03–11985 Filed 5–13–03; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

[USCG 2002–13191]

Review of Great Lakes Pilotage Bridge-Hour Standards for American Pilots on the Great Lakes

AGENCY: Coast Guard, DHS.

ACTION: Notice of availability and request for comments.

SUMMARY: The Coast Guard announces the availability of, and seeks public comments on, the Review of Bridge-Hour Standards for American pilots on the Great Lakes dated March 4, 2003. The Review asks, as it states, "how much pilotage work needs to be done, and how many pilots we need to do the work." In particular, it arrives at establishing the number of pilots we need to do that work "*safely, reliably, and efficiently* (italics in original)."

DATES: Comments and related material must reach the Docket Management Facility on or before July 14, 2003.

ADDRESSES: Please identify your comments and related material by the docket number of this notice (USCG 2002–13191). Then, to make sure they enter the docket just once, submit them by just one of the following means:

(1) By mail to the Docket Management Facility, U.S. Department of Transportation, room PL–401, 400 Seventh Street, SW., Washington DC 20590–0001.

(2) By delivery to room PL–401 on the Plaza level of the Nassif Building, 400 Seventh Street, SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The telephone number is 202–366–9329.

(3) By fax to the Docket Management Facility at 202–493–2251.

(4) Electronically through the Web site for the Docket Management System at *http://dms.dot.gov*.

The Facility maintains the public docket for this notice. Comments and related material received from the public, as well as documents mentioned in this notice, will become part of this docket and will be available for inspection or copying at room PL–401 on the Plaza level of the Nassif Building, 400 Seventh Street, SW., Washington, DC, between 9 a.m. and 5 p.m. Monday through Friday, except Federal holidays.

The Review is available on the Internet at *http://dms.dot.gov*. It is also available from Mr. Tom Lawler, Chief Economist, Great Lakes Pilotage, Commandant (G–MW–1), U.S. Coast Guard Headquarters, telephone 202–267–1241.

FOR FURTHER INFORMATION CONTACT: For questions on this Notice or on the Review of Bridge-Hour Standards for American pilots on the Great Lakes, write or call Mr. Tom Lawler where indicated under **ADDRESSES.** For questions on viewing or submitting material to the docket, call Ms. Dorothy Beard, Chief, Dockets, Department of Transportation, telephone 202–366–9329.

SUPPLEMENTARY INFORMATION:

What Action Is the Coast Guard Taking?

The current Bridge-Hour Standards for American pilots on the Great Lakes appear at 46 Code of Federal Regulations (CFR) part 404, Appendix A. These standards help determine the number of pilots necessary to guide commercial vessels engaged in foreign trade through the American waters of the Great Lakes system in a safe, reliable, and efficient manner. Elaborate and rigid though they seem, they only constitute "guidance" to the Director, Great Lakes Pilotage. They are a component of the pilotage program's ratemaking process and, as such, are part of the equation used in determining the annual rate that owners and operators of vessels must pay for pilotage in each area of the Great Lakes. They also help determine the number of hours of work a pilot must perform to earn target compensation. Under them, a pilot in designated waters must work 1000 hours during the season to make target compensation while a pilot in undesignated waters must work 1800 hours to make target compensation.

At the requests of Representative James L. Oberstar and the St. Lawrence Seaway Pilots' Association, the Coast Guard chartered a study to determine whether the Bridge-Hour Standards are reasonable for each area of the Great Lakes and, if not, seeking recommendations for change. The study in the form of the Review now made available was completed on March 4, 2003. The Coast Guard has placed the Review in the Public Docket (USCG 2002–13191). It seeks public comments on the Review and on its recommendations.

Why Is the Coast Guard Taking This Action?

The Coast Guard is taking this action to obtain the benefit of public comment before determining which, if any, of the recommendations of the Review it will approve. It will incorporate any recommendations it does approve in a revision to the current rules on ratemaking, at a future date.

How May I Participate in This Action?

You may participate in this action by submitting comments and related material on the Review of Bridge-Hour Standards for American pilots on the Great Lakes. If you submit written comments please include—

- Your name and address;
- The docket number for this notice (USCG 2002–13191);
- The specific section of the Review to which each comment applies; and
- The reason for each comment.

You may mail, deliver, fax, or electronically submit your comments and related material to the Docket Management Facility, using an address or fax number listed in **ADDRESSES.** Please do not submit the same comment material more than once. If you mail or deliver your comments and material, they must be on 8½-by-11-inch paper, and the quality of the copy should be clear enough for copying and scanning. If you mail your comments and material and would like to know whether the Facility received them, please enclose a stamped, self-addressed postcard or envelope. The Coast Guard will consider all comments and material received during the 60-day comment period.

Once we have considered all comments and related material, we may publish an NPRM amending the standards used to determine the number of American pilots needed to guide foreign-flag vessels through the Great Lakes system in a safe, reliable, and efficient manner.

Dated: May 2, 2003.

L.L. Hereth,

Rear Admiral, Coast Guard, Acting Assistant Commandant for Marine Safety, Security and Environmental Protection.

[FR Doc. 03–11984 Filed 5–13–03; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

Open Meeting of the Federal Interagency Committee on Emergency Medical Services

AGENCY: Emergency Preparedness and Response Directorate, Federal Emergency Management Agency, Department of Homeland Security.

ACTION: Notice of open meeting.

Summary: FEMA announces the following open meeting.

Name: Federal Interagency Committee on Emergency Medical Services (FICEMS).

Date of Meeting: June 5, 2003.

Place: Building J, Room 107, National Emergency Training Center (NETC), 16825 South Seton Avenue, Emmitsburg, Maryland 21727.

Time: 10:30 a.m.

Proposed Agenda: Review and submission for approval of previous FICEMS Committee Meeting Minutes; Ambulance Safety Subcommittee and Counter-terrorism Subcommittee report; presentation of member agency reports; and reports of other interested parties.

SUPPLEMENTARY INFORMATION: This meeting will be open to the public with limited seating available on a first-come, first-served basis. *See* the Response and Security Procedures below.

Response Procedures: Committee Members and members of the general public who plan to attend the meeting should contact Ms. Patti Roman, on or before Tuesday, June 3, 2003, via mail at NATEK Incorporated, 4200–G Technology Court, Chantilly, Virginia 20151, or by telephone at (703) 818–7070, or via facsimile at (703) 818–0165, or via e-mail at *proman@natekinc.com.* This is necessary to be able to create and provide a current roster of visitors to NETC Security per directives.

Security Procedures: Increased security controls and surveillance are in effect at the National Emergency Training Center. All visitors must have a valid picture identification card and their vehicles will be subject to search by Security personnel. All visitors will be issued a visitor pass, which must be worn at all times while on campus. Please allow adequate time before the meeting to complete the security process.

Conference Call Capabilities: If you are not able to attend in person, a toll free number has been set up for teleconferencing. The toll free number will be available from 10:30 a.m. until 4 p.m. Members should call in around 10:30 a.m. The number is 1–800–320–4330. The FICEMS conference code is "10." If you plan to call in, you should just enter the number "10"—no need to hit any other buttons, such as the star or pound keys.

FICEMS Meeting Minutes: Minutes of the meeting will be prepared and will be available upon request 30 days after they have been approved at the next FICEMS Committee Meeting on September 5, 2003. The minutes will also be posted on the United States Fire Administration website at *http://www.usfa.fema.gov/ems/ficems.htm* within 30 days after their approval at the September 5, 2003 FICEMS Committee Meeting.

Dated: May 7, 2003.

R. David Paulison,

Director, Preparedness Division.

[FR Doc. 03–12003 Filed 5–13–03; 8:45 am]

BILLING CODE 6718–08–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Emergency Exemption: Issuance of Permit for Endangered Species

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of emergency issuance of permit for endangered species.

SUMMARY: The following permit was issued.

ADDRESSES: Documents and other information submitted for this application are available for review, subject to the requirements of the Privacy Act and Freedom of Information Act, by any party who submits a written request for a copy of such documents to: U.S. Fish and Wildlife Service, Division of Management Authority, 4401 North Fairfax Drive, Room 700, Arlington, Virginia 22203, telephone (703) 358–2104 or fax (703) 358–2281.

FOR FURTHER INFORMATION CONTACT: Division of Management Authority, telephone (703) 358–2104.

SUPPLEMENTARY INFORMATION: On April 17, 2003, the U.S. Fish and Wildlife Service (Service) issued a permit (PRT–070221) to the Cincinnati Zoo, Cincinnati, Ohio, to import biological samples collected from bonobos (*Pan paniscus*) from Lola ya Bonobo sanctuary in the Democratic Republic of Congo, for the purpose of scientific research. The 30-day comment period required under the Endangered Species Act was waived pursuant to 16 U.S.C. 1539(c). The Service determined that an emergency affecting the health and life of the remaining bonobos sanctuary population existed, and that no reasonable alternative was available to the applicant for several reasons.

The Cincinnati Zoo requested a permit to import multiple blood samples, tracheal washings, gastric washings, urine, feces, hair and tissues samples from all animals housed at the Lola ya Bonobo sanctuary in the Democratic Republic of Congo for emergency and ongoing health/disease evaluation purposes. Samples will be utilized exclusively for diagnostic and scientific purposes. The specimens will be used to run diagnostics tests to determine the cause of the death of several animals that have died during an ongoing disease outbreak at the sanctuary within the past several weeks. The necessary diagnostic testing is not available in Africa. The results of health and disease testing from these bonobos may result in a secondary benefit by providing important clues to disease threats to the wild bonobo population.

The U.S. Fish and Wildlife Service has information collection approval from OMB through March 31, 2004, OMB Control Number 1018–0093. Federal Agencies may not conduct or sponsor and a person is not required to respond to a collection of information unless it displays a current valid OMB control number.

Dated: April 18, 2003.

Timothy J. Van Norman,

Chief, Branch of Permits—International Division of Management Authority.

[FR Doc. 03–11945 Filed 5–13–03; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Issuance of Permit for Marine Mammals

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of issuance of permit for marine mammals.

SUMMARY: The following permit was issued.

ADDRESSES: Documents and other information submitted for this application is available for review by any party who submits a written request to the U.S. Fish and Wildlife Service, Division of Management Authority, 4401 North Fairfax Drive, Room 700, Arlington, Virginia 22203; fax (703) 358–2281.

FOR FURTHER INFORMATION CONTACT: Division of Management Authority, telephone (703) 358–2104.

SUPPLEMENTARY INFORMATION: On March 3, 2003, a notice was published in the **Federal Register** (68 FR 10026), that an application had been filed with the Fish and Wildlife Service by Ricky H. Jackson for a permit (PRT–067142) to import one polar bear (*Ursus maritimus*) sport hunted from the Foxe Basin polar bear population, Canada, prior to April 30, 1994, for personal use.

Notice is hereby given that on April 17, 2003, as authorized by the provisions of the Marine Mammal Protection Act of 1972, *as amended* (16 U.S.C. 1361 *et seq.*) the Fish and Wildlife Service issued the requested permit subject to certain conditions set forth therein.

Dated: April 25, 2003.

Michael S. Moore,

Senior Permit Biologist, Branch of Permits, Division of Management Authority.

[FR Doc. 03–11944 Filed 5–13–03; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[MT–072–03–1220–HB]

Notice of Temporary Area Closure of Approximately 40 Acres by the Bureau of Land Management (BLM) Butte Field Office to All Public Uses of the Holter Lake, Log Gulch and Departure Point Recreation Sites Located on Holter Lake Within Lewis and Clark County, Montana While Reconstruction Is Underway

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of closure.

SUMMARY: Notice is hereby given that all public lands and roadways within the Holter Lake Recreation Site between April 28 and June 30, 2003, and all public lands and roadways within Log Gulch and Departure Point Recreation Sites between July 15 and October 31, 2003 are closed to all public uses for reconstruction. Closure signs will be posted at main entry points to these locations. Maps of the closure area and information on the reconstruction plans may be obtained from the Butte Field Office.

Reasons for this closure are to provide for the safety of the public, expedite construction work, and protect construction equipment and materials. Authority for this closure is cited under 43 CFR, Subpart 8364.

Prohibited Act: Under 43 CFR 8364.1, the Bureau of Land Management will enforce the following rule within the area known as Holter Lake Recreation Area: The public is not allowed within the area for any purpose. The public lands affected by this closure are administered by the BLM in T. 14 N., R. 3 W., Sec. 4, 14, and 23 P.M.M.

DATES: This closure will take effect May 14, 2003.

ADDRESSES: Closure area maps may be obtained from the Butte Field Office, 106 N. Parkmont, Butte, MT 59701.

FOR FURTHER INFORMATION CONTACT: Brad Rixford, Butte Field Office, telephone (406) 533–7600.

SUPPLEMENTARY INFORMATION:

Exemptions: Persons who are exempt from these rules include any Federal, State, or local officer or employee in the scope of their duties, members of any organized rescue or fire-fighting force in performance of an official duty, construction and contract workers, and any person authorized in writing by the Bureau of Land Management.

Penalties: The authority for this closure is found under section 303(a) of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1733(a)) and 43 CFR 8360.0–7. Any person who violates this closure may be tried before a United States Magistrate and fined no more than $1,000 or imprisoned for no more than 12 months, or both. Such violations may also be subject to the enhanced fines provided for by 18 U.S.C. 3571.

Dated: April 14, 2003.

Steven Hartmann,

Assistant Field Manager.

[FR Doc. 03–12060 Filed 5–13–03; 8:45 am]

BILLING CODE 4310–$$–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[ES–930–5420–M082]

Notice of Application for Disclaimer of Interest, Iowa

AGENCY: Bureau of Land Management, Interior.

ACTION: Proposal to issue a disclaimer.

SUMMARY: Jeffrey L. Poulson has filed an application on behalf of Fairview Farms, A Partnership, claiming title to the lands hereinafter described, for a recordable disclaimer of interest from the United States pursuant to the authority of Section 315 of the Federal Land Management Act of 1976 (43 U.S.C. 1745).

FOR FURTHER INFORMATION CONTACT: Regina Berry, Bureau of Land Management, Eastern States, 7450 Boston Boulevard, Springfield, Virginia 22153, 703–440–1547.

SUPPLEMENTARY INFORMATION: Bureau of Land Management has tentatively determined that the United States does not have any interest in the following described land. The land is described according to a private land survey, dated September 6, 1969, filed in the Office of the Clerk, County of Monona, State of Iowa.

Tax Lot "C" of Section Twenty Six (26); Tax Lot "E" of Section Twenty Seven (27); Tax Lot "D" of Section Thirty Three (33); The North Half of the Northeast Quarter (N½NE¼), The Southeast Quarter of the Northwest Quarter (SE¼NW¼), The Southwest Quarter of the Northeast Quarter (SW¼NE¼); Tax Lot "E" Except for the West 700 Feet, Tax Lots "F and H, Except for the West 700 Feet of Section Thirty Four (34); and Tax Lot "B" of Section Thirty Five (35), All in Township Eighty Five (85) North, Range Forty Seven (47) West of the 5th P.M., containing 472.77 acres in Monona County, Iowa.

The above described acreage was formed by accretion to land after the land was selected by the State of Iowa as swamplands and conveyed by the United States to that State, in accordance with the Act of September 28, 1850, by the patent number 2, dated January 10, 1860 and patent number 7, dated February 15, 1869. Accretion is the gradual deposit of soil and other materials along the bank of a body of water adding to the riparian owner's land. If issued the proposed recordable disclaimer of interest will remove a cloud on the title to the accreted land and will state that the United States does not have a valid interest in the accreted land. For a period of 90 days from the **Federal Register** publication date of this notice, persons who wish to comment or present an objection in connection with the pending application and the proposed disclaimer may do so by writing Ida V. Doup, Chief, Branch of Use Authorization, Bureau of Land Management, Eastern States, 7450 Boston Boulevard, Springfield, Virginia 22153. If no objections are received, the disclaimer will be issued after 90-day period.

Dated: May 6, 2003.

Walter Rewinski,

Acting State Director.

[FR Doc. 03–12059 Filed 5–13–03; 8:45 am]

BILLING CODE 4310–75–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[MT010–1060–JJ]

[WY930–1060–JJ]

Notice of Public Hearing on the Use of Helicopters and Motor Vehicles To Gather Wild Horses From Public Lands in Montana and Wyoming.

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of public hearing date inviting comment on the use of helicopters and motor vehicles to gather and remove excess wild horses from public lands administered by the

Bureau of Land Management in Montana and Wyoming.

SUMMARY: The Bureau of Land Management (BLM) will conduct a public hearing on the use of helicopters and motor vehicles to gather wild horses from BLM-administered lands in the Pryor Mountain Wild Horse Range, Montana. The hearing will be held at the Bighorn Canyon National Recreation Area Visitor Center, in Lovell, Wyoming, on Thursday, June 26, 2003, from 7 p.m. to 9 p.m. The Montana Billings Field Office has scheduled wild horse gathering operations to begin no earlier than July 7, 2003, and may continue through September 30, 2003. Concurrently, the Wyoming State Office will conduct a public hearing on the use of helicopters and motor vehicles to gather wild horses from all the BLM Wyoming's Herd Management Areas (HMAs).

The Wyoming BLM proposes to conduct gather operations using helicopters and motorized vehicles during the period starting July 15, 2003, through April 15, 2004. The 2003 schedule of Wyoming gathers has not been set, but will be scheduled based on priority needs. The Wyoming BLM will notify the public in advance of the gathering dates for its HMAs as they are determined.

The Wild, Free Roaming Horse and Burro Act (Act), as amended (Pub. L. 92–195) provides for the removal of excess wild horses from public land; and for the use of aircraft and motor vehicles by the BLM in all phases of the administration of the Act. The Code of Federal Regulations at 43 CFR 4740.1 requires the BLM authorized officer to conduct a public hearing in the area where such use of helicopters and motorized vehicles is to be made. The June 26, 2003, meeting in Lovell, Wyoming, will serve as the BLM's required hearing addressing all HMAs in the entire State.

ADDRESSES: Bureau of Land Management, Billings Field Office, Linda Coates-Markle, PO Box 36800, 5001 Southgate Drive, Billings, Montana 59107–6800 and Bureau of Land Management, Wyoming State Office, Alan Shepherd, PO Box 1828, 5353 Yellowstone Road, Cheyenne, Wyoming 82003–1828.

FOR FURTHER INFORMATION CONTACT: Linda Coates-Markle, Montana BLM State Wild Horse and Burro Specialist, telephone (406) 896–5013. Alan Shepherd, Wyoming BLM State Wild Horse and Burro Program Lead, telephone (307) 775–6097.

SUPPLEMENTARY INFORMATION: The Montana BLM completed the Pryor Mountain Wild Horse Range Environmental Assessment (EA) and Wild Horse Gather and Removal Plan on April 16, 2003. The Prior Mountain Wild Horse Range EA and associated Plan are available for public review. Copies may be obtained from the above address or by accessing the BLM–MT Web site at *http://www.mt.blm.gov/bifo/whb/doc2.html.*

The Wyoming BLM has completed the following EAs and Wild Horse Gather and Removal Plans:

- EA for Wild Horse Gathering Inside and Outside Wild Horse Herd Management Areas and approved in the Decision Record and Finding of No Significant Impact for Wild Horse Gathering Inside and Outside Wild Horse Herd Management Areas, July 14, 1999, (WY–040–EA9–041). Also in the EA for Late Winter Gathering of Wild Horses in the Rock Springs Field Office Area and approved in the Decision Record and Finding of No Significant Impact for the Late Winter Gathering of Wild Horses in the Rock Springs Field Office Area. February 16, 2001, (WY–040–01–EA–019), Rock Springs Field Office, Rock Springs, Wyoming; (307) 352–0256.
- Maintaining Viable Populations of Wild Horses on Healthy Rangelands in the Adobe Town HMA in the Rawlins Field Office Jurisdiction (EA No. WY–030–02–EA–007). January 2002, Rawlins Field Office, Rawlins, Wyoming; (307) 328–4200.

Copies of these EAs are available by request from the Field Office that prepared the EA and plan or by accessing the BLM–WY Web site at *http://www.wy.blm.gov/wildhorses/docs.html.*

Dated: May 7, 2003.

Michael Madrid,

Acting State Director.

Dated: May 8, 2003.

Eddie Bateson,

Assistant Field Manager.

[FR Doc. 03–11976 Filed 5–13–03; 8:45 am]

BILLING CODE 4310–DN–P; 4310–22–P

DEPARTMENT OF THE INTERIOR

Minerals Management Service

Agency Information Collection Activities: Submitted for Office of Management and Budget (OMB) Review; Comment Request

AGENCY: Minerals Management Service (MMS), Interior.

ACTION: Notice of an extension of a currently approved information collection (OMB Control Number 1010–0135).

SUMMARY: To comply with the Paperwork Reduction Act of 1995 (PRA), we are notifying the public that we have submitted to OMB an information collection request (ICR) to renew approval of the paperwork requirements in the regulations under 30 CFR part 208—Surety Requirements. This notice also provides the public a second opportunity to comment on the paperwork burden of these regulatory requirements. The ICR is titled "30 CFR 208.11 (a), (b), (d), and (e)—Surety Requirements (Forms MMS–4071 and MMS–4072)."

DATES: Submit written comments on or before June 13, 2003.

ADDRESSES: Submit written comments directly to the Office of Information and Regulatory Affairs, OMB, Attention: Desk Officer for the Department of the Interior (OMB Control Number 1010–0035), 725 17th Street, NW., Washington, DC 20503. Mail or hand-carry a copy of your comments to Sharron L. Gebhardt, Regulatory Specialist, Minerals Management Service, Minerals Revenue Management, P.O. Box 25165, MS 320B2, Denver, Colorado 80225. If you use an overnight courier service, our courier address is Building 85, Room A–614, Denver Federal Center, Denver, Colorado 80225. You may also email your comments to us at *mrm.comments@mms.gov.* Include the title of the information collection and the OMB Control Number in the "Attention" line of your comment. Also include your name and return address. Submit electronic comments as an ASCII file avoiding the use of special characters and any form of encryption. If you do not receive a confirmation that we have received your email, contact Ms. Gebhardt at (303) 231–3211.

FOR FURTHER INFORMATION CONTACT: Sharron L. Gebhardt, telephone (303) 231–3211, FAX (303) 231–3781, email *Sharron.Gebhardt@mms.gov.* You may also contact Sharron Gebhardt to obtain a copy at no cost of the forms and regulations that require the subject collection of information.

SUPPLEMENTARY INFORMATION:

Title: 30 CFR 208.11(a), (b), (d), and (e)—Surety Requirements.

OMB Control Number: 1010–0135.

Bureau Form Numbers: Forms MMS–4071 and MMS–4072.

Abstract: The Department of the Interior (DOI) is responsible for matters relevant to mineral resource development on Federal and Indian lands and the Outer Continental Shelf (OCS). The Secretary of the Interior (Secretary) under the Mineral Leasing Act (30 U.S.C. 1923) and the Outer Continental Shelf Lands Act (43 U.S.C. 1353) is responsible for managing the production of minerals from Federal and Indian lands and the OCS, collecting royalties from lessees who produce minerals, and distributing the funds collected in accordance with applicable laws. MMS performs the royalty management functions for the Secretary.

When the Secretary determines that sufficient need exists among small refining companies to justify taking royalty oil in kind and offering this oil for sale to eligible refiners, small refiners may apply to participate in this sale of Federal royalty oil and follow procedures under which contracts for the purchase of royalty oil will be awarded. Completed applications to participate in the sale bid proposals, signed contracts, and surety instruments are submitted to MMS.

The application must be complete and timely filed, and applicants for royalty oil may be required to provide a surety instrument with their bid package. This surety instrument may be a Letter of Credit (Form MMS–4071) or a Royalty In Kind Contract Surety Bond (Form MMS–4072), or other acceptable commercial surety.

MMS is requesting OMB's approval to continue to collect this information. Not collecting this information would limit the Secretary's ability to discharge his/her duties. Without the surety protection, the government can lose money if a refiner does not pay for oil he has received. Proprietary information submitted is protected, and there are no questions of a sensitive nature included in this information collection.

We have also changed the title of this ICR to clarify the regulatory language we are covering under 30 CFR part 208.

Frequency: On occasion.

Estimated Number and Description of Respondents: 10 purchasers.

Estimated Annual Reporting and Recordkeeping "Hour" Burden: 10 burden hours.

The following chart details the individual components and estimated hour burdens. In calculating the burdens, we assumed that respondents perform certain requirements in the normal course of their activities. Therefore, we consider these to be usual and customary and took that into account in estimating the burden.

RESPONDENT ANNUAL BURDEN HOUR CHART

30 CFR section	Reporting requirement	Burden hours per response	Annual number of responses	Annual burden hours
208.11(a), (b), (d), and (e)	The eligible purchaser, prior to execution of the contract, shall furnish an "MMS-specified surety instrument," in an amount equal to the estimated value of royalty oil that could be taken by the purchaser in a 99-day period, plus related administrative charges * * * The purchaser or its surety company may elect not to renew the letter of credit at any monthly anniversary date, but must notify MMS of its intent not to renew at least 30 days prior to the anniversary date * * * The "MMS-specified surety instrument" shall be in the form specified by MMS instructions or approved by MMS. All surety instruments must be in a form acceptable to MMS and must include such other specific requirements as MMS may require adequately to protect the Government's interests.	1	10	10
Total			10	10

Estimated Annual Reporting and Recordkeeping "Non-hour" Cost Burden: We have identified no "non-hour" cost burdens.

Public Disclosure Statement: The PRA (44 U.S.C. 3501, *et seq.*) provides that an agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB Control Number.

Comments: Section 3506(c)(2)(A) of the PRA requires each agency "* * * to provide notice * * * and otherwise consult with members of the public and affected agencies concerning each proposed collection of information * * *." Agencies must specifically solicit comments to: (a) Evaluate whether the proposed collection of information is necessary for the agency to perform its duties, including whether the information is useful; (b) evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) enhance the quality, usefulness, and clarity of the information to be collected; and (d) minimize the burden on the respondents, including the use of automated collection techniques or other forms of information technology.

To comply with the public consultation process, we published a notice in the **Federal Register** on December 3, 2002 (67 FR 71979), announcing that we would submit this ICR to OMB for approval. The notice provided the required 60-day comment period. We received no comments in response to the notice.

If you wish to comment in response to this notice, you may send your comments to the offices listed under the **ADDRESSES** section of this notice. OMB has up to 60 days to approve or disapprove the information collection but may respond after 30 days. Therefore, to ensure maximum consideration, OMB should receive public comments by June 13, 2003.

Public Comment Policy. We will post all comments in response to this notice on our Web site at *http://www.mrm.mms.gov/Laws_R_D/InfoColl/InfoColCom.htm.* We will also make copies of the comments available for public review, including names and addresses of respondents, during regular business hours at our offices in Lakewood, Colorado. Individual respondents may request that we withhold their home address from the public record, which we will honor to the extent allowable by law. There also may be circumstances in which we would withhold from the rulemaking record a respondent's identity, as allowable by law. If you request that we withhold your name and/or address, state this prominently at the beginning of your comment. However, we will not

consider anonymous comments. We will make all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, available for public inspection in their entirety.

MMS Information Collection Clearance Officer: Jo Ann Lauterbach, (202) 208–7744.

Dated: April 10, 2003.

Cathy J. Hamilton,

Acting Associate Director for Minerals Revenue Management.

[FR Doc. 03–11948 Filed 5–13–03; 8:45 am]

BILLING CODE 4310–MR–P

DEPARTMENT OF THE INTERIOR

Minerals Management Service

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Minerals Management Service (MMS), Interior.

ACTION: Notice of extension of a currently approved information collection (OMB Control Number 1010–0154).

SUMMARY: To comply with the Paperwork Reduction Act of 1995 (PRA), we are inviting comments on a collection of information that we will submit to the Office of Management and Budget (OMB) for review and approval. The information collection request (ICR) concerns the paperwork requirements under the Endangered Species Act Biological Opinions, issued by the Fish and Wildlife Service (FWS) and National Oceanic and Atmospheric Administration Fisheries (NOAA Fisheries) and is titled: "Notices to Lessees and Operators Numbers 2002–G07, 2003–G06, and 2003–G07."

DATE: Submit written comments by July 14, 2003.

ADDRESSES: Mail or hand carry comments to the Department of the Interior; Minerals Management Service; Attention: Rules Processing Team; Mail Stop 4024; 381 Elden Street; Herndon, Virginia 20170–4817. If you wish to e-mail comments, the address is: *rules.comments@mms.gov*. Reference "Information Collection 1010–0154" in your e-mail subject line and mark your message for return receipt. Include your name and return address in your message.

FOR FURTHER INFORMATION CONTACT: Arlene Bajusz, Rules Processing Team (703) 787–1600. You may also contact Arlene Bajusz to obtain a copy, at no cost, of the Notices to Lessees that require the subject collection of information.

SUPPLEMENTARY INFORMATION:

Title: Notices to Lessees and Operators Numbers 2002–G07, 2003–G06, and 2003–G07.

OMB Control Number: 1010–0154.

Abstract: The Outer Continental Shelf (OCS) Lands Act, as amended (43 U.S.C. 1331 *et seq.* and 43 U.S.C. 1801 *et seq.*), authorizes the Secretary of the Interior to prescribe rules and regulations to administer leasing of the OCS. Such rules and regulations will apply to all operations conducted under a lease. Operations on the OCS must preserve, protect, and develop oil and natural gas resources in a manner that is consistent with the need to make such resources available to meet the Nation's energy needs as rapidly as possible; to balance orderly energy resource development with protection of human, marine, and coastal environments; to ensure the public a fair and equitable return on the resources of the OCS; and to preserve and maintain free enterprise competition.

The Department of the Interior, MMS, as a Federal agency, has a continuing affirmative duty to comply with the Endangered Species Act (ESA). This includes a substantive duty to carry out any agency action in a manner that is not likely to jeopardize protected species as well as a procedural duty to consult with the FWS and NOAA Fisheries before engaging in a discretionary action that may affect a protected species.

The MMS follows these procedural requirements by conducting formal consultations with FWS and NOAA Fisheries prior to lease sales. Consultations on OCS lease sales 181, 184, and the 5-year multisale (2002–2007) program in the Central and Western Planning Areas of the Gulf of Mexico resulted in no-jeopardy biological opinions from the FWS and NOAA Fisheries. In their biological opinions, NOAA Fisheries determined that some activities associated with the proposed action (lease sale and related exploration, development, and production activities) may adversely affect (harm) sperm whales and sea turtles in the action area and that certain reasonable and prudent measures are necessary to minimize the potential for incidental take of these animals. To be exempt from the prohibitions of Section 9 of the ESA (which prohibits taking listed species), MMS must implement and enforce nondiscretionary terms and conditions. The ESA also requires monitoring and reporting. Monitoring programs resulting from ESA interagency consultations are designed to (1) detect adverse effects resulting from a proposed action, (2) assess the actual level of incidental take in comparison with the level of anticipated incidental take documented in the biological opinion, (3) detect when the level of anticipated take is exceeded, and (4) determine the effectiveness of reasonable and prudent alternatives and their implementing terms and conditions.

To provide supplementary guidance and procedures, MMS issues Notices to Lessees and Operators (NTLs) on a regional or national basis. Regulation 30 CFR 250.103 allows MMS to issue NTLs to clarify, supplement, or provide more detail about certain requirements. To implement the nondiscretionary terms and conditions of these biological opinions, the MMS issued three NTLs:

- NTL 2002–G07 (Addendum 1)—Implementation of Seismic Survey Mitigation Measures
- NTL 2003–G06—Marine Trash and Debris Awareness and Elimination
- NTL 2003–G07—Vessel Strike Avoidance and Injured/Dead Protected Species Reporting

The MMS will use the information collected to report annually to NOAA Fisheries the effectiveness of mitigation, any adverse effects of the proposed action, and any incidental take, in accordance with 50 CFR 402.14(i)(3). The MMS engineers, geologists, geophysicists, environmental scientists, and other Federal agencies (FWS, NOAA Fisheries, etc.) also will analyze the information and data collected under these NTLs to better evaluate the potential impacts to listed species and to plan operations in a manner that will further reduce and/or avoid adverse impacts to protected species in the OCS.

On March 26, 2003, the OMB approved our request under emergency processing procedures to collect the information required by these NTLs and assigned OMB Control Number 1010–0154. Emergency processing permits the collection of information for 180 days. This notice announces our intention to request a 3-year extension for this information collection. As the programs in these NTLs develop further, MMS acknowledges there may be some revisions to the collection of information. MMS is now more fully developing the observer training and reporting programs associated with NTL 2002–G07 (Addendum 1), Implementation of Seismic Survey Mitigation Measures, and with NTL 2003–G07, Vessel Strike Avoidance and Injured/Dead Protected Species Reporting. MMS is currently working with NOAA Fisheries to develop a training and network reporting program indicated in NTL 2003–G07. Therefore, with this submission, we are requesting an extension of the approved collections and noting that we are revising details of the observer training programs and we are adding an experimental (voluntary) passive acoustic monitoring program. Consequently, these NTLs may be reissued.

We will protect information from respondents considered proprietary under the Freedom of Information Act (5 U.S.C. 552) and its implementing regulations (43 CFR part 2) and under regulations at 30 CFR parts 250, 251, and 252. No items of a sensitive nature are collected. Responses are mandatory or required to obtain or retain a benefit.

Frequency: On occasion and on the 1st and 15th of each month for the marine mammal observation reports.

Estimated Number and Description of Respondents: Approximately 130 Federal OCS lessees and operators.

Estimated Reporting and Recordkeeping "Hour" Burden: The currently approved annual reporting burden for this collection is 310 hours. The following chart details the individual components and respective hour burden estimates of this ICR. In calculating the burdens, we assumed that respondents perform certain requirements in the normal course of their activities. We consider these to be usual and customary and took that into account in estimating the burden.

NTL number and name	Reporting, posting, and recordkeeping requirement	Hour burden
2002–G07 (Addendum 1) Seismic Survey Mitigation Measures.	Marine mammal observation/reports (including observer, survey, sighting, shutdown, and passive acoustic monitoring reports).	1 hour/report.
2003–G06 Marine Trash and Debris	*Training certification recordkeeping*	½ hour/record.
	Post placards on vessels and structures. (Exempt from information collection burden because MMS is providing exact language for the trash and debris warning, similar to the "Surgeon General's Warning" exemption.).	0.
2003–G07 Vessel Strikes	Injured/dead protected species report	½ hour/report.

Estimated Reporting and Recordkeeping "Non-Hour Cost" Burden: We have identified no cost burdens for this collection.

Public Disclosure Statement: The PRA (44 U.S.C. 3501, *et seq.*) provides that an agency may not conduct or sponsor a collection of information unless it displays a currently valid OMB control number. Until OMB approves a collection of information, you are not obligated to respond.

Comments: Before submitting an ICR to OMB, PRA section 3506(c)(2)(A) requires each agency "* * * to provide notice * * * and otherwise consult with members of the public and affected agencies concerning each proposed collection of information * * *". Agencies must specifically solicit comments to: (a) Evaluate whether the proposed collection of information is necessary for the agency to perform its duties, including whether the information is useful; (b) evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) enhance the quality, usefulness, and clarity of the information to be collected; and (d) minimize the burden on the respondents, including the use of automated collection techniques or other forms of information technology.

Agencies must also estimate the "non-hour cost" burdens to respondents or recordkeepers resulting from the collection of information. Therefore, if you have costs to generate, maintain, and disclose this information, you should comment and provide your total capital and startup cost components or annual operation, maintenance, and purchase of service components. You should describe the methods you use to estimate major cost factors, including system and technology acquisition, expected useful life of capital equipment, discount rate(s), and the period over which you incur costs. Capital and startup costs include, among other items, computers and software you purchase to prepare for collecting information, monitoring, and record storage facilities. You should not include estimates for equipment or services purchased: (i) Before October 1, 1995; (ii) to comply with requirements not associated with the information collection; (iii) for reasons other than to provide information or keep records for the Government; or (iv) as part of customary and usual business or private practices.

We will summarize written responses to this notice and address them in our submission for OMB approval. As a result of your comments, we will make any necessary adjustments to the burden in our submission to OMB.

Public Comment Policy: Our practice is to make comments, including names and home addresses of respondents, available for public review during regular business hours. Individual respondents may request that we withhold their home address from the record, which we will honor to the extent allowable by law. There may be circumstances in which we would withhold from the record a respondent's identity, as allowable by the law. If you wish us to withhold your name and/or address, you must state this prominently at the beginning of your comment. However, we will not consider anonymous comments. We will make all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, available for public inspection in their entirety.

MMS Information Collection Clearance Officer: Jo Ann Lauterbach, (202) 208–7744.

Dated: May 5, 2003.

E.P. Danenberger,

Chief, Engineering and Operations Division.

[FR Doc. 03–11965 Filed 5–13–03; 8:45 am]

BILLING CODE 4310–MR–P

DEPARTMENT OF JUSTICE

Antitrust Division

Noticed Pursuant to the National Cooperative Research and Production Act of 1993—DVD Copy Control Association ("DVD CCA")

Notice is hereby given that, on April 4, 2003, pursuant to section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* ("the Act"), DVD Copy Control Association ("DVD CCA") has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership status. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, Foryou General Electronics Co., Ltd., Guangdong, People's Republic of China; Futic Electronics Ltd., Hong Kong, Hong Kong-China; GZ Digital Media, A.S., Lodenice, Czech Republic; Jiangsu

Syber Electronic Co., Ltd., Jiangsu, People's Republic of China; Matrix Technology S.p.A., Peschiera Borromeo, Italy; Mirai Audio & Video Co., Ltd., Seoul, Republic of Korea; Shenzhen Paragon Industries (China) Incorporation, Guangdong, People's Republic of China; Stebbing Recording Centre Ltd., Auckland, New Zealand; Taijin Media Co., Ltd., Seoul, Republic of Korea; Tanashin Denki Co., Ltd., Tokyo, Japan; and UL Tran Technology & Service Co., Taipei Hsien, Taiwan have been added as parties to this venture.

Also, Jaton Computer Co., Ltd., Bangkok, Thailand has been dropped as a party to this venture. In addition, Nippon Columbia Co., Ltd. has changed its name to Columbia Music Entertainment, Tokyo, Japan.

No other changes have been made in either the membership or planned activity of the group research project. Membership in this group research project remains open, and DVD CCA intends to file additional written notification disclosing all changes in membership.

On April 11, 2001, DVD CCA filed its original notification pursuant to Section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to section 6(b) of the Act on August 3, 2001 (66 FR 40727).

The last notification was filed with the Department on January 6, 2003. A notice was published in the **Federal Register** pursuant to section 6(b) of the Act on February 11, 2003 (68 FR 6946).

Constance K. Robinson,

Director of Operations, Antitrust Division.

[FR Doc. 03–11954 Filed 5–13–03; 8:45 am]

BILLING CODE 4410–11–M

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—the National Center for Manufacturing Sciences, Inc.

Notice is hereby given that, on April 16, 2003, pursuant to section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* ("the Act"), The National Center for Manufacturing Sciences, Inc. ("NCMS") has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership status. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, The Boeing Company, St. Louis, MO; Endicott Interconnect Technologies, Inc., Endicott, NY; Four Rivers Associates, LLC, Mequon, WI; and General Electric Co., Cincinnati, OH have been added as parties to this venture. Also, CoCreate Software, Inc., Ft. Collins, CO; Concurrent Technologies Corporation, Johnstown, PA; Defense Modeling & Simulation, Alexandria, VA; Ferro Corporation, Washington, PA; Johnson Controls, Plymouth, MI; Kestrel Aircraft Company, Norman, OK; Laser Fare, Narragansett, RI; Masco Machine, Inc., Cleveland, OH; Perceptron, Plymouth, MI; Precision Optical Manufacturing, Auburn Hills, MI; Sandia National Laboratory, Albuquerque, NM; SeeBeyond Technology Corporation, Monrovia, CA; Star Cutter Company, Farmington, MI; Sulzer Metco (US) Inc., Lawrence, MI; WebEx Inc., San Jose, CA; and West Virginia University, Morgantown, WV have been dropped as parties to this venture.

No other changes have been made in either the membership or planned activity of the group research project. Membership in this group research project remains open, and The National Center for Manufacturing Sciences, Inc. intends to file additional written notification disclosing all changes in membership.

On February 20, 1987, The National Center for Manufacturing Sciences, Inc. filed its original notification pursuant to section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to section 6(b) of the Act on March 17, 1987 (52 FR 8375).

The last notification was filed with the Department on November 27, 2002. A notice was published in the **Federal Register** pursuant to section 6(b) of the Act on December 27, 2002 (67 FR 79150).

Constance K. Robinson,

Director of Operations, Antitrust Division.

[FR Doc. 03–11955 Filed 5–13–03; 8:45 am]

BILLING CODE 4410–11–M

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—VSI Alliance

Notice is hereby given that, on April 8, 2003, pursuant to section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* ("the Act"), VSI Alliance has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership status. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, Agere Systems, Inc., Allentown, PA; ControlNet, Inc., Campbell, CA; M-Techno Structure IT-Solution GmbH, Vienna, Austria; NewLogic Technologies AG, Lustenau, Austria; Sanyo LSI Technology, India PVT. Ltd., Bangalore, India; TaraCom Integrated Products, Inc., Sunnyvale, CA; True Circuits, Inc., Los Altos, CA; UMC, Hsin-Chu, Taiwan; and Kurt Woodland (individual member), Morgan Hill, CA have been added as parties to this venture.

Also, Arasan Chip Systems, San Jose, CA; Axeon Ltd, Aberdeen, Scotland, United Kingdom; Conexant Spinco, Inc., Newport Beach, CA; Lateral Sands, West Perth, Western Australia, Australia; Timothy O'Donnell (individual member), Los Gatos, CA; Robert Bosch GmbH, Reutlingen, Germany; Siroyan, Ltd., Reading, United Kingdom; Thales Group, Gennevilliers, France; TriMedia Technologies, Milpitas, CA; and WIS Technologies, San Jose, CA have been dropped as parties to this venture.

No other changes have been made in either the membership or planned activity of the group research project. Membership in this group research project remains open, and VSI Alliance intends to file additional written notification disclosing all changes in membership.

On November 29, 1996, VSI Alliance filed its original notification pursuant to section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to section 6(b) of the Act on March 4, 1997 (62 FR 9812).

The last notification was filed with the Department on January 13, 2003. A notice was published in the **Federal Register** pursuant to section 6(b) of the Act on February 11, 2003 (68 FR 6947).

Constance K. Robinson,

Director of Operations, Antitrust Division.

[FR Doc. 03–11956 Filed 5–13–03; 8:45 am]

BILLING CODE 4410–11–M

DEPARTMENT OF JUSTICE

Federal Bureau of Investigation

Criminal Justice Information Services Division; Agency Information Collection Activities: Proposed Collection; Comments Requested

ACTION: 60-Day Notice of Information Collection Under Review: Extension of a Currently Approved Collection Return A-Monthly Return of Offenses Known to the Police and Supplement to Return A-Monthly Return of Offenses Known to the Police.

The Department of Justice (DOJ), FBI, Criminal Justice Information Services Division has submitted the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995. The proposed information collection is published to obtain comments from the public and affected agencies. Comments are encouraged and will be accepted for "sixty days" until July 14, 2003. This process is conducted in accordance with 5 CFR 1320.10.

If you have comments especially on the estimated public burden or associated response time, suggestions, or need a copy of the proposed information collection instrument with instructions or additional information, please contact Gregory E. Scarbro, Unit Chief, FBI, Criminal Justice Information Services Division (CJIS), Module E–3, 1000 Custer Hollow Road, Clarksburg, West Virginia 26306, telephone (304) 625–4830 or facsimile (304) 625–3566.

Request written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agencies estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

Overview of this information collection:

(1) *Type of Information Collection:* Extension of a Currently Approved Collection.

(2) *Title of the Form/Collection:* Return A-Monthly Return of Offenses Known to the Police and Supplement to Return A-Monthly Return of Offenses Known to the Police.

(3) *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection:* Form Number: 4–927A and 4–919; Criminal Justice Services Division, FBI, Department of Justice.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: Local and State Law Enforcement Agencies. This collection is needed to collect data regarding criminal offenses and their respective clearances throughout the United States. Data is tabulated and published in the annual *Crime in the United States.*

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* There are approximately 16,971 agencies with 407,304 responses (including zero reports) at an average of 21 minutes a month devoted to compilation of data for this information collection.

(6) *An estimate of the total public burden (in hours) associated with the collection:* There are approximately 142,556 hours annual burden associated with this information collection.

If additional information is required contact: Mr. Robert B. Briggs, Department Clearance Officer, Policy and Planning Staff, Justice Management Division, United States Department of Justice, Patrick Henry Building, Suite 1600, 601 D Street, NW., Washington, DC 20530.

Dated: May 2, 2003.

Robert B. Briggs,

Department Clearance Officer, United States Department of Justice.

[FR Doc. 03–11928 Filed 5–13–03; 8:45 am]

BILLING CODE 4410–02–M

LEGAL SERVICES CORPORATION

Sunshine Act Meeting of the Board of Directors

TIME AND DATE: The Board of Directors of the Legal Services Corporation will meet on May 19, 2003 via conference call. The meeting will begin at 1 p.m. and continue until conclusion of the Board's agenda.

LOCATION: 750 First Street, NE, 11th Floor, Washington, DC 20002, in Room 11026.

STATUS OF MEETING: Open.

MATTERS TO BE CONSIDERED:

1. Approval of the agenda.
2. Consider and act on Board of Directors' Semi-Annual Report to Congress for the period of October 1, 2002–March 31, 2003.
3. Consider and act on whether to dissolve or reconstitute the working group established on April 26, 2003 to study and report back to the Board on how to proceed with the selection of a new LSC President and Inspector General.
4. Consider and act on resolutions thanking former Board members for their service.
5. Consider and act on other business.
6. Public comment.

FOR MORE INFORMATION CONTACT: Victor M. Fortuno, Vice President for Legal Affairs, General Counsel & Corporate Secretary, at (202) 336–8800.

SPECIAL NEEDS: Upon request, meeting notices will be made available in alternate formats to accommodate visual and hearing impairments. Individuals who have a disability and need an accommodation to attend the meeting may notify Elizabeth Cushing, at (202) 336–8800.

Dated: May 12, 2003.

Victor M. Fortuno,

Vice President for Legal Affairs, General Counsel and Corporate Secretary.

[FR Doc. 03–12208 Filed 5–12–03; 3:23 pm]

BILLING CODE 7050–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–261]

Carolina Power and Light Company; H. B. Robinson Steam Electric Plant, Unit 2; Notice of Availability of the Draft Supplement 13 to the Generic Environmental Impact Statement and Public Meeting for the License Renewal of H. B. Robinson Steam Electric Plant, Unit 2

Notice is hereby given that the U.S. Nuclear Regulatory Commission (the Commission) has published a draft plant-specific supplement to the Generic Environmental Impact Statement (GEIS), NUREG–1437, regarding the renewal of operating license DPR–23 for an additional 20 years of operation at H. B. Robinson

Steam Electric Plant, Unit 2. H. B. Robinson Steam Electric Plant, Unit 2 is located in Darlington County, South Carolina. Possible alternatives to the proposed action (license renewal) include no action and reasonable alternative energy sources.

The draft supplement to the GEIS is available electronically for public inspection in the NRC's Public Document Room (PDR), located at One White Flint North, 11555 Rockville Pike (first floor), Rockville, Maryland, or from the Publicly Available Records (PARS) component of NRC's Agencywide Documents Access and Management System (ADAMS). ADAMS is accessible from the NRC Web site at *http://www.nrc.gov/reading-rm.html* (the Public Electronic Reading Room). Persons who do not have access to ADAMS or who encounter problems in accessing the documents located in ADAMS, should contact the NRC's PDR Reference staff at 1–800–397–4209, (301) 415–4737, or by e-mail to *pdr@nrc.gov*. In addition, the Hartsville Memorial Library, located at 147 West College Avenue, Hartsville, South Carolina has agreed to make the draft supplement to the GEIS available for public inspection.

Any interested party may submit comments on the draft supplement to the GEIS for consideration by the NRC staff. To be certain of consideration, comments on the draft supplement to the GEIS and the proposed action must be received by July 30, 2003. Comments received after the due date will be considered if it is practical to do so, but the NRC staff is able to assure consideration only for comments received on or before this date. Written comments on the draft supplement to the GEIS should be sent to: Chief, Rules and Directives Branch, Division of Administrative Services, Office of Administration, Mail Stop T–6D 59, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

Comments may be hand-delivered to the NRC at 11545 Rockville Pike, Rockville, Maryland, between 7:45 a.m. and 4:15 p.m. on Federal workdays. Electronic comments may be submitted to the NRC by e-mail at *RobinsonEIS@nrc.gov*. All comments received by the Commission, including those made by Federal, State, and local agencies, Indian tribes, or other interested persons, will be made available electronically at the Commission's PDR in Rockville, Maryland, and from the PARS component of NRC's ADAMS.

The NRC staff will hold a public meeting to present an overview of the draft plant-specific supplement to the GEIS and to accept public comments on the document. The public meeting will be held on June 25, 2003, at Coker College in Davidson Hall, 300 East College Avenue, Hartsville, South Carolina. There will be two sessions to accommodate interested parties. The first session will commence at 1:30 p.m. and will continue until 4:30 p.m. The second session will commence at 7 p.m. and will continue until 10 p.m. Both meetings will be transcribed and will include (1) a presentation of the contents of the draft plant-specific supplement to the GEIS, and (2) the opportunity for interested government agencies, organizations, and individuals to provide comments on the draft report. Additionally, the NRC staff will host informal discussions one hour prior to the start of each session at the same location. No comments on the draft supplement to the GEIS will be accepted during the informal discussions. To be considered, comments must be provided either at the transcribed public meetings or in writing, as discussed below.

Persons may pre-register to attend or present oral comments at the meeting by contacting Mr. Richard L. Emch, Jr. by telephone at 1–800–368–5642, extension 1590, or by e-mail at *rle@nrc.gov* no later than June 20, 2003. Members of the public may also register to provide oral comments within 15 minutes of the start of each session. Individual oral comments may be limited by the time available, depending on the number of persons who register. If special equipment or accommodations are needed to attend or present information at the public meeting, the need should be brought to Mr. Emch's attention no later than June 20, 2003, to provide the NRC staff adequate notice to determine whether the request can be accommodated.

For Further Information Contact: Mr. Richard L. Emch, Jr., License Renewal and Environmental Impacts Program, Division of Regulatory Improvement Programs, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001. Mr. Emch may be contacted at the aforementioned telephone number or e-mail address.

Dated at Rockville, Maryland, this 5th day of May, 2003.

For the Nuclear Regulatory Commission.

Pao-Tsin Kuo,

Program Director, License Renewal and Environmental Impacts, Division of Regulatory Improvement Programs, Office of Nuclear Reactor Regulation.

[FR Doc. 03–11958 Filed 5–13–03; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Advisory Committee on Reactor Safeguards; Meeting of the ACRS Subcommittee on Plant Operations; Notice of Meeting

The ACRS Subcommittee on Plant Operations meeting on June 10, 2003, Region I, 475 Allendale Road, King of Prussia, Pennsylvania.

The entire meeting will be open to public attendance.

The agenda for the subject meeting shall be as follows: Tuesday, June 10, 2003—8:30 a.m. until the conclusion of business.

The Subcommittee will hear presentations by and hold discussion with representatives of the NRC Region I staff and other interested persons regarding matters related to plant and region operations. The Subcommittee will gather information, analyze relevant issues and facts, and formulate proposed positions and actions, as appropriate, for deliberation by the full Committee.

Members of the public desiring to provide oral statements and/or written comments should notify the Designated Federal Official, Ms. Maggalean W. Weston (telephone 301–415–3151) five days prior to the meeting, if possible, so that appropriate arrangements can be made. Electronic recordings will be permitted.

Further information regarding this meeting can be obtained by contacting the Designated Federal Official between 8 a.m. and 5:30 p.m. (e.t.). Persons planning to attend this meeting are urged to contract the above named individual at least two working days prior to the meeting to be advised of any potential changes to the agenda.

Dated: May 8, 2003.

Sher Bahadur,

Associate Director for Technical Support, ACRS/ACNW.

[FR Doc. 03–11961 Filed 5–13–03; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

West Valley Citizen Task Force; Notice of Meeting

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of meeting.

SUMMARY: Representatives from the U.S. Nuclear Regulatory Commission (NRC), U.S. Environmental Protection Agency (EPA), and New York State Department of Environmental Conservation (NYSDEC) will present information relating to the decommissioning of the West Valley site to the West Valley Citizen Task Force (CTF). This meeting is sponsored by the CTF. The meeting is open to the public and all interested parties may attend.

DATES: May 22, 2003, from 7 p.m. to 9:30 p.m.

ADDRESSES: Ashford Office Complex, 9030 Route 219, Ashford Hollow, New York.

FOR FURTHER INFORMATION CONTACT: Chad Glenn, Mail Stop T–F32, U.S. Nuclear Regulatory Commission, Washington, DC 20005–0001. Telephone: (301) 415–6722; FAX: (301) 415–5398; Internet: *CJG1@NRC.GOV*.

Dated in Rockville, Maryland, this 7th day of May, 2003.

For the Nuclear Regulatory Commission.

Claudia M. Craig,

Chief, Facilities Decommissioning Section, Division of Waste Management, Office of Nuclear Material Safety and Safeguards.

[FR Doc. 03–11959 Filed 5–13–03; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Proposed Generic Communication; Requirements for Steam Generator Tube Inspections

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of opportunity for public comment.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) is proposing to issue a generic letter (GL) to (1) advise all holders of operating licenses for pressurized-water reactors (PWRs), except those who have permanently ceased operations and have certified that fuel has been permanently removed from the reactor vessel, that the NRC's interpretation of technical specification (TS) requirements in conjunction with Appendix B to part 50 of title 10 of the Code of Federal Regulations (10 CFR part 50) raises questions as to whether steam generator (SG) tube inspection practices ensure compliance with these requirements, (2) request that addressees submit a description of the tube inspections performed at their plants, including an assessment of whether these inspections ensure compliance with the requirements contained in their TS in conjunction with 10 CFR part 50, Appendix B, (3) request that addressees propose plans for coming into compliance with these requirements if they conclude they are not in compliance, and (4) request that addressees submit a safety assessment addressing any differences from the NRC's position regarding these requirements. The NRC is seeking comment from interested parties on the clarity and utility of the proposed GL under the **SUPPLEMENTARY INFORMATION** heading. The NRC will consider the comments received in its final evaluation of the proposed GL.

This **Federal Register** notice is available through the NRC's Agencywide Documents Access and Management System (ADAMS) under accession number ML031270171.

DATES: Comment period expires July 14, 2003. Comments submitted after this date will be considered if it is practical to do so, but assurance of consideration cannot be given except for comments received on or before this date.

ADDRESSES: Submit written comments to the Chief, Rules and Directives Branch, Division of Administrative Services, Office of Administration, U.S. Nuclear Regulatory Commission, Mail Stop T6–D59, Washington, DC 20555–0001, and cite the publication date and page number of this **Federal Register** notice. Written comments may also be delivered to NRC Headquarters, 11545 Rockville Pike (Room T–6D59), Rockville, Maryland, between 7:30 a.m. and 4:15 p.m. on Federal workdays.

FOR FURTHER INFORMATION CONTACT: Paul Klein at (301) 415–4030 or by E-mail to *pak@nrc.gov*.

SUPPLEMENTARY INFORMATION:

NRC Generic Letter 2003–XX: Requirements for Steam Generator Tube Inspections

Addressees

All holders of operating licenses for pressurized-water reactors (PWRs), except those who have permanently ceased operations and have certified that fuel has been permanently removed from the reactor vessel.

Purpose

The U.S. Nuclear Regulatory Commission (NRC) is issuing this generic letter to

(1) Advise addressees that the NRC's interpretation of the technical specification (TS) requirements in conjunction with 10 CFR part 50, Appendix B, raises questions whether certain licensee steam generator (SG) tube inspection practices ensure compliance with these requirements,

(2) Request that addressees submit a description of the tube inspections performed at their plants, including an assessment of whether these inspections ensure compliance with the requirements contained in their TS in conjunction with 10 CFR part 50, Appendix B,

(3) Request that addressees that conclude they are not in compliance with the SG tube inspection requirements contained in their TS in conjunction with 10 CFR part 50, Appendix B, propose plans for coming into compliance with these requirements, and

(4) Request that addressees submit a safety assessment that addresses any differences from the NRC's position regarding the requirements of the TS in conjunction with 10 CFR part 50, Appendix B.

Background

Steam generator tubes function as an integral part of the reactor coolant pressure boundary (RCPB) and, in addition, serve to isolate radiological fission products in the primary coolant from the secondary coolant and the environment. For the purposes of this generic letter, tube integrity means that the tubes are capable of performing these functions in accordance with the plant licensing basis, including applicable regulatory requirements.

Title 10 of the Code of Federal Regulations (10 CFR) establishes the fundamental regulatory requirements with respect to the integrity of the SG tubing. Specifically, the general design criteria (GDC) in Appendix A to 10 CFR part 50 state that the RCPB shall be "designed, fabricated, erected, and tested so as to have an extremely low probability of abnormal leakage * * * and of gross rupture" (GDC 14), "designed, fabricated, erected, and tested to the highest quality standards practical" (GDC 30), and "designed to permit periodic inspection and testing * * * to assess * * * structural and leaktight integrity" (GDC 32). (There are similar requirements in the licensing basis for plants licensed prior to 10 CFR part 50, Appendix A.)

Given the importance of SG tube integrity, all current PWR licensees have TS governing the surveillance of SG tubes. These TS typically do not prescribe non-destructive test methods for conducting tube inspections or specify where a particular methodology should be used. For example, current TS may employ the following or similar nonspecific language:

Tube inspection for tubes selected in accordance with Table [xxxx] means an inspection of the steam generator tube from the point of entry (hot leg side) completely around the U-bend to the top support of the cold leg, excluding sleeved areas.

The surveillance requirements do, however, specify acceptance limits for SG tubes (often called plugging or repair limits). The surveillance requirements seek to ensure that enough information is obtained about imperfections (flaws) in the tubes to determine if TS plugging limits are being met. Tube imperfections are defined in the TS and include circumferential and axial cracks.

SG tube inspections are also subject to the quality assurance requirements of 10 CFR part 50, Appendix B. Specifically, SG tube inspections must be performed in accordance with Criterion IX of 10 CFR part 50, Appendix B, which requires that "measures shall be established to assure that special processes, including welding, heat treating, and nondestructive testing, are controlled and accomplished by qualified personnel using qualified procedures in accordance with applicable codes, standards, specifications, criteria, and other special requirements."

Licensees currently employ an eddy current test bobbin probe, at least, to inspect the entire length of tubing required by the TS. The bobbin probe is a high-speed probe which the industry has demonstrated to be qualified for and capable of detecting volumetric flaws and axially oriented cracks in the absence of significant masking signals. Masking signals may be produced by tube geometry variations or irregularities along the tube axis (such as small-radius U-bends, dents and dings, and expansion transitions) or by tube surface irregularities. Masking signals can also be produced by deposits on the tube surface, adjacent support structures (such as the tubesheet), probe wobble, cold working, permeability variations, or electrical noise.

While the bobbin probe generally provides an effective means of SG tube inspection over much of the tube length, experience has shown that the bobbin probe may not be effective at locations where significant masking signals are present. In addition, the bobbin probe generally cannot detect circumferential cracks. Circumferential cracks can occur at locations of high axial stress (*e.g.*, small-radius U-bends and the tubesheet expansion region).

Plant TS for virtually all PWRs require inspection of the entire length of hot leg tubing within the tubesheet. With some exceptions where specified in the plant TS, the acceptance limits (plugging limits) for these inspections apply to all imperfections along the full length of the tube in the tubesheet on the hot leg side, including axial and circumferential cracks. Criterion IX, "Control of Special Processes," of 10 CFR part 50, Appendix B, requires in part that nondestructive testing is to be accomplished by qualified personnel using qualified procedures in accordance with applicable criteria. The bobbin probe has not been qualified for and is not capable of reliably detecting axial or circumferential cracks in the expanded region of tubing inside the tubesheet; however, specialized probes are available which have been qualified for this application.

As a result of these limitations, the industry practice is to supplement the bobbin probe inspection with inspections by specialized probes, such as the rotating pancake coil or plus point probe, that are qualified for and capable of detecting degradation that is not detectable with the bobbin probe. However, inspecting tubes with these specialized probes is slower than with the bobbin probe. Therefore, these slow-speed probes are typically not applied over the entire length of a tube that is subject to inspection, but only at tube locations where degradation which cannot be detected with the bobbin probe (*e.g.*, circumferential cracks, axial cracks in U-bends and expansion transitions) is known to be present or considered to have a potential to occur. This practice involves a degree of engineering judgment to determine the locations in which potential degradation mechanisms may exist that could lead to degradation that is not detectable using a bobbin probe. The EPRI Steam Generator Examination Guidelines provide guidance on assessing the potential for degradation to occur at various locations.

In 2002, the staff learned of several instances in which licensees were not fully implementing inspection methods capable of detecting circumferentially oriented cracks at all locations where the potential for such cracks exists and where, based on available evidence, there is reason to believe such cracks may be present. These licensees were conducting full-length bobbin probe inspections of the tubes, and were performing additional inspections using specialized probes to inspect for axial and circumferential cracks at certain locations, including the tube expansion transitions near the top of the tubesheet. The licensees conducted the specialized probe inspections at the tube expansion transitions in an area that extended from 2 inches above the top of the tubesheet to about 5 inches below the top of the tubesheet. At several facilities, circumferential cracks were identified at tube expansion transitions, as well as below the transitions near the bottom of the zone being inspected. These results indicate a potential for circumferential cracks to exist in the tubing below the zone inspected with the specialized probe. However, each licensee also performed an analysis indicating that circumferential cracks below the zone being inspected would not be detrimental to tube structural and leakage integrity. These licensees concluded, therefore, that inspections for circumferential cracks with the specialized probe were unnecessary below the zone already inspected with the probe. These analyses had not been provided to the NRC staff.

The staff became aware of these activities during the licensees' SG inspections conducted during refueling outages and asked the licensees to submit TS amendment requests or safety analyses to obtain NRC approval of their inspection approaches. The staff reviewed the resulting submittals on a one-cycle basis before the plants restarted. Subsequent to these plant-specific actions, the staff evaluated the appropriate method to interact with licensees on this issue. Given the potentially generic nature of the issue, the staff decided to communicate this issue to addressees through issuance of this generic letter.

Discussion

In the aforementioned instances, tube inspections with a specialized probe near the top of the tubesheet clearly indicated the potential for circumferential cracks to occur deeper into the tubesheet beyond the region inspected with the specialized probes. In each instance the licensee was aware of the potential for such cracks to exist deeper into the tubesheet, but the licensee did not employ techniques qualified for detecting such cracks based on the licensee's analysis that such cracks did not have safety implications.

The staff acknowledges that there may be circumstances under which certain flaws at certain locations may not pose a safety concern. However, it is the staff's position that pending the submission of a license amendment request clarifying the acceptability of a more limited inspection approach, licensees are required under existing requirements (TS in conjunction with 10 CFR part 50, Appendix B) to employ inspection techniques capable of detecting all flaw types which may potentially be present at locations which are required to be inspected pursuant to the TS. The staff is concerned that in instances similar to those cited above, failure to expand the scope of the specialized probe inspection deeper into the tubesheet to detect cracks likely to be present poses a potential compliance issue with respect to the plant TS in conjunction with 10 CFR part 50, Appendix B.

In addition, the staff notes that not inspecting for cracks with qualified procedures in the lower regions of the tubesheet would allow any such cracks to remain in place. However, most plant TS state that only tubes with imperfections less than 40 percent of the nominal tube wall thickness are acceptable for continued service (there are exceptions specified in some plant TS). While it is not known whether any such cracks actually exist, the staff notes that the acceptance or plugging limit for SG tube inspections is a specific technical specification limit that can only be changed through the license amendment process.

Also, for the instances cited above, the safety basis developed by the licensees for not expanding the scope of the specialized probe inspection beyond a specific distance (x-inches) into the tubesheet was that any cracks below that distance were not detrimental to tube integrity. This was based on analyses indicating that tubes only needed a minimum embedment of x-inches into the tubesheet to exhibit acceptable structural and accident leakage integrity. These analyses have been performed to demonstrate that cracks below this embedment distance do not impair SG tube integrity, even if these cracks cause complete severance of the tube. According to plant final safety analysis reports (FSARs), the SGs were designed in accordance with section III of the American Society of Mechanical Engineers (ASME) Code. In accordance with section III of the Code, the original design basis pressure boundary for the tube-to-tubesheet joint included the tube and tubesheet extending down to and including the tube-to-tubesheet weld. The criteria of section III of the ASME Code constitute the "method of evaluation" for the design basis. In the event licensees are using a different "method of evaluation" for assessing the steam generator pressure boundary, an evaluation under 10 CFR 50.59 would determine whether a license amendment is required in these cases.

In summary, for the cases discussed above, the TS required a tube inspection for the full length of the tube within the tubesheet (scope), and the findings from this inspection were required to be evaluated against a repair (plugging) criteria. Neither the scope nor the repair criteria in the TS contained provisions for limiting the inspections through a licensee controlled analysis.

Based on these instances, the NRC cannot conclude that addressees that are using such an approach remain in compliance with their TS in conjunction with Criterion IX of 10 CFR part 50, Appendix B with regard to the inspections they are performing. This concern stems, in part, from the experience with some addressees relying on licensee controlled analyses to limit the scope and therefore the repair or plugging of defective SG tubes contrary to the requirements in the TS in conjunction with Criterion IX of 10 CFR part 50, Appendix B, which contains no provisions for limiting the inspections in this manner. It is the staff's position that pending a license amendment clarifying the inspection approach to be followed, licensees are required to employ inspection methods capable of detecting all flaw types which may potentially be present at locations which are required to be inspected pursuant to the TS, as set forth above.

Based on these staff concerns, the NRC is issuing this generic letter, consistent with the requirements in 10 CFR 50.54(f) to obtain information necessary for the staff to determine if addressees are in compliance with the technical specifications in conjunction with 10 CFR part 50, Appendix B. In addition, licensees who have not been implementing inspections consistent with the staff's position should submit a safety assessment that demonstrates their ability to ensure continued safe operation and addresses any differences relative to the staff's position.

For licensees that cannot demonstrate continued compliance with the TS in conjunction with 10 CFR part 50, Appendix B, owners group involvement in the development of standard or generic approaches to this issue, including TS and associated Bases wording, could be helpful from the standpoint of minimizing resource impacts for both licensees and the staff.

Requested Information

Within 30 days of the date of this generic letter, addressees are requested to provide to the NRC the following information:

1. Addressees should provide a description of the SG tube inspections performed at their plant during the last inspection. In addition, addressees should provide an assessment of how the tube inspections performed at their plant meet the requirements of the TS in conjunction with Criterion IX of 10 CFR part 50, Appendix B, if they are not using SG tube inspection methods with capabilities consistent with the NRC's position. This assessment should also address whether the tube inspection practices ensured that the tube plugging or repair limits were implemented for the entire length of tubing required to be inspected per the TS (*i.e.*, discuss whether the techniques employed during the tube inspections ensured flaws could be detected such that the plugging or repair limits could be implemented).

2. If addresses conclude that full compliance with the TS in conjunction with Criterion IX of 10 CFR part 50, Appendix B, requires corrective actions to be taken, they should discuss their proposed corrective actions (*e.g.*, changing inspection practices consistent with the NRC's position, or submitting a TS amendment request with the associated safety basis for limiting the inspections). If addressees choose to change their TS, the staff has included in Attachment 1 suggested changes to the TS definitions for a tube inspection and for plugging limits to show what may be acceptable to the staff in cases where the extent of the inspection in the tubesheet region is limited.

3. For plants where SG tube inspections have not been or are not being performed consistent with the NRC's position on the requirements contained in the TS in conjunction with Criterion IX of 10 CFR part 50, Appendix B, the licensee should submit a safety assessment that addresses any differences relative to the NRC's position (*i.e.*, submit the safety basis for not employing inspection methods capable of detecting specific flaw types at specific locations where these flaw types may potentially occur and where a tube inspection is required by the TS), and include an evaluation of whether this safety assessment constitutes a change to the "method of evaluation" (as defined in 10 CFR 50.59) for establishing the structural and leakage integrity of the joint. Licensees should also determine whether a license amendment is necessary pursuant to 10 CFR 50.59.

Required Response

In accordance with 10 CFR 50.54(f), addressees are required to submit written responses to this generic letter. Two options are available:

(a) Addressees may choose to submit written responses providing the information requested above within the requested time period.

(b) Addressees who cannot meet the requested completion date are required to notify the NRC in writing as soon as possible but no later than 30 days from the date of this generic letter. The responses must address any alternative course of action proposed, including the basis for the acceptability of the proposed alternative course of action, the basis for finding that the SGs remain

operable, and the schedule when the requested information will be submitted.

The required written response should be addressed to the U.S. Nuclear Regulatory Commission, ATTN: Document Control Desk, 11555 Rockville Pike, Rockville, Maryland 20852, under oath or affirmation under the provisions of section 182a of the Atomic Energy Act of 1954, as amended, and 10 CFR 50.54(f). In addition, submit a copy of the response to the appropriate regional administrator.

Reasons for Requested Information

This generic letter requests that addressees submit information. The requested information will enable the NRC staff to make a determination as to whether licensees are implementing SG tube inspections in accordance with applicable requirements. In cases where licensees are not implementing inspections in such a manner, the requested information will allow the staff to make a determination as to the adequacy of the licensee's inspection program and compliance of the licensee's program relative to existing requirements (the plant TS in conjunction with 10 CFR part 50, Appendix B).

Backfit Discussion

Under the provisions of section 182a of the Atomic Energy Act of 1954, as amended, and 10 CFR 50.54(f), this generic letter transmits an information request for the purpose of verifying compliance with applicable existing requirements. Specifically, the requested information will enable the NRC staff to determine whether applicable requirements (plant TS in conjunction with 10 CFR part 50, Appendix B) are being met. No backfit is either intended or approved in the context of issuance of this generic letter. Therefore, the staff has not performed a backfit analysis.

Federal Register *Notification*

To be done after the public comment period.

Paperwork Reduction Act Statement

This generic letter contains information collections that are subject to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). These information collections were approved by the Office of Management and Budget (OMB), control number 3150–0011, which expires on January 31, 2004.

The burden to the public for these information collections is estimated to average 60 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. The U.S. Nuclear Regulatory Commission is seeking public comment on the potential impact of the collection of information contained in the generic letter and on the following issues:

(1) Is the proposed collection of information necessary for the proper performance of the functions of the NRC, and will the information have practical utility?

(2) Is the estimate of burden accurate?

(3) Is there a way to enhance the quality, utility, and clarity of the information to be collected?

(4) How can the burden of the collection of information be minimized? Can automated collection techniques be used?

Send comments regarding this burden estimate or on any other aspect of these information collections, including suggestions for reducing the burden, to the Information and Records Management Branch (T–6 E6), U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, or by Internet electronic mail to *INFOCOLLECTS@nrc.gov;* and to the Desk Officer, Office of Information and Regulatory Affairs, NEOB–10202 (3150–0011), Office of Management and Budget, Washington, DC 20503.

Public Protection Notification

The NRC may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

If you have any questions about this matter, please contact one of the persons listed below or the appropriate Office of Nuclear Reactor Regulation (NRR) project manager.

Attachments: 1. Sample Changes to the TS for Plants Limiting Inspections in the Tubesheet Region

Attachment 1

Sample Changes to the TS for Plants Limiting Inspections in the Tubesheet Region

Plugging Limit means the imperfection depth at or beyond which the tube shall be removed from service and is equal to 40% of the nominal tube wall thickness. All tubes with degradation in the portion of the tube from x-inches below the bottom of the expansion transition or the top of the tubesheet to the bottom of the expansion transition or the top of the tubesheet, whichever is lower, shall be removed from service.

Tube Inspection means an inspection of the steam generator tube from x-inches below the hot-leg expansion transition or the top of tubesheet, whichever is lower, completely around the U-bend to the top support of the cold leg.

Documents may be examined, and/or copied for a fee, at the NRC's Public Document Room at One White Flint North, 11555 Rockville Pike (first floor), Rockville, Maryland. Publicly available records will be accessible electronically from the Agencywide Documents Access and Management System (ADAMS) Public Electronic Reading Room on the Internet at the NRC Web site, *http://www.nrc.gov/NRC/ADAMS/index.html.* If you do not have access to ADAMS or if you have problems in accessing the documents in ADAMS, contact the NRC Public Document Room (PDR) reference staff at 1–800–397–4209 or 301–415–4737 or by e-mail to *pdr@nrc.gov.*

Dated in Rockville, Maryland, this 8th day of May, 2003.

For the Nuclear Regulatory Commission.

William D. Beckner,

Program Director, Operating Reactor Improvements, Division of Regulatory Improvement Programs, Office of Nuclear Reactor Regulation.

[FR Doc. 03–11960 Filed 5–13–03; 8:45 am]

BILLING CODE 7590–01–P

SECURITIES AND EXCHANGE COMMISSION

Existing Collection; Comment Request

Upon Written Request, Copies Available From: Securities and Exchange Commission, Office of Filings and Information Services, Washington, DC 20549.

Extension:

Rule 11a–3 [17 CFR 270.11a–3] SEC File No. 270–321 OMB Control No. 3235–0358.

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1995 [44 U.S.C. 3501–3520], the Securities and Exchange Commission ("Commission") is soliciting comments on the collections of information summarized below. The Commission plans to submit this existing collection of information to the Office of Management and Budget ("OMB") for extension and approval.

Rule 11a–3 under the Investment Company Act of 1940 [17 CFR 270.11a–3] is an exemptive rule that permits open-end investment companies ("funds"), other than insurance company separate accounts, and funds' principal underwriters, to make certain exchange offers to fund shareholders and shareholders of other funds in the same group of investment companies. The rule requires a fund, among other things, (i) to disclose in its prospectus and advertising literature the amount of any administrative or redemption fee imposed on an exchange transaction, (ii) if the fund imposes an administrative fee on exchange transactions, other than a nominal one, to maintain and preserve records with respect to the actual costs incurred in connection with exchanges for at least six years, and (iii) give the fund's shareholders a sixty day notice of a termination of an exchange offer or any material amendment to the terms of an exchange offer (unless the only material effect of an amendment is to reduce or eliminate an administrative fee, sales load or redemption fee payable at the time of an exchange).

The rule's requirements are designed to protect investors against abuses associated with exchange offers, provide fund shareholders with information necessary to evaluate exchange offers and certain material changes in the terms of exchange offers, and enable the Commission staff to monitor funds' use of administrative fees charged in connection with exchange transactions.

There are approximately 3,075 funds registered with the Commission as of December 31, 2002. The staff estimates that one-quarter of these funds imposes a non-nominal administrative fee on exchange transactions, and that the recordkeeping requirement of the rule requires approximately one hour annually of clerical time (at an estimated $16 per hour) per fund, for a total of 768.75 hours for all funds (at a total annual cost of $12,300). The staff estimates that one-quarter of the 3,075 funds terminates an exchange offer or makes a material change to its terms once each year, and that the notice requirement of the rule requires approximately one hour of professional time (at an estimated $60 per hour) and two hours of clerical time (at an estimated $16 per hour) per fund, for a total of approximately 2306.25 hours for all funds (at a total annual cost of $70,725). The burdens associated with the disclosure requirement of the rule are accounted for in the burdens associated with the Form N–1A registration statement for funds.

The estimate of average burden hours is made solely for the purposes of the Paperwork Reduction Act, and is not derived from a comprehensive or even a representative survey or study of the costs of Commission rules and forms. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid control number.

Written comments are requested on: (a) Whether the collection of information is necessary for the proper performance of the functions of the Commission, including whether the information has practical utility; (b) the accuracy of the Commission's estimate of the burden[s] of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted in writing within 60 days of this publication.

Please direct your written comments to Kenneth A. Fogash, Acting Associate Executive Director/CIO, Office of Information Technology, Securities and Exchange Commission, Mail Stop 0–4, 450 5th Street, NW., Washington, DC 20549.

Dated: May 7, 2003.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 03–11993 Filed 5–13–03; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

Proposed Collection; Comment Request

Upon Written Request, Copies Available From: Securities and Exchange Commission, Office of Filings and Information Services, Washington, DC 20549.

Extension:

Regulation C; OMB Control No. 3235–0074; SEC File No. 270–068.

Form SB–1; OMB Control No. 3235–0423; SEC File No. 270–374.

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*) the Securities and Exchange Commission ("Commission") is soliciting comments on the collections of information summarized below. The Commission plans to submit these existing collections of information to the Office of Management Budget for extension and approval.

Regulation C provides standard instructions to guide persons when filing registration statements under the Securities Act of 1933. The information collected is intended to ensure the adequacy of information available to investors in the registration of securities. Regulation C is assigned one burden hour for administrative convenience because the regulation simply prescribes the disclosure that must appear in other filings under the federal securities laws.

Small Business issuers use Form SB–1, as defined in Rule 405 of the Securities Act of 1933 ("Securities Act") to register up to $10 million of securities to be sold for cash, if they have not registered more than $10 million in securities offerings in any continuous 12-month period, including the transaction being registered. The information to be collected is intended to ensure the adequacy of information available to investors in the registration of securities and assures public availability. Approximately 17 respondents filed Form SB–1 during the last fiscal year at an estimated 177 hours per response for a total annual burden of 12,036 hours. It is estimated that 25% of the total burden (3,009 hours) is prepared by the company.

Written comments are invited on: (a) Whether these proposed collections of information are necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information collection information; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted in writing within 60 days of this publication.

Please direct your written comments to Kenneth A. Fogash, Acting Associate Executive Director/CIO, Office of Information Technology, Securities and Exchange Commission, 450 fifth Street, NW., Washington, DC 20549.

Dated: May 7, 2003.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 03–11997 Filed 5–13–03; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 35–27676]

Filings Under the Public Utility Holding Company Act of 1935, as Amended ("Act")

May 8, 2003.

Notice is hereby given that the following filing(s) has/have been made with the Commission pursuant to provisions of the Act and rules promulgated under the Act. All interested persons are referred to the

application(s) and/or declaration(s) for complete statements of the proposed transaction(s) summarized below. The application(s) and/or declaration(s) and any amendment(s) is/are available for public inspection through the Commission's Branch of Public Reference.

Interested persons wishing to comment or request a hearing on the application(s) and/or declaration(s) should submit their views in writing by June 2, 2003, to the Secretary, Securities and Exchange Commission, Washington, DC 20549–0609, and serve a copy on the relevant applicant(s) and/or declarant(s) at the address(es) specified below. Proof of service (by affidavit or, in the case of an attorney at law, by certificate) should be filed with the request. Any request for hearing should identify specifically the issues of facts or law that are disputed. A person who so requests will be notified of any hearing, if ordered, and will receive a copy of any notice or order issued in the matter. After June 2, 2003, the application(s) and/or declaration(s), as filed or as amended, may be granted and/or permitted to become effective.

UniSource Energy Corporation (70–10116)

UniSource Energy Corporation ("UniSource Energy"), One South Church Avenue, Suite 100, Tucson, Arizona 85701, an Arizona corporation and a public utility holding company claiming exemption from registration under section 3(a)(1) of the Act under rule 2 and from all other provisions of the Act except section 9(a)(2), has filed an application ("Application") for an order under sections 9(a)(2) and 10 of the Act authorizing the proposed acquisition of the operating electric and gas utility properties ("Assets") of Citizens Communications Company ("Citizens") that are located in Arizona (the "Transaction"). UniSource also requests an order under section 3(a)(1) of the Act declaring it exempt it from all provisions of the Act, except section 9(a)(2), following the consummation of the proposed Transaction.

UniSource proposes alternative structures for the acquisition of the Assets. UniSource may combine the Assets in one new utility company or keep the Assets separate in two different utility companies ("New Utility Companies"). The New Utility Companies will be incorporated under Arizona law. UniSource will either acquire and hold the common stock of the New Utility Companies directly, or alternatively, as direct subsidiaries of a newly formed Arizona corporation ("HoldCo") that will be a direct subsidiary of UniSource (referred to as the "HoldCo Structure"). In the event that the HoldCo Structure is employed, it is requested that HoldCo be deemed to be an additional applicant in this proceeding and that the Commission's order granting UniSource an exemption under section 3(a)(1) of the Act also grant HoldCo an exemption.

UniSource Energy owns substantially all of the issued and outstanding common stock of Tucson Electric Power Company ("TEP"), an Arizona corporation, which provides electric utility service to over 355,000 customers in a 1,155 square-mile area of southeastern Arizona having a population of approximately 891,000, and two direct nonutility subsidiaries, Millennium Energy Holdings, Inc. ("Millennium") and UniSource Energy Development Company ("UED"). In 2002, TEP, UniSource's predominant subsidiary, accounted for approximately 94% of UniSource Energy's total consolidated assets and more than 99% of UniSource Energy's operating revenues. TEP's retail service area includes the City of Tucson and adjoining areas of Pima County. TEP also supplies the power requirements of a military base that is located in Cochise County, to the east of Tucson, and sells electricity at wholesale to other utilities and power marketing entities in the western U.S. UniSource Energy states that in the three-year period of 2000 through 2002, not more than 4% of TEP's total operating revenues were derived from wholesale sales outside of Arizona. As of December 31, 2002, TEP owned or leased 2,002 MW of net generating capability. UniSource Energy itself does not engage in any business activities or have any material assets, other than the stock of its subsidiaries.

TEP has five direct, wholly-owned, nonutility subsidiaries, as follows: Escavada Company, which is engaged in the business of maintaining miscellaneous assets and property; San Carlos Resources, Inc., which holds legal title to Unit No. 2 of the Springerville Generating Station, and is the lessee, jointly and severally with TEP, of an undivided one-half interest in certain facilities shared in common between Unit No. 1 and Unit No. 2 of the Springerville Generating Station; Sierrita Resources, Inc., which holds investments in financial assets; Tucson Resources, Inc., which also holds investments in financial assets; and Tucsonel Inc., which holds an undivided interest in the Springerville Generating Station coal-handling facility. TEP also holds minority interests in entities that provide demand side and energy management services and engage in development activities relating to technologies that provide pricing and other related services to consumers for a wide variety of products, including utility services.

TEP is subject to regulation by the Arizona Corporation Commission ("ACC") with respect to retail electric rates, the issuance of securities, affiliate transactions, the maintenance of books and records, and other matters and by the Federal Energy Regulatory Commission ("FERC") with respect to wholesale electric rates and electric transmission service.

For the twelve months ended December 31, 2002, UniSource Energy reported consolidated operating revenues of $856 million, more than 98% of which were derived from retail and wholesale sales of electricity and related transmission and distribution services. At December 31, 2002, UniSource Energy had $2.7 billion in total assets, including total net utility plant of $1.7 billion.

As of March 4, 2003, UniSource Energy had issued and outstanding 33,583,182 shares of common stock, no par value, which are listed and traded on the New York Stock Exchange and the Pacific Exchange. TEP has issued and outstanding 32,139,555 shares of common stock, no par value, of which 32,139,434 are held by UniSource Energy.

Citizens, a Delaware corporation, operates as an electric and gas utility in Arizona through two operating divisions. Through its Arizona Electric Division, Citizens provides electric service to approximately 77,500 customers in most of Mohave County in northwest Arizona and in all of Santa Cruz County in southeast Arizona between TEP's service area and the U.S.-Mexico border. Through its Arizona Gas Division, Citizens provides natural gas service to approximately 125,000 customers in most of northern Arizona, including portions of Mohave, Yavapai, Coconino, Navajo, Greenlee, and Apache Counties, as well as Santa Cruz County in southeast Arizona. Citizens owns generating units in Arizona having a total capacity of about 47 MW. Citizens' Arizona electric transmission and distribution system consists of approximately 56 circuit-miles of 115 kV transmission lines, 229 circuit-miles of 69 kV transmission lines, and 3,116 circuit-miles of underground and overhead distribution lines. Citizens also owns 38 substations having a total installed transformer capacity of 1,077,300 kVA. Citizens' Arizona gas transmission and distribution system consists of approximately 168 miles of steel transmission mains, 2,459 miles of steel and plastic distribution mains, and 127,015 customer service lines.

Citizens is subject to regulation in Arizona by the ACC with respect to retail electric and gas rates, the issuance of securities, affiliate transactions, the maintenance of books and records, and other matters and by the FERC with respect to wholesale power sales and interstate transmission service.

Citizens and UniSource Energy have entered into separate Asset Purchase Agreements, each dated October 29, 2002, relating to the purchase of Citizens' electric and gas utility businesses in Arizona. Under the terms of the Asset Purchase Agreement relating to Citizens' electric utility business, Citizens has agreed to sell and UniSource Energy has agreed to purchase all of the assets (subject to certain stated exceptions) used by Citizens in connection with or otherwise necessary for the conduct of its electric utility business in Arizona (the "Electric Assets"). Under the terms of the Asset Purchase Agreement relating to Citizens' gas utility business, Citizens has agreed to sell and UniSource Energy has agreed to purchase all of the assets (subject to certain stated exceptions) used by Citizens in connection with or otherwise necessary for the conduct of its gas utility business in Arizona (the "Gas Assets").

UniSource Energy has agreed to pay Citizens $92 million in cash for the Electric Assets and $138 million in cash for the Gas Assets, subject in each case to adjustment based on the date on which the Transaction closes and on the amount of certain assets and liabilities associated with the Assets at the time of closing. In addition, the base price for the Electric Assets and the Gas Assets will be reduced by $10 million in the aggregate if the Transaction closes by July 28, 2003. However, whether or not the Transaction closes by July 28, 2003, UniSource Energy has agreed to reduce rate base for the Gas Assets by $10 million. UniSource Energy will not assume Citizens' obligations under existing industrial development revenue bonds that were issued to finance portions of the purchased assets. Citizens will remain liable on these obligations.

Under the Asset Purchase Agreements, UniSource Energy and Citizens also agreed to coordinate the overall development of the positions to be taken and the regulatory actions to be requested regarding the two utility rate cases that Citizens has pending before the ACC. As part of the Joint Application of Citizens Communications Company and UniSource Energy Corporation to the Arizona Corporation Commission ("Joint Application"), UniSource Energy is seeking approval for a reduced level of rate increases. On April 1, 2003, UniSource Energy, Citizens, TEP and the staff of the Utilities Division of the ACC entered into a Settlement Agreement ("Settlement"), which sets forth the agreement and understanding of the parties with respect to the settlement of all issues arising under the Joint Application, the amount of the reduction in Citizens' proposed gas rate increase, UniSource Energy's forfeiture of any right to seek recovery of the under-collected balance under Citizens' purchase power and fuel adjustment clause, and other matters.[1] The proposed Settlement is subject to approval by the ACC. UniSource Energy states that under the proposed Settlement Citizens' electric and gas customers would save a total of about $29 million per year, as compared to the amount of rate increases proposed in Citizens' pending applications. The proposed Settlement also contains the agreement of the parties with respect to UniSource Energy's plan for financing the Transaction, as described below.

UniSource Energy states that the Transaction is subject to, among other conditions precedent, receipt by the parties of required approvals by the ACC, the FERC and this Commission, and filing of pre-merger notification statements under the Hart-Scott-Rodino Antitrust Improvements Act of 1976, as amended, and expiration or early termination of the statutory waiting period. The boards of directors of UniSource Energy and Citizens have each approved the proposed Transaction. The Transaction does not require shareholder approval by either company.

UniSource Energy states that it intends to fund the purchase price under the Asset Purchase Agreements using a combination of several sources, including: (1) Available cash at UniSource Energy; (2) possibly the issuance of new equity by UniSource Energy; (3) a loan from TEP; and (4) debt issued by the New Utility Companies or HoldCo (if the HoldCo Structure is utilized), which will be repaid either directly or indirectly from the cash flows of the New Utility Companies. The issuance of new debt securities by the New Utility Companies and the loan from TEP are subject to approval by the ACC.

More specifically, in the Joint Application, UniSource Energy is requesting the authorization of the ACC for the New Utility Companies to: (1) Issue or guarantee up to $175 million of debt securities for the purpose of funding a portion of the purchase price and initial working capital requirements of the New Utility Companies; (2) issue or guarantee additional debt securities from time to time under the terms of a new revolving credit agreement that will provide ongoing liquidity support to the New Utility Companies; (3) enter into indentures or security agreements which grant liens on some or all of the properties held by such companies to secure the debt obligations of such companies; and (4) issue common stock to UniSource Energy (or to HoldCo if the HoldCo Structure is used). Additionally, UniSource Energy and TEP are seeking authority from the ACC to allow TEP to fund up to $50 million of the aggregate purchase price through a loan to UniSource Energy. Authorization of this loan from TEP would provide financing flexibility to UniSource Energy in the event that, at the time of the consummation of the Transaction, UniSource Energy is unable to issue common stock on reasonable terms in order to fund the purchase price.

Under the proposed Settlement filed with the ACC, the New Utility Companies are expected to have an initial capital structure of about 40% common equity and 60% long-term debt. UniSource Energy's objective is to capitalize the New Utility Companies at a level that is consistent with an investment grade rating, in accordance with current ratings criteria published by the principal rating agencies. UniSource Energy has agreed that, until common equity as a percentage of total capitalization (*i.e.*, common and preferred equity and long-term debt, including current portion) of each of the New Utility Companies equals 40%, such company will not pay dividends to UniSource or HoldCo, as the case may be, in an amount exceeding 75% of such company's earnings. The $50 million loan from TEP would have a maturity not to exceed four years, would be secured by a pledge of 100% of the common stock of the New Utility Companies or HoldCo (if the HoldCo Structure is used), and would bear interest at 383 basis points above the yield-to-maturity of an equivalent four-year U.S. Treasury security as determined on the date of the loan. The

[1] Under the proposed Settlement, UniSource Energy has agreed to seek an increase in rates of the new gas utility of approximately 20.9%, versus the 28.9% increase requested by Citizens. In addition, UniSource Energy has agreed to forfeit its right to seek recovery of the under-collected balance under Citizens' electric purchase power and fuel adjuster clause (estimated to be at least $135 million as of July 28, 2003). As a result, electric rates of the new electric utility would increase by 22%, rather than the 45% increase proposed by Citizens.

Settlement further specifies that 264 basis points of the interest income earned by TEP on the TEP loan will be recorded as a deferred credit and used to offset rates in the future, and that the balance of the interest income will be used to build the equity capitalization of TEP.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 03–11991 Filed 5–13–03; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–47811; File No. SR–CHX–2002–20]

Self-Regulatory Organizations; Order Granting Partial Approval of Proposed Rule Change by the Chicago Stock Exchange, Incorporated Relating to Automatic Execution of Orders

May 7, 2003.

I. Introduction

On July 11, 2002, the Chicago Stock Exchange, Inc. ("CHX" or "Exchange") submitted to the Securities and Exchange Commission ("SEC" or "Commission"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b–4 thereunder,[2] a proposed rule change to allow a specialist to limit his aggregate auto-execution exposure.[3] On August 13, 2002, the Exchange submitted Amendment No. 1 to the proposal.[4] On August 27, 2002, the Exchange filed Amendment No. 2 to the proposed rule change.[5]

The proposed rule change was published for comment in the **Federal Register** on September 6, 2002.[6] No comments were received on this aspect of the proposal.[7] On April 25, 2003, the Exchange filed Amendment No. 3 to the proposed rule change.[8] This order partially approves the proposed rule change.

II. Description of the Proposal

The CHX Rules provide for automatic execution of orders, *i.e.*, without manual intervention by the CHX specialist, if certain conditions are met.[9] Under the CHX Rules, each CHX specialist designates an "auto-execution threshold" for each issue.[10] The auto-execution threshold is a number of shares, greater than 99 shares that the specialist is willing to execute automatically. If a specialist receives an order that exceeds his designated auto-execution threshold, the order is automatically directed into the specialist's book for manual execution, unless the order-sending firm has elected to receive partial automatic executions, in which case a portion of the order will automatically execute, up to the size of the auto-execution threshold, and the balance of the order will be placed in the specialist's book for manual execution.

Under the current version of the CHX Rules, a CHX specialist has unlimited (and the CHX believes unwarranted) auto-execution exposure, because a rapid succession of orders entered into the MAX system at or below the specialist's auto-execution threshold are due an automatic fill at the prevailing National Best Bid or Offer ("NBBO") price. Therefore, the CHX believes that specialists may be required to provide more liquidity than they intend to through automatic executions.

To resolve this issue, the Exchange has proposed to amend CHX Article XX, Rule 37(b)(1) to limit a specialist's unintended automatic execution liability by incorporating an Aggregate Share Threshold into the specialist's designated auto-execution parameters. The specialist can enable the Aggregate Share Threshold on an issue-by-issue basis. The functionality is entirely optional, however, and a specialist can still elect to provide additional liquidity guarantees.

Under this voluntary system enhancement, the specialist would agree to provide automatic execution (at the NBBO) of an aggregate number of shares (the "Aggregate Share Threshold"). Once an aggregate number of shares equal to the Aggregate Share Threshold was automatically executed, whether as a result of one order or numerous orders, subsequent orders would be directed into the specialist's book for manual execution. Under the proposed rule change, a specialist would then be obligated to either execute the order at a price and size equal to or better than the NBBO price and size at the time the order was received, or act as agent for the order to obtain the best available price on a marketplace other than the Exchange.

The Aggregate Share Threshold would reset after a prescribed amount of time designated by a specialist[11] and could never be set at a level less than the shares included in the specialist's own bid or offer.

The Exchange also proposes to relocate Article XX, Rule 43(d) to Rule 37(a), rendering the provisions of Rule 43(d) applicable to both over-the-counter and listed securities. This provision states that with respect to any market or marketable limit order not executed automatically, a specialist shall be obligated to either (a) manually execute such order at a price and size equal to or better than the NBBO price and size at the time the order was received; or (b) act as agent for such order in seeking to obtain the best available price for such order on a marketplace other than the Exchange, using order routing systems where appropriate.

III. Discussion

After careful review, the Commission finds that the proposed changes to CHX Article XX, Rules 37(a)(1), 37(a)(2), 37(b)(1) and 43(d) described above are consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.[12] Specifically, the Commission finds that these proposed changes are consistent with the requirements of Section 6(b)(5) of the Act[13] because they are designed to facilitate transactions in securities; to remove impediments to and to perfect the mechanism of a free and open market and a national market system; and, in general, to protect investors and the public interest; and are not designed to permit unfair discrimination between customers, issuers, brokers or dealers.[14]

The Commission believes that the proposed changes to CHX Article XX, Rule 37(a)(2) providing for an Aggregate Share Threshold achieve an appropriate balance between providing customers with efficient and prompt executions of orders and limiting the risk that specialists are exposed to by guaranteeing automatic executions. The Commission further finds that the proposed changes to CHX Article XX, Rule 37(b)(1) dealing with a specialist's obligations for manually handling market and marketable limit orders are consistent with the Act and the manner in which specialists currently handle orders for listed securities.

IV. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[15] that the portion of proposed rule change (SR–CHX–2002–20) relating to CHX Article XX, Rules 37(a)(1), 37(a)(2), 37(b)(1) and 43(d), as discussed above, is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[16]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 03–11992 Filed 5–13–03; 8:45 am]

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[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] In the proposed rule change, the Exchange also proposed a modified definition of the "BBO Price" and corresponding changes to the BEST Rule that would reflect the modified definition. The Commission is not approving those proposed changes in this order.

[4] *See* letter from Kathleen M. Boege, Associate General Counsel, CHX, to Nancy J. Sanow, Assistant Director, Division of Market Regulation ("Division"), Commission, dated August 9, 2002 ("Amendment No. 1").

[5] *See* letter from Kathleen M. Boege, Assistant General Counsel, CHX, to Nancy J. Sanow, Assistant Director, Division, Commission, dated August 23, 2002 ("Amendment No. 2").

[6] *See* Securities Exchange Act Release No. 46436 (August 29, 2002), 67 FR 57048.

[7] The Commission received one comment addressing the Exchange's proposed change to the definition of "BBO price."

[8] *See* letter from Kathleen M. Boege, Assistant General Counsel, CHX, to Nancy J. Sanow, Assistant Director, Division, Commission, dated April 24, 2003 ("Amendment No. 3"). In Amendment No. 3, the Exchange withdrew its request that the proposed rule change be approved on a pilot basis. Further, the Exchange made changes to the proposed definition of BBO price and requested partial approval of the portion of the proposed rule change dealing with issues other than the definition of BBO price. Because the only substantive changes contained in Amendment No. 3 involve this definition of BBO price, which the Commission is not approving in this order, the Commission similarly is not approving Amendment No. 3 at this time.

[9] *See* CHX Article XX, Rule 37(b)(6)(automatic execution of orders in listed securities); CHX Article XX, Rule 37(b)(7)(automatic execution of orders in OTC securities).

[10] *See* CHX Article XX, Rule 37(b)(1).

[11] A specialist choosing to enable the Aggregate Share Threshold functionality would be required to provide CHX staff with the designated time increment for each issue. The time increment would commence (and restart) upon any change in the NBBO.

[12] In approving this portion of the rule proposal, the Commission notes that it has also considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[13] 15 U.S.C. 78f(b)(5).

[14] The Commission notes that it is not approving proposed Interpretation .01 to CHX Rule 37, nor the corresponding modifications to Rule 37 that would accompany this interpretation.

[15] 15 U.S.C. 78f(b)(2).

[16] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–47814; File No. SR–MSRB–2002–12]

Self-Regulatory Organizations; Order Granting Approval of a Proposed Rule Change and Amendment No. 1 Thereto by the Municipal Securities Rulemaking Board Relating to Amendments to Rules G–37, on Political Contributions and Prohibitions on Municipal Securities Business, G–8, on Books and Records, Revisions to Form G–37/G–38 and the Withdrawal of Certain Rule G–37 Questions and Answers

May 8, 2003.

I. Introduction

On September 26, 2002, the Municipal Securities Rulemaking Board ("Board" or "MSRB") filed with the Securities and Exchange Commission ("Commission" or "SEC"), pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Exchange Act"), and rule 19b–4 thereunder,[1] a proposed rule change to amend rule G–37, on political contributions and prohibitions on municipal securities business, G–8, on books and records, revisions to Form G–37/G–38 and the withdrawal of certain rule G–37 Questions and Answers. On March 26, 2003, the MSRB amended the proposal. The proposed rule change revises the exemption process and the definition of municipal finance professional. Amendment No. 1 alters the text of the amendments to the rule language as it appears in the original filing. The proposed rule change, as modified by Amendment No. 1, was published in the **Federal Register** on April 8, 2003.[2]

The Commission received two comment letters on the proposed rule change.[3] This order approves the proposed rule change as modified by Amendment No. 1.

II. Summary of Comments

The Commission received two comment letters on the proposed rule change, both support the proposal.

The TBMA letter expresses support for the proposal because the TBMA believes that the changes will help reduce some of the burdens associated with rule G–37. According to the TBMA letter, the proposed rule change, "will not undercut [rule G–37's] goal of maintaining the integrity of the municipal underwriting process."[4] Furthermore, TBMA believes that the changes are long overdue and urges the Commission to quickly adopt the proposal.[5] Similar to the TBMA letter, the ABA/ABASA letter provides support for the proposed rule change as a means to limit the costs and burdens associated with regulatory compliance. On the amended definition of municipal finance professional, the ABA/ABASA letter expressed that the changes will limit the "unintended consequences of preventing dealer firms from hiring otherwise qualified employees."[6] Additionally, the more flexible exemption process will provide some relief for "inadvertent violations" on rule G–37's ban on contributions.[7]

III. Discussion and Commission Findings

Section 19(b) of the Exchange Act[8] requires the Commission to approve the proposed rule change filed by the MSRB if the Commission finds that the proposed rule change is consistent with the requirements of the Exchange Act and the rules and regulations thereunder. After careful review of the proposed rule change and comment letters, the Commission finds that the proposed rule change is consistent with the requirements of the Exchange Act and the rules and regulations thereunder, which govern the MSRB.[9] The language of section 15B(b)(2)(C) of the Act requires that the MSRB's rules must be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principals of trade, to foster cooperation and coordination with persons engaged in regulating, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market in municipal securities, and, in general, to protect investors and the public interest.[10]

The Commission acknowledges the MSRB Long-Range Plan, to assess rule G–37's requirements and resulting

[1] 15 U.S.C. 78s(b)(1); 17 CFR 240.19b–4.

[2] *See* Release No. 34–47609 (April 1, 2003), 67 FR 17122.

[3] April 25, 2003, letter from John M. Ramsay, Senior Vice President and Regulatory Counsel, The Bond Market Association to Jonathan G. Katz, Secretary, Commission ("TBMA letter"); April 29, 2003, letter from Sarah Miller, American Bankers Association and ABA Securities Association to Jonathan G. Katz, Secretary, Commission ("ABA/ABASA letter").

[4] *See* TBMA letter at 1.

[5] *Id.* at 2.

[6] *See* ABA/ABASA letter at 2.

[7] *Id.*

[8] 15 U.S.C. 78s(b).

[9] Additionally, in approving this rule, the Commission notes that it has considered the proposed rule's impact on efficiency, competition and capital formation. 15 U.S.C. 78c(f).

[10] 1015 U.S.C. 78o–4(b)(2)(C).

compliance concerns. Both the Commission and the MSRB believe that rule G–37 is essential to diminish pay-to-play practices in the municipal securities market. The rule has provided substantial benefit to the industry and the investing public by reducing the direct connection between political contributions to issuer officials and the awarding of municipal securities business.

The comment letters welcome the amendments proposed as a means to reduce industry costs and burdens. The Commission does not believe that the proposed rule change will threaten the purpose and efficacy of the pay-to-play restrictions. The Commission believes that the proposed rule change adequately provides essential protections in the exemption process and the revised definition of municipal finance professional. Furthermore, proposed revision of the look back and look forward periods to better correlate with the municipal finance professionals' role and business activity will continue to safeguard against the potential link between obtaining municipal securities business and contributions.

IV. Conclusion

It is therefore ordered, pursuant to section 19(b)(2) of the Exchange Act,[11] that the proposed rule change (File No. SR–MSRB–2002–12) be and hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[12]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 03–11995 Filed 5–13–03; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–47815; File No. SR–MSRB–2003–03]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the Municipal Securities Rulemaking Board Relating to Marketing of 529 College Savings Plans in the Workplace

May 8, 2003.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (the "Exchange Act") and rule 19b–4 thereunder,[1] notice is hereby given that on April 29, 2003, the Municipal Securities Rulemaking Board (the "MSRB") filed with the Securities and Exchange Commission (the "Commission") a proposed rule change (File No. SR–MSRB–2003–03) (the "proposed rule change") described in items, I, II, and III below, which items have been prepared by the MSRB. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The MSRB has filed with the Commission a proposed rule change consisting of an interpretive notice on marketing by brokers, dealers and municipal securities dealers ("dealers") of 529 college savings plans in the workplace. The entire text of the proposed rule change appears at the end of this notice.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the MSRB included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in item IV below. The MSRB has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

(1) Purpose

The MSRB has received a number of requests for guidance on dealer responsibilities under MSRB rules with respect to the marketing of 529 college savings plans (a type of state program that issues municipal fund securities) through the workplace to employees. Such workplace marketing programs raise unique interpretive issues under MSRB rules. The MSRB has determined to provide interpretive guidance on the application of rule G–8, on recordkeeping, rule G–17, on fair dealing, rule G–19, on suitability, rule G–27, on supervision, and rule G–32, on disclosure, in the context of workplace marketing programs relating to 529 college savings plans.

(2) Basis

The MSRB believes that the proposed rule change is consistent with section 15B(b)(2)(C) of the Exchange Act, which provides that the MSRB's rules shall:

> be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in municipal securities, to remove impediments to and perfect the mechanism of a free and open market in municipal securities, and, in general, to protect investors and the public interest.

The MSRB believes that the proposed rule change will provide guidance to dealers engaged in workplace marketing programs for 529 college savings plans as to how to comply with MSRB rules in a manner that ensures that the investor protection objectives of the rules are met.

B. Self-Regulatory Organization's Statement on Burden on Competition

The MSRB does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Exchange Act since it would apply equally to all dealers involved in workplace marketing programs for 529 college savings plans.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

On November 18, 2002, the MSRB published for comment draft interpretive notice on marketing of 529 college savings plan employee payroll deduction programs. The MSRB received six comment letters.[2] After reviewing these comments, the MSRB approved the draft interpretive notice, with certain modifications, for filing with the SEC.[3] The comments and the MSRB's responses are discussed below.

[11] 15 U.S.C. 78s(b)(2).

[12] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1) and 17 CFR 240.19b–4 thereunder.

[2] Letter from Robert W. Berta, Jr., Vice President—Compliance, Countrywide Investment Services, Inc. ("Countrywide"), to Ernesto A. Lanza, Senior Associate General Counsel, MSRB, dated December 17, 2002; letter from M. Shawn Dreffein, President, National Planning Corporation ("NPC"), to Ernesto A. Lanza, dated January 7, 2003; letter from Natalie A. Kavanaugh, Legal Specialist, Fidelity Investments ("Fidelity"), to Ernesto A. Lanza, dated January 9, 2003; letter from Diana F. Cantor, Chair, College Savings Plan Network ("CSPN") and Executive Director, Virginia College Savings Plan, to Ernesto A. Lanza, dated January 10, 2003; letter from Stuart J. Kaswell, Senior Vice President and General Counsel, Securities Industry Association ("SIA"), to Ernesto A. Lanza, dated January 10, 2003; and letter from Tamara K. Salmon, Senior Associate Counsel, Investment Company Institute ("ICI"), to Ernesto A. Lanza, dated January 10, 2003.

[3] After reviewing the comments, the MSRB modified the draft interpretive guidance to: (i) Change the term "introducing broker" to "selling broker;" (ii) reflect the existence of other scenarios in which 529 college savings plans are marketed in the workplace; (iii) provide more guidance as to when dealers may rely on others to fulfill regulatory responsibilities; and (iv) clarify certain recordkeeping obligations. These revisions are described in greater detail below.

NPC fully supported the draft interpretive notice, stating that it "clearly sets out the rationale for providing guidance in this area * * * [and] will make it possible for our Representatives to assist companies in offering 529 college savings plans to their employees." CSPN, Fidelity, ICI and SIA all generally supported the draft interpretive notice, although each requested that the MSRB further broaden and/or clarify the guidance in various respects.[4]

Fidelity, ICI and SIA requested that the MSRB substitute the term "selling broker" or "selling dealer" for the term "introducing broker" used in the draft interpretive notice. They stated that the term "introducing broker" is used with different meanings under the federal securities laws applicable to other types of securities and may cause some confusion. In addition, SIA recommended that, for purposes of the interpretation, the term "selling broker" also encompass the primary distributor where it directly establishes the relationship with the employer. SIA stated, "In addition to recognizing that a selling broker rarely, if ever, has a suitability obligation in the context of a payroll deduction program, the notice should clarify that a primary distributor who makes 529 Plan investments available through a third-party broker would not have a suitability obligation under rule G–19, as it too makes no recommendation to an employee." The MSRB has changed the term "introducing broker" to "selling broker" in the revised interpretive notice. Contrary to SIA's statement that the interpretive notice recognizes "that a selling broker rarely, if ever, has a suitability obligation," the notice does not assess the likelihood or frequency of recommendations being made by selling brokers. The notice does provide some guidance regarding the factors to consider when determining whether a recommendation has occurred. The MSRB believes that no further guidance in this area is necessary.

CSPN, Fidelity, ICI and SIA each noted that the scenario described in the draft interpretive notice is not the only form in which dealers may seek to market 529 college savings plans through employers. In addition to arrangements where selling brokers having a contractual relationship with the primary distributor to market through employers, with the employees making investments directly through the primary distributor (as described in the draft interpretive notice), these commentators noted that: (1) Primary distributors may themselves market 529 college savings plans through employers; (2) selling brokers sometimes have contractual relationships with the issuer rather than the primary distributor; (3) selling brokers may handle employee investments and maintain long-term relationships with employees, rather than merely introducing employees to the primary distributor; (4) transfer agents may undertake significant responsibilities in connection with employees' investments; and (5) employees may in some instances use a dealer other than the selling broker or primary distributor to make an investment that may still be considered part of the employer-sponsored program. These commentators requested that the MSRB address some or all of these additional scenarios. In addition, CSPN suggested that the MSRB make clear that the scenarios addressed in the draft interpretive notice are illustrative and that other models may be implemented.

The MSRB has made significant modifications to the initial paragraphs of the notice to reflect the existence of these other scenarios. No significant change in interpretation results from a primary distributor acting in the role of a selling broker. The identity of the selling broker's counterparty on the selling agreement also does not significantly change its regulatory obligations. Selling brokers that make recommendations remain fully obligated under MSRB rules and remain ultimately responsible where the primary distributor has not affirmatively undertaken regulatory obligations on behalf of the selling broker (as discussed below). The guidance provided by the notice is primarily intended for dealers that are formally involved in a workplace marketing program; thus, the notice is of limited applicability to dealers that do not have a formal role in such a program.

Fidelity observed that the draft interpretive notice referred to on-line enrollment with the primary distributor and noted that in many circumstances enrollment and investments continue to be handled by mail. Also, Fidelity, ICI and SIA noted that other forms of payment, such as ACH (automated clearing house) bank transfers, may be used in addition to traditional employee payroll deductions. These commentators requested that the MSRB recognize these variants in its final notice. The revised interpretive notice now more clearly acknowledges these different processes.

CSPN, Fidelity, ICI and SIA sought further clarification on the circumstances under which selling brokers may rely on other parties to meet their regulatory obligations. CSPN and SIA stated that dealers should be able to rely on issuers to distribute official statements to customers. CSPN noted its concern that customers may be confused by the receipt of redundant (and possibly out-dated) disclosure documents if dealers must deliver official statements regardless of whether the issuer has sent them to customers. SIA suggested that the ability of the selling broker to rely on the primary distributor for delivery of the official statement as provided in the draft interpretive notice be extended to the ability to rely on other parties, such as other dealers, employers and issuers.

The revised interpretive notice permits a selling broker to conclusively rely on the primary distributor to meet its disclosure obligations and certain supervisory obligations (described below) only under the limited circumstances in which employee orders are not accepted without actual delivery of the official statement and the primary distributor has affirmatively agreed to undertake such regulatory obligations on behalf of the selling broker. In such circumstances, the primary distributor will be responsible for fulfilling such obligations. In all other circumstances, the notice clarifies that a selling broker may agree with another party to take certain actions on its behalf but that if such other party fails to take such actions, the selling broker remains responsible for fulfilling its regulatory obligation.

ICI suggested that the MSRB should permit selling brokers to enter into arrangements with the primary distributor to meet their supervisory obligations to review and approve customer accounts and transactions based upon having procedures in place that provide assurances to the selling brokers that such review and approval is being undertaken by the primary distributor. SIA questioned the value of requiring a selling broker to review customer accounts and transactions well after the transaction is executed, especially if the transaction was not recommended. In addition, SIA questioned why a requirement for such review and related recordkeeping would be dependent upon whether the selling broker receives compensation for a transaction.

[4] Countrywide did not state its position regarding the draft interpretive notice but merely noted a possible grammatical correction.

The revised interpretive notice clarifies that, where a selling broker does not make a recommendation and the primary distributor affirmatively agrees to take on both the disclosure responsibilities and the supervisory responsibilities with regard to opening of accounts and approval of transactions, the regulatory obligation may be shifted to the primary distributor. However, supervisory responsibility remains with the selling broker so long as the selling broker retains any affirmative duties to employees. The MSRB believes that the limited recordkeeping obligations imposed on all selling brokers in the notice are appropriate. The revised interpretive notice makes clear that the limited recordkeeping requirements that remain for subsequent transactions effected by the primary distributor where compensation is paid to the selling broker applies only when such compensation is transaction based since, depending on the facts and circumstances, this information may be necessary to determine compliance with MSRB's fair pricing and fair commission requirements.

With respect to transfer agents, SIA noted that many plans provide for applications and customer orders to be sent directly to a transfer agent, with the primary distributor's activities "limited to managing the overall marketing of the program and the production of marketing and promotional materials." SIA stated that, "only the transfer agent maintains any investor records and these records are the plan's investor records. Thus, in this model, the primary distributor's regulatory responsibilities are limited primarily to compliance with applicable rules governing marketing materials but not those rules mandating customer account related procedures." SIA sought assurance that primary distributors did not retain residual customer protection obligations under MSRB rules in the scenario where applications and orders are submitted directly to the transfer agent.

The MSRB notes that transfer agents generally are viewed under the Exchange Act as working on behalf of the issuer but that, in the 529 college savings plan market, transfer agents also sometimes contractually agree to act on behalf of the primary distributor. In the revised interpretive notice, where transactions are effected through a transfer agent without the direct involvement of the primary distributor or the selling broker, the selling broker is permitted to conclusively rely on the primary distributor to fulfill certain of the selling broker's regulatory obligations only if the transfer agent has contractually agreed to act on behalf of the primary distributor. Otherwise, the transfer agent is effectively treated as an agent of the issuer and the dealer that enlisted the corresponding employer to participate in the workplace marketing plan remains ultimately responsible for compliance with MSRB rules.

SIA asked why a selling broker would have a fair dealing obligation under rule G–17 to an employer since the employer is not the dealer's client. SIA also sought guidance regarding the nature of information that a dealer would be obligated to provide to the employer under the rule G–17 disclosure obligation. ICI and SIA also questioned the need for the selling broker to maintain a record of the name and address of an employer that the dealer solicited, as well as for principal review of such solicitation. CSPN sought assurances that the fair dealing obligation toward the employer would not give rise to any inference that the issuer has any Federal securities law obligation to employers under the scenario described in the draft interpretive notice.

The fair dealing requirement of rule G–17 applies, on its face, to all persons, not just customers. The MSRB believes that it appropriately applies to the selling broker's relationship with employers, particularly since the selling broker is inducing the employer to create a captive audience of investors and the employer's agreement to participate in the program may lead employees to believe that the employer endorses investment under the program. Under these circumstances, it is important that selling brokers provide adequate information regarding the program to the employer so that it can make an informed decision with regard to enrollment in the program. The limited recordkeeping regarding the employer required by the notice is important in the context of documenting the ability of a selling broker to rely on the guidance provided in the notice with respect to particular transactions. The revised interpretive notice provides assurances that a dealer's fair dealing obligation to the employer is not intended to imply that the issuer has a similar legal obligation to the employer.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve the proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule is consistent with the Exchange Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of the submissions, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of the filing will also be available for inspection and copying at the MSRB's principal offices. All submissions should refer to File No. SR–MSRB–2003–03 and should be submitted by June 4, 2003.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[5]

Margaret H. McFarland,

Deputy Secretary.

Interpretive Notice on Marketing of 529 College Savings Plans in the Workplace

The Municipal Securities Rulemaking Board ("MSRB") has received a number of requests for interpretive guidance on the responsibilities of brokers, dealers and municipal securities dealers ("dealers") under MSRB rules with respect to the marketing of 529 college savings plans through the workplace to employees ("workplace marketing programs"). Workplace marketing programs have been described to the MSRB as being offered through a variety of means.[1] In many cases, a dealer ("selling broker") that has signed a selling agreement with the primary distributor of a 529 college savings plan makes available to employers the opportunity to initiate a workplace marketing program for those employees who choose to enroll and make contributions under the 529 college savings plan.[2] The selling broker typically meets with the employer's human resources/benefits representatives, who then may agree to have the employer participate in the workplace marketing program. One form of workplace marketing program provides for the employer to utilize its existing payroll direct deposit process for after-tax contributions by employees. In other cases, employee contributions may be effected by means of ACH (automated clearing house) bank transfers or other means, whether electronically or by check.

After the employer has agreed to participate in a workplace marketing program, its employees can establish an account in a variety of manners, depending upon the specific 529 college savings plan. For example, many workplace marketing programs provide for the employee to establish an account with the primary distributor by completing an online or paper account application and participation agreement, which is submitted directly to the primary distributor. In other cases, applications may be submitted to a transfer agent[3] or the issuer, or may be handled by the selling broker itself. Typically, the selling broker provides the employer with materials for distribution to interested employees describing the particular 529 college savings plan, including but not limited to the program disclosure document that meets the definition of "official statement" under Exchange Act rule 15c2–12. Further, the selling broker may, but does not always, hold informational meetings with employees, either in groups or individually. However, in many workplace marketing programs, once the employer has agreed to participate, employees can enroll in the program and make contributions directly through the primary distributor, transfer agent or issuer without any further involvement of the selling broker.

When an employee enrolls in the workplace marketing program, certain information regarding the employee's enrollment is made available to the parties who are involved in the processing of the enrollment and contributions. Typically, however, the selling broker will receive notification of an account opening and any transactions effected for an individual employee only after the fact, either on a transaction-by-transaction basis or in periodic *summaries* of trade activities.[4] Thus, unless the selling broker itself handles the enrollment and contribution functions for employees, the selling broker may not learn the identity of individual employees actually making investments in the 529 college savings plan until well after the time of trade and settlement on such transactions. The selling broker generally receives commissions on an individual participant basis for those employees who enroll and invest in the 529 college savings plan.

The MSRB has established a number of rules designed to protect customers purchasing municipal securities (including investments in 529 college savings plans) from or through dealers. In particular, under rule G–19, a dealer that recommends a 529 college savings plan transaction to a customer must have reasonable grounds for believing that the recommendation is suitable, based upon information available from the issuer or otherwise and the facts disclosed by or otherwise known about the customer. To assure that a dealer effecting a recommended transaction with a non-institutional customer has the information needed about the customer to make its suitability determination, the rule requires the dealer to make reasonable efforts to obtain information concerning the customer's financial status, tax status and investment objectives, as well as any other information reasonable and necessary in making the recommendation. In addition, the dealer has certain disclosure-related obligations to the customer, regardless of whether the dealer has recommended a particular transaction to the customer. For example, under rule G–32, the dealer is obligated to deliver an official statement to the customer by settlement of the transaction.[5]

Further, under rule G–17, each dealer, in the conduct of its municipal securities activities, must deal fairly with all persons and must not engage in any deceptive, dishonest or unfair practice. This rule has been interpreted to require a dealer to disclose to its customer, at or before the time of trade, all material facts concerning the transaction known by the dealer, as well as material facts about the security when such facts are reasonably accessible to the market.[6] This rule G–17 disclosure obligation applies regardless of whether the dealer has made a recommendation to the customer. If the customer is investing in an out-of-state 529 college savings plan, the dealer also is obligated to inform the customer that, depending upon the laws of the customer's home state, favorable state tax treatment for investing in a 529 college savings plan may be limited to investments made in a plan offered by the customer's home state.[7] Further, rule G–17 prohibits the dealer from misleading customers regarding facts material to the transaction, including but not limited to the availability of state tax benefits in connection with an investment in a 529 college savings plan.[8]

A dealer is obligated under rule G–17 to deal fairly not only with customers but with all persons in connection with the conduct of its municipal securities activities. Thus, in addition to dealing fairly with employees that have agreed to participate in a workplace marketing program, a selling broker that enters into a formal or informal agreement with an employer to undertake a workplace marketing program also is obligated under rule G–17 to deal fairly with the employer itself.[9] Whether a dealer has

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[5] 17 CFR 200.30–3(a)(12).

[1] The description of certain characteristics of workplace marketing programs in this notice is intended to illustrate the application of MSRB rules and is not intended to imply that workplace marketing programs having different characteristics are not permitted under MSRB rules.

[2] In some cases, the primary distributor itself, rather than a separate dealer, may initiate a workplace marketing program and undertake the various functions of a selling broker described in this notice. In other cases, the selling broker may have a contractual relationship with the issuer rather than with, or in addition to, the primary distributor.

[3] Third-party transfer agents are generally considered, under section 3(a)(25) of the Exchange Act, to be providing services on behalf of the issuer of securities. The MSRB understands that, in the 529 college savings plan market, transfer agents may sometimes be engaged by the primary distributor to handle certain recordkeeping and processing functions on behalf of the primary distributor.

[4] Where the primary distributor itself serves in the role of selling broker, it will obtain information concerning the transaction on a timely basis where enrollment and contributions are effected directly with the primary distributor and, where enrollment and contributions are effected with a transfer agent that has a direct contractual relationship with the primary distributor, the transfer agent will obtain such information on a timely basis on behalf of the primary distributor.

[5] In the case of a repeat purchaser who has already received the official statement, dealers generally are required to deliver any amendments or supplements to the official statement in connection with subsequent investments in the 529 college savings plan.

[6] *See* rule G–17 Interpretation—Interpretive Notice Regarding Rule G–17, on Disclosure of Material Facts, March 20, 2002, *MSRB Rule Book*.

[7] *See* rule G–21 Interpretation—Application of Fair Practice and Advertising Rules to Municipal Fund Securities, May 14, 2002, *MSRB Rule Book*.

[8] *Id.*

[9] Under section 15B(c)(1) of the Exchange Act, any dealer that attempts to induce the purchase of municipal securities must do so in compliance with MSRB rules. This would include an attempt by a selling broker (or a primary distributor acting in the role of a selling broker) to induce employees to invest in a 529 college savings plan through an employer participating in a workplace marketing program. Thus, the selling broker generally will become obligated to comply with the duties

dealt fairly with an employer is dependent upon the facts and circumstances. However, the MSRB believes that, under these circumstances, rule G–17 obligates the selling broker to disclose to the employer all material facts known by the selling broker concerning the transactions it is attempting to induce, as well as material facts about the security when such facts are reasonably accessible to the market. If the selling broker knows or has reason to know that one or more employees may not be resident in the state of the 529 college savings plan being offered under the workplace marketing program, rule G–17 requires the selling broker to disclose to the employer that, depending upon the laws of the state of residence of an employee, favorable state tax treatment for investing in a 529 college savings plan may be limited to investments made in a 529 college savings plan offered by the employee's home state. These are the same disclosures that a dealer effecting a transaction with individual customers is required to make under rule G–17.

Where a selling broker has recommended a transaction in a 529 college savings plan to an employee through a workplace marketing program, the selling broker is fully obligated to make a suitability determination under rule G–19.[10] The selling broker would be responsible for obtaining and maintaining the information required under rule G–19(b) in connection with such suitability determination and the additional information required under rule G–8(a)(xi), as well as for maintaining proper supervision.[11] The MSRB has previously stated that whether a particular transaction is in fact recommended depends on an analysis of all the relevant facts and circumstances.[12] Among the facts and circumstances that generally would be relevant in this context is the nature of the statements made by the selling broker if it conducts any informational meetings with employees. If, for example, the selling broker conducts an employee informational meeting at which it states that the particular 529 college savings plan is appropriate for most or all employees, or at which it advises individual employees that the plan or specific investment options within the plan are appropriate for such individuals, the introducing broker most likely has made a recommendation. If, however, the selling broker provides, at most, only generalized recommendations about the 529 college savings plan accompanied by clear statements that enrollment in this particular 529 college savings plan or investment in any particular investment option within the plan may not be appropriate for all employees, the selling broker must have reasonable grounds for the generalized recommendation in light of the information about the security but need not make a determination that the investment is suitable for each employee in attendance.[13] A selling broker making a recommendation to a particular employee also is fully responsible for providing the required disclosure information under rules G–17 and G–32.

If a selling broker does not make a recommendation in connection with a transaction in a 529 college savings plan by an employee through a workplace marketing program, it has no suitability obligation under rule G–19. Although the selling broker still would be obligated to provide the required disclosures under rules G–17 and G–32, if all employee transactions under the workplace marketing program are handled by the primary distributor or a transfer agent that has contractually agreed to act on behalf of the primary distributor, the selling broker's responsibilities will be conclusively fulfilled if the placing of an order in that manner is conditioned upon actual receipt of the official statement and the primary distributor has formally agreed to be responsible for such delivery.[14] For example, if employees make investments directly through the primary distributor's Web site and the Web site requires that investors first view or download the official statement before being allowed to complete transactions, then the selling broker would be able to conclusively rely on this method of delivery for purposes of fulfilling its disclosure requirements.[15] However, if the primary distributor does not provide assurances that necessary disclosures will be made to employees, the selling broker will be required to provide such disclosures.[16] The selling broker must put in place appropriate supervisory procedures to ensure that required disclosures are provided in a satisfactory manner where it is not entitled to conclusively rely on the primary distributor as described above.

In addition, where a selling broker is entitled to conclusively rely on disclosures provided by the primary distributor or transfer agent (as described in the preceding paragraph) and the transaction is not recommended, the selling broker may conclusively rely on the primary distributor to fulfill the selling broker's supervisory obligation to review and approve customer accounts and transactions under rule G–27(c)(iii) and (vii) for such accounts and transactions if the primary distributor has formally agreed to be responsible for such supervision.[17] Under circumstances where such conclusive reliance is not available to the selling broker, the selling broker may fulfill these supervisory obligations by reviewing and approving individual account openings and transactions as information becomes available from the primary distributor, transfer agent or other relevant party. In all cases of non-recommended transactions, the selling broker must undertake prompt reviews and approvals of agreements obtained from employers to participate in a workplace marketing program and for recording account information under rule G–8(a)(ii) and customer specific information for each enrolled employee required under rule G–8(a)(xi) (of which only information under items (A), (C), (E) and (H) thereunder shall be required) as it becomes available. A selling broker wishing to rely on the guidance provided in this notice also is required to record the name and principal business address of any employer agreeing to participate in a workplace marketing program, together with the signature of an appropriate principal approving such agreement. Selling brokers are reminded that the conclusive reliance permitted by this paragraph and the preceding paragraph is not available in the case of recommended transactions, in which case the selling broker retains the primary obligation to fulfill all customer protection, disclosure, supervisory and recordkeeping duties.

Dealers should note that none of the foregoing obviates the need for primary distributors to fulfill all of their customer protection obligations under MSRB rules where a selling broker is not otherwise required to fulfill such obligations. Furthermore, if transactions subsequent to the initial enrollment of an employee in a workplace marketing program are effected directly between the employee and the primary distributor, the primary distributor generally will have sole responsibility with respect to compliance with MSRB rules in connection with such subsequent transactions, provided that the selling broker will be required to record information regarding subsequent transactions as required under rule G–8(a)(ii) to the extent that it receives transaction-based compensation for such transactions. Dealers also should note that, if employees make their purchases directly from the governmental issuer (whether through the issuer's own employees or any non-dealer agent of the issuer), the selling broker or primary distributor that enlists an employer to participate in a workplace marketing program is ultimately responsible for fulfilling all of its obligations under MSRB rules. Thus, for example, although an issuer may undertake to provide disclosure materials to investors, the dealer remains responsible under MSRB rules should the issuer fail to deliver the required disclosures to an employee who enrolls in a 529 college savings plan through a workplace marketing program promoted by the dealer acting as a selling broker, or if such disclosure information is not delivered in a timely manner.

[FR Doc. 03–11998 Filed 5–13–03; 8:45 am]

BILLING CODE 8010–01–P

established under rule G–17 with respect to the employer in connection with the procurement of the employer's agreement to participate in the workplace marketing program, even if there is no assurance that any employee ultimately will enroll. This obligation would not apply to an issuer if its own personnel or agents of the issuer were to initiate a workplace marketing program with an employer, as MSRB rules do not apply to issuers.

[10] A selling broker that recommends a transaction to an employee cannot avoid its suitability obligations and related duties simply because the employee places its order directly with the primary distributor, transfer agent or issuer. In addition, a primary distributor acting in the role of a selling broker that recommends a transaction to an employee cannot avoid its suitability obligations and related duties simply because the employee places its order directly with the issuer or transfer agent.

[11] Rule G–27 requires an appropriate principal to review the opening of each customer account and of each transaction for such customer. In addition, rules G–8 and G–9 require dealers to create and preserve certain records in connection with such accounts and transactions.

[12] *See* rule G–19 Interpretive Letter—Recommendations, February 17, 1998, *MSRB Rule Book*. The MSRB also has provided guidance on recommendations in the context of on-line communications in rule G–19 Interpretation—Notice Regarding Application of Rule G–19, on Suitability of Recommendations and Transactions, to Online Communications, September 25, 2002, *MSRB Rule Book*.

[13] *See* rule G–19 Interpretation—Notice Concerning the Application of Suitability Requirements to Investment Seminars and Customer Inquiries Made in Response to a Dealer's Advertisements, May 7, 1985, *MSRB Rule Book*.

[14] Under these circumstances, the primary distributor could be held responsible for any failures to meet the disclosure requirements of rules G–17 and G–32. In addition, the primary distributor should note that, if the official statement omits material information that it would be obligated to provide under rule G–17, the primary distributor would be responsible for providing such omitted information.

[15] The MSRB has provided guidance on electronic delivery of required disclosure information in rule G–32 Interpretation—Notice Regarding Electronic Delivery and Receipt of Information by Brokers, Dealers and Municipal Securities Dealers, November 20, 1998, *MSRB Rule Book*. Arrangements assuring actual delivery of the official statement to employees may also be possible in circumstances where paper applications and participation agreements are mailed directly to the primary distributor or its transfer agent.

[16] Selling brokers would be advised, for example, to provide official statements to the employer's human resource/employee benefits department and at any employee informational meetings that it attends. The selling broker may enter into contractual arrangements whereby the primary distributor, transfer agent, issuer or other party agrees to provide the required disclosures to employees. However, except as described above, the selling broker will be responsible for any failure by such third party to meet its contractual delivery obligation.

[17] Under these circumstances, the primary distributor could be held responsible for any failures to meet such supervisory obligations.

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–47813; File No. SR–NYSE–2003–11]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the New York Stock Exchange, Inc. Relating to NYSE Broker Volume Web Service

May 8, 2003.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and rule 19b–4 thereunder,[2] notice is hereby given that on April 22, 2003, the New York Stock Exchange, Inc. ("NYSE" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in items I, II, and III below, which items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to establish fees for its NYSE Broker Volume Web Service, a new service that allows subscribers to view reports of broker share volume information that the NYSE produces from the NYSE Broker Volume Database. The text of the proposed rule change is below. Proposed new language is in italics.

NYSE 2003 PRICE LIST

* * * * *

MARKET DATA FEES

* * * * *

Schedule of Monthly Charges (excluding applicable taxes)

* * * * *

NYSE Broker Volume

*NYSE Broker Volume Web Service—per user—$300.00**

NYSE Broker Volume Database access fee—$3,000.00

NYSE Broker Volume Device Fee—per terminal—$100.00

(Maximum monthly device fee per subscriber—$2,500.00)

** Applies for web access to reports directly from NYSE. Persons that subscribe on or prior to October 1, 2003, receive a 30-day waiver of the NYSE Broker Volume Web Service fee.*

* * * * *

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to establish fees to make NYSE Broker Volume information available via a new Web-based service (the "NYSE Broker Volume Web Service"). Subscribers to this new service will be able to log-on to the NYSE Web site (*www.nysedata.com*) ("Web site") and receive formatted displays containing aggregate broker-dealer volume rankings in NYSE-traded securities. NYSE produces these displays from NYSE's electronic database of raw share volume information. NYSE creates that database from trades in NYSE-listed securities that participating NYSE members execute on NYSE (the "NYSE Broker Volume Database"). NYSE developed the NYSE Broker Volume Database to respond to requests from broker-dealers and others.

Vendors currently make broker volume reports available without the use of the NYSE Broker Volume

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

Database. They produce those services from volume data that broker-dealers voluntarily provide. NYSE constituents have told NYSE that they do not find those reports sufficient and have asked NYSE to distribute broker volume information that reflects members' actual trading activity as reported to NYSE. In response, NYSE created the NYSE Broker Volume Database and made that database available to vendors as an alternative to the databases that vendors are creating for themselves. On November 12, 2002, NYSE filed a proposed rule change [3] to establish fees for vendor access to the NYSE Broker Volume Database and for vendor distribution to subscribers of Broker Volume Reports that vendors generate from the NYSE Broker Volume Database (the "2002 Filing"). The 2002 Filing imposes a per-device subscriber fee that is subject to a per-subscriber monthly maximum that is reached when a subscriber has 25 devices.

Pursuant to the 2002 Filing, vendors may redistribute information from the NYSE Broker Volume Database in the form of controlled displays of broker volume reports. Vendors may display the reports according to their own preferences and styles and in the manner that they consider most useful to their subscribers. However, to date, no vendors have taken advantage of the opportunity to access the NYSE Broker Volume Database or to make reports generated from that database available to subscribers. Yet, NYSE continues to receive requests for broker volume information from its members and investors.

Accordingly, the Exchange proposes to provide a NYSE Broker Volume Web Service, which will allow market participants to gain access to NYSE Broker Volume displays that NYSE creates from the NYSE Broker Volume Database. NYSE will provide the NYSE Broker Volume Web Service on a controlled display directly to subscribers over the Web site.

The Exchange proposes to charge subscribers $300 per month for each user that has access to the NYSE Broker Volume Web Service. NYSE has established a secure information display and retrieval system through the combined use of user IDs and passwords. Persons with access to NYSE Broker Volume displays through the NYSE Broker Volume Web Service will not be able to manipulate the information contained in the displays or to redistribute the displays to others. The Exchange will require each subscriber to execute a suitable subscriber agreement with the Exchange. The Exchange will not cap the NYSE Broker Volume Web Service fees payable in respect of a subscriber, as it does in respect of subscribers that receive broker volume reports from a vendor.

For any individual that first subscribes to the NYSE Broker Volume Web Service on or prior to October 1, 2003, NYSE will waive the NYSE Broker Volume Web Service fee for 30 days (the "Free Trial Period"). The Free Trial Period will be applied on a rolling basis, determined by the date on which NYSE first entitles a new individual subscriber or potential individual subscriber to receive the NYSE Broker Volume Web Service. A specific individual subscriber may only receive this fee waiver one time.

2. Statutory Basis

The NYSE believes the proposed rule change is consistent with section 6(b)(4) of the Act [4] because it provides for the equitable allocation of reasonable dues, fees and other charges among its members and other persons using its facilities.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange believes that the proposal will not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others

The Exchange has not solicited, and does not intend to solicit, comments regarding the proposed rule change. The Exchange has not received any unsolicited written comments from members or other interested parties.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the Exchange consents, the Commission will:

(A) By order approve such proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the NYSE. All submissions should refer to file number SR-NYSE–2003–11 and should be submitted by June 4, 2003.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[5]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 03–11994 Filed 5–13–03; 8:45 am]

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[3] Securities Exchange Act Release No. 46847 (November 19, 2002), 67 FR 70799 (November 26, 2002)(SR–NYSE–2002–61).

[4] 15 U.S.C. 78f(b)(4).

[5] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–47819; File No. SR-Phlx-2002–17]

Self-Regulatory Organizations; Philadelphia Stock Exchange, Inc.; Order Granting Approval of Proposed Rule Change and Amendment Nos. 1, 2, and 3 Thereto and Notice of Filing of and Order Granting Accelerated Approval to Amendment Nos. 4, 5, 6, and 7 Thereto Relating to Crossing, Facilitation, and Solicited Orders

May 8, 2003.

I. Introduction

On March 18, 2002, the Philadelphia Stock Exchange, Inc. ("Phlx" or "Exchange") filed with the Securities and Exchange Commission ("Commission"), pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act") [1] and Rule 19b–4 thereunder,[2] a proposed rule change relating to crossing, facilitation, and solicited orders. On May 2, 2002, July 24, 2002, and August 20, 2002, Phlx submitted Amendment Nos. 1, 2, and 3 to the proposed rule change, respectively.[3] On May 2, 2002, notice of the proposed rule change, as amended by Amendment Nos. 1, 2, and 3, was published in the **Federal Register**.[4] The Commission received no comments on the proposed rule change. On November 6, 2002, February 25, 2003, March 19, 2003, and April 23, 2003, Phlx submitted Amendment Nos. 4, 5, 6, and 7 to the proposed rule change, respectively.[5] This notice and order solicits comment on Amendment Nos. 4, 5, 6, and 7 and approves the proposed rule change, as amended, on an accelerated basis.

II. Description of Proposal

The proposed rule change would amend Phlx Rule 1064, "Crossing, Facilitation and Solicited Orders," which governs the crossing of equity option orders by floor brokers. Rule 1064, among other things, sets forth the procedures by which a floor broker who holds a customer order ("original order") may cross such order with either another customer order or orders from the same originating firm, or with a contra side order provided by the originating firm from its own proprietary account.[6]

As explained by the Phlx, under the current rule, a floor broker seeking to cross buy and sell orders for the same options series must first bring the transaction to the trading floor and request markets from the trading crowd for all components of the order. After providing the crowd with the opportunity to make such markets, the floor broker must announce that he or she holds an order subject to crossing or facilitation, and then must propose a price at which to cross the original order that improves upon the price provided by the crowd. However, before the floor broker can effect the cross, the registered options traders ("ROTs") in the crowd are given the opportunity to take all or part of the transaction at the proposed price.

Under these rules, if the crowd does not want to participate in the trade, the floor broker may proceed with the cross. If the crowd wants to participate in part of the order, however, the crowd has priority and the floor broker may cross only that amount remaining after the crowd has taken its portion. If the crowd wants to participate in the entire order, the floor broker will not be able to cross or facilitate any part of the order.

The Phlx proposes to adopt new Commentary .02 to Rule 1064 to entitle the floor broker, under certain conditions, to cross a specified percentage of an original order with another customer order or orders, or with an order of the originating firm, before ROTs in the crowd can participate in the transaction. The percentage of the floor broker's guarantee would depend upon whether the price at which the order is ultimately traded is at the crowd's best bid or offer in response to the floor broker's initial request, or at an improved price.

Where the floor broker proposes the cross at a price that improves the crowd's market, and the crowd then wants to take part in some or all of the order at the improved price, the floor broker would be entitled to cross 40% of the contracts.[7] Where the trade takes place at the market provided by the crowd, the floor broker would be entitled to cross 20% of the contracts. These entitlements would apply only with respect to any portion of the original order that remained after all public customer orders in the limit order book and represented in the trading crowd at the time the market was established were satisfied.

The proposed rule change would apply to transactions in equity options and would initially apply to customer orders of a minimum size of 500 contracts. The Exchange's Options Committee would be authorized to determine, on an option by option basis, the eligible size for an order that could be transacted pursuant to the proposal. However, the eligible order size could not be less than 500 contracts. In the case of a complex order, such as a spread or a straddle, the proposed rule change would require that at least one leg of such an order, standing alone, would need to meet the eligible size requirement.

The proposed rule change also provides that if the same member organization of the Exchange is both the originating firm and the specialist for the option in which the transaction takes place, and the floor broker acting on behalf of the originating firm crosses or facilitates under the proposed rule, the specialist would not be entitled to any Enhanced Specialist Participation pursuant to Phlx Rule 1014(g) [8] with respect to the particular cross transaction.

If the specialist is not the same member organization as the originating firm, and the trade takes at the specialist's disseminated bid or offer when the specialist is on parity with one or more controlled accounts, the specialist may be entitled to an Enhanced Specialist Participation, but in no case would the specialist be guaranteed a percentage that, when combined with the percentage crossed by the floor broker, exceeds 40% of the original order after relevant public customer orders have been satisfied.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] See letters from Richard S. Rudolph, Director and Counsel, Phlx, to Nancy J. Sanow, Assistant Director, Division of Market Regulation ("Division"), Commission, dated May 1, 2002 ("Amendment No. 1"); and to Ira Brandriss, Special Counsel, Division, Commission, dated July 23, 2002 ("Amendment No. 2"), and August 19, 2002 ("Amendment No. 3").

[4] See Securities Exchange Act Release No. 45824 (April 25, 2002), 67 FR 22144 ("Notice").

[5] See letters from Richard S. Rudolph, Director and Counsel, Phlx, to Ira Brandriss, Special Counsel, Division, Commission, dated November 5, 2002 ("Amendment No. 4"), February 24, 2003 ("Amendment No. 5"), March 18, 2003 ("Amendment No. 6"), and April 22, 2003 ("Amendment No. 7").

Amendment No. 4 replaced the text of the proposed rule change with new text that made revisions to proposed Commentary .03. The text of proposed Commentary .03 was further amended by Amendment Nos. 5, 6, and 7. As discussed *infra*, the final text of proposed Commentary .03 as set forth in Amendment No. 7 is intended to clarify that the provision would apply to any transaction in which a floor broker is crossing a public customer order with an order that is not a public customer order.

In Amendment No. 6, Phlx also amended proposed Commentary .02(i) to Phlx Rule 1064, as discussed *infra*, to reflect that the proposed provision to entitle a floor broker to cross a certain percentage of a customer order with a facilitation order from the originating firm would apply only to *public* customer orders, not all customer orders.

[6] When the contra side is provided by the originating firm from its own proprietary account, the transaction is known as a "facilitation."

[7] After the floor broker proposed to cross the order, he or she would be required again to give the crowd a reasonable opportunity to bid or offer for the order. Telephone conversation between Richard S. Rudolph, Director and Counsel, and Dawn Kelly Reim, Market Surveillance Investigator, Phlx, and Ira Brandriss, Special Counsel, and Frank N. Genco, Attorney, Division, Commission, on October 21, 2002. If the crowd improved upon the floor broker's price, and the floor broker then proposed to match the crowd's price, the floor broker would be entitled to cross 20% of the contracts. Telephone conversation between Richard S. Rudolph, Director and Counsel, Phlx, and Ira Brandriss, Special Counsel, and Frank N. Genco, Attorney, Division, Commission, on November 21, 2002.

[8] The Enhanced Specialist Participation programs in Phlx Rule 1014(g) allocate to the specialist, in certain options classes, a greater than equal share of the portion of the order that is divided among the specialist and any "controlled accounts" that are on parity. A "controlled account" is an account controlled by or under common control with a broker-dealer.

Other provisions of the proposed rule change are patterned after similar rules on other exchanges.[9]

Amendment No. 6 to the proposed rule change specifies that the provisions of Commentary .02 to permit the floor broker to cross a specified percentage of an original order with a facilitation order of the originating firm would apply where the original order is a *public* customer order.

The Exchange further proposes to adopt Commentary .03 to Phlx Rule 1064. As set forth in Amendment No. 7 to the proposed rule change, Commentary .03 would state that a floor broker crossing a public customer order with an order that is not a public customer order, when providing a reasonable opportunity for the trading crowd to participate in the transaction, must disclose the public customer order that is subject to crossing prior to the execution of the order.

III. Discussion

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange. Specifically, the Commission finds that the proposal is consistent with the requirements of sections 6(b)(5) of the Act[10] that the rules of an exchange, among other things, be designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanisms of a free and open market and a national market system, and, in general, to protect investors and the public interest.[11]

The Commission believes that Phlx's proposal to grant crossing guarantees and participation rights to member firms seeking to execute crosses on the Exchange, under the proposed conditions, is reasonable. As noted above, other options exchanges have similar rules, and the proposed rule change should enable Phlx to compete with these exchanges in attracting order flow of broker-dealer firms seeking to cross or facilitate customer orders.

The Commission notes that, in approving member firm participation rights and other guaranteed participations in the past, it has found that rules entitling a market participant or participants to up to 40% of an order are not inconsistent with the statutory standards of competition and free and open markets.[12] The Commission has raised concerns, on the other hand, about participation guarantees that "lock up" a larger percentage of an order, and thereby reduce the number of contracts for which the trading crowd can compete.[13] The proposed rule change guarantees an allocation of no more than 40% of an order to a member firm seeking to facilitate an order. Moreover, the proposal includes a provision that limits the number of contracts to be allocated to the facilitating firm and the specialist in the aggregate to no more than 40% of the order. The rule for which the Phlx seeks approval is consistent with the Commission's position with respect to participation guarantees.

The Commission finds good cause for granting accelerated approval of Amendment Nos. 4, 5, 6, and 7 to the proposed rule change. Amendment No. 4 restated the text of the proposed rule change as set forth in the Notice, and made revisions only to Commentary .03. Amendment Nos. 5 and 6 also revised proposed Commentary .03. To the extent that the revisions made by these amendments were retained in the final version of proposed Commentary .03 set forth in Amendment No. 7, they are discussed below.

Amendment No. 6 also amended proposed Commentary .02 to establish that the member firm participation guarantee would apply only when the floor broker is seeking to cross a facilitation order from the member firm with a *public* customer order. The Commission notes that Phlx Rule 1064(b), governing facilitation crosses, refers specifically to transactions in which a floor broker is holding an options order for a *public* customer that he or she is seeking to cross with a contra side order. The text of proposed new Commentary .02 as originally submitted also referred to the facilitation of a public customer order. Although in an earlier amendment the Exchange deleted the word "public" from proposed Commentary .02,[14] the Exchange has now determined to restore the term. The Commission believes that this change is reasonable and also eliminates a possible inconsistency between Phlx Rule 1064(b) and proposed Commentary .02.

The Commission also finds good cause for accelerating approval of Amendment No. 7 to the proposed rule change. Amendment No. 7 would amend the text of proposed Commentary .03 to state that a floor broker crossing a public customer order with an order that is not a public customer order, when providing for a reasonable opportunity for the trading crowd to participate in the transaction, shall disclose the public customer order that is subject to crossing prior to the execution of the order. As discussed in the Notice, the Phlx believes that "[i]f the customer order is disclosed first, the trading crowd may be more likely to bid or offer competitively as contra side to that customer's order, thus benefiting the customer." As originally proposed, Commentary .03, referred only to facilitation orders. Amendment No. 7 establishes that the provision would apply to all crossing transactions in which the floor broker is crossing a public customer order with an order that is not a public customer order.[15] The Commission believes that it is appropriate to accelerate approval of Amendment No. 7.

Accordingly, the Commission finds that good cause exists, consistent with sections 6(b)(5) and 19(b)(2) of the Act,[16] to grant accelerated approval of Amendment Nos. 4, 5, 6, and 7 to the proposed rule change prior to the thirtieth day after publication in the **Federal Register**.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning Amendment Nos. 4, 5, 6 and 7, including whether Amendment Nos. 4, 5, 6 and 7 are consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to Amendment Nos. 4, 5, 6, and 7 that are filed with the Commission, and all written communications relating to these amendments between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the Exchange. All submissions should refer to File No. SR–Phlx–2002–17 and should be submitted by June 4, 2003.

V. Conclusion

It is therefore ordered, pursuant to section 19(b)(2) of the Act,[17] that the proposed rule change (File No. SR–Phlx–2002–17), as amended, is hereby approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[18]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 03–11996 Filed 5–13–03; 8:45 am]

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[9] *See* Notice.

[10] 15 U.S.C. 78f(b)(5).

[11] In approving the proposal, the Commission has considered its impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[12] *See, e.g.*, Securities Exchange Act Release Nos. 42455 (February 24, 2000), 65 FR 11388 (March 2, 2000); 42894 (June 2, 2000), 65 FR 36850 (June 12, 2000); 42835 (May 26, 2000), 65 FR 35683 (June 5, 2000); 42848 (May 26, 2000), 65 FR 36206 (June 7, 2000).

[13] *See, e.g.*, Securities Exchange Act Release No. 43100 (July 31, 2000), 65 FR 48778 (August 9, 2000).

[14] *See* Amendment No. 2.

[15] Commentary .03 also was amended by the Phlx to distinguish the disclosure requirement of proposed Commentary .03 from the provision of proposed Commentary .02(iv) requiring the floor broker to disclose all components of the customer order initially, before requesting that the trading crowd provide its market.

[16] 15 U.S.C. 78f(b)(5) and 78s(b)(2).

[17] 15 U.S.C. 78s(b)(2).

[18] 17 CFR 200.30–3(a)(12).

DEPARTMENT OF STATE

[Public Notice 4347]

Overseas Schools Advisory Council Notice of Meeting

The Overseas Schools Advisory Council, Department of State, will hold its Annual Meeting on Thursday, June 12, 2003, in the Bureau of Administration Conference Room 6320, Department of State Building, 2201 C Street, NW., Washington, DC. The meeting will take place from 9:30 a.m. to 12 p.m. and is open to the public.

The Overseas Schools Advisory Council works closely with the U.S. business community in improving American-sponsored schools overseas, which are assisted by the Department of State and which are attended by dependents of U.S. Government families and children of employees of U.S. corporations and foundations abroad.

This meeting will deal with issues related to the work and the support provided by the Overseas Schools Advisory Council to the American-sponsored overseas schools. The agenda includes a review of the recent activities of American-sponsored overseas schools and the overseas schools regional associations, a progress report on projects selected for the annual Program of Educational Assistance, and a presentation on the Council's project to develop a video tape for U.S. corporations on the Council's activities.

Members of the general public may attend the meeting and join in the discussion, subject to the instructions of the Chair. Admittance of public members will be limited to the seating available. Access to the State Department is controlled, and individual building passes are required for all attendees. Persons who plan to attend should so advise Dr. Keith D. Miller, Department of State, Office of Overseas Schools, Room H328, SA–1, Washington, DC 20522–0132, telephone 202–261–8200, prior to June 2, 2003. Each visitor will be asked to provide a date of birth and Social Security number at the time of registration and attendance and must carry a valid photo ID to the meeting. All attendees must use the C Street entrance to the building.

Dated: May 7, 2003.

Keith D. Miller,

Executive Secretary, Overseas Schools Advisory Council, Department of State.

[FR Doc. 03–12006 Filed 5–13–03; 8:45 am]

BILLING CODE 4710–24–P

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

[Docket No. WTO/DS–277]

WTO Dispute Settlement Proceeding Regarding the United States International Trade Commission Final Determination of Threat of Material Injury in the Investigation Concerning Certain Softwood Lumber From Canada

AGENCY: Office of the United States International Trade Representative.

ACTION: Notice; request for comments.

SUMMARY: The Office of the United States International Trade Representative ("USTR") is providing notice of the request by the Government of Canada for the establishment of a dispute settlement panel under the Marrakesh Agreement Establishing the World Trade Organization ("WTO Agreement") to examine the International Trade Commission ("ITC") final determination of threat of material injury with respect to certain softwood lumber from Canada.

The request for the establishment of a panel alleges that the ITC's determination is inconsistent with various provisions of the General Agreement on Tariffs and Trade 1994 ("GATT 1994"), the Agreement on Implementation of Article VI of GATT 1994 ("Anti-dumping Agreement"), and the Agreement on Subsidies and Countervailing Measures ("SCM Agreement"). USTR invites written comments from the public concerning the issues raised in this dispute.

DATES: Athough USTR will accept any comments received during the course of the dispute settlement proceedings, comments should be submitted on or before June 30, 2003 to be assured of timely consideration by USTR.

ADDRESSES: Comments should be submitted (i) electronically, to *fr0062@ustr.gov*, Attn: "Lumber Injury Dispute" in the subject line, or (ii) by fax, to Sandy KcKinzy at (202) 395–3640, with a confirmation copy sent electronically to the e-mail address above.

FOR FURTHER INFORMATION CONTACT: Theodore R. Posner, Assistant General Counsel, Office of the United States Trade Representative, 600 17th Street, NW., Washington, DC 20508, (202) 395–3582.

SUPPLEMENTARY INFORMATION: Pursuant to section 127(b) of the Uruguay Round Agreements Act ("URAA") (19 U.S.C. 3537(b)(1)), USTR is providing notice that on April 3, 2003, the Government of Canada submitted a request for establishment of a dispute settlement panel to examine the U.S. International Trade Commission ("ITC") final determination that an industry in the United States is threatened with material injury by reason of imports of softwood lumber from Canada determined by the U.S. Department of Commerce to have been subsidized and sold in the United States at less than fair value.

Major Issues Raised and Legal Basis of the Complaint

In its determination of May 16, 2002, published in the **Federal Register** on May 22, 2002, the ITC found that imports of softwood lumber from Canada that the U.S. Department of Commerce found to be subsidized and sold at less than fair value threatened an industry in the United States with material injury. The reasons for the ITC's determination are set forth in USITC Publication No. 3509 (May 2002).

By letter dated December 20, 2002, Canada requested consultations with the United States under the WTO Dispute Settlement Understanding regarding the ITC's determination. Consultations were held on January 22, 2003.

In its request for the establishment of a panel, Canada alleges that the United States has violated Article VI:6(a) of the GATT 1994; Articles 1, 3.1, 3.2, 3.4, 3.5, 3.7, 3.8, 12.2, 12.2.2, and 18.1 of the Anti-dumping Agreement; and Articles 10, 15.1, 15.2, 15.4, 15.5, 15.7, 15.8, 22.3, 22.5 and 32.1 of the SCM

Agreement. Canada alleges that these violations stem from certain errors in the ITC's determination. In particular, Canada claims that the ITC:

1. Failed to objectively evaluate the volume of dumped and subsidized imports from Canada, their impact on prices in the United States, and their impact on the U.S. industry;

2. Failed to objectively evaluate injury or threat of injury to the U.S. industry caused by factors other than dumped and subsidized imports, and to ensure that the impact of those factors was not attributed to dumped and subsidized imports;

3. Improperly determined that increased dumped and subsidized imports were imminent and were likely to exacerbate price pressure, which would materially injure the U.S. industry;

4. Failed to properly evaluate a variety of factors that it should have evaluated in reaching a conclusion of threatened material injury;

5. Failed to accord "special care" to its determination of threatened material injury;

6. Failed to set forth sufficient detail in its report regarding its findings and conclusions, including all relevant information and all considerations relevant to its threatened material injury determination; and

7. Failed to satisfy the requirements of Article 3 of the Anti-dumping Agreement and Article 15 of the SCM Agreement.

Public Comment: Requirements for Submissions

Interested persons are invited to submit written comments concerning the issues raised in Canada's request for consultations. Persons submitting comments may either send one copy by fax to Sandy McKinzy at (202) 395–3640, or transmit a copy electronically to *fr0062@ustr.gov*, with "Lumber Injury Dispute" in the subject line. For documents sent by fax, USTR requests that the submitter provide a confirmation copy electronically. USTR encourages the submission of documents in Adobe PDF format, as attachments to an electronic mail. Interested persons who make submissions by electronic mail should not provide separate cover letters; information that might appear in a cover letter should be included in the submission itself. Similarly, to the extent possible, any attachments to the submission should be included in the same file as the submission itself, and not as separate files.

A person requesting that information contained in a comment submitted by that person be treated as confidential business information must certify that such information is business confidential and would not customarily be released to the public by the submitter. Confidential business information must be clearly marked "BUSINESS CONFIDENTIAL" at the top and bottom of the cover page and each succeeding page of the submission.

Information or advice contained in a comment submitted, other than business confidential information, may be determined by USTR to be confidential in accordance with section 135(g)(2) of the Trade Act of 1974 (19 U.S.C. 2155(g)(2)). If the submitting person believes that information or advice may qualify as such, the submitting person—

(1) Must so designate the information or advice;

(2) Must clearly mark the material as "SUBMITTED IN CONFIDENCE" at the top and bottom of the cover page and each succeeding page of the submission; and

(3) Is encouraged to provide a non-confidential summary of the information or advice.

Pursuant to section 127(e) of the URAA (19 U.S.C. 3537(e)), USTR will maintain a file on this dispute settlement proceeding, accessible to the public, in the USTR Reading Room, which is located at 1724 F Street, NW., Washington, DC 20508. The public file will include non-confidential comments received by USTR from the public with respect to the dispute; the U.S. submissions to the panel in the dispute, the submissions, or non-confidential summaries of submissions, to the panel received from other participants in the dispute, as well as the report of the panel; and, if applicable, the report of the Appellate Body. An appointment to review the public file may be made by calling the USTR Reading Room at (202) 395–6186. The USTR Reading Room is open to the public from 9:30 a.m. to 12 noon and 1 p.m. to 4 p.m., Monday through Friday.

Daniel E. Brinza,

Assistant United States Trade Representative for Monitoring and Enforcement.

[FR Doc. 03–12036 Filed 5–13–03; 8:45 am]

BILLING CODE 3190–01–M

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

[Docket No. WTO/DS–250]

WTO Dispute Settlement Proceeding Regarding United States—Equalizing Excise Tax Imposed by Florida on Processed Orange and Grapefruit Products

AGENCY: Office of the United States Trade Representative.

ACTION: Notice; request for comments.

SUMMARY: The Office of the United States Trade Representative ("USTR") is providing notice of the request by the Government of the Federative Republic of Brazil for the establishment of a dispute settlement panel under the Marrakesh Agreement Establishing the World Trade Organization ("WTO Agreement") to examine the equalizing excise tax imposed by Florida on processed orange and processed grapefruit products pursuant to Section 601.155 of the Florida Statutes. Brazil alleges that Florida's equalizing excise tax is inconsistent with the obligations of the United States under the General Agreement on Tariffs and Trade 1994 ("GATT 1994"). USTR invites written comment from the public concerning the issues raised in this dispute.

DATES: Although USTR will accept any comments received during the course of the dispute settlement proceedings, comments should be submitted on or before July 1, 2003 to be assured of timely consideration by USTR.

ADDRESSES: Comments should be submitted (i) electronically, to *FR0077@ustr.gov*, with "DS250" in the subject line, or (ii) by mail, to Sandy McKinzy, Monitoring and Enforcement Unit, Office of the General Counsel, Room 122, Office of the United States Trade Representative, 600 17th Street, NW., Washington, DC 20508, Attn: DS250 Dispute, with a confirmation copy sent electronically to the e-mail address above or by fax to (202) 395–3640.

FOR FURTHER INFORMATION CONTACT: Stanford K. McCoy, Assistant General Counsel, Office of the United States Trade Representative, 600 17th Street, NW., Washington, DC 20508, (202) 395–3581.

SUPPLEMENTARY INFORMATION: Pursuant to section 127(b) of the Uruguay Round Agreements Act ("URAA") (19 U.S.C. 3537(b)(1)), USTR is providing notice that, on August 19, 2002, the United States received a request from the Government of the Federative Republic of Brazil for the establishment of a WTO dispute settlement panel to examine the equalizing excise tax imposed by Florida on processed orange and processed grapefruit products pursuant to Section 601.155 of the Florida Statutes. The panel was established on October 1, 2002. Chile, the European Communities ("EC"), Mexico, and Paraguay have notified the WTO of their intention to participate as third parties.

Major Issues Raised and Legal Basis of the Complaint

Brazil alleges that the equalizing excise tax imposed by the State of Florida pursuant to Section 601.155 of the Florida Statutes, as amended effective July 1, 2002, is inconsistent with certain obligations of the United States under GATT 1994. Brazil asserts that Section 601.155 levies an excise tax on the privilege of processing, reprocessing, blending, or mixing processed orange products or processed grapefruit products into retail or instituted size containers in Florida. Products on which an equivalent tax is levied pursuant to § 601.15 of the Florida Statutes are exempt from the tax imposed by § 601.155. Brazil asserts that the Florida equalizing excise tax is inconsistent with United States obligations under Articles III:1, III:2 and III:4 of GATT 1994.

Specifically, Brazil alleges, inter alia, that the equalizing excise tax (a) is applied to the Brazilian product so as to afford production; (b) exceeds internal taxes and charges applied to like domestic products; and (c) accords Brazilian products treatment less favorable than that accorded to like products of U.S. origin, particularly in regard to the use of the proceeds of the equalizing excise tax for advertising and promotion of Florida citrus and citrus products.

Public Comment: Requirements for Submissions

Interested persons are invited to submit written comments concerning the issues raised in the dispute. Persons submitting comments may either send one copy by U.S. mail, first class, postage prepaid, to Sandy McKinzy at the address listed above or transmit a copy electronically to *FR007@ustr.gov*, with "DS250" in the subject line. For documents sent by U.S. mail, the submitter should provide a confirmation copy, either electronically or by fax to (202) 395–3640.

USTR encourages the submission of documents in Adobe PDF format, as attachments to an electronic mail. Interested persons who make submissions by electronic mail should not provide separate cover letters; information that might appear in a cover letter should be included in the submission itself. Similarly, to the extent possible, any attachments to the submission should be included in the same file as the submission itself, and not as separate files.

A person requesting that information contained in a comment submitted by that person be treated as confidential business information must certify that such information is business confidential and would not customarily be released to the public by the submitter. Confidential business information must be clearly marked "BUSINESS CONFIDENTIAL" at the top and bottom of the cover page and each succeeding page of the submission.

Information or advice contained in a comment submitted, other than business confidential information, may be determined by USTR to be confidential in accordance with section 135(b)(2) of the Trade Act of 1974 (19 U.S.C. 2155(g)(2)). If the submitting person believes that information or advice may qualify as such, the submitting person—

(1) Must so designate the information or advice;

(2) Must clearly mark the material as "SUBMITTED IN CONFIDENCE" at the top and bottom of the cover page and each succeeding page of the submission; and

(3) Is encouraged to provide a non-confidential summary of the information or advice.

Pursuant to section 127(e) of the URAA (19 U.S.C. 3537(e)), USTR will maintain a file on this dispute settlement proceeding, accessible to the public, in the USTR Reading Room, which is located at 1724 F Street, NW., Washington, DC 20508. The public file will include non-confidential comments received by USTR from the public with respect to the dispute; the U.S. submissions to the panel in the dispute, the submissions, or non-confidential summaries of submissions, to the panel received from other participants in the dispute, as well as the report of the panel; and, if applicable, the report of the Appellate Body. An appointment to review the public file may be made by calling the USTR Reading Room at (202) 395–6186. The USTR Reading Room is open to the public from 9:30 a.m. to 12 noon and 1 p.m. to 4 p.m., Monday through Friday.

Daniel E. Brinza,

Assistant United States Trade Representative for Monitoring and Enforcement.

[FR Doc. 03–12037 Filed 5–13–03; 8:45 am]

BILLING CODE 3190–01–M

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Finance Docket No. 34339]

Huron & Eastern Railway Company, Inc.-Corporate Family Merger Exemption-Saginaw Valley Railway Company, Inc.

Huron & Eastern Railway Company, Inc. (HESR)[1] and the Saginaw Valley Railway Company, Inc. (SGVY),[2] both of which are subsidiaries of RailAmerica, Inc., have filed a verified notice of exemption with respect to a proposed corporate restructuring, through which SGVY will merge into HESR, with HESR as the surviving entity. Under the agreement and plan of merger, HESR will own all of the assets of SGVY and will be responsible for all debts, liabilities, and obligations of SGVY.

The transaction was scheduled to be consummated on or after April 21, 2003, the effective date of the exemption (7 days after the exemption was filed).

The purpose of the transaction is to reduce corporate overhead and duplication and save state taxes.

This is a transaction within a corporate family of the type specifically exempted from prior review and approval under 49 CFR 1180.2(d)(3). The parties state that the transaction will not result in adverse changes in service levels, significant operational changes, or a change in the competitive balance with carriers outside the corporate family.

Under 49 U.S.C. 10502(g), the Board may not use its exemption authority to relieve a rail carrier of its statutory obligation to protect the interests of its employees. Section 11326(c), however, does not provide for labor protection for transactions under sections 11324 and 11325 that involve only Class III rail carriers. Because this transaction involves Class III rail carriers only, the Board, under that statute, may not impose labor protective conditions for this transaction.

If the notice contains false or misleading information, the exemption is void *ab initio*. Petitions to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction.

An original and 10 copies of all pleadings, referring to STB Finance Docket No. 34339 must be filed with the

[1] HESR, a Class III rail carrier, owns and operates approximately 171 miles of railroad in the State of Michigan.

[2] SGVY, a Class III rail carrier, owns and operates approximately 56.72 miles of railroad in the State of Michigan.

Surface Transportation Board, 1925 K Street, NW., Washington, DC 20423–0001. In addition, a copy of each pleading must be served on Louis E. Gitomer, Of Counsel, BALL JANIK LLP, 1455 F Street, NW., Suite 225, Washington, DC 20005.

Board decisions and notices are available on our Web site at *www.stb.dot.gov.*

Decided: May 8, 2003.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 03–12002 Filed 5–13–03; 8:45 am]

BILLING CODE 4915–01–P

DEPARTMENT OF THE TREASURY

Submission for OMB Review; Comment Request

May 8, 2003.

The Department of the Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Pub. L. 104–13. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 11000, 1750 Pennsylvania Avenue, NW., Washington, DC 20220.

Dates: Written comments should be received on or before June 13, 2003, to be assured of consideration.

Internal Revenue Service (IRS)

OMB Number: 1545–0233.
Form Number: IRS Form 7004.
Type of Review: Extension.
Title: Application for Automatic Extension of Time to File Corporation Income Tax Return.

Description: Form 7004 is used by corporations and certain non-profit institutions to request an automatic 6-month extension of time to file their income tax returns. The information is needed by IRS to determine whether Form 7004 was timely filed so as not to impose a late filing penalty in error and also to insure that the proper amount of tax was computed and deposited.

Respondents: Business or other for-profit, not-for-profit institutions.

Estimated Number of Respondents/Recordkeepers: 1,081,045.

Estimated Burden Hours Per Respondent/Recordkeeper:

Recordkeeping—5 hr., 44 min.
Learning about the law or the form—1 hr., 33 min.
Preparing the form—2 hr., 39 min.
Copying, assembling, and sending the form to the IRS—16 min.

Frequency of Response: Annually.

Estimated Total Reporting/Recordkeeping Burden: 11,048,280 hours.

OMB Number: 1545–0887.
Form Number: IRS Form 8281.
Type of Review: Extension.
Title: Information Return for Publicly Offered Original Issue Discount Instruments.

Description: Form 8281 is filed by the issuer of a publicly offered debt instrument having Original Issue Discount (OID). The information is used to update Publication 1212, "List of Original Issue Discount Instruments."

Respondents: Business or other for-profit.

Estimated Number of Respondents/Recordkeepers: 500.

Estimated Burden Hours Per Respondent/Recordkeeper:

Recordkeeping—5 hr., 1 min.
Learning about the law or the form—30 min.
Preparing, copying, assembling and sending the form to the IRS—36 min.

Frequency of Response: On occasion, annually.

Estimated Total Reporting/Recordkeeping Burden: 3,060 hours.

OMB Number: 1545–1131.
Regulation Project Number: INTL–485–89 Final.
Type of Review: Extension.
Title: Taxation of Gain or Loss from Certain Nonfunctional Currency Transactions (Section 988 Transactions).

Description: Sections 988(c)(1)(D) and (E) require taxpayers to make certain elections which determine whether section 988 applies. In addition sections 988(a)(1)(B) and 988(d) require taxpayers to identify transactions which generate capital gain or loss or which are hedges of other transactions.

Respondents: Business or other for-profit, individuals or households.

Estimated Number of Respondents/Recordkeepers: 5,000.

Estimated Burden Hours Per Respondent/Recordkeeper: 40 minutes.

Frequency of Response: Annually.

Estimated Total Reporting/Recordkeeping Burden: 3,333 hours.

OMB Number: 1545–1241.
Regulation Project Number: PS–92–90 Final.
Type of Review: Extension.
Title: Special Valuation Rules.

Description: Section 2701 of the Internal Revenue Code allows various elections by family members who make gifts of common stock or partnership interests and retain senior interests. The elections affect the value of the gifted interests and the retained interests.

Respondents: Individuals or households.

Estimated Number of Respondents: 1,200.

Estimated Burden Hours Per Respondent: 25 minutes.

Frequency of Response: Other (one-time election).

Estimated Total Reporting Burden: 496 hours.

OMB Number: 1545–1260.
Regulation Project Number: CO–62–89 Final.
Type of Review: Extension.
Title: Final Regulations Under Section 382 of the Internal Revenue Code of 1986; Limitations on Corporate Net Operating Loss Carryforwards.

Description: The reporting requirement concerns the election a taxpayer may make to treat as the change date the effective date of a plan of reorganization in a title II or similar case rather than the confirmation date of a plan.

Respondents: Business or other for-profit.

Estimated Number of Respondents: 10.

Estimated Burden Hours Per Respondent: 1 hour.

Frequency of Response: Other (once).

Estimated Total Reporting Burden: 1 hour.

OMB Number: 1545–1344.
Regulation Project Number: CO–30–92 Final.
Type of Review: Extension.
Title: Consolidated Returns—Stock Basis and Excess Loss Accounts, Earnings and Profits, Absorption of Deductions and Losses, Joining and Leaving Consolidated Groups, Worthless Stock Loss, Non-applicability of Section 357(c).

Description: The reporting requirements affect consolidated taxpayers who will be making elections (if made) to treat certain loss carryovers as expiring and an election (if made) allocating items between returns. The information will facilitate enforcement of consolidated return regulations.

Respondents: Business or other for-profit.

Estimated Number of Respondents: 52,049.

Estimated Burden Hours Per Respondent: 45 minutes.

Frequency of Response: On occasion.

Estimated Total Reporting Burden: 18,600 hours.

OMB Number: 1545–1426.

Regulation Project Number: INTL–21–91 Temporary and Final.
Type of Review: Extension.
Title: Section 6662—Imposition of the Accuracy-Related Penalty.

Description: These regulations provide guidance about substantial and gross valuation misstatements as defined in section 6662(e) and 6662(h). They also provide guidance about the reasonable cause and good faith exclusion. The regulations apply to taxpayers who have transactions between persons described in section 482 and net section 482 transfer price adjustments.

Respondents: Business or other for-profit.

Estimated Number of Respondents/Recordkeepers: 2,500.

Estimated Burden Hours Per Respondent/Recordkeeper: 8 hours, 3 minutes.

Frequency of Response: Annually, other (one-time only).

Estimated Total Reporting/Recordkeeping Burden: 20,125 hours.

Clearance Officer: Glenn Kirkland, (202) 622–3428, Internal Revenue Service, Room 6411–03, 1111 Constitution Avenue, NW., Washington, DC 20224.

Reviewer: Joseph F. Lackey, Jr., (202) 395–7316, Office of Management and Budget, Room 10235, New Executive Office Building, Washington, DC 20503.

Mary A. Able,

Departmental Reports Management Officer.

[FR Doc. 03–11999 Filed 5–13–03; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

United States Mint

ACTION: Notification of CCAC public meeting.

SUMMARY: Pursuant to Public Law 108–15, enacted on April 23, 2003, the United States Mint announces the first Citizens Coinage Advisory Committee (CCAC) bi-monthly meeting. This meeting is open to the public. The purpose of this meeting is to conduct business associated with the CCAC's responsibility to advise the Secretary of the Treasury on designs pertaining to the coinage of the United States and for other purposes.

Date: May 15, 2003.

Time: 9 a.m. to 11 a.m.

Location: United States Mint, 801 Ninth St., NW., Washington, DC Treasury Executive Institute Conference Room—1st floor.

Subject: Consider 5-cent coin designs, state commemorative quarter-dollar coin designs, and other business.

The meeting completion time may be extended to accommodate additional business that must be conducted. *Interested persons should call 202–354–7502 for the latest update on meeting time and location.*

Public Law 108–15 established the CCAC to:

- Advise the Secretary of the Treasury on any theme or design proposals relating to circulating coinage, bullion coinage, Congressional gold medals, and national and other medals produced by the United States Mint;
- Advise the Secretary of the Treasury with regard to the events, persons, or places that the Committee recommends to be commemorated by the issuance of commemorative coins in each of the five calendar years succeeding the year in which a commemorative coin designation is made; and
- Make recommendations with respect to the mintage level for any commemorative coin recommended.

FOR FURTHER INFORMATION CONTACT: Melody Grimm, United States Mint Liaison to the CCAC, 801 Ninth Street, NW., Washington, DC 20220, or call 202–354–7606.

Any member of the public interested in submitting matters for the CCAC's consideration is invited to submit them by fax to the following number: 202–756–6424.

Authority: Public Law 108–15 (April 23, 2003).

Dated: May 9, 2003.

Henrietta Holsman Fore,

Director, United States Mint.

[FR Doc. 03–12066 Filed 5–13–03; 8:45 am]

BILLING CODE 4810–37–P

Federal Register

Wednesday,
May 14, 2003

Part II

Department of the Interior

Fish and Wildlife Service

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; Designation of Critical Habitat for 60 Plant Species from the Islands of Maui and Kahoolawe, HI; Final Rule

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018–AH70

Endangered and Threatened Wildlife and Plants; Designation of Critical Habitat for 60 Plant Species from the Islands of Maui and Kahoolawe, HI

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), designate critical habitat pursuant to the Endangered Species Act of 1973, as amended (Act), for 60 of 70 listed plant species known historically from the Hawaiian islands of Maui and Kahoolawe. A total of approximately 37,717 hectares (ha) (93,200 acres (ac)) of land on the island of Maui and 1,180 ha (2,915 ac) of land on the island of Kahoolawe fall within the boundaries of the 139 critical habitat units designated for the 60 species. This critical habitat designation requires the Service to consult under section 7 of the Act with regard to actions carried out, funded, or authorized by a Federal agency. Section 4 of the Act requires us to consider economic and other relevant impacts when specifying any particular area as critical habitat. We solicited data and comments from the public on all aspects of the proposed rule, including data on economic and other impacts of the designation.

DATES: This rule becomes effective on June 13, 2003.

ADDRESSES: Comments and materials received, as well as supporting documentation, used in the preparation of this final rule will be available for public inspection, by appointment, during normal business hours at U.S. Fish and Wildlife Service, Pacific Islands Office, 300 Ala Moana Blvd., Room 3–122, P.O. Box 50088, Honolulu, HI 96850–0001.

FOR FURTHER INFORMATION CONTACT: Paul Henson, Field Supervisor, Pacific Islands Office at the above address (telephone 808/541–3441; facsimile 808/541–3470).

SUPPLEMENTARY INFORMATION:

Background

In the List of Endangered and Threatened Plants (50 CFR 17.12(h)), there are 70 plant species that, at the time of listing, were reported from the islands of Maui and/or Kahoolawe (Table 1).

TABLE 1.—SUMMARY OF ISLAND DISTRIBUTION OF 70 SPECIES FROM MAUI AND KAHOOLAWE

Species (common name)	Island distribution						
	Kauai	Oahu	Molokai	Lanai	Maui	Hawaii	NW Isles, Kahoolawe, Niihau
Acaena exigua (liliwai)	H				H		
Adenophorus periens (pendent kihi fern).	C	C	C	R	R	C	
Alectryon macrococcus (mahoe)	C	C	C		C		
Argyroxiphium sandwicense ssp. *macrocephalum* (ahinahina).					C		
Asplenium fragile var. *insulare* (NCN)					C	C	
Bidens micrantha ssp. *kalealaha* (kookoolau).				H	C		
Bonamia menziesii (NCN)	C	C	H	C	C	C	
Brighamia rockii (pua ala)			C	H	H		
Cenchrus agrimonioides (kamanomano)		C		H	C	R	NW Isles (H)
Centaurium sebaeoides (awiwi)	C	C	C	C	C		
Clermontia lindseyana (oha wai)					C	C	
Clermontia oblongifolia ssp. mauiensis (oha wai).				C	C		
Clermontia peleana (oha wai)					H	C	
Clermontia samuelii (oha wai)					C		
Colubrina oppositifolia (kauila)		C			C	C	
Ctenitis squamigera (pauoa)	H	C	C	C	C	H	
Cyanea copelandii ssp. *haleakalaensis* (haha).					C		
Cyanea glabra (haha)					C		
Cyanea grimesiana ssp. *grimesiana* (haha).		C	C	C	C		
Cyanea hamatiflora ssp. *hamatiflora* (haha).					C		
Cyanea lobata (haha)				H	C		
Cyanea mceldowneyi (haha)					C		
Cyrtandra munroi (haiwale)				C	C		
Delissea undulata (NCN)	C				H	C	Ni (H)
Diellia erecta (asplenium-leaved diellia)	H	H	C	H	C	C	
Diplazium molokaiense (NCN)	H	H	H	H	C		
Dubautia plantaginea ssp. *humilis* (naenae).					C		
Flueggea neowawraea (mehamehame)	C	C	H		C	C	
Geranium arboreum (nohoanu)					C		
Geranium multiflorum (nohoanu)					C		
Gouania vitifolia (NCN)		C			H	C	
Hedyotis coriacea (kioele)		H			C	C	
Hedyotis mannii (pilo)			C	C	C		
Hesperomannia arborescens (NCN)		C	C	H	C		

TABLE 1.—SUMMARY OF ISLAND DISTRIBUTION OF 70 SPECIES FROM MAUI AND KAHOOLAWE—Continued

Species (common name)	Island distribution						
	Kauai	Oahu	Molokai	Lanai	Maui	Hawaii	NW Isles, Kahoolawe, Niihau
Hesperomannia arbuscula (NCN)		C			C		
Hibiscus brackenridgei (mao hau hele)	H	C	H	C	C	C	Ka (R)
Ischaemum byrone (Hilo ischaemum)	C	H	C		C	C	
Isodendrion pyrifolium (wahine noho kula).		H	H	H	H	C	Ni (H)
Kanaloa kahoolawensis (kohe malama malama o kanaloa).							Ka (C)
Lipochaeta kamolensis (nehe)					C		
Lysimachia lydgatei (NCN)		H			C		
Mariscus pennatiformis (NCN)	H	H			C	H	NW Isles (C)
Melicope adscendens (alani)					C		
Melicope balloui (alani)					C		
Melicope knudsenii (alani)	C				C		
Melicope mucronulata (alani)					C		
Melicope ovalis (alani)			C		C		
Neraudia sericea (NCN)					C		
Nototrichium humile (kului)			C	H	C		Ka (H)
Peucedanum sandwicense (makou)	C	C			H		
Phlegmariurus mannii (wawaeiole)	H		C		C		
Phyllostegia mannii (NCN)					C	C	
Phyllostegia mollis (NCN)			C		H		
Phyllostegia parviflora (NCN)		C	H		C		
Plantago princeps (laukahi kuahiwi)	C	C			H		
Platanthera holochila (NCN)	C	C	C		C	H	
Pteris lidgatei (NCN)		H	C		C	H	
Remya mauiensis (NCN)			H		C		
Sanicula purpurea (NCN)					C		
Schiedea haleakalensis (NCN)		C			C		
Schiedea hookeri (NCN)					C		
Schiedea nuttallii (NCN)		C			H		
Sesbania tomentosa (ohai)	C	C	C		R		
	C	C	C	H	C	C	Ni (H), Ka (C), NW Isles (C)
Solanum incompletum (popolo ku mai)	H		H	H	H	C	
Spermolepis hawaiiensis (NCN)	C	C	C	C	C	C	
Tetramolopium arenarium (NCN)					C	C	
Tetramolopium capillare (pamakani)					C		
Tetramolopium remyi (NCN)					C		
Vigna o-wahuensis (NCN)		H	C	C	H		
Zanthoxylum hawaiiense (ae)	C		C	C	C	C	Ni (H), Ka (C)

Key:
C (Current)—population last observed within the past 30 years
H (Historical)—population not seen for more than 30 years
R (Reported)—reported from undocumented observations
NCN—no common name

Eighteen of these species are endemic to the islands of Maui and Kahoolawe, while 42 species are reported from one or more other islands, as well as Maui and/or Kahoolawe. Each of these species is described in more detail below in the section, "Discussion of Plant Taxa." Although we considered designating critical habitat on Maui and Kahoolawe for each of the 70 plant species, for the reasons described below, the final designation includes critical habitat for 60 of 70 plant species. Species that also occur on other islands may have critical habitat designated on other islands in previous or subsequent rulemakings.

The Islands of Maui and Kahoolawe

Maui, the second largest island in Hawaii at 1,888 square kilometers (sq km) (729 square miles (sq mi)) in area, was formed from the remnants of two large shield volcanoes, the older West Maui volcano (1.3 million years) on the west and the larger, but much younger, Haleakala volcano on the east. Stream erosion has cut deep valleys and ridges into the originally shield-shaped West Maui volcano. The highest point on West Maui is Puu Kukui at 1,764 meters (m) (5,787 feet (ft)) elevation, which has an average rainfall of 1,020 centimeters (cm) (400 inches (in)) per year, making it the second wettest spot in Hawaii (Department of Geography 1998). Having erupted just 200 years ago, East Maui's Haleakala crater, reaching 3,055 m (10,023 ft) in elevation, has retained its classic shield shape and lacks the diverse vegetation typical of the older and more eroded West Maui mountain. Rainfall on the slopes of Haleakala is about 89 cm (35 in) per year, with its windward (northeastern) slope receiving the most precipitation. However, Haleakala's crater is a dry cinder desert because it is above the level at which precipitation develops and is sheltered from moisture-laden winds (Gagne and Cuddihy 1999).

The island of Kahoolawe measures about 17.7 km (11 mi) long by 11.3 km (7 mi) wide, comprising some 11,655 ha (28,800 ac). Located in the lee of

Haleakala, the island lies approximately 11 km (6.7 mi) from East Maui. The highest point is the rim of an extinct volcano at 450 m (1,477 ft) above sea level. The estimated annual precipitation is approximately 50 cm (20 in), with most of it falling from November through March. In addition to the low precipitation, Kahoolawe is the windiest of the Hawaiian Islands (Gon *et al.* 1992).

Discussion of Plant Taxa

Species Endemic to Maui or Kahoolawe

Argyroxiphium sandwicense ssp. *macrocephalum* (Ahinahina)

Argyroxiphium sandwicense ssp. *macrocephalum*, a long-lived perennial and a member of the aster family (Asteraceae), is called the Haleakala silversword. It is a distinctive, globe-shaped rosette plant with a dense covering of silver hairs. This subspecies is distinguished from *A. sandwicense* ssp. *sandwicense* by the shape and ratio of the dimensions of the inflorescence (flowering part of plant), the number of ray florets per head, and the combination of its longer, three-angled leaves; its silvery leaf hairs, which completely hide the leaf surface; and its longer achenes (dry fruits) (Carr 1985, 1999a).

This monocarpic (flowers only once, at the end of its lifetime) plant matures from seed to its final stage in approximately 15 to 50 years. The plant remains a compact rosette until it sends up an erect, central flowering stalk, sets seed, and dies. Flowering occurs from June to September, with annual numbers of flowering plants varying dramatically from year to year. Reliable counts of flowering plants were made in 1935 (217 flowered) and in 1941 (815 flowered). Numbers recorded flowering in recent years have ranged from zero in 1970 to 6,632 in 1991. The environmental stimulus for synchronous flowering is as yet unknown. An apparent relationship of the 1991 mass flowering event to stratospheric alteration by the eruption of Pinatubo Volcano in the Philippines has been considered. Investigations are underway by R. Pharis of the University of Calgary and L.L. Loope of the U.S. Geological Survey—Biological Resources Division (USGS–BRD) to explore whether enhanced flowering is related to increased UV–B radiation caused by temporary reduction of stratospheric ozone. Flying insects, especially native bees, moths, flies, bugs, and wasps, many of which are pollinators, are attracted in large numbers to the giant, aromatic inflorescences. *Argyroxiphium sandwicense* ssp. *macrocephalum* cannot fertilize itself and is reliant on insect pollinators for reproduction. Rarely, hybrids between *A. sandwicense* ssp. *macrocephalum* and *Dubautia menziesii* (naenae) have been observed. Primarily found within Haleakala Crater, especially on Puu o Pele and Puu o Maui cinder cones, these hybrid individuals can flower for several years before dying (Carr 1985; Loope and Crivellone 1986; Loope and Medeiros, in press; Service 1997; 57 FR 20772).

Currently, *Argyroxiphium sandwicense* ssp. *macrocephalum* occupies all of its historic range, a 1,000 ha (2,500 ac) area at 2,100 to 3,000 m (6,890 to 9,840 ft) elevation in the crater and outer slopes of Haleakala Volcano, within Haleakala National Park and The Nature Conservancy of Hawaii's (TNCH) Waikamoi Preserve. There are a total of 7 occurrences on Federal and privately owned land, with a total of 39,025 to 44,025 individual plants (Geographic Decision Systems International (GDSI) 2001; Hawaii Natural Heritage Program (HINHP) Database 2001; Loope and Crivellone 1986; Service 1997; TNCH 1998; 57 FR 20772).

The habitat of this species consists primarily of lava flows and otherwise barren, unstable slopes of recent (less than several thousand years old) volcanic cinder cones or in *Deschampsia nubigena* (hair grass) grasslands at elevations between 1,508 and 3,053 m (4,947 and 10,016 ft). Mean annual precipitation is approximately 75 to 250 cm (29.6 to 98.4 in). The substrate has almost no soil development and is subject to frequent formation of ice at night and extreme heating during cloudless days. This species is found in alpine dry shrubland with native species, including *Agrostis sandwicensis* (bent grass), *Dubautia menziesii*, *Leptecophylla tameiameiae* (pukiawe), *Silene struthioloides* (catchfly), *Tetramolopium humile* (NCN), or *Trisetum glomeratum* (pili uka) (Service 1997; 57 FR 20772; Robert Hobdy, Hawaii Division of Forestry and Wildlife (DOFAW), pers. comm., 2001).

The threats to this species are loss of pollinators caused by the nonnative Argentine ant (*Iridomyrmex humilis*) and yellow jackets (*Vespula pennsylvanica*); native seed-eating and herbivorous insects such as the tephritid fly (*Trupanea cratericola*); limited natural range, which makes it vulnerable to extinction due to catastrophic events, such as a natural disaster; competition from the nonnative plant species *Verbascum thapsus* (mullein); and human impacts (trampling and site degradation). Although goats (*Capra hircus*) and cattle (*Bos taurus*) have been removed from the park, they remain a potential threat (Service 1997; 57 FR 20772).

Clermontia samuelii (Oha wai)

Clermontia samuelii, a short-lived perennial in the bellflower family (Campanulaceae), is a terrestrial shrub with elliptical leaves which are sometimes broader at the tips. *C. s.* ssp. *hanaensis* is differentiated from *C. s.* ssp. *samuelii* by the greenish white to white flowers; longer, narrower leaves with the broadest point near the base of the leaves; and fewer hairs on the lower surface of the leaves. This species is separated from other members of this endemic Hawaiian genus by the size of the flowers and the hypanthium (base of flower) (Lammers 1999; Service 2001).

Little is known about the life history of *Clermontia samuelii*. Flowering cycles, pollination vectors, seed dispersal agents, longevity, specific environmental requirements, and limiting factors are unknown (Service 2001; 64 FR 48307).

Historically, *Clermontia samuelii* has been reported from Haleakala and from Keanae Valley on the windward side to Manawainui on the leeward (southeastern) side of Haleakala. Currently, *C. samuelii* is known from Papanalahoa Point, Kuhiwa Valley, the ridge north of Palike Stream, Kawaipapa, and Mokulehua Gulch. There are 7 occurrences with 309 individual plants on State and Federal lands within Haleakala National Park, Hanawi Natural Area Reserve (NAR), Hana Forest Reserve, and within the East Maui Watershed Partnership (GDSI 2001, HINHP Database 2001, Medeiros and Loope 1989, Service 2001, Warshauer 1998, 64 FR 48307, R. Hobdy, DOFAW, *in litt.* 2000, Ken Wood, National Tropical Botanical Garden (NTBG), *in litt.* 2000).

Clermontia samuelii is found at elevations between 723 and 2,244 m (2,372 and 7,362 ft). *Clermontia samuelii* ssp. *hanaensis* is found in wet *Metrosideros polymorpha* (ohia) and *Metrosideros polymorpha-Dicranopteris linearis* (uluhe) forest containing one or more of the following associated native plant species: *Adenophorus tamariscinus* (wahine no mauna); *Broussaisia arguta* (kanawao); *Carex alligata* (NCN); *Cheirodendron trigynum* (olapa); *Cibotium* spp. (hapuu); *Diplazium sandwichianum* (hoio); *Dubautia* spp. (naenae); *Hedyotis hillebrandii* (manono); *Hedyotis terminalis* (manono); *Melicope clusiifolia* (kolokolo mokihana); *Melicope* spp. (alani); *Peperomia obovatilimba* (ala ala wai nui); *Psychotria mariniana* (kopiko); *Tetraplasandra oahuensis* (ohe mauka); or *Vaccinium* spp. (ohelo). In addition, *Clermontia samuelii* ssp. *samuelii* is found in wet *Metrosideros polymorpha* and *M. polymorpha-Cheirodendron trigynum* forest containing one or more of the following native plant species: *Broussaisia arguta*; *Carex alligata*; *Cibotium* spp.; *Clermontia arborescens* ssp. *waihiae* (oha wai nui); *Clermontia* spp. (oha wai); *Diplazium sandwichianum*; *Dubautia* spp.; *Hedyotis hillebrandii*; *Hedyotis* spp. (NCN); *Melicope* spp.; *Rubus hawaiensis* (akala); or *Vaccinium* spp. (HINHP Database 2001; Service 2001; 64 FR 48307; R. Hobdy pers. comm., 2001; K. Wood, *in litt.* 2000).

Threats to *Clermontia samuelii* ssp. *hanaensis* include habitat degradation and destruction by feral pigs (*Sus scrofa*) and competition with nonnative plant species such as *Hedychium coronarium* (white ginger), *Hedychium gardnerianum* (kahili ginger), *Juncus* spp. (NCN), *Paspalum urvillei* (vasey grass), *Paspalum conjugatum* (Hilo grass), or *Tibouchina herbacea* (glorybush). In addition, two extremely invasive nonnative plant species, *Miconia calvescens* (velvet tree) and *Clidemia hirta* (Koster's curse), are found in nearby areas and may invade this habitat if not controlled. The habitat of *Clermontia samuelii* ssp. *samuelii* was extensively damaged by pigs in the past, and pigs are still a major threat to the populations on State-owned lands. The occurrence within the National Park has been fenced, and pigs have been eradicated. However, due to the large populations of pigs in adjacent areas, the park occurrences must constantly be monitored to prevent further ingress. Competition with nonnative plant species such as *Holcus lanatus* (velvet grass) and *Juncus planifolius* (NCN) is also a major threat to this subspecies. In addition, rats (mainly black rats (*Rattus rattus*)) and slugs (mainly *Milax gagetes*) are known to eat leaves, stems, and fruits of other members of this genus and therefore are a potential threat to both subspecies (Service 2001; 64 FR 48307; K. Wood, *in litt.* 2000).

Cyanea copelandii ssp. *haleakalaensis* (Haha)

Cyanea copelandii ssp. *haleakalaensis*, a short-lived perennial member of the bellflower family (Campanulaceae), is a vine-like shrub with sprawling stems and tan latex (sap). This subspecies is differentiated from *C. c.* ssp. *copelandii* by its shorter elliptical leaves. The species differs from others in this endemic Hawaiian genus by the vine-like stems and the yellowish flowers that appear red caused by the covering of hairs (Lammers 1999; Service 2001).

Little is known about the life history of *Cyanea copelandii* ssp. *haleakalaensis*. Flowering cycles, pollination vectors, seed dispersal agents, longevity, specific environmental requirements, and limiting factors are unknown (Service 2001; 64 FR 48307).

Historically, *Cyanea copelandii* ssp. *haleakalaensis* was reported from the windward side of Haleakala and from Waikamoi to Kipahulu Valley. Currently, this species is known from 5 occurrences with a total of 204 individuals on Federal and privately owned land within the East Maui Watershed Partnership in Haiku Uka, the ridge above Kuhiwa Valley, and Kipahulu Valley within Haleakala National Park and Hanawi Natural Area Reserve (NAR) (GDSI 2001; HINHP Database 2001; Lammers 1999; Service 2001; Warshauer 1998; 64 FR 48307).

Cyanea copelandii ssp. *haleakalaensis* is found on stream banks or wet scree (a sloping mass of rocks at the base of a cliff) slopes or in forest understory in montane wet or mesic forests dominated by *Acacia koa* (koa) and *Metrosideros polymorpha* at elevations between 616 and 1,411 m (2,021 and 4,630 ft). Associated species include *Broussaisia arguta*, *Cibotium* spp., *Hedyotis acuminata* (au), *Perrottetia sandwicensis* (olomea), and *Psychotria hawaiiensis* (kopiko ula) (HINHP Database 2001; R. Hobdy, pers. comm., 2001; Service 2001; 64 FR 48307).

The major threats to this species are habitat degradation and destruction by feral pigs; competition with several nonnative plant species; rats; slugs; human activities; and potential extinction caused by random environmental events due to small occurrence sizes (Service 2001; 64 FR 48307).

Cyanea glabra (Haha)

Cyanea glabra, a member of the bellflower family (Campanulaceae), is a short-lived, perennial shrub, with the leaves of juvenile plants deeply pinnately lobed, while those of the adult plants are more or less entire and elliptical. This species is differentiated from others in this endemic Hawaiian genus by the size of the flower and the pinnately lobed juvenile leaves (Lammers 1999; Service 2001).

Little is known about the life history of *Cyanea glabra*. Flowering cycles, pollination vectors, seed dispersal agents, longevity, specific environmental requirements, and limiting factors are unknown (Service 2001; 64 FR 48307).

Historically, *Cyanea glabra* has been reported from West Maui and on Haleakala, East Maui. Currently, this species is known from a single occurrence of 12 individual plants on privately owned land in Kauaula Valley (GDSI 2001; HINHP Database 2001; 64 FR 48307).

Cyanea glabra is found on soil and rock stream banks in wet lowland forests dominated by *Acacia koa* and *Metrosideros polymorpha*, at elevations between 413 and 1,572 m (1,355 and 5,156 ft). Associated native plants include *Boehmeria grandis* (akolea), *Cheirodendron trigynum*, *Christella cyatheoides* (kikawaio), *Cibotium* spp., *Clermontia kakeana* (ohai wai), *Coprosma* spp. (pilo), *Diplazium* spp. (NCN), *Dodonaea viscosa* (aalii), *Dubautia plantaginea* (naenae), *Perrottetia sandwicensis*, *Pipturus albidus* (mamaki), *Psychotria* spp. (kopiko), *Sadleria* spp. (amau), *Touchardia latifolia* (olona), and *Xylosma hawaiiense* (maua) (Service 2001; 64 FR 48307; Joel Lau, HINHP, pers. comm., 2001; HINHP Database 2001; R. Hobdy, pers. comm., 2001).

The threats to this species are slugs; habitat degradation and destruction by feral pigs; flooding; competition with several nonnative plant species; rats; the two-spotted leafhopper (*Saphonia rufofascia*); and extinction caused by random environmental events caused by the small number of individuals in the only remaining occurrence (Service 2001; 64 FR 48307).

Cyanea hamatiflora ssp. *hamatiflora* (Haha)

Cyanea hamatiflora ssp. *hamatiflora*, a short-lived perennial member of the bellflower family (Campanulaceae), is a palm-like tree with tan colored latex. This subspecies is differentiated from the other listed subspecies (*C. hamatiflora* ssp. *carlsonii*) by its longer calyx lobes and shorter individual flower stalks. This species is separated from others in this endemic Hawaiian genus by fewer flowers per inflorescence and narrower leaves (Lammers 1999; Service 2001).

Little is known about the life history of *Cyanea hamatiflora* ssp. *hamatiflora*. Flowering cycles, pollination vectors, seed dispersal agents, longevity, specific environmental requirements, and limiting factors are unknown (Service 2001; 64 FR 48307).

Historically, *Cyanea hamatiflora* ssp. *hamatiflora* was known from the windward side of Haleakala, stretching from Puu o Kakae to Manawainui. Currently, this species is known from 9

occurrences with a total of 12 individuals within the East Maui Watershed Partnership in Honomanu, Wailuaiki, Kipahulu Valley, Koukouai, and Puu Ahulili, on Federal (Haleakala National Park) and privately owned lands (GDSI 2001; HINHP Database 2001; Service 2001; Warshauer 1998; 64 FR 48307).

Typical habitat for this species is montane wet forest dominated by *Metrosideros polymorpha*, with a *Cibotium* spp. and/or native shrub understory, or closed *Acacia koa-M. polymorpha* wet forest, containing one or more of the following associated native plant species: *Athyrium microphyllum* (akolea), *Broussaisia arguta, Cheirodendron trigynum, Cyanea aculeatiflora* (haha), *Cyanea kunthiana* (haha), *Dicranopteris linearis, Diplazium sandwichianum, Melicope* spp., *Myrsine* spp. (kolea), or *Vaccinium* spp.; and at elevations between 767 and 1,553 m (2,515 and 5,095 ft) (HINHP Database 2001; R. Hobdy, pers. comm., 2001; Service 2001; 64 FR 48307).

The threats to this species are habitat degradation and destruction by feral pigs; landslides; competition with the nonnative plant *Ageratina adenophora* (Maui pamakani); rats; and slugs (Service 2001; 64 FR 48307).

Cyanea mceldowneyi (Haha)

Cyanea mceldowneyi, a member of the bellflower family (Campanulaceae), is a short-lived, unbranched perennial shrub with rough to prickly stems. This species is distinguished from other species of *Cyanea* by the combination of a densely armed trunk; long (4 cm (1.6 in)), white corollas; and leaf blade size and shape (Lammers 1999; Service 2001).

Little is known about the life history of *Cyanea mceldowneyi*. Flowering cycles, pollination vectors, seed dispersal agents, longevity, specific environmental requirements, and limiting factors are unknown (Service 1997; 57 FR 20772).

Historically, *Cyanea mceldowneyi* was known from rainforest west of Waikamoi to Honomanu on northwestern Haleakala. Currently, this species is known from 11 occurrences with a total of 36 individuals on State (Makawao Forest Reserve and Hanawi NAR) and privately owned lands within the East Maui Watershed Partnership at Kahakapao Gulch, Opana Gulch, Waikamoi, Puohokamoa, Makapipi, and the flats above Kuhiwa Valley (GDSI 2001; HINHP Database 2001; Lammers 1999; Service 1997; Warshauer 1998; 57 FR 20772).

The habitat of this species is montane wet and mesic forest with mixed *Metrosideros polymorpha-Acacia koa* containing one or more of the following associated native plant species: *Broussaisia arguta, Cheirodendron trigynum, Cibotium* spp., *Clermontia arborescens*, Cyrtandra spp. (haiwale), *Dicranopteris linearis, Diplazium sandwichianum, Hedyotis* spp., or *Melicope clusiifolia*, at elevations between 779 and 1,357 m (2,555 and 4,453 ft) (R. Hobdy, pers. comm., 2001, Service 1997, 57 FR 20772).

The threats to this species are habitat degradation and physical destruction by feral pigs, small number of occurrences and individuals, human activities, and competition with nonnative plant species, especially *Setaria palmifolia* (palmgrass) (Service 1997; 57 FR 20772).

Dubautia plantaginea ssp. *humilis* (Naenae)

Dubautia plantaginea ssp. *humilis*, a short-lived perennial of the aster family (Asteraceae), is a dwarf shrub less than 80 cm (30 in) tall with hairless or strigillose (bulbous-based hairs, all pointing in the same direction) stems. This species differs from other Hawaiian members of the genus by the number of veins in the leaves and by the close resemblance of the leaves to the genus *Plantago*. The subspecies *humilis* differs from the other two subspecies (*D. plantaginea* ssp. *magnifolia* and *D. plantaginea* ssp. *plantaginea*) by having fewer heads per inflorescence, but more florets per head (Carr 1985; Carr 1999b; Service 2001).

Little is known about the life history of *Dubautia plantaginea* ssp. *humilis*. Flowering cycles, pollination vectors, seed dispersal agents, longevity, specific environmental requirements, and limiting factors are unknown (Service 2001; 64 FR 48307).

Dubautia plantaginea ssp. *humilis* has only been reported from Iao Valley on West Maui. The two occurrences with 60 to 65 individuals in total are on privately owned land (GDSI 2001; HINHP Database 2001; Service 2001; 64 FR 48307).

The typical habitat of the species is wet, barren, steep, rocky, wind-blown cliffs containing one or more of the following associated native plant species: *Bidens* spp. (kookoolau), *Carex* spp. (NCN), *Eragrostis variabilis* (kawelu), *Hedyotis formosa* (NCN), *Lysimachia remyi* (NCN), *Metrosideros polymorpha, Pipturus albidus, Plantago princeps* (laukahi kuahiwi), or *Pritchardia* spp. (loulu), at elevations between 266 and 1,593 m (873 and 5,226 ft) (HINHP Database 2001; Service 2001; 64 FR 48307; R. Hobdy, pers. comm., 2001).

Threats to *Dubautia plantaginea* ssp. *humilis* include landslides and competition from nonnative plant species. Random environmental events, such as landslides, are a threat because of the limited number of individuals and occurrences and their narrow distribution (Service 2001; 64 FR 48307).

Geranium arboreum (Nohoanu)

Geranium arboreum, a long-lived perennial member of the geranium family (Geraniaceae), is a many branched, spreading, woody shrub about 1.8 to 3.7 m (6 to 12 ft) tall. This species can be distinguished from other *Geranium species* by its red petals with the upper three petals erect and the lower two reflexed, causing the flower to appear curved (Wagner *et al.* 1999).

Geranium arboreum is the only species in its genus that appears to be adapted to bird-pollination. Native honeycreepers appear to be a major pollination vector. *Geranium arboreum* from the southwest area of Haleakala in the Kula Forest Reserve produce seeds that are larger and fuller than seeds from the northwest extension of its distribution. Native honeycreepers are reasonably abundant in both areas. Little else is known about the life history of *Geranium arboreum*. Flowering cycles, other pollination vectors, seed dispersal agents, longevity, specific environmental requirements, and limiting factors are unknown (Funk 1982, 1988; Service 1997; 57 FR 20772).

The original range and abundance of the species is unknown, but late 19th and early 20th century collections indicate that it once grew on the southern slopes of Haleakala and that its distribution on the northern slopes extended beyond its presently known range. Currently, there are 12 occurrences totaling 158 individuals, within the East Maui Watershed Partnership on State (Kula and Kahikinui Forest Reserves), private, and federally owned or leased (Haleakala National Park) lands. These occurrences are found in Kahua, Kanahau, Waiohuli, Kaipoioi Gulch, Hapapa Gulch, Keauaiwi Gulch, Kalialinui, and south of Puu Luau and east of Puu Nianiau (GDSI 2001; HINHP Database 2001; Service 1997; Warshauer 1998; 57 FR 20772).

Geranium arboreum grows in steep, damp, and shaded narrow canyons and gulches, steep banks, and intermittent streams in *Sophora chrysophylla* (mamane) subalpine dry shrubland or *Metrosideros polymorpha* montane forest containing one or more of the following associated native plant species: *Dryopteris wallichiana* (io nui); *Dodonaea viscosa; Leptecophylla tameiameiae*; *Rubus hawaiiensis*; or *Vaccinium reticulatum* (ohelo ai), at elevations between 1,451 and 2,184 m (4,760 and 7,164 ft) (R. Hobdy, pers. comm., 2001; Service 1997; 57 FR 20772).

The greatest immediate threat to the survival of this species is encroachment and competition from naturalized, nonnative vegetation, chiefly grasses and trees. Soil disturbance, caused by trampling cattle and rooting by feral pigs, also is a major threat as it destroys plants and facilitates the encroachment of competing species of naturalized plants. Other less important threats include browsing by cattle; fires; and pollen from nonnative pine trees, which at certain times of the year completely covers the stigmas of the geraniums, precluding any fertilization by its own pollen. The small number of individual plants increases the potential for extinction from random environmental events, and the limited gene pool may depress reproductive vigor (Funk 1982, 1988; Service 1997; 57 FR 20772).

Geranium multiflorum (Nohoanu)

Geranium multiflorum, a long-lived member of the geranium family (Geraniaceae), is a perennial many-branched shrub 1 to 3 m (3 to 10 ft) tall. Flowers are in clusters of 25 to 50 and have 5 white petals that are 10 to 15 millimeters (mm) (0.4 to 0.6 in) long with purple veins or bases. This species is distinguished from others of the genus by its white, regularly symmetrical flowers and by the shape and pattern of teeth on its leaf margins (Wagner *et al.* 1999).

Little is known about the life history of *Geranium multiflorum*. Flowering cycles, pollination vectors, seed dispersal agents, longevity, specific environmental requirements, and limiting factors are unknown (Service 1997; 57 FR 20772).

Historically, *Geranium multiflorum* was known from Ukulele, Waieleele, and Waianapanapa on East Maui. This species is now known from Federal (Haleakala National Park), State (Hanawi NAR and Koolau Forest Reserve), and private lands within the East Maui Watershed Partnership in Haiku Ula, Kalialinui, Koolau Gap, between East Waiuaki and Kopiliula Streams, near Puu Alaea along Kalapawili Ridge, Kipahulu Valley, Waiakekeehia, and Haleakala Crater. The 13 known occurrences extend over a distance of about 10.5 by 5.5 km (6.5 by 3.5 mi). Due to the inaccessibility of the occurrences, and the difficulty in determining the number of individuals (caused by the plant's multi-branched form), the total number of individuals of this species is not known; however, it probably does not exceed 3,000 plants (GDSI 2001; HINHP Database 2001; R. Hobdy, pers. comm., 2001; Service 1997; Warshauer 1998; 57 FR 20772).

Geranium multiflorum is found in wet or mesic *Metrosideros polymorpha* montane forest or alpine mesic forest, *Leptecophylla tameiameiae* shrubland, *Sophora chrysophylla* subalpine dry forest, open sedge swamps, fog-swept lava flows, or montane grasslands containing one or more of the following associated native plant species: *Coprosma montana* (pilo); *Dryopteris glabra* (hohui); *Dryopteris wallichiana; Hedyotis* spp.; *Rubus hawaiiensis; Sadleria cyatheoides;* or *Vaccinium* spp. (amau), at elevations between 1,499 and 2,710 m (4,918 and 8,890 ft) (HINHP Database 2001; Service 1997; Wagner *et al.* 1999; 57 FR 20772).

The major threat to *Geranium multiflorum* is competition with encroaching nonnative plant species, particularly *Rubus argutus* (prickly Florida blackberry). A potential threat is habitat destruction by feral pigs and goats in unfenced areas (Service 1997; 57 FR 20772).

Kanaloa kahoolawensis (Kohe malama malama o kanaloa)

Kanaloa kahoolawensis, a short-lived perennial member of the legume family (Fabaceae), is a densely branched shrub 0.75 to 1 m (2.5 to 3.5 ft) tall. The leaves are divided into three pairs of leaflets, with a leaf nectary (nectar-bearing gland) at the joint between each pair of leaflets. One to three inflorescences are found in the leaf axils (joint between leaf and stem), developing with the flush of new leaves. The inflorescence is a globose head with 20 to 54 white flowers. No other species of legume in Hawaii bears any resemblance to this species, which is why it is the only one in this genus (Lorence and Wood 1994; Service 2001).

Little is known about the life history of *Kanaloa kahoolawensis*. Flowering cycles, pollination vectors, seed dispersal agents, longevity, specific environmental requirements, and limiting factors are unknown (Service 2001; 64 FR 48307).

Kanaloa kahoolawensis was unknown to science until its discovery by Steve Perlman and Ken Wood of NTBG in 1992 on a steep rocky spire on the coast of Kahoolawe. The only known location of *K. kahoolawensis* is this rocky stack on the southern coast of Kahoolawe, in an area which is owned by the State of Hawaii. While there are no previous records of the plant, pollen core studies on Oahu revealed a legume pollen that could not be identified but is most likely this species. The pollen cores indicate that this previously unidentified species was a codominant with *Dodonaea viscosa* and *Pritchardia* spp. from before 1210 B.C. to 1565 A.D., at which point *K. kahoolawensis* disappeared from the pollen record and *D. viscosa* and *Pritchardia* spp. declined dramatically. Only one occurrence with two living individuals is known (Athens *et al.* 1992; Athens and Ward 1993; Lorence and Wood 1994; Service 2001; 64 FR 48307; Paul Higashino, Kahoolawe Island Reserve Commission (KIRC), pers. comm., 2000).

The only known habitat is steep rocky talus slopes in mixed coastal shrubland at elevations between 0 and 305 m (0 and 1,000 ft) and containing one or more of the following associated native plant species: *Bidens mauiensis* (kookoolau); *Capparis sandwichiana* (maiapilo); *Melanthera lavarum* (nehe); *Portulaca molokiniensis* (ihi); *Senna gaudichaudii* (kolomona); or *Sida fallax* (ilima) (Service 2001; 64 FR 48307; R. Hobdy, pers. comm., 2001).

The major threats to *Kanaloa kahoolawensis* are landslides and competition with the nonnative plant species *Emilia fosbergii* (pualele) and *Nicotiana glauca* (tree tobacco). Goats played a major role in the destruction of vegetation on Kahoolawe before they were removed, and *K. kahoolawensis* probably survived only because the rocky stack is almost completely separated from the island and inaccessible to goats. Rats are a potential threat to *K. kahoolawensis*, because the species has seeds similar in appearance and presentation to the seeds of the federally endangered *Caesalpinia kavaiensis* (uhiuhi), which are eaten by rats. Rats may have been the cause of the decline of this species over 400 years ago. Trampling and habitat degradation from introduced cats and native seabirds are also potential threats. Random environmental events and reduced reproductive vigor are also threats to this species, because only two individuals are known (Cuddihy and Stone 1990; Lorence and Wood 1994; Service 2001; 64 FR 48307; P. Higashino, pers. comm., 2000).

Lipochaeta kamolensis (Nehe)

Lipochaeta kamolensis, a short-lived perennial herb of the aster family (Asteraceae), has trailing or climbing stems that are woody at the base and reach a length of 0.3 to 3 m (1 to 10 ft). This species is distinguished from others of the genus by the simple leaves, which are pinnately lobed or cut, and by

the size of the flower heads (Wagner *et al.* 1999).

Lipochaeta kamolensis has been observed flowering from December through February, as well as in April. The growing season coincides with the wet season between November and April to May. Plants are deciduous and appear to be metabolically inactive during the dry season. Little else is known about the life history of *L. kamolensis*. Flowering cycles, pollination vectors, seed dispersal agents, longevity, specific environmental requirements, and limiting factors are otherwise unknown (Service 1997; 57 FR 20772).

Historically, *Lipochaeta kamolensis* was known from Kamole Gulch, west of Kepuni Gulch, and 7.2 km (11.8 mi) southeast of Ulupalakua Ranch Office. This species still occurs in Kamole Gulch, on State-owned (Department of Hawaiian Home Lands (DHHL)) land. The only known occurrence, which extends over an area of about 40 ha (100 ac), is estimated to contain fewer than 500 individuals (GDSI 2001; HINHP Database 2001; Service 1997; Wagner *et al.* 1999; 57 FR 20772; K. Wood, *in litt.* 1999).

Lipochaeta kamolensis typically grows in gulches or on gentle slopes outside gulches in dry shrubland at elevations between 40 and 602 m (132 and 1,974 ft) and containing one or more of the following associated native plant species: *Dodonaea viscosa; Ipomoea indica* (koali awa); or *Plumbago zeylanica* (iliee) (Service 1997; Wagner *et al.* 1999; 57 FR 20772; R. Hobdy, pers. comm., 2001; K. Wood, *in litt. 1999).*

The major threats to *Lipochaeta kamolensis* are habitat destruction, predation by cattle and goats, competition with nonnative plants such as *Lantana camara* (lantana), fire, and the one occurrence being subject to extinction by random environmental events (Service 1997; 57 FR 20772).

Melicope adscendens (Alani)

Melicope adscendens, a long-lived perennial of the rue family (Rutaceae), is a sprawling shrub with long, slender branches covered with gray hairs when young, which become hairless when older. *Melicope adscendens* is distinguished from other species of the genus by its growth habit, the distinct follicles (chambers) of its fruit, and the persistent (remaining attached) sepals and petals (Stone *et al.* 1999).

Melicope adscendens fruits have been collected in March and July. Little else is known about the life history of *M. adscendens*. Flowering cycles, pollination vectors, seed dispersal agents, longevity, specific environmental requirements, and limiting factors are unknown (Service 1997; 59 FR 62346).

Melicope adscendens has been found only on the southwestern slope of Haleakala; two plants, separated by an unspecified distance, were found by Forbes in 1920. Today, there are 16 occurrences on State (Kanaio NAR) and privately owned lands at Puu Ouli and on the border of the Hana and Makawao Districts (GDSI 2001; HINHP Database 2001; Service 1997; 59 FR 62346).

This species typically grows on aa lava (a particular type of lava flow with very sharp edges) with pockets of soil in *Nestegis sandwicensis* (olopua)-*Pleomele auwahiensis* (hala pepe)-*Dodonaea viscosa* lowland mesic forest or open dry forest containing one or more of the following associated native plant species: *Alphitonia ponderosa* (kauila); *Chamaesyce celastroides* var. *lorifolia* (akoko); *Leptecophylla tameiameiae; Osteomeles anthyllidifolia* (ulei); *Pouteria sandwicensis* (alaa); *Santalum ellipticum* (iliahialoe); or *Xylosma hawaiiense* (maua) at elevations between 761 and 1,209 m (2,497 and 3,967 ft) (HINHP Database 2001; Service 1997; 59 FR 62346; R. Hobdy, pers. comm., 2001; K. Wood, *in litt.* 1999).

Major threats are habitat damage and trampling by cattle; competition with nonnative plant species, including *Bocconia frutescens* (NCN), *Lantana camara*, and *Pennisetum clandestinum* (kikuyu grass); and reduced reproductive vigor or extinction from random environmental events caused by the small number of individuals and narrow distribution. Potential threats include habitat degradation and damage to plants by axis deer (*Axis axis*), feral goats, feral pigs, black twig borer (*Xylosandrus compactus*), fire, and ranch activities (HINHP Database 2001; Service 1997; 59 FR 62346).

Melicope balloui (Alani)

Melicope balloui, a long-lived perennial of the rue family (Rutaceae), is a small tree or shrub. New growth has yellowish brown woolly hairs and waxy scales; plant parts later become nearly hairless. *Melicope balloui* is distinguished from other species of the genus by the partially fused carpels of its four-lobed capsule (dry fruit) and usually persistent sepals and petals (Stone *et al.* 1999).

Little is known about the life history of *Melicope balloui*. Flowering cycles, pollination vectors, seed dispersal agents, longevity, specific environmental requirements, and limiting factors are unknown (Service 1997; 59 FR 62346).

Melicope balloui has been found only on the northern and southeastern slopes of Haleakala. There are 3 known occurrences with a total of approximately 50 individuals on private and federally owned (Haleakala National Park) lands within the East Maui Watershed Partnership at Puu O Kakae and Palikea Stream (GDSI 2001; HINHP Database 2001; Service 1997; 59 FR 62346; K. Wood, *in litt.* 1999).

Melicope balloui typically grows in mesic to wet forest between 781 and 1,596 m (2,561 and 5,267 ft) in elevation and containing one or more of the following associated native plant species: *Acacia koa; Cibotium chamissoi* (hapuu); *Cibotium glaucum* (hapuu); *Diplazium sandwichianum; Melicope clusiifolia; Metrosideros polymorpha;* or *Sadleria pallida* (amau) (HINHP Database 2001; Service 1997; 59 FR 62346; J. Lau, Hawaii Natural Heritage Program, pers. comm., 2001).

Major threats are habitat degradation and damage to plants by feral pigs and axis deer and reduced reproductive vigor or extinction caused by random environmental events caused by the small number of existing occurrences and individuals. Potential threats include competition with nonnative plant species such as *Clidemia hirta, Paspalum conjugatum, Paspalum urvillei,* and *Psidium cattleianum* (strawberry guava); susceptibility to black twig borer; and predation by rats (HINHP Database 2001; Service 1997; 59 FR 62346).

Melicope ovalis (Alani)

Melicope ovalis, a long-lived perennial of the rue family (Rutaceae), is a tree growing up to 5 m (16 ft) tall. New growth has fine, short, brownish hairs, but soon becomes hairless. Leaves are opposite, leathery, and broadly elliptic. Bruised foliage has an anise odor similar to that of *M. anisata* (mokihana). *Melicope ovalis* is distinguished from other species of the genus by the almost entirely fused carpels of its capsule, its nonpersistent sepals and petals, and its well-developed petioles (leaf stems) (Stone *et al.* 1999).

Little is known about the life history of *Melicope ovalis*. Flowering cycles, pollination vectors, seed dispersal agents, longevity, specific environmental requirements, and limiting factors are unknown (Service 1997; 59 FR 62346).

Melicope ovalis has been found only on the eastern and southeastern slopes of Haleakala. There are two occurrences with approximately 200 individuals, found on federally owned land along Palikea Stream in Haleakala National Park within the East Maui Watershed Partnership (GDSI 2001; HINHP Database 2001; Service 1997; 59 FR 62346; K. Wood, *in litt.* 1999).

This species typically grows in *Acacia koa* and *Metrosideros polymorpha*-dominated montane wet forests along streams at elevations between 753 and 1,537 m (2,469 and 5,042 ft). Associated plant species include: *Broussaisia arguta; Cheirodendron trigynum; Dicranopteris linearis; Dubautia plantaginea; Hedyotis hillebrandii; Labordia hedyosmifolia* (kamakahala); *Machaerina angustifolia* (uki); *Perrottetia sandwicensis;* or *Wikstroemia oahuensis* (akia) (HINHP Database 2001; Service 1997; 59 FR 62346; R. Hobdy, pers. comm., 2001).

Major threats to the only known population are habitat degradation and damage to plants by feral pigs and reduced reproductive vigor and/or extinction caused by random environmental events. Competition with introduced plants such as *Clidemia hirta, Paspalum conjugatum, Psidium cattleianum* and *Rubus rosifolius* (thimbleberry); seed predation by rats; and susceptibility to black twig borer are also threats to this species. Habitat degradation and damage to plants by feral goats and axis deer are potential threats if the integrity of the fence currently surrounding the occurrence is compromised (HINHP Database 2001; Service 1997; 59 FR 62346; K. Wood, *in litt.* 1999).

Remya mauiensis (NCN)

Remya mauiensis is a short-lived perennial member of the aster family (Asteraceae). The genus *Remya* is endemic to the Hawaiian Islands. This species is a small perennial shrub, about 90 cm (3 ft) tall, with many slender, sprawling, or scandent (climbing) to weakly erect branches. It is distinguished from the other two members of the genus by its hairy stems and foliage, leaf shape, and length of the petiole (Wagner *et al.* 1999).

Little is known about the life history of *Remya mauiensis*. Flowering cycles, pollination vectors, seed dispersal agents, longevity, specific environmental requirements, and limiting factors are unknown (Service 1997; 56 FR 1450).

Remya mauiensis was collected twice on West Maui by William Hillebrand between 1851 and 1871, and again in 1920 by Charles Forbes, also on West Maui. It was thought to be extinct until its rediscovery in 1971 by L.E. Bishop, W. Gagne, and S. Montgomery on the slopes of Manawainui Gulch, West Maui. Currently, *R. mauiensis* is known from five occurrences on State-owned land within the West Maui Mountains Watershed Partnership at Paupau, Kokuula, Kanaulaiki, and Maunawainui Gulch in the Panaewa section of the West Maui NAR, the West Maui Forest Reserve, and the Manawainui Plant Sanctuary. Because of the sprawling habit of this species, and the often dense growth of the surrounding vegetation, it is difficult to determine the exact number of individuals; however, there is an estimated total of 21 individuals (GDSI 2001; HINHP Database 2001; Service 1997; 56 FR 1450).

Remya mauiensis grows chiefly on steep, north or northeast-facing slopes in mixed mesophytic forests or *Metrosideros polymorpha* montane wet forests containing one or more of the following associated native species: *Alyxia oliviformis* (maile); *Diospyros sandwicensis* (lama); *Diplazium sandwichianum; Dodonaea viscosa; Leptecophylla tameiameiae; Lysimachia remyi; Melicope* spp.; *Microlepia strigosa* (palapalai); *Myrsine lessertiana* (kolea lau nui); *Nestegis sandwicensis; Pleomele auwahiensis; Psychotria mariniana; Wikstroemia* spp. (akia); or *Xylosma hawaiiense* at elevations between 400 and 1,228 m (1,312 and 4,029 ft) (HINHP Database 2001; Service 1997; 56 FR 1450; R. Hobdy, pers. comm., 2001).

This species is threatened by extinction caused by random catastrophic environmental events by virtue of the extremely small size of the occurrences coupled with their limited distribution. The limited gene pool may depress reproductive vigor, or a single environmental disturbance could destroy a significant percentage of the known individuals. However, the primary threat to this species is the loss and degradation of its habitat caused by the introduction of nonnative plants, such as *Adiantum hispidulum* (rough maidenhair fern), Rubus rosifolius, *Schinus terebinthifolius* (Christmas berry), or *Tibouchina herbacea;* human activities; and feral goats and pigs (Service 1997; 56 FR 1450).

Schiedea haleakalensis (NCN)

Schiedea haleakalensis, a short-lived perennial of the pink family (Caryophyllaceae), is a hairless shrub, with slightly fleshy, narrow leaves and a single vein. Flowers are in clusters at the ends of the branches. This species differs from other species of the genus on East Maui by its crowded, hairless inflorescence composed of bisexual flowers (Wagner *et al.* 1999).

Schiedea haleakalensis is gynodioecious (individuals either have only female flowers or only bisexual flowers) and so likely requires cross-pollination by small insects. Small, short-flighted flies and moths have been observed visiting flowers. Fruits and seeds have been observed from August through September. Little else is known about the life history of *S. haleakalensis*. Flowering cycles, pollination vectors, seed dispersal agents, longevity, specific environmental requirements, and limiting factors are unknown (Service 1997; 57 FR 20772).

Due to the lack of early collections or sightings, the historical range of *Schiedea haleakalensis* is unknown. This species is known only from Leleiwi Pali and Kaupo Gap in Haleakala National Park within the East Maui Watershed Partnership. The two occurrences are estimated to contain a total of 100 to 200 individuals, which together extend over a total area of 11 ha (28 ac) (GDSI 2001; HINHP Database 2001; Service 1997; 57 FR 20772).

Schiedea haleakalensis typically grows in rock cracks on sheer cliffs adjacent to barren lava and subalpine shrublands and grasslands with cinder, weathered volcanic ash, or in bare lava substrate with little or no soil development and periodic freezing temperatures, and containing one or more of the following associated native plant species: *Artemisia mauiensis* (hinahina), *Bidens micrantha* (kookoolau), *Dubautia menziesii, Leptecophylla tameiameiae, Vaccinium reticulatum,* or *Viola chamissoniana* (pamakani) at elevations between 1,678 and 2,434 m (5,505 and 7,986 ft) (HINHP Database 2001, Service 1997, 57 FR 20772 R. Hobdy, pers. comm., 2001).

The greatest threats to *Schiedea haleakalensis* are fire and other catastrophic events that could severely impact the species due the small number and restricted distribution of remaining individuals and occurrences (Service 1997; 57 FR 20772).

Tetramolopium capillare (Pamakani)

Tetramolopium capillare, a short-lived perennial of the sunflower family (Asteraceae), is a sprawling shrub with stems measuring 50 to 80 cm (20 to 31 in) long and covered with many glands when young. *Tetramolopium capillare* differs from other species of the genus by its very firm leaves with edges rolled under, its solitary flower heads, the color of its disk florets, and its shorter pappus. It differs from *T. remyi*, with which it sometimes grows, by its more sprawling habit and the shorter stalks of its smaller flower heads (Lowrey 1999).

Little is known about the life history of *Tetramolopium capillare*. Flowering

cycles, pollination vectors, seed dispersal agents, longevity, specific environmental requirements, and limiting factors are unknown (Lowrey 1999).

Historically, *Tetramolopium capillare* is known from Lahaina Luna to Wailuku on West Maui. Currently, 5 known occurrences with a total of 166 individuals are known from State (West Maui Forest Reserve) and privately owned lands within the West Maui Mountains Watershed Partnership, south of Kanaha Stream, Kauaula, Ulaula, and Koia (GDSI 2001; Lowrey 1999; Service 1997; 59 FR 49860).

Tetramolopium capillare typically grows on rocky substrates in *Heteropogon contortus* (pili grass) lowland dry forest containing *Dodonaea viscosa* or *Myoporum sandwicense* (naio); or in *Metrosideros polymorpha-Leptecophylla tameiameiae montane mesic* or wet shrubland and wet cliff faces containing one or more of the following associated plant species: *Dodonaea viscosa, Leptecophylla tameiameiaem* or *Metrosideros polymorpha,* at elevations between 131 and 1,432 m (430 and 4,698 ft) (Service 1997; 59 FR 49860; R. Hobdy, pers. comm., 2001).

The major threats to *Tetramolopium capillare* are fires; competition from nonnative plant species, particularly *Lantana camara, Leucaena leucocephala* (koa haole), or *Melinus repens* (natal redtop); and reduced reproductive vigor and/or extinction from random environmental events caused by the small number of existing occurrences and individuals (Service 1997; 59 FR 49860).

Multi-Island Species

Acaena exigua (Liliwai)

Acaena exigua is a small perennial rosette herb in the rose family (Rosaceae) with narrow, fern-like, divided leaves. It is easily hidden among the other low, tufted bog plants with which it grows. It is distinguished from other Hawaiian rose family members by its lack of petals and by the urn-shaped, constricted base of the flower, that encloses the fruit (Wagner *et al.* 1999).

Little is known about the life history of *Acaena exigua*. Its flowering cycles, pollination vectors, seed dispersal agents, longevity, specific environmental requirements, and limiting factors are unknown (Service 1997; 57 FR 20772).

Historically, *Acaena exigua* was known from Puu Kukui on West Maui and from Mount Waialeale on Kauai. On Maui, *A. exigua* was last seen by Hank Oppenheimer and Steve Perlman in 1999 within the Puu Kukui Watershed Management Area. It has not been seen in the wild since March 2000 (Hank Oppenheimer, Maui Pineapple Company Limited, pers. comm., 2001; Service 1997; 57 FR 20772).

Acaena exigua is known only from montane bogs characterized by a thick peat substrate overlying an impervious clay substrate, with hummocks of sedges and grasses, stunted trees, and shrubs at elevations between 1,178 and 1,764 m (3,865 and 5,787 ft). Associated native species include the sedges and grasses *Carex montis-eeke* (NCN), *Deschampsia nubigena, Dichanthelium cynodon* (NCN), *Dichanthelium hillebrandianum* (NCN), *Dichanthelium isachnoides* (NCN), *Oreobolus furcatus (NCN),* or *Rhynchospora chinensis* (kuolohia), and the shrubs *Lagenifera maviensis* (howaiaulu), *Metrosideros polymorpha, Myrsine* spp., *Vaccinium* spp., or *Viola maviensis* (pamakani) (R. Hobdy, pers. comm., 2001; Service 1997; 57 FR 20772).

The reason for the disappearance of this species is not known. The main current threats to *Acaena exigua,* if it exists, are believed to include small occurrence size; human impacts (collecting and site degradation); consumption of vegetative or floral parts by nonnative slugs and rats; predation and habitat disturbance by feral pigs; and competition with nonnative plant species (Service 1997; 57 FR 20772).

Adenophorus periens (Pendent kihi fern)

Adenophorus periens, a member of the grammitis family (Grammitidaceae) and a short-lived perennial, is a small, pendent, epiphytic (not rooted in the ground) fern. This species differs from others in this endemic Hawaiian genus by having hairs along the pinna (leaflet) margins, by the pinnae being at right angles to the midrib axis, by the placement of the sori (spore-bearing structures) on the pinnae, and by the degree of dissection of each pinna (Linney 1989).

Little is known about the life history of *Adenophorus periens,* which seems to grow only in closed canopy dense forest with high humidity. Its breeding system is unknown, but outbreeding is very likely to be the predominant mode of reproduction. Spores are dispersed by wind, possibly by water, and perhaps on the feet of birds or insects. Spores lack a thick resistant coat which may indicate their longevity is brief, probably measured in days at most. Due to the weak differences between the seasons, there seems to be no evidence of seasonality in growth or reproduction. Additional information on reproductive cycles, longevity, specific environmental requirements, and limiting factors is not known (Linney 1989).

Historically, *Adenophorus periens* was reported from Kauai, Oahu, Lanai, Maui, and the island of Hawaii. Currently, it is known from Kauai, Molokai, and Hawaii. On Maui, it has not been seen in the wild since 1929 (GDSI 2001; HINHP Database 2001; Service 1999; 59 FR 56333).

Nothing is known of the preferred habitat of or native plant species associated with *Adenophorus periens* on the island of Maui (Service 1999; 59 FR 56333).

Nothing is known of the threats to *Adenophorus periens* on the island of Maui (Service 1999; 59 FR 56333).

Alectryon macrococcus (Mahoe)

Alectryon macrococcus, a long-lived perennial member of the soapberry family (Sapindaceae), consists of two varieties, *macrococcus* and *auwahiensis,* both trees with reddish-brown branches and leaves with one to five pairs of sometimes asymmetrical egg-shaped leaflets. The underside of the leaf has dense brown hairs, persistent in A. macrococcus var. auwahiensis but only on leaves of young *A. macrococcus* var. *macrococcus.* The only member of its genus found in Hawaii, this species is distinguished from other Hawaiian members of its family by being a tree with a hard fruit 2.5 cm (1 in) or more in diameter (Service 1997; Wagner *et al.* 1999; 57 FR 20772).

Alectryon macrococcus is a relatively slow-growing, long-lived tree that grows in xeric to mesic sites and is adapted to periodic drought. Little else is known about the life history of *A. macrococcus.* Flowering cycles, pollination vectors, seed dispersal agents, longevity, and specific environmental requirements are unknown (Service 1997; 57 FR 20772).

Historically and currently, *Alectryon macrococcus* var. *macrococcus is* known from Kauai, Oahu, Molokai, and Maui. On Maui, 10 occurrences with a total of 10 individuals are found along the Honokowai Ditch Trail, Launiupoko Valley, and Iao Valley on privately owned land within the West Maui Mountains Watershed Partnership. Currently, *A. macrococcus* var. *auwahiensis* is known from 3 occurrences with 22 individuals on leeward East Maui in Auwahi in the Hana District and on the ridge east of Pahihi Gulch on private and State-owned (Kahikinui Forest Reserve) lands (GDSI 2001; HINHP Database 2001; Medeiros *et al.* 1986; Service 1997; 57 FR 20772).

The habitat of *Alectryon macrococcus* var. *macrococcus* on Maui is mesic forests with *Antidesma platyphyllum* (hame), *Antidesma pulvinatum* (hame), *Bobea sandwicensis* (ahakea), *Nestegis sandwicensis, Pittosporum confertiflorum* (hoawa), *Pittosporum glabrum* (hoawa), *Pouteria sandwicensis,* or *Xylosma* spp. (maua) at elevations between 1,017 and 3,562 m (1,168 and 3,337 ft). The habitat of *Alectryon macrococcus* var. *auwahiensis* is mesic to wetter mesic and upper dryland forest containing one or more of the following associated native plant species: *Alphitonia ponderosa; Diospyros sandwicensis; Dodonaea viscosa; Osteomeles anthyllidifolia; Pleomele auwahiensis; Pouteria sandwicensis; Santalum ellipticum; Streblus pendulinus* (aiai); or *Xylosma hawaiiense,* at elevations between 333 and 1,210 m (1,092 and 3,969 ft) (HINHP Database 2001; Service 1997; 57 FR 20772; R. Hobdy, pers. comm., 2001; K. Wood, *in litt.* 1999).

The threats to *Alectryon macrococcus* var. *macrococcus* on Maui include feral goats and pigs; nonnative plant species, such as *Melinus minutiflora* (molasses grass), *Pennisetum clandestinum, Psidium cattleianum,* or *Schinus terebinthifolius;* damage from the black twig borer; seed predation by rats and mice (*Mus musculus*); fire; seed predation by insects (probably the endemic microlepidopteran *Prays* cf. *fulvocanella*); loss of pollinators; depressed reproductive vigor; and caused by the very small remaining number of individuals and their limited distribution, the likelihood that a single natural or human-caused environmental disturbance could easily be catastrophic. The threats to *A. macrococcus* var. *auwahiensis* on Maui are damage from the black twig borer; seed predation by rats and mice; habitat degradation by feral pigs, deer, and escaped cattle; seed predation by insects (probably *Prays* cf. *fulvocanella*); nonnative plant species; loss of pollinators; depressed reproductive vigor; and caused by the very small remaining number of individuals and their limited distribution, the likelihood that a single natural or human-caused environmental disturbance could be catastrophic (Service 1997; 57 FR 20772).

Asplenium fragile var. *insulare* (NCN)

Asplenium fragile var. *insulare,* a short-lived perennial member of the spleenwort family (Aspleniaceae), is a fern with a short sub-erect stem with a dull gray or brown main axis with two greenish ridges. This species is most similar to *A. macraei.* The two can be distinguished by the size and shape of the pinnae and the number of sori (spore-bearing structures) per pinna (Wagner and Wagner 1992).

Little life history information is available for *Asplenium fragile* var. *insulare.* Reproductive cycles, longevity, specific environmental requirements, and limiting factors are largely unknown. Researchers have collected information on species composition, extent of cover, and age-class structure in six sub-populations at Pohakuloa Training Area on the island of Hawaii in order to describe the populations. No gametophytes (gamete-producing life stage) were found, and the age-class structure of the sub-populations sampled was determined to be 100 percent reproductive adults because all the sporophytes (spore-producing life stage) had sori on some fronds (Service 1998a; 59 FR 49025).

Asplenium fragile var. *insulare* was known historically and currently from East Maui and the island of Hawaii. Currently, on Maui there are two occurrences with 18 individuals found in Kalialinui within the East Maui Watershed Partnership on private and federally (Haleakala National Park) owned lands (GDSI 2001; Service 1998a; 59 FR 49025).

On Maui, *Asplenium fragile* var. *insulare* is found in streamside hollows and grottos in gulches that occur in mesic to dry subalpine shrubland dominated by *Leptecophylla tameiameiae* and *Sadleria cyatheoides,* with scattered *Metrosideros polymorpha,* between 1,682 and 2,407 m (5,518 and 7,896 ft). Associated native plant species include *Dryopteris wallichiana* and *Grammitis hookeri* (makue lau lii) (Service 1998a; 59 FR 49025; R. Hobdy, pers. comm., 2001).

The primary threat to *Asplenium fragile* var. *insulare* on the island of Maui is the risk of extinction caused by random naturally occurring events due to the small number of existing individuals (Service 1998a; Shaw 1992; 59 FR 49025).

Bidens micrantha ssp. *kalealaha* (Kookoolau)

Bidens micrantha ssp. *kalealaha,* a short-lived member of the aster family (Asteraceae), is an erect perennial herb. This subspecies can be distinguished by the shape of the seeds, the density of the flower clusters, the numbers of ray and disk florets per head, differences in leaf surfaces, and other characteristics (Ganders and Nagata 1999; 57 FR 20772).

Bidens micrantha is known to hybridize with other native *Bidens,* such as *B. mauiensis* and *B. menziesii,* and possibly *B. conjuncta.* Little else is known about the life history of *B. micrantha* ssp. *kalealaha.* Flowering cycles, pollination vectors, seed dispersal agents, longevity, and specific environmental requirements are unknown (Ganders and Nagata 1999; Service 1997; 57 FR 20772).

Historically, *Bidens micrantha* ssp. *kalealaha* was known from Lanai, the south slope of Haleakala on East Maui, and from one location on West Maui. Currently, this species remains only on East Maui in Kahua, Nakula, and Haleakala Crater and Kaupo Gap, on State (Kahikinui Forest Reserve) and Federal (Haleakala National Park) lands within the East Maui Watershed Partnership. There are a total of 4 occurrences with less than a total of 2,000 individuals (Ganders and Nagata 1999; GDSI 2001; HINHP Database 2001; Service 1997; 57 FR 20772).

The habitat of *Bidens micrantha* ssp. *kalealaha* on Maui is blocky lava flows with little or no soil development; deep pit craters; sheer rock walls in open canopy *Metrosideros polymorpha-Acacia koa* forest; montane shrubland; *Sophora chrysophylla* forests or cliff faces, and containing one or more of the following associated native plant species: *Coprosma montana* (pilo); *Dodonaea viscosa; Dubautia platyphylla* (naenae); *Leptecophylla tameiameiae; Santalum haleakalae* (iliahi); or *Vaccinium reticulatum.* In addition, the habitat of *Bidens micrantha* ssp. *kalealaha* is at elevations between 1,317 and 2,565 m (4,321 and 8,414 ft) (Ganders and Nagata 1999; HINHP Database 2001; Service 1997; 57 FR 20772; R. Hobdy, pers. comm., 2001).

The threats to this species on Maui are habitat destruction by feral goats, pigs, and cattle; competition from a variety of invasive plant species; and fire (Service 1997; 57 FR 20772).

Bonamia menziesii (NCN)

Bonamia menziesii, a short-lived perennial member of the morning-glory family (Convolvulaceae), is a vine with twining branches that are fuzzy when young. This species is the only member of the genus that is endemic to the Hawaiian Islands and differs from other genera in the family by its two styles, longer stems and petioles, and rounder leaves (Austin 1999).

Little is known about the life history of *Bonamia menziesii.* Flowering cycles, pollination vectors, seed dispersal agents, longevity, specific environmental requirements, and

limiting factors are unknown (Service 1999; 59 FR 56333).

Historically, *Bonamia menziesii* was known from Kauai, Oahu, Molokai, one location on West Maui, and the island of Hawaii. Currently, this species is known from Kauai, Oahu, Lanai, Maui, and Hawaii. On Maui, there are six occurrences containing a total of eight individuals on State (Kanaio NAR) and privately owned lands within the West Maui Mountains Watershed Partnership at Honokawai, Keokea, Haunauhane, and Kanaio (GDSI 2001; HINHP Database 2001; Service 1999; 59 FR 56333; K. Wood, *in litt.* 1999).

Bonamia menziesii on Maui is found on a lava in mixed open dry forest, *Erythrina sandwicensis* (wiliwili) lowland dry forest, or in mesic mixed *Metrosideros polymorpha* forest containing one or more of the following associated native plant species: *Acacia koaia* (koaia); *Achyranthes splendens* (Maui hinahina ewa); *Alphitonia ponderosa; Alyxia oliviformis; Diospyros sandwicensis; Dodonaea viscosa; Lipochaeta rockii* (nehe); *Myoporum sandwicense; Nestegis sandwicensis; Nothocestrum latifolium* (aiea); *Nototrichium* spp. (kului); *Pleomele auwahiensis; Pouteria sandwicensis; Osteomeles anthyllidifolia; Reynoldsia sandwicensis* (ohe); *Santalum ellipticum; Sicyos* spp. (anunu); *Sida fallax;* or *Xylosma hawaiiense,* at elevations between 184 and 906 m (604 and 2,971 ft) (HINHP Database 2001; Service 1999; 59 FR 56333; R. Hobdy, pers. comm., 2001; K. Wood, *in litt.* 1999).

The primary threats to this species on Maui are habitat degradation and possible predation by feral pigs, goats, axis deer, and cattle; competition with a variety of nonnative plant species, particularly *Bocconia frutescens* or *Lantana camara;* and an nonnative beetle (*Physomerus grossipes*) (Service 1999; 59 FR 56333).

Brighamia rockii (Pua ala)

Brighamia rockii, a long-lived perennial member of the bellflower family (Campanulaceae), grows as an unbranched stem-succulent with a thickened stem that tapers from the base. This species is a member of a unique endemic Hawaiian genus with only one other species, found on Kauai, from which it differs by the color of its petals, its longer calyx (fused sepals) lobes, and its shorter flower stalks (Lammers 1999).

Observations of *Brighamia rockii* have provided the following information: The reproductive system is protandrous, meaning male flower parts are produced before female parts, in this case, separated by several days; only five percent of the flowers produce pollen; very few fruits are produced per inflorescence; there are 20 to 60 seeds per capsule; and plants in cultivation have been known to flower at nine months of age. This species has been observed in flower during August. Little else is known about the life history of *B. rockii.* Flowering cycles, pollination vectors, seed dispersal agents, longevity, specific environmental requirements, and limiting factors are unknown (HINHP Database 2001; Service 1996b; 57 FR 46325).

Historically, *Brighamia rockii* ranged along the northern coast of East Molokai and may possibly have grown on Lanai and Maui. Currently, it is only extant on Molokai (HINHP Database 2001; Lammers 1999; Service 1996b; 57 FR 46325; K. Wood, *in litt.* 2000).

Brighamia rockii occurs in rock crevices on steep sea cliffs, often within the spray zone, in coastal dry to mesic forests and shrublands between 0 and 195 m (0 and 640 ft). Associated plant species include *Diospyros sandwicensis, Psydrax odorata* (alahee), *Osteomeles anthyllidifolia,* and *Scaevola taccada* (naupaka kahakai) (Service 1996b; 57 FR 46325; J. Lau, pers. comm., 2001).

Nothing is known of the threats to *Brighamia rockii* on the island of Maui (Service 1996b; 57 FR 46325).

Cenchrus agrimonioides (Kamanomano, =sandbur, agrimony)

Cenchrus agrimonioides is a short-lived perennial member of the grass family (Poaceae) with leaf blades that are flat or folded and have a prominent midrib. There are two varieties, *C. agrimonioides* var. *laysanensis* and *C. agrimonioides* var. *agrimonioides.* They differ from each other in that var. *agrimonioides* has smaller burs, shorter stems, and narrower leaves. This species is distinguished from others in the genus by the cylindrical to lance-shaped bur and the arrangement and position of the bristles (O'Connor 1999).

Little is known about the life history of *Cenchrus agrimonioides.* Flowering cycles, pollination vectors, seed dispersal agents, longevity, specific environmental requirements, and limiting factors are unknown. This species has been observed to produce fruit year-round (Service 1999; 61 FR 53108).

Historically, *Cenchrus agrimonioides* var. *agrimonioides* was known from Oahu, Lanai, the south slope of Haleakala and Ulupalakua on Maui, and (in an undocumented report) the island of Hawaii. Historically, *C. agrimonioides* var. *laysanensis* was known from Laysan, Kure, and Midway, all within what is now the Northwestern Hawaiian Islands National Wildlife Refuge, but has not been seen since 1973. This variety was never known from Maui. Currently, *C. agrimonioides* var. *agrimonioides* is known from Oahu and Maui. On Maui, this variety is known from one occurrence on State-owned land (Kanaio NAR) at Ukumehame and Kanaio, East Maui, containing an unknown number of individuals (Corn 1980; HINHP Database 2001; Service 1999; 61 FR 53108).

Cenchrus agrimonioides var. *agrimonioides* is found in mid-elevation dry forest or *Pleomele-Diospyros* forest associated with *Alyxia oliviformis, Dodonaea viscosa, Osteomeles anthyllidifolia,* or *Santalum ellipticum* at elevations between 471 and 1,091 m (1,544 and 3,579 ft) (HINHP Database 2001; Service 1999; 61 FR 53108; R. Hobdy, pers. comm., 2001).

The major threats to the only known occurrence of *Cenchrus agrimonioides* var. *agrimonioides* on Maui are competition with nonnative plant species, browsing and habitat degradation by goats and cattle and a risk of extinction from naturally occurring events and/or reduced reproductive vigor caused by the small number of existing individuals (Service 1999; 61 FR 53108).

Centaurium sebaeoides (Awiwi)

Centaurium sebaeoides is an annual herb in the gentian family (Gentianaceae) with fleshy leaves and stalkless flowers. This species is distinguished from *C. erythraea* (bitter herb), which is naturalized in Hawaii, by its fleshy leaves and the unbranched arrangement of the flower cluster (Wagner *et al.* 1999).

Centaurium sebaeoides has been observed flowering in April. Flowering may be induced by heavy rainfall. Occurrences are found in dry areas, and plants are more likely to be found following heavy rains. Little else is known about the life history of this plant. Its flowering cycles, pollination vectors, seed dispersal agents, longevity, specific environmental requirements, and limiting factors are unknown (Service 1999; 56 FR 55770).

Historically and currently, *Centaurium sebaeoides* is known from Kauai, Oahu, Molokai, Lanai, and Maui. On Maui, there are 3 occurrences of this species, with a total of more than 50 individuals, on State and privately owned lands at Kahakuloa Head, Lahoole, and Kupaa Gulch (HINHP Database 2001; Service 1999; Wagner *et al.* 1999; 56 FR 55770).

This species typically grows in volcanic or clay soils or on cliffs in windward coastal areas at elevations between 0 and 194 m (0 and 636 ft) and containing one or more of the following associated native plant species: *Bidens mauiensis; Lycium sandwicense* (ohelo kai); *Lysimachia mauritiana* (kolokolo kuahiwi); *Melanthera integrifolia* (nehe); *Panicum torridum* (kakonakona); *Scaevola taccada;* or *Schiedea globosa* (NCN) (HINHP Database 2001; Service 1999; Wagner *et al.* 1999; 56 FR 55770; R. Hobdy, pers. comm., 2001).

The major threats to this species on Maui are habitat degradation by feral goats and cattle, competition from the nonnative plant species *Leucaena leucocephala,* trampling by humans on or near trails, and fire (Service 1999; 56 FR 55770).

Clermontia lindseyana (Oha wai)

Clermontia lindseyana, a short-lived perennial member of the bellflower family (Campanulaceae), is a small, branched tree that grows 2.5 to 6 m (8.2 to 20 ft) tall. *Clermontia lindseyana* is either terrestrial or epiphytic. *Clermontia lindseyana* is easily distinguished from the other species within this genus by several characters: Much larger leaves and flowers; petals similar to sepals; and spreading floral lobes. Rock (1962) commented on the leaves being conspicuously hairy beneath (Cuddihy *et al.* 1983; Lammers 1999).

This species has been observed in fruit from June to October and in flower from February to August. Little else is known about the life history of *Clermontia lindseyana.* Flowering cycles, pollination vectors, seed dispersal agents, longevity, specific environmental requirements, and limiting factors are unknown (HINHP Database 2001; Service 1996a; 59 FR 10305).

Historically, *Clermontia lindseyana* was known from Maui and the island of Hawaii. The two Maui occurrences are located in Waiopai and Wailaulau Gulches in the Kahikinui and Kula Forest Reserves on State and private lands, and are estimated to total about 330 individuals (GDSI 2001, HINHP Database 2001, Service 1996a, 59 FR 10305; Arthur Medeiros, USGS–BRD, *in litt.* 2000).

On Maui, *Clermontia lindseyana* grows in *Acacia koa* mesic forest containing one or more of the following associated native plant species: *Coprosma* spp.; *Cyrtandra* spp.; *Ilex anomala* (kawau); *Myrsine* spp.; or native fern species, at elevations between 1,142 and 1,870 m (3,747 and 6,134 ft) (HINHP Database 2001; Service 1996a; 59 FR 10305; R. Hobdy, pers. comm., 2001).

The threats to *Clermontia lindseyana* are trampling and grazing by cattle, trampling and browsing by goats, and trampling and rooting by pigs; competition with the nonnative plant *Pennisetum clandestinum;* and consumption of berries, flowers, and vegetation by black rats (Service 1996a; 59 FR 10305).

Clermontia oblongifolia ssp. *mauiensis* (Oha wai)

Clermontia oblongifolia ssp. *mauiensis,* a short-lived perennial member of the bellflower family (Campanulaceae), is a shrub or tree with oblong to lance-shaped leaves with petioles. *Clermontia oblongifolia* is distinguished from other members of the genus by its calyx and corolla, which are similar in color and are each fused into a curved tube that falls off as the flower ages. The species is also distinguished by the leaf shape, the male floral parts, the shape of the flower buds, and the lengths of the leaf and flower stalks, the flower, and the smooth green basal portion of the flower (the hypanthium). *Clermontia oblongifolia* ssp. *mauiensis* is reported from Maui and Lanai, while ssp. *oblongifolia* is only known from Oahu and ssp. *brevipes* is only known from Molokai (Lammers 1988, 1999; 57 FR 20772).

Clermontia oblongifolia ssp. *mauiensis* is known to flower from November to July. Little else is known about the life history of this species. Flowering cycles, pollination vectors, seed dispersal agents, longevity, specific environmental requirements, and limiting factors are unknown (Rock 1919; Service 1997; 57 FR 20772).

Historically, *Clermontia oblongifolia* ssp. *mauiensis* was known from Lanai and Honomanu Valley on Haleakala, East Maui. Currently, it is known from Lanai and West Maui. This species is currently known from one occurrence with an unknown number of individuals, at Kaulalewelewe on privately owned land within the West Maui Mountains Watershed Partnership (GDSI 2001; HINHP Database 2001; Lammers 1999; Service 1997; 57 FR 20772).

This plant typically grows on the sides of ridges and ridge tops in *Metrosideros polymorpha*-dominated montane wet forests at elevations between 414 and 1,764 m (1,358 and 5,787 ft) and containing one or more of the following associated native plant species: *Cheirodendron* spp. (NCN); *Clermontia* spp.; *Coprosma* spp.; *Dicranopteris linearis; Hedyotis* spp.; *Ilex anomala; Melicope* spp.; or *Myrsine* spp. (HINHP Database 2001; Service 1997; 57 FR 20772; R. Hobdy, pers. comm., 2001).

The only known population of this species on Maui is vulnerable to extinction from a natural or human-caused environmental disturbance caused by its small size; depressed reproductive vigor; competition with the nonnative plant species *Tibouchina herbacea;* and habitat degradation by feral pigs (Service 1997; 57 FR 20772).

Clermontia peleana (Oha wai)

Clermontia peleana, a member of the bellflower family (Campanulaceae) and a short-lived perennial, is an epiphytic shrub or tree that grows on native trees and tree ferns. Two subspecies are recognized: *C. peleana* ssp. *singuliflora* (with greenish-white petals) and *C. peleana* ssp. *peleana* (with blackish-purple petals). This species can be separated from other Hawaiian members of the genus by its epiphytic growth, small triangular green calyx lobes, and single-lipped flowers (Lammers 1999).

Clermontia peleana has been observed in flower during June and November, and in fruit during November. Little else is known about the life history of *C. peleana.* Flowering cycles, pollination vectors, seed dispersal agents, longevity, specific environmental requirements, and limiting factors are unknown (HINHP Database 2001; Service 1996a; 59 FR 10305).

Clermontia peleana ssp. *singuliflora* was formerly found on the island of Hawaii and on East Maui, but has not been seen in either place since the early 1900s (HINHP Database 2001; Service 1996a; Wagner *et al.* 1999; 59 FR 10305; Lyman Perry, DOFAW, pers. comm., 2000).

Nothing is known of the preferred habitat of or native plant species associated with *Clermontia peleana* on the island of Maui (R. Hobdy, pers. comm., 2001; Service 1996a; 59 FR 10305) or of the threats to *Clermontia peleana* on the island of Maui (Service 1996a; 59 FR 10305).

Colubrina oppositifolia (Kauila)

Colubrina oppositifolia, a member of the buckthorn family (Rhamnaceae), is a long-lived tree with extremely hard, red wood. This species is readily distinguished from the other species in Hawaii by the opposite leaf position, dull leaf surface, and entire leaf margins (Wagner *et al.* 1999).

This species has been observed in fruit and flower in September and June, and in flower during December and January. Little else is known about the

life history of *Colubrina oppositifolia*. Flowering cycles, pollination vectors, seed dispersal agents, longevity, specific environmental requirements, and limiting factors are unknown (HINHP Database 2001; Service 1996a; 59 FR 10305).

Historically and currently, *Colubrina oppositifolia* is known from Oahu, Maui, and the island of Hawaii. Currently on Maui, there are two occurrences containing one individual each on privately owned land in Honokawai in Lahaina District and in Auwahi in Hana District (GDSI 2001; HINHP Database 2001; Service 1996a; Warshauer 1998; 59 FR 10305).

The habitat of this species is lowland dry and mesic forest dominated by *Diospyros sandwicensis*, at elevations between 192 and 929 m (630 and 3,047 ft) and containing one or more of the following associated native plant species: *Bidens micrantha* ssp. *micrantha* (kookoolau); *Canavalia* spp. (awikiwiki); *Dodonaea viscosa; Freycinetia arborea* (ieie); *Metrosideros polymorpha; Microlepia strigosa; Pleomele auwahiensis; Psydrax odorata; Reynoldsia sandwicensis;* or *Wikstroemia* spp. (HINHP Database 2001; Service 1996a; 59 FR 10305; R. Hobdy, pers. comm., 2001).

The threats to this species on Maui are habitat destruction by feral pigs, competition with the nonnative plants *Lantana camara* and *Schinus terebinthifolius*, the black twig borer, Chinese rose beetle (*Adoretus sinicus*), fire; and its small number of occurrences and limited distribution (Service 1996a; 59 FR 10305).

Ctenitis squamigera (Pauoa)

Ctenitis squamigera is a short-lived perennial of the woodfern family (Dryopteridaceae). *Ctenitis squamigera* can be readily distinguished from other Hawaiian species of *Ctenitis* by the dense covering of tan-colored scales on its frond (Degener and Degener 1957; Wagner and Wagner 1992).

Little is known about the life history of *Ctenitis squamigera*. Its reproduction cycles, dispersal agents, longevity, specific environmental requirements, and limiting factors are unknown (Service 1998a; 59 FR 49025).

Historically, *Ctenitis squamigera* was recorded from the islands of Kauai, Oahu, Molokai, Lanai, Maui, and Hawaii. It is currently found on Oahu, Lanai, Molokai, and Maui. On Maui, there are 12 occurrences with 41 individuals on State (West Maui Forest Reserve) and privately owned lands at Honolua, Kahana, Honokawai, Wahikuli, Kapilau Ridge, Paupau, and Hukoula within the West Maui Mountains Watershed Partnership (GDSI 2001; HINHP Database 2001; Service 1998a; 59 FR 49025; J. Lau *in litt.* 2000; J. Lau, pers. comm., 2000; H. Oppenheimer, *in litt.* 2000; K. Wood, pers. comm., 2000).

This species is found in the forest understory of *Metrosideros polymorpha* montane wet forest or diverse mesic forest at elevations between 74 and 1,593 m (243 and 5,226 ft) and containing one or more of the following native plant species: *Alyxia oliviformis; Antidesma* spp. (hame); *Bobea* spp. (ahakea); *Canavalia* spp.; *Coprosma* spp.; *Dicranopteris linearis; Doodia* spp. (okupukupu lauii); *Dryopteris* spp. (NCN); *Freycinetia arborea; Hedyotis terminalis; Hibiscus kokio* ssp. *kokio* (kokio); *Myrsine* spp.; *Peperomia* spp. (ala ala wainui); *Pittosporum* spp. (hoawa); *Pleomele* spp. (hala pepe); *Pritchardia* spp.; *Psychotria* spp.; *Remya mauiensis; Sadleria* spp.; *Schiedea pubescens* var. *pubescens* (NCN); or *Xylosma* spp. (HINHP Database 2001; Service 1998a; 59 FR 49025; R. Hobdy, pers. comm., 2001; H. Oppenheimer, pers. comm., 2000).

The primary threats to *Ctenitis squamigera* are habitat degradation by feral pigs, goats, and axis deer; competition with nonnative plant species, especially *Psidium cattleianum* and *Schinus terebinthifolius;* fire; and extinction from naturally occurring events caused by the small number of existing occurrences and individuals (Service 1998a; 59 FR 49025).

Cyanea grimesiana ssp. *grimesiana* (Haha)

Cyanea grimesiana ssp. *grimesiana*, a short-lived member of the bellflower family (Campanulaceae), is a perennial shrub with pinnately divided leaves. This species is distinguished from others in this endemic Hawaiian genus by the pinnately lobed leaf margins and the width of the leaf blades. This subspecies is distinguished from the other two subspecies by the shape and size of the calyx lobes, which overlap at the base (Lammers 1990).

On Molokai, flowering plants have been reported in July and August. Little else is known about the life history of *Cyanea grimesiana* ssp. *grimesiana*. Flowering cycles, pollination vectors, seed dispersal agents, longevity, specific environmental requirements, and limiting factors are unknown (Service 1999; 61 FR 53108).

Historically and currently, *Cyanea grimesiana* ssp. *grimesiana* is known from Oahu, Molokai, Lanai, and scattered locations on Maui. Currently on Maui, there are two occurrences with a total of five individuals on privately owned land in Iao Valley and Kapilau Ridge (GDSI 2001; HINHP Database 2001; Service 1999; 61 FR 53108).

This species is typically found on rocky or steep slopes of stream banks in wet forest gulch bottoms often dominated by *Metrosideros polymorpha* at elevations between 312 and 1,617 m (1,024 and 5,305 ft) and containing one or more of the following associated native plant species: *Antidesma* spp.; *Bobea* spp.; *Myrsine* spp.; *Nestegis sandwicensis; Psychotria* spp.; or *Xylosma* spp. (Service 1999; 61 FR 53108; R. Hobdy, pers. comm., 2001).

The threats to this species on Maui are habitat degradation and/or destruction caused by axis deer, goats, and pigs; competition with various nonnative plants; random naturally occurring events that could cause extinction caused by the small number of existing individuals; trampling by hikers; landslides; rats; and slugs (Service 1999; 61 FR 53108).

Cyanea lobata (Haha)

Cyanea lobata, a short-lived member of the bellflower family (Campanulaceae), is a sparingly branched perennial shrub with smooth to somewhat rough stems and oblong, irregularly lobed leaves. This species is distinguished from other species of *Cyanea* by the size of the flower and the irregularly lobed leaves with petioles (Lammers 1990).

Cyanea lobata is known to flower from August to February, even in individuals as small as 50 cm (20 in) in height. Little else is known about the life history of *Cyanea lobata*. Flowering cycles, pollination vectors, seed dispersal agents, longevity, specific environmental requirements, and limiting factors are unknown (Degener 1936; Rock 1919; Service 1997; 57 FR 20772).

Historically, *Cyanea lobata* was known from Lanai and West Maui. It is no longer extant on Lanai. On Maui, there are currently 5 occurrences with a total of 12 individuals on privately owned land within the West Maui Mountains Watershed Partnership at Kaulalewelewe, Honolowai, Honokohau, and Waikapu (GDSI 2001; HINHP Database 2001; Lammers 1999; Service 1997; 57 FR 20772).

This species has been seen and collected on steep stream banks in deep shade in wet forest at elevations between 204 and 1,530 m (669 and 5,020 ft) and containing one or more of the following associated native plant species: *Antidesma* spp.; *Athyrium* spp. (akolea); *Clermontia kakeana; Cyrtandra* spp.; *Freycinetia arborea; Metrosideros polymorpha; Morinda trimera* (noni kuahiwi); *Peperomia* spp.; *Pipturus albidus; Pleomele* spp.; *Psychotria* spp.; *Touchardia latifolia;* or *Xylosma* spp. (HINHP Database 2001; Lammers 1999; Service 1997; 57 FR 20772; R. Hobdy, pers. comm., 2001).

The threats to this species on Maui are habitat degradation by feral pigs, depressed reproductive vigor, and natural or human-caused environmental disturbance that could easily be catastrophic caused by the small number of remaining individuals and the limited and scattered distribution of the species (Service 1997; 57 FR 20772).

Cyrtandra munroi (Haiwale)

Cyrtandra munroi, a short-lived perennial and member of the African violet family (Gesneriaceae), is a shrub with opposite, elliptic to almost circular leaves that are sparsely to moderately hairy on the upper surface and covered with velvety, rust-colored hairs underneath. This species is distinguished from other species of the genus by the broad opposite leaves, the length of the flower cluster stalks, the size of the flowers, and the amount of hair on various parts of the plant (Wagner *et al.* 1999).

The reproductive biology of some species of *Cyrtandra* has been studied, but not on *C. munroi* specifically. Studies of other members of the genus suggest that a specific pollinator may be necessary for successful pollination. Seed dispersal may be via birds that eat the fruits. Flowering time, longevity of plants and seeds, specific environmental requirements, and other limiting factors are unknown (Service 1995b; 57 FR 20772).

Cyrtandra munroi was historically and is currently known from Lanai and West Maui. Currently on Maui, there are 5 occurrences with a total of approximately 1,000 individuals on private and State (West Maui Forest Reserve) owned lands within the West Maui Mountains Watershed Partnership in Kahanaiki Gulch, Pulepule Gulch, Honokahua Gulch, along Makamakaole Stream, and Hahakea (GDSI 2001; HINHP Database 2001; Service 1995b; Wagner *et al.* 1999; 57 FR 20772).

The habitat of this species is rich, moist to wet, moderately steep talus slopes in lowland wet *Metrosideros polymorpha* forest at elevations between 390 and 1,108 m (1,280 and 3,635 ft) and containing one or more of the following associated native plant species: *Alyxia oliviformis; Bobea* spp.; *Clermontia* spp.; *Coprosma* spp.; *Cyrtandra* spp.; *Diospyros* spp. (lama); *Freycinetia arborea; Hedyotis acuminata; Melicope* spp.; *Myrsine* spp.; *Perrottetia sandwicensis; Pipturus* spp. (mamaki); *Pittosporum* spp.; *Pouteria sandwicensis; Psychotria* spp.; *Sadleria* spp.; *Scaevola* spp. (naupaka); *Sicyos* spp.; *Strongylodon ruber* (nuku iiwi); *Xylosma* spp.; or *Zanthoxylum kauense* (ae) (HINHP Database 2001; Service 1995b; 57 FR 20772; R. Hobdy, pers. comm., 2001).

The threats to this species on Maui are from competition with the nonnative plant species *Melinis minutiflora, Paspalum conjugatum, Pluchea carolinensis* (sourbush), *Psidium cattleianum*, and *Rubus rosifolius;* loss of appropriate pollinators; a very small number of extant individuals which can cause depressed reproductive vigor; and the effects of random environmental events that could easily be catastrophic caused by the small number of occurrences on Maui (Service 1995b; 57 FR 20772).

Delissea undulata (NCN)

Delissea undulata, a member of the bellflower family (Campanulaceae) and a short-lived perennial, is an unbranched, palm-like, woody-stemmed tree with a dense cluster of leaves at the tip of the stem. One or two knob-like structures often occur on the back of the flower tube. Three subspecies, all but the last of which are considered extinct, may be separated on the basis of leaf shape and margin characters: In *D. undulata* var. *kauaiensis*, the leaf blades are oval and flat-margined with sharp teeth; in *D. undulata* var. *niihauensis*, the leaf blades are heart shaped and flat-margined with shallow, rounded teeth; and in *D. undulata* var. *undulata*, the leaf blades are elliptic to lance-shaped and wavy-margined with small, sharply pointed teeth. This species is separated from the other closely related members of the genus by its large flowers and berries and broad leaf bases. *Delissea undulata* ssp. *undulata* is the only subspecies known from Maui (Lammers 1990).

Delissea undulata var. *undulata* has been observed in fruit and flower during December. Little else is known about the life history of *D. undulata* var. *undulata*. Flowering cycles, pollination vectors, seed dispersal agents, longevity, specific environmental requirements, and limiting factors are unknown (HINHP Database 2001; Service 1996a; 61 FR 53124).

Delissea undulata var. *undulata* was known from southwestern Maui, western Hawaii, and Niihau. Currently it occurs on Kauai and the island of Hawaii (GDSI 2001; HINHP Database 2001; Service 1996a; 61 FR 53124; Linda Pratt, USGS-BRD, pers. comm., 2001; K. Wood, pers. comm., 2001).

Nothing is known of the preferred habitat of or native plant species associated with *Delissea undulata* var. *undulata* on the island of Maui (Service 1996a; 61 FR 53124; R. Hobdy, pers. comm., 2001) or of the threats to *Delissea undulata* var. *undulata* on the island of Maui (Service 1996a; 61 FR 53124).

Diellia erecta (Asplenium-leaved diellia)

Diellia erecta, a short-lived perennial fern in the spleenwort family (Aspleniaceae), grows in tufts of three to nine lance-shaped fronds emerging from a rhizome covered with brown to dark gray scales. This species differs from other members of the genus in having brown or dark gray scales usually more than 2 cm (0.8 in) in length, fused or separate sori along both margins, shiny black midribs that have a hardened surface, and veins that do not usually encircle the sori (Degener and Greenwell 1950; Smith 1934; Wagner 1952).

Little is known about the life history of *Diellia erecta*. Reproduction cycles, dispersal agents, longevity, specific environmental requirements, and limiting factors are unknown (Service 1999; 59 FR 56333).

Historically, *Diellia erecta* was known on Kauai, Oahu, Molokai, Lanai, Maui, and the island of Hawaii. Currently, it is known from Kauai, Molokai, Maui, and Hawaii. On Maui, there are 5 known occurrences with a total of 35 individual plants on State (West Maui Forest Reserve, Manawainui Plant Sanctuary, and Department of Hawaiian Home Lands) and privately owned lands within the West Maui Mountains Watershed Partnership in Iao Valley, Hanaulaiki, Manawainui Gulch, near Polipoli in Kamaole, and west of Waiopai Gulch (GDSI 2001; HINHP Database 2001; Service 1999; 59 FR 56333).

This species is found in steep slopes or gulch sides in deep shade in *Acacia koa-Metrosideros polymorpha* low-to mid-elevation mesic forests between 338 and 1,744 m (1,109 and 5,722 ft) and containing one or more of the following associated native plant species: *Coprosma* spp.; *Dodonaea viscosa; Dryopteris unidentata* (akole); *Leptecophylla tameiameiae; Melicope* spp.; *Myrsine* spp.; *Osteomeles anthyllidifolia;* or *Psychotria* spp. (HINHP Database 2001; Service 1999; 59 FR 56333; R. Hobdy, pers. comm., 2001).

The major threats to *Diellia erecta* on Maui are habitat degradation by pigs, goats, and cattle; competition with nonnative plant species, including

Blechnum occidentale (NCN); and random naturally occurring events that could cause extinction and/or reduced reproductive vigor caused by the small number of existing individuals (Service 1999; 59 FR 56333).

Diplazium molokaiense (NCN)

Diplazium molokaiense, a short-lived perennial member of the woodfern family (Dryopteridaceae), has a short prostrate rhizome and green or straw-colored leaf stalks with thin-textured fronds. This species can be distinguished from other species of *Diplazium* in the Hawaiian Islands by a combination of characteristics, including venation pattern, the length and arrangement of the sori, frond shape, and the degree of dissection of the frond (Wagner and Wagner 1992).

Little is known about the life history of *Diplazium molokaiense*. Reproductive cycles, dispersal agents, longevity, specific environmental requirements, and limiting factors are unknown (Service 1998a; 59 FR 49025).

Historically, *Diplazium molokaiense* was found on Kauai, Oahu, Molokai, Lanai, and East and West Maui. Currently, this species is only known from Maui. Four occurrences with a total of 23 individuals are found on State (Kula and Kahikinui Forest Reserves) and privately owned lands within the East Maui Watershed Partnership near Polipoli in Kamaole, between Kahakapao Gulch and Puu O Kakae, Honomanu, and Waiopai Gulch (GDSI 2001; HINHP Database 2001; Service 1998a; Warshauer 1998; 59 FR 49025).

This species occurs near water courses, often in proximity to waterfalls, in lowland or montane mesic *Metrosideros polymorpha-Acacia koa* forest at elevations between 273 and 1,917 m (896 and 6,289 ft) (HINHP Database 2001; Service 1998a; 59 FR 49025; R. Hobdy, pers. comm., 2001).

The primary threats on Maui are habitat degradation by feral goats, cattle, pigs, and axis deer; competition with nonnative plant species; decreased reproductive vigor; and extinction from randomly occurring natural events caused by the small number of occurrences and individuals (HINHP Database 2001; Service 1998a; 59 FR 49025).

Flueggea neowawraea (Mehamehame)

Flueggea neowawraea, a long-lived perennial member of the spurge family (Euphorbiaceae), is a large tree with white oblong pores covering its scaly, pale brown bark. This species is the only member of the genus found in Hawaii and can be distinguished from similar Hawaiian species in the family by its hairless whitish lower leaf surfaces and round fruits (Hayden 1999; Linney 1982; Neal 1965; Service 1999).

Individual trees of *Flueggea neowawraea* bear only male or female flowers, and must be cross-pollinated from a different tree to produce viable seed. Little else is known about the life history of *F. neowawraea*. Flowering cycles, pollination vectors, seed dispersal agents, longevity, specific environmental requirements, and limiting factors are unknown (Hayden 1999; Service 1999; 59 FR 56333).

Historically, *Flueggea neowawraea* was known from the islands of Oahu, Kauai, Molokai, and Hawaii. Currently, occurrences are known from Kauai, Oahu, East Maui, and Hawaii. On Maui, there are four occurrences on State (DHHL) and privately owned lands at Auwahi, and above Lualailua and Alena (GDSI 2001; HINHP Database 2001; Service 1999; 59 FR 56333; Mahealani Kaiaokamalie, Ulupalakua Ranch, *in litt.* 2000).

Flueggea neowawraea occurs in dry or mesic forest at elevations between 633 and 971 m (2,078 and 3,186 ft) and containing one or more of the following associated native plant species: *Alectryon macrococcus; Antidesma pulvinatum; Bobea timonioides* (ahakea); *Charpentiera* spp. (papala); *Diplazium sandwichianum; Diospyros* spp.; *Myrsine lanaiensis* (kolea); *Nesoluma polynesicum* (keahi); *Nestegis sandwicensis; Pleomele auwahiensis; Pleomele* spp.; *Pouteria sandwicensis; Psydrax odorata; Rauvolfia sandwicensis* (hao); or *Tetraplasandra* spp. (oheohe) (HINHP Database 2001; Service 1999; 59 FR 56333; R. Hobdy, pers. comm., 2001).

The threats to the populations on Maui are the black twig borer; habitat degradation by feral pigs, goats, deer, and cattle; competition with nonnative plant species; depressed reproductive vigor; the risk of extinction from a random environmental event caused by the small number of individuals; and predation of the fruit by rats (HINHP Database 2001; Service 1999; 59 FR 56333).

Gouania vitifolia (NCN)

Gouania vitifolia, a member of the buckthorn family (Rhamnaceae) and a short-lived perennial, is a climbing shrub with tendriled flowering branches. This species differs from other members of its genus by having flowering branches with a tendril and coarsely wavy to toothed leaf margins (Wagner *et al.* 1999).

In winter and late spring, the main vine of *Gouania vitifolia* produces new young side shoots which soon die. Plants have been observed flowering from late November to January, but flowering probably depends on precipitation. Little else is known about the life history of *G. vitifolia*. Flowering cycles, pollination vectors, seed dispersal agents, longevity, specific environmental requirements, and limiting factors are unknown (Service 1998b; 59 FR 32932).

Historically, *Gouania vitifolia* was known from West Maui, the Kau District of the island of Hawaii, and Oahu. The species currently occurs on Oahu and on the island of Hawaii (GDSI 2001; Service 1998b; 59 FR 32932; Jon Giffin, DOFAW, *in litt.* 2000).

On Maui, *Gouania vitifolia* typically grows on the sides of ridges and gulches in dry to mesic forests at elevations between 155 and 1,326 m (509 and 4,350 ft). Associated plant species include: *Bidens* spp.; *Carex meyenii* (NCN); *Chamaesyce* spp. (akoko); *Diospyros sandwicensis; Dodonaea viscosa; Erythrina sandwicensis; Hedyotis* spp.; *Hibiscus* spp.; *Melicope* spp.; *Nestegis sandwicensis; Pipturus albidus; Psychotria* spp.; or *Urera glabra* (opuhe) (Service 1998b; 59 FR 32932; J. Lau, pers. comm., 2001).

Nothing is known of the threats to *Gouania vitifolia* on the island of Maui (Service 1998b; 59 FR 32932).

Hedyotis coriacea (Kioele)

Hedyotis coriacea, a member of the coffee family (Rubiaceae), is a small, short-lived perennial shrub with leathery leaves which are generally elliptic to oblong in shape, 3 to 8 cm (1.2 to 3.1 in) long and usually 1.5 to 3 cm (0.6 to 1.2 in) wide. This species is distinguished from others of the genus by its small, triangular calyx lobes, which do not enlarge in fruit, and the combination of capsules which are longer than wide and flower buds which are square in cross-section (Wagner *et al.* 1999).

Little is known about the life history of *Hedyotis coriacea*. Flowering cycles, pollination vectors, seed dispersal agents, longevity, specific environmental requirements, and limiting factors are unknown (Service 1997; 57 FR 20772).

Historically, *Hedyotis coriacea* was known from Oahu and the island of Hawaii. Considered extinct on all islands in recent years, this species was discovered in 1990 by Steve Perlman in the State-owned Lihau section of the West Maui NAR and in 1991 on the 1859 lava flow in the Pohakuloa Training Area, island of Hawaii. Currently, only a single individual is known from West Maui on State-owned land within the West Maui Mountains Watershed Partnership (GDSI 2001; HINHP Database 2001; Service 1997; 57 FR 20772).

Hedyotis coriacea is found on steep, rocky slopes in dry lowland *Dodonaea viscosa*-dominated shrublands at elevations between 110 and 937 m (361 and 3,074 ft) and containing one or more of the following associated native plant species: *Bidens menziesii* (kookoolau); *Gouania hillebrandii* (NCN); *Melanthera lavarum; Myoporum sandwicense; Schiedea menziesii* (NCN); or *Sida fallax* (HINHP Database 2001; Service 1997; 57 FR 20772; R. Hobdy, pers. comm., 2001).

The single remaining individual of *Hedyotis coriacea* on Maui is threatened by extinction from a random naturally occurring event (Service 1997; 57 FR 20772).

Hedyotis mannii (Pilo)

Hedyotis mannii, a member of the coffee family (Rubiaceae), is a short-lived perennial plant with smooth, usually erect stems 30 to 60 cm (1 to 2 ft) long, which are woody at the base and four-angled or winged. This species' growth habit; its quadrangular or winged stems; the shape, size, and texture of its leaves; and its dry capsule, which opens when mature, separate it from other species of the genus (Wagner *et al.* 1999).

Little is known about the life history of *Hedyotis mannii*. Flowering cycles, pollination vectors, seed dispersal agents, longevity, specific environmental requirements, and limiting factors are unknown (Service 1996b; 57 FR 46325).

Currently and historically, *Hedyotis mannii* is known from Lanai, West Maui, and Molokai. On Maui, there is a single occurrence of approximately 20 individuals located on private land in Kauaula Valley (GDSI 2001; Service 1996b; 57 FR 46325; K. Wood, *in litt.* 2000).

The occurrence on Maui is found on basalt cliffs along stream banks in *Metrosideros polymorpha-Dicranopteris linearis* montane wet forest at elevations between 340 and 1,593 m (1,115 and 5,226 ft) and containing one or more of the following associated native plant species: *Boehmeria grandis; Carex meyenii; Cyanea* spp. (haha); *Cyrtandra grayi* (haiwale); *Cyrtandra hawaiensis* (haiwale); *Cyrtandra platyphylla* (ilihia); *Hedyotis acuminata; Isachne distichophylla* (ohe); *Machaerina* spp. (uki); *Phyllostegia* spp. (NCN); *Pipturus albidus; Psychotria spp.; Touchardia latifolia;* or *Urera glabra* (Service 1996b; 57 FR 46325; R. Hobdy, pers. comm., 2001; K. Wood, *in litt.* 2000).

Hedyotis mannii on Maui is threatened by landslides; competition with the nonnative plant species *Ageratina adenophora, Buddleia asiatica* (butterfly bush), *Clidemia hirta, Pluchea carolinensis* (sourbush), and *Rubus rosifolius;* and the low number of individuals which makes it extremely vulnerable to extinction by random naturally occurring events (Service 1996b; 57 FR 46325; K. Wood, *in litt.* 2000).

Hesperomannia arborescens (NCN)

Hesperomannia arborescens, a long-lived perennial of the aster family (Asteraceae), is a small shrubby tree that usually stands 1.5 to 5 m (5 to 16 ft) tall. This member of an endemic Hawaiian genus differs from other *Hesperomannia* species in having the following combination of characteristics: Erect to ascending flower heads; thick flower head stalks; and usually hairless and relatively narrow leaves (Wagner *et al.* 1999).

This species has been observed in flower from April through June and in fruit during March and June. Little else is known about the life history of *Hesperomannia arborescens*. Flowering cycles, pollination vectors, seed dispersal agents, longevity, specific environmental requirements, and limiting factors are unknown (Service 1998b; 59 FR 14482).

Hesperomannia arborescens was formerly known from Oahu, Molokai, and Lanai. This species is now known from Oahu, Molokai, and Maui. There are four occurrences with a total of six individuals on State (Kahukuloa section of the West Maui NAR) and privately owned lands in Honokohau and Lanilii within the West Maui Mountains Watershed Partnership (GDSI 2001; HINHP Database 2001; Service 1998b; 59 FR 14482).

Hesperomannia arborescens is found on slopes or ridges in lowland mesic or wet forest at elevations between 346 and 1,422 m (1,135 and 4,665 ft) and containing one or more of the following associated native plant species: *Antidesma* spp.; *Bobea* spp.; *Cheirodendron* spp.; *Clermontia* spp.; *Cibotium* spp.; *Coprosma* spp.; *Dicranopteris linearis; Freycinetia arborea; Isachne distichophylla; Machaerina* spp.; *Melicope* spp.; *Metrosideros polymorpha; Myrsine sandwicensis* (kolea); *Pipturus* spp.; *Psychotria* spp.; or *Sadleria* spp. (HINHP Database 2001; Service 1998b; 59 FR 14482; R. Hobdy, pers. comm., 2001).

The major threats to *Hesperomannia arborescens* on Maui are habitat degradation by feral pigs and goats; competition with nonnative plant species; impact by humans; and extinction caused by random environmental events or reduced reproductive vigor caused by the small number of remaining individuals (HINHP Database 2001; Service 1998b; 59 FR 14482).

Hesperomannia arbuscula (NCN)

Hesperomannia arbuscula, a long-lived perennial member of the aster family (Asteraceae), is a small shrubby tree, 2 to 3.3 m (7 to 11 ft) tall. This species can be distinguished from other members of the genus by the erect flower heads and the leaves, usually hairy beneath, which are one to two times as long as wide (Wagner *et al.* 1999).

Hesperomannia arbuscula usually flowers in the spring, depending on precipitation. Seeds mature in about 6 weeks and trees live about 10 to 15 years. Little else is known about the life history of *H. arbuscula*. Flowering cycles, pollination vectors, seed dispersal agents, longevity, specific environmental requirements, and limiting factors are unknown (Service 1998b; 56 FR 55770).

Historically and currently, *Hesperomannia arbuscula* is known from Oahu and West Maui. On Maui, there are 8 occurrences with a total of 37 individuals, on privately owned land along Waihee Stream and Nakalaloa within the West Maui Mountains Watershed Partnership (GDSI 2001; HINHP Database 2001; Service 1998b; 56 FR 55770; K. Wood, *in litt.* 1999).

Hesperomannia arbuscula typically grows on steep forested slopes and ridges in mesic forest dominated by *Metrosideros polymorpha* or *Diospyros sandwicensis* at elevations between 354 and 1,453 m (1,161 and 4,767 ft) and containing one or more of the following associated native plant species: *Alyxia oliviformis; Bidens* spp.; *Cheirodendron* spp.; *Clermontia* spp.; *Cyanea spp.; Psychotria* spp.; or *Tetraplasandra* spp. (HINHP Database 2001; Service 1998b; 56 FR 55770; R. Hobdy and J. Lau, pers. comm., 2001).

The major threats to *Hesperomannia arbuscula* on Maui are habitat degradation by feral pigs, competition from nonnative plant species, trampling by humans, and extinction from naturally occurring random events caused by the small number of occurrences (Service 1998b; 56 FR 55770).

Hibiscus brackenridgei (Mao hau hele)

Hibiscus brackenridgei, a short-lived perennial member of the mallow family (Malvaceae), is a sprawling to erect

shrub or small tree. This species differs from other members of the genus in having the following combination of characteristics: Yellow petals; a calyx consisting of triangular lobes with raised veins and a single midrib; bracts attached below the calyx, and thin stipules (leaf bracts) that fall off, leaving an elliptical scar. Two subspecies are currently recognized, *Hibiscus brackenridgei* ssp. *brackenridgei* and *H. brackenridgei* ssp. *mokuleianus* (Bates 1990).

Hibiscus brackenridgei is known to flower continuously from early February through late May, and intermittently at other times of year. Intermittent flowering may possibly be tied to day length. Little else is known about the life history of *H. brackenridgei*. Pollination vectors, seed dispersal agents, longevity, specific environmental requirements, and limiting factors are unknown (Service 1999; 59 FR 56333).

Historically, *Hibiscus brackenridgei* was known from the islands of Kauai, Oahu, Lanai, Maui, Molokai, Kahoolawe, and Hawaii. Currently, *H. brackenridgei* ssp. *mokuleianus* is known from Oahu and from undocumented observations on Kauai. *Hibiscus brackenridgei* ssp. *brackenridgei* is currently known from Lanai, Maui, and Hawaii. On Maui, *H. brackenridgei* ssp. *brackenridgei* is found in 5 occurrences, containing 40 individuals, on State (Lihau section of West Maui NAR and DHHL) and privately owned lands at Lihau, Kaonohua, Keokea, and near Puu O Kali (Bates 1990; GDSI 2001; HINHP Database 2001; Service 1999; 59 FR 56333).

Hibiscus brackenridgei ssp. *brackenridgei* occurs in lowland dry forest sometimes with *Erythrina sandwicensis* as the dominant tree at elevations between 43 and 771 m (141 and 2,530 ft) and containing one or more of the following associated native plant species: *Achyranthes* spp. (NCN); *Chamaesyce celastroides* var. *lorifolia; Chenopodium* spp. (aheahea); *Diospyros* spp.; *Dodonaea viscosa; Melanthera lavarum; Myoporum sandwicense; Nototrichium* spp.; annual *Panicum* spp.; *Psydrax odorata; Schiedea salicaria* (NCN); or *Sida fallax* (HINHP Database 2001; Service 1999; 59 FR 56333; R. Hobdy, pers. comm., 2001).

The primary threats to *Hibiscus brackenridgei* ssp. *brackenridgei* on Maui and Kahoolawe are habitat degradation and possible predation by pigs, goats, cattle, axis deer, and rats; competition with nonnative plant species; fire; and extinction caused by random environmental events or reduced reproductive vigor caused by small occurrence size and the limited number of individuals (Service 1999; 59 FR 56333).

Ischaemum byrone (Hilo ischaemum)

Ischaemum byrone, a short-lived member of the grass family (Poaceae), is a perennial species with creeping underground and erect stems. *Ischaemum byrone* can be distinguished from other Hawaiian grasses by its tough outer flower bracts; dissimilar basic flower units, which are awned (slender bristle) and two-flowered; and a two-or three-tiered-branching inflorescence (O'Connor 1999).

Little is known about the life history of *Ischaemum byrone*. Flowering cycles, pollination vectors, seed dispersal agents, longevity, specific environmental requirements, and limiting factors are unknown (Service 1996a; 59 FR 10305).

Historically, *Ischaemum byrone* was reported from Kauai, Oahu, Molokai, East Maui, and the island of Hawaii. Currently, this species is found on Kauai, Molokai, Maui, and Hawaii. On Maui, there are 6 occurrences with less than 2,000 individuals found on State and privately owned lands at Keopuka Rock, Paupalu Point, Moku Huki, west of Kalahu Point, between Keakulikuli Point and Pukaulua Point, and Kauiki Head (GDSI 2001; HINHP Database 2001; Service 1996a; 59 FR 10305).

Ischaemum byrone grows in close proximity to the ocean, among rocks or on basalt cliffs in windward coastal dry shrubland at elevations between 0 and 190 m (0 and 623 ft) and containing one or more of the following associated native plant species: *Bidens* spp. *Fimbristylis cymosa* (mauu akiaki) or *Scaevola taccada* (HINHP Database 2001; Service 1996a; 59 FR 10305; R. Hobdy, pers. comm., 2001).

The most serious threat to *Ischaemum byrone* is the invasion of nonnative plant species, particularly *Digitaria ciliaris* (Henry's crabgrass), *Ardisia elliptica* (shoebutton ardisia), and *Casuarina equisetifolia* (ironwood). Additionally, fire may pose a threat in areas infested with nonnative grasses, provided enough fuel is present. Other potential threats include grazing and browsing by goats and axis deer. Disturbance incurred from these ungulates further promotes the introduction and establishment of nonnative weeds. Some occurrences are also threatened by residential development (HINHP Database 2001; Service 1996a; 59 FR 10305).

Isodendrion pyrifolium (Wahine noho kula)

Isodendrion pyrifolium, a short-lived perennial of the violet family (Violaceae), is a small, branched shrub with elliptic to lance-shaped leaf blades. The papery-textured blade has moderately hairy veins. Below the petiole are oval, hairy stipules. *Isodendrion pyrifolium* is distinguished from other species in the genus by its smaller, green-yellow flowers and hairy stipules and leaf veins (Wagner *et al.* 1999).

During periods of drought, this species will drop all but the newest leaves. After sufficient rains, the plants produce flowers with seeds ripening one to two months later. Little else is known about the life history of *Isodendrion pyrifolium*. Flowering cycles, pollination vectors, seed dispersal agents, longevity, specific environmental requirements, and limiting factors are unknown (Service 1996a; 59 FR 10305).

Isodendrion pyrifolium is known historically from six of the Hawaiian Islands: Niihau, Molokai, Lanai, Oahu, Maui, and the island of Hawaii. Currently, it is only found on the island of Hawaii (GDSI 2001; HINHP Database 2001; Service 1996a; 59 FR 10305; Marie Bruegmann, Service, pers. comm., 2000).

On Maui, *Isodendrion pyrifolium* occured in dry shrubland at elevations between 54 and 557 m (177 and 1,827 ft) with one or more of the following associated native plant species: *Capparis sandwichiana; Dodonaea viscosa; Myoporum sandwicense;* or *Psydrax odorata* (Service 1996a; 59 FR 10305; R. Hobdy and J. Lau, pers. comm., 2001).

Nothing is known of the threats to *Isodendrion pyrifolium* on the island of Maui (Service 1996a; 59 FR 10305).

Lysimachia lydgatei (NCN)

Lysimachia lydgatei, a short-lived perennial member of the primrose family (Primulaceae), is a sprawling, branched shrub with stems from 1 to 1.3 m (3 to 4 ft) long. This species is distinguished from others in the genus by the dense hairs on both the upper and lower surfaces of mature leaves (Wagner *et al.* 1999).

Little is known about the life history of *Lysimachia lydgatei*. Flowering cycles, pollination vectors, seed dispersal agents, longevity, specific environmental requirements, and limiting factors are unknown (Service 1997; 57 FR 20772).

Lysimachia lydgatei was known historically from a gulch behind

Lahaina on West Maui and from Oahu. Currently, it is found only on Maui on State (Lihau section of West Maui NAR and the West Maui Forest Reserve) and privately owned lands at Helu, Lihau, east of Halepohaku, and Ulaula within the West Maui Mountains Watershed Partnership. The 4 Maui occurrences number approximately 240 individuals (GDSI 2001; HINHP Database 2001; Service 1997; Wagner *et al.* 1999; 57 FR 20772).

Lysimachia lydgatei typically grows on the sides of steep ridges in *Metrosideros polymorpha-Dicranopteris linearis*-dominated wet to mesic shrubland or *Metrosideros polymorpha-Cheirodendron* spp. montane forest at elevations between 829 and 1,432 m (2,720 and 4,698 ft) and containing one or more of the following associated native plant species: *Astelia* spp. (painiu); *Broussaisia arguta; Coprosma* spp.; *Dodonaea viscosa; Eurya sandwicensis* (anini); *Ilex anomala; Leptecophylla tameiameiae; Lycopodium* spp. (wawae iole); *Ochrosia* spp. (holei); *Vaccinium* spp.; or mat ferns such as *Dicranopteris* spp. (HINHP Database 2001; Service 1997; 57 FR 20772; R. Hobdy, pers. comm., 2001).

The greatest threats to *Lysimachia lydgatei* are extinction from a random environmental event caused by the small number of occurrences; competition with nonnative plant species such as *Rubus argutus;* and fire (Service 1997; 57 FR 20772).

Mariscus pennatiformis (NCN)

Mariscus pennatiformis, a short-lived member of the sedge family (Cyperaceae), is a perennial plant with a woody root system covered with brown scales. *Mariscus pennatiformis* is divided into two subspecies, ssp. *bryanii* and ssp. *pennatiformis*, which are distinguished by the length and width of the spikelets; color, length, and width of the glume; and by the shape and length of the fruit. This species differs from other members of the genus by its three-sided, slightly concave, smooth stems; the length and number of spikelets; the leaf width; and the length and diameter of stems (Koyama 1990).

Mariscus pennatiformis is known to flower from November to December after heavy rainfall. Little else is known about the life history of *M. pennatiformis*. Flowering cycles, pollination vectors, seed dispersal agents, longevity, specific environmental requirements, and limiting factors are unknown (Service 1999; 59 FR 56333).

Historically, *Mariscus pennatiformis* was known from Kauai, Oahu, East Maui (Keanae Valley, Hana, and Nahiku), the island of Hawaii, and from Laysan in the northwestern Hawaiian Islands. *Mariscus pennatiformis* ssp. *bryanii* is only known from Laysan Island. *Mariscus pennatiformis* ssp. *pennatiformis* is currently found only on East Maui. Two occurrences of approximately 30 individuals are found on State-owned land near the mouth of Hanawi Stream (GDSI 2001; HINHP Database 2001; Service 1999; 59 FR 56333; K. Wood, *in litt.* 1999).

On Maui, *Mariscus pennatiformis* ssp. *pennatiformis* is found on cliffs with brown soil and talus within reach of ocean spray in *Pandanus tectorius* (hala) coastal wet forests at elevations between 0 and 188 m (0 and 615 ft) and containing one or more of the following associated native plant species: *Cyperus laevigatus* (makaloa); *Eragrostis* spp. (NCN); *Ipomoea* spp. (morning glory); *Lysimachia mauritiana;* or *Sadleria pallida* (HINHP Database 2001; Service 1999; 59 FR 56333; J. Lau, pers. comm., 2001; K. Wood, *in litt.* 1999).

Threats to *Mariscus pennatiformis* ssp. *pennatiformis* on Maui include grazing and habitat destruction caused by ungulates; competition with nonnative plant species; and extinction from random naturally occurring events (Service 1999; 59 FR 56333).

Melicope knudsenii (Alani)

Melicope knudsenii, a long-lived perennial member of the rue family (Rutaceae), is a tree with smooth gray bark and yellowish brown to olive-brown hairs on the tips of the branches. The species is distinguished from *M. haupuensis* and other members of the genus by the distinct carpels (chambers) present in the fruit, a hairless endocarp (fruit wall), a larger number of flowers per cluster, and the distribution of hairs on the underside of the leaves (Stone *et al.* 1999).

Little is known about the life history of *Melicope knudsenii*. Flowering cycles, pollination vectors, seed dispersal agents, longevity, specific environmental requirements, and limiting factors are unknown (Service 1995a; 59 FR 9304).

Historically and currently, *Melicope knudsenii* is known from the southeastern slope of Haleakala on Maui and from Kauai. Currently on Maui, there are four occurrences on State (DHHL) and privately owned lands from Puu Mahoe to east of Puu Ouli (GDSI 2001; HINHP Database 2001; Service 1995a; 59 FR 9304).

Melicope knudsenii grows in *Nestegis sandwicensis-Pleomele* sp. mixed open dry forests at elevations between 648 and 1,331 m (2,125 and 4,367 ft) and containing one or more of the following associated native plant species: *Alphitonia ponderosa; Dodonaea viscosa; Osteomeles anthyllidifolia; Santalum ellipticum;* or *Xylosma hawaiiense* (HINHP Database 2001; Service 1995a; 59 FR 9304; R. Hobdy, pers. comm., 2001).

Threats to *Melicope knudsenii* include habitat degradation by nonnative animals, such as goats, cattle, and pigs; reduced reproductive vigor; fire; natural aging and death; and invasive plant species, such as *Pennisetum clandestinum* (Service 1995a; 59 FR 9304).

Melicope mucronulata (Alani)

Melicope mucronulata, a long-lived perennial of the rue family (Rutaceae), is a small tree up to 4 m (13 ft) tall with oval to elliptic-oval leaves, 8 to 16 cm (3 to 6.5 in) long and 3.5 to 6.5 cm (1.5 to 2.5 in) wide. This species is distinguished from others in the genus by the growth habit, the number of flowers in each flower cluster, the size and shape of the fruit, and the degree of hairiness of the leaves and fruit walls (Stone *et al.* 1999).

Little is known about the life history of *Melicope mucronulata*. Flowering cycles, pollination vectors, seed dispersal agents, longevity, specific environmental requirements, and limiting factors are unknown (Service 1997; 57 FR 20772).

First discovered in 1920 in Kanaio, East Maui, *Melicope mucronulata* was not relocated until 1983 when it was reported from privately owned land with an unknown number of plants in Auwahi. This species was also found two years later on East Molokai (GDSI 2001; HINHP Database 2001; Service 1997; Stone *et al.* 1999; 57 FR 20772).

Melicope mucronulata typically grows on gentle south-facing slopes in lowland dry to mesic forest at elevations between 625 and 1,331 m (2,050 and 4,367 ft) and containing one or more of the following associated species: *Antidesma pulvinatum; Dodonaea viscosa; Melicope hawaiensis* (alani); *Nestegis sandwicensis; Pleomele auwahiensis; Pouteria sandwicensis;* and *Streblus pendulinus* (Service 1997; 57 FR 20772; J. Lau, pers. comm., 2001).

The major threat to the continued existence of the only known occurrence of *Melicope mucronulata* on Maui is the risk of extinction from a random environmental event. Habitat degradation by goats and pigs, predation by goats, and competition with nonnative plant species, particularly *Melinis minutiflora*, also pose immediate threats to this species (Service 1997; 57 FR 20772).

Neraudia sericea (NCN)

Neraudia sericea, a short-lived perennial member of the nettle family (Urticaceae), is a 3 to 5 m (10 to 16 ft) tall shrub with densely hairy branches. The lower leaf surface is densely covered with irregularly curved, silky gray to white hairs along the veins. The male flowers may be stalkless or have short stalks. *Neraudia sericea* differs from the other four species of this endemic Hawaiian genus by the density, length, color, and posture of the hairs on the lower leaf surface and by its mostly entire leaf margins (Wagner *et al.* 1999).

Little is known about the life history of *Neraudia sericea*. Flowering cycles, pollination vectors, seed dispersal agents, longevity, specific environmental requirements, and limiting factors are unknown (Service 1999; 59 FR 56333).

Neraudia sericea was known historically from Molokai, Lanai, Olowalu Valley on West Maui, the southern slopes of Haleakala on East Maui, and from Kahoolawe. Currently, this species is known from Molokai and Maui. On Maui, five occurrences are found on State (DHHL) and privately owned lands in Pohakea Gulch (West Maui) and in Manawainui and Kamole Gulches (East Maui) (GDSI 2001; HINHP Database 2001; Service 1999; 59 FR 56333; M. Kaiaokamalie, *in litt.* 2000).

Neraudia sericea generally occurs in dry to mesic *Metrosideros polymorpha-Dodonaea viscosa-Leptecophylla tameiameiae* shrubland or forest or *Acacia koa* forest at elevations between 198 and 1,658 m (650 and 5,439 ft) and containing one or more of the following associated native plant species: *Bobea* spp.; *Coprosma* spp.; *Cyrtandra oxybapha* (haiwale); *Cyrtandra* spp.; *Diospyros* spp.; *Hedyotis* spp.; *Sida fallax;* or *Urera glabra* (HINHP Database 2001; Service 1999; Wagner *et al.* 1999; 59 FR 56333; M. Bruegmann, *in litt.* 1995; R. Hobdy, pers. comm., 2001).

The primary threats to *Neraudia sericea* on Maui are habitat degradation by feral pigs and goats; competition with the nonnative plant species *Cymbopogon refractus* (barbwire grass), *Eragrostis* spp. (love grass), *Holcus lanatus, Melinus minutiflora,* and *Pennisetum clandestinum;* and a risk of extinction caused by random environmental events (Service 1999; 59 FR 56333).

Nototrichium humile (Kului)

Nototrichium humile, a member of the amaranth family (Amaranthaceae), is an upright to trailing shrub with branched stems to 1.5 m (5 ft) long. This species is distinguished from the only other species in the genus by its inflorescence, a slender spike 4 mm (0.2 in) in diameter or less, which is covered with short hairs (Wagner *et al.* 1999).

Nototrichium humile has been observed flowering after heavy rain, but flowering is generally heaviest in the spring and summer. Fruits mature a few weeks after flowering. In cultivation, this species is known to live for more than a decade. Little else is known about the life history of *N. humile*. Flowering cycles, pollination vectors, seed dispersal agents, longevity, specific environmental requirements, and limiting factors are unknown (Service 1998b; 56 FR 55770).

Historically, *Nototrichium humile* was known from Oahu and Maui. It currently occurs only on Oahu. On Maui, *N. humile* was last seen in the wild by Robert Hobdy in 1979 in Pohakea Gulch (HINHP Database 2001; Service 1998b; 56 FR 55770).

On Maui, *Nototrichium humile* occurred on old cinder cones in dry shrubland at elevations between 338 and 734 m (1,110 and 2,407 ft) with one or more of the following associated native plant species: *Dodonaea viscosa; Erythrina sandwicensis; Heteropogon contortus;* and *N. sandwicense* (kului) (Service 1998b; 56 FR 55770; J. Lau, pers. comm., 2001).

Nothing is known of the threats to *Nototrichium humile* on the island of Maui (Service 1998b; 56 FR 55770).

Peucedanum sandwicense (Makou)

Peucedanum sandwicense, a member of the parsley family (Apiaceae), is a short-lived, parsley-scented, sprawling herb. Hollow stems arise from a short, vertical, perennial stem with several fleshy roots. This species is the only member of the genus in the Hawaiian Islands. It is distinguished from other Hawaiian members of the family by being a slightly succulent perennial herb and having broad basal leaflets, white flowers, and by its floral bracts, the size and shape of its fruit, and the oil glands in the fruit wall (Constance and Affolter 1999).

Little is known about the life history of *Peucedanum sandwicense*. Flowering cycles, pollination vectors, seed dispersal agents, longevity, specific environmental requirements, and limiting factors are unknown (Service 1995a; 59 FR 9304).

Historically and currently, *Peucedanum sandwicense* is known from Molokai, Maui, and Kauai. Discoveries in 1990 extended the known distribution of this species to the island of Oahu. Currently on Maui, there are 3 occurrences on State and privately owned lands at Keopuka Islet, near Pauwalu Point, and east of Hanawi Stream, with a total of 32 individuals (GDSI 2001; HINHP Database 2001; Service 1995a; 59 FR 9304).

This species grows on sparsely vegetated steep to vertical cliff habitats with little soil in mesic or coastal communities at elevations between 0 and 1,132 m (0 and 3,714 ft) and containing one or more of the following associated native species: *Artemisia australis; Bidens* spp.; *Carex* spp.; *Chamaesyce* spp.; *Diospyros sandwicensis; Eragrostis* spp.; *Hedyotis littoralis; Lysimachia mauritiana; Metrosideros polymorpha; Peperomia* spp.; *Pandanus tectorius* (hala); *Scaevola taccada;* or *Schiedea globosa* (NCN) (Constance and Affolter 1999; HINHP Database 2001; Service 1995a; 59 FR 9304; R. Hobdy and J. Lau pers. comms., 2001).

Competition with introduced plants is the major threat to *Peucedanum sandwicense* on Keopuka Rock. Additionally, small occurrence sizes also make the species subject to extinction caused by random environmental events (Service 1995a; 59 FR 9304).

Phlegmariurus mannii (Wawae iole)

Phlegmariurus (=*Huperzia,* =*Lycopodium*) *mannii*, a short-lived perennial member of the clubmoss family (Lycopodiaceae), is a hanging epiphyte with clustered, delicate red stems and forked reproductive spikes. These traits distinguish it from others in the genus in Hawaii (Degener and Degener 1959; Holub 1991; St. John 1981; Wagner and Wagner 1992).

Little is known about the life history of *Phlegmariurus mannii*. Reproductive cycles, dispersal agents, longevity, specific environmental requirements, and limiting factors are unknown (Service 1997; 57 FR 20772).

Historically, *Phlegmariurus mannii* was known from Kauai, West Maui (Haelaau and Hanaula), and the island of Hawaii. Currently, this species is found on Maui and Hawaii. On Maui, this species is now known on State (Lihau section of West Maui NAR, Makawao Forest Reserve, DHHL, and Kipahulu Forest Reserve), Federal and privately owned lands in Honokohau, Lihau, Puu Okakae, Manawainui, Healani Stream, Puu Ahulili, and Kaapahu within the East Maui Watershed Partnership and the West Maui Mountains Watershed Partnership. There are 7 occurrences with a total of 22 individuals on Maui (GDSI 2001; HINHP Database 2001; Service 1997; 57 FR 20772).

On Maui, *Phlegmariurus mannii* typically grows as an epiphyte on

Metrosideros polymorpha, Dodonaea viscosa and *Acacia koa* trees in moist, protected gulches or mossy tussocks in mesic to wet montane *Metrosideros polymorpha-Acacia koa* forests at elevations between 446 and 1,688 m (1,464 and 5,539 ft) and containing one or more of the following associated native plant species: *Astelia menziesiana* (kaluaha); *Athyrium* spp.; *Cheirodendron trigynum; Christella* spp. (NCN); *Coprosma* spp.; *Cyanea* spp.; *Cyrtandra* spp.; *Ilex anomala; Leptecophylla tameiameiae; Machaerina* spp.; *Sadleria* spp.; or *Vaccinium* spp. (Service 1997; 57 FR 20772; R. Hobdy, pers. comm., 2001).

The primary threats to this species are habitat alteration by goats, cattle and pigs, and the impacts of nonnative plant species. Additionally, small occurrence sizes also make the species subject to extinction caused by random environmental events (Service 1997; 57 FR 20772).

Phyllostegia mannii (NCN)

Phyllostegia mannii, a non-aromatic member of the mint family (Lamiaceae), is a climbing vine with many-branched, four-sided, hairy stems. This species is distinguished from others in the genus by its hairiness; its thin, narrow leaves, which are not pinnately divided; and the usually six flowers per false whorl in a terminal inflorescence (Wagner *et al.* 1999).

This species has been observed with fruit in July. Little else is known about the life history of *Phyllostegia mannii*. Flowering cycles, pollination vectors, seed dispersal agents, longevity, specific environmental requirements, and limiting factors are unknown (Service 1996b; 57 FR 46325).

Historically, *Phyllostegia mannii* was found from Hanalilolilo to Ohialele on East Molokai and at Ukulele on East Maui. It has not been seen on Maui for over 70 years. This species is now known only from Molokai (HINHP Database 2001; Service 1996b; 57 FR 46325).

On Maui, *Phyllostegia mannii* occured on gentle slopes and the steep sides of gulches in mesic to wet forest dominated by *Acacia koa* and/or *Metrosideros polymorpha* at elevations between 1,069 and 1,615 m (3,506 and 5,297 ft) with one or more of the following associated native plant species: *Alyxia oliviformis; Cheirodendron trigynum; Dicranopteris linearis; Diplazium sandwichianum; Melicope* spp.; or *Myrsine lessertiana* (Service 1996b; 57 FR 46325; J. Lau, pers. comm., 2001).

Nothing is known of the threats to *Phyllostegia mannii* on the island of Maui (Service 1996b; 57 FR 46325).

Phyllostegia mollis (NCN)

Phyllostegia mollis, a short-lived member of the mint family (Lamiaceae), grows as a nearly erect, densely hairy, nonaromatic, perennial herb. Characteristics concerning the kind and amount of hair, the number of flowers in a cluster, and details of other plant parts separate this species from other members of the genus (Wagner *et al.* 1990).

Individual *Phyllostegia mollis* plants live for approximately 5 years. The species is known to flower in late winter and spring. Little else is known about the life history of *P. mollis*. Flowering cycles, pollination vectors, seed dispersal agents, longevity, specific environmental requirements, and limiting factors are unknown (Service 1998b; 56 FR 55770).

Historically, *Phyllostegia mollis* was known from Oahu, Molokai, and East Maui. Currently, this species is only known from Oahu and Maui. On East Maui, a single occurrence with an unknown number of individuals remains on State (on the border of Kahikinui Forest Reserve and DHHL) land in Waiopai Gulch (GDSI 2001; HINHP Database 2001; Service 1998b; Wagner *et al.* 1999; 56 FR 55770).

Phyllostegia mollis typically grows on steep slopes and in gulches in mesic forests dominated by *Metrosideros polymorpha* and/or *Acacia koa* at elevations between 1,144 and 1,970 m (3,754 and 6,463 ft). Associated native plant species include *Alyxia oliviformis, Cheirodendron trigynum, Diplazium sandwichianum, Melicope* spp., and *Myrsine lessertiana* (Service 1998b; 56 FR 55770; J. Lau, pers. comm., 2001).

The major threats to *Phyllostegia mollis* are competition from the nonnative plant species *Rubus* spp. and *Schinus terebinthifolius,* and a risk of extinction of the only known occurrence of this species on Maui caused by random environmental events (Service 1998b; 56 FR 55770).

Phyllostegia parviflora (NCN)

Phyllostegia parviflora, a member of the mint family (Lamiaceae), is a perennial herb. The species is distinguished from others of the genus by the egg-shaped to broadly egg-shaped leaves, leaf stalks usually 6 to 13.5 cm (2.4 to 5.3 in) long, and the lower corolla lip 6 to 9 mm (0.24 to 0.36 in) long. *Phyllostegia parviflora* var. *glabriuscula* has fewer glandular hairs in the inflorescence, less pubescent leaves, and usually unbranched inflorescences compared with *P. parviflora* var. *parviflora*. *Phyllostegia parviflora* var. *lydgatei* has shorter leaf stalks, spreading hairs on the leaf stalks, and fewer gland-tipped hairs in the inflorescence. At the time of listing of this species, only two varieties were recognized, *glabriuscula* and *parviflora*. Subsequent to the final rule listing this species in 1996, Wagner's (1999) taxonomic treatment of this group reorganized *P. parviflora* var. *lydgatei* as distinct from *P. parviflora* var. *parviflora*. Wagner's (1999) treatment is cited in the revised edition of the Manual of the Flowering Plants of Hawaii as the basis for recognizing *P. parviflora* var. *lydgatei* (Wagner *et al.* 1999). This name change will be addressed in a future **Federal Register** notice.

Historically *Phyllostegia parviflora* was known from three islands, Oahu, Hawaii, and Maui. This species is now known only from two occurrences on Oahu (HINHP Database 2001; GDSI 2001; Service 1999; 61 FR 53108).

Nothing is known of the preferred habitat of or native plant species associated with *Phyllostegia parviflora* on the island of Maui (Service 1999; 61 FR 53108; R. Hobdy, pers. comm., 2001) or of the threats to *Phyllostegia parviflora* on the island of Maui (Service 1999; 61 FR 53108).

Plantago princeps (Laukahi kuahiwi)

Plantago princeps, a short-lived member of the plantain family (Plantaginaceae), is a small shrub or robust perennial herb. This species differs from other native members of the genus in Hawaii by its large branched stems, flowers at nearly right angles to the axis of the flower cluster, and fruits that break open at a point two-thirds from the base. The four varieties, vars. *anomala, laxiflora, longibracteata,* and *princeps,* are distinguished by the branching and pubescence of the stems; the size, pubescence, and venation of the leaves; the density of the inflorescence; and the orientation of the flowers (Wagner *et al.* 1999).

Individuals of this species have been observed in fruit from April through September. Little else is known about the life history of *Plantago princeps*. Flowering cycles, pollination vectors, seed dispersal agents, longevity, specific environmental requirements, and limiting factors are unknown (Service 1999; 59 FR 56333).

Plantago princeps was historically found on Kauai, Oahu, Molokai, Maui, and Hawaii. It is no longer extant on the island of Hawaii. Only one of the four varieties is on Maui; *Plantago princeps* var. *laxiflora* is known from Molokai

and Maui. On Maui, there are 8 occurrences of *P. princeps* var. *laxiflora*, with a total of 118 individuals, on Federal (Haleakala National Park) and privately owned lands within the East Maui Watershed Partnership. This variety is found at Kahoolewa Ridge, Nakalaloa Stream, Iao Valley near the Needle, Hanakauhi, the west side of Kaupo Gap, and Palikea Stream (GDSI 2001; HINHP Database 2001; Service 1999; 59 FR 56333).

On Maui, *Plantago princeps* var. *laxiflora* is typically found on basalt cliffs that are windblown with little vegetation in *Metrosideros polymorpha* lowland wet forest; or *Acacia koa-M. polymorpha* montane wet forest; or *M. polymorpha* montane wet shrubland at elevations between 281 and 2,539 m (922 and 8,329 ft) and containing one or more of the following associated native plant species: *Bidens micrantha* ssp. *kalealaha; Chamaesyce celastroides; Cyanea* spp.; or *Dryopteris* spp. and various other ferns, such as *Dubautia menziesii, Dubautia plantaginea* ssp. *humilis, Eragrostis variabilis, Hedyotis formosa, Leptecophylla tameiameiae, Melicope ovalis, Perrottetia sandwicensis, Pipturus albidus,* or *Touchardia latifolia* (HINHP Database 2001; Service 1999; 59 FR 56333; R. Hobdy, pers. comm., 2001).

The primary threats to *Plantago princeps* var. laxiflora on Maui are herbivory and habitat degradation by feral pigs and goats and competition with various nonnative plant species (Service 1999; 59 FR 56333).

Platanthera holochila (NCN)

Platanthera holochila, a short-lived, perennial member of the orchid family (Orchidaceae), is an erect, deciduous herb. The stems arise from underground tubers, the pale green leaves are lance- to egg-shaped and the greenish-yellow flowers occur in open spikes. This is the only species of this genus that occurs on the Hawaiian Islands. It is distinguished from other Hawaiian orchids by its underground tubers that lack roots at the nodes or pseudo bulbs, and the shape and length of its dorsal sepal (Wagner *et al.* 1999).

Little is known about the life history of *Platanthera holochila*. Flowering cycles, pollination vectors, seed dispersal agents, longevity, specific environmental requirements, and limiting factors are unknown (Service 1999; 61 FR 53108).

Historically, *Platanthera holochila* was known from Maui, Oahu, Molokai, and Kauai. Currently, *P. holochila* is extant on Kauai, Molokai, and Maui. On Maui, 5 occurrences with 22 individuals are reported on State (West Maui Forest Reserve) and privately owned lands within the West Maui Mountains Watershed Partnership and the East Maui Watershed Partnership from Kapaloa Stream, Waihee River, the border of Lahaina and Wailuku Districts and Koolau Gap (GDSI 2001; HINHP Database 2001; Service 1999; 61 FR 53108).

Platanthera holochila is found in *Metrosideros polymorpha-Dicranopteris linearis* montane wet forest or *M. polymorpha* mixed montane bog or mesic scrubby *M. polymorpha* forest at elevations between 536 and 2,314 m (1,759 and 7,592 ft) and containing one or more of the following associated native plant species: *Broussaisia arguta; Cibotium* spp.; *Clermontia* spp.; *Coprosma ernodeoides* (kukae nene); *Deschampsia nubigena; Dubautia scabra* (naenae); *Gahnia gahniiformis* (NCN); *Leptecophylla tameiameiae; Lycopodiella cernua* (wawae iole); *Luzula hawaiiensis* (wood rush); *Oreobolus furcatus; Polypodium pellucidum* (ae); *Sadleria* spp.; *Scaevola chamissoniana* (naupaka kuahiwi); *Sisyrinchium acre* (mauu laili); *Vaccinium reticulatum;* or *Wikstroemia* spp. (Service 1999; 61 FR 53108; R. Hobdy, pers. comm., 2001).

The primary threats to *Platanthera holochila* on Maui are habitat degradation and destruction by feral pigs; landslides; competition with nonnative plant species; and a risk of extinction on Maui from naturally occurring events and reduced reproductive vigor caused by the small number of remaining occurrences and individuals. Predation by slugs may also be a potential threat to this species (Service 1999; 61 FR 53108).

Pteris lidgatei (NCN)

Pteris lidgatei, a short-lived member of the maidenhair fern family (Adiantaceae), is a coarse perennial herb, 0.5 to 1 m (1.6 to 3.3 ft) tall. *Pteris lidgatei* can be distinguished from other species of *Pteris* on the Hawaiian Islands by the thick, brittle texture of its fronds and the tendency of the sori along the leaf margins to be broken into short segments instead of being fused into continuous marginal sori (Wagner 1949; Wagner and Wagner 1992).

Little is known about the life history of *Pteris lidgatei*. Reproductive cycles, dispersal agents, specific environmental requirements, and limiting factors are unknown (Service 1998a; 59 FR 49025).

Historically, *Pteris lidgatei* was found on Oahu, Molokai, and at Waihee on West Maui. Currently, this species is known from Oahu and Maui. Two occurrences with approximately 20 individuals occur on Maui on State (Kahakuloa section of the West Maui NAR) and privately owned lands within the West Maui Mountains Watershed Partnership north of Eke Crater and at Kauala (GDSI 2001; HINHP Database 2001; Service 1998a; 59 FR 49025).

This species grows on steep stream banks in wet *Metrosideros polymorpha-Dicranopteris linearis* montane forest at elevations between 201 and 1,717 m (659 and 5,633 ft) and containing one or more of the following native plant species: *Christella cyatheoides; Cibotium chamissoi; Dicranopteris linearis; Elaphoglossum crassifolium* (hoe a Maui); *Sadleria squarrosa* (apuu); or *Sphenomeris chinensis* (palaa) (HINHP Database 2001; Service 1998a; 59 FR 49025; R. Hobdy, pers. comm., 2001).

The primary threats to *Pteris lidgatei* on Maui are the nonnative plants *Ageratina adenophora, Clidemia hirta,* and *Tibouchina herbacea;* habitat destruction by feral pigs; and a risk of extinction caused by random environmental events (Service 1998a; 59 FR 49025).

Sanicula purpurea (NCN)

Sanicula purpurea, a short-lived member of the parsley family (Apiaceae), is a stout perennial herb, 8 to 36 cm (3 to 14 in) tall, arising from a massive perennial stem. This species is distinguished from others in the genus by the number of flowers per cluster and by the color of the petals (Constance and Affolter 1999).

Little is known about the life history of *Sanicula purpurea*. Flowering cycles, pollination vectors, seed dispersal agents, longevity, specific environmental requirements, and limiting factors are unknown (Service 1999; 61 FR 53108).

Historically and currently, *Sanicula purpurea* is known from Oahu and West Maui. On Maui, 7 occurrences totaling 200 individuals are currently known on State (Kahakuloa and Honokawai sections of the West Maui NAR) and private lands within the West Maui Mountains Watershed Partnership north of Eke Crater and east of Kahakuloa Stream, south of Eke Crater, near Violet Lake, the ridge west of Puu Kukui, and Kahoolewa Ridge east of Puu Kukui (GSDI 2001; HINHP Database 2001; Service 1999; 61 FR 53108).

This species typically grows in open *Metrosideros polymorpha* mixed montane bogs at elevations between 1,195 and 1,764 m (3,921 and 5,787 ft) and containing one or more of the following associated plant species: *Argyroxiphium caliginis* (eke silversword); *Argyroxiphium grayanum* (green sword); *Gahnia beecheyi* (NCN); *Geranium hillebrandii* (nohoanu); *Lagenifera maviensis; Leptecophylla tameiameiae; Lycopodium* spp.; *Machaerina* spp.; *Myrsine vaccinioides* (kolea); *Oreobolus furcatus; Plantago pachyphylla* (laukahi kuahiwi); or *Viola maviensis* (HINHP Database 2001; Service 1999; 61 FR 53108; R. Hobdy, pers. comm., 2001).

Habitat degradation by feral pigs, a risk of extinction caused by random environmental events and reduced reproductive vigor caused by the small number of existing occurrences, and slugs are the major threats to *Sanicula purpurea* (HINHP Database 2001; Service 1999; 61 FR 53108).

Schiedea hookeri (NCN)

Schiedea hookeri, a member of the pink family (Caryophyllaceae), is a sprawling or clumped perennial herb. This species is distinguished from others in this endemic Hawaiian genus by its open, hairy, and sometimes sticky inflorescence, and by the size of the capsules (Wagner *et al.* 1999).

Based on field and greenhouse observations, *Schiedea hookeri* is hermaphroditic, which means that each individual has both male and female reproductive organs. Mature fruits have been observed in June and August. *Schiedea hookeri* appears to be an outcrossing species. Under greenhouse conditions, flowers do not set fruit unless pollinated. In the field, the species is presumed to be pollinated by insects, although none have been observed. A related species, *S. lydgatei* on Molokai, is apparently pollinated by native, night-flying moths. A series of self-pollinations, intra-population crosses, and crosses among populations have demonstrated that *S. hookeri* experiences moderately strong inbreeding depression. These results indicate that reductions in population size could result in inbreeding depression among progeny, with negative consequences for the long-term persistence of this species. Individuals of *S. hookeri* appear to be long-lived, but there is no evidence of reproduction from seed under field conditions. Seedlings of *Schiedea* occurring in mesic or wet sites are apparently consumed by introduced slugs and snails, which have been observed feeding on *S. membranacea*, another mesic forest species that occurs on Kauai. In contrast to mesic forest species, *Schiedea* occurring in dry areas produce abundant seedlings following winter rains, presumably because the drier sites have fewer nonnative predators. *Schiedea hookeri* differs considerably through its range in potential for clonal growth. Plants from Kaluakauila Gulch are upright and show little potential for clonal spread. In contrast, clonal growth has been detected for individuals at Kaluaa Gulch, where the growth form is decumbent and plants apparently root at the nodes. Little else is known about the life history of *Schiedea hookeri*. Flowering cycles, pollination vectors, seed dispersal agents, longevity, specific environmental requirements, and limiting factors are otherwise unknown (HINHP Database 2001; Service 1999; Weller and Sakai, unpublished data; 61 FR 53108).

Historically, *Schiedea hookeri* was known from the Waianae Mountains of Oahu and from a single fragmentary collection from Haleakala on Maui that may represent *S. menziesii* rather than *S. hookeri*. Currently, this species is known only from Oahu (Environmental Division of the Army (EDA) Database 2001; HINHP Database 2001; Service 1999; 61 FR 53108).

Nothing is known of the preferred habitat of, or native plant species associated with, *Schiedea hookeri* on the island of Maui (Service 1999; 61 FR 53108; R. Hobdy, pers. comm., 2001), and nothing is known of the threats to *Schiedea hookeri* on the island of Maui (Service 1999; 61 FR 53108).

Schiedea nuttallii (NCN)

Schiedea nuttallii, a member of the pink family (Caryophyllaceae), is a generally hairless, erect subshrub. This long-lived perennial species is distinguished from others in this endemic Hawaiian genus by its habit, length of the stem internodes, length of the inflorescence, number of flowers per inflorescence, and smaller leaves, flowers, and seeds (Wagner *et al.* 1999).

Little is known about the life history of *Schiedea nuttallii*. Based on field and greenhouse observations, it is hermaphroditic. Plants on Oahu have been under observation for 10 years, and they appear to be long-lived. *Schiedea nuttallii* appears to be an outcrossing species. Under greenhouse conditions, plants fail to set seed unless hand-pollinated, suggesting that this species requires insects for pollination. Fruits and flowers are abundant in the wet season but can be found throughout the year. Little else is known about the life history of *S. nuttallii*. Flowering cycles, pollination vectors, seed dispersal agents, longevity, specific environmental requirements, and limiting factors are otherwise unknown (Service 1999; 61 FR 53108).

Historically, *Schiedea nuttallii* was known from Kauai and Oahu and was reported from Maui. Currently, it is found on Kauai, Oahu, and Molokai (GDSI 2001; HINHP Database 2001; Service 1999; 61 FR 53108).

Nothing is known of the preferred habitat of, or native plant species associated with, *Schiedea nuttallii* on the island of Maui (Service 1999; 61 FR 53108; R. Hobdy, pers. comm., 2001), and nothing is known of the threats to *Schiedea nuttallii* on the island of Maui (Service 1999; 61 FR 53108).

Sesbania tomentosa (Ohai)

Sesbania tomentosa, a short-lived perennial member of the pea family (Fabaceae), is typically a sprawling shrub, but may also be a small tree. Each compound leaf consists of 18 to 38 oblong to elliptic leaflets which are usually sparsely to densely covered with silky hairs. The flowers are salmon colored, tinged with yellow, orange-red, scarlet or, rarely, pure yellow. *Sesbania tomentosa* is the only endemic Hawaiian species in the genus, differing from the naturalized *S. sesban* by the color of the flowers, the longer petals and calyx, and the number of seeds per pod (Geesink *et al.* 1999).

The pollination biology of *Sesbania tomentosa* has been studied by David Hopper, University of Hawaii at Manoa. His findings suggest that although many insects visit *Sesbania* flowers, the majority of successful pollination is accomplished by native bees of the genus *Hylaeus*, and that populations at Kaena Point on Oahu are probably pollinator-limited. Flowering at Kaena Point is highest during the winter-spring rains, and gradually declines throughout the rest of the year. Other aspects of the life history of *S. tomentosa* are unknown (Service 1999; 59 FR 56333).

Historically, *Sesbania tomentosa* occurred on all eight of the main Hawaiian Islands and on the northwestern Hawaiian Islands of Nihoa and Necker. Currently, *S. tomentosa* occurs on Kauai, Oahu, Molokai, Kahoolawe, Maui, Hawaii, Nihoa, and Necker. On Maui, *S. tomentosa* is known from 7 occurrences with a total of 83 individuals. The occurrences are located on State-owned and/or State-leased land (Lihau section of West Maui NAR, Hana Forest Reserve, and Kanaio Training Area), under Federal jusisdiction (Kanaio National Guard Training Area) and on privately owned land within the East Maui Watershed Partnership and West Maui Mountains Watershed Partnership at Poelua Bay, Mokolea Point, between Kahakuloa Head and Puu Kahulianapa, Mahinanui, Olowalu, and Pimoe, south of Puu Puou. Off the south central coast of Kahoolawe, approximately 100 individuals of *S. tomentosa* are found on a small islet, Puu Koae, a State-

owned seabird sanctuary (GDSI 2001; HINHP Database 2001; Service 1999; 59 FR 56333; R. Hobdy *in litt.* 2000).

Sesbania tomentosa is found on windswept slopes, sea cliffs, and cinder cones in *Scaevola taccada* coastal dry shrublands at elevations between 0 and 608 m (0 and 1,993 ft) and containing one or more of the following associated native plant species: *Bidens* spp.; *Diospyros sandwicensis*; stunted *Dodonaea viscosa*; *Jacquemontia ovalifolia* ssp. *sandwicensis* (pauohiiaka); *Melanthera integrifolia*; or *Sida fallax* (HINHP Database 2001; Service 1999; 59 FR 56333; R. Hobdy, pers. comm., 2001).

The primary threats to *Sesbania tomentosa* on Maui are habitat degradation caused by competition with various nonnative plant species such as *Lantana camara*, *Waltheria indica* (uhaloa), and various grass species; grazing and trampling by feral cattle; lack of adequate pollination; seed predation by rats, mice and, potentially, nonnative insects; fire; and destruction by off-road vehicles and other human disturbances. Threats to *S. tomentosa* on Kahoolawe include habitat degradation caused by competition with various nonnative plant species, erosion, and trampling by cats and seabirds (Service 1999; 59 FR 56333; P. Higashino, pers. comm., 2000).

Solanum incompletum (Popolo ku mai)

Solanum incompletum, a short-lived perennial member of the nightshade family (Solanaceae), is a woody shrub. Its stems and lower leaf surfaces are covered with prominent reddish prickles or sometimes with yellow fuzzy hairs on young plant parts and lower leaf surfaces. This species differs from other native members of the genus by being generally prickly and having loosely clustered white flowers, curved anthers about 2 mm (0.08 in) long, and berries 1 to 2 cm (0.4 to 0.8 in) in diameter (Symon 1999).

Little is known about the life history of *Solanum incompletum*. Flowering cycles, pollination vectors, seed dispersal agents, longevity, specific environmental requirements, and limiting factors are unknown (Service 1999; 59 FR 56333).

Historically, *Solanum incompletum* was known from Lanai, scattered locations on Maui, and the island of Hawaii. According to David Symon (1999), the known distribution of *S. incompletum* also extended to the islands of Kauai and Molokai. Currently, *S. incompletum* is only known from the island of Hawaii (HINHP Database 2001; Service 1999; 59 FR 56333).

Nothing is known of the preferred habitat of, or native plant species associated with, *Solanum incompletum* on the island of Maui (Service 1999; 59 FR 56333; R. Hobdy, pers. comm., 2001), and nothing is known of the threats to *Solanum incompletum* on the island of Maui (Service 1999; 59 FR 56333).

Spermolepis hawaiiensis (NCN)

Spermolepis hawaiiensis, a member of the parsley family (Apiaceae), is a slender annual herb with few branches. Its leaves are dissected into narrow, lance-shaped divisions. *Spermolepis hawaiiensis* is the only member of the genus native to Hawaii. It is distinguished from other native members of the family by being a non-succulent annual with an umbrella-shaped inflorescence (Constance and Affolter 1999).

Little is known about the life history of *Spermolepis hawaiiensis*. Flowering cycles, pollination vectors, seed dispersal agents, longevity, specific environmental requirements, and limiting factors are unknown (Service 1999; 59 FR 56333).

Historically, *Spermolepis hawaiiensis* was known from the islands of Kauai, Oahu, Lanai, and Hawaii. Currently, it is extant on Kauai, Oahu, Molokai, Lanai, Maui, and Hawaii. On Maui, there are five known occurrences with hundreds to thousands of individuals on State (Lihau section of West Maui NAR and Kanaio NAR) and privately owned lands within the West Maui Mountains Watershed Partnership in Puu Hipa, south of Kanaha Stream, Olowalu, and Kanaio (GDSI 2001; HINHP Database 2001; Service 1999; 59 FR 56333; Charles Chimera, USGS-BRD, pers. comm., 2000).

Spermolepis hawaiiensis on Maui is known from shady spots in *Dodonaea viscosa* lowland dry shrubland at elevations between 221 and 742 m (725 and 2,434 ft) and containing one or more of the following associated native species: *Diospyros* spp.; *Eragrostis variabilis*; *Erythrina sandwicensis*; *Gouania hillebrandii*; *Heteropogon contortus*; *Melanthera lavarum*; *Myoporum sandwicense*; *Pleomele* spp.; *Santalum ellipticum*; *Sida fallax*; or *Wikstroemia* spp. (HINHP Database 2001; Service 1999; 59 FR 56333; C. Chimera, pers. comm., 2000; R. Hobdy, pers. comm., 2001).

The primary threats to *Spermolepis hawaiiensis* on Maui are habitat degradation by feral goats, pigs, cattle, and axis deer; competition with various nonnative plants, such as *Lantana camara* and *Melinis repens*; fire; erosion, landslides, and rock slides caused by natural weathering, which result in the death of individual plants as well as habitat destruction (Service 1999; 59 FR 56333).

Tetramolopium arenarium (NCN)

Tetramolopium arenarium is a short-lived perennial and an upright, branched shrub in the sunflower family (Asteraceae). Alternate leaves are lance-shaped, hairy, glandular, and gray-green. This species is separated from other species of the genus in the Hawaiian Islands by several characters: Upright habit; number of heads per flower cluster; presence and type of glands and hairs; size of male ray flowers; number and color of bisexual disk flowers; and fruit shape and pubescence. Three infra-specific taxa are recognized: *Tetramolopium arenarium* ssp. *arenarium* var. *arenarium* (from Maui and Hawaii); *T. arenarium* ssp. *arenarium* var. *confertum* (from Hawaii); and *T. arenarium* ssp. *laxum* (from Maui). These taxa are distinguished by a combination of characters. *Tetramolopium arenarium* ssp. *arenarium* var. *confertum* and *T. arenarium* ssp. *laxum* have not been seen the late 1800s (Lowrey 1999).

Little is known about the life history of *Tetramolopium arenarium*. Flowering cycles, pollination vectors, seed dispersal agents, longevity, specific environmental requirements, and limiting factors are unknown (Service 1996a; 59 FR 10305).

Tetramolopium arenarium was historically known from the islands of Maui and Hawaii. The species was considered extinct until *T. arenarium* ssp. *arenarium* var. *arenarium* was recently rediscovered on the island of Hawaii. Both subspecies were last seen on Maui in the late 1800s (GDSI 2001; HINHP Database 2001; Service 1996a; 59 FR 10305).

Nothing is known about the preferred habitat of or native species associated with *Tetramolopium arenarium* on Maui (Service 1996a; 59 FR 10305; R. Hobdy, pers. comm., 2001), and nothing is known of the threats to *Tetramolopium arenarium* on the island of Maui (Service 1996a; 59 FR 10305).

Tetramolopium remyi (NCN)

Tetramolopium remyi, a short-lived perennial member of the sunflower family (Asteraceae), is a many branched, decumbent (reclining, with the end ascending) or occasionally erect shrub up to about 38 cm (15 in) tall. The stems, leaves, flower bracts, and fruit are covered with sticky hairs. *Tetramolopium remyi* has the largest flower heads in the genus. Two other species of the genus are known historically from Lanai, but both have purplish rather than yellow disk florets and from 4 to 60 rather than one flower head per branch (Lowrey 1999).

Tetramolopium remyi flowers between April and January. Field observations suggest that the population size of the species can be profoundly affected by variability in annual precipitation. The adult plants may succumb to prolonged drought, but apparently there is a seedbank in the soil that can replenish the population during favorable conditions. Such seed banks are of great importance for arid-dwelling plants to allow populations to persist through adverse conditions. Success in greenhouse cultivation of these plants with much higher water availability implies that, although these plants are drought-tolerant, perhaps the dry conditions in which they currently exist are not optimum. Individual plants are probably not long-lived. Pollination is hypothesized to be by butterflies, bees, or flies. Seed dispersal agents, specific environmental requirements, and other limiting factors of this species are unknown (Service 1995b; 56 FR 47686).

Historically, the species was known from the Lahaina area of West Maui and Lanai. Currently, *Tetramolopium remyi* is known from two occurrences on Lanai. It was last seen on Maui in 1944 until relocated in 2001 by Joel Lau of HINHP on State-owned land with an unknown number of plants in the Kuia area (GDSI 2001; HINHP Database 2001; Service 1995b; 56 FR 47686).

On Maui, *Tetramolopium remyi* occurs in lowland dry shrubland on dry, exposed ridges or flats at elevations between 52 and 550 m (171 and 1,804 ft). Associated plant species include *Bidens mauiensis*, *Bidens menziesii*, *Dodonaea viscosa*, *Eragrostis atropioides* (lovegrass), *Heteropogon contortus*, *Lipochaeta heterophylla* (NCN), or *Waltheria indica* (Service 1995b; 56 FR 47686; R. Hobdy, pers. comm., 2001).

Nothing is known of the threats to *Tetramolopium remyi* on the island of Maui (Service 1995b; 56 FR 47686).

Vigna o-wahuensis (NCN)

Vigna o-wahuensis, a member of the pea family (Fabaceae), is a slender, twining, short-lived perennial herb with fuzzy stems. Each leaf is made up of three leaflets which vary in shape from round to linear. This species differs from others in the genus by its thin, yellowish petals; sparsely hairy calyx; and thin pods, which may or may not be slightly inflated (Geesink *et al.* 1999).

Little is known about the life history of *Vigna o-wahuensis*. Flowering cycles, pollination vectors, seed dispersal agents, longevity, specific environmental requirements, and limiting factors are unknown (Service 1999; 59 FR 56333).

Historically, *Vigna o-wahuensis* was known from Niihau, Oahu, East Maui in Makawao, Waiakoa, and Haleakala, and at an unspecified site on West Maui. Currently, *V. o-wahuensis* is known from the islands of Molokai, Lanai, Kahoolawe, Maui, and Hawaii. On the State-owned island of Kahoolawe, there is one occurrence with an unknown number of individuals in the Makaalae/Lua Kealialalo area. On Maui, there is a single occurrence of at least one individual on State-owned land at Kamanamana (GDSI 2001; HINHP Database 2001; Service 1999; 59 FR 56333; C. Chimera, pers. comm., 2000).

On Kahoolawe and Maui, *Vigna o-wahuensis* occurs in dry to mesic grassland and shrubland at elevations between 0 and 50 m (0 and 164 ft) and containing one or more of the following associated plant species: *Chamaesyce* spp.; *Chenopodium* spp.; or *Sida fallax* (HINHP Database 2001; Service 1999; 59 FR 56333; R. Hobdy, pers. comm., 2001).

The primary threats to *Vigna o-wahuensis* on Kahoolawe are competition with various nonnative plant species, fire, a risk of extinction caused by random environmental events, and reduced reproductive vigor caused by the small number of existing occurrences and individuals. The primary threats to this species on Maui are competition with the nonnative plant species *Cenchrus ciliaris* (buffelgrass) and *Lantana camara*, and herbivory by axis deer and goats (Service 1999; 59 FR 56333).

Zanthoxylum hawaiiense (Ae)

Zanthoxylum hawaiiense, a long-lived perennial, is a medium-sized tree with pale to dark gray bark and lemon-scented leaves in the rue family (Rutaceae). *Zanthoxylum hawaiiense* is distinguished from other Hawaiian members of the genus by several characters: Three leaflets all of similar size, one joint on the lateral leaf stalk, and sickle-shaped fruits with a rounded tip (Stone *et al.* 1999).

Little is known about the life history of *Zanthoxylum hawaiiense*. Flowering cycles, pollination vectors, seed dispersal agents, longevity, specific environmental requirements, and limiting factors are unknown (Service 1996a; 59 FR 10305).

Historically, *Zanthoxylum hawaiiense* was known from the islands of Kauai, Molokai, Lanai, Hawaii, and the southern and southwestern slopes of Haleakala on Maui. Currently, *Z. hawaiiense* is extant on the islands of Kauai, Molokai, Maui, and Hawaii. This species is found on Maui in 9 occurrences with a total of 11 individuals on private and State (Makawao Forest Reserve and DHHL) lands at Kahakapao, and in the Hana District, north and south of the Jeep Trail and north of the Kula Pipeline (GDSI 2001; HINHP Database 2001; Service 1996a; 59 FR 10305).

Zanthoxylum hawaiiense on Maui is reported from open lowland dry or mesic *Nestegis sandwicensis-Pleomele auwahiensis* forests, *Acacia koa-Pleomele auwahiensis* forest, or montane dry forest at elevations between 869 and 1,540 m (2,852 and 5,051 ft) and containing one or more of the following associated native species: *Alectryon macrococcus; Alphitonia ponderosa; Charpentiera* spp.; *Diospyros sandwicensis; Dodonaea viscosa; Melicope* spp.; *Metrosideros polymorpha; Myrsine lanaiensis; Osteomeles anthyllidifolia; Pisonia* spp. (papala kepau); *Santalum ellipticum; Sophora chrysophylla; Streblus pendulinus;* or *Xylosma hawaiiense* (HINHP Database 2001; Service 1996a; 59 FR 10305; R. Hobdy, pers. comm., 2001).

The threats to *Zanthoxylum hawaiiense* on Maui include browsing, grazing, and trampling by feral goats and cattle; competition with the nonnative plant species, *Lantana camara*, *Melia azedarach* (chinaberry) and *Pennisetum clandestinum*; fire; human disturbance; risk of extinction from naturally occurring events; and reduced reproductive vigor caused by the small number of populations (Service 1996a; 59 FR 10305).

A summary of occurrences and land ownership for the 70 plant species reported from the islands of Maui and Kahoolawe is given in Table 2.

TABLE 2.—SUMMARY OF EXISTING OCCURRENCES AND LAND OWNERSHIP FOR 70 SPECIES REPORTED FROM MAUI AND KAHOOLAWE

Species	Number of current occurrences	Land ownership		
		Federal	State	Private
Acaena exigua	0			
Adenophorus periens	0			
Alectryon macrococcus	13		X	X
Argyroxiphium sandwicense ssp. *macrocephalum*	7	X*		X
Asplenium fragile var. *insulare*	2	X*		X
Bidens micrantha ssp. *kalealaha*	4	X*	X	
Bonamia menziesii	6		X	X
Brighamia rockii	0			
Cenchrus agrimonioides	1		X	
Centaurium sebaeoides	3		X	X
Clermontia lindseyana	2		X	X
Clermontia oblongifolia ssp. *mauiensis*	1			
Clermontia peleana	0			
Clermontia samuelii	7	X*	X	
Colubrina oppositifolia	1			X
Ctenitis squamigera	12		X	X
Cyanea copelandii ssp. *haleakalaensis*	5	X*	X	X
Cyanea glabra	1			X
Cyanea grimesiana ssp. *grimesiana*	2			X
Cyanea hamatiflora ssp. *hamatiflora*	3	X*	X	X
Cyanea lobata	5			X
Cyanea mceldowneyi	11		X	X
Cyrtandra munroi	5		X	X
Delissea undulata	0			
Diellia erecta	5		X	X
Diplazium molokaiense	4		X	X
Dubautia plantaginea ssp. *humilis*	2			X
Flueggea neowawraea	4		X	X
Geranium arboreum	12		X	X
Geranium multiflorum	13	X*	X	X
Gouania vitifolia	0			
Hedyotis coriacea	1		X	
Hedyotis mannii	1			X
Hesperomannia arborescens	4		X	X
Hesperomannia arbuscula	8			X
Hibiscus brackenridgei	5		X	X
Ischaemum byrone	6		X	X
Isodendrion pyrifolium	0			
Kanaloa kahoolawensis	1		X	
Lipochaeta kamolensis	1		X	
Lysimachia lydgatei	4		X	X
Mariscus pennatiformis	2		X	
Melicope adscendens	16		X	X
Melicope balloui	3	X*		X
Melicope knudsenii	4		X	X
Melicope mucronulata	1			X
Melicope ovalis	2	X*		
Neraudia sericea	5		X	X
Nototrichium humile	0			
Peucedanum sandwicense	3		X	X
Phlegmariurus mannii	7	X*	X	X
Phyllostegia mannii	0			
Phyllostegia mollis	1		X	
Phyllostegia parviflora	0			
Plantago princeps	8	X*		X
Platanthera holochila	5		X	X
Pteris lidgatei	2		X	X
Remya mauiensis	5		X	
Sanicula purpurea	7		X	X
Schiedea haleakalensis	2	X*		
Schiedea hookeri	0			
Schiedea nuttallii	0			
Sesbania tomentosa	5	X**	X	X
Solanum incompletum	0			
Spermolepis hawaiiensis	5		X	X
Tetramolopium arenarium	0			
Tetramolopium capillare	5		X	X
Tetramolopium remyi	1		X	
Vigna o-wahuensis	2		X	

TABLE 2.—SUMMARY OF EXISTING OCCURRENCES AND LAND OWNERSHIP FOR 70 SPECIES REPORTED FROM MAUI AND KAHOOLAWE—Continued

Species	Number of current occurrences	Land ownership		
		Federal	State	Private
Zanthoxylum hawaiiense	9		X	X

*Haleakala National Park Lands.
**Kanaio Army National Guard Lands.

Previous Federal Action

Federal action on these plants began as a result of section 12 of the Endangered Species Act of 1973, as amended (Act) (16 U.S.C. 1531 *et seq.*), which directed the Secretary of the Smithsonian Institution to prepare a report on plants considered to be endangered, threatened, or extinct in the United States. This report, designated as House Document No. 94–51, was presented to Congress on January 9, 1975. In that document, *Alectryon macrococcus* (as *Alectryon macrococcum* var. *macrococcum* and *Alectryon mahoe*), *Bonamia menziesii*, *Brighamia rockii*, *Clermontia lindseyana*, *Colubrina oppositifolia*, *Cyanea glabra* (as *Cyanea scabra* var. *variabilis*), *Cyanea lobata* (as *Cyanea baldwinii*), *Cyanea mceldowneyi*, *Flueggea neowawraea* (as *Drypetes phyllanthoides*), *Geranium arboreum*, *Geranium multiflorum* (as *Geranium multiflorum* var. *multiflorum*, var. *ovatifolium*, and var. *superbum*), *Hedyotis thyrsoidea* var. *thyrsoidea*), *Hesperomannia arborescens* (as *Hesperomannia arborescens* var. *bushiana* and var. *swezeyi*), *Hesperomannia arbuscula*, *Hibiscus brackenridgei* (as *Hibiscus brackenridgei* var. *brackenridgei*, var. *mokuleianus*, and var. "from Hawaii"), *Ischaemum byrone*, *Melicope balloui* (as *Pelea balloui*), *Melicope knudsenii* (as *Pelea multiflora*), *Melicope ovalis* (as *Pelea ovalis*), *Neraudia sericea* (as *Neraudia kahoolawensis*), *Nototrichium humile*, *Peucedanum sandwicense* (as *Peucedanum kauaiense*), *Phyllostegia mollis*, *Plantago princeps* (as *Plantago princeps* var. *elata*, var. *laxiflora*, var. *princeps*), *Remya mauiensis*, *Sesbania tomentosa* (as *Sesbania hobdyi* and *Sesbania tomentosa* var. *tomentosa*), *Vigna o-wahuensis* (as *Vigna sandwicensis* var. *heterophylla* and var. *sandwicensis*), and *Zanthoxylum hawaiiense* (as *Zanthoxylum hawaiiense* var. *citriodora*), were considered to be endangered; *Cyrtandra munroi*, *Diellia erecta*, and *Zanthoxylum hawaiiense* (as *Zanthoxylum hawaiiense* var. *hawaiiense* and var. *velutinosum*) were considered to be threatened; and *Asplenium fragile* var. *insulare* (as *Asplenium fragile*), *Bidens micrantha* ssp. *kalealaha* (as *Bidens distans* and *Bidens micrantha* ssp. *kalealaha*), *Ctenitis squamigera*, *Diplazium molokaiense*, *Gouania vitifolia*, *Hedyotis coriacea*, *Isodendrion pyrifolium*, *Melicope knudsenii* (as *Pelea knudsenii* and *Pelea tomentosa*), *Melicope mucronulata* (as *Pelea mucronulata*), *Phlegmariurus mannii* (as *Lycopodium mannii*), *Plantago princeps* (as *Plantago princeps* var. *acaulis* var. *denticulata*, and var. *queleniana*), *Pteris lidgatei*, *Tetramolopium arenarium* (as *Tetramolopium arenarium* var. *arenarium*, var. *confertum*, and var. *dentatum*), *Tetramolopium capillare*, and *Tetramolopium remyi* were considered extinct. On July 1, 1975, we published a notice in the **Federal Register** (40 FR 27823) of our acceptance of the Smithsonian report as a petition within the context of section 4(c)(2) (now section 4(b)(3)) of the Act, and gave notice of our intention to review the status of the plant taxa named therein. As a result of that review, on June 16, 1976, we published a proposed rule in the **Federal Register** (41 FR 24523) to determine endangered status pursuant to section 4 of the Act for approximately 1,700 vascular plant taxa, including all of the above taxa except *Cyanea glabra* and *Cyrtandra munroi*; additionally, *Argyroxiphium sandwicense* ssp. *macrocephalum* (as *Argyroxiphium macrocephalum*) appeared in the 1976 proposed rule as endangered. The list of 1,700 plant taxa was assembled on the basis of comments and data received by the Smithsonian Institution and the Service in response to House Document No. 94–51 and the July 1, 1975, **Federal Register** publication (40 FR 27823).

General comments received in response to the 1976 proposal were summarized in an April 26, 1978, **Federal Register** publication (43 FR 17909). In 1976, amendments to the Act required that all proposals over two years old be withdrawn. A 1-year grace period was given to proposals already over two years old. On December 10, 1979, we published a notice in the **Federal Register** (44 FR 70796) withdrawing the portion of the June 16, 1976, proposal that had not been made final, along with four other proposals that had expired. We published updated Notices of Review for plants on December 15, 1980 (45 FR 82479), September 27, 1985 (50 FR 39525), February 21, 1990 (55 FR 6183), September 30, 1993 (58 FR 51144), and February 28, 1996 (61 FR 7596). We listed the 70 species as endangered or threatened between 1991 and 1999. A summary of the listing actions can be found in Table 3(a).

TABLE 3(a).—SUMMARY OF LISTING ACTIONS FOR 70 PLANT SPECIES FROM MAUI AND KAHOOLAWE

Species	Federal status	Proposed listing rule		Final listing rule	
		Date	Federal Register	Date	Federal Register
Acaena exigua	E	05/24/91	56 FR 23842	05/15/92	57 FR 20772
Adenophorus periens	E	09/14/93	58 FR 48012	11/10/94	59 FR 56333
Alectryon macrococcus	E	05/24/91	56 FR 23842	05/15/92	57 FR 20772
Argyroxiphium sandwicense ssp. *macrocephalum*	T	05/24/91	56 FR 23842	05/15/92	57 FR 20772
Asplenium fragile var. *insulare*	E	06/24/93	58 FR 34231	09/09/94	59 FR 49025
Bidens micrantha ssp. *kalealaha*	E	05/24/91	56 FR 23842	05/15/92	57 FR 20772
Bonamia menziesii	E	09/14/93	58 FR 48012	11/10/94	59 FR 56333

TABLE 3(a).—SUMMARY OF LISTING ACTIONS FOR 70 PLANT SPECIES FROM MAUI AND KAHOOLAWE—Continued

Species	Federal status	Proposed listing rule		Final listing rule	
		Date	Federal Register	Date	Federal Register
Brighamia rockii	E	09/20/91	56 FR 47718	10/08/92	57 FR 46325
Cenchrus agrimonioides	E	10/02/95	60 FR 51417	10/10/96	61 FR 53108
Centaurium sebaeoides	E	09/28/90	55 FR 39664	10/29/91	56 FR 55770
Clermontia lindseyana	E	12/17/92	57 FR 59951	03/04/94	59 FR 10305
Clermontia oblongifolia ssp. *mauiensis*	E	05/24/91	56 FR 23842	05/15/92	57 FR 20772
Clermontia peleana	E	12/17/92	57 FR 59951	03/04/94	59 FR 10305
Clermontia samuelii	E	05/15/97	62 FR 26757	09/03/99	64 FR 48307
Colubrina oppositifolia	E	12/17/92	57 FR 59951	03/04/94	59 FR 10305
Ctenitis squamigera	E	06/24/93	58 FR 34231	09/09/94	59 FR 49025
Cyanea copelandii ssp. *haleakalaensis*	E	05/15/97	62 FR 26757	09/03/99	64 FR 48307
Cyanea glabra	E	05/15/97	62 FR 26757	09/03/99	64 FR 48307
Cyanea grimesiana ssp. *grimesiana*	E	10/02/95	60 FR 51417	10/10/96	61 FR 53108
Cyanea hamatiflora ssp. *hamatiflora*	E	05/15/97	62 FR 26757	09/03/99	64 FR 48307
Cyanea lobata	E	05/24/91	56 FR 23842	05/15/92	57 FR 20772
Cyanea mceldowneyi	E	05/24/91	56 FR 23842	05/15/92	57 FR 20772
Cyrtandra munroi	E	05/24/91	56 FR 23842	05/15/92	57 FR 20772
Delissea undulata	E	06/27/94	59 FR 32946	10/10/96	61 FR 53124
Diellia erecta	E	09/14/93	58 FR 48012	11/10/94	59 FR 56333
Diplazium molokaiense	E	06/24/93	58 FR 34231	09/09/94	59 FR 49025
Dubautia plantaginea ssp. *humilis*	E	05/15/97	62 FR 26757	09/03/99	64 FR 48307
Flueggea neowawraea	E	09/14/93	58 FR 48012	11/10/94	59 FR 56333
Geranium arboreum	E	01/23/91	56 FR 2490	05/13/92	57 FR 20589
Geranium multiflorum	E	05/24/91	56 FR 23842	05/15/92	57 FR 20772
Gouania vitifolia	E	12/14/92	57 FR 39066	06/27/94	59 FR 32932
Hedyotis coriacea	E	05/24/91	56 FR 23842	05/15/92	57 FR 20772
Hedyotis mannii	E	09/20/91	56 FR 47718	10/08/92	57 FR 46325
Hesperomannia arborescens	E	10/14/92	57 FR 47028	03/28/94	59 FR 14482
Hesperomannia arbuscula	E	09/28/90	55 FR 39664	10/29/91	56 FR 55770
Hibiscus brackenridgei	E	09/14/93	58 FR 48012	11/10/94	59 FR 56333
Ischaemum byrone	E	12/17/92	57 FR 59951	03/04/94	59 FR 10305
Isodendrion pyrifolium	E	12/17/92	57 FR 59951	03/04/94	59 FR 10305
Kanaloa kahoolawensis	E	05/15/97	62 FR 26757	09/03/99	64 FR 48307
Lipochaeta kamolensis	E	05/24/91	56 FR 23842	05/15/92	57 FR 20772
Lysimachia lydgatei	E	05/24/91	56 FR 23842	05/15/92	57 FR 20772
Mariscus pennatiformis	E	09/14/93	58 FR 48012	11/10/94	59 FR 56333
Melicope adscendens	E	05/11/93	58 FR 18073	12/05/94	59 FR 62346
Melicope balloui	E	05/11/93	58 FR 18073	12/05/94	59 FR 62346
Melicope knudsenii	E	10/30/91	56 FR 5562	02/25/94	59 FR 09304
Melicope mucronulata	E	05/24/91	56 FR 23842	05/15/92	57 FR 20772
Melicope ovalis	E	05/11/93	58 FR 18073	12/05/94	59 FR 62346
Neraudia sericea	E	09/14/93	58 FR 48012	11/10/94	59 FR 56333
Nototrichium humile	E	10/02/95	60 FR 51398	10/10/96	61 FR 53089
Peucedanum sandwicense	T	10/30/91	56 FR 5562	02/25/94	59 FR 09304
Phlegmariurus mannii	E	05/24/91	56 FR 23842	05/15/92	57 FR 20772
Phyllostegia mannii	E	09/20/91	56 FR 47718	10/08/92	57 FR 46325
Phyllostegia mollis	E	09/28/90	55 FR 39664	10/29/91	56 FR 55770
Phyllostegia parviflora	E	10/02/95	60 FR 51417	10/10/96	61 FR 53108
Plantago princeps	E	09/14/93	58 FR 48012	11/10/94	59 FR 56333
Platanthera holochila	E	10/02/95	60 FR 51417	10/10/96	61 FR 53108
Pteris lidgatei	E	06/24/93	58 FR 34231	09/09/94	59 FR 49025
Remya mauiensis	E	10/02/89	54 FR 40447	01/14/91	56 FR 1450
Sanicula purpurea	E	10/02/95	60 FR 51417	10/10/96	61 FR 53108
Schiedea haleakalensis	E	05/24/91	56 FR 23842	05/15/92	57 FR 20772
Schiedea hookeri	E	10/02/95	60 FR 51417	10/10/96	61 FR 53108
Schiedea nuttallii	E	10/02/95	60 FR 51417	10/10/96	61 FR 53108
Sesbania tomentosa	E	09/14/93	58 FR 48012	11/10/94	59 FR 56333
Solanum incompletum	E	09/14/93	58 FR 48012	11/10/94	59 FR 56333
Spermolepis hawaiiensis	E	09/14/93	58 FR 48012	11/10/94	59 FR 56333
Tetramolopium arenarium	E	12/17/92	57 FR 59951	03/04/94	59 FR 10305
Tetramolopium capillare	E	03/25/93	58 FR 16164	09/30/94	59 FR 49860
Tetramolopium remyi	E	09/17/90	55 FR 38236	09/20/91	56 FR 47686
Vigna o-wahuensis	E	09/14/93	58 FR 48012	11/10/94	59 FR 56333
Zanthoxylum hawaiiense	E	12/17/92	57 FR 59951	03/04/94	59 FR 10305

Key:
E= Endangered.
T= Threatened.

At the time each plant was listed, we found that designation of critical habitat was prudent for six of these plants (*Clermontia samuelii, Cyanea copelandii* ssp. *haleakalaensis, Cyanea glabra, Cyanea hamatiflora* ssp. *hamatiflora, Dubautia plantaginea* ssp. *humilis*, and *Kanaloa kahoolawensis*) and not prudent for the other 64 plants because it would not benefit the plant or would increase the degree of threat to the species. The not prudent determinations for these species, along with others, were challenged in *Conservation Council for Hawaii* v. *Babbitt*, 2 F. Supp. 2d 1280 (D. Haw. 1998). On March 9, 1998, the United States District Court for the District of Hawaii directed us to review the prudency findings for 245 listed plant species in Hawaii, including 64 of the 70 listed species reported from Maui. Among other things, the court held that in most cases we did not sufficiently demonstrate that the species are threatened by human activity or that such threats would increase with the designation of critical habitat. The court also held that we failed to balance any risks of designating critical habitat against any benefits (*id.* at 1283–85).

Regarding our determination that designating critical habitat would have no additional benefits to the species above and beyond those already provided through the section 7 consultation requirement of the Act, the court ruled that we failed to consider the specific effect of the consultation requirement on each species (*id.* at 1286–88). In addition, the court stated that we did not consider benefits outside of the consultation requirements. In the court's view, these potential benefits include substantive and procedural protections. The court held that, substantively, designation establishes a "uniform protection plan" prior to consultation and indicates where compliance with section 7 of the Act is required. Procedurally, the court stated that the designation of critical habitat educates the public, State, and local governments and affords them an opportunity to participate in the designation (*id.* at 1288). The court also stated that private lands may not be excluded from critical habitat designation even though section 7 requirements apply only to Federal agencies. In addition to the potential benefit of informing the public, State, and local governments of the listing and of the areas that are essential to the species' conservation, the court found that there may be Federal activity on private property in the future, even though no such activity may be occurring there at the present (*id.* at 1285–88).

On August 10, 1998, the court ordered us to publish proposed critical habitat designations or nondesignations for at least 100 species by November 30, 2000, and to publish proposed designations or nondesignations for the remaining 145 species by April 30, 2002 (*Conservation Council for Hawaii* v. *Babbitt*, 24 F. Supp. 2d 1074 (D. Haw. 1998)).

At the time we listed *Clermontia samuelii, Cyanea copelandii* ssp. *haleakalaensis, Cyanea glabra, Cyanea hamatiflora* ssp. *hamatiflora, Dubautia plantaginea* ssp. *humilis*, and *Kanaloa kahoolawensis* (64 FR 48307), we found that designation of critical habitat was prudent and stated that we would develop critical habitat designations for these six taxa, along with four others, by the time we completed designations for the 245 Hawaiian plant species. This timetable was challenged in *Conservation Council for Hawaii* v. *Babbitt*, Civ. No. 99–00283 HG (D. Haw. Aug. 19, 1999, Feb. 16, 2000, and March 28, 2000). The court agreed that it was reasonable for us to integrate these 10 Maui Nui (Maui, Lanai, Molokai, and Kahoolawe) plant taxa into the schedule established for designating critical habitat for the other 245 Hawaiian plants, but ordered us to publish proposed critical habitat designations for the 10 Maui Nui species by November 30, 2000, and to publish final critical habitat designations by November 30, 2001.

On November 30, 1998, we published a notice in the **Federal Register** requesting public comments on our reevaluation of whether designation of critical habitat is prudent for the 245 Hawaiian plants at issue (63 FR 65805). The comment period closed on March 1, 1999, and was reopened from March 24, 1999, to May 24, 1999 (64 FR 14209). We received more than 100 responses from individuals, non-profit organizations, the State Division of Forestry and Wildlife (DOFAW), county governments, and Federal agencies (U.S. Department of Defense-Army, Navy, Air Force). Only a few responses offered information on the status of individual plant species or on current management actions for one or more of the 245 Hawaiian plants. While some of the respondents expressed support for the designation of critical habitat for 245 Hawaiian plants, more than 80 percent opposed the designation of critical habitat for these plants. In general, these respondents opposed designation because they believed it would cause economic hardship, discourage cooperative projects, polarize relationships with hunters, or potentially increase trespass or vandalism on private lands. In addition, commenters also cited a lack of information on the biological and ecological needs of these plants which, they suggested, may lead to designation based on guesswork. The respondents who supported the designation of critical habitat cited that designation would provide a uniform protection plan for the Hawaiian Islands; promote funding for management of these plants; educate the public and State government; and protect partnerships with landowners and build trust.

On December 29, 1999, we provided information to landowners on the islands of Maui and Kahoolawe, regarding our requirement to designate critical habitat for 70 plant species. This information included a copy of the November 30, 1998, **Federal Register** notice, a map showing the general locations of the species that may be on his/her property, and a handout containing general information on critical habitat. We held two open houses on the island of Maui, at the Lahaina Civic Center and the Wailuku Community Center on January 11 and 12, 2000, respectively, to meet with local landowners and other interested members of the public. A total of 30 people attended the two open houses. In addition, we met with Maui County DOFAW staff to discuss their management activities on Maui.

On December 18, 2000, we published the second of the court-ordered proposed critical habitat designations or nondesignations for 61 Maui and Kahoolawe plants (65 FR 79192). The proposed critical habitat designations for Kauai and Niihau plants were published on November 7, 2000 (65 FR 66808), for Molokai plants on December 29, 2000 (65 FR 83158), and for Lanai plants on December 27, 2000 (65 FR 82086). All of these proposed rules were sent to the **Federal Register** by or on November 30, 2000, as required by the court orders. In those proposals we proposed that critical habitat was prudent for 61 species (*Alectryon macrococcus, Argyroxiphium sandwicense* ssp. *macrocephalum, Adenophorus periens, Bidens micrantha* ssp. *kalealaha, Bonamia menziesii, Brighamia rockii, Cenchrus agrimonioides, Centaurium sebaeoides, Clermontia lindseyana, Clermontia oblongifolia* ssp. *mauiensis, Clermontia samuelii, Colubrina oppositifolia, Ctenitis squamigera, Cyanea copelandii* ssp. *haleakalaensis, Cyanea glabra, Cyanea grimesiana* ssp. *grimesiana, Cyanea hamatiflora* ssp. *hamatiflora, Cyanea lobata, Cyanea mceldowneyi, Cyrtandra munroi, Delissea undulata,*

Diellia erecta, Diplazium molokaiense, Dubautia plantaginea ssp. *humilis, Flueggea neowawraea, Geranium arboreum, Geranium multiflorum, Hedyotis coriacea, Hedyotis mannii, Hesperomannia arborescens, Hesperomannia arbuscula, Hibiscus brackenridgei, Ischaemum byrone, Isodendrion pyrifolium, Kanaloa kahoolawensis, Lipochaeta kamolensis, Lysimachia lydgatei, Mariscus pennatiformis, Melicope adscendens, Melicope balloui, Melicope knudsenii, Melicope mucronulata, Melicope ovalis, Neraudia sericea, Peucedanum sandwicense, Phlegmariurus mannii, Phyllostegia mannii, Phyllostegia mollis, Plantago princeps, Platanthera holochila, Pteris lidgatei, Remya mauiensis, Sanicula purpurea, Schiedea haleakalensis, Schiedea nuttallii, Sesbania tomentosa, Spermolepis hawaiiensis, Tetramolopium capillare, Tetramolopium remyi, Vigna o-wahuensis,* and *Zanthoxylum hawaiiense*) that are reported from Maui and/or Kahoolawe, as well as Kauai, Niihau, Molokai, and Lanai. We proposed that critical habitat was not prudent for one species, *Acaena exigua*, a species reported from Maui as well as Kauai, because it had not been seen recently in the wild, and no genetic material of this species was known to exist. At the time we proposed critical habitat on Maui, critical habitat was not proposed for four species, *Argyroxiphium sandwicense* ssp. *macrocephalum, Melicope balloui, Melicope ovalis,* and *Schiedea haleakalensis*, because they were found only in areas on Maui that did not require special management considerations or protection because they were already protected and managed to the benefit of these species, pursuant to 16 U.S.C. 1532(5)(A)(i). (However, a recent Federal District Court disagreed with this interpretation of the definition of critical habitat. *Center for Biological Diversity* v. *Norton*, Civ. No. 01–409 TUC DCB (D. Ariz. Jan. 13, 2003). While the Service still believes our interpretation is reasonable, we have not excluded areas from this critical habitat designation based on 16 U.S.C. 1532(5)(a)(i).)

On December 18, 2000, we proposed designation of critical habitat on approximately 13,574 ha (33,614 ac) of land on the island of Maui and 207 ha (512 ac) on the island of Kahoolawe. The publication of the proposed rule opened a 60-day public comment period, which closed on February 16, 2001. On February 22, 2001, we published a notice (66 FR 11131) announcing the reopening of the comment period until April 2, 2001, on the proposal to designate critical habitat for 50 plants from Maui and Kahoolawe and a notice of a public hearing. On March 20, 2001, we held a public hearing at the Renaissance Wailea Beach Resort, Maui.

On October 3, 2001, we submitted a joint stipulation with Earthjustice (representing the plaintiffs in *Hawaii Conservation Council* v. *Babbitt*) to the U.S. District Court requesting extension of the court order for the final rules to designate critical habitat for plants from Kauai and Niihau (July 30, 2002), Maui and Kahoolawe (August 23, 2002), Lanai (September 16, 2002), and Molokai (October 16, 2002), citing the need to revise the proposals to incorporate or address new information and comments received during the comment periods. The joint stipulation was approved and ordered by the court on October 5, 2001.

On April 3, 2002, we published a revised proposed rule for 70 listed plant species from Maui and Kahoolawe (67 FR 15856). Critical habitat for 61 (*Alectryon macrococcus, Argyroxiphium sandwicense* ssp. *macrocephalum, Asplenium fragile* var. *insulare, Bidens micrantha* ssp. *kalealaha, Bonamia menziesii, Brighamia rockii, Cenchrus agrimonioides, Centaurium sebaeoides, Clermontia lindseyana, Clermontia oblongifolia* ssp. *mauiensis, Clermontia samuelii, Colubrina oppositifolia, Ctenitis squamigera, Cyanea copelandii* ssp. *haleakalaensis, Cyanea glabra, Cyanea grimesiana* ssp. *grimesiana, Cyanea hamatiflora* ssp. *hamatiflora, Cyanea lobata, Cyanea mceldowneyi, Cyrtandra munroi, Diellia erecta, Diplazium molokaiense, Dubautia plantaginea* ssp. *humilis, Flueggea neowawraea, Geranium arboreum, Geranium multiflorum, Gouania vitifolia, Hedyotis coriacea, Hedyotis mannii, Hesperomannia arborescens, Hesperomannia arbuscula, Hibiscus brackenridgei, Ischaemum byrone, Isodendrion pyrifolium, Kanaloa kahoolawensis, Lipochaeta kamolensis, Lysimachia lydgatei, Mariscus pennatiformis, Melicope adscendens, Melicope balloui, Melicope knudsenii, Melicope mucronulata, Melicope ovalis, Neraudia sericea, Nototrichium humile, Peucedanum sandwicense, Phlegmariurus mannii, Phyllostegia mannii, Phyllostegia mollis, Plantago princeps, Platanthera holochila, Pteris lidgatei, Remya mauiensis, Sanicula purpurea, Schiedea haleakalensis, Sesbania tomentosa, Spermolepis hawaiiensis, Tetramolopium capillare, Tetramolopium remyi, Vigna o-wahuensis,* and *Zanthoxylum hawaiiense*) of the 70 plant species from the islands of Maui and Kahoolawe was proposed on approximately 51,208 ha (126,531 ac) of land on Maui, and approximately 1,372 ha (4,500 ac) on Kahoolawe (67 FR 15856). We proposed that critical habitat was prudent for six species (*Clermontia peleana, Gouania vitifolia, Nototrichium humile, Phyllostegia parviflora, Schiedea hookeri,* and *Tetramolopium arenarium*) for which a prudency finding had not been made previously. Critical habitat was not proposed for *Adenophorus periens, Clermontia peleana, Delissea undulata, Phyllostegia parviflora, Schiedea hookeri, Schiedea nuttallii, Solanum incompletum,* and *Tetramolopium arenarium* on the islands of Maui and Kahoolawe because these plants no longer occur on Maui or Kahoolawe, and we were unable to identify habitat which was essential to their conservation on these islands. Critical habitat was not proposed for *Acaena exigua*, a species reported from Maui as well as Kauai because it has not been seen recently in the wild and was not known to be in storage or under propagation.

The publication of the revised proposed rule opened up a 60-day public comment period, which closed on June 3, 2002. On July 11, 2002, we submitted joint stipulations with Earthjustice to the U.S. District Court requesting extension of the court orders for the final rules to designate critical habitat for plants from Lanai (December 30, 2002), Kauai and Niihau (January 31, 2003), Molokai (February 28, 2003), Maui and Kahoolawe (April 18, 2003), Oahu (April 30, 2003), the Northwestern Hawaiian Islands (April 30, 2003), and the island of Hawaii (May 30, 2003), citing the need to conduct additional reviews of the proposals, address comments received during the public comment periods, and to conduct a series of public workshops on the proposals. The joint stipulations were approved and ordered by the court on July 12, 2002. On August 26, 2002, we published a notice (67 FR 54764) announcing a public hearing and reopening the comment period until September 30, 2002. On August 27, 2002, September 12, 2002, and September 26, 2002, we held public meetings at the Maui Arts and Cultural Center, Kahului, Maui. On October 2, 2002, we published a notice (67 FR 61845) announcing the availability of the draft economic analysis on the proposed critical habitat and reopening the public comment period until November 2, 2002.

We determined that designation of critical habitat for the multi-island species, *Acaena exigua*, was not prudent on February 27, 2003 (68 FR 9116) and explained why we believe critical habitat is prudent for the following 45 multi-island species in other published final critical habitat rules: *Adenophorus periens; Alectryon macrococcus; Bidens micrantha* ssp. *kalealaha; Bonamia menziesii; Brighamia rockii; Cenchrus agrimonioides; Centaurium sebaeoides; Clermontia oblongifolia* ssp. *mauiensis; Clermontia samuelii; Ctenitis squamigera; Cyanea copelandii* ssp. *haleakalaensis; Cyanea glabra; Cyanea grimesiana* ssp. *grimesiana; Cyanea hamatiflora* ssp. *hamatiflora; Cyanea lobata; Cyrtandra munroi; Delissea undulata; Diellia erecta; Diplazium molokaiense; Flueggea neowawraea; Hedyotis mannii; Hesperomannia arborescens; Hibiscus brackenridgei; Ischaemum byrone; Isodendrion pyrifolium; Kanaloa kahoolawensis; Mariscus pennatiformis; Melicope knudsenii; Melicope mucronulata; Neraudia sericea; Peucedanum sandwicense; Phlegmariurus mannii; Phyllostegia mannii; Phyllostegia mollis; Phyllostegia parvilfora; Plantago princeps; Platanthera holochila; Pteris lidgatei; Schiedea nuttallii; Sesbania tomentosa; Solanum incompletum; Spermolepis hawaiiensis; Tetramolopium remyi; Vigna o-wahuensis;* and *Zanthoxylum hawaiiense* (64 FR 48307, 68 FR 1220, 68 FR 9116, 68 FR 12982). A summary of the critical habitat actions can be found in Table 3(b).

TABLE 3((b).—SUMMARY OF PREVIOUS CRITICAL HABITAT ACTIONS FOR 70 PLANT SPECIES FROM MAUI AND KAHOOLAWE

Species	Proposed critical habitat		Final critical habitat prior to publication of this rule	
	Date(s)	Federal Register	Date(s)	Federal Register
Acaena exigua	12/18/2000	65 FR 79192	NA	NA
Adenophorus periens	11/07/2000	65 FR 66808	02/27/03	68 FR 9116
	12/27/2000	65 FR 82086	03/18/03	
	12/29/2000	65 FR 83158		68 FR 12982
	03/04/2002	67 FR 9806		
	04/05/2002	67 FR 16492		
	05/28/2002	67 FR 36968		
	05/28/2002	67 FR 37108		
Alectryon macrococcus	11/07/2000	65 FR 66808	02/27/03	68 FR 9116
	12/18/2000	65 FR 79192	03/18/03	68 FR 12982
	12/29/2000	65 FR 83158		
	01/28/2002	67 FR 3940		
	03/04/2002	67 FR 9806		
	04/03/2002	67 FR 15856		
	04/05/2002	67 FR 16492		
	05/28/2002	67 FR 37108		
Argyroxiphium sandwicense ssp. *macrocephalum*	12/18/2000	65 FR 79192	NA	NA
	04/03/2002	67 FR 15856		
Asplenium fragile var. *insulare*	04/03/2002	67 FR 15856	NA	NA
	05/28/2002	67 FR 36968		
Bidens micrantha ssp. *kalealaha*	12/18/2000	65 FR 79192	01/09/03	68 FR 1220
	04/03/2002	67 FR 15856		
Bonamia menziesii	11/07/2000	65 FR 66808	02/27/03	68 FR 9116
	12/18/2000	65 FR 79192	03/18/03	68 FR 12982
	12/27/2000	65 FR 82086		
	01/28/2002	67 FR 3940		
	03/04/2002	67 FR 9806		
	04/03/2002	67 FR 15856		
	04/05/2002	67 FR 16492		
	05/28/2002	67 FR 36968		
	05/28/2002	67 FR 37108		
Brighamia rockii	12/29/2000	65 FR 83158	03/18/03	68 FR 12982
	03/04/2002	67 FR 9806		
	04/03/2002	67 FR 15856		
	04/05/2002	67 FR 16492		
Cenchrus agrimonioides	03/04/2002	67 FR 9806	NA	NA
	04/03/2002	67 FR 15856		
	05/28/2002	67 FR 36968		
	05/28/2002	67 FR 37108		
Centaurium sebaeoides	11/07/2000	65 FR 66808	02/27/03	68 FR 9116
	12/18/2000	65 FR 79192	03/18/03	68 FR 12982
	12/27/2000	65 FR 82086		
	12/29/2000	65 FR 83158		
	01/28/2002	67 FR 3940		
	03/04/2002	67 FR 9806		
	04/03/2002	67 FR 15856		
	04/05/2002	67 FR 16492		
	05/28/2002	67 FR 37108		
Clermontia lindseyana	12/18/2000	65 FR 79192	NA	NA
	04/03/2002	67 FR 15856		
	05/28/2002	67 FR 36968		

TABLE 3((b).—SUMMARY OF PREVIOUS CRITICAL HABITAT ACTIONS FOR 70 PLANT SPECIES FROM MAUI AND KAHOOLAWE—Continued

Species	Proposed critical habitat		Final critical habitat prior to publication of this rule	
	Date(s)	Federal Register	Date(s)	Federal Register
Clermontia oblongifolia ssp. *mauiensis*	12/18/2000	65 FR 79192	NA	NA
	12/27/2000	65 FR 82086		
	03/04/2002	67 FR 9806		
	04/03/2002	67 FR 15856		
Clermontia peleana	05/28/2002	67 FR 36968	NA	NA
Clermontia samuelii	12/18/2000	65 FR 79192	NA	NA
	04/03/2002	67 FR 15856		
Colubrina oppositifolia	12/18/2000	65 FR 79192	NA	NA
	04/03/2002	67 FR 15856		
	05/28/2002	67 FR 36968		
	05/28/2002	67 FR 37108		
Ctenitis squamigera	12/18/2000	65 FR 79192	02/27/03	68 FR 9116
	12/27/2000	65 FR 82086	03/18/03	68 FR 12982
	12/29/2000	65 FR 83158		
	01/28/2002	67 FR 3940		
	03/04/2002	67 FR 9806		
	04/05/2002	67 FR 16492		
	05/28/2002	67 FR 37108		
Cyanea copelandii ssp. *haleakalaensis*	12/18/2000	65 FR 79192	NA	NA
	04/03/2002	67 FR 15856		
Cyanea glabra	12/18/2000	65 FR 79192	NA	NA
	04/03/2002	67 FR 15856		
Cyanea grimesiana ssp. *grimesiana*	12/18/2000	65 FR 79192	03/18/03	68 FR 12982
	12/27/2000	65 FR 82086		
	12/29/2000	65 FR 83158		
	03/04/2002	67 FR 9806		
	04/03/2002	67 FR 15856		
	04/5/2002	67 FR 16492		
	05/28/2002	67 FR 37108		
Cyanea hamatiflora ssp. *hamatiflora*	12/18/2002	65 FR 79192	NA	NA
	04/03/2002	67 FR 15856		
Cyanea lobata	12/18/2000	65 FR 79192	NA	NA
	03/04/2002	67 FR 9806		
	04/03/2002	67 FR 15856		
Cyanea mceldowneyi	12/18/2000	65 FR 79192	NA	NA
	04/03/2002	67 FR 15856		
Cyrtandra munroi	12/18/2000	65 FR 79192	NA	NA
	12/27/2000	65 FR 82086		
	03/04/2002	67 FR 9806		
	04/03/2002	67 FR 15856		
Delissea undulata	11/07/2000	65 FR 66808	02/27/03	68 FR 9116
	01/28/2002	67 FR 3940		
	05/28/2002	67 FR 36968		
Diellia erecta	12/18/2000	65 FR 79192	02/27/03	68 FR 9116
	12/29/2000	65 FR 83158	03/18/03	68 FR 12982
	01/28/2002	67 FR 3940		
	03/04/2002	67 FR 9806		
	04/03/2002	67 FR 15856		
	04/05/2002	67 FR 16492		
	05/28/2002	67 FR 36968		
	05/28/2002	67 FR 37108		
Diplazium molokaiense	12/18/2000	65 FR 79192	02/27/03	68 FR 9116
	01/28/2002	67 FR 3940	03/18/03	68 FR 12982
	03/04/2002	67 FR 9806		
	04/03/2002	67 FR 15856		
	04/05/2002	67 FR 16492		
	05/28/2002	67 FR 37108		
Dubautia plantaginea ssp. *humilis*	12/18/2000	65 FR 79192	NA	NA
	04/04/2002	67 FR 15856		
Flueggea neowawraea	11/07/2000	65 FR 66808	02/27/03	68 FR 9116
	12/18/2000	65 FR 79192	03/18/03	68 FR 12982
	01/28/2002	67 FR 3940		
	04/03/2002	67 FR 15856		
	04/05/2002	67 FR 16492		
	05/28/2002	67 FR 36968		
	05/28/2002	67 FR 37108		

TABLE 3((b).—SUMMARY OF PREVIOUS CRITICAL HABITAT ACTIONS FOR 70 PLANT SPECIES FROM MAUI AND KAHOOLAWE—Continued

Species	Proposed critical habitat		Final critical habitat prior to publication of this rule	
	Date(s)	Federal Register	Date(s)	Federal Register
Geranium arboreum	12/18/2000	65 FR 79192	NA	NA
	04/04/2002	67 FR 15856		
Geranium multiflorum	12/18/2000	65 FR 79192	NA	NA
	04/04/2002	67 FR 15856		
Gouania vitifolia	04/03/2002	67 FR 15856	NA	NA
	05/28/2002	67 FR 36968		
	05/28/2002	67 FR 37108		
Hedyotis coriacea	12/18/2000	65 FR 79192	NA	NA
	04/03/2002	67 FR 15856		
	05/28/2002	67 FR 36968		
	05/28/2002	67 FR 37108		
Hedyotis mannii	12/18/2000	65 FR 79192	NA	NA
	12/27/2000	65 FR 82086		
	12/29/2000	65 FR 83158		
	03/04/2002	67 FR 9806		
	04/03/2002	67 FR 15856		
	04/05/2002	67 FR 16492		
Hesperomannia arborescens	12/18/2000	65 FR 79192	03/18/03	68 FR 12982
	12/29/2000	65 FR 83158		
	03/04/2002	67 FR 9806		
	04/03/2002	67 FR 15856		
	04/05/2002	67 FR 16492		
	05/28/2002	67 FR 37108		
Hesperomannia arbuscula	12/18/2000	65 FR 79192	NA	NA
	04/03/2002	67 FR 15856		
	05/28/2002	67 FR 37108		
Hibiscus brackenridgei	12/18/2000	65 FR 79192	02/27/03	68 FR 9116
	12/27/2000	65 FR 82086	03/18/03	68 FR 12982
	03/04/2002	67 FR 9806		
	04/03/2002	67 FR 15856		
	04/05/2002	67 FR 16492		
	05/28/2002	67 FR 36968		
	05/28/2002	67 FR 37108		
Ischaemum byrone	12/18/2000	65 FR 79192	02/27/03	68 FR 9116
	12/29/2000	65 FR 83157	03/18/03	68 FR 12982
	01/28/2002	67 FR 3940		
	04/03/2002	67 FR 15856		
	04/05/2002	67 FR 16492		
	05/28/2002	67 FR 36968		
Isodendrion pyrifolium	01/28/2002	67 FR 3940	03/18/03	68 FR 12982
	03/04/2002	67 FR 9806		
	04/03/2002	67 FR 15856		
	04/05/2002	67 FR 16492		
	05/28/2002	67 FR 36968		
	05/28/2002	67 FR 37108		
Kanaloa kahoolawensis	12/18/2000	65 FR 79192	NA	NA
	04/03/2002	67 FR 15856		
Lipochaeta kamolensis	12/18/2000	65 FR 79192	NA	NA
	04/03/2002	67 FR 15856		
Lysimachia lydgatei	12/18/2000	65 FR 79192	NA	NA
	04/03/2002	67 FR 15856		
Mariscus pennatiformis	12/18/2000	65 FR 79192	02/27/03	68 FR 9116
	01/28/2002	67 FR 3940		
	04/03/2002	67 FR 15856		
	05/14/2002	67 FR 34522		
	05/28/2002	67 FR 37108		
Melicope adscendens	12/18/2000	65 FR 79192	NA	NA
	04/03/2002	67 FR 15856		
Melicope balloui	12/18/2000	65 FR 79192	NA	NA
	04/03/2002	67 FR 15856		
Melicope knudsenii	11/07/2000	65 FR 66808	02/27/03	68 FR 9116
	12/18/2000	65 FR 79192		
	01/28/2002	67 FR 3940		
	04/03/2002	67 FR 15856		

TABLE 3((b).—SUMMARY OF PREVIOUS CRITICAL HABITAT ACTIONS FOR 70 PLANT SPECIES FROM MAUI AND KAHOOLAWE—Continued

Species	Proposed critical habitat		Final critical habitat prior to publication of this rule	
	Date(s)	Federal Register	Date(s)	Federal Register
Melicope mucronulata	12/18/2000	65 FR 79192	03/18/03	68 FR 12982
	12/29/2000	65 FR 83158		
	04/03/2002	67 FR 15856		
	04/05/2002	67 FR 16492		
Melicope ovalis	12/18/2000	65 FR 79192	NA	NA
	04/03/2002	67 FR 15856		
Neraudia sericea	12/18/2000	65 FR 79192	03/18/03	68 FR 12982
	12/29/2000	65 FR 83158		
	03/04/2002	67 FR 9806		
	04/03/2002	67 FR 15856		
	04/05/2002	67 FR 16492		
Nototrichium humile	04/03/2002	66 FR 79192	NA	NA
	05/28/2002	67 FR 37108		
Peucedanum sandwicense	11/07/2000	65 FR 66808	02/27/03	68 FR 9116
	12/18/2000	65 FR 79192	03/18/03	68 FR 12982
	12/29/2000	65 FR 83158		
	01/28/2002	67 FR 3940		
	04/03/2002	67 FR 15856		
	04/05/2002	67 FR 16492		
	05/28/2002	67 FR 37108		
Phlegmariurus mannii	12/18/2000	65 FR 79192	NA	NA
	04/03/2002	67 FR 15856		
Phyllostegia mannii	04/03/2002	67 FR 15856	03/18/03	68 FR 12982
	04/05/2002	67 FR 16492		
Phyllostegia mollis	12/18/2000	65 FR 79192		
	04/03/2002	67 FR 15856		
	04/05/2002	67 FR 16492		
	05/28/2002	67 FR 37108		
Phyllostegia parviflora	05/28/2002	67 FR 37108	NA	NA
Plantago princeps	11/07/2000	65 FR 66808	02/27/03	68 FR 9116
	12/18/2000	65 FR 79192	03/18/03	68 FR 12982
	12/29/2000	65 FR 83158		
	01/28/2002	67 FR 3940		
	04/03/2002	67 FR 15856		
	04/05/2002	67 FR 16492		
	05/28/2002	67 FR 37108		
Platanthera holochila	11/07/2000	65 FR 66808	02/27/03	68 FR 9116
	12/18/2000	65 FR 79192		
	12/29/2000	65 FR 83158		
	01/28/2002	67 FR 3940		
	04/03/2002	67 FR 15856		
	04/05/2002	67 FR 16492		
	05/28/2002	67 FR 37108		
Pteris lidgatei	12/18/2000	65 FR 79192	03/18/03	68 FR 12982
	04/03/2002	67 FR 15856		
	04/05/2002	67 FR 16492		
	05/28/2002	67 FR 37108		
Remya mauiensis	12/18/2000	65 FR 79192	NA	NA
	04/03/2002	67 FR 15856		
Sanicula purpurea	12/18/2000	65 FR 79192	NA	NA
	04/03/2002	67 FR 15856		
	05/28/2002	67 FR 37108		
Schiedea haleakalensis	12/18/2000	65 FR 79192	NA	NA
	04/03/2002	67 FR 15856		
Schiedea hookeri	05/28/2002	67 FR 37108	NA	NA
Schiedea nuttallii	12/29/2000	65 FR 83158	03/18/03	68 FR 12982
	04/05/2002	67 FR 16492		
Sesbania tomentosa	11/07/2000	65 FR 66808	02/27/03	68 FR 9116
	12/18/2000	65 FR 79192	03/18/03	68 FR 12982
	12/29/2000	65 FR 83158		
	01/28/2002	67 FR 3940		
	03/04/2002	67 FR 9806		
	04/03/2002	67 FR 15856		
	04/05/2002	67 FR 16492		
	05/14/2002	67 FR 34522		
	05/28/2002	67 FR 36968		
	05/28/2002	67 FR 37108		

TABLE 3((b).—SUMMARY OF PREVIOUS CRITICAL HABITAT ACTIONS FOR 70 PLANT SPECIES FROM MAUI AND KAHOOLAWE—Continued

Species	Proposed critical habitat		Final critical habitat prior to publication of this rule	
	Date(s)	Federal Register	Date(s)	Federal Register
Solanum incompletum	01/28/2002	67 FR 3940	03/18/03	68 FR 12982
	04/05/2002	67 FR 16492		
Spermolepis hawaiiensis	11/07/2000	65 FR 66808	02/27/03	68 FR 9116
	12/18/2000	65 FR 79192	03/18/03	68 FR 12982
	12/27/2000	65 FR 82086		
	12/29/2000	65 FR 83158		
	01/28/2002	67 FR 3940		
	03/04/2002	67 FR 9806		
	04/03/2002	67 FR 15856		
	04/05/2002	67 FR 16492		
	05/28/2002	67 FR 36968		
	05/28/2002	67 FR 37108		
Tetramolopium arenarium	05/28/2002	67 FR 36968	NA	NA
Tetramolopium capillare	12/18/2000	65 FR 79192	NA	NA
	04/03/2002	67 FR 15856		
Tetramolopium remyi	12/27/2000	65 FR 79192	01/09/03	68 FR 1220
	04/04/2002	67 FR 15856		
	03/04/2002	67 FR 9806		
Vigna o-wahuensis	12/18/2000	65 FR 79192	02/27/03	68 FR 9116
	12/27/2000	65 FR 82086		
	12/29/2000	65 FR 83158		
	01/28/2002	67 FR 3940		
	03/04/2002	67 FR 9806		
	04/03/2002	67 FR 15856		
	04/05/2002	67 FR 16492		
	05/28/2002	67 FR 36968		
	05/28/2002	67 FR 37108		
Zanthoxylum hawaiiense	11/07/2000	65 FR 66808	02/27/03	68 FR 9116
	12/18/2000	65 FR 79192	03/18/03	68 FR 12982
	12/29/2000	65 FR 83158		
	01/28/2000	67 FR 3940		
	04/03/2002	67 FR 15856		
	04/05/2002	67 FR 16492		
	05/28/2002	67 FR 36968		

Summary of Comments and Recommendations

We received a total of seven oral and 2,779 written comments during the three comment periods on the revised proposal published on April 3, 2002, and the draft economic analysis, including the public hearing held on September 12, 2002, and the public meetings held on August 27, 2002 and September 26, 2002. These included responses from eight State offices, four local agencies, and 39 private organizations or individuals. Of the written comments, approximately 2,728 letters were submitted by facsimile or by e-mail, as part of mailing campaign, all in support of the proposed critical habitat designations. Of the other 51 comments, 21 supported the designation, 28 were opposed to it, and two provided information or declined to oppose or support the designations. We reviewed all comments received for substantive issues and new information regarding critical habitat for the Maui and Kahoolawe plants. Similar comments were grouped into ten general issues relating specifically to the proposed critical habitat designations and the draft economic analysis on the proposed designations. These are addressed in the following summary.

Peer Review

In accordance with our policy published on July 1, 1994 (59 FR 34270), we solicited independent opinions from 19 knowledgeable individuals with expertise in one or several fields, including familiarity with the species, familiarity with the geographic region that the species occurs in, and familiarity with the principles of conservation biology. We received comments from seven reviewers. One reviewer expressed support for the proposed critical habitat designations. The other six reviewers generally supported our methodology and conclusion, but none expressed support or opposition for the proposed critical habitat designations. Comments received from the peer reviewers are summarized in the following section and were considered in developing the final rule.

Issue 1: Species-Specific Biological Comments

(1) *Comment:* A peer reviewer noted that unit Maui I3 excludes two small DOFAW exclosures and an unprotected area containing good populations of *Geranium arboreum*. Critical habitat should be expanded to include these populations.

Our Response: While the habitat noted above may be important for the recovery of the species, not all suitable habitat (including occupied) is essential to the conservation of the species. At the time we proposed critical habitat on Maui, we were not aware of these exclosures, and we had identified and proposed other sites that (1) contain the primary constituent elements that are essential to the conservation of the species, (2) are within the species' historical range, and (3) accommodate

our recovery goals of 8 to 10 populations for *Geranium arboreum*.

(2) *Comment:* One commentor stated that the "best scientific data available at this time" does not support the areas being proposed for *Vigna o-wahuensis* on Kahoolawe. The proposed areas for this plant are based on a single observation at each of two different sites. Repeated surveys in these areas by plant specialists over the last 5 years have yet to confirm the presence of *Vigna* at these sites. However, the Navy commented that the area excluded from critical habitat perhaps merits reconsideration because *Vigna o-wahuensis* has appeared in the Lua Makika area on Kahoolawe that was previously the subject of a planned burn. That fact supports the conclusion that fire apparently does not adversely affect the constituent elements for *Vigna*.

Our Response: We have reevaluated the proposed designation of critical habitat for *Vigna o-wahuensis* on Kahoolawe in response to additional information received during the comment periods. Critical habitat was not designated for *Vigna o-wahuensis* on Kahoolawe because there is some question about the location of the earlier observations and because we were able to locate other sites that (1) contain the primary constituent elements that are essential to the conservation of the species, (2) are within the species' historical range, and (3) accommodate our recovery goals of 8 to 10 populations.

(3) *Comment:* One peer reviewer noted that reducing the amount of designated critical habitat for *Hibiscus brackenridgei* on West Maui and Lanai, because it occurs on more than one island, might adversely affect the retention of the genetic diversity needed for recovery. The diversity of East versus West Maui populations will not be retained if unit Maui D1 is reduced or removed. The Lanai prostrate form of the species is distinct from all other populations and should be conserved as a distinct recovery unit.

Our Response: We have retained our proposed designation of critical habitat for *Hibiscus brackenridgei* on Maui in this final rule. Because the Lanai populations are not considered by taxonomists to be a distinct subspecies, and therefore were not listed as such, we cannot consider them as separate from the Maui taxon. However, if the taxonomy is revised and the scientific community approves such revision, we will consider the new information with regard to critical habitat.

(4) *Comment:* One commenter was concerned that *Bidens micrantha*, *Lipochaeta kamolensis*, and *Sesbania tomentosa* might hybridize with other members of their families. It is possible that such unnatural hybridization could lead to further endangerment of the species while inducing the endangerment of other species.

Our Response: Hybridization presents potential problems with species recovery. To the maximum extent possible, we separated critical habitat of species that potentially had hybridization potential. In addition, issues of hybridization and other technical questions will be addressed in project specific recovery planning actions.

(5) *Comment:* In the case of *Phyllostegia mollis*, it appears that the Service is unsure for which species it is designating critical habitat. In the 1998 recovery plan for this species, the Service states, "the Maui population may be separated into its own species." Critical habitat designation cannot be made for a plant or animal for which the science is so scant that more harm may come to the species by the designation.

Our Response: At the time the recovery plan was completed for *Phyllostegia mollis*, the Service acknowledged that the Maui population may warrant recognition as a separate species, based on a personal communication from Joel Lau, a botanist with the Hawaii Natural Heritage Program. In 1999, a taxonomic revision of the species was published by Dr. Warren L. Wagner in which the Oahu populations were recognized as *Phyllostegia mollis* and the Maui populations were assigned to *P. pilosa*. Due to the court-ordered deadlines, we are required to publish this final rule to designate critical habitat on Maui and Kahoolawe before we can prepare and publish a notice of taxonomic changes for this species. We plan to publish a taxonomic change notice for *Phyllostegia mollis* after we have published the final critical habitat designations on Maui and Kahoolawe. We do not believe that the designation of critical habitat for *Phyllostegia mollis* will entail harm to the species. Federal agencies are required to consult with the Service regarding any action they may fund, authorize, or permit that may affect a listed species or designated critical habitat. The consultation process results in conservation benefits to the species, not in harmful actions to the species.

(6) *Comment:* One commenter expressed concern about the designation of critical habitat for *Alectryon macrococcus* var. *auwahiensis* and *Melicope adscendens* on Ulupalakua Ranch. Forty *A. m.* var. *auwahiensis* trees were last sighted in 1910. No other populations of this tree were documented. However, the Service recommends that four new populations be established, even as far away as Kaupo. In the case of *M. adscendens*, the Service stated that within historic times, this species has apparently always been extremely rare. Restoring any plant or animal beyond their historical numbers and or geographical distribution is not the intent of the Act.

Our Response: Alectryon macrococcus var. *auwahiensis* trees were reported from the area as recently as 1990 and 1999. However, Ulupalakua Ranch has been excluded from critical habitat designation under section 4(b)(2), which states that critical habitat may be excluded if the benefits of not designating outweigh the benefits of designating critical habitat. We were also able to locate other sites for *A. m.* var. *auwahiensis* that (1) contain the primary constituent elements that are essential to the conservation of the species, (2) are within the species' historical range, and (3) accommodate our recovery goals of 8 to 10 populations.

(7) *Comment:* One peer reviewer and many commenters did not support the Service's conclusion that *Acaena exigua* would not benefit from critical habitat designation. These commenters pointed out that the fact that *Acaena* has not been sighted since 1999 (only three years ago) does not justify the Service's refusal to protect its critical habitat, as it is common for biologists in Hawaii to rediscover plants that have not been seen for decades. Some also felt that the decision was based on a faulty interpretation of the Act's direction to designate critical habitat "to the maximum extent prudent." In enacting this language, according to these commenters, Congress clearly intended that the Service would designate critical habitat in all but the rare instances in which designation would actually increase threats to listed species from overcollecting or vandalism, or otherwise affirmatively harm the species. The Service cannot refuse to designate critical habitat merely because it cannot come up with examples of how critical habitat would benefit this species. Absent a finding that designation would actually harm *Acaena exigua* in some concrete way, the Service must designate its critical habitat. Furthermore, if the Service believes this species is extinct, it must follow the procedures set forth in the ESA for delisting species. As long as this species remains on the endangered species list, the Service cannot lawfully deny it the habitat protection that

Congress intended that all listed species enjoy.

Our Response: We continue to believe that it would not be prudent to designate critical habitat for *Acaena exigua*. It has not been seen in the wild since March 2000 (Hank Oppenheimer, Maui Pineapple Company Limited, pers. comm., 2001; Service 1997; 57 FR 20772) and is not known to be in storage or under propagation. Given these circumstances, we have determined that designation of critical habitat for *Acaena exigua* is not prudent because such designation would not be beneficial to the species. If this species is rediscovered, we may reconsider designating critical habitat for this species as new information becomes available. *See* 16 U.S.C. 1532(5)(B); 50 CFR 424.13(f).

Issue 2: Biological Justification and Methodology

(8) *Comment:* One peer reviewer was concerned about the number of populations needed for recovery. The expert opinion of the Hawaii Pacific Plant Recovery Coordinating Committee (HPPRCC) is that 10 to 20 viable populations are needed for recovery. How did the Service determine that 8 to 10 populations were all that should be required? While 8 to 10 populations may be sufficient for the recovery of long-lived species, it may be insufficient for ephemeral annuals or certain ferns or species with unique island variants. The target number of populations should be revisited on a species-by-species basis. Another peer reviewer commented that the proposed rule was improved by the use of targets of 8 to 10 populations ranging in size from 100 to 500 mature individuals, unless information that is more specific was available (*e.g., Argyroxiphium sandwicense* ssp. *macrocephalum).* However, these targets are generally lower than those used by the HPPRCC and should be considered the "low end" of what is needed for recovery.

Our Response: In defining the procedures used to delineate essential habitat areas the HPPRCC agreed that "the minimum target for each species was to have habitat for at least 10 potential populations for each species that was found on a single island and have habitat for at least 5 potential populations on each island for species that occurred on two or more islands. The maximum number of target populations was set at 20 potential populations." However, in defining generalized recovery objectives for Hawaiian plants, the committee recommended 5–10 populations for delisting. The Service adopted a relatively conservative 8–10 viable populations for the recovery objectives for each species in the recovery plans. Establishing and conserving 8 to10 viable populations on one or more islands within the historic range of the species will provide each species with a reasonable expectation of persistence and eventual recovery, even with the high potential that one or more of these populations will be eliminated by normal or random adverse events, such as the hurricanes that occurred in 1982 and 1992 on Kauai, fires, and nonnative plant invasions (HPPRCC 1994; Luijten *et. al.* 2000; Mangel and Tier 1994; Pimm *et. al.* 1998; Stacey and Taper 1992). We conclude that designation of adequate suitable habitat for 8 to 10 populations as critical habitat is essential to give the species a reasonable likelihood of long-term survival and recovery, based on currently available information.

(9) *Comment:* Areas that are excluded from proposed critical habitat should be identified and mapped in the proposed and final rule to allow reviewers to fully evaluate how well the proposal provides for listed species.

Our Response: Although we have not mapped the areas excluded from critical habitat, textual descriptions of the areas excluded can be found in the section titled "Summary of Changes from the Revised Proposed Rule and *Analysis of Impacts Under Section 4(b)(2).*"

(10) *Comment:* One peer reviewer stated that the Service did not identify explicit modeling efforts that provide clear guidance for Hawaiian species. If available, these models should be evaluated and included in the Service's methodology to determine future critical habitat designations. Models of the population dynamics of understory plants in tropical forests, focusing on environmental variation caused by natural disturbance and plant-animal interactions, do exist.

Our Response: The lack of detailed scientific data on the life history of these plant species makes it impossible for us to develop a robust quantitative model (*e.g.*, population viability analysis) to identify the optimal number, size, and location of critical habitat units to achieve recovery. At this time, and consistent with the listing of these species and their recovery plans, the best available information leads us to conclude that the current size and distribution of the extant populations are not sufficient to expect a reasonable probability of long-term survival and recovery of these plant species. Therefore, our approach employed two widely recognized and scientifically accepted goals for promoting viable populations of listed species: (1) Creation or maintenance of multiple populations so that a single or series of catastrophic events cannot destroy the entire listed species, and (2) increasing the size of each population in the respective critical habitat units to a level where the threats of genetic, demographic, and normal environmental uncertainties are diminished. In addition, we used a GIS model that evaluated known current and historic range, elevation, rainfall, and vegetation units to determine potential habitat for each species. Using this information plus information from existing historically known plant locations and advice from species experts, we modeled the potentially suitable habitat for each species. The critical habitat designated is a subset of suitable potential habitat that was determined to be essential to the conservation of each species (see the "Methods" section for more detail).

(11) *Comment:* One peer reviewer commented that fencing and control of ungulates is critical to the success of a plant restoration program. One commenter was concerned that there is a lack of solid scientific evidence on the relationship between introduced ungulates (in particular, cattle), nonnative plants, and native ecosystems. In the recovery plan for *Lipochaeta kamolensis*, the Service appears to concur that more research on the relationship between managed ungulates and native plants needs to be examined. In the Recovery Plan for the Maui Plant Cluster, the Service states, "Portions of the populations should be left unfenced until the effects of protection from grazing and browsing are fully known." Because the science on how to best protect these plants is not certain, the designation of critical habitat may have a negative, rather than positive impact.

Our Response: We believe that it is important to control threats to the survival and recovery of federally listed species and have received numerous sources of information demonstrating that nonnative ungulates are a threat to the listed plant species as can be seen in the discussion of each species' background in the "Discussion of Plant Taxa" and "*Analysis of Impacts Under Section 4(b)(2): Other Impacts*" sections of this final rule. However, critical habitat is only one of many tools established in the Act that can play an important role in the recovery of the species. Critical habitat designation does not create a wilderness area, preserve, or wildlife refuge. It does not require activities associated with conservation management such as

ungulate control and fencing. Critical habitat increases protection of federally listed species by requiring consultation under section 7 of the Act to ensure that any action authorized, funded, or carried out by a Federal agency is not likely to result in the destruction or adverse modification of the critical habitat. The management of nonnative species is an important conservation issue that is addressed in the recovery plans for these species.

(12) *Comment:* One peer reviewer stated that degraded areas should only be excluded if they lack the ability to become habitat in the future. Another peer reviewer felt that, in some situations, populations in degraded habitat might be critical to the viability of the overall populations. Other peer reviewers commented that degraded habitat should be considered secondary only if adequate non-degraded habitat is available and designated. Many peer reviewers were optimistic about the potential for degraded areas to be restored. One peer reviewer suggested that sites significantly altered by human activities, such as roads and buildings, should not be included in conservation plans, but that areas that have been altered by agriculture and other activities that do not significantly disturb the soil should be included as they provide potential sites for restoration of plant species. Other commenters objected to critical habitat designation in degraded areas.

Our Response: We agree that recovery of a species is more likely in designated critical habitat in the least degraded areas containing primary constituent elements. During our evaluation of areas essential for the conservation of the species we tried to select the least degraded areas where possible because these areas are most essential. However, for some species, especially those only known from low-elevation areas, only degraded habitat remains. Therefore, some units still contain degraded habitat, but only if the area could be restored. Management for the restoration of these habitats is addressed in the species' recovery plans.

(13) *Comment:* The proposed designation failed to contain all historically known listed plants, and therefore failed to propose critical habitat for all listed plants statewide. The following endangered plant species lack proposed critical habitat on Maui and Kahoolawe: *Abutilon menziesii; Argyroxiphium sandwicense* ssp. *sandwicense; Abutilon menziesii; Caesalpinia kaviensis; Gardenia brighamii; Haplostachys haplostachya; Panicum fauriei* var. *carteri; Santalum freycinetianum* var. *lanaiense;* and *Scaevola coriacea.*

Our Response: These species were not part of the lawsuit (see "Previous Federal Action" section) and subsequent stipulations, and therefore were not included in this rulemaking. Critical habitat for these species may be considered in the future if warranted and funding and resources are available.

(14) *Comment:* Peer reviewers and other commenters wrote that the amount, location, and type of land proposed for critical habitat appears to be mostly adequate for the long-term conservation of these species. In order to build self-sustaining populations, adequate land for expansion is required, and most peer reviewers supported inclusion of larger amounts of land. One peer reviewer believes that removing significant portions of any of the proposed critical habitat units is likely to prevent the recovery of, or lead to the extinction of, listed species. One peer reviewer felt that the boundaries appear to be set by landowner parcels and not based upon the habitat features required for protection, especially units Maui H and L. Other commenters questioned the methodology that led to the increase in proposed critical habitat from 33,614 acres (13,574) in the original proposal to 126,531 acres (51,208 ha) in the revised proposal. These commenters believe the proposed critical habitat units are larger than necessary. The Service should work to ensure that (1) areas designated as critical habitat are "essential for the conservation of the species", and that (2) "critical habitat does not include the entire geographical area which can be occupied by the threatened or endangered species" 16 U.S.C. 1532(5)(C).

Our Response: We made revisions to the unit boundaries based on information supplied by commenters, as well as information gained from field visits to some of the sites, that indicated that the primary constituent elements were not present in certain portions of proposed units, that certain changes in land use had occurred on lands within the proposed critical habitat that would preclude those areas from supporting the primary constituent elements, or that the areas were not essential to the conservation of the species in question. In many cases, critical habitat boundaries were reduced for multi-island species because we have identified adequate and more appropriate habitat on other islands within the historical range in at least eight other places that have more primary constituent elements or are less degraded; already undergoing restoration; within a partnership, NAR, or TNCH preserve; or on a refuge.

No critical habitat units in the proposed rule were excluded or modified due to economic impacts. However, section 4(b)(2) of the Act requires us to consider other relevant impacts, in addition to economic impacts, of designating critical habitat. An area may be excluded from designation as critical habitat if the Secretary determines the benefits of excluding the area outweigh the benefits of designating the area as critical habitat (and provided the exclusion would not result in the extinction of the species). We have removed the two TNCH Maui Preserves, the State's Hanawi NAR, Maui Land and Pineapple Company, Inc.'s (ML&P) Puu Kukui Watershed Management Area (WMA), and Ulupalakua and Haleakala Ranches from final critical habitat designation based upon either their conservation history or the relevant issue that designation of critical habitat would have a negative effect on the landowner's voluntary ongoing conservation activities as well as future activities under consideration by the landowner. In both cases, we believe it is in the best interest of the species to exclude habitat from the designation based on their conservation actions. See *"Analysis of Impacts Under Section 4(b)(2): Other Impacts"*.

The land area in the second proposal of critical habitat was increased from the first proposal caused by the Service's decision to include unoccupied habitat. To recover the species, it is essential in some instances to conserve suitable habitat that is not currently occupied to allow for the establishment of additional populations through natural recruitment or managed reintroductions. Establishment of additional populations will increase the likelihood that the species will survive and recover in the face of normal and stochastic events (*e.g.*, hurricanes, fire, and nonnative species introductions).

(15) *Comment:* The majority of our peer reviewers agreed that the methodology used to define critical habitat is appropriate, scientifically well grounded, and conceptually sound. The proposed rule represents the best scientific information available and the most scientifically appropriate techniques for determining critical habitat on Maui. On the other hand, some commenters felt that the Service's approach to designating critical habitat was not based on scientific principles and knowledge of the needs of the plant species. The proposed rule acknowledges that little is known about the life history, threats, or preferred habitat of particular species and applies a "broad-brush" approach.

Our Response: In accordance with our policy on peer review published on July 1, 1994 (59 FR 34270), we solicited the expert opinions of appropriate and independent specialists regarding the proposed rule. The purpose of this peer review was to ensure that our methodology for designation of critical habitat of Maui plants was based on scientifically sound data, assumptions, and analysis. The majority of peer reviewers support our methodology. All data and information on species status information received in preparation of this rule were weighted equally and considered to come from reliable sources. Where discrepancies existed between different data sources, the most current data were used. While we agree that additional time would be beneficial for the preparation of these final rules, and the collection of more scientific information, we are required under the court-approved stipulation to finalize this designation by April 18, 2003. If provided with new information, we may revise the critical habitat designation in the future.

(16) *Comment:* Peer reviewers commented that a multi-population approach is essential for the survival and recovery of listed Hawaiian plant species. Multiple populations prevent small-scale changes in habitat from destroying all remaining individuals. The multiple population approach offers the opportunity to protect a wider range of genetic variability for each species, rather than concentrating on a single or small number of areas with genetically similar individuals. The Service has designated enough land to provide for the long-term conservation of multiple populations of the listed species.

Our Response: We agree that the multi-population approach to conservation is necessary for the recovery of Hawaii's endangered plants.

(17) *Comment:* One peer reviewer and other commenters stated that the proposed rule is improved by the inclusion of appropriate unoccupied habitat because such habitat will help to recover species that have been reduced to an unsustainable number of populations.

Our Response: We agree. Our recovery plans for these species identify the need to expand existing populations and reestablish wild populations within historic range.

(18) *Comment:* Several commenters opposed designating critical habitat in unoccupied areas. Two commenters wrote that lands in urban, agricultural, and rural districts are designated, used, and intended for a wide variety of land use activities. As such, there is a much greater likelihood that critical habitat designation will have an adverse economic impact on the landowner. These commenters recommend the following rebuttable presumption: non-conservation lands which are unoccupied by any listed species should not be designated as critical habitat

Our Response: Our recovery plans for these species identify the need to expand existing populations and reestablish wild populations within the historical range. Because of the very limited current range of many of these species, designating only occupied areas would not meet the conservation requirements of the species and would be inconsistent with our recovery plans. Occupied areas, as well as the similar habitat around them within the designated units of critical habitat that may be occupied in the future, provide the essential life-cycle needs of the species and provide some or all of the habitat components essential for the conservation (primary constituent elements) of these species. Expansion of some of these species to areas that were likely to have been historically occupied is essential to their recovery.

When designating unoccupied habitat for these species, we first evaluated lands that are suitable for each species. Of this suitable habitat, we determined which areas are essential for the conservation of each species using the guidelines outlined in the recovery plans (*i.e.*, areas that contain one or more of the primary constituent elements and are either in good condition for recovery efforts or could be made suitable through appropriate management actions), and would provide space needed by the species to reach our recovery goals of 8 to 10 populations with a minimum of 100 mature reproducing individuals per population for long-lived perennials, 300 mature reproducing individuals per population for short-lived perennials, and 500 mature reproducing individuals per population for annuals.

Areas that contain one or more of the primary constituent elements, are either in good condition for recovery efforts or could be made suitable through appropriate management actions, and would provide space needed by the species to reach our recovery goals of 8 to 10 populations with a minimum number of mature reproducing individuals as specified above, were determined to be essential for the conservation of each species, regardless of land-use zoning.

(19) *Comment:* Proposed critical habitat includes unoccupied habitat. It appears that the Service has designated unoccupied habitat largely based on guesswork and the faulty conclusion that any areas that appear, based on limited biological knowledge to be potentially suitable habitat for these species (*i.e.*, "merely capable of supporting" these species), are by default essential habitat. This conclusion is not consistent with the provisions in the Act.

Our Response: As explained in the Methods section of this rule, we used the best scientific information available to determine areas that contain the physical and biological features that are essential for the conservation of the species covered by this designation. This information included the known locations, site-specific species information from the HINHP database and our own rare plant database; species information from the Center for Plant Conservation's (CPC's) rare plant monitoring database housed at the University of Hawaii's Lyon Arboretum; island-wide Geographic Information System (GIS) coverages (*e.g.*, vegetation, soils, annual rainfall, elevation contours, land ownership); the final listing rules for these 60 species; the December 18, 2000, proposal; the April 3, 2002, revised proposal; information received during the public comment periods and the public hearings; recent biological surveys and reports; our recovery plans for these species; and any species and management information received for the islands of Maui and Kahoolawe; discussions with botanical experts; and recommendations from the Hawaii and Pacific Plant Recovery Coordinating Committee (HPPRCC) (see also the discussion below) (GDSI 2000; HINHP Database 2000; HPPRCC 1998; Service 1995a, 1995b, 1996a, 1996b, 1997, 1998a, 1998b, 1999, 2001; 65 FR 66808; 67 FR 3940; CPC *in litt.* 1999).

In 1994, the HPPRCC initiated an effort to identify and map habitat it believed to be important for the recovery of 282 endangered and threatened Hawaiian plant species. The HPPRCC identified these areas on most of the islands in the Hawaiian chain, and in 1999, we published them in our *Recovery Plan for the Multi-Island Plants* (Service 1999). The HPPRCC expects that there will be subsequent efforts to further refine the locations of important habitat areas and that new survey information or research may also lead to additional refinement of identifying and mapping of habitat important for the recovery of these species.

The HPPRCC identified essential habitat areas for all listed, proposed,

and candidate plants and evaluated species of concern to determine if these essential habitat areas would provide for their habitat needs. However, the HPPRCC's mapping of habitat was distinct from the regulatory designation of critical habitat as defined by the Act. In addition, data have been collected since the recommendations made by the HPPRCC in 1998. Much of the area that was identified by the HPPRCC as inadequately surveyed has now been surveyed to some degree. New location data for many species have been gathered. Also, the HPPRCC identified areas as essential based on species clusters (areas that included listed species as well as candidate species, and species of concern) while we have only delineated areas that are essential for the conservation of the specific listed species at issue. As a result, the critical habitat designations in this rule include not only some habitat that was identified as essential in the 1998 recommendations but also habitat that was not identified as essential in those recommendations.

Issue 3: Site-Specific Biological Comments

(20) *Comment:* One peer reviewer was concerned about the lower elevation wet forests on windward Haleakala because Hanawi NAR is expected to be fenced only above 1,000 meters in elevation. *Cyanea mceldowneyi, Cyanea copelandii,* and *Clermontia samuelii* may rely on habitat lower than 1,000 meters in elevation.

Our Response: While the habitat lower than 1,000 m (3,281 ft) in elevation may be important for the conservation of these species, we do not believe that this habitat contains the primary constituent elements for *Cyanea mceldowneyi, Cyanea copelandii,* and *Clermontia samuelii.* Therefore, we did not find this area to be essential to the conservation of these three species.

(21) *Comment:* The boundaries of units Maui A and B should be relocated to follow existing conservation boundaries. The boundaries of units C1 and C2 should be refined to reflect that the appropriate habitat of the species of concern is sea cliffs within the spray zone. It should be clarified that units Maui C1 and C2 are unoccupied critical habitat for *Centaurium sebaeoides* and *Sesbania tomentosa.*

Our Response: The boundaries of units Maui A and B have been revised. We are no longer proposing critical habitat units Maui C1 and C2 for *Centaurium sebaeoides* and *Sesbania tomentosa* because we were able to locate other sites that were less degraded, contain a better representation of the primary constituent elements that are essential to the conservation of the species, are within the species' historical ranges, and accommodate our recovery goals of 8 to 10 populations.

(22) *Comment:* KIRC commented that, while we support the mission of the Service and the extraordinary efforts it is taking to protect endangered plants, the KIRC feels it is unnecessary to establish critical habitat for the listed taxa on Kahoolawe because of ongoing management for endangered species on the island by KIRC. In addition, because Kahoolawe is already a permanent natural and cultural reserve and a National Historic Site, it is already bound by a set of Federal and State rules for careful stewardship and does not require an additional layer of protection. Further, two of the proposed plants, *Hibiscus brackenridgei* and *Neraudia sericea,* have not been seen in over 90 years, although biological consultants continue to survey their historical locations.

Our Response: We did not designate critical habitat for *Hibiscus brackenridgei* and *Neraudia sericea* on Kahoolawe because we were able to locate other sites that contain the primary constituent elements that are essential to the conservation of the species, are within their historical ranges, and accommodate our recovery goals of 8 to 10 populations. The footprint of critical habitat on Kahoolawe is greatly reduced, although it remains designated for *Kanaloa kahoolawensis,* as Kahoolawe has the only suitable habitat for this species identified by our species experts. Designations of critical habitat are to be made on the basis of the best scientific and commercial data available, after taking into account the economic and other relevant impacts of specifying any area as critical habitat (16 U.S.C. 1533(b)(2)). An area may be excluded from designation as critical habitat if the Secretary determines the benefits of excluding the area outweigh the benefits of designating the area as critical habitat (and provided the exclusion would not result in the extinction of the species). However, because this is the last known occupied habitat for *Kanaloa kahoolawensis,* we do not believe that the benefits of excluding Kahoolawe outweigh the benefits of including it. *See "Analysis of Impacts Under Section 4(b)(2): Other Impacts".*

(23) *Comment:* One peer reviewer commented that the rationale for the configuration of unit Maui H is not clearly explained. In general, units should maximize interior areas and have easily identifiable boundaries. Why was an area almost encircled by unit Maui H excluded? This area appears to be part of the Kahikinui Forest Reserve with current populations of *Bidens micrantha* ssp. *kalealaha, Clermontia lindseyana, Diellia erecta, Diplazium molokaiense* and *Phyllostegia mollis.* If the Kahikinui area is not managed appropriately, adequate habitat for the above-mentioned species might not exist. Another peer reviewer questions the exclusion of the Waiopae-Wailaulau-Pahihi area from unit Maui H because it contains occurrences for two to three plant species and is DOFAW land slated and funded for fencing, restoration, and removal of cattle. It is crucial to include this parcel.

Our Response: We evaluated the Kahikinui area and determined that it was not essential for the conservation of the species because critical habitat was designated elsewhere for these species that is less degraded and contains a better representation of the primary constituent elements that are essential to the conservation of the species, are within their historical ranges, and accommodates our recovery goals of 8 to 10 populations.

Issue 4: Effects of Critical Habitat Designation

(24) *Comment:* One commenter suggested that critical habitat designation presents an opportunity to expand Hawaii's appeal in ecotourism. Many of the areas covered by the designation are degraded forests that could be restored to showcase Hawaii's unique birds and plants.

Our Response: Although we agree that the restoration of degraded forests is essential to the conservation of federally listed species, critical habitat is only one of many tools established in the Act that can play an important role in the recovery of the species. Critical habitat designation does not create a wilderness area, preserve, or wildlife refuge. It does not require activities associated with conservation management, such as ungulate control and fencing. Critical habitat increases protection of federally listed species by requiring consultation under section 7 of the Act to ensure that any action authorized, funded, or carried out by a Federal agency is not likely to result in the destruction or adverse modification of the critical habitat.

(25) *Comment:* Animal Rights Hawaii stated that although they support protection for endangered species, they are also concerned about protecting nonnative species. The current interpretation of critical habitat allows the Federal government and its partners to utilize any methodology they wish in dealing with feral animals, even though such methods may be cruel and environmentally unsound.

Our Response: The designation of critical habitat does not give the Federal government and its partners the authority to utilize any methodology they wish in dealing with feral animals. Any potential animal control program would be subject to all applicable State, Federal, and local laws.

(26) *Comment:* Critical habitat designation, and the underlying decision to list as endangered the species that are the subject of the designation, exceed the constitutional limits of the Service's delegated authority. Congress enacted the ESA as an exercise of its Commerce Clause power and delegated exercise of that Commerce Clause power to the Service to apply the ESA by regulation. The listed species are not interstate. They exist only in Hawaii and do not cross state lines. Nor are they in commerce as the subject of any economic endeavor. They lack any commercial value. Therefore, the Service's regulations listing these species and designating critical habitat for them within Hawaii exceed the Federal power to regulate interstate commerce under the governing precedents interpreting the Commerce Clause.

Our Response: The Federal government has the authority under the Commerce Clause of the U.S. Constitution to protect species, for the reasons given in Judge Wald's opinion and Judge Henderson's concurring opinion in *National Association of Homebuilders* v. *Babbitt,* 130 F. 3d 1041 (D.C. Cir. 1997), *cert. denied,* 1185 S.Ct, 2340 (1998). *See also Gibbs* v. *Babbitt,* No. 99–1218 (4th Cir. 2000). The *Home Builders* case involved a challenge to application of ESA prohibitions to protect the listed Delhi Sands flower-loving fly (*Rhaphiomidas terminatus abdominalis*). As with the species at issue here, the Delhi Sands flower-loving fly is endemic to only one state. Judge Wald held that application of the ESA to this fly was a proper exercise of Commerce Clause power because it prevented loss of biodiversity and destructive interstate competition.

(27) *Comment:* Many commenters questioned the utility of critical habitat designation because it will not result in on-the-ground improvement of habitat or endangered species. Most commenters felt that voluntary partnerships to effect actual land management would be more beneficial to the species. Conversely, some commenters pointed out that critical habitat will prevent the Federal government from carrying out activities that destroy habitat or species in need of recovery and that it will benefit the people of Maui by preserving native forests, thus preventing erosion that pollutes water and smothers reefs.

Our Response: Critical habitat designation is one of a number of conservation tools established in the Act that can play an important role in the recovery of a species. For a Federal action to adversely modify critical habitat, the action would have to adversely affect the critical habitat's constituent elements or their management in a manner likely to appreciably diminish or preclude the role of that habitat in the conservation of the species. Designation of critical habitat is a way to guide Federal agencies in evaluating their actions, in consultation with the Service, such that their actions do not hamper conservation of listed species. There also are educational or informational benefits to the designation of critical habitat. Education benefits include the notification of land owners, land managers, and the general public of the importance of protecting the habitat of these species and dissemination of information regarding their essential habitat requirements.

(28) *Comment:* One commenter stated that the designation of critical habitat may result in delays and confusion in water use decisions in the State and that permits for non-point source discharges into protected areas may be denied, which would have a devastating effect on agricultural activities.

Our Response: As noted in the October 2002 Draft Economic Analysis (DEA), the likelihood of changes to the existing water diversions based on critical habitat is very low for the following two reasons: (1) None of the plants are stream-dependent for their survival and therefore would not cause a reduction in water diversion, and (2) water infrastructure is considered a manmade feature and therefore would not be included in critical habitat pursuant to the rule, because these features and structures normally do not contain, and are not likely to develop, any primary constituent elements. Thus, unless its operation and maintenance would indirectly affect critical habitat, which is not anticipated, it should not be affected by section 7 of the Act.

The potential impacts on State water uses were analyzed in the October 2002 DEA and December 2002 Addendum to the DEA. As noted in the DEA and Addendum, Maui County and Department of Water Supply (DWS) submitted specific information regarding planned projects in the proposed critical habitat during the public comment period. Possible and planned projects by the DWS include water source development in Unit B2; construction of a water reservoir adjacent to Unit L; access and intake improvements in Unit L; and repair and maintenance of existing flumes in Unit L. As noted in this final rule, we have removed Unit B2 from the final designation. Most of the identified DWS projects in Unit L involve repair and maintenance of existing manmade features and structures, and as such, would not be subject to section 7 consultation. However, to the extent that the planned improvements go beyond repair and maintenance and would be subject to section 7 consultation caused by Federal funding or permitting, the DEA's estimate of zero to two consultations reasonably reflects the potential number of section 7 consultations over the next 10 years (see Chapter VI, Section 3.k. of the DEA). As a worst case scenario, the DEA estimates that the consultations could cost up to $68,000 with project modifications that could range up to $200,000.

The State Department of Health Polluted Runoff Control Program and the State Office of Planning, Coastal Zone Management Program work together to address nonpoint source pollution through outreach and education and programs that utilize incentives. Under the Coastal Zone Act Reauthorization Amendments, Section 6217, the State is required to meet various conditions for approval of the State's Coastal Nonpoint Pollution Control Program by the U.S. Environmental Protection Agency. To meet these conditions, the State Department of Health is developing administrative rules to create Statewide enforceable policies and mechanisms to address nonpoint source pollution. These draft rules are currently the subject of public informational meetings. Public comments and suggestions received during these meetings will be considered before final rules are drafted and proposed to the Governor.

At the present time, there is no permit requirement for nonpoint source pollution. Moreover, the proposed rules regarding nonpoint source pollution make no reference to either water quality standards or to critical habitat. Until the State administrative rules are finalized, the impact caused by the interplay of nonpoint source pollution requirements and the designation of critical habitat is entirely speculative.

Issue 5: Mapping and PCEs

(29) *Comment:* The State of Hawaii Department of Transportation (DOT) stated that the proposed designations near State routes would restrict the design, maintenance, and construction of highways. In particular, Units Maui C1 and C2 may impact Route 30, Honoapiilani Highway, and Unit C3 may impact route 30, Kahekili Highway. Highway corridors require constant upkeep and periodic improvements to maintain safe transportation, keep abreast of changing policies and regulations, limit liability exposure, and manage congestion. These activities, and the intrusive nature of highway traffic itself (pollutants, litter, alien species), tend to conflict with the critical habitat designation. The DOT recommends that buffer zones on each side of the State highway right of way should be excluded from proposed critical habitat to minimize designation-related costs for future improvements, maintenance, and repair to roads, bridges, drainage culverts etc. The buffer zones should be based on topography and be a minimum of 100 feet (30 m) in width.

Our Response: Units C1 and C2 have been removed from the final designation and Unit C3 has been substantially reduced in the final designation. State DOT's comments did not identify any planned widening or other significant improvement project within Unit C3. Rather, State DOT's concerns focused on the impact to routine repair and maintenance. Operation and maintenance of existing manmade features and structures adjacent to critical habitat are not subject to section 7 consultation, unless they involve federal funding or permitting and they affect the critical habitat or the species.

(30) *Comment:* The Service should reconsider designating critical habitat on Navy lands because such designation will adversely impact the Navy's ability to accomplish its national defense mission. The designation will also impose costly procedural burdens on the Navy's ongoing efforts to clear ordnance at Kahoolawe. A careful analysis of the benefits and burdens of critical habitat designation may result in a determination that critical habitat designation on Kahoolawe is not prudent, especially in light of potential prescribed burns for clearing ordnance. While the Navy will manage endangered species found on its property, it will not agree to introduce any endangered species to an area where it is currently absent.

Our Response: In 1993, the U.S. Congress passed a law that required the return of Kahoolawe to the State of Hawaii and authorized Federal funding through November 2003. Therefore, critical habitat will not adversely impact the Navy's ability to accomplish its national defense mission as the Navy will not have a presence on the island for that purpose. As modified, the critical habitat designation on Kahoolawe covers the southeastern coastline, an area along the eastern side of the island, and an area on the western side of the island, predominantly overlapping with Level 3 and Level 4 areas—areas which have either received surface clearance only or which have received no ordnance clearance. Anticipated activities in these areas within the next 10 years are likely to be limited to ordnance removal. Part of the designation on the western tip of Kahoolawe is a Level 1 area, and anticipated activities in this area could include operation of overnight campsites with minimal facilities to support restoration efforts. The December 2002 Addendum to the Draft Economic Analysis of Proposed Critical Habitat for the Maui and Kahoolawe plants considered the effects of critical habitat designation on the Navy's clean-up program on Kahoolawe and estimates section 7 consultation costs to range from $0 to $47,100. The removal of ordnance, which will enable long-term restoration efforts to proceed, is consistent with the recovery goals for these listed plant species on Kahoolawe. Kahoolawe is essential to the conservation of *Kanaloa kahoolawensis* because this is the only place where this plant currently is known to exist.

Issue 6: Definition of Critical Habitat

(31) *Comment:* Many commenters, including peer reviewers, noted that critical habitat should be identified for all areas that may need to be managed for the benefit of the listed species. The ESA defines critical habitat (Section 3 (5)(A)(I)) as "the specific areas * * * (I) essential to the conservation of the species and (II) which may require special management considerations or protection. It does not use the phrase "which may require *additional* special management considerations or protection." Therefore, all areas that meet the definition of critical habitat should be designated, even if they are currently being managed for conservation. Designation of these areas would be in accordance with the mandatory duty to designate critical habitat "to the maximum extent prudent and determinable" 16 U.S.C. 1533(a)(3). Also, designation will provide an additional measure of protection by preventing Federal agencies from carrying out funding or approving any activity likely to result in adverse modification or destruction of critical habitat, whether directly or indirectly, regardless of the location of the activity. Furthermore, areas that may have adequate management in place may not be safe from even direct threats from Federal activities, which can arise with little warning. Additionally, adequate funding for conservation and management of listed species on lands currently being managed for conservation may not be assured. Multiple commenters wrote that the following areas should be designated as critical habitat: Haleakala National Park; Puu Kukui Watershed Management Area; Waikamoi; Kapunakea Preserves; and Hanawi Natural Area Reserve.

Our Response: While we do not necessarily agree with the commenters' interpretation of section 3(5)(A) we considered whether the areas proposed for exclusion because special management was not needed should be designated as critical habitat. However, section 4(b)(2) of the Act requires us to consider other relevant impacts, in addition to economic impacts, of designating critical habitat. An area may be excluded from designation as critical habitat if the Secretary determines the benefits of excluding the area outweigh the benefits of designating the area as critical habitat (and provided the exclusion would not result in the extinction of the species). We have removed the two TNCH Maui Preserves, the State's Hanawi NAR, ML&P's Puu Kukui WMA, and Ulupalakua and Haleakala Ranches from final critical habitat designation based upon either their conservation history or the relevant issue that designation of critical habitat would have a negative effect on the landowner's voluntary ongoing conservation activities as well as future activities under consideration by the landowner. In both cases, we believe it is in the best interest of the species to exclude habitat from the designation based on their conservation actions. *See "Analysis of Impacts Under Section 4(b)(2): Other Impacts"*.

(32) *Comment:* Alexander and Baldwin, Inc., requested that the Service consider excluding lands managed by the East Maui Watershed Partnership (EMWP) because future EMWP efforts to protect the watershed are likely to include many of the same management measures identified as necessary for the recovery of endangered plant species within the watershed (*e.g.*, control of ungulates and invasive weeds). Cooperative conservation efforts by landowners ultimately will benefit endangered species more than the mere designation of critical habitat.

Our Response: We agree that cooperative conservation efforts by landowners are important to the conservation of Hawaiian plant species. We did exclude portions of the EMWP, including portions of Hanawi NAR, Haleakala Ranch, and Waikamoi Preserve. However, at this time, we did not find the benefits of excluding other lands within the EMWP to outweigh the benefits of including them in critical habitat, under section 4(b)(2) of the Act. As resources allow, the Service would be willing to consider future revisions or amendments to this final critical habitat rule if landowners affected by this rule develop conservation programs or partnerships (*e.g.*, Habitat Conservation Plans, Safe Harbor Agreements, conservation agreements, etc.) on their lands that outweigh the regulatory and educational benefits of a critical habitat designation (*see "Analysis of Impacts Under Section 4(b)(2): Other Impacts"* for which the benefits of exclusion exceed the benefits of inclusion).

(33) *Comment:* One peer reviewer stated that it is not strategically wise to exclude most of the East Maui Watershed above 3,500–4,000 ft (1,067–1,219 m).

Our Response: We agree that the area is essential for the conservation of many of these species and have designated portions of this area as critical habitat.

(34) *Comment:* Maui Land and Pineapple Company, Inc. requested that the currently actively managed, conservation-zoned lands on West Maui (A, B1, and B2) be excluded from critical habitat designation. ML&P has cooperated with many other conservation agencies, including the Service, to preserve the native biodiversity of its conservation lands.

Our Response: We have excluded some of ML&P's lands under section 4(b)(2) of the Act, finding that the benefits of their conservation efforts outweigh the benefits of including those lands in this designation (*see "Analysis of Impacts Under Section 4(b)(2): Other Impacts"*). However, there are other ML&P lands for which we did not make this finding, and they are therefore included in this critical habitat designation.

(35) *Comment:* The Service should comment on how Haleakala National Park will function as a result of designation of unit Maui J.

Our Response: Haleakala National Park will continue to function much the same as it had before the critical habitat designation. However, they will need to consult with us, under section 7 of the Act, if they are planning a project that may affect critical habitat.

(36) *Comment:* The Estate of James Campbell requested that the critical habitat boundaries for their Kula and Kaupo properties be amended in light of a lack of important data on species' life history and habitat. They specifically request that the proposed designation on the Kaupo property be adjusted to exclude unoccupied agricultural land that could be adversely affected by such a designation.

Our Response: Unoccupied agricultural lands of the Kaupo properties were not included in the proposed or final designations. However, we have found that some of the James Campbell Estate lands are essential to the conservation of some of the species and do not meet the criteria under section 3(5)(A) of the Act for exclusion because long-range management goals and plans are not yet in place. These lands have been included in the final critical habitat designation. As resources allow, however, the Service would be willing to consider future revisions or amendments to this final critical habitat rule if landowners affected by this rule develop conservation programs or partnerships (*e.g.*, Habitat Conservation Plans, Safe Harbor Agreements, conservation agreements, etc.) on their lands that outweigh the regulatory and educational benefits of a critical habitat designation (*see "Analysis of Impacts Under Section 4(b)(2): Other Impacts"*).

(37) *Comment:* Ulupalakua Ranch requested that its lands be removed from proposed critical habitat for the following reasons: (1) Likelihood of private party lawsuits resulting in mandated protection for critical habitat; (2) likelihood of private party lawsuits limiting current ranch operations; (3) limits on development of diversified agricultural operations caused by the Ranch's interest in Federal cost share programs; (4) lost revenues; (5) expenditures to assess the impact of the proposed designations; (6) economic hardship resulting from increased expenses to counter trespassing caused by increased curiosity over critical habitat lands; (7) lower economic returns and job loss caused by critical habitat dividing up sections of the Ranch, thus leading to inefficiency; (8) concern over the Service becoming involved in County Permitting processes (as they did when Ulupalakua Ranch requested a Special Use Permit from the County of Maui for telecommunications purposes); (9) ranch lands consisting of predominantly nonnative alien species that the Service has documented as threats; and (10) a reduced willingness of the Ranch to participate in voluntary conservation efforts.

Our Response: We found that Ulupalakua Ranch met the requirements under 4(b)(2) of the Act (*see "Analysis of Impacts Under Section 4(b)(2)"*) and therefore has been excluded from critical habitat designation.

Issue 7: Policy and Regulations

(38) *Comment:* One commenter opposed the designation of critical habitat in East Maui from Makawao to Kula because hunters use these areas.

Our Response: Critical habitat designation does not affect activities, including human access, on State or private lands unless some kind of Federal permit, license, or funding is involved and the activities may affect the species. It imposes no regulatory prohibitions on State or other non-Federal lands, nor does it impose any restrictions on State or non-Federal activities that are not funded or authorized by any Federal agencies. Access to Federal lands that are designated as critical habitat is not restricted unless access is determined to result in the destruction or adverse modification of the critical habitat. If we determine that access will result in adverse modification of the critical habitat, we will suggest reasonable or prudent alternatives that allow the proposed activities to proceed. Recreational, commercial, and subsistence activities, including hunting, on non-Federal lands are not regulated by this critical habitat designation, and may be impacted only where there is Federal involvement in the action and the action is likely to destroy or adversely modify critical habitat. According to our economic analysis the probability of a major change in game management by the State is regarded as slight. Thus, designation of critical habitat is expected to have minor economic impacts related to management of game mammals and to hunting.

Issue 8: Economic Issues

(39) *Comment:* An economic analysis (EA) must be completed before critical habitat is designated. Even though the Service is designating critical habitat before conducting an EA in order to meet a court imposed deadline, the Service is not relieved from meeting the prudent and determinable standard for designating critical habitat. It is a disservice to the landowners to not include an economic impact analysis at the time of proposed designation even if the Service anticipates that such designation will not have any significant economic impact. Any

proposed critical habitat designated without first conducting an economic analysis would be imprudent and premature.

Our Response: We did not designate critical habitat before conducting an EA. The draft economic analysis was published and made available for review on October 2, 2002 (67 FR 61845). The comment period on the proposed rule to designate critical habitat for these 61 species from the islands of Maui and Kahoolawe was extended until November 1, 2002, to allow interested and affected parties the opportunity to review the draft economic analysis in conjunction with the proposed critical habitat rule.

The Service determines whether critical habitat designation is prudent according to regulations found at 50 CFR 424.12(a). In accordance with these regulations, critical habitat designation is not prudent only when one or both of the following two situations exist: (1) The species is threatened by taking or other human activity, and identification of critical habitat can be expected to increase the degree of such threat to the species; or (2) such designation would not be beneficial to the species. The economic analysis is conducted after critical habitat has been proposed in a given area, as set forth in regulations found at 50 CFR 424.19. If we find that economic and other impacts outweigh the benefit of designating critical habitat in a given area, that area may be excluded.

(40) *Comment:* The proposal identifies portions of two habitat units (units C1, C2, C3, G1, and G5), that consist in part of private lands and are occupied by only one or two species, which have known current populations on other islands. Portions of these units may have economic value to their respective landowners for eventual shoreline development or as sources of surface water for irrigation. Absent the economic analysis, it is impossible to determine from the proposal whether the benefits of excluding these areas would outweigh the benefits of including them as critical habitat.

Our Response: We agree that it is difficult to determine the relative costs and benefits of critical habitat designation without benefit of an economic analysis. It is precisely for this reason that the draft economic analysis was made available for review immediately upon completion on October 2, 2002, and the public comment period on the proposed critical habitat designations for these 61 species from the islands of Maui and Kahoolawe was extended until November 1, 2002. Maui units C1 and C2 have not been designated as final critical habitat. Maui unit C3 has been reduced to include only State owned lands within the conservation district and G1 and G5 have been reduced to lands within the conservation district. No costs are expected to occur from such impacts to water systems, because none of the plants are stream-dependent for their survival and therefore would not cause a reduction in water diversions. In addition, water infrastructures are considered a manmade feature and therefore its operation and maintenance are not subject to critical habitat provisions of section 7, because these features and structures normally do not contain, and are not likely to develop, any primary constituent elements.

(41) *Comment:* The DEA did not address, or did not adequately consider, a variety of costs and benefits that they believe could occur caused by the implementation of section 7 consultation for these species.

Our Response: Many of these possible costs were considered and some were addressed in the DEA. In many cases, however, potential costs were purposely not addressed in the DEA because they are not expected to occur. In other cases, it is possible for them to occur. In still other cases, the concerns no longer have substance given the Service's modifications to the proposed critical habitat. Finally, in some cases, the comments provided new information and costs were modified in section 4 of the Addendum.

(42) *Comment:* One commenter stated that the proposed designation fails to properly consider the importance of cooperation and goodwill between the Service and private landowners, and the impact critical habitat designations will have in discouraging voluntary partnerships on private lands. Haleakala Ranch stated that if critical habitat were designated on ranch lands, the ranch would cease participation in conservation projects designed to promote endangered species recovery. The ranch also stated that access to Haleakala Ranch land will be denied to those seeking data about the presence of the listed species, and future partnerships, existing agreements, and a land steward position may be terminated in an effort to insulate the company from outside governmental oversight. The ranch prefers to work cooperatively with the Service and other conservation entities to continue its legacy of land stewardship. Ulupalakua Ranch stated that designation of critical habitat would result in discontinuation of its associations with organizations associated with native plant restoration. Ulupalakua Ranch will also deny access to those interested in plant conservation and would not allow reintroductions of any native plants to its private property. Similarly, Alexander and Baldwin, Inc. cautioned the Service to carefully consider the benefits of existing cooperative agreements such as the East Maui Watershed Partnership and the potentially chilling effect that designation might have on such agreements. The Estate of James Campbell also stated a preference for encouraging the establishment of voluntary partnerships with landowners to effectuate the desired species conservation. This commenter further stated that the regulatory approach discourages the cooperation which has been a key to successful species conservation. Another commenter stated that if the Service truly wants to carry out its mission statement and "work with others to conserve, protect and enhance fish, wildlife and plants, and their habitats for the continuing benefit of the American people," they should meet with the community of the DHHL Kahikinui homesteads to explain in clear and concise terms what is being proposed and exactly how it may impact our community. Others expressed similar concerns that cooperation and on-the-ground management were more important than critical habitat designation.

Our Response: Chapter VI, Section 4.j. of the DEA discusses the potential for reduced cooperation with the Service on conservation projects as a result of critical habitat. The DEA determines that a modest but undetermined reduction in cooperation may occur, along with a corresponding but undetermined environmental loss to society. However, as the comment indicates, the Service received letters from two landowners, Ulupalakua Ranch and Haleakala Ranch, during the public comment period stating that they will no longer participate in conservation projects designed to assist native plant species if critical habitat is designated on their land. Over the past three years alone, these landowners have participated in more than seven different conservation projects, receiving more than $290,000 from the Service or Natural Resources Conservation Service (NRCS). This funding is often matched by the landowner, and thus the cost of these projects likely exceeds $580,000. While the benefits of these projects are difficult to quantify (as discussed further in section 6 of the Addendum), the biological value of these projects to the native plants is at minimum equal

to the costs of each project. Assuming that participation over the past three years is indicative of the average level of participation, over a period of ten years, the value of the conservation projects would exceed $1.7 million. Thus, a reduction in cooperation in conservation projects by these two landowners could be expected to result in a corresponding environmental loss to society of more than $1.7 million. In addition, these landowners have indicated that they will not allow outside individuals, agencies or organizations to monitor, investigate, or collect data about native plants on their lands. In qualitative terms, the total loss to society as a result of reduced cooperation in conservation projects could be considered significant.

(43) *Comment:* The DEA fails to consider economic impacts of critical habitat that result through interaction with Hawaii Land Use Law. Critical habitat could result in changes to zoning under State law. There is an overriding directive under State law that endangered plant species are to be protected in the State's planning and zoning process. HRS § 205–2(e) states that Conservation Districts shall include areas necessary for conserving endangered species. HRS 195D–5.1 states that DLNR shall initiate amendments in order to include the habitat of rare species. Even if DLNR does not act, the Land Use Commission may initiate such changes, or they may be forced by citizen lawsuits. Areas for endangered species are placed in the protected subzone with the most severe restrictions. While existing uses can be grandfathered, downzoning will prevent landowners from being able to shift uses in the future, will reduce market value, increase property tax, and make the land unmortgageable. Although the Service acknowledges that there could be substantial indirect costs relating to redistricting of land to the Conservation District, several commentators disagreed with the characterization of these costs as "minor" and with the statement that the probabilities of redistricting is "slight to small."

Our Response: In our economic analysis we indicated that about 8,770 ha (21,670 ac) of Agricultural lands would be included in the designation, of which 4,443 ha (10,980 ac) is privately owned. However, in this final rule, we have designated critical habitat on only 5,170 ha (12,744 ac) of Agricultural lands on Maui and Kahoolawe; the remaining Agricultural lands were excluded from the final designation pursuant to section 4(b)(2). Of this, approximately 15 percent, or 794 ha (1,960 ac), is owned by private landowners. The primary activity that takes place on privately-owned agriculturally-zoned land is ranching. The economic analysis found that reduction in land values that would be caused by redistricting privately owned land from Agricultural to Conservation District ranges from $1,000 to $10,000 per acre. Since 1,960 acres of Agricultural land are privately owned, if all such lands were redistricted, the total loss would range from $1,960,000 to $19,600,000. Even if a landowner has no plans to sell the land, the loss in land value due to redistricting could reduce potential mortgage financing. However, as discussed in the economic analysis, the redistricting of all Agricultural land to Conservation is a worst-case scenario, and one which is not envisioned for several reasons.

HRS section 195D–5.1 states that the Department of Land and Natural Resources (DLNR) "shall initiate amendments to the conservation district boundaries consistent with section 205–4 in order to include high quality native forests and the habitat of rare native species of flora and fauna within the conservation district." HRS section 205–2(e) specifies that "conservation districts shall include areas necessary for * * * conserving indigenous or endemic plants, fish and wildlife, including those which are threatened or endangered * * *" Unlike the automatic conferral of State law protection for all federally listed species (*see* HRS 195D–4(a)), these provisions do not explicitly reference federally designated critical habitat and, to our knowledge, DLNR has not proposed amendments in the past to include all designated critical habitat in the Conservation District. Nevertheless, according to the Land Division of DLNR, DLNR is required by HRS 195D–5.1 to initiate amendments to reclassify critical habitat lands to the Conservation District (Deirdre Mamiya, Administrator, Land Division, in litt. 2002).

State law only permits other State departments or agencies, the county in which the land is situated, and any person with a property interest in the land to petition the State Land Use Commission (LUC) for a change in the boundary of a district. HRS section 205–4. The Hawaii Department of Business, Economic Development & Tourism's (DBEDT) Office of Planning also conducts a periodic review of district boundaries taking into account current land uses, environmental concerns and other factors and may propose changes to the LUC.

The State Land Use Commission determines whether changes proposed by DLNR, DBEDT, other state agencies, counties or landowners should be enacted. In doing so, State law requires LUC to take into account specific criteria, set forth at HRS 205–17. While the LUC is specifically directed to consider the impact of the proposed reclassification on "the preservation or maintenance of important natural systems or habitats," it is also specifically directed to consider five other impacts in its decision: (1) "maintenance of valued cultural, historical, or natural resources;" (2) "maintenance of other natural resources relevant to Hawaii's economy, including, but not limited to, agricultural resources;" (3) "commitment of state funds and resources;" (4) "provision for employment opportunities and economic development;" and (5) "provision for housing opportunities for all income groups, particularly the low, low-moderate, and gap groups." HRS 205.17. Approval of redistricting requires six affirmative votes from the nine commissioners, with the decision based on a "clear preponderance of the evidence that the proposed boundary is reasonable." HRS 205–4.

Thus, even if all federally designated critical habitat is petitioned for redistricting, the likelihood of redistricting will vary parcel by parcel. While the LUC may redistrict some parcels, it is unlikely that lands with a high economic value to the community, such as lands with significant State investments, prime agricultural land, land planned for the economic and community development, and land planned for the provision of housing, would be redistricted. By way of illustration, in the last State district boundary review only five privately owned parcels were redistricted to Conservation even though several hundred parcels were proposed for redistricting (Addendum). While concern has been expressed that a third party would challenge a decision by the LUC not to redistrict a critical habitat parcel in State court, State courts have been deferential to the LUC decisions if they are supported by the record, consistent with statutory provisions, and not affected by errors. *See, e.g., Kilauea Neighborhood Ass'n.* v. *Land Use Comm'n.* 751 P.2d 1031, 1035 (Haw. Ct. App. 1988) (finding that, although LUC's findings were poorly drawn, the record provided sufficient support for the decision); *Outdoor Circle* v. *Harold K.L. Castle Trust Estate,* 675 P.2d 784, 793 (Haw. Ct. App. 1983) (upholding LUC's decision as consistent

with statutory provisions and not affected by errors).

(44) *Comment:* A commenter stated that the DEA fails to consider economic impacts of critical habitat that result through interaction with State law, specifically Hawaii Environmental Impact Statement Law. HRS 343–5 applies to any use of conservation land, and a full Environmental Impact Statement is required if any of the significance criteria listed in HAR 11–200–12 apply. One of these criteria is that an action is significant if it "substantially affects a rare, threatened or endangered species or its habitat." This will result in costly procedural requirements and delays. Another commenter expressed concerns that the Service may get involved in county permitting processes (as it did when Ulupalakua Ranch requested a Special Use Permit from the County of Maui for telecommunication purposes). Multiple commenters also stated the following: The DEA fails to evaluate the practical effect critical habitat designation will have on development. The draft fails to quantify the indirect costs that critical habitat designation could cause by making the process of obtaining State and county permits for development more difficult, expensive, and time consuming. Similarly, it should take into account the delays and additional cost to ensure compliance with Federal regulations. Special Management Area permits administered by Maui County as required by Hawaii's Coastal Zone Management Act will be harder to get, will result in delays, will cause a decline in property values and may make it impossible to develop. This economic impact disappears because the DEA's bottom line erroneously counts only so-called "direct" costs of consultation.

Another commenter also stated that the Service has taken the position in other States that it has a right to intervene in local land use proceedings if they affect endangered species on private property. For example, the Service petitioned the local zoning board in Arizona to postpone approval of a rezoning petition pending a survey to determine the extent to which an endangered plant was present on the property even though no Federal approval was being sought. The failure of the Service to address this type of activity in the DEA is a fundamental error of the analysis.

Our Response: Adverse impacts on development, including, but not limited to, delays for additional studies and agency reviews, increased costs for environmental studies, increased risk of project denials, increased risk of costly mitigation measures, increased risk of litigation over approvals, are not expected since there are no known development plans within the designation. Furthermore, the following factors make future development projects in the proposed critical habitat unlikely: (1) As modified, approximately 80 percent of the proposed critical habitat is in Conservation District where development is severely limited; (2) the approximately 20 percent of the proposed critical habitat in the Agricultural district is in remote areas, areas lined with gulches or steep cliffs, or areas with limited access to water; (3) there are no known plans for development within the final critical habitat; and (4) most of the land designated in the Special Management Area is also within the Conservation District.

(45) *Comment:* The DEA fails to consider economic impacts of critical habitat that result through interaction with State law, specifically the State Water Code. HRS 174C–2 states "adequate provision shall be made for protection of fish and wildlife." HRS 174C–71 instructs the commission of Water Resource Management to establish an in-stream use protection program to protect fish and wildlife. Another commenter was concerned that critical habitat is proposed in watershed areas in which stream or irrigation system water flows. This commenter also stated the following: The proposed rule states that activities such as watershed alteration or water diversion may trigger section 7 consultations if there is Federal involvement. If the ability to divert or take water from these sources or systems is restricted or limited, the impact would be far reaching and affect all lands served by such water sources or systems. The Service has an obligation to thoroughly investigate this issue and refrain from designating critical habitat until it has determined whether its actions will affect water use and balance this against any benefit to the species.

Our Response: No costs are expected to occur from such impacts to water systems, because none of the listed plants are aquatic and therefore would not cause a reduction in water diversion. In addition, water infrastructure is considered a manmade feature and therefore its operation and maintenance are not subject to critical habitat provisions of section 7, because these features and structures normally do not contain, and are not likely to develop, any primary constituent elements.

(46) *Comment:* A commenter expressed concerns that opponents of water diversions may use critical habitat as a tool to delay, and effectively stop, many worthwhile water diversion projects.

Our Response: Maui County and Department of Water Supply (DWS) submitted specific information regarding planned projects in the proposed critical habitat during the public comment period. Possible and planned projects by the DWS include water source development in Unit B2; construction of a water reservoir adjacent to Unit L; access and intake improvements in Unit L; and repair and maintenance of existing flumes in Unit L. As noted earlier, the Service removed Unit B2 from the final designation. Thus, no section 7 costs would be anticipated to result from future DWS projects in this area. Moreover, most of the identified DWS projects in Unit L involve repair and maintenance of existing manmade features and structures, and as such, would not be subject to section 7 consultation. However, to the extent that the planned improvements go beyond repair and maintenance and would be subject to section 7 consultation caused by Federal funding or permitting, the DEA's estimate of zero to two consultations reasonably reflects the potential number of section 7 consultations over the next 10 years (see Chapter VI, Section 3.k. of the DEA). The DEA estimates that the consultations could cost up to $68,000 with project modifications that could range up to $200,000.

(47) *Comment:* Several commenters stated that the DEA focuses primarily on the costs of critical habitat and lacks a thorough benefits analysis. It does not include the benefits of watershed protection and improvement or protection of other stream and riparian biota; the value of the listed plants as an indicator of ecological health; the value of protecting culturally significant species; the value that Hawaii's people place on conservation of Hawaiian plants; and the benefits of keeping other native species off the endangered species list, of maintaining water quality and quantity, of promoting ground water recharge, and of preventing siltation of the marine environment, thus protecting coral reefs. The Service cannot exclude land from critical habitat designation if it considers only the costs, and not the benefits, of critical habitat designation. In failing to discuss these benefits, the Service missed an opportunity to educate the public regarding the value of protecting native species and native ecosystems. The Service must use the tools available,

such as a study by the University of Hawaii (UH) Secretariat for Conservation Biology that estimated the value of ecosystem services, to quantify the benefits of critical habitat. Conversely, another commenter stated that the alleged benefits are entirely speculative and unquantifiable, and that the listed plants are of no use to anyone and lack commercial value. Another commenter points out that according to the DEA summary of costs and benefits, the benefits of designating critical habitat are "difficult to estimate" and are exceeded by the costs. Accordingly, the Service should exclude areas covered by the DEA from designation.

Our Response: There is little disagreement in the published economic literature that real social welfare benefits can result from the conservation and recovery of endangered and threatened species (Bishop 1978, 1980; Brookshire and Eubanks 1983; Boyle and Bishop 1986; Hageman 1985; Samples *et al.* 1986; Stoll and Johnson 1984). Such benefits have also been ascribed to preservation of open space and biodiversity (see examples in Pearce and Moran (1994) and Fausold and Lilieholm (1999)), both of which are associated with species conservation. Likewise, a regional economy can benefit from the preservation of healthy populations of endangered and threatened species, and the habitat on which these species depend.

Chapter VI, Section 6 of the DEA discusses potential benefits, both direct and indirect, that can result from the proposed designation. The DEA notes that the proposed designation can create ecological and cultural benefits such as the ones mentioned in the above comment—*e.g.*, ethnobotanical value of plants to the Native Hawaiians and social welfare benefits of ecological improvements. However, the DEA also indicates that these benefits are not quantified due to lack of information available on: (1) Quantified data on the value of the Maui and Kahoolawe species, and (2) quantified data on the change in the quality of the ecosystem and the species as a result of the designation. The DEA, however, does not conclude that the benefits are exceeded by the costs. Instead, it discusses the benefits that could result from critical habitat designation in qualitative terms.

While section 4(b)(1)(A) of the Act stipulates that listing determinations must be made solely on the basis of biological evidence, section 4(b)(2) of the Act, which calls for the establishment of critical habitat for all listed species if it is prudent and determinable, adds that the Secretary should take into consideration the economic impact of the designation and any other relevant impacts before specifying any particular area as critical habitat. Hence, an economic analysis is part of the process of designating critical habitat. Section 4(b)(2) of the Act provides the Secretary with broad discretion to take into consideration the economic impacts of any proposed critical habitat designation and exclude areas where she finds that the benefits of exclusion outweigh the benefits of designation.

The Secretary may exclude any area from critical habitat if she determines that the benefits of exclusion outweigh the benefits of specifying such area as part of the critical habitat, unless she determines, based on the best scientific and commercial data available, the failure to designate such area as critical habitat will result in the extinction of the species concerned (16 U.S.C. 1533(b)(2)).

Thus, the Secretary is not required to find that the benefits of inclusion outweigh the costs of inclusion before designating an area, nor is the Secretary required to exclude an area from critical habitat if she determines that the benefits of exclusion outweigh the benefits of inclusion. Rather, the Act provides the Secretary with the discretion to take economic and other considerations into account when designating critical habitat.

As such, the DEA and the Addendum serve to illustrate possible impacts that can result from the designation, whether in the form of costs or benefits. However, the DEA and the Addendum are not intended to provide a comprehensive analysis of the benefits that could result from section 7 of the Act in general, or of critical habitat in particular. In short, the Service believes that the benefits of critical habitat designation are best expressed in biological terms that can be weighed against the expected costs of the rulemaking. The DEA and the Addendum simply provide information for the Secretary to exercise her discretion, but do not provide definitive conclusions or recommendations as to what areas, if any, should be excluded from the final designation.

Finally, although the UH study does value ecosystem services, it has limited applicability for valuing the benefits of the proposed critical habitat designation for the plants for a number of reasons. First, the UH study had a different purpose, which was to estimate the total value of environmental benefits provided by the entire Ko'olau Mountains on the island of Oahu versus the value of the more limited benefits provided by the proposed critical habitat for the plants on the islands of Maui and Kahoolawe. Consistent with its purpose, the UH study provided no estimates of the changes in environmental conditions resulting from changes in land and stream management due to critical habitat designation.

Furthermore, many of the assumptions and much of the analysis in the UH study are not transferable to the economic analysis for the plants' critical habitat. For example, the value of water recharge in the UH study reflects projected water supply and demand conditions on Oahu—an island ¾ of the size of Maui but with a population of nearly ten times that of Maui. Also, the UH benefit analysis of reducing soil runoff is unique to three valleys that drain through partially channelized streams in urban areas into the manmade Ala Wai Canal. Since this canal was designed with inadequate flushing from stream or ocean currents, it functions as an unintended settling basin that must be dredged periodically. In addition, the recreational and ecotourism values provided in the UH study apply to areas that are accessible to most hikers, which is not the case with significant portions of the plants' critical habitat. Significant portions of the plants' critical habitat units are in mountainous range with steep slopes and difficult access and on coastal cliffs.

(48) *Comment:* Critical habitat does not benefit ecotourism by creating new special places for people to visit, as the DEA suggests. Rather, it helps to protect the special places that already exist from degradation, ensuring that they will be around in the future to attract future ecotourists. Moreover, the Service's subjective preference that commercial operators not feature visits to view threatened and endangered plants has no place in an objective economic analysis.

Our Response: Chapter VI, Section 6.b.(1) of the DEA indicates that the proposed critical habitat may enhance the appeal of ecotourism by providing a marketing dimension. However, the DEA also states that this benefit may be slight since these places may already be regarded as special due to the existing natural and cultural resources in the area.

(49) *Comment:* The DEA underestimates economic costs because they are limited to what is likely to occur within 10 years. Critical habitat designation is permanent and not automatically revised if there is new evidence of the benefits of

nondesignation, or if the species is delisted.

Our Response: A listed species is delisted when it is recovered or has become extinct. Recovery is defined as no longer needing the protections provided by the Act, which includes critical habitat. As such, when a species is delisted, its critical habitat would be simultaneously "undesignated."

Furthermore, a 10-year time horizon is used because many landowners and managers do not have specific plans for projects beyond 10 years. In addition, the forecasts in the analysis of future economic activity are based on current socioeconomic trends and the current level of technology, both of which are likely to change over the long term.

(50) *Comment:* The DEA dismisses concerns about impacts on the use of structures and features already in place in areas to be designated as critical habitat. The draft concedes that the lack of clarity can force landowners to incur costs to investigate the implications of the regulations. The estimate that this will only take 15–40 hours is too low given the size of the designated areas, the vagueness of the regulatory exclusion, and the real costs of obtaining development approvals.

In addition, the DEA's analysis of potential costs expected to be incurred by private landowners to investigate the implications of critical habitat on their lands is flawed, because the analysis fails to recognize that the cost to investigate the implications of CH are sunk costs associated with the designation process, not additional costs that the final designation would impose.

Our Response: The DEA recognized that some landowners might spend a great deal of time investigating the implications of critical habitat, while others might not spend any time. The costs reported in the DEA reflect a reasonable estimate of total costs for all landowners, based on an estimate of the number of landowners who are likely to investigate the implications of critical habitat. The Addendum revised this number upwards in response to public comment. However, on further reflection, the estimate contained in the DEA better reflects an average estimate for all affected landowners for the following reasons. The estimate takes into account whether their land is in areas that are unsuitable for development due to mountainous terrain and/or being in the Conservation District. The analysis also assumes an average cost per landowner to investigate the implications of critical habitat. Public comment did not offer an alternative estimate of time or costs that would support changing the estimate in the DEA. Thus the estimates of hours spent and costs incurred remain the same as they appear in the DEA.

(51) *Comment:* One commenter stated the following: The DEA fails to consider the economic impacts of listing and critical habitat that result through interaction with State law, specifically Hawaii's Endangered Species Act. The commenter suggested that *New Mexico Cattle Growers Association* v. *U.S. Fish and Wildlife Service* requires consideration of the impact of listing as well as the impact of designating an area as critical habitat. Instead, the analysis is expressly limited to the impact of Federal agency consultation under the jeopardy standard. Since Federal listing triggers listing under State law, the Service must consider the impact of take prohibitions under State law (and consequently Federal law, which prohibits destruction of plants in knowing violation of State law). Violations of these laws can trigger lawsuits.

Our Response: The DEA and the Addendum consider the economic impacts of section 7 consultations related to critical habitat even if they are attributable co-extensively to the listed status of the species. In addition, the DEA and the Addendum examine any indirect costs of critical habitat designation; however, where it is the listing of a species that prompts action at the State or local level, the impacts are not attributable to critical habitat designation. Take prohibitions under Hawaii law are purely attributable to a listing decision and do not occur because of critical habitat designations. There are not take prohibitions associated with the plants critical habitat.

(52) *Comment:* Multiple commenters opposed the designation of agricultural lands needed to support agriculture and ranching. They stated that critical habitat designation would reduce property values and the ability to develop lands that were previously planned for development. Approximately 77 percent of the proposed designated land is within the State Conservation District, which includes irrigation water essential to agriculture. The rest of the lands proposed for designation are in the State Agricultural District. Designation of agricultural lands could prevent a farmer or rancher from using those lands since the very nature of those uses would in all likelihood entail cutting, uprooting, or injuring plants to a certain extent. The DEA fails to examine the economic impact of a landowner not being able to use his own land for fear of injuring a species he doesn't even recognize. No protection is afforded to farmers who unwittingly "harm" the designated critical habitat. A careful cost-benefit analysis should conclude that agricultural lands should be excluded.

Our Response: There are no take provisions associated with critical habitat. The Act requires only that Federal agencies consult with the Service to ensure that activities they fund, authorize, or carry out do not result in destruction or adverse modification of critical habitat. Because consultation under section 7 only applies to activities that have Federal involvement, the designation of critical habitat does not afford any additional protections for listed species with respect to strictly private activities. As such, designation of critical habitat on agricultural lands would not prevent a private farmer or rancher from farming or ranching on their land, unless the activity had Federal involvement, such as through participation in federally sponsored agricultural or ranching programs.

Chapter VI, Section 3.g. of the DEA presents estimates of section 7 costs associated with participation in federally sponsored agricultural or ranching related programs, such as Farm Bill programs administered by NRCS. The DEA bases its estimate of two to eight consultations over the next 10 years on the amount of Agricultural land contained within the proposed designation; number of past projects located within the area proposed for designation; and the possibility that some landowners could decide not to participate in future programs to avoid Federal involvement in their activities.

The Service reduced the amount of Agricultural land designated from 29,175 ac (11,806 ha) to 21,670 ac (8,770 ha), a reduction of 25 percent. The designation contains approximately 10,980 ac (4,443 ha) of Agricultural land owned by those most likely to participate in NRCS programs. However, the majority of this land, approximately 9,028 acres, is owned by two landowners who indicated during public comment that they will not participate in future NRCS programs if their land was designated as critical habitat. Moreover, as noted in the DEA, not all of the Agricultural land designated is in active agricultural use. Finally, competition for NRCS funding is strong. Based upon the final critical habitat designation and the new information, the Addendum adjusts the direct section 7 costs accordingly. The Addendum estimates that the consultation cost can range from $0 to $41,200, with a project modification cost ranging $0 to $100,000.

Other indirect impacts that could result from the designation of critical habitat are discussed in Chapter VI, Section 4 of the DEA and Section 5 of the Addendum. First, the critical habitat designation may reduce property value of these Agricultural lands. In the worst case scenario, one which is not envisioned, reduction in land values due to redistricting all Agricultural land to the Conservation District could range from $11 million to $110 million. In addition, critical habitat could result in the cessation of existing agricultural activities. While the likelihood of this being mandated as a result of critical habitat designation is low, the estimated costs resulting from stopping all ranching activities within the designation ranges form $110,000 to $825,000 per year.

(53) *Comment:* Many commenters stated that the DEA fails to adequately assess the scope of indirect costs associated with critical habitat designation. Indirect impacts cannot be dismissed just because it is difficult to assign a dollar value to them. Without acknowledging the full scope of direct and indirect costs, the Service cannot complete an accurate final determination of critical habitat. Another commenter also stated that the DEA should be amended to properly reflect all economic impacts, including the various indirect impacts, which would clearly show that the economic costs of critical habitat designation are significantly higher than the benefits.

Our Response: Chapter VI, Section 4 of the DEA and Section 5 of the Addendum discuss various indirect impacts that can result from the designation. There is considerable uncertainty on whether any or all of these indirect impacts may occur, as they depend upon actions and decisions by entities other than the Service under circumstances for which there is limited or no history that can be used to determine the probability of different outcomes. Thus, based on the available information, these impacts were discussed qualitatively in the DEA and where possible, estimates were given of worst-case scenarios for illustrative purposes.

(54) *Comment:* Several commenters stated that critical habitat designation has the potential to decrease the amount of available hunting lands and game animals. Governmental officials seem to value plants and insects more than hunting, which is an important family and cultural tradition, a means of subsistence, and a way of life. Members of all ethnic groups hunt and depend on subsistence activities as a real part of their income. Hunting also contributes to the economy via money spent on pet foods, inter-island trips, gasoline, supplies, etc. Additionally, DLNR will lose money as the demand for hunting licenses and tag fees dwindles. The DEA does not adequately reflect the costs associated with management of game mammals and loss of hunting lands. Another commenter questioned why a cost was associated with project modifications to the management of game hunting on State managed lands because Maui does not have any State hunting areas that are managed to maintain or enhance game mammal populations. The commenters also questioned the methodology used to estimate the project modification cost.

Our Response: Chapter VI, Section 3.a.(2) and Section 4.a. of the Addendum discuss the direct economic impact of critical habitat designation on federally funded game management activities by estimating the direct section 7 costs associated with consultation and project modifications. The DEA makes the assumption that the cost of past project modifications only incorporates the portions of the hunting units that overlap with the occupied proposed critical habitat. However, information received during public comment noted that the prior consultation already modified the State's proposed game mammal program to address potential impacts to habitat everywhere on the island, including occupied and unoccupied habitat and areas inside and outside of critical habitat designation, based on the understanding that increasing game mammal populations in one location where the plants are not present may cause those mammals to move to areas where the plants are present and cause destruction. Upon further review of past consultations and past project modifications, the project modification costs are now estimated at $23,000 to $37,000. As noted in the DEA, because Maui does not have any State hunting areas that are managed to maintain or enhance game mammal populations, project modifications are anticipated to be similar to those in the past. They are not anticipated to include closure of hunting areas. In addition, as noted in the DEA, DLNR is likely to avoid costly project modifications by using Federal funds for game management projects that do not adversely affect listed species or their critical habitat, and if needed use only State funds on projects that the Service believes could have adverse impacts.

Chapter VI, Section 4.b. of the DEA and Section 5.a. of the Addendum discuss the potential indirect impact of critical habitat on the management of game mammals. The DEA notes that section 7 of the Act by itself does not require DLNR to manage State hunting lands to protect critical habitat; assure the survival and conservation of listed species, or participate in projects to recover species for which critical habitat has been established. Moreover, the DEA notes that critical habitat designation does not require: (1) Creating any reserve, refuge, or wilderness areas; (2) fencing for any reason; (3) removing ungulates; or (4) closing areas to hunters. However, the DEA recognizes that a change in game-management strategy is possible as a result of a lawsuit or as a voluntary decision by DLNR. For illustrative purposes, Chapter VI, Section 4.b. of the DEA and Section 5.a. of the Addendum present potential costs that could result if DLNR removed areas within the designation from the State-managed hunting units. Assuming that about half of those who hunt game mammals on the affected lands were to give up hunting, then hunting activity on Maui could drop by about 14.5 percent. This drop in hunting activity would translate into a decrease in annual economic activity related to hunting on Maui of about $290,000 in direct sales (14.5 percent of $2 million); $510,000 in total direct and indirect sales (14.5 percent of $3.5 million); nine jobs (14.5 percent of 60 jobs); and $170,000 in income (14.5 percent of $1.2 million). However, the decrease in expenditures by the displaced hunters would probably be spent on other recreational activities, goods, and services, so these figures are likely to overstate the economic costs. In addition to the change in economic activity discussed above, a reduction in hunting activity in critical habitat would also result in a loss in value or benefit to hunters (consumers' surplus). Section 5.a. of the Addendum estimates this loss in value at $150,000 annually and recognizes that benefits derived from recreational activities that replace game mammal hunting would partially offset this loss.

(55) *Comment:* Three parcels (TMK (2) 1–8–001:003, TMK (2) 3–1–001:004, and TMK (2) 3–1–002:011) should be excluded from designation, because the DEA fails to establish that the benefits of including these parcels in the designation outweigh the costs of including these parcels in the designation.

Our Response: The Service removed two of the three parcels mentioned in the comment—*i.e.*, TMK (2) 3–1–001:004 and TMK (2) 3–1–002:011 from the proposed designation. The

remaining parcel—*i.e.*, TMK (2) 1–8–001:003—is approximately 710 acres (4 ha) in the Agricultural District, and this would remain within the designation. Chapter VI, Section 3.g. of the DEA and Section 4.e. of the Addendum discuss activities on Agricultural land and specifically recognizes that some of the State managed Agricultural land is leased out to private entities as pasturage. However, no direct section 7 costs involving these leases are anticipated because there is no known Federal involvement.

While section 4(b)(1)(A) of the Act stipulates that listing determinations must be made solely on the basis of biological evidence, section 4(b)(2) of the Act, which calls for the establishment of critical habitat for all listed species if it is prudent and determinable, adds that the Secretary should take into consideration the economic impact of the designation and any other relevant impacts before specifying any particular area as critical habitat. Hence, an economic analysis is part of the process of designating critical habitat. Section 4(b)(2) of the Act provides the Secretary with broad discretion to take into consideration the economic impacts of any proposed critical habitat designation and exclude areas where she finds that the benefits of exclusion outweigh the benefits of designation.

The Secretary may exclude any area from critical habitat if she determines that the benefits of exclusion outweigh the benefits of specifying such area as part of the critical habitat, unless she determines, based on the best scientific and commercial data available, that the failure to designate such area as critical habitat will result in the extinction of the species concerned (16 U.S.C. 1533(b)(2)).

Thus, the Secretary is not required to find that the benefits of inclusion outweigh the costs of inclusion before designating an area, nor is the Secretary required to exclude an area from critical habitat if she determines that the benefits of exclusion outweigh the benefits of inclusion. Rather, the Act provides the Secretary with the discretion to take economic consideration into account when designating critical habitat.

As such, the DEA and the Addendum serve to illustrate possible impacts that can result from the designation, whether in form of costs or benefit. They provide information for the Secretary to exercise her discretion, but do not provide definitive conclusions or recommendations as to what areas, if any, should be excluded from the final designation.

(56) *Comment:* While the Service has stated that critical habitat affects only activities that require Federal permits or funding, and does not require landowners to carry out special management or restrict use of their land, they fail to address the breadth of Federal activities that affect private property in Hawaii and the extent to which private landowners are required to obtain Federal approval before they can use their property. These requirements extend to all State agencies using Federal funds in connection with a proposed action and community actions for which Federal approval or review is necessary. For example, if the Federal government approves eligibility for flood insurance, flood plain development programs shall become subject to consultations under the Act. Federal agencies such as the U.S. Department of Agriculture and the Federal Farm Services Agency (FFSA) have numerous programs that provide funds or other assistance to farmers and ranchers in the form of loans, grants, loan deficiency, and subsidy payments for certain commodities, marketing assistance, disaster assistance, and other financial, technical, and educational assistance. Participation in any such programs would be subject to section 7 consultation, thus making Federal assistance unavailable to the types of operations that these programs are designed to assist.

Our Response: The analysis in the DEA, as revised by the Addendum, is based on a review of all "reasonably foreseeable" projects, land uses, and activities that may be directly affected by the implementation of section 7 for the plants. "Reasonably foreseeable" projects, land uses, and activities are defined in the DEA as those which are: (1) Currently authorized, permitted, or funded; (2) proposed in plans currently available to the public; or (3) projected or likely to occur within next 10 years based on (a) recent economic or land-use trends, development patterns, evolving technologies, competitive advantages, etc., and (b) limits imposed by land-use controls, access, terrain, infrastructure and other restrictions on development. After determining the "reasonably foreseeable" projects, land uses, and activities that could affect the physical and biological features of the proposed critical habitat units, the next step in the analysis was to determine Federal involvement. Thus, the DEA does not evaluate all potential activities with Federal nexus; instead, the DEA is limited to those activities that were "reasonably foreseeable." The results of this analysis are presented in Table VI–3 in the DEA and Table Add-2 in the Addendum.

(57) *Comment:* Two commenters wrote that lands in Urban, Agricultural, and Rural Districts are designated, used, and intended for a wide variety of land use activities. These commenters stated that there is a much greater likelihood, therefore, that critical habitat designation will have an adverse economic impact on these landowners.

Our Response: None of the critical habitat units are in the Urban or Rural District. In fact, 86 percent of the critical habitat designation is in Conservation District and 14 percent in Agricultural District. As discussed above, designation of the Agricultural lands may result in direct section 7 costs through federally sponsored agricultural or ranching related programs, such as Farm Bill programs administered by NRCS. The DEA bases its estimate of two to eight consultations over the next 10 years on the amount of Agricultural land contained within the proposed designation, the number of past projects located within the area proposed for designation, and the possibility that some landowners could decide not to participate in future programs to avoid Federal involvement in their activities.

(58) *Comment:* Several commenters stated that although the Service has expressed that designation of critical habitat does not create a reserve, refuge, or wilderness area; require fencing for any reason; close off areas to hunters, hikers, or other land users; or create a land management plan, many are concerned that critical habitat designation could result in limitations or special management requirements (such as fencing, removal of grazing animals, or control of invasive species) being established on private lands at great expense to the private and public. The Service's own recovery plans for many of the species in the proposed rule specifically identify cattle grazing as a potential threat to the species or their habitats. Many feel that it is likely that private party litigation will force the implementation of "special management considerations or protection." An example of this is the worrisome precedent of *Palila* v. *Hawaii Department of Land and Natural Resources* in which the Sierra Club Legal Defense Fund sued the State of Hawaii under the Endangered Species Act and resulted in a Federal court order specifying that sheep and goats should be permanently removed from critical habitat designated for palila on the Big Island. The argument against this case being relevant for the plants critical habitat is not persuasive when it argues that palila cases are irrelevant to

Hawaii ESA law because the Federal Act defines "take" as "harm" while the State law defines "take" as "injure." "Harm" and "injure" are generally synonymous. The cost of such special management should be considered prior to a final determination on the proposed designations. Where costs are likely to outweigh the benefits of the proposed designation, designation of critical habitat should be determined not to be prudent, or at a minimum, areas proposed for designation should be significantly reduced so that any special management measures that may eventually be mandated through litigation are of a scale that is reasonable and cost-effective to implement.

Another commenter expressed concerns that the proposed critical habitat would bring private party lawsuits resulting in mandated protection for critical habitat. Another commenter also stated that in Hawaii it has long been established that landowners own all feral animals on their property. The commenter expressed concerns that plaintiffs who seek to compel a private landowner to spend money to protect critical habitat could argue that the landowner has a positive obligation to ensure that such animals do not harm the habitat.

Our Response: Section 4(a)(3)(A) of the Act directs the Secretary to designate critical habitat to the "maximum extent prudent and determinable." Critical habitat is not prudent when one or both the following situations exist: (1) A species is threatened by taking or other human activity and identification of critical habitat would increase the degree of threat; or (2) designation would not be beneficial to the species (50 CFR 424.12(a)(1)). Thus the costs of designation are not considered in analyzing whether critical habitat is prudent. However, such costs are considered under section 4(b)(2) of the Act, which directs the Secretary to take into consideration the economic and other impacts of designation and authorizes the Secretary to exclude any area if she determines that the benefits of exclusion outweigh the benefits of designating it as critical habitat, unless it will result in extinction of the species.

The Act does not obligate landowners to manage their land to protect critical habitat, nor would landowners and managers be obligated under the Act to participate in projects to recover a species for which critical habitat has been established. However, Chapter VI, Section 4.c. of the DEA does discuss the potential mandate for conservation management pursuant to litigation and the resulting costs for the proposed designation on Maui. In addition, Chapter VI, Section 4.f. of the DEA, discusses the potential for adverse impacts on development, including delays for additional studies and agency reviews, increased costs for environmental studies, increased risk of project denials, increased risk of costly mitigation measures, increased risk of litigation over approvals, etc. The DEA concludes that it is impossible to quantify these potential costs, because there are no known development plans within the proposed designation. Furthermore, the following factors make future development projects in the proposed critical habitat highly unlikely: (1) 86 percent of the critical habitat is in Conservation District where development is severely limited; (2) the approximately 14 percent of the critical habitat in the Agricultural District is in remote areas, areas lined with gulches or steep cliffs, or areas with limited access to water; (3) there are no known plans for development within the designation; and (4) most of the critical habitat in the Special Management Area is also within the Conservation District. While it is conceivable that there may initially be an increase in subsequent lawsuits related to the critical habitat designation, it is not possible to predict their number, degree of complexity, chance of success, or any other associated effect due to scant historical evidence for the plants.

(59) *Comment:* Several commenters were concerned that critical habitat designation will lead to unnecessary and costly litigation. Another commenter was concerned about the likelihood of private party lawsuits limiting current ranch operations.

Our Response: As discussed in the DEA and the Addendum, an undetermined probability exists that a Federal or State court could mandate certain indirect impacts as a result of critical habitat. However, it is beyond the scope of the economic analysis to assess the legal merits of the arguments for or against the various indirect impacts, to assess the probability that a lawsuit will be filed, and, if filed, to identify possible outcomes of a court decision and the associated probabilities. However, whenever possible, the DEA and the Addendum present the worst-case scenario of the costs associated with the potential outcomes of third party lawsuits.

(60) *Comment:* ML&P believes that designation of critical habitat would adversely impact the value of agricultural lands and lands proposed for future development, reduce the collateralized value of land holdings, and (due to State and county law) reduce the ability to develop lands previously planned for development. The impacted lands include areas described in the proposed units A, C1, C2 and C3.

Our Response: As discussed above, the Service removed Units C1 and C2 and reduced Units A and C3. After this modification, less than one acre of ML&P's land in Units A and C3 remains within the designation. As such, minimal impacts are anticipated for ML&P's Agricultural land in Units A and C3.

(61) *Comment:* The Maui County Department of Water Supply provided the following information on planned projects occurring in proposed units L, G, and B2. These projects include access improvements, intake improvements, reservoir design and construction, well construction, flume repair and maintenance, water distribution system maintenance, and identification of potential sources for future groundwater. Whether these or other projects would involve Federal lands, funding, or permits, it is important that water treatment plants, sources, and collection and distribution systems can continue to be established and maintained within these areas where they are needed for hydrogeological and security reasons.

Our Response: Maui County and Department of Water Supply (DWS) submitted specific information regarding planned projects in the proposed critical habitat during the public comment period. Possible and planned projects include water source development in Unit B2, construction of a water reservoir adjacent to Unit L, access and intake improvements in Unit L, and repair and maintenance of existing flumes in Unit L. As noted earlier, the Service removed Unit B2 from the final designation. Thus, no section 7 costs would be anticipated to result from future DWS projects in that area. Moreover, most of the identified DWS projects in Unit L involve repair and maintenance of existing manmade features and structures, and as such, would not be subject to section 7 consultation. However, to the extent that the planned improvements go beyond repair and maintenance and would be subject to section 7 consultation due to Federal funding or permitting, the DEA's estimate of zero to two consultations reasonably reflects the potential number of section 7 consultations over the next 10 years (see Chapter VI, Section 3.k. of the DEA). The DEA estimates that the consultations can cost up to $68,000 with project modification that can range up to $200,000.

(62) *Comment:* Ulupalakua Ranch expressed concerns that the proposed critical habitat will: (1) Limit development of diversified agricultural operations due to the Ranch's interest in Federal cost share programs; (2) cause a loss in revenue; (3) create economic hardship resulting from increased expenses to counter trespassing caused by increased curiosity over critical habitat lands; and (4) lower economic returns and job loss due to critical habitat dividing up sections of the ranch, thus leading to inefficiency.

Our Response: Chapter III of the DEA notes that section 7 of the Act requires Federal agencies to consult with the Service to ensure that activities they fund, authorize, or carry out do not result in destruction or adverse modification of critical habitat. Because consultation under section 7 only applies to activities that have Federal involvement, the designation of critical habitat does not afford any additional protections for listed species with respect to strictly private activities.

Chapter VI, Section 3.g.(2) of the DEA and Section 4.e. of the Addendum present estimates of direct section 7 costs associated with participation in Federal cost-share programs with NRCS. The Addendum estimates that total consultation costs for all projects in the critical habitat designation range from $0 to $41,200, while project modification costs range from $0 to $100,000. The DEA and the Addendum both note that projects sponsored by NRCS programs are generally beneficial in nature and are likely to involve minimal project modifications. However, the DEA and the Addendum recognize that a landowner could decide to forego Federal funding and cancel the contract with NRCS to avoid making modifications identified through the section 7 consultation process. If Ulupalakua Ranch were to be one of the anticipated consultations over the next ten years, and if the section 7 consultation process resulted in project modifications that would limit the development of diversified agricultural operations, then Ulupalakua Ranch could avoid these project modifications by foregoing Federal funding, thus removing the Federal involvement. The cost of project modifications in that case would be the total amount of Federal funding foregone. If no Federal involvement exists, there can be no direct section 7 costs associated with critical habitat designation on Ulupalakua Ranch lands.

The remaining three concerns raised above by Ulupalakua Ranch, specifically that critical habitat designation will cause loss in revenue, create economic hardship resulting from increased expenses to counter trespassing caused by increased curiosity over critical habitat lands, and lower economic returns and job loss caused by critical habitat dividing up sections of the ranch, are concerns about indirect impacts of critical habitat designation.

There is considerable uncertainty about whether any or all of these indirect impacts may occur, as they depend upon actions and decisions by entities other than the Service under circumstances for which there is limited or no history that can be used to determine the probability of different outcomes. To the extent possible, the possible costs associated with these impacts are discussed in Chapter VI, Section 4 of the DEA and Section 5 of the Addendum. However, based on the limited information available, it is not possible to determine the probability that any of these impacts will actually occur as a result of critical habitat designation.

(63) *Comment:* The Department of Hawaiian Homelands (DHHL) opposes the designation of critical habitat on their land in Unit E and H because the currently degraded land is slated for development of homes for native Hawaiian beneficiaries. DHHL further noted that critical habitat designation will cause significant economic harm, because: (1) The designation of critical habitat would require hundreds of future beneficiaries to conduct an environmental assessment and section 7 consultation in order to construct homes and prepare ground for farming; (2) the identified areas have already been subdivided into individual lots and DHHL does not have the authority to retroactively impose management plans on individual lessees, meaning that any regulatory impact will fall on individual lessees; (3) DHHL's homesteading program uses Federal programs to guarantee and insure the mortgages of homesteaders; (4) Federal funds may be used construct site improvements and homes; and (5) to the extent that the use of these programs triggers consultation under section 7, lessees will be subject to additional filing requirements, delays in homebuilding, possible additional expenditures, and limitations on property use. DHHL supports the proposed designations in areas that are not subject to homestead development, such as the cliff face found in unit G4.

Our Response: As discussed earlier, the Service reduced Units E and H to exclude certain areas for biological reasons, including DHHL land subject to homestead development. As such, possible impacts discussed in the comment are not expected.

(64) *Comment:* The Service did not adequately address the takings of private property as a result of designating critical habitat for endangered plants on Maui. If the critical habitat proposal would require reducing water diversions from any stream, the Service should investigate whether that would take anyone's vested water rights. In addition, if the proposed designation of critical habitat precipitates conversion of agricultural lands to conservation land that has no economically beneficial use, then the Federal and State governments will have taken private property. In addition, the government may also take property by excessive regulation as was evidenced in *Lucas* v. *South Carolina Coastal Council*, 505 U.S. 1003 (1992).

Our Response: As noted above, none of the plants are stream-dependent for their survival and therefore would not cause a reduction in water diversion. Also, Chapter VI, Section 4.e. of the DEA, the Addendum and our response to comment 43 address costs involved in redistricting lands proposed for critical habitat designation from the Agricultural to the Conservation District. Any redistricting of land to Conservation and any corresponding loss of economically beneficial use would be decided by the State Land Use Commission, not the Service, based on an array of state laws and other factors, including the extent to which the proposed reclassification conforms to the applicable goals, objectives, and policies of the Hawaii state plan; the extent to which the proposed reclassification conforms to the applicable district standards; and the impacts of the proposed reclassification on the following: preservation or maintenance of important natural systems or habitats; maintenance of valued cultural, historical, or natural resources; maintenance of other natural resources relevant to Hawaii's economy; commitment of state funds and resources; provision for employment opportunities and economic development; and provision for housing opportunities for all income groups; and the representations and commitments made by the petitioner in securing a boundary change.

(65) *Comment:* A Federal nexus exists for the non-point source water discharge program. If water discharge into critical habitat does not meet water quality standards, a permit could be denied. The effect on agriculture may be devastating since some run-off from agricultural activities is avoidable.

Our Response: The State Department of Health Polluted Runoff Control Program and the State Office of Planning, Coastal Zone Management Program, work together to address nonpoint source pollution through outreach and education and programs that utilize incentives. Under the Coastal Zone Act Reauthorization Amendments, Section 6217, the State is required to meet various conditions for approval of the State's Coastal Nonpoint Pollution Control Program by the U.S. Environmental Protection Agency. To meet these conditions, the State Department of Health is developing administrative rules to create Statewide enforceable policies and mechanisms to address nonpoint source pollution. These draft rules are currently the subject of public informational meetings. Public comments and suggestions received during these meetings will be considered before final rules are drafted and proposed to the Governor.

At the present time, there is no permit requirement for nonpoint source pollution. Moreover, the proposed rules regarding nonpoint source pollution make no reference to either water quality standards or to critical habitat. Until the State administrative rules are finalized, the economic impact caused by the interplay of nonpoint source pollution requirements and the designation of critical habitat is entirely speculative.

(66) *Comment:* The designation of critical habitat will impose costly procedural burdens on the Navy's ongoing efforts to clear ordnance at Kahoolawe. A careful analysis of the benefits and burdens of critical habitat designation may result in a determination that critical habitat designation on Kahoolawe is not prudent, especially in light of potential prescribed burns for clearing ordnance.

Our Response: Chapter VI, Section 3.e. of the DEA notes that November 2003 marks the end of the Navy's congressionally-mandated cleanup period. After that point, Kahoolawe Island Reserve Commission (KIRC) is likely to seek some form of Federal assistance. In the event that KIRC receives Federal funding in the future, the DEA estimates section 7 consultation costs at $10,400 to $78,500 including minor project modification costs (based on two to five consultations). However, as noted above, the Service reduced the designation on Kahoolawe for biological reasons, and the number of section 7 consultations over the next 10 years is expected to decrease to zero to three consultations as a result. As such, the Addendum revises future section 7 consultation costs to range from $0 to $47,100.

(67) *Comment:* Many commenters questioned the utility of critical habitat designation because it will not result in on-the-ground improvement of habitat or endangered species. Conversely, some commenters pointed out that critical habitat will prevent the Federal government from carrying out activities that destroy habitat or species in need of recovery and that it will benefit the people of Maui by preserving native forests, thus preventing erosion that pollutes water and smothers reefs.

Our Response: There is little disagreement in the published economic literature that real social welfare benefits can result from the conservation and recovery of endangered and threatened species (Bishop 1978, 1980; Brookshire and Eubanks 1983; Boyle and Bishop 1986; Hageman 1985, Samples *et al.* 1986; Stoll and Johnson 1984). Such benefits have also been ascribed to preservation of open space and biodiversity (see examples in Pearce and Moran (1994) and Fausold and Lilieholm (1999)), both of which are associated with species conservation. Likewise, a regional economy can benefit from the preservation of healthy populations of endangered and threatened species, and the habitat on which these species depend.

It is not feasible, however, to fully describe and accurately quantify these benefits in the specific context of the proposed critical habitat for the plants, because no quantified data on the value of the Maui and Kahoolawe species exists, and the Service is unable to provide specific data on the change in the quality of the ecosystem and the species as a result of the designation (for example, how many fewer ungulates will roam into the critical habitat, how many fewer invasive plants will be introduced as a result, and therefore how many more of the plants will be present in the area). The discussion presented in the DEA and in the Addendum provides examples of potential benefits, which derive primarily from the listing of the species, based on information obtained in the course of developing the economic analysis. It is not intended to provide a complete analysis of the benefits that could result from section 7 of the Act in general, or of critical habitat designation in particular. In short, the Service believes that the benefits of critical habitat designation are best expressed in biological terms that can be weighed against the expected cost impacts of the rulemaking.

(68) *Comment:* The State Department of Land and Natural Resources, Land Division, requests that 15 tax map parcels be excluded from critical habitat because they: (1) Are currently being leased for activities that could be adversely affected by the designation (*e.g.*, agricultural leases); (2) have been identified as parcels with possible lease or development potential; (3) could suffer a significant loss in value; or (4) include water sources of water systems.

Our Response: As noted earlier, the Service modified the critical habitat designation for biological reasons, and as a result of the changes, five of the 15 parcels were no longer within the designation. The ten parcels remaining in the designation are located in Units A, G1, G3, H, I1, I2, I3, I4, K, and L. These ten parcels overlap with the designation in the amount of approximately 7,015 ac (2,839 ha). Approximately 90 percent (6,305 ac (2,552 ha)) is within the Conservation District. The other 10 percent (710 ac (287 ha)) is within the Agricultural District.

Chapter VI, Section 3.g. of the DEA and Section 4.e. of the Addendum discuss activities on Agricultural land and specifically recognize that some of the State managed Agricultural land is leased out to private entities as pasturage. DLNR-Land Division specifically identified three parcels within the proposed critical habitat designation that are leased for pasture purpose. Two of these parcels are no longer within the designation. The third parcel, approximately 710 ac (287 ha) in the Agricultural District, remains within the designation. No direct section 7 costs involving these leases are anticipated because there is no known Federal involvement.

Indirect costs, specifically the possibility of restrictions on the State's ability to lease the land caused by the interplay between critical habitat designation and State law, are discussed in Section 5.b. of the Addendum. As noted in Section 5.b., the likelihood of a future lawsuit interfering with existing agricultural activity within the designated critical habitat is considered low, based upon review of the existing Federal and State law provisions and professional judgment. However, for illustration purposes, an estimate of the potential impact is $7,100 per year utilizing the land rents of $10 per acre per year (as used in the DEA) since DLNR did not provide any additional information regarding the value of the affected leases.

Of the remaining ten parcels, DLNR did not identify which have possible lease or development potential, could suffer a significant loss in value, or include water sources for water systems. As noted above, the portions of these

parcels that overlap with the designation are all located within the Conservation District, where development is severely limited. Without more information from DLNR, it is difficult to evaluate how these parcels could suffer a significant loss in value as these parcels are already subject to the restrictions of the Conservation District. Finally, no costs are expected to occur from impacts to water systems, because none of the plants are stream-dependent for their survival and therefore would not cause a reduction in water diversion. In addition, water infrastructure is considered a manmade feature and therefore its operation and maintenance are not subject to critical habitat provisions of section 7, because these features and structures normally do not contain, and are not likely to develop, any primary constituent elements.

Summary of Changes From the Revised Proposed Rule

Based on a review of public comments received on the proposed determinations of critical habitat, we have reevaluated our proposed designations and included several changes to the final designations of critical habitat. These changes include the following:

(1) We published 139 critical habitat units for 60 plant species on the islands of Maui and Kahoolawe.

(2) The scientific names were changed for the following non-listed associated plant species found in the "*Supplementary Information: Discussion of the Plant Taxa*" section: *Thelypteris cyatheoides* changed to *Christella cyatheoides* (Palmer in press) in the discussions of *Cyanea glabra, Phlegmariurus mannii,* and *Pteris lydgatei; Lipochaeta lavarum* changed to *Melanthera lavarum* (Wagner and Robinson 2001) in the discussion of *Kanaloa kahoolawensis, Hedyotis coriacea, Hibiscus brackenridgei,* and *Spermolepis hawaiiensis; Styphelia tameiameiae* changed to *Leptecophylla tameiameiae* (Weiller 1999) in the discussion of *Asplenium fragile* var. *insulare, Bidens micrantha* ssp. *kalealaha, Diellia erecta, Lysimachia lydgatei, Melicope adscendens, Neraudia sericea, Phlegmariurus mannii, Plantago princeps, Platanthera holochila, Remya mauiensis, Sanicula purpurea,* and *Schiedea haleakalensis; Lipochaeta integrifolia* changed to *Melanthera integrifolia* (Wagner and Robinson 2001) in the discussion of *Centaurium sebaeoides* and *Sesbania tomentosa; Pluchea symphytifolia* changed to *Pluchea carolinensis* (Wagner and Herbst 1995) in the discussions of *Cyrtandra munroi; Lycopodium cernuum* changed to *Lycopodiella cernua* (Palmer 2003) in the discussions of *Platanthera holochila; Morelotia gahniiformis* changed to *Gahnia gahniiformis* in the discussions of *Platanthera holochila;* and *Sphenomeris chusana* changed to *Sphenomeris chinensis* in the discussion of *Pteris lydgatei.*

(3) We replaced the specific name of the associated native plant species, *Hibiscus arnottianus* (which is not reported to occur on Maui), with "*Hibiscus* spp." in the discussion of *Gouania vitifolia* in the "*Supplementary Information: Discussion of the Plant Taxa*" and section 17.96.

(4) We removed the following species from the "*Supplementary Information: Discussion of the Plant Taxa,*" as they are not reported to occur on Maui: *Chloris barbata* was removed from the list of associated native plant species for *Kanaloa kahoolawensis; Andropogon virginicus* was removed from the list of associated native plant species for *Melicope balloui;* and *Pennisetum setaceum* was removed from the list of associated native plant species for *Colubrina oppositifolia.*

(5) For clarity regarding the number of location occurrences for each species (which do not necessarily represent viable populations) and the number of populations essential for the conservation of a species (*e.g.,* 8 to 10 populations with 100, 300, or 500 reproducing individuals), we changed the word "population" to "occurrence" and updated the number of occurrences in the "*Supplementary Information: Discussion of the Plant Taxa*" section and in "Table 2.—Summary of existing occurrences and land ownership for 70 species reported from Maui and Kahoolawe" for the species listed below. In this final critical habitat rule, we have used "occurrence" when reporting collections or observations of one or more plants in a specific location. We have used "population" when discussing conservation goals for the Maui and Kahoolawe plants. We made the following changes for these species: *Alectryon macrococcus* changed from seven populations to 13 occurrences; *Argyroxiphium sandwicense* ssp. *macrocephalum* changed from four populations to seven occurrences; *Asplenium fragile* var. *insulare* changed from one population to two occurrences; *Bidens micrantha* ssp. *kalealaha* changed from three populations to four occurrences; *Bonamia menziesii* changed from four populations to six occurrences; *Cenchrus agrimonioides* changed from two populations to one occurrence; *Clermontia samuelii* changed from four populations to seven occurrences; *Colubrina oppositifolia* changed from two populations to one occurrence; *Ctenitis squamigera* changed from six populations to 12 occurrences; *Cyanea copelandii* ssp. *haleakalaensis* changed from three populations to five occurrences; *Cyanea hamatiflora* ssp. *hamatiflora* changed from seven populations to nine occurrences; *Cyanea lobata* changed from four populations to five occurrences; *Cyanea mceldowneyi* changed from six populations to 11 occurrences; *Cyrtandra munroi* changed from four populations to five occurrences; *Dubautia plantaginea* ssp. *humilis* changed from one population to two occurrences; *Flueggea neowawraea* changed from three populations to four occurrences; *Geranium arboreum* changed from seven populations to 12 occurrences; *Geranium multiflorum* changed from eight populations to 13 occurrences; *Hesperomannia arborescens* changed from two populations to four occurrences; *Hesperomannia arbuscula* changed from two populations to eight occurrences; *Mariscus pennatiformis* changed from one population to two occurrences; *Melicope adscendens* changed from two populations to 16 occurrences; *Melicope balloui* changed from two populations to three occurrences; *Melicope knudsenii* changed from one population to four occurrences; *Melicope ovalis* changed from one population to two occurrences; *Neraudia sericea* changed from three populations to five occurrences; *Plantago princeps* changed from five populations to eight occurrences; *Platanthera holochila* changed from three populations to five occurrences; *Remya mauiensis* changed from three populations to five occurrences; *Sanicula purpurea* changed from five populations to seven occurrences; *Sesbania tomentosa* changed from eight populations to six occurrences; *Spermolepis hawaiiensis* changed from four populations to five occurrences; *Tetramolopium capillare* changed from four populations to five occurrences; *Tetramolopium remyi* changed from zero populations to one occurrence; *Vigna o-wahuensis* changed from four populations to two occurrences; and *Zanthoxylum hawaiiense* changed from four populations to nine occurrences.

(6) We changed "flowering cycles, pollination vectors, seed dispersal agents" to "reproduction cycles, dispersal agents" in the life history portion of the "*Supplementary Information: Discussion of the Plant Taxa*" section for the fern or fern ally species, *Asplenium fragile* var. *insulare, Ctenitis squamigera, Diellia erecta, Diplazium molokaiense, Phlegmariurus mannii,* and *Pteris lydgatei.*

(7) We revised the list of excluded, manmade features in the "*Criteria Used to Identify Critical Habitat*" and section 17.96 to include additional features based on information received during the public comment periods.

(8) We refined the elevation ranges for *Alectryon macrococcus, Argyroxiphium sandwicense* ssp. *macrocephalum, Asplenium fragile* var. *insulare, Bonamia menziesii, Brighamia rockii, Cenchrus agrimonioides, Centaurium sebaeoides, Clermontia lindseyana, Clermontia oblongifolia* ssp. *mauiensis, Clermontia samuelii, Colubrina oppositifolia, Ctenitis squamigera, Cyanea glabra, Cyanea lobata, Cyanea mceldowneyi, Cyrtandra munroi, Diellia erecta, Diplazium molokaiense, Dubautia plantaginea* ssp. *humilis, Flueggea neowawraea, Geranium arboreum, Geranium multiflorum, Gouania vitifolia, Hedyotis coriacea, Hesperomannia arbuscula, Hibiscus brackenridgei, Ischaemum byrone,*

Isodendrion pyrifolium, Kanaloa kahoolawensis, Mariscus pennatiformis, Melicope adscendens, Melicope balloui, Melicope knudsenii, Melicope mucronulata, Peucedanum sandwicense, Phlegmariurus mannii, Phyllostegia mannii, Phyllostegia mollis, Plantago princeps, Platanthera holochila, Pteris lidgatei, Remya mauiensis, Sanicula purpurea, Sesbania tomentosa, Tetramolopium capillare, Tetramolopium remyi, and *Vigna o-wahuensis.*

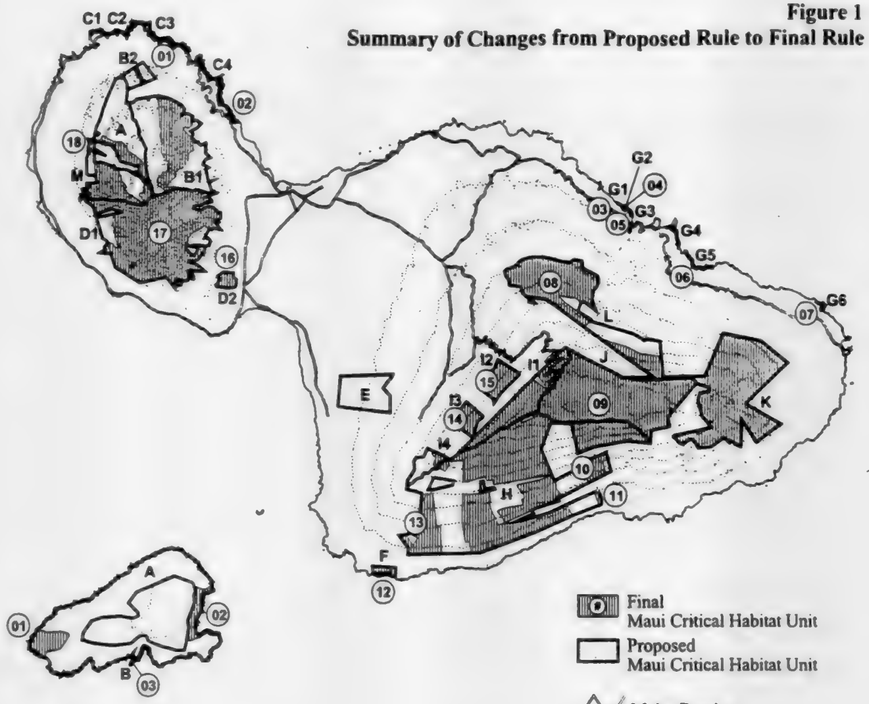
(9) We corrected the typographic error in the acreage published for the revised proposed rule of critical habitat on Kahoolawe from 713 ha (1,762 ac) to 7,683 ha (18,984 ac).

(10) We made revisions to the unit boundaries based on information supplied by commenters, as well as information gained from field visits to some of the sites, that indicated that the primary constituent elements were not present in certain portions of the proposed unit, that certain changes in land use had occurred on lands within the proposed critical habitat that would preclude those areas from supporting the primary constituent elements, or that the areas were not essential to the conservation of the species in question. In addition, areas were excluded based on weighing the benefits of inclusion versus exclusion pursuant to section 4(b)(2) of the Act (*see* "*Economic Analysis*").

(11) In the draft rule, we proposed that TNCH's Kapunakea and Waikamoi Preserves and the State's upper Hanawi NAR not be included as critical habitat pursuant to section 3(5)(A) of the Act, because they are not in need of special management or protection. The reasons for this were discussed in detail in the proposed rule. In this final rule we have determined that they should also be excluded under section 4(b)(2) of the Act, because we have determined that the benefits of exclusion exceed the benefits of inclusion due to the positive and voluntary conservation efforts underway there (*see* discussion under Analysis of Impacts Under Section 4(b)(2)).

A brief summary of the modifications made to each unit is given below (*see also* Figure 1).

Figure 1
Summary of Changes from Proposed Rule to Final Rule



Maui A

This unit was proposed as critical habitat for 16 species: *Alectryon macrococcus; Clermontia oblongifolia* ssp. *mauiensis; Colubrina oppositifolia; Ctenitis squamigera; Cyanea glabra; Cyanea lobata; Cyrtandra munroi; Gouania vitifolia; Hedyotis mannii; Hesperomannia arbuscula; Phlegmariurus mannii; Platanthera holochila; Plantago princeps; Pteris lydgatei; Remya mauiensis;* and *Sanicula purpurea*. We excluded the proposed critical habitat on ML&P lands because the benefits of excluding them outweighed the benefits of inclusion (*see "Analysis of Impacts Under Section 4(b)(2): Other Impacts"*). Proposed critical habitat in Maui A for *Colubrina oppositifolia, Plantago princeps,* and *Pteris lydgatei,* all multi-island species, was excluded. This area is not essential to the conservation of these three species because it has a lower proportion of associated native species and more nonnative species than other areas we consider to be essential to the conservation of these three species. In addition, there are at least eight other locations for each of these species within their historical ranges on Maui and other islands which provide habitat essential for their conservation and which are either designated as critical habitat in this final rule or have been designated or proposed for designation in other rules.

The area designated as critical habitat for the Maui endemic species, *Remya mauiensis,* provides habitat within its historical range for two populations. The area designated as critical habitat for the following multi-island species provides habitat for two populations of *Alectryon macrococcus;* three populations each of *Clermontia oblongifolia* ssp. *mauiensis, Ctenitis squamigera,* and *Cyanea glabra;* two populations of *Cyanea lobata;* four populations of *Cyrtandra munroi;* one population of *Gouania vitifolia;* two populations each of *Hedyotis mannii* and *Hesperomannia arbuscula;* one population each of *Phlegmariurus mannii* and *Platanthera holochila;* and three populations of *Sanicula purpurea* within their historical ranges.

These modifications resulted in the reduction from 3,884 ha (9,598 ac) to 1,632 ha (4,033 ac). This unit was renamed Maui 17—*Alectryon macrococcus*—d, 17—*Alectryon macrococcus*—e, 17—*Clermontia oblongifolia* ssp. *mauiensis*—a, 17—*Clermontia oblongifolia* ssp. *mauiensis*—c, 17—*Ctenitis squamigera*—b, 17—*Ctenitis squamigera*—c, 17—*Cyanea glabra*—e, 17—*Cyanea glabra*—f, 17—*Cyanea lobata*—a, 17—*Cyrtandra munroi*—a, 17—*Cyrtandra munroi*—b, 17—*Gouania vitifolia*—a, 17—*Hedyotis mannii*—a, 17—*Hesperomannia arbuscula*—a, 17—*Phlegmariurus mannii*—d, 17—*Platanthera holochila*—c, 17—*Remya mauiensis*—b, 17—*Remya mauiensis*—c, 17—*Sanicula purpurea*—b, 18—*Alectryon macrococcus*—f, 18—*Ctenitis squamigera*—d, and 18—*Remya mauiensis*—d.

Maui B

This unit was proposed as critical habitat for 11 species: *Clermontia oblongifolia* ssp. *mauiensis; Ctenitis squamigera; Cyanea lobata; Cyrtandra munroi; Diplazium molokaiense; Hesperomannia arborescens; Phlegmariurus mannii; Platanthera holochila; Plantago princeps; Pteris lydgatei;* and *Sanicula purpurea*. We excluded the proposed critical habitat on ML&P lands because the benefits of excluding them outweighed the benefits of inclusion (*see "Analysis of Impacts Under Section 4(b)(2): Other Impacts"*). As a result, no critical habitat was designated for *Hesperomannia arborescens,* a multi-island species, on Maui because all of the habitat proposed for this species is within these lands. However, we have proposed (67 FR 37108) and designated (68 FR 12981) critical habitat on other islands within its historical range. We excluded the proposed critical habitat for the multi-island species *Ctenitis squamigera* and *Platanthera holochila* in Maui B. Areas proposed for these two species were excluded because they are not essential to the conservation of these two species. We are designating adequate and more appropriate habitat elsewhere on Maui for these two species in this final rule and have designated or proposed for designation habitat on other islands within their historical ranges. There is a lower likelihood that the biological features essential to these species will persist there because these areas have a low likelihood of being managed by the landowner for conservation. In addition, there are at least eight other locations for each of these species within their historical ranges on Maui and other islands.

The area designated as critical habitat for the multi-island species provides habitat within historical range for six populations of *Clermontia oblongifolia* ssp. *mauiensis;* three populations each of *Cyanea lobata, Cyrtandra munroi,* and *Diplazium molokaiense;* one population each of *Phlegmariurus mannii* and *Plantago princeps;* two populations of *Pteris lidgatei;* and four populations of *Sanicula purpurea*.

These modifications resulted in the reduction from 4,736 ha (11,701 ac) to 1,760 ha (4,349 ac). This unit was renamed 17—*Clermontia oblongifolia* ssp. *mauiensis*—b, 17—*Clermontia oblongifolia* ssp. *mauiensis*—c, 17—*Cyanea lobata*—c, 17—*Cyrtandra munroi*—c, 17—*Diplazium molokaiense*—c, 17—*Phlegmariurus mannii*—d, 17—*Plantago princeps*—b, 17—*Pteris lidgatei*—a, 17—*Sanicula purpurea*—a, 17—*Sanicula purpurea*—b, and 17—*Sanicula purpurea*—c.

Maui C

This unit was proposed as critical habitat for three species: *Brighamia rockii; Centaurium sebaeoides;* and *Sesbania tomentosa*. Modifications were made to this unit to exclude areas that do not contain the primary constituent elements for these species.

The area designated as critical habitat for these multi-island species provides habitat within their historical ranges for two populations of *Brighamia rockii* and one population each of *Centaurium sebaeoides* and *Sesbania tomentosa*.

These modifications resulted in the reduction from 356 ha (880 ac) to 110 ha (270 ac). This unit was renamed 2—*Brighamia rockii*—a, 2—*Brighamia rockii*—b, 2—*Centaurium sebaeoides*—b, and 1—*Sesbania tomentosa*—a.

Maui D

This unit was proposed as critical habitat for 28 species: *Cenchrus agrimonioides; Clermontia oblongifolia* ssp. *mauiensis; Ctenitis squamigera; Cyanea glabra; Cyanea grimesiana* ssp. *grimesiana; Cyanea lobata; Cyrtandra munroi; Diellia erecta; Diplazium molokaiense; Dubautia plantaginea* ssp. *humilis; Gouania vitifolia; Hedyotis coriacea; Hedyotis mannii; Hesperomannia arbuscula; Hibiscus brackenridgei; Isodendrion pyrifolium; Lysimachia lydgatei; Neraudia sericea; Peucedanum sandwicense; Phlegmariurus mannii; Plantago princeps; Platanthera holochila; Pteris lydgatei; Remya mauiensis; Sanicula purpurea; Spermolepis hawaiiensis; Tetramolopium capillare;* and *Tetramolopium remyi*. We excluded the proposed critical habitat in Maui D for *Clermontia oblongifolia* ssp. *mauiensis, Cyrtandra munroi, Isodendrion pyrifolium, Neraudia sericea, Tetramolopium capillare,* and *Tetramolopium remyi*. Areas proposed for these six species were excluded because they are not essential to the conservation of these species. There is a lower likelihood that the biological features essential to these species will persist there because they have a lower proportion of associated native species than other areas we consider to be essential to the conservation of these six species and they have a low likelihood of being managed for conservation. In addition, there are at least eight other locations for each of these species designated elsewhere on Maui and proposed or designated on other islands within their historical ranges.

The area designated as critical habitat for the Maui endemic species provides habitat for six populations of *Dubautia plantaginea* ssp. *humilis* and four populations of *Remya mauiensis* within their historical ranges. The area designated as critical habitat for the multi-island species provides habitat for one population of *Cenchrus agrimonioides;* two populations of *Ctenitis squamigera;* four populations of *Cyanea glabra;* two populations each of *Cyanea grimesiana* ssp. *grimesiana, Cyanea lobata,* and *Diellia erecta;* three populations of *Diplazium molokaiense;* one population of *Gouania vitifolia;* two populations each of *Hedyotis coriacea* and *Hedyotis mannii;* five populations of *Hesperomannia arbuscula;* three populations of *Hibiscus brackenridgei;* eight populations of *Lysimachia lydgatei;* one population each of *Peucedanum sandwicense, Phlegmariurus mannii, Plantago princeps, Platanthera holochila,* and *Pteris lidgatei;* three populations of *Sanicula purpurea;* and one population of *Spermolepis hawaiiensis* within their historical ranges.

These modifications resulted in the reduction from 7,162 ha (17,698 ac) to 6,358 ha (15,709 ac). This unit was renamed 17—*Cenchrus agrimonioides*—b, 17—*Ctenitis squamigera*—a, 17—*Cyanea glabra*—d, 17—*Cyanea glabra*—e, 17—*Cyanea glabra*—g, 17—*Cyanea grimesiana* ssp. *grimesiana*—a, 17—*Cyanea lobata*—b, 17—*Diellia erecta*—c, 17—*Diellia erecta*—d, 17—*Diellia erecta*—e, 17—*Diellia erecta*—f, 17—*Diplazium molokaiense*—c, 17—*Dubautia plantaginea* ssp. *humilis*—a, 17—*Dubautia plantaginea* ssp. *humilis*—b, 17—*Dubautia plantaginea* ssp. *humilis*—c, 17—*Gouania vitifolia*—a, 17—*Hedyotis coriacea*—a, 17—*Hedyotis coriacea*—b, 17—*Hedyotis mannii*—a, 17—*Hesperomannia arbuscula*—a, 17—*Hesperomannia arbuscula*—b, 17—*Hibiscus brackenridgei*—b, 17—*Lysimachia lydgatei*—a, 17—*Lysimachia lydgatei*—b, 17—*Lysimachia lydgatei*—c, 17—*Lysimachia lydgatei*—d, 17—*Lysimachia lydgatei*—e, 17—*Peucedanum sandwicense*—b, 17—*Phlegmariurus mannii*—e, 17—*Plantago*

princeps—b, 17—*Platanthera holochila*—b, 17—*Pteris lidgatei*—b, 17—*Remya mauiensis*—a, 17—*Remya mauiensis*—b, 17—*Sanicula purpurea*—b, 17—*Spermolepis hawaiiensis*—b, and 16—*Hibiscus brackenridgei*—a.

Maui E

This unit was proposed as critical habitat for two multi-island species, *Bonamia menziesii* and *Hibiscus brackenridgei*. The entire unit is eliminated from the final rule. There is a lower likelihood that the biological features essential to these species will persist there because the area has a low likelihood of being managed for conservation and there are 10 other locations that have been designated or proposed to meet the recovery goal of 8 to 10 populations throughout their historical ranges on this and other islands. There is also habitat designated elsewhere on Maui for *Bonamia menziesii* and *Hibiscus brackenridgei*. Exclusion of this unit from critical habitat for *Bonamia menziesii* and *Hibiscus brackenridgei* resulted in the overall reduction of 14,101 ha (34,843 ac) of critical habitat on Maui.

Maui F

No changes were made to Maui F. The area designated as critical habitat for the multi-island species *Vigna o-wahuensis* provides habitat within its historical range for one population. This unit remains 144 ha (357 ac) but was renamed 12—*Vigna o-wahuensis*—a.

Maui G

This unit was proposed as critical habitat for four species: *Brighamia rockii; Ischaemum byrone; Mariscus pennatiformis;* and *Peucedanum sandwicense*. Modifications were made to this unit to exclude areas that do not contain the primary constituent elements for these species. The portion excluded was not essential to the conservation of these four species because it has a lower proportion of associated native species than other areas we consider to be essential to the conservation of these four species, it has a low likelihood of being managed for conservation (Buck, *in litt.* 2002), and there are at least eight other locations that have been designated or proposed to meet the recovery goal of 8 to 10 populations throughout their historical ranges on this and other islands.

The area designated as critical habitat for these multi-island species provides habitat for one population of *Brighamia rockii*, two populations each of *Ischaemum byrone* and *Mariscus pennatiformis*, and one population of *Peucedanum sandwicense* within their historical ranges.

These modifications resulted in the reduction from 83 ha (185 ac) to 52 ha (128 ac). This unit was renamed 3—*Brighamia rockii*—c, 4—*Brighamia rockii*—d, 5—*Brighamia rockii*—e, 5—*Ischaemum byrone*—a, 7—*Ischaemum byrone*—*b, 5*— *Mariscus pennatiformis*—a, and 4—*Peucedanum sandwicense*—a.

Maui H

This unit was proposed as critical habitat for 25 species: *Alectryon macrococcus; Argyroxiphium sandwicense* ssp. *macrocephalum; Bidens micrantha* ssp. *kalealaha; Bonamia menziesii; Cenchrus agrimonioides; Clermontia lindseyana; Colubrina oppositifolia; Diellia erecta; Diplazium molokaiense; Flueggea neowawraea; Geranium arboreum; Geranium multiflorum; Lipochaeta kamolensis; Melicope adscendens; Melicope knudsenii; Melicope mucronulata; Neraudia sericea; Nototrichium humile; Phlegmariurus mannii; Phyllostegia mollis; Plantago princeps; Sesbania tomentosa; Schiedea haleakalensis; Spermolepis hawaiiensis;* and *Zanthoxylum hawaiiense*. We excluded the proposed critical habitat on Ulupalakua and Haleakala Ranch lands because the benefits of excluding these lands outweighed the benefits of including them in critical habitat (see "*Analysis of Impacts Under Section 4(b)(2)*"). We excluded the proposed critical habitat for the Maui endemics *Geranium arboreum* and *Schiedea haleakalensis*, and the multi-island species *Zanthoxylum hawaiiense*. Areas proposed for these three species were excluded because we have proposed adequate and more appropriate habitat elsewhere on Maui and, for *Z. hawaiiense*, on other islands within its historical ranges. The portion excluded was not essential to the conservation of these three species because it has a lower proportion of associated native species than other areas we consider to be essential to the conservation of these three species, it has a low likelihood of being managed for conservation (Urdman *in litt.*, 2002; Silva *in litt.*, 2002), and there are at least eight other locations that have been designated or proposed to meet the recovery goal of 8 to 10 populations throughout their historical ranges on this and other islands. There is habitat designated elsewhere on Maui for *Geranium arboreum, Schiedea haleakalensis*, and *Zanthoxylum hawaiiense*.

The area designated as critical habitat for the Maui endemic species provides habitat for one population each of *Argyroxiphium sandwicense* ssp. *macrocephalum* and *Geranium multiflorum*, four populations of *Lipochaeta kamolensis*, and one population of *Melicope adscendens* within their historical ranges. The area designated as critical habitat for the multi-island species provides habitat for two populations of *Alectryon macrococcus;* four populations of *Bidens micrantha* ssp. *kalealaha;* one population each of *Bonamia menziesii* and *Cenchrus agrimonioides;* two populations of *Clermontia lindseyana;* one population each of *Colubrina oppositifolia, Diellia erecta, Diplazium molokaiense*, and *Flueggea neowawraea;* two populations each of *Melicope knudsenii* and *Melicope mucronulata;* three populations of *Neraudia sericea;* two populations of *Nototrichium humile;* one population of *Phlegmariurus mannii;* two populations of *Phyllostegia mollis;* and one population each of *Plantago princeps, Sesbania tomentosa*, and *Spermolepis hawaiiensis* within their historical ranges.

These modifications resulted in the reduction from 14,101 ha (34,843 ac) to 9,823 ha (24,270 ac). This unit was renamed 9—*Argyroxiphium sandwicense* ssp. *macrocephalum*—a, 9—*Bidens micrantha* ssp. *kalealaha*—b, 9—*Clermontia lindseyana*—a, 9—*Clermontia lindseyana*—b, 9—*Diellia erecta*—b, 9—*Diplazium molokaiense*—b, 9—*Flueggea neowawraea*—a, 9—*Geranium multiflorum*—c, 9—*Lipochaeta kamolensis*—a, 9—*Melicope knudsenii*—a, 9—*Melicope mucronulata*—a, 9—*Neraudia sericea*—a, 9—*Nototrichium humile*—a, 9—*Phlegmariurus mannii*—b, 9—*Phyllostegia mollis*—b, 9—*Plantago princeps*—a, 10—*Alectryon macrococcus*—b, 11—*Lipochaeta kamolensis*—b, 13—*Alectryon macrococcus*—c, 13—*Bonamia menziesii*—a, 13—*Cenchrus agrimonioides*—a, 13—*Colubrina oppositifolia*—a, 13—*Flueggea neowawraea*—b, 13—*Melicope adscendens*—a, 13—*Melicope knudsenii*—b, 13—*Melicope mucronulata*—b, 13—*Sesbania tomentosa*—b, and 13—*Spermolepis hawaiiensis*—a.

Maui I

This unit was proposed as critical habitat for 11 species: *Argyroxiphium sandwicense* ssp. *macrocephalum; Asplenium fragile* var. *insulare; Bidens micrantha* ssp. *kalealaha; Clermontia lindseyana; Diellia erecta; Diplazium molokaiense; Geranium arboreum; Geranium multiflorum; Phlegmariurus mannii; Phyllostegia mollis;* and *Plantago princeps*. We excluded the proposed critical habitat on Haleakala Ranch lands because the benefits of excluding these lands outweighed the benefits of including them in critical habitat (see 4(b)(2) exclusion section). We excluded the proposed critical habitat for the Maui endemic *Geranium arboreum* and the multi-island species *Diplazium molokaiense, Phlegmariurus mannii, Phyllostegia mollis*, and *Plantago princeps*. The portion excluded was not essential to the conservation of these five species because it has a lower proportion of associated native species than other areas we consider to be essential to the conservation of these five species. There is a lower likelihood that the biological features essential to these species will persist there because it has a low likelihood of being managed for conservation (Silva *in litt.*, 2002). There is habitat designated elsewhere on Maui for *Diplazium molokaiense, Geranium arboreum, Phlegmariurus mannii, Phyllostegia mollis*, and *Plantago princeps*.

The area designated as critical habitat for the Maui endemic species provides habitat for one population of *Argyroxiphium sandwicense* ssp. *macrocephalum*, three populations of *Geranium arboreum*, and six populations of *Geranium multiflorum* within their historical ranges. The area designated as critical habitat for the multi-island species provides habitat for two populations of *Asplenium fragile* var. *insulare*, four populations of *Bidens micrantha* ssp. *kalealaha*, and one population each of *Clermontia lindseyana* and *Diellia erecta* within their historical ranges.

These modifications resulted in the reduction from 3,491 ha (8,625 ac) to 2,961 ha (7,383 ac). This unit was renamed 9—*Argyroxiphium sandwicense* ssp. *macrocephalum*—a, 9—*Asplenium fragile* var. *insulare*—a, 9—*Bidens micrantha* ssp. *kalealaha*—b, 9—*Clermontia lindseyana*—b, 9—*Diellia erecta*—a, 9—*Geranium multiflorum*—b, 14—*Geranium arboreum*—b, and 15—*Geranium arboreum*—c.

Maui J

This unit was proposed as critical habitat for eight species: *Argyroxiphium sandwicense* ssp. *macrocephalum; Asplenium fragile* var. *insulare; Bidens micrantha* ssp. *kalealaha; Clermontia samuelii; Geranium multiflorum; Plantago princeps; Platanthera holochila;* and *Schiedea haleakalensis*. We excluded the proposed critical habitat for *Argyroxiphium sandwicense* ssp. *macrocephalum, Geranium multiflorum*, and *Platanthera holochila* in Maui J. This area is not essential to the conservation of these three species because it has a lower proportion of associated native species than other areas we consider to be essential to the conservation of these three species. For the Maui endemic *Argyroxiphium sandwicense* ssp. *macrocephalum*, the recovery goal is one population with more than 50,000 individuals. We are designating habitat essential for the conservation of this species in Maui unit 9. There are at least eight other locations on Maui which provide habitat for the endemic species *Geranium multiflorum* that are being designated as critical habitat. There are at least eight other locations in its historical range on Maui and other islands that provide habitat for the multi-island species *Platanthera holochila* that are being designated as critical habitat, have been designated as critical habitat, or have been proposed for designation.

The area designated as critical habitat for the Maui endemic species *Schiedea haleakalensis* provides habitat within its historical range for four populations. The area designated as critical habitat for the multi-island species provides habitat for two populations of *Asplenium fragile* var. *insulare*, three populations of *Bidens micrantha* ssp. *kalealaha*, five populations of *Clermontia samuelii*, and one population of *Plantago princeps* within their historical ranges.

These modifications resulted in the reduction from 5,790 ha (14,308 ac) to 5,785 ha (14,295 ac). This unit was renamed 9—*Asplenium fragile* var. *insulare*—a, 9—*Bidens micrantha* ssp. *kalealaha*—a, 9—*Clermontia samuelii*—a, 9—*Plantago princeps*—a, 9—*Schiedea haleakalensis*—a, and 9—*Schiedea haleakalensis*—b.

Maui K

This unit was proposed as critical habitat for 11 species: *Alectryon macrococcus; Clermontia samuelii; Cyanea copelandii* ssp. *haleakalaensis; Cyanea glabra; Cyanea hamatiflora* ssp. *hamatiflora; Geranium multiflorum; Melicope balloui; Melicope ovalis; Phlegmariurus mannii; Plantago princeps;* and *Platanthera holochila*. We excluded the proposed critical habitat for *Alectryon macrococcus, Clermontia samuelii, Cyanea copelandii* ssp. *haleakalaensis, Cyanea hamatiflora* ssp. *hamatiflora*, and *Plantago princeps*. This area is not essential to the conservation of these five species because it has a lower proportion of associated native species than other areas we consider to be essential to the conservation of these five species, and there are at least eight other locations that have been designated or proposed to meet the recovery goal of 8 to 10 populations throughout their historical ranges on this and other islands.

The area designated as critical habitat for the Maui endemic species provides habitat for six populations of *Geranium multiflorum*, two populations of *Melicope balloui*, and three populations of *Melicope ovalis* within their historical ranges. The area designated as critical habitat for the multi-island species provides habitat for five populations of *Clermontia samuelii*, three populations each of *Cyanea glabra* and *Phlegmariurus mannii*, and one population of *Platanthera holochila* within their historical ranges.

These modifications resulted in the reduction from 5,464 ha (13,502 ac) to 5,458 ha (13,487 ac). This unit was renamed 9—*Clermontia samuelii*—a, 9—*Cyanea glabra*—b, 9—*Cyanea glabra*—c, 9—*Geranium multiflorum*—b, 9—*Melicope balloui*—b, 9—*Melicope ovalis*—a, 9—*Phlegmariurus mannii*—c, and 9—*Platanthera holochila*—a.

Maui L

This unit was proposed as critical habitat for 16 species: *Alectryon macrococcus; Argyroxiphium sandwicense* ssp. *macrocephalum; Asplenium fragile* var. *insulare; Clermontia samuelii; Cyanea copelandii* ssp. *haleakalaensis; Cyanea glabra; Cyanea hamatiflora* ssp. *hamatiflora; Cyanea mceldowneyi; Diplazium molokaiense; Geranium multiflorum; Melicope balloui; Phlegmariurus mannii; Phyllostegia mannii; Phyllostegia mollis; Platanthera holochila;* and *Zanthoxylum hawaiiense*. We excluded the proposed critical habitat for the Maui endemic *Cyanea mceldowneyi*, and the multi-island species *Alectryon macrococcus* and *Asplenium fragile* var. *insulare*. The portion excluded has a lower likelihood that the biological features essential to these species will persist because it has a low likelihood of being managed for conservation. In addition, there are at least eight other locations that have been designated or proposed to meet the recovery goal of 8 to 10 populations throughout their historical ranges on this and other islands.

The area designated as critical habitat for the Maui endemic species provides habitat for one population of *Argyroxiphium sandwicense* ssp. *macrocephalum*, three populations of *Cyanea copelandii* ssp. *haleakalaensis* and *Cyanea hamatiflora* ssp. *hamatiflora*, seven populations of *Geranium multiflorum*, and one

population of *Melicope balloui* within their historical ranges. The area designated as critical habitat for the multi-island species provides habitat for five populations of *Clermontia samuelii;* two populations each of *Cyanea glabra, Diplazium molokaiense, Phlegmariurus mannii,* and *Phyllostegia mannii;* and one population each of *Phyllostegia mollis, Platanthera holochila,* and *Zanthoxylum hawaiiense* within their historical ranges.

These modifications resulted in the reduction from 4,612 ha (11,396 ac) to 3,608 ha (8,916 ac). This unit was renamed 8—*Cyanea copelandii* ssp. *haleakalaensis*—a, 8—*Cyanea glabra*—a, 8—*Cyanea hamatiflora* ssp. *hamatiflora*—a, 8—*Diplazium molokaiense*—a, 8—*Geranium multiflorum*—a, 8—*Melicope balloui*—a, 8—*Phlegmariurus mannii*—a, 8—*Phyllostegia mannii*—a, 8—*Phyllostegia mollis*—a, 8—*Zanthoxylum hawaiiense*—a, 9—*Argyroxiphium sandwicense* ssp. *macrocephalum*—a, 9—*Clermontia samuelii*—a, 9—*Geranium multiflorum*—b, and 9—*Platanthera holochila*—a.

Maui M

This unit was proposed as critical habitat for *Spermolepis hawaiiense.* The entire area proposed for this species is eliminated from this final rule. There is a lower likelihood that the biological features essential to these species will persist there because it has a low likelihood of being managed for conservation (Buck, *in litt.* 2002) and it has a lower proportion of associated native species than other areas we consider to be essential to the conservation of this species. In addition, there are 10 other locations that have been designated or proposed to meet the recovery goal of 8 to 10 populations throughout their historical ranges on this and other islands. There is habitat designated elsewhere on Maui for *Spermolepis hawaiiense.*

Kahoolawe A

This unit was proposed as critical habitat for four species: *Hibiscus brackenridgei; Kanaloa kahoolawensis; Sesbania tomentosa;* and *Vigna o-wahuensis.* We excluded the proposed critical habitat for *Hibiscus brackenridgei, Sesbania tomentosa,* and *Vigna o-wahuensis.* There is a lower likelihood that the biological features essential to these species will persist there because it has a low likelihood of being managed for conservation (KIRC, *in litt.* 2002) and it has a lower proportion of associated native species than other areas we consider to be essential to the conservation of this species. In addition, there are 10 other locations that have been designated or proposed to meet the recovery goal of 8 to 10 populations throughout their historical ranges on this and other islands. Modifications were also made to this unit to exclude areas that do not contain the primary constituent elements for *Kanaloa kahoolawensis.*

The area designated as critical habitat for the multi-island species *Kanaloa kahoolawensis* provides habitat within its historical range for seven populations.

These modifications resulted in the reduction from 7,683 ha (18,984 ac) to 1,175 ha (2,903 ac). This unit was renamed Kahoolawe 1—*Kanaloa kahoolawensis*—a and Kahoolawe 2—*Kanaloa kahoolawensis*—b.

Kahoolawe B

This unit was proposed as critical habitat for two species: *Kanaloa kahoolawensis* and *Sesbania tomentosa.* We excluded the proposed critical habitat for the multi-island species *Sesbania tomentosa.* There is a lower likelihood that the biological features essential to this species will persist there because it has a low likelihood of being managed for conservation (KIRC, *in litt.* 2002) and there are10 other locations that have been designated to meet the recovery goal of 8 to 10 populations throughout its historical range on this and other islands.

The area designated as critical habitat for the multi-island species *Kanaloa kahoolawensis* provides habitat within its historical range for one population.

There was no change in the area proposed in the final designation. It remains at 5 ha (12 ac). This unit was renamed Kahoolawe 3—*Kanaloa kahoolawensis*—c.

Critical Habitat

Critical habitat is defined in section 3 of the Act as—(i) The specific areas within the geographic area occupied by a species, at the time it is listed in accordance with the Act, on which are found those physical or biological features (I) essential to the conservation of the species and (II) that may require special management considerations or protection; and (ii) specific areas outside the geographic area occupied by a species at the time it is listed, upon a determination that such areas are essential for the conservation of the species. "Conservation," as defined by the Act, means the use of all methods and procedures that are necessary to bring an endangered or a threatened species to the point at which listing under the Act is no longer necessary.

Critical habitat receives protection under section 7 of the Act through the prohibition against destruction or adverse modification of critical habitat with regard to actions carried out, funded, or authorized by a Federal agency. Section 7 also requires conferences on Federal actions that are likely to result in the destruction or adverse modification of proposed critical habitat. In our regulations at 50 CFR 402.02, we define destruction or adverse modification as "* * * a direct or indirect alteration that appreciably diminishes the value of critical habitat for both the survival and recovery of a listed species. Such alterations include, but are not limited to, alterations adversely modifying any of those physical or biological features that were the basis for determining the habitat to be critical." However, in the March 15, 2001, decision of the United States Court of Appeals for the Fifth Circuit (*Sierra Club* v. *U.S. Fish and Wildlife Service et al.,* 245 F.3d 434) regarding a not prudent finding, the Court found our definition of destruction or adverse modification as currently contained in 50 CFR 402.02 to be invalid. In response to this decision, we are reviewing the regulatory definition of adverse modification in relation to the conservation of the species.

In order to be included in a critical habitat designation, areas within the geographical range of the species at the time of listing must contain the physical or biological features essential to the conservation of the species or, for an area outside the geographical area occupied by the species at the time of listing, the area itself must be essential to the conservation of the species (16 U.S.C. 1532(5)(A)).

Section 4 of the Act requires that we designate critical habitat for a species, to the extent such habitat is determinable, at the time of listing. When we designate critical habitat at the time of listing or under short court-ordered deadlines, we may not have sufficient information to identify all the areas essential for the conservation of the species, we may inadvertently include areas that later will be shown to be nonessential. Nevertheless, we are required to designate those areas we know to be critical habitat, using the best information available to us.

Within the geographic areas occupied by the species, we will designate only areas that have features and habitat characteristics that are necessary to sustain the species. If the information available at the time of designation does not show that an area provides essential life cycle needs of the species, then the area should not be included in the critical habitat designation.

Our regulations state that "The Secretary shall designate as critical habitat areas outside the geographical area presently occupied by a species only when a designation limited to its present range would be inadequate to ensure the conservation of the species' (50 CFR 424.12(e)). Accordingly, when the best available scientific and commercial data do not demonstrate that the conservation needs of the species require designation of critical habitat outside of occupied areas, we will not designate critical habitat in areas outside the geographic area occupied by the species.

Our Policy on Information Standards Under the Endangered Species Act, published in the **Federal Register** on July 1, 1994 (59 FR 34271), provides criteria, establishes procedures, and provides guidance to ensure that our decisions represent the best scientific and commercial data available. It requires our biologists, to the extent consistent with the Act and with the use of the best scientific and commercial data available, to use primary and original sources of information as the basis for recommendations to designate critical habitat. When determining which areas are critical habitat, a primary source of information should be the listing package for the species. Additional information may be obtained from recovery plans, articles in peer-reviewed journals, conservation plans developed by States and counties, scientific status surveys and studies, and biological assessments or other unpublished materials.

It is important to clearly understand that critical habitat designations do not signal that habitat outside the designation is unimportant or may not be required for recovery. Areas outside the critical habitat designation will continue to be subject to conservation actions that may be implemented under section 7(a)(1) and to the regulatory protections afforded by the Act's 7(a)(2) jeopardy standard and section 9 prohibitions, as determined on the basis of the best available information at the time of the action. We specifically anticipate that federally funded or assisted projects affecting listed species outside their designated critical habitat areas may still result in jeopardy findings in some cases. Similarly, critical habitat designations made on the basis of the best available information at the time of designation will not control the direction and substance of future recovery plans, habitat conservation plans, or other species conservation planning efforts if new information available to these planning efforts calls for a different outcome. Furthermore, we recognize that designation of critical habitat may not include all of the habitat areas that may eventually be determined to be necessary for the recovery of the species.

Prudency

Designation of critical habitat is not prudent when one or both of the following situations exist: (i) The species is threatened by taking or other human activity, and identification of critical habitat can be expected to increase the degree of such threat to the species; or (ii) such designation of critical habitat would not be beneficial to the species (50 CFR 424.12(a)(1)).

To determine whether critical habitat would be prudent for each species, we analyzed the potential threats and benefits for each species in accordance with the court's order. In the final critical habitat rule published for Kauai and Niihau plants, we determined that designation of critical habitat was not prudent for *Acaena exigua,* a species reported from Maui as well as from Kauai because it had not been seen recently in the wild, and no genetic material of this species was known to exist (68 FR 9115). In other final rules, we have found that critical habitat would be prudent for the following 45 species that are reported from Maui and Kahoolawe as well as from Lanai, Kauai, Niihau, and Molokai: *Adenophorus periens; Alectryon macrococcus; Bidens micrantha* ssp. *kalealaha; Bonamia menziesii; Brighamia rockii; Cenchrus agrimonioides; Centaurium sebaeoides; Clermontia oblongifolia* ssp. *mauiensis; Clermontia samuelii; Ctenitis squamigera; Cyanea copelandii* ssp. *haleakalaensis; Cyanea glabra; Cyanea grimesiana* ssp. *grimesiana; Cyanea hamatiflora* ssp. *hamatiflora; Cyanea lobata; Cyrtandra munroi; Delissea undulata; Diellia erecta; Diplazium molokaiense; Flueggea neowawraea; Hedyotis mannii; Hesperomannia arborescens; Hibiscus brackenridgei; Ischaemum byrone; Isodendrion pyrifolium; Kanaloa kahoolawensis; Mariscus pennatiformis; Melicope knudsenii; Melicope mucronulata; Neraudia sericea; Peucedanum sandwicense; Phlegmariurus mannii; Phyllostegia mannii; Phyllostegia mollis; Phyllostegia parvilfora; Plantago princeps; Platanthera holochila; Pteris lidgatei; Schiedea nuttallii; Sesbania tomentosa; Solanum incompletum; Spermolepis hawaiiensis; Tetramolopium remyi; Vigna o-wahuensis;* and *Zanthoxylum hawaiiense* (64 FR 48307, 68 FR 1219, 68 FR 9115, 68 FR 12981).

Due to low numbers of individuals and/or populations and their inherent immobility, the other 24 plants may be vulnerable to unrestricted collection, vandalism, or disturbance. However, we examined the evidence available for these taxa and have not, at this time, found specific evidence of taking, vandalism, collection or trade of these taxa or of similar species. Consequently, while we remain concerned that these activities could potentially threaten these 24 plant species in the future, consistent with applicable regulations (50 CFR 424.12(a)(1)(i)) and the court's discussion of these regulations, we do not find that any of these species are currently threatened by taking or other human activity, which would be exacerbated by the designation of critical habitat.

In the absence of finding that critical habitat would increase threats to a species, if there are any benefits to critical habitat designation, then a prudent finding is warranted. The potential benefits include: (1) Triggering section 7 consultation in new areas where it would not otherwise occur; (2) focusing conservation activities on the most essential area; (3) providing educational benefits to State or county governments or private entities; and (4) preventing people from causing inadvertent harm to the species.

In the case of these 24 species, there would be some benefits to critical habitat. The primary regulatory effect of critical habitat is the section 7 requirement that Federal agencies refrain from taking any action that destroys or adversely affects critical habitat. Thirteen of these species are reported on or near Federal lands (see Table 2 above, under "Discussion of Plant Taxa"), where actions are subject to section 7 consultation. Although a majority of the species considered in this rule are located exclusively on non-Federal lands with limited Federal activities, there could be Federal actions affecting these lands in the future. While a critical habitat designation for habitat currently occupied by these species would not likely change the section 7 consultation outcome, since an action that destroys or adversely modifies such critical habitat would also be likely to result in jeopardy to the species, there may be instances where section 7 consultation would be triggered only if critical habitat were designated. There would also be some educational or informational benefits to the designation of critical habitat. Benefits of designation would include the notification of land owners, land managers, and the general public of the importance of protecting the habitat of

these species and dissemination of information regarding their essential habitat requirements.

Therefore, we believe that the designation of critical habitat is prudent for these 24 plant species: *Argyroxiphium sandwicense* ssp. *macrocephalum; Asplenium fragile* var. *insulare; Clermontia lindseyana; Clermontia peleana; Colubrina oppositifolia; Cyanea mceldowneyi; Dubautia plantaginea* ssp. *humilis; Geranium arboreum; Geranium multiflorum; Gouania vitifolia; Hedyotis coriacea; Hesperomannia arbuscula; Lipochaeta kamolensis; Lysimachia lydgatei; Melicope adscendens; Melicope balloui; Melicope ovalis; Nototrichium humile; Remya mauiensis; Sanicula purpurea; Schiedea haleakalensis; Schiedea hookeri; Tetramolopium arenarium;* and *Tetramolopium capillare* because the potential benefits of critical habitat designation outweigh the potential threats.

Methods

As required by the Act and regulations (section 4(b)(2) and 50 CFR 424.12), we used the best scientific information available to determine areas that contain the physical and biological features that are essential for the conservation of *Adenophorus periens, Alectryon macrococcus, Argyroxiphium sandwicense* ssp. *macrocephalum, Asplenium fragile* var. *insulare, Bidens micrantha* ssp. *kalealaha, Bonamia menziesii, Brighamia rockii, Cenchrus agrimonioides, Centaurium sebaeoides, Clermontia lindseyana, Clermontia oblongifolia* ssp. *mauiensis, Clermontia samuelii, Clermontia peleana, Colubrina oppositifolia, Ctenitis squamigera, Cyanea copelandii* ssp. *haleakalaensis, Cyanea glabra, Cyanea grimesiana* ssp. *grimesiana, Cyanea hamatiflora* ssp. *hamatiflora, Cyanea lobata, Cyanea mceldowneyi, Cyrtandra munroi, Delissea undulata, Diellia erecta, Diplazium molokaiense, Dubautia plantaginea* ssp. *humilis, Flueggea neowawraea, Geranium arboreum, Geranium multiflorum, Gouania vitifolia, Hedyotis coriacea, Hedyotis mannii, Hesperomannia arborescens, Hesperomannia arbuscula, Hibiscus brackenridgei, Ischaemum byrone, Isodendrion pyrifolium, Kanaloa kahoolawensis, Lipochaeta kamolensis, Lysimachia lydgatei, Mariscus pennatiformis, Melicope adscendens, Melicope balloui, Melicope knudsenii, Melicope mucronulata, Melicope ovalis, Neraudia sericea, Nototrichium humile, Peucedanum sandwicense, Phlegmariurus mannii, Phyllostegia mannii, Phyllostegia mollis, Phyllostegia parviflora, Plantago princeps, Platanthera holochila, Pteris lidgatei, Remya mauiensis, Sanicula purpurea, Schiedea haleakalensis, Schiedea hookeri, Schiedea nuttallii, Sesbania tomentosa, Solanum incompletum, Spermolepis hawaiiensis, Tetramolopium arenarium, Tetramolopium capillare, Tetramolopium remyi, Vigna o-wahuensis,* and *Zanthoxylum hawaiiense*. This information included the known locations, site-specific species information from the HINHP database and our own rare plant database; species information from the Center for Plant Conservation's (CPC's) rare plant monitoring database housed at the University of Hawaii's Lyon Arboretum; island-wide Geographic Information System (GIS) coverages (*e.g.*, vegetation, soils, annual rainfall, elevation contours, land ownership); the final listing rules for these 69 species; the December 18, 2000, proposal; the April 3, 2002, revised proposal; information received during the public comment periods and the public hearings; recent biological surveys and reports; our recovery plans for these species; any species and management information received from landowners, land managers, and interested parties for the islands of Maui and Kahoolawe; discussions with botanical experts; and recommendations from the Hawaii and Pacific Plant Recovery Coordinating Committee (HPPRCC) (see also the discussion below) (GDSI 2000; HINHP Database 2000; HPPRCC 1998; Service 1995a, 1995b, 1996a, 1996b, 1997, 1998a, 1998b, 1999, 2001; 65 FR 66808; 67 FR 3940; CPC, *in litt.* 1999).

In 1994, the HPPRCC initiated an effort to identify and map habitat believed to be important for the recovery of 282 endangered and threatened Hawaiian plant species. The HPPRCC identified these areas on most of the islands in the Hawaiian chain, and in 1999, we published them in our *Recovery Plan for the Multi-Island Plants* (Service 1999). The HPPRCC expects there will be subsequent efforts to further refine the locations of important habitat areas and that new survey information or research may also lead to additional refinement of identifying and mapping of habitat important for the recovery of these species.

The HPPRCC identified essential habitat areas for all listed, proposed, and candidate plants and evaluated species of concern to determine if essential habitat areas would provide for their habitat needs. However, the HPPRCC's mapping of habitat is distinct from the regulatory designation of critical habitat as defined by the Act. More data have been collected since the recommendations made by the HPPRCC in 1998. Much of the area that was identified by the HPPRCC as inadequately surveyed has now been surveyed to some degree. New location data for many species have been gathered. Also, the HPPRCC identified areas as essential based on species clusters (areas that included listed species, as well as candidate species and species of concern) while we have only delineated areas that are essential for the conservation of the specific listed species at issue. As a result, the critical habitat designations in this rule include not only some habitat that was identified as essential in the 1998 recommendations but also habitat that was not identified as essential in those recommendations.

Primary Constituent Elements

In accordance with section 3(5)(A)(i) of the Act and regulations at 50 CFR 424.12, in determining which areas to propose as critical habitat, we are required to base critical habitat determinations on the best scientific and commercial data available and to consider those physical and biological features (primary constituent elements) that are essential to the conservation of the species and that may require special management considerations or protection. These features include, but are not limited to: Space for individual and population growth, and for normal behavior; food, water, air, light, minerals, or other nutritional or physiological requirements; cover or shelter; sites for breeding, reproduction, or rearing of offspring, germination, or seed dispersal; and habitats that are protected from disturbance or are representative of the historic geographical and ecological distributions of a species.

Much of what is known about the specific physical and biological requirements of *Alectryon macrococcus, Argyroxiphium sandwicense* ssp. *macrocephalum, Asplenium fragile* var. *insulare, Bidens micrantha* ssp. *kalealaha, Bonamia menziesii, Brighamia rockii, Cenchrus agrimonioides, Centaurium sebaeoides, Clermontia lindseyana, Clermontia oblongifolia* ssp. *mauiensis, Clermontia samuelii, Colubrina oppositifolia, Ctenitis squamigera, Cyanea copelandii* ssp. *haleakalaensis, Cyanea glabra, Cyanea grimesiana* ssp. *grimesiana, Cyanea hamatiflora* ssp. *hamatiflora, Cyanea lobata, Cyanea mceldowneyi, Cyrtandra munroi, Diellia erecta, Diplazium molokaiense, Dubautia plantaginea* ssp. *humilis, Flueggea neowawraea, Geranium arboreum, Geranium multiflorum, Gouania vitifolia, Hedyotis coriacea, Hedyotis mannii, Hesperomannia arbuscula, Hibiscus brackenridgei, Ischaemum byrone, Isodendrion pyrifolium, Kanaloa kahoolawensis, Lipochaeta kamolensis, Lysimachia lydgatei, Mariscus pennatiformis, Melicope adscendens, Melicope balloui, Melicope knudsenii, Melicope mucronulata, Melicope ovalis, Neraudia sericea, Nototrichium humile, Peucedanum sandwicense, Phlegmariurus mannii, Phyllostegia mannii, Phyllostegia mollis, Phyllostegia parviflora, Plantago princeps, Platanthera holochila, Pteris lidgatei, Remya mauiensis, Sanicula purpurea, Schiedea haleakalensis, Sesbania tomentosa, Spermolepis hawaiiensis, Tetramolopium capillare, Tetramolopium remyi, Vigna o-wahuensis,* and *Zanthoxylum hawaiiense* is described in the "Background" section of this final rule.

We are unable to identify these features for *Adenophorus periens, Clermontia peleana, Delissea undulata, Phyllostegia parviflora, Schiedea hookeri, Schiedea nuttallii, Solanum incompletum,* and *Tetramolopium arenarium,* which no longer occur on the islands of Maui and Kahoolawe, because information on the physical and biological features (*i.e.*, the primary constituent elements) that are considered essential to the conservation of these eight species on Maui and Kahoolawe is not known. Therefore, we are not designating critical habitat for these species on Maui. We are able to identify these features for *Hesperomannia arborescens,* but we are not designating critical habitat for this species on Maui for the reasons given in the "*Analysis of Impacts Under Section 4(b)(2): Other Impacts*" section.

All areas designated as critical habitat are within the historical range of the 60 species at issue and contain one or more of the physical or biological features (primary constituent elements) essential for the conservation of the species.

As described in the discussions for each of the 60 species for which we are designating critical habitat, we are defining the primary constituent elements on the basis of the habitat features of the areas from which the plant species are reported, as described by the type of plant community (*e.g.*, mesic *Metrosideros polymorpha* forest), associated native plant species, locale information (*e.g.*, steep rocky cliffs, talus slopes, gulches, stream banks), and elevation. The habitat features provide the ecological components required by the plant. The type of plant community and associated native plant species indicate specific microclimate (localized climatic) conditions, retention and availability of water in the soil, soil microorganism community, and nutrient cycling and availability. The locale indicates information on soil type, elevation, rainfall regime, and temperature. Elevation indicates information on daily and seasonal temperature and sun intensity. Therefore, the descriptions of the physical elements of the locations of each of these species, including habitat type, plant communities associated with the species, location, and elevation, as described in the "*Supplementary Information: Discussion of the Plant Taxa*" section above, constitute the primary constituent elements for these species on the islands of Maui and Kahoolawe.

Criteria Used To Identify Critical Habitat

The lack of detailed scientific data on the life history of these plant species makes it impossible for us to develop a robust quantitative model (*e.g.*, population viability analysis (National Research Council 1995)) to identify the optimal number, size, and location of critical habitat units to achieve recovery (Beissinger and Westphal 1998; Burgman *et al.* 2001; Ginzburg *et al.* 1990; Karieva and Wennergren 1995; Menges 1990; Murphy *et al.* 1990; Taylor 1995). However, based on the best information available at this time, including information on which the listing of these species was based, as well as their recovery plans, we have concluded that the current size and distribution of the extant populations are not sufficient to expect a reasonable probability of long-term survival and recovery of these plant species.

For each of these species, the overall recovery strategy outlined in the approved recovery plans includes: (1) Stabilization of existing wild populations; (2) protection and management of habitat; (3) enhancement of existing small populations and reestablishment of new populations within historic range; and (4) research on species biology and ecology (Service 1995a, 1995b, 1996a, 1996b, 1997, 1998a, 1998b, 1999, 2001). Thus, the long-term recovery of these species is dependent upon the protection of existing population sites and potentially suitable unoccupied habitat within their historic range.

The overall recovery goal stated in the recovery plans for each of these species includes the establishment of 8 to 10 populations with a minimum of 100 mature, reproducing individuals per population for long-lived perennials, 300 mature, reproducing individuals per population for short-lived perennials, and 500 mature, reproducing individuals per population for annuals. (There is one specific exception to this general recovery goal of 8 to 10 populations for species that are believed to be very narrowly distributed on a single island. The recovery goal for *Argyroxiphium sandwicense* ssp. *macrocephalum* is one population of more than 50,000 individuals, and the critical habitat designations reflect this exception for this species.)

To be considered recovered, the populations of a multi-island species should be distributed among the islands of its known historic range (Service 1995a, 1995b, 1996a, 1996b, 1997, 1998a, 1998b, 1999, 2001). A population, for the purposes of this discussion and as defined in the recovery plans for these species, is a unit in which the individuals could be regularly cross-pollinated and influenced by the same small-scale events (such as landslides), and that contains a minimum of 100, 300, or 500 mature, reproducing individuals, depending on whether the species is a long-lived perennial, short-lived perennial, or annual.

By adopting the specific recovery objectives enumerated above, the adverse effects of genetic inbreeding and random environmental events and catastrophes, such as landslides, hurricanes, or tsunamis, which could destroy a large percentage of a species at any one time, may be reduced (Menges 1990; Podolsky 2001). These recovery objectives were initially developed by the HPPRCC and are found in all of the recovery plans for these species. While they are expected to be further refined as more information on the population biology of each species becomes available, the justification for these objectives is found in the current conservation biology literature addressing the conservation of rare and endangered plants and animals (Beissinger and Westphal 1998; Burgman *et al.* 2001; Falk *et al.* 1996; Ginzburg *et al.* 1990; Hendrix and Kyhl 2000; Karieva and Wennergren 1995; Luijten *et al.* 2000; Meffe and Carroll 1996; Menges 1990; Murphy *et al.* 1990; Podolsky 2001; Quintana-Ascencio and Menges 1996; Taylor 1995; Tear *et al.* 1995; Wolf and Harrison 2001). The overall goal of recovery in the short-term is a successful population that can carry on basic life history processes, such as establishment, reproduction, and dispersal, at a level where the probability of extinction is low. In the long-term, the species and its populations should be at a reduced risk

of extinction and be adaptable to environmental change through evolution and migration.

Many aspects of a species' life history are typically considered to determine guidelines for its interim stability and recovery, including longevity, breeding system, growth form, fecundity, ramet (a plant that is an independent member of a clone) production, survivorship, seed longevity, environmental variation, and successional stage of the habitat. Hawaiian species are poorly studied, and the only one of these characteristics that can be uniformly applied to all Hawaiian plant species is longevity (*i.e.*, long-lived perennial, short-lived perennial, and annual). In general, long-lived woody perennial species would be expected to be viable at population levels of 50 to 250 individuals per population, while short-lived perennial species would be viable at population levels of 1,500 to 2,500 individuals or more per population. These population numbers were refined for Hawaiian plant species by the HPPRCC (1994) due to the restricted distribution of suitable habitat typical of Hawaiian plants and the likelihood of smaller genetic diversity of several species that evolved from one single introduction. For recovery of Hawaiian plants, the HPPRCC recommended a general recovery guideline of 100 mature, reproducing individuals per population for long-lived perennial species, 300 mature, reproducing individuals per population for short-lived perennial species, and 500 mature, reproducing individuals per population for annual species.

The HPPRCC also recommended the conservation and establishment of 8 to 10 populations to address the numerous risks to the long-term survival and conservation of Hawaiian plant species. Although absent the detailed information inherent to the types of population viability analysis models described above (Burgman *et al.* 2001), this approach employs two widely recognized and scientifically accepted goals for promoting viable populations of listed species: (1) Creation or maintenance of multiple populations so that a single or series of catastrophic events cannot destroy the entire listed species (Luijten *et al.* 2000; Menges 1990; Quintana-Ascencio and Menges 1996); and (2) increasing the size of each population in the respective critical habitat units to a level where the threats of genetic, demographic, and normal environmental uncertainties are diminished (Hendrix and Kyhl 2000; Luijten *et al.* 2000; Meffe and Carroll 1996; Podolsky 2001; Service 1997; Tear *et al.* 1995; Wolf and Harrison 2001). In general, the larger the number of populations and the larger the size of each population, the lower the probability of extinction (Meffe and Carroll 1996; Raup 1991). This basic conservation principle of redundancy applies to Hawaiian plant species. By maintaining 8 to 10 viable populations in several critical habitat units, the threats represented by a fluctuating environment are alleviated and the species has a greater likelihood of achieving long-term survival and recovery. Conversely, loss of one or more of the plant populations within any critical habitat unit could result in an increase in the risk that the entire listed species may not survive and recover.

Due to the reduced size of suitable habitat areas for these Hawaiian plant species, they are now more susceptible to the variations and weather fluctuations affecting quality and quantity of available habitat, as well as direct pressure from hundreds of species of nonnative plants and animals. Establishing and conserving 8 to10 viable populations on one or more islands within the historic range of the species will provide each species with a reasonable expectation of persistence and eventual recovery, even with the high potential that one or more of these populations will be eliminated by normal or random adverse events, such as the hurricanes that occurred in 1982 and 1992 on Kauai, fires, and nonnative plant invasions (HPPRCC 1994; Luijten *et al.* 2000; Mangel and Tier 1994; Pimm *et al.* 1998; Stacey and Taper 1992). We conclude that designation of adequate suitable habitat for 8 to 10 populations as critical habitat is essential to give the species a reasonable likelihood of long-term survival and conservation, based on currently available information.

In summary, the long-term survival and conservation of Hawaiian plant species requires the designation of critical habitat units on one or more of the Hawaiian islands with suitable habitat for 8 to 10 populations of each plant species. Some of this habitat is currently not known to be occupied by these species. To recover the species, it is essential to conserve suitable habitat in these unoccupied units, which in turn will allow for the establishment of additional populations through natural recruitment or managed reintroductions. Establishment of these additional populations will increase the likelihood that the species will survive and recover in the face of normal and stochastic events (*e.g.*, hurricanes, fire, and nonnative species introductions) (Mangel and Tier 1994; Pimm *et al.* 1998; Stacey and Taper 1992).

In this rule, we have defined the primary constituent elements based on the general habitat features of the areas from which the plants are reported, such as the type of plant community, the associated native plant species, the physical location (*e.g.*, steep rocky cliffs, talus slopes, stream banks), and elevation. The areas we are designating as critical habitat provide some or all of the habitat components essential for the conservation of the 60 plant species.

Our approach to delineating critical habitat units was applied in the following manner:

(1) Critical habitat was proposed and will be designated on an island by island basis for ease of understanding for landowners and the public, for ease of conducting the public hearing process, and for ease of conducting public outreach. In Hawaii, landowners and the public are most interested and affected by issues centered on the island on which they reside.

(2) We focused on designating units representative of the known current and historical geographic and elevational range of each species; and

(3) We designated critical habitat units to allow for expansion of existing wild populations and reestablishment of wild populations within the historic range, as recommended by the recovery plans for each species.

The proposed critical habitat units were delineated by creating rough units for each species by screen digitizing polygons (map units) using ArcView (Environmental Systems Research Institute, Inc.), a computer GIS program. The polygons were created by overlaying current and historic plant location points onto digital topographic maps of each of the islands.

The resulting shape files (delineating historic elevational range and potentially suitable habitat) were then evaluated. Elevation ranges were further refined and land areas identified as not suitable for a particular species (*i.e.*, not containing the primary constituent elements) were avoided. The resulting shape files for each species were then considered to define all suitable habitat on the island, including occupied and unoccupied habitat.

These shape files of suitable habitat were further evaluated. Several factors were used to delineate the proposed critical habitat units from these land areas. We reviewed the recovery objectives as described above and in recovery plans for each of the species to determine if the number of populations and population size requirements needed for conservation would be available within the suitable habitat units identified as containing the appropriate primary constituent elements for each species. If more than the area needed for the number of recovery populations was identified as potentially suitable, only those areas within the least disturbed suitable habitat were included as proposed critical habitat. A population for this purpose is defined as a discrete aggregation of individuals located a sufficient distance from a neighboring aggregation such that the two are not affected by the same small-scale events and are not believed to be consistently cross-pollinated. In the absence of more specific information indicating the appropriate distance to assure limited cross-pollination, we are using a distance of 1,000 m (3,280 ft) based on our review of current literature on gene flow (Barret and Kohn 1991; Fenster and Dudash 1994; Havens 1998; Schierup and Christiansen 1996).

The resulting critical habitat units were further refined by using satellite imagery and parcel data to eliminate areas that did not contain the appropriate vegetation or associated native plant species, as well as features such as cultivated agriculture fields, housing developments, and other areas that are unlikely to contribute to the conservation of one or more of the 61 plant species for which critical habitat was proposed on April 3, 2002. Geographic features (ridge lines, valleys, streams, coastlines, etc.) or manmade features (roads or obvious land use) that created an obvious boundary for a unit were used as unit area boundaries.

Following publication of the proposed critical habitat rules, some of which were revised, for 255 Hawaiian plants (67 FR 3940, 67 FR 9806, 67 FR 15856, 67 FR 16492, 67 FR 34522, 67 FR 36968, 67 FR 37108), we re-evaluated proposed critical habitat, Statewide, for each species using the applicable recovery guidelines (generally 8 to 10 populations with a minimum of 100 mature, reproducing individuals per population for long-lived perennials; 300 mature, reproducing individuals per population for short-lived perennials; and 500 mature, reproducing individuals per population for annuals) to determine if we had inadvertently proposed for designation too much or too little habitat to meet the essential recovery goals of 8 to 10 populations per species distributed among the islands of the species' known historic range (HINHP Database 2000, 2001; Wagner *et al.* 1990, 1999).

Based on comments and information we received during the comment periods, we assessed the proposed critical habitat in order to ascertain which areas contained the highest quality habitat, had the highest likelihood of species conservation, and were geographically distributed within the species' historical range and located a sufficient distance from each other such that populations of a single species are unlikely to be impacted by a single catastrophic event. We ranked areas of the proposed critical habitat by the quality of the primary constituent elements (*e.g.*, intact native plant communities, predominance of associated native plants versus nonnative plants), potential as a conservation area (*e.g.*, whether the land is zoned for conservation or whether the landowner is already participating in plant conservation actions), and current or expected management of known threats (*e.g.*, ungulate control; weed control; nonnative insect, slug, and snail control). Areas that are zoned for conservation or have been identified as a State Forest Reserve, NAR, Wildlife Preserve, State Park, or are managed for conservation by a private landowner have a high likelihood of providing conservation benefit to the species and are therefore more essential than other comparable habitat outside of those types of areas.

Areas that contain high quality primary constituent elements and conservation potential (*e.g.*, are zoned for conservation and have ongoing or expected threat abatement actions) were ranked the most essential. This ranking process also included determining which habitats were representative of the historic geographical and ecological distributions of the species (see "Primary Constituent Elements"). Of these most essential areas, we selected adequate area to provide for 8 to 10 populations distributed among the islands of each species' historical range. Of the proposed critical habitat for a species, areas that were not ranked most essential to provide habitat for populations above the recovery goal of 8 to 10 populations were determined not essential for the conservation of the species and were excluded from the final designation.

In selecting areas of designated critical habitat, we made an effort to avoid developed areas, such as towns and other similar lands, that are unlikely to contribute to the conservation of the 60 species. However, the minimum mapping unit that we used to approximate our delineation of critical habitat for these species did not allow us to exclude all such developed areas from the maps. In addition, existing manmade features and structures within the boundaries of the mapped unit, such as buildings; roads; aqueducts and other water system features—including but not limited to pumping stations, irrigation ditches, pipelines, siphons, tunnels, water tanks, gaging stations, intakes, reservoirs, diversions, flumes, and wells; existing trails; campgrounds and their immediate surrounding landscaped area; scenic lookouts; remote helicopter landing sites; existing fences; telecommunications towers and associated structures and equipment; electrical transmission lines and distribution, and communication facilities and regularly maintained associated rights-of-way and access ways; radars, and telemetry antennas; missile launch sites; arboreta and gardens; heiau (indigenous places of worship or shrines) and other archaeological sites; airports; other paved areas; and lawns and other rural residential landscaped areas do not contain one or more of the primary constituent elements and are therefore excluded under the terms of the final regulation. Federal actions limited to those areas would not trigger a section 7 consultation unless they affect the species or primary constituent elements in adjacent critical habitat.

In summary, for these species we utilized the approved recovery plan guidance to identify appropriately sized land units containing essential occupied and unoccupied habitat. Based on the best available information, we believe these areas constitute the essential habitat on Maui and Kahoolawe to provide for the recovery of these 60 species.

The approximate areas of the designated critical habitat by land ownership or jurisdiction are shown in Table 4.

TABLE 4.—APPROXIMATE CRITICAL HABITAT DESIGNATED AREA BY UNIT AND LAND OWNERSHIP OR JURISDICTION, MAUI COUNTY, HAWAII

Unit name	State/local	Private	Federal	Total
Maui 1—*Centaurium sebaeoides*—a	70 ha (174 ac)	<1 ha (<1 ac)		70 ha (174 ac)
Maui 1—*Sesbania tomentosa*—a	38 ha (94 ac)	<1 ha (<1 ac)		38 ha (94 ac)
Maui 2—*Brighamia rockii*—a	5 ha (14 ac)	<1 ha (<1 ac)		5 ha (14 ac)
Maui 2—*Brighamia rockii*—b	17 ha (42 ac)	<1 ha (<1 ac)		17 ha (42 ac)
Maui 2—*Centaurium sebaeoides*—b	14 ha (35 ac)	12 ha (30 ac)		26 ha (65 ac)
Maui 3—*Brighamia rockii*—c	<1 ha (<1 ac)	3 ha (9 ac)		3 ha (9 ac)
Maui 4—*Brighamia rockii*—d	1 ha (2 ac)			1 ha (2 ac)
Maui 4—*Peucedanum sandwicense*—a.	1 ha (2 ac)			1 ha (2 ac)
Maui 5—*Brighamia rockii*—e	7 ha (16 ac)			7 ha (16 ac)
Maui 6—*Ischaemum byrone*—a	15 ha (35 ac)	3 ha (7 ac)		18 ha (42 ac)
Maui 6—*Mariscus pennatiformis*—a	17 ha (40 ac)	13 ha (34 ac)		30 ha (74 ac)
Maui 7—*Ischaemum byrone*—b	11 ha (27 ac)			11 ha (27 ac)
Maui 8—*Cyanea copelandii* ssp. *haleakalaensis*—a.	5 ha (13 ac)	496 ha (1,225 ac)		501 ha (1,238 ac)
Maui 8—*Cyanea glabra*—a	448 ha (1,108 ac)	2 ha (4 ac)		450 ha (1,112 ac)
Maui 8—*Cyanea hamatiflora* ssp. *hamatiflora*—a.	48 ha (119 ac)	563 ha (1,390 ac)		611 ha (1,509 ac)
Maui 8—*Cyanea mceldowneyi*—a	489 ha (1,208 ac)	1,638 ha (4,047 ac)		2,127 ha (5,255 ac)
Maui 8—*Diplazium molokaiense*—a	87 ha (214 ac)	488 ha (1,206 ac)		575 ha (1,420 ac)
Maui 8—*Geranium multiflorum*—a		46 ha (113 ac)		46 ha (113 ac)
Maui 8—*Melicope balloui*—a	73 ha (181 ac)	78 ha (192 ac)		151 ha (373 ac)
Maui 8—*Phlegmariurus mannii*—a	101 ha (251 ac)	120 ha (297 ac)		221 ha (548 ac)
Maui 8—*Phyllostegia mannii*—a	2 ha (4 ac)	568 ha (1,404 ac)		570 ha (1,408 ac)
Maui 8—*Phyllostegia mollis*—a	128 ha (316 ac)			128 ha (316 ac)
Maui 8—*Zanthoxylum hawaiiense*—a	362 ha (894 ac)	1 ha (1 ac)		363 ha (895 ac)
Maui 9—*Alectryon macrococcus*—a	1,893 ha (4,678 ac)	<1 ha (<1 ac)		1,893 ha (4,678 ac)
Maui 9—*Argyroxiphium sandwicense* ssp. *macrocephalum*—a.	2,117 ha (5,232 ac)	852 ha (2,105 ac)	5,996 ha (14,816 ac)	8,965 ha (22,153 ac)
Maui 9—*Asplenium fragile* var. *insulare*—a.			362 ha (894 ac)	362 ha (894 ac)
Maui 9—*Bidens micrantha* ssp. *kalealaha*—a.	390 ha (965 ac)	629 ha (1,554 ac)	543 ha (1,343 ac)	1,562 ha (3,862 ac)
Maui 9—*Bidens micrantha* ssp. *kalealaha*—b.	2,115 ha (5,229 ac)			2,115 ha (5,229 ac)
Maui 9—*Clermontia lindseyana*—a	177 ha (438 ac)			177 ha (438 ac)
Maui 9—*Clermontia lindseyana*—b	60 ha (149 ac)			60 ha (149 ac)
Maui 9—*Clermontia samuelii*—a	2,777 ha (6,863 ac)		353 ha (872 ac)	3,130 ha (7,735 ac)
Maui 9—*Cyanea copelandii* ssp. *haleakalaensis*—b.	391 ha (966 ac)		1,318 ha (3,258 ac)	1,709 ha (4,224 ac)
Maui 9—*Cyanea glabra*—b			649 ha (1,605 ac)	649 ha (1,605 ac)
Maui 9—*Cyanea glabra*—c	363 ha (897 ac)			363 ha (897 ac)
Maui 9—*Cyanea hamatiflora* ssp. *hamatiflora*—b.	203 ha (503 ac)		1,107 ha (2,732 ac)	1,310 ha (3,235 ac)
Maui 9—*Diellia erecta*—a	2 ha (6 ac)			2 ha (6 ac)
Maui 9—*Diellia erecta*—b	174 ha (432 ac)			174 ha (432 ac)
Maui 9—*Diplazium molokaiense*—b	162 ha (401 ac)			162 ha (401 ac)
Maui 9—*Flueggea neowawraea*—a	52 ha (128 ac)			52 ha (128 ac)
Maui 9—*Geranium arboreum*—a	731 ha (1,806 ac)			731 ha (1,806 ac)
Maui 9—*Geranium multiflorum*—b	322 ha (795 ac)	297 ha (735 ac)	4,198 ha (10,372 ac)	4,817 ha (11,902 ac)
Maui 9—*Geranium multiflorum*—c	183 ha (450 ac)			183 ha (450 ac)
Maui 9—*Lipochaeta kamolensis*—a	1,472 ha (3,638 ac)	2 ha (6 ac)		1,474 ha (3,644 ac)
Maui 9—*Melicope balloui*—b			394 ha (972 ac)	394 ha (972 ac)
Maui 9—*Melicope knudsenii*—a	28 ha (69 ac)			28 ha (69 ac)
Maui 9—*Melicope mucronulata*—a	34 ha (83 ac)			34 ha (83 ac)
Maui 9—*Melicope ovalis*—a	1 ha (2 ac)		933 ha (2,304 ac)	934 ha (2,306 ac)
Maui 9—*Neraudia sericea*—a	623 ha (1,539 ac)			623 ha (1,539 ac)
Maui 9—*Nototrichium humile*—a	382 ha (944 ac)	15 ha (38 ac)		397 ha (982 ac)
Maui 9—*Phlegmariurus mannii*—b	383 ha (947 ac)			383 ha (947 ac)
Maui 9—*Phlegmariurus mannii*—c	224 ha (554 ac)		252 ha (622 ac)	476 ha (1,176 ac)
Maui 9—*Phyllostegia mollis*—b	509 ha (1,256 ac)			509 ha (1,256 ac)
Maui 9—*Plantago princeps*—a			164 ha (406 ac)	164 ha (406 ac)
Maui 9—*Platanthera holochila*—a	32 ha (80 ac)		208 ha (516 ac)	240 ha (596 ac)
Maui 9—*Schiedea haleakalensis*—a			26 ha (64 ac)	26 ha (64 ac)
Maui 9—*Schiedea haleakalensis*—b			77 ha (189 ac)	77 ha (189 ac)
Maui 10—*Alectryon macrococcus*—b	372 ha (918 ac)	30 ha (75 ac)		402 ha (993 ac)
Maui 11—*Lipochaeta kamolensis*—b	42 ha (105 ac)			42 ha (105 ac)
Maui 12—*Vigna o-wahuensis*—a	144 ha (356 ac)			144 ha (356 ac)
Maui 13—*Alectryon macrococcus*—c	419 ha (1,033 ac)			419 ha (1,033 ac)
Maui 13—*Bonamia menziesii*—a	536 ha (1,325 ac)			536 ha (1,325 ac)

TABLE 4.—APPROXIMATE CRITICAL HABITAT DESIGNATED AREA BY UNIT AND LAND OWNERSHIP OR JURISDICTION, MAUI COUNTY, HAWAII—Continued

Unit name	State/local	Private	Federal	Total
Maui 13—*Cenchrus agrimonioides*—a.	237 ha (585 ac)			237 ha (585 ac)
Maui 13—*Colubrina oppositifolia*—a	739 ha (1,827 ac)			739 ha (1,827 ac)
Maui 13—*Flueggea neowawraea*—b	50 ha (124 ac)			50 ha (124 ac)
Maui 13—*Melicope adscendens*—a	160 ha (398 ac)			160 ha (398 ac)
Maui 13—*Melicope knudsenii*—b	163 ha (403 ac)			163 ha (403 ac)
Maui 13—*Melicope mucronulata*—b	194 ha (481 ac)			194 ha (481 ac)
Maui 13—*Sesbania tomentosa*—b	78 ha (193 ac)	1 ha (2 ac)		79 ha (195 ac)
Maui 13—*Spermolepis hawaiiensis*—a.	91 ha (224 ac)			91 ha (224 ac)
Maui 14—*Geranium arboreum*—b	282 ha (697 ac)	170 ha (418 ac)		452 ha (1,115 ac)
Maui 15—*Geranium arboreum*—c	177 ha (437 ac)	490 ha (1,211 ac)		667 ha (1,648 ac)
Maui 16—*Hibiscus brackenridgei*—a		212 ha (524 ac)		212 ha (524 ac)
Maui 17—*Alectryon macrococcus*—d	209 ha (517 ac)	181 ha (448 ac)		390 ha (965 ac)
Maui 17—*Alectryon macrococcus*—e	110 ha (270 ac)	<1 ha (1 ac)		110 ha (271 ac)
Maui 17—*Cenchrus agrimonioides*—b.	118 ha (292 ac)	<1 ha (1 ac)		118 ha (293 ac)
Maui 17—*Clermontia oblongifolia* ssp. *mauiensis*—a.	16 ha (40 ac)	<1 ha (<1 ac)		16 ha (40 ac)
Maui 17—*Clermontia oblongifolia* ssp. *mauniensis*—b.	696 ha (1,720 ac)	<1 ha (<1 ac)		696 ha (1,720 ac)
Maui 17—*Clermontia oblongifolia* ssp. *mauiensis*—c.	293 ha (726 ac)	<2 ha (6 ac)		295 ha (732 ac)
Maui 17—*Colubrina oppositifolia*—b	132 ha (327 ac)	44 ha (108 ac)		176 ha (435 ac)
Maui 17—*Ctenitis squamigera*—a	953 ha (2,356 ac)	1,026 ha (2,534 ac)		1,979 ha (4,890 ac)
Maui 17—*Ctenitis squamigera*—b	478 ha (1,181 ac)	338 ha (837 ac)		816 ha (2,018 ac)
Maui 17—*Ctenitis squamigera*—c	137 ha (336 ac)	<1 ha (1 ac)		137 ha (337 ac)
Maui 17—*Cyanea glabra*—d	255 ha (630 ac)			255 ha (630 ac)
Maui 17—*Cyanea glabra*—e	264 ha (652 ac)	207 ha (511 ac)		471 ha (1,163 ac)
Maui 17—*Cyanea glabra*—f	188 ha (463 ac)	<1 ha (1 ac)		188 ha (464 ac)
Maui 17—*Cyanea glabra*—g		79 ha (194 ac)		79 ha (194 ac)
Maui 17—*Cyanea grimesiana* ssp. *grimesiana*—a.	10 ha (24 ac)	911 ha (2,249 ac)		921 ha (2,273 ac)
Maui 17—*Cyanea lobata*—a	132 ha (322 ac)	<1 ha (1 ac)		132 ha (323 ac)
Maui 17—*Cyanea lobata*—b	112 ha (276 ac)	2 ha (5ac)		114 ha (281 ac)
Maui 17—*Cyanea lobata*—c	578 ha (1,427 ac)	<1 ha (<1 ac)		578 ha (1,427 ac)
Maui 17—*Cyrtandra munroi*—a	156 ha (385 ac)	<1 ha (1 ac)		156 ha (386 ac)
Maui 17—*Cyrtandra munroi*—b	25 ha (62 ac)	213 ha (528 ac)		238 ha (590 ac)
Maui 17—*Cyrtandra munroi*—c	603 ha (1,490 ac)	<1 ha (<1 ac)		603 ha (1,490 ac)
Maui 17—*Diellia erecta*—c	22 ha (55 ac)			22 ha (55 ac)
Maui 17—*Diellia erecta*—d		70 ha (172 ac)		70 ha (172 ac)
Maui 17—*Diellia erecta*—e	12 ha (30 ac)			12 ha (30 ac)
Maui 17—*Diellia erecta*—f	14 ha (34 ac)			14 ha (34 ac)
Maui 17—*Diplazium molokaiense*—c	30 ha (74 ac)	1,465 ha (3,619 ac)		1,495 ha (3,693 ac)
Maui 17—*Dubautia plantaginea* ssp. *humilis*—a.	66 ha (164 ac)	227 ha (550 ac)		293 ha (723 ac)
Maui 17—*Dubautia plantaginea* ssp. *humilis*—b.	68 ha (168 ac)	46 ha (115 ac)		114 ha (283 ac)
Maui 17—*Dubautia plantaginea* ssp. *humulis*—c.	27 ha (66 ac)	68 ha (168 ac)		95 ha (234 ac)
Maui 17—*Gouania vitifolia*—a	446 ha (1,103 ac)	40 ha (95 ac)		486 ha (1,198 ac)
Maui 17—*Hedyotis coriacea*—a	106 ha (262 ac)	<1 ha (<1 ac)		106 ha (262 ac)
Maui 17—*Hedyotis coriacea*—b	138 ha (340 ac)			138 ha (340 ac)
Maui 17—*Hedyotis mannii*—a	572 ha (1,414 ac)	1,662 ha (4,107 ac)		2,234 ha (5,521 ac)
Maui 17—*Hesperomannia arbuscula*—a.	378 ha (933 ac)	14 ha (35 ac)		392 ha (968 ac)
Maui 17—*Hesperomannia arbuscula*—b.		436 ha (1,076 ac)		436 ha (1,076 ac)
Maui 17—*Hibiscus brackenridgei*—b	593 ha (1,463 ac)	74 ha (182 ac)		667 ha (1,645 ac)
Maui 17—*Isodendrion pyrifolium*—a	224 ha (555 ac)	<1 ha (<1 ac)		224 ha (555 ac)
Maui 17—*Lysimachia lydgatei*—a	64 ha (157 ac)	26 ha (64 ac)		90 ha (221 ac)
Maui 17—*Lysimachia lydgatei*—b	42 ha (104 ac)	116 ha (287 ac)		158 ha (391 ac)
Maui 17—*Lysimachia lydgatei*—c	19 ha (46 ac)	28 ha (70 ac)		47 ha (116 ac)
Maui 17—*Lysimachia lydgatei*—d	28 ha (70 ac)	70 ha (172 ac)		98 ha (242 ac)
Maui 17—*Lysimachia lydgatei*—e	18 ha (44 ac)			18 ha (44 ac)
Maui 17—*Neraudia sericea*—b	1,026 (2,538 ac)	ha 162 ha (400 ac)		1,188 ha (2,938 ac)
Maui 17—*Peucedanum sandwicense*—b.		117 ha (289 ac)		117 ha (289 ac)
Maui 17—*Phlegmariurus mannii*—d	57 ha (141 ac)	<1 ha (<1 ac)		57 ha (141 ac)
Maui 17—*Phlegmariurus mannii*—e	29 ha (72 ac)	6 ha (15 ac)		35 ha (87 ac)
Maui 17—*Plantago princeps*—b	23 ha (57 ac)	304 ha (750 ac)		327 ha (807 ac)

TABLE 4.—APPROXIMATE CRITICAL HABITAT DESIGNATED AREA BY UNIT AND LAND OWNERSHIP OR JURISDICTION, MAUI COUNTY, HAWAII—Continued

Unit name	State/local	Private	Federal	Total
Maui 17—*Platanthera holochila*—b	4 ha (10 ac)	4 ha (9 ac)		8 ha (19 ac)
Maui 17—*Platanthera holochila*—c	189 ha (466 ac)	<1 ha (<1 ac)		189 ha (466 ac)
Maui 17—*Pteris lidgatei*—a	504 ha (1,246 ac)	664 ha (1,641 ac)		1,168 ha (2,887 ac)
Maui 17—*Pteris lidgatei*—b		163 ha (403 ac)		163 ha (403 ac)
Maui 17—*Remya mauiensis*—a	227 ha (562 ac)	1 ha (2 ac)		228 ha (564 ac)
Maui 17—*Remya mauiensis*—b	366 ha (904 ac)	201 ha (496 ac)		567 ha (1,400 ac)
Maui 17—*Remya mauiensis*—c	31 ha (78 ac)	<1 ha (<1 ac)		31 ha (78 ac)
Maui 17—*Sanicula purpurea*—a	29 ha (70 ac)	5 ha (13 ac)		34 ha (83 ac)
Maui 17—*Sanicula purpurea*—b	97 ha (240 ac)	209 ha (516 ac)		306 ha (756 ac)
Maui 17—*Sanicula purpurea*—c		8 ha (19 ac)		8 ha (19 ac)
Maui 17—*Spermolepis hawaiiensis*—b.	23 ha (56 ac)			23 ha (56 ac)
Maui 17—*Tetramolopium capillare*—a.	1,106 ha (2,732 ac)	676 ha (1,672 ac)		1,782 ha (4,404 ac)
Maui 17—*Tetramolopium remyi*—a	216 ha (536 ac)	71 ha (176 ac)		287 ha (712 ac)
Maui 18—*Alectryon macrococcus*—f	5 ha (11 ac)	3 ha (6 ac)		8 ha (17 ac)
Maui 18—*Colubrina oppositifolia*—c	38 ha (92 ac)	26 ha (63 ac)		64 ha (155 ac)
Maui 18—*Ctenitis squamigera*—d	10 ha (24 ac)	4 ha (10 ac)		14 ha (34 ac)
Maui 18—*Remya mauiensis*—d	1 ha (3 ac)	1 ha (3 ac)		2 ha (6 ac)
Kahoolawe 1—*Kanaloa kahoolawensis*—a.	562 ha (1,388 ac)			562 ha (1,388 ac)
Kahoolawe 2—*Kanaloa kahoolawensis*—b.	613 ha (1,515 ac)			613 ha (1,515 ac)
Kahoolawe 3—*Kanaloa kahoolawensis*—c.	5 ha (12 ac)			5 ha (12 ac)
Total*	21,229 ha (52,458 ac)	8,858 ha (21,890 ac)	8,805 ha (21,757 ac)	38,897 ha (96,115 ac)

*Totals take into consideration overlapping individual species units.

TABLE 5.—APPROXIMATE FINAL CRITICAL HABITAT AREA (HA (AC)), ESSENTIAL AREA, AND EXCLUDED AREA ON MAUI AND KAHOOLAWE

Area considered essential on Maui	48,352 ha (119,480 ac)
Area not included because of special management or protection (State upper Hanawi NAR, ML&P Puu Kukui WMA, and TNCH Kupunukea and Waikamoi Preserves) on Maui.	6,741 ha (16,657 ac)
Area excluded under 4(b)(2) (Haleakala and Ulupalakua Ranches) on Maui	3,894 ha (9,622 ac)
Final Critical Habitat on Maui	37,717 ha (93,200 ac)
Final Critical Habitat on Kahoolawe	1,180 ha (2,915 ac)
Total Critical Habitat on Maui and Kahoolawe	38,897 ha (96,115)

Critical habitat includes habitat for 59 species primarily in the upland portions of Maui, and for one species on Kahoolawe. Lands designated as critical habitat have been divided into a total of 139 units. A brief description of each unit is presented below.

Descriptions of Critical Habitat Units

Maui 9—*Alectryon macrococcus*—a

This unit is critical habitat for *Alectryon macrococcus* and is 1,893 ha (4,678 ac) on State and privately owned lands. The unit contains Auwahi and Manawainui gulches including portions of Lualailua Hills, Puu Kao, and Kamole and Kepuni gulches. It, in combination with Maui 10—*Alectryon macrococcus*—b, Maui 13—*Alectryon macrococcus*—c, and land on Ulupalakua and Haleakala ranches, provides habitat for two populations of 100 mature, reproducing individuals of the long-lived perennial *A. macrococcus* and is currently unoccupied. The habitat features contained in this unit that are essential for this species include, but are not limited to, mesic to wetter mesic and upper dryland forest. This unit is essential to conservation of the species because it provides for two populations within this multi-island species' historical range on Maui that are some distance away from the other critical habitat for this species, in order to avoid all populations important for the conservation of the species on the island from being destroyed by one naturally occurring catastrophic event.

Maui 10—*Alectryon macrococcus*—b

This unit is critical habitat for *Alectryon macrococcus* and is 402 ha (993 ac) on State (Kahikinui Forest Reserve) and privately owned land. The unit contains land from Pahihi Gulch to Kahalulu Gulch. It, in combination with Maui 9—*Alectryon macrococcus*—a, Maui 13—*Alectryon macrococcus*—c, and Haleakala and Ulupalakua ranches, provides habitat for two populations of 100 mature, reproducing individuals of the long-lived perennial *A. macrococcus* and is currently unoccupied. The habitat features contained in this unit that are essential for this species include, but are not limited to, mesic to wetter mesic and upper dryland forest. This unit is essential to conservation of the species because it provides for two populations within this multi-island species' historical range on Maui that are some distance away from the other critical habitat for this species, in order to avoid all populations important for the conservation of the species on the island from being destroyed by one naturally occurring catastrophic event.

Maui 13—*Alectryon macrococcus*—c

This unit is critical habitat for *Alectryon macrococcus* and is 419 ha (1,033 ac) on State-owned land (Kanaio NAR). The unit contains the area below Puu Ouli. It, in combination with Ulupalakua and Haleakala ranches, and Maui 9—*Alectryon macrococcus*—a and Maui 10—*Alectryon macrococcus*—b, provides habitat for 2 populations of 100 mature, reproducing individuals of the long-lived perennial *A. macrococcus* and is currently unoccupied. The habitat features contained in this unit that are essential for this species include, but are not limited to, mesic to wetter mesic and upper dryland forest. This unit is essential to conservation of the species because it provides for two populations within this multi-island species' historical range on Maui that are some distance away from the other critical habitat for this species, in order to avoid all populations important for the conservation of the species on the island from being destroyed by one naturally occurring catastrophic event.

Maui 17—*Alectryon macrococcus*—d

This unit is critical habitat for *Alectryon macrococcus* and is 390 ha (965 ac) on State (West Maui Forest Reserve and the Panaewa Section of West Maui NAR) and privately owned land. The unit contains portions of Wahikuli and Kealii gulches and Puuiki, Kahoma, and Kanaha streams. It, in combination with Maui 17—*Alectryon macrococcus*—e, Maui 18—*Alectryon macrococcus*—f, and Kapunakea Preserve, provides habitat for two populations of 100 mature, reproducing individuals of the long-lived perennial *A. macrococcus* and is currently unoccupied. The habitat features contained in this unit that are essential for this species include, but are not limited to, mesic to wetter mesic and upper dryland forest. This unit is essential to conservation of the species because it provides for two populations within this multi-island species' historical range on Maui that are some distance away from the other critical habitat for this species, in order to avoid all populations important for the conservation of the species on the island from being destroyed by one naturally occurring catastrophic event.

Maui 17—*Alectryon macrococcus*—e

This unit is critical habitat for *Alectryon macrococcus* and is 110 ha (271 ac) on State (West Maui Forest Reserve) and privately owned land. The unit contains Honokowai Stream. It, in combination with Maui 17—*Alectryon macrococcus*—d, Maui 18—*Alectryon macrococcus*—f and Kapunakea Preserve, provides habitat for two populations of 100 mature, reproducing individuals of the long-lived perennial *A. macrococcus* and is currently occupied by three plants. The habitat features contained in this unit that are essential for this species include, but are not limited to, mesic to wetter mesic and upper dryland forest. This unit is essential to the conservation of the species because it supports an extant colony of this species and includes habitat that is important for the expansion of the present population. It is some distance away from the other critical habitat for this species, in order to avoid all populations important for the conservation of the species on the island from being destroyed by one naturally occurring catastrophic event.

Maui 18—*Alectryon macrococcus*—f

This unit is critical habitat for *Alectryon macrococcus* and is 8 ha (17 ac) on State (West Maui Forest Reserve) and privately owned land. The unit contains Honokawai Valley. It, in combination with Maui 17—*Alectryon macrococcus*—d, Maui 17—*Alectryon macrococcus*—e, and Kapunakea Preserve, provides habitat for two populations of 100 mature, reproducing individuals of the long-lived perennial *A. macrococcus* and is currently unoccupied. The habitat features contained in this unit that are essential for this species include, but are not limited to, mesic to wetter mesic and upper dryland forest. This unit is essential to conservation of the species because it provides for two populations within this multi-island species' historical range on Maui that are some distance away from the other critical habitat for this species, in order to avoid all populations important for the conservation of the species on the island from being destroyed by one naturally occurring catastrophic event.

Maui 9—*Argyroxiphium sandwicense* ssp. *macrocephalum*—a

This unit is critical habitat for *Argyroxiphium sandwicense* ssp. *macrocephalum* and is 8,965 ha (22,153 ac) on State (Kula and Kahikinui Forest Reserve), Federal (Haleakala National Park), and privately owned land. The unit contains portions of Halalii Summit, Haleakala Summit, Haleakala Crater, Hanakauhi Summit, Haupaakea Peak Summit, Hina Summit, Honokahua Summit, Ka Moa o Pele Summit, Kalahaku Pali, Kalepeamoa Summit, Kalua Awa Summit, Kaluaiki Crater, Kaluanui Crater, Kaluu o ka Oo Crater, Kamaolii Summit, Kanahau Summit, Keoneheehee Ridge, Kilohana Summit, Kolekole Summit, Koolau Gap, and Kumuiilahi. It provides habitat for one population of greater than 50,000 mature, reproducing individuals of the long-lived perennial *A. sandwicense* ssp. *macrocephalum* and is currently occupied by 39,000 to 44,000 plants. The habitat features contained in this unit that are essential for this species include, but are not limited to, lava flows with almost no soil development and otherwise barren, unstable slopes of recent (less than several thousand years old) volcanic cinder cones subject to frequent formation of ice at night and extreme heating during cloudless days with an annual precipitation of approximately 75 to 250 cm (29.6 to 98.4 in). This unit is essential to the conservation of the species because it supports an extant colony of this species and includes habitat that is important for the expansion of the present population. Although we do not feel that there is enough habitat designatied to reach the recovery goal of 8 to 10 populations, this species is a very narrow endemic in terms of its alpine habitat requirement, and probably never naturally occurred in more than a single or a few populations.

Maui 9—*Asplenium fragile* var. *insulare*—a

This unit is critical habitat for *Asplenium fragile* var. *insulare* and is 362 ha (894 ac) on federally owned land (Haleakala National Park). The unit contains Koolau Gap. This unit, in combination with Waikamoi Preserve, provides habitat for two populations of 300 mature, reproducing individuals of the short-lived perennial *A. fragile* var. *insulare* and is currently unoccupied. The habitat features contained in this unit that are essential for this species include, but are not limited to, streamside hollows and grottos in gulches. This unit is essential to conservation of the species because it provides for two populations within this multi-island species' historical range on Maui that are some distance away from the other critical habitat for this species, in order to avoid all populations important for the conservation of the species on the island from being destroyed by one naturally occurring catastrophic event.

Maui 9—*Bidens micrantha* ssp. *kalealaha*—a

This unit is critical habitat for *Bidens micrantha* ssp. *kalealaha* and is 1,562 ha (3,862 ac) on State (Kahikinui Forest Reserve), Federal, and privately owned land. The unit contains portions of Kumuiilahi and Haleakala summits, Pukai, Pahihi, and Waioale gulches, Haleakala Crater, and Kumuiliahi. It provides habitat for 3 populations of 300 mature, reproducing individuals of the short-lived perennial *B. micrantha* ssp. *kalealaha* and is currently occupied by two plants. The habitat features

contained in this unit that are essential for this species include, but are not limited to, blocky lava flows with little or no soil development, deep pit craters, and sheer rock walls in open canopy montane shrubland. This unit is essential to the conservation of the species because it supports an extant colony of this species and includes habitat that is important for the expansion of the present population. It is some distance away from the other critical habitat for this species, in order to avoid all populations important for the conservation of the species on the island from being destroyed by one naturally occurring catastrophic event.

Maui 9—*Bidens micrantha* ssp. *kalealaha*—b

This unit is critical habitat for *Bidens micrantha* ssp. *kalealaha* and is 2,115 ha (5,229 ac) on State-owned land (Kahikinui Forest Reserve). The unit is between Kanaio and Auwahi. It provides habitat for 4 populations of 300 mature, reproducing individuals of the short-lived perennial *B. micrantha* ssp. *kalealaha* and is currently occupied by 10 plants. The habitat features contained in this unit that are essential for this species include, but are not limited to, blocky lava flows with little or no soil development, deep pit craters, and sheer rock walls in open canopy montane shrubland. This unit is essential to the conservation of the species because it supports an extant colony of this species and includes habitat that is important for the expansion of the present population. It is some distance away from the other critical habitat for this species, in order to avoid all populations important for the conservation of the species on the island from being destroyed by one naturally occurring catastrophic event.

Maui 13—*Bonamia menziesii*—a

This unit is critical habitat for *Bonamia menziesii* and is 536 ha (1,325 ac) on State (Kanaio NAR) land. The unit lies in the area between Kanaio and Auwahi. It provides habitat for one population of 300 mature, reproducing individuals of the short-lived perennial *B. menziesii* and is currently occupied by 5 plants. The habitat features contained in this unit that are essential for this species include, but are not limited to, aa lava in mixed open dry forest; *Erythrina sandwicensis* lowland dry forest, or mesic mixed *Metrosideros polymorpha* forest. This unit is essential to the conservation of the species because it supports an extant colony of this species and includes habitat that is important for the expansion of the present population. It is some distance away from the other critical habitat for this species, in order to avoid all populations important for the conservation of the species on the island from being destroyed by one naturally occurring catastrophic event.

Maui 2—*Brighamia rockii*—a

This unit is critical habitat for *Brighamia rockii* and is 5 ha (14 ac) on State and privately owned land. The unit lies near Lahoole Cape. This unit provides habitat for one population of 100 mature, reproducing individuals of the long-lived perennial *B. rockii* and is currently unoccupied. The habitat features contained in this unit that are essential for this species include, but are not limited to, rock crevices on steep sea cliffs, often within the spray zone. This unit is essential to conservation of the species because it provides for one population within this multi-island species' historical range on Maui that is some distance away from the other critical habitat for this species, in order to avoid all populations important for the conservation of the species on the island from being destroyed by one naturally occurring catastrophic event.

Maui 2—*Brighamia rockii*—b

This unit is critical habitat for *Brighamia rockii* and is 17 ha (42 ac) on State and privately owned land. The unit contains Kaemi, Lahoole, and Moho capes, Makalina Valley, Waiokila and Waiolai gulches, Makamakaole Stream, and Puu Makawana Summit. This unit provides habitat for one population of 100 mature, reproducing individuals of the long-lived perennial *B. rockii* and is currently unoccupied. The habitat features contained in this unit that are essential for this species include, but are not limited to, rock crevices on steep sea cliffs, often within the spray zone. This unit is essential to conservation of the species because it provides for one population within this multi-island species' historical range on Maui that is some distance away from the other critical habitat for this species, in order to avoid all populations important for the conservation of the species on the island from being destroyed by one naturally occurring catastrophic event.

Maui 3—*Brighamia rockii*—c

This unit is critical habitat for *Brighamia rockii* and is 3 ha (9 ac) on State and privately owned land. The unit contains Waikamoi Stream, Waihanepee Stream, and Puohokamoa Stream. This unit in combination with Maui 4—*Brighamia rockii*—d and Maui 5—*Brighamia rockii*—e, provides habitat for one population of 100 mature, reproducing individuals of the long-lived perennial *B. rockii* and is currently unoccupied. The habitat features contained in this unit that are essential for this species include, but are not limited to, rock crevices on steep sea cliffs, often within the spray zone. This unit is essential to conservation of the species because it provides for one population within this multi-island species' historical range on Maui that is some distance away from the other critical habitat for this species, in order to avoid all populations important for the conservation of the species on the island from being destroyed by one naturally occurring catastrophic event.

Maui 4—*Brighamia rockii*—d

This unit is critical habitat for *Brighamia rockii* and is 1 ha (2 ac) on State-owned land. The unit contains all of Keopuka Rock. This unit provides habitat for one population in combination with Maui 3—*Brighamia rockii*—c and Maui 5—*Brighamia rockii*—e, of 100 mature, reproducing individuals of the long-lived perennial *B. rockii* and is currently unoccupied. The habitat features contained in this unit that are essential for this species include, but are not limited to, rock crevices on steep sea cliffs, often within the spray zone. This unit is essential to conservation of the species because it provides for one population within this multi-island species' historical range on Maui that is some distance away from the other critical habitat for this species, in order to avoid all populations important for the conservation of the species on the island from being destroyed by one naturally occurring catastrophic event.

Maui 5—*Brighamia rockii*—e

This unit is critical habitat for *Brighamia rockii* and is 7 ha (16 ac) on State-owned land. The unit contains Moiki Point and Haipuaena Stream. This unit provides habitat for one population in combination with Maui 3—*Brighamia rockii*—c and Maui 4—*Brighamia rockii*—d, of 100 mature, reproducing individuals of the long-lived perennial *B. rockii* and is currently unoccupied. The habitat features contained in this unit that are essential for this species include, but are not limited to, rock crevices on steep sea cliffs, often within the spray zone. This unit is essential to conservation of the species because it provides for one population within this multi-island species' historical range on Maui that is some distance away from the other critical habitat for this species, in order to avoid all populations important for the conservation of the species on the island from being destroyed by one naturally occurring catastrophic event.

Maui 13—*Cenchrus agrimonioides*—a

This unit is critical habitat for *Cenchrus agrimonioides* and is 237 ha (585 ac) on State (Kanaio NAR) land. The unit contains land between Kanaio and Auwahi. This unit provides habitat for one population of 300 mature, reproducing individuals of the short-lived perennial *C. agrimonioides* and is currently occupied by between one and 10 plants. The habitat features contained in this unit that are essential for this species include, but are not limited to, dry forest or *Pleomele* sp.-*Diospyros* sp. forest. This unit is essential to the conservation of the species because it supports an extant colony of this species and includes habitat that is important for the expansion of the present population. It is some distance away from the other critical habitat for this species, in order to avoid all populations important for the conservation of the species on the island from being destroyed by one naturally occurring catastrophic event.

Maui 17—*Cenchrus agrimonioides*—b

This unit is critical habitat for *Cenchrus agrimonioides* and is 118 ha (293 ac) on State (West Maui Forest Reserve and Manawainui Plant Sanctuary) and privately owned land. The unit contains Papalaua and Manawainui gulches and Hanaulaiki. This unit provides habitat for one population of 300 mature, reproducing individuals of the short-lived perennial *C. agrimonioides* and is currently unoccupied. The habitat features contained in this unit that are essential for this species include, but are not limited to, dry forest or *Pleomele* sp.-*Diospyros* sp. forest. This unit is essential to conservation of the species because it provides for one population within this multi-island species' historical range on Maui that is some distance away from the other critical habitat for this species, in order to avoid all populations important for the conservation of the species on the island from being destroyed by one naturally occurring catastrophic event.

Maui 1—*Centaurium sebaeoides*—a

This unit is critical habitat for *Centaurium sebaeoides* and is 70 ha (174 ac) on non-managed State and privately owned land. The unit contains Alapapa Gulch, Honanana Gulch, Mokolea Point, Owaluhi Gulch, Papanahoa Gulch, Papanalahoa Point, Poelua Bay, and Poelua Gulch. It provides habitat for one population of 300 mature, reproducing individuals of the short-lived perennial *C. sebaeoides* and is currently occupied by one plant. The habitat features contained in this unit that are essential for this species include, but are not limited to, dry forest or *Pleomele* sp.-*Diospyros* sp. forest. This unit is essential to the conservation of the species because it supports an extant colony of this species and includes habitat that is important for the expansion of the present population. It is some distance away from the other critical habitat for this species, in order to avoid all populations important for the conservation of the species on the island from being destroyed by one naturally occurring catastrophic event.

Maui 2—*Centaurium sebaeoides*—b

This unit is critical habitat for *Centaurium sebaeoides* and is 26 ha (65 ac) on State and privately owned land. The unit contains Alapapa Gulch, Honanana Gulch, Lahoole Cape, Makamakaole Stream, Moho Cape, Mokolea Point, Owaluhi Gulch, Papanahoa Gulch, Papanalahoa Point, Poelua Bay, Poelua Gulch, Waihee Stream, Waihee Valley, Waiokila Gulch, and Waiolai Gulch. This unit provides habitat for one population of 300 mature, reproducing individuals of the short-lived perennial *C. sebaeoides* and is currently occupied by 10 plants. The habitat features contained in this unit that are essential for this species include, but are not limited to, dry forest or *Pleomele* sp.-*Diospyros* sp. forest. This unit is essential to the conservation of the species because it supports an extant colony of this species and includes habitat that is important for the expansion of the present population. It is some distance away from the other critical habitat for this species, in order to avoid all populations important for the conservation of the species on the island from being destroyed by one naturally occurring catastrophic event.

Maui 9—*Centaurium lindseyana*—a

This unit is critical habitat for *Centaurium lindseyana* and is 177 ha (438 ac) on State-owned land. The unit contains Manawainui Gulch. This unit provides habitat for one population of 300 mature, reproducing individuals of the short-lived perennial *C. lindseyana* and is currently occupied by 330 plants. The habitat features contained in this unit that are essential for this species include, but are not limited to, *Acacia koa* mesic forest. This unit is essential to the conservation of the species because it supports an extant colony of this species. It is some distance away from the other critical habitat for this species, in order to avoid all populations important for the conservation of the species on the island from being destroyed by one naturally occurring catastrophic event.

Maui 9—*Clermontia lindseyana*—b

This unit is critical habitat for *Clermontia lindseyana* and is 60 ha (149 ac) on State-owned land (Kula Forest Reserve). The unit contains no named natural features. This unit provides habitat for one population of 300 mature, reproducing individuals of the short-lived perennial *C. lindseyana* and is currently unoccupied. The habitat features contained in this unit that are essential for this species include, but are not limited to, *Acacia koa* mesic forest. This unit is essential to conservation of the species because it provides for one population within this multi-island species' historical range on Maui that is some distance away from the other critical habitat for this species, in order to avoid all populations important for the conservation of the species on the island from being destroyed by one naturally occurring catastrophic event.

Maui 17—*Clermontia oblongifolia* ssp. *mauiensis*—a

This unit is critical habitat for *Clermontia oblongifolia* ssp. *mauiensis* and is 16 ha (40 ac) on State and privately owned land. The unit contains no named natural features. This unit provides habitat for one population of 300 mature, reproducing individuals of the short-lived perennial *C. oblongifolia* ssp. *mauiensis* and is currently unoccupied. The habitat features contained in this unit that are essential for this species include, but are not limited to, sides of ridges and ridge tops in *Metrosideros polymorpha*-dominated montane forest. This unit is essential to conservation of the species because it provides for one population within this multi-island species' historical range on Maui that is some distance away from the other critical habitat for this species, in order to avoid all populations important for the conservation of the species on the island from being destroyed by one naturally occurring catastrophic event.

Maui 17—*Clermontia oblongifolia* ssp. *mauiensis*—b

This unit is critical habitat for *Clermontia oblongifolia* ssp. *mauiensis* and is 696 ha (1,720 ac) on State (Kahakuloa Section of the West Maui NAR) and privately owned land. The unit contains Eke Crater, Konanano Gulch, and Kahakuloa Valley. This unit provides habitat for 4 populations of 300 mature, reproducing individuals of

the short-lived perennial *C. oblongifolia* ssp. *mauiensis* and is currently unoccupied. The habitat features contained in this unit that are essential for this species include, but are not limited to, sides of ridges and ridge tops in *Metrosideros polymorpha*-dominated montane forest. This unit is essential to conservation of the species because it provides for four populations within this multi-island species' historical range on Maui that are some distance away from the other critical habitat for this species, in order to avoid all populations important for the conservation of the species on the island from being destroyed by one naturally occurring catastrophic event.

Maui 17—*Clermontia oblongifolia* ssp. *mauiensis*—c

This unit is critical habitat for *Clermontia oblongifolia* ssp. *mauiensis* and is 295 ha (732 ac) on State (Honokowai Section of the West Maui NAR) and privately owned land. The unit contains Violet Lake, Amalu and Kapaloa streams, and Honokowai Valley. This unit provides habitat for two populations of 300 mature, reproducing individuals of the short-lived perennial *C. oblongifolia* ssp. *mauiensis* and is currently occupied by one plant. The habitat features contained in this unit that are essential for this species include, but are not limited to, sides of ridges and ridge tops in *Metrosideros polymorpha*-dominated montane forest. This unit is essential to the conservation of the species because it supports an extant colony of this species and includes habitat that is important for the expansion of the present population. It is some distance away from the other critical habitat for this species, in order to avoid all populations important for the conservation of the species on the island from being destroyed by one naturally occurring catastrophic event.

Maui 9—*Clermontia samuelii*—a

This unit is critical habitat for *Clermontia samuelii* and is 3,130 ha (7,735 ac) on State (Hana and Koolau Forest Reserve) and federally (Haleakala National Park) owned land. The unit contains Anapanapa Lake, Heleleikeoha Stream, Kawakoe Valley, and Kawaipapa Stream. This unit provides habitat for 5 populations of 300 mature, reproducing individuals of the short-lived perennial *C. samuelii* and is currently occupied by 5 plants. The habitat features contained in this unit that are essential for this species include, but are not limited to, wet *Metrosideros polymorpha* and *M. polymorpha-Dicranopteris linearis* forest or wet *M. polymorpha* and *M. polymorpha-Cheirodendron trigynum* forest. This unit is essential to the conservation of the species because it supports an extant colony of this species and includes habitat that is important for the expansion of the present population. Although we do not believe that there is enough habitat that currently exists to reach the recovery goal of 8 to 10 populations for this island-endemic species, this unit is of an appropriate size so that each potential population important for the conservation of the species within the unit is geographically separated enough to avoid their destruction by one naturally occurring catastrophic event.

Maui 13—*Colubrina oppositifolia*—a

This unit is critical habitat for *Colubrina oppositifolia* and is 739 ha (1,827 ac) on State (Kanaio NAR) land. The unit contains land between Kanaio and Auwahi. This unit provides habitat for one population of 100 mature, reproducing individuals of the long-lived perennial *C. oppositifolia* and is currently unoccupied. The habitat features contained in this unit that are essential for this species include, but are not limited to, lowland dry and mesic forests dominated by *Diospyros sandwicensis*. This unit is essential to conservation of the species because it provides for one population within this multi-island species' historical range on Maui that is some distance away from the other critical habitat for this species, in order to avoid all populations important for the conservation of the species on the island from being destroyed by one naturally occurring catastrophic event.

Maui 17—*Colubrina oppositifolia*—b

This unit is critical habitat for *Colubrina oppositifolia* and is 176 ha (435 ac) on State (Panaewa Section of the West Maui NAR) and privately owned land. The unit contains Kahoma and Kanaha Valleys and Halona Stream. This unit provides habitat for one population of 100 mature, reproducing individuals of the long-lived perennial *C. oppositifolia* and is currently unoccupied. The habitat features contained in this unit that are essential for this species include, but are not limited to, lowland dry and mesic forests dominated by *Diospyros sandwicensis*. This unit is essential to conservation of the species because it provides for one population within this multi-island species' historical range on Maui that is some distance away from the other critical habitat for this species, in order to avoid all populations important for the conservation of the species on the island from being destroyed by one naturally occurring catastrophic event.

Maui 18—*Colubrina oppositifolia*—c

This unit is critical habitat for *Colubrina oppositifolia* and is 64 ha (155 ac) on State (West Maui Forest Reserve) and privately owned land. The unit contains Honokowai Valley. This unit provides habitat for one population of 100 mature, reproducing individuals of the long-lived perennial *C. oppositifolia* and is currently occupied by one plant. The habitat features contained in this unit that are essential for this species include, but are not limited to, lowland dry and mesic forests dominated by *Diospyros sandwicensis*. This unit is essential to the conservation of the species because it supports an extant colony of this species and includes habitat that is important for the expansion of the present population. It is some distance away from the other critical habitat for this species, in order to avoid all populations important for the conservation of the species on the island from being destroyed by one naturally occurring catastrophic event.

Maui 17—*Ctenitis squamigera*—a

This unit is critical habitat for *Ctenitis squamigera* and is 1,979 ha (4,890 ac) on State (West Maui Forest Reserve) and privately owned land. The unit contains Hokuula and Puu Lio summits, Nakalaloa and Poohahoahoa streams, and Kapilau Ridge. This unit provides habitat for two populations of 300 mature, reproducing individuals of the short-lived perennial *C. squamigera* and is currently occupied by 30 plants. The habitat features contained in this unit that are essential for this species include, but are not limited to, forest understory in *Metrosideros polymorpha* montane wet forest, mesic forest, or diverse mesic forest. This unit is essential to the conservation of the species because it supports an extant colony of this species and includes habitat that is important for the expansion of the present population. It is some distance away from the other critical habitat for this species, in order to avoid all populations important for the conservation of the species on the island from being destroyed by one naturally occurring catastrophic event.

Maui 17—*Ctenitis squamigera*—b

This unit is critical habitat for *Ctenitis squamigera* and is 816 ha (2,018 ac) on State (Panaewa Section of the West Maui NAR and West Maui Forest Reserve) and privately owned land. The unit contains Wahikuli, Hahakea and Puuiki gulches, and Kanaha Stream. This unit provides habitat for two populations of 300 mature, reproducing individuals of the short-lived perennial *C. squamigera* and is currently occupied by one plant. The habitat features contained in this unit that are essential for this species include, but are not limited to, forest understory in *Metrosideros polymorpha* montane wet forest, mesic forest, or diverse mesic forest. This unit is essential to the conservation of the species because it supports an extant colony of this species and includes habitat that is important for the expansion of the present population. It is some distance away from the other critical habitat for this species, in order to avoid all populations important for the conservation of the species on the island from being destroyed by one naturally occurring catastrophic event.

Maui 17—*Ctenitis squamigera*—c

This unit is critical habitat for *Ctenitis squamigera* and is 137 ha (337 ac) on State (Honokowai Section of the West Maui NAR and West Maui Forest Reserve) and privately owned land. The unit contains Kapaloa and Amalu Streams. This unit provides habitat for one population, in combination with Maui 18—*Ctenitis squamigera*—d and Kapunakea Preserve, of 300 mature, reproducing individuals of the short-lived perennial *C. squamigera* and is currently occupied by 21 plants. The habitat features contained in this unit that are essential for this species include, but are not limited to, forest understory in *Metrosideros polymorpha* montane wet forest, mesic forest, or diverse mesic forest. This unit is essential to the conservation of the species because it supports an extant colony of this species and includes habitat that is important for the expansion of the present population. It is some distance away from the other critical habitat for this species, in order to avoid all populations important for the conservation of the species on the island from being destroyed by one naturally occurring catastrophic event.

Maui 18—*Ctenitis squamigera*—d

This unit is critical habitat for *Ctenitis squamigera* and is 14 ha (34 ac) on State (West Maui Forest Reserve) and privately owned land. The unit contains no named natural features and provides habitat for one population in combination with Maui 17—*Ctenitis squamigera*—c and Kapunakea Preserve of 300 mature, reproducing individuals of the short-lived perennial *C. squamigera* and is currently unoccupied. The habitat features contained in this unit that are essential for this species include, but are not limited to, forest understory in *Metrosideros polymorpha* montane wet forest, mesic forest, or diverse mesic forest. This unit is essential to conservation of the species because it provides for one population within this multi-island species' historical range on Maui that is some distance away from the other critical habitat for this species, in order to avoid all populations important for the conservation of the species on the island from being destroyed by one naturally occurring catastrophic event.

Maui 8—*Cyanea copelandii* ssp. *haleakalaensis*—a

This unit is critical habitat for *Cyanea copelandii* ssp. *haleakalaensis* and is 501 ha (1,238 ac) on State and privately owned land. The unit contains Opana Gulch, Kailua Stream, and Haiku Uka. This unit provides habitat for 3 populations of 300 mature, reproducing individuals of the short-lived perennial *C. copelandii* ssp. *haleakalaensis* and is currently occupied by one plant. The habitat features contained in this unit that are essential for this species include, but are not limited to, stream banks and wet talus slopes. This unit is essential to the conservation of the species because it supports an extant colony of this species and includes habitat that is important for the expansion of the present population. It is some distance away from the other critical habitat for this species, in order to avoid all populations important for the conservation of the species on the island from being destroyed by one naturally occurring catastrophic event.

Maui 9—*Cyanea copelandii* ssp. *haleakalaensis*—b

This unit is critical habitat for *Cyanea copelandii* ssp. *haleakalaensis* and is 1,709 ha (4,224 ac) on State (Hana Forest Reserve) and federally (Haleakala National Park) owned land. The unit contains Kaumakani Summit, Puu Kue Summit, Kipahulu Valley, Kaukaui Gulch, and Palikea Stream. It provides habitat for 5 populations of 300 mature, reproducing individuals of the short-lived perennial *C. copelandii* ssp. *haleakalaensis* and is currently occupied by 200 plants. The habitat features contained in this unit that are essential for this species include, but are not limited to, stream banks and wet talus slopes. This unit is essential to the conservation of the species because it supports an extant colony of this species and includes habitat that is important for the expansion of the present population. It is some distance away from the other critical habitat for this species, in order to avoid all populations important for the conservation of the species on the island from being destroyed by one naturally occurring catastrophic event.

Maui 8—*Cyanea glabra*—a

This unit is critical habitat for *Cyanea glabra* and is 450 ha (1,112 ac) on State (Makawao Forest Reserve) and privately owned land. The unit contains Wiohiwi Gulch. It provides habitat for two populations of 300 mature, reproducing individuals of the short-lived perennial *C. glabra* and is currently unoccupied. The habitat features contained in this unit that are essential for this species include, but are not limited to, soil and rock stream banks in wet lowland forest. This unit is essential to conservation of the species because it provides for two populations within this multi-island species' historical range on Maui that are some distance away from the other critical habitat for this species, in order to avoid all populations important for the conservation of the species on the island from being destroyed by one naturally occurring catastrophic event.

Maui 9—*Cyanea glabra*—b

This unit is critical habitat for *Cyanea glabra* and is 649 ha (1,605 ac) on federally owned land (Haleakala National Park). The unit contains Kipahulu Valley, Palikea Stream, and Kaukaui Gulch. It provides habitat for two populations of 300 mature, reproducing individuals of the short-lived perennial *C. glabra* and is currently unoccupied. The habitat features contained in this unit that are essential for this species include, but are not limited to, soil and rock stream banks in wet lowland forest. This unit is essential to conservation of the species because it provides for two populations within this multi-island species' historical range on Maui that are some distance away from the other critical habitat for this species, in order to avoid all populations important for the conservation of the species on the island from being destroyed by one naturally occurring catastrophic event.

Maui 9—*Cyanea glabra*—c

This unit is critical habitat for *Cyanea glabra* and is 363 ha (897 ac) on State (Hana Forest Reserve) land. The unit contains Waihoi Valley. It provides habitat for one population of 300 mature, reproducing individuals of the short-lived perennial *C. glabra* and is currently unoccupied. The habitat features contained in this unit that are essential for this species include, but are not limited to, soil and rock stream

banks in wet lowland forest. This unit is essential to conservation of the species because it provides for one population within this multi-island species' historical range on Maui that is some distance away from the other critical habitat for this species, in order to avoid all populations important for the conservation of the species on the island from being destroyed by one naturally occurring catastrophic event.

Maui 17—*Cyanea glabra*—d

This unit is critical habitat for *Cyanea glabra* and is 255 ha (630 ac) on State (West Maui Forest Reserve) land. The unit contains Olowalu Valley and Stream. It provides habitat for one population of 300 mature, reproducing individuals of the short-lived perennial *C. glabra* and is currently unoccupied. The habitat features contained in this unit that are essential for this species include, but are not limited to, soil and rock stream banks in wet lowland forest. This unit is essential to conservation of the species because it provides for one population within this multi-island species' historical range on Maui that is some distance away from the other critical habitat for this species, in order to avoid all populations important for the conservation of the species on the island from being destroyed by one naturally occurring catastrophic event.

Maui 17—*Cyanea glabra*—e

This unit is critical habitat for *Cyanea glabra* and is 471 ha (1,163 ac) on State (Panaewa Section of the West Maui NAR, and West Maui Forest Reserve) and privately owned land. The unit contains Waihikuli, Hahakea and Puuiki gulches, and Kanaha and Halona streams. It provides habitat for two populations of 300 mature, reproducing individuals of the short-lived perennial *C. glabra* and is currently unoccupied. The habitat features contained in this unit that are essential for this species include, but are not limited to, soil and rock stream banks in wet lowland forest. This unit is essential to conservation of the species because it provides for two populations within this multi-island species' historical range on Maui that are some distance away from the other critical habitat for this species, in order to avoid all populations important for the conservation of the species on the island from being destroyed by one naturally occurring catastrophic event.

Maui 17—*Cyanea glabra*—f

This unit is critical habitat for *Cyanea glabra* and is 188 ha (464 ac) on State (Honokowai Section of the West Maui NAR, and West Maui Forest Reserve) and privately owned land. The unit contains Amalu and Kapaloa streams. It provides habitat for one population of 300 mature, reproducing individuals of the short-lived perennial *C. glabra* and is currently unoccupied. The habitat features contained in this unit that are essential for this species include, but are not limited to, soil and rock stream banks in wet lowland forest. This unit is essential to conservation of the species because it provides for one population within this multi-island species' historical range on Maui that is some distance away from the other critical habitat for this species, in order to avoid all populations important for the conservation of the species on the island from being destroyed by one naturally occurring catastrophic event.

Maui 17—*Cyanea glabra*—g

This unit is critical habitat for *Cyanea glabra* and is 79 ha (194 ac) on privately owned land. The unit contains Kauaula Valley. It provides habitat for one population of 300 mature, reproducing individuals of the short-lived perennial *C. glabra* and is currently occupied by 12 plants. The habitat features contained in this unit that are essential for this species include, but are not limited to, soil and rock stream banks in wet lowland forest. This unit is essential to the conservation of the species because it supports an extant colony of this species and includes habitat that is important for the expansion of the present population. It is some distance away from the other critical habitat for this species, in order to avoid all populations important for the conservation of the species on the island from being destroyed by one naturally occurring catastrophic event.

Maui 17—*Cyanea grimesiana ssp. grimesiana*—a

This unit is critical habitat for *Cyanea grimesiana* ssp. *grimesiana* and is 921 ha (2,273 ac) on State (West Maui Forest Reserve) and privately owned land. The unit contains the Needle Summit, Poohahouhoa Stream, Nakalaloa Stream, and Iao Valley. It provides habitat for two populations of 300 mature, reproducing individuals of the short-lived perennial *C. grimesiana* ssp. *grimesiana* and is currently occupied by fewer than 5 plants. The habitat features contained in this unit that are essential for this species include, but are not limited to, rocky or steep slopes of stream banks in wet forest gulch bottoms. This unit is essential to the conservation of the species because it supports an extant colony of this species and includes habitat that is important for the expansion of the present population. It is some distance away from the other critical habitat for this species, in order to avoid all populations important for the conservation of the species on the island from being destroyed by one naturally occurring catastrophic event.

Maui 8—*Cyanea hamatiflora ssp. hamatiflora*—a

This unit is critical habitat for *Cyanea hamatiflora* ssp. *hamatiflora* and is 611 ha (1,509 ac) on State (Koolau Forest Reserve) and privately owned land. The unit contains Haipuaena Stream, Puohokamoa Stream, and Waikamoi Stream. It provides habitat for 3 populations of 300 mature, reproducing individuals of the short-lived perennial *C. hamatiflora* ssp. *hamatiflora* and is currently occupied by 5 plants. The habitat features contained in this unit that are essential for this species include, but are not limited to, montane wet forest dominated by *Metrosideros polymorpha* with a *Cibotium* sp. and/or native shrub understory or closed *Acacia koa-M. polymorpha* wet forest. This unit is essential to the conservation of the species because it supports an extant colony of this species and includes habitat that is important for the expansion of the present population. It is some distance away from the other critical habitat for this species, in order to avoid all populations important for the conservation of the species on the island from being destroyed by one naturally occurring catastrophic event.

Maui 9—*Cyanea hamatiflora ssp. hamatiflora*—b

This unit is critical habitat for *Cyanea hamatiflora* ssp. *hamatiflora* and is 1,310 ha (3,235 ac) on State (Kipahulu and Hana Forest Reserve) and federally owned (Haleakala National Park) land. The unit contains Puu Ahulili Summit, Kipahulu Valley, Kaumakani Summit, Kaukaui Gulch, and Palikea Stream. It provides habitat for 5 populations of 300 mature, reproducing individuals of the short-lived perennial *C. hamatiflora* ssp. *hamatiflora* and is currently occupied by 13 plants. The habitat features contained in this unit that are essential for this species include, but are not limited to, montane wet forest dominated by *Metrosideros polymorpha* with a *Cibotium* sp. and/or native shrub understory or closed *Acacia koa-M. polymorpha* wet forest. This unit is essential to the conservation of the species because it supports an extant colony of this species and includes habitat that is important for the expansion of the present population. It is some distance away from the other critical habitat for this species, in order to avoid all populations important for the conservation of the species on the island from being destroyed by one naturally occurring catastrophic event.

Maui 17—*Cyanea lobata*—a

This unit is critical habitat for *Cyanea lobata* and is 132 ha (323 ac) on State (Honokowai Section of the West Maui NAR, and West Maui Forest Reserve) and privately owned land. The unit contains Kapaloa and Amalu Streams. It provides habitat for two populations of 300 mature, reproducing individuals of the short-lived perennial *C. lobata* and is currently occupied by at least one plant. The habitat features contained in this unit that are essential for this species include, but are not limited to, steep stream banks in deep shade in wet forest. This unit is essential to the conservation of the species because it supports an extant colony of this species and includes habitat that is important for the expansion of the present population. It is some distance away from the other critical habitat for this species, in order to avoid all populations important for the conservation of the species on the island from being destroyed by one naturally occurring catastrophic event.

Maui 17—*Cyanea lobata*—b

This unit is critical habitat for *Cyanea lobata* and is 114 ha (281 ac) on State (Panaewa Section of the West Maui NAR) and privately owned land. The unit contains Kauaula Stream. It provides habitat for two populations of 300 mature, reproducing individuals of the short-lived perennial *C. lobata* and is currently unoccupied. The habitat features contained in this unit that are essential for this species include, but are not limited to, steep stream banks in deep shade in wet forest. This unit is essential to the conservation of the species because it provides for two populations within this multi-island species' historical range on Maui that are some distance away from the other critical habitat for this species, in order to avoid all populations important for the conservation of the species on the island from being destroyed by one naturally occurring catastrophic event.

Maui 17—*Cyanea lobata*—c

This unit is critical habitat for *Cyanea lobata* and is 578 ha (1,427 ac) on State (Kahakuloa Section of the West Maui NAR) and privately owned land. The unit contains Honanana and Kahakuloa Streams. It provides habitat for 3 populations of 300 mature, reproducing individuals of the short-lived perennial *C. lobata* and is currently unoccupied. The habitat features contained in this unit that are essential for this species include, but are not limited to, steep stream banks in deep shade in wet forest. This unit is essential to the conservation of the species because it provides for three populations within this multi-island species' historical range on Maui that are some distance away from the other critical habitat for this species, in order to avoid all populations important for the conservation of the species on the island from being destroyed by one naturally occurring catastrophic event.

Maui 8—*Cyanea mceldowneyi*—a

This unit is critical habitat for *Cyanea mceldowneyi* and is 2,127 ha (5,255 ac) on State (Makawao and Koolau Forest Reserves) and privately owned land. The unit contains area from Kahakapau Gulch to the rim of Keanae Valley. It provides habitat for 5 populations of 300 mature, reproducing individuals of the short-lived perennial *C. mceldowneyi* and is currently occupied by 33 plants. The habitat features contained in this unit that are essential for this species include, but are not limited to, montane wet and mesic forest with mixed *Metrosideros polymorpha-Acacia koa*. This unit is essential to the conservation of the species because it supports an extant colony of this species and includes habitat that is important for the expansion of the present population. Although we do not feel that there is enough habitat that currently exists to reach the recovery goal of 8 to 10 populations for this island-endemic species, this unit is of an appropriate size so that each potential population important for the conservation of the species within the unit is geographically separated enough to avoid their destruction by one naturally occurring catastrophic event.

Maui 17—*Cyrtandra munroi*—a

This unit is critical habitat for *Cyrtandra munroi* and is 156 ha (386 ac) on State (Honokowai Section of the West Maui NAR, and West Maui Forest Reserve) and privately owned land. The unit contains Amalu Stream. It provides habitat for two populations of 300 mature, reproducing individuals of the short-lived perennial *C. munroi* and is currently unoccupied. The habitat features contained in this unit that are essential for this species include, but are not limited to, moist to wet, moderately steep talus slopes. This unit is essential to the conservation of the species because it provides for two populations within this multi-island species' historical range on Maui that are some distance away from the other critical habitat for this species, in order to avoid all populations important for the conservation of the species on the island from being destroyed by one naturally occurring catastrophic event.

Maui 17—*Cyrtandra munroi*—b

This unit is critical habitat for *Cyrtandra munroi* and is 238 ha (590 ac) on State and privately owned land. The unit contains Hahakea and Puuiki gulches and Kahoma Stream. It provides habitat for two populations of 300 mature, reproducing individuals of the short-lived perennial *C. munroi* and is currently occupied by at least one plant. The habitat features contained in this unit that are essential for this species include, but are not limited to, moist to wet, moderately steep talus slopes. This unit is essential to the conservation of the species because it supports an extant colony of this species and includes habitat that is important for the expansion of the present population. It is some distance away from the other critical habitat for this species, in order to avoid all populations important for the conservation of the species on the island from being destroyed by one naturally occurring catastrophic event.

Maui 17—*Cyrtandra munroi*—c

This unit is critical habitat for *Cyrtandra munroi* and is 603 ha (1,490 ac) on State (Kahakuloa Section of the West Maui NAR) and privately owned land. The unit contains Kahakuloa Valley, Honanana Gulch, Keahikauo, and Makamakaole Stream. It provides habitat for 3 populations of 300 mature, reproducing individuals of the short-lived perennial *C. munroi* and is currently unoccupied. The habitat features contained in this unit that are essential for this species include, but are not limited to, moist to wet, moderately steep talus slopes. This unit is essential to the conservation of the species because it provides for three populations within this multi-island species' historical range on Maui that are some distance away from the other critical habitat for this species, in order to avoid all populations important for the conservation of the species on the island from being destroyed by one naturally occurring catastrophic event.

Maui 9—*Diellia erecta*—a

This unit is critical habitat for *Diellia erecta* and is 2 ha (6 ac) on State-owned land (Kula Forest Reserve). The unit contains no named natural features. It provides habitat for one population of 300 mature, reproducing individuals of the short-lived perennial *D. erecta* and is currently unoccupied. The habitat features contained in this unit that are essential for this species include, but are

not limited to, granular soil with leaf litter and moss on north-facing slopes in deep shade or gulch bottoms. This unit is essential to the conservation of the species because it provides for one population within this multi-island species' historical range on Maui that is some distance away from the other critical habitat for this species, in order to avoid all populations important for the conservation of the species on the island from being destroyed by one naturally occurring catastrophic event.

Maui 9—*Diellia erecta*—b

This unit is critical habitat for *Diellia erecta* and is 174 ha (432 ac) on State-owned land. The unit contains Puu Pane. It provides habitat for one population of 300 mature, reproducing individuals of the short-lived perennial *D. erecta* and is currently unoccupied. The habitat features contained in this unit that are essential for this species include, but are not limited to, granular soil with leaf litter and moss on north-facing slopes in deep shade or gulch bottoms. This unit is essential to the conservation of the species because it provides for one population within this multi-island species' historical range on Maui that is some distance away from the other critical habitat for this species, in order to avoid all populations important for the conservation of the species on the island from being destroyed by one naturally occurring catastrophic event.

Maui 17—*Diellia erecta*—c

This unit is critical habitat for *Diellia erecta* and is 22 ha (55 ac) on State (West Maui Forest Reserve) land. The unit contains Papalaua Gulch. It provides habitat for one population;in combination with Maui 17—*Diellia erecta*—e and Maui 17—*Diellia erecta*—f, f 300 mature, reproducing individuals of the short-lived perennial *D. erecta* and is currently unoccupied. The habitat features contained in this unit that are essential for this species include, but are not limited to, granular soil with leaf litter and moss on north-facing slopes in deep shade or gulch bottoms. This unit is essential to the conservation of the species because it provides for one population within this multi-island species' historical range on Maui that is some distance away from the other critical habitat for this species, in order to avoid all populations important for the conservation of the species on the island from being destroyed by one naturally occurring catastrophic event.

Maui 17—*Diellia erecta*—d

This unit is critical habitat for *Diellia erecta* and is 70 ha (172 ac) on privately owned land. The unit contains Iao Valley. It provides habitat for one population of 300 mature, reproducing individuals of the short-lived perennial *D. erecta* and is currently occupied by 20 plants. The habitat features contained in this unit that are essential for this species include, but are not limited to, granular soil with leaf litter and moss on north-facing slopes in deep shade or gulch bottoms. This unit is essential to the conservation of the species because it supports an extant colony of this species and includes habitat that is important for the expansion of the present population. It is some distance away from the other critical habitat for this species, in order to avoid all populations important for the conservation of the species on the island from being destroyed by one naturally occurring catastrophic event.

Maui 17—*Diellia erecta*—e

This unit is critical habitat for *Diellia erecta* and is 12 ha (30 ac) on State (Manawainui Plant Sanctuary) land. The unit contains no named natural features. It provides habitat for one population,in combination with Maui 17—*Diellia erecta*—c and Maui 17—*Diellia erecta*—f, of 300 mature, reproducing individuals of the short-lived perennial *D. erecta* and is currently occupied by at least one plant. The habitat features contained in this unit that are essential for this species include, but are not limited to, granular soil with leaf litter and moss on north-facing slopes in deep shade or gulch bottoms. This unit is essential to the conservation of the species because it supports an extant colony of this species and includes habitat that is important for the expansion of the present population. It is some distance away from the other critical habitat for this species, in order to avoid all populations important for the conservation of the species on the island from being destroyed by one naturally occurring catastrophic event.

Maui 17—*Diellia erecta*—f

This unit is critical habitat for *Diellia erecta* and is 14 ha (34 ac) on State-owned land (West Maui Forest Reserve). The unit contains Hanaulaiki. It provides habitat for one population in combination with Maui 17—*Diellia erecta*—c and Maui 17—*Diellia erecta*—e, of 300 mature, reproducing individuals of the short-lived perennial *D. erecta* and is currently occupied by one plant. The habitat features contained in this unit that are essential for this species include, but are not limited to, granular soil with leaf litter and moss on north-facing slopes in deep shade or gulch bottoms. This unit is essential to the conservation of the species because it supports an extant colony of this species and includes habitat that is important for the expansion of the present population. It is some distance away from the other critical habitat for this species, in order to avoid all populations important for the conservation of the species on the island from being destroyed by one naturally occurring catastrophic event.

Maui 8—*Diplazium molokaiense*—a

This unit is critical habitat for *Diplazium molokaiense* and is 575 ha (1,420 ac) on State (Makawao Forest Reserve) and privately owned land. The unit contains Puu o Kakae, Waikamoi, Honomanu, and Piinaau streams. It provides habitat for two populations of 300 mature, reproducing individuals of the short-lived perennial *D. molokaiense* and is currently occupied by at least one plant. The habitat features contained in this unit that are essential for this species include, but are not limited to, land near water courses, often in proximity to waterfalls, in lowland or montane mesic forests. This unit is essential to the conservation of the species because it supports an extant colony of this species and includes habitat that is important for the expansion of the present population. It is some distance away from the other critical habitat for this species, in order to avoid all populations important for the conservation of the species on the island from being destroyed by one naturally occurring catastrophic event.

Maui 9—*Diplazium molokaiense*—b

This unit is critical habitat for *Diplazium molokaiense* and is 162 ha (401 ac) on State-owned land. The unit contains Manawainui Stream. It provides habitat for one population of 300 mature, reproducing individuals of the short-lived perennial *D. molokaiense* and is currently unoccupied. The habitat features contained in this unit that are essential for this species include, but are not limited to, land near water courses, often in proximity to waterfalls, in lowland or montane mesic forests. This unit is essential to the conservation of the species because it provides for one population within this multi-island species' historical range on Maui that is some distance away from the other critical habitat for this species, in order to avoid all populations important for the conservation of the species on the island from being destroyed by one naturally occurring catastrophic event.

Maui 17—*Diplazium molokaiense*—c

This unit is critical habitat for *Diplazium molokaiense* and is 1,495 ha (3,693 ac) on State (West Maui Forest Reserve) and privately owned land. The unit contains the Needle Summit, Poohahouhoa and Nakalaloa streams, and Iao Valley). It provides habitat for three populations of 300 mature, reproducing individuals of the short-lived perennial *D. molokaiense* and is currently unoccupied. The habitat features contained in this unit that are essential for this species include, but are not limited to, land near water courses, often in proximity to waterfalls, in lowland or montane mesic forests. This unit is essential to the conservation of the species because it provides for three populations within this multi-island species' historical range on Maui that is some distance away from the other critical habitat for this species, in order to avoid all populations important for the conservation of the species on the island from being destroyed by one naturally occurring catastrophic event.

Maui 17—*Dubautia plantaginea* ssp. *humilis*—a

This unit is critical habitat for *Dubautia plantaginea* ssp. *humilis* and is 293 ha (723 ac) on State (West Maui Forest Reserve) and privately owned land. The unit contains Kauaula Valley and Stream and Niupoko. It provides habitat for three populations of 300 mature, reproducing individuals of the short-lived perennial *D. plantaginea* ssp. *humilis* and is currently unoccupied. This unit is essential to the conservation of the species because it supports habitat that is necessary to the establishment of additional populations on Maui in order to reach recovery goals. The habitat features contained in this unit that are essential for this species include, but are not limited to, wet, barren, steep, rocky, wind-blown cliffs. Although we do not believe that there is enough habitat that currently exists to reach the recovery goal of 8 to 10 populations for this island-endemic species this unit is some distance away from the other critical habitat for this species, in order to avoid all populations important for the conservation of the species from being destroyed by one naturally occurring catastrophic event.

Maui 17—*Dubautia plantaginea* ssp. *humilis*—b

This unit is critical habitat for *Dubautia plantaginea* ssp. *humilis* and is 114 ha (283 ac) on State (West Maui Forest Reserve) and privately owned land. The unit contains Lihau Summit and Olowalu Valley. It provides habitat for two populations of 300 mature, reproducing individuals of the short-lived perennial *D. plantaginea* ssp. *humilis* and is currently unoccupied. This unit is essential to the conservation of the species because it supports habitat that is necessary to the establishment of additional populations on Maui in order to reach recovery goals. The habitat features contained in this unit that are essential for this species include, but are not limited to, wet, barren, steep, rocky, wind-blown cliffs. Although we do not believe that there is enough habitat that currently exists to reach the recovery goal of 8 to 10 populations for this island-endemic species, this unit is some distance away from the other critical habitat for this species in order to avoid all populations important for the conservation of the species from being destroyed by one naturally occurring catastrophic event.

Maui 17—*Dubautia plantaginea* ssp. *humilis*—c

This unit is critical habitat for *Dubautia plantaginea* ssp. *humilis* and is 95 ha (234 ac) on State (West Maui Forest Reserve) and privately owned land. The unit contains Iao Valley and Needle and Au Stream. It provides habitat for one population of 300 mature, reproducing individuals of the short-lived perennial *D. plantaginea* ssp. *humilis* and is currently occupied by 65 plants. The habitat features contained in this unit that are essential for this species include, but are not limited to, wet, barren, steep, rocky, wind-blown cliffs. This unit is essential to the conservation of the species because it supports an extant colony of this species and includes habitat that is important for the expansion of the present population. Although we do not believe that there is enough habitat that currently exists to reach the recovery goal of 8 to 10 populations for this island-endemic species, this unit some distance away from the other critical habitat for this species in order to avoid all populations important for the conservation of the species from being destroyed by one naturally occurring catastrophic event.

Maui 9—*Flueggea neowawraea*—a

This unit is critical habitat for *Flueggea neowawraea* and is 52 ha (128 ac) on State-owned land (Department of Hawaiian Home Lands (DHHL)). The unit contains Lualailua Hills. It provides habitat for one population in combination with Ulupalakua Ranch of 100 mature, reproducing individuals of the long-lived perennial *F. neowawraea* and is currently occupied by 4 plants. The habitat features contained in this unit that are essential for this species include, but are not limited to, dry or mesic forest. This unit is essential to the conservation of the species because it supports an extant colony of this species and includes habitat that is important for the expansion of the present population. It is some distance away from the other critical habitat for this species, in order to avoid all populations important for the conservation of the species on the island from being destroyed by one naturally occurring catastrophic event.

Maui 13—*Flueggea neowawraea*—b

This unit is critical habitat for *Flueggea neowawraea* and is 50 ha (124 ac) on State-owned land. The unit contains land west of Auwahi Gulch and south of Puu Ouli. In combination with Ulupalakua Ranch and Maui 9—*Flueggea neowawraea*—a, it provides habitat for one population of 100 mature, reproducing individuals of the long-lived perennial *F. neowawraea* and is currently unoccupied. The habitat features contained in this unit that are essential for this species include, but are not limited to, dry or mesic forest. This unit is essential to the conservation of the species because it provides for one population within this multi-island species' historical range on Maui that is some distance away from the other critical habitat for this species, in order to avoid all populations important for the conservation of the species on the island from being destroyed by one naturally occurring catastrophic event.

Maui 9—*Geranium arboreum*—a

This unit is critical habitat for *Geranium arboreum* and is 731 ha (1,806 ac) on State (Kula Forest Reserve) land. The unit contains Polipoli Summit. It provides habitat for 4 populations of 100 mature, reproducing individuals of the long-lived perennial *G. arboreum* and is currently occupied by 12 plants. The habitat features contained in this unit that are essential for this species include, but are not limited to, steep, damp, and shaded narrow canyons and gulches, steep banks, and intermittent streams. This unit is essential to the conservation of the species because it supports an extant colony of this species and includes habitat that is important for the expansion of the present population. Although we do not feel that there is enough habitat that currently exists to reach the recovery goal of 8 to 10 populations for this island-endemic species, the units are of an appropriate

distance apart to avoid their destruction by one naturally occurring catastrophic event.

Maui 14—*Geranium arboreum*—b

This unit is critical habitat for *Geranium arboreum* and is 452 ha (1,115 ac) on State (Kula Forest Reserve) and privately owned land. The unit contains Waiohuli Gulch. It provides habitat for one population of 100 mature, reproducing individuals of the long-lived perennial *G. arboreum* and is currently occupied by 22 plants. The habitat features contained in this unit that are essential for this species include, but are not limited to, steep, damp, and shaded narrow canyons and gulches, steep banks, and intermittent streams. This unit is essential to the conservation of the species because it supports an extant colony of this species and includes habitat that is important for the expansion of the present population. It is some distance away from the other critical habitat for this species, in order to avoid all populations important for the conservation of the species on the island from being destroyed by one naturally occurring catastrophic event.

Maui 15—*Geranium arboreum*—c

This unit is critical habitat for *Geranium arboreum* and is 667 ha (1,648 ac) on State (Kula Forest Reserve) and privately owned land. The unit contains land from Waiakoa to Kamehamenui. It provides habitat for two populations of 100 mature, reproducing individuals of the long-lived perennial *G. arboreum* and is currently occupied by two plants. The habitat features contained in this unit that are essential for this species include, but are not limited to, steep, damp, and shaded narrow canyons and gulches, steep banks, and intermittent streams. This unit is essential to the conservation of the species because it supports an extant colony of this species and includes habitat that is important for the expansion of the present population. Although we do not feel that there is enough habitat that currently exists to reach the recovery goal of 8 to 10 populations for this island-endemic species, the units are of an appropriate distance apart to avoid their destruction by one naturally occurring catastrophic event.

Maui 8—*Geranium multiflorum*—a

This unit is critical habitat for *Geranium multiflorum* and is 46 ha (113 ac) on privately owned land. The unit contains Honomanu and Piihaau streams. It provides habitat for one population in combination with Waikamoi Preserve of 100 mature, reproducing individuals of the long-lived perennial *G. multiflorum* and is currently unoccupied. The habitat features contained in this unit that are essential for this species include, but are not limited to, wet or mesic *Metrosideros polymorpha* montane forest or alpine mesic forest, *Leptecophylla tameiameiae* shrubland, *Sophora chrysophylla* subalpine dry forest, open sedge swamps, fog-swept lava flows, or montane grasslands. This unit is essential to the conservation of the species because it provides for one population within this multi-island species' historical range on Maui that is some distance away from the other critical habitat for this species, in order to avoid all populations important for the conservation of the species on the island from being destroyed by one naturally occurring catastrophic event.

Maui 9—*Geranium multiflorum*—b

This unit is critical habitat for *Geranium multiflorum* and is 4,817 ha (11,902 ac) on State (Koolau Forest Reserve), Federal (Haleakala National Park), and privately owned land. The unit contains Anapanapa Lake, Halalii Summit, Haleakala Crater, Hanakauhi Summit, Hina, Mauna Summit, Honokahua Summit, Ka Moa o Pele Summit, Kalapawili Ridge, Kalua Awa Summit, Kaluaiki Crater, Kaluanui Crater, Koolau Gap, Kuiki Summit, Laie Cave, Laie Puu Summit, Lauulu Summit, Namana o ke Akua Summit, Oili Puu Summit, Pohaku Palaha Summit, Puu Alaea Summit, Puu Kauaua Summit, Puu Kumu Summit, Puu Maile Summit, Puu Mamane Summit, Puu Naue Summit, Puu Nole Summit, and Waikekeehia. It provides habitat for 6 populations of 100 mature, reproducing individuals of the long-lived perennial *G. multiflorum* and is currently occupied by 122 plants. The habitat features contained in this unit that are essential for this species include, but are not limited to, wet or mesic *Metrosideros polymorpha* montane forest or alpine mesic forest, *Leptecophylla tameiameiae* shrubland, *Sophora chrysophylla* subalpine dry forest, open sedge swamps, fog-swept lava flows, or montane grasslands. This unit is essential to the conservation of the species because it supports an extant colony of this species and includes habitat that is important for the establishment of additional populations. It is some distance away from the other critical habitat for this species, in order to avoid all populations important for the conservation of the species on the island from being destroyed by one naturally occurring catastrophic event.

Maui 9—*Geranium multiflorum*—c

This unit is critical habitat for *Geranium multiflorum* and is 183 ha (450 ac) on State-owned land. The unit contains Manawainui Gulch. It provides habitat for one population of 100 mature, reproducing individuals of the long-lived perennial *G. multiflorum* and is currently unoccupied. The habitat features contained in this unit that are essential for this species include, but are not limited to, wet or mesic *Metrosideros polymorpha* montane forest or alpine mesic forest, *Leptecophylla tameiameiae* shrubland, *Sophora chrysophylla* subalpine dry forest, open sedge swamps, fog-swept lava flows, or montane grasslands. This unit is essential to the conservation of the species because it provides for one population within this multi-island species' historical range on Maui that is some distance away from the other critical habitat for this species, in order to avoid all populations important for the conservation of the species on the island from being destroyed by one naturally occurring catastrophic event.

Maui 17—*Gouania vitifolia*—a

This unit is critical habitat for *Gouania vitifolia* and is 486 ha (1,198 ac) on State (Panaewa Section of the West Maui NAR) and privately owned land. The unit contains Paupau Summit and Halona and Kanaka streams. It provides habitat for one population of 300 mature, reproducing individuals of the short-lived perennial *G. vitifolia* and is currently unoccupied. The habitat features contained in this unit that are essential for this species include, but are not limited to, the sides of ridges and gulches in dry to mesic forests. This unit is essential to the conservation of the species because it provides for one population within this multi-island species' historical range on Maui that is some distance away from the other critical habitat for this species, in order to avoid all populations important for the conservation of the species on the island from being destroyed by one naturally occurring catastrophic event.

Maui 17—*Hedyotis coriacea*—a

This unit is critical habitat for *Hedyotis coriacea* and is 106 ha (262 ac) on State (Lihau Section of the West Maui NAR) and privately owned land. The unit contains Olowalu Valley. It provides habitat for one population of 300 mature, reproducing individuals of the short-lived perennial *H. coriacea* and is currently occupied by one plant. The habitat features contained in this unit that are essential for this species include, but are not limited to, steep, rocky slopes in dry lowland *Dodonaea viscosa*-dominated shrublands. This unit is essential to the conservation of the species because it supports an extant colony of this species and includes habitat that is important for the expansion of the present population. It is some distance away from the other critical habitat for this species, in order to avoid all populations important for the conservation of the species on the island from being destroyed by one naturally occurring catastrophic event.

Maui 17—*Hedyotis coriacea*—b

This unit is critical habitat for *Hedyotis coriacea* and is 138 ha (340 ac) on State-owned land (West Maui Forest Reserve). The unit contains Ukumehame Valley. It provides habitat for one population of 300 mature, reproducing individuals of the short-lived perennial *H. coriacea* and is currently unoccupied. The habitat features contained in this unit that are essential for this species include, but are not limited to, steep, rocky slopes in dry lowland *Dodonaea viscosa*-dominated shrublands. This unit is essential to the conservation of the species because it provides for one population within this multi-island species' historical range on Maui that is some distance away from the other critical habitat for this species, in order to avoid all populations important for the conservation of the species on the island from being destroyed by one naturally occurring catastrophic event.

Maui 17—*Hedyotis mannii*—a

This unit is critical habitat for *Hedyotis mannii* and is 2,234 ha (5,521 ac) on State (Panaewa Section of the West Maui NAR) and privately owned land. The unit contains the Needle Summit, Poohahouhoa Stream, Nakalaloa Stream, Iao Valley, Kauaula, Makila Stream, and Kanaha Stream. It provides habitat for two populations of 300 mature, reproducing individuals of the short-lived perennial *H. mannii* and is currently occupied by fewer than 10 plants. The habitat features contained in this unit that are essential for this species include, but are not limited to, basalt cliffs along stream banks in *Metrosideros polymorpha-Dicranopteris* linearis montane wet forest. This unit is essential to the conservation of the species because it supports an extant colony of this species and includes habitat that is important for the expansion of the present population. It is some distance away from the other critical habitat for this species, in order to avoid all populations important for the conservation of the species on the island from being destroyed by one naturally occurring catastrophic event.

Maui 17—*Hesperomannia arbuscula*—a

This unit is critical habitat for *Hesperomannia arbuscula* and is 392 ha (968 ac) on State (Panaewa Section of the West Maui NAR) and privately owned land. The unit contains Panaewa Valley and Halona and Kanaha streams. It provides habitat for two populations of 100 mature, reproducing individuals of the long-lived perennial *H. arbuscula* and is currently unoccupied. The habitat features contained in this unit that are essential for this species include, but are not limited to, steep forested slopes and ridges in mesic forest dominated by *Metrosideros polymorpha* or *Diospyros sandwicensis*. This is essential to the conservation of the species because it unit provides for two populations within this multi-island species' historical range on Maui that are some distance away from the other critical habitat for this species, in order to avoid all populations important for the conservation of the species on the island from being destroyed by one naturally occurring catastrophic event.

Maui 17—*Hesperomannia arbuscula*—b

This unit is critical habitat for *Hesperomannia arbuscula* and is 436 ha (1,076 ac) on privately owned land. The unit contains Iao Valley and Needle, and Poohahaonao, Nakalaloa, and Kinihapai streams. It provides habitat for 3 populations of 100 mature, reproducing individuals of the long-lived perennial *H. arbuscula* and is currently occupied by 10 plants. The habitat features contained in this unit that are essential for this species include, but are not limited to, steep forested slopes and ridges in mesic forest dominated by *Metrosideros polymorpha* or *Diospyros sandwicensis*. This unit is essential to the conservation of the species because it supports an extant colony of this species and includes habitat that is important for the expansion of the present population. It is some distance away from the other critical habitat for this species, in order to avoid all populations important for the conservation of the species on the island from being destroyed by one naturally occurring catastrophic event.

Maui 16—*Hibiscus brackenridgei*—a

This unit is critical habitat for *Hibiscus brackenridgei* and is 212 ha (524 ac) on privately owned land. The unit contains Paleaanu and Kaonohoa gulches and Kaunoahua Ridge. It provides habitat for one population of 300 mature, reproducing individuals of the short-lived perennial *H. brackenridgei* and is currently occupied by 8 plants. The habitat features contained in this unit that are essential for this species include, but are not limited to, lowland dry forest, sometimes with *Erythrina sandwicensis* as the dominant tree. This unit is essential to the conservation of the species because it supports an extant colony of this species and includes habitat that is important for the expansion of the present population. It is some distance away from the other critical habitat for this species, in order to avoid all populations important for the conservation of the species on the island from being destroyed by one naturally occurring catastrophic event.

Maui 17—*Hibiscus brackenridgei*—b

This unit is critical habitat for *Hibiscus brackenridgei* and is 667 ha (1,645 ac) on State (Lihau Section of the West Maui NAR, West Maui Forest Reserve) and privately owned land. The unit contains Olowalu Valley, Olowalu Stream, and Ukumehame. It provides habitat for two populations of 300 mature, reproducing individuals of the short-lived perennial *H. brackenridgei* and is currently occupied by 14 plants. The habitat features contained in this unit that are essential for this species include, but are not limited to, lowland dry forest, sometimes with *Erythrina sandwicensis* as the dominant tree. This unit is essential to the conservation of the species because it supports an extant colony of this species and includes habitat that is important for the expansion of the present population. It is some distance away from the other critical habitat for this species, in order to avoid all populations important for the conservation of the species on the island from being destroyed by one naturally occurring catastrophic event.

Maui 6—*Ischaemum byrone*—a

This unit is critical habitat for *Ischaemum byrone* and is 18 ha (42 ac) on State and privately owned land. The unit contains Kopiliula Stream, Kapaula Gulch, Waiaaka Stream, Waiohue Bay and Paakea Gulch. It provides habitat for one population of 300 mature, reproducing individuals of the short-lived perennial *I. byrone* and is currently occupied by fewer than 10 plants. The habitat features contained in this unit that are essential for this species include, but are not limited to, close proximity to the ocean, among rocks or on basalt cliffs in windward coastal dry shrubland. This unit is essential to the conservation of the species because it supports an extant colony of this species and includes habitat that is important for the

expansion of the present population. It is some distance away from the other critical habitat for this species, in order to avoid all populations important for the conservation of the species on the island from being destroyed by one naturally occurring catastrophic event.

Maui 7—*Ischaemum byrone*—b

This unit is critical habitat for *Ischaemum byrone* and is 11 ha (27 ac) on State-owned land (Waianapanapa State Park). The unit contains Pailoa and Keawaiki Bays, and Pukaulaa Point. This unit provides habitat for one population of 300 mature, reproducing individuals of the short-lived perennial *I. byrone* and is currently occupied by 50 to 100 plants. The habitat features contained in this unit that are essential for this species include, but are not limited to, close proximity to the ocean, among rocks or on basalt cliffs in windward coastal dry shrubland. This unit is essential to the conservation of the species because it supports an extant colony of this species and includes habitat that is important for the expansion of the present population. It is some distance away from the other critical habitat for this species, in order to avoid all populations important for the conservation of the speciess on the island from being destroyed by one naturally occurring catastrophic event.

Maui 17—*Isodendrion pyrifolium*—a

This unit is critical habitat for *Isodendrion pyrifolium* and is 224 ha (555 ac) on State (Lihau Section of the West Maui NAR, West Maui Forest Reserve) and privately owned land. The unit contains Olowalu Valley, Olowalu Stream, and Ukumehame. It provides habitat for two populations of 300 mature, reproducing individuals of the short-lived perennial *I. pyrifolium* and is currently unoccupied. The habitat features contained in this unit that are essential for this species include, but are not limited to, close proximity to the ocean, among rocks or on basalt cliffs in windward coastal dry shrubland. This unit is essential to the conservation of the species because it provides for two populations within this multi-island species' historical range on Maui that are some distance away from the other critical habitat for this species, in order to avoid all populations important for the conservation of the species on the island from being destroyed by one naturally occurring catastrophic event.

Maui 9—*Lipochaeta kamolensis—a*

This unit is critical habitat for *Lipochaeta kamolensis* and is 1,474 ha (3,644 ac) on State and privately owned land. The unit contains Lualailua Hills and Manawainui, Kamole, and Palaha gulches. It provides habitat for 4 populations of 300 mature, reproducing individuals of the short-lived perennial *L. kamolensis* and is currently occupied by 100 to 200 plants. The habitat features contained in this unit that are essential for this species include, but are not limited to, gulches or gentle slopes outside gulches in dry shrubland. This unit is essential to the conservation of the species because it supports an extant colony of this species and includes habitat that is important for the expansion of the present population. Although we do not believe that there is enough habitat that currently exists to reach the recovery goal of 8 to 10 populations for this island-endemic species, the units are of an appropriate distance apart to avoid their destruction by one naturally occurring catastrophic event.

Maui 11—*Lipochaeta kamolensis*—b

This unit is critical habitat for *Lipochaeta kamolensis* and is 42 ha (105 ac) on State-owned land. The unit contains Pahihi Gulch. It, in combination with Haleakala Ranch lands, provides habitat for two populations of 300 mature, reproducing individuals of the short-lived perennial *L. kamolensis* and is currently unoccupied. This unit is essential to the conservation of the species because it supports habitat that is necessary to the establishment of additional populations on Maui in order to reach recovery goals. The habitat features contained in this unit that are essential for this species include, but are not limited to, gulches or gentle slopes outside gulches in dry shrubland. Although we do not believe that there is enough habitat that currently exists to reach the recovery goal of 8 to 10 populations for this island-endemic species, this unit is some distance away from the other critical habitat for this species in order to avoid all recovery populations from being destroyed by one naturally occurring catastrophic event.

Maui 17—*Lysimachia lydgatei*—a

This unit is critical habitat for *Lysimachia lydgatei* and is 90 ha (221 ac) on State (Lihau Section of the West Maui NAR, West Maui Forest Reserve) and privately owned land. The unit contains Lihau Summit and Olowalu Valley. It provides habitat for one population of 300 mature, reproducing individuals of the short-lived perennial *L. lydgatei* and is currently occupied by 50 to 100 plants. The habitat features contained in this unit that are essential for this species include, but are not limited to, sides of steep ridges in *Metrosideros polymorpha-Dicranopteris linearis*-dominated wet to mesic shrubland or *M. polymorpha-Cheirodendron* sp. montane forest. This unit is essential to the conservation of the species because it supports an extant colony of this species and includes habitat that is important for the expansion of the present population. It is some distance away from the other critical habitat for this species, in order to avoid all populations important for the conservation of the species on the island from being destroyed by one naturally occurring catastrophic event.

Maui 17—*Lysimachia lydgatei*—b

This unit is critical habitat for *Lysimachia lydgatei* and is 158 ha (391 ac) on State (West Maui Forest Reserve) and privately owned land. The unit contains Pohakea Gulch and Hanaula Summit. It, in combination with Haleakala Ranch lands, provides habitat for 4 populations of 300 mature, reproducing individuals of the short-lived perennial *L. lydgatei* and is currently unoccupied. The habitat features contained in this unit that are essential for this species include, but are not limited to, sides of steep ridges in *Metrosideros polymorpha-Dicranopteris linearis*-dominated wet to mesic shrubland or *M. polymorpha-Cheirodendron* sp. montane forest. This unit is essential to the conservation of the species because, in combination with Haleakala Ranch, it provides for four populations within this multi-island species' historical range on Maui that are some distance away from the other critical habitat for this species, in order to avoid all populations important for the conservation of the species on the island from being destroyed by one naturally occurring catastrophic event.

Maui 17—*Lysimachia lydgatei*—c

This unit is critical habitat for *Lysimachia lydgatei* and is 47 ha (116 ac) on State (Panaewa Section of the West Maui NAR) and privately owned land. The unit contains no named natural features. It, in combination with Haleakala Ranch Lands, provides habitat for one population of 300 mature, reproducing individuals of the short-lived perennial *L. lydgatei* and is currently unoccupied. The habitat features contained in this unit that are essential for this species include, but are not limited to, sides of steep ridges in *Metrosideros polymorpha-Dicranopteris linearis*-dominated wet to mesic shrubland or *M. polymorpha-Cheirodendron* sp. montane forest. This unit is essential to the conservation of the species because, in combination with Haleakala Ranch, it provides for

one population within this multi-island species' historical range on Maui that is some distance away from the other critical habitat for this species, in order to avoid all populations important for the conservation of the species on the island from being destroyed by one naturally occurring catastrophic event.

Maui 17—*Lysimachia lydgatei*—d

This unit is critical habitat for *Lysimachia lydgatei* and is 98 ha (242 ac) on State (West Maui Forest Reserve) and privately owned land. The unit contains Helu Summit. It provides habitat for one population of 300 mature, reproducing individuals of the short-lived perennial *L. lydgatei* and is currently occupied by 40 plants. The habitat features contained in this unit that are essential for this species include, but are not limited to, sides of steep ridges in *Metrosideros polymorpha-Dicranopteris linearis*-dominated wet to mesic shrubland or *M. polymorpha-Cheirodendron* sp. montane forest. This unit is essential to the conservation of the species because it supports an extant colony of this species and includes habitat that is important for the expansion of the present population. It is some distance away from the other critical habitat for this species, in order to avoid all populations important for the conservation of the species on the island from being destroyed by one naturally occurring catastrophic event.

Maui 17—*Lysimachia lydgatei*—e

This unit is critical habitat for *Lysimachia lydgatei* and is 18 ha (44 ac) on State-owned land (West Maui Forest Reserve). The unit contains Halepohaku Summit. It provides habitat for one population of 300 mature, reproducing individuals of the short-lived perennial *L. lydgatei* and is currently occupied by 50 to 100 plants. The habitat features contained in this unit that are essential for this species include, but are not limited to, sides of steep ridges in *Metrosideros polymorpha-Dicranopteris linearis*-dominated wet to mesic shrubland or *M. polymorpha-Cheirodendron* sp. montane forest. This unit is essential to the conservation of the species because it supports an extant colony of this species and includes habitat that is important for the expansion of the present population. It is some distance away from the other critical habitat for this species, in order to avoid all populations important for the conservation of the species on the island from being destroyed by one naturally occurring catastrophic event.

Maui 6—*Mariscus pennatiformis*—a

This unit is critical habitat for *Mariscus pennatiformis* and is 30 ha (74 ac) on State and privately owned land. The unit contains Pahiha Point, Kopiliula Stream, Paakea Gulch, Waiohue Bay, Waiaaka Stream, Kapaula Gulch, and Hanawi Stream. It provides habitat for two populations of 300 mature, reproducing individuals of the short-lived perennial *M. pennatiformis* and is currently occupied by two plants. The habitat features contained in this unit that are essential for this species include, but are not limited to, cliffs with brown soil and talus within reach of ocean spray. This unit is essential to the conservation of the species because it supports an extant colony of this species and includes habitat that is important for the expansion of the present population. It is some distance away from the other critical habitat for this species, in order to avoid all populations important for the conservation of the species on the island from being destroyed by one naturally occurring catastrophic event.

Maui 13—*Melicope adscendens*—a

This unit is critical habitat for *Melicope adscendens* and is 160 ha (398 ac) on State (Kanaio NAR) land. The unit contains no named natural features. It, in combination with Ulupalakua Ranch land, provides habitat for one population of 100 mature, reproducing individuals of the long-lived perennial *M. adscendens* and is currently occupied by one plant. The habitat features contained in this unit that are essential for this species include, but are not limited to, aa lava with pockets of soil in *Nestegis sandwicensis-Pleomele auwahiensis-Dodonaea viscosa* lowland mesic forest or open dry forest. This unit is essential to the conservation of the species because it supports an extant colony of this species and includes habitat that is important for the expansion of the present population. Although we do not believe that there is enough habitat designated to reach the recovery goal of 8 to 10 populations, this species is a very narrow endemic and probably never naturally occurred in more than a single or a few populations.

Maui 8—*Melicope balloui*—a

This unit is critical habitat for *Melicope balloui* and is 151 ha (373 ac) on State (Makawao Forest Reserve) and privately owned land. The unit contains Puu o Kakae. It, in combination with Waikamoi Preserve land, provides habitat for one population of 100 mature, reproducing individuals of the long-lived perennial *M. balloui* and is currently occupied by one plant. The habitat features contained in this unit that are essential for this species include, but are not limited to, mesic to wet forest. This unit is essential to the conservation of the species because it supports an extant colony of this species and includes habitat that is important for the expansion of the present population. Although we do not believe that there is enough habitat that currently exists to reach the recovery goal of 8 to 10 populations for this island-endemic species, this unit is of an appropriate size so that each potential population within the unit is geographically separated enough to avoid their destruction by one naturally occurring catastrophic event.

Maui 9—*Melicope balloui*—b

This unit is critical habitat for *Melicope balloui* and is 394 ha (972 ac) on federally owned land (Haleakala National Park). The unit contains Kipahulu Valley and Palikea Stream. It provides habitat for two populations of 100 mature, reproducing individuals of the long-lived perennial *M. balloui* and is currently occupied by 10 to 50 plants. The habitat features contained in this unit that are essential for this species include, but are not limited to, mesic to wet forest. This unit is essential to the conservation of the species because it supports an extant colony of this species and includes habitat that is important for the expansion of the present population. Although we do not believe that there is enough habitat that currently exists to reach the recovery goal of 8 to 10 populations for this island-endemic species, this unit is some distance away from the other critical habitat for this species, in order to avoid all populations important for the conservation of the species from being destroyed by one naturally occurring catastrophic event.

Maui 9—*Melicope knudsenii*—a

This unit is critical habitat for *Melicope knudsenii* and is 28 ha (69 ac) on State-owned land (Kanaio NAR). The unit contains no named natural features. It, in combination with Ulupalakua Ranch land, provides habitat for one population of 100 mature, reproducing individuals of the long-lived perennial *M. knudsenii* and is currently occupied by 12 plants. The habitat features contained in this unit that are essential for this species include, but are not limited to, forested flats or talus slopes in *Nestegis sandwicensis-Pleomele* sp. mixed open dry forests. This unit is essential to the conservation of the species because it supports an extant

colony of this species and includes habitat that is important for the expansion of the present population. It is some distance away from the other critical habitat for this species, in order to avoid all populations important for the conservation of the species on the island from being destroyed by one naturally occurring catastrophic event.

Maui 13—*Melicope knudsenii*—b

This unit is critical habitat for *Melicope knudsenii* and is 163 ha (403 ac) on State-owned land. The unit contains no named natural features. This unit is essential to the conservation of the species because, in combination with Ulupalakua Ranch, it provides habitat for one population of 100 mature, reproducing individuals of the long-lived perennial *M. knudsenii* and is currently unoccupied. The habitat features contained in this unit that are essential for this species include, but are not limited to, forested flats or talus slopes in *Nestegis sandwicensis-Pleomele* sp. mixed open dry forests. This unit, in combination with Ulupalakua Ranch, provides for one population within this multi-island species' historical range on Maui that is some distance away from the other critical habitat for this species, in order to avoid all populations important for the conservation of the species on the island from being destroyed by one naturally occurring catastrophic event.

Maui 9—*Melicope mucronulata*—a

This unit is critical habitat for *Melicope mucronulata* and is 34 ha (83 ac) on State-owned land (Kanaio NAR). The unit contains no named natural features. It, in combination with Ulupalakua Ranch, provides habitat for one population of 100 mature, reproducing individuals of the long-lived perennial *M. mucronulata* and is currently unoccupied. The habitat features contained in this unit that are essential for this species include, but are not limited to, gentle south-facing slopes in lowland dry to mesic forest. This unit is essential to the conservation of the species because, in combination with Haleakala Ranch, it provides for one population within this multi-island species' historical range on Maui that is some distance away from the other critical habitat for this species, in order to avoid all populations important for the conservation of the species on the island from being destroyed by one naturally occurring catastrophic event.

Maui 13—*Melicope mucronulata*—b

This unit is critical habitat for *Melicope mucronulata* and is 194 ha (481 ac) on State-owned land. The unit contains no named natural features. It, in combination with Ulupalakua Ranch, provides habitat for one population of 100 mature, reproducing individuals of the long-lived perennial *M. mucronulata* and is currently unoccupied. The habitat features contained in this unit that are essential for this species include, but are not limited to, gentle south-facing slopes in lowland dry to mesic forest. This unit is essential to the conservation of the species because, in combination with Ulupalakua Ranch, it provides for one population within this multi-island species' historical range on Maui that is some distance away from the other critical habitat for this species, in order to avoid all populations important for the conservation of the species on the island from being destroyed by one naturally occurring catastrophic event.

Maui 9—*Melicope ovalis*—a

This unit is critical habitat for *Melicope ovalis* and is 934 ha (2,306 ac) on State and Federal (Haleakala National Park) land. The unit contains Kipahulu Valley, Palikea Stream, and Kaukaui Gulch. It provides habitat for 3 populations of 100 mature, reproducing individuals of the long-lived perennial *M. ovalis* and is currently occupied by 250 plants. The habitat features contained in this unit that are essential for this species include, but are not limited to, *Acacia koa* and *Metrosideros polymorpha*-dominated montane wet forests along streams. This unit is essential to the conservation of the species because it supports an extant colony of this species and includes habitat that is important for the expansion of the present population. Although we do not believe that there is enough habitat that currently exists to reach the recovery goal of 8 to 10 populations for this island-endemic species, this unit is of an appropriate size so that each potential populations important for the conservation of the specie within the unit is geographically separated enough to avoid their destruction by one naturally occurring catastrophic event.

Maui 9—*Neraudia sericea*—a

This unit is critical habitat for *Neraudia sericea* and is 623 ha (1,539 ac) on State-owned land. The unit contains Manawainui Gulch, Kamole Gulch and Puu Pane. It provides habitat for 3 populations of 300 mature, reproducing individuals of the short-lived perennial *N. sericea* and is currently occupied by 4 plants. The habitat features contained in this unit that are essential for this species include, but are not limited to, dry to mesic *Metrosideros polymorpha-Dodonaea viscosa-Leptecophylla tameiameiae* shrubland or forest or *Acacia koa* forest. This unit is essential to the conservation of the species because it supports an extant colony of this species and includes habitat that is important for the expansion of the present population. It is some distance away from the other critical habitat for this species, in order to avoid all populations important for the conservation of the species on the island from being destroyed by one naturally occurring catastrophic event.

Maui 17—*Neraudia sericea*—b

This unit is critical habitat for *Neraudia sericea* and is 1,188 ha (2,938 ac) on State (Lihau Section of the West Maui NAR, West Maui Forest Reserve) and privately owned land. The unit contains Olowalu Valley, Pohakea, and Lihau, Hokuula, and Halepohaku summits. It provides habitat for 4 populations of 300 mature, reproducing individuals of the short-lived perennial *N. sericea* and is currently occupied by one plant. The habitat features contained in this unit that are essential for this species include, but are not limited to, dry to mesic *Metrosideros polymorpha-Dodonaea viscosa-Leptecophylla tameiameiae* shrubland or forest or *Acacia koa* forest. This unit is essential to the conservation of the species because it supports an extant colony of this species and includes habitat that is important for the expansion of the present population. It is some distance away from the other critical habitat for this species, in order to avoid all recovery populations on the island from being destroyed by one naturally occurring catastrophic event.

Maui 9—Nototrichium Humile—a

This unit is critical habitat for *Nototrichium humile* and is 397.ha (982 ac) on State (DHHL) and privately owned land. The unit contains Lualailua Hills. It provides habitat for two populations of 300 mature, reproducing individuals of the short-lived perennial *N. humile* and is currently unoccupied. The habitat features contained in this unit that are essential for this species include, but are not limited to, old cinder cones in dry shrubland. This unit is essential to the conservation of the species because it provides for two populations within this multi-island species' historical range on Maui that are some distance away from the other critical habitat for this species, in order to avoid all populations important for the conservation of the species on the island from being destroyed by one naturally occurring catastrophic event.

Maui 4—*Peucedanum sandwicense*—a

This unit is critical habitat for *Peucedanum sandwicense* and is 1 ha (2 ac) on State-owned land. The unit contains all of Keopuka Rock. It provides habitat for one population of 300 mature, reproducing individuals of the short-lived perennial *P. sandwicense* and is currently occupied by 20 to 30 plants. The habitat features contained in this unit that are essential for this species include, but are not limited to, sparsely vegetated steep to vertical cliff habitats with little soil in mesic or coastal communities. This unit is essential to the conservation of the species because it supports an extant colony of this species and includes habitat that is important for the expansion of the present population. It is some distance away from the other critical habitat for this species, in order to avoid all populations important for the conservation of the species on the island from being destroyed by one naturally occurring catastrophic event.

Maui 17—*Peucedanum sandwicense*—b

This unit is critical habitat for *Peucedanum sandwicense* and is 117 ha (289 ac) on privately owned land. The unit contains Iao Valley. It provides habitat for one population of 300 mature, reproducing individuals of the short-lived perennial *P. sandwicense* and is currently unoccupied. The habitat features contained in this unit that are essential for this species include, but are not limited to, sparsely vegetated steep to vertical cliff habitats with little soil in mesic or coastal communities. This unit is essential to the conservation of the species because it provides for one population within this multi-island species' historical range on Maui that is some distance away from the other critical habitat for this species, in order to avoid all populations important for the conservation of the species on the island from being destroyed by one naturally occurring catastrophic event.

Maui 8—*Phlegmariurus mannii*—a

This unit is critical habitat for *Phlegmariurus mannii* and is 221 ha (548 ac) on State (Makawao Forest Reserve) and privately owned land. The unit contains Puu o Kakae and Opana Gulch. It, in combination with Waikamoi Preserve, provides habitat for two populations of 300 mature, reproducing individuals of the short-lived perennial *P. mannii* and is currently occupied by at least one plant. The habitat features contained in this unit that are essential for this species include, but are not limited to, epiphytic growth on *Metrosideros polymorpha, Dodonaea viscosa,* or *Acacia koa* trees in moist protected gulches or mossy tussocks in mesic to wet montane *M. polymorpha-Acacia koa* forests. This unit is essential to the conservation of the species because it supports an extant colony of this species and includes habitat that is important for the expansion of the present population. It is some distance away from the other critical habitat for this species, in order to avoid all populations important for the conservation of the species on the island from being destroyed by one naturally occurring catastrophic event.

Maui 9—*Phlegmariurus mannii*—b

This unit is critical habitat for *Phlegmariurus mannii* and is 383 ha (947 ac) on State-owned land. The unit contains Manawainui Gulch. It provides habitat for one population of 300 mature, reproducing individuals of the short-lived perennial *P. mannii* and is currently occupied by at least one plant. The habitat features contained in this unit that are essential for this species include, but are not limited to, epiphytic growth on *Metrosideros polymorpha, Dodonaea viscosa,* or *Acacia koa* trees in moist protected gulches or mossy tussocks in mesic to wet montane *M. polymorpha-Acacia koa* forests. This unit is essential to the conservation of the species because it supports an extant colony of this species and includes habitat that is important for the expansion of the present population. It is some distance away from the other critical habitat for this species, in order to avoid all populations important for the conservation of the species on the island from being destroyed by one naturally occurring catastrophic event.

Maui 9—*Phlegmariurus mannii*—c

This unit is critical habitat for *Phlegmariurus mannii* and is 476 ha (1,176 ac) on State (Kipahulu Forest Reserve) and federally owned land (Haleakala National Park). The unit contains Puu Anulili and Manawainui Gulch. It provides habitat for 3 populations of 300 mature, reproducing individuals of the short-lived perennial *P. mannii* and is currently occupied by two plants. The habitat features contained in this unit that are essential for this species include, but are not limited to, epiphytic growth on *Metrosideros polymorpha, Dodonaea viscosa,* or *Acacia koa* trees in moist protected gulches or mossy tussocks in mesic to wet montane *M. polymorpha-Acacia koa* forests. This unit is essential to the conservation of the species because it supports an extant colony of this species and includes habitat that is important for the expansion of the present population. It is some distance away from the other critical habitat for this species, in order to avoid all populations important for the conservation of the species on the island from being destroyed by one naturally occurring catastrophic event.

Maui 17—*Phlegmariurus mannii*—d

This unit is critical habitat for *Phlegmariurus mannii* and is 57 ha (141 ac) on Dtate (Honokowai Section of the West Maui NAR) and privately owned land. The unit contains Amahu and Kanaha streams. It provides habitat for one population of 300 mature, reproducing individuals of the short-lived perennial *P. mannii* and is currently occupied by at least one plant. The habitat features contained in this unit that are essential for this species include, but are not limited to, epiphytic growth on *Metrosideros polymorpha, Dodonaea viscosa,* or *Acacia koa* trees in moist protected gulches or mossy tussocks in mesic to wet montane *M. polymorpha-Acacia koa* forests. This unit is essential to the conservation of the species because it supports an extant colony of this species and includes habitat that is important for the expansion of the present population. It is some distance away from the other critical habitat for this species, in order to avoid all populations important for the conservation of the species on the island from being destroyed by one naturally occurring catastrophic event.

Maui 17—*Phlegmariurus mannii*—e

This unit is critical habitat for *Phlegmariurus mannii* and is 35 ha (87 ac) on State (Lihau Section of the West Maui NAR and West Maui Forest Reserve) and privately owned land. The unit contains Lihau Summit. It provides habitat for one population of 300 mature, reproducing individuals of the short-lived perennial *P. mannii* and is currently occupied by at least one plant. The habitat features contained in this unit that are essential for this species include, but are not limited to, epiphytic growth on *Metrosideros polymorpha, Dodonaea viscosa,* or *Acacia koa* trees in moist protected gulches or mossy tussocks in mesic to wet montane *M. polymorpha-Acacia koa* forests. This unit is essential to the conservation of the species because it supports an extant colony of this species and includes habitat that is important for the expansion of the present

population. It is some distance away from the other critical habitat for this species, in order to avoid all populations important for the conservation of the species on the island from being destroyed by one naturally occurring catastrophic event.

Maui 8—*Phyllostegia mannii*—a

This unit is critical habitat for *Phyllostegia mannii* and is 570 ha (1,408 ac) on State (Makawao Forest Reserve) and privately owned land. The unit contains Opana Gulch and Waikamoi, Honomanu, Haipuaena, and Puohakamau streams. It provides habitat for two populations of 300 mature, reproducing individuals of the short-lived perennial *P. mannii* and is currently unoccupied. The habitat features contained in this unit that are essential for this species include, but are not limited to, gentle slopes and the steep sides of gulches in mesic to wet forest dominated by *Acacia koa* and/or *Metrosideros polymorpha*. This unit is essential to the conservation of the species because it provides for two populations within this multi-island species' historical range on Maui that are some distance away from the other critical habitat for this species, in order to avoid all populations important for the conservation of the species on the island from being destroyed by one naturally occurring catastrophic event.

Maui 8—*Phyllostegia mollis*—a

This unit is critical habitat for *Phyllostegia mollis* and is 128 ha (316 ac) on State-owned land (Makawao Forest Reserve). The unit contains Opana Gulch. It provides habitat for one population in combination with Haleakala Ranch land of 300 mature, reproducing individuals of the short-lived perennial *P. mollis* and is currently unoccupied. The habitat features contained in this unit that are essential for this species include, but are not limited to, steep slopes and gulches in mesic forest dominated by *Metrosideros polymorpha* and/or *Acacia koa*. This unit is essential to the conservation of the species because it provides for one population within this multi-island species' historical range on Maui that is some distance away from the other critical habitat for this species, in order to avoid all populations important for the conservation of the species on the island from being destroyed by one naturally occurring catastrophic event.

Maui 9—*Phyllostegia mollis*—b

This unit is critical habitat for *Phyllostegia mollis* and is 509 ha (1,256 ac) on State-owned land. The unit contains Puu Pane: It provides habitat for two populations of 300 mature, reproducing individuals of the short-lived perennial *P. mollis* and is currently unoccupied. The habitat features contained in this unit that are essential for this species include, but are not limited to, steep slopes and gulches in mesic forest dominated by *Metrosideros polymorpha* and/or *Acacia koa*. This unit is essential to the conservation of the species because it provides for two populations within this multi-island species' historical range on Maui that are some distance away from the other critical habitat for this species, in order to avoid all populations important for the conservation of the species on the island from being destroyed by one naturally occurring catastrophic event.

Maui 9—*Plantago princeps*—a

This unit is critical habitat for *Plantago princeps* and is 164 ha (406 ac) on federally owned land (Haleakala National Park). The unit contains Haleakala Summit and Kaopo Gap. It provides habitat for one population of 300 mature, reproducing individuals of the short-lived perennial *P. princeps* and is currently occupied by 44 plants. The habitat features contained in this unit that are essential for this species include, but are not limited to, basalt cliffs that are windblown with little vegetation in *Metrosideros polymorpha* lowland wet forest, *Acacia koa-M. polymorpha* montane wet forest, or *M. polymorpha* montane wet shrubland. This unit is essential to the conservation of the species because it supports an extant colony of this species and includes habitat that is important for the expansion of the present population. It is some distance away from the other critical habitat for this species, in order to avoid all populations important for the conservation of the species on the island from being destroyed by one naturally occurring catastrophic event.

Maui 9—*Platanthera holochila*—a

This unit is critical habitat for *Platanthera holochila* and is 240 ha (596 ac) on State (Hana Forest Reserve) and federally owned land (Haleakala National Park). The unit contains Anapanapa Lake and Kalapawili Ridge. It provides habitat for one population of 300 mature, reproducing individuals of the short-lived perennial *P. holochila* and is currently unoccupied. The habitat features contained in this unit that are essential for this species include, but are not limited to, *Metrosideros polymorpha-Dicranopteris linearis* montane wet forest, *M. polymorpha* mixed montane bog, or mesic scrubby *M. polymorpha* forest. This unit is essential to the conservation of the species because it provides for one population within this multi-island species' historical range on Maui that is some distance away from the other critical habitat for this species, in order to avoid all populations important for the conservation of the species on the island from being destroyed by one naturally occurring catastrophic event.

Maui 17—*Plantago princeps*—b

This unit is critical habitat for *Plantago princeps* and is 327 ha (807 ac) on State (West Maui Forest Reserve) and privately owned land. The unit contains Iao Valley and Kahoolewa Ridge. It provides habitat for one population of 300 mature, reproducing individuals of the short-lived perennial *P. princeps* and is currently occupied by 51 plants. The habitat features contained in this unit that are essential for this species include, but are not limited to, basalt cliffs that are windblown with little vegetation in *Metrosideros polymorpha* lowland wet forest, *Acacia koa-M. polymorpha* montane wet forest, or *M.*

conservation of the species on the island from being destroyed by one naturally occurring catastrophic event.

Maui 17—*Platanthera holochila*—c

This unit is critical habitat for *Platanthera holochila* and is 189 ha (466 ac) on State (Honokowai Section of the West Maui NAR) and privately owned land. The unit contains Kapaloa and Amala streams. It, in combination with Maui 17–*Platanthera holochila*—b, provides habitat for one population of 300 mature, reproducing individuals of the short-lived perennial *P. holochila* and is currently unoccupied. The habitat features contained in this unit that are essential for this species include, but are not limited to, *Metrosideros polymorpha-Dicranopteris linearis* montane wet forest, *M. polymorpha* mixed montane bog, or mesic scrubby *M. polymorpha* forest. This unit, in combination with Maui 17–*Platanthera holochila*—b, is essential to the conservation of the species because it provides for one population within this multi-island species' historical range on Maui that is some distance away from the other critical habitat for this species, in order to avoid all populations important for the conservation of the species on the island from being destroyed by one naturally occurring catastrophic event.

Maui 17—*Pteris lidgatei*—a

This unit is critical habitat for *Pteris lidgatei* and is 1,168 ha (2,887 ac) on State (Kahakuloa Section of the West Maui NAR) and privately owned land. The unit contains Eke Crater, Keahikauo Summit, and Mananole Stream. It provides habitat for two populations of 300 mature, reproducing individuals of the short-lived perennial *P. lidgatei* and is currently occupied by at least one plant. The habitat features contained in this unit that are essential for this species include, but are not limited to, steep stream banks in wet *Metrosideros polymorpha-Dicranopteris linearis* montane forest. This unit is essential to the conservation of the species because it supports an extant colony of this species and includes habitat that is important for the expansion of the present population. It is some distance away from the other critical habitat for this species, in order to avoid all populations important for the conservation of the species on the island from being destroyed by one naturally occurring catastrophic event.

Maui 17—*Pteris lidgatei*—b

This unit is critical habitat for *Pteris lidgatei* and is 163 ha (403 ac) on privately owned land. The unit contains Kauaula Valley. It provides habitat for one population of 300 mature, reproducing individuals of the short-lived perennial *P. lidgatei* and is currently occupied by at least one plant. The habitat features contained in this unit that are essential for this species include, but are not limited to, steep stream banks in wet *Metrosideros polymorpha-Dicranopteris linearis* montane forest. This unit is essential to the conservation of the species because it supports an extant colony of this species and includes habitat that is important for the expansion of the present population. It is some distance away from the other critical habitat for this species, in order to avoid all populations important for the conservation of the species on the island from being destroyed by one naturally occurring catastrophic event.

Maui 17—*Remya mauiensis*—a

This unit is critical habitat for *Remya mauiensis* and is 228 ha (564 ac) on State (West Maui Forest Reserve) and privately owned land. The unit contains Ukumehame Valley and Hanaulaiki. It provides habitat for two populations of 300 mature, reproducing individuals of the short-lived perennial *R. mauiensis* and is currently occupied by two plants. The habitat features contained in this unit that are essential for this species include, but are not limited to, steep, north or northeast-facing slopes in mixed mesophytic forests or *Metrosideros polymorpha* montane wet forests. This unit is essential to the conservation of the species because it supports an extant colony of this species and includes habitat that is important for the expansion of the present population. Although we do not believe that there is enough habitat that currently exists to reach the recovery goal of 8 to 10 populations for this island-endemic species, the units are essential because they are an appropriate distance apart to avoid their destruction by one naturally occurring catastrophic event.

Maui 17—*Remya mauiensis*—b

This unit is critical habitat for *Remya mauiensis* and is 567 ha (1,400 ac) on State (West Maui Forest Reserve and Panaewa Section of the West Maui NAR) and privately owned land. The unit contains Wahikuli and Puuiki Gulches and Kula Valley. It provides habitat for two populations of 300 mature, reproducing individuals of the short-lived perennial *R. mauiensis* and is currently occupied by at least one plant. The habitat features contained in this unit that are essential for this species include, but are not limited to, steep, north or northeast-facing slopes in mixed mesophytic forests or *Metrosideros polymorpha* montane wet forests. This unit is essential to the conservation of the species because it supports an extant colony of this species and includes habitat that is important for the expansion of the present population. Although we do not believe that there is enough habitat that currently exists to reach the recovery goal of 8 to 10 populations for this island-endemic species, the units are essential because they are an appropriate distance apart to avoid their destruction by one naturally occurring catastrophic event.

Maui 17—*Remya mauiensis*—c

This unit is critical habitat for *Remya mauiensis* and is 31 ha (78 ac) on State (West Maui Forest Reserve and Honokowai Section of the West Maui NAR) and privately owned land. The unit contains Honokowai Valley. It, in combination with Maui 18—*Remya mauiensis*—d and Kapunakea Preserve, provides habitat for two populations of 300 mature, reproducing individuals of the short-lived perennial *R. mauiensis* and is currently unoccupied. The habitat features contained in this unit that are essential for this species include, but are not limited to, steep, north or northeast-facing slopes in mixed mesophytic forests or *Metrosideros polymorpha* montane wet forests. Although we do not believe that there is enough habitat that currently exists to reach the recovery goal of 8 to 10 populations for this island-endemic species, the units are essential because they are an appropriate distance apart to avoid their destruction by one naturally occurring catastrophic event.

Maui 18—*Remya mauiensis*—d

This unit is critical habitat for *Remya mauiensis* and is 2 ha (6 ac) on State (West Maui Forest Reserve) and privately owned land. The unit contains no named natural features. It, in combination with Maui 17—*Remya mauiensis*—c and Kapunakea Preserve, provides habitat for two populations of 300 mature, reproducing individuals of the short-lived perennial *R. mauiensis* and is currently unoccupied. The habitat features contained in this unit that are essential for this species include, but are not limited to, steep, north or northeast-facing slopes in mixed mesophytic forests or *Metrosideros polymorpha* montane wet forests. Although we do not believe that there is enough habitat that currently exists to reach the recovery goal of 8 to 10 populations for this island-endemic species, the units are essential because

they are an appropriate distance apart to avoid their destruction by one naturally occurring catastrophic event.

Maui 17—*Sanicula purpurea*—a

This unit is critical habitat for *Sanicula purpurea* and is 34 ha (83 ac) on State (Kahakuloa Section of the West Maui NAR) and privately owned land. The unit contains Eke Crater. It, in combination with Maui 17—*Sanicula purpurea*—c, provides habitat for one population of 300 mature, reproducing individuals of the short-lived perennial *S. purpurea* and is currently unoccupied. The habitat features contained in this unit that are essential for this species include, but are not limited to, open *Metrosideros polymorpha* mixed montane bogs. This unit is essential to the conservation of the species because it, in combination with Maui 17—*Sanicula purpurea*—c, provides for one population within this multi-island species' historical range on Maui that is some distance away from the other critical habitat for this species, in order to avoid all populations important for the conservation of the species from being destroyed by one naturally occurring catastrophic event.

Maui 17—*Sanicula purpurea*—b

This unit is critical habitat for *Sanicula purpurea* and is 306 ha (756 ac) on State (Panaewa and Honokowai Sections of the West Maui NAR) and privately owned land. The unit contains Kahoolewa, Kahoolewa Ridge, Puu Kukui Summit, and Violet Lake. It provides habitat for 3 populations of 300 mature, reproducing individuals of the short-lived perennial *S. purpurea* and is currently occupied by 70 to 150 plants. The habitat features contained in this unit that are essential for this species include, but are not limited to, open *Metrosideros polymorpha* mixed montane bogs. This unit is essential to the conservation of the species because it supports an extant colony of this species and includes habitat that is important for the expansion of the present population. It is some distance away from the other critical habitat for this species, in order to avoid all populations important for the conservation of the species on the island from being destroyed by one naturally occurring catastrophic event.

Maui 17—*Sanicula purpurea*—c

This unit is critical habitat for *Sanicula purpurea* and is 8 ha (19 ac) on privately owned land. The unit contains no named natural features. It, in combination with Maui 17—*Sanicula purpurea*—a, provides habitat for one population of 300 mature, reproducing individuals of the short-lived perennial *S. purpurea* and is currently occupied by 50 plants. The habitat features contained in this unit that are essential for this species include, but are not limited to, open *Metrosideros polymorpha* mixed montane bogs. This unit is essential to the conservation of the species because it supports an extant colony of this species and includes habitat that is important for the expansion of the present population. It is some distance away from the other critical habitat for this species, in order to avoid all populations important for the conservation of the species on the island from being destroyed by one naturally occurring catastrophic event.

Maui 9—*Schiedea haleakalensis*—a

This unit is critical habitat for *Schiedea haleakalensis* and is 26 ha (64 ac) on federally owned land (Haleakala National Park). The unit is located in Haleakala Crater. It provides habitat for one population of 300 mature, reproducing individuals of the long-lived perennial *S. haleakalensis* and is currently occupied by 20 plants. The habitat features contained in this unit that are essential for this species include, but are not limited to, rock cracks on sheer cliffs adjacent to barren lava; subalpine shrublands and grasslands with cinder, weathered volcanic ash; or bare lava substrate with little or no soil development and periodic freezing temperatures. This unit is essential to the conservation of the species because it supports an extant colony of this species and includes habitat that is important for the expansion of the present population. Although we do not believe that there is enough habitat that currently exists to reach the recovery goal of 8 to 10 populations for this island-endemic species, the units are essential because they are an appropriate distance apart to avoid their destruction by one naturally occurring catastrophic event.

Maui 9—*Schiedea haleakalensis*—b

This unit is critical habitat for *Schiedea haleakalensis* and is 77 ha (189 ac) on federally owned land (Haleakala National Park). The unit is located in Haleakala Crater. It provides habitat for one population of 300 mature, reproducing individuals of the long-lived perennial *S. haleakalensis* and is currently occupied by at least one plant. The habitat features contained in this unit that are essential for this species include, but are not limited to, rock cracks on sheer cliffs adjacent to barren lava; subalpine shrublands and grasslands with cinder, weathered volcanic ash; or bare lava substrate with little or no soil development and periodic freezing temperatures. This unit is essential to the conservation of the species because it supports an extant colony of this species and includes habitat that is important for the expansion of the present population. It is some distance away from the other critical habitat for this species, in order to avoid all populations important for the conservation of the species on the island from being destroyed by one naturally occurring catastrophic event.

Maui 1—*Sesbania tomentosa*—a

This unit is critical habitat for *Sesbania tomentosa* and is 38 ha (94 ac) on non-managed State and privately owned land. The unit contains Honanana Gulch, Alapapa Gulch, Mokolea Point, and Papanahoa Gulch. It provides habitat for one population of 300 mature, reproducing individuals of the short-lived perennial *Sesbania tomentosa* and is currently occupied by 30 plants. The habitat features contained in this unit that are essential for this species include, but are not limited to, windswept slopes, sea cliffs, and cinder cones in *Scaevola taccada* coastal dry shrublands. This unit is essential to the conservation of the species because it supports an extant colony of this species and includes habitat that is important for the expansion of the present population. It is some distance away from the other critical habitat for this species, in order to avoid all populations important for the conservation of the species on the island from being destroyed by one naturally occurring catastrophic event.

Maui 13—*Sesbania tomentosa*—b

This unit is critical habitat for *Sesbania tomentosa* and is 79 ha (195 ac) on State-owned land. The unit contains Pimoe and Pohakea summits. This unit provides habitat for one population of 300 mature, reproducing individuals of the short-lived perennial *Sesbania tomentosa* and is currently occupied by 13 plants. The habitat features contained in this unit that are essential for this species include, but are not limited to, windswept slopes, sea cliffs, and cinder cones in *Scaevola taccada* coastal dry shrublands. This unit is essential to the conservation of the species because it supports an extant colony of this species and includes habitat that is important for the expansion of the present population. It is some distance away from the other critical habitat for this species, in order to avoid all populations important for the conservation of the species on the

island from being destroyed by one naturally occurring catastrophic event.

Maui 13—*Spermolepis hawaiiensis*—a

This unit is critical habitat for *Spermolepis hawaiiensis* and is 91 ha (224 ac) on State (Kanaio NAR) land. The unit contains no named natural features. It provides habitat for one population of 500 mature, reproducing individuals of the annual *S. hawaiiensis* and is currently occupied by 100 plants. The habitat features contained in this unit that are essential for this species include, but are not limited to, shady spots in *Dodonaea viscosa* lowland dry shrubland. This unit is essential to the conservation of the species because it supports an extant colony of this species and includes habitat that is important for the expansion of the present population. It is some distance away from the other critical habitat for this species, in order to avoid all populations important for the conservation of the species on the island from being destroyed by one naturally occurring catastrophic event.

Maui 17—*Spermolepis hawaiiensis*—b

This unit is critical habitat for *Spermolepis hawaiiensis* and is 23 ha (56 ac) on State-owned land (Lihau Section of the West Maui NAR). The unit contains Olowalu Valley. It provides habitat for one population of 500 mature, reproducing individuals of the annual *S. hawaiiensis* and is currently occupied by 300 plants. The habitat features contained in this unit that are essential for this species include, but are not limited to, shady spots in *Dodonaea viscosa* lowland dry shrubland. This unit is essential to the conservation of the species because it supports an extant colony of this species and includes habitat that is important for the expansion of the present population. It is some distance away from the other critical habitat for this species, in order to avoid all populations important for the conservation of the species on the island from being destroyed by one naturally occurring catastrophic event.

Maui 17—*Tetramolopium capillare*—a

This unit is critical habitat for *Tetramolopium capillare* and is 1,782 ha (4,404 ac) on State (Lihau Section of the West Maui NAR, West Maui Forest Reserve) and privately owned land. The unit contains Halepohaku, Hanaulaiki, Helu, Koai, Lihau, Luakoi, and Ulaula summits. It provides habitat for 6 populations of 300 mature, reproducing individuals of the short-lived perennial *T. capillare* and is currently occupied by 50 to 100 plants. The habitat features contained in this unit that are essential for this species include, but are not limited to, rocky substrates in *Heteropogon contortus* lowland dry forest. This unit is essential to the conservation of the species because it supports an extant colony of this species, includes habitat that is important for the expansion of the present population, and is the only habitat essential for the conservation of this species on Maui. Although we do not feel that there is enough habitat that currently exists to reach the recovery goal of 8 to 10 populations for this island-endemic species, this unit is of an appropriate size so that each potential populations important for the conservation of the specie within the unit is geographically separated enough to avoid their destruction by one naturally occurring event.

Maui 17—*Tetramolopium remyi*—a

This unit is critical habitat for *Tetramolopium remyi* and is 287 ha (712 ac) on State (Lihau Section of the West Maui NAR, West Maui Forest Reserve) and privately owned land. The unit contains Olowalu Stream and Valley. It provides habitat for 3 populations of 300 mature, reproducing individuals of the short-lived perennial *T. remyi* and is currently unoccupied. The habitat features contained in this unit that are essential for this species include, but are not limited to, red sandy loam soil in dry *Dodonaea viscosa-Heteropogon contortus* communities. This unit is essential to the conservation of the species because it provides for three populations within this multi-island species' historical range on Maui that are some distance away from the other critical habitat for this species, in order to avoid all populations important for the conservation of the species from being destroyed by one naturally occurring catastrophic event.

Maui 12—*Vigna o-wahuensis*—a

This unit is critical habitat for *Vigna o-wahuensis* and is 144 ha (356 ac) on State-owned land. The unit contains area east of Kamanamana Point. It provides habitat for one population of 300 mature, reproducing individuals of the short-lived perennial *V. o-wahuensis* and is currently occupied by two plants. The habitat features contained in this unit that are essential for this species include, but are not limited to, dry or mesic grassland or shrubland. This unit is essential to the conservation of the species because it supports an extant colony of this species and includes habitat that is important for the expansion of the present population. It is some distance away from the other critical habitat for this species, in order to avoid all populations important for the conservation of the species on the island from being destroyed by one naturally occurring catastrophic event.

Maui 8—*Zanthoxylum hawaiiense*—a

This unit is critical habitat for *Zanthoxylum hawaiiense* and is 363 ha (895 ac) on State (Makawao Forest Reserve) and privately owned land. The unit contains Kahakapao Stream. It provides habitat for one population of 100 mature, reproducing individuals of the long-lived perennial *Z. hawaiiense* and is currently occupied by 3 plants. The habitat features contained in this unit that are essential for this species include, but are not limited to, open lowland dry or mesic *Nestegis sandwicensis-Pleomele auwahiensis* forests or *Acacia koa-Pleomele auwahiensis* forest, or montane dry forest. This unit is essential to the conservation of the species because it supports an extant colony of this species and includes habitat that is important for the expansion of the present population. It is some distance away from the other critical habitat for this species, in order to avoid all populations important for the conservation of the species on the island from being destroyed by one naturally occurring catastrophic event.

Kahoolawe 1—*Kanaloa kahoolawensis*—a

This unit is critical habitat for *Kanaloa kahoolawensis* and is 562 ha (1,388 ac) on State (KIRC) land. The unit contains Keana Keiki, Laa o Kealaikahiki, Honukanaenae, and Wai Honu Gulch. This unit provides habitat for two populations of 100 mature, reproducing individuals of the long-lived perennial *K. kahoolawensis* and is currently unoccupied. The habitat features contained in this unit that are essential for this species include, but are not limited to, steep, rocky talus slopes. Although we do not believe that there is enough habitat that currently exists to reach the recovery goal of 8 to 10 populations for this island-endemic species, the units are essential because they are an appropriate distance apart to avoid their destruction by one naturally occurring catastrophic event.

Kahoolawe 2—*Kanaloa kahoolawensis*—b

This unit is critical habitat for *Kanaloa kahoolawensis* and is 613 ha (1,515 ac) on State (KIRC) land. The unit contains Aleale, Kunaka Cave, Kamohio Bay, Iliililoa, Lae o Kuakaiwa, Lae O Kaka, Lae o Halona, Keoheuli Bay,

Kaukamaka Gulch, Pali o Kalapakea, Kalua o Kamohoalii, Hula Kao, and Lae o ka Ule. This unit provides habitat for 4 populations of 100 mature, reproducing individuals of the long-lived perennial *K. kahoolawensis* and is currently occupied by two plants. The habitat features contained in this unit that are essential for this species include, but are not limited to, steep, rocky talus slopes. This unit is essential to the conservation of the species because it supports an extant colony of this species and includes habitat that is important for the expansion of the present population. Although we do not feel that there is enough habitat that currently exists to reach the recovery goal of 8 to 10 populations for this island-endemic species, the units are of an appropriate distance apart to avoid their destruction by one naturally occurring catastrophic event.

Kahoolawe 3—*Kanaloa kahoolawensis*—c

This unit is critical habitat for *Kanaloa kahoolawensis* and is 5 ha (12 ac) on State (KIRC) land. The unit contains the entirety of Puu Koae Islet. This unit, in combination with a portion of Kahoolawe 2—*Kanaloa kahoolawensis*—b, provides habitat for one population of 100 mature, reproducing individuals of the long-lived perennial *K. kahoolawensis* and is currently unoccupied. The habitat features contained in this unit that are essential for this species include, but are not limited to, steep, rocky talus slopes. Although we do not believe that there is enough habitat that currently exists to reach the recovery goal of 8 to 10 populations for this island-endemic species, the units are essential because they are an appropriate distance apart to avoid their destruction by one naturally occurring catastrophic event.

Effects of Critical Habitat Designation

Section 7 Consultation

Section 7(a)(2) of the Act requires Federal agencies, including the Service, to ensure that actions they fund, authorize, or carry out are not likely to destroy or adversely modify critical habitat. If a Federal action may affect a listed species or its critical habitat, the responsible Federal action agency must enter into consultation with us. Section 7(a)(4) of the Act requires Federal agencies (action agency) to confer with us on any action that is likely to jeopardize the continued existence of a species proposed for listing or result in destruction or adverse modification of proposed critical habitat. Destruction or adverse modification of critical habitat occurs when a Federal action directly or indirectly alters critical habitat to the extent that it appreciably diminishes the value of critical habitat for the conservation of the species. Individuals, organizations, States, local governments, and other non-Federal entities are affected by the designation of critical habitat when their actions occur on Federal lands, require a Federal permit, license, or other authorization, or involve Federal funding. Regulations implementing this interagency cooperation provision of the Act are codified at 50 CFR part 402.

Regulations at 50 CFR 402.16 require Federal agencies to reinitiate formal consultation on previously reviewed actions under certain circumstances, including instances where critical habitat is subsequently designated and the Federal agency has retained discretionary involvement, or control has been retained or is authorized by law. Consequently, some Federal agencies may request reinitiation of consultation or conferencing with us on actions for which formal consultation has been completed, if those actions may affect designated critical habitat or adversely modify or destroy proposed critical habitat.

If we issue a biological opinion concluding that a project is likely to result in the destruction or adverse modification of critical habitat, we also provide "reasonable and prudent alternatives" to the project, if any are identifiable. Reasonable and prudent alternatives are defined at 50 CFR 402.02 as alternative actions identified during consultation that can be implemented in a manner consistent with the intended purpose of the action, that are consistent with the scope of the Federal agency's legal authority and jurisdiction, that are economically and technologically feasible, and that the Director believes would avoid the likelihood of the destruction or adverse modification of critical habitat. Reasonable and prudent alternatives can vary from slight project modifications to extensive redesign or relocation of the project. Costs associated with implementing a reasonable and prudent alternative are similarly variable.

Activities on Federal lands that may affect the critical habitat of one or more of the 60 plant species from Maui and Kahoolawe will require section 7 consultation. Activities on private or State lands requiring a permit from a Federal agency, such as a permit from the U.S. Army Corps of Engineers (Corps) under section 404 of the Clean Water Act (33 U.S.C. 1344 *et seq.*,) the Department of Housing and Urban Development, or a section 10(a)(1)(B) permit from us; or some other Federal action, including funding (*e.g.*, from the Federal Highway Administration, Federal Aviation Administration (FAA), Federal Emergency Management Agency (FEMA), Environmental Protection Agency (EPA), or Department of Energy), regulation of airport improvement activities by the FAA; and construction of communication sites licensed by the Federal Communications Commission, may also be subject to the section 7 consultation process. Federal actions not affecting critical habitat and actions on non-Federal lands that are not federally funded, authorized, or permitted would not require section 7 consultation as a result of this rule designating critical habitat.

Section 4(b)(8) of the Act requires us to briefly describe and evaluate in any proposed or final regulation that designates critical habitat those activities involving a Federal action that may adversely modify such habitat or that may be affected by such designation. We note that such activities may also jeopardize the continued existence of the species.

Activities that, when carried out, funded, or authorized by a Federal agency, may directly or indirectly destroy or adversely modify critical habitat include, but are not limited to:

(1) Activities that appreciably degrade or destroy the primary constituent elements including, but not limited to: Overgrazing; maintenance of feral ungulates; clearing or cutting of native live trees and shrubs, whether by burning or mechanical, chemical, or other means (*e.g.*, woodcutting, bulldozing, construction, road building, mining, herbicide application); introducing or enabling the spread of nonnative species; and taking actions that pose a risk of fire;

(2) Activities that alter watershed characteristics in ways that would appreciably reduce groundwater recharge or alter natural, dynamic wetland or other vegetative communities. Such activities may include manipulation of vegetation, such as timber harvesting, residential and commercial development, and grazing of livestock that degrades watershed values;

(3) Rural residential construction that includes concrete pads for foundations and the installation of septic systems in wetlands where a permit under section 404 of the Clean Water Act would be required by the Corps;

(4) Recreational activities that appreciably degrade vegetation;

(5) Mining of sand or other minerals;

(6) Introducing or encouraging the spread of nonnative plant species into critical habitat units; and

(7) Importation of nonnative species for research, agriculture, and aquaculture, and the release of biological control agents that would have unanticipated deleterious effects on the listed species and the primary constituent elements of their habitats.

If you have questions regarding whether specific activities will likely constitute adverse modification of critical habitat, contact the Field Supervisor, Pacific Islands Ecological Services Field Office (*see* **ADDRESSES** section). Requests for copies of the regulations on listed plants and animals, and inquiries about prohibitions and permits may be addressed to the U.S. Fish and Wildlife Service, Division of Endangered Species, 911 N.E. 11th Ave., Portland, OR 97232–4181 (telephone 503/231–2063; facsimile 503/231–6243).

Analysis of Managed Lands Under Section 3(5)(A)

Pursuant to the definition of critical habitat in section 3(5)(A) of the Act, the primary constituent elements as found in any area so designated must also require "special management considerations or protections." Adequate special management or protection is provided by a legally operative plan that addresses the maintenance and improvement of the essential elements and provides for the long-term conservation of the species. We consider a plan adequate when it: (1) Provides a conservation benefit to the species (*i.e.*, the plan must maintain or provide for an increase in the species' population or the enhancement or restoration of its habitat within the area covered by the plan); (2) provides assurances that the management plan will be implemented (*i.e.*, those responsible for implementing the plan are capable of accomplishing the objectives, have an implementation schedule and have adequate funding for the management plan); and, (3) provides assurances that the conservation plan will be effective (*i.e.*, it identifies biological goals, has provisions for reporting progress, and is of a duration sufficient to implement the plan and achieve the plan's goals and objectives). If an area is covered by a plan that meets these criteria, it does not constitute critical habitat as defined by the Act because the primary constituent elements found there are not in need of special management or protection.

Currently occupied and historically known sites containing one or more of the primary constituent elements considered essential to the conservation of these 60 plant species were examined to determine the adequacy of special management considerations or protection are required and, consequently, whether such areas meet the definition of critical habitat under section 3(5)(A). We reviewed all available management information on these plants at these sites, including published reports and surveys; annual performance and progress reports; management plans; grants; memoranda of understanding and cooperative agreements; DOFAW planning documents; internal letters and memos; biological assessments and environmental impact statements; and section 7 consultations. Additionally, we contacted the major private landowners on Maui and Kahoolawe by mail and we met with several landowners between the publication of the revised proposal on April 3, 2002, and the end of the comment period on September 30, 2002, to discuss their current management for the plants on their lands. We also met with Maui District DOFAW staff to discuss management activities they are conducting on Maui. In addition, we reviewed new biological information and public comments received during the public comment periods and at the public hearing.

In determining whether a management plan or agreement provides adequate management or protection, we first consider whether that plan provides a conservation benefit to the species. We considered the following threats and associated recommended management actions:

(1) The factors that led to the listing of the species, as described in the final rules for listing each of the species. Effects of clearing and burning for agricultural purposes and of invasive non-native plant and animal species have contributed to the decline of nearly all endangered and threatened plants in Hawaii (Cuddihy and Stone 1990; Howarth 1985; Loope 1998; Scott *et al.* 1986; Service 1994, 1995, 1996, 1997, 1998a, 1998b, 1998c, 1999, 2001; Smith 1985; Stone 1985; Vitousek 1992; Wagner *et al.* 1985).

Current threats to these species include nonnative grass- and shrub-carried wildfire; browsing, digging, rooting, and trampling from feral ungulates (including axis deer, goats, cattle, and pigs); direct and indirect effects of nonnative plant invasions, including alteration of habitat structure and microclimate; and disruption of pollination and gene-flow processes by adverse effects of mosquito-borne avian disease on forest bird pollinators, direct competition between native and non-native insect pollinators for food, and predation of native insect pollinators by non-native hymenopteran insects (ants). In addition, physiological processes such as reproduction and establishment continue to be negatively affected by fruit- and flower-eating pests such as non-native arthropods, molluscs, and rats, and photosynthesis and water transport are affected by non-native insects, pathogens, and diseases. Many of these factors interact with one another, thereby compounding effects. Such interactions include non-native plant invasions altering wildfire regimes, feral ungulates carrying weeds and disturbing vegetation and soils, thereby facilitating dispersal and establishment of nonnative plants, and numerous nonnative insect species feeding on native plants, thereby increasing their vulnerability and exposure to pathogens and disease (Bruegmann *et al.* 2001; Cuddihy and Stone 1990; D'Antonio and Vitousek 1992; Howarth 1985; Mack 1992; Scott *et al.* 1986; Service 1995a, 1995b, 1996a, 1996b, 1997, 1998a, 1998b, 1999, 2001; Smith 1985; Tunison *et al.* 1992);

(2) The recommendations from the HPPRCC in their 1998 report to us ("Habitat Essential to the Recovery of Hawaiian Plants"). As summarized in this report, recovery goals for endangered Hawaiian plant species cannot be achieved without the effective control of non-native species threats, wildfire, and land use changes; and

(3) The management actions needed for assurance of survival and ultimate recovery of these plants. These actions are described in our recovery plans for these 60 species (Service 1995a, 1995b, 1996a, 1996b, 1997, 1998a, 1998b, 1999, 2001), in the 1998 HPPRCC report to us, and in various other documents and publications relating to plant conservation in Hawaii (Cuddihy and Stone 1990; Mueller-Dombois 1985; Smith 1985; Stone 1985; Stone *et al.* 1992). In addition to monitoring the plant populations, these actions include, but are not limited to: (1) Feral ungulate control; (2) non-native plant control; (3) rodent control; (4) invertebrate pest control; (5) fire management; (6) maintenance of genetic material of the endangered and threatened plant species; (7) propagation, reintroduction, and augmentation of existing populations into areas deemed essential for the recovery of these species; (8) ongoing management of the wild, outplanted, and augmented populations; and (9) habitat management and restoration in areas deemed essential for the recovery of these species.

In general, taking all of the above recommended management actions into account, the following management actions are important in providing a conservation benefit to the species: Feral ungulate control; wildfire management; non-native plant control; rodent control; invertebrate pest control; maintenance of genetic material of the endangered and threatened plant species; propagation, reintroduction, and augmentation of existing populations into areas deemed essential for the recovery of the species; ongoing management of the wild, outplanted, and augmented populations; maintenance of natural pollinators and pollinating systems, when known; habitat management and restoration in areas deemed essential for the recovery of the species; monitoring of the wild, outplanted, and augmented populations; rare plant surveys; and control of human activities/access (Service 1995a, 1995b, 1996a, 1996b, 1997, 1998a, 1998b, 1999, 2001). On a case-by-case basis, these actions may rise to different levels of importance for a particular species or area, depending on the biological and physical requirements of the species and the location(s) of the individual plants.

As shown in Table 2, the 60 species of plants are found on Federal, State, and private lands on the islands of Maui and Kahoolawe. Information received in response to our public notices; meetings with landowners of Maui County and Maui District DOFAW staff; the December 18, 2000, and April 3, 2002, proposals; public comment periods; and the March 20, 2001, and September 12, 2002, public hearings; as well as information in our files, indicated that there is limited on-going conservation management action for these plants, except as noted below. Without management plans and assurances that the plans will be implemented, we are unable to find that the other areas do require special management or protection. The following discussion analyzes current management plans that provide a conservation benefit to the species to assess whether they meet the Service's requirements for adequate management or protection

Federal Lands

The Sikes Act Improvements Act of 1997 (Sikes Act) requires each military installation that includes land and water suitable for the conservation and management of natural resources to complete, by November 17, 2001, an Integrated Natural Resources Management Plan (INRMP). An INRMP integrates implementation of the military mission of the installation with stewardship of the natural resources found there. Each INRMP includes an assessment of the ecological needs on the installation, including needs to provide for the conservation of listed species; a statement of goals and priorities; a detailed description of management actions to be implemented to provide for these ecological needs; and a monitoring and adaptive management plan. We consult with the military on the development and implementation of INRMPs for installations with listed species. We believe that bases that have completed and approved INRMPs that address the needs of the species generally do not meet the definition of critical habitat discussed above, because they require no additional special management or protection. Therefore, we do not include these areas in critical habitat designations if they meet the following three criteria: (1) A current INRMP must be complete and provide a conservation benefit to the species; (2) the plan must provide assurances that the conservation management strategies will be implemented; and (3) the plan must provide assurances that the conservation management strategies will be effective, by providing for periodic monitoring and revisions as necessary. If all of these criteria are met, then the lands covered under the plan would not meet the definition of critical habitat.

One species, *Sesbania tomentosa*, occurs on Kanaio Training Area (Hawaii Army National Guard) lands on the island of Maui, and we believe this land is essential for the conservation of this species. In 1998, funds were provided for protective fencing and monitoring of *Sesbania tomentosa* on this land. Since then, however, these management activities for *Sesbania tomentosa* have been curtailed due to a lack of funding (Lt. Col. Richard Young, Hawaii Army National Guard, *in litt.* 2000). Because appropriate conservation management strategies have not been adequately funded or effectively implemented for *Sesbania tomentosa* on this land, we cannot at this time find that management of this land under Federal jurisdiction is sufficient to find that they do not meet the definition of critical habitat. Therefore, this area has been included within the critical habitat units.

Contractors for the U.S. Navy are clearing the state-owned island of Kahoolawe of military ordnance utilizing Congressional funding that expires in 2003. The Navy has consulted with the Service under section 7 of the Act to ensure protection of threatened and endangered species during the clearance activities. In June 1998, the State of Hawaii Kahoolawe Island Reserve Commission developed an environmental restoration plan for Kahoolawe (Social Science Research Institute, University of Hawaii 1998). The plan, however, does not address specific management actions to protect and conserve endangered plant species. While the island is isolated and remote, and access is restricted due to the presence of unexploded ordnance hazards, this action alone is not sufficient to indicate that special management is not required for the listed plant species, and areas on the island are included within the critical habitat units for *Kanaloa kahoolawensis*.

State of Hawaii Lands

The Upper Areas of Hanawi Natural Area Reserve (HNAR)

Three plant species, *Geranium multiflorum*, and *Clermontia samuelii* ssp. *hanaensis*, and Cyanea mceldowneyi are reported from the upper areas of HNAR (GDSI 2000; HINHP Database 2000). The HNAR was established in 1986, and comprises 3,035 ha (7,500 ac) of diverse native ecosystems and endangered forest bird habitat. The Department of Land and Natural Resources (DLNR) manages Natural Area Reserves, except that any use must be specifically approved by the Natural Area Reserve System Commission. The State holds Natural Area Reserves in trust and they may not be non-nativeated except upon a finding by the DLNR of an imperative and unavoidable necessity. DLNR must provide public notice and conduct public hearings before revoking or modifying an executive order that sets aside lands for the reserve system (Haw. Rev. Stat. sections 195–1—195–11). The primary goals of the HNAR are to: (1) Protect the upper areas of the reserve by fencing smaller manageable units to restrict pig movements; (2) prevent degradation of native forest by reducing feral ungulate damage; and (3) improve or maintain the integrity of native ecosystems in selected areas of the preserve by reducing the effects of non-native plants.

Specific management actions to address feral ungulate impacts include the construction of fences, including strategic fencing of smaller manageable units, and staff hunting. Currently, the upper 809 ha (2,000 ac) has been fenced and pigs removed. Fences have been constructed along the western boundaries of the HNAR, along the 1,585 m (5,200 ft) contour to the east up to the Haleakala National Park boundary on State land. The Haleakala National Park fence serves as the upper fence boundary for HNAR. Additionally, fences have been constructed to separate three distinct management units: Puu Alaea Unit, Poouli Unit, and Kuhiwai/Waieleele Unit. Since the removal of pigs in these upper forest units of the HNAR, vegetation monitoring has been implemented to determine recovery of native plant species. Currently, a fence is being constructed along the 1,100 m (3,600 ft) contour of the HNAR which will comprise the "middle forest unit" (Willian Evanson, DLNR, pers. comm., 1999).

The nonnative plant control program within HNAR focuses on habitat-modifying nonnative plants (weeds). A weed priority list has been compiled for HNAR, and control and monitoring of the highest priority species are ongoing. Weeds are controlled manually, chemically, or through a combination of both. Monitoring transects help locate developing populations of other priority weed species and, if necessary, removal of these populations is conducted (DLNR 1989).

Because *Geranium multiflorum* and *Clermontia samuelii* ssp. *hanaensis* and their habitats within the upper areas of HNAR (above 1,525 m (5,000 ft) elevation) are permanently protected and managed by State law and because the continued successful management of this area is assured by State funding, HRS 195–9 (Natural Area Reserve Fund; Heritage Program; established) establishes in the state treasury a special fund known as the natural area reserve fund to implement the purposes of this chapter, including the identification, establishment, and management of natural area reserves * * * the fund shall be administered by the department [DLNR]. Since its establishment, DLNR has received funding for this program each year from the Legislature and funding for natural resource programs such as this is a high priority and unlikely to be discontinued (Randy Kennedy, Native Resource Program Manager, DOFAW, pers. comm. 2003). This area is not in need of special management considerations or protection. Therefore, we have determined that the State land within the upper areas of HNAR does not meet the definition of critical habitat in the Act, and we are not designating this area as critical habitat. Should the status of this reserve change, for example by revocation or modification of the NAR, we will reconsider whether it then meets the definition of critical habitat. If so, we have the authority to propose to amend critical habitat to include such area at that time (50 CFR 424.12(g)) as workload and resources allow.

Private Lands

The Nature Conservancy of Hawaii's Waikamoi and Kapunakea Preserves, which are located on the northeastern slopes of Haleakala and in the West Maui mountains, respectively

Lands within The Nature Conservancy of Hawaii's (TNCH) Maui preserves were not included within proposed critical habitat. Sixteen species (*Alectryon macrococcus, Argyroxiphium sandwicense* ssp. *macrocephalum, Asplenium fragile* var. *insulare, Bonamia menziesii, Colubrina oppositifolia, Ctenitis squamigera, Cyanea lobata, Diplazium molokaiense, Geranium arboreum, Geranium multiflorum, Melicope balloui, Phlegmariurus mannii, Plantago princeps, Platanthera holochila, Remya mauiensis*, and *Sanicula purpurea*) are reported from TNCH's Waikamoi and Kapunakea Preserves, which are located on the northeastern slopes of Haleakala and in the West Maui mountains, respectively (TNCH 1997, 1998; GDSI 2000; HINHP Database 2000). Both preserves were established by grants of perpetual conservation easements from the private landowners to TNCH and are included in the State's Natural Area Partnership (NAP) program, which provides matching funds for the management of private lands that have been permanently dedicated to conservation (TNCH 1997, 1998).

Under the NAP program, the State of Hawaii provides matching funds on a two-for-one basis for management of private lands dedicated to conservation. In order to qualify for this program, the land must be dedicated in perpetuity through transfer of fee title or a conservation easement to the State or a cooperating entity. The land must be managed by the cooperating entity or a qualified landowner according to a detailed management plan approved by the Board of Land and Natural Resources. Once approved, the six-year partnership agreement between the State and the managing entity is automatically renewed each year so that there are always six years remaining in the term, although the management plan is updated and funding amounts are re-authorized by the board at least every six years. By April 1 of any year, the managing partner may notify the State that it does not intend to renew the agreement; however, in such case the partnership agreement remains in effect for the balance of the existing six-year term, and the conservation easement remains in full effect in perpetuity. The conservation easement may be revoked by the landowner only if State funding is terminated without the concurrence of the landowner and cooperating entity. Prior to terminating funding, the State must conduct one or more public hearings. The NAP program is funded through real estate conveyance taxes which are placed in a Natural Area Reserve Fund. Participants in the NAP program must provide annual reports to the DLNR and DLNR makes annual inspections of the work in the reserve areas. *See* Haw. Rev. Stat. sections 195–1—195–11; Hawaii Administrative Rules section 13–210.

Management programs within the preserves are documented in long-range management plans and yearly operational plans. These plans detail management measures that protect, restore, and enhance the rare plants and their habitats within the preserves and in adjacent areas (TNCH 1997, 1998, 1999). These management measures address factors which led to the listing of the ten species including control of nonnative species of ungulates, rodents, and weeds. In addition, habitat restoration and monitoring are also included in these plans.

The primary management goals for both Kapunakea and Waikamoi Preserves are to (1) prevent degradation of native forest by reducing feral ungulate damage; (2) improve or maintain the integrity of native ecosystems in selected areas of the preserve by reducing the effects of nonnative plants; (3) increase the understanding of threats posed by small mammals and reduce their negative impact, where possible; (4) prevent extinction of rare species in the preserve; (5) track the biological and physical resources in the preserves and evaluate changes in these resources over time; (6) identify new threats to the preserves before they become established pests; and (7) build public understanding and support for the preservation of natural areas, and enlist volunteer assistance for preserve management (TNCH 1997, 1998).

The goal of the ungulate program is to bring pig populations to zero as rapidly as possible. Specific management actions to address feral ungulate impacts include the construction of fences, including strategic fencing (fences placed in proximity to natural barriers such as cliffs), annual monitoring of ungulate presence transects, and trained staff and volunteer hunting. Since axis deer may also pose a threat to the preserves, TNCH is a member of the Maui Axis Deer Group (MADG) and staff meet regularly with other MADG members to seek solutions. In Waikamoi Preserve, the management actions also include working with community hunters in

conjunction with the East Maui Watershed Partnership (EMWP). In Kapunakea Preserve, a system of transects extends the length of the preserve to monitor resource threats, including ungulate presence. By monitoring ungulate activity within the preserve, the staff is able to assess the success of the hunting program. If increased hunting pressure does not reduce feral ungulate activity in the preserves, the preserve staff work with the hunting group to identify and implement alternative methods (TNCH 1997, 1998).

The nonnative plant control program within both preserves focuses on controlling habitat-modifying nonnative plants (weeds) in intact native communities and preventing the introduction of additional non-native plants. Based on the degree of threat to native ecosystems, a weed priority list has been compiled for the preserves, and control and monitoring of the highest priority species are ongoing. Weeds are controlled manually, chemically, or through a combination of both. Preventive measures (prevention protocol) are required by all who enter the preserves. This protocol includes such things as brushing footgear before entering the preserves to remove seeds of nonnative plants. Weeds are monitored along transects annually, weed priority maps are maintained, staff participate as members of the Melastome Action Committee and the Maui Invasive Species Committee (MISC), and cooperate with the State Division of Conservation and Resources Enforcement (DOCARE) in marijuana control, as needed.

The effects of nonnative invertebrates and small mammals on native Hawaiian ecosystems are poorly understood. Initial control measures such as anti-coagulant diphacinone bait stations are being used to control rats in areas of suspected impact; however, valid conclusions from data gathered have not been drawn. Adaptive management will be applied when new information becomes available (TNCH 1997, 1998).

Natural resource monitoring and research address the need to track the biological and physical resources of the preserves and evaluate changes in these resources to guide management programs. Vegetation is monitored throughout the preserves to document long-term ecological changes, and rare plant species are monitored to assess population status. Cuttings of endangered plants are taken to the University of Hawaii's tissue culture lab at Lyon Arboretum for propagation. In addition, the preserve staff provides logistical support to scientists and others who are conducting research within the preserves.

Kapunakea Preserve is adjacent to two areas that are also managed to protect natural resources: Puu Kukui Watershed Management Area (WMA) and the Honokowai section of the West Maui NAR. TNCH currently acts as a consultant to Maui Land and Pineapple Company, managers of Puu Kukui WMA, and has a Master Cooperative Agreement with DOFAW. These agreements are used to coordinate management and sharing of staff and equipment, and expertise to maximize management efficiency.

Waikamoi Preserve is adjacent to three other large areas that are also managed to protect natural resources: Haleakala National Park, Koolau Forest Reserve, and the State's Hanawi NAR. An agreement between the DLNR, East Maui Irrigation Company, Keola Hana Maui Inc., Haleakala Ranch Company, County of Maui, TNCH, and Haleakala National Park was signed in order to implement a joint management plan (East Maui Watershed Partnership Plan) for the entire East Maui Watershed. Management efforts at Waikamoi complement the objectives of the plan as much as possible. The partnership agreement is being used to coordinate management and sharing of staff and equipment, and expertise to maximize management efficiency (TNCH 1998).

Because the preserves and the continuing management plans being implemented for these plants and their habitats within the preserves provide a conservation benefit to the species and because they are permanently protected and managed, these lands are not in need of special management or protection. Therefore, we have determined that the private lands within Waikamoi Preserve and Kapunakea Preserve do not meet the definition of critical habitat in the Act, and we are not designating these lands as critical habitat. Should the status of any of these reserves change, for example by non-renewal of a partnership agreement or termination of NAP funding, we will reconsider whether it then meets the definition of critical habitat. If so, we have the authority to propose to amend critical habitat to include such area at that time (50 CFR 424.12(g)).

Maui Land and Pineapple Co., Ltd.

Maui Pineapple Company's Puu Kukui WMA, Located in The West Maui Mountains

Lands within Maui Land and Pineapple Co.'s Puu Kukui Watershed Management Area, located in the West Maui Mountains, were included in proposed critical habitat on Maui. Eight species (*Ctenitis squamigera, Clermontia oblongifolia* ssp. *mauiensis, Cyanea lobata, Cyrtandra munroi, Hesperomannia arborescens, Phlegmariurus mannii, Platanthera holochila,* and *Sanicula purpurea*) are reported from the Puu Kukui WMA (GDSI 2000; HINHP Database 2000; Maui Land and Pineapple Co., Ltd. undated). In the December 18, 2000, proposal we proposed that lands within the Puu Kukui WMA were adequately managed for the conservation of the listed species that occur on those lands and were not in need of special management considerations or protection. Therefore, we proposed that these lands did not meet the definition of critical habitat in the Act, and we did not propose designation of these lands as critical habitat. However, during the comment periods on the December 18, 2000, proposal we received information from the Watershed Supervisor that funding for the conservation and management of the listed plant species on lands within Puu Kukui WMA was not adequate nor assured. However, during the comment periods for the April 3, 2002, proposal we received yet more information from the Watershed Supervisor that, contrary to the previous comments submitted, funding for Puu Kukui WMA was indeed secure. In his September 30, 2002, letter to us the Puu Kukui Watershed Supervisor stated that since 1988 Maui Land and Pineapple has proactively managed Puu Kukui Watershed and that they are currently in their second, six-year contract with the State of Hawaii's NAP Program to preserve the native biodiversity of their conservation lands. They are also receiving funding from the Service to survey for rare plants on their lands and build feral ungulate control fences for the protection of listed plants. In other words, they have a history of self-funding and conducting proactive conservation efforts in Puu Kukui, they are enrolled in the State's NAP Program and they receive funding from the Service to support their conservation efforts. Therefore, we have determined that the private land within Puu Kukui WMA does not meet the definition of critical habitat in the Act as discussed below, and we are not designating critical habitat on this land.

At just over 3,483 ha (8,600 ac), the Puu Kukui WMA is the largest privately owned preserve in the State. In 1993, the Puu Kukui WMA became the first private landowner participant in the NAP program. In the NAP program, Puu Kukui WMA staff are pursuing four management programs stipulated in their Long Range Management Plan with an emphasis on reducing nonnative species that immediately threaten the management area (Maui Pineapple Company 1999).

The primary management goals within Puu Kukui WMA are to (1) eliminate ungulate activity in all Puu Kukui management units; (2) reduce the range of habitat-modifying weeds and prevent introduction of nonnative plants; (3) reduce the negative impacts of non-native invertebrates and small animals; (4) monitor and track biological and physical resources in the watershed in order to improve management understanding of the watershed's resources; and (5) prevent the extinction of rare species within the watershed.

Specific management actions to address feral ungulates include the construction of fences surrounding 10 management units and removal of ungulates within the Puu Kukui WMA.

The nonnative plant control program within Puu Kukui WMA focuses on habitat modifying weeds, prioritizing them according to the degree of threat to native ecosystems, and preventing the introduction of new weeds. The weed control program includes mapping and monitoring along established transects and manual/mechanical control. Biological control of *Clidemia hirta* was tried by releasing *Antiblemma acclinalis* moth larvae.

Natural resource monitoring and research address the need to track biological and physical resources of the Puu Kukui WMA and evaluate changes to these resources in order to guide management programs. Vegetation is monitored through permanent photo points, nonnative species are monitored along permanent transects, and rare, endemic, and indigenous species are monitored. Additionally, logistical and other support for approved research projects, interagency cooperative agreements, and remote survey trips within the watershed is provided.

For these reasons, Puu Kukui WMA meets the three criteria for determining that an area is not in need of special management as discussed above. Therefore, we have determined that the private land within Puu Kukui WMA does not meet the definition of critical habitat in the Act, and we are not designating this land as critical habitat. Should the status of this reserve change, for example by non-renewal of a partnership agreement or termination of NAP funding, we will reconsider whether it then meets the definition of critical habitat. If so, we have the authority to propose to amend critical habitat to include such area at that time (50 CFR 424.12(g)).

In summary, we believe that the habitat within Waikamoi and Kapunakea Preserves, Puu Kukui WMA, and the upper area (above 1,525 m (5,000 ft)) of Hanawi NAR, are being adequately managed for the conservation of the listed species that occur within these areas and are not in need of special management considerations or protection. Therefore, we have determined that these lands do not meet the definition of critical habitat in the Act, and we are not designating these lands as critical habitat.

Analysis of Impacts Under Section 4(b)(2)

Section 4(b)(2) of the Act requires us to designate critical habitat on the basis of the best scientific information available, and to consider the economic and other relevant impacts of designating a particular area as critical habitat. We may exclude areas from critical habitat upon a determination that the benefits of exclusion outweigh the benefits of specifying such areas as critical habitat. We cannot exclude such areas from critical habitat when exclusion will result in the extinction of the species concerned.

Economic Impacts

Following the publication of the revised proposed critical habitat designation on April 5, 2002, a draft economic analysis (DEA) was prepared to estimate the potential economic impact of the proposed designation in accordance with the Court's decision in the *N.M. Cattlegrowers Ass'n* v. *U.S. Fish and Wildlife Serv.*, 248 F.3d 1277 (10th Cir. 2001). The draft analysis was made available for review on October 2, 2002 (67 FR 61845). We accepted comments on the draft analysis until November 2, 2002.

Our draft economic analysis evaluated the potential direct and indirect economic impacts of section 7 associated with the proposed critical habitat designation for the 61 plant species from the islands of Maui and Kahoolawe over the next ten years. Direct impacts are those related to consultations under section 7 of the Act. They include the cost of completing the section 7 consultation process and potential project modifications resulting from the consultation. Indirect impacts are secondary costs and benefits that could occur coextensively with critical habitat designation, but are not necessarily directly related to the Act. Examples of indirect impacts include potential effects to property values, potential effects of redistricting of land from agricultural or urban to conservation, and social welfare benefits of ecological improvements.

The categories of potential direct and indirect costs considered in the analysis included the costs associated with: (1) Conducting section 7 consultations including incremental consultations and technical assistance; (2) Modifications to projects, activities, or land uses resulting from the section 7 consultations; (3) Uncertainty and public perceptions resulting from the designation of critical habitat including potential indirect costs resulting from the loss of hunting opportunities and the interaction of State and local laws; and (4) Potential offsetting beneficial impacts associated with critical habitat, including educational benefits. The most likely economic effects of critical habitat designation are on activities funded, authorized, or carried out by a Federal agency (*i.e.*, direct costs).

The analysis in the DEA incorporates two baselines: one which addresses the impact of critical habitat designation that may be "attributable co-extensively" to the listing of the species and one which addresses the incremental impact of the critical habitat designation itself.

This Addendum utilizes one baseline and analyzes the impacts of critical habitat designation that may be attributable co-extensively to the listing of the species. Because of the potential uncertainty about the benefits and economic costs resulting solely from critical habitat designations, the Service believes that it is reasonable to estimate the effects of the designation utilizing this approach to avoid understating potential economic impacts. It is important to note that the inclusion of impacts attributable co-extensively to the listing does not convert the economic analysis into a tool to be considered in the context of a listing decision.

The addendum incorporates public comments on the draft analysis and makes other changes in the draft. These changes were primarily the result of modifications made to the proposed critical habitat designation based on biological information received during the comment periods. In addition, we have completed an amendment to the addendum in which we have examined the potential economic impacts of a critical habitat designation in areas that were not included in the original proposal because we believed they were areas essential to the conservation of the species but did not require special management considerations or protection and thus could be excluded from designation under section 3(5)(a) of the Act.

Together, the draft economic analysis, the addendum and the addendum amendment constitute our final economic analysis. The draft economic analysis estimated the total direct cost of the designation of critical habitat on Maui and Kahoolawe for the 60 plant species co-extensive with the listing to be between $418,700 and $2,075,600 over 10 years. This direct cost was revised in the addendum to $241,700 to $1,441,200 over 10 years. The reduction of $177,000 to $634,400 from the costs estimated in the draft economic analysis is primarily due to the exclusion of some proposed units and the significant reduction in size of other proposed units. Using a seven percent discount rate and assuming these direct costs are distributed evenly over the 10-year period, the annualized direct costs range from $24,170 to $144,120 per year.

Certain costs identified the final economic analysis are based on "worst-case" scenarios that, while possible, do not seem likely based on past consultation histories for these species. In particular, the final economic analysis includes an evaluation of potential indirect costs associated with the designation of critical habitat for 60 plant species on Maui and Kahoolawe. These reported costs are speculative and, in general, thought to have a low probability of occurrence. In addition, the final economic analysis discusses economic benefits in qualitative terms rather than providing quantitative estimates because of the lack of information available to estimate the economic benefits of endangered species preservation and ecosystem improvements.

The likely direct cost impact of designating critical habitat on Maui and Kahoolawe for the 60 plant species is estimated to be between $24,170 to $144,120 per year over the next 10 years. This estimate, however, includes areas that were proposed as critical habitat, but have been excluded under sections 3(5)(a) and/or 4(b)(2) of the Act. Therefore, the direct cost of designating critical habitat for these 60 plant species is likely to be somewhat less than this amount.

A more detailed discussion of our economic analysis is contained in the draft economic analysis and the addendum. Both documents are included in our administrative record and are available for inspection at the Pacific Islands Fish and Wildlife Office (*see* **ADDRESSES** section).

Other Impacts

As described in the "Analysis of Managed Lands Under Section 3(5)(A)" section above, based on our evaluation of the adequacy of special management and protection that is provided in current management plans involving *Alectryon macrococcus, Argyroxiphium sandwicense* ssp. *macrocephalum, Asplenium fragile* var. *insulare, Bonamia menziesii, Clermontia oblongifolia ssp. mauiensis, Clermontia samuelii, Colubrina oppositifolia, Ctenitis squamigera, Cyanea lobata, Cyanea mceldowneyi, Cyrtandra munroi, Diplazium molokaiense, Geranium arboreum, Geranium multiflorum, Hesperomannia arborescens, Melicope balloui, Phlegmariurus mannii, Plantago princeps, Platanthera holochila, Remya mauiensis,* and *Sanicula purpurea* in accordance with section 3(5)(A)(i) of the Act, we have not included TNCH's Waikamoi and Kapunakea Preserves, Maui Land and Pineapple's Puu Kukui WMA, and the State's upper Hanawi NAR lands, in this final designation of critical habitat. However, to the extent that special management considerations and protection may be required for these areas, and they therefore meet the definition of critical habitat according to section 3(5)(A)(i), they are properly excluded from designation under section 4(b)(2) of the Act, based on the following analysis.

In addition, approximately 3,894 ha (9,622 ac) within five proposed critical habitat units (Maui units H, I1, I2, and I4) located on private lands owned by Ulupalakua and Haleakala Ranches are excluded from designation under section 4(b)(2) because the benefits provided by these two landowners' voluntary conservation activities within and adjacent to these units outweigh the benefits provided by a designation of critical habitat.

The Service believes that designation of critical habitat on these lands would be a disincentive to those that have demonstrated a willingness to manage their lands in a manner compatible with the conservation of listed and non-listed species on Maui and Kahoolawe. Designation, therefore, would have a strong possibility of having a detrimental effect on the recovery of the listed species on these lands. The exclusion of these lands from critical habitat, on the other hand, will help improve and maintain our positive relationship with the landowners involved and it will also provide incentives to other landowners on Maui and Kahoolawe to consider implementing similar voluntary conservation activities, conservation partnerships, and beneficial natural resource programs on their lands.

TNCH's Waikamoi and Kapunakea Preserves contain occupied habitat for 13 species (*Alectryon macrococcus, Argyroxiphium sandwicense* ssp. *macrocephalum, Asplenium fragile* var. *insulare, Bonamia menziesii, Colubrina oppositifolia, Ctenitis squamigera, Cyanea lobata, Diplazium molokaiense, Geranium arboreum, Geranium multiflorum, Plantago princeps, Platanthera holochila,* and *Sanicula purpurea*) and unoccupied habitat for three species (*Melicope balloui, Phlegmariurus mannii,* and *Remya mauiensis*). The State's upper Hanawi NAR contains occupied habitat for *Clermontia samuelii* and *Geranium multiflorum*, and unoccupied habitat for *Cyanea mceldowneyi*. Eight species (*Ctenitis squamigera, Clermontia oblongifolia* ssp. *mauiensis, Cyanea lobata, Cyrtandra munroi, Hesperomannia arborescens, Phlegmariurus mannii, Platanthera holochila,* and *Sanicula purpurea*) occur within the Maui Land and Pineapple Company's Puu Kukui WMA. For a more detailed description of the management activities conducted on TNCH's Waikamoi and Kapunakea Preserves, the State's Hanawi NAR and Maui Land and Pineapple's Puu Kukui WMA, see the "Analysis of Managed Lands Under Section 3(5)(A)" section.

The portion of proposed unit Maui H on Ulupalakua Ranch lands is occupied habitat for nine species: *Alectryon macrococcus; Bonamia menziesii; Cenchrus agrimonioides; Flueggea neowawraea; Geranium arboreum; Lipochaeta kamolensis; Melicope adscendens; Melicope knudsenii;* and *Melicope mucronulata*. It is unoccupied habitat for three species: *Clermontia lindseyana; Colubrina oppositifolia;* and *Diellia erecta*.

Ulupalakua Ranch is involved in several important voluntary conservation agreements and is currently carrying out some of these activities for the conservation of these species. For example, the Partners for Fish and Wildlife Auwahi and Puu Makua agreements were entered into in fiscal year 1997 and 1998 with the stated purpose of protecting and restoring dryland forest including construction of exclosure fences, a greenhouse, access road, and propagation and outplanting of native plants. Preservation of these areas conserves critically endangered species of plants and animals in one of Hawaii's most degraded ecosystem types (lowland dry forest). This management strategy is consistent with recovery of these species. The Auwahi agreement (Auwahi I Project) is between Ulupalakua Ranch, USGS–BRD, and the Service. The Service provided funding ($64,388) for fence materials, plant propagation and outplanting, and weed control, Ulupalakua Ranch provided labor and materials valued at $18,000, and USGS–BRD provided materials and technical assistance as well as staff and volunteer labor. In the 4 ha (10 ac) Auwahi project area, Ulupalakua Ranch has built the exclosure fence, outplanted native plants grown in the greenhouse including *Alectryon macrococcus* var. *auwahiensis* and *Zanthoxylum hawaiiense*, removed the majority of nonnative alien species within the fence, and removed all ungulates. The Service provided $31,675 through an agreement with Ulupalakua Ranch for restoration work at Puu Makua. Ulupalakua Ranch has provided in-kind labor and materials valued at $37,055 to construct a fence around the 40-ha (100-ac) exclosure, removal of ungulates, control of nonnative plants and out-planting of native plants. The first two tasks have been completed, with weed control and out-planting ongoing.

A third voluntary partnership project undertaken in cooperation with the Ulupalakua Ranch is the Auwahi II Dryforest Restoration Project. The Service provided $76,500 (matched by in-kind services valued at $52,000) for this 8-ha (20-ac) restoration effort adjacent to the Auwahi I project. This project is ongoing, and will employ the same methods used at Auwahi I: construct of ungulate exclosure fence; remove ungulates; control nonnative plants; and out-plant native species (including listed species).

In addition, Ulupalakua Ranch entered a partnership with Ducks Unlimited, a private conservation organization, and the Natural Resources Conservation Service's (NRCS) Wetland Reserve Program in 2000, to create wetland complexes suitable for two endangered birds, the Hawaiian Goose, nene (*Branta sandvicensis*) and Hawaiian duck, koloa (*Anas wyvilliana*). NRCS Wetland Reserve Program (WRP) provided $100,000 for funding and technical support to develop the wetland complex, Ducks Unlimited provided matching funds and provided full survey, design, construction management and completion of wetland development practices, and Ulupalakua Ranch provided fencing, equipment, labor or other in-kind services as required to match the WRP funds. Ducks Unlimited also conducted waterfowl monitoring at the four ponds for one full year after pond construction. In 2001, a 14 ha (35 ac) area was fenced and encompassed four constructed artificial ponds and associated upland habitat at a 1,585 m (5,200 ft) elevation site. The ponds were created to attract nene and koloa pairs to forage and nest within the protected pond/wetland area, which totals approximately 0.4 ha (1 ac) of surface water, with 1–2 m (3–6 ft) depths filled and maintained by natural hydrology and rainfall. Nene may naturally disperse to Ulupalakua Ranch from Haleakala National Park and the few koloa now present on Maui may disperse to potential higher elevation habitat at the ranch. Normal grazing and management of pasture lands throughout Ulupalakua Ranch will also provide additional foraging areas for nene.

As endangered species are anticipated on the ranch, Ulupalakua Ranch is developing a Safe Harbor Agreement with the Service and the State through the Safe Harbor program. The Safe Harbor program encourages proactive management to benefit endangered and threatened species on non-Federal lands by providing regulatory assurances to landowners that no additional Endangered Species Act restrictions will be imposed on future land, water, or resource use for enrolled lands. The intended purpose of the ranch's Safe Harbor Agreement is to restore and enhance foraging and breeding habitat for two endangered Hawaiian waterbirds at Ulupalakua Ranch in East Maui. Under this Agreement, Ulupalakua Ranch will create a fenced 14-ha (35-ac) pond/wetland area and maintain it for 20 years. If endangered species are attracted to the area, Ulupalakua Ranch's voluntary conservation activities will contribute to recovery by increasing their reproduction, survival, and distribution on Maui.

The portion of proposed units Maui H, I1, I2, and I4 on Haleakala Ranch Company lands is occupied habitat for seven species: *Alectryon macrococcus; Cyanea mceldowneyi; Diellia erecta; Diplazium molokaiense; Geranium arboreum; Melicope balloui;* and *Phlegmariurus mannii*. It is unoccupied habitat for 11 species: *Argyroxiphium sandwicense* ssp. *macrocephalum; Asplenium fragile* var. *insulare; Clermontia lindseyana; Cyanea glabra; Geranium multiflorum; Lipochaeta kamolensis; Neraudia sericea; Phyllostegia mannii; Phyllostegia mollis; Plantago princeps; and Platanthera holochila*.

Haleakala Ranch Company is involved in several important voluntary conservation agreements that benefit the species included in the proposed critical habitat. For example, in the mid-1980s, Haleakala Ranch Company granted TNCH a perpetual conservation easement that included over 19,000 ha (47,000 ac) (Waikamoi Preserve) on Maui in order to protect its native forest resources and watershed from damage caused by pigs and cattle. Haleakala Ranch Company has been working with the Central Maui Soil and Water Conservation District to address soil and resource issues. In cooperation with the NRCS Environmental Quality Incentives Program (EQIP), Haleakala Ranch Company has implemented a weed control program that has been on-going for over 80 years. Eight years ago, the Haleakala Ranch Company Directors created and filled a Land Steward position in order to shepherd the ranch's conservation efforts and update the conservation plans for all Haleakala Ranch Company lands.

In addition, the Service's Partners for Fish and Wildlife Puu Pahu agreement with Haleakala Ranch Co. and NRCS within proposed unit Maui I1 was entered into in fiscal year 2001 with the stated purpose of protecting and restoring native subalpine dry shrubland. This agreement included construction of a 6.9 km (4.3 mi) exclosure fence and removal of ungulates within the area in order to allow the already semi-intact native vegetation to regenerate. Preservation of this area conserves critically endangered species of plants and animals in one of Hawaii's most restricted ecosystem types (subalpine dry shrubland). This management strategy is consistent with the recovery of these species. The Service and NRCS provided funding for fencing materials ($91,418 from the Service) and are providing technical assistance on the conservation of *Geranium arboreum* and restoration of the subalpine dry shrubland. Haleakala Ranch Co. is building the fence and removing the ungulates (in-kind cost-share valued at $28,875). This work is planned for completion by August 30, 2003. Haleakala Ranch Co. has also worked with DOFAW for the past 2 years on an ungulate-free reserve for native habitat regeneration in the Waiopae area. Haleakala Ranch Co. is fencing the area to improve grazing management from the forest to the shoreline. These actions will include riparian protection to improve habitat for native plants, especially *Lipochaeta kamolensis* and *Alectryon macrococcus*, and watershed management.

According to our published recovery plans, recovery of the species addressed in this rule will require self-sustaining populations distributed across the landscape of sufficient robustness to withstand periodic threats due to natural disaster or biological threats (Service 1995a, 1995b, 1996a, 1996b, 1997, 1998a, 1998b, 1999, 2001). The highest priority recovery tasks include active management such as plant

propagation and reintroduction, fire control, nonnative species removal, and ungulate fencing. Failure to implement these management measures, all of which require voluntary landowner support and participation, virtually assures the extinction of these species. Many of these types of conservation actions in these areas of Maui are carried out as part of TNCH's, the State's, ML&P's, and Ulupalakua and Haleakala Ranch's participation in landowner incentive-based programs, and by actions taken on the landowner's initiative, as well as by actions taken on the State's prioritization and initiative, and Ulupalakua Ranch's and Haleakala Ranch's participation with the Service's Partners for Fish and Wildlife. These activities, which are described in more detail above, require substantial voluntary cooperation by each entity and other cooperating landowners and local residents.

The following analysis describes the likely conservation benefits of a critical habitat designation compared to the conservation benefits without critical habitat designation. In particular we considered: to what extent a critical habitat designation would confer additional regulatory conservation benefits on these species; to what extent the designation would provide an educational benefit to the members of the public that would lead to enhanced conservation; and whether the critical habitat designation would have a positive, neutral, or negative impact on voluntary conservation efforts on each landowner's lands as well as other non-Federal lands on Maui that could contribute to recovery.

(1) Benefits of Inclusion

These areas contain habitat essential to the conservation of the species listed for each area as described above. The primary direct benefit of inclusion of these lands as critical habitat would result from the requirement under section 7 of the Act that Federal agencies consult with us to ensure that any proposed Federal actions do not destroy or adversely modify critical habitat.

The benefit of a critical habitat designation would ensure that any actions authorized, funded or carried out by a Federal agency would not likely destroy or adversely modify any critical habitat. Without critical habitat, some site-specific projects might not trigger consultation requirements under the Act in areas where species are not currently present; in contrast, Federal actions in areas occupied by listed species would still require consultation under section 7 of the Act to determine if the action is likely to jeopardize the continued existence of the listed species.

Much of the area on TNCH's lands is already occupied habitat for 13 of the 16 listed species. Therefore, any Federal activities that may affect these areas will likely require section 7 jeopardy consultation. Historically, we have conducted only one informal consultation under section 7 regarding Federal actions on TNCH's land on Maui. This consultation was conducted with the U.S. Department of Agriculture to review the effect of feral pig removal on listed endangered and threatened species within Waikamoi and Kapunakea Preserves. Thirteen of the 60 species, *Alectryon macrococcus, Argyroxiphium sandwicense* ssp. *macrocephalum, Asplenium fragile* var. *insulare, Bonamia menziesii, Colubrina oppositifolia, Ctenitis squamigera, Cyanea lobata, Diplazium molokaiense, Geranium arboreum, Geranium multiflorum, Plantago princeps, Platanthera holochila,* and *Sanicula purpurea,* are known to occur within the preserves.

Much of the area on State lands is already occupied habitat for two of the three listed species. Therefore, any Federal activities that may affect these areas will likely require section 7 jeopardy consultation. Historically, we have conducted one formal consultation and 16 informal consultations under section 7 on the islands of Maui and Kahoolawe for one or more of the 60 plant species. None of these consultations involved this State land.

Much of the area in the ML&P's Puu Kukui WMA is already occupied by *Ctenitis squamigera, Clermontia oblongifolia* ssp. *mauiensis, Cyanea lobata, Cyrtandra munroi, Hesperomannia arborescens, Phlegmariurus mannii, Platanthera holochila,* and *Sanicula purpurea.* Therefore, any Federal activities that may affect these areas will in all likelihood require section 7 jeopardy consultation. Historically, we have conducted one informal consultation for this property. It addressed the beneficial effects of Federal funding for ungulate exclusion on listed endangered and threatened species within the Puu Kukui Partnership Project area.

On Maui, historically we have conducted only one formal consultation and 16 informal consultations under section 7 for any of the plant species found on Maui. Of these, only two informal consultations were conducted on Ulupalakua Ranch. These were intra-Service consultations on the effects of fencing and outplanting within the Puu Makua Partnership Project area and the Auwahi Partnership Project area (see discussion below).

We have never completed a section 7 consultation on Haleakala Ranch Company's lands (although one is in the process of being completed for the Puu Pahu project that the Service is funding in part).

As a result of the low level of previous Federal activity on these lands, and after considering the future Federal activities that might occur on these lands, it is the Service's opinion that there is likely to be a low number of future Federal activities that would adversely affect habitat on the lands described above. Therefore, we anticipate little additional regulatory benefits from including these areas in critical habitat beyond what is already provided by the existing section 7 nexus for habitat areas occupied by the listed extant species.

Another possible benefit of designating critical habitat is that the designation can educate the public regarding the potential conservation value of an area, which may contribute to conservation efforts by other parties by clearly delineating areas of high conservation value for certain species. Information about the species for which suitable habitat was identified on these lands on Maui, including other parties engaged in conservation activities, could have a positive conservation benefit for the species.

While we believe this educational outcome is important for the conservation of these species, we believe it has already been achieved through the existing management, education, and public outreach efforts carried out by land owners and their conservation partners. The Nature Conservancy of Hawaii has a well-developed public outreach infrastructure that includes magazines, newsletters, and well-publicized public events on Maui and throughout Hawaii. The State has a well-developed public outreach infrastructure that includes websites, newsletters, and well-publicized public events on Maui and throughout Hawaii. ML&P features the Puu Kukui Watershed preserve on its Web site (*http://www.maui.net/mauilnp/puu_kukui.html*) and the Puu Kukui Watershed department staff hold monthly volunteer weed service trips throughout the year. An annual boardwalk hike ($1,500/person) for a dozen people is held in August/September with one free "prize" slot reserved for the student winner of an environmental essay contest from Maui County high schools (Randy Bartlett, Watershed Management Supervisor, ML&P, in litt., 2002). Through the

critical habitat designation process, the portion of unit Maui H that lies within Ulupalakua Ranch and the portion of units Maui H, I1, I2, and I4 that lie within Haleakala Ranch have been identified as essential to the conservation of 25 of the 60 Maui plant species addressed in this rule. In addition, the existing conservation activities being conducted within proposed unit Maui H that lies within Ulupalakua Ranch and the portion of proposed units Maui H, I1, I2, and I4 that lie within Haleakala Ranch, as well as other portions of each ranch, by the Service and other Federal agencies (*e.g.*, USDA NRCS), the State, and private organizations (*e.g.*, Ducks Unlimited) demonstrate that the public is already aware of the importance of this area for the conservation of the species located on each ranch. These examples and other media extol and explain the conservation importance of these lands and their conservation value. A final designation of critical habitat would simply affirm what is already widely accepted by Hawaii's conservationists, public agencies, and most of the public concerning the conservation value of these lands.

In sum, we believe that a critical habitat designation for listed plants on these lands on Maui would provide a relatively low level of additional regulatory conservation benefit to each of the plant species beyond what is already provided by existing section 7 consultation requirements due to the physical presence of the listed species. Any regulatory conservation benefits would accrue through the benefit associated with additional section 7 consultation associated with critical habitat. Based on a review of past consultations and consideration of the likely future activities in this specific area, there is little Federal activity expected to occur on this land that would trigger section 7 consultation. The Service also believes that a final critical habitat designation provides little additional educational benefits since the conservation value is already well known by the landowner, the State, Federal agencies, private organizations, and the public.

(2) Benefits of Exclusion

Proactive voluntary conservation efforts are necessary to prevent the extinction and promote the recovery of these listed plant species on Maui and other Hawaiian islands (Shogren *et al.* 1999, Wilcove and Chen 1998, Wilcove *et al.* 1998). Consideration of this concern is especially important in areas where species have been extirpated and their recovery requires access and permission for reintroduction efforts (Bean 2002, Wilcove *et al.* 1998). For example, three of the 16 species associated with Waikamoi and Kapunakea Preserve are extirpated from TNCH lands, *Cyanea mceldownei* associated with Hawaii NAR lands, three of the 12 species associated with proposed unit Maui H on Ulupalakau Ranch, and 11 of the 18 species associated with proposed units Maui H, I1, I2, and I4 on Haleakala Ranch Company are extirpated from these respective lands, and repopulation is likely not possible without human assistance and landowner cooperation. Although none of the species associated with ML&P lands are extirpated, augmentation of existing populations and establishment of new populations are also likely not possible without human assistance and landowner cooperation.

As described earlier, TNCH, the State, and ML&P have a history of entering into conservation agreements with various Federal and State agencies and other private organizations on their lands. The Nature Conservancy's mission is to preserve the plants, animals and natural communities that represent the diversity of life on Earth by protecting the lands and waters they need to survive. The State's NAR mission is to preserve and protect representative samples of the Hawaiian biological ecosystems and geological formations. One of ML&P's missions is to practice prudent stewardship of their land and water resources ensuring the protection of crucial water resources for the community, as well as the rare and endangered species of plants and animals.

To address the conservation needs of the species in a larger area, Ulupalakua Ranch has expanded their Partners for Fish and Wildlife projects with the Service, in cooperation with the State NAR program for conserving additional areas, which include the following important voluntary actions by Ulupalakua Ranch: (1) Construction of exclosure fencing around a portion of Ulupalakua Ranch and the Kanaio NAR (a portion of proposed Maui unit H) with $50,000 provided by Service, matched by in-kind services (*e.g.*, labor and materials) valued at $50,000; (2) Active management of feral ungulates that are negatively impacting listed plants within the fenced areas; (3) Active management of nonnative grasses and other fire hazards, and development of fire control measures; and (4) Nursery propagation and planting of native flora, including some of the 12 species, within the fenced areas.

Haleakala Ranch Company informed the Service that they are currently devising management plans for conserving resources, which include the following important voluntary actions by Haleakala Ranch Company: (1) Construction of a 9 ha (22 ac) exclosure fence around Keokea Gulch in Kihei to reduce sedimentation on the shoreline and reef and to reduce the fire hazard in the area by using R–1 reclaimed water to irrigate a riparian buffer. construction of an exclosure fence for a dryland lava flow in the Keokea area. In cooperation with DOFAW, fence construction of an exclosure in the Waiopae area for habitat protection of native forest and riparian areas (proposed units H, I1, I2, and I4); (2) Control of feral ungulates that are negatively impacting listed plants within the fenced areas; (3) Control of nonnative grasses and other fire hazards, and development of fire control measures; and (4) Habitat protection for natural regeneration of native flora within the fenced areas.

The Service believes that each of the listed species within these areas is benefitting substantially from the landowner's proactive management actions. Voluntary management actions include a reduction in ungulate browsing and habitat conversion, a reduction in competition with nonnative weeds, a reduction in risk of fire, and the reintroduction of species currently extirpated from various areas, and for which the technical ability to propagate these species currently exists or will be developed in the near future.

The conservation benefits of critical habitat are primarily regulatory or prohibitive in nature. But on Maui, simply preventing "harmful activities" alone will not slow the extinction of listed plant species (Bean 2002). Where consistent with the discretion provided by the Act, the Service believes it is necessary to implement policies that provide positive incentives to private landowners to voluntarily conserve natural resources and that remove or reduce disincentives to conservation (Wilcove *et al.* 1998). Thus, we believe it is essential for the recovery of these species to build on continued conservation activities such as these with a proven partner, and to provide positive incentives for other private landowners on Maui who might be considering implementing voluntary conservation activities but have concerns about incurring incidental regulatory or economic impacts.

Approximately 80 percent of imperiled species in the United States occur partly or solely on private lands where the Service has little management

authority (Wilcove *et al.* 1996). In addition, recovery actions involving the reintroduction of listed species onto private lands require the voluntary cooperation of the landowner (Bean 2002, James 2002, Knight 1999, Main *et al.* 1999, Norton 2000, Shogren *et al.* 1999, Wilcove *et al.* 1998). Therefore, "a successful recovery program is highly dependent on developing working partnerships with a wide variety of entities, and the voluntary cooperation of thousands of non-Federal landowners and others is essential to accomplishing recovery for listed species' (Crouse *et al.* 2002). Because the Federal government manages relatively little land on Maui, and because large tracts of land suitable for conservation of threatened and endangered species are mostly owned by private landowners, successful recovery of listed species on Maui is especially dependent upon working partnerships and the voluntary cooperation of non-Federal landowners.

Therefore, the Service believes that excluding these lands from critical habitat will help maintain and improve our partnership relationship with these landowners by recognizing their positive contribution to conservation on Maui. It will also reduce the cost and logistical burden of unnecessary regulatory oversight. We also believe this recognition will provide other landowners with a positive incentive to undertake voluntary conservation activities on their lands, especially where there is no regulatory requirement to implement such actions.

(3) The Benefits of Exclusion Outweigh the Benefits of Inclusion

Based on the above considerations, and consistent with the direction provided in section 4(b)(2) of the Act, we have determined that the benefits of excluding the following areas as critical habitat for the Maui plant species concerned that occur on these lands as described above: TNCH's Maui preserves, the State's Hawaii NAR, ML&P's Kukui WMA, the Ulupalakua Ranch portion of proposed unit Maui H, and the Haleakala Ranch portion of proposed units Maui H, I1, I2, and I4.

This conclusion is based on the following factors:

(i) TNCH's mission is to preserve the plants, animals and natural communities that represent the diversity of life on Earth by protecting the lands and waters they need to survive. Therefore, all of their preserve lands are currently being managed on a voluntary basis in cooperation with the Service, State, and other private organizations to achieve important conservation goals. In the past, TNCH has cooperated with Federal and State agencies, and private organizations to implement voluntary conservation activities on their lands that have resulted in tangible conservation benefits.

The State's NAR mission is to preserve and protect representative samples of the Hawaiian biological ecosystems and geological formations. Therefore, the Hanawi NAR lands are currently being managed on a proactive basis in cooperation with the Service, the National Park, and private organizations to achieve important conservation goals. In the past, the State has cooperated with Federal agencies, and private organizations to implement proactive conservation activities on their lands that have resulted in tangible conservation benefits.

One of ML&P's missions is to practice prudent stewardship of their land and water resources ensuring the protection of crucial water resources for the community, as well as the rare and endangered species of plants and animals. Therefore, all of their Puu Kukui WMA lands are currently being managed on a voluntary basis in cooperation with the Service, State, and other private organizations to achieve important conservation goals. In the past, ML&P has cooperated with Federal and State agencies, and private organizations to implement voluntary conservation activities on their lands that have resulted in tangible conservation benefits.

A substantial amount of the Ulupalakua Ranch portion of proposed unit Maui H are currently being managed by the landowner on a voluntary basis in cooperation with us, the State of Hawaii, and USGS–BRD to achieve important conservation goals. In the past, Ulupalakua Ranch has cooperated with us, the State, and other organizations to implement voluntary conservation activities on their lands that have resulted in tangible conservation benefits.

A substantial amount of the Haleakala Ranch Co. portion of proposed units H, I1, I2, and I4 is currently being managed by the landowner on a voluntary basis in cooperation with us, the State of Hawaii, USGS–BRD, and TNCH to achieve important conservation goals. In the past, Haleakala Ranch has cooperated with us, the State, and other organizations to implement voluntary conservation activities on their lands that have resulted in tangible conservation benefits.

(ii) Simple regulation of "harmful activities" is not sufficient to conserve these species. Landowner cooperation and support is required to prevent the extinction and promote the recovery of all of the listed species on Maui due to the need to implement proactive conservation actions such as ungulate management, weed control, fire suppression, plant propagation, and outplanting.

The need for TNCH's cooperation is especially acute because 3 of the 16 reported species are not currently found on the preserves. Future conservation efforts, such as translocation of these three plant species on to these lands and expansion of the extant species, will require the cooperation of TNCH and other non-Federal landowners on Maui. Exclusion of TNCH lands from this critical habitat designation will help the Service maintain and improve this partnership by formally recognizing the positive contributions of TNCH to plant recovery, and by streamlining or reducing redundant regulatory oversight.

The need for the State's cooperation is also especially acute because the upper Hanawi NAR is unoccupied by *Cyanea mceldowneyi*. Future conservation efforts, such as translocation of this plant species back into unoccupied habitat on this land and expansion of the extant species, will require the cooperation of the State and other non-Federal landowners on Maui. Exclusion of the State's Hanawi NAR lands from this critical habitat designation will help the Service maintain and improve this partnership by formally recognizing the positive contributions of the State NAR to plant recovery, and by streamlining or reducing unnecessary regulatory oversight.

The need for ML&P's cooperation is necessary because future conservation efforts, such as expansion of the extant species, will require the cooperation of ML&P and other non-Federal landowners on Maui. Exclusion of ML&P lands from this critical habitat designation will help the Service maintain and improve this partnership by formally recognizing the positive contributions of ML&P to plant recovery, and by streamlining or reducing unnecessary regulatory oversight.

The need for Ulupalakua Ranch's cooperation is important because the proposed unit Maui H is unoccupied by 3 of the 12 species. Future conservation efforts, such as translocation of these three plant species back into unoccupied habitat on these lands, will require the cooperation of Ulupalakua Ranch.

The need for Haleakala Ranch Co.'s cooperation is especially acute because the proposed units Maui H, I1, I2, and I4 are unoccupied by 11 of the 18 species. Future conservation efforts, such as reintroduction of these 11 plant species back into unoccupied habitat on these lands, will require the cooperation of Haleakala Ranch Co.

(iii) The Service believes the additional regulatory and educational benefits of including these lands as critical habitat are relatively small. The current partnership agreements between TNCH and many organizations, the State and many organizations, ML&P and many organizations, and current agreements between the Service and Ulupalakua Ranch and Haleakala Ranch already provide significant conservation and educational benefits.

The designation of critical habitat can serve to educate the general public as well as conservation organizations regarding the potential conservation value of an area, but this goal is already being accomplished through the identification of this area in the management plans described above and through public outreach efforts. Likewise, there will be little additional Federal regulatory benefit to the species because (a) there is a low likelihood that these proposed critical habitat units will be negatively affected to any significant degree by Federal activities requiring section 7 consultation, and (b) on land owned by TNCH, the State, Ulupalakua and Haleakala Ranches, and ML&P much of the areas are already occupied by listed species and a section 7 nexus already exists. The Service is unable to identify any other potential benefits associated with critical habitat for these proposed units.

(iv) It is documented that publicly and privately owned lands and lands owned by conservation organizations such as these, alone, are too small and poorly distributed to provide for the conservation of most listed species (Bean 2002, Crouse *et al.* 2002). Excluding these lands from critical habitat may, by way of example, provide positive social, legal, and economic incentives to other non-Federal landowners on Maui who own lands that could contribute to listed species recovery if voluntary conservation measures on these lands are implemented (Norton 2000, Main *et al.* 1999, Shogren *et al.* 1999, Wilcove and Chen 1998). As resources allow, the Service would be willing to consider future revisions or amendments to this final critical habitat rule if landowners affected by this rule develop conservation programs or partnerships (*e.g.*, Habitat Conservation Plans, Safe Harbor Agreements, conservation agreements, etc.) on their lands that outweigh the regulatory and educational benefits of a critical habitat designation.

As described above, the overall benefits to these species of a critical habitat designation for these areas are relatively small. In contrast, we believe that this exclusion will enhance our existing partnership with each landowner and it will set a positive example and provide positive incentives to other non-Federal landowners who may be considering implementing voluntary conservation activities on their lands. There is a higher likelihood of beneficial conservation activities occurring in these and other areas of Maui without designated critical habitat than there would be with designated critical habitat in these areas. In conclusion, we find that the designation of critical habitat on the TNCH Maui preserves, the State's Hawaii upper Hanawi NAR, ML&P's Kukui WMA, the Ulupalakua Ranch portion of proposed unit Maui H, and the Haleakala Ranch portion of proposed units Maui H, I1, I2, and I4 would most likely have a negative effect on the recovery and conservation of the Maui plant species concerned. Therefore, the Service's conclusion is that the net benefits of excluding these areas from critical habitat outweigh the benefits of including these areas.

(4) Exclusion of This Unit Will Not Cause Extinction of the Species

In considering whether or not exclusion of the TNCH preserve lands might result in the extinction of any of the 16 reported species, the Service first considered the impacts to the five species endemic to Maui (*Argyroxiphium sandwicense* ssp. *macrocephalum, Geranium arboreum, Geranium multiflorum, Melicope balloui,* and *Remya mauiensis*).

For both the five endemic and the 11 "multi-island" species, it is the Service's conclusion that the TNCH's mission and management plans will provide as much or more net conservation benefits as would be provided if these preserves were designated as critical habitat. These management plans, which are described above, will provide tangible proactive conservation benefits that will reduce the likelihood of extinction for the listed plants in these areas of Maui and increase their likelihood of recovery. Extinction for any of these species as a consequence of this exclusion is unlikely because there are no known threats in these preserves due to any current or reasonably anticipated Federal actions that might be regulated under section 7 of the Act. The DEA indicates that there may be future programmatic consultations. These management actions were designed to protect and provide for the conservation of these species and will not create any threats or risks of extinction to these species. Further, these areas are already occupied by 13 of the 16 species and thereby benefit from the section 7 protections of the Act, should such an unlikely Federal threat actually materialize. The exclusion of these preserves will not increase the risk of extinction to any of these species, and it may increase the likelihood that these species will recover by encouraging other landowners to implement voluntary conservation activities as TNCH has done.

In addition, critical habitat is being designated on other areas of Maui for all five of the endemic species (9—*Argyroxiphium sandwicense* ssp. *macrocephalum*—a, Maui 9—*Geranium arboreum*—a, Maui 14—*Geranium arboreum*—b, Maui 15—*Geranium arboreum*—c, Maui 8—*Geranium multiflorum*—a, Maui 9—*Geranium multiflorum*—b, Maui 9—*Geranium multiflorum*—c, Maui 8—*Melicope balloui*—a, Maui 9—*Melicope balloui*—b, Maui 17—*Remya mauiensis*—a, Maui 17—*Remya mauiensis*—b, Maui 17—*Remya mauiensis*—c, and Maui 18—*Remya mauiensis*—d), and critical habitat has been designated elsewhere on Maui, and proposed or designated on other islands for the remaining 11 multi-island species consistent with the guidance in recovery plans. These other designations identify conservation areas for the maintenance and expansion of the existing populations and are sufficient to prevent extinction of the species concerned.

In considering whether or not exclusion of the State's upper Hanawi NAR might result in the extinction of *Clermontia samuelii, Cyanea mceldowneyi,* and *Geranium multiflorum* the Service considered potential impacts. For all three endemic species, it is the Service's conclusion that the State's NAR mission and management provide a significant conservation benefit. The management will provide tangible proactive conservation benefits that will reduce the likelihood of extinction for the listed plants in this area of Maui and increase their likelihood of recovery. Extinction for any of these species as a consequence of this exclusion is unlikely because there are no known threats in the NAR due to any current or reasonably anticipated Federal actions that might be regulated under section 7 of the Act. Further, this area is already occupied by two of the three species and thereby benefits from the section 7 protections of the Act, should such an unlikely Federal threat actually

materialize. The exclusion of this NAR will not increase the risk of extinction to any of these species, and it may increase the likelihood these species will recover by encouraging other landowners to implement voluntary conservation activities as the State has done.

In addition, critical habitat is being designated on another area of Maui for all three endemic species (Maui 9—*Clermontia samuelii*—a, Maui 8—*Cyanea mceldowneyi*—a, Maui 8—*Geranium multiflorum*—a, Maui 9—*Geranium multiflorum*—b, and Maui 9—*Geranium multiflorum*—c). These other designations identify conservation areas for the maintenance and expansion of the existing populations.

In considering whether or not exclusion of the Puu Kukui WMA might result in the extinction of any of the eight species, the Service first considered the impacts to the Maui endemic, *Hesperomannia arborescens*.

For both the endemic *Hesperomannia arborescens* and the seven "multi-island" species, it is the Service's conclusion that ML&P's mission and management programs will provide as much or more net conservation benefits as would be provided if this area was designated as critical habitat. These management programs, which are described above, will provide tangible proactive conservation benefits that will reduce the likelihood of extinction for the listed plants in these areas of Maui and increase their likelihood of recovery. Extinction for any of these species as a consequence of this exclusion is unlikely because there are no known threats in Puu Kukui WMA due to any current or reasonably anticipated Federal actions that might be regulated under section 7 of the Act. Further, this area is already occupied by all of the eight species and thereby benefit from the section 7 protections of the Act, should such an unlikely Federal threat actually materialize. The exclusion of Puu Kukui WMA will not increase the risk of extinction to any of these species, and it may increase the likelihood these species will recover by encouraging other landowners to implement voluntary conservation activities as ML&P has done.

In addition, critical habitat has been designated elsewhere on Maui, and proposed or designated on other islands for the remaining seven multi-island species consistent with the guidance in recovery plans. These other designations identify conservation areas for the maintenance and expansion of the existing populations.

In considering whether or not exclusion of Ulupalakua Ranch's proposed unit Maui H might result in the extinction of any of the 12 species, the Service first considered the impacts to the three species endemic to Maui (*Geranium arboreum, Lipochaeta kamolensis,* and *Melicope adscendens*), and second to the nine species known from Maui and one or more other Hawaiian islands.

For both the three endemic and the nine "multi-island" species, it is the Service's conclusion that the partnership agreements developed by Ulupalakua Ranch and the Service will provide more net conservation benefits than would be provided by designating the portion of proposed unit Maui H as critical habitat. These agreements, which are described above, will provide tangible proactive conservation benefits that will reduce the likelihood of extinction for the listed plants in this area of Maui and increase their likelihood of recovery. Extinction for any of these species as a consequence of this exclusion is unlikely because there are no known threats in this portion of proposed unit Maui H due to any current or reasonably anticipated Federal actions that might be regulated under section 7 of the Act. Implementation of the partnership agreements between the landowner and the Service and the exclusion of the portion of proposed unit Maui H have the highest likelihood of preventing extinction of these 12 species, especially the species endemic to the island of Maui.

In addition, critical habitat is being designated on another area of Maui for all three of the endemic species (Maui 9—*Geranium arboreum*—a, Maui 9—*Lipochaeta kamolensis*—a, and Maui 13—*Melicope adscendens*—a). These other designations identify conservation areas for the maintenance and expansion of the existing populations.

In considering whether or not exclusion of Haleakala Ranch Company's portions of proposed units Maui H, I1, I2, and I4 might result in the extinction of any of the 18 species, the Service first considered the impacts to the six species endemic to Maui (*Argyroxiphium sandwicense* ssp. *macrocephalum, Cyanea mceldowneyi, Geranium arboreum, Geranium multiflorum, Lipochaeta kamolensis,* and *Melicope balloui*), and second to the 12 species known from Maui and one or more other Hawaiian islands.

For both the six endemic and the 12 "multi-island" species, it is the Service's conclusion that the partnership agreements developed by Haleakala Ranch and the Service will provide more net conservation benefits than would be provided by designating the portion of proposed units H, I1, I2, and I4 as critical habitat. These agreements, which are described above, will provide tangible proactive conservation benefits that will reduce the likelihood of extinction for the listed plants in this area of Maui and increase their likelihood of recovery. Extinction for any of these species as a consequence of this exclusion is unlikely because there are no known threats in these portions of proposed units Maui H, I1, I2, and I4 due to any current or reasonably anticipated Federal actions that might be regulated under section 7 of the Act. Implementation of the partnership agreements between the landowner and the Service, and the exclusion of the portion of proposed units Maui H, I1, I2, and I4, have the highest likelihood of preventing extinction of these 18 species, especially the species endemic to the island of Maui.

In addition, critical habitat is being designated on other areas of Maui for all six of the endemic species (Maui 9—*Argyroxiphium sandwicense* ssp. *macrocephalum*—a, Maui 8—*Cyanea mceldowneyi*—a, Maui 9—*Geranium arboreum*—a, Maui 14—*Geranium arboreum*—b, Maui 14—*Geranium arboreum*—c, Maui 8—*Geranium multiflorum*—a, Maui 8—*Geranium multiflorum*—b, Maui 9—*Geranium multiflorum*—c, Maui 9—*Lipochaeta kamolensis*—a, Maui 8—*Melicope balloui*—a, and Maui 8—*Melicope balloui*—b), and critical habitat has been designated elsewhere on Maui, and proposed or designated on other islands for the remaining 12 multi-island species consistent with the guidance in the recovery plans for these species. These other designations identify conservation areas for the maintenance and expansion of the existing populations.

In addition, § 195D–4 (Hawaii Revised Statutes, Endangered species and threatened species) stipulates that species determined to be endangered or threatened under the Federal ESA shall be deemed endangered or threatened under the state law. It is unlawful under the state law, with some exceptions, to "take" such species, or to possess, sell, carry or transport them. For plants, take is defined in the State statute as to "cut, collect, uproot, destroy, injure, or possess". The statutory protections for these plants provide additional assurances that exclusion of these areas from critical habitat will not result in extinction of the species in question.

In sum, the above analysis concludes that an exclusion of these areas from final critical habitat on Maui will have a net beneficial impact with little risk of

negative impacts. Therefore the exclusion of these lands will not cause extinction and should in fact improve the chance of recovery for *Alectryon macrococcus, Argyroxiphium sandwicense* ssp. *macrocephalum, Asplenium fragile* var. *insulare, Bonamia menziesii, Cenchrus agrimonioides, Clermontia lindseyana, Clermontia oblongifolia* ssp. *mauiensis, Clermontia samuelii, Colubrina oppositifolia, Ctenitis squamigera, Cyanea glabra, Cyanea lobata, Cyanea mceldowneyi, Cyrtandra munroi, Diellia erecta, Diplazium molokaiense, Flueggea neowawraea, Geranium arboreum, Geranium multiflorum, Hesperomannia arborescens, Lipochaeta kamolensis, Melicope adscendens, Melicope balloui, Melicope knudsenii, Melicope mucronulata, Neraudia sericea, Phlegmariurus mannii, Phyllostegia mannii, Phyllostegia mollis, Plantago princeps, Platanthera holochila, Remya mauiensis,* and *Sanicula purpurea.*

Taxonomic Changes

At the time we listed *Clermontia peleana, Cyanea grimesiana* ssp. *grimesiana, Cyanea lobata, Delissea undulata, Mariscus pennatiformis, Phyllostegia parviflora,* and *Phyllostegia mollis,* we followed the taxonomic treatments in Wagner *et al.* (1990), the widely used and accepted *Manual of the Flowering Plants of Hawaii.* For *Phlegmariurus mannii,* we used the "Revised Checklist of Hawaiian Pteridophytes" (Wagner and Wagner 1994). Subsequent to the final listing, we became aware of new taxonomic treatments of these species. Also, in the recently published *Hawaii's Ferns and Fern Allies* (Plamer 2003), the family name for *Ctenitis squamigera* has changed (from Aspleniaceae to Dryopteridaceae). Due to the court-ordered deadlines, we are required to publish this final rule to designate critical habitat on Maui and Kahoolawe before we can prepare and publish a notice of taxonomic changes for these nine species. We plan to publish a taxonomic change notice for these nine species after we have published the final critical habitat designations on Maui and Kahoolawe.

Required Determinations

Regulatory Planning and Review

In accordance with Executive Order 12866, the Office of Management and Budget (OMB) has determined that this critical habitat designation is not a significant regulatory action. This rule will not have an annual economic effect of $100 million or more or adversely affect any economic sector, productivity, competition, jobs, the environment, or other units of government. This designation will not create inconsistencies with other agencies' actions or otherwise interfere with an action taken or planned by another agency. It will not materially affect entitlements, grants, user fees, loan programs, or the rights and obligations of their recipients. Finally, this designation will not raise novel legal or policy issues. Accordingly, OMB has not formally reviewed this final critical habitat designation.

Regulatory Flexibility Act

Under the Regulatory Flexibility Act (RFA) (as amended by the Small Business Regulatory Enforcement Fairness Act (SBREFA) of 1996), whenever a Federal agency is required to publish a notice of rulemaking for any proposed or final rule, it must prepare and make available for public comment a regulatory flexibility analysis that describes the effect of the rule on small entities (*i.e.,* small businesses, small organizations, and small governmental jurisdictions). However, no regulatory flexibility analysis is required if the head of the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. SBREFA amended the RFA to require Federal agencies to provide a statement of the factual basis for certifying that a rule will not have a significant economic impact on a substantial number of small entities.

Based on the information in our economic analysis (draft economic analysis, supplement, and addendum), we are certifying that the critical habitat designation for 60 Maui and Kahoolawe plant species will not have a significant effect on a substantial number of small entities because a substantial number of small entities are not affected by the designation.

SBREFA does not explicitly define either "substantial number" or "significant economic impact." Consequently, to assess whether a "substantial number" of small entities is affected by this designation, this analysis considers the relative number of small entities likely to be impacted in the area. Similarly, this analysis considers the relative cost of compliance on the revenues/profit margins of small entities in determining whether or not entities incur a "significant economic impact." Federal courts and Congress have indicated that an RFA/SBREFA analysis should be limited to all impacts to entities directly subject to the requirements of the regulation (*See Mid-Tex Electric Co-Op, Inc.* v. *F.E.R.C.* and *America Trucking Associations, Inc.* v. *EPA.*). As such, entities indirectly impacted by the plant listings and critical habitat and, therefore, not directly regulated by the listing or critical habitat designation are not considered in this section of the analysis.

Small entities include small organizations, such as independent non-profit organizations, and small governmental jurisdictions, such as school boards and city and town governments that serve fewer than 50,000 residents, as well as small businesses. Refer to the draft economic analysis for a further discussion of the definition of small entities.

The RFA/SBREFA defines "small governmental jurisdiction" as the government of a city, county, town, school district with a population of less than 50,000. By this definition, Federal government agencies are not small business under SBA guidelines, and State agencies are not considered small governments under the RFA. The County of Maui is also not a small governmental jurisdiction because its population was approximately 128,240 in 2000.

SBREFA further defines "small organization" as any not-for-profit enterprise that is independently owned and operated and is not dominant in its field. The East Maui Watershed Partnership and the West Maui Watershed Partnership are not independently owned but are public-private partnerships between Federal agencies, State agencies, private landowners, and community organizations that are dominant in setting policy for watershed protection. While the definition of "small organization" leaves some room for interpretation, based on the above factors, the economic analysis does not consider either partnership to be a "small organization." Our draft economic analysis further identified one other organization that may be affected by the critical habitat designation on Maui, although, to this point, we have never consulted with them directly or indirectly, as Hawaii Television Broadcasters Association (HTBA). The HTBA is a Hawaii nonprofit corporation that represents the common interests of Hawaii's television broadcasters, each of which has annual revenues in excess of $750,000. As the entity representing all the local broadcast stations, HTBA appears to be dominant in its field and therefore does not appear to meet SBREFA's definition of a "small organization."

The RFA/SBREFA requires that agencies use the SBA's definition of "small business," which is codified at 13 CFR 121.201. The draft economic analysis identified the following small businesses. Zond Pond, a company formed to develop wind projects in Hawaii that have not yet been constructed, and several livestock operations. Zond Pond currently has no sales by which to evaluate whether it meets the definition of a small business. However, our DEA concluded, based on a public declaration from Zond Pond that it is not a small business and the projected scale of its windfarm projects, that Zond Pond does not qualify as a "small business" under SBA's small business definitions. In 2000, there were 170 cattle livestock operations in Maui County. The combined cattle sales of all of these operations in 2000 was about $3.2 millions (Statistics of Hawaii Agriculture, 2000). Since this implies average annual cattles sales per business of $19,000, it is likely that all of almost all of the Maui County cattle operations meet the definition of a small business (annual sales less thant $750,000).

To determine if the rule would affect a substantial number of small entities, we consider the number of small entities affected within particular types of economic activities (*e.g.*, housing development, grazing, oil and gas production, timber harvesting, etc.) in this particular area/market affected by the regulation. We apply the "substantial number" test individually to each industry to determine if certification is appropriate. In estimating the numbers of small entities potentially affected, we also consider whether their activities have any Federal involvement. Some kinds of activities are unlikely to have any Federal involvement, and so will not be affected by critical habitat designation.

The primary projects and activities that might be affected by the designation and could affect small entities include ranching operations in Maui County. The economic analysis predicts that between zero and two section 7 consultations will be conducted over the next 10 years on ranches in Maui County. The economic analysis estimates that these consultations may affect one to four businesses out of 170 (1 to two percent) of the small businesses in the cattle industry in Maui County. (This is an overestimate of the number of businesses potentially affected because it is based on more consultations occurring than is currently estimated.)

The entire island of Kahoolawe is under State ownership and within the State Conservation District. The current and projected land uses on Kahoolawe are land restoration and ordnance removal (Decision Analysts Hawaii (DAHI) 2001). For these reasons, the draft economic analysis concluded that the proposed rule would not affect a substantial number of small entities on the island of Kahoolawe. Based on the above analysis, a significant economic impact on a substantial number of small entities will not result from the proposed critical habitat designation on Maui and Kahoolawe.

This conclusion are supported by the history of consultations on Maui. Since these 60 plant species were listed (between 1991 and 1999), on the island of Maui we have conducted only one formal consultation and 16 informal consultations, in addition to consultations on Federal grants to State wildlife programs, which do not affect small entities. Three informal consultations were conducted with the U.S. Air Force, for the Maui Space Surveillance Site, who requested we review their final draft "Environmental Assessment, "Integrated Natural Resources Management Plan for the Maui Space Surveillance Complex," and the effects of the construction of the surveillance site on listed and proposed endangered and threatened species. Three informal consultations were conducted with Haleakala National Park, regarding a collecting permit for two of the 60 species, *Geranium arboreum* and *Geranium multiflorum*, and we reviewed the "Environmental Assessment for Replacement of the Summit Comfort Station and Utilities Systems' and a park highway resurfacing project. One informal consultation was conducted with the Service's Ecological Services Program for the effects of fencing and replanting on listed endangered and threatened species within the Auwahi Partnership Project area. One informal consultation was conducted with the Service's Ecological Services Program for the effects of fencing and hunting on listed endangered and threatened species within the Kahikinui Partnership Project area. One informal consultation was conducted with the Service's Ecological Services Program, for the effects of fencing and outplanting on listed endangered and threatened species within the Puu Makua Partnership Project area. One informal consultation was conducted with the Service for the effects of ungulate exclusion on listed endangered and threatened species within the Puu Kukui Partnership Project area. One informal consultation was conducted with the Department of Defense for review of the effects of the Kanaio National Guard Training Area on listed endangered and threatened species and review of "Natural Resources Management Plan: Kanaio Guard Training Area." Two informal consultations were conducted with the Department of Transportation for review of the effects of the proposed Kihei-Upcountry Highway on listed endangered and threatened species. One informal consultations was conducted with the U.S. Department of Agriculture for review of the effect of feral pig removal on listed endangered and threatened species within Waikamoi and Kapunakea Preserves. One informal consultation was conducted with the Service's Ecological Services Program for the effects of fencing and replanting listed endangered and threatened species within the Puu O Kali restoration area. One informal consultation was conducted with NRCS for the effects of ranching operations on listed endangered and threatened species within 38 acres of private land. One formal consultation was conducted with the Federal Aviation Administration (FAA) for the review of the "Final Environmental Impact Statement, Kahului Airport Improvements."

None of these consultations affected or concerned small entities. In all 16 informal consultations, we concurred with each agency's determination that the project, as proposed, was not likely to adversely affect listed species. For the formal consultation, we determined that the airport improvement project, which included a mandatory state-of-the-art alien species interdiction facility, was not likely to jeopardize listed species nor adversely affect designated critical habitat for *Gouania hillebrandii* on the island of Maui. In addition, only the FAA's proposed airport improvement project is ongoing. The FAA is not a small entity. Therefore, the requirement to reinitiate consultation for ongoing projects will not affect a substantial number of small entities on Maui.

There has been one informal consultation on the island of Kahoolawe. The consultation was conducted on behalf of the Department of the Navy for the effects of ordnance cleanup on listed endangered and threatened species. The Department of the Navy is not a small entity; therefore this consultation did not affect or concern small entities. In this case, we concurred with the agency's determination that the project as proposed was not likely to adversely affect listed species. Although this project is ongoing, it does not affect nor concern small entities, so the requirement to reinitiate consultation for ongoing projects will not affect a substantial number of small entities on Kahoolawe.

In addition, on Maui, nearly all of the land within the critical habitat units is unsuitable for development, land uses, and activities. This is due to their remote locations, lack of access, and rugged terrain. Approximately 86 percent of this land, and all of the land on Kahoolawe, is within the State Conservation District where State land-use controls severely limit development and most activities, and approximately 14 percent of this land is within the State Agricultural District.

Even where the requirements of section 7 might apply due to critical habitat, based on our experience with section 7 consultations for all listed species, virtually all projects—including those that, in their initial proposed form, would result in jeopardy or adverse modification determinations under section 7—can be implemented successfully with, at most, the adoption of reasonable and prudent alternatives. These measures by definition must be economically feasible and within the scope of authority of the Federal agency involved in the consultation.

For these reasons, we are certifying that the designation of critical habitat for *Alectryon macrococcus, Argyroxiphium sandwicense* ssp. *macrocephalum, Asplenium fragile* var. *insulare, Bidens micrantha* ssp. *kalealaha, Bonamia menziesii, Brighamia rockii, Cenchrus agrimonioides, Centaurium sebaeoides, Clermontia lindseyana, Clermontia oblongifolia* ssp. *mauiensis, Clermontia samuelii, Colubrina oppositifolia, Ctenitis squamigera, Cyanea copelandii* ssp. *haleakalaensis, Cyanea glabra, Cyanea grimesiana* ssp. *grimesiana, Cyanea hamatiflora* ssp. *hamatiflora, Cyanea lobata, Cyanea mceldowneyi, Cyrtandra munroi, Diellia erecta, Diplazium molokaiense, Dubautia plantaginea* ssp. *humilis, Flueggea neowawraea, Geranium arboreum, Geranium multiflorum, Gouania vitifolia, Hedyotis coriacea, Hedyotis mannii, Hesperomannia arbuscula, Hibiscus brackenridgei, Ischaemum byrone, Isodendrion pyrifolium, Kanaloa kahoolawensis, Lipochaeta kamolensis, Lysimachia lydgatei, Mariscus pennatiformis, Melicope adscendens, Melicope balloui, Melicope knudsenii, Melicope mucronulata, Melicope ovalis, Neraudia sericea, Nototrichium humile, Peucedanum sandwicense, Phlegmariurus mannii, Phyllostegia mannii, Phyllostegia mollis, Plantago princeps, Platanthera holochila, Pteris lidgatei, Remya mauiensis, Sanicula purpurea, Schiedea haleakalensis, Sesbania tomentosa, Spermolepis hawaiiensis, Tetramolopium capillare, Tetramolopium remyi, Vigna o-wahuensis,* and *Zanthoxylum hawaiiense* will not have a significant economic impact on a substantial number of small entities. Therefore, a regulatory flexibility analysis is not required.

Small Business Regulatory Enforcement Fairness Act (5 U.S.C. 804(2))

Under the Small Business Regulatory Enforcement Fairness Act (5 U.S.C. 801 *et seq.*), this rule is not a major rule. Our detailed assessment of the economic effects of this designation are described in the draft economic analysis, the final addendum and the supplement to the economic analysis. Based on the effects identified in these documents, we believe that this rule will not have an effect on the economy of $100 million or more per year, will not cause a major increase in costs or prices for consumers, and will not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises. Refer to the final addendum to the economic analysis for a discussion of the effects of this determination.

Executive Order 13211

On May 18, 2001, the President issued Executive Order 13211; on regulations that significantly affect energy supply, distribution, and use. Executive Order 13211 requires agencies to prepare Statements of Energy Effects when undertaking certain actions. According to OMB, this rule is not a significant regulatory action under Executive Order 12866, and we do not expect to significantly affect energy production supply and distribution facilities because no significant energy production, supply, and distribution facilities are included within designated critical habitat. Further, for the reasons described in the economic analysis, we do not believe that designation of critical habitat for the 60 species on Maui and Kahoolawe will affect future energy production. Therefore, this action is not a significant energy action, and no Statement of Energy Effects is required.

Unfunded Mandates Reform Act (2 U.S.C. 1501 et seq.)

In accordance with the Unfunded Mandates Reform Act (2 U.S.C. 1501 *et seq.*):

(a) This rule will not "significantly or uniquely" affect small governments. A small Government Agency Plan is not required. Small governments will not be affected unless they propose an action requiring Federal funds, permits, or other authorizations. Any such activities will require that the Federal agency ensure that the action will not adversely modify or destroy designated critical habitat.

(b) This rule will not produce a Federal mandate on State or local governments or the private sector of $100 million or greater in any year, that is, it is not a "significant regulatory action" under the Unfunded Mandates Reform Act. The designation of critical habitat imposes no obligations on State or local governments.

Takings

In accordance with Executive Order 12630 ("Government Actions and Interference with Constitutionally Protected Private Property Rights"), we have analyzed the potential takings implications of designating critical habitat for the 60 species from Maui and Kahoolawe in a takings implications assessment. The takings implications assessment concludes that this final rule does not pose significant takings implications.

Federalism

In accordance with Executive Order 13132, this final rule does not have significant Federalism effects. A Federalism assessment is not required. In keeping with Department of Interior policy, we requested information from appropriate State agencies in Hawaii. This rule imposes no regulatory requirements unless an agency is seeking Federal funding or authorization, so it does not have Federal implications. In addition, this rule will not have substantial direct compliance costs because many of the planned projects that could affect critical habitat have no Federal involvement.

The designations may have some benefit to these governments, in that the areas essential to the conservation of these species are more clearly defined and the primary constituent elements of the habitat necessary to the survival of the species are specifically identified. While this definition and identification does not alter where and what federally sponsored activities may occur, it may assist these local governments in long-range planning, rather than waiting for case-by-case section 7 consultation to occur.

Civil Justice Reform

In accordance with Executive Order 12988, the Department of the Interiors's Office of the Solicitor has determined that this rule does not unduly burden the judicial system and does meet the requirements of sections 3(a) and 3(b)(2) of the Order. We have designated critical habitat in accordance with the provisions of the Endangered Species Act. The rule uses standard property descriptions and identifies the primary constituent elements within the designated areas to assist the public in understanding the habitat needs of the 60 plant species from Maui and Kahoolawe.

Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq.)

This rule does not contain any information collection requirements for which OMB approval under the Paperwork Reduction Act is required. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a valid OMB control number.

National Environmental Policy Act

We have determined that we do not need to prepare an Environmental Assessment and/or an Environmental Impact Statement as defined by the National Environmental Policy Act of 1969 in connection with regulations adopted pursuant to section 4(a) of the Endangered Species Act. We published a notice outlining our reason for this determination in the **Federal Register** on October 25, 1983 (48 FR 49244). This determination does not constitute a major Federal action significantly affecting the quality of the human environment.

Government-to-Government Relationship with Tribes

In accordance with the President's memorandum of April 29, 1994, "Government-to-Government Relations with Native American Tribal Governments" (59 FR 22951), Executive Order 13175, and the Department of the Interior's manual at 512 DM 2, we readily acknowledge our responsibility to communicate meaningfully with recognized Federal Tribes on a government-to-government basis. We have determined that there are no Tribal lands essential for the conservation of these 60 plant species. Therefore, designation of critical habitat for these 60 species does not involve any Tribal lands.

References Cited

A complete list of all references cited in this final rule is available upon request from the Pacific Islands Fish and Wildlife Office (*see* **ADDRESSES** section).

Authors

The primary authors of this final rule are staff of the Pacific Islands Fish and Wildlife Office (*see* **ADDRESSES** section).

List of Subjects in 50 CFR Part 17

Endangered and threatened species, Exports, Imports, Reporting and recordkeeping requirements, Transportation.

Regulation Promulgation

■ Accordingly, we hereby amend part 17, subchapter B of chapter I, title 50 of the Code of Federal Regulations as set forth below:

PART 17—[AMENDED]

■ 1. The authority citation for part 17 continues to read as follows:

Authority: 16 U.S.C. 1361–1407; 16 U.S.C. 1531–1544; 16 U.S.C. 4201–4245; Pub. L. 99–625, 100 Stat. 3500; unless otherwise noted.

■ 2. Amend § 17.12(h), the List of Endangered and Threatened Plants, as set forth below:

■ a. Under the table's heading FLOWERING PLANTS, by revising the entries for *Alectryon macrococcus*, *Argyroxiphium sandwicense* ssp. *macrocephalum*, *Bidens micrantha* ssp. *kalealaha*, *Bonamia menziesii*, *Brighamia rockii*, *Cenchrus agrimonioides*, *Centaurium sebaeoides*, *Clermontia lindseyana*, *Clermontia oblongifolia* ssp. *mauiensis*, *Clermontia samuelii*, *Colubrina oppositifolia*, *Cyanea copelandii* ssp. *haleakalaensis*, *Cyanea glabra*, *Cyanea grimesiana* ssp. *grimesiana*, *Cyanea hamatiflora* ssp. *hamatiflora*, *Cyanea lobata*, *Cyanea mceldowneyi*, *Cyrtandra munroi*, *Dubautia plantaginea* ssp. *humilis*, *Flueggea neowawraea*, *Geranium arboreum*, *Geranium multiflorum*, *Gouania vitifolia*, *Hedyotis coriacea*, *Hedyotis mannii*, *Hesperomannia arbuscula*, *Hibiscus brackenridgei*, *Ischaemum byrone*, *Isodendrion pyrifolium*, *Kanaloa kahoolawensis*, *Lipochaeta kamolensis*, *Lysimachia lydgatei*, *Mariscus pennatiformis*, *Melicope adscendens*, *Melicope balloui*, *Melicope knudsenii*, *Melicope mucronulata*, *Melicope ovalis*, *Neraudia sericea*, *Nototrichium humile*, *Peucedanum sandwicense*, *Phyllostegia mannii*, *Phyllostegia mollis*, *Plantago princeps*, *Platanthera holochila*, *Remya mauiensis*, *Sanicula purpurea*, *Schiedea haleakalensis*, *Sesbania tomentosa*, *Spermolepis hawaiiensis*, *Tetramolopium capillare*, *Tetramolopium remyi*, *Vigna o-wahuensis*, and *Zanthoxylum hawaiiense* to read as follows: and

■ b. Under the table's heading FERNS AND ALLIES, by revising the entries for *Asplenium fragile* var. *insulare*, *Ctenitis squamigera*, *Diellia erecta*, *Diplazium molokaiense*, and *Pteris lidgatei*; by removing the entry for *Huperzia* (=*Phlegmariurus*, =*Lycopodium*) *mannii*; and by adding an entry for *Phlegmariurus* (=*Lycopodum*, =*Huperzia*) *mannii* to read as follows.

§ 17.12 Endangered and threatened plants.

* * * * *

(h) * * *

Species		Historic range	Family	Status	When listed	Critical habitat	Special rules
Scientific name	Common name						
FLOWERING PLANTS							
Alectryon macrococcus	Mahoe	U.S.A. (HI)	Sapindaceae	E	467	17.99(a)(1), (c) and (e)(1).	NA
Argyroxiphium sandwicense ssp. *macrocephalum*	Ahinahina	U.S.A. (HI)	Asteraceae	T	467	17.99(e)(1)	NA
Bidens micrantha ssp. *kalealaha*	Kookoolau	U.S.A. (HI)	Asteraceae	E	467	17.96(b) and 17.99(e)(1).	NA
Bonamia menziesii	None	U.S.A. (HI)	Convolvulaceae	E	559	17.99(a)(1) and (e)(1)	NA
Brighamia rockii	Pua ala	U.S.A. (HI)	Campanulaceae	E	480	17.99(c) and (e)(1)	NA
Cenchrus agrimonioides	Kamanomano	U.S.A. (HI)	Poaceae	E	592	17.99(e)(1)	NA

Species		Historic range	Family	Status	When listed	Critical habitat	Special rules
Scientific name	Common name						
(=Sandbur, agrimony)							
Centaurium sebaeoides	Awiwi	U.S.A. (HI)	Gentianaceae	E	448	17.99(a)(1), (c) and (e)(1).	NA
Clermontia lindseyana	Oha wai	U.S.A. (HI)	Campanulaceae	E	532	17.99(e)(1)	NA
Clermontia oblongifolia ssp. *mauiensis*	Oha wai	U.S.A. (HI)	Campanulaceae	E	467	17.99(e)(1)	NA
Clermontia samuelii	Oha wai	U.S.A. (HI)	Campanulaceae	E	666	17.99(e)(1)	NA
Colubrina oppositifolia	Kauila	U.S.A. (HI)	Rhamnaceae	E	532	17.99(e)(1)	NA
Cyanea copelandii ssp. *haleakalaensis*	Haha	U.S.A. (HI)	Campanulaceae	E	666	17.99(e)(1)	NA
Cyanea glabra	Haha	U.S.A. (HI)	Campanulaceae	E	666	17.99(e)(1)	NA
Cyanea grimesiana ssp. *grimesiana*	Haha	U.S.A. (HI)	Campanulaceae	E	592	17.99(c) and (e)(1)	NA
Cyanea hamatiflora ssp. *hamatiflora*	Haha	U.S.A. (HI)	Campanulaceae	E	666	17.99(e)(1)	NA
Cyanea lobata	Haha	U.S.A. (HI)	Campanulaceae	E	467	17.99(e)(1)	NA
Cyanea mceldowneyi	Haha	U.S.A. (HI)	Campanulaceae	E	467	17.99(e)(1)	NA
Cyrtandra munroi	Haiwale	U.S.A. (HI)	Gesneriaceae	E	467	17.99(e)(1)	NA
Dubautia plantaginea ssp. *humilis*	Naenae	U.S.A. (HI)	Asteraceae	E	666	17.99(e)(1)	NA
Flueggea neowawraea	Mehamehame	U.S.A. (HI)	Euphorbiaceae	E	559	17.99(a)(1), (c), and (e)(1).	NA
Geranium arboreum	Hawaiian red-flowered geranium.	U.S.A. (HI)	Geraniaceae	E	455	17.99(e)(1)	NA
Geranium multiflorum	Nohoanu	U.S.A. (HI)	Geraniaceae	E	467	17.99(e)(1)	NA
Gouania vitifolia	None	U.S.A. (HI)	Rhamnaceae	E	541	17.99(e)(1)	NA
Hedyotis coriacea	Kioele	U.S.A. (HI)	Rubiaceae	E	467	17.99(e)(1)	NA
Hedyotis mannii	Pilo	U.S.A. (HI)	Rubiaceae	E	480	17.99(e)(1)	NA
Hesperomannia arbuscula	None	U.S.A. (HI)	Asteraceae	E	448	17.99(e)(1)	NA
Hibiscus brackenridgei	Mao hau hele	U.S.A. (HI)	Malvaceae	E	559	17.99(c) and (e)(1)	NA
Ischaemum byrone	Hilo ischaemum	U.S.A. (HI)	Poaceae	E	532	17.99(a)(1), (c), and (e)(1).	NA
Isodendrion pyrifolium	Wahine noho kula	U.S.A. (HI)	Violaceae	E	532	17.99(c) and (e)(1)	NA
Kanaloa kahoolawensis	Kohe malama malama o kanaloa.	U.S.A. (HI)	Fabaceae	E	666	17.99(e)(2)	NA
Lipochaeta kamolensis	Nehe	U.S.A. (HI)	Asteraceae	E	467	17.99(e)(1)	NA
Lysimachia lydgatei	None	U.S.A. (HI)	Primulaceae	E	467	17.99(e)(1)	NA
Mariscus pennatiformis	None	U.S.A. (HI)	Cyperaceae	E	559	17.99(a)(1) and (e)(1)	NA
Melicope adscendens	Alani	U.S.A. (HI)	Rutaceae	E	565	17.99(e)(1)	NA
Melicope balloui	Alani	U.S.A. (HI)	Rutaceae	E	565	17.99(e)(1)	NA
Melicope knudsenii	Alani	U.S.A. (HI)	Rutaceae	E	530	17.99(a)(1) and (e)(1)	NA
Melicope mucronulata	Alani	U.S.A. (HI)	Rutaceae	E	467	17.99(c) and (e)(1)	NA
Melicope ovalis	Alani	U.S.A. (HI)	Rutaceae	E	565	17.99(e)(1)	NA
Neraudia sericea	None	U.S.A. (HI)	Urticaceae	E	559	17.99(c) and (e)(1)	NA
Nototrichium humile	Kului	U.S.A. (HI)	Amaranthaceae	E	448	17.99(e)(1)	NA
Peucedanum sandwicense	Makou	U.S.A. (HI)	Apiaceae	T	530	17.99(a)(1), (c), and (e)(1).	NA
Phyllostegia mannii	None	U.S.A. (HI)	Lamiaceae	E	480	17.99(c) and (e)(1)	NA

Species		Historic range	Family	Status	When listed	Critical habitat	Special rules
Scientific name	Common name						
Phyllostegia mollis	None	U.S.A. (HI)	Lamiaceae	E	448	17.99(e)(1)	NA
Plantago princeps	Laukahi kuahiwi	U.S.A. (HI)	Plantaginaceae	E	559	17.99(a)(1), (c), and (e)(1).	NA
Platanthera holochila	None	U.S.A. (HI)	Orchidaceae	E	592	17.99(a)(1) and (e)(1)	NA
Remya mauiensis	Maui remya	U.S.A. (HI)	Asteraceae	E	413	17.99(e)(1)	NA
Sanicula purpurea	None	U.S.A. (HI)	Apiaceae	E	592	17.99(e)(1)	NA
Schiedea haleakalensis	None	U.S.A. (HI)	Caryophyllaceae	E	467	17.99(e)(1)	NA
Sesbania tomentosa	Ohai	U.S.A. (HI)	Fabaceae	E	559	17.99(a)(1), (c), and (e)(1).	NA
Spermolepis hawaiiensis	None	U.S.A. (HI)	Apiaceae	E	559	17.99(a)(1), (c), and (e)(1).	NA
Tetramolopium capillare	Pamakani	U.S.A. (HI)	Asteraceae	E	555	17.99(e)(1)	NA
Tetramolopium remyi	None	U.S.A. (HI)	Asteraceae	E	435	17.96(b) and 17.99(e)(1).	NA
Vigna o-wahuensis	None	U.S.A. (HI)	Fabaceae	E	559	17.99(e)(1)	NA
Zanthoxylum hawaiiense	Ae	U.S.A. (HI)	Rutaceae	E	532	17.99(a)(1), (c), and (e)(1).	NA
FERNS AND ALLIES							
Asplenium fragile var. *insulare*	None	U.S.A. (HI)	Aspleniaceae	E	553	17.99(e)(1)	NA
Ctenitis squamigera	Pauoa	U.S.A. (HI)	Aspleniaceae	E	553	17.99(a)(1), (c), and (e)(1).	NA
Diellia erecta	Asplenium-leaved diellia.	U.S.A. (HI)	Aspleniaceae	E	559	17.99(a)(1), (c), and (e)(1).	NA
Diplazium molokaiense	None	U.S.A. (HI)	Aspleniaceae	E	553	17.99(a)(1), (c), and (e)(1).	NA
Phlegmariurus (=*Lycopodium,=Huperzia*) *mannii.*	Wawaeiole	U.S.A. (HI)	Lycopodiaceae	E	467	17.99(e)(1)	NA
Pteris lidgatei	None	U.S.A. (HI)	Adiantaceae	E	553	17.99(c) and (e)(1)	NA

■ 3. Amend § 17.99 as set forth below:
■ a. By revising the section heading to read as follows: and
■ b. By adding paragraphs (e) and (f) to read as follows:

§ 17.99 Critical habitat; plants on the islands of Kauai, Niihau, Molokai, Maui and Kahoolawe, HI.

* * * * *

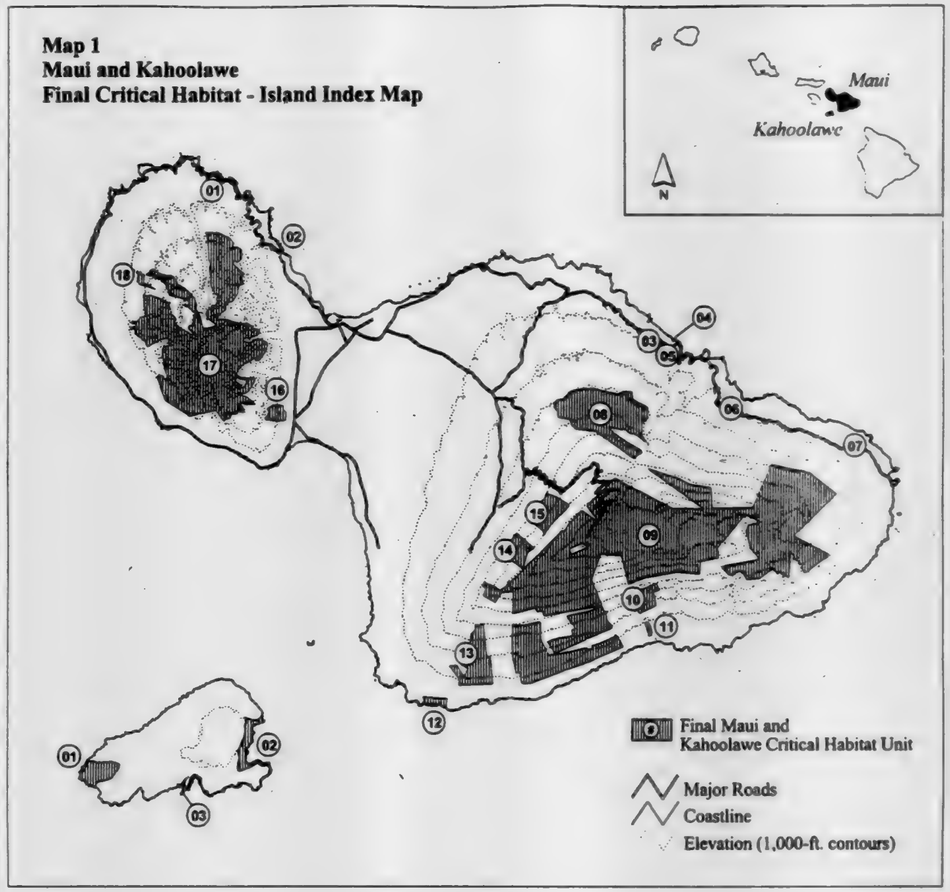
(e) *Maps and critical habitat unit descriptions for the islands of Maui and Kahoolawe, HI.* The following sections contain the legal descriptions of the critical habitat units designated for the islands of Maui and Kahoolawe, HI. Existing manmade features and structures within the boundaries of the mapped areas, such as buildings; roads; aqueducts and other water system features—including but not limited to pumping stations, irrigation ditches, pipelines, siphons, tunnels, water tanks, gaging stations, intakes, reservoirs, diversions, flumes, and wells; existing trails; campgrounds and their immediate surrounding landscaped area; scenic lookouts; remote helicopter landing sites; existing fences; telecommunications towers and associated structures and equipment; electrical transmission lines and distribution, and communication facilities and regularly maintained associated rights-of-way and access ways; radars and telemetry antennas; missile launch sites; arboreta and gardens; heiau (indigenous places of worship or shrines) and other archaeological sites; airports; other paved areas; and lawns and other rural residential landscaped areas do not contain the primary constituent elements described for each species in paragraph (f) of this section, except for the elevation primary constituent element, and therefore are not included in the critical habitat designations.

(1) *Maui.* Critical habitat units are described below. Coordinates in UTM Zone 4 with units in meters using North American Datum of 1983 (NAD83). The following map shows the general locations of the 136 critical habitat units designated on the island of Maui.

(i) **Note:** Map 1—Index map—follows:

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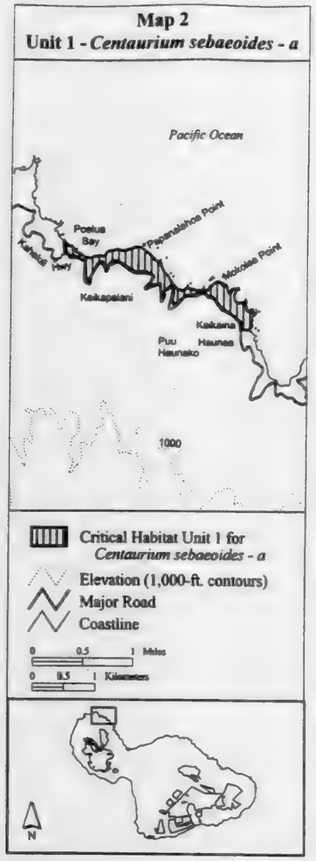
Map 1
Maui and Kahoolawe
Final Critical Habitat - Island Index Map



(ii) Maui 1—*Centaurium sebaeoides*—a (71 ha; 174 ac).

(A) Unit consists of the following 93 boundary points and the intermediate coastline: Start at 751112, 2326166; 754099, 2324756; 754053, 2324754; 754053, 2324754; 753973, 2324765; 753966, 2324891; 753771, 2325042; 753692, 2325076; 753669, 2325092; 753524, 2325277; 753446, 2325286; 753446, 2325286; 753388, 2325342; 753388, 2325342; 753381, 2325348; 753372, 2325347; 753367, 2325346; 753332, 2325352; 753325, 2325353; 753299, 2325342; 753270, 2325329; 753238, 2325323; 753221, 2325320; 753189, 2325314; 753085, 2325303; 753085, 2325303; 753085, 2325303; 753077, 2325294; 753069, 2325293; 752894, 2325153; 752865, 2325227; 752886, 2325361; 752884, 2325378; 752893, 2325419; 752878, 2325426; 752833, 2325446; 752831, 2325447; 752829, 2325444; 752827, 2325442; 752732, 2325363; 752732, 2325363; 752732, 2325363; 752725, 2325288; 752717, 2325268; 752711, 2325276; 752692, 2325301; 752671, 2325491; 752670, 2325500; 752591, 2325471; 752535, 2325474; 752535, 2325474; 752535, 2325474; 752475, 2325438; 752566, 2325581; 752580, 2325602; 752559, 2325613; 752455, 2325669; 752444, 2325674; 752441, 2325676; 752268, 2325670; 751992, 2325839; 751990, 2325840; 751898, 2325842; 751835, 2325769; 751804, 2325709; 751734, 2325826; 751730, 2325834; 751715, 2325826; 751714, 2325826; 751713, 2325825; 751653, 2325794; 751526, 2325562; 751530, 2325511; 751525, 2325510; 751492, 2325530; 751475, 2325549; 751475, 2325549; 751461, 2325680; 751461, 2325835; 751461, 2325837; 751461, 2325837; 751461, 2325837; 751273, 2325927; 751251, 2325921; 751218, 2325911; 751187, 2325954; 751173, 2325973; 751154, 2325968; 751123, 2325981; 751122, 2325980; 751117, 2326075; 751115, 2326111; 751112, 2326166; return to starting point.

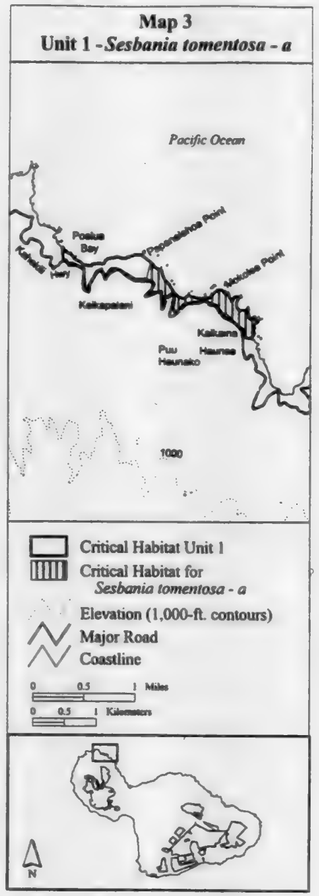
(B) **Note:** Map 2 follows:



(iii) Maui 1—*Sesbania tomentosa*—a (38 ha; 94 ac).

(A) Unit consists of the following 54 boundary points and the intermediate coastline: Start at 752505, 2325951; 754099, 2324756; 754053, 2324754; 754053, 2324754; 753994, 2324762; 753966, 2324896; 753718, 2325117; 753656, 2325144; 753550, 2325285; 753389, 2325341; 753388, 2325342; 753384, 2325343; 753372, 2325347; 753346, 2325356; 753332, 2325352; 753332, 2325352; 753325, 2325353; 753300, 2325342; 753299, 2325342; 753238, 2325323; 753231, 2325321; 753221, 2325320; 753036, 2325303; 752894, 2325153; 752865, 2325227; 752886, 2325361; 752882, 2325396; 752886, 2325418; 752878, 2325426; 752850, 2325454; 752833, 2325446; 752829, 2325444; 752753, 2325409; 752739, 2325369; 752739, 2325369; 752732, 2325363; 752730, 2325339; 752708, 2325279; 752708, 2325280; 752700, 2325498; 752671, 2325491; 752593, 2325471; 752535, 2325474; 752535, 2325474; 752487, 2325446; 752567, 2325578; 752566, 2325581; 752559, 2325613; 752549, 2325657; 752455, 2325669; 752443, 2325670; 752444, 2325674; 752504, 2325951; 752505, 2325951; return to starting point.

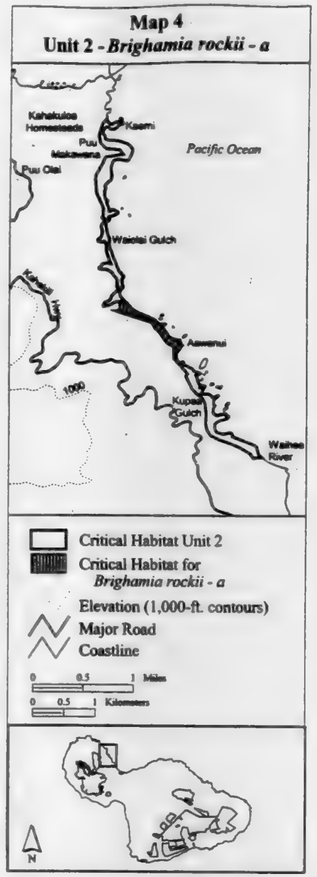
(B) **Note:** Map 3 follows:



(iv) Maui 2—*Brighamia rockii*—a (6 ha; 14 ac).

(A) Unit consists of the following 29 boundary points and the intermediate coastline: Start at 757892, 2319612; 757868, 2319613; 757861, 2319624; 757862, 2319690; 757862, 2319690; 757794, 2319720; 757771, 2319757; 757765, 2319756; 757726, 2319818; 757700, 2319852; 757688, 2319868; 757645, 2319908; 757645, 2319908; 757626, 2319942; 757626, 2319942; 757371, 2320024; 757371, 2320024; 757333, 2320052; 757268, 2320058; 757266, 2320058; 757272, 2320064; 757278, 2320070; 757288, 2320086; 757296, 2320107; 757292, 2320137; 757312, 2320161; 757387, 2320119; 757388, 2320120; 757892, 2319612; return to starting point.

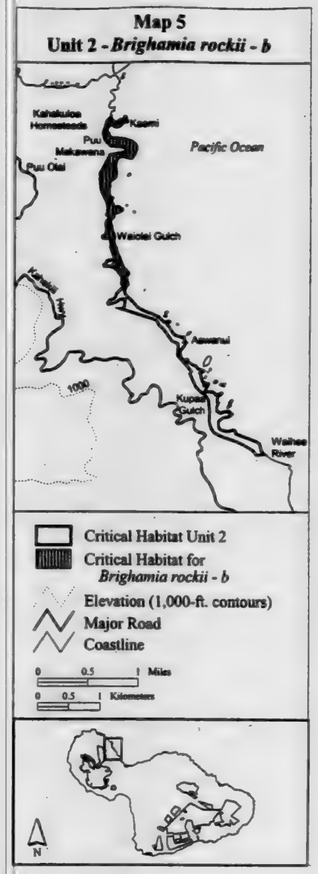
(B) **Note:** Map 4 follows:



(v) Maui 2—*Brighamia rockii*—b (17 ha; 42 ac).

(A) Unit consists of the following 47 boundary points and the intermediate coastline: Start at 757133, 2322103; 757301, 2320290; 757290, 2320310; 757286, 2320313; 757279, 2320318; 757264, 2320330; 757264, 2320389; 757248, 2320415; 757247, 2320416; 757241, 2320425; 757211, 2320467; 757209, 2320469; 757193, 2320485; 757174, 2320504; 757148, 2320525; 757157, 2320542; 757190, 2320563; 757188, 2320568; 757183, 2320582; 757167, 2320630; 757140, 2320705; 757145, 2320746; 757139, 2320784; 757137, 2320794; 757102, 2320856; 757102, 2320918; 757125, 2321030; 757126, 2321037; 757127, 2321042; 757107, 2321136; 757104, 2321149; 757082, 2321207; 757031, 2321316; 757019, 2321449; 757019, 2321491; 757069, 2321583; 757108, 2321658; 757109, 2321661; 757127, 2321696; 757312, 2321727; 757278, 2321778; 757132, 2321784; 757073, 2321843; 757052, 2321922; 757086, 2322052; 757133, 2322103; 757133, 2322103; return to starting point.

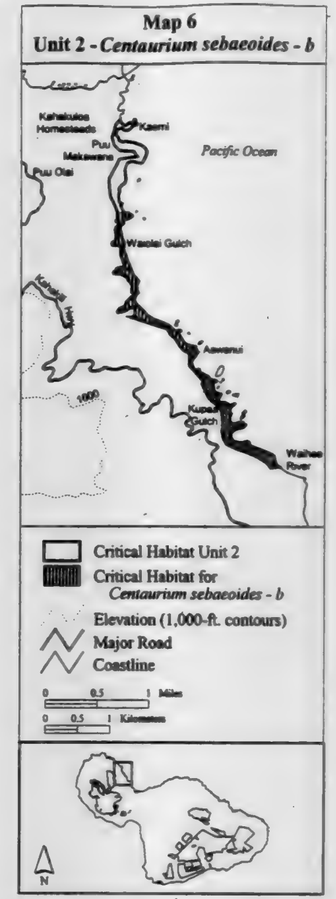
(B) **Note:** Map 5 follows:



(vi) Maui 2—*Centaurium sebaeoides*—b (27 ha; 66 ac).

(A) Unit consists of the following 106 boundary points and the intermediate coastline: Start at 757167, 2321145; 758803, 2318519; 758719, 2318510; 758683, 2318554; 758580, 2318620; 758534, 2318638; 758445, 2318673; 758344, 2318706; 758258, 2318748; 758224, 2318802; 758205, 2318870; 758210, 2318971; 758198, 2319087; 758172, 2319133; 758100, 2319189; 758059, 2319236; 757995, 2319372; 758013, 2319396; 758013, 2319396; 758013, 2319396; 757861, 2319563; 757861, 2319624; 757862, 2319690; 757794, 2319720; 757771, 2319757; 757727, 2319831; 757700, 2319852; 757658, 2319885; 757645, 2319908; 757626, 2319942; 757371, 2320024; 757267, 2320057; 757268, 2320058; 757272, 2320064; 757287, 2320085; 757291, 2320139; 757294, 2320164; 757273, 2320164; 757242, 2320158; 757201, 2320133; 757176, 2320121; 757115, 2320110; 757111, 2320116; 757132, 2320151; 757173, 2320169; 757193, 2320192; 757198, 2320217; 757211, 2320231; 757274, 2320293; 757290, 2320303; 757286, 2320313; 757285, 2320316; 757279, 2320318; 757259, 2320326; 757259, 2320339; 757260, 2320395; 757247, 2320416; 757243, 2320423; 757241, 2320425; 757213, 2320452; 757209, 2320469; 757205, 2320484; 757193, 2320485; 757184, 2320485; 757169, 2320504; 757152, 2320502; 757143, 2320509; 757089, 2320510; 757068, 2320516; 757067, 2320526; 757083, 2320535; 757093, 2320554; 757100, 2320567; 757138, 2320580; 757188, 2320568; 757191, 2320567; 757183, 2320582; 757171, 2320606; 757168, 2320622; 757167, 2320630; 757156, 2320685; 757142, 2320706; 757148, 2320745; 757139, 2320784; 757136, 2320795; 757126, 2320807; 757087, 2320802; 757054, 2320808; 757050, 2320822; 757051, 2320829; 757079, 2320846; 757094, 2320878; 757098, 2320909; 757087, 2320942; 757083, 2320967; 757092, 2320990; 757125, 2321030; 757127, 2321033; 757126, 2321037; 757124, 2321043; 757096, 2321047; 757094, 2321055; 757103, 2321074; 757107, 2321136; 757107, 2321139; 757167, 2321145; return to starting point.

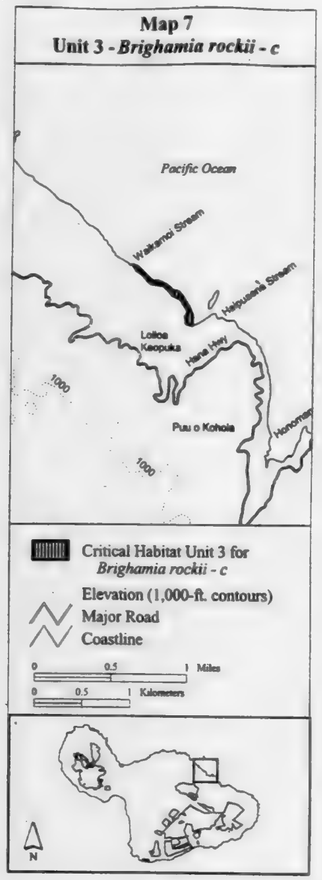
(B) **Note:** Map 6 follows:



(vii) Maui 3—*Brighamia rockii*—c (4 ha; 9 ac).

(A) Unit consists of the following 31 boundary points and the intermediate coastline: Start at 793379, 2311347; 793988, 2310722; 793937, 2310735; 793921, 2310750; 793918, 2310815; 793926, 2310829; 793943, 2310864; 793938, 2310875; 793940, 2310881; 793940, 2310881; 793940, 2310881; 793940, 2310881; 793931, 2310894; 793906, 2310935; 793885, 2310962; 793883, 2310973; 793856, 2311001; 793796, 2311026; 793781, 2311037; 793781, 2311037; 793768, 2311053; 793690, 2311134; 793635, 2311144; 793569, 2311152; 793544, 2311158; 793534, 2311167; 793459, 2311247; 793399, 2311287; 793362, 2311345; 793379, 2311347; return to starting point.

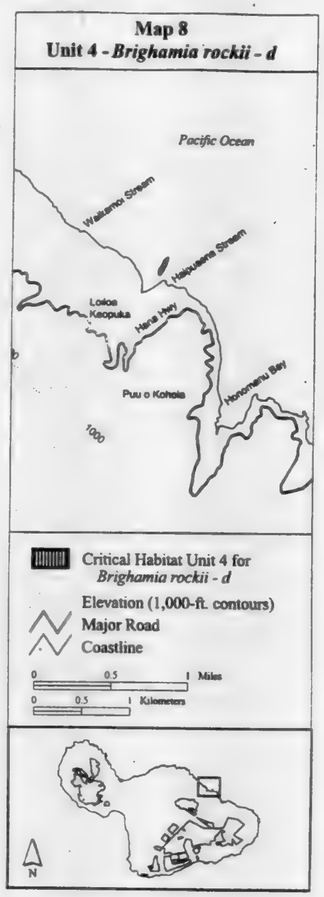
(B) **Note:** Map 7 follows:



(viii) Maui 4—*Brighamia rockii*—d (1 ha; 2 ac).

(A) Unit consists of the entire offshore island located at approximately: 794212, 2310986.

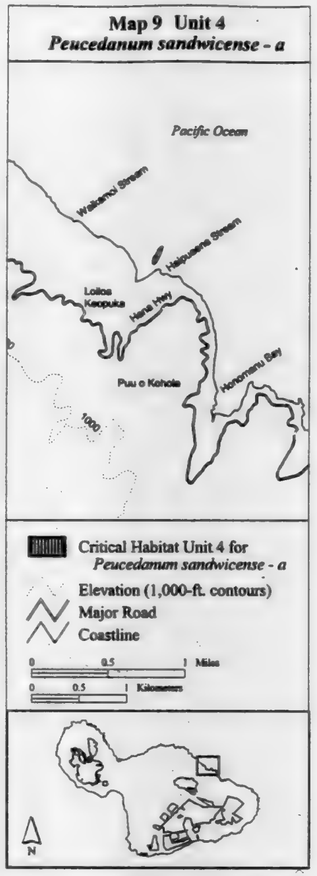
(B) **Note:** Map 8 follows:



(ix) Maui 4—*Peucedanum sandwicense*—a (1 ha; 2 ac).

(A) Unit consists of the entire offshore island located at approximately: 794212, 2310986.

(B) **Note:** Map 9 follows:

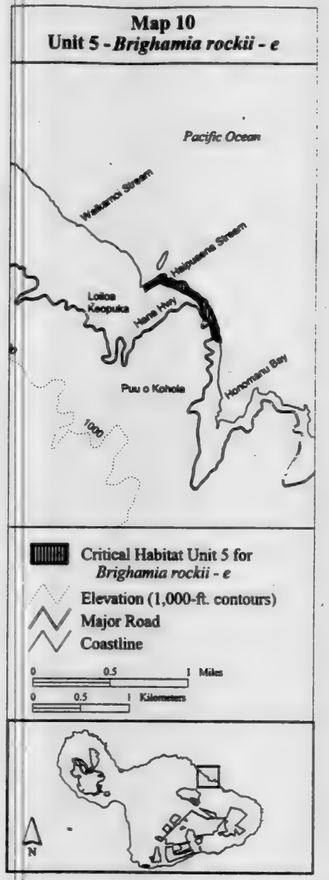


(x) Maui 5—*Brighamia rockii*—e (6 ha; 15 ac).

(A) Unit consists of the following 46 boundary points and the intermediate coastline: Start at 794814, 2310166; 794778, 2310176; 794770, 2310182; 794756, 2310193; 794756, 2310217; 794742, 2310240; 794739, 2310261; 794733, 2310282; 794733, 2310282; 794733, 2310282; 794732, 2310303; 794731, 2310313; 794728, 2310324; 794728, 2310324; 794728, 2310324; 794721, 2310337; 794712, 2310344; 794707, 2310362; 794706, 2310368; 794706, 2310368; 794706, 2310368; 794665, 2310393; 794660, 2310404; 794652, 2310413; 794642, 2310419; 794632, 2310428; 794632, 2310428; 794629, 2310436; 794625, 2310446; 794622, 2310523; 794573, 2310595; 794492, 2310647; 794439, 2310671; 794411, 2310685; 794335, 2310724; 794326, 2310728; 794266, 2310740;

794242, 2310754; 794222, 2310764; 794210, 2310773; 794177, 2310772; 794066, 2310705; 794050, 2310688; 794040, 2310715; 794043, 2310738; 794043, 2310738; return to starting point.

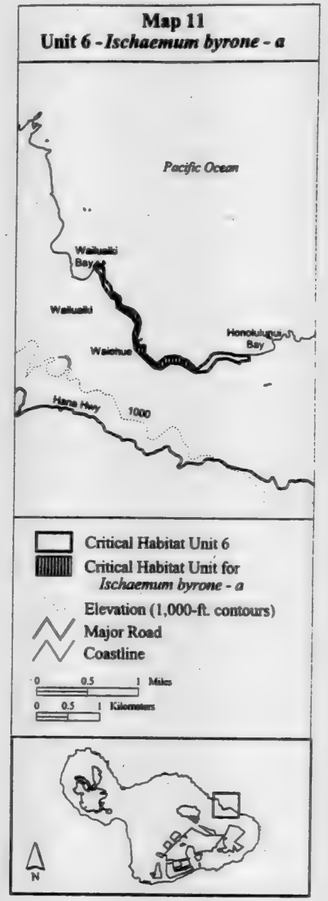
(B) **Note:** Map 10 follows:



(xi) Maui 6—*Ischaemum byrone*—a (17 ha; 43 ac).

(A) Unit consists of the following 34 boundary points and the intermediate coastline: Start at 799822, 2306499; 801132, 2305284; 801131, 2305234; 801117, 2305232; 801048, 2305275; 800891, 2305373; 800731, 2305387; 800581, 2305284; 800517, 2305297; 800481, 2305305; 800472, 2305307; 800472, 2305307; 800265, 2305505; 800166, 2305599; 800166, 2305599; 800166, 2305599; 800159, 2305694; 800147, 2305843; 800147, 2305849; 800147, 2305849; 800190, 2305990; 800138, 2306094; 800138, 2306094; 800060, 2306148; 800001, 2306188; 800001, 2306188; 799917, 2306240; 799879, 2306263; 799874, 2306386; 799796, 2306425; 799795, 2306425; 799795, 2306425; 799795, 2306425; 799822, 2306499; return to starting point.

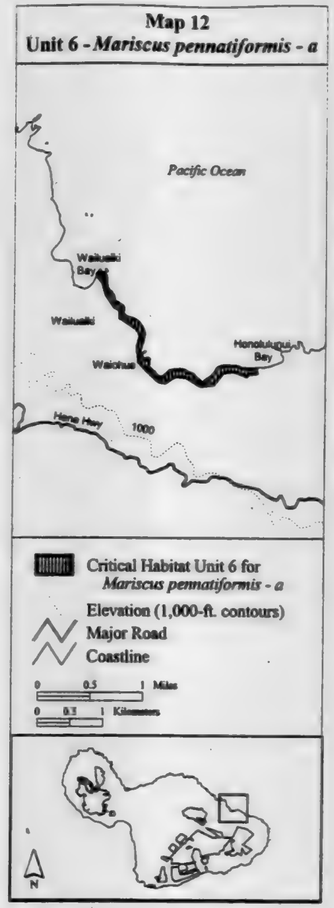
(B) **Note:** Map 11 follows:



(xii) Maui 6—*Mariscus pennatiformis*—a (30 ha; 75 ac).

(A) Unit consists of the following 47 boundary points and the intermediate coastline: Start at 799656, 2306630; 799606, 2306800; 799516, 2306902; 799516, 2306902; 801972, 2305512; 801972, 2305512; 801981, 2305435; 801840, 2305416; 801825, 2305385; 801734, 2305421; 801628, 2305464; 801558, 2305455; 801466, 2305444; 801320, 2305260; 801117, 2305232; 801067, 2305263; 801048, 2305275; 800896, 2305373; 800734, 2305390; 800586, 2305288; 800517, 2305297; 800517, 2305297; 800481, 2305305; 800481, 2305305; 800289, 2305482; 800265, 2305505; 800171, 2305595; 800159, 2305694; 800150, 2305769; 800147, 2305842; 800147, 2305843; 800171, 2305927; 800190, 2305990; 800156, 2306059; 800136, 2306101; 800060, 2306148; 800060, 2306148; 800001, 2306188; 799917, 2306240; 799917, 2306240; 799886, 2306262; 799874, 2306391; 799795, 2306425; 799789, 2306428; 799723, 2306527; 799721, 2306530; 799656, 2306630; return to starting point.

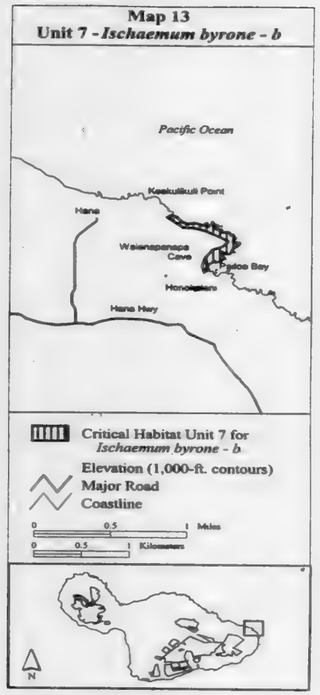
(B) **Note:** Map 12 follows:



(xiii) Maui 7—*Ischaemum byrone*—b (11 ha; 27 ac).

(A) Unit consists of the following 15 boundary points and the intermediate coastline: Start at 811597, 2302341; 811983, 2301617; 811982, 2301617; 811936, 2301585; 811916, 2301671; 811945, 2301774; 812026, 2301885; 812133, 2301927; 812193, 2301995; 812092, 2302061; 811938, 2302135; 811849, 2302164; 811717, 2302172; 811546, 2302307; 811597, 2302341; return to starting point.; return to starting point.

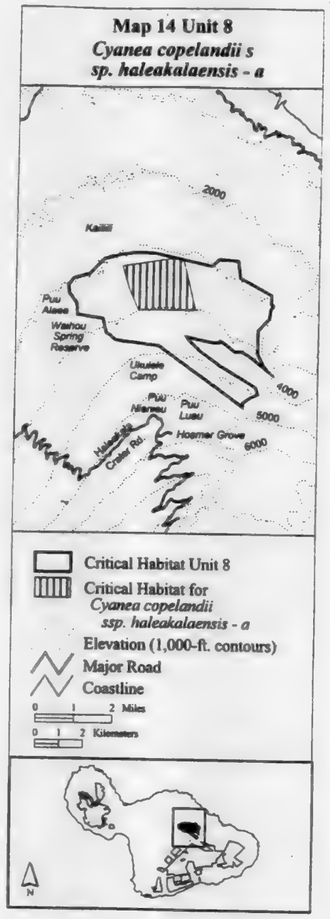
(B) **Note:** Map 13 follows:



(xiv) Maui 8—*Cyanea copelandii* ssp. *haleakalaensis*—a (501 ha; 1,238 ac).

(A) Unit consists of the following 10 boundary points: Start at 787682, 2306203; 787708, 2306208; 787902, 2306166; 787967, 2306151; 788003, 2306143; 788005, 2306134; 788521, 2304072; 786138, 2304072; 785730, 2304957; 785457, 2305842; return to starting point.

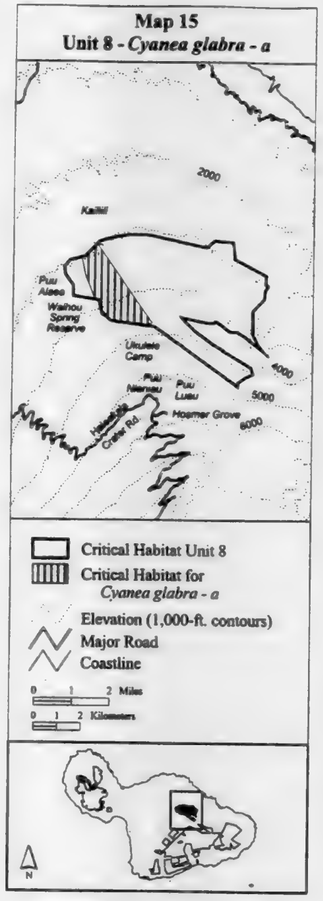
(B) **Note:** Map 14 follows:



(xv) Maui 8—*Cyanea glabra*—a (450 ha; 1,112 ac).

(A) Unit consists of the following 29 boundary points: Start at 783933, 2305472; 783933, 2305473; 783961, 2305480; 784075, 2305511; 784100, 2305536; 784575, 2306024; 784578, 2306020; 786938, 2302713; 786676, 2302611; 786661, 2302613; 786491, 2302633; 786339, 2302653; 786280, 2302660; 786106, 2302680; 786032, 2302690; 785884, 2302707; 785796, 2302718; 785680, 2302732; 785510, 2302753; 785357, 2302772; 785246, 2302785; 785242, 2302786; 785188, 2302835; 784760, 2303276; 784660, 2303678; 784487, 2303704; 784079, 2304760; 784008, 2305132; 783955, 2305292; return to starting point.

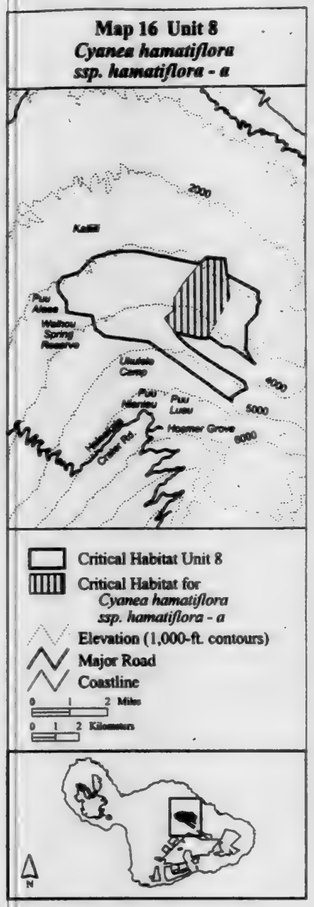
(B) **Note:** Map 15 follows:



(xvi) Maui 8—*Cyanea hamatiflora* ssp. *hamatiflora*—a (611 ha; 1,509 ac).

(A) Unit consists of the following 17 boundary points: Start at 789198, 2305890; 789215, 2305911; 789515, 2306162; 790281, 2306097; 790352, 2305511; 790360, 2305448; 790364, 2305412; 790482, 2304451; 789577, 2302791; 789530, 2302705; 789179, 2302726; 788179, 2302942; 788149, 2302948; 787716, 2303565; 788077, 2303893; 788127, 2304437; 788521, 2305059; return to starting point.

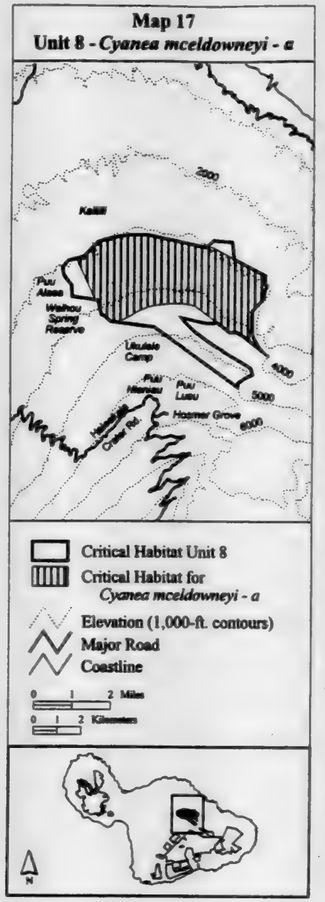
(B) **Note:** Map 16 follows:



(xvii) Maui 8—*Cyanea maeldowneyi*—a (2,127 ha; 5,256 ac).

(A) Unit consists of the following 56 boundary points: Start at 784578, 2306020; 784691, 2306136; 785400, 2306325; 785976, 2306411; 786598, 2306408; 786651, 2306403; 786837, 2306385; 787682, 2306203; 788005, 2306134; 789162, 2305885; 789198, 2305890; 789297, 2305904; 789492, 2305870; 790364, 2305412; 791696, 2304712; 791696, 2304710; 791671, 2304359; 791781, 2304297; 791780, 2304294; 791653, 2304101; 791627, 2303742; 791158, 2303230; 791158, 2302616; 791149, 2302250; 791407, 2301760; 791550, 2301582; 790766, 2302188; 790511, 2302348; 790503, 2302354; 790502, 2302354; 790198, 2302345; 790198, 2302344; 789827, 2302625; 788750, 2303441; 788540, 2303493; 788181, 2303547; 787765, 2303538; 787076, 2303479; 786758, 2303386; 786339, 2303226; 786095, 2303051; 785740, 2302863; 785554, 2302748; 785510, 2302753; 785357, 2302772; 785246, 2302785; 785206, 2302791; 785067, 2302898; 784947, 2303017; 784875, 2303047; 784803, 2303101; 784660, 2303678; 784551, 2303694; 783794, 2305326; 784087, 2305516; 784183, 2305615; return to starting point.

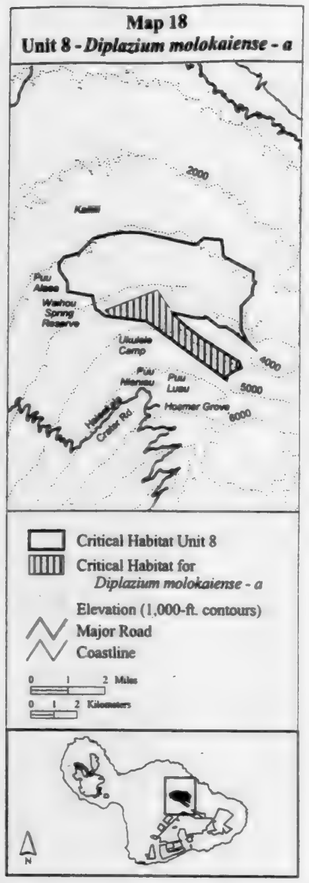
(B) **Note:** Map 17 follows:



(xviii) Maui 8—*Diplazium molokaiense*—a (574 ha; 1,419 ac).

(A) Unit consists of the following 91 boundary points: Start at 788179, 2302942; 788284, 2302790; 788714, 2302383; 789527, 2301802; 789911, 2301569; 789906, 2301556; 791083, 2300859; 791083, 2300858; 791164, 2300577; 790858, 2300440; 790545, 2300227; 790534, 2300210; 790469, 2300111; 790425, 2300143; 790396, 2300164; 790270, 2300253; 790224, 2300285; 790198, 2300304; 790089, 2300382; 790055, 2300406; 790028, 2300425; 789912, 2300508; 789880, 2300531; 789749, 2300625; 789706, 2300655; 789647, 2300697; 789572, 2300752; 789531, 2300780; 789502, 2300802; 789471, 2300823; 789458, 2300832; 789393, 2300880; 789355, 2300906; 789339, 2300917; 789210, 2301009; 789182, 2301030; 789152, 2301051; 789038, 2301132; 789009, 2301153; 788981, 2301173; 788864, 2301257; 788834, 2301279; 788804, 2301301; 788692, 2301381; 788635, 2301422; 788527, 2301498; 788489, 2301526; 788434, 2301565; 788343, 2301629; 788313, 2301650; 788288, 2301668; 788190, 2301738; 788141, 2301774; 788117, 2301792; 787998, 2301875; 787965, 2301899; 787938, 2301919; 787838, 2301989; 787796, 2302020; 787771, 2302038; 787661, 2302116; 787622, 2302144; 787597, 2302162; 787492, 2302236; 787423, 2302286; 787307, 2302369; 787253, 2302408; 787141, 2302489; 787105, 2302512; 787079, 2302531; 787026, 2302568; 787026, 2302569; 786951, 2302579; 786738, 2302604; 786661, 2302613; 786491, 2302633; 786339, 2302653; 786280, 2302660; 786106, 2302680; 786032, 2302690; 785884, 2302707; 785796, 2302718; 785680, 2302732; 785510, 2302753; 785504, 2302754; 785239, 2303033; 785221, 2303039; 785230, 2303043; 785221, 2303052; 785248, 2303050; 787496, 2303927; return to starting point.

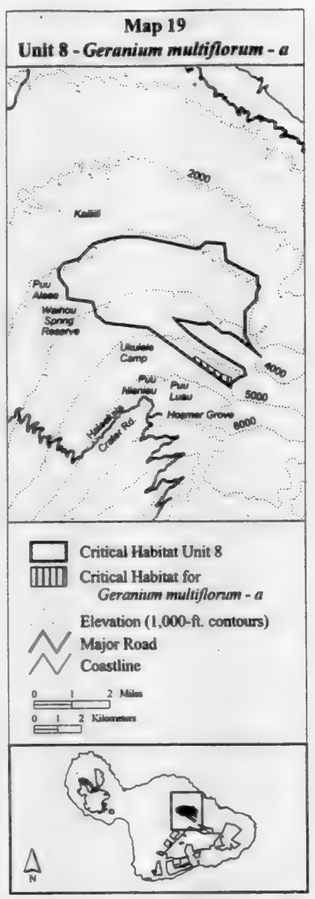
(B) **Note:** Map 18 follows:



(xix) Maui 8—*Geranium multiflorum*—a (46 ha; 113 ac).

(A) Unit consists of the following 32 boundary points: Start at 790534, 2300210; 790525, 2300071; 790425, 2300143; 790396, 2300164; 790270, 2300253; 790224, 2300285; 790198, 2300304; 790089, 2300382; 790055, 2300406; 790028, 2300425; 789912, 2300508; 789880, 2300531; 789749, 2300625; 789706, 2300655; 789647, 2300697; 789572, 2300752; 789531, 2300780; 789502, 2300802; 789466, 2300826; 789393, 2300880; 789355, 2300906; 789339, 2300917; 789210, 2301009; 789182, 2301030; 789152, 2301051; 789038, 2301132; 789009, 2301153; 788981, 2301173; 788881, 2301245; 789034, 2301393; 790128, 2300638; 790551, 2300470; return to starting point.

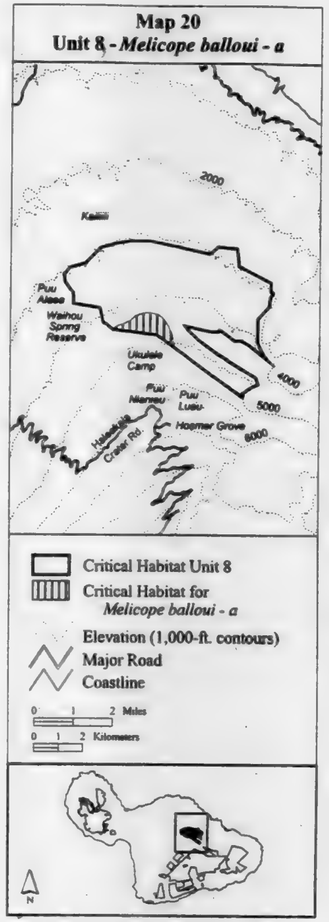
(B) **Note:** Map 19 follows:



(xx) Maui 8—*Melicope balloui*—a (151 ha; 374 ac).

(A) Unit consists of the following 42 boundary points: Start at 787661, 2302116; 787622, 2302144; 787597, 2302162; 787492, 2302236; 787423, 2302286; 787307, 2302369; 787253, 2302408; 787141, 2302489; 787105, 2302512; 787079, 2302531; 787026, 2302568; 787026, 2302569; 786951, 2302579; 786738, 2302604; 786661, 2302613; 786491, 2302633; 786339, 2302653; 786280, 2302660; 786106, 2302680; 786032, 2302690; 785884, 2302707; 785796, 2302718; 785680, 2302732; 785510, 2302753; 785357, 2302772; 785248, 2302785; 785306, 2302888; 785406, 2302943; 785630, 2303011; 785923, 2303157; 786143, 2303330; 786357, 2303424; 786541, 2303481; 786781, 2303481; 787100, 2303408; 787288, 2303230; 787513, 2302911; 787513, 2302859; 787634, 2302639; 787702, 2302252; 787717, 2302148; 787677, 2302105; return to starting point.

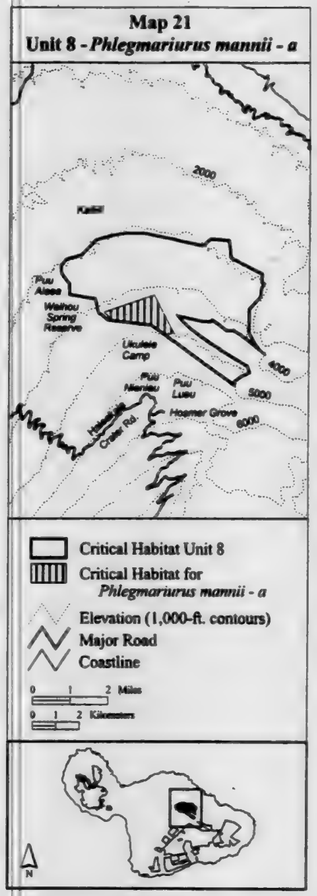
(B) **Note:** Map 20 follows:



(xxi) Maui 8—*Phlegmariurus mannii*—a (221 ha; 547 ac).

(A) Unit consists of the following 28 boundary points: Start at 787622, 2302144; 787597, 2302162; 787492, 2302236; 787423, 2302286; 787307, 2302369; 787253, 2302408; 787141, 2302489; 787105, 2302512; 787079, 2302531; 787026, 2302568; 787026, 2302569; 786951, 2302579; 786738, 2302604; 786661, 2302613; 786491, 2302633; 786339, 2302653; 786280, 2302660; 786106, 2302680; 786032, 2302690; 785884, 2302707; 785796, 2302718; 785680, 2302732; 785510, 2302753; 785414, 2302765; 785047, 2303112; 787157, 2303805; 787966, 2302253; 787643, 2302129; return to starting point.

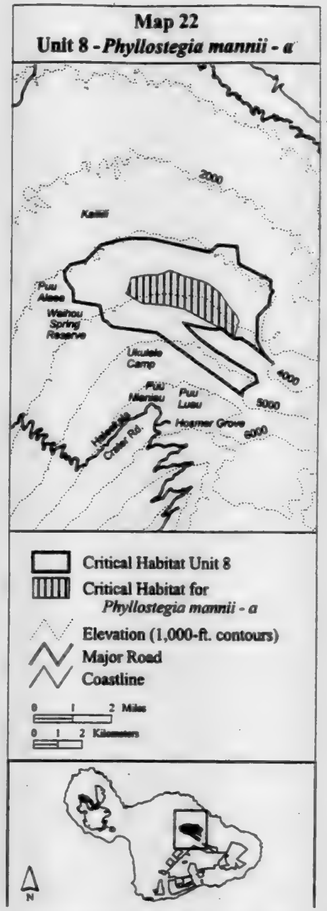
(B) **Note:** Map 21 follows:



(xxii) Maui 8—*Phyllostegia mannii*—a (570 ha; 1,407 ac).

(A) Unit consists of the following 26 boundary points: Start at 789827, 2302625; 789610, 2302774; 789577, 2302791; 788148, 2303539; 787484, 2303692; 786396, 2303777; 785739, 2304188; 785794, 2304239; 785860, 2304480; 785944, 2304792; 786485, 2304912; 787026, 2304936; 787302, 2305014; 787488, 2305093; 787615, 2305093; 788065, 2304906; 788906, 2304672; 789100, 2304588; 789615, 2304203; 789825, 2303873; 790084, 2303525; 790288, 2303290; 790396, 2303032; 790324, 2302870; 790294, 2302671; 790206, 2302365; return to starting point.

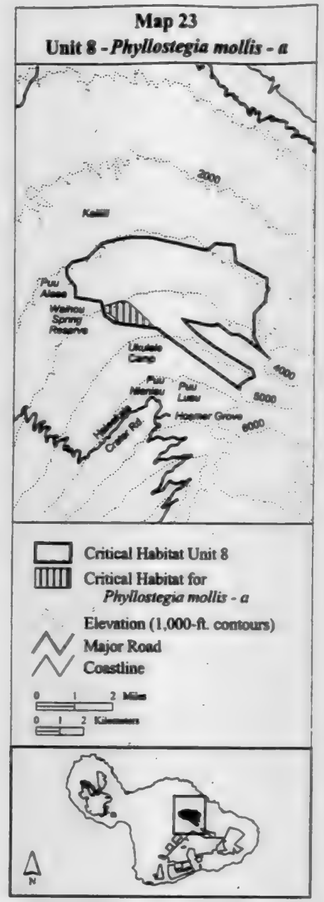
(B) **Note:** Map 22 follows:



(xxiii) Maui 8—*Phyllostegia mollis*—a (128 ha; 316 ac).

(A) Unit consists of the following 20 boundary points: Start at 785938, 2302701; 785884, 2302707; 785796, 2302718; 785680, 2302732; 785510, 2302753; 785357, 2302772; 785247, 2302785; 785274, 2302870; 785281, 2302986; 784974, 2303191; 784840, 2303242; 784725, 2303477; 785401, 2303682; 785589, 2303726; 785845, 2303639; 786322, 2303224; 786467, 2303065; 786660, 2302911; 786775, 2302757; 786962, 2302596; return to starting point.

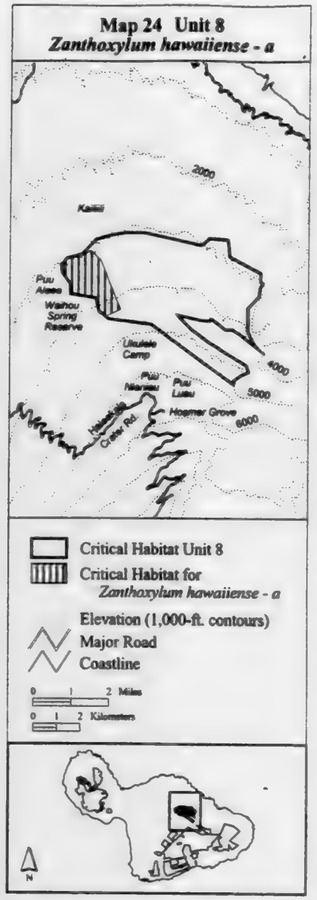
(B) **Note:** Map 23 follows:



(xxiv) Maui 8—*Zanthoxylum hawaiiense*—a (362 ha; 895 ac)

(A) Unit consists of the following 24 boundary points: Start at 783221, 2305104; 783425, 2305329; 783765, 2305418; 783933, 2305472; 783961, 2305480; 783967, 2305482; 784075, 2305511; 784083, 2305519; 784480, 2305646; 784882, 2305244; 785713, 2303193; 785079, 2302889; 785056, 2302911; 784947, 2303017; 784803, 2303101; 784660, 2303678; 783584, 2303838; 783583, 2303838; 783559, 2304310; 783487, 2304405; 783488, 2304406; 783486, 2304406; 783228, 2304747; 783196, 2305076; return to starting point.

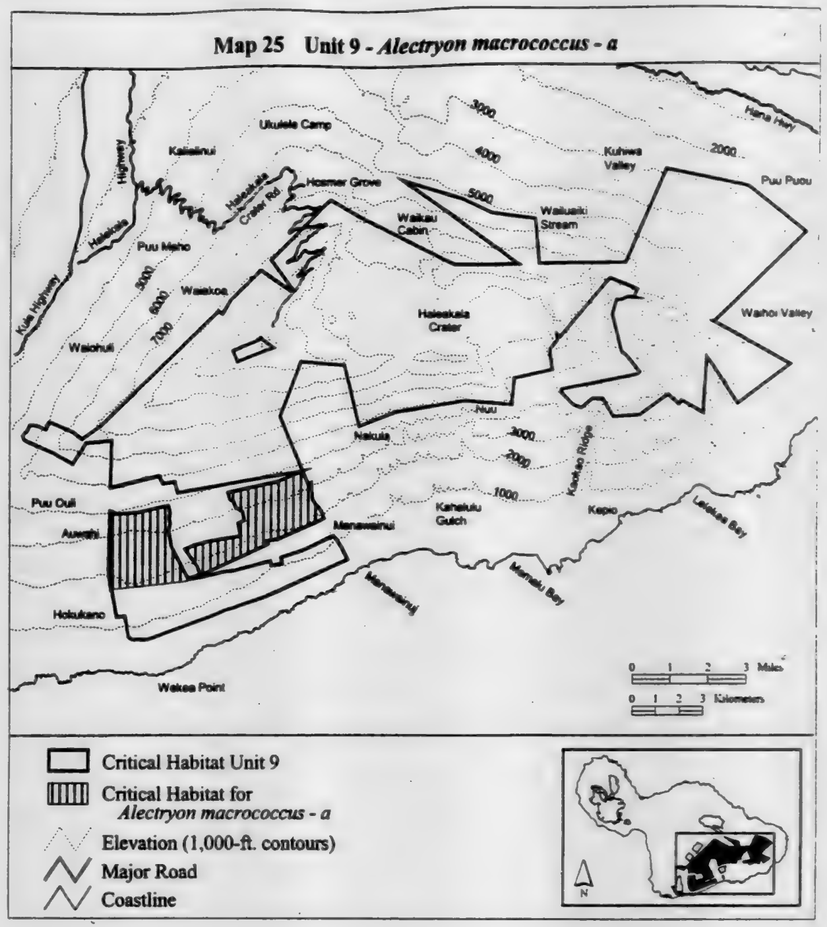
(B) **Note:** Map 24 follows:



(xxv) Maui 9—*Alectryon macrococcus*—a (1,893 ha; 4,678 ac).

(A) Unit consists of the following 87 boundary points: Start at 787503, 2286804; 787552, 2286825; 787793, 2286254; 787882, 2286300; 787924, 2286322; 787969, 2285836; 787982, 2285645; 788112, 2285409; 788112, 2285408; 788269, 2285261; 788387, 2285086; 788485, 2284821; 788486, 2284815; 788116, 2284626; 788115, 2284625; 786708, 2284032; 786514, 2283946; 786511, 2283963; 786509, 2283964; 786072, 2283891; 786071, 2283889; 786091, 2283757; 785721, 2283591; 782955, 2282353; 782675, 2282228; 779507, 2281898; 779470, 2281894; 779468, 2281911; 779453, 2282018; 779433, 2282157; 779422, 2282233; 779414, 2282298; 779404, 2282370; 779384, 2282500; 779372, 2282586; 779369, 2282603; 779370, 2282710; 779372, 2282813; 779377, 2282926; 779379, 2283091; 779379, 2283156; 779384, 2283260; 779385, 2283362; 779386, 2283461; 779389, 2283570; 779391, 2283672; 779394, 2283769; 779397, 2283875; 779398, 2283992; 779401, 2284094; 779401, 2284203; 779403, 2284241; 779406, 2284322; 779413, 2284560; 779419, 2284768; 779424, 2284997; 779552, 2285008; 780605, 2285094; 781897, 2285373; 781955, 2285060; 781922, 2284849; 781966, 2284605; 781901, 2284319; 782031, 2283673; 782383, 2282985; 782730, 2282341; 782731, 2282340; 783230, 2282513; 783231, 2282514; 783231, 2282515; 783112, 2282851; 782588, 2283565; 782997, 2283742; 783717, 2283910; 784941, 2284105; 784942, 2284105; 784943, 2284107; 784824, 2284610; 785088, 2284723; 785089, 2284725; 785013, 2285109; 785013, 2285110; 784720, 2285273; 784639, 2285527; 784482, 2285614; 784385, 2285911; 786496, 2286367; return to starting point.

(B) **Note:** Map 25 follows:



(xxvi) Maui 9—*Argyroxiphium sandwicense* ssp. *macrocephalum*—a (9,041 ha; 22,340 ac).

(A) Unit consists of the following 159 boundary points: Start at 778986, 2288684; 778989, 2288687; 779048, 2288746; 779070, 2288768; 780400, 2290082; 780392, 2290088; 780380, 2290097; 781358, 2291060; 781772, 2291467; 783957, 2293620; 784132, 2293514; 784471, 2294125; 785753, 2295387; 785766, 2295377; 785773, 2295373; 785784, 2295366; 785798, 2295356; 785812, 2295346; 785831, 2295333; 785843, 2295325; 785871, 2295305; 785887, 2295294; 785904, 2295283; 785906, 2295281; 785922, 2295270; 785931, 2295264; 785949, 2295252; 785962, 2295242; 785975, 2295233; 785995, 2295220; 786007, 2295211; 786012, 2295208; 786032, 2295194; 786034, 2295193; 786047, 2295183; 786054, 2295179; 786071, 2295167; 786099, 2295147; 786102, 2295145; 786104, 2295144; 786108, 2295141; 786113, 2295137; 786127, 2295127; 786136, 2295121; 786146, 2295115; 786153, 2295110; 786155, 2295108; 786173, 2295096; 786193, 2295082; 786225, 2295060; 786238, 2295051; 786290, 2295015; 786293, 2295013; 786317, 2294997; 786332, 2294986; 786344, 2294978; 786351, 2294973; 786354, 2294971; 786363, 2294965; 786368, 2294961; 786378, 2294954; 786390, 2294945; 786395, 2294943; 786413, 2294930; 786415, 2294929; 786420, 2294926; 786424, 2294923; 786464, 2294895; 786474, 2294887; 786483, 2294882; 786493, 2294875; 786507, 2294865; 786518, 2294857; 786525, 2294853; 786537, 2294844; 786558, 2294830; 786582, 2294813; 786597, 2294803; 786600, 2294801; 786616, 2294789; 786634, 2294777; 786668, 2294753; 786701, 2294730; 786716, 2294721; 786759, 2294691; 786775, 2294680; 786777, 2294679; 786791, 2294668; 786810, 2294655; 786824, 2294646; 786843, 2294633; 786895, 2294597; 786905, 2294591; 786915, 2294583; 786917, 2294582; 786938, 2294566; 786957, 2294554; 786990, 2294532; 787001, 2294523; 787015, 2294513; 787022, 2294508; 787024, 2294508; 787025, 2294508; 787038, 2294530; 787082,

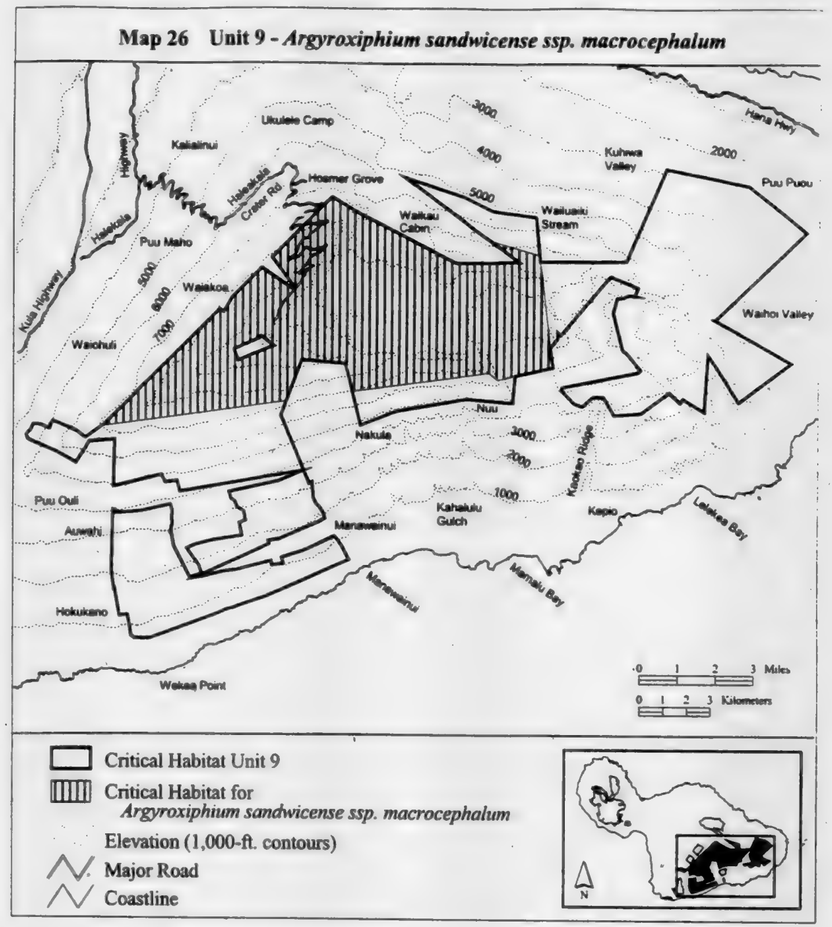
2294593; 786188, 2295812; 788190, 2297786; 788404, 2297994; 788742, 2298301; 788752, 2298310; 788754, 2298309; 788785, 2298291; 788906, 2298219; 788934, 2298204; 788940, 2298201; 788942, 2298200; 788965, 2298185; 789012, 2298158; 789034, 2298146; 789372, 2297947; 789683, 2297771; 789712, 2297753; 789756, 2297728; 789999, 2297585; 790577, 2297304; 790826, 2297180; 791591, 2296795; 794000, 2295593; 795810, 2295621; 795945, 2295623; 796322, 2295627; 796366, 2295628; 796367, 2295628; 796710, 2295632; 796712, 2295633; 796712, 2295635; 796322, 2295917; 796064, 2296102; 795805, 2296286; 795433, 2296550; 797565, 2295906; 797569, 2295864; 797581, 2295638; 797634, 2295413; 798056, 2292032; 798056, 2292031; 798107, 2291624; 798165, 2291162; 796929, 2290891; 796545, 2290807; 795794, 2290643; 795424, 2290939; 795382, 2290933; 789630, 2290134; 789516, 2290615; 789343, 2291348; 787469, 2291492; 786812, 2289742; 778932, 2288646; return to starting point.

(B) Excluding the area bounded by the following 42 boundary points (76ha; 189ac):

Start at 784680, 2291987; 784747, 2292015; 784786, 2292031; 784910, 2292083; 784946, 2292099; 784984, 2292116; 785051, 2292143; 785110, 2292167; 785146, 2292182; 785204, 2292207; 785308, 2292250; 785341, 2292265; 785383, 2292282; 785501, 2292330; 785537, 2292346; 785576, 2292362; 785614, 2292410; 785643, 2292390; 785674, 2292428; 785689, 2292448; 785732, 2292503; 785780, 2292466; 785847, 2292414; 785871, 2292394; 785930, 2292350; 785942, 2292341; 785983, 2292310; 785993, 2292302; 786016, 2292284; 786041, 2292263; 786107, 2292213; 786138, 2292189; 786181, 2292155; 786209, 2292133; 786238, 2292111; 786263, 2292091; 785264, 2291677; 784769, 2291468; 784742, 2291524; 784703, 2291618; 784568, 2291939; 784568, 2291941; return to starting point.

(C) **Note:** Map 26 follows:

Map 26 Unit 9 - *Argyroxiphium sandwicense ssp. macrocephalum*

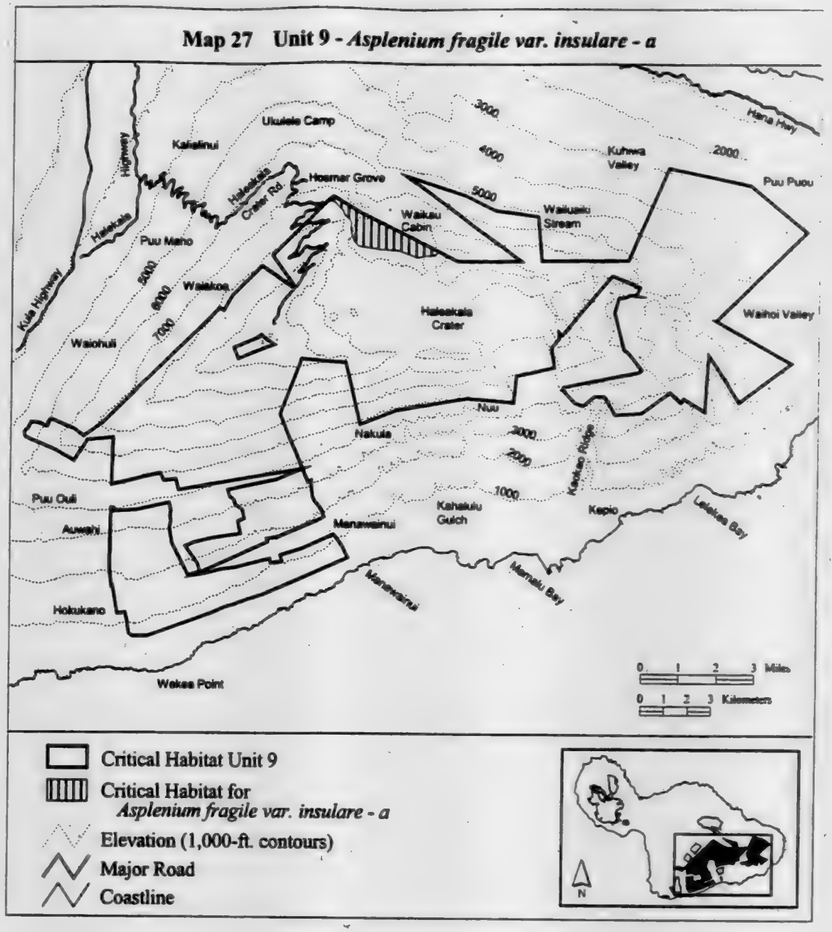


(xxvii) Maui 9—*Asplenium fragile var. insulare*—a (362 ha; 894 ac).

(A) Unit consists of the following 74 boundary points: Start at 788543, 2298123; 788563, 2298140; 788600, 2298173; 788754, 2298309; 788785, 2298291; 788906, 2298219; 788934, 2298204; 788942, 2298200; 788965, 2298185; 789012, 2298158; 789097, 2298111; 789125, 2298094; 789154, 2298077; 789279, 2298004; 789310, 2297986; 789342, 2297969; 789450, 2297905; 789495, 2297879; 789521, 2297863; 789656, 2297787; 789683, 2297771; 789712, 2297753; 789841, 2297681; 789867, 2297664; 789901, 2297645; 789955, 2297614; 790033, 2297574; 790061, 2297560; 790093, 2297545; 790216, 2297485; 790249, 2297467; 790279, 2297452; 790304, 2297441; 790412, 2297387; 790443, 2297372; 790472, 2297357; 790581, 2297304; 790638, 2297276; 790666, 2297261; 790719, 2297235; 790800, 2297196; 790831, 2297181; 790865, 2297163; 790992, 2297102; 791409, 2296895; 791824, 2296689; 792240, 2296482; 792444, 2296380; 792449, 2296378; 792655, 2296275; 793070, 2296068; 793155, 2296026; 793157, 2295951; 793118, 2295890; 792901, 2295834; 792611, 2295823; 792304, 2295750; 791909, 2295901; 791480, 2296046; 791067, 2296068; 790755, 2296079; 790543, 2296118; 789819, 2296246; 789629, 2296452; 789535, 2296731; 789485, 2296976; 789512, 2297221; 789514, 2297223; 789451, 2297316; 789306, 2297478; 789212, 2297600; 789145, 2297717; 788799, 2298069; 788554, 2298124; return to starting point.

(B) **Note:** Map 27 follows:

Map 27 Unit 9 - *Asplenium fragile var. insulare - a*



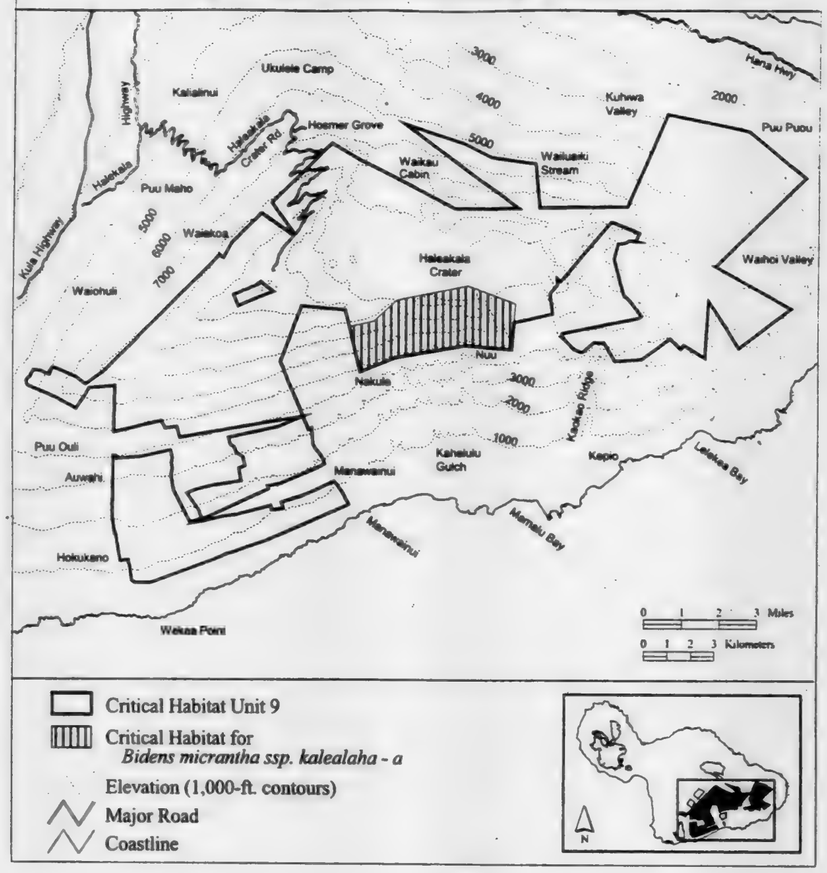
(xxviii) Maui 9—*Bidens micrantha* ssp. *kalealaha*—a (1,563 ha; 3,861 ac).

(A) Unit consists of the following 16 boundary points: Start at 796545, 2290807; 796545, 2290801; 796458, 2289725; 796454, 2289679; 796453,

2289665; 794502, 2289839; 794488, 2289840; 794474, 2289837; 791519, 2289316; 789966, 2288718; 789516, 2290615; 790559, 2290844; 791422, 2291618; 791566, 2291747; 794576, 2292372; 796609, 2291606; return to starting point.

(B) **Note:** Map 28 follows:

Map 28 Unit 9 - *Bidens micrantha ssp. kalealaha - a*

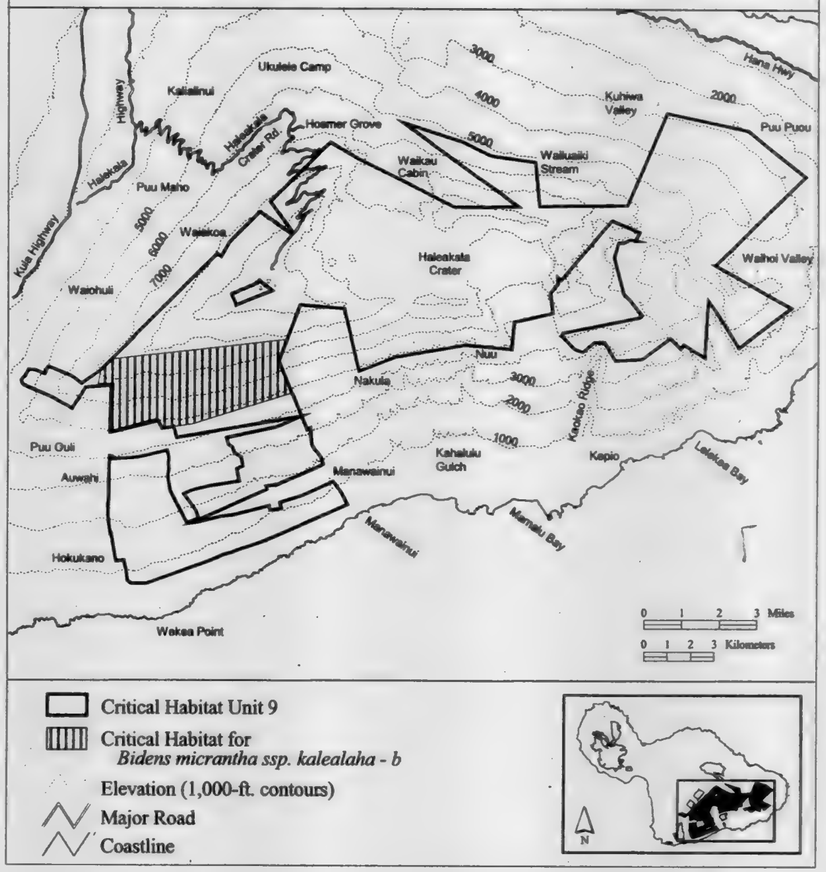


(xxix) Maui 9—*Bidens micrantha* ssp. *kalealaha*—b (2,116 ha; 5,229 ac).

(A) Unit consists of the following 18 boundary points: Start at 779048, 2288746; 779070, 2288768; 779512, 2289205; 780627, 2289332; 782572, 2289555; 786928, 2290052; 786812, 2289742; 786580, 2289125; 786747, 2288730; 787145, 2287787; 782967, 2286486; 782162, 2286366; 781652, 2286290; 781485, 2286623; 781454, 2286686; 779524, 2286194; 779600, 2288162; 778935, 2288132; return to starting point.

(B) **Note:** Map 29 follows:

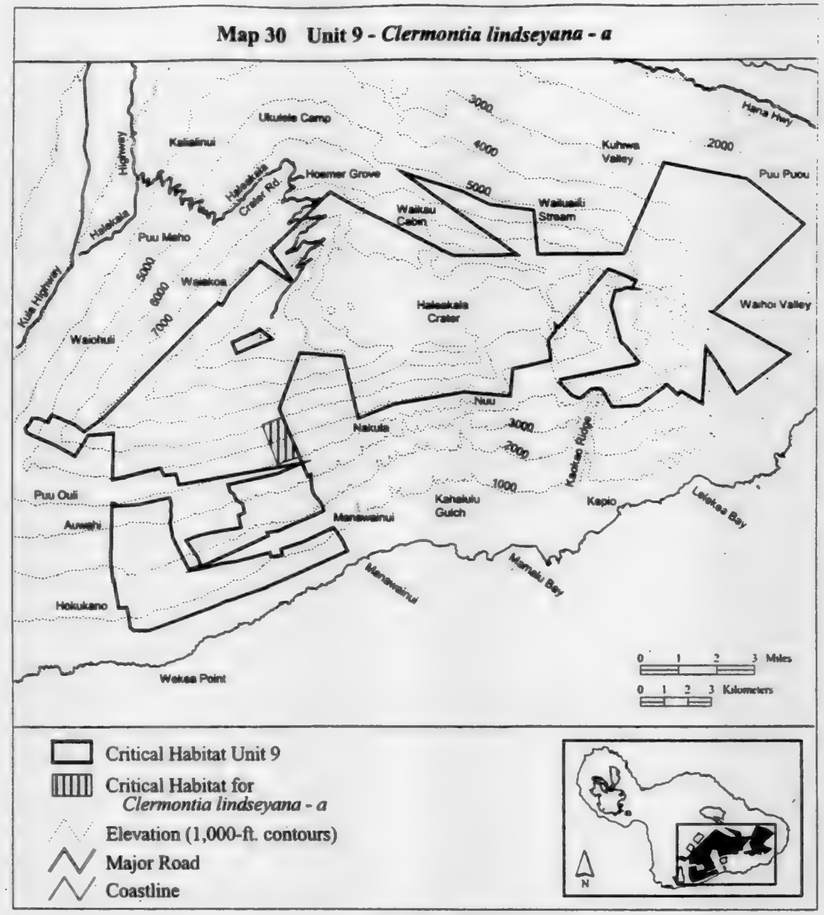
Map 29 Unit 9 - *Bidens micrantha ssp. kalealaha - b*



(xxx) Maui 9—*Clermontia lindseyana*—a (177 ha; 438 ac).

(A) Unit consists of the following 5 boundary points: Start at 787444, 2287080; 787071, 2286938; 786501, 2286762; 785851, 2288424; 786721, 2288791; return to starting point.

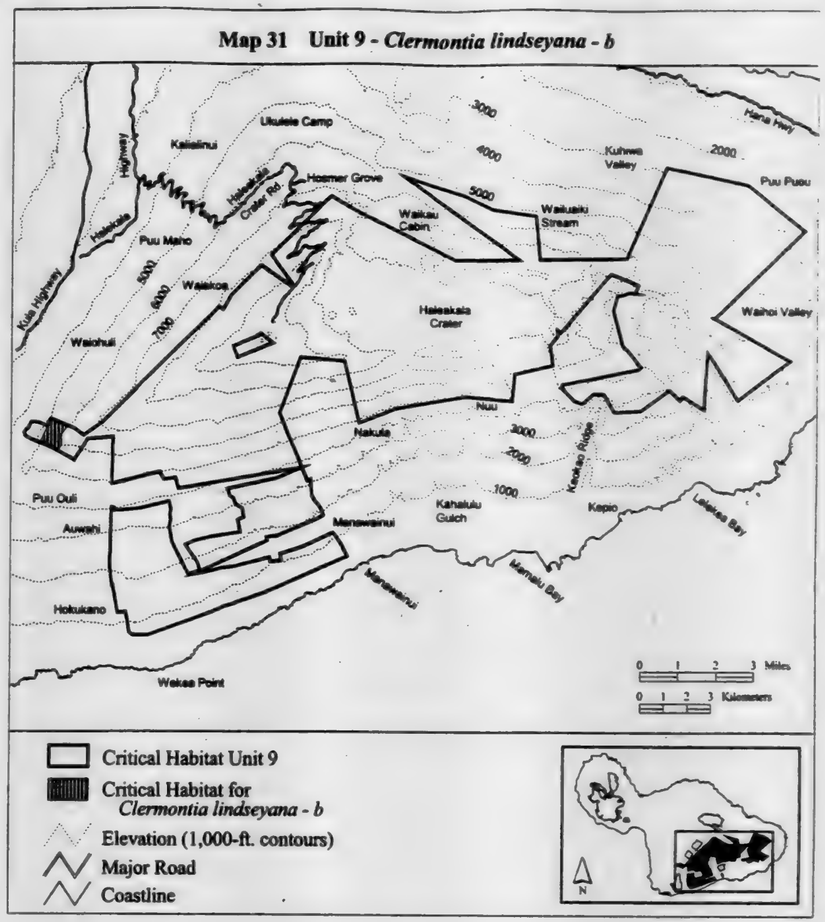
(B) **Note:** Map 30 follows:



(xxxi) Maui 9—*Clermontia lindseyana*—b (60 ha; 148 ac).

(A) Unit consists of the following 25 boundary points: Start at 776854, 2288875; 776854, 2288876; 776882, 2288864; 776920, 2288848; 776994, 2288817; 777561, 2288580; 777275, 2288186; 777275, 2287757; 777159, 2287487; 776983, 2287585; 776726, 2287694; 776756, 2287770; 776817, 2287928; 776860, 2288037; 776871, 2288068; 776895, 2288122; 776938, 2288237; 776979, 2288341; 777002, 2288401; 777006, 2288411; 777006, 2288412; 777006, 2288413; 777005, 2288413; 777005, 2288414; 776698, 2288553; return to starting point.

(B) **Note:** Map 31 follows:

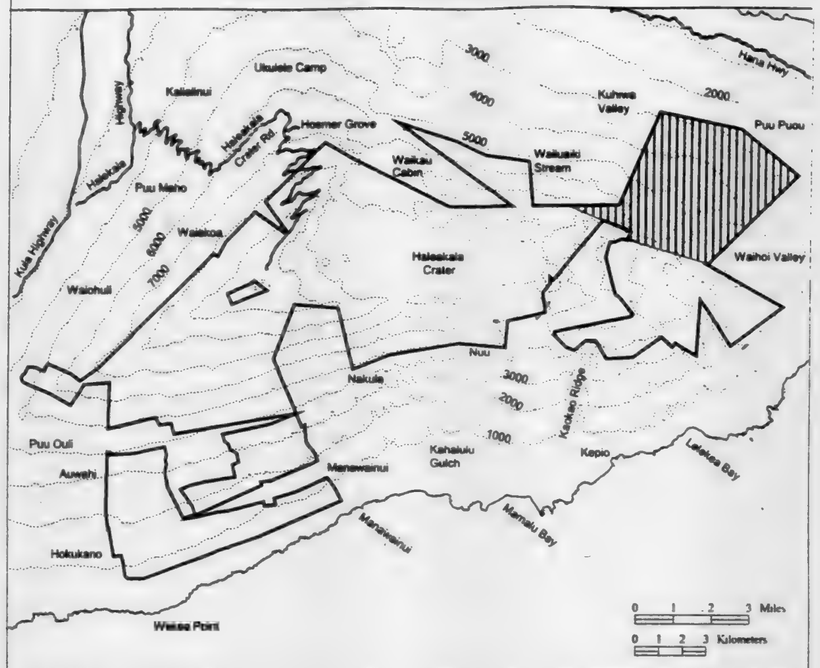


(xxxii) Maui 9—*Clermontia samuelii*—a (3,130 ha; 7,734 ac).

(A) Unit consists of the following 27 boundary points: Start at 799099, 2295658; 799092, 2295661; 799244, 2295662; 799663, 2295668; 800082, 2295673; 800414, 2295677; 800379, 2295672; 800982, 2295684; 801296, 2295688; 801297, 2295688; 801369, 2295851; 802993, 2299556; 806459, 2298838; 807604, 2297939; 808913, 2296912; 805091, 2293218; 805090, 2293218; 801679, 2294214; 801640, 2294225; 801796, 2294569; 801346, 2294743; 801340, 2294745; 800636, 2295040; 800633, 2295036; 800632, 2295034; 800624, 2295037; 800620, 2295038; return to starting point.

(B) **Note:** Map 32 follows:

Map 32 Unit 9 - *Clermontia samuelii - a*

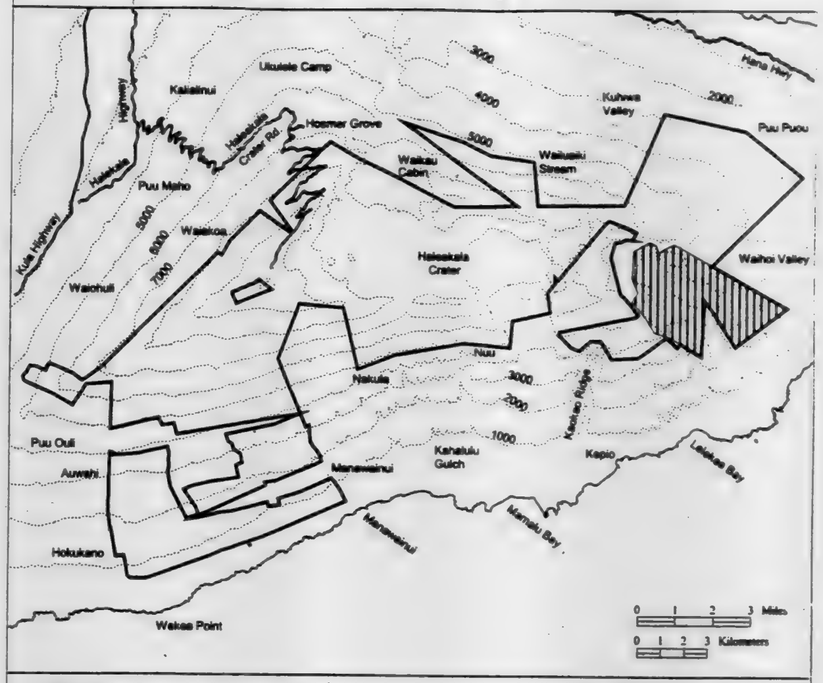


(xiii) Maui 9—*Cyanea copelandii* ssp. *haleakalaensis*—b (1,709 ha; 4,224 ac).

(A) Unit consists of the following 21 boundary points: Start at 805053, 2293180; 806644, 2292314; 808301, 2291412; 806062, 2289747; 805115, 2291183; 804741, 2291728; 804610, 2289526; 804598, 2289317; 803684, 2289877; 803296, 2290115; 802589, 2290350; 802215, 2290953; 801641, 2291671; 801871, 2292015; 801641, 2292647; 801699, 2293766; 802359, 2294139; 802646, 2294024; 802761, 2293680; 802962, 2293852; 803432, 2294063; return to starting point.

(B) **Note:** Map 33 follows:

Map 33 Unit 9 - *Cyanea copelandii ssp. haleakalaensis - b*

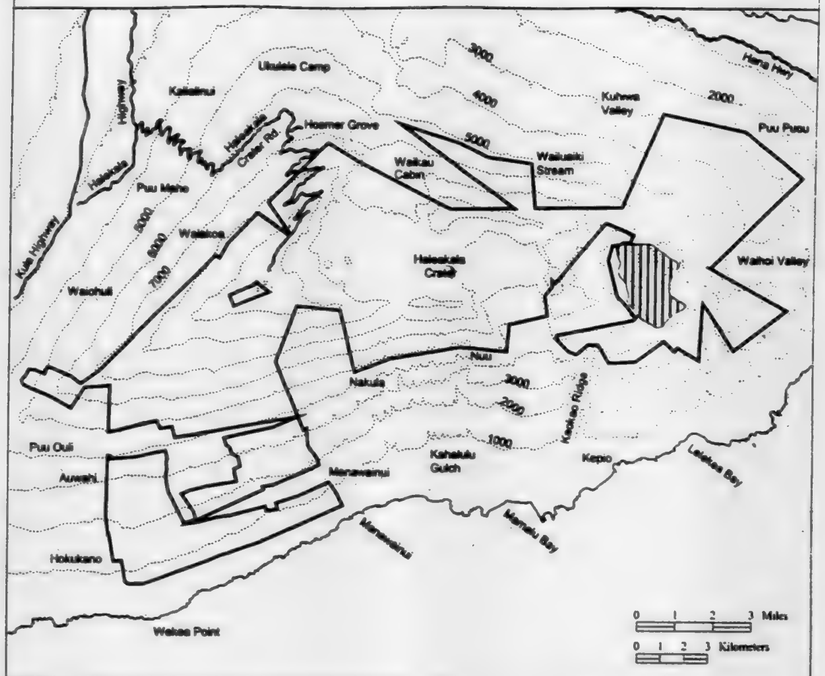


(xxxiv) Maui 9—*Cyanea glabra*—b (650 ha; 1,605 ac).

(A) Unit consists of the following 50 boundary points: Start at 801146, 2294134; 801147, 2294134; 801185, 2294156; 801306, 2294225; 801376, 2294265; 801594, 2294228; 801679, 2294214; 801771, 2294198; 802073, 2294198; 802434, 2294198; 802655, 2294131; 802883, 2293924; 803365, 2293596; 803600, 2293468; 803707, 2293361; 803713, 2293247; 803425, 2292852; 803318, 2292564; 803312, 2292196; 803372, 2292055; 803713, 2291855; 803988, 2291687; 804008, 2291560; 803894, 2291480; 803680, 2291366; 803486, 2291265; 803305, 2291078; 803044, 2290763; 802850, 2290709; 802722, 2290743; 802542, 2290884; 802227, 2291017; 801979, 2291212; 801832, 2291439; 801745, 2291560; 801637, 2291660; 801550, 2291788; 801544, 2291848; 801604, 2291955; 801611, 2292069; 801517, 2292370; 801497, 2292538; 801443, 2292638; 801330, 2292757; 801229, 2292846; 801175, 2293006; 801182, 2293134; 801242, 2293401; 801142, 2293689; 801062, 2294018; return to starting point.

(B) **Note:** Map 34 follows:

Map 34 Unit 9 - *Cyanea glabra* - *b*

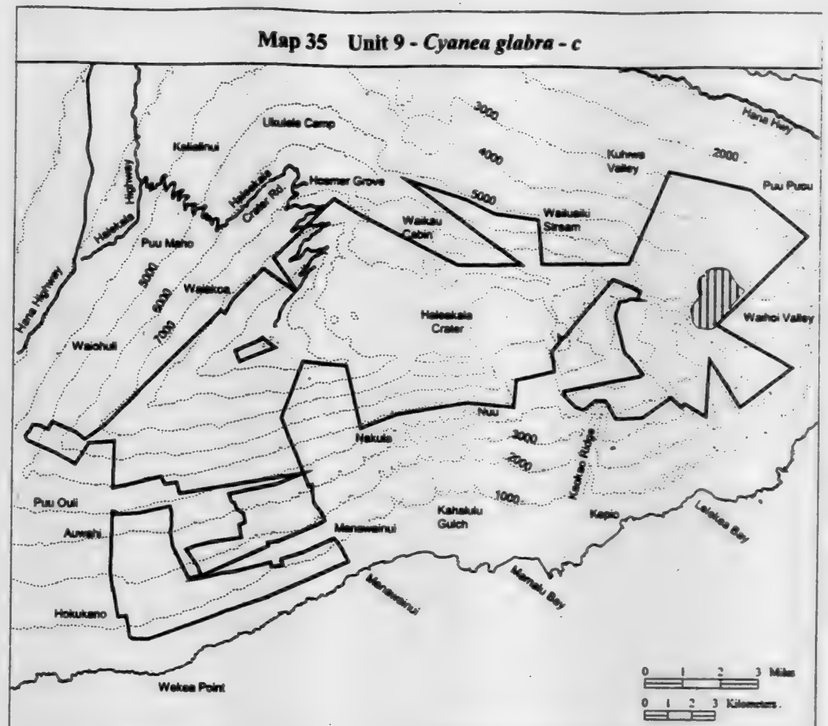


(xxxv) Maui 9—*Cyanea glabra*—c (363 ha; 898 ac).

(A) Unit consists of the following 38 boundary points: Start at 805090, 2293218; 805068, 2293196; 805053, 2293181; 805053, 2293180; 804943, 2293067; 804871, 2293032; 804680, 2293002; 804400, 2293049; 804298, 2293049; 804161, 2293121; 804036, 2293276; 804024, 2293342; 803964, 2293634; 803917, 2293843; 803988, 2293950; 804084, 2294076; 804245, 2294261; 804298, 2294398; 804245, 2294571; 804191, 2294750; 804215, 2295007; 804304, 2295144; 804489, 2295275; 804573, 2295394; 804650, 2295454; 804895, 2295550; 805367, 2295538; 805534, 2295460; 805587, 2295365; 805695, 2295150; 805933, 2294828; 806166, 2294684; 806184, 2294631; 806178, 2294595; 805981, 2294362; 805677, 2294016; 805480, 2293718; 805188, 2293318; return to starting point.

(B) **Note:** Map 35 follows:

Map 35 Unit 9 - *Cyanea glabra* - *c*

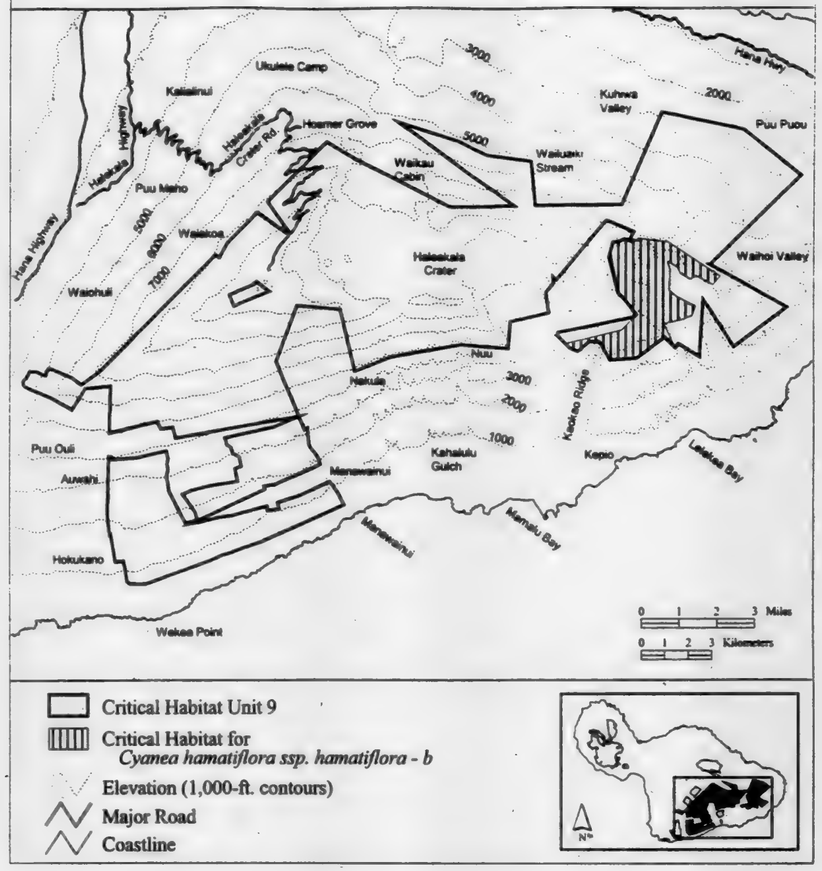


(xxxvi) Maui 9—*Cyanea hamatiflora* ssp. *hamatiflora*—b (1,309 ha; 3,235 ac).

(A) Unit consists of the following 34 boundary points: Start at 801996, 2294274; 803261, 2294116; 805475, 2292702; 805159, 2292328; 804474, 2292692; 804184, 2292587; 803762, 2292824; 803635, 2293097; 803235, 2293299; 803340, 2292930; 803288, 2292113; 803657, 2291823; 804421, 2291454; 804289, 2291058; 803920, 2290900; 803077, 2290716; 803548, 2289729; 803114, 2290141; 801935, 2289265; 800788, 2289185; 800516, 2289662; 800342, 2289966; 799912, 2289966; 799418, 2289552; 799034, 2289728; 799006, 2289910; 801285, 2290452; 801917, 2291085; 801678, 2291389; 801153, 2292060; 800860, 2293524; 801185, 2294156; 801306, 2294225; 801759, 2294089; return to starting point.

(B) **Note:** Map 36 follows:

Map 36 Unit 9 - *Cyanea hamatiflora ssp. hamatiflora - b*

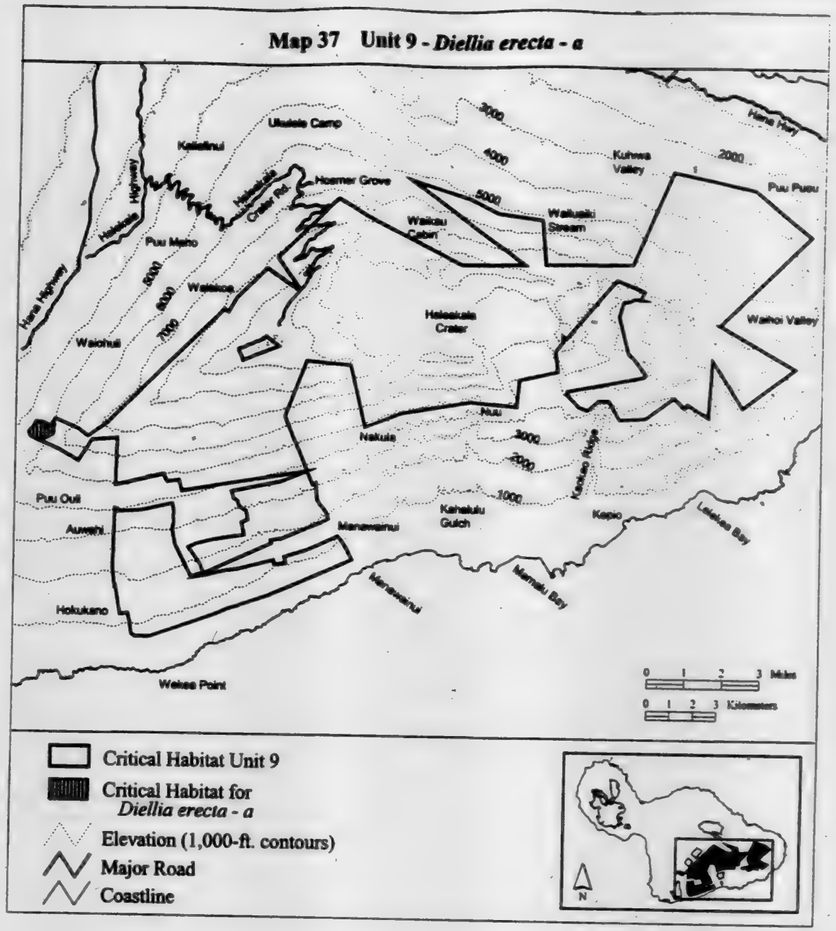


(xxxvii) Maui 9—*Diellia erecta*—a (2 ha; 5 ac).

(A) Unit consists of the following 9 boundary points: Start at 776678, 2288562; 776714, 2288648; 776729, 2288680; 776747, 2288719; 776756, 2288719; 776808, 2288717; 776832, 2288598; 776823, 2288519; 776820, 2288498; return to starting point.

(B) **Note:** Map 37 follows:

Map 37 Unit 9 - *Diellia erecta - a*

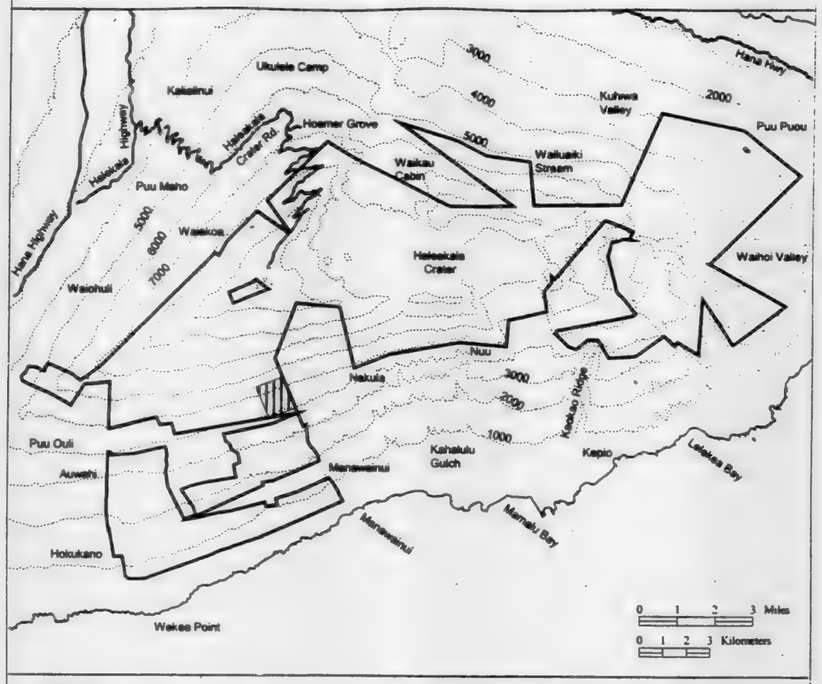


(xxxviii) Maui 9—*Diellia erecta*—b (175 ha; 431 ac).

(A) Unit consists of the following 9 boundary points: Start at 787240, 2287564; 787475, 2287007; 786302, 2286613; 785862, 2287663; 785861, 2287662; 785789, 2287851; 785769, 2287902; 785806, 2287916; 786914, 2288334; return to starting point.

(B) **Note:** Map 38 follows:

Map 38 Unit 9 - *Diellia erecta - b*

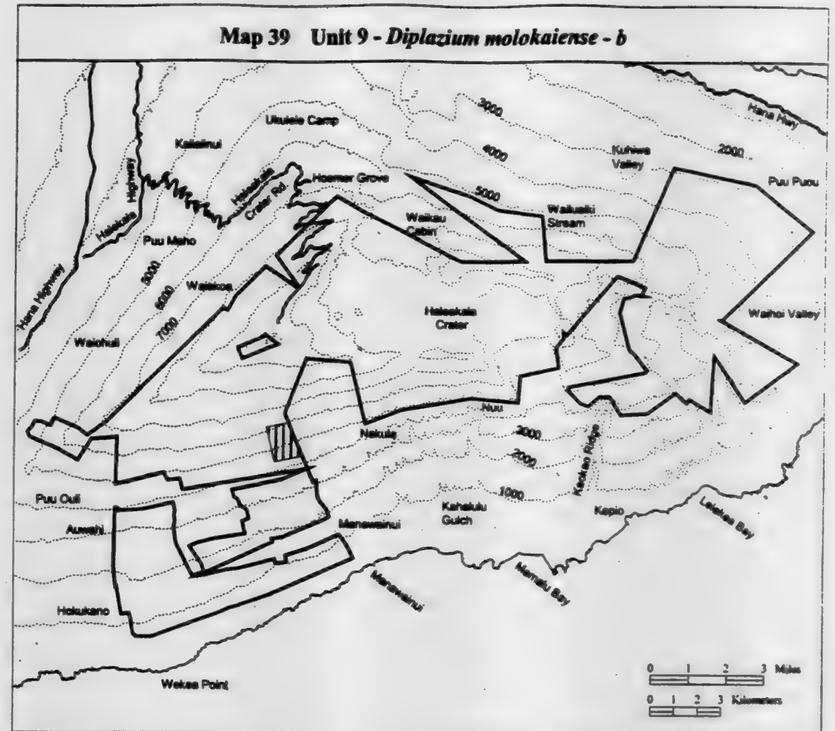


(xxxix) Maui 9—*Diplazium molokaiense*—b (162 ha; 401 ac).

(A) Unit consists of the following 4 boundary points: Start at 786149, 2287088; 785806, 2288547; 786747, 2288730; 787339, 2287329; return to starting point.

(B) **Note:** Map 39 follows:

Map 39 Unit 9 - *Diplazium molokaiense - b*

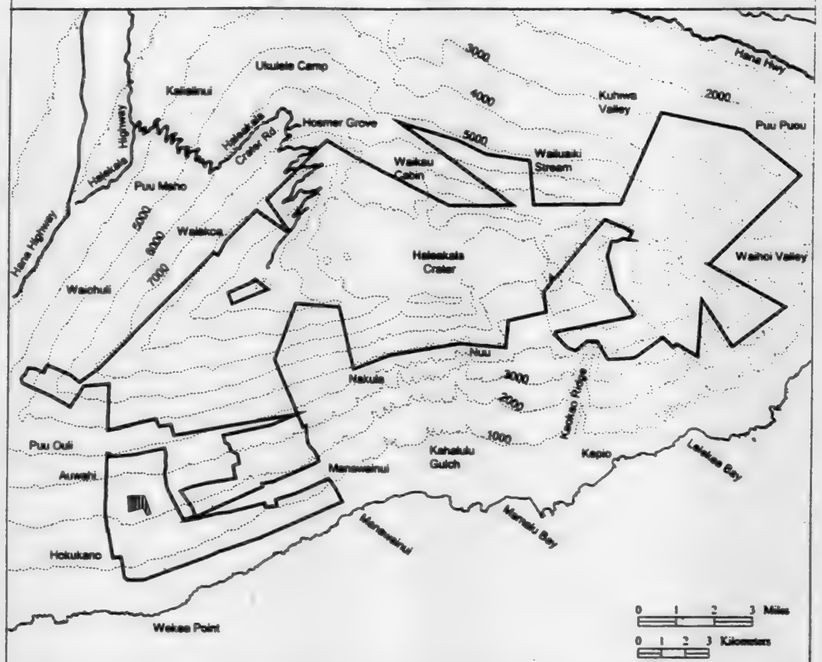


(xl) Maui 9—*Flueggea neowawraea*—a (52 ha; 128 ac).

(A) Unit consists of the following 6 boundary points: Start at 780345, 2283357; 781056, 2283374; 781342, 2282594; 781160, 2282542; 781012, 2282863; 780388, 2282689; return to starting point.

(B) **Note:** Map 40 follows:

Map 40 Unit 9 - *Flueggea neowawraea - a*

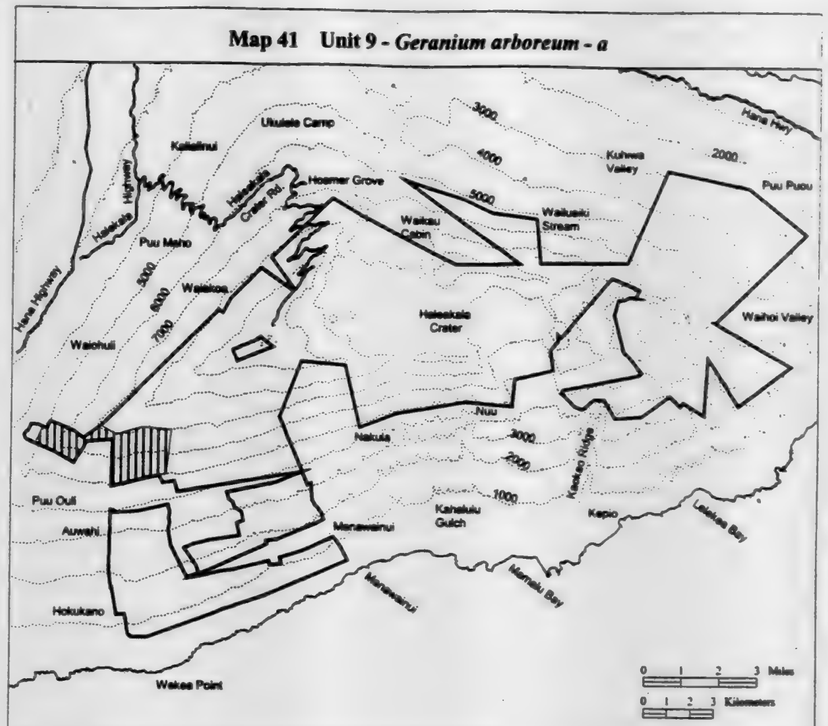


(xli) Maui 9—*Geranium arboreum*—a (731 ha; 1,805 ac).

(A) Unit consists of the following 78 boundary points: Start at 776678, 2288562; 776714, 2288648; 776729, 2288680; 776769, 2288768; 776801, 2288841; 776816, 2288873; 776823, 2288888; 776854, 2288875; 776994, 2288817; 777437, 2288634; 777736, 2288504; 777822, 2288467; 778221, 2288151; 778821, 2288569; 778986, 2288684; 779630, 2288318; 780757, 2288633; 782012, 2288542; 781788, 2286699; 781485, 2286623; 779450, 2286115; 779447, 2286116; 779447, 2286118; 779447, 2286148; 779449, 2286273; 779451, 2286428; 779453, 2286528; 779457, 2286767; 779463, 2287069; 779466, 2287187; 779469, 2287405; 779474, 2287664; 779478, 2287896; 779480, 2288005; 779481, 2288094; 779481, 2288097; 779480, 2288099; 779379, 2288090; 779098, 2288064; 778964, 2288051; 778864, 2288041; 778675, 2288023; 778485, 2288006; 778407, 2287998; 778397, 2287997; 778396, 2287997; 778295, 2287839; 778290, 2287830; 778201, 2287689; 778141, 2287597; 778127, 2287576; 778122, 2287567; 778097, 2287528; 778072, 2287490; 778051, 2287458; 778008, 2287395; 777941, 2287295; 777929, 2287273; 777926, 2287268; 777872, 2287190; 777820, 2287111; 777670, 2287202; 777221, 2287452; 776983, 2287585; 776726, 2287694; 776756, 2287770; 776817, 2287928; 776860, 2288037; 776871, 2288068; 776895, 2288122; 776938, 2288237; 776979, 2288341; 777002, 2288401; 777006, 2288411; 777006, 2288412; 777006, 2288413; 777005, 2288413; 777005, 2288414; return to starting point.

(B) **Note:** Map 41 follows:

Map 41 Unit 9 - *Geranium arboreum - a*



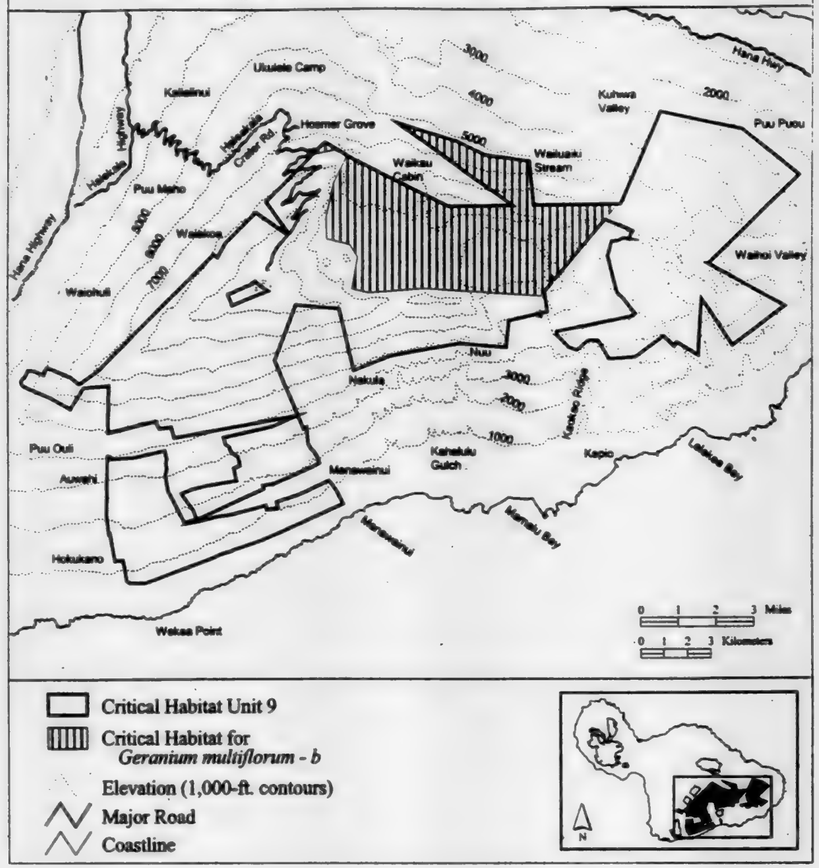
(xlii) Maui 9—*Geranium multiflorum*—b (4,817 ha; 11,903 ac).

(A) Unit consists of the following 155 boundary points: Start at 788163, 2297782; 788209, 2297823; 788474, 2298061; 788549, 2298128; 788563, 2298140; 788752, 2298310; 788754, 2298309; 788785, 2298291; 788906, 2298219; 788934, 2298204; 788940, 2298201; 788945, 2298198; 788965, 2298185; 789012, 2298158; 789097, 2298111; 789125, 2298094; 789154, 2298077; 789279, 2298004; 789310, 2297986; 789342, 2297969; 789450, 2297905; 789495, 2297879; 789521, 2297863; 789656, 2297787; 789683, 2297771; 789712, 2297753; 789841, 2297681; 789867, 2297664; 789901, 2297645; 789955, 2297614; 790033, 2297574; 790061, 2297560; 790093, 2297545; 790216, 2297485; 790249, 2297467; 790279, 2297452; 790304, 2297441; 790412, 2297387; 790443, 2297372; 790472, 2297357; 790581, 2297304; 790633, 2297278; 790637, 2297277; 790638, 2297276; 790666, 2297261; 790712, 2297238; 790778, 2297205; 790851, 2297171; 790865, 2297163; 790992, 2297102; 791049, 2297073; 791253, 2296971; 791748, 2296726; 792093, 2296555; 792239, 2296482; 792302, 2296451; 792444, 2296380; 792449, 2296378; 792490, 2296357; 792655, 2296275; 793070, 2296068; 793303, 2295953; 793307, 2295951; 793422, 2295894; 793425, 2295892; 793482, 2295864; 793485, 2295863; 793542, 2295834; 793701, 2295755; 794013, 2295601; 794376, 2295605; 794739, 2295608; 795102, 2295612; 795523, 2295618; 795945, 2295623; 796322, 2295627; 796366, 2295628; 796367, 2295628; 796710, 2295632; 796712, 2295633; 796712, 2295635; 796322, 2295917; 796064, 2296102; 795805, 2296286; 795412, 2296565; 794929, 2296911; 794586, 2297162; 794089, 2297517; 793843, 2297693; 793840, 2297695; 793717, 2297782; 793715, 2297784; 793592, 2297871; 793096, 2298227; 792850, 2298402; 792846, 2298405; 792724, 2298492; 792721, 2298494; 792661, 2298537; 792659, 2298539; 792630, 2298559; 792627, 2298561; 792614, 2298570; 792612, 2298572; 792606, 2298576; 792604, 2298578; 792602,

2298579; 792600, 2298581; 792599, 2298581; 792395, 2298727; 792392, 2298730; 792290, 2298802; 792288, 2298804; 792238, 2298839; 792236, 2298841; 792212, 2298858; 792210, 2298860; 792199, 2298867; 792197, 2298869; 792193, 2298872; 792190, 2298874; 792187, 2298876; 791820, 2299139; 792911, 2298800; 794323, 2298361; 795561, 2297771; 797414, 2297495; 797590, 2295645; 797591, 2295643; 797602, 2295643; 797615, 2295643; 797793, 2295645; 798243, 2295649; 800429, 2295671; 801112, 2295683; 801148, 2295656; 800620, 2295038; 800619, 2295037; 799580, 2293819; 798494, 2292544; 798490, 2292539; 798357, 2292680; 798374, 2292403; 798056, 2292031; 797894, 2291841; 792958, 2292187; 790618, 2291998; 789902, 2292186; 790128, 2293507; 789788, 2294035; 788807, 2294262; 788770, 2295129; 789109, 2296601; 789675, 2297733; 789185, 2297997; return to starting point.

(B) **Note:** Map 42 follows:

Map 42 Unit 9 - *Geranium multiflorum - b*

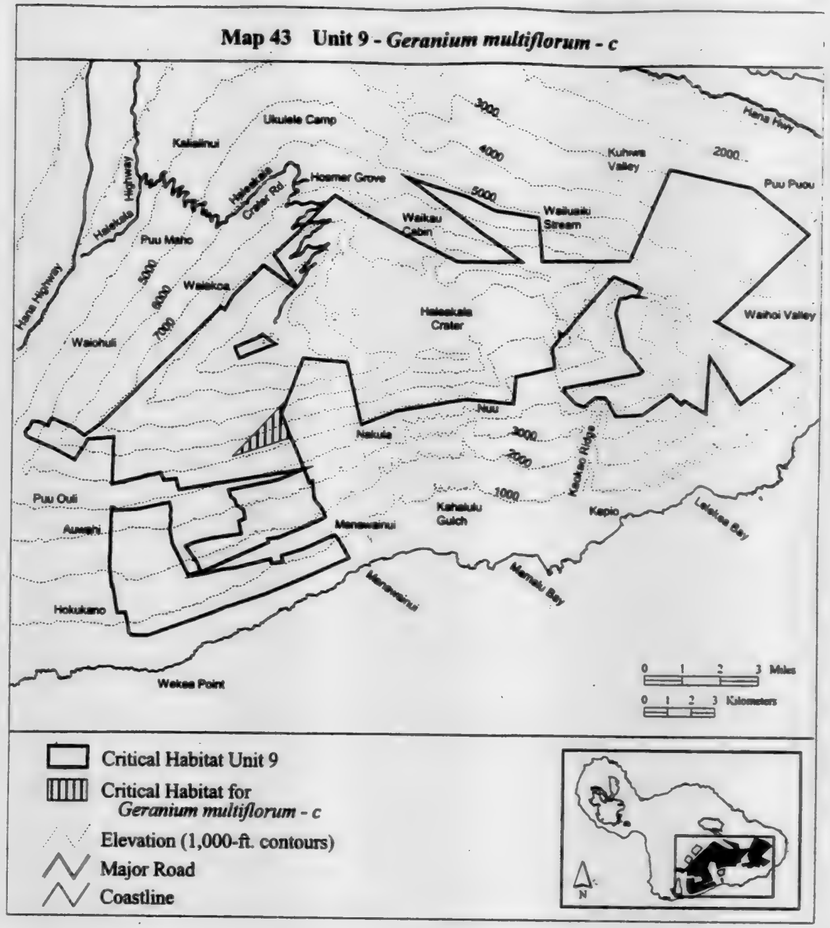


(xliii) Maui 9—*Geranium multiflorum*—c (182 ha; 451 ac).

(A) Unit consists of the following 4 boundary points: Start at 786997, 2288137; 784544, 2287319; 786824, 2289775; 786580, 2289125; return to starting point.

(B) **Note:** Map 43 follows:

Map 43 Unit 9 - *Geranium multiflorum - c*

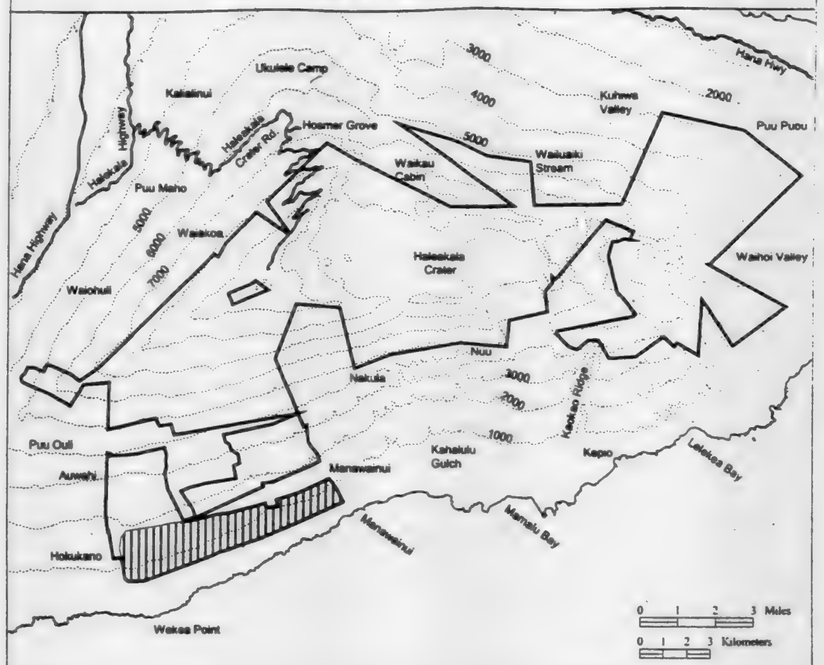


(xliv) Maui 9—*Lipochaeta kamolensis*—a (1,475 ha; 3,644 ac).

(A) Unit consists of the following 42 boundary points: Start at 782955, 2282353; 783327, 2282400; 784164, 2282607; 784741, 2282683; 785726, 2282934; 786198, 2283073; 786228, 2282888; 786228, 2282887; 786230, 2282886; 786701, 2282954; 786702, 2282955; 786702, 2282956; 786655, 2283208; 787384, 2283423; 787548, 2283495; 787945, 2283669; 788905, 2284089; 788984, 2283995; 789152, 2283770; 789288, 2283565; 789391, 2283327; 789514, 2283129; 787773, 2282368; 786596, 2281853; 786087, 2281631; 786085, 2281630; 784789, 2281189; 784708, 2281139; 784251, 2281019; 784001, 2280899; 783805, 2280811; 781021, 2279811; 780368, 2279811; 780216, 2279920; 780139, 2280453; 780063, 2280787; 780052, 2280834; 779976, 2281160; 780031, 2281595; 780248, 2281900; 781662, 2282128; 782206, 2282259; return to starting point.

(B) **Note:** Map 44 follows:

Map 44 Unit 9 - *Lipochaeta kamolensis - a*

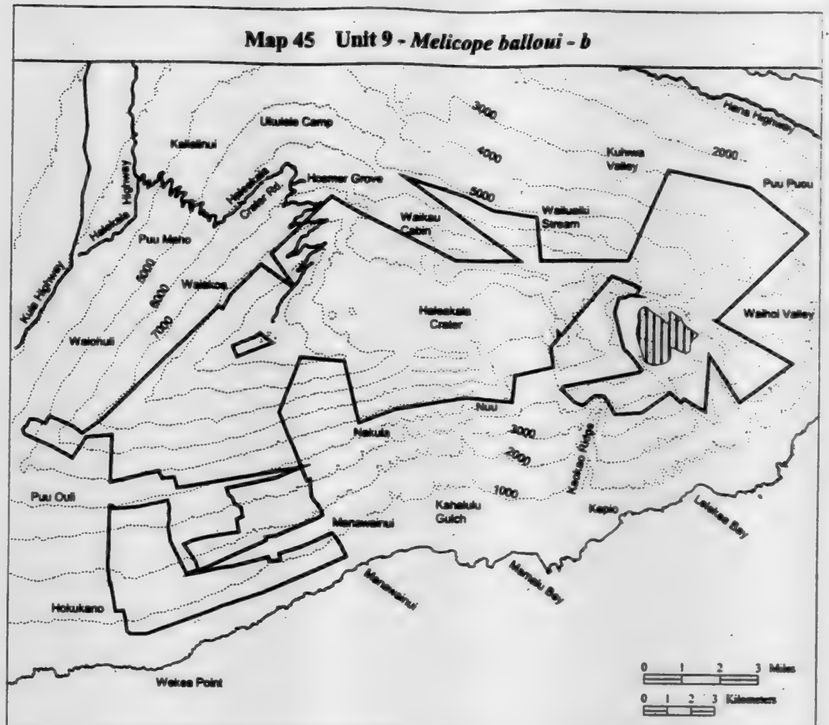


, (xlv) Maui 9—*Melicope balloui*—b (394 ha; 973 ac).

(A) Unit consists of the following 45 boundary points: Start at 801687, 2292860; 801740, 2293120; 801749, 2293217; 801736, 2293388; 801740, 2293476; 801793, 2293617; 801894, 2293723; 802092, 2293736; 802374, 2293512; 802708, 2293331; 802840, 2293212; 802889, 2293116; 802955, 2293094; 803069, 2293173; 803087, 2293287; 803047, 2293446; 803047, 2293538; 803140, 2293582; 803316, 2293437; 803545, 2293314; 803619, 2293116; 803769, 2292957; 804016, 2292781; 804266, 2292645; 804249, 2292561; 804051, 2292403; 803963, 2292244; 803945, 2292099; 803945, 2291945; 803928, 2291870; 803804, 2291844; 803681, 2291848; 803413, 2291949; 803272, 2292020; 803153, 2292051; 803109, 2292020; 803118, 2291804; 803091, 2291562; 802964, 2291430; 802770, 2291368; 802422, 2291298; 802088, 2291417; 802000, 2291518; 801758, 2292262; 801714, 2292447; return to starting point.

(B) **Note:** Map 45 follows:

Map 45 Unit 9 - *Melicope balloui - b*

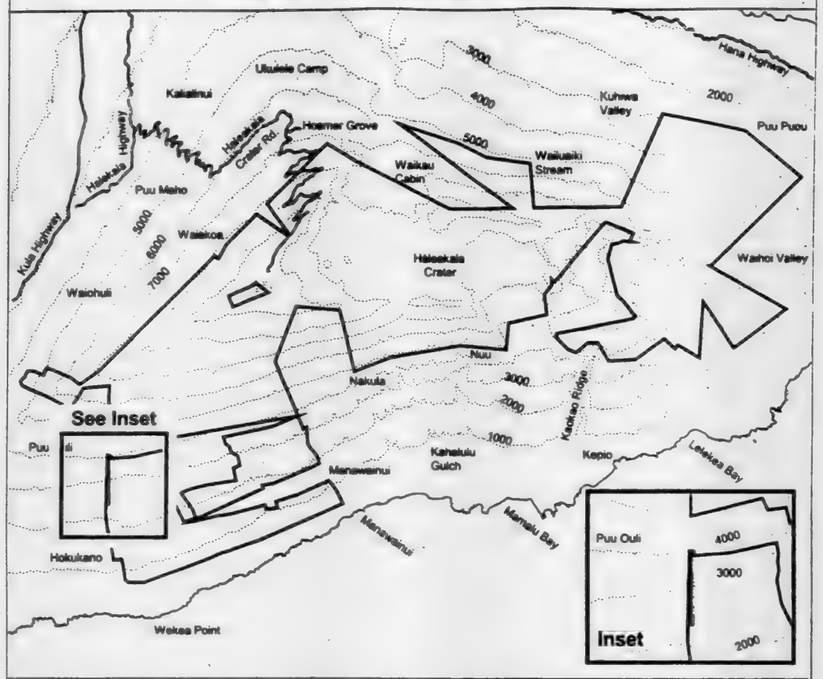


(xlvi) Maui 9—Melicope knudsenii—a (28 ha; 69 ac).

(A) Unit consists of the following 26 boundary points: Start at 779378, 2283038; 779379, 2283091; 779379, 2283156; 779384, 2283260; 779385, 2283362; 779386, 2283461; 779389, 2283570; 779391, 2283672; 779394, 2283769; 779397, 2283858; 779397, 2283869; 779397, 2283875; 779398, 2283992; 779401, 2284094; 779401, 2284203; 779403, 2284241; 779406, 2284322; 779408, 2284377; 779408, 2284385; 779408, 2284390; 779413, 2284560; 779419, 2284768; 779424, 2285004; 779427, 2285134; 779523, 2285126; 779547, 2283051; return to starting point.

(B) **Note:** Map 46 follows:

Map 46 Unit 9 - *Melicope knudsenii - a*

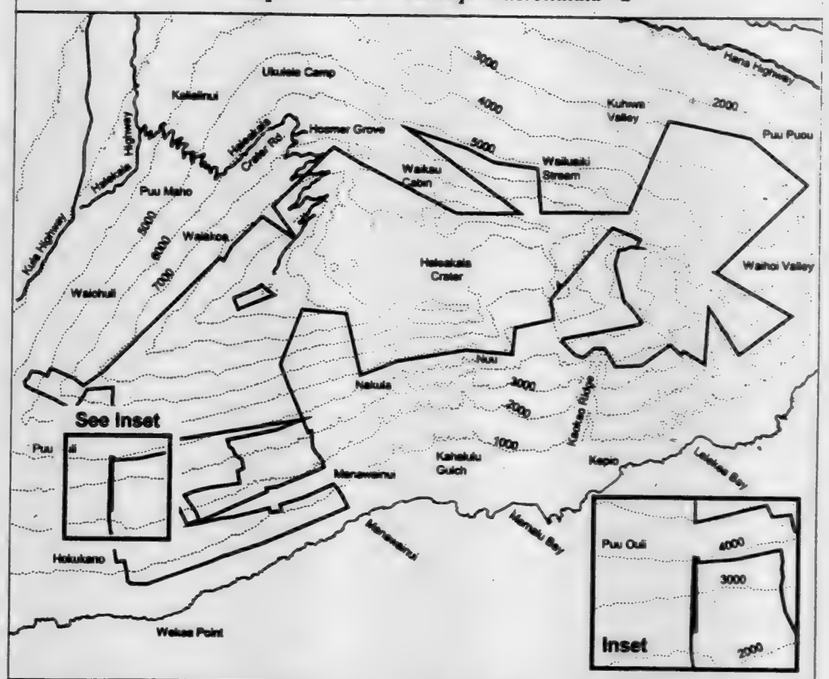


(xlvii) Maui 9—*Melicope mucronulata*—a (34 ha; 83 ac).

(A) Unit consists of the following 23 boundary points: Start at 779374, 2282861; 779377, 2282926; 779379, 2283091; 779379, 2283156; 779384, 2283260; 779385, 2283362; 779386, 2283461; 779389, 2283570; 779391, 2283672; 779394, 2283769; 779397, 2283875; 779398, 2283992; 779401, 2284094; 779401, 2284203; 779403, 2284241; 779406, 2284322; 779413, 2284560; 779419, 2284768; 779424, 2285004; 779427, 2285144; 779552, 2285134; 779552, 2285008; 779544, 2282873; return to starting point.

(B) **Note:** Map 47 follows:

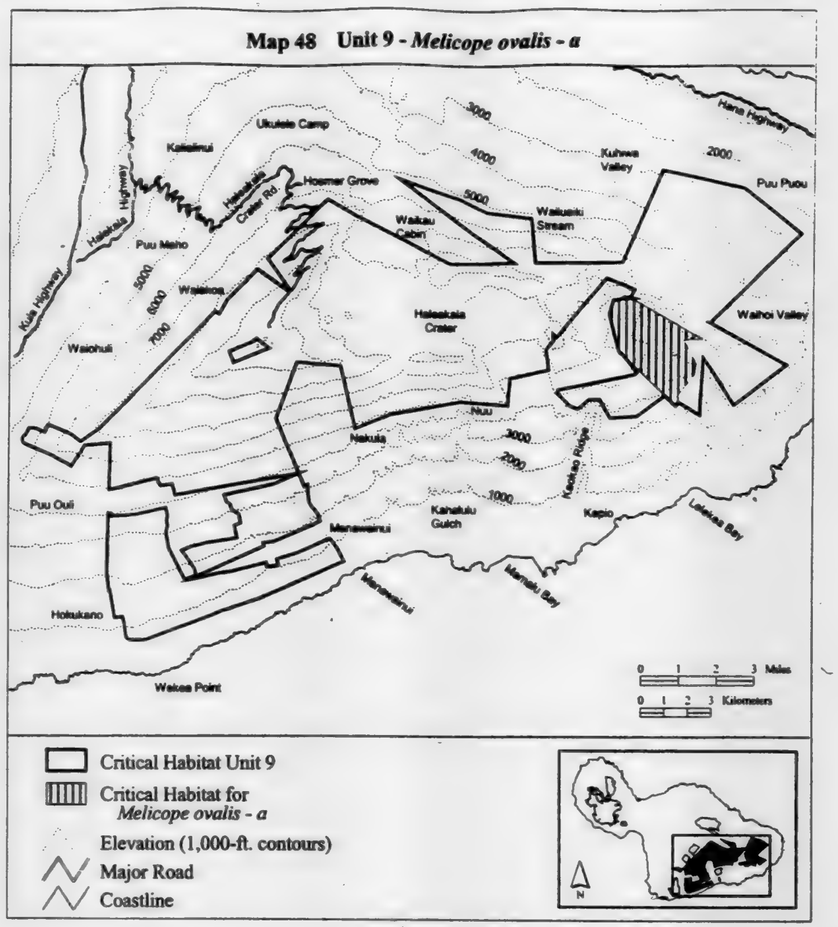
Map 47 Unit 9 - *Melicope mucronulata - a*



(xlviii) Maui 9—*Melicope ovalis*—a (933 ha; 2,306 ac).

(A) Unit consists of the following 18 boundary points: Start at 803684, 2289877; 803574, 2289704; 803114, 2290141; 803112, 2290139; 801383, 2291766; 801145, 2291990; 800743, 2293514; 800900, 2294126; 801146, 2294134; 801147, 2294134; 801148, 2294134; 801758, 2294144; 804700, 2292498; 804245, 2292498; 803895, 2292463; 804438, 2291482; 804352, 2291008; 803667, 2290169; return to starting point.

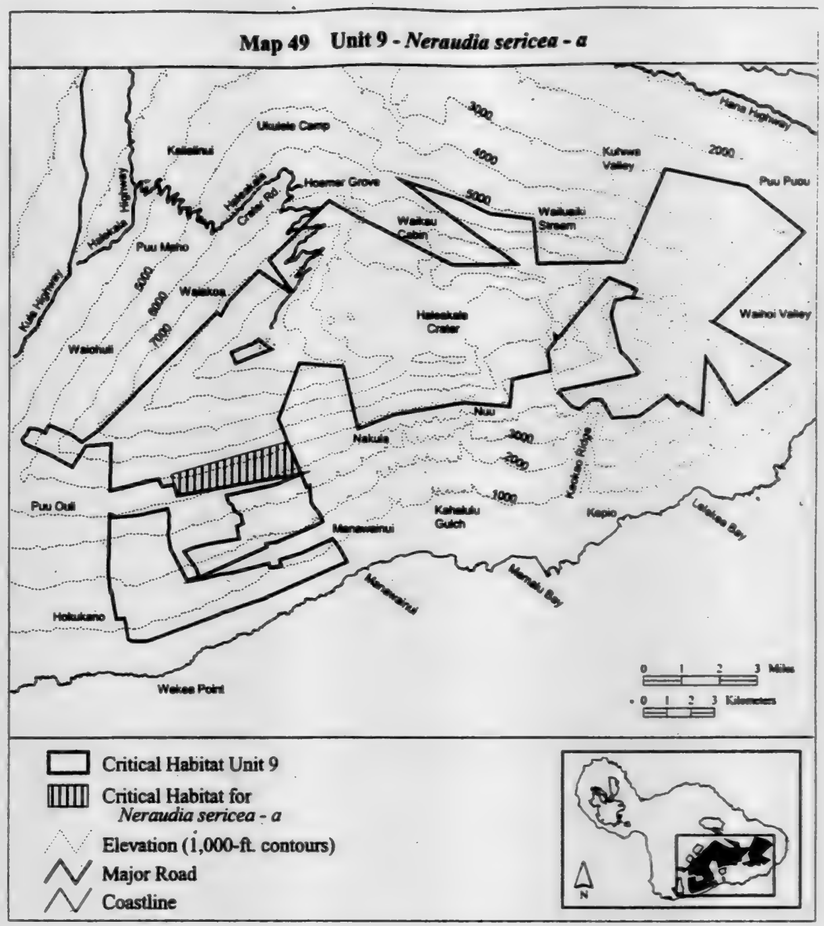
(B) **Note:** Map 48 follows:



(xlix) Maui 9—*Neraudia sericea*—a (623 ha; 1,540 ac).

(A) Unit consists of the following 7 boundary points: Start at 787503, 2286804; 782284, 2285907; 782162, 2286366; 782046, 2286802; 786980, 2288178; 787198, 2287662; 787557, 2286813; return to starting point.

(B) **Note:** Map 49 follows:

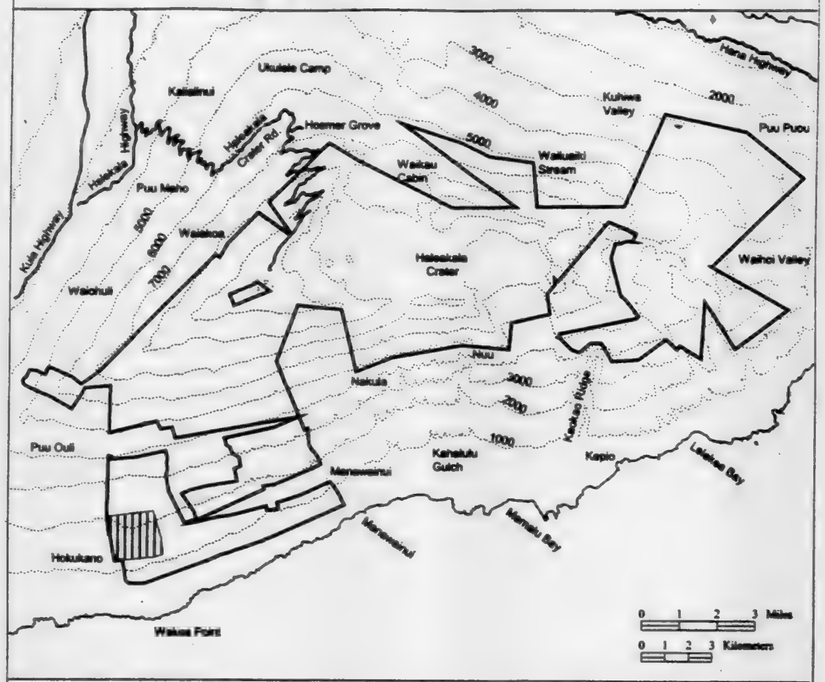


(l) Maui 9—*Nototrichium humile*—a (398 ha; 982 ac).

(A) Unit consists of the following 9 boundary points: Start at 780063, 2280787; 779707, 2280753; 779507, 2281898; 779466, 2282131; 779455, 2282613; 781370, 2282843; 781731, 2281716; 781818, 2281027; 781425, 2280917; return to starting point.

(B) **Note:** Map 50 follows:

Map 50 Unit 9 - *Nototrichium humile - a*

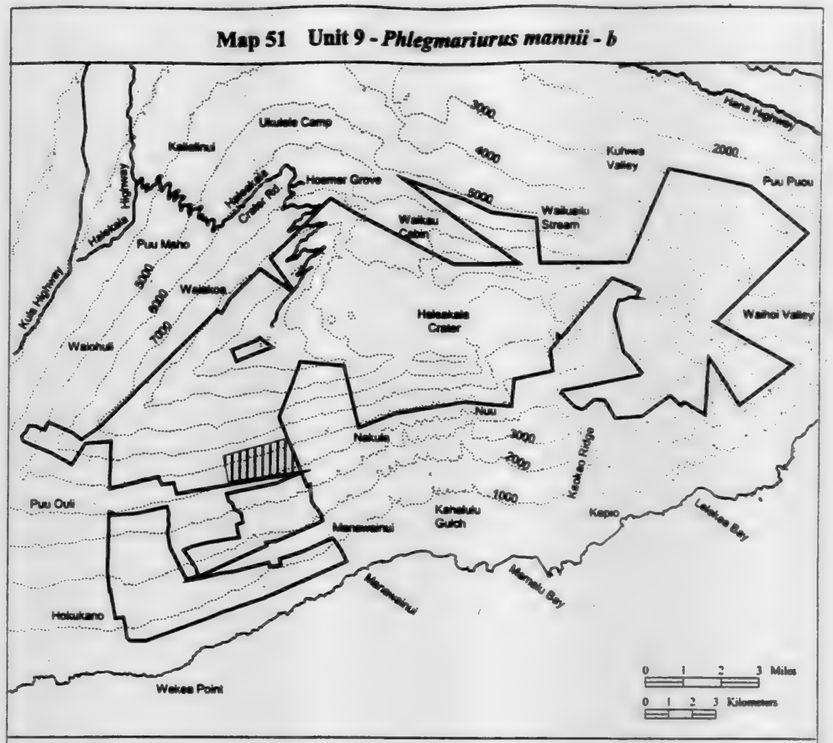


(li) Maui 9—*Phlegmariurus mannii*—b (383 ha; 947 ac).

(A) Unit consists of the following 4 boundary points: Start at 787536, 2286861; 784465, 2286413; 784226, 2287486; 786946, 2288260; return to starting point.

(B) **Note:** Map 51 follows:

Map 51 Unit 9 - *Phlegmariurus mannii - b*

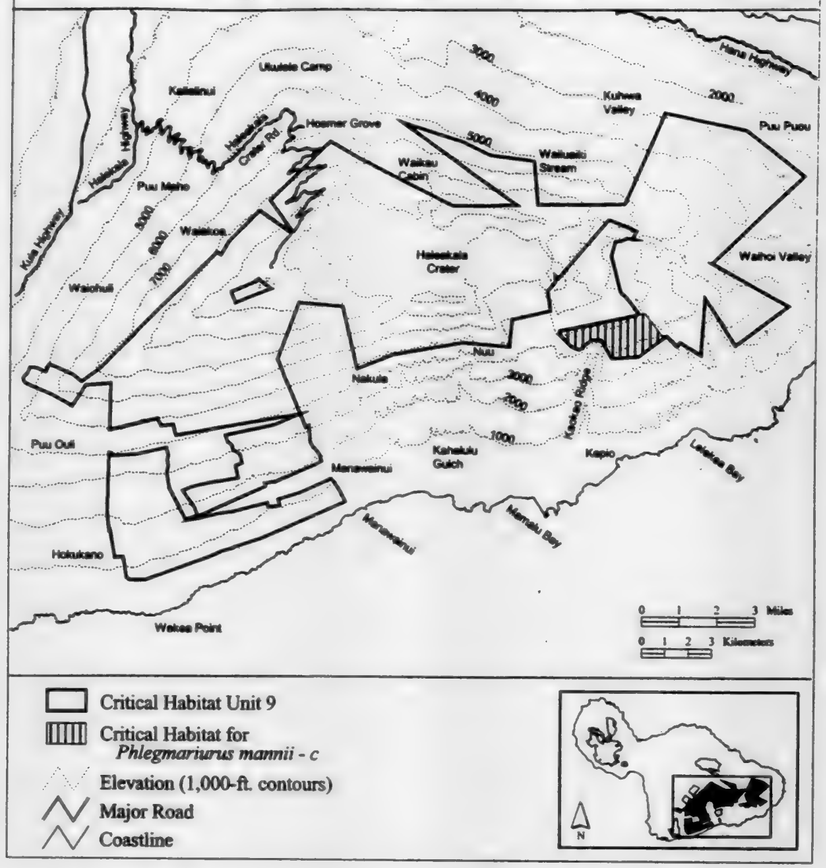


(lii) Maui 9—*Phlegmariurus mannii*—c (476 ha; 1,176 ac).

(A) Unit consists of the following 12 boundary points: Start at 801935, 2289265; 800788, 2289185; 800342, 2289966; 799912, 2289966; 799418, 2289552; 799083, 2289679; 799034, 2289728; 798541, 2290221; 798585, 2290346; 801831, 2290999; 802185, 2291070; 803010, 2290064; return to starting point.

(B) **Note:** Map 52 follows:

Map 52 Unit 9 - *Phlegmariurus mannii - c*

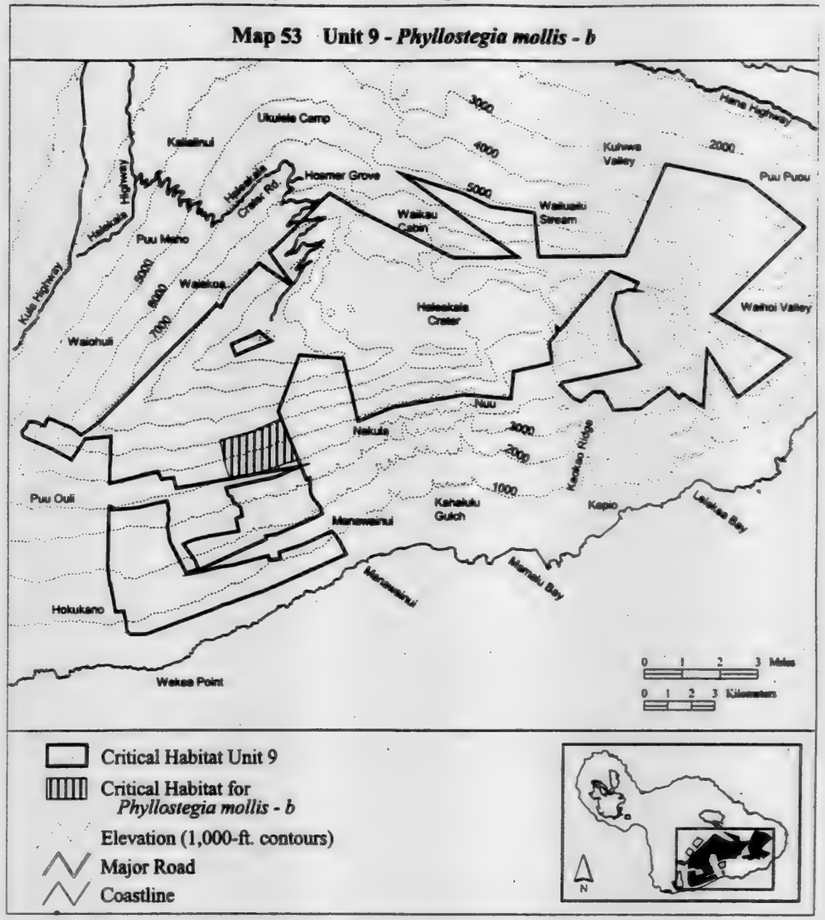


(liii) Maui 9—*Phyllostegia mollis*—b (508 ha; 1,256 ac)

(A) Unit consists of the following 9 boundary points: Start at 787430, 2287113; 786267, 2286707; 785468, 2286458; 784537, 2286331; 784388, 2286734; 784109, 2287909; 785061, 2288163; 785507, 2288294; 786709, 2288819; return to starting point.

(B) **Note:** Map 53 follows:

Map 53 Unit 9 - *Phyllostegia mollis - b*

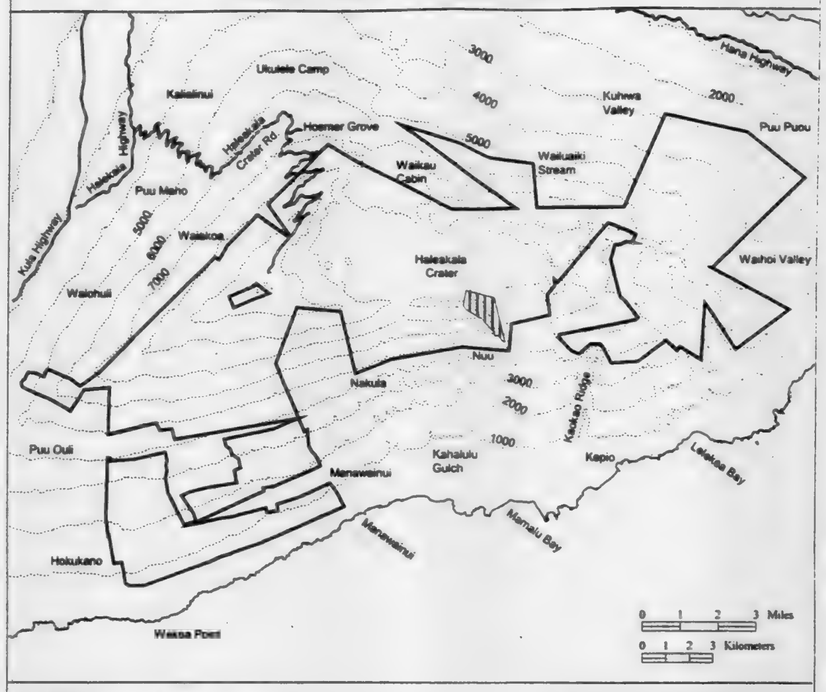


(liv) Maui 9—*Plantago princeps*—a (164 ha; 406 ac).

(A) Unit consists of the following 13 boundary points: Start at 794508, 2291589; 794636, 2292209; 795824, 2291911; 796274, 2290033; 796133, 2290112; 796008, 2290304; 795864, 2290318; 795807, 2290385; 795821, 2290462; 795400, 2290907; 795299, 2291051; 795213, 2291075; 794614, 2291434; return to starting point.

(B) **Note:** Map 54 follows:

Map 54 Unit 9 - *Plantago princeps - a*

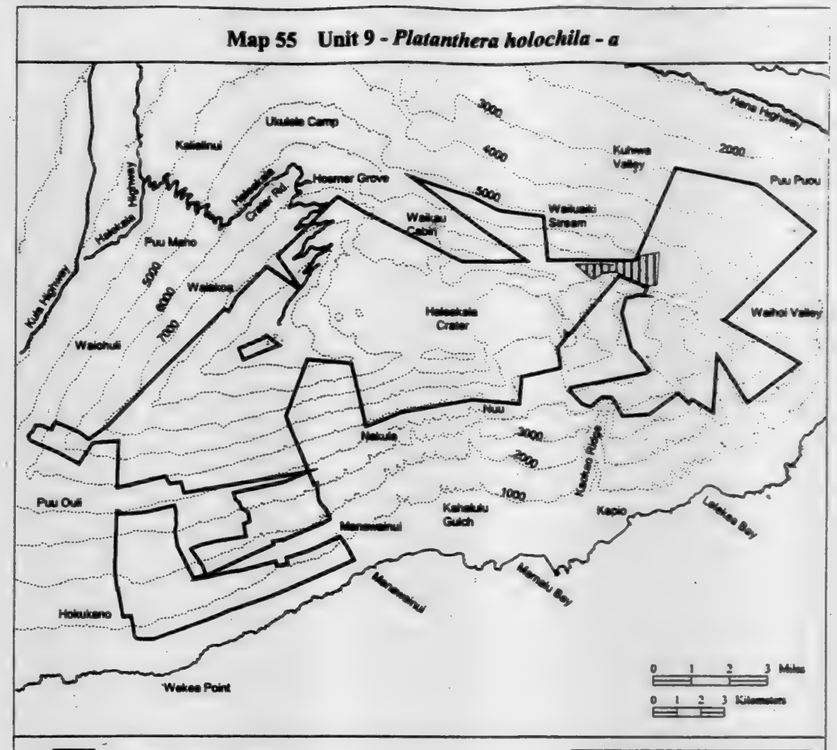


(lv) Maui 9—*Platanthera holochila*—a (241 ha; 596 ac).

(A) Unit consists of the following 18 boundary points: Start at 800379, 2295672; 800982, 2295684; 801296, 2295688; 801297, 2295688; 801367, 2295845; 802309, 2296025; 802197, 2294658; 801820, 2294614; 801346, 2294743; 801343, 2294744; 800511, 2295191; 800001, 2295168; 799735, 2294991; 799557, 2294880; 799402, 2294969; 798778, 2295470; 799935, 2295528; 800349, 2295462; return to starting point.

(B) **Note:** Map 55 follows:

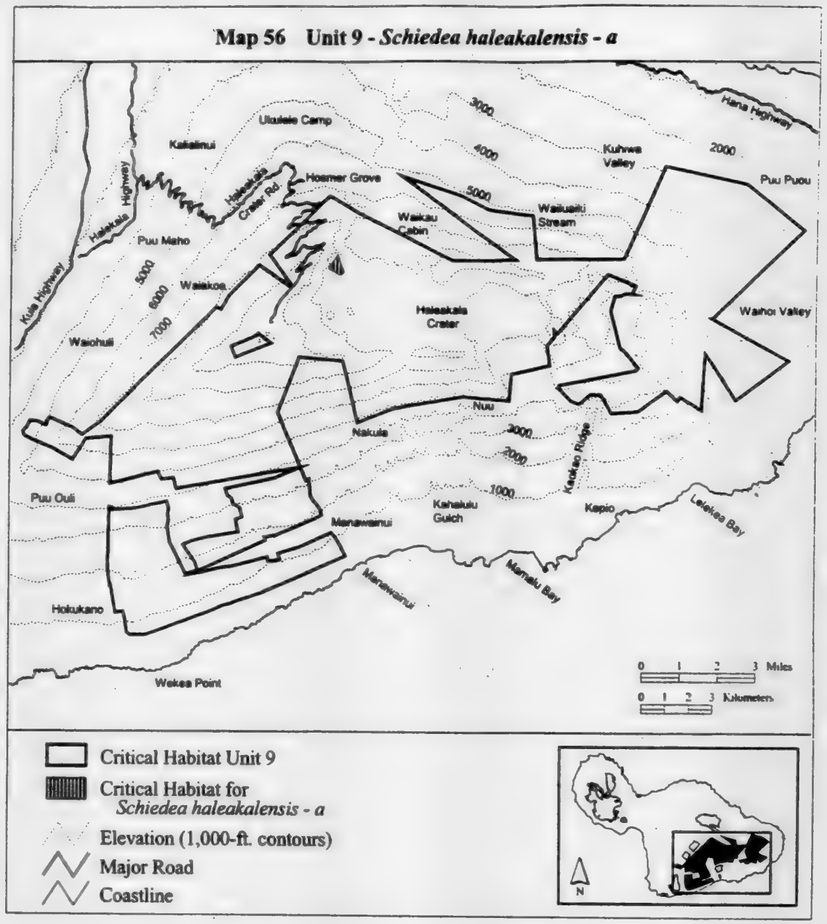
Map 55 Unit 9 - *Platanthera holochila - a*



(lvi) Maui 9—*Schiedea haleakalensis*—a (26 ha; 64 ac).

(A) Unit consists of the following 4 boundary points: Start at 789350, 2295087; 789223, 2294975; 788711, 2295251; 789089, 2295825; return to starting point.

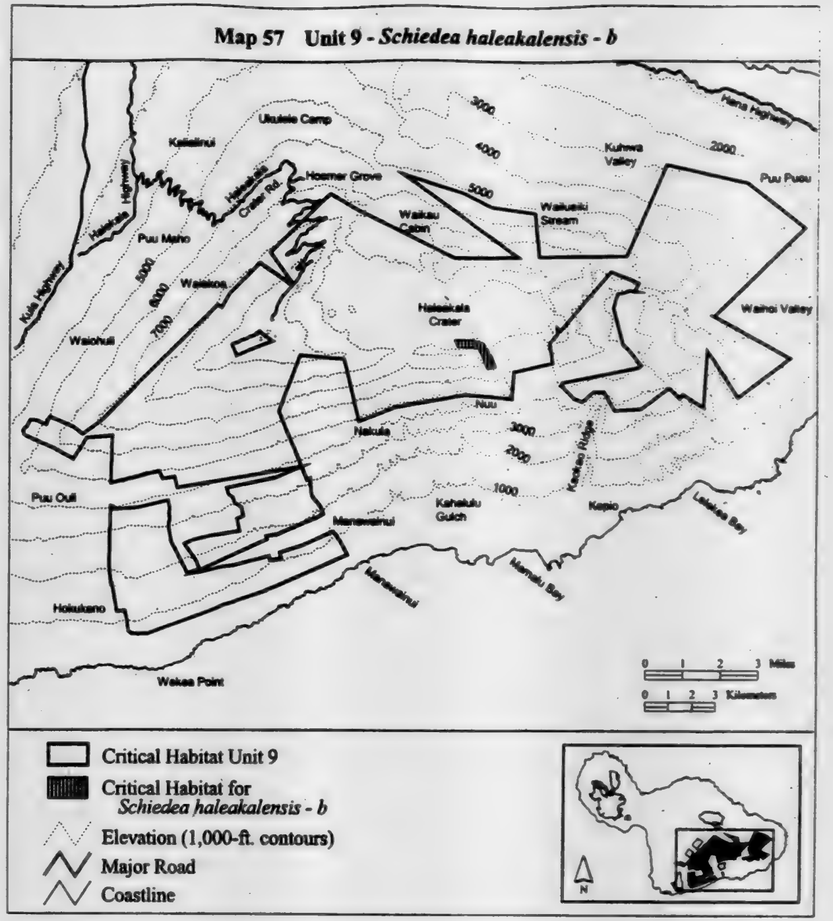
(B) **Note:** Map 56 follows:



(lvii) Maui 9—*Schiedea haleakalensis*—b (77 ha; 189 ac).

(A) Unit consists of the following 8 boundary points: Start at 794791, 2292187; 795274, 2292032; 795602, 2291475; 795788, 2291001; 795397, 2290929; 795031, 2291796; 794146, 2291863; 793984, 2292184; return to starting point.

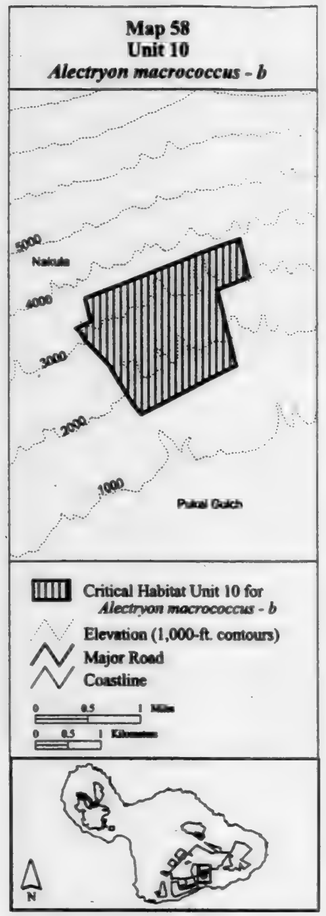
(B) **Note:** Map 57 follows:



(lviii) Maui 10—*Alectryon macrococcus*—b (402 ha; 992 ac).

(A) Unit consists of the following 25 boundary points: Start at 790161, 2287892; 790167, 2287894; 792132, 2288649; 792550, 2288788; 792695, 2288207; 792207, 2288023; 792491, 2286865; 792021, 2286624; 791018, 2286111; 790896, 2286265; 790745, 2286503; 790526, 2286863; 790525, 2286864; 790342, 2287060; 790170, 2287235; 790166, 2287238; 790160, 2287244; 790149, 2287257; 790135, 2287278; 790113, 2287317; 790099, 2287341; 790085, 2287359; 790061, 2287386; 790031, 2287426; 790244, 2287538; return to starting point.

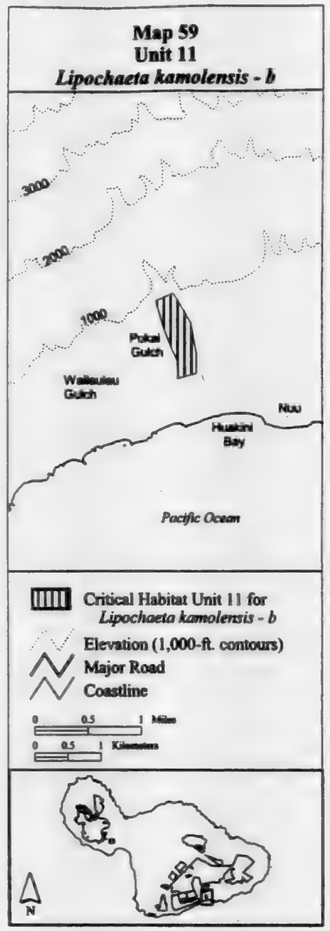
(B) **Note:** Map 58 follows:



(lix) Maui 11—*Lipochaeta kamolensis*—b (42 ha; 105 ac).

(A) Unit consists of the following 16 boundary points: Start at 791492, 2285251; 791757, 2285370; 791758, 2285368; 792019, 2284935; 792107, 2284459; 792107, 2284447; 792107, 2284163; 792103, 2284162; 791825, 2284087; 791831, 2284136; 791831, 2284137; 791825, 2284347; 791825, 2284348; 791736, 2284527; 791629, 2284802; 791506, 2285203; return to starting point.

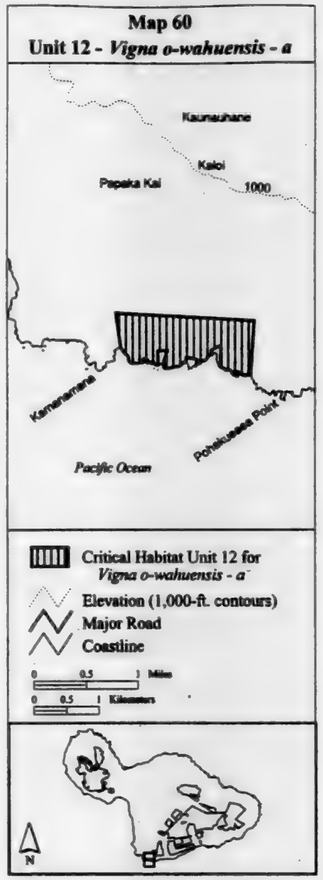
(B) **Note:** Map 59 follows:



(lx) Maui 12—*Vigna o-wahuensis*—a (144 ha; 357 ac).

(A) Unit consists of the following 27 boundary points and the intermediate coastline: Start at Start at 771207, 2278581; 771207, 2278581; 772344, 2278517; 773349, 2278461; 773349, 2278461; 773296, 2277638; 773294, 2277610; 772830, 2277758; 772839, 2278087; 772691, 2278009; 772697, 2277944; 772464, 2277817; 772464, 2277818; 772464, 2277873; 772302, 2277904; 772291, 2277823; 772291, 2277823; 771941, 2277804; 772001, 2278009; 771861, 2277996; 771858, 2277785; 771283, 2278049; 771283, 2278049; 771283, 2278049; 771207, 2278581; return to starting point.; return to starting point.

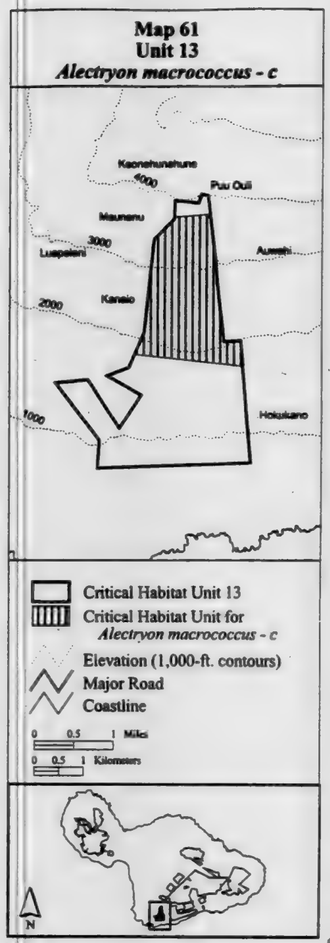
(B) **Note:** Map 60 follows:



(lxi) Maui 13—*Alectryon macrococcus*—c (418 ha; 1,034 ac).

(A) Unit consists of the following 20 boundary points: Start at 777409, 2281715; 777399, 2281716; 775210, 2281944; 775397, 2282390; 775399, 2282405; 775595, 2284266; 776003, 2284682; 776042, 2284722; 776732, 2284778; 776737, 2284731; 776802, 2284151; 776861, 2283642; 776886, 2283406; 776919, 2283097; 776983, 2282542; 777020, 2282206; 777020, 2282205; 777021, 2282204; 777365, 2282220; 777408, 2281728; return to starting point.

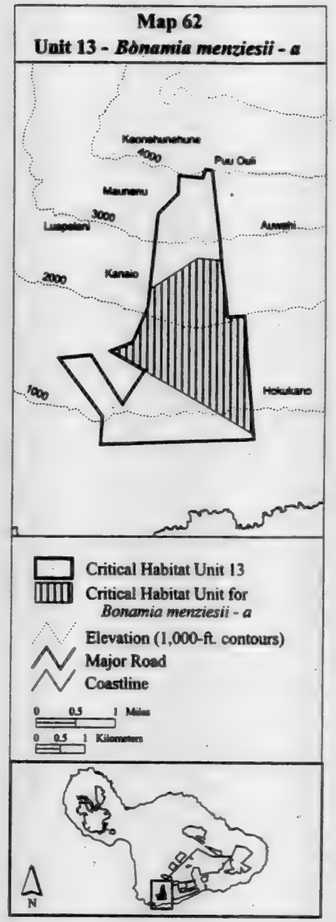
(B) **Note:** Map 61 follows:



(lxii) Maui 13—*Bonamia menziesii*—a (536 ha; 1,325 ac).

(A) Unit consists of the following 18 boundary points: Start at 777534; 2280121; 777558, 2279855; 777557, 2279856; 775339, 2281114; 774656, 2281501; 775099, 2281680; 775397, 2282390; 775399, 2282405; 775433, 2282731; 775436, 2282755; 776398, 2283391; 776891, 2283357; 776919, 2283097; 776983, 2282542; 777020, 2282206; 777020, 2282205; 777021, 2282204; 777348, 2282219; return to starting point.

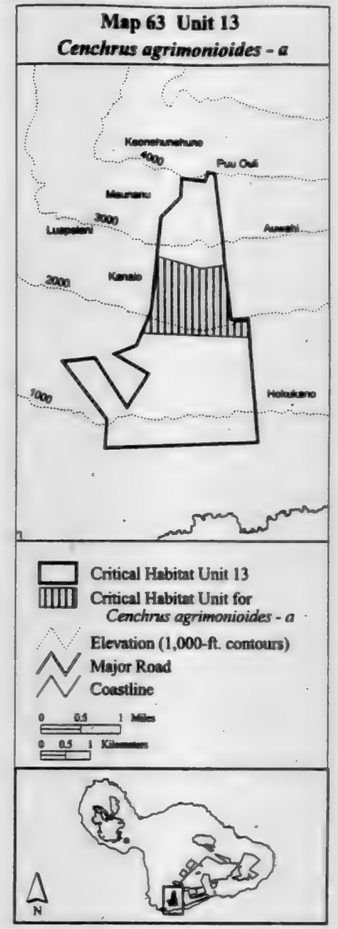
(B) **Note:** Map 62 follows:



(lxiii) Maui 13—*Cenchrus agrimonioides*—a (237 ha; 586 ac).

(A) Unit consists of the following 15 boundary points: Start at 775397, 2282390; 775399, 2282405; 775513, 2283488; 776422, 2283239; 776896, 2283308; 776919, 2283097; 776983, 2282542; 777020, 2282206; 777020, 2282205; 777021, 2282204; 777071, 2282206; 777077, 2282162; 777341, 2282162; 777390, 2281851; 775204, 2281929; return to starting point.

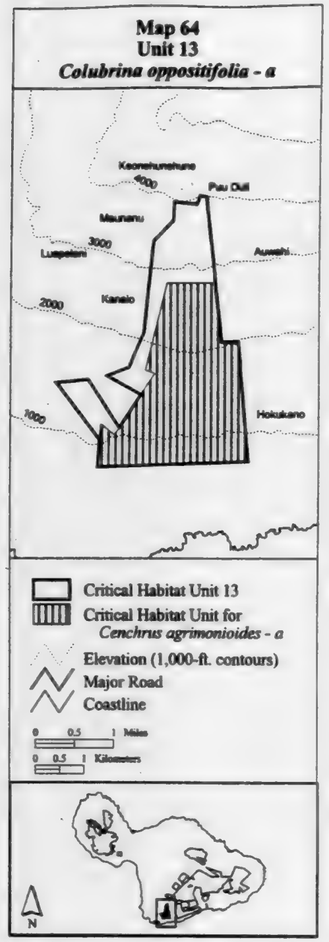
(B) **Note:** Map 63 follows:



(lxiv) Maui 13—*Colubrina oppositifolia*—a (739 ha; 1,827 ac).

(A) Unit consists of the following 20 boundary points: Start at 777399, 2281716; 777534, 2280121; 777557, 2279856; 777566, 2279748; 774460, 2279633; 774498, 2280191; 774520, 2280511; 774805, 2280290; 774901, 2280438; 775339, 2281114; 775626, 2281557; 775438, 2281627; 775884, 2283410; 776885, 2283418; 776886, 2283406; 776919, 2283097; 776983, 2282542; 776985, 2282522; 777010, 2282190; 777361, 2282167; return to starting point.

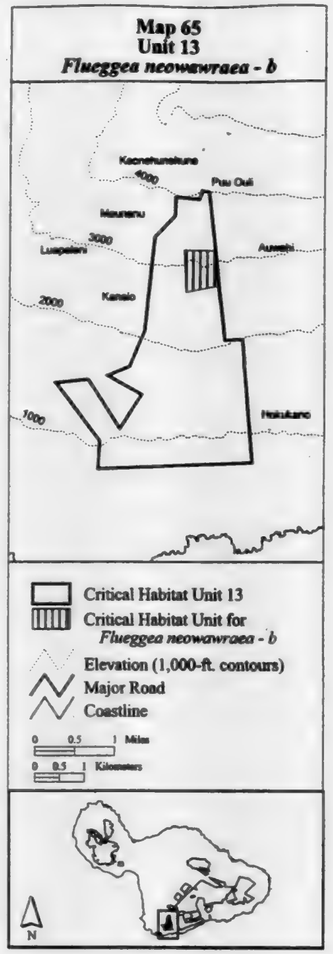
(B) **Note:** Map 64 follows:



(lxv) Maui 13—*Flueggea neowawraea*—b (50 ha; 123 ac).

(A) Unit consists of the following 6 boundary points: Start at 776821, 2283991; 776861, 2283642; 776886, 2283406; 776899, 2283288; 776236, 2283166; 776192, 2283998; return to starting point.

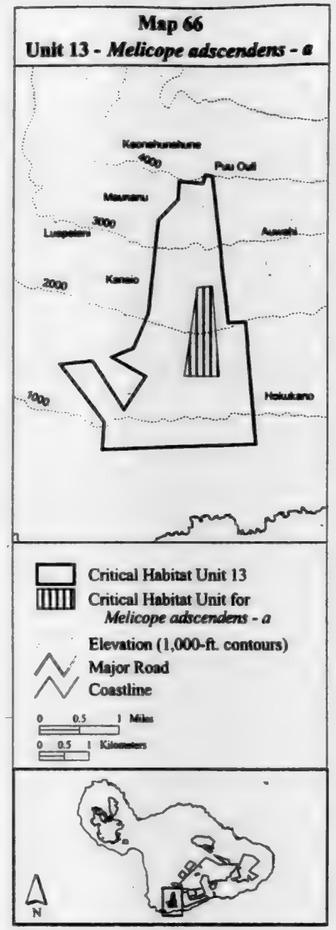
(B) **Note:** Map 65 follows:



(lxvi) Maui 13—*Melicope adscendens*—a (161 ha; 397 ac).

(A) Unit consists of the following 12 boundary points: Start at 776003, 2284682; 776019, 2285054; 776489, 2284998; 776709, 2284972; 776737, 2284731; 776802, 2284151; 776844, 2283785; 776865, 2283600; 776886, 2283406; 776919, 2283097; 776928, 2283019; 775938, 2283164; return to starting point.

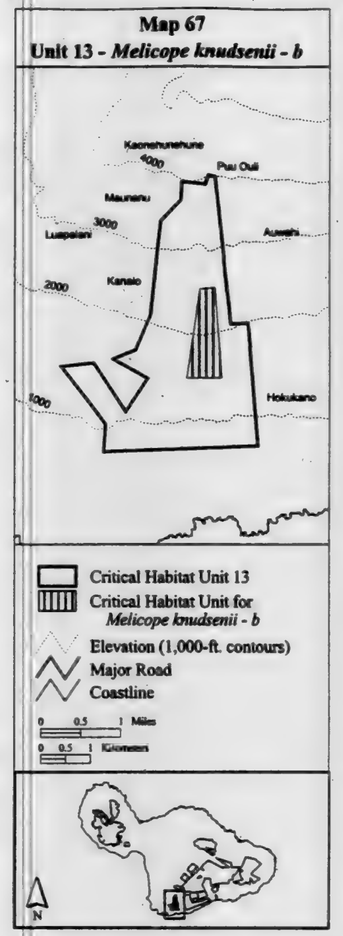
(B) **Note:** Map 66 follows:



(lxvii) Maui 13—*Melicope knudsenii*—b (163 ha; 403 ac).

(A) Unit consists of the following 11 boundary points: Start at 776489, 2284998; 776552, 2285180; 776688, 2285156; 776737, 2284731; 776802, 2284151; 776854, 2283698; 776863, 2283625; 776886, 2283406; 776919, 2283097; 776948, 2282847; 775700, 2282749; return to starting point.

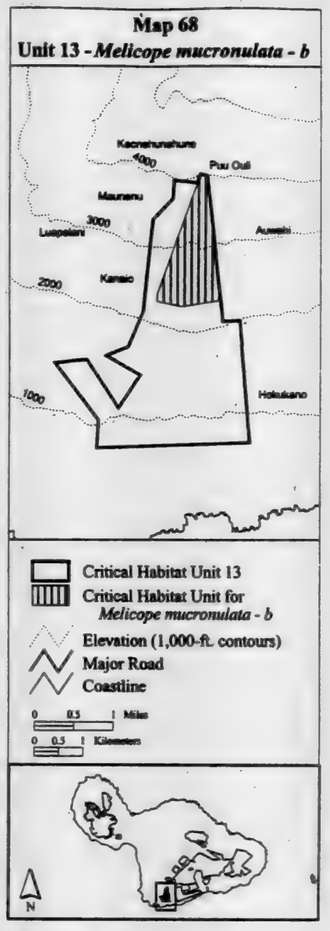
(B) **Note:** Map 67 follows:



(lxviii) Maui 13—*Melicope mucronulata*—b (195 ha; 481 ac).

(A) Unit consists of the following 13 boundary points: Start at 776560, 2285179; 776688, 2285156; 776737, 2284731; 776802, 2284151; 776834, 2283873; 776873, 2283524; 776886, 2283406; 776919, 2283097; 776973, 2282631; 776189, 2282501; 775681, 2282604; 775689, 2282754; 776094, 2283897; return to starting point.

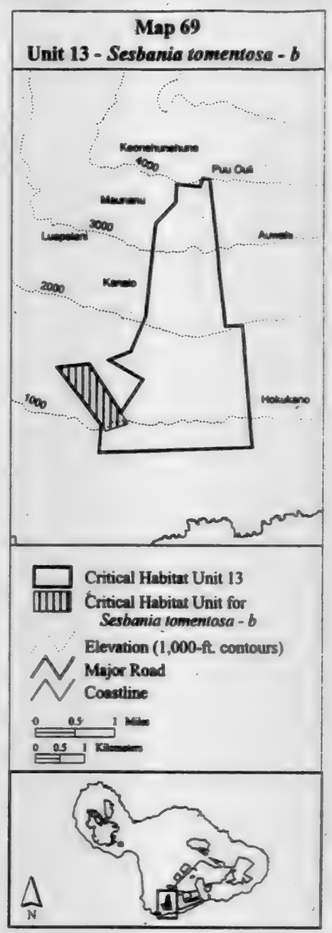
(B) **Note:** Map 68 follows:



(lxix) Maui 13—*Sesbania tomentosa*—b (79 ha; 195 ac).

(A) Unit consists of the following 6 boundary points: Start at 774498, 2280191; 773607, 2281357; 774253, 2281429; 774901, 2280438; 775045, 2280217; 774598, 2280060; return to starting point.

(B) **Note:** Map 69 follows:

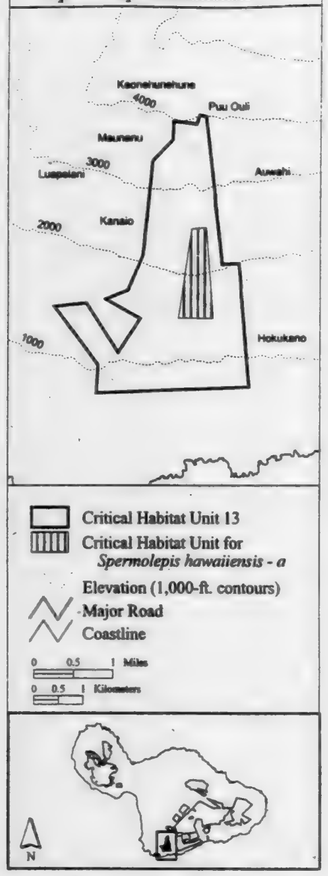


(lxx) Maui 13—*Spermolepis hawaiiensis*—a (91 ha; 225 ac).

(A) Unit consists of the following 4 boundary points: Start at 776697, 2282941; 776828, 2281119; 776127, 2281124; 776388, 2282905; return to starting point.

(B) **Note:** Map 70 follows:

Map 70 Unit 13
Spermolepis hawaiiensis* - *a

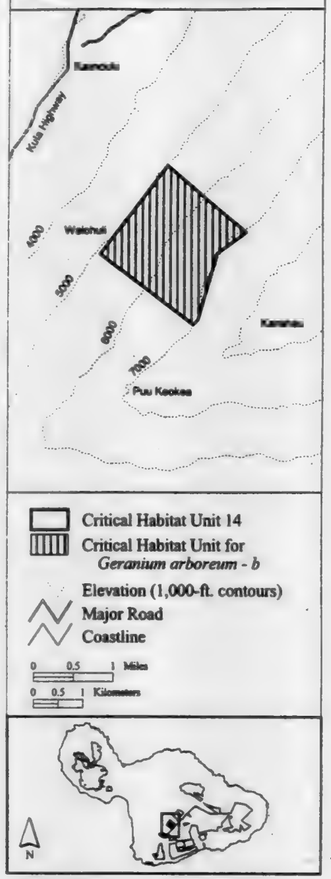


(lxxi) Maui 14—*Geranium arboreum*—b (452 ha; 1,116 ac).

(A) Unit consists of the following 9 boundary points: Start at 780754, 2291599; 780710, 2291446; 780373, 2290270; 780279, 2290173; 780278, 2290174; 778398, 2291590; 779750, 2293350; 781334, 2292030; 781340, 2292025; return to starting point.

(B) **Note:** Map 71 follows:

Map 71
Unit 14 - *Geranium arboreum* - *b*

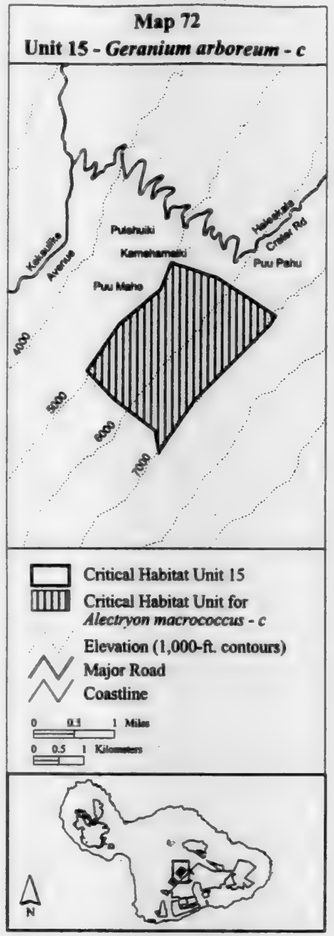


(lxxii) Maui 15—*Geranium arboreum*—c (667 ha; 1,648 ac).

(A) Unit consists of the following 39 boundary points: Start at 783428, 2296641; 784570, 2295895; 784440, 2295690; 784206, 2295457; 782957, 2294208; 782956, 2294207; 782421, 2293422; 782263, 2293191; 782223, 2293416; 782187, 2293615; 781338, 2294254; 781096, 2294510; 780818, 2294804; 781473, 2295735; 782282, 2296409; 782490, 2296948; 782522, 2296937; 782582, 2296918; 782616, 2296907; 782636, 2296900; 782656, 2296893; 782679, 2296886; 782713, 2296875; 782816, 2296841; 782839, 2296833; 782858, 2296827; 782895, 2296816; 782965, 2296793; 783029, 2296772; 783050, 2296765; 783073, 2296758; 783093, 2296751; 783114, 2296744; 783182, 2296721; 783227, 2296707; 783263, 2296695; 783282, 2296689; 783304, 2296681; 783388, 2296654; return to starting point.

(B) **Note:** Map 72 follows:

Map 72
Unit 15 - *Geranium arboreum* - *c*

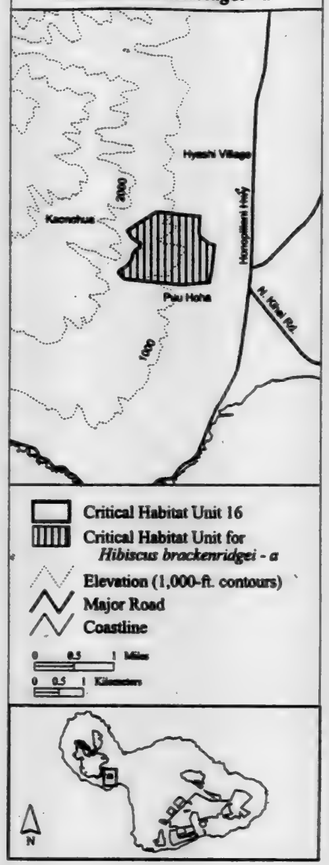


(lxxiii) Maui 16—*Hibiscus brackenridgei*—a (212 ha; 523 ac).

(A) Unit consists of the following 27 boundary points: Start at 756769, 2303771; 756794, 2303787; 756914, 2303864; 757007, 2303958; 757033, 2304013; 757058, 2304068; 757053, 2304123; 757071, 2304153; 757104, 2304208; 757162, 2304244; 757198, 2304267; 757206, 2304365; 757138, 2304395; 757037, 2304471; 756959, 2304605; 757541, 2304994; 758421, 2304900; 758402, 2304566; 758427, 2304491; 758605, 2304369; 758716, 2304323; 758665, 2303806; 758665, 2303805; 758615, 2303558; 758067, 2303509; 756894, 2303623; 756774, 2303746; return to starting point.

(B) **Note:** Map 73 follows:

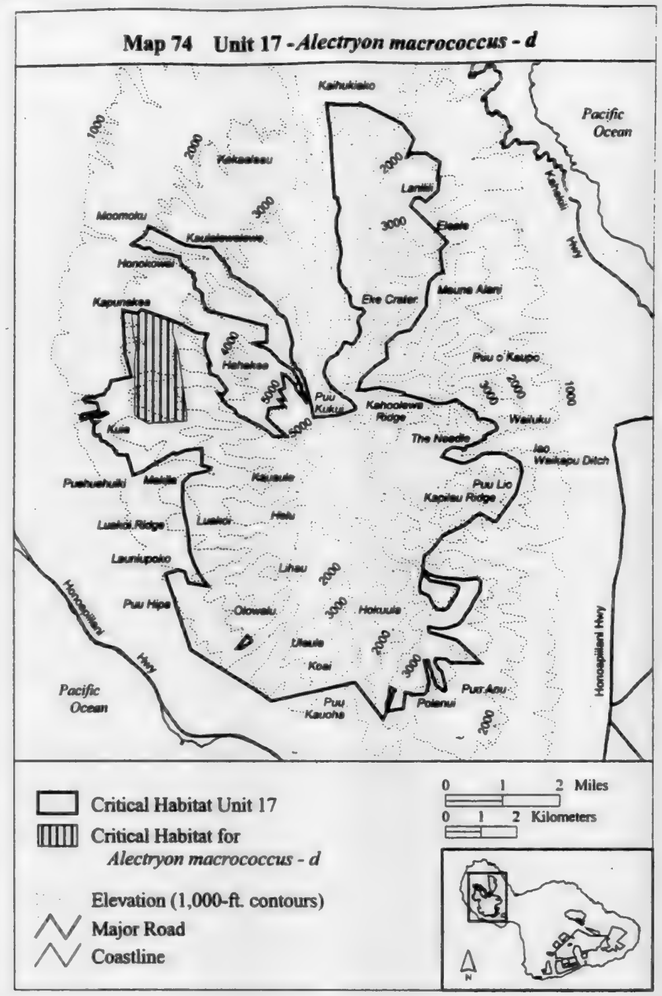
Map 73
Unit 16
Hibiscus brackenridgei* - *a



(lxxiv) Maui 17—*Alectryon macrococcus*—d (391 ha; 965 ac).

(A) Unit consists of the following 27 boundary points: Start at 746095, 2314835; 746096, 2314835; 746207, 2314953; 746887, 2314706; 747096, 2314630; 747103, 2314277; 747172, 2314023; 747194, 2313958; 747189, 2313958; 747258, 2313703; 747500, 2311983; 747492, 2311912; 747502, 2311779; 746629, 2311755; 746420, 2311719; 746022, 2311962; 746024, 2312026; 746020, 2312039; 746014, 2312318; 746038, 2312650; 746002, 2313394; 746052, 2313940; 746048, 2313940; 745960, 2314381; 745954, 2314592; 745934, 2314718; 745938, 2314873; return to starting point.

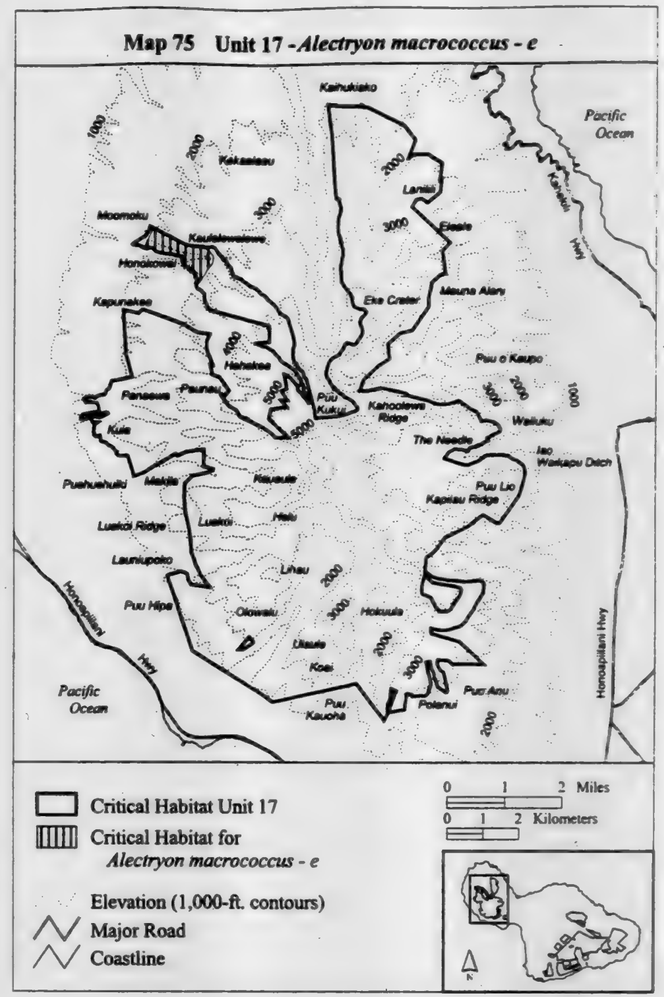
(B) **Note:** Map 74 follows:



(lxxv) Maui 17—*Alectryon macrococcus*—e (110 ha; 271 ac).

(A) Unit consists of the following 105 boundary points: Start at 747695, 2315652; 747693, 2315665; 747695, 2315687; 747702, 2315718; 747713, 2315745; 747728, 2315775; 747729, 2315792; 747729, 2315793; 747717, 2315811; 747717, 2315812; 747697, 2315822; 747681, 2315836; 747675, 2315860; 747677, 2315876; 747681, 2315899; 747681, 2315918; 747667, 2315950; 747648, 2315974; 747620, 2315996; 747585, 2316012; 747546, 2316034; 747526, 2316055; 747508, 2316086; 747494, 2316109; 747476, 2316129; 747447, 2316142; 747409, 2316159; 747389, 2316169; 747365, 2316186; 747345, 2316212; 747336, 2316228; 747328, 2316244; 747312, 2316282; 747299, 2316323; 747290, 2316361; 747289, 2316384; 747289, 2316392; 747296, 2316429; 747296, 2316430; 747296, 2316451; 747260, 2316441; 747214, 2316449; 747159, 2316459; 747125, 2316462; 747109, 2316472; 747100, 2316476; 747078, 2316500; 747077, 2316501; 747055, 2316503; 747024, 2316497; 746977, 2316510; 746946, 2316512; 746922, 2316518; 746881, 2316516; 746836, 2316520; 746786, 2316524; 746741, 2316526; 746698, 2316533; 746655, 2316550; 746617, 2316562; 746584, 2316571; 746551, 2316595; 746533, 2316622; 746505, 2316643; 746458, 2316680; 746457, 2316680; 746411, 2316689; 746410, 2316689; 746348, 2316682; 746338, 2316683; 746337, 2316682; 746335, 2316658; 746329, 2316659; 746231, 2316679; 746501, 2317239; 746647, 2317164; 746706, 2317135; 746859, 2317060; 746968, 2317006; 747190, 2316887; 747229, 2316866; 747344, 2316808; 747418, 2316781; 747517, 2316751; 747602, 2316733; 747628, 2316729; 747715, 2316716; 747716, 2316715; 747717, 2316715; 747937, 2316652; 748040, 2316630; 748046, 2316620; 748049, 2316619; 748181, 2316434; 748179, 2316409; 748181, 2316406; 748176, 2316380; 748164, 2316249; 748053, 2316110; 747990, 2316024; 747963, 2315953; 747889, 2315855; 747846, 2315782; 747792, 2315728; 747733, 2315650; return to starting point.

(B) **Note:** Map 75 follows:



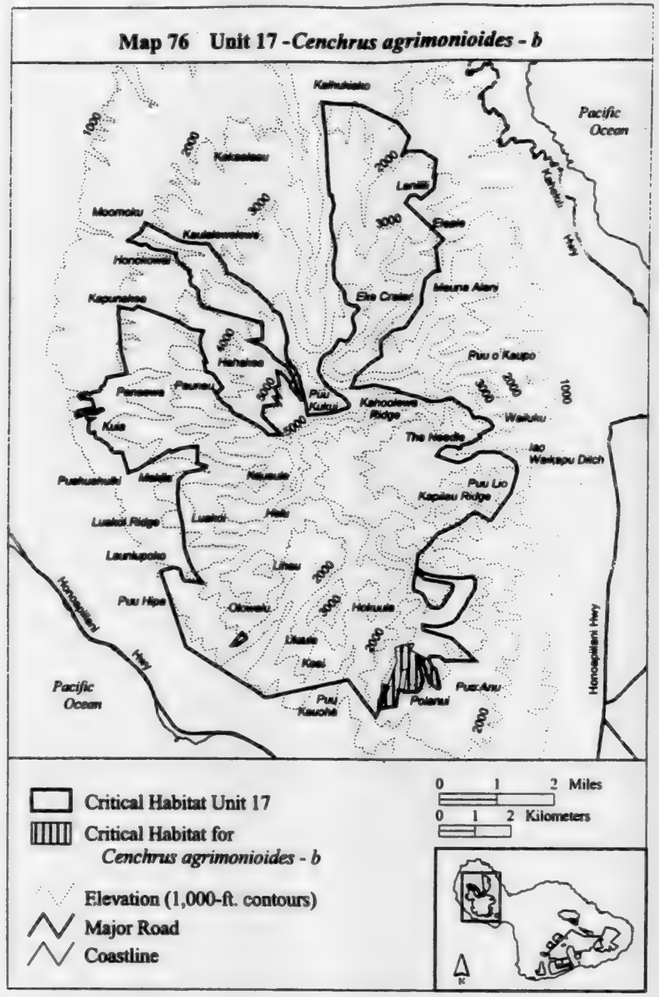
(lxxvi) Maui 17—*Cenchrus agrimonioides*—b (119 ha; 293 ac).

(A) Unit consists of the following 55 boundary points: Start at 753366, 2304292; 753617, 2305024; 753566, 2305394; 753780, 2305464; 754068, 2305512; 754084, 2305461; 754013, 2305321; 754480, 2305078; 754546, 2305000; 754621, 2304863; 754699, 2304812; 754764, 2304356; 754769, 2304263; 754770, 2304254; 754759, 2304261; 754670, 2304324; 754542, 2304415; 754352, 2305097; 754319, 2305108; 754132, 2305170; 754163, 2305075; 754239, 2304985; 754242, 2304971; 754278, 2304785; 754347, 2304463; 754340, 2304443; 754333, 2304422; 754326, 2304400; 754314, 2304365; 754314, 2304364; 754278, 2304259; 754277, 2304259; 754068, 2304164; 754067, 2304164; 754066, 2304164; 754065, 2304164; 753918, 2304149; 753825, 2304139; 753832, 2304195; 753908, 2304800; 753751, 2304765; 753675, 2304217; 753632, 2303912; 753617, 2303805; 753611, 2303762; 753577, 2303756; 753550, 2303751; 753534, 2303749; 753531, 2303748; 753152, 2303682; 753163, 2303713; 753304, 2304113; 753310,

2304130; 753365, 2304285; 753367, 2304292; return to starting point.

(B) **Note:** Map 76 follows:

Map 76 Unit 17 - *Cenchrus agrimonioides - b*

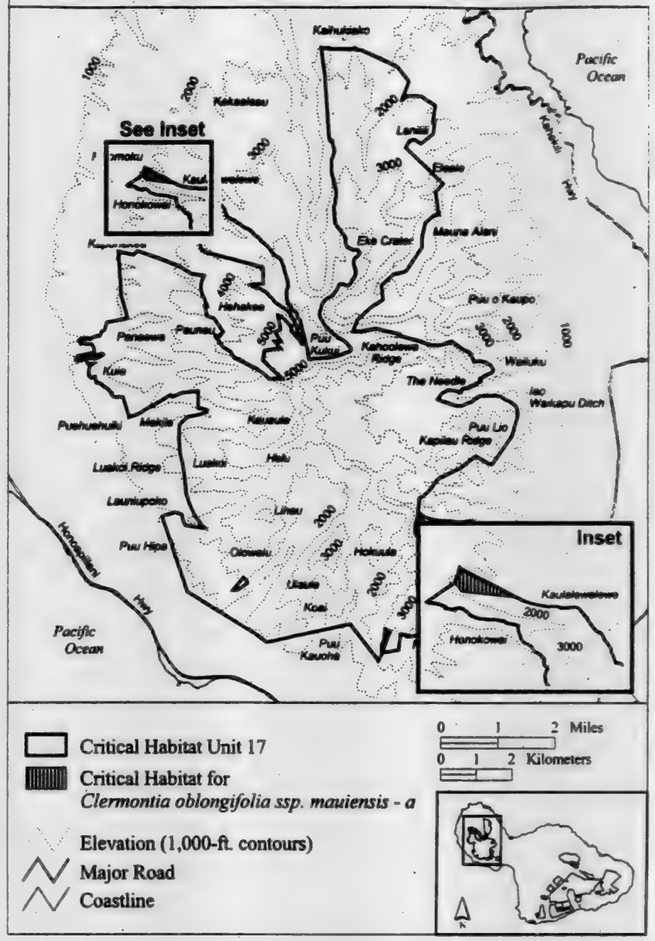


(lxxvii) Maui 17—*Clermontia oblongifolia* ssp. *mauiensis*—a (16 ha; 40 ac).

(A) Unit consists of the following 12 boundary points: Start at 746327, 2317071; 746357, 2317155; 746471, 2317255; 746647, 2317164; 746706, 2317135; 746859, 2317060; 746968, 2317006; 747190, 2316887; 747229, 2316866; 747288, 2316836; 746433, 2316935; 746323, 2317068; return to starting point.

(B) **Note:** Map 77 follows:

Map 77 Unit 17 - *Clermontia oblongifolia ssp. mauiensis - a*

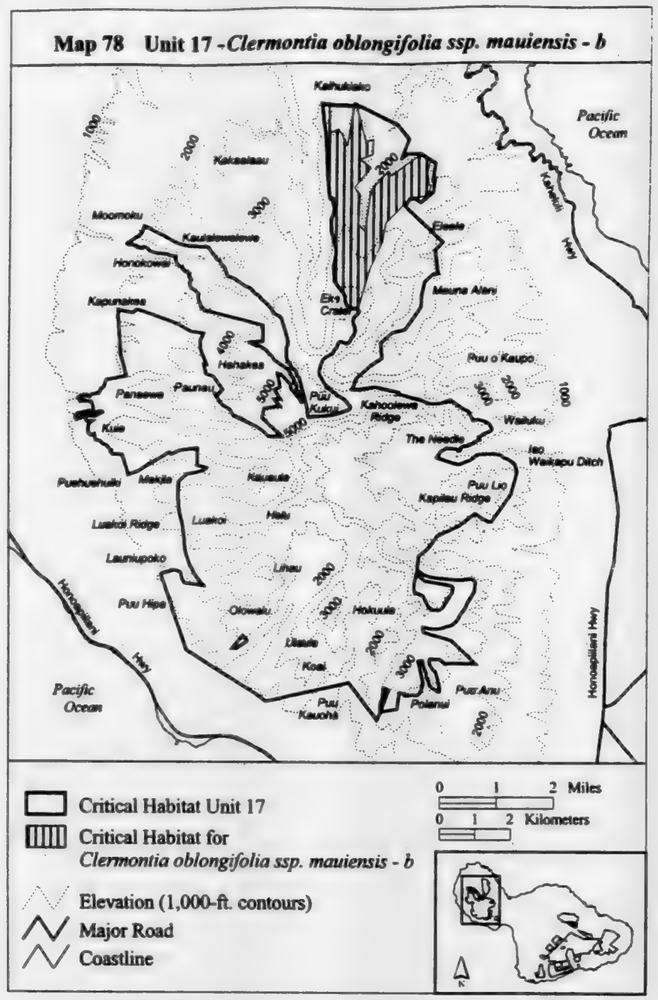


(lxxviii) Maui 17—*Clermontia oblongifolia* ssp. *mauiensis*—b (696 ha; 1,720 ac).

(A) Unit consists of the following 130 boundary points: Start at 752453, 2314975; 752453, 2314976; 752416, 2314975; 752381, 2314973; 752342, 2314967; 752250, 2315013; 752158, 2315058; 752138, 2315091; 752117, 2315151; 752108, 2315196; 752103, 2315252; 752113, 2315300; 752112, 2315302; 752096, 2315325; 752085, 2315344; 752070, 2315374; 752051, 2315406; 752026, 2315438; 751991, 2315478; 751949, 2315532; 751900, 2315589; 751856, 2315640; 751831, 2315694; 751805, 2315739; 751802, 2315745; 751780, 2316007; 751791, 2316023; 751792, 2316024; 751792, 2316025; 751785, 2316046; 751774, 2316078; 751771, 2316121; 751767, 2316164; 751778, 2316192; 751794, 2316230; 751799, 2316258; 751807, 2316311; 751812, 2316339; 751828, 2316408; 751840, 2316469; 751842, 2316535; 751836, 2316587; 751832, 2316640; 751828, 2316678; 751828, 2316679; 751812, 2316711; 751793, 2316765; 751774, 2316831; 751763, 2316879; 751754, 2316929; 751744, 2317001; 751727, 2317051; 751703, 2317090; 751693, 2317225; 751691, 2317254; 751693, 2317261; 751698, 2317290; 751694, 2317322; 751695, 2317366; 751697, 2317415; 751702, 2317462; 751715, 2317522; 751728, 2317571; 751747, 2317619; 751767, 2317682; 751769, 2317710; 751778, 2317751; 751782, 2317790; 751782, 2317791; 751769, 2317829; 751750, 2317859; 751741, 2317901; 751738, 2317949; 751738, 2317997; 751730, 2318034; 751729, 2318035; 751714, 2318045; 751713, 2318046; 751712, 2318046; 751690, 2318034; 751665,

2318030; 751651, 2318051; 751640, 2318085; 751632, 2318124; 751599, 2318608; 751517, 2319810; 751458, 2320229; 751458, 2320252; 751458, 2320253; 751454, 2320260; 751411, 2320566; 751402, 2320630; 751401, 2320638; 751430, 2320630; 751621, 2320578; 751649, 2319822; 751885, 2319941; 752122, 2319497; 752334, 2320586; 752346, 2320647; 752379, 2320632; 752380, 2320629; 752654, 2319615; 752861, 2319645; 752861, 2319260; 752506, 2319113; 752802, 2318906; 752358, 2318344; 752506, 2318166; 752477, 2317338; 752654, 2317131; 752832, 2318285; 753305, 2318817; 753393, 2318669; 753778, 2318965; 754192, 2319231; 754441, 2319131; 754485, 2319104; 754399, 2318787; 754458, 2318403; 754519, 2318419; 754431, 2318127; 754060, 2318058; 753902, 2318028; 753875, 2318023; 753250, 2317363; 753146, 2316807; 752799, 2316077; 752486, 2315000; 752460, 2314964; return to starting point.

(B) **Note:** Map 78 follows:



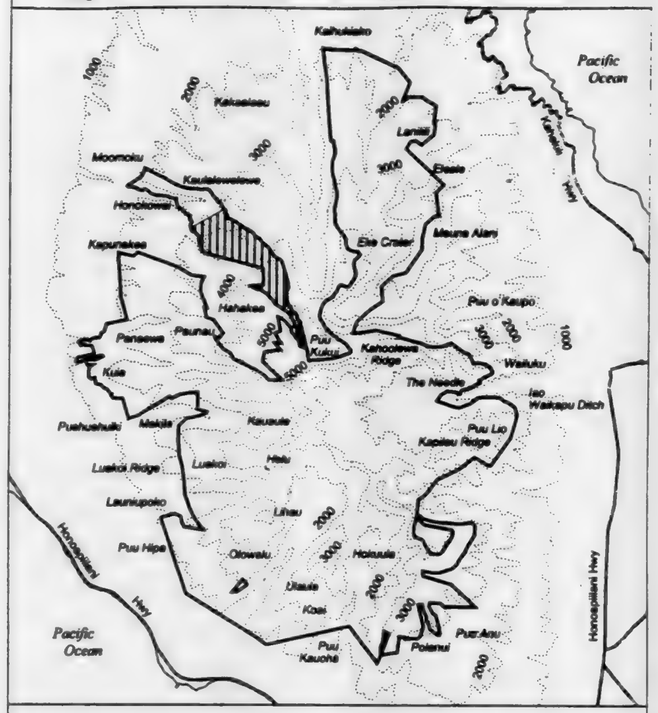
(lxxix) Maui 17—*Clermontia oblongifolia* ssp. *mauiensis*—c (296 ha; 732 ac).

(A) Unit consists of the following 262 boundary points: Start at 750654, 2312939; 750658, 2312963; 750658, 2312964; 750644, 2312989; 750610, 2313159; 750421, 2313289; 750102, 2313508; 750074, 2313542; 750046, 2313594; 750046, 2313595; 749977, 2313657; 749957, 2313674; 749879,

2313766; 749865, 2313785; 749864, 2313785; 749692, 2313889; 749655, 2313912; 749653, 2313912; 749594, 2313900; 749427, 2313998; 749481, 2314008; 749517, 2314015; 749719, 2314022; 749762, 2314024; 749763, 2314024; 749764, 2314024; 749764, 2314025; 749764, 2314060; 749776, 2314062; 749776, 2314445; 749768, 2314447; 749769, 2314498; 749768, 2314500; 749767, 2314500; 748184, 2314906; 748105, 2314940; 748092, 2314945; 748090, 2314947; 748089, 2314948; 748069, 2314973; 748068, 2314973; 748029, 2314987; 748007, 2315005; 748001, 2315029; 748005, 2315065; 748005, 2315083; 747994, 2315106; 747975, 2315127; 747954, 2315161; 747942, 2315193; 747940, 2315201; 747933, 2315253; 747929, 2315289; 747930, 2315329; 747935, 2315356; 747931, 2315379; 747914, 2315403; 747887, 2315423; 747857, 2315454; 747831, 2315482; 747792, 2315504; 747772, 2315512; 747727, 2315626; 748615, 2316119; 748666, 2316120; 748680, 2316102; 748682, 2316095; 748687, 2316079; 748691, 2316057; 748698, 2316026; 748698, 2316025; 748717, 2315987; 748727, 2315962; 748733, 2315944; 748738, 2315922; 748743, 2315901; 748750, 2315885; 748758, 2315876; 748759, 2315875; 748770, 2315868; 748796, 2315863; 748806, 2315862; 748826, 2315861; 748849, 2315847; 748876, 2315834; 748913, 2315824; 748949, 2315807; 748960, 2315800; 749000, 2315773; 749021, 2315756; 749067, 2315724; 749090, 2315709; 749140, 2315671; 749173, 2315647; 749188, 2315640; 749205, 2315627; 749223, 2315614; 749244, 2315605; 749332, 2315568; 749353, 2315555; 749385, 2315535; 749404, 2315524; 749421, 2315514; 749470, 2315477; 749479, 2315464; 749486, 2315451; 749500, 2315430; 749524, 2315402; 749550, 2315385; 749571, 2315373; 749617, 2315351; 749628, 2315342; 749652, 2315326; 749666, 2315306; 749677, 2315288; 749682, 2315280; 749701, 2315256; 749720, 2315236; 749736, 2315224; 749781, 2315186; 749804, 2315173; 749833, 2315147; 749874, 2315098; 749888, 2315088; 749934, 2315046; 749960, 2315009; 750020, 2314928; 750057, 2314876; 750072, 2314855; 750097, 2314830; 750120, 2314809; 750138, 2314798; 750173, 2314786; 750215, 2314763; 750223, 2314758; 750232, 2314754; 750246, 2314737; 750265, 2314720; 750286, 2314703; 750288, 2314702; 750454, 2314143; 750461, 2314125; 750462, 2314110; 750462, 2314098; 750469, 2314075; 750476, 2314039; 750478, 2314029; 750479, 2314015; 750481, 2313991; 750479, 2313958; 750479, 2313946; 750479, 2313933; 750476, 2313919; 750468, 2313903; 750450, 2313871; 750441, 2313851; 750441, 2313850; 750438, 2313827; 750440, 2313794; 750439, 2313772; 750436, 2313747; 750437, 2313723; 750437, 2313700; 750439, 2313671; 750438, 2313647; 750435, 2313610; 750436, 2313597; 750436, 2313596; 750441, 2313585; 750451, 2313562; 750456, 2313545; 750463, 2313528; 750465, 2313510; 750469, 2313497; 750469, 2313496; 750477, 2313484; 750491, 2313465; 750505, 2313443; 750510, 2313432; 750515, 2313420; 750526, 2313409; 750541, 2313398; 750551, 2313389; 750560, 2313367; 750565, 2313356; 750572, 2313334; 750578, 2313319; 750591, 2313304; 750609, 2313283; 750640, 2313257; 750643, 2313255; 750652, 2313247; 750674, 2313233; 750689, 2313219; 750704, 2313203; 750713, 2313180; 750725, 2313151; 750736, 2313118; 750747, 2313077; 750753, 2313062; 750767, 2313040; 750774, 2313031; 750792, 2313015; 750803, 2313003; 750815, 2312997; 750834, 2312921; 750866, 2312797; 750864, 2312784; 750864, 2312768; 750864, 2312767; 750868, 2312756; 750877, 2312736; 750881, 2312727; 750882, 2312717; 750888, 2312691; 750895, 2312668; 750904, 2312647; 750904, 2312646; 750905, 2312646; 751008, 2312240; 751019, 2312199; 751038, 2312126; 751038, 2312124; 751038, 2312092; 751037, 2312087; 751022, 2312131; 751013, 2312201; 750784, 2312291; 750742, 2312502; 750763, 2312476; 750804, 2312434; 750835, 2312384; 750877, 2312324; 750877, 2312323; 750878, 2312323; 750879, 2312323; 750880, 2312324; 750889, 2312378; 750889, 2312379; 750885, 2312387; 750887, 2312412; 750887, 2312413; 750876, 2312455; 750851, 2312517; 750819, 2312576; 750799, 2312595; 750799, 2312596; 750798, 2312596; 750757, 2312591; 750749, 2312590; 750747, 2312611; 750734, 2312726; 750739, 2312751; 750739, 2312752; 750730, 2312793; 750712, 2312846; 750711, 2312846; 750711, 2312847; 750691, 2312851; 750690, 2312851; 750687, 2312849; 750672, 2312852; return to starting point.

(B) **Note:** Map 79 follows:

Map 79 Unit 17 - *Clermontia oblongifolia ssp. mauiensis - c*

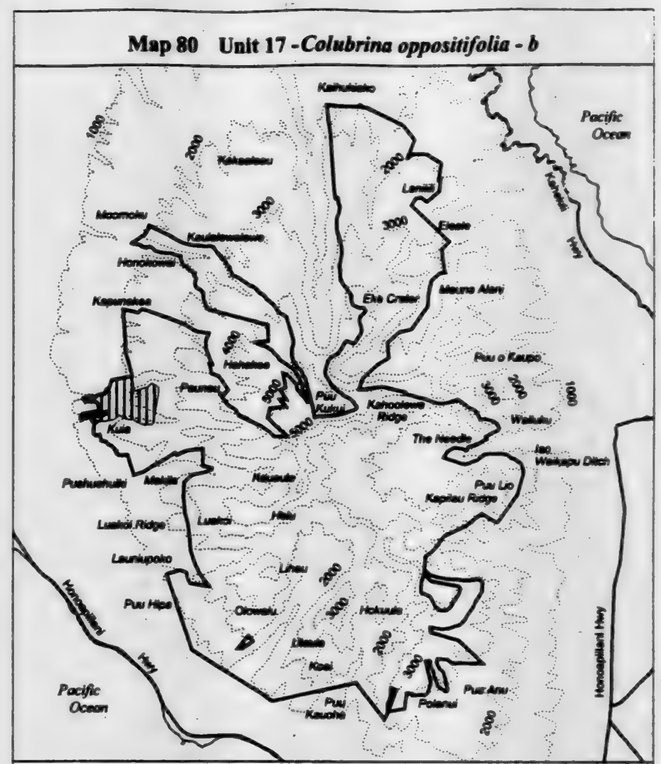


(bxxx) Maui 17—*Golubrina oppositifolia*–b (176 ha; 436 ac).

(A) Unit consists of the following 67 boundary points: Start at 744959, 2311780; 744794, 2311780; 744757, 2311853; 744803, 2311913; 744873, 2311930; 745003, 2311908; 745103, 2311941; 745246, 2312013; 745237, 2312047; 745184, 2312054; 745082, 2312024; 744998, 2311962; 744940, 2311972; 744855, 2311959; 744843, 2311979; 744786, 2311969; 744644, 2311877; 744574, 2311856; 744542, 2311859; 744531, 2311866; 744526, 2311860; 744468, 2311866; 744468, 2311918; 744513, 2311972; 744523, 2311989; 744820, 2312059; 744992, 2312075; 744984, 2312177; 744929, 2312317; 744741, 2312341; 744737, 2312339; 744736, 2312339; 744734, 2312365; 744653, 2312345; 744609, 2312328; 744558, 2312437; 744633, 2312480; 744679, 2312478; 744722, 2312477; 744785, 2312485; 744871, 2312454; 744945, 2312517; 745143, 2312557; 745196, 2312680; 745264, 2312714; 745351, 2312931; 745805, 2313017; 745826, 2313019; 745913, 2313025; 745975, 2312628; 746367, 2312736; 746475, 2312844; 746618, 2312761; 746666, 2312733; 746657, 2312639; 746654, 2312523; 746558, 2311971; 746539, 2311801; 746492, 2311692; 746250, 2311692; 746219, 2311706; 746197, 2311706; 745959, 2311825; 745773, 2311844; 745572, 2311939; 745404, 2311822; 745147, 2311780; return to starting point.

(B) **Note:** Map 80 follows:

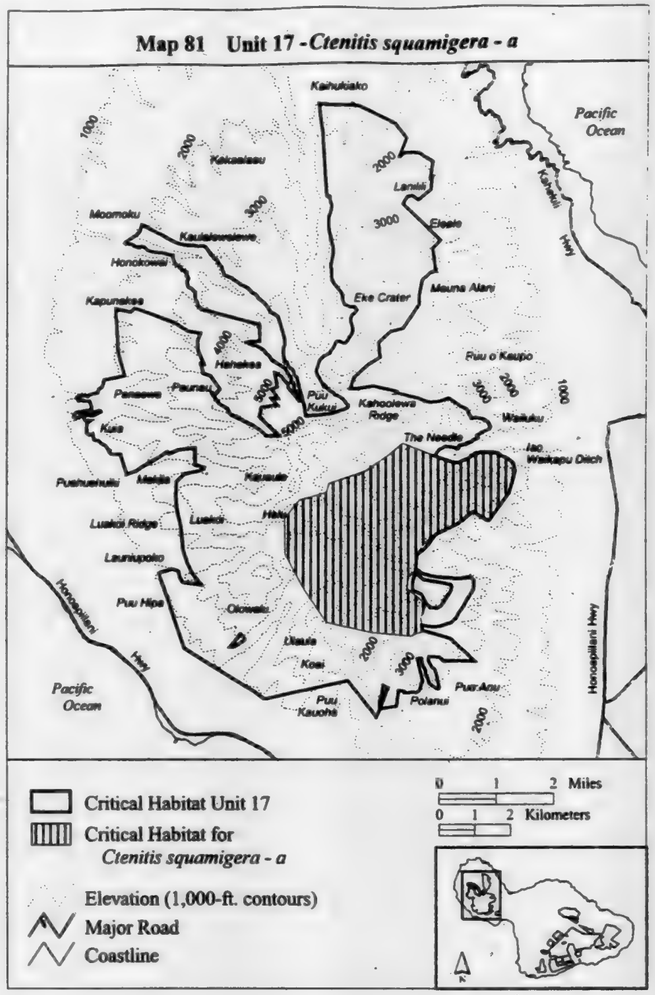
Map 80 Unit 17 - *Colubrina oppositifolia - b*



(bxxxi) Maui 17—*Ctenitis squamigera*—a (1,979 ha; 4,891 ac).

(A) Unit consists of the following 58 boundary points: Start at 754711, 2310770; 755224, 2310599; 755234, 2310596; 755269, 2310584; 755320, 2310567; 755364, 2310585; 755366, 2310585; 755661, 2310703; 755670, 2310709; 756015, 2310849; 756300, 2310859; 756582, 2310767; 756724, 2310720; 756903, 2310594; 756939, 2310479; 756941, 2310469; 756961, 2310369; 756961, 2310368; 756967, 2310338; 756918, 2310152; 756801, 2309745; 756244, 2308954; 756153, 2308971; 755784, 2309203; 755328, 2308843; 754727, 2308566; 754703, 2308555; 754391, 2308291; 754206, 2308013; 754199, 2308002; 754164, 2307624; 754157, 2307555; 753944, 2307384; 753924, 2307060; 754322, 2306732; 754390, 2306683; 754409, 2306473; 754314, 2306226; 754335, 2306032; 754344, 2305953; 754346, 2305896; 754350, 2305895; 754350, 2305894; 754356, 2305843; 754191, 2305795; 754037, 2305734; 752927, 2305830; 751646, 2306112; 751009, 2307051; 750478, 2308025; 750460, 2309016; 750885, 2309547; 751648, 2309754; 751721, 2310011; 752535, 2310277; 752735, 2310348; 753433, 2310829; 753806, 2311124; return to starting point.

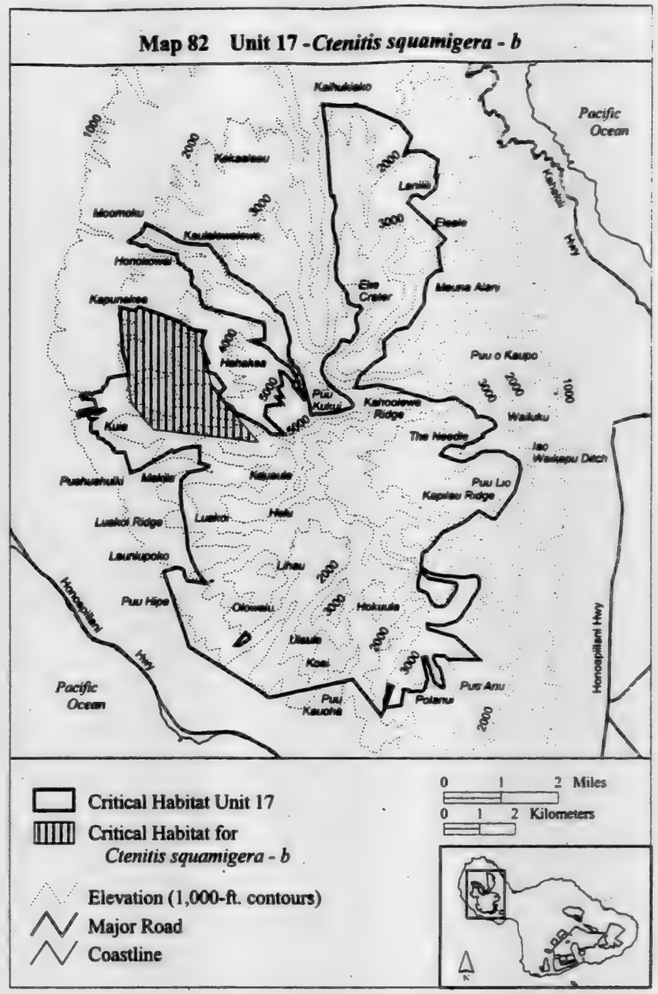
(B) **Note:** Map 81 follows:



(lxxxii) Maui 17—*Ctenitis squamigera*—b (816 ha; 2,017 ac).

(A) Unit consists of the following 33 boundary points: Start at 745855, 2313035; 745916, 2313043; 745773, 2313571; 745745, 2313671; 745742, 2313671; 745733, 2313825; 745726, 2313936; 745666, 2314939; 746095, 2314835; 746096, 2314835; 746207, 2314953; 746887, 2314706; 747359, 2314534; 747735, 2314300; 747988, 2314266; 747997, 2314050; 748006, 2313828; 748025, 2313740; 748103, 2313389; 748166, 2313105; 748233, 2312800; 748392, 2312568; 748570, 2312307; 748631, 2312228; 748652, 2312200; 748748, 2312058; 748822, 2312005; 749297, 2311460; 749584, 2311129; 749324, 2311150; 749143, 2311192; 746617, 2311468; 745999, 2312213; return to starting point.

(B) **Note:** Map 82 follows:



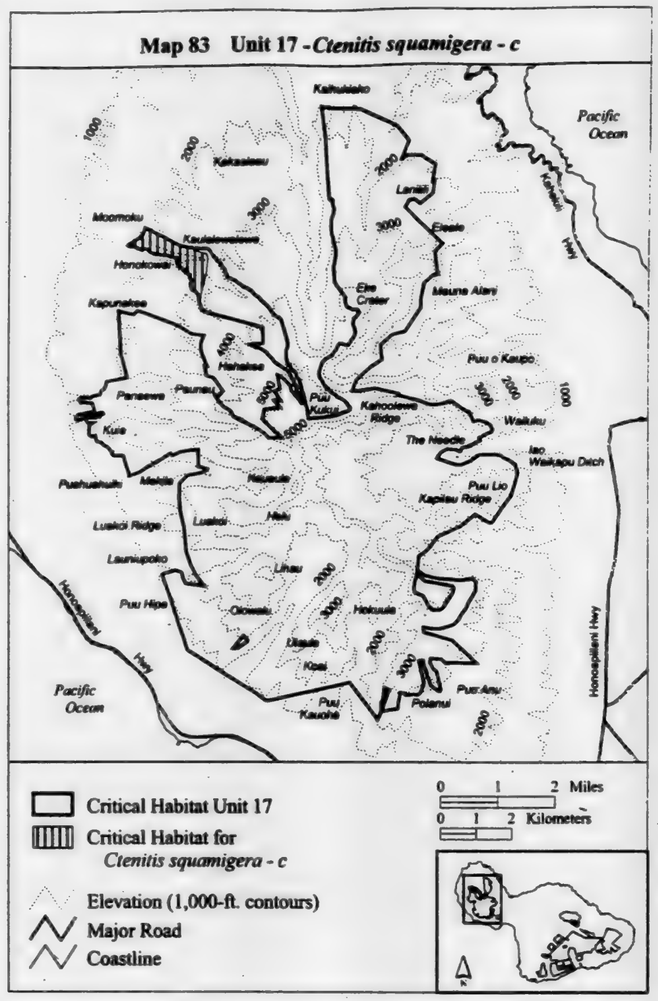
(lxxxiii) Maui 17—*Ctenitis squamigera*—c (137 ha; 338 ac).

(A) Unit consists of the following 133 boundary points: Start at 747966, 2315141; 747954, 2315161; 747942, 2315193; 747940, 2315201; 747933, 2315253; 747929, 2315289; 747930, 2315329; 747935, 2315356; 747931, 2315379; 747914, 2315403; 747887, 2315423; 747857, 2315454; 747831, 2315482; 747792, 2315504; 747750, 2315521; 747726, 2315545; 747722, 2315552; 747704, 2315583; 747698, 2315635; 747693, 2315665; 747695, 2315687; 747702, 2315718; 747713, 2315745; 747728, 2315775; 747729, 2315792; 747729, 2315793; 747717, 2315811; 747717, 2315812; 747702, 2315820; 747691, 2315827; 747681, 2315836; 747675, 2315860; 747677, 2315876; 747681, 2315899; 747681, 2315918; 747667, 2315950; 747648, 2315974; 747620, 2315996; 747585, 2316012; 747546, 2316034; 747526, 2316055; 747508, 2316086; 747494, 2316109; 747476, 2316129; 747447, 2316142; 747409, 2316159; 747389, 2316169; 747365, 2316186; 747345, 2316212; 747336, 2316228; 747328, 2316244; 747312, 2316282; 747299, 2316323; 747290, 2316361; 747289, 2316384; 747289, 2316392; 747296, 2316429; 747296, 2316430; 747296, 2316431; 747260, 2316441; 747214, 2316449; 747159, 2316459; 747125, 2316462; 747109, 2316472; 747100, 2316476; 747078, 2316500; 747077, 2316501; 747055, 2316503; 747024, 2316497; 746977, 2316510; 746946, 2316512; 746922, 2316518; 746881, 2316516; 746836, 2316520; 746786, 2316524; 746741, 2316526; 746698, 2316533; 746655, 2316550; 746617, 2316562; 746584, 2316571; 746551, 2316595; 746533, 2316622; 746505,

2316643; 746458, 2316680; 746457, 2316680; 746411, 2316689; 746410, 2316689; 746348, 2316682; 746338, 2316683; 746337, 2316682; 746335, 2316658; 746329, 2316659; 746194, 2316687; 746199, 2316707; 746200, 2316707; 746199, 2316708; 746198, 2316709; 746186, 2316712; 746160, 2316720; 746128, 2316738; 746127, 2316738; 746095, 2316749; 746058, 2316757; 746020, 2316765; 745994, 2316766; 745962, 2316761; 745913, 2316779; 745961, 2316812; 746173, 2316962; 746267, 2317022; 746270, 2317031; 746278, 2317037; 746327, 2317071; 746357, 2317155; 746377, 2317211; 746405, 2317289; 746423, 2317280; 747344, 2316808; 747450, 2316773; 747517, 2316751; 747602, 2316733; 747628, 2316729; 747715, 2316716; 747716, 2316715; 747719, 2316715; 747767, 2316674; 747991, 2316589; 748152, 2316547; 748190, 2316422; 748188, 2316396; 748181, 2316327; 748153, 2316030; 747996, 2315412; return to starting point.

(B) **Note:** Map 83 follows:

Map 83 Unit 17 - *Ctenitis squamigera* - c



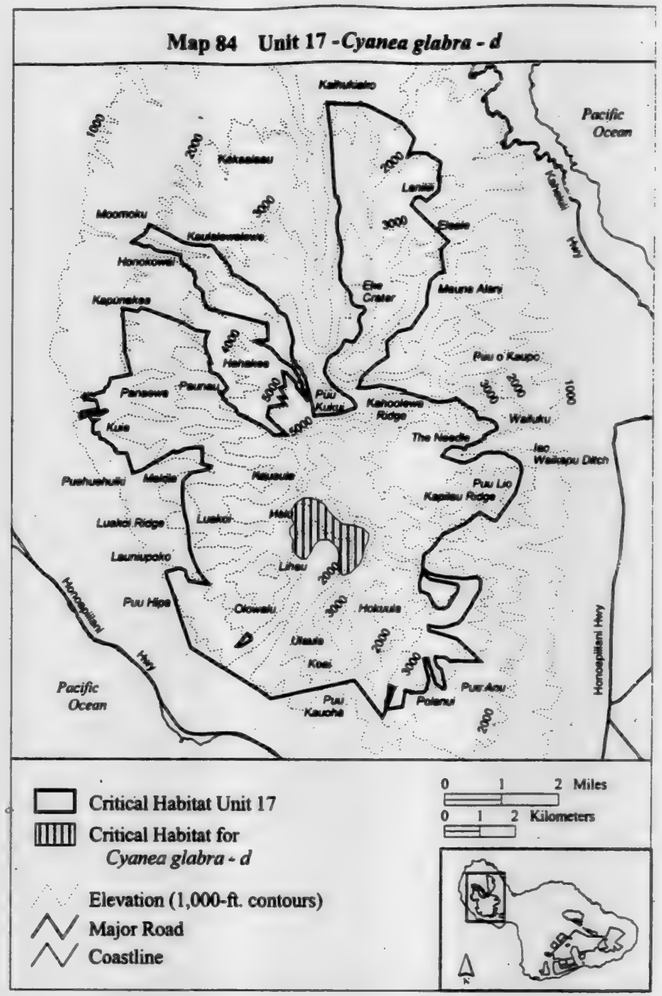
(lxxxiv) Maui 17—*Cyanea glabra*—d (255 ha; 630 ac).

(A) Unit consists of the following 36 boundary points: Start at 750480, 2308143; 750494, 2308421; 750414, 2308545; 750406, 2308713; 750523, 2308867; 750465, 2308969; 750450, 2309254; 750575, 2309437; 750794, 2309576; 750969, 2309576; 751203, 2309517; 751401, 2309386; 751474, 2309254; 751664, 2309057; 751905, 2308859; 752286, 2308801; 752468,

2308742; 752636, 2308589; 752607, 2308362; 752505, 2308165; 752461, 2307938; 752381, 2307755; 752125, 2307492; 751913, 2307434; 751803, 2307507; 751766, 2307712; 751781, 2307880; 751781, 2308019; 751744, 2308194; 751511, 2308421; 751262, 2308406; 751130, 2308296; 750969, 2308019; 750882, 2307872; 750736, 2307872; 750545, 2308026; return to starting point.

(B) **Note:** Map 84 follows:

Map 84 Unit 17 - *Cyanea glabra* - d

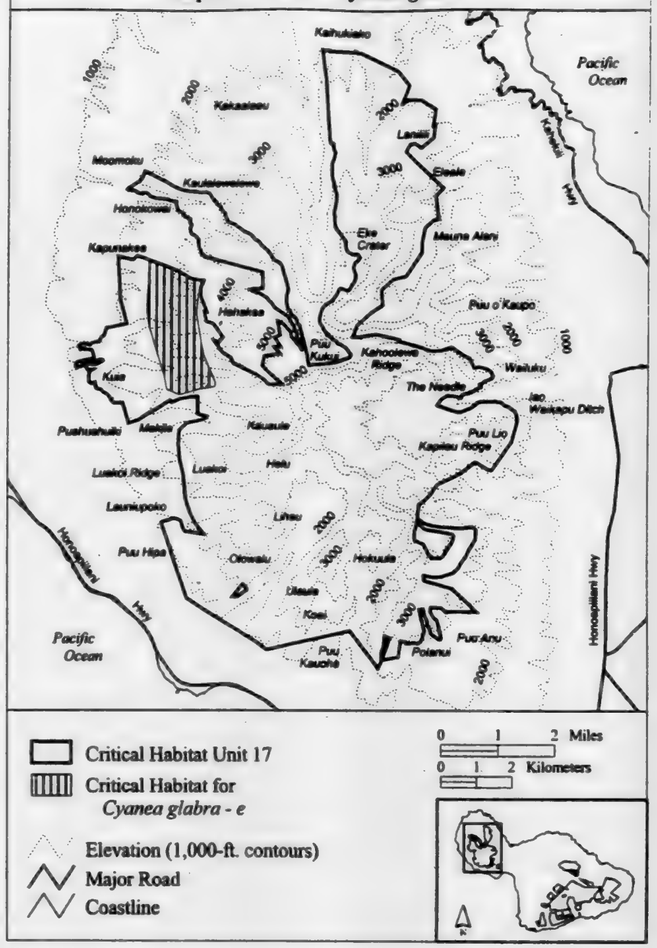


(lxxxv) Maui 17—*Cyanea glabra*—e (470 ha; 1,163 ac).

(A) Unit consists of the following 28 boundary points: Start at 746593, 2314813; 746887, 2314706; 747359, 2314534; 747735, 2314300; 748095, 2314252; 748080, 2314231; 747997, 2314050; 747967, 2313985; 747921, 2313749; 747890, 2313343; 748044, 2312415; 748090, 2312169; 748396, 2311456; 748418, 2311379; 748403, 2311287; 748254, 2311251; 747983, 2311220; 747495, 2311082; 747412, 2311052; 747044, 2311200; 746967, 2311589; 746567, 2312918; 746485, 2313343; 746485, 2313738; 746526, 2314164; 746521, 2314359; 746546, 2314733; 746555, 2314791; return to starting point.

(B) **Note:** Map 85 follows:

Map 85 Unit 17 - *Cyanea glabra - e*



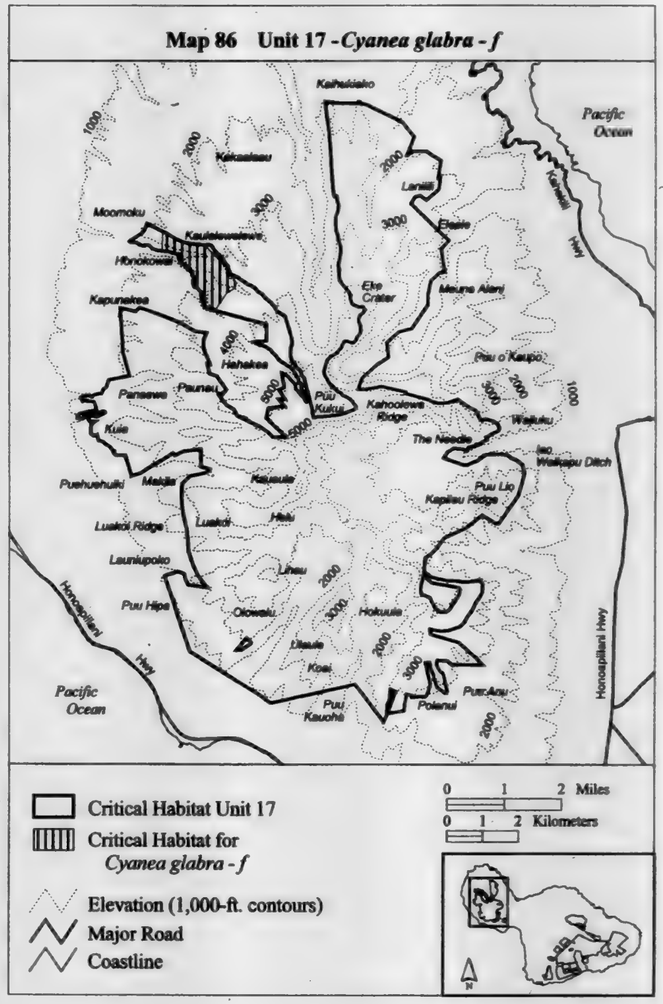
(bxxxvi) Maui 17—*Cyanea glabra*—f (188 ha; 465 ac).

(A) Unit consists of the following 122 boundary points: Start at 748090, 2314947; 748089, 2314948; 748069, 2314973; 748068, 2314973; 748029, 2314987; 748007, 2315005; 748001, 2315029; 748005, 2315065; 748005, 2315083; 747994, 2315106; 747975, 2315127; 747954, 2315161; 747942, 2315193; 747940, 2315201; 747933, 2315253; 747929, 2315289; 747930, 2315329; 747935, 2315356; 747931, 2315379; 747914, 2315403; 747887, 2315423; 747857, 2315454; 747831, 2315482; 747792, 2315504; 747750, 2315521; 747726, 2315545; 747722, 2315552; 747704, 2315583; 747698, 2315635; 747693, 2315665; 747695, 2315687; 747702, 2315718; 747713, 2315745; 747728, 2315775; 747729, 2315792; 747729, 2315793; 747717, 2315811; 747717, 2315812; 747697, 2315822; 747681, 2315836; 747675, 2315860; 747677, 2315876; 747681, 2315899; 747681, 2315918; 747667, 2315950; 747648, 2315974; 747620, 2315996; 747585, 2316012; 747546, 2316034; 747526, 2316055; 747508, 2316086; 747494, 2316109; 747476, 2316129; 747447, 2316142; 747409, 2316159; 747389, 2316169; 747365, 2316186; 747345, 2316212; 747336, 2316228; 747328, 2316244; 747312, 2316282; 747299, 2316323; 747290, 2316361; 747289, 2316384; 747289, 2316392; 747296, 2316429; 747296, 2316430; 747296, 2316431; 747260, 2316441; 747214, 2316449; 747159, 2316459; 747125, 2316462; 747109, 2316472; 747100, 2316476; 747078, 2316500; 747077, 2316501; 747055, 2316503; 747024, 2316497; 746977, 2316510; 746946, 2316512; 746922, 2316518; 746881, 2316516; 746836,

2316520; 746828, 2316521; 746834, 2316631; 746839, 2316939; 746859, 2317060; 746968, 2317006; 747190, 2316887; 747229, 2316866; 747344, 2316808; 747418, 2316781; 747450, 2316773; 747628, 2316729; 747716, 2316715; 747717, 2316715; 747733, 2316713; 747829, 2316717; 747887, 2316715; 747903, 2316702; 747932, 2316692; 747932, 2316691; 747967, 2316688; 748003, 2316690; 748029, 2316693; 748649, 2316082; 748735, 2315935; 748738, 2315922; 748743, 2315901; 748750, 2315885; 748758, 2315876; 748759, 2315875; 748770, 2315868; 748775, 2315867; 748793, 2315836; 748906, 2315667; 748901, 2315549; 748798, 2315451; 748660, 2315374; 748372, 2314933; 748352, 2314863; 748326, 2314870; return to starting point.

(B) **Note:** Map 86 follows:

Map 86 Unit 17 - *Cyanea glabra - f*



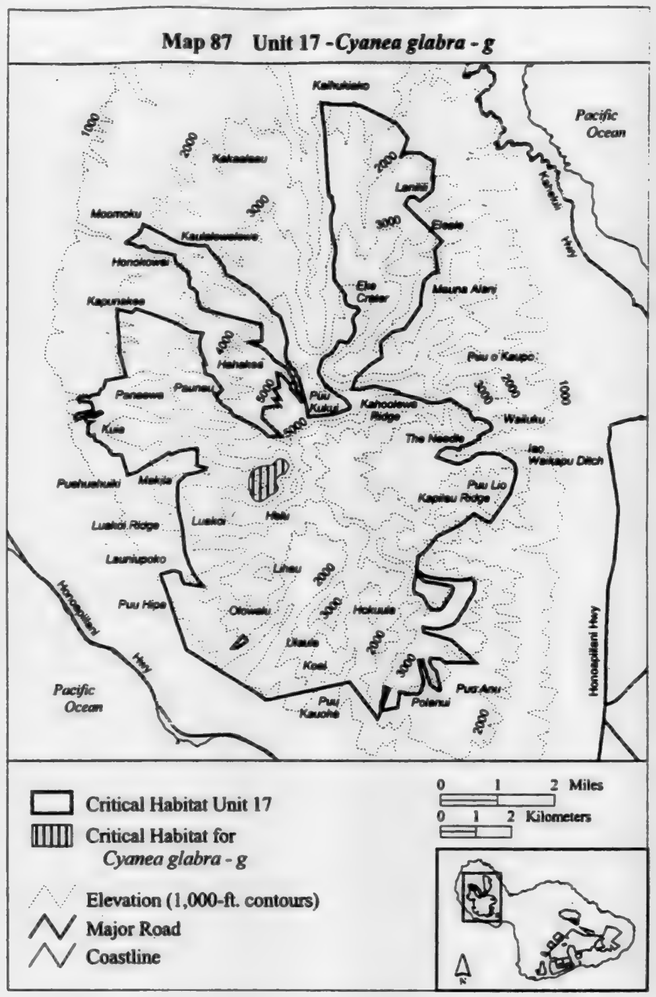
(bxxxvii) Maui 17—*Cyanea glabra*—g (79 ha; 195 ac).

(A) Unit consists of the following 33 boundary points: Start at 749398, 2310143; 749470, 2310348; 749639, 2310451; 749793, 2310523; 750055, 2310548; 750137, 2310615; 750188, 2310687; 750190, 2310697; 750274, 2310725; 750348, 2310711; 750440, 2310656; 750505, 2310582; 750523, 2310503; 750496, 2310420; 750440, 2310332; 750385, 2310295; 750292, 2310277; 750204, 2310203; 750149, 2310105; 750167, 2310022; 750223, 2309925; 750209, 2309842; 750144,

2309773; 750006, 2309708; 749881, 2309611; 749770, 2309532; 749691, 2309527; 749585, 2309541; 749502, 2309629; 749437, 2309759; 749444, 2309766; 749408, 2309876; 749398, 2309979; return to starting point.

(B) **Note:** Map 87 follows:

Map 87 Unit 17 -*Cyanea glabra - g*

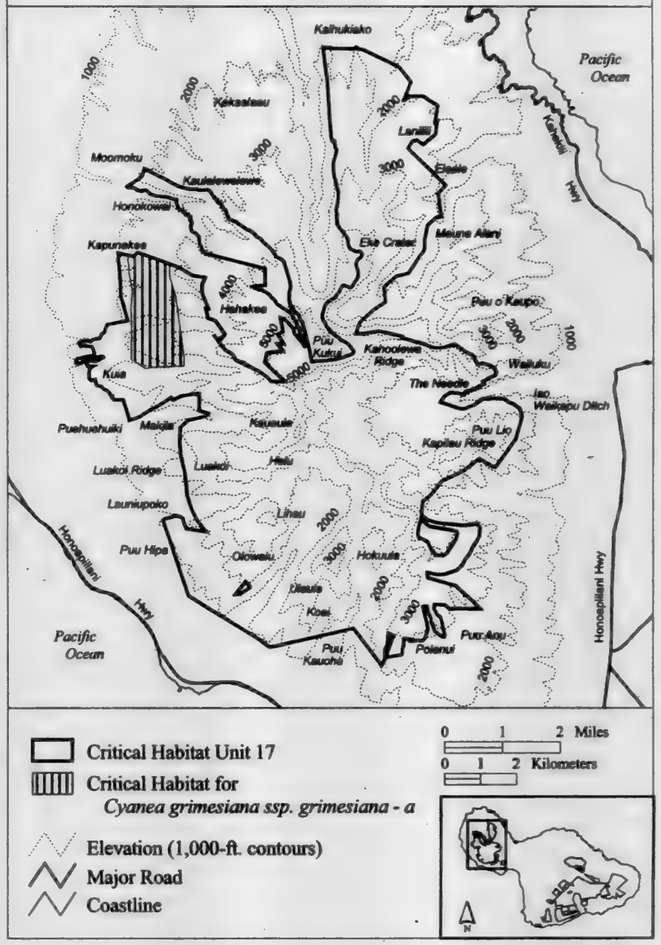


(bxxxviii) Maui 17—*Cyanea grimesiana* ssp. *grimesiana*—a (920 ha; 2,273 ac).

(A) Unit consists of the following 26 boundary points: Start at 755402, 2311063; 755355, 2310968; 755230, 2311019; 755226, 2311019; 754833, 2311178; 753854, 2311761; 753088, 2311437; 753109, 2310920; 752629, 2309941; 753391, 2309839; 754118, 2310001; 755127, 2310494; 755241, 2309743; 754863, 2309251; 753812, 2308620; 751175, 2309545; 751031, 2309863; 750935, 2311100; 751464, 2311599; 751968, 2311905; 753055, 2312211; 753463, 2312289; 754058, 2312313; 754688, 2312061; 755127, 2311731; 755547, 2311353; return to starting point.

(B) **Note:** Map 88 follows:

Map 88 Unit 17 -*Cyanea grimesiana ssp. grimesiana - a*



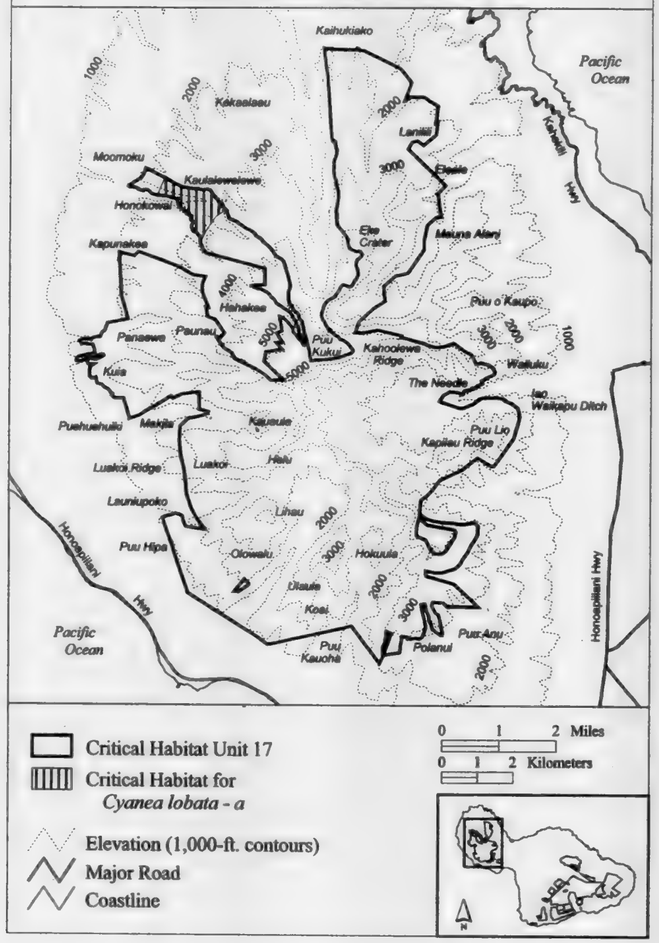
(bxxxix) Maui 17—*Cyanea lobata*—a (131 ha; 324 ac).

(A) Unit consists of the following 133 boundary points: Start at 747973, 2315130; 747957, 2315156; 747952, 2315167; 747942, 2315193; 747940, 2315201; 747933, 2315253; 747929, 2315289; 747930, 2315329; 747935, 2315356; 747931, 2315379; 747914, 2315403; 747887, 2315423; 747857, 2315454; 747831, 2315482; 747792, 2315504; 747750, 2315521; 747726, 2315545; 747722, 2315552; 747704, 2315583; 747698, 2315635; 747693, 2315665; 747695, 2315687; 747702, 2315718; 747713, 2315745; 747728, 2315775; 747729, 2315792; 747729, 2315793; 747717, 2315811; 747717, 2315812; 747697, 2315822; 747681, 2315836; 747675, 2315860; 747677, 2315876; 747681, 2315899; 747681, 2315918; 747667, 2315950; 747648, 2315974; 747620, 2315996; 747585, 2316012; 747546, 2316034; 747526, 2316055; 747508, 2316086; 747494, 2316109; 747476, 2316129; 747447, 2316142; 747409, 2316159; 747389, 2316169; 747365, 2316186; 747345, 2316212; 747336, 2316228; 747328, 2316244; 747312, 2316282; 747299, 2316323; 747290, 2316361; 747289, 2316384; 747289, 2316392; 747296, 2316429; 747296, 2316430; 747296, 2316431; 747260, 2316441; 747214, 2316449; 747159, 2316459; 747125, 2316462; 747109, 2316472; 747103, 2316475; 747094, 2316483; 747078, 2316500; 747077, 2316501; 747055, 2316503; 747024, 2316497; 746977, 2316510; 746946, 2316512; 746922, 2316518; 746881, 2316516; 746850, 2316519; 746759, 2316594; 746828, 2316776; 746943, 2317018; 747229, 2316866; 747344, 2316808; 747418, 2316781; 747517, 2316751; 747602,

2316733; 747628, 2316729; 747716, 2316715; 747717, 2316715; 747733, 2316713; 747887, 2316715; 747903, 2316702; 747932, 2316692; 747932, 2316691; 747967, 2316688; 748003, 2316690; 748041, 2316695; 748056, 2316696; 748113, 2316703; 748141, 2316706; 748159, 2316704; 748168, 2316702; 748201, 2316684; 748211, 2316678; 748218, 2316670; 748236, 2316643; 748254, 2316624; 748267, 2316607; 748276, 2316584; 748310, 2316551; 748349, 2316494; 748389, 2316441; 748415, 2316408; 748446, 2316368; 748446, 2316367; 748505, 2316331; 748531, 2316319; 748548, 2316311; 748549, 2316310; 748562, 2316282; 748574, 2316250; 748575, 2316245; 748585, 2316225; 748587, 2316220; 748589, 2316217; 748596, 2316201; 748610, 2316189; 748613, 2316186; 748649, 2316141; 748655, 2316134; 748446, 2315991; 748398, 2315949; 748126, 2315586; 748029, 2315400; 748003, 2315327; 747976, 2315313; return to starting point.

(B) **Note:** Map 89 follows:

Map 89 Unit 17 -*Cyanea lobata - a*



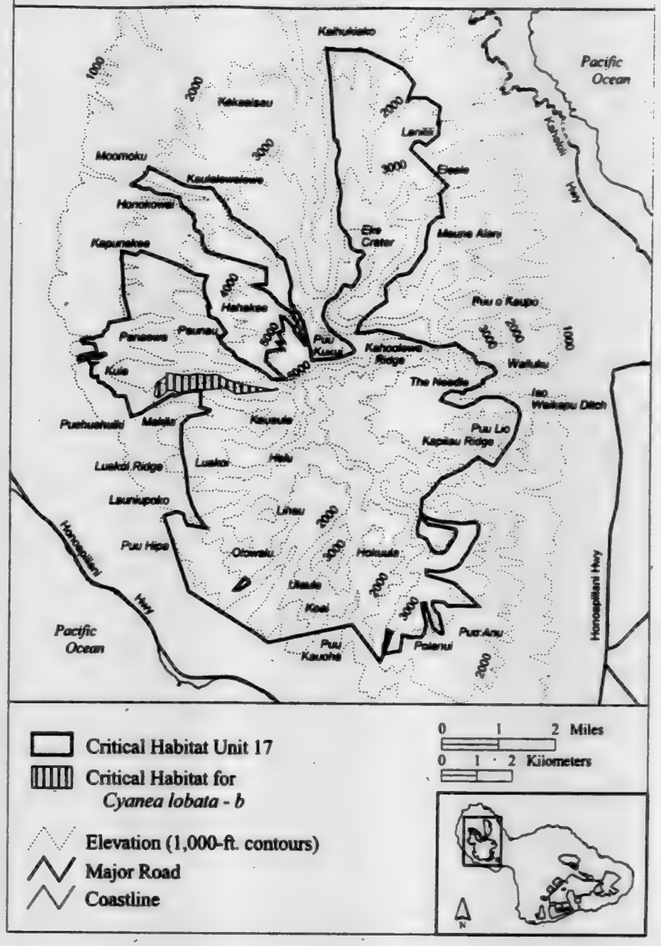
(xc) Maui 17—*Cyanea lobata*—b (114 ha; 282 ac).

(A) Unit consists of the following 35 boundary points: Start at 747903, 2311009; 747443, 2310953; 747432, 2310952; 747407, 2310938; 747319, 2310932; 747154, 2311018; 747024, 2311018; 746814, 2310852; 746755, 2310801; 746678, 2310811; 746652, 2310844; 746630, 2310853; 746617, 2310888; 746652, 2311053; 746661, 2311200; 746971, 2311433; 746952,

2311505; 747422, 2311441; 747662, 2311441; 747812, 2311501; 748142, 2311441; 748322, 2311471; 748472, 2311441; 748564, 2311384; 748784, 2311284; 748999, 2311226; 749324, 2311150; 749769, 2311083; 749908, 2311040; 749987, 2311042; 750063, 2311077; 750068, 2311092; 750118, 2311050; 748942, 2310916; 748618, 2311096; return to starting point.

(B) **Note:** Map 90 follows:

Map 90 Unit 17 -*Cyanea lobata - b*



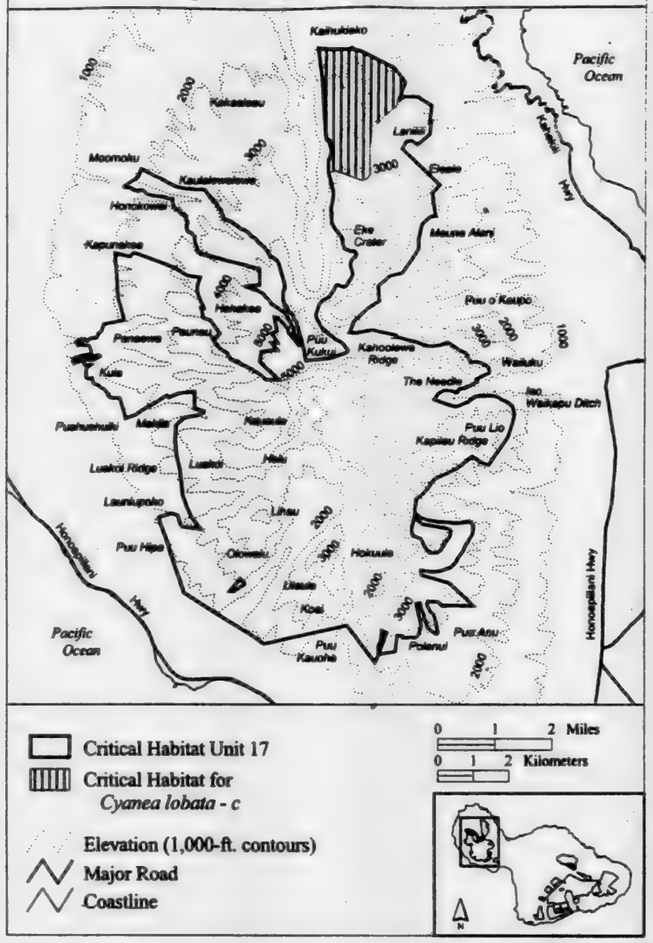
(xci) Maui 17—*Cyanea lobata*—c (578 ha; 1,427 ac).

(A) Unit consists of the following 62 boundary points: Start at 751691, 2317255; 751693, 2317261; 751698, 2317290; 751694, 2317322; 751695, 2317366; 751697, 2317415; 751702, 2317462; 751715, 2317522; 751728, 2317571; 751747, 2317619; 751767, 2317682; 751769, 2317710; 751778, 2317751; 751782, 2317790; 751782, 2317791; 751769, 2317829; 751750, 2317859; 751741, 2317901; 751738, 2317949; 751738, 2317997; 751730, 2318034; 751729, 2318035; 751714, 2318045; 751713, 2318046; 751712, 2318046; 751690, 2318034; 751665, 2318030; 751651, 2318051; 751640, 2318085; 751632, 2318124; 751599, 2318608; 751517, 2319810; 751458, 2320230; 751458, 2320252; 751458, 2320253; 751454, 2320260; 751411, 2320566; 751406, 2320602; 751619, 2320598; 752334, 2320586; 752403, 2320585; 752415, 2320564; 752418, 2320564; 752509, 2320573; 752522, 2320567; 753547, 2320078; 753862, 2319691; 753884, 2319664; 753681, 2319159; 753622, 2319012; 753234, 2318678; 753089, 2318512; 752913,

2318248; 752876, 2317830; 752886, 2317088; 752845, 2317055; 752810, 2316993; 752718, 2316956; 752684, 2316929; 752465, 2317006; 751895, 2317211; 751704, 2317136; return to starting point.

(B) **Note:** Map 91 follows:

Map 91 Unit 17 - *Cyanea lobata* - c



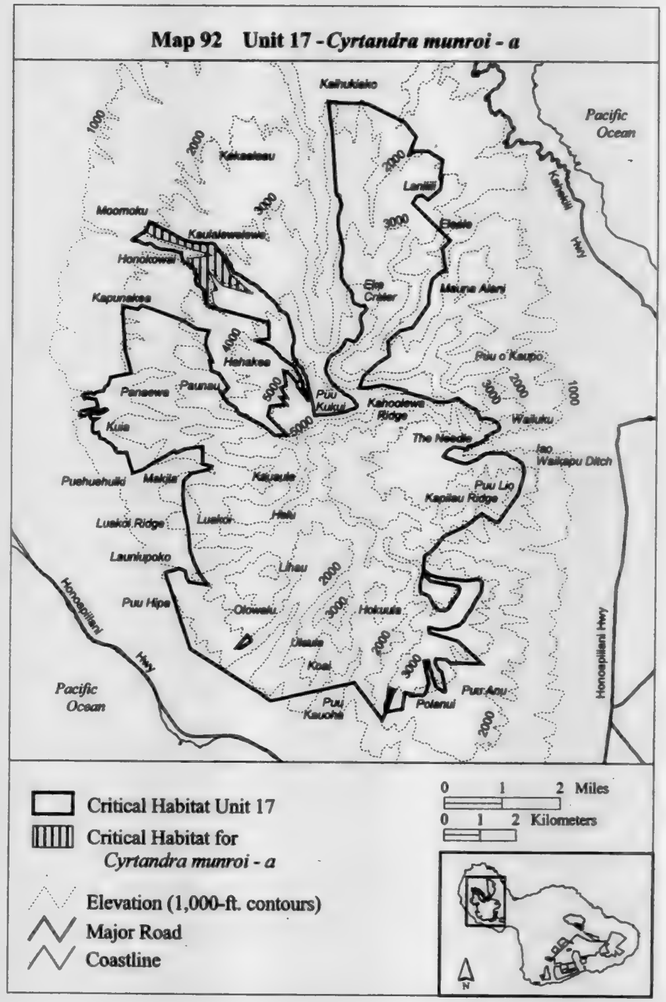
(xcii) Maui 17—*Cyrtandra munroi*—a (156 ha; 386 ac).

(A) Unit consists of the following 95 boundary points: Start at 748364, 2314860; 748184, 2314906; 748126, 2314931; 748112, 2314937; 748019, 2315110; 747987, 2315114; 747975, 2315127; 747954, 2315161; 747942, 2315193; 747940; 2315201; 747933, 2315253; 747929, 2315289; 747930, 2315329; 747935, 2315356; 747931, 2315379; 747914, 2315403; 747887, 2315423; 747857, 2315454; 747831, 2315482; 747792, 2315504; 747750, 2315521; 747726, 2315545; 747722, 2315552; 747704, 2315583; 747698, 2315635; 747693, 2315665; 747695, 2315687; 747702, 2315718; 747713, 2315745; 747728, 2315775; 747728, 2315776; 747736, 2315775; 747729, 2315788; 747729, 2315792; 747729, 2315793; 747717, 2315811; 747717, 2315812; 747711, 2315815; 747676, 2315871; 747677, 2315876; 747681, 2315899; 747681, 2315918; 747667, 2315950; 747648, 2315974; 747620, 2315996; 747594, 2316008; 747441, 2316258; 748156, 2316363; 746590, 2316862; 746278, 2317037; 746327, 2317071; 746397, 2317266; 746423,

2317280; 746706, 2317135; 747190, 2316887; 747344, 2316808; 747418, 2316781; 747517, 2316751; 747602, 2316733; 747628, 2316729; 747716, 2316715; 747717, 2316715; 747733, 2316713; 747829, 2316717; 747887, 2316715; 747903, 2316702; 747932, 2316692; 747932, 2316691; 747967, 2316688; 748003, 2316690; 748041, 2316695; 748056, 2316696; 748113, 2316703; 748141, 2316706; 748159, 2316704; 748168, 2316702; 748201, 2316684; 748211, 2316678; 748218, 2316670; 748236, 2316643; 748254, 2316624; 748267, 2316607; 748276, 2316584; 748310, 2316551; 748349, 2316494; 748389, 2316441; 748415, 2316408; 748434, 2316383; 748660, 2315859; 749291, 2315291; 748450, 2315523; 748051, 2315943; 748324, 2315397; 748156, 2315355; 748219, 2314997; return to starting point.

(B) **Note:** Map 92 follows:

Map 92 Unit 17 - *Cyrtandra munroi* - a



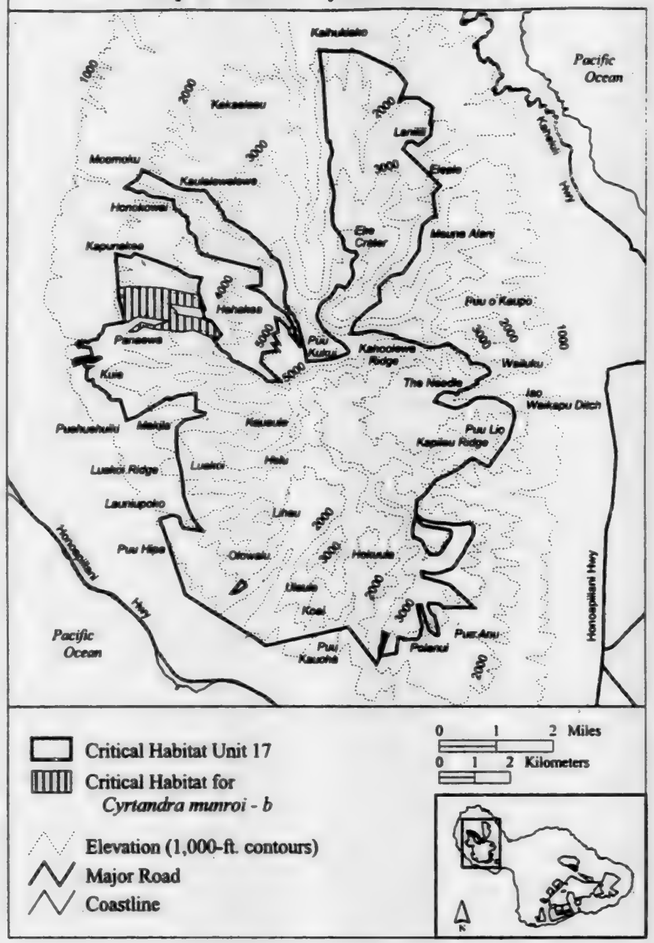
(xciii) Maui 17—*Cyrtandra munroi*—b (238 ha; 589 ac).

(A) Unit consists of the following 40 boundary points: Start at 745826, 2313019; 745846, 2313034; 745916, 2313043; 745773, 2313571; 745748, 2313661; 745886, 2313757; 745733, 2313825; 745730, 2313826; 745724, 2313911; 745726, 2313936; 745729, 2313970; 745961, 2314006; 746362, 2314006; 746980, 2313974; 748012, 2313772; 748025, 2313740; 748177, 2313379; 748103, 2313389; 747126, 2313526; 747399, 2313295; 747315, 2313253; 748093, 2313127; 748166, 2313105; 748366, 2313043; 748639, 2312664; 748513, 2312517; 748392, 2312568; 747862, 2312790; 747601,

2312741; 746746, 2312824; 746468, 2312889; 746275, 2312760; 746103, 2312739; 746034, 2312754; 746391, 2313022; 746769, 2312917; 747126, 2313043; 746286, 2313169; 745836, 2312964; 745821, 2313015; return to starting point.

(B) **Note:** Map 93 follows:

Map 93 Unit 17 - *Cyrtandra munroi* - *b*



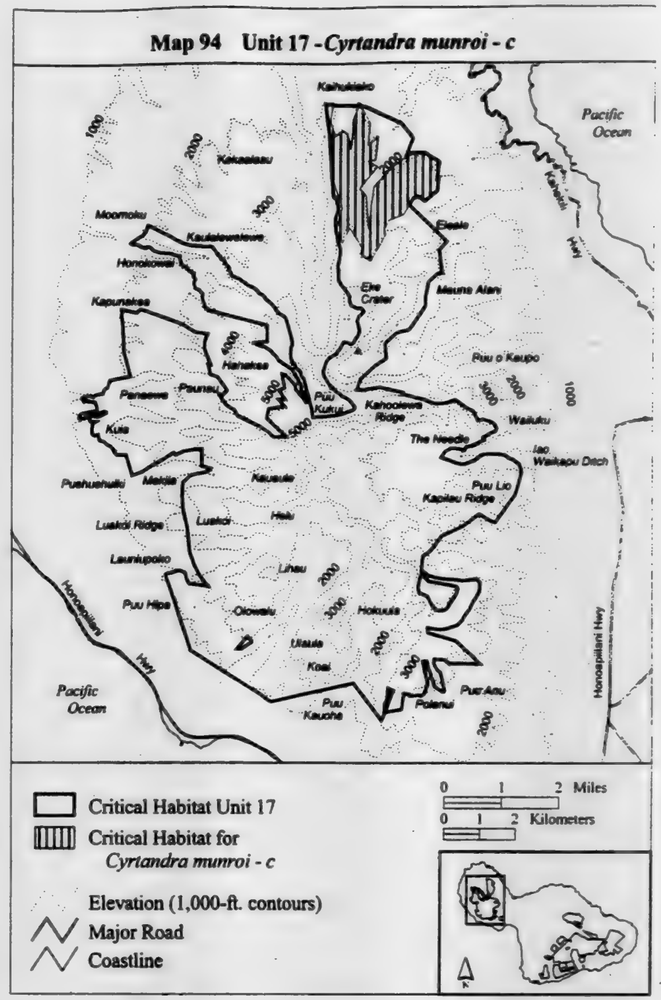
(xciv) Maui 17—*Cyrtandra munroi*—c (603 ha; 1,490 ac).

(A) Unit consists of the following 62 boundary points: Start at 751599, 2318608; 751517, 2319810; 751458, 2320238; 751458, 2320252; 751458, 2320253; 751454, 2320260; 751411, 2320566; 751402, 2320630; 751430, 2320630; 751624, 2320630; 751619, 2320598; 751540, 2320146; 751687, 2319726; 751897, 2319894; 752023, 2319831; 752128, 2319390; 752191, 2319978; 752191, 2320188; 752380, 2320629; 752380, 2320630; 752418, 2320564; 752675, 2320125; 752612, 2319495; 752906, 2319726; 752843, 2319096; 752654, 2319053; 752885, 2318906; 752401, 2318318; 752570, 2318087; 752633, 2317183; 752780, 2318339; 753263, 2318864; 753681, 2319159; 753684, 2319161; 753684, 2319160; 753831, 2319264; 754230, 2319264; 754381, 2319169; 754437, 2319134; 754441, 2319131; 754485, 2319104; 754628, 2319014; 754566, 2318549; 754622, 2318566; 754580, 2318228; 754222, 2317936; 754060, 2318058; 753962, 2318131; 753902, 2318028; 753788, 2317835; 753638, 2317579; 753215, 2317416; 753086,

2317157; 753119, 2317020; 752717, 2316300; 752443, 2316447; 752443, 2316679; 752107, 2317204; 751897, 2316784; 751861, 2316826; 751721, 2317157; 751884, 2317774; return to starting point.

(B) **Note:** Map 94 follows:

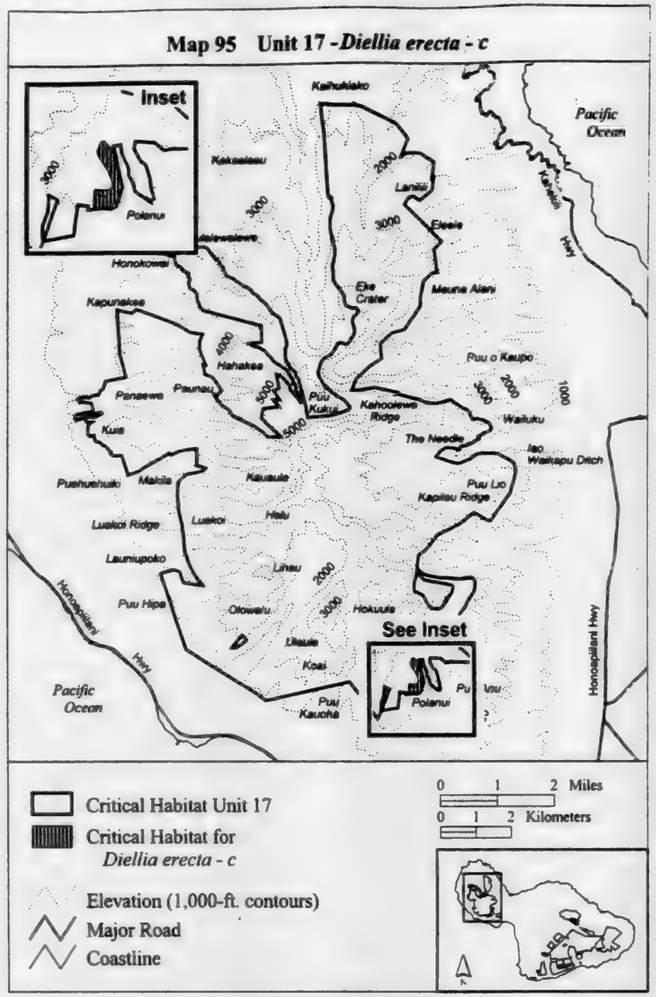
Map 94 Unit 17 - *Cyrtandra munroi* - *c*



(xcv) Maui 17—*Diellia erecta*—c (22 ha; 55 ac).

(A) Unit consists of the following 28 boundary points: Start at 754348, 2304465; 754342, 2304448; 754333, 2304422; 754330, 2304413; 754327, 2304404; 754314, 2304365; 754306, 2304342; 754244, 2304245; 754151, 2304186; 753923, 2304157; 753916, 2304179; 753904, 2304271; 753923, 2304437; 753945, 2304452; 753997, 2304441; 754126, 2304441; 754188, 2304474; 754185, 2304570; 754133, 2304717; 753971, 2304953; 753963, 2305019; 754019, 2305159; 754078, 2305174; 754177, 2305056; 754236, 2304923; 754258, 2304820; 754258, 2304743; 754306, 2304647; return to starting point.

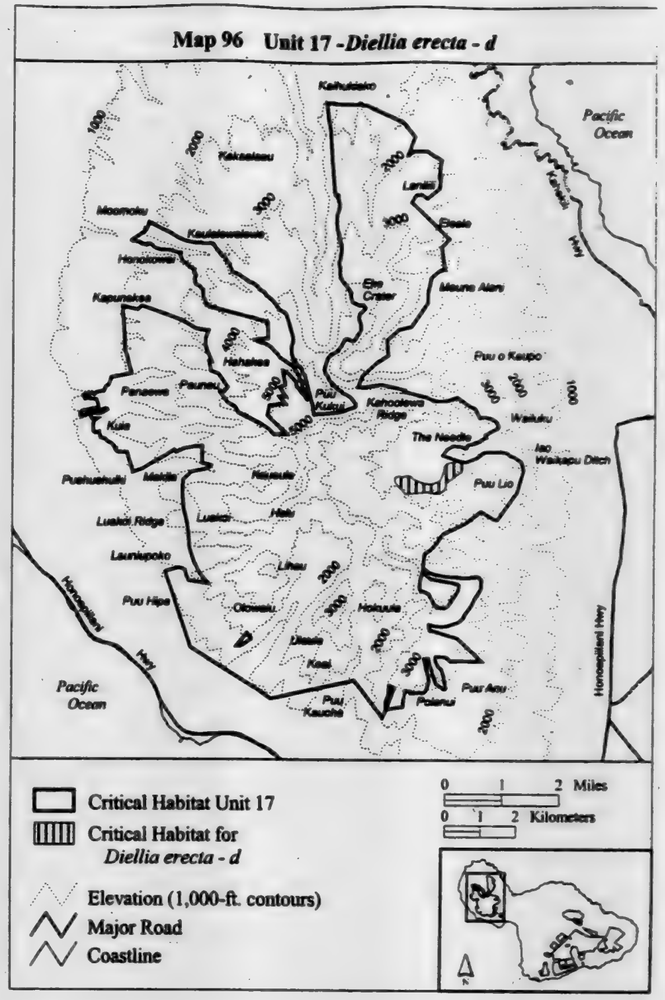
(B) **Note:** Map 95 follows:



(xcvi) Maui 17—*Diellia erecta*—d (70 ha; 172 ac).

(A) Unit consists of the following 36 boundary points: Start at 755224, 2310599; 755233, 2310600; 755234, 2310596; 755254, 2310511; 755254, 2310380; 755223, 2310289; 755066, 2310201; 754953, 2310084; 754848, 2310040; 754796, 2309997; 754796, 2309936; 754748, 2309779; 754591, 2309692; 754495, 2309692; 754404, 2309722; 754277, 2309731; 754216, 2309744; 754129, 2309718; 753641, 2309683; 753549, 2309805; 753423, 2309923; 753362, 2310023; 753362, 2310136; 753480, 2310171; 753589, 2310145; 753658, 2310188; 753754, 2310193; 753811, 2310162; 753863, 2310097; 754173, 2309970; 754408, 2309962; 754626, 2310066; 754713, 2310276; 754744, 2310446; 754796, 2310524; 754922, 2310572; return to starting point.

(B) Note: Map 96 follows:

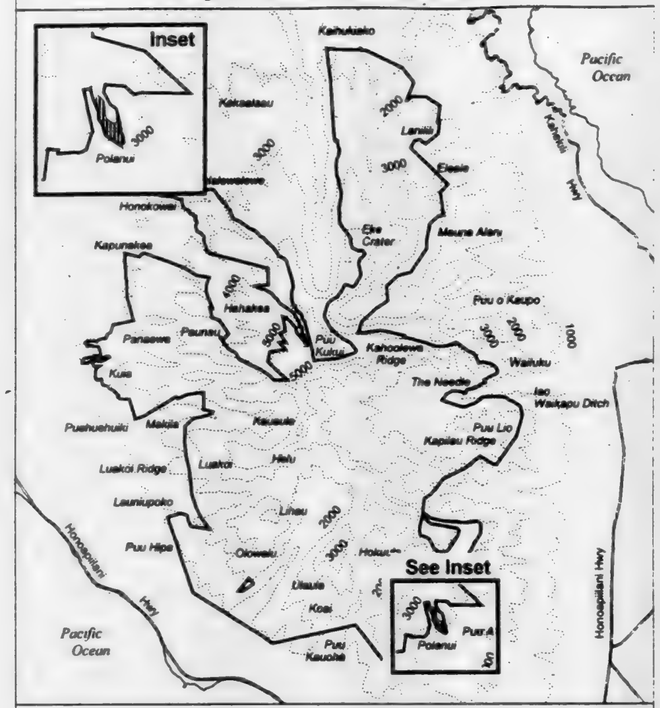


(xcvii) Maui 17—*Diellia erecta*—e (12 ha; 29 ac).

(A) Unit consists of the following 29 boundary points: Start at 754760, 2304616; 754771, 2304529; 754782, 2304447; 754796, 2304431; 754826, 2304297; 754824, 2304296; 754782, 2304278; 754773, 2304280; 754723, 2304289; 754601, 2304370; 754538, 2304427; 754486, 2304579; 754443, 2304647; 754438, 2304725; 754437, 2304765; 754435, 2304770; 754432, 2304809; 754406, 2304960; 754432, 2305008; 754513, 2304931; 754542, 2304817; 754542, 2304724; 754561, 2304654; 754638, 2304599; 754693, 2304584; 754715, 2304617; 754708, 2304702; 754712, 2304743; 754722, 2304737; return to starting point.

(B) Note: Map 97 follows:

Map 97 Unit 17 - *Diellia erecta* - e

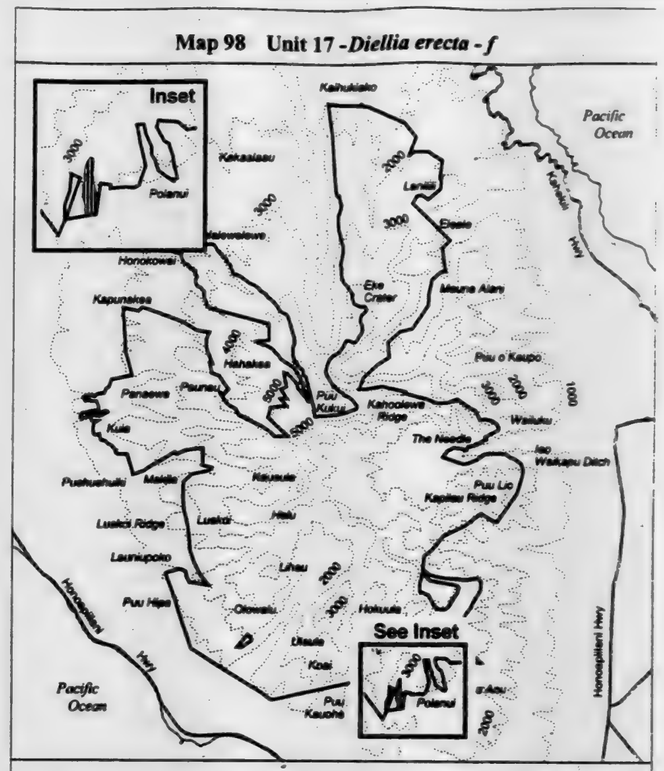


(xcviii) Maui 17—*Diellia erecta*—f (14 ha; 34 ac).

(A) Unit consists of the following 26 boundary points: Start at 753632, 2303912; 753625, 2303862; 753619, 2303819; 753617, 2303805; 753606, 2303762; 753541, 2303750; 753534, 2303749; 753531, 2303748; 753440, 2303770; 753436, 2303843; 753444, 2303891; 753396, 2304028; 753410, 2304101; 753403, 2304190; 753429, 2304234; 753422, 2304323; 753436, 2304448; 753469, 2304533; 753517, 2304603; 753565, 2304584; 753569, 2304536; 753565, 2304407; 753558, 2304356; 753569, 2304289; 753565, 2304238; 753632, 2304017; return to starting point.

(B) **Note:** Map 98 follows:

Map 98 Unit 17 - *Diellia erecta* - f



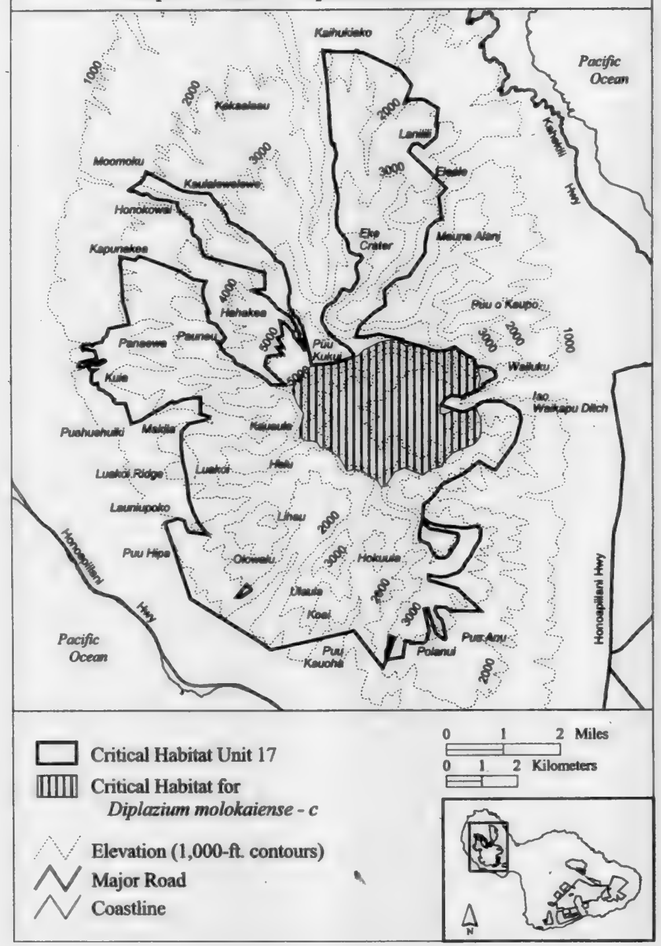
(xcix) Maui 17—*Diplazium molokaiense*—c (1,495 ha; 3,693 ac).

(A) Unit consists of the following 104 boundary points: Start at 754546, 2312287; 754606, 2312288; 754610, 2312288; 754834, 2312292; 755095, 2312393; 755436, 2312152; 755603, 2312078; 755737, 2311831; 755740, 2311819; 755830, 2311503; 755790, 2311369; 755790, 2311220; 755790, 2311209; 755633, 2311121; 755402, 2311063; 755230, 2311019; 754988, 2311042; 754931, 2311008; 754820, 2310941; 754711, 2310770; 754680, 2310721; 754687, 2310533; 754794, 2310520; 754921, 2310553; 755041, 2310620; 755269, 2310584; 755294, 2310580; 755295, 2310580; 755357, 2310584; 755364, 2310585; 755366, 2310585; 755395, 2310587; 755690, 2310701; 755823, 2310420; 755837, 2310132; 755810, 2309871; 755636, 2309671; 755034, 2309443; 754723, 2309107; 754733, 2309062; 754399, 2308969; 754265, 2308862; 754185, 2308821; 753679, 2309015; 753403, 2308902; 753162, 2308507; 753021, 2308494; 752921, 2308661; 752767, 2308768; 752647, 2308828; 752480, 2308948; 752259, 2308982; 752072, 2308935; 751858, 2309310; 751530, 2309577; 751323, 2309597; 751242, 2309744; 751129, 2309778; 750935, 2309778; 750741, 2309898; 750741, 2310145; 750801, 2310333; 750841, 2310553; 750661, 2310848; 750527, 2311202; 750607, 2311396; 750888, 2311744; 751101, 2311891; 751115, 2311894; 751125, 2311897; 751138, 2311901; 751197, 2311915; 751210, 2311916; 751252, 2311917; 751334, 2311913; 751353, 2311910; 751415, 2311923; 751428, 2311924; 751575, 2311921; 751719, 2311957; 751730, 2311960; 751766, 2311969; 751772, 2311971; 751845, 2311984; 751888,

2311992; 751889, 2311992; 751963, 2312014; 751997, 2312034; 752095, 2312064; 752096, 2312064; 752393, 2312158; 752547, 2312326; 752774, 2312419; 752975, 2312526; 753137, 2312560; 753296, 2312593; 753510, 2312586; 753690, 2312439; 753831, 2312419; 754009, 2312447; 754051, 2312453; 754245, 2312393; 754379, 2312336; 754499, 2312286; return to starting point.

(B) **Note:** Map 99 follows:

Map 99 Unit 17 -*Diplazium molokaiense* - c



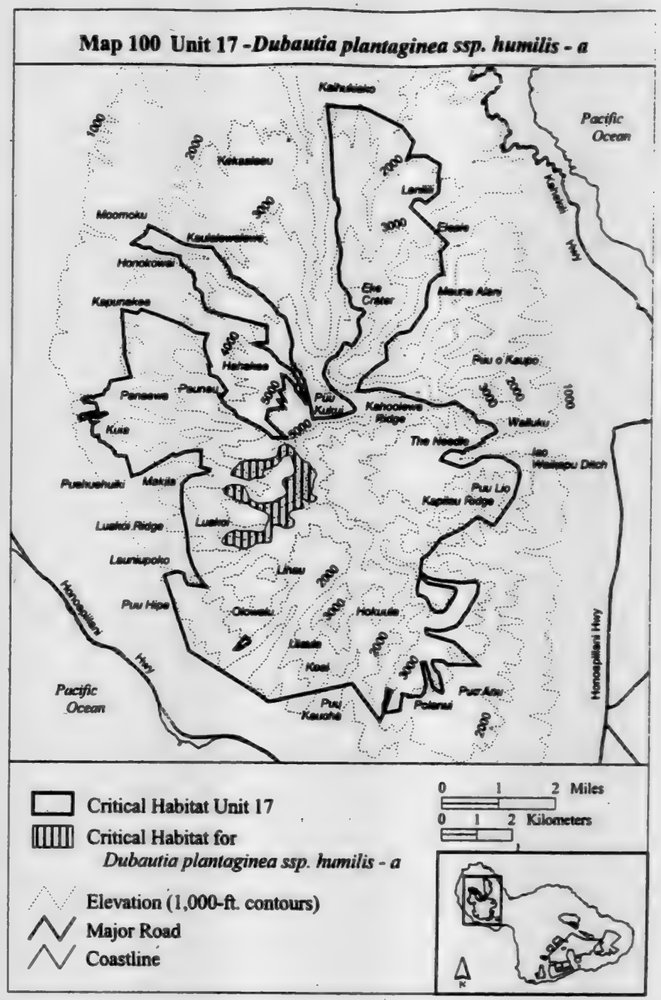
(c) Maui 17—*Dubautia plantaginea* ssp. *humilis*—a (293 ha; 723 ac).

(A) Unit consists of the following 125 boundary points: Start at 750756, 2309574; 750804, 2309536; 750834, 2309494; 750822, 2309406; 750716, 2309394; 750457, 2309300; 750422, 2309212; 750451, 2309153; 750581, 2309053; 750581, 2308953; 750557, 2308895; 750410, 2308848; 750298, 2308848; 750116, 2308936; 750004, 2308936; 749946, 2308818; 749940, 2308653; 749940, 2308495; 749916, 2308454; 749810, 2308430; 749722, 2308430; 749505, 2308412; 749410, 2308336; 749228, 2308271; 749058, 2308271; 748869, 2308348; 748681, 2308365; 748587, 2308383; 748528, 2308459; 748617, 2308589; 748711, 2308689; 748922, 2308783; 749016, 2308753; 749158, 2308753; 749352, 2308753; 749516, 2308712; 749652, 2308718; 749734, 2308753; 749804, 2308971; 749840, 2309042; 749860, 2309196; 749755, 2309277; 749635, 2309321; 749341, 2309445; 749279, 2309518; 749193, 2309518; 748880,

2309633; 748847, 2309691; 748794, 2309691; 748592, 2309801; 748577, 2309878; 748659, 2309998; 748847, 2310041; 749020, 2310032; 749159, 2309974; 749231, 2309825; 749293, 2309657; 749447, 2309561; 749553, 2309522; 749735, 2309527; 749995, 2309570; 750105, 2309647; 750283, 2309719; 750360, 2309806; 750322, 2309931; 750230, 2310080; 750240, 2310137; 750298, 2310229; 750447, 2310267; 750548, 2310344; 750596, 2310459; 750524, 2310671; 750471, 2310849; 750389, 2310887; 750269, 2310849; 750077, 2310599; 749687, 2310426; 749673, 2310363; 749678, 2310306; 749711, 2310262; 749659, 2310238; 749466, 2310238; 749313, 2310157; 749106, 2310209; 748952, 2310267; 748779, 2310301; 748799, 2310402; 749039, 2310671; 749245, 2310728; 749495, 2310724; 749639, 2310728; 749841, 2310757; 750048, 2310820; 750077, 2310863; 750120, 2311094; 750274, 2311175; 750432, 2311146; 750466, 2311103; 750557, 2311031; 750610, 2310949; 750663, 2310887; 750716, 2310805; 750845, 2310709; 750956, 2310680; 751009, 2310589; 751042, 2310536; 751124, 2310459; 751172, 2310407; 751182, 2310320; 751163, 2310248; 751124, 2310176; 751105, 2310075; 751095, 2309974; 751066, 2309888; 751057, 2309811; 751081, 2309767; 751143, 2309739; 751211, 2309700; 751196, 2309643; 751163, 2309614; 751095, 2309580; 750990, 2309566; 750927, 2309604; 750831, 2309652; 750778, 2309652; return to starting point.

(B) **Note:** Map 100 follows:

Map 100 Unit 17 -*Dubautia plantaginea* ssp. *humilis* - a

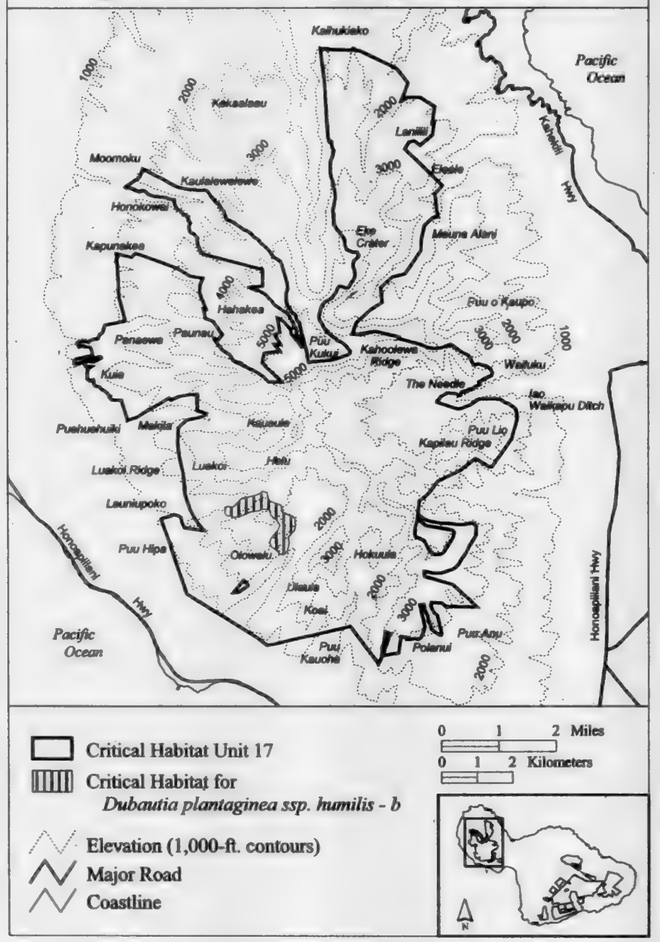


(ci) Maui 17—*Dubautia plantaginea* ssp. *humilis*—b (114 ha; 283 ac).

(A) Unit consists of the following 42 boundary points: Start at 748770, 2307854; 748911, 2307842; 749022, 2307918; 749146, 2308060; 749652, 2308195; 749769, 2308283; 749887, 2308248; 749916, 2308101; 749969, 2308007; 750287, 2307895; 750298, 2307813; 750304, 2307713; 750457, 2307630; 750628, 2307566; 750681, 2307507; 750698, 2307336; 750669, 2307178; 750492, 2306983; 750510, 2306836; 750463, 2306601; 750363, 2306507; 750263, 2306519; 750146, 2306648; 750010, 2306719; 749963, 2306831; 749999, 2306960; 750198, 2307195; 750257, 2307325; 750157, 2307466; 749987, 2307619; 749993, 2307666; 749975, 2307748; 749904, 2307771; 749775, 2307771; 749646, 2307724; 749428, 2307695; 749146, 2307571; 748964, 2307542; 748834, 2307583; 748758, 2307583; 748699, 2307654; 748705, 2307830; return to starting point.

(B) **Note:** Map 101 follows:

Map 101 Unit 17 - *Dubautia plantaginea ssp. humilis - b*



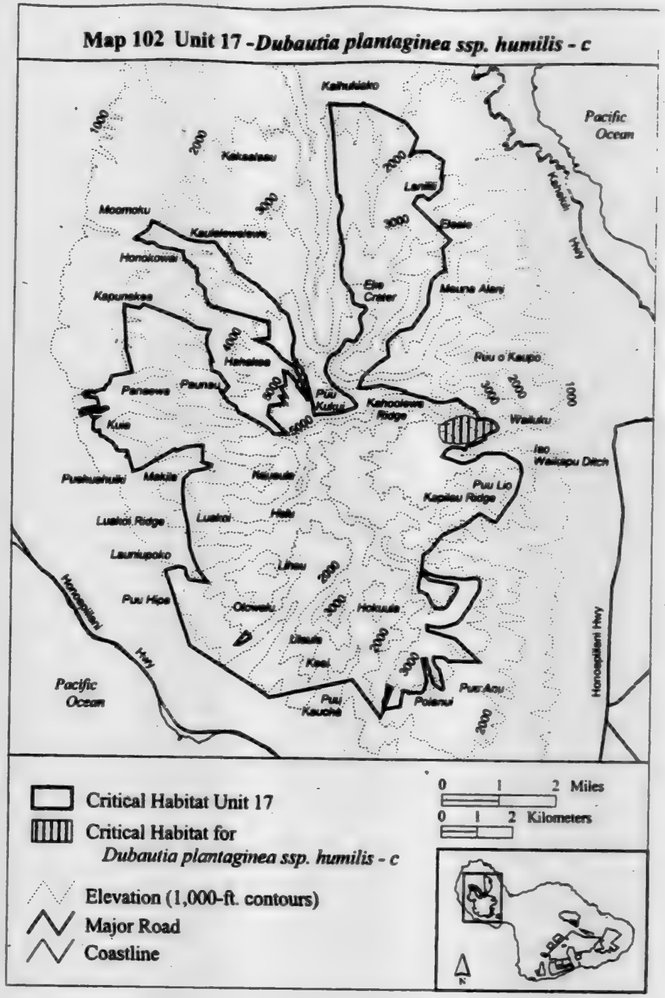
(cii) Maui 17—*Dubautia plantaginea* ssp. *humilis*—c (95 ha; 234 ac).

(A) Unit consists of the following 38 boundary points: Start at 755740, 2311819; 755809, 2311825; 755868, 2311853; 756001, 2311820; 756000, 2311819; 756067, 2311803; 756113, 2311777; 756198, 2311730; 756271, 2311594; 756244, 2311522; 756130, 2311477; 756013, 2311418; 755972, 2311382; 755885, 2311350; 755759, 2311305; 755487, 2311142; 755383,

2311142; 755306, 2311137; 755211, 2311119; 755098, 2311119; 755016, 2311160; 754948, 2311155; 754917, 2311105; 754908, 2311137; 754808, 2311160; 754713, 2311191; 754627, 2311327; 754627, 2311336; 754604, 2311481; 754604, 2311617; 754627, 2311667; 754740, 2311690; 754754, 2311721; 754971, 2311830; 755143, 2311893; 755356, 2311925; 755537, 2311875; 755664, 2311812; return to starting point.

(B) **Note:** Map 102 follows:

Map 102 Unit 17 - *Dubautia plantaginea ssp. humilis - c*



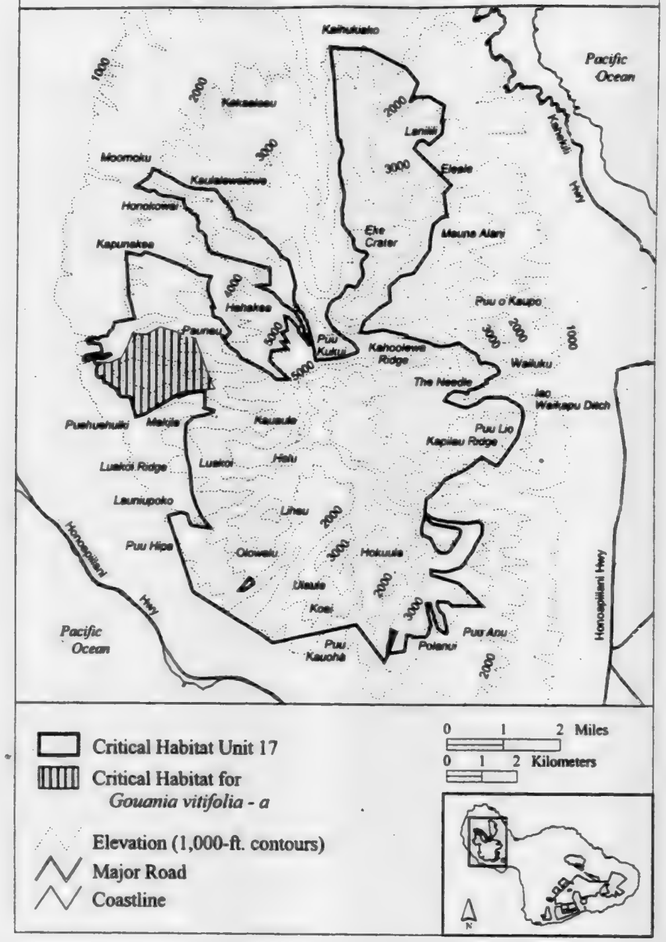
(ciii) Maui 17—*Gouania vitifolia*—a (485 ha; 1,198 ac).

(A) Unit consists of the following 41 boundary points: Start at 747141, 2310897; 746995, 2310813; 746754, 2310674; 746408, 2310474; 746263, 2310363; 745972, 2310265; 745966, 2310304; 745798, 2310840; 745541, 2310836; 745477, 2310914; 745480, 2310933; 745471, 2310939; 745465, 2310964; 745411, 2311024; 745368, 2311075; 745241, 2311145; 745197, 2311199; 745057, 2311247; 745052, 2311257; 745043, 2311276; 745010, 2311405; 744912, 2311365; 744842, 2311439; 744842, 2311486; 744842, 2311603; 744848, 2311671; 744847, 2311673; 744850, 2311702; 744959, 2311780; 744998, 2311808; 745212, 2311808; 745549, 2311923; 745721, 2312269; 745854, 2312631; 746251, 2312595; 746652, 2312824; 747641, 2312506; 747841, 2311974; 748141,

2311198; 748215, 2311076; 747319, 2311000; return to starting point.

(B) **Note:** Map 103 follows:

Map 103 Unit 17 - *Gouania vitifolia* - a

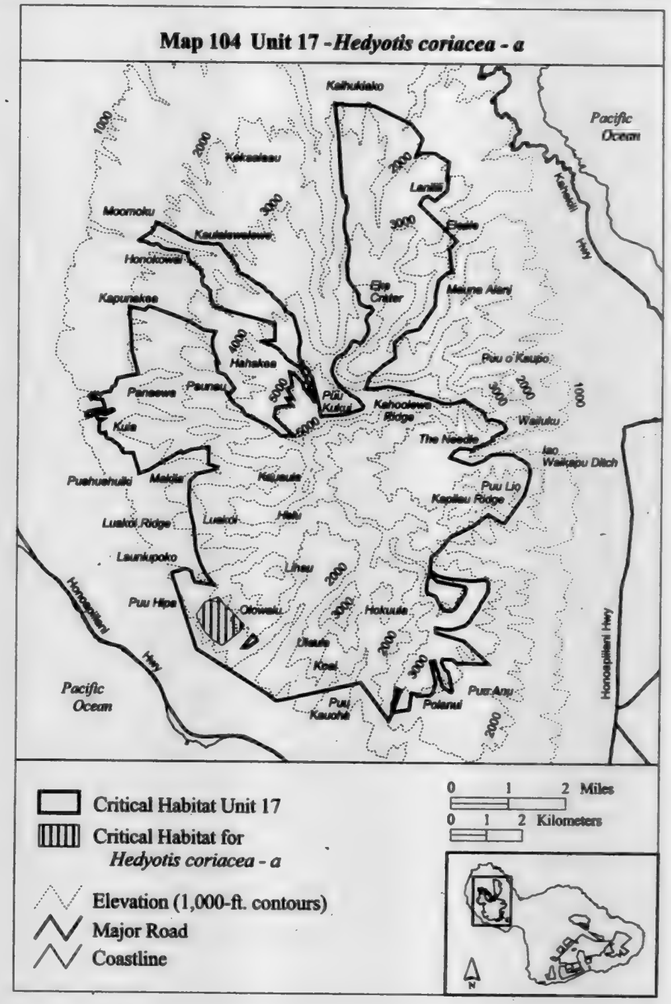


(civ) Maui 17—*Hedyotis coriacea*—a (106 ha; 262 ac).

(A) Unit consists of the following 17 boundary points: Start at 748229, 2306846; 748395, 2306645; 748650, 2306411; 748979, 2306067; 748838, 2305871; 748820, 2305865; 748469, 2305574; 748339, 2305505; 748218, 2305574; 748077, 2305651; 747887, 2305845; 747810, 2305946; 747709, 2306127; 747636, 2306281; 747610, 2306361; 747634, 2306377; 747850, 2306700; return to starting point.

(B) **Note:** Map 104 follows:

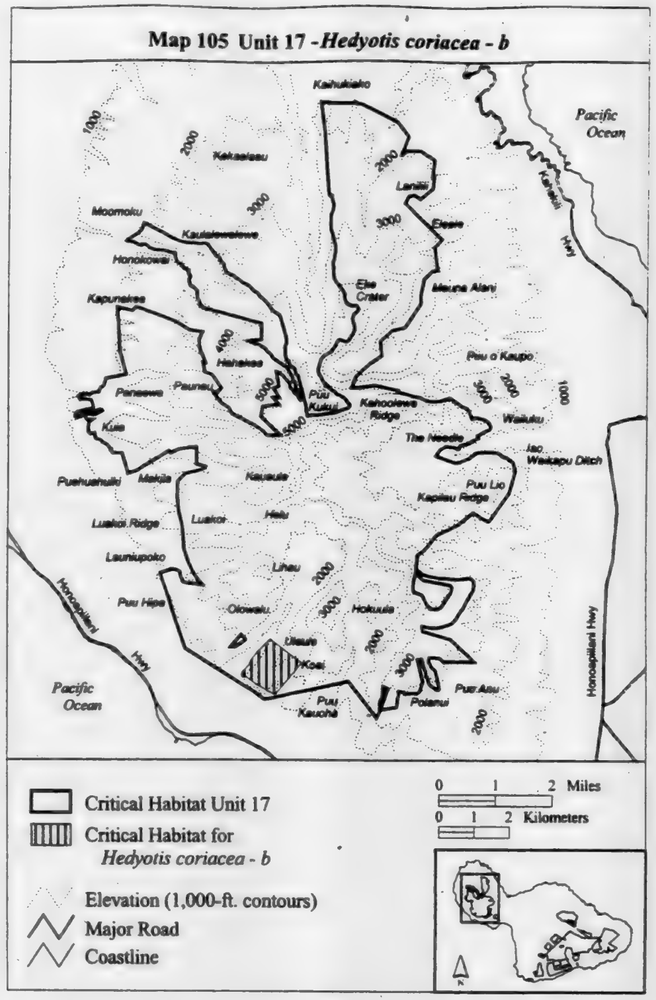
Map 104 Unit 17 - *Hedyotis coriacea* - a



(cv) Maui 17—*Hedyotis coriacea*—b (138 ha; 340 ac).

(A) Unit consists of the following 15 boundary points: Start at 750175, 2304106; 750114, 2304143; 749603, 2304436; 749378, 2304612; 749292, 2304605; 749240, 2304605; 749225, 2304642; 749247, 2304740; 749311, 2304807; 749416, 2304901; 749540, 2305122; 749716, 2305336; 749855, 2305464; 750041, 2305656; 750931, 2304991; return to starting point.

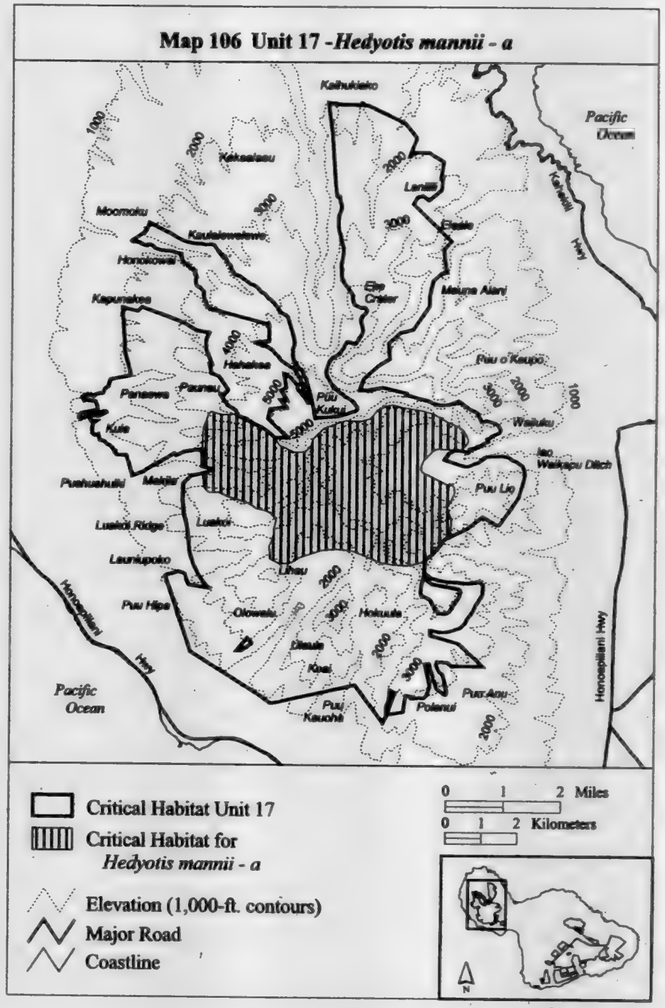
(B) **Note:** Map 105 follows:



(cvi) Maui 17—*Hedyotis mannii*—a (2,234 ha; 5,521 ac).

(A) Unit consists of the following 91 boundary points: Start at 754727, 2308566; 754627, 2308441; 754539, 2308313; 754379, 2308137; 754206, 2308013; 754067, 2307913; 753787, 2307825; 753291, 2307841; 752907, 2307913; 752547, 2308073; 752153, 2308222; 751739, 2308265; 751304, 2308250; 750705, 2308040; 750420, 2307876; 750121, 2307846; 749836, 2307996; 749821, 2308340; 749939, 2308602; 749944, 2308823; 750001, 2309070; 749859, 2309265; 749711, 2309330; 749709, 2309329; 749451, 2309383; 749360, 2309453; 749225, 2309542; 748982, 2309613; 748668, 2309703; 748413, 2309823; 748114, 2309823; 747994, 2309943; 747935, 2310342; 747935, 2310343; 748094, 2310374; 748180, 2310466; 747930, 2310531; 747921, 2311010; 747919, 2311126; 747942, 2311477; 747949, 2311590; 748084, 2311980; 748174, 2312070; 748443, 2311980; 748833, 2311995; 748934, 2311945; 749571, 2311633; 749803, 2311489; 749939, 2311346; 749971, 2311313; 750085, 2311145; 750491, 2310953; 750699, 2310953; 750827, 2310993; 750971, 2311129; 750974, 2311127; 751010, 2311307; 751322, 2311611; 751900, 2311832; 752386, 2311832; 752622, 2311893; 752820, 2312105; 753056, 2312250; 753254, 2312280; 753543, 2312212; 754098, 2312113; 754402, 2312029; 754775, 2311832; 755109, 2311680; 755208, 2311596; 755307, 2311467; 755368, 2311315; 755337, 2311208; 755201, 2311071; 754934, 2311041; 754496, 2311070; 754383, 2311003; 754117, 2310737; 754049, 2310524; 754079, 2310418; 754794, 2310076; 754904, 2310075; 754980, 2310014; 754995, 2309839; 754919, 2309679; 754889, 2309596; 754767, 2309514; 754827, 2309305; 754907, 2309113; 754907, 2308945; 754851, 2308721; return to starting point.

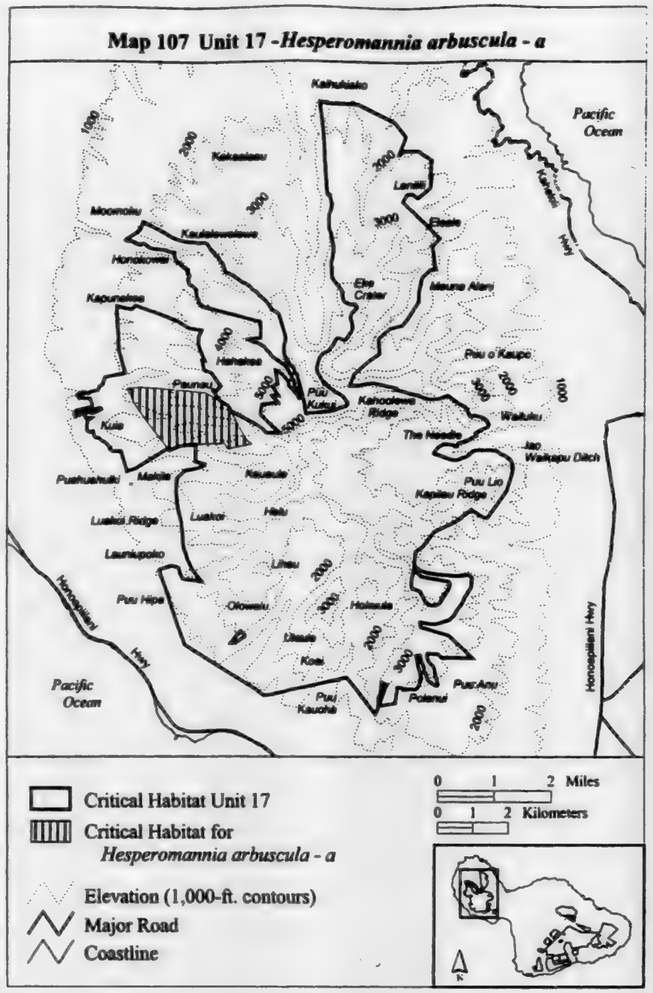
(B) **Note:** Map 106 follows:



(cvii) Maui 17—*Hesperomannia arbuscula*—a (392 ha; 968 ac).

(A) Unit consists of the following 19 boundary points: Start at 747921, 2311010; 747903, 2311009; 747525, 2310992; 747443, 2310953; 747190, 2310834; 747141, 2310897; 746634, 2311554; 746203, 2312157; 745979, 2312604; 746368, 2312645; 748186, 2312479; 748631, 2312228; 748848, 2312105; 748934, 2311945; 749268, 2311327; 749365, 2311159; 749509, 2311034; 748847, 2310882; 748737, 2311047; return to starting point.

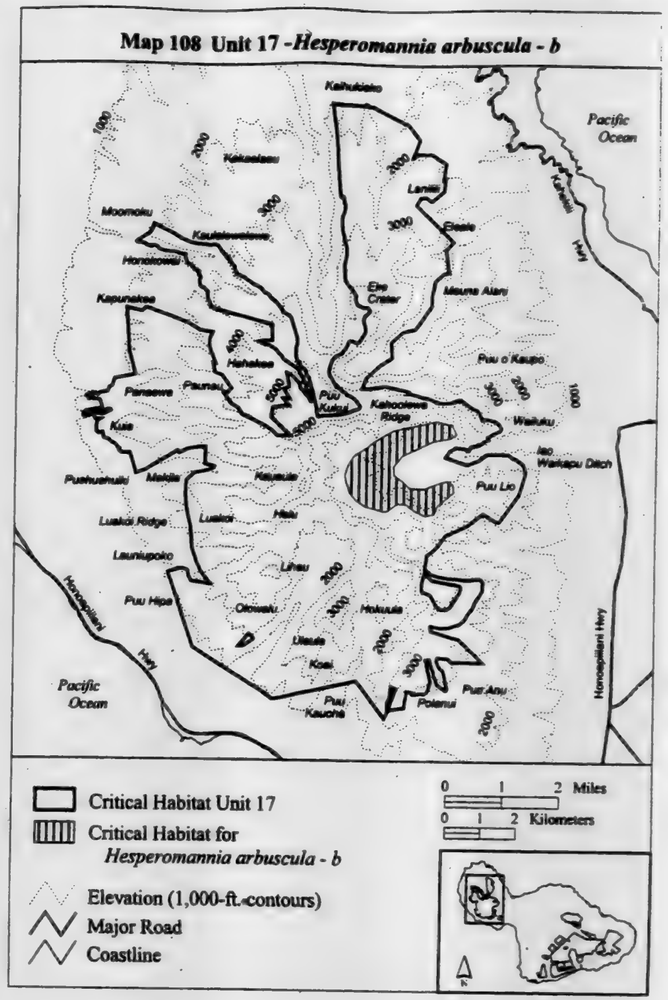
(B) **Note:** Map 107 follows:



(cviii) Maui 17—*Hesperomannia arbuscula*—b (435 ha; 1,076 ac).

(A) Unit consists of the following 36 boundary points: Start at 752168, 2310821; 752476, 2311020; 752645, 2311166; 753026, 2311401; 753239, 2311511; 754450, 2311761; 754890, 2311665; 755015, 2311408; 754831, 2311291; 754347, 2311203; 753481, 2310799; 753232, 2310491; 753247, 2310271; 753459, 2310095; 753701, 2309890; 754112, 2309875; 754567, 2310044; 754773, 2310102; 754912, 2310014; 754949, 2309787; 754736, 2309611; 754479, 2309391; 754391, 2309156; 754142, 2309105; 753841, 2309244; 753599, 2309427; 753349, 2309449; 753078, 2309251; 752982, 2309229; 752461, 2309361; 752190, 2309530; 751999, 2309758; 751904, 2310058; 751860, 2310256; 751955, 2310528; 752087, 2310748; return to starting point.

(B) Note: Map 108 follows:



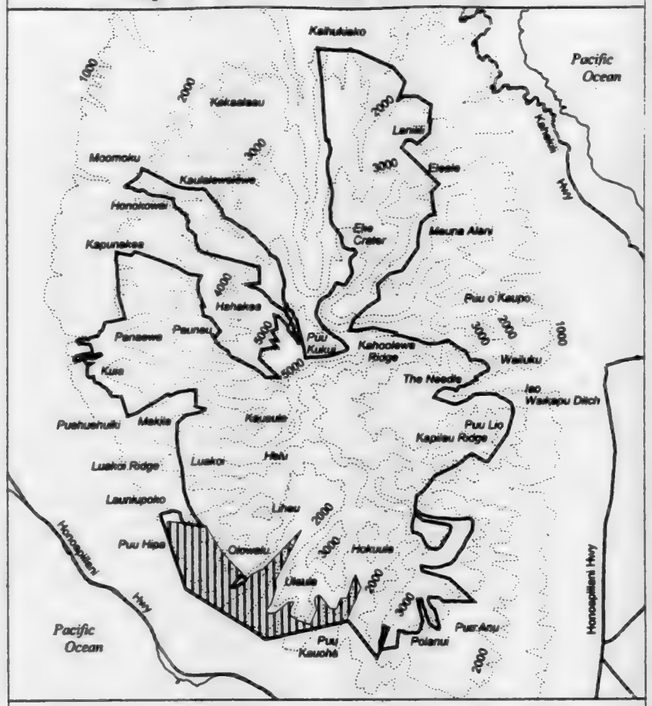
(cix) Maui 17—*Hibiscus brackenridgei*—b (672 ha; 1,661 ac).

(A) Unit consists of the following 60 boundary points: Start at 752075, 2304457; 752048, 2304451; 750687, 2304151; 750686, 2304151; 750403, 2304088; 749884, 2303974; 749722, 2304095; 749666, 2304138; 749584, 2304189; 748359, 2304949; 747620, 2305411; 747479, 2305820; 747343, 2306214; 747263, 2306446; 747200, 2306630; 747191, 2306692; 747101, 2307299; 747121, 2307299; 747120, 2307301; 747329, 2307289; 747571, 2307254; 748096, 2307179; 748214, 2307162; 748499, 2306705; 748671, 2306455; 749034, 2306050; 749215, 2305860; 749378, 2305670; 749491, 2305783; 749783, 2305937; 749811, 2305928; 750938, 2307038; 750193, 2305638; 750202, 2305598; 750197, 2305412; 750122, 2305158; 750027, 2304930; 749905, 2304760; 750011, 2304702; 750197, 2304744; 750446, 2304940; 750546, 2305015; 750695, 2305036; 750679, 2304967; 750621, 2304845; 750589, 2304670; 750818, 2304506; 751161, 2304400; 751352, 2304808; 751305, 2304993; 751305, 2305126; 751352, 2305195; 751442, 2305221; 751741, 2304837; 751924, 2304837; 752039, 2305135; 752222, 2305135; 752452, 2305777; 752612, 2305410; 752197, 2304484; return to starting point.

(B) Excluding the area bounded by the following 11 boundary points (6ha; 15ac): Start at 749362, 2305641; 749057, 2305433; 748930, 2305439; 749226, 2305793; 749363, 2305641; 749363, 2305641; 749363, 2305641; 749363, 2305641; 749363, 2305641; 749362, 2305640; return to starting point.

(C) Note: Map 109 follows:

Map 109 Unit 17 - *Hibiscus brackenridgei* - b

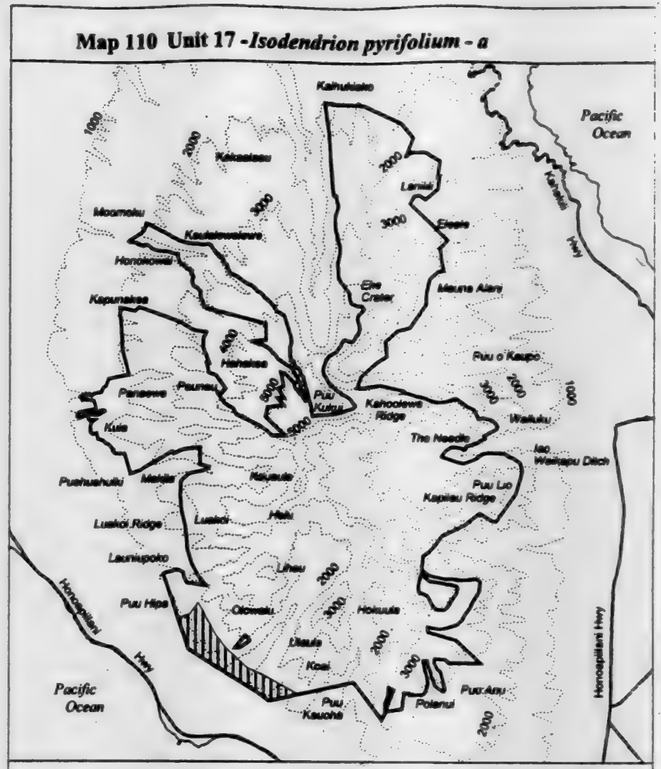


(cx) Maui 17—*Isodendrion pyrifolium*—a (224 ha; 555 ac).

(A) Unit consists of the following 20 boundary points: Start at 750686, 2304151; 750460, 2304101; 750214, 2304047; 749928, 2303984; 749903, 2303978; 749898, 2303977; 749722, 2304095; 749584, 2304189; 749409, 2304307; 748359, 2304949; 747620, 2305407; 747479, 2305820; 747331, 2306254; 747670, 2306395; 747898, 2306699; 748388, 2305794; 748679, 2305440; 749287, 2304896; 749758, 2304696; 750700, 2304154; return to starting point.

(B) **Note:** Map 110 follows:

Map 110 Unit 17 - *Isodendrion pyrifolium* - a

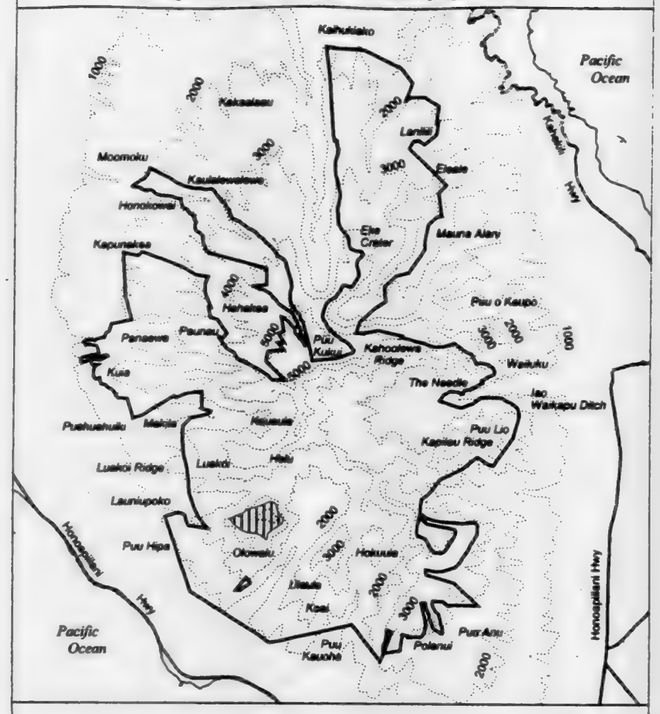


(cxi) Maui 17—*Lysimachia lydgatei*—a (89 ha; 221 ac).

(A) Unit consists of the following 28 boundary points: Start at 748761, 2307434; 748761, 2307462; 748898, 2307517; 749159, 2307627; 749233, 2307705; 749329, 2307723; 749389, 2307755; 749654, 2307824; 749737, 2307865; 749879, 2307929; 750007, 2307916; 750080, 2307833; 750099, 2307732; 750103, 2307664; 750186, 2307558; 750273, 2307434; 750250, 2307334; 750076, 2307201; 749911, 2307100; 749842, 2307040; 749801, 2306857; 749663, 2306972; 749549, 2307022; 749480, 2307040; 749242, 2307059; 749086, 2307127; 748830, 2307334; 748761, 2307421; return to starting point.

(B) **Note:** Map 111 follows:

Map 111 Unit 17 -*Lysimachia lydgatei* - a



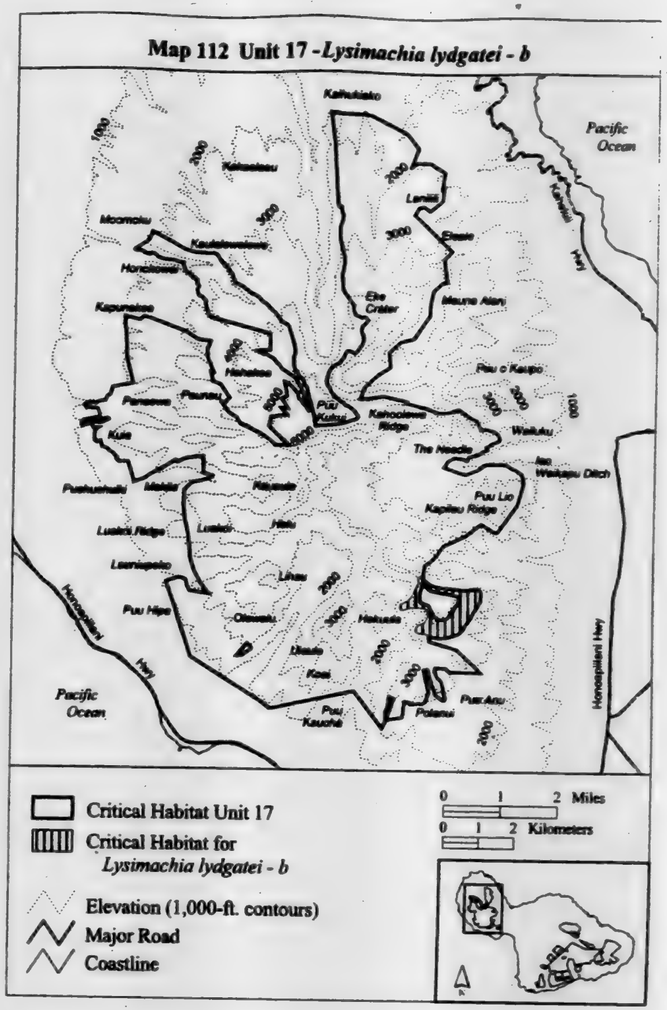
(cxii) Maui 17—*Lysimachia lydgatei*—b (220 ha; 544 ac).

(A) Unit consists of the following 67 boundary points: Start at 754164, 2307624; 754188, 2307607; 754367, 2307487; 754541, 2307436; 754599, 2307426; 754834, 2307383; 755113, 2307365; 755261, 2307345; 755428, 2307345; 755624, 2307370; 755652, 2307375; 755657, 2307376; 755704, 2307385; 755734, 2307365; 755806, 2307294; 755803, 2307069; 755794, 2307046; 755803, 2307043; 755697, 2306874; 755624, 2306756; 755515, 2306552; 755490, 2306519; 755377, 2306367; 755334, 2306276; 755319, 2306243; 755262, 2306193; 755163, 2306105; 755088, 2306079; 755078, 2306075; 754935, 2306024; 754857, 2305996; 754748, 2305990; 754614, 2305982; 754412, 2306019; 754341, 2306032; 754341, 2306031; 754336, 2306037; 754319, 2306054; 754254, 2306105; 754083, 2306112; 753970, 2306152; 753941, 2306203; 753985, 2306280; 754050, 2306349; 754192, 2306403; 754247, 2306469; 754327, 2306603; 754312, 2306694; 754272, 2306781; 754214, 2306829; 753999, 2306850; 753861, 2306832; 753774, 2306836; 753618, 2306774; 753523, 2306770; 753494, 2306847; 753541, 2306949; 753640, 2306978; 753730, 2307025; 753825, 2307130; 753890, 2307243; 753940, 2307388; 754036, 2307519; 754021, 2307625; 754007, 2307650; 754021, 2307697; 754054, 2307701; return to starting point.

(B) Excluding the area bounded by the following 19 boundary points (62ha; 153ac): Start at 754495, 2306605; 754472, 2306625; 754334, 2306901; 754090, 2307018; 754065, 2307098; 754087, 2307266; 754141, 2307512; 754162, 2307496; 754243, 2307436; 754381, 2307316; 755039, 2307210; 755145, 2307181; 755188, 2307116; 755155, 2306981; 755028, 2306781; 754890, 2306567; 754808, 2306523; 754788, 2306512; 754588, 2306523; return to starting point.

(C) **Note:** Map 112 follows:

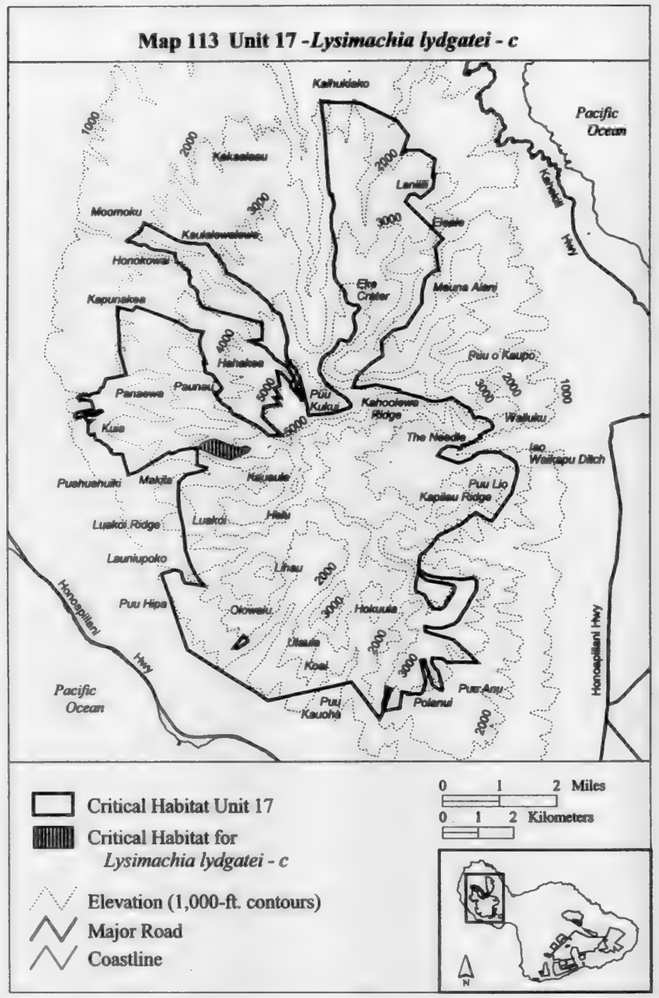
Map 112 Unit 17 -*Lysimachia lydgatei* - b



(cxiii) Maui 17—*Lysimachia lydgatei*—c (47 ha; 117 ac).

(A) Unit consists of the following 18 boundary points: Start at 748746, 2311133; 748917, 2311048; 749167, 2311011; 749305, 2311059; 749438, 2311006; 749422, 2310952; 749353, 2310873; 749060, 2310745; 748858, 2310670; 748624, 2310729; 748411, 2310793; 748135, 2310920; 747970, 2311000; 747997, 2311080; 748066, 2311154; 748289, 2311240; 748433, 2311255; 748512, 2311234; return to starting point.

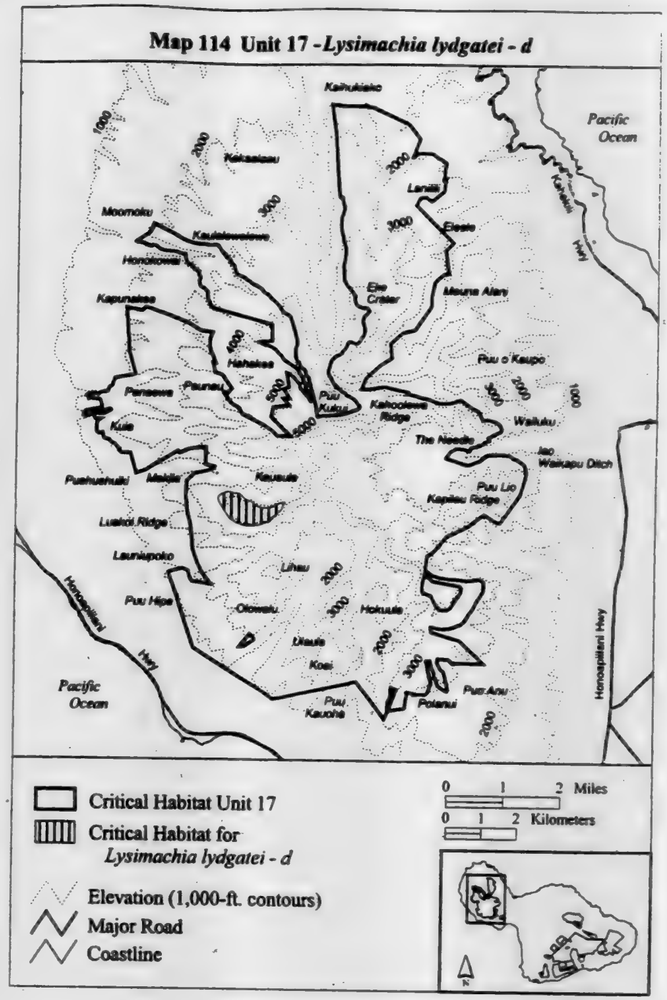
(B) **Note:** Map 113 follows:



(cxiv) Maui 17—*Lysimachia lydgatei*—d (98 ha; 241 ac).

(A) Unit consists of the following 30 boundary points: Start at 750135, 2309496; 750181, 2309483; 750177, 2309446; 750122, 2309373; 750090, 2309281; 749925, 2309130; 749801, 2309038; 749773, 2308951; 749416, 2308836; 749077, 2308814; 748834, 2308882; 748623, 2309020; 748486, 2309217; 748335, 2309450; 748293, 2309574; 748321, 2309638; 748385, 2309698; 748523, 2309757; 748582, 2309771; 748738, 2309734; 748885, 2309721; 748999, 2309606; 749123, 2309519; 749251, 2309487; 749329, 2309405; 749498, 2309322; 749682, 2309322; 749842, 2309350; 749906, 2309400; 750025, 2309450; return to starting point.

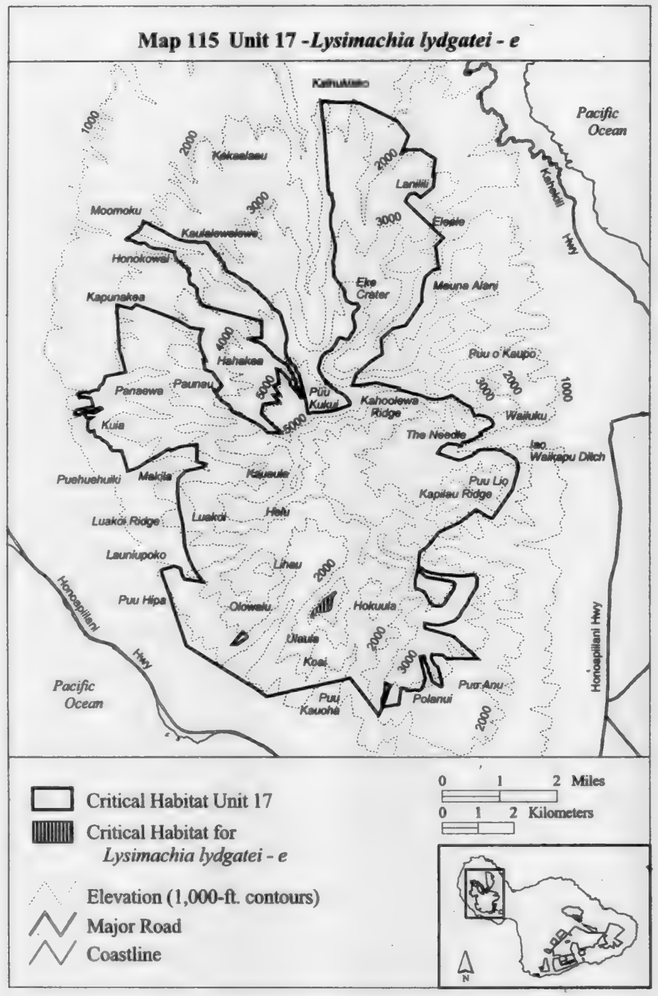
(B) **Note:** Map 114 follows:



(cxv) Maui 17—*Lysimachia lydgatei*—e (18 ha; 44 ac).

(A) Unit consists of the following 22 boundary points: Start at 751408, 2306523; 751429, 2306563; 751478, 2306669; 751724, 2306831; 751767, 2306892; 751846, 2306916; 751871, 2306886; 751843, 2306831; 751785, 2306736; 751755, 2306654; 751746, 2306529; 751718, 2306404; 751575, 2306347; 751374, 2306334; 751307, 2306322; 751264, 2306246; 751164, 2306182; 751133, 2306194; 751136, 2306234; 751188, 2306328; 751240, 2306423; 751359, 2306493; return to starting point.

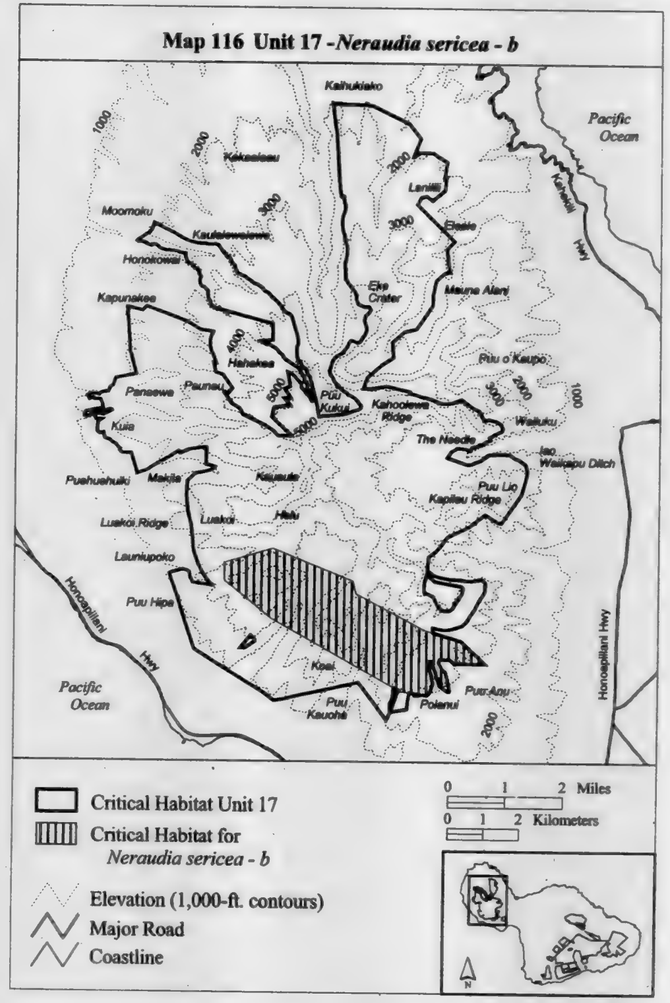
(B) **Note:** Map 115 follows:



(cxvi) Maui 17—*Neraudia sericea*—b (1,189 ha; 2,938 ac).

(A) Unit consists of the following 56 boundary points: Start at 754350, 2305894; 755139, 2305668; 755567, 2305273; 755828, 2305033; 755089, 2305043; 755087, 2305045; 754979, 2305016; 754831, 2305142; 754762, 2305147; 754540, 2305162; 754519, 2305074; 754515, 2305057; 754540, 2305011; 754546, 2305000; 754546, 2305000; 754621, 2304863; 754699, 2304812; 754760, 2304616; 754771, 2304529; 754777, 2304488; 754780, 2304459; 754601, 2304367; 754542, 2304415; 754486, 2304579; 754439, 2304653; 754438, 2304725; 754437, 2304765; 754435, 2304770; 754349, 2304956; 754320, 2305103; 754319, 2305108; 754309, 2305107; 754214, 2305093; 754235, 2304991; 754278, 2304785; 754282, 2304767; 754351, 2304474; 754342, 2304448; 754333, 2304422; 754324, 2304394; 754323, 2304390; 754277, 2304259; 754255, 2304193; 754171, 2304150; 754067, 2304164; 753832, 2304195; 753811, 2304198; 753675, 2304217; 753449, 2304247; 749789, 2306260; 748476, 2307315; 748455, 2307820; 749832, 2308208; 752082, 2307325; 752168, 2306959; 754128, 2305958; return to starting point.

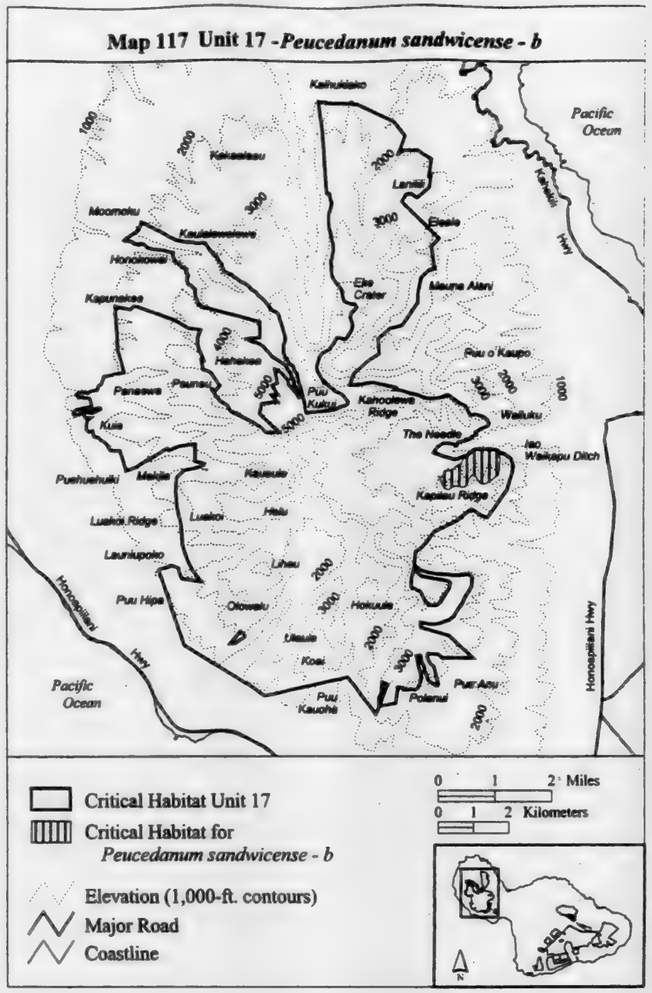
(B) **Note:** Map 116 follows:



(cxvii) Maui 17—*Peucedanum sandwicense*—b (117 ha; 289 ac).

(A) Unit consists of the following 41 boundary points: Start at 755661, 2310703; 755670, 2310709; 755718, 2310743; 755890, 2310863; 755896, 2310864; 756325, 2310873; 756497, 2310849; 756549, 2310816; 756582, 2310768; 756582, 2310767; 756578, 2310701; 756602, 2310559; 756578, 2310444; 756578, 2310273; 756549, 2310135; 756463, 2310087; 756387, 2310011; 756287, 2309973; 756216, 2309911; 756116, 2309892; 756068, 2309906; 755992, 2309963; 755930, 2310082; 755806, 2310140; 755735, 2310078; 755697, 2309982; 755659, 2309873; 755587, 2309811; 755502, 2309811; 755430, 2309835; 755292, 2309835; 755140, 2309730; 755002, 2309797; 754882, 2310059; 754982, 2310125; 755002, 2310244; 755068, 2310268; 755221, 2310259; 755344, 2310382; 755492, 2310463; 755573, 2310625; return to starting point.

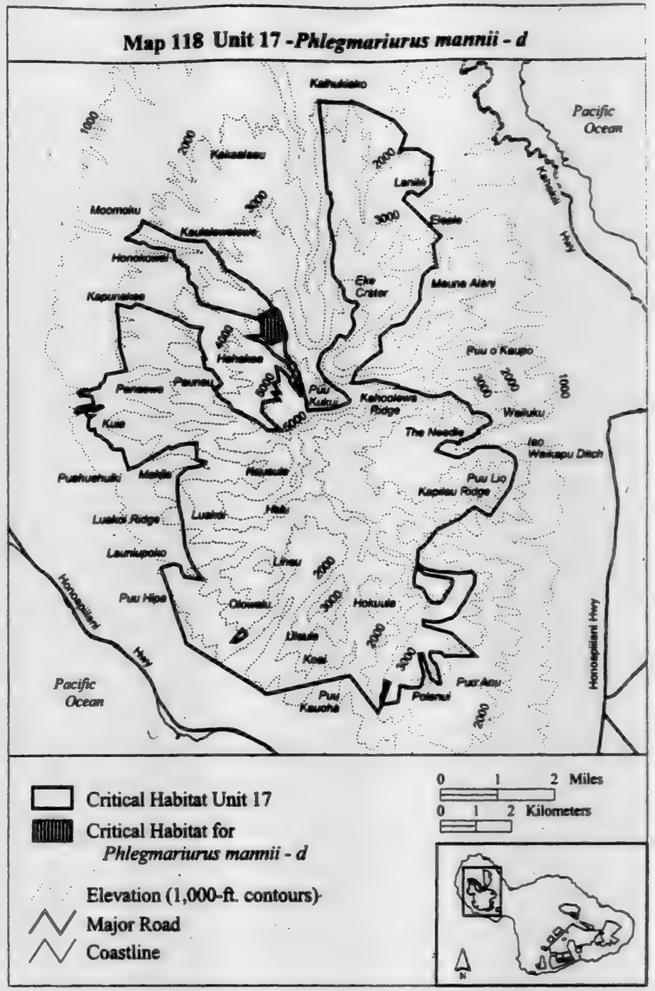
(B) **Note:** Map 117 follows:



(cxviii) Maui 17—*Phlegmariurus mannii*—d (57 ha; 140 ac).

(A) Unit consists of the following 34 boundary points: Start at 749731, 2314023; 749762, 2314024; 749763, 2314024; 749764, 2314024; 749764, 2314025; 749766, 2314245; 749769, 2314498; 749768, 2314500; 749767, 2314500; 749602, 2314542; 750115, 2314813; 750120, 2314809; 750138, 2314798; 750173, 2314786; 750215, 2314763; 750223, 2314758; 750232, 2314754; 750246, 2314737; 750265, 2314720; 750286, 2314703; 750288, 2314702; 750386, 2314362; 750454, 2314143; 750461, 2314125; 750462, 2314110; 750462, 2314098; 750469, 2314075; 750476, 2314039; 750478, 2314029; 750479, 2314015; 750481, 2313991; 750479, 2313958; 750479, 2313948; 750046, 2313750; return to starting point.

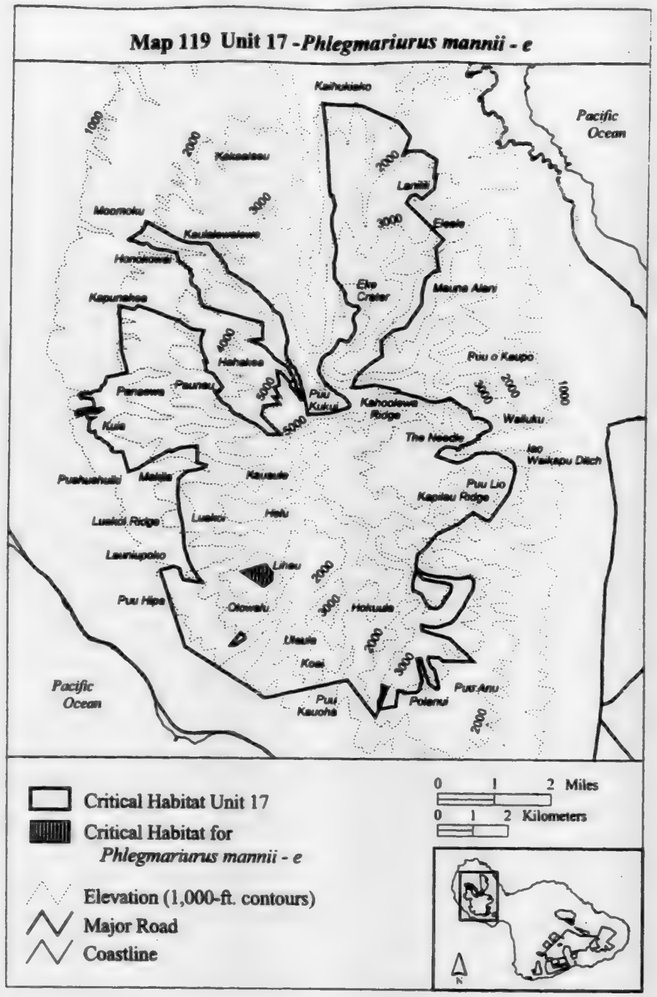
(B) **Note:** Map 118 follows:



(cxix) Maui 17—*Phlegmariurus mannii*—e (35 ha; 87 ac).

(A) Unit consists of the following 5 boundary points: Start at 749857, 2307053; 749164, 2307491; 749922, 2307722; 750135, 2307470; 750105, 2307233; return to starting point.

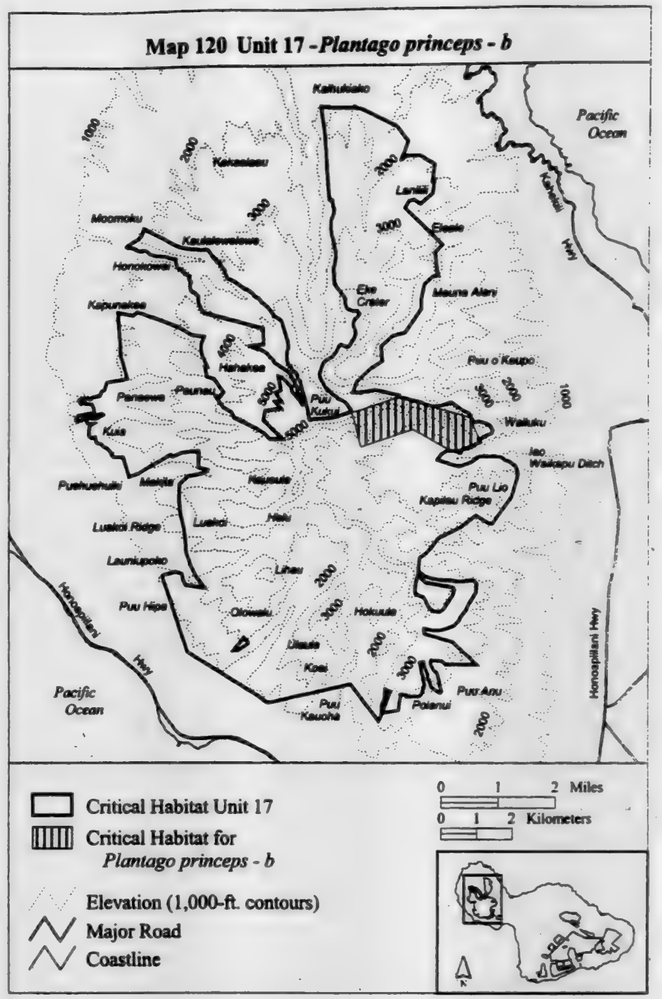
(B) **Note:** Map 119 follows:



(cxx) Maui 17—*Plantago princeps*—b (327 ha; 808 ac).

(A) Unit consists of the following 16 boundary points: Start at 755885, 2311350; 755922, 2311264; 755790, 2311220; 755197, 2311022; 755103, 2311031; 754021, 2311640; 752538, 2311146; 752284, 2312106; 752542, 2312180; 753629, 2312550; 753645, 2312555; 753846, 2312495; 754009, 2312447; 754379, 2312336; 754546, 2312287; 755617, 2311968; return to starting point.

(B) **Note:** Map 120 follows:

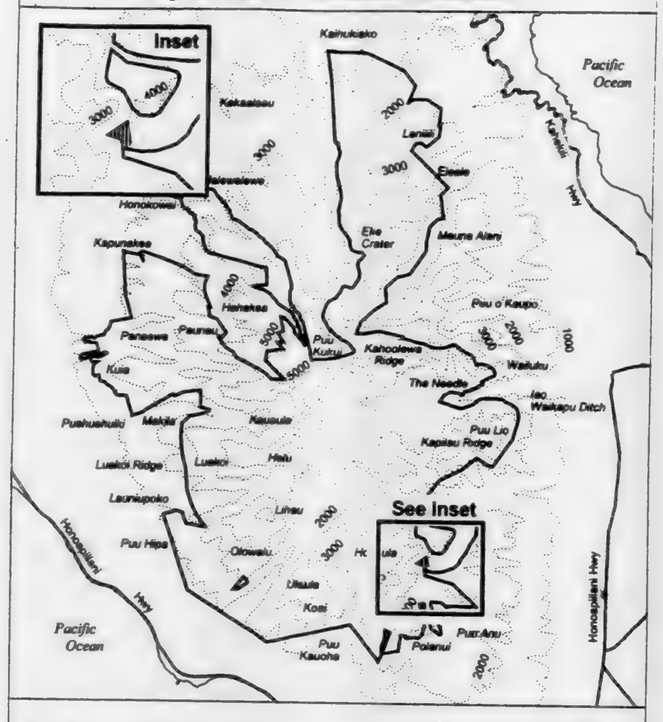


(cxxi) Maui 17—*Platanthera holochila*—b (8 ha; 19 ac).

(A) Unit consists of the following 7 boundary points: Start at 754412, 2306019; 754341, 2306032; 754341, 2306031; 754290, 2306152; 754075, 2306222; 754409, 2306447; 754465, 2306113; return to starting point.

(B) **Note:** Map 121 follows:

Map 121 Unit 17 - *Platanthera holochila - b*

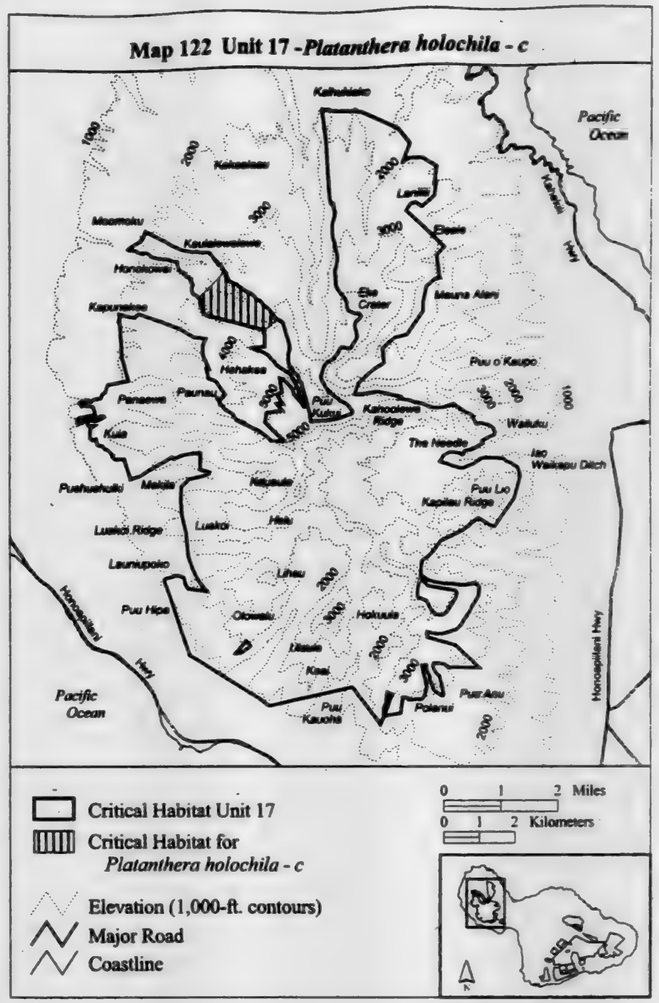


(cxxii) Maui 17—*Platanthera holochila*—c (189 ha; 467 ac).

(A) Unit consists of the following 99 boundary points: Start at 749766, 2314500; 748184, 2314906; 748128, 2314930; 748092, 2314946; 748091, 2314947; 748090, 2314947; 748089, 2314948; 748069, 2314973; 748068, 2314973; 748029, 2314987; 748007, 2315005; 748001, 2315029; 748005, 2315065; 748005, 2315083; 747994, 2315106; 747975, 2315127; 747954, 2315161; 747942, 2315193; 747940, 2315201; 747933, 2315253; 747929, 2315289; 747930, 2315329; 747935, 2315356; 747931, 2315379; 747914, 2315403; 747887, 2315423; 747885, 2315426; 748574, 2316083; 748639, 2316154; 748649, 2316141; 748680, 2316102; 748682, 2316095; 748687, 2316079; 748691, 2316057; 748698, 2316026; 748698, 2316025; 748717, 2315987; 748731, 2315953; 748738, 2315922; 748743, 2315901; 748750, 2315885; 748758, 2315876; 748759, 2315875; 748770, 2315868; 748796, 2315863; 748806, 2315862; 748826, 2315861; 748849, 2315847; 748876, 2315834; 748913, 2315824; 748949, 2315807; 748960, 2315800; 749000, 2315773; 749021, 2315756; 749067, 2315724; 749090, 2315709; 749140, 2315671; 749173, 2315647; 749188, 2315640; 749205, 2315627; 749223, 2315614; 749244, 2315605; 749315, 2315575; 749336, 2315565; 749353, 2315555; 749385, 2315535; 749404, 2315524; 749421, 2315514; 749470, 2315477; 749479, 2315464; 749486, 2315451; 749500, 2315430; 749524, 2315402; 749550, 2315385; 749571, 2315373; 749617, 2315351; 749628, 2315342; 749652, 2315326; 749666, 2315306; 749677, 2315288; 749682, 2315280; 749701, 2315256; 749720, 2315236; 749736, 2315224; 749781, 2315186; 749797, 2315177; 749814, 2315164; 749833, 2315147; 749874, 2315098; 749888, 2315088; 749934, 2315046; 749960, 2315009; 750020, 2314928; 750057, 2314876; 750072, 2314855; 750097, 2314830; 750120, 2314809; 750138, 2314798; 750139, 2314798; return to starting point.

(B) **Note:** Map 122 follows:

Map 122 Unit 17 - *Platanthera holochila - c*

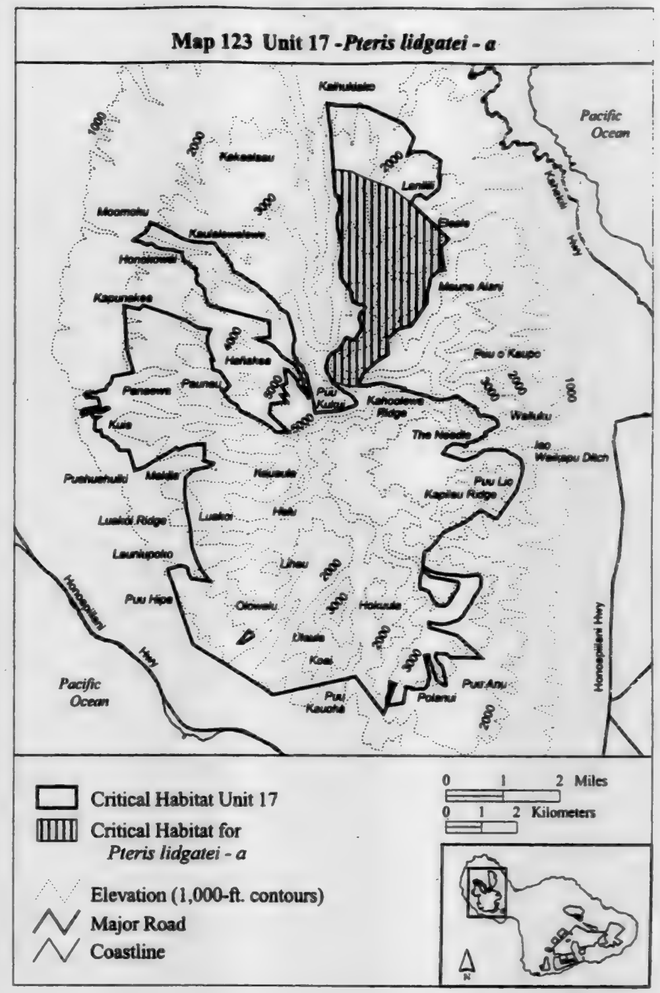


(cxxiii) Maui 17—*Pteris lidgatei*—a (1,168 ha; 2,887 ac).

(A) Unit consists of the following 211 boundary points: Start at 751582, 2312795; 751577, 2312796; 751528, 2312835; 751509, 2312866; 751494, 2312898; 751477, 2312924; 751470, 2312949; 751455, 2312970; 751447, 2312990; 751430, 2313008; 751409, 2313034; 751396, 2313055; 751392, 2313077; 751379, 2313115; 751372, 2313144; 751371, 2313166; 751372, 2313195; 751376, 2313220; 751378, 2313242; 751391, 2313266; 751395, 2313289; 751399, 2313300; 751407, 2313325; 751423, 2313372; 751434, 2313402; 751442, 2313431; 751445, 2313445; 751458, 2313470; 751460, 2313473; 751483, 2313503; 751510, 2313537; 751525, 2313552; 751530, 2313556; 751547, 2313568; 751557, 2313585; 751561, 2313589; 751596, 2313611; 751632, 2313629; 751663, 2313639; 751692, 2313653; 751724, 2313678; 751730, 2313685; 751736, 2313691; 751741, 2313698; 751753, 2313712; 751774, 2313739; 751802, 2313779; 751812, 2313796; 751834, 2313826; 751848, 2313852; 751858, 2313865; 751891, 2313928; 751915,

2313975; 751943, 2314006; 751962, 2314018; 751999, 2314023; 752033, 2314016; 752081, 2313996; 752123, 2313971; 752153, 2313965; 752154, 2313965; 752187, 2313971; 752206, 2313984; 752220, 2314004; 752241, 2314040; 752255, 2314066; 752280, 2314106; 752298, 2314135; 752326, 2314169; 752350, 2314207; 752375, 2314234; 752375, 2314235; 752380, 2314285; 752390, 2314310; 752394, 2314322; 752394, 2314323; 752390, 2314361; 752385, 2314401; 752376, 2314456; 752359, 2314508; 752350, 2314542; 752334, 2314592; 752332, 2314632; 752340, 2314668; 752351, 2314710; 752369, 2314743; 752392, 2314761; 752420, 2314774; 752451, 2314798; 752466, 2314821; 752482, 2314848; 752505, 2314885; 752505, 2314886; 752505, 2314887; 752495, 2314905; 752453, 2314975; 752453, 2314976; 752448, 2314976; 752453, 2314984; 752376, 2314996; 752366, 2314973; 752362, 2314970; 752342, 2314967; 752250, 2315013; 752158, 2315058; 752138, 2315091; 752117, 2315151; 752108, 2315196; 752103, 2315252; 752113, 2315300; 752112, 2315302; 752096, 2315325; 752085, 2315344; 752070, 2315374; 752051, 2315406; 752026, 2315438; 751991, 2315478; 751949, 2315532; 751900, 2315589; 751856, 2315640; 751831, 2315694; 751805, 2315739; 751802, 2315745; 751780, 2316007; 751791, 2316023; 751792, 2316024; 751792, 2316025; 751785, 2316046; 751774, 2316078; 751771, 2316121; 751767, 2316164; 751778, 2316192; 751794, 2316230; 751799, 2316258; 751807, 2316311; 751812, 2316339; 751828, 2316408; 751840, 2316469; 751842, 2316535; 751836, 2316587; 751832, 2316640; 751828, 2316678; 751828, 2316679; 751812, 2316711; 751793, 2316765; 751774, 2316831; 751763, 2316879; 751754, 2316929; 751744, 2317001; 751727, 2317051; 751703, 2317090; 751693, 2317225; 751691, 2317254; 751693, 2317261; 751698, 2317290; 751694, 2317322; 751695, 2317366; 751697, 2317415; 751702, 2317462; 751715, 2317522; 751728, 2317571; 751747, 2317619; 751767, 2317682; 751769, 2317710; 751778, 2317751; 751782, 2317790; 751782, 2317791; 751769, 2317829; 751750, 2317859; 751741, 2317901; 751738, 2317949; 751738, 2317997; 751730, 2318034; 751729, 2318035; 751714, 2318045; 751713, 2318046; 751712, 2318046; 751690, 2318034; 751665, 2318030; 751651, 2318051; 751640, 2318085; 751632, 2318124; 751632, 2318131; 751630, 2318160; 751587, 2318788; 752124, 2318723; 752171, 2318701; 752172, 2318700; 752441, 2318572; 753228, 2318261; 753719, 2317901; 753788, 2317835; 754546, 2317117; 754543, 2317112; 754622, 2317045; 754855, 2316824; 754646, 2316585; 754736, 2315958; 754586, 2315928; 754347, 2315718; 754257, 2315300; 754257, 2315031; 753809, 2314373; 753450, 2314284; 753121, 2313985; 753151, 2313566; 752822, 2313357; 752434, 2312998; 752317, 2312676; 752314, 2312669; 752040, 2312664; return to starting point.

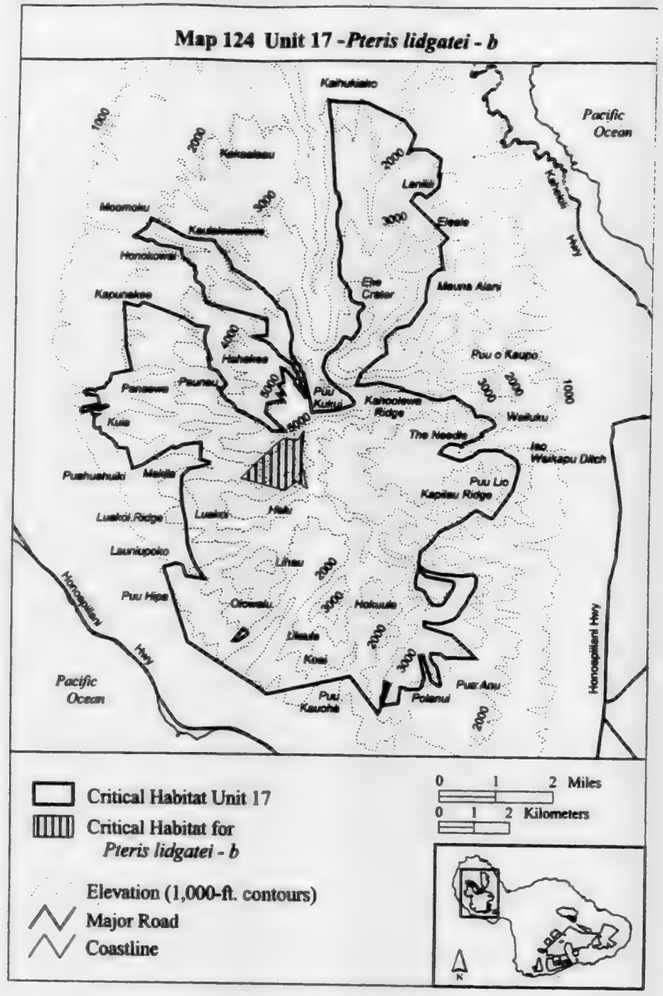
(B) **Note:** Map 123 follows:



(cxxiv) Maui 17—*Pteris lidgatei*—b (164 ha; 404 ac).

(A) Unit consists of the following 9 boundary points: Start at 750072, 2310995; 750282, 2311145; 750670, 2311085; 750850, 2311354; 750790, 2310427; 750969, 2309740; 750670, 2309949; 750341, 2309680; 749086, 2310009; return to starting point.

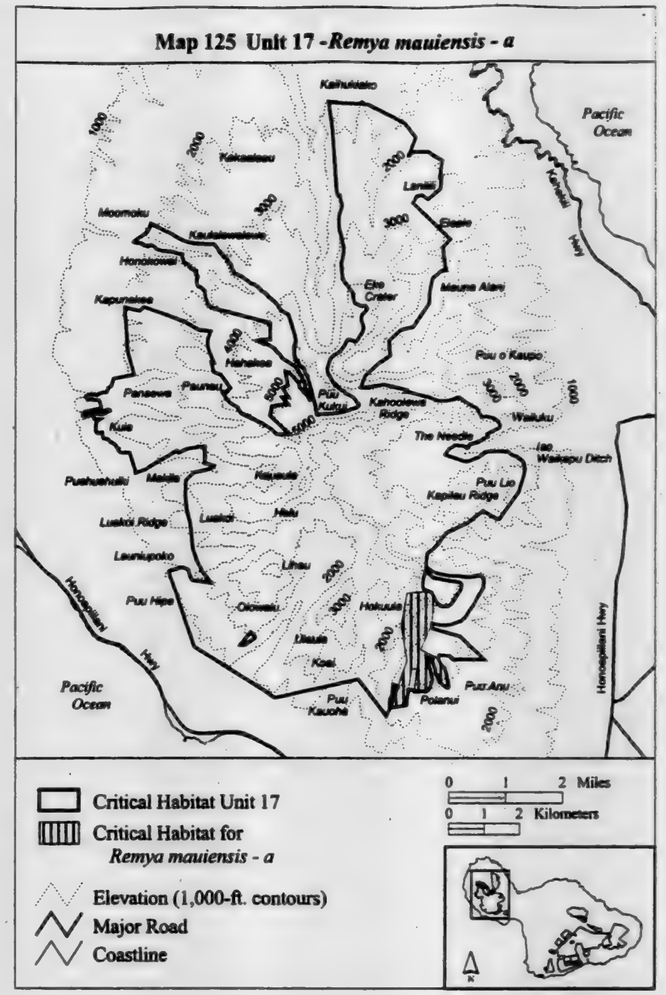
(B) **Note:** Map 124 follows:



(cxxv) Maui 17—*Remya mauiensis*—a (228 ha; 564 ac).

(A) Unit consists of the following 61 boundary points: Start at 754336, 2306037; 754335, 2306032; 754334, 2306014; 754022, 2305314; 754484, 2305080; 754534, 2305022; 754537, 2305016; 754540, 2305011; 754621, 2304863; 754699, 2304812; 754773, 2304280; 754776, 2304259; 754769, 2304263; 754670, 2304324; 754605, 2304364; 754603, 2304366; 754542, 2304415; 754499, 2304541; 754356, 2305091; 754320, 2305103; 754319, 2305108; 754309, 2305107; 754122, 2305169; 754172, 2305069; 754235, 2304991; 754238, 2304988; 754242, 2304971; 754278, 2304785; 754282, 2304767; 754312, 2304638; 754336, 2304537; 754343, 2304451; 754343, 2304450; 754342, 2304448; 754333, 2304422; 754327, 2304403; 754279, 2304263; 754165, 2304205; 754078, 2304169; 753828, 2304146; 753911, 2304797; 753750, 2304769; 753606, 2303761; 753602, 2303760; 753576, 2303756; 753552, 2303751; 753534, 2303749; 753531, 2303748; 753515, 2303745; 753154, 2303686; 753252, 2303966; 753304, 2304113; 753310, 2304130; 753365, 2304285; 753367, 2304292; 753628, 2305002; 753472, 2305975; 753622, 2306887; 754189, 2306927; 754311, 2306887; 754387, 2306765; return to starting point.

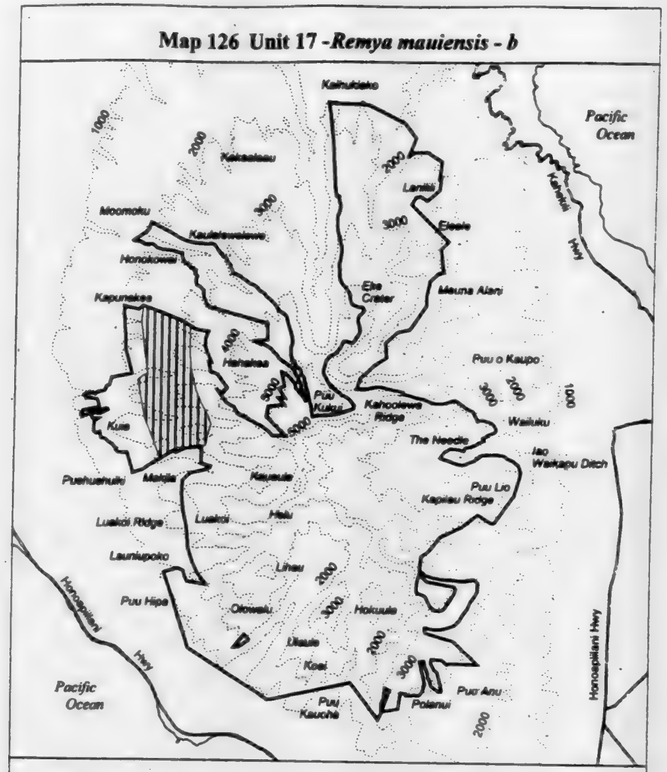
(B) **Note:** Map 125 follows:



(cxxvi) Maui 17—*remya mauiensis*—b (567 ha; 1,401 ac).

(A) Unit consists of the following 30 boundary points: Start at 746995, 2310813; 746762, 2310659; 746754, 2310674; 746719, 2310734; 746452, 2311437; 746303, 2311773; 746170, 2312397; 746101, 2312866; 746244, 2312994; 746324, 2313016; 746372, 2313015; 746273, 2313672; 746174, 2314527; 746227, 2314946; 746887, 2314706; 747359, 2314534; 747564, 2314406; 747564, 2313642; 747609, 2313176; 747674, 2312935; 747689, 2312936; 747743, 2312584; 747871, 2312291; 748089, 2311885; 748185, 2311619; 748123, 2311444; 748084, 2311336; 748036, 2311038; 747487, 2310984; 747263, 2310990; return to starting point.

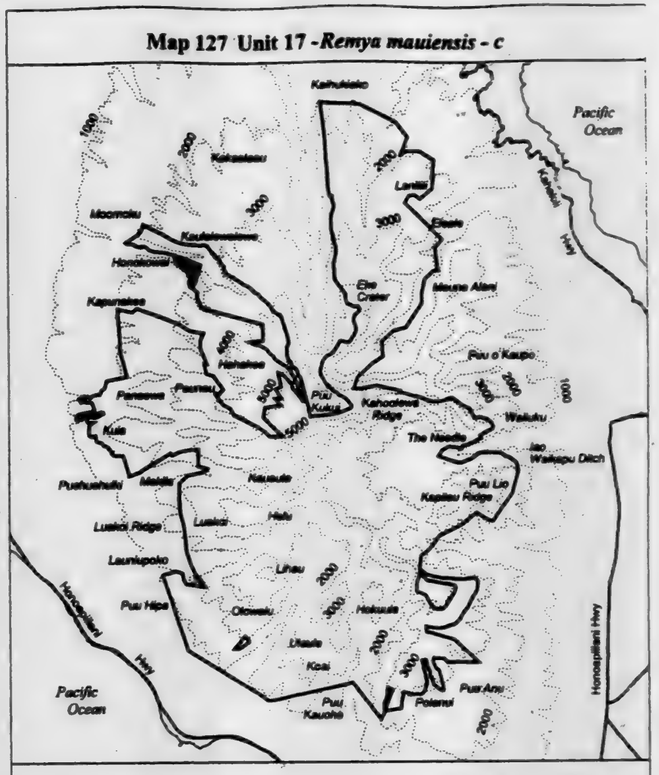
(B) **Note:** Map 126 follows:



(cxxvii) Maui 17—*Remya mauiensis*—c (32 ha; 78 ac).

(A) Unit consists of the following 52 boundary points: Start at 747792, 2315504; 747750, 2315521; 747726, 2315545; 747722, 2315552; 747704, 2315583; 747698, 2315635; 747693, 2315665; 747695, 2315687; 747702, 2315718; 747713, 2315745; 747728, 2315775; 747729, 2315792; 747729, 2315793; 747717, 2315811; 747717, 2315812; 747697, 2315822; 747681, 2315836; 747675, 2315860; 747677, 2315876; 747681, 2315899; 747681, 2315918; 747667, 2315950; 747648, 2315974; 747620, 2315996; 747585, 2316012; 747546, 2316034; 747526, 2316055; 747508, 2316086; 747494, 2316109; 747476, 2316129; 747447, 2316142; 747409, 2316159; 747389, 2316169; 747365, 2316186; 747345, 2316212; 747336, 2316228; 747328, 2316244; 747312, 2316282; 747299, 2316323; 747290, 2316361; 747289, 2316384; 747289, 2316392; 747296, 2316429; 747296, 2316430; 747296, 2316431; 747295, 2316431; 747296, 2316436; 747510, 2316405; 748060, 2316161; 747945, 2315810; 747915, 2315650; 747824, 2315486; return to starting point.

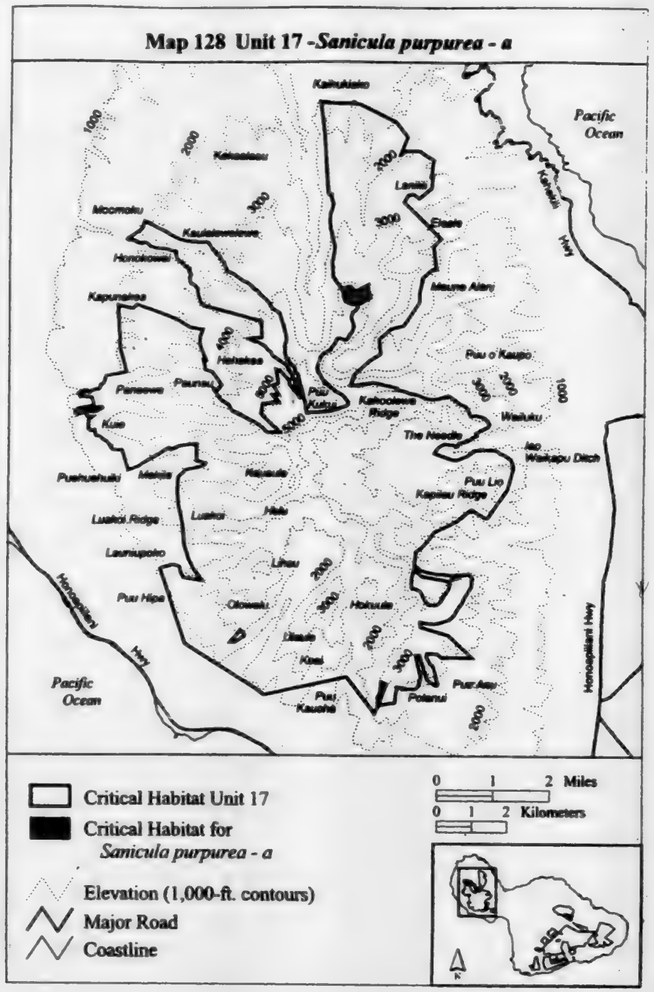
(B) **Note:** Map 127 follows:



(cxxviii) Maui 17—*Sanicula purpurea*—a (34 ha; 84 ac).

(A) Unit consists of the following 26 boundary points: Start at 752495, 2314905; 752453, 2314975; 752453, 2314976; 752416, 2314975; 752381, 2314973; 752342, 2314967; 752250, 2315013; 752158, 2315058; 752138, 2315091; 752117, 2315151; 752108, 2315196; 752103, 2315252; 752113, 2315300; 752112, 2315302; 752096, 2315325; 752085, 2315344; 752070, 2315374; 752051, 2315406; 752043, 2315416; 752194, 2315469; 752315, 2315502; 752449, 2315352; 752817, 2315548; 752838, 2315319; 752900, 2315143; 752499, 2314898; return to starting point.

(B) **Note:** Map 128 follows:

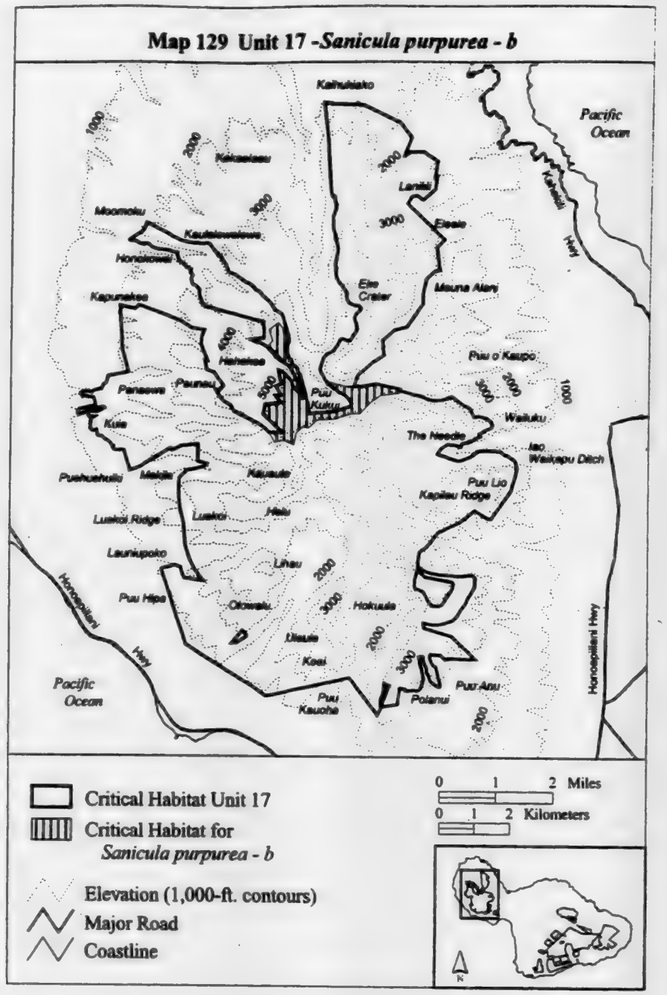


(cxxix) Maui 17—*Sanicula purpurea*—b (306 ha; 756 ac).

(A) Unit consists of the following 270 boundary points: Start at 749939, 2311346; 750305, 2311362; 749759, 2311879; 749818, 2312144; 750261, 2312204; 750099, 2312396; 750276, 2312410; 750113, 2312661; 750261, 2312735; 750185, 2313139; 750220, 2313118; 750265, 2313091; 750306, 2313067; 750358, 2313037; 750373, 2313023; 750566, 2312802; 750568, 2312798; 750565, 2312761; 750564, 2312729; 750574, 2312687; 750574, 2312686; 750581, 2312676; 750586, 2312670; 750636, 2312621; 750675, 2312576; 750701, 2312549; 750729, 2312518; 750733, 2312514; 750763, 2312476; 750804, 2312434; 750835, 2312384; 750877, 2312324; 750877, 2312323; 750878, 2312323; 750879, 2312323; 750880, 2312324; 750889, 2312378; 750889, 2312379; 750885, 2312387; 750887, 2312412; 750887, 2312413; 750876, 2312455; 750851, 2312517; 750819, 2312576; 750799, 2312595; 750799, 2312596; 750798, 2312596; 750757, 2312591; 750749, 2312590; 750747, 2312611; 750734, 2312726; 750739, 2312751; 750739, 2312752; 750730, 2312793; 750712, 2312846; 750711, 2312846; 750711, 2312847; 750691, 2312851; 750690, 2312851; 750687, 2312849; 750671, 2312852; 750654, 2312855; 750651, 2312867; 750650, 2312873; 750649, 2312880; 750650, 2312898; 750652, 2312927; 750658, 2312963; 750658, 2312964; 750636, 2313003; 750632, 2313007; 750567, 2313111; 750565, 2313117; 750562, 2313122; 750571, 2313119; 750482, 2313247; 750468, 2313267; 749907, 2313828; 750025, 2313946; 749907, 2314271; 750187, 2314463; 750305, 2314315; 750379,

2313917; 750339, 2314523; 750386, 2314362; 750414, 2314272; 750454, 2314143; 750461, 2314125; 750462, 2314110; 750462, 2314098; 750469, 2314075; 750476, 2314039; 750478, 2314029; 750479, 2314015; 750481, 2313991; 750479, 2313958; 750479, 2313946; 750479, 2313933; 750476, 2313919; 750468, 2313903; 750450, 2313871; 750441, 2313851; 750441, 2313850; 750438, 2313827; 750440, 2313794; 750439, 2313772; 750436, 2313747; 750437, 2313723; 750437, 2313700; 750439, 2313671; 750438, 2313647; 750435, 2313610; 750436, 2313597; 750436, 2313596; 750441, 2313585; 750451, 2313562; 750456, 2313545; 750463, 2313528; 750465, 2313510; 750469, 2313497; 750469, 2313496; 750477, 2313484; 750491, 2313465; 750505, 2313443; 750510, 2313432; 750515, 2313420; 750526, 2313409; 750541, 2313398; 750551, 2313389; 750560, 2313367; 750565, 2313356; 750572, 2313334; 750578, 2313319; 750591, 2313304; 750609, 2313283; 750640, 2313257; 750643, 2313255; 750652, 2313247; 750674, 2313233; 750689, 2313219; 750704, 2313203; 750713, 2313180; 750725, 2313151; 750736, 2313118; 750747, 2313077; 750753, 2313062; 750767, 2313040; 750774, 2313031; 750792, 2313015; 750803, 2313003; 750815, 2312997; 750834, 2312921; 750866, 2312797; 750864, 2312784; 750864, 2312768; 750864, 2312767; 750868, 2312756; 750877, 2312736; 750881, 2312727; 750882, 2312717; 750888, 2312691; 750895, 2312668; 750904, 2312647; 750904, 2312646; 750905, 2312646; 751008, 2312240; 751038, 2312126; 751038, 2312124; 751038, 2312088; 751038, 2312083; 751034, 2312059; 751040, 2312045; 751059, 2311963; 751065, 2311938; 751066, 2311935; 751077, 2311889; 751077, 2311888; 751078, 2311887; 751079, 2311887; 751095, 2311890; 751115, 2311894; 751125, 2311897; 751154, 2311907; 751190, 2311915; 751210, 2311916; 751266, 2311917; 751317, 2311916; 751353, 2311910; 751415, 2311923; 751455, 2311926; 751502, 2311927; 751574, 2311945; 751610, 2311953; 751637, 2311945; 751638, 2311945; 751682, 2311949; 751730, 2311960; 751772, 2311971; 751845, 2311984; 751888, 2311992; 751889, 2311992; 751963, 2312014; 752001, 2312036; 752045, 2312060; 752095, 2312064; 752133, 2312081; 752177, 2312098; 752226, 2312119; 752255, 2312146; 752255, 2312147; 752257, 2312154; 752258, 2312161; 752260, 2312173; 752260, 2312174; 752259, 2312178; 752259, 2312186; 752255, 2312201; 752254, 2312203; 752242, 2312224; 752209, 2312264; 752181, 2312294; 752174, 2312305; 752146, 2312343; 752130, 2312360; 752109, 2312384; 752089, 2312404; 752052, 2312430; 752018, 2312454; 751992, 2312468; 751944, 2312486; 751906, 2312492; 751887, 2312501; 751874, 2312514; 751860, 2312545; 751852, 2312558; 751828, 2312576; 751812, 2312583; 751790, 2312588; 751769, 2312599; 751747, 2312616; 751708, 2312656; 751683, 2312672; 751660, 2312697; 751625, 2312730; 751609, 2312742; 751590, 2312761; 751567, 2312785; 751582, 2312795; 751605, 2312809; 752078, 2312676; 752317, 2312676; 752521, 2312676; 752964, 2312750; 753643, 2312602; 753629, 2312550; 753611, 2312482; 753082, 2312425; 752728, 2312174; 752491, 2311908; 752255, 2311908; 751812, 2311746; 751295, 2311716; 751059, 2311495; 750881, 2311509; 750704, 2311347; 750630, 2311007; 750360, 2311126; 750081, 2311078; 749999, 2311246; 749928, 2311346; return to starting point.

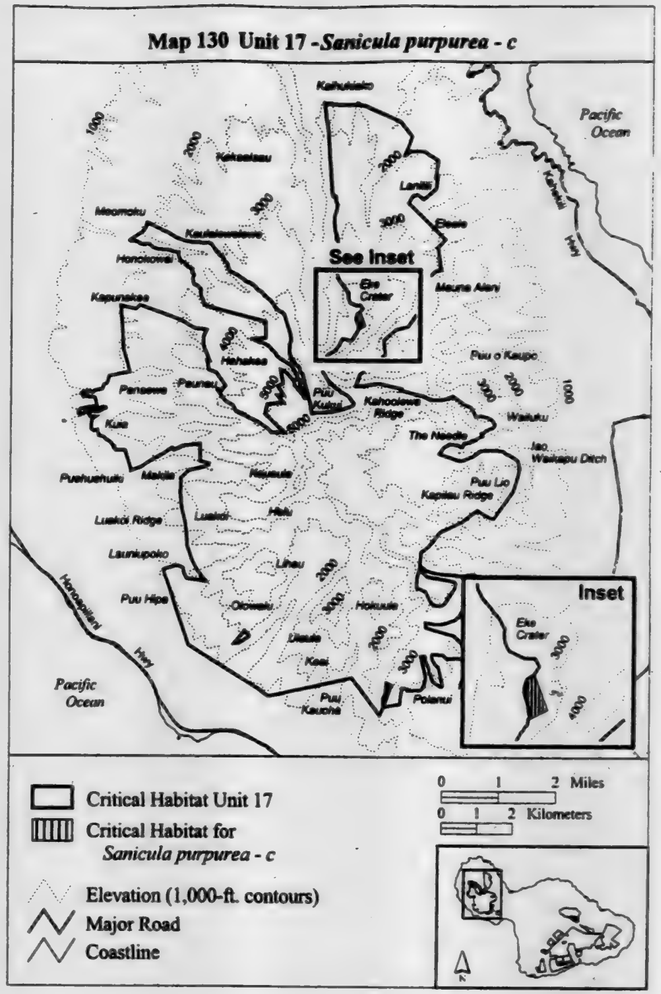
(B) **Note:** Map 129 follows:



(cxxx) Maui 17—*Sanicula purpurea*—c (8 ha; 19 ac).

(A) Unit consists of the following 19 boundary points: Start at 752386, 2314300; 752390, 2314310; 752394, 2314322; 752394, 2314323; 752390, 2314361; 752385, 2314401; 752376, 2314456; 752359, 2314508; 752350, 2314542; 752334, 2314592; 752332, 2314632; 752340, 2314668; 752351, 2314710; 752369, 2314743; 752392, 2314761; 752420, 2314774; 752448, 2314795; 752604, 2314395; 752382, 2314282; return to starting point.

(B) **Note:** Map 130 follows:

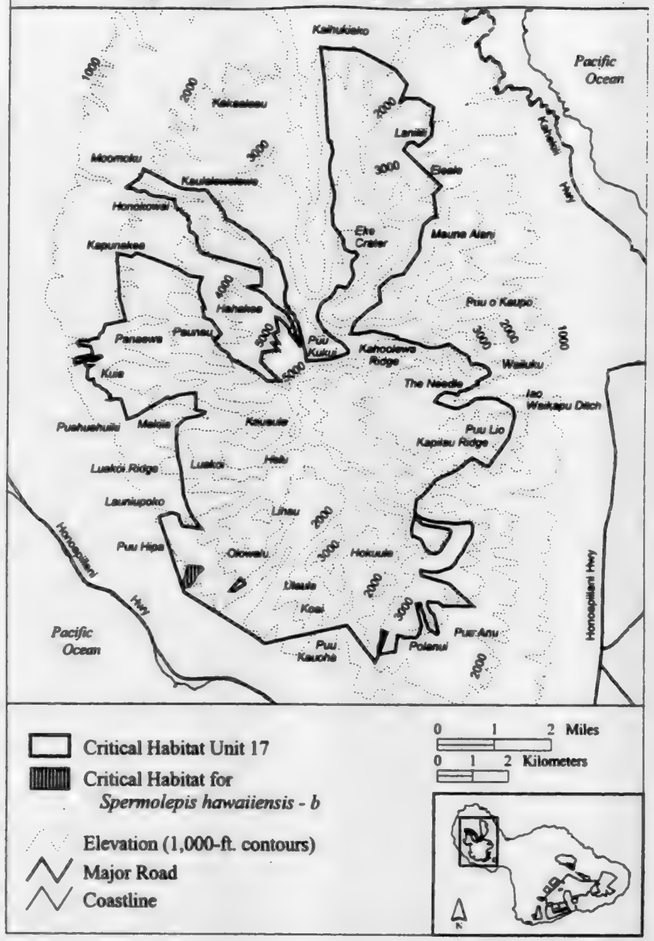


(cxxxi) Maui 17—*Spermolepis hawaiiensis*—b (23 ha; 56 ac).

(A) Unit consists of the following 15 boundary points: Start at 747559, 2305612; 747617, 2305791; 747703, 2306156; 747789, 2306167; 747843, 2306153; 747942, 2306144; 748010, 2306130; 748096, 2306137; 748170, 2306086; 748184, 2306061; 748161, 2306016; 748049, 2305919; 747908, 2305689; 747771, 2305547; 747640, 2305517; return to starting point.

(B) **Note:** Map 131 follows:

Map 131 Unit 17 -*Spermolepis hawaiiensis* - b



(cxxxii) Maui 17—*Tetramolopium capillare*—a (1,783 ha; 4,405 ac).

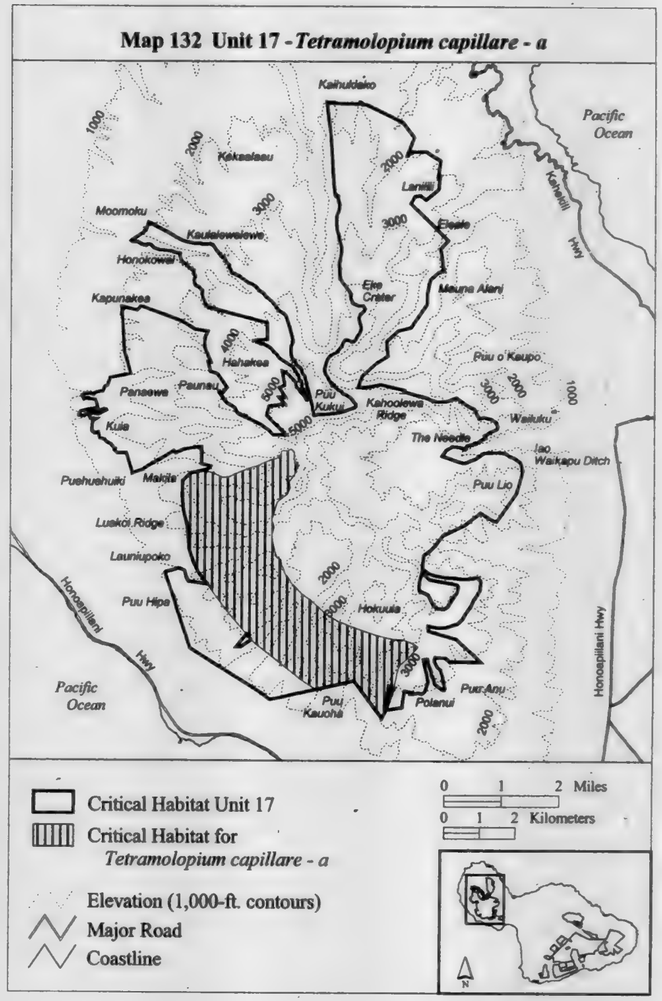
(A) Unit consists of the following 106 boundary points: Start at 753165, 2303717; 753304, 2304113; 753310, 2304130; 753365, 2304285; 753367, 2304292; 753234, 2304365; 753213, 2304104; 753136, 2303909; 753136, 2303821; 753136, 2303653; 753134, 2303650; 753042, 2303454; 752244, 2304494; 752075, 2304457; 751171, 2304258; 750787, 2304513; 750132, 2305024; 749428, 2305569; 749226, 2305793; 748731, 2306342; 748269, 2306956; 748096, 2307179; 747868, 2307474; 747703, 2307791; 747578, 2308164; 747558, 2308516; 747523, 2308819; 747420, 2309233; 747378, 2309647; 747392, 2310068; 747618, 2310281; 747935, 2310342; 747979, 2310351; 748255, 2310282; 748531, 2310151; 748738, 2310172; 748844, 2310234; 749327, 2310432; 749542, 2310481; 749646, 2310558; 749937, 2310662; 750058, 2310701; 750146, 2310783; 750157, 2310794; 750168, 2310853; 750181, 2310898; 750231, 2310909; 750364, 2310903; 750415, 2310935; 750473, 2310938; 750521, 2310903; 750537, 2310855; 750542, 2310826; 750524, 2310786; 750524, 2310648; 750566, 2310619; 750648, 2310507; 750656, 2310478; 750627, 2310436; 750582, 2310409; 750574, 2310385; 750590, 2310361; 750601, 2310316; 750582, 2310287; 750555, 2310253; 750534, 2310213; 750502, 2310197; 750509, 2310184; 750399, 2310047; 750432, 2309865; 750350, 2309706; 750179, 2309579; 750058, 2309475; 749910, 2308997; 749965, 2308782; 749916, 2308579; 749932, 2308442; 749954, 2308271; 750042, 2307941; 750166, 2307867; 750187, 2307736; 750256, 2307612; 750284,

2307494; 750442, 2307287; 750465, 2307217; 750753, 2306922; 751036, 2306728; 751439, 2306361; 751774, 2306157; 752327, 2305947; 752871, 2305768; 753260, 2305683; 753470, 2305652; 753563, 2305652; 753626, 2305636; 753874, 2305566; 754007, 2305496; 754053, 2305450; 753820, 2305169; 753540, 2304928; 753462, 2304711; 753427, 2304482; 753399, 2304426; 753396, 2304292; 753299, 2304046; 753237, 2303876; return to starting point.

(B) Excluding the area bounded by the following 11 boundary points (6ha; 15ac): Start at 749362, 2305641; 749057, 2305433; 748930, 2305439; 749226, 2305793; 749363, 2305641; 749363, 2305641; 749363, 2305641; 749363, 2305641; 749363, 2305641; 749363, 2305641; 749362, 2305640; return to starting point.

(C) **Note:** Map 132 follows:

Map 132 Unit 17 -*Tetramolopium capillare* - a

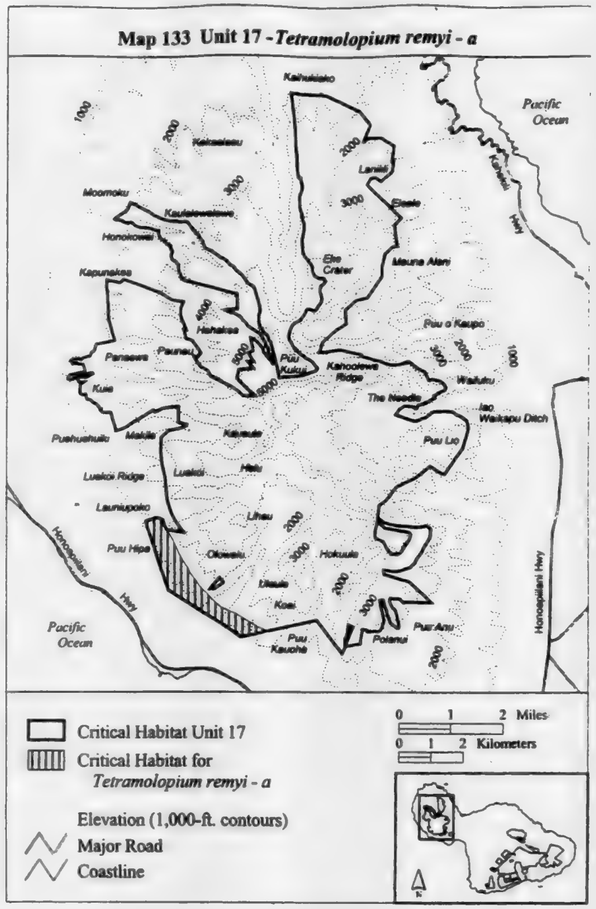


(cxxxiii) Maui 17—*Tetramolopium remyi*—a (288 ha; 711 ac).

(A) Unit consists of the following 34 boundary points: Start at 750702, 2304154; 750687, 2304151; 750686, 2304151; 750680, 2304150; 749916, 2304019; 748359, 2304949; 747628, 2305445; 747343, 2306214; 747283, 2306377; 747263, 2306446; 747206, 2306648; 747191, 2306692; 746912, 2307495; 746967, 2307530; 747135, 2307579; 747275, 2307621; 747405, 2307590; 747464, 2307541; 747496, 2307408; 747571, 2307254; 747576, 2307243; 747664, 2307114; 747769,

2306921; 747937, 2306568; 748094, 2306298; 748227, 2306099; 748294, 2305966; 748613, 2305521; 748914, 2305226; 749056, 2305056; 749264, 2304887; 749718, 2304706; 750413, 2304302; 750566, 2304230; return to starting point.

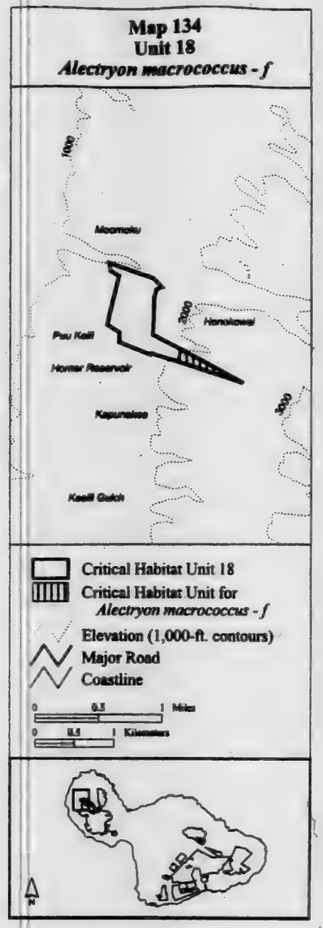
(B) **Note:** Map 133 follows:



(cxxxiv) Maui 18—*Alectryon macrococcus*—f (7 ha; 18 ac).

(A) Unit consists of the following 7 boundary points: Start at 745986, 2315882; 746238, 2315748; 746249, 2315743; 746785, 2315459; 746095, 2315676; 746082, 2315680; 745946, 2315723; return to starting point.

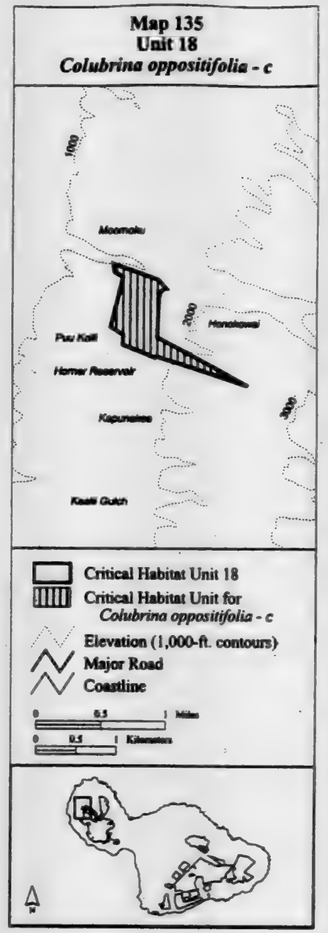
(B) **Note:** Map 134 follows:



(cxxxv) Maui 18—*Colubrina oppositifolia*—c (64 ha; 157 ac).

(A) Unit consists of the following 34 boundary points: Start at 745633, 2315799; 745216, 2315967; 745220, 2316095; 745062, 2316193; 745156, 2316554; 745218, 2316810; 745110, 2316866; 745095, 2316969; 745651, 2316773; 745745, 2316673; 745748, 2316670; 745741, 2316666; 745700, 2316637; 745682, 2316625; 745668, 2316564; 745666, 2316551; 745660, 2316498; 745660, 2316496; 745660, 2316495; 745656, 2316346; 745650, 2316196; 745644, 2316064; 745644, 2316063; 745645, 2316063; 746238, 2315748; 746249, 2315743; 746713, 2315497; 746710, 2315483; 746095, 2315676; 746082, 2315680; 745637, 2315820; 745636, 2315820; 745635, 2315819; 745634, 2315807; return to starting point.

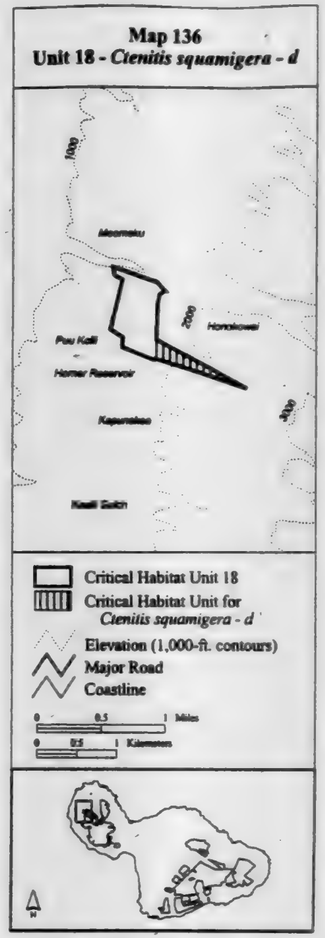
(B) **Note:** Map 135 follows:



(cxxxvi) Maui 18—*Ctenitis squamigera*—d (14 ha; 35 ac).

(A) Unit consists of the following 13 boundary points: Start at 745644, 2316064; 745644, 2316063; 745645, 2316063; 746238, 2315748; 746249, 2315743; 746785, 2315459; 746095, 2315676; 746082, 2315680; 745637, 2315820; 745636, 2315820; 745635, 2315819; 745641, 2316066; 745644, 2316067; return to starting point.

(B) **Note:** Map 136 follows:

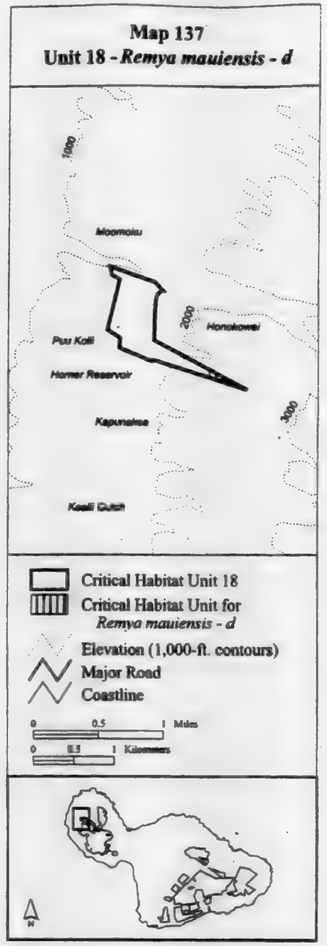


(cxxxvii) Maui 18—*Remya mauiensis*—d (2 ha; 6 ac).

(A) Unit consists of the following 3 boundary points: Start at 746322, 2315704; 746785, 2315459; 746309, 2315609; return to starting point.

(B) **Note:** Map 137 follows:

BILLING CODE 4310-55-C



(cccxviii) Table of Protected Species Within Each Critical Habitat Unit for Maui

Unit name	Species occupied	Species unoccupied
Maui 1—*Centaurium sebaeoides*—a	*Centaurium sebaeoides.*	
Maui 1—*Sesbania tomentosa*—a	*Sesbania tomentosa.*	
Maui 2—*Brighamia rockii*—a	.....	*Brighamia rockii.*
Maui 2—*Brighamia rockii*—b	.....	*Brighamia rockii.*
Maui 2—*Centaurium sebaeoides*—b	*Centaurium sebaeoides.*	
Maui 3—*Brighamia rockii*—c	.....	*Brighamia rockii.*
Maui 4—*Brighamia rockii*—d	.....	*Brighamia rockii.*
Maui 4—*Peucedanum sandwicense*—a	*Peucedanum sandwicense.*	
Maui 5—*Brighamia rockii*—e	.....	*Brighamia rockii.*
Maui 6—*Ischaemum byrone*—a	*Ischaemum byrone.*	
Maui 6—*Mariscus pennatiformis*—a	*Mariscus pennatiformis.*	
Maui 7—*Ischaemum byrone*—b	*Ischaemum byrone.*	
Maui 8—*Cyanea copelandii* ssp. *haleakalaensis*—a	*Cyanea copelandii* ssp. *haleakalaensis.*	
Maui 8—*Cyanea glabra*—a	.....	*Cyanea glabra.*
Maui 8—*Cyanea hamatiflora* ssp. *hamatiflora*—a	*Cyanea hamatiflora* ssp. *hamatiflora..*	

Unit name	Species occupied	Species unoccupied
Maui 8—*Cyanea mceldowneyi*—a	*Cyanea mceldowneyi.*	
Maui 8—*Diplazium molokaiense*—a	*Diplazium molokaiense.*	
Maui 8—*Geranium multiflorum*—a	.....	*Geranium multiflorum.*
Maui 8—*Melicope balloui*—a	*Melicope balloui.*	
Maui 8—*Phlegmariurus mannii*—a	*Phlegmariurus mannii.*	
Maui 8—*Phyllostegia mannii*—a	.....	*Phyllostegia mannii.*
Maui 8—*Phyllostegia mollis*—a	.....	*Phyllostegia mollis.*
Maui 8—*Zanthoxylum hawaiiense*—a	*Zanthoxylum hawaiiense.*	
Maui 9—*Alectryon macrococcus*—a	.....	*Alectryon macrococcus.*
Maui 9—*Argyroxiphium sandwicense* ssp. *macrocephalum*—a	*Argyroxiphium sandwicense* ssp. *macrocephalum.*	
Maui 9—*Asplenium fragile* var. *insulare*—a	.....	*Asplenium fragile* var. *insulare.*
Maui 9—*Bidens micrantha* ssp. *kalealaha*—a	*Bidens micrantha* ssp. *kalealaha.*	
Maui 9—*Bidens micrantha* ssp. *kalealaha*—b	*Bidens micrantha* ssp. *kalealaha.*	
Maui 9—*Clermontia lindseyana*—a	*Clermontia lindseyana.*	
Maui 9—*Clermontia lindseyana*—b	.....	*Clermontia lindseyana.*
Maui 9—*Clermontia samuelii*—a	*Clermontia samuelii.*	
Maui 9—*Cyanea copelandii* ssp. *haleakalaensis*—b	*Cyanea copelandii* ssp. *haleakalaensis.*	
Maui 9—*Cyanea glabra*—b	.....	*Cyanea glabra.*
Maui 9—*Cyanea glabra*—c	.....	*Cyanea glabra.*
Maui 9—*Cyanea hamatiflora* ssp. *hamatiflora*—b	*Cyanea hamatiflora* ssp. *hamatiflora.*	
Maui 9—*Diellia erecta*—a	.....	*Diellia erecta.*
Maui 9—*Diellia erecta*—b	.....	*Diellia erecta.*
Maui 9—*Diplazium molokaiense*—b	.....	*Diplazium molokaiense.*
Maui 9—*Flueggea neowawraea*—a	*Flueggea neowawraea.*	
Maui 9—*Geranium arboreum*—a	*Geranium arboreum.*	
Maui 9—*Geranium multiflorum*—b	*Geranium multiflorum.*	
Maui 9—*Geranium multiflorum*—c	.....	*Geranium multiflorum.*
Maui 9—*Lipochaeta kamolensis*—a	*Lipochaeta kamolensis.*	
Maui 9—*Melicope balloui*—b	*Melicope balloui.*	
Maui 9—*Melicope knudsenii*—a	*Melicope knudsenii.*	
Maui 9—*Melicope mucronulata*—a	.....	*Melicope mucronulata.*
Maui 9—*Melicope ovalis*—a	*Melicope ovalis.*	
Maui 9—*Neraudia sericea*—a	*Neraudia sericea.*	
Maui 9—*Nototrichium humile*—a	.....	*Nototrichium humile.*
Maui 9—*Phlegmariurus mannii*—b	*Phlegmariurus mannii.*	
Maui 9—*Phlegmariurus mannii*—c	*Phlegmariurus mannii.*	
Maui 9—*Phyllostegia mollis*—b	.....	*Phyllostegia mollis.*
Maui 9—*Plantago princeps*—a	*Plantago princeps.*	
Maui 9—*Platanthera holochila*—a	.....	*Platanthera holochila.*
Maui 9—*Schiedea haleakalensis*—a	*Schiedea haleakalensis.*	
Maui 9—*Schiedea haleakalensis*—b	*Schiedea haleakalensis.*	
Maui 10—*Alectryon macrococcus*—b	.....	*Alectryon macrococcus.*
Maui 11—*Lipochaeta kamolensis*—b	.....	*Lipochaeta kamolensis.*
Maui 12—*Vigna o-wahuensis*—a	*Vigna o-wahuensis.*	
Maui 13—*Alectryon macrococcus*—c	.....	*Alectryon macrococcus.*
Maui 13—*Bonamia menziesii*—a	*Bonamia menziesii.*	
Maui 13—*Cenchrus agrimonioides*—a	*Cenchrus agrimonioides.*	
Maui 13—*Colubrina oppositifolia*—a	.....	*Colubrina oppositifolia.*
Maui 13—*Flueggea neowawraea*—b	.....	*Flueggea neowawraea.*
Maui 13—*Melicope adscendens*—a	*Melicope adscendens.*	
Maui 13—*Melicope knudsenii*—b	.....	*Melicope knudsenii.*
Maui 13—*Melicope mucronulata*—b	.....	*Melicope mucronulata.*
Maui 13—*Sesbania tomentosa*—b	*Sesbania tomentosa.*	
Maui 13—*Spermolepis hawaiiensis*—a	*Spermolepis hawaiiensis.*	
Maui 14—*Geranium arboreum*—b	*Geranium arboreum.*	
Maui 15—*Geranium arboreum*—c	*Geranium arboreum.*	
Maui 16—*Hibiscus brackenridgei*—a	*Hibiscus brackenridgei.*	
Maui 17—*Alectryon macrococcus*—d	.....	*Alectryon macrococcus.*
Maui 17—*Alectryon macrococcus*—e	*Alectryon macrococcus.*	
Maui 17—*Cenchrus agrimonioides*—b	.....	*Cenchrus agrimonioides.*
Maui 17—*Clermontia oblongifolia* ssp. *mauiensis*—a	.....	*Clermontia oblongifolia* ssp. *mauiensis.*
Maui 17—*Clermontia oblongifolia* ssp. *mauiensis*—b	.....	*Clermontia oblongifolia* ssp. *mauiensis.*
Maui 17—*Clermontia oblongifolia* ssp. *mauiensis*—c	*Clermontia oblongifolia* ssp. *mauiensis.*	
Maui 17—*Colubrina oppositifolia*—b	.....	*Colubrina oppositifolia.*
Maui 17—*Ctenitis squamigera*—a	*Ctenitis squamigera.*	
Maui 17—*Ctenitis squamigera*—b	*Ctenitis squamigera.*	
Maui 17—*Ctenitis squamigera*—c	*Ctenitis squamigera.*	
Maui 17—*Cyanea glabra*—d	.....	*Cyanea glabra.*

Unit name	Species occupied	Species unoccupied
Maui 17—*Cyanea glabra*—e	.....	*Cyanea glabra.*
Maui 17—*Cyanea glabra*—f	.....	*Cyanea glabra.*
Maui 17—*Cyanea glabra*—g	*Cyanea glabra.*	
Maui 17—*Cyanea grimesiana* ssp. *grimesiana*—a	*Cyanea grimesiana* ssp. *grimesiana.*	
Maui 17—*Cyanea lobata*—a	*Cyanea lobata.*	
Maui 17—*Cyanea lobata*—b	.....	*Cyanea lobata.*
Maui 17—*Cyanea lobata*—c	.....	*Cyanea lobata.*
Maui 17—*Cyrtandra munroi*—a	.....	*Cyrtandra munroi.*
Maui 17—*Cyrtandra munroi*—b	*Cyrtandra munroi.*	
Maui 17—*Cyrtandra munroi*—c	.....	*Cyrtandra munroi.*
Maui 17—*Diellia erecta*—c	.....	*Diellia erecta.*
Maui 17—*Diellia erecta*—d	*Diellia erecta.*	
Maui 17—*Diellia erecta*—e	*Diellia erecta.*	
Maui 17—*Diellia erecta*—f	*Diellia erecta.*	
Maui 17—*Diplazium molokaiense*—c	.....	*Diplazium molokaiense.*
Maui 17—*Dubautia plantaginea* ssp. *humilis*—a	.....	*Dubautia plantaginea* ssp. *humilis.*
Maui 17—*Dubautia plantaginea* ssp. *humilis*—b	.....	*Dubautia plantaginea* ssp. *humilis.*
Maui 17—*Dubautia plantaginea* ssp. *humilis*—c	*Dubautia plantaginea* ssp. *humilis.*	
Maui 17—*Gouania vitifolia*—a	.....	*Gouania vitifolia.*
Maui 17—*Hedyotis coriacea*—a	*Hedyotis coriacea.*	
Maui 17—*Hedyotis coriacea*—b	.....	*Hedyotis coriacea.*
Maui 17—*Hedyotis mannii*—a	*Hedyotis mannii.*	
Maui 17—*Hesperomannia arbuscula*—a	.....	*Hesperomannia arbuscula.*
Maui 17—*Hesperomannia arbuscula*—b	*Hesperomannia arbuscula.*	
Maui 17—*Hibiscus brackenridgei*—b	*Hibiscus brackenridgei.*	
Maui 17—*Isodendrion pyrifolium*—a	.....	*Isodendrion pyrifolium.*
Maui 17—*Lysimachia lydgatei*—a	*Lysimachia lydgatei.*	
Maui 17—*Lysimachia lydgatei*—b	.....	*Lysimachia lydgatei.*
Maui 17—*Lysimachia lydgatei*—c	.....	*Lysimachia lydgatei.*
Maui 17—*Lysimachia lydgatei*—d	*Lysimachia lydgatei.*	
Maui 17—*Lysimachia lydgatei*—e	*Lysimachia lydgatei.*	
Maui 17—*Neraudia sericea*—b	*Neraudia sericea.*	
Maui 17—*Peucedanum sandwicense*—b	.....	*Peucedanum sandwicense.*
Maui 17—*Phlegmariurus mannii*—d	*Phlegmariurus mannii.*	
Maui 17—*Phlegmariurus mannii*—e	*Phlegmariurus mannii.*	
Maui 17—*Plantago princeps*—b	*Plantago princeps.*	
Maui 17—*Platanthera holochila*—b	*Platanthera holochila.*	
Maui 17—*Platanthera holochila*—c	.....	*Platanthera holochila.*
Maui 17—*Pteris lidgatei*—a	*Pteris lidgatei.*	
Maui 17—*Pteris lidgatei*—b	*Pteris lidgatei.*	
Maui 17—*Remya mauiensis*—a	*Remya mauiensis.*	
Maui 17—*Remya mauiensis*—b	*Remya mauiensis.*	
Maui 17—*Remya mauiensis*—c	.....	*Remya mauiensis.*
Maui 17—*Sanicula purpurea*—a	.....	*Sanicula purpurea.*
Maui 17—*Sanicula purpurea*—b	*Sanicula purpurea.*	
Maui 17—*Sanicula purpurea*—c	*Sanicula purpurea.*	
Maui 17—*Spermolepis hawaiiensis*—b	*Spermolepis hawaiiensis.*	
Maui 17—*Tetramolopium capillare*—a	*Tetramolopium capillare.*	
Maui 17—*Tetramolopium remyi*—a	.....	*Tetramolopium remyi.*
Maui 18—*Alectryon macrococcus*—f	.....	*Alectryon macrococcus.*
Maui 18—*Colubrina oppositifolia*—c	*Colubrina oppositifolia.*	
Maui 18—*Ctenitis squamigera*—d	.....	*Ctenitis squamigera.*
Maui 18—*Remya mauiensis*—d	.....	*Remya mauiensis.*

(cxxxix) Critical habitat unit descriptions and maps, and a description of primary constituent elements, for Family Rhamnaceae: *Gouania hillebrandi* on the island of Maui is provided in 50 CFR 17.96(a).

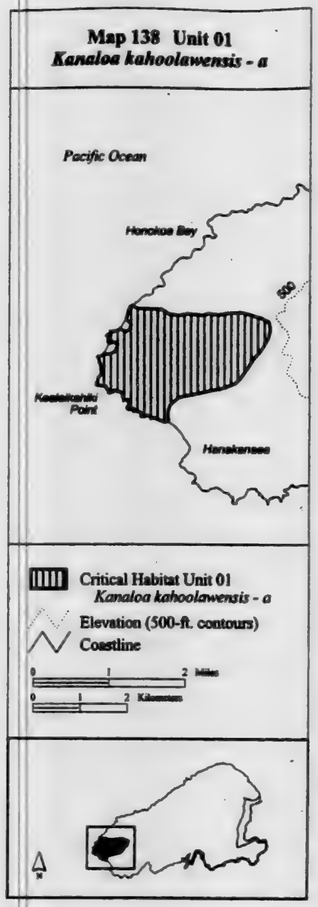
(2) *Kahoolawe.* Critical habitat units are described below. Coordinates in UTM Zone 4 with units in meters using North American Datum of 1983 (NAD83).

(i) Kahoolawe 1—*Kanaloa kahoolawensis*—a (62 ha; 1,388 ac).

(A) Unit consists of the following 53 boundary points and the intermediate coastline: 741288, 2270367; 739913, 2271787; 739924, 2271802; 740037, 2271790; 740156, 2271842; 740226, 2271995; 740142, 2272051; 740036, 2272014; 740031, 2272022; 740031, 2272025; 740030, 2272030; 740266, 2272329; 740273, 2272338; 740375, 2272265; 740467, 2272316; 740500, 2272422; 740407, 2272520; 740392, 2272537; 740396, 2272546; 740401, 2272558; 740521, 2272815; 740529, 2272822; 740631, 2272765; 741148, 2272741; 741302, 2272644; 741524, 2272620; 741689, 2272648; 742016, 2272620; 742142, 2272660; 742340, 2272628; 742578, 2272668; 742844, 2272680; 743224, 2272571; 743406, 2272470; 743438, 2272325; 743389, 2272115; 743244, 2271885; 743103, 2271711; 742901, 2271404; 742784, 2271259; 742687, 2271170; 742453, 2271077; 742344, 2271053; 742190, 2271025; 741883, 2270952; 741673, 2270912; 741508, 2270875; 741415, 2270795; 741326, 2270714; 741290, 2270597; 741282, 2270508; 741286, 2270423; 741288, 2270367; return to starting point.

(B) **Note:** Map 138 follows :

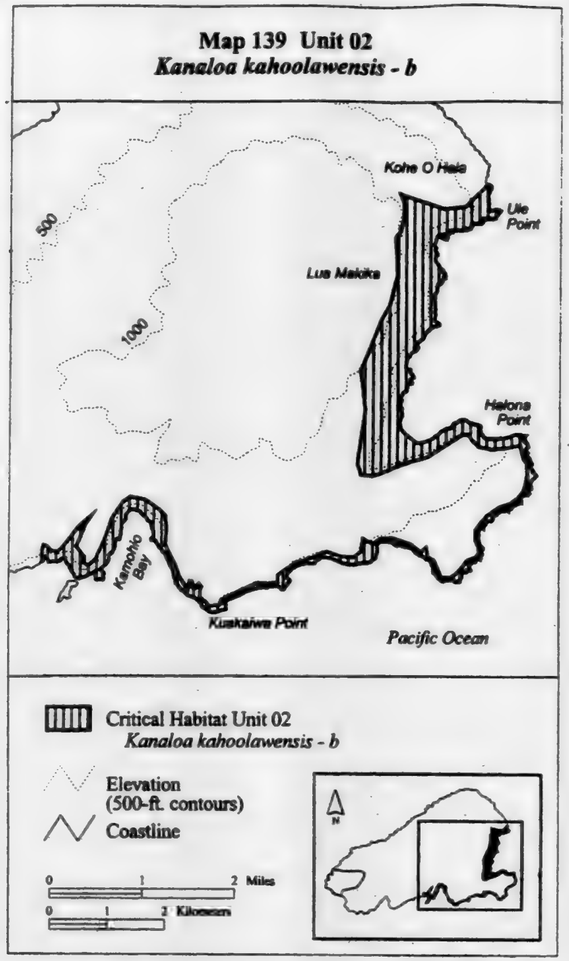
BILLING CODE 4310-55-P



(ii) Kahoolawe 2—*Kanaloa kahoolawensis*—b (613 ha; 1,516 ac).

(A) Unit consists of the following 131 boundary points and the intermediate coastline: 756526, 2276870; 756534, 2276893; 748810, 2270407; 748804, 2270414; 748801, 2270602; 748829, 2270694; 748896, 2270675; 748956, 2270592; 749080, 2270581; 749149, 2270650; 749452, 2271037; 749659, 2271200; 749547, 2271037; 749432, 2270760; 749397, 2270670; 749534, 2270492; 749529, 2270389; 749599, 2270339; 749724, 2270439; 749837, 2270680; 749914, 2270865; 749962, 2271002; 750002, 2271142; 750187, 2271420; 750335, 2271525; 750605, 2271469; 750812, 2271310; 750943, 2271192; 750958, 2270952; 750945, 2270692; 751093, 2270402; 751195, 2270154; 751278, 2270019; 751272, 2270015; 751343, 2269909; 751373, 2270074; 751419, 2270068; 751438, 2269987; 751483, 2269952; 751538, 2270023; 751576, 2269978; 751565, 2269934; 751553, 2269794; 751670, 2269694; 751700, 2269639; 751893, 2269652; 751933, 2269679; 751928, 2269742; 752308, 2269927; 752533, 2270032; 752756, 2270029; 752909, 2270054; 752896, 2270169; 753054, 2270282; 753219, 2270392; 753537, 2270482; 753667, 2270557; 753667, 2270551; 753757, 2270587; 754009, 2270497; 754207, 2270480; 754355, 2270585; 754382, 2270807; 754562, 2270710; 754677, 2270807; 754877, 2270822; 755212, 2270710; 755390, 2270580; 755480, 2270660; 755510, 2270495; 755605, 2270439; 755680, 2270285; 755747, 2270135; 755897, 2270132; 755995, 2270202; 756108, 2270312; 756168, 2270405; 756226, 2270450; 756341, 2270495; 756393, 2270550; 756401, 2270645; 756338, 2270782; 756333, 2270950; 756408, 2271057; 756523, 2271185; 756716, 2271328; 756763, 2271353; 756916, 2271408; 757056, 2271503; 757164, 2271635; 757209, 2271808; 757224, 2271970; 757214, 2271970; 757214, 2272116; 757154, 2272171; 757116, 2272326; 757101, 2272408; 756891, 2272366; 756608, 2272333; 756386, 2272378; 756271, 2272488; 756198, 2272593; 756078, 2272571; 755795, 2272388; 755508, 2272205; 755210, 2272115; 754942, 2272025; 754947, 2272036; 754785, 2271960; 754550, 2271868; 754339, 2271898; 754289, 2272068; 754297, 2272223; 754327, 2272463; 754339, 2272518; 754412, 2273006; 754327, 2273668; 754665, 2274523; 754833, 2274812; 754954, 2275312; 754948, 2275650; 754918, 2275963; 755008, 2276059; 755062, 2276282; 755068, 2276565; 755008, 2276710; 755767, 2276457; 756140, 2276495; 756363, 2276718; 756518, 2276871; 756526, 2276870; return to starting point.

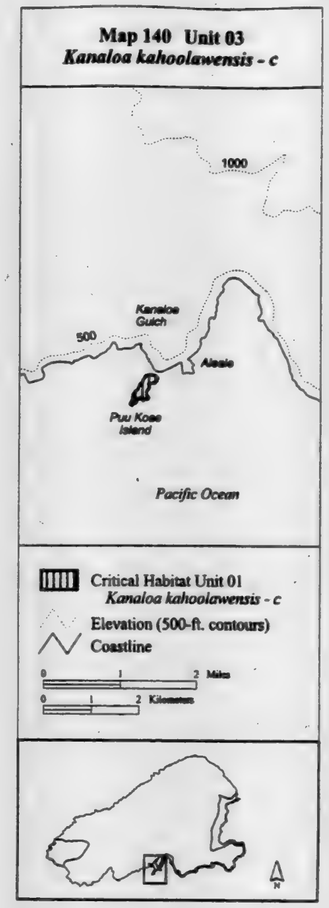
(B) **Note:** Map 139 follows:



(iii) Kahoolawe 3—*Kanaloa kahoolawensis*—c (5 ha; 12 ac).

(A) Unit consists of the entire offshore island located at approximately: 749231, 2269900.

(B) **Note:** Map 140 follows:



BILLING CODE 4310–55–C

(iv) Table of Protected Species Within Each Critical Habitat Unit for Kahoolawe

Unit name	Species occupied	Species unoccupied
Kahoolawe 1—*Kanaloa kahoolawensis*—a	.....	*Kanaloa kahoolawensis.*
Kahoolawe 2—*Kanaloa kahoolawensis*—b	*Kanaloa kahoolawensis.*	.....
Kahoolawe 3—*Kanaloa kahoolawensis*—c	.....	*Kanaloa kahoolawensis.*

(f) *Plants on Maui and Kahoolawe; Constituent elements.*

(1) *Flowering Plants.*

Family Amaranthaceae: *Nototrichium humile* (kului)

Maui 9—*Nototrichium humile*—a, identified in the legal description in paragraph (e)(1) of this section, constitutes critical habitat for *Nototrichium humile* on Maui. Within this unit, the currently known primary constituent elements of critical habitat include, but are not limited to, the habitat components provided by:

(i) Old cinder cones in dry shrubland containing one or more of the following associated native species: *Dodonaea viscosa, Erythrina sandwicensis, Heteropogon contortus,* or *Nototrichium sandwicense;* and

(ii) Elevations between 338 and 734 m (1,110 and 2,407 ft).

Family Apiaceae: *Peucedanum sandwicense* (makou)

Maui 4—*Peucedanum sandwicense*—a and Maui 17—*Peucedanum sandwicense*—b, identified in the legal descriptions in paragraph (e)(1) of this section, constitute critical habitat for *Peucedanum sandwicense* on Maui. Within these units, the currently known primary constituent elements of critical habitat include, but are not limited to, the habitat components provided by:

(i) Sparsely vegetated steep to vertical cliff habitats with little soil in mesic or coastal communities and containing one or more of the following associated native species: *Artemisia australis, Bidens* spp., *Carex* spp., *Chamaesyce* spp., *Diospyros sandwicensis, Eragrostis* spp., *Hedyotis littoralis, Lysimachia mauritiana, Metrosideros polymorpha, Pandanus tectorius, Peperomia* spp., *Scaevola taccada*, or *Schiedea globosa;* and

(ii) Elevations between 0 and 1,132 m (0 and 3,714 ft).

Family Apiaceae: *Sanicula purpurea* (NCN)

Maui 17—*Sanicula purpurea*—a, Maui 17—*Sanicula purpurea*—b, and Maui 17—*Sanicula purpurea*—c, identified in the legal descriptions in paragraph (e)(1) of this section, constitute critical habitat for *Sanicula purpurea* on Maui. Within these units, the currently known primary constituent elements of critical habitat include, but are not limited to, the habitat components provided by:

(i) Open *Metrosideros polymorpha* mixed montane bogs and containing one or more of the following associated native plant taxa: *Argyroxiphium caliginis, Argyroxiphium grayanum, Gahnia beecheyi, Geranium hillebrandii, Lagenifera maviensis, Leptecophylla tameiameiae, Lycopodium* sp., *Machaerina* sp., *Myrsine vaccinioides, Oreobolus furcatus, Plantago pachyphylla*, or *Viola maviensis;* and

(ii) Elevations between 1,195 and 1,761 m (3,921 and 5,778 ft).

Family Apiaceae: *Spermolepis hawaiiensis* (NCN)

Maui 13—*Spermolepis hawaiiensis*—a, and Maui 17—*Spermolepis hawaiiensis*—b, identified in the legal descriptions in paragraph (e)(1) of this section, constitute critical habitat for *Spermolepis hawaiiensis* on Maui. Within these units, the currently known primary constituent elements of critical habitat include, but are not limited to, the habitat components provided by:

(i) Shady spots in *Dodonaea viscosa* lowland dry shrubland and containing one or more of the following associated native species: *Diospyros* sp., *Eragrostis variabilis, Erythrina sandwicensis, Gouania hillebrandii, Heteropogon contortus, Melanthera lavarum, Myoporum sandwicense, Pleomele* sp., *Santalum ellipticum, Sida fallax*, or *Wikstroemia* sp.; and

(ii) Elevations between 221 and 742 m (725 and 2,434 ft).

Family Asteraceae: *Argyroxiphium sandwicense* ssp. *macrocephalum* (ahinahina)

Maui 9—*Argyroxiphium sandwicense* ssp. *macrocephalum*—a, identified in the legal description in paragraph (e)(1) of this section, constitutes critical habitat for *Argyroxiphium sandwicense* ssp. *macrocephalum* on Maui. Within this unit, the currently known primary constituent elements of critical habitat include, but are not limited to, the habitat components provided by:

(i) Lava flows and otherwise barren, unstable slopes of recent (less than several thousand years old) volcanic cinder cones, or *Deschampsia* grasslands; or a mean annual precipitation of approximately 75 to 250 cm (29.6 to 98.4 in); or substrate with almost no soil development and subject to frequent formation of ice at night and extreme heating during cloudless days; or alpine dry shrubland; and the presence of one or more of the following associated native plant species: *Agrostis sandwicensis, Deschampsia nubigena, Dubautia menziesii, Leptecophylla tameiameiae, Silene struthioloides, Tetramolopium humile*, or *Trisetum glomeratum;* and

(ii) Elevations between 1,508 and 3,053 m (4,947 and 10,016 ft).

Family Asteraceae: *Bidens micrantha* ssp. *kalealaha* (kookoolau)

Maui 9—*Bidens micrantha* ssp. *kalealaha*—a and Maui 9—*Bidens micrantha* ssp. kalealaha—b, identified in the legal descriptions in paragraph (e)(1) of this section, constitute critical habitat for *Bidens micrantha* ssp. *kalealaha* on Maui. Within these units, the currently known primary constituent elements of critical habitat include, but are not limited to, the habitat components provided by:

(i) Blocky lava flows with little or no soil development, or deep pit craters, or sheer rock walls in open canopy *Metrosideros polymorpha-Acacia koa* forest; montane shrubland; *Sophora chrysophylla* forest or cliff face, and the presence of one or more of the following associated native plant species: *Coprosma montana, Dodonaea viscosa, Dubautia menziesii, Dubautia platyphylla, Leptecophylla tameiameiae, Santalum haleakalae*, or *Vaccinium reticulatum;* and

(ii) Elevations between 1,317 and 2,565 m (4,321 and 8,414 ft).

Family Asteraceae: *Dubautia plantaginea* ssp. *humilis* (naenae)

Maui 17—*Dubautia plantaginea* ssp. *humilis*—a, Maui 17—*Dubautia plantaginea* ssp. *humilis*—b, and Maui 17—*Dubautia plantaginea* ssp. *humilis*—c, identified in the legal descriptions in paragraph (e)(1) of this section, constitute critical habitat for *Dubautia plantaginea* ssp. *humilis* on Maui. Within these units, the currently known primary constituent elements of critical habitat include, but are not limited to, the habitat components provided by:

(i) Wet, barren, steep, rocky, wind-blown cliffs containing one or more of the following associated native plant species: *Bidens* sp., *Carex* sp., *Eragrostis variabilis, Hedyotis formosa, Lysimachia remyi, Metrosideros polymorpha, Pipturus albidus, Plantago princeps*, or *Pritchardia* sp.; and

(ii) Elevations between 291 and 1,593 m (955 and 5,226 ft).

Family Asteraceae: *Hesperomannia arbuscula* (NCN)

Maui 17—*Hesperomannia arbuscula*—a and Maui 17—*Hesperomannia arbuscula*—b, identified in the legal descriptions in paragraph (e)(1) of this section, constitute critical habitat for *Hesperomannia arbuscula* on Maui. Within these units, the currently known primary constituent elements of critical habitat include, but are not limited to, the habitat components provided by:

(i) Steep forested slopes and ridges in mesic forest dominated by *Metrosideros polymorpha* or *Diospyros sandwicensis* and containing one or more of the following associated native plant species: *Alyxia oliviformis, Bidens* sp., *Cheirodendron* sp., *Clermontia* sp., *Cyanea* sp., *Psychotria* sp., or *Tetraplasandra* sp.; and

(ii) Elevations between 412 and 1,422 m (1,352 and 4,665 ft).

Family Asteraceae: *Lipochaeta kamolensis* (nehe)

Maui 9—*Lipochaeta kamolensis*—a and Maui 11—*Lipochaeta kamolensis*—b, identified in the legal descriptions in paragraph (e)(1) of this section, constitute critical habitat for *Lipochaeta kamolensis* on Maui. Within these units, the currently known primary constituent elements of critical habitat include, but are not limited to, the habitat components provided by:

(i) Gulches or gentle slopes outside gulches in dry shrubland and containing one or more of the following associated native plant species: *Dodonaea viscosa, Ipomoea indica*, or *Plumbago zeylanica;* and

(ii) Elevations between 40 and 602 m (132 and 1,974 ft).

Family Asteraceae: *Remya mauiensis* (NCN)

Maui 17—*Remya mauiensis*—a, Maui 17—*Remya mauiensis*—b, Maui 17—*Remya mauiensis*—c, and Maui 18—*Remya mauiensis*—d, identified in the legal descriptions in paragraph (e)(1) of this section, constitute critical habitat for *Remya mauiensis* on Maui. Within these units, the currently known primary constituent elements of critical habitat include, but are not limited to, the habitat components provided by:

(i) Steep, north or northeast-facing slopes in mixed mesophytic forests or *Metrosideros polymorpha* montane wet forests and containing one or more of the following associated native species: *Alyxia oliviformis, Diospyros sandwicensis, Diplazium sandwichianum, Dodonaea viscosa, Leptecophylla tameiameiae, Lysimachia remyi, Melicope* sp., *Microlepia strigosa, Myrsine lessertiana, Nestegis sandwicensis, Pleomele auwahiensis, Psychotria mariniana, Wikstroemia* sp., or *Xylosma hawaiiense;* and

(ii) Elevations between 435 and 1,228 m (1,427 and 4,029 ft).

Family Asteraceae: *Tetramolopium capillare* (pamakani)

Maui 17—*Tetramolopium capillare*—a, identified in the legal description in paragraph (e)(1) of this section, constitutes critical habitat for *Tetramolopium capillare* on Maui. Within this unit, the currently known primary constituent elements of critical habitat include, but are not limited to, the habitat components provided by:

(i) Rocky substrates in *Heteropogon contortus* lowland dry forest or in *Metrosideros polymorpha-Leptecophylla tameiameiae* montane mesic or wet shrubland and wet cliff faces and containing one or more of the following associated plant species: *Dodonaea viscosa* or *Myoporum sandwicense;* and

(ii) Elevations between 155 and 1,432 m (509 and 4,698 ft).

Family Asteraceae: *Tetramolopium remyi* (NCN)

Maui 17—*Tetramolopium remyi*—a, identified in the legal description in paragraph (e)(1) of this section, constitutes critical habitat for *Tetramolopium remyi* on Maui. Within this unit, the currently known primary constituent elements of critical habitat include, but are not limited to, the habitat components provided by:

(i) Dry, exposed ridges or flats in lowland dry shrubland and containing one or more of the following associated native plant species: *Bidens mauiensis, Bidens menziesii, Dodonaea viscosa, Eragrostis atropioides, Heteropogon contortus, Lipochaeta heterophylla*, or *Waltheria indica;* and

(ii) Elevations between 85 and 550 m (279 and 1,804 ft).

Family Campanulaceae: *Brighamia rockii* (pua ala)

Maui 2—*Brighamia rockii*—a, Maui 2—*Brighamia rockii*—b, Maui 3—*Brighamia rockii*—c, Maui 4—*Brighamia rockii*—d, and Maui 5—*Brighamia rockii*—e, identified in the legal descriptions in paragraph (e)(1) of this section, constitute critical habitat for *Brighamia rockii* on Maui. Within these units, the currently known primary constituent elements of critical habitat include, but are not limited to, the habitat components provided by:

(i) Steep sea cliffs, often within the spray zone, in coastal dry to mesic forests and shrublands and containing one or more of the following associated plant species: *Diospyros sandwicensis, Osteomeles anthyllidifolia, Psydrax odorata*, or *Scaevola taccada;* and

(ii) Elevations between 0 and 146 m (0 and 479 ft).

Family Campanulaceae: *Clermontia lindseyana* (haha)

Maui 9—*Clermontia lindseyana*—a and Maui 9—*Clermontia lindseyana*—b, identified in the legal descriptions in paragraph (e)(1) of this section, constitute critical habitat for *Clermontia lindseyana* on Maui. Within these units, the currently known primary constituent elements of critical habitat include, but are not limited to, the habitat components provided by:

(i) *Acacia koa* mesic forest containing one or more of the following associated native plant species: *Coprosma* sp., *Cyrtandra* spp., *Ilex anomala, Myrsine* sp., or native fern species; and

(ii) Elevations between 1,147 and 1,868 m (3,762 and 6,129 ft).

Family Campanulaceae: *Clermontia oblongifolia* ssp. *mauiensis* (oha eai)

Maui 17—*Clermontia oblongifolia* ssp. *mauiensis*—a, Maui 17—*Clermontia oblongifolia* ssp. *mauiensis*—b, and Maui 17—*Clermontia oblongifolia* ssp. *mauiensis*—c, identified in the legal descriptions in paragraph (e)(1) of this section, constitute critical habitat for *Clermontia oblongifolia* ssp. *mauiensis* on Maui. Within these units, the currently known primary constituent elements of critical habitat include, but are not limited to, the habitat components provided by:

(i) The sides and tops of ridges in *Metrosideros polymorpha*-dominated montane wet forest and containing one or more of the following associated native plant species: *Cheirodendron* sp., *Clermontia* sp., *Coprosma* sp., *Dicranopteris linearis, Hedyotis* sp., *Ilex anomala, Melicope* sp., or *Myrsine* sp.; and

(ii) Elevations between 539 and 1,738 m (1,768 and 5,702 ft).

Family Campanulaceae: *Clermontia samuelii* (oha wai)

Maui 9—*Clermontia samuelii*—a, identified in the legal description in paragraph (e)(1) of this section, constitutes critical habitat for *Clermontia samuelii* on Maui. Within this unit, the currently known primary constituent elements of critical habitat include, but are not limited to, the habitat components provided by:

(i) Wet *Metrosideros polymorpha* and *M. polymorpha-Dicranopteris linearis* forest or wet *M. polymorpha* and *M. polymorpha-Cheirodendron trigynum* forest containing one or more of the following associated native plant species: *Adenophorus tamariscinus, Broussaisia arguta, Carex alligata, Cibotium* spp., *Clermontia arborescens* ssp. *waihiae, Clermontia* sp., *Diplazium sandwichianum, Dubautia* sp., *Hedyotis hillebrandii, Hedyotis terminalis, Hedyotis* sp., *Melicope clusiifolia, Melicope* spp., *Peperomia obovatilimba, Psychotria mariniana, Rubus hawaiiensis, Tetraplasandra oahuensis*, or *Vaccinium* spp.; and

(ii) Elevations between 724 and 2,244 m (2,375 and 7,362 ft).

Family Campanulaceae: *Cyanea copelandii* ssp. *haleakalaensis* (haha)

Maui 8—*Cyanea copelandii* ssp. *haleakalaensis*—a and Maui 9—*Cyanea copelandii* ssp. *haleakalaensis*—b, identified in the legal descriptions in paragraph (e)(1) of this section, constitute critical habitat for *Cyanea copelandii* ssp. *haleakalaensis* on Maui. Within these units, the currently known primary constituent elements of critical habitat include, but are not limited to, the habitat components provided by:

(i) Stream banks or wet scree slopes or forest understory in montane wet or mesic forest dominated by *Acacia koa* and/or *Metrosideros polymorpha* and containing one or more of the following associated native plant species: *Broussaisia arguta, Cibotium* sp.,

Hedyotis acuminata, Perrottetia sandwicensis, or *Psychotria hawaiiensis;* and

(ii) Elevations between 616 and 1,411 m (2,021 and 4,630 ft).

Family Campanulaceae: *Cyanea glabra* (haha)

Maui 8—*Cyanea glabra*—a, Maui 9—*Cyanea glabra*—b, Maui 9—*Cyanea glabra*—c, Maui 17—*Cyanea glabra*—d, Maui 17—*Cyanea glabra*—e, Maui 17—*Cyanea glabra*—f, and Maui 17—*Cyanea glabra*—g, identified in the legal descriptions in paragraph (e)(1) of this section, constitute critical habitat for *Cyanea glabra* on Maui. Within these units, the currently known primary constituent elements of critical habitat include, but are not limited to, the habitat components provided by:

(i) Soil and rock stream banks in wet lowland forest dominated by *Acacia koa* and/or *Metrosideros polymorpha* and containing one or more of the following associated native plant species: *Boehmeria grandis, Cheirodendron trigynum, Christella cyatheoides, Cibotium* sp., *Clermontia kakeana, Coprosma* sp., *Cyanea elliptica, Diplazium* sp., *Dodonaea viscosa, Dubautia plantaginea, Perrottetia sandwicensis, Pipturus albidus, Psychotria* sp., *Sadleria* sp., *Touchardia latifolia,* or *Xylosma hawaiiense* or; and

(ii) Elevations between 413 and 1,569 m (1,355 and 5,149 ft).

Family Campanulaceae: *Cyanea grimesiana* ssp. *grimesiana* (haha)

Maui 17—*Cyanea grimesiana* ssp. *grimesiana*—a, identified in the legal description in paragraph (e)(1) of this section, constitutes critical habitat for *Cyanea grimesiana* ssp. *grimesiana* on Maui. Within this unit, the currently known primary constituent elements of critical habitat include, but are not limited to, the habitat components provided by:

(i) Rocky or steep slopes of stream banks in wet forest gulch bottoms often dominated by *Metrosideros polymorpha* and containing one or more of the following associated native plant species: *Antidesma* sp., *Bobea* sp., *Myrsine* sp., *Nestegis sandwicensis, Psychotria* sp., or *Xylosma* sp.; and

(ii) Elevations between 312 and 1,617 m (1,024 and 5,305 ft).

Family Campanulaceae: *Cyanea hamatiflora* ssp. *hamatiflora* (haha)

Maui 8—*Cyanea hamatiflora* ssp. *hamatiflora*—a and Maui 9—*Cyanea hamatiflora* ssp. *hamatiflora*—b, identified in the legal descriptions in paragraph (e)(1) of this section, constitute critical habitat for *Cyanea hamatiflora* ssp. *hamatiflora* on Maui. Within these units, the currently known primary constituent elements of critical habitat include, but are not limited to, the habitat components provided by:

(i) Montane wet forest dominated by *Metrosideros polymorpha,* with a Cibotium sp. and/or native shrub understory or closed *Acacia koa-Metrosideros polymorpha* wet forest containing one or more of the following associated native plant species: *Athyrium microphyllum, Broussaisia arguta, Cheirodendron trigynum, Cyanea aculeatiflora, Cyanea kunthiana, Dicranopteris linearis, Diplazium sandwichianum, Melicope* sp., *Myrsine* sp., or *Vaccinium* sp.; and

(ii) Elevations between 767 and 1,553 m (2,515 and 5,095 ft).

Family Campanulaceae: *Cyanea lobata* (haha)

Maui 17—*Cyanea lobata*—a, Maui 17—*Cyanea lobata*—b, and Maui 17—*Cyanea lobata*—c, identified in the legal descriptions in paragraph (e)(1) of this section, constitute critical habitat for *Cyanea lobata* on Maui. Within these units, the currently known primary constituent elements of critical habitat include, but are not limited to, the habitat components provided by:

(i) Steep stream banks in deep shade in wet forest and containing one or more of the following associated native plant species: *Antidesma* sp., *Athyrium* sp., *Clermontia kakeana, Cyrtandra* spp., *Freycinetia arborea, Metrosideros polymorpha, Morinda trimera, Peperomia* sp., *Pipturus albidus, Pleomele* sp., *Psychotria* sp., *Touchardia latifolia,* or *Xylosma* sp.; and

(ii) Elevations between 260 and 1,530 m (853 and 5,020 ft).

Family Campanulaceae: *Cyanea mceldowneyi* (haha)

Maui 8—*Cyanea mceldowneyi*—a, identified in the legal description in paragraph (e)(1) of this section, constitutes critical habitat for *Cyanea mceldowneyi* on Maui. Within this unit, the currently known primary constituent elements of critical habitat include, but are not limited to, the habitat components provided by:

(i) Montane wet and mesic forest with mixed *Metrosideros polymorpha-Acacia koa* and containing one or more of the following associated native plant species: *Broussaisia arguta, Cheirodendron trigynum, Cibotium* sp., *Clermontia arborescens, Cyrtandra* sp., *Dicranopteris linearis, Diplazium sandwichianum, Hedyotis* sp., or *Melicope clusiifolia;* and

(ii) Elevations between 837 and 1,348 m (2,745 and 4,423 ft).

Family Caryophyllaceae: *Schiedea haleakalensis* (NCN)

Maui 9—*Schiedea haleakalensis*—a and Maui 9—*Schiedea haleakalensis*—b, identified in the legal descriptions in paragraph (e)(1) of this section, constitute critical habitat for *Schiedea haleakalensis* on Maui. Within these units, the currently known primary constituent elements of critical habitat include, but are not limited to, the habitat components provided by:

(i) Rock cracks on sheer cliffs adjacent to barren lava and subalpine shrublands; or grasslands with cinder, or weathered volcanic ash, or bare lava substrate with little or no soil development and periodic freezing temperatures; and containing one or more of the following associated native plant species: *Artemisia mauiensis, Bidens micrantha, Dubautia menziesii, Leptecophylla tameiameiae, Vaccinium reticulatum,* or *Viola chamissoniana;* and

(ii) Elevations between 1,678 and 2,434 m (5,505 and 7,986 ft).

Family Convolvulaceae: *Bonamia menziesii* (NCN)

Maui 13—*Bonamia menziesii*—a, identified in the legal description in paragraph (e)(1) of this section, constitutes critical habitat for *Bonamia menziesii* on Maui. Within this unit, the currently known primary constituent elements of critical habitat include, but are not limited to, the habitat components provided by:

(i) Aa lava in mixed open dry forest or *Erythrina sandwicensis* lowland dry forest, or in mesic mixed *Metrosideros polymorpha* forest and containing one or more of the following associated native plant species: *Acacia koaia, Achyranthes splendens, Alphitonia ponderosa, Alyxia oliviformis, Diospyros sandwicensis, Dodonaea viscosa, Lipochaeta rockii, Myoporum sandwicense, Nestegis sandwicensis, Nothocestrum latifolium, Nototrichium* sp., *Osteomeles anthyllidifolia, Pleomele auwahiensis, Pouteria sandwicensis, Reynoldsia sandwicensis, Santalum ellipticum, Sicyos* sp., *Sida fallax,* or *Xylosma hawaiiensis;* and

(ii) Elevations between 221 and 836 m (725 and 2,743 ft).

Family Cyperaceae: *Mariscus pennatiformis* (NCN)

Maui 6—*Mariscus pennatiformis*—a, identified in the legal description in paragraph (e)(1) of this section, constitutes critical habitat for *Mariscus pennatiformis* on Maui. Within this unit, the currently known primary constituent elements of critical habitat include, but are not limited to, the habitat components provided by:

(i) Cliffs with brown soil and talus within reach of ocean spray in *Pandanus tectorius* coastal wet forests and containing one or more of the following associated native plant species: *Cyperus laevigatus, Eragrostis* spp., *Ipomoea* sp., *Lysimachia mauritiana,* or *Sadleria pallida;* and

(ii) Elevations between 0 and 134 m (0 and 440 ft).

Family Euphorbiaceae: *Flueggea neowawraea* (mehamehame)

Maui 9—*Flueggea neowawraea*—a and Maui 13—*Flueggea neowawraea*—b, identified in the legal descriptions in paragraph (e)(1) of this section, constitute critical habitat for *Flueggea neowawraea* on Maui. Within these units, the currently known primary constituent elements of critical habitat include, but are not limited to, the habitat components provided by:

(i) Dry or mesic forest containing one or more of the following associated native plant species: *Alectryon macrococcus, Antidesma pulvinatum, Bobea timonioides, Charpentiera* sp., *Diospyros* sp., *Diplazium sandwichianum, Myrsine lanaiensis, Nesoluma polynesicum, Nestegis sandwicensis, Pleomele auwahiensis, Pleomele* sp., *Pouteria sandwicensis, Psydrax odorata, Rauvolfia sandwicensis,* or *Tetraplasandra* sp.; and

(ii) Elevations between 633 and 971 m (2,078 and 3,186 ft).

Family Fabaceae: *Kanaloa kahoolawensis* (kohe malama malama o Kanaloa)

Kahoolawe 1— *Kanaloa kahoolawensis*—a, Kahoolawe 2—*Kanaloa kahoolawensis*—b, and Kahoolawe 3—*Kanaloa kahoolawensis*—c, identified in the legal descriptions in paragraph (e)(2) of this section, constitute critical habitat for *Kanaloa kahoolawensis* on Kahoolawe. Within these units, the currently known primary constituent elements of critical habitat include, but are not limited to, the habitat components provided by:

(i) Steep, rocky talus slopes in mixed coastal shrubland and containing one or more of the following associated native plants: *Bidens mauiensis, Capparis sandwichiana, Melanthera lavarum, Portulaca molokiniensis, Senna gaudichaudii,* or *Sida fallax;* and

(ii) Elevations between 0 and 305 m (0 and 1,000 ft).

Family Fabaceae: *Sesbania tomentosa* (ohai)

Maui 1—*Sesbania tomentosa*—a and Maui 13—*Sesbania tomentosa*—b, identified in the legal descriptions in paragraph (e)(1) of this section, constitute critical habitat for *Sesbania tomentosa* on Maui. Within these units, the currently known primary constituent elements of critical habitat include, but are not limited to, the habitat components provided by:

(i) Windswept slopes, sea cliffs, and cinder cones in *Scaevola taccada* coastal dry shrublands and containing one or more of the following associated native plant species: *Bidens* sp., *Diospyros sandwicensis, Dodonaea viscosa, Jacquemontia ovalifolia* ssp. *sandwicensis, Melanthera integrifolia,* or *Sida fallax;* and

(ii) Elevations between 0 and 542 m (0 and 1,778 ft).

Family Fabaceae: *Vigna o-wahuensis* (NCN)

Maui 12—*Vigna o-wahuensis*—a, identified in the legal description in paragraph (e)(1) of this section, constitutes critical habitat for *Vigna o-wahuensis* on Maui. Within this unit, the currently known primary constituent elements of critical habitat include, but are not limited to, the habitat components provided by:

(i) Dry or mesic grassland or shrubland containing one or more of the following associated plant species: *Chamaesyce* sp., or *Dodonaea viscosa;* and

(ii) Elevations between 0 and 50 m (0 and 164 ft).

Family Gentianaceae: *Centaurium sebaeoides* (awiwi)

Maui 1—*Centaurium sebaeoides*—a and Maui 2—*Centaurium sebaeoides*—b, identified in the legal descriptions in paragraph (e)(1) of this section, constitute critical habitat for *Centaurium sebaeoides* on Maui. Within these units, the currently known primary constituent elements of critical habitat include, but are not limited to, the habitat components provided by:

(i) Volcanic or clay soils or cliffs, in windward coastal areas, containing one or more of the following associated native plant species: *Bidens mauiensis, Lycium sandwicense, Melanthera integrifolia, Panicum torridum, Lysimachia mauritiana, Scaevola taccada,* or *Schiedea globosa;* and

(ii) Elevations between 0 and 129 m (0 and 423 ft).

Family Geraniaceae: *Geranium arboreum* (nohoanu)

Maui 9—*Geranium arboreum*—a, Maui 14—*Geranium arboreum*—b, and Maui 15—*Geranium arboreum*—c, identified in the legal descriptions in paragraph (e)(1) of this section, constitute critical habitat for *Geranium arboreum* on Maui. Within these units, the currently known primary constituent elements of critical habitat include, but are not limited to, the habitat components provided by:

(i) Steep, damp and shaded narrow canyons and gulches, steep banks, and intermittent streams in *Sophora chrysophylla* subalpine dry shrubland or *Metrosideros polymorpha* montane forest and containing one or more of the following associated native plant species: *Dodonaea viscosa, Dryopteris wallichiana, Leptecophylla tameiameiae, Rubus hawaiiensis,* or *Vaccinium reticulatum;* and

(ii) Elevations between 1,472 and 2,184 m (4,830 and 7,164 ft).

Family Geraniaceae: *Geranium multiflorum* (nohoanu)

Maui 8—*Geranium multiflorum*—a, Maui 9—*Geranium multiflorum*—b, and Maui 9—*Geranium multiflorum*—c, identified in the legal descriptions in paragraph (e)(1) of this section, constitute critical habitat for *Geranium multiflorum* on Maui. Within these units, the currently known primary constituent elements of critical habitat include, but are not limited to, the habitat components provided by:

(i) Wet or mesic *Metrosideros polymorpha* montane forest or alpine mesic forest, *Leptecophylla tameiameiae* shrubland, *Sophora chrysophylla* subalpine dry forest, open sedge swamps, fog-swept lava flows, or montane grasslands and containing one or more of the following associated native plant species: *Coprosma montana, Dryopteris glabra, Dryopteris wallichiana, Hedyotis* sp., *Leptecophylla tameiameiae Metrosideros polymorpha, Rubus hawaiiensis, Sadleria cyatheoides,* or *Vaccinium* sp.; and

(ii) Elevations between 1,538 and 2,710 m (5,045 and 8,890 ft).

Family Gesneriaceae: *Cyrtandra munroi* (haiwale)

Maui 17—*Cyrtandra munroi*—a, Maui 17—*Cyrtandra munroi*—b, and Maui 17—*Cyrtandra munroi*—c, identified in the legal descriptions in paragraph (e)(1) of this section, constitute critical habitat for *Cyrtandra munroi* on Maui. Within these units, the currently known primary constituent elements of critical habitat include, but are not limited to, the habitat components provided by:

(i) Rich, moist to wet, moderately steep talus slopes in lowland wet *Metrosideros polymorpha* forest and containing one or more of the following associated native plant species: *Alyxia oliviformis, Bobea* sp., *Clermontia* sp., *Coprosma* sp., *Cyrtandra* spp., *Diospyros* sp., *Freycinetia arborea, Hedyotis acuminata, Melicope* sp., *Myrsine* sp., *Perrottetia sandwicensis, Pipturus* sp., *Pittosporum* sp., *Pouteria sandwicensis, Psychotria* sp., *Sadleria* sp., *Scaevola* sp., *Sicyos* sp., *Strongylodon ruber, Xylosma* sp., or *Zanthoxylum kauense;* and

(ii) Elevations between 468 and 1,108 m (1,535 and 3,635 ft).

Family Lamiaceae: *Phyllostegia mannii* (NCN)

Maui 8—*Phyllostegia mannii*—a, identified in the legal description in paragraph (e)(1) of this section, constitutes critical habitat for *Phyllostegia mannii* on Maui. Within this unit, the currently known primary constituent elements of critical habitat include, but are not limited to, the habitat components provided by:

(i) Gentle slopes and the steep sides of gulches in mesic to wet forest dominated by *Acacia koa* and/or *Metrosideros polymorpha* and containing one or more of the following associated native plant species: *Alyxia oliviformis, Cheirodendron trigynum, Dicranopteris linearis, Diplazium sandwichianum, Melicope* spp., or *Myrsine lessertiana;* and

(ii) Elevations between 1,069 and 1,348 m (3,506 and 4,421 ft).

Family Lamiaceae: *Phyllostegia mollis* (NCN)

Maui 8—*Phyllostegia mollis*—a and Maui 9—*Phyllostegia mollis*—b, identified in the legal descriptions in paragraph (e)(1) of this section, constitute critical habitat for *Phyllostegia mollis* on Maui. Within these units, the currently known primary constituent elements of critical habitat include, but are not limited to, the habitat components provided by:

(i) Steep slopes and gulches in mesic forest dominated by *Metrosideros polymorpha* and/or *Acacia koa* and containing one or more of the following associated native plant species: *Alyxia oliviformis, Cheirodendron trigynum, Diplazium sandwichianum, Melicope* spp., or *Myrsine lessertiana;* and

(ii) Elevations between 1,164 and 1,878 m (3,818 and 6,161 ft).

Family Malvaceae: *Hibiscus brackenridgei* (mao hau hele)

Maui 16—*Hibiscus brackenridgei*—a and Maui 17—*Hibiscus brackenridgei*—b, identified in the legal descriptions in paragraph (e)(1) of this section, constitute critical habitat for *Hibiscus brackenridgei* on Maui. Within these units, the currently known primary constituent elements of critical habitat include, but are not limited to, the habitat components provided by:

(i) Lowland dry forest sometimes with *Erythrina sandwicensis* as the dominant tree containing one or more of the following associated native plant species: *Achyranthes* sp., *Chamaesyce celastroides* var. *lorifolia, Chenopodium* sp., *Diospyros* sp., *Dodonaea viscosa, Melanthera lavarum, Myoporum sandwicense, Nototrichium* sp., annual *Panicum* spp., *Psydrax odorata, Schiedea salicaria,* or *Sida fallax;* and

(ii) Elevations between 85 and 771 m (279 and 2,530 ft).

Family Orchidaceae: *Platanthera holochila* (NCN)

Maui 9—*Platanthera holochila*—a, Maui 17—*Platanthera holochila*—b, and Maui 17—*Platanthera holochila*—c, identified in the legal descriptions in paragraph (e)(1) of this section, constitute critical habitat for *Platanthera holochila* on Maui. Within these units, the currently known primary constituent elements of critical habitat include, but are not limited to, the habitat components provided by:

(i) *Metrosideros polymorpha-Dicranopteris linearis* montane wet forest, *M. polymorpha* mixed montane bog, or mesic scrubby *M. polymorpha* forest and containing one or more of the following associated native plant species: *Broussaisia arguta, Cibotium* sp., *Clermontia* sp., *Coprosma ernodeoides, Deschampsia nubigena, Dubautia scabra, Gahnia gahniiformis, Leptecophylla tameiameiae, Luzula hawaiiensis, Lycopodiella cernua, Oreobolus furcatus, Polypodium pellucidum, Sadleria* sp., *Scaevola chamissoniana, Sisyrinchium acre, Vaccinium reticulatum,* or *Wikstroemia* sp.; and

(ii) Elevations between 669 and 2,314 m (2,195 and 7,592 ft).

Family Plantaginaceae: *Plantago princeps* (laukahi kuahiwi)

Maui 9—*Plantago princeps*—a and Maui 17—*Plantago princeps*—b, identified in the legal descriptions in paragraph (e)(1) of this section, constitute critical habitat for *Plantago princeps* on Maui. Within these units, the currently known primary constituent elements of critical habitat include, but are not limited to, the habitat components provided by:

(i) Basalt cliffs that are windblown with little vegetation in *Metrosideros polymorpha* lowland wet forest, *Acacia koa-M. polymorpha* montane wet forest, or *M. polymorpha* montane wet shrubland and containing one or more of the following associated native plant species: *Bidens micrantha* ssp. *kalealaha, Chamaesyce celastroides, Cyanea* spp., *Dryopteris* sp., *Dubautia menziesii, Dubautia plantaginea* ssp. *humilis, Eragrostis variabilis, Hedyotis formosa, Leptecophylla tameiameiae, Melicope ovalis, Perrottetia sandwicensis, Pipturus albidus,* or *Touchardia latifolia;* and

(ii) Elevations between 281 and 2,460 m (922 and 8,070 ft).

Family Poaceae: *Cenchrus agrimonioides* (kamanomano (= sandbur, agrimony))

Maui 13—*Cenchrus agrimonioides*—a, and Maui 17—*Cenchrus agrimonioides*—b, identified in the legal descriptions in paragraph (e)(1) of this section, constitute critical habitat for *Cenchrus agrimonioides* on Maui. Within these units, the currently known primary constituent elements of critical habitat include, but are not limited to, the habitat components provided by:

(i) Dry forest or *Pleomele* sp.-*Diospyros* sp. forest and containing one or more of the following associated native plant species: *Alyxia oliviformis, Dodonaea viscosa, Osteomeles anthyllidifolia,* or *Santalum ellipticum;* and

(ii) Elevations between 528 and 1,091 m (1,732 and 3,579 ft).

Family Poaceae: *Ischaemum byrone* (Hilo ischaemum)

Maui 6—*Ischaemum byrone*—a and Maui 7—*Ischaemum byrone*—b, identified in the legal descriptions in paragraph (e)(1) of this section, constitute critical habitat for *Ischaemum byrone* on Maui. Within these units, the currently known primary constituent elements of critical habitat include, but are not limited to, the habitat components provided by:

(i) Close proximity to the ocean, among rocks or on basalt cliffs in windward coastal dry shrubland and containing one or more of the following associated native plant species: *Bidens* sp., *Fimbristylis cymosa,* or *Scaevola taccada;* and

(ii) Elevations between 0 and 132 m (0 and 432 ft).

Family Primulaceae: *Lysimachia lydgatei* (NCN)

Maui 17—*Lysimachia lydgatei*—a, Maui 17—*Lysimachia lydgatei*—b, Maui 17—*Lysimachia lydgatei*—c, Maui 17—*Lysimachia lydgatei*—d, and Maui 17—*Lysimachia lydgatei*—e, identified in the legal descriptions in paragraph (e)(1) of this section, constitute critical habitat for *Lysimachia lydgatei* on Maui. Within these units, the currently known primary constituent elements of critical habitat include, but are not limited to, the habitat components provided by:

(i) Lowland dry and mesic forests dominated by *Diospyros sandwicensis* and containing one or more of the following associated native plant species: *Bidens micrantha* spp. *micrantha, Canavalia* spp., *Dodonaea viscosa, Freycinetia arborea, Metrosideros polymorpha, Microlepia strigosa, Pleomele auwahiensis, Psydrax odorata, Reynoldsia sandwicensis,* or *Wikstroemia* sp.; and

(ii) Elevations between 193 and 844 m (633 and 2,769 ft).

Family Rhamnaceae: *Gouania vitifolia* (NCN)

Maui 17—*Gouania vitifolia*—a, identified in the legal description in paragraph (e)(1) of this section, constitutes critical habitat for *Gouania vitifolia* on Maui. Within this unit, the currently known primary constituent elements of critical habitat include, but are not limited to, the habitat components provided by:

(i) The sides of ridges and gulches in dry to mesic forests and containing one or more of the following associated native plant species: *Bidens* sp., *Carex meyenii, Chamaesyce* spp., *Diospyros sandwicensis, Dodonaea viscosa, Erythrina sandwicensis, Hedyotis* sp., *Hibiscus* spp., *Melicope* sp., *Nestegis sandwicensis, Pipturus albidus, Psychotria* sp., or *Urera glabra;* and

(ii) Elevations between 357 and 1,167 m (1,171 and 3,829 ft).

Family Rubiaceae: *Hedyotis coriacea* (kioele)

Maui 17—*Hedyotis coriacea*—a and Maui 17—*Hedyotis coriacea*—b, identified in the legal descriptions in paragraph (e)(1) of this section, constitute critical habitat for *Hedyotis coriacea* on Maui. Within these units, the currently known primary constituent elements of critical habitat include, but are not limited to, the habitat components provided by:

(i) Sides of steep ridges in *Metrosideros polymorpha-Dicranopteris linearis*-dominated wet to mesic shrubland or *M. polymorpha-Cheirodendron* spp. montane forest and containing one or more of the following associated native plant species: *Astelia* sp., *Broussaisia arguta, Coprosma* spp., *Dodonaea viscosa, Eurya sandwicensis, Ilex anomala, Leptecophylla tameiameiae, Lycopodium* spp., *Ochrosia* spp., *Vaccinium spp.,* or mat ferns such as *Dicranopteris* spp.; and

(ii) Elevations between 829 and 1,432 m (2,720 and 4,698 ft).

Family Rhamnaceae: *Colubrina oppositifolia* (kauila)

Maui 13—*Colubrina oppositifolia*—a, Maui 17—*Colubrina oppositifolia*—b, and Maui 18—*Colubrina oppositifolia*—c, identified in the legal descriptions in paragraph (e)(1) of this section, constitute critical habitat for *Colubrina oppositifolia* on Maui. Within these units, the currently known primary constituent elements of critical habitat include, but are not limited to, the habitat components provided by:

(i) Lowland dry and mesic forests dominated by *Diospyros sandwicensis* and containing one or more of the following associated native plant species: *Bidens micrantha* spp. *micrantha, Canavalia* spp., *Dodonaea viscosa, Freycinetia arborea, Metrosideros polymorpha, Microlepia strigosa, Pleomele auwahiensis, Psydrax odorata, Reynoldsia sandwicensis,* or *Wikstroemia* sp.; and

(ii) Elevations between 193 and 844 m (633 and 2,769 ft).

Family Rhamnaceae: *Gouania vitifolia* (NCN)

Maui 17—*Gouania vitifolia*—a, identified in the legal description in paragraph (e)(1) of this section, constitutes critical habitat for *Gouania vitifolia* on Maui. Within this unit, the currently known primary constituent elements of critical habitat include, but are not limited to, the habitat components provided by:

(i) The sides of ridges and gulches in dry to mesic forests and containing one or more of the following associated native plant species: *Bidens* sp., *Carex meyenii, Chamaesyce* spp., *Diospyros sandwicensis, Dodonaea viscosa, Erythrina sandwicensis, Hedyotis* sp., *Hibiscus* spp., *Melicope* sp., *Nestegis sandwicensis, Pipturus albidus, Psychotria* sp., or *Urera glabra;* and

(ii) Elevations between 357 and 1,167 m (1,171 and 3,829 ft).

Family Rubiaceae: *Hedyotis coriacea* (kioele)

Maui 17—*Hedyotis coriacea*—a and Maui 17—*Hedyotis coriacea*—b, identified in the legal descriptions in paragraph (e)(1) of this section, constitute critical habitat for *Hedyotis coriacea* on Maui. Within these units, the currently known primary constituent elements of critical habitat include, but are not limited to, the habitat components provided by:

(i) Steep, rocky slopes in dry lowland *Dodonaea viscosa*-dominated shrublands and containing one or more of the following associated native plant species: *Bidens menziesii, Gouania hillebrandii, Melanthera lavarum, Myoporum sandwicense, Schiedea menziesii,* or *Sida fallax;* and

(ii) Elevations between 159 and 754 m (522 and 2,474 ft).

Family Rubiaceae: *Hedyotis mannii* (pilo)

Maui 17—*Hedyotis mannii*—a, identified in the legal description in paragraph (e)(1) of this section, constitutes critical habitat for *Hedyotis mannii* on Maui. Within this unit, the currently known primary constituent elements of critical habitat include, but are not limited to, the habitat components provided by:

(i) Basalt cliffs along stream banks in *Metrosideros polymorpha-Dicranopteris linearis* montane wet forest and containing one or more of the following associated native plant species: *Boehmeria grandis, Carex meyenii, Cyrtandra grayi, Cyrtandra hawaiensis, Cyrtandra platyphylla, Cyanea* sp., *Hedyotis acuminata, Isachne distichophylla, Machaerina* sp., *Phyllostegia* sp., *Pipturus albidus, Psychotria* sp., *Touchardia latifolia,* or *Urera glabra;* and

(ii) Elevation between 340 and 1,593 m (1,115 and 5,226 ft).

Family Rutaceae: *Melicope adscendens* (alani)

Maui 13—*Melicope adscendens*—a, identified in the legal description in paragraph (e)(1) of this section, constitutes critical habitat for *Melicope adscendens* on Maui. Within this unit, the currently known primary constituent elements of critical habitat include, but are not limited to, the habitat components provided by:

(i) Aa lava with pockets of soil in *Nestegis sandwicensis-Pleomele auwahiensis-Dodonaea viscosa* lowland mesic forest or open dry forest and containing one or more of the following associated native plant species: *Alphitonia ponderosa, Chamaesyce celastroides* var. *lorifolia, Leptecophylla tameiameiae, Osteomeles anthyllidifolia, Pouteria sandwicensis, Santalum ellipticum,* or *Xylosma hawaiiensis;* and

(ii) Elevations between 761 and 1,209 m (2,497 and 3,967 ft).

Family Rutaceae: *Melicope balloui* (alani)

Maui 8—*Melicope balloui*—a and Maui 9—*Melicope balloui*—b, identified in the legal descriptions in paragraph (e)(1) of this section, constitute critical habitat for *Melicope balloui* on Maui. Within these units, the currently known primary constituent elements of critical habitat include, but are not limited to, the habitat components provided by:

(i) Mesic to wet forest containing one or more of the following associated native plant species: *Acacia koa, Cibotium chamissoi, Cibotium glaucum, Diplazium sandwichianum, Melicope clusiifolia, Metrosideros polymorpha,* or *Sadleria pallida;* and

(ii) Elevations between 781 and 1,544 m (2,561 and 5,267 ft).

Family Rutaceae: *Melicope knudsenii* (alani)

Maui 9—*Melicope knudsenii*—a and Maui 13—*Melicope knudsenii*—b, identified in the legal descriptions in paragraph (e)(1) of this section, constitute critical habitat for *Melicope knudsenii* on Maui. Within these units, the currently known primary constituent elements of critical habitat include, but are not limited to, the habitat components provided by:

(i) Forested flats or talus slopes in *Nestegis sandwicensis-Pleomele* sp. mixed open dry forests and containing one or more of the following associated native plant species: *Alphitonia ponderosa, Dodonaea viscosa, Osteomeles anthyllidifolia, Santalum ellipticum,* or *Xylosma hawaiiensis;* and

(ii) Elevations between 648 and 1,231 m (2,125 and 4,039 ft).

Family Rutaceae: *Melicope mucronulata* (alani)

Maui 9—*Melicope mucronulata*—a and Maui 13—*Melicope mucronulata*—b, identified in the legal descriptions in paragraph (e)(1) of this section, constitute critical habitat for *Melicope mucronulata* on Maui. Within these units, the currently known primary constituent elements of critical habitat include, but are not limited to, the habitat components provided by:

(i) Gentle south-facing slopes in lowland dry to mesic forest and containing one or more of the following associated species: *Antidesma pulvinatum, Dodonaea viscosa, Melicope hawaiensis, Nestegis sandwicensis, Pleomele auwahiensis, Pouteria sandwicensis,* or *Streblus pendulinus;* and

(ii) Elevations between 625 and 1,232 m (2,050 and 4,042 ft).

Family Rutaceae: *Melicope ovalis* (alani)

Maui 9—*Melicope ovalis*—a, identified in the legal description in paragraph (e)(1) of this section, constitutes critical habitat for *Melicope ovalis* on Maui. Within this unit, the currently known primary constituent elements of critical habitat include, but are not limited to, the habitat components provided by:

(i) *Acacia koa* and *Metrosideros polymorpha*-dominated montane wet forests along streams and containing one or more of the following associated species: *Broussaisia arguta, Cheirodendron trigynum, Dicranopteris linearis, Dubautia plantaginea, Hedyotis hillebrandii, Labordia hedyosmifolia, Machaerina angustifolia, Perrottetia sandwicensis,* or *Wikstroemia oahuensis;* and

(ii) Elevations between 753 and 1,537 m (2,469 and 5,042 ft).

Family Rutaceae: *Zanthoxylum hawaiiense* (ae)

Maui 8—*Zanthoxylum hawaiiense*—a, identified in the legal description in paragraph (e)(1) of this section, constitutes critical habitat for *Zanthoxylum hawaiiense* on Maui. Within this unit, the currently known primary constituent elements of critical habitat include, but are not limited to, the habitat components provided by:

(i) Open lowland dry or mesic *Nestegis sandwicensis-Pleomele auwahiensis* forest or Acacia koa-Pleomele auwahiensis forest or montane dry forest and containing one or more of the following associated native species: *Alectryon macrococcus, Alphitonia ponderosa, Charpentiera* sp., *Diospyros sandwicensis, Dodonaea viscosa, Melicope* sp., *Metrosideros polymorpha, Myrsine lanaiensis, Osteomeles anthyllidifolia, Pisonia* sp., *Santalum ellipticum, Sophora chrysophylla, Streblus pendulinus,* or *Xylosma hawaiiensis;* and

(ii) Elevations between 869 and 1,298 m (2,852 and 4,260 ft).

Family Sapindaceae: *Alectryon macrococcus* (mahoe)

Maui 9—*Alectryon macrococcus*—a, Maui 10—*Alectryon macrococcus*—b, Maui 13—*Alectryon macrococcus*—c, Maui 17—*Alectryon macrococcus*—d, Maui 17—*Alectryon macrococcus*—e, and Maui 18—*Alectryon macrococcus*—f, identified in the legal descriptions in paragraph (e)(1) of this section, constitute critical habitat for *Alectryon macrococcus* on Maui. Within these units, the currently known primary constituent elements of critical habitat include, but are not limited to, the habitat components provided by:

(i) Mesic to wetter mesic and upper dryland forest and containing one or more of the following associated native plant species: *Alphitonia ponderosa, Antidesma platyphylla, Antidesma pulvinatum, Bobea sandwicensis, Diospyros sandwicensis, Dodonaea viscosa, Nestegis sandwicensis, Osteomeles anthyllidifolia, Pittosporum confertiflorum, Pittosporum glabrum, Pouteria sandwicensis, Santalum ellipticum, Streblus pendulinus, Xylosma hawaiiensis,* or *Xylosma* sp.; and

(ii) Elevations between 333 and 1,191 m (1,092 and 3,909 ft).

Family Urticaceae: *Neraudia sericea* (NCN)

Maui 9—*Neraudia sericea*—a and Maui 17—*Neraudia sericea*—b, identified in the legal descriptions in paragraph (e)(1) of this section, constitute critical habitat for *Neraudia sericea* on Maui. Within these units, the currently known primary constituent elements of critical habitat include, but are not limited to, the habitat components provided by:

(i) Dry to mesic *Metrosideros polymorpha-Dodonaea viscosa-Leptecophylla tameiameiae* shrubland or forest or *Acacia koa* forest and containing one or more of the following associated native plant species: *Bobea* sp., *Coprosma* sp., *Cyrtandra oxybapha, Cyrtandra* spp., *Diospyros* sp., *Hedyotis* sp., *Sida fallax,* or *Urera glabra;* and

(ii) Elevations between 198 and 1,658 m (650 and 5,439 ft).

Family Violaceae: *Isodendrion pyrifolium* (aupaka)

Maui 17—*Isodendrion pyrifolium*—a, identified in the legal description in paragraph (e)(1) of this section, constitutes critical habitat for *Isodendrion pyrifolium* on Maui. Within this unit, the currently known primary constituent elements of critical habitat include, but are not limited to, the habitat components provided by:

(i) Dry shrubland containing one or more of the following associated native plant taxa: *Capparis sandwichiana, Dodonaea viscosa, Myoporum sandwicense,* or *Psydrax odorata;* and

(ii) Elevations between 85 and 534 m (279 and 1,752 ft).

(2) *Ferns and Allies.*

Family Adiantaceae: *Pteris lidgatei* (NCN)

Maui 17—*Pteris lidgatei*—a and Maui 17—*Pteris lidgatei*—b, identified in the legal descriptions in paragraph (e)(1) of this section, constitute critical habitat for *Pteris lidgatei* on Maui. Within these units, the currently known primary constituent elements of critical habitat include, but are not limited to, the habitat components provided by:

(i) Steep stream banks in wet *Metrosideros polymorpha-Dicranopteris linearis* montane forest and containing one or more of the following native plant species: *Christella cyatheoides, Cibotium chamissoi, Dicranopteris linearis, Elaphoglossum crassifolium, Sadleria squarrosa,* or *Sphenomeris chinensis;* and

(ii) Elevations between 213 and 1,593 m (699 and 5,226 ft).

Family Aspleniaceae: *Asplenium fragile* var. *insulare* (NCN)

Maui 9—*Asplenium fragile* var. *insulare*—a, identified in the legal description in paragraph (e)(1) of this section, constitutes critical habitat for *Asplenium fragile* var. *insulare* on Maui. Within this unit, the primary constituent elements of critical habitat include, but are not limited to, the habitat components provided by:

(i) Streamside hollows and grottos in gulches in mesic to dry subalpine shrubland dominated by *Leptecophylla tameiameiae* and *Sadleria cyatheoides,* with scattered *Metrosideros polymorpha* and containing one or more of the following native plant species: *Dryopteris wallichiana, Grammitis hookeri,* or *Pteris cretica;* and

(ii) Elevations between 1,964 and 2,407 m (6,445 and 7,896 ft).

Family Aspleniaceae: *Ctenitis squamigera* (pauoa)

Maui 17—*Ctenitis squamigera*—a, Maui 17—*Ctenitis squamigera*—b, Maui 17—*Ctenitis squamigera*—c, and Maui 18—*Ctenitis squamigera*—d, identified in the legal descriptions in paragraph (e)(1) of this section, constitute critical habitat for *Ctenitis squamigera* on Maui. Within these units, the primary constituent elements of critical habitat include, but are not limited to, the habitat components provided by:

(i) Forest understory in *Metrosideros polymorpha* montane wet forest, mesic forest, or diverse mesic forest and containing one or more of the following native plant species: *Alyxia oliviformis, Antidesma* sp., *Bobea* sp., *Canavalia* sp., *Coprosma* sp., *Dicranopteris linearis, Doodia* sp., *Dryopteris* sp., *Freycinetia arborea, Hedyotis terminalis, Hibiscus kokio* ssp. *kokio, Myrsine* sp., *Peperomia* sp., *Pittosporum* sp., *Pleomele* sp., *Pritchardia* sp., *Psychotria* sp., *Remya mauiensis, Sadleria* sp., *Schiedea pubescens* var. *pubescens,* or *Xylosma* sp.; and

(ii) Elevations between 275 and 1,421 m (902 and 4,662 ft).

Family Aspleniaceae: *Diellia erecta* (NCN)

Maui 9—*Diellia erecta*—a, Maui 9—*Diellia erecta*—b, Maui 17—*Diellia erecta*—c, Maui 17—*Diellia erecta*—d, Maui 17—*Diellia erecta*—e, and Maui 17—*Diellia erecta*—f, identified in the legal descriptions in paragraph (e)(1) of this section, constitute critical habitat for *Diellia erecta* on Maui. Within these units, the currently known primary constituent elements of critical habitat include, but are not limited to, the habitat components provided by:

(i) Steep slopes or gulch sides in deep shade in *Acacia koa-Metrosideros polymorpha* low- to mid-elevation mesic forest and containing one or more of the following associated native plant species: *Coprosma* sp., *Dodonaea viscosa, Dryopteris unidentata, Leptecophylla tameiameiae, Melicope* sp., *Myrsine* sp., *Osteomeles anthyllidifolia,* or *Psychotria* sp.; and

(ii) Elevations between 338 and 1,695 m (1,109 and 5,561 ft).

Family Aspleniaceae: *Diplazium molokaiense* (NCN)

Maui 8—*Diplazium molokaiense*—a, Maui 9—*Diplazium molokaiense*—b, and Maui 17—*Diplazium molokaiense*—c, identified in the legal descriptions in paragraph (e)(1) of this section, constitute critical habitat for *Diplazium molokaiense* on Maui. Within these units, the currently known primary constituent elements of critical habitat include, but are not limited to, the habitat components provided by:

(i) Water courses, often in proximity to waterfalls, in lowland or montane mesic *Metrosideros polymorpha-Acacia koa* forest; and

(ii) Elevations between 273 and 1,885 m (896 and 6,186 ft).

Family Lycopodiaceae: *Phlegmariurus mannii* (wawaeiole)

Maui 8—*Phlegmariurus mannii*—a, Maui 9—*Phlegmariurus mannii*—b, Maui 9—*Phlegmariurus mannii*—c, Maui 17—*Phlegmariurus mannii*—d, and Maui 17—*Phlegmariurus mannii*—e, identified in the legal descriptions in paragraph (e)(1) of this section, constitute critical habitat for *Phlegmariurus mannii* on Maui. Within these units, the currently known primary constituent elements of critical habitat include, but are not limited to, the habitat components provided by:

(i) Epiphytic growth on *Metrosideros polymorpha, Dodonaea viscosa,* or *Acacia koa* trees in moist protected gulches or mossy tussocks in mesic to wet montane *Metrosideros polymorpha-Acacia koa* forests and containing one or more of the following associated native plant species: *Astelia menziesii, Athyrium* sp., *Cheirodendron trigynum, Coprosma* sp., *Cyanea* sp., *Cyrtandra* sp., *Ilex anomala, Leptecophylla tameiameiae, Machaerina* sp., *Myrsine* sp., *Sadleria* sp., *Thelypteris* sp., or *Vaccinium* sp.; and

(ii) Elevations from 952 and 1,688 m (3,122 and 5,539 ft).

* * * * *

Dated: April 18, 2003.

Craig Manson,

Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 03–10107 Filed 5–13–03; 8:45 am]

BILLING CODE 4310–55–P

Federal Register

Wednesday,
May 14, 2003

Part III

Department of Commerce

Economic Development Administration

National Technical Assistance, Training, Research, and Evaluation—Request for Grant Proposals; Notice

DEPARTMENT OF COMMERCE

Economic Development Administration

[Docket No. 991215339–3104–06]

RIN: 0610–ZA14

National Technical Assistance, Training, Research, and Evaluation—Request for Grant Proposals

AGENCY: Economic Development Administration (EDA), Department of Commerce (DOC).

ACTION: Request for Grant Proposals (RFP) Upon Availability of Funds.

SUMMARY: The role of government is to create the conditions in which jobs are created, and in which people can find work. EDA is soliciting proposals to develop and disseminate, on a monthly basis, information on the reuse of former military bases for practitioners engaged in base redevelopment and economic development.

DATES: Prospective applicants are advised that proposals for funding under this program will be accepted through June 13, 2003, at either of the addresses provided below. Proposals received after 4 p.m. EDT, on June 13, 2003, will not be considered for funding.

By June 30, 2003, EDA will notify proposers whether they will be given further funding consideration. The successful proponent will be invited to submit an Application for Federal Assistance, OMB Control Number 0610–0094. The project will be funded as soon as possible, but no later than September 30, 2003.

ADDRESSES:

1. Proposals may be e-mailed to *jmcnamee@eda.doc.gov*, or

2. Proposals may be hand-delivered to: John J. McNamee, Director, Research and National Technical Assistance Division, Economic Development Administration, Room 1874, U.S. Department of Commerce, 1401 Constitution Avenue, NW., Washington, DC 20230, or

3. Proposals may be mailed to: John J. McNamee, Director, Research and National Technical Assistance Division, Economic Development Administration, Room 7019, U.S. Department of Commerce, 1401 Constitution Avenue, NW., Washington, DC 20230.

Proponents are encouraged to submit proposals by email. Proponents are advised that, due to mail security measures, receipt of U.S.P.S. mail may be delayed for up to two weeks. EDA will not accept proposals submitted by FAX.

FOR FURTHER INFORMATION CONTACT: John J. McNamee, (202) 482–4085; email: *jmcnamee@eda.doc.gov*.

SUPPLEMENTARY INFORMATION: In a previous notice published on April 9, 2003 (68 FR 17520), EDA stated that it would publish separate announcements for its National Technical Assistance, Training, Research, and Evaluation program. Pursuant to that notice, EDA publishes program requirements and solicits applications for this program.

I. Funding Availability

Funds appropriated under Pub. L. 107–248 to the Department of Defense will be transferred to EDA under authority of 42 U.S.C. 3214(c) for this project. In FY 2002, EDA funded a one year information dissemination project on the reuse of military bases with a $35,000 award. This project differs significantly in that the initial performance period is for two years and it involves substantial in-depth analysis of aspects of base redevelopment. As a result, EDA anticipates this project will cost more.

The award will be in the form of a cooperative agreement. In funding cooperative agreements, a common example of substantial involvement is collaboration between EDA program staff and the recipient of this information dissemination award to establish an editorial board to comment on stories and to suggest and select themes for future feature stories.

II. Authority

The authority for the program listed above is the Public Works and Economic Development Act of 1965, as amended (Pub. L. 89–136, 42 U.S.C. 3121 *et seq.*), and as further amended by Pub. L. 105–393.

III. Eligibility

Eligible recipients of EDA financial assistance are defined at 13 CFR 300.2 and eligible applicants are specified at 13 CFR 301.1. An "area" is an eligible recipient and is defined at 13 CFR 301.2. One category of the areas eligible for financial assistance are those areas meeting the "special needs" criteria. The special needs criteria are published in Part XV of the **Federal Register** notice of April 9, 2003 (68 FR 17524).

IV. Proposal Format

Each proposal submitted must include:

1. A description of how the proposer(s) intend(s) to carry out the scope of work (not to exceed 10 pages in length);

2. A proposed budget and accompanying explanation;

3. Resumes/qualifications of key staff (not to exceed two pages per individual, with an additional two pages allowed for a single summary description of all organizations/consultants named in the proposal); and

4. A proposed schedule for completion of the project.

V. Evaluation and Selection Process

To apply for an award under this request, an eligible recipient must submit a proposal to EDA during the specified timeframe, at one of the addresses specified above. Proposals that do not meet all items required or that exceed the page limitations of Section IV of this RFP, will be considered nonresponsive, and will not be considered. Proposals that meet all the requirements will be evaluated by a review panel comprised of at least three members all of whom will be full-time federal employees. The panel first evaluates the proposals using the general evaluation criteria set forth in 13 CFR 304.1 and 304.2 as further defined by the supplemental evaluation criteria set forth in Part VI of the **Federal Register** notice published on April 9, 2003 (68 FR 17521). Proposals that meet these threshold criteria will then be evaluated by the panel using the following three criteria of approximate equal weight:

(1) The quality of a proposal's response to the Scope of Work and other requirements described in Section VI below;

(2) The ability of the prospective applicant to successfully carry out the proposed activities. This will include an evaluation of the qualifications of the proposed staff, the use and cost of travel, how applicant expertise will be supplemented through the use of contractors or consultants, how the potential applicant plans to work cooperatively with economic development organizations, how the target audience will be identified and reached, and both the quality of the potential applicant's suggestions for feature story topics and the methodology that will be used to identify future topics; and

(3) Cost to the federal government.

The Assistant Secretary for Economic Development is the Selecting Official. He may not make any selection, or he may substitute one of the lower rated proposals, if he determines that it better meets the overall objectives of the Public Works and Economic Development Act of 1965, as amended (Pub. L. 89–136, 42 U.S.C. 3121 *et seq.*), and as further amended by Pub. L. 105–393.

If a proposal is selected, EDA will provide the proponent with an Application for Federal Assistance (OMB Control Number 0610–0094).

VI. Areas of Special Interest

EDA is inviting proposals for National Technical Assistance, Training, Research, and Evaluation as described below.

Program: National Technical Assistance—(Pub. L. 89–136, as Amended by Pub. L. 105–393, 42 U.S.C. 3147)

(Catalog of Federal Domestic Assistance: 11.303 Economic Development Technical Assistance)

Background: As part of its ongoing mission to assist communities in reusing former military bases, EDA supports the dissemination of information to economic development practitioners engaged in base reuse. The intent of disseminating this information is to broadly convey how reuse works successfully, to increase the knowledge of practitioners, and to attract innovative practitioners into the field of redeveloping former military bases.

Scope of Work:

The successful applicant will:

(1) Develop and disseminate, on alternate months,

(a) Three to five "news" stories reporting on activities at former military bases. The 300–1,000 word news stories will answer, for example, why particular end-users chose a particular base, rather than just announcing that they did; and

(b) "Feature" stories on major base-reuse topics. The 2,000–5,000 word (with a few appropriate charts or diagrams) feature stories will show how practitioners engaged in base redevelopment solved specific challenges in reusing the former military bases that closed in the 1990s. They will not be "policy studies" that address the strengths or weaknesses of federal base closure programs and legislation. Rather, feature stories will analyze in-depth one particular aspect of base redevelopment at one to three former bases; for example, how did redevelopers structure environmental service cooperative agreements to facilitate redevelopment, and reduce the cost of site preparation and regulatory burden. Issues with news and feature stories will alternate each month, six each per year.

(2) Disseminate news and feature stories widely, using existing electronic networks for economic development practitioners engaged in the reuse of both military bases and non-military facilities.

(3) Establish with the grantor a 3–5 member editorial board to comment on stories and to suggest and select themes for future feature stories. Topics for initial feature stories on base redevelopment will include: how to blend grant, municipal debt, asset sales, and private equity to finance infrastructure; how environmental service cooperative agreements can become a redevelopment tool; when planning and zoning alone are sufficient to direct redevelopment. Other topics may be proposed in the application, but must then be adopted by the editorial board.

Timing: The initial award and funding periods will be for two years from the date of approval. However, those periods may be amended to cover an additional two-year period resulting in four-year award and funding periods, subject to funding availability, satisfactory performance under the initial award, and at the sole discretion of EDA.

Additional Requirement: The proposed information dissemination should not be primarily for the benefit of the grantee or the grantee's members, or a localized geographic area.

VII. Other Information and Requirements

EDA regulations at 13 CFR Chapter III are available on the EDA Web site at *http://www.doc.gov/eda*. The Department of Commerce Pre-Award Notification Requirements for Grants and Cooperative Agreements contained in the **Federal Register** notice of October 1, 2001 (66 FR 49917), as amended by the **Federal Register** notice published on October 30, 2002 (67 FR 66109), are applicable to this solicitation and can be found on EDA's Web site *http://www.doc.gov/eda*.

A. Ordinarily, the applicant is expected to provide a 50% non-federal share of project costs. However, EDA may reduce or waive the required 50% matching share of the total project costs, provided the applicant demonstrates: (1) The project is not feasible without a reduction or waiver and the project merits a reduction or waiver, or (2) the requirements of 13 CFR 301.4(b) are satisfied.

B. Notwithstanding any other provision of law, no person is required to respond to, nor shall a person be subject to a penalty for failure to comply with a collection of information subject to the requirements of the Paperwork Reduction Act (PRA) unless that collection of information displays a currently valid Office of Management and Budget (OMB) control number. This notice involves a collection of information requirement subject to the provisions of the PRA and has been approved by OMB under Control Number 0610–0094. The EDA application (ED–900A), which incorporates the SF–424, are the forms in the EDA application kit, approved under the aforementioned OMB control number.

C. If an application is selected for funding, EDA has no obligation to provide any additional future funding in connection with an award. Renewal of an award to increase funding or extend the period of performance is at the sole discretion of EDA.

D. EDA is committed to a policy of non-discrimination in the administration of all its programs.

E. EDA will notify unsuccessful proposers in writing and unsuccessful proposals will be maintained for not more than three years from the date of receipt.

F. This Notice has been determined to be "not significant" for purposes of Executive Order 12866.

G. It has been determined that this notice does not contain policies with Federalism implications as that term is defined in Executive Order 13132.

H. The rulemaking requirements of 5 U.S.C. 553 are not applicable to this notice relating to public property, loans, grants, benefits or contracts (5 U.S.C. 5553(a)(2)). Because notice and comment are not required under 5 U.S.C. 553, or any other law for this rule, the analytical requirements of the Regulatory Flexibility Act (5 U.S.C. 601) are not applicable. Thus, a Regulatory Flexibility Analysis is not required and has not been prepared for this rule.

Dated: May 6, 2003.

David A. Sampson,

Assistant Secretary for Economic Development.

[FR Doc. 03–11953 Filed 5–13–03; 8:45 am]

BILLING CODE 3510–24–P

Federal Register

Wednesday,
May 14, 2003

Part IV

Department of Education

Office of Special Education and Rehabilitative Services; National Institute on Disability and Rehabilitation; Research—Disability Rehabilitation Research Projects (DRRP) Program; Inviting Applications for Fiscal Year (FY) 2003; Notice

DEPARTMENT OF EDUCATION

[CFDA No.: 84.133A–6]

Office of Special Education and Rehabilitative Services; National Institute on Disability and Rehabilitation Research-Disability Rehabilitation Research Projects (DRRP) Program; Notice Inviting Applications for Fiscal Year (FY) 2003

Note to Applicants: This notice is a complete application package. Together with the statute authorizing the program and the Education Department General Administrative Regulations (EDGAR), this notice contains all of the information, application forms, and instructions you need to apply for a grant under this competition.

Purpose of the Program: The purpose of the DRRP program is to improve the effectiveness of services authorized under the Rehabilitation Act of 1973 (the Act), as amended. For FY 2003 the competition for new awards focuses on projects designed to meet the priority we describe in the PRIORITY section of this application notice. We intend this priority to improve rehabilitation services and outcomes for individuals with disabilities.

In order to provide applicants with a 60-day application period and to ensure that this grant is awarded before the end of FY 2003, NIDRR is inviting applications based on the proposed priority. NIDRR will publish the final priority as soon as possible after the comment period closes on May 16, 2003.

Depending upon the comments that NIDRR receives, the final priority may include revisions to the proposed priority. It is generally the policy of the Department of Education not to solicit applications before the publication of a final priority. However, in this case, it is essential to solicit applications on the basis of the proposed priority in order to allow applicants sufficient time to prepare applications of appropriate quality to be funded. Applicants are advised to begin to develop their applications based on the proposed priority. If changes are made in the final priority, applicants will be given an opportunity to revise or resubmit their applications.

The notice of proposed priority for collaborative research for Traumatic Brain Injury Model Systems (TBIMS) requires the applicants to collaborate with the current TBIMS grantees. The National Rehabilitation Information Center has the contact information for the TBIMS grantees at *http://www.naric.com/search/pd/notice.* NIDRR's current TBIMS grantees are: University of Alabama at Birmingham TBIMS; Northern California TBIMS of Care at Santa Clara Valley Medical Center (SCVMC); Rocky Mountain Regional Brain Injury System (RMRBIS) at Craig Hospital; Spaulding/Partners TBIMS at Harvard Medical School; Southeastern Michigan TBI System (SEMTBIS) at Wayne State University; Mayo Clinic TBIMS; TBIMS of Mississippi (TBIMSM) at Methodist Rehabilitation Center; JFK-Johnson Rehabilitation Institute TBIMS; New York TBIMS (NYTBIMS) at Mount Sinai School of Medicine; Carolinas TBI Rehabilitation and Research System (CTBIRRS) at Charlotte Mecklenburg Hospital Authority; Ohio Regional TBIMS at Ohio State University; Moss TBIMS at Albert Einstein Healthcare Network; University of Pittsburgh Brain Injury Model System (UPBI); North Texas TBIMS (NT–TBIMS) at University of Texas Southwestern Medical Center; TBIMS at Virginia Commonwealth University; and University of Washington TBIMS.

Eligible Applicants: Parties eligible to apply for grants under this program are States; public or private agencies, including for-profit agencies; public or private organizations, including for-profit organizations; institutions of higher education; and Indian tribes and tribal organizations.

Applications Available: May 14, 2003.

Deadline for Transmittal of Applications: July 14, 2003.

Estimated Number of Awards: 2–3.

Note: The Department is not bound by any estimates in this notice.

Maximum Award Amount: $600,000.

Note: We will reject without consideration or evaluation any application that proposes a budget exceeding the stated maximum award amount in any year (*See* 34 CFR 75.104(b)).

Page Limit: The Secretary strongly recommends the following:

(1) A one-page abstract;

(2) An Application Narrative (*i.e.*, Part III that addresses selection criteria that will be used by reviewers in evaluating individual proposals) of no more 75 numbered, double-spaced (no more than 3 lines per vertical inch) 8.5″ x 11″ pages (on one side only) with one inch margins (top, bottom, and sides). The application narrative page limit recommendation does not apply to: Part I—the electronically scanable form; Part II—the budget section (including the narrative budget justification); and Part IV—the assurances and certifications; and

(3) A font no smaller than a 12-point font and an average character density no greater than 14 characters per inch.

Project Period: Up to 60 months.

Applicable Regulations: (a) The Education Department General Administrative Regulations (EDGAR), 34 CFR parts 74, 75, 77, 80, 81, 82, 85, 86 and 97, and (b) the program regulations 34 CFR part 350.

Priority

Collaborative Research Projects in Traumatic Brain Injury

This competition focuses on a project designed to meet the priority in the notice of proposed priority for this program, published in the **Federal Register** on April 16, 2003 (68 FR 18601).

For FY 2003, this priority is an absolute priority. Under 34 CFR 75.105 (c)(3) we consider only applications that meet this priority.

Selection Criteria

We use the following selection criteria to evaluate applications under this program.

The maximum score for all of these criteria is 100 points. The maximum score for each criterion is indicated in parentheses.

(a) *Responsiveness to an absolute or competitive priority* (5 points).

(1) The Secretary considers the responsiveness of the application to an absolute or competitive priority published in the **Federal Register**.

(2) In determining the application's responsiveness to the absolute or competitive priority, the Secretary considers one or more of the following factors:

(i) The extent to which the applicant's proposed activities are likely to achieve the purposes of the absolute or competitive priority. (5 points)

(b) *Design of research activities* (40 points).

(1) The Secretary considers the extent to which the design of research activities is likely to be effective in accomplishing the objectives of the project.

(2) In determining the extent to which the design is likely to be effective in accomplishing the objectives of the project, the Secretary considers one or more of the following factors:

(i) The extent to which the research activities constitute a coherent, sustained approach to research in the field, including a substantial addition to the state-of-the art. (10 points)

(ii) The extent to which the methodology of each proposed research activity is meritorious, including consideration of the extent to which—

(A) The proposed design includes a comprehensive and informed review of the current literature, demonstrating knowledge of the state-of-the art; (5 points)

(B) Each research hypothesis is theoretically sound and based on current knowledge; (6 points)

(C) Each sample population is appropriate and of sufficient size; (7 points)

(D) The data collection and measurement techniques are appropriate and likely to be effective; (7 points) and

(E) The data analysis methods are appropriate. (5 points)

(c) *Design of dissemination activities* (6 points).

(1) The Secretary considers the extent to which the design of dissemination activities is likely to be effective in accomplishing the objectives of the project.

(2) In determining the extent to which the design is likely to be effective in accomplishing the objectives of the project, the Secretary considers one or more of the following factors:

(i) The extent to which the materials to be disseminated are likely to be effective and usable, including consideration of their quality, clarity, variety, and format. (2 points)

(ii) The extent to which the materials and information to be disseminated and the methods for dissemination are appropriate to the target population. (2 points)

(iii) The extent to which the information to be disseminated will be accessible to individuals with disabilities. (2 points)

(d) *Plan of operation* (10 points).

(1) The Secretary considers the quality of the plan of operation.

(2) In determining the quality of the plan of operation, the Secretary considers the adequacy of the plan of operation to achieve the objectives of the proposed project on time and within budget, including clearly defined responsibilities, and timelines for accomplishing project tasks. (4 points)

(3) In addition, the Secretary also considers whether there is a clearly delineated plan for research management, with focus on quality controls for data collection, management of research protocols, and provisions for oversight at collaborating sites. (6 points)

(e) *Collaboration* (10 points).

(1) The Secretary considers the quality of collaboration.

(2) In determining the quality of collaboration, the Secretary considers the following factors:

(i) The extent to which the applicant's proposed collaboration with one or more agencies, organizations, or institutions is likely to be effective in achieving the relevant proposed activities of the project. (5 points)

(ii) The extent to which agencies, organizations, or institutions demonstrate a commitment to collaborate with the applicant. (5 points)

(f) *Adequacy and reasonableness of the budget* (5 points).

(1) The Secretary considers the adequacy and the reasonableness of the budget.

(2) In determining the adequacy and the reasonableness of the proposed budget, the Secretary considers one or more of the following factors:

(i) The extent to which the costs are reasonable in relation to the proposed project activities. (3 points)

(ii) The extent to which the applicant is of sufficient size, scope, and quality to effectively carry out the activities in an efficient manner. (2 points)

(g) *Plan of Evaluation* (8 points).

(1) The Secretary considers the quality of the plan of evaluation.

(2) In determining the quality of the plan of evaluation, the Secretary considers the extent to which the plan of evaluation provides for periodic assessment of a project's progress that is based on identified performance measures that—

(i) Are clearly related to the intended outcomes of the project and expected impacts on the target population; (4 points) and

(ii) Are objective, and quantifiable or qualitative, as appropriate. (4 points)

(h) *Project Staff* (6 points).

(1) The Secretary considers the quality of the project staff.

(2) In determining the quality of the project staff, the Secretary considers the extent to which the applicant encourages applications for employment from persons who are members of groups that have traditionally been underrepresented based on race, color, national origin, gender, age, or disability. (2 points)

(3) In addition, the Secretary considers one or more of the following:

(i) The extent to which the key personnel and other key staff have appropriate training and experience in disciplines required to conduct all proposed activities. (2 points)

(ii) The extent to which the commitment of staff time is adequate to accomplish all the proposed activities of the project. (2 points)

(a) *Adequacy and accessibility of resources* (10 points).

(1) The Secretary considers the adequacy and accessibility of the applicant's resources to implement the proposed project.

(2) In determining the adequacy and accessibility of resources, the Secretary considers one or more of the following factors:

(i) The quality of an applicant's past performance in carrying out a grant. (2 points)

(ii) The extent to which the applicant has appropriate access to clinical populations and organizations representing individuals with disabilities to support advanced clinical rehabilitation research. (6 points)

(iii) The extent to which the facilities, equipment, and other resources are appropriately accessible to individuals with disabilities who may use the facilities, equipment, and other resources of the project. (2 points)

Pre-Application Meeting: Interested parties are invited to participate in a pre-application meeting to discuss the funding priorities and to receive technical assistance through individual consultation and information about the funding priorities. The pre-application meeting will be held on May 28, 2003 either in person or by conference call at the Department of Education, Office of Special Education and Rehabilitative Services, Switzer Building, room 3065, 330 C Street, SW., Washington, DC between 10 a.m. and 12 noon. NIDRR staff will also be available from 1:30 p.m. to 4 p.m. on that same day to provide technical assistance through individual consultation and information about the funding priority. For further information or to make arrangements to attend contact Donna Nangle, Switzer Building, room 3412, 330 C Street, SW., Washington, DC 20202. Telephone (202) 205–5880 or via Internet: *donna.nangle@ed.gov.*

If you use a telecommunications device for the deaf (TDD), you may call (202) 205–4475.

Assistance to Individuals With Disabilities at the Public Meetings

The meeting site is accessible to individuals with disabilities, and a sign language interpreter will be available. If you will need an auxiliary aid or service other than a sign language interpreter in order to participate in the meeting (*e.g.*, other interpreting service such as oral, cued speech, or tactile interpreter; assistive listening device; or materials in alternate format), notify the contact person listed in this notice at least two weeks before the scheduled meeting date. Although we will attempt to meet a request we receive after this date, we may not be able to make available the requested auxiliary aid or service because of insufficient time to arrange it.

Application Procedures

Note: Some of the procedures in these instructions for transmitting applications differ from those in the Education Department General Administrative Regulations (EDGAR) (34 CFR 75.102). Under the Administrative Procedure Act (5 U.S.C. 553) the Department generally offers interested parties the opportunity to comment on proposed regulations. However, these amendments make procedural changes only and do not establish new substantive policy. Therefore, under 5 U.S.C. 553(b)(A), the Secretary has determined that proposed rulemaking is not required.

Pilot Project for Electronic Submission of Applications

In FY 2003, the U.S. Department of Education is continuing to expand its pilot project for electronic submission of applications to include additional formula grant programs and additional discretionary grant competitions. The Disability Rehabilitation Research Projects (DRRP) Program—CFDA #84.133A is one of the programs included in the pilot project. If you are an applicant under the DRRP, you may submit your application to us in either electronic or paper format.

The pilot project involves the use of the Electronic Grant Application System (e-Application) portion of the Grant Administration and Payment System (GAPS). Users of e-Application will be entering data on-line while completing their applications. You may not e-mail a soft copy of a grant application to us. If you participate in this voluntary pilot project by submitting an application electronically, the data you enter on-line will be saved into a database. We request your participation in e-Application. We shall continue to evaluate its success and solicit suggestions for improvement.

If you participate in e-Application, please note the following:

- Your participation is voluntary.
- You will not receive any additional point value because you submit a grant application in electronic format, nor will we penalize you if you submit an application in paper format. When you enter the e-Application system, you will find information about its hours of operation.
- You may submit all documents electronically, including the Application for Federal Assistance (ED 424), Budget Information—Non-Construction Programs (ED 524), and all necessary assurances and certifications.
- After you electronically submit your application, you will receive an automatic acknowledgement, which will include a PR/Award number (an identifying number unique to your application).
- Within three working days after submitting your electronic application, fax a signed copy of the Application for Federal Assistance (ED 424) to the Application Control Center after following these steps:

(1) Print ED 424 from the e-Application system.

(2) The institution's Authorizing Representative must sign this form.

(3) Place the PR/Award number in the upper right hand corner of the hard copy signature page of the ED 424.

(4) Fax the signed ED 424 to the Application Control Center at (202) 260–1349.

- We may request that you give us original signatures on all other forms at a later date.
- *Closing Date Extension in Case of System Unavailability:* If you elect to participate in the e-Application pilot for the DRRP and you are prevented from submitting your application on the closing date because the e-Application system is unavailable, we will grant you an extension of one business day in order to transmit your application electronically, by mail, or by hand delivery. For us to grant this extension—

(1) You must be a registered user of e-Application, and have initiated an e-Application for this competition; and

(2)(a) The e-Application system must be unavailable for 60 minutes or more between the hours of 8:30 a.m. and 3:30 p.m., Washington, DC time, on the deadline date; or

(b) The e-Application system must be unavailable for any period of time during the last hour of operation (that is, for any period of time between 3:30 and 4:30 p.m., Washington, DC time) on the deadline date. The Department must acknowledge and confirm these periods of unavailability before granting you an extension. To request this extension you must contact either (1) the person listed elsewhere in this notice under **FOR FURTHER INFORMATION CONTACT** or (2) the e-GRANTS help desk at 1–888–336–8930.

You may access the electronic grant application for the DRRP at: *http://e-grants.ed.gov*.

Parity Guidelines Between Paper and Electronic Applications: In FY 2003, the U.S. Department of Education is continuing to expand the pilot project that allows applicants to use an Internet-based electronic system for submitting applications. This competition is among those that have an electronic submission option available to all applicants. The system, called e-Application, allows an applicant to submit a grant application to us electronically, using a current version of the applicant's Internet browser. To see e-Application visit the following address: *http://e-grants.ed.gov*.

Parity Instructions

Users of e-application, a data driven system, will be entering data on-line while completing their applications. This will be more interactive than just e-mailing a soft copy of a grant application to us. If you participate in this voluntary pilot project by submitting an application electronically, the data you enter on-line will go into a database and ultimately will be accessible in electronic form to our reviewers.

This pilot project continues the Department's transition to an electronic grant award process. In addition to e-Application, the Department plans to expand the number of discretionary programs using the electronic peer review (e-Reader) system and to increase the participation of discretionary programs offering grantees the use of the electronic annual performance reporting (e-Reports) system.

To help ensure parity and a similar look between electronic and paper copies of grant applications, we are asking each applicant that submits a paper application to adhere to the following guidelines:

- Submit your application on 8.5″ by 11″ paper.
- Leave a 1-inch margin on all sides.
- Use consistent font throughout your document. You may also use boldface type, underlining, and italics. However, please do not use colored text.
- Please use black and white, also, for illustrations, including charts, tables, graphs and pictures.
- For the narrative component, your application should consist of the number and text of each selection criterion followed by the narrative. The text of the selection criterion, if included, does not count against any page limitation.
- Place a page number at the bottom right of each page beginning with 1; and number your pages consecutively throughout your document.

Additional Application Procedures

Appendices: Do not attach any appendices if all of your appendices are not in electronic format. Type in the appendices section: "Appendices are being sent separately." and note the date that they are hand delivered or mailed. Put the PR/award number and the word "Appendices" in the upper right hand corner of each page of the appendices.

Send the entire package of appendices to: U.S. Department of Education, Application Control Center, Attention: (CFDA # 84.133A–6)—Appendices, 7th & D Streets, SW., Room 3671, Regional Office Building 3, Washington, DC 20202–4725.

You must clearly label the outside of the envelope with the PR/Award Number and the word "Appendices." You must submit all hard copy appendices according to the **Instructions for Transmitting Applications** found elsewhere in this notice.

Instructions for Transmitting Applications

If you want to apply for a grant in paper and be considered for funding, you must meet the following deadline requirements:

(a) *If You Send Your Application by Mail*

You must mail the original and two copies of the application on or before the deadline date. To help expedite our review of your application, applicants are encouraged to submit an original and seven copies. Mail your application to: U.S. Department of Education, Application Control Center, Attention: (CFDA # 84.133A–6), 7th & D Streets, SW., Room 3671, Regional Office Building 3, Washington, DC 20202–4725.

You must show one of the following as proof of mailing:

(1) A legibly dated U.S. Postal Service postmark.

(2) A legible mail receipt with the date of mailing stamped by the U.S. Postal Service.

(3) A dated shipping label, invoice, or receipt from a commercial carrier.

(4) Any other proof of mailing acceptable to the Secretary.

If you mail an application through the U.S. Postal Service, we do not accept either of the following as proof of mailing:

(1) A private metered postmark.

(2) A mail receipt that is not dated by the U.S. Postal Service.

(b) *If You Deliver Your Application by Hand*

You or your courier must hand deliver the original and two copies of the application by 4:30 p.m. (Washington, DC time) on or before the deadline date. To help expedite our review of your application, we would appreciate your voluntarily including an additional seven copies of your application. Deliver your application to: U.S. Department of Education, Application Control Center, Attention: (CFDA # 84.133A–6), 7th & D Streets, SW., Room 3671, Regional Office Building 3, Washington, DC 20202–4725.

The Application Control Center accepts application deliveries daily between 8 a.m. and 4:30 p.m. (Washington, DC time), except Saturdays, Sundays, and Federal holidays. The Center accepts application deliveries through the D Street entrance only. A person delivering an application must show identification to enter the building.

(c) If You Submit Your Application Electronically: You must submit your grant application through the Internet using the software provided on the e-Grants Website (*http://www.e-grants.ed.gov*) by 4:30 p.m. (Washington, DC time) on the deadline date.

The regular hours of operation of the e-Grants Web site are 6 a.m. until 12 midnight (Washington, DC time) Monday–Friday and 6 a.m. until 7 p.m. Saturdays. The system is unavailable on the second Saturday of every month, Sundays, and Federal holidays. Please note that on Wednesdays the Web site is closed for maintenance at 7 p.m. (Washington, DC time).

Notes

(1) The U.S. Postal Service does not uniformly provide a dated postmark. Before relying on this method, you should check with your local post office.

(2) If you send your application by mail or if you or your courier deliver it by hand, the Application Control Center will mail a Grant Application Receipt Acknowledgment to you. If you do not receive the notification of application receipt within 15 days from the date of mailing the application, you should call the U.S. Department of Education Application Control Center at (202) 708–9493.

(3) If your application is late, we will notify you that we will not consider the application.

(4) You must indicate on the envelope and—if not provided by the Department—in Item 4 of the Application for Federal Education Assistance (ED 424 (exp. 11/30/2004)) the CFDA number—and suffix letter, if any—of the competition under which you are submitting your application.

(5) If you submit your application through the Internet via the e-Grants Web site, you will receive an automatic acknowledgment when we receive your application.

Application Forms and Instructions

The Appendix to this notice contains forms and instructions, a statement regarding estimated public reporting burden, and various assurances and certifications. Please organize the parts and additional materials in the following order:

- PART I: Application for Federal Assistance (ED 424 (Exp. 11/30/2004)) and instructions.
- PART II: Budget Form—Non-Construction Programs (ED 524) and instructions and definitions.
- PART III: Application Narrative.
- PART IV: Additional Materials.
- Estimated Public Reporting Burden.
- Assurances—Non-Construction Programs (Standard Form 424B).
- Certification Regarding Lobbying, Debarment, Suspension, and Other Responsibility Matters: and Drug-Free Work-Place Requirements (ED Form 80–0013).
- Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion: Lower Tier Covered Transactions (ED Form 80–0014) and instructions.

(**Note:** ED Form GCS–014 is intended for the use of primary participants and should not be transmitted to the Department.)

- Disclosure of Lobbying Activities (Standard Form LLL, if applicable) and instructions; and Disclosure Lobbying Activities Continuation Sheet (Standard Form LLL–A).
- Survey on Ensuring Equal Opportunity for Applicants

An applicant may submit information on a photostatic copy of the application and budget forms, the assurances, and the certifications. However, the application form, the assurances, and the certifications must each have an *original signature*. No grant may be awarded unless a completed application form has been received.

FOR FURTHER INFORMATION CONTACT: Donna Nangle, U.S. Department of Education, 400 Maryland Avenue, SW., room 3412, Switzer Building, Washington, DC 20202–2645. Telephone: (202) 205–5880 or via Internet: *Donna.Nangle@ed.gov*.

If you use a telecommunications device for the deaf (TDD), you may call the TDD number at (202) 205–4475.

Individuals with disabilities may obtain this document in an alternative format (*e.g.*, Braille, large print, audiotape, or computer diskette) on request to the contact person listed under **FOR FURTHER INFORMATION CONTACT**.

Electronic Access to This Document

You may review this document, as well as all other Department of Education documents published in the **Federal Register**, in text or Adobe Portable Document Format (PDF) on the Internet at the following site: *http://www.ed.gov/legislation/FedRegister*.

To use PDF you must have Adobe Acrobat Reader, which is available free at this site. If you have questions about using PDF, call the U.S. Government Printing Office (GPO), toll free, at

1–888–293–6498; or in the Washington, DC area at (202) 512–1530.

Note: The official version of this document is the document published in the **Federal Register**. Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available on GPO Access at: *http://www.access.gpo.gov/nara/index.html.*

Program authority: 29 U.S.C. 762(g) and 764(a).

Dated: May 9, 2003.

Loretta Petty Chittum,

Acting Assistant Secretary for Special Education and Rehabilitative Services.

Appendix—Instructions for Estimated Public Reporting Burden

According to the Paperwork Reduction Act of 1995, you are not required to respond to a collection of information unless it displays a valid OMB control number. The valid OMB control number for this collection of information is 1820–0027. Expiration date: 11/20/2003. We estimate the time required to complete this collection of information to average 30 hours per response, including the time to review instructions, search existing data sources, gather the data needed, and complete and review the collection of information. If you have any comments concerning the accuracy of the time estimate or suggestions for improving this form, please write to: U.S. Department of Education, Washington, DC 20202–4651. If you have comments or concerns regarding the status of your submission of this form, write directly to: Donna Nangle, U.S. Department of Education, 400 Maryland Avenue, SW., room 3412, Switzer Building, Washington, DC 20202–2645.

Application Forms and Instructions

Applicants are advised to reproduce and complete the application forms in this section. Applicants applying in paper copy format are required to submit an original and two copies of each application as provided in this section. However, applicants are encouraged to submit an original and seven copies of each application in order to facilitate the peer review process and minimize copying errors.

Frequent Questions

1. Can I Get an Extension of the Due Date?

No. On rare occasions the Department of Education may extend a closing date for all applicants. If that occurs, a notice of the revised due date is published in the **Federal Register**. However, there are no extensions or exceptions to the due date made for individual applicants.

2. What Should Be Included in the Application?

The application should include a project narrative, vitae of key personnel, and a budget, as well as the Assurances forms included in this package. Vitae of staff or consultants should include the individual's title and role in the proposed project, and other information that is specifically pertinent to this proposed project. The budgets for both the first year and all subsequent project years should be included.

If collaboration with another organization is involved in the proposed activity, the application should include assurances of participation by the other parties, including written agreements or assurances of cooperation. It is not useful to include general letters of support or endorsement in the application.

If the applicant proposes to use unique tests or other measurement instruments that are not widely known in the field, it would be helpful to include the instrument in the application.

Many applications contain voluminous appendices that are not helpful and in many cases cannot even be mailed to the reviewers. It is generally not helpful to include such things as brochures, general capability statements of collaborating organizations, maps, copies of publications, or descriptions of other projects completed by the applicant.

3. What Format Should Be Used for the Application?

NIDRR generally advises applicants that they may organize the application to follow the selection criteria that will be used. The specific review criteria vary according to the specific program, and are contained in this Consolidated Application Package.

4. May I Submit Applications to More Than One NIDRR Program Competition or More Than One Application to a Program?

Yes, you may submit applications to any program for which they are responsive to the program requirements. You may submit the same application to as many competitions as you believe appropriate. You may also submit more than one application in any given competition.

5. What Is the Allowable Indirect Cost Rate?

The limits on indirect costs vary according to the program and the type of application. An applicant for an RRTC is limited to an indirect rate of 15 percent. An applicant for Advanced Rehabilitation Research Training project is limited to a training grant indirect rate of 8 percent. An applicant for a RERC, DRRP, or Field Initiated project should limit indirect charges to the organization's approved indirect cost rate. If the organization does not have an approved indirect cost rate, the application should include an estimated actual rate.

6. Can Profitmaking Businesses Apply for Grants?

Yes. However, for-profit organizations will not be able to collect a fee or profit on the grant, and in some programs will be required to share in the costs of the project.

7. Can Individuals Apply for Grants?

No. Only organizations are eligible to apply for grants under NIDRR programs. However, individuals are the only entities eligible to apply for fellowships.

8. Can NIDRR Staff Advise Me Whether My Project Is of Interest to NIDRR or Likely To Be Funded?

No. NIDRR staff can advise you of the requirements of the program in which you propose to submit your application. However, staff cannot advise you of whether your subject area or proposed approach is likely to receive approval.

9. How Do I Assure That My Application Will Be Referred to the Most Appropriate Panel for Review?

Applicants should be sure that their applications are referred to the correct competition by clearly including the competition title and CFDA number, including alphabetical code, on the Standard Form 424, and including a project title that describes the project.

10. How Soon After Submitting My Application Can I Find Out if It Will Be Funded?

The time from closing date to grant award date varies from program to program. Generally speaking, NIDRR endeavors to have awards made within five to six months of the closing date. Unsuccessful applicants generally will be notified within that time frame as well. For the purpose of estimating a project start date, the applicant should estimate approximately six months from the closing date, but no later than following September 30.

11. Can I Call NIDRR to Find Out if My Application Is Being Funded?

No. When NIDRR is able to release information on the status of grant applications, it will notify applicants by letter. The results of the peer review cannot be released except through this formal notification.

12. If My Application Is Successful, Can I Assume I Will Get the Requested Budget Amount in Subsequent Years?

No. Funding in subsequent years is subject to availability of funds and project performance.

13. Will All Approved Applications Be Funded?

No. It often happens that the peer review panels approve for funding more applications than NIDRR can fund within available resources. Applicants who are approved but not funded are encouraged to consider submitting similar applications in future competitions.

BILLING CODE 4000–01–P

Application for Federal Education Assistance (ED 424)

U.S. Department of Education
Form Approved
OMB No. 1875-0106
Exp. 11/30/2004

Applicant Information

1. Name and Address
Legal Name: _____
Address: _____
_____
City _____ State _____ County _____ ZIP Code + 4 _____
Organizational Unit _____

2. Applicant's D-U-N-S Number ☐☐☐☐☐☐☐☐☐

3. Applicant's T-I-N ☐☐-☐☐☐☐☐☐☐

4. Catalog of Federal Domestic Assistance #: 8 4 ☐☐☐☐☐
Title: _____
_____

5. Project Director: _____
Address: _____
_____
City _____ State _____ ZIP Code + 4 _____
Tel. #: _____ Fax #: _____
E-Mail Address: _____

6. Novice Applicant ☐ Yes ☐ No

7. Is the applicant delinquent on any Federal debt? ☐ Yes ☐ No
(If "Yes," attach an explanation.)

8. Type of Applicant (Enter appropriate letter in the box.) ☐

A State
B Local
C Special District
D Indian Tribe
E Individual
F Independent School District
G Public College or University
H Private, Non-Profit College or University
I Non-Profit Organization
J Private, Profit-Making Organization
K Other (Specify): _____

Application Information

9. Type of Submission:
—PreApplication ☐ Construction ☐ Non-Construction
—Application ☐ Construction ☐ Non-Construction

10. Is application subject to review by Executive Order 12372 process?
☐ Yes (Date made available to the Executive Order 12372 process for review): _____
☐ No (If "No," check appropriate box below.)
☐ Program is not covered by E.O. 12372.
☐ Program has not been selected by State for review.

11. Proposed Project Dates: Start Date: _____ End Date: _____

12. Are any research activities involving human subjects planned at any time during the proposed project period?
☐ Yes (Go to 12a.) ☐ No (Go to item 13.)

12a. Are all the research activities proposed designated to be exempt from the regulations?
☐ Yes (Provide Exemption(s) #): _____
☐ No (Provide Assurance #): _____

13. Descriptive Title of Applicant's Project:

Estimated Funding

14a. Federal	$	.00
b. Applicant	$	.00
c. State	$	.00
d. Local	$	.00
e. Other	$	.00
f. Program Income	$	.00
g. TOTAL	$	0.00

Authorized Representative Information

15. To the best of my knowledge and belief, all data in this preapplication/application are true and correct. The document has been duly authorized by the governing body of the applicant and the applicant will comply with the attached assurances if the assistance is awarded.

a. Authorized Representative (Please type or print name clearly.)
b. Title
c. Tel. #: _____ Fax #: _____
d. E-Mail Address:
e. Signature of Authorized Representative _____ Date: _____

Application for Federal Education Assistance (ED 424)

U.S. Department of Education
Form Approved
OMB No. 1875-0106
Exp. 11/30/2004

Applicant Information

1. Name and Address
Legal Name: _____
Address: _____
_____
City _____ State _____ County _____ ZIP Code + 4 _____

Organizational Unit

2. Applicant's D-U-N-S Number
3. Applicant's T-I-N
4. Catalog of Federal Domestic Assistance #: 8 4
Title: _____
5. Project Director: _____
Address: _____
City _____ State _____ ZIP Code + 4 _____
Tel. #: _____ Fax #: _____
E-Mail Address: _____

6. Novice Applicant ☐ Yes ☐ No
7. Is the applicant delinquent on any Federal debt? ☐ Yes ☐ No
(If "Yes," attach an explanation.)
8. Type of Applicant (Enter appropriate letter in the box.)

A State
B Local
C Special District
D Indian Tribe
E Individual
F Independent School District
G Public College or University
H Private, Non-Profit College or University
I Non-Profit Organization
J Private, Profit-Making Organization
K Other (Specify): _____

Application Information

9. Type of Submission:
—PreApplication ☐ Construction ☐ Non-Construction
—Application ☐ Construction ☐ Non-Construction

10. Is application subject to review by Executive Order 12372 process?
☐ Yes (Date made available to the Executive Order 12372 process for review): _____
☐ No (If "No," check appropriate box below.)
☐ Program is not covered by E.O. 12372.
☐ Program has not been selected by State for review.

11. Proposed Project Dates: Start Date: _____ End Date: _____

12. Are any research activities involving human subjects planned at any time during the proposed project period?
☐ Yes (Go to 12a.) ☐ No (Go to item 13.)

12a. Are all the research activities proposed designated to be exempt from the regulations?
☐ Yes (Provide Exemption(s) #): _____
☐ No (Provide Assurance #): _____

13. Descriptive Title of Applicant's Project:

Estimated Funding

14a. Federal	$	.00
b. Applicant	$	.00
c. State	$	.00
d. Local	$	.00
e. Other	$	.00
f. Program Income	$	.00
g. TOTAL	$	0 .00

Authorized Representative Information

15. To the best of my knowledge and belief, all data in this preapplication/application are true and correct. The document has been duly authorized by the governing body of the applicant and the applicant will comply with the attached assurances if the assistance is awarded.

a. Authorized Representative (Please type or print name clearly.)

b. Title

c. Tel. #: _____ Fax #: _____

d. E-Mail Address:

e. Signature of Authorized Representative _____ Date: _____

Instructions for ED 424

1. Legal Name and Address. Enter the legal name of applicant and the name of the primary organizational unit which will undertake the assistance activity.

2. D-U-N-S Number. Enter the applicant's D-U-N-S Number. If your organization does not have a D-U-N-S Number, you can obtain the number by calling 1-800-333-0505 or by completing a D-U-N-S Number Request Form. The form can be obtained via the Internet at the following URL: http://www.dnb.com.

3. Tax Identification Number. Enter the taxpayer's identification number as assigned by the Internal Revenue Service.

4. Catalog of Federal Domestic Assistance (CFDA) Number. Enter the CFDA number and title of the program under which assistance is requested. The CFDA number can be found in the federal register notice and the application package.

5. Project Director. Name, address, telephone and fax numbers, and e-mail address of the person to be contacted on matters involving this application.

6. Novice Applicant. Check "Yes" or "No" only if assistance is being requested under a program that gives special consideration to novice applicants. Otherwise, leave blank.

   Check "Yes" if you meet the requirements for novice applicants specified in the regulations in 34 CFR 75.225 and included on the attached page entitled "Definitions for Form ED 424." By checking "Yes" the applicant certifies that it meets these novice applicant requirements. Check "No" if you do not meet the requirements for novice applicants.

7. Federal Debt Delinquency. Check "Yes" if the applicant's organization is delinquent on any Federal debt. (This question refers to the applicant's organization and not to the person who signs as the authorized representative. Categories of debt include delinquent audit disallowances, loans and taxes.) Otherwise, check "No."

8. Type of Applicant. Enter the appropriate letter in the box provided.

9. Type of Submission. See "Definitions for Form ED 424" attached.

10. Executive Order 12372. See "Definitions for Form ED 424" attached. Check "Yes" if the application is subject to review by E.O. 12372. Also, please enter the month, day, and four (4) digit year (e.g., 12/12/2001). Otherwise, check "No."

11. Proposed Project Dates. Please enter the month, day, and four (4) digit year (e.g., 12/12/2001).

12. Human Subjects Research. (See I.A. "Definitions" in attached page entitled "Definitions for Form ED 424.")

    If Not Human Subjects Research. Check "No" if research activities involving human subjects are not planned at any time during the proposed project period. The remaining parts of Item 12 are then not applicable.

    If Human Subjects Research. Check "Yes" if research activities involving human subjects are planned at any time during the proposed project period, either at the applicant organization or at any other performance site or collaborating institution. Check "Yes" even if the research is exempt from the regulations for the protection of human subjects. (See I.B. "Exemptions" in attached page entitled "Definitions for Form ED 424.")

12a. If Human Subjects Research is Exempt from the Human Subjects Regulations. Check "Yes" if all the research activities proposed are designated to be exempt from the regulations. Insert the exemption number(s) corresponding to one or more of the six exemption categories listed in I.B. "Exemptions." In addition, follow the instructions in II.A. "Exempt Research Narrative" in the attached page entitled "Definitions for Form ED 424." Insert this narrative immediately following the ED 424 face page.

12a. If Human Subjects Research is Not Exempt from Human Subjects Regulations. Check "No" if some or all of the planned research activities are covered (not exempt). In addition, follow the instructions in II.B. "Nonexempt Research Narrative" in the page entitled "Definitions for Form ED 424." Insert this narrative immediately following the ED 424 face page.

12a. Human Subjects Assurance Number. If the applicant has an approved Federal Wide (FWA) or Multiple Project Assurance (MPA) with the Office for Human Research Protections (OHRP), U.S. Department of Health and Human Services, that covers the specific activity, insert the number in the space provided. If the applicant does not have an approved assurance on file with OHRP, enter "None." In this case, the applicant, by signature on the face page, is declaring that it will comply with 34 CFR 97 and proceed to obtain the human subjects assurance upon request by the designated ED official. If the application is recommended/selected for funding, the designated ED official will request that the applicant obtain the assurance within 30 days after the specific formal request.

    Note about Institutional Review Board Approval. ED does not require certification of Institutional Review Board approval with the application. However, if an application that involves non-exempt human subjects research is recommended/selected for funding, the designated ED official will request that the applicant obtain and send the certification to ED within 30 days after the formal request.

13. Project Title. Enter a brief descriptive title of the project. If more than one program is involved, you should append an explanation on a separate sheet. If appropriate (e.g., construction or real property projects), attach a map showing project location. For preapplications, use a separate sheet to provide a summary description of this project.

14. Estimated Funding. Amount requested or to be contributed during the first funding/budget period by each contributor. Value of in-kind contributions should be included on appropriate lines as applicable. If the action will result in a dollar change to an existing award, indicate only the amount of the change. For decreases, enclose the amounts in parentheses. If both basic and supplemental amounts are included, show breakdown on an attached sheet. For multiple program funding, use totals and show breakdown using same categories as item 14.

15. Certification. To be signed by the authorized representative of the applicant. A copy of the governing body's authorization for you to sign this application as official representative must be on file in the applicant's office. Be sure to enter the telephone and fax number and e-mail address of the authorized representative. Also, in item 15e, please enter the month, day, and four (4) digit year (e.g., 12/12/2001) in the date signed field.

Paperwork Burden Statement. According to the Paperwork Reduction Act of 1995, no persons are required to respond to a collection of information unless such collection displays a valid OMB control number. The valid OMB control number for this information collection is 1875-0106. The time required to complete this information collection is estimated to average between 15 and 45 minutes per response, including the time to review instructions, search existing data resources, gather the data needed, and complete and review the information collection. If you have any comments concerning the accuracy of the estimate(s) or suggestions for improving this form, please write to: U.S. Department of Education, Washington, D.C. 20202-4651. If you have comments or concerns regarding the status of your individual submission of this form write directly to: Joyce I. Mays, Application Control Center, U.S. Department of Education, 7th and D Streets, S.W. ROB-3, Room 3633, Washington, D.C. 20202-4725.

Instructions for ED 424

1. Legal Name and Address. Enter the legal name of applicant and the name of the primary organizational unit which will undertake the assistance activity.

2. D-U-N-S Number. Enter the applicant's D-U-N-S Number. If your organization does not have a D-U-N-S Number, you can obtain the number by calling 1-800-333-0505 or by completing a D-U-N-S Number Request Form. The form can be obtained via the Internet at the following URL: http://www.dnb.com.

3. Tax Identification Number. Enter the taxpayer's identification number as assigned by the Internal Revenue Service.

4. Catalog of Federal Domestic Assistance (CFDA) Number. Enter the CFDA number and title of the program under which assistance is requested. The CFDA number can be found in the federal register notice and the application package.

5. Project Director. Name, address, telephone and fax numbers, and e-mail address of the person to be contacted on matters involving this application.

6. Novice Applicant. Check "Yes" or "No" only if assistance is being requested under a program that gives special consideration to novice applicants. Otherwise, leave blank.

   Check "Yes" if you meet the requirements for novice applicants specified in the regulations in 34 CFR 75.225 and included on the attached page entitled "Definitions for Form ED 424." By checking "Yes" the applicant certifies that it meets these novice applicant requirements. Check "No" if you do not meet the requirements for novice applicants.

7. Federal Debt Delinquency. Check "Yes" if the applicant's orgânization is delinquent on any Federal debt. (This question refers to the applicant's organization and not to the person who signs as the authorized representative. Categories of debt include delinquent audit disallowances, loans and taxes.) Otherwise, check "No."

8. Type of Applicant. Enter the appropriate letter in the box provided.

9. Type of Submission. See "Definitions for Form ED 424" attached.

10. Executive Order 12372. See "Definitions for Form ED 424" attached. Check "Yes" if the application is subject to review by E.O. 12372. Also, please enter the month, day, and four (4) digit year (e.g., 12/12/2001). Otherwise, check "No."

11. Proposed Project Dates. Please enter the month, day, and four (4) digit year (e.g., 12/12/2001).

12. Human Subjects Research. (See I.A. "Definitions" in attached page entitled "Definitions for Form ED 424.")

    If Not Human Subjects Research. Check "No" if research activities involving human subjects are not planned at any time during the proposed project period. The remaining parts of Item 12 are then not applicable.

    If Human Subjects Research. Check "Yes" if research activities involving human subjects are planned at any time during the proposed project period, either at the applicant organization or at any other performance site or collaborating institution. Check "Yes" even if the research is exempt from the regulations for the protection of human subjects. (See I.B. "Exemptions" in attached page entitled "Definitions for Form ED 424.")

12a. If Human Subjects Research is Exempt from the Human Subjects Regulations. Check "Yes" if all the research activities proposed are designated to be exempt from the regulations. Insert the exemption number(s) corresponding to one or more of the six exemption categories listed in I.B. "Exemptions." In addition, follow the instructions in II.A. "Exempt Research Narrative" in the attached page entitled "Definitions for Form ED 424." Insert this narrative immediately following the ED 424 face page.

12a. If Human Subjects Research is Not Exempt from Human Subjects Regulations. Check "No" if some or all of the planned research activities are covered (not exempt). In addition, follow the instructions in II.B. "Nonexempt Research Narrative" in the page entitled "Definitions for Form ED 424." Insert this narrative immediately following the ED 424 face page.

12a. Human Subjects Assurance Number. If the applicant has an approved Federal Wide (FWA) or Multiple Project Assurance (MPA) with the Office for Human Research Protections (OHRP), U.S. Department of Health and Human Services, that covers the specific activity, insert the number in the space provided. If the applicant does not have an approved assurance on file with OHRP, enter "None." In this case, the applicant, by signature on the face page, is declaring that it will comply with 34 CFR 97 and proceed to obtain the human subjects assurance upon request by the designated ED official. If the application is recommended/selected for funding, the designated ED official will request that the applicant obtain the assurance within 30 days after the specific formal request.

    Note about Institutional Review Board Approval. ED does not require certification of Institutional Review Board approval with the application. However, if an application that involves non-exempt human subjects research is recommended/selected for funding, the designated ED official will request that the applicant obtain and send the certification to ED within 30 days after the formal request.

13. Project Title. Enter a brief descriptive title of the project. If more than one program is involved, you should append an explanation on a separate sheet. If appropriate (e.g., construction or real property projects), attach a map showing project location. For preapplications, use a separate sheet to provide a summary description of this project.

14. Estimated Funding. Amount requested or to be contributed during the first funding/budget period by each contributor. Value of in-kind contributions should be included on appropriate lines as applicable. If the action will result in a dollar change to an existing award, indicate only the amount of the change. For decreases, enclose the amounts in parentheses. If both basic and supplemental amounts are included, show breakdown on an attached sheet. For multiple program funding, use totals and show breakdown using same categories as item 14.

15. Certification. To be signed by the authorized representative of the applicant. A copy of the governing body's authorization for you to sign this application as official representative must be on file in the applicant's office. Be sure to enter the telephone and fax number and e-mail address of the authorized representative. Also, in item 15e, please enter the month, day, and four (4) digit year (e.g., 12/12/2001) in the date signed field.

Paperwork Burden Statement. According to the Paperwork Reduction Act of 1995, no persons are required to respond to a collection of information unless such collection displays a valid OMB control number. The valid OMB control number for this information collection is 1875-0106. The time required to complete this information collection is estimated to average between 15 and 45 minutes per response, including the time to review instructions, search existing data resources, gather the data needed, and complete and review the information collection. If you have any comments concerning the accuracy of the estimate(s) or suggestions for improving this form, please write to: U.S. Department of Education, Washington, D.C. 20202-4651. If you have comments or concerns regarding the status of your individual submission of this form write directly to: Joyce I. Mays, Application Control Center, U.S. Department of Education, 7th and D Streets, S.W. ROB-3, Room 3633, Washington, D.C. 20202-4725.

Definitions for Form ED 424

Novice Applicant (See 34 CFR 75.225). For discretionary grant programs under which the Secretary gives special consideration to novice applications, a novice applicant means any applicant for a grant from ED that—

- Has never received a grant or subgrant under the program from which it seeks funding;

- Has never been a member of a group application, submitted in accordance with 34 CFR 75.127-75.129, that received a grant under the program from which it seeks funding; and

- Has not had an active discretionary grant from the Federal government in the five years before the deadline date for applications under the program. For the purposes of this requirement, a grant is active until the end of the grant's project or funding period, including any extensions of those periods that extend the grantee's authority to obligate funds.

In the case of a group application submitted in accordance with 34 CFR 75.127-75.129, a group includes only parties that meet the requirements listed above.

Type of Submission. "Construction" includes construction of new buildings and acquisition, expansion, remodeling, and alteration of existing buildings, and initial equipment of any such buildings, or any combination of such activities (including architects' fees and the cost of acquisition of land). "Construction" also includes remodeling to meet standards, remodeling designed to conserve energy, renovation or remodeling to accommodate new technologies, and the purchase of existing historic buildings for conversion to public libraries. For the purposes of this paragraph, the term "equipment" includes machinery, utilities, and built-in equipment and any necessary enclosures or structures to house them; and such term includes all other items necessary for the functioning of a particular facility as a facility for the provision of library services.

Executive Order 12372. The purpose of Executive Order 12372 is to foster an intergovernmental partnership and strengthen federalism by relying on State and local processes for the coordination and review of proposed Federal financial assistance and direct Federal development. The application notice, as published in the Federal Register, informs the applicant as to whether the program is subject to the requirements of E.O. 12372. In addition, the application package contains information on the State Single Point of Contact. An applicant is still eligible to apply for a grant or grants even if its respective State, Territory, Commonwealth, etc. does not have a State Single Point of Contact. For additional information on E.O. 12372 go to http://www.cfda.gov/public/eo12372.htm.

PROTECTION OF HUMAN SUBJECTS IN RESEARCH

I. Definitions and Exemptions

A. Definitions.

A research activity involves human subjects if the activity is research, as defined in the Department's regulations, and the research activity will involve use of human subjects, as defined in the regulations.

—Research

The ED Regulations for the Protection of Human Subjects, Title 34, Code of Federal Regulations, Part 97, define research as "a systematic investigation, including research development, testing and evaluation, designed to develop or contribute to generalizable knowledge." If an activity follows a deliberate plan whose purpose is to develop or contribute to generalizable knowledge, it is research. Activities which meet this definition constitute research whether or not they are conducted or supported under a program which is considered research for other purposes. For example, some demonstration and service programs may include research activities.

—Human Subject

The regulations define human subject as "a living individual about whom an investigator (whether professional or student) conducting research obtains (1) data through intervention or interaction with the individual, or (2) identifiable private information." (1) If an activity involves obtaining information about a living person by manipulating that person or that person's environment, as might occur when a new instructional technique is tested, or by communicating or interacting with the individual, as occurs with surveys and interviews, the definition of human subject is met. (2) If an activity involves obtaining private information about a living person in such a way that the information can be linked to that individual (the identity of the subject is or may be readily determined by the investigator or associated with the information), the definition of human subject is met. [Private information includes information about behavior that occurs in a context in which an individual can reasonably expect that no observation or recording is taking place, and information which has been provided for specific purposes by an individual and which the individual can reasonably expect will not be made public (for example, a school health record).]

B. Exemptions.

Research activities in which the only involvement of human subjects will be in one or more of the following six categories of exemptions are not covered by the regulations:

(1) Research conducted in established or commonly accepted educational settings, involving normal educational practices, such as (a) research on regular and special education instructional strategies, or (b) research on the effectiveness of or the comparison among instructional techniques, curricula, or classroom management methods.

(2) Research involving the use of educational tests (cognitive, diagnostic, aptitude, achievement), survey procedures, interview procedures or observation of public behavior, unless: (a) information obtained is recorded in such a manner that human subjects can be identified, directly or through identifiers linked to the subjects; and (b) any disclosure of the human subjects' responses outside the research could reasonably place the subjects at risk of criminal or civil liability or be damaging to the subjects' financial standing, employability, or reputation. If the subjects are children, exemption 2 applies only to research involving educational tests and observations of public behavior when the investigator(s) do not participate in the

activities being observed. Exemption 2 does not apply if children are surveyed or interviewed or if the research involves observation of public behavior and the investigator(s) participate in the activities being observed. [Children are defined as persons who have not attained the legal age for consent to treatments or procedures involved in the research, under the applicable law or jurisdiction in which the research will be conducted.]

(3) Research involving the use of educational tests (cognitive, diagnostic, aptitude, achievement), survey procedures, interview procedures or observation of public behavior that is not exempt under section (2) above, if the human subjects are elected or appointed public officials or candidates for public office; or federal statute(s) require(s) without exception that the confidentiality of the personally identifiable information will be maintained throughout the research and thereafter.

(4) Research involving the collection or study of existing data, documents, records, pathological specimens, or diagnostic specimens, if these sources are publicly available or if the information is recorded by the investigator in a manner that subjects cannot be identified, directly or through identifiers linked to the subjects.

(5) Research and demonstration projects which are conducted by or subject to the approval of department or agency heads, and which are designed to study, evaluate, or otherwise examine: (a) public benefit or service programs; (b) procedures for obtaining benefits or services under those programs; (c) possible changes in or alternatives to those programs or procedures; or (d) possible changes in methods or levels of payment for benefits or services under those programs.

(6) Taste and food quality evaluation and consumer acceptance studies, (a) if wholesome foods without additives are consumed or (b) if a food is consumed that contains a food ingredient at or below the level and for a use found to be safe, or agricultural chemical or environmental contaminant at or below the level found to be safe, by the Food and Drug Administration or approved by the Environmental Protection Agency or the Food Safety and Inspection Service of the U.S. Department of Agriculture.

II. Instructions for Exempt and Nonexempt Human Subjects Research Narratives

If the applicant marked "Yes" for Item 12 on the ED 424, the applicant must provide a human subjects "exempt research" or "nonexempt research" narrative and insert it immediately following the ED 424 face page.

A. Exempt Research Narrative.

If you marked "Yes" for item 12a. and designated exemption numbers(s), provide the "exempt research" narrative. The narrative must contain sufficient information about the involvement of human subjects in the proposed research to allow a determination by ED that the designated exemption(s) are appropriate. The narrative must be succinct.

B. Nonexempt Research Narrative.

If you marked "No" for item 12a. you must provide the "nonexempt research" narrative. The narrative must address the following seven points. Although no specific page limitation applies to this section of the application, be succinct.

(1) Human Subjects Involvement and Characteristics: Provide a detailed description of the proposed involvement of human subjects. Describe the characteristics of the subject population, including their anticipated number, age range, and health status. Identify the criteria for inclusion or exclusion of any subpopulation. Explain the rationale for the involvement of special classes of subjects, such as children, children with disabilities, adults with disabilities, persons with mental disabilities, pregnant women, prisoners, institutionalized individuals, or others who are likely to be vulnerable

(2) Sources of Materials: Identify the sources of research material obtained from individually identifiable living human subjects in the form of specimens, records, or data. Indicate whether the material or data will be obtained specifically for research purposes or whether use will be made of existing specimens, records, or data.

(3) Recruitment and Informed Consent: Describe plans for the recruitment of subjects and the consent procedures to be followed. Include the circumstances under which consent will be sought and obtained, who will seek it, the nature of the information to be provided to prospective subjects, and the method of documenting consent. State if the Institutional Review Board (IRB) has authorized a modification or waiver of the elements of consent or the requirement for documentation of consent.

(4) Potential Risks: Describe potential risks (physical, psychological, social, legal, or other) and assess their likelihood and seriousness. Where appropriate, describe alternative treatments and procedures that might be advantageous to the subjects.

(5) Protection Against Risk: Describe the procedures for protecting against or minimizing potential risks, including risks to confidentiality, and assess their likely effectiveness. Where appropriate, discuss provisions for ensuring necessary medical or professional intervention in the event of adverse effects to the subjects. Also, where appropriate, describe the provisions for monitoring the data collected to ensure the safety of the subjects.

(6) Importance of the Knowledge to be Gained: Discuss the importance of the knowledge gained or to be gained as a result of the proposed research. Discuss why the risks to subjects are reasonable in relation to the anticipated benefits to subjects and in relation to the importance of the knowledge that may reasonably be expected to result.

(7) Collaborating Site(s): If research involving human subjects will take place at collaborating site(s) or other performance site(s), name the sites and briefly describe their involvement or role in the research.

Copies of the Department of Education's Regulations for the Protection of Human Subjects, 34 CFR Part 97 and other pertinent materials on the protection of human subjects in research are available from the Grants Policy and Oversight Staff, Office of the Chief Financial Officer, U.S. Department of Education, Washington, D.C. 20202-4248, telephone: (202) 708-8263, and on the U.S. Department of Education's Protection of Human Subjects in Research Web Site at http://www.ed.gov/offices/OCFO/humansub.html

U.S. DEPARTMENT OF EDUCATION — OMB Control Number: 1890-0004

BUDGET INFORMATION — Expiration Date: 10/31/2003

NON-CONSTRUCTION PROGRAMS

Applicants requesting funding for only one year should complete the column under "Project Year 1." Applicants requesting funding for multi-year grants should complete all applicable columns. Please read all instructions before completing form.

Name of Institution/Organization

SECTION A - BUDGET SUMMARY
U.S. DEPARTMENT OF EDUCATION FUNDS

Budget Categories	Project Year 1 (a)	Project Year 2 (b)	Project Year 3 (c)	Project Year 4 (d)	Project Year 5 (e)	Total (f)
1. Personnel						
2. Fringe Benefits						
3. Travel						
4. Equipment						
5. Supplies						
6. Contractual						
7. Construction						
8. Other						
9. Total Direct Costs (lines 1-8)						
10. Indirect Costs						
11. Training Stipends						
12. Total Costs (lines 9-11)						

ED Form No. 524

Name of Institution/Organization

Applicants requesting funding for only one year should complete the column under "Project Year 1." Applicants requesting funding for multi-year grants should complete all applicable columns. Please read all instructions before completing form.

SECTION B - BUDGET SUMMARY
NON-FEDERAL FUNDS

Budget Categories	Project Year 1 (a)	Project Year 2 (b)	Project Year 3 (c)	Project Year 4 (d)	Project Year 5 (e)	Total (f)
1. Personnel						
2. Fringe Benefits						
3. Travel						
4. Equipment						
5. Supplies						
6. Contractual						
7. Construction						
8. Other						
9. Total Direct Costs (lines 1-8)						
10. Indirect Costs						
11. Training Stipends						
12. Total Costs (lines 9-11)						

SECTION C - OTHER BUDGET INFORMATION (see instructions)

ED Form No. 524

Public reporting burden for this collection of information is estimated to vary from 13 to 22 hours per response, with an average of 17.5 hours per response, including the time reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the U.S. Department of Education, Information Management and Compliance Division, Washington, D.C. 20202-4651; and the Office of Management and Budget, Paperwork Reduction Project 1875-0102, Washington DC 20503.

INSTRUCTIONS FOR ED FORM 524

General Instructions

This form is used to apply to individual U.S. Department of Education discretionary grant programs. Unless directed otherwise, provide the same budget information for each year of the multi-year funding request. Pay attention to applicable program specific instructions, if attached.

Section A - Budget Summary
U.S. Department of Education Funds

All applicants must complete Section A and provide a breakdown by the applicable budget categories shown in lines 1-11.

Lines 1-11, columns (a)-(e): For each project year for which funding is requested, show the total amount requested for each applicable budget category.

Lines 1-11, column (f): Show the multi-year total for each budget category. If funding is requested for only one project year, leave this column blank.

Line 12, columns (a)-(e): Show the total budget request for each project year for which funding is requested.

Line 12, column (f): Show the total amount requested for all project years. If funding is requested for only one year, leave this space blank.

Section B - Budget Summary
Non-Federal Funds

If you are required to provide or volunteer to provide matching funds or other non-Federal resources to the project, these should be shown for each applicable budget category on lines 1-11 of Section B.

Lines 1-11, columns (a)-(e): For each project year for which matching funds or other contributions are provided, show the total contribution for each applicable budget category.

Lines 1-11, column (f): Show the multi-year total for each budget category. If non-Federal contributions are provided for only one year, leave this column blank.

Line 12, columns (a)-(e): Show the total matching or other contribution for each project year.

Line 12, column (f): Show the total amount to be contributed for all years of the multi-year project. If non-Federal contributions are provided for only one year, leave this space blank.

Section C - Other Budget Information
Pay attention to applicable program specific instructions, if attached.

1. Provide an itemized budget breakdown, by project year, for each budget category listed in Sections A and B.
2. If applicable to this program, enter the type of indirect rate (provisional, predetermined, final or fixed) that will be in effect during the funding period. In addition, enter the estimated amount of the base to which the rate is applied, and the total indirect expense.
3. If applicable to this program, provide the rate and base on which fringe benefits are calculated.
4. Provide other explanations or comments you deem necessary.

OMB Approval No. 0348-0040

ASSURANCES - NON-CONSTRUCTION PROGRAMS

Public reporting burden for this collection of information is estimated to average 15 minutes per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Office of Management and Budget, Paperwork Reduction Project (0348-0040), Washington, DC 20503

PLEASE DO NOT RETURN YOUR COMPLETED FORM TO THE OFFICE OF MANAGEMENT AND BUDGET. SEND IT TO THE ADDRESS PROVIDED BY THE SPONSORING AGENCY.

Note: Certain of these assurances may not be applicable to your project or program. If you have questions, please contact the awarding agency. Further, certain Federal awarding agencies may require applicants to certify to additional assurances. If such is the case, you will be notified.

As the duly authorized representative of the applicant I certify that the applicant:

1. Has the legal authority to apply for Federal assistance, and the institutional, managerial and financial capability (including funds sufficient to pay the non-Federal share of project cost) to ensure proper planning, management, and completion of the project described in this application.

2. Will give the awarding agency, the Comptroller General of the United States, and if appropriate, the State, through any authorized representative, access to and the right to examine all records, books, papers, or documents related to the award; and will establish a proper accounting system in accordance with generally accepted accounting standards or agency directives.

3. Will establish safeguards to prohibit employees from using their positions for a purpose that constitutes or presents the appearance of personal or organizational conflict of interest, or personal gain.

4. Will initiate and complete the work within the applicable time frame after receipt of approval of the awarding agency.

5. Will comply with the Intergovernmental Personnel Act of 1970 (42 U.S.C. §§4728-4763) relating to prescribed standards for merit systems for programs funded under one of the 19 statutes or regulations specified in Appendix A of OPM's Standards for a Merit System of Personnel Administration (5 C.F.R. 900, Subpart F).

6. Will comply with all Federal statutes relating to nondiscrimination. These include but are not limited to: (a) Title VI of the Civil Rights Act of 1964 (P.L. 88-352) which prohibits discrimination on the basis of race, color or national origin; (b) Title IX of the Education Amendments of 1972, as amended (20 U.S.C. §§1681-1683, and 1685-1686), which prohibits discrimination on the basis of sex; (c) Section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. §794), which prohibits discrimination on the basis of handicaps; (d) the Age Discrimination Act of 1975, as amended (42 U.S.C. §§ 6101-6107), which prohibits discrimination on the basis of age; (e) the Drug Abuse Office and Treatment Act of 1972 (P.L. 92-255), as amended, relating to nondiscrimination on the basis of drug abuse; (f) the Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment and Rehabilitation Act of 1970 (P.L. 91-616), as amended, relating to nondiscrimination on the basis of alcohol abuse or alcoholism; (g) §§ 523 and 527 of the Public Health Service Act of 1912 (42 U.S.C. §§ 290 dd-3 and 290 ee 3), as amended, relating to confidentiality of alcohol and drug abuse patient records; (h) Title VIII of the Civil Rights Act of 1968 (42 U.S.C. § 3601 et seq.), as amended, relating to nondiscrimination in the sale, rental or financing of housing; (i) any other nondiscrimination provisions in the specific statute(s) under which application for Federal assistance is being made; and (j) the requirements of any other nondiscrimination statute(s) which may apply to the application.

7. Will comply, or has already complied, with the requirements of Titles II and III of the uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (P.L. 91-646) which provide for fair and equitable treatment of persons displaced or whose property is acquired as a result of Federal or federally assisted programs. These requirements apply to all interests in real property acquired for project purposes regardless of Federal participation in purchases.

8. Will comply, as applicable, with the provisions of the Hatch Act (5 U.S.C. §§1501-1508 and 7324-7328) which limit the political activities of employees whose principal employment activities are funded in whole or in part with Federal funds.

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Prescribed by OMB Circular A-102

9. Will comply, as applicable, with the provisions of the Davis-Bacon Act (40 U.S.C. §§276a to 276a-7), the Copeland Act (40 U.S.C. §276c and 18 U.S.C. §§874) and the Contract Work Hours and Safety Standards Act (40 U.S.C. §§ 327-333), regarding labor standards for federally assisted construction subagreements.

10. Will comply, if applicable, with flood insurance purchase requirements of Section 102(a) of the Flood Disaster Protection Act of 1973 (P.L. 93-234) which requires recipients in a special flood hazard area to participate in the program and to purchase flood insurance if the total cost of insurable construction and acquisition is $10,000 or more.

11. Will comply with environmental standards which may be prescribed pursuant to the following: (a) institution of environmental quality control measures under the National Environmental Policy Act of 1969 (P.L. 91-190) and Executive Order (EO) 11514; (b) notification of violating facilities pursuant to EO 11738; (c) protection of wetlands pursuant to EO 11990; (d) evaluation of flood hazards in floodplains in accordance with EO 11988; (e) assurance of project consistency with the approved State management program developed under the Coastal Zone Management Act of 1972 (16 U.S.C. §§1451 et seq.); (f) conformity of Federal actions to State (Clear Air) Implementation Plans under Section 176(c) of the Clear Air Act of 1955, as amended (42 U.S.C. §§7401 et seq.); (g) protection of underground sources of drinking water under the Safe Drinking Water Act of 1974, as amended, (P.L. 93-523); and (h) protection of endangered species under the Endangered Species Act of 1973, as amended, (P.L. 93-205).

12 Will comply with the Wild and Scenic Rivers Act of 1968 (16 U.S.C. §§1721 et seq.) related to protecting components or potential components of the national wild and scenic rivers system.

13. Will assist the awarding agency in assuring compliance with Section 106 of the National Historic Preservation Act of 1966, as amended (16 U.S.C. §470), EO 11593 (identification and protection of historic properties), and the Archaeological and Historic Preservation Act of 1974 (16 U.S.C. §§469a-1 et seq.).

14. Will comply with P.L. 93-348 regarding the protection of human subjects involved in research, development, and related activities supported by this award of assistance.

15. Will comply with the Laboratory Animal Welfare Act of 1966 (P.L. 89-544, as amended, 7 U.S.C. §§2131 et seq.) pertaining to the care, handling, and treatment of warm blooded animals held for research, teaching, or other activities supported by this award of assistance.

16. Will comply with the Lead-Based Paint Poisoning Prevention Act (42 U.S.C. §§4801 et seq.) which prohibits the use of lead-based paint in construction or rehabilitation of residence structures.

17. Will cause to be performed the required financial and compliance audits in accordance with the Single Audit Act Amendments of 1996 and OMB Circular No. A-133, AAudits of States, Local Governments, and Non-Profit Organizations.≅

18. Will comply with all applicable requirements of all other Federal laws, executive orders, regulations and policies governing this program.

SIGNATURE OF AUTHORIZED CERTIFYING OFFICIAL	TITLE
APPLICANT ORGANIZATION	DATE SUBMITTED

Standard Form 424B (Rev. 7-97) Back

CERTIFICATIONS REGARDING LOBBYING; DEBARMENT, SUSPENSION AND OTHER RESPONSIBILITY MATTERS; AND DRUG-FREE WORKPLACE REQUIREMENTS

Applicants should refer to the regulations cited below to determine the certification to which they are required to attest. Applicants should also review the instructions for certification included in the regulations before completing this form. Signature of this form provides for compliance with certification requirements under 34 CFR Part 82, "New Restrictions on Lobbying," and 34 CFR Part 85, "Government-wide Debarment and Suspension (Nonprocurement) and Government-wide Requirements for Drug-Free Workplace (Grants)." The certifications shall be treated as a material representation of fact upon which reliance will be placed when the Department of Education determines to award the covered transaction, grant, or cooperative agreement.

1. LOBBYING

As required by Section 1352, Title 31 of the U.S. Code, and implemented at 34 CFR Part 82, for persons entering into a grant or cooperative agreement over $100,000, as defined at 34 CFR Part 82, Sections 82.105 and 82.110, the applicant certifies that:

(a) No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the making of any Federal grant, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal grant or cooperative agreement;

(b) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal grant or cooperative agreement, the undersigned shall complete and submit Standard Form - LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions;

(c) The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subgrants, contracts under grants and cooperative agreements, and subcontracts) and that all subrecipients shall certify and disclose accordingly.

2. DEBARMENT, SUSPENSION, AND OTHER RESPONSIBILITY MATTERS

As required by Executive Order 12549, Debarment and Suspension, and implemented at 34 CFR Part 85, for prospective participants in primary covered transactions, as defined at 34 CFR Part 85, Sections 85.105 and 85.110--

A. The applicant certifies that it and its principals:

(a) Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal department or agency;

(b) Have not within a three-year period preceding this application been convicted of or had a civil judgement rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State, or local) transaction or contract under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;

(c) Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, State, or local) with commission of any of the offenses enumerated in paragraph (2)(b) of this certification; and

(d) Have not within a three-year period preceding this application had one or more public transaction (Federal, State, or local) terminated for cause or default; and

B. Where the applicant is unable to certify to any of the statements in this certification, he or she shall attach an explanation to this application.

3. DRUG-FREE WORKPLACE (GRANTEES OTHER THAN INDIVIDUALS)

As required by the Drug-Free Workplace Act of 1988, and implemented at 34 CFR Part 85, Subpart F, for grantees, as defined at 34 CFR Part 85, Sections 85.605 and 85.610 -

A. The applicant certifies that it will or will continue to provide a drug-free workplace by:

(a) Publishing a statement notifying employees that the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance is prohibited in the grantee's workplace and specifying the actions that will be taken against employees for violation of such prohibition;

(b) Establishing an on-going drug-free awareness program to inform employees about:

(1) The dangers of drug abuse in the workplace;

(2) The grantee's policy of maintaining a drug-free workplace;

(3) Any available drug counseling, rehabilitation, and employee assistance programs; and

(4) The penalties that may be imposed upon employees for drug abuse violations occurring in the workplace;

(c) Making it a requirement that each employee to be engaged in the performance of the grant be given a copy of the statement required by paragraph (a);

(d) Notifying the employee in the statement required by paragraph (a) that, as a condition of employment under the grant, the employee will:

(1) Abide by the terms of the statement; and

(2) Notify the employer in writing of his or her conviction for a violation of a criminal drug statute occurring in the workplace no later than five calendar days after such conviction;

(e) Notifying the agency, in writing, within 10 calendar days after receiving notice under subparagraph (d)(2) from an employee or otherwise receiving actual notice of such conviction. Employers of convicted employees must provide notice, including position title, to: Director, Grants Policy and Oversight Staff, U.S. Department of Education, 400 Maryland Avenue, S.W. (Room 3652, GSA Regional Office Building No. 3), Washington, DC 20202-4248. Notice shall include the identification number(s) of each affected grant;

(f) Taking one of the following actions, within 30 calendar days of receiving notice under subparagraph (d)(2), with respect to any employee who is so convicted:

(1) Taking appropriate personnel action against such an employee, up to and including termination, consistent with the requirements of the Rehabilitation Act of 1973, as amended; or

(2) Requiring such employee to participate satisfactorily in a drug abuse assistance or rehabilitation program approved for such purposes by a Federal, State, or local health, law enforcement, or other appropriate agency;

(g) Making a good faith effort to continue to maintain a drug-free workplace through implementation of paragraphs (a), (b), (c), (d), (e), and (f).

B. The grantee may insert in the space provided below the site(s) for the performance of work done in connection with the specific grant:

Place of Performance (Street address. city, county, state, zip code)

Check [ ] if there are workplaces on file that are not identified here.

DRUG-FREE WORKPLACE (GRANTEES WHO ARE INDIVIDUALS)

As required by the Drug-Free Workplace Act of 1988, and implemented at 34 CFR Part 85, Subpart F, for grantees, as defined at 34 CFR Part 85, Sections 85.605 and 85.610-

A. As a condition of the grant, I certify that I will not engage in the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance in conducting any activity with the grant; and

B. If convicted of a criminal drug offense resulting from a violation occurring during the conduct of any grant activity, I will report the conviction, in writing, within 10 calendar days of the conviction, to: Director, Grants Policy and Oversight Staff, Department of Education, 400 Maryland Avenue, S.W. (Room 3652, GSA Regional Office Building No. 3), Washington, DC 20202-4248. Notice shall include the identification number(s) of each affected grant.

As the duly authorized representative of the applicant, I hereby certify that the applicant will comply with the above certifications.

NAME OF APPLICANT	PR/AWARD NUMBER AND / OR PROJECT NAME
PRINTED NAME AND TITLE OF AUTHORIZED REPRESENTATIVE	
SIGNATURE	DATE

ED 80-0013 12/98

Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion – Lower Tier Covered Transactions

This certification is required by the Department of Education regulations implementing Executive Order 12549, Debarment and Suspension, 34 CFR Part 85, for all lower tier transactions meeting the threshold and tier requirements stated at Section 85.110.

Instructions for Certification

1. By signing and submitting this proposal, the prospective lower tier participant is providing the certification set out below.

2. The certification in this clause is a material representation of fact upon which reliance was placed when this transaction was entered into. If it is later determined that the prospective lower tier participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.

3. The prospective lower tier participant shall provide immediate written notice to the person to which this proposal is submitted if at any time the prospective lower tier participant learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.

4. The terms "covered transaction," "debarred," "suspended," "ineligible," "lower tier covered transaction," "participant," " person," "primary covered transaction," " principal," "proposal," and "voluntarily excluded," as used in this clause, have the meanings set out in the Definitions and Coverage sections of rules implementing Executive Order 12549. You may contact the person to which this proposal is submitted for assistance in obtaining a copy of those regulations.

5. The prospective lower tier participant agrees by submitting this proposal that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency with which this transaction originated.

6. The prospective lower tier participant further agrees by submitting this proposal that it will include the clause titled "Certification Regarding Debarment, Suspension, Ineligibility, and Voluntary Exclusion-Lower Tier Covered Transactions," without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions.

7. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that it is not debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant may decide the method and frequency by which it determines the eligibility of its principals. Each participant may but is not required to, check the Nonprocurement List.

8. Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of a participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.

9. Except for transactions authorized under paragraph 5 of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal Government, the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.

Certification

(1) The prospective lower tier participant certifies, by submission of this proposal, that neither it nor its principals are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or agency.

(2) Where the prospective lower tier participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

NAME OF APPLICANT	PR/AWARD NUMBER AND/OR PROJECT NAME
PRINTED NAME AND TITLE OF AUTHORIZED REPRESENTATIVE	
SIGNATURE	DATE

ED 80-0014, 9/90 (Replaces GCS-009 (REV.12/88), which is obsolete)

Approved by OMB
0348-0046

Disclosure of Lobbying Activities

Complete this form to disclose lobbying activities pursuant to 31 U.S.C. 1352
(See reverse for public burden disclosure)

1. Type of Federal Action: a. contract ____ b. grant c. cooperative agreement d. loan e. loan guarantee f. loan insurance	**2. Status of Federal Action:** a. bid/offer/application ____ b. initial award c. post-award	**3. Report Type:** a. initial filing ____ b. material change **For material change only:** Year _____ quarter _____ Date of last report_____
4. Name and Address of Reporting Entity: ___ Prime ____ Subawardee Tier_____, if Known: **Congressional District, if known:**		**5. If Reporting Entity in No. 4 is Subawardee,** Enter Name and Address of Prime: **Congressional District, if known:**
6. Federal Department/Agency:		**7. Federal Program Name/Description:** CFDA Number, *if applicable*: _____
8. Federal Action Number, *if known:*		**9. Award Amount,** *if known:* **$**
10. a. Name and Address of Lobbying Registrant *(if individual, last name, first name, MI):*		**b. Individuals Performing Services** *(including address if different from No. 10a)* *(last name, first name, MI):*
11. Information requested through this form is authorized by title 31 U.S.C. section 1352. This disclosure of lobbying activities is a material representation of fact upon which reliance was placed by the tier above when this transaction was made or entered into. This disclosure is required pursuant to 31 U.S.C. 1352. This information will be reported to the Congress semi-annually and will be available for public inspection. Any person who fails to file the required disclosure shall be subject to a civil penalty of not less than $10,000 and not more than $100,000 for each such failure.		**Signature:** _____ **Print Name:**_____ **Title:**_____ **Telephone No.:** _____ **Date:** _____
Federal Use Only		**Authorized for Local Reproduction** **Standard Form - LLL (Rev. 7-97)**

INSTRUCTIONS FOR COMPLETION OF SF-LLL, DISCLOSURE OF LOBBYING ACTIVITIES

This disclosure form shall be completed by the reporting entity, whether subawardee or prime Federal recipient, at the initiation or receipt of a covered Federal action, or a material change to a previous filing, pursuant to title 31 U.S.C. section 1352. The filing of a form is required for each payment or agreement to make payment to any lobbying entity for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with a covered Federal action. Complete all items that apply for both the initial filing and material change report. Refer to the implementing guidance published by the Office of Management and Budget for additional information.

1. Identify the type of covered Federal action for which lobbying activity is and/or has been secured to influence the outcome of a covered Federal action.

2. Identify the status of the covered Federal action.

3. Identify the appropriate classification of this report. If this is a followup report caused by a material change to the information previously reported, enter the year and quarter in which the change occurred. Enter the date of the last previously submitted report by this reporting entity for this covered Federal action.

4. Enter the full name, address, city, State and zip code of the reporting entity. Include Congressional District, if known. Check the appropriate classification of the reporting entity that designates if it is, or expects to be, a prime or subaward recipient. Identify the tier of the subawardee, e.g., the first subawardee of the prime is the 1st tier. Subawards include but are not limited to subcontracts, subgrants and contract awards under grants.

5. If the organization filing the report in item 4 checks "Subawardee," then enter the full name, address, city, State and zip code of the prime Federal recipient. Include Congressional District, if known.

6. Enter the name of the federal agency making the award or loan commitment. Include at least one organizational level below agency name, if known. For example, Department of Transportation, United States Coast Guard.

7. Enter the Federal program name or description for the covered Federal action (item 1). If known, enter the full Catalog of Federal Domestic Assistance (CFDA) number for grants, cooperative agreements, loans, and loan commitments.

8. Enter the most appropriate Federal identifying number available for the Federal action identified in item 1 (e.g., Request for Proposal (RFP) number; Invitations for Bid (IFB) number; grant announcement number; the contract, grant, or loan award number; the application/proposal control number assigned by the Federal agency). Included prefixes, e.g., "RFP-DE-90-001."

9. For a covered Federal action where there has been an award or loan commitment by the Federal agency, enter the Federal amount of the award/loan commitment for the prime entity identified in item 4 or 5.

10. (a) Enter the full name, address, city, State and zip code of the lobbying registrant under the Lobbying Disclosure Act of 1995 engaged by the reporting entity identified in item 4 to influence the covered Federal action.

(b) Enter the full names of the individual(s) performing services, and include full address if different from 10(a). Enter Last Name, First Name, and Middle Initial (MI).

11. The certifying official shall sign and date the form, print his/her name, title, and telephone number.

According to the Paperwork Reduction Act, as amended, no persons are required to respond to a collection of information unless it displays a valid OMB control Number. The valid OMB control number for this information collection is OMB No. 0348-0046. Public reporting burden for this collection of information is estimated to average 10 minutes per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Office of Management and Budget, Paperwork Reduction Project (0348-0046), Washington, DC 20503

SURVEY ON ENSURING EQUAL OPPORTUNITY FOR APPLICANTS

Do not enter information below unless instructed to do so.

OMB No. 1890-0014 Exp. 1/31/2006

Purpose: This form is for applicants that are nonprofit private organizations (not including private universities). Please complete it to assist the Federal government in ensuring that all qualified applicants, small or large, non-religious or faith-based, have an equal opportunity to compete for Federal funding. Information provided on this form will not be considered in any way in making funding decisions and will not be included in the Federal grants database.

Instructions for Submitting Survey

If submitting hard copy, please place the completed survey in an envelope labeled "Applicant Survey." Seal the envelope and include it with your application package.

If submitting electronically, please include the PR Award Number assigned to your e-application in the box above entitled "*Do not enter information below unless instructed to do so.*" Place and seal the completed survey in an envelope and mail it to: Joyce I. Mays, Application Control Center, U.S. Department of Education, 7th and D Streets, SW, ROB-3, Room 3671, Washington, DC 20202-4725.

1. Does the applicant have 501(c)(3) status?
   - ❑ Yes ❑ No

2. How many full-time equivalent employees does the applicant have? *(Check only one box).*
   - ❑ 3 or Fewer
   - ❑ 4-5
   - ❑ 6-14
   - ❑ 15-50
   - ❑ 51-100
   - ❑ over 100

3. What is the size of the applicant's annual budget? *(Check only one box.)*
   - ❑ Less Than $150,000
   - ❑ $150,000 - $299,999
   - ❑ $300,000 - $499,999
   - ❑ $500,000 - $999,999
   - ❑ $1,000,000 - $4,999,999
   - ❑ $5,000,000 or more

4. Is the applicant a faith-based/religious organization?
   - ❑ Yes ❑ No

5. Is the applicant a non-religious community-based organization?
   - ❑ Yes ❑ No

6. Is the applicant an intermediary that will manage the grant on behalf of other organizations?
   - ❑ Yes ❑ No

7. Has the applicant ever received a government grant or contract (Federal, State, or local)?
   - ❑ Yes ❑ No

8. Is the applicant a local affiliate of a national organization?
   - ❑ Yes ❑ No

Survey Instructions on Ensuring Equal Opportunity for Applicants

1. 501(c)(3) status is a legal designation provided on application to the Internal Revenue Service by eligible organizations. Some grant programs may require nonprofit applicants to have 501(c)(3) status. Other grant programs do not.

2. For example, two part-time employees who each work half-time equal one full-time equivalent employee. If the applicant is a local affiliate of a national organization, the responses to survey questions 2 and 3 should reflect the staff and budget size of the local affiliate.

3. Annual budget means the amount of money your organization spends each year on all of its activities.

4. Self-identify.

5. An organization is considered a community-based organization if its headquarters/service location shares the same zip code as the clients you serve.

6. An "intermediary" is an organization that enables a group of small organizations to receive and manage government funds by administering the grant on their behalf.

7. Self-explanatory.

8. Self-explanatory

Paperwork Burden Statement

According to the Paperwork Reduction Act of 1995, no persons are required to respond to a collection of information unless such collection displays a valid OMB control number. The valid OMB control number for this information collection is 1890-0014. The time required to complete this information collection is estimated to average five (5) minutes per response, including the time to review instructions, search existing data resources, gather the data needed, and complete and review the information collection. **If you have any comments concerning the accuracy of the time estimate(s) or suggestions for improving this form, please write to:** U.S. Department of Education, Washington, D.C. 20202-4651. **If you have comments or concerns regarding the status of your individual submission of this form, write directly to:** Joyce I. Mays, Application Control Center, U.S. Department of Education, 7th and D Streets, SW, ROB-3, Room 3671, Washington, DC 20202-4725.

[FR Doc. 03–11981 Filed 5–13–03; 8:45 am]
BILLING CODE 4000–01–C

Federal Register

Wednesday,
May 14, 2003

Part V

The President

Proclamation 7675—Peace Officers Memorial Day and Police Week, 2003
Proclamation 7676—National Defense Transportation Day and National Transportation Week, 2003
Proclamation 7677—National Safe Boating Week, 2003

Federal Register
Vol. 68, No. 93
Wednesday, May 14, 2003

Presidential Documents

Title 3—

The President

Proclamation 7675 of May 9, 2003

Peace Officers Memorial Day and Police Week, 2003

By the President of the United States of America

A Proclamation

Every day across the country, from our largest cities to our quietest crossroads, peace officers stand watch over our citizens, selflessly risking their lives to protect individuals, families, neighborhoods, and property against crime. This week, we salute these men and women for their courage, commitment, and service, and we honor those who have fallen in the line of duty. We also reaffirm our commitment to supporting law enforcement by bringing our communities together to fight crime.

Peace officers fulfill a great calling in upholding the rule of law in our society. Law enforcement officers choose their profession and take their oaths knowing that theirs is a dangerous job. They accept these risks, answering the call of duty and demonstrating a willingness to serve that reflects the best of America.

As they work to protect our communities, peace officers often place themselves in harm's way. Some make the ultimate sacrifice in defense of others. During Police Week, and particularly on Peace Officers Memorial Day, we pay tribute to the 148 law enforcement officers who gave their lives in the line of duty last year. Those who have fallen are remembered in our hearts and in the memory of our country. Through their service and sacrifice, they have earned our Nation's respect and gratitude.

As we honor these fallen heroes, we should also resolve to support all law enforcement officers by becoming active in the fight against crime. Strong communities and neighborhoods help deter crime. By coming together as neighbors, and by looking out for each other, Americans can assist law enforcement in preventing crime in our communities and also help secure our homeland from the threat of terrorism. In the new world we face since September 11, one of our best defenses is a vigilant public working with law enforcement to help protect our land.

I created the USA Freedom Corps to foster a culture of service, citizenship, and responsibility in America, and to provide opportunities for Americans to get involved in helping their communities. A key component of Freedom Corps is the Citizen Corps, which helps coordinate volunteer activities that make our communities safer, stronger, and better prepared for emergencies. Since the Citizens Corps was launched last year, more than 500 Citizen Corps Councils have been established, bringing together first responders, local government officials, and volunteer service organizations.

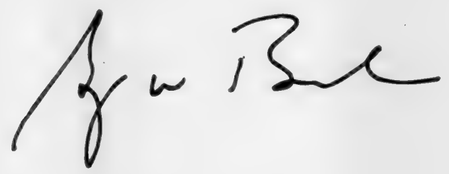
Volunteers are also working with police departments through more than 430 Volunteers in Police Service programs in our Nation. Additionally, the number of registered Neighborhood Watch groups continues to grow. To build on these successes, we should continue to strengthen partnerships between citizens and local law enforcement and work to engage more volunteers in public safety and emergency preparedness. By joining together to fight crime, we honor the memory and uphold the legacy of all those who gave their lives to preserve our safety and security.

By a joint resolution approved October 1, 1962, as amended, (76 Stat. 676), the Congress has authorized and requested the President to designate May

15 of each year as "Peace Officers Memorial Day" and the week in which it falls as "Police Week," and, by Public Law 103–322, as amended, (36 U.S.C. 136), has directed that the flag be flown at half-staff on Peace Officers Memorial Day.

NOW, THEREFORE, I, GEORGE W. BUSH, President of the United States of America, do hereby proclaim May 15, 2003, as Peace Officers Memorial Day and May 11 through May 17, 2003, as Police Week. I call on all Americans to observe these events with appropriate ceremonies and activities. I also call on Governors of the United States and the Commonwealth of Puerto Rico, as well as appropriate officials of all units of government, to direct that the flag be flown at half-staff on Peace Officers Memorial Day. I further encourage all Americans to display the flag at half-staff from their homes and businesses on that day.

IN WITNESS WHEREOF, I have hereunto set my hand this ninth day of May, in the year of our Lord two thousand three, and of the Independence of the United States of America the two hundred and twenty-seventh.



[FR Doc. 03–12196
Filed 5–13–03: 8:45 am]
Billing code 3195–01–P

Presidential Documents

Proclamation 7676 of May 9, 2003

National Defense Transportation Day and National Transportation Week, 2003

By the President of the United States of America

A Proclamation

America's transportation system takes us where we need to go, keeps our economy moving, and strengthens our Nation's security. On National Defense Transportation Day and during National Transportation Week, we celebrate how modern transportation has transformed the world and recognize the men and women who have contributed to its progress. We also renew our commitment to increasing transportation safety and to keeping our transportation system on the leading edge of technology.

Our 21st century transportation system safely and securely transports our citizens and delivers a wide range of goods throughout the country and the world. In times of war, our transportation system also moves troops and carries defense cargo efficiently. Preserving and enhancing our transportation resources makes that infrastructure safer, facilitates growth in business and industry, creates jobs, secures our Nation, and improves the quality of life of our citizens.

To sustain these advantages, we must continue to invest in our Nation's transportation systems. From enhancing existing highways, waterways, railway lines, pipelines, and airports, to developing fuel-efficient and reduced-emissions vehicles, we must work towards improving safety, protecting the environment, and furthering our national defense. As part of these efforts, my Administration has announced a hydrogen fuel initiative to reverse America's growing dependence on foreign oil by developing the technology to produce commercially viable, hydrogen fuel cells, which will help power cars and trucks with no emissions of air pollution or greenhouse gases. This new national commitment could make it possible for the first car driven by a child born today to be powered by hydrogen, and be pollution-free.

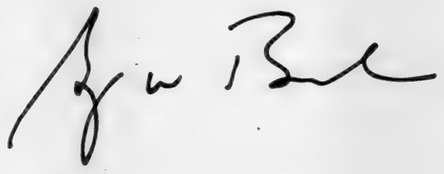
Through the newly created Department of Homeland Security, my Administration is working towards strengthening protections throughout our national transportation system. Designed to increase protections for America's citizens while maintaining the free flow of goods and people across our borders, our comprehensive national plan includes selective maritime restrictions, increased airport security, and improved railroad infrastructure security. We are also enforcing temporary flight restrictions and flying Combat Air Patrols over critical sites, increasing surveillance of hazardous material shipments within our country, and taking measures to keep hazardous materials away from places where large numbers of people gather. We are determined to defend the American homeland, and we will do all in our power to make sure our skies, rails, pipelines, waterways, and roads are safe from terror.

To recognize the men and women who work in the transportation industry and who contribute to our Nation's well-being, and defense, the Congress, by joint resolution approved May 16, 1957, as amended (36 U.S.C. 120), has designated the third Friday in May of each year as "National Defense Transportation Day," and, by joint resolution approved May 14, 1962, as

amended (36 U.S.C. 133), declared that the week during which that Friday falls be designated as "National Transportation Week."

NOW, THEREFORE, I, GEORGE W. BUSH, President of the United States of America, do hereby proclaim Friday, May 16, 2003, as National Defense Transportation Day and May 11 through May 17, 2003, as National Transportation Week. I encourage all Americans to learn more about how our modern transportation system enhances our economy and contributes to our freedom.

IN WITNESS WHEREOF, I have hereunto set my hand this ninth day of May, in the year of our Lord two thousand three, and of the Independence of the United States of America the two hundred and twenty-seventh.



[FR Doc. 03–12197
Filed 5–13–03; 8:45 am]
Billing code 3195–01–P

Presidential Documents

Proclamation 7677 of May 9, 2003

National Safe Boating Week, 2003

By the President of the United States of America

A Proclamation

As summer approaches, Americans are looking forward to enjoying our Nation's rivers, lakes, and oceans. National statistics show that recreational boating is safer today than ever before, with the number of boating fatalities declining even as the number of boats increases. However, lives continue to be lost needlessly, and we must remain committed to boating safety. During National Safe Boating Week, we are reminded that practicing simple steps can make recreational boating safer and more enjoyable.

This year's theme, "Boat Smart. Boat Safe. Wear It!" highlights the importance and ease of wearing life jackets. Drowning remains the number one cause of recreational boating fatalities. According to the United States Coast Guard, nearly 80 percent of those who died in boating accidents in 2001 were not wearing life jackets. In many of these cases, life jackets were available on board, but were useless to the passengers in the boats because the speed and suddenness of the accident prevented them from having time to put on their life jackets. The chances of surviving a serious boating accident increase dramatically by wearing a life jacket. Modern life jackets are smaller, lighter, and more flexible, making them easier and more comfortable to wear.

The National Safe Boating Council, the National Association of State Boating Law Administrators, and the U.S. Coast Guard are working with other campaign partners to encourage safe boating practices through the 2003 North American Safe Boating Campaign. In addition to wearing life jackets, the campaign encourages boaters to enroll in a boating safety class, to ensure that boats are properly maintained and checked for safety, to follow regulations and guidelines relating to homeland security issues, and not to consume alcohol when operating a boat. More information about staying safe on the water is available by visiting the U.S. Coast Guard's Office of Boating Safety website at www.uscgboating.org. By improving our skills and increasing our knowledge of recreational boating safety, we can reduce the loss of life, the injuries, and the property damage that occur on our waterways.

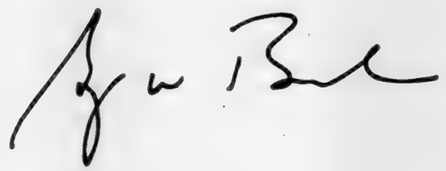
Safe boating also contributes to homeland security and frees the time of public safety officers to focus on enforcement issues. The same Coast Guard members, marine patrol, police, and fire officers who respond to recreational boating accidents are also responsible for protecting the security of our ports and waterways. By avoiding boating accidents, Americans can help these officials devote more time and effort to safeguarding our homeland.

In recognition of the importance of safe boating practices, the Congress, by joint resolution approved June 4, 1958 (36 U.S.C. 131), as amended, has authorized and requested the President to proclaim annually the 7-day period prior to Memorial Day weekend as "National Safe Boating Week."

NOW, THEREFORE, I, GEORGE W. BUSH, President of the United States of America, do hereby proclaim May 17 through May 23, 2003, as National Safe Boating Week. I encourage the Governors of the 50 States, the District of Columbia, the Commonwealth of Puerto Rico, and the officials of other areas subject to the jurisdiction of the United States, to join in observing

this occasion. I also urge boaters to learn about proper boating practices, including the wearing of life jackets, and to take advantage of boating safety programs throughout the year.

IN WITNESS WHEREOF, I have hereunto set my hand this ninth day of May, in the year of our Lord two thousand three, and of the Independence of the United States of America the two hundred and twenty-seventh.



[FR Doc. 03–12198
Filed 5–13–03; 8:45 am]
Billing code 3195–01–P

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Federal Register
Vol. 68, No. 93
Wednesday May 14, 2003

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Federal Register/Code of Federal Regulations	
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Presidential Documents	
Executive orders and proclamations	741–6000
The United States Government Manual	741–6000
Other Services	
Electronic and on-line services (voice)	741–6020
Privacy Act Compilation	741–6064
Public Laws Update Service (numbers, dates, etc.)	741–6043
TTY for the deaf-and-hard-of-hearing	741–6086

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FEDERAL REGISTER PAGES AND DATE, MAY

23183–23376	1
23377–23568	2
23569–23884	5
23885–24332	6
24333–24604	7
24605–24858	8
24859–25278	9
25279–25478	12
25479–25808	13
25809–26200	14

CFR PARTS AFFECTED DURING MAY

At the end of each month, the Office of the Federal Register publishes separately a List of CFR Sections Affected (LSA), which lists parts and sections affected by documents published since the revision date of each title.

3 CFR

Proclamations:
7668 23821
7669 23823
7670 23825
7671 23827
7672 23829
7673 24333
7674 25277
7675 26195
7676 26197
7677 26199

Executive Orders:
12865 (Revoked by 13298) 24857
13069 (Revoked by 13298) 24857
13098 (Revoked by 13298) 24857
13298 24857
13299 25477
13300 25807

Administrative Orders:
Memorandums:
Memorandum of May 6, 2003 25275
Presidential Determinations:
No. 2003-22 of May 6, 2003 25809

5 CFR

213 24605
Ch. XIV 23885
2424 23885
2429 23885
2471 23885
2472 23885

Proposed Rules:
2601 23876

7 CFR

6 25479
29 25484
46 23377
56 25484
301 ..... 24605, 24613
868 24589
932 23378
985 ..... 23569, 25486
989 25279
1410 24830
1424 24596
1710 24335

Proposed Rules:
274 23927
276 23927
278 23927
279 23927
280 23927
360 23425
1530 23230

9 CFR

Proposed Rules:
2 24052
130 25308

10 CFR

40 25281
70 23574
71 23574
72 23183
73 23574
150 25281

Proposed Rules:
20 23618
490 23620

12 CFR

21 25090
208 25090
211 25090
326 25090
563 25090
740 23381
748 25090

Proposed Rules:
613 ..... 23425, 23426

14 CFR

1 25486
11 25486
25 ..... 24336, 24338
39 ..... 23183, 23186, 23190, 23384, 23387, 23575, 23886, 24614, 24861, 25488, 25811
71 ..... 23577, 23579, 23580, 23581, 23682, 24340, 24341, 24342, 24864, 24866, 24868, 24869, 24870, 24871, 24872, 24874, 25489, 25491, 25492, 25493, 25494, 25495, 25684
73 25495
77 23583
97 ..... 23888, 23889
382 24874

Proposed Rules:
3 23808
39 ..... 23231, 23235, 23427, 23620, 24383, 25543
71 ..... 23622, 23624, 23625, 23626
119 24810
121 24810
135 24810
145 24810
255 ..... 24896, 25844
330 23627
399 ..... 24896, 25844

15 CFR

0 24878
270 24343
902 24615

16 CFR
305 23584
Proposed Rules:
309 24669

17 CFR
42 25149
230 25788
232 ..... 24345, 25788
239 25788
240 25788
241 25281
249 25788
250 25788
259 25788
260 25788
269 25788
270 25131
274 25788

18 CFR
375 25814
376 25814
Proposed Rules:
35 24679

19 CFR
178 24052

20 CFR
Proposed Rules:
404 ..... 23192, 24896
416 ..... 23192, 24896

21 CFR
Ch. 1 24879
10 25283
14 25283
20 25283
310 24347
314 25283
358 24347
720 25283
1300 23195
1310 23195
Proposed Rules:
1 ..... 23630, 25242, 25188
11 25188
16 25242
101 23930
1310 24689

22 CFR
42 24638
121 25088
228 23891

23 CFR
140 24639
646 24639
661 24642
Proposed Rules:
630 ..... 23239, 24384

24 CFR
203 23370

25 CFR
Proposed Rules:
170 23631

26 CFR
1 ..... 23586, 24349, 24351, 24644, 24880
301 24644
602 24644
Proposed Rules:
1 ..... 23632, 23931, 24404, 24405, 24406, 24898, 24903, 25310, 25845
54 24406
602 24406

27 CFR
Proposed Rules:
4 24903
5 24903
7 24903
9 25851
13 24903

28 CFR
Proposed Rules:
513 25545

29 CFR
Proposed Rules:
1480 23634
1910 23528

30 CFR
36 23892
917 24644
948 24355
950 24647

31 CFR
103 ..... 25090, 25149, 25113, 25163
315 24794
351 24794
353 24794
359 24794
360 24794
363 24794
Proposed Rules:
103 ..... 23640, 23646, 23653, 25163

32 CFR
311 24880
505 25816
806B 24881
Proposed Rules:
701 24904

33 CFR
100 ..... 25817, 25818
110 25496
117 ..... 23390, 23590, 24882, 24883, 25818
165 ..... 23390, 23393, 23399, 23591, 23594, 23595, 23893, 23894, 23896, 24359, 24361, 24883, 25288, 25498, 25500, 25818
Proposed Rules:
62 25855
165 ..... 23935, 24406, 24408
66 25855
67 25855
72 25855
401 25546

34 CFR
674 25821
682 25821
685 25821

36 CFR
Proposed Rules:
251 ..... 25748, 25751
1280 23430

37 CFR
Proposed Rules:
262 23241

38 CFR
2 25503
4 25822
Proposed Rules:
39 23249

39 CFR
Proposed Rules:
111 23937

40 CFR
51 25684
52 ..... 23206, 23207, 23404, 23597, 23604, 24363, 24365, 24368, 24885, 25414, 25418, 25442, 25504
62 ..... 23209, 25291
63 ..... 23898, 24562, 24653
71 25507
80 24300
81 ..... 24368, 25418, 25442
89 25823
180 ..... 24370, 25824, 25831
271 ..... 23407, 23607
300 23211
312 24888
438 25686
Proposed Rules:
Ch. 1 ..... 24410, 25312
52 ..... 23270, 23430, 23661, 23662, 24416, 24417, 25547
60 24692
62 ..... 23272, 25313
71 25548
80 24311
146 ..... 23666, 23673
258 25550
300 23939

44 CFR
64 23408
67 23898
Proposed Rules:
67 23941

45 CFR
2 25838
32 24052
148 23410
301 25293
302 25293
303 25293
304 25293
307 25293
1309 23212

46 CFR
Proposed Rules:
540 23947

47 CFR
Ch. 1 25840
1 ..... 23417, 25841
2 25512
52 25843
73 ..... 23613, 23900, 23901, 25512, 25542
74 25512
80 25512
90 25512
97 25512
Proposed Rules:
1 23431
15 23677
64 25313
73 24417

48 CFR
511 24372
516 24372
532 24372
538 24372
546 24372
552 24372
1802 23423
1806 23423
1815 23423
1816 23423
1843 23423
1845 23424
Proposed Rules:
245 25313

49 CFR
107 ..... 23832, 24653
171 ..... 23832, 24653
173 24653
176 23832
177 ..... 23832, 24653
180 24653
209 24891
383 23844
384 23844
571 ..... 23614, 24664
1570 23852
1572 23852
Proposed Rules:
193 23272
572 24417
1137 ..... 23947, 25859

50 CFR
17 25934
216 24905
300 ..... 23224, 23901
600 23901
648 ..... 24914, 25305
660 ..... 23901, 23913, 23924
679 ..... 23925, 24615, 24667, 24668
Proposed Rules:
18 24700
20 24324
216 24905
622 23686
648 ..... 23275, 23948, 23949, 24914

REMINDERS

The items in this list were editorially compiled as an aid to Federal Register users. Inclusion or exclusion from this list has no legal significance.

RULES GOING INTO EFFECT MAY 14, 2003

AGRICULTURE DEPARTMENT
Agricultural Marketing Service
Spearmint oil produced in Far West; published 5-13-03; comments due by 12-30-99; published 5-13-03 [FR 03-11891]

DEFENSE DEPARTMENT
Army Department
Privacy Act; implementation:; published 5-14-03; comments due by 12-30-99; published 5-14-03 [FR 03-12004]

EDUCATION DEPARTMENT
Postsecondary education:
Federal Perkins Loan, Federal Direct Loan, and Federal Family Education Loan Programs; waivers and modifications; published 5-14-03; comments due by 12-30-99; published 5-14-03 [FR 03-11982]

ENVIRONMENTAL PROTECTION AGENCY
Air pollution control; new motor vehicles and engines:
Nonroad diesel engines; nonroad engine definition; published 4-11-03; comments due by 12-30-99; published 4-11-03 [FR 03-08955]
Pesticides; tolerances in food, animal feeds, and raw agricultural commodities:
Indoxacarb; published 5-14-03; comments due by 12-30-99; published 5-14-03 [FR 03-11758]
Pyriproxyfen; published 5-14-03; comments due by 7-14-03; published 5-14-03 [FR 03-12022]

FEDERAL COMMUNICATIONS COMMISSION
Common carrier services:
Numbering resource optimization; correction; published 5-14-03; comments due by 12-30-99; published 5-14-03 [FR 03-11963]

TRANSPORTATION DEPARTMENT
Federal Aviation Administration
Airworthiness directives:
Bombardier; published 4-29-03; comments due by 5-29-03; published 4-29-03 [FR 03-10235]
Empresa Brasileira de Aeronautica, S.A. (EMBRAER); published 4-29-03; comments due by 5-29-03; published 4-29-03 [FR 03-10236]

COMMENTS DUE NEXT WEEK

AGRICULTURE DEPARTMENT
Agricultural Marketing Service
Hass avocado promotion, research, and information order; comments due by 5-19-03; published 3-18-03 [FR 03-06510]

AGRICULTURE DEPARTMENT
Animal and Plant Health Inspection Service
Plant related quarantine; domestic:
Fire ant, imported; methoprene, authorized treatment; comments due by 5-20-03; published 3-21-03 [FR 03-06799]
User fees:
Export certificates for ruminants; comments due by 5-20-03; published 3-21-03 [FR 03-06797]

AGRICULTURE DEPARTMENT
Foreign Agricultural Service
Farmers; trade adjustment assistance; comments due by 5-23-03; published 4-23-03 [FR 03-10050]

COMMERCE DEPARTMENT
National Oceanic and Atmospheric Administration
Fishery conservation and management:
West Coast States and Western Pacific fisheries—
Pacific Coast groundfish; correction; comments due by 5-22-03; published 5-6-03 [FR 03-11084]
West Coast salmon; comments due by 5-21-03; published 5-6-03 [FR 03-11083]

EDUCATION DEPARTMENT
Elementary and secondary education:
Disadvantaged children; academic achievement improvement; comments due by 5-19-03; published 3-20-03 [FR 03-06653]

ENVIRONMENTAL PROTECTION AGENCY
Air pollution control:
Interstate ozone transport reduction—
Nitrogen oxides budget trading program; Section 126 petitions; findings of significant contribution and rulemaking; withdrawal provision; comments due by 5-24-03; published 4-4-03 [FR 03-08152]

ENVIRONMENTAL PROTECTION AGENCY
Air quality implementation plans; approval and promulgation; various States; air quality planning purposes; designation of areas:
Wisconsin; comments due by 5-19-03; published 4-17-03 [FR 03-09347]

ENVIRONMENTAL PROTECTION AGENCY
Air quality implementation plans; approval and promulgation; various States; air quality planning purposes; designation of areas:
Wisconsin; comments due by 5-19-03; published 4-17-03 [FR 03-09348]

ENVIRONMENTAL PROTECTION AGENCY
Air quality implementation plans; approval and promulgation; various States:
Louisiana; comments due by 5-21-03; published 4-21-03 [FR 03-09619]

ENVIRONMENTAL PROTECTION AGENCY
Air quality implementation plans; approval and promulgation; various States:
Louisiana; comments due by 5-21-03; published 4-21-03 [FR 03-09620]
Superfund program:
Toxic chemical release reporting; community right-to-know—
North American Industry Classification System; comments due by 5-20-03; published 3-21-03 [FR 03-06582]

GOVERNMENT ETHICS OFFICE
Government ethics:
Post-employment conflict of interest restrictions; comments due by 5-19-03; published 2-18-03 [FR 03-03043]
Correction; comments due by 5-19-03; published 3-31-03 [FR 03-07539]

HEALTH AND HUMAN SERVICES DEPARTMENT
Food and Drug Administration
Human drugs:
Ophthalmic products for emergency first aid use (OTC); final monograph; amendment; comments due by 5-20-03; published 2-19-03 [FR 03-03927]

HOMELAND SECURITY DEPARTMENT
Coast Guard
Drawbridge operations:
Florida; comments due by 5-19-03; published 3-19-03 [FR 03-06637]
New Jersey; comments due by 5-19-03; published 3-20-03 [FR 03-06638]
Ports and waterways safety:
Long Island Sound Marine Inspection and Captain of Port Zone, CT; regulated navigation area and safety and security zones; comments due by 5-19-03; published 3-20-03 [FR 03-06642]

HOMELAND SECURITY DEPARTMENT
Customs Service
Articles conditionally free, subject to reduced rates, etc.:
African Growth and Opportunity Act; sub-Saharan Africa trade benefits; textile and apparel provisions; comments due by 5-20-03; published 3-21-03 [FR 03-06760]
Caribbean Basin Economic Recovery Act; textile and apparel provisions; comments due by 5-20-03; published 3-21-03 [FR 03-06755]

HOMELAND SECURITY DEPARTMENT
Customs Service
Merchandise, special classes, and financial and accounting procedures:
Patent Survey Program; discontinuation; comments due by 5-19-03; published 3-20-03 [FR 03-06756]

INTERIOR DEPARTMENT
Surface coal mining hearings and appeals; special rules; comments due by 5-19-03; published 3-20-03 [FR 03-06555]

LABOR DEPARTMENT
Mine Safety and Health Administration
Coal mine safety and health:

Underground mines—
Sanitary toilets; standards; comments due by 5-21-03; published 4-21-03 [FR 03-09656]

LABOR DEPARTMENT
Mine Safety and Health Administration
Coal mine safety and health:
Underground mines—
Sanitary toilets; standards; comments due by 5-21-03; published 4-21-03 [FR 03-09655]

LABOR DEPARTMENT
Mine Safety and Health Administration
Metal and nonmetal mine safety and health:
Seat belts for off-road work machines and wheeled agricultural tractors; comments due by 5-21-03; published 4-21-03 [FR 03-09658]

LABOR DEPARTMENT
Mine Safety and Health Administration
Metal and nonmetal mine safety and health:
Seat belts for off-road work machines and wheeled agricultural tractors; comments due by 5-21-03; published 4-21-03 [FR 03-09657]

LIBRARY OF CONGRESS
Copyright Office, Library of Congress
Copyright Arbitration Royalty Panel rules and procedures:
Digital performance of sound recordings; reasonable rates and terms determinations; comments due by 5-21-03; published 4-21-03 [FR 03-09783]

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION
Space flight:
Astronaut candidates; recruitment and selection; comments due by 5-23-03; published 4-23-03 [FR 03-10002]

NUCLEAR REGULATORY COMMISSION
Byproduct material; medical use:
Clarifications and amendments; comments due by 5-21-03; published 4-21-03 [FR 03-09601]

NUCLEAR REGULATORY COMMISSION
Byproduct material; medical use:
Clarifications and amendments; comments due by 5-21-03; published 4-21-03 [FR 03-09602]

PERSONNEL MANAGEMENT OFFICE
Health and counseling programs, Federal employees:
Child care costs for lower income employees; agency use of appropriated funds; comments due by 5-23-03; published 3-24-03 [FR 03-06887]

TRANSPORTATION DEPARTMENT
Procedural regulations:
Air carriers; compensation procedures; adjustment; comments due by 5-19-03; published 5-5-03 [FR 03-11185]

TRANSPORTATION DEPARTMENT
Federal Aviation Administration
Airworthiness directives:
Bell; comments due by 5-19-03; published 3-18-03 [FR 03-06136]

TRANSPORTATION DEPARTMENT
Federal Aviation Administration
Airworthiness directives:
Bombardier; comments due by 5-23-03; published 4-23-03 [FR 03-09690]

TRANSPORTATION DEPARTMENT
Federal Aviation Administration
Airworthiness directives:
General Electric Co.; comments due by 5-19-03; published 3-18-03 [FR 03-06044]

TRANSPORTATION DEPARTMENT
Federal Aviation Administration
Airworthiness directives:
Short Brothers and Harland Ltd.; comments due by 5-19-03; published 4-10-03 [FR 03-08750]
Airworthiness standards:
Special conditions—
Embraer Model ERJ-170 series airplanes; comments due by 5-23-03; published 4-23-03 [FR 03-10045]
Class E airspace; comments due by 5-19-03; published 4-3-03 [FR 03-08143]

TRANSPORTATION DEPARTMENT.
Federal Aviation Administration
Class E airspace; comments due by 5-19-03; published 4-17-03 [FR 03-09506]

TRANSPORTATION DEPARTMENT
National Highway Traffic Safety Administration
Insurer reporting requirements:
Insurers required to file reports; list; comments due by 5-20-03; published 3-21-03 [FR 03-05629]

TREASURY DEPARTMENT
Foreign Assets Control Office
Cuban assets control regulations:
Family and educational travel transactions, remittances, support for Cuban people and humanitarian projects; technical amendments; comments due by 5-23-03; published 3-24-03 [FR 03-06808]

TREASURY DEPARTMENT
Internal Revenue Service
Excise taxes:
Structured settlement factoring transactions; cross-reference; comments due by 5-20-03; published 2-19-03 [FR 03-03865]

TREASURY DEPARTMENT
Currency and foreign transactions; financial reporting and recordkeeping requirements:
USA PATRIOT Act; implementation—
Nauru; special measures imposition due to designation as primary money laundering concern; comments due by 5-19-03; published 4-17-03 [FR 03-09410]
Terrorism Risk Insurance Program
State residual market insurance entities and State workers' compensation funds; comments due by 5-19-03; published 4-18-03 [FR 03-09613]

TREASURY DEPARTMENT
Terrorism Risk Insurance Program
Statutory conditions for Federal payment; comments due by 5-19-03; published 4-18-03 [FR 03-09611]

TREASURY DEPARTMENT
Terrorism Risk Insurance Program
Statutory conditions for Federal payment; cross-reference; comments due by 5-19-03; published 4-18-03 [FR 03-09612]

VETERANS AFFAIRS DEPARTMENT
Grants and cooperative agreements; availability, etc.:
Homeless Providers Grant and Per Diem Program; comments due by 5-19-03; published 3-19-03 [FR 03-06329]

LIST OF PUBLIC LAWS

This is a continuing list of public bills from the current session of Congress which have become Federal laws. It may be used in conjunction with "PLUS" (Public Laws Update Service) on 202–741–6043. This list is also available online at *http://www.nara.gov/fedreg/plawcurr.html*.

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H.R. 1770/P.L. 108–20
Smallpox Emergency Personnel Protection Act of 2003 (Apr. 30, 2003; 117 Stat. 638)

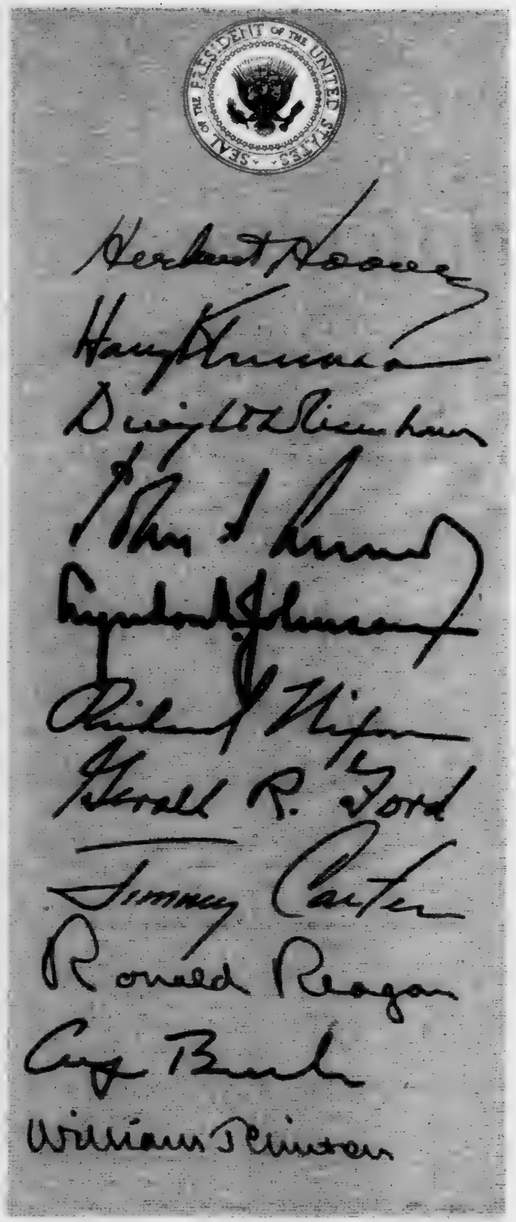
S. 151/P.L. 108–21
Prosecutorial Remedies and Other Tools to end the Exploitation of Children Today Act of 2003 (Apr. 30, 2003; 117 Stat. 650)

Last List April 29, 2003

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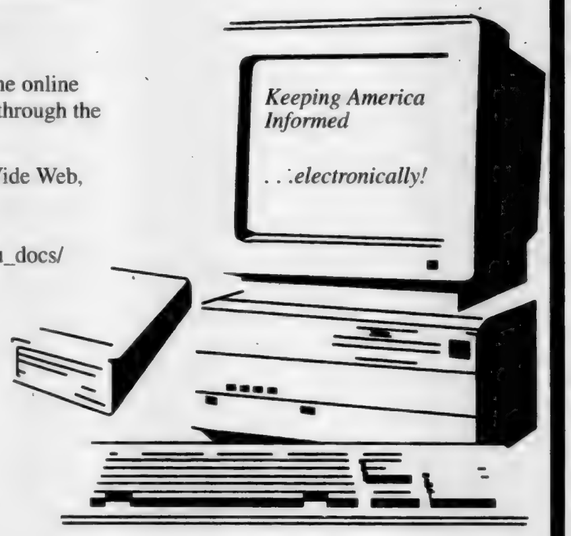
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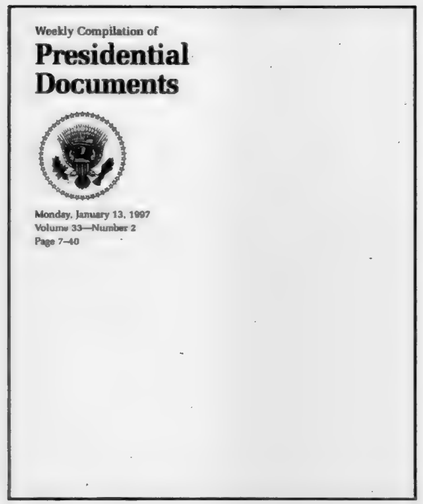
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Federal Register

5–15–03 Thursday
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Contents

Federal Register
Vol. 68, No. 94
Thursday, May 15, 2003

Administration on Aging
See Aging Administration

Aging Administration
NOTICES
Grants and cooperative agreements; availability, etc.:
National Consumer Protection Technical Resource Center, 26298

Agriculture Department
See Animal and Plant Health Inspection Service
See Forest Service
See Natural Resources Conservation Service
See Rural Utilities Service
NOTICES
Committees; establishment, renewal, termination, etc.:
Dietary Guidelines Advisory Committee, 26280

Animal and Plant Health Inspection Service
NOTICES
Agency information collection activities; proposals, submissions, and approvals, 26281

Army Department
See Engineers Corps
NOTICES
Meetings:
Western Hemisphere Institute for Security Cooperation Board of Visitors, 26292–26293

Centers for Disease Control and Prevention
NOTICES
Grants and cooperative agreements; availability, etc.:
Occupational safety and health—
Education programs, 26298–26306

Centers for Medicare & Medicaid Services
See Inspector General Office, Health and Human Services Department

Civil Rights Commission
NOTICES
Meetings; State advisory committees:
North Carolina, 26287–26288
South Carolina, 26288

Coast Guard
RULES
Drawbridge operations:
Texas, 26208
Ports and waterways safety:
Anchorage, Knik Arm, AK; security zone, 26208–26210
PROPOSED RULES
Ports and waterways safety:
Chesapeake Bay, MD; Cove Point Liquefied Natural Gas Terminal; safety and security zone, 26247–26248

Commerce Department
See International Trade Administration
See National Oceanic and Atmospheric Administration

Defense Department
See Army Department
See Engineers Corps
PROPOSED RULES
Acquisition regulations:
Purchases from required source; competition requirements, 26265–26269

Drug Enforcement Administration
PROPOSED RULES
Schedules of controlled substances:
Fenfluramine; removal; withdrawn, 26247
NOTICES
Applications, hearings, determinations, etc.:
Banerjee, Sankar N., M.D., 26355
Bristol-Myers Squibb Pharma Co., 26355
Cerilliant Corp., 26355–26356
Chattem Chemicals, Inc., 26356
Kooker, Robert A., M.D., 26357

Education Department
NOTICES
Grants and cooperative agreements; availability, etc.:
Elementary and secondary education—
Advanced Placement Incentive Program, 26425–26429
Arts in Education Model Development and Dissemination Program, 26431–26456

Energy Department
See National Nuclear Security Administration
NOTICES
Electricity export and import authorizations, permits, etc.:
OGE Energy Resources, Inc., 26294
Grants and cooperative agreements; availability, etc.:
Controlled Hydrogen Fleet and Infrastructure Demonstration and Validation Project, 26294–26295
Natural gas exportation and importation:
H.Q. Energy Services (U.S.) Inc. et al., 26295–26296

Engineers Corps
NOTICES
Environmental statements; availability, etc.:
Harrison County, MS; Royal D'Iberville Hotel and Casino development, 26293
Environmental statements; notice of intent:
Hotspot Miami Beach, Dade County, FL; Section 227 National Shoreline Erosion Control Demonstration Project, 26293–26294

Environmental Protection Agency
RULES
Air quality implementation plans; approval and promulgation; various States; air quality planning purposes; designation of areas:
Colorado, 26212–26220
Air quality implementation plans; approval and promulgation; various States:
Utah, 26210–26212
PROPOSED RULES
Air pollutants, hazardous; national emission standards:
Control technology determinations; general provisions; amendments, 26249–26265

Air quality implementation plans; approval and promulgation; various States; air quality planning purposes; designation of areas:
Colorado, 26248–26249
Air quality implementation plans; approval and promulgation; various States:
Utah, 26248

Federal Aviation Administration
RULES
Airworthiness directives:
Rolls-Royce plc, 26201–26202
VOR Federal airways and jet routes, 26202–26204
PROPOSED RULES
Airworthiness directives:
Cessna, 26239–26242, 26244–26247
Dornier, 26242–26244
Airworthiness standards:
Special conditions—
Cessna Model 680 Sovereign airplane, 26237–26239
NOTICES
Environmental statements; availability, etc.:
Potomac Consolidated Terminal Radar Approach Control (TRACON) airspace redesign, 26373
Exemption petitions; summary and disposition, 26373–26374

Federal Communications Commission
RULES
Television broadcasting:
Noncommercial educational broadcast station applicants; comparative standards reexamination; motion for stay of low power television auction, 26220–26230
NOTICES
Agency information collection activities; proposals, submissions, and approvals, 26297

Federal Election Commission
PROPOSED RULES
Bipartisan Campaign Reform Act; implementation:
Presidential candidates and nominating conventions; public financing, 26237

Federal Motor Carrier Safety Administration
NOTICES
Motor carrier safety standards:
Controlled substances and alcohol testing regulations; exemption applications—
Aero Mayflower Transit et al., 26374–26375

Federal Reserve System
NOTICES
Banks and bank holding companies:
Change in bank control, 26297
Formations, acquisitions, and mergers; correction, 26297–26298

Food and Drug Administration
RULES
Animal drugs, feeds, and related products:
Carprofen, 26205
Fenbendazole suspension, 26204–26205
Penicillin G potassium in drinking water, 26204
Xylazine injection, 26205–26206
NOTICES
Agency information collection activities; proposals, submissions, and approvals, 26306–26308
Reports and guidance documents; availability, etc.:
Medical devices—
Surgical masks; premarket notification submissions, 26308–26309

Forest Service
NOTICES
Environmental statements; notice of intent:
Chugach National Forest, AK, 26281–26283
Idaho Panhandle National Forest, ID, 26283–26284
Meetings:
Black Hills National Forest Advisory Board, 26284–26285
Resource Advisory Committees—
North Central Idaho, 26285
Ravalli County, 26285
Tuolumne County, 26285

Health and Human Services Department
See Aging Administration
See Centers for Disease Control and Prevention
See Food and Drug Administration
See Health Resources and Services Administration
See Inspector General Office, Health and Human Services Department
See National Institutes of Health
See Public Health Service
NOTICES
Committees; establishment, renewal, termination, etc.:
Dietary Guidelines Advisory Committee, 26280

Health Resources and Services Administration
NOTICES
Agency information collection activities; proposals, submissions, and approvals, 26309–26310
Grants and cooperative agreements; availability, etc.:
Bioterrorism Training and Curriculum Development Program; correction, 26310

Homeland Security Department
See Coast Guard
See Transportation Security Administration

Housing and Urban Development Department
NOTICES
Agency information collection activities; proposals, submissions, and approvals, 26327–26329

Indian Affairs Bureau
NOTICES
Net Common Fund; partial settlement; payment and distribution:
Ramah Navajo Chapter et al., NM, 26329–26352

Inspector General Office, Health and Human Services Department
NOTICES
Program exclusions; list, 26310–26313

Interior Department
See Indian Affairs Bureau
See Land Management Bureau

Internal Revenue Service
NOTICES
Agency information collection activities; proposals, submissions, and approvals, 26379–26381

International Trade Administration
NOTICES
Antidumping:
Stainless steel wire rods from—
India, 26288–26291
Antidumping and countervailing duties:
Administrative review requests, 26288

Justice Department
See Drug Enforcement Administration
NOTICES
Pollution control; consent judgments:
Corbett, Charles E., Jr., 26352
Ed Krewatch Partnership et al., 26352–26354
Wisconsin Electric Power Co., 26354

Land Management Bureau
NOTICES
Coal leases, exploration licenses, etc.:
Montana, 26352

National Archives and Records Administration
NOTICES
Agency records schedules; availability, 26357–26359

National Commission on Terrorist Attacks Upon the United States
NOTICES
Hearings, 26359

National Council on Disability
NOTICES
Meetings:
Cultural Diversity Advisory Committee, 26359

National Highway Traffic Safety Administration
PROPOSED RULES
Motor vehicle safety standards:
Brake hoses, 26383–26424
Transmission shift lever sequence, starter interlock, and transmission braking effect, 26269–26279
NOTICES
Agency information collection activities; proposals, submissions, and approvals, 26375–26376

National Institutes of Health
NOTICES
Inventions, Government-owned; availability for licensing, 26313–26314
Meetings:
National Cancer Institute, 26314–26316
National Center for Complementary and Alternative Medicine, 26318
National Center for Research Resources, 26316–26319
National Heart, Lung, and Blood Institute, 26319–26320
National Institute of Allergy and Infectious Diseases, 26320–26322, 26324
National Institute of Biomedical Imaging and Bioengineering, 26324
National Institute of Dental and Craniofacial Research, 26324–26325
National Institute of Diabetes and Digestive and Kidney Diseases, 26322–26323
National Institute of Nursing Research, 26324
National Institute on Aging, 26323
National Institute on Deafness and Other Communication Disorders, 26320–26321
National Library of Medicine, 26325
Warren Grant Magnuson Clinical Center Board of Governors, 26325

National Nuclear Security Administration
NOTICES
Environmental statements; availability, etc.:
Los Alamos National Laboratory, NM; Chemical and Metallurgy Research Building Replacement Project, 26296–26297

National Oceanic and Atmospheric Administration
RULES
Fishery conservation and management:
Alaska; fisheries of Exclusive Economic Zone—
Pacific halibut; subsistence fishing; correction, 26230
Caribbean, Gulf, and South Atlantic fisheries—
Gulf of Mexico and South Atlantic coastal migratory pelagic resources and Gulf of Mexico reef fish, 26230–26236
NOTICES
Meetings:
Regional fisheries management, 26291–26292

Natural Resources Conservation Service
NOTICES
Field office technical guides; changes:
Indiana, 26285–26286

Nuclear Regulatory Commission
NOTICES
Meetings:
Yucca Mountain, NV; potential high-level waste repository—
Activities overview, 26360–26361
Applications, hearings, determinations, etc.:
Envirocare of Utah, Inc., 26359–26360

Pension Benefit Guaranty Corporation
RULES
Single-employer plans:
Allocation of assets—
Interest assumptions for valuing and paying benefits, 26206–26208
NOTICES
Multiemployer plans:
Interest rates and assumptions, 26361

Public Health Service
NOTICES
National Toxicology Program:
Center for Evaluation of Risks to Human Reproduction—
Ethylene glycol and propylene glycol; developmental and reproductive toxicity; expert panel reports, 26325–26326

Rural Utilities Service
NOTICES
Agency information collection activities; proposals, submissions, and approvals, 26286–26287

Securities and Exchange Commission
NOTICES
Meetings; Sunshine Act, 26361
Self-regulatory organizations; proposed rule changes:
Boston Stock Exchange, Inc., 26361–26363
Chicago Board Options Exchange, Inc., 26363–26364
Chicago Mercantile Exchange, 26364–26366
International Securities Exchange, Inc., 26366–26369

OneChicago, LLC, 26369–26371

State Department
NOTICES
Passport travel restrictions, U.S.:
Iraq, 26371

Surface Transportation Board
NOTICES
Railroad operation, acquisition, construction, etc.:
Burlington Northern & Santa Fe Railway Co., 26376–26377
Riverview Trenton Railroad Co., 26377–26378
Union Pacific Railroad Co., 26378

Tennessee Valley Authority
NOTICES
Environmental statements; availability, etc.:
Scott and Campbell Counties, TN; Koppers Coal Reserve management plan, 26371–26373

Transportation Department
See Federal Aviation Administration
See Federal Motor Carrier Safety Administration
See National Highway Traffic Safety Administration
See Surface Transportation Board
See Transportation Statistics Bureau
NOTICES
Aviation proceedings:
Hearings, etc.—
USA Jet Airlines, Inc., 26373

Transportation Security Administration
NOTICES
Agency information collection activities; proposals, submissions, and approvals, 26326–26327

Transportation Statistics Bureau
NOTICES
Agency information collection activities; proposals, submissions, and approvals, 26378–26379

Treasury Department
See Internal Revenue Service

United States Institute of Peace
NOTICES
Grants and cooperative agreements; availability, etc.:
Solicited grants—
Senior Fellowship competition, 26381

Separate Parts In This Issue

Part II
Transportation Department, National Highway Traffic Safety Administration, 26383–26424

Part III
Education Department, 26425–26429

Part IV
Education Department, 26431–26456

Reader Aids
Consult the Reader Aids section at the end of this issue for phone numbers, online resources, finding aids, reminders, and notice of recently enacted public laws.

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CFR PARTS AFFECTED IN THIS ISSUE

A cumulative list of the parts affected this month can be found in the Reader Aids section at the end of this issue.

11 CFR
Proposed Rules:
104 26237
107 26237
110 26237
9003 26237
9004 26237
9008 26237
9032 26237
9033 26237
9034 26237
9035 26237
9036 26237
9038 26237

14 CFR
39 26201
71 26202
Proposed Rules:
25 26237
39 (3 documents) 26239, 26242, 26244

21 CFR
520 (2 documents) 26204
522 (2 documents) 26205
Proposed Rules:
1308 26247

29 CFR
4022 26206
4044 26206

33 CFR
117 26208
165 26208
Proposed Rules:
165 26247

40 CFR
52 (2 documents) 26210, 26212
81 26212
Proposed Rules:
52 (2 documents) 26248
63 26249
81 26248

47 CFR
73 26220
74 26220

48 CFR
Proposed Rules:
208 26265
219 26265
252 26265

49 CFR
Proposed Rules:
571 (2 documents) 26269, 26384

50 CFR
300 26230
600 26230
622 26230
679 26230

Rules and Regulations

Federal Register
Vol. 68, No. 94
Thursday, May 15, 2003

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

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DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2003–NE–15–AD; Amendment 39–13146; AD 2003–10–02]

RIN 2120–AA64

Airworthiness Directives; Rolls-Royce plc RB211 Series Turbofan Engines

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule; request for comments.

SUMMARY: The FAA is adopting a new airworthiness directive (AD) for Rolls-Royce plc (RR) RB211–524C2–19 and RB211–524C2–B–19 series turbofan engines. This AD requires replacing the existing low pressure (LP) compressor location bearing assembly, intermediate pressure (IP) compressor location bearing, IP compressor bearing support housing, IP compressor rear stub shaft, LP compressor location bearing support, oil transfer connector assembly, hydraulic oil seal housing, and hydraulic oil seal with improved design parts. This AD is prompted by statistical analysis by the manufacturer of in-service premature bearing failures. The actions specified in this AD are intended to prevent LP compressor failure and uncontained disc failures, resulting in damage to the airplane.

DATES: Effective June 19, 2003.

We must receive any comments on this AD by July 14, 2003.

ADDRESSES: Use one of the following addresses to submit comments on this AD:

- By mail: The Federal Aviation Administration (FAA), New England Region, Office of the Regional Counsel, Attention: Rules Docket No. 2003–NE–15–AD, 12 New England Executive Park, Burlington, MA 01803–5299.
- By fax: (781) 238–7055.
- By e-mail: *9-ane-adcomment@faa.gov*

You may get the service information referenced in this AD from Rolls-Royce plc, PO Box 31, Derby, England, DE248BJ; telephone: 011–44–1332–242424; fax: 011–44–1332–245–418.

You may examine the AD docket, by appointment, at the FAA, New England Region, Office of the Regional Counsel, 12 New England Executive Park, Burlington, MA.

FOR FURTHER INFORMATION CONTACT: Ian Dargin, Aerospace Engineer, Engine Certification Office, FAA, Engine And Propeller Directorate, 12 New England Executive Park; Burlington, MA 01803–5299, telephone (781) 238–7178; fax (781) 238–7199.

SUPPLEMENTARY INFORMATION: The manufacturer has performed statistical analysis of in-service bearing failures in RR RB211–524C2–19 and RB211–524C2–B–19 series turbofan engines. The analysis indicates a more rapid deterioration of the LP compressor location bearing assembly and IP compressor location bearing than the latest bearing standard used on other model RB211 turbofan engines. This AD requires replacing the existing LP compressor location bearing assembly, IP compressor location bearing, IP compressor bearing support housing, IP compressor rear stub shaft, LP compressor location bearing support, oil transfer connector assembly, hydraulic oil seal housing, and hydraulic oil seal with improved design parts. The actions specified in this AD are intended to prevent LP compressor failure and uncontained disc failures, resulting in damage to the airplane.

Relevant Service Information

We have reviewed the technical contents of RR Mandatory Service Bulletin (MSB) No. RB.211–72–D021, Revision 2, dated March 5, 2001, that introduces an improved design LP compressor location bearing assembly. We have also reviewed Service Bulletin (SB) No. RB.211–72–9446, dated October 15, 1993, that introduces an improved design IP compressor location bearing, IP compressor bearing support housing, IP compressor rear stub shaft, LP compressor location bearing support, oil transfer connector assembly, hydraulic oil seal housing, and hydraulic oil seal. MSB No. RB.211–72–D021, Revision 2, dated March 5, 2001, requires that the improved design parts listed in SB RB.211–72–9446, dated October 15, 1993, be installed before or concurrently with the installation of the improved design LP compressor location bearing assembly listed in SB RB.211–72–D021. The Civil Aviation Authority (CAA), which is the airworthiness authority for the U.K., classified MSB No. RB.211–72–D021 as mandatory and issued AD 001–12–2000, dated December 5, 2000, in order to assure the airworthiness of these RR RB211–524C2–19 and RB211–524C2–B–19 series turbofan engines in the U.K.

FAA's Determination and Requirements of This AD

Although none of these affected engine models are used on any airplanes that are registered in the United States, the possibility exists that the engine models could be used on airplanes that are registered in the United States in the future. Since an unsafe condition has been identified that is likely to exist or develop on other RR RB211–524C2–19 and RB211–524C2–B–19 series turbofan engines of the same type design, this AD is being issued to prevent LP compressor failure and uncontained disc failures, resulting in damage to the airplane. This AD requires replacing the LP compressor location bearing assembly, IP compressor location bearing, IP compressor bearing support housing, IP compressor rear stub shaft, LP compressor location bearing support, oil transfer connector assembly, hydraulic oil seal housing, and hydraulic oil seal with improved design parts.

Bilateral Airworthiness Agreement

These engine models are manufactured in the U.K. and is type certificated for operation in the United States under the provisions of § 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, the CAA has kept the FAA informed of the situation described above. The FAA has examined the findings of the CAA, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

FAA's Determination of the Effective Date

Since there are currently no domestic operators of this engine model, notice and opportunity for prior public comment are unnecessary. Therefore, a situation exists that allows the immediate adoption of this regulation.

Changes to 14 CFR Part 39—Effect on the AD

On July 10, 2002, we issued a new version of 14 CFR part 39 (67 FR 47997, July 22, 2002), which governs our AD system. This regulation now includes material that relates to special flight permits, alternative methods of compliance, and altered products. This material previously was included in each individual AD. Since this material is included in 14 CFR part 39, we will not include it in future AD actions.

Comments Invited

This AD is a final rule that involves requirements affecting flight safety and was not preceded by notice and an opportunity for public comment; however, we invite you to submit any written relevant data, views, or arguments regarding this AD. Send your comments to an address listed under **ADDRESSES.** Include "AD Docket No. 2003–NE–15–AD" in the subject line of your comments. If you want us to acknowledge receipt of your mailed comments, send us a self-addressed, stamped postcard with the docket number written on it; we will date-stamp your postcard and mail it back to you. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of the rule that might suggest a need to modify it. If a person contacts us through a nonwritten communication, and that contact relates to a substantive part of this AD, we will summarize the contact and place the summary in the docket. We will consider all comments received by the closing date and may amend the AD in light of those comments.

We are reviewing the writing style we currently use in regulatory documents. We are interested in your comments on whether the style of this document is clear, and your suggestions to improve the clarity of our communications with you. You may get more information about plain language at *http://www.plainlanguage.gov.*

Regulatory Findings

We have determined that this AD will not have federalism implications under Executive Order 13132. This AD will not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government.

For the reasons discussed above, I certify that the regulation:

1. Is not a "significant regulatory action" under Executive Order 12866;

2. Is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and

3. Will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

We prepared a summary of the costs to comply with this AD and placed it in the AD Docket. You may get a copy of this summary by sending a request to us at the address listed under **ADDRESSES.** Include "AD Docket No. 2003–NE–15–AD" in your request.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety.

Adoption of the Amendment

■ Accordingly, under the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

■ 1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

■ 2. The FAA amends § 39.13 by adding the following new airworthiness directive:

2003–10–02 Rolls-Royce plc: Amendment 39–13146. Docket No. 2003–NE–15–AD.

Effective Date

(a) This airworthiness directive (AD) becomes effective June 19, 2003.

Affected ADs

(b) None.

Applicability

(c) This AD is applicable to Rolls-Royce plc (RR) RB211–524C2–19 and RB211–524C2–B–19 series turbofan engines. These engines are installed on, but not limited to Boeing 747 airplanes.

Unsafe Condition

(d) This AD was prompted by statistical analysis by the manufacturer of in-service premature bearing failures. The actions specified in this AD are intended to prevent LP compressor failure and uncontained disc failures, resulting in damage to the airplane.

Compliance

(e) Compliance with this AD is required at next parts exposure, but not later than October 10, 2005, unless already done.

Replacement of LP Location Bearing Assembly

(f) Replace LP compressor location bearing assembly P/N UL22848 or UL29054 with an improved design LP compressor location bearing assembly. Information on the replacement of the LP compressor bearing assembly can be found in RR Mandatory Service Bulletin No. RB.211–72–D021, Revision 2, dated March 5, 2001.

Concurrent Parts Replacement

(g) Either concurrently with, or before replacing the LP compressor location bearing assembly as specified in paragraph (f) of this AD, unless already done, replace IP compressor location bearing, IP compressor bearing support housing, IP compressor rear stub shaft, LP compressor location bearing support, oil transfer connector assembly, hydraulic oil seal housing, and hydraulic oil seal, with improved design parts. Information on the replacement of these improved design parts can be found in RR Service Bulletin No. RB.211–72–9446, dated October 15, 1993.

Alternative Methods of Compliance

(h) Alternative methods of compliance must be requested in accordance with 14 CFR 39.19, and must be approved by the Manager, Engine Certification Office, FAA.

Related Information

(i) CAA airworthiness directive 001–12–2000, dated December 5, 2000, also addresses the subject of this AD.

Issued in Burlington, Massachusetts, on May 7, 2003.

Francis A. Favara,

Acting Manager, Engine and Propeller Directorate, Aircraft Certification Service.

[FR Doc. 03–11974 Filed 5–14–03; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA 2002–13362; Airspace Docket No. 02–ASO–7]

RIN 2120–AA66

Revision of VOR Federal Airways and Jet Routes in the Vicinity of Savannah, GA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action revises four jet routes and seven Very High Frequency Omnidirectional Range (VOR) Federal airways in the vicinity of Savannah, GA. The FAA is taking this action because the Savannah Very High Frequency Omnidirectional Range/Tactical Air Navigation (VORTAC) facility has been relocated to the Savannah International Airport as a result of environmental restrictions at the previous site.

EFFECTIVE DATE: 0901 UTC, July 10, 2003.

FOR FURTHER INFORMATION CONTACT: Paul Gallant, Airspace and Rules Division, ATA–400, Office of Air Traffic Airspace Management, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone: (202) 267–8783.

SUPPLEMENTARY INFORMATION:

Background

On January 23, 2003, the FAA proposed to revise four jet routes and seven VOR Federal airways in the vicinity of Savannah, GA, due to the planned relocation of the Savannah VORTAC (68 FR 3196).

Interested parties were invited to participate in this rulemaking proceeding by submitting written comments. No comments to the proposal were received. Except for editorial changes and the correction of obsolete radial information contained in the description for V–441 between St. Petersburg, FL, and Gators, FL, this rule is the same as that proposed in the notice.

The Rule

This action amends 14 CFR part 71 by revising the legal descriptions of Jet Routes J–51, J–55, J–79, and J–103; and VOR Federal Airways V–3, V–37, V–154, V–185, V–437, V–441, and V–578, in the vicinity of Savannah, GA. This action is being taken as a result of the relocation of the Savannah, GA, VORTAC to a site at the Savannah International Airport due to environmental restrictions at the previous site. This action aligns the affected segments of the above jet routes and VOR Federal airways with the new geographical position of the Savannah VORTAC.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore, this regulation: (1) Is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under Department of Transportation (DOT) Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) does not warrant preparation of a Regulatory Evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

Jet routes and Domestic VOR Federal airways are published in paragraphs 2004 and 6010(a), respectively, of FAA Order 7400.9K, dated August 30, 2002, and effective September 16, 2002, which is incorporated by reference in 14 CFR 71.1. The jet routes and VOR Federal airways listed in this document will be published subsequently in the Order.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Amendment

■ In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A, CLASS B, CLASS C, CLASS D, AND CLASS E, AIRSPACE AREAS; AIRWAYS; ROUTES; AND REPORTING POINTS

■ 1. The authority citation for part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§ 71.1 [Amended]

■ 2. The incorporation by reference in 14 CFR 71.1 of FAA Order 7400.9K, Airspace Designations and Reporting Points, dated August 30, 2002, and effective September 16, 2002, is amended as follows:

Paragraph 2004—Jet Routes

* * * * *

J–51 [Revised]

From Craig, FL; INT Craig 004° and Savannah, GA, 193° radials; Savannah; Columbia, SC; INT Columbia 042° and Flat Rock, VA, 212° radials; Flat Rock; Nottingham, MD; Dupont, DE; to Yardley, NJ.

* * * * *

J–55 [Revised]

From Dolphin, FL; INT Dolphin 331° and Gators, FL, 160° radials; INT Gators 160° and Craig, FL, 192° radials; Craig; INT Craig 004° and Savannah, GA, 193° radials; Savannah; Charleston, SC; Florence, SC; INT Florence 003° and Raleigh-Durham, NC, 224° radials; Raleigh-Durham; INT Raleigh-Durham 035° and Hopewell, VA, 234° radials; Hopewell; INT Hopewell 030° and Nottingham, MD, 174° radials. From Sea Isle, NJ; INT Sea Isle 050° and Hampton, NY, 223° radials; Hampton; Providence, RI; Boston, MA; Kennebunk, ME; Presque Isle, ME; to Mont Joli, PQ, Canada, excluding the portion within Canada.

* * * * *

J–79 [Revised]

From Key West, FL; INT Key West 038° and Dolphin, FL, 244° radials; Dolphin; Palm Beach, FL; Vero Beach, FL; Ormond Beach, FL; INT Savannah, GA, 178° and Charleston, SC, 212° radials; Charleston; Tar River, NC; Franklin, VA; Salisbury, MD; INT Salisbury 018° and Kennedy, NY, 218° radials; Kennedy; INT Kennedy 080° and Nantucket, MA, 254° radials; INT Nantucket 254° and Marconi, MA, 205° radials; Marconi; INT Marconi 006° and Bangor, ME, 206° radials; Bangor.

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J–103 [Revised]

From Ormond Beach, FL; to Savannah, GA.

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Paragraph 6010(a)—Domestic VOR Federal Airways

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V–3 [Revised]

From Key West, FL; INT Key West 083° and Dolphin, FL, 191° radials; Dolphin; Ft. Lauderdale, FL; Palm Beach, FL; Vero Beach, FL; Melbourne, FL; Ormond Beach, FL; Brunswick, GA; INT Brunswick 014° and Savannah, GA, 177° radials; Savannah; INT Savannah 028° and Vance, SC, 203° radials; Vance; Florence, SC; Sandhills, SC; Raleigh-Durham, NC; INT Raleigh-Durham 016° and Flat Rock, VA, 214° radials; Flat Rock; Gordonsville, VA; INT Gordonsville 331° and Martinsburg, WV, 216° radials; Martinsburg; Westminster, MD; INT Westminster 048° and Modena, PA, 258° radials; Modena; Solberg, NJ; INT Solberg 044° and Carmel, NY, 243° radials; Carmel; Hartford, CT; INT Hartford 084° and Boston, MA, 224° radials; Boston; INT Boston 014° and Pease, NH, 185° radials; Pease; INT Pease 004° and Augusta, ME, 233° radials; Augusta; Bangor, ME; INT Bangor 039° and Houlton, ME, 203° radials; Houlton; Presque Isle, ME; to PQ, Canada. The airspace within R–2916, R–2934, R–2935, and within Canada is excluded.

* * * * *

V–37 [Revised]

From Craig, FL; Brunswick, GA; INT Brunswick 014° and Savannah, GA, 177° radials; Savannah; Allendale, SC; Columbia, SC; Charlotte, NC; Pulaski, VA; Elkins, WV; Clarksburg, WV; INT Clarksburg 359° and Ellwood City, PA, 185° radials; Ellwood City; Erie, PA; INT Erie 010° and Toronto, ON, Canada 210° radials; to Toronto. The airspace within Canada is excluded.

* * * * *

V–154 [Revised]

From Rome, GA; INT Rome 166° and Macon, GA, 301° radials; Macon; Dublin, GA; INT Dublin 105° and Savannah, GA, 289° radials; to Savannah.

* * * * *

V–185 [Revised]

From Savannah, GA; INT Savannah 335° and Colliers, SC, 150° radials; Colliers;

Greenwood, SC; Sugarloaf Mountain, NC; Snowbird, TN; INT Snowbird 301° and Volunteer, TN, 069° radials; to Volunteer.

* * * * *

V–437 [Revised]

From Dolphin, FL; INT Dolphin 354° and Pahokee, FL, 157° radials; Pahokee; Melbourne, FL; INT Melbourne 322° and Ormond Beach, FL, 211° radials; Ormond Beach; INT Ormond Beach 360° and Savannah, GA, 177° radials; Savannah; INT Savannah 053° and Charleston, SC, 231° radials; Charleston; to Florence, SC. The airspace within R–2935 is excluded.

* * * * *

V–441 [Revised]

From Melbourne, FL; INT Melbourne 269° and Lakeland, FL, 081° radials; Lakeland; St. Petersburg, FL; INT St. Petersburg 011° and Ocala, FL, 208° radials; Ocala; Gators, FL; INT Gators 014° and Brunswick, GA, 223° radials; Brunswick; INT Brunswick 060° and Savannah, GA, 177° radials; to Savannah.

* * * * *

V–578 [Revised]

From Pecan, GA; Tift Meyers, GA; Alma, GA; INT Alma 072° and Savannah, GA, 196° radials; to Savannah.

* * * * *

Issued in Washington, DC, on May 9, 2003.

Reginald C. Matthews,

Manager, Airspace and Rules Division.

[FR Doc. 03–12049 Filed 5–14–03; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 520

Oral Dosage Form New Animal Drugs; Penicillin G Potassium in Drinking Water

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect approval of an abbreviated new animal drug application (ANADA) filed by Phoenix Scientific, Inc. The ANADA provides for the use of penicillin G in the drinking water of turkeys for the treatment of erysipelas caused by *Erysipelothrix rhusiopathiae*.

DATES: This rule is effective May 15, 2003.

FOR FURTHER INFORMATION CONTACT: Lonnie W. Luther, Center for Veterinary Medicine (HFV–104), Food and Drug Administration, 7519 Standish Pl., Rockville, MD 20855, 301–827–8549, e-mail: *lluther@cvm.fda.gov*.

SUPPLEMENTARY INFORMATION: Phoenix Scientific, Inc., 3915 South 48th Street Ter., St. Joseph, MO 64503, filed ANADA 200–347 that provides for use of Penicillin G Potassium, USP, in the drinking water of turkeys for the treatment of erysipelas caused by *Erysipelothrix rhusiopathiae*. Phoenix Scientific's Penicillin G Potassium, USP, is approved as a generic copy of Fort Dodge Animal Health's Penicillin G Potassium, USP, approved under NADA 55–060. The ANADA is approved as of January 22, 2003, and the regulations are amended in 21 CFR 520.1696b to reflect the approval. The basis of approval is discussed in the freedom of information summary.

In accordance with the freedom of information provisions of 21 CFR part 20 and 21 CFR 514.11(e)(2)(ii), a summary of safety and effectiveness data and information submitted to support approval of this application may be seen in the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852, between 9 a.m. and 4 p.m., Monday through Friday.

The agency has determined under 21 CFR 25.33(a)(1) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

This rule does not meet the definition of "rule" in 5 U.S.C. 804(3)(A) because it is a rule of "particular applicability." Therefore, it is not subject to the congressional review requirements in 5 U.S.C. 801–808.

List of Subjects in 21 CFR Part 520

Animal drugs.

■ Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Veterinary Medicine, 21 CFR part 520 is amended as follows:

PART 520—ORAL DOSAGE FORM NEW ANIMAL DRUGS

■ 1. The authority citation for 21 CFR part 520 continues to read as follows:

Authority: 21 U.S.C. 360b.

§ 520.1696b [Amended]

■ 2. Section 520.1696b *Penicillin G potassium in drinking* water is amended in paragraph (b) by adding "059130" in numerical sequence.

Dated: May 6, 2003.

Stephen F. Sundlof,

Director, Center for Veterinary Medicine.

[FR Doc. 03–12194 Filed 5–14–03; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 520

Oral Dosage Form New Animal Drugs; Fenbendazole Suspension

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect approval of a supplemental new animal drug application (NADA) filed by Intervet, Inc. The supplemental NADA provides for a change to over-the-counter marketing status for the oral use of fenbendazole suspension in goats for removal and control of stomach worms.

DATES: This rule is effective May 15, 2003.

FOR FURTHER INFORMATION CONTACT: Janis R. Messenheimer, Center for Veterinary Medicine (HFV–130), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855; 301–827–7578; e-mail: *jmessenh@cvm.fda.gov*.

SUPPLEMENTARY INFORMATION: Intervet, Inc., PO Box 318, 405 State St., Millsboro, DE 19966, filed a supplement to NADA 128–620 for the oral use of SAFE-GUARD (fenbendazole) Suspension 10% in goats for removal and control of stomach worms. The supplemental NADA is approved as of February 13, 2003, and the regulations are amended in 21 CFR 520.905a to reflect the approval. The basis of approval is discussed in the freedom of information summary.

In accordance with the freedom of information provisions of 21 CFR part 20 and 21 CFR 514.11(e)(2)(ii), a summary of safety and effectiveness data and information submitted to support approval of this application may be seen in the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852, between 9 a.m. and 4 p.m., Monday through Friday.

FDA has determined under 21 CFR 25.33(a)(1) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

This rule does not meet the definition of "rule" in 5 U.S.C. 804(3)(A) because it is a rule of "particular applicability." Therefore, it is not subject to the congressional review requirements in 5 U.S.C. 801–808.

List of Subjects in 21 CFR Part 520

Animal drugs.

■ Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Veterinary Medicine, 21 CFR part 520 is amended as follows:

PART 520—ORAL DOSAGE FORM NEW ANIMAL DRUGS

■ 1. The authority citation for 21 CFR part 520 continues to read as follows:

Authority: 21 U.S.C. 360b.

■ 2. Section 520.905a is amended by revising paragraph (d)(4)(ii) and in paragraph (d)(4)(iii) by removing the last sentence to read as follows:

§ 520.905a Febendazole suspension.

* * * * *

(d) * * *

(4) * * *

(ii) *Indications for use.* For the removal and control of stomach worms (adults) *Haemonchus contortus* and *Teladorsagia circumcincta*.

* * * * *

Dated: April 30, 2003.

Steven F. Sundlof,

Director, Center for Veterinary Medicine.

[FR Doc. 03–12121 Filed 5–14–03; 8:45 am]

BILLING CODE 4160–01–S

neither an environmental assessment nor an environmental impact statement is required.

This rule does not meet the definition of "rule" in 5 U.S.C. 804(3)(A) because it is a rule of "particular applicability." Therefore, it is not subject to the congressional review requirements in 5 U.S.C. 801–808.

List of Subjects in 21 CFR Part 520

Animal drugs.

■ Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Veterinary Medicine, 21 CFR part 520 is amended as follows:

PART 520—ORAL DOSAGE FORM NEW ANIMAL DRUGS

■ 1. The authority citation for 21 CFR part 520 continues to read as follows:

Authority: 21 U.S.C. 360b.

■ 2. Section 520.905a is amended by revising paragraph (d)(4)(ii) and in paragraph (d)(4)(iii) by removing the last sentence to read as follows:

§ 520.905a Febendazole suspension.

* * * * *

(d) * * *

(4) * * *

(ii) *Indications for use.* For the removal and control of stomach worms (adults) *Haemonchus contortus* and *Teladorsagia circumcincta*.

* * * * *

Dated: April 30, 2003.

Steven F. Sundlof,

Director, Center for Veterinary Medicine.

[FR Doc. 03–12121 Filed 5–14–03; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 522

Implantation or Injectable Dosage Form New Animal Drugs; Carprofen

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect approval of a new animal drug application (NADA) filed by Pfizer, Inc. The NADA provides for the veterinary prescription use of carprofen solution in dogs, by subcutaneous injection, for the relief of pain and inflammation associated with osteoarthritis.

DATES: This rule is effective May 15, 2003.

FOR FURTHER INFORMATION CONTACT: Melanie R. Berson, Center for Veterinary Medicine (HFV–110), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301–827–7540, e-mail *mberson@cvm.fda.gov*.

SUPPLEMENTARY INFORMATION: Pfizer, Inc., 235 East 42d St., New York, NY 10017–5755, filed NADA 141–199 for RIMADYL (carprofen) Injection. The NADA provides for the veterinary prescription use of carprofen solution in dogs, by subcutaneous injection, for the relief of pain and inflammation associated with osteoarthritis. The application is approved as of March 3, 2003, and the regulations in part 522 (21 CFR part 522) are amended by adding new § 522.312 to reflect the approval. The basis of approval is discussed in the freedom of information summary.

In accordance with the freedom of information provisions of 21 CFR part 20 and 514.11(e)(2)(ii), a summary of safety and effectiveness data and information submitted to support approval of this application may be seen in the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852, between 9 a.m. and 4 p.m., Monday through Friday.

Under section 512(c)(2)(F)(ii) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 360b(c)(2)(F)(ii)), this approval qualifies for 3 years of marketing exclusivity beginning March 3, 2003.

The agency has determined under 21 CFR 25.33(d)(1) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

This rule does not meet the definition of "rule" in 5 U.S.C. 804(3)(A) because it is a rule of "particular applicability." Therefore, it is not subject to the congressional review requirements in 5 U.S.C. 801–808.

List of Subjects in 21 CFR Part 522

Animal drugs.

■ Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Veterinary Medicine, 21 CFR part 522 is amended as follows:

PART 522—IMPLANTATION OR INJECTABLE DOSAGE FORM NEW ANIMAL DRUGS

■ 1. The authority citation for 21 CFR part 522 continues to read as follows:

Authority: 21 U.S.C. 360b.

■ 2. Section 522.312 is added to read as follows:

§ 522.312 Carprofen.

(a) *Specifications.* Each milliliter of solution contains 50 milligrams (mg) carprofen.

(b) *Sponsor.* See No. 000069 in § 510.600(c) of this chapter.

(c) [Reserved]

(d) *Conditions of use in dogs*—(1) *Amount.* 1 mg per pound (2.2 mg per kilogram) body weight twice daily, by subcutaneous injection.

(2) *Indications for use.* For the relief of pain and inflammation associated with osteoarthritis.

(3) *Limitations.* Federal law restricts this drug to use by or on the order of a licensed veterinarian.

Dated: May 6, 2003.

Steven F. Sundlof,

Director, Center for Veterinary Medicine.

[FR Doc. 03–12041 Filed 5–14–03; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 522

Implantation or Injectable Dosage Form New Animal Drugs; Xylazine

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect approval of a supplemental new animal drug application (NADA) filed by Lloyd, Inc. The supplemental NADA provides for use of a 300 milligram per milliliter strength of xylazine hydrochloride solution in elk and wild deer to produce sedation, accompanied by a shorter period of analgesia. A food safety cautionary statement regarding the use of xylazine in elk and wild deer (Cervidae) is also being codified for currently approved products.

DATES: This rule is effective May 15, 2003.

FOR FURTHER INFORMATION CONTACT: Melanie R. Berson, Center for Veterinary Medicine (HFV–110), Food and Drug Administration, 7500 Standish Pl.,

Rockville, MD 20855, 301–827–7543, e-mail: *mberson@cvm.fda.gov*.

SUPPLEMENTARY INFORMATION: Lloyd, Inc., 604 West Thomas Ave., Shenandoah, IA 51601, filed a supplement to NADA 139–236 that provides for use of CERVIZINE 300 (xylazine hydrochloride) solution in elk and wild deer to produce sedation, accompanied by a shorter period of analgesia. The supplemental NADA is approved as of February 10, 2003, and the regulations are amended in § 522.2662 (21 CFR 522.2662) to reflect the approval. The basis of approval is discussed in the freedom of information summary.

Section 522.2662 is also being amended to revise a codified food safety limitation and to add a food safety cautionary statement regarding the use of xylazine in elk and wild deer (Cervidae). Both statements are currently used in labeling for both pioneer and generic xylazine products. Section 522.2662 is also revised to reflect a current format.

In accordance with the freedom of information provisions of 21 CFR part 20 and 21 CFR 514.11(e)(2)(ii), a summary of safety and effectiveness data and information submitted to support approval of this application may be seen in the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852, between 9 a.m. and 4 p.m., Monday through Friday.

The agency has determined under 21 CFR 25.33(d)(1) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

This rule does not meet the definition of "rule" in 5 U.S.C. 804(3)(A) because it is a rule of "particular applicability." Therefore, it is not subject to the congressional review requirements in 5 U.S.C. 801–808.

List of Subjects in 21 CFR Part 522

Animal drugs.

■ Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Veterinary Medicine, 21 CFR part 522 is amended as follows:

PART 522—IMPLANTATION OR INJECTABLE DOSAGE FORM NEW ANIMAL DRUGS

■ 1. The authority citation for 21 CFR part 522 continues to read as follows:

Authority: 21 U.S.C. 360b.

■ 2. Section 522.2662 and the section heading are revised to read as follows:

§ 522.2662 Xylazine.

(a) *Specifications.* Each milliliter (mL) of solution contains xylazine hydrochloride equivalent to:

(1) 20 milligrams (mg) xylazine.

(2) 100 mg xylazine.

(3) 300 mg xylazine.

(b) *Sponsors.* See sponsors in § 510.600(c) of this chapter for uses as in paragraph (d) of this section.

(1) No. 000010 for use of product described in paragraph (a)(2) of this section as in paragraph (d)(2) of this section.

(2) No. 000856 for use of product described in paragraph (a)(2) of this section as in paragraphs (d)(2), (d)(3)(i), (d)(3)(ii)(A), and (d)(3)(iii) of this section.

(3) Nos. 000859 and 061651 for use of product described in paragraph (a)(1) of this section as in paragraph (d)(1); and product described in paragraph (a)(2) of this section as in paragraphs (d)(2), (d)(3)(i), (d)(3)(ii)(A), and (d)(3)(iii) of this section.

(4) No. 061690 for use of product described in paragraph (a)(1) of this section as in paragraph (d)(1) of this section; product described in paragraph (a)(2) of this section as in paragraphs (d)(2), (d)(3)(i), (d)(3)(ii)(A), and (d)(3)(iii) of this section; and product described in paragraph (a)(3) of this section as in paragraphs (d)(3)(i), (d)(3)(ii)(B), and (d)(3)(iii) of this section.

(c) *Special considerations.* Federal law restricts this drug to use by or on the order of a licensed veterinarian.

(d) *Conditions of use*—(1) *Dogs and cats*—(i) *Amount.* 0.5 mg/pound (lb) intravenously or 1.0 mg/lb subcutaneously.

(ii) *Indications for use.* To produce sedation, as an analgesic, and as a preanesthetic to local or general anesthesia.

(2) *Horses*–(i) *Amount.* 0.5 mg/lb intravenously or 1.0 mg/lb intramuscularly.

(ii) *Indications for use.* To produce sedation, as an analgesic, and as a preanesthetic to local or general anesthesia.

(iii) *Limitations.* Not for use in horses intended for food.

(3) *Elk and deer*–(i) *Amount.* Administer intramuscularly, by hand syringe, or by syringe dart, in the heavy muscles of the croup or shoulder as follows:

(A) Elk (*Cervus canadensis*): 0.25 to 0.5 mg/lb.

(B) Mule deer (*Odocoileus hemionus*), sika deer (*Cervus nippon*), and white-tailed deer (*Odocoileus virginianus*): 1 to 2 mg/lb.

(C) Fallow deer (*Dama dama*): 2 to 4 mg/lb.

(ii) *Indications for use.*

(A) To produce sedation, as an analgesic, and as a preanesthetic to local anesthesia.

(B) To produce sedation, accompanied by a shorter period of analgesia. May be used to calm and facilitate handling of fractious animals for diagnostic procedures, for minor surgical procedures, for therapeutic medication for sedation and relief of pain following injury or surgery, and as a preanesthetic to local anesthetic. At the recommended dosages, can be used in conjunction with local anesthetics, such as procaine or lidocaine.

(iii) *Limitations.* Do not use in domestic food-producing animals. Do not use in Cervidae less than 15 days before or during the hunting season.

Dated: April 2, 2003.

Steven D. Vaughn,

Director, Office of New Animal Drug Evaluation, Center for Veterinary Medicine.

[FR Doc. 03–12120 Filed 5–14–03; 8:45 am]

BILLING CODE 4160–01–S

PENSION BENEFIT GUARANTY CORPORATION

29 CFR Parts 4022 and 4044

Benefits Payable in Terminated Single-Employer Plans; Allocation of Assets in Single-Employer Plans; Interest Assumptions for Valuing and Paying Benefits

AGENCY: Pension Benefit Guaranty Corporation.

ACTION: Final rule.

SUMMARY: The Pension Benefit Guaranty Corporation's regulations on Benefits Payable in Terminated Single-Employer Plans and Allocation of Assets in Single-Employer Plans prescribe interest assumptions for valuing and paying benefits under terminating single-employer plans. This final rule amends the regulations to adopt interest assumptions for plans with valuation dates in June 2003. Interest assumptions are also published on the PBGC's Web site *(http://www.pbgc.gov)*.

EFFECTIVE DATE: June 1, 2003.

FOR FURTHER INFORMATION CONTACT: Harold J. Ashner, Assistant General Counsel, Office of the General Counsel, Pension Benefit Guaranty Corporation, 1200 K Street, NW., Washington, DC 20005, 202–326–4024. (TTY/TDD users may call the Federal relay service toll-free at 1–800–877–8339 and ask to be connected to 202–326–4024.)

SUPPLEMENTARY INFORMATION: The PBGC's regulations prescribe actuarial assumptions—including interest assumptions—for valuing and paying plan benefits of terminating single-employer plans covered by title IV of the Employee Retirement Income Security Act of 1974. The interest assumptions are intended to reflect current conditions in the financial and annuity markets.

Three sets of interest assumptions are prescribed: (1) A set for the valuation of benefits for allocation purposes under section 4044 (found in Appendix B to part 4044), (2) a set for the PBGC to use to determine whether a benefit is payable as a lump sum and to determine lump-sum amounts to be paid by the PBGC (found in Appendix B to part 4022), and (3) a set for private-sector pension practitioners to refer to if they wish to use lump-sum interest rates determined using the PBGC's historical methodology (found in Appendix C to part 4022).

Accordingly, this amendment (1) adds to Appendix B to part 4044 the interest assumptions for valuing benefits for allocation purposes in plans with valuation dates during June 2003, (2) adds to Appendix B to part 4022 the interest assumptions for the PBGC to use for its own lump-sum payments in plans with valuation dates during June 2003, and (3) adds to Appendix C to part 4022 the interest assumptions for private-sector pension practitioners to refer to if they wish to use lump-sum interest rates determined using the PBGC's historical methodology for valuation dates during June 2003.

For valuation of benefits for allocation purposes, the interest assumptions that the PBGC will use (set forth in Appendix B to part 4044) will be 4.70 percent for the first 20 years following the valuation date and 5.25 percent thereafter. These interest assumptions represent a decrease (from those in effect for May 2003) of 0.20 percent for the first 20 years following the valuation date and are otherwise unchanged.

The interest assumptions that the PBGC will use for its own lump-sum payments (set forth in Appendix B to part 4022) will be 3.50 percent for the period during which a benefit is in pay status and 4.00 percent during any years preceding the benefit's placement in pay status. These interest assumptions are unchanged from those in effect for May 2003.

For private-sector payments, the interest assumptions (set forth in Appendix C to part 4022) will be the same as those used by the PBGC for determining and paying lump sums (set forth in Appendix B to part 4022).

The PBGC has determined that notice and public comment on this amendment are impracticable and contrary to the public interest. This finding is based on the need to determine and issue new interest assumptions promptly so that the assumptions can reflect, as accurately as possible, current market conditions.

Because of the need to provide immediate guidance for the valuation and payment of benefits in plans with valuation dates during June 2003, the PBGC finds that good cause exists for making the assumptions set forth in this amendment effective less than 30 days after publication.

The PBGC has determined that this action is not a "significant regulatory action" under the criteria set forth in Executive Order 12866.

Because no general notice of proposed rulemaking is required for this amendment, the Regulatory Flexibility Act of 1980 does not apply. *See* 5 U.S.C. 601(2).

List of Subjects

29 CFR Part 4022

Employee benefit plans, Pension insurance, Pensions, Reporting and recordkeeping requirements.

29 CFR Part 4044

Employee benefit plans, Pension insurance, Pensions.

■ In consideration of the foregoing, 29 CFR parts 4022 and 4044 are amended as follows:

PART 4022—BENEFITS PAYABLE IN TERMINATED SINGLE-EMPLOYER PLANS

■ 1. The authority citation for part 4022 continues to read as follows:

Authority: 29 U.S.C. 1302, 1322, 1322b, 1341(c)(3)(D), and 1344.

■ 2. In appendix B to part 4022, Rate Set 116, as set forth below, is added to the table. (The introductory text of the table is omitted.)

Appendix B to Part 4022—Lump Sum Interest Rates For PBGC Payments

* * * * *

Rate set	For plans with a valuation date		Immediate annuity rate (percent)	Deferred annuities (percent)				
	On or after	Before		i_1	i_2	i_3	n_1	n_2
.	.	.	.	.	.	.	.	.
116	6–1–03	7–1–03	3.50	4.00	4.00	4.00	7	8

■ 3. In appendix C to part 4022, Rate Set 116, as set forth below, is added to the table. (The introductory text of the table is omitted.)

Appendix C to Part 4022—Lump Sum Interest Rates For Private-Sector Payments

* * * * *

Rate set	For plans with a valuation date		Immediate annuity rate (percent)	Deferred annuities (percent)				
	On or after	Before		i_1	i_2	i_3	n_1	n_2
.	.	.	.	.	.	.	.	.
116	6–1–03	7–1–03	3.50	4.00	4.00	4.00	7	8

PART 4044—ALLOCATION OF ASSETS IN SINGLE-EMPLOYER PLANS

■ 4. The authority citation for part 4044 continues to read as follows:

Authority: 29 U.S.C. 1301(a), 1302(b)(3), 1341, 1344, 1362.

■ 5. In appendix B to part 4044, a new entry, as set forth below, is added to the table. (The introductory text of the table is omitted.)

Appendix B to Part 4044—Interest Rates Used to Value Benefits

* * * * *

For valuation dates occuring in the month—	The values of i_t are:					
	i_1	for t=	i_2	for t=	i_3	for t=
. . . .	.	.	.	.	.	.
June 2003	.0470	1–20	.0525	>20	N/A	N/A

Issued in Washington, DC, on this 9th day of May 2003.

Joseph H. Grant,

Deputy Executive Director and Chief Operating Officer, Pension Benefit Guaranty Corporation.

[FR Doc. 03–12116 Filed 5–14–03; 8:45 am]

BILLING CODE 7708–01–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 117

[CGD08–03–021]

Drawbridge Operation Regulations; Corpus Christi—Port Aransas Channel—Tule Lake, Corpus Christi, TX

AGENCY: Coast Guard, DHS.

ACTION: Notice of temporary deviation from regulations.

SUMMARY: The Commander, Eighth Coast Guard District, has issued a temporary deviation from the regulation governing the operation of the Tule Lake Vertical Lift Span Highway and Railroad Bridge across the Corpus Christi—Port Aransas Channel, mile 14.0, at Corpus Christi, Nueces County, TX. This deviation allows the bridge to remain closed to navigation on May 22, 2003. The deviation is necessary to conduct emergency repairs to the drawbridge.

DATES: This deviation is effective from 7 a.m. through 7 p.m. on May 22, 2003.

ADDRESSES: Materials referred to in this document are available for inspection or copying at the office of the Eighth Coast Guard District, Bridge Administration Branch, Hale Boggs Federal Building, room 1313, 501 Magazine Street, New Orleans, Louisiana 70130–3396 between 7 a.m. and 3 p.m., Monday through Friday, except Federal holidays. The telephone number is (504) 589–2965. The Bridge Administration Branch of the Eighth Coast Guard District maintains the public docket for this temporary deviation.

FOR FURTHER INFORMATION CONTACT: Kay Wade, Bridge Administration Branch, telephone (504) 589–2965.

SUPPLEMENTARY INFORMATION: The Port of Corpus Christi Authority has requested a temporary deviation in order to remove and replace the main drive bearings of the Tule Lake vertical lift span bridge across Corpus Christi—Port Aransas Channel, mile 14.0 at Corpus Christi, Nueces County, Texas. This maintenance is essential for the continued safe operation of the bridge. This temporary deviation will allow the bridge to remain in the closed-to-navigation position from 7 a.m. through 7 p.m. on Thursday, May 22, 2003.

The vertical lift span bridge has a vertical clearance of 9.0 feet above mean high water, elevation 1.0 feet Mean Sea Level and 11.0 feet above mean low water, elevation −1.0 Mean Sea Level in the closed-to-navigation position. Navigation at the site of the bridge consists mainly of oil tankers and tows with barges. There is no recreational pleasure craft usage at the bridge site. Due to prior experience, as well as coordination with water way users, it has been determined that this one day closure will not have a significant effect on these vessels. The bridge normally opens to pass navigation an average of 850 times per month. The bridge opens on signal as required by 33 CFR 117.5. The bridge will not be able to open for emergencies during the closure period. Alternate routes are not available.

In accordance with 33 CFR 117.35(c), this work will be performed with all due speed in order to return the bridge to normal operation as soon as possible. This deviation from the operating regulations is authorized under 33 CFR 117.35.

Dated: May 7, 2003.

Marcus Redford,

Bridge Administrator.

[FR Doc. 03–12182 Filed 5–14–03; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[COTP Western Alaska 03–001]

RIN 1625–AA00

Security zone; Port of Anchorage, Knik Arm, AK

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary 1000-yard security zone in the navigable waters off the Port of Anchorage, Alaska. This security zone temporarily closes all navigable waters extending out from the Port of Anchorage. This action is necessary to protect the Port of Anchorage, vessels moored at the Port, and its personnel against sabotage or subversive acts.

DATES: This temporary final rule is effective from 1:01 p.m. March 19, 2003, to 12:01 p.m. June 19, 2003.

ADDRESSES: Documents indicated in this preamble as being available in the docket are part of docket (COTP Western Alaska 03–001) and are available for inspection or copying at Coast Guard Marine Safety Office Anchorage, AK between 7:30 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Lieutenant Commander Chris Woodley, USCG Marine Safety Office Anchorage, at (907) 271–6700.

SUPPLEMENTARY INFORMATION:

Regulatory Information

We did not publish a notice of proposed rulemaking (NPRM) for this regulation. Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing an NPRM, and that under 5 U.S.C. 553(d)(3), good cause exists for making this rule effective less

than 30 days after publication in the **Federal Register**. The Port of Anchorage, Alaska recently experienced a terrorist threat of damage to the port and its personnel. We are immediately establishing this temporary security zone to protect the Port, the vessels within the Port, and its personnel from sabotage or subversive acts.

Background and Purpose

In light of a recent terrorist threat to the Port of Anchorage, the Coast Guard is establishing a security zone on the navigable waters off the Port of Anchorage to safeguard the Port, the vessels within the Port, and its personnel from sabotage or subversive acts and incidents of a similar nature. This security zone prohibits movement within or entry into the specified area.

This rule establishes a temporary 1000-yard security zone in the navigable waters of Knik Arm off the Port of Anchorage, Alaska. This security zone is designed to permit the safe loading and unloading of vessels moored at the Port and to protect its personnel from possible sabotage, subversive acts or incidents of a similar nature.

Discussion of Rule

The Coast Guard is establishing a temporary 1000-yard security zone in the navigable waters of Knik Arm off the Port of Anchorage. Specifically, the zone includes the waters of Knik Arm that are within an area bounded by a line drawn from a point located at 61°15.14′ North, 149°52.78′ West, then west to a point located at 61°15.14′ North, 149°53.84′ West, then south to a point located at 61°14.17′ North, 149°54.43′ West, then east to a point located at 61°13.94′ North, 149°53.55′ West. All cargo vessels scheduled to moor at the Port of Anchorage and that have submitted the required Advance Notice of Arrival will be allowed to transit the zone. All tow vessels contracted, specifically Cook Inlet Tug and Barge, to assist the vessels into the Port of Anchorage, may transit the security zone when actually assisting a vessel. The limited size of the zone is designed to minimize the impact on other vessels transiting to facilities near the Port of Anchorage.

Regulatory Evaluation

This rule is not a "significant regulatory action" under section 3(f) of Executive Order 12886, Regulatory Planning and Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that Order. It is not "significant" under the regulatory policies and procedures of the Department of Homeland Security (DHS). This finding is based on the limited size of the security zone which will have minimal, if any, impact on vessels transiting the waters of Knik Arm and to facilities near the Port of Anchorage.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), we have considered whether this rule would have a significant economic impact on a substantial number of small entities. The term "small entities" comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000.

The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities.

This rule will affect the following entities, some of which may be small entities: The owners or operators of vessels intending to transit in the vicinity of the Port of Anchorage.

This security zone will not have a significant economic impact on a substantial number of small entities for the following reasons. Marine traffic will still be able to transit through Knik Arm during the zone's activation. Additionally, vessels with cargo to load or unload at the Port of Anchorage will not be precluded from mooring at or getting underway from the Port. Tow vessels contracted to assist vessels will not be precluded from transiting the zone to assist vessels.

Collection of Information

This rule calls for no new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

Federalism

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on State or local governments and would either preempt State law or impose a substantial direct cost of compliance on them. We have analyzed this rule under that Order and have determined that it does not have implications for federalism.

Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of $100,000,000 or more in any one year. Though this rule will not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

Taking of Private Property

This rule will not effect a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

Civil Justice Reform

This rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

Protection of Children

We have analyzed this rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and does not create an environmental risk to health or risk to safety that may disproportionately affect children.

Indian Tribal Governments

This rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal government and Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes.

Energy Effects

We have analyzed this final rule under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. We have determined that it is not a "significant energy action" under that order because it is not a "significant regulatory action" under Executive Order 12866 and is not likely to have a significant adverse effect on the supply, distribution, or use of energy. It has not been designated by the Administrator of the Office of Information and Regulatory Affairs as a significant energy action. Therefore, it does not require a Statement of Energy Effects under Executive Order 13211.

Environment

We have analyzed this rule under Commandant Instruction M16475.lD,

which guides the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4370f), and have concluded that there are no factors in this case that would limit the use of a categorical exclusion under section 2.B.2 of the Instruction. Therefore, this rule is categorically excluded, under figure 2–1, paragraph (34)(g) of the Instruction, from further environmental documentation. A final "Environmental Analysis Check List" and a final "Categorical Exclusion Determination" will be available in the docket where indicated under **ADDRESSES.**

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and Record keeping requirements, Security measures, Waterways.

■ For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 165 as follows:

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

■ 1. The authority citation for part 165 continues to read as follows:

Authority: 33 U.S.C. 1231; 50 U.S.C. 191, 33 CFR 1.05–1(g), 6.04–1, 6.04–6, and 160.5; Department of Homeland Security Delegation No. 0170.

■ 2. Add § 165.T17–017 to read as follows:

§ 165.T17–017 Security Zone: Port of Anchorage, Knik Arm, Alaska.

(a) *Location.* The following area is a security zone: All navigable waters within 1000-yards of the Port of Anchorage. Specifically, the zone includes the waters of Knik Arm that are within an area bounded by a line drawn from a point located at 61°15.14′ North, 149°52.78′ West, then west to a point located at 61°15.14′ North, 149°53.84′ West, then south to a point located at 61°14.17′ North, 149°54.43′ West, then east to a point located at 61°13.94′ North, 149°53.55′ West.

(b) *Effective period.* This section is effective from 1:01 p.m. March 19, 2003 to 12:01 p.m. June 19, 2003.

(c) *Regulations.* (1) For the purpose of this section, the general regulations contained in 33 CFR 165.33 apply to all but the following vessels in the areas described in paragraph (a):

(i) Vessels scheduled to moor and offload or load cargo at the Port of Anchorage that have provided the Coast Guard with an Advance Notice of Arrival.

(ii) Tow vessels contracted, specifically Cook Inlet Tug and Barge, to assist vessels to the dock at the Port of Anchorage.

(2) All persons and vessels shall comply with the instructions of the Captain of the Port representative or the designated on-scene patrol personnel. These personnel are comprised of commissioned, warrant, and petty officers of the Coast Guard. Upon being hailed by a U.S. Coast Guard vessel by siren, radio, flashing light, or other means, the operator of a vessel shall proceed as directed.

Dated: March 19, 2003.

Ronald J. Morris,

Captain, Coast Guard, Captain of the Port, Western Alaska.

[FR Doc. 03–12048 Filed 5–14–03; 8:45 am]

BILLING CODE 4910–15–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[SIP NO. UT–001–0052a; FRL–7483–4]

Approval and Promulgation of Air Quality Implementation Plans; State of Utah; Continuous Emission Monitoring Program

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is taking direct final action approving State Implementation Plan (SIP) revisions submitted by the Governor of Utah on September 7, 1999 and February 11, 2003. The September 7, 1999 submittal revises Utah's Air Conservation Regulations (UACR) by repealing and re-enacting the Continuous Emission Monitoring Program (CEM) rule in order to clarify the requirements of the rule. The February 11, 2003 submittal makes additional revisions to the CEM rule to make it in agreement with Federal regulations and the Clean Air Act (CAA). The intended effect of this action is to make the CEM rule federally enforceable. This action is being taken under section 110 of the CAA.

DATES: This rule is effective on July 14, 2003 without further notice, unless EPA receives adverse comment by June 16, 2003. If adverse comment is received, EPA will publish a timely withdrawal of the direct final rule in the **Federal Register** informing the public that the rule will not take effect.

ADDRESSES: Written comments may be mailed to Richard R. Long, Director, Air and Radiation Program, Mailcode 8P-AR, Environmental Protection Agency (EPA), Region 8, 999 18th Street, Suite 300, Denver, Colorado, 80202. Copies of the documents relevant to this action are available for public inspection during normal business hours at the Air and Radiation Program, Environmental Protection Agency, Region 8, 999 18th Street, Suite 300, Denver, Colorado, 80202. Copies of the documents relevant to this action are available for public inspection at the Air and Radiation Docket and Information Center, U.S. Environmental Protection Agency, Room B–108 (Mail Code 6102T), 1301 Constitution Ave., NW., Washington, DC 20460. Copies of the State documents relevant to this action are available for public inspection at the Utah Department of Environmental Quality, Division of Air Quality, 150 North 1950 West, Salt Lake City, Utah 84114.

FOR FURTHER INFORMATION CONTACT: Laurel Dygowski, EPA, Region 8, (303) 312–6144.

SUPPLEMENTARY INFORMATION: Throughout this document, wherever the term "we" or "our" is used means EPA.

I. Summary of SIP Revisions

A. September 7, 1999 Submittal

On September 7, 1999 and February 11, 2003, the Governor of Utah submitted revisions to the SIP. The September 7, 1999 submittal revises Utah's Air Conservation Regulations (UACR) by repealing and re-enacting the Continuous Emission Monitoring Program (CEM) rule, R307–170, in order to clarify the requirements of the rule. R307–170 applies to sources in Utah that use continuous monitoring systems to report their emissions. The changes to the CEM rule clarify points which were vague in the old rule, identify reporting parameters, reduce quarterly reporting for some CEM sources, and require electronic data reporting. The rule is also changed to reflect that when sources are planning on conducting a relative accuracy test audit, they must give notice to the executive secretary forty-five days instead of thirty days before performing a relative accuracy test audit and also submit the pretest protocol. In addition, the new rule separates monitor unavailability into categories which are exempt and non-exempt for reporting purposes and does not require reporting emissions during shutdowns.

B. February 11, 2003 Submittal

On April 2, 2002, EPA Region 8 sent a letter from Richard Long, Director, Air and Radiation Program, to Richard Sprott, Director, Utah Division of Air Quality to explain that certain sections in R307–170, as submitted on September 7, 1999, were not approvable. Specifically, the letter pointed out a typographical error in R307–170–4, as well as director discretion provisions in the following sections: R307–170–5(c), R307–170–5(d) and R307–107–9(4)(c). Director discretion means that sections R307–170–5(c), R307–170–5(d) and R307–107–9(4)(c) contain language that allows the State to approve alternative sampling methods and determine when continuous emission monitoring breakdowns are not a violation. These director discretion provisions essentially allow for a variance from SIP requirements, which is not allowed under section 110(i) of the Clean Air Act. The April 2, 2002 letter stated that unless the State corrected these provisions, we would not be able to approve them. On February 11, 2003, the Governor of Utah submitted revisions to R307–170 to correct the typographical error in R307–170–4 and director discretion provisions in R307–170–5(c), R307–170–5(d) and R307–107–9(4)(c).

We have reviewed the revisions identified above. We believe the revisions are acceptable and are approving them into the SIP.

II. Final Action

EPA is approving SIP revisions submitted by the Governor of Utah on September 7, 1999 and February 11, 2003. The September 7, 1999 submittal revises UACR by repealing and re-enacting R307–170, CEM rule, in order to clarify the requirements of the rule. The February 11, 2003 submittal makes additional revisions to the CEM rule to make it in agreement with Federal regulations and the CAA.

Section 110(l) of the Clean Air Act states that a SIP revision cannot be approved if the revision would interfere with any applicable requirement concerning attainment and reasonable further progress towards attainment of the NAAQS or any other applicable requirements of the Act. The Utah SIP revisions that are the subject of this document do not interfere with the maintenance of the NAAQS or any other applicable requirement of the Act because the revisions meet the requirements of 40 CFR 51.214, 40 CFR 51, Appendix P and 40 CFR 60. Therefore, section 110(l) requirements are satisfied.

EPA is publishing this rule without prior proposal because the Agency views this as a noncontroversial amendment and anticipates no adverse comments. However, in the "Proposed Rules" section of today's **Federal Register** publication, EPA is publishing a separate document that will serve as the proposal to approve the SIP revision if adverse comments be filed. This rule will be effective July 14, 2003 without further notice unless the Agency receives adverse comments by June 16, 2003. If the EPA receives adverse comments, EPA will publish a timely withdrawal in the **Federal Register** informing the public that the rule will not take effect. EPA will address all public comments in a subsequent final rule based on the proposed rule. The EPA will not institute a second comment period on this action. Any parties interested in commenting must do so at this time. Please note that if EPA receives adverse comment on an amendment, paragraph, or section of this rule and if that provision may be severed from the remainder of the rule, EPA may adopt as final those provisions of the rule that are not the subject of an adverse comment.

III. Statutory and Executive Order Review

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a "significant regulatory action" and therefore is not subject to review by the Office of Management and Budget. For this reason, this action is also not subject to Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use" (66 FR 28355, May 22, 2001). This action merely approves state law as meeting Federal requirements and imposes no additional requirements beyond those imposed by state law. Accordingly, the Administrator certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this rule approves pre-existing requirements under state law and does not impose any additional enforceable duty beyond that required by state law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4).

This rule also does not have tribal implications because it will not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000). This action also does not have Federalism implications because it does not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999). This action merely approves a state rule implementing a Federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. This rule also is not subject to Executive Order 13045 "Protection of Children from Environmental Health Risks and Safety Risks" (62 FR 19885, April 23, 1997), because it is not economically significant.

In reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. In this context, in the absence of a prior existing requirement for the State to use voluntary consensus standards (VCS), EPA has no authority to disapprove a SIP submission for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews a SIP submission, to use VCS in place of a SIP submission that otherwise satisfies the provisions of the Clean Air Act. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a "major rule" as defined by 5 U.S.C. section 804(2).

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by July 14, 2003. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it

extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Incorporation by reference, Intergovernmental relations, Lead, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

Dated: April 3, 2003.

Robert E. Roberts,

Regional Administrator, Region 8.

■ 40 CFR part 52 is amended as follows:

PART 52—[AMENDED]

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

Subpart TT—Utah

■ 2. Section 52.2320 is amended by adding paragraph (c)(57) to read as follows:

§ 52.2320 Identification of plan.

* * * * *

(c) * * *

(57) On September 7, 1999 and February 11, 2003, the Governor of Utah submitted revisions to the SIP. The submittals revise Utah's Air Conservation Regulations (UACR), R307–170, Continuous Emission Monitoring Program, by repealing and re-enacting the rule to clarify requirements of the rule. The revisions are being approved into the SIP.

(i) Incorporation by reference.

(A) UACR R307–170, effective 4/1/1999, except sections R307–170–4, R307–170–5 and R307–170–9.

(B) UACR sections R307–170–4, R307–170–5 and R307–170–9, effective December 5, 2002.

[FR Doc. 03–12027 Filed 5–14–03; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 52 and 81

[CO–001–0070a; FRL–7489–4]

Approval and Promulgation of Air Quality Implementation Plans; Colorado; Designation of Areas for Air Quality Planning Purposes, Aspen

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is taking direct final action to approve a State Implementation Plan (SIP) revision submitted by the Governor of the State of Colorado on November 9, 2001, for the purpose of redesignating the Aspen, Colorado area from nonattainment to attainment for particulate matter with an aerodynamic diameter less than or equal to a nominal 10 micrometers (PM_{10}) under the 1987 standards. The Governor's submittal, among other things, documents that the Aspen area has attained the PM_{10} national ambient air quality standards (NAAQS), requests redesignation to attainment and includes a maintenance plan for the area demonstrating maintenance of the PM_{10} NAAQS for ten years. EPA is approving this redesignation request and maintenance plan because Colorado has met the applicable requirements of the Clean Air Act (CAA), as amended. Upon the effective date of this approval, the Aspen area will be designated attainment for the PM_{10} NAAQS. This action is being taken under sections 107, 110, and 175A of the Clean Air Act.

DATES: This rule is effective on July 14, 2003, without further notice, unless EPA receives adverse comment by June 16, 2003. If adverse comment is received, EPA will publish a timely withdrawal of the direct final rule in the **Federal Register** informing the public that the rule will not take effect.

ADDRESSES: Written comments may be mailed to Richard R. Long, Director, Air and Radiation Program, Mailcode 8P–AR, Environmental Protection Agency (EPA), Region VIII, 999 18th Street, Suite 300, Denver, Colorado 80202. Copies of the documents relevant to this action are available for public inspection during normal business hours at the Air and Radiation Program, Environmental Protection Agency, Region VIII, 999 18th Street, Suite 300, Denver, Colorado 80202 and copies of the Incorporation by Reference material are available at the Air and Radiation Docket and Information Center, Environmental Protection Agency, Room B–108 (Mail Code 6102T), 1301 Constitution Ave., NW., Washington, DC 20460. Copies of the State documents relevant to this action are available for public inspection at the Colorado Department of Public Health and Environment, Air Pollution Control Division, 4300 Cherry Creek Drive South, Denver, Colorado 80246–1530.

FOR FURTHER INFORMATION CONTACT: Libby Faulk, EPA, Region VIII, (303) 312–6083.

SUPPLEMENTARY INFORMATION: Throughout this document, wherever "we," "us," or "our" are used, we mean the Environmental Protection Agency (EPA).

Table of Contents

I. EPA's Final Action
What Action Is EPA Taking in this Direct Final Rule?
II. Summary of Redesignation Request and Maintenance Plan
A. What Requirements Must Be Followed for Redesignation to Attainment?
B. Does the Aspen Redesignation Request and Maintenance Plan Meet the CAA Requirements?
C. Have the Transportation Conformity Requirements Been Met?
D. Did Colorado Follow the Proper Procedures for Adopting this Action?
III. Background
IV. CAA Section 110(l) Requirements
V. Statutory and Executive Order Reviews

I. EPA's Final Action

What Action Is EPA Taking in This Direct Final Rule?

We are approving the Governor's submittal of November 9, 2001, that requests redesignation of the Aspen nonattainment area to attainment for the 1987 PM_{10} standards. Included in Colorado's submittal are changes to the "State Implementation Plan—Specific Regulations for Nonattainment—Attainment/Maintenance Areas (Local Areas)" which we are approving, under section 110 of the CAA, into Colorado's SIP. We are also approving the maintenance plan for the Aspen PM_{10} nonattainment area, which was submitted with the Governor's November 9, 2001, redesignation request. We are approving this request and maintenance plan because Colorado has adequately addressed all of the requirements of the CAA for redesignation to attainment applicable to the Aspen PM_{10} nonattainment area. Upon the effective date of this action, the Aspen area designation status under 40 CFR part 81 will be revised to attainment.

EPA is publishing this rule without prior proposal because the Agency views this as a noncontroversial amendment and anticipates no adverse comments. However, in the "Proposed Rules" section of today's **Federal Register** publication, EPA is publishing a separate document that will serve as the proposal to approve the SIP revision if adverse comments are filed. This rule will be effective July 14, 2003, without further notice unless the Agency receives adverse comments by June 16, 2003. If the EPA receives adverse comments, EPA will publish a timely withdrawal in the **Federal Register** informing the public that the rule will not take effect. EPA will address all public comments in a subsequent final rule based on the proposed rule. The EPA will not institute a second comment period on this action. Any parties interested in commenting must do so at this time. Please note that if EPA receives adverse comment on an amendment, paragraph, or section of this rule and if that provision may be severed from the remainder of the rule, EPA may adopt as final those provisions of the rule that are not the subject of an adverse comment.

II. Summary of Redesignation Request and Maintenance Plan

A. What Requirements Must Be Followed for Redesignations to Attainment?

In order for a nonattainment area to be redesignated to attainment, the following conditions in section 107(d)(3)(E) of the CAA must be met:

(i) We must determine that the area has attained the NAAQS;

(ii) The applicable implementation plan for the area must be fully approved under section 110(k) of the CAA;

(iii) We must determine that the improvement in air quality is due to permanent and enforceable reductions in emissions resulting from implementation of the applicable implementation plan and applicable Federal air pollutant control regulations and other permanent and enforceable reductions;

(iv) We must fully approve a maintenance plan for the area as meeting the requirements of CAA section 175A; and,

(v) The State containing such an area must meet all requirements applicable to the area under section 110 and part D of the CAA.

Our September 4, 1992, guidance entitled "Procedures for Processing Requests to Redesignate Areas to Attainment" outlines how to assess the adequacy of redesignation requests against the conditions listed above.

The following is a brief discussion of how Colorado's redesignation request and maintenance plan meet the requirements of the CAA for redesignation of the Aspen area to attainment for PM_{10}.

B. Does the Aspen Redesignation Request and Maintenance Plan Meet the CAA Requirements?

i. Attainment of the PM_{10} NAAQS

A State must demonstrate that an area has attained the PM_{10} NAAQS through submittal of ambient air quality data from an ambient air monitoring network representing maximum PM_{10} concentrations. The data, which must be quality assured and recorded in the Aerometric Information Retrieval System (AIRS), must show that the average annual number of expected exceedances for the area is less than or equal to 1.0, pursuant to 40 CFR 50.6. In making this showing, the three most recent years of complete air quality data must be used.

Colorado operates one PM_{10} monitoring site in the Aspen PM_{10} nonattainment area. For this redesignation request, the Colorado Air Pollution Control Division (APCD) designated the Tapered Element Oscillating Microbalance (TEOM) monitor as the primary sampler for determining attainment of the PM_{10} NAAQS in the Aspen area, beginning in 1998. Colorado submitted ambient air quality data from the monitoring site which demonstrate that the area has attained the PM_{10} NAAQS. These air quality data were quality-assured and placed in AIRS. The 24-hour PM_{10} NAAQS was exceeded once in Aspen in 1991 and the annual PM_{10} NAAQS has never been exceeded. We reviewed the three most recent years of data for the area (1999–2001) and determined that the data is complete (*i.e.*, data are available for at least 75% of the scheduled PM_{10} samples per quarter) with no recorded violations of either the 24-hour or annual PM_{10} NAAQS. We believe that Colorado has adequately demonstrated, through ambient air quality data, that the PM_{10} NAAQS have been attained in the Aspen area.

ii. State Implementation Plan Approval

Those States containing initial moderate PM_{10} nonattainment areas were required by the 1990 amendments to the CAA to submit a SIP by November 15, 1991, which demonstrated attainment of the PM_{10} NAAQS by December 31, 1994. To approve a redesignation request, the SIP for the area must be fully approved under section 110(k) and must satisfy all requirements that apply to that area. The Aspen PM_{10} SIP was initially submitted by Colorado on January 15, 1992, with revisions submitted on March 17, 1993, and December 9, 1993. EPA fully approved the PM_{10} SIP for Aspen on September 14, 1994 (59 FR 47088). Additional revisions consisting of further updating of the technical and administrative information, adopting emission budgets for the Aspen area, and removing the voluntary no-drive program from consideration as part of the Federal SIP were submitted by Colorado on March 13, 1995, and were approved by EPA on December 17, 1997 (62 FR 66007). The PM_{10} SIP for Aspen was approved as meeting the moderate PM_{10} nonattainment plan requirements that were due to EPA on November 15, 1991.

iii. Improvement in Air Quality Due to Permanent and Enforceable Measures

Section 107(d)(3)(E)(iii) of the CAA provides that for an area to be redesignated to attainment, the Administrator must determine that the improvement in air quality is due to emission reductions which are permanent and enforceable. Control measures in the Aspen PM_{10} element of the Colorado SIP were adopted by the Colorado Air Quality Control Commission in January 1993 and November 1993, and were approved by EPA on September 14, 1994 (59 FR 47088). The primary sources of PM_{10} emissions in the Aspen area are re-entrained road dust (from highways, paved roads, chip sealed roads, and unpaved roads) and woodburning. The permanent and enforceable control measures that brought the Aspen area into attainment of the NAAQS are explained in more detail below.

The City of Aspen and Pitkin County have adopted local ordinances that limit the number of woodburning devices in new construction in the Aspen area, and the City of Aspen adopted a local ordinance that requires emission controls for new restaurant grills. These woodburning and restaurant controls were adopted and implemented locally in the late 1980's and early 1990's and included in State regulation in 1993 (section III.C.4. of the State Implementation Plan—Specific Regulations for Nonattainment—Attainment/Maintenance Areas (Local Areas)). The rule was approved by EPA into the SIP in 1994.

In addition, Aspen has adopted street sanding controls that require the use of street sanding material containing less than "one percent fines" with a durability index of less than 30 percent. This control strategy was adopted in 1993 and approved by EPA in 1994, and is defined in detail in section III.C.1. of the "State Implementation Plan—

Specific Regulations for Nonattainment—Attainment/Maintenance Areas (Local Areas)."

In addition, Aspen has adopted street sweeping control requirements for any user of street sanding materials on defined roadways in the Aspen attainment/maintenance area. Street cleaning using broom sweepers or any other sweepers with equal efficiency must be performed within four days of the roadways becoming free and clear of snow and ice following each sanding deployment. These requirements are defined in detail in section III.C.2. of the "State Implementation Plan—Specific Regulations for Nonattainment—Attainment/Maintenance Areas (Local Areas)."

Aspen also has paid parking requirements that were adopted in 1993 and approved by EPA in 1994 and will remain as part of the federal SIP. Parking on public streets within the City of Aspen's commercial core and surrounding residential areas is restricted through parking fees and permits to reduce traffic and encourage transit ridership. This requirement is defined in detail in section III.C.3. of the "State Implementation Plan—Specific Regulations for Nonattainment—Attainment/Maintenance Areas (Local Areas)."

In addition, the City of Aspen implemented local transit measures such as expansion of the bus fleet by 14 buses, establishment of a 400 space Park 'n Ride lot and a 250 space intercept parking lot, and establishment of cross-town and intercept lot shuttle services. These measures were adopted in 1993 and approved by EPA in 1994 and have been completed.

In addition to the State and local control measures, the Federal Motor Vehicle Emission Control Program has reduced PM_{10} emissions in Aspen as older, higher emitting diesel vehicles are replaced with newer vehicles that meet tighter emission standards. Overall, despite growth in the Aspen nonattainment area (*e.g.*, in population, employment and vehicle miles traveled), attainment of the PM_{10} NAAQS has been demonstrated. We have evaluated the various control measures, in addition to the 1997 attainment year emission inventory and the projected emissions described below, and have concluded that the continued attainment of the PM_{10} NAAQS in the Aspen area has resulted from emission reductions that are permanent and enforceable.

iv. Fully Approved Maintenance Plan Under Section 175A of the CAA

Section 107(d)(3)(E) of the CAA requires that, for a nonattainment area to be redesignated to attainment, we must fully approve a maintenance plan which meets the requirements of section 175A of the CAA. The plan must demonstrate continued attainment of the relevant NAAQS in the area for at least 10 years after our approval of the redesignation. Eight years after our approval of a redesignation, Colorado must submit a revised maintenance plan demonstrating attainment for the 10 years following the initial 10 year period. The maintenance plan must also contain a contingency plan to ensure prompt correction of any violation of the NAAQS. (*See* sections 175A(b) and (d).) Our September 4, 1992, guidance outlines 5 core elements that are necessary to ensure maintenance of the relevant NAAQS in an area seeking redesignation from nonattainment to attainment. Those elements, as well as guidelines for subsequent maintenance plan revisions, are as follows:

a. Attainment Inventory

The maintenance plan should include an attainment emission inventory to identify the level of emissions in the area which is sufficient to attain the NAAQS. An emission inventory for Aspen was developed for the attainment year 1997 as well as a projection inventory for the year 2015. The emission inventory incorporates the emission estimates for woodburning, arterial and local street re-entrained emissions, gravel road emissions, restaurant exhaust emissions, and mobile exhaust emissions that are contained in the nonattainment area SIP Element that was approved by EPA on September 22, 1994. The emission inventory reflects 1997 emissions for airport emissions based on information provided by the Federal Aviation Administration (FAA) and highway re-entrained road dust emissions using the latest traffic counts from the Colorado Department of Transportation (CDOT). There are no stationary sources in the attainment/maintenance area. Summary emission figures from the 1997 attainment year and the 2015 projected year are provided in Tables 1, 2 and 3 below.

TABLE 1.—1997 AND 2015 PM_{10} TOTAL EMISSION INVENTORY FOR ROAD DUST ACTIVITY IN POUNDS PER WINTER DAY FOR ASPEN/PITKIN COUNTY

	Highway 82	Paved roads		Gravel roads
		Arterial	Local	
1997	7540	1468	1000	79
2015	12109	2358	1606	127

* 1997 emissions from Highway 82, paved arterial roads, paved local roads, and gravel roads were increased by 60.6% based on long-term traffic projections from CDOT (58%) through 2015 and adding some additional VMT (1.65%) in the year 2015 to account for eliminating from the federally-approved plan some transit and parking measures.

TABLE 2.—1997 AND 2015 PM_{10} TOTAL EMISSION INVENTORY FOR RESTAURANT, MOBILE SOURCE, AND AIRCRAFT ACTIVITY IN POUNDS PER WINTER DAY FOR ASPEN/PITKIN COUNTY

	Vehicle exhaust	Aircraft	Restaurants
1997	44	28	27
2015	44	44	36

* 1997 emissions from restaurants were increased by 33.1% based on Pitkin County population projections to determine 2015 emissions.
** Aircraft emissions are based on FAA activity projections.
*** 1997 emissions from vehicle exhaust are assumed to remain constant through 2015.

TABLE 3.—1997 AND 2015 PM_{10} TOTAL EMISSION INVENTORY FOR WOOD STOVES/INSERTS AND FIREPLACES IN POUNDS PER WINTER DAY FOR ASPEN/PITKIN COUNTY

	Wood stoves/ inserts	Fireplaces
1997	84	233
2015	112	233

* 1997 emissions from wood stoves/inserts were increased by 33.1% based on Pitkin County population projections to determine 2015 emissions.
** Fireplace emissions were held at 1997 levels due to a city/county cap on new fireplace construction.

More detailed descriptions of the 1997 attainment year inventory and the 2015 projected inventory are documented in the maintenance plan in chapter 3, section B and in the Colorado technical support documentation. Colorado's submittal contains detailed emission inventory information that was prepared in accordance with EPA emission inventory guidance.[1] Following our review, we have determined that Colorado prepared an adequate attainment inventory for the area.

b. Maintenance Demonstration

A State may generally demonstrate maintenance of the NAAQS by either showing that future emissions of a pollutant or its precursors will not exceed the level of the attainment inventory, or by modeling to show that the future mix of sources and emission rates will not cause a violation of the NAAQS. Colorado chose the modeling approach for the Aspen area.

The maintenance demonstration for the Aspen area uses the chemical mass balance (CMB) roll-forward methodology, which is the same level of modeling used in the original attainment demonstration for the moderate PM_{10} SIP for this area. The CMB receptor model data are used to identify the sources of emissions that influence PM_{10} concentrations in the area. Colorado used the attainment inventories to further refine the CMB source identification and then apportion the design day concentration. The design day concentration was determined using EPA's "Table look-up" method. Based on the number of samples collected during a three year period from 1996–1998[2] (1005 samples), the third highest concentration measured during that period is used as the design value. Because the third highest concentration measured during that period occurred outside of the traditional late winter/early spring high pollution season, the second highest concentration of 89 $\mu g/m^3$ was selected as the design value for this redesignation request and maintenance plan. Colorado prepared a maintenance inventory for the year 2015 and rolled forward the design day concentration based on the changes that occurred in the emission inventory from the attainment year to the maintenance year. Based on this process, the Aspen 2015 maintenance concentration is 130 $\mu g/m^3$. Since these 2015 projections for Aspen are below the 24-hour PM_{10} NAAQS of 150 $\mu g/m^3$, maintenance is demonstrated.

Although EPA would normally insist on some interim year projections between the attainment year and 2015, we have no reason to believe that total emissions will be greater than the 2015 projections in any of the interim years. Colorado applied simple, environmentally conservative, growth rates to all source categories. Thus, total emissions in all years before 2015 should be less than 2015 total emissions and no interim year projections are required.

Since no violations of the annual PM_{10} NAAQS have ever occurred in Aspen and since the maintenance demonstration clearly shows maintenance of the 24-hour PM_{10} NAAQS in this area through the year 2015, it is reasonable and adequate to assume that protection of the 24-hour standard will be sufficient to protect the annual standard as well. Thus, EPA believes Colorado has adequately demonstrated that the Aspen area will maintain the PM_{10} NAAQS for at least the next ten years.

i. Control Strategy

According to the Calcagni memorandum, any assumptions concerning emission rates must reflect permanent, enforceable measures. A State can't take credit in the maintenance demonstration for reductions unless there are regulations in place requiring those reductions or the reductions are otherwise shown to be permanent. States are expected to maintain implemented control strategies despite redesignation to attainment, unless such measures are shown to be unnecessary for maintenance or are replaced with measures that achieve equivalent reductions. In preparing the Aspen PM_{10} maintenance plan, Colorado has chosen to retain the street sand specifications, street sweeping requirements, paid parking provisions, and woodburning and restaurant emissions requirements previously included in the SIP, with some minor revisions which are explained in more detail below.

Colorado is making minor revisions to the materials applicability section (III.C.1.a and III.C.2.a, "Applicability") of the street sanding and street sweeping requirements (contained in the State Implementation Plan—Specific Regulations for Nonattainment—Attainment/Maintenance Areas (Local Areas). These minor revisions delete language specific to salt and de-icing material making the language consistent with the SIP's federally approved definition of "Street Sanding Materials" which excludes salt and other de-icing chemicals. Since these changes do not change the enforceability of the street sanding or street sweeping control measures and make the language consistent with the SIP's federally

[1] EPA's current guidance on the preparation of PM_{10} emission inventories includes, "PM_{10} Emission Inventory Requirements," September 1994, "Emission Inventory Improvement Program Technical Report Series, Volumes I–VII," July 1997 and September 1999, "Revised 1999 National Emission Inventory Preparation Plan," February 2001.

[2] Colorado used years 1996–1998 instead of 1998–2000 to develop the design value because there were data completeness issues with their Hi-vol data in 1999 and 2000. Using the Hi-vol data from 1996–1998 to calculate the design value resulted in the highest design value for developing the maintenance plan, and the higher the design value, the higher the predicted concentration in the maintenance year. In other words, the State's approach was conservative. Use of TEOM data alone would have resulted in a lower design value, and thus, a lower predicted concentration in the maintenance year. Although the TEOM monitor recorded a value of 109 $\mu g/m^3$ in 1999—a higher value than the three highest Hi-vol values in 1996–1998—the use of the 1999 TEOM data would not have altered the design value. This is because the high three values from both monitors would have fallen within the high pollution season, and the 3rd high—89 $\mu g/m^3$—would've been the appropriate design value. Colorado used the TEOM monitoring method for data collected from 1998–2000 to demonstrate attainment because to demonstrate attainment, the latest 3 years of data must be used, and the TEOM is an equivalent monitoring method.

approved definition, we are approving the changes.

Colorado also submitted revisions to their SIP—Specific Regulations that change the reporting requirements for street sanding materials, street sweeping, and the implementation section for local control strategies in Aspen to recordkeeping requirements only and delete the reporting requirements for Division Audit Authority and for paid parking. These changes require users to retain records for 2 years. Users are no longer required to submit monthly and annual reports to the State. Since these changes in reporting requirements do not change the enforceability of the street sanding control measure, street sweeping control measure, paid parking control measure, or the implementation of local control strategies in Aspen, we are approving the changes.

Colorado also submitted revisions to section III.C.4 of the SIP—Specific Regulations. The City of Aspen and Pitkin County adopted local ordinances in the late 1980's and early 1990's that limit the number of woodburning devices in new construction in the Aspen area. These ordinances were included in State regulations in 1993 (section III.C.4 of the State Implementation Plan—Specific Regulations for Nonattainment—Attainment/Maintenance Areas (Local Areas)). EPA approved section III.C.4 in 1994. Colorado's changes to section III.C.4 allow the City and the County to revise the ordinances to allow greater use of natural gas devices. Since the use of such devices will not increase primary PM_{10} emissions, we are approving the changes.

In addition to the revised control measures, there are also certain control measures which are being removed from the control strategy with this maintenance plan. This is acceptable under the Calcagni Memorandum as long as the area can still demonstrate maintenance of the PM_{10} standard in its projections. Through this redesignation, Colorado is requesting removal of specific control measures that were previously approved in the Aspen PM_{10} SIP. The control measures being removed are expansion of the bus fleet by 14 buses, establishment of a 400 space Park'n Ride lot and a 250 space intercept parking lot, establishment of intercept lot and crosstown shuttle services, and establishment of a bus priority lane (which was removed from service shortly after implementation because of the severe traffic congestion that resulted from converting a driving lane into the bus lane). The vehicle miles traveled (VMT) reduction credits that were assigned to these measures in the 1994 nonattainment SIP Element were used to determine VMT increases in 2015 for all roads in order to account for the potential for emissions increases due to the elimination of these measures. In accordance with section 175A(d) of the CAA, these transit control measures are being retained as possible contingency measures that could be re-implemented should the Aspen area violate the PM_{10} NAAQS requirements.

Colorado is also eliminating a voluntary woodburning curtailment program. The voluntary woodburning curtailment program was not implemented because forecasts of high pollution events were never issued by the Air Pollution Control Division due to low PM_{10} levels. However, the program is being retained as a potential contingency measure to bring the Aspen area back into compliance with the PM_{10} NAAQS should a violation occur. Colorado is also eliminating the President's Day event strategies program of maximized sweeping and driving reduction efforts, which were adopted in 1993. These programs did not receive emission reduction credits and were sporadically implemented.

Although there are no stationary sources located in the Aspen attainment/maintenance area, the State's comprehensive permit rules will limit emissions from any new source that may, in the future, locate in the area. These rules include: (1) Regulation No. 3, "Air Pollution Emission Notices, Construction Permits and Fees, Operating Permits, and Including the Prevention of Significant Deterioration," (2) the "Common Provisions" regulation, and (3) Regulation No. 6, "Standards for Performance for New Stationary Sources." The Common Provisions, and Part A and B of Regulation No. 3 are already included in the approved SIP. Regulation No. 6 implements the federal standards of performance for new stationary sources. This reference to Regulation No. 6 shall not be construed to mean that this regulation is included in the SIP. Once this redesignation request and maintenance plan is approved by the EPA, the prevention of significant deterioration (PSD) permitting requirements become effective.

In addition to the State and local control measures mentioned above, the Federal Motor Vehicle Emission Control Program remains in effect and will continue to reduce PM_{10} emissions in Aspen as older, higher-emitting diesel vehicles are replaced with newer vehicles that meet tighter emission standards.

c. Monitoring Network

Once a nonattainment area has been redesignated to attainment, the State must continue to operate an appropriate air quality monitoring network, in accordance with 40 CFR part 58, to verify the attainment status of the area. The maintenance plan should contain provisions for continued operation of air quality monitors that will provide such verification. Colorado operates one PM_{10} monitoring site in the Aspen area. We approve this site annually, and any future change would require discussion with, and approval from, us. In their November 9, 2001, submittal, Colorado committed to continue to operate this PM_{10} monitoring station in Aspen, in accordance with 40 CFR part 58. Detailed information regarding the State's monitoring efforts and historical monitoring data can be found in chapter 2 of the "PM_{10} Redesignation Request and Maintenance Plan for the Aspen Area."

d. Verification of Continued Attainment

A State's maintenance plan submittal should indicate how it will track the progress of the maintenance plan. This is necessary due to the fact that emission projections made for the maintenance demonstration depend on assumptions of point and area source growth. Colorado commits to operate the Aspen PM_{10} monitoring network and analyze the PM_{10} concentrations in accordance with 40 CFR part 58 to verify continued maintenance of the PM_{10} NAAQS. In addition, Colorado commits to track the progress of the Aspen maintenance plan through a periodic review (every three years) of the assumptions made in the emissions inventories to verify continued maintenance of the PM_{10} NAAQS in the Aspen area. EPA relies on these commitments in approving the Aspen maintenance plan.

e. Contingency Plan

Section 175A(d) of the CAA requires that a maintenance plan also include contingency provisions, as necessary, to promptly correct any violation of the NAAQS that occurs after redesignation of the area. For the purposes of section 175A, a State is not required to have fully adopted contingency measures that will take effect without further action by the State in order for the maintenance plan to be approved. However, the contingency plan is an enforceable part of the SIP and should ensure that contingency measures are adopted expeditiously when a violation of the NAAQS has occurred in a redesignated area. The plan should clearly identify the measures to be adopted, a schedule and procedure for adoption and implementation, and a specific time limit for action by the State. The State should also identify the specific indicators, or triggers, which will be used to determine when the contingency plan will be implemented.

Chapter 3, section H, contains the Aspen PM_{10} contingency plan. Exceedances trigger one level of response and violations trigger another. If there's an exceedance, APCD and local government staff will develop appropriate contingency measures intended to prevent or correct a violation of the PM_{10} standard. APCD and local government staff will consider relevant information, including information about historical exceedances, meteorological data, the most recent estimates of growth and emissions, and whether the exceedance might be attributed to an exceptional event. The maintenance plan indicates that the State will generally notify EPA and local governments in the Aspen area within 30 days of the exceedance, but in no event later than 45 days. The process for exceedances will be completed within six months of the exceedance notification.

If a violation of the PM_{10} NAAQS has occurred, a public hearing process at the State and local level will begin. If the Air Quality Control Commission (AQCC) agrees that the implementation of local measures will prevent further exceedances or violations, the AQCC may endorse or approve of the local measures without adopting State requirements. If, however, the AQCC finds locally adopted contingency measures to be inadequate, the AQCC will adopt State enforceable measures as deemed necessary to prevent additional exceedances or violations. Contingency measures will be adopted and fully implemented within one year of the PM_{10} NAAQS violation. Any State-enforceable measures will become part of the next revised maintenance plan, submitted to us for approval.

The maintenance plan specifies the following as potential contingency measures for the Aspen area: Increased street sweeping; road paving requirements; more stringent street sand specifications; voluntary or mandatory woodburning curtailment or bans on all woodburning; expanded mandatory use of alternative de-icers; re-establishing nonattainment new source review permitting requirements for stationary sources;[3] transportation control measures designed to reduce vehicle miles traveled; re-implementing the following measures (but only if they are not being implemented at the time the contingency measures are triggered): expansion of the bus fleet by 14 buses, establishment of 400 Park 'n Ride lot spaces and a 250 space intercept parking lot, and establishment of intercept lot and cross-town shuttle services; or other measures as deemed appropriate, considering various factors.

[3] The maintenance plan refers to "Re-establishing new source review permitting requirements for stastionary soruces." Given that PSD permitting requirements will apply to the area after the effective date of this action, we interpret the maintenance plan's reference to mean "nonattainment new source review."

f. Subsequent Maintenance Plan Revisions

In accordance with section 175A(b) of the CAA, the State of Colorado is required to submit a revision to the maintenance plan eight years after the redesignation of the Aspen area to attainment for PM_{10}. This revision is to provide for maintenance of the NAAQS for an additional 10 years following the first ten year period. Colorado commits, in the Aspen redesignation request, to submit a revised maintenance plan to EPA eight years after the approval of the redesignation request and maintenance plan.

v. Meeting Applicable Requirements of Section 110 and Part D of the CAA

In order for an area to be redesignated to attainment, section 107(d)(3)(E) requires that it must have met all applicable requirements of section 110 and part D of the CAA. We interpret this to mean that, for a redesignation request to be approved, the State must have met all requirements that applied to the subject area prior to, or at the time of, submitting a complete redesignation request. In our evaluation of a redesignation request, we don't need to consider other requirements of the CAA that became due after the date of the submission of a complete redesignation request.

a. Section 110 Requirements

Section 110(a)(2) contains general requirements for nonattainment plans. These requirements were met for Aspen with Colorado's January 15, 1992, submittal and revisions submitted on March 17, 1993, and December 9, 1993. EPA fully approved the Aspen PM_{10} SIP on September 14, 1994 (59 FR 47088). Additional revisions were submitted by the State on March 13, 1995, and were approved by EPA on December 17, 1997 (62 FR 66007).

b. Part D Requirements

Before a PM_{10} nonattainment area may be redesignated to attainment, the State must have fulfilled the applicable requirements of part D. Subpart 1 of part D establishes the general requirements applicable to all nonattainment areas, subpart 4 of part D establishes specific requirements applicable to PM_{10} nonattainment areas.

The requirements of sections 172(c) and 189(a) regarding attainment of the PM_{10} NAAQS, and the requirements of section 172(c) regarding reasonable further progress, imposition of Reasonably Available Control Measures (RACM), the adoption of contingency measures, and the submission of an emission inventory, have been satisfied through our September 14, 1994 (59 FR 47088), and December 17, 1997 (62 FR 66007), approvals of the Aspen PM_{10} SIP.

Although EPA's regulations (*see* 40 CFR 51.396) require that States adopt transportation conformity provisions in their SIPs for areas designated nonattainment or subject to an EPA-approved maintenance plan, we have decided that a transportation conformity SIP is not an applicable requirement for purposes of evaluating a redesignation request under section 107(d) of the CAA. This decision is reflected in EPA's 1996 approval of the Boston carbon monoxide redesignation. (*See* 61 FR 2918, January 30, 1996.)

Although there are no stationary sources currently located in the Aspen attainment/maintenance area, once the Aspen area is redesignated to attainment, the prevention of significant deterioration (PSD) requirements of part C of the CAA will apply. Colorado's PSD regulations, which we have previously approved as meeting all applicable Federal requirements (*See* 51 FR 31125, September 2, 1986), apply to any area designated as unclassifiable or attainment and, thus, will become fully effective in the Aspen area upon redesignation of the area to attainment.

c. Have the Transportation Conformity Requirements Been Met?

Transportation conformity is required by section 176(c) of the CAA. Our conformity rule requires that transportation plans, programs and projects conform to SIPs and that transportation activities will not produce new air quality violations, worsen existing violations, or delay timely attainment of the NAAQS. On March 2, 1999, the United States Court of Appeals for the District of Columbia Circuit issued a decision in *Environmental Defense Fund* v. *the*

Environmental Protection Agency, No. 97–1637, that we must make an affirmative determination that the submitted motor vehicle emission budgets contained in State Implementation Plans (SIPs) are adequate before they are used to determine the conformity of Transportation Plans or Transportation Improvement Programs. In response to the court decision, we make any submitted SIP revision containing an emission budget available for public comment and respond to these comments before announcing our adequacy determination. The criteria and process by which we determine whether a SIP's motor vehicle emission budgets are adequate for conformity purposes are outlined in 40 CFR 93.118(e)(4) and in the guidance "Conformity Guidance on Implementation of March 2, 1999, Conformity Court Decision," dated May 14, 1999.

In the Aspen maintenance plan, Colorado established a new mobile source emissions budget of 16,244 lbs./day for the year 2015 and beyond. This budget is the total of the 2015 mobile source PM_{10} emissions and includes emissions from vehicle exhaust, highways, paved arterial and local roads, and gravel roads. EPA's approval of 16,244 lbs./day as the budget means that this value must be used for conformity determinations for 2015 and beyond.

EPA sent a letter to the Colorado Air Pollution Control Division (APCD) on May 16, 2002 stating that the motor vehicle emissions budget in the submitted Aspen PM_{10} maintenance plan is adequate. This finding has also been announced on EPA's conformity Web site: *http://www.epa.gov/oms/transp/conform/adequacy.htm*. We documented our adequacy determination for Aspen in the **Federal Register** on August 20, 2002 (67 FR 53925). The budgets took effect on September 4, 2002 (15 days after our announcement in the **Federal Register**).

d. Did Colorado Follow the Proper Procedures for Adopting This Action?

The CAA requires States to observe certain procedural requirements in developing implementation plans and plan revisions for submission. Section 110(a)(2) of the CAA provides that each implementation plan submitted by a State must be adopted after reasonable notice and public hearing. Section 110(l) of the CAA similarly provides that each revision to an implementation plan submitted by a State under the CAA must be adopted by such State after reasonable notice and public hearing.

Colorado held a public hearing for the proposed rule changes on January 11, 2001. The rulemaking was adopted by the Air Pollution Control Division (APCD) directly after the January 11, 2001, hearing and was formally submitted to EPA by the Governor on November 9, 2001. We have evaluated the Governor's submittal and have determined that Colorado met the requirements for reasonable notice and public hearing under section 110(a)(2) of the CAA.

III. Background

To implement our 1987 revisions to the PM_{10} NAAQS, on August 7, 1987 (52 FR 29383), we categorized areas of the nation into three groups based on the likelihood that protection of the PM_{10} NAAQS would require revisions of the existing SIP. We identified Aspen as a PM_{10} "Group I" area of concern, *i.e.*, areas with a strong likelihood of violating the PM_{10} NAAQS and requiring a substantial SIP revision. The Aspen area was among several Group I PM_{10} areas, all of which were designated and classified as moderate PM_{10} nonattainment areas by operation of law upon enactment of the Clean Air Act Amendments of 1990 (November 15, 1990). *See* 56 FR 56694 at 56705–706 (November 6, 1991).

By November 15, 1991, States containing initial moderate PM_{10} nonattainment areas were required to submit most elements of their PM_{10} SIPs. (*See* sections 172(c), 188, and 189 of the CAA.) Some provisions, such as PM_{10} contingency measures required by section 172(c)(9) of the CAA and nonattainment new source review (NSR) provisions, were due at later dates. In order for a nonattainment area to be redesignated to attainment, the above mentioned conditions in section 107(d)(3)(E) of the CAA must be met. We fully approved the PM_{10} SIP for Aspen on September 14, 1994 (59 FR 47088).

EPA promulgated new standards for PM_{10} on September 18, 1997. Areas were to be designated under the new PM_{10} standard by July 2000. On May 14, 1999, the United States Court of Appeals for the DC Circuit in *American Trucking Associations, Inc., et al.* v. *United States Environmental Protection Agency* vacated the 1997 PM_{10} standard. Because of the Court ruling, we are continuing to implement the pre-existing PM_{10} standard, and are therefore approving redesignations to qualified PM_{10} nonattainment areas. On November 9, 2001, the Governor of Colorado submitted a request to redesignate the Aspen moderate PM_{10} nonattainment area to attainment (for the 1987 PM_{10} NAAQS) and submitted a maintenance plan for the area.

IV. Consideration of CAA Section 110(l)

Section 110(l) of the CAA states that a SIP revision cannot be approved if the revision would interfere with any applicable requirement concerning attainment and reasonable further progress towards attainment of a NAAQS or any other applicable requirement of the CAA. As stated above, the Aspen area has shown continuous attainment of the PM_{10} NAAQS and has met the applicable Federal requirements for redesignation to attainment. The maintenance plan and associated SIP revisions will not interfere with attainment, reasonable further progress, or any other applicable requirement of the CAA.

V. Statutory and Executive Order Reviews

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a "significant regulatory action" and therefore is not subject to review by the Office of Management and Budget. For this reason, this action is also not subject to Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use" (66 FR 28355, May 22, 2001). This action merely approves State law as meeting Federal requirements and imposes no additional requirements beyond those imposed by State law. Accordingly, the Administrator certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this rule approves pre-existing requirements under State law and does not impose any additional enforceable duty beyond that required by State law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4).

This rule also does not have tribal implications because it will not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal government and Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000). This action also does not have federalism implications because it does not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999). This action merely approves a State rule implementing a Federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. This rule also is not subject to Executive Order 13045 "Protection of Children from Environmental Health Risks and Safety Risks" (62 FR 19885, April 23, 1997), because it is not economically significant.

In reviewing SIP submissions, EPA's role is to approve State choices, provided that they meet the criteria of the Clean Air Act. In this context, in the absence of a prior existing requirement for the State to use voluntary consensus standards (VCS), EPA has no authority to disapprove a SIP submission for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews a SIP submission, to use VCS in place of a SIP submission that otherwise satisfies the provisions of the Clean Air Act. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a "major rule" as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by July 14, 2003. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (*See* section 307(b)(2).)

List of Subjects

40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Particulate Matter, Reporting and recordkeeping requirements.

40 CFR Part 81

Air pollution control.

Dated: April 18, 2003.

Robert E. Roberts,

Regional Administrator, Region 8.

■ 40 CFR parts 52 and 81, chapter I, title 40 are amended as follows:

PART 52—[AMENDED]

■ 1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

Subpart G—Colorado

■ 2. Section 52.320 is amended by adding paragraph (c)(97) to read as follows:

§ 52.320 Identification of plan.

* * * * *

(c) * * *

(97) On November 9, 2001, the State of Colorado submitted a maintenance plan for the Aspen PM_{10} nonattainment area and requested that this area be redesignated to attainment for the PM_{10} National Ambient Air Quality Standards. The redesignation request and maintenance plan satisfy all applicable requirements of the Clean Air Act.

(i) Incorporation by reference.

(A) Colorado Air Pollution Control Division, "State Implementation Plan—Specific Regulations for Nonattainment—Attainment/Maintenance Areas (Local Areas)," 5 CCR 1001–20, revisions adopted January 11, 2001, effective February 28, 2001 as follows: Section III, which is titled "Aspen/Pitkin County PM_{10} Attainment/Maintenance Area," and which supersedes and replaces all prior versions of Section III.

■ 3. Section 52.332 is amended by adding paragraph (m) to read as follows:

§ 52.332 Control strategy: Particulate matter.

* * * * *

(m) On November 9, 2001, the State of Colorado submitted a maintenance plan for the Aspen PM_{10} nonattainment area and requested that this area be redesignated to attainment for the PM_{10} National Ambient Air Quality Standards. The redesignation request and maintenance plan satisfy all applicable requirements of the Clean Air Act.

PART 81—[AMENDED]

■ 1. The authority citation for part 81 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

■ 2. In section 81.306, the table entitled "Colorado-PM–10" is amended by revising the entries under Pitkin County for the "Aspen/Pitkin County Area" to read as follows:

§ 81.306 Colorado.

* * * * *

COLORADO—PM–10

Designated area	Designation		Classification	
	Date	Type	Date	Type
Pitkin County:				
Aspen/Pitkin County Area—The area encompassed by the following Parcel ID numbers, as defined by the Pitkin County Planning Department: 2337–29, 2737–28, 2737–21, 2737–20, 2737–19, 2737–18, 2737–17, 2737–08, 2737–07, 2737–06, 2735–22, 2735–15, 2735–14, 2735–13, 2735–12, 2735–11, 2735–10, 2735–03, 2735–02, 2735–01, 2641–31, 2643–36, 2643–35, 2643–34, 2643–27, 2643–26.	7/14/03	Attainment.		

* * * * *

[FR Doc. 03–12026 Filed 5–14–03; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 73 and 74

[MM Docket No. 95–31; FCC 03–44]

RIN 3060–AH96

Reexamination of the Comparative Standard for Noncommercial Educational Applicants; Association of America's Public Television Stations' Motion for Stay of Low Power Television Auction (No. 81)

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: In this document the Commission modifies its rules and procedures for allocating and licensing "non-reserved" broadcast spectrum where conflicting uses are proposed by commercial and noncommercial educational broadcast stations. The Commission received several comments in how to resolve solutions. These methods were established to select among competing noncommercial and commercial applicants.

DATES: Effective June 16, 2003.

FOR FURTHER INFORMATION CONTACT: Eric J. Bash (202) 418–1188 or *ebash@fcc.gov*, Peter Corea (202) 418–7931 or *pcorea@fcc.gov*, Media Bureau, Policy Division.

SUPPLEMENTARY INFORMATION: This is a summary of the Media Bureau's *Second Report and Order ("2R&O")* in MM Docket No. 95–31; FCC 03–44, adopted March 4, 2003, and released on April 10, 2003. The full text of this *2R&O* is available for inspection and copying during regular business hours in the FCC Reference Center, 445 Twelfth Street, SW., Room CY–A257, Portals II, Washington, DC 20554, and may also be purchased from the Commission's copy contractor, Qualex International, Room CY–B402, telephone (202) 863–2893, or via e-mail *qualexint@aol.com*. This document is also available to persons with disabilities requiring accessible formats (electronic ASCII text; Braille, large print, and audiocassette) by contacting Brian Millin at (202) 418–7426 (voice), (202) 418–7365 (TTY), or by sending an e-mail to *access@fcc.gov*.

Synopsis of Second Report and Order

I. Introduction

1. In this *2R&O*, we establish new policies for licensing spectrum that the Commission has not reserved for the exclusive use of broadcast stations that provide or intend to provide noncommercial educational ("NCE") service. In developing our new policies and procedures, we are constrained by a number of court decisions, regulations, and statutory provisions that, taken together, limit our options. We have come to the following conclusions. First, those stations that a nonprofit educational organization shows will be used to advance an educational program are eligible to be licensed as NCE radio or television stations and thus are exempt from auction. Nonprofit educational organizations that do not make such a showing must compete at auction for licenses. Second, we will not hold applicants for NCE stations ineligible to apply for non-reserved channels, and instead will permit such applicants to continue to apply for this spectrum in filing windows. Any applications for NCE stations determined to be mutually exclusive with applications for commercial stations will be dismissed, although applicants for services in which engineering solutions are possible will have a prior opportunity for settlement. Third, we reaffirm our existing relaxed reservation criteria, which enable would-be applicants for NCE stations in the full-power FM and TV services to add to the number of channels reserved for their use when they demonstrate that they are technically precluded from using an already-reserved channel, and they will provide needed NCE service in a given area. Interested parties may use these criteria to reserve channels in future allocation proceedings, as well as to reserve channels already in the Table of Allotments for which the Commission initiated an allocation proceeding prior to the August 7, 2000 effective date of the relaxed reservation standards, and for which the Commission has never accepted applications. Interested parties may not use these criteria to reserve channels already in the Table for which the Commission initiated an allocation rulemaking after August 7, 2000, or channels for which the Commission has already accepted applications.

II. Background

2. The Commission licenses NCE stations on channels reserved for their exclusive use and also on other broadcast spectrum. In the FM service, the Commission has reserved twenty specific channels out of a total of one hundred channels, exclusively for full-power FM and FM translator use by NCE stations. In the television service, the Commission has reserved a similar proportion of channels, but using different channels in the Table of Allotments in different geographic areas across the country. The Commission has not reserved any particular frequencies for exclusive use in the AM service, or secondary TV services, such as low power television (LPTV) and TV translators.

3. The Commission initiated this proceeding in 1995 to revise the criteria it used to select among competing applicants for new NCE stations. In the past, the Commission had used comparative criteria to resolve mutually exclusive applications in both the commercial and NCE services, although the criteria were different for reserved and non-reserved spectrum. NCE applicants competing against commercial applicants for a non-reserved channel were evaluated using the commercial criteria. Both comparative processes, however, were called into question in the 1990s, leading the Commission to revisit its comparative criteria for applicants for both commercial and NCE stations. The Commission has adopted new selection criteria for NCE stations.

4. The Balanced Budget Act of 1997 ("1997 Budget Act") amended certain provisions of the Communications Act ("Act") germane to the Commission's ongoing review of its licensing processes. The 1997 Budget Act amended section 309(j) of the Act. As revised, section 309(j)(1) states: "If * * * mutually exclusive applications are accepted for any initial licenses or construction permits, then, except as provided in paragraph (2), the Commission shall grant the license or permit to a qualified applicant through a system of competitive bidding that meets the requirements of this subsection." Section 309(j)(2) sets forth the limited exceptions to section 309(j)(1), including "licenses or construction permits issued by the Commission * * * (C) for stations described in section 397(6) of this Act." Section 397(6) of the Act provides the definition of NCE stations.

5. Given the different licensing mechanisms for NCE stations and all other stations, the Commission issued a *Further Notice of Proposed Rulemaking ("FNPRM")*, 63 FR 58358, October 30, 1998, in this docket and sought comment on how to resolve conflicts between commercial and NCE applicants for non-reserved spectrum. The Commission also sought comment on whether section 309 of the Act prohibited it from using competitive bidding to resolve any mutually exclusive applications when they included at least one filed by an applicant for an NCE station, or instead only when they involved competing applications for reserved channels.

6. In the *Report and Order ("R&O")*, 65 FR 36375, June 8, 2000, the Commission concluded that "the exemption of NCE applicants from our general mandatory auction authority does not prohibit us from auctioning non-reserved spectrum, even when NCE entities apply for those channels." The Commission decided to require applicants for NCE stations to compete with applicants for commercial stations for non-reserved spectrum at auction. In order to minimize any hardship on applicants for NCE stations, the Commission also relaxed the criteria used to evaluate requests to reserve new channels.

7. The Association of Public Television Stations, the Corporation for Public Broadcasting, National Public Radio, and the State of Oregon challenged the Commission's decision in court. In *NPR* v. *FCC*, 254 F.3d 226 (DC Cir. 2001), the U.S. Court of Appeals for the D.C. Circuit rejected the Commission's construction of section 309. The court held that "nothing in the Act authorizes the Commission to hold auctions for licenses issued to NCEs to operate in the unreserved spectrum," because section 309(j)(2) denied the Commission the authority to use competitive bidding "based on the nature of the station that ultimately receives the license, and not on the part of the spectrum in which the station operates," 254 F.3d at 229.

8. In order to resolve the issues raised by the court's decision, we issued a *Second Further Notice of Proposed Rulemaking (2FNPRM)*, 67 FR 9945, March 5, 2002. We asked for comment on the scope of the auction exemption, and offered three options, not necessarily mutually exclusive, on how to resolve the competing interests of applicants for commercial and NCE stations in the non-reserved spectrum. First, we proposed to hold applicants for NCE stations ineligible for this spectrum, stating that such an approach "is consistent with the statutory language" and "has the advantage of clarity and simplicity." Second, recognizing that, under our first proposal, spectrum might lie fallow if no commercial applicants applied to use it, we proposed to permit applicants for NCE stations to apply for non-reserved spectrum, subject to dismissal of their applications if they were mutually exclusive with those filed by commercial applicants. Third, given that applicants for NCE stations may not legally participate in auctions, we also sought comment on whether we should further relax the criteria for would-be applicants for NCE stations to reserve additional channels in the future, and whether we should permit NCE applicants the opportunity to apply such criteria, or other criteria, to reserve existing or "vacant" allotments. We also welcomed comment on other options.

III. Discussion

A. Scope of Exemption for NCE Stations From Competitive Bidding

1. Generally

9. *Background.* In the *2FNPRM*, we sought comment on the breadth of section 309(j)(2)(C), which exempts NCE stations from competitive bidding. As indicated, that section exempts the licenses issued "for stations described in section 397(6) of this Act." Subsection (A) defines "noncommercial educational broadcast station" by incorporation of the Commission's eligibility rules for such stations in effect in 1978. Subsection (B) defines as NCE stations those that are municipality-owned and transmit only noncommercial programs for educational purposes.

10. *Discussion.* We conclude that the auction exemption for NCE stations applies to two types of broadcast stations: (1) AM, full-power FM, FM translator, and full-power TV stations that a nonprofit educational organization shows will be used to advance an educational program, and are eligible to be licensed as NCE stations pursuant to the Commission's service-specific standards, in effect as of November 1978; and (2) stations that will be used by a municipality to transmit only noncommercial programs for educational purposes. Section 309(j)(2)(C) states that "(t)he competitive bidding authority granted by this paragraph shall not apply to licenses or construction permits issued by the Commission * * * (C) for stations described in section 397(6) of this Act." Section 397(6), in turn, states that "(t)he terms 'noncommercial educational broadcast station' and 'public broadcast station' mean a television or radio broadcast station which (A) under the rules and regulations of the Commission in effect on the effective date of this paragraph, is eligible to be licensed by the Commission as a noncommercial educational radio or television broadcast station and which is owned and operated by a public agency or nonprofit private foundation, corporation, or association; or (B) is owned and operated by a municipality and which transmits only noncommercial programs for education purposes." Defining stations within the scope of section 397(6)(A) must begin with the content of our eligibility rules as of November 2, 1978, because that is the date section 397(6) became effective. The substance of the eligibility rules for NCE stations has not changed since that time. Section 73.503(a) of the

Commission rules set forth the current eligibility rule for FM stations: "A noncommercial educational FM broadcast station will be licensed only to a nonprofit educational organization and upon showing that the station will be used for the advancement of an educational program." Section 73.621(a) of the rules sets forth the current eligibility rule for TV stations: "(N)oncommercial educational broadcast stations will be licensed only to nonprofit educational organizations upon showing that the proposed stations will be used primarily to serve the educational needs of the community; for the advancement of educational programs; and to furnish a nonprofit and noncommercial television broadcast service." Weaving together these various regulatory and statutory provisions, in the manner the Act instructs, under section 397(6)(A), an NCE station is either an FM or TV station that is licensed to a nonprofit educational organization that shows that the station will be used to advance an educational program. A TV station must also show that the station will be used to furnish a nonprofit and noncommercial service that will serve the educational needs of its community. The Commission has also licensed AM stations that satisfy the FM station eligibility rules, as well as FM translators that rebroadcast the signals of an NCE FM station, as NCE stations, and has done so both before and since the November 1978 effective date of section 397(6). In terms of paragraph 397(6)(B), an NCE station is also any station that is owned and operated by a municipality and transmits only noncommercial programs for educational purposes, regardless of the Commission's eligibility rules. We conclude that applicants are exempt from auctions, pursuant to section 309(j)(2)(C), only when they file applications for broadcast stations expressly defined by sections 397(6)(A) and 397(6)(B).

11. This construction of the governing legal standards for NCE stations is consistent with our current practice. The Commission has long licensed nonprofit educational organizations, such as universities, to provide commercial service on non-reserved channels. When licensed to operate commercial broadcast stations, these nonprofit educational organizations are subject to the requirements applicable to all commercial stations. For example, they must pay filing fees; by contrast, fees are not required with respect to any station that a nonprofit educational organization is licensed to operate as an NCE station.

2. LPTV and TV Translators

12. *Background.* We also sought comment on the applicability of the auction exemption in section 309(j)(2)(C) to LTPV and TV translator stations specifically. The Commission does not now issue, and has never issued, licenses for NCE stations in these services. As a result, we asked whether the auction exemption extends to applicants for LPTV and TV translator licenses that could qualify as applicants for NCE stations in other services. If the fact that we have not licensed LPTV and TV translator facilities as NCE stations in the past means that applicants must compete for these license at auction, we asked whether, and if so how, we should create an NCE LPTV and TV service. Even if we took such action, we sought comment on whether it would have any impact on the auctions exemption, given that section 397(6)(A) of the Act defines NCE stations in terms of our eligibility rules as they existed on November 2, 1978.

Discussion. We conclude that no licenses for LPTV and TV translator facilities fall within the scope of section 397(6)(A), and that adopting new NCE eligibility criteria for these services would not bring applicants for such services within the scope of the auction exemption. LPTV and TV translator facilities, however, qualify as NCE stations under section 397(6)(B) of the Act, if they are owned and operated by municipalities and transmit only NCE programs. This definition does not turn on our eligibility rules, and so applicants of the latter type are exempt from auction.

13. Section 397(6)(A) of the Act defines the NCE stations that are exempt from auction in terms of the Commission's eligibility rules in effect on November 2, 1978. We did not license LPTV and TV translator facilities as NCE stations as of that date. Indeed, the Commission did not create the LPTV service until 1982, and at that time expressly rejected the approach of licensing these facilities as NCE stations. With respect to the LPTV service, the Commission stated that

> Whether a low power applicant or licensee is noncommercial or not-for-profit is a decision properly made by the licensee on the basis of applicable corporate and tax law, pertinent requirements of the Corporation for Public Broadcasting and perceived characteristics of the market in which it proposes to operate. Section 73.621 of the Commission rules (the eligibility and programming rules regarding NCE TV stations) will not apply to lower power stations.

The same applies to TV translators, because LPTV and TV translators are virtually the same; the difference between the two is that LPTV licenses can originate more programming than TV translator licensees, but licensees can switch between the two through simple letter notification to the Commission. Although we have exempted LPTV and TV translator licensees from administrative fees on certain conditions, we do not license these facilities as NCE stations, with the result that the programming and service requirements for NCE stations do not apply. Given that we do not license LPTV and TV translator facilities as NCE stations, and did not do so as of the effective date of section 397(6), these stations (other than those defined in section 397(6)(B)) do not fall within the scope of section 309(j)(2)(C).

14. Section 397(6)(B) defines an NCE station as one that "is owned and operated by a municipality and which transmits only noncommercial programs for education purposes." This definition does not incorporate the Commission's eligibility rules for NCE stations. LPTV and TV translator stations that are owned and operated by municipalities and transmit only noncommercial programming for educational purposes are exempt from auction under section 309(j)(2)(C).

B. Licensing of Non-Reserved Spectrum

15. *Background.* In the *2FNPRM*, we offered two different proposals for licensing noncommercial educational applicants on non-reserved spectrum. As one option, we proposed to hold applicants for NCE station licenses simply ineligible for non-reserved spectrum. As an alternative, we proposed to accept applications for both commercial and NCE stations in the non-reserved spectrum, with the latter applications subject to dismissal if they were mutually exclusive with the former. We also asked whether we should amend the anti-collusion rule to permit mutually exclusive commercial and NCE applicants for AM stations a prior opportunity to resolve their conflicts through settlements.

16. *Discussion.* We adopt our proposal to allow applicants for NCE stations to submit applications for non-reserved spectrum in a filing window, subject to being returned as unacceptable for filing if there is any mutually exclusive application for a commercial station. We also will allow applicants for AM stations and secondary services a prior opportunity to resolve their mutually exclusive applications through settlements. We prefer this approach to that of holding applicants for NCE stations ineligible to apply for non-reserved spectrum. These policies are designed to preserve opportunities for applicants for NCE broadcast stations to use non-reserved spectrum, consistent with section 309(j), as amended, and in a manner that will not unduly delay the initiation of any broadcast service to the public. We recognize that these opportunities are limited to those situations in which commercial applicants do not file mutually exclusive applications for the spectrum, and to certain services in which the applicants reach a settlement, but these situations can and do happen.

17. As a practical matter, and as is currently our practice, we will begin the licensing process for non-reserved spectrum by opening an auctions filing window. Applicants for NCE stations may submit applications in the window in the same way as commercial applicants, using FCC Form 175, the "short-form" application to participate in an auction. Applicants that seek an NCE station license must identify themselves by checking the box labeled "noncommercial educational," which will serve as a preliminary showing that they intend to use the station to advance an educational program and that they meet all other Commission eligibility requirements for NCE stations. Applicants that do not check this box will be considered, as a matter of law, applicants for commercial broadcast stations. Because an applicant's self-identification as "noncommercial educational" affects its eligibility to hold an NCE station license and therefore its eligibility to participate in an auction, we will treat any applicant's attempt to change its self-identification as a major amendment, which is prohibited after the short-form application filing deadline. Applications for NCE stations that are mutually exclusive only with one another will not proceed to auction and instead will be resolved by the same point system selection procedures that we have established for the reserved band. Any application for an NCE station that is mutually exclusive with any application for a commercial broadcast station will, after any settlement opportunities expire, be returned as unacceptable for filing.

18. *Anti-Collusion Rule.* We adopt the approach outlined in the *2FNPRM* to amend our anti-collusion rule to permit mutually exclusive applicants for AM stations to settle, when the applicants include at least one for an NCE station. The anti-collusion rule generally prohibits applicants that have filed mutually exclusive applications from "discussing or negotiating settlement agreements" among themselves after the short-form filing deadline. The Commission, however, has carved out limited exceptions for certain applicant groups in the broadcast and Instructional Fixed Television (ITFS) services, namely those involving applications for major modifications that are mutually exclusive with one another or with applications for new stations, as well as those involving secondary services. The Commission created these exceptions based in part on the fact that it is possible for the applicants to devise engineering solutions to remove the technical conflicts between their applications.

19. As a consequence of the exception for secondary services, applicants for NCE stations in the LPTV and translator services already have the opportunity to resolve their mutually exclusivity applications. Applicants for new AM stations also have the opportunity to settle when their applications are mutually exclusive with those for major modifications. We believe it will serve the public interest if we expand the settlement opportunity to applicants for new AM stations that are mutually exclusive with one another, when at least one of them is an applicant for an NCE station. Given the limited number of opportunities for any new stations using AM frequencies, this expansion to the groups that qualify for settlement is incremental. This is buttressed by the fact that we limit the groups of AM applicants eligible to enter into settlements to only those that include applicants for both commercial and NCE stations. We do not believe that extending settlement opportunities to applicants for NCE stations is particularly likely to compromise the purpose of the anti-collusion rule, which is to enhance the competitiveness of the auction process, given that these applicants will never compete at auction for the licenses for which they have applied. As a result, mixed groups of applicants for AM stations will have the opportunity to design engineering solutions or reach other settlements, which must conform to all requirements in our settlement process for broadcast applicants. Because we only accept applications for non-reserved full-power FM and full-power TV channels that are already in the Table of Allotments, it is not possible for applicants that file mutually exclusive applications for such channels to resolve their conflicts through engineering means; as a result, we will not extend a similar settlement opportunity to them.

C. Allocating Spectrum

20. *Background.* In the *R&O* in this proceeding, the Commission decided to allocate a channel as reserved if a proponent demonstrated: For radio, that it is technically precluded from using a reserved channel and would provide a first or second NCE radio service to 10% of the population within its 1mV/m contour, and for television, that there is no reserved channel available in the proponent's community and it would provide the first or second NCE television service to 2000 or more people who constitute 10% of the population within its noise limited contour. The Commission adopted these standards for use at the allocation stage of the licensing process, and thus expressly declined to extend them to existing (vacant) allotments, pending applications, and services such as AM that do not use an allocations process. In the *2FNPRM*, we asked whether we should further relax the reservation standards, and if so what the standard should be. We also asked whether we should establish opportunities for interested parties to reserve existing allotments that we have not yet licensed (*i.e.*, "vacant" allotments), and if so what the standards should be.

21. *Discussion.* We reaffirm the relaxed reservation standard that the Commission adopted in the *R&O* in this proceeding. We will permit the use of these criteria to reserve channels not only in future allocation proceedings, but also in allocation proceedings that the Commission initiated prior to its adoption of the relaxed reservation standard. We believe these policies best satisfy the public interest, and are the fairest to all parties concerned.

22. *Future Allocations.* The Commission already has reserved twenty (201–220) out of a total of one hundred FM channels for the exclusive use of NCE stations, and will reserve any of the remaining eighty channels (221–300) for NCE stations if one of three tests is satisfied. The Commission's original purpose in reserving a band of channels was simply to ensure that NCE stations would develop; when establishing the FM and TV services, the Commission was concerned that commercial stations, due to their financial advantage, would make such immediate use of the spectrum for these services that none would remain available for NCE stations when they were prepared to make use of it. In order to ensure that NCE stations could in fact make use of the reserved band of channels, the Commission adopted two tests for reserving channels outside this band;

the Commission will allocate a new FM channel as reserved if a would-be applicant for an NCE station can show that it cannot use another reserved channel to provide its service without causing interference to either a foreign station or a domestic TV station operating on channel 6. Moreover, in order "to mitigate any potential hardship that the auction process might impose on noncommercial entities," the Commission adopted a third test for reserving channels outside 201–220 in the *R&O* in this proceeding. Under this third standard, the Commission will allocate a new FM channel as reserved if a would-be applicant for an NCE station can show that it is technically precluded from using a reserved channel, and that it will provide a first or second NCE service to 10% of the population within its proposed protected service contour. Since the Commission further relaxed the standard, several parties have asked the Commission to allocate a particular FM channel as reserved pursuant to the relaxed reservation standards, and we have done so.

23. Our third test thus requires a proponent for reservation to demonstrate that NCE service is needed in their proposed service area (by showing that they will provide the first or second NCE service within some portion of their proposed service contour), and to show that they are "technically precluded" from using a reserved channel. NCE service is not technically precluded if it is possible to specify a location at which same-class reserved band NCE facilities could be licensed to the proposed community in compliance with NCE technical rules. A reservation proponent must satisfy two criteria: First, that class-maximum facilities at the allotment reference site would provide a new first or second NCE service to ten percent or more of the population in a station's service area; and second, that a same-class reserved band facility that would provide the requisite level of new NCE service is—to a reasonable degree of certitude—technically precluded.

24. In order to expedite new service and minimize burdens to prospective NCE applicants, we will use the following methodology to evaluate allotment reservation requests. A reservation showing must satisfy two distinct criteria. First, it must establish the relative need for a new NCE service by demonstrating that maximum class facilities at the proposed allotment site would provide a first or second NCE service to at least ten percent of the population within the proposed station's service area and that such population is at least 2000 persons. The Commission will not reserve a particular allotment if this "first or second service" criterion is not satisfied at the allotment site's reference coordinates.

25. Secondly, a reservation request must include a technical preclusion showing. The following test is designed to provide a reliable and efficient proxy of technical preclusion. It is not a conclusive test, but one that the Commission will treat as establishing a rebuttable presumption of technical preclusion. The showing will be based on a circle, centered in the proposed community of license and drawn with a radius one kilometer less than the distance to the predicted 60 dBu strength signal of a maximum same-class facility. The reservation showing must establish that no rule-compliant facility can be authorized at maximum antenna height above average terrain ("HAAT") and with maximum effective radiated power ("ERP") on any reserved band channel at four equally-spaced locations on the circle, beginning with 0 (zero) degrees. In addition, the reservation showing must establish that no same-class rule-compliant facility can be authorized at minimum antenna HAAT and with minimum ERP on any reserved band channel at the city center coordinates for the community of license. If these two criteria are satisfied, the reservation proponent has presumptively established that the allotment should be reserved, *i.e.*, that a nonreserved band FM station licensed to the proposed community with the proposed class facilities is technically precluded from providing service on a reserved band channel.

26. In the event that an NCE station can be licensed on one or more channels at any of these five sites in compliance with the NCE technical rules, the reservation showing must undertake a "first or second service" analysis of the technically acceptable facilities at each acceptable site. If any analyzed facility would satisfy the "first or second service" criterion, the allotment will not be reserved. If none of the identified channel/site combinations satisfy the "first or second service" criterion, then the reservation proponent has presumptively established that the allotment should be reserved.

27. A reservation showing will be conclusively rebutted if a party that desires a non-reserved allotment can both identify a single location from which a facility with a class-permissible power/height combination can be authorized in compliance with the rules, and show, with respect to that location, that the specified facilities would satisfy the "first or second service" criterion. If no acceptable rebuttal showing is submitted, the allotment generally will be reserved. The staff may reject reservation showings if it determines that technically acceptable reserved band facilities can be licensed to the particular community, provided that such facilities meet the "first or second service" criterion.

28. We also clarify that a reservation request, accompanied with a complete technical preclusion showing, may be submitted as an original petition for rulemaking or as a timely counterproposal. If a reservation request is filed as a counterproposal and specifies the same community as the initial petition, the station class and allotment coordinates set forth in the initial petition would be used to determine technical preclusion. Conflicts between mutually exclusive allotments for different communities when a party has made the two-part reservation showing with respect to one community will be resolved under established Section 307(b) precedent. Reserved allotments will be conditioned on the construction and licensing of an NCE station that provides the requisite level of first and second NCE service. In the event that all applications for a reserved band allotment fail to propose such service, the allotment will become unreserved by operation of law and subject to the Commission's competitive bidding licensing procedures.

29. *Vacant Allotments.* We will authorize entities to use the relaxed reservation standards that we reaffirm today not only for future allocations, but also for FM channels for which we initiated an allocation proceeding before the effective date of these standards, August 7, 2000, and for which we never opened a filing window to accept applications. There are approximately 450 such FM channels, including approximately 350 that were previously scheduled for auction. In determining whether to reevaluate the status of an FM channel that already has been the subject of an allocation rulemaking proceeding, we believe that the public interest requires us to weigh the delay in the introduction of new FM service to the public that would be associated with such a review, against the public interest benefits of additional review, and fairness to all interested parties. For FM channels for which Commission initiated an allocation proceeding before August 7, 2000, and for which it has no applications on file, we believe that the balance of these concerns favors further review. On the one hand is delay, as some commenters indicate, as well as unfairness to the proponents of these channels, each of which petitioned the Commission to allocate the channel, and has affirmatively expressed an interest in filing an application and competing for the channel at auction. On the other hand, proponents of channels have no "finder's preference" for them, and entities that wish to use these FM channels to operate NCE stations have not had meaningful opportunities to acquire the licenses for them. This is because these entities never had opportunities to reserve these channels using our relaxed reservation standards, and although we will still permit them to apply for these channels, their applications will be returned as soon as they become mutually exclusive with those for commercial stations. Allowing entities that wish to use these FM channels to operate NCE stations an opportunity to reserve them also ensures that we will allocate them as reserved or non-reserved according to whether there is a greater need for commercial or NCE service, as determined by our relaxed reservation standards, such that the delay of service occasioned by our further review of the nature of the channel is offset by the public interest benefit of more diverse service. Thus, on balance, we believe that the public interest is best served by allowing interested parties an opportunity to reserve FM channels using the standards that were not previously available to them. As a result, we will direct the staff to open a short window in the near future, during which interested parties may attempt to reserve any FM channel for which we initiated an allocation rulemaking before August 7, 2000, using the standards that became effective that day and that we reaffirm and clarify here. Interested parties objecting to any proffered reservation showing we receive may of course file opposing pleadings. We will release a Public Notice containing the details of our procedures for reserving vacant allotments in advance of the window.

30. We will not allow interested parties to use the relaxed reservation standards for any FM channel for which we initiated an allocation rulemaking after August 7, 2000. We believe the cost-benefit analysis associated with opening these rulemakings is different. The relaxed reservation standards were available to reserve any of these channels. Indeed, several parties have reserved allotments using the Commission's new standards. We do not believe it would serve the public interest to introduce additional delay to offer would-be applicants for NCE stations yet another opportunity to attempt to reserve these channels using the criteria that have already been available to them.

31. *Pending Applications.* Consistent with our conclusion not to open these newer vacant allotments to reconsider reserving the channels, we also reaffirm the decision in then *R&O* in this proceeding not to permit applicants for NCE stations in pending mixed groups a further opportunity to reserve the channels for which they have applied. At the time of the 2FNPRM, a total of forty mixed groups were pending. We offered these groups an opportunity to settle, and many took advantage of that opportunity, with the result that approximately twenty groups remain. The channels at issue here are altogether different from the allotments discussed because they have advanced to a farther point in our licensing process: the Commission opened a filing window for some of these channels nearly ten years ago, already had long-form applications on file for them, and in fact had originally scheduled to award the licenses by auction in 1999. As a result, when compared to the allotments for which we never opened a filing window, further review of the channels associated with the pending applications would cause even greater delay in our licensing process and the introduction of broadcast service, and also would cause greater unfairness to applicants for commercial stations, because all interested parties have spent the time and money necessary to complete all of the engineering and legal components of a long-form application. Particularly given that we have already offered settlement opportunities to all applicants in these pending cases, we are not persuaded that the equities favoring the applicants for NCE stations in these pending proceedings outweigh the delay in initiating new broadcast service to the public as well as the unfairness to applicants for commercial stations. As a result, we believe that it will serve the public interest best to return as unacceptable for filing the pending applications for NCE stations, and move the process forward by subjecting any remaining mutually exclusive applications to auction. This auction will be closed; we will not open a new filing window. Prior to auction, we will not review these applicants' long-form applications already on file, nor will we accept amendments to these forms. If only one commercial application remains after the return of all mutually exclusive NCE applications, we will process that applicant's pending long-form application in accordance with our applicable rules. This approach will end the administrative delay in processing these applications, and will result in licensing new broadcast facilities to serve the public more quickly.

32. Other Allocation Issues. NPR, with the support of a few other commenters, asked us to reallocate TV channel 6 for NCE radio use. A number of NCE TV licensees, however, stated that this issue is outside the scope of this proceeding. We agree, and decline to adopt NPR's proposal. We also conclude that Amherst Alliance's request that we expand the reserved band, and limit eligibility to the expanded reserved particular types of NCE stations, is likewise outside the scope of this proceeding.

IV. Conclusion

33. This proceeding has required us to undertake the difficult task of deciding how to resolve the competing interests of applicants for commercial and NCE stations for non-reserved spectrum. We have attempted to create and maintain opportunities for applicants for NCE stations insofar as possible, consistent with the applicable legal standards, and fairness toward applicants for commercial stations. Our resolution of these issues will now enable the Commission to move forward quickly with licensing non-reserved spectrum, so that the ultimate licensees may provide service to the public.

V. Final Regulatory Flexibility Analysis

34. As required by the Regulatory Flexibility Act of 1980, as amended ("RFA"), an Initial Regulatory Flexibility Analysis ("IRFA") was incorporated in the *2FNPRM* in this docket. The Commission sought written public comment on the proposals in the *2FNPRM*, including comment on the IRFA. No comments addressed the IRFA. This present Final Regulatory Flexibility Analysis ("FRFA") conforms to the RFA.

Need for, and Objectives of, the Second Report and Order

35. The Commission adopts the *2R&O* to establish new policies for licensing spectrum that the Commission has not specifically reserved for the exclusive use of noncommercial educational ("NCE") broadcast stations. In the *R&O* in this docket, the Commission decided to resolve competing applications for commercial and NCE stations in this "non-reserved" spectrum via competitive bidding, but the U.S. Court of Appeals for the D.C. Circuit overturned that result. In the *2FNPRM* in this docket, the Commission sought

comment on how to allocate and license this spectrum, consistent with the court's opinion and the Communications Act. The *2R&O* resolves the issues we raised in the *2FNPRM*.

Summary of Significant Issues Raised by the Public in Responses to the IRFA

36. No comments addressed the IRFA, or otherwise discussed issues that may impact small entities.

Description and Estimate of the Number of Small Entities to Which the Rules Will Apply

37. The RFA directs the Commission to provide a description of, and, where feasible, an estimate of the number of small entities that will be affected by the rules. The RFA defines the term "small entity" as having the same meaning as "small business," "small organization," and "small governmental jurisdiction." In addition, the term "small business" has the same meaning as the term "small business concern" under the Small Business Act. A "small business concern" is one that: (1) Is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the SBA. A "small organization" is generally defined as "any not-for-profit enterprise which is independently owned and operated and is not dominant in its field * * *." A "small governmental jurisdiction" is generally defined as "governments of cities, counties, towns, townships, villages, school districts, or special districts, with a population of less than fifty thousand * * *."

38. The rules adopted in the *2R&O* will affect applicants for NCE stations on non-reserved channels and frequencies. Under the applicable provisions of the Act, NCE stations are those owned and operated by: (1) Nonprofit educational organizations after showing that they will use the stations to advance educational programs, or (2) municipalities that use the stations to air only noncommercial programs for educational purposes. The rules could also affect commercial stations by causing delay in processing their applications; although the new rules establish that applications for NCE stations will be returned as unacceptable for filing if they become and remain mutually exclusive with applications for commercial stations, the rules continue to permit applicants for NCE stations to apply for non-reserved channels, and in some services, the opportunity to negotiate a settlement with a competing applicant for a commercial station. In addition, our new policies may cause some delay to applicants for commercial stations, whether large or small, that seek to use certain vacant allotments; although as a general matter we will allow applicants for NCE stations to attempt to reserve channels only when we are conducting an allocation proceeding to amend the Table of Allotments, we will permit applicants for NCE stations an opportunity to reserve channels for which we have already concluded the allocation proceeding, if the Commission initiated the proceeding before August 7, 2000, and never accepted applications for the channel. Thus, the rules may affect "small business concerns," "small organizations," and "small governmental jurisdictions." The number of possible future applicants cannot be determined.

39. *Radio.* Applicants could also include existing radio stations. As of June 30, 2002, the Commission had licensed a total of 13,261 radio stations, of which 4,811 were AM stations, 6,147 were commercial FM stations, and 2,303 were NCE FM stations. As of the same date, the Commission had also licensed 3,770 FM translator and booster stations (commercial and NCE). SBA defines as a small business those radio broadcasting stations that have no more than $6 million in annual receipts. According to Commission staff review of BIA Publications, Inc. Master Access Radio Analyzer Database on August 22, 2002, about 10,800 commercial radio stations have revenue of $6 million or less. Many commercial radio stations, however, are affiliated with larger corporations with higher revenue, with the result that the estimate of 10,800 commercial radio stations overstates the number that qualify as small entities. The Commission does not compile and otherwise does not have access to information on the revenue of NCE stations that would permit it to determine how many such stations would qualify as small entities.

40. *Television.* Applicants could also include TV stations. As of June 30, 2002, the Commission had licensed a total of 1,712 full-power TV stations, of which 1,331 commercial TV stations, were 381 were NCE TV stations. As of the same date, the Commission had licensed 4,741 TV translator stations, 2,120 LPTV stations, and 554 Class A TV stations. SBA defines a television broadcasting station that has no more than $12 million in annual receipts as a small business. According to Commission staff review of the BIA Publications, Inc. Master Access Television Analyzer Database on August 22, 2002, about 870 of the commercial TV stations have revenues of $12 million or less. Many commercial TV stations, however, are affiliated with larger corporations with higher revenue, with the result that the estimate of 870 commercial TV stations overstates the number that qualify as small entities. The Commission does not compile and otherwise does not have access to information on the revenue of NCE stations that would permit it to determine how many such stations would qualify as small entities.

Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements

41. The Commission anticipates that none of the rules adopted in the *2R&O* will result in an increase in the existing reporting and recordkeeping requirements of potential applicants.

Steps Taken To Minimize Significant Economic Impact on Small Entities, and Significant Alternatives Considered

42. The RFA requires an agency to describe any significant alternatives that it has considered in adopting its rules, which may include the following four alternatives (among others): (1) The establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (2) the clarification, consolidation, or simplification of compliance or reporting requirements under the rule for small entities; (3) the use of performance, rather than design, standards; and (4) an exemption from coverage of the rule, or any part thereof, for small entities.

43. The *2R&O* establishes new policies for licensing non-reserved spectrum, in a manner consistent with the court's decision in the *NPR* case, and the applicable provisions of the statute. As explained in detail in the *2R&O*, section 309(j)(1) of the Act generally requires the Commission to resolve mutually exclusive applications for licenses to use spectrum via competitive bidding, but section 309(j)(2)(C) exempts the licenses for NCE stations from this process. In the *R&O* in this docket, the Commission concluded that the auction exemption applied only to licenses for NCE stations to use the channels that Commission has reserved for their exclusive use, and that applicants for licenses for NCE stations to use non-reserved spectrum must compete for them via competitive bidding; in the *NPR* case, the D.C. Circuit decided that the auction exemption extended to licenses for NCE stations to use non-reserved spectrum. As a result, the Commission's new policies and rules must distinguish between commercial station and NCE stations in terms of how it allocates and licenses this spectrum. Thus, the Commission cannot distinguish between "small" and "non-small" entities in applying the relevant statutory standards.

44. Although it is not necessarily true that more applicants for NCE stations would qualify as "small entities" than applicants for commercial stations, the Commission has attempted, within the applicable legal constraints, to maximize the opportunities for applicants for NCE stations to obtain licenses to use non-reserved spectrum, consistent with the mandate in section 604(a)(5) of the RFA that an agency consider alternatives to minimize significant economic impact on small entities. For example, in the *2FNPRM*, the Commission proposed two alternatives for licensing non-reserved spectrum: Hold applicants for NCE stations ineligible for the spectrum, or permit them to apply for this spectrum, subject to the Commission returning their applications as unacceptable for filing if any mutually exclusive applications for commercial stations remained after the expiration of any settlement period. In the *2R&O*, the Commission has adopted the second of these alternatives, which permits NCE stations to obtain licenses for non-reserved spectrum, while the first one did not. This alternative is equally beneficial to both large and small entities, because it permits all entities the opportunity to acquire licenses for non-reserved spectrum. Moreover, the Commission has also reaffirmed its process that permits would-be applicants for NCE stations, both large and small, to reserve more FM and TV channels for their exclusive use upon showing that an already-reserved channel is not available for use, and there is a need for NCE service in a given area. The Commission will allow interested parties an opportunity to apply these criteria to future allocation proceedings, and to channels already in the Table of Allotments for which the Commission initiated an allocation proceeding before the effective date of the criteria, and for which it never accepted applications.

Report to Congress

45. The Commission will send a copy of the *2R&O*, including this FRFA, in a report to be sent to Congress pursuant to the Congressional Review Act. In addition, the Commission will send a copy of the *2R&O*, including this FRFA, to the Chief Counsel for Advocacy of the Small Business Administration. A copy of the *2R&O* and this FRFA (or summaries thereof) will also be published in the **Federal Register**.

Ordering Clauses

46. Pursuant to the authority contained in sections 1, 2(a), 4(i), 303, 307, and 309 of the Communications Act, as amended, 47 U.S.C. 151, 152(a), 154(i), 303, 307, and 309 of this *2R&O* is *adopted*, and parts 73 and 74 of the Commission's rules are amended, effective June 16, 2003.

47. The Commission's Consumer and Governmental Affairs Bureau, Reference Information Center, *shall send* a copy of this *2R&O*, including the Final Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration.

48. This proceeding is *terminated*.

List of Subjects in 47 CFR Parts 73 and 74

Radio, Television.

Federal Communications Commission.

William F. Caton,

Deputy Secretary.

Rule Changes

■ For the reasons discussed in the preamble, the Federal Communications Commission amends 47 CFR parts 73 and 74 as follows:

PART 73—RADIO BROADCAST SERVICES

■ 1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303, 334 and 336.

■ 2. Section 73.3571 is amended by revising paragraphs (h)(1)(i), (h)(2)(i), and (h)(3) to read as follows:

§ 73.3571 Processing of AM broadcast station applications.

* * * * *

(h) * * *

(1)(i) The FCC will specify by Public Notice, pursuant to § 73.5002, a period for filing AM applications for a new station or for major modifications in the facilities of an authorized station. AM applications for new facilities or for major modifications, whether for commercial broadcast stations or noncommercial educational broadcast stations, as described in 47 U.S.C. 397(6), will be accepted only during these specified periods. Applications submitted prior to the appropriate filing period or "window" opening date identified in the Public Notice will be returned as premature. Applications submitted after the specified deadline will be dismissed with prejudice as untimely.

* * * * *

(2) * * *

(i) Identifying the short-form applications received during the window filing period which are found to be mutually exclusive, including any applications for noncommercial educational broadcast stations, as described in 47 U.S.C. 397(6), as well as the procedures the FCC will use to resolve the mutually exclusive applications;

* * * * *

(3) After the close of the filing window, the FCC will also release a Public Notice identifying any short-form applications received which are found to be non-mutually exclusive, including any applications for noncommercial educational broadcast stations, as described in 47 U.S.C. 397(6). All non-mutually exclusive applicants will be required to submit an appropriate long form application within 30 days of the Public Notice and, for applicants for commercial broadcast stations, pursuant to the provisions of § 73.5005(d). Non-mutually exclusive applications for commercial broadcast stations will be processed and the FCC will periodically release a Public Notice listing such non-mutually exclusive applications determined to be acceptable for filing and announcing a date by which petitions to deny must be filed in accordance with the provisions of §§ 73.5006 and 73.3584. Non-mutually exclusive applications for noncommercial educational broadcast stations, as described in 47 U.S.C. 397(6), will be processed and the FCC will periodically release a Public Notice listing such non-mutually exclusive applications determined to be acceptable for filing and announcing a date by which petitions to deny must be filed in accordance with the provisions of §§ 73.7004 and 73.3584. If the applicant is duly qualified, and upon examination, the FCC finds that the public interest, convenience and necessity will be served by the granting of the non-mutually exclusive long form application, the same will be granted.

* * * * *

■ 3. Section 73.3572 is amended by revistng the section heading and paragraph (e) to read as follows:

§ 73.3572 Processing of TV broadcast, Class A TV broadcast, low power TV, TV translators, and TV booster applications.

* * * * *

(e) The FCC will specify by Public Notice a period for filing applications for a new non-reserved television, low power TV and TV translator stations or for major modifications in the facilities of such authorized stations, whether for

commercial broadcast stations or noncommercial educational broadcast stations, as described in 47 U.S.C. 397(6), and major modifications in the facilities of Class A TV stations.

* * * * *

■ 4. Section 73.3573 is amended by revising paragraphs (f)(2)(i), (f)(3)(i), and (f)(4) to read as follows:

§ 73.3573 Processing of FM broadcast station applications.

* * * * *

(f) * * *

(2)(i) The FCC will specify by Public Notice, pursuant to § 73.5002(a), a period for filing non-reserved band FM applications for a new station or for major modifications in the facilities of an authorized station. FM applications for new facilities or for major modifications, whether for commercial broadcast stations or noncommercial educational broadcast stations, as described in 47 U.S.C. 397(6), will be accepted only during the appropriate filing period or "window." Applications submitted prior to the window opening date identified in the Public Notice will be returned as premature. Applications submitted after the specified deadline will be dismissed with prejudice as untimely.

* * * * *

(3) * * *

(i) Identifying the short-form applications received during the window filing period which are found to be mutually exclusive, including any applications for noncommercial educational broadcast stations, as described in 47 U.S.C. 397(6), as well as the procedures the FCC will use to resolve the mutually exclusive applications;

* * * * *

(4) If, after the close of the appropriate window filing period, a non-reserved FM allotment remains vacant, the window remains closed until the FCC, by Public Notice, specifies a subsequent period for filing non-reserved band FM applications for a new station or for major modifications in the facilities of an authorized station pursuant to paragraph (f)(2)(i) of this section. After the close of the filing window, the FCC will also release a Public Notice identifying the short-form applications which are found to be non-mutually exclusive, including any applications for noncommercial educational broadcast stations, as described in 47 U.S.C. 397(6). These non-mutually exclusive applicants will be required to submit the appropriate long-form application within 30 days of the Public Notice and, for applicants for commercial broadcast stations, pursuant to the provisions of § 73.5005(d). Non-mutually exclusive applications for commercial broadcast stations will be processed and the FCC will periodically release a Public Notice listing such non-mutually exclusive applications determined to be acceptable for filing and announcing a date by which petitions to deny must be filed in accordance with the provisions of §§ 73.5006 and 73.3584. Non-mutually exclusive applications for noncommercial educational broadcast stations, as described in 47 U.S.C. 397(6), will be processed and the FCC will periodically release a Public Notice listing such non-mutually exclusive applications determined to be acceptable for filing and announcing a date by which petitions to deny must be filed in accordance with the provisions of §§ 73.7004 and 73.3584. If the applicant is duly qualified, and upon examination, the FCC finds that the public interest, convenience, and necessity will be served by the granting of the non-mutually exclusive long-form application, it will be granted.

* * * * *

Subpart I—Procedures for Competitive Bidding and for Applications for Noncommercial Educational Broadcast Stations on Non-Reserved Channels

■ 5. The heading in subpart I of part 73 is revised as set forth above.

■ 6. Section 73.5000 is amended by revising paragraph (b) to read as follows:

§ 73.5000 Services subject to competitive bidding.

* * * * *

(b) Mutually exclusive applications for broadcast channels in the reserved portion of the FM band (Channels 200–220) and for television broadcast channels reserved for noncommercial educational use are not subject to competitive bidding procedures. Applications for noncommercial educational broadcast stations, as described in 47 U.S.C. 397(6), on non-reserved channels also are not subject to competitive bidding procedures.

■ 7. Section 73.5002 is amended by revising the section heading and paragraphs (a), (b), (c) introductory text and adding paragraph (d)(4) to read as follows:

§ 73.5002 Application and certification procedures; return of mutually exclusive applications not subject to competitive bidding procedures; prohibition of collusion.

(a) Prior to any broadcast service or ITFS auction, the Commission will issue a public notice announcing the upcoming auction and specifying the period during which all applicants seeking to participate in an auction, and all applicants for noncommercial educational broadcast stations, as described in 47 U.S.C. 397(6), on non-reserved channels, must file their applications for new broadcast or ITFS facilities or for major changes to existing facilities. Broadcast service or ITFS applications for new facilities or for major modifications will be accepted only during these specified periods. This initial and other public notices will contain information about the completion and submission of applications to participate in the broadcast or ITFS auction, and applications for noncommercial educational broadcast stations, as described in 47 U.S.C. 397(6), on non-reserved channels, as well as any materials that must accompany the applications, and any filing fee that must accompany the applications or any upfront payments that will need to be submitted. Such public notices will also, in the event mutually exclusive applications are filed for broadcast construction permits or ITFS licenses that must be resolved through competitive bidding, contain information about the method of competitive bidding to be used and more detailed instructions on submitting bids and otherwise participating in the auction. In the event applications are submitted that are not mutually exclusive with any other application in the same service, or in the event that any applications that are submitted that had been mutually exclusive with other applications in the same service are resolved as a result of the dismissal or modification of any applications, the non-mutually exclusive applications will be identified by public notice and will not be subject to auction.

(b) To participate in broadcast service or ITFS auctions, or to apply for a noncommercial educational station, as described in 47 U.S.C. 397(6), on a non-reserved channel, all applicants must timely submit short-form applications (FCC Form 175), along with all required certifications, information and exhibits, pursuant to the provisions of § 1.2105(a) of this chapter and any Commission public notices. So determinations of mutual exclusivity for auction purposes can be made, applicants for non-table broadcast services or for ITFS must also submit the engineering data contained in the appropriate FCC form (FCC Form 301, FCC Form 346, FCC Form 349 or FCC Form 330). Beginning January 1, 1999, all short-form applications must be filed electronically. If any application for a noncommercial educational broadcast station, as described in 47 U.S.C. 397(6), is mutually exclusive with applications for commercial broadcast stations, and the applicants that have the opportunity to resolve the mutually exclusivity pursuant to paragraph (c) and (d) of this section fail to do so, the application for noncommercial educational broadcast station, as described in 47 U.S.C. 397(6), will be returned as unacceptable for filing, and the remaining applications for commercial broadcast stations will be processed in accordance with competitive bidding procedures.

(c) Applicants in all broadcast service or ITFS auctions, and applicants for noncommercial educational stations, as described in 47 U.S.C. 397(6), on non-reserved channels will be subject to the provisions of § 1.2105(b) of this chapter regarding the modification and dismissal of their short-form applications. Notwithstanding the general applicability of § 1.2105(b) of this chapter to broadcast and ITFS auctions, and applicants for noncommercial educational stations, as described in 47 U.S.C. 397(6), on non-reserved channels, the following applicants will be permitted to resolve their mutual exclusivities by making amendments to their engineering submissions following the filing of their short-form applications:

* * * * *

(d) * * *

(4) Applicants for the AM broadcast service who file applications that are mutually exclusive with at least one application for a noncommercial educational station, as defined in 47 U.S.C. 397(6).

■ 8. Section 73.5005 is amended by revising paragraph (d) to read as follows:

§ 73.5005 Filing of long-form applications.

* * * * *

(d) An applicant whose short-form application, submitted pursuant to § 73.5002(b), was not mutually exclusive with any other short-form application in the same service, or whose short-form application was mutually exclusive only with one or more short-form applications for a noncommercial educational broadcast station, as described in 47 U.S.C. 397(6), shall submit an appropriate long-form application within thirty (30) days following release of a public notice identifying any such non-mutually exclusive applicants. The long-form application should be submitted pursuant to the rules governing the relevant service and according to any procedures for filing such applications set out by public notice. The long-form application filed by a non-mutually exclusive applicant need not contain the additional exhibits, identified in paragraph (a) of this section, required to be submitted with the long-form applications filed by winning bidders. When electronic procedures become available, the Commission may require any non-mutually exclusive applicants to file their long-form applications electronically.

■ 9. Section 73.5006 is amended by revising paragraph (a) to read as follows:

§ 73.5006 Filing of petitions to deny against long-form applications.

(a) As set forth in 47 CFR 1.2108, petitions to deny may be filed against the long-form applications filed by winning bidders in broadcast service or ITFS auctions and against the long-form applications filed by applicants whose short-form applications were not mutually exclusive with any other applicant, or whose short-form applications were mutually exclusive only with one or more short-form applications for a noncommercial educational broadcast station, as described in 47 U.S.C. 397(6).

* * * * *

Subpart K—Application and Selection Procedures for Reserved Noncommercial Educational Channels, and for Certain Applications for Noncommercial Educational Stations on Non-Reserved Channels

■ 10. The heading in subpart K of part 73 is revised as set forth above.

■ 11. Section 73.7001 is amended by revising paragraph (b) and adding paragraph (c) to read as follows:

§ 73.7001 Services subject to evaluation by point system.

* * * * *

(b) A point system will be used to evaluate mutually exclusive applications for new radio, television, and FM translator facilities, and for major changes to existing facilities, on non-reserved channels, only when all of the mutually exclusive applications are for noncommercial educational broadcast stations, as described in 47 U.S.C. 397(6)(A) or 47 U.S.C. 397(6)(B).

(c) A point system will be used to evaluate mutually exclusive applications for new television translator and low power television facilities, and for major changes to existing facilities, only when all of the mutually exclusive applications are for noncommercial educational broadcast stations, as described in 47 U.S.C. 397(6)(B).

PART 74—EXPERIMENTAL RADIO, AUXILIARY, SPECIAL BROADCAST AND OTHER PROGRAM DISTRIBUTIONAL SERVICES

■ 11. The authority citation for part 74 continues to read as follows:

Authority: 47 U.S.C. 154, 303, 307, 336(f), 336(h) and 554.

■ 12. Section 74.1233 is amended by revising paragraphs (d)(2)(i), (d)(3)(i), (d)(4) to read as follows:

§ 74.1233 Processing FM translator and booster station applications.

* * * * *

(d) * * *

(2)(i) The FCC will specify by Public Notice, pursuant to § 73.5002(a) of this chapter, a period for filing non-reserved band FM translator applications for a new station or for major modifications in the facilities of an authorized station. FM translator applications for new facilities or for major modifications, whether for commercial broadcast stations or noncommercial educational broadcast stations, as described in 47 U.S.C. 397(6), will be accepted only during these specified periods. Applications submitted prior to the window opening date identified in the Public Notice will be returned as premature. Applications submitted after the specified deadline will be dismissed with prejudice as untimely.

* * * * *

(3) * * *

(i) Identifying the short-form applications received during the appropriate filing period or "window" which are found to be mutually exclusive, including any applications for noncommercial educational broadcast stations, as defined in 47 U.S.C. 397(6), as well as the procedures the FCC will use to resolve the mutually exclusive applications;

* * * * *

(4) After the close of the filing window, the FCC will also release a Public Notice identifying any short-form applications which are found to be non-mutually exclusive, including any applications for noncommercial educational broadcast stations, as described in 47 U.S.C. 397(6). These non-mutually exclusive applicants will be required to submit the appropriate long form application within 30 days of the Public Notice and, for applicants for commercial broadcast stations, pursuant to the provisions of § 73.5005 of this chapter. Non-mutually exclusive applications for commercial broadcast stations will be processed and the FCC

will periodically release a Public Notice listing such non-mutually exclusive applications determined to be acceptable for filing and announcing a date by which petitions to deny must be filed in accordance with the provisions of §§ 73.5006 and 73.3584 of this chapter. Non-mutually exclusive applications for noncommercial educational broadcast stations, as described by 47 U.S.C. 397(6), will be processed and the FCC will periodically release a Public Notice listing such non-mutually exclusive applications determined to be acceptable for filing and announcing a date by which petitions to deny must be filed in accordance with the provisions of §§ 73.7004 and 73.3584 of this chapter. If the applicants are duly qualified, and upon examination, the FCC finds that the public interest, convenience and necessity will be served by the granting of the non-mutually exclusive long-form application, the same will be granted.

* * * * *

[FR Doc. 03–12057 Filed 5–14–03; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Parts 300, 600, and 679

[Docket No. 020801186 3073 02; I.D.053102D]

RIN 0648 AQ09

Pacific Halibut Fisheries; Subsistence Fishing; Correction

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Final rule; correction.

SUMMARY: This document corrects the final rule that implemented the Pacific Halibut Subsistence Program, which published on April 15, 2003.

DATES: Effective on May 15, 2003.

FOR FURTHER INFORMATION CONTACT: Patsy A. Bearden, NMFS, 907–586–7228 or e-mail at *patsy.bearden@noaa.gov*.

SUPPLEMENTARY INFORMATION: This document corrects the final rule, which published on April 15, 2003 (68 FR 18145) FR Doc. 03–8822, and which will become effective on May 15, 2003. The intext table entitled VII. NORTH PACIFIC FISHERY MANAGEMENT COUNCIL of 50 CFR part 600.725(v) was incorrect. This action corrects the heading by removing "Allowable gear types" and by adding in its place "Authorized gear types." This action will not have any substantive regulatory effect.

Classification

This action corrects a typographic error, a non-discretionary technical change with no substantive effects. Pursuant to 5 U.S.C. 553(b)(B), the Assistant Administrator of Fisheries (AA), NOAA, finds good cause to waive prior notice and comment procedures otherwise required by the section. NOAA finds that prior notice and comment are unnecessary as this final rule makes a minor, non-substantive change to correct wording in a heading of a table. NOAA finds that because of the technical, non-substantive nature of the correction, no particular public interest exists in this rule for which prior notice and comment would otherwise be needed. For the above reasons, the AA also finds good cause, under 5 U.S.C. 553(d) not to delay for 30 days the effective date of this action.

List of Subjects in 50 CFR Part 679

Alaska, Fisheries, Recordkeeping and reporting requirements.

Dated: May 8, 2003.

Rebecca Lent,

Deputy Assistant Administrator for Regulatory Programs, National Marine Fisheries Service.

PART 600—MAGNUSON-STEVENS ACT PROVISIONS

■ 1. The authority citation for part 600 continues to read as follows:

Authority: 5 U.S.C 561, 16 U.S.C. 773 *et seq.*, and 16 U.S.C. 1801 *et seq.*

■ 2. On page 18161, bottom of second column, in § 600.725, paragraph (v), correct table VII. NORTH PACIFIC FISHERY MANAGEMENT COUNCIL, by removing the second heading in the boxhead, "Allowable gear types", and adding in its place "Authorized gear types".

[FR Doc. 03–12040 Filed 5–14–03; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 622

[Docket No. 030303053–3118–02; I.D. 022403C]

RIN 0648–AQ70

Fisheries of the Caribbean, Gulf of Mexico, and South Atlantic; Coastal Migratory Pelagic Resources of the Gulf of Mexico and South Atlantic; Reef Fish Fishery of the Gulf of Mexico; Revision of Charter Vessel and Headboat Permit Moratorium Eligibility Criterion

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Final rule.

SUMMARY: NMFS issues this final rule to implement a corrected Amendment for the charter vessel/headboat permit moratorium established in Amendment 14 to the Fishery Management Plan for the Coastal Migratory Pelagic Resources of the Gulf of Mexico and South Atlantic (Amendment 14) and in Amendment 20 to the Fishery Management Plan for the Reef Fish Resources of the Gulf of Mexico (Amendment 20). This final rule revises, consistent with the actions taken by the Gulf of Mexico Fishery Management Council (Council), one of the eligibility criteria for obtaining a charter vessel/headboat permit under the moratorium. This final rule also reopens the application process for obtaining Gulf charter vessel/headboat moratorium permits and extends the applicable deadlines; extends the expiration dates of valid or renewable open access permits for these fisheries; clarifies, as requested by the Council, a constraint on issuance of historical captain permits under the moratorium; and extends the expiration date of the moratorium to account for the delay in implementation. In addition, NMFS informs the public of the approval by the Office of Management and Budget (OMB) of the collection-of-information requirements contained in this final rule and publishes the OMB control numbers for those collections. The intended effect of this final rule is to implement the charter vessel/headboat moratorium in the Gulf of Mexico consistent with the actions taken by the Council.

DATES: This final rule is effective June 16, 2003.

ADDRESSES: Copies of the final regulatory flexibility analysis (FRFA) may be obtained from the Southeast Regional Office, NMFS, 9721 Executive Center Drive N., St. Petersburg, FL 33702.

Comments on the collection-of-information requirements contained in this rule should be sent to Robert Sadler, Southeast Regional Office, NMFS, 9721 Executive Center Drive N., St. Petersburg, FL 33702, and to the Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Washington, DC 20503 (Attention: NOAA Desk Officer).

FOR FURTHER INFORMATION CONTACT: Phil Steele, telephone: 727–570–5305, fax: 727–570–5583, e-mail: Phil.Steele@noaa.gov.

SUPPLEMENTARY INFORMATION: The fishery for reef fish is managed under the Fishery Management Plan for the Reef Fish Resources of the Gulf of Mexico (Reef Fish FMP) that was prepared by the Council. The fisheries for coastal migratory pelagic resources are managed under the Fishery Management Plan for the Coastal Migratory Pelagic Resources of the Gulf of Mexico and South Atlantic (Coastal Migratory Pelagics FMP) that was prepared jointly by the Council and the South Atlantic Fishery Management Council. These FMPs were approved by NMFS and implemented under the authority of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) by regulations at 50 CFR part 622.

NMFS approved the corrected Amendment on May 6, 2003. NMFS published a proposed rule on March 12, 2003, to implement the corrected Amendment and requested comments on the proposed rule through March 27, 2003 (68 FR 11794, March 12, 2003). The rationale for the measures in the corrected Amendment was provided in the proposed rule and is not repeated here.

Comments and Responses

NMFS received a September 2002 minority report signed by two Council members, a November 2002 minority report signed by one Council member, and nine letters opposing aspects of the corrected amendment and/or the proposed rule. Twelve letters in support of the proposed rule were received. Neither minority report was filed specifically in response to the proposed rule or the corrected amendment, but both reports addressed prior Council requests that are related to the proposed rule. Therefore, responses to the minority reports are also provided here.

September 2002 Minority Report

A minority report was submitted by two Council members that contained objections to the Council's action at its September 2002 meeting regarding a letter to NMFS which modified a final Council motion adopted in March 2001. The September 2002 Council motion stated, "To write a letter to NMFS stating that it was the intent of the Council under C–1. Eligibility - to provide for fully transferable reef fish or coastal migratory pelagic charter/headboat permits to individuals/charter vessels who held valid permits on March 29, 2001, or who had applied for such permits received in NMFS' office by March 29, 2001. The intent of the Council was to cap the effort and passenger capacity of vessels as of March 29, 2001." Following are the minority report comments related to this action.

Comment 1: The action clearly violates the basic rules of statutory construction to the detriment of persons who have taken or may take actions based on the language of the original Council motion.

Response: In determining the scope of the measures proposed by the Council, NMFS promulgates appropriate regulations in light of the entire administrative record. The final rule is the result of a detailed review of such record, and the eligibility requirements are consistent with Council discussions on the issue. Further, NMFS is not construing a statute, but rather a motion made by a Council member, and the agency has a duty to examine the record developed by the Council in order to clarify ambiguities and resolve inconsistencies in the language used. The Council assisted in this endeavor by providing clarification of its intent.

Comment 2: Some remarks from the minutes of the '01 Mobile meeting contradict the newly construed meaning of the eligibility provisions of the Amendment as stated in the action contested herein. Therefore, the present action is not fully supported even on its merits.

Response: With the exception of the single eligibility criterion, which Council staff acknowledged was included in the amendment erroneously, and is being removed in this final rule, the record supports NMFS' current interpretation of the Mobile motion. The fact that some members held different views does not mean that the action is not supported by the record. Unanimous votes are fairly uncommon, and a majority of the Council concurred with the action.

Comment 3: Action taken at this meeting was not properly noticed to the affected public. Therefore, it will be a surprise move to affected parties, many of whom participated in the negotiations relating to passage of the original language, and many of whom can be substantially adversely impacted by this new move, clearly contrary to the principles of public notice contained in the M-S Act [sic] (Magnuson-Stevens Act) and other applicable law.

Response: The published agenda indicated that on Tuesday, September 10, 2002, the Mackerel Management Committee would hear a "Status Report on the Charter Vessel/Headboat Moratorium Amendment." NMFS presented this status report, which included a discussion of the fact that one of the eligibility requirements included in the amendment prepared by staff was not supported elsewhere in the administrative record. The Council agreed that NMFS' review was correct and that such criterion was in error. As a result, the Council voted to acknowledge in writing to the Secretary, its concurrence with this determination, along with another suggested clarification which is not part of this final rule. No new action was taken by the Council at the September 2002 meeting for which further public notice was required. Those members of the public who had participated throughout the process were aware of the inclusion of the erroneous criterion in the final rule, and first indicated the possibility of error to NMFS just prior to the effective date of the final rule.

Comment 4: Five Council members who participated in the original vote in Mobile were not at this Metairie meeting to tell what they thought or knew of the original adopted language.

Response: It is true that the membership of the Council had changed, and all new members abstained from discussing the issue and voting on the letter to the Secretary.

Comment 5: The original action in Mobile was taken as a joint effort of the Reef Fish and Coastal Migratory Pelagic Fisheries Committees. The charterboat moratorium affects both fisheries. The present action at the Metairie meeting seeking to modify the results of the joint effort passed through only the Reef Fish Committee, and did not pass through a joint committee, nor was the joint committee convened for this purpose.

Response: See the response to comment 3 as to the "action" taken by the Council. The only committee to hear the update at the September 2002 meeting was the Coastal Migratory Pelagic committee, but the topic was

addressed at length during full Council session; hence, all persons who would have comprised a joint committee had an opportunity to participate in the full Council session.

Comment 6: The Council members and the public did not have, before taking this action, any alternatives, impacts, scoping or other facts and documents required by the National Environmental Policy Act (NEPA) and M-S [sic].

Response: See the response to comment 3 as to the "action" taken by the Council. When "action" was taken on this amendment in March 2001, the Council had before it all the pertinent materials and was fully compliant with the applicable laws in its consideration and approval of the amendment.

Comment 7: Since the present action will affect a fishery jointly shared with the South Atlantic Council, the action, as was the original action, must be passed through the South Atlantic Council for approval.

Response: See the response to comment 3 as to the "action" taken by the Council. Given that there was no "action" taken on the amendment itself, only a confirmation of an error in the document, which in no way pertained to the South Atlantic Council's area of jurisdiction, there was no need for the South Atlantic Council to approve it again.

Comment 8: Allowing this to happen sets a bad precedent as to the ability of the fishing industry to rely on anything the Council or NMFS does. It should be viewed as an action by the Council at the request of NMFS that will seriously erode confidence in the system.

Response: The provisions in this final rule reflect what was discussed at the meetings and what is contained in the record, rather than the erroneous eligibility criterion which appeared in the document after Council approval. Maintaining erroneous regulations, which differ from those discussed at public meetings, would not promote public confidence in NMFS or the Council.

November 2002 Minority Report

A minority report was submitted by one Council member that contained objections to the Council's action at its November 2002 meeting regarding a letter requesting that the Secretary of Commerce implement via emergency action a provision that again amends two fishery management plans without going through the plan amendment process. The Council's November 2002 motion stated "To write a letter to the Secretary of Commerce to implement via emergency action the language of the motion adopted by the Council at its September 9–12, 2002, meeting amended as follows: "It was the intent of the Council that under C–1 - to provide for fully transferable reef fish or coastal migratory pelagic charter/headboat permits to individuals/charter vessels who held valid permits on March 29, 2001, or held a valid permit during the preceding year or had applied for such permits received in the NMFS office by March 29, 2001. The intent of the Council was to cap the effort and passenger capacity of vessels as of March 29, 2001." Following are the minority report comments related to this action.

Comment 9: This action was taken without any notice to the public or to the affected classes of vessel owners.

Response: The only action taken at the November 2002 meeting was that the Council requested NMFS to implement via emergency rule a moratorium containing the eligibility requirements supported by the record. While no notice was included in the published agenda, section 302(i)(2)(C) of the Magnuson-Stevens Act expressly excludes from the prior public notice requirement modifications to the published agenda addressing emergency actions. As the Magnuson-Stevens Act requires, notice of the perceived emergency and need for action was given immediately at the meeting.

Comment 10: The actions by NMFS in publishing the regulations and by the Council at both meetings since the Mobile meeting would result in regulations that implement something more restrictive than the Council Plan Amendment Motion establishing the moratorium.

Response: NMFS actions in promulgating this final rule will implement the moratorium supported by the administrative record as developed at the March 2001 Council meeting in Mobile, Alabama. This final rule will actually be less restrictive than the prior final rule which contained an erroneous eligibility criterion. The erroneous eligibility criterion was a requirement to hold a valid permit on the effective date of the final rule. Contrary to the assertions contained in the minority report, the correction would slightly increase, rather than decrease, the number of participants compared to the erroneous regulation.

Comment 11: The requirements relative to emergency action are not met by the content of the eligibility measures; only by the pending termination of existing permits.

Response: NMFS is not implementing the moratorium with the corrected criteria via emergency rule. The agency did exactly as this comment advocates in using an emergency rule to prevent the potential economic disruption of the charter industry upon implementation of the previous final rule which contained the erroneous criterion.

Comment 12: No scientific justification or information was given upon which to base the Council's actions (contrary to national standard 2 and other applicable laws).

Response: The original decision to implement a moratorium was based on the best available scientific information regarding the status of certain overfished species in the Gulf, which were subject to considerable increasing pressure by the expanding charter fleet in the region. No new management measures subject to national standard 2 have been proposed by NMFS or the Council with regard to the charter permit moratorium. Also, see the following response regarding the change to the eligibility requirements from the March 2001 Mobile motion.

Comment 13: Changing the eligibility provisions without following the Plan Amendment process will be a serious insult to the M-S [sic] Act Council Conservation and Management process.

Response: NMFS has not changed the eligibility provisions from those approved by the Council at the March 2001 meeting in Mobile, Alabama. As the record clearly indicates, this final rule merely removes a single eligibility criterion that was erroneously included in the amendment and thereby incorporated in the prior regulations. As to the suggestion that the motion from the March 2001 Mobile meeting made eligible all persons who had ever held a permit for either fishery, this claim is simply not supported by the record. The maker of the motion for the Reef Fish Management Committee stated that the intent of the moratorium criteria was to cap effort (hence the number of eligible vessels) at 2001 levels. Allowing all persons who ever held such a permit for either fishery regardless of the lack of recent participation is clearly inconsistent with the concept of capping effort at 2001 levels.

Comment 14: NMFS was (and would be) acting outside its authority in publishing implementing regulations changing the eligibility requirements of the Council's Plan Amendment motion.

Response: See the response to the previous comment.

Comment 15: NEPA was not followed at the Mobile meeting, and that let the eligibility requirements of the implementing regulations differ from the Motion establishing the permit moratorium system.

Response: The duty to satisfy NEPA rests with NMFS and it was complied with through the Council's preparation of an Environmental Assessment and a finding of no significant impact (FONSI) considering the proposed action, a reasonable range of alternatives, and the potential impacts of such measures on the human environment.

Other Public Comments

Comment 16: Eight individuals stated that the permit moratorium restricted free enterprise throughout the recreational for-hire sector.

Response: During the moratorium, new participation into the fisheries can still occur through the transfer of existing permits, albeit at a higher entry cost than in the absence of the moratorium. Thus, new entry can continue to occur without resulting in increased fishing mortality rates on the affected stocks.

Comment 17: There has been no discussion of the impact or profitability of restricting vessel eligibility so that vessels having a valid permit at any time from 1987 (when permits were first issued) through 3/29/00, but not since, would not be eligible for a moratorium permit.

Response: The economic analysis for the amendment looked at the impact of the moratorium on new entrants to the fishery, which for present purposes includes this class of individuals. Prior participants, who no longer participated in the fishery, would be affected in the identical manner as people who had never participated and now wanted to enter the fishery.

Comment 18: In addition to restating previous comments made in the minority reports, and on subsequent rules, one individual objected to the amendment, specifically the manner in which permit eligibility is established.

Response: As stated in the response to comment 1, NMFS must promulgate regulations in light of the administrative record as a whole, which supports the approach taken in the final rule. The purpose of the moratorium was to cap current effort, while allowing historical participants to continue in the fishery, and the final rule providing eligibility to owners of vessels who held permits during the qualifying period does just this. Owners (or historical captains as the case may be) are eligible for permits based on participation with some vessel in the respective fishery during the qualifying time period. The Council has clearly expressed its intent on this issue, and in light of the administrative record as a whole, the approach suggested in these comments would conflict with the Council's stated intent and the objective of the amendment.

Change From the Proposed Rule

In § 622.4(r)(3), the third sentence is revised to indicate that the letter of eligibility for an historical captain is valid only for a vessel of the same or lesser authorized passenger capacity as the vessel used to document earned income for eligibility purposes. The proposed rule language required that the passenger capacity be the same as the vessel used to document earned income (i.e., would not be valid for a vessel with lesser passenger capacity). This change from the proposed rule is consistent with the Council's intent to cap fishing effort (not to discourage or preclude reduction in fishing effort); makes the rule language regarding this eligibility and transferability provision consistent; and avoids unnecessary administrative procedures (i.e., issuance and an otherwise unnecessary transfer to a vessel of lesser capacity).

Classification

The Administrator, Southeast Region, NMFS, determined that the corrected Amendment is necessary for the conservation and management of the Gulf reef fish and coastal migratory pelagics fisheries and that it is consistent with the Magnuson-Stevens Act and other applicable laws.

This final rule has been determined to be not significant for purposes of E.O. 12866.

NMFS prepared an FRFA for this final rule pursuant to § 604 of the Regulatory Flexibility Act. A summary of the FRFA follows.

The Magnuson-Stevens Act provides the statutory basis for the rule. Under a rule promulgated on June 28, 2002 (67 FR 43558), all for-hire operators in the reef fish and/or coastal migratory pelagic fisheries in the Gulf of Mexico exclusive economic zone (EEZ) were required to have a valid limited access moratorium permit beginning December 26, 2002. The objective of that rule was to cap the number of for-hire vessels permitted to fish for reef fish or coastal migratory pelagics in the EEZ of the Gulf of Mexico at the current level while the Council assesses the actions necessary to restore overfished reef fish and king mackerel stocks and determine whether a more comprehensive effort management system is appropriate for these fisheries. Subsequent to publication of the rule, it was determined that the amendment did not correctly reflect the actions approved by the Council, resulting in the unintentional exclusion of 935 historical participants in the fishery. As an interim measure prior to correcting this error via normal rulemaking, NMFS promulgated an emergency rule that extended several dates associated with the moratorium to allow those participants erroneously excluded from qualifying for a moratorium permit to continue participation in the fishery, pending completion of the normal rulemaking process. The primary objective of this final rule is, therefore, to correct the error associated with the eligibility criterion for the for-hire moratorium permit. This final rule will revise, consistent with the Council's clarification of intent, one of the eligibility criteria for obtaining a Gulf charter vessel/headboat moratorium permit to remove a restrictive provision requiring that a valid permit was held on July 29, 2002. Complementary logistical adjustments, e.g., reopening the application process, extension of deadlines, etc., are also included.

The qualification requirements for the initial issuance of the moratorium permit will mandate the provision of information necessary to establish qualification for the permit, such as information on income, record of past participation in the fishery, and proof of the time a vessel was under construction. Permit renewal will require that permitted vessels participate in the standard data collection programs implemented in the region which will require that information be maintained on standard vessel operation information, such as trips, passenger loads, catch success, etc. All information elements required for these actions are standard elements essential to the successful operation of the business and should already be collected and maintained as standard operating practice by the business. These requirements do not require professional skills, and, therefore, may be deemed not to be onerous on the affected participants.

Two categories of impacted entities are presumed, those that qualify for the for-hire permit and those that do not. Those who qualify for permits fall under two groups; those who qualify based on permit records and those who qualify based on the provisions for historical captains or vessel-under-construction. Based on permit records, an estimated 3,071 permitted for-hire vessels would qualify for the moratorium permit, of which 1,917 would qualify for both reef fish and coastal migratory pelagic permits, 974 would qualify for only the coastal migratory pelagic permit, and 180 would qualify for only the reef fish permit. In addition to these vessels, an indeterminate number of entities would qualify for the initial issuance of the for-

hire moratorium permit under the historical captain or vessel-under-construction criteria. In total, the two groups would constitute the universe of qualified entities. A precise estimate of this universe cannot be provided as, although it can be presumed that all active permits will be maintained to allow either sale of the permit or continued use, it cannot be determined how many entities will qualify under the historical captain or vessel-under-construction criteria. Of the 3,071 qualifying vessels, 2,136 vessels qualify under the status quo moratorium program, of which 1,373 vessels qualify for both permits, 99 vessels qualify for only the reef fish permit, and 664 vessels qualify for only the coastal migratory pelagic for-hire permit. This final rule will, therefore, allow the qualification of an additional 935 vessels, of which 544 vessels will qualify for both permits, 81 vessels will qualify for the reef fish permit, and 310 vessels will qualify for the coastal migratory pelagic permit. These 935 vessels represent approximately 30 percent of the historic fleet. It should be noted that all 3,071 vessels, including the 935 vessels that would additionally qualify as a result of the final rule, are all historical participants in the fishery. This condition is reflective of the Council's intent to stabilize participation at historical levels.

Business operations in the for-hire sector consist primarily, if not exclusively, of small business entities. For-hire vessel operations are considered small business entities if they generate receipts not in excess of $6.0 million per year. The average gross revenues for charter boats operating in 1997 was $83,000 for vessels operating in Alabama, Mississippi, Louisiana, and Texas (based on average numbers of trips per vessel and average fee per trip) and $68,000 for vessels in Florida, while the average gross revenues for head boats/party boats was $328,000 from vessels operating in Alabama to Texas and $324,000 in Florida. Current revenues may exceed those of 1997, but the revenue performance of the fishery clearly qualifies the participants to fit the definition of small business entities. Since all entities operating in the fishery as well as the 935 new qualifiers will be affected by the final rule, the criterion of a substantial number of the small business entities being affected by the rule will be met.

The determination of significant economic impact can be ascertained by examining two criteria, disproportionality and profitability. The disproportionality question is: Will the regulations place a substantial number of small business entities at a significant competitive disadvantage to large business entities? Although some variation exists between vessel operation type (guide boat, charter boat, and head/party boat), vessel length, and degree of participation in the fishery (number of trips per year), all vessels are classified as small business entities. Thus, the issue of disproportionality is not relevant in the present case.

The profitability question is: Will the regulations significantly reduce profit for a substantial number of small entities? Two categories of operations will be affected by the final rule, qualifying vessels and non-qualifying vessels. Effects on qualifying vessels may accrue through the permit fee, the reporting requirement, and the limitation on passenger capacity expansion. While permit fees are $50 for the first permit and $20 each for any additional permit, all vessels are currently required to possess a permit. Thus, permit costs should not be substantially affected, nor should they significantly affect profits. The reporting requirement impacts time expenses rather than actual monetary outlays and, therefore, do not directly affect profitability. However, the time expenses are estimated at $13 for charterboat participants (5.5 interviews x 7 minutes per interview x $20 per hour) and $700 for headboat participants (140 logbooks per headboat x 15 minutes per logbook x $20 per hour). The effects on profits of the limitation on passenger capacity expansion cannot be estimated because neither the cost of purchasing an existing permit, the expected rate of expansion (what portion of vessels might be expected to expand their passenger capacity), or the expected average capacity expansion can be forecast.

Additionally, the 935 vessels that were previously erroneously excluded from qualification for the moratorium permit, and that would now be qualified under the final rule, will be allowed to continue their historic participation and accompanying profit performance and in addition will experience a substantial increase in profitability over what would occur under the status quo since they would have been precluded from continued participation under the June 28, 2002 rule. Since this is an increase in profit and not a decrease, significant reductions in profit are not expected to occur.

Effects on non-qualifying vessels would consist of the effects on business profits of not being allowed to continue participation in the fishery or enter the fishery without purchasing an existing permit. The effects on profits of these vessels is unknown since neither the price of the necessary permit nor the alternative business options (what they might do and what the profitability profile of this option is in lieu of participating in the for-hire fishery) for these vessels are known. It is also not possible to estimate the number of small entities this would affect, primarily because it can not be determined how many small business entities would seek to enter the fishery in the absence of the moratorium.

This final rule will allow qualification for the moratorium permit and continued operation of 935 vessels, or approximately 30 percent of the historic participants, in addition to the 2,136 vessels qualified under the status quo moratorium program, plus an unknown number of qualifiers under the historic captain and boat-under-construction provisions. Continued participation by these 935 vessels will allow the avoidance of a significant loss in performance and profits of these small business entities and the fishery as a whole. It is, therefore, concluded that the final rule will result in a significant beneficial economic impact on a substantial number of small entities (i.e., the 935 vessels).

No significant issues were raised by public comments in response to the IRFA. Therefore, no changes were made to the proposed rule as a result of such comments.

Ten alternatives to the initial eligibility requirements were considered. These were: allowing all persons who held a for-hire permit on the date of implementation of the amendment; allowing all persons who held a for-hire permit on either September 16, 1999 or November 11, 1999; using a control date of November 18, 1998 and allowing for continuous participation under permit, vessel replacement by current permitted participant and issuance of new permit, purchase of permitted vessel, or purchase of a new vessel and issuance of a new permit; establishment and eligibility requirements for a Class 1 (fully transferable) species endorsements; establishment and eligibility requirements for a Class 2 (non-transferable) species endorsements; historical captain permit/endorsement provisions (2 alternatives); boat-under-construction provisions (2 alternatives); and allowing all persons who held a for-hire permit on or before January 1, 2002. Since the intent of the Council is to accommodate actual participation existent at the time of amendment development and the perception was strong that many active participants did not possess the required permits, control dates more restrictive than the proposed control date would increase the negative impacts on the fishery through the exclusion of active participants, contrary to the intent of the Council. More liberal control dates, however, while reducing the potential universe of excluded vessels, would also be contrary to the Council's intent of stabilizing participation at the level existent at the time of amendment development. The transferability provisions could result in contraction of the fleet, contrary to the intent of stabilization and would increase the negative impacts on the fishery. The alternative historical captain provisions would have increased the burden of eligibility and increased the negative impacts. The alternative provisions for boats under construction are more restrictive than those of the final rule because it would have been harder to qualify for a permit. This would have increased the negative impacts on the fishery because more permit holders would have been excluded. In summary, this final rule accomplishes the Council's intent while minimizing impacts.

Copies of the FRFA are available upon request (see **ADDRESSES**).

This final rule contains two collection-of-information requirements subject to the Paperwork Reduction Act (PRA)--namely a requirement to submit a charter vessel/headboat permit application and submission of appeals of NMFS' initial denial of a charter vessel/headboat permit -that have been approved by OMB under control number 0648–0205. The public reporting burdens for these collections of information are estimated to average 20 minutes for a permit application, an additional 2 hours for additional documentation for an application based on a vessel being under construction or on historical captain status, and 5 hours for an appeal. These estimates include the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collections of information. Send comments regarding these burden estimates, or any other aspect of these data collections, including suggestions for reducing the burden, to NMFS and OMB (see **ADDRESSES**).

Notwithstanding any other provision of law, no person is required to respond to, nor shall a person be subject to a penalty for failure to comply with, a collection of information subject to the requirements of the PRA unless that collection of information displays a currently valid OMB control number.

List of Subjects in 50 CFR Part 622

Fisheries, Fishing, Puerto Rico, Reporting and recordkeeping requirements, Virgin Islands.

Dated: May 9, 2003.

William T. Hogarth,

Assistant Administrator for Fisheries, National Marine Fisheries Service.

■ For the reasons set out in the preamble, 50 CFR part 622 is amended as follows:

PART 622—FISHERIES OF THE CARIBBEAN, GULF, AND SOUTH ATLANTIC

■ 1. The authority citation for part 622 continues to read as follows:

Authority: 16 U.S.C. 1801 *et seq.*

■ 2. In § 622.4, the suspensions of the first sentence of paragraph (r)(1), the first sentence of paragraph (r)(6), and paragraph (r)(8)(v) are lifted; and paragraph (r) is revised to read as follows:

§ 622.4 Permits and fees.

* * * * *

(r) *Moratorium on charter vessel/headboat permits for Gulf coastal migratory pelagic fish and Gulf reef fish.* The provisions of this paragraph (r) are applicable through June 16, 2006. Notwithstanding the other provisions of this paragraph (r), the expiration dates of all charter vessel/headboat permits for Gulf reef fish or Gulf coastal migratory pelagic fish that were not issued under the provision of this paragraph (r) and that were valid or renewable as of December 17, 2002, will be extended through November 13, 2003, provided that a permit has not been issued under this paragraph (r) for the applicable vessel.

(1) *Applicability.* Beginning November 13, 2003, the only valid charter vessel/headboat permits for Gulf coastal migratory pelagic fish or Gulf reef fish are those that have been issued under the moratorium criteria in this paragraph (r). No applications for additional charter vessel/headboat permits for these fisheries will be accepted. Existing permits may be renewed, are subject to the transferability provisions in paragraph (r)(9) of this section, and are subject to the requirement for timely renewal in paragraph (r)(10) of this section.

(2) *Initial eligibility.* Initial eligibility for a charter vessel/headboat permit for Gulf coastal migratory pelagic fish or Gulf reef fish is limited to the following:

(i) An owner of a vessel that had a valid charter vessel/headboat permit for Gulf reef fish or coastal migratory pelagic fish on March 29, 2001, or held such a permit during the preceding year or whose application for such permit had been received by NMFS, by March 29, 2001, and was being processed or awaiting processing.

(ii) Any person who can provide NMFS with documentation verifying that, prior to March 29, 2001, he/she had a charter vessel or headboat under construction and that the associated expenditures were at least $5,000 as of that date. If the vessel owner was constructing the vessel, the vessel owner must provide NMFS with receipts for the required expenditures. If the vessel was being constructed by someone other than the owner, the owner must provide NMFS with a copy of the contract and/or receipts for the required expenditures.

(iii) A historical captain, defined for the purposes of paragraph (r) of this section as a person who provides NMFS with documentation verifying that

(A) Prior to March 29, 2001, he/she was issued either a USCG Operator of Uninspected Passenger Vessel license (commonly referred to as a 6–pack license) or a USCG Masters license; operated, as a captain, a federally permitted charter vessel or headboat in the Gulf reef fish and/or coastal migratory pelagic fisheries; but does not have a fishery permit issued in their name; and

(B) At least 25 percent of his/her earned income was derived from charter vessel or headboat fishing in one of the years, 1997, 1998, 1999, or 2000.

(3) *Special conditions applicable to eligibility based on historical captain status.* A person whose eligibility is based on historical captain status will be issued a letter of eligibility by the RA. The letter of eligibility may be redeemed through the RA for a charter vessel/headboat permit for Gulf coastal migratory pelagic fish and/or Gulf reef fish, with a historical captain endorsement. The letter of eligibility is valid for the duration of the moratorium; is valid only for a vessel of the same or lesser authorized passenger capacity as the vessel used to document earned income in paragraph (r)(2)(iii)(B) of this section; and is valid only for the fisheries certified on the application under paragraph (r)(2)(iii)(A) of this section. A charter vessel/headboat permit for Gulf coastal migratory pelagic fish or Gulf reef fish with a historical captain endorsement is valid only on a vessel that the historical captain operates as a captain.

(4) *Determination of eligibility based on permit history.* NMFS' permit records are the sole basis for

determining eligibility based on permit or application history. An owner of a currently permitted vessel who believes he/she meets the permit or application history criterion based on ownership of a vessel under a different name, as may have occurred when ownership has changed from individual to corporate or vice versa, must document his/her continuity of ownership. An owner will not be issued initial charter vessel/headboat permits for Gulf coastal migratory pelagic fish or Gulf reef fish under the moratorium in excess of the number of federally permitted charter vessels and/or headboats that he/she owned simultaneously at some time during the period March 29, 2000 through March 29, 2001.

(5) *Application requirements and procedures*—(i) *General.* An applicant who desires a charter vessel/headboat permit for Gulf coastal migratory pelagic fish or Gulf reef fish must submit an application for such permit to the RA postmarked or hand-delivered not later than September 15, 2003. Application forms are available from the RA. The information requested on the application form varies according to the eligibility criterion that the application is based upon as indicated in paragraphs (r)(5)(ii), (r)(5)(iii), and (r)(5)(iv) of this section; however, all applicants must provide a copy of the applicable, valid USCG Operator of Uninspected Passenger Vessel license or Masters license and valid USCG Certificate of Inspection. Failure to apply in a timely manner will preclude permit issuance even when the applicant meets the eligibility criteria for such permit.

(ii) *Application based on the prior permit/application history criterion.* On or about June 16, 2003, the RA will mail an application for a charter vessel/headboat permit for Gulf coastal migratory pelagic fish and/or Gulf reef fish to each owner of a vessel who, according to NMFS' permit records, is eligible based on the permit or application history criterion in paragraph (r)(2)(i) of this section. Information requested on the application is consistent with the standard information required in paragraph (b)(3)(ii) of this section. The RA will also mail each such owner a notice that his/her existing charter vessel/headboat permit(s) for coastal migratory pelagic fish and/or Gulf reef fish will expire November 13, 2003, and that the new permit(s) required under this moratorium will be required as of that date. A vessel owner who believes he/she qualifies for a charter vessel/headboat permit for Gulf coastal migratory pelagic fish and/or Gulf reef fish based on permit or application history, but who does not receive an application from the RA, must request an application from the RA and provide documentation of eligibility. The RA will mail applications and notifications to vessel owner addresses as indicated in NMFS' permit records.

(iii) *Application based on a charter vessel/headboat under construction prior to March 29, 2001.* A person who intends to obtain a charter vessel/headboat permit for Gulf coastal migratory pelagic fish and/or Gulf reef fish based on the vessel-under-construction eligibility criterion in paragraph (r)(2)(ii) of this section must obtain an application from the RA. Information requested on the application includes the standard information required in paragraph (b)(3)(ii) of this section and the documentation of construction and associated costs as specified in paragraph (r)(2)(ii) of this section.

(iv) *Application based on historical captain status.* A person who intends to obtain a charter vessel/headboat permit for Gulf coastal migratory pelagic fish and/or Gulf reef fish based on historical captain status must obtain an application from the RA. Information requested on the application includes the standard information required in paragraph (b)(3)(ii) of this section and documentation of the criteria specified in paragraphs (r)(2)(iii)(A)and (B) of this section. Such documentation includes income tax records pertinent to verifying earned income; a copy of the applicable USCG license and/or Certificate of Inspection; and a notarized affidavit signed by a vessel owner certifying the period the applicant served as captain of a charter vessel or headboat permitted for Gulf reef fish and/or coastal migratory pelagic fish, whether the charter vessel or headboat was permitted for Gulf reef fish or coastal migratory pelagic fish or both, and whether the charter vessel or headboat was uninspected (i.e., 6–pack) or had a USCG Certificate of Inspection.

(v) *Incomplete applications.* If an application that is postmarked or hand-delivered in a timely manner is incomplete, the RA will notify the applicant of the deficiency. If the applicant fails to correct the deficiency within 20 days of the date of the RA's notification, the application will be considered abandoned.

(6) *Issuance of initial permits.* If a complete application is submitted in a timely manner and the applicable eligibility requirements specified in paragraph (r)(2) of this section are met, the RA will issue a charter vessel/headboat permit for Gulf coastal migratory pelagic fish and/or Gulf reef fish or a letter of eligibility for such fisheries, as appropriate, and mail it to the applicant not later than November 3, 2003.

(7) *Notification of ineligibility.* If the applicant does not meet the applicable eligibility requirements of paragraph (r)(2) of this section, the RA will notify the applicant, in writing, of such determination and the reasons for it not later than October 14, 2003.

(8) *Appeal process.* (i) An applicant may request an appeal of the RA's determination regarding initial permit eligibility, as specified in paragraph (r)(2) of this section, by submitting a written request for reconsideration to the RA with copies of the appropriate records for establishing eligibility. Such request must be postmarked or hand-delivered within 45 days after the date of the RA's notification of ineligibility and may include a request for an oral hearing. If an oral hearing is granted, the RA will notify the applicant of the place and date of the hearing and will provide the applicant a maximum of 45 days prior to the hearing to provide information in support of the appeal.

(ii) A request for an appeal constitutes the appellant's authorization under section 402(b)(1)(F) of the Magnuson-Stevens Fishery Conservation and Management Act (16 U.S.C. 1801 et. seq.) for the RA to make available to the appellate officer(s) such confidential records as are pertinent to the appeal.

(iii) The RA may independently review the appeal or may appoint one or more appellate officers to review the appeal and make independent recommendations to the RA. The RA will make the final determination regarding granting or denying the appeal.

(iv) The RA and appellate officer(s) are empowered only to deliberate whether the eligibility criteria in paragraph (r)(2) of this section were applied correctly. Hardship or other factors will not be considered in determining eligibility.

(v) The RA will notify the applicant of the decision regarding the appeal within 45 days after receipt of the request for appeal or within 45 days after the conclusion of the oral hearing, if applicable. The RA's decision will constitute the final administrative action by NMFS.

[FR Doc. 03–12184 Filed 5–14–03; 8:45 am]

BILLING CODE 3510–22–S

Proposed Rules

Federal Register
Vol. 68, No. 94
Thursday, May 15, 2003

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

FEDERAL ELECTION COMMISSION

11 CFR Parts 104, 107, 110, 9003, 9004, 9008, 9032 Through 9036, and 9038

[Notice 2003–10]

Extension of Public Comment Period for Public Financing of Presidential Candidates and Nominating Conventions

AGENCY: Federal Election Commission.

ACTION: Proposed rule; reopening of public comment period.

SUMMARY: This notice extends the public comment period on the Federal Election Commission's notice of proposed rulemaking on public financing of presidential candidates and nominating conventions to May 23, 2003. The Commission will hold a hearing on the proposed rules on June 6, 2003, at 10 a.m.

DATES: Comments must be received on or before May 23, 2003. The Commission will hold a hearing on the proposed rules for June 6, 2003, at 10 a.m., if it receives sufficient requests to testify. Commenters wishing to testify at the hearing must so indicate in their written or electronic comments.

ADDRESSES: All comments should be addressed to Ms. Mai T. Dinh, Acting Assistant General Counsel, and must be submitted in either electronic or written form. Electronic mail comments should be sent to *pubfund2004@fec.gov* and must include the full name, electronic mail address and postal service address of the commenter. Electronic mail comments that do not contain the full name, electronic mail address and postal service address of the commenter will not be considered. If the electronic mail comments include an attachment, the attachment must be in the Adobe Acrobat (.pdf) or Microsoft Word (.doc) format. Faxed comments should be sent to (202) 219–3923, with printed copy follow-up to ensure legibility. Written comments and printed copies of faxed comments should be sent to the Federal Election Commission, 999 E Street, NW., Washington, DC 20463. Commenters are strongly encouraged to submit comments electronically to ensure timely receipt and consideration. The Commission will make every effort to post public comments on its Web site within 10 business days of the close of the comment period. The hearing will be held in the Commission's ninth floor meeting room, 999 E Street, NW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: J. Duane Pugh Jr., Senior Attorney, 999 E Street, NW., Washington, DC, 20463, (202) 694–1650 or (800) 424–9530.

SUPPLEMENTARY INFORMATION: The Federal Election Commission recently requested comment on proposed changes to its rules governing publicly financed presidential candidates, in both the primary and general elections, and national nominating conventions. *See Notice of Proposed Rulemaking on Public Financing of Presidential Candidates and Nominating Conventions,* 68 FR 18484 (Apr. 15, 2003) (*"Public Financing NPRM"*). The document states that the public comment period closed on May 9, 2003, and a hearing on the proposed rules was tentatively scheduled for May 19, 2003. On May 2, 2003, the United States District Court for the District of Columbia issued a decision in *McConnell* v. *FEC,* Civ. No. 02–582, 2003 WL 21003144 (D.D.C. May 1, 2003), *notice of appeal filed* (U.S. May 2, 2003), which addresses certain provisions of the Bipartisan Campaign Reform Act of 2002, Public Law 107–155, 116 Stat. 81 (Mar. 27, 2002). A portion of the notice of proposed rulemaking concerned the application of the Bipartisan Campaign Reform Act and the Commission's implementing regulations to national nominating conventions. *See Public Financing NPRM,* 68 FR at 18502–07. In order to permit commenters the opportunity to consider the *McConnell* v. *FEC* decision and its impact on national nominating conventions, the Commission is extending the comment period until May 23, 2003, and rescheduling the hearing on the proposed rules to June 6, 2003, at 10 a.m.

Dated: May 8, 2003.

Ellen L. Weintraub,

Chair, Federal Election Commission.

[FR Doc. 03–11978 Filed 5–14–03; 8:45 am]

BILLING CODE 6715–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 25

[Docket No. NM254; Notice No. 25–03–02–SC]

Special Conditions: Cessna Model 680 Sovereign; Side Facing Single Occupant Seats

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed special conditions.

SUMMARY: This document proposes special conditions for the Cessna Model 680 Sovereign airplane. This airplane will have a novel or unusual design feature(s) associated with side-facing single-occupant seats. The applicable airworthiness regulations do not contain adequate or appropriate safety standards for this design feature. These proposed special conditions contain the additional safety standards that the Administrator considers necessary to establish a level of safety equivalent to that established by the existing airworthiness standards.

DATES: Comments must be received on or before June 30, 2003.

ADDRESSES: Comments on this proposal may be mailed in duplicate to: Federal Aviation Administration, Transport Airplane Directorate, Attn: Rules Docket (ANM–113), Docket No. NM254, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; or delivered in duplicate to the Transport Airplane Directorate at the above address. Comments must be marked: Docket No. NM254. Comments may be inspected in the Rules Docket weekdays, except Federal holidays, between 7:30 a.m. and 4 p.m.

FOR FURTHER INFORMATION CONTACT: Mark Quam, FAA, Standardization Branch, ANM–113, Transport Airplane Directorate, Aircraft Certification Service, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2145, facsimile (425) 227–1149.

SUPPLEMENTARY INFORMATION:

Comments Invited

The FAA invites interested persons to participate in this rulemaking by submitting written comments, data, or views. The most helpful comments

reference a specific portion of the special conditions, explain the reason for any recommended change, and include supporting data. We ask that you send us two copies of written comments.

We will file in the docket all comments we receive, as well as a report summarizing each substantive public contact with FAA personnel concerning these special conditions. The docket is available for public inspection before and after the comment closing date. If you wish to review the docket in person, go to the address in the **ADDRESSES** section of this preamble between 7:30 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

We will consider all comments we receive on or before the closing date for comments. We will consider comments filed late if it is possible to do so without incurring expense or delay. We may change these special conditions in light of the comments we receive.

If you want the FAA to acknowledge receipt of your comments on this proposal, include with your comments a pre-addressed, stamped postcard on which the docket number appears. We will stamp the date on the postcard and mail it back to you.

Background

On November 24, 1999, Cessna Aircraft Company, One Cessna Boulevard, Wichita, KS 67277, applied for type certificate for their new Cessna Model 680 Sovereign airplane. The Model 680 Sovereign is a twin engine pressurized executive jet airplane with standard seating provisions for 12 passenger/crew and allowance for baggage and optional equipment. This airplane will have a maximum takeoff weight of 30,000 pounds with a wingspan of 63.1 feet and will have two aft-mounted Pratt & Whitney 306C engines.

Cessna Model 680 offers interior arrangements, which include single-occupant side-facing seat installations. These seats are installed on the LH and RH side of the cabin's forward section, forward of and opposite to the entry door respectively. Dynamic testing of all seats approved for occupancy during takeoff and landing is required by 14 CFR 25.562. The pass/fail criteria for the testing developed in Amendment 25–64 to § 25.562 focused primarily on fore/aft facing seats. Side facing seating installations were not adequately addressed for transport category airplane in this Amendment.

These special conditions are applicable to single-occupant side-facing seats only. They are not intended to be used for multiple-occupant side-facing divans or sofas, as they do not account for possible interaction among the occupants.

Type Certification Basis

Under the provisions of 14 CFR 21.17, the Cessna Aircraft Company must show that the Model 680 Sovereign airplane meets the applicable provisions of 14 CFR part 25, effective February 1, 1965, as amended by Amendments 25–1 through 25–98; 14 CFR part 34, effective September 10, 1990, as amended by any amendment in effect on the date of certification. Subsequent changes have been made to § 21.101 as part of Amendment 21–77, but those changes do not become effective until June 10, 2003.

If the Administrator finds that the applicable airworthiness regulations (*i.e.*, 14 CFR part 25) do not contain adequate or appropriate safety standards for the Cessna Model 680 Sovereign airplane because of a novel or unusual design feature, special conditions are prescribed under the provisions of § 21.16.

In addition to the applicable airworthiness regulations and special conditions, the Cessna Model 680 Sovereign must comply with the fuel vent and exhaust emission requirements of part 34 and the noise certification requirements of part 36, and the FAA must issue a finding of regulatory adequacy pursuant to § 611 of Public Law 92–574, the "Noise Control Act of 1972."

Special conditions, as defined in 14 CFR 11.19, are issued in accordance with § 11.38 and become part of the type certification basis in accordance with § 21.17(a)(2), Amendment 21–69, effective September 16, 1991. Special conditions are initially applicable to the model for which they are issued. Should the type certificate for that model be amended later to include any other model that incorporates the same novel or unusual design feature, the special conditions would also apply to the other model under the provisions of § 21.101(a)(1), Amendment 21–69, effective September 16, 1991.

Novel or Unusual Design Features

The Cessna Model 680 offers interior arrangements, which include single-occupant side-facing seat installations. These seats are installed on the LH and RH side of the cabin's forward section, forward and opposite to the entry door respectively. Dynamic testing of all seats approved for occupancy during takeoff and landing is required by § 25.562. The pass/fail criteria for the testing developed in Amendment 25–64 to § 25.562 focused primarily on fore/aft facing seats. Side facing seating installations were not adequately addressed for transport category airplanes in this Amendment.

Discussion

The following injury criteria and testing represent the minimum acceptable standards, and are being proposed for certification of the Model 680 single-occupant side-facing seats, and are to be included as requirements in the proposed special conditions. However, the existing requirements call for a "no yaw" test condition. Cessna is proposing to demonstrate values of thoracic trauma index (TTL) and lateral pelvic acceleration (LPA) for a "10 degree yaw" for which it has some test data. In this case, Cessna must show the "10 degree yaw" yields results that will only differ slightly from the "no yaw" condition and that these differences would not be of such magnitude as to exceed the maximum allowable.

Proposed Injury Criteria

(a) *Existing Criteria.* As referenced by § 25.785(b), all injury protection criteria of §§ 25.562(c)(1) through (c)(6) apply to the occupants of the single-occupant side-facing seats. Head injury criteria (HIC) assessments are only required for head contact with the seat and/or adjacent structures.

(b) *Body-to-wall/furnishing contact.* The seat must be installed aft of a structure such as an interior wall or furnishing that will contact the pelvis, upper arm, chest, or head of an occupant seated next to the structure. A conservative representation of the structure and its stiffness must be included in the tests. It is recommended, but not required, that the contact surface of this structure be covered with at least two inches of energy absorbing protective padding (foam or equivalent), such as Ensolite.

(c) *Thoracic Trauma.* Testing with a Side Impact Dummy (SID), as defined by 49 CFR part 572, subpart F, or its equivalent, must be conducted and TTI injury criteria acquired with the SID must be less than 85, as defined in 49 CFR part 572, subpart F. Side Impact Dummy TTI must be processed as defined in Federal Motor Vehicle Safety Standard (FMVSS) part 571.214, section S6.13.5. Rational analysis, comparing an installation with another installation where TTI data were acquired and found acceptable, may also be viable.

(d) *Pelvis.* Pelvic lateral acceleration must not exceed 130g, pelvic acceleration data must be processed as defined in FMVSS part 571.214, section S6.13.5

(f) *Shoulder Strap Loads.* Where upper torso straps (shoulder straps) are used for sofa occupants, tension loads in individual straps must not exceed 1,750 pounds. If dual straps are used for restraining the upper torso, the total strap tension loads must not exceed 2,000 pounds.

Applicability

As discussed above, these special conditions are applicable to the Cessna Model 680 Sovereign. Should Cessna Aircraft Company apply at a later date for a change to the type certificate to include another model incorporating the same novel or unusual design feature, the special conditions would apply to that model as well under the provisions of § 21.101(a)(1), Amendment 21–69, effective September 16, 1991.

Conclusion

This action affects only certain novel or unusual design features on the Cessna Model 680 Sovereign airplane. It is not a rule of general applicability, and it affects only the applicant who applied to the FAA for approval of these features on the airplane.

List of Subjects in 14 CFR Part 25

Aircraft, Aviation safety, Reporting and recordkeeping requirements.

The authority citation for these special conditions is as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701, 44702, 44704.

The Proposed Special Conditions

Accordingly, the Federal Aviation Administration (FAA) proposes the following special conditions as part of the type certification basis for the Cessna Aircraft Company Model 680 Sovereign airplanes.

The minimum acceptable standards of injury criteria and testing requirements for dynamic certification of the Model 680 side-facing single-occupant seats are as follows:

(a) *Existing Criteria.* As referenced by § 25.785(b), all injury protection criteria of §§ 25.562(c)(1) through (c)(6) apply to the occupants of the side-facing seats. Head injury criteria (HIC) assessments are only required for head contact with the seat and/or adjacent structures.

(b) *Body-to-wall/furnishing contact.* The seat must be installed aft of a structure such as an interior wall or furnishing that will contact the pelvis, upper arm, chest, or head of an occupant seated next to the structure. A conservative representation of the structure and its stiffness must be included in the tests. It is recommended, but not required, that the contact surface of this structure must be covered with at least two inches of energy absorbing protective padding (foam or equivalent), such as Ensolite.

(c) *Thoracic Trauma.* Testing with a Side Impact Dummy (SID), as defined by 49 CFR Part 572, Subpart F, or its equivalent, must be conducted and TTI injury criteria acquired with the SID must be less than 85, as defined in 49 CFR Part 572, Subpart F. SID TTI must be processed as defined in Federal Motor Vehicle Safety Standard (FMVSS) Part 571.214, section S6.13.5. Rational analysis, comparing an installation with another installation where TTI data were acquired and found acceptable, may also be viable.

(d) *Pelvis.* Pelvic lateral acceleration must not exceed 130g, pelvic acceleration data must be processed as defined in FMVSS Part 571.214, section S6.13.5

(f) *Shoulder Strap Loads.* Where upper torso straps (shoulder straps) are used for occupants, tension loads in individual straps must not exceed 1,750 pounds. If dual straps are used for restraining the upper torso, the total strap tension loads must not exceed 2,000 pounds.

Issued in Renton, Washington, on May 5, 2003.

Ali Bahrami,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 03–12043 Filed 5–14–03; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2002–CE–05–AD]

RIN 2120–AA64

Airworthiness Directives; Cessna Aircraft Company Models 401, 401A, 401B, 402, 402A, 402B, 411, and 411A Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes to supersede Airworthiness Directive (AD) 79–10–15 R2, which applies to all Cessna Aircraft Company (Cessna) Models 401, 401A, 401B, 402, 402A, 402B, 411, and 411A airplanes. AD 79–10–15 R2 currently requires repetitive inspections of the right and left wing spar lower cap areas for fatigue cracks and requires wing spar cap repair or replacement as necessary. Cessna has performed fatigue and crack growth analyses of the wings of these airplanes, and the Federal Aviation Administration (FAA) has evaluated this information and determined that a wing spar modification is necessary as well as periodic inspections. This proposed AD would require you to repetitively inspect the wing spar caps for fatigue cracks with any necessary repair or replacement on all airplanes and incorporate a spar strap modification on each wing spar on certain airplanes. The actions specified by this proposed AD are intended to prevent wing spar cap failure due to undetected fatigue cracks. Such failure could result in loss of a wing with consequent loss of airplane control.

DATES: The FAA must receive any comments on this proposed rule on or before August 8, 2003.

ADDRESSES: Submit comments to FAA, Central Region, Office of the Regional Counsel, Attention: Rules Docket No. 2002–CE–05–AD, 901 Locust, Room 506, Kansas City, Missouri 64106. You may view any comments at this location between 8 a.m. and 4 p.m., Monday through Friday, except Federal holidays. You may also send comments electronically to the following address: *9–ACE–7–Docket@faa.gov.* Comments sent electronically must contain "Docket No. 2002–CE–05–AD" in the subject line. If you send comments electronically as attached electronic files, the files must be formatted in Microsoft Word 97 for Windows or ASCII text.

You may get service information that applies to this proposed AD from the Cessna Aircraft Company, Product Support, PO Box 7706, Wichita, Kansas 67277; telephone: (316) 517–5800; facsimile: (316) 942–9006. You may also view this information at the Rules Docket at the address above.

FOR FURTHER INFORMATION CONTACT: Paul Nguyen, Aerospace Engineer, FAA, Wichita Aircraft Certification Office, 1801 Airport Road, Mid-Continent Airport, Wichita, Kansas 67209; telephone: (316) 946–4125; facsimile: (316) 946–4107.

SUPPLEMENTARY INFORMATION:

Comments Invited

How Do I Comment on This Proposed AD?

The FAA invites comments on this proposed rule. You may submit whatever written data, views, or arguments you choose. You need to include the rule's docket number and submit your comments to the address specified under the caption **ADDRESSES**.

We will consider all comments received on or before the closing date. We may amend this proposed rule in light of comments received. Factual information that supports your ideas and suggestions is extremely helpful in evaluating the effectiveness of this proposed AD action and determining whether we need to take additional rulemaking action.

Are There Any Specific Portions of This Proposed AD I Should Pay Attention to?

The FAA specifically invites comments on the overall regulatory, economic, environmental, and energy aspects of this proposed rule that might suggest a need to modify the rule. You may view all comments we receive before and after the closing date of the rule in the Rules Docket. We will file a report in the Rules Docket that summarizes each contact we have with the public that concerns the substantive parts of this proposed AD.

How Can I Be Sure FAA Receives My Comment?

If you want FAA to acknowledge the receipt of your mailed comments, you must include a self-addressed, stamped postcard. On the postcard, write "Comments to Docket No. 2002–CE–05–AD." We will date stamp and mail the postcard back to you.

Discussion

Has FAA Taken Any Action to This Point?

Reports of fatigue cracks on Cessna 401, 402, and 411 series airplanes caused FAA to take AD action (AD 79–10–15 R2, Amendment 39–3711) to require repetitive inspections of the right and left wing spar lower cap areas for fatigue cracks and to require wing spar cap repair or replacement as necessary.

Accomplishment of the inspections required by AD 79–10–15 R2 is required in accordance with Cessna Service Bulletin ME79–16, Revision 3, dated February 8, 1980.

AD 79–10–15 R2 allowed for the incorporation of Cessna Service Kit SK402–36 or SK411–56 on the front wing spar lower cap as terminating action for the repetitive inspections on the applicable wing.

What Has Happened Since AD 79–10–15 R2 To Initiate This Proposed Action?

Since issuance of AD 79–10–15, Cessna has analyzed the wing, including fatigue and crack growth analyses, on the affected airplanes. Analysis included:

—A determination of the probable location and modes of damage based on analytical results, available test data, and service information;

—Classical fatigue analyses;

—Crack growth and residual strength analyses including use of linear elastic fracture mechanics methods;

—Full-scale ground testing to validate analytical models; and

—A flight strain survey to develop stress spectra used in the analyses.

The inspections required by AD 79–10–15 R2 in accordance with Cessna Service Bulletin ME79–16, Revision 3, are accomplished using a surface eddy current inspection method.

Based on the analysis, Cessna has found that the eddy current method will not find the crack until it is .03 inch longer than the critical crack length. When the crack reaches the critical length, it is not reliably detectable because it is under the head of the fastener. Once the main spar cap is severed, the remaining structure will no longer meet the residual strength requirements. Wing separation could then occur under loading conditions significantly less than those established for the design limit load.

Cessna reported only one instance where cracks were detected using the nondestructive inspection (NDI) eddy current procedure. There are other reported instances where cracks were detected visually in the wheel well area on the aft flange. The problem with visual inspections is the access doubler flanges cover a large percentage of the forward spar flange. This limits the effectiveness of the visual inspections.

To meet industry NDI standards, cracks need to be found on Cessna Models 401, 401A, 401B, 402, 402A, 402B, 411, and 411A airplanes through NDI inspection methods with a 90-percent probability of detection at a 95-percent confidence level.

Cessna's analysis indicates that the probability and confidence levels are not being met.

Is There Service Information That Applies to This Subject?

Cessna has issued the following:

—Service Bulletin MEB01–06 and Service Kit SK402–46, both dated September 24, 2001; and

—Service Bulletin MEB01–07 and Service Kit SK411–59, both dated September 24, 2001.

This service information includes procedures for inspecting and modifying the lower wing spar caps.

The FAA's Determination and an Explanation of the Provisions of This Proposed AD

What Has FAA Decided?

After examining the circumstances and reviewing all available information related to the incidents described above, we have determined that:

—Cessna's analysis of the problems with the eddy current inspection on the wing spar cap area on the Cessna 401, 402, and 411 series airplanes is valid;

—The unsafe condition referenced in this document exists or could develop on these airplanes that are the same type design;

—The actions specified in the previously-referenced service information should be accomplished on the affected airplanes; and

—AD action should be taken in order to correct this unsafe condition.

What Would This Proposed AD Require?

This proposed AD would supersede AD 79–10–15 R2 with a new AD that would require you to either (depending on the aircraft configuration):

—*For airplanes that do not incorporate one of certain Cessna Service Kits:* repetitively inspect the wing spar caps for fatigue cracks and repair or replace the wing spar caps as necessary and incorporate a spar strap modification on each wing spar; or

—*For airplanes that incorporate one of certain Cessna Service Kits:* repetitively inspect the wing spar caps for fatigue cracks and repair or replace the wing spar caps as necessary.

How Does the Revision to 14 CFR Part 39 Affect This Proposed AD?

On July 10, 2002, FAA published a new version of 14 CFR part 39 (67 FR 47997, July 22, 2002), which governs FAA's AD system. This regulation now includes material that relates to special flight permits, alternative methods of compliance, and altered products. This material previously was included in each individual AD. Since this material is included in 14 CFR part 39, we will not include it in future AD actions.

Cost Impact

How Many Airplanes Would This Proposed AD Impact?

We estimate that this proposed AD affects 400 airplanes in the U.S. registry.

What Would Be the Cost Impact of This Proposed AD on Owners/Operators of the Affected Airplanes?

We estimate the following costs to accomplish the proposed modification and initial inspection:

Labor cost	Parts cost	Total cost per airplane	Total cost on U.S. operators
485 workhours × $60 per hour = $29,100 per airplane.	$1,763 per airplane	$29,100 + $1,763 = $30,863 per airplane.	$30,863 × 400 = $12,345,200.

The above figures do not take into account the cost of repetitive inspections. The FAA does not have any way of determining the number of repetitive inspections each owner/operator would incur during the operating life of the affected airplanes.

Regulatory Impact

Would This Proposed AD Impact Various Entities?

The regulations proposed herein would not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this proposed rule would not have federalism implications under Executive Order 13132.

Would This Proposed AD Involve a Significant Rule or Regulatory Action?

For the reasons discussed above, I certify that this proposed action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action has been placed in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, under the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. FAA amends § 39.13 by removing Airworthiness Directive (AD) 79–10–15 R2, Amendment 39–3711, and by adding a new AD to read as follows:

Cessna Aircraft Company: Docket No. 2002–CE–05–AD; Supersedes AD 79–10–15 R2, Amendment 39–3711.

(a) *What airplanes are affected by this AD?* This AD affects Models 401, 401A; 401B, 402, 402A, 402B, 411, and 411A airplanes, all serial numbers, that are certificated in any category.

(b) *Who must comply with this AD?* Anyone who wishes to operate any of the airplanes identified in paragraph (a) of this AD must comply with this AD.

(c) *What problem does this AD address?* The actions specified by this AD are intended to prevent wing spar cap failure due to undetected fatigue cracks. Such failure could result in loss of a wing with consequent loss of airplane control.

(d) *What actions must I accomplish to address this problem?* To address this problem, you must repetitively inspect the wing spar caps for fatigue cracks and repair or replace the wing spar caps as necessary and incorporate a spar strap modification (as specified) on each wing spar in accordance with Cessna Service Bulletin MEB01–6 and Cessna Service Kit SK402–46, both dated September 24, 2001; or Cessna Service Bulletin MEB01–7 and Cessna Service Kit SK411–59, both dated September 24, 2001, as follows:

Initial and repetitive compliance times	Affected airplanes
(1) Inspect and modify at whichever of the following that occurs later and repair or replace as necessary prior to further flight after the inspection, unless already accomplished, and repetitively inspect at the intervals specified in paragraphs (d)(3)(i), (d)(3)(ii), and (d)(3)(iii) of this AD: (i) Upon accumulating 5,500 hours time-in-service (TIS) on a wing spar; or (ii) Within the next 200 hours TIS after the effective date of this AD or 12 months after the effective date of this AD, whichever occurs first.	Cessna Models 411 and 411A airplanes that do not incorporate Cessna Service Kit SK411–56, SK411–56A, or SK411–56B.
(2) Inspect and modify at whichever of the following that occurs first and repair or replace as necessary prior to further flight after the inspection, unless already accomplished, and repetitively inspect at the intervals specified in paragraphs (d)(4)(i) and (d)(4)(ii) of this AD: (i) Upon accumulating 6,500 hours TIS on a wing spar; or (ii) Within the next 200 hours TIS after the effective date of this AD or 12 months after the effective date of this AD, whichever occurs first.	Cessna Models 401, 401A, 401B, 402, 402A, and 402B airplanes that do not incorporate Cessna Service or Kit SK402–36, SK402–36A, (SK402–36B, or SK402–36C.

Initial and repetitive compliance times	Affected airplanes
(3) Inspect in the following areas (modification not required for these airplanes) and repair or replace as necessary prior to further flight after the inspection where cracks are found. Inspection areas are defined in the Cessna Model 411 Supplemental Inspection Document (SID): (i) *Area "A" (Inspection ID 57–10–11):* Initially upon accumulating 5,400 hours TIS after incorporating the applicable service kit on a wing spar or within the next 100 hours TIS after the effective date of this AD, whichever occurs later, unless already accomplished, and thereafter at intervals not to exceed 2,500 hours TIS. (ii) *Area "B" (Inspection ID 57–10–12):* Initially upon accumulating 5,400 hours TIS after incorporating the applicable service kit on a wing spar or within the next 100 hours TIS after the effective date of this AD, whichever occurs later, unless already accomplished, and thereafter at intervals not to exceed 1,000 hours TIS. (iii) *Area "C" (Inspection ID 57–10–08):* Upon accumulating 19,900 hours TIS after incorporating the applicable service kit on a wing spar or within the next 100 hours TIS after the effective date of this AD, whichever occurs later, unless already accomplished, and thereafter at intervals not to exceed 2,000 hours TIS.	Cessna Models 411 and 411A airplanes that incorporate Cessna Service Kit SK411–56, SK411–56A, SK411–56B, or SK411–59. This includes airplanes that had Cessna Service Kit SK411–59 incorporated as required by paragraph (d)(1) of this AD.
(4) Inspect in the following areas (modification not required for these airplanes) and repair or replace as necessary prior to further flight after the inspection. Inspection areas are defined in the Cessna Model 401/402 Supplemental Inspection Document (SID): (i) *Area "A" (Inspection ID 57–10–11) and Area "B" (Inspection ID 57–10–12):* Initially upon accumulating 7,400 hours TIS after incorporating the applicable service kit on a wing spar or within the next 100 hours TIS after the effective date of this AD, whichever occurs later, unless already accomplished, and thereafter at intervals not to exceed 5,000 hours TIS. (ii) *Area "C" (Inspection ID 57–10–08):* Initially upon accumulating 19,900 hours TIS after incorporating the applicable service kit on a wing spar or within the next 100 hours TIS after the effective date of this AD, whichever occurs later, unless already accomplished, and thereafter at intervals not to exceed 2,500 hours TIS.	Cessna Models 401, 401A, 401B, 402, 402A, and 402B airplanes that incorporate Cessna Service Kit SK402–36, SK402–36A, SK402–36B, SK402–36C, or SK402–46. This includes airplanes that had Cessna Service Kit SK402–46 incorporated as required by paragraph (d)(2) of this AD.

(e) *Can I comply with this AD in any other way?*

(1) To use an alternative method of compliance or adjust the compliance time, follow the procedures in 14 CFR 39.19. Send these requests to the Manager, Wichita Aircraft Certification Office (ACO). For information on any already approved alternative methods of compliance, contact Paul Nguyen, Aerospace Engineer, FAA, Wichita Aircraft Certification Office, 1801 Airport Road, Mid-Continent Airport, Wichita, Kansas 67209; telephone: (316) 946–4125; facsimile: (316) 946–4107.

(2) Alternative methods of compliance approved in accordance with AD 79–10–15 R2, which is superseded by this AD, are not approved as alternative methods of compliance with this AD.

(f) *How do I get copies of the documents referenced in this AD?* You may get copies of the documents referenced in this AD from the Cessna Aircraft Company, Product Support, PO Box 7706, Wichita, Kansas 67277; telephone: (316) 517–5800; facsimile: (316) 942–9006. You may view these documents at FAA, Central Region, Office of the Regional Counsel, 901 Locust, Room 506, Kansas City, Missouri 64106.

(g) *Does this AD action affect any existing AD actions?* This amendment supersedes AD 79–10–15 R2, Amendment 39–3711.

Issued in Kansas City, Missouri, on May 9, 2003.

James E. Jackson,

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 03–12113 Filed 5–14–03; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2003–CE–20–AD]

RIN 2120–AA64

Airworthiness Directives; Dornier Luftfahrt GMBH Models 228–100, 228–101, 228–200, 228–201, 228–202, and 228–212 Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes to adopt a new airworthiness directive (AD) that would apply to certain Dornier Luftfahrt GMBH (Dornier) Models 228–100, 228–101, 228–200, 228–201, 228–202, and 228–212 airplanes that have electrical cabin/cockpit heater option P05 or option P09 installed. This proposed AD would require you to modify the cockpit and cabin auxiliary heating wiring. This proposed AD is the result of mandatory continuing airworthiness information (MCAI) issued by the airworthiness authority for Germany. The actions specified by this proposed AD are intended to correct problems with the current design of the heater wiring, which could result in failure of the auxiliary cabin heater. Such failure could lead to overheating and smoke in the cockpit.

DATES: The Federal Aviation Administration (FAA) must receive any comments on this proposed rule on or before June 23, 2003.

ADDRESSES: Submit comments to FAA, Central Region, Office of the Regional Counsel, Attention: Rules Docket No. 2003–CE–20–AD, 901 Locust, Room 506, Kansas City, Missouri 64106. You may view any comments at this location between 8 a.m. and 4 p.m., Monday through Friday, except Federal holidays. You may also send comments electronically to the following address: *9–ACE–7–Docket@faa.gov*. Comments sent electronically must contain "Docket No. 2003–CE–20–AD" in the subject line. If you send comments electronically as attached electronic files, the files must be formatted in Microsoft Word 97 for Windows or ASCII text.

You may get service information that applies to this proposed AD from Dornier Luftfahrt GMBH, Customer Support, P.O. Box 1103, D–82230 Wessling, Federal Republic of Germany; telephone: (08153) 300; facsimile: (08153) 304463. You may also view this information at the Rules Docket at the address above.

FOR FURTHER INFORMATION CONTACT: Karl Schletzbaum, Aerospace Engineer, FAA, Small Airplane Directorate, 901 Locust, Room 301, Kansas City, Missouri 64106; telephone: (816) 329–4146; facsimile: (816) 329–4090.

SUPPLEMENTARY INFORMATION:

Comments Invited

How do I comment on this proposed AD? The FAA invites comments on this proposed rule. You may submit whatever written data, views, or arguments you choose. You need to include the proposed rule's docket number and submit your comments to the address specified under the caption **ADDRESSES**. We will consider all comments received on or before the closing date. We may amend this proposed rule in light of comments received. Factual information that supports your ideas and suggestions is extremely helpful in evaluating the effectiveness of this proposed AD action and determining whether we need to take additional rulemaking action.

Are there any specific portions of this proposed AD I should pay attention to? The FAA specifically invites comments on the overall regulatory, economic, environmental, and energy aspects of this proposed rule that might suggest a need to modify the rule. You may view all comments we receive before and after the closing date of the rule in the Rules Docket. We will file a report in the Rules Docket that summarizes each contact we have with the public that concerns the substantive parts of this proposed AD.

How can I be sure FAA receives my comment? If you want FAA to acknowledge the receipt of your mailed comments, you must include a self-addressed, stamped postcard. On the postcard, write "Comments to Docket No. 2003–CE–20–AD." We will date stamp and mail the postcard back to you.

Discussion

What events have caused this proposed AD? The Luftfahrt-Bundesamt (LBA), which is the airworthiness authority for Germany, recently notified FAA that an unsafe condition may exist on certain Dornier Models 228–100, 228–101, 228–200 and 228–201, 228–202, and 228–212 airplanes. The LBA reports an occurrence of stuck contacts of the power relay of the heating circuit to the auxiliary cabin heater, Dornier option P05 or P09.

What are the consequences if the condition is not corrected? Failure of the auxiliary cabin heater could lead to overheating and smoke in the cockpit.

Is there service information that applies to this subject? Dornier has issued Service Bulletin No. 228–249, Revision No. 1, dated November 19, 2001.

What are the provisions of this service information? The service bulletin includes procedures for modifying the auxiliary cabin heater wiring.

What action did the LBA take? The LBA classified this service bulletin as mandatory and issued German AD Number 2002–264, dated September 19, 2002, in order to ensure the continued airworthiness of these airplanes in Germany.

Was this in accordance with the bilateral airworthiness agreement? These airplane models are manufactured in Germany and are type certificated for operation in the United States under the provisions of section 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement.

Pursuant to this bilateral airworthiness agreement, the LBA has kept FAA informed of the situation described above.

The FAA's Determination and an Explanation of the Provisions of This Proposed AD

What has FAA decided? The FAA has examined the findings of the LBA; reviewed all available information, including the service information referenced above; and determined that:

—The unsafe condition referenced in this document exists or could devlop on other Dornier Models 228–100, 228–101, 228–200 and 228–201, 228–202, and 228–212 airplanes of the same type design that are on the U.S. registry;

—The actions specified in the previously-referenced service information should be accomplished on the affected airplanes; and

—AD action should be taken in order to correct this unsafe condition.

What would this proposed AD require? This proposed AD would require you to incorporate the actions in the previously-referenced service bulletin.

How does the revision to 14 CFR part 39 affect this proposed AD? On July 10, 2002, FAA published a new version of 14 CFR part 39 (67 FR 47997, July 22, 2002), which governs FAA's AD system. This regulation now includes material that relates to special flight permits, alternative methods of compliance, and altered products. This material previously was included in each individual AD. Since this material is included in 14 CFR part 39, we will not include it in future AD actions.

Cost Impact

How many airplanes would this proposed AD impact? We estimate that this proposed AD affects 14 airplanes in the U.S. registry.

What would be the cost impact of this proposed AD on owners/operators of the affected airplanes? We estimate the following costs to accomplish this proposed modification. We have no way of determining the number of airplanes that may need such modification:

Labor cost	Parts cost	Total cost per airplane
3 workhours × $60 per hour = $180	$95.	$275.

Regulatory Impact

Would this proposed AD impact various entities? The regulations proposed herein would not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this proposed rule would not have federalism implications under Executive Order 13132.

Would this proposed AD involve a significant rule or regulatory action? For the reasons discussed above, I certify that this proposed action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT

Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action has been placed in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, under the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. FAA amends § 39.13 by adding a new airworthiness directive (AD) to read as follows:

Dornier Luftfahrt GMBH: Docket No. 2003–CE–20–AD.

(a) *What airplanes are affected by this AD?* This AD affects Models 228–100, 228–101, 228–200, 228–201, 228–202, and 228–212 airplanes, all serial numbers, that are:

(1) certificated in any category; and

(2) equipped with electrical cabin/cockpit heater option P05 or option P09 auxiliary cabin heater(s) (32HA/35HA or 51HA/52HA).

(b) *Who must comply with this AD?* Anyone who wishes to operate any of the airplanes identified in paragraph (a) of this AD must comply with this AD.

(c) *What problem does this AD address?* The actions specified by this AD are intended to correct problems with the current design of the heater wiring, which could result in failure of the auxiliary cabin heater. Such failure could lead to overheating and smoke in the cockpit.

(d) *What actions must I accomplish to address this problem?* To address this problem, you must accomplish the following:

Actions	Compliance	Procedures
(1) Modify any installed cockpit and cabin auxiliary cabin heater (32HA/35HA or 51HA/52HA) heating wiring.	Within the next 50 hours time-in-service (TIS) after the effective date of this AD, unless already accomplished. Removal from the airplane of any unmodified auxiliary cabin heater (32HA/35HA or 51HA/52HA) or 51HA/52HA) is terminating action for this AD.	In accordance with Fairchild Dornier Dornier 228 Service Bulletin No. SB–228–249, Revision No. 1, dated November 19, 2001, and following standard practices.
(2) Do not install any auxiliary cabin heater (32HA/35HA or 51HA/52HA) (or FAA-approved equivalent part number) unless it has been modified as required in paragraph (d)(1) of this AD.	As of the effective date of this AD	Not applicable.

(e) *Can I comply with this AD in any other way?* To use an alternative method of compliance or adjust the compliance time, follow the procedures in 14 CFR 39.19. Send these requests to the Manager, Standards Office, Small Airplane Directorate. For information on any already approved alternative methods of compliance, contact Karl Schletzbaum, Aerospace Engineer, FAA, Small Airplane Directorate, 901 Locust, Room 301, Kansas City, Missouri 64106; telephone: (816) 329–4146; facsimile: (816) 329–4090.

(f) *How do I get copies of the documents referenced in this AD?* You may get copies of the documents referenced in this AD from Dornier Luftfahrt GmbH, Customer Support, P.O. Box 1103, D–82230 Wessling, Federal Republic of Germany; telephone: (08153) 300; facsimile: (08153) 304463. You may view these documents at FAA, Central Region, Office of the Regional Counsel, 901 Locust, Room 506, Kansas City, Missouri 64106.

Note: The subject of this AD is addressed in German AD Number 2002–264, dated September 19, 2002.

Issued in Kansas City, Missouri, on May 9, 2003.

James E. Jackson,

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 03–12112 Filed 5–14–03; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2002–CE–57–AD]

RIN 2120–AA64

Airworthiness Directives; Cessna Aircraft Company Models 402C and 414A Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes to supersede Airworthiness Directive (AD) 2000–23–01, which applies to all Cessna Aircraft Company (Cessna) Model 402C airplanes. AD 2000–23–01 currently requires repetitive inspections of the forward, aft, and auxiliary wing spars for cracks, and repair or replacement as necessary. Cessna has performed fatigue and crack growth analyses of the wings of these airplanes, and the Federal Aviation Administration (FAA) has evaluated this information and determined that a wing spar modification and inspections are necessary on the Model 414A airplanes as well as the Model 402C airplanes. This proposed AD would require you to inspect the wing spar caps for fatigue cracks with any necessary repair or replacement and to incorporate a spar strap modification on each wing spar. The actions specified by this proposed AD are intended to prevent wing spar cap failure due to undetected fatigue cracks. Such failure could result in loss of a wing with consequent loss of airplane control.

DATES: The Federal Aviation Administration (FAA) must receive any comments on this proposed rule on or before August 8, 2003.

ADDRESSES: Submit comments to FAA, Central Region, Office of the Regional Counsel, Attention: Rules Docket No. 2002–CE–57–AD, 901 Locust, Room 506, Kansas City, Missouri 64106. You may view any comments at this location between 8 a.m. and 4 p.m., Monday through Friday, except Federal holidays. You may also send comments electronically to the following address: *9–ACE–7–Docket@faa.gov*. Comments sent electronically must contain "Docket No. 2002–CE–57–AD" in the subject line. If you send comments electronically as attached electronic files, the files must be formatted in Microsoft Word 97 for Windows or ASCII text.

You may get service information that applies to this proposed AD from the Cessna Aircraft Company, Product Support, P.O. Box 7706, Wichita, Kansas 67277; telephone: (316) 517–5800; facsimile: (316) 942–9006. You may also view this information at the Rules Docket at the address above.

FOR FURTHER INFORMATION CONTACT: Paul Nguyen, Aerospace Engineer, FAA, Wichita Aircraft Certification Office, 1801 Airport Road, Mid-Continent Airport, Wichita, Kansas 67209; telephone: (316) 946–4125; facsimile: (316) 946–4107.

SUPPLEMENTARY INFORMATION:

Comments Invited

How do I comment on this proposed AD? The FAA invites comments on this proposed rule. You may submit whatever written data, views, or arguments you choose. You need to include the rule's docket number and submit your comments to the address specified under the caption **ADDRESSES**. We will consider all comments received on or before the closing date. We may amend this proposed rule in light of comments received. Factual information that supports your ideas and suggestions is extremely helpful in evaluating the effectiveness of this proposed AD action and determining whether we need to take additional rulemaking action.

Are there any specific portions of this proposed AD I should pay attention to? The FAA specifically invites comments on the overall regulatory, economic, environmental, and energy aspects of this proposed rule that might suggest a need to modify the rule. You may view all comments we receive before and after the closing date of the rule in the Rules Docket. We will file a report in the Rules Docket that summarizes each contact we have with the public that concerns the substantive parts of this proposed AD.

How can I be sure FAA receives my comment? If you want FAA to acknowledge the receipt of your mailed comments, you must include a self-addressed, stamped postcard. On the postcard, write "Comments to Docket No. 2002–CE–57–AD." We will date stamp and mail the postcard back to you.

Discussion

Has FAA taken any action to this point? Reports of fatigue cracks on Cessna 401, 402, and 411 series airplanes caused FAA to take AD action (AD 79–10–15 R2, Amendment 39–3711) to require repetitive inspections of the right and left wing spar lower cap areas for fatigue cracks and to require wing spar cap repair or replacement as necessary.

Cessna Models 402C and 414A airplanes incorporate a similar design to those airplanes affected by AD 79–10–15 R2. We issued AD 2000–23–01, Amendment 39–11971 (65 FR 70645, November 27, 2000), to require repetitive inspections of the forward, aft, and auxiliary wing spars for cracks on Cessna Models 402C airplanes with repair or replacement as necessary.

There is no similar AD action addressing the Model 414A airplanes.

What has happened since AD 79–10–15 R2 and AD 2000–23–01 to initiate this proposed action? Since issuance of AD 79–10–15 and AD 2000–23–01, Cessna has analyzed the wing, including fatigue and crack growth analyses, on the affected airplanes. Analysis included:

—A determination of the probable location and modes of damage based on analytical results, available test data, and service information;
—Classical fatigue analyses;
—Crack growth and residual strength analyses including use of linear elastic fracture mechanics methods;
—Full-scale ground testing to validate analytical models; and
—A Flight strain survey to develop stress spectra used in the analyses.

The inspections required by AD 79–10–15 R2 in accordance with Cessna Service Bulletin ME79–16, Revision 3, are accomplished using a surface eddy current inspection method.

Based on the analysis, Cessna has found that the eddy current method will not find the crack until it is .03 inch longer than the critical crack length. When the crack reaches the critical length, it is not reliably detectable because it is under the head of the fastener. Once the main spar cap is severed, the remaining structure will no longer meet the residual strength requirements. Wing separation could then occur under loading conditions significantly less than those established for the design limit load.

Cessna reported only one instance where cracks were detected using the nondestructive inspection (NDI) eddy current procedure. There are other reported instances where cracks were detected visually in the wheel well area on the aft flange. The problem with visual inspections is the access doubler flanges cover a large percentage of the forward spar flange. This limits the effectiveness of the visual inspections.

To meet industry NDI standards, cracks need to be found on Cessna Models 402C and 414A airplanes through NDI inspection methods with a 90-percent probability of detection at a 95-percent confidence level.

Cessna's analysis indicates that the probability and confidence levels are not being met.

Is there service information that applies to this subject? Cessna has issued Service Bulletin MEB02–05 and Cessna Service Kit SK402–47, both dated June 24, 2002. This service information includes procedures for inspecting and modifying the lower wing spar caps.

The FAA's Determination and an Explanation of the Provisions of this Proposed AD

What has FAA decided? After examining the circumstances and reviewing all available information related to the incidents described above, we have determined that:

—Cessna's analysis of the problems with the eddy current inspection on the wing spar cap area on the Cessna Models 401, 401A, 401B, 402A, 402B, 411, and 411A airplane is valid;
—The unsafe condition referenced in this document also exists or could develop on Cessna Models 402C and 414A airplanes that are the same type design;
—The actions specified in the previously-referenced service information should be accomplished on the affected airplanes; and
—AD action should be taken in order to correct this unsafe condition.

What would this proposed AD require? This proposed AD would supersede AD 2000–23–01 with a new AD that would apply to Cessna Models 402C and 414A airplanes and would require you to:

—Inspect the wing spar caps for fatigue cracks;
—Repair or replace the wing spar caps as necessary; and
—Incorporate a spar strap modification on each wing spar.

How does the revision to 14 CFR part 39 affect this proposed AD? On July 10, 2002, FAA published a new version of 14 CFR part 39 (67 FR 47997, July 22, 2002), which governs FAA's AD system.

This regulation now includes material that relates to special flight permits, alternative methods of compliance, and altered products. This material previously was included in each individual AD. Since this material is included in 14 CFR part 39, we will not include it in future AD actions.

Cost Impact

How many airplanes would this proposed AD impact? We estimate that this proposed AD affects 656 airplanes in the U.S. registry.

What would be the cost impact of this proposed AD on owners/operators of the affected airplanes? We estimate the following costs to accomplish the proposed modification and initial inspection:

Labor cost	Parts cost	Total cost per airplane	Total cost on U.S. operators
485 workhours × $60 per hour = $29,100 per airplane.	$14,000 per airplane	$29,100 + $14,000 = $43,100 per airplane.	$43,100 × 656 = $28,273,600.

The above figures do not take into account the cost of repetitive inspections. The FAA does not have any way of determining the number of repetitive inspections each owner/operator would incur during the operating life of the affected airplanes.

Regulatory Impact

Would this proposed AD impact various entities? The regulations proposed herein would not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this proposed rule would not have federalism implications under Executive Order 13132.

Would this proposed AD involve a significant rule or regulatory action? For the reasons discussed above, I certify that this proposed action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action has been placed in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, under the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations(14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

■ 1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

■ 2. FAA amends § 39.13 by removing Airworthiness Directive (AD) 2000–23–01, Amendment 39–11971 (65 FR 70645, November 27, 2000), and by adding a new AD to read as follows:

Cessna Aircraft Company: Docket No. 2002-CE–57-AD; Supersedes AD 2000–23–01, Amendment 39–11971.

(a) *What airplanes are affected by this AD?* This AD affects Models 402C and 414A airplanes, all serial numbers, that are certificated in any category.

(b) *Who must comply with this AD?* Anyone who wishes to operate any of the airplanes identified in paragraph (a) of this AD must comply with this AD.

(c) *What problem does this AD address?* The actions specified by this AD are intended to prevent wing spar cap failure due to undetected fatigue cracks. Such failure could result in loss of a wing with consequent loss of airplane control.

(d) *What actions must I accomplish to address this problem?* To address this problem, you must inspect the wing spar caps for fatigue cracks and repair or replace the wing spar caps as necessary and incorporate a spar strap modification on each wing spar in accordance with Cessna Service Bulletin MEB02–5, dated June 24, 2002, and Cessna Service Kit SK402–47, dated June 24, 2002, as follows:

Compliance times	Affected airplanes
(1) Inspect and modify at whichever of the following that occurs later and repair or replace as necessary prior to further flight after the inspection, unless already accomplished (no repetitive actions necessary): (i) Upon accumulating 8,500 hours time-in-service (TIS) on a wing spar; or. (ii) Within the next 500 hours TIS after the effective date of this AD or 12 months after the effective date of this AD, whichever occurs first.	Cessna Models 402C and 414A airplanes, serial number 414A0001 through 414A0047 and 414A0049 through 414A0200.
(2) Inspect and modify at whichever of the following that occurs first and repair or replace as necessary prior to further flight after the inspection, unless already accomplished (no repetitive actions necessary): (i) Upon accumulating 14,500 hours TIS on a wing spar; or. (ii) Within the next 500 hours TIS after the effective date of this AD or 12 months after the effective date of this AD, whichever occurs first.	Cessna Models 402C and 414A airplanes, serial numbers 414A0201 through 414A1212.

(e) *Can I comply with this AD in any other way?*

(1) To use an alternative method of compliance or adjust the compliance time, follow the procedures in 14 CFR 39.19. Send these requests to the Manager, Wichita Aircraft Certification Office (ACO). For information on any already approved alternative methods of compliance, contact Paul Nguyen, Aerospace Engineer, FAA, Wichita Aircraft Certification Office, 1801 Airport Road, Mid-Continent Airport, Wichita, Kansas 67209; telephone: (316) 946–4125; facsimile: (316) 946–4107.

(2) Alternative methods of compliance approved in accordance with AD 2000–23–01 and AD 99–11–13 are not approved as alternative methods of compliance with this AD.

(f) *How do I get copies of the documents referenced in this AD?* You may get copies of the documents referenced in this AD from the Cessna Aircraft Company, Product Support, P.O. Box 7706, Wichita, Kansas 67277; telephone: (316) 517–5800; facsimile: (316) 942–9006. You may view these documents at FAA, Central Region, Office of the Regional Counsel, 901 Locust, Room 506, Kansas City, Missouri 64106.

(g) *Does this AD action affect any existing AD actions?* This amendment supersedes AD 2000–23–01, Amendment 39–11971.

Issued in Kansas City, Missouri, on May 9, 2003.

James E. Jackson,

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 03–12111 Filed 5–14–03; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

21 CFR Part 1308

[Docket No. DEA–162W]

Schedules of Controlled Substances: Proposed Removal of Fenfluramine From the Controlled Substances Act; Withdrawal of Proposed Rule

AGENCY: Drug Enforcement Administration (DEA), Justice.

ACTION: Withdrawal of proposed rule.

SUMMARY: The Drug Enforcement Administration (DEA) is withdrawing a proposed rule that appeared in the **Federal Register** of May 6, 1997 (62 FR 24620) and is terminating the rulemaking. The proposed rule would have removed fenfluramine from schedule IV of the Controlled Substances Act. The drug's manufacturer has withdrawn its original petition that requested decontrol. DEA has determined that fenfluramine should remain in schedule IV due to the withdrawal of the petition, the removal of products containing the drug from the United States marketplace, and the public health and safety concerns expressed by the Department of Health and Human Services that arose after publication of the proposed rule.

FOR FURTHER INFORMATION CONTACT: Frank Sapienza, Chief, Drug and Chemical Evaluation Section, Drug Enforcement Administration, Washington, DC 20537, (202) 307–7183.

SUPPLEMENTARY INFORMATION: In 1973, fenfluramine, its salts, isomers and salts of isomers were placed into schedule IV of the Controlled Substances Act (CSA), 21 CFR 1308.14(d). On March 18, 1991, Interneuron Pharmaceuticals, Inc., the manufacturer of a fenfluramine product (dexfenfluramine, brand name Redux), petitioned DEA to decontrol fenfluramine. The fenfluramine product Redux, an anorectic indicated for the management of exogenous obesity, was approved by the Food and Drug Administration (FDA) of the Department of Health and Human Services (DHHS) for marketing in the United States in 1996. After receiving Interneuron's petition, and in accordance with the CSA requirements at 21 U.S.C. 811(b), DEA reviewed available data about fenfluramine. On June 3, 1996, the DHHS Assistant Secretary of Health submitted a recommendation to DEA that the substance be decontrolled. As a result of DEA's review and DHHS's recommendation, a notice of proposed rulemaking titled "Schedules of Controlled Substances: Proposed Removal of Fenfluramine From the Controlled Substances Act" was published on May 6, 1997 in the **Federal Register** (62 FR 24620). This notice of proposed rulemaking was in direct response to Interneuron's petition to decontrol fenfluramine. A sixty day comment period was provided during which four comments were received, two in favor of the proposed action and two against decontrol.

On July 8, 1997, two months after the proposed rulemaking was published, FDA issued a public health advisory regarding the use of fenfluramine, especially in conjunction with phentermine (commonly known as "fen-phen"), citing evidence of significant side effects associated with fenfluramine. FDA announced a voluntary withdrawal by the pharmaceutical manufacturers of fenfluramine (brand name Pondimin) and dexfenfluramine (brand name Redux) from United States markets on September 15, 1997. DHHS issued a final rule on March 8, 1999 listing drug products that were withdrawn or removed from the market because they were found to be unsafe or not effective, including fenfluramine hydrochloride. (64 FR 10944). This regulation is codified at 21 CFR 216.24.

In a February 27, 2003 letter addressed to DEA's Acting Administrator, John B. Brown III, Indevus Pharmaceuticals, Inc., formerly known as Interneuron Pharmaceuticals, Inc., wrote to withdraw its petition to decontrol fenfluramine because the company no longer markets fenfluramine products in the United States.

As a result of the recent withdrawal of the petition and the earlier removal of the drug from the United States marketplace by FDA due to health and safety concerns, DEA now has reason to reconsider its proposed rulemaking. DEA no longer considers it appropriate to remove fenfluramine from schedule IV. The health and safety concerns that prompted the manufacturers' voluntary withdrawal of fenfluramine from the marketplace and DHHS's subsequent codification of this withdrawal, *see* 21 CFR 216.24, occurred after DEA's proposed rulemaking was published. Based on these events, DEA has determined that fenfluramine's current placement in schedule IV should not be altered. Accordingly, DEA withdraws the proposed rule published in the **Federal Register** on May 6, 1997 (62 FR 24620) and hereby terminates this rulemaking.

Dated: May 2, 2003.

John B. Brown, III,

Acting Administrator.

[FR Doc. 03–12150 Filed 5–14–03; 8:45 am]

BILLING CODE 4410–09–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[CGD05–03–023]

RIN 1625–AA00

Safety and Security Zone; Cove Point Liquefied Natural Gas Terminal, Chesapeake Bay, MD

AGENCY: Coast Guard, DHS.

ACTION: Notice of proposed rulemaking; notice of public meeting; reopening of comment period.

SUMMARY: On March 20, 2003, the U.S. Coast Guard Captain of the Port, Baltimore (COTP) published a notice of proposed rulemaking for revising a safety and security zone for the Cove Point Liquefied Natural Gas Terminal. In response to that notice, the COTP received requests for a public meeting to discuss the proposed rule. In this notice, the COTP is announcing a public meeting to receive comments regarding the proposed safety and security zone and is reopening the comment period for this rulemaking.

DATES: The meeting will be held Thursday, June 5, 2003, from 6 p.m. to 9 p.m. Comments and related material must reach the Coast Guard on or before June 12, 2003.

ADDRESSES: The meeting location is: The Holiday Inn, 155 Holiday Drive, Solomon's Island, Maryland. You may mail comments and related material to Commander, U.S. Coast Guard Activities, 2401 Hawkins Point Road,

Building 70, Port Safety, Security and Waterways Management Branch, Baltimore, Maryland, 21226–1791. The Port Safety, Security and Waterways Management Branch of Coast Guard Activities Baltimore maintains the public docket, CGD05–03–023, for this rulemaking. Comments and material received from the public, as well as documents indicated in this preamble as being available in the docket, will become part of this docket and will be available for inspection or copying at Commander, U.S. Coast Guard Activities, 2401 Hawkins Point Road, Building 70, Port Safety, Security and Waterways Management Branch, Baltimore, Maryland, 21226–1791 between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Commander Gordon Loebl at U.S. Coast Guard Activities Baltimore (410) 576–2526.

SUPPLEMENTARY INFORMATION:

Background Information

On March 20, 2003, the Coast Guard published a notice of proposed rulemaking entitled "Safety and Security Zone; Cove Point Liquefied Natural Gas Terminal, Chesapeake Bay, Maryland. (68 FR 13647). The Coast Guard received several requests for public meetings before the comment period closed on April 21, 2003. The Captain of the Port has decided that a public meeting is in the public's interest and is therefore issuing this notice to advise the public of the time and place of the meeting, and of the reopening of the comment period.

Public Meeting

The public meeting will be held June 5, 2003, from 6 p.m. to 9 p.m., at the Holiday Inn, 155 Holiday Drive, Solomon's Island, Maryland. Attendance is open to the public. During this meeting, the Coast Guard will receive comments from the public on the proposed rule for the safety and security zone.

With advance notice, members of the public may provide oral statements. Oral statements will be limited to five minutes. Persons wishing to make oral statements should notify Commander Gordon Loebl listed under **FOR FURTHER INFORMATION CONTACT** no later than two days before the meeting.

Written comments may be submitted to the docket under **ADDRESSES** 30 minutes before, during, or up to one week after the meeting. You may also submit written comments directly to Coast Guard personnel at the public meeting.

Information on Services for Individuals With Disabilities

For information on facilities or services for individuals with disabilities, or to request assistance at the meeting, contact Commander Gordon Loebl listed under **FOR FURTHER INFORMATION CONTACT** as soon as possible.

Dated: May 5, 2003.

Roger B. Peoples,

Captain, Coast Guard, Captain of the Port, Baltimore, MD.

[FR Doc. 03–12050 Filed 5–14–03; 8:45 am]

BILLING CODE 4910–15–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[SIP NO. UT–001–0052b; FRL–7483–5]

Approval and Promulgation of Air Quality Implementation Plans; State of Utah; Continuous Emission Monitoring Program

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to take direct final action approving State Implementation Plan (SIP) revisions submitted by the Governor of Utah on September 7, 1999 and February 11, 2003. The September 7, 1999 submittal revises Utah's Air Conservation Regulations (UACR) by repealing and re-enacting the Continuous Emission Monitoring Program (CEM) rule in order to clarify the requirements of the rule. The February 11, 2003 submittal makes additional revisions to the CEM rule to make it in agreement with Federal regulations and the Clean Air Act (CAA). The intended effect of this action is to make the CEM rule federally enforceable. This action is being taken under section 110 of the CAA.

In the "Rules and Regulations" section of this **Federal Register**, EPA is approving the State's SIP revision as a direct final rule without prior proposal because the Agency views this as a noncontroversial SIP revision and anticipates no adverse comments. A detailed rationale for the approval is set forth in the preamble to the direct final rule. If EPA receives no adverse comments, EPA will not take further action on this proposed rule. If EPA receives adverse comments, EPA will withdraw the direct final rule and it will not take effect. EPA will address all public comments in a subsequent final rule based on this proposed rule. EPA will not institute a second comment period on this action. Any parties interested in commenting must do so at this time. Please note that if EPA receives adverse comment on an amendment, paragraph, or section of this rule and if that provision may be severed from the remainder of the rule, EPA may adopt as final those provisions of the rule that are not the subject of an adverse comment.

DATES: Comments must be received in writing on or before June 16, 2003.

ADDRESSES: Written comments may be mailed to Richard R. Long, Director, Air and Radiation Program, Mailcode 8P–AR, Environmental Protection Agency (EPA), Region 8, 999 18th Street, Suite 300, Denver, Colorado, 80202. Copies of the documents relevant to this action are available for public inspection during normal business hours at the Air and Radiation Program, Environmental Protection Agency, Region 8, 999 18th Street, Suite 300, Denver, Colorado, 80202. Copies of the State documents relevant to this action are available for public inspection at the Utah Department of Environmental Quality, Division of Air Quality, 150 North 1950 West, Salt Lake City, Utah 84114.

FOR FURTHER INFORMATION CONTACT: Laurel Dygowski , EPA, Region 8, (303) 312–6144.

SUPPLEMENTARY INFORMATION: See the information provided in the Direct Final action of the same title which is located in the Rules and Regulations Section of this **Federal Register**.

Authority: 42 U.S.C. 7401 *et seq.*

Dated: April 3, 2003.

Robert E. Roberts,

Regional Administrator, Region 8.

[FR Doc. 03–12030 Filed 5–14–03; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 52 and 81

[CO–001–0070b; FRL–7489–3]

Approval and Promulgation of Air Quality Implementation Plan; Colorado; Designation of Area for Air Quality Planning Purposes, Aspen

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to approve a State Implementation Plan (SIP) revision submitted by the Governor of the State of Colorado on November 9, 2001, for the purpose of redesignating the Aspen, Colorado area from nonattainment to attainment for particulate matter with an aerodynamic diameter less than or equal to a nominal 10 micrometers (PM_{10}) under the 1987 standards. The Governor's submittal, among other things, documents that the Aspen area has attained the PM_{10} national ambient air quality standards (NAAQS), requests redesignation to attainment, and includes a maintenance plan for the area demonstrating maintenance of the PM_{10} NAAQS for 10 years. EPA is proposing to approve this redesignation request and maintenance plan because Colorado has met the applicable requirements of the Clean Air Act (CAA), as amended. Subsequent to this approval, the Aspen area would be designated attainment for the PM_{10} NAAQS. This action is being taken under sections 107, 110, and 175A of the Clean Air Act. In the "Rules and Regulations" section of this **Federal Register**, EPA is approving the State's SIP revision as a direct final rule without prior proposal because the Agency views this as a noncontroversial SIP revision and anticipates no adverse comments. A detailed rationale for the approval is set forth in the preamble to the direct final rule. If EPA receives no adverse comments, EPA will not take further action on this proposed rule. If EPA receives adverse comments, EPA will withdraw the direct final rule and it will not take effect. EPA will address all public comments in a subsequent final rule based on this proposed rule. EPA will not institute a second comment period on this action. Any parties interested in commenting must do so at this time. Please note that if EPA receives adverse comment on an amendment, paragraph, or section of this and if that provision may be severed from the remainder of the rule, EPA may adopt as final those provisions of the rule that are not the subject of an adverse comment.

DATES: Comments must be received in writing on or before June 16, 2003.

ADDRESSES: Written comments may be mailed to Richard R. Long, Director, Air and Radiation Program, Mailcode 8P–AR, Environmental Protection Agency (EPA), Region VIII, 999 18th Street, Suite 300, Denver, Colorado, 80202. Copies of the documents relevant to this action are available for public inspection during normal business hours at the Air and Radiation Program, Environmental Protection Agency, Region VIII, 999 18th Street, Suite 300, Denver, Colorado, 80202. Copies of the State documents relevant to this action are available for public inspection at the Colorado Department of Public Health and Environment, Air Quality Control Commission, 4300 Cherry Creek Drive South, Denver, Colorado 80246–1530.

FOR FURTHER INFORMATION CONTACT: Libby Faulk, EPA, Region VIII, (303) 312–6083.

SUPPLEMENTARY INFORMATION: *See* the information provided in the Direct Final action of the same title which is located in the Rules and Regulations section of this **Federal Register**.

Authority: 42 U.S.C. 7401 *et seq.*

Dated: April 18, 2003.

Robert E. Roberts,

Regional Administrator, Region 8.

[FR Doc. 03–12025 Filed 5–14–03; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 63

[Docket ID No. OAR–2002–0044; FRL –7497–8]

RIN 2060–AF31

National Emission Standards for Hazardous Air Pollutants for Source Categories: General Provisions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule; amendments.

SUMMARY: On March 16, 1994, the EPA promulgated General Provisions for national emission standards for hazardous air pollutants (NESHAP) and other regulatory requirements that are established under section 112 of the Clean Air Act (CAA). On April 5, 2002, we amended the General Provisions to revise and clarify several of the requirements. In this action, we are proposing additional amendments that would provide regulatory relief, where appropriate, to facilities that use pollution prevention (P2) to achieve and maintain hazardous air pollutant (HAP) emissions reductions equivalent to or better than the maximum achievable control technology (MACT) level of control required under applicable NESHAP.

We are proposing these amendments to encourage and promote pollution prevention, which is our strategy of first choice for reducing HAP emissions. EPA is also proposing additional incentives specifically designed for, and only available to, facilities that are members of the National Environmental Performance Track program (Performance Track). The Performance Track program recognizes and encourages top environmental performers; those who go beyond compliance with regulatory requirements to attain levels of environmental performance and management that provide greater benefit to people, communities, and the environment.

DATES: *Comments.* Submit comments on or before July 14, 2003.

Public Hearing. If anyone contacts the EPA requesting to speak at a public hearing by June 5, 2003, a public hearing will be held on June 12, 2003.

ADDRESSES: *Comments.* The official public docket is the collection of materials that is available for public viewing at the EPA Docket Center (EPA/DC), EPA West, Room B102, 1301 Constitution Ave., NW., Washington, DC.

Public Hearing. If a public hearing is requested, it will be held at the new EPA facility complex in Research Triangle Park, NC at 10 a.m. Persons interested in attending the hearing or wishing to present oral testimony should notify Dorothy Apple, Policy, Planning, and Standards Group (MD–C439–04), U.S. EPA, Research Triangle Park, NC 27711, telephone (919) 541–4487 at least 2 days in advance of the hearing.

FOR FURTHER INFORMATION CONTACT: Steve Fruh, Policy, Planning, and Standards Group (MD–C439–04), Emission Standards Division, Office of Air Quality Planning and Standards, U.S. EPA, Research Triangle Park, NC 27711, telephone (919) 541–2837, electronic mail (e-mail) address, *fruh.steve@epa.gov*.

SUPPLEMENTARY INFORMATION: *Regulated Entities.* Categories and entities potentially affected by this action include all source categories listed pursuant to section 112(c) and (k) of the CAA:

Industry Group: Source Categories With Major and Area Sources

Fuel Combustion

Combustion Turbines
Engine Test Facilities
Industrial Boilers
Process Heaters
Reciprocating Internal Combustion Engines
Rocket Testing Facilities

Non-Ferrous Metals Processing

Primary Aluminum Production
Primary Copper Smelting
Primary Lead Smelting
Primary Magnesium Refining
Secondary Aluminum Production
Secondary Lead Smelting

Ferrous Metals Processing

Coke By-Product Plants
Coke Ovens: Charging, Top Side, and Door Leaks
Coke Ovens: Pushing, Quenching, Battery Stacks
Ferroalloys Production: Silicomanganese and Ferromanganese
Integrated Iron and Steel Manufacturing
Iron Foundries Electric Arc Furnace (EAF) Operation
Steel Foundries
Steel Pickling—HCl Process Facilities and Hydrochloric Acid Regeneration

Mineral Products Processing

Alumina Processing
Asphalt Concrete Manufacturing
Asphalt Processing
Asphalt Roofing Manufacturing
Asphalt/Coal Tar Application—Metal Pipes
Clay Products Manufacturing
Lime Manufacturing
Mineral Wool Production
Portland Cement Manufacturing
Refractories Manufacturing
Taconite Iron Ore Processing
Wool Fiberglass Manufacturing

Petroleum and Natural Gas Production and Refining

Oil and Natural Gas Production
Natural Gas Transmission and Storage
Petroleum Refineries—Catalytic Cracking (Fluid and other) Units, Catalytic Reforming Units, and Sulfur Plant Units
Petroleum Refineries—Other Sources Not Distinctly Listed

Liquids Distribution

Gasoline Distribution (Stage 1)
Marine Vessel Loading Operations
Organic Liquids Distribution (Non-Gasoline)

Surface Coating Processes

Aerospace Industries
Auto and Light Duty Truck
Large Appliance
Magnetic Tapes
Manufacture of Paints, Coatings, and Adhesives
Metal Can
Metal Coil
Metal Furniture
Miscellaneous Metal Parts and Products
Paper and Other Webs
Plastic Parts and Products
Printing, Coating, and Dyeing of Fabrics
Printing/Publishing
Shipbuilding and Ship Repair
Wood Building Products
Wood Furniture

Waste Treatment and Disposal

Hazardous Waste Incineration
Municipal Landfills
Off-Site Waste and Recovery Operations
Publicly Owned Treatment Works (POTW) Emissions
Sewage Sludge Incineration
Site Remediation
Solid Waste Treatment, Storage and Disposal Facilities (TSDF)

Agricultural Chemicals Production

Pesticide Active Ingredient Production

Fibers Production Processes

Acrylic Fibers/Modacrylic Fibers Production
Rayon Production
Spandex Production

Food and Agriculture Processes

Manufacturing of Nutritional Yeast
Cellulose Food Casing Manufacturing
Vegetable Oil Production

Pharmaceutical Production Processes

Pharmaceuticals Production

Polymers and Resins Production

Acetal Resins Production
Acrylonitrile-Butadiene-Styrene Production
Alkyd Resins Production
Amino Resins Production
Boat Manufacturing
Butyl Rubber Production
Carboxymethylcellulose Production
Cellophane Production
Cellulose Ethers Production
Epichlorohydrin Elastomers Production
Epoxy Resins Production
Ethylene-Propylene Rubber Production
Flexible Polyurethane Foam Production
Hypalon (tm) Production
Maleic Anhydride Copolymers Production
Methylcellulose Production
Methyl Methacrylate-Acrylonitrile-Butadiene-Styrene Production
Methyl Methacrylate-Butadiene-Styrene Terpolymers Production
Neoprene Production
Nitrile Butadiene Rubber Production
Nitrile Resins Production
Non-Nylon Polyamides Production
Phenolic Resins Production
Polybutadiene Rubber Production
Polycarbonates Production
Polyester Resins Production
Polyether Polyols Production
Polyethylene Terephthalate Production
Polymerized Vinylidene Chloride Production
Polymethyl Methacrylate Resins Production
Polystyrene Production
Polysulfide Rubber Production
Polyvinyl Acetate Emulsions Production
Polyvinyl Alcohol Production
Polyvinyl Butyral Production
Polyvinyl Chloride and Copolymers Production
Reinforced Plastic Composites Production
Styrene-Acrylonitrile Production
Styrene-Butadiene Rubber and Latex Production

Production of Inorganic Chemicals

Ammonium Sulfate Production—Caprolactam By-Product Plants
Carbon Black Production
Chlorine Production
Cyanide Chemicals Manufacturing
Fumed Silica Production
Hydrochloric Acid Production
Hydrogen Fluoride Production
Phosphate Fertilizers Production
Phosphoric Acid Manufacturing
Uranium Hexafluoride Production

Production of Organic Chemicals

Ethylene Processes
Quaternary Ammonium Compounds Production
Synthetic Organic Chemical

Miscellaneous Processes

Benzyltrimethylammonium Chloride Production
Butadiene Dimers Production
Carbonyl Sulfide Production
Cellulosic Sponge Manufacturing
Chelating Agents Production
Chlorinated Paraffins
Chromic Acid Anodizing
Commercial Dry Cleaning (Perchloroethylene)—Transfer Machines
Commercial Sterilization Facilities
Decorative Chromium Electroplating
Dry Cleaning (Petroleum Solvent)
Ethylidene Norbornene Production
Explosives Production
Flexible Polyurethane Foam Fabrication Operations
Friction Products Manufacturing
Halogenated Solvent Cleaners
Hard Chromium Electroplating
Hydrazine Production
Industrial Cleaning (Perchloroethylene)—Dry-to-dry Machines
Industrial Dry Cleaning (Perchloroethylene)—Transfer Machines
Industrial Process Cooling Towers
Leather Tanning and Finishing Operations
OBPA/1,3-Diisocyanate Production
Paint Stripping Operations
Photographic Chemicals Production
Phthalate Plasticizers Production
Plywood and Composite Wood Products
Polyether Polyols Production
Pulp and Paper Production
Rubber Chemicals Manufacturing
Rubber Tire Manufacturing
Semiconductor Manufacturing
Symmetrical Tetrachloropyridine Production

Categories With Area Sources Only

Agriculture Chemicals & Pesticides Manufacturing
Autobody Refinishing Paint Shops
Cadmium Refining & Cadmium Oxide Production
Cyclic Crude and Intermediate Production
Hospital Sterilizers
Industrial Inorganic Chemical Manufacturing
Industrial Organic Chemical Manufacturing
Lead and Acid Battery Manufacturing
Medical Waste Incinerators
Mercury Cell Chlor-Alkali Plants
Miscellaneous Organic Chemical Manufacturing (MON)
Municipal Waste Combustors
Other Solid Waste Incinerators (Human/Animal Cremation)
Plastic Materials and Resins Manufacturing
Plating and Polishing
Pressed and Blown Glass & Glassware Manufacturing
Secondary Copper Smelting
Secondary Nonferrous Metals
Stainless and Nonstainless Steel Manufacturing Electric Arc Furnaces (EAF)
Stationary Internal Combustion Engines
Synthetic Rubber Manufacturing
Wood Preserving

This list is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be regulated by this action. To determine whether your facility is regulated by this action, you should examine your source category-specific section 112 regulation. Additional information on the listing of source categories is available at *http://www.epa.gov/ttn/atw/socatlst/socatpg.html*. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed in the preceding **FOR FURTHER INFORMATION CONTACT** section.

Docket. EPA has established an official public docket for this action under Docket ID No. OAR–2002–0044. The official public docket is the collection of materials that is available for public viewing in the General Provisions Docket at the EPA Docket Center (Air Docket), EPA West, Room B–108, 1301 Constitution Avenue, NW., Washington, DC 20004. The Docket Center is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the reading room is (202) 566–1744 and the telephone number for the Air Docket is (202) 566–1742.

Electronic Access. An electronic version of the public docket is available through EPA's electronic public docket and comment system, EPA Dockets. You may use EPA Dockets at *http://www.epa.gov/edocket/* to submit or view public comments, access the index of the contents of the official public docket, and to access those documents in the public docket that are available electronically. Once in the system, select "search" and key in the appropriate docket identification number.

Certain types of information will not be placed in the EPA Dockets. Information claimed as confidential business information (CBI) and other information whose disclosure is restricted by statute, which is not included in the official public docket, will not be available for public viewing in EPA's electronic public docket. The EPA's policy is that copyrighted material will not be placed in EPA's electronic public docket but will be available only in printed, paper form in the official public docket. Although not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the docket facility previously identified in this document.

For public commenters, it is important to note that EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing in EPA's electronic public docket as EPA receives them and without change, unless the comment contains copyrighted material, CBI, or other information whose disclosure is restricted by statute. When EPA identifies a comment containing copyrighted material, EPA will provide a reference to that material in the version of the comment that is placed in EPA's electronic public docket. The entire printed comment, including the copyrighted material, will be available in the public docket.

Public comments submitted on computer disks that are mailed or delivered to the docket will be transferred to EPA's electronic public docket. Public comments that are mailed or delivered to the docket will be scanned and placed in EPA's electronic public docket. Where practical, physical objects will be photographed, and the photograph will be placed in EPA's electronic public docket along with a brief description written by the docket staff.

Comments. You may submit comments electronically, by mail, by facsimile, or through hand delivery/courier. To ensure proper receipt by EPA, identify the appropriate docket identification number in the subject line on the first page of your comment. Please ensure that your comments are submitted within the specified comment period. Comments submitted after the close of the comment period will be marked "late." EPA is not required to consider these late comments.

Electronically. If you submit an electronic comment as prescribed below, EPA recommends that you include your name, mailing address, and an e-mail address or other contact information in the body of your comment. Also include this contact information on the outside of any disk or CD ROM you submit and in any cover letter accompanying the disk or CD ROM. This ensures that you can be identified as the submitter of the comment and allows EPA to contact you in case EPA cannot read your comment due to technical difficulties or needs further information on the substance of your comment. EPA's policy is that EPA will not edit your comment, and any identifying or contact information provided in the body of a comment will be included as part of the comment that is placed in the official public docket and made available in EPA's electronic public docket. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment.

Your use of EPA's electronic public docket to submit comments to EPA electronically is EPA's preferred method for receiving comments. Go directly to EPA Dockets at *http://www.epa.gov/edocket*, and follow the online instructions for submitting comments. Once in the system, select "search" and key in Docket ID No. OAR–2002–0044, Category VI, Part 63 General Provisions (Subpart A) Pollution Prevention Compliance Alternative Amendments. The system is an "anonymous access" system, which means EPA will not know your identity, e-mail address, or other contact information unless you provide it in the body of your comment.

Comments may be sent by electronic mail (e-mail) to *air-and-r-docket@epa.gov*, Attention Docket ID No. OAR–2002–0044, Category VI, Part 63 General Provisions (Subpart A) Pollution Prevention Compliance Alternative Amendments. In contrast to EPA's electronic public docket, EPA's e-mail system is not an "anonymous access" system. If you send an e-mail comment directly to the docket without going through EPA's electronic public docket, EPA's e-mail system automatically captures your e-mail address. E-mail addresses that are automatically captured by EPA's e-mail system are included as part of the comment that is placed in the official

public docket and made available in EPA's electronic public docket.

You may submit comments on a disk or CD ROM that you mail to the mailing address identified in this document. These electronic submissions will be accepted in WordPerfect or ASCII file format. Avoid the use of special characters and any form of encryption.

By Mail. Send your comments (in duplicate, if possible) to: General Provisions Docket, Category VI, Part 63 General Provisions (Subpart A) Pollution Prevention Compliance Alternative Amendments, EPA Docket Center (Air Docket), U.S. EPA West (MD–6102T), Room B–108, 1200 Pennsylvania Avenue, NW., Washington, DC 20460, Attention Docket ID No. OAR–2002–0044.

By Hand Delivery or Courier. Deliver your comments (in duplicate, if possible) to: EPA Docket Center, Room B–108, U.S. EPA West, 1301 Constitution Avenue, NW., Washington, DC 20004, Attention Docket ID No. OAR–2002–0044, Category VI, Part 63 General Provisions (Subpart A) Pollution Prevention Compliance Alternative Amendments. Such deliveries are only accepted during the Docket Center's normal hours of operation as identified in this document.

By Facsimile. Fax your comments to: (202) 566–1741, Attention General Provisions Docket, Category VI, Part 63 General Provisions (Subpart A) Pollution Prevention Compliance Alternative Amendments, Docket ID No. OAR–2002–0044.

CBI. Do not submit information that you consider to be CBI through EPA's electronic public docket or by e-mail. Send or deliver information identified as CBI only to the following address: Roberto Morales, OAQPS Document Control Officer (MD–C404–02), Attention Steve Fruh, U.S. EPA, Research Triangle Park, NC 27709, Attention Docket ID No. OAR–2002–0044. You may claim information that you submit to EPA as CBI by marking any part or all of that information as CBI (if you submit CBI on disk or CD ROM, mark the outside of the disk or CD ROM as CBI and then identify electronically within the disk or CD ROM the specific information that is CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

Worldwide Web (WWW). In addition to being available in the docket, an electronic copy of this proposal will also be available on the WWW through the Technology Transfer Network (TTN). Following signature, a copy of this action will be posted on the TTN's policy and guidance page for newly proposed rules at *http://www.epa.gov/ttn/oarpg*. The TTN provides information and technology exchange in various areas of air pollution control. If more information regarding the TTN is needed, call the TTN HELP line at (919) 541–5384.

Concurrent Rulemaking: In a proposed rule dated August 13, 2002 (67 FR 52674), EPA solicited comments on the incentives designed for Performance Track member facilities. These proposed amendments contain additional incentives for Performance Track member facilities. Persons interested in doing so are encouraged to comment on the additional incentives as they specifically relate to the MACT incentives in the Performance Track proposed rule. It is EPA's intent to finalize both proposed rules as they relate to the NESHAP General Provisions in one final rulemaking. In the final rule, EPA intends to reconcile the two different definitions of "pollution prevention" and "source at a Performance Track member facility" as they appear in these proposed amendments and in the Performance Track proposed rule by adopting the definitions contained in these proposed amendments.

Outline. The information presented in this preamble is organized as follows:

I. Summary of Proposed Action
II. Background
III. Proposed Amendments to the Part 63 General Provisions
A. Definitions
B. Option 1: Facilities that Implement Pollution Prevention to Eliminate HAP Emissions Subject to Regulation under a NESHAP Subpart
C. Option 2: Facilities that Implement Pollution Prevention to Reduce HAP Emissions to at Least the Level of a NESHAP Subpart
IV. Statutory and Executive Order Reviews
A. Executive Order 12866, Regulatory Planning and Review
B. Paperwork Reduction Act
C. Regulatory Flexibility Act (RFA), as Amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), 5 U.S.C. 601 *et seq.*
D. Unfunded Mandates Reform Act of 1995
E. Executive Order 13132, Federalism
F. Executive Order 13175, Consultation and Coordination with Indian Tribal Governments
G. Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks
H. Executive Order 13211, Actions Concerning Regulations that Significantly Affect Energy Supply, Distribution, or Use
I. National Technology Transfer Advancement Act

I. Summary of Proposed Action

We are proposing to amend the NESHAP General Provisions in 40 CFR part 63, subpart A. The individual NESHAP (which are frequently referred to as MACT standards) are codified as subparts within 40 CFR part 63. We are proposing two options:

- *Option 1:* If a facility completely eliminates all HAP emissions from all sources of emissions regulated by the subpart, it could request to no longer be subject to that subpart. This option would be available only where the subpart does not already require complete elimination of HAP emissions from any of the regulated sources of emissions.
- *Option 2:* If a facility uses P2 to reduce HAP emissions either to the level required by the subpart, or below, it could request "P2 alternative compliance requirements." The alternative compliance requirements would include monitoring, recordkeeping, reporting, and/or other requirements which match the P2 measures implemented by the facility. Alternative emission limits could not be included. If approved, the alternative compliance requirements would replace specified requirements in the subpart. This option would be available for any regulated portion of the facility; it would not be necessary for the facility to implement P2 on every source of emissions that is subject to the subpart. Under this option, the facility would remain subject to the subpart, but some of the requirements would be changed.

Either option would be effective only as long as the facility continued to use the P2 measures and to eliminate or reduce HAP emissions as described in the approved request. If the facility discontinued the P2 measures or failed to eliminate or reduce HAP emissions as approved, all applicable requirements of the subpart would again apply immediately, and the facility would be required to comply beginning on that date.

We are also proposing additional incentives for sources at facilities that are members of the Performance Track program.

II. Background

Consistent with the Pollution Prevention Act of 1990 (42 U.S.C. 13101–13109), it is our policy to promote and encourage P2 in all our programs. We seek to reduce HAP emissions with alternative approaches that achieve results in innovative and sustainable ways. Preventing pollution at the source is our strategy of first choice. Pollution prevention strategies allow facilities the advantage of meeting pollution reduction goals in ways that are most cost effective and appropriate for their individual situations. Furthermore, State and local air pollution agencies have urged us on numerous occasions to do more to encourage P2 in the MACT standards program. For these reasons, we are proposing revisions to the part 63 General Provisions which encourage the development and implementation of P2 measures at facilities that are already subject to NESHAP subparts. By working with State and local agencies in a series of meetings, we have developed this proposal to further this goal.

We are also proposing provisions that would further promote improved environmental performance through incentives that are only available to facilities participating in the Performance Track program. For example, the Administrator will designate a central contact within the EPA to facilitate and expedite the review of a Performance Track member facility's request for pollution prevention alternatives. The Performance Track program was created to recognize, provide incentives, and reward individual facilities that go beyond compliance in their environmental operations and management. The Performance Track program is based on the following premises: Better environmental performance warrants different oversight; the EPA should induce facilities to perform beyond basic compliance; environmental accomplishments should be recognized and rewarded; private and public resources should be used efficiently to these ends; and demonstrated innovative ideas should be included in regulations.

The Agency selects its Performance Track members for entry into the program based on certain criteria. Member facilities must:

- Have adopted and implemented an environmental management system that includes specific elements;
- Be able to demonstrate environmental achievements and commit to continued improvement in particular environmental categories;
- Engage the public, and report to the public on the facilities' performance; and
- Have a record of sustained compliance with environmental requirements.

In addition, member facilities must commit to providing annual reports on the status of their efforts to achieve their commitments to making improvements in specific environmental categories and to maintaining their qualifications as program participants.

In line with these premises and criteria, we are proposing provisions that would provide additional incentives only to those sources at facilities that are members of the Performance Track program.

III. Proposed Amendments to the Part 63 General Provisions

We are proposing to amend the General Provisions for the MACT-based NESHAP, which are codified at 40 CFR part 63, subpart A. The General Provisions establish the framework for emission standards and other requirements developed pursuant to section 112 of the CAA. The General Provisions eliminate the repetition of general information and requirements in individual NESHAP subparts by consolidating all generally applicable information in one location. They include sections on applicability, definitions, compliance dates and requirements, monitoring, and recordkeeping and reporting, among others. In addition, they include administrative sections concerning actions that the EPA Administrator must take, such as making determinations of applicability, reviewing applications for approval of new construction, responding to requests for extensions or waivers of applicable requirements, and generally enforcing NESHAP. The General Provisions apply to every facility that is subject to a NESHAP subpart, except where specifically overridden by that subpart.

We are proposing to add definitions for "pollution prevention" and "source at a Performance Track member facility" to § 63.2 of the General Provisions.

The proposed amendments would also add two sections to the General Provisions. New § 63.17 (Option 1) would provide a mechanism for a facility that uses P2 to eliminate completely all HAP emissions regulated under a NESHAP subpart to become exempt from that subpart. New § 63.18 (Option 2) would provide a mechanism enabling a facility that uses P2 to reduce HAP emissions to at least the level required by a NESHAP subpart to replace select requirements of the subpart with requirements appropriate to the P2 measures.

A. Definitions

We are proposing to add the following definitions for "pollution prevention" and "source at a Performance Track member facility" to § 63.2 of the General Provisions:

Pollution prevention means *source reduction* as defined under the Pollution Prevention Act. The definition is as follows:

(1) *Source reduction* is any practice that:

(i) Reduces the amount of any hazardous substance, pollutant, or contaminant entering any waste stream or otherwise released into the environment (including fugitive emissions) prior to recycling, treatment, or disposal; and

(ii) Reduces the hazards to public health and the environment associated with the release of such substances, pollutants, or contaminants.

(2) The term *source reduction* includes equipment or technology modifications, process or procedure modifications, reformulation or redesign of products, substitution of raw materials, and improvements in housekeeping, maintenance, training, or inventory control.

(3) The term *source reduction* does not include any practice that alters the physical, chemical, or biological characteristics or the volume of a hazardous substance, pollutant, or contaminant through a process or activity which itself is not integral to and necessary for the production of a product or the providing of a service.

This definition is taken directly from the Pollution Prevention Act of 1990 (42 U.S.C. 13101–13109). We are proposing to add this definition to clarify the types of actions that we intend to consider in qualifying a facility for Option 1 or 2.

The Pollution Prevention Act establishes the following hierarchy for managing pollution and wastes: source reduction, recycling, treatment, and disposal. Because Congress' primary focus in this statute was source reduction, we are proposing to limit availability of Options 1 and 2 to facilities whose P2 measures qualify as source reduction.

Source at a Performance Track member facility means a major or area source located at a facility which has been accepted by EPA for membership in the Performance Track program (as described at *http://www.epa.gov/performancetrack*, formerly known as the Achievement Track Program) and is still a member of the program. The Performance Track program is a voluntary public-private partnership that encourages continuous environmental improvement through the use of environmental management systems, local community outreach, and measurable results.

B. Option 1: Facilities That Implement Pollution Prevention To Eliminate HAP Emissions Subject to Regulation Under a NESHAP Subpart

We are proposing to add § 63.17 to the General Provisions to address facilities that were subject to a NESHAP subpart on the first applicable compliance date, and which subsequently have implemented P2 measures that eliminate all HAP emissions that are regulated under that subpart. Under the proposed provision, such facilities could submit a request to the Administrator to no longer be subject to the subpart. If approved, the facility would no longer be subject to the subpart, as long as it does not resume emitting HAP from the regulated source(s) of emissions.

A facility would be eligible for Option 1 if the following three conditions are met for a particular NESHAP subpart:

- The facility was subject to the subpart on the first compliance date that applied to the facility under the subpart.
- The facility has implemented P2 measures which ensure that no HAP is emitted from any source of emissions that is subject to any requirement under the subpart.
- None of the emission limitations under the subpart already require the complete elimination of HAP emissions.

By "first applicable compliance date" we mean the first date by which a source must comply with an emission limitation or other substantive regulatory requirement (*i.e.*, emission limit, leak detection and repair program, work practice standard, housekeeping measure, *etc.*, but not a notice requirement) in the applicable NESHAP subpart. For an existing major source, the first applicable compliance date is the compliance date defined in the subpart for such sources, typically 3 years after the effective date (*i.e.*, promulgation date) of the subpart. (This is also true for subparts that apply to area sources.) For subparts that have multiple and staggered compliance dates for different emission limitations, this means the first such date. For a new source, the first applicable compliance date is either the date of startup or the effective date of the subpart, whichever is later.

We have included this condition because this mechanism is intended primarily for facilities that have initially been subject to a NESHAP subpart and complied through conventional means, such as add-on emission control equipment or mandated work practices. In this way, we intend to encourage and reward the development and implementation of P2 measures for such facilities.

As a general matter, we already encourage facilities to develop and implement P2 measures prior to the first applicable compliance date. Facilities that eliminate HAP through P2 (or otherwise) prior to the first compliance date avoid becoming subject to major source NESHAP subparts. The proposed General Provisions section (§ 63.17) would extend the same benefits to facilities that implement P2 measures to eliminate HAP after this initial window of opportunity. This condition would require the facility to use P2 to reduce HAP emissions to zero for all the sources of emissions subject to any requirement under a particular NESHAP subpart. For purposes of this proposal, "pollution prevention" means "source reduction" as defined in the Pollution Prevention Act. As discussed earlier in this preamble, we are proposing to add this definition to § 63.2 of the General Provisions.

By "sources of emissions" we mean all emission units or processes, which includes sources of fugitive emissions as well as sources with identifiable points of emissions (such as stacks). "Subject to any requirement under the subpart" refers to sources of emissions to which any type of requirement applies under the subpart. This includes sources of emissions to which emission limitations apply, "Emission limitations" include operation and maintenance, design, equipment, work practice, and operational requirements, as well as emission limits, opacity limits, operating limits, and visible emissions limits. Moreover, this includes sources of emissions that are below a cutoff in the subpart so that an emission limitation does not apply, but monitoring or recordkeeping requirements apply.

Option 1 would apply subpart by subpart. That is, a facility could use this mechanism to cease being subject to one NESHAP subpart, even if it continued to emit HAP from equipment that is subject to a different NESHAP subpart.

Option 1 would be "all or nothing." A facility would not be eligible to use this mechanism if it eliminated HAP emissions from only some of the sources of emissions that are regulated under the NESHAP subpart. For example, if a subpart includes multiple affected sources, a facility could not use this provision to become exempt from the subpart for individual affected sources. However, such facilities could likely use the second option to obtain reduced monitoring, recordkeeping, and reporting requirements for those affected sources or individual sources of emissions for which they have eliminated HAP emissions.

Option 1 could be used only when none of the emission limitations in the subpart require the facility to completely eliminate HAP emissions. Any zero HAP limitation could only be achieved through P2. (Add-on controls, work practices, *etc.*, can never achieve zero HAP emissions as long as HAP are used or produced.) Thus, a facility that implements P2 to eliminate HAP emissions from the subject source of emissions is simply meeting the required limitation. We do not believe that such a facility should be exempted from an emission limitation, and the associated monitoring, recordkeeping, and reporting, if the subpart already has a requirement to meet a zero HAP limitation.

Furthermore, we believe that subparts that include a requirement to meet a zero HAP emission limitation contain associated compliance provisions (such as testing, monitoring, recordkeeping, and reporting) that are appropriate for that limitation, and that no further relief is warranted. However, if a facility implements P2 measures that were unanticipated during development of the subpart, rendering the subpart's compliance provisions inappropriate, the facility could use the second option to obtain appropriate provisions.

It should be noted that requirements for zero visible emissions or zero opacity do not qualify as "zero HAP emission limitations." Such limits can be met without completely eliminating HAP from a process. Thus, such limits do not preclude a source from using this option.

Under Option 1, a facility could submit a written request to the Administrator to no longer be subject to the subpart at any time after the subpart's first applicable compliance date. As defined in § 63.2 of the General Provisions, "Administrator" means the EPA Administrator or his or her authorized representative, such as a State that has been delegated the authority to implement the provisions of part 63. For Performance Track member facilities, the Administrator would designate a central contact within the EPA to facilitate and expedite the review of such requests for a P2 exemption. Owners and operators of Performance Track member facilities would be encouraged to submit their requests to the designated Performance Track contact within EPA in addition to the EPA Administrator.

The request may include any information that the facility considers useful in demonstrating that the subpart should no longer apply. At a minimum, the written request would be required to include these six items:

- A statement identifying the NESHAP subpart and the operations that are currently subject to the subpart, and indicating that the facility is applying to no longer be subject to the subpart.
- A description of the P2 measures used to eliminate HAP emissions and a demonstration that the measures qualify as P2 as defined in § 63.2.
- A demonstration that the P2 measures have eliminated all HAP emissions from each and every source of emissions subject to an emission limitation under the subpart.
- Documentation that the subpart does not include a limit of zero HAP emissions for any of the sources of emissions subject to an emission limitation under the subpart.
- A certification (signed by a responsible official) that the facility will not resume emitting HAP without notifying the Administrator in writing at least 30 days prior to doing so.
- A certification (signed by a responsible official) agreeing that, upon resuming HAP emissions, the relevant subpart again applies, and the facility must immediately comply with the requirements of the subpart.

The first four items that would be required simply identify the NESHAP subpart and the affected equipment, indicate that the facility wishes to use this provision to be exempt from the subpart, and demonstrate that the facility meets the eligibility requirements. The fifth is an enforceable commitment by the facility not to resume emitting HAP from the affected operations without giving at least 30 days written notice. The sixth is an enforceable acknowledgment by the facility that if it resumes emitting HAP from the affected operations, the relevant subpart applies immediately and the facility would be required to comply with the subpart immediately upon beginning to emit HAP.

A facility that submits a request under Option 1 would remain subject to the NESHAP subpart in question until the Administrator notifies it in writing that the request to no longer be subject to the subpart has been approved. When the Administrator receives a request under Option 1, he or she would notify the facility in writing of approval or intent to deny approval within 45 days after receiving the original request. (Performance Track member facilities would be notified within 30 days.) However, failure by the Administrator to meet this deadline would not constitute approval of the request.

If the Administrator intends to disapprove the request, he or she would include the following three items in the written notification:

- Notice of the information and findings on which the intended disapproval is based.
- Notice of the opportunity for the facility to present additional information before final action on the request.
- A deadline for the facility to present the additional information.

If the facility fails to provide additional information by the deadline established above, the Administrator would disapprove the request. If the facility provided additional information by the deadline, the Administrator would notify the facility of approval or disapproval within 45 days after receiving the information. (Performance Track member facilities would be notified within 30 days.) However, failure by the Administrator to meet this deadline would not constitute approval of the request.

If the Administrator finds that the facility meets the requirements under Option 1, he or she would approve the facility's request to no longer be subject to the subpart. However, the Administrator could condition approval on additional compliance measures as deemed necessary. The Administrator would transmit written approval to the facility that includes the following components:

- Identification of the subpart that no longer applies.
- Identification of the sources of emissions to which the subpart would otherwise apply.
- Any additional compliance measures deemed necessary.
- A requirement that the facility provide written notice to the Administrator at least 30 days prior to beginning to emit HAP from the designated sources of emissions.
- A condition that the applicable requirements of the subpart will again apply to the designated sources of emissions on the date that the facility begins to emit HAP from the sources of emissions, and that the facility must comply with the requirements of the subpart on that date. This written approval would serve as an enforceable agreement between the enforcing agency and the facility.

We believe that 45 days is a reasonable period for the Administrator to review a request and determine whether it should be approved or denied. We also believe that a reduced period of 30 days is a reasonable period of time for the Administrator to review a request from a Performance Track member facility and determine whether it should be approved or denied, particularly with the support of a designated central contact within EPA to facilitate and expedite the Performance Track request. Performance Track member facilities would be accorded a shorter review period in recognition of their top environmental performance, because of EPA's increased familiarity with operations at these member facilities, and to provide an incentive to promote increased participation in the Performance Track program. However, we have proposed that a failure to meet this deadline should not be deemed approval because we believe that an action of this importance should not go into effect without affirmative approval.

After a facility's request has been approved, the facility would be required to keep the commitments it agreed to during the request/approval process. These include the commitment not to emit HAP from the affected sources of emissions without giving at least 30 days prior notice and the requirement to carry out any additional compliance measures upon which the approval was conditioned.

In addition, we believe that the facility should keep records sufficient to show that it is meeting its commitments. Nevertheless, we have not proposed that the facility must accept specified monitoring, recordkeeping, and reporting requirements for this purpose. We believe that the situation after an approval is analogous to that of any other facility in a source category for which a NESHAP subpart is promulgated. These facilities would be required to determine whether they are subject to the subpart, and, if not, they would be required to produce documentation to satisfy the Administrator that they are not subject when asked to do so. If a facility incorrectly asserted that it was not subject to the subpart, it would be subject to an enforcement action for failing to meet the requirements of the subpart.

This being said, we also acknowledge that all facilities are unique. We are proposing that the Administrator may condition approval on additional compliance measures, and these may include monitoring, recordkeeping, and/or reporting as warranted by individual circumstances. However, we do not think the level required for demonstrating continuous compliance under a NESHAP subpart is likely to be appropriate here.

If a facility resumes HAP emissions from the affected operations, the NESHAP subpart would apply to the

facility immediately, and the facility would be required to comply with the subpart immediately upon emitting HAP. This would be a condition of approval, and the facility must agree to it during the request/approval process. If the facility fails to give 30 days notice of its intent to emit HAP from the affected operations and/or fails to comply with the subpart upon emitting HAP, it could be subject to an enforcement action.

If the facility has no reason to be subject to CAA title V permitting requirements after approval of a request under Option 1, it could apply to its permitting authority to rescind the permit. This would be the case if the only reason that a facility was required to have a title V permit was the fact that it was subject to the NESHAP subpart that no longer applies after the approval.

If the facility continued to be subject to title V for other reasons, such as major status for HAP or other pollutants, the "applicable requirements" that come out of the request/approval process would be added to the title V permit. These would include the requirement not to emit HAP from the affected operations without 30 days notice; the stipulation that the NESHAP subpart applies, and that the facility must comply immediately upon emitting HAP; and any additional compliance measures imposed as a condition of approval. Similarly, the requirements of the subpart itself would be removed from the title V permit.

From the perspective of part 63, the facility would no longer be subject to the subpart upon receiving written approval of its request from the Administrator. We believe that the facility should generally be able to implement the approved change in status immediately, with any process needed to revise the title V permit taking place afterwards.

C. Option 2: Facilities That Implement Pollution Prevention To Reduce HAP Emissions To at Least the Level of a NESHAP Subpart

We are proposing to add § 63.18 to the General Provisions to address facilities that are subject to a NESHAP subpart on the first applicable compliance date, and have subsequently implemented P2 measures to achieve and maintain HAP emissions reductions equivalent to or better than the MACT level of control for some or all of the regulated sources of emissions. Under the proposed Option 2, such facilities could submit a request to the Administrator for P2 alternative compliance requirements.

If the request is approved, the alternative compliance requirements would replace requirements specified in the subpart. The P2 alternative compliance requirements would remain in force as long as the facility continues to use the P2 measures and maintains the HAP emissions reductions described in the approved request.

A facility would be eligible for Option 2 if the following two conditions are met for a particular NESHAP subpart:

- The facility was subject to the subpart on the first compliance date that applied to the facility under the subpart.
- The facility has implemented P2 measures to reduce HAP emissions to at least the level required under the subpart for one or more of the regulated sources of emissions, and continues to maintain those reductions.

The first condition is the same as presented above in Option 1 for facilities that eliminate regulated HAP emissions entirely. The second condition would require the facility to use P2 to reduce HAP emissions, to at least the level of the subpart requirements, for at least one source of emissions that is subject to an emission limitation under the subpart. Option 2 differs from Option 1 in that this condition would not require the facility either to completely eliminate HAP emissions or to apply P2 across all the sources of emissions regulated under the subpart. Instead, the facility could apply for P2 alternative compliance requirements for any regulated sources of emissions on which it has implemented P2 and achieved or exceeded the HAP emissions reductions required under the subpart.

A facility could submit a written request to the Administrator for P2 alternative compliance requirements at any time after the subpart's first applicable compliance date. As defined in § 63.2 of the General Provisions, "Administrator" means the EPA Administrator or his or her authorized representative, such as a State that has been delegated the authority to implement the provisions of part 63. For Performance Track member facilities, the Administrator would designate a central contact within the EPA to facilitate and expedite the review of such requests for P2 alternative requirements. Owners and operators of Performance Track member facilities would be encouraged to submit their requests to the designated Performance Track contact within EPA in addition to the EPA Administrator.

The request may include any information that the facility considers useful to demonstrate that alternative compliance requirements are justified. At a minimum, the proposed rule would require that the written request include these nine items:

- A statement identifying the NESHAP subpart and the operations that are subject to the subpart, and indicating that the facility is applying for P2 alternative compliance requirements.
- A description of each source of emissions for which the facility is requesting P2 alternative compliance requirements.
- A description of the P2 measures used to reduce HAP emissions, and a demonstration that the measures qualify as P2 as defined in § 63.2. (This definition is proposed to be added as part of this rulemaking; *see* section III.A of this document.)
- A demonstration that the P2 measures have reduced HAP emissions from each source of emissions for which alternative compliance requirements are being requested to at least the level that is required by the subpart.
- Proposed specific P2 alternative compliance requirements for the designated sources of emissions which ensure that the commitment both to continue using the P2 measures and to maintain the described HAP emissions reductions is enforceable as a practical matter, along with a demonstration that the proposed alternative requirements will effectively assure continuous compliance with the commitment.
- A citation of each applicable requirement in the subpart and General Provisions that the facility proposes to replace with the P2 alternative compliance requirements, accompanied by an explanation of how the proposed alternative requirements satisfy the intent of the replaced requirements and/or why the replaced requirements are not necessary.
- A certification (signed by a responsible official) that the facility will not discontinue the P2 measures or fail to maintain the HAP emissions reductions described in the request without notifying the Administrator in writing at least 30 days prior to doing so.
- A certification (signed by a responsible official) agreeing that, upon discontinuing the P2 measures and/or failing to maintain the HAP emissions reductions described in the request, the subpart again applies and the facility must comply immediately with all of the requirements of the subpart.
- A certification (signed by a responsible official) that the facility is subject to all applicable requirements of the subpart not proposed to be replaced by P2 alternative compliance requirements.

The first four required items would simply identify the NESHAP subpart and the affected equipment, indicate that the facility wishes to use this provision to obtain P2 alternative compliance requirements, and demonstrate that the facility meets the eligibility requirements. For the fifth and sixth items, the facility would propose and justify the alternative compliance requirements and identify the requirements in the subpart that the alternative requirements would replace. The seventh and eighth items certify that the facility acknowledges it would be required to continue the approved alternative P2 measures, and understands the consequences for failing to do so. The ninth item certifies that the facility will continue to comply with those portions of the subpart that were not replaced by approved alternative P2 measures.

Under Option 2, approved P2 alternative compliance requirements would actually replace the compliance requirements in the NESHAP subpart and become the facility's applicable requirements under part 63 for the subpart. However, unlike Option 1, the facility would remain subject to the subpart. Thus, the facility would be required to continue to meet all requirements of the subpart for any regulated sources of emissions not included in the request, and it would remain subject to title V permitting requirements.

To provide certainty to both the facility and the enforcement agency as to exactly what requirements apply to each regulated source of emissions, the proposed rule would require that the facility's request clearly tie the proposed P2 alternative compliance requirements to the designated sources of emissions. Where appropriate, the facility could propose different alternative requirements for different sources of emissions, as long as applicability is clear. In addition, the facility would be required to specify exactly which requirements of the subpart and General Provisions would be replaced by the proposed P2 alternative compliance requirements, and for which sources of emissions.

For its P2 alternative compliance requirements, the facility would be required to propose measures that assure compliance with its commitments both to continue using the P2 measures and to maintain the HAP emissions reductions described in the request. Because the facility would remain subject to the subpart, the alternative requirements would be sufficient to demonstrate continuous compliance.

To demonstrate and assure continuous compliance, we expect that the P2 alternative compliance requirements will include monitoring, recordkeeping, and reporting requirements. In this context, we mean "monitoring" in a broad sense, which could involve simply tracking the purchases and composition of the materials used in the operations covered by the alternative requirements. Depending on the situation, appropriate monitoring may involve more rigorous measures, up to and including continuous instrumental monitoring of process or control device operating parameters or of the exhaust stream. In general, the monitoring program should gather relevant data with sufficient frequency and accuracy to form a conclusive basis for assessing whether the facility maintained continuous compliance with its commitments for P2 and HAP emissions reductions. The monitoring program should include appropriate quality assurance and quality control procedures to ensure the continued reliability of monitoring data.

Similarly, the facility would be required to propose recordkeeping requirements sufficient to document conclusively whether the facility maintained continuous compliance. One existing recordkeeping requirement in the General Provisions that we believe generally should not be replaced by alternative requirements is § 63.10(b)(1), which governs availability and retention of records. The facility's proposed reporting requirements would include periodic reporting to disclose periods of noncompliance or to confirm continuous compliance, as applicable, for each reporting period. Reports also should address the performance of the facility's monitoring program. We expect that alternative reporting requirements typically will conform to the schedule of the existing requirements for the sources of emissions not covered by the P2 alternative compliance requirements, and that the facility would submit combined reports for all of the sources of emissions subject to the subpart.

The facility should not overlook startup, shutdown, and malfunction (SSM) requirements in its request for P2 alternative compliance requirements. It may need to revise its SSM plan, and may want to propose alternative SSM recordkeeping or reporting requirements to match its P2 measures.

The mechanics of the review process under Option 2 would be identical to the process under Option 1. A facility that submits a request under Option 2 would remain subject to all the applicable requirements of the NESHAP subpart in question until the Administrator notifies it in writing that the request for P2 alternative compliance requirements has been approved. When the Administrator receives a request under Option 2, he or she would notify the facility in writing of approval or intent to deny approval within 45 days after receiving the original request. (Performance Track member facilities would be notified within 30 days.) However, failure by the Administrator to meet this deadline would not constitute approval of the request.

If the Administrator intends to disapprove the request, he or she would include the following three items in the written notification:

- Notice of the information and findings on which the intended disapproval is based.
- Notice of the opportunity for the facility to present additional information before final action on the request.
- A deadline for the facility to present the additional information.

If the facility failed to provide additional information by the deadline established above, the Administrator would deny the request. If the facility provided additional information by the deadline, the Administrator would notify the facility of approval or disapproval within 45 days after receiving the information. (Performance Track member facilities would be notified within 30 days.) However, failure by the Administrator to meet this deadline would not constitute approval of the request.

If the Administrator found that the facility meets the requirements under Option 2, he or she would approve the facility's request for P2 alternative compliance requirements. However, the Administrator could condition approval on additional compliance measures as deemed necessary. The Administrator would transmit written approval to the facility that would include the following components:

- Identification of the specific regulated sources of emissions covered by the approval.
- The P2 alternative compliance requirements that apply, including any additional compliance measures deemed necessary. (If necessary, the alternative requirements that apply to different sources of emissions would be clearly specified.)
- The applicable requirements of the subpart that no longer apply to the designated sources of emissions. (Again, requirements would be differentiated by source of emissions, if necessary.)

• A requirement that the facility provide written notice to the Administrator at least 30 days prior to discontinuing the P2 measures and/or failing to maintain the HAP reductions described in the request.

• A condition that the applicable requirements of the subpart will again apply to the designated source(s) of emissions on the date that the facility discontinues the P2 measures and/or fails to maintain the HAP reductions described in the request, and that the facility must comply on that date. This written approval would serve as an enforceable agreement between the enforcing agency and the facility.

As noted previously, we believe that 45 days is a reasonable period for the Administrator to review a request and determine whether it should be approved or denied. We also believe that a reduced period of 30 days is a reasonable period of time for the Administrator to review a request from a Performance Track member facility and determine whether it should be approved or denied, particularly with the support of a designated central contact within EPA to facilitate and expedite the Performance Track request. Performance Track member facilities would be accorded a shorter review period in recognition of their top environmental performance, because of EPA's increased familiarity with operations at these member facilities, and to provide an incentive to promote increased participation in the Performance Track program. However, we are proposing that a failure to meet this deadline should not be deemed approval because an action of this importance should not go into effect without affirmative approval.

In implementing Option 2, the Administrator will remain cognizant of the fact that the purpose of these provisions is to provide an incentive for facilities to develop and implement P2 measures. At the same time, the reviewing agency must ensure that HAP emissions will be reduced to at least the level of MACT, and that the P2 alternative compliance requirements will assure compliance with the facility's commitments in a practically enforceable way. Option 2 is not intended to be a mechanism for obtaining an exemption from necessary compliance requirements.

As a first step, a facility would submit a clear and complete request for P2 alternative compliance requirements. At a minimum, the request would include the nine components previously listed. The facility would be free to submit any additional information that it believes will help justify the alternative requirements.

The facility and the reviewing agency must have a common understanding of the sources of emissions designated for P2 alternative compliance requirements, the proposed alternative requirements (*i.e.*, the actions that the facility would be required to carry out), and the provisions of the NESHAP subpart and General Provisions that would no longer apply. In addition, three unambiguous certifications, signed by a responsible official of the facility (as defined in § 63.2 of the General Provisions) would be included in the request. The reviewing agency would not grant a request until these aspects are clearly and completely specified in writing.

A key component of the request would be a clear and comprehensive description of the P2 measures that the facility has implemented and a demonstration that these measures meet the definition of "pollution prevention" in the proposed amendments. As detailed earlier (in Section III A.), "pollution prevention" means "source reduction" as defined in the Pollution Prevention Act.

Another key component of the request would be a demonstration that the P2 measures have achieved, and will maintain, HAP emissions reductions equivalent to or better than the MACT level of control. Because of the uniqueness of each situation, the facility should describe operations before and after implementation of the P2 measures so as to demonstrate that the P2 measures obtain equivalent (or better) results. Facilities have detailed knowledge of their operations and, as such, are in the best position to determine how to make this demonstration.

We will encourage State, local, and tribal agencies that receive requests for P2 alternative compliance requirements to collaborate with the EPA Regional Offices and Headquarters in reviewing these requests. In this manner, we expect to build a common awareness of the issues that arise as a basis for forging a common approach to review and approval.

We invite comment on this approach to demonstrating that P2 measures reduce HAP emissions to at least the level required by the NESHAP subpart. Commenters who believe that we should provide more specific criteria or guidance on this demonstration should provide specific suggestions on appropriate criteria/guidance.

In addition to proposing clear P2 alternative compliance requirements, the proposed rule would require that the request include a commitment from the facility to continue using the P2 measures and to maintain the described HAP emissions reductions. To be approved, the alternative requirements must be adequate to demonstrate and document continuous compliance.

For example, if a process has been modified to make it inherently less polluting and incapable of emitting HAP at or near the level of the MACT emission limit, the alternative compliance requirements might consist of documenting and periodically certifying that the process continues to be operated as described in the request. If the P2 measures consist of switching raw materials to reduce HAP emissions, tracking raw material purchases and HAP content may be adequate to demonstrate continuous compliance.

The margin of compliance achieved through the P2 measures can be an important consideration in developing proposed alternative requirements. When HAP emissions are at or near the emission limit, greater accuracy would typically be desired than when emissions are well below allowable levels and the likelihood of exceeding the limit is low. Many existing regulations and policies are based on this principle. For example, the General Provisions already provide a mechanism whereby a facility with a continuous emission monitoring system may apply for a less-rigorous alternative to the relative accuracy test when its emission rate is less than 50 percent of the applicable emission limit. (*See* § 63.8(f)(6).)

Many subparts include emission limits and/or compliance options based on P2. For such subparts, we do not believe that simply meeting these limits automatically entitles a facility to P2 alternative compliance requirements, since the requirements are based on the use of P2. In general, we believe that the existing requirements are appropriate in such cases; however, there may be situations where an alternative requirement is equally appropriate. For example, the reviewing agency may wish to consider approving alternative compliance requirements where a facility's P2 measures have reduced HAP emissions to well below the emission limit (*i.e.*, where the margin of compliance is large). The margin of compliance is relevant because we have typically developed compliance requirements based on what is needed to assure continuous compliance when a facility operates at or near the emission limit. In addition, a facility that has introduced P2 measures that were not considered during development of the applicable subpart's compliance requirements is a prime candidate for P2 alternative compliance requirements.

After a facility's request has been approved under Option 2, the facility would keep the commitments it agreed to during the request/approval process. This includes the commitment to neither discontinue the P2 measures, nor fail to maintain the HAP emissions reductions described in the request without giving at least 30 days prior notice. It also includes the commitment to comply with the NESHAP subpart for all sources of emissions not designated in the request and approval, and the commitment to carry out the approved P2 alternative compliance requirements (including any added by the Administrator as a condition of approval).

After approval, the P2 alternative compliance requirements would replace the identified portions of the NESHAP subpart and General Provisions for the designated sources of emissions. They would become the enforceable requirements for the facility under 40 CFR part 63 for the subpart.

Note that the facility would be required to maintain the HAP emissions reductions described in its request and approved by the Administrator, even if this requirement is more stringent than the subpart's emission limit. This would be a condition of approval, and the facility would be required to agree to it during the request/approval process. Because the facility's margin of compliance with the MACT emission limits may have been an important consideration in development and approval of its P2 alternative compliance requirements, it is important that the compliance margin be maintained. Alternative compliance requirements approved based on a large margin of compliance may not be adequate to demonstrate continuous compliance during times when the facility operates closer to the emission limit in the subpart. Thus, facilities should be aware that they will be held to the HAP reductions described in their requests. If necessary, they may want to build in some flexibility by claiming less HAP reductions than they are able to obtain with the P2 measures under optimum current operating conditions.

If a facility discontinued the P2 measures and/or failed to maintain the HAP emissions reductions described in the approved request without giving at least 30 days prior notice, it may be subject to an enforcement action for violating the commitments it agreed to as a condition of approval. In addition, all portions of the NESHAP subpart would apply to the facility immediately, and the facility would be required to comply with the subpart immediately upon discontinuing the P2 measures and/or failing to maintain the HAP reductions described in the approved request, whether or not the facility gave the required prior notice. The facility may be subject to an enforcement action if it does not comply with all portions of the NESHAP subpart immediately.

A facility operating under approved P2 alternative compliance requirements could submit a request, at any time, to modify the alternative requirements. The request may involve changes to any combination of the approved P2 measures, levels of HAP reductions, and alternative compliance requirements.

A request for a modification would include, at a minimum, the same information required for an initial request for P2 alternative compliance requirements. The facility may include any additional information that it believes will help demonstrate that modifications are justified.

The Administrator would review the request and approve or disapprove it according to the procedures for an initial request. The facility would remain subject to the existing P2 alternative compliance requirements and all associated commitments until it received written approval of the requested modifications.

A facility that receives approval of P2 alternative compliance requirements would remain subject to the NESHAP subpart. As a result, the facility also would remain subject to title V permitting requirements.

The "applicable requirements" that come out of the request/approval process would be added to the title V permit. These would include the following:

• The approved P2 alternative compliance requirements (including any requirements added by the Administrator as a condition of approval), with associated sources of emissions.

• Citations for the subpart and General Provisions requirements that have been replaced by the P2 alternative compliance requirements, with associated sources of emissions.

• A requirement to give at least 30 days notice prior to discontinuing the P2 measures and/or failing to maintain the HAP emissions reductions described in the request.

• A stipulation that all portions of the subpart apply, and the facility must comply immediately upon discontinuing the P2 measures and/or failing to maintain the HAP emissions reductions described in the request.

Similarly, any requirements in the subpart which no longer apply to the facility would be removed from the title V permit. From the perspective of 40 CFR part 63, the facility would be subject to the P2 alternative compliance requirements (and not to the replaced NESHAP subpart and General Provisions requirements) upon receiving written approval of its request from the Administrator. As noted previously, we believe that the facility should generally be able to implement the approved change in status immediately, with the needed title V permit revisions taking place afterwards.

IV. Statutory and Executive Order Reviews

A. Executive Order 12866, Regulatory Planning and Review

Under Executive Order 12866 (58 FR 51735, October 4, 1993), the EPA must determine whether the regulatory action is "significant" and therefore subject to review by the Office of Management and Budget (OMB) and the requirements of the Executive Order. The Executive Order defines a "significant regulatory action" as one that is likely to result in a rule that may:

(1) Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities;

(2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or

(4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

It has been determined that these proposed amendments are not a "significant regulatory action" under the terms of Executive Order 12866 and are therefore not subject to OMB review.

B. Paperwork Reduction Act

The information collection requirements in the proposed amendments have been submitted for approval to OMB under the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* An information collection request (ICR) document has been prepared by EPA (ICR No. 2099.01), and a copy may be obtained from Susan Auby by mail at U.S. EPA, Office of Environmental Information, Collection Strategies Division (2822T), 1200 Pennsylvania Avenue, Washington, DC 20460, by e-

mail at *auby.susan@epa.gov*, or by calling (202) 566–1672. A copy may also be downloaded off the Internet at *http://www.epa.gov/icr*. The information requirements are not effective until OMB approves them.

The information requirements are based on notification, recordkeeping, and reporting requirements in the NESHAP General Provisions (40 CFR part 63, subpart A), which are mandatory for all operators subject to NESHAP. These recordkeeping and reporting requirements are specifically authorized by section 114 of the CAA (42 U.S.C. 7414). All information submitted to EPA pursuant to the recordkeeping and reporting requirements for which a claim of confidentiality is made is safeguarded according to Agency policies in 40 CFR part 2, subpart B.

The proposed amendments would require that owners or operators who wish to apply for P2 compliance alternatives to submit a written request that provides all information needed to document the P2 measures that have been implemented and the alternative compliance provisions that are requested. Upon approval of the request, the owner or operator would be required to implement any alternative monitoring, reporting, and recordkeeping requirements associated with the P2 compliance alternative. Participation in the program of P2 compliance alternatives is voluntary. Only facilities that qualify for a reduced burden associated with monitoring, reporting, and recordkeeping are expected to participate.

The annual public reporting and recordkeeping burden for this collection of information (averaged over the first 3 years after the effective date of the final rule) is estimated to reduce the burden associated with existing MACT standards by 82,160 labor hours per year at a total annual cost reduction of $4.7 million. The average burden reduction per facility is 137 hours per year. This estimate includes savings for facilities that completely eliminate all HAP emissions and qualify for an exemption from the applicable standards. The estimate also includes savings from reduced monitoring, reporting, and recordkeeping for facilities that implement P2 measures for specific emission points that reduce HAP emissions to, or below, the level required by the applicable standards. There are no capital or startup costs associated with the proposed amendments.

Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, disclose, or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information; processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

An Agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control number for EPA's regulations are listed in 40 CFR part 9 and 48 CFR chapter 15.

Comments are requested on EPA's need for this information, the accuracy of the provided burden estimates, and any suggested methods for minimizing respondent burden, including through the use of automated collection techniques. Send comments on the ICR to the Director, Collection Strategies Division (2822), U.S. EPA (2136), 1200 Pennsylvania Avenue, NW., Washington, DC 20460; and to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725 17th Street, NW., Washington, DC 20503, marked "Attention: Desk Officer for EPA." Include the ICR number in any correspondence. Because OMB is required to make a decision concerning the ICR between 30 and 60 days after May 15, 2003, a comment to OMB is best assured of having its full effect if OMB receives it by June 16, 2003. The final rule will respond to any OMB or public comments on the information collection requirements contained in the proposed amendments.

C. Regulatory Flexibility Act (RFA) as Amended by Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), 5 U.S.C. 601 et seq.

The RFA generally requires an agency to prepare a regulatory flexibility analysis of any proposed rule subject to notice and comment rulemaking requirements under the Administrative Procedure Act or any other statute unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and small governmental jurisdictions.

For purposes of assessing the impacts of the proposed amendments on small entities, small entity is defined as: (1) A small business as defined in each applicable subpart; (2) a government jurisdiction that is a government of a city, county, town, school district or special district with a population of less than 50,000; and (3) a small organization that is any not-for-profit enterprise which is independently owned and operated and that is not dominant in its field.

After considering the economic impacts of the proposed amendments on small entities, I certify that this action will not have a significant economic impact on a substantial number of small entities. In determining whether a rule has significant economic impact on a substantial number of small entities, the impact of concern is any significant adverse economic impact on small entities, since the primary purpose of the regulatory flexibility analysis is to identify and address regulatory alternatives which minimize any significant economic impact on a substantial number of small entities (5 U.S.C. 603–604). Thus, an agency may certify that a rule will not have a significant economic impact on a substantial number of small entities if the rule relieves regulatory burden, or otherwise has a positive economic effect on all of the small entities subject to the rule.

Small entities that are subject to MACT standards would not be required to take any action under this proposal; P2 alternative compliance requirements are strictly voluntary. In addition, we expect that any sources implementing P2 compliance alternatives will experience cost savings that will outweigh the cost of requesting the alternative requirements.

The only mandatory cost that would be incurred by air pollution control agencies would be the cost of reviewing sources' requests for P2 compliance alternatives. No small governmental jurisdictions operate their own air pollution control agencies, so none would be required to incur costs under the proposal. In addition, any costs associated with these reviews are expected to be offset by reduced agency oversight obligations for sources with approved P2 alternative compliance requirements.

Based on the considerations above, we have concluded that the proposed amendments will relieve regulatory burden for all affected small entities. Nevertheless, we continue to be interested in the potential impacts of the proposed amendments on small entities and welcome comments on issues related to such impacts.

D. Unfunded Mandates Reform Act of 1995

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. Under section 202 of the UMRA, EPA generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with "Federal mandates" that may result in expenditures by State, local, and tribal governments, in aggregate, or by the private sector, of $100 million or more in any 1 year. Before promulgating an EPA rule for which a written statement is needed, section 205 of the UMRA generally requires EPA to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective, or least burdensome alternative that achieves the objectives of the rule. The provisions of section 205 do not apply when they are inconsistent with applicable law. Moreover, section 205 allows EPA to adopt an alternative other than the least costly, most cost-effective, or least burdensome alternative if the Administrator publishes with the final rule an explanation why that alternative was not adopted. Before EPA establishes any regulatory requirements that may significantly or uniquely affect small governments, including tribal governments, it must have developed under section 203 of the UMRA a small government agency plan. The plan must provide for notifying potentially affected small governments, enabling officials of affected small governments to have meaningful and timely input in the development of EPA regulatory proposals with significant Federal intergovernmental mandates, and informing, educating, and advising small governments on compliance with the regulatory requirements.

EPA has determined that these proposed amendments do not contain a Federal mandate that may result in expenditures of $100 million or more for State, local, and tribal governments, in the aggregate, or the private sector in any 1 year. Sources subject to MACT standards would not be required to take any action under this proposal, including sources owned or operated by State, local, or tribal governments; P2 alternative compliance requirements are strictly voluntary. In addition, P2 compliance alternatives are expected to result in reduced burden on any source that obtains approval of such alternative requirements. Under the proposed amendments, a State, local, or tribal air pollution control agency to which we have delegated section 112 authority would be required to review any requests for P2 compliance alternatives submitted by sources in its jurisdiction. However, such requests are not expected to be plentiful and will not approach the $100 million annual threshold. In addition, any costs associated with these reviews are expected to be offset by reduced agency oversight obligations for sources with approved P2 alternative compliance requirements. Thus, the proposed amendments are not subject to the requirements of sections 202 and 205 of UMRA. EPA has determined that the proposed amendments contain no regulatory requirements that might significantly or uniquely affect small governments because they contain no requirements that apply to such governments or impose obligations upon them. Thus, the proposed amendments are not subject to the requirements of section 203 of the UMRA.

E. Executive Order 13132, Federalism

Executive Order 13132, entitled "Federalism" (64 FR 43255, August 10, 1999), requires EPA to develop an accountable process to ensure "meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications." "Policies that have federalism implications" is defined in the Executive Order to include regulations that have "substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government."

These proposed amendments do not have federalism implications. They will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132. Although the proposed amendments would require State air pollution control agencies which have voluntarily taken delegation of the part 63 program to conduct case-by-case reviews where sources elect to apply for P2 alternative compliance requirements, the burden on States will not be substantial. In addition, we expect that the overall effect of the proposed amendments will be to reduce the burden on State agencies as their oversight obligations become less demanding for sources with approved P2 alternative compliance requirements. Thus, Executive Order 13132 does not apply to these proposed amendments. Although section 6 of Executive Order 13132 does not apply to the proposed amendments, we consulted extensively with State and local air pollution control officials during the development of this proposal.

In the spirit of Executive Order 13132, and consistent with EPA policy to promote communications between EPA and State and local governments, EPA specifically solicits comment on these proposed amendments from State and local officials.

F. Executive Order 13175, Consultation and Coordination With Indian Tribal Governments

Executive Order 13175, entitled "Consultation and Coordination with Indian Tribal Governments" (65 FR 67249, November 6, 2000), requires EPA to develop an accountable process to ensure "meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications."

These proposed amendments do not have tribal implications, as specified in Executive Order 13175. They will not have substantial direct effects on tribal governments, on the relationship between the Federal government and Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes. Any tribal government that owns or operates a source subject to MACT standards would not be required to take any action under this proposal; P2 alternative compliance requirements are strictly voluntary. In addition, P2 compliance alternatives are expected to result in reduced burden on any source that obtains such alternative requirements. Under the proposed amendments, a tribal government with an air pollution control agency to which we have delegated section 112 authority would be required to review any requests for P2 compliance alternatives submitted by sources in its jurisdiction. However, such requests are not expected to be plentiful, so the effects will not be substantial. In addition, any costs associated with these reviews are expected to be offset by reduced agency oversight obligations for sources with approved P2 alternative compliance requirements. Thus, Executive Order 13175 does not apply to these proposed amendments.

However, in the spirit of Executive Order 13175, and consistent with EPA policy to promote communications between EPA and Indian tribes, EPA

specifically solicits comment on the proposed amendments from tribal officials.

G. Executive Order 13045, Protection of Children From Environmental Health Risks and Safety Risks

Executive Order 13045, entitled "Protection of Children from Environmental Health Risks and Safety Risks" (62 FR 19885, April 23, 1997) applies to any rule that: (1) Is determined to be "economically significant" as defined under Executive Order 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency.

EPA interprets Executive Order 13045 as applying only to regulatory actions that are based on health or safety risks, such that the analysis required under section 5–501 of the Executive Order has the potential to influence the regulation. These proposed amendments are not subject to Executive Order 13045 because all MACT standards governed by the General Provisions are based on technology performance and not on health or safety risks. Furthermore, the proposed amendments have been determined not to be "economically significant" as defined under Executive Order 12866.

H. Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use

The proposed amendments are not subject to Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use" (66 FR 28355, May 22, 2001) because they are not a significant regulatory action under Executive Order 12866.

I. National Technology Transfer and Advancement Act

Section 12(d) of the National Technology Transfer and Advancement Act (NTTAA) of 1995, Public Law 104–113,12(d) (15 U.S.C. 272 note) directs EPA to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (*e.g.*, materials specifications, test methods, sampling procedures, business practices) that are developed or adopted by voluntary consensus standards bodies. The NTTAA directs EPA to provide Congress, through OMB, explanations when the Agency decides not to use available and applicable voluntary consensus standards.

These proposed amendments do not involve technical standards. Therefore, EPA is not considering the use of any voluntary consensus standards. EPA welcomes comments on this aspect of the proposed amendments, specifically, invites the public to identify potentially-applicable voluntary consensus standards and to explain why such standards should be used in the proposed amendments.

List of Subjects in 40 CFR Part 63

Environmental protection, Administrative practice and procedure, Air pollution control, Hazardous substances, Intergovernmental relations, Reporting and recordkeeping requirements.

Dated: May 8, 2003.

Christine Todd Whitman,

Administrator.

For the reasons cited in the preamble, part 63, title 40, chapter I of the Code of Federal Regulations is proposed to be amended as follows:

PART 63—[AMENDED]

1. The authority citation for part 63 continues to read as follows:

Authority: 42 U.S.C. 7401, *et seq.*

Subpart A—[Amended]

2. Section 63.2 is amended by adding, in alphabetical order, definitions for the terms *Pollution prevention* and *Source at a Performance Track member facility* to read as follows:

§ 63.2 Definitions.

* * * * *

Pollution prevention means *source reduction* as defined under the Pollution Prevention Act (42 U.S.C. 13101–13109). The definition is as follows:

(1) *Source reduction* is any practice that:

(i) Reduces the amount of any hazardous substance, pollutant, or contaminant entering any waste stream or otherwise released into the environment (including fugitive emissions) prior to recycling, treatment, or disposal; and

(ii) Reduces the hazards to public health and the environment associated with the release of such substances, pollutants, or contaminants.

(2) The term *source reduction* includes equipment or technology modifications, process or procedure modifications, reformulation or redesign of products, substitution of raw materials, and improvements in housekeeping, maintenance, training, or inventory control.

(3) The term *source reduction* does not include any practice that alters the physical, chemical, or biological characteristics or the volume of a hazardous substance, pollutant, or contaminant through a process or activity which itself is not integral to and necessary for the production of a product or the providing of a service.

* * * * *

Source at a Performance Track member facility means a major or area source located at a facility which has been accepted by EPA for membership in the National Environmental Performance Track program (as described at *http://www.epa.gov/performancetrack*, formerly known as the Achievement Track Program) and is still a member of the program. The Performance Track program is a voluntary public-private partnership that encourages continuous environmental improvement through the use of environmental management systems, local community outreach, and measurable results.

* * * * *

3. Section 63.17 is added to read as follows:

§ 63.17 Pollution prevention exemption.

Consistent with EPA's commitment to promote and encourage pollution prevention, this section provides a mechanism for a major or area source to cease being subject to a particular subpart of this part if the owner or operator has implemented pollution prevention measures that eliminate all hazardous air pollutant emissions from all sources of emissions subject to regulation under that subpart after the initial compliance date specified in that subpart.

(a) *Applicability of pollution prevention exemption.* The owner or operator of a major or area source subject to a subpart in this part that meets the requirements in paragraphs (a)(1) through (3) of this section may submit a written request to the Administrator that the major or area source no longer be subject to the subpart.

(1) The major or area source was subject to the subpart on the first applicable compliance date specified in the subpart.

(2) The owner or operator has implemented pollution prevention measures (as defined in § 63.2) such that no hazardous air pollutant is emitted from any source of emissions to which any requirement under the subpart applies.

(3) Each emission limitation under the subpart is greater than zero.

(b) *General requirements for pollution prevention exemption.* (1) Until the owner or operator receives written notification that the Administrator has approved a pollution prevention exemption according to this section, the major or area source is subject to all applicable requirements in the subpart.

(2) Upon receipt by the owner or operator of the written notification of approval from the Administrator, the major or area source is no longer subject to the subpart.

(3) The approved exemption applies only as long as no hazardous air pollutant is emitted from any source of emissions to which any requirement under the subpart applies. The owner or operator must notify the Administrator at least 30 days prior to emitting a hazardous air pollutant. If any hazardous air pollutant is emitted from any such source of emissions, the major or area source is subject to the subpart, and the owner or operator must comply with the subpart as of that date.

(4) If the applicability of the subpart is the only reason that the major or area source is subject to requirements under 40 CFR part 70 or 71 (*i.e.*, the title V operating permits program), after receiving the written notification that the source is no longer subject to the subpart, the owner or operator may apply to the permitting authority to no longer be subject to the title V operating permits program and to have the existing permit rescinded.

(c) *Request for pollution prevention exemption.* (1) The owner or operator may submit a written request to the Administrator at any time after the first applicable compliance date for the major or area source to no longer be subject to the subpart. For a source at a Performance Track member facility, the owner or operator must submit the request to the Administrator and is encouraged to submit it to the designated performance track contact within EPA. (The Administrator will designate a central contact within the EPA to facilitate and expedite the review of a Performance Track member facility's request for a pollution prevention exemption.)

(2) The written request may include any information that the owner or operator considers useful to demonstrate that the subpart should no longer apply. At a minimum, the written request must include the information in paragraphs (c)(2)(i) through (c)(2)(vi) of this section.

(i) A statement identifying the subpart and each source of emissions that is currently subject to the subpart, and indicating that the owner or operator is applying for the major or area source to no longer be subject to the subpart.

(ii) A description of the pollution prevention measures used to eliminate the hazardous air pollutant emissions, and a demonstration that the measures qualify as pollution prevention as defined in § 63.2.

(iii) A demonstration that the pollution prevention measures have eliminated all hazardous air pollutant emissions from each source of emissions to which any requirement under the subpart applies.

(iv) Documentation that the subpart does not include a limit of zero hazardous air pollutant emissions for any source of emissions to which any requirement under the subpart applies.

(v) A certification signed by a responsible official that the major or area source will not resume emitting any hazardous air pollutant from any source of emissions to which any requirement under the subpart applies unless the owner or operator notifies the Administrator in writing at least 30 days prior to emitting a hazardous air pollutant.

(vi) A certification signed by a responsible official that the subpart will again apply to the major or area source on the date that the source resumes emitting a hazardous air pollutant, and that the owner or operator will comply with all applicable requirements of the subpart on that date.

(d) *Review and approval or disapproval of request for pollution prevention exemption.* (1) For each request submitted for a pollution prevention exemption in accordance with paragraph (c) of this section, the Administrator will notify the owner or operator in writing of the approval of, or intent to deny approval of, the request within a 45-day notification period after receiving the request. For a source at a Performance Track member facility, the notification period for approval or intent to deny is 30 days after receiving the request.

(2) The major or area source is subject to the subpart until the Administrator notifies the owner or operator in writing of the approval of the request to no longer be subject to the subpart. Failure of the Administrator to notify the owner or operator in writing of the approval of, or intent to deny approval of, the request within the applicable notification period after receiving the request does not constitute approval of the request.

(3) The Administrator may specify additional compliance requirements as a condition of approving the request that the subpart no longer apply.

(4) If the Administrator intends to disapprove the request that the subpart no longer apply, the Administrator will notify the owner or operator in writing of the intent to deny approval within the applicable notification period after receiving the request. The written notification will include the information in paragraphs (d)(4)(i) through (d)(4)(iii) of this section.

(i) Notice of the information and findings on which the intended disapproval is based.

(ii) Notice of opportunity for the owner or operator to present additional information to the Administrator before final action on the request.

(iii) A deadline for presenting the additional information to the Administrator.

(5) If additional information is submitted according to paragraph (d)(4)(ii) of this section, the Administrator will notify the owner or operator in writing of the approval or disapproval of the request within the applicable notification period after receiving any additional information. If additional information has not been submitted by the deadline established according to paragraph (d)(4)(iii) of this section, the Administrator will disapprove the request. Failure of the Administrator to notify the owner or operator in writing of the approval or disapproval within the applicable notification period after receiving the additional information does not constitute approval of the request.

(6) If the Administrator approves the request that the subpart no longer apply, the Administrator will transmit written approval to the owner or operator that includes the elements in paragraphs (d)(6)(i) through (d)(6)(v) of this section. The written approval document shall be enforceable under the CAA.

(i) Identification of the subpart of this part that no longer applies.

(ii) Identification of each specific source of emissions to which the approval would apply, *i.e.*, the source(s) of emissions to which the subpart would no longer apply.

(iii) Any additional compliance measures deemed necessary by the Administrator.

(iv) A requirement that the owner or operator provide written notice to the Administrator at least 30 days prior to emitting a hazardous air pollutant from the source of emissions to which the approval applies.

(v) A condition that the subpart will again apply on the date that the major or area source begins to emit a hazardous air pollutant from the source of emissions to which the approval applies, and that the owner or operator of a major or area source must comply with the subpart on that date.

4. Section 63.18 is added to read as follows:

§ 63.18 Pollution prevention alternative requirements.

Consistent with EPA's commitment to promote and encourage pollution prevention, this section provides a mechanism for a major or area source to replace particular requirements of a subpart of this part with pollution prevention alternative requirements if the owner or operator has implemented pollution prevention measures that reduce hazardous air pollutant emissions to at least the level required by the emission limitation(s) in that subpart after the initial compliance date specified in that subpart.

(a) *Applicability of pollution prevention alternative requirements.* The owner or operator of an affected source subject to emission limitation(s) in a subpart of this part may submit a written request to the Administrator for approval of pollution prevention alternative requirements, including (as desired) alternative compliance demonstration procedures, monitoring, recordkeeping, and reporting. This mechanism may not be used to request alternative test methods or emission limits. The owner or operator of an affected source that is currently exempt from a subpart of this part pursuant to § 63.17 may also apply for alternative requirements. The request for approval of pollution prevention alternative requirements may be for a portion of an affected source (for example, where the emission limitation applies to a source of emissions within the affected source rather than to the entire affected source), for an affected source, or for multiple affected sources (for example, where the subpart includes several affected sources with different emission limitations for each affected source). To apply for pollution prevention alternative requirements, the owner or operator of an affected source must meet the requirements in paragraphs (a)(1) and (2) of this section for each affected source.

(1) The affected source was subject to the subpart on the first applicable compliance date specified in the subpart.

(2) The owner or operator has implemented pollution prevention measures (as defined in § 63.2) to reduce hazardous air pollutant emissions to at least the level that is required by the applicable emission limitation(s), and maintained hazardous air pollutant emissions at that level. If the owner or operator is applying for pollution prevention alternative requirements for an affected source subject to an emission limitation, the hazardous air pollutant emissions must be reduced at least to the level required by the emission limitation that applies to that affected source.

(b) *General requirements for pollution prevention alternative requirements.* (1) Until the owner or operator receives written notification that the Administrator has approved pollution prevention alternative requirements according to this section, the affected source is subject to all applicable requirements in the subpart. For an affected source that is currently exempt from a subpart pursuant to § 63.17, the affected source is subject to all requirements contained in the written approval document for the exemption until the owner or operator receives written notification that the Administrator has approved pollution prevention alternative requirements.

(2) Upon receipt by the owner or operator of the written notification of approval from the Administrator, the approved pollution prevention alternative requirements become the applicable requirements for the source of emissions. Accordingly, the source of emissions is no longer subject to the compliance requirements in the subpart that the alternative requirements specifically replace.

(3) The approved pollution prevention alternative requirements apply only as long as the owner or operator continues to use the approved pollution prevention measures and to reduce hazardous air pollutant emissions to at least the level specified in the approved request. The owner or operator must notify the Administrator at least 30 days prior to discontinuing the approved pollution prevention measures or failing to maintain the hazardous air pollutant reductions. If the owner or operator discontinues the approved pollution prevention measures and/or fails to maintain the hazardous air pollutant reductions specified in the approved request, all applicable requirements of the subpart again apply, and the owner or operator must comply with the applicable requirements as of that date.

(4) At all times after the first applicable compliance date identified in the subpart, the affected source must comply with each applicable requirement in the subpart, unless the Administrator has provided written notification according to paragraph (d)(4) of this section that an applicable requirement under the subpart does not apply.

(c) *Request for pollution prevention alternative requirements.* (1) The owner or operator may submit a written request to the Administrator at any time after the first applicable compliance date for use of pollution prevention alternative requirements. For a source at a Performance Track member facility, the owner or operator must submit the request to the Administrator and is encouraged to submit it to the designated performance track contact within EPA. (The Administrator will designate a central contact within the EPA to facilitate and expedite the review of a Performance Track member facility's request for pollution prevention alternative requirements.)

(2) The written request may include any information that the owner or operator considers useful to demonstrate that pollution prevention alternative requirements are justified. At a minimum, the written request must include the information in paragraphs (c)(2)(i) through (c)(2)(ix) of this section.

(i) A statement identifying the subpart and each source of emissions that is currently subject to the subpart, and indicating that the owner or operator is applying for the use of pollution prevention alternative requirements. (Indicate if the affected source is currently exempt from the subpart pursuant to § 63.17.)

(ii) A description of each source of emissions for which pollution prevention alternative requirements are requested.

(iii) A description of the pollution prevention measures used to reduce hazardous air pollutant emissions from each source of emissions, and a demonstration that the measures qualify as pollution prevention as defined in § 63.2.

(iv) A demonstration that the pollution prevention measures have reduced hazardous air pollutant emissions from each identified source of emissions at least to the level that is required by the applicable emission limitation.

(v) Proposed specific pollution prevention alternative requirements, including (as needed) procedures for demonstrating continuous compliance, monitoring (which may include tracking of material purchases and composition), recordkeeping, and reporting to assure compliance with the commitment to continue using the pollution prevention measures and to maintain the described hazardous air pollutant reductions.

(vi) A citation of each applicable requirement in the subpart that the owner or operator proposes to replace with the proposed pollution prevention alternative requirements, accompanied by an explanation of how the proposed alternative requirements satisfy the intent of the replaced requirements and/or why the replaced requirements are not necessary.

(vii) A certification signed by a responsible official that each source of emissions will not discontinue the pollution prevention measures or fail to maintain the hazardous air pollutant reductions described in the request unless the owner or operator notifies the Administrator in writing at least 30 days prior to discontinuing the pollution prevention measures or failing to maintain the hazardous air pollutant reductions.

(viii) A certification signed by a responsible official that the requirements in the subpart will again apply to each source of emissions on the date that the owner or operator discontinues the pollution prevention measures and/or fails to maintain the hazardous air pollutant reductions, and that the owner or operator will comply with all applicable requirements of the subpart on that date.

(ix) A certification signed by a responsible official that the affected source is subject to and in compliance with all applicable requirements in the subpart not specifically identified in paragraph (c)(2)(vi) of this section (*i.e.*, not proposed to be replaced by alternative compliance requirements).

(d) *Review and approval or disapproval of request for pollution prevention alternative requirements.* (1) For each request submitted according to paragraph (c) of this section, the Administrator will notify the owner or operator of the affected source in writing of the approval or intent to deny approval within a 45-day period after receiving the request. For a source at a Performance Track member facility, the notification period for approval or intent to deny is 30 days after receiving the request.

(2) The affected source is subject to all of the requirements in the subpart until the Administrator notifies the owner or operator in writing of the approval of the request to use pollution prevention alternative requirements. Failure of the Administrator to notify the owner or operator in writing of the approval or intent to deny approval of the request within the applicable notification period after receiving the request does not constitute approval of the request.

(3) The Administrator may specify additional compliance requirements as a condition of approving the pollution prevention alternative requirements.

(4) If the Administrator intends to disapprove the request for pollution prevention alternative requirements, the written notification will include the information in paragraphs (d)(4)(i) through (d)(4)(iii) of this section.

(i) Notice of the information and findings on which the intended disapproval is based.

(ii) Notice of opportunity for the owner or operator to present additional information to the Administrator before final action on the request.

(iii) A deadline for presenting the additional information to the Administrator.

(5) If additional information is submitted according to paragraph (d)(4)(ii) of this section, the Administrator will notify the owner or operator in writing of the approval or disapproval of the request within the applicable notification period after receiving any additional information. If additional information has not been submitted by the deadline established according to paragraph (d)(4)(iii) of this section, the Administrator will disapprove the request. Failure of the Administrator to notify the owner or operator in writing of the approval or disapproval within the applicable notification period after receiving the additional information does not constitute approval of the request.

(6) If the Administrator approves the request for pollution prevention alternative requirements, the Administrator will transmit written approval to the owner or operator that includes the elements listed in paragraphs (d)(6)(i) through (d)(6)(v) of this section. The written approval document shall be enforceable under the CAA.

(i) Identification of each specific source of emissions covered by the approval.

(ii) The pollution prevention alternative requirements that apply to each designated source of emissions, including any additional compliance measures deemed necessary by the Administrator.

(iii) The applicable requirements of the subpart that no longer apply to each designated source of emissions.

(iv) A requirement that the owner or operator provide written notice to the Administrator at least 30 days prior to discontinuing the pollution prevention measures and/or failing to maintain the HAP reductions described in the request.

(v) A condition that the applicable requirements of the subpart will again apply to each designated source of emissions on the date that the owner or operator discontinues the pollution prevention measures and/or fails to maintain the hazardous air pollutant reductions described in the request for that source of emissions, and that the owner or operator must comply with all applicable requirements of the subpart on that date.

(e) *Review and approval or disapproval of request for modification to approved pollution prevention alternative requirements.* (1) If a request for pollution prevention alternative requirements has been approved according to paragraph (d) of this section, the owner or operator may submit a request to modify the pollution prevention alternative requirements.

(2) The request must include, at a minimum, the information specified in paragraphs (c)(2)(i) through (c)(2)(ix) of this section.

(3) The Administrator will approve or disapprove the request according to the procedures in paragraphs (d)(1) through (d)(6) of this section.

(4) Each source of emissions is subject to the previously-approved pollution prevention alternative requirements until the Administrator notifies the owner or operator in writing of the approval of the modified pollution prevention alternative requirements.

[FR Doc. 03–12180 Filed 5–14–03; 8:45 am]
BILLING CODE 6560–50–P

DEPARTMENT OF DEFENSE

48 CFR Parts 208, 219, and 252

[DFARS Case 2002–D003]

Defense Federal Acquisition Regulation Supplement; Competition Requirements for Purchases From a Required Source

AGENCY: Department of Defense (DoD).

ACTION: Proposed rule with request for comments.

SUMMARY: DoD is proposing to amend the Defense Federal Acquisition Regulation Supplement (DFARS) to implement Section 811 of the National Defense Authorization Act for Fiscal Year 2002 and Section 819 of the National Defense Authorization Act for Fiscal Year 2003. Sections 811 and 819 address requirements for conducting market research before purchasing a product listed in the Federal Prison Industries (FPI) catalog, and for use of competitive procedures if an FPI product is found to be noncomparable to products available from the private sector. Section 819 also addresses

limitations on an inmate worker's access to information and on use of FPI as a subcontractor.

DATES: Comments on the proposed rule should be submitted in writing to the address shown below on or before July 14, 2003, to be considered in the formation of the final rule.

ADDRESSES: Respondents may submit comments directly on the World Wide Web at *http://emissary.acq.osd.mil/dar/dfars.nsf/pubcomm*. As an alternative, respondents may e-mail comments to: *dfars@acq.osd.mil*. Please cite DFARS Case 2002–D003 in the subject line of e-mailed comments.

Respondents that cannot submit comments using either of the above methods may submit comments to: Defense Acquisition Regulations Council, Attn: Ms. Susan Schneider, OUSD (AT&L) DPAP (DAR), IMD 3C132, 3062 Defense Pentagon, Washington, DC 20301–3062; facsimile (703) 602–0350. Please cite DFARS Case 2002–D003.

At the end of the comment period, interested parties may view public comments on the World Wide Web at *http://emissary.acq.osd.mil/dar/dfars.nsf*.

FOR FURTHER INFORMATION CONTACT: Ms. Susan Schneider, (703) 602–0326.

SUPPLEMENTARY INFORMATION:

A. Background

Section 811 of the National Defense Authorization Act for Fiscal Year 2002 (Pub. L. 107–107) added 10 U.S.C. 2410n, providing that (1) before purchasing a product listed in the FPI catalog, DoD must conduct market research to determine whether the FPI product is comparable in price, quality, and time of delivery to products available from the private sector; (2) if the FPI product is not comparable in price, quality, and time of delivery, DoD must use competitive procedures to acquire the product; and (3) in conducting such a competition, DoD must consider a timely offer from FPI for award in accordance with the specifications and evaluation factors in the solicitation.

On April 26, 2002, DoD published an interim rule at 67 FR 20687 to implement Section 811 of Public Law 107–107. In addition, DoD conducted a public meeting on June 2, 2002, to hear the views of interested parties. Approximately 60 persons attended the public meeting, and 43 sources submitted written comments in response to the interim rule.

On December 2, 2002, Section 819 of the National Defense Authorization Act for Fiscal Year 2003 (Public Law 107–314) amended 10 U.S.C. 2410n to (1) clarify requirements for conducting market research before purchasing a product listed in the FPI catalog; (2) specify requirements for use of competitive procedures or for making a purchase under a multiple award contract if an FPI product is found to be noncomparable to products available from the private sector; (3) specify that a contracting officer's determination, regarding the comparability of an FPI product to products available from the private sector, is not subject to the arbitration provisions of 18 U.S.C. 4124(b); (4) specify that a DoD contractor may not be required to use FPI as a subcontractor; and (5) prohibit the award of a contract to FPI that would allow an inmate worker access to classified or sensitive information.

This proposed rule further implements the requirements of Section 811 of Public Law 107–107 and implements Section 819 of Public Law 107–314. DoD considered comments received in response to the interim rule published on April 26, 2002, in developing this proposed rule. A discussion of the comments, grouped by subject area, is provided below:

1. Small Business Issues

Comment: DoD should provide guidance on the role of FPI participation in small business set-aside competitions. Some respondents want DoD to restrict FPI participation to those acquisitions that have not been set aside for competition among small businesses. Those respondents indicate that, prior to the issuance of the first interim rule, FPI had been defined as an "other than small" business and, therefore, is not eligible to compete for small business set-aside awards. Other respondents commented that FPI participation in small business set-asides will have a positive effect on FPI.

DoD Response: Section 811 of Public Law 107–107 was silent on FPI's relationship to small business set-asides. However, Section 819 of Public Law 107–314 added a definition of "competitive procedures" as it applies to 10 U.S.C. 2410n. This definition is the one at 10 U.S.C. 2302(2), which includes, in subsection (2)(D), "procurements conducted in furtherance of section 15 of the Small Business Act (15 U.S.C. 644) * * *" Therefore, this proposed rule adds text at 208.601–70, 208.602(a)(iv)(B), subpart 219.5, and Part 252 to provide for the inclusion of FPI in procurements conducted using small business set-aside procedures.

Comment: The Initial Regulatory Flexibility Analysis is correct in stating that the rule will have a positive effect on small business concerns, because the rule permits small businesses to participate in procurements for supplies that were previously allocated to FPI on a priority basis.

DoD Response: DoD expects this rule to have a positive impact on small businesses. If an FPI product is determined to be noncomparable, small businesses will have the opportunity to compete. The rule further provides small businesses an opportunity to compete with FPI as their sole competitor.

2. Micro-Purchase Exclusion

Comment: DoD should exempt micro-purchases ($2,500 and under) from the requirements of the rule. The procedures of the rule are far too burdensome for micro-purchases.

Comment: The requirements of Section 811 and FPI's statute apply regardless of whether the purchase is below the micro-purchase threshold.

DoD Response: 10 U.S.C. 2410n does not authorize DoD to provide an exemption for micro-purchases. However, FPI's Board of Directors recently adopted a resolution exempting purchases at or below $2,500 from FPI clearance requirements. This change is being processed under a separate FAR case. When the FAR is amended to reflect this exemption, the text at DFARS 208.606(1) will become obsolete and will be removed. Therefore, this proposed rule excludes the text at DFARS 208.606(1).

3. Competitive Procedures

Comment: DoD should provide examples of "competitive procedures."

DoD Response: Section 819 of Public Law 107–314 added a definition of "competitive procedures" as it applies to 10 U.S.C. 2410n. The definition in the proposed rule at 208.601–70 reflects the statutory definition, and also includes competition conducted using simplified acquisition procedures in accordance with FAR Part 13.

4. GSA Multiple Award Schedules

Comment: It is questionable whether the use of GSA multiple award schedules constitutes "competitive procedures" as contemplated in Section 811. Confusion arises because orders on GSA schedules do not require issuance of a solicitation or establishment of evaluation factors.

DoD Response: Section 811 of Public Law 107–107 was silent on FPI's relationship to the GSA multiple award schedule program. However, the definition of "competitive procedures" added by Section 819 of Public Law 107–314 includes "the procedures established by the Administrator of General Services for the multiple award schedule program * * *" (10 U.S.C. 2302(2)(C)). The definition of "competitive procedures" in the proposed rule at 208.601–70 includes the use of GSA multiple award schedules (as one of the procedures in FAR 6.102). The proposed rule provides further clarification, at 208.602(a)(iv)(C), regarding competitive procedures involving multiple award schedules.

Comment: Contracting officers should be authorized to acquire the product off the Federal Supply Schedule, eliminating further competition if Federal Supply Schedule published prices are lower than FPI catalog prices.

DoD Response: Do not concur. This would violate 10 U.S.C. 2410n, which requires market research to determine if the FPI product is comparable. If the FPI product is determined to be noncomparable, competitive procedures must be used to acquire the product.

5. Comparability

Comment: The meaning of "comparable price, quality, and time of delivery" is questionable with respect to FPI products compared to private sector competition. Recognizing that it may not be feasible to produce a single general methodology that applies to every product, the rule should require disclosure of specific guidelines and the methodology used. Several respondents believed it was clear from both the statute and the interim rule that, to be found comparable to a product from the private sector, the FPI product must meet all three criteria of price, quality, and time of delivery. The inability to meet any one of the criteria should result in an automatic failure to find FPI comparable. Several other respondents stated exactly the opposite, *i.e.*, that for the FPI product to be considered comparable, it need only be comparable in one of the three areas. Several respondents requested that the final rule contain procedures for making the noncomparability determination.

DoD Response: Section 819(b) of Public Law 107–314 clarifies that DoD may determine an FPI product to be noncomparable based on price, quality, or time of delivery. The proposed rule clarifies this point at 208.602(a)(iv). The comparability determination must be fair, but it is not practicable to set the criteria that will apply to all circumstances. The contracting officer must retain flexibility. The word "comparable" is already used throughout the FAR with its common dictionary meaning ("having sufficient features in common with something else to afford comparison"). To support the comparability determination, a requirement for a written document has been included in the proposed rule at 208.602(a)(ii). This document will include an assessment of the three factors, based on the results of market research that compares FPI products to those available from the private sector.

Comment: Eliminate the requirement to allow FPI to compete if, based on market research, it is determined noncomparable to the private sector. The private sector does not receive two chances, so FPI should not either.

DoD Response: Do not concur. The recommended change does not comply with 10 U.S.C. 2410n, which requires that an offer from FPI be considered if made in a timely fashion.

Comment: Section 811 is not appropriate for build-to-print items (spares) that support older weapons systems. It is more appropriate for commercial-type items, where it is easier to conduct market surveys for comparison purposes. In some cases, the organization uses the Government's depot cost to fabricate, as a basis of comparison. The use of the term "private sector" invalidates that comparison and requires a further comparison before award to FPI.

DoD Response: It appears that 10 U.S.C. 2410n was tailored more for commercial-type items than build-to-print items. However, DoD organizations must comply with its requirements.

Comment: The rule does not address buys of military-unique items, because those items do not have catalog prices. Each requirement is built to customer specification and must be individually quoted. There are no catalogs to consult for pricing and delivery, from either FPI or commercial sources. Section 811 would require following manual procedures, outside of automated procurement systems, and cause additional unnecessary lead time. In these situations, is it permissible to solicit commercial sources and FPI simultaneously and have the competitive offers and subsequent award decision serve as the basis for making the determination of whether the FPI product is comparable?

DoD Response: Although 10 U.S.C. 2410n does not prohibit this method of conducting comparability determinations, the statute clearly establishes an "if-then" situation, *i.e.*, if the Secretary makes a noncomparability determination, then he uses competitive procedures. Therefore, section 208.602 of the proposed rule addresses the market research and resulting comparability determination as a step separate from the solicitation process, to adhere to the "if-then" approach established in 10 U.S.C. 2410n.

6. The Resolution Process

Comment: Does the arbitration panel affect the resolution of protests? In enacting Section 811, Congress was silent regarding the arbitration panel's authority or whether a clearance or waiver from FPI is required if the market research indicates that FPI's products are not comparable to those available from the private sector.

DoD Response: Although Section 811 was silent on this matter, Section 819 of Public Law 107–314 provides that the contracting officer's determination, regarding the comparability of FPI products or services to those available from the private sector that best meet DoD's needs in terms of price, quality, and time of delivery, is not subject to 18 U.S.C. 4124(b). 18 U.S.C. 4124(b) addresses the arbitration board process as it relates to disputes as to price, quality, character, or suitability of FPI products. The proposed rule amends the text at DFARS 208.602(a)(i) to clarify that the arbitration board process does not apply to a contracting officer's comparability determination.

7. Delegation of Authority

Comment: Will the determination to award to other than FPI be delegated down to the contracting officer level, as opposed to being kept at the department or agency level as stated in 208.602?

DoD Response: The proposed rule amends DFARS 208.602(a) to provide contracting officers the authority to make comparability determinations with regard to FPI products. This amendment is consistent with the language in Section 819(c)(1) of Public Law 107–314.

8. Unilateral Decision at 208.602(a)

Comment: It is inappropriate for the rule to state that the comparability determination is "a unilateral decision made solely at the discretion of the department or agency." This sentence should either be stricken or clarified. The provisions of the rule may conflict with other statutes or lead to possible misapplication of applicable law. DoD should be afforded discretion in making its decision, however, there must be guidance setting forth the criteria so the decisions are not arbitrary or capricious.

DoD Response: Do not concur. The comparability determination is clearly and solely a DoD determination.

9. Terminology

Comment: The words "FPI Schedule", in the first sentence of 208.602(a),

should be changed to "FPI Catalog" to conform to the language in Section 811.

DoD Response: Do not concur. The word "Schedule" has been retained to conform to the terminology used in FAR subpart 8.4.

10. Previous DoD Guidance

Comment: The validity of a policy memorandum from the Office of the Assistant Secretary of Defense, dated October 1988, that directs use of GSA schedules as a "quick and efficient" way to obtain furniture for DoD activities is questionable.

DoD Response: DoD recommends that the respondent not use this memorandum for guidance. The policy has been superceded by 10 U.S.C. 2410n and its implementing regulations.

11. Sole-source Purchases

Comment: Is there a requirement to perform a comparability determination if the need is to be acquired on a sole-source basis?

DoD Response: 10 U.S.C. 2410n does not provide for sole-source purchases. If a product is on the FPI Schedule, the purchaser must follow the DFARS policy implementing 10 U.S.C. 2410n.

12. Architect-engineer Contracts

Comment: There is concern about mandating the use of FPI products for architect-engineer contracts. The rule should state that "FPI may not be specified as a source, nor shall an FPI product be prescribed or recommended in any design or specification prepared by an architect or engineer under contract to the Government. * * *"

DoD Response: The requirements of 10 U.S.C. 2410n are imposed on the Government, not on the contractor. Section 819 of Public Law 107–314 added text prohibiting DoD from requiring a contractor or potential contractor to use FPI as a subcontractor or supplier. This prohibition is addressed in the proposed rule at 208.670.

13. Use of the Term "Solicitation".

Comment: Use of the term "solicitation" means one must proceed with issuing a formal solicitation whenever an agency determines that an FPI product is not comparable.

DoD Response: Do not concur. As defined in FAR 2.101, "solicitation" means any request to submit offers or quotations to the Government. For further clarification, the proposed rule separately addresses the use of multiple award schedules at 208.602(a)(iv)(C).

14. Use of the Phrase "That Best Meet the Government's Needs".

Comment: The rule should be revised to conform to the text of Section 811 by deleting the phrase "that best meet the Government's needs" at each of the three locations where it appears. This phrase does not meet the intent of the statute.

DoD Response: DoD used the phrase "that best meet the Government's needs" in the interim rule to provide needed guidance in this area. This phrase was included in Section 819 of Public Law 107–314 and, therefore, has been retained in the proposed rule.

15. Application of Priorities for Use of Government Supply Sources.

Comment: If the FPI item is not comparable, can the Government go directly to JWOD?

DoD Response: No. FPI can still fulfill the requirement, even though it has been determined to be noncomparable.10 U.S.C. 2410n requires DoD to consider a timely offer from FPI under such circumstances.

This rule was subject to Office of Management and Budget review under Executive Order 12866, dated September 30, 1993.

B. Regulatory Flexibility Act

This rule may have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, because the rule will permit small entities to compete with FPI for DoD contract awards under certain conditions. An initial regulatory flexibility analysis has been prepared and is summarized as follows: This rule proposes amendments to DoD policy pertaining to the acquisition of products from FPI. The rule implements 10 U.S.C. 2410n. The impact of the rule is unknown at this time. However, the rule could benefit small business concerns that offer products comparable to those listed in the FPI Schedule, by permitting those concerns to compete for DoD contract awards.

A copy of the analysis may be obtained from the point of contact specified herein. DoD invites comments from small businesses and other interested parties. DoD also will consider comments from small entities concerning the affected DFARS subparts in accordance with 5 U.S.C. 610. Such comments should be submitted separately and should cite DFARS Case 2002–D003.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the rule does not impose any information collection requirements that require the approval of the Office of Management and Budget under 44 U.S.C. 3501, *et seq.*

List of Subjects in 48 CFR Parts 208, 219, and 252

Government procurement.

Michele P. Peterson,

Executive Editor, Defense Acquisition Regulations Council.

Therefore, DoD proposes to amend 48 CFR Parts 208, 219, and 252 as follows:

1. The authority citation for 48 CFR Parts 208, 219, and 252 continues to read as follows:

Authority: 41 U.S.C. 421 and 48 CFR Chapter 1.

PART 208—REQUIRED SOURCES OF SUPPLIES AND SERVICES

2. Section 208.601–70 is added to read as follows:

208.601–70 Definitions.

As used in this subpart—

Competitive procedures includes the procedures in FAR 6.102, the set-aside procedures in FAR subpart 19.5, and competition conducted in accordance with FAR part 13.

Market research means obtaining specific information about the price, quality, and time of delivery of products available in the private sector and may include techniques described in FAR 10.002(b)(2).

3. Sections 208.602 and 208.606 are revised to read as follows:

208.602 Policy.

(a)(i) Before purchasing a product listed in the FPI Schedule, conduct market research to determine whether the FPI product is comparable to products available from the private sector that best meet the Government's needs in terms of price, quality, and time of delivery (10 U.S.C. 2410n). This is a unilateral determination made at the discretion of the contracting officer. The procedures of FAR 8.605 do not apply.

(ii) Prepare a written determination that includes supporting rationale explaining the assessment of price, quality, and time of delivery, based on the results of market research comparing FPI products to those available from the private sector.

(iii) If the FPI product is comparable, follow the policy at FAR 8.602(a).

(iv) If the FPI product is not comparable in one or more of the areas of price, quality, and time of delivery—

(A) Acquire the product using—

(1) Competitive procedures; or

(2) The fair opportunity procedures in FAR 16.505, if placing an order under a multiple award task or delivery order contract;

(B) Include FPI in the solicitation process and consider a timely offer from FPI for award in accordance with the requirements and evaluation factors in the solicitation, including solicitations issued using small business set-aside procedures; and

(C) When using a multiple award schedule issued under the procedures of FAR subpart 8.4—

(1) Establish and communicate to FPI the requirements and evaluation factors that will be used as the basis for selecting a source, so that an offer from FPI can be evaluated on the same basis as the schedule holder; and

(2) Consider a timely offer from FPI.

208.606 Exceptions.

For DoD, FPI clearances also are not required when the contracting officer makes a determination that the FPI product is not comparable to products available from the private sector that best meet the Government's needs in terms of price, quality, and time of delivery, and the procedures at 208.602(a)(iv) are used.

4. Sections 208.670 and 208.671 are added to read as follows:

208.670 Performance as a subcontractor.

Do not require a contractor, or subcontractor at any tier, to use FPI as a subcontractor for performance of a contract by any means, including means such as—

(a) A solicitation provision requiring a potential contractor to offer to make use of FPI products or services;

(b) A contract specification requiring the contractor to use specific products or services (or classes of products or services) offered by FPI; or

(c) Any contract modification directing the use of FPI products or services.

208.671 Protection of classified and sensitive information.

Do not enter into any contract with FPI that allows an inmate worker access to any—

(a) Classified data;

(b) Geographic data regarding the location of—

(1) Surface and subsurface infrastructure providing communications or water or electrical power distribution;

(2) Pipelines for the distribution of natural gas, bulk petroleum products, or other commodities; or

(3) Other utilities; or

(c) Personal or financial information about any individual private citizen, including information relating to such person's real property however described, without the prior consent of the individual.

PART 219—SMALL BUSINESS PROGRAMS

5. Section 219.502–70 is added to read as follows:

219.502–70 Inclusion of Federal Prison Industries, Inc.

When using competitive procedures in accordance with 208.602(a)(iv), include Federal Prison Industries, Inc. (FPI), in the solicitation process and consider a timely offer from FPI.

6. Section 219.508 is added to read as follows:

219.508 Solicitation provisions and contract clauses.

(c) Use the clause at FAR 52.219–6, Notice of Total Small Business Set-Aside, with 252.219–70XX, Alternate A, when the procedures of 208.602(a)(iv) apply to the acquisition.

(d) Use the clause at FAR 52.219–7, Notice of Partial Small Business Set-Aside, with 252.219–70YY, Alternate A, when the procedures of 208.602(a)(iv) apply to the acquisition.

PART 252—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

7. Sections 252.219–70XX and 252.219–70YY are added to read as follows:

252.219–70XX Alternate A.

Alternate A (XXX 2003)

As prescribed in 219.508(c), substitute the following paragraph (b) for paragraph (b) of the clause at FAR 52.219–6:

(b) *General.* (1) Offers are solicited only from small business concerns and Federal Prison Industries, Inc. (FPI). Offers received from concerns that are not small business concerns or FPI shall be considered nonresponsive and will be rejected.

(2) Any award resulting from this solicitation will be made to either a small business concern or FPI.

252.219–70YY Alternate A.

Alternate A (XXX 2003)

As prescribed in 219.508(d), add the following paragraph (d) to the clause at FAR 52.219–7:

(d) Notwithstanding paragraph (b) of this clause, offers will be solicited and considered from Federal Prison Industries, Inc., for both the set-aside and non-set-aside portion of this requirement.

[FR Doc. 03–12190 Filed 5–14–03; 8:45 am]

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DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 571

[DOT Docket No. NHTSA–03–14907]

RIN 2127–AI43

Federal Motor Vehicle Safety Standards; Transmission Shift Lever Sequence, Starter Interlock, and Transmission Braking Effect

AGENCY: National Highway Traffic Safety Administration (NHTSA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes to amend the starter interlock requirements of Federal Motor Vehicle Safety Standard No. 102 to permit a vehicle's engine to stop and restart automatically after the driver has initially started the vehicle. The amendment would facilitate the development of propulsion systems, such as hybrid/electric systems, that conserve energy and reduce emissions by stopping the engine (internal combustion engine) when it is not needed. To prevent inadvertent vehicle motion in reverse gear that may result from a driver shifting error, the proposed amendment would allow a propulsion system to start and stop automatically in reverse gear only if the system exhibits, at least, a minimum "creep force" when the engine is stopped.

DATES: You should submit your comments early enough to ensure that Docket Management receives them not later than July 14, 2003.

ADDRESSES: You should mention the docket number of this document in your comments and submit your comments in writing to: Docket Management, Room PL–401, 400 Seventh Street, SW., Washington, DC 20590.

You may call the Docket at 202–366–9324. You may visit the Docket from 10 a.m. to 5 p.m., Monday through Friday.

FOR FURTHER INFORMATION CONTACT: For non-legal issues, you may call Mr. William Evans, Office of Crash Avoidance Standards at (202) 366–2272. His FAX number is (202) 493–2739.

For legal issues, you may call Ms. Dorothy Nakama, Office of the Chief

Counsel at (202) 366–2992. Her FAX number is (202) 366–3820.

You may send mail to both of these officials at National Highway Traffic Safety Administration, 400 Seventh St., SW., Washington, DC 20590.

SUPPLEMENTARY INFORMATION:

Table of Contents

I. Executive Summary
II. What is the Safety Need for this Rulemaking?
III. How Different Hybrid/Electrical Systems Work
A. How the Toyota Hybrid System Works—The Prius
B. How Idle-Stop Technology Works—The Honda Insight
IV. Previous Related Rulemaking Action—ZEMCO Petition
V. Notice of Proposed Rulemaking
A. Reed Interpretation Letter, the Significance of Reverse Drive and the Park Position
B. Safety Importance of Creep Force in Cueing the Driver—Creep Force in Reverse
C. The Level of Creep Force Specified
D. The Safety Need for Fail-Safe Provisions for Automatic Engine Stopping and Restarting While the Transmission and/or Transmission Shift Lever Are in Gear
VI. Leadtime
VII. Regulatory Analyses and Notices
A. Executive Order 12866; DOT Regulatory Policies and Procedures
B. Executive Order 13132 (Federalism)
C. Executive Order 13045 (Economically Significant Rules Disproportionately Affecting Children)
D. Executive Order 12778 (Civil Justice Reform)
E. Regulatory Flexibility Act
F. National Environmental Policy Act
G. Paperwork Reduction Act
H. National Technology Transfer and Advancement Act
I. Unfunded Mandates Reform Act of 1995
J. Data Quality Guidelines
K. Plain Language
L. Regulation Identifier Number (RIN)
Proposed Regulatory Text

I. Executive Summary

The starter interlock requirement of Federal Motor Vehicle Safety Standard (FMVSS) No. 102 (presently at S3.1.3) states "the engine starter shall be inoperative when the transmission shift lever is in a forward or reverse drive position." The purpose of this requirement is to prevent injuries and death from the unexpected motion of a vehicle when the driver starts the vehicle with the transmission inadvertently in a forward or reverse gear. Two recently introduced vehicles, the Toyota Prius and the Honda Insight, are powered by hybrid/electric systems (the Toyota Hybrid System (THS) and Honda's Idle-stop Technology (IST)) that permit their gasoline engines to stop and restart automatically while the transmission shift lever is in a drive position.

Each manufacturer requested us to interpret S3.1.3 as it applied to these new vehicles. In interpretation letters to Toyota (November 1, 1999) and Honda (January 17, 2001), we concluded that S3.1.3 would not prohibit either system. In each case we based our interpretations on a finding that the system met S3.1.3's underlying purpose of ensuring that the vehicle will not lurch forward or backward during driver activation of the engine starter because driver activation of the engine starter is inoperative when the transmission shift lever is in a drive position. We also noted that these new systems were more complex than those on vehicles that existed when S3.1.3 was first adopted, and that we planned to conduct rulemaking to update the requirements of FMVSS No. 102. Pending completion of the rulemaking, we stated that we would interpret S3.1.3 as requiring that *driver activation* of the engine starter must be inoperative when the transmission shift lever is in a forward or reverse drive position.

This notice proposes to amend S3.1.3 to accommodate these new technologies, while preserving the safety purpose of the standard. With respect to vehicles with automatic transmissions, the agency proposes that, after activation of the vehicle's propulsion system by the driver, the engine may stop and restart automatically when the transmission shift lever is in any forward drive gear.

We also propose to permit the engine to start and stop automatically when the transmission shift lever is in Reverse, but only if the vehicle's propulsion system provides, at least, a minimum creep force in Reverse when the engine is stopped, the accelerator is released and the propulsion system is activated. In vehicles whose engines automatically start and stop in Reverse, creep force is a force that must be overcome by driver braking even when the engine is not running. Creep force is significant relative to rearward motion in that it serves to warn drivers of impending rearward motion before the driver fully releases the brake (as does an internal combustion engine (ICE) automatic transmission only vehicle with the engine running).

In ICE automatic transmission only vehicles, creep force is the motive force applied to the vehicle by the idling engine and automatic transmission whenever the transmission shift lever is in a drive position. Creep force occurs in the direction indicated by the automatic transmission shift lever position and provides enough force to cause motion of a vehicle loaded to its Gross Vehicle Weight Rating (GVWR) on a level, paved surface before the service brake pedal is completely released. Although not required by the Federal Motor Vehicle Safety Standards, creep force exists on virtually all vehicles powered by ICE engines and equipped with automatic transmissions.

To measure creep force, we propose a test procedure that will be applicable to any vehicle whose propulsion system provides for automatic stopping and restarting when the transmission is in Reverse.

II. What Is the Safety Need for This Rulemaking?

This rulemaking addresses the starter interlock requirement in S3.1.3 of FMVSS No. 102, which currently states that the engine starter shall be inoperative when the transmission shift lever is in a forward or reverse drive position. The requirement was adopted as part of the original standard in 1968 for the purpose of preventing injuries and death from the unexpected surging of a vehicle forward or rearward in cases where the driver starts the vehicle while its transmission is inadvertently in a forward or reverse drive gear.

The development of the Toyota Hybrid System (THS) used on the Prius introduced a low emission, fuel saving propulsion system that, by design, allows the engine to stop and restart automatically while the transmission shift lever remains in a drive position. The design of the THS satisfies the concern addressed in S3.1.3, that the driver not be able to activate the engine starter when the transmission shift lever is in a forward or reverse drive position; however, the THS design is not in compliance with S3.1.3's literal meaning. Until the development of the THS, it was not necessary for S3.1.3 to differentiate between driver activation and automatic activation of the engine starter as the driver always activated the starter.

In response to a request by Toyota regarding the Prius, NHTSA issued an interpretation letter of November 1, 1999, in which we ruled that S3.1.3 applied to the driver's activation of the engine starter when the transmission shift lever is in a forward or reverse drive position, not to automatic activation of the engine starter. The THS raised no other FMVSS No. 102 issues. From a driver's perspective, the THS/Prius operates like an ICE automatic transmission only vehicle. The engine stopping and restarting mode is in effect in both forward and reverse drive gears, and regardless of whether the gasoline engine or the electric motor is powering the vehicle, the propulsion system provides a creep force that must be opposed by the vehicle brake in order to keep the vehicle stopped when the propulsion system is on, the accelerator is released and the transmission is in gear. Creep force alerts the driver to the vehicle's direction of travel while the driver is in the process of releasing the brake pedal and minimizes the chance that the driver will be surprised due to shifting errors when he depresses the accelerator pedal. Creep force is a characteristic inherent to ICE automatic transmission only vehicles.

Later, Honda introduced the IST on the Insight equipped with a continuously variable transmission (CVT) and requested an interpretation similar to the one that NHTSA provided to Toyota. IST is another hybrid/electric low emission, fuel saving system, which allows the gasoline engine to stop and restart automatically while the transmission shift lever is in a drive position. IST also satisfies FMVSS No. 102, S3.1.3's concern about driver shifting errors during driver activation of the engine starter because it renders driver activation of the engine starter inoperative when the transmission shift lever is in a forward or reverse drive position. However, it is not in agreement with the literal meaning of S3.1.3. IST is similar to Toyota's THS relative to starter interlock, but there are significant differences in other areas of operation. IST does not provide creep force when the engine is stopped, and it is employed only in the forward drive gears. From a driver's perspective, IST does not operate quite like an ICE automatic transmission only vehicle. IST does not shut the engine off in Reverse and therefore creep force is retained in Reverse by means of the idling gasoline engine and automatic transmission. In an interpretation of January 17, 2001, we ruled that IST would be permitted under S3.1.2, citing the Toyota interpretation, but because the Insight does not act like an ICE automatic transmission only vehicle, we stated that the Honda situation raised new issues that would necessitate further rulemaking.

This notice proposes that an exception be added to FMVSS No. 102 to accommodate these new hybrid/electric technologies while preserving the safety purpose of the standard. It proposes that for automatic transmission equipped vehicles, after the driver activates the vehicle's propulsion system, the engine may stop and restart automatically while the transmission shift lever is in any forward drive gear. It also proposes that if the vehicle's propulsion system provides a creep force in Reverse (when the engine is stopped, the accelerator is released, and the propulsion system is on) that has a ratio to gross vehicle weight rating (GVWR) of at least .015, the engine may stop and restart automatically when the transmission shift lever is in Reverse. This amendment permits new technologies that allow the engine to stop and restart automatically with the transmission shift lever in gear, but minimizes the possibility that the vehicle will move in a direction unexpected to the driver upon restart. Automatic engine restarting would be permitted only in forward drive gears so that drivers learn to associate restarting with forward motion. However, automatic engine restarting is allowed for vehicles that provide a rearward creep force in Reverse that must be overcome by driver braking even when the engine is not running. Because such vehicles warn their drivers of impending rearward motion before the driver fully releases the brake (as does an ICE automatic transmission only vehicle with the engine running), restarting in Reverse would also be permitted.

III. How Different Hybrid/Electric Systems Work

So that the reader fully understands the safety need to conduct this rulemaking, and what NHTSA seeks to accomplish in amending FMVSS No. 102, the following describes how the Toyota Prius and the Honda Insight operate. NHTSA considers these two vehicles as examples of the type of electronic control systems that we can expect more of in the future, and that we propose to amend FMVSS No. 102 to accommodate. NHTSA continues to ensure that FMVSS No. 102 meets the need for safety. Significant differences between the Toyota and the Honda approaches are explained, and the consequences of these differences for this rulemaking are discussed.

A. How the Toyota Hybrid System Works—the Prius

As explained further, from the driver's perspective, the THS operates like an ICE automatic transmission only vehicle. The THS, which is currently in use on the Prius, uses both an electric motor and a gasoline engine to provide motive power. The electric motor is the primary source of motive power and is also used to start the engine. The engine is used to provide supplemental motive power and to charge the batteries. Before the driver may start or turn on the vehicle, the transmission shift lever must be in Park. After the vehicle is started or turned on by the driver, the gasoline engine may or may not start. If the engine is within the range of normal operating temperature and battery power is sufficient, the engine will not start, but the electric motor is immediately available to provide motive power and creep force. If battery power is low or the engine is not within normal operating temperature, the gasoline engine will start in order to warm up the engine and/or charge the batteries (to power the electric motor), then it will shut off. During normal vehicle operation, the engine automatically stops when the Engine Control Unit (ECU) determines that the vehicle does not need the engine to provide additional power (motive power and/or electrical power). Also, the engine automatically restarts when the ECU determines that the vehicle needs extra power (motive power and/or electrical power). When the engine is required, it may start when the transmission and the transmission shift lever are in drive positions.

The THS functions in all forward and reverse drive gears. The THS also provides creep force in all forward and reverse drive gears regardless of whether the engine or electric motor is powering the vehicle at the time. Normally, when the batteries are charged, the engine is within normal temperature range and the accelerator is depressed, the vehicle will begin to accelerate by means of power from the electric motor and will move in the direction both selected by the automatic transmission shift lever and, as previously indicated, by creep force. As the demand for acceleration increases beyond the capability of the electric motor and/or as the vehicle batteries require recharging, the same electric motor will start the vehicle engine (while the automatic transmission/transmission shift lever remain in drive positions), to provide additional motive and/or electrical power. When stopping, the electric motor aids in recharging the batteries through regenerative braking.

B. How Idle-Stop Technology Works—the Honda Insight

Idle-stop technology (IST) is currently used on the Insight and more recently on the Civic hybrid electric vehicle (system is identical to the Insight), but in the future it may be used on other Honda and Acura models that are not hybrids. Both hybrid vehicles are powered by a low-horsepower gasoline engine assisted by an electric motor. When the driver manually engages the starter to start the vehicle's engine, the transmission shift lever must be in Park or Neutral. During vehicle operation, the engine is always running except during

certain circumstances while the vehicle is stopped. Under normal conditions after the vehicle has been driven with the transmission in a forward drive position at a speed greater than or equal to 15 kph (9.32 mph), when the driver stops the vehicle by depressing the service brake pedal, the gasoline engine will stop and the transmission will automatically shift to Neutral even though the transmission shift lever remains in Drive. When the driver removes his foot from the service brake pedal, hydraulic brake pressure is maintained, the starter automatically engages the vehicle engine and the engine starts up. After the engine starts, the transmission automatically shifts internally from Neutral back to Drive, hydraulic brake fluid pressure is automatically released, and the vehicle may start to move slowly forward due to creep force from the idling engine and automatic transmission. When the accelerator is depressed, the vehicle moves in the direction directed by the transmission shift lever position.

Since IST does not provide creep force when the service brake is applied, there is no indication of the direction of vehicle movement until after the driver's foot has been completely removed from the service brake pedal. After release of the service brake pedal, the service brakes remain fully engaged until the engine is restarted and the transmission automatically shifts into a forward drive position. This automatic chain of events occurs very rapidly after the service brake pedal is released, however, the sequence may or may not be completed by the time the driver depresses the accelerator.

As IST is not in effect in Reverse, the engine does not shut off when the transmission is in Reverse. Therefore, the propulsion system provides creep force as a result of the idling engine and the automatic transmission. In forward gears, when the accelerator is depressed, the engine or the engine assisted by the electric motor accelerates the vehicle. The electric motor is used to assist the gasoline engine when extra motive power is required, and to restart the engine after idle-stop.

The Honda system receives input from numerous sensors throughout the vehicle. The ECU will not allow the engine to stop when the vehicle comes to a stop and the transmission lever is in Reverse, Low or S mode (another low gear); immediately after the engine starts; when the air conditioning is in "Auto Switch" mode; when the engine water temperature, the transmission oil temperature, ambient temperature or energy in the battery are low; when electrical load is high; and during sudden (panic) braking. Also, when the engine is stopped and the transmission shift lever is shifted from Drive to Reverse, Low, or Park, the engine restarts immediately while the service brake pedal is depressed.

IV. Previous Related Rulemaking Action—ZEMCO Petition

In 1979, ZEMCO Inc. asked for an interpretation of S3.1.3 in FMVSS No. 102. ZEMCO wanted to market an add-on fuel savings device that conflicted with S3.1.3. The ZEMCO system could be installed on all vehicles as original or after-market equipment and would automatically control the shutdown and restarting of the vehicle engine in order to conserve fuel at times when the vehicle would be otherwise stopped with the engine running at idle speed. The ZEMCO system did not exhibit creep force when the engine was stopped and was employed in both the forward and reverse gears.

As a result of ZEMCO's request for an interpretation and subsequent petition for rulemaking, NHTSA commenced rulemaking to amend S3.1.3. As part of the rulemaking process, NHTSA tested the operational safety of the ZEMCO system. Several safety concerns surfaced during testing such as the delay in engine restarting, the lack of an automatic shut-off feature for the system when the driver parks the vehicle and leaves without specifically turning off the fuel savings system, the effects on other vehicle functions, vehicle stalling on restart and the avoidance of engine shutdown under certain conditions. These safety concerns resulted in the agency publishing a notice of termination of rulemaking in the **Federal Register** of March 27, 1984 (49 FR 11692). In the termination notice, NHTSA also encouraged further research and development in the area of fuel economy devices.

V. Notice of Proposed Rulemaking

The following describes NHTSA's rulemaking proposal to amend FMVSS No. 102 and the four major issues addressed in the rulemaking: first, the significance of reverse drive and the park position; second, the importance of creep force; third, the level of creep force to be specified; and fourth, the safety need for fail-safe provisions for automatic engine stopping and restarting while the transmission and/or transmission shift lever are in gear.

A. Reed Interpretation Letter, the Significance of Reverse Drive and the Park Position

In 1991, Mr. Brett Reed of Morse Controls, Inc. submitted a request for an interpretation of FMVSS No. 102 as it applies to electronic transmission shift controls. Mr. Reed specifically asked about controls that operate automatic transmissions used in heavy trucks and recreational vehicles (RVs) and on solenoid operated power shift transmissions used in various on and off highway vehicles. In his letter, Mr. Reed cited S3.1.3, which requires that the engine starter be inoperative when the transmission shift lever is in a forward or reverse drive position. The main question posed was if the intent of the standard was to render the starter engine inoperative when the transmission shift lever is in a forward or reverse drive position or when the transmission was in a forward or reverse drive gear. Mr. Reed noted that when FMVSS No. 102 was written, transmission levers communicated with transmissions via mechanical linkages and therefore the transmission shift lever always matched the gear position of the transmission.

With the introduction of electronic shift systems and fully electronic controlled transmissions, communication between the transmission shift lever and the transmission is rarely performed by direct mechanical means. This raises the possibility that the transmission shift lever position may not match the gear currently engaged by the transmission in situations where the transmission control circuitry overrides the shift lever selection in the interest of safety, transmission protection or other criteria related to performance and specific applications. The concern was that some systems automatically shift to Neutral within the transmission when the engine is started, however, the transmission shift lever remains in some other position. In these cases, the transmission shift lever position does not coincide with the status of the transmission. Mr. Reed sought an interpretation stating that the intention of S3.1.3 was that the engine starter shall be inoperative when the transmission is in a forward or reverse drive position.

NHTSA's response of September 16, 1991 essentially stated that the transmission shift lever position and the gear position of the transmission must always agree. Since this interpretation in 1991, electronically controlled transmissions have become more prevalent. Today, electronically controlled transmissions are not only on large trucks and recreational vehicles, but are also appearing in the passenger car fleet. In addition, vehicle electronic control systems and control algorithms have become more sophisticated, which allow for more safeguards and fail-safe systems. These systems are capable, on a limited basis, of overriding the driver's input or lack of input to achieve optimal vehicle performance and safety.

The Honda Insight with the continuously variable transmission, which employs idle-stop technology (IST) and which NHTSA permitted in an interpretation letter of January 17, 2001, highlights the decreasing relevance of the shift lever position in certain situations. IST allows the engine to stop, the transmission to briefly shift to Neutral while the engine is automatically restarting, then allows the transmission to shift back to Drive while the transmission shift lever remains in a drive position. During this procedure, however, service brake pressure is maintained even after the driver has released the service brake pedal. This scenario was not disputed in the Honda interpretation even though it was in conflict with the 1991 interpretation letter to Mr. Reed.

NHTSA intends that the Honda interpretation supersede the Reed interpretation to the extent that, from now on, for all vehicles, when the transmission shift lever is in a forward drive position, the transmission gear may be in another forward drive position or Neutral. When the transmission shift lever is in Reverse, the transmission gear must be in reverse gear. Additionally, when the driver has selected the transmission shift lever "Park" position, the transmission must always be in the Park position. This restriction is necessary to ensure that the vehicle does not start moving when the driver does not expect the vehicle to move, and cause the driver to panic. We are proposing an additional provision for vehicles with systems that allow the engine to start and stop automatically after driver activation of the engine starter which states that when the transmission shift lever is in Park, the engine automatic start/stop system shall not take the transmission out of Park.

B. Safety Importance of Creep Force in Cueing the Driver—Creep Force in Reverse

In ICE automatic transmission only vehicles, creep force is the motive force applied to the vehicle by the idling engine and automatic transmission whenever the transmission shift lever is in a drive position. Creep force occurs in the direction indicated by the automatic transmission shift lever position and provides enough force to cause motion of a vehicle loaded to its Gross Vehicle Weight Rating (GVWR) on a level, paved surface before the service brake pedal is completely released. Although not required by the Federal Motor Vehicle Safety Standards, creep force exists on virtually all vehicles powered by ICEs and equipped with automatic transmissions.

When the current wording of FMVSS No. 102 was adopted in 1968, vehicles were equipped mostly with ICEs and mechanical/hydraulic automatic transmissions, which have always provided creep force. Today, drivers can rely on creep force to avoid crashes that would result from shifting errors. When a driver places the automatic transmission shift lever in a drive position and reduces service brake pressure slowly by easing up on the service brake pedal, the vehicle begins to move slowly in the direction that has been selected by the transmission shift lever. This creep force in the correct direction cues the driver that when the accelerator is depressed, the vehicle will move in the anticipated direction.

It is important for creep force to initiate motion of the vehicle before the driver's foot leaves the service brake pedal and before the service brakes are completely disengaged. Then, if a shifting error has occurred, the driver's foot is still on the brake pedal and the error can be safely and quickly corrected. For example, if there is no creep force associated with an automatic transmission equipped vehicle and the driver thought he had selected Drive but instead had selected Reverse, when he removes his foot from the brake and depresses the accelerator, the vehicle would unexpectedly move rearward instead of forward. The unexpected movement of the vehicle rearward may cause the driver to further depress the accelerator. By the time the driver realizes his mistake and applies the brake again, the vehicle may have moved rearward a considerable distance and possibly struck a pedestrian or an object, causing injury and/or property damage.

From years of driving ICE-powered automatic transmission vehicles, drivers are familiar with cues in the direction of travel indicated by creep force. Since it is not inherent in hybrid vehicles, it is NHTSA's view that there is a safety need to at least design creep force into the vehicles when in Reverse. Toyota designed the Prius in such a way that allows the electric motor to provide creep force so that it would function like an ICE automatic transmission only vehicle. For vehicles like the Prius that provide creep force in Reverse when the engine is stopped, the changes proposed in FMVSS No. 102 would allow the engine to stop and restart automatically when the transmission shift lever is in Reverse as well as in forward gears. The opportunity for shifting errors is always present. Drivers experience creep force constantly as a cue, which assures them of what gear they are in. An engine that is stopping and restarting automatically may add to driver confusion, especially when there is an absence of creep force. This proposed amendment has the effect of assuring rearward creep force in all automatic transmission vehicles with engine stop/start systems, either by requiring that the engine remain running in Reverse for vehicles like the hybrid electric Insight/Civic or by virtue of the design of the electric propulsion system for vehicles like the Prius. When there is no creep force or when there is creep force in the forward direction, the driver will know the vehicle is in a forward drive gear, in Neutral, or Park.

In examining the propulsion systems of the Honda Insight and Civic hybrid electric vehicle with IST and the Toyota Prius with the THS, it was noted that the Honda Insight/Civic hybrid electric vehicle did not provide creep force in the forward direction, as there was no possibility of vehicle motion until the service brake pedal was fully released. The Honda system provides creep force in Reverse because IST does not function in Reverse and the engine remains running, allowing the engine/automatic transmission to provide creep force by means of the ICE and automatic transmission. For the Toyota Prius, the engine stops in either the forward or reverse gears, however, when the gasoline engine is off, creep force is provided by the electric motor.

C. The Level of Creep Force Specified

In order to investigate the level of creep force that drivers are used to, and the level of creep force to require of any vehicle that allows the engine to automatically start and stop in Reverse, NHTSA measured the creep force produced by thirteen vehicles, including passenger cars, multipurpose passenger vehicles, and light trucks, that were selected on the basis of their availability. Measurements were made with the vehicle engines running at idle and the vehicle automatic transmissions in Drive, the lowest ratio forward gear (Low) and Reverse.

A record of the vehicles tested and creep forces measured are in Table 1. The creep force must be high enough to be noticeable to the driver. A heavier vehicle requires greater creep force to produce an obvious cue to the driver. The force data in Table 1 represents the amount of creep force that each vehicle's propulsion system produced. The creep force of some of these vehicles may be in excess of what is necessary to be minimally noticeable to

the driver. Since the motion cue to the driver depends mainly on creep force and vehicle weight, NHTSA believes it is appropriate to examine the ratio of creep force (forward and reverse) to vehicle weight (in Table 1, curb weight was used) of the vehicles tested. The results ranged from a minimum value of 0.02 for test number one (rearward creep force) to a maximum value of 0.17 for test number eleven (forward creep force). Since the creep force was obvious to the driver for all of these vehicles, NHTSA selected the lowest creep force to vehicle curb weight ratio, which was .02. Later, for the purpose of consistency, we decided to convert the lowest creep force/curb weight ratio to its corresponding creep force/GVWR ratio, which is .015. For vehicles that allow the engine to stop and start automatically while the transmission shift lever is in Reverse, the reverse creep force designed into a vehicle's propulsion system must be, at minimum, 1.5 percent of the vehicle's Gross Vehicle Weight Rating (GVWR) when the vehicle's engine is stopped, the propulsion system is on, the accelerator is released, the vehicle is loaded to its GVWR and the vehicle is on a level, paved surface.

The agency invites input from industry and the public relative to what this minimum ratio of creep force to vehicle GVWR should be. The agency also requests comments on the test for creep force in S5 of the proposed regulatory text.

TABLE 1

Test No.	Date	Vehicle							Creep force (lbs.)		
		Vehicle type	Year	Make	Model	VIN	Engine size (L)	Curb weight (lbs)	Drive	Low	Rev.
1	10/19/01	Truck	2000	Chevrolet	1500 Pickup, Full size, 4X4, ½ ton.	1GCEK19T0YE******	5.3	[1] 4374	150	155	95
2	10/24/01	Passenger Car.	1992	Chevrolet	Camaro Sport Coupe, 2DR, Hatchback/ liftback.	1G1FP2385NL******	5.7	3103	400	400	270
3	10/31/01	MPV (Van-Wagon).	1998	Mazda	MPV, Wagon, (4X4), JEE, HYD/ Class D.	JM3LV5239W0******	3	4120	265	260	255
4	11/2/01	Passenger Car.	1997	Honda	Civic EX 2DR, Coupe/4A.	1HGEJ824XVL******	1.6	2518	265	255	200
5	11/3/01	Passenger Car.	1990	Toyota	Corolla, Deluxe, 4DR.	2T1AE94AXLC******	1.6	2394	270	270	225
6	11/4/01	Passenger Car.	1993	Saturn	SW2, 4DR, Wagon.	1G8ZK8579PZ******	1.9	2506	265	265	265
7	11/4/01	Passenger Car.	1998	Subaru	Forester, Wagon, L.	JF1SF6351WH******	2.5	2795	295	295	295
8	11/4/01	MPV	1999	Jeep	Grand Cherokee, 4X4, Laredo, 4DR.	1J4GW58S6XC******	4	3932	350	350	240
9	11/4/01	MPV	1999	Jeep	Grand Cherokee, 4X4, Laredo, 4DR.	1J4GW58S7XC******	4	3932	490	490	290
10	11/4/01	MPV	2000	Chevrolet	S10/Blazer, 4X4, ½ ton.	1GNDT13W7Y2******	4.3	5350	175	175	125
11	11/4/01	Truck	1996	Dodge	Dakota, Pickup, Sport.	1B7GL26X5TS******	3.9	3124	520	520	285
12	11/4/01	Passenger Car.	1988	Ford	Mustang, GT, 2DR, Sedan, Hatchback.	1FABP42E5JF******	5	3173	200	200	155
13	11/6/01	Passenger Car.	2002	Toyota	Prius	JT2BK18U820******	1.5	2765	165	167	165

[1] (GVWR = 6400 lbs.).

D. The Safety Need for Fail-Safe Provisions for Automatic Engine Stopping and Restarting While the Transmission and/or Transmission Shift Lever Are in Gear

With any automatic system that is critical to the safe operation of a motor vehicle, there is concern about what happens during a failure mode. For systems that allow the engine to stop and restart while the transmission and/or transmission shift lever remain in a drive position, it is important that the automatic starting of the engine does not cause the vehicle to unexpectedly surge forward or rearward both during normal operation and during failure modes. It is also important that when the vehicle is stopped, the engine stops automatically, the driver releases the brake pedal and depresses the accelerator to move the vehicle, that the engine restarts and is prepared to move the vehicle in a reasonable amount of time.

From the driver's perspective, the Prius behaves like an ICE automatic transmission only vehicle. The potential for the automatic restarting of the engine to confuse the driver and cause unexpected surging of the vehicle due to driver shifting errors is not an issue with the THS on the Prius. The Prius is an electric vehicle with a gasoline engine that assists when the batteries need charging or when additional motive power is required during acceleration and the electric motor provides creep force in both the forward and rearward directions regardless of whether the gasoline engine is running.

The Honda Insight does not have creep force in Drive when the idle-stop system operates. Any slow, forward motion of the vehicle that occurs is developed by the idling engine and automatic transmission after it starts. This takes place after the driver has released the brake pedal. One of the sensors that the Honda system receives input from is the brake switch, which indicates whether the brake is depressed or released. If the brake switch should fail open and the brake is depressed without the idle-stop sensing it, the idle-stop would cease to function. If the failure took place while the idle-stop function was operating, the engine would start and run at idle speed. This would not be an unsafe condition because the driver's foot is on the brake. The running engine would initiate slow, forward motion of the vehicle but a small amount of additional force on the already depressed brake pedal would hold the vehicle stationary. If the brake switch failed closed while the idle-stop system was operating and then the brake was released, the system would not sense the brake release and the engine would not restart. If the failure occurred while the vehicle was being driven, it would fail to restart during the next cycle. This failure mode would be no different than any of the many other failures that could cause an ICE only motor vehicle to stall in traffic. Thus, the current designs of the Prius and Insight do not introduce any failure mode safety issues over those that presently exist in ICE automatic transmission only vehicles.

It is anticipated that idle-stop technology will eventually be applied to ICE only vehicles (non-hybrid electric). We expect that these new designs will be very similar to the system used on the Insight/Civic hybrid electric vehicle. Systems that may permit unexpected, sudden surging of the vehicle when the ICE automatically restarts would not meet the need for safety. Even when the vehicle is stopped and the accelerator is fully depressed during automatic engine starting, such systems should contain safeguards that prevent sudden, unexpected surging of the vehicle. NHTSA requests comments on specifying a maximum throttle position regardless of the driver's input, for example, when the vehicle is stopped and the engine is about to automatically restart, if the driver's throttle input is greater than one-fourth of the maximum throttle, the throttle would automatically be limited to one-fourth of the maximum throttle during automatic engine restart.

The issue of timely restarting during normal operation is again of no concern to vehicles like the Prius. The electric motor of the Prius produces creep force and is also available to drive the vehicle when the engine is not running or if it would be slow to start. On the Insight/Civic hybrid electric vehicle, when the brake is depressed, the gasoline engine will stop when the vehicle speed is below 5 miles per hour. While the vehicle is stopped and the brake is depressed, the transmission automatically shifts into Neutral. When the brake is released, brake fluid pressure is maintained, the engine starts in Neutral then automatically shifts to Drive, and the vehicle moves slowly forward. This sequence occurs very rapidly.

In normal situations, the propulsion system is available to move the vehicle by the time the driver's foot moves from the brake to the accelerator. As earlier discussed, in March of 1984, NHTSA terminated rulemaking on ZEMCO's crude but similar system. Among the numerous safety concerns which led the agency to terminate rulemaking was the ZEMCO system's excessive delay in engine restarting. It is important that the time required for the engine to restart not become excessive as the vehicle ages and the system wears for designs where the propulsion system is disabled while the vehicle is stopped and the propulsion system must be re-enabled before the vehicle can move.

NHTSA requests comments on requiring a control that would allow the operator to lock out or turn off the idle-stop system in the event that restarting time becomes excessive or a malfunction occurs. NHTSA seeks input on what would be a reasonable maximum allowable time for the propulsion system to be available to move the vehicle after the brake pedal is released.

VI. Leadtime

We propose that if made final, the changes apply to passenger cars, multipurpose passenger vehicles, trucks and buses manufactured on or after the first September 1st that occurs two or more years after the publication of the final rule. Public comment is sought on this proposed lead time. We believe that two years is sufficient lead time for industry since we do not believe that compliance with this proposed rule would involve any new technology, or performance specifications that manufacturers cannot meet with existing design, tooling, or manufacturing capabilities. We further believe that conducting the proposed test procedures would not involve any new technologies or procedures that manufacturers would find difficult to conduct. Since this rulemaking would not make any substantive changes in the scope of FMVSS No. 102, manufacturers of passenger cars, multipurpose passenger vehicles, trucks or buses that are available for sale at the time this notice of proposed rulemaking is issued would not need to make any changes in vehicle manufacturing processes or procedures to ensure that their vehicles meet the amended FMVSS No. 102.

VII. Regulatory Analyses and Notices

A. Executive Order 12866 and DOT Regulatory Policies and Procedures

Executive Order 12866, "Regulatory Planning and Review" (58 FR 51735, October 4, 1993), provides for making determinations whether a regulatory action is "significant" and therefore subject to Office of Management and Budget (OMB) review and to the requirements of the Executive Order. The Order defines a "significant regulatory action" as one that is likely to result in a rule that may:

(1) Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or Tribal governments or communities;

(2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or

(4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

We have considered the impact of this rulemaking action under Executive Order 12866 and the Department of Transportation's regulatory policies and procedures. This rulemaking document was not reviewed by the Office of Management and Budget under E.O. 12866, "Regulatory Planning and Review." The rulemaking action is also not considered to be significant under the Department's Regulatory Policies and Procedures (44 FR 11034; February 26, 1979).

The purpose of the proposed revision of FMVSS No. 102, *Transmission shift lever sequence, starter interlock, and transmission braking effect*, is to keep pace with existing technology, by permitting the propulsion system of a vehicle to stop and restart automatically while the automatic transmission shift lever is in any forward drive gear. We also propose to allow the propulsion system to stop and restart automatically when the automatic transmission shift lever is in Reverse, provided that the propulsion system exhibits, at least, a minimum creep force in Reverse when the vehicle is stopped, the accelerator released and the propulsion system is activated. These proposed requirements were developed with the agency working in concert with the motor vehicle industry while resolving interpretation issues associated with the present standard. Therefore, there are no new costs involved with the proposed revisions, and a regulatory evaluation has not been prepared.

B. Executive Order 13132 (Federalism)

Executive Order 13132 requires us to develop an accountable process to ensure "meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications." "Policies that have federalism implications" is defined in the Executive Order to include regulations that have "substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government." Under Executive Order 13132, we may not issue a regulation with Federalism implications, that imposes substantial direct compliance costs, and that is not required by statute, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by State and local governments, or unless we consult with State and local officials early in the process of developing the proposed regulation. We also may not issue a regulation with Federalism implications and that preempts State law unless we consult with State and local officials early in the process of developing the proposed regulation.

This proposed rule would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132. The reason is that this proposed rule, if made final, would apply to motor vehicle manufacturers, and not to the States or local governments. Thus, the requirements of Section 6 of the Executive Order do not apply to this proposed rule.

C. Executive Order 13045 (Economically Significant Rules Disproportionately Affecting Children)

Executive Order 13045 (62 FR 19885, April 23, 1997) applies to any rule that: (1) Is determined to be "economically significant" as defined under E.O. 12866, and (2) concerns an environmental, health or safety risk that NHTSA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, we must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by us.

This proposed rule is not subject to the Executive Order because it is not economically significant as defined in E.O. 12866 and does not involve decisions based on environmental, health or safety risks that disproportionately affect children.

D. Executive Order 12778 (Civil Justice Reform)

Pursuant to Executive Order 12778, "Civil Justice Reform," we have considered whether this proposed rule would have any retroactive effect. We conclude that it would not have such an effect. Under 49 U.S.C. 30103, whenever a Federal motor vehicle safety standard is in effect, a State may not adopt or maintain a safety standard applicable to the same aspect of performance which is not identical to the Federal standard, except to the extent that the state requirement imposes a higher level of performance and applies only to vehicles procured for the State's use. 49 U.S.C. 30161 sets forth a procedure for judicial review of final rules establishing, amending or revoking Federal motor vehicle safety standards. That section does not require submission of a petition for reconsideration or other administrative proceedings before parties may file suit in court.

E. Regulatory Flexibility Act

Pursuant to the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*, as amended by the Small Business Regulatory Enforcement Fairness Act (SBREFA) of 1996) whenever an agency is required to publish a notice of rulemaking for any proposed or final rule, it must prepare and make available for public comment a regulatory flexibility analysis that describes the effect of the rule on small entities (*i.e.*, small businesses, small organizations, and small governmental jurisdictions). However, no regulatory flexibility analysis is required if the head of an agency certifies the rule would not have a significant economic impact on a substantial number of small entities. SBREFA amended the Regulatory Flexibility Act to require Federal agencies to provide a statement of the factual basis for certifying that a rule would not have a significant economic impact on a substantial number of small entities.

The Head of the Agency has considered the effects of this rulemaking action under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) and certifies that this proposal would not have a significant economic impact on a substantial number of small entities. The statement of the factual basis for the certification is that since this rulemaking would not make any substantive changes in the scope of FMVSS No. 102, small manufacturers of passenger cars, multipurpose passenger vehicles, trucks or buses would not need to make any changes in vehicle manufacturing processes or procedures to ensure that their vehicles meet an amended FMVSS No. 102. Accordingly, the agency believes that this proposal would not affect the costs of motor vehicle manufacturers considered to be small business entities.

F. National Environmental Policy Act

We have analyzed this proposal for the purposes of the National Environmental Policy Act and determined that it would not have any significant impact on the quality of the human environment.

G. Paperwork Reduction Act

NHTSA has determined that, if made final, this proposed rule would not impose any "collection of information" burdens on the public, within the meaning of the Paperwork Reduction Act of 1995 (PRA). This rulemaking action would not impose any filing or recordkeeping requirements on any manufacturer or any other party. For this reason, we discuss neither electronic filing and recordkeeping nor do we discuss a fully electronic reporting option by October 2003.

H. National Technology Transfer and Advancement Act

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law 104–113, section 12(d) (15 U.S.C. 272) directs us to use voluntary consensus standards in our regulatory activities unless doing so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (*e.g.*, materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by voluntary consensus standards bodies, such as the Society of Automotive Engineers (SAE). The NTTAA directs us to provide Congress, through OMB, explanations when we decide not to use available and applicable voluntary consensus standards.

After conducting a search of available sources (including data from International Organization of Standards or other standards bodies), we have determined that there are not any available and applicable voluntary consensus standards that we can use in this notice of proposed rulemaking. We have searched the SAE's Recommended Practices for standards applicable to creep force. We have found no SAE Standard that provides guidance on creep force. We have therefore developed our own proposal.

I. Unfunded Mandates Reform Act of 1995

Section 202 of the Unfunded Mandates Reform Act of 1995 (UMRA) requires Federal agencies to prepare a written assessment of the costs, benefits and other effects of proposed or final rules that include a Federal mandate likely to result in the expenditure by State, local or tribal governments, in the aggregate, or by the private sector, of more than $100 million in any one year (adjusted for inflation with base year of 1995). Before promulgating a NHTSA rule for which a written statement is needed, section 205 of the UMRA generally requires us to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective or least burdensome alternative that achieves the objectives of the rule. The provisions of section 205 do not apply when they are inconsistent with applicable law. Moreover, section 205 allows us to adopt an alternative other than the least costly, most cost-effective or least burdensome alternative if we publish with the final rule an explanation why that alternative was not adopted.

This proposal would not result in costs of $100 million or more to either State, local, or tribal governments, in the aggregate, or to the private sector. Thus, this proposal is not subject to the requirements of sections 202 and 205 of the UMRA.

J. Data Quality Guidelines

After reviewing the provisions of this NPRM pursuant to OMB's Guidelines for Ensuring and Maximizing the Quality, Objectivity, Utility, and Integrity of Information Disseminated by Federal Agencies ("Guidelines") issued by the Office of Management and Budget (OMB) (67 FR 8452, Feb. 22, 2002) and issued by the Department of Transportation (DOT) in final form on October 1, 2002 (67 FR 61719), NHTSA has determined that if made final, nothing in this rule would result in "information dissemination" to the public, as that term is defined in the Guidelines.

If a determination were made that public distribution of data resulting from this rule constituted information dissemination and was, therefore, subject to the OMB/DOT Guidelines, then the agency would review the information prior to dissemination to ascertain its utility, objectivity, and integrity (collectively, "quality"). Under the Guidelines, any "affected person" who believed that the information ultimately disseminated by NHTSA was of insufficient quality could file a complaint with the agency. The agency would review the disputed information, make an initial determination of whether it agreed with the complainant, and notify the complainant of its initial determination. Once notified of the initial determination, the affected person could file an appeal with the agency.

K. Plain Language

Executive Order 12866 requires each agency to write all rules in plain language. Application of the principles of plain language includes consideration of the following questions:

—Have we organized the material to suit the public's needs?
—Are the requirements in the rule clearly stated?
—Does the rule contain technical language or jargon that is not clear?
—Would a different format (grouping and order of sections, use of headings, paragraphing) make the rule easier to understand?
—Would more (but shorter) sections be better?
—Could we improve clarity by adding tables, lists, or diagrams?
—What else could we do to make this rulemaking easier to understand?

If you have any responses to these questions, please include them in your comments on this NPRM.

L. Regulation Identifier Number (RIN)

The Department of Transportation assigns a regulation identifier number (RIN) to each regulatory action listed in the Unified Agenda of Federal Regulations. The Regulatory Information Service Center publishes the Unified Agenda in April and October of each year. You may use the RIN contained in the heading at the beginning of this document to find this action in the Unified Agenda.

Comments

How Do I Prepare and Submit Comments?

Your comments must be written and in English. To ensure that your comments are correctly filed in the Docket, please include the docket number of this document in your comments.

Your comments must not be more than 15 pages long. (49 CFR 553.21). We established this limit to encourage you to write your primary comments in a concise fashion. However, you may attach necessary additional documents to your comments. There is no limit on the length of the attachments.

Please submit two copies of your comments, including the attachments,

to Docket Management at the address given above under **ADDRESSES**.

You may also submit your comments to the docket electronically by logging onto the Dockets Management System Web site at *http://dms.dot.gov*. Click on "Help & Information" or "Help/Info" to obtain instructions for filing the document electronically.

How Can I Be Sure That My Comments Were Received?

If you wish Docket Management to notify you upon its receipt of your comments, enclose a self-addressed, stamped postcard in the envelope containing your comments. Upon receiving your comments, Docket Management will return the postcard by mail.

How Do I Submit Confidential Business Information?

If you wish to submit any information under a claim of confidentiality, you should submit three copies of your complete submission, including the information you claim to be confidential business information, to the Chief Counsel, NHTSA, at the address given above under **FOR FURTHER INFORMATION CONTACT**. In addition, you should submit two copies, from which you have deleted the claimed confidential business information, to Docket Management at the address given above under **ADDRESSES**. When you send a comment containing information claimed to be confidential business information, you should include a cover letter setting forth the information specified in our confidential business information regulation. (49 CFR Part 512.)

Will the Agency Consider Late Comments?

We will consider all comments that Docket Management receives before the close of business on the comment closing date indicated above under **DATES**. To the extent possible, we will also consider comments that Docket Management receives after that date. If Docket Management receives a comment too late for us to consider it in developing a final rule (assuming that one is issued), we will consider that comment as an informal suggestion for future rulemaking action.

How Can I Read the Comments Submitted by Other People?

You may read the comments received by Docket Management at the address given above under **ADDRESSES**. The hours of the Docket are indicated above in the same location.

You may also see the comments on the Internet. To read the comments on the Internet, take the following steps:

1. Go to the Docket Management System (DMS) Web page of the Department of Transportation (*http://dms.dot.gov/*).

2. On that page, click on "search."

3. On the next page (*http://dms.dot.gov/search/*), type in the four-digit docket number shown at the beginning of this document. Example: If the docket number were "NHTSA–1998–1234," you would type "1234." After typing the docket number, click on "search."

4. On the next page, which contains docket summary information for the docket you selected, click on the desired comments. You may download the comments. Although the comments are imaged documents, instead of word processing documents, the "pdf" versions of the documents are word searchable.

Please note that even after the comment closing date, we will continue to file relevant information in the Docket as it becomes available. Further, some people may submit late comments. Accordingly, we recommend that you periodically check the Docket for new material.

How Does the Federal Privacy Act Apply to My Public Comments?

Anyone is able to search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (Volume 65, Number 70; pages 19477–78) or you may visit *http://dms.dot.gov*.

List of Subjects in 49 CFR Part 571

Imports, Motor vehicle safety, Motor vehicles, Rubber and rubber products, Tires.

In consideration of the foregoing, it is proposed that the Federal Motor Vehicle Safety Standards (49 CFR Part 571), be amended as set forth below.

PART 571—FEDERAL MOTOR VEHICLE SAFETY STANDARDS

1. The authority citation for part 571 would continue to read as follows:

Authority: 49 U.S.C. 322, 30111, 30115, 30117, and 30166; delegation of authority at 49 CFR 1.50.

2. Section 571.102 would be revised to read as follows:

§ 571.102 Standard No. 102; Transmission shift lever sequence, starter interlock, and transmission braking effect.

S1. *Purpose and scope.* This standard specifies the requirements for the transmission shift lever sequence, a starter interlock, and for a braking effect of automatic transmissions, to reduce the likelihood of shifting errors, starter engagement by the driver when the transmission is in any drive position, and to provide supplemental braking at speeds below 40 kilometers per hour (25 miles per hour).

S2. *Application.* This standard applies to passenger cars, multi-purpose passenger vehicles, trucks, and buses.

S3. *Definitions.*

Creep force means a motive force applied exclusively by the electric motor of a vehicle that is propelled by both an electrical motor and a combustion engine while the combustion engine is stopped, the accelerator is released, the transmission shift lever is in a drive gear, and the vehicle is turned on.

S4. *Requirements.*

S4.1 *Automatic transmissions.*

S4.1.1 *Location of transmission shift lever positions on passenger cars.* A neutral position shall be located between forward drive and reverse drive positions. If a steering-column-mounted transmission shift lever is used, movement from neutral position to forward drive position shall be clockwise. If the transmission shift lever sequence includes a park position, it shall be located at the end, adjacent to the reverse drive position.

S4.1.2 *Transmission braking effect.* In vehicles having more than one forward transmission gear ratio, one forward drive position shall provide a greater degree of engine braking than the highest speed transmission ratio at vehicle speeds below 40 kilometers per hour (25 miles per hour).

S4.1.3 *Starter interlock.* The engine starter shall be inoperative when the transmission shift lever is in a forward or reverse drive position, except that after the driver has activated the vehicle's propulsion system:

S4.1.3.1 The engine may stop and restart automatically when the transmission shift lever is in any forward drive gear; and

S4.1.3.2 The engine may stop and restart automatically when the transmission shift lever is in reverse gear if the vehicle's propulsion system, when tested under S5, provides a creep force that is measurable before the brake pedal is fully released and, when measured with the brake pedal fully released, has a ratio to the vehicle gross vehicle weight rating of at least .015, with the engine stopped.

S4.1.3.3 If the transmission shift lever is in Park, automatically stopping or restarting the engine shall not take the transmission out of Park.

S4.1.4 *Identification of shift lever positions.*

S4.1.4.1 Except as specified in S4.1.4.3, if the transmission shift lever sequence includes a park position, identification of shift lever positions, including the positions in relation to each other and the position selected, shall be displayed in view of the driver whenever any of the following conditions exist:

(a) the ignition is in a position where the transmission can be shifted; or

(b) the transmission is not in park.

S4.1.4.2 Except as specified in S4.1.4.3, if the transmission shift lever sequence does not include a park position, identification of shift lever positions, including the positions in relation to each other and the position selected, shall be displayed in view of the driver whenever the ignition is in a position in which the engine is capable of operation.

S4.1.4.3 Such information need not be displayed when the ignition is in a position that is used only to start the vehicle.

S4.1.4.4 All of the information required to be displayed by S4.1.4.1 or S4.1.4.2 shall be displayed in view of the driver in a single location. At the option of the manufacturer, redundant displays providing some or all of the information may be provided.

S4.2 *Manual transmissions.* Identification of the shift lever pattern of manual transmissions, except three forward speed manual transmissions having the standard "H" pattern, shall be displayed in view of the driver at all times when a driver is present in the driver's seating position.

S5. *Test Conditions and Procedures.* A vehicle with an automatic transmission that operates according to S4.1.3.2 shall be tested under the following conditions and procedures.

S5.1 *Test for Creep Force.*

S5.1.1 The ambient temperature of the test environment must be between 0 and 40 degrees Celsius (32 to 104 degrees Fahrenheit).

S5.1.2 All parameters and adjustments of the vehicle are set to factory specifications as delivered to the customer. This includes such parameters as brake adjustments, engine adjustments, and wheel bearing lubrication. Initial tire inflation pressures shall be in accordance with 49 CFR section 571.110, S4.3(c) for maximum loaded vehicle weight. The initial battery charge shall be in accordance with manufacturer's specifications, or if the manufacturer has no specifications, at a state of charge of not less than 95 percent.

S5.1.3 All accessory systems, except those that prevent creep force from being measured with the engine stopped, shall be turned on to their maximum setting.

S5.1.4 Load the vehicle under test to its gross vehicle weight rating in such a way as not to exceed any axle's gross axle weight rating when measured at the tire-ground interface and place it on a level paved surface.

S5.1.5 Attach one end of a tether such as a chain or cable to the front of the vehicle chassis at a point on the vehicle's longitudinal centerline and attach the other end to a structure that will remain stationary during the test. In series with the tether and between the vehicle and the stationary structure, place a force measurement device such as a load cell that will measure tension force at a minimum frequency of 10 HZ and to an accuracy within ± 2 percent of the actual reading in the range of 0 to 4450 N (0 to 1000 lb).

S5.1.5.1 The tether and the force measurement device must be in a horizontal orientation, parallel to the longitudinal axis of the vehicle during measurements.

S5.1.6 With the transmission shift lever in the Neutral or Park position and the parking brake applied, place the ignition switch to the Start position then release it to the Run position. Allow the vehicle to remain in this state for 15 minutes.(whether the engine is running or not) before the measurements are recorded. Depress and hold the vehicle's service brake pedal to prevent vehicle motion, release the parking brake and place the transmission shift lever in the Reverse position.

S5.1.7 With the internal combustion engine stopped, slowly release the vehicle service brake pedal until the measurement device begins to register a force.

S5.1.8 Fully release the vehicle service brake pedal. Record the force indicated by the force measurement device.

Issued on: May 9, 2003.

Stephen R. Kratzke,

Associate Administrator for Rulemaking.

[FR Doc. 03–12051 Filed 5–14–03; 8:45 am]

BILLING CODE 4910–59–P

Notices

Federal Register
Vol. 68, No. 94
Thursday, May 15, 2003

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF HEALTH AND HUMAN SERVICES

DEPARTMENT OF AGRICULTURE

Announcement of Establishment of the 2005 Dietary Guidelines Advisory Committee and Solicitation of Nominations for Membership

AGENCIES: U.S. Department of Health and Human Services, Office of Public Health and Science; and U.S. Department of Agriculture, Food, Nutrition and Consumer Services (FNCS) and Research, Education and Economics (REE).

ACTION: Notice.

SUMMARY: The Department of Health and Human Services (HHS) and the Department of Agriculture (USDA) announce the establishment of a Dietary Guidelines Advisory Committee and invite nominations for the Committee.

DATES: Nominations must be submitted by close of business on June 16, 2003.

ADDRESSES: Nominations may be submitted by electronic mail to *dietaryguidelines@osophs.dhhs.gov*. Alternatively, nominations may be sent to the following address: Kathryn McMurry, M.S., HHS Office of Disease Prevention and Health Promotion, Office of Public Health and Science, Room 738–G, 200 Independence Ave., SW., Washington, DC 20201, (202) 690–7102 (telephone), 202–205–0463 (fax).

FOR FURTHER INFORMATION CONTACT: HHS Co-Executive Secretaries: Kathryn McMurry or Karyl Thomas (phone 202–690–7102), HHS Office of Disease Prevention and Health Promotion, Office of Public Health and Science, Room 738–G, 200 Independence Ave., SW., Washington, DC 20201. USDA Co-Executive Secretaries: Carole Davis (phone 703–305–7600), USDA Center for Nutrition Policy and Promotion, 3101 Park Center Drive, Room 1034, Alexandria, Virginia 22302, or Pamela Pehrsson (phone 301–504–0716), USDA Agricultural Research Service, Beltsville Agricultural Research Center-West, Building 005, Room 309A, Beltsville, Maryland 20705. Additional information is available on the Internet at *http://www.health.gov/dietaryguidelines/*.

SUPPLEMENTARY INFORMATION:

Authority and Purpose: The Dietary Guidelines for Americans forms the basis of Federal food and nutrition education activities. Section 301 of the National Nutrition Monitoring and Related Research Act of 1990 (Pub. L. 101–445) requires the Secretaries of USDA and HHS to publish the Dietary Guidelines for Americans at least every five years. The Dietary Guidelines were first published by USDA and HHS in 1980, with revisions in 1985, 1990, 1995, and 2000. Beginning with the 1985 edition, HHS and USDA have appointed a Dietary Guidelines Advisory Committee of prominent experts in nutrition and health to assist in the preparation of the Dietary Guidelines.

Structure: The Committee will determine if revision of the 2000 edition of Nutrition and Your Health: Dietary Guidelines for Americans is warranted, based on thorough evaluation of recent scientific and applied literature and, if so, will proceed to develop recommendations for these revisions in a report to the Secretaries of Agriculture and Health and Human Services. The Committee will hold two-to three-day meetings, three to four times over the course of about a year. It is expected to begin meeting by Fall 2003 and prepare a report of its recommendations. Pursuant to the requirements of the Federal Advisory Committee Act, the meetings will be open to the public. Copies of the Report of the Dietary Guidelines Advisory Committee on the Dietary Guidelines for Americans, 2000 are available upon request from the HHS or USDA Co-Executive Secretaries listed above.

Prospective members of the Dietary Guidelines Advisory Committee should be knowledgeable of current scientific research in human nutrition and be respected and published experts in their fields. They should be familiar with the purpose, communication, and application of the Dietary Guidelines and have demonstrated interest in the public's health and well-being through their research and/or educational endeavors. Expertise is sought in specific specialty areas, including but not limited to, cardiovascular disease, cancer, pediatrics, gerontology, epidemiology, general medicine, overweight and obesity, physical activity, public health, nutrition biochemistry and physiology, nutrient bioavailability, nutrition education, and food safety and technology.

Nominations: The Departments will consider nominations for Committee membership of individuals qualified to carry out the above-mentioned tasks. A nomination should include, at a minimum, the following for each nominee: (1) A letter of nomination that clearly states the name and affiliation of the nominee, the basis for the nomination (*i.e.*, specific attributes which qualify the nominee for service in this capacity), and a statement that the nominee is willing to serve as a member of the Committee; (2) the nominator's name, address and daytime telephone number, and the address telephone number, and electronic mail address of the individual being nominated; and (3) a copy of the nominee's curriculum vitae.

Equal opportunity practices, in line with HHS and USDA policies, will be followed in all membership appointments to the Committee. To ensure that recommendations of the Committee take into account the needs of the diverse groups served by HHS and USDA, membership shall include, to the extent practicable, individuals with demonstrated ability to represent minorities, women, and persons with disabilities.

Dated: April 28, 2003.

Richard H. Carmona,

Surgeon General and Acting Assistant Secretary for Health, U.S. Department of Health and Human Services.

Dated: May 2, 2003.

Eric M. Bost,

Under Secretary, Food, Nutrition and Consumer Services, U.S. Department of Agriculture.

Dated: May 8, 2003.

Joseph Jen,

Under Secretary, Research, Education, and Economics, U.S. Department of Agriculture.

[FR Doc. 03–12136 Filed 5–14–03; 8:45 am]

BILLING CODE 4150–32–P

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

[Docket No. 03–042–1]

Notice of Request for Extension of Approval of an Information Collection

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Extension of approval of an information collection; comment request.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces the Animal and Plant Health Inspection Service's intention to request an extension of approval of an information collection in support of regulations for the use of irradiation as a phytosanitary treatment for fruits and vegetables imported into the United States.

DATES: We will consider all comments that we receive on or before July 14, 2003.

ADDRESSES: You may submit comments by postal mail/commercial delivery or by e-mail. If you use postal mail/commercial delivery, please send four copies of your comment (an original and three copies) to: Docket No. 03–042–1, Regulatory Analysis and Development, PPD, APHIS, Station 3C71, 4700 River Road Unit 118, Riverdale, MD 20737–1238. Please state that your comment refers to Docket No. 03–042–1. If you use e-mail, address your comment to *regulations@aphis.usda.gov*. Your comment must be contained in the body of your message; do not send attached files. Please include your name and address in your message and "Docket No. 03–042–1" on the subject line.

You may read any comments that we receive on this docket in our reading room. The reading room is located in room 1141 of the USDA South Building, 14th Street and Independence Avenue SW., Washington, DC. Normal reading room hours are 8 a.m. to 4:30 p.m., Monday through Friday, except holidays. To be sure someone is there to help you, please call (202) 690–2817 before coming.

APHIS documents published in the **Federal Register**, and related information, including the names of organizations and individuals who have commented on APHIS dockets, are available on the Internet at *http://www.aphis.usda.gov/ppd/rad/webrepor.html*.

FOR FURTHER INFORMATION CONTACT: For information regarding regulations for the use of irradiation as a phytosanitary treatment for fruits and vegetables imported into the United States, contact Dr. Inder P. Gadh, Import Specialist, Phytosanitary Issues Management Team, PPQ, APHIS, 4700 Road Unit 140, Riverdale, MD 20737–1236; (301) 734–5210. For copies of more detailed information on the information collection, contact Mrs. Celeste Sickles, APHIS' Information Collection Coordinator, at (301) 734–7477.

SUPPLEMENTARY INFORMATION:

Title: Irradiation Phytosanitary Treatment for Fresh Fruits and Vegetables.

OMB Number: 0579–0155.

Type of Request: Extension of approval of an information collection.

Abstract: The Plant Protection Act (7 U.S.C. 7701–7772) authorizes the Secretary of Agriculture to regulate the importation of plants, plant products, and other articles into the United States to prevent the introduction of plant pests and noxious weeds.

The regulations in 7 CFR part 319 include specific requirements for the importation of fruits and vegetables. For example, fruits and vegetables from certain regions of the world must be treated for insect pests in order to be eligible for entry into the United States.

The regulations in 7 CFR part 305 provide for the use of irradiation as a phytosanitary treatment for certain fruits and vegetables imported into the United States. The irradiation treatment provides protection against 11 species of fruit flies and the mango seed weevil. It may be used as an alternative to other approved treatments for these pests in fruits and vegetables, such as fumigation, cold treatment, heat treatment, and other techniques.

This collection requires the submission of a compliance agreement, 24-hour notification, labeling requirements, dosimetry recordings, requests for dosimetry device approval, recordkeeping, requests for facility approval, trust fund agreement, and annual work plan.

We are asking the Office of Management and Budget (OMB) to approve our use of these information collection activities for an additional 3 years.

The purpose of this notice is to solicit comments from the public (as well as affected agencies) concerning our information collection. These comments will help us:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the Agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of our estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, through use, as appropriate, of automated, electronic, mechanical, and other collection technologies; *e.g.*, permitting electronic submission of responses.

Estimate of burden: The public reporting burden for this collection of information is estimated to average 0.0825093 hours per response.

Respondents: Foreign plant protection services, irradiation facility personnel, importers.

Estimated annual number of respondents: 125.

Estimated annual number of responses per respondent: 999.16.

Estimated annual number of responses: 124,895.

Estimated total annual burden on respondents: 10,305 hours. (Due to averaging, the total annual burden hours may not equal the product of the annual number of responses multiplied by the reporting burden per response.)

All responses to this notice will be summarized and included in the request for OMB approval. All comments will also become a matter of public record.

Done in Washington, DC, this 12th day of May, 2003.

Peter Fernandez,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 03–12166 Filed 5–14–03; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF AGRICULTURE

Forest Service

Alaska Region, (R–10), Chugach National Forest, Glacier and Seward Ranger Districts, Commercially Guided Helicopter Skiing

AGENCY: Forest Service, USDA.

ACTION: Notice of intent to prepare an environmental impact statement.

SUMMARY: The Chugach National Forest proposes to authorize a 5-year special use permit to Chugach Powder Guides, Inc. (CPG) for guided helicopter skiing on National Forest lands on the Kenai Peninsula near Girdwood and Seward, Alaska. Guided helicopter skiing would be permitted on 13 zones totaling 342,700 acres on the Glacier and Seward

Ranger Districts. The season of use would be from approximately December 15 through April 20. Three helicoptors would be used and 2,400 client days would be authorized.

DATES: Comments concerning the scope of the analysis must be received by June 6, 2003. The draft environmental impact statement is expected in July 2003 and the final environmental impact statement is expected in September 2003.

ADDRESSES: Send written comments to Teresa Paquet, Interdisciplinary Team Leader, Glacier Ranger District, P.O. Box 129, Girdwood, Alaska 99587–0129, or FAX comments to 907–783–2094, or send by e-mail to: *tpaquet@fs.fed.us*. For further information contact Teresa Paquet, Interdisciplinary Team Leader, Glacier Ranger District, P.O. Box 129, Girdwood, Alaska 99587–0129.

FOR FURTHER INFORMATION CONTACT: Teresa Paquet, Interdisciplinary Team Leader, Glacier Ranger District, P.O. Box 129, Girdwood, Alaska 99587–0129.

SUPPLEMENTARY INFORMATION:

Purpose and Need for Action

The Forest Service is responding to a request by a commercial guide service to provide helicopter skiing on the Kenai Peninsula. Chugach National Forest lands on the Kenai Peninsula provide many winter recreational opportunities including snowmobiling, cross-country skiing, ski touring, fixed-wing supported skiing, and helicopter supported skiing. Heli-skiing requires untracked powder snow, several vertical runs per day and a backcountry experience. Many areas on the Kenai have excellent physical characteristics (terrain and snow conditions) for helicopter skiing. There is not enough suitable terrain on private lands to meet this need. The proposed areas are near a major population center, Anchorage, which is needed to support such an operation. This proposal would help meet the public demand for quality, safe, guided helicopter skiing. Guided helicopter skiing would help meet the Chugach National Forest Revised Land and Resource Management Plan's goals to (1) maintain quality settings for motorized recreation opportunities and (2) provide helicopter access for skiing at appropriate locations.

CPG has submitted an application for a 5-year special use permit for outfitting/guiding helicopter skiing on National Forest lands on the Kenai Peninsula, near Girdwood and Seward Alaska. The applicant requested the use of 13 zones (342,700 acres) during the winter ski season (December 15, through April 20). Eight of these zones have been used by CPG under temporary permits and five are additional exploratory zones. The eight core zones are: Glacier-Winner, West Twentymile, North Twentymile, East Twentymile, Placer-Skookum, Grandview, and Bench Peak. The five exploratory zones are Seattle Creek, Moose Creek, Ptarmigan, Snow River and Mount Ascension. The project area is bordered on the west by the Hope Highway, Seward Highway, and the Forest boundary near Resurrection River, on the north by the Forest boundary, on the east by the divide between the Kenai Peninsula and Prince William Sound and non-National Forest land, and on the south by the Forest boundary and non-National Forest land.

Proposed Action

The Chugach National Forest proposes to authorize a 5-year special use permit to Chugach Powder Guides, Inc. (CPG) for guided helicopter skiing on National Forest lands on the Kenai Peninsula near Girdwood and Seward, Alaska. Guided helicopter skiing would be permitted on 13 use areas totaling 342,700 acres on the Glacier and Seward Ranger Districts. The season of use would be from approximately December 15 through April 20. Three helicopters would be used and 2,400 client days per season (1,800 core and 600 exploratory) would be authorized.

Possible Alternatives

Alternative 1. No Action.

Alternative 2. Submitted by proponent. 1,800 core clients days 600 exploratory client days. All use areas. All staging areas and 30 cycles (take off and landing) per staging area per day. Timing restrictions in Bench Creek West.

Alternative 3. Proponent's proposal with design features to address noise and user conflicts. 1,800 core and 600 exploratory client days. No use in Seattle Creek West, Moose Creek West and Ptarmigan West. No staging area in Moose Pass. 30 cycles per staging area per day. Timing restriction in Seattle Creek East and Bench Peak West.

Alternative 4. Designed to maintain current helicopter activity. No use in Seattle Creek, Ptarmigan, Moose Creek, Mount Ascension and Snow River. 1,200 client days. No staging areas in Moose Pass. 30 cycles per day per staging area. Timing restrictions in Bench Peak West.

Alternative 5. Designed to minimize user conflicts. 1,800 core and 600 exploratory client days. No use in Seattle Creek West, Seattle Creek East, Moose Creek West, Ptarmigan West, and Bench Peak West. No staging area in Moose Pass. 30 cycles per staging area per day.

Alternative 6. Designed to minimize noise and social impacts in Moose Pass. 1,800 core and 300 exploratory client days. No use in Moose Creek, Ptarmigan, Bench Peak West, Seattle Creek West, and Seattle Creek East. No staging area in Moose Pass. 30 cycles per staging area per day, except Girdwood Airstrip which would have 20 cycles per day.

Responsible Officials

Michael R. Kania, District Ranger, Seward Ranger District, 334 Fourth Ave., P.O. Box 390, Seward, Alaska 99664–0390; and James M. Fincher, District Ranger, Glacier Ranger District, Forest Station Road, PO Box 129, Girdwood, Alaska 99587–0129.

Nature of Decision To Be Made

The decision to be made from this analysis is whether or not to issue a 5-year permit to Chugach Powder Guides for helicopter skiing on the Glacier and Seward Ranger Districts, and if so, for what areas, for what period of time and with what restrictions.

Scoping Process

Public Involvement was initiated in September 2002 with the Chugach National Forest Schedule of Proposed Actions. On October 31, 2002, a letter describing the proposed action and seeking public comment was mailed to over 800 interested individuals, businesses and environmental groups. Public meetings, to share information and gather comments regarding the proposal, were held at Seward and Moose Pass on November 22, 2002, and at Hope and Girdwood on December 12, 2002. Additional public meetings, to share information and gather comments regarding draft Alternatives were held at Moose Pass on April 29, 2003, Seward on April 30, 2003, and at Hope and Girdwood on May 1, 2003.

Preliminary Issues

1. Wildlife. Helicopter operations and skiing activities can disturb wildlife. Factors include the distance to disturbance, sensitivity of individual species to noise and level of habituation. Excessive disturbance can cause harm to overall health, growth rates and reproductive success. Some of the species with the greatest potential to be impacted in the permit area are brown bear, wolverine, mountain goat, and Dall sheep.

2. Impacts on communities. Lifestyles of rural community residents can be negatively impacted by increases in permitted recreation activities either incrementally over a number of years or by sudden increases in the number of helicopter trips. The noise of helicopters during flights could affect the quality of life for residents in the following areas: Girdwood, Sunrise, Moose Pass, and Seward.

3. Impacts to recreationists. Heli-skiing activities could negatively impact backcountry ground-based recreationists' experience by helicopter noise disturbance, increasing avalanche hazards and their sudden presence in areas that ground-based recreationists have expended effort to reach.

4. Wilderness recommendations. Permitted landings in roadless areas could affect future Wilderness recommendations.

5. Wildlife cumulative effects. Cumulative effects of various recreation activities (motorized and non-motorized) can have detrimental effects on wildlife use of habitat in alpine areas.

Permits or Licenses Required

USDA Forest Service Special Use Permit.

Comment Requested

This notice of intent continues the scoping process which guides the development of the environmental impact statement. Comments specific to the proposal and draft Alternatives are being sought.

Early Notice of Importance of Public Participation in Subsequent Environmental Review: A draft environmental impact statement will be prepared for comment. The comment period on the draft environmental impact statement will be 45 days from the date the Environmental Protection Agency publishes the notice of availability in the **Federal Register**.

The Forest Service believes, at this early stage, it is important to give reviewers notice of several court rulings related to public participation in the environmental review process. First, reviewers of draft environmental impact statements must structure their participation in the environmental review of the proposal so that it is meaningful and alerts an agency to the reviewer's position and contentions, (*Vermont Yankee Nuclear Power Corp.* v. *NRDC*, 435 U.S. 519, 553 (1978)). Also, environmental objections that could be raised at the draft environmental impact statement stage but that are not raised until after completion of the final environmental impact statement may be waived or dismissed by the courts, (*City of Angoon* v. *Hodel*, 803 F.2d 1016, 1022 (9th Cir. 1986) and *Wisconsin Heritages, Inc.* v. *Harris*, 490 F. Supp. 1334, 1338 (E.D. Wis. 1980)). Because of these court rulings, it is very important that those interested in this proposed action participate by the close of the June 6, 2003, comment period so that substantive comments and objections are made available to the Forest Service at a time when it can meaningfully consider them and respond to them in the final environmental impact statement.

To assist the Forest Service in identifying and considering issues and concerns on the proposed action, comments on the draft environmental impact statement should be as specific as possible. It is also helpful if comments refer to specific pages or chapters of the draft statement. Comments may also address the adequacy of the draft environmental impact statement or the merits of the alternatives formulated and discussed in the statement. Reviewers may wish to refer to the Council on Environmental Quality Regulations for implementing the procedural provisions of the National Environmental Policy Act at 40 CFR 1503.3 in addressing these points.

Comments received, including the names and addresses of those who comment, will be considered part of the public record on this proposal and will be available for public inspection.

(Authority: 40 CFR 1501.7 and 1508.22; Forest Service Handbook 1909.15, Section 21)

Dated: May 5, 2003.

Gerald F. Xavier,

Acting Forest Supervisor.

[FR Doc. 03–11871 Filed 5–14–03; 8:45 am]

BILLING CODE 3410–11–P

DEPARTMENT OF AGRICULTURE

Forest Service

Idaho Panhandle National Forest, Idaho—Quartz Gold Project EIS

AGENCY: Forest Service, USDA.

ACTION: Notice of intent to prepare an environmental impact statement.

SUMMARY: The Forest Service will prepare an environmental impact statement on a proposal of ecosystem management in the Quartz Gold project area, which is approximately 44,000 acres in size. Opportunities were developed through a comparison of existing project area conditions with desired future conditions for all the resources in the project area. The assessment utilized the Idaho Panhandle Forest Plan and findings from the St. Joe Geographic Assessment, Upper Columbia River Basin Assessment along with trends observed by interdisciplinary specialists conducting on the ground assessments. The proposal improves forest health, wildlife and fisheries habitat, and watershed health. It reduces risks to wildfire, and maintains a spectrum of access for public recreation. The project is intended to move the landscape toward long-term ecologic, economic and social sustainability.

DATES: Comments concerning the scope of the analysis must be received within 30 days of publication of this notice in the **Federal Register**. The draft environmental impact statement is expected to be available for public review in July 2003 and the final environmental impact statement is expected November 2003.

ADDRESSES: Send written comments to George Bain, District Ranger, St. Joe Ranger District, PO Box 407, St. Maries, Idaho 83861 or electronically to *gbain@fs.fed.us*. For further information, mail correspondence to Kimberly Johnson, EIS Team Leader at the address listed above. Information on this project can be found on the Internet by going to *http://www.fs.fed.us/ipnf/* and looking under Ecosystems, Management, Index of NEPA Project and St. Joe Ranger District.

FOR FURTHER INFORMATION CONTACT: Kimberly Johnson, Quartz Gold Project Team Leader, 208–245–6072.

SUPPLEMENTARY INFORMATION:

Purpose and Need for Action

The purpose of this proposal is to improve forest health by managing vegetative conditions that in the long term encourage more resilient and sustainable forest conditions. It also improves and maintains winter range conditions and white bark pine habitat, which are both declining. It will reduce the risk of resource loss through fuel management and improve growing conditions for sapling/pole stands. The proposal will contribute to watershed recovery processes by correcting sediment sources from the existing road system. Approximately 65% of stream-crossing culverts surveyed are undersized for a 100 year event (as required by Infish). It will also improve instream habitat conditions as several streams in the area are not meeting Infish standards as directed in the Forest Plan and provide fish passage on those road/stream crossing culverts. It will increase wildlife security which is currently below Forest Plan standards and maintain a spectrum of access for public recreation and provide opportunities for disabled hunters,

which currently, one exists on the District.

Proposed Action

The proposed action to meet the purpose and need of the project area is: commercially harvest approximately 5,300 acres of which 4,000 acres is intermediate harvest, 1,100 acres are sanitation salvage and approximately 200 acres of regeneration harvest (clearcut with reserve). The commercial harvest would include approximately 9 miles of road construction and reconstruction on existing roads. The proposal also includes the use of prescribe burning on approximately 466 acres on big game winter range, building approximately 3 miles of fuel breaks on the Idaho/Montana border, conducting pre-commercial stand improvement on approximately 2,000 acres, enhancement of whitebark pine habitat on 1,434 acres, by thinning around the remaining trees, and decommissioning approximately 160 miles of road and putting approximately 68 miles of road into storage. The proposal also adds access for disabled hunters, provides loops for ATV enthusiasts, increases wildlife security through effective road closures and improves instream fisheries habitat by placing structures in several streams in the area.

Responsible Official

Ranotta McNair, Forest Supervisor, Idaho Panhandle National Forest, 3815 Schreiber Way, Coeur D'Alene, Idaho 83815.

Nature of Decision To Be Made

The St. Joe Ranger District will prepare the EIS. The Forest Supervisor of the Idaho Panhandle National Forest will decide whether to implement this project, and if so, in what manner. The decision will be documented in a Record of Decision (ROD).

Scoping Process

Public Scoping packages describing the proposed action were sent out to the Quartz Gold Project mailing list in January 2003. An open house was held in February of 2003. A field trip to the project area is planned for May or June of 2003.

Preliminary Issues

Preliminary issues from scoping have been identified. These include effects of the proposed vegetation management and roads on water yield and sediment delivery to streams, the effects of management activities on riparian habitat conservation areas, the effects of proposed access management on the full spectrum of recreation use of roads and trial in the project area, and economic cost efficiency of proposed commercial harvest and road construction and decommissioning.

Comment Requested

This notice of intent initiates the scoping process which guides the development of the environmental impact statement. To assist the Forest Service in identifying and considering issues and concerns on the proposed action, comments should be as specific as possible. Public participation in this analysis is welcome at any time, however; comments received within 30 days of publication of this notice will be especially useful in the preparation of the Draft EIS.

Early Notice of Importance of Public Participation in Subsequent Environmental Review: A draft environmental impact statement will be prepared for comment. The comment period on the draft environmental impact statement will be 45 days from the date the Environmental Protection Agency publishes the Notice of Availability in the **Federal Register**.

The Forest Service believes, at this early stage, it is important to give reviewers notice of several court rulings related to public participation in the environmental review process. First, reviewers of draft environmental impact statements must structure their participation in the environmental review of the proposal so that it is meaningful and alerts an agency to the reviewer's position and contentions. Vermont Yankee Nuclear *Power Corp.* v. *NRDC*, 435 U.S. 519, 553 (1978). Also, environmental objections that could be raised at the draft environmental impact statement stage but that are not raised until after completion of the final environmental impact statement may be waived or dismissed by the courts. *City of Angoon* v. *Hodel*, 803 F.2d 1016, 1022 (9th Cir. 1986) and Wisconsin *Heritages*, Inc. v. *Harris*, 490 F. Supp. 1334;, 1338 (E.D. Wis. 1980). Because of these court rulings, it is very important that those interested in this proposed action participate by the close of the 45 day comment period so that substantive comments and objections are made available to the Forest Service at a time when it can meaningfully consider them and respond to them in the final environmental impact statement.

To assist the Forest Service in identifying and considering issues and concerns on the proposed action, comments on the draft environmental impact statement should be as specific as possible. It is also helpful if comments refer to specific pages or chapters of the draft statement. Comments may also address the adequacy of the draft environmental impact statement or the merits of the alternatives formulated and discussed in the statement. Reviewers may wish to refer to the Council on Environmental Quality Regulations for implementing the procedural provisions of the National Environmental Policy Act at 40 CFR 1503.3 in addressing these points.

Comments received, including the names and addresses of those who comment, will be considered part of the public record on this proposal and will be available for public inspection.

(Authority: 40 CFR 1501. 7 and 1508.22; Forest Service Handbook 1909.15, Section 21)

Dated: May 9, 2003.

Ranotta K. McNair,

Forest Supervisor.

[FR Doc. 03–12104 Filed 5–14–03; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Forest Service

Public Meetings of the Black Hills National Forest Advisory Board

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The Black Hills National Forest Advisory Board (NFAB) will hold meetings to become informed about Black Hills Naitonal Forest issues and to reach consensus on those issues so as to make management recommendations to the forest supervisory. The meetings are open, and the public may attend any part of the meetings. The May 28 agenda includes a presentation on the Phase II Amendment to the Black Hills National Forest 1997 Land and Resource Management Plan.

DATES: The meetings will be held on the following dates:

Wednesday, May 28, 2003 from 1 to 6 p.m.
Friday, July 11, 2003 from 1 to 6 p.m.
Wednesday, August 20, 2003 from 1 to 6 p.m.
Wednesday, September 17, 2003 from 1 to 6 p.m.
Wednesday, October 15, 2003 from 1 to 6 p.m.
Wednesday, November 19, 2003 from 1 to 6 p.m.

ADDRESSES: The meetings will take place at the Alex Johnson Hotel located at 523 Sixth Street, Rapid City, SD.

FOR FURTHER INFORMATION CONTACT: Frank Carroll, Black Hills National Forest, 25041 North Highway 16, Custer, SD, 57730, (605) 673–9200.

Dated: May 6, 2003.

David M. Thom,

Acting Black Hills National Forest Supervisor.

[FR Doc. 03–12105 Filed 5–14–03; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Forest Service

Ravalli County Resource Advisory Committee

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The Ravalli County Resource Advisory Committee will be meeting to discuss projects for 2003 and monitoring of 2002 projects. Agenda topics will include project proposal submissions and a public forum (question and answer session). The meeting is being held pursuant to the authorities in the Federal Advisory Committee Act (Pub. L. 92–463) and under the Secure Rural Schools and Community Self-Determination Act of 2000 (Pub. L. 106–393). The meeting is open to the public.

DATES: The meeting will be held on May 27, 2003, 6:30 p.m.

ADDRESSES: The meeting will be held at the Ravalli County Administration Building, 215 S. 4th Street, Hamilton, Montana. Send written comments to Jeanne Higgins, District Ranger, Stevensville Ranger District, 88 Main Street, Stevensville, MT 59870, by facsimile (406) 777–7423, or electronically to *jmhiggins@fs.fed.us.*

FOR FURTHER INFORMATION CONTACT: Jeanne Higgins, Stevensville District Ranger and Designated Federal Officer, Phone: (406) 777–5461.

Dated: May 8, 2003.

David T. Bull,

Forest Supervisor.

[FR Doc. 03–12103 Filed 5–14–03; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Forest Service

Tuolumne County Resource Advisory Committee

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The Tuolumne County Resource Advisory Committee will meet on May 19, 2003 at the City of Sonora Fire Department, in Sonora, California. The purpose of the meeting is to review project proposal submittals, and determine presentation needs for the upcoming June and July meetings.

DATES: The meeting will be held May 19, 2003, from 12 p.m. to 3 p.m.

ADDRESSES: The meeting will be held at the City of Sonora Fire Department located at 201 South Shepherd Street, in Sonora, California (CA 95370).

FOR FURTHER INFORMATION CONTACT: Pat Kaunert, Committee Coordinator, USDA, Stanislaus National Forest, 19777 Greenley Road, Sonora, CA 95370 (209) 532–3671; e-mail *pkaunert@fs.fed.us*

SUPPLEMENTARY INFORMATION: Agenda items to be covered include: (1) Status of replacement member applicants; (2) Review project proposal submittals; (3) Determine which proposal proponents to invite to make an oral presentation at the June and July meetings. This meeting is open to the public.

Dated: May 7, 2003.

Tom Quinn,

Forest Supervisor.

[FR Doc. 03–12106 Filed 5–14–03; 8:45 am]

BILLING CODE 3410–ED–M

DEPARTMENT OF AGRICULTURE

Forest Service

Notice of Resource Advisory Committee Meeting

AGENCY: North Central Idaho Resource Advisory Committee, Kamiah, Idaho, USDA, Forest Service.

ACTION: Notice of meeting.

SUMMARY: Pursuant to the authorities in the Federal Advisory Committee Act (Pub. L. 92–463) and under the Secure Rural Schools and Community Self-Determination Act of 2000 (Pub. L. 106–393) the Nez Perce and Clearwater National Forests' North Central Idaho Resource Advisory Committee will meet Thursday, May 29, 2003 in Kooskia, Idaho for a business meeting. The meeting is open to the public.

SUPPLEMENTARY INFORMATION: The business meeting on May 29 begins at 10 a.m. (PST), at the IOOF Hall, Kooskia, Idaho. Agenda topics will include discussion of potential projects. A public forum will begin at 2:30 p.m. (PST).

FOR FURTHER INFORMATION CONTACT: Ihor Mereszczak, Staff Officer and Designated Federal Officer at (208) 935–2513.

Dated: May 6, 2003.

Ihor Mereszczak,

Acting Forest Supervisor.

[FR Doc. 03–12126 Filed 5–14–03; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Natural Resources Conservation Service

Notice of Proposed Changes to Section IV of the Field Office Technical Guide (FOTG) of the Natural Resources Conservation Service in Indiana

AGENCY: Natural Resources Conservation Service (NRCS), USDA.

ACTION: Notice of availability of proposed changes in Section IV of the FOTG of the NRCS in Indiana for review and comment.

SUMMARY: It is the intention of NRCS in Indiana to issue two revised conservation practice standards in Section IV of the FOTG. The revised standards are: Dike (356) and Wildlife Watering Facility (648). These practices may be used in conservation systems that treat highly erodible land and/or wetlands.

DATES: Comments will be received for a 30-day period commencing with this date of publication.

ADDRESSES: Address all requests and comments to Jane E. Hardisty, State Conservationist, Natural Resources Conservation Service (NRCS), 6013 Lakeside Blvd., Indianapolis, Indiana 46278. Copies of this standard will be made available upon written request. You may submit your electronic requests and comments to *darrell.brown@in.usda.gov.*

FOR FURTHER INFORMATION CONTACT: Jane E. Hardisty, 317–290–3200.

SUPPLEMENTARY INFORMATION: Section 343 of the Federal Agriculture Improvement and Reform Act of 1996 states that after enactment of the law, revisions made to NRCS state technical guides used to carry out highly erodible land and wetland provisions of the law, shall be made available for public review and comment. For the next 30 days, the NRCS in Indiana will receive comments relative to the proposed changes. Following that period, a determination will be made by the NRCS in Indiana regarding disposition of those comments and a final determination of changes will be made.

Dated: April 21, 2003.

Jane E. Hardisty,

State Conservationist, Iqdianapolis, Indiana.

[FR Doc. 03–12065 Filed 5–14–03; 8:45 am]

BILLING CODE 3410–16–P

DEPARTMENT OF AGRICULTURE

Rural Utilities Service

Information Collection Activity; Comment Request

AGENCY: Rural Utilities Service, USDA.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35, as amended), the Rural Utilities Service (RUS) invites comments on this information collection for which RUS intends to request approval from the Office of Management and Budget (OMB).

DATES: Comments on this notice must be received by July 14, 2003.

FOR FURTHER INFORMATION CONTACT: F. Lamont Heppe, Jr., Director, Program Development and Regulatory Analysis, Rural Utilities Service, 1400 Independence Ave., SW., STOP 1522, Room 4036 South Building, Washington, DC 20250–1522. Telephone: (202) 720–9550. FAX: (202) 720–4120.

SUPPLEMENTARY INFORMATION: The Office of Management and Budget's (OMB) regulation (5 CFR part 1320) implementing provisions of the Paperwork Reduction Act of 1995 (Pub. L. 104–13) requires that interested members of the public and affected agencies have an opportunity to comment on information collection and recordkeeping activities (*see* 5 CFR 1320.8(d)). This notice identifies an information collection that RUS is submitting to OMB for extension.

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the Agency, including whether the information will have practical utility; (b) the accuracy of the Agency's estimate of the burden of the proposed collection of information including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology. Comments may be sent to: F. Lamont Heppe, Jr., Director, Program Development and Regulatory Analysis, Rural Utilities Service, U.S. Department of Agriculture, STOP 1522, 1400 Independence Ave., SW., Washington, DC 20250–1522. FAX: (202) 720–4120.

Title: Distance Learning and Telemedicine Loan and Grant Program.

OMB Control Number: 0572–0096.

Type of Request: Extension of a currently approved information collection package.

Abstract: The Rural Utilities Service's (RUS) Distance Learning and Telemedicine (DLT) Loan and Grant program provides loans and grants for advanced telecommunications services to improve rural areas' access to educational and medical services. The various forms and narrative statements required are collected from the applicants (rural community facilities, such as schools, libraries, hospitals, and medical facilities, for example). The purpose of collecting the information is to determine such factors as eligibility of the applicant; the specific nature of the proposed project; the purposes for which loan and grant funds will be used; project financial and technical feasibility; and, compliance with applicable laws and regulations. In addition, for grants funded pursuant to the competitive evaluation process, information collected facilitates RUS' selection of those applications most consistent with DLT goals and objectives in accordance with the authorizing legislation and implementing regulation.

Estimate of Burden: Public reporting burden for this collection of information is estimated to average 2.47 hours per response.

Respondents: Business or other for-profit; not-for-profit institutions; and State, Local or Tribal Government.

Estimated Number of Respondents: 300.

Estimated Number of Responses per Respondent: 22.00.

Estimated Total Annual Burden on Respondents: 16,316 hours.

Copies of this information collection can be obtained from Michele Brooks, Program Development and Regulatory Analysis, at (202) 690–1078. FAX: (202) 720–4120.

All responses to this notice will be summarized and included in the request for OMB approval. All comments will also become a matter of public record.

Dated: May 9, 2003.

Curtis M. Anderson,

Acting Administrator, Rural Utilities Service.

[FR Doc. 03–12068 Filed 5–14–03; 8:45 am]

BILLING CODE 3410–15–P

DEPARTMENT OF AGRICULTURE

Rural Utilities Service

Information Collection Activity; Comment Request

AGENCY: Rural Utilities Service, USDA.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35, as amended), the Rural Utilities Service (RUS) invites comments on this information collection for which RUS intends to request approval from the Office of Management and Budget (OMB).

DATES: Comments on this notice must be received by July 14, 2003.

FOR FURTHER INFORMATION CONTACT: F. Lamont Heppe, Jr., Director, Program Development and Regulatory Analysis, Rural Utilities Service, 1400 Independence Ave., SW., STOP 1522, Room 4036 South Building, Washington, DC 20250–1522. Telephone: (202) 720–9550. FAX: (202) 720–4120.

SUPPLEMENTARY INFORMATION: The Office of Management and Budget's (OMB) regulation (5 CFR 1320) implementing provisions of the Paperwork Reduction Act of 1995 (Pub. L. 104–13) requires that interested members of the public and affected agencies have an opportunity to comment on information collection and recordkeeping activities (see 5 CFR 1320.8(d)). This notice identifies an information collection that RUS is submitting to OMB for extension.

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the Agency, including whether the information will have practical utility; (b) the accuracy of the Agency's estimate of the burden of the proposed collection of information including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology. Comments may be sent to: F. Lamont Heppe, Jr., Director, Program Development and Regulatory Analysis, Rural Utilities Service, U.S. Department of Agriculture, STOP 1522, 1400 Independence Ave., SW., Washington, DC 20250–1522. FAX: (202) 720–4120.

Title: State Telecommunications Modernization Plan.

OMB Control Number: 0572–0104.

Type of Request: Extension of a currently approved information collection.

Abstract: This information collection requirement stems from passage of the Rural Electrification Loan Restructuring Act (RELRA, Pub. L. 103–129) on November 1, 1993, which amended the Rural Electrification Act of 1936, 7 U.S.C. 901 *et seq.* (the RE Act). RELRA requires that a State Telecommunications Modernization Plan (Modernization Plan), covering at a minimum the Rural Utilities Service (RUS) borrowers in the state, be established in a state or RUS cannot make hardship or concurrent cost-of-money and Rural Telephone Bank (RTB) loans for construction in that state. It is the policy of RUS that every State has a Modernization Plan which provides for the improvement of the State's telecommunications network. A proposed Modernization plan must be submitted to RUS for approval. RUS will approve a proposed Modernization Plan if it conforms to the provisions of 7 CFR part 1751, subpart B.

Estimate of Burden: Public reporting burden for this collection of information is estimated to average 350 hours per response.

Respondents: Business or other for-profit; not-for-profit organizations.

Estimated Number of Respondents: 1.

Estimated Number of Responses per Respondent: 1.

Estimated Total Annual Burden on Respondents: 350.

Copies of this information collection can be obtained from MaryPat Daskal, Program Development and Regulatory Analysis, at (202) 720–7853, FAX: (202) 720–4120.

All responses to this notice will be summarized and included in the request for OMB approval. All comments will also become a matter of public record.

Dated: May 9, 2003.

Curtis M. Anderson,

Acting Administrator, Rural Utilities Service.

[FR Doc. 03–12069 Filed 5–14–03; 8:45 am]

BILLING CODE 3410–15–P

DEPARTMENT OF AGRICULTURE

Rural Utilities Service

Information Collection Activity; Comment Request

AGENCY: Rural Utilities Service, USDA.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35, as amended), the Rural Utilities Service (RUS) invites comments on this information collection for which RUS intends to request approval from the Office of Management and Budget (OMB).

DATES: Comments on this notice must be received July 14, 2003.

FOR FURTHER INFORMATION CONTACT: F. Lamont Heppe, Jr., Director, Program Development and Regulatory Analysis, Rural Utilities Service, 1400 Independence Ave., SW., STOP 1522, Room 4036 South Building, Washington, DC 20250–1522. Telephone: (202) 720–9550. FAX: (202) 720–4120.

SUPPLEMENTARY INFORMATION: The Office of Management and Budget's (OMB) regulation (5 CFR 1320) implementing provisions of the Paperwork Reduction Act of 1995 (Pub. L. 104–13) requires that interested members of the public and affected agencies have an opportunity to comment on information collection and recordkeeping activities (*see* 5 CFR 1320.8(d)). This notice identifies an information collection that RUS is submitting to OMB for extension.

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the Agency, including whether the information will have practical utility; (b) the accuracy of the Agency's estimate of the burden of the proposed collection of information including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology. Comments may be sent to: F. Lamont Heppe, Jr., Director, Program Development and Regulatory Analysis, Rural Utilities Service, U.S. Department of Agriculture, STOP 1522, 1400 Independence Ave., SW., Washington, DC 20250–1522. FAX: (202) 720–4120.

Title: RUS Loan Prepayments and Related Reporting Burdens.

OMB Control Number: 0572–0088.

Type of Request: Extension of a currently approved information collection.

Abstract: 7 CFR Part 1786 establishes policies and procedures mandated by legislation. This part deals with the prepayment of certain loans held by the Federal Financing Bank (FFB), a wholly-owned government instrumentality under the supervision of the Secretary of the Treasury, and guaranteed by RUS.

This regulation sets forth policy and procedures implementing section 306(A) of the RE Act which permits an RUS-financed electric or telephone system to prepay an FFB loan (or any loan advance thereunder) by paying the outstanding principal balance due on the loan (or advance).

Estimate of Burden: Public reporting burden for this collection of information is estimated to average 2.21 hours per response.

Respondents: Not-for-profits organizations; business or, other for-profit.

Estimated Number of Respondents: 28.

Estimated Number of Responses per Respondent: 1.

Estimated Total Annual Burden on Respondents: 62 hours.

Copies of this information collection can be obtained from MaryPat Daskal, Program Development and Regulatory Analysis, at (202) 720–7853. FAX: (202) 720–4120.

All responses to this notice will be summarized and included in the request for OMB approval. All comments will also become a matter of public record.

Dated: May 9, 2003.

Curtis M. Anderson,

Acting Administrator, Rural Utilities Service.

[FR Doc. 03–12070 Filed 5–14–03; 8:45 am]

BILLING CODE 3410–15–P

COMMISSION ON CIVIL RIGHTS

Agenda and Notice of Public Meeting of the North Carolina State Advisory Committee

Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights, that a conference call of the North Carolina Advisory Committee will convene at 2 p.m. and adjourn at 4 p.m. on Thursday, May 15, 2003. The purpose of the conference call is to finalize project proposal plans for North Carolina.

This conference call is available to the public through the following call-in number: 1–800–473–8693, access code: 17002060. Any interested member of the public may call this number and listen to the meeting. Callers can expect to incur charges for calls not initiated using the supplied call-in number or over wireless lines and the Commission will not refund any incurred charges. Callers will incur no charge for calls

using the call-in number over land-line connections. Persons with hearing impairments may also follow the proceedings by first calling the Federal Relay Service at 1–800–977–8339 and providing the Service with the conference call number and access code.

To ensure that the Commission secures an appropriate number of lines for the public, persons are asked to register by contacting Bobby Doctor, Director of the Southern Regional Office, 404–562–7000 (TDD 404–562–7004), by 4 p.m. on Wednesday, May 14, 2003.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, DC, May 7, 2003.

Ivy L. Davis,

Chief, Regional Programs Coordination Unit.

[FR Doc. 03–12134 Filed 5–12–03; 3:43 pm]

BILLING CODE 6335–01–P

COMMISSION ON CIVIL RIGHTS

Agenda and Notice of Public Meeting of the South Carolina State Advisory Committee

Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights, that a conference call of the South Carolina Advisory Committee will convene at 2 p.m. and adjourn at 4 p.m. on Tuesday, May 20, 2003. The purpose of the conference call is to receive a briefing from key state officials on issues affecting South Carolina.

This conference call is available to the public through the following call-in number: 1–888–777–0937, access code: 17002109. Any interested member of the public may call this number and listen to the meeting. Callers can expect to incur charges for calls not initiated using the supplied call-in number or over wireless lines and the Commission will not refund any incurred charges. Callers will incur no charge for calls using the call-in number over land-line connections. Persons with hearing impairments may also follow the proceedings by first calling the Federal Relay Service at 1–800–977–8339 and providing the Service with the conference call number and access code.

To ensure that the Commission secures an appropriate number of lines for the public, persons are asked to register by contacting Bobby Doctor, Director of the Southern Regional Office, 404–562–7000 (TDD 404–562–7004), by 4 p.m. on Monday, May 19, 2003.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, DC, May 7, 2003.

Ivy L. Davis,

Chief, Regional Programs Coordination Unit.

[FR Doc. 03–12135 Filed 5–12–03; 3:43 pm]

BILLING CODE 6335–01–P

DEPARTMENT OF COMMERCE

International Trade Administration

Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Amendment to Notice of Opportunity To Request Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Amendment to notice of Opportunity to Request Administrative Review of Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation.

SUMMARY: This is an amendment to the notice of "Opportunity to Request Administrative Review of Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation" published on May 1, 2003 (68 FR 23281).

EFFECTIVE DATE: May 15, 2003.

FOR FURTHER INFORMATION CONTACT: Holly A. Kuga, Office of AD/CVD Enforcement, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230, telephone: (202) 482–4737.

SUPPLEMENTARY INFORMATION: This notice is an amendment to the "Opportunity to Request Administrative Review" notice published on May 1, 2003 (68 FR 23281). As explained in the notice the Department published on May 6, 2003, *"Antidumping and Countervailing Duty Proceedings: Assessment of Antidumping Duties,"* 68 FR 23954, the Department has clarified its practice with respect to the collection of final antidumping duties on imports of merchandise where intermediate firms are involved. The public should be aware of this clarification in determining whether to request an adminstrative review of merchandise subject to antidumping findings and orders. See also the Import Administration Web site at *http://www.ia.ita.doc.gov.*

The clarification applies to all entries for which the anniversary month for requesting an administrative review of an antidumping duty order or finding is May 2003 or later, beginning with the orders cited in the opportunity notice for May 2003 anniversary cases which published on May 1, 2003 (68 FR 23281).

Further, the clarification addresses the assessment of duties on imports of merchandise from a market-economy country subject to an antidumping duty order. The clarification does not apply to imports of merchandise from non-market-economy (NME) countries which may be subject to an antidumping duty order. In addition, the clarification does not apply to imports of merchandise subject to a countervailing duty order because this issue does not arise in the subsidy enforcement context.

Dated: May 9, 2003.

Holly A. Kuga,

Acting Deputy Assistant Secretary, Group II for Import Administration.

[FR Doc. 03–12185 Filed 5–14–03; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A-533–808]

Stainless Steel Wire Rods From India: Final Results and Partial Rescission of Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, U.S. Department of Commerce.

ACTION: Notice of final results and partial rescission of antidumping duty administrative review of stainless steel wire rods from India.

SUMMARY: On January 8, 2003, the Department of Commerce ("the Department") published in the **Federal Register** the preliminary results of its administrative review of the antidumping duty order on stainless steel wire rods from India. *See Stainless Steel Wire Rods From India: Preliminary Results and Partial Rescission of Antidumping Duty Administrative Review*, 68 FR 1040 (January 8, 2003) (*"Preliminary Results"*). This review covers the Viraj Group Ltd., ("Viraj Group"), Panchmahal Steel Limited ("Panchmahal"), and Mukand Limited ("Mukand"), manufacturers and exporters of subject merchandise to the United States. Isibars Limited ("Isibars") was originally a respondent in this review, but the Department rescinded the review of Isibars when petitioner, being the only party to request the review of Isibars, withdrew its request for review. *See Preliminary Results.* The period of review is December 1, 2000 through November 30, 2001.

Based on our analysis of the comments received, we have made changes from the preliminary results of review. Therefore, the final results differ from the *Preliminary Results* of review with respect to the weighted-average dumping margin for the Viraj Group and Mukand. The final weighted-average dumping margin for the reviewed firms is listed below in the section entitled "Final Results of the Review."

EFFECTIVE DATE: May 15, 2003.

FOR FURTHER INFORMATION CONTACT: Stephen Bailey (Viraj Group, Isibars, and Panchmahal) and Jonathan Herzog (Mukand), Import Administration, International Trade Administration, U.S. Department of Commerce, 14th and Constitution Avenue, N.W., Washington, D.C. 20230; telephone: 202–482–1102, or 202–482–4271, respectively.

SUPPLEMENTARY INFORMATION:

Background

On January 8, 2003, the Department published in the **Federal Register** the preliminary results and partial rescission of its administrative review of the antidumping duty order on stainless steel wire rods from India. *See Preliminary Results.* We invited parties to comment on our preliminary results of review. We received case briefs from Panchmahal on February 14, 2003, referencing arguments made in its submissions to the Department dated January 6, 2003 and January 13, 2003. On February 11, 2003, Kurt Orban Partners LLC ("Kurt Orban"), an interested party, submitted a case brief. Pursuant to a request from the Department to redact new information, Kurt Orban resubmitted its case brief on March 13, 2003. We received Mukand's case briefs on January 13, 2003, and February 14, 2003. We received the Viraj Group's case brief on February 14, 2003. We received petitioner's case briefs addressing Mukand and the Viraj Group on February 14, 2003. On February 24, 2003, we received rebuttal briefs from the Viraj Group and from petitioner addressing the arguments presented by Panchmahal, Mukand, and the Viraj Group. Pursuant to 19 CFR 351.309(c)(ii), the Department directed the Viraj Group to resubmit their brief and omit certain arguments that were not raised in a timely manner. *See* the Department's letter dated March 26, 2003 rejecting the Viraj Group's case brief. The Viraj Group resubmitted their case brief on March 31, 2003. On April 15, 2003, Kurt Orban met with the Department to discuss Panchmahal's cost reconciliation. See the Department's memorandum to the file dated April 16, 2003. We have now completed the administrative review in accordance with section 751 of the Tariff Act of 1930, as amended ("the Act").

Scope of Review

The merchandise under review is certain stainless steel wire rods ("SSWR"), which are hot-rolled or hot-rolled annealed and/or pickled rounds, squares, octagons, hexagons or other shapes, in coils. SSWR are made of alloy steels containing, by weight, 1.2 percent or less of carbon and 10.5 percent or more of chromium, with or without other elements. These products are only manufactured by hot-rolling and are normally sold in coiled form, and are of solid cross section. The majority of SSWR sold in the United States are round in cross-section shape, annealed and pickled. The most common size 5.5 millimeters in diameter.

The SSWR subject to this review are currently classifiable under subheadings 7221.00.0005, 7221.00.0015, 7221.00.0030, 7221.00.0045, and 7221.00.0075 of the *Harmonized Tariff Schedule of the United States* (HTSUS). Although the HTSUS subheadings are provided for convenience and customs purposes (as of March 1, 2003, renamed the U.S. Bureau of Customs and Border Protection), the written description of the merchandise under review is dispositive of whether or not the merchandise is covered by the review.

Rescission of Review

In our preliminary results, we stated we are rescinding the review with respect to Isibars because petitioner, the only party to request a review for Isibars, withdrew its request for review. *See Preliminary Results.* Consequently, in accordance with 19 CFR 351.213(d)(1) and consistent with the Department's practice, we preliminarily rescinded our review with respect to Isibars. Since we have received no new information since the preliminary results that contradicts the decision made in the preliminary results of review, we are rescinding the administrative review with respect to Isibars.

Facts Available

In the instant review, for the preliminary results, the Department applied adverse facts available in accordance with section 776(a) of the Act to Panchmahal because Panchmahal failed to provide or withheld information the Department requested. *See Preliminary Results.* The Department received inadequate responses to the questionnaire and multiple supplemental questionnaires from Panchmahal and could not verify the incomplete information that Panchmahal did provide, which is necessary for the margin analysis. *See Preliminary Results.* However, in the preliminary results, the Department inadvertently failed to corroborate the "all others" rate it applied to Panchmahal. We are correcting this oversight with the following.

Corroboration of the "All Others" Rate

Section 776(b) of the Act states that an adverse inference may include reliance on information derived from the petition. *See also* 19 CFR 351.308(c); Uruguay Round Agreement Act, Statement of Administrative Action ("SAA") at 829–831. Section 776(c) of the Act provides that, when the Department relies on secondary information (such as the petition rates) as facts available, it must, to the extent practicable, corroborate that information from independent sources that are reasonably at its disposal. The SAA clarifies that "corroborate" means that the Department will satisfy itself that the secondary information to be used has probative value. See SAA at 870. To corroborate secondary information, the Department will, to the extent practicable, examine the reliability and relevance of the information used. *See Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, from Japan, and Tapered Roller Bearings, Four Inches or Less in Outside Diameter, and Components Thereof, from Japan; Preliminary Results of Antidumping Duty Administrative Reviews and Partial Termination of Administrative Reviews*, 61 FR 57391, 57392 (November 6, 1996); *Notice of Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination: Barium Carbonate From the People's Republic of China*, 68 FR 12664 (March 17, 2003). The Department's regulations state that independent sources used to corroborate may include, but are not limited to, published price lists, official import statistics and customs data, and information obtained from interested parties during the particular review. *See* 19 CFR 351.308(d); SAA at 870. Further, in accordance with *F. lll De Cecco Di Filippo Fara S. Martino S.p.A. v. United States*, 216 F.3d 1027, 1034 (Fed. Cir. 2000), we examine whether information on the record supporting the selected adverse facts available is reasonable and has some basis in reality.

To assess the reliability of the petition margins for purposes of this review, in

accordance with section 776(c) of the Act, we examined the key elements of the calculations of export price and normal value upon which the petitioner based its margins for the petition, to the extent practicable. *See Certain Cut-to-Length Carbon Steel Plate from Mexico: Final Results of Antidumping Duty Administrative Review*, 64 FR 76, 84 (January 4, 1999) ("CTL Plate from Mexico").

The "all others" rate from the investigation, which we are using in this review as adverse facts available, is the average of the rates applied to each original respondent in the investigation. In the investigation, the Department applied the highest rate obtained from the petition margins to each respondent based upon a determination by the Department to use the best information available. *See Final Determination of Sales at Less Than Fair Value: Certain Stainless Steel Wire Rods from India*, 58 FR 54110, 54111 (October 20, 1993). In this case, the U.S. prices in the petition were based on quotes to U.S. customers which were obtained through market research. *See* Petition for the Imposition of Antidumping Duties, December 29, 1993. We were able to corroborate the U.S. prices in the petition, which were used as the basis of the 48.80 percent rate, by comparing these prices to publicly available information based on IM-145 import statistics from the U.S. International Trade Commission's web-site for HTS numbers 7221.00.0005, 7221.00.0015, 7221.00.0030, 7221.00.0045, and 7221.00.0075. We noted that the average reported customs unit value for these products for the period of December 1, 2000 through November 30, 2001 was lower than all of the U.S. prices cited in the petition, which ranged from $1.92 per kilogram to $2.51 per kilogram (Quoted Price) or $1.73 per kilogram to $2.36 per kilogram (Adjusted Price), thus corroborating the petition's U.S. price.

The normal values used in the petition were based on actual price quotations obtained through market research. The Department examined the normal values from the petition and attempted to corroborate the normal values used in the petition, which were based on actual price quotations obtained through market research. For a complete discussion of the Department's corroboration analysis for normal value, *see Corroboration Memorandum for Panchmahal Steel Limited, for the final results of the 2000–2001 Administrative Review of Stainless Steel Wire Rods from India*, from Stephen Bailey to The File, dated May 8, 2003. The parties did not present information during the course of this administrative review and the Department is not aware of other independent sources of information that would enable it to further examine the NV calculations in the petition.

With respect to the relevance aspect of corroboration, however, the Department will consider information reasonably at its disposal as to whether there are circumstances that would render data used as facts available not relevant. Where circumstances indicate that the selected data are not appropriate as adverse facts available, the Department will disregard the data and use alternate data as facts available. *See Fresh Cut Flowers from Mexico: Preliminary Results and Termination in Part of Antidumping Duty Administrative Review*, 60 FR 49577, 49579 (September 26, 1995), (where the Department disregarded the highest dumping margin as best information available because the margin was based on another company's uncharacteristic business expense resulting in an unusually high margin).

Furthermore, in corroborating the petition rate, in this review, we found that certain individual transactions from a particular company had margins higher than the petition rate.

Thus, we find that the 48.80 percent rate that the Department is using for this review does have probative value. This rate is relevant for Panchmahal because we are not aware of any circumstances that would render this rate inappropriate and there is nothing on the record of the petition or this administrative review which calls into question the validity of this rate.

The implementing regulation for section 776 of the Act, codified at 19 CFR 351.308(d), states, "(t)he fact that corroboration may not be practicable in a given circumstance will not prevent the Secretary from applying an adverse inference as appropriate and using the secondary information in question." Additionally, the SAA at 870 states specifically that, where "corroboration may not be practicable in a given circumstance," the Department may nevertheless apply an adverse inference. The SAA at 869 emphasizes that the Department need not prove that the facts available are the best alternative information. Therefore, based on our efforts, described above, to corroborate information contained in the petition and in accordance with 776(c) of the Act, we consider the margins in the petition to be corroborated to the extent practicable for purposes of this final determination. *See CTL Plate from Mexico* (regarding the normal values contained in the petition, although the Department was provided no useful information by the parties and was unaware of other independent sources of information that would permit further corroboration of the margin calculation in the petition, the Department found that their efforts corroborated information contained in the petition to the extent practicable).

Analysis of Comments Received

All issues raised in the case and rebuttal briefs by parties to this administrative review are addressed in the "Issues and Decision Memorandum" ("*Decision Memorandum*") from Barbara Tillman, Acting Deputy Assistant Secretary, Import Administration, to Joseph A. Spetrini, Acting Assistant Secretary for Import Administration, dated May 8, 2003, which is hereby adopted by this notice. A list of the issues which parties have raised and to which we have responded, all of which are in the *Decision Memorandum*, is attached to this notice as an Appendix. Parties can find a complete discussion of all issues raised in this review and the corresponding recommendations in the *Decision Memorandum*, which is on file in the Central Records Unit, Room B-099 of the main Department building. In addition, a complete version of the *Decision Memorandum* can be accessed directly on the Web at http://ia.ita.doc.gov/frn/index.html. The paper copy and electronic version of the *Decision Memorandum* are identical in content.

Sales Below Cost

We disregarded sales that failed the cost test for Mukand and the Viraj Group during the course of the review. We initiated a sales below the cost of production investigation with respect to Panchmahal. *See* the Department's June 11, 2002 letter to Panchmahal initiating sales below cost of production investigation; *Preliminary Results*. However, because Panchmahal was unable to provide the Department with a complete cost database, the Department could not conduct the dumping analysis, including the sales below cost investigation. For a complete discussion of Panchmahal's incomplete cost information see Comment 1 of the *Decision Memorandum*.

Changes Since the Preliminary Results

Based on our analysis of comments received, we have made changes in the margin calculations for the Viraj Group and Mukand. The changes to the margin calculations are listed below:

The Viraj Group

• The Department has revised the Viraj Group's total cost of manufacturing to reflect the actual direct material cost incurred for purchasing billets. *See* Comment 12.

Mukand

• The Department reclassified some of Mukand's sales as agency sales. *See* Comment 2.
• The Department revised Mukand's interest expense ratio to exclude certain capitalized expenses related to the construction of a non-subject merchandise producing plant. *See* Comment 4.
• The Department revised Mukand's general and administrative expenses ("G&A") ratio to exclude certain indirect selling expenses. As a result, the Department also recalculated Mukand's indirect selling expenses to account for the reclassification. *See* Comment 5.
• The Department revised Mukand's U.S. direct expenses to exclude certain taxes already reported as part of its direct material costs. *See* Comment 6.
• The Department revised Mukand's packing costs in order to account for an improper currency conversion in the preliminary margin calculation program. *See* Comment 8.

Final Results of Review

We determine that the following percentage margins exist for the period December 1, 2000, through November 30, 2001:

Producer/Manufacturer/ Exporter	Weighted-Average Margin
The Viraj Group	3.25%
Mukand	26.38%
Panchamahl	48.80%

The Department shall determine, and U.S. Bureau of Customs and Border Protection ("BCBP") shall assess, antidumping duties on all appropriate entries. In accordance with 19 CFR 351.212(b)(1), we have calculated exporter/importer (or customer)-specific assessment rates for merchandise subject to this review. The Department will issue appraisement instructions directly to the BCBP within 15 days of publication of these final results of review. We will direct the BCBP to assess the resulting assessment rates against the entered customs values for the subject merchandise on each of that importer's entries under the relevant order during the review period. For customer's duty-assessment purposes, we will calculate importer-specific assessment rates by dividing the dumping margins calculated for each importer by the total entered value of sales for each importer during the period of review.

Cash Deposit Requirements

The following deposit requirements will be effective upon publication of this notice of final results of administrative review for all shipments of stainless steel wire rods from India entered, or withdrawn from warehouse, for consumption on or after the date of publication, as provided by section 751(a)(1) of the Act: (1) The cash deposit rates for the Viraj Group, Mukand, and Panchmahal will be the rates shown above; (2) for previously reviewed or investigated companies not listed above, the cash deposit rate will continue to be the company-specific rate published for the most recent period; (3) if the exporter is not a firm covered in this review, a prior review, or the original less-than-fair-value (LTFV) investigation, but the manufacturer is, the cash deposit rate will be the rate established for the most recent period for the manufacturer of the merchandise; and (4) if neither the exporter nor the manufacturer is a firm covered in these or any previous reviews conducted by the Department, the cash deposit rate will be the "all others" rate, which is 48.80 percent.

These deposit requirements shall remain in effect until publication of the final results of the next administrative review.

Notification of Interested Parties

This notice also serves as a final reminder to importers of their responsibility under 19 CFR 351.402(f)(2) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of the antidumping duties occurred and the subsequent assessment of double antidumping duties.

This notice also serves as a reminder to parties subject to administrative protective orders ("APOs") of their responsibility concerning the return or destruction of proprietary information disclosed under APO in accordance with 19 CFR 351.305, which continues to govern business proprietary information in this segment of the proceeding. Timely written notification of the return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and terms of an APO is a violation which is subject to sanction.

We are issuing and publishing this determination and notice in accordance with sections 751(a)(1) and 777(i)(1) of the Act.

Dated: May 8, 2003.

Joseph A. Spetrini,

Acting Assistant Secretary for Import Administration.

Appendix 1

Issues in the Decision Memorandum

A. Issues with regard to Panchmahal

Comment 1: Facts Available

B. Issues with regard to Mukand

Comment 2: Agency Sales
Comment 3: Use of Facts Available
Comment 4: Interest Expense
Comment 5: Sales Overhead Expense
Comment 6: Treatment of Unrefunded Taxes
Comment 7: Import Duties
Comment 8: Packing Costs

C. Issues with regard to the Viraj Group

Comment 9: The Viraj Group's Cost Data
Comment 10: Collapsing the Viraj Group
Comment 11: Financial Expenses of the Viraj Group
Comment 12: Raw Material Cost
Comment 13: Non-Dumped Sales
Comment 14: Ministerial Errors

[FR Doc. 03–12186 Filed 5–14–03; 8:45 am]
BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 041703A]

Notice of Regional Fisheries Management Meetings

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of public meetings

SUMMARY: NMFS is scheduling a series of eight regional constituent meetings beginning in June and running through September to gather public input on ways to improve the effectiveness of NMFS and its management of living marine resources. The regional meetings will be a collaborative effort involving all major marine fisheries interests. The primary objective is to assemble and provide a comprehensive analysis of the diverse opinions, attitudes, and perspectives of marine resource stakeholders as they relate to broad themes in fisheries management. The secondary objective is to identify performance measures.

DATES: The meetings will be held in eight regional locations. See Meeting

Times, Dates, and Agenda for specific dates and times. To submit comments, see **FOR FURTHER INFORMATION CONTACT**.

ADDRESSES: For locations of the meetings see **SUPPLEMENTARY INFORMATION**. Information on the meetings will be updated periodically on NMFS' web page: *http://www.nmfs.noaa.gov/constit_sessions_2003.html*.

FOR FURTHER INFORMATION CONTACT: Patricia Lawson, NMFS, telephone: 301–713–2239; fax: 301–713–1940; email: *patricia.lawson@noaa.gov*. To submit e-Comments (see E-Comments Pilot Program).

SUPPLEMENTARY INFORMATION:

Meeting Times, Dates, and Agenda

1. Western Pacific Meeting: June 10, 2003, 6 p.m. - 8 p.m. and June 11, 2003, 10 a.m. - 1 p.m. The meeting location is the Ala Moana Hotel, 410 Atkinson Drive Honolulu, HI 96814, telephone: 808–955–4911.

2. North Pacific Meeting: June 13, 2003, 2 p.m. - 5 p.m. and 6 p.m. - 8 p.m. The meeting location is the Kodiak Inn-Best Western, 236 Rezanof Drive West, Kodiak, AK 99615, telephone: 907–486–5712.

3. Caribbean Meeting: June 20, 2003, 9 a.m. - 12 p.m. and 6 p.m. - 8 p.m. The meeting location is the Wyndham Sugar Bay Resort and Spa, 6500 Estate Smith Bay, St. Thomas, USVI, telephone: 340–777–7100.

4. Gulf of Mexico Meeting: July 15, 2003, 2 p.m. - 5 p.m. and 6 p.m. - 8 p.m. The meeting location is The Naples Beach Hotel & Golf Club, 851 Gulf Shore Blvd. North, Naples, FL 34102, telephone: 800–237–7600.

5. Mid-Atlantic Meeting: August 5, 2003, 1 p.m.- 4 p.m. and 6 p.m. -8 p.m. The meeting location is the Wyndham Baltimore - Inner Harbor, 101 West Fayette Street, Baltimore, MD 21201, telephone: 410–752–1100.

6. Pacific Meeting: September 8, 2003, 6 p.m. - 8 p.m. and September 9, 2003, 8 a.m. - 11 p.m. The meeting location is the Double Tree Guest Suites Seattle Southcenter, 16500 Southcenter Parkway, Seattle, WA 98188, telephone: 206–575–8220.

7. New England Meeting: September 16, 2003, 2 p.m. - 5 p.m. and 6 p.m. - 8 p.m. The meeting location is the Holiday Inn Express, 110 Middle Street, Fairhaven, MA 02719, telephone: 508–997–1281.

8. South Atlantic Meeting: September 18, 2003, 1:30 p.m. - 4:30 p.m. and 6 p.m. - 8 p.m. The meeting location is the Pawley's Plantation, 70 Tanglewood Drive, Pawley's Island, SC 29585, telephone: 800–367–9959.

E-Comments Pilot Program

NMFS encourages the public to participate in submitting comments by the e-comment program. To this end, NMFS is accepting comments by submitted mail, fax, and the Internet as part of its e-Comments pilot project. The e-Comments pilot project is designed to introduce electronic commenting to its constituents. You can respond to the questions on the e-comment page through NMFS' web page *http://www.nmfs.noaa.gov/constit_sessions_2003.html*. The public is encouraged to use the new web site to compose and submit comments on the regional constituent meetings. In submitting comments, please include your name, address and reason for each comment. NMFS also invites public comments on the e-Comments program that allows you to submit your comments on line. Please submit your comments by only one means. Comments received from the public will become part of the public record and will be posted on the e-Comments web site *http://www.nmfs.noaa.gov/emeetings*.

Areas NMFS is soliciting public comments on:

(1) Issue(s) - What are the key issue(s) facing fisheries management, nationally or regionally?

(2) Responsibility - Who should have management or conservation responsibility? (If commenting, indicate issue comment relates to.)

(3) Process - How could the Federal process of managing fisheries be improved?

(4) Performance Measure - How could one measure whether the solution is being properly implemented and working? (If commenting,indicate issue performance measure relates to.)

(5) Contact - Briefly describe the best way for NMFS to keep the public informed about changes within the agency and fisheries management.

Special Accommodations

These meetings are physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Patricia Lawson (see **FOR FURTHER INFORMATION CONTACT**) 2 weeks before each meeting.

Dated: May 12, 2003.

William T. Hogarth,

Assistant Administrator, National Marine Fisheries Service.

[FR Doc. 03–12159 Filed 5–14–03; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF DEFENSE

Department of the Army

Western Hemisphere Institute for Security Cooperation Board of Visitors; Meeting

AGENCY: Department of the Army, DoD.

ACTION: Notice of open meeting.

SUMMARY: This notice sets forth the schedule and summary agenda for the meeting of the Board of Visitor (BoV) for the Western Hemisphere Institute for Security Cooperation (WHINSEC). Notice of this meeting is required under the Federal Advisory Committee Act (Pub. L. 92–463). This board was chartered on February 1, 2002, in compliance with the requirements set forth in 10 U.S.C. 2166.

Date: June 3–4, 2003.

Time: 3:30 p.m. to 5:30 p.m. (June 3, 2003). 8 a.m. to 2:30 p.m. (June 4, 2003).

Location: Pratt Hall, Building 35, 7011 Morrison Ave., Fort Benning, GA 31905.

Proposed Agenda: the WHINSEC BoV will elect BoV leadership for calendar year 2003, establish its 2003 schedule; validate and or establish sub-committees; receive status briefings of actions taken on last year's BoV recommendations and on new activities and efforts since December 2002. The Board will look into the areas deferred from the 2002 sessions: WHINSEC fiscal affairs and physical equipment. The Board will also look into any matters it deems important and will meet with groups of WHINSEC students.

FOR FURTHER INFORMATION CONTACT: Ken LaPlante, BCPI, Limited, Army G–3 (Room 2D337), 400 Army Pentagon, Washington, DC 20310, telephone (703) 692–7419 or Dr. Mary Grizzard at (703) 614–8414.

SUPPLEMENTARY INFORMATION: The meeting is open to the public. There will be time set aside for public comments by individuals and organization on June 4, 2003. Public comment and presentations will be limited to two minutes each and members of the public desiring to make oral statements or presentations must inform the contact personnel; in writing. Requests must be received before Wednesday, May 28, 2003. Mail written presentations and requests to register to attend the public sessions to: Dr. Mary Grizzard or Mr. LaPlante. Public seating is limited, and is available on a first come, first served basis.

Dated: May 5, 2003.

John G. Speedy III,

SES, Designated Federal Officer, WHINSEC BoV.

[FR Doc. 03–12154 Filed 5–14–03; 8:45 am]

BILLING CODE 3710–08–M

DEPARTMENT OF DEFENSE

Department of the Army; Corps of Engineers

Draft Environmental Impact Statement for the Proposed Royal D'Iberville Hotel and Casino Development, City of D'Iberville, Harrison County, MS

AGENCY: Department of the Army, U.S. Army Corps of Engineers, DoD.

ACTION: Notice of availability.

SUMMARY: This notice of availability announces the public release of the Draft Environmental Impact Statement (DEIS) for the Proposed Royal D'Iberville Hotel and Casino Development, City of D'Iberville, Harrison County, MS. On February 23, 1998, Royal D'Iberville, Inc. submitted a Joint Permit Application and Notification to the U.S. Army Corps of Engineers (Corps), Mobile District, the Mississippi Department of Environmental Quality, Office of Pollution Control and the Mississippi Department of Marine Resources for the D'Iberville project. The proposed action involves the construction of a dockside casino adjacent to the west side of the I–110 bridge over the Back Bay of Biloxi in D'Iberville, Harrison County, Mississippi. Based on a review of the level of impacts associated with the proposed action, the Mobile District published in **Federal Register**, November 21, 2001 (66 FR 58459), a notice of intent to prepare a DEIS for the proposed Royal D'Iberville Casino and Hotel, located in D'Iberville, Harrison County, MS. This DEIS has been developed by the Corps (lead agency) and 10 cooperating Federal and state agencies. The DEIS provides a comprehensive environmental analysis to aid in the decision-making process to deny or approve the Department of the Army permit for the proposed D'Iberville Hotel and Casino Project.

DATES: The public comment period for the DEIS will extend through June 30, 2003.

ADDRESSES: To receive a copy of the DEIS, or to submit comments, contact U.S. Army Corps of Engineers, Mobile District, Coastal Environment Team, Post Office Box 2288, Mobile, AL 36628–0001. A copy of the full document may also be viewed in the Gulfport Public Library, Gulfport, the Margaret Sherry Memorial Library in Biloxi, the D'Iberville Public Library in D'Iberville, or in the Mobile District.

FOR FURTHER INFORMATION CONTACT: Susan Ivester Rees, Ph.D., EIS Manager, (334) 694–4141, facsimile number (334) 690–2727 or e-mail address (*susan.i.rees@sam.usace.army.mil*).

SUPPLEMENTARY INFORMATION: Public comments can be submitted through a variety of methods. Written comments may be submitted to the Corps by mail, facsimile, or electronic methods, comments (written or oral) may be presented at a public meeting to be scheduled during the month of June in D'Iberville, MS. Additional information on these meetings will be mailed in a public notice to the agencies and public and announced in news releases.

Dated: May 5, 2003.

Ronald A. Krizman,

Chief, Regulatory Branch.

[FR Doc. 03–12156 Filed 5–14–03; 8:45 am]

BILLING CODE 3710–CR–M

DEPARTMENT OF DEFENSE

Department of the Army; Corps of Engineers

Intent to Prepare a Draft Environmental Impact Statement on the Proposed Section 227 National Shoreline Erosion Control Demonstration Project, 63rd Street, "Hotspot" Miami Beach, Dade County, FL

AGENCY: Department of the Army, Corps of Engineers, DOD.

ACTION: Notice of intent.

SUMMARY: The Jacksonville District, U.S. Army Corps of Engineers (Corps) intends to prepare a Technical Report and 100% Plans and Specifications with a Draft Environmental Impact Statement (DEIS) for the placement of an innovative breakwater design to help control erosion along the upcoming Test Fill at North Miami Beach using a domestic upland sand source. The proposed project is to be constructed from NE. 63rd Street to NE. 65th Street, Miami Beach, Dade County, FL. The Secretary of the Army is responsible for report approval. a collaborative effort between the Jacksonville District and Waterways Experiment Station, Vicksburg, MS.

FOR FURTHER INFORMATION CONTACT: Paul C. Stevenson, U.S. Army Corps of Engineers, Planning Division, Plan Formulation Branch, 701 San Marco Blvd, Jacksonville, FL, 32207, *paul.c.stevenson@usace.army.mil* by e-mail, or phone 904–232–3747.

SUPPLEMENTARY INFORMATION:

a. *Authorization.* Authority and funds for the project are provided by section 227, of the Water Resources Development Act (WRDA) of 1996, as amended. The proposed section 227, National Shoreline Erosion Control Demonstration Project, 63rd Street, "Hotspot", Miami Beach, Dade County, Florida, has awarded a contract to URS Group to complete 100% plans and specifications for an innovative breakwater to help control erosion along the Dade County Beach Erosion Control and Hurricane Protection (BEC&HP) Project in the same location. The BEC&HP for Dade County, Florida was authorized by the Flood Control Act of 1968 (with supplemental Appropriation Act of 1985 and WRDA 1986) to protect, reduce the loss of public beachfront and to prevent or reduce periodic damages and potential risk life, health and property in the developed lands adjacent to the beach.

b. *Study Area:* The project area begins at NE. 63rd Street and continues north to NE. 65th Street, Miami Beach, FL, an erosion hot spot.

c. *Project Scope:* The proposed project area is very specific to the erosion hot spot area of Miami Beach, between NE. 63rd Street and NE. 65th Street. The proposed project footprint will cover approximately 1,800 linear foot by 40-foot wide and 4.5 to 6-foot high, covered by at least one foot of water at Mean Low Water (MLW), 150-foot from the toe of fill.

d. *Preliminary Alternatives:* The DEIS will evaluate the No Action Plan and the nearshore Submerged Artificial Reef Training (SMART) structure. SMART is proposed approximately 150-foot from the toe of fill for the Test Beach Renourishment at Miami Beach, in the vicinity of 63rd Street, "Hotspot", Miami Beach, FL. The SMART design consists of groupings of reef modules in 200-foot by 40-foot segments, attached to an articulated armor concrete mat, parallel to the shoreline for a total length of 1,800-foot. The artificial reef modules would vary in size from 2,400 (4.5-foot high) pounds to 9,800 (6-foot high) pounds and be covered by a minimum of 1-foot of water at MLW. The reef modules would be anchored to the mats to prevent "rolling". Mat ends would be free of reefs modules to help prevent scouring. The SMART design breakwater is proposed to help control erosion along the renourished and provide environmental benefits (*see* ftp site *ftp://ftp.saj.usace.army.mil/pub/uploads/k3cdstjv/*

URSMiamiHotSpotSection227/ for the 30% submittal).

e. *Issues:* This DEIS will evaluate the potential impacts of the innovative submerged breakwater. The environmental analysis will incorporate the results of studies/surveys of environmental resources within the proposed project area and cumulative effects the proposed structure may produce.

f. *Scoping:* Scoping for the section 227 National Shoreline Erosion Control Development and Demonstration Project, 63rd Street, "Hotspot", Miami Beach, Date County, FL was initiated April 28, 2003, via letter. A scoping meeting and teleconference was held April 14, 2003; with interested resource agency participants. The proposed project area has been scoped for several previous Environmental Impact Statements (EIS) and Environmental Assessments in the past. We invite the participation of affected Federal, State and local agencies, affected Indian tribes, other interested private organizations and the public.

g. DEIS Preparation: The forecasted completion date for the EIS and National Environmental Policy Act work is February 4, 2004.

Dated: May 1, 2003.

George M. Strain,

Acting Chief, Planning Division.

[FR Doc. 03–12155 Filed 5–14–03; 8:45 am]

BILLING CODE 3710–HM

DEPARTMENT OF ENERGY

[Docket No. EA–232–A]

Application to Export Electric Energy; OGE Energy Resources, Inc.

AGENCY: Office of Fossil Energy, DOE.

ACTION: Notice of application.

SUMMARY: OGE Energy Resources, Inc. (OERI) has applied for authority to transmit electric energy from the United States to Canada pursuant to section 202(e) of the Federal Power Act.

DATES: Comments, protests or requests to intervene must be submitted on or before June 16, 2003.

ADDRESSES: Comments, protests or requests to intervene should be addressed as follows: Office of Coal & Power Im/Ex (FE–27), Office of Fossil Energy, U.S. Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585–0350 (FAX (202) 287–5736).

FOR FURTHER INFORMATION CONTACT: Xavier Puslowski (Program Office) (202) 586–4708 or Michael Skinker (Program Attorney) (202) 586–2793.

SUPPLEMENTARY INFORMATION: Exports of electricity from the United States to a foreign country are regulated and require authorization under section 202(e) of the Federal Power Act (FPA) (16 U.S.C. 824a(e)).

On February 6, 2001, the Office of Fossil Energy (FE) of the Department of Energy (DOE) received an application from OERI to transmit electric energy from the United States to Canada. On April 16, 2001, OERI was issued an export authorization by DOE for a two year period. The authorization expired on April 16, 2003. On April 22, 2003, OERI applied to DOE for renewal of its application. OERI is an Oklahoma corporation created for the purposes of marketing electricity, natural gas and other energy commodities throughout North America. OERI will purchase the power to be exported from electric utilities and Federal power marketing agencies in the United States.

OERI proposes to arrange for the delivery of electric energy to Canada over the existing international transmission facilities owned by Basin Electric Power Cooperative, Bonneville Power Administration, Citizens Utilities Co., Eastern Maine Electric Cooperative, International Transmission Company, Joint Owners of the Highgate Project, Long Sault, Inc., Maine Electric Power Company, Maine Public Service Company, Minnesota Power and Light Inc., Minnkota Power Cooperative, New York Power Authority, Niagara Mohawk Power Corporation, Northern States Power, and Vermont Electric Transmission Company. The construction, operation, maintenance, and connection of each of the international transmission facilities to be utilized by OERI, as more fully described in the application, has previously been authorized by a Presidential permit issued pursuant to Executive Order 10485, as amended.

Procedural Matters: Any person desiring to become a party to this proceeding or to be heard by filing comments or protests to this application should file a petition to intervene, comment or protest at the address provided above in accordance with §§ 385.211 or 385.214 of the FERC's Rules of Practice and Procedures (18 CFR 385.211, 385.214). Fifteen copies of each petition and protest should be filed with the DOE on or before the date listed above.

Comments on the OERI application to export electric energy to Canada should be clearly marked with Docket EA–232–A. Additional copies are to be filed directly with Patricia Horn, Esq., General Counsel, Enogex Inc., Suite 600, 515 Central Park Drive, Oklahoma City, OK 73105 *and* Tyson L. Williams, Attorney, OEG Energy Resources, Inc. Suite 408 Oklahoma City, OK 73105.

A final decision will be made on this application after the environmental impacts have been evaluated pursuant to the National Environmental Policy Act of 1969, and a determination is made by the DOE that the proposed action will not adversely impact on the reliability of the U.S. electric power supply system.

Copies of this application will be made available, upon request, for public inspection and copying at the address provided above or by accessing the Fossil Energy Home page at *http://www.fe.doe.gov.* Upon reaching the Fossil Energy Home page, select "Regulatory Programs," then "Electricity Regulation," and then "Pending Proceedings" from the options menus.

Issued in Washington, DC, on May 8, 2003.

Anthony J. Como,

Deputy Director, Electric Power Regulation, Office of Coal & Power Im/Ex, Office of Coal & Power Systems, Office of Fossil Energy.

[FR Doc. 03–12162 Filed 5–14–03; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Controlled Hydrogen Fleet and Infrastructure Demonstration and Validation Project

AGENCY: U.S. Department of Energy (DOE).

ACTION: Issuance of solicitation for financial assistance applications, solicitation number DE–PS36–03GO93010.

SUMMARY: The Office of Hydrogen, Fuel Cell, and Infrastructure Technologies of the Department of Energy (DOE) Office of Energy Efficiency and Renewable Energy is soliciting financial assistance Applications with the objective of supporting industry efforts and the President's Hydrogen Fuel Initiative in developing a path to a hydrogen economy. DOE intends to provide financial support under provisions of the Hydrogen Future Act of 1996.

DATES: Issuance of the Solicitation is planned for May 5, 2003 with a closing date of August 15, 2003.

ADDRESSES: To obtain a copy of the Solicitation once it is issued, interested parties should access the DOE Industry Interactive Procurement System (IIPS) Web site. The Solicitation can be obtained directly through IIPS at *http://e-center.doe.gov* by browsing opportunities by Program Office, Financial Assistance, Golden Field Office, and then selecting this Solicitation number. DOE will not issue paper copies of the Solicitation.

FOR FURTHER INFORMATION CONTACT: James Damm, Contracting Officer, via facsimile to (303) 275–4788 or electronically to *h2validation@go.doe.gov.* Once the Solicitation is issued, all questions must be submitted through IIPS per the instructions contained in the Solicitation. Responses to questions will be posted on the IIPS Web site. Further information on DOE's Hydrogen, Fuel Cells, and Infrastructure Technologies Program can be viewed at *http://www.eere.energy.gov/hydrogenandfuelcells.*

SUPPLEMENTARY INFORMATION: Under this Solicitation, DOE is soliciting Applications for Validation projects that include the testing, demonstration, and validation of hydrogen fuel cell vehicles and infrastructure, and the required vehicle and infrastructure interfaces for complete system solutions. The Validation projects should also include a comprehensive safety plan, a program that enhances the development of codes and standards, and a comprehensive, integrated education and training campaign.

Awards under this Solicitation will be Cooperative Agreements, with a five-year Project Period. Teams under this Solicitation must include an automobile manufacturer and an energy company, with one of the two entities proposed as the Applicant. DOE anticipates selecting three to five Applications for negotiation toward Award. Subject to the availability of annual congressional appropriations, the total cumulative DOE funding available under this Solicitation for all projects is anticipated to be between $150 million and $240 million. Applicant cost share is required in order to be considered for an Award under this Solicitation. The minimum required cost share varies with the type of Applicant and type of proposed project and will be specified in the Solicitation.

Issued in Golden, Colorado, on May 5, 2003.

Jerry L. Zimmer,

Director, Office of Acquisition and Financial Assistance.

[FR Doc. 03–12163 Filed 5–14–03; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Office of Fossil Energy

[FE Docket No. 03–15–NG, 03–14–NG, et al.]

H.Q. Energy Services (U.S.) Inc., PG&E Energy Trading-Gas Corporation, Cargill, Incorporated, Statoil Natural Gas LLC, Dartmouth Power Associates, Limited Partnership; Orders Granting Authority to Import and Export Natural Gas, Including Liquefied Natural Gas

AGENCY: Office of Fossil Energy, DOE.

ACTION: Notice of orders.

SUMMARY: The Office of Fossil Energy (FE) of the Department of Energy gives notice that during April 2003, it issued Orders granting authority to import and export natural gas, including liquefied natural gas. These Orders are summarized in the attached appendix and may be found on the FE Web site at *http://www.fe.doe.gov* (select gas regulation), or on the electronic bulletin board at (202) 586–7853. They are also available for inspection and copying in the Office of Natural Gas & Petroleum Import & Export Activities, Docket Room 3E–033, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586–9478. The Docket Room is open between the hours of 8 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, DC on May 5th, 2003.

Clifford P. Tomaszewski,

Manager, Natural Gas Regulation, Office of Natural Gas & Petroleum Import & Export Activities, Office of Fossil Energy.

APPENDIX—ORDERS GRANTING IMPORT/EXPORT AUTHORIZATIONS

[DOE/FE Authority]

Order No.	Date issued	Importer/exporter FE Docket No.	Import volume	Export volume	Comments
1861	4–4–03	H.Q. Energy Services (U.S.) Inc., 03–15–NG.	200 Bcf	200 Bcf	Import and export natural gas from and to Canada and Mexico, beginning on May 1, 2003, and extending through April 30, 2005.
1862	4–4–03	PG&E Energy Trading-Gas Corporation, 03–14–NG.	100 Bcf	100 Bcf	Import and export natural gas from and to Canada, beginning on July 1, 2003, and extending through June 31, 2005.
1863	4–15–03	Cargill, Incorporation 03–17–NG.	1,500 Bcf	500 Bcf	Import up to a combined total of natural gas from Canada and Mexico, and to export up to a combined total of natural gas to Canada and Mexico, beginning on April 15, 2003, and extending through April 14, 2005.
1864	4–21–03	Statoil Natural Gas LLC, 03–16–LNG.	190 Bcf		Import liquefied natural gas from various international sources, beginning on June 1, 2003, and extending through May 31, 2005.
1865	4–28–03	Dartmouth Power Associates Limited Partnership 03–18–NG.	11.68 Bcf		Import natural gas from Canada, beginning on May 7, 2003, and extending through May 6, 2005.

[FR Doc. 03–12161 Filed 5–14–03; 8:45 am]
BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

National Nuclear Security Administration

Notice of Availability of the Draft Environmental Impact Statement for the Proposed Chemistry and Metallurgy Research Building Replacement Project at Los Alamos National Laboratory, Los Alamos, NM

AGENCY: U.S. Department of Energy, National Nuclear Security Administration.

ACTION: Notice of availability and public hearings.

SUMMARY: Pursuant to the National Environmental Policy Act (NEPA) of 1969, as amended (42 U.S.C. 4321 *et seq.*), and the DOE Regulations Implementing NEPA (10 CFR part 1021), the National Nuclear Security Administration (NNSA), an agency within the U.S. Department of Energy (DOE), announces the availability of the *Draft Environmental Impact Statement for the Chemistry and Metallurgy Research Building Replacement Project at Los Alamos National Laboratory, Los Alamos, New Mexico* (the Draft CMRR EIS), and the dates and locations for the public hearings to receive comments on the Draft CMRR EIS. The present Chemistry and Metallurgy Research (CMR) Building at Los Alamos National Laboratory (LANL) houses mission critical analytical chemistry, material characterization and actinide (actinides are any of a series of elements with atomic numbers ranging from actinium-89 through lawrencium-103) research and development capabilities. The Draft CMRR EIS considers the potential environmental impacts that could result due to the consolidation and relocation of these CMR capabilities from the existing aged CMR Building to a new facility such that these capabilities would be available on a long-term basis to successfully accomplish LANL mission support activities or programs. The Draft CMRR EIS also considers the no-action alternative of maintaining the CMR capabilities at the CMR Building.

DATES: The NNSA invites members of Congress, American Indian Tribal Governments, state and local governments, other Federal agencies, and the general public to provide comments on the Draft CMRR EIS. The comment period runs through June 30, 2003; the NNSA will consider all comments received or postmarked by that date. Comments postmarked after June 30, 2003, will be considered to the extent practicable. As part of the public comment period for the Draft CMRR EIS, pubic hearings will be held on June 3rd and 4th, 2003, to provide the public and stakeholders with an opportunity to present comments on the draft document, ask questions, and discuss concerns with DOE and NNSA officials regarding the Draft CMRR EIS. The dates, times, and locations for these public hearings are as follows:

June 3, 2003, 6:30 p.m.–9 p.m., Fuller Lodge, 2132 Central Avenue, Los Alamos, NM.

June 4, 2003, 6:30 p.m.–9 p.m., Cities of Gold Hotel, Highway 84/285, Pojoaque, NM.

ADDRESSES: A copy of the Draft CMRR EIS or its Summary may be obtained upon request by writing to: U.S. Department of Energy, National Nuclear Security Administration, Los Alamos Site Office, Attn: Ms. Elizabeth Withers, Office of Facility Operations, 528 35th Street, Los Alamos, New Mexico, 87544; by facsimile ((505) 667–9998); or by E-mail (CMRR *EIS@doeal.gov*). Please mark all envelopes, faxes and e-mail: "Draft CMRR EIS Comments". Copies of the Draft CMRR EIS are also available for review at: the Los Alamos Outreach Center, 1619 Central Avenue, Los Alamos, New Mexico, 87544; and the Zimmerman Library, University of New Mexico, Albuquerque, New Mexico 87131.

Specific information regarding the public hearings can also be obtained by the means described above. Comments concerning the Draft CMRR EIS can be submitted by the means described above or by leaving a message on the EIS Hotline at (toll free) 1–877–491–4957. The Hotline will have instructions on how to record comments.

FOR FURTHER INFORMATION CONTACT: For general information on NNSA NEPA process, please contact: Mr. James Mangeno (NA–3.6), NEPA Compliance Officer for the National Nuclear Security Administration, U.S. Department of Energy, 1000 Independence Avenue SW., Washington, DC 20585, (202) 586–8395. For general information about the DOE NEPA process, please contact: Ms. Carol Borgstrom, Director, Office of NEPA Policy and Compliance (EH–42), U.S. Department of Energy, 1000 Independence Avenue SW., Washington, DC 20585, (202) 586–4600, or leave a message at 1–800–472–2756.

SUPPLEMENTARY INFORMATION: Mission critical CMR capabilities at LANL support NNSA's stockpile stewardship and management strategic objectives. CMR's analytical chemistry, materials characterization, and actinide research and development capabilities are necessary to support the current and future directed stockpile work and campaign activities conducted at LANL. The CMR Building is over 50 years old and approaching end of life. Studies conducted in the late 1990s identified a seismic fault trace located beneath the CMR Building, which greatly increases the level of structural upgrades needed for the building to meet current structural seismic code requirements for a Hazard Category 2 nuclear facility. The CMR Building has been upgraded such that operations can continue, on a restricted basis, in support of national security missions. The CMR Upgrades project was designed to extend the life of the CMR Building through approximately 2010. It would be cost prohibitive to perform the needed repairs, upgrades, and systems retrofitting for long-term (beyond 2010), unrestricted use of the CMR Building.

NNSA cannot perform the assigned LANL mission critical CMR capabilities in the existing CMR Building at an acceptable level of risk to public and worker health and safety without operational restrictions. These operational restrictions preclude the full implementation of the level of operation DOE decided upon through its Record of Decision for the 1999 LANL Site-wide Environmental Impact Statement for the Continued Operation of Los Alamos National Laboratory (DOE/EIS–0238). CMR capabilities are necessary to support the current and directed stockpile work and campaign activities at LANL. By 2010, operations will have been conducted in the existing CMR Building for 60 years; this is the estimated operational life span for nuclear operations at the existing CMR Building. Given that the CMR Building is near the end of its useful life, action is now required by NNSA to assess alternatives for continuing these activities for the succeeding 50 years.

The CMRR EIS evaluates the environmental impacts associated with relocating the CMR capabilities at LANL to new buildings sited at the following alternative locations: (1) Next to the Plutonium Facility at Technical Area 55 (TA–55) at LANL (the Proposed Action), and (2) a "greenfield" site near TA–55 within TA–6. The NNSA also evaluated performing minimal necessary structural and systems upgrades and repairs to portions of the existing CMR Building and continuing the use of these upgraded portions of the structure for administrative offices and support function purposes, as well as evaluating the potential decontamination and demolition of the entire existing CMR Building as disposition options coupled with the alternatives for construction and operation of new nuclear laboratory facilities at the two previously identified locations. The EIS considers the performance of minimal necessary structural and systems upgrades and repairs to the existing CMR Building as a no-action alternative with continued maintenance of limited mission critical CMR capabilities at the CMR Building. NNSA expects to complete the Final CMRR EIS by November 2003. A Record of Decision would be completed no sooner than 30 days after the Final CMRR EIS is issued.

Signed in Washington, DC this 28th day of April, 2003.

Everet H. Beckner,

Deputy Administrator for Defense Programs, National Nuclear Security Administration.

[FR Doc. 03–12164 Filed 5–14–03; 8:45 am]
BILLING CODE 6450–01–P

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collection(s) Being Reviewed by the Federal Communications Commission

May 7, 2003.

SUMMARY: The Federal Communications Commission, as part of its continuing effort to reduce paperwork burden invites the general public and other Federal agencies to take this opportunity to comment on the following information collection(s), as required by the Paperwork Reduction Act of 1995, Public Law 104–13. An agency may not conduct or sponsor a collection of information unless it displays a current valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a valid control number. Comments are requested concerning (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

DATES: Written comments should be submitted on or before July 14, 2003. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: Direct all comments to Les Smith, Federal Communications Commission, Room 1–A804, 445 12th Street, SW., Washington, DC 20554, or via the Internet to *Leslie.Smith@fcc.gov.*

FOR FURTHER INFORMATION CONTACT: For additional information or copies of the information collection(s) contact Les Smith at 202–418–0217 or via the Internet at *Leslie.Smith@fcc.gov.*

SUPPLEMENTARY INFORMATION:

OMB Control Number: 3060–0249.

Title: Section 74.781, Station Records.

Form Number: N/A.

Type of Review: Extension of a currently approved collection.

Respondents: Business and other for-profit entities; not-for-profit institutions; State, Federal or Tribal Governments.

Number of Respondents: 7,400.

Estimated Time per Response: 0.75 hours.

Frequency of Response: Recordkeeping; annual reporting requirement.

Total Annual Burden: 5,735 hours.

Total Annual Costs: $666,000.

Needs and Uses: 47 CFR Section 74.781 requires licensees of low power television, TV translator and TV booster stations to maintain adequate records. FCC staff in field inspections used the records to ensure that reasonable measures are taken to maintain proper station operations and to ensure compliance with the Commission's rules.

Federal Communications Commission.

William F. Caton,

Deputy Secretary.

[FR Doc. 03–12058 Filed 5–14–03; 8:45 am]
BILLING CODE 6712–01–P

FEDERAL RESERVE SYSTEM

Change in Bank Control Notices; Acquisition of Shares of Bank or Bank Holding Companies

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. The notices also will be available for inspection at the office of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than May 29, 2003.

A. Federal Reserve Bank of San Francisco (Maria Villanueva, Consumer Regulation Group) 101 Market Street, San Francisco, California 94105-1579:

1. James Patrick Koehler, Aberdeen, South Dakota; to acquire additional voting shares of Valley Bancorp, Henderson, Nevada, and thereby indirectly acquire additional voting shares of Valley Bank, Henderson, Nevada.

Board of Governors of the Federal Reserve System, May 9, 2003.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. 03–12056 Filed 5–14–03; 8:45 am]
BILLING CODE 6210–01–S

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies; Correction

This notice corrects a notice (FR Doc. 03-11424) published on pages 24742 and 24743 of the issue for Thursday, May 8, 2003.

Under the Federal Reserve Bank of Boston heading, the entry for Citizens Financial Group, Inc., Providence Rhode Island, is revised to read as follows:

A. Federal Reserve Bank of Boston (Richard Walker, Community Affairs Officer) 600 Atlantic Avenue, Boston, Massachusetts 02106-2204:

1. Citizens Financial Group, Inc., Providence, Rhode Island; Royal Bank of Scotland, PLC, Theedinburgh; Royal Bank of Scotland Group PLC, Theedinburgh; and RBSG International Holdings Limited, Edinburgh, all in Scotland; to acquire 100 percent of the voting shares of Port Financial Corp., Brighton, Massachusetts, and its subsidiary, Cambridgeport Bank, Cambridge, Massachusetts, and to acquire up to 9.9 percent of the voting shares of Cambridge Bancorp, Cambridge, Massachusetts, and thereby indirectly acquire voting shares of Cambridge Trust Company, Cambridge, Massachusetts.

Comments on this application must be received by June 2, 2003.

Board of Governors of the Federal Reserve System, May 9, 2003.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. 03–12055 Filed 5–14–03; 8:45 am]

BILLING CODE 6210–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration on Aging

[Program Announcement No. AoA–03–04]

Fiscal Year 2003 Program Announcement; Availability of Funds and Notice Regarding Applications

AGENCY: Administration on Aging, HHS.

ACTION: Announcement of availability of funds and request for applications.

SUMMARY: The Administration on Aging (AoA) announces that under this program announcement it will hold a competition for one award to support a National Consumer Protection Technical Resource Center at a federal share of approximately $450,000 per year for a project period of three years.

Legislative authority: The Health Insurance Portability and Accountability Act of 1996, the Older Americans Act, Public Law 106–501 (Catalog of Federal Domestic Assistance 93.048, Title IV and Title II Discretionary Projects).

Purpose of grant award: The purpose of this award is to establish one National Consumer Protection Technical Resource Center to provide advice, guidance and technical assistance to AoA's Senior Medicare Patrol (SMP) projects. These projects test the best ways of using the skills of retired nurses, doctors, accountants and other professionals to train seniors as expert resources to curb health care error, fraud, and abuse.

The award is a cooperative agreement because the Administration on Aging will be substantially involved in the development and execution of the activities of the grantee.

The applicant and AoA will negotiate a work plan which details activities necessary to implement advice, guidance and technical assistance to SMP projects. The applicant will develop strategies with AoA to replicate nationwide best practices of the SMP program. The AoA will plan national and regional conferences, forums and meetings to provide program information, training, and education. The applicant will participate in these events to report on the activities of the center.

The AoA will provide a contact person for the center's project director/staff to receive SMP grantee information and orientation on the resources available "in house" for start up activities. AOA will also conduct conference calls to identify priorities or as a tool for planning upcoming events. The grantee will be required to report semiannually on the progress of this project. Based on the review of the report, AoA will negotiate any modifications needed to the cooperative agreement. At the end of each budget period, the AoA will review the project's performance and determine at the time if future funding is justified.

Eligibility for grant awards and other requirements: Public and non-profit agencies, organizations, institutions, and federally recognized tribes are eligible to apply under this program announcement. Faith-based organizations are eligible to apply. To be considered for funding, however, the applicant must be experienced in providing advice, guidance and technical assistance to Medicare fraud educational/outreach efforts.

Executive Order 12372 is not applicable to this grant application.

Grantees must cover at least 25% of the project's total cost with non-federal cash or in-kind resources. Grantees must contribute at least one (1) dollar in non-federal cash or in-kind resources for every three (3) dollars received in federal funding.

Screening criteria: All applications will be screened to assure a level playing field for all applicants. Applications that fail to meet the screening criteria described below will not be reviewed and will not receive further consideration.

1. Applications must be postmarked by midnight, June 30, 2003, or hand-delivered by 5:30 p.m. Eastern Time, on June 30, 2003, or submitted electronically by midnight, June 30, 2003.

2. Electronic submissions must be sent to: *http://www.aoa.gov/egrants.* Note: For electronic submissions, the required signature form must be postmarked by midnight, June 30, 2003, or hand-delivered by 5:30 p.m., Eastern Time, on June 30, 2003.

3. The Project Narrative section of the application must not exceed 20 pages. Page fifteen of the application kit details the components of the application not included in this limitation.

Review of Applications: Applications will be evaluated against the following criteria: Purpose and Need for Assistance. (20 Points), Approach, Work Plan and Activities. (30 Points), Project Outcomes, Evaluation and Dissemination. (30 Points); and Level of Effort (20 points).

DATES: The deadline date for the submission of applications is June 30, 2003.

ADDRESSES: Application kits are available by writing to the U.S. Department of Health and Human Services, Administration on Aging, Office of Consumer Choice and Protection, Washington, DC 20201, by calling (202) 357–3532, or online at *http://www.aoa.gov/egrants.*

Applications may be mailed to the U.S. Department of Health and Human Services, Administration on Aging, Office of Grants Management, Washington, DC 20201, attn: Margaret Tolson (AoA–03–04).

Applications may be delivered to the U.S. Department of Health and Human Services, Administration on Aging, Office of Grants Management, One Massachusetts Avenue, NW., Room 4604, Washington, DC 20201, attn: Margaret Tolson (AoA–03–04).

If you elect to mail or hand deliver your application you must submit one original and two copies of the application; an acknowledgement card will be mailed to all applicants.

SUPPLEMENTARY INFORMATION: All grant applicants are encouraged to obtain a D–U–N–S number from Dun and Bradstreet. It is a nine-digit identification number, which provides unique identifiers of single business entities. The D–U–N–S number is free and easy to obtain from *http://www.dnb.com/US/duns_update/.*

FOR FURTHER INFORMATION CONTACT: U.S. Department of Health and Human Services, Administration on Aging, Office of Consumer Choice and Protection, Washington, DC 20201, telephone: (202) 357–3532.

Dated: May 12, 2003.

Josefina G. Carbonell,

Assistant Secretary for Aging.

[FR Doc. 03–12133 Filed 5–14–03; 8:45 am]

BILLING CODE 4154–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[Program Announcement 04001]

Grants for Education Programs in Occupational Safety and Health; Notice of Availability of Funds

Application Deadline: July 1, 2003.

A. Authority and Catalog of Federal Domestic Assistance Number

This program is authorized under section 670(a) of the Occupational Safety and Health Act (29 U.S.C. 670 (a)). The Catalog of Federal Domestic Assistance number is 93.263.

B. Purpose

The Centers for Disease Control and Prevention (CDC) announces the availability of fiscal year (FY) 2004 funds for a grant program for institutional training grants in occupational safety and health. This program addresses the "Healthy People 2010" focus area of Occupational Safety and Health.

The National Institute for Occupational Safety and Health (NIOSH) is mandated to provide an adequate supply of qualified personnel to carry out the purposes of the Occupational Safety and Health Act. The specific purpose of this program is to provide financial assistance to eligible applicants to assist in providing an adequate supply of qualified professional occupational safety and health personnel. Projects are funded to support Occupational Safety and Health Education and Research Center Training Grants (ERCs) and Training Project Grants (TPGs).

ERCs are academic institutions that provide interdisciplinary graduate training and continuing education in the industrial hygiene, occupational health nursing, occupational medicine, occupational safety, and closely related occupational safety and health fields. The ERCs also serve as regional resource centers for industry, labor, government, and the public. TPGs are academic institutions that primarily provide single-discipline graduate training in the industrial hygiene, occupational health nursing, occupational medicine, occupational safety, and closely related occupational safety and health fields. Measurable outcomes of the program will be in alignment with one or more of the following performance goals for the National Institute for Occupational Safety and Health: Ensure safer and healthier work environments for all Americans through information dissemination, knowledge transfer, and training.

C. Eligible Applicants

Any public or private educational or training institution that has demonstrated competency in the occupational safety and health field and is located in a State, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, American Samoa, Guam, the Trust Territory of the Pacific Islands, Wake Island, Outer Continental Shelf lands defined in the Outer Continental Shelf Lands Act, Johnston Island, and any other U.S. Territory or Trust Territory not named herein are eligible to apply for an institutional training grant.

Applications may be submitted by:

- Universities.
- Colleges.
- Technical schools.

Note: Title 2 of the United States Code section 1611 states that an organization described in section 501c(4) of the Internal Revenue Code that engages in lobbying activities is not eligible to receive Federal funds constituting an award, grant or loan.

D. Funding

Availability of Funds

Approximately $3,825,000 is anticipated in FY 2004 to fund approximately 23 ERC and TPG awards, subject to availability of funds. It is expected that the awards will begin on or about July 1, 2004 and will be made for a 12-month budget period within a project period of up to 5 years. Funding estimates may change. ERC individual program awards will be made for a 12-month budget period within a project period not to exceed that of the main ERC training grant.

Continuation awards within an approved project period will be made on the basis of satisfactory progress as evidenced by required reports and the availability of funds.

Use of Funds

At least 50 percent of the funds awarded for each grant must be used for direct trainee expenses. Post-doctoral trainee support is discouraged with the exception of occupational medicine residents. Under this announcement, only one award will be made to any single institution or organization.

Recipient Financial Participation

Matching funds are not required for this program.

Funding Preferences

Funding for ERCs: Approximately $2,640,000 of the total funds available will be utilized as follows:

1. Approximately $2,400,000 is available to award four competing continuation or new ERC grants. This includes a total of $160,000 to augment the support of trainees in occupational medicine residency programs. Awards will range from $400,000 to $800,000 with the average award being $600,000.

2. Approximately $120,000 is available to award two competing continuation or new training grants; one of the awards is planned for $60,000 for a Hazardous Substance Academic Training (HSAT) Program and one of the awards is planned for $60,000 for a Hazardous Substance Training (HST) Program. The awards are to support the development and presentation of continuing education and short courses (HST Programs), and academic curricula (HSAT Programs) for trainees and professionals engaged in the management of hazardous substances. Program support is available for faculty and staff salaries, trainee costs, and other costs to provide training and education for occupational safety and health and other professional personnel engaged in the evaluation, management, and handling of hazardous substances.

3. Approximately $120,000 is available to award two competing continuation or new grants to support the enhancement of the ERC research training mission through the support of pilot project research training programs.

Funding for TPGs: Approximately $780,000 is available to fund twelve competing continuation or new TPG grants. Awards will range from $20,000 to $100,000, with the average award being $65,000. This includes a total of $40,000 to augment the support of trainees in occupational medicine residency programs. These awards will support academic programs in the core disciplines (*i.e.*, industrial hygiene, occupational health nursing, occupational medicine, and occupational safety and ergonomics) and relevant components (*e.g.*, occupational injury prevention, industrial toxicology, and ergonomics).

These awards are intended to augment the scope, enrollment, and quality of training programs rather than to replace funds already available for current operations.

Funding for ERCs and TPGs: Approximately $405,000 is available to fund three competing continuation or new grants for occupational injury prevention research training. Awards will range from $75,000 to $150,000, with the average award being $135,000. This program is intended to encourage new occupational injury prevention research training programs and will only support doctoral-level training and trainees. In institutions with existing NIOSH-funded occupational safety/ergonomics and/or injury epidemiology programs, funding will be considered for the addition of a doctoral-level program only if it is not part of the existing NIOSH-funded program. For the purpose of this announcement, only doctoral-level programs with a specific concentration in occupational injury

prevention will be considered. The proposed program must be described in detail, with objectives, competencies and how achieved in specified courses, curricula, recruitment, faculty and other program features. Institutions submitting proposed programs under this announcement that also have existing NIOSH-funded programs in safety/ergonomics and/or injury epidemiology must describe in detail how the proposed program differs from the existing program. In some instances, it may be necessary to replace the existing program funding with funding available under this announcement.

E. Program Requirements

In conducting activities to achieve the purpose of this program, the recipient will be responsible for the following activities that define the ERC and TPG programs to be conducted:

1. All Applicants are required to provide Measures of Effectiveness that will demonstrate the accomplishment of the various objectives of the grant. Measures must be objective/quantitative and must measure the intended outcomes. These Measures of Effectiveness shall be submitted with the application and shall be an element of evaluation.

2. ERC Applicants shall be an identifiable organizational unit within the sponsoring organization. Applicants must meet the following characteristics in order to be considered for an award. If the characteristics are not met, the application will be considered non-responsive and will be returned to the applicant without a review.

a. Cooperative arrangements with a medical school or teaching hospital (with an established program in preventive or occupational medicine), a school of nursing or its equivalent, a school of public health or its equivalent, or a school of engineering or its equivalent. It is expected that other schools or departments with relevant disciplines and resources shall be represented and shall contribute as appropriate to the conduct of the total program, *e.g.*, epidemiology, toxicology, biostatistics, environmental health, law, business administration, and education. Specific mechanisms to implement the cooperative arrangements between departments, schools/colleges, universities, *etc.*, shall be demonstrated in order to assure that the intended interdisciplinary training and education will be engendered.

b. An ERC Director who possesses a demonstrated capacity for sustained productivity and leadership in occupational health and safety education and training. The Director shall oversee the general operation of the ERC Program and shall, to the extent possible, directly participate in training activities. A Deputy Director shall be responsible for managing the daily administrative duties of the ERC and to increase the ERC Director's availability to ERC staff and to the public.

c. Program Directors who are full-time faculty and professional staff representing various disciplines and qualifications relevant to occupational safety and health who are capable of planning, establishing, and carrying out or administering training projects undertaken by the ERC. Each academic program, as well as the continuing education and outreach program, shall have a Program Director.

d. Faculty and staff with demonstrated training and research expertise, appropriate facilities and ongoing training and research activities in occupational safety and health areas.

e. A program for conducting education and training for four core disciplines: Occupational physicians, occupational health nurses, industrial hygienists, and occupational safety personnel. ERC core academic programs are intended to provide multi-level practitioner and research training. Core academic programs should offer masters degrees and, in research institutions, doctoral degrees. There shall be a minimum of five full-time students or full-time equivalent students in each of the core programs and a minimum of three full-time students or full-time equivalent students in each of the component programs, with a goal of a minimum of 30 full-time students (total in all of core and component programs together). ERCs are encouraged to recruit and train minority students to help address the under-representation of minorities among the occupational safety and health professional workforce. Although it is desirable for an ERC to have the full range of core programs, an ERC with a minimum of three academic programs of which two are in the core disciplines is eligible for support providing it is demonstrated that students will be exposed to the principles and issues of all four core disciplines. In order to maximize the unique strengths and capabilities of institutions, consideration will be given to the development of new and innovative academic component programs that are relevant to the occupational safety and health field, *e.g.*, ergonomics, industrial toxicology, occupational injury prevention, occupational epidemiology, health services research, and agricultural safety and health; and to innovative technological approaches to training and education. ERCs must also document that the program covers an occupational safety and health discipline in critical need or meets a specific regional workforce need. Each core program curriculum shall include courses from non-core categories as well as appropriate clinical rotations and field experiences with public health and safety agencies and with labor-management health and safety groups. Where possible, field experience shall involve students representing other disciplines in a manner similar to that used in team surveys and other team approaches. ERCs should address the importance of providing training and education content related to special populations at risk, including minority workers and other sub-populations specified in the National Occupational Research Agenda (NORA) special populations at risk category.

f. A specific plan describing how trainees in core and component academic programs will be exposed to the principles of all other occupational safety and health core and allied disciplines. ERCs that apply as a consortium (contracting with other institutional partners) generally have geographic, policy and other barriers to achieving this ERC characteristic and, therefore, must give special, innovative, attention to thoroughly describing the approach for fulfilling interdisciplinary interaction between students.

g. Demonstrated impact of the ERC on the curriculum taught by relevant medical specialties, including family practice, internal medicine, dermatology, orthopedics, pathology, radiology, neurology, perinatal medicine, psychiatry, *etc.*, and on the curriculum of undergraduate, graduate and continuing education of primary core disciplines as well as relevant medical specialties and the curriculum of other schools such as engineering, business, and law.

h. An outreach program to interact with and help other institutions or agencies located within the region. Programs shall be designed to address regional needs and implement innovative strategies for meeting those needs. Partnerships and collaborative relationships shall be encouraged between ERCs and TPGs. Programs to address the under-representation of minorities among occupational safety and health professionals shall be encouraged. Specific efforts should be made to conduct outreach activities to develop collaborative training programs with academic institutions serving minority and other special populations, such as Tribal Colleges and Universities, Historically Black Colleges and Universities, and Hispanic-Serving Institutions. Examples of outreach activities might include: Interaction with other colleges and schools within the ERC and with other universities or institutions in the region to integrate occupational safety and health principles and concepts within existing curricula (*e.g.*, Colleges of Business Administration, Engineering, Architecture, Law, and Arts and Sciences); exchange of occupational safety and health faculty among regional educational institutions; providing curriculum materials and consultation for curriculum/course development in other institutions; use of a visiting faculty program to involve labor and management leaders; cooperative and collaborative arrangements with professional societies, scientific associations, and boards of accreditation, certification, or licensure; and presentation of awareness seminars to undergraduate and secondary educational institutions (*e.g.*, high school science fairs and career days) as well as to labor, management and community associations.

i. A specific plan for preparing, distributing and conducting courses, seminars and workshops to provide short-term and continuing education training courses for physicians, nurses, industrial hygienists, safety engineers and other occupational safety and health professionals, paraprofessionals and technicians, including personnel from labor-management health and safety committees, in the geographical region in which the ERC is located. The goal shall be that the training be made available to a minimum of 400 trainees per year representing all of the above categories of personnel, on an approximate proportional basis with emphasis given to providing occupational safety and health training to physicians in family practice, as well as industrial practice, industrial nurses, and safety engineers. Priority shall be given to establishing new and innovative training technologies, including distance learning programs and to short-term programs designed to prepare a cadre of practitioners in occupational safety and health. Where appropriate, it shall be professionally acceptable that Continuing Education Units (as approved by appropriate professional associations) may be awarded. These courses should be structured so that higher educational institutions, public health and safety agencies, professional societies or other appropriate agencies can utilize them to provide training at the local level to occupational health and safety personnel working in the workplace. Further, the ERC shall conduct periodic training needs assessments, shall develop a specific plan to meet these needs, and shall have demonstrated capability for implementing such training directly and through other institutions or agencies in the region. The ERC should establish and maintain cooperative efforts with labor unions, government agencies, and industry trade associations, where appropriate, thus serving as a regional resource for addressing the problems of occupational safety and health that are faced by State and local governments, labor and management.

j. A Board of Advisors or Consultants representing the user and affected population, including representatives of labor, industry, government agencies, academic institutions and professional associations, shall be established by the ERC. The Board should meet at least annually to advise an ERC Executive Committee and to provide periodic evaluation of ERC activities. The Executive Committee shall be composed of the ERC Director and Deputy Director, academic Program Directors, the Director for Continuing Education and Outreach and others whom the ERC Director may appoint to assist in governing the internal affairs of the ERC.

k. A plan to incorporate research training into all aspects of training and, in research institutions, as documented by on-going funded research and faculty publications, a defined research training plan for training doctoral-level researchers in the occupational safety and health field. The plan will include how the ERC intends to strengthen existing research training efforts, how it will integrate research training activities into the curriculum, field and clinical experiences, how it will expand these research activities to have an impact on other primarily clinically-oriented disciplines, such as nursing and medicine, and how it will build on and utilize existing research opportunities in the institution. Each ERC is required to identify or develop a minimum of one, preferably more, areas of research focus related to work environment problems. Consideration should be given to the CDC/NIOSH priority research areas identified in the National Occupational Health Research Agenda (NORA). Further information regarding NORA may be found at the CDC/NIOSH Internet address: *http://www.cdc.gov/niosh/norhmpg.html*. The research training plan will address how students will be instructed and instilled with critical research perspectives and skills. This training will emphasize the importance of developing and working on interdisciplinary teams appropriate for addressing a research issue. It should also prepare students with the skill necessary for developing research protocols, pilot studies, outreach efforts to transfer research findings into practice, and successful research proposals. Such components of research training will require the ERCs to strive toward developing the faculty composition and administrative infrastructure essential to being Centers of Excellence in Occupational Safety and Health Research Training that are required to train research leaders of the future. The plan should address the incremental growth of such elements and evaluation of the plan commensurate with funds available. In addition to the research training components, the plan will also include such items as specific strategies for obtaining student and faculty funding, plans for acquiring equipment, if appropriate, and a plan for developing research-oriented faculty.

1. Evidence in obtaining support from other sources, including other Federal grants, support from States and other public agencies, and support from the private sector including grants from foundations and corporate endowments, chairs, and gifts.

3. TPG Applicants must document that the program covers an occupational safety and health discipline in critical need or meets a specific regional workforce need. There shall be a minimum of three full-time students or full-time equivalent students in each academic program. Applicants should address the importance of providing training and education content related to special populations at risk, including minority and disadvantaged workers. The types of training currently eligible for support are:

a. Graduate training for practice, teaching, and research careers in occupational safety and health. Priority will be given to programs producing graduates in areas of greatest occupational safety and health need. Strong consideration will be given to the establishment of innovative training technologies including distance learning programs.

b. Undergraduate and other pre-baccalaureate training providing trainees with capabilities for positions in occupational safety and health professions.

c. Special technical or other programs for long-term training of occupational safety and health technicians or specialists.

F. Content

Applications

The Program Announcement title and number must appear in the application. Use the information in the Program Requirements, Other Requirements, and Evaluation Criteria sections to develop the application content. Your application will be evaluated on the criteria listed, so it is important to follow them in laying out your program plan. The narrative should be no more than fifteen pages per program, single-spaced, printed on one side, with one-inch margins, and unreduced 12-point font. The print must be clear and legible. Use standard size, black letters that can be clearly copied. Do not use photo reduction. Prepare all graphs, diagrams, tables, and charts in black ink. The application must contain only material that can be photocopied. Do not include course catalogue and course brochures. When additional space is needed to complete any of the items, use plain white paper (8.5 x 11 inches), leave one inch margins on each side, identify each item by its title, and type the name of the program director and the grant number (if the application is a competitive renewal) in the upper right corner of each page. All pages, including Appendices should be numbered consecutively at least one-half inch from the bottom edge.

Please consult the detailed Recommended Outline for Preparation of Competing New/Renewal Training Grant Applications (CDC 2.145 A) available at the Internet address listed in section J.

G. Submission and Deadline

Application Forms

Submit the signed original and two copies of CDC 2.145 A–ERC or TPG (OMB Number 0920–0261). Applications should be clearly identified as an application for an ERC Training Grant or TPG Training Grant. Forms are available at the following Internet address: *http://www.cdc.gov/od/pgo/forminfo.htm.*

If you do not have access to the Internet, or if you have difficulty accessing the forms on-line, you may contact the CDC Procurement and Grants Office Technical Information Management Section (PGO–TIM) at: 770–488–2700. Application forms can be mailed to you.

Submission Date, Time, and Address

The application must be received by 4 p.m. Eastern Time July 1, 2003. Submit the application to: Technical Information Management—PA#04001, CDC Procurement and Grants Office, 2920 Brandywine Road, Atlanta, GA 30341–4146.

Applications may not be submitted electronically.

CDC Acknowledgement of Application Receipt

A postcard will be mailed by PGO–TIM, notifying you that CDC has received your application.

Deadline

Applications shall be considered as meeting the deadline if they are received before 4 p.m. Eastern Time on the deadline date. Any applicant who sends their application by the United States Postal Service or commercial delivery services must ensure that the carrier will be able to guarantee delivery of the application by the closing date and time. If an application is received after closing due to (1) carrier error, when the carrier accepted the package with a guarantee for delivery by the closing date and time, or (2) significant weather delays or natural disasters, CDC will upon receipt of proper documentation, consider the application as having been received by the deadline.

Any application that does not meet the above criteria will not be eligible for competition, and will be discarded. The applicant will be notified of their failure to meet the submission requirements.

H. Evaluation Criteria

Application

Applicants are required to provide measures of effectiveness that will demonstrate the accomplishment of the various identified objectives of the grant. Measures of effectiveness must relate to the performance goals stated in the purpose section of this announcement. Measures must be objective and quantitative and must measure the intended outcome. These measures of effectiveness must be submitted with the application and will be an element of evaluation.

Upon receipt, applications will be reviewed by CDC/NIOSH for completeness. Incomplete applications will be returned to the applicant without further consideration. Those applications judged to be competitive will be further evaluated individually against the following criteria and the extent to which they have been met. The initial peer review will be conducted by means of a panel meeting or site visit. The purpose of the initial review is to obtain basic information regarding elements of the proposed training grant program and to provide a technical report as input to the Special Emphasis Panel. Site visits will be made for new ERC and TPG applications, competing continuation ERC applications, and competing continuation TPG applications that have undergone major program changes during the previous project period. Since the site visits are not assured and depend on the availability of funds, the application is considered a complete document for review purposes. All other competing continuation applications will be initially reviewed by a panel. This panel review includes telephone communication with the proposed Program Directors and serves to clarify elements of the application and answer reviewer questions. Site visitors and panel members are extramural peer reviewers with education and expertise in specific occupational safety and health disciplines.

The final official peer review will be conducted by a Special Emphasis Panel (SEP) appointed by CDC. SEP members are extramural peer reviewers with occupational safety and health expertise in the program areas under review, and include selected members of initial site visit and panel review teams. Each of the following criteria will be addressed and considered by the peer reviewers in assigning the overall priority score weighting them as appropriate for each application. If an application is deemed responsive and of significant merit, a priority score will be assigned using the 100–500 range representing adjectival equivalents from outstanding (100) to acceptable (500). Note that applications do not need to be strong in all categories to be judged likely to have a major scientific impact and thus deserve a good priority score. The NIOSH Training Grants Council provides an internal programmatic review and provides funding recommendations to the Director of NIOSH based programmatic relevance of competing applications to the NIOSH goals and objectives.

The Special Emphasis Panel will evaluate each application against the following criteria:

1. ERC comprehensive evaluation criteria are as follows:

a. Plans to satisfy the regional needs for training in the areas outlined by the application, including projected enrollment, recruitment and current workforce populations. Special consideration should be given to the development of programs addressing the under-representation of minorities among occupational safety and health professionals. Indicators of regional need should include measures utilized by the ERC such as previous record of training and placement of graduates.

The need for supporting students in allied disciplines must be specifically justified in terms of user community requirements.

b. Extent to which arrangements for day-to-day management, allocation of funds and cooperative arrangements are designed to effectively achieve the Characteristics of an Education and Research Center (see E.2).

c. The establishment of new and innovative programs and approaches to training and education relevant to the occupational safety and health field and based on documentation that the program meets specific regional workforce needs. In reviewing such proposed programs, consideration should be given to the developing nature of the program and its capability to produce graduates who will meet such workforce needs.

d. Extent to which curriculum content and design includes formalized training objectives, minimal course content to achieve degree, course descriptions, course sequence, additional related courses open to occupational safety and health students, time devoted to lecture, laboratory and field experience, and the nature of specific field and clinical experiences including their relationships with didactic programs in the educational process.

e. Academic training including the number of full-time and part-time students and graduates for each core and component program, the placement of graduates, employment history, and their current location by type of institution (academic, industry, labor, etc.). Previous continuing education training in each discipline and outreach activity and assistance to groups within the ERC region.

f. Methods in use or proposed methods for evaluating the effectiveness of training and outreach including the use of placement services and feedback mechanisms from graduates as well as employers, innovative strategies for meeting regional needs, critiques from continuing education courses, and reports from consultations and cooperative activities with other universities, professional associations, and other outside agencies.

g. Competence, experience and training of the ERC Director, the Deputy ERC Director, the Program Directors and other professional staff in relation to the type and scope of training and education involved.

h. Institutional commitment to ERC goals. An example of institutional commitment to the long-term stability of ERC programs is the commitment of tenured or tenure-track faculty positions to each participating academic program.

i. Academic and physical environment in which the training will be conducted, including access to appropriate occupational settings.

j. Extent to which the budget is adequate, justified, and consistent with the intended use of the grant funds. This includes a separate budget for the academic staff's time and effort in continuing education and outreach.

k. Evidence of the integration of research experience into the curriculum, and field and clinical experiences. In institutions seeking funds for doctoral and post-doctoral (physician training) level research training, evidence of a plan describing the research and research training the ERC proposes. This should include goals, elements of the program, research faculty and amount of effort, support faculty, facilities and equipment available and needed, and methods for implementing and evaluating the program.

l. Evidence of success in attaining outside support to supplement the ERC grant funds including other Federal grants, support from States and other public agencies, and support from the private sector including grants from foundations and corporate endowments, chairs, and gifts.

m. Evidence of a strategy to evaluate the impact that the ERC and its programs have had on the region served by the Center. Examples could include a continuing education needs assessment and action plan, a workforce needs survey and action plan, consultation and research programs provided to address regional occupational safety and health problems, the impact on primary care practice and training, a program graduate data base to track the employment history and contributions of graduates to the occupational safety and health field, and the cost effectiveness of the program.

n. Past performance based on evaluation of the most recent CDC/NIOSH Peer Review Summary Statement and the grant application Progress Report (Competing Continuation applications only).

2. ERC specialty program evaluation criteria are as follows:

a. Hazardous Substance Training Program in Education and Research Centers:

(1) Relevance of the proposed project to each element of the characteristics of a hazardous substance training program.

(2) Comprehensiveness and soundness of the training plan developed to carry out the proposed activities. This is based on a documented need for the training and evidence to support the approach used to provide the required training. It includes descriptions of the scope and magnitude of the hazardous substance problem in the region served by the ERC and current activities and training efforts.

(3) Education and experience of the Project Director, faculty, and staff assigned to this project with respect to handling, managing or evaluating hazardous substance sites and to the training of professionals in this field.

(4) Creativity and innovation of the project leadership with respect to marketing the courses, structure in attracting trainees and/or providing incentives for training.

(5) Extent to which the applicant considered the work of relevant agencies involved in hazardous substance activities, including EPA, and cooperated with these agencies in developing and implementing this training program.

(6) Suitability of facilities and equipment available for this project.

(7) Extent to which the budget is adequate, justified, and consistent with the intended use of the grant funds.

b. Agricultural Safety and Health Education Programs in Education and Research Centers:

(1) Evidence of a needs assessment directed to the overall contribution of the training program toward meeting the job market, especially within the applicant's region, for qualified personnel to carry out the purposes of the Occupational Safety and Health Act of 1970. The needs assessment should consider the regional requirements for outreach, continuing education, information dissemination and special industrial or community training needs that may be peculiar to the region.

(2) Evidence of a plan to satisfy the regional needs for training in the areas outlined by the application, including projected enrollment, recruitment and current workforce populations. The need for supporting students in allied disciplines must be specifically justified in terms of user community requirements.

(3) The extent to which arrangements for day-to-day management, allocation of funds and cooperative arrangements are designed to effectively achieve characteristics of an ERC.

(4) The extent to which curriculum content and design includes formalized training objectives, minimal course content to achieve degree, course descriptions, course sequence, additional related courses open to occupational safety and health students, time devoted to lecture, laboratory and field experience, and the nature of specific field and clinical experiences

including their relationships with didactic programs in the educational process.

(5) Previous record of academic training in agricultural safety and health including the number of full-time and part-time students and graduates, the placement of graduates, employment history, and their current location by type of institution (academic, industry, labor, etc.). Previous record of continuing education training in agricultural safety and health and record of outreach activity and assistance to agricultural groups within the ERC region.

(6) Methods in use or proposed for evaluating the effectiveness of training and services including the use of placement services and feedback mechanisms from graduates as well as employers, critiques from continuing education courses, and reports from consultations and cooperative activities with other universities, professional associations, and other outside agencies.

(7) The competence, experience and training of the Program Director and other professional staff in relation to the type and scope of training and education involved.

(8) Institutional commitment to Center goals.

(9) Academic and physical environment in which the training will be conducted, including access to appropriate occupational agricultural settings.

(10) Extent to which the budget is adequate, justified, and consistent with the intended use of the grant funds. This includes the budget for the academic program and the continuing education and outreach program.

(11) Evidence of a plan describing the agricultural safety and health training the Center proposes. This should include goals, elements of the program, faculty and amount of effort, support faculty, facilities and equipment available and needed, and methods for implementing and evaluating the program.

(12) Evidence of success in attaining outside support to supplement the ERC grant funds including other federal grants, support from states and other public agencies, and support from the private sector including grants from foundations and corporate endowments, chairs, and gifts.

c. Hazardous Substance Academic Training Program in Education and Research Centers:

(1) Evidence of a needs assessment directed to the overall contribution of the proposed training program toward meeting the needs of the job market, especially within the applicant's region. The needs assessment should consider the regional requirements for hazardous substance training, information dissemination and special industrial, labor or community training needs that may be peculiar to the region.

(2) Evidence of a plan to satisfy regional needs for training in the areas outlined by the application, including Program projected enrollment and recruitment and current workforce populations.

(3) The extent to which the HSAT curriculum content and design includes: Formalized training objectives; minimal course content to achieve a degree or successful completion of the specialty area requirements; course descriptions; course sequence; additional related courses open to occupational safety and health students; time devoted to lecture, laboratory, and field experience; and the nature of specific field and clinical experiences including their relationships with didactic programs in the educational process.

(4) Previous record of academic and/or short course training delivered in the hazardous substances field, including the number and type of students trained. Previous record of hazardous substances outreach activity and assistance to hazardous substance groups within the ERC's region.

(5) Methods in use or proposed for evaluating the effectiveness of training and services including the use of placement services and feedback mechanisms from graduates as well as employers, student evaluations from academic and continuing education courses, and reports from consultations and cooperative activities with other universities, professional associations, and other outside agencies.

(6) The competence, experience and training of the Program Director and other professional staff in relation to the type and scope of training and education involved.

(7) Institutional commitment to HSAT Program goals.

(8) Academic and physical environment in which the training will be conducted.

(9) Extent to which the budget is adequate, justified, and consistent with the intended use of the grant funds. This includes the budget required to support the training courses developed, as well as accounting for the academic staff's time.

(10) Evidence of a plan describing the hazardous substances academic training the Center proposes. This should include goals, elements of the program, faculty and amount of effort, support faculty, facilities and equipment available and needed, and methods for implementing and evaluating the program.

(11) Evidence of success in attaining outside support to supplement the ERC grant funds including other federal grants, support from states and other public agencies, and support from the private sector including grants from foundations and corporate endowments, chairs, and gifts.

(12) Extent to which the applicant has collaborated with state and federal agencies having hazardous substance management functions, including the U.S. Environmental Protection Agency, and has cooperated with the agencies in developing and implementing this program.

d. ERC Pilot Project Research Training Programs:

(1) Relevance of the proposed program, including objectives that are specific and consistent.

(2) Adequacy of the plan proposed to conduct the pilot projects program, including procedures for reviewing and funding projects, the scientific review mechanism, and program quality assurance.

(3) Extent to which the applicant demonstrates collaboration with other research training institutions in the region, including NIOSH Training Project Grantees.

(4) Education and experience of the proposed Research Training Program Director and faculty in the occupational safety and health field, including the utilization of pilot projects as a research training mechanism.

(5) Extent to which the budget is adequate, justified, and consistent with the intended use of the grant funds.

(6) Adequacy of the plan to evaluate the effectiveness of the proposed pilot projects program.

(7) Gender and minority issues—Are plans to include women, ethnic, and racial groups adequately developed (as appropriate for the scientific goals of the pilot projects)? (See AR–2, Requirements for Inclusion of Women and Racial and Ethnic Minorities in Research.)

e. ERC Health Services Research Training Programs:

(1) Evidence of a plan to satisfy the need for training in the area outlined by the application, including projected enrollment, recruitment and job opportunities. Indicators of need may include measures utilized by the Program such as previous record of training and placement of graduates. Indicate the potential contribution of the project toward meeting the need for this specialized training.

(2) Extent to which arrangements for day-to-day management, allocation of funds and cooperative arrangements are designed to effectively achieve the program requirements.

(3) Evidence of a plan describing the academic and research training the program proposes. This should include goals, elements of the program, research faculty and amount of effort, support faculty, facilities and equipment available and needed, and methods for implementing and evaluating the program.

(4) Extent to which curriculum content and design includes formalized training objectives, minimal course content to achieve degree, course descriptions, course sequence, additional related courses open to students, time devoted to lecture, and clinical and research experience addressing the relationship with didactic programs in the educational process.

(5) The extent to which the program effort is capable of supporting the number and type of students proposed.

(6) Extent to which the program has initiated collaborative relationships with external agencies and institutions to expand and strengthen its research capabilities by providing student and faculty research opportunities.

(7) Evidence of previous record of training in health services research and occupational safety and health, including placement of graduates and employment history.

(8) The extent to which the program documents methods in use or proposed methods for evaluating the effectiveness of the training, including the use of feedback mechanisms from graduates and employers, placement of graduates in research positions, research accomplishments of graduates and reports from consultations and cooperative activities with other universities, professional associations, and other outside agencies.

(9) Competence, experience and training of the Program Director, faculty and advisors in relation to the type and scope of research training and education involved.

(10) Degree of institutional commitment to Program goals.

(11) Adequacy of the academic and physical environment in which the training will be conducted, including access to appropriate occupational health research resources.

(12) The extent to which the budget is reasonable, adequately justified, and consistent with the intended use of the grant funds.

(13) Evidence of a plan for establishment of an Advisory Committee, including meeting times, roles and responsibilities.

3.TPG evaluation criteria are as follows:

a. Need for training in the program area outlined by the application. This should include documentation of a plan for student recruitment, projected enrollment, job opportunities, regional need both in quality and quantity, and for programs addressing the under-representation of minorities in the profession of occupational safety and health.

b. Potential contribution of the project toward meeting the needs for graduate or specialized training in occupational safety and health.

c. The establishment of new and innovative programs and approaches to training and education relevant to the occupational safety and health field and based on documentation that the program meets specific regional workforce needs. In reviewing such proposed programs, consideration should be given to the developing nature of the program and its capability to produce graduates who will meet such workforce needs.

d. Curriculum content and design which should include formalized program objectives, minimal course content to achieve degree, course sequence, related courses open to students, time devoted to lecture, laboratory and field experience, nature and the interrelationship of these educational approaches. There should also be evidence of integration of research experience into the curriculum, and field and clinical experiences.

e. Previous records of training in this or related areas, including placement of graduates.

f. Methods proposed to evaluate effectiveness of the training.

g. Degree of institutional commitment: Is grant support necessary for program initiation or continuation? Will support gradually be assumed? Is there related instruction that will go on with or without the grant? An example of institutional commitment to the long-term stability of TPG programs is the commitment of tenured or tenure-track faculty positions to each academic program.

h. Adequacy of facilities (classrooms, laboratories, library services, books, and journal holdings relevant to the program, and access to appropriate occupational settings).

i. Competence, experience, training, time commitment to the program and availability of faculty to advise students, faculty/student ratio, and teaching loads of the program director and teaching faculty in relation to the type and scope of training involved. The program director must be a full-time faculty member.

j. Admission Requirements: Student selection standards and procedures, student performance standards and student counseling services.

k. Advisory Committee: Membership, industries and labor groups represented; how often they meet; who they advise, role in designing curriculum and establishing program need. The Committee should meet at least annually to provide advice and periodic evaluation of TPG activities.

l. Evidence of a strategy to evaluate the impact that the program has had on the region. Examples could include a workforce needs survey and action plan, consultation and research programs provided to address regional occupational safety and health problems, a program graduate data base to track the employment history and contributions of graduates to the occupational safety and health field, and the cost effectiveness of the program.

m. Past performance based on evaluation of the most recent CDC/NIOSH Peer Review Summary Statement and the grant application Progress Report (Competing Continuation applications only).

n. Extent to which the budget is adequate, justified, and consistent with the intended use of the grant funds.

4. ERC and TPG applications for Occupational Injury Prevention Research Training Programs evaluation criteria are as follows:

a. Evidence of a plan to satisfy the need for training in the area outlined by the application, including projected enrollment, recruitment and job opportunities. Indicators of need may include measures utilized by the Program such as previous record of training and placement of graduates. Indicate the potential contribution of the project toward meeting the need for this specialized training.

b. Extent to which arrangements for day-to-day management, allocation of funds and cooperative arrangements are designed to effectively achieve the program requirements.

c. Evidence of a plan describing in detail the research training the program proposes. This should include goals, elements of the program, research faculty and amount of effort, support faculty, facilities and equipment available and needed, and methods for implementing and evaluating the program.

d. Extent to which curriculum content and design includes formalized training objectives, minimal course content to achieve degree, course descriptions,

course sequence, additional related courses open to students, time devoted to lecture, and clinical and research experience addressing the relationship with didactic programs in the educational process.

e. The extent to which the program effort is capable of supporting the number and type of students proposed.

f. Extent to which the program has initiated collaborative relationships with external agencies and institutions to expand and strengthen its research capabilities by providing student and faculty research opportunities.

g. Evidence of previous record of training in occupational injury prevention, including placement of graduates and employment history.

h. The extent to which the applicant documents methods in use or proposed methods for evaluating the effectiveness of the training, including the use of feedback mechanisms from graduates and employers, placement of graduates in research positions, research accomplishments of graduates and reports from consultations and cooperative activities with other universities, professional associations, and other outside agencies.

i. Competence, experience and training of the Program Director, faculty and advisors in relation to the type and scope of research training involved.

j. Degree of institutional commitment to Program goals. An example of institutional commitment to the long-term stability of academic programs is the commitment of tenured or tenure-track faculty positions to each participating academic program.

k. Adequacy of the academic and physical environment in which the training will be conducted, including access to appropriate occupational injury prevention research resources.

l. The extent to which the budget is adequate, justified, and consistent with the intended use of the grant funds.

m. Evidence of a plan for establishment of an Advisory Committee, including meeting times, roles and responsibilities.

I. Other Requirements

Technical Reporting Requirements

Provide CDC with original plus two copies of:

1. The initial interim progress report is due December 1, 2004. This report is required on December 1, on an annual basis. The progress report will serve as your non-competing continuation application, and must contain the following elements:

a. Current Budget Period Objectives and Activities.

b. Current Budget Period Financial Progress.

c. New Budget Period Program Proposed Activities and Objectives.

d. Detailed Line-Item Budget and Justification.

e. Additional Requested Information.

2. Financial status report, no more than 90 days after the end of each budget period. The initial report is due September 30, 2005.

3. Final financial and performance reports, no more than 90 days after the end of the project period.

Send all reports to the Grants Management Specialist identified in the "Where to Obtain Additional Information" section of this announcement.

Additional Requirements:

The following additional requirements are applicable to this program. For a complete description of each, see Attachment I of the program announcement, as posted on the CDC Web site.

AR–2* Requirements for Inclusion of Women and Racial and Ethnic Minorities in Research
AR–3* Animal Subjects Requirements
AR–10 Smoke-Free Workplace Requirements
AR–11 Healthy People 2010
AR–12 Lobbying Restrictions

*Applies only to ERC Pilot Project Research Training Program applications.

Executive Order 12372 does not apply to this program.

J. Where To Obtain Additional Information

This and other CDC announcements, the necessary applications, and associated forms can be found on the CDC Web site, Internet address: *http://www.cdc.gov*. Click on "Funding" then "Grants and Cooperative Agreements".

For general questions about this announcement, contact: Technical Information Management, CDC Procurement and Grants Office, 2920 Brandywine Road, Atlanta, GA 30341–4146, Telephone: 770–488–2700.

For business management and budget assistance, contact: Cynthia Y. Mitchell, Grants Management Specialist, Procurement and Grants Office, Program Announcement 04001, Centers for Disease Control and Prevention (CDC), 626 Cochrans Mill Rd., Mailstop P05, Pittsburgh, PA 15236, Telephone: (412) 386–6434, e-mail address: *CMitchell@cdc.gov*.

For program technical assistance, contact: John T. Talty, Principal Engineer, Office of Extramural Programs, National Institute for Occupational Safety and Health, Centers for Disease Control and Prevention (CDC), 4676 Columbia Parkway, Mailstop C–7, Cincinnati, OH 45226–1998, Telephone (513) 533–8241, e-mail address: *jtt2@cdc.gov*.

Dated: May 9, 2003.

Sandra R. Manning,

Director, Procurement and Grants Office, Centers for Disease Control and Prevention (CDC).

[FR Doc. 03–12107 Filed 5–14–03; 8:45 am]

BILLING CODE 4163–19–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 02N–0077]

Agency Information Collection Activities; Announcement of OMB Approval; Emergency Medical Device Shortage Program Survey

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that a collection of information entitled "Emergency Medical Device Shortage Program Survey" has been approved by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995.

FOR FURTHER INFORMATION CONTACT: Peggy Robbins, Office of Information Resources Management (HFA–250), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–1223.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of March 17, 2003 (68 FR 12705), the agency announced that the proposed information collection had been submitted to OMB for review and clearance under 44 U.S.C. 3507. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. OMB has now approved the information collection and has assigned OMB control number 0910–0491. The approval expires on January 31, 2004. A copy of the supporting statement for this information collection is available on the Internet at *http://www.fda.gov/ohrms/dockets*.

Dated: May 9, 2003.

Jeffrey Shuren,

Assistant Commissioner for Policy.

[FR Doc. 03–12191 Filed 5–14–03; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 03N–0187]

Agency Information Collection Activities; Proposed Collection; Comment Request; Postmarket Surveillance of Medical Devices

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act of 1995 (the PRA), Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing information collection, and to allow 60 days for public comment in response to the notice. This notice solicits comments on information collection requirements for postmarket surveillance (PS) of medical devices.

DATES: Submit written or electronic comments on the collection of information by July 14, 2003.

ADDRESSES: Submit electronic comments on the collection of information to *http://www.accessdata.fda.gov/scripts/oc/dockets/edockethome.cfm*. Submit written comments on the collection of information to the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. All comments should be identified with the docket number found in brackets in the heading of this document.

FOR FURTHER INFORMATION CONTACT: Peggy Robbins, Office of Information Resources Management (HFA–250), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–1223.

SUPPLEMENTARY INFORMATION: Under the PRA (44 U.S.C. 3501–3520), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. "Collection of information" is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c) and includes agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. Section 3506(c)(2)(A) of the PRA (44 U.S.C. 3506(c)(2)(A)) requires Federal agencies to provide a 60-day notice in the **Federal Register** concerning each proposed collection of information including each proposed extension of an existing collection of information, before submitting the collection to OMB for approval. To comply with this requirement, FDA is publishing notice of the proposed collection of information set forth in this document.

With respect to the following collection of information, FDA invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of FDA's functions, including whether the information will have practical utility; (2) the accuracy of FDA's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques, when appropriate, and other forms of information technology.

Postmarket Surveillance of Medical Devices—21 CFR Part 822 (OMB Control Number 0910–0449)—Extension

Section 522(a) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 360l(a)) authorizes the FDA to require manufacturers to conduct PS of any device that meets the criteria set forth in the statute.

The PS regulation in part 822 (21 CFR part 822) establishes procedures that FDA uses to approve and disapprove PS plans. The regulation provides specific, clear, and flexible instructions to manufacturers so they know what information is required in a PS plan submission. FDA reviews submissions in accordance with §§ 822.15 through 822.18 (which describe the grounds for approving or disapproving a PS plan). If this information is not collected, FDA cannot ensure that the PS will result in the collection of useful data that can reveal unforeseen adverse events or other information necessary to protect the public health.

Respondents to this collection of information are those manufacturers who require PS of their products. As previously stated, the collection of data and information under these regulations is conducted on a very infrequent basis and only as necessary.

FDA estimates the burden of this collection of information as follows:

TABLE 1.—ESTIMATED ANNUAL REPORTING BURDEN[1]

21 CFR Section	No. of Respondents	Total Annual Responses	No. of Responses	Hours per Response	Total Hours
822.9 and 822.10	5	1	5	120	600
822.21	2	1	2	40	80
822.26	1	1	1	5	5
822.27	1	1	1	40	40
822.28	1	1	1	40	40
822.29	1	1	1	120	120
822.30	1	1	1	40	40
822.34	1	1	1	20	20
822.38	23	2	46	80	3,680

TABLE 1.—ESTIMATED ANNUAL REPORTING BURDEN[1]—Continued

21 CFR Section	No. of Respondents	Total Annual Responses	No. of Responses	Hours per Response	Total Hours
Totals					4,628

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

TABLE 2.—ESTIMATED ANNUAL RECORDKEEPING BURDEN[1]

21 CFR Section	No. of Recordkeepers	Total Annual Records	No. of Records	Hours per Record	Total Hours
822.31	23	1	23	20	460
822.32	69	1	69	10	690
Totals					1,150

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

FDA estimates, based on current staffing and resources, only one actual PS action and manufacturers' aversion to the stigma of PS over the past year. One PS action will be issued for generic devices comprising of approximately five manufacturers. Each manufacturer will be required to submit a PS plan (§§ 822.9 and 822.10) and interim and final reports on the progress of the surveillance (§ 822.38). FDA anticipates that, on a case-by-case basis, requests for additional information may be made from a manufacturer. FDA expects that a small number of respondents will propose changes to their PS plans (§ 822.21), request a waiver of a specific requirement of this regulation (§ 822.29), or request exemption from the requirement to conduct PS of their device (§ 822.30). FDA's experience has shown that a few respondents will go out of business (§ 822.26) or cease marketing the device subject to PS (§ 822.28) each year. In addition, manufacturers must certify transfer of records when ownership changes (§ 822.34).

Section 822.25 does not constitute information collections subject to review under the PRA because "* * * they entail no burden other than that necessary to identify the respondent, the date, the respondent's address, and the nature of the instrument * * *" (5 CFR 1320.3(h)(1)).

FDA expects that at least some of the manufacturers will be able to satisfy the PS requirement using information or data they already have. For purposes of calculating burden, however, FDA has assumed that each PS order can only be satisfied by a 3-year clinically-based surveillance plan, using three investigators. These estimates are based on FDA's knowledge and experience with limited implementation of section 522 of the act under the Safe Medical Devices Act of 1990. Therefore, FDA would expect that the recordkeeping requirements would apply to a maximum of 23 manufacturers (6 added each year) and 69 investigators (3 years per surveillance plan). After 3 years, FDA would expect these numbers to remain level as the surveillance plans conducted under the earliest orders reach completion and new orders are issued.

Dated: May 9, 2003.

Jeffrey Shuren,

Assistant Commissioner for Policy.

[FR Doc. 03–12192 Filed 5–14–03; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 03D–0137]

Medical Devices: Draft Guidance for Industry and FDA; Surgical Masks—Premarket Notification Submissions; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of the draft guidance for industry entitled "Surgical Masks—Premarket Notification (510(k)) Submissions; Draft Guidance for Industry and FDA." This draft guidance is intended to assist industry in preparing premarket notification submissions for surgical masks. This draft guidance is neither final nor is it in effect at this time.

DATES: Submit written or electronic comments on this draft guidance by June 16, 2003.

ADDRESSES: Submit written requests for single copies on a 3.5" diskette of the draft guidance entitled "Surgical Masks—Premarket Notification (510(k)) Submissions; Draft Guidance for Industry and FDA" to the Division of Small Manufacturers, International, and Consumer Assistance (HFZ–220), Center for Devices and Radiological Health, Food and Drug Administration, 1350 Piccard Dr., Rockville, MD 20850. Send two self-addressed adhesive labels to assist that office in processing your request or fax your request to 301–443–8818. See the **SUPPLEMENTARY INFORMATION** section for information on electronic access to the draft guidance.

Submit written comments on the draft guidance to the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. Submit electronic comments to *http://www.fda.gov/dockets/ecomments*. Identify comments with the docket number found in brackets in the heading of this document.

FOR FURTHER INFORMATION CONTACT: Chiu S. Lin, Center for Devices and Radiological Health (HFZ–480), Food and Drug Administration, 9200 Corporate Blvd., Rockville, MD 20850, 301–443–8913.

SUPPLEMENTARY INFORMATION:

I. Background

FDA previously issued on its Web site a draft guidance entitled "Draft Guidance for Industry and FDA Reviewers on the Content and Format of Premarket Notification (510(k)) Submissions for Surgical Mask" on January 16, 1998; however, no notice of availability was published in the **Federal Register**. We are seeking to correct that error by issuing the draft guidance again for comment with a notice of availability in the **Federal Register**. FDA will consider the comments received and make every effort to issue the draft guidance for implementation in a reasonable time after the comment period has closed.

We have also revised the draft guidance by adding information concerning industry's option to submit an abbreviated 510(k) and retitled the guidance for clarity.

II. Significance of Guidance

This draft guidance is being issued consistent with FDA's good guidance practices regulation (21 CFR 10.115). The draft guidance, when finalized, will represent the agency's current thinking on surgical masks. It does not create or confer any rights for or on any person and does not operate to bind FDA or the public. An alternative approach may be used if such approach satisfies the requirements of the applicable statute and regulations.

III. Paperwork Reduction Act of 1995

This draft guidance contains information collection provisions that are subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (the PRA) (44 U.S.C. 3501–3520). The collections of information addressed in the draft guidance have been approved by OMB in accordance with the PRA under the regulations governing premarket notification submissions (21 CFR part 807, subpart E, OMB control number 0910–0120). The labeling provisions addressed in the draft guidance have been approved by OMB under the PRA under OMB control number 0910–0485.

IV. Comments

Interested persons may submit to the Dockets Management Branch (see **ADDRESSES**) written or electronic comments on the draft guidance. Submit a single copy of electronic comments to *http://www.fda.gov/dockets/ecomments*. Submit two paper copies of any mailed comments. Identify comments with the docket number found in brackets in the heading of this document. The draft guidance and received comments are available for public examination in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

V. Electronic Access

The CDRH Web site may be accessed at *http://www.fda.gov/cdrh*. A search capability for all CDRH guidance documents are also available on the Dockets Management Branch Internet site at *http://www.fda.gov/ohrms/dockets*.

To receive a copy of "Surgical Masks—Premarket Notification (510(k)) Submissions; Draft Guidance for Industry and FDA" by fax, call the CDRH Facts-On-Demand system at 800–899–0381 or 301–827–0111 from a touch-tone telephone. Press 1 to enter the system. At the second voice prompt, press 1 to order a document. Enter the document number (094) followed by the pound sign (#). Follow the remaining voice prompts to complete your request.

Persons interested in obtaining a copy of the draft guidance may also do so by using the Internet. CDRH maintains a site on the Internet for easy access to information including text, graphics, and files that may be downloaded to a personal computer with Internet access. Updated on a regular basis, the CDRH home page includes device safety alerts, **Federal Register** reprints, information on premarket submissions (including lists of approved applications and manufacturers' addresses), small manufacturer's assistance, information on video conferencing and electronic submissions, Mammography Matters, and other device-oriented information.

Dated: May 5, 2003.

Linda S. Kahan,

Deputy Director, Center for Devices and Radiological Health.

[FR Doc. 03–12193 Filed 5–14–03; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Agency Information Collection Activities: Proposed Collection: Comment Request

In compliance with the requirement for opportunity for public comment on proposed data collection projects (section 3506(c)(2)(A) of Title 44, United States Code, as amended by the Paperwork Reduction Act of 1995, Public Law 104–13), the Health Resources and Services Administration (HRSA) publishes periodic summaries of proposed projects being developed for submission to the Office of Management and Budget under the Paperwork Reduction Act of 1995. To request more information on the proposed project or to obtain a copy of the data collection plans and draft instruments, call the HRSA Reports Clearance Officer on (301) 443–1129.

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the Agency, including whether the information shall have practical utility; (b) the accuracy of the Agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including the use of automated collection techniques or other forms of information technology.

Proposed Project: The National Health Service Corps (NHSC) Professional Training and Information Questionnaire (PTIQ) (OMB No. 0915–0208)—Revision

The National Health Service Corps (NHSC) of the HRSA's Bureau of Health Professions (BHPr), is committed to improving the health of the Nation's underserved by uniting communities in need with caring health professionals and by supporting communities' efforts to build better systems of care.

The National Health Service Corps (authorized by the Public Health Services Act, section 331) collects data on its programs to ensure compliance with legislative mandates and to report to Congress and policymakers on program accomplishments. To meet these objectives, the NHSC requires a core set of information collected annually that is appropriate for monitoring and evaluating performance and reporting on annual trends.

The PTIQ is used to collect data related to professional issues from NHSC-obligated Scholarship Program Recipients including physicians, physician assistants (PAs), nurse practioners (NPs), certified nurse midwives (CNMs), and other disciplines in the current year's placement cycle. This data is used to match an individual health care professional with the most appropriate clinical practice setting.

The PTIQ will be mailed twelve months in advance of the intended service availability date. Estimates of annualized reporting burden are as follows:

Type of respondent	Number of respondents	Responses per respondent	Hours per response	Total burden hours
Health Care Professionals	311	1	5 min	26

Send comments to Susan G. Queen, Ph.D., HRSA Reports Clearance Officer, Room 14–45, Parklawn Building, 5600 Fishers Lane, Rockville, MD 20857. Written comments should be received within 60 days of this notice.

Dated: May 9, 2003.

Jane M. Harrison,

Director, Division of Policy Review and Coordination.

[FR Doc. 03–12195 Filed 5–14–03; 8:45 am]

BILLING CODE 4165–15–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

HRSA–03–099 Fiscal Year 2003 Competitive Cycle for the Bioterrorism Training and Curriculum Development Program (BCDF) 93.996

AGENCY: Health Resources and Services Administration, HHS.

ACTION: Correction of deadline date.

SUMMARY: In notice document FR Doc. 03–10934, in the issue of Monday, May 5, 2003, make the following correction:

On page 23730, under the section Application Requests, Availability, Deadline and Addresses, in the third column, the application deadline date should read June 30, 2003.

Dated: May 9, 2003.

Jane M. Harrison,

Director, Division of Policy Review and Coordination.

[FR Doc. 03–12042 Filed 5–14–03; 8:45 am]

BILLING CODE 4165–15–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of Inspector General

Program Exclusions: April 2003

AGENCY: Office of Inspector General, HHS.

ACTION: Notice of program exclusions.

During the month of April 2003, the HHS Office of Inspector General imposed exclusions in the cases set forth below. When an exclusion is imposed, no program payment is made to anyone for any items or services (other than an emergency item or service not provided in a hospital emergency room) furnished, ordered or prescribed by an excluded party under the Medicare, Medicaid, and all Federal Health Care programs. In addition, no program payment is made to any business or facility, *e.g.*, a hospital, that submits bills for payment for items or services provided by an excluded party. Program beneficiaries remain free to decide for themselves whether they will continue to use the services of an excluded party even though no program payments will be made for items and services provided by that excluded party. The exclusions have national effect and also apply to all Executive Branch procurement and non-procurement programs and activities.

Subject city, state	Effective date
PROGRAM-RELATED CONVICTIONS	
AGUILAR, DAVID HERAN FLORENCE, AZ	05/20/2003
ALCANTAR, EVA ALVAREZ LOS ANGELES, CA	05/20/2003
ALSAKER, ERIC ALLEN BUFFALO, MN	05/20/2003
ARIAS, JOSE PENSACOLA, FL	05/20/2003
ASHBAUGH, TERESA MARGE SALINA, KS	05/20/2003
BAIRD, CURTIS JAMES III YUCAIPA, CA	05/20/2003
BARNHOUSE, WILLIS HONOLULU, HI	05/20/2003
BARONOV, BORIS LOS ANGELES, CA	05/20/2003
BARRETT, DONNA M BARRE, VT	05/20/2003
BENSON, CARRIE L HILLSBORO, OH	05/20/2003
BRANDON, MARIA MIAMI, FL	05/20/2003
CAO, SANH FOUNTAIN VALLEY, CA	05/20/2003
CAPLAN, STEVEN HONOLULU, HI	05/20/2003
CASAS, OSIRIS MARIA MIAMI, FL	05/20/2003
CERDA, EDUARDO POMONA, CA	05/20/2003
CHANG, ALBERT MIAMI, FL	05/20/2003
CHASE, JANET A GREELY, CO	05/20/2003
CHAVEZ, LINDA MARTINEZ MONTEBELLO, CA	05/20/2003
COLEMAN, MAURICE ANN MARYSVILLE, WA	05/20/2003
COMPETENT CARE, INC NEWBURGH, NY	05/20/2003
CULLEN, KENNETH C WOODSIDE, NY	05/20/2003
DAVIS, TERRY B SARASOTA, FL	05/20/2003
EDMOND, DOROTY WESTBURY, NY	05/20/2003
ESPINOSA, ORLANDO MIAMI, FL	05/20/2003
FEENEY, ELIZABETH A CANAL WINCHESTER, OH	05/20/2003
FICK, MELISSA SPRINGFIELD, OH	05/20/2003
FINA, JEFFREY OKLAHOMA CITY, OK	05/20/2003
GASPARYAN, ANNA TARZANA, CA	05/20/2003
GONZALEZ, LILIA MIAMI, FL	05/20/2003
GONZALEZ, CARLOS J CHIPLEY, FL	05/20/2003
GREEN, BRANDI RAE TUCSON, AZ	05/20/2003
HERNANDEZ, VERONICA CATALINA HUNTINGTON PK, CA	05/20/2003
HERNANDO, GILDA MIAMI, FL	05/20/2003
HORNSHUH, DAVID L HONOLULU, HI	05/20/2003
HOWARD, JASON MURELLS INLET, SC	05/20/2003
JEREZ, EVARISTO MIAMI, FL	05/20/2003
KALADZHYAN, OGANES LOS ANGELES, CA	05/20/2003
KRAMER, MELODY ANN SPOKANE, WA	05/20/2003
LABRADOR, JESUS MANUEL TOPEKA, KS	05/20/2003
MAMBREYAN, NORAYR LOS ANGELES, CA	05/20/2003
MARTINEZ, JOE LA PUENTE, CA	05/20/2003
MED-CARE DISTRIBUTORS, INC SMITHVILLE, WV	05/20/2003
MIN, CHANPHIRUN MEANOWUTH DELANO, CA	05/20/2003
MITCHELL, JENNIFER LYNN DEL MAR, CA	05/20/2003
MOHAMMAD, KHADIJAH MARIANNA, FL	05/20/2003
MOHAMMED, KRISHNA EGLIN, FL	05/20/2003
MURPHY, HATTIE MAE MIAMI, FL	05/20/2003
PLUCER, MARK GERRY FLINT, MI	05/20/2003
ROBINSON, JEREMY WASHINGTON, DC	05/20/2003
SAAVEDRA, JOSE MIAMI, FL	05/20/2003
SALINAS, JOHN YOLMAN DORAVILLE, GA	05/20/2003
SALMANS, ROBERT S REYNOLDSBURG, OH	05/20/2003
DENISCO, RICHARD ALAN LAKE MARY, FL	05/20/2003
FOLEY, COLLEEN BERNICE HEMPSTEAD, TX	05/20/2003
GRANDSTAFF, STEVEN WADE SEWARD, AK	05/20/2003
HUNTER, JERRY DEWAYNE INDIANAPOLIS, IN	05/20/2003
JONES, TONIANETTA DENISE MARIANNA, FL	05/20/2003
KITLOWSKI, MARY LOU AURORA, CO	05/20/2003
LONGCOR, MICHELLE GAY STOCKTON, CA	05/20/2003
LUCIER, KATHLEEN JOAN SONORA, CA	05/20/2003
MEADE, KIMBERLEY DAWN RALEIGH, NC	05/20/2003
MEDINA, GAY LYNN SAN ANTONIO, TX	05/20/2003
PERKINS, JANET UNIVERSITY CITY, MO	05/20/2003
RIBBENTROP, PAUL HENRY CLINTON TWNSHP, MI	05/20/2003
SHARP, LANA MARIE WHITESBORO, TX	05/20/2003
PATIENT ABUSE/NEGLECT CONVICTIONS	
BENNETT, PATRICIA CANTON, MS	05/20/2003
BROTHERS, AELIA SINAE OKLAHOMA CITY, OK	05/20/2003
BURGESS, RANDY SHANE MITCHELL, SD	05/20/2003
BURT, TRACY OXFORD, MS	05/20/2003
COMPASSIONATE HOME CARE, INC MINNEAPOLIS, MN	05/20/2003
CORNISH, GEOFFREY LEONARD CORCORAN, CA	05/20/2003
EVANS, STEPANIE OCONOMOWOC, WI	05/20/2003
HERNANDEZ, JOSE SERGIO ABERDEEN, WA	05/20/2003
HINZO, ALEX GILBERT SANTA MARIA, CA	05/20/2003
HUDSON, SARAH E EXETER, NH	05/20/2003
HUMPHRIES, PAULINE CLEVELAND, OH	05/20/2003
KOENIG, RYAN G CLINTON, WI	05/20/2003
LOEB, CHARLES PHILLIP III LOS ANGELES, CA	05/20/2003
MARIER, KUIR G TUCSON, AZ	05/20/2003
MASSOUD, NIDAL E PALO ALTO, CA	05/20/2003
NEELY, MICHAEL T GREENFIELD, WI	05/20/2003
REILLY, TARA LENEXA, KS	05/20/2003
ROSENTHAL, DAVID K SACRAMENTO, CA	05/20/2003
SPRUCH, REZSO MORELIA, MEXICO	05/20/2003
VICTORIA, PAUL SHANE WOOSTER, OH	05/20/2003
SANCHEZ, JUAN MIAMI, FL	05/20/2003
SCHLAFF, RICHARD M TERRE HAUTE, IN	05/20/2003
SHAW, MARVIN LEROY SANDY, UT	05/20/2003
SOLOMON, MARCUS A DELMONT, NJ	05/20/2003
T-TECH MEDICAL SERVICES, INC SAFETY HARBOR, FL	05/20/2003
THIGPEN, JEFFERY JEROME DULUTH, MN	05/20/2003
THOMPSON, MICHAEL W LITHONIA, GA	05/20/2003
TONEY, LAURA NAMPA, ID	05/20/2003
TRANS-CAPITAL INVESTMENT GROUP TAMPA, FL	05/20/2003
TRIFAN, SHAUN KATHLEEN S PORTLAND, ME	05/20/2003
TY, HUYNH VAN RIALTO, CA	05/20/2003
URBANIK, MICHAEL STEPHEN CLAWSON, MI	05/20/2003
WEBER, DAVID C AUSTIN, TX	05/20/2003
FELONY CONVICTION FOR HEALTH CARE FRAUD	
CARNEY, DEBORAH A LEWISVILLE, TX	05/20/2003
FINK, DAVID M METUCHEN, NJ	05/20/2003
HELLER, ELLIOT M NEW BRUNSWICK, NJ	05/20/2003
KATINE, SCOTT H MONTGOMERY, PA	05/20/2003
KRAMER, LARRY S POMONA, NY	05/20/2003
LAYSHOCK, DAVENE MARIE DENVER, CO	05/20/2003
MELCHOR, CYNTHIA VIOLETA PERRYSBURG, OH	05/20/2003
MEYER, MARILYN KAY WOLCOTT, IN	05/20/2003
NGUYEN, SANDY YUNG LUN SAN JOSE, CA	05/20/2003
NORBY, SCOTT BONITA, CA	05/20/2003
OLIVAS, DOLORES ANITA COLORADO SPRNGS, CO	05/20/2003
SADLER, ALANE K CLEVELAND, OH	05/20/2003
VOUGHT, RAYMOND JESSE SAN PEDRO, CA	05/20/2003
FELONY CONTROL SUBSTANCE CONVICTION	
ANDERSON, GINA M PEMBROKE, MA	05/20/2003
ATHEY, ALAN JAMES AURORA, CO	05/20/2003
BUCHAR, CHRIS R BALTIMORE, MD	05/20/2003
BYRNE, MARY ANN EL CAJON, CA	05/20/2003
CHAMP, DEBORAH LEE LACEY, WA	05/20/2003
WHALEN, MARTIN THORNTON, CO	05/20/2003
WICKRAM, IAN E TRACY, CA	05/20/2003
WILLIAMS, VASIE MANSFIELD, OH	05/20/2003
WISLA, PETER BERT PRESQUE ISLE, WI	05/20/2003
YOUNG, ELSIE MAE COATESVILLE, PA	05/20/2003
CONVICTION FOR HEALTH CARE FRAUD	
VAUGHAN-SCHREIBER, JANIE. DOYLESTOWN, PA	05/20/2003
CONVICTION-OBSTRUCTION OF AN INVESTIGATION	
ALTER, SUZI SHERMAN OAKS, CA	05/20/2003
LICARI, ANTHONY MICHAEL PEMBROKE PINES, FL	05/20/2003
LICENSE REVOCATION/SUSPENSION/ SURRENDERED	
AIKEN, RHONDA L MILTON, VT	05/20/2003
ALLEN, KIMBERLY ANN LYNN, MA	05/20/2003
BABB, STEPHEN REX PROVO, UT	05/20/2003
BAKER, SHERYL R WAYNESBORO, VA	05/20/2003
BLODGETT, ERIC R FRAMINGHAM, MA	05/20/2003
BREKOSKY, DENISE P DILLSBURG, PA	05/20/2003
BRENNAN, LORI JEAN MESA, AZ	05/20/2003
BROOKS, LYNNETTA PHOENIX, AZ	05/20/2003
BROOKS, LINDA DIXON, WY	05/20/2003
BROTHERTON, WILLIAM LESTER FORT COLLINS, CO	05/20/2003
BROWN, CATHY WICHITA, KS	05/20/2003
BROWN, NICOLA SUSAN DENVER, CO	05/20/2003
BRUCHIS, GARY ALAN LAKEWOOD, CO	05/20/2003
BURKE, JAMES BENJAMIN BIRMINGHAM, AL	05/20/2003
BUSHWAY, LEIGH ANN IRONDALE, AL	05/20/2003
BUSSE, WAYNE SCOTT SANTEE, CA	05/20/2003
CALAME, CYNTHIA DIANE ORRVILLE, AL	05/20/2003
CARBONELL, AUGUSTINA TUCSON, AZ	05/20/2003
CARMODY, CATHLEEN MARY PAT AURORA, CO	05/20/2003
CARPENTER, ETTA MARIE PHILPOT, KY	05/20/2003
CARTER, VALERIE JOSLIN PHOENIX, AZ	05/20/2003
CERROS, JUAN JOSE	05/20/2003

Subject city, state	Effective date
WEST WENDOVER, NV	
CHAPPLE, STEVEN TUCSON, AZ	05/20/2003
CLEMONS, REGINALD DEAN FORT COLLINS, CO	05/20/2003
CORSELLO, SERAFINA NEW YORK, NY	05/20/2003
CROSS, BRADLEY JAMES NILES, MI	05/20/2003
CROUCH, SHANNON CELESTE YUMA, AZ	05/20/2003
DALTON, DEL B SAN DIEGO, CA	05/20/2003
DANIEL, ELIZABETH GOODYEAR, AZ	05/20/2003
DAVIS, CHERYL L NORFOLK, VA	05/20/2003
DAVIS, ROY L FARMINGTON, NM	05/20/2003
DEZES, MARY ELLEN PALM COAST, FL	05/20/2003
DONLEY, PATRICIA GAIL SANTA CLARITA, CA	05/20/2003
DRISCOLL, NANCY ELLEN PHOENIX, AZ	05/20/2003
EDWARDS, LARRY JOSEPH PUEBLO, CO	05/20/2003
FARMER, ROBIN SUE TUCSON, AZ	05/20/2003
FAROOQI, WAQAR ALI AUBURN, NY	05/20/2003
FLEMING, TAMI S HOUSTON, TX	05/20/2003
FRANK, EDITH JENEAN VALLEJO, CA	05/20/2003
FRY, MICKEY L CORYDON, IA	05/20/2003
FULTON, CARL L DALLAS, TX	05/20/2003
GARDUNO, MARTHA LETICIA LOS ANGELES, CA	05/20/2003
GIBBONS, DARLA M YOUNGTOWN, AZ	05/20/2003
GILMORE, LESLIE R SANFORD, FL	05/20/2003
GOLDFINE, BRIAN DAVID PALM DESERT, CA	05/20/2003
GREENE, KIMBERLY LEIGH EUFAULA, AL	05/20/2003
HARDING, HARRIET A FLORENCE, MA	05/20/2003
HARVEY, MELINDA D GREENVILLE, MS	05/20/2003
HAYES, AUDREY MUZACZ PHOENIX, AZ	05/20/2003
HEMRICK, JENNIFER L KERRVILLE, TX	05/20/2003
HIGGINS, JENNIFER L LEWISTON, ME	05/20/2003
HOLT, GWENDOLYN ANNE RUSTBURG, VA	05/20/2003
HORNER, PHILIP STANLEY CONCORD, NH	05/20/2003
HOUSTEEN, DENIECE CHINLE, AZ	05/20/2003
HUFFMAN, JACQUELINE B SAFFORD, AZ	05/20/2003
HURST, LISA MARIE JOLIET, IL	05/20/2003
HURTADO, SANDRA G VENTURA, CA	05/20/2003
IRISH, IRENE ELIZABETH	05/20/2003
LAKE PLACID, FL	
JACKSON, KELLY P STAUNTON, VA	05/20/2003
JANES, STEVEN WILLIAM LOWELL, MA	05/20/2003
JIMENEZ, NANCY LEE INDIO, CA	05/20/2003
JONES, CHERYL R FORT LUPTON, CO	05/20/2003
KADERLIK, KAREN CATHERINE ST PAUL, MN	05/20/2003
KENNEDY, KEITH P LEECHBURG, PA	05/20/2003
KING, EDWARD JOSEPH III PHOENIX, AZ	05/20/2003
KINTER, MARK SILVON PEARCY, AR	05/20/2003
LAFONT, DONNA CHRISTIAN SAN JOSE, CA	05/20/2003
LANG, MARY ANN KERRVILLE, TX	05/20/2003
LARIMORE, SUSAN M MONTE VISTA, CO	05/20/2003
LASPISA, JOSEPH ANTHONY MELROSE PARK, IL	05/20/2003
LEUSCHEN, MARILYN LEE ERIE, PA	05/20/2003
LEVIN, JOEL L ELKINS PARK, PA	05/20/2003
LEVIN, PAULA B ELKINS PARK, PA	05/20/2003
LOVEJOY, LAWRENCE DARRYL SLOAN, IA	05/20/2003
MAHDY, HELMY MOHAMED BRIDGEPORT, CT	05/20/2003
MALAVE, RONALD C LAKE MARY, FL	05/20/2003
MALEKI, PEJMAN IRVINE, CA	05/20/2003
MARBUT, CATHY ANN BIRMINGHAM, AL	05/20/2003
MARLENEE, KEVIN ARLO DES MOINES, IA	05/20/2003
MCCONNAUGHEY, PAMELA S TUCSON, AZ	05/20/2003
MELTON, BRENDA FAYE ANCHORAGE, AK	05/20/2003
MESIROW, PATRICIA L ROANOKE, VA	05/20/2003
MICHEL, LESLIE NEW ORLEANS, LA	05/20/2003
MILES, DELTON L FLAGSTAFF, AZ	05/20/2003
MILKEY, JOHN JOSEPH LONG BEACH, CA	05/20/2003
MOAYEDPARDAZI, SEYED B DECATUR, AL	05/20/2003
MONET, DEBRA DAWN PUEBLO WEST, CO	05/20/2003
MOSES, BRUCE DONALD JR PINEVILLE, LA	05/20/2003
MURPHY, GAIL SUSAN PEORIA, AZ	05/20/2003
NAGORE, LYNNE MICHELLE TUCSON, AZ	05/20/2003
NEIBURG, DOROTHY E ESSEX JUNCTION, VT	05/20/2003
NOWAK, VALENTINE JARRETTSVILLE, MD	05/20/2003
O'DONNELL, DENISE MARIE	05/20/2003
LOS ANGELES, CA	
PARILLO, KELLY A PHOENIX, AZ	05/20/2003
PASTONES, DENNIS FERNANDEZ SAN FRANCISCO, CA	05/20/2003
PATRICK, MARY J LA SALLE, IL	05/20/2003
PEPPERS, BRETT FOUNTAIN HILLS, AZ	05/20/2003
PERRY, ANITA A NEWPORT NEWS, VA	05/20/2003
PETRIE, ROBERT JEFFERY ST AUGUSTINE, FL	05/20/2003
PEZOA, LOIS JACQUELINE DENVER, CO	05/20/2003
POOR, GREGORY SHAWN OMAHA, NE	05/20/2003
RAMMING, KENNETH PAUL LOS ANGELES, CA	05/20/2003
RANDEL, WILLIAM BRADLEY TUCSON, AZ	05/20/2003
REEVES, MYRNA LYNN TUCSON, AZ	05/20/2003
RINALDI, TODD CHARLES DENVER, CO	05/20/2003
ROACH, DEBRA PHOENIX, AZ	05/20/2003
ROBBINS, JILL PEORIA, AZ	05/20/2003
ROBERTSON, DONNA LEE GREENFIELD, IN	05/20/2003
ROBINSON, PHYLLIS D WESTBURY, NY	05/20/2003
ROUSSE, TONI F LONGMEADOW, MA	05/20/2003
RUSH, CARRIE GAY VALENCIA, CA	05/20/2003
SAFDARI, MEHDI ALTAMONTE SPRNGS, FL	05/20/2003
SANDERS, TANYA M CHICAGO, IL	05/20/2003
SCHNEIDER, LISA FITZGERALD PITTSBURGH, PA	05/20/2003
SCHRYVER, KIM ELAINE LAMAR, CO	05/20/2003
SCHWAB, BRENT L ELKRIDGE, MD	05/20/2003
SCULLY, KIMBERLY M PITTSBURGH, PA	05/20/2003
SELLERS, ANTHONY BRUCE ANAHEIM, CA	05/20/2003
SHURLAN, VLADIMIR P CAMBRIDGE, MA	05/20/2003
ST ROMAIN-KYLE, PAMELA A PEORIA, AZ	05/20/2003
STATHOULOPOULOS, PETER A WORCESTER, MA	05/20/2003
STONE, JEFFREY K SAN FRANCISCO, CA	05/20/2003
STUCKLESS, JENNIFER MARTHA TUCSON, AZ	05/20/2003
TATE, SHELLY R QUEEN CREEK, AZ	05/20/2003
TEFFT, JANICE MARLENE CENTRAL FALLS, RI	05/20/2003
THORNTON, LAWRENCE J THOMASTON, CT	05/20/2003
UTLEY, JOHN ROWLAND SANDIA, TX	05/20/2003
VANCOR, ALBERT SCOTT	05/20/2003
GREENVILLE, AL	
WAGHER, LISA KATHLEEN WILLIAMS, AZ	05/20/2003
WASSIF, ANTHONY A RESEDSA, CA	05/20/2003
WEINBERG, ROBERT PAUL BOSTON, MA	05/20/2003
WEINBERG, MARC COLUMBIA, MD	05/20/2003
WHITE, MARGARET ASHEVILLE, NC	05/20/2003
WILSON, JOHN STROTHER MONTGOMERY, AL	05/20/2003
WILTFANG, CHRIS CHARLES ST SIMONS ISLAND, GA	05/20/2003
WITTRUP, LADONNA ALBERTINA GREELEY, CO	05/20/2003

FEDERAL/STATE EXCLUSION/ SUSPENSION

NATHAN, SYLVESTER ARTHUR WOODRIDGE, IL	05/20/2003
NATOLI, DENNIS RIVER EDGE, NJ	05/20/2003
SMOOTS, OLIVIA L SACRAMENTO, CA	05/20/2003

OWNED/CONTROLLED BY CONVICTED ENTITIES

BLOSSOM HILL DENTAL CARE SAN JOSE, CA	05/20/2003
CALIXTO GARCIA MEDICAL CTR INC MIAMI, FL	05/20/2003
DIAMOND DENTAL SERVICES, LLP POCATELLO, ID	05/20/2003
FAMILY FIRST HEALTHCARE, INC WICHITA, KS	05/20/2003
HOI LEE D D S RENTON, WA	05/20/2003
NATL MEDICAL EQUIP & SUPPLIES PLANTATION, FL	05/20/2003
PRINCIPLE MEDICAL MGMT, INC HOLLYWOOD, CA	05/20/2003
ROLYJANE HOME CARE, INC MIAMI, FL	05/20/2003
SOLOMON'S INVALID COACH, INC NEWARK, NJ	05/20/2003
UNION PHARMACY MIAMI, FL	05/20/2003

DEFAULT ON HEAL LOAN

BARBATO, BEVERLY V SALEM, WV	04/03/2003
BILYEU, STUART WILLIAM ANN ARBOR, MI	05/20/2003
CROW, JOE A ROCKY FORD, CO	05/20/2003
DIEDE, CLYDE A WINNER, SD	05/20/2003
FLEMING, JAMES E JR E CLEVELAND, OH	05/20/2003
LESINSKI, MARY CATHERINE	04/14/2003
CLEVELAND, OH	
MARTINEZ, JOSE R MINEOLA, TX	05/20/2003

OWNERS OF EXCLUDED ENTITIES

PARKER, CHARLIE A MINNEAPOLIS, MN	05/20/2003
PARKER, ROBERTA CATO MINNEAPOLIS, MN	05/20/2003

CIVIL MONETARY PENALTY

MATTHYS, JERRY A SHAWNEE MISSION, KS	10/01/2002

Dated: May 1, 2003.

Katherine B. Petrowski,

Director, Exclusions Staff Office of Inspector General.

[FR Doc. 03–11681 Filed 5–14–03; 8:45 am]

BILLING CODE 4150–04–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Government-Owned Inventions; Availability for Licensing

AGENCY: National Institutes of Health, Public Health Service, DHHS.

ACTION: Notice.

SUMMARY: The inventions listed below are owned by agencies of the U.S. Government and are available for licensing in the U.S. in accordance with 35 U.S.C. 207 to achieve expeditious commercialization of results of federally-funded research and development. Foreign patent applications are filed on selected inventions to extend market coverage for companies and may also be available for licensing.

ADDRESSES: Licensing information and copies of the U.S. patent applications listed below may be obtained by writing to the indicated licensing contact at the Office of Technology Transfer, National Institutes of Health, 6011 Executive Boulevard, Suite 325, Rockville, Maryland 20852–3804; telephone: 301/496–7057; fax: 301/402–0220. A signed Confidential Disclosure Agreement will be required to receive copies of the patent applications.

Triggering Receptors Expressed in Myeloid Cells (TREM) Like Transcript (TLT–1), A Novel Inhibitory Receptor of Platelets and Uses Therefore

Daniel W. McVicar (NCI), A. Valence Washington (NCI), Laura Quigley (NCI)

DHHS Reference No. E–097–2003/0 filed March 16, 2003

Licensing Contact: Jeff Walenta; 301/435–4633; *walentaj@od.nih.gov.*

The human immune response involves a complex series of molecular interactions to produce a beneficial response to foreign invasion within the body. These molecular interactions orchestrate the specific responses of innate and adaptive immunity. When these interactions break down, immune related disorders such as cancer and sepsis arise.

This invention describes an advance in understanding the regulation of the immune response. Triggering Receptors in Myeloid Cells (TREM) recently were discovered to modulate innate and adaptive immunity. Specifically, TREM1 amplifies the response to sepsis in innate immunity by activating neutrophils and other leukocytes; and TREM2 potentiates dendritic cell maturation in adaptive immunity. This invention describes a new inhibitory TREM like Transcript, TLT–1.

TLT–1 is the first inhibitory receptor discovered to reside within the TREM gene locus. This discovery implies the receptor has an important regulatory role in both innate and adaptive immunity. Structurally, TLT–1 also possesses inhibitory domains that indicate this regulatory function. TLT–1 is highly expressed in peripheral blood platelets and may modulate many other types of myeloid cells. Potential therapeutic implications are for immune disorders, cancer, septic shock, infectious disease, stroke, heart disease, myocardial infarction, vascular disorders, and other platelet-associated disorders.

17–AAG Treatment of Diseases Sensitive to c-KIT Down Regulation

Gerard Fumo and Len Neckers (NCI)

DHHS Reference No. E–256–2002 filed 22 Oct 2002

Licensing Contact: George Pipia; 301/435–5560; *pipiag@od.nih.gov.*

This invention describes the use of 17-allylamino-17-demethoxygeldanamycin (17-AAG), a derivative of geldanamycin, which inhibits mutated KIT protein kinase activity (the product of proto-oncogene c-KIT). This kinase has been identified as the protein responsible for transformation of certain human cell types into pathologic cells. The invention is predicated on the discovery of a new method of inhibiting the activity of a mutated, constitutively active form of the tyrosine kinase, KIT. The method involves the administration of 17-AAG to a cell expressing the

mutated KIT protein, whereby the activity level of KIT in the cell is reduced. The invention may prove to be useful for treating diseases such as mastocytosis, gastrointestinal stromal tumors (GIST), mast cell leukemia, myelogenenous leukemia, and testicular cancer, all of which are associated with mutations in the c-KIT proto-oncogene.

Recombinant Vaccinia Viruses Expressing IL–15 and Methods of Using the Same

Liyanage Perera et al. (NCI)

Serial No. 60/433,703 filed 16 Dec 2002

Licensing Contact: Jonathan Dixon; 301/435–5559; *dixonj@od.nih.gov.*

Vaccinia-based vaccines have a proven record of being effective vaccines in humans as well as in animals. However, accumulating evidence reveals the need for technology to improve the immune responses such vaccines generate.

The present invention discloses recombinant vaccinia viruses capable of expressing interleukin 15 (IL–15), and methods for modulating immune responses using such viruses. This invention shows that by inserting the human IL–15 gene into the vaccinia genome, more effective vaccines can be generated against infectious agents and cancer. Currently, IL–2 has been approved by the FDA for use in the treatment of patients with metastatic renal cell carcinoma or with metastatic melanoma. It has been used as a component of cancer vaccines and in various approaches for the treatment of AIDS. However, administration of IL–2 is associated with activation-induced cell death (AICD), and may lead to death of T-cells that recognize the antigens expressed in the tumor cells. Thus, IL–15 may be a superior agent in the treatment of cancer, or as a component of a vaccine directed towards cancer or infectious agents. Co-delivery of IL–15 with antigens during the immunization process, according to the current invention, leads to induction of CD8+ memory T cells that proliferate more effectively in vivo and persist much longer in the immunized individual in addition to enhancing the levels and persistence of antigen specific antibodies thus providing substantially longer lasting cellular and humoral immunity.

This invention has the potential to be used in a variety of ways, including: (i) An improved, more efficacious vaccine candidate for smallpox, (ii) for incorporation into existing vaccinia based vaccines to enhance and confer superior long lasting immune response to viral and cancer antigens, or (iii) as a valuable source material for IL–15 production, especially should IL–15 be proven as an alternate of more efficacious cytokine than IL–2.

This research has been described, in part, in Proc. Natl. Acad. Sci USA 2003 Mar 18; 100(6):3392–3397.

DNA-Binding Polyamide Drug Conjugates

Zoltan Szekely, Humcha K. Hariprakasha, Marek W. Cholody, Christopher J. Michejda (NCI)

DHHS Reference No. E–060–2002/2–PCT–01 filed 27 Feb 2003 (PCT/US03/06006)

Licensing Contact: George Pipia; 301/435–5560; *pipiag@od.nih.gov.*

Many current anti-cancer drugs have the DNA of cancer cells as their principal target. However, in most instances, the drugs are not selective and are plagued by toxicities, which are frequently dose limiting. The present invention seeks to enhance anti-tumor selectivity and decrease unspecific toxicity. It has been known that various polyamides can target the minor groove of DNA, and rules have been devised to ascertain the sequence-reading properties of the component residues of the polyamide chain. The present invention utilizes sequence-selective polyamide technology together with groups that modify DNA, either by sequence-selective alkylation or strand cleavage. The DNA-modifying moieties that are used for this purpose are novel derivatives based on the cyclopropylbenzindole (CBI) core structure. These compounds alkylate the DNA only when bound into the minor groove, and they provide some DNA-sequence recognizing capability of their own. The DNA-modifying agents are either embedded in the polyamide chain as components of the chain or are located at the termini. These compounds are highly toxic to cancer cells that over-express a targeted DNA sequence (*e.g.* the c-Myc oncogene promoter sequence) and are much less toxic to non-cancerous tissue. The compounds of the present invention represent a novel method for targeting DNA of cancer cells.

SH2 Domain Binding Inhibitors

Terrence R. Burke, Jr., et al. (NCI)

DHHS Reference No. E–262–2000/1 filed 28 Jun 2002

Licensing Contact: George Pipia; 301/435–5560; *pipia@od.nih.gov.*

Signal transduction processes underlie the transfer of extracellular information to the interior of the cell and ultimately to the nucleus. A variety of signal transduction processes are critical for normal cellular homeostasis, with protein-tyrosine kinases (PTKs) playing central roles in many of these pathways. Examples of such PTKs include the PDGF receptor, the FGF receptor, the HGF receptor, members of the EGF receptor family, such as the EGF receptor, erb-B2, erb-B3 and erb-B4, the src kinase family, Fak kinase and the Jak kinase family. Protein-tyrosine phosphorylation that results from the action of PTKs can modulate the activity of certain target enzymes as well as facilitate the formation of specific multi-protein signaling complexes through the actions of homologous protein modules termed Src homology 2 (SH2) domains, which recognize specific phosphotyrosyl containging sequences. A malfunction in this system through tyrosine kinase overexpression and/or deregulation can be manifested by various oncogenic and hyperproliferative disorders, including cancers, inflammation, autoimmune disease, hyperproliferative skin disorders, psoriasis and allergy/asthma, etc. The disclosed compounds, *e.g.* peptides, preferably, macrocyclic peptides, are Grb2 SH2 domain signaling antagonists with enhanced binding affinity. The claims of the current application are directed to compositions of matter and methods of use which provide for the diagnosis, testing and treatment of the aforementioned disease states.

Dated: May 7, 2003.

Steven M. Ferguson,

Acting Director, Division of Technology Development and Transfer, Office of Technology Transfer, National Institutes of Health.

[FR Doc. 03–12102 Filed 5–14–03; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Cancer Institute; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Cancer Institute Special Emphasis Panel; Rebuilding Immunity for Survival.

Date: May 22–23, 2003.

Time: 7 p.m. to 7 p.m.

Agenda: To review and evaluate grant applications.

Place: Wyndham City Center, 1143 New Hampshire Avenue, NW, Washington, DC 20037.

Contact Person: William D. Merritt, PhD, Scientific Review Administrator, Grants Review Branch, National Cancer Institute, National Institutes of Health, 6116 Executive Boulevard, Room 8034, MSC 8328, Bethesda, MD 20892–8328, 301–496–9767.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.392, Cancer Construction; 93.393, Cancer Cause and Prevention Research; 93.394, Cancer Detection and Diagnosis Research; 93.395, Cancer Treatment Research; 93.396, Cancer Biology Research; 93.397, Cancer Centers Support; 93.398, Cancer Research Manpower; 93.399, Cancer Control, National Institutes of Health, HHS)

Dated: May 5, 2003.

Anna P. Snouffer,

Acting Director, Office of Federal Advisory Committee Policy.

[FR Doc. 03–11714 Filed 5–14–03; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Cancer Institute; Notice of Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the meeting of the National Cancer Advisory Board.

The meeting will be open to the public as indicated below, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

A portion of the meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4), and 552b(6), as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Cancer Advisory Board.

Dates: June 10, 2003.

Open: June 10, 2003, 8:30 a.m. to 12 p.m.

Agenda: Program reports and presentations; Business of the Board.

Place: National Cancer Institute, 9000 Rockville Pike, Building 31, C Wing, 6th Floor, Conference Room 10, Bethesda, MD 20892.

Contact: Dr. Paulette S. Gray, Acting Executive Secretary, National Cancer Institute, National Institutes of Health, 6116 Executive Boulevard, 8th Floor, Room 8141, Bethesda, MD 20892, (301) 496–4218.

Name of Committee: National Cancer Advisory Board, Ad Hoc Subcommittee on Confidentiality of Patient Data.

Open: June 10, 2003, 12 p.m. to 1 p.m.

Agenda: To discuss activities related to the Ad Hoc subcommittee on Confidentiality of Patient Data.

Place: National Cancer Institute, 9000 Rockville Pike, Building 31, C Wing, 6th Floor, Conference Room 10, Bethesda, MD 20892.

Contact Person: Ms. Mary McCabe, Executive Secretary, Ad Hoc Subcommittee on Confidentiality of Patient Data, National Cancer Institute, National Institutes of Health, 9000 Rockville Pike, Building 31, Room 3A44, Bethesda, MD 20892, (301) 496–6404.

Name of Committee: National Cancer Advisory Board, Subcommittee on Clinical Investigations.

Open: June 10, 2003, 12 p.m. to 1 p.m.

Agenda: To discuss activities related to the Subcommittee on Clinical Investigations.

Place: National Cancer Institute, 9000 Rockville Pike, Building 31, C Wing, 6th Floor, Conference Room 8, Bethesda, MD 20892.

Contact Person: Dr. Ellen Feigal, Executive Secretary, Subcommittee on Clinical Investigations, National Cancer Institute, National Institutes of Health, 9000 Rockville Pike, Building 31, Room 3A44, Bethesda, MD 20892, (301) 496–4291.

Name of Committee: National Cancer Advisory Board.

Open: June 10, 2003, 1 p.m. to 2 p.m.

Agenda: Program reports and presentations; Business of the Board.

Place: National Cancer Institute, 9000 Rockville Pike, Building 31, C Wing, 6th Floor, Conference Room 10, Bethesda, MD 20892.

Contact: Dr. Paulette S. Gray, Acting Executive Secretary, National Cancer Institute, National Institutes of Health, 6116 Executive Boulevard, 8th Floor, Room 8141, Bethesda, MD 20892, (301) 496–4218.

Name of Committee: National Cancer Advisory Board, Subcommittee on Planning and Budget.

Open: June 10, 2003, 2 p.m. to 2:45 p.m.

Agenda: Bypass Budget Update.

Place: National Cancer Institute, 9000 Rockville Pike, Building 31, C Wing, 6th Floor, Conference Room 10, Bethesda, MD 20892.

Contact Person: Ms. Cherie Nichols, Executive Secretary, Subcommittee on Planning and Budget, National Cancer Institute, National Institutes of Health, 9000 Rockville Pike, Building 31, Room 11A03, Bethesda, MD 20892, (301) 496–5515.

Name of Committee: National Cancer Advisory Board.

Open: June 10, 2003, 2:45 p.m. to 4:25 p.m.

Agenda: Program reports and presentations; Business of the Board.

Place: National Cancer Institute, 9000 Rockville Pike, Building 31, C Wing, 6th Floor, Conference Room 10, Bethesda, MD 20892.

Contact Person: Dr. Paulette S. Gray, Acting Executive Secretary, National Cancer Institute, National Institutes of Health, 6116 Executive Boulevard, 8th Floor, room 8141, Bethesda, MD 20892, (301) 496–4218.

Name of Committee: National Cancer Advisory Board,

Closed: June 10, 2003, 4:25 p.m. to Adjournment.

Agenda: Review of grant applications.

Contact Person: Dr. Paulette S. Gray, Acting Executive Secretary, National Cancer Institute, National Institutes of Health, 6116 Executive Boulevard, 8th Floor, Room 8141, Bethesda, MD 20892, (301) 496–4218.

Any interested person may file written comments with the committee by forwarding the statement to the Contact Person listed on this notice. The statement should include the name, address, telephone number and when applicable, the business or professional affiliation of the interested person.

In the interest of security, NIH has instituted stringent procedures for entrance into the building by non-government employees. Persons without a government I.D. will need to show a photo I.D. and sign-in at the security desk upon entering the building.

Information is also available on the Institute's/Center's home page: *http://deainfo.nci.nih.gov/advisory/ncab.htm,* where an agenda and any additional information for the meeting will be posted when available.

(Catalogue of Federal Domestic Assistance Program Nos. 93.392, Cancer Construction; 93.393, Cancer Cause and Prevention Research; 93.394, Cancer Detection and Diagnosis Research; 93.395, Cancer Treatment Research; 93.396, Cancer Biology Research; 93.397, Cancer Centers Support, 93.398, Cancer Research Manpower; 93.399, Cancer Control, National Institutes of Health, HHS)

Dated: May 8, 2003.

Anna P. Snouffer,

Acting Director, Office of Federal Advisory Committee Policy.

[FR Doc. 03–12074 Filed 5–14–03; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Cancer Institute; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Cancer Institute Initial Review Group, Subcommittee I—Career Development.

Date: June 11–13, 2003.

Time: 6:30 p.m. to 12 p.m.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn Georgetown, 2101 Wisconsin Avenue, NW., Washington, DC 20007.

Contact Person: Robert Bird, PhD, Scientific Review Administrator, Resources and Training Review Branch, National Cancer Institute, National Institutes of Health, Room 8113, 6116 Executive Blvd, MSC 8328, Bethesda, MD 20892–8328, 301–496–7978, *bird@mail.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.392, Cancer Construction; 93.393, Cancer Cause and Prevention Research; 93.394, Cancer Detection and Diagnosis Research; 93.395, Cancer Treatment Research; 93.396, Cancer Biology Research; 93.397, Cancer Centers Support; 93.398, Cancer Research Manpower; 93.399, Cancer Control, National Institutes of Health, HHS).

Dated: May 8, 2003.

Anna P. Snouffer,

Acting Director, Office of Federal Advisory Committee Policy.

[FR Doc. 03–12075 Filed 5–14–03; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Cancer Institute; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Cancer Institute Initial Review Group, Subcommittee F—Manpower & Training.

Date: June 11–13, 2003.

Time: 6:30 pm to 5 pm.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn Georgetown, 2101 Wisconsin Avenue, NW., Washington, DC 20007.

Contact Person: Lynn M. Amende, PhD, Scientific Review Administrator, Resources and Training Review Branch, Division of Extramural Activities, National Cancer Institute, National Institutes of Health, 6116 Executive Boulevard Room 8105, Bethesda, MD 20892, 301–451–4759, *amendel@mail.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.392, Cancer Construction; 93.393, Cancer Cause and Prevention Research; 93.394, Cancer Detection and Diagnosis Research; 93.395, Cancer Treatment Research; 93.396, Cancer Biology Research; 93.397, Cancer Centers Support; 93.398, Cancer Research Manpower; 93.399, Cancer Control, National Institutes of Health, HHS)

Dated: May 8, 2003.

Anna P. Snouffer,

Acting Director, Office of Federal Advisory Committee Policy.

[FR Doc. 03–12076 Filed 5–14–03; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Cancer Institute; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Cancer Institute Special Emphasis Panel, Therapy of CML.

Date: June 16–18, 2003.

Time: 7 p.m. to 11 a.m.

Agenda: To review and evaluate grant applications.

Place: Hilton Houston Plaza, 6633 Travis Street, Houston, TX 77030.

Contact Person: Claudio A. Dansky Ullmann, MD, Scientific Review Administrator, National Cancer Institute, Division of Extramural Activities, Grants Review Branch, Research Programs Review Branch, 6116 Executive Blvd., Rm 8119, MSC 8328, Bethesda, MD 20892, 301–451–4761, *ullmannc@mail.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.392, Cancer Construction; 93.393, Cancer Cause and Prevention Research; 93.394, Cancer Detection and Diagnosis Research; 93.395, Cancer Treatment Research; 93,396, Cancer Biology Research; 93.397, Cancer Centers Support; 93.398, Cancer Research Manpower; 93.399, Cancer Control, National Institutes of Health, HHS)

Dated: May 8, 2003.

Anna P. Snouffer,

Acting Director, Office of Federal Advisory Committee Policy.

[FR Doc. 03–12093 Filed 5–14–03; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Center for Research Resources; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and pesonal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Center for Research Resources Special Emphasis Panel, Research Infrastructure.

Date: June 17–18, 2003.

Time: June 17, 2003, 8 a.m. to Adjournment.

Agenda: To review and evaluate grant applications.

Place: Hyatt Regency Bethesda, One Bethesda Metro Center, Bethesda, MD 20814.

Contact Person: Bo Hong, PhD, Scientific Review Administrator, National Institutes of Health, National Center for Research Resources, Office of Review, 6701 Democracy Boulevard, 1 Democracy Plaza, Room 1078, Bethesda, MD 20817, (301) 435–0813, *hongb@mail.nih.gov.*

Name of Committee: National Center for Research Resources Special Emphasis Panel, Research Infrastructure.

Date: June 30–July 1, 2003.

Time: June 30, 2003, 8 a.m. to Adjournment.

Agenda: To review and evaluate grant applications.

Place: Residence Inn Bethesda, 7335 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Marc Rigas, PhD, Scientific Review Administrator, National Institutes of Health, National Center for Research Resources, Office of Review, 6701 Democracy Boulevard, 1 Democracy Plaza, Room 1080, Bethesda, MD 20817–4814, 301 435–0806, *rigasm@mail.nih.gov.*

Name of Committee: National Center for Research Resources Special Emphasis Panel, Science Education Partnership Award Special Emphasis Panel.

Date: July 15–16, 2003.

Time: July 15, 2003, 8 a.m. to Adjournment.

Agenda: To review and evaluate grant applications.

Place: Bethesda Marriott Suites, 6711 Democracy Boulevard, Bethesda, MD 20817.

Contact Person: John L. Meyer, PhD, Scientific Review Administrator, Office of Review, National Center For Research Resources, National Institutes of Health, 6701 Democracy Boulevard, 1 Democracy Plaza, Bethesda, MD 20817, 301–435–0807, *meyerj@ncrr.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine; 93.333, Clinical Research; 93.371, Biomedical Technology; 93.389, Research Infrastructure, 93.306, 93.333, National Institutes of Health, HHS)

Dated: May 8, 2003.

Anna P. Snouffer,

Deputy Director, Office of Federal Advisory Committee Policy.

[FR Doc. 03–12082 Filed 5–14–03; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Center for Research Resources; Notice of Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meetings will be open to the public as indicated below, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Scientific and Technical Review Board on Biomedical and Behavorial Research Facilities.

Date: May 27–29, 2003.

Open: May 27, 2003, 8 a.m. to 9 a.m.

Agenda: To discuss program planning and other issues.

Place: Residence Inn Bethesda, 7335 Wisconsin Avenue, Bethesda, MD 20814.

Closed: May 27, 2003, 9 a.m. to Adjournment.

Agenda: To review and evaluate grant applications.

Place: Residence Inn Bethesda, 7335 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: D.G. Patel, PhD, Scientific Review Administrator, National Institutes of Health, National Center for Research Resources, Office of Review, 6701 Democracy, Room 1070, MSC–4874, Bethesda, MD 20892, 301–435–0824, *pateldag@mail.nih.gov*

Name of Committee: National Center for Research Resources Initial Review Group/ Clinical Research Review Committee.

Date: June 4–5, 2003.

Open: June 4, 2003, 8 a.m. to 9 a.m.

Agenda: To discuss program planning and other issues.

Place: Holiday Inn Bethesda, 8120 Wisconsin Avenue, Bethesda, MD 20814.

Closed: June 4, 2003, 9 a.m. to Adjournment.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn Bethesda, 8120 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Sheryl K. Brining, PhD., Acting Director, Office of Review, National Center for Research Resources, National Institutes of Health, 6701 Democracy Boulevard, 1 Democracy Plaza, Room 1074, Bethesda, MD 20817, 301–435–0809, *sb44k@nih.gov.*

Name of Committee: National Center for Research Resources Initial Review Group Comparative Medicine Review Committee.

Date: June 10–11, 2003.

Open: June 10, 2003, 8 a.m. to 8:30 a.m.

Agenda: To discuss program planning and other issues.

Place: Bethesda Marriott Suites, 6711 Democracy Boulevard, Bethesda, MD 20817.

Closed: June 10, 2003, 8:30 a.m. to Adjournment.

Agenda: To review and evaluate grant applications.

Place: Bethesda Marriott Suites, 6711 Democracy Boulevard, Bethesda, MD 20817.

Contact Person: Guo Zhang, MPH, MD, PhD, Scientific Review Administrator, Office of Review, National Center for Research Resources, National Institutes of Health, One Democracy Plaza, 6701 Democracy Blvd., Room WS–1064, 10th Floor, Bethesda, MD 20814–9692, (301) 435–0812, *zhanggu@mail.nih.gov.*

Name of Committee: National Center for Research Resources Initial Review Group, Research Centers In Minority Institutions Review Committee.

Date: July 7–8, 2003.

Open: July 7, 2003, 8 a.m. to 9 a.m.

Agenda: Grant applications.

Place: Gaithersburg Marriott Washingtonian Center, 9751 Washingtonian Boulevard, Gaithersburg, MD 20878.

Closed: July 7, 2003, 9 a.m. to Adjournment.

Agenda: To review and evaluate grant applications.

Place: Gaithersburg Marriott Washingtonian Center, 9751 Washingtonian Boulevard, Gaithersburg, MD 20878.

Contact Person: Eric H. Brown, PhD, Scientific Review Administrator, Office of Review, National Center for Research Resources, National Institutes of Health, 6701 Democracy Boulevard, 1 Democracy Plaza, Room 1068, Bethesda, MD 20817, (301) 435–0815, *browne@ncrr.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine; 93.333, Clinical Research; 93.371, Biomedical Technology; 93.389, Research Infrastructure, 93.306, 93.333, National Institutes of Health, HHS)

Dated: May 8, 2003.

Anna P. Snouffer,

Deputy Director, Office of Federal Advisory Committee Policy.

[FR Doc. 03–12087 Filed 5–14–03; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Center for Complementary and Alternative Medicine; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Center for Complementary and Alternative Medicine Special Emphasis Panel; Clinical Science.

Date: June 5–6, 2003.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Bethesda Marriott Suites, 6711 Democracy Boulevard, Bethesda, MD 20817.

Contact Person: William A. Kachadorian, PhD, MTS, Scientific Review Administrator, Office of Scientific Review, National Center for Complementary and Alternative Medicine, 6707 Democracy Blvd., Ste. 106, Bethesda, MD 20892–5475, (301) 594–2014, *kachadow@mail.nih.gov*.

Name of Committee: National Center for Complementary and Alternative Medicine Special Emphasis Panel; Oncology Application Review.

Date: June 9–10, 2003.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Bethesda Marriott, 5151 Pooks Hills Road, Bethesda, MD 20814.

Contact Person: Carol Pontzer, PhD, Scientific Review Administrator, National Center for Complementary and Alternative Medicine, 6707 Democracy Blvd., Bethesda, MD 20892.

Name of Committee: National Center for Complementary and Alternative Medicine Special Emphasis Panel; Basic Science Application Review.

Date: June 12–13, 2003.

Time: 7 p.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Bethesda Marriott Suites, 6711 Democracy Boulevard, Bethesda, MD 20817.

Contact Person: Dale Birkle, PhD, Scientific Review Administrator, NIH/NCCAM, 6707 Democracy Blvd, Democracy Two Building, Suite 401, Bethesda, MD 20892, (301) 451–6570, *birkled@mail.nih.gov*.

Name of Committee: National Center for Complementary and Alternative Medicine Special Emphasis Panel; Training/Education Application Review.

Date: June 25, 2003.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Bethesda Marriott Suites, 6711 Democracy Boulevard, Bethesda, MD 20817.

Contact Person: Carol Pontzer, PhD, Scientific Review Administrator, National Center for Complementary and Alternative Medicine, 6707 Democracy Blvd., Bethesda, MD 20892.

Dated: May 7, 2003.

Ann P. Snouffer,

Deputy Director, Office of Federal Advisory Committee Policy.

[FR Doc. 03–12097 Filed 5–14–03; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Center for Complementary and Alternative Medicine; Notice of Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the National Advisory Council for Complementary and Alternative Medicine (NACCAM) meeting.

The meeting will be open to the public as indicated below, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

A portion of the meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and/or contract proposals and the discussion could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications and/or contract proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Advisory Council for Complementary and Alternative Medicine.

Date: June 2, 2003.

Closed: 8:30 a.m. to 12 p.m.

Agenda: To review and evaluate grant applications and/or proposals.

Open: 1 p.m. to adjournment.

Agenda: The agenda includes Opening Remarks by Director, NCCAM, Overview of Activities at the Food and Drug Administration, report on the Working Group on Cancer, Focus Groups on Cancer and other business in the Council.

Place: Neurosicence Conference Center, 6001 Executive Boulevard, Conference Rooms C and D, Rockville, MD 20852.

Contact Person: Jane F. Kinsel, Ph.D., M.B.A., Executive Secretary, National Center for Complementary and Alternative Medicine, National Institutes of Health, 6707 Democracy Blvd., Suite 401, Bethesda, MD 20892, (301) 496–6701.

The public comments session is scheduled from 4:45–5:15 p.m. Each speaker will be permitted 5 minutes for their presentation. Interested individuals and representatives of organizations are requested to notify Dr. Jane Kinsel, National Center for Complementary and Alternative Medicine, NIH, 6707 Democracy Boulevard, Suite 401, Bethesda, Maryland, 20892, (301) 496–6701, Fax: (301) 480–0087. Letters of intent to present comments, along with a brief description of the organization represented, should be received no later than 5 p.m. on May 23, 2003. Only one representative of an organization may present oral comments. Any person attending the meeting who does not request an opportunity to speak in advance of the meeting may be considered for oral presentation, if time permits, and at the discretion of the Chairperson. In addition, written comments may be submitted to Dr. Jane Kinsel at the address listed above up to ten calendar days (June 12, 2003) following the meeting.

Copies of the meeting agenda and the roster of members will be furnished upon request by contacting Dr. Jane Kinsel, Executive Secretary, NACCAM, National Institutes of Health, 6707 Democracy Boulevard, Suite 401, Bethesda, Maryland 20892, (301) 496–6701, Fax (301) 480–0087, or via e-mail at *naccames@mail.nih.gov*.

Dated: May 7, 2003.

Anna P. Snouffer,

Deputy Director, Office of Federal Advisory Committee Policy, NIH.

[FR Doc. 03–12098 Filed 5–14–03; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Center for Research Resources; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal AdvisorY Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commerical property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Center for Research Resources Special Emphasis Panel; Scientific and Technical Review Board on Biomedical and Behavioral Research Facilities.

Date: May 14, 2003.

Time: 2 p.m. to adjournment.

Agenda: To review and evaluate grant applications.

Place: One Democracy Boulevard, 6701 Democracy Boulevard, Bethesda, MD 20817, (Telephone Conference Call).

Contact Person: D.G. Patel, PhD, Scientific Review Administator, National Institutes of Health, National Center For Research Resources, Office of Review, 6701 Democracy Boulevard, 1 Democracy Plaza, Room 1070, Bethesda, MD 20892, 301–435–0824, *pateldg@mail.nih.gov*.

This notice is being publlished less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: National Center for Research Resources Special Emphasis Panel, Research Infrastructure.

Date: May 22–23, 2003.

Time: May 22, 2003, 8 a.m. to adjournment.

Agenda: To review and evaluate grant applications.

Place: Hyatt Regency Bethesda, One Bethesda Metro Center, 7400 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Guo Zhang, PhD, MPH, Scientific Review Administrator, Office of Review, National Center for Research Resources, National Institutes of Health, 6701 Democracy Boulevard, 1 Democracy Plaza, Room 1064, Bethesda, MD 20814–9692, 301–435–0812, *zhanggu@mail.nih.gov*.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: National Center for Research Resources Special Emphasis Panel; Research Infrastructure.

Date: May 28–29, 2003.

Time: May 28, 2003, 8 a.m. to adjournment.

Agenda: To review and evaluate grant applications.

Place: Hyatt Regency Bethesda, One Bethesda Metro Center, 7400 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Carol Lambert, PhD, Scientific Review Administrator, Office of Review, National Center for Research Resources, National Institutes of Health, 6701 Democracy Boulevard, 1 Democracy Plaza, Room 1076, Bethesda, MD 20892–4874, 301–435–0814, *lambert@mail.nih.gov*.

Name of Committee: National Center for Research Resources Special Emphasis Panel; Clinical Research

Date: June 5, 2003.

Time: 10:30 a.m. to adjournment.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn Bethesda, 8120 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Mohan Viswanathan, PhD, Scientific Review Administrator, National Center for Research Resources, National Institutes of Health, Office of Review, 6701 Democracy Boulevard, 1 Democracy Plaza, Room 1084, Bethesda, MD 20892, 301–435–0829, *viswanathanm@ncrr.nih.gov*.

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine; 93.333, Clinical Research; 93.371, Biomedical Technology; 93.389, Research Infrastructure, 93.306, 93.333, National Institutes of Health, HHS)

Dated: May 7, 2003.

Anna P. Snouffer,

Deputy Director, Office of Federal Advisory Committee Policy.

[FR Doc. 03–12099 Filed 5–14–03; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Heart, Lung, and Blood Institute; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Heart, Lung, and Blood Institute Special Emphasis Panel, Minority K–12 Mentored Clinical Scientist Development Program Award.

Date: May 21, 2003.

Time: 8 a.m. to 4 p.m.

Agenda: To review and evaluate grant applications.

Place: Bethesda Marriott Suites, 6711 Democracy Boulevard, Bethesda, MD 20817.

Contact Person: Chitra Krishnamurti PhD, Scientific Review Administrator, Review Branch, Room 7206, Division of Extramural Affairs, National Heart, Lung, and Blood Institute, National Institutes of Health, 6701 Rockledge Drive, MSC 7924, Bethesda, MD 20892.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.233, National Center for Sleep Disorders Research; 93.837, Heart and Vascular Diseases Research; 93.838, Lung Diseases Research; 93.839, Blood Diseases and Resources Research, National Institutes of Health, HHS)

Dated: May 7, 2003.

Anna P. Snouffer,

Acting Director, Office of Federal Advisory Committee Policy.

[FR Doc. 03–12079 Filed 5–14–03; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Heart, Lung, and Blood Institute; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Heart, Lung, and Blood Institute Special Emphasis Panel, Non Human Primate Models of HIV-Associated Pulmonary, Cardiovascular and, Hematological Disorders.

Date: July 10, 2003.

Time: 8 a.m. to 2 p.m.

Agenda: To review and evaluate grant applications.

Place: Bethesda Marriott, 5151 Pooks Hill Road, Bethesda, MD 20814.

Contact Person: Zoe Huang, MD, Health Scientist Administrator, Review Branch, Room 7190, Division of Extramural Affairs, National Heart, Lung, and Blood Institute, National Institutes of Health, 6701 Rockledge Drive, MSC 7924, Bethesda, MD 20892–7924, 301–435–0314.

(Catalogue of Federal Domestic Assistance Program Nos. 93.233, National Center for Sleep Disorders Research; 93.837, Heart and Vascular Diseases Research; 93.838, Lung Diseases Research; 93.839, Blood Diseases and Resources Research, National Institutes of Health, HHS)

Dated: May 8, 2003.

Anna P. Snouffer,

Acting Director, Office of Federal Advisory Committee Policy.

[FR Doc. 03–12090 Filed 5–14–03; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Heart, Lung, and Blood Institute; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Heart, Lung, and Blood Institute Special Emphasis Panel, Viability and Remodeling.

Date: June 9, 2003.

Time: 10 a.m. to 12 p.m.

Agenda: To review and evaluate grant applications.

Place: Hilton Crystal City, 2399 Jefferson Davis Hwy, Arlington, VA 22202.

Contact Person: Anne P. Clark, PhD, Chief, Review Branch, Review Branch, Division of Extramural Affairs, National Heart, Lung, and Blood Institute, NIH, Rockledge II, Room 7214, 6701 Rockledge Drive, Bethesda, MD 20892, (301) 435–0270.

(Catalogue of Federal Domestic Assistance Program Nos. 93.233, National Center for Sleep Disorders Research; 93.837, Heart and Vascular Diseases Research; 93.838, Lung Diseases Research; 93.839, Blood Diseases and Resources Research, National Institutes of Health, HHS)

Dated: May 7, 2003.

Anna P. Snouffer,

Acting Director, Office of Federal Advisory Committee Policy.

[FR Doc. 03–12092 Filed 5–14–03; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Heart, Lung, and Blood Institute; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Heart, Lung, and Blood Institute Special Emphasis Panel, Summer Institute for Training in Biostatistics (SIBS) (Review of T–15s).

Date: June 3, 2003.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Bethesda Marriott Suites, 6711 Democracy Boulevard, Bethesda, MD 20817.

Contact Person: Chitra Krishnamurti, PhD, Scientific Review Administrator, Review Branch, Room 7206, Division of Extramural Affairs, National Heart Lung, and Blood Institute, National Institutes of Health, 6701 Rockledge Drive, MSC 7924, Bethesda, MD 20892.

(Catalogue of Federal Domestic Assistance Program Nos. 93.233, National Center for Sleep Disorders Research; 93.837, Heart and Vascular Diseases Research; 93.838, Lung Diseases Research; 93.839, Blood Diseases and Resources Research, National Institutes of Health, HHS)

Dated: May 7, 2003.

Anna P. Snouffer,

Acting Director, Office of Federal Advisory Committee Policy.

[FR Doc. 03–12095 Filed 5–14–03; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Allergy and Infectious Diseases; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of a meeting of the Board of Scientific Counselors, NIAID.

The meeting will be closed to the public as indicated below in accordance with the provisions set forth in section 552b(c)(6), Title 5 U.S.C., as amended for the review, discussion, and evaluation of individual intramural programs and projects conducted by the National Institute of Allergy and Infectious Diseases, including consideration of personnel qualifications and performance, and the competence of individual investigators, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Board of Scientific Counselors, NIAID.

Date: June 9–10, 2003.

Time: June 9, 2003, 8 AM to 7 PM.

Agenda: To review and evaluate personal qualifications and performance, and competence of individual investigators.

Place: National Institutes of Health, Building 10, 10 Center Drive, Wolff Memorial Conference Room, Bethesda, MD 20892.

Time: June 10, 2003, 8 AM to 12:30 PM.

Agenda: To review and evaluate personal qualifications and performance, and competence of individual investigators.

Place: National Institutes of Health, Building 10, 10 Center Drive, Wolff Memorial Conference Room, Bethesda, MD 20892.

Contact Person: Thomas J. Kindt, PhD, Director, Division of Intramural Research, National Institute of Allergy and Infectious Diseases, Building 10, Room 4A31, Bethesda, MD 20892, 301 496–3006, *tk9c@nih.gov*.

In the interest of security, NIH has instituted stringent procedures for entrance into the building by non-government employees. Persons without a government I.D. will need to show a photo I.D. and sign-in at the security desk upon entering the building.

(Catalogue of Federal Domestic Assistance Program Nos. 93.855, Allergy, Immunology, and Transplantation Research; 93.856, Microbiology and Infectious Diseases Research, National Institutes of Health, HHS)

Dated: May 8, 2003.

Anna P. Snouffer,

Deputy Director, Office of Federal Advisory Committee Policy.

[FR Doc. 03–12073 Filed 5–14–03; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Deafness and Other Communication Disorders; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice

is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4), and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Communication Disorders Review Committee.

Date: June 11–12, 2003.

Time: June 11, 2003, 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Wyndham Washington, DC, 1400 M Street, NW., Washington, DC 20005.

Time: June 12, 2003, 8 a.m. to 4 p.m.

Agenda: To review and evaluate grant applications.

Place: Wyndham Washington, DC, 1400 M Street, NW., Washington, DC 20005.

Contact Person: Melissa J. Stick, PhD., MPH, Scientific Review Administrator, Scientific Review Branch, Division of, Extramural Research, NIDCD/NIH, 6120 Executive Blvd., Bethesda, MD 20892, 301–496–8683.

Name of Committee: Communication Disorders Review Committee, Loan Repayment Review.

Date: June 12, 2003.

Time: 4 p.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Wyndham Washington, DC, 1400 M Street, NW., Washington, DC 20005.

Contact Person: Melissa J. Stick, PhD., MPH, Scientific Review Administrator, Scientific Review Branch, Division of Extramural Research, NIDCD/NIH, 6120 Executive Blvd., Bethesda, MD 20892, 301–496–8683.

(Catalogue of Federal Domestic Assistance Program Nos. 93.173, Biological Research Related to Deafness and Communicative Disorders, National Institutes of Health, HHS)

Dated: May 7, 2003.

Anna P. Snouffer,

Acting Director, Office of Federal Advisory Committee Policy.

[FR Doc. 03–12077 Filed 5–14–03; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Deafness and Other Communication Disorders; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute on Deafness and Other Communications Disorders Special Emphasis Panel; NIDCD Training Grants.

Date: June 18, 2003.

Time: 1 p.m. to 3 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6120 Executive Blvd., Rockville, MD 20852, (Telephone Conference Call).

Contact Person: Ali A. Azadegan, DVM, PhD, Scientific Review Administrator, Scientific Review Branch, Division of Extramural Research, NIDCD, NIH, EPS–400C, 6120 Executive Blvd. MSC 7180, Bethesda, MD 20892–7180, (301) 496–8683, *azadegan@nih.gov*.

Name of Committee: National Institute on Deafness and Other Communications Disorders Special Emphasis Panel; "Stem cell potential of olfactory epithelium".

Date: June 26, 2003.

Time: 2 p.m. to 4:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6120 Executive Blvd., Rockville, MD 20852, (Telephone Conference Call).

Contact Person: Sheo Singh, PhD, Scientific Review Administrator, Scientific Review Branch, Division of Extramural Research, Executive Plaza South, Room 400C, 6120 Executive Blvd, Bethesda, MD 301–496–8683.

(Catalogue of Federal Domestic Assistance Program Nos. 93.173, Biological Research Related to Deafness and Communicative Disorders, National Institutes of Health, HHS)

Dated: May 7, 2003.

Anna P. Snouffer,

Acting Director, Office of Federal Advisory Committee Policy.

[FR Doc. 03–12078 Filed 5–14–03; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Allergy and Infectious Diseases; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Allergy and Infectious Diseases Special Emphasis Panel, Comprehensive International Program of Research on AIDS (CIPRA)—Uganda/Kenya.

Date: May 30, 2003.

Time: 12 p.m. to 4 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Rockledge 6700, 6700B Rockledge Drive, Bethesda, MD 20817, (Telephone Conference Call).

Contact Person: Eleazar Cohen, PhD, Scientific Review Administrator, Scientific Review Program, National Institute of Allergy and Infectious Diseases, DEEA/NIH/DHHS, 6700 B Rockledge Drive, MSC 7616, Room 3112, Bethesda, MD 20892–7616, 301–435–3564, *ec17w@nih.gov*.

Name of Committee: National Institute of Allergy and Infectious Disease Special Emphasis Panel, Comprehensive International Program of Research on AIDS (CIPRA)—Thailand.

Date: June 4, 2003.

Time: 10 a.m. to 12:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Rockledge 6700, 6700B Rockledge Drive, Bethesda, MD 20817, (Telephone Conference Call).

Contact Person: Eleazar Cohen, PhD, Scientific Review Administrator, Scientific Review Program, National Institute of Allergy and Infectious Diseases, DEA/NIH/DHHS, 6700 B Rockledge Drive, MSC 7616, Room 3112, Bethesda, MD 20892–7616, 301–435–3564, *ec17w@nih.gov*.

Name of Committee: National Institute of Allergy and Infectious Diseases Special Emphasis Panel, Partnerships: Hepatitis B and Vector Borne Diseases Control (Part B: Tick-borne Diseases Transmission).

Date: June 13, 2003.

Time: 2 p.m. to 5 p.m.
Agenda: To review and evaluate grant applications.
Place: National Institutes of Health, Rockledge 6700, 6700B Rockledge Drive, Bethesda, MD 20817, (Telephone Conference Call).
Contact Person: Gary S. Madonna, PhD, Scientific Review Administrator, Scientific Review Program, Division of Extramural Activities NIAID, NIH, DHHS, 6700–B Rockledge Drive, MSC 7616, Room 2149, Bethesda, MD 20892–7616, 301–496–3528, *gm12w@nih.gov*.

Name of Committee: National Institute of Allergy and Infectious Diseases Special Emphasis Panel, Partnerships: Hepatitis B and Vector Borne Diseases Control (Part C: Arthropod Vector Control).
Date: June 17, 2003.
Time: 11 a.m. to 2 p.m.
Agenda: To review and evaluate grant applications.
Place: National Institutes of Health, Rockledge 6700, 6700–B Rockledge Drive, Bethesda, MD 20817, (Telephone Conference Call).
Contact Person: Gary S. Madonna, PhD, Scientific Review Administrator, Scientific Review Program, Division of Extramural Activities NIAID, NIH, DHHS, 6700–B Rockledge Drive, MSC 7616, Room 2149, Bethesda, MD 20892–7616, 301–496–3528, *gm12w@nih.gov*.

Name of Committee: National Institute of Allergy and Infectious Diseases Special Emphasis Panel, Partnerships: Hepatitis B and Vector Borne Diseases Control (Part A: Hepatitis B Therapies).
Date: June 18, 2003.
Time: 2 a.m. to 5 p.m.
Agenda: To review and evaluate grant applicants.
Place: National Institutes of Health Rockledge 6700, 6700–B Rockledge Drive, Bethesda, MD 20817, (Telephone Conference Call).
Contact Person: Gary S. Madonna, PhD., Scientific Review Administrator, Scientific Review Program, Division of Extramural Activities, NIAID, NIH, DHHS, 6700–B Rockledge Drive, MSC 7616, Room 2149, Bethesda, MD 20892–7616, 301–496–3528, *gm12w@nih.gov*.

(Catalogue of Federal Domestic Assistance Program Nos. 93.855, Allergy, Immunology, and Transplantation Research; 93.856, Microbiology and Infectious Diseases Research, National Institutes of Health, HHS)

Dated: May 8, 2003.

Anna P. Snouffer,

Deputy Director, Office of Federal Advisory Committee Policy.

[FR Doc. 03–12080 Filed 5–14–03; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Allergy and Infectious Diseases; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Allergy and Infectious Diseases Special Emphasis Panel, National Biocontainment Laboratories.
Date: June 2–3, 2003.
Time: 8 a.m. to 5 p.m.
Agenda: To review and evaluate grant applications.
Place: Holiday Inn Georgetown, 2101 Wisconsin Avenue, NW., Washington, DC 20007.
Contact Person: Peter R. Jackson, PhD, Scientific Review Administrator, Scientific Review Program, Division of Extramural Activities, NIAID, NIH, Room 2217, 6700–B Rockledge Drive, MSC, 7616, Bethesda, MD 20892–7616, 301–496–2550.

Name of Committee: National Institute of Allergy and Infectious Diseases Special Emphasis Panel, 3 Unsolicited PO1s.
Date: June 2, 2003.
Time: 8 a.m. to 5 p.m.
Agenda: To review and evaluate grant applications.
Place: Holiday Inn Chevy Chase, 5520 Wisconsin Avenue, Chevy Chase, MD 20815.
Contact Person: Nasrin Nabavi, PhD, Scientific Review Administrator, Scientific Review Program, Division of Extramural Activities, NIAID, NIH, Room 2217, 6700–B Rockledge Drive, MSC, 7616, Bethesda, MD 20892–7616, 301–496–2550, *nn30t@nih.gov*.

Name of Committee: National Institute of Allergy and Infectious Diseases Special Emphasis Panel, Regional Biocontainment Laboratories.
Date: June 23–24, 2003.
Time: 8 a.m. to 5 p.m.
Agenda: To review and evaluate grant applications.
Place: Gaithersburg Marriott Washingtonian Center, 9751 Washingtonian Boulevard, Gaithersburg, MD 20878.
Contact Person: Robert C. Goldman, PhD, Scientific Review Administrator, Scientific Review Program, Division of Extramural Activities, NIAID, NIH, DHHS, Room 3124, 6700–B Rockledge Drive, MSC, 7616, Bethesda, MD 20892–7616, 301–496–8424, *rg159@nih.gov*.

Name of Committee: National Institute of Allergy and Infectious Diseases Special Emphasis Panel, Biodefense and Emerging Infectious Diseases Research Program Projects.
Date: June 25, 2003.
Time: 10 a.m. to 1 p.m.
Agenda: To review and evaluate grant applications and/or proposals.
Place: National Institutes of Health, Rockledge 6700, 6700–B Rockledge Drive, Room 1202, Bethesda, MD 20817 (Telephone Conference Call).
Contact Person: Paula S. Strickland, PhD, Scientific Review Administrator, Scientific Review Program, DHHS/NIH/NIAID/DEA/OD, Room 2139, 6700–B Rockledge Drive, MSC, 7616, Bethesda, MD 20892–7616, 301–435–8563, *ps30f@nih.gov*.

(Catalogue of Federal Domestic Assistance Program Nos. 93.855, Allergy, Immunology, and Transplantation Research; 93.856, Microbiology and Infectious Diseases Research, National Institutes of Health, HHS)

Dated: May 8, 2003.

Anna P. Snouffer,

Deputy Director, Office of Federal Advisory Committee Policy.

[FR Doc. 03–12081 Filed 5–14–03; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Diabetes and Digestive and Kidney Diseases; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Diabetes and Digestive and Kidney Diseases Initial Review Group; Kidney, Urologic and Hematologic Diseases D Subcommittee.
Date: June 18–19, 2003.
Time: 2 p.m. to 3 p.m.
Agenda: To review and evaluate grant applications.
Place: Embassy Suites Hotel, 1300 Concourse Drive, Linthicum, MD 21090.
Contact Person: Neal A. Musto, PhD, Scientific Review Administrator, Review Branch, DEA, NIDDK, Room 751, 6707 Democracy Boulevard, National Institutes of Health, Bethesda, MD 20892–6600, (301) 594–7798, *muston@extra.niddk.nih.gov*.

(Catalogue of Federal Domestic Assistance Program Nos. 93.847, Diabetes, Endocrinology and Metabolic Research; 93.848, Digestive Diseases and Nutrition Research; 93.849, Kidney Diseases, Urology and Hematology Research, National Institutes of Health, HHS)

Dated: May 8, 2003.

Anna P. Snouffer,

Acting Director, Office of Federal Advisory Committee Policy.

[FR Doc. 03–12083 Filed 5–14–03; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Aging; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The contract proposals and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the contract proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute on Aging Special Emphasis Panel, Tissue Bank.
Date: May 14, 2003.
Time: 1 p.m. to 3 p.m.
Agenda: To review and evaluate contract proposals.
Place: National Institute on Aging, Gateway Building, 7201 Wisconsin Avenue, Bethesda, MD 20814, (Telephone Conference Call).
Contact Person: Arthur D. Schaerdel, DVM, The Bethesda Gateway Building, 7201 Wisconsin Avenue/Suite 2C212, Bethesda, MD 20892, (301) 496–9666.
This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: National Institute on Aging Special Emphasis Panel; Nonhuman Primates.
Date: May 16, 2003.
Time: 1 p.m. to 3 p.m.
Agenda: To review and evaluate contract proposals.
Place: National Institutes of Health, 7201 Wisconsin Avenue, Bethesda, MD 20892, (Telephone Conference Call).
Contact Person: Arthur D. Schaerdel, DVM, The Bethesda Gateway Building, 7201 Wisconsin Avenue/Suite 2C212, Bethesda, MD 20892, (301) 496–9666.
This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program No. 93.866, Aging Research, National Institutes of Health, HHS)

Dated: May 8, 2003.

Anna P. Snouffer,

Acting Director, Office of Federal Advisory Committee Policy.

[FR Doc. 03–12084 Filed 5–14–03; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Aging; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute on Aging Special Emphasis Panel, Translational Research Centers.
Date: May 13–14, 2003.
Time: 5 p.m. to 5 p.m.
Agenda: To review and evaluate grant applications.
Place: Holiday Inn Chevy Chase, 5520 Wisconsin Avenue, Chevy Chase, MD 20815.
Contact Person: Alfonso R. Latoni, PhD, Scientific Review Administrator, Scientific Review Office, National Institute on Aging, National Institutes of Health, 7201 Wisconsin Avenue, Room 2C212, Bethesda, MD 20892, 301/496–9666, *latonia@mail.nih.gov*.
This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: National Institute on Aging Special Emphasis Panel, Restless Legs.
Date: May 30, 2003.
Time: 1 p.m. to 4 p.m.
Agenda: To review and evaluate grant applications.
Place: National Institute on Aging, Gateway Building, 7201 Wisconsin Avenue, Bethesda, MD 20814 (Telephone Conference Call).
Contact Person: William Cruce, PhD, Scientific Review Administrator, National Institute on Aging, National Institutes of Health, Scientific Review Office, Gateway Building 2C212, 7201 Wisconsin Avenue, Bethesda, MD 20892, 301–402–7704, (*crucew@nia.nih.gov*.)

Name of Committee: National Institute on Aging Special Emphasis Panel, Economics of Aging.
Date: June 1–2, 2003.
Time: 7 p.m. to 5 p.m.
Agenda: To review and evaluate grant applications.
Place: Hilton Boston Back Bay, 40 Dalton Street, Boston, MA 02115.
Contact Person: Alfonso R. Latoni, PhD, Scientific Review Administrator, Scientific Review Office, National Institute on Aging, National Institutes of Health, 7201 Wisconsin Avenue, Room 2C212, Bethesda, MD 20892, 301/496–9666, *latonia@mail.nih.gov*.

(Catalogue of Federal Domestic Assistance Program Nos. 93.866, Aging Research, National Institutes of Health, HHS)

Dated: May 8, 2003.

Anna P. Snouffer,

Acting Director, Office of Federal Advisory Committee Policy.

[FR Doc. 03–12085 Filed 5–14–03; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Aging; Amended Notice of Meeting

Notice is hereby given of a change in the meeting of the Board of Scientific Counselors, NIA, May 13, 2003, 8 a.m. to May 14, 2003, 3 p.m, Gerontology Research Center, National Institutes of Health, 5600 Nathan Shock Drive, Baltimore, MD, 21224–6825 which was published in the **Federal Register** on April 8, 1003, 68 FR 17962.

The portion of the meeting being held May 14, 2003 from 2:30 to 3 p.m. will be closed. The meeting is partially closed to the public.

Dated: May 8, 2003.

Anna P. Snouffer,

Acting Director, Office of Federal Advisory Committee Policy.

[FR Doc. 03–12086 Filed 5–14–03; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Biomedical Imaging and Bioengineering; Amended Notice of Meeting

Notice is hereby given of a change in the meeting of the National Advisory Council for Biomedical Imaging and Bioengineering, May 29, 2003, 8:30 a.m. to May 30, 2003, 5 p.m., National Institutes of health, Neuroscience Center, 6001 Executive Boulevard, Rockville, MD 20852 which was published in the **Federal Register** on April 22, 2003, 68 FR 7719841.

The meeting agenda has changed so that the open session of the meeting will be in the morning on May 29, and the closed session in the afternoon. The meeting is partially closed to the public.

Dated: May 8, 2003.

Anna P. Snouffer,

Deputy Director, Office of Federal Advisory Committee Policy.

[FR Doc. 03–12088 Filed 5–14–03; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Allergy and Infectious Diseases; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Allergy and Infectious Diseases Special Emphasis Panel; Comprehensive International Program of Research on AIDS (CIPRA).

Date: May 30, 2003.

Time: 12 p.m. to 3 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Rockledge 6700, 6700B Rockledge Drive, Bethesda, MD 20817, (Telephone Conference Call).

Contact Person: Gregory P. Jarosik, PhD, Scientific Review Administrator, Scientific Review Program, Division of Extramural Activities, NIAID, 6700B Rockledge Drive, MSC–7616, Bethesda, MD 20892, 301–496–2550, *gjarosik@niaid.nih.gov.*

Name of Committee: National Institute of Allergy and Infectious Diseases Special Emphasis Panel; Comprehensive International Program of Research on AIDS (CIPRA).

Date: June 5, 2003.

Time: 10:30 a.m. to 12:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Rockledge 6700, 6700B Rockledge Drive, Bethesda, MD 20817, (Telephone Conference Call).

Contact Person: Gregory P. Jarosik, PhD, Scientific Review Administrator, Scientific Review Program, Division of Extramural Activities, NIAID, 6700B Rockledge Drive, MSC–7616, Bethesda, MD 20892, 301–496–2550, *gjarosik@niaid.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.855, Allergy, Immunology, and Transplantation Research; 93.856, Microbiology and Infectious Diseases Research, National Institutes of Health, HHS)

Dated: May 8, 2003.

Anna P. Snouffer,

Deputy Director, Office of Federal Advisory Committee Policy.

[FR Doc. 03–12089 Filed 5–14–03; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Nursing Research; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Nursing Research Special Emphasis Panel, Loan Repayment Program.

Date: May 14, 2003.

Time: 10 a.m. to 12 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institute of Nursing Research, 6701 Democracy Plaza, Bethesda, MD 20817, (Telephone Conference Call).

Contact Person: John E. Richters, PhD., Scientific Review Administrator, Office of Review, Division of Extramural Activities, National Institute of Nursing Research, National Institutes of Health, 6701 Democracy Blvd., Room 715, Bethesda, MD 20817, (301) 594–5971, *jrichters@nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.361, Nursing Research, National Institutes of Health, HHS).

Dated: May 6, 2003.

Anna P. Snouffer,

Acting Director, Office of Federal Advisory Committee Policy.

[FR Doc. 03–12096 Filed 5–14–03; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Dental & Craniofacial Research; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby give of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Dental and Craniofacial Research Special Emphasis Panel; 03–61, Review of R01s.

Date: May 28, 2003.

Time: 9 a.m. to 10:30 a.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Natcher Building, 45 Center Drive, Bethesda, MD 20892. (Telephone Conference Call).

Contact Person: Rebecca Roper, MS, MPH, Scientific Review Administrator, Scientific Review Branch, Division of Extramural Research, National Inst of Dental & Craniofacial Research, National Institutes of Health, 45 Center Dr., room 4AN32E, Bethesda, MD 20892, 301–451–5096.

Name of Committee: National Institute of Dental and Craniofacial Research Special Emphasis Panel 03–56, Review of R01s.

Date: May 28, 2003.

Time: 10:30 a.m. to 12 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Natcher Building, 45 Center Drive, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Rebecca Roper, MS, MPH, Scientific Review Administrator, Scientific Review Branch, Division of Extramural Research, National Inst of Dental & Craniofacial Research, National Institutes of Health, 45 Center Dr., room 4AN32E, Bethesda, MD 20892, 301–451–5096.

Name of Committee: National Institute of Dental and Craniofacial Research Special Emphasis Panel; 03–72, Review of Ks and R03s.

Date: June 3, 2003.

Time: 11 a.m. to 2 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Natcher Building, 45 Center Drive, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Lynn M King, Phd, Scientific Review Administrator, Scientific Review Branch, 45 Center Dr., Rm 4AN–38K, National Institute of Dental & Craniofacial Research, National Institutes of Health, Bethesda, MD 20892–6402, 301–594–5006.

Name of Committee: National Institute of Dental and Craniofacial Research Special Emphasis Panel 03–57, Review of R13s.

Date: June 10, 2003.

Time: 1 p.m. to 3 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Natcher Building, 45 Center Drive, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: H. George Hausch, PhD, Acting Director, 45 Center Drive, Natcher Building, Rm. 4AN44F, National Institutes of Health, Bethesda, MD 20892, (301) 594–2372.

Name of Committee: National Institute of Dental and Craniofacial Research Special Emphasis Panel 03–65, Review of R44s.

Date: June 12, 2003.

Time: 11 a.m. to 1 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Natcher Building, 45 Center Drive, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Philip Washko, PhD, DMD, Scientific Review Administrator, 45 Center Drive, Natcher Building, Rm. 4AN44F, National Institutes of Health, Bethesda, MD 20892, (301) 594–2372.

Name of Committee: National Institute of Dental and Craniofacial Research Special Emphasis Panel 03–71, Review of U24 Progress Reports.

Date: August 20, 2003.

Time: 10 a.m. to 4 p.m.

Agenda: To review and evaluate review Interim Progress Reports.

Place: National Institutes of Health, Natcher Building, 45 Center Drive, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: H. George Hausch, PhD, Acting Director, 45 Center Drive, Natcher Building, Rm. 4AN44F, National Institutes of Health, Bethesda, MD 20892, (301) 594–2372.

(Catalogue of Federal Domestic Assistance Program Nos. 93.121, Oral Diseases and Disorders Research, National Institutes of Health, HHS)

Dated: May 7, 2003.

Anna P. Snouffer,

Acting Director, Office of Federal Advisory Committee Policy.

[FR Doc. 03–12100 Filed 5–14–03; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Library of Medicine; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Library of Medicine Special Emphasis Panel.

Date: June 5, 2003.

Time: 1 p.m. to 3 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6705 Rockledge Drive, Bethesda, MD 20817, (Telephone Conference Call).

Contact Person: Merlyn M. Rodrigues, MD, PhD, Medical Officer/SRA, National Library of Medicine, Extramural Programs, 6705 Rockledge Drive, Suite 301, Bethesda, MD 20894.

(Catalogue of Federal Domestic Assistance Program Nos. 93.879, Medical Library Assistance, National Institutes of Health, HHS)

Dated: May 7, 2003.

Anna P. Snouffer,

Acting Director, Office of Federal Advisory Committee Policy.

[FR Doc. 03–12094 Filed 5–14–03; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Clinical Center; Notice of Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. appendix 2), notice is hereby given of the Board of Governors of the Warren Grant Magnuson Clinical Center.

The meeting will be closed to the public, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

Name of Committee: Board of governors of the Warren Grant Magnuson Clinical Center, Executive Committee.

Date: June 13, 2003.

Time: 9 a.m. to 12 p.m.

Agenda: Updates on organizational planning and budget issues.

Place: National Institutes of Health, Building 10, 10 Center Drive, Bethesda, MD 20892.

Contact Person: Maureen E. Gormley, Executive Secretary, Warren Grant Magnuson Clinical Center, National Institutes of Health, Building 10, Room 2C146, Bethesda, MD 20892, 301/496–2897.

Information is also available on the Institute's/Center's home page: *www.cc.nih.gov/*, where an agenda and any additional information for the meeting will be posted when available.

Dated: May 8, 2003.

Anna P. Snouffer,

Acting Director, Office of Federal Advisory Committee Policy.

[FR Doc. 03–12091 Filed 5–14–03; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Public Health Service

National Toxicology Program (NTP); National Institute of Environmental Health Sciences; the NTP Center for the Evaluation of Risks to Human Reproduction (CERHR) Expert Panel Report on the Developmental and Reproductive Toxicity of Ethylene Glycol and the CERHR Expert Panel Report on the Developmental and Reproductive Toxicity of Propylene Glycol: Notice of Availability and Request for Public Comments

Summary

Notice is hereby given of the availability of the Expert Panel Report on the Developmental and Reproductive

Toxicity of Ethylene Glycol and the Expert Panel Report on the Developmental and Reproductive Toxicity of Propylene Glycol. These reports include the summaries and conclusions of the expert panel's evaluation of the scientific data for potential reproductive and/or developmental hazards associated with exposure to ethylene glycol and to propylene glycol. The CERHR held this expert panel meeting in February 2003. CERHR is seeking public comment on these reports and additional information about recent, relevant toxicology or human exposure studies.

Availability of Reports

These expert panel reports are available electronically on the CERHR Web site (*http://cerhr.niehs.nih.gov*) and in printed copy by contacting the CERHR [P.O. Box 12233, MD EC–32, Research Triangle Park, NC 27709; telephone: (919) 541–3455; fax: (919) 316–4511; or email: *shelby@niehs.nih.gov*].

Request for Public Comments

The CERHR invites public comments on these expert panel reports and input regarding any recent, relevant toxicology or human exposure studies. The CERHR requests that all comments and other information be submitted to the CERHR at the address above by July 14, 2003.

All public comments received by the date above will be reviewed and included in the final NTP–CERHR monograph on ethylene glycol or propylene glycol to be prepared by NTP staff. The NTP–CERHR monograph will include the NTP brief, expert panel report, and all public comments received on the report. The brief will provide the NTP's interpretation of the potential for adverse reproductive and/or developmental effects to humans from exposure to ethylene glycol or propylene glycol. The NTP will transmit the NTP–CERHR monograph to the appropriate federal and state agencies, the public, and the scientific community.

Background

A 9-member expert panel composed of scientists from state and federal governments, universities, and private companies conducted an evaluation of the reproductive and developmental toxicities of ethylene glycol and propylene glycol [**Federal Register** Vol. 67 No. 236, pp. 72965–72967, December 9, 2002]. Public deliberations by the panel took place February 11–13, 2003 at the Holiday Inn Old Town Select in Alexandria, Virginia. Following the February meeting, the draft expert panel report for each chemical was revised to incorporate the panel's conclusions and subsequently reviewed by the Ethylene Glycol and Propylene Glycol Expert Panel, NTP scientists, and CERHR personnel.

Ethylene glycol is a high production volume chemical used as a chemical intermediate in the production of polyester compounds. There is widespread public exposure to ethylene glycol due to its use in heating and cooling systems (*e.g.*, automotive antifreeze and as a de-icer for aircraft). Propylene glycol is used commercially as an intermediate in the manufacture of unsaturated polyester resins and in the production of plasticizers. Similar in structure to ethylene glycol, public exposure is through its FDA-approved use in food, tobacco, pharmaceutical products, and cosmetics, its use in various paints and coatings, and as an antifreeze and de-icing solution.

Additional Information About CERHR

The NTP and the NIEHS established the NTP CERHR in June 1998 [**Federal Register** Vol. 63, No. 239, page 68782, December 1998]. The purpose of the CERHR is to provide scientifically based, uniform assessments of the potential for adverse effects on reproduction and development caused by agents to which humans may be exposed. Further information on the CERHR's chemical review process, including how to nominate chemicals for evaluation and scientists for the expert registry, can be obtained from its Web site (*http://cerhr.niehs.nih.gov*) or by contacting the CERHR directly (see address above). The CERHR also serves as a resource for information on various environmental exposures and their potential to affect pregnancy and child development. The Web site has information about common concerns related to fertility, pregnancy and the health of unborn children and links to other resources for information about public health.

Dated: May 7, 2003.

Samuel H. Wilson,

Deputy Director, National Institute of Environmental Health Sciences.

[FR Doc. 03–12101 Filed 5–14–03; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HOMELAND SECURITY

Transportation Security Administration

Reports, Forms, and Record Keeping Requirements: Agency Information Collection Activity Under OMB Review; Aviation-Related Assistance in the Emergency Wartime Supplemental Appropriations Act of 2003

AGENCY: Transportation Security Administration (TSA), Department of Homeland Security.

ACTION: Notice of emergency clearance request.

SUMMARY: TSA has submitted a request for emergency processing of a new public information collection to the Office of Management and Budget (OMB) for review and clearance under the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. 35). This notice announces that the Information Collection Request (ICR) abstracted below has been forwarded to OMB for review and comment. The ICR describes the nature of the information collection and its expected burden.

DATES: Send your comments by June 16, 2003. A comment to OMB is most effective if OMB receives it within 30 days of publication.

ADDRESSES: Comments may be faxed to the Office of Information and Regulatory Affairs, Office of Management and Budget, Attention: DHS-TSA Desk Officer, at (202) 395–5806.

FOR FURTHER INFORMATION CONTACT: Conrad Huygen, Privacy Act Officer, Information Management Programs, Office of Finance and Administration, Transportation Security Administration HQ, West Tower, Floor 4, TSA–17, 400 Seventh Street, SW., Washington, DC 20590–0001; telephone (571) 227–1954; facsimile (571) 227–2912.

SUPPLEMENTARY INFORMATION:

Transportation Security Administration

Title: Aviation-related Assistance in the Emergency Wartime Supplemental Appropriations Act of 2003.

OMB Control Number: 1652–0012.

Type of Request: Emergency processing request of new collection.

Forms(s): NA.

Affected Public: U.S. Flag commercial air carriers.

Abstract: Pursuant to Public Law No. 108–11, 117 Stat. 559 (4/16/2003), "Emergency Wartime Supplemental Appropriations Act, 2003", TSA is required to remit approximately $2.3 billion to U.S. Flag air carriers based on the proportional share each such carrier has paid or collected as of the date of enactment of this Act in passenger security and air carrier security fees to TSA. Prior to remittance of these funds, the Act requires TSA to enter into an executive compensation agreement with certain carriers as defined by the statute. To ascertain which carriers are required to enter into the compensation agreement, TSA is requesting that the airlines certify whether they are bound by statutory requirements, as each carrier is in the best position to know its own situation. TSA is therefore requiring each carrier to certify that funds were allocated appropriately and prepare a report detailing this information.

Number of Respondents: 70.

Estimated Annual Burden Hours: It is estimated that this certification and report will take 8 hours for each carrier to prepare, for a total burden of 560 hours.

TSA is soliciting comments to—

(1) Evaluate whether the proposed information requirement is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's estimate of the burden;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Issued in Arlington, Virginia, on May 8, 2003.

Susan T. Tracey,

Deputy Chief Administrative Officer.

[FR Doc. 03–12172 Filed 5–14–03; 8:45 am]

BILLING CODE 4910–62–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4820–N–22]

Notice of Proposed Information Collection: Comment Request; Single Family Application for Insurance Benefits

AGENCY: Office of the Assistant Secretary for Housing-Federal Housing Commissioner, HUD.

ACTION: Notice

SUMMARY: The proposed information collection requirement described below will be submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

DATES: *Comments Due Date:* July 14, 2003.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB Control Number and should be sent to: Wayne Eddins, Reports Management Officer, Department of Housing and Urban Development, 451 7th Street, SW., L'Enfant Plaza Building, Room 8003, Washington, DC 20410 or *Wayne__Eddins@hud.gov.*

FOR FURTHER INFORMATION CONTACT: Joseph McCloskey, Director, Office of Single Family Asset Management, Department of Housing and Urban Development, 451 7th Street, SW., Washington, DC 20410, telephone (202) 708–1672 (this is not a toll free number) for copies of the proposed forms and other available information.

SUPPLEMENTARY INFORMATION: The Department is submitting the proposed information collection to OMB for review, as required by the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35, as amended).

This Notice is soliciting comments from members of the public and affected agencies concerning the proposed collection of information to: (1) Evaluate whether the proposed collection is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (3) enhance the quality, utility, and clarity of the information to be collected; and (4) minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

This Notice also lists the following information:

Title of Proposal: Single Family Application for Insurance Benefits.

OMB Control Number, if applicable: 2502–0429.

Description of the need for the information and proposed use: Mortgagees are required to complete this information collection in order to claim their insurance benefits on defaulted single-family mortgages. This information collection is used to provide HUD the information needed to process and pay claims on defaulted FHA-insured home mortgage loans.

Agency form numbers, if applicable: HUD–27011, parts A, B, C, D, & E.

Estimation of the total numbers of hours needed to prepare the information collection including number of respondents, frequency of response, and hours of response: The estimated total number of burden hours needed to process the information collection is 150,000; the number of respondents is 450 generating approximately 200,000 annual responses; the frequency of response varies from once to 5,000 depending upon the lender's portfolio; and the estimated time needed to prepare the response is 45 minutes.

Status of the proposed information collection: Extension of a currently approved collection.

Authority: The Paperwork Reduction Act of 1995, 44 U.S.C., chapter 35, as amended.

Dated: May 8, 2003

Sean G. Cassidy,

General Deputy Assistant Secretary for Housing-Deputy Federal Housing Commissioner.

[FR Doc. 03–12122 Filed 5–14–03; 8:45 am]

BILLING CODE 4210–27–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4820–N–23]

Notice of Proposed Information Collection: Comment Request; Multifamily Housing Service Coordinator Program

AGENCY: Office of the Assistant Secretary for Housing-Federal Housing Commissioner, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below will be submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

DATES: *Comments Due Date:* July 14, 2003.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB Control Number and should be sent to: Wayne Eddins, Reports Management Officer, Department of Housing and Urban Development, 451 7th Street, SW., L'Enfant Plaza Building, Room 8003, Washington, DC 20410 or *Wayne_Eddins@hud.gov.*

FOR FURTHER INFORMATION CONTACT: Willie Spearmon, Director, Office of

Housing Assistance and Grant Administration, Department of Housing and Urban Development, 451 7th Street SW., Washington, DC 20410, telephone (202) 708–3000 (this is not a toll free number) for copies of the proposed forms and other available information.

SUPPLEMENTARY INFORMATION: The Department is submitting the proposed information collection to OMB for review, as required by the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35, as amended).

This Notice is soliciting comments from members of the public and affected agencies concerning the proposed collection of information to: (1) Evaluate whether the proposed collection is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (3) Enhance the quality, utility, and clarity of the information to be collected; and (4) Minimize the burden of the collection of information on those who are to respond; including the use of appropriate automated collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

This Notice also lists the following information:

Title of Proposal: Multifamily Housing Service Coordinator Program.

OMB Control Number, if applicable: 2502–0447.

Description of the need for the information and proposed use: HUD evaluates the grant applications (SF–424 and related documents) for the need and proposed use of grant funds and owners' ability to administer awarded funds of the Multifamily Housing Service Coordinator Program. HUD staff will use requests for extensions to evaluate anticipated program costs and the continued need for the program. The semi-annual Performance Reports will be used to determine how well grant funds met stated program goals. Grantees will also be able to retain data on the effectiveness of the program and how well the public was served. The Payment Voucher is used to monitor grant funds for eligible costs over the term of the grant, and the grantee may similarly use this voucher to track and record their requests for payment reimbursement for grant-funded expenses.

Agency form numbers, if applicable: HUD–50080–SCMF, HUD–91186/91186–i, HUD–91186–A & HUD–92456.

Estimation of the total numbers of hours needed to prepare the information collection including number of respondents, frequency of response, and hours of response: The estimated total number of burden hours needed to prepare the information collection is 51,100; the number of respondents is 6,700 generating approximately 14,400 annual responses; the frequency of response is quarterly, semi-annually, and annually; and the estimated time needed to prepare the response varies from 15 minutes to 40 hours.

Status of the proposed information collection: Extension of a currently approved collection.

Authority: The Paperwork Reduction Act of 1995, 44 U.S.C. chapter 35, as amended.

Dated: May 8, 2003.

Sean G. Cassidy,

General Deputy Assistant Secretary for Housing-Deputy Federal Housing Commissioner.

[FR Doc. 03–12123 Filed 5–14–03; 8:45 am]

BILLING CODE 4210–27–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4820–N–24]

Notice of Proposed Information Collection: Comment Request; Application for Approval—FHA Lender and/or Ginnie Mae Mortgage-Backed Securities Issuer Branch Office Notification—Title I/Title II

AGENCY: Office of the Assistant Secretary for Housing-Federal Housing Commissioner, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below will be submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

DATES: *Comments Due Date:* July 14, 2003.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB Control Number and should be sent to: Wayne Eddins, Reports Management Officer, Department of Housing and Urban Development, 451 7th Street, SW., L'Enfant Plaza Building, Room 8003, Washington, DC 20410 or *Wayne_Eddins@hud.gov.*

FOR FURTHER INFORMATION CONTACT: Phillip A. Murray, Director, Office of Lender Activities, Assistant Secretary for Housing, Department of Housing and Urban Development, 451 7th Street SW., Washington, DC 20410, telephone (202) 708–1515 (this is not a toll free number) for copies of the proposed forms and other available information.

SUPPLEMENTARY INFORMATION: The Department is submitting the proposed information collection to OMB for review, as required by the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35, as amended).

The Notice is soliciting comments from members of the public and affected agencies concerning the proposed collection of information to: (1) Evaluate whether the proposed collection is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (3) Enhance the quality, utility, and clarity of the information to be collected; and (4) Minimize the burden of the collection of information on those who are to respond; including the use of appropriate automated collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

The Notice also lists the following information:

Title of Proposal: Application for Approval—FHA Lender and/or Ginnie Mae Mortgage-Backed Securities Issuer Branch Office Notification—Title I/Title II.

OMB Control Number, if applicable: 2502–0005.

Description of the need for the information and proposed use: The Federal Housing Administration (FHA) and the Government National Mortgage Association (Ginnie Mae) of the Department of Housing and Urban Development approve entities to participate as Title I lenders, Title II mortgagees, and the Ginnie Mae mortgage-backed securities issuers. Specific information must be obtained and reviewed to determine if an entity meets the criteria to obtain the requested approval. In addition, this submission covers subsequent information required by FHA in order for entities to maintain their approval, update information previously submitted on the entity, report any non-compliances, and voluntarily terminate their FHA approval.

Agency form numbers, if applicable: HUD–11701 and HUD–92001–B.

Estimation of the total numbers of hours needed to prepare the information collection including number of respondents, frequency of response, and hours of response:

INFORMATION COLLECTION BURDEN HOUR

Item No.	Information collection	Number of expected respondents	Total annual responses	Hours per response	Total annual hours
1	HUD–11701—Application for FHA Approval, by paper (including attachments).	2,000	2,000	2.00	4,000
1	HUD–11701 Application for Ginnie Mae Approval, by paper (including attachments).	50	50	1.25	63
2	HUD–92100–B Application for New Branch by loan correspondents, by paper (including attachments).	1,000	1,500	.50	750
3	Electronic Registration of New Branch by Mortgages via FHA Connection.	1,500	2,500	.10	250
4	Electronic Termination of Existing Branch by all lenders via FHA Connection.	1,000	3,000	.05	150
5	Cover Sheet for Application Fee or Conversion of Mortgagee Type for Title I Approval (by paper).	200	200	.05	10
5	Cover Sheet for Application Fee or Conversion of Mortgagee Type for Title II Approval (by paper).	1,800	1,800	.05	90
5	Application Fee for Branch registration electronically or request for approval in paper using HUD 92001–B.	2,500	4,000	.05	200
6	Annual Verification Report by all approved lenders (by paper).	11,500	11,500	.10	1,150
7	Non-Address Business Change Notification (by paper)	600	600	.50	300
8	Address Updates via FHA Connection	1,500	3,000	.25	750
9	Personnel Change Notification of new owners, officers, directors or partners (by paper).	1,000	1,000	.50	500
10	Non-Compliance Notification pursuant to Lender Quality Control Plans (by paper).	300	600	1.00	600
11	Voluntary Termination by a Lender (by letter)	500	500	.25	125
Total		25,450	32,250		8,938

Status of the proposed information collection: Revision of a currently approved collection.

Authority: The Paper Reduction Act of 1995, 44 U.S.C. chapter 35, as amended.

Dated: May 8, 2003.

Sean G. Cassidy,

General Deputy Assistant Secretary for Housing-Deputy Federal Housing Commissioner.

[FR Doc. 03–12124 Filed 5–14–03; 8:45 am]

BILLING CODE 4210–27–M

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

[No. CIV 90–0957 LH/WWD ACE]

Notice of Distribution of Second Partial Settlement: Ramah Navajo Chapter v. Gale Norton

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice.

SUMMARY: A Notice of the Distribution of the Second Partial Settlement is contained in this announcement. The Notice describes procedures for the payment and distribution of the Net Common Fund, including eligibility for payment, necessary documentation and related information.

FOR FURTHER INFORMATION CONTACT: Michael P. Gross, Class Counsel, M.P. Gross & Associates, P.C., 460 St. Michael's Drive, #300, Santa Fe, NM 87505–7602; Telephone No. (505) 983–6686; Fax (505) 989–1096; E-mail address: *mpgross@cnsp.com;* or C. Bryant Rogers, Co-Class Counsel, Roth, VanAmberg, Rogers, Ortiz, Fairbanks & Yepa, LLP, Post Office Box 1447, Santa Fe, NM 87504–1447; Telephone No. (505) 988–8979; Fax (505) 983–7508; E-mail address: *cbrogers@nmlawgroup.com;* or Lloyd B. Miller, Co-Class Counsel for the DCSC Claim, Sonosky Chambers Sachse Miller and Munson, 900 W Fifth Street, Suite 700, Anchorage, Alaska 99501; Telephone No. (907) 258–6377; Fax (907) 2723–8332; E-mail address: *lloyd@sonosky.net*

SUPPLEMENTARY INFORMATION: This notice is published in accordance with the authority delegated by the Secretary of the Interior to the Assistant Secretary—Indian Affairs by 209 Departmental Manual 8.1.

The Class Distribution Notice in *Ramah Navajo Chapter, Oglala Sioux Tribe, and Pueblo of Zuni, for themselves and on behalf of a class of persons similarly situated,* v. *Gale Norton, Secretary of the Interior, in her official capacity, United States Department of the Interior, Neal McCaleb, Assistant Secretary for Indian Affairs, in his official capacity, Earl Devaney, Inspector General, in his official capacity, and the United States of America* (No. CIV 90–0957 LH/WWD ACE), before the United States District Court for the District of New Mexico, reads as set forth below.

Dated: May 5, 2003.

Aurene M. Martin,

Assistant Secretary—Indian Affairs.

Class Distribution Notice Number 1; Second Partial Settlement (PSA–2); Introduction

With this notice, Class Counsel are commencing distribution of the Second Partial Settlement (PSA–2) paid by Defendants on March 21, 2003. The Net Common Fund to be distributed pursuant to this notice is $22,230,594.49. A second distribution of the remaining balance in the Reserve Account (to which all interest accruals of the Net Common Fund and Reserve Account are deposited) will occur later. PSA–2 settles remaining claims for three years only: FY 1992, FY 1993, and FY 1994.

The proceeds of PSA–2 were deposited pursuant to Court Order in the Court Registry Investment System (CRIS) administered by the Clerk of the United States District Court for the Southern District of Texas (Houston). The Class has engaged the Albuquerque firm of REDW, LLC, as the Independent

CPA (Settlement Administrator) to assist in the distribution of the Net Common Fund of these settlement proceeds. Class Counsel have also engaged Kenton Keckler, CPA to serve as Class Monitor. As such, Mr. Keckler has responsibility for confirming that the Independent CPA's implementation of the PSA–2 is in conformity with the provisions of the PSA–2 agreement as approved by the court.

The purpose of this Notice is:

1. To publish a provisional list of Class Members who may be eligible for an allocation from the Net Common Fund and to provide procedures to challenge the stated amount of BIA expenditures contained in the attachment. (See Attachment A for the Provisional List.)

2. To give notice to any tribe or tribal entity not on the provisional list of procedures it must follow in order to challenge omission from the list.

3. To give notice to all Class Members of the requirement to submit a timely Claim Form with requested documents and the deadline for submitting Claim Forms to the Settlement Administrator. (See Attachment B for the Claim Form.)

4. To outline procedures for Class Members who may wish to relinquish their shares in this settlement.

Any conflict between this Notice and the Second Partial Settlement Agreement (PSA–2) will be resolved in favor of the Settlement Agreement. The entire Second Partial Settlement Agreement including Appendix F may be found on the Class web site at: *http:www.rncsettlement.com.*

I. How Are Shares Calculated?

The allocations will be made on the basis of each Class Member's actual credited BIA expenditures (not including construction expenses exceeding $100,000) as shown in the Claim Form compared with those of the entire Class. To be eligible for a full allocation covering all three settlement years, each claimant must certify under penalty of perjury that it meets the criteria for eligibility for all three years. If the claimant meets the criteria for only two years, it will receive a two-thirds allocation. If it meets the criteria for only one year, it will receive a one-third allocation. See Appendix F.

II. Who Is Eligible for a Share in This Settlement?

A. Only Class Members which had a Public Law 93–638 contract or compact with the Bureau of Indian Affairs during any of the settlement years, FY 1992, FY 1993, or FY 1994, are eligible to share in the proceeds of this settlement. Class Members who also had a school grant under the Tribally Controlled School Grants Act, 25 U.S.C. 2001 *et seq.* may include their school grant amount in the share calculation *only* if they had an indirect cost rate and the grant was included in the direct cost base for that rate. School grantees who did not have a Public Law 93–638 contract are not Class Members.

B. To qualify for a share in PSA–2, each Class Member must submit a Claim Form, duly executed and notarized, to the Settlement Administrator within 60 days of publication of this Notice in the **Federal Register**.

III. Provisional List of Class Members and Procedure for Correcting Your Entry

Attached to this Notice is a list of tribes and tribal entities compiled by Class Counsel who may be members of the Class eligible for an allocation from the Net Common Fund. This list is also published on the Class web site and will be published in the **Federal Register**. The web site contains important pleadings, other documents, and notices previously sent to the Class as well as the complete Second Partial Settlement Agreement including Appendix F.

A. If You Are on the List But Wish To Disclaim a Share of This Settlement

There are no opt outs and the period for opting out of the class action has passed. If your tribe or tribal organization does not wish to receive a share of this settlement, this may be achieved by so indicating on the attached claim form or by sending a letter to the Settlement Administrator disclaiming any share of this settlement. Tribes which so indicate will remain class members but will be removed from the list used in future mailings regarding this settlement.

B. If You Are Not on the List But Are a Class Member Who Wishes To Be Included or Who Wishes To Challenge the Provisional List Data for Your Entity

Any tribal entity which does not appear on the provisional list or wishes to challenge the accuracy of its data on the provisional list and which believes it is a Class Member eligible to receive a share of the Net Common Fund must file a statement certifying under oath that it had a Public Law 93–638 contract or self-governance compact with the BIA during any one or more of the settlement years FY 1992 through FY 1994. The response must state that the information provided is true and correct to the best of the signatory's knowledge, information, and belief. The statement must also be accompanied by documentary proof (*e.g.*, "Schedule of Federal Financial Assistance" from your annual single agency audit or alternative documentation such as contract award documents and IDC agreements, etc.) showing existence of the elements and amounts for eligibility under Part I of this Notice for each year the entity claims to have had such contracts or compacts. The completed claim form and supporting documentation must be received by REDW, LLC no later than 60 days after the date of publication of this Notice in the **Federal Register** and must also be served on Plaintiffs' and Defendants' Counsel within the same period. Addresses for Class Counsel are set out at the end of this notice. Defendant's counsel's address is: Karen K. Richardson, Esq., United States Department of Justice, Civil Division, Post Office Box 883, Benjamin Franklin Station, Washington, DC 20044.

Challenges to inclusion or exclusions from the provisional list by other Class Members are not permitted.

IV. You Must Timely File a Claim Form To Share in This Settlement

Each Class Member must submit to the Settlement Administrator the attached claim form duly executed and notarized by the responsible official plus such financial information about its federal funding expenditures for each of the settlement years as may be required on the form.

The preferred information to be attached to the claim form is your "Schedule of Federal Financial Assistance (SFFA)" in your annual single agency audit for the relevant year or years.

If the SFFA is not on file and cannot be located, alternative documentation may be substituted if acceptable to the Settlement Administrator.

Audit data received from Class Members will be kept confidential pursuant to Paragraph 9(C) of Appendix D of the First Partial Settlement Agreement (PSA–1), except for publication of BIA funding expenditures data in connection with this distribution as authorized by Appendix F, PSA–2. Entities for whom the required documents are not received will not receive an allocation.

If the Court, on petition, later finds that the methodology for distribution of PSA–2 is unworkable, too costly, or not beneficial to the interests of the Class, some other method may be substituted after notice and an opportunity for hearing objections.

After expiration of the response period set forth in this Notice, the Settlement Administrator will determine the Final List of Class Members who have been determined to be eligible for an allocation under PSA–2. The Notice accompanying this "Final Share Percentage Schedule" (FSPS) will provide a final means for challenging the share percentage stated in the FSPS.

Unless Class Members timely submit a claim form and provide necessary documentation to the Settlement Administrator, they will not receive a share of the Net Common Fund.

The claim form must be mailed to: REDW, LLC, Ramah Navajo Chapter Class Action Settlement Administrator, 6401 Jefferson NE, Post Office Box 93659, Albuquerque, New Mexico 87199–3659; Telephone No. 1–888–726–9418; Web site: *http:www.rncsettlement.com*; Email address: *rncsettlement@redw.com*

Questions regarding this notice should be directed to the Settlement Administrator at the above address or to Class Counsel below.

Michael P. Gross, Class Counsel, M. P. Gross & Associates, P.C., 460 St. Michael's Drive, #300, Santa Fe, NM 87505–7602; Telephone No. (505) 983–6686; Fax No. (505) 989–1096; Email address: *mpgross@cnsp.com.*

C. Bryant Rogers, Co-Class Counsel, Roth, VanAmberg, Rogers, Ortiz, Fairbanks & Yepa, LLP, Post Office Box 1447, Santa Fe, NM 87504–1447; Telephone No. (505) 988–8979; Fax No. (505) 983–7508; Email address: *cbrogers@nmlawgroup.com.*

Lloyd B. Miller, Co-Class Counsel for the DCSC Claim, Sonosky Chambers Sachse Miller and Munson, 900 W. Fifth Street, Suite 700, Anchorage, Alaska 99501; Telephone No. (907) 258–6377; Fax No. (907) 2723–8332; Email address: *lloyd@sonosky.net.*

ATTACHMENT A.—RAMAH NAVAJO CHAPTER SETTLEMENT ADMINISTRATION

[Information on file for the base year amount for 1993; Appendix F paragraph 10(b)—Provisional List (part 1 of 2); Alphabetical order—by organization]

Tribe/Organization	Control No.	1993 BIA expenditures
1854 AUTHORITY	1040	$385,083
ABSENTEE–SHAWNEE TRIBE OF OKLAHOMA	1	1,144,671
AKIACHAK NATIVE COMMUNITY (IRA)	11	102,985
ALABAMA–COUSHATTA TRIBE OF TEXAS	14	1,005,948
ALAMO NAVAJO SCHOOL BOARD INC	17	2,860,123
ALEUTIAN/PRIBOLOF ISLAND ASSOCIATION	22	876,862
ALL INDIAN PUEBLO COUNCIL	24	572,687
ARTIC SLOPE COMMUNITY	38	826,772
ASSOCIATION OF VILLAGE COUNCIL PRESIDENTS INC	43	3,372,828
BAD RIVER BAND OF LAKE SUPERIOR CHIPPEWA INDIANS	51	936,549
BAY MILLS COMMUNITY COLLEGE	908	665,657
BAY MILLS INDIAN COMMUNITY	56	1,734,035
BIG LAGOON RANCHERIA	67	81,777
BIG PINE PAUITE SHOSHONE BAND	68	225,648
BISHOP PAIUTE TRIBE	74	191,163
BLACKFEET TRIBE	77	3,504,136
BLUE LAKE RANCHERIA OF CALIFORNIA	78	131,087
BOARD OF DIRECTORS TRENTON INDIAN SERVICE AREA	79	320,577
BOIS FORTE BAND OF MINNESOTA CHIPPEWA TRIBE	495	549,864
BURNS PAIUTE TRIBE	89	481,324
CADDO TRIBE OF OKLAHOMA	93	23,325
CAHUILLA BAND OF INDIANS	95	70,969
CAMPO BAND OF MISSION INDIANS	97	37,358
CENTRAL COUNCIL OF THE TLINGIT AND HAIDA INDIAN TRIBES	108	5,843,029
CHER-AE HEIGHTS INDIAN COMMUNITY OF THE TRINIDAD RANCHERIA	117	68,449
CHEROKEE NATION	120	12,135,102
CHEYENNE RIVER COMMUNITY COLLEGE	920	831,795
CHEYENNE RIVER SIOUX TRIBE	122	5,419,641
CHEYENNE-ARAPAHO TRIBES OF OKLAHOMA	123	2,038,243
CHICKASAW NATION	126	3,667,626
CHIPPEWA CREE TRIBE	138	2,460,888
CHITIMACHA TRIBE OF LOUISIANA	141	2,529,525
CHOCTAW NATION OF OKLAHOMA/JONES ACADEMY	144	6,268,339
CHUCACHIUT, INC.	149	1,819,593
CITIZEN POTAWATOMI NATION	156	992,281
COAST INDIAN COMMUNITY OF THE RESIGHINI RANCHERIA	161	151,469
COEUR D'ALENE TRIBE	164	3,116,653
COLORADO RIVER INDIAN TRIBES	167	1,635,403
COLUMBIA RIVER INTERTRIBAL FISH COMMISSION	1047	3,196,475
COMANCHE TRIBE OF OKLAHOMA	171	1,441,674
CONCOW MAIDU TRIBE OF MOORETOWN RANCHERIA	471	225,200
CONFEDERATED SALISH AND KOOTENAI TRIBES	173	9,803,091
CONFEDERATED TRIBES AND BANDS OF THE YAKAMA NATION	890	9,086,044
CONFEDERATED TRIBES OF COOS, LOWER UMPQUA, & SIUSL	174	637,323
CONFEDERATED TRIBES OF GRAND RONDE COMMUNITY OF OR	177	1,434,869
CONFEDERATED TRIBES OF SILETZ INDIANS OF OREGON	175	2,072,413
CONFEDERATED TRIBES OF THE CHEHALIS RESERVATION	114	941,154
CONFEDERATED TRIBES OF THE COLVILLE RESERVATION	176	9,809,752
CONFEDERATED TRIBES OF UMATILLA INDIAN RESERVATION	179	3,079,881
COOK INLET TRIBAL COUNCIL, INC.	181	1,551,039
COPPER RIVER NATIVE ASSOCIATION	183	1,624,840
COQUILLE INDIAN TRIBE	185	1,227,958

ATTACHMENT A.—RAMAH NAVAJO CHAPTER SETTLEMENT ADMINISTRATION—Continued

[Information on file for the base year amount for 1993; Appendix F paragraph 10(b)—Provisional List (part 1 of 2); Alphabetical order—by organization]

Tribe/Organization	Control No.	1993 BIA expenditures
COUSHATTA TRIBE OF LOUISIANA	191	540,290
COW CREEK BAND OF UMPQUA TRIBE OF INDIANS	193	503,712
CROW CREEK SIOUX TRIBE	198	1,389,634
CROW TRIBE OF INDIANS	200	1,635,528
DELAWARE TRIBE OF WESTERN OKLAHOMA	208	7,550
DUCKWATER SHOSHONE TRIBE	219	941,575
DULL KNIFE MEMORIAL COLLEGE	940	915,950
EASTERN BAND OF CHEROKEE	118	8,898,982
EASTERN SHAWNEE TRIBE OF OKLAHOMA	222	160,297
EASTERN SHOSHONE TRIBE	223	329,697
EIGHT NORTHERN INDIAN PUEBLOS COUNCIL	226	485,379
ELK VALLEY RANCHERIA	232	106,652
ELY SHOSHONE TRIBE	234	586,019
FAIRBANKS NATIVE ASSOCIATION	240	620,669
FALLON PAIUTE SHOSHONE TRIBE	241	1,187,735
FLANDREAU SANTEE SIOUX TRIBE	244	300,973
FOND DU LAC BAND OF LAKE SUPERIOR CHIPPEWA	246	3,603,978
FOREST COUNTY POTAWAOM COMMUNITY (A.K.A. FOREST	248	366,782
FORT BELKNAP TRIBAL COUNCIL	250	2,772,116
FORT BIDWELL INDIAN COMMUNITY OF PAIUTE INDIANS	251	99,167
FORT MCDOWELL YAVAPAI NATION	256	326,827
FORT MOJAVE INDIAN TRIBE	257	1,303,279
FORT PECK TRIBES	42	3,446,174
GILA RIVER INDIAN COMMUNITY	266	7,696,975
GRAND PORTAGE BAND OF OJIBWE	269	416,474
GRAND TRAVERSE BAND OF OTTAWA & CHIPPEWA INDIANS	270	2,043,822
GREAT LAKES FISH & WILDLIFE COMMISSION	1039	4,260,441
HANNAHVILLE INDIAN SCHOOL	280	4,313,522
HAVASUPAI TRIBE	284	1,733,262
HO-CHUNK NATION	286	449,947
HOH TRIBE	288	586,259
HOOPA VALLEY TRIBE	291	5,674,086
HOPI TRIBE	295	4,538,542
HOULTON BAND OF MALISEET INDIANS	299	683,317
HUALAPAI TRIBE	300	1,591,245
INTER-TRIBAL COUNCIL OF MICHIGAN	1055	188,131
IOWA TRIBE OF OKLAHOMA	320	487,421
JAMESTOWN S'KLALLAM TRIBE	327	1,939,626
JICARILLA APACHE TRIBE	332	1,220,639
JOINT BUSINESS COUNCIL SHOSHONE AND ARAPAHO TRIBE	716	3,282,171
KALISPEL TRIBE OF INDIANS	340	701,218
KARUK TRIBE OF CALIFORNIA	345	491,815
KAW NATION OF OKLAHOMA	349	422,937
KAWERAK INCORPORATED	350	3,542,620
KENAI VILLAGE (KENAITZE VILLAGE)	352	354,419
KETCHIKAN INDIAN CORPORATION (IRA)	353	2,043,122
KEWEENAW BAY INDIAN COMMUNITY	354	1,136,752
KIANA VILLAGE	356	34,772
KICKAPOO TRIBE IN KANSAS	359	677,978
KICKAPOO TRIBE OF OKLAHOMA	360	326,643
KIOWA TRIBE OF OKLAHOMA	365	1,200,128
KLAMATH GENERAL COUNCIL	369	2,694,361
KODIAK AREA NAVTIVE ASSOCIATION	373	617,159
KOOTENAI TRIBAL COUNCIL	378	336,745
KUSKOKWIM NATIVE ASSOCIATION	384	915,693
KWETHLUK VILLAGE (IRA)	385	217,724
KWIGILLINGOK VILLAGE (IRA)	386	59,677
LAC COURTE OREILLES TRIBAL GOVERNING BOARD	391	4,178,614
LAC DU FLAMBEAU BAND OF LAKE SUPERIOR CHIPPEWA IND	392	1,751,307
LAC VIEUX DESERT BAND OF LAKE SUPERIOR CHIPPEWA IN	393	666,756
LAS VEGAS PAUITE TRIBE	398	208,897
LEECH LAKE RESERVATION BUSINESS COMMITTEE/LEECH LA	401	7,238,032
LOWER BRULE SIOUX TRIBE	419	2,372,623
LOWER ELWHA COMMUNITY COUNCIL	420	1,805,497
LUMMI TRIBE OF THE LUMMI RESERVATION WASHINGTON	426	7,166,776
MAKAH TRIBAL COUNCIL	431	3,547,205
MANILAQ ASSOCIATION	435	1,296,256
MANZANITA BAND OF MISSION INDIANS	440	170,475
MASHANTUCKET PEQUOT TRIBE	445	570,218

ATTACHMENT A.—RAMAH NAVAJO CHAPTER SETTLEMENT ADMINISTRATION—Continued

[Information on file for the base year amount for 1993; Appendix F paragraph 10(b)—Provisional List (part 1 of 2); Alphabetical order—by organization]

Tribe/Organization	Control No.	1993 BIA expenditures
MENOMINEE INDIAN TRIBE OF WISCONSIN	450	7,318,025
MESA GRANDE BAND OF MISSION INDIANS	453	14,946
MESCALERO APACHE TRIBE	455	2,007,517
METLAKATLA INDIAN COMMUNITY	456	4,118,183
MIAMI TRIBE OF OKLAHOMA	459	87,088
MUCCOSUKEE TRIBE OF INDIANS OF FLORIDA	461	5,316,211
MILLE LACS BAND OF CHIPPEWA INDIANS (INCLUDES MILL	463	3,196,856
MINNESOTA CHIPPEWA TRIBAL EXECUTIVE COMMITTEE	464	2,847,198
MISSISSIPPI BAND OF CHOCTAW INDIANS	466	19,718,975
MOAPA BAND OF PAIUTES	467	256,303
MUCKLESHOOT TRIBAL COUNCIL	473	2,278,536
MUSCOGEE (CREEK) NATION OF OKLAHOMA	475	5,975,572
NARRAGANSETT INDIAN TRIBE	484	1,585,254
NAVAJO—TOHATCHI SPECIAL EDUCATION & TRAINING CEN	1044	1,144,290
NAVAJO AREA SCHOOL BOARD ASSOC., INC	1043	997,352
NAVAJO NATION	488	89,683,454
NAVAJO PREPARATORY SCHOOL, INC.	489	2,091,269
NEZ PERCE TRIBE	502	2,925,810
NINILCHIK VILLAGE	506	88,190
NISQUALLY INDIAN COMMUNITY COUNCIL	507	1,624,556
NOME ESKIMO COMMUNITY	511	723,663
NOOKSACK INDIAN TRIBE	515	626,090
NORTHERN ARAPAHO TRIBE	37	140,790
NORTHERN CHEYENNE TRIBAL SCHOOLS	518	1,518,429
NORTHERN CHEYENNE TRIBE	519	4,243,762
NORTHWEST INDIAN COLLEGE	983	1,802,390
NORTHESET INDIAN FISHERIES COMMISSION	521	4,672,570
NORTHWEST INTERTRIBAL COURT SYSTEM	1065	819,622
NORTHWESTERN BAND OF THE SHOSHONI NATION	522	294,918
OGLALA LAKOTA COLLEGE	917	2,634,108
OGLALA SIOX DEPT. OF PUBLIC SAFETY	1037	3,213,585
OGLALA SIOX PARKS & RECREATION AUTHORITY	1042	330,158
OGLALA SIOUX TRIBE	528	7,718,221
OMAHA TRIBE OF NEBRASKA	534	2,578,480
ONEIDA TRIBE OF INDIANS OF WISCONSIN	536	3,375,812
ORGANIZED VILLAGE OF KAKE	338	1,034,041
ORUTSARARMUIT NATIVE COUNCIL	66	960,258
OSAGE TRIBE OF INDIANS OF OKLAHOMA	540	556,425
OTOE-MISSOURIA TRIBE OF OKLAHOMA	542	589,598
PAIUTE INDIAN TRIBE OF UTAH	548	720,711
PASCUA YAQUI TRIBE OF ARIZONA	552	2,098,993
PASSAMAQUODDY TRIBE-PLEASANT POINT	555	1,441,729
PASSAMAQUODDY TRIBE-INDIAN TOWNSHIP	334	1,656,079
PAUMA BAND OF MISSION INDIANS	557	134,990
PAWNEE NATION OF OKLAHOMA	558	51,737
PENOBSCOT INDIAN NATION	561	2,630,292
PLEASEANT POINT SCHOOL/MAINE INDIAN EDUCATION	430	3,441,565
POARCH BAND OF CREEK INDIANS	584	1,809,323
POINT NO POINT TREATY COUNCIL	587	2,250,521
PONCA TRIBE OF OKLAHOMA	591	573,197
PORT GAMBLES S'KLALLAM TRIBE	593	1,782,476
PRAIRIE BAND OF POTAWATOMI INDIANS	599	576,990
PUEBLO DE SAN FELIPE	663	372,618
PUEBLO OF ACOMA	2	1,673,414
PUEBLO OF ISLETA	322	1,493,582
PUEBLO OF JEMEZ	330	474,655
PUEBLO OF LAGUNA	395	5,330,977
PUEBLO OF NAMBE	479	324,349
PUEBLO OF PICURIS	565	336,762
PUEBLO OF SANTA ANA	674	306,039
PUEBLO OF TAOS	778	1,575,756
PUELBO OF SANTA CLARA	603	1,085,182
PUYALLUP TRIBE OF INDIANS	604	4,346,464
PYRAMID LAKE PAIUTE TRIBAL COUNCIL	606	2,719,352
QUAPAW TRIBE OF OKLAHOMA	609	198,722
QUECHAN INDIAN TRIBE	611	1,837,056
QUILEUTE TRIBAL	612	2,561,532
QUINAULT INDIAN NATION	614	10,697,379
RAMAH NAVAJO SCHOOL BOARD INC	615	8,285,404

ATTACHMENT A.—RAMAH NAVAJO CHAPTER SETTLEMENT ADMINISTRATION—Continued

[Information on file for the base year amount for 1993; Appendix F paragraph 10(b)—Provisional List (part 1 of 2); Alphabetical order—by organization]

Tribe/Organization	Control No.	1993 BIA expenditures
RED CLIFF BAND OF LAKE SUPERIOR CHIPPEWA	621	1,069,878
RED LAKE BAND OF CHIPPEWAS INDIANS	623	4,393,457
REDDING RANCHERIA	629	199,816
RENO-SPARKS INDIAN COLONY	631	657,671
ROCK POINT COMMUNITY SCHOOL	638	4,039,611
ROSEBUD SIOUX TRIBE	641	5,689,843
SAC & FOX NATION OF OKLAHOMA	651	1,435,159
SAC AND FOX TRIBAL OF THE MISSISSIPPI IN IOWA	653	1,019,606
SAGINAW CHIPPEWA TRIBAL COUNCIL	655	1,112,858
SALISH KOOTENAI COLLEGE	998	2,520,842
SALT RIVER PIMA-MARICOPA INDIAN COMMUNITY	660	2,925,067
SAN CARLOS APACHE TRIBE	662	8,924,947
SAN JUAN PUEBLO TRIBAL COUNCIL	666	748,666
SAN JUAN SOUTHERN PAIUTE COUNCIL	667	380,267
SANTEE SIOUX TRIBE OF NEBRASKA	683	570,245
SAUK-SUIATTLE TRIBAL COUNCIL	685	187,567
SAULT STE, MARIE TRIBE OF CHIPPEWA INDIANS	686	3,186,096
SEMINOLE NATION OF OKLAHOMA	695	1,193,223
SEMINOLE TRIBE OF FLORIDA	696	4,830,423
SENECA NATION OF INDIANS	697	944,922
SENECA-CAYUGA TRIBE OF OKLAHOMA	698	327,036
SHERWOOD VALLEY BAND OF POMO INDIANS	706	73,250
SHOALWATER BAY INDIAN TRIBE	712	359,218
SHOSHONE-BANNOCK TRIBE	718	4,403,788
SHOSHONE-PALUTE TRIBES OF THE DUCK VALLEY INDIAN R	217	1,963,287
SINTE GLESKA UNIVERSITY	720	2,539,828
SISSETON-WAHPETON SCHOOL BOARD—TIOSPA ZINA TRIB	796	2,506,011
SISSETON-WAHPETON SIOUX TRIBE	721	2,715,330
SISSETON-WAHPETON SIOUX TRIBE	721	2,715,330
SITKA TRIBE OF ALASKA	722	1,878,699
SKAGIT SYSTEM COOPERATIVE	1071	1,118,489
SKOKOMISH INDIAN TRIBE	724	605,857
SKY PEOPLE EDUCATION COMMITTEE	1072	188,003
SOUTHERN UTE INDIAN TRIBE	740	3,132,581
SPIRIT LAKE TRIBE (FMA DEVILS LAKE SIOUX TRIBE)	741	1,334,823
SPOKANE TRIBE OF INDIANS	742	2,285,294
SQUAXIN ISLAND TRIBE	743	1,281,992
ST. STEPHENS INDIAN SCHOOL	746	2,403,284
ST. CROIX TRIBAL COUNCIL	747	884,179
ST. REGIS MOHAWK TRIBE	749	1,190,245
STANDING ROCK SIOUX TRIBE	752	6,148,190
STILLAGUAMISH TRIBE OF INDIANS	759	708,545
STOCKBRIDGE-MUNSEE COMMUNITY	760	476,759
SUMMIT LAKE PAIUTE TRIBE	764	271,909
SUQUAMISH TRIBE	765	2,188,253
SUSANVILLE INDIAN RANCHERIA	766	96,818
SWINOMISH INDIAN TRIBAL COMMUNITY	768	2,159,155
TANANA CHIEFS CONFERENCE	776	5,016,231
TE-MOAK TRIBE OF WESTERN SHOSHONE	786	794,024
THE CONFEDERATED TRIBES OF THE WARM SPRINGS RESERVATION	178	6,178,972
THE HOPI CREDIT ASSOCIATION	789	1,168,878
THE TORRES MARTINEZ DESERT CAHUILLA INDIANS	809	366,142
THREE AFFILIATED TRIBES OF NORTH DAKOTA	794	4,406,092
TOHONO O'ODHAM NATION	800	9,825,839
TOIYABE INDIAN HEALTH PROJECT, INC.	801	265,069
TONKAWA TRIBE OF OKLAHOMA	806	179,828
TULALIP TRIBES OF WASHINGTON	817	2,231,866
TULE RIVER INDIAN TRIBE	818	519,067
TUNICA-BILOXI INDIAN TRIBE OF LOUISIANA	820	583,456
TURTLE MOUNTAIN BAND OF CHIPPEWA	824	9,977,925
TURTLE MOUNTAIN COMMUNITY COLLEGE	825	1,689,949
UNITED SIOUX TRIBES	846	116,012
UNITED TRIBES TECHNICAL COLLEGE	847	3,683,524
UPPER SIOUX COMMUNITY	852	439,712
UPER SKAGIT TRIBAL COUNCIL	853	506,923
UTE INDIAN TRIBE-UINTAH & OURAY RESERVATION	854	1,016,724
UTE MOUNTAIN UTE TRIBE	855	6,672,883
VALDEZ NATIVE ASSOCIATION	856	58,510
WALKER RIVER PAIUTE TRIBE	864	1,410,644

ATTACHMENT A.—RAMAH NAVAJO CHAPTER SETTLEMENT ADMINISTRATION—Continued

[Information on file for the base year amount for 1993; Appendix F paragraph 10(b)—Provisional List (part 1 of 2); Alphabetical order—by organization]

Tribe/Organization	Control No.	1993 BIA expenditures
WAMPANOAG TRIBE OF GAY HEAD (AQUINNAH)	865	1,014,577
WASHOE TRIBE OF NEVADA AND CALIFORNIA	870	849,039
WHITE EARTH BAND OF CHIPPEWA INDIANS	875	3,999,788
WHITE MOUNTAIN APACHE	876	6,755,079
WICHITA AND AFFILIATED TRIBES	881	154,425
WINGATE BOARD OF EDUCATION, INC.	1033	675,420
WINNEBAGO TRIBE OF NEBRASKA	884	951,502
WYANDOTTE TRIBE OF OKLAHOMA	9889	170,656
YAKUTAT TLINGIT TRIBE/YAKUTAT NATIVE ASSOCIATION	892	467,486
YANKTON SIOUX TRIBE	893	769,742
YAVAPAI-PRESCOTT BOARD OF DIRECTORS	895	294,266
YERINGTON PAIUTE TRIBE	896	444,898
YOMBA SHOSHONE TRIBE	897	159,649
YSLETA DEL SUR PUEBLO	898	1,210,587
ZIA PUEBLO, AKA PUEBLO OF ZIA	901	190,764
ZUNI PUEBLO	902	4,134,997
Total BIA expenditures on file		654,470,924

Note: If 1993 BIA expenditure information existed in settlement administrator's files it is listed above. If no 1993 expenditure information exists in the settlement administor's files then your entity should be listed on part two to the provisional list. A school grantee's presence on this listing does not mean that you qualify as a member. Please see claim form.

ATTACHMENT A.—RAMAH NAVAJO CHAPTER SETTLEMENT ADMINISTRATION

[Settlement Administrator does not have any information on file for the base year amount for 1993; Appendix F paragraph 10(b)—Provisional list (part 2 of 2); Alphabetical order—by organization]

Tribe/Organization	Control No.
AFOGNAK NATIVE VILLAGE	3
AGDAAGUX TRIBE OF KING COVE	4
AGUA CALIENTE BAND OF CAHUILLA INDIANS	5
AHFACHKEE DAY SCHOOL	6
AHMIUM EDUCATION INC	7
AK CHIN INDIAN COMMUNITY	8
AK CHIN INDIAN COMMUNITY COUNCIL	9
AKHIOK VILLAGE	10
AKIAK NATIVE COMMUNITY (IRA)	12
AKUTAN VILLAGE	13
ALABAMA-QUASSARTE TRIBAL TOWN	15
ALAKANUK VILLAGE	16
ALAMO-NAVAJO INDIAN RESERVATION	18
ALASKA NATIVE FOUNDATION	1074
ALATNA VILLAGE	19
ALEKNAGIK VILLAGE	20
ALEUT COMMUNITY OF ST PAUL ISLAND	21
ALGAACIQ VILLAGE (AKA ST MARYS)	23
ALLAKAKET VILLAGE	25
ALSO' BIYA' AZH COMMUNITY SCHOOL (SHIPROCK ELEMENT	903
ALTURAS RANCHERIA	26
AMBLER VILLAGE	27
AMERICAN HORSE SCHOOL	904
AMERICAN INDIAN CENTER OF CENTRAL CALIFORNIA	28
AMERICAN INDIAN CHILD RESOURCE CENTER	29
ANAKTUVUK PASS VILLAGE	30
ANDREAFSKI VILLAGE	31
ANETH CHAPTER	32
ANETH COMMUNITY SCHOOL	905
ANGOON VILLAGE (IRA)	33
ANIAK VILLAGE	34
ANNETTE ISLAND-METLAKATLA INDIAN COMMUNITY	1045
ANVIK VILLAGE	35
APACHE TRIBE OF OKLAHOMA	36
ARCTIC VILLAGE	39
AROOSTOOK BAND OF MICMAC INDIANS	40
ASA'CARSARMIUT TRIBAL COUNCIL	41
ATKA VILLAGE (IRA)	44
ATMUATHLUAK VILLAGE	45
ATQASUK VILLAGE	46

ATTACHMENT A.—RAMAH NAVAJO CHAPTER SETTLEMENT ADMINISTRATION—Continued

[Settlement Administrator does not have any information on file for the base year amount for 1993; Appendix F paragraph 10(b)—Provisional list (part 2 of 2); Alphabetical order—by organization]

Tribe/Organization	Control No.
ATSA'BI'YAAZH COMMUNITY SCHOOL	47
AUBURN RANCHERIA	48
AUGUSTINE BAND OF MISSION INDIANS	49
AZTEC DOMITORY	906
BACA COMMUNITY SCHOOL	907
BACA/HAYSTACK CHAPTER	50
BAHWETING ANISHINABE SCHOOL	52
BARONA—CAPITAN GRANDE DIEGUENO TRIBE	53
BARROW VILLAGE	54
BATTLE MOUNTAIN BAND COUNCIL	55
BEADSPRINGS CHAPTER	57
BEAR RIVER BANK OF ROHNERVILLE RANCHERIA	58
BEATRICE RAFFERTY SCHOOL	59
BEAVER VILLAGE	60
BECENTI CHAPTER	61
BECLABITO CHAPTER	62
BECLABITO DAY SCHOOL	909
BELKOFSKI VILLAGE	63
BENTON PAIUTE RESERVATION	64
BENTON PAIUTE TRIBE	836
BERRY CREEK RANCHERIA OF MAIDU INDIANS	65
BIG SANDY RANCHERIA OF MONO INDIANS	69
BIG VALLEY RANCHERIA	70
BILL MOORE'S SLOUGH ELDER'S COUNCIL	71
BIRCH CREEK VILLAGE	72
BIRDSPRINGS CHAPTER	73
BLACK MESA CHAPTER	75
BLACK MESA COMMUNITY SCHOOL BOARD, INC	76
BLACKFEET COMMUNITY COLLEGE	910
BLACKFEET DORMITORY	911
BLACKWATER COMMUNITY SCHOOL	912
BODAWAY CHAPTER	80
BOIS FORTE RESERVATION BUSINESS COMMITTEE	81
BOQUE CHITTO ELEMENTARY SCHOOL	82
BREAD SPRINGS DAY SCHOOL	913
BREVIG MISSION VILLAGE	83
BRIDGEPORT PAIUTE INDIAN COLONY	84
BRISTOL BAY NATIVE ASSOCIATION	1046
BUCKLAND VILLAGE (IRA)	85
BUENA VISTA RANCHERIA OF MEWUK INDIANS	86
BUG-O-NAY-GE-SHIG SCHOOL	87
BURNHAM CHAPTER	88
BUTTE COUNTY OFFICE OF EDUCATION	90
CABAZON BAND OF MISSION INDIANS	91
CACHIL DEHE BAND OF WINTUN INDIANS	92
CAHTO INDIAN TRIBE	94
CALIFORNIA INDIAN MANPOWER CONSORTIUM, INC	180
CAMERON CHAPTER	96
CANKDESKA CIKANA COMMUNITY COLLEGE	914
CANONCITO CHAPTER	98
CANTWELL VILLAGE	99
CAPITAN GRANDE BAND OF MISSION INDIANS	100
CARSON COLONY COMMUNITY COUNCIL	101
CARTER SEMINARY	915
CASE BLANCA DAY SCHOOL	916
CASAMERO LAKE CHAPTER	102
CATAWBA INDIAN NATION	103
CATAWBA INDIAN TRIBE	104
CAYUGA NATION	105
CEDARVILLE RANCHERIA	106
CEDARVILLE RANCHERIA OF NORTHERN PAIUTE INDIANS	107
CENTRAL TRIBES OF THE SHAWNEE AREA INC	109
CENTRAL UNION ELEMENTARY SCHOOL DISTRICT	110
CHALKYITSIK VILLAGE	111
CHAWANAKEE JOINT UNITED SCHOOL DISTRICT	112
CHEFORNAK VILLAGE	113
CHEMAWA INDIAN SCHOOL	918
CHEMEHUEVI TRIBAL COUNCIL	115
CHENEGA IRA COUNCIL	116
CHEROKEE CENTRAL ELEMENTARY SCHOOL	119

ATTACHMENT A.—RAMAH NAVAJO CHAPTER SETTLEMENT ADMINISTRATION—Continued

[Settlement Administrator does not have any information on file for the base year amount for 1993; Appendix F paragraph 10(b)—Provisional list (part 2 of 2); Alphabetical order—by organization]

Tribe/Organization	Control No.
CHEROKEE CENTRAL HIGH SCHOOL	919
CHEVAK VILLAGE	121
CHEYENNE-EAGLE BUTTE SCHOOL	921
CHICHHILTAH CHAPTER	124
CHI-CH'IL'TAH/JONES RANCH COMMUNITY SCHOOL	922
CHICKALOON NATIVE VILLAGE	125
CHICKEN RANCH BAND OF ME-WUK INDIANS	127
CHICO RANCHERIA	128
CHIEF LESCHI SCHOOL SYSTEM (PUYALLUP)	129
CHIGNIK LAGOON VILLAGE	130
CHIGNIK LAKE VILLAGE	131
CHIGNIK VILLAGE	132
CHILCHINBETO COMMUNITY SCHOOL, INC. (FKA CHILCHINB	923
CHILKAT INDIAN VILLAGE (IRA)	133
CHILKOOT INDIAN ASSN (IRA)	134
CHINIK ESKIMO COMMUNITY	135
CHINLCHINBETO CHAPTER	136
CHINLE BOARDING SCHOOL	924
CHINLE CHAPTER	137
CHISTOCHINA VILLAGE	139
CHITIMACHA DAY SCHOOL	140
CHITINA VILLAGE	142
CHOCTAW CENTRAL HIGH SCHOOL	925
CHOCTAW CENTRAL MIDDLE SCHOOL	143
CHOTAW CENTRAL HIGH SCHOOL	145
CHOTAW FIELD OFFICE	146
CHUATHBALUK VILLAGE	147
CHUGACH REGIONAL RESC COMMISSION	148
CHULOONAWICK NATIVE VILLAGE	150
CHURCH ROCK CHAPTER	151
CHUSKA COMMUNITY SCHOOL	926
CIBECUE COMMUNITY EDUCATION BOARD, INC	152
CIKANA COMMUNITY COLLEGE (formerly Little Hoop)	1072
CIRCLE NATIVE COMMUNITY (IRA)	153
CIRCLE OF LIFE SURVIVAL SCHOOL	154
CIRCLE OF NATIONS SCHOOL	155
CLARKS POINT VILLAGE	157
CLOVERDALE RANCHERIA OF POMO INDIANS	158
CLOVIS UNIFIELD SCHOOL DISTIRCT	159
COALMINE MESA CHAPTER	160
COCHITI PUEBLO	162
COCOPAH TRIBAL COUNCIL	163
COEUR D'ALENE TRIBAL SCHOOL	165
COLD SPRINGS RANCHERIA OF MONO INDIANS	166
COLUSA COUNTY OFFICE OF EDUCATION	168
COLUSA RANCHERIA	169
COLVILLE BUSINESS COUNCIL	170
CONEHATTA ELEMENTARY SCHOOL	172
CONFEDERATED TRIBES OF THE GOSHUTE RESERVATION	268
COPPER CENTER VILLAGE	182
COPPERMINE	184
CORNFIELDS CHAPTER	186
CORTINA BAND OF WINTUN INDIANS	187
COTTONWOOD DAY SCHOOL	925
COUNCIL VILLAGE	188
COUNSELOR CHAPTER	189
COUNTY INDIAN HEALTH INC	190
COVE CHAPTER	192
COVE DAY SCHOOL	929
COVELO INDIAN COMMUNITY COLLEGE/ROUND VALLEY RESER	1049
COVELO INDIAN COMMUNITY COUNCIL	1050
COYOTA VALLEY RESERVATION	530
COYTE CANYON	194
COYOTE VALLEY TRIBAL COUNCIL	195
CRAIG COMMUNITY ASSN (IRA)	196
CRAZY HORSE SCHOOL	930
CROOKED CREEK VILLAGE	197
CROW CREEK RESERVATION HIGH SCHOOL	931
CROW CREEK SIOUX TRIBAL ELEMENTARY SCHOOL	932
CROW CREEK SIIOUX TRIBAL HIGH SCHOOL & CROW CREEK S	199

ATTACHMENT A.—RAMAH NAVAJO CHAPTER SETTLEMENT ADMINISTRATION—Continued

[Settlement Administrator does not have any information on file for the base year amount for 1993; Appendix F paragraph 10(b)—Provisional list (part 2 of 2); Alphabetical order—by organization]

Tribe/Organization	Control No.
CROWNPOINT CHAPTER	201
CRYSTAL BOARDING SCHOOL	933
CRYSTAL CHAPTER	202
CUDELL CHAPTER	203
CURYUNG TRIBAL COUNCIL	204
CUYAPAIPE BAND OF MISSION INDIANS	205
DAKOTA PLAINS INSTITUTE OF LEARNING	1051
DEERING VILLAGE (IRA)	206
DELAWARE TRIBE OF INDIANS OF EAST OK	207
DELAWARE TRUST BOARD	209
DENNEHOTSO BOARDING SCHOOL	934
DENNEHOTSO CHAPTER	210
DIBE YAZHI HABITIIN OLTA, INC. (BORREGO, PASS)	935
DILCON BOARDING SCHOOL	936
DILKON CHAPTER	211
DILLINGHAM VILLAGE	212
DINE COLLEGE	937
DIOMEDE VILLAGE (IRA)	213
DLO'AY AZHI COMMUNITY SCHOOL (THOREAU)	938
DOT LAKE VILLAGE	214
DOUGLAS INDIAN ASSN (IRA)	215
D–Q UNIVERSITY	939
DRY CREEK RANCHERIA	216
DUCKWATER SHOSHONE ELEMENTARY SCHOOL	218
DZILTH-NA-O-DITH-HLE COMMUNITY SCHOOL	941
EAGLE VILLAGE COUNCIL	220
EASTERN BAND OF CHEROKEE INDIANS	221
EEDA CONSORTIUM OF TRIBES	1052
EEK VILLAGE	224
EGEGIK VILLAGE	225
EKLUTNA VILLAGE	227
EKUK VILLAGE	228
EKWOK VILLAGE	229
ELEM INDIAN COLONY OF POMO INDIANS	230
ELIM VILLAGE (IRA)	231
ELKO BANK COUNCIL	233
EMMÓNAK VILLAGE	235
ENEMY SWIM DAY SCHOOL	236
ENTERPRISE RANCHERIA OF ESTOM YUMEKA MAIDU	237
EUFAULA DORMITORY	942
EVANSVILLE VILLAGE	238
FALSE PASS VILLAGE	242
FIVE SANDOVAL INDIAN PUEBLO, INC.	1075
FLAGSTAFF BORDERTOWN DORMITORY	243
FLANDREAU INDIAN BOARDING SCHOOL	943
FOND DU LAC BANK OF LAKE SUPERIOR CHIPPEWA	245
FOND DU LAC RESERVATION BUSINESS COMMITTEE	247
FOND DU LAC TRIBAL & COMMUNITY COMMUNITY COLLEGE	944
FOREST LAKE CHAPTER	249
FORT BELKNAP COMMUNITY COLLEGE	945
FORT BELKNAP INDIAN COMMUNITY GROS VENTRE & ASSINI	276
FORT BERTHOLD COMMUNITY COLLEGE	946
FORT DEFIANCE CHAPTER	252
FORT HALL BUSINESS COUNCIL	253
FORT INDEPENDENCE PAIUTE INDIAN COMMUNITY	254
FORT MCDERMITT TRIBAL COUNCIL	255
FORT PECK COMMUNITY COLLEGE	947
FORT PECK TRIBAL EXECUTIVE BOARD	258
FORT SILL APACHE TRIBE OF OKLAHOMA	259
FOUR WINDS ELEMENTARY (TATE TOPA TRIBAL SCHOOL)	779
GAKONA VILLAGE COUNCIL	261
GALENA VILLAGE	262
GAMBELL VILLAGE	263
GANADO CHAPTER	264
GEORGETOWN VILLAGE	265
GILA CROSSING DAY SCHOOL	948
GRAYLING VILLAGE (IRA) (HOLIKACHUK)	271
GREASEWOOD SPRINGS COMMUNITY SCHOOL INC	272
GREAT LAKES INTER-TRIBAL COUNCIL	1053
GREENVILLE RANCHERIA OF MAIDU INDIANS	273

ATTACHMENT A.—RAMAH NAVAJO CHAPTER SETTLEMENT ADMINISTRATION—Continued

[Settlement Administrator does not have any information on file for the base year amount for 1993; Appendix F paragraph 10(b)—Provisional list (part 2 of 2); Alphabetical order—by organization]

Tribe/Organization	Control No.
GREYHILLS ACADEMY HIGH SCHOOL	274
GRINDSTONE INDIAN RANCHERIA OR WINTUN-NOMOLAKI	275
GUIDIVILLE BANK OF POMO INDIANS	277
GULKANA VILLAGE COUNCIL	278
HAMILTON VILLAGE	279
HANNAHVILLE INDIAN COMMUNITY COUNCIL	281
HARD ROCK CHAPTER	282
HASKELL INDIAN NATIONS UNIVERSITY	949
HAVASUPAI SCHOOL	283
HEALY LAKE VILLAGE	285
HOGBACK CHAPTER	287
HOLBROOK DORMITORY	950
HOLY CROSS VILLAGE	289
HOONAH INDIAN ASSN (IRA)	290
HOOPER BAY VILLAGE	292
HOPI CREDIT ASSOCIATION	1054
HOPI DAY SCHOOL	951
HOPI DAY SCHOOL	293
HOPI HIGH SCHOOL	294
HOPLAND BAND OF POMO INDIANS	296
HOTEVILLA BACAVI COMMUNITY SCHOOL	297
HOUCK CHAPTER	298
HUERFANO CHAPTER	301
HUERFANO DORMITORY	952
HUGHES VILLAGE	302
HUNTERS POINT BOARDING SCHOOL	953
HURON POTAWATOMI INC	303
HUSLIA VILLAGE	304
HYDABURG COOPERATIVE ASSN (IRA)	305
IGIUGIG VILLAGE	306
ILIAMNA VILLAGE	307
INAJA-COSMIT BAND OF MISSION INDIANS	308
INDIAN CHILD & FAMILY SERVICES	309
INDIAN HEALTH COUNCIL INC	310
INDIAN ISLAND SCHOOL	311
INDIAN TOWNSHIP SCHOOL	312
INDIAN TOWNSHIP SCHOOL	954
INDIAN TOWNSHIP—PASSAMAQUODDY	313
INDIAN WELLS CHAPTER	314
INSCRIPTION HOUSE CHAPTER	315
INTER-TRIBAL COUNCIL OF CA INC	316
INTER-TRIBAL COUNCIL OF OKLAHOMA	1056
INUPIAT COMMUNITY OF ARCTIC SLOPE (IRA)	317
IONE BAND OF MIWOK INDIANS	318
IOWA TRIBE OF KANSAS-NEBRASKA	319
IQURMUIT VILLAGE (RUSSIAN MISSION)	321
ISLETA ELEMENTARY SCHOOL	955
IVANOF BAY VILLAGE	323
IYANBITO CHAPTER	324
JACKSON BAND OF MI-WUK INDIANS	325
JACKSON RANCHERIA	326
JAMUL INDIAN VILLAGE	328
JEDDITO CHAPTER	329
JEMEZ DAY SCHOOL	956
JENA BAND OF CHOCTAWS	331
JICARILLA DORMITORY	333
JOHN F. KENNEDY DAY SCHOOL	957
JONES ACADEMY	958
KAGUYAK VILLAGE	335
KAIBAB-PAIUTE TRIBAL COUNCIL	336
KAIBETO BOARDING SCHOOL	959
KAIBETO CHAPTER	337
KAKTOVIK VILLAGE	339
KALTAG VILLAGE	342
KANATAK NATIVE VILLAGE	343
KARLUK VILLAGE (IRA)	344
KASHIA BAND OF POMO INDIANS	347
KASIGLUK VILLAGE	348
KAYENTA BOARDING SCHOOL	960
KAYENTA CHAPTER	351

ATTACHMENT A.—RAMAH NAVAJO CHAPTER SETTLEMENT ADMINISTRATION—Continued

[Settlement Administrator does not have any information on file for the base year amount for 1993; Appendix F paragraph 10(b)—Provisional list (part 2 of 2); Alphabetical order—by organization]

Tribe/Organization	Control No.
KEAMS CANYON BOARDING SCHOOL	961
KIALEGEE TRIBAL TOWN	355
KIAWOCK CORPORATIVE ASSN (IRA)	357
KICKAPOO NATION SCHOOL	962
KICKAPOO TRADITIONAL TRIBE OF TEXAS	358
KING COVE VILLAGE	361
KING ISLAND NATIVE COMMUNITY (IRA)	362
KINGS CANYON UNIFIED SCHOOL DISTRICT	363
KINLICHEE BOARDING SCHOOL	963
KINLICHEE CHAPTER	364
KIPNUK VILLAGE	366
KLAGETOH CHAPTER	368
KLAWOCK COOPERATIVE ASSN (IRA)	370
KNIK VILLAGE	371
KOBUK VILLAGE	372
KODIAK TRIBAL COUNCIL	374
KOKHANOK VILLAGE	375
KOLIGANEK VILLAGE	376
KONGIGANAK VILLAGE	377
KOTLIK TRADITIONAL COUNCIL	379
KOYUKUK VILLAGE	382
KUIGPAGMIUT INC	383
KWINHAGAK VILLAGE (IRA) (AKA QUINHAGAK)	387
LA JOLLA BAND OF INDIANS	388
LA JOLLA BAND OF LUISENO INDIANS	753
LA POSTA BAND OF MISSION INDIANS	389
LAC COURTE OREILLES INDIAN RESERVATION	390
LAC COURTE OREILLES OJIBWA COMMUNITY COLLEGE	964
LAGUNA ELEMENTARY SCHOOL	965
LAGUNA MIDDLE SCHOOL	394
LAKE VALLEY CHAPTER	396
LAKE VALLEY NAVAJO SCHOOL	966
LARSEN BAY VILLAGE	397
LAYTONVILLE RANCHERIA	399
LECHEE CHAPTER	400
LEECH LAKE TRIBAL COLLEGE	967
LEISNOI VILLAGE (AKA WOODY ISLAND)	402
LEUPP CHAPTER	403
LEUPP SCHOOLS INC.	404
LEUPP SCHOOLS, INCORPORATED	968
LEVELOCK VILLAGE	405
LIME VILLAGE	406
LITTLE BIG HORN COLLEGE	969
LITTLE EAGLE DAY SCHOOL	970
LITTLE PRIEST TRIBAL COLLEGE	971
LITTLE RIVER BAND OF OTTAWA INDIANS INC	407
LITTLE SINGER COMMUNITY SCHOOL, INC	408
LITTLE TRAVERSE BAY BANDS OF ODAWA INDIANS	409
LITTLE WATER CHAPTER	410
LITTLE WOUND SCHOOL	411
LOCAL INDIAN EDUCATION COMMITTEE, INC.	1058
LONE PINE RESERVATION	412
LONEMAN DAY SCHOOL	413
LOS COYOTES BAND OF INDIANS	414
LOUDEN TRIBAL COUNCIL	415
LOVELOCK TRIBAL COUNCIL	416
LOW MOUNTAIN	417
LOW MOUNTAIN BOARDING SCHOOL	972
LOWER BRULE DAY SCHOOL	418
LOWER GREASEWOOD CHAPTER	421
LOWER KALSKAG VILLAGE	422
LOWER SIOUX INDIAN COMMUNITY COUNCIL	423
LOWER SIOUX INDIAN COMMUNITY OF MINNESOTA	424
LUKACHUKAI BOARDING SCHOOL	973
LUKACHUKAI CHAPTER	425
LUMMI COMMUNITY COLLEGE	1059
LUMMI TRIBAL SCHOOL SYSTEM	427
LUPTON CHPTER	428
LYTTON BAND OF POMO INDIANS	429
MAKAH TRIBE	432

ATTACHMENT A.—RAMAH NAVAJO CHAPTER SETTLEMENT ADMINISTRATION—Continued

[Settlement Administrator does not have any information on file for the base year amount for 1993; Appendix F paragraph 10(b)—Provisional list (part 2 of 2); Alphabetical order—by organization]

Tribe/Organization	Control No.
MANCHESTER-POINT ARENA BAND OF POMO INDIANS	433
MANDAREE DAY SCHOOL	434
MALEY HOT SPRINGS VILLAGE	436
MAOKOTAK VILLAGE	437
MANUELITO CHAPTER	438
MANY FARMS CHAPTER	439
MANY FARMS HIGH SCHOOL	974
MARIANO LAKE CHAPTER	441
MARIANO LAKE COMMUNITY SCHOOL	975
MARSHALL VILLAGE	442
MARTY INDIAN SCHOOL	443
MARYSVILLE JOINT UNION SCHOOL DISTRICT	444
MC GRATH NATIVE VILLAGE	446
MECHOOPDA INDIAN TRIBE	447
MEDICINE CREEK TRIBAL COLLEGE	976
MEKORYUK VILLAGE (IRA)	448
MENOMINEE FORESTRY CENTER	449
MENOMINEE TRIBAL SCHOOL	451
MENTASTA LAKE VILLAGE	452
MESCALERO APACHE SCHOOL	454
MEXICAN SPRINGS CHAPTER	457
MICCOSUKEE INDIAN SCHOOL	460
MIDDLETOWN RANCHERIA OF POMO INDIANS	462
MINTO VILLAGE (IRA)	465
MODOC TRIBE OF OKLAHOMA	468
MOENCOPI DAY SCHOOL	977
MOHAVE-APACHE COMMUNITY COUNCIL	469
MOHEGAN TRIBE OF INDIANS OF CONNECTICUT	470
MORONGO BAND OF MISSION INDIANS	472
MUCKLESHOOT TRIBAL SCHOOL	474
NAGEEZI CHAPTER	476
NAHODISHGISH/DALTON PASS CHAPTER	477
NAKNEK VILLAGE	478
NA'NEELZHIIN JI'OLTA (TORREON)	978
NANWALEK VILLAGE (IRA)	480
NAPAIMUTE VILLAGE	481
NAPAKIAK VILLAGE (IRA)	482
NAPASKIAK VILLAGE	483
NASCHITTI CHAPTER	485
NATIVE AMERICAN FAMILY SERVICES INC	486
NATIVE AMERICAN FISH & WILDLIFE SOCIETY	1061
NATIVE VILLAGE OF EYAK	239
NATIVE VILLAGE OF FORT YUKON	260
NATIVE VILLAGE OF GOODNEWS BAY	267
NATIVE VILLAGE OF KALSKAG	341
NATIVE VILLAGE OF KIVALINA	367
NATIVE VILLAGE OF KOTZEBUE (KOTZEBUE VILLAGE (IRA)	380
NATIVE VILLAGE OF KOYUK (IRA)	381
NATIVE VILLAGE OF POINT LAY (IRA)	586
NATIVE VILLAGE OF PORT LIONS	596
NATIVE VILLAGE OF SAVOONGA IRA	687
NATIVE VILLAGE OF SOUTH NAKNEK, SOUTH NAKNEK VILLA	736
NAVAJO MISSION ACADEMY	1062
NAVOJO MOUNTAIN	487
NAVAJO MOUNTAIN COMMUNITY SCHOOL	979
NATIVE VILLAGE OF KASAAN (IRA)	346
NATIVE VILLE OF SHAKTOOLIK (IRA)	702
NAY-AH-SHING SCHOOL	490
NAZJINI BOARDING SCHOOL	980
NAZLINI CHAPTER	491
NEBRASKA INDIAN COMMUNITY COLLEGE	981
NELSON LAGOON VILLAGE	492
NENAHNEZAD COMMUNITY SCHOOL	982
NENAHNEZAH CHAPTER	493
NENANA NATIVE COUNCIL	494
NEW KOLIGANEK VILLAGE COUNCIL	496
NEW LANDS (HAHATHDZILL) CHAPTER	497
NEW STUYAHOK VILLAGE	498
NEWCOMB CHAPTER	499
NEWHALEN VILLAGE	500

ATTACHMENT A.—RAMAH NAVAJO CHAPTER SETTLEMENT ADMINISTRATION—Continued

[Settlement Administrator does not have any information on file for the base year amount for 1993; Appendix F paragraph 10(b)—Provisional list (part 2 of 2); Alphabetical order—by organization]

Tribe/Organization	Control No.
NEWTOK VILLAGE	501
NIGHTMUTE VILLAGE	503
NIKOLAI VILLAGE	504
NIKOLSKI VILLAGE (IRA)	505
NOATAK VILLAGE (IRA)	508
NOLI SCHOOL	509
NOME ESKIMO COMMUNITY	510
NONDALTON VILLAGE	512
NOOKSACK INDIAN TRIBAL COUNCIL	513
NOORVIK VILLAGE (IRA)	514
NORTH FORK RANCHERIA OF MONO INDIANS	516
NORTH PACIFIC RIM	1064
NORTHERN PUEBLOS TRIBUTARY WATER RIGHTS ASSOC.	517
NORTHWAY VILLAGE	520
NOTTAWASEPPI HURON POTAWATOMI BAND	523
NOY-AH-SHING SCHOOL	984
NUIQSUT VILLAGE	524
NULATO VILLAGE	525
NUNAPITCHUK VILLAGE (IRA)	526
OAK/PINE SPRINGS CHAPTER	527
OHKAY OWINGETH COMMUNITY SCHOOL (SAN JUAN)	985
OHOGAMIUT VILLAGE	529
OJIBWA INDIAN SCHOOL	530
OJO ENCINO CHAPTER	531
OJO ENCINO DAY SCHOOL	986
OLD HARBOR VILLAGE	532
OLJATO CHAPTER	533
ONEIDA INDIAN NATION OF NEW YORK	535
ONEIDA TRIBAL SCHOOL	537
ONONDAGA NATION	538
ORUTSARARMUIT NATIVE COUNCIL	539
OSCARVILLE VILLAGE	541
OTOE MISSOURIA TRIBE OF OKLAHOMA	1060
OTTAWA TRIBE OF OKLAHOMA	543
OUZINKIE VILLAGE	544
OWENS VALLEY CAREER DEVELOP CENTER	545
OWENS VALLEY INDIAN WATER COMMISSION	546
PAIMIUT VILLAGE	547
PAIUTE-SHOSHONE INDIANS OF THE LONE PINE COMMUNITY	549
PALA BAND OF MISSION INDIANS	550
PASCHAL SHERMAN INDIAN SCHOOL	551
PASKENTA BAND OF NOMELAKI INDIANS	553
PASSAMAQUODDY TRIBE—INDIAN TOWNSHIP	554
PAULOFF HARBOR VILLAGE	556
PEARL RIVER ELEMENTARY SCHOOL	987
PECHANGA BAND OF LUSIENO MISSION INDIANS	559
PEDRO BAY VILLAGE	560
PEORIA TRIBE OF INDIANS OF OKLAHOMA	562
PERRYVILLE VILLAGE (IRA)	563
PETERSBURY INDIAN ASSN (IRA)	564
PICAYUNE RANCHERIA OF CHUKCHANSI INDIANS	565
PIERRE INDIAN LEARNING CENTER	567
PILOT POINT VILLAGE	568
PILOT STATION VILLAGE	569
PINE DALE CHAPTER	570
PINE HILL DAY SCHOOL	571
PINE HILL SCHOOL	988
PINE RIDGE SCHOOL	989
PINE SPRINGS COMMUNITY SCHOOL	990
PINOLEVILLE BAND OF POMO INDIANS	572
PINON CHAPTER	573
PINON COMMUNITY SCHOOL BOARD INC	574
PINON DORMITORY	991
PIT RIVER TRIBE OF CALIFORNIA	575
PIT RIVER TRIBE OF CALIFORNIA—BIG BEND	576
PIT RIVER TRIBE OF CALIFORNIA—LIKELY	577
PIT RIVER TRIBE OF CALIFORNIA—LOOKOUT	578
PIT RIVER TRIBE OF CALIFORNIA—MONTGOMERY CREEK	579
PIT RIVER TRIBE OF CALIFORNIA—ROARING CREEK	580
PIT RIVER TRIBE OF CALIFORNIA—XL	581

ATTACHMENT A.—RAMAH NAVAJO CHAPTER SETTLEMENT ADMINISTRATION—Continued

[Settlement Administrator does not have any information on file for the base year amount for 1993; Appendix F paragraph 10(b)—Provisional list (part 2 of 2); Alphabetical order—by organization]

Tribe/Organization	Control No.
PITKA'S POINT VILLAGE	582
PLATINUM TRADITIONAL VILLAGE	583
POINT HOPE VILLAGE (IRA)	585
POJOAQUE PUEBLO	588
POKAGON BAND OF POTAWATOMI INDIANS OF MICHIGAN	589
POLACCA DAY SCHOOL	992
PONCA TRIBE OF NEBRASKA	590
PORCUPINE SCHOOL	592
PORT GRAHAM VILLAGE COUNCIL	594
PORT HEIDEN VILLAGE	595
PORTAGE CREEK VILLAGE	597
POTTER VALLEY RANCHERIA OF POMO INDIANS	598
PRAIRIE ISLAND COMMUNITY COUNCIL	600
PUEBLO PINTADO	602
PUEBLO PINTADO COMMUNITY SCHOOL	993
PYRAMID LAKE HIGH SCHOOL	605
QAGUN TAYAGUNGIN SAND POINT	607
QAWALANGIN TRIBE (OF UNALASKA)	608
QUARTZ VALLEY INDIAN RESERVATION	610
QUILEUTE TRIBAL SCHOOL	613
QUTEKCAK NATIVE TRIBE	1041
RAMAH-NAVAJO CHAPTER	616
RAMONA	617
RAMONA BAND OF MISSION INDIANS	618
RAMPART VILLAGE	619
REAL RIVER ELEMENTARY SCHOOL	620
RED DEVIL VILLAGE	622
RED HORSE LODGE	1067
RED LAKE CHAPTER	624
RED MESA CHAPTER	625
RED MESA TRADING POST #1019	458
RED ROCK CHAPTER	626
RED ROCK DAY SCHOOL	994
RED SCAFFOLD SCHOOL	1068
RED VALLEY CHAPTER	627
RED WATER ELEMENTARY SCHOOL	628
RESERVATION FIRE PROTECTION DISTRICT	632
RICHFIELD RESIDENTIAL HALL, INC.	633
RINCON BAND OF LUISENO INDIANS	634
RIVERSIDE INDIAN SCHOOL	995
ROBINSON RANCHERIA	635
ROBINSON RANCHERIA	636
ROCK CREEK DAY SCHOOL	996
ROCK POINT CHAPTER	637
ROCK SPRINGS CHAPTER	639
ROCKY BOYS SCHOOL	1069
ROCKY RIDGE BOARDING SCHOOL	997
ROSEBUD DORMITORIES	640
ROSELAND SCHOOL DISTRICT	642
ROUGH ROCK CHAPTER	643
ROUGH ROCK SCHOOL BOARD, INC.	644
ROUND ROCK CHAPTER	645
ROUND VALLEY TRIBES	646
ROUNDHOUSE COUNCIL	647
RUBY VILLAGE	648
RUMSEY INDIAN RANCHERIA	649
SAC & FOX SETTLEMENT SHCOOL	650
SAC AND FOX NATION OF MISSOURI IN KS AND NE	652
SAC AND FOX TRIBE OF THE MISSISSIPPI IN IOWA	654
SAINT GEORGE VILLAGE	656
SAINT MICHAEL VILLAGE (IRA)	657
SAINT PAUL VILLAGE	658
SALAMATOF VILLAGE	659
SALT RIVER DAY SCHOOL	999
SAMISH TRIBE OF INDIANS	661
SAN FELIPE PUEBLO ELEMENTARY SCHOOL	1000
SAN ILDEFONSO DAY SCHOOL	1001
SAN ILDEFONSO PUEBLO	664
SAN JUAN CHAPTER	665
SAN LORENZO UNIFIED SCHOOL DISTRICT	668

ATTACHMENT A.—RAMAH NAVAJO CHAPTER SETTLEMENT ADMINISTRATION—Continued

[Settlement Administrator does not have any information on file for the base year amount for 1993; Appendix F paragraph 10(b)—Provisional list (part 2 of 2); Alphabetical order—by organization]

Tribe/Organization	Control No.
SAN MANUEL BAND OF MISSION INDIANS	669
SAN PASQUAL BAND OF MISSION INDIANS	670
SAN SIMON SCHOOL	1002
SAN XAVIER DISTRICT OF THE TOHONO O'ODHAM NATION	671
SANDIA PUEBLO	672
SANOSTEE CHAPTER	673
SANOSTEE DAY SCHOOL	1003
SANTA CLARA PUEBLO	675
SANTA CLARA PUEBLO	1004
SANTA CLARA UNIFIED SCHOOL DISTRICT	676
SANTA FE INDIAN SCHOOL, INC.	677
SANTA ROSA BAND OF CAHUILLA INDIANS	678
SANTA ROSA BOARDING SCHOOL	1005
SANTA ROSA INDIAN COMMUNITY	679
SANTA ROSA RANCH SCHOOL	1006
SANTA YNEZ BAND OF MISSION INDIANS	680
SANTA YNEZ INDIAN HEALTH CLINIC	681
SANTA YSABEL BAND OF DIEGUENO INDIANS	682
SANTO DOMINGO TRIBE	684
SAWMILL CHAPTER	688
SAXMAN VILLAGE (IRA)	689
SCAMMON BAY VILLAGE	690
SCOTTS VALLEY BAND OF POMO INDIANS	691
SEBA DALKAI BOARDING SCHOOL	1007
SECOND MESA DAY SCHOOL	692
SELAWIK VILLAGE (IRA)	693
SELDOVIA VILLAGE TRIBE	694
SEQUOYAH HIGH SCHOOL	1008
SHAGELUK VILLAGE (IRA)	699
SHAKOPEE MDEWAKANTON SIOUX COMMUNITY	700
SHAKOPEE SIOUX BUSINESS COUNCIL	701
SHEEP RANCH BAND OF ME-WUK INDIANS	703
SHEEPSPRINGS CHAPTER	704
SHELDON POINT VILLAGE	705
SHINGLE SPRINGS RANCHERIA	707
SHIPROCK CHAPTER	708
SHIPROCK DIRECTOR OF EDUCATION	1038
SHIPROCK NORTHWEST HIGH SCHOOL	709
SHIPROCK RESERVATION DORMITORY	710
SHISHMAREF VILLAGE (IRA)	711
SHO-BAN SCHOOL DISTRICT NO. 512	713
SHONTO CHAPTER	714
SHONTO PREPARATORY SCHOOL	715
SHOSHONE PAIUTE BUSINESS COUNCIL	717
SHUNGNAK VILLAGE (IRA)	719
SINTE GLESKA UNIVERSITY	1009
SIOUX CITY INDIAN EDUCATION COMMITTEE	1070
SISSETON WAHPETON COMMUNITY COLLEGE	1010
SITTING BULL COIMMUNITY COLLEGE (formerly Standing Rock)	1073
SITTING BULL COLLEGE	1011
SKAGWAY TRADITIONAL COUNCIL	723
SKULL VALLEY BAND OF GOSHUTE INDIANS	725
SKULL VALLEY GENERAL COUNCIL	726
SKY CITY COMMUNITY SCHOOL	1012
SLEETMUTE VILLAGE	727
SMITH LAKE CHAPTER	728
SMITH RIVER RANCHERIA OF CALIFORNIA	729
SOBOBA BAND OF MISSION INDIANS	730
SOBOBO BAND OF MISSION INDIANS	731
SOKAOGON CHIPPEWA TRIBAL COUNCIL	732
SOLOMON TRADITIONAL COUNCIL	733
SOLOMON VILLAGE	734
SOUTH FORK BAND COUNCIL	735
SOUTHERN CALIFORNIA INDIAN CENTER	737
SOUTHERN CALIFORNIA TRIBAL CHAIRMAN'S ASSOCIATION	738
SOUTHERN INDIAN HEALTH COUNCIL INC	1013
SOUTHWESTERN INDIAN POLYTECHNIC INSTITUTE	1013
ST. GEORGE ISLAND	745
ST. FRANCIS INDIAN SCHOOL	744
ST. MICHAELS ASSOCIATION FOR SPECIAL EDUCATION, IN	748

ATTACHMENT A.—RAMAH NAVAJO CHAPTER SETTLEMENT ADMINISTRATION—Continued

[Settlement Administrator does not have any information on file for the base year amount for 1993; Appendix F paragraph 10(b)—Provisional list (part 2 of 2); Alphabetical order—by organization]

Tribe/Organization	Control No.
STANDING PINE ELEMENTARY SCHOOL	750
STANDING ROCK CHAPTER	751
STANDING ROCK COMMUNITY SCHOOL	1014
STEAMBOAT	754
STEBBINS VILLAGE (IRA)	755
STEVENS VILLAGE (IRA)	756
STEWART COMMUNITY COUNCIL	757
STEWART POINT RANCHERIA	758
STOCKTON UNIFIED SCHOOL DISTRICT	761
STONE CHILD COMMUNITY COLLEGE	1015
STONEY RIVER VILLAGE	762
SUMMERVILLE ELEMENTARY SCHOOL	763
SWEETWATER CHAPTER	767
SYCUAN BAND OF MISSION INDIANS	769
TABLE BLUFF RESERVATION OF WIYOT INDIANS	770
TABLE MOUNTAIN RANCHERIA	771
TACHEE/BLUE GAP CHAPTER	772
TAKINA SCHOOL	773
TAKOTNA VILLAGE	774
TANACROSS VILLAGE (IRA)	775
TANANA VILLAGE	777
TAOS DAY SCHOOL	1016
TATITLEK VILLAGE (IRA)	780
TAZLINA VILLAGE	781
TE TSU GEH OWEENGE DAY SCHOOL (TESUQUE)	1017
TEECNOSPOS CHAPTER	782
TEESTO CHAPTER	783
TELIDA VILLAGE	784
TELLER VILLAGE	785
TESUQUE PUEBLO	787
TETLIN VILLAGE (IRA)	788
THEODORE JAMERSON ELEMENTARY SCHOOL	790
THEODORE ROOSEVELT SCHOOL	791
THLOPTHLOCCO TRIBAL TOWN	792
THOREAU CHAPTER	793
T'IIS NAZBAS COMMUNITY SCHOOL (TEECNOSPOS)	1018
T'IISTS'OOZJ'BI'OLTA (CROWNPOINT)	1019
TIMBISHA SHOSHONE BAND	795
TIOSPAYE TOPA SCHOOL	1020
TOGIAK VILLAGE	797
TOHAALI' COMMUNITY SCHOOL (TOADLENA)	1021
TO'HAJFILEE-HE (CANONCITO)	1022
TOHATCHI CHAPTER	798
TOHONO O'ODHAM HIGH SCHOOL	1023
TOHONO O'ODHAM HOUSING AUTHORITY	799
TOKSOOK BAY VILLAGE	802
TOLANI LAKE CHAPTER	803
TONALEA CHAPTER	804
TONALEA DAY SCHOOL (RED LAKE)	1024
TONAWANDA BAND OF SENECAS	805
TONTO APACHE TRIBAL COUNCIL	807
TORREON/STAR LAKE CHAPTER	808
TRENTON SCHOOL	810
TRINIDAD RANCHERIA	811
TSAILE/WHEATFIELDS CHAPTER	812
TSAYATOH CHAPTER	813
TSE'II'AHI' COMMUNITY SCHOOL (STANDING ROCK)	1025
TSELANI/COTTONWOOD CHAPTER	814
TUBA CITY CHAPTER	815
TUBA HIGH SCHOOL BOARD, INC.	1026
TUCKER ELEMENTARY SCHOOL	816
TULUKSAK VILLAGE (IRA)	819
TUNTUTULIAK VILLAGE	821
TUNUNAK VILLAGE (IRA)	822
TUOLUMNE RANCHERIA	823
TURNING POINT	1073
TURTLE MOUNTAIN COMMUNITY COLLEGE	1027
TURTLE MOUNTAIN ELEMENTARY SCHOOL	1028
TURTLE MOUNTAIN HIGH SCHOOL	826
TURTLE MOUNTAIN MIDDLE SCHOOL	1029

ATTACHMENT A.—RAMAH NAVAJO CHAPTER SETTLEMENT ADMINISTRATION—Continued

[Settlement Administrator does not have any information on file for the base year amount for 1993; Appendix F paragraph 10(b)—Provisional list (part 2 of 2); Alphabetical order—by organization]

Tribe/Organization	Control No.
TUSCARORA NATION	827
TUSCARORA NATION	828
TWENTY-NINE PALMS BAND OF MISSION INDIANS	829
TWIN BUTTES DAY SCHOOL	830
TWIN HILLS VILLAGE	831
TWIN LAKES CHAPTER	832
TWO EAGLE RIVER SCHOOL	833
TWO GREY HILLS CHAPTER	834
TYONEK VILLAGE (IRA)	835
UGASHIK VILLAGE	837
UINTAH AND OURAY TRIBAL BUSINESS COMMITTEE	838
UMKUMIUT NATIVE VILLAGE	839
UNALAKLEET VILLAGE (IRA)	840
UNGA TRIBAL COUNCIL	841
UNGA VILLAGE	842
UNITED AUBURN INDIAN COMMUNITY	843
UNITED CROW BAND INC	844
UNITED KEETOOWAH BAND IN OKLAHOMA	845
uNITED VILLAGES INC	848
UPPER FRUITLAND CHAPTER	849
UPPER LAKE BAND OF POMO INDIANS	850
UPPER LAKE RANCHERIA	851
VENETIE TRIBAL GOVERNMENT	857
VENETIE VILLAGE (IRA)	858
VIEJAS (BARON LONG)	859
VIEJAS BAND OF THE KUMEYAAY NATION	860
WA HE LUT INDIAN SCHOOL	1030
WAINWRIGHT VILLAGE	862
WALES VILLAGE (IRA)	863
WASHOE TRIBE—CARSON COLONY COMMUNITY COUNCIL	866
WASHOE TRIBE—DRESSLERVILLE COMMUNITY COUNCIL	867
WASHOE TRIBE—STEWART COMMUNITY COUNCIL	868
WASHOE TRIBE—WOODFORDS COLONY	869
WELLS INDIAN COLONY BAND COUNCIL	871
WESTERN APACHE CONSTRUCTION COMPANY	872
WHIPPOORWILL	873
WHITE CONE	874
WHITE MOUNTAIN VILLAGE (IRA)	877
WHITE ROCK CHAPTER	878
WHITE SHIELD SCHOOL	879
WHITEHORSE LAKE	880
WICHITA AND AFFILIATED TRIBES	882
WIDE RUINS CHAPTER	883
WIDE RUINS COMMUNITY SCHOOL	1031
WINGATE ELEMENTARY SCHOOL	1032
WINNEMUCCA COLONY INDIAN RESERVATION	885
WINSLOW DORMITORY	1034
WOODFORDS COMMUNITY COUNCIL	886
WOUNDED KNEE DISTRICT SCHOOL	1035
WOUNDED KNEE DISTRICT SCHOOL, OGLALA LAKOTA TREATY	887
WRANGELL COOPERATIVE ASSN (IRA)	888
YAKAMA TRIBAL SCHOOL	891
YAVAPAI-APACHE NATION	894
YUPIIT OF ANDEREAFSKI	899
YUROK TRIBE OF CALIFORNIA	900
ZIA DAY SCHOOL	1036

Attachment B.—United States District Court for the District of New Mexico

Ramah Navajo Chapter, et al., **v.** *Gale Norton, et al.*

[CIV No. 90–00957 LH/WWD]

Second Partial Settlement Agreement Claim Form

REDW, LLC, Ramah Navajo Chapter Class Action Settlement Administrator, 6401 Jefferson NE., Post Office Box 93659, Albuquerque, New Mexico 87199–3659, 1–888–726–9418

Introduction, Instructions, and Definitions

To share in this settlement this claim form must be returned to the above address and postmarked no later than sixty (60) days after publication of this notice in the **Federal Register.**

All claim forms must be signed and notarized by a responsible official of the organization under penalty of perjury.

The Second Partial Settlement Agreement (PSA–2) may be obtained from the class settlement Web site at *http://www.rncsettlement.com* or by calling the Settlement Administrator at 1–888–726–9418.

All Class Members who wish to share in the Second Partial Settlement Agreement in this case must complete the claimant information in Section I. Only school grantees must complete Section II.

Special Instructions

1. If you do not agree with the base amount shown on the attached Provisional List for your organization for FY/CY 1993, please submit a letter stating why you do not agree with the amount shown and provide the amount that you believe is correct, with supporting documentation. The Settlement Administrator has discretion to accept or reject such documentation or to seek further clarification or documentation.

2. If you did *not* receive a share of the First Partial Settlement in this case for the year 1993 please submit your 1993 documentary evidence, along with the completed claim form.

3. If you did not have any BIA funding expenditures for the year 1993 but did have BIA funding expenditures for 1992 or 1994, or both, please complete the claim form for the years that you meet the requirements as set forth below and attach your entity's supporting documentation.

Information provided to the settlement Administrator will be reviewed for adequacy and accuracy. Class Members shall be required to timely provide to the Independent CPA and data and documentation as may be required to demonstrate their eligibility.

Definitions

(1) Documentary evidence to support a claim includes the Schedule of Federal Financial Assistance portion of audited financial statements, contract award documents, and IDC rate agreements which show actual expenditures on BIA programs under Public Law 93–638 contract for each year your entity had BIA Public Law 93–638 contracts or compacts during the settlement period (1992–1994). The Schedule of Federal Financial Assistance will control over all other data and must be provided if it exists.

(2) For purposes of PSA–2, the definition of construction contained in 25 U.S.C. § 450b(a) ("Construction Programs") will be used: "Construction" means—programs for the planning, design, construction, repair, improvement, and expansion of buildings or facilities, including but not limited to, housing, law enforcement and detection facilities, sanitation and water systems, roads, schools, administration and health facilities, irrigation and agricultural work, and water conservation, flood control and port facilities.

Construction Expenditures above $100,000 will not be included in the "BIA Expenditures" amount used to calculate class members' share under PSA–2.

[Please note that an exclusion of certain construction activities was later added at 25 U.S.C. § 450b(m) from this definition. That change did not become law until after the close of FY 1994, hence those later exclusions for "construction purposes" will not be recognized in calculating shares under this settlement. This means that HIP expenditures and construction planning costs for construction *must* be included as part of construction expenditures on this form.]

Forms

Attached is the Claim form which must be submitted by a duly authorized official of the tribe or tribal organization under penalty of perjury.

All Class Members must complete Section 1 of this form in order to receive a share of this settlement. Section II applies only to school grantees.

Special Requirements for Direct Contract Support Survey Tribes and Tribal Organizations

If your tribe or entity participated in the survey of direct contract support costs in the year 2000, you can receive reimbursement of your out-of-pocket expenditures connected with the survey by submitting a separate statement with receipts or other documents of your incurred costs. A list of tribes who participated in the survey is attached to this form.

Questions may be directed to the Independent CPA at REDW, LLC, Ramah Navajo Chapter Class Action Settlement Administrator, 6401 Jefferson NE., Post Office Box 93659, Albuquerque, New Mexico 87199–3659, 1–888–726–9418, fax (505) 998–3333, E-mail: *rncsettlement@redw.com.*

Class Members Who Participated in the DCSC Survey

Bristol Bay Native Association
Burns Paiute Tribes
Central Council of Tlingit & Haida Indian Tribes of Alaska
Confederated Tribes of the Colville Reservation
Grand Traverse Band of Ottawa and Chippewa Indians
Great Lakes Indian Fish & Wildlife Commission
Hoopa Valley Tribal Council
Jamestown S'Klallam Tribe
Klamath Tribes
Lac Courte Oreilles
Lac de Flambeau Band of Lake Superior Chippewa Indians
Lummi Indian Business Council
Mescalero Apache Tribe
Miccosukee Corporation
Mississippi Band of Choctaw Indians
Nambe Pueblo
Nez Perce Tribe
North Slope Borough School District
Northwest Indian Fisheries Commission
Penobscot Indian Nation
Pueblo of Zuni
Quinault Indian Nation
Ramah Navajo Chapter
Red Lake Band of Chippewa Indians
Sac & Fox Nation
Sinte Gleska University
Southern Ute Indian Tribe
Tanana Chiefs Conference, Inc.
Tohono O'Odham Nation

BILLING CODE 4310–4J–P

Attachment B, Page 5

CLAIM FORM – SECOND PARTIAL SETTLEMENT

PURSUANT TO APPENDIX F OF SECOND PARTIAL SETTLEMENT

United States District Court
For the District of New Mexico

Ramah Navajo Chapter, et al v. Gale Norton, et al.
CIV No. 90-00957 LH/WWD

SECTION I

PAGE 1 of 3

ALL CLAIMANTS MUST FILL OUT AND SUBMIT THIS SECTION I.
SCHOOL GRANTEES MUST ALSO FILL OUT AND SUBMIT SECTION II.

(Please type or print)

_____
Name of federally recognized tribe or tribal organization

_____
Contact person

_____
Mailing Address

_____ _____ _____
City State Zip Code

_____ _____
Area Code Telephone Number

_____ _____
Area Code Fax Number

_____
E-mail Address

_____
Taxpayer Identification Number

_____Federally Recognized Tribe _____Tribal Organization

Attachment B, Page 6

Claim Form
PAGE 2 of 3
SECTION I (CONTINUED)

REQUIRED SWORN CERTIFICATIONS

I hereby certify that

_____(
name of federally recognized tribe or tribal organization)
expended funds under one or more BIA P.L. 93-638 contract(s) or compact(s) for each of the following years marked below. Each year must be marked, enter yes or no.

		No	Yes
FY (or CY)	1992	____	____
FY (or CY)	1993	____	____
FY (or CY)	1994	____	____

If you answer yes to 1993 above, then you only need to provide the requested financial information below for 1993. Otherwise, you must provide the info for the other two years.

		Amount BIA '638 Non-construction Expenditures (Direct & Indirect)	Amount BIA Construction Expenditures* (Direct & Administrative)	Check Here If Your Entity Was A Tribally Controlled School Grantee Under 25 §2001 *et. seq.* U.S.C.
FY (or CY)	1992	$_____	$_____	_____
FY (or CY)	1993	_____	_____	_____
FY (or CY)	1994	_____	_____	_____

* As defined on page 2 of this form. If the construction expenditure for the given year is $100,000 or less, it will not be excluded from your BIA expenditures amount.

REQUIRED SUPPORTING DOCUMENTATION

If the BIA funding expenditures amount shown on the attached "Provisional List" for your organization for 1993 is not accurate, or if you entered a different amount for 1993 in the certification portion of this form, you must submit supporting documentation to verify the amount you claim to be correct as shown in the certification portion of this form. If you did not have BIA expenditures for 1993 you do need to document your 1992 and 1994 BIA expenditures, if any.

Separate documentation of construction expenditures will not be required unless REDW,

LLC later determines that such documentation is required in a particular case.

CERTIFICATION BY RESPONSIBLE OFFICIAL

These representations are true and correct to the best of the undersigned signatory's knowledge, information and belief.

_____
Signature of Responsible Official

_____
Print Name

SECTION I (CONTINUED)

State of_____)
) ss.
County of _____)

The foregoing was duly sworn to and subscribed on penalty of perjury before me this day by _____, known to me to be that person whose name appears above, this _____ day of _____, 2003.

_____
NOTARY PUBLIC

My Commission Expires:_____ (seal)

SECTION II

United States District Court
For the District of New Mexico

Ramah Navajo Chapter, et al v. Gale Norton, et al.
CIV No. 90-00957 LH/WWD

FOR SCHOOL GRANTEES ONLY

PLEASE NOTE: IF YOU ARE A CLASS MEMBER AS WELL AS A SCHOOL GRANTEE YOU MUST ALSO COMPLETE THIS SECTION.

School grant expenditures will be included as BIA expenditures only if they were included in the BIA direct program base in the calculation of a negotiated indirect cost rate per 25 U.S.C. §2008(h) (formerly §2008(d)(4)). Accordingly, School Grantees are required to attach their indirect cost agreements and all other data and documentation as may be required by the Independent CPA to demonstrate the amount of school expenditures which were included in the direct base under BIA expenditures.

I hereby certify that

_____
(name of federally recognized tribal organization)
expended funds under one or more P.L. 93-638 contract(s) or compact(s) and under a Tribally Controlled School Grant Act grant for each of the years marked below and that the amounts listed below were included in the BIA direct cost base.

	No	Yes	Indirect Cost Rate	Amount of BIA Expenditures In Direct Cost Base (including School Grant Expenditures)	Amount of BIA School Grant Expenditures in Direct Cost Base
1992	____	____	_____	$_____	$_____
1993	____	____	_____	_____	_____
1994	____	____	_____	_____	_____

Attachment B, Page 9

PAGE 2 of 2
SECTION II (CONTINUED)

These representations are true and correct to the best of the undersigned signatory's knowledge, information and belief.

_____
Signature of Responsible Official

_____
Print Name

State of_____)
) ss.
County of _____)

The foregoing was duly sworn to and subscribed under penalty of perjury before me this day by _____, known to me to be that person whose name appears above, this _____ day of _____, 2003.

_____
NOTARY PUBLIC

My Commission Expires:_____ (seal)

[FR Doc. 03–12165 Filed 5–14–03; 8:45 am]
BILLING CODE 4310–4J–C

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[MT–921–03–1320–EL–P; MTM 92532]

Notice of Invitation—Coal Exploration License Application MTM 92532

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of invitation.

SUMMARY: Members of the public are hereby invited to participate with Decker Coal Company in a program for the exploration of coal deposits owned by the United States of America in the following-described lands located in Big Horn County, Montana, encompassing 320.00 acres:

T. 9 S., R. 40 E., P. M. M.
Sec. 5: SE¼
Sec. 8: NE¼

SUPPLEMENTARY INFORMATION: Any party electing to participate in this exploration program shall notify, in writing, both the State Director, Bureau of Land Management, P.O. Box 36800, Billings, Montana 59107–6800; and Decker Coal Company, P.O. Box 12, Decker, Montana 59025. Such written notice must refer to serial number MTM 92532 and be received no later than June 16, 2003 or 10 calendar days after the last publication of this Notice in the *Big Horn County* News newspaper, whichever is later. This Notice will be published once a week for two (2) consecutive weeks in the *Big Horn County News*, Hardin, Montana.

The proposed exploration program is fully described, and will be conducted pursuant to an exploration plan to be approved by the Bureau of Land Management. The exploration plan, as submitted by Decker Coal Company, is available for public inspection at the Bureau of Land Management, Montana State Office, 5001 Southgate Drive, Billings, Montana, during regular business hours (9 a.m. to 4 p.m.), Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Robert Giovanini, Mining Engineer, or Connie Schaff, Land Law Examiner, Branch of Solid Minerals (MT–921), Bureau of Land Management, Montana State Office, P.O. Box 36800, Billings, Montana 59107–6800, telephone (406) 896–5084 or (406) 896–5060, respectively.

Dated: April 8, 2003.

Randy D. Heuscher,
Chief, Branch of Solid Minerals.

[FR Doc. 03–12061 Filed 5–14–03; 8:45 am]
BILLING CODE 4310–$$–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[MT–921–03–1320–EL–P; MTM 92544]

Notice of Invitation—Coal Exploration License Application MTM 92544

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of invitation.

SUMMARY: Members of the public are hereby invited to participate with Kiewit Mining Group, Inc., in a program for the exploration of coal deposits owned by the United States of America in the following-described lands located in Prairie County, Montana, encompassing 240.00 acres:

T. 11 N., R. 49 E., P. M. M.
Sec. 21: NE¼SE¼, NW¼NE¼
Sec. 22: NE¼SE¼
Sec. 27: NW¼NW¼, SE¼NW¼
Sec. 28: SW¼NE¼

SUPPLEMENTARY INFORMATION: Any party electing to participate in this exploration program shall notify, in writing, both the State Director, Bureau of Land Management, PO Box 36800, Billings, Montana 59107–6800, and Kiewit Mining Group, Inc., PO Box 3, Decker, Montana 59025. Such written notice must refer to serial number MTM 92544 and be received no later than June 16, 2003 or 10 calendar days after the last publication of this Notice in *The Terry Tribune*, Terry, Montana, or *The Miles City Star*, Miles City, Montana, newspapers, whichever is later. This Notice will be published once a week for two (2) consecutive weeks in *The Terry Tribune*, Terry, Montana and *The Miles City Star*, Miles City, Montana.

The proposed exploration program is fully described, and will be conducted pursuant to an exploration plan to be approved by the Bureau of Land Management. The exploration plan, as submitted by Kiewit Mining Group, Inc., is available for public inspection at the Bureau of Land Management, Montana State Office, 5001 Southgate Drive, Billings, Montana, during regular business hours (9 a.m. to 4 p.m.), Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Robert Giovanini, Mining Engineer, or Connie Schaff, Land Law Examiner, Branch of Solid Minerals (MT–921), Bureau of Land Management, Montana State Office, PO Box 36800, Billings, Montana 59107–6800, telephone (406) 896–5084 or (406) 896–5060, respectively.

Dated: April 15, 2003.

Randy D. Heuscher,
Chief, Branch of Solid Minerals.

[FR Doc. 03–12062 Filed 5–14–03; 8:45 am]
BILLING CODE 4310–$$–P

DEPARTMENT OF JUSTICE

Notice of Lodging Proposed Consent Decree

In accordance with Departmental Policy, 28 CFR 50.7, notice is hereby given that a proposed consent decree in the case of *United States of America, Plaintiff* v. *Charles E. Corbett, Jr., Defendant*, Civil Action No. 4:03–0166–25 (D.S.C.), was lodged with the United States District Court for the District of South Carolina, Florence Division, on May 2, 2003. This proposed Consent Decree concerns a complaint filed by the United States of America against Charles E. Corbett, Jr., pursuant to sections 301(a) and 309(b) and (d) of the Clean Water Act, 33 U.S.C. 1311(a) and 1319(b) and (d), to obtain injunctive relief from, and impose civil penalties against, the Defendant for unauthorized discharge of dredged or fill material into waters of the United States in connection with the development of a portion of a 4.724 acre site adjacent to Gravelly Gully Circle on Highway 544 near the City of Conway, Horry County, South Carolina.

The proposed Consent Decree prohibits any further discharge of pollutants into waters of the United States and requires the payment of civil penalties in the amount of $5,000.

The Department of Justice will accept written comments relating to this proposed Consent Decree for thirty (30) days from the date of publication of this notice. Please address comments to Joseph P. Griffith, Jr., Assistant United States Attorney, P.O. Box 978, Charleston, South Carolina, 29402 and refer to *United States of America* v *Charles E. Corbett, Jr.*

The proposed Consent Decree may be examined at the Clerk's office, United States District Court for the District of South Carolina, Florence Division, 401 W. Evans Street, Florence, South Carolina 29501. In addition, the proposed Consent Decree may be viewed on the World Wide Web at *http://www.usdoj.gov/enrd/home.html.*

Joseph P. Griffith Jr.,
Assistant United States Attorney, 151 Meeting Street, Ste. 200, P.O. Box 978, Charleston, S.C. 29402, (843) 266–1667 (tel), (843) 727–4443 (fax), joseph.griffith@usdoj.gov.

[FR Doc. 03–12052 Filed 5–14–03; 8:45 am]
BILLING CODE 4410–15–M

DEPARTMENT OF JUSTICE

Notice of Lodging of Settlement Stipulation Under the Comprehensive Environmental Response, Compensation and Liability Act

Notice is hereby given that on April 30, 2003, a proposed Stipulation and Agreement in *United States of America et al.* v. *The Ed Krewatch Partnership, et al.*, C.A. No. 01–660 (D. Del.), was lodged with the United States District Court for the District of Delaware.

In this action the United States has sought to recover costs incurred by the United States Environmental Protection Agency ("EPA") in 1996–1997, under Section 104(a) of the Comprehensive Environmental Response, Compensation and Liability Act, as amended ("CERCLA"), 42 U.S.C. 9604(a), at the Drum Burial Area of the Krewatch Farm Site. The United States settled its claims against The Ed Krewatch Partnership and Anthony Nero in 2001 and simultaneously sued Gardner Asphalt Corporation ("GAC"), Raymond T. Hyer, Jr. ("Hyer"), and Emulsion Products Company ("Emulsion"). The Stipulation and Agreement will resolve the liability of GAC, Hyer and Emulsion for their liability under Section 107 of CERCLA, 42 U.S.C. 9607.

The Krewatch Farm Site is located near Seaford, Delaware. EPA conducted a removal action at the Drum Burial Area of the Site to remove buried drums and soil which had become contaminated with hazardous substances. In settlement, Hyer and Emulsion have agreed to pay the sum of $300,000 over a five year period. Upon the District Court's approval of the Stipulation and Agreement, Hyer and Emulsion will receive a covenant not to sue from the United States. GAC will receive its covenant not to sue when the principal amount of the settlement and all accumulated interest have been paid. All defendants will receive contribution protection when the Stipulation and Agreement are approved by the Court. In the event Hyer and Emulsion fail to pay an installment, the United States has the right to seek entry of a judgment against them in the District Court, as soon as 10 days after the payment is due. The only defense to entry of judgment would be that payment has been made.

Upon the District Court's approval of the Stipulation and Agreement, the United States will move to dismiss a declaratory judgment action filed in the United States Bankruptcy Court for the Southern District of Florida, in which the United States has been seeking declaratory rulings that the discharge of

debts GAC and Hyer received under a plan of reorganization confirmed in 1993 does not bar the United States from pursuing its CERCLA claims against them.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments relating to the proposed Stipulation and Agreement. Comments should be addressed to the Assistant Attorney General for the Environment and Natural Resources Division, P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611, and should refer to *United States of America et al.* v. *The Ed Krewatch Partnership, et al.*, DJ No. 90–11–3–07224.

The proposed Stipulation and Agreement may be examined at the office of the United States Attorney, District of Delaware, 1201 N. Market Street, Wilmington, DE and at the Region III Office of the Environmental Protection Agency, 1650 Arch St., Philadelphia, PA 19103. During the public comment period, the Stipulation and Agreement may also be examined on the following Department of Justice Web site, *http://www.usdoj.gov/enrd/open.html*. A copy of the Stipulation and Agreement may be obtained by mail from the Consent Decree Library, P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611 or by faxing or e-mailing a request to Tonia Fleetwood (*tonia.fleetwood@usdoj.gov*), fax no. (202) 514–0097, phone confirmation number (202) 514–1547. In requesting a copy from the Consent Decree Library, please enclose a check in the amount of $7.25 (25 cents per page reproduction cost) payable to the U.S. Treasury. In all correspondence, please refer to the case by its title and DOJ Ref. # 90–11–3–07224.

Robert D. Brook,

Assistant Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 03–12054 Filed 5–14–03; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Between the United States and Wisconsin Electric Power Company Under the Clean Air Act

Under 28 C.F.R. 50.7, notice is hereby given that on April 29, 2003, a proposed consent decree ("Consent Decree") between Wisconsin Electric Power Company ("Wisconsin Electric") and the United States, Civil Action No. 2003V00451, was lodged with the United States District Court for the Eastern District of Wisconsin.

The Consent Decree would resolve claims asserted by the United States against Wisconsin Electric pursuant to Sections 113(b) and 167 of the Clean Air Act (the "Act"), 42 U.S.C. 7413(b) and 7477, seeking injunctive relief and the assessment of civil penalties for WE's violations of:

(a) The Prevention of Significant Deterioration provisions in Part C of Subchapter I of the Act, 42 U.S.C. 7470–92;

(b) The nonattainment New Source Review provisions in Part D of Subchapter I of the Act, 42 U.S.C. 7501–7515;

(c) The federally-enforceable State Implementation Plan developed by the State of Michigan (the "Michigan SIP"); and

(d) The federally-enforceable State Implementation Plan developed by the State of Wisconsin (the "Wisconsin SIP").

The complaint filed by the United States alleges, among other things, that between approximately 1982 and the present, Wisconsin Electric modified and thereafter operated certain coal-fired electricity generating units at its Oak Creek Generating Station in Milwaukee County, Wisconsin, without first obtaining a PSD permit authorizing the construction and without installing the best available technology to control emissions of sulfur dioxide, nitrogen oxides, and particulate matter, as required by the Act, applicable federal regulations, and the Michigan and Wisconsin SIPs. These major modifications included, but were not limited to, replacement of economizers, induced draft fans, waterwall tubes, reheaters and superheaters on one or more units at the Oak Creek Generating Station. These modifications resulted in significant net emissions increases, as defined by 40 CFR 52.2(b)(3)(i), of one or more of the following pollutants: NO_X, SO_2, and PM.

The complaint also alleges, upon information and belief, that Wisconsin Electric undertook similar major modifications at one or more of its other facilities—namely, the Presque Isle Generating Station in Marquette County, Michigan, the Pleasant Prairie Generating Station in Kenosha County, Wisconsin, the Port Washington Generating Station in Ozaukee County, Wisconsin, and the Valley Generating Station in Milwaukee County, Wisconsin—which resulted in significant net emissions increases, as defined by 40 CFR 52.21(b)(3)(i), of one or more of the following pollutants: NO_X, SO_2, and PM.

The proposed Consent Decree would require Wisconsin Electric to reduce SO_2, NO_X, and PM emissions across its coal-fired system through the installation of state-of-the-art pollution control technologies and the retirement of certain units. In addition, the proposed Consent Decree would require Wisconsin Electric to spend no less than $20 million to implement the TOXECON Project at its Presque Isle Power Plant, which is designed to implement and explore innovative ways to reduce mercury and PM emissions from coal-fired power plants, as a means of mitigating the harm caused by the alleged violations. Finally, the proposed Consent Decree would require Wisconsin Electric to pay a $3.2 million civil penalty.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments relating to the Consent Decree. Comments should be addressed to the Assistant Attorney General, Environmental and Natural Resources Division, PO Box 7611, U.S. Department of Justice, Washington, DC 20044–7611, and should refer to *United States* v. *Wisconsin Electric*, D.J. Ref. No. 90–5–2–1–07493.

The Consent Decree may be examined at the Office of the United States Attorney, Eastern District of Wisconsin, Federal Courthouse, 517 East Wisconsin Ave., Milwaukee, Wisconsin 53202, and at U.S. EPA Region V, 77 West Jackson Blvd., Chicago, IL 60604–3507. During the public comment period, the Consent Decree may also be examined on the following Department of Justice Web site, *http://www.usdoj.gov/enrd/open.html*. A copy of the Consent Decree may also be obtained by mail from the Consent Decree Library, PO Box 7611, U.S. Department of Justice, Washington, DC 20044–7611 or by faxing or e-mailing a request to Tonia Fleetwood (*tonia.fleetwood@usdoj.gov*), fax no. (202) 514–0097, phone confirmation number (202) 514–1547. In requesting a copy from the Consent Decree Library, please enclose a check in the amount of $18.00 (25 cents per page reproduction cost) payable to the U.S. Treasury.

W. Benjamin Fisherow,

Deputy Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 03–12053 Filed 5–14–03; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Sankar N. Banerjee, M.D.; Revocation of Registration

On April 9, 2002, the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration (DEA), issued an Order to Show Cause to Sankar N. Banerjee, M.D. (Dr. Banerjee) of Exeter, New Hampshire, notifying him of an opportunity to show cause as to why DEA should not revoke his DEA Certificate of Registration, AB2002436 under 21 U.S.C. 824(a), and deny any pending applications for renewal or modification of that registration. As a basis for revocation, the Order to Show Cause alleged that Dr. Banerjee is not currently authorized to handle controlled substances in New Hampshire, the state in which he practices. The order also notified Dr. Banerjee that should no request for a hearing be filed within 30 days, his hearing right would be deemed waived.

The Order to Show Cause was sent by certified mail to Dr. Banerjee at his registered location in Exeter, New Hampshire. DEA received a signed receipt indicating that the Order to Show Cause was received by Dr. Banerjee on April 29, 2002. DEA has not received a request for hearing or any other reply from Dr. Banerjee or anyone purporting to represent him in this matter. Therefore, the Deputy Administrator, finding that (1) 30 days have passed since the receipt of the Order to Show Cause, and (2) no request for a hearing having been received, concludes that Dr. Banerjee is deemed to have waived his hearing right. After considering material from the investigative file in this matter, the Deputy Administrator now enters his final order without a hearing pursuant to 21 CFR 1301.43(d) and (e) and 1301.46.

The Deputy Administrator finds that Dr. Banerjee possessed DEA Certificate of Registration AB2002436. The Deputy Administrator further finds that an investigation by DEA revealed that on May 25, 2001, the New Hampshire Board of Medicine suspended Dr. Banerjee's license to pactice medicine in New Hampshire.

DEA does not have statutory authority under the Controlled Substances Act to issue or maintain a registration if the applicant or registrant is without state authority to handle controlled substances in the state in which he conducts business. *See* 21 U.S.C. 802(21), 823(f) and 824(a)(3). This prerequisite has been consistently upheld. *See Muttaiya Darmarajeh, M.D.*, 66 FR 52936 (2001); *Dominick A. Ricci, M.D.*, 58 FR 51104 (1993); *Bobby Watts, M.D.*, 53 FR 11919 (1988).

Here, it is clear that Dr. Banerjee is not licensed to handle controlled substances in the State of New Hampshire, where he is registered with DEA. Therefore, he is not entitled to a DEA registration in that state.

Accordingly, the Deputy Administrator of the Drug Enforcement Administration, pursuant to the authority vested in him by 21 U.S.C. 823 and 824 and 28 CFR 0.100(b) and 0.104, hereby orders that DEA Certificate of Registration AB2002436, issued to Sankar N. Banerjee, M.D. be, and it hereby is, revoked. The Deputy Administrator further orders that any pending applications for renewal or modification of such registration be, and they hereby are, denied. This order is effective June 16, 2003.

Dated: April 23, 2003.

John B. Brown III,

Deputy Administrator.

[FR Doc. 03–12157 Filed 5–14–03; 8:45 am]

BILLING CODE 4410–09–M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Manufacturer of Controlled Substances Notice of Registration

By Notice dated January 6, 2003, and published in the **Federal Register** on January 28, 2003, (68 FR 4233), Bristol-Myers Squibb Pharma Company, 1000 Stewart Avenue, Garden City, New York 11530, made application by renewal to the Drug Enforcement Administration to be registered as a bulk manufacturer of the basic classes of controlled substances listed below:

Drug	Schedule
Oxycodone (9143)	II
Hydrocodone (9193)	II
Oxymorphone (9652)	II

The firm plans to manufacture the controlled substances to make finished products.

No comments or objections have been received. DEA has considered the factors in Title 21, United States Code, Section 823(a) and determined that the registration of Bristol-Myers Squibb Pharma Company to manufacture the listed controlled substances is consistent with the public interest at this time. DEA has investigated Bristol-Myers Squibb Pharma Company to ensure that the company's registration is consistent with the public interest. The investigation included inspection and testing of the company's physical security systems, verification of the company's compliance with state and local laws, and a review of the company's background and history. Therefore, pursuant to 21 U.S.C. § 823 and 28 CFR §§ 0.100 and 0.104, the Deputy Assistant Administrator, Office of Diversion Control, hereby orders that the application submitted by the above firm for registration as a bulk manufacturer of the basic classes of controlled substances listed above is granted.

Dated: April 16, 2003.

Laura M. Nagel,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 03–12151 Filed 5–14–03; 8:45 am]

BILLING CODE 4410–09–M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Importer of Controlled Substances Notice of Registration

By Notice dated January 7, 2003, and published in the **Federal Register** on January 29, 2003, (68 FR 4517), Cerilliant Corporation, 811 Paloma Drive, Suite A, Round Rock, Texas 78664, made application by renewal to the Drug Enforcement Administration to be registered as an importer of the basic classes of controlled substances listed below:

Drug	Schedule
Cathinone (1235)	I
Methcathinone (1237)	I
N-Ethylamphetamine (1475)	I
Gamma hydroxybutyric acid (2010)	I
Ibogaine (7260)	I

Drug	Schedule
Tetrahydrocannabinols (7370)	I
Mescaline (7381)	I
4-Bromo-2, 5-dimethoxyamphetamine (7391)	I
4-Bromo-2, 5-dimethoxyphenethylamine (7392)	I
4-Methyl-2, 5-dimethoxyamphetamine (7395)	I
2, 5-Dimethoxyamphetamine (7396)	I
3, 4-Methylenedioxyamphetamine (7400)	I
3, 4-Methylanedioxy-N-ethylamphetamine (7404)	I
3, 4-Methylenedioxymethamphetamine (7405)	I
4-Methoxyamphetamine (7411)	I
Psilocybin (7437)	I
Psilocyn (7438)	I
Etrophine (9056)	I
Heroin (9200)	I
Pholcodine (9314)	I
Cocaine (9041)	II
Codeine (9050)	II
Amphetamine (1100)	II
Methamphetamine (1105)	II
Amobarbital (2125)	II
Pentobarbital (2270)	II
Dihydrocodeine (9120)	II
Oxycodone (9143)	II
Hydromorphone (9150)	II
Benzoylecgonine (9180)	II
Ethylmorphine (9190)	II
Meperidine (9230)	II
Methadone (9250)	II
Dextropropoxyphene, bulk (non-dosage forms) (9273)	II
Morphine (9300)	II
Thebaine (9333)	II
Levo-alphacetylmethadol (9648)	II
Oxymorphone (9652)	II

The firm plans to import small quantities of the listed controlled substances for the manufacture of analytical reference standards.

No comments or objections have been received. DEA has considered the factors in Title 21, United States Code, Section 823(a) and determined that the registration of Cerilliant Corporation to import the listed controlled substances is consistent with the public interest and with United States obligations under international treaties, conventions, or protocols in effect on May 1, 1971, at this time. DEA has investigated Cerilliant Corporation on a regular basis to ensure that the company's continued registration is consistent with the public interest. The investigations include inspection and testing of the company's physical security systems, verification of the company's compliance with state and local laws, and a review of the company's background and history. Therefore, pursuant to Section 1008(a) of the Controlled Substances Import and Export Act and in accordance with Title 21, Code of Federal Regulations, Section 1301.34, the above firm is granted registration as an importer of the basic classes of controlled substances listed above.

Dated: April 16, 2003.

Laura M. Nagel,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 03–12152 Filed 5–14–03; 8:45 am]

BILLING CODE 4410–09–M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Importer of Controlled Substances; Notice of Registration

By Notice dated February 5, 2003, and published in the **Federal Register** on February 20, 2003, (68 FR 8307), Chattem Chemicals, Inc., 3801 St. Elmo Avenue, Building 18, Chattanooga, Tennessee, made application by renewal to the Drug Enforcement Administration (DEA) to be registered as an importer of phenylacetone (8501) a basic class of controlled substance listed in Schedule II.

The firm plans to import the phenylacetone to manufacture bulk controlled substances.

No comments or objections have been received. DEA has considered the factors in Title 21, United States Code, Section 823(a) and determined that the registration of Chattem Chemicals, Inc., to import phenylacetone is consistent with the public interest and with United States obligations under international treaties, conventions, or protocols in effect on May 1, 1971, at this time. DEA has investigated Chattem Chemicals, Inc., on a regular basis to ensure that the company's continued registration is consistent with the public interest. This investigation included inspection and testing of the company's physical security systems, verification of the company's compliance with state and local laws, and a review of the company's background and history. Therefore, pursuant to Section 1008(a) of the Controlled Substances Import and Export Act and in accordance with Title 21, Code of Federal Regulations, Section 1301.34, the above firm is granted registration as an importer of the basic class of controlled substance stated.

Dated: April 16, 2003.

Laura M. Nagel,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 03–12153 Filed 5–14–03; 8:45 am]

BILLING CODE 4410–09–M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Robert A. Kooker, M.D.; Revocation of Registration

On June 12, 2002, the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration (DEA), issued an Order to Show Cause to Robert A. Kooker, M.D. (Dr. Kooker) of Loomis, California, notifying him of an opportunity to show cause as to why DEA should not revoke his DEA Certificate of Registration, AK1490779 under 21 U.S.C. 824(a), and deny any pending applications for renewal or modification of that registration. As a basis for revocation, the Order to Show Cause alleged that Dr. Kooker is not currently authorized to handle controlled substances in California, the state in which he practices. The order also notified Dr. Kooker that should no request for a hearing be filed within 30 days, his hearing right would be deemed waived.

The Order to Show Cause was sent by certified mail to Dr. Kooker at his registered location in Loomis, California. DEA received a signed receipt indicating that the Order to Show Cause was received by Dr. Kooker on or around June 27, 2002. DEA has not received a request for hearing on any other reply from Dr. Kooker or anyone purporting to represent him in this matter. Therefore, the Deputy Administrator, finding that (1) 30 days have passed since the receipt of the Order to Show Cause, and (2) no request for a hearing having been received, concludes that Dr. Kooker is deemed to have waived his hearing right. After considering material from the investigative file in this matter, the Deputy Administrator now enters his final order without a hearing pursuant to 21 CFR 1301.43(d) and (e) and 1301.46.

The Deputy Administrator finds that Dr. Kooker possessed DEA Certificate of Registratin AK1490779. The Deputy Administrator further finds that an investigation by DEA revealed that on July 28, 2000, the California Physician's and Surgeon's Board suspended Dr. Kooker's license to practice medicine in California and ordered that Dr. Kooker could not reapply for licensing until July 28, 2003.

DEA does not have statutory authority under the Controlled Substances Act to issue or maintain a registration if the applicant or registrant is without state authority to handle controlled substances in the state in which he conducts business. *See* 21 U.S.C. 802(21), 823(f) and 824(a)(3). This prerequisite has been consistently upheld. *See Muttaiya Darmarajeh, M.D.*, 66 FR 52936 (2001); *Dominick A. Ricci, M.D.*, 58 FR 51104 (1993); *Bobby Watts, M.D.*, 53 FR 11919 (1988).

Here, it is clear that Dr. Kooker is not licensed to handle controlled substances in the State of California, where he is registered with DEA. Therefore, he is not entitled to a DEA registration in that state.

Accordingly, the Deputy Administrator of the Drug Enforcement Administration, pursuant to the authority vested in him by 21 U.S.C. 823 and 824 and 28 CFR 0.100(b) and 0.104, hereby orders that DEA Certificate of Registration AK1490779, issued to Robert A. Kooker, M.D. be, and it hereby is, revoked. The Deputy Administrator further orders that any pending applications for renewal or modification of such registration be, and they hereby are, denied. This order is effective June 16, 2003.

Dated: April 23, 2003.

John B. Brown, III,

Deputy Administrator.

[FR Doc. 03–12158 Filed 5–14–03; 8:45 am]

BILLING CODE 4410–09–M

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

Records Schedules; Availability and Request for Comments

AGENCY: National Archives and Records Administration (NARA).

ACTION: Notice of availability of proposed records schedules; request for comments.

SUMMARY: The National Archives and Records Administration (NARA) publishes notice at least once monthly of certain Federal agency requests for records disposition authority (records schedules). Once approved by NARA, records schedules provide mandatory instructions on what happens to records when no longer needed for current Government business. They authorize the preservation of records of continuing value in the National Archives of the United States and the destruction, after a specified period, of records lacking administrative, legal, research, or other value. Notice is published for records schedules in which agencies propose to destroy records not previously authorized for disposal or reduce the retention period of records already authorized for disposal. NARA invites public comments on such records schedules, as required by 44 U.S.C. 3303a(a).

DATES: Requests for copies must be received in writing on or before June 30, 2003. Once the appraisal of the records is completed, NARA will send a copy of the schedule. NARA staff usually prepare appraisal memorandums that contain additional information concerning the records covered by a proposed schedule. These, too, may be requested and will be provided once the appraisal is completed. Requesters will be given 30 days to submit comments.

ADDRESSES: To request a copy of any records schedule identified in this notice, write to the Life Cycle Management Division (NWML), National Archives and Records Administration (NARA), 8601 Adelphi Road, College Park, MD 20740–6001. Requests also may be transmitted by FAX to 301–837–3698 or by e-mail to *records.mgt@nara.gov*. Requesters must cite the control number, which appears in parentheses after the name of the agency which submitted the schedule, and must provide a mailing address. Those who desire appraisal reports should so indicate in their request.

FOR FURTHER INFORMATION CONTACT: Paul M. Wester, Jr., Director, Life Cycle Management Division (NWML), National Archives and Records Administration, 8601 Adelphi Road, College Park, MD 20740–6001. Telephone: 301–837–3120. E-mail: *records.mgt@nara.gov*.

SUPPLEMENTARY INFORMATION: Each year Federal agencies create billions of records on paper, film, magnetic tape, and other media. To control this accumulation, agency records managers prepare schedules proposing retention periods for records and submit these schedules for NARA's approval, using the Standard Form (SF) 115, Request for Records Disposition Authority. These schedules provide for the timely transfer into the National Archives of historically valuable records and authorize the disposal of all other records after the agency no longer needs them to conduct its business. Some schedules are comprehensive and cover all the records of an agency or one of its major subdivisions. Most schedules, however, cover records of only one office or program or a few series of records. Many of these update previously approved schedules, and some include records proposed as permanent.

No Federal records are authorized for destruction without the approval of the Archivist of the United States. This approval is granted only after a thorough consideration of their administrative use by the agency of origin, the rights of the Government and

of private persons directly affected by the Government's activities, and whether or not they have historical or other value.

Besides identifying the Federal agencies and any subdivisions requesting disposition authority, this public notice lists the organizational unit(s) accumulating the records or indicates agency-wide applicability in the case of schedules that cover records that may be accumulated throughout an agency. This notice provides the control number assigned to each schedule, the total number of schedule items, and the number of temporary items (the records proposed for destruction). It also includes a brief description of the temporary records. The records schedule itself contains a full description of the records at the file unit level as well as their disposition. If NARA staff has prepared an appraisal memorandum for the schedule, it too includes information about the records. Further information about the disposition process is available on request.

Schedules Pending

1. Department of the Air Force, Agency-wide (N1–AFU–03–6, 2 items, 2 temporary items). Records used to determine manpower requirements for service-type contracts, including electronic copies of records created using electronic mail and word processing.

2. Department of the Army, Agency-wide (N1–AU–03–7, 4 items, 4 temporary items). Records relating to the nomination, selection/non-selection, and appointment of individuals to honorary regimental positions. Electronic copies of records created using electronic mail and word processing are included.

3. Department of the Army, Agency-wide (N1–AU–03–8, 3 items, 3 temporary items). Records relating to enlisted selection boards. Included are such records as selection board reporting files, promotion packets, and electronic copies of documents created using electronic mail and word processing. This schedule authorizes the agency to apply the proposed disposition instructions to any recordkeeping medium.

4. Department of the Army, Agency-wide (N1–AU–03–11, 3 items, 3 temporary items). Individual flight records, including aeronautical rating orders, flying status orders, suspension from flying status orders, qualification records, and reports of physical examinations. Electronic copies of records created using electronic mail and word processing are also included. The most current Individual Flight Record and Flight Certificate (Department of the Army Form 759) will be placed in the service member's Official Military Personnel File on separation.

5. Department of Defense, Office of the Inspector General (N1–509–03–3, 8 items, 6 temporary items). Records relating to the voluntary disclosure program, including program management files and case files lacking significance. Also included are electronic copies of documents created using electronic mail and word processing. Proposed for permanent retention are recordkeeping copies of policy files and significant case files.

6. Department of Justice, Drug Enforcement Administration (N1–170–03–3, 5 items, 5 temporary items). System inputs, outputs, master files, and documentation of the Hazardous Waste Disposal System, which is used to track the disposal of hazardous waste associated with clandestine drug laboratories and the funding of cleanup operations. Also included are electronic copies of documents created using electronic mail and word processing.

7. Department of the Navy, Agency-wide (N1–NU–03–1, 4 items, 4 temporary items). Records relating to security clearance adjudications accumulated by the Criminal Investigative Service, including electronic copies of records created using electronic mail and word processing.

8. Department of the Treasury, Office of the Assistant Secretary for Management and Chief Financial Officer (N1–56–03–4, 25 items, 20 temporary items). Committee files, collection loan files, and electronic tracking systems relating to equal employment opportunity complaints and human resource needs, artifacts and gifts, and graphics and printing work. Also included are electronic copies of records created using electronic mail and word processing. Proposed for permanent retention are recordkeeping copies of historical structure reports, artifact collection files, and project files accumulated by the Office of the Curator. Also proposed for permanent retention are Treasury building renovation project files and related quarterly reports.

9. Department of the Treasury, Bureau of the Public Debt (N1–53–03–5, 4 items, 4 temporary items). Agency web site pages, which include such materials as copies of official organizational publications, bulletin board postings, press releases, laws and guidance, savings bond calculators, and frequently asked questions.

10. Department of the Treasury, Bureau of the Public Debt (N1–53–03–6, 5 items, 3 temporary items). Motion picture films, video masters, video copies, and dubs regarding savings bond programs. Included are such materials as news stories, company-produced videos, infomercials, public service announcements, and focus group videos. Original films of historical savings bond program advertisements and campaigns are proposed for permanent retention.

11. Department of the Treasury, Bureau of the Public Debt (N1–53–03–7, 5 items, 5 temporary items). Inputs, outputs, system documentation, and master files of the Bureau Automated Tracking System, which is designed to track correspondence from customers requesting information or tracking transactions involving Treasury securities.

12. Department of the Treasury, Bureau of the Public Debt, (N1–53–03–8, 7 items, 7 temporary items). Records relating to securities and coupon shipments, audit copies of advices from automated systems, payment due notices, customer contact records, and Treasury securities case files. Also included are electronic copies of documents created using electronic mail and word processing.

13. Department of the Treasury, Bureau of the Public Debt (N1–53–03–9, 150 items, 150 temporary items). Inputs, outputs, system documentation, and master files of the Savings Bond Replacement System, which is used to process cash and security transactions resulting from the sale and retirement of accrual and retirement type securities.

14. Environmental Protection Agency, Office of Environmental Information (N1–412–03–7, 4 items, 4 temporary items). Software programs, inputs, documentation, and master files associated with an electronic system used to catalog metadata pertaining to the definition, sources, and uses of environmental data, including information relating to chemical identification, biological taxonomy, and associated terminology.

15. National Archives and Records Administration, Office of Records Services—Washington, DC (N1–64–03–2, 3 items, 1 temporary item). Raw input electronic files resulting from the conversion of microfilm images of punch cards of Army serial numbers to ASCII data files. Proposed for permanent retention are merged raw files and merged processed files.

16. Small Business Administration, Office of Government Contracting and Business Development (N1–309–03–1, 7 items, 5 temporary items). System inputs, outputs, and backups of the Technology Marketing Access Network, which contains demographic data and contract information on firms that have received awards under the Small Business Innovation Research and Small Business Technology Transfer Programs. Also included are electronic copies of documents created using electronic mail and word processing. Proposed for permanent retention are the master data files and the associated technical documentation.

17. Small Business Administration, Office of Government Contracting and Business Development (N1–309–03–3, 7 items, 5 temporary items). Inputs, outputs, and system backups of an electronic system used to approve businesses as eligible for assistance because they are located in "historically underutilized business zones." Also included are electronic copies of documents created using electronic mail and word processing. Proposed for permanent retention are master files and the technical system documentation.

18. Small Business Administration, Office of Government Contracting and Business Development (N1–309–03–5, 11 items, 9 temporary items). Inputs, outputs, and system backups of an electronic system containing information on small businesses that is used for marketing their capabilities for contracts with the Federal Government and large businesses. Also included are electronic copies of documents created using electronic mail and word processing. Proposed for permanent retention are master data files and system documentation.

19. United States Office of Special Counsel, Agency-wide (N1–481–03–1, 23 items, 13 temporary items). Reading files, conflict of interest files, surveys, Alternative Dispute Resolution case files, program administrative files, litigation/investigative case files, and other records. Also included are electronic copies of records created using electronic mail and word processing. Proposed for permanent retention are recordkeeping copies of such records as final opinions, subject files, and calendars of the Special Counsel and Deputy Special Counsel, legal opinions, advisory opinions, record sets of directives, official publications, press releases, and significant litigation and investigative case files.

Dated: May 9, 2003.

Michael J. Kurtz,

Assistant Archivist for Record Services—Washington, DC.

[FR Doc. 03–12130 Filed 5–14–03; 8:45 am]

BILLING CODE 7515–01–P

NATIONAL COMMISSION ON TERRORIST ATTACKS UPON THE UNITED STATES

National Commission on Terrorist Attacks Upon the United States; Public Hearing

ACTION: Notice of public hearing.

SUMMARY: The National Commission on Terrorist Attacks Upon the United States will hold its second public hearings on May 22 and May 23, 2003, in Washington, DC. Congressional witnesses and people with expertise on aviation security will testify. Representatives of the media should register with the Commission in advance of the hearing. Seating for the general public will be on a first-come, first-served basis. Press availability will occur at the conclusion of each day's hearing.

DATES: May 22, 9 a.m. to 4 p.m., May 23, 9 a.m. to 1 p.m.

ADDRESSES: Hart Senate Office Building, 2nd and D Streets, NE., Washington, DC 20515.

FOR FURTHER INFORMATION CONTACT: Al Felzenberg (202) 301–4062 and (202) 236–4878 (Cellular).

SUPPLEMENTARY INFORMATION: Please refer to Public Law 107–306 (November 27, 2002), title VI (Legislation creating the Commission), and the Commission's Web site: *www.9-11Commission.gov*.

Dated: May 8, 2003.

Philip Zelikow,

Executive Director.

[FR Doc. 03–12108 Filed 5–14–03; 8:45 am]

BILLING CODE 5800–01–M

NATIONAL COUNCIL ON DISABILITY

Cultural Diversity Advisory Committee Meetings (Teleconferences)

AGENCY: National Council on Disability (NCD).

Times and Dates: 1:30 p.m. EDT, June 13, 2003, and August 15, 2003

Place: National Council on Disability, 1331 F Street, NW., Suite 850, Washington, DC.

Status: All parts of these meetings will be open to the public. Those interested in participating in these meetings should contact the appropriate staff member listed below. Due to limited resources, only a few telephone lines will be available for the conference calls.

Agenda: Roll call, announcements, reports, new business, adjournment.

Contact Person for More Information: Geraldine (Gerrie) Drake Hawkins, Ph.D., Program Specialist, NCD, 1331 F Street, NW., Suite 850, Washington, DC 20004; 202–272–2004 (voice), 202–272–2074 (TTY), 202–272–2022 (fax), *ghawkins@ncd.gov* (e-mail).

Cultural Diversity Advisory Committee Mission: The purpose of NCD's Cultural Diversity Advisory Committee is to provide advice and recommendations to NCD on issues affecting people with disabilities from culturally diverse backgrounds. Specifically, the committee will help identify issues, expand outreach, infuse participation, and elevate the voices of underserved and unserved segments of this nation's population that will help NCD develop federal policy that will address the needs and advance the civil and human rights of people from diverse cultures.

Dated: May 12, 2003.

Ethel D. Briggs,

Executive Director.

[FR Doc. 03–12167 Filed 5–14–03; 8:45 am]

BILLING CODE 6820–MA–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 40–8989]

Envirocare of Utah, Inc.; Notice of Receipt of Amendment Request and Opportunity To Request a Hearing

I. Introduction

The U.S. Nuclear Regulatory Commission (NRC) has received, by letter dated March 27, 2003, a request from Envirocare of Utah, Inc., for approval of a license amendment to Materials License SMC–1559 to authorize it to receive and dispose of byproduct material, as defined in section 11e.(2) of the Atomic Energy Act (AEA) of 1954, as amended (hereafter referred to as 11e.(2) byproduct material), with concentrations of Ra–226 up to 100,000 pico curies per gram (pCi/g). Envirocare also requested approval of a revision to its License Application to allow disposal of containerized waste.

The Envirocare facility, located at Clive, Utah, is licensed by NRC to accept and dispose of 11e.(2) byproduct material received from others. Currently, Envirocare's license restricts the concentration of Ra–226 in 11e.(2) byproduct material received by Envirocare to 4000 pCi/g. Additionally, Envirocare's License Application discusses disposal of unpackaged 11e.(2) byproduct material. The unpackaged material is to be put into the disposal cell in layers not exceeding 12 inches.

The request from Envirocare, if granted by NRC, would allow 11e.(2) byproduct material with higher concentrations of Ra–226 to be disposed of at the facility. It would allow the higher activity material to be containerized and disposed of in containers that will not meet the existing 12 inch layering requirement.

The staff will review Envirocare's request for conformance with 10 CFR parts 20 and 40, using NUREG–1620, "Standard Review Plan for the Review of a Reclamation Plan for Mill Tailings Sites Under Title II of the Uranium Mill Tailings Radiation Control Act" and other applicable agency regulations and guidance. If NRC approves Envirocare's request, the approval will be documented in an amendment to Envirocare's license. However, before approving the request, NRC will need to make the findings required by the AEA and NRC regulations. These findings will be documented in a Technical Evaluation Report and either an Environmental Assessment or an Environmental Impact Statement.

II. Opportunity To Request a Hearing

The NRC hereby provides notice that this is a proceeding on an application for an amendment of a license falling within the scope of Subpart L, "Informal Hearing Procedures for Adjudications in Materials and Operator Licensing Proceedings" of NRC's rules and practice for domestic licensing proceedings in 10 CFR part 2. Pursuant to § 2.1205(a), any person whose interest may be affected by this proceeding may file a request for a hearing in accordance with § 2.1205(d). A request for a hearing must be filed within 30 days of the publication of this **Federal Register** notice.

The request for a hearing must be filed with the Office of the Secretary, either:

(1) By delivery to the Rulemaking and Adjudications Staff of the Office of the Secretary of the Commission at One White Flint North, 11555 Rockville Pike, Rockville, MD 20852, between 7:45 a.m. and 4:15 p.m., Federal workdays; or

(2) By mail or telegram addressed to the Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Rulemaking and Adjudications Staff. Because of continuing disruptions in the delivery of mail to United States Government offices, it is requested that requests for hearing also be transmitted to the Secretary of the Commission either by means of facsimile transmission to 301–415–1101, or by e-mail to *hearingdocket@nrc.gov*.

In accordance with 10 CFR 2.1205(f), each request for a hearing must also be served, by delivering it personally or by mail, to:

(1) The applicant, Envirocare of Utah, Inc., 605 North 5600 West, Salt Lake City, Utah 84116; and

(2) The NRC staff, by delivery to the Office of the General Counsel, One White Flint North, 11555 Rockville Pike, Rockville, MD 20852, between 7:45 a.m. and 4:15 p.m., Federal workdays, or by mail addressed to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555. Because of continuing disruptions in the delivery of mail to United States Government offices, it is requested that requests for hearing also be transmitted to the Office of the General Counsel, either by means of facsimile transmission to 301–415–3725, or by e-mail to *OGCMailCenter@nrc.gov*.

In addition to meeting other applicable requirements of 10 CFR part 2 of the NRC's regulations, a request for a hearing filed by a person other than an applicant must describe in detail:

(1) The interest of the requestor;

(2) How that interest may be affected by the results of the proceeding, including the reasons why the requestor should be permitted a hearing, with particular reference to the factors set out in § 2.1205(h);

(3) The requestor's areas of concern about the licensing activity that is the subject matter of the proceeding; and

(4) The circumstances establishing that the request for a hearing is timely in accordance with § 2.1205(d).

III. Further Information

The application for the license amendment and the request to revise the License Application are available for inspection at NRC's Public Electronic Reading Room at *http://www.nrc.gov/reading-rm/adams.html*. [ADAMS Accession No. ML031000416] Documents may also be examined and/or copied for a fee, at the NRC's Public Document Room, located at One White Flint North, 11555 Rockville Pike, Rockville, MD 20854. Any questions with respect to this action should be referred to Myron Fliegel, Fuel Cycle Facilities Branch, Division of Fuel Cycle Safety and Safeguards, Office of Nuclear Materials Safety and Safeguards, U.S. Nuclear Regulatory Commission, Mail Stop T8–A33, Washington, DC 20555–0001. Telephone: (301) 415–6629.

Dated at Rockville, Maryland, this 9th day of May, 2003.

For the Nuclear Regulatory Commission.

Eric J. Leeds,

Deputy Director, Division of Fuel Cycle Safety and Safeguards, Office of Nuclear Materials Safety and Safeguards.

[FR Doc. 03–12114 Filed 5–14–03; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Public Meeting on Regulatory Oversight of the Potential High-Level Waste Repository at Yucca Mountain, NV

AGENCY: U.S. Nuclear Regulatory Commission.

ACTION: Notice of public meeting in Tecopa, California.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) staff will hold a public meeting to discuss regulatory oversight of the potential high-level waste repository at Yucca Mountain. The meeting is intended to foster a common understanding among the stakeholders on safety and regulatory issues, should the U.S. Department of Energy (DOE) submit a license application to the NRC for a possible geologic repository at Yucca Mountain, Nevada. The meeting will be facilitated by Francis X. Cameron, Special Counsel for Public Liaison, Office of the General Counsel, NRC.

The meeting is primarily to acquaint the public with the NRC's oversight of a potential high-level waste repository at Yucca Mountain. It will include an overview of NRC's responsibilities and preparations for evaluating the safety of a potential repository, including the protection of groundwater; and conclude with an overview of the NRC's role with respect to the transportation and security of spent nuclear fuel. Several opportunities for questions will be provided. In addition, members of the NRC staff will be available for informal discussion with members of the public. The date, time, and location of the public meeting is shown below.

Date/Time: Wednesday, June 4, 2003, from 6:30 p.m.–8:30 p.m. (Pacific time).

Place: Tecopa Community Center, Hot Springs Road, Tecopa, California.

FOR FURTHER INFORMATION CONTACT: Francis X. Cameron, Special Counsel for Public Liaison, Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington DC 20555–0001, or by telephone: (301) 415–1642 or e-mail: *fxc@nrc.gov*.

Dated at Rockville, Maryland this 8th day of May, 2003.

For the Nuclear Regulatory Commission.

Janet R. Schlueter,

Chief, High-Level Waste Branch, Division of Waste Management, Office of Nuclear Material Safety and Safeguards.

[FR Doc. 03–12115 Filed 5–14–03; 8:45 am]

BILLING CODE 7590–01–P

PENSION BENEFIT GUARANTY CORPORATION

Required Interest Rate Assumption for Determining Variable-Rate Premium; Interest Assumptions for Multiemployer Plan Valuations Following Mass Withdrawal

AGENCY: Pension Benefit Guaranty Corporation.

ACTION: Notice of interest rates and assumptions.

SUMMARY: This notice informs the public of the interest rates and assumptions to be used under certain Pension Benefit Guaranty Corporation regulations. These rates and assumptions are published elsewhere (or can be derived from rates published elsewhere), but are collected and published in this notice for the convenience of the public. Interest rates are also published on the PBGC's Web site (*http://www.pbgc.gov*).

DATES: The required interest rate for determining the variable-rate premium under part 4006 applies to premium payment years beginning in May 2003. The interest assumptions for performing multiemployer plan valuations following mass withdrawal under part 4281 apply to valuation dates occurring in June 2003.

FOR FURTHER INFORMATION CONTACT: Harold J. Ashner, Assistant General Counsel, Office of the General Counsel, Pension Benefit Guaranty Corporation, 1200 K Street, NW., Washington, DC 20005, 202–326–4024. (TTY/TDD users may call the Federal relay service toll-free at 1–800–877–8339 and ask to be connected to 202–326–4024.)

SUPPLEMENTARY INFORMATION:

Variable-Rate Premiums

Section 4006(a)(3)(E)(iii)(II) of the Employee Retirement Income Security Act of 1974 (ERISA) and § 4006.4(b)(1) of the PBGC's regulation on Premium Rates (29 CFR part 4006) prescribe use of an assumed interest rate (the "required interest rate") in determining a single-employer plan's variable-rate premium. The required interest rate is the "applicable percentage" (currently 100 percent) of the annual yield on 30-year Treasury securities for the month preceding the beginning of the plan year for which premiums are being paid (the "premium payment year"). (Although the Treasury Department has ceased issuing 30-year securities, the Internal Revenue Service announces a surrogate yield figure each month—based on the 30-year Treasury bond maturing in February 2031—which the PBGC uses to determine the required interest rate.)

The required interest rate to be used in determining variable-rate premiums for premium payment years beginning in May 2003 is 4.90 percent.

The following table lists the required interest rates to be used in determining variable-rate premiums for premium payment years beginning between June 2002 and May 2003.

For premium payment years beginning in:	The required interest rate is:
June 2002	5.65
July 2002	5.52
August 2002	5.39
September 2002	5.08
October 2002	4.76
November 2002	4.93
December 2002	4.96
January 2003	4.92
February 2003	4.94
March 2003	4.81
April 2003	4.80
May 2003	4.90

Multiemployer Plan Valuations Following Mass Withdrawal

The PBGC's regulation on Duties of Plan Sponsor Following Mass Withdrawal (29 CFR part 4281) prescribes the use of interest assumptions under the PBGC's regulation on Allocation of Assets in Single-Employer Plans (29 CFR part 4044). The interest assumptions applicable to valuation dates in June 2003 under part 4044 are contained in an amendment to part 4044 published elsewhere in today's **Federal Register**. Tables showing the assumptions applicable to prior periods are codified in appendix B to 29 CFR part 4044.

Issued in Washington, DC, on this 9th day of May 2003.

Joseph H. Grant,

Deputy Executive Director and Chief Operating Officer, Pension Benefit Guaranty Corporation.

[FR Doc. 03–12117 Filed 5–14–03; 8:45 am]

BILLING CODE 7708–01–F

SECURITIES AND EXCHANGE COMMISSION

Sunshine Act Meeting

FEDERAL REGISTER CITATION OF PREVIOUS ANNOUNCEMENT: (68 FR 23332, May 1, 2003).

Status: Closed meetings.

Place: 450 Fifth Street, NW., Washington, DC.

Date and Time of Previously Announced Meeting: Thursday, May 8, 2003.

Change in the Meeting: Additional item/additional meeting.

The following item was added to the closed meeting of Thursday, May 8, 2003: litigation matter.

An additional closed meeting was held on Friday, May 9, 2003, at 3 p.m.

The subject matter of the closed meeting scheduled for Friday, May 9, 2003, was: litigation matter.

Commissioner Goldschmid, as duty officer, determined that Commission business required the above change and that no earlier notice thereof was possible.

At times, changes in Commission priorities require alterations in the scheduling of meeting items. For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact the Office of the Secretary at (202) 942–7070.

Dated: May 12, 2003.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 03–12221 Filed 5–12–03; 4:29 pm]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–47816; File No. SR–BSE–2003–03]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the Boston Stock Exchange, Incorporated, Relating to Its Floor Operations Fee Schedule

May 8, 2003.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on March 24, 2003, the Boston Stock Exchange, Incorporated ("Exchange"), filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II and III below, which Items have been prepared by the Exchange. On April 22, 2003, the Exchange filed Amendment No. 1 to the proposed rule change.[3] The Exchange has designated

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] In Amendment No. 1, the Exchange amended the proposal (i) to clarify the language in the proposed rule change and (ii) to seek immediate effectiveness of the proposed rule change pursuant to section 19(b)(3)(A) of the Act and subparagraph

Continued

this proposal as one establishing or changing a due, fee or other charge imposed by the self-regulatory organization under section 19(b)(3)(A)(ii) of the Act [4] and Rule 19b–4(f)(2) thereunder,[5] which renders the proposed rule change effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend its Floor Operations Fee Schedule to include a provision for the pass-through of miscellaneous trading related fees. The text of the proposed rule change is below. Proposed new language is in *italics*.

* * * * *

Floor Operation Fees

(1) Occupancy/Technology:	
Occupancy Fee	$500.00 per post per month.
Specialist/Floor Trader Technology Fee	$500.00 per Beacon terminal per month.
Floor Broker Technology Fee	$100.00 per Beacon terminal per month.
Security Routing Fee	$500.00 per month per Beacon user-ID that has stocks routed to it.
Floor Facility Fee	$250.00 per person that regularly accesses the trading floor.
Electronic Trading Permit Fee	$1,000.00 per trader trading from a remote location per month.
(2) Specialist Post Clearing and Cashiering:	
Post Cashiering Fee	$750.00 per specialist book for first 3 books per firm. $100.00 per specialist book for any books in excess of 3 per firm.
Clearing Fee	$.05 per trade.
(3) *Listed* Specialist Trade Processing Fees/Credits:	
Pre-Opening Trades	No Charge.
Trades in CTA Securities ranked 1,001 and greater	No Charge (BSE executions only).
Round lot	$.50 per order.
Odd Lot Trades (includes CSI Issues)	$.05 per order ($400 maximum per account).
Trading Account Trades	$1.50 per order.
ETF Trade Credit	$2.00 per trade (maximum annual credit capped at total amount paid in upfront annual registration fees).

Listed Securities

	Monthly Transaction Fee Maximum
A. Maximum Total Round lot/Odd lot charges:	
CTA Trade Rank:	
1–50	$400.
51–100	$300.
101–500	$250.
501+	$0*.

* Includes BSE executions only. For all other executions, the applicable trade rate will apply.

B. Credit:	
Primary Specialist	$.50 per trade (based on Competing Specialist trade volume).

(Total of the assessed fees for round lot/odd lot trades and trade credits will not be less than zero on a per issue basis)

(4) Other Charges:	
ITS User Fee	$.003 per share on net outbound specialist trades (charge for outgoing trades offset by cumulative credit for incoming trades); No charge for non-specialist firms.
Quotation Services	Member assumes 100% of cost.
Specialist Margin Account Financing	Charged daily at current broker call rate.
Solely Listed Issue Credit	$50.00 Credit per issue traded.
Miscellaneous Trading Charges	*Direct pass through of all miscellaneous trading charges, such as Nasdaq fees, other market center access fees, ECN access fees, trading-related telecommunications charges, market data service charges, and other similar fees and charges.*
Miscellaneous Administrative Charges	*At cost for phone, postage, courier service, fax usage, after hours BSE staff assistance and other applicable items.*
Late Fees	1.5% will be charged on outstanding balances as of the last calendar day of the month.

* * * * *

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of the proposed rule change is to amend the Exchange's Floor Operation Fee schedule to include a provision for the pass-through of all miscellaneous fees to its members who incur such charges as a result of trading activity on the Exchange. The provision would allow for, among other things, as applicable, the pass-through of all Nasdaq fees, other market center access fees, ECN access fees, trading-related telecommunications charges, market data service charges, and other similar charges.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with section 6 of the Act,[6] in general, and section 6(b)(4) of the Act,[7] in particular, in that it provides for the equitable allocation of reasonable dues, fees, and other charges among its members.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

The Exchange has neither solicited nor received comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The proposed rule change has become immediately effective pursuant to section 19(b)(3)(A)(ii) of the Act,[8] and subparagraph (f)(2) of Rule 19b–4 thereunder,[9] in that it establishes or changes a due, fee, or other charge imposed by the self-regulatory organization. At any time within 60 days of the filing of such proposed rule change, the Commission may summarily abrogate the rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the Exchange. All submissions should refer to File No. SR–BSE–2003–03 and should be submitted by June 5, 2003.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[10]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 03–12147 Filed 5–14–03; 8:45 am]

BILLING CODE 8010–01–P

(f)(2) of Rule 19b–4 thereunder. *See* letter dated April 22, 2003, from John Boese, Vice President, Legal and Compliance, Exchange, to Katherine England, Assistant Director, Division of Market Regulation, Commission. For purposes of calculating the 60-day period within which the Commission may summarily abrogate the proposed rule change under section 19(b)(3)(C) of the Act, the Commission considers that the period to commence on April 22, 2003, the date the Exchange filed Amendment No. 1. *See* 15 U.S.C. 78s(b)(3)(C).

[4] 15 U.S.C. 78s(b)(3)(A)(ii).

[5] 17 CFR 240.19b–4(f)(2).

[6] 15 U.S.C. 78f.

[7] 15 U.S.C. 78f(b)(4).

[8] 15 U.S.C. 78s(b)(3)(A)(ii).

[9] 17 CFR 240.19b–4(f)(2).

[10] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–47818; File No. SR–CBOE–2003–02]

Self-Regulatory Organizations; Order Granting Approval of Proposed Rule Change by the Chicago Board Options Exchange, Inc., Relating to the Reporting of Other Affiliations of Associated Persons to the Exchange

May 8, 2003.

I. Introduction

On January 9, 2003, the Chicago Board Options Exchange, Inc. ("CBOE" or "Exchange"), filed with the Securities and Exchange Commission ("Commission"), pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and rule 19b-4 thereunder,[2] a proposed rule change relating to a member's obligation to report other affiliations of its Associated Persons ("APs") to the Exchange. Notice of the proposed rule change was published for comment in the **Federal Register** on February 5, 2003.[3] The Commission received one comment letter on the proposed rule change.[4] On March 10, 2003, CBOE filed Amendment No. 1 to the proposed rule change.[5] This order approves the proposed rule change, as amended.

II. Description of the Proposed Rule Change

A. Text of the Proposed Rule Change

The Exchange proposes to amend its rules requiring members to report outside business affiliations of their personnel to the Exchange. Below is the text of the proposed rule change. Proposed new language is *italicized*. Proposed deletions are in [brackets].[6]

* * * * *

Chicago Board Options Exchange, Inc.

Rules

* * * * *

Rule 3.6A. Qualification and Registration of Certain Associated Persons

(a) Financial/Operations Principal. Each individual member or member organization subject to Exchange Act rule 15c3–1 shall designate a Financial/Operations Principal. The duties of a Financial/Operations Principal shall include taking appropriate actions to assure that the member complies with applicable financial and operational requirements under the rules and the Exchange Act, including but not limited to those requirements relating to the submission of financial reports and the maintenance of books and records. Each Financial/Operations Principal is required to have successfully completed the Financial and Operations Principal Examination (Series 27 Exam). Each Financial/Operations Principal designated by a member shall be registered in that capacity with the Exchange in a form and manner prescribed by the Exchange. A Financial/Operations Principal of a

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 47290 (January 30, 2003), 68 FR 5945 ("Notice").

[4] March 6, 2003 letter from Brian C. Underwood, Senior Vice President—Director of Compliance, A.G. Edwards & Sons, Inc., to Jonathan Katz, Secretary, Commission. The commenter expressed support for the proposed rule change.

[5] In Amendment No. 1, CBOE added a comma immediately following the phrase "Financial / Operations Principal" in revised CBOE rule 9.4. This grammatical correction clarifies the scope of application of rule 9.4(b) to Registered Options Principals and Sales Supervisors, in accordance with the intent of the proposal, as described in the Notice. This is a technical amendment to the proposed rule change that does not require notice and comment. *See* e-mail from Jaime Galvan, Attorney, CBOE, to Andrew Shipe, Special Counsel, Division of Market Regulation, Commission, dated March 10, 2003 ("Amendment No. 1").

[6] The text of the proposed rule change was published in the notice. This publication of rule text corrects a typographical error in the notice to show that the phrase "and Registered Representative" in revised CBOE rule 9.4(b) should have been marked as deleted by placing it in [brackets].

member may be a full-time employee [of the member], [or with the prior written approval of the Exchange, may be] a part-time employee or independent contractor of the member. *Member firms for which the Exchange is the Designated Examining Authority ("DEA") must provide prompt written notice to the Exchange's Department of Financial and Sales Practice Compliance for each person designated as a Financial/Operations Principal reporting whether such person is a full-time employee, part-time employee, independent contractor or has any outside business affiliations.*

(b) No change.

* * * *Interpretations and Policies:*

.01—.03 No change.

* * * * *

CHAPTER IX

* * * * *

Doing Business with the Public

Rule 9.4. Other Affiliations of Registered [Representatives] *Associated Persons*

(a) No person associated with a member in any registered capacity shall be employed by, or accept compensation from, any other person or entity as a result of any business activity, other than a passive investment, outside the scope of his/her relationship with his/her employer firm, unless the person has provided prompt written notice to the member and has received prior written consent of the member.

(b) Except with *the prior written consent of the member and* [express] *prompt* written *notice to* [permission of] the Exchange, every Registered Options Principal, *Sales Supervisor, and Financial/Operations Principal, registered with a member for which the Exchange is the Designated Examining Authority ("DEA")* [and Registered Representative] shall devote his/*her* entire time during business hours to the business of the member organization employing [him] *or compensating him/her.* [or to the business of its affiliates which are engaged in the transaction of business as a broker or dealer in securities or commodities or in such other businesses as have been approved by the Exchange.]

* * * * *

B. Description of the Proposed Rule Change

Currently, CBOE rule 9.4 ("Other Affiliations of Registered Representatives") requires a member firm's Registered Representatives and Registered Options Principals ("ROPs") to obtain express written permission from the Exchange in order to engage in any business, other than that of their member organization, during business hours. Further, CBOE rule 3.6A ("Qualification and Registration of Certain Associated Persons") provides that a member firm may employ a part-time employee or independent contractor as a Financial/Operations Principal, provided that it receives the prior written approval of the Exchange to do so.

Pursuant to the proposed rule change, CBOE would amend rule 9.4 to apply to all of a member firm's registered APs. The rule would now provide that, other than in the case of a passive investment, all such persons would be required to give prompt written notice to the employing member, and to receive the member's prior written consent, with respect to outside business activities. Where CBOE is the firm's Designated Examining Authority, and the AP in question is a ROP, Sales Supervisor, or Financial / Operations Principal, the CBOE will also require prompt written notice to the Exchange. CBOE rule 3.6A's restrictions on FINOPs would also be amended with changes corresponding to the new provisions of rule 9.4.

III. Discussion

After careful review, the Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.[7] In particular, the Commission believes that the proposal is consistent with section 6(b)(5) of the Act,[8] which requires, among other things, that the rules of an exchange be designed to promote just and equitable principles of trade and to protect investors and the public interest.

The Commission believes that the proposed rule change will provide CBOE with information that it needs to regulate its member firms. The Commission further notes that the proposed rules are similar to rules of other self-regulatory organizations.[9] Finally, the proposed rule change does not alter in any way the obligation of a CBOE member or member organization to oversee the operation of its business and supervise the performance of its associated persons, including any potential conflicts of interest involving any associated person, in a manner that assures compliance with the Act and rules and regulations thereunder, as well as applicable rules of the CBOE. To this end, the Commission notes that CBOE member firms will be obligated to review and approve in writing any outside business arrangements of their personnel.

Therefore, the Commission believes that the proposal is consistent with section 6(b)(5) of the Act,[10] which requires, among other things, that the rules of an exchange be designed to promote just and equitable principles of trade, and to protect investors and the public interest.

IV. Conclusion

It is therefore ordered, pursuant to section 19(b)(2) of the Act,[11] that the proposed rule change, as amended (File No. SR–CBOE–2003–02) be, and it hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[12]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 03–12145 Filed 5–14–03; 8:45 am]

BILLING CODE 8010–01–P

[7] In approving this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78(c)(f).

[8] 15 U.S.C. 78f(b)(5).

[9] *See* American Stock Exchange rule 342(b), National Association of Securities Dealers rule 3030, New York Stock Exchange rule 346(b), Pacific Exchange rule 1.26(d) and Philadelphia Stock Exchange rule 793.

[10] 15 U.S.C. 78f(b)(5).

[11] 15 U.S.C. 78s(b)(2).

[12] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–47812; File No. SR–CME–2003–01]

Self-Regulatory Organizations; Notice of Filing and Order Granting Accelerated Approval of a Proposed Rule Change by the Chicago Mercantile Exchange To Adopt, on a Permanent Basis, a Standard Under Which a Market Maker Can Qualify for Exclusion From CME's Margin Rules

May 7, 2003.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on May 7, 2003, the Chicago Mercantile Exchange ("CME" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I and II below, which Items have been prepared by CME. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons and to grant accelerated approval of the proposed rule change.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Amendments

CME proposes to adopt, on a permanent basis, CME Rule 930.B.2.b.(3) (herein referred to as "Market Maker Exclusion"). On November 8, 2002, the Commission approved the Market Maker Exclusion on a pilot basis, ending May 7, 2003 (the "Pilot").[3] CME believes that permanent approval of the Market Maker Exclusion is consistent with the jointly adopted margin rules of the Commission and the Commodity Futures Trading Commission ("CFTC") (collectively, "Commissions").

Below is the text of the proposed rule change that CME proposes to adopt on a permanent basis.

* * * * *

930.B. Performance Bond Rates

1. Non-Security Futures (No Change).

2. Security Futures

a.–b. (1) and (2) (No change).

(3) The Market Maker:

(i) Is assigned to a group of Security Futures Contracts listed on the Exchange that is either unlimited in nature ("Unlimited Assignment"); or, is assigned to no more that 20% of the Security Futures Contracts listed on the Exchange ("Limited Assignment");

(ii) At least 75% of the Market Maker's total trading activity in Exchange Security Futures Contracts is in its assigned Security Futures Contracts, measured on a quarterly basis;

(iii) During at least 50% of the trading day the Market Maker has bids or offers in the market that are at or near the best market, except in unusual market conditions as determined by the Exchange (such as a fast market in either a Security Futures Contract or a security underlying a Security Futures Contract), with respect to at least 25% (in the case of an Unlimited Assignment) or at least one (in the case of a Limited Assignment) of its assigned Security Futures Contracts; and

(iv) The requirements in (ii) and (iii) are satisfied on (a) at least 90% of the trading days in each calendar quarter by Market Makers who have undertaken an Unlimited Assignment; or (b) at least 80% of the trading days in each calendar quarter by Market Makers who have undertaken a Limited Assignment; or (c) on at least 80% of the trading days in each calendar quarter by Market Makers who have undertaken either an Unlimited Assignment or Limited Assignment but where the Exchange is listing four (4) or fewer Security Futures Contracts.

For purposes of clauses (1) and (2) above, beginning on the 181st calendar day after the commencement of trading of Security Futures Contracts on the Exchange, a "meaningful proportion of the total trading volume of Security Futures Contracts on the Exchange" shall mean a minimum of 20% of such trading volume.

Any Market Maker that fails to comply with the applicable Rules of the Exchange, CFTC Regulations 41.41 through 41.49 and SEC Regulations 242.400 through 242.406 shall be subject to disciplinary action in accordance with Chapter 4. Appropriate sanctions in the case of any such failure shall include, without limitation, a revocation of such Market Maker's registration as a Security Futures Dealer.

c.–d. (No Change),

* * * * *

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the proposed Rule Change

In its filing with the Commission, the CME included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item III below. The CME has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The CME proposes to adopt, on a permanent basis, the Market Maker Exclusion, which sets forth the standards under which a CME member may be excluded from the Exchange's margin requirements as a "market maker." The CME believes that the proposed rule change is consistent with Commission Rule 400(c)(2)(v) under the Act[4] and CFTC Rule 41.42(c)(2)(v),[5] which establish standards by which members of national securities exchanges may qualify as Security Futures Dealers and therefore be excluded from customer margin requirements for security futures.

The CME notes that the Market Maker Exclusion has not actually been deployed in practice at the Exchange to date. In addition, the CME notes that the Commission has received no comment letters on this matter during the pilot period. The CME proposes no changes to the Market Maker Exclusion and, therefore, CME proposes to adopt the proposed rule change on a permanent basis.

2. Statutory Basis

The CME believes that the proposed rule change is consistent with section 6(b)(5) of the Act[6] in that it promotes competition and is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and to protect investors and the public interest. The CME believes that the proposed rule change is designed to accomplish these goals by permitting members to trade security futures, as permitted under the Commission's Rule.

B. Self-Regulatory Organization's Statement on Burden on Competition

The CME does not believe that the proposed rule change will have an impact on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Comments on the proposed rule change have not been solicited and none have been received.

III. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference

[3] *See* Securities Exchange Act Release No. 46792 (November 8, 2002), 67 FR 69273 (November 15, 2002).

[4] 17 CFR 242.400(c)(2)(v).

[5] 17 CFR 41.42(c)(2)(v).

[6] 15 U.S.C. 78f(b)(5).

Room. Copies of such filing will also be available for inspection and copying at the principal office of the CME. All submissions should refer to File No. SR–CME–2003–01 and should be submitted by June 5, 2003.

IV. Commission Findings and Order Granting Accelerated Approval of a Proposed Rule Change

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.[7] In particular, the Commission believes that the proposed rule change is consistent with the requirements of section 6(b)(5) of the Act,[8] which requires, among other things, that the rules of the Exchange be designed to promote just and equitable principles of trade and, in general, to protect investors and the public interest.[9] In addition, the Commission believes that the proposed rule change is consistent with section 7(c)(2)(B) of the Act,[10] which provides, among other things, that the margin requirements for security futures must preserve the financial integrity of markets trading security futures, prevent systemic risk, be consistent with the margin requirements for comparable exchange-traded options, and provide that the margin levels for security futures may be no lower than the lowest level of margin, exclusive of premium, required for any comparable exchange-traded option.

The Commission believes that the CME's standards for market makers under Rule 930.B.2.b.(3) are consistent with the Act, and Rule 400(c)(2)(v) thereunder.[11] Specifically, Rule 400(c)(2)(v) provides that the Commissions' joint margin rules do not apply to a member of a national securities exchange that is registered with such exchange as a "Security Futures Dealer" pursuant to exchange rules that must meet several criteria, including a requirement that a Security Futures Dealer be required to "to hold itself out as being willing to buy and sell security futures for its own account on a regular and continuous basis." The Commission believes that the affirmative obligations required by the CME pursuant to Rule 930.B.2.b.(3) satisfy this requirement.

The CME has requested that the Commission approve the proposed rule change prior to the thirtieth day after publication of notice of the filing in the **Federal Register**. The Commission finds good cause for approving the proposed rule change prior to the thirtieth day after the date of publication of notice of filing thereof in the **Federal Register**. The Commission believes that accelerated approval of the proposed rule change should enable CME members to trade security futures as market makers under the Market Maker Exclusion without undue delay. The Commission notes that it approved the Market Maker Exclusion as a temporary pilot to give members of the public an opportunity to comment on the substance of the Market Maker Exclusion. The Commission received no comments on the Pilot. Accordingly, the Commission finds good cause, consistent with section 19(b)(2) of the Act,[12] to approve the proposed rule change prior to the thirtieth day after publication of the notice of filing.

V. Conclusion

It is therefore Ordered, pursuant to section 19(b)(2) of the Act,[13] that the proposed rule change (File No. SR–CME–2003–01) be approved, on a permanent basis, on an accelerated basis.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[14]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 03–12148 Filed 5–14–03; 8:45 am]

BILLING CODE 8010–01–P

[7] 15 U.S.C. 78s(b)(2).

[8] 15 U.S.C. 78f(b)(5).

[9] In approving the proposed rule, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[10] 15 U.S.C. 78g(c)(2)(B).

[11] 17 CFR 240.400(c)(2)(v).

[12] 15 U.S.C. 78s(b)(2).

[13] 15 U.S.C. 78s(b)(2).

[14] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–47817; File No. SR–ISE–2003–10]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change and Amendment No. 1 Thereto by the International Securities Exchange, Inc. To Amend Its Obvious Error Rule

May 8, 2003.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b-4 thereunder,[2] notice is hereby given that on February 28, 2003, the International Securities Exchange, Inc. ("ISE" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. On May 1, 2003, the ISE submitted Amendment No. 1 to the proposed rule change.[3] The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange is proposing to amend ISE Rule 720 (the "Obvious Error Rule"). Proposed new language is *italicized;* proposed deletions are in [brackets].

* * * * *

Rule 720. Obvious Errors

The Exchange shall either bust a transaction or adjust the execution price of a transaction that results from an Obvious Error as provided in this Rule.

(a) Definition of Obvious Error. For purposes of this Rule only, an Obvious Error will be deemed to have occurred when *the execution price of a transaction is higher or lower than the Theoretical Price for the series by an amount equal to at least the amount shown below:*

Theoretical price	*Minimum amount*
Below $2	*.25*
$2 to $5	*.40*
Above $5 to $10	*.50*
Above $10 to $20	*.80*
Above $20	*1.00*

[(1) If the Theoretical Price of the option is less than $3.00:

(i) During regular market conditions (including rotations), the execution price of a transaction is higher or lower than the Theoretical Price for the series by an amount of 35 cents or more; or

(ii) During fast market conditions (*i.e.*, the Exchange has declared a fast market status for the option in question), the execution price of a transaction is higher or lower than the Theoretical Price for the series by an amount of 50 cents or more.

(2) If the Theoretical Price of the option is $3.00 or higher:

(i) During regular market conditions (including rotations), the execution price of a transaction is higher or lower than the Theoretical Price for the series by an amount equal to at least two (2) times the maximum bid/ask spread allowed for the option, so long as such amount is 50 cents or more; or

(ii) During fast market conditions (*i.e.*, the Exchange has declared a fast market status for the option in question), the execution price of a transaction is higher or lower than the Theoretical Price for the series by an amount equal to at least three (3) times the maximum bid/ask spread allowed for the option, so long as such amount is 50 cents or more.]

(b) Definition of Theoretical Price. For purposes of this Rule only, the Theoretical Price of an options *series* is:

(1) If the series is traded on at least one other options exchange, the last bid *price with respect to an erroneous sell transaction,* [or] *and last* offer *price with respect to an erroneous buy transaction,* just prior to the trade, [found on] *disseminated by* the *competing options* exchange that has the most liquidity in that option [as provided in Supplementary Material .02 below]; or

(2) If there are no quotes for comparison purposes, as determined by designated personnel in the Exchange's market control center ("Market Control").

[(c) Adjustments. Where the execution price of a transaction executed as the result of an Obvious Error is adjusted, the adjusted price will be:

(1) The Theoretical Price of the option in the case where the erroneous price is displayed in the market and subsequently executed by quotes or orders that did not exist in the System at the time the erroneous price was entered; or

(2) The last bid or offer, just prior to the trade, found on the exchange that has the most liquidity in that option as provided in Supplementary Material .03 below in the case where an erroneous price executes against quotes or orders already existing in the System at the time the erroneous price was entered.

(d)] (*c*) Obvious Error Procedure. Market Control shall administer the application of this Rule as follows.

(1) *Notification.* If a market maker on the Exchange believes that it participated in a transaction that was the result of an Obvious Error, it must notify Market Control within five (5) minutes of the execution. If an Electronic Access Member believes an order it executed on the Exchange was the result of an Obvious Error, it must notify Market Control within twenty (20) minutes of the execution. Absent unusual circumstances, Market Control will not grant relief under this Rule unless notification is made within the prescribed time periods.

(2) *Adjust or Bust.* Market Control will determine whether there was an Obvious Error as defined above. If it is determined that an Obvious Error has occurred, Market Control shall take one of the [following] actions *listed below.*[:] *Upon taking final action, Market Control shall promptly notify both parties to the trade.*

(i) [w]Where each party to the transaction is a market maker on the Exchange, the execution price of the transaction will be adjusted *by Market Control to the prices provided in paragraphs (A) and (B) below* unless both parties agree to *adjust the transaction to a different price or agree to* bust the trade within ten (10) minutes of being notified by Market Control of the Obvious Error.[; or]

(A) Erroneous buy transactions will be adjusted to their Theoretical Price (1) plus $.15 if the Theoretical Price is under $3, and (2) plus $.30 if the Theoretical Price is at or above $3.

(B) Erroneous sell transactions will be adjusted to their Theoretical Price (1) minus $.15 if the Theoretical Price is under $3, and (2) minus $.30 if the Theoretical Price is at or above $3.

(ii) [w]Where at least one party to the Obvious Error is not a market maker on the Exchange, the trade will be busted *by Market Control* unless both parties agree to [adjust the] *an adjustment* price [of] *for* the transaction within thirty (30) minutes of being notified by Market Control of the Obvious Error. [Upon taking final action, Market Control shall promptly notify both parties to the trade.]

(e) Obvious Error Panel.

(1) *Composition.* An Obvious Error Panel will be comprised of representatives from four (4) Members. Two (2) of the representatives must be directly engaged in market making activity and two (2) of the representatives must be employed by an Electronic Access Member.

(2) [Request for] *Scope of Panel's* Review. If a party affected by a determination made under this Rule so requests within the time permitted *in (3)* below, the Obvious Error Panel will review decisions made by Market Control under this Rule, including whether an Obvious Error occurred, whether the correct Theoretical Price was used, and whether an adjustment was made at the correct price. A party may also request that the Obvious Error Panel provide relief [under] *as provided in* this Rule in cases where the party failed to provide the notification required in paragraph [(d)]*(c)*(1) and Market Control declined to grant an extension, but unusual circumstances must merit special consideration.

(3) Procedure for Requesting Review. A request for review must be made in writing within thirty (30) minutes after a party receives verbal notification of a final determination by Market Control under this Rule, except that if notification is made after 3:30 p.m. Eastern Time, either party has until 9:30 a.m. Eastern Time the next trading day to request review. The Obvious Error Panel shall review the facts and render a decision on the day of the transaction, or the next trade day in the case where a request is properly made after 3:30 on the day of the transaction or where the request is properly made the next trade day.

[(3)] *(4)* Panel Decision. The Obvious Error Panel may overturn or modify an action taken by Market Control under this Rule upon agreement by a majority of the Panel representatives. All determinations by the Obvious Error Panel shall constitute final Exchange action on the matter at issue.

Supplementary Material to Rule 720

[.01 For purposes of paragraph (a) of this Rule, the maximum bid/ask spread shall be the maximum bid/ask spread allowed under Rule 803(b), unless a wider spread has been allowed by the Exchange for the option because of unusual market conditions, such as high market volatility.

.02 The Theoretical Price will be determined under paragraph (b)(1) above as follows: (i) The bid price from the exchange providing the most volume will be used with respect to an erroneous bid price entered on the Exchange, and (ii) the offer price from the exchange providing the most volume will be used with respect to an erroneous offer price entered on the Exchange.

.03 The price to which a transaction is adjusted under paragraph (c)(2) above will be as follows: (i) The bid price from the exchange providing the most volume for the option will be used with respect to an erroneous offer price entered on the Exchange, and (ii) the offer price from the exchange providing the most volume for the option will be used with respect to an erroneous bid price entered on the Exchange. If there are no quotes for comparison purposes, the adjustment price will be determined by Market Control.]

[.04] *.01* When Market Control determines that an Obvious Error has occurred and action is warranted under paragraph [(d)]*(c)*(2) above, the identity of the parties to the trade will be disclosed to each other in order to encourage conflict resolution.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* letter from Michael Simon, Senior Vice President and General Counsel, ISE, to Nancy Sanow, Assistant Director, Division of Market Regulation, Commission, dated April 30, 2003 ("Amendment No. 1"). In Amendment No. 1, the ISE replaced the proposed rule text in its entirety.

[.05] *.02* To qualify as a representative of an Electronic Access Member on an Obvious Error Panel, a person must (i) be employed by a Member whose revenues from options market making activity do not exceed ten percent (10%) of its total revenues; or (ii) have as his or her primary responsibility the handling of Public Customer orders or supervisory responsibility over persons with such responsibility, and not have any responsibilities with respect to market making activities.

[.06] *.03* The Exchange shall designate at least ten (10) market maker representatives and at least ten (10) Electronic Access representatives to be called upon to serve on Obvious Error Panels as needed. In no case shall an Obvious Error Panel include a person related to a party to the trade in question. To the extent reasonably possible, the Exchange shall call upon the designated representatives to participate on an Obvious Error Panel on an equally frequent basis.

[.07] *.04* All determinations made by the Exchange, Market Control or an Obvious Error Panel under this Rule shall be rendered without prejudice as to the rights of the parties to the transaction to submit a dispute to arbitration.

.05 Buyers of options with a zero bid and $.05 offer (i.e., a Theoretical Price of $.05) may request that their execution be busted if at least the three strikes below (for calls) or above (for puts) in the same options class were quoted with a zero bid and $.05 offer at the time of the execution. Such buyers must follow the procedures of paragraph (c)(1) above.

.06 For purposes of paragraph (b)(1) of Rule 720, the competing options exchange with the most liquidity will be the options exchange that had the highest total contract volume in the options class for the previous two months (e.g., if an obvious error occurs on March 9, the total contract volume from January 8 to March 8 will be used).

.07 For purposes of Rule 720, an "erroneous sell transaction" is one in which the price received by the person selling the option is erroneously low, and an "erroneous buy transaction" is one in which the price received by the person purchasing the option is erroneously high.

* * * * *

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend ISE Rule 720 to simplify its application. When the Exchange first adopted the Obvious Error Rule,[4] it was the first such rule of its kind on any options exchange. During the nearly two-year period since the Rule was approved by the Commission, the Exchange made minor adjustments to the Rule to address specific issues that arose.[5]

The current proposed rule change represents the result of a comprehensive analysis of the effectiveness of the Rule in addressing obvious error situations. After consultation with Members, the Exchange believes that the structure and standards of the Rule have worked very well. However, the Rule itself is unnecessarily complex, which can create confusion and uncertainty regarding when trades qualify as obvious errors and the prices to which qualifying trades may be adjusted. Accordingly, the Exchange proposes the changes described herein.

Determining Whether or Not an Obvious Error Has Occurred

Currently, under paragraph (b) of the Rule and Supplementary Material .02, the Theoretical Price for an option is determined by the bid price on the options exchange other than ISE that has the most volume in the option for erroneous buy orders or bid quotes. Similarly, the Theoretical Price for an option is determined by the offer price on the other options exchange for erroneous sell orders or offer quotes. Determining the Theoretical Price in this manner is counter-intuitive to market participants, which generally look to the offer as the price at which one can buy and the bid as the price at which one can sell. Moreover, under paragraph (a) of the Rule, the required deviation from the Theoretical Price necessary to qualify the trade as an obvious error is a multiple of the option's maximum allowable bid/ask spread, with a greater multiple applied in fast market conditions.

The Exchange proposes to amend the Rule to provide that the Theoretical Price for trades caused by erroneous buy orders or bid quotes will be determined by the offer from the other options exchange, and that the Theoretical Price of trades caused by erroneous sell orders or offer quotes will be determined by the bid from the other options exchange. Because the side to which the Rule will look to determine the Theoretical Price is switched, the Exchange proposes to reduce the required deviation necessary for a trade to qualify as an obvious error to the amount equivalent to the maximum bid/ask spread for the series, rather than a multiple of the allowable spread. The result of these two changes taken together is not material for options priced $3 and higher, as the price at which a trade must occur to qualify as an obvious error does not change.[6] For options priced under $3, the proposed rule change will increase the deviation required for a trade to qualify as an obvious error.

As described below, the Exchange is also proposing a manner in which to address obvious errors in the purchase of certain very low-priced options. Finally, the Exchange proposes to eliminate entirely the current rule's distinction between regular market condition and fast market condition, as the higher standard for fast market conditions is unnecessary in the Exchange's electronic environment.

Adjusting Prices

Paragraph (c) in Supplementary Material .03 of the current Rule governs the price to which a trade is adjusted when there is an obvious error. Currently, the price used is dependent on whether the erroneous price existed in the market first, or whether the erroneous price executed against an existing order or quote in the book. The Exchange proposes to apply a single adjustment standard to all executions that qualify as an obvious error: erroneous buy executions will be adjusted to the Theoretical Price (the offer) plus $.15 for options under $3, and plus $.30 for options as or above $3. Erroneous sell executions will be adjusted to the Theoretical Price (the bid) minus $.15 for options under $3, and minus $.30 for options at or above $3. This change addresses two issues under the current Rule. First, it simplifies the determination of the appropriate adjustment price and creates certainty for Members who generally do not know which price was first in the market at the time a trade occurs. Second, it protects against abuse of the Rule, as the adjustment price is not as favorable as what the party making the error would have received had it not made an error.

The "Nickel Rule"

The current obvious error Rule does not contain any special criteria for executions in options with a quote of $0 to $.05 (no bid, offered at a nickel). The Exchange proposes to create a special standard for no-bid buyers, as a purchase of these options is extremely rare and most often the result of an error. Under proposed Supplementary Material .05, buyers of options priced at no bid, offered at a nickel, may request that their execution be busted if at least the three strike prices below (for calls) or above (for puts) in the same class were quoted no bid, offered at a nickel at the time of the erroneous execution. The buyer must notify market control as otherwise required under the Rule.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with section 6(b) of the Act[7] in general, and furthers the objectives of section 6(b)(5)[8] in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism for a free and open market and a national market system, and, in general, to protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange did not solicit or receive written comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the Exchange consents, the Commission will:

(A) By order approve such proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change, as amended, is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the Exchange. All submissions should refer to File No. SR–ISE–2003–10 and should be submitted by June 5, 2003.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[9]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 03–12146 Filed 5–14–03; 8:45 am]

BILLING CODE 8010–01–P

[4] *See* Securities Exchange Act Release No. 44376 (June 1, 2001), 66 FR 30772 (June 7, 2001).

[5] *See* Securities Exchange Act Release No. 46110 (June 25, 2002), 67 FR 44487 (July 2, 2002).

[6] For example, assume the quote on the options exchange other than ISE for an option is $6 to $6.50. Under the current Rule, the execution price of a buy order must be $7 higher, *i.e.*, the Theoretical Price (the bid from the other options exchange) plus an amount equal to twice the allowable spread ($.50). Under the amended Rule, the execution price of the buy order must still be $7 or higher, *i.e.*, the Theoretical Price (the offer from the other options exchanges) plus an amount equal to the allowable spread ($.50).

[7] 15 U.S.C. 78f(b).

[8] 15 U.S.C. 78f(b)(5).

[9] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–47810; File No. SR–OC–2003–05]

Self-Regulatory Organizations; Notice of Filing and Order Granting Accelerated Approval of a Proposed Rule Change and Amendment No. 1 Thereto by OneChicago, LLC To Adopt, on a Permanent Basis, the Standards Under Which a Market Maker Can Qualify for Exclusion From OneChicago's Margin Rules

May 7, 2003.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on May 5, 2003, OneChicago, LLC ("OneChicago" or "Exchange") filed with the Securities and Exchange Commission ("Commission" or "SEC") the proposed rule change as described in Items I and II below, which Items have been prepared by OneChicago. On May 6, 2003, OneChicago submitted Amendment No. 1 to the proposed rule change.[3] The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons and to grant accelerated approval of the proposed rule change.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

OneChicago proposes to adopt, on a permanent basis, Rule 515(n)(ii)(C) ("Exclusion for Market Makers") (herein referred to as "Margin Rule"). On November 7, 2002, the Commission approved the Margin Rule on a pilot basis, ending May 7, 2003 ("the Pilot").[4] OneChicago believes that permanent approval of the Margin Rule is consistent with the jointly adopted margin rules of the Commission and the Commodity Futures Trading Commission ("CFTC") (collectively, "Commissions").

Below is the text of the proposed rule change that OneChicago proposes to adopt on a permanent basis.

* * * * *

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* letter from Madge M. Hamilton, Deputy General Counsel, OneChicago, to Theodore Lazo, Senior Special Counsel, Division of Market Regulation, Commission, dated May 5, 2003.

[4] *See* Securities Exchange Act Release No. 46787 (November 7, 2002), 67 FR 69059 (November 14, 2002).

Customer Margin Requirements

515. General Requirements; Offsetting Positions; Exclusion for Market Makers

(a)–(n)(ii)(B) No Change.

(C) Hold itself out as being willing to buy and sell security futures for its own account on a regular or continuous basis.

A Market Maker satisfies condition (C) above if:

(1) Such Market Maker: (x) provides continuous two-sided quotations throughout the trading day for all delivery months of Contracts representing a meaningful proportion of the total trading volume on the Exchange, subject to relaxation during unusual market conditions as determined by the Exchange (such as a fast market in either a Contract or a security underlying such Contract) at which times such Market Maker must use its best efforts to quote continuously and competitively; and (y) when providing quotations, quotes with a maximum bid/ask spread of no more than the greater of $0.20 or 150% of the bid/ask spread in the primary market for the security underlying each Contract;

(2) Such Market Maker: (x) responds to at least 75% of the requests for quotation for all delivery months of Contracts representing a meaningful proportion of the total trading volume on the Exchange, subject to relaxation during unusual market conditions as determined by the Exchange (such as a fast market in either a Contract or a security underlying such Contract) at which times such Market Maker must use its best efforts to quote competitively; and (y) when responding to requests for quotation, quotes within five seconds with a maximum bid/ask spread of no more than the greater of $0.20 or 150% of the bid/ask spread in the primary market for the security underlying each Contract; or

(3) (w) Such Market Maker is assigned to a group of Contracts that is either unlimited in nature ("Unlimited Assignment") or is assigned to no more than 20% of the Contracts listed on the Exchange ("Limited Assignment"); (x) at least 75% of such Market Maker's total trading activity in Exchange products is in its assigned Contracts, measured on a quarterly basis; (y) during at least 50% of the trading day such Market Maker has bids or offers in the market that are at or near the best market, except in unusual market conditions as determined by the Exchange (such as a fast market in either a Contract or a security underlying such Contract), with respect to at least 25% (in the case of an Unlimited Assignment) or at least one (in the case of a Limited Assignment) of its assigned Contracts; and (z) the requirements set forth in clauses (x) and (y) are satisfied on at least 90% (in the case of an Unlimited Assignment) or 80% (in the case of a Limited Assignment) of the trading days in each calendar quarter.

For purposes of clauses (1) and (2) above, beginning on the 181st calendar day after the commencement of trading on the Exchange, a "meaningful proportion of the total trading volume on the Exchange" shall mean a minimum of 20% of such trading volume.

(n)(iii) No Change.

Schedule A—No Change.

* * * * *

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, OneChicago included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item III below. OneChicago has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

OneChicago proposes to adopt, on a permanent basis, the Margin Rule, which sets forth the standards under which a OneChicago member may be excluded from the Exchange's margin requirements as a "market maker." OneChicago believes that the Margin Rule, consistent with Rule 400(c)(2)(v) under the Act[5] and the CFTC Rule 41.42(c)(2)(v),[6] establishes standards by which members may qualify as Security Futures Dealers and therefore be excluded from OneChicago's margin rules.

The Commission did not receive any comments on the Margin Rule during the pilot period. Since OneChicago believes that the Margin Rule has been performing as anticipated during the pilot period and OneChicago proposes no changes to the Margin Rule, OneChicago now proposes to adopt the Margin Rule on a permanent basis.

[5] 17 CFR 242.400(c)(2)(v).

[6] 17 CFR 41.42(c)(2)(v).

2. Statutory Basis

OneChicago believes that the proposed rule change is consistent with section 6(b)(5) of the Act,[7] in that the proposal promotes competition, and is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and to protect investors and the public interest. OneChicago believes that the proposed rule change is designed to accomplish these goals by permitting members to qualify as Security Futures Dealers, as permitted under the Commission's Rule.[8]

B. Self-Regulatory Organization's Statement on Burden on Competition

OneChicago does not believe that the proposed rule change will have an impact on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Comments on the proposed rule change have not been solicited and none have been received.

III. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change, as amended, is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of OneChicago. All submissions should refer to File No. SR–OC–2003–05 and should be submitted by June 5, 2003.

IV. Commission Findings and Order Granting Accelerated Approval of a Proposed Rule Change

The Commission finds that the proposed rule change, as amended, is

[7] 15 U.S.C. 78f(b)(5).

[8] *See* 17 CFR 240.400(c)(2)(v).

consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.[9] In particular, the Commission believes that the proposed rule change is consistent with the requirements of section 6(b)(5) of the Act,[10] which requires, among other things, that the rules of the Exchange be designed to promote just and equitable principles of trade and, in general, to protect investors and the public interest.[11] In addition, the Commission believes that the proposed rule change is consistent with section 7(c)(2)(B) of the Act,[12] which provides, among other things, that the margin requirements for security futures must preserve the financial integrity of markets trading security futures, prevent systemic risk, be consistent with the margin requirements for comparable exchange-traded options, and provide that the margin levels for security futures may be no lower than the lowest level of margin, exclusive of premium, required for any comparable exchange-traded option.

The Commission believes that OneChicago's standards for market makers under Rule 515(n)(ii)(C) are consistent with the Act, and Rule 400(c)(2)(v) thereunder.[13] Specifically, Rule 400(c)(2)(v) provides that the Commission's joint margin rules do not apply to a member of a national securities exchange that is registered with such exchange as a "Security Futures Dealer" pursuant to exchange rules that must meet several criteria, including a requirement that a Security Futures Dealer be required to "to hold itself out as being willing to buy and sell security futures for its own account on a regular and continuous basis." The Commission believes that the affirmative obligations required by OneChicago pursuant to Rule 515(n)(ii)(C) satisfy this requirement.

OneChicago has requested that the Commission approve the proposed rule change, as amended, prior to the thirtieth day after publication of notice of the filing in the **Federal Register**. The Commission finds good cause for approving the proposed rule change prior to the thirtieth day after the date of publication of notice of filing thereof in the **Federal Register**. The Commission believes that accelerated approval of the proposed rule change should enable OneChicago members that trade security futures as market makers to continue to do so on an uninterrupted basis. The Commission notes that it approved the Margin Rule as a temporary pilot to give members of the public an opportunity to comment on the substance of the Margin Rule. The Commission received no comments on the Pilot. Accordingly, the Commission finds good cause, consistent with section 19(b)(2) of the Act,[14] to approve the proposed rule change, as amended, prior to the thirtieth day after publication of the notice of filing.

V. Conclusion

It is therefore ordered, pursuant to section 19(b)(2) of the Act[15], that the proposed rule change (File No. SR–OC–2003–05), as amended, be approved on a permanent basis.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[16]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 03–12149 Filed 5–14–03; 8:45 am]

BILLING CODE 8010–01–P

[9] 15 U.S.C. 78s(b)(2).

[10] 15 U.S.C. 78f(b)(5).

[11] In approving the proposed rule, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[12] 15 U.S.C. 78g(c)(2)(B).

[13] 17 CFR 240.400(c)(2)(v)(B)(3).

[14] 15 U.S.C. 78s(b)(2).

[15] 15 U.S.C. 78s(b)(2).

[16] 17 CFR 200.30–3(a)(12).

DEPARTMENT OF STATE

Office of the Secretary

[Public Notice 4366]

Amendment of the Restriction on the Use of United States Passports for Travel To, In or Through Iraq

By means of Public Notice 4337 of April 16, 2003 (68 FR 18722), certain amendments were made to the restriction set forth in Public Notice 4283 of February 25, 2003 (68 FR 8791) on the use of U.S. passports for travel to, in, or through Iraq.

The security situation in Iraq remains unstable and consular services are not currently available to U.S. citizens there. Nevertheless, it is in the U.S. national interest to continue to facilitate the humanitarian and reconstructive activities taking place in Iraq. Therefore, pursuant to the authorities set forth in 22 U.S.C. 211a, Executive Order 11295, and 22 CFR 51.73, I have decided to broaden further the exemptions from the restriction on the use of U.S. passports for travel to, in, or through Iraq.

Accordingly, Public Notice 4337 of April 16, 2003, which amended Public Notice 4283, of February 25, 2003, is hereby amended by deleting the penultimate paragraph (beginning with "Accordingly") and replacing it with the following:

"Accordingly, United States passports shall continue to be invalid for travel to, in, or through Iraq unless specifically validated for such travel under the authority of the Secretary of State. This restriction on the validity of U.S. passports for travel to, in or through Iraq shall not apply to U.S. passports held by (1) persons resident in Iraq since February 1, 1991; (2) professional reporters and journalists on assignment there; (3) persons conducting humanitarian activities, as defined in 31 CFR Section 575.330; (4) persons conducting activities within the scope of a U.S. Government contract or grant, including employees of subcontractors and other persons hired to conduct such activities; (5) personnel of the United Nations and its agencies; or (6) U.S. Government personnel on official U.S. Government assignment in Iraq, including Members of Congress and their staffs on official business there."

This Public Notice amending Public Notice Number 4337 is effective May 9, 2003, and shall expire at midnight on February 25, 2004, unless sooner extended or revoked by public notice.

Dated: May 9, 2003.

Colin L. Powell,

Secretary of State, Department of State.

[FR Doc. 03–12296 Filed 5–14–03; 8:45 am]

BILLING CODE 4710–10–P

TENNESSEE VALLEY AUTHORITY

Environmental Impact Statement—Koppers Coal Reserve Management Plan

AGENCY: Tennessee Valley Authority (TVA).

ACTION: Notice of intent.

SUMMARY: This notice is provided in accordance with the Council on Environmental Quality's regulations (40 CFR parts 1500 to 1508), section 106 of the National Historic Preservation Act (NHPA) and its implementing regulations (36 CFR part 800), and TVA's procedures implementing the National Environmental Policy Act (NEPA). TVA will prepare an Environmental Impact Statement (EIS) to assess the impacts of various strategies for future management of TVA's mineral rights underlying 53,000 acres in Scott and Campbell Counties, Tennessee known as the Koppers Coal Reserve. TVA estimates approximately 5,000 acres of surface disturbance could occur from mining all of the identified

coal reserves. Maximum recoverable coal is estimated at approximately 70 million tons, including 28 million tons from surface mining and 42 million tons from deep mining, having an estimated value of about $140 million. TVA will select a management plan that will best guide the lease of Koppers coal over the next 50 years, with the goal of protecting both the environment and the value of TVA's assets for the benefit of its ratepayers.

Lead and Cooperating Agencies: The Tennessee Valley Authority is the lead agency in the development of this EIS. The United States Department of Interior (USDI) Office of Surface Mining (OSM), Knoxville, TN; the Tennessee Wildlife Resources Agency (TWRA); and the National Park Service, Big South Fork National River and Recreation Area (BSFNRRA) will participate as cooperating agencies.

DATES: Comments on the scope of issues and alternatives to be considered in the environmental review must be received on or before June 15, 2003.

ADDRESSES: Written comments should be sent to Ruth M. Horton, Sr. NEPA Specialist, Environmental Policy and Planning, Tennessee Valley Authority, 400 West Summit Hill Drive, WT 8C, Knoxville, Tennessee 37902–1499.

FOR FURTHER INFORMATION CONTACT: Ruth M. Horton, Sr. NEPA Specialist, Environmental Policy and Planning, Tennessee Valley Authority, 400 West Summit Hill Drive, WT 8C, Knoxville, Tennessee 37902–1499; telephone (865) 632–3719 or e-mail *rmhorton@tva.gov.*

SUPPLEMENTARY INFORMATION:

Background

The Koppers Coal Reserve is a 53,000 acre area in western Campbell County and eastern Scott County, straddling Interstate 75 immediately north of the towns of Caryville and Jacksboro in upper east Tennessee. TVA acquired the rights to the Koppers Coal Reserve in 1962 as part of an effort to ensure reliable fuel supplies. The area is typical of coal properties in eastern Tennessee and eastern Kentucky, with coal seams of various thickness and quality. There are 19 seams identified on the property which vary in sulfur content from less than 1 percent to over 5 percent, and range in thickness from 1 to more than 3 feet. Total recoverable coal is estimated at approximately 70 million tons, including 28 million tons from surface mining and 42 million tons from deep mining. This coal is presently valued at approximately $140 million. The property was heavily surface- and underground-mined in certain areas from the 1930s through the 1950s, producing a significant quantity of coal and providing substantial employment to miners and other satellite businesses.

Since 1962, production from the Koppers Coal Reserve has been limited. During the 1970s, three coal companies conducted mining operations to provide coal to TVA facilities. There were no requests for mining coal between 1979 and 1990, possibly as a result of the implementation of the more stringent mining and reclamation requirements in the Surface Mining Control and Reclamation Act of 1977 (SMCRA). Since 1990, 10 leases have been auctioned, with mining occurring on only seven of these leases. The newest lease, issued December 18, 2002, the Cross/Adkins mine, is still under development.

TVA issued a Draft EA (DEA) in December 2002 for a proposal to mine coal at Braden Mountain which is located in the northwest corner of the Koppers Reserve. However, TVA is ending consideration of the Braden Mountain mine lease as a separate action and will include the review of Braden Mountain coal mining activity in this EIS.

Since acquiring the Koppers Coal Reserve, TVA has considered requests from the coal industry for mine leases on a case by case basis. Site specific environmental reviews of lease requests have tiered from the Office of Surface Mining's (OSM's) permitting process and its 1985 FEIS on the Comprehensive Impacts of Permit Decisions Under Tennessee Federal Program. Cumulative impact assessments for these projects have focused on the Cumulative Hydrological Impacts Analyses (CHIAs) prepared for each permit application to the OSM.

In 1992, the Tennessee Wildlife Resources Agency (TWRA) bought the surface overlying most of the Koppers Coal Reserve and established the 50,000 acre Royal Blue Wildlife Management Area (WMA), with the understanding that the underlying minerals would be mined. A comprehensive management plan for the Royal Blue WMA has not yet been developed. In late 1995, TVA and TWRA reached an interim agreement to enhance communication and coordination on coal mining activities in the area. The Royal Blue WMA is adjacent to the newly created 74,000 acre Sundquist WMA. Additionally, the Smokey Mountain segment of the Cumberland Trail State Park crosses the southern portion of the Koppers Coal Reserve.

Proposed Action

TVA is undertaking the development of a plan for managing its coal reserves on the Koppers property in response to an anticipated increase in demand for this coal. The market for coal from the Koppers Coal Reserve has improved as a result of utility industry efforts to comply with the 1990 amendments to the Clean Air Act which put a cap on emissions of sulfur dioxide (SO_2) from electric utility boilers. These efforts by TVA and other electric utilities include constructing flue gas desulfurization units (scrubbers) at existing coal-fired generating plants. Due to their high SO_2 removal efficiency, the scrubbers will allow TVA and other utilities to burn higher sulfur coal from coalfields like Koppers while still meeting emissions limits and reducing the amount of SO_2 released. A management plan will help TVA manage the use of mineral resources at Koppers Coal Reserve to meet the future coal demand in a manner that protects both the environment and the value of TVA's coal assets for the benefit of its ratepayers. This EIS will assess the environmental impacts of alternative strategies for managing the Koppers Coal Reserve.

Range of Alternatives

As required by Council on Environmental Quality (CEQ) regulations (40 CFR 1502.14) TVA will evaluate a reasonable range of alternatives in this EIS. At this time, TVA anticipates the following four alternatives would be assessed in the EIS in addition to the no action alternative: managed surface and deep coal mining; deep mining only; no mining beyond current leases; and disposal of TVA's mineral rights at fair market value. The no action alternative would entail continued ad hoc consideration of requests for both surface and deep mine leases. The managed approach would explore different intensities and quantities of surface and deep coal mining. In the deep mining alternative, no surface mining would be considered. The no mining alternative would look at the possibility of discontinuing coal mining on the Koppers Coal Reserve beyond current leases. Under the disposal option, two scenarios are possible. TVA's mineral rights could be purchased by a coal company for the purpose of mining or by an entity that does not intend to mine. It is envisioned that the no action and the managed mining alternatives would include consideration of the potential impacts from the proposed lease of mineral rights at Braden Mountain. Other alternatives proposed by the public; local, state, and federal agencies; and cooperating agencies during scoping will also be given due consideration.

Potential Environmental Impacts

TVA anticipates that the EIS will include discussion of the potential effects of the various alternatives on the following resources: terrestrial wildlife and vegetation; aquatic ecology, endangered and threatened species; geology; surface and groundwater; wetlands; recreation and natural areas; cultural resources; socioeconomic and environmental justice issues; land use; solid waste disposal; visual resources; and transportation. Other issues that may also be discussed, depending on the potential impact of the alternatives, include noise, air quality, floodplains, and soils.

Public Participation

TVA is interested in receiving comments on issues and alternatives to be addressed in the EIS. Written comments on the scope of the environmental review should be received on or before June 15, 2003. TVA will prepare an EIS on a range of alternatives for the proposed Koppers Coal Reserve Management Plan after considering public comments received from this scoping process. TVA anticipates completing the Draft EIS by October 2004. An opportunity to review and comment on the Draft EIS will be provided at that time. Concurrent with the NEPA review, TVA also seeks comments from the public on the scope of this federal undertaking on historic properties as provided under section 106 of NHPA.

TVA plans to hold a public meeting to provide more information and to receive comments on the proposal on June 3, 2003, at Cove Lake State Park, 4 p.m.–8 p.m. eastern standard time. The time, location, and place will be announced in local newspapers, on the TVA Web page at *http://www.tva.gov/environment/calendar.htm*, and may be obtained by contacting the persons listed above.

Dated: May 7, 2003.

Kathryn J. Jackson,

Executive Vice President, River System Operations & Environment.

[FR Doc. 03–12129 Filed 5–14–03; 8:45 am]

BILLING CODE 8120–08–P

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

Application of USA Jet Airlines, Inc. for Passenger Certificate Authority

AGENCY: Department of Transportation.

ACTION: Notice of order to show cause (Order 2003–5–10), Dockets OST–02–12987 and OST–02–12989.

SUMMARY: The Department of Transportation is directing all interested persons to show cause why it should not issue an order finding USA Jet Airlines, Inc., fit, willing, and able, and awarding it certificates of public convenience and necessity authorizing it to engage in interstate and foreign charter air transportation of persons, property and mail.

DATES: Persons wishing to file objections should do so no later than May 27, 2003.

ADDRESSES: Objections and answers to objections should be filed in Dockets OST–02–12987 and OST–02–12989 and addressed to the Department of Transportation Dockets (SVC–124.1, Room PL–401), U.S. Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590, and should be served upon the parties listed in Attachment A to the order.

FOR FURTHER INFORMATION CONTACT: Mr. Howard Serig, Air Carrier Fitness Division (X–56, Room 6401), U.S. Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590, (202) 366–4822.

Dated: May 9, 2003.

Read C. Van De Water,

Assistant Secretary for Aviation and International Affairs.

[FR Doc. 03–12171 Filed 5–14–03; 8:45 am]

BILLING CODE 4910–62–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Availability of the Record of Decision on the Potomac Consolidated Terminal Radar Approach Control (TRACON) Airspace Redesign

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of Availability of the record of Decision for the Potomac Consolidated TRACON Airspace Redesign.

SUMMARY: In accordance with the National Environmental Policy Act of 1969 and FAA Order 1050.1D, Policies and Procedures for Considering Environmental Impacts, the Federal Aviation Administration (FAA) has made a final determination to modify aircraft routes, altitudes and air traffic control procedures used in a 23,000 square mile area around Washington, DC. These procedures relate to aircraft arriving and departing from Andrews Air force Base (ADW), Baltimore-Washington International Airport (BWI), Dulles International Airport (IAD), Reagan Washington National Airport (DCA) and other smaller area airports. The FAA's determinations on the airspace redesign are contained in the Record of Decision (ROD) dated May 1, 2003.

FOR FURTHER INFORMATION CONTACT: Mr. William Carver, Support Manager, Potomac TRACON, (540) 349–7520, E-mail: *william.carver@faa.gov.*

SUPPLEMENTARY INFORMATION: As discussed in the ROD, the revised aircraft routes, altitudes and procedures will be established in a manner consistent with the alternative "Existing Peripheral Airspace Ingress/Egress Transfer Points with New Internal Airspace Design," Alternative 2, identified as the preferred alternative in the Final Environmental Impact Statement (FEIS), Potomac Consolidated TRACON (PCT) Airspace Redesign, prepared by the FAA and dated December 2002. The FAA issued the FEIS on January 10, 2003.

The ROD is available for review on the Internet at *http://www.faa.gov/ats/potomac.*

Dated: May 8, 2003.

Barbara Jo Cogliandro,

Air Traffic Manager, Potomac TRACON.

[FR Doc. 03–12044 Filed 5–14–03; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Summary Notice No. PE–2003–28]

Petitions for Exemption; Summary of Petitions Received

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of petitions for exemption received.

SUMMARY: Pursuant to FAA's rulemaking provisions governing the application, processing, and disposition of petitions for exemption part 11 of Title 14, Code of Federal Regulations (14 CFR), this notice contains a summary of certain petitions seeking relief from specified requirements of 14 CFR, dispositions of certain petitions previously received, and corrections. The purpose of this notice is to improve the public's awareness of, and participation in, this aspect of FAA's regulatory activities. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of any petition or its final

disposition. Because the FAA is intending to make a decision on the allocation of these exemption slots in the near future, the FAA is providing an abbreviated comment period of 10 days.

DATES: Comments on petitions received must identify the petition docket number involved and must be received on or before May 27, 2003.

ADDRESSES: Send comments on any petition to the Docket Management System, U.S. Department of Transportation, Room Plaza 401, 400 Seventh Street, SW., Washington, DC 20590–0001. You must identify the docket number FAA–2000–XXXX at the beginning of your comments. If you wish to receive confirmation that FAA received your comments, include a self-addressed, stamped postcard.

You may also submit comments through the Internet to *http://dms.dot.gov*. You may review the public docket containing the petition, any comments received, and any final disposition in person in the Dockets Office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Dockets Office (telephone 1–800–647–5527) is on the plaza level of the NASSIF Building at the Department of Transportation at the above address. Also, you may review public dockets on the Internet at *http://dms.dot.gov*.

FOR FURTHER INFORMATION CONTACT: Tim Adams (202) 267–8033, Dennis Emrick (202) 267–75174, or Sandy Buchanan-Sumter (202) 267–7271, Office of Rulemaking (ARM–1), Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591.

This notice is published pursuant to 14 CFR 11.85 and 11.91.

Issued in Washington, DC, on May 9, 2003.

Donald P. Byrne,

Assistant Chief Counsel for Regulations.

Petitions for Exemption

Docket No.: FAA–2003–14827.
Petitioner: Comair, Inc.
Section of 14 CFR Affected: 14 CFR 93.123.
Description of Relief Sought: To permit Comair to operate certain slots at Ronald Reagan National Airport, authorized by exemption only, to provide nonstop service to Savannah, Georgia, and Lexington, Kentucky.

Docket No.: FAA–2003–14975.
Petitioner: Spirit Airlines, Inc.
Section of 14 CFR Affected: 14 CFR 93.123.
Description of Relief Sought: To permit Spirit Airlines, Inc. to operate certain slots at Ronald Reagan National Airport, authorized by exemption only, to provide nonstop service to Detroit, Michigan, or Ft. Lauderdale, Florida.

[FR Doc. 03–12045 Filed 5–14–03; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[FMCSA Docket No. FMCSA–2003–14911]

Exemptions From Certain Controlled Substances and Alcohol Testing Regulations; Mayflower Transit LLC dba Aero Mayflower Transit and United Van Lines LLC Requesting Exemptions

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT.

ACTION: Notice of application for exemption; request for comments.

SUMMARY: This notice announces the FMCSA's receipt of an application from Mayflower Transit LLC and United Van Lines LLC for exemptions from certain Federal controlled substance and alcohol testing requirements. The applicants request exemptions that would allow them to impose controlled substance and alcohol testing on their non-CDL (commercial driver's license) drivers using the same standards, forms and requirements, and in the same random testing pool, as their CDL drivers.

DATES: Comments must be received on or before June 16, 2003.

ADDRESSES: Mail or hand deliver comments to the U.S. Department of Transportation, Dockets Management Facility, Room PL–401, 400 Seventh Street, SW., Washington, DC 20590, or submit electronically at *http://dmses.dot.gov/submit*. All comments received will be available for examination and copying at the above address from 9 a.m. to 5 p.m. e.t., Monday through Friday, except Federal holidays. Those desiring notification of receipt of comments must include a self-addressed, stamped postcard, or you may print the acknowledgment page that appears after submitting comments electronically.

FOR FURTHER INFORMATION CONTACT: For information about the exemption application in this notice, Ms. Kaye Kirby, Office of Bus and Truck Standards and Operations, (202) 366–3109; for information about legal issues related to this notice, Mr. Mike Falk, Office of the Chief Counsel, (202) 366–1384, FMCSA, Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590. Office hours are from 7:45 a.m. to 4:15 p.m., e.t., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

Background

Section 4007 of the Transportation Equity Act for the 21st Century (TEA–21) (Pub. L. 105–178, 112 Stat. 107, now codified at 49 U.S.C 31315 and 31136), requires FMCSA to publish a notice in the **Federal Register** for each exemption requested, explain that the request has been filed, provide the public with an opportunity to inspect the safety analysis and any other relevant information known to the agency, and provide an opportunity to comment on the request. Prior to granting a request for an exemption, the agency must publish a notice in the **Federal Register** identifying the person or class of persons who will receive the exemption, the provisions from which the person will be exempt, the effective period, and all terms and conditions of the exemption. The terms and conditions established by FMCSA must ensure that the exemption will likely achieve a level of safety that is equivalent to, or greater than, the level that would be achieved by complying with the regulation.

On December 8, 1998, FMCSA published an interim final rule implementing section 4007 of TEA–21 (63 FR 67600). The regulations at 49 CFR part 381 establish the procedures to be followed to request waivers and to apply for exemptions from the Federal Motor Carrier Safety Regulations, and the provisions used to process them.

Exemption Request

Mayflower and United Van Lines have requested exemptions that would allow them to impose controlled substance and alcohol testing on their non-CDL drivers using the same standards, forms and requirements, and in the same random testing pool as their CDL drivers.

Mayflower and United Van Lines note that for purposes of administrative efficiency and to promote safety in their operations, Mayflower and United Van Lines have included all of the commercial motor vehicle drivers, including the non-CDL drivers, in the company controlled substance and alcohol testing programs conducted under the Department of Transportation regulations. This request for exemptions was prompted by the results of a compliance review conducted by the Federal Motor Carrier Safety Administration during which Mayflower was cited for including non-CDL drivers in its controlled substances and alcohol testing program. Consequently, Mayflower and United Van Lines are requesting exemptions from certain controlled substance and alcohol testing requirements specifically, 49 CFR 382.105, 49 CFR 382.305(l)(1), and 49 CFR 40.13(a), (b), (c) and (d).

Mayflower and United Van Lines propose two conditions for their exemption that they believe would allow the FMCSA to monitor whether they have met the required annual random testing percentage. First, they intend to mark each driver controlled substance and alcohol testing record with either "CDL driver" or "non-CDL driver" so that an enforcement officer can readily determine which records are for drivers subject to 49 CFR part 383 Commercial Driver's License Standards; Requirements and Penalties. Secondly, they will establish a random testing program that will test all drivers (both CDL drivers and non-CDL drivers) for controlled substances and alcohol at an annual rate of at least 15 percent for alcohol and at least 55 percent for controlled substances. The applicants believe by implementing these two conditions they will meet the minimum annual random testing percentage while still having a single pool of drivers for random selection.

Request for Comments

In accordance with 49 U.S.C. 31315(b)(4) and 31136(e), FMCSA is requesting public comment from all interested persons on these exemption applications. All comments received before the close of business on the comment closing date, indicated at the beginning of this notice, will be considered and will be available for examination in the docket at the location listed under the address section of this notice. Comments received after the comment closing date will be filed in the public docket and will be considered to the extent practicable, but FMCSA may make its decision at any time after the close of the comment period. In addition to late comments, FMCSA will also continue to file, in the public docket, relevant information that becomes available after the comment closing date. Interested persons should continue to examine the public docket for new material.

Authority: 49 U.S.C. 31136 and 31315; and 49 CFR 1.73.

Issued on: May 9, 2003.

Pamela M. Pelcovits,

Acting Associate Administrator for Policy and Program Development.

[FR Doc. 03–12173 Filed 5–14–03; 8:45 am]

BILLING CODE 4910–EX–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

Reports, Forms and Record Keeping Requirements; Agency Information Collection Activity Under OMB Review

AGENCY: National Highway Traffic Safety Administration (NHTSA), DOT.

ACTION: Emergency **Federal Register** Notice.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), this notice. announces that the Information Collection Request (ICR) abstracted below has been forwarded to the Office of Management and Budget (OMB) for review and comment. The ICR describes the nature of the information collections and their expected burden. The **Federal Register** Notice with a 60-day comment period was published on November 5, 2001 [66 FR 55979].

DATES: OMB approval has been requested by May 30, 2003.

FOR FURTHER INFORMATION CONTACT: Gayle Dalrymple at the National Highway Traffic Safety Administration (NHTSA), Office of Crash Avoidance Standards, 202–366–5559. 400 Seventh Street, SW., Washington, DC 20590.

SUPPLEMENTARY INFORMATION:

National Highway Traffic Safety Administration

Title: Exemption from the Make Inoperative Prohibition.
OMB Number: New.
Type of Request: New collection.
Abstract: On Febraury 27, 2001, NHTSA published a final rule (66 FR 12638) to facilitate the modification of motor vehicle so that persons with disabilities can use the vehicle. The regulation is found at 49 CFR Part 595 Subpart C—Vehicle Modifications to Accommodate People with Disabilities. This final rule included two new "collection of information," as that term is defined in 5 CFR Part 1320 Controlling Paperwork Burdens on the Public: Modifier identification and a document to be provided to the owner of the modified vehicle stating the exemptions used for that vehicle and any reduction in load carrying capacity of the vehicle of more than 100 kg (220 lbs).
Affected Public: Businesses that modify vehicles, after the first retail sale, so that the vehicle may be used by persons with disabilities.
Estimated Total Annual Burden: 655 hours and $7.48.

ADDRESSES: Send comments, within 30 days, to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725 17th Street, NW., Washington, DC 20503, Attention: NHTSA Desk Officer.

Comments Are Invited On:

- Whether the proposed collection of information is necessary for the proper performance of the functions of the Department, including whether the information will have practical utility.
- Whether the Department's estimate for the burden of the proposed information collection is accurate.
- Ways to minimize the burden of the collection of information on respondents, including the use of automated collection techniques or other forms of information technology.

A comment to OMB is most effective if OMB receives it prior to May 30, 2003.

Issued on: May 9, 2003.

Stephen R. Kratzke,

Associate Administrator for Rulemaking.

[FR Doc. 03–12168 Filed 5–14–03; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

Reports, Forms and Record Keeping Requirements; Agency Information Collection Activity Under OMB Review

AGENCY: National Highway Traffic Safety Administration, DOT.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), this notice announces that the Information Collection Request (ICR) abstracted below has been forwarded to the Office of Management and Budget (OMB) for review and comment. The ICR describes the nature of the information collections and their expected burden. The **Federal Register** Notice with a 60-day comment period was published on February 3, 2003 [Volume 68, No. 22, Page 5331].

DATES: Comments must be submitted on or before June 16, 2003.

FOR FURTHER INFORMATION CONTACT: Gary Toth, NHTSA, 400 Seventh Street, SW., Room 6213, NPO 122, Washington, DC 20590. The telephone number for Mr. Toth is (202) 366–5378.

SUPPLEMENTARY INFORMATION:

National Highway Traffic Safety Administration

Title: National Automotive Sampling System (NASS).

OMB Number: 2127–0021.

Type of Request: Continuation.

Abstract: The collection of crash data that support the establishment and enforcement of motor vehicle regulations that reduce the severity of injury and property damage caused by motor vehicle crashes is authorized under the National Traffic and Motor Vehicle Safety Act of 1966 (Pub. L. 89–563, Title 1, Sec. 106, 108, and 112). The National Automotive Sampling System (NASS) Crashworthiness Data System (CDS) of the National Highway Traffic Safety Administration investigates high severity crashes. Once a crash has been selected for investigation, researchers locate, visit, measure, and photograph the crash scene; locate, inspect, and photograph vehicles; conduct a telephone or personal interview with the involved individuals or surrogate; and obtain and record injury information received from various medical data sources. NASS CDS data are used to describe and analyze circumstances, mechanisms, and consequences of high severity motor vehicle crashes in the United States. The collection of interview data aids in this effort.

Affected Public: Passenger Motor Vehicle Operators.

Estimated Total Annual Burden: 5,807 hours.

ADDRESSES: Send comments, within 30 days, to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725–17th Street, NW., Washington, DC 20503, Attention NHTSA Desk Officer.

Comments are invited on: Whether the proposed collection of information is necessary for the proper performance of the functions of the Department, including whether the information will have practical utility; the accuracy of the Departments estimate of the burden of the proposed information collection; ways to enhance the quality, utility and clarity of the information to be collected; and ways to minimize the burden of the collection of information on respondents, including the use of automated collection techniques or other forms of information technology.

A Comment to OMB is most effective if OMB receives it within 30 days of publication.

Issued in Washington, DC, on May 9, 2003.

Raymond P. Owings,

Associate Administrator for Advanced Research and Analysis.

[FR Doc. 03–12169 Filed 5–14–03; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

Reports, Forms and Record Keeping Requirements; Agency Information Collection Activity Under OMB Review

AGENCY: National Highway Traffic Safety Administration, DOT.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), this notice announces that the Information Collection Request (ICR) abstracted below has been forwarded to the Office of Management and Budget (OMB) for review and comment. The ICR describes the nature of the information collections and their expected burden. The **Federal Register** Notice with a 60-day comment period was published on December 9, 2002 67 FR 73005–73006.

DATES: Comments must be submitted on or before June 16, 2003.

FOR FURTHER INFORMATION CONTACT: Mr. Glenn Karr at the National Highway Traffic Safety Administration, National Center for Statistics and Analysis (NPO–124), 202/366–4800, 400 Seventh Street, SW, Room 6124A, Washington, DC 20590.

SUPPLEMENTARY INFORMATION:

National Highway Traffic Safety Administration

Title: National Driver Register.

OMB Number: 2127–0001.

Type of Request: Extension of a currently approved collection.

Abstract: The purpose of the NDR is to assist States and other authorized users in obtaining information about problem drivers. State motor vehicle agencies submit and use the information for driver licensing purposes. Other users obtain the information for transportation safety purposes.

Affected Public: State, Local, or Tribal Government.

Estimated Total Annual Burden: 1,979.

ADDRESSES: Send comments, within 30 days, to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725 17th Street, NW, Washington, DC 20503, Attention NHTSA Desk Officer.

Comments are invited on: Whether the proposed collection of information is necessary for the proper performance of the functions of the Department, including whether the information will have practical utility; the accuracy of the Department's estimate of the burden of the proposed information collection; ways to enhance the quality, utility and clarity of the information to be collected; and ways to minimize the burden of the collection of information on respondents, including the use of automated collection techniques or other forms of information technology.

A Comment to OMB is most effective if OMB receives it within 30 days of publication.

Issued in Washington, DC, on May 9, 2003.

Raymond P. Owings,

Associate Administrator for Advanced Research and Analysis.

[FR Doc. 03–12170 Filed 5–14–03; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Finance Docket No. 34320 (Sub–No. 1)]

Union Pacific Railroad Company—Trackage Rights Exemption—The Burlington Northern and Santa Fe Railway Company

AGENCY: Surface Transportation Board, DOT.

ACTION: Petition for partial revocation.

SUMMARY: The Board, under 49 U.S.C. 10502, exempts the trackage rights described in STB Finance Docket No. 34320[1] to permit the trackage rights to expire on or about May 22, 2003, in accordance with the agreement of the parties.

DATES: This exemption will be effective on May 22, 2003. Petitions to reopen must be filed by June 4, 2003.

ADDRESSES: An original and 10 copies of all pleadings referring to STB Finance Docket No. 34320 (Sub-No. 1) must be filed with the Surface Transportation Board, 1925 K Street, NW., Washington, DC 20423–0001. In addition, a copy of all pleadings must be served on petitioners' representative: Robert T. Opal, 1416 Dodge Street, Room 830, Omaha, NE 68179.

FOR FURTHER INFORMATION CONTACT: Joseph H. Dettmar (202) 565–1600 (Federal Information Relay Service (FIRS) for the hearing impaired: 1–800–877–8339).

SUPPLEMENTARY INFORMATION: Additional information is contained in the Board's decision. To purchase a copy of the full decision, write to, call, or pick up in person from: Da 2 Da Legal Copy Service, Suite 405, 1925 K Street, NW., Washington, DC 20006. Telephone: (202) 293–7776. (Assistance for the hearing impaired is available through FIRS at 1–800–877–8339.)

Board decisions and notices are available on our Web site at *www.stb.dot.gov.*

Decided: May 9, 2003.

By the Board, Chairman Nober and Commissioner Morgan.

Vernon A. Williams,

Secretary.

[FR Doc. 03–12137 Filed 5–14–03; 8:45 am]

BILLING CODE 4915–00–P

[1] On March 7, 2003, Union Pacific Railroad Company (UP) filed a notice of exemption under the Board's class exemption procedures at 49 CFR 1180.2(d)(7). The notice covered the agreement by The Burlington Northern and Santa Fe Railway Company (BNSF) to grant temporary overhead trackage rights to UP over a BNSF line of railroad between BNSF milepost 203.0 near Keddie, CA, and BNSF milepost 0.0 near Klamath Falls, OR, a distance of approximately 203.0 miles. *See Union Pacific Railroad Company—Trackage Rights Exemption—The Burlington Northern and Santa Fe Railway Company,* STB Finance Docket No. 34320 (STB served Mar. 26, 2003). The trackage rights operations under the exemption were scheduled to begin on March 16, 2003.

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Finance Docket No. 34321 (Sub–No. 1)]

Union Pacific Railroad Company—Trackage Rights Exemption—The Burlington Northern and Santa Fe Railway Company

AGENCY: Surface Transportation Board.

ACTION: Petition for partial revocation.

SUMMARY: The Board, under 49 U.S.C. 10502, exempts the trackage rights described in STB Finance Docket No. 34321[1] to permit the trackage rights to expire on or about May 12, 2003, in accordance with the agreement of the parties.

DATES: This exemption will be effective on May 12, 2003. Petitions to reopen must be filed by June 4, 2003.

ADDRESSES: An original and 10 copies of all pleadings referring to STB Finance Docket No. 34321 (Sub-No. 1) must be filed with the Surface Transportation Board, 1925 K Street, NW., Washington, DC 20423–0001. In addition, a copy of all pleadings must be served on petitioner's representative: Robert T. Opal, 1416 Dodge Street, Room 830, Omaha, NE 68179.

FOR FURTHER INFORMATION CONTACT: Joseph H. Dettmar, (202) 565–1600 (Federal Information Relay Service (FIRS) for the hearing impaired: 1–800–877–8339).

SUPPLEMENTARY INFORMATION: Additional information is contained in the Board's decision. To purchase a copy of the full decision, write to, call, or pick up in person from: Da 2 Da Legal Copy Service, Suite 405, 1925 K Street, NW., Washington, DC 20006. Telephone: (202) 293–7776. (Assistance for the hearing impaired is available through FIRS at 1–800–877–8339.)

Board decisions and notices are available on our Web site at *www.stb.dot.gov.*

Decided: May 9, 2003.

By the Board, Chairman Nober and Commissioner Morgan.

Vernon A. Williams,

Secretary.

[FR Doc. 03–12138 Filed 5–14–03; 8:45 am]

BILLING CODE 4915–00–P

[1] On March 7, 2003, the Union Pacific Railroad Company (UP) filed a notice of exemption under the Board's class exemption procedures at 49 CFR 1180.2(d)(7). The notice covered the agreement by The Burlington Northern and Santa Fe Railway Company (BNSF) to grant temporary overhead trackage rights to UP over BNSF's rail lines between BNSF milepost 143.2 near Los Angeles, CA, and BNSF milepost 10.5 near Riverside, CA, a distance of approximately 57.2 miles. *See Union Pacific Railroad Company—Trackage Rights Exemption—The Burlington Northern and Santa Fe Railway Company,* STB Finance Docket No. 34321 (STB served Mar. 26, 2003). The trackage rights operations under the exemption were scheduled to begin on March 14, 2003.

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Finance Docket No. 34333 (Sub—No. 1)]

Union Pacific Railroad Company—Trackage Rights Exemption—The Burlington Northern and Santa Fe Railway Company

AGENCY: Surface Transportation, Board DOT.

ACTION: Petition for partial revocation.

SUMMARY: The Board, under 49 U.S.C. 10502, exempts the temporary trackage rights arrangement between Union Pacific Railroad Company (UP) and the Burlington Northern and Santa Fe Railway Company (BNSF) described in STB Finance Docket No. 34333,[1] to permit it to expire on or about May 10, 2003.

DATES: This exemption is effective on May 9, 2003. Petitions to reopen must be filed by June 4, 2003.

ADDRESSES: An original and 10 copies of all pleadings referring to STB Finance Docket No. 34333 (Sub-No. 1) must be filed with the Surface Transportation Board, 1925 K Street, NW., Washington DC 20423–0001. In addition, a copy of all pleadings must be served on petitioner's representative: T. Christopher Lewis, 1416 Dodge Street, Room 830, Omaha, NE 68179.

FOR FURTHER INFORMATION CONTACT: Beryl Gordon, (202) 565–1600. (Assistance for the hearing impaired is available through the Federal Information Relay Service (FIRS) at 1–800–877–8339.)

SUPPLEMENTARY INFORMATION: Additional information is contained in the Board's decision. Copies of the decision may be purchased from Da 2 Da Legal Copy Service by calling (202) 293–7776 (assistance for the hearing impaired is available through FIRS at 1–800–877–8339) or by visiting Suite 405, 1925 K Street, NW., Washington DC 20006.

Board decisions and notices are available on our Web site at *www.stb.dot.gov.*

Decided: May 9, 2003.

By the Board, Chairman Nober and Commissioner Morgan.

Vernon A. Williams,

Secretary.

[FR Doc. 03–12139 Filed 5–14–03; 8:45 am]

BILLING CODE 4915–00–P

[1] The temporary trackage rights exempted in *Union Pacific Railroad Company—Trackage Rights Exemption—The Burlington Northern and Santa Fe Railway Company,* STB Finance Docket No. 34333 (STB served May 2, 2003), are over BNSF's rail line from BNSF milepost 141.7 near Rockview, MO, to BNSF milepost 422.2 near Jonesboro, AR, a distance of approximately 161.6 miles.

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Finance Docket No. 34040]

Riverview Trenton Railroad Company—Petition for Exemption From 49 U.S.C. 10901 To Acquire and Operate a Rail Line In Wayne County, MI

Pursuant to 49 U.S.C. 10502, the Surface Transportation Board (Board) is granting an exemption from the licensing provisions of 49 U.S.C. 10901 to the Riverview Trenton Railroad Company (RTR) to allow RTR to begin operation as a new railroad over 1.45 miles of track located on a site formerly owned by the McLouth Steel Company in the towns of Riverview and Trenton in Wayne County, Michigan. On this site, RTR plans to establish an intermodal terminal involving the interchange of rail, motor, and possibly at some undetermined future date, barge traffic. RTR also plans to transport traffic for the Detroit Steel Center, a steel mini-mill operating on an adjacent site. RTR seeks to interchange rail cars with line haul carriers operating adjacent to RTR.

In granting this exemption, the Board has analyzed a substantial record generated by RTR and opponents of the exemption. The analysis appears in a decision that is being issued simultaneously with the publication of this notice. That decision subjects RTR's project to comprehensive environmental, monitoring, and reporting conditions.

The decision is available on the Board's Web site at *www.stb.dot.gov*.

Decided: May 9, 2003.

By the Board, Chairman Nober and Commissioner Morgan.

Vernon A. Williams,

Secretary.

[FR Doc. 03–12144 Filed 5–14–03; 8:45 am]

BILLING CODE 4915–00–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Finance Docket No. 34345]

The Burlington Northern and Santa Fe Railway Company—Trackage Rights Exemption—Union Pacific Railroad Company

Union Pacific Railroad Company (UP) has agreed to grant limited overhead trackage rights to The Burlington Northern and Santa Fe Railway Company (BNSF)[1] over UP lines between Port Chicago, CA, at milepost 41.3 on UP's Tracy Subdivision, and Stege, CA, at milepost 9.3 on UP's Martinez Subdivision, a distance of approximately 28.7 miles—6.3 on the Tracy Subdivision and 22.4 miles on the Martinez Subdivision.

The transaction was scheduled to be consummated on May 2, 2003. The purpose of the trackage rights is to allow BNSF to bridge its train service while BNSF's main line is out of service due to maintenance.

As a condition to this exemption, any employees affected by the trackage rights will be protected by the conditions imposed in *Norfolk and Western Ry. Co.—Trackage Rights—BN*, 354 I.C.C. 605 (1978), as modified in *Mendocino Coast Ry., Inc.—Lease and Operate*, 360 I.C.C. 653 (1980).

This notice is filed under 49 CFR 1180.2(d)(7). If the notice contains false or misleading information, the exemption is void *ab initio*. Petitions to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction.

An original and 10 copies of all pleadings, referring to STB Finance Docket No. 34345, must be filed with the Surface Transportation Board, 1925 K Street, NW., Washington, DC 20423–0001. In addition, a copy of each pleading must be served on Michael E. Roper, 2500 Lou Menk Drive, PO Box 961039, Fort Worth, TX 76161–0039.

Board decisions and notices are available on our website at "*www.stb.dot.gov*."

By the Board, David M. Konschnik, Director, Office of Proceedings.

Decided: May 7, 2003.

Vernon A. Williams,

Secretary.

[FR Doc. 03–12000 Filed 5–14–03; 8:45 am]

BILLING CODE 4915–00–P

[1] On May 6, 2003, BNSF filed a petition for termination of this trackage rights exemption in *Burlington Northern and Santa Fe Railway Company-Trackage Rights Exemption-Union Pacific Railroad Company*, STB Finance Docket No. 34345 (Sub-No. 1), wherein BNSF requests that the Board permit the proposed overhead trackage rights arrangement described in the present proceeding to expire on or about May 22, 2003. That petition will be addressed by the Board in a separate decision.

DEPARTMENT OF TRANSPORTATION

Bureau of Transportation Statistics

Reports, Forms and Recordkeeping Requirements; Activity Under OMB Review: Part 249 Preservation of Records

AGENCY: Bureau of Transportation Statistics (BTS), DOT.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), this notice announces that the Information Collection Request (ICR) abstracted below has been forwarded to the Office of Management and Budget (OMB) for extension of currently approved collections. The ICR describes the nature of the information collection and its expected burden. The **Federal Register** Notice with a 60-day comment period soliciting comments on the following collection of information was published on February 26, 2003 (68 FR vol. 68, page 8958).

DATES: Written comments should be submitted by June 16, 2003.

FOR FURTHER INFORMATION CONTACT: Bernie Stankus, Office of Airline Information, K–14, Room 4125, Bureau of Transportation Statistics, 400 Seventh Street, SW., Washington, DC 20590–0001, Telephone Number (202) 366–4387, Fax Number (202) 366–3383 or e-mail *bernard.stankus@bts.gov*.

SUPPLEMENTARY INFORMATION:

Bureau of Transportation Statistics (BTS)

Title: Part 249 Preservation of Records.

Type of Request: Extension of a currently approved collection.

OMB Control Number: 2138–0006.

Forms: None.

Affected Public: U.S. certificated carriers, public charter operators and overseas military personnel charter operators.

Abstract: Title 14 CFR part 249 requires U.S. certificated air carriers, public charter operators and overseas military personnel charter operators to retain such records as general and subsidiary ledgers, journals and journal vouchers, voucher distribution registers, accounts receivable and payable journals and ledgers, subsidy records documenting underlying financial and statistical reports to the Department, funds reports, consumer records, sales reports, auditors' and flight coupons, air waybills, etc. Depending on the nature of the document, it may be retained for a period of 30 days to 3 years. Public charter and overseas military personnel charter operators must retain documents which evidence or reflect deposits made by each charter participant and commissions received by, paid to, or deducted by travel agents, and all statements, invoices, bills and receipts from suppliers or furnishers of goods and services in connection with the tour or charter. These records are retained for 6 months after completion of the charter program.

Estimated Annual Burden Hours: 660 hours.

ADDRESSES: Send comments to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725—17th Street, NW., Washington, DC 20503, Attention BTS Desk Officer.

Comments are invited on whether the record retention requirements are necessary for the proper performance of the functions of the Department, including whether the record retention requirements have practical utility; whether the accuracy of the Department's estimate of burden hours is correct. Also, commenters are invited to provide suggestions on ways to enhance the quality, utility, and clarity of the information to be collected; and ways to minimize the burden of the requirements on respondents, including the use of automated techniques or other forms of information technology.

Issued in Washington, DC, on May 8, 2003.

Donald W. Bright,

Assistant Director, Office of Airline Information.

[FR Doc. 03–12046 Filed 5–14–03; 8:45 am]

BILLING CODE 4910–FE–P

DEPARTMENT OF TRANSPORTATION

Bureau of Transportation Statistics

Reports, Forms and Recordkeeping Requirements; Activity Under OMB Review: Report of Extension of Credit to Political Candidates

AGENCY: Bureau of Transportation Statistics (BTS), DOT.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), this notice announces that the Information Collection Request (ICR) abstracted below has been forwarded to the Office of Management and Budget (OMB) for extension of currently approved collections. The ICR describes the nature of the information collection and its expected burden. The **Federal Register** Notice with a 60-day comment period soliciting comments on the following collection of information was published on February 26, 2003 (68 FR vol. 68, page 8959).

DATES: Written comments should be submitted by June 16, 2003.

FOR FURTHER INFORMATION CONTACT: Bernie Stankus, Office of Airline Information, K–14, Room 4125, Bureau of Transportation Statistics, 400 Seventh Street, SW., Washington, DC 20590–0001, Telephone Number (202) 366–4387, Fax Number (202) 366–3383 or e-mail *bernard.stankus@bts.gov*.

SUPPLEMENTARY INFORMATION:

Bureau of Transportation Statistics (BTS)

Title: Report of Extension of Credit to Political Candidates.

Type of Request: Extension of a currently approved collection.

OMB Control Number: 2138–0016.

Forms: 183.

Affected Public: U.S. air carriers that extend credit to political candidates during Federal elections.

Background

The Department uses this Form 183 as the means to fulfill its obligation under the Federal Election Campaign Act of 1971 (the Act). The Act's legislative history indicates that one of its statutory goals is to prevent candidates for Federal political office from incurring large amounts of unsecured debt with regulated transportation companies (*e.g.* airlines). This information collection allows the Department to monitor and disclose the amount of unsecured credit extended by airlines to candidates for Federal office. All certificated air carriers are required to submit this information.

Estimated Annual Burden Hours: 24 hours.

ADDRESSES: Send comments to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725—17th Street, NW., Washington, DC 20503, Attention BTS Desk Officer.

Comments are invited on: Whether this collection of information is necessary for the proper performance of the functions of the Department concerning extension of credit to political candidates by airlines. Comments should address whether the information will have practical utility; the accuracy of the Department's estimate of the burden of the proposed information collection; ways to enhance the quality, utility and clarity of the information to be collected; and ways to minimize the burden of the collection of information on respondents, including the use of automated collection techniques or other forms of information technology.

The Confidential Information Protection and Statistical Efficiency Act of 2002 (44 U.S.C. 3501 note), requires a statistical agency to clearly identify information it collects for non-statistical purposes. BTS hereby notifies the respondents and the public that BTS uses the information it collects under this OMB approval for non-statistical purposes including, but not limited to, publication of both Respondent's identity and its data, submission of the information to agencies outside BTS for review, analysis and possible use in regulatory and other administrative matters.

Issued in Washington, DC, on May 8, 2003.

Donald W. Bright,

Assistant Director, Airline Information, Bureau of Transportation Statistics.

[FR Doc. 03–12047 Filed 5–14–03; 8:45 am]

BILLING CODE 4910–FE–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Revenue Procedure 2003–37

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Revenue Procedure 2003–37, Documentation Provisions for Certain Taxpayers Using the Fair Market Value Method.

DATES: Written comments should be received on or before July 14, 2003 to be assured of consideration.

ADDRESSES: Direct all written comments to Glenn P. Kirkland, Internal Revenue Service, room 6411, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the revenue procedure should be directed to Carol Savage at Internal Revenue Service, room 6407, 1111 Constitution Avenue NW., Washington, DC 20224, or at (202) 622–3945, or through the Internet at *CAROL.A.SAVAGE@irs.gov*.

SUPPLEMENTARY INFORMATION:

Title: Documentation Provisions for Certain Taxpayers Using the Fair Market Value Method of Internet Expense Apportionment.

OMB Number: 1545–1833.

Revenue Procedure Number: Revenue Procedure 2003–37.

Abstract: Revenue Procedure 2003–37 describes documentation and information a taxpayer that uses the fair market value method of apportionment of interest expense may prepare and make available to the Service upon request in order to establish the fair market value of the taxpayer's assets to the satisfaction of the Commissioner as required by § 1.861–9T(g)(1)(iii). It also sets forth the procedures to be followed in the case of elections to use the fair market value method.

Current Actions: There are no changes being made to the revenue procedure at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit organizations.

Estimated Number of Respondents and/or Recordkeepers: 125.

Estimated Average Time Per Respondent/Recordkeeper: 5 hours.

Estimated Total Annual Reporting and/or Recordkeeping Burden: 625 hours.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: May 8, 2003.

Glenn P. Kirkland,

IRS Reports Clearance Officer.

[FR Doc. 03–12187 Filed 5–14–03; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Form 8876

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Form 8876, Excise Tax on Structured Settlement Factoring Transactions.

DATES: Written comments should be received on or before July 14, 2003 to be assured of consideration.

ADDRESSES: Direct all written comments to Glenn P. Kirkland, Internal Revenue Service, room 6411, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to Carol Savage at Internal Revenue Service, room 6407, 1111 Constitution Avenue NW., Washington, DC 20224, or at (202) 622–3945, or through the internet at *CAROL.A.SAVAGE@irs.gov.*

SUPPLEMENTARY INFORMATION:

Title: Excise Tax on Structured Settlement Factoring Transactions.

OMB Number: 1545–1826.

Form Number: 8876.

Abstract: Form 8876 is used to report structured settlement transactions and pay the applicable excise tax.

Current Actions: There are no changes being made to the form at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit organizations and individual.

Estimated Number of Respondents: 100.

Estimated Time Per Respondent: 5 hours, 36 minutes.

Estimated Total Annual Burden Hours: 560.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: May 9, 2003.

Carol Savage,

Management and Program Analyst.

[FR Doc. 03–12188 Filed 5–14–03; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Revenue Procedure 2003–39

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Revenue Procedure 2003–39, Section 1031 LKE (Like-Kind Exchanges) Auto Leasing Programs.

DATES: Written comments should be received on or before July 14, 2003 to be assured of consideration.

ADDRESSES: Direct all written comments to Glenn P. Kirkland, Internal Revenue Service, room 6411, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the revenue procedure should be directed to Carol Savage at Internal Revenue Service, room 6407, 1111 Constitution Avenue NW., Washington, DC 20224, or at (202) 622–3945, or through the internet at *CAROL.A.SAVAGE@irs.gov.*

SUPPLEMENTARY INFORMATION:

Title: Section 1031 LKE (Like-Kind Exchanges) Auto Leasing Programs.

OMB Number: 1545–1834.

Revenue Procedure Number: Revenue Procedure 2003–39.

Abstract: Revenue Procedure 2003–39 provides safe harbors for certain aspects of the qualification under § 1031 of certain exchanges of property pursuant to LKE Programs for federal income tax purposes.

Current Actions: There are no changes being made to the revenue procedure at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit organizations.

Estimated Number of Respondents: 8,600.

Estimated Average Time Per Respondent: 1 hour.

Estimated Total Annual Burden Hours: 8,600.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: May 8, 2003.

Glenn P. Kirkland,

IRS Reports Clearance Officer.

[FR Doc. 03–12189 Filed 5–14–03; 8:45 am]

BILLING CODE 4830–01–P

UNITED STATES INSTITUTE OF PEACE

Announcement of Senior Fellowship Competition

AGENCY: United States Institute of Peace.

ACTION: Notice.

SUMMARY: The agency is soliciting applications for Senior Fellowships from scholars or practitioners who conduct research related to the peaceful resolution of international conflict. Fellowship entails residence at agency in Washington, DC, for up to ten months beginning October 1, 2004.

DATES: Application Material Available Upon Request. *Receipt Date for Return of Applications:* September 15, 2003. *Notification of Awards:* April, 2004.

ADDRESSES: For application materials, visit the Institute's Web site at *http://www.usip.org*, or contact: United States Institute of Peace, Jennings Randolph Program, 1200 17th Street, NW., Suite 200, Washington, DC 20036–3011, (202) 429–6063 (fax), (202) 457–1719 (TTY), *jrprogram@usip.org* (e-mail).

FOR FURTHER INFORMATION CONTACT: Jennings Randolph Program, Phone (202) 429–3886.

Dated: April 2, 2003.

Bernice J. Carney,

Director, Office of Administration.

[FR Doc. 03–12141 Filed 5–14–03; 8:45 am]

BILLING CODE 6820–AR–M

Federal Register

Thursday,
May 15, 2003

Part II

Department of Transportation

National Highway and Traffic Safety Administration

49 CFR Part 571

Federal Motor Vehicle Safety Standards; Brake Hoses; Proposed Rule

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 571

[Docket No. 03–14483, No. 1]

RIN 2127–AH79

Federal Motor Vehicle Safety Standards; Brake Hoses

AGENCY: National Highway Traffic Safety Administration (NHTSA), Department of Transportation (DOT).

ACTION: Notice of proposed rulemaking.

SUMMARY: Pursuant to the agency's grant of a joint petition from Elf Atochem North America, Inc., Mark IV Industrial/Dayco Eastman, and Parker Hannifin Corporation, NHTSA proposes to update the Federal motor vehicle safety standard on brake hoses to incorporate the substantive specifications of several Society of Automotive Engineers (SAE) Recommended Practices relating to hydraulic brake hoses, vacuum brake hoses, air brake hoses, and plastic air brake tubing.

DATES: Comments must be received on or before July 14, 2003.

ADDRESSES: Comments should refer to the docket number above and be submitted to: Docket Section, National Highway Traffic Safety Administration, 400 Seventh Street, SW, Washington, DC 20590. Alternatively, you may submit your comments electronically by logging onto the Docket Management System (DMS) Web site at *http://dms.dot.gov*. Click on "Help & Information" or "Help/Info" to view instructions for filing your comments electronically. Regardless of how you submit your comments, you should mention the docket number of this document.

You may call the Docket at 202–366–9324. Docket hours are 9:30 a.m. to 4 p.m., Monday through Friday.

FOR FURTHER INFORMATION CONTACT: For non-legal issues, Mr. Jeffrey Woods, Vehicle Dynamics Division, Office of Vehicle Safety Standards (Telephone: 202–366–6206) (Fax: 202–366–4921). Mr. Woods' mailing address is National Highway Traffic Safety Administration/DOT, NPS–22, 400 Seventh St., SW., Washington, DC 20590.

For legal issues, Mr. George Feygin, Office of the Chief Counsel (Telephone: 202–366–2992) (Fax: 202–366–3820). Mr. Feygin's mailing address is National Highway Traffic Safety Administration, NCC–20, 400 Seventh St., SW., Washington, DC 20590.

SUPPLEMENTARY INFORMATION:

Table of Contents

I. Background
II. Joint Petition for Rulemaking
III. Summary of Response to Petition
IV. NHTSA's Proposed Revisions to FMVSS No. 106
A. Hydraulic Brake Hoses
1. Pressure Test
2. Constriction
3. Volumetric Expansion
4. Whip Resistance Test
5. Tensile Strength
6. Water Absorption and Pressure Test, Tensile Strength, and Whip Resistance
7. Low temperature Resistance Test
8. Brake Fluid Compatibility, Constriction, and Burst Strength
9. Ozone Resistance
10. End Fitting Corrosion Resistance
11. High Temperature Impulse Test
B. Air Brake Hoses
1. Dimensional Requirements
2. Construction and Labeling
3. Manufacturer Identification
4. Constriction
5. High Temperature Resistance
6. Low Temperature Resistance
7. Oil Resistance
8. Ozone Resistance
9. Length Change
10. Adhesion
11. Air Pressure (leakage)
12. Burst Strength
13. Tensile Strength
14. Water Absorption and Tensile Strength
15. Zinc Chloride Resistance
16. End Fitting Corrosion Resistance
17. Minimum Bend Radius
C. Vacuum Brake Hoses
1. Constriction
2. High Temperature Resistance
3. Low Temperature Resistance
4. Ozone Resistance
5. Burst Strength
6. Vacuum Deformation
7. Bend Test
8. Swell (Fuel Resistance)
9. Adhesion
10. Deformation
11. End Fitting Corrosion Resistance
D. Plastic Air Brake Tubing
1. Classification
2. Dimensions and Tolerances
3. One Hundred Percent Leak Test
4. Burst Test
5. Moisture Absorption
6. Ultraviolet Resistance
7. Cold temperature Flexibility
8. Heat Aging
9. Zinc Chloride Resistance
10. Methyl Alcohol Resistance
11. Stiffness
12. Boiling Water Stabilization and Burst Test
13. Cold Temperature Impact
14. Adhesion
15. Heat Aging and Adhesion Test
16. Collapse Resistance
17. Oil Resistance
18. Ozone Resistance
E. Plastic Air Brake Tubing Assemblies and End Fittings
1. Tensile Strength
2. Hot Tensile Strength
3. Conditioned Pull Test
4. Vibration Leak Test
5. Proof and Burst Test
6. Serviceability Test
7. Fitting Compatibility Test
8. Constriction
9. End Fitting Dimensional Requirements
10. End Fitting Corrosion Resistance
V. Rulemaking Analyses and Notices
A. Executive Order 12866 and DOT Regulatory Policies and Procedures
B. Regulatory Flexibility Act
C. National Environmental Policy Act
D. Executive Order 13132 (Federalism)
E. Civil Justice Reform
F. Paperwork Reduction Act
G. National Technology Transfer and Advancement Act
H. Unfunded Mandates Reform Act
I. Plain Language
J. Regulation Identifier Number (RIN)
K. Comments

I. Background

This document responds to a joint petition for rulemaking filed on October 30, 1998, by Elf Atochem North America, Inc., Mark IV Industrial/Dayco Eastman, and Parker Hannifin Corporation, three brake hose manufacturers. The petitioners request that certain requirements relating to brake hoses, brake hose tubing, and brake hose end fittings that are presently administered by the Federal Motor Carrier Safety Administration (FMCSA) be incorporated into the brake hose standard that is currently administered by the National Highway Traffic Safety Administration ("NHTSA" or the "agency"). Specifically, the petitioners request incorporation of the requirements in § 393.45 (Brake tubing and hose, adequacy) and § 393.46 (Brake tubing and hose connections) of the Federal Motor Carrier Safety Regulations (FMCSR) into § 571.106 (Brake hoses) of the Federal motor vehicle safety standards ("FMVSS").

Sections 393.45 and 393.46 of the FMCSRs require that brake hose, tubing, and fittings on "commercial motor vehicles" be maintained according to certain specifications adopted by the Society of Automotive Engineers ("SAE"). A "commercial motor vehicle" is defined, in § 393.5 of the FMCSRs, as

> any self-propelled or towed motor vehicle used on a highway in interstate commerce to transport passengers or property when the vehicle—
>
> (1) Has a gross vehicle weight rating or gross combination weight rating, or gross vehicle weight or gross combination weight, of 4,537 kg (10,001 lbs.) or more; whichever is greater; or
>
> (2) Is designed or used to transport more than 8 passengers (including the driver) for compensation; or
>
> (3) Is designed or used to transport more than 15 passengers, including the driver, and is not used to transport passengers for compensation; or
>
> (4) Is used in transporting material found by the Secretary of Transportation to be hazardous under 49 U.S.C. 5103 and transported in a quantity requiring placarding under regulations prescribed by the Secretary under 49 CFR, subtitle B, chapter I, subchapter C.[1]

Pursuant to § 393.45, brake tubing and hose on commercial motor vehicles must conform to the following SAE specifications: SAE Recommended Practice J1149 (Metallic Air Brake System Tubing and Pipe—July 1976); SAE Recommended Practice J844 (Nonmetallic Air Brake System Type B—October 1980); SAE Recommended Practice J1402 (Automotive Air Brake Hose and Hose Assemblies—June 1985); SAE Recommended Practice J1401 (Road Vehicle Hydraulic Brake Hose Assemblies for Use with Non Petroleum Base Hydraulic Fluid—June 1985); and SAE Recommended Practice J1403 (Vacuum Brake Hose—June 1985). Under section 393.46, tube fittings on commercial motor vehicles must conform to the requirements of either SAE Standard J512 (Automotive Tube Fittings—October 1980) or SAE J246 (Spherical and Flanged Sleeve (Compression) Tube Fittings—March 1981).

The Federal Highway Administration ("FHWA"), which was responsible for administering the FMCSRs prior to the formation of the Federal Motor Carrier Safety Administration, issued a Notice of Proposed Rulemaking on April 14, 1997 (62 FR 18170). The FHWA proposed amending part 393 of the FMSCRs to, among other things, remove obsolete and redundant regulations and resolve inconsistencies between part 393 and NHTSA's FMVSS. The FHWA stated that because it has no statutory authority to regulate vehicle manufacturers or manufacturers of brake hose, tubing, or fittings, all such regulations should be included in NHTSA's FMVSS rather than in the FMCSRs. The FHWA proposed adopting a requirement that commercial motor vehicles be maintained in compliance with FMVSS No. 106.

Accordingly, FHWA's NPRM included a proposal to delete from §§ 393.45 and 393.46 all but one of the references to SAE specifications applicable to metallic brake tubing, nonmetallic brake tubing, air brake hose, hydraulic brake hose, vacuum brake hose, air brake tube fittings, and

[1] The FMCSRs contain two different definitions of "commercial motor vehicle": one in § 393.5 and another in section 382.107. The latter definition is narrower than the former. We note that all references throughout this document to "commercial motor vehicle" are to the broader definition found in section 393.5.

spherical and flanged sleeve tube fittings. In place of the SAE specifications, FHWA proposed that § 393.45 state that all brake hose and tubing, brake hose assemblies, and fittings must meet the applicable requirements of FMVSS No. 106. The proposal included retaining one reference to SAE J844 in § 393.45 for coiled nylon brake hose and hose assemblies. Presently, FMVSS No. 106 excludes coiled nylon brake hose/assemblies that comply with FMCSR § 393.45 from certain requirements, namely S7.3.6 (length change), S7.3.10 (tensile strength), and S7.3.11 (tensile strength of an assembly after immersion in water).

FHWA's NPRM aroused concerns. Several brake hose manufacturers and one engineering consultant submitted comments objecting to the proposed deletion of all but one reference to the SAE specifications from §§ 393.45 and 393.46 of the FMCSRs. In addition, a letter signed by 44 Members of Congress was sent to the Secretary of Transportation on November 3, 1997, expressing their concern over FHWA's proposal to repeal its safety standards for commercial motor vehicle brake hose, brake tubing, and fittings.

In response to these concerns, the Department of Transportation held a public meeting on March 24, 1998. In attendance were representatives from FHWA and NHTSA, several brake hose/tubing/fitting manufacturers, a truck manufacturer, a truck manufacturers association, an explosives manufacturer, a truck users association, and United States Congressman Thomas Sawyer (D-Ohio).

At the public meeting, representatives from NHTSA and FHWA said that they favored consolidating all requirements for brake hose, brake tubing, and fittings in FMVSS No. 106, instead of maintaining separate requirements under the jurisdiction of two different agencies. They explained that consolidation of the requirements would, among other things, make them more enforceable. Some of the brake component manufacturers stated their opposition to deleting the SAE specifications for their products. FHWA and NHTSA indicated that anyone opposed to FHWA's proposal was welcome to file a petition for rulemaking requesting that the SAE specifications proposed for deletion for the FMCSRs be incorporated into FMVSS No. 106.

II. Joint Petition for Rulemaking

On October 30, 1998, Elf Atochem North America, Inc., Mark IV Industrial/Dayco Eastman, and Parker Hannifin Corporation jointly submitted a petition for rulemaking asking the agency to incorporate into FMVSS No. 106 the SAE specifications for brake hose, brake tubing, and fittings that FHWA proposed deleting from §§ 393.45 and 393.46 of the FMCSRs. The petition requested that the application of these SAE specifications be limited to hose, tubing, and fittings used on trucks, truck-trailer combinations, and buses with either a GVWR greater than 10,000 lbs. or which are designed to transport 16 or more people, including the driver. In addition, the petitioners requested that the current versions of the SAE specifications be adopted instead of the older versions cited in the FMCSRs.

III. NHTSA's Response to the Joint Petition

NHTSA has decided to grant the joint petition for rulemaking. The agency agrees with the petitioners that there is a safety need to transfer the brake hose, tubing, and fitting requirements currently contained in §§ 393.45 and 393.46 of the FMCSRs to FMVSS No. 106, before those requirements are deleted. NHTSA tentatively concludes that to ensure the continued safety of commercial motor vehicle braking systems, the substantive specifications of the SAE Recommended Practices should be incorporated into FMVSS No. 106, with a few exceptions as noted. This would involve, among other changes, establishing a new category in the standard for plastic air brake tubing, end fittings, and tubing assemblies.

NHTSA's decision to grant the joint petition is also based on the fact that FMVSS No. 106 has not been substantially updated in many years. Revisions over the past 20 years have primarily addressed labeling issues, inclusion of metric-sized brake hoses, updating test fluids to match advances in industry, and minor regulatory revisions to individual test conditions such as the whip test and the adhesion test. The agency notes that most of the substantive requirements currently in Standard 106, other than the labeling requirements, were originally based on SAE standards and American Society for Testing and Materials (ASTM) standards referenced therein. While the SAE and ASTM standards have been modified over time to keep pace with technological developments in the industry, the substantive requirements of FMVSS No. 106 have remained relatively unchanged. Therefore, NHTSA's proposed changes to Standard No. 106 would take into account the substantial technological developments that have occurred and align the

standard's requirements with standard industry practices. Incorporating many of the SAE standard's performance requirements is consistent with Office of Management and Budget (OMB) Circular A–119, which directs federal agencies to use and/or develop voluntary consensus industry standards, in accordance with Public Law 104–113, the "National Technology Transfer and Advancement Act of 1995."

The agency's proposal differs in a number of respects, however, from that requested by the petitioners—

First, as explained in greater detail below, instead of simply incorporating complete SAE standards by reference as the FMCSRs currently do, NHTSA proposes to incorporate only the specific requirements/specifications of the SAE standards that are either more rigorous than those in Standard No. 106 or are not present at all in FMVSS No. 106.

Second, the agency does not propose to limit the application of those SAE requirements/specifications to brake hose, tubing, and fittings used on commercial motor vehicles. NHTSA tentatively concludes that all brake hose, tubing, and fittings can and should meet the requirements/specifications, regardless of their end use.

Third, although NHTSA agrees with the petitioners that proposed changes to FMVSS No. 106 should be based on the most recent versions of the SAE standards, instead of the older versions cited in the FMCSRs, the agency notes that a number of SAE's standards have been updated since the joint petition was filed. Accordingly, NHTSA proposes to rely on the most recent versions of the SAE standards.

Fourth, the agency does not propose to incorporate SAE standards relating to copper tubing, galvanized steel pipe, or end fittings used with metallic or non-metallic tubing because these materials are occasionally used in chassis plumbing and these products are not considered to be brake hoses, thus it would not be appropriate to include them in FMVSS No. 106.

Fifth, NHTSA is not proposing to incorporate the material and construction specifications for Type A and Type B tubing contained in SAE J844, *Nonmetallic Air Brake System Tubing*, and SAE J1394, *Metric Nonmetallic Air Brake System Tubing* because the agency tentatively concludes that incorporating those material specifications would be design-restrictive.

Sixth, NHTSA does not propose to incorporate the manufacturer identification requirements in SAE J1401, *Hydraulic Brake Hose Assemblies for Use with Nonpetroleum-Base Hydraulic Fluids*, because it tentatively concludes that the manufacturer identification requirements already present in FMVSS No. 106 are sufficient.

IV. Proposed Revisions to FMVSS No. 106

The following sections describe the changes NHTSA proposes to make to Standard No. 106's performance requirements and test procedures relating to: (a) Hydraulic brake hose; (b) air brake hose; (c) vacuum brake hose; (d) plastic air brake tubing; and (e) plastic air brake tubing assemblies and end fittings. Each section contains a table comparing the performance requirements and test procedures of FMVSS No. 106 to the relevant SAE Recommended Practice/Standard and a requirement-by-requirement/procedure-by-procedure explanation of the changes NHTSA is proposing. Generally speaking, whenever an SAE specification is more stringent than the corresponding FMVSS No. 106 requirement/procedure, NHTSA proposes to incorporate the SAE specification.

A. Hydraulic Brake Hoses

NHTSA's performance requirements and test procedures relating to hydraulic brake hoses are located in paragraph S5., *Requirements—Hydraulic brake hose, brake hose assemblies, and brake hose end fittings*, and paragraph S6., *Test procedures—Hydraulic brake hose, brake hose assemblies, and brake hose end fittings* of FMVSS No. 106. The corresponding SAE specifications are contained in SAE Surface Vehicle Standard J1401, *Hydraulic Brake Hose Assemblies for Use with Nonpetroleum-Base Hydraulic Fluids, Rev. September 1999* (SAE J1401).

The performance requirements and test procedures for hydraulic brake hoses in FMVSS No. 106 and SAE J1401 are similar, but not identical. In many cases, the requirements and procedures in SAE J1401 are more stringent than the corresponding requirements and procedures in paragraphs S5 and S6 of FMVSS No. 106. For example, in recognition of the fact that underhood temperatures have increased in modern passenger cars and, therefore, front brake hoses near the engine compartment are subjected to these higher temperatures, SAE J1401 recommends subjecting hydraulic brake hose to a hot impulse test. In contrast, FMVSS No. 106 does not specify a hot impulse test because many of the specifications in the standard originated in the late 1960s, when underhood temperatures were lower.

Generally, in those instances in which the performance requirements and test procedures in SAE J1401 are more rigorous, as with the hot impulse test specification, NHTSA is proposing to incorporate the SAE J1401 requirement/procedure. Where the requirements and procedures of FMVSS No. 106 are either more stringent or are not addressed at all in SAE J1401, however, the agency is proposing to retain the FMVSS No. 106 requirement/procedure.

The agency notes that because the reach of § 393.45 of the FMCSRs is limited to "commercial motor vehicles," the performance requirements and test procedures in SAE J1401 are, at present, only being applied to hydraulic brake hose in use on those vehicles. In contrast, FMVSS No. 106's requirements/procedures apply to all hydraulic brake hoses, regardless of their end use. One question that arises in connection with NHTSA's proposal to incorporate many of SAE J1401's specifications, therefore, is whether to restrict application of those specifications to hydraulic brake hoses designed for use on commercial motor vehicles. NHTSA proposes to apply the specifications of SAE J1401 to all hydraulic brake hoses, regardless of the type of vehicle on which it is installed. The agency does not favor the creation of a separate category of, for example, "commercial" hydraulic brake hoses that would include the more severe test conditions only for those particular brake hoses because NHTSA tentatively concludes that all types of brake hoses can and should meet the current SAE J1401 specifications.

Many light vehicles, including passenger cars, are currently manufactured using brake hoses that meet SAE J1401 specifications or other, proprietary standards that are more severe than Standard 106. Although it is not clear whether replacement brake hoses are also designed to meet these more rigorous specifications, NHTSA tentatively concludes that it is in the interest of safety to specify that they do so. From a safety standpoint, if a replacement brake hose which does not meet SAE J1401 specifications were to be installed on a vehicle originally outfitted with hose designed to meet the specifications of SAE J1401 (or another proprietary standard more stringent than FMVSS No. 106), the vehicle brake hose would be more prone to failure. Requiring all hydraulic brake hoses, both original equipment manufacturer (OEM) brake hoses and replacement brake hoses, to meet the current SAE J1401 requirements/specifications should substantially decrease the likelihood of brake hose failure. NHTSA welcomes comments, however, regarding the appropriateness of applying SAE J1401's requirements/specifications to all hydraulic brake hoses, regardless of their end use or whether they are OEM hoses or replacement hoses.

A detailed discussion of the differences between the hydraulic brake hose performance requirements and test procedures in SAE J1401 and FMVSS No. 106 follows, along with the agency's proposed resolution of those differences.

1. Pressure Test

SAE J1401 specifies a test pressure of 1,500 psi minimum and 2,100 psi maximum for inert gas or air tests and 3,000 psi minimum and 3,500 psi maximum for water and brake fluid tests, with the hose assembly required to sustain these pressures for 10 to 20 seconds, as a preconditioning test for all samples of hose assemblies to be subjected to further test conditions. The burst test (following the expansion test; *see* S5.3.2) specifies a minimum requirement of 4,000 psi plus zero (0) minus 200 psi for 2 minutes, using water or brake fluid, followed by a pressure increase to the point of failure. The minimum failure for ⅛ inch hose is 7,000 psi and for 3/16 hose is 5,000 psi. SAE J1401 does not specify test conditions for hose sizes other than ⅛ or 3/16 inch.

In contrast, FMVSS No. 106 specifies a water pressure test of 4,000 psi for 2 minutes and 5,000 psi minimum burst strength. The performance requirements and test procedures are similar to those in SAE J1401, although FMVSS No. 106 includes a lower pressure requirement for ⅛ hose (5,000 psi) and includes requirements for hose with inside diameters of ¼ inch or larger.

NHTSA tentatively concludes that a higher, 7,000 psi burst strength requirement should be adopted for ⅛ inch and 3mm hydraulic brake hoses. NHTSA contacted Intertek Testing Services, a company that has performed compliance testing of brake hoses under contract to the agency, to determine if the 7,000-psi pressure has been sustained by brake hoses in past testing. Intertek indicated that it typically will test up to 10,000 psi for all sizes of hydraulic brake hose, and that the hose have consistently been able to sustain this much pressure without bursting. Therefore, NHTSA proposes that the 7,000 psi burst strength requirement from SAE J1401 be adopted into Standard No. 106 for ⅛ inch and 3 mm hydraulic brake hoses.

2. Constriction

SAE J1401's constriction requirement is limited to hydraulic brake hose with an internal hose diameter of ⅛ inch or 3/16 inch. SAE J1401 specifies a minimum pass-through diameter of 64 percent of nominal internal hose diameter, which is determined by performing a plug gage test. FMVSS No. 106 contains the same 64 percent of nominal internal hose diameter requirement, but applies it to hose of all sizes, not just hose with an internal hose diameter of ⅛ inch or 3/16 inch. Unlike SAE J1401, however, FMVSS No. 106 does not specify a test for determining hose's minimum pass-through diameter. In addition, FMVSS No. 106 explicitly excludes those portions of end fittings that do not contain hose from the constriction test while SAE J1401 does not. NHTSA welcomes comments on the issue of whether the constriction exclusion for portions of end fittings that do not contain hose is still necessary, or if there have been any substantial changes to brake systems which preclude the use of intentionally-restrictive end fittings.

NHTSA proposes retaining the existing constriction performance requirement in FMVSS No. 106 and adding a constriction test procedure. Two different constriction test procedures are available: the drop-ball test and the plug gauge test. In the drop-ball test, a steel ball with a diameter equal to the minimum constriction diameter for a particular hose size is dropped into one end of the hose at its fitting. Gravity is the only downward force acting on the ball, and friction between the hose and ball may not be sufficiently overcome in all tests.

As noted above, SAE J1401 specifies use of a plug gauge test. In the plug gauge test, a cylindrical plug with a small rod handle is inserted into and removed from the hose. NHTSA proposes specifying a plug gauge test because the agency tentatively concludes that the additional weight of the plug gauge may make it less susceptible to friction than the ball used in the drop-ball test. The plug gauge test that NHTSA is proposing, the details of which are contained in paragraph S6.12 of the Proposed Regulatory Text, differs somewhat from the plug gauge test specified in SAE J1401 in two respects. First, the spherical end of the plug gauge must be able to enter the hose or end fitting by applying a force no greater than gravity. Second, the plug gauge must fall under the force of gravity within 3 seconds. The agency welcomes comments both on its proposal to specify a plug gauge test instead of a drop-ball test and on the differences between the plug gauge test specified in SAE J1401 and the one the agency is proposing.

3. Volumetric Expansion

Both SAE J1401 and FMVSS No. 106 have similar requirements/procedures; however, SAE J1401 does not specify tests for hoses other than ⅛ or 3/16 inch. FMVSS No. 106 includes requirements for hoses smaller than ⅛ inch, larger than ¼ inch, and also for metric nominal hose sizes. NHTSA does not propose to make any changes to the volumetric expansion requirements/procedures in FMVSS No. 106.

4. Whip Resistance Test

The whip resistance requirements/procedures for hydraulic brake hose in SAE J1401 and FMVSS No. 106 are similar. Both SAE J1401 and FMVSS No. 106 specify that a hydraulic brake hose assembly shall not rupture when run continuously on a flexing machine for 35 hours. The test procedures differ, however, regarding the level of water pressure to be exerted in conducting the whip resistance test. While FMVSS No. 106 specifies a constant minimum water pressure of 235 psi during the test, SAE J1401 specifies a water pressure range of 225 to 250 psi. The agency does not propose any changes to Standard No. 106's existing test procedures for whip resistance because the existing specifications are so close to the upper pressure limit specified in SAE J1401.

5. Tensile Strength

FMVSS No. 106 specifies that a hose assembly shall have a minimum tensile strength of 325 pounds when pulled at a rate of 1 inch per minute. SAE J1401 includes this same specification, but also specifies an additional tensile strength of 370 pounds when pulled at a faster, 2 inches per minute, rate. Therefore, SAE J1401's test environment is more severe than that specified in FMVSS No. 106. NHTSA proposes that the SAE J1401 fast-pull test and 370 pound strength requirement be incorporated into FMVSS No. 106. The agency also proposes to update the ASTM reference for tension testing machines to the latest version of the standard practice.

6. Water Absorption and Pressure Test, Tensile Strength, and Whip Resistance

Both SAE J1401 and FMVSS No. 106 have identical specifications for the conditioning of the hose assembly in water for 70 hours, but the subsequent test conditions (which are also used for non-water conditioned hose) vary, given the aforementioned differences between

the pressure, tensile strength, and whip resistance requirements in SAE J1401 and FMVSS No. 106. NHTSA does not propose any changes to the existing water absorption requirements of FMVSS No. 106 but, as noted above, NHTSA does propose to incorporate SAE J1401's fast-pull test and 370-pound strength requirement into Standard No. 106's tensile strength test procedure. Accordingly, after being conditioned in water for 70 hours, hydraulic brake hose assembly would be required to meet these heightened tensile strength requirements.

7. Low Temperature Resistance Test

Both SAE J1401 and FMVSS No. 106 specify identical test procedures for bending brake hose around a test cylinder after conditioning at minus 40 degrees F. However, SAE J1401 does not include test cylinder dimensions for hoses with inside diameters other than ⅛ inch or 3/16 inch, while FMVSS No. 106 includes test cylinder dimensions applicable to all sizes of brake hose. NHTSA does not propose any changes in Standard No. 106's low temperature resistance requirements/procedures.

8. Brake Fluid Compatibility, Constriction, and Burst Strength

FMVSS No. 106 specifies that the hose be conditioned with SAE RM–66–05 Compatibility Fluid at 200 degrees F for 70 hours, and then subjected to constriction and burst strength tests. SAE J1401 specifies that the hose be conditioned using SAE RM–66–03 Compatibility Fluid at 248 +9 −0 degrees F for 70 to 72 hours prior to the constriction and burst strength tests. Thus, when compared to the test procedures specified in Standard No. 106, the SAE J1401 test is run at a higher temperature and uses the older SAE compatibility fluid. Because the RM–66–05 fluid has superceded the RM–66–03 fluid, NHTSA does not propose any change in the type of fluid specified for conditioning the hose. NHTSA does propose; however, to increase the conditioning temperature in FMVSS No. 106 to 248 degrees F.

9. Ozone Resistance

The test cylinder dimensional specifications in SAE J1401 and FMVSS No. 106 are the same, although the test procedures in FMVSS No. 106 account for hose that are not long enough to fit all the way around the test cylinder, while SAE J1401 provides test procedures for hose that exceed the test cylinder circumference and also for hose that collapse when subject to bending. SAE J1401 requires a higher concentration of ozone of 100 parts per million (ppm) compared to FMVSS No. 106, which requires a concentration of 50 ppm.

Both SAE J1401 and FMVSS No. 106 specify a conditioning temperature of 104 degrees F. In addition, both SAE 1401 and FMVSS No. 106 specify that the hose be subjected to ozone for at least 70 hours after which no visible cracks in the hose may be apparent when examined under 7-power magnification. Unlike FMVSS No. 106, however, SAE J1401 includes an additional dynamic ozone test, in which a cut length of hose is mounted in an environmental chamber, exposed to ozone at a 100 ppm concentration, and flexed on a specified apparatus through 3 inches of stroke at 0.3 Hz for 48 hours. SAE J1401 specifies that no cracking of the hose is permissible after 48 hours.

NHTSA proposes to upgrade FMVSS No. 106's ozone resistance requirements to incorporate the 100–ppm ozone concentration in SAE J1401. The agency also proposes to incorporate the dynamic ozone test in SAE J1401 into Standard No. 106. NHTSA tentatively concludes that such an upgrade is appropriate given the well-documented increase in ground-layer ozone formation and concentration in U.S. cities that has occurred since FMVSS No. 106 was first proposed in 1967. Requiring hydraulic brake hose to sustain increased ozone concentrations should more accurately reflect the present-day operating environments of brake hose and may prevent premature failure of the hose due to ozone exposure.

10. End Fitting Corrosion Resistance

Both SAE J1401 and FMVSS No. 106 specify exposing hydraulic brake hose end fittings to salt spray in a chamber for 24 hours. The salt spray chamber specified in FMVSS No. 106 is based on specifications outlined in ASTM B117–64, while the chamber specifications in SAE J1401 are based on ASTM B 117 Appendix B. NHTSA tentatively concludes these are different versions of the same ASTM Standard Practice B117, which has been revised over time. Instead of referencing either ASTM B117–64 or ASTM B 117 Appendix B, both of which are outdated, NHTSA proposes to change the reference in FMVSS No. 106 to the most recent set of ASTM specifications for salt spray chambers, which are found in ASTM B117–97.

Another difference between the end fitting corrosion resistance specifications in SAE J1401 and FMVSS No. 106 pertains to the mounting angle of the hose. SAE J1401 specifies that the hose shall be mounted at an angle between 15 and 30 degrees from vertical while FMVSS No. 106 specifies an angle of 30 degrees. Most of the end fitting corrosion resistance performance requirements in SAE J1401 and FMVSS No. 106 are similar or identical, with SAE J1401 typically providing tolerances on all parameters. SAE J1401 excludes brass end fittings from testing because apparently SAE deems those end fittings to have adequate corrosion resistance. While the two sets of performance requirements are very similar, Standard No. 106's requirements are somewhat more rigorous and inclusive. Accordingly, with the exception of updating the reference to the most recent set of ASTM specifications for salt spray chambers, NHTSA proposes no changes to the end fitting corrosion resistance requirements/procedures in FMVSS No. 106.

11. High Temperature Impulse Test

SAE J1401 specifies a hot impulse test in which a hose assembly is filled with brake fluid and subjected to 150 cycles of 1600 psi for one minute, then zero pressure for one minute, at an elevated temperature of 259 degrees F. After this test procedure, the hose assembly is cooled and subjected to a burst test with a specified minimum burst pressure of 5,000 psi. FMVSS No. 106 does not include a hot impulse test. Accordingly, NHTSA proposes incorporating the high temperature impulse test from SAE J1401 into FMVSS No. 106.

The table below summarizes the differences between the hydraulic brake hose requirements/procedures of FMVSS No. 106 and SAE J1401 and indicates which requirements/procedures NHTSA proposes incorporating into the standard.

TABLE 1.—COMPARISON OF HYDRAULIC BRAKE HOSE REQUIREMENTS IN FMVSS NO. 106 AND SAE J1401

Requirement/procedure		Existing FMVSS No. 106		SAE J1401
Hydraulic Brake Hoses "x" Indicates Requirements/Procedures Proposed To Be Included in FMVSS No. 106				
Pressure Test		5,000 psi burst strength specification, all hoses.	x	7,000 psi specified for ⅛ in. hose, same for 3/16 in. hose.
Constriction	1	Similar dimensional specifications	1	Similar, does not specify ¼ in. hose size.
Volumetric Expansion	x	Same		Same.
Whip Test	x	Same		Same.
Tensile Strength		Slow pull rate test	x	Includes slow plus fast pull rate tests.
Water Absorption and Pressure Test	x	Similar, note differences in pressure test		Similar.
Water Absorption and Tensile Strength		Similar, except fast pull rate test not included.	x	Similar, but includes fast pull rate.
Water Absorption and Whip Resistance	x	Similar		Similar.
Low Temperature Resistance Test	x	Same		Same, but does not cover all hose sizes.
Brake Fluid Compatibility, Constriction, and Burst Strength.		Lower conditioning temperature	x	Higher conditioning temperature, older version of test fluid (use RM–66–05 fluid).
Ozone Resistance		Similar, 50 ppm ozone concentration	x	Similar, 100 ppm ozone concentration.
Dynamic Ozone Test		Not included	x	Flex hose in ozone chamber for 48 hours.
End Fitting Corrosion Resistance	x	Similar, 30 degree mounting angle		Similar, 15–30 degree mounting angle, brass material exempt.
High Temperature Impulse Test		Not included	x	Pressure cycling at elevated temperature followed by burst test; does not cover ¼ in. brake hose.

Note 1: Use existing FMVSS No. 106 constriction requirement, propose that J1401 plug gauge test method be adopted in Test Procedure 106, add drop time.

B. Air Brake Hoses

NHTSA's performance requirements and test procedures relating to air brake hose are located in paragraph S7, *Requirements—Air brake hose, brake hose assemblies, and brake hose end fittings*, and paragraph S8, *Test procedures—Air brake hose, brake hose assemblies, and brake hose end fittings*, of FMVSS No. 106. The corresponding SAE requirements/procedures are contained in SAE Surface Vehicle Recommended Practice J1402, *Automotive Air Brake Hose and Hose Assemblies, Rev. June 1985* (SAE J1402).

NHTSA proposes to update FMVSS No. 106 to include performance requirements from SAE Recommended Practice J1402 that are not presently contained in the standard. The agency notes that, as was the case for hydraulic and vacuum brake hoses, air brake hose requirements as originally incorporated in Standard 106 in November of 1973 (38 FR 31302) were based on the substantive requirements in SAE J1402.

NHTSA tentatively concludes that virtually all air-braked vehicles are currently equipped with air brake hoses that meet SAE J1402 because many of these vehicles are used in commercial operations, and therefore are subject to the current FMCSA regulations requiring use of air brake hoses that comply with SAE J1402. While some vehicles equipped with air brake systems may not be operated as commercial vehicles, such as heavy-duty motor homes, the agency tentatively concludes that such vehicle populations are small in comparison to the number of straight trucks, tractors, and air-braked buses. NHTSA tentatively concludes that it is likely that the air brake hose, assemblies, and fittings on these non-commercial vehicles are already compliant with SAE 1402's specifications, however, because SAE 1402-compliant air brake hose products are the most widely available in the United States. Nevertheless, the agency welcomes comments on whether air brake hoses currently in use on commercial and non-commercial vehicles are designed to meet the specifications in SAE J1402.

A detailed discussion of the differences between the air brake hose, assemblies, and end fitting performance requirements and test procedures in SAE J1402 and FMVSS No. 106 follows, along with the agency's proposed resolution of those differences.

1. Dimensional Requirements

FMVSS No. 106 requires that hose constructed of synthetic or natural elastomeric rubber and intended for use with reusable end fittings must conform to the dimensional requirements listed in Table III of paragraph S7.1, *Construction*. Standardized dimensional requirements for hose with reusable end fittings guard against the possibility that replacement hose will not properly fit the end fittings. Table III lists required inside diameter (ID) and outside diameter (OD) dimensions for Type AI and Type AII air brake hose manufactured in fractional-inch sizes.

SAE J1402 includes the same dimensional requirements for AI and AII hose, but also includes dimensions for Type "A" hose. Type A air brake hose are primarily used with permanently attached end fittings, unlike Types AI and AII air brake hose, which are used with reusable end fittings. Some Type A hose, specifically ⅜ inch, 7/16 inch, and ½ inch "Special" hose, may also be fitted with reusable end fittings. SAE J1402's dimensional requirements apply to all Type A hose, regardless of whether they are fitted with permanent or reusable end fittings. With respect to the Type A ⅜-inch and Type A ½-inch "Special" hose, the agency notes that there are already corresponding dimensions included in Table III of FMVSS No. 106 with identical dimensions for both Type AI and Type AII hose. Under FMVSS No. 106, a ½-Special or ⅜ brake hose can be labeled to include the "A," "AI," and/or "AII" designations, or any combination thereof (*e.g.*, "AI–AII"), as the hose manufacturer deems appropriate.

Although the petitioners did not specifically request the incorporation of SAE J1402's dimensional requirements for Type A air brake hose into FMVSS No. 106, the agency notes that it once considered whether to do so. In a June 28, 1974, final rule (39 FR 24012, Docket No. 1–5; Notice 11), the agency

decided against including dimensional requirements for Type A air hose in FMVSS No. 106. The agency stated that the primary purpose of the dimensional requirements was to prevent mismatch between reusable end fittings and replacement brake hose. At that time, hose used with permanent end fittings were generally assembled by high volume manufacturers rather than repair operations in the field. The agency did not believe that there was a safety need to provide dimensional requirements for hose assemblies manufactured in such a manner. Accordingly, NHTSA found that including dimensional requirements for air brake hose used with permanent end fittings would amount to "a design restriction without corresponding safety benefit."

NHTSA no longer believes that only high-volume brake hose manufacturers are assembling air brake hoses with permanently attached fittings. A review of brake hose manufacturers that are registered with NHTSA indicates that many truck repair facilities are registered, and the agency tentatively concludes that many of these facilities may be capable of assembling brake hoses with permanently attached end fittings as replacement parts. NHTSA does not know the extent to which air brake hose that meets SAE J1402 dimensional requirements for Type A hose is used in such replacement assemblies, but tentatively concludes it is likely that most, if not all, such hose already comply with SAE J1402's dimensional requirements because § 393.45 requires that hoses used on commercial motor vehicles comply with SAE 1402.

NHTSA is not proposing to incorporate into FMVSS No. 106 the dimensional requirements for rubber hose used with permanently attached end fittings found in Table A of SAE J1402. In the case of 7/16-inch hose, which is not currently listed in Table III of FMVSS No. 106, NHTSA proposes to add this hose size to the dimensional tables for Type I and Type II hose, which would have the effect that as indicated in SAE J1402, 7/16-inch hose could be used with either permanent or reusable fittings, as is the case for 3/8-inch and 1/2-inch Special hose as currently included in Table III of FMVSS No. 106. Hose manufacturers would then be able to label 7/16-inch hose with a designation of "A," "AI," and/or "AII," as they deem appropriate. NHTSA welcomes public comments on this proposal, and also requests any dimensional and descriptive information for other sizes of air brake hose that manufacturers may be producing that is not covered under SAE J1402. NHTSA also welcomes public comments on whether FMVSS No. 106 should include dimensional requirements for metric sized hose used with reusable end fittings as Standard No. 106 currently does not provide requirements for such hose. Note that Standard No. 106 does include references to metric sizes of air brake hose that presumably is used with permanently-attached end fittings.

2. Construction and Labeling

Paragraphs S7.1, *Construction*, and S7.2, *Labeling*, both contain references to air brake hoses constructed of synthetic or natural elastomeric rubber to differentiate those hose types from air brake tubing constructed from nylon (plastic), with both rubber hose and nylon tubing currently regulated as air brake hoses under paragraphs S7 and S8. The designation for synthetic or natural elastomeric rubber hoses was added to FMVSS No. 106 in a 1991 final rule (56 FR 7589) so that the dimensions for hoses used with reusable fittings in Table III would not apply to plastic tubing. NHTSA proposes, as discussed in another section below, that plastic air brake tubing be regulated in its own section in FMVSS No. 106 since it differs significantly in construction and material properties from elastomeric rubber hoses. Therefore, NHTSA proposes that any references to synthetic or natural elastomeric rubber be deleted from S7 of FMVSS No. 106 since it will no longer be necessary to differentiate rubber hoses from plastic tubing in S7 and S8. The proposed text in this notice also removes references to "outside diameter (OD)" from S7 and S8 of FMVSS No. 106 since OD measurements are generally only applicable to tubing, which NHTSA proposes to address in the new section for plastic tubing.

NHTSA also proposes to specify in S7.2.1(e) of FMVSS No. 106 the labeling scheme that is to be used for air brake hose that meet the dimensional requirements of more than one type of end fitting (A, AI, or AII). The proper labeling of such hose has been addressed in several of the agency's legal interpretation letters and inserting this language in FMVSS No. 106 would serve to minimize confusion on this issue. The proposed text also states that a hose intended for use with more than one type of end fitting may be labeled as such, but is not required to be so labeled. This provides flexibility for hose manufacturers to determine how they intend for their hoses to be used, and would not require them to label hoses for multiple end fitting designations unless they so desire.

3. Manufacturer Identification

While the labeling requirements in FMVSS No. 106 and SAE J1402 differ somewhat, both can be accommodated on a single brake hose. SAE J1402 requires each manufacturer to register the identification of its yarn scheme in accordance with SAE J1401, Appendix B and to label each hose with its manufacturer's identification number. Similarly, FMVSS No. 106 requires that hose manufacturers register with NHTSA and imprint their name or symbol on subject hoses and/or fittings. The agency does not propose to change FMVSS No. 106's manufacturer identification or labeling requirements.

4. Constriction

The constriction requirements relating to air brake hose are found in paragraph S7.3.1 of FMVSS No. 106. Standard No. 106 requires that every inside diameter of any section of each air brake hose assembly shall be not less than 66 percent of the nominal inside diameter of the hose, except for those portions of end fittings that do not contain hose. SAE J1402 also requires air brake hose assembly to meet a 66 percent of nominal inside diameter requirement but, unlike FMVSS No. 106, it does not exclude the portions of end fittings not containing hose. NHTSA proposes to eliminate the exclusion in S7.3.1 for those portions of end fittings which do not contain hose, as the agency does not believe that end fittings for air brake hose include restrictions designed into the fittings, nor are there complex shapes for end fittings as found with some hydraulic brake hoses. NHTSA welcomes public comments on this proposal. NHTSA also proposes that the same test method proposed for testing hydraulic brake hoses for constriction be specified for testing air brake hoses. In addition, noting that the title of paragraph S7.3.1 contains a typographical error, NHTSA proposes to change the title of S7.3.1 from "Construction" to "Constriction."

5. High Temperature Resistance

FMVSS No. 106 includes a test in which the hose is bent around a test cylinder, conditioned at 212 degrees F for 70 hours, then cooled and straightened. No charring, disintegration, or cracks are permitted. The high temperature test specifications for air brake hose contained in SAE J1402 are similar, but not identical, to those in FMVSS. First, the radii of the test cylinders specified for each hose size are significantly smaller in SAE J1402 than in FMVSS No. 106. Second, unlike FMVSS No. 106, SAE J1402 does not include test cylinder radii specifications for 1/8-inch ID hose. Third, SAE J1402 does not provide specifications for metric sized hose. Instead, the SAE specification provides only metric conversions for inch sizes of hose. Fourth, unlike FMVSS No. 106, SAE J1402 excludes hose with fabric covering from external inspection for cracks, stating that visual inspection is not practical.

NHTSA proposes that FMVSS No. 106 adopt the smaller radii test cylinders from SAE J1402 and, for 1/8-inch and 3 mm, 4 mm, and 5 mm hose, NHTSA proposes that the test cylinder radius of 1 inch as specified in SAE J1402 for 3/16-inch hose also be used for these hose sizes. As currently indicated in Table IV of FMVSS No. 106, the larger metric sizes of hose (6 mm and above) numerically correspond closely to inch sizes of hose, for example, 6 mm (0.236 inch) is very close to 1/4 inch (0.250 inch). Accordingly, NHTSA proposes to apply the test cylinder values from SAE J1402 to metric sizes of hose as currently specified in Table IV of FMVSS No. 106. As to SAE J1402's exclusion of fabric-covered air brake hose from the external inspection requirement, NHTSA disagrees that external inspection of such hose is impractical and, therefore, does not propose to incorporate SAE J1402's exclusion.

6. Low Temperature Resistance

FMVSS No. 106 specifies that the hose and test cylinder be conditioned at minus 40 degrees F for 70 hours, followed by bending the hose 180 degrees around the test cylinder. No cracks may be visible on the outside cover of the hose after performing this test. The test procedure in SAE J1402 is similar, including the radii of the test cylinders, except that it does not specify test cylinder radii for 1/8 inch or 3mm hose. SAE J1402 also prohibits cracks on the inside of the hose and, in this respect, the SAE test is more severe than the one specified by FMVSS No. 106. Unlike FMVSS No. 106, however, SAE J1402 excludes the exterior surface of hoses covered with fabric from external inspection.

The agency indicated in a February 26, 1974 final rule (39 FR 7425, Docket No. 1–5, Notice 10) amending FMVSS No. 106 that it would consider specifying inspection of the inner layer of an air brake hose subjected to the low-temperature resistance test at a future date. In addition, the agency notes that the test procedure for Standard No. 106, TP–106, specifies that the same test procedure be used for air brake hose as for hydraulic brake hose, using the test cylinders sized for air brake hose, and does include internal inspection of both types of hoses. NHTSA is now proposing that the internal surface inspection of air brake hose, as specified in SAE J1402, be incorporated into FMVSS No. 106. The agency does not propose, however, to incorporate SAE J1402's exclusion of fabric-covered air brake hose from external inspection.

7. Oil Resistance

Paragraphs S7.3.4, *Oil resistance*, and S8.3, *Oil resistance test*, of FMVSS No. 106 specify that specimens prepared from the inner tube and outer cover of the subject brake hose, when immersed in American Society of Testing and Materials (ASTM) No. 3 oil for 70 hours at 212 degrees F, shall not increase in volume by more than 100 percent. SAE J1402 contains an identical test procedure. As indicated in ASTM D147–98e1, *Standard Test Method for Rubber Property—Effect of Liquids*, ASTM No. 3 oil is no longer commercially available and has been superseded by IRM 903 oil. Accordingly, NHTSA proposes that all references in S7.3.4 and S8.3 to ASTM No. 3 oil be changed to specify IRM 903 oil. The agency does not propose any additional changes to FMVSS No. 106's oil resistance requirements/specifications.

8. Ozone Resistance

FMVSS No. 106's ozone resistance requirements/specifications for air brake hose are the same as those specified for hydraulic brake hose. Standard No. 106 specifies that air brake hose be conditioned in an ozone chamber for 70 hours at 104 degrees F while the hose is secured around a test cylinder. Because the test procedure for air brake hose, S8.4 (*Ozone resistance test*), specifies that the same test procedure for a hydraulic brake hose ozone resistance test be utilized, and because NHTSA is proposing that the ozone concentration for hydraulic brake hose be changed from 50 ppm to 100 ppm, NHTSA proposes to specify the higher ozone concentration (100 ppm) for air brake hose as well. The agency tentatively concludes it is appropriate to specify the same concentration of ozone for testing all types of brake hoses and welcomes public comments on this issue.

9. Length Change

Paragraph S7.3.6, *Length change*, of FMVSS No. 106 requires that air brake hose, when subjected to 200 psi of air pressure, shall not contract more than 7 percent nor elongate more than 5 percent over the length of the hose. The associated test procedure, found in paragraph S8.5, *Length change test*, specifies that the initial length of the hose be measured at a pressure of 10 psi. Coiled nylon tube may alternatively comply with requirements in FMCSR 393.45 (which references J844 for nylon air brake tubing). SAE J1402's length change requirements/procedures are identical to those in FMVSS No. 106. Considering that FMCSA and NHTSA are proposing to consolidate all federal brake hose requirements/procedures into FMVSS No. 106 and because NHTSA is proposing specific requirements/procedures for plastic air brake tubing, the agency proposes to delete the option for coiled nylon tube to comply with FMCSR 393.45 from Standard No. 106. Aside from deleting this reference, the agency does not propose any additional changes to the length change requirements/procedures in FMVSS No. 106.

10. Adhesion

FMVSS No. 106 requires a minimum separation strength of 8 pounds per linear inch for each layer in an air brake hose, except for hose reinforced by wire. SAE J1402 has a similar requirement for non-wire reinforced hose, and a separate test procedure for wire reinforced hose, in which a steel ball is placed inside the hose sample, one end is capped and the other connected to a vacuum source, and the hose is bent 180 degrees around a test cylinder in one direction and then the opposite direction. While still under vacuum, the hose is straightened and the steel ball must be able to roll from one end of the hose to the other. NHTSA proposes to incorporate the SAE J1402 adhesion test for wire-reinforced air brake hose into FMVSS No. 106, with the exception of the steel ball sizes as discussed below.

The table of steel ball sizes for this test procedure in SAE J1402 indicates that for all but the 13/32-inch hose sizes, the ball diameter is equal to 75 percent of the nominal hose ID. For the 13/32-inch hose size, the specified ball diameter is 73 percent of the nominal hose ID. It appears that the reason for this one difference is that the ball sizes in the table are standard size steel balls measured in 64ths of an inch, thus 75 percent of 13/32-inch is slightly larger than 19/64-inch and 73 percent of 13/32 equals 19/64-inch. The table in SAE J1402 also does not provide corresponding steel ball sizes for metric sized hose. Accordingly, to incorporate SAE J1402's specifications into FMVSS No. 106, NHTSA proposes that rather than specifying steel ball diameters for each hose size, the steel ball should be

specified as having a diameter that is 75 percent of the nominal inside diameter of the hose. This would allow for testing of any and all sizes of hose. NHTSA welcomes public comments on this issue.

The agency notes that it is proposing to specify use of a plug gauge rather than a steel ball for constriction testing of other types of hose to which FMVSS No. 106 applies. For the adhesion test, however, it would not be possible to use a plug gauge because the hose is closed off at both ends during the test. Accordingly, NHTSA proposes to specify the use of a steel ball to test air brake hose for adhesion. Finally, the agency proposes to update the ASTM tension testing machine reference in S8.9 from the 1964 version currently in FMVSS No. 106 to the latest revision of that standard, *Standard Practices for Force Verification of Testing Machines*, Designation E4–99.

11. Air Pressure (Leakage)

FMVSS No. 106 specifies that an air brake hose assembly be subjected to a 200-psi pressure test. Once the target pressure is reached, the hose is sealed and the pressure drop over a five-minute period may not exceed 5 psi.

SAE J1402 has two test procedures to evaluate the leakage from air hose assemblies. In the first test, two hose assemblies are tested as follows. One hose assembly is subjected to the high temperature resistance test described above, and is then subjected to a 300-psi pressure test using air or nitrogen, under water, with no visible leakage for 30 seconds. The second hose assembly is subjected to the low temperature resistance test described above, and is then subjected to a 300-psi pressure test using air or nitrogen, under water, with no visible leakage for 30 seconds.

In the second test, a flexure test is performed as follows. A test hose assembly is prepared to the length shown in Figure 2 of that standard. The hose is preconditioned by exposure to a salt spray for 24 hours with the ends sealed, followed by high-temperature aging at 212 degrees F for 70 hours with the ends open and, within 168 hours of completion of the preconditioning, the hose is subjected to the flex test. The hose is mounted on the flex test fixture as described in Figure 2, with the hose being subjected to a 6-inch stroke while the air pressure in the hose is cycled between 0 psi for one minute and 150 psi for one minute. With the flexure machine stroking at 100 cycles per minute, the hose is subjected to 1 million stroke cycles. Upon completion of the 1 million cycles, the hose must be capable of maintaining 150-psi ±10 psi when air is supplied through a 1/16-inch diameter orifice.

The SAE J1402 specifications for hose leakage are more severe than those presently in FMVSS No. 106, and NHTSA proposes incorporating them into Standard 106, with the following modifications. SAE J1402 specifies that upon completion of the high-temperature aging test, the hose assembly must be flex tested within 168 hours. NHTSA tentatively concludes there could be variability introduced in the test results if, for example, the hose was immediately flex tested after the high-temperature test, or if the hose were allowed to cool before being flex tested. Therefore, NHTSA proposes that upon completion of the high-temperature aging test, the hose assembly be cooled at room temperature for two hours, and the flex test then be initiated within 166 hours from that time.

NHTSA also proposes to modify SAE J1402's testing procedures by specifying the thickness of the orifice during the final leak check because the thickness of the orifice, and not only the diameter of the orifice, affects the rate at which air can be supplied to the hose. This would be critical if a small amount of hose leakage is present during the final leakage test. NHTSA proposes specifying an orifice thickness of 0.032 inches (1/32-inch), which is the same thickness specified for the orifice in FMVSS No. 121 S5.3.5, *Control signal pressure differential for converter dollies and trailers designed to tow another vehicle equipped with air brakes*. NHTSA tentatively concludes that this proposed orifice dimension would supply air at a greater rate than any thicker orifice while still providing sufficient mechanical strength to withstand the test conditions. NHTSA welcomes comments on this proposal.

With respect to the amount of leakage that is permitted after the flex test is conducted, SAE J1402 is not absolutely specific. SAE J1402 defines failure as the hose's inability to be repressurized to 150-psi ±10 psi, supplied through the 0.062-inch orifice, within 2 minutes. SAE J1402 specifies that the supply air pressure to the orifice is 150 psi ±10 psi. Accordingly, a hose supplied with up to 160-psi supply air pressure and resulting in 140-psi pressure in the hose assembly could conceivably be construed as passing the test. On the other hand, the specifications could be construed as permitting no leakage, that the pressure in the hose assembly must equal the supply pressure, within a range of 140 psi to 160 psi. If that were the case, however, there would be no need for an orifice to be included in the test apparatus.

NHTSA proposes to specify a supply pressure of 150 psi and to further specify that the pressure in the hose assembly must reach 140 psi within 2 minutes. NHTSA notes that this is consistent with the existing requirements in FMVSS No. 106, S7.3.8 *Air pressure*, which permits a small amount of leakage in an air brake hose assembly, albeit without prior conditioning. NHTSA welcomes comments on these proposed leakage specifications.

12. Burst Strength

FMVSS No. 106 requires that an air brake hose assembly shall not rupture when subjected to a hydrostatic pressure of 800 psi. SAE J1402 specifies that a hose assembly be first subjected to a 24-hour salt spray test, with no resulting corrosion other than as permitted by that standard, and then shall not burst or separate from an end fitting at a hydrostatic pressure of 900 psi. SAE J1402's burst strength specifications/requirements are more severe than those in FMVSS No. 106. NHTSA proposes to incorporate SAE J1402's burst strength specifications/requirements into Standard No. 106.

13. Tensile Strength

FMVSS No. 106 specifies that a hose assembly for use between either the frame and the axle or between a towed and towing vehicle meet a longitudinal pull test, at a 1 inch per minute force application rate, and not separate from its end fittings at the following force levels: 250 pounds for ¼ inch or less, or 6mm or less, nominal ID; 325 pounds for more than ¼ inch or 6mm nominal ID. A hose assembly used in any other application must withstand force levels of: 50 pounds for ¼ in or less (or 6 mm or less) nominal ID; 150 pounds for ⅜ inch, ½ inch, or 10 mm to 12 mm, nominal ID; and 325 pounds if the hose assembly is larger than ½ inch (or 12 mm) nominal ID. A coiled nylon tube assembly can either meet these requirements or, alternatively, can meet the requirements in FMCSR § 393.45.

The distinction between a brake hose used between a frame and axle or between a towed and towing unit, and hose used for other purposes, was added to Standard No. 106 on February 26, 1974 (39 FR 7425), in response to petitions for reconsideration of certain brake hose requirements. This distinction was introduced in response to the inclusion of plastic tubing as an air brake hose, and permitted lower tensile strength requirements for plastic tubing used in chassis applications.

Because the agency is now proposing separate requirements for plastic tubing in a new section of FMVSS No. 106, NHTSA proposes to delete the lower tensile strength limits for hose that are used for purposes other than connections between a frame and axle or between a towed and towing unit.

The agency proposes that all rubber brake hose meet the requirements for hose that is used between a frame and axle or between a towed and towing unit. NHTSA tentatively concludes that rubber hoses are no longer used extensively for other purposes on heavy vehicles, as plastic tubing is used for most chassis plumbing of air systems. An example of a chassis plumbing use for rubber hose is to connect an air dryer to the wet tank, although here again many vehicles use plastic tubing in this application. NHTSA tentatively concludes that these rubber hoses are of sufficient diameter to have the mechanical strength to meet the higher, frame-to-axle tensile strength requirements. These requirements are similar to the ones originally proposed for FMVSS No. 106 prior to the accommodation of plastic tubing strength requirements. In addition, these tensile strength requirements are currently specified in SAE J1402, which does not distinguish based on the application of the hose and includes the higher force specification. SAE J1402 does not specify a stand-alone tensile strength test, but does specify a water absorption test followed by a tensile strength test, described below. NHTSA welcomes comments on the proposed tensile strength requirements and information on any alternate tensile strength requirements that might be appropriate for rubber hose.

NHTSA also proposes to delete the reference to FMCSR § 393.45 in paragraph S7.3.10 because NHTSA is proposing to incorporate into FMVSS No. 106 many of the SAE requirements referenced in § 393.45 for plastic air brake tubing.

14. Water Absorption and Tensile Strength

FMVSS No. 106 specifies that a hose assembly be immersed in distilled water for 70 hours at room temperature and, within 30 minutes of being removed from the water, be subjected to the tensile strength test and requirements described above. A coiled nylon tube assembly can either meet these specifications/requirements or, alternatively, the requirements in FMCSR § 393.45.

SAE J1402 specifies bending a hose assembly around a test cylinder and, with its ends capped, immersed in tap water at room temperature for 168 hours. Following this, the hose assembly is subjected to a tensile pull test, with the following force levels specified to be achieved without separation or rupture: 250 pounds for hose of ¼ inch, or 6.4 mm, or less, nominal ID; 325 pounds for hose larger than ¼ inch or 6.4 mm. Thus, the tensile strength required in SAE J1402 is similar to that in FMVSS No. 106 for a hose used between a frame and axle, or between a towed and towing vehicle. SAE J1402 does not, however, include lower tensile strength values for hoses that are used between components that do not experience substantial relative motion and it also does not address plastic tubing.

Although the SAE J1402 test specifies a longer water conditioning period than FMVSS No. 106, which would make those specifications more severe, FMVSS No. 106 specifies that the ends of the hose assembly be left open thereby exposing the inside of the hose to water. SAE J1402 also specifies that tap water rather than distilled water (as specified in FMVSS No. 106) be used in this test, which could introduce variability in test results depending on compounds that are in the tap water at any particular location. On balance, it would be difficult to state which test condition is more severe, but NHTSA proposes that the current requirements in paragraph S7.3.11, *Water absorption and tensile strength*, be retained, except as modified by proposed changes to the stand-alone tensile strength requirements discussed above. NHTSA also proposes to delete the reference to FMCSR § 393.45 in S7.3.11.

15. Zinc Chloride Resistance

Paragraph S7.3.12, *Zinc chloride resistance*, of FMVSS No. 106 requires that a hose assembly be immersed in a 50 percent zinc chloride aqueous solution for 200 hours, with no visible cracks permitted when viewed with 7 power magnification. SAE J1402 does not include a similar requirement. NHTSA does not propose any changes in Standard No. 106's zinc chloride resistance requirements.

16. End Fitting Corrosion Resistance

FMVSS No. 106 requires that air brake hose end fittings meet the same requirements as those specified for hydraulic brake hose end fittings. As is the case for hydraulic brake hoses per SAE J1401, SAE J1402 references the ASTM B117 Method of Salt Spray (Fog) Testing while FMVSS No. 106 references ASTM B117–64. Unlike SAE J1401, SAE J1402 does not exclude brass end fittings from this requirement. While SAE J1402 does not specify the attitude of the brake hose assembly in the chamber, FMVSS No. 106 specifies a 30-degree from vertical angle. Because FMVSS No. 106's end fitting corrosion resistance requirements appear to be more rigorous, NHTSA does not propose any changes to these requirements.

17. Minimum Bend Radius

SAE J1402 specifies minimum bend radius requirements for hose as installed on a vehicle. NHTSA tentatively concludes it would not be appropriate to add these requirements to FMVSS No. 106 because FMVSS No. 106 regulates the properties of brake hoses as stand-alone motor vehicle equipment rather than use requirements.

The table below summarizes the differences between the air brake hose requirements/procedures of FMVSS No. 106 and SAE J1402 and indicates which requirements/procedures NHTSA proposes incorporating into the standard.

TABLE 2.—COMPARISON OF AIR BRAKE HOSE REQUIREMENTS/PROCEDURES IN FMVSS NO. 106 AND SAE J1402

Requirement/procedure		Existing FMVSS No. 106		SAE J1402
Air Brake Hoses "x" Indicates Requirements/Procedures Proposed To Be Included in FMVSS No. 106				
Dimensional Specifications	x	Similar, does not include Type A hose		Similar, but includes Type A hose.
Constriction	x	Similar, includes end fittings		Similar but does not include end fittings.
High Temperature Resistance		Similar, but larger test cylinder radii	x	Similar, but smaller test cylinder radii.

TABLE 2.—COMPARISON OF AIR BRAKE HOSE REQUIREMENTS/PROCEDURES IN FMVSS NO. 106 AND SAE J1402—Continued

Requirement/procedure		Existing FMVSS No. 106		SAE J1402
Low Temperature Resistance	1	Similar, excludes interior of hose from inspection.	1	Similar, requires internal inspection, excludes fabric covered hose exterior inspection.
Oil Resistance	x	Same		Same.
Length Change	x	Same; coiled nylon can meet FMCSR §393.45.		Same.
Adhesion		Same except for wire reinforced hose	x	Same but includes specific test for wire reinforced hose.
Air Pressure (Leakage)		200 psi leak test	x	More test specifications including dynamic flex test.
Burst Strength		800 psi hydrostatic test	x	Salt spray test followed by 900 psi hydrostatic test.
Tensile Strength	x	Specifies longitudinal pull test		No corresponding, stand-alone test. Specifications are in Water Absorption test.
Water Absorption and Tensile Strength	x	70 hour water immersion followed by pull test; coiled.		168 hour water immersion followed by pull test.
Tensile Strength		Nylon can meet FMCSR 393.45		Followed by pull test.
Zinc Chloride Resistance	x	200 hour immersion in zinc chloride		No corresponding test.
End Fitting Corrosion Resistance	x	Similar, specifies angle of hose in test chamber.		Similar, does not specify angle of hose in test chamber.
Ozone Test		No ozone test	2	Hose bent around test cylinder exposed to 50 ppm ozone for 70 hours.
Minimum Bend Radius		None	3	Specifies minimum bend radii for hose as installed on a vehicle.

Note 1: for low temperature resistance, use the most severe requirements from each standard.
Note 2: propose J1402 test, except with 100-ppm ozone concentration.
Note 3: would not be appropriate for FMVSS No. 106.

C. Vacuum Brake Hoses

NHTSA's performance requirements and test procedures relating to vacuum brake hoses are located in paragraph S9., *Requirements—Vacuum brake hose, brake hose assemblies, and brake hose end fittings,* and paragraph S10., *Test procedures—Vacuum brake hose, brake hose assemblies, and brake hose end fittings,* of FMVSS No. 106. The corresponding SAE requirements are contained in SAE Highway Vehicle Standard J1403, *Vacuum Brake Hose, Rev. July 1989.*

When requirements for vacuum brake hoses were originally added to FMVSS No. 106 in November of 1973 (38 FR 31302), the substantive requirements of SAE J1403 were adopted. NHTSA proposes to update FMVSS No. 106 to include performance requirements from the most recent version of SAE J1403 that are not presently contained in the standard.

Again, as with hydraulic brake hoses, the agency tentatively concludes that many light vehicle manufacturers already voluntarily equip their vehicles with vacuum hoses that meet the current version of SAE J1403. Accordingly, NHTSA proposes applying the SAE specifications to all types of vacuum hoses and not just those used on commercial vehicles. The proposed amendments to FMVSS No. 106 represent incrementally more severe performance requirements that the industry has adopted over the past 20 years.

The petitioners requested that the requirements of SAE J1403 be added to FMVSS No. 106 to upgrade the performance requirements for vacuum brake hose. The use of vacuum brake hose in automotive applications is generally for the vacuum hose connecting the power brake booster to the engine manifold, and although there may be other applications for vacuum brake hose, the agency tentatively concludes that vacuum-operated braking systems are no longer being used in the U.S. Although the use of this type of brake hose may be far more limited than it was 40 or 50 years ago, NHTSA tentatively concludes that upgrading the requirements for vacuum brake hose is still warranted given that use of such hose is still widespread.

A detailed discussion of the differences between the vacuum brake hose performance requirements and test procedures in SAE J1403 and FMVSS No. 106 follows, along with the agency's proposed resolution of those differences.

1. Constriction

Paragraph S9.2.1, *Constriction,* of FMVSS No. 106 requires the inside diameter of a heavy duty vacuum hose assembly to be at least 75 percent of the hose's nominal inside diameter. The inside diameter of a light duty vacuum hose assembly is required, by S9.2.1, to be at least 70 percent of the hose's nominal inside diameter. FMVSS No. 106 excludes from these performance requirements those portions of the hose's end fittings that do not contain hose. Constriction testing, as outlined in Testing Procedure 106–08 (TP–106–08), is performed using plug gauges with diameters as specified in TP–106–08.

SAE J1403 does not contain a corresponding set of constriction test requirements/procedures. Accordingly, NHTSA does not propose any changes to Standard No. 106's constriction requirements/procedures for vacuum brake hose. NHTSA does seek public comments, however, on whether to continue to exclude those portions of end fittings that do not contain hose from the standard's constriction requirements.

2. High Temperature Resistance

Paragraph S9.2.2, *High temperature resistance,* of FMVSS No. 106 specifies bending a length of hose around a cylinder of specified diameter and exposing it to air at a temperature of 212 degrees F for 70 hours. After conditioning the hose in this manner, Standard No. 106 specifies that the hose be straightened and cut longitudinally and visually inspected. No visible cracking, charring, or disintegration on the exterior or interior of the hose is permitted.

SAE J1403 has a different test procedure in which a straight length of hose is subjected to a vacuum and conditioned at 257 degrees F for 96 hours. After temperature conditioning, the hose is cooled and bent around a test cylinder, then visibly inspected for degradation. The hose is then subjected to a proof pressure test of 175 psi for one minute. Required performance measures include: not more than 10 percent collapse of the outside diameter (OD) for heavy-wall hose and not more than 15 percent collapse of the OD for light-wall hose after the hot aging test; no visible internal or external embrittlement or degradation; and no leakage during the high-pressure test.

While FMVSS No. 106 specifies test cylinder radii for given sizes of hose (Table V), SAE J1403 simply specifies a test cylinder that is five times the OD of the hose. These test cylinder dimensions cannot be compared based on information in the standards because FMVSS No. 106 does not indicate the OD of the hose.

Nevertheless, the high temperature resistance requirements in SAE J1403 appear to be more rigorous than those in FMVSS No. 106 given that standard's post-test dimensional and burst test specifications. Accordingly, NHTSA proposes to incorporate SAE J1403's high temperature resistance requirements/specifications for vacuum brake hose into FMVSS No. 106.

3. Low Temperature Resistance

Paragraph S9.2.3, *Low temperature resistance,* of FMVSS No. 106 specifies conditioning vacuum brake hose, in a straight configuration, at minus 40 degrees F for 70 hours and then, while still cold, bending the hose 180 degrees around a test cylinder with a radius specified in Table V. After performing this test, S9.2.3 specifies visual inspection of the hose. No visible cracks on the hose are permitted. SAE J1403 has similar provisions, except that after the cold bending test is performed, SAE J1403 specifies subjecting the hose to a 175-psi pressure test at room temperature with no leakage permitted. SAE J1403's low temperature resistance requirements are more rigorous due to the addition of this pressure test. Accordingly, NHTSA proposes to incorporate SAE J1403's pressure test procedure into FMVSS No. 106.

4. Ozone Resistance

Paragraph S9.2.4, *Ozone resistance,* of FMVSS No. 106 specifies subjecting vacuum brake hose to an ozone concentration of 50 ppm for 70 hours. After performing the test, the hose, when visually inspected under 7 power magnification, must reveal no visible cracks. The ozone resistance specifications in SAE J1403 are similar but SAE J1403 specifies an ozone concentration of 100 ppm rather than 50 ppm. The agency tentatively concludes it is appropriate to update the ozone resistance specifications for vacuum brake hose, as it proposes to do for other types of brake hoses. Accordingly, NHTSA proposes to incorporate SAE J1403's 100-ppm ozone concentration specification into FMVSS No. 106.

5. Burst Strength

The burst strength requirements in FMVSS No. 106 and SAE J1403 are nearly identical. Both standards specify a hydrostatic burst test at 350 psi with no hose rupturing allowed under FMVSS No. 106 and no leakage or bursting allowed under SAE J1403. Given the similarities in the two standards, NHTSA does not propose any changes to the vacuum brake hose burst strength requirements/procedures in FMVSS No. 106.

6. Vacuum Deformation

Paragraph S9.2.6, *Vacuum,* of FMVSS No. 106 requires that a vacuum brake hose, when subjected to 26 inches of Hg. for 5 minutes, not collapse more than 1/16-inch as measured on the hose's outside diameter. SAE J1403 does not contain a corresponding, stand-alone test specification, although the collapse of hose as a percentage of OD is measured after performing the high temperature vacuum aging test described above. NHTSA does not propose any changes to the vacuum deformation requirements/procedures in FMVSS No. 106.

7. Bend Test

FMVSS No. 106 requires that a specified length of hose be bent until the ends are touching, with a maximum permissible outside diameter (OD) collapse specified in fractional inches. SAE J1403 has a similar requirement, although the maximum permissible collapse is specified as a percentage of the un-bent OD (*e.g.,* 20 percent, 30 percent). It is difficult to compare the two requirements/procedures because the values presented in Standard No. 106 are not expressed in terms of OD measurement and, therefore, a percentage calculation cannot be made. One difference between the two standards is that SAE J1403 excludes preformed hoses molded to fit specific applications in which no significant additional bending occurs when the hose is installed on a vehicle. Based on the information provided in each standard, it does not appear that either set of requirements/procedures is more stringent than the other. Accordingly, NHTSA does not propose any changes to the bending requirements/procedures in FMVSS No. 106. The agency does propose, however, to incorporate SAE J1403's exclusion of preformed hose and welcomes public comments on this issue.

8. Swell (Fuel Resistance)

FMVSS No. 106 specifies that a brake hose specimen be filled with ASTM Reference Fuel A and conditioned for 48 hours, after which the inside diameter (ID) of the hose is required to be at least 75 percent of nominal ID for heavy-duty hose and 70 percent of nominal ID for light-duty hose. Standard No. 106 specifies use of a plug gauge to measure the hose's inside diameter. Following the swell test, FMVSS No. 106 specifies subjecting the hose to 26 inches of Hg for ten minutes. The hose must then be examined to determine that no leakage or separation of the inner tube from the fabric reinforcement of the hose has occurred.

SAE J1403's swell test requirements/procedures are similar, but not identical. First, SAE J1403 specifies use of Reference Fuel B rather than Reference Fuel A. Second, SAE J1403 specifies that the hose's inside diameter be measured with a drop ball rather than a plug gauge. Third, SAE J1403 specifies a 10-minute vacuum test, followed by a layer adhesion test with an 8 pounds-per-inch minimum separation specification. In contrast, FMVSS No. 106 specifies that the hose show no leakage or separation of the inner tube from the fabric reinforcement of the hose while the 10-minute vacuum test is being performed.

With respect to the difference in specified fuels, as described in ASTM D471–98e1, *Standard Test Method for Rubber Property—Effect of Liquids,* Reference Fuel A is composed of 100 percent isooctane and Reference Fuel B is composed of 70 percent isooctane and 30 percent toluene by volume. Note 2 in the test method states that:

> The ASTM reference fuels in Table 3 have been selected to provide the maximum and minimum swelling effects produced by commercial gasolines. Reference Fuel A has a mild action on rubber vulcanizates and produces results of the same order as low swelling gasolines of the highly paraffinic, straight run type. Reference Fuels B, C [isooctance 50 percent, toluene 50 percent], and D [isooctane 60 percent, toluene 40 percent] simulate the swelling behaviour of the majority of commercial gasolines, with Reference Fuel C producing the highest swelling which is typical of highly aromatic premium grades of automotive gasoline.

NHTSA proposes that Reference Fuel B as specified in SAE J1403 be used for the swell test in FMVSS No. 106. While this fuel would increase the severity of the test, it would not be so severe as using one of the other reference fuels that contain higher concentrations of toluene, nor as severe as some of the other reference fuels that represent ethanol or methanol blends of gasoline (gasohol).

With respect to the difference in measuring instruments used to determine the hose's inside diameter, NHTSA favors use of a plug gauge because plug gauges are somewhat less susceptible to friction than steel drop-balls. Accordingly, NHTSA proposes that the plug gauge method be kept in place in TP–106 for swell testing of vacuum brake hoses, but welcomes comments on the merits of each constriction test procedure as it applies to vacuum brake hose.

Regarding the differences in adhesion testing between the NHTSA and SAE standards during or after the vacuum test, NHTSA tentatively concludes that each standard has its benefits and drawbacks. While the visual check for hose collapse in FMVSS No. 106 is valid for cases in which the entire hose integrity has been compromised during the fuel soak, it is not clear that this visual check would be able to detect separation of multi-layer hose materials if collapse occurs only on the inside tube or layer. On the other hand, the SAE J1403 layer adhesion test does not include a specification that the hose not visibly collapse during the vacuum test. Visible collapse of the hose during the vacuum test indicates a loss of hose integrity, even if the hose layers remain well bonded.

NHTSA proposes that the specifications of these two standards be combined as follows. Following the fuel conditioning using Reference Fuel B and the constriction test, each vacuum hose would be subjected to a vacuum of 26 inches of Hg for ten minutes, with no visible collapse or leakage of the hose permitted (as currently specified by FMVSS No. 106). Then, for hoses constructed of two layers or more, a layer adhesion test would be conducted with a specified performance of 8 pounds-per-inch minimum separation force (as specified by SAE J1403). NHTSA proposes that this adhesion test only be applied to multi-layer hoses for two reasons. First, the agency tentatively concludes that single layer hose cannot be tested easily. Second, NHTSA tentatively concludes that single layer hose that have lost mechanical integrity would not be able to pass the visual collapse or no leakage specification during the vacuum test and, as such, failure would already be detected prior to completion of the vacuum test.

In addition to the foregoing changes to FMVSS No. 106's swell test requirements/procedures, NHTSA also proposes to update the ASTM test procedure referenced in S10.7 for the swell test to the current revision, D471–98e1.

9. Adhesion

FMVSS No. 106 requires that vacuum brake hose, other than wire-reinforced hose, have a minimum layer separation strength of 8 pounds per inch. There are no specifications for wire-reinforced hose. There is a similar, 8-pound-per-inch adhesion requirement in SAE J1403, although the SAE standard specifically identifies the layers as "the tube from the plies" and "the cover from the plies." NHTSA tentatively concludes that there are no substantial differences between these two standards. Because NHTSA is proposing to combine the adhesion test with the swell test, however, the agency proposes to delete the stand-alone adhesion test specifications for vacuum brake hose from FMVSS No. 106.

10. Deformation

Paragraph S9.2.10, *Deformation*, of FMVSS No. 106 specifies testing short lengths of hose by compressing (flattening or collapsing) the hose to a specified dimension and then releasing the compression force. After five cycles, the minimum outside diameter (OD) of the hose must be at least a specified percentage of the original OD. SAE J1403 does not contain a similar set of deformation testing specifications. NHTSA does not propose any changes to the vacuum brake hose deformation requirements/specifications in FMVSS No. 106.

11. End Fitting Corrosion Resistance

Paragraph S9.2.11, *End fitting corrosion resistance*, of FMVSS No. 106 requires that vacuum brake hose end fittings show no surface base metal corrosion after being exposed to salt spray for 24 hours. Standard No. 106 provides an exception for that portion of the end fitting where crimping or the application of labeling information has caused displacement of the end fitting's protective coating. SAE J1403 does not contain any corresponding requirements. NHTSA does not propose any changes to Standard No. 106's end fitting corrosion resistance requirements.

The table below summarizes the differences between the vacuum brake hose requirements/procedures of FMVSS No. 106 and SAE J1403 and indicates which requirements/procedures NHTSA proposes incorporating into the standard.

TABLE 3.—COMPARISON OF VACUUM BRAKE HOSE REQUIREMENTS/PROCEDURES IN FMVSS NO. 106 AND SAE J1403

Requirement/Procedure		Existing FMVSS No. 106		SAE J1403
Vacuum Brake Hoses "x" Indicates Requirements/Procedures Proposed To Be Included in FMVSS No. 106				
Constriction Test	x	Specifications for constriction at end fittings		No corresponding specifications
High Temperature Resistance		Hose bent and exposed to elevated temperature, less severe than J1403.	x	High temperature conditioning, bend test, pressure test
Low Temperature Resistance		Similar, but does not include pressure test	x	Similar, but also specifies 175 psi pressure test
Ozone Resistance		Similar, 50 ppm ozone concentration	x	Similar, 100 ppm ozone concentration
Burst Strength	x	Same		Same
Vacuum Deformation	x	Limit 1/16 in. collapse of hose OD under vacuum.		No corresponding, stand-alone specification; high temperature test has specifications
Bend Test	x	Similar test, different measurement		Similar test, different measurement
Swell (Fuel Resistance)	1	Similar test, Reference Fuel A, no collapse or leakage permitted.	1	Similar test, Reference Fuel B, layer adhesion test specified
Adhesion		Similar, but is a stand-alone test	x	Similar, but is conducted after swell test fuel soak

TABLE 3.—COMPARISON OF VACUUM BRAKE HOSE REQUIREMENTS/PROCEDURES IN FMVSS NO. 106 AND SAE J1403—Continued

Requirement/Procedure		Existing FMVSS No. 106		SAE J1403
Deformation	x	Compression test	....	No corresponding test
End Fitting Corrosion Resistance hose end fittings.	x	Same as for hydraulic brake hose end fittings.		No corresponding test

Note 1: NHTSA proposes performing layer adhesion test once vacuum hose has been conditioned during swell test. NHTSA considers a stand-alone adhesion test unnecessary.

The agency notes that plastic vacuum brake tubing is being used in automotive applications, as it has been requested to issue legal interpretations on the application of requirements in Standard No. 106 to this type of material. This may lead to a situation similar to that for air brake hose, for which both rubber hose and plastic tubing are widely used and the agency is now proposing to create separate requirements for each type of hose. The agency is not aware of an SAE or other industry standard for plastic vacuum brake hose and therefore is not currently proposing any separate requirements for this material. If a suitable industry standard is developed for plastic vacuum brake tubing, the agency may consider adopting those requirements into Standard No. 106 as appropriate, as part of a future rulemaking activity.

D. Plastic Air Brake Tubing

NHTSA's performance requirements and test procedures relating to plastic air brake tubing are located in paragraph S7., *Requirements—Air brake hose, brake hose assemblies, and brake hose end fittings*, and paragraph S8., *Test procedures—Air brake hose, brake hose assemblies, and brake hose end fittings*. The corresponding SAE requirements/procedures are contained in SAE Surface Vehicle Standard J844, *Nonmetallic Air Brake System Tubing, Rev. June 1988* (SAE J844).

Standard No. 106's requirements for plastic air brake tubing are the same as those for rubber air brake tubing. NHTSA tentatively concludes that FMVSS No. 106 does not adequately address the performance requirements for plastic air brake tubing because of the significant difference in the materials, construction, and end fittings of plastic air brake tubing compared with rubber air brake hose. The agency tentatively concludes that due to the current requirements in the FMCSRs, plastic air brake tubing as widely used on air-braked vehicles has been, up until this time, compliant with SAE J844. Therefore, if SAE J844 compliance is no longer required by the FMCSRs, as has been proposed by the FHWA, then the potential exists that the requirements currently in Standard No. 106 will not adequately ensure the continued safe performance of plastic air brake tubing.

NHTSA proposes that the substantive requirements/procedures in SAE J844 be incorporated into FMVSS No. 106, including dimensional specifications, classifications, burst test, moisture absorption test, ultraviolet resistance test, cold temperature flexibility test, heat aging test, resistance to zinc chloride and methyl alcohol tests, boiling water stabilization and burst tests, cold temperature impact test, collapse resistance test, and hot tensile strength test. NHTSA proposes that two performance requirements currently in Standard No. 106 for air brake hoses, ozone resistance and oil resistance, continue to be required for plastic tubing. However, for the oil resistance test, NHTSA proposes a new test procedure consisting of oil conditioning followed by a burst test, rather than the volumetric expansion specification currently in Standard No. 106, as a test condition more appropriate for plastic tubing.

The agency also proposes incorporating the classifications and dimensional specifications from SAE Surface Vehicle Standard J1394, *Metric Nonmetallic Air Brake System Tubing, Rev. April 1991*, into FMVSS No. 106. Although not referenced by the petitioners, this standard contains requirements for plastic air brake tubing manufactured in metric sizes. NHTSA tentatively concludes that it is appropriate to include requirements for both metric and inch sizes of plastic air brake tubing.

Plastic air brake tubing is typically sold separately from the end fittings and therefore it is generally not sold or supplied as an air brake hose assembly, with the exception of coiled hoses used between tractors and trailers which are often pre-assembled using permanently-attached end fittings. In light of this, the SAE has developed separate standards for plastic air brake tubing and plastic air brake tubing assemblies and end fittings. SAE J844 contains performance requirements for plastic air brake tubing, while SAE Surface Vehicle Standard J1131, *Performance Requirements for SAE J844 Nonmetallic Tubing and Fitting Assemblies Used in Automotive Air Brake Systems*, contains performance requirements for plastic air brake tubing assemblies and end fittings.

The requirements in S7 of FMVSS No. 106 were developed for rubber air brake hose that is sized according to internal diameter (ID). Paragraph S7 contains few references to plastic/nylon tubing that, unlike rubber air brake hose, is sized according to outside diameter (OD) and is a significantly different product than rubber hose. Plastic tubing is generally manufactured from nylon but the generic term plastic is used in this notice to account for other types of plastic that may be used for this application. As previously discussed, the applicability of Table III in Standard 106 was amended so that it would only be applicable to brake hoses made from synthetic or natural elastomeric rubber, thus there are no dimensional requirements for plastic tubing in FMVSS No. 106. NHTSA proposes that new dimensional requirements for plastic air brake tubing be included in Standard No. 106 based on the dimensions currently used in SAE J844 (inch units) and SAE J1394 (metric units).

Non-coiled plastic tubing is used for air system plumbing to connect components that maintain a basically fixed relationship during vehicle operation. Coiled plastic tubing is generally used in flexible connections such as between a tractor and a semi-trailer. By coiling a long length of relatively stiff plastic tubing, a flexible coiled arrangement is obtained. Non-coiled tubing differs from conventional rubber hose in that it would not be used between components that experience relative motion, although it would still be subjected to vibration and other loads.

1. Classification

FMVSS No. 106 references Type I and Type II air brake hose and reusable end fittings which are required to be labeled as either "AI" or "AII." SAE J844 and SAE J1394 classify plastic tubing as "A"

for smaller diameter, non-reinforced tubing made from one layer of material, or "B" for larger diameter tubing made from two layers of material with a reinforcement braid located at the layer interface. Tubing is sized by the nominal OD of the tubing either in fractions of an inch or in millimeters. These designations are appropriate for plastic tubing but FMVSS No. 106 does not currently contain any references to Type A and B tubing or any dimensional requirements for plastic tubing.

It should be noted that FMCSR § 393.45(b)(ii) specifies that, for plastic tubing used on commercial motor vehicles, the reference to SAE J844 only includes Type B tubing. NHTSA proposes to update FMVSS No. 106 to include requirements for both Types A and B plastic tubing.

2. Dimensions and Tolerances

SAE J844 includes a table (Table 1) that prescribes, for each nominal size of tubing, the ID, OD, minimum wall thickness, and tolerances on the ID and OD. There are no corresponding dimensions in FMVSS No. 106. These dimensions are safety-critical because they ensure that the tubing is compatible with the fittings designed for that tubing. Incompatibility between tubing and end fittings can, among other things, cause the inside diameter of the tubing to collapse. NHTSA agrees with the petitioners that, if there are no requirements for these dimensions, there is the possibility that tubing of improper dimensions could pull out of the end fittings or otherwise prematurely fail at the connections, leak because of improper sealing due to dimensional incompatibility with fittings, or loosen due to thermal expansion and contraction. Accordingly, NHTSA proposes to incorporate into Standard No. 106 the dimension and tolerance requirements contained in SAE J844.

3. One Hundred Percent Leak Test

SAE J844 requires tubing manufacturers to subject all air brake tubing to a 200-psi leak test. The specific testing methods, including test media, rate of application, and required performance measures, are not specified in SAE J844 and are, therefore, determined by the tubing manufacturer.

FMVSS No. 106 does not address the quality control methods that hose manufacturers use to ensure that all hoses installed on motor vehicles will meet the standard. Rather, the manufacturers of such components are required to certify compliance, and each brake hose or assembly is required to meet the standard. NHTSA tentatively concludes that plastic air brake tubing manufacturers will continue to perform quality control tests on their products, but that such requirements should not be included in FMVSS No. 106.

4. Burst Test

SAE J844 specifies that tubing be stabilized at 75 degrees F for a period of 30 minutes to 3 hours. Pressure (of an unidentified medium, assumed to be air) in the tube is increased at a constant rate to reach a specified minimum burst pressure (specified in Table 2) within a time period of 3 to 15 seconds. The tubing must sustain the specified pressure without bursting. FMVSS No. 106 specifies using water as the test media, with a pressure increase rate of approximately 1,000 psi per minute, to a pressure of 800 psi. The specified pressures in Table 2 of SAE J844 range from 1000 to 1200 psi for Type A tubing and 800 psi to 1400 psi for Type B tubing (each size of tubing has one specific burst pressure). Therefore, the pressure requirements in SAE J844 are equal to or higher than those in FMVSS No. 106. While the performance differences of the different test media have not been measured, it would appear that using air would be more appropriate for air brake tubing than using water. NHTSA welcomes comments on the use of air versus water as the test medium.

In NHTSA' judgment, the greater pressure requirements in SAE J844 are more rigorous than existing requirements in FMVSS No. 106. NHTSA proposes changing the burst strength requirements in FMVSS No. 106 to the higher values in SAE J844, and specifying air as the test medium rather than water. NHTSA proposes that the pressure in the tubing be increased in a period of 5 seconds because using the range of 3 to 15 seconds in SAE J844 would specify testing at both 3 and 15 seconds and therefore would be too broad of a specification for use in FMVSS No. 106. NHTSA welcomes comments on the use of air versus water as the test medium.

5. Moisture Absorption

SAE J844 specifies that a tubing specimen be conditioned for 24 hours at 230 degrees F, immediately weighed, and then subjected to 100 percent relative humidity for 100 hours at 75 degrees F. Within five minutes of removal from the humidity chamber, surface moisture is wiped from all surfaces of the tubing and the tubing is weighed. The moisture absorption shall not exceed 2 percent by weight. FMVSS No. 106 does not have a corresponding test. NHTSA proposes incorporating the moisture absorption specification from SAE J844 into FMVSS No. 106.

6. Ultraviolet Resistance

SAE J844 specifies that the tubing be placed in a Q-Panel QUV test apparatus equipped with Philips Type UVS–340 bulbs. If the test apparatus is equipped with a "Solar Eye," the bulbs need not be rotated and the irradiance should be set at 0.85; however, all bulbs should be discarded after 4800 hours maximum or if they fall below the 0.85 irradiance level, whichever occurs first. If the test apparatus is not equipped with a "Solar Eye," the bulbs must be rotated every 400 hours maximum, per the apparatus manufacturer and ASTM G 53. Bulbs used in such an apparatus must be discarded after 1600 hours of use.

The samples are placed in the sample racks of the test apparatus and are exposed for 300 hours at a temperature of 113 degrees F, with the surface of the specimen mounting plate located no more than 2 inches from the bulbs. The samples are rotated according to ASTM D 4329 except the rotation is each 96 hours rather than weekly. No humidity other than ambient is introduced. Immediately after the samples are removed from the ultraviolet light test apparatus, they are subjected to an impact test using a device depicted in Figure 1 of SAE J844. The tubing samples are then cooled to 75 degrees F and subjected to a burst test, with a minimum burst pressure that is at least 80 percent of the value assigned to the tubing based on the tubing's outside diameter as indicated in Figure 2 of SAE J844.

NHTSA notes that in November 1973 (38 FR 31302), NHTSA deleted the ultraviolet light resistance tests for air brake hoses in Standard No. 106, stating that sufficient data had not been generated to support a minimum performance requirement. However, NHTSA tentatively concludes that the plastic material used in nylon air brake tubing is significantly different from the materials used in rubber air brake hoses, and that plastic is susceptible to deterioration that can cause embrittlement due to exposure to ultraviolet light. NHTSA also notes that air brake tubing is installed on heavy vehicles in locations that are exposed to naturally-occurring ultraviolet light. Therefore, NHTSA proposes to incorporate SAE J844's ultraviolet resistance test into FMVSS No. 106, although the agency proposes to reference the apparatus specified in ASTM G154–00, *Standard Practice for Operating Fluorescent Light Apparatus for UV Exposure of Nonmetallic Materials*, rather than the one specified in ASTM G53 because ASTM G154–00 is an updated version of ASTM G53. NHTSA also proposes to reference two additional ASTM standards: ASTM D4329–99, *Standard Practice for Fluorescent UV Exposure of Plastics*, which is currently refefenced in SAE J844, and ASTM G151–97, *Standard Practice for Exposing Nonmetallic Materials in Accelerated Test Devices that Use Laboratory Light Sources*, which is not currently referenced in SAE J844, but may provide useful guidance for conducting UV testing.

7. Cold Temperature Flexibility

SAE J844 specifies tubing to be conditioned at 230 degrees F for 24 hours. Within 30 minutes of removal from the oven, the tubing is placed in a cold chamber at minus 40 degrees F and conditioned for 4 hours. A test cylinder with a radius equal to 6 times the nominal OD of the tubing is also conditioned at minus 40 degrees F for 4 hours. The tubing and test cylinder are removed from the cold chamber and the tubing is bent 180 degrees around the test cylinder within a period of 4 to 8 seconds. The tubing must show no signs of fracture.

FMVSS No. 106 also contains a low temperature resistance test procedure. The FMVSS No. 106 procedure differs in that the hose is bent around the test cylinder prior to being conditioned in the cold chamber; the cold conditioning is for 70 hours; and there is no high-temperature preconditioning. The table in paragraph S7 (Table IV) includes dimensions for the test cylinder radius for each nominal size of hose. Table IV references hose size by nominal diameter, and does not differentiate between hose, which is sized by inside diameter, and tubing, which is sized by outside diameter. Applying the test cylinder radii in Table IV to the nominal outside diameter of tubing, and then comparing these values to the test cylinder radii in SAE J844, reveals that the test cylinder radii in SAE J844 are smaller and, therefore, SAE J844 provides a more stringent test condition in terms of bend radius than does FMVSS No. 106.

The test conditions of "cold temperature flexibility" in SAE J844 do not correspond to the "low temperature resistance" test in FMVSS No. 106. SAE J844 is a test to evaluate the crack resistance of tubing, subjected to bending while in a cold state, while the FMVSS No. 106 test condition is an evaluation of pre-bent tubing's resistance to cracking when subjected to cold temperatures. Because SAE J844 is more rigorous, NHTSA proposes substituting it for the current test in FMVSS No. 106. NHTSA tentatively concludes that the time period of 4 to 8 seconds to accomplish the bending of the tubing is appropriate for this test because the bending is done by hand and is therefore subject to some variability. Specifying the 4 to 8 second time period will preclude the need for specialized bending apparatus that can meet a specific timing specification.

8. Heat Aging

SAE J844 includes three different heat aging tests, which specify use of three separate samples of the same tubing. A tubing sample is subjected to one of the aging tests described below, then subjected to the burst test at room temperature, with a minimum burst strength of 80 percent of a specified value.

The first test is to bend a section of tubing 180 degrees around a test cylinder with a diameter equal to two times the tubing's minimum bend radius, as specified in the standard. The tubing and test cylinder are conditioned for 72 hours at 230 degrees F and then removed to cool at 75 degrees F. Within 30 minutes after stabilizing at 75 degrees F, the tubing is straightened within a time period of four seconds. The tubing is then bent 180 degrees in the opposite direction within a time period of 4 to 8 seconds.

The second test is to condition the tubing at 230 degrees F for 72 hours, then remove and cool the tubing to 75 degrees F. Within 30 minutes after stabilizing at 75 degrees F, the tubing is subjected to an impact test as specified in the standard.

The third test involves conditioning the tubing by immersing it in boiling water for 2 hours, then removing and cooling it to 75 degrees F. Within 30 minutes after stabilizing at 75 degrees F, the tubing is subjected to an impact test as specified in the standard.

FMVSS No. 106 does not have corresponding test procedures. The high temperature resistance test (S8.1) evaluates a hose for resistance to visible cracking after being conditioned at 212 degrees F for 70 hours and then straightened. There is no burst (pressure) strength requirement. NHTSA proposes incorporating the SAE J844 test procedures for plastic air brake tubing into FMVSS No. 106.

9. Zinc Chloride Resistance

SAE J844 specifies that tubing be bent around a test cylinder and immersed in a 50 percent by weight (specific gravity of 1.576 or a Baume rating of 53 degrees at 60 degrees F) aqueous solution of zinc chloride for 200 hours at 75 degrees F. After removal from the solution, the tubing must show no evidence of cracking on the outside diameter. FMVSS No. 106 specifies that a hose assembly be immersed in a 50 percent zinc chloride aqueous solution for 200 hours, with no visible cracks permitted when viewed with 7-power magnification. SAE J844's zinc chloride test procedures are more rigorous due to the bending of the tubing during the conditioning. Accordingly, NHTSA proposes to incorporate the zinc chloride resistance performance requirements and test procedures from SAE J844 into FMVSS No. 106.

10. Resistance to Methyl Alcohol Resistance

SAE J844 specifies that the tubing be bent around a test cylinder and then immersed in 95 percent methyl alcohol for 200 hours at 75 degrees F. After removal from the solution, the tubing must show no evidence of cracking. This test ensures that air brake tubing is not susceptible to damage from alcohol that is sometimes introduced into air brake systems during extreme cold weather conditions, or from windshield washer fluid containing alcohol that may spill onto brake tubing. There is no corresponding test procedure/performance requirement in FMVSS No. 106, and NHTSA proposes to incorporate the one specified in SAE J844. NHTSA also welcomes comments on the suitability of adopting this test procedure/performance requirement for rubber air brake hoses, since they are also susceptible to alcohol exposure for the same reasons.

11. Stiffness

SAE J844 specifies that an 11-inch long sample of tubing be slipped over a rod to maintain the hose in a straight position within plus or minus ⅛ inch. The tubing and rod are conditioned at 230 degrees F for 24 hours, then removed and cooled to 75 degrees F. Within 30 minutes after stabilizing at 75 degrees F, the rod is removed and tubing is subjected to a stiffness test as outlined in the standard. The tubing must require no more that the specified amount of force to deflect 2 inches. This test ensures that the flexibility of the tubing is not reduced when the tubing is subjected to elevated temperatures. An increase in stiffness after exposure to elevated temperatures indicates that the tubing is susceptible to kinking or embrittlement under this condition. Because Standard No. 106 does not contain a similar set of procedures/requirements, NHTSA proposes to incorporate the stiffness procedures/

requirements from SAE J844 into FMVSS No. 106.

12. Boiling Water Stabilization and Burst Test

SAE J844 specifies that the tubing be immersed in boiling water for 2 hours. The tubing is then removed from the water and subjected to a burst test at room temperature. The standard specifies a minimum burst strength of 80 percent of the value assigned to the tubing based on the tubing's nominal outside diameter. NHTSA tentatively concludes that this test condition is redundant because a similar boiling water conditioning test, followed by impact and burst tests, is already specified by the third heat aging test, as described above. FMVSS No. 106 has no corresponding test procedure. Because NHTSA is already proposing to incorporate the heat aging test from SAE J844, the agency does not propose to also incorporate SAE J844's stand-alone boiling water stabilization and burst test.

13. Cold Temperature Impact

SAE J844's cold temperature impact test specifies the use of 10 separate samples of air brake tubing. Five samples are conditioned for 24 hours at 230 degrees F, and the other five are conditioned in boiling water for 2 hours. All samples and the impact test apparatus are then conditioned at minus 40 degrees F for 4 hours. Each sample is then subjected to the impact test per Figure 1, with no visible cracks permitted. Each sample is then warmed to 75 degrees F and, within 30 minutes of stabilization at this temperature, a burst test conducted. Each tubing sample must withstand 80 percent of the specified burst strength. If any one of the samples fails these tests, the entire test sequence is repeated using twenty samples. If any one of these twenty samples fails, then the entire manufacturing lot is to be rejected. This test evaluates the resistance of the tubing to cold temperature fracturing. FMVSS No. 106 does not have corresponding test procedures/performance requirements.

In an August 1970 notice of proposed amendment to FMVSS No. 106 (35 FR 13738), NHTSA's predecessor agency, the National Highway Safety Bureau, addressed the issue of a sampling approach in testing standards. That notice indicated that the SAE approach, which includes testing of several samples and then retesting additional samples if initial failures are found, is not an essential methodology to demonstrate non-compliance. Rather, the agency indicated that it favored testing one brake hose sample to determine compliance. Manufacturers, on the other hand, should or may conduct testing on multiple samples as part of their quality control procedures to determine whether continued failures exist such as to demand rejection of an entire manufacturing lot. NHTSA tentatively concludes that it is still preferable to subject only one sample to a particular set of testing procedures for compliance purposes. Accordingly, the agency proposes that only one plastic brake tubing sample be subjected to the cold impact test procedures contained in SAE J844. With this one modification, NHTSA proposes to incorporate the cold impact test procedures/performance requirements from SAE J844 into FMVSS No. 106.

14. Adhesion Test

SAE J844 specifies that Type B, reinforced tubing, be subjected to an adhesion test. A helical sample ¼ inch wide and with a length equal to five times the circumference of the tubing is cut from the tubing. With the tubing sample at a temperature of 75 degrees F, a knife blade is used to initiate separation at the braid interface. Further attempts to separate the sample must result in no separation over the entire length of the test sample other than at points at which the braid is present. SAE J844 does not include any specifications for Type A, non-reinforced tubing because this type of hose is only manufactured from one layer. Standard No. 106 presently requires that hose have a minimum adhesion strength of 8 pounds per linear inch of hose.

NHTSA tentatively concludes that the "no separation" performance requirement in SAE J844 would be unenforceable because during a destructive test the tubing will ultimately fail at some point during the test. NHTSA tentatively concludes that the existing Standard No. 106 minimum adhesion requirement of 8 pounds per linear inch is suitable for rubber air brake hose. Given the SAE J844 "no separation" specification for Type B plastic tubing, however, NHTSA proposes that a higher minimum adhesion requirement is appropriate for that type of tubing. NHTSA therefore proposes a minimum separation value of 25 pounds per linear inch for Type B plastic tubing, which the agency tentatively concludes is severe enough to ensure that an adequate bond exists between the tubing layers but not so high as to present enforcement concerns. Accordingly, NHTSA proposes that the adhesion test procedures/performance requirements for Type B tubing in SAE J844 be incorporated into FMVSS No. 106, with a minimum separation strength of 25 pounds per linear inch. Rather than specifying a stand-alone adhesion test, however, NHTSA is proposing to incorporate SAE J844's heat aging adhesion test, which is described below. With respect to Type A tubing, because such tubing is typically manufactured from a single extrusion of nylon with no internal layers, the agency does not believe it is necessary to specify an adhesion test for that type of tubing.

NHTSA proposes to deviate from SAE J844's test procedure because it appears that it would be difficult to mount the test specimen in a tension testing machine if the specimen is cut from a ¼-inch wide helical section of tubing. NHTSA proposes that a 1-inch length of tubing be cut lengthwise and two flaps of material be cut using a sharp knife so that the test sample can be clamped in the machine. The adhesion test for air brake hose that uses a rotating mandrel to support the inner layers of the hose was considered for tubing but does not appear to be practical for tubing since it would be difficult to separate (cut) the outer layer of the tubing from the inner layer with the inner layer of the tubing in an intact, round shape. NHTSA welcomes comments on the proposed adhesion test procedures/performance requirements.

15. Heat Aging and Adhesion Test

SAE J844 specifies that a Type B tubing sample be conditioned in the first heat aging test (bend tubing, heat conditioning, and re-bend tubing after cooling) and then subjected to the adhesion test, detailed above. Type A tubing is not subjected to this test. FMVSS No. 106 does not have a corresponding set of test procedures/performance requirements. NHTSA proposes to incorporate the heat aging adhesion test procedures from SAE J844, but that the minimum adhesion performance requirement for Type B tubing be raised from 8 pounds per linear inch to 25 pounds per linear inch.

16. Collapse Resistance

SAE J844 specifies that three test samples of specified length be prepared and the minor outside diameter (OD) be measured. The minor OD is the smallest outside diameter of the tubing measured at the center of the sample, typically located 90 degrees from the natural lay line of the tubing. The samples are installed on a specified bend test fixture and, following the natural bend of the tubing, each tube is bent 180 degrees to the minimum kink radius listed in the standard. The samples are conditioned at 200 degrees F for 24 hours and then cooled to room temperature (75 degrees F) and, while still installed on the bend fixture, the minor OD is measured. The minor OD collapse of the heat-conditioned samples must not exceed 20 percent of the initial minor OD. FMVSS No. 106 does not contain corresponding test procedures/performance requirements.

NHTSA proposes to incorporate the collapse resistance test procedures/performance requirements from SAE J844 into FMVSS No. 106, with two changes. First, the agency proposes to specify that only one sample be tested rather than three. Second, NHTSA notes that the minimum kink radii in Table 3 of SAE J844 represents the minimum unsupported bend radii for tubing as installed on a vehicle while the test bend radii in Table 2 of that standard represent the minimum bend radii for supported tubing during applicable test procedures. NHTSA tentatively concludes that because heavy vehicle manufacturers are aware that such installation criteria are included in SAE J844 there is no need to incorporate them into FMVSS No. 106. NHTSA welcomes public comments on both of these proposed modifications.

17. Oil Resistance

SAE J844 does not include an oil resistance test as specified by FMVSS No. 106. The oil test is used to measure the volumetric expansion of specimens prepared from the inner and outer layers of a hose, after immersion in ASTM No. 3 oil at 212 degrees F for 70 hours, with a maximum permissible volumetric expansion of 100 percent. While such a test is appropriate for the type of materials used in elastomeric, synthetic rubber air brake hoses, NHTSA tentatively concludes that in the case of plastic air brake tubing it would be more appropriate to evaluate a mechanical property of the tubing such as the ability to pass a burst test after conditioning in oil.

NHTSA is aware of a problem that was encountered several years ago with pre-assembled air brake tubing assemblies used for tractor-trailer connections supplied by one manufacturer. This particular product, when subjected to conditioning in oil, would undergo material property changes that resulted in failure (dissolution) of the tubing. The manufacturer of the tubing assemblies petitioned NHTSA to request that coiled air brake tubing assemblies be exempt from the oil resistance requirements in Standard No. 106. NHTSA ultimately denied this request and stated in the denial (58 FR 38346) that coiled air brake tubing assemblies are subjected to elevated temperatures and exposed to oil. The agency notes that this particular product was not compliant with SAE J844.

NHTSA tentatively concludes it is critical that plastic air brake tubing be resistant to oil exposure. Oil can be introduced into air brake systems due to air compressor leakage, and exposed portions of tubing are subject to oil and grease contamination from sources such as hydraulic work equipment mounted on vocational trucks, axle lubricant leakage, and fifth wheel lubrication. Therefore, NHTSA proposes a test procedure for plastic tubing that combines existing FMVSS No. 106 oil conditioning criteria with the burst strength requirements of SAE J844.

The proposed test procedure involves preparation of a tubing assembly, conditioning it in ASTM IRM 903 oil (which supercedes ASTM No. 3 oil as described in ASTM D471–98e1, *Standard Test Method for Rubber Property-Effect of Liquids*), and then subjecting the tubing to the burst test specified in SAE J844. NHTSA proposes that the tubing not burst at less than 80 percent of the burst pressure listed in Table 2 of SAE J844. This required performance is the same as that specified in SAE J844 for the boiling water stabilization and burst test. NHTSA tentatively concludes that using an 80 percent value for the oil test is appropriate given that the tubing is pre-conditioned in oil, similar to the preconditioning of the boiling water test, and notes that the tubing would not be required to have the 100 percent burst strength required for non-conditioned tubing tested at room temperature. NHTSA welcomes comments on this proposed test procedure in lieu of the existing Standard No. 106 requirement that limits volumetric expansion of the material during oil conditioning.

18. Ozone Resistance

SAE J844 does not include an ozone resistance test as specified by FMVSS No. 106. Standard No. 106 specifies bending a hose around a test cylinder and conditioning it in a test chamber at 50-ppm ozone concentration at 104 degrees F for 70 hours. After performing this test, no visible cracks may be detected when viewed under 7-power magnification. The agency notes that the ozone test for hydraulic brake hose in SAE J1401 specifies an ozone concentration of 100 ppm and that, as noted above, NHTSA is proposing to increase the ozone concentration requirements for all types of brake hose covered by FMVSS No. 106. Accordingly, NHTSA proposes that the ozone test that is currently specified in Standard No. 106 continue to be applied to plastic air brake tubing at the higher ozone concentration level of 100 ppm.

The table below summarizes the differences between the plastic air brake tubing requirements/procedures of FMVSS No. 106 and SAE J844 and indicates which requirements/procedures NHTSA proposes incorporating into the standard.

TABLE 4.—COMPARISON OF NYLON AIR BRAKE TUBING REQUIREMENTS/PROCEDURES IN FMVSS NO. 106 AND SAE J844

Requirement/Procedure		Existing FMVSS No. 106		SAE J844
Plastic Air Brake Tubing				
"x" Indicates Requirements/Procedures Proposed to be Included in FMVSS No. 106. A new section would be added with performance requirements/test procedures for plastic air brake tubing. Some existing requirements/procedures for air brake hose would also apply.				
100 Percent Leak Test	x	Not Specified		Each lot to be tested.
Classification		Type AI or AII air hose	x	Type A or B plastic air brake tubing.
Dimensional Specifications		None	x	J844 (inch) and J1394 (metric) dimensions for plastic tubing.
Burst Test		800 psi requirement	x	Strength based on tubing size and type, minimum is 800 psi.
Moisture Absorption		None	x	Not to exceed 2 percent.
Ultraviolet Resistance		None	x	300 hour exposure followed by impact test.

TABLE 4.—COMPARISON OF NYLON AIR BRAKE TUBING REQUIREMENTS/PROCEDURES IN FMVSS NO. 106 AND SAE J844—Continued

Requirement/Procedure		Existing FMVSS No. 106		SAE J844
Cold Temperature Flexibility		Low temperature resistance but not flexibility.	x	Cold conditioning followed by bending around test cylinder.
Heat Aging		Does not include burst test	x	Three separate test procedures followed by burst test.
Zinc Chloride Resistance		Similar but tubing is not bent during test	x	Similar, tubing is conditioned while bent around test cylinder.
Methyl Alcohol Resistance		None	x	Tubing bent around test cylinder and conditioned in alcohol for 200 hours.
Stiffness		None	x	Stiffness of tubing after conditioning at elevated temperature.
Boiling Water Stablization and Burst Test		None		Considered redundant since more severe test condition included in heat aging test.
Cold Temperature Impact		None	x	Cold conditioning, impact test, and burst test.
Adhesion Test		8 lbs. per linear inch, for any air brake hose.	1	Type B tubing only, no separation permitted.
Heat Aging Adhesion Test		None	1	Type B tubing only, heat aging and adhesion test. No separation permitted.
Collapse Resistance		None	x	Max. 20 percent collapse after high temp. conditioning bent around test cylinder.
Ozone Resistance	2	Same as air brake hose, 50 ppm		None.
Oil Resistance	3	Same as air brake hose	....	None.

Note 1: NHTSA proposes a 25 lbs. per inch adhesion strength instead of "no separation."
Note 2: NHTSA proposes 100 ppm ozone concentration.
Note 3: NHTSA proposes an oil soak and burst test for plastic tubing.

E. Plastic Air Brake Tubing Assemblies and End Fittings

NHTSA's performance requirements and test procedures relating to plastic air brake tubing assemblies and end fittings are located in paragraph S7., *Requirements—Air brake hose, brake hose assemblies, and brake hose end fittings*, and paragraph S8., *Test procedures—Air brake hose, brake hose assemblies, and brake hose end fittings*, of FMVSS No. 106. The corresponding SAE performance requirements/test procedures are contained in SAE Surface Vehicle Standard J1131, *Performance Requirements for SAE J844 Nonmetallic Tubing and Fitting Assemblies Used in Automotive Air Brake Systems, Rev. August 1998* (SAE J1131). SAE's end fitting performance requirements/test procedures are located in SAE Surface Vehicle Standard J512, *Automotive Tube Fittings Rev. October 1980* (SAE J512) and SAE Surface Vehicle Standard J246, *Spherical and Flanged Sleeve (Compression) Tube Fittings Rev. March 1981* (SAE J246).

This section addresses performance requirements and test procedures for plastic air brake tubing assemblies and end fittings. The previous section compared FMVSS No. 106 to SAE J844 and only addressed the properties of the tubing and not the properties of tubing assemblies or end fittings. SAE J1131 evaluates the performance of SAE J844 tubing when used in an assembly with either permanently-attached or reusable end fittings.

NHTSA proposes to incorporate the following end fitting performance requirements/test procedures from SAE J1131 into Standard No. 106: the hot tensile strength test, the conditioned pull test, the vibration leak test, the proof and burst test, the fitting compatibility test, and the serviceability test. The serviceability test specifies that an end fitting, after five assembly and disassembly cycles, not leak more than 25 cm^3/min. and NHTSA proposes that this test will only apply to fittings that use a threaded retention nut. Push-to-connect fittings are often believed to result in damage to the tubing upon disassembly and therefore may not be able to meet this specification. When such fittings are disassembled, the end of the tubing can be cut off if there is enough slack in the assembly, or a new section of tubing will need to be fitted for reinstallation.

The agency also proposes specifying constriction testing for plastic air brake tubing assemblies as such testing is already specified for air brake hose assemblies under Standard No. 106.

NHTSA proposes including the current corrosion resistance test in FMVSS No. 106, as applied to all types of brake hose fittings (*i.e.*, hydraulic, vacuum, air), for fittings used with plastic air brake tubing. End fitting corrosion specifications are included in SAE J246 and SAE J512 rather than SAE J1131, and these specifications are different than those currently in FMVSS No. 106, with the SAE test procedures including longer exposure to salt spray but less severe performance requirements for permissible corrosion.

A detailed discussion of the differences between the performance requirements/test procedures of SAE J1131, SAE J246, SAE J512, and FMVSS No. 106 as they relate to plastic air brake tubing assemblies and end fittings follows, along with the agency's proposed resolution of those differences.

1. Tensile Strength

FMVSS No. 106 specifies that an air brake hose assembly for use between either the frame and the axle, or a towing and towed vehicle, meet a longitudinal pull test, at a 1 inch per minute force application rate without separating from its end fittings at the following force levels: 250 pounds for ¼ inch or less, or 6mm or less, nominal ID; 325 pounds for more than ¼ inch or 6mm nominal ID. A hose assembly used in any other application must withstand force levels of: 50 pounds for ¼ in or less, or 6 mm or less, nominal ID; 150 pounds for ⅜ inch, ½ inch, or 10 mm to 12 mm, nominal ID; and 325 pounds if the hose assembly is larger than ½ inch or 12 mm nominal ID. A coiled nylon tube assembly may either meet these requirements or, alternatively, may meet the requirements in FMCSR 393.45.

While FMVSS No. 106's air brake hose performance requirements and test procedures are currently presented in terms of nominal inside diameter, the agency notes that plastic air brake tubing is sized according to nominal outside diameter. In an August 7, 1974, amendment to FMVSS No. 106 (39 FR 28436), NHTSA responded to a petition from Samuel Moore Company in which the petitioner contended that it was appropriate to base Standard No. 106's tensile strength requirements on the nominal inside diameter of the tubing rather than on the tubing's nominal outside diameter. The petitioner argued that because ⅜-inch nominal OD plastic tubing has an inside diameter of ¼-inch and provides the same air flow capability as a ¼-inch nominal ID rubber hose, they should be subject to the same tensile strength requirements. In response to the petition, NHTSA decided to base the tensile strength requirements on the nominal inside diameter of the hose or tubing. Because plastic air brake tubing is labeled according to its nominal outside diameter, however, NHTSA now proposes to specify tensile strength requirements in the same manner to minimize confusion.

Unlike FMVSS No. 106, SAE J1131 does not contain a stand-alone tensile strength test for air brake ttbing assemblies. Instead, SAE J1131 specifies tensile strength testing after an air brake tubing assembly has been assembled and pre-conditioned in some manner. The SAE tensile strength performance requirements for pre-conditioned tubing assemblies are not as rigorous as NHTSA's stand-alone requirements. Although the agency proposes to incorporate SAE J1131's tensile strength requirements, NHTSA also proposes to retain the stand-alone tensile strength requirements already present in FMVSS No. 106, with the modifications discussed below.

Standard No. 106's tensile strength requirements provide an alternative set of requirements for coiled nylon tubing. Coiled nylon tubing may either meet the tensile strength requirements in FMVSS No. 106 or, alternatively, may meet the requirements in section 393.45 of the FMCSRs. FMCSR § 393.45, in turn, references the tensile strength requirements of SAE J844. The agency notes, however, that SAE J844 does not contain tensile strength requirements for end fitting retention. The end fitting retention requirements are contained in SAE J1131, which is not referenced in FMCSR § 393.45.

Coiled nylon tubing assemblies, by design, provide that tensile loads on these assemblies are spread out over the long length of the hose in its coiled form, and thus large amounts of relative motion, such as between a tractor and a semi-trailer, are not expected to result in significant tensile load on the end fittings that would pull the tubing out of the fitting. Nevertheless, NHTSA tentatively concludes that the potential exists for the supply and control air lines connecting tractors and semi-trailers to get tangled among themselves, among various components (springs and poles) that are used to support the lines above the truck frame, or with the electrical cord. The agency also notes that these air lines are completely exposed to the elements, are frequently connected and disconnected, and may be subject to various amounts of stretching depending on the physical dimensions of the trailers that are towed.

Despite these potential hazards in the operating environment of coiled nylon tubing, however, FMVSS No. 106, as presently constituted, provides no tensile strength requirements for coiled nylon tubing assemblies if the optional compliance with SAE J844 as referenced in § 393.45 is exercised. In contrast, small, ⅛-inch air brake tubing is essentially prohibited from use in air brake systems because of its inability to meet Standard No. 106's 50-pound tensile strength requirement, even though the application of this tubing would typically be inside the truck cab and routed to protect it from damage. As discussed below, NHTSA proposes to correct this disparity in treatment by requiring coiled nylon tubing to meet SAE J1131's end fitting retention requirements and by lowering the tensile strength requirements for tubing with relatively small nominal outside diameters. The agency proposes to lower the tensile strength requirement for ⅛-inch nominal OD tubing from 50 pounds to 35 pounds and, for 5/32-inch OD tubing, from 50 pounds to 40 pounds.

The agency proposes to retain the existing FMVSS No. 106 tensile strength requirements for air brake tubing assemblies used between a frame and an axle, or between a towed and a towing vehicle, of 250 pounds for a ⅜-inch or less, or 10 mm or less, in nominal outside diameter, and 325 pounds for a tubing assembly larger than ⅜-inch or 10 mm in nominal outside diameter. With respect to plastic air brake tubing assemblies used for any other purpose, the agency proposes to require a tensile strength of: 35 pounds for tubing with a nominal outside diameter of ⅛ inch or less (3 mm or less); 40 pounds for tubing with a nominal outside diameter of 5/32 inch (4 mm); 50 pounds for tubing with a nominal outside diameter between 3/16-inch and ⅜-inch (between 5 mm and 10 mm); 150 pounds for tubing with a nominal outside diameter between ½-inch and ⅝-inch (between 11 mm and 16 mm); and 325 pounds for tubing with a nominal outside diameter larger than ⅝-inch (16 mm).

2. Hot Tensile Strength

SAE J1131 specifies that a 6-inch long tubing assembly be placed in a tensile testing machine, with the lower 4 inches of the assembly submerged in boiling water for 5 minutes. The assembly is then pulled at a rate of 1 inch per minute. The required performance is either 50 percent elongation of the hose without end fitting separation or the assembly must sustain a specified tensile load. Standard No. 106 does not have a corresponding test condition. Compared to the tensile strength requirements in FMVSS No. 106, the end fitting separation strength requirements in SAE J1131 are lower, but Standard No. 106's requirements are for non-conditioned tubing assemblies. NHTSA proposes that the hot tensile strength requirement from SAE J1131 be incorporated into FMVSS No. 106. Considering that SAE J1131 does not include tensile loads for metric sized plastic brake tubing, however, the agency proposes to specify tensile load values for metric sized plastic brake tubing.

3. Conditioned Pull Test

SAE J1131 specifies that a tubing assembly undergo four temperature cycles of a minus 40 degree F cold soak for 30 minutes, normalizing at 75 degrees F, immersion in boiling water for 15 minutes and normalizing at 75 degrees F. After four complete cycles of temperature conditioning, the tubing assembly is subjected to a tensile test. The required performance is the same as for the hot tensile strength test above. This test evaluates the tubing's resistance to pulling out of its end fittings when subjected to thermal cycling. Equivalent performance requirements/test procedures are not included in FMVSS No. 106. NHTSA proposes that these performance requirements/test procedures be incorporated into Standard No. 106.

4. Vibration Leak Test

SAE J1131 specifies that an 18-inch long hose assembly be subjected to one million cycles on a vibration machine with one end of the hose fixed and the other end stroked 0.5 inches

perpendicularly to the hose centerline at a rate of 600 cycles per minute, with ½ inch of slack in the hose. The hose is subjected to 120-psi air pressure during the test, and the test chamber temperature is initially 220 degrees F. After 250,000 cycles, the temperature is decreased to minus 40 degrees F. This temperature cycle is repeated after 500,000 cycles. The hose assembly is instrumented to measure leakage during the test. There are two performance requirements. First, the assembly must not leak at a rate greater than 50 cm^3 per minute at minus 40 degrees F or greater than 25 cm^3 per minute at 75 degrees F. Second, the attaching nut at each fitting cannot move when 20 percent of the original tightening torque is re-applied to the nut. FMVSS No. 106 has a leak test (S8.7), but it does not specify preconditioning of the hose by vibration, temperature, or other means, nor does it address fitting tightness after such conditioning. End fitting nut tightness is applicable to end fittings that can be disassembled such that new sections of tubing can be used with the existing fitting components, other than the compression sleeve and the tube support that are renewed when new tubing is installed. Swaged or crimped, permanently-attached fittings which cannot be disassembled for reuse, and push-to-connect fittings which can be reused but do not use a nut to secure the hose or tubing, are exempt from the nut tightness requirement.

The SAE J1131 performance requirements/test procedures ensure adequate end fitting performance to resist vibration and temperature cycling. NHTSA proposes that most of these performance requirements/test procedures be incorporated into FMVSS No. 106.

5. Proof and Burst Test

SAE J1131 specifies proof and burst tests to evaluate end fitting retention. The test apparatus includes a suitable hydraulic pressure source of an unspecified medium. Tubing samples are prepared with 12 inches of free hose length along with the fittings to be evaluated. One end of the assembly is plugged and the other end is attached to the pressure source. At a temperature of 75 degrees F, the pressure is increased to proof pressure and held for 30 seconds. The proof pressure is defined as one-half of the burst pressure specified in SAE J844. Pressure is then increased at a rate such that the specified burst pressure is achieved within 3 to 15 seconds. The fittings must not separate from the tubing and no visible leaks are permitted at less than the specified burst pressure. While FMVSS No. 106 contains leakage and burst performance requirements/test procedures, as detailed above, the burst pressures specified are lower than those in SAE J844 or SAE J1131. NHTSA proposes to incorporate the proof and burst test from SAE J1131 into FMVSS No. 106 so that there will be a specific test to evaluate the performance of end fittings used with plastic tubing. NHTSA proposes that this test be conducted using water, as this is the test fluid used for the burst strength test for air hoses in FMVSS No. 106.

6. Serviceability Test

SAE J1131 specifies a serviceability test to evaluate end fitting performance for reusable fittings after repeated assembly and disassembly. Tubing samples are prepared with 12 inches of free hose length, following the fitting manufacturer's recommendations for assembly of the end fittings. The fittings are then disassembled and reassembled a minimum of five times. The tubing assembly is then subjected to 120 psi of air at 75 degrees F, with resulting leakage not greater than 25 cm^3 per minute.

When flanged-sleeve fittings have been fitted in a plastic tubing assembly that requires replacement, the old tubing is removed by loosening the retaining nut on the fitting. A new section of tubing is cut from a bulk supply of tubing, new ferrules (compression sleeves that fit on the outside of the tubing) and tube supports (internal sleeves that fit inside the tubing) are installed at each end of the replacement tubing, and the new tubing is installed. The other components of the end fittings can be reused. For other types of repairs, such as replacement of a valve to which the tubing is connected, the tubing is disconnected in the same way. The portion of the fitting that threads into the valve can be removed and reinstalled on the replacement valve, and the tubing can then be reinstalled on the new valve using the existing ferrule that remains permanently attached to the tubing. The serviceability performance requirements/test procedures in SAE J1131 are a measure of the fitting's suitability for repeated assembly and disassembly similar to the example of valve replacement when all parts of the end fitting are reused.

Another type of end fitting is the push-to-connect fitting, which when used in an assembly, the end of the tubing is simply pushed into the fitting. To remove the tubing for repair purposes, a ring on the fitting around the outside of the tubing is raised to release the tubing, which can then be pulled out of the fitting. All information the agency has collected on this type of fitting indicates that the tubing may or may not be damaged upon removal from the fitting, depending on such factors as how much air pressure and pulling force the assembly has been subjected to during its use. If the tubing is damaged, a small section cut off for subsequent reassembly if there is a sufficient slack available in the assembly. If there is not enough tubing length to cut the end off for reassembly, then a new section of tubing will need to be installed. If the O-ring in the push-to-connect fitting is also damaged, it may be serviced or the entire fitting will need to be replaced. This would have to be detected by the technician checking for leakage after reassembly.

NHTSA proposes that the serviceability test be included in Standard No. 106 for those fittings that use a threaded retaining nut. This will ensure that the fittings can be separated and reused during servicing of brake system components with minimal likelihood of leakage upon reassembly. NTHSA does not believe the serviceability test could be consistently applied to push-to-connect fittings and therefore does not propose to include them in this test.

7. Fitting Compatibility Test

SAE J1131 specifies that test specimens be prepared according to the fitting manufacturer's recommendations, with 12 inches of free hose length. The assembly is filled with hydraulic fluid at atmospheric pressure and conditioned at 200 degrees F for 24 hours. The pressure is then increased to 450 psi for 5 minutes after which time the pressure is reduced to atmospheric levels and the assembly is cooled to 75 degrees F. Following this, the tubing assembly is cooled to minus 40 degrees F with the fluid at atmospheric pressure for 24 hours after which time the pressure is increased to 450 psi for 5 minutes. The tubing must not rupture or disconnect from the fittings. Standard No. 106 does not have a corresponding set of test procedures/performance requirements. Accordingly, NHTSA proposes to incorporate the fitting compatibility test and performance requirements from SAE J1131 into FMVSS No. 106.

8. Constriction

FMVSS No. 106 requires that each air brake hose assembly shall be not less than 66 percent of the nominal ID of the hose, except for those portions of end fittings that do not contain hose. SAE J1131 does not contain a corresponding requirement. As discussed in greater detail above, NHTSA is proposing to require that all portions of air brake assemblies, including those portions of end fittings that do not contain hose, meet this requirement. NHTSA proposes to apply the same 66 percent of nominal ID constriction requirement to plastic air brake tubing assemblies. The agency proposes to apply this requirement based on the tubing's nominal inside diameter even though, as noted above, NHTSA is proposing that other requirements relating to air brake tubing be expressed in terms of the tubing's nominal outside diameter.

9. End Fitting Dimensional Requirements

FMVSS No. 106 does not presently contain end fitting dimensional requirements. The petitioners, however, requested incorporation of the requirements of FMCSR § 393.46, which references two SAE standards containing such requirements. FMCSR § 393.46 provides that splices in tubing installed on a vehicle after March 7, 1989, must use fittings that meet the requirements of SAE J512, *Automotive Tube Fittings Rev. October 1980* (SAE J512) or, for air brake systems, SAE J246, *Spherical and Flanged Sleeve (Compression) Tube Fittings Rev. March 1981* (SAE J246).

SAE J512 provides general and dimensional specifications for the various types of tube fittings intended for general application in the automotive, appliance, and allied fields, and includes the following categories of fittings: flare type fittings, inverted flare type fittings, and tapered sleeve compression type fittings intended for use with annealed copper alloy tubing. SAE J512 states that the spherical sleeve compression fitting components in SAE J246 are not to be intermixed with tapered sleeve compression type fitting components in SAE J512. The dimensions of single and double 45 degree flares on tubing used in conjunction with flared and inverted flared fittings in SAE J512 are provided in a different SAE standard, SAE J533.

The application of SAE J512 fittings in automotive braking systems as used in the U.S. is believed to be most commonly associated with inverted double flare hydraulic brake tubing connections, and also for metal tubing that may be used for connecting vacuum booster lines to engine manifolds. NHTSA does not believe that copper tubing is widely used in vehicle braking applications anymore. The agency also does not believe that SAE J512 fittings would be appropriate for use with plastic tubing.

Both SAE J246 and SAE J512 include dimensional requirements for fitting length, concentricity, pipe threads, wrench hexes, ferrule seats, tube support sleeves in the case of plastic tubing fittings, and material properties of brass stock used in fittings and stainless steel stock used in plastic tubing support sleeves. The standards also permit steel to be used if requested by the purchaser.

As already noted above, FMVSS No. 106 does not include any dimensional or material properties specifications for fittings used with brake hose or tubing. NHTSA does not agree with the petitioners that the substantive dimensional and material requirements of SAE J246 and SAE J512 are needed in FMVSS No. 106 for a number of reasons. First, the agency tentatively concludes that fittings that have demonstrated their compatibility with plastic air brake tubing through the testing required by SAE J1131. Second, NHTSA does not favor incorporating the SAE requirements because neither SAE J246 nor SAE J512 provides fitting standards for metric sized plastic tubing. Third, although FMVSS No. 106 does not provide any dimensional specifications for any types of fittings used with other types of brake hose or tubing, the agency is not aware of any field problems associated with these brake products. Fourth, even if FMVSS were to incorporate the dimensional specifications from the SAE standards, at least one of those standards, SAE J246, explicitly states that the standard is not intended to restrict or preclude other designs of a tube fitting for use with SAE J844 air brake tubing.

NHTSA tentatively concludes that the automotive industry generally standardizes, on a voluntary basis, such fittings for compatibility and repair purposes, and has no reason to believe that this will not continue to be the case for plastic air brake tubing fittings. Standard No. 106 currently permits specialized fittings as long as they can meet the specified performance requirements. In a November 13, 1973, final rule (38 FR 31302, Docket No. 1–5; Notice 8), NHTSA declined to adopt any specific standard for end fittings. For the reasons outlined above, NHTSA does not propose to include any dimensional or material properties specifications for end fittings at this time.

10. End Fitting Corrosion Resistance

SAE J246 and SAE J512 specify that the external surfaces and threads of carbon steel fittings be subjected to a 72 hour salt spray test per ASTM B117, with no appearance of red rust permitted except for: Internal portions of fittings; edges such as hex points, serrations, or thread crests where there may be mechanical deformation of the plating or coating of mass-produced parts or shipping effects; areas where the plating or coating is subjected to mechanical deformation due to crimping, flaring, bending, or other post plate metal forming operations; or areas where the parts are suspended or affixed in the test chamber where condensate can accumulate. Both standards specify that after January 1, 1997, no parts shall be cadmium plated due to environmental concerns relating to that process.

FMVSS No. 106 specifies that the fittings as installed on a brake hose assembly be subjected to a 24-hour salt spray test, the same test that is specified for hydraulic brake hose, as detailed above. The end fittings must show no base metal corrosion on the end fitting surface except where crimping or the application of labeling information causes a displacement of the protective coating. Standard No. 106 specifies that all fittings meet the corrosion test, and does not provide different specifications based on the end fitting's composition (steel, stainless steel, or brass).

The duration of the salt spray test is longer in the SAE standards than in FMVSS No. 106 (72 hours versus 24 hours), but the specified corrosion performance is more rigorous in FMVSS No. 106. The SAE standards specify testing of fittings without any hose attached, while FMVSS No. 106 specifies that the fittings be mounted to a hose for testing. NHTSA tentatively concludes that the existing corrosion resistance requirements in FMVSS No. 106 assure adequate integrity of end fittings, and in one respect is more strenuous than the SAE standards. Accordingly, the agency does not propose to change Standard No. 106's corrosion resistance requirements at this time. Nevertheless, NHTSA welcomes comments on the suitability and need to increase the duration of the salt spray test from the current 24 hours to the 72 hours specified in the SAE standards.

The table below summarizes the differences between the plastic air brake tubing assembly and end fitting performance requirements/test procedures of FMVSS No. 106 and SAE J1131 and indicates which requirements/procedures NHTSA proposes incorporating into the standard.

TABLE 5.—COMPARISON OF PLASTIC AIR BRAKE TUBING ASSEMBLY AND END FITTING REQUIREMENTS/PROCEDURES IN FMVSS NO. 106 AND SAE J1131, SAE J246, AND SAE J512

Requirement/Procedure		Existing FMVSS No. 106		SAE J1131
Fittings for Nylon Air Brake Tubing "x" indicates requirements/procedures proposed to be included in FMVSS No. 106. A new section would be added for the performance of these fittings. Existing FMVSS No. 106 requirements/procedures for fittings would also apply.				
Tensile Strength	x	Same as for air brake hose assemblies		No tensile test at ambient conditions.
Hot Tensile Strength		Only at ambient temperature, higher strength specifications.	x	Immersion in boiling water followed by pull test.
Conditioned Pull Test		Only at ambient temperature, higher strength specifications.	x	Four cold soak cycles followed by boiling water, then pull test.
Vibration Leak Test		None	x	Leakage specification after vibration conditioning.
Proof and Burst Test		Burst test, does not specify failure mode	x	No fitting separation during proof and burst tests.
Serviceability Test		None	x	Leakage specifications for flanged-sleeve fittings after five assembly cycles.
Fitting Compatibility Test		None	x	Pressure and temperature cycling to evaluate fitting retention.
Constriction	x	66 percent of nominal inside diameter		None.
End Fitting Dimensional Requirements	x	None		Specified in SAE J246 and SAE J512—variations permitted.
End Fitting Corrosion Resistance	x	Same as for hydraulic brake hose end fittings.		Specified in SAE J246 and SAE J512—similar, exemption for brass fittings.

V. Rulemaking Analyses and Notices

A. Executive Order 12866 and DOT Regulatory Policies and Procedures

Executive Order 12866, "Regulatory Planning and Review" (58 FR 51735, October 4, 1993), provides for making determinations whether a regulatory action is "significant" and therefore subject to Office of Management and Budget (OMB) review and to the requirements of the Executive Order. The Order defines a "significant regulatory action" as one that is likely to result in a rule that may:

(1) Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or Tribal governments or communities;

(2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations or recipients thereof; or

(4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

This notice was not reviewed under Executive Order 12866. Further, this notice was determined not to be significant within the meaning of the DOT Regulatory Policies and Procedures.

In this document, NHTSA is proposing to incorporate performance requirements and test procedures that are currently contained and/or referenced in the Federal Motor Carrier Safety Regulations. Those performance requirements/test procedures are based on voluntary standards adopted by the Society of Automotive Engineers. Although NHTSA proposes to incorporate the most recent versions of these SAE requirements/procedures and to apply them to brake hoses, tubing, and fittings for all motor vehicles, not just commercial motor vehicles, the agency tentatively concludes that most, if not all, such hoses, tubing, and fittings are already designed to meet the SAE requirements/procedures. However, in the event that there are some brake hose products that would need to be modified to comply with the proposed regulations, the agency (1) estimates that it is a small proportion of brake hose products that would need modification, as most are believed to already comply; and (2) tentatively concludes that the manufacturers of the components used in producing such products are not small businesses.

For air brake hoses, both rubber hose and plastic tubing products, and hydraulic and vacuum brake hoses installed on vehicles that are typically used as commercial motor vehicles such as medium duty trucks, the agency tentatively concludes that all of the brake hose products already comply with the proposed regulations. The largest effect of the proposed regulations would be on the light vehicle sector including passenger cars and light trucks, of which approximately 16 million vehicles are produced each year. As the typical light vehicle is equipped with three to four brake hoses, 48 to 64 million hydraulic brake hose assemblies as installed in new vehicles would be affected, as well as an unknown quantity of replacement brake hoses for light vehicles, but probably a few million. In addition, the agency estimates that approximately 15.5 million vacuum brake hoses and/or assemblies are installed on these vehicles.

Since large quantities of brake hose material are needed to manufacture these brake hoses, the agency believes that there are large manufacturers that produce both hydraulic and vacuum brake hoses in such large quantities. There are many small companies that use the brake hose material and end fitting components to produce brake hose assemblies, but NHTSA does not anticipate that they would be affected by the proposed changes because they simply assemble already-compliant components supplied by the large manufacturers.

The agency does not have data on how many hydraulic and vacuum brake hose assemblies would need to be modified to meet the proposed changes. Based on an informal survey of available hydraulic and vacuum brake hose assemblies, the agency estimates that perhaps as many as 20 percent may need to be modified in some manner to comply with the proposed requirements. Likewise, the agency does not know the cost to modify the manufacturing processes of the brake hose materials to comply with the proposed changes, but can assume that it would be for improved additives to elastomeric compounds or improved synthetic fibers used as reinforcing materials. Again, the agency does not have any data on the cost of manufacturing such materials, but estimates that the modification of such manufacturing processes would add not more than ten cents to the cost of each brake hose assembly. The highest-cost estimate of the proposed regulations is based on production of 64 million new and replacement hydraulic brake hose assemblies, plus 16 million new and replacement vacuum brake hoses/assemblies, for a total of 80 million total affected brake hoses. If 20 percent of these need to be modified to meet the proposed changes, at a cost of ten cents per hose, the total cost would be $1.6M Therefore, the agency estimates the cost of complying with the proposed changes to FMVSS No. 106 to be between zero and $1.6 M. This potential additional cost would not, however, be expected to have any impact on small businesses, but only on large manufacturers of brake hose materials that are produced in large quantities. Accordingly, the agency does not believe that this proposal would have any significant economic effects. Nevertheless, the agency welcomes comments on the cost of compliance with the proposed requirements.

The DOT's regulatory policies and procedures require the preparation of a full regulatory evaluation, unless the agency finds that the impacts of a rulemaking are so minimal as not to warrant the preparation of a full regulatory evaluation. Since anecdotal evidence suggests that most, if not all, of these hose, tubing, and fittings are already compliant with the minimum performance requirements that the agency is proposing to apply, the agency believes that the impacts of this rulemaking would be minimal. Thus, it has not prepared a full regulatory evaluation.

B. Regulatory Flexibility Act

Pursuant to the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*, as amended by the Small Business Regulatory Enforcement Fairness Act (SBREFA) of 1996), whenever an agency is required to publish a notice of rulemaking for any proposed or final rule, it must prepare and make available for public comment a regulatory flexibility analysis that describes the effect of the rule on small entities (*i.e.*, small businesses, small organizations, and small governmental jurisdictions). The Small Business Administration's regulations at 13 CFR part 121 define a small business, in part, as a business entity "which operates primarily within the United States." (13 CFR 121.105(a)). No regulatory flexibility analysis is required if the head of an agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. The SBREFA amended the Regulatory Flexibility Act to require Federal agencies to provide a statement of the factual basis for certifying that a rule will not have a significant economic impact on a substantial number of small entities.

NHTSA has considered the effects of this rulemaking action under the Regulatory Flexibility Act. As explained above, NHTSA is proposing to incorporate performance requirements and test procedures that are currently contained or referenced in the Federal Motor Carrier Safety Regulations. Those performance requirements/test procedures are based on voluntary standards adopted by the Society of Automotive Engineers. Although NHTSA proposes to incorporate the most recent versions of these SAE requirements/procedures and to apply them to brake hoses, tubing, and fittings for all motor vehicles, not just commercial motor vehicles, the agency believes that most, if not all, such hoses, tubing, and fittings are already designed to meet the most recent SAE requirements/procedures. For the remaining hoses, tubing, and fittings, estimated at up to 20 percent of all hydraulic and vacuum brake hoses manufactured each year, the agency estimates the cost of complying with these requirements to be $1.6M. Considering that the total number of hydraulic brake hose assemblies and vacuum brake hose/assemblies that would be subject to the proposed requirements is estimated to be approximately 80 million units annually, the agency estimates that the total annual effect of this proposed rule would be between zero and $1.6M. Accordingly, I hereby certify that it would not have a significant economic impact on a substantial number of small entities.

C. National Environmental Policy Act

NHTSA has analyzed this rulemaking action for the purposes of the National Environmental Policy Act. The agency has determined that implementation of this action would not have any significant impact on the quality of the human environment.

D. Executive Order 13132 (Federalism)

Executive Order 13132 requires NHTSA to develop an accountable process to ensure "meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications." The Executive Order defines "policies that have federalism implications" to include regulations that have "substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government." Under Executive Order 13132, NHTSA may not issue a regulation with Federalism implications, that imposes substantial direct compliance costs, and that is not required by statute, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by State and local governments, the agency consults with State and local governments, or the agency consults with State and local officials early in the process of developing the proposed regulation. NHTSA also may not issue a regulation with Federalism implications and that preempts State law unless the agency consults with State and local officials early in the process of developing the proposed regulation.

NHTSA has analyzed this rulemaking action in accordance with the principles and criteria set forth in Executive Order 13132. The agency has determined that this proposed rule would not have sufficient federalism implications to warrant consultation with State and local officials or the preparation of a federalism summary impact statement. The proposal would not have any substantial effects on the States, or on the current Federal-State relationship, or on the current distribution of power and responsibilities among the various local officials.

E. Civil Justice Reform

This proposed amendment would not have any retroactive effect. Under 49 U.S.C. 30103, whenever a Federal motor vehicle safety standard is in effect, a State may not adopt or maintain a safety standard applicable to the same aspect of performance which is not identical to the Federal standard, except to the extent that the state requirement imposes a higher level of performance and applies only to vehicles procured for the State's use. 49 U.S.C. 30161 sets forth a procedure for judicial review of final rules establishing, amending, or revoking Federal motor vehicle safety standards. That section does not require

submission of a petition for reconsideration or other administrative proceedings before parties may file suit in court.

F. Paperwork Reduction Act

Under the Paperwork Reduction Act of 1995, a person is not required to respond to a collection of information by a Federal agency unless the collection displays a valid Office of Management and Budget (OMB) control number. This proposed rule would not require any collections of information as defined by the OMB in 5 CFR part 1320.

G. National Technology Transfer and Advancement Act

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law 104–113, section 12(d) (15 U.S.C. 272) directs NHTSA to use voluntary consensus standards in its regulatory activities unless doing so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (*e.g.*, materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by voluntary consensus standards bodies, such as the Society of Automotive Engineers (SAE). The NTTAA directs the agency to provide Congress, through the OMB, explanations when we decide not to use available and applicable voluntary consensus standards.

The proposed changes that NHTSA is proposing are based on voluntary consensus standards adopted by the Society of Automotive Engineers. Accordingly, this proposed rule is in compliance with Section 12(d) of NTTAA.

H. Unfunded Mandates Reform Act

Section 202 of the Unfunded Mandates Reform Act of 1995 (UMRA) requires Federal agencies to prepare a written assessment of the costs, benefits, and other effects of proposed or final rules that include a Federal mandate likely to result in the expenditure by State, local or tribal governments, in the aggregate, or by the private sector, of more than $100 million in any one year (adjusted for inflation with base year of 1995). Before promulgating a rule for which a written statement is needed, section 205 of the UMRA generally requires NHTSA to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective, or least burdensome alternative that achieves the objectives of the rule. The provisions of section 205 do not apply when they are inconsistent with applicable law. Moreover, section 205 allows NHTSA to adopt an alternative other than the least costly, most cost-effective or least burdensome alternative if the agency publishes with the final rule an explanation why that alternative was not adopted.

This proposed rule would not result in the expenditure by State, local, or tribal governments, in the aggregate, or by the private sector of more than $100 million annually. The estimated cost of complying with the proposed requirements is estimated to be between zero and $1.6M annually. Accordingly, the agency has not prepared an Unfunded Mandates assessment.

I. Plain Language

Executive Order 12866 requires each agency to write all rules in plain language. Application of the principles of plain language includes consideration of the following questions:

—Have we organized the material to suit the public's needs?
—Are the requirements in the rule clearly stated?
—Does the rule contain technical language or jargon that is not clear?
—Would a different format (grouping and order of sections, use of headings, paragraphing) make the rule easier to understand?
—Would more (but shorter) sections be better?
—Could we improve clarity by adding tables, lists, or diagrams?
—What else could we do to make this rulemaking easier to understand?

If you have any responses to these questions, please include them in your comments on this NPRM.

J. Regulation Identifier Number (RIN)

The Department of Transportation assigns a regulation identifier number (RIN) to each regulatory action listed in the Unified Agenda of Federal Regulations. The Regulatory Information Service Center publishes the Unified Agenda in April and October of each year. You may use the RIN contained in the heading at the beginning of this document to find this action in the Unified Agenda.

K. Comments

How Do I Prepare and Submit Comments?

Your comments must be written and in English. To ensure that your comments are correctly filed in the Docket, please include the docket number of this document in your comments.

Your comments must not be more than 15 pages long. (49 CFR 553.21). We established this limit to encourage you to write your primary comments in a concise fashion. However, you may attach necessary additional documents to your comments. There is no limit on the length of the attachments.

Please submit two copies of your comments, including the attachments, to Docket Management at the address given above under **ADDRESSES.**

You may also submit your comments to the docket electronically by logging onto the Dockets Management System Web site at *http://dms.dot.gov.* Click on "Help & Information" or "Help/Info" to obtain instructions for filing the document electronically.

How Can I Be Sure That My Comments Were Received?

If you wish Docket Management to notify you upon its receipt of your comments, enclose a self-addressed, stamped postcard in the envelope containing your comments. Upon receiving your comments, Docket Management will return the postcard by mail.

How Do I Submit Confidential Business Information?

If you wish to submit any information under a claim of confidentiality, you should submit three copies of your complete submission, including the information you claim to be confidential business information, to the Chief Counsel, NHTSA, at the address given above under **FOR FURTHER INFORMATION CONTACT.** In addition, you should submit two copies, from which you have deleted the claimed confidential business information, to Docket Management at the address given above under **ADDRESSES.** When you send a comment containing information claimed to be confidential business information, you should include a cover letter setting forth the information specified in our confidential business information regulation. (49 CFR part 512)

Will the Agency Consider Late Comments?

We will consider all comments that Docket Management receives before the close of business on the comment closing date indicated above under **DATES.** To the extent possible, we will also consider comments that Docket Management receives after that date. If Docket Management receives a comment too late for us to consider it in developing a final rule (assuming that one is issued), we will consider that comment as an informal suggestion for future rulemaking action.

How Can I Read the Comments Submitted by Other People?

You may read the comments received by Docket Management at the address given above under **ADDRESSES.** The hours of the Docket are indicated above in the same location.

You may also see the comments on the Internet. To read the comments on the Internet, take the following steps:

1. Go to the Docket Management System (DMS) Web page of the Department of Transportation (*http://dms.dot.gov/*)
2. On that page, click on "search."
3. On the next page (*http://dms.dot.gov/search/*), type in the four-digit docket number shown at the beginning of this document. Example: If the docket number were "NHTSA–1998–1234", you would type "1234". After typing the docket number, click on "search."
4. On the next page, which contains docket summary information for the docket you selected, click on the desired comments. You may download the comments. Although the comments are imaged documents, instead of word processing documents, the "pdf" versions of the documents are word searchable.

Please note that even after the comment closing date, we will continue to file relevant information in the Docket as it becomes available. Further, some people may submit late comments. Accordingly, we recommend that you periodically check the Docket for new material.

List of Subjects in 49 CFR Part 571

Imports, Motor vehicle safety, Motor vehicles, Rubber and rubber products, and Tires.

In consideration of the foregoing, NHTSA proposes to amend 49 CFR part 571 as follows:

PART 571—FEDERAL MOTOR VEHICLE SAFETY STANDARDS

1. The authority for part 571 would continue to read as follows:

Authority: 49 U.S.C. 322, 30111, 30115, 30166, and 30177; delegation of authority at 49 CFR 1.50.

2. Section 571.106 would be amended by:

a. Adding a new definition to paragraph S4,
b. Revising paragraph (b) of S5.2.2,
c. Revising paragraph (b) of S5.2.4,
d. Revising paragraphs S5.3 through S5.3.5,
e. Revising paragraphs S5.3.9 and S5.3.11,
f. Adding paragraphs S5.3.12 and S5.3.13,
g. Revising paragraph (c) of S6.2,
h. Revising paragraphs S6.4 and S6.4.2,
i. Revising paragraph (b) of S6.8.2,
j. Redesignating paragraphs S6.9, S6.9.1, S6.9.2, and S6.9.3 as paragraphs S6.11, S6.11.1, S6.11.2, and S6.11.3 and revising redesignated paragraph S6.11 and paragraph (c) of redesignated S6.11.3,
k. Adding paragraphs S6.9 through S6.9.2,
l. Adding paragraphs S6.10 through S6.10.2,
m. Adding paragraph S6.12,
n. Revising paragraphs (b), (d), and (e) of S7.2.1,
o. Revising Table III,
p. Revising paragraphs (b) and (d) of S7.2.2,
q. Revising paragraphs S7.3 and S7.3.1,
r. Revising paragraph S7.3.3,
s. Revising Table IV,
t. Revising paragraphs S7.3.6 through S7.3.11,
u. Adding paragraph S7.3.14,
v. Revising paragraphs (c) and (d) of S8.2,
w. Revising paragraph (b) of S8.3.2,
x. Revising the heading of paragraph S8.6,
y. Revising paragraph S8.7,
z. Adding paragraphs S8.7.1 and S8.7.2,
aa. Revising paragraph S8.8,
bb. Revising paragraph S8.9, introductory text,
cc. Adding paragraphs S8.13 through S8.15,
dd. Revising paragraphs S9.2 through S9.2.3,
ee. Revising paragraphs S9.2.7 and S9.2.8,
ff. Removing paragraph S9.2.9,
gg. Redesignating paragraphs S9.2.10 and S9.2.11 as paragraphs S9.2.9 and S9.2.10,
hh. Revising paragraphs S10.1 and S10.2,
ii. Revising paragraphs S10.6(a) and S10.7,
jj. Redesignating Figure 3 as Figure 6,
kk. Removing paragraph S10.8,
ll. Redesignating paragraphs S10.9, S10.9.1, S10.9.2, and S10.10 as paragraphs S10.8, S10.8.1, S10.8.2, and S10.9,
mm. Revising paragraph (b) of newly redesignated paragraph S10.8.2,
nn. Redesignating Figure 4 as Figure 7 and adding it at the end of paragraph S10.8.2(b),
oo. Adding Figure 4,
pp. Adding Figure 5,
qq. Adding Figure 8,
rr. Adding Figure 9,
ss. Adding paragraph S10.10,
tt. Redesignating paragraphs S11, S11.1, S11.2, and S11.3 as paragraphs S13, S13.1, S13.2, and S13.3,
uu. Adding paragraphs S11 through S11.3.24,
vv. Adding paragraphs S12 through S12.27,
ww. Revising newly redesignated paragraphs S13 and S13.2, and
xx. Adding paragraph S13.4.

The additions and revisions to § 571.106 would read as follows:

§ 571.106 Standard No. 106; Brake hoses.

* * * * *

S4. *Definitions.*

* * * * *

Preformed means a brake hose that is manufactured with permanent bends and is shaped to fit a specific vehicle without further bending.

* * * * *

S5. *Requirements—Hydraulic brake hose, brake hose assemblies, and brake hose end fittings.*

* * * * *

S5.2.2 * * *

* * * * *

(b) A designation that identifies the manufacturer of the hose, which shall be filed in writing with: Office of Vehicle Safety Compliance, Equipment Division NVS–222, National Highway Traffic Safety Administration, 400 Seventh St. S.W., Washington, DC 20590. The marking may consist of a designation other than block capital letters required by S5.2.2.

* * * * *

S5.2.4 * * *

* * * * *

(b) A designation that identifies the manufacturer of the hose assembly, which shall be filed in writing with: Office of Vehicle Safety Compliance, Equipment Division NVS–222, National Highway Traffic Safety Administration, 400 Seventh St. S.W., Washington, DC 20590. The designation may consist of block capital letters, numerals, or a symbol.

* * * * *

S5.3 *Test Requirements.* A hydraulic brake hose assembly or appropriate part thereof shall be capable of meeting any of the requirements set forth under this heading, when tested under the conditions of S13 and the applicable procedures of S6. However, a particular hose assembly or appropriate part thereof need not meet further requirements after having been subjected to and having met the constriction requirement (S5.3.1) and any one of the requirements specified in S5.3.2 through S5.3.13.

S5.3.1 *Constriction.* Except for that part of an end fitting which does not contain hose, every inside diameter of any section of a hydraulic brake hose

assembly shall be not less than 64 percent of the nominal inside diameter of the brake hose. (S6.12)

S5.3.2 *Expansion and burst strength.* The maximum expansion of a hydraulic brake hose assembly at 1,000 psi and 1,500 psi shall not exceed the values specified in Table I (S6.1). The hydraulic brake hose assembly shall then withstand water pressure of 4,000 psi for 2 minutes without rupture, and shall not rupture at less than 7,000 psi for a ⅛ inch, 3 mm, or smaller diameter hose, or at less than 5,000 psi for a 3/16 inch, 4 mm, or larger diameter hose (S6.2).

* * * * *

S5.3.4 *Tensile strength.* A hydraulic brake hose assembly shall withstand a pull of 325 pounds without separation of the hose from its end fittings during a slow pull test, and shall withstand a pull of 370 pounds without separation of the hose from its end fittings during a fast pull test (S6.4).

S5.3.5 *Water absorption and tensile strength.* A hydraulic brake hose assembly, after immersion in water for 70 hours (S6.5), shall withstand a pull of 325 pounds without separation of the hose from its end fittings during a slow pull test, and shall withstand a pull of 370 pounds without separation of the hose from its end fittings during a fast pull test (S6.4).

* * * * *

S5.3.9 *Brake fluid compatibility, constriction, and burst strength.* Except for brake hose assemblies designed for use with mineral or petroleum-based brake fluids, a hydraulic brake hose assembly shall meet the constriction requirement of S5.3.1 after having been subjected to a temperature of 248 °F for 70 hours while filled with SAE RM–66–05 Compatibility Fluid, as described in Appendix B of SAE Standard J1703 JAN 1995, "Motor Vehicle Brake Fluid." It shall then withstand water pressure of 4,000 psi for 2 minutes and thereafter shall not rupture at less than 5,000 psi (S6.2).

* * * * *

S5.3.11 *Dynamic ozone test.* A hydraulic brake hose shall not show cracks visible without magnification after having been subjected to a 48-hour dynamic ozone test (S6.9).

S5.3.12 *High temperature impulse test.* A brake hose assembly tested under the conditions in S6.10:

(a) shall withstand pressure cycling for 150 cycles, at 295 °F without leakage;

(b) shall not leak during a 2-minute, 4,000 psi pressure hold test, and;

(c) shall not burst at a pressure less than 5,000 psi.

S5.3.13 *End fitting corrosion resistance.* After 24 hours of exposure to salt spray, a hydraulic brake hose end fitting shall show no base metal corrosion on the end fitting surface except where crimping or the application of labeling information has caused displacement of the protective coating (S6.11).

S6. *Test procedures—Hydraulic brake hose, brake hose assemblies, and brake hose end fittings.*

* * * * *

S6.2 *Burst strength test.* (a) * * *

(c) After 2 minutes at 4,000 psi, increase the pressure at the rate of 15,000 psi per minute until the pressure exceeds 5,000 psi for a hose of 3/10, 4 mm, or larger diameter, or 7,000 psi for a hose of ⅛ inch, 3 mm, or smaller diameter.

* * * * *

S6.4 *Tensile strength test.* Utilize a tension testing machine conforming to the requirements of American Society for Testing and Materials (ASTM) Standard Practices for Force Verification of Testing Machines, Designation E4–99, and provided with a recording device to give the total pull in pounds.

* * * * *

S6.4.2 *Operation.*

(a) Conduct the slow pull test by applying tension at a rate of 1 inch per minute travel of the moving head until separation occurs.

(b) Conduct the fast pull test by applying tension at a rate of 2 inches per minute travel of the moving head until separation occurs.

* * * * *

S6.8.2 *Exposure to ozone.* (a) * * *

(b) Immediately thereafter, condition the hose on the cylinder for 70 hours in an exposure chamber having an ambient air temperature of 104 °F during the test and containing air mixed with ozone in the proportion of 100 parts of ozone per 100 million parts of air by volume.

* * * * *

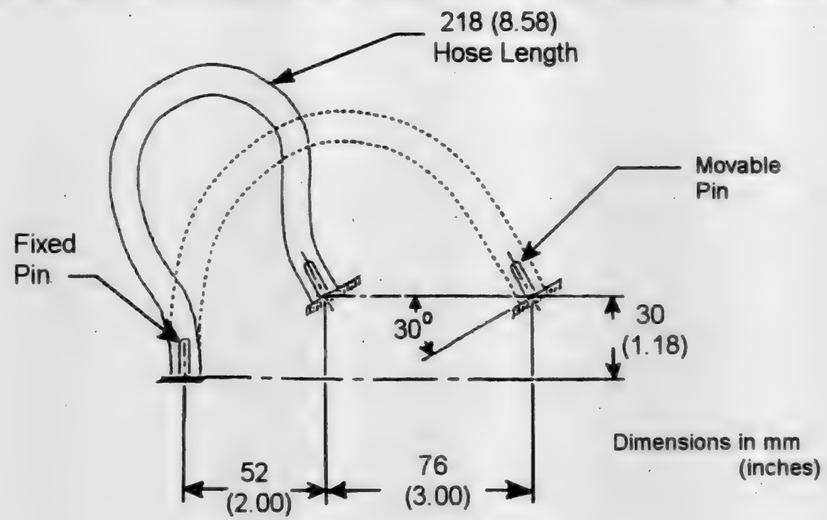
S6.9 *Dynamic Ozone Test.*

S6.9.1 *Apparatus.* Utilize a test apparatus shown in Figure 3 which is constructed so that:

(a) It has a fixed pin with a vertical orientation over which one end of the brake hose is installed.

(b) It has a movable pin that is oriented 30 degrees from vertical, with the top of the movable pin angled towards the fixed pin. The moveable pin maintains its orientation to the fixed pin throughout its travel in the horizontal plane. The other end of the brake hose is installed on the movable pin.

Figure 3. Dynamic Ozone Test Apparatus



S6.9.2 *Preparation.*

(a) Precondition the hose assembly by laying it on a flat surface in an unstressed condition, at room temperature, for 24 hours.

(b) Cut the brake hose assembly to a length of 8.6 inches (218 mm), such that no end fittings remain on the cut hose.

(c) Mount the brake hose onto the test fixture by fully inserting the fixture pins into each end of the hose. Secure the hose to the fixture pins using a band clamp at each end of the hose.

(d) Place the test fixture into an ozone chamber.

(e) Stabilize the atmosphere in the ozone chamber so that the ambient temperature is 104 °F and the air mixture contains air mixed with ozone in the proportion of 100 parts of ozone per 100 million parts of air by volume. This atmosphere is to remain stable throughout the remainder of the test.

(f) Begin cycling the movable pin at a rate of 0.3 Hz. Continue the cycling for 48 hours.

(g) At the completion of 48 hours of cycling, remove the test fixture from the ozone chamber. Without removing the hose from the test fixture, visually examine the hose for cracks without magnification, ignoring areas immediately adjacent to or within the area covered by the band clamps. Examine the hose with the movable pin at any point along its travel.

S6.10 *High temperature impulse test.*

S6.10.1 *Apparatus.*

(a) A pressure cycling machine to which one end of the brake hose assembly can be attached, with the entire hose assembly installed vertically inside of a circulating air oven. The machine is capable of increasing the pressure in the hose from zero psi to 1600 psi, and decreasing the pressure in the hose from 1600 psi to zero psi, within 2 seconds.

(b) A circulating air oven that can reach a temperature of 295 °F within 30 minutes, and that can maintain a constant 295 °F thereafter, with the brake hose assembly inside of the oven and attached to the pressure cycling machine.

(c) A burst test apparatus to conduct testing specified in S6.2.

S6.10.2 *Preparation.*

(a) Connect one end of the hose assembly to the pressure cycling machine and plug the other end of the hose. Fill the pressure cycling machine and hose assembly with SAE RM–66–05 Compatibility Fluid, as described in Appendix B of SAE Standard J1703 JAN 1995, and bleed all gases from the system.

(b) Place the brake hose assembly inside of the circulating air oven in a vertical position. Increase the oven temperature to 295 °F and maintain this temperature throughout the pressure cycling test.

(c) During each pressure cycle, the pressure in the hose is increased from zero psi to 1600 psi and held constant for 1 minute, then the pressure is decreased from 1600 psi to zero psi and held constant for 1 minute. Perform 150 pressure cycles on the brake hose assembly.

(d) Remove the brake hose assembly from the oven, disconnect it from the pressure cycling machine, and drain the fluid from the hose. Cool the brake hose assembly at room temperature for 45 minutes.

(e) Wipe the brake hose using acetone to remove residual Compatibility Fluid. Conduct the burst strength test in S6.2.

S6.11 *End fitting corrosion test.* Utilize the apparatus described in ASTM B117–97, "Standard Practice for Operating Salt Spray (Fog) Apparatus".

* * * * *

S6.11.3 *Operation.* * * *

* * * * *

(c) Upon completion, remove the salt deposit from the surface of the hose by washing gently or dipping in clean running water not warmer than 100 °F and then drying immediately.

* * * * *

S6.12 *Constriction Test.*

(a) Utilize a plug gauge as shown in Figure 4. Diameter "A" is equal to 64 percent of the nominal inside diameter of the hydraulic brake hose being tested.

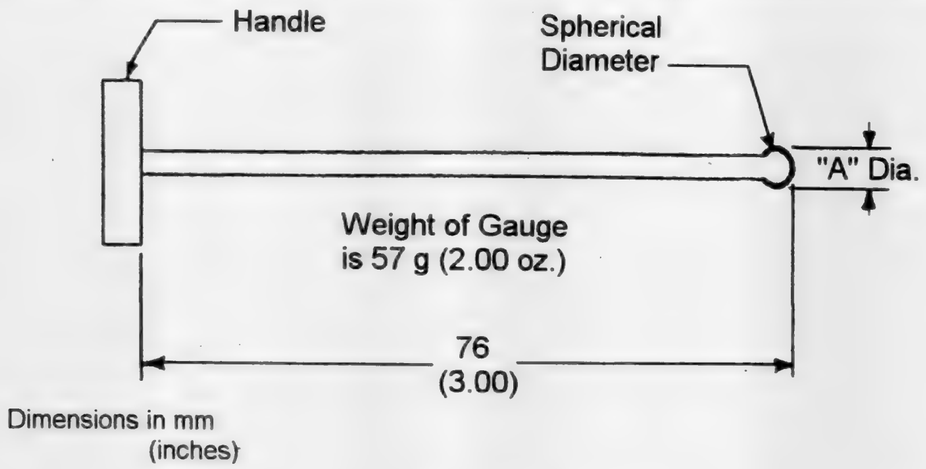
(b) Brake hose assemblies that are to be used for additional testing have constriction testing only at each end fitting. Other brake hose assemblies may be cut into three inch lengths to permit constriction testing of the entire assembly. Hose assemblies with end fittings that do not permit entry of the gauge (*e.g.*, restrictive orifice or banjo fitting) are cut three inches from the point at which the hose terminates in the end fitting and then tested from the cut end.

(c) Hold the brake hose in a straight position and vertical orientation.

(d) Place the spherical end of the plug gauge just inside the hose or end fitting. If the spherical end will not enter the hose or end fitting using no more force than gravity acting on the plug gauge, this constitutes failure of the constriction test.

(e) Release the plug gauge. Within three seconds, the plug gauge shall fall under the force of gravity alone up to the handle of the gauge. If the plug gauge does not fully enter the hose up to the handle of the gauge within three seconds, this constitutes failure of the constriction test.

Figure 4. Constriction Test Plug Gauge



S7. *Requirements—Air brake hose, brake hose assemblies, and brake hose end fittings.*

* * * * *

S7.2.1 *Hose.* * * *

* * * * *

(b) A designation that identifies the manufacturer of the hose, which shall be filed in writing with: Office of Vehicle Safety Compliance, Equipment Division NVS–222, National Highway Traffic Safety Administration, 400 Seventh St. SW., Washington, DC 20590. The designation may consist of block capital letters, numerals, or a symbol.

* * * * *

(d) The nominal inside diameter of the hose expressed in inches or fractions of inches or in millimeters. The abbreviation "mm" shall follow hose sizes that are expressed in millimeters. (Examples: ⅜, ½ (½SP in the case of ½ inch special air brake hose), 4mm, 6mm.)

(e) The letter "A" shall indicate intended use in air brake systems. In the case of a hose intended for use in a reusable assembly, "AI" or "AII" shall indicate Type I or Type II dimensional characteristics of the hose as described in Table III. A hose that is intended to be used with more than one type of end fitting may be labeled with multiple designations. (Examples: AI–AII, AI & AII.)

TABLE III.—AIR BRAKE HOSE DIMENSIONS FOR REUSABLE ASSEMBLIES

Size, inches	Inside diameter tolerance, inches	Type I outside diameter, inches		Type II outside diameter, inches	
		Minimum	Maximum	Minimum	Maximum
3/16	+0.026 −0.000	0.472	0.510	0.500	0.539
¼	+0.031 −0.000	0.535	0.573	0.562	0.602
5/16	+0.031 −0.000	0.598	0.636	0.656	0.695
⅜	±0.023	0.719	0.781	0.719	0.781
7/16	±0.031	0.781	0.843	0.781	0.843
13/32	+0.031 −0.000	0.714	0.760	0.742	0.789
½	+0.039 −0.000	0.808	0.854	0.898	0.945
⅝	+0.042 −0.000	0.933	0.979	1.054	1.101
½ special	±0.031	0.844	0.906	0.844	0.906

S7.2.2 *End fittings.* * * *

* * * * *

(b) A designation that identifies the manufacturer of that component of the fitting, which shall be filed in writing with: Office of Vehicle Safety Compliance, Equipment Division NVS–222, National Highway Traffic Safety Administration, 400 Seventh St. SW., Washington, DC 20590. The designation may consist of block capital letters, numerals, or a symbol.

* * * * *

(d) The nominal inside diameter of the hose to which the fitting is properly attached expressed in inches or fractions of inches or in millimeters. (*See* examples in S7.2.1(d).) The abbreviation "mm" shall follow hose sizes that are expressed in millimeters.

* * * * *

S7.3 *Test requirements.* Each air brake hose assembly or appropriate part thereof shall be capable of meeting any of the requirements set forth under this heading, when tested under the conditions of S13 and the applicable procedures of S8. However, a particular hose assembly or appropriate part thereof need not meet further requirements after having met the constriction requirement (S7.3.1) and then having been subjected to any one of the requirements specified in S7.3.2 through S7.3.14.

S7.3.1 *Constriction.* Every inside diameter of any section of an air brake hose assembly shall not be less than 66 percent of the nominal inside diameter of the brake hose. (S8.15)

* * * * *

S7.3.3 *Low temperature resistance.* The inside and outside surfaces of an air brake hose shall not show cracks as a result of conditioning at minus 40 °F for 70 hours when bent around a cylinder having the radius specified in Table IV for the size of hose tested (S8.2).

TABLE IV.—AIR BRAKE HOSE DIAMETERS AND TEST CYLINDER RADII

Nominal hose diameter, inches [1]	⅛	3/16	¼	5/16	⅜	13/32	7/16, ½	⅝
Nominal hose diameter, millimeters [1]	3	4, 5	6	8	.....	10	12	16
Test cylinder radius for high temperature resistance test and adhesion test for wire reinforced hose, inches (mm)	1 (25)	1 (25)	1½ (38)	1¾ (44)	1¾ (44)	1⅞ (48)	2 (51)	2½ (64)
Test cylinder radius for low temperature resistance test and ozone test, inches (mm)	1½ (38)	2 (51)	2½ (64)	3 (76)	3 (89)	3½ (89)	4 (102)	4½ (114)

[1] These sizes are listed to provide test values for brake hose manufactured in these sizes. They do not represent conversions.

* * * * *

S7.3.6 *Length Change.* An airbrake hose shall not contract in length more than 7 percent nor elongate more than 5 percent when subjected to air pressure of 200 psi (S8.5).

S7.3.7 *Adhesion.* (a) Except for hose reinforced by wire, an air brake hose shall withstand a tensile force of 8 pounds per inch of length before separation of adjacent layers (S8.6).

(b) An air brake hose reinforced by wire shall permit a steel ball to roll freely along the entire length of the inside of the hose when the hose is subjected to a vacuum of 25 inches of Hg and bent around a test cylinder (S8.13).

S7.3.8 *Flex strength and air pressure leakage.* An air brake hose assembly of the length specified in Table 5, when subjected to a flex test and internal pressure cycling, shall be capable of having its internal pressure increased from zero to 140 psi within 2 minutes with pressurized air supplied through an orifice (S8.7).

S7.3.9 *Corrosion resistance and burst strength.* An air brake hose assembly exposed to salt spray shall not rupture when exposed to hydrostatic pressure of 900 psi (S8.8).

S7.3.10 *Tensile strength.* An air brake hose assembly shall withstand, without separation of the hose from its end fittings, a pull of 250 pounds if it is ¼ inch or less or 6 mm or less in nominal inside diameter, or a pull of 325 pounds if it is larger than ¼ inch or 6 mm in nominal inside diameter (S8.9).

S7.3.11 *Water absorption and tensile strength.* After immersion in distilled water for 70 hours (S8.10), an air brake hose assembly shall withstand, without separation of the hose from its end fittings, a pull of 250 pounds if it is ¼ inch or less or 6 mm or less in nominal inside diameter, or a pull of 325 pounds if it is larger than ¼ inch or 6 mm in nominal inside diameter (S8.9).

* * * * *

S7.3.14 *Ozone resistance.* An air brake hose assembly shall not show cracks visible under 7-power magnification after exposure to ozone for 70 hours at 104 °F when bent around a test cylinder of the radius specified in Table IV for the size of hose tested (S8.14).

S8. *Test procedures—Air brake hose, brake hose assemblies, and brake hose end fittings.*

* * * * *

S8.2 *Low temperature resistance test.*

* * * * *

(c) With the hose and cylinder at minus 40 °F, bend the hose 180 degrees around the cylinder at a steady rate in a period of 3 to 5 seconds. Remove the hose from the test cylinder and visibly examine the exterior of the hose for cracks without magnification.

(d) Allow the hose to warm at room temperature for 2 hours. All reusable end fittings are removed from the hose. All permanently-attached end fittings are cut away from the hose. Cut through one wall of the hose longitudinally along its entire length. Unfold the hose to permit examination of the interior surface. Visibly examine the interior of the hose for cracks without magnification.

* * * * *

S8.3.2 *Measurement.*

* * * * *

(b) Immerse each specimen in ASTM IRM 903 oil for 70 hours at 212 °F. and then cool in ASTM IRM 903 oil at room temperature for 30 to 60 minutes.

* * * * *

S8.6 *Adhesion test for air brake hose not reinforced by wire.*

* * * * *

S8.7 *Flex strength and air pressure test.*

S8.7.1 *Apparatus.* A flex testing machine with a fixed hose assembly attachment point and a movable hose assembly attachment point, which meets the dimensional requirements of Figure 5 for the size of hose being tested. The attachment points connect to the end fittings on the hose assembly without leakage and, after the hose assembly has been installed for the flex test, are restrained from rotation. The movable end has a linear travel of 6 inches and a cycle rate of 100 cycles per minute. The machine is capable of increasing the air pressure in the hose assembly from zero to 150 psi within 2 seconds, and decreasing the air pressure

in the hose assembly from 150 to zero psi within 2 seconds.

Figure 5. Flex Test Apparatus

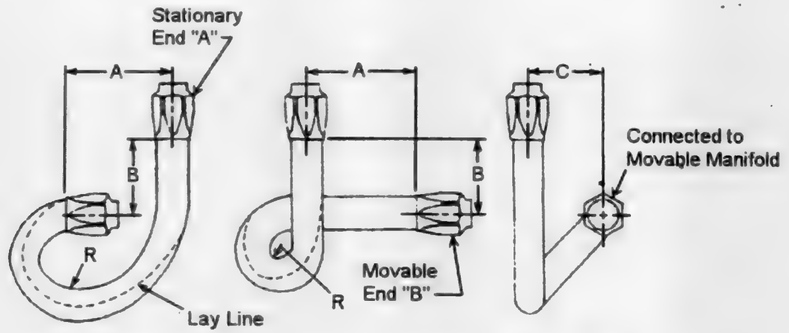


TABLE ACCOMPANYING FIGURE 5

Free hose length 27 (1.6mm)	Hose I.D., in (mm)	Dimensions							
		Position "1"				Position "2"			
		"A"	"B"	"C"	"R"[a]	"A"	"B"	"C"	"R"[a]
10 in (254 mm).	3/16 (4.8); 1/4 (6.3)	3 in (76 mm)	2.75 in (70 mm).	3.75 in (95 mm).	1.4 in (34 mm).	3 in (76 mm)	2.75 in (70 mm).	3.75 in (95 mm).	1.2 in 30 mm).
11 in (279 mm).	5/16 (7.9); 3/8 (9.7); 13/32 (10.4).	3 in (76 mm)	3.5 in (8.9 mm).	5/8 in (114 mm).	1.7 in (43 mm).	3 in (76 mm)	3.5 in (89 mm).	4.5 in (114 mm).	1.3 in (33 mm).
14 in (355 mm).	7/16 (11.2); 1/2 (12.7; (5/8 (16.0).	3 in (76 mm)	4 in (102 mm).	4 in (127 mm).	2.2 in (56 mm).	3 in (76 mm)	4 in (102 mm).	5 in (127 mm).	1.8 in (46 mm).

[a] This is an approximate average radius.

8.7.2 *Preparation.* (a) Lay the hose material on a flat surface in an unstressed condition. Apply a permanent marking line along the centerline of the hose on the uppermost surface.

(b) Prepare the hose assembly with a free length as shown in Figure 5. The end fittings shall be attached according to the end fitting manufacturer's instructions.

(c) Plug the ends of the hose assembly and conduct the salt spray test in S6.9 using an air brake hose assembly. Remove the plugs from the end fittings.

(d) Within 168 hours of completion of the salt spray test, expose the hose assembly to an air temperature of 212 °F for 70 hours, with the hose in a straight position. Remove the hose and cool it at room temperature for 2 hours. Within 166 hours, subject the hose to the flexure test in (e).

(e) Install the hose assembly on the flex testing machine as follows. With the movable hose attachment point at the mid point of its travel, attach one end of the hose to the movable attachment point with the marked line on the hose in the uppermost position. Attach the other end of the hose to the fixed attachment point allowing the hose to follow its natural curvature.

(f) Cycle the air pressure in the hose by increasing the pressure in the hose from zero psi to 150 psi and holding constant for one minute, then decreasing the pressure from 150 psi to zero psi and holding constant for one minute. Continue the pressure cycling for the duration of the flex testing. Begin the flex testing by cycling the movable attachment point through 6 inches of travel at a rate of 100 cycles per minute. Stop the flex testing and pressure cycling after 1 million flex cycles have been completed.

(g) Install an orifice with a hole diameter of 0.0625 inches and a thickness of 0.032 inches in the air pressure supply line to the hose assembly. Provide a gauge or other means to measure air pressure in the hose assembly. Regulate the supply air pressure to the orifice to 150 psi.

(h) Apply 150 psi air pressure to the orifice. After 2 minutes have elapsed, measure the air pressure in the brake hose assembly, while pressurized air continues to be supplied through the orifice.

S8.8 *Corrosion resistance and burst strength test.* (a) Conduct the test specified in S6.9 using an air brake hose assembly. Remove the plugs from the ends of the hose assembly.

(b) Fill the hose assembly with water, allowing all gases to escape. Apply water pressure at a uniform rate of increase of approximately 1,000 psi per minute until the hose ruptures.

S8.9 *Tensile strength test.* Utilize a tension testing machine conforming to the requirements of American Society for Testing and Materials (ASTM) Standard Practices for Force Verification of Testing Machines, Designation E4–99, and provided with a recording device to register total pull in pounds.

* * * * *

S8.13 *Adhesion test for air brake hose reinforced by wire.* (a) Place a steel ball with a diameter equal to 75 percent of the nominal inside diameter of the hose being tested inside of the hose. Plug one end of the hose. Attach the other end of the hose to a source of vacuum.

(b) Subject the hose to a vacuum of 25 inches of Hg for five minutes. With the vacuum still applied to the hose, bend the hose 180 degrees around a test cylinder of the size specified in Table IV for the hose being tested. At the location of this bend, bend the hose 180 degrees around the test cylinder in the opposite direction.

(c) With the vacuum still applied to the hose, return the hose to a straight position. Attempt to roll the ball inside the hose using gravity from one end of the hose to the other end.

S8.14 *Ozone test.* Conduct the test in S6.8 on an air brake hose assembly except use the test cylinder radius specified in Table IV for the size of hose tested.

S8.15 *Constriction test.*

(a) Utilize a plug gauge as shown in Figure 4. Diameter "A" shall be equal to 66 percent of the nominal inside diameter of the air brake hose being tested.

(b) Air brake hose assemblies that are to be used for additional testing have constriction testing only at each end fitting. Other hose assemblies may be cut into three inch lengths to permit constriction testing of the entire assembly.

(c) Hold the brake hose in a straight position and vertical orientation.

(d) Place the spherical end of the plug gauge just inside the hose or end fitting. If the spherical end will not enter the hose or end fitting using no more force than gravity acting on the plug gauge, this constitutes failure of the constriction test.

(e) Release the plug gauge. Within three seconds, the plug gauge shall fall under the force of gravity alone up to the handle of the gauge. If the plug gauge does not fully enter the hose up to the handle of the gauge within three seconds, this constitutes failure of the constriction test.

S9. *Requirements—Vacuum brake hose, brake hose assemblies, and brake hose end fittings.*

* * * * *

S9.2 *Test requirements.* Each vacuum brake hose assembly or appropriate part thereof shall be capable of meeting any of the requirements set forth under this heading, when tested under the conditions of S13 and the applicable procedures of S10. However, a particular hose assembly or appropriate part thereof need not meet further requirements after having met the constriction requirement (S9.2.1) and then having been subjected to any one of the requirements specified in S9.2.2 through S9.2.10.

S9.2.1 *Constriction.* Except for that part of an end fitting which does not contain hose, every inside diameter of any section of a vacuum brake hose assembly shall be not less than 75 percent of the nominal inside diameter of the hose if for heavy duty, or 70 percent of the nominal inside diameter of hose if for light duty. (S10.10)

S9.2.2 *High temperature resistance.* A vacuum brake hose tested under the conditions specified in S10.1:

(a) shall not have collapse of the outside diameter exceeding 10 percent of the initial outside diameter for a heavy-duty vacuum brake hose, or exceeding 15 percent of the initial outside diameter for a light-duty vacuum brake hose;

(b) shall not show external cracks, charring, or disintegration visible without magnification, and;

(c) shall not leak when subjected to a hydrostatic pressure test.

S9.2.3 *Low temperature resistance.* A vacuum brake hose tested under the conditions specified in S10.2 shall

(a) not show cracks visible without magnification after conditioning at minus 40 °F for 70 hours when bent around a cylinder having the radius specified in Table V for the size hose tested, and;

(b) not leak when subjected to a hydrostatic pressure test.

* * * * *

S9.2.7 *Bend.* The collapse of the outside diameter of a vacuum brake hose, other than a preformed vacuum brake hose, at the middle point of the test length when bent until the ends touch shall not exceed the values given in Table V for the size of hose tested. (S10.6).

* * * * *

S9.2.8 *Swell and Adhesion.* Following exposure to Reference Fuel B, every inside diameter of any section of a vacuum brake hose shall not be less than 75 percent of the nominal inside diameter of the hose if for heavy duty, or 70 percent of the nominal inside diameter of the hose if for light duty. The vacuum brake hose shall show no leakage in a vacuum test of 26 inches of Hg for 10 minutes. A vacuum hose that is constructed of two or more layers shall withstand a force of 8 pounds per inch of length before separation of adjacent layers. (S10.7).

S9.2.9 *Deformation.* A vacuum brake hose shall return to 90 percent of its original outside diameter within 60 seconds after five applications of force as specified in S10.9, except that a wire-reinforced hose need only return to 85 percent of its original outside diameter. In the case of heavy duty hose, the first application of force shall not exceed a peak value of 70 pounds, and the fifth application of force shall reach a peak value of at least 40 pounds. In the case of light duty hose the first application of force shall not exceed a peak value of 50 pounds, and the fifth application of force shall reach a peak value of at least 20 pounds (S10.9).

S9.2.10 *End fitting corrosion resistance.* After 24 hours of exposure to salt spray, vacuum brake hose end fittings shall show no base metal corrosion of the end fitting surface except where crimping or the application of labeling information has caused displacement of the protective coating.

S10. *Test procedures—Vacuum brake hose, brake hose assemblies, and brake hose end fittings.*

S10.1 *High temperature resistance test.*

(a) Measure the initial outside diameter of the hose.

(b) Subject the hose to an internal vacuum of 26 inches of Hg at an ambient temperature of 257 °F for a period of 96 hours. Remove the hose to room temperature and atmospheric pressure.

(c) Within 5 minutes of completion of the test in (b), measure the outside diameter at the point of greatest collapse and calculate the percentage collapse based on the initial outside diameter.

(d) Cool the hose at room temperature for 5 hours. Bend the hose around a mandrel with a diameter equal to five times the initial outside diameter of the hose. Examine the exterior of the hose for cracks, charring, or disintegration visible without magnification. Remove the hose from the mandrel.

(e) Fill the hose assembly with water, allowing all gases to escape. Apply water pressure in the hose of 175 psi within 10 seconds. Maintain an internal hydrostatic pressure of 175 psi for one minute and examine the hose for visible leakage.

S10.2 *Low temperature resistance test.*

(a) Conduct the test specified in S8.2 using vacuum brake hose with the cylinder radius specified in Table V for the size of hose tested. Visually inspect the exterior of the hose for cracks without magnification.

(b) Remove the hose from the test cylinder, warm the hose at room temperature for 5 hours, and conduct the hydrostatic pressure test in 10.1(e).

* * * * *

S10.6 *Bend test.*

(a) Bend a vacuum brake hose, of the length prescribed in Table V, in the direction of its normal curvature until

the ends just touch as shown in Figure 6.

* * * * * *

S10.7 *Swell and adhesion test.*

(a) Fill a specimen of vacuum brake hose 12 inches long with ASTM Reference Fuel B as described in ASTM D471–98e1 Standard Test Method for Rubber Property B Effect of Liquids.

(b) Maintain reference fuel in the hose under atmospheric pressure at room temperature for 48 hours.

(c) Remove fuel and determine that every inside diameter of any section of the brake hose is not less than 75 percent of the nominal inside diameter of the hose for heavy-duty hose and 70 percent of the nominal inside diameter of the hose for light-duty hose.

(d) Attach the hose to a source of vacuum and subject it to a vacuum of 26 inches of Hg for 10 minutes. Remove the hose from the vacuum source.

(e) For a vacuum brake hose constructed of two or more layers, conduct the test specified in S8.6 using the vacuum brake hose.

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S10.8.2 * * *

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(b) Apply gradually increasing force to the test specimen to compress its inside diameter to that specified in Table VI (dimension D of Figure 7) for the size of hose tested.

* * * * * *

S10.10 *Constriction test.*

(a) Utilize a plug gauge is shown in Figure 4. Diameter AA" shall be equal to 75 percent of the nominal inside diameter of the vacuum brake hose being tested if it is heavy duty, or 70 percent of the nominal inside diameter of the vacuum brake hose being tested if it is light duty.

(b) Vacuum brake hose assemblies that are to be used for additional testing have constriction testing only at each end fitting. Other hose assemblies may be cut into three inch lengths to permit constriction testing of the entire assembly. Hose assemblies with end fittings that do not permit entry of the gauge (*e.g.*, restrictive orifice) are cut three inches from the point at which the hose terminates in the end fitting and then tested from the cut end.

(c) Hold the vacuum brake hose in a straight position and vertical orientation.

(d) Place the spherical end of the plug gauge just inside the hose or end fitting. If the spherical end will not enter the hose or end fitting using no more force than gravity acting on the plug gauge, this constitutes failure of the constriction test.

(e) Release the plug gauge. Within three seconds, the plug gauge shall fall under the force of gravity alone up to the handle of the gauge. If the plug gauge does not fully enter the hose up to the handle of the gauge within three seconds, this constitutes failure of the constriction test.

S11. *Requirements—Plastic air brake tubing, plastic air brake tubing assemblies, and plastic air brake tubing end fittings.*

11.1 *Construction.* Each plastic air brake tubing assembly shall be equipped with permanently attached brake hose end fittings or reusable brake hose end fittings. Plastic air brake tubing that is constructed of one layer of material shall be designated as Type A tubing and plastic air brake tubing that is constructed of two layers of material with a reinforcing braid between the layers shall be designated as Type B tubing. Plastic air brake tubing shall conform to the dimensional requirements specified in Table VII. (S12.1)

TABLE VII.—PLASTIC AIR BRAKE TUBING DIMENSIONS

Type	Nominal tubing OD	Maximum outside diameter		Minimum outside diameter		Nominal inside diameter		Nominal wall thickness		Wall thickness tolerance	
		mm	inch	mm	inch	mm	inch	mm	inch	mm	inch
A	1/8 inch	3.25	0.128	3.10	0.122	2.01	0.079	0.58	0.023	±0.08	±0.003
A	5/32 inch	4.04	0.159	3.89	0.153	2.34	0.092	0.81	0.032	±0.08	±0.003
A	3/16 inch	4.83	0.190	4.67	0.184	2.97	0.117	0.89	0.035	±0.08	±0.003
A	1/4 inch	6.43	0.253	6.27	0.247	4.32	0.170	1.02	0.040	±0.08	±0.003
A	5/16 inch	8.03	0.316	7.82	0.308	5.89	0.232	1.02	0.040	±0.10	±0.004
B	3/8 inch	9.69	0.379	9.42	0.371	6.38	0.251	1.57	0.062	±0.10	±0.004
B	1/2 inch	12.83	0.505	12.57	0.495	9.55	0.376	1.57	0.062	±0.10	±0.004
B	5/8 inch	16.00	0.630	15.75	0.620	11.20	0.441	2.34	0.092	±0.13	±0.005
B	3/4 inch	19.18	0.755	18.92	0.745	14.38	0.566	2.34	0.092	±0.13	±0.005
A	6 mm	6.10	0.240	5.90	0.232	4.00	0.157	1.00	0.039	±0.10	±0.004
A	8 mm	8.10	0.319	7.90	0.311	6.00	0.236	1.00	0.039	±0.10	±0.004
B	10 mm	10.15	0.399	9.85	0.387	7.00	0.275	1.50	0.059	±0.15	±0.006
B	12 mm	12.15	0.478	11.85	0.466	9.00	0.354	1.50	0.059	±0.15	±0.006
B	16 mm	16.15	0.635	15.85	0.623	12.00	0.472	2.00	0.079	±0.15	±0.006

S11.2 *Labeling.*

S11.2.1 *Plastic Air Brake Tubing.* Plastic air brake tubing shall be labeled, or cut from bulk tubing that is labeled, at intervals of not more than 6 inches, measured from the end of one legend to the beginning of the next, in block capital letters and numerals at least one-eighth of an inch high, with the information listed in paragraphs (a) through (e) of this section. The information need not be present on tubing that is sold as part of a motor vehicle.

(a) The symbol DOT, constituting a certification by the hose manufacturer that the hose conforms to all applicable motor vehicle safety standards.

(b) A designation that identifies the manufacturer of the tubing, which shall be filed in writing with: Office of Vehicle Safety Compliance, Equipment Division NVS–222, National Highway Traffic Safety Administration, 400 Seventh St. S.W., Washington, DC 20590. The designation may consist of block capital letters, numerals, or a symbol.

(c) The month, day, and year, or the month and year, of manufacture, expressed in numerals. For example, 10/1/96 means October 1, 1996.

(d) The nominal outside diameter expressed in inches or fractions of inches or in millimeters followed by the letters OD. The abbreviation "mm" shall follow tubing sizes that are expressed in millimeters. (Examples: 3/8 OD, 6 mm OD.)

(e) The letter "A" shall indicate intended use in air brake systems.

S11.2.2 *End Fittings.* Except for an end fitting that is attached by deformation of the fitting about the tubing by crimping or swaging, at least one component of each plastic air brake tubing end fitting shall be etched, embossed, or stamped in block capital letters and numerals at least one-sixteenth of an inch high with the following information:

(a) The symbol DOT, constituting a certification by the manufacturer of that component that the component conforms to all applicable motor vehicle safety standards.

(b) A designation that identifies the manufacturer of that component of the fitting, which shall be filed in writing with: Office of Vehicle Safety Compliance, Equipment Division NVS–222, National Highway Traffic Safety Administration, 400 Seventh St. S.W., Washington, DC 20590. The designation may consist of block capital letters, numerals, or a symbol.

(c) The letter "A" shall indicate intended use in air brake systems.

(d) The nominal outside diameter of the plastic tubing to which the fitting is properly attached expressed in inches or fractions of inches or in millimeters followed by the letters OD. The abbreviation "mm" shall follow tubing sizes that are expressed in millimeters. (See examples in S11.2.1(d).)

S11.2.3. *Assemblies.* Each plastic air brake tubing assembly made with end fittings that are attached by crimping or swaging, except those sold as part of a motor vehicle, shall be labeled by means of a band around the brake tubing assembly as specified in this paragraph or, at the option of the manufacturer, by means of labeling as specified in S11.2.3.1. The band may at the manufacturer's option be attached so as to move freely along the length of the assembly, as long as it is retained by the end fittings. The band shall be etched, embossed, or stamped in block capital letters, numerals or symbols at least one-eighth of an inch high, with the following information:

(a) The symbol DOT, constituting certification by the tubing assembler that the tubing assembly conforms to all applicable motor vehicle safety standards.

(b) A designation that identifies the manufacturer of the hose assembly, which shall be filed in writing with: Office of Vehicle Safety Compliance, Equipment Division NVS–222, National Highway Traffic Safety Administration, 400 Seventh St. S.W., Washington, DC 20590. The designation may consist of block capital letters, numerals, or a symbol.

S11.2.3.1 At least one end fitting of a plastic air brake tubing assembly made with end fittings that are attached by crimping or swaging shall be etched, stamped, or embossed with a designation at least one-sixteenth of an inch high that identifies the manufacturer of the tubing assembly and is filed in accordance with S11.2.3(b).

S11.3 *Test requirements.* Each plastic air brake tubing assembly or appropriate part thereof shall be capable of meeting any of the requirements set forth under this heading, when tested under the conditions of S13 and the applicable procedures of S12. However, a particular tubing assembly or appropriate part thereof need not meet further requirements after having met the constriction requirement (S11.3.1) and then having been subjected to any one of the requirements specified in S11.3.2 through S11.3.24.

S11.3.1 *Constriction.* Every inside diameter of any section of a plastic air brake tubing assembly shall not be less than 66 percent of the nominal inside diameter of the brake tubing. (S12.2)

S11.3.2 *High temperature conditioning and dimensional stability.* Plastic air brake tubing shall conform to the dimensions in Table VII after conditioning in air at 230 °F for four hours. (S12.3)

S11.3.3 *Boiling water conditioning and dimensional stability.* Plastic air brake tubing shall conform to the dimensions in Table VII after conditioning in boiling water for two hours. (S12.4)

S11.3.4 *Moisture absorption.* Plastic air brake tubing shall not absorb moisture in a quantity of more than 2 percent by weight after conditioning in air at 230 °F for 24 hours and then conditioning in a 100 percent relative humidity atmosphere at 75 °F for 100 hours. (S12.5)

S11.3.5 *Burst strength.* Plastic air brake tubing shall not rupture or burst when subjected to the burst strength pressure in Table VIII for the size of tubing being tested, when tested at an ambient temperature of 75 °F. (S12.6)

TABLE VIII.—PLASTIC AIR BRAKE TUBING MECHANICAL PROPERTIES

Type	Nominal tubing OD	Burst strength pressure		Stiffness force		Bend radius		Tensile load	
		kPa	psi	N	lbf	mm	inches	N	lbf
A	1/8 inch	6900	1000	4.4	1.0	9.4	0.37	67	15
A	5/32 inch	8300	1200	4.4	1.0	12.7	0.50	178	40
A	3/16 inch	8300	1200	4.4	1.0	19.1	0.75	178	40
A	1/4 inch	8300	1200	8.9	2.0	25.4	1.00	222	50
A	5/16 inch	6900	1000	27.0	6.0	31.8	1.25	334	75
B	3/8 inch	9700	1400	36.0	8.0	38.1	1.50	6671	50
B	1/2 inch	6500	950	89.0	20.0	50.8	2.00	890	200
B	5/8 inch	6200	900	222.0	50.0	63.5	2.50	1446	325
B	3/4 inch	5500	800	356.0	80.0	76.2	3.00	1557	350
A	6 mm	7600	1100	9.0	2.0	20.0	0.75	222	50
A	8 mm	6200	900	27.0	6.0	32.0	1.25	334	75
B	10 mm	8200	1200	36.0	8.0	38.0	1.50	667	150
B	12 mm	6900	1000	90.0	20.0	45.0	1.75	890	200
B	16 mm	6000	875	225.0	50.0	70.0	2.75	1446	325

S11.3.6 *Ultraviolet light resistance.* Plastic air brake tubing shall not rupture or burst when subjected to 80 percent of the burst strength pressure in Table VIII for the size of tubing being tested, after being exposed to ultraviolet light for 300 hours and then impacted with a one pound weight dropped from a height of 12 inches. (S12.7)

S11.3.7 *Low temperature flexibility.* The outer surface of plastic air brake tubing shall not show cracks visible without magnification as a result of conditioning in air at 230 °F for 24 hours, and then conditioning in air at minus 40 °F for four hours, and then bending the tubing 180 degrees around a test cylinder having a radius equal to

six times the nominal outside diameter of the tubing. (S12.8)

S11.3.8 *High temperature flexibility.* Plastic air brake tubing shall not rupture or burst when subjected to 80 percent of the burst strength pressure in Table VIII for the size of tubing being tested, after the tubing has been:

(a) conditioned in air at 230 °F for 72 hours while bent 180 degrees around a cylinder having a radius of two times the nominal outside diameter of the tubing; and

(b) cooled to room temperature while remaining on the cylinder, then straightened; and

(c) bent 180 degrees around the cylinder in the opposite direction of the first bending. (S12.9)

S11.3.9 *High temperature resistance.* Plastic air brake tubing shall not rupture or burst when subjected to 80 percent of the burst strength pressure in Table VIII for the size of tubing being tested, after the tubing has been conditioned in air at 230 °F for 72 hours. (S12.10)

S11.3.10 *High temperature conditioning, low temperature impact resistance.* Plastic air brake tubing shall not rupture or burst when subjected to 80 percent of the burst strength pressure in Table VIII for the size of tubing being tested, after the tubing has been conditioned in air at 230 °F for 24 hours, then conditioned in air at minus 40 °F for 4 hours and impacted with a one pound weight dropped from a height of 12 inches. (S12.11)

S11.3.11 *Boiling water conditioning, low temperature impact resistance.* Plastic air brake tubing shall not rupture or burst when subjected to 80 percent of the burst strength pressure in Table VIII for the size of tubing being tested, after the tubing has been conditioned in boiling water for two hours, then conditioned in air at minus 40 °F for 4 hours, and then impacted with a one pound weight dropped from a height of 12 inches. (S12.12)

S11.3.12 *Zinc chloride resistance.* The outer surface of plastic air brake tubing shall not show cracks visible under 7-power magnification after immersion in a 50 percent zinc chloride aqueous solution for 200 hours while bent around a cylinder having a radius of two times the nominal outside diameter of the tubing. (S12.13)

S11.3.13 *Methyl alcohol resistance.* The outer surface of plastic air brake tubing shall not show cracks visible under 7-power magnification after immersion in a 95 percent methyl alcohol aqueous solution for 200 hours while bent around a cylinder having a radius of two times the nominal outside diameter of the tubing (S12.14)

S11.3.14 *High temperature conditioning and stiffness.* Plastic air brake tubing shall require not more than the stiffness force specified in Table VIII to deflect 2 inches, when tested using the apparatus in Figure 9, after conditioning in air at 230 °F for 24 hours with the tubing supported in a straight position. (S12.15)

S11.3.15 *High temperature conditioning and adhesion.* Type B plastic air brake tubing shall have a tensile strength of 25 pounds per linear inch, measured at the interface of the inner and outer layers, after conditioning as specified in S11.3.8(a) through (c). (S12.16)

S11.3.16 *High temperature conditioning and collapse resistance.* The collapse of the outside diameter of plastic air brake tubing shall not exceed twenty percent of the original outside diameter when bent 180 degrees on a holding fixture to the bend radius specified in Table VIII and conditioned in air at 200 °F for 24 hours. (S12.17)

S11.3.17 *Ozone resistance.* The outer surface of plastic air brake tubing shall not show cracks visible under 7-power magnification after exposure to ozone for 70 hours at 104 °F. (S12.18)

S11.3.18 *Oil resistance.* Plastic air brake tubing shall not rupture or burst when subjected to 80 percent of the burst strength pressure in Table VIII for the size of tubing being tested, after the tubing has been conditioned in ASTM IRM 903 oil at 212 °F for 70 hours. (S12.19)

S11.3.19 *Tensile strength.* A plastic air brake tubing assembly designed for use between frame and axle or between a towed and a towing vehicle shall withstand, without separation of the tubing from its end fittings, a pull of 250 pounds if it is ⅜ inch or less or 10 mm or less in nominal outside diameter, or a pull of 325 pounds if it is larger than ⅜ inch or 10 mm in nominal outside diameter. A plastic air brake tubing assembly designed for use in any other application shall withstand, without separation of the hose from its end fittings, a pull of 35 pounds if it is ⅛ inch or 3 mm or less in nominal outside diameter, 40 pounds if it is 5/32 inch or 4 mm in nominal outside diameter, 50 pounds if it is 3/16 to ⅜ inch or 5 mm to 10 mm in nominal outside diameter, 150 pounds if it is ½ to ⅝ inch or 11 mm to 16 mm in nominal outside diameter, or 325 pounds if it is larger than ⅝ inch or 16 mm in nominal outside diameter. (S12.20)

S11.3.20 *Boiling water conditioning and tensile strength.* A plastic air brake tubing assembly when subjected to a tensile pull test shall either elongate 50 percent or withstand the tensile load in Table VIII without separation from its end fittings, with one end of the assembly conditioned in boiling water for 5 minutes. (S12.21)

S11.3.21 *Thermal conditioning and tensile strength.* A plastic air brake tubing assembly when subjected to a tensile pull test shall either elongate 50 percent or withstand the tensile strength in Table VIII without separation from its end fittings after the assembly has been subjected to four cycles of conditioning in air at minus 40 °F for thirty minutes, normalizing at room temperature, conditioning in boiling water for 15 minutes, and normalizing at room temperature. (S12.22)

S11.3.22 *Vibration resistance.* A plastic air brake tubing assembly with an internal air pressure of 120 psi shall not leak more than 50 cm^3 per minute at a temperature of minus 40 °F and 25 cm^3 per minute at a temperature of 75 °F, after the assembly has been subjected to 1,000,000 cycles of vibration testing with one end of the assembly fixed and the other end stroked ½-inch at 600 cycles per minute. In addition, end fittings that use a threaded retention nut shall retain at least 20 percent of the original retention nut tightening torque upon completion of the vibration testing. The vibration test shall be conducted in an environmental chamber and the air temperature shall be cycled between minus 40 °F and 220 °F during the test. (S12.23)

S11.3.23 *End fitting retention.* The end fittings of a plastic air brake tubing assembly shall not separate from the tubing or leak when the assembly is filled with hydraulic fluid and pressurized to the burst strength pressure in Table VIII. (S12.24)

S11.3.24 *Thermal conditioning and end fitting retention.* The end fittings of a plastic air brake tubing assembly shall not separate from the tubing or leak when filled with hydraulic fluid and:

(a) conditioned in air at 200 °F for 24 hours with atmospheric pressure inside the tubing assembly, and;

(b) maintaining an air temperature of 200 °F and increasing the pressure inside the tubing assembly to 450 psi, and holding this pressure for five minutes, and;

(c) reducing the internal tubing assembly pressure to atmospheric and permitting the tubing assembly to cool at 75 NF for 1 hour, and;

(d) conditioning the tubing assembly in air at minus 40 °F for 24 hours with atmospheric pressure inside the tubing assembly, and;

(e) maintaining an air temperature of minus 40 °F and increasing the pressure inside the tubing assembly to 450 psi, and holding this pressure for five minutes. (S12.25)

S11.3.24 *End fitting corrosion resistance.* After 24 hours of exposure to salt spray, air brake hose end fittings shall show no base metal corrosion on the end fitting surface except where crimping or the application of labeling information causes a displacement of the protective coating. (S12.26)

S12. *Test procedures—Plastic air brake tubing, plastic air brake tubing assemblies, plastic air brake tubing end fittings.*

S12.1 *Air brake tubing dimensions.* Measure the tubing dimensions including wall thickness, inside diameter, and outside diameter, using appropriate metrology apparatus such as micrometers, dial indicators and gauge blocks, or optical comparators. To account for slight out-of-round conditions, diameter measurements may be calculated using the average of the major and minor diameters.

S12.2 *Constriction test.*

(a) Utilize a plug gauge as shown in Figure 4. Diameter "A" shall be equal to 66 percent of the nominal inside diameter of the plastic air brake tubing being tested.

(b) Tubing assemblies that are to be used for additional testing shall have constriction testing only at each end fitting. Other tubing assemblies may be cut into three inch lengths to permit constriction testing of the entire assembly.

(c) Hold the tubing in a straight position and vertical orientation.

(d) Place the spherical end of the plug gauge just inside the tubing. If the spherical end will not enter the tubing or end fitting using no more force than gravity acting on the plug gauge, this constitutes failure of the constriction test.

(e) Release the plug gauge. Within three seconds, the plug gauge shall fall under the force of gravity alone up to the handle of the gauge. If the plug gauge does not fully enter the tubing up to the handle of the gauge within three seconds, this constitutes failure of the constriction test.

S12.3 *High temperature conditioning and dimensional stability test.*

(a) Condition the tubing at 230 °F for 4 hours in an air oven.

(b) Remove the tubing from the oven and allow to cool at room temperature for 30 minutes.

(c) Measure the dimensions of the tubing using the procedure in S12.1.

S12.4 *Boiling water conditioning and dimensional stability test.*

(a) Utilize a pot constructed of a non-reactive material and fill with distilled water.

(b) Cut the tubing to a length that will fit into the pot without touching any surface of the pot. Slip the tubing over a stainless steel wire for positioning it in the pot.

(c) Bring the water to a boil. Place the tubing in the water and position it so that it does not touch the pot. Boil the tubing for two hours. Replenish the water as necessary, adding it slowly so that the water in the pot boils continuously.

(d) Remove the tubing from the water and allow to cool at room temperature for 30 minutes. Wipe off any water that remains on the tubing.

(e) Measure the dimensions of the tubing using the procedure in S12.1.

S12.5 *Moisture absorption test.*

(a) Prepare a sample of tubing twelve inches in length.

(b) Condition the tubing at 230 °F for 24 hours in an air oven. Remove the tubing from the oven and within 30 seconds, weigh it to establish the initial weight. The weight shall be measured with a resolution of 0.01g; if the scale has a higher resolution, then values of 0.005g and above shall be rounded to the nearest 0.01g and values below 0.005g shall be truncated.

(c) Place the tubing in an environmental chamber and condition it for 100 hours at 100 percent relative humidity and a temperature of 75 °F.

(d) Remove the tubing from the chamber within a period of 5 minutes, remove all surface moisture from the tubing using cloth and weigh the tubing to establish the conditioned weight. Weight shall be measured to the nearest 0.01g as in (b) above.

(e) Calculate percentage of moisture absorption as follows:

[Conditioned Weight − Initial Weight] ÷ [Initial Weight] × 100

S12.6 *Burst strength test.*

(a) Utilize an air brake tubing assembly or prepare a 12 inch length of tubing and install end fittings according to the end fitting manufacturer's instructions.

(b) Connect one end of the tubing assembly to a source of air pressure and plug the other end.

(c) Increase the pressure inside the tubing assembly at a constant rate to the burst strength pressure for the size of tubing being tested as specified in Table VIII within a period of 5 seconds.

S12.7 *Ultraviolet light resistance test.*

(a) *Apparatus.* An accelerated weathering test machine for ultraviolet light conditioning of plastic air brake tubing. The machine shall be equipped with fluorescent UVA–340 light bulbs and automatic irradiance control. Also utilize an impact test apparatus as shown in Figure 8.

(b) *Test Standards.* The testing is in accordance with American Society for Testing and Materials (ASTM) G154–00 Standard Practice for Operating Light Apparatus for UV Exposure of Nonmetallic Materials; ASTM G151–97 Standard Practice for Exposing Nonmetallic Materials in Accelerated Test Devices that Use Laboratory Light Sources, and; ASTM D4329–99 Standard Practice for Fluorescent UV Exposure of Plastics.

(c) *Preparation.*

(i) Utilize a 12 inch length of plastic air brake tubing. Mask 1 inch of each end of the tubing where end fittings will be attached using opaque tape.

(ii) Attach the tubing to the test rack of the machine, securing it at the ends along the masked sections. Wipe the outside surface of the tubing with acetone to remove any surface contaminants. Place the tubing and rack in the accelerated weathering test machine so that the center of the tubing assembly is approximately in the center of the UV light exposure area of the test machine and the longitudinal axis of the tubing is parallel to the fluorescent bulb. (If multiple plastic brake tubing assemblies are tested, then their position in the machine should be rotated according to ASTM D4329–99 S7.4.1, except the rotation is each 96 hours instead of weekly.) The distance from the light bulb to the tubing is approximately 2 inches. Set the UV irradiance to 0.85 W/m^2 @ 340 nm and maintain this level during the testing. Maintain a temperature inside the test chamber of 113 °F, and use only atmospheric humidity. Expose the tubing at this UV irradiance level for 300 hours continuously. Remove the tubing from the test chamber.

(iii) Place the tubing inside the impact test apparatus, and drop the impacter onto the tubing from a height of 12 inches.

(iv) Remove the masking material from the ends of the tubing. Install end fittings according to the end fitting manufacturer's instructions. Conduct the burst strength test in S12.6 using 80 percent of the burst strength pressure for the size of tubing being tested as specified in Table VIII.

Figure 8. Impact Test Apparatus

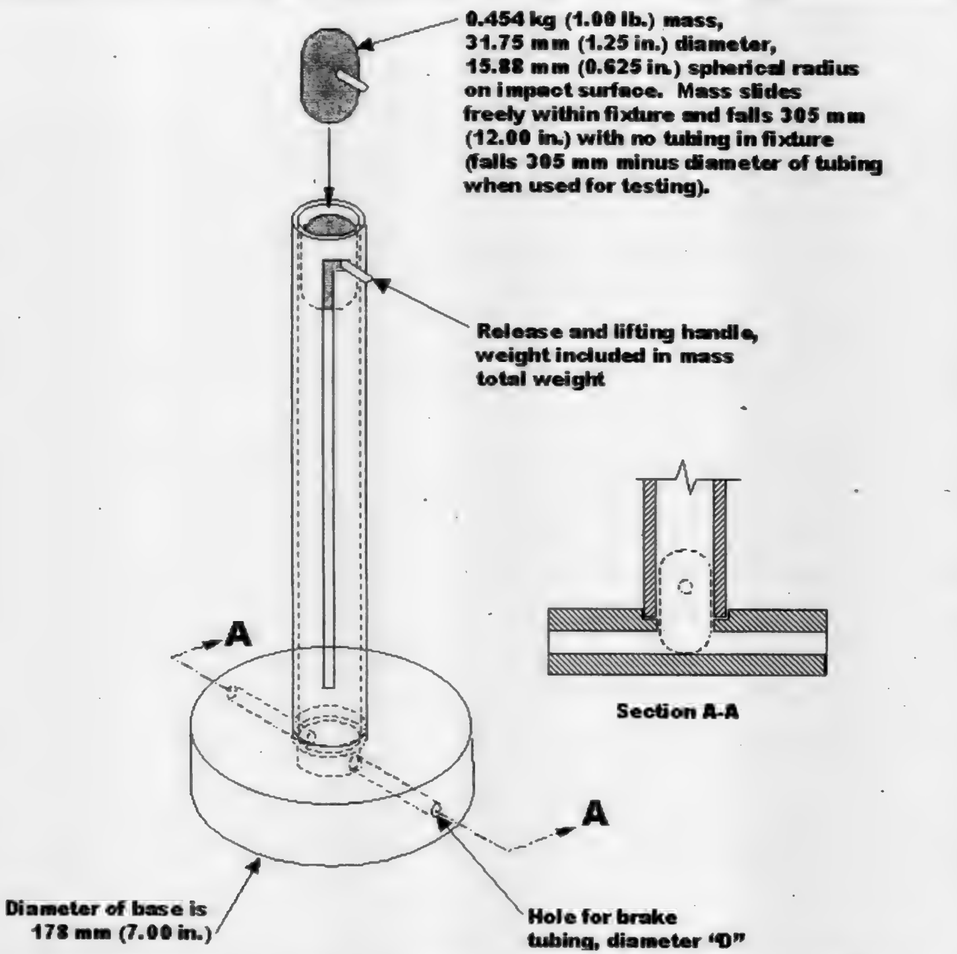


TABLE ACCOMPANYING FIGURE 8

Nominal tube O.D.	Hole DIA D (mm)	Hole DIA D (in)
1/8 in	3.96	0.156
5/32 in	4.75	0.187
3/16 in	5.54	0.218
1/4 in	7.14	0.281
5/16 in	8.71	0.343
3/8 in	10.31	0.406
1/2 in	13.49	0.531
5/8 in	16.66	0.656
3/4 in	20.32	0.800
6 mm	6.80	0.268
8 mm	8.80	0.346
10 mm	10.80	0.425
12 mm	12.80	0.504
16 mm	16.80	0.661

S12.8 *Low temperature flexibility test.*

(a) Utilize a cylinder having a radius of six times the nominal outside diameter of the tubing.

(b) Condition the tubing in an air oven at 230 °F for 24 hours. Remove from the oven and cool at room temperature for 30 minutes.

(c) Condition the cylinder and the tubing in an environmental chamber at minus 40 °F for four hours.

(d) With the tubing and test cylinder at minus 40 °F, bend the tubing 180 degrees around the cylinder at a steady rate in a period of 4 to 8 seconds.

S12.9 *High temperature flexibility test.*

(a) Utilize a cylinder having a radius of two times the nominal outside diameter of the tubing.

(b) Bend the tubing 180 degrees around the cylinder and hold in place with a clamp or other suitable support, applying only enough force on the tubing to hold it in position.

(c) Condition the tubing and cylinder in an air oven at 230 °F for 72 hours. Remove the tubing and cylinder from the oven and cool at room temperature for two hours.

(d) Remove the clamps or supports from the tubing and straighten the tubing at a steady rate in a period of 4 to 8 seconds.

(e) Rebend the tubing 180 degrees around the mandrel, at the same point but in the opposite direction of the bending in (b) above, at a steady rate in a period of 4 to 8 seconds.

(f) Conduct the burst strength test in S12.6 using 80 percent of the burst strength pressure for the size of tubing being tested as specified in Table VIII.

S12.10 *High temperature resistance test.* Condition the tubing in an air oven at 230 °F for 72 hours. Remove the tubing and allow to cool at room temperature for 30 minutes. Conduct the burst strength test in S12.6 using 80 percent of the burst strength pressure for the size of tubing being tested as specified in Table VIII.

S12.11 *High temperature conditioning, low temperature impact resistance test.*

(a) *Apparatus.* Utilize an impact test apparatus as shown in Figure 8.

(b) Condition the tubing in an air oven at 230 °F for 72 hours. Remove the tubing and allow to cool at room temperature for 30 minutes.

(c) Condition the tubing and the impact test apparatus in an environmental chamber at minus 40 °F for 4 hours.

(d) With the tubing and impact test apparatus at minus 40 °F, place the tubing inside the apparatus and drop the impacter onto the tubing from a height of 12 inches. Remove the tubing from the chamber and allow to warm at room temperature for one hour.

(e) Conduct the burst strength test in S12.6 using 80 percent of the burst strength pressure for the size of tubing being tested as specified in Table VIII.

S12.12 *Boiling water conditioning, low temperature impact resistance test.*

(a) *Apparatus.* Utilize an impact test apparatus as shown in Figure 8.

(b) Condition the tubing in boiling water using the test in S12.4(a) through (d).

(c) Condition the tubing and the impact test apparatus in an environmental chamber at minus 40 °F for 4 hours.

(d) With the tubing and impact test apparatus at minus 40 °F, place the tubing inside the apparatus and drop the impacter onto the tubing from a height of 12 inches. Remove the tubing from the chamber and allow to warm at room temperature for one hour.

(e) Conduct the burst strength test in S12.6 using 80 percent of the burst strength pressure for the size of tubing being tested as specified in Table VIII.

S12.13 *Zinc chloride resistance test.*

(a) Utilize a cylinder having a radius of two times the nominal outside diameter of the tubing. The cylinder is constructed of a non-reactive material or coated to prevent chemical reaction with zinc chloride.

(b) Bend the tubing 180 degrees around the cylinder and hold in place with a clamp or other suitable support constructed of non-reactive materials, applying only enough force on the tubing to hold it in position.

(c) Immerse the tubing and cylinder in a 50 percent zinc chloride aqueous solution at room temperature for 200 hours.

(d) Remove the tubing and cylinder from the solution. While still on the test cylinder, inspect the tubing under 7-power magnification for cracks.

S12.14 *Methyl alcohol resistance.*

(a) Utilize a cylinder having a radius of two times the nominal outside diameter of the tubing. The cylinder is constructed of a non-reactive material or coated to prevent chemical reaction with methyl alcohol.

(b) Bend the tubing 180 degrees around the cylinder and hold in place with a clamp or other suitable support constructed of non-reactive materials, applying only enough force on the tubing to hold it in position.

(c) Immerse the tubing and cylinder in a 95 percent methyl alcohol aqueous solution at room temperature for 200 hours.

(d) Remove the tubing and cylinder from the solution. While still on the test cylinder, inspect the tubing under 7-power magnification for cracks.

S12.15 *High temperature conditioning and stiffness.*

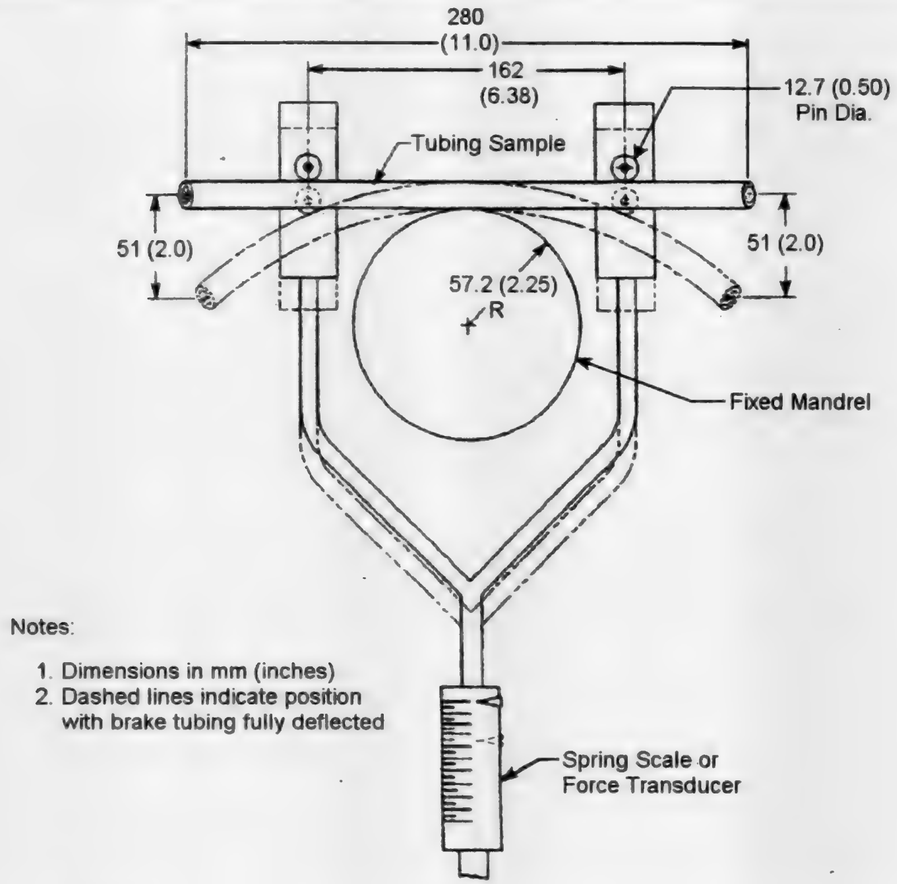
(a) *Apparatus.* Use a flexibility test device shown in Figure 9 with a spring scale or force transducer to measure the force applied to the tubing during bending.

(b) Prepare an 11-inch long length of tubing. Insert a metal rod 12 inches long of suitable diameter to provide a slip fit inside the tubing, and insert it in the tubing to hold it in a straight position within 1/8 inch of true straightness.

(c) Condition the tubing in an air oven at 230 °F for 24 hours. Remove the tubing and allow to cool at room temperature for two hours.

(d) Remove the metal rod from the tubing and place the tubing in the flexibility test device, with the tubing centered on the device and clearance removed between tubing and the pins and cylinder of the test device.. Mark the location of each end of the tubing. Pull on the device until both ends of the tubing have deflected 2 inches from the original position. Record the force applied to the device and verify that it does not exceed the stiffness force in Table VII for the size of tubing being tested.

Figure 9. Stiffness Test Apparatus



Notes:

1. Dimensions in mm (inches)
2. Dashed lines indicate position with brake tubing fully deflected

S12.16 *High temperature conditioning and adhesion test.*

S12.16.1 *Apparatus.* A tension testing machine that conforms to the requirements of American Society for Testing and Materials (ASTM) Standard Practices for Force Verification of Testing Machines, Designation E4–99. The machine shall have one movable and one fixed jaw suitable for clamping small sections of plastic air brake tubing material. The machine produces a chart or has a recording device providing displacement as one coordinate and tensile force as the other.

S12.16.2 *Preparation.*

(a) Subject the tubing to the bending and temperature conditioning tests specified in S12.9 (a) through (e).

(b) Cut a test specimen of 1 inch in length from a section of tubing that was subjected to bending in (a).

(c) Cut the specimen longitudinally along its entire length so that one wall of the tubing is completely cut through. Along one edge of the specimen resulting from this cut, use a sharp knife and cut the tubing at the interface of the inner and outer layers until two flaps of material are created that are large enough to be clamped in the tension testing machine. One flap consists of material from the inner layer and one flap consists of material from the outer layer.

(d) Mount the specimen in the tension testing machine by clamping one flap in each jaw. Apply a tensile force of 25 pounds to the flaps of the specimen in a period of 5 seconds and maintain this force for the duration of the test. The specimen is permitted to separate a small amount until the inner and outer layer interface becomes fully engaged and a continuous line of reinforcing braid is not present at the layer interface. The layers of the specimen shall not separate thereafter.

S12.17 *High temperature conditioning and collapse resistance test.*

(a) *Apparatus.* A holding device with two vertical pins, the distance between which can be adjusted by moving one or both pins. The bottoms of the pins are attached to the device and remain in a horizontal plane. The diameter of the pins is approximately the same as the inside diameter of the size of tubing to be tested, and is 1 inch in length.

(b) *Preparation.* (i) Use the bend radius for the size of tubing being tested from Table VIII and cut the tubing to the following length:

3.14 × [bend radius]] + [10 × [nominal tubing OD]] + 2 inches

or

[3.14 × [bend radius]] + [10 × [nominal tubing OD]] + 50 mm

(ii) Place a reference mark at the center of the sample. At this mark, measure the initial outside diameter of the tubing. If the tubing is slightly out-of-round, use the minor diameter as the initial outside diameter.

(iii) Install the tubing completely over the pins of the holding device so that the tubing is bent 180 degrees. Adjust the distance between the pins until the bent radius of the tubing is approximately equal to the bend radius for the size of tubing being tested from Table VIII.

(iv) Condition the holding device and tubing in an air oven at 230 °F for 24 hours. Remove the holding device and tubing and allow to cool at room temperature for thirty minutes.

(v) With the tubing still mounted to the holding device, measure the minor diameter of the tubing at the reference mark to determine the final outside diameter.

(c) *Calculation.* Calculate the percentage collapse of the outside diameter of the tubing as follows:

[Initial Outside Diameter − Final Outside Diameter] ÷ [Initial Outside Diameter] × 100

S12.18 *Ozone resistance test.* Conduct the test specified in S6.8 using plastic air brake tubing.

S12.19 *Oil resistance test.*

(a) Utilize a plastic air brake tubing assembly or prepare a 12 inch length of tubing and install end fittings according to the end fitting manufacturer's instructions.

(b) Immerse the tubing assembly in ASTM 903 oil at 212 °F for 70 hours. Remove and allow to cool at room temperature for 30 minutes. Wipe any excess oil from the tubing assembly.

(c) Connect one end of the tubing assembly to a source of air pressure and plug the other end.

(d) Increase the pressure inside the tubing assembly at a constant rate to 80 percent of the burst strength pressure for the size of tubing being tested as specified in Table VIII within a period of 5 seconds.

S12.20 *Tensile strength test.* Conduct the test specified in S6.9 using a plastic air brake tubing assembly or an assembly prepared from a 12 inch length of tubing with the end fittings according to the end fitting manufacturer's instructions.

S12.21 *Boiling water conditioning and tensile strength.*

(a) *Apparatus.* Use the tension testing machine specified in S8.9. Equip the lower attachment point of the machine with a heated, open-top container. The container acts as the lower attachment point for a brake tubing assembly, or it may have a hole in the bottom for the lower attachment point of the machine to pass through the container provided that the hole is sealed water-tight to the machine.

(b) *Preparation.* Prepare an air brake tubing assembly with a free length of six inches in accordance with the end fitting manufacturer's instructions. The free length is measured from the innermost crimp, ferrule, taper, or other mechanical joint that secures the fitting to the tubing and spring guards and other appurtenances are disregarded for measurement purposes. Install the tubing assembly on the tension testing machine with the lower fitting plugged to prevent water from entering the tubing. Fill the container with distilled water so that 4 inches of exposed tubing is submerged. Heat the water until it boils. After the water has boiled continuously for 5 minutes, apply tension to the tubing assembly at a rate of 1 inch per minute travel of the moving head until either the tensile load in Table VIII for the size of tubing being tested is reached or the free length of the tubing assembly reaches 9 inches, whichever occurs first.

S12.22 *Thermal conditioning and tensile strength.*

(a) *Apparatus.* Use the tension testing machine specified in S8.9.

(b) *Preparation.* Prepare an air brake tubing assembly with a free length of six inches in accordance with the end fitting manufacturer's instructions. The free length is measured from the innermost crimp, ferrule, taper, or other mechanical joint that secures the fitting to the tubing and spring guards and other appurtenances are disregarded for measurement purposes. Subject the tubing assembly to four complete cycles of the following sequence:

(i) Condition the tubing assembly in an environmental chamber at minus 40 °F for 30 minutes. Remove from the chamber and allow to warm at room temperature for 30 minutes.

(ii) Condition the tubing assembly by submerging it in boiling water for 15 minutes. Remove and allow to cool at room temperature for 30 minutes.

Install the tubing assembly on the tension testing machine and apply tension to the tubing assembly at a rate of 1 inch per minute travel of the moving head until either the tensile load in Table VIII for the size of tubing being tested is reached or the free length of the tubing assembly reaches 9 inches, whichever occurs first.

S12.23 *Vibration resistance test.*

(a) *Apparatus.* A vibration testing machine that supports a brake tubing assembly by its end fittings in approximately a straight line and includes the following features:

(i) One tubing assembly attachment point is fixed and the other moves in a plane perpendicular to a line projected between the attachment points. The movable attachment point moves in a linear direction and travels ½ inch total and at its midpoint of travel falls on a line projected between the attachment points. The movable attachment point has a cycle rate of 600 cycles per minute.

(i) The distance between the attachment points is adjustable to compensate for varying lengths of brake tubing assemblies.

(ii) The actuating mechanism for the movable attachment point is balanced to prevent introduction of machine vibration into the brake tubing assembly.

(iii) The machine has a compressed air supply system that pressurizes the air brake tubing assembly through one fitting while the other fitting is plugged. The machine's compressed air supply system includes a pressure gauge or monitoring system and an air flow meter.

(iv) The machine is constructed so that an air brake tubing assembly mounted on it can be conditioned in an environmental test chamber.

(b) *Preparation.* (i) Prepare an air brake tubing assembly with a free length of eighteen inches in accordance with the end fitting manufacturer's instructions. The free length is measured from the innermost crimp, ferrule, taper, or other mechanical joint that secures the fitting to the tubing and spring guards and other appurtenances are disregarded for measurement purposes.

(ii) Install the air brake tubing assembly on the vibration testing machine and, with the movable attachment point at the midpoint of its travel, adjust the distance between the attachment points so that they are ½ inch closer together than the distance at which the tubing assembly is taut.

(iii) With the tubing assembly inside the environmental chamber, supply compressed air to the tubing assembly at a pressure of 120 psig and maintain this supply pressure for the duration of the test. Set the temperature of the environmental chamber to 220 °F and initiate cycling of the movable attachment point. After 250,000 cycles,

set the temperature of the environmental chamber to minus 40 °F. After 500,000 cycles, set the temperature of the environmental chamber to 220 °F. After 750,000 cycles, set the temperature of the environmental chamber to minus 40 °F. Measure the air flow rate just prior to 1,000,000 cycles and if the compressed air flow rate supplied to the air brake tubing assembly exceeds 50 cm^3 per minute this constitutes failure of the test. Stop the cycling at 1,000,000 cycles and set the environmental chamber temperature to 75 °F, while air pressure is still supplied to the air brake tubing assembly. After 1 hour, measure the compressed air flow rate supplied to the air brake tubing assembly and if the rate exceeds 25 cm^3 per minute this constitutes failure of the test.

(iv) For end fittings that use a threaded retaining nut, apply 20 percent of the original tightening torque as measured in S11.3.22, in the direction of tightening. If the retention nut visibly moves, this constitutes a failure of the test.

S12.24 *End fitting retention test.*

(a) *Apparatus.* A source of hydraulic pressure that includes a pressure gauge or monitoring system, and uses a petroleum-based hydraulic fluid with a pour point of less than minus 40 °F.

(b) *Preparation.* Utilize an air brake tubing assembly or prepare an air brake tubing assembly with a free length of twelve inches in accordance with the end fitting manufacturer's instructions. Attach one end of the assembly to the hydraulic pressure supply and plug the other end of the assembly, and fill the assembly with hydraulic fluid and bleed any air from the assembly. Increase the hydraulic pressure inside the tubing assembly at a constant rate to 50 percent of the burst pressure for the size of tubing being tested as specified in Table VIII within a period of 5 seconds, and hold this pressure for 30 seconds. Then increase the hydraulic pressure inside the tubing assembly at a constant rate to the burst pressure for the size of tubing being tested as specified in Table VIII within a period of 5 seconds. Visually inspect the assembly for leakage or separation at the end fittings.

S12.25 *Thermal conditioning and end fitting retention test.*

(a) *Apparatus.* A source of hydraulic pressure that includes a pressure gauge or monitoring system, uses a petroleum-based hydraulic fluid with a pour point of less than minus 40 °F, and is constructed so that an air brake tubing assembly mounted to it can be conditioned in an environmental test chamber.

(b) *Preparation.* Utilize an air brake tubing assembly or prepare an air brake tubing assembly with a free length of twelve inches in accordance with the end fitting manufacturer's instructions. Attach one end of the assembly to the hydraulic pressure supply and plug the other end of the assembly, fill the assembly with hydraulic fluid and bleed any air from the assembly, and place the tubing assembly inside an environment chamber. Conduct the following tests:

(i) With atmospheric pressure applied to the hydraulic fluid inside the tubing assembly, set the environmental chamber temperature to 200 °F and condition the tubing assembly for 24 hours.

(ii) With the temperature maintained at 200 °F, increase the hydraulic pressure inside the tubing assembly at a constant rate to 450 psig within a period of 5 seconds, and hold this pressure for 5 minutes.

(iii) Decrease the pressure inside the tubing assembly to atmospheric and set the temperature of the environmental chamber to 75 °F. Condition the tubing assembly at this temperature for 1 hour.

(iv) Set the temperature of the environmental chamber to minus 40 °F and condition the tubing assembly for 24 hours.

(v) With the temperature maintained at minus 40 °F, increase the hydraulic pressure inside the tubing assembly at a constant rate to 450 psi within a period of 5 seconds, and hold this pressure for 5 minutes. Visually inspect the assembly for leakage or separation at the end fittings.

S12.26. *End fitting serviceability.*

(a) *Apparatus.* A source of air pressure that includes a pressure gauge or monitoring system and is equipped with a mass flow meter.

(b) *Preparation.* Prepare a 12 inch length of plastic air brake tubing and plug one end. Assemble the end fitting with the threaded retention nut on the other end of the tubing according to the end fitting manufacturer's instructions, and then disassemble the fitting. Repeat the assembly and disassembly sequence three more times, and then reassemble the end fitting (five total assembly steps).

(c) Attach the end fitting with the threaded retention nut to the source of air pressure. Pressurize the tubing assembly to a pressure of 120 psi in a period of two seconds. If the end fitting leaks, measure and record the leakage rate using the mass air flow meter.

S12.27 *End fitting corrosion resistance.* Conduct the test specified in S6.9 using a plastic air brake tubing assembly.

S13. *Test conditions.* Each hose assembly or appropriate part thereof shall be able to meet the requirements of S5, S7, S9, and S11, under the following conditions.

S13.1 The temperature of the testing room is 75 °F.

S13.2 Unless otherwise indicated, the test samples are stabilized at test room temperature prior to testing.

S13.3 The brake hoses and brake hose assemblies are at least 24 hours old, and unused.

S13.4. Specified test pressures are gauge pressures (psig).

Issued: May 1, 2003.

Stephen R. Kratzke,

Associate Administrator for Rulemaking.

[FR Doc. 03–11292 Filed 5–14–03; 8:45 am]

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Federal Register

Thursday,

May 15, 2003

Part III

Department of Education

Office of Innovation and Improvement—Advanced Placement Incentive (API) Program; Notice Inviting Applications for New Grant Awards for Fiscal Year (FY) 2003; Notice

DEPARTMENT OF EDUCATION

RIN 1855–ZA00

[CFDA No.: 84.330C]

Office of Innovation and Improvement—Advanced Placement Incentive (API) Program; Notice Inviting Applications for New Awards for Fiscal Year (FY) 2003

Purpose of Program: The API program, funded under section 1705 of Title I, Part G of the Elementary and Secondary Education Act of 1965 (ESEA), as amended by the No Child Left Behind Act of 2001 (NCLB), awards competitive grants designed to increase the successful participation of low-income students in pre-advanced placement and advanced placement courses and tests. By supporting increased access to and participation in pre-advanced placement and advanced placement courses and tests, the program provides greater opportunities for low-income students to achieve to high standards in English, mathematics, science, and other core subjects. Additional long-term goals of the program are to demonstrate that larger and more diverse groups of students can participate and succeed in advanced placement programs, and to increase the numbers of low-income and other disadvantaged students who receive baccalaureate and advanced degrees.

The API program provides resources that local educational agencies (LEAs) and other eligible applicants can use in pursuit of the objectives of the NCLB which aims for all elementary and secondary students to achieve to high standards. In particular, this program provides an opportunity for eligible entities to create new programs in schools identified for improvement, corrective action, or restructuring under Title I, Part A of the ESEA.

Eligible Applicants: (a) State educational agencies (SEAs); (b) LEAs, including charter schools that are considered LEAs under State law; and (c) national nonprofit educational entities with expertise in advanced placement services. In the case of an eligible entity that is an SEA, the SEA may use API grant funds to award subgrants to LEAs to enable those LEAs to carry out activities authorized under this program.

Applications Available: 5–16–03.

Notification of Intent to Apply for Funding: The Department will be able to develop a more efficient process for reviewing grant applications if it has a better understanding of the number of entities that intend to apply for funding under this competition. Therefore, the Secretary strongly encourages each potential applicant for the API program to notify the Department by e-mail that it intends to submit an application for funding. The notification of intent to apply for funding should be sent no later than June 16, 2003 to the following Internet address: *madeline.baggett@ed.gov.*

Applicants who fail to provide this e-mail notification may still apply for funding.

Deadline for Transmittal of Applications: 7–3–03.

Deadline for Intergovernmental Review: 9–1–03.

Estimated Available Funds: Approximately $10.7 million.

Estimated Range of Awards: $200,000 to $700,000 per year.

Estimated Average Size of Awards: $200,000—$450,000 per year.

Estimated Number of Awards: 22–42.

Note: These estimates are projections for the guidance of potential applicants. The Department is not bound by any estimates in this notice.

Project Period: Up to 36 months.

Page Limit: The application narrative (Part VII of the application package) is where you, the applicant, address the selection criteria that reviewers use to evaluate your application. You are encouraged to limit Part VII to the equivalent of no more than 50 pages, using the following standards:

- A "page" is 8.5″ x 11″ on one side only, with 1″ margins at the top, bottom, and both sides;
- Double space (no more than three lines per vertical inch) all text in the application narrative, including titles, headings, footnotes, quotations, references, and captions, as well as text in charts, tables, figures, and graphs; and
- Use a font that is either 12-point or larger or no smaller than 10 pitch (characters per inch).

Applicable Regulations and Statute: (a) *Regulations.* Education Department General Administrative Regulations (EDGAR) in 34 CFR Parts 74, 75, 77, 79, 80, 81, 82, 85, 86, 97, 98, and 99. (b) *Statute.* Title I, Part G of Elementary and Secondary Education Act of 1965 (ESEA), as amended the No Child Left Behind Act of 2001 (NCLB), 20 U.S.C. 6535–6537.

SUPPLEMENTARY INFORMATION: The API program promotes greater access to, and participation in, advanced placement courses and tests for low-income and other disadvantaged students. Covered programs include pre-advanced placement and advanced placement courses as well as the advanced placement tests administered by the College Board. The International Baccalaureate Organization courses and exams are also approved under the program. Other educational entities that provide comparable programs of rigorous academic courses and testing through which low-income students may earn college credit may request approval from the Secretary.

The Secretary encourages schools to offer more rigorous middle and high school curricula in English, mathematics, science, and other core subjects. The API program supports that effort and, thus, is an important component of the Department's commitment to ensuring that "no child is left behind". In addition to improving academic achievement for all students, the program strives to raise expectations for low-income children. The development, enhancement, and expansion of advanced placement courses in all core disciplines is a key strategy for increasing the participation of students, especially low-income and other disadvantaged students, in advanced placement and other challenging courses.

Since the original authorization of the Department's Advanced Placement program in 1998, funding for the program has increased from $3 million to the current appropriation of $23 million. In May 2002, low-income students took 140,571 advanced placement tests administered by the College Board, a 25 percent increase compared to 2001. While the Department is encouraged by this dramatic increase, it is important to note that, in 2002, the College Board changed the way it collects the data, and part of the increase may reflect this change. In addition, even with significant gains, there is still a significant gap between the level of participation of low-income students in advanced placement courses and tests and the level of participation of students from more affluent backgrounds.

The API program supports activities that enable greater numbers of low-income and other disadvantaged students to benefit from advanced placement courses and exams (ultimately increasing the likelihood that these students will receive college degrees) through increased access to, and participation in, pre-advanced placement and advanced placement courses. Pre-advanced placement and advanced placement teachers in the schools served by the program may participate in sustained, high-quality professional development activities designed to:

(1) Improve teacher content area knowledge;

(2) Increase utilization of research-based classroom practices that foster student achievement for low-income students; and

(3) Strengthen the alignment of pre-advanced placement and advanced placement curricula through "vertical team training" and other strategies.

In accordance with section 1705(f) of the authorizing statute, applicants approved for funding under this program will, for each advanced placement subject supported by the grant, be required to submit to the Secretary annual reports on, among other things, the number of students served by the grantee who are taking an advanced placement course in that subject; the number of advanced placement tests in that subject taken by students served by the grantee; and the number of students served by the grantee scoring at different levels on advanced placement tests in that subject. In addition, grantees must submit disaggregated data (by race, ethnicity, sex, English proficiency status, and socio-economic status) on individuals taking advanced placement courses and tests.

Absolute Priority: We have chosen the elements of the absolute priority from the authorized activities and priorities specified in sections 1705(c) and (d) of the ESEA. To implement the absolute priority, the Secretary will fund under this competition only applications from eligible applicants that meet both elements of the absolute priority.

Under section 75.105(c)(3) of EDGAR, the Secretary is establishing an absolute priority for applications that—

(1) Demonstrate an intent to carry out activities that target schools, or LEAs operating schools, with a high concentration of low-income students (if the applicant is an LEA, propose to serve schools with a high concentration of low-income students); and

(2) Propose to develop, enhance, or expand pre-advanced placement courses, in conjunction with advanced placement courses, in English, mathematics, science, and other core academic areas at the middle or high school level. Effective pre-advanced placement programs should enable low-income students to enroll and succeed in advanced placement courses and tests in core academic areas. Proposals may include vertical teams training, high-quality professional development for pre-advanced placement and advanced placement teachers, and coordination of curriculum design and development between middle and high school teachers.

Notes

(1) Pre-advanced placement courses are intended to provide middle and high school students with the higher order thinking skills, content knowledge, and study habits necessary for successful participation in advanced placement courses. Applicants should explain why the courses supported by the proposed project qualify as pre-advanced placement or advanced placement.

(2) Applicants may submit free or reduced-price lunch data in order to verify that participating schools meet this priority. For the definitions of *low-income individual* (including a list of other types of data that may be used to verify low-income status) and *high concentration of low-income students,* see the Definitions section of this notice.

Allowable Activities

Within this absolute priority, eligible entities implement programs designed to expand access for low-income individuals to pre-advanced placement and advanced placement programs through activities such as:

(1) Teacher training;

(2) Pre-advanced placement course development;

(3) Coordination and articulation between grade levels to prepare students to enter and succeed in advanced placement courses;

(4) Purchase of books and supplies;

(5) Activities to increase the availability of, and participation in, on-line advanced placement courses; and

(6) Any other activity directly related to expanding access to and participation in pre-advanced placement and advanced placement programs, particularly for low-income individuals.

Note: Applicants approved for funding under this competition may be required to attend a two-day Project Directors' meeting in Washington, DC during the first year of the grant. The cost of attending this meeting may be paid from API program grant funds or State or local resources.

Selection Criteria: The Secretary will use the following selection criteria to evaluate applications under this competition. These selection criteria apply to the absolute priority and allowable activities only. The maximum score for all of the selection criteria is 100 points. The maximum score for each criterion is indicated in parenthesis with the criterion. The criteria are as follows:

(a) *Significance* (20 points). The Secretary considers the significance of the proposed project. In determining the significance of the proposed project, the Secretary considers the following factors:

(1) The likelihood that the proposed project will result in system changes or improvements that provide greater access to pre-advanced placement and advanced placement courses and highly-trained teachers for low-income and other disadvantaged students.

(2) The importance or magnitude of the results or outcomes likely to be attained by the proposed project, especially improvements in teaching and student achievement.

(b) *Quality of the Project Design* (20 points). The Secretary considers the quality of the project design of the proposed project. In determining the quality of the project design, the Secretary considers the following factors:

(1) The extent to which the proposed project represents an exceptional approach for meeting the objectives of the program and the priorities established for the competition.

(2) The extent to which the design of the proposed project is appropriate to, and will successfully address, the needs of the target population.

(c) *Quality of Project Services* (20 points). The Secretary considers the quality of project services to be provided by the proposed project. In determining the quality of the services to be provided, the Secretary considers the quality and sufficiency of strategies for ensuring equal access and treatment for eligible project participants based on race, color, national origin, gender, age, or disability. In addition, the Secretary considers the following factors:

(1) The extent to which the services to be provided by the proposed project reflect up-to-date knowledge from research and of effective practices.

(2) The extent to which the training or professional development services to be provided by the proposed project are of sufficient quality, intensity, and duration to lead to improvements in practice among the recipients of those services.

(d) *Quality of Project Personnel* (10 points). The Secretary considers the quality of the personnel who will carry out the proposed project. In determining the quality of project personnel, the Secretary considers the following factors:

(1) The qualifications, including relevant training and experience, of the project director and other key personnel;

(2) The qualifications, including relevant training and experience, of project consultants or subcontractors, if any.

(e) *Adequacy of Resources* (5 points). The Secretary considers the adequacy of resources. In determining the adequacy

of resources for the proposed project, the Secretary considers the following factors:

(1) The adequacy of support, including facilities, equipment, supplies, and other resources, from the applicant organization.

(2) The extent to which the costs are reasonable in relation to the number of persons to be served and to the anticipated results and benefits.

(f) *Quality of the Management Plan* (10 points). The Secretary considers the quality of the management plan. In determining the quality of the management plan for the proposed project, the Secretary considers the following factors:

(1) The likelihood of the management plan to achieve the objectives of the proposed project on time and within budget, including clearly defined responsibilities, time lines, and milestones for accomplishing project tasks.

(2) The extent to which the time commitments of the project director and other key project personnel are appropriate and adequate to meet the objectives of the proposed project.

(g) *Quality of the Project Evaluation* (15 points). The Secretary considers the quality of the project evaluation. In determining the quality of the project evaluation, the Secretary considers the following factors:

(1) The extent to which the methods of evaluation include the use of objective performance measures that are clearly related to the intended outcomes of the project and will produce quantitative and qualitative data to the extent possible; and

(2) The extent to which the evaluation meets the reporting requirements of section 1705(f) of the authorizing statute.

Competitive Priorities: These priority points are in addition to any points the applicant earns under the selection criteria. The selection criteria will not be used to evaluate these priorities. The Secretary may select an application that meets a priority over an application of comparable merit that does not meet the priority. The maximum number of points an application may earn based on the priority points and the selection criteria is 145 points.

Statutory Priorities

In accordance with the requirements of section 1705(c) of the authorizing statute and section 75.105(c)(2)(i) of EDGAR, the Secretary will award applications a total of up to twenty-five (25) additional points for addressing the following statutory priorities:

(1) Up to twenty (20) points for demonstrating a pervasive need for the development of pre-advanced placement or advanced placement courses for middle or high schools where there are few or no advanced placement courses currently available; and

(2) Up to five (5) points for demonstrating one or more of the following:

- Involvement of business and community organizations in the activities assisted;
- Availability of matching funds from State, local, or other sources to pay for a portion of the cost of activities to be assisted; or
- Intent to carry out activities to increase the availability of, and participation in, on-line advanced placement courses.

Evaluation Priority

Under 34 CFR 75.105(c)(2)(i), the Secretary will award a total of up to twenty (20) additional priority points to applicants that propose to conduct evaluation activities designed to assess the effectiveness of this program in one or more areas. The project is designed to determine whether the program implemented produces meaningful effects on student achievement or teacher performance through a rigorous evaluation. The evaluation preferably uses an experimental design. For the API program, an evaluation using an experimental design is one where subjects at the school or district level are randomly assigned to receive the program being evaluated or to be in a control group that does not receive the program. Evaluations using an experimental design will receive up to twenty (20) points.

If random assignment is not feasible, the project may employ a quasi-experimental design with carefully matched comparison conditions. This alternative design attempts to approximate a randomly assigned control group by matching subjects (students, teachers, classrooms or schools) with non-participants possessing similar pre-program characteristics. Evaluations using a quasi-experimental design will receive up to fifteen (15) points.

Proposed evaluations that use neither experimental designs with random assignment nor quasi-experimental designs using matched comparison groups will receive no points under this competitive priority.

Data from reliable and valid measures of the intervention that the program intends to implement and of the outcomes that the program intends to effect should be collected before and after participation in the program or the comparison condition.

Points awarded under this priority will be determined by the quality of the proposed evaluation. In determining the quality of the evaluation, we will consider the extent to which the applicant presents a feasible, credible plan that includes:

(1) The type of design to be used (random assignment or matched comparison);

(2) Outcomes to be measured;

(3) A discussion of how schools or districts will be assigned to the program or matched for comparison with other schools or districts; and

(4) A proposed evaluator, preferably independent, with the necessary background and technical expertise to carry out the proposed evaluation.

Definitions

The following definitions and other provisions are taken from the API program authorizing statute, in Title I, Part G of the ESEA. They are repeated in this application notice for the convenience of the applicant.

As used in this section:

(a) The term *advanced placement test* means an advanced placement test administered by the College Board or approved by the Secretary.

Note: In addition to advanced placement tests administered by the College Board, the Department has approved advanced placement tests administered by the International Baccalaureate Organization. As part of the grant application process, applicants may request approval of tests from other educational entities that provide comparable programs of rigorous academic courses and testing through which students may earn college credit.

(b) The term *high concentration of low-income students,* used with respect to a school, means a school that serves a student population at least 40 percent or more of whom are low-income individuals.

(c) The term *low-income individual* means an individual who is determined by a State educational agency or local educational agency to be a child from a low-income family on the basis of data used by the Secretary to determine allocations under section 1124 of the ESEA, data on children eligible for free or reduced-price lunches under the National School Lunch Act, data on children in families receiving assistance under Part A of Title IV of the Social Security Act, or data on children eligible to receive medical assistance under the Medicaid program under title XIX of the Social Security Act, or through an alternate method that combines or extrapolates from those data.

Supplement, Not Supplant, Rule

Funds provided under this program must be used only to supplement and not supplant other non-Federal funds that are available to assist low-income individuals in paying advanced placement test fees.

Waiver of Proposed Rulemaking

In accordance with the Administrative Procedure Act (5 U.S.C. 553), it is the practice of the Secretary to offer interested parties the opportunity to comment on proposed rules that are not taken directly from the statute. Ordinarily, this practice would have applied to the rules in this notice. Section 437(d)(2) of the General Education Provisions Act (GEPA), however, exempts from this rulemaking requirement those rules where the Secretary determines that it will cause extreme hardship to the intended beneficiaries of the program affected by the regulations. The Secretary, in accordance with section 437(d)(2) of GEPA, has decided to forgo public comment with respect to the rules in this grant competition in order to ensure timely and high-quality awards. These rules will apply only to the FY 2003 grant competition.

For Applications Contact: Education Publications Center (ED Pubs), P.O. Box 1398, Jessup, MD 20794–1398. Telephone (toll free): 1–877–433–7827. FAX: (301) 470–1244. If you use a telecommunications device for the deaf (TDD) you may call (toll free): 1–877–576–7734.

You may also contact ED Pubs at its Web site: *http://www.ed.gov/pbs/edpubs.html.*

Or you may contact ED Pubs at its e-mail address: *edpubs@inet.ed.gov.*

If you request an application from ED Pubs, be sure to identify this competition as follows: CFDA number 84.330C.

FOR FURTHER INFORMATION CONTACT: Madeline E. Baggett, U.S. Department of Education, 400 Maryland Avenue, SW., room 3E228, Washington, DC 20202–6140. Telephone: (202) 260–2502 or via Internet: *madeline.baggett@ed.gov.*

If you use a telecommunications device for the deaf (TDD), you may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

Individuals with disabilities may obtain this document in an alternative format (*e.g.*, Braille, large print, audiotape, or computer diskette) on request to the program contact person listed under **FOR FURTHER INFORMATION CONTACT.**

Individuals with disabilities may obtain a copy of the application package in an alternative format by contacting that person. However, the Department is not able to reproduce in an alternative format the standard forms included in the application package.

Electronic Access to this Document

You may view this document, as well as all other Department of Education documents published in the **Federal Register**, in text or Adobe Portable Document Format (PDF) on the Internet at the following site: *http://www.ed.gov/legislation/FedRegister.*

To use PDF, you must have Adobe Acrobat Reader, which is available free at this site. If you have questions about using PDF, call the U.S. Government Printing Office (GPO), toll free, at 1–888–293–6498; or in the Washington, DC area at (202) 512–1530.

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Program Authority: 20 U.S.C. 6535–6537.

Dated: May 9, 2003.

Nina Rees,

Deputy Under Secretary for Innovation and Improvement.

[FR Doc. 03–12118 Filed 5–14–03; 8:45 am]

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Thursday,
May 15, 2003

Part IV

Department of Education

Office of Innovation and Improvement—Arts in Education Model Development and Dissemination Grant Program; Notice Inviting Applications for New Grant Awards for Fiscal Year (FY) 2003; Notice

DEPARTMENT OF EDUCATION

[CFDA No. 84.351D]

Office of Innovation and Improvement—Arts in Education Model Development and Dissemination Grant Program; Notice Inviting Applications for New Grant Awards for Fiscal Year (FY) 2003

Note to Applicants: This notice is a complete application package. Together with the statute authorizing these grants and the Education Department General Administrative Regulations (EDGAR), this notice contains all of the information, application forms, and instructions needed to apply for an Arts in Education Model Development and Dissemination grant under this competition. This grant program is authorized by Title V, Part D, Subpart 15 of the Elementary and Secondary Education Act (ESEA) as reauthorized by the No Child Left Behind Act of 2001 (NCLB).

Purpose of Program: The Arts in Education Model Development and Dissemination Grant Program supports the development, documentation, evaluation and dissemination of innovative, cohesive models that have demonstrated their effectiveness in (1) integrating arts into the core elementary and middle school curricula, (2) strengthening arts instruction in these grades, and (3) improving students' academic performance, including their skills in creating, performing, and responding to the arts.

The Arts in Education Model Development and Dissemination Grant Program provides resources that local educational agencies (LEAs) and other eligible applicants can use in pursuit of the objectives of the No Child Left Behind Act which aims for all elementary and secondary students to achieve high standards. This program provides an opportunity for eligible entities to develop programs in schools identified for improvement, corrective action, or restructuring under Title I, Part A of the ESEA.

Eligible Applicants: (1) One or more LEAs, including charter schools that are considered LEAs under State law and regulations, that may work in partnership with one or more of the following:

- State or local non-profit or governmental arts organizations.
- State educational agencies (SEAs) or regional educational service agencies.
- Institutions of higher education.
- Other public and private agencies, institutions, and organizations with expertise in the arts.

(2) One or more State or local non-profit or governmental arts organizations that must work in partnership with one or more LEAs and may partner with one or more of the following:

- SEAs or regional educational service agencies.
- Institutions of higher education.
- Other public and private agencies, institutions, and organizations with expertise in the arts.

Note: If more than one LEA or arts organization wishes to form a consortium and jointly submit a single application, they must follow the procedures for group applications described in 34 CFR 75.127–75.129 of EDGAR.

Notification of Intent to Apply for Funding: The Department will be able to develop a more efficient process for reviewing grant applications if it has an estimate of the number of entities that intend to apply for funding under this competition. Therefore, the Secretary strongly encourages each potential applicant to notify the Department with a short e-mail noting the intent to submit an application for funding. The e-mail need not include information regarding the content of the proposed application, only the applicant's intent to submit it. The Secretary requests that this e-mail notification be sent no later than June 16, 2003. The e-mail notification should be sent to *Diane.Austin@ed.gov.* Applicants that fail to provide this e-mail notification may still apply for funding.

Deadline for Transmittal of Applications: 7–10–03.

Deadline for Intergovernmental Review: 9–8–03.

Estimated Available Funds: $8,360,300.

Estimated Range of Awards: $293,000–$836,000 (total for the 3-year project period. Funding of continuation awards after the initial year of funding is contingent upon future Congressional appropriations for the program).

Estimated Average Size of Awards: 750,000 total for the 3-year project period; equates to an average of $250,000 per year.

Estimated Number of Awards: 33.

Note: The Department of Education is not bound by any estimates in this notice.

Project Period: Up to 36 months.

Note: Applicants for multi-year awards are required to provide detailed budget information for the total grant period requested. The Secretary will determine at the time of the initial award the funding levels for each year of the grant award.

Project Directors Meeting. Applicants should budget for a two-day meeting for project directors in Washington, DC.

Applicable Regulations and Statute: (a) *Regulations.* EDGAR in 34 CFR Parts 75, 77, 79, 80, 81, 82, 85, 86, 97, 98, and 99. (b) *Statute.* Title V, Part D, Subpart 15, of the Elementary and Secondary Education Act as reauthorized by the No Child Left Behind Act of 2001.

Coordination Requirement: Under section 5551(f)(1) of the ESEA, the Secretary requires that each entity funded under this program coordinate, to the extent practicable, each project or program carried out with such assistance with appropriate activities of public or private cultural agencies, institutions, and organizations, including museums, arts education association, libraries and theaters.

Supplement, Not Supplant, Requirement: Under section 5551(f)(2) of the authorizing statute, the Secretary requires that assistance provided under this program be used only to supplement, and not supplant, other assistance or funds made available from non-federal sources for the activities assisted under this subpart.

SUPPLEMENTARY INFORMATION: While many schools and districts have moved swiftly in recent years to reform and enhance traditional core academic programs, most have not made similar efforts to integrate arts effectively into the regular curriculum, either as a vehicle by which to strengthen other core academic subjects or as an academic discipline in its own right. High-quality programs effectively integrating and improving arts instruction are increasingly important as students face the demands of the information age in the 21st century. Creating, performing, and responding to works of art builds creativity, self-confidence, and critical thinking skills—qualities central to success in school, work, and life.

For several reasons, high-quality arts and art education programs have implications for other areas of students' academic development. Studies have found that improving the quality of arts education has a particularly positive impact on students from low-income backgrounds. Unfortunately, students from low socioeconomic backgrounds are almost twice as likely to attend arts-poor schools, while students from socio-economically advantaged backgrounds are twice as likely to attend "arts-rich" schools.

The Arts in Education Model Development and Dissemination Grant Program seeks to address the lack of high quality, research-based models by encouraging partnerships of arts and education specialists to further develop and document effective models for improving arts education and student achievement—particularly for students from poor and disadvantaged backgrounds.

Description of Program: The Arts in Education Model Development and Dissemination Grant program is authorized under section 5551, Part D, Subpart 15 of Title V of the ESEA. The Arts in Education Model Development and Dissemination Grant program furthers the development of promising comprehensive models for integrating arts into the school curriculum. In this case, "integrating" should be understood as both strengthening the use of high-quality arts within other academic instruction and strengthening the place of arts as a core academic subject in the regular school curriculum.

This program seeks to provide more communities with solid information regarding innovative, research-based models for effectively strengthening arts instruction, improving students' skills in creating, performing, and responding to works of arts, and increasing student achievement in other academic subjects.

These grants are designed to enable LEAs and organizations with arts expertise to further develop and create materials for the replication or adaptation of current comprehensive approaches for integrating a range of arts disciplines—such as music, dance, theater, and visual arts, including folk arts—into the elementary and middle school curriculum. Such development work should yield more systematic information about effective models that provide quality arts instruction and use the arts to enhance instruction in other core academic subjects.

Use of funds may include, but are not limited to all of the following activities:

- Field testing and evaluating nascent educational strategies;
- Field testing and evaluating model in-service and pre-service professional development programs for arts educators and other instructional staff;
- Ensuring comprehensive coverage of the arts disciplines—such as visual arts, dance, music, and theater, including the folk arts;
- Developing partnerships among schools, arts organizations, and others with expertise in the arts to combine resources and enhance the quality and sustainability of effective programming;
- Creating materials documenting the implementation and achievement of the model program for other educators and agencies; and
- Obtaining the services of outside experts in the implementation and assessment of the model. (This might include assistance in such areas as curriculum development, implementation strategies, data collection, evaluation design, or other appropriate activities.)

Application Requirements

To be eligible for Arts in Education Model Development and Dissemination funds, applicants must propose to—

(1) Further the development of programs designed to improve or expand the integration of arts education in elementary or middle school curricula;

(2) Develop materials designed to help replicate or adapt the program;

(3) Document the program's outcomes and benefits; and

(4) Develop products and services that can be used to replicate the program in other settings.

Grant applications must describe an existing set of strategies for integrating the arts into the regular elementary and middle school curriculum. These strategies would then be successfully implemented, expanded, documented, evaluated, and disseminated. Taken together, these strategies and methods must comprise a research-based, comprehensive arts in education model that—

- Is based, to the extent possible, on the most rigorous theory, research, and evaluation available, and is effective in improving student achievement and performance and other program objectives;
- Is linked to State and national standards enabling all students to meet challenging expectations, and to improving student and school performance;
- Has the potential to improve students' achievement both in creating, performing, and responding to works of art and in other core academic subjects;
- Demonstrates the feasibility of further replication and dissemination;
- Is applicable to a broad range of high-poverty and disadvantaged, rural and urban schools, including those that are chronically low-performing;
- Makes effective use of technology to further the model's goals;
- Describes methods by which the applicant will assess the model's outcomes; and
- Describes activities that, to the extent possible, coordinate model development with relevant activities of public and private cultural agencies, institutions, and organizations, such as museums, arts education associations, libraries, and theaters. (20 U.S.C. 7271 (f)(1))

In addition to any dissemination work in which the applicants choose to engage, the Department intends to take the products and information resulting from these demonstration grants and share them widely with other communities. Upon completion of the project, the Department requires that any materials or products developed as a part of model development activities be provided to the Department for further dissemination. Such activities will be carried out in full compliance with copyright requirements.

Priorities: Under 34 CFR 75.105(c)(3) we consider only applications that meet the following absolute priority.

Absolute Priority: The Secretary will only fund applications from eligible applicants that propose to work with at least one elementary and/or middle school with no less than 35 percent of its students from low-income families based on poverty criteria set out in Title I, section 1113(a)(5) of the ESEA, and that propose projects that meet all of the requirements described under APPLICATION REQUIREMENTS.

Competitive Priorities: This competition focuses on projects designed to meet the following priorities. Under 34 CFR 75.105(c)(2)(i), we award up to an additional 25 points depending on how well the application meets the priorities. These points are in addition to any points the application earns under the selection criteria.

Competitive Priority 1—Projects in rural or inner-city communities: The Secretary will award five (5) points to projects proposing models that involve schools in rural or inner-city communities.

Competitive Priority 2—Research-based evaluation: The project is designed to determine, through a rigorous evaluation, whether the implemented program produces meaningful effects on student achievement or teacher performance. Evaluations using an experimental design are best for determining program effectiveness. Thus, the project preferably uses an experimental design under which participants—that is, students, teachers, classrooms, or schools—are randomly assigned (a) to receive the program being evaluated or (b) to be in a control group that does not receive the program. Evaluations using an experimental design will receive up to 20 points in addition to any points the application earns under the selection criteria.

If random assignment is not feasible, the project may use a quasi-experimental design with carefully matched comparison conditions. This alternative design attempts to approximate a randomly assigned control group by matching program participants-that is, students, teachers, classrooms or schools—with non-participants having similar pre-program

characteristics. Evaluations of this type will receive up to 15 points in addition to any points the application earns under the selection criteria.

Proposed evaluations that use neither experimental designs with random assignment nor quasi-experimental designs using a matched comparison group will receive 0 points under this competitive preference priority.

Before and after participation in the program or the comparison condition, the project evaluator should collect—before the program commences and after it ends—valid and reliable data that measure the impact of participation in the program or in the comparison group.

We determine points under this priority by the quality of the proposed evaluation. We will consider the extent to which the applicant presents a feasible, credible plan that includes the following:

- The type of design to be used (that is, random assignment or matched comparison).
- Outcomes to be measured.
- A discussion of how the applicant plans to assign students, teachers, classrooms, or schools to the program or match them for comparison with other students, teachers, classrooms, or schools.
- A proposed evaluator, preferably independent, with the necessary background and technical expertise to carry out the proposed evaluation.

Definitions: In addition to definitions in the statute and EDGAR, the following definitions apply:

Inner-City Community, for the purpose of this program, is any place that fits code 1, 2 or 3 of the National Center for Educational Statistics (NCES) locale codes. The locale codes are:

1. Central city of a Consolidated Metropolitan Statistical Area (CMSA) or Metropolitan Statistical Area (MSA) with population of 250,000 or more or a population.
2. Central city of a CMSA or MSA but not designated as a large central city.
3. Place within the CMSA or MSA of a large central city.
4. Place within the CMSA or MSA of a mid-size central city.
5. Place not within a CMSA or MSA but with population of 25,000 or more and defined as urban.
6. Place not within a CMSA or MSA with a population of at least 2,500 but less than 25,000.
7. Place not within a CMSA or MSA and designated as rural.
8. Place within a CMSA or MSA designated as rural (this code not available prior to 1998).

Research-based, when used with respect to an activity or a program, means that, to the extent possible, the activity or program is based on the most rigorous theory, research, and evaluation available and is effective in improving student achievement and performance and other program objectives.

Rural, for the purpose of this program, is any place that fits 6, 7 or 8 of the NCES locale codes. Please see the list under the definition of Inner-City Community.

Waiver of Proposed Rulemaking: In accordance with the Administrative Procedure Act (5 U.S.C. 553), it is the practice of the Secretary to offer interested parties the opportunity to comment on proposed rules. Section 437(d)(1) of the General Education Provisions Act (GEPA), however, allows the Secretary to exempt from rulemaking requirements rules governing the first grant competition under a new or substantially revised program authority (20 U.S.C. section 1232(d)(1)). This program is the first Model Arts competition under the program as reauthorized by Public Law 107–100, the No Child Left Behind Act of 2001, and therefore qualifies for this exemption. The Secretary, in accordance with section 437(d)(1) of GEPA has decided to forego public comment in order to ensure timely grant awards. These rules will apply for the FY 2003 competition only.

Selection Criteria: The Secretary uses the following selection criteria to evaluate applications for grants under this competition. In all instances where the word "project" appears in the selection criteria, the reference to an Arts in Education Model Development and Dissemination grant program should be made.

The maximum composite score for all of these criteria is 100 points. The maximum score an applicant may receive is 125 if they fully meet both of the competitive priorities.

The maximum score for each criterion is indicated in parentheses. Within each criterion, the Secretary evaluates each factor equally.

(a) *Need for project.* (10 points)

In determining the need for the proposed project, the Secretary considers the following factors:

(i) The extent to which the model addresses specific needs of students at risk of educational failure.

(ii) The extent to which specific gaps, weaknesses, or opportunities have been identified in effectively integrating arts into the core curricula, strengthening arts instruction and improving students' academic performance, including skills in creating, performing, and responding to the arts. Also, the nature and magnitude of those gaps or weaknesses and the degree to which they will be addressed by the proposed model.

(b) *Significance.* (20 points)

In determining the significance of the proposed project, the Secretary considers the following factors:

(i) The potential contribution of the proposed project to increased knowledge or understanding of effective strategies for strengthening the use of high-quality arts in the course of other academic instruction and/or strengthening the place of arts as a core academic subject in the regular school curricula.

(ii) The likely utility and replicability of the proposed model and the extent to which its products (including information, materials, processes, or techniques) will be effective in a variety of settings.

(c) *Quality of the project design.* (30 points)

In determining the quality of the design of the proposed project, the Secretary considers the following factors:

(i) The extent to which the goals, objectives, and outcomes to be achieved over the proposed project period are clearly specified and measurable.

(ii) The extent to which the proposed model is based on reliable research, effective practice, and/or coherent theory as a means for strengthening the use of high-quality arts in the course of other academic instruction and/or strengthening the place of arts as a core academic subject in the regular school curricula.

(iii) The extent to which the proposed model aims to strengthen the academic performance of students in creating, performing, and responding to the arts, and in the rest of the core curriculum.

(iv) The extent to which the project will document and evaluate the success of the model and disseminate relevant information.

(d) *Quality of the management plan.* (15 points)

In determining the quality of the management plan for the proposed project, the Secretary considers the following factors:

(i) The adequacy of the management plan to achieve the objectives of the proposed project on time and within budget, including clearly defined responsibilities, relevant contributions and commitment from partners, timelines, continuous improvement strategies, and milestones for accomplishing project tasks.

(ii) The qualifications, including relevant training and experience of key project personnel, major partners, project consultants, and/or subcontractors.

(e) *Quality of the project evaluation.* (25 points)

In determining the quality of the evaluation, the Secretary considers the following factors:

(i) The extent to which the methods of evaluation are rigorous, thorough, feasible, and appropriate to the goals, objectives, and outcomes of the proposed project.

(ii) The extent to which the methods of evaluation include the use of objective performance measures that are clearly related to the intended outcomes of the project and will produce quantitative and qualitative data on the results of the program.

(iii) The extent to which the evaluation will provide guidance about effective strategies suitable for replication or testing in other settings.

Intergovernmental Review of Federal Programs

This program is subject to Executive Order 12372 (Intergovernmental Review of Federal Programs) and the regulations in 34 CFR Part 79.

One of the objectives of the Executive order is to foster an intergovernmental partnership and a strengthened federalism. The Executive order relies on processes developed by State and local governments for coordination and review of proposed Federal financial assistance.

If you are an applicant, you must contact the appropriate State Single Point of Contact (SPOC) to find out about, and to comply with, the State's process under Executive Order 12372. If you propose to perform activities in more than one State, you should immediately contact the SPOC for each of those States and follow the procedure established in each State under the Executive order. If you want to know the name and address of any SPOC, see the latest official SPOC list on the Web site of the Office of Management and Budget at the following address: *http://www.whitehouse.gov/omb/grants/spoc.html.* In States that have not established a process or chosen a program for review, State, areawide, regional, and local entities may submit comments directly to the Department.

Any State Process Recommendation and other comments submitted by a SPOC and any comments from State, areawide, regional, and local entities must be mailed or hand-delivered by the date indicated in this application notice to the following address: The Secretary, E.O. 12372–CFDA #84.351D, U.S. Department of Education, room 7E200, 400 Maryland Avenue, SW., Washington, DC 20202–0125.

We will determine proof of mailing under 34 CFR 75.102 (Deadline date for applications). Recommendations or comments may be hand-delivered until 4:30 p.m. (Washington, DC time) on the date indicated in this notice.

Please note that this address is not the same address as the one to which an applicant submits its completed application. Do not send applications to the above address.

Application Instructions and Forms

The Appendix to this notice contains forms and instructions, a statement regarding estimated public reporting burden, a notice to applicants regarding compliance with section 427 of the General Education Provisions Act, and various assurances and certifications. Please organize the parts and additional materials in the following order:

- Application for Federal Education Assistance (ED 424 (Exp. 11/30/2004)) and instructions and definitions.
- Protection of Human Subjects in Research (Attachment to ED 424).
- Budget Information—Non-Construction Programs (ED Form No. 524) and instructions.
- Application Narrative.
- Assurances—Non-Construction Programs (Standard Form 424B) (Rev. 7–97).
- Certifications regarding Lobbying; Debarment, Suspension, and Other Responsibility Matters; and Drug-Free Workplace Requirements (ED 80–0013, 12/98) and instructions.
- Certification regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion: Lower Tier Covered Transactions (ED 80–0014, 9/90) and instructions. (NOTE: ED 80–0014 is intended for the use of grantees and should not be transmitted to the Department.)
- Certification of Eligibility for Federal Assistance in Certain Programs (ED 80–0016 9/92)).
- Disclosure of Lobbying Activities (Standard Form LLL (Rev. 7–97)) and instructions.
- Survey on Ensuring Equal Opportunity for Applicants and survey instructions.

You may submit information on a photocopy of the application and budget forms, the assurances, and the certifications. However, the application form, the assurances, and the certifications must each have an original signature. We will not award a grant unless we have received a completed application form.

Individuals with disabilities may obtain this document in an alternative format (*e.g.,* Braille, large print, audiotape, or computer diskette) on request to the program contact person listed under **FOR FURTHER INFORMATION CONTACT**. However, the Department is not able to reproduce in an alternative format the standard forms included in this application notice.

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To use PDF you must have Adobe Acrobat Reader, which is available free at this site. If you have questions about using PDF, call the U.S. Government Printing Office (GPO), toll free, at 1–888–293–6498; or in the Washington, DC, area at (202) 512–1530.

Note: The official version of this document is the document published in the **Federal Register**. Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available on GPO Access at: *http://www.access.gpo.gov/nara/index.html.*

FOR FURTHER INFORMATION CONTACT: Diane Austin, U.S. Department of Education, 400 Maryland Avenue, SW., Washington, DC 20202–6140. Telephone: (202) 260–1280 or via Internet: *diane.austin@ed.gov.*

If you use a telecommunications device for the deaf (TDD), you may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

Application Procedures

The Government Paperwork Elimination Act (GPEA) of 1998, (Pub. L. 105–277) and the Federal Financial Assistance Management Improvement Act of 1999, (Pub. L. 106–107) encourage us to undertake initiatives to improve our grant processes. Enhancing the ability of individuals and entities to conduct business with us electronically is a major part of our response to these Acts. Therefore, we are taking steps to adopt the Internet as our chief means of conducting transactions in order to improve services to our customers and to simplify and expedite our business processes.

We are requiring that applications for grants for FY 2003 under the Arts in Education Model Development and Dissemination Grant program (CFDA #84.351D) be submitted electronically using e-Application available through the Department of Education's e-GRANTS system. The e-GRANTS system is accessible through its portal page at: *http://e-grants.ed.gov.*

Applicants who are unable to submit an application through the e-GRANTS system may apply for a waiver to the electronic submission requirement. To apply for a waiver, applicants must explain the reason or reasons that prevent them from using the Internet to submit their applications. The reasons must be outlined in a letter addressed to: Diane Austin, U.S. Department of Education, 400 Maryland Avenue, SW., room 3C124, Washington, DC 20202–6140. We must receive your letter no later than two weeks before the deadline for transmittal of applications.

Any application that receives a waiver to the electronic submission requirement will be given the same consideration in the review process as an electronic application.

Pilot Project for Electronic Submission of Applications

In FY 2003, the U.S. Department of Education is continuing to expand its pilot project for electronic submission of applications to include additional formula grant programs and additional discretionary grant competitions. The Arts in Education Model Development and Dissemination Grant program (CFDA #84.351D) is one of the programs included in the pilot project. If you are an applicant under the Arts in Education Model Development and Dissemination Grant program, you must submit your application to us in electronic format or receive a waiver.

The pilot project involves the use of the Electronic Grant Application System (e-Application) Users of e-Application will be entering data on-line while completing their applications. You may not e-mail a soft copy of a grant application to us. The data you enter on-line will be saved into a database. We request your participation in e-Application. We shall continue to evaluate its success and solicit suggestions for improvement.

In submitting an electronic application, please note the following:

- You will not receive any additional point value because you submit a grant application in electronic format, nor will we penalize you if you submit an application in paper format. (**Note:** We accept your submission of an application in paper format only if we have granted you a waiver as described in the preceding section of this notice.)
- When you enter the e-Application system, you will find information about its hours of operation.
- You must submit all documents electronically, including the Application for Federal Education Assistance (ED 424), Budget Information—Non-Construction Programs (ED 524), and all necessary assurances and certifications.
- After you electronically submit your application, you will receive an automatic acknowledgement, which will include a PR/Award number (an identifying number unique to your application).
- Within three working days after submitting your electronic application, fax a signed copy of the Application for Federal Education Assistance (ED 424) to the Application Control Center after following these steps:

1. Print ED 424 from the e-Application system.

2. The institution's Authorizing Representative must sign this form.

3. Place the PR/Award number in the upper right hand corner of the hard copy signature page of the ED 424.

4. Fax the signed ED 424 to the Application Control Center at (202) 260–1349.

- We may request that you give us original signatures on all other forms at a later date.
- *Closing Date Extension in Case of System Unavailability:* If you are prevented from submitting your application on the closing date because the e-Application system is unavailable, we will grant you an extension of one business day in order to transmit your application electronically, by mail, or by hand delivery. For us to grant this extension—

1. You must be a registered user of e-Application, and have initiated an e-Application for this competition; and

2. (a) The e-Application system must be unavailable for 60 minutes or more between the hours of 8:30 a.m. and 3:30 p.m., Washington, DC time, on the deadline date; or

(b) The e-Application system must be unavailable for any period of time during the last hour of operation (that is, for any period of time between 3:30 and 4:30 p.m., Washington, DC time) on the deadline date.

The Department must acknowledge and confirm these periods of unavailability before granting you an extension. To request this extension you must contact either (1) the person listed elsewhere in this notice under **FOR FURTHER INFORMATION CONTACT** or (2) the e-GRANTS help desk at 1–888–336–8930.

We have included additional information about the e-Application pilot project (see Parity Guidelines between Paper and Electronic Applications) elsewhere in this notice.

Instructions for Transmitting Applications

If you want to apply for a grant and be considered for funding, you must meet these deadline requirements:

- If you apply for and we grant you a waiver from the electronic submission requirement, you must follow the transmittal instructions under (A) If You Send Your Application by Mail or (B) If You Deliver Your Application by Hand.
- Otherwise, you must follow the transmittal instructions under (C) If You Submit Your Application Electronically.

(A) *If You Send Your Application by Mail:* You must mail the original and two copies of the application on or before the deadline date. One copy of the application should be unbound and suitable for photocopying. To expedite our review of your application, we would appreciate you voluntarily including an additional three copies of your application. We will not penalize applicants who do not provide additional copies. Mail your application to: U.S. Department of Education, Application Control Center, Attention: CFDA #84.351D, 7th & D Streets, SW., Room 3671, Regional Office Building 3, Washington, DC 20202–4725.

You must show one of the following as proof of mailing:

(1) A legibly dated U.S. Postal Service postmark.

(2) A legible mail receipt with the date of mailing stamped by the U.S. Postal Service.

(3) A dated shipping label, invoice, or receipt from a commercial carrier.

(4) Any other proof of mailing acceptable to the Secretary.

If you mail an application through the U.S. Postal Service, we do not accept either of the following as proof of mailing:

(1) A private metered postmark.

(2) A mail receipt that is not dated by the U.S. Postal Service.

(B) *If You Deliver Your Application by Hand:* You or your courier must hand deliver the original and two copies of the application by 4:30 p.m. (Washington, DC time) on or before the deadline date. One copy of the application should be unbound and suitable for photocopying. To expedite our review of your application, we would appreciate you voluntarily including an additional three copies of your application. We will not penalize applicants who do not provide additional copies. Deliver your application to: U.S. Department of Education, Application Control Center, Attention: CFDA #84.351D, 7th & D Streets, SW., Room 3671, Regional Office Building 3, Washington, DC 20202–4725.

The Application Control Center accepts application deliveries daily between 8 a.m. and 4:30 p.m. (Washington, DC time), except Saturdays, Sundays, and Federal holidays. The Center accepts application deliveries through the D Street entrance only. A person delivering an application must show identification to enter the building.

(C) *If You Submit Your Application Electronically:* You must submit your grant application through the Internet using the software provided on the e-Grants Web site (*http://e-grants.ed.gov*) by 4:30 p.m. (Washington, DC time) on the deadline date.

The regular hours of operation of the e-Grants Web site are 6 a.m. Monday until 7 p.m. Wednesday; and 6 a.m. Thursday until midnight Saturday (Washington, DC time). The system is unavailable on Sunday and Federal holidays and is closed for maintenance at 7 p.m. (Washington, DC time) on Wednesday.

Notes

(1) The U.S. Postal Service does not uniformly provide a dated postmark. Before relying on this method, you should check with your local post office.

(2) If you send your application by mail or if you or your courier deliver it by hand, the Application Control Center will mail a Grant Application Receipt Acknowledgment to you. If you do not receive the notification of application receipt within 15 days from the date of mailing the application, you should call the U.S. Department of Education Application Control Center at (202) 708–9493.

(3) If your application is late, we will notify you that we will not consider the application.

(4) You must indicate on the envelope and—if not provided by the Department—in Item 4 of the Application for Federal Education Assistance (ED 424 (exp. 11/30/2004)) the CFDA number—and suffix letter, if any—of the competition under which you are submitting your application.

(5) If you submit your application through the Internet via the e-Grants Web site, you will receive an automatic acknowledgment when we receive your application.

Parity Guidelines Between Paper and Electronic Applications

In FY 2003, the U.S. Department of Education is continuing to expand the pilot project that allows applicants to use an Internet-based electronic system for submitting applications. This competition is among those that provide for the electronic submission of applications by all applicants. Under this system, called e-APPLICATION, an applicant submits a grant application to us electronically, using a current version of the applicant's Internet browser. To see e-APPLICATION visit the following address: *http://e-grants.ed.gov*.

Users of e-APPLICATION, a data driven system, will be entering data on-line while completing their applications. This will be more interactive than just e-mailing a soft copy of a grant application to us. If you submit an application electronically, the data you enter on-line will go into a database and ultimately will be accessible in electronic form to our reviewers.

This pilot project continues the Department's transition to an electronic grant award process. In addition to e-APPLICATION, the Department plans to expand the number of discretionary programs using the electronic peer review (e-READER) system and to increase the participation of discretionary programs offering grantees the use of the electronic annual performance reporting (e-REPORTS) system.

Because this competition mandates the filing of electronic applications, the following guidelines apply only if—as described elsewhere in this notice—we have granted you a waiver to submit an application in paper format.

To help ensure parity and a similar look between electronic and paper copies of grant applications, we are asking each applicant that submits a paper application to adhere to the following guidelines:

- Submit your application on 8½″ by 11″ paper.
- Leave a 1-inch margin on all sides.
- Use consistent font throughout your document. You may also use boldface type, underlining, and italics. However, please do not use colored text.
- Please use black and white, also, for illustrations, including charts, tables, graphs and pictures.
- For the narrative component, your application should consist of the number and text of each selection criterion followed by the narrative. The text of the selection criterion, if included, does not count against any page limitation.
- Place a page number at the bottom right of each page beginning with 1, and number your pages consecutively throughout your document.

Program Authority: 20 U.S.C. 7271 *et seq.*

Dated: May 9, 2003.

Nina S. Rees,

Deputy Under Secretary for Innovation and Improvement.

Appendix

Instructions for Estimated Public Reporting Burden

According to the Paperwork Reduction Act of 1995, you are not required to respond to a collection of information unless it displays a valid OMB control number. The valid OMB control number for this collection of information is 1855–0006. Expiration date: May 31, 2004. We estimate the time required to complete this collection of information to average 60 hours per response, including the time to review instructions, search existing data sources, gather the data needed, and complete and review the collection of information. If you have any comments concerning the accuracy of the time estimate or suggestions for improving this form, please write to: U.S. Department of Education, 400 Maryland Avenue, SW., Washington, DC 20202–4651.

If you have comments or concerns regarding the status of your submission of this form, write directly to: Diane Austin, U.S. Department of Education, 400 Maryland Avenue, SW., Washington, DC 20202–6140.

Instructions for Application Narrative

Before preparing the Application Narrative you should read carefully the description of the program, the information regarding priorities, and the selection criteria we use to evaluate applications.

The narrative should—

1. Begin with an abstract; that is, a summary of your proposed project;

2. Describe your proposed project in light of each of the selection criteria in the order in which we list the criteria in this notice;

3. List each function or activity for which you are requesting funds; and

4. Include any other pertinent information that might assist us in reviewing your application. When applying for funds as a consortium, individual eligible applicants must enter into an agreement signed by all members. The consortium's agreement must detail the activities each member of the consortium plans to perform, and must bind each member to every statement and assurance made in the consortium's application. The designated applicant must submit the consortium's agreement with its application.

Note: The section on PAGE LIMIT elsewhere in this application notice applies to your application.

Instructions for Budget Narrative

The budget should reflect costs that are reasonable and necessary for administration, and for developing and implementing activities described in the narrative. Complete ED Form 524 Section A—Budget Summary U.S. Department of Education Funds to indicate funds requested for the 36-month project period. Complete ED Form Section B—Non-Federal Funds to indicate support from other public or private United States sources.

Fill in columns (a) Project Year 1; (b) Project Year 2; Project Year 3; and (f) Total. In addition to ED Form 524, applicants must attach budget detail pages that itemize and explain the costs requested for each budget category for each year of the project. The budget forms and budget detail pages are not included in the page limit.

Note: Successful applicants will be expected to report annually on the progress of each project or study included in the grant.

including a description of preliminary or key findings and an explanation of any changes in goals, objectives, methodology, or planned products or publications.

BILLING CODE 4000-01-P

OMB Control No. 1890-0007 (Exp. 09/30/2004)

NOTICE TO ALL APPLICANTS

The purpose of this enclosure is to inform you about a new provision in the Department of Education's General Education Provisions Act (GEPA) that applies to applicants for new grant awards under Department programs. This provision is Section 427 of GEPA, enacted as part of the Improving America's Schools Act of 1994 (Public Law (P.L.) 103-382).

To Whom Does This Provision Apply?

Section 427 of GEPA affects applicants for new grant awards under this program. **ALL APPLICANTS FOR NEW AWARDS MUST INCLUDE INFORMATION IN THEIR APPLICATIONS TO ADDRESS THIS NEW PROVISION IN ORDER TO RECEIVE FUNDING UNDER THIS PROGRAM.**

(If this program is a State-formula grant program, a State needs to provide this description only for projects or activities that it carries out with funds reserved for State-level uses. In addition, local school districts or other eligible applicants that apply to the State for funding need to provide this description in their applications to the State for funding. The State would be responsible for ensuring that the school district or other local entity has submitted a sufficient section 427 statement as described below.)

What Does This Provision Require?

Section 427 requires each applicant for funds (other than an individual person) to include in its application a description of the steps the applicant proposes to take to ensure equitable access to, and participation in, its Federally-assisted program for students, teachers, and other program beneficiaries with special needs. This provision allows applicants discretion in developing the required description. The statute highlights six types of barriers that can impede equitable access or participation: gender, race, national origin, color, disability, or age. Based on local circumstances, you should determine whether these or other barriers may prevent your students, teachers, etc. from such access or participation in, the Federally-funded project or activity. The description in your application of steps to be taken to overcome these barriers need not be lengthy; you may provide a clear and succinct description of how you plan to address those barriers that are applicable to your circumstances. In addition, the information may be provided in a single narrative, or, if appropriate, may be discussed in connection with related topics in the application.

Section 427 is not intended to duplicate the requirements of civil rights statutes, but rather to ensure that, in designing their projects, applicants for Federal funds address equity concerns that may affect the ability of certain potential beneficiaries to fully participate in the project and to achieve to high standards. Consistent with program requirements and its approved application, an applicant may use the Federal funds awarded to it to eliminate barriers it identifies.

What are Examples of How an Applicant Might Satisfy the Requirement of This Provision?

The following examples may help illustrate how an applicant may comply with Section 427.

(1) An applicant that proposes to carry out an adult literacy project serving, among others, adults with limited English proficiency, might describe in its application how it intends to distribute a brochure about the proposed project to such potential participants in their native language.

(2) An applicant that proposes to develop instructional materials for classroom use might describe how it will make the materials available on audio tape or in braille for students who are blind.

(3) An applicant that proposes to carry out a model science program for secondary students and is concerned that girls may be less likely than boys to enroll in the course, might indicate how it intends to conduct "outreach" efforts to girls, to encourage their enrollment.

We recognize that many applicants may already be implementing effective steps to ensure equity of access and participation in their grant programs, and we appreciate your cooperation in responding to the requirements of this provision.

Estimated Burden Statement for GEPA Requirements

According to the Paperwork Reduction Act of 1995, no persons are required to respond to a collection of information unless such collection displays a valid OMB control number. The valid OMB control number for this information collection is **1890-0007.** The time required to complete this information collection is estimated to average 1.5 hours per response, including the time to review instructions, search existing data resources, gather the data needed, and complete and review the information collection. **If you have any comments concerning the accuracy of the time estimate(s) or suggestions for improving this form, please write to:** Director, Grants Policy and Oversight Staff, U.S. Department of Education, 400 Maryland Avenue, SW (Room 3652, GSA Regional Office Building No. 3), Washington, DC 20202-4248.

Application for Federal Education Assistance (ED 424)

U.S. Department of Education
Form Approved
OMB No. 1875-0106
Exp. 11/30/2004

Applicant Information

1. Name and Address
Legal Name: _____
Address: _____
_____
City _____ State _____ County _____ ZIP Code + 4 _____

Organizational Unit

2. Applicant's D-U-N-S Number

3. Applicant's T-I-N

4. Catalog of Federal Domestic Assistance #: 8 4 3 5 1 D
Title: Arts in Education Model Development and Dissemination Grant Program

5. Project Director: _____
Address: _____
City _____ State _____ ZIP Code + 4 _____
Tel. #: _____ Fax #: _____
E-Mail Address: _____

6. Novice Applicant ☐ Yes ☐ No

7. Is the applicant delinquent on any Federal debt? ☐ Yes ☐ No
(If "Yes," attach an explanation.)

8. Type of Applicant (Enter appropriate letter in the box.)

A State
B Local
C Special District
D Indian Tribe
E Individual
F Independent School District
G Public College or University
H Private, Non-Profit College or University
I Non-Profit Organization
J Private, Profit-Making Organization
K Other (Specify):

Application Information

9. Type of Submission:
—PreApplication ☐ Construction ☐ Non-Construction
—Application ☐ Construction ☐ Non-Construction

10. Is application subject to review by Executive Order 12372 process?
☐ Yes (Date made available to the Executive Order 12372 process for review): _____
☐ No (If "No," check appropriate box below.)
☐ Program is not covered by E.O. 12372.
☐ Program has not been selected by State for review.

11. Proposed Project Dates: Start Date: _____ End Date: _____

12. Are any research activities involving human subjects planned at any time during the proposed project period?
☐ Yes (Go to 12a.) ☐ No (Go to item 13.)

12a. Are all the research activities proposed designated to be exempt from the regulations?
☐ Yes (Provide Exemption(s) #): _____
☐ No (Provide Assurance #): _____

13. Descriptive Title of Applicant's Project:

Estimated Funding

14a. Federal	$	.00
b. Applicant	$	.00
c. State	$	.00
d. Local	$	.00
e. Other	$	.00
f. Program Income	$	.00
g. TOTAL	$	0.00

Authorized Representative Information

15. To the best of my knowledge and belief, all data in this preapplication/application are true and correct. The document has been duly authorized by the governing body of the applicant and the applicant will comply with the attached assurances if the assistance is awarded.

a. Authorized Representative (Please type or print name clearly.)

b. Title

c. Tel. #: _____ Fax #: _____

d. E-Mail Address:

e. Signature of Authorized Representative _____ Date: _____

Instructions for ED 424

1. Legal Name and Address. Enter the legal name of applicant and the name of the primary organizational unit which will undertake the assistance activity.

2. D-U-N-S Number. Enter the applicant's D-U-N-S Number. If your organization does not have a D-U-N-S Number, you can obtain the number by calling 1-800-333-0505 or by completing a D-U-N-S Number Request Form. The form can be obtained via the Internet at the following URL: http://www.dnb.com.

3. Tax Identification Number. Enter the taxpayer's identification number as assigned by the Internal Revenue Service.

4. Catalog of Federal Domestic Assistance (CFDA) Number. Enter the CFDA number and title of the program under which assistance is requested. The CFDA number can be found in the federal register notice and the application package.

5. Project Director. Name, address, telephone and fax numbers, and e-mail address of the person to be contacted on matters involving this application.

6. Novice Applicant. Check "Yes" or "No" only if assistance is being requested under a program that gives special consideration to novice applicants. Otherwise, leave blank.

Check "Yes" if you meet the requirements for novice applicants specified in the regulations in 34 CFR 75.225 and included on the attached page entitled "Definitions for Form ED 424." By checking "Yes" the applicant certifies that it meets these novice applicant requirements. Check "No" if you do not meet the requirements for novice applicants.

7. Federal Debt Delinquency. Check "Yes" if the applicant's organization is delinquent on any Federal debt. (This question refers to the applicant's organization and not to the person who signs as the authorized representative. Categories of debt include delinquent audit disallowances, loans and taxes.) Otherwise, check "No."

8. Type of Applicant. Enter the appropriate letter in the box provided.

9. Type of Submission. See "Definitions for Form ED 424" attached.

10. Executive Order 12372. See "Definitions for Form ED 424" attached. Check "Yes" if the application is subject to review by E.O. 12372. Also, please enter the month, day, and four (4) digit year (e.g., 12/12/2001). Otherwise, check "No."

11. Proposed Project Dates. Please enter the month, day, and four (4) digit year (e.g., 12/12/2001).

12. Human Subjects Research. (See I.A. "Definitions" in attached page entitled "Definitions for Form ED 424.")

If Not Human Subjects Research. Check "No" if research activities involving human subjects are not planned at any time during the proposed project period. The remaining parts of Item 12 are then not applicable.

If Human Subjects Research. Check "Yes" if research activities involving human subjects are planned at any time during the proposed project period, either at the applicant organization or at any other performance site or collaborating institution. Check "Yes" even if the research is exempt from the regulations for the protection of human subjects. (See I.B. "Exemptions" in attached page entitled "Definitions for Form ED 424.")

12a. If Human Subjects Research is Exempt from the Human Subjects Regulations. Check "Yes" if all the research activities proposed are designated to be exempt from the regulations. Insert the exemption number(s) corresponding to one or more of the six exemption categories listed in I.B. "Exemptions." In addition, follow the instructions in II.A. "Exempt Research Narrative" in the attached page entitled "Definitions for Form ED 424." Insert this narrative immediately following the ED 424 face page.

12a. If Human Subjects Research is Not Exempt from Human Subjects Regulations. Check "No" if some or all of the planned research activities are covered (not exempt). In addition, follow the instructions in II.B. "Nonexempt Research Narrative" in the page entitled "Definitions for Form ED 424." Insert this narrative immediately following the ED 424 face page.

12a. Human Subjects Assurance Number. If the applicant has an approved Federal Wide (FWA) or Multiple Project Assurance (MPA) with the Office for Human Research Protections (OHRP), U.S. Department of Health and Human Services, that covers the specific activity, insert the number in the space provided. If the applicant does not have an approved assurance on file with OHRP, enter "None." In this case, the applicant, by signature on the face page, is declaring that it will comply with 34 CFR 97 and proceed to obtain the human subjects assurance upon request by the designated ED official. If the application is recommended/selected for funding, the designated ED official will request that the applicant obtain the assurance within 30 days after the specific formal request.

Note about Institutional Review Board Approval. ED does not require certification of Institutional Review Board approval with the application. However, if an application that involves non-exempt human subjects research is recommended/selected for funding, the designated ED official will request that the applicant obtain and send the certification to ED within 30 days after the formal request.

13. Project Title. Enter a brief descriptive title of the project. If more than one program is involved, you should append an explanation on a separate sheet. If appropriate (e.g., construction or real property projects), attach a map showing project location. For preapplications, use a separate sheet to provide a summary description of this project.

14. Estimated Funding. Amount requested or to be contributed during the first funding/budget period by each contributor. Value of in-kind contributions should be included on appropriate lines as applicable. If the action will result in a dollar change to an existing award, indicate only the amount of the change. For decreases, enclose the amounts in parentheses. If both basic and supplemental amounts are included, show breakdown on an attached sheet. For multiple program funding, use totals and show breakdown using same categories as item 14.

15. Certification. To be signed by the authorized representative of the applicant. A copy of the governing body's authorization for you to sign this application as official representative must be on file in the applicant's office. Be sure to enter the telephone and fax number and e-mail address of the authorized representative. Also, in item 15e, please enter the month, day, and four (4) digit year (e.g., 12/12/2001) in the date signed field.

Paperwork Burden Statement. According to the Paperwork Reduction Act of 1995, no persons are required to respond to a collection of information unless such collection displays a valid OMB control number. The valid OMB control number for this information collection is 1875-0106. The time required to complete this information collection is estimated to average between 15 and 45 minutes per response, including the time to review instructions, search existing data resources, gather the data needed, and complete and review the information collection. If you have any comments concerning the accuracy of the estimate(s) or suggestions for improving this form, please write to: U.S. Department of Education, Washington, D.C. 20202-4651. If you have comments or concerns regarding the status of your individual submission of this form write directly to: Joyce I. Mays, Application Control Center, U.S. Department of Education, 7th and D Streets, S.W. ROB-3, Room 3633, Washington, D.C. 20202-4725.

Application for Federal Education Assistance (ED 424)

U.S. Department of Education
Form Approved
OMB No. 1875-0106
Exp. 11/30/2004

Applicant Information

1. Name and Address — Organizational Unit

Legal Name: _____

Address: _____

City _____ State _____ County _____ ZIP Code + 4 _____

2. Applicant's D-U-N-S Number _____

3. Applicant's T-I-N _____

4. Catalog of Federal Domestic Assistance #: 8 4 3 5 1 D

Title: Arts in Education Model Development and Dissemination Grant Program

5. Project Director: _____

Address: _____

City _____ State _____ ZIP Code + 4 _____

Tel. #: _____ Fax #: _____

E-Mail Address: _____

6. Novice Applicant ☐ Yes ☐ No

7. Is the applicant delinquent on any Federal debt? ☐ Yes ☐ No
(If "Yes," attach an explanation.)

8. Type of Applicant (Enter appropriate letter in the box.) ____

A State
B Local
C Special District
D Indian Tribe
E Individual
F Independent School District
G Public College or University
H Private, Non-Profit College or University
I Non-Profit Organization
J Private, Profit-Making Organization
K Other (Specify): _____

Application Information

9. Type of Submission:

—PreApplication	—Application
☐ Construction	☐ Construction
☐ Non-Construction	☐ Non-Construction

10. Is application subject to review by Executive Order 12372 process?
☐ Yes (Date made available to the Executive Order 12372 process for review): _____
☐ No (If "No," check appropriate box below.)
☐ Program is not covered by E.O. 12372.
☐ Program has not been selected by State for review.

11. Proposed Project Dates: Start Date: _____ End Date: _____

12. Are any research activities involving human subjects planned at any time during the proposed project period?
☐ Yes (Go to 12a.) ☐ No (Go to item 13.)

12a. Are all the research activities proposed designated to be exempt from the regulations?
☐ Yes (Provide Exemption(s) #): _____
☐ No (Provide Assurance #): _____

13. Descriptive Title of Applicant's Project:

Estimated Funding

14a. Federal	$	.00
b. Applicant	$	.00
c. State	$	.00
d. Local	$	.00
e. Other	$	.00
f. Program Income	$	.00
g. TOTAL	$	0.00

Authorized Representative Information

15. To the best of my knowledge and belief, all data in this preapplication/application are true and correct. The document has been duly authorized by the governing body of the applicant and the applicant will comply with the attached assurances if the assistance is awarded.

a. Authorized Representative (Please type or print name clearly.)

b. Title

c. Tel. #: _____ Fax #: _____

d. E-Mail Address:

e. Signature of Authorized Representative — Date: _____

Instructions for ED 424

1. Legal Name and Address. Enter the legal name of applicant and the name of the primary organizational unit which will undertake the assistance activity.

2. D-U-N-S Number. Enter the applicant's D-U-N-S Number. If your organization does not have a D-U-N-S Number, you can obtain the number by calling 1-800-333-0505 or by completing a D-U-N-S Number Request Form. The form can be obtained via the Internet at the following URL: http://www.dnb.com.

3. Tax Identification Number. Enter the taxpayer's identification number as assigned by the Internal Revenue Service.

4. Catalog of Federal Domestic Assistance (CFDA) Number. Enter the CFDA number and title of the program under which assistance is requested. The CFDA number can be found in the federal register notice and the application package.

5. Project Director. Name, address, telephone and fax numbers, and e-mail address of the person to be contacted on matters involving this application.

6. Novice Applicant. Check "Yes" or "No" only if assistance is being requested under a program that gives special consideration to novice applicants. Otherwise, leave blank.

Check "Yes" if you meet the requirements for novice applicants specified in the regulations in 34 CFR 75.225 and included on the attached page entitled "Definitions for Form ED 424." By checking "Yes" the applicant certifies that it meets these novice applicant requirements. Check "No" if you do not meet the requirements for novice applicants.

7. Federal Debt Delinquency. Check "Yes" if the applicant's organization is delinquent on any Federal debt. (This question refers to the applicant's organization and not to the person who signs as the authorized representative. Categories of debt include delinquent audit disallowances, loans and taxes.) Otherwise, check "No."

8. Type of Applicant. Enter the appropriate letter in the box provided.

9. Type of Submission. See "Definitions for Form ED 424" attached.

10. Executive Order 12372. See "Definitions for Form ED 424" attached. Check "Yes" if the application is subject to review by E.O. 12372. Also, please enter the month, day, and four (4) digit year (e.g., 12/12/2001). Otherwise, check "No."

11. Proposed Project Dates. Please enter the month, day, and four (4) digit year (e.g., 12/12/2001).

12. Human Subjects Research. (See I.A. "Definitions" in attached page entitled "Definitions for Form ED 424.")

If Not Human Subjects Research. Check "No" if research activities involving human subjects are not planned at any time during the proposed project period. The remaining parts of Item 12 are then not applicable.

If Human Subjects Research. Check "Yes" if research activities involving human subjects are planned at any time during the proposed project period, either at the applicant organization or at any other performance site or collaborating institution. Check "Yes" even if the research is exempt from the regulations for the protection of human subjects. (See I.B. "Exemptions" in attached page entitled "Definitions for Form ED 424.")

12a. If Human Subjects Research is Exempt from the Human Subjects Regulations. Check "Yes" if all the research activities proposed are designated to be exempt from the regulations. Insert the exemption number(s) corresponding to one or more of the six exemption categories listed in I.B. "Exemptions." In addition, follow the instructions in II.A. "Exempt Research Narrative" in the attached page entitled "Definitions for Form ED 424." Insert this narrative immediately following the ED 424 face page.

12a. If Human Subjects Research is Not Exempt from Human Subjects Regulations. Check "No" if some or all of the planned research activities are covered (not exempt). In addition, follow the instructions in II.B. "Nonexempt Research Narrative" in the page entitled "Definitions for Form ED 424." Insert this narrative immediately following the ED 424 face page.

12a. Human Subjects Assurance Number. If the applicant has an approved Federal Wide (FWA) or Multiple Project Assurance (MPA) with the Office for Human Research Protections (OHRP), U.S. Department of Health and Human Services, that covers the specific activity, insert the number in the space provided. If the applicant does not have an approved assurance on file with OHRP, enter "None." In this case, the applicant, by signature on the face page, is declaring that it will comply with 34 CFR 97 and proceed to obtain the human subjects assurance upon request by the designated ED official. If the application is recommended/selected for funding, the designated ED official will request that the applicant obtain the assurance within 30 days after the specific formal request.

Note about Institutional Review Board Approval. ED does not require certification of Institutional Review Board approval with the application. However, if an application that involves non-exempt human subjects research is recommended/selected for funding, the designated ED official will request that the applicant obtain and send the certification to ED within 30 days after the formal request.

13. Project Title. Enter a brief descriptive title of the project. If more than one program is involved, you should append an explanation on a separate sheet. If appropriate (e.g., construction or real property projects), attach a map showing project location. For preapplications, use a separate sheet to provide a summary description of this project.

14. Estimated Funding. Amount requested or to be contributed during the first funding/budget period by each contributor. Value of in-kind contributions should be included on appropriate lines as applicable. If the action will result in a dollar change to an existing award, indicate only the amount of the change. For decreases, enclose the amounts in parentheses. If both basic and supplemental amounts are included, show breakdown on an attached sheet. For multiple program funding, use totals and show breakdown using same categories as item 14.

15. Certification. To be signed by the authorized representative of the applicant. A copy of the governing body's authorization for you to sign this application as official representative must be on file in the applicant's office. Be sure to enter the telephone and fax number and e-mail address of the authorized representative. Also, in item 15e, please enter the month, day, and four (4) digit year (e.g., 12/12/2001) in the date signed field.

Paperwork Burden Statement. According to the Paperwork Reduction Act of 1995, no persons are required to respond to a collection of information unless such collection displays a valid OMB control number. The valid OMB control number for this information collection is 1875-0106. The time required to complete this information collection is estimated to average between 15 and 45 minutes per response, including the time to review instructions, search existing data resources, gather the data needed, and complete and review the information collection. If you have any comments concerning the accuracy of the estimate(s) or suggestions for improving this form, please write to: U.S. Department of Education, Washington, D.C. 20202-4651. If you have comments or concerns regarding the status of your individual submission of this form write directly to: Joyce I. Mays, Application Control Center, U.S. Department of Education, 7th and D Streets, S.W. ROB-3, Room 3633, Washington, D.C. 20202-4725.

Definitions for Form ED 424

Novice Applicant (See 34 CFR 75.225). For discretionary grant programs under which the Secretary gives special consideration to novice applications, a novice applicant means any applicant for a grant from ED that—

- Has never received a grant or subgrant under the program from which it seeks funding;
- Has never been a member of a group application, submitted in accordance with 34 CFR 75.127-75.129, that received a grant under the program from which it seeks funding; and
- Has not had an active discretionary grant from the Federal government in the five years before the deadline date for applications under the program. For the purposes of this requirement, a grant is active until the end of the grant's project or funding period, including any extensions of those periods that extend the grantee's authority to obligate funds.

In the case of a group application submitted in accordance with 34 CFR 75.127-75.129, a group includes only parties that meet the requirements listed above.

Type of Submission. "Construction" includes construction of new buildings and acquisition, expansion, remodeling, and alteration of existing buildings, and initial equipment of any such buildings, or any combination of such activities (including architects' fees and the cost of acquisition of land). "Construction" also includes remodeling to meet standards, remodeling designed to conserve energy, renovation or remodeling to accommodate new technologies, and the purchase of existing historic buildings for conversion to public libraries. For the purposes of this paragraph, the term "equipment" includes machinery, utilities, and built-in equipment and any necessary enclosures or structures to house them; and such term includes all other items necessary for the functioning of a particular facility as a facility for the provision of library services.

Executive Order 12372. The purpose of Executive Order 12372 is to foster an intergovernmental partnership and strengthen federalism by relying on State and local processes for the coordination and review of proposed Federal financial assistance and direct Federal development. The application notice, as published in the Federal Register, informs the applicant as to whether the program is subject to the requirements of E.O. 12372. In addition, the application package contains information on the State Single Point of Contact. An applicant is still eligible to apply for a grant or grants even if its respective State, Territory, Commonwealth, etc. does not have a State Single Point of Contact. For additional information on E.O. 12372 go to http://www.cfda.gov/public/eo12372.htm.

PROTECTION OF HUMAN SUBJECTS IN RESEARCH

I. Definitions and Exemptions

A. Definitions.

A research activity involves human subjects if the activity is research, as defined in the Department's regulations, and the research activity will involve use of human subjects, as defined in the regulations.

—Research

The ED Regulations for the Protection of Human Subjects, Title 34, Code of Federal Regulations, Part 97, define research as "a systematic investigation, including research development, testing and evaluation, designed to develop or contribute to generalizable knowledge." If an activity follows a deliberate plan whose purpose is to develop or contribute to generalizable knowledge, it is research. Activities which meet this definition constitute research whether or not they are conducted or supported under a program which is considered research for other purposes. For example, some demonstration and service programs may include research activities.

—Human Subject

The regulations define human subject as "a living individual about whom an investigator (whether professional or student) conducting research obtains (1) data through intervention or interaction with the individual, or (2) identifiable private information." (1) If an activity involves obtaining information about a living person by manipulating that person or that person's environment, as might occur when a new instructional technique is tested, or by communicating or interacting with the individual, as occurs with surveys and interviews, the definition of human subject is met. (2) If an activity involves obtaining private information about a living person in such a way that the information can be linked to that individual (the identity of the subject is or may be readily determined by the investigator or associated with the information), the definition of human subject is met. [Private information includes information about behavior that occurs in a context in which an individual can reasonably expect that no observation or recording is taking place, and information which has been provided for specific purposes by an individual and which the individual can reasonably expect will not be made public (for example, a school health record).]

B. Exemptions.

Research activities in which the only involvement of human subjects will be in one or more of the following six categories of exemptions are not covered by the regulations:

(1) Research conducted in established or commonly accepted educational settings, involving normal educational practices, such as (a) research on regular and special education instructional strategies, or (b) research on the effectiveness of or the comparison among instructional techniques, curricula, or classroom management methods.

(2) Research involving the use of educational tests (cognitive, diagnostic, aptitude, achievement), survey procedures, interview procedures or observation of public behavior, unless: (a) information obtained is recorded in such a manner that human subjects can be identified, directly or through identifiers linked to the subjects; and (b) any disclosure of the human subjects' responses outside the research could reasonably place the subjects at risk of criminal or civil liability or be damaging to the subjects' financial standing, employability, or reputation. If the subjects are children, exemption 2 applies only to research involving educational tests and observations of public behavior when the investigator(s) do not participate in the activities being observed. Exemption 2 does not apply if children are surveyed or interviewed or if the research involves observation of public behavior and the investigator(s) participate in the activities being observed. [Children are defined as persons who have not attained the legal age for consent to treatments or procedures involved in the research, under the applicable law or jurisdiction in which the research will be conducted.]

(3) Research involving the use of educational tests (cognitive, diagnostic, aptitude, achievement), survey procedures, interview procedures or observation of public behavior that is not exempt under section (2) above, if the human subjects are elected or appointed public officials or candidates for public office; or federal statute(s) require(s) without exception that the confidentiality of the personally identifiable information will be maintained throughout the research and thereafter.

(4) Research involving the collection or study of existing data, documents, records, pathological specimens, or diagnostic specimens, if these sources are publicly available or if the information is recorded by the investigator in a manner that subjects cannot be identified, directly or through identifiers linked to the subjects.

(5) Research and demonstration projects which are conducted by or subject to the approval of department or agency heads, and which are designed to study, evaluate, or otherwise examine: (a) public benefit or service programs; (b) procedures for obtaining benefits or services under those programs; (c) possible changes in or alternatives to those programs or procedures; or (d) possible changes in methods or levels of payment for benefits or services under those programs.

(6) Taste and food quality evaluation and consumer acceptance studies, (a) if wholesome foods without additives are consumed or (b) if a food is consumed that contains a food ingredient at or below the level and for a use found to be safe, or agricultural chemical or environmental contaminant at or below the level found to be safe, by the Food and Drug Administration or approved by the Environmental Protection Agency or the Food Safety and Inspection Service of the U.S. Department of Agriculture.

II. Instructions for Exempt and Nonexempt Human Subjects Research Narratives

If the applicant marked "Yes" for Item 12 on the ED 424, the applicant must provide a human subjects "exempt research" or "nonexempt research" narrative and insert it immediately following the ED 424 face page.

A. Exempt Research Narrative.

If you marked "Yes" for item 12a. and designated exemption numbers(s), provide the "exempt research" narrative. The narrative must contain sufficient information about the involvement of human subjects in the proposed research to allow a determination by ED that the designated exemption(s) are appropriate. The narrative must be succinct.

B. Nonexempt Research Narrative.

If you marked "No" for item 12a. you must provide the "nonexempt research" narrative. The narrative must address the following seven points. Although no specific page limitation applies to this section of the application, be succinct.

(1) Human Subjects Involvement and Characteristics: Provide a detailed description of the proposed involvement of human subjects. Describe the characteristics of the subject population, including their anticipated number, age range, and health status. Identify the criteria for inclusion or exclusion of any subpopulation. Explain the rationale for the involvement of special classes of subjects, such as children, children with disabilities, adults with disabilities, persons with mental disabilities, pregnant women, prisoners, institutionalized individuals, or others who are likely to be vulnerable

(2) Sources of Materials: Identify the sources of research material obtained from individually identifiable living human subjects in the form of specimens, records, or data. Indicate whether the material or data will be obtained specifically for research purposes or whether use will be made of existing specimens, records, or data.

(3) Recruitment and Informed Consent: Describe plans for the recruitment of subjects and the consent procedures to be followed. Include the circumstances under which consent will be sought and obtained, who will seek it, the nature of the information to be provided to prospective subjects, and the method of documenting consent. State if the Institutional Review Board (IRB) has authorized a modification or waiver of the elements of consent or the requirement for documentation of consent.

(4) Potential Risks: Describe potential risks (physical, psychological, social, legal, or other) and assess their likelihood and seriousness. Where appropriate, describe alternative treatments and procedures that might be advantageous to the subjects.

(5) Protection Against Risk: Describe the procedures for protecting against or minimizing potential risks, including risks to confidentiality, and assess their likely effectiveness. Where appropriate, discuss provisions for ensuring necessary medical or professional intervention in the event of adverse effects to the subjects. Also, where appropriate, describe the provisions for monitoring the data collected to ensure the safety of the subjects.

(6) Importance of the Knowledge to be Gained: Discuss the importance of the knowledge gained or to be gained as a result of the proposed research. Discuss why the risks to subjects are reasonable in relation to the anticipated benefits to subjects and in relation to the importance of the knowledge that may reasonably be expected to result.

(7) Collaborating Site(s): If research involving human subjects will take place at collaborating site(s) or other performance site(s), name the sites and briefly describe their involvement or role in the research.

Copies of the Department of Education's Regulations for the Protection of Human Subjects, 34 CFR Part 97 and other pertinent materials on the protection of human subjects in research are available from the Grants Policy and Oversight Staff, Office of the Chief Financial Officer, U.S. Department of Education, Washington, D.C. 20202-4248, telephone: (202) 708-8263, and on the U.S. Department of Education's Protection of Human Subjects in Research Web Site at http://www.ed.gov/offices/OCFO/humansub.html

U.S. DEPARTMENT OF EDUCATION

BUDGET INFORMATION

NON-CONSTRUCTION PROGRAMS

OMB Control Number: 1890-0004

Expiration Date: 10/31/03

Name of Institution/Organization	Applicants requesting funding for only one year should complete the column under "Project Year 1." Applicants requesting funding for multi-year grants should complete all applicable columns. Please read all instructions before completing form.

SECTION A - BUDGET SUMMARY
U.S. DEPARTMENT OF EDUCATION FUNDS

Budget Categories	Project Year 1 (a)	Project Year 2 (b)	Project Year 3 (c)	Project Year 4 (d)	Project Year 5 (e)	Total (f)
1. Personnel						
2. Fringe Benefits						
3. Travel						
4. Equipment						
5. Supplies						
6. Contractual						
7. Construction						
8. Other						
9. Total Direct Costs (lines 1-8)						
10. Indirect Costs						
11. Training Stipends						
12. Total Costs (lines 9-11)						

ED Form No. 524

Name of Institution/Organization	Applicants requesting funding for only one year should complete the column under "Project Year 1." Applicants requesting funding for multi-year grants should complete all applicable columns. Please read all instructions before completing form.

SECTION B - BUDGET SUMMARY
NON-FEDERAL FUNDS

Budget Categories	Project Year 1 (a)	Project Year 2 (b)	Project Year 3 (c)	Project Year 4 (d)	Project Year 5 (e)	Total (f)
1. Personnel						
2. Fringe Benefits						
3. Travel						
4. Equipment						
5. Supplies						
6. Contractual						
7. Construction						
8. Other						
9. Total Direct Costs (lines 1-8)						
10. Indirect Costs						
11. Training Stipends						
12. Total Costs (lines 9-11)						

SECTION C - OTHER BUDGET INFORMATION (see instructions)

ED Form No. 524

Public reporting burden for this collection of information is estimated to vary from 13 to 22 hours per response, with an average of 17.5 hours per response, including the time reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the U.S. Department of Education, Information Management and Compliance Division, Washington, D.C. 20202-4651; and the Office of Management and Budget, Paperwork Reduction Project 1875-0102, Washington DC 20503.

INSTRUCTIONS FOR ED FORM 524

General Instructions

This form is used to apply to individual U.S. Department of Education discretionary grant programs. Unless directed otherwise, provide the same budget information for each year of the multi-year funding request. Pay attention to applicable program specific instructions, if attached.

Section A - Budget Summary
U.S. Department of Education Funds

All applicants must complete Section A and provide a breakdown by the applicable budget categories shown in lines 1-11.

Lines 1-11, columns (a)-(e): For each project year for which funding is requested, show the total amount requested for each applicable budget category.

Lines 1-11, column (f): Show the multi-year total for each budget category. If funding is requested for only one project year, leave this column blank.

Line 12, columns (a)-(e): Show the total budget request for each project year for which funding is requested.

Line 12, column (f): Show the total amount requested for all project years. If funding is requested for only one year, leave this space blank.

Section B - Budget Summary
Non-Federal Funds

If you are required to provide or volunteer to provide matching funds or other non-Federal resources to the project, these should be shown for each applicable budget category on lines 1-11 of Section B.

Lines 1-11, columns (a)-(e): For each project year for which matching funds or other contributions are provided, show the total contribution for each applicable budget category.

Lines 1-11, column (f): Show the multi-year total for each budget category. If non-Federal contributions are provided for only one year, leave this column blank.

Line 12, columns (a)-(e): Show the total matching or other contribution for each project year.

Line 12, column (f): Show the total amount to be contributed for all years of the multi-year project. If non-Federal contributions are provided for only one year, leave this space blank.

Section C - Other Budget Information
Pay attention to applicable program specific instructions, if attached.

1. Provide an itemized budget breakdown, by project year, for each budget category listed in Sections A and B.
2. If applicable to this program, enter the type of indirect rate (provisional, predetermined, final or fixed) that will be in effect during the funding period. In addition, enter the estimated amount of the base to which the rate is applied, and the total indirect expense.
3. If applicable to this program, provide the rate and base on which fringe benefits are calculated.
4. Provide other explanations or comments you deem necessary.

OMB Approval No. 0348-0040

ASSURANCES - NON-CONSTRUCTION PROGRAMS

Public reporting burden for this collection of information is estimated to average 15 minutes per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Office of Management and Budget, Paperwork Reduction Project (0348-0040), Washington, DC 20503.

PLEASE DO NOT RETURN YOUR COMPLETED FORM TO THE OFFICE OF MANAGEMENT AND BUDGET. SEND IT TO THE ADDRESS PROVIDED BY THE SPONSORING AGENCY.

NOTE: Certain of these assurances may not be applicable to your project or program. If you have questions, please contact the awarding agency. Further, certain Federal awarding agencies may require applicants to certify to additional assurances. If such is the case, you will be notified.

As the duly authorized representative of the applicant, I certify that the applicant:

1. Has the legal authority to apply for Federal assistance and the institutional, managerial and financial capability (including funds sufficient to pay the non-Federal share of project cost) to ensure proper planning, management and completion of the project described in this application.
2. Will give the awarding agency, the Comptroller General of the United States and, if appropriate, the State, through any authorized representative, access to and the right to examine all records, books, papers, or documents related to the award; and will establish a proper accounting system in accordance with generally accepted accounting standards or agency directives.
3. Will establish safeguards to prohibit employees from using their positions for a purpose that constitutes or presents the appearance of personal or organizational conflict of interest, or personal gain.
4. Will initiate and complete the work within the applicable time frame after receipt of approval of the awarding agency.
5. Will comply with the Intergovernmental Personnel Act of 1970 (42 U.S.C. §§4728-4763) relating to prescribed standards for merit systems for programs funded under one of the 19 statutes or regulations specified in Appendix A of OPM's Standards for a Merit System of Personnel Administration (5 C.F.R. 900, Subpart F).
6. Will comply with all Federal statutes relating to nondiscrimination. These include but are not limited to: (a) Title VI of the Civil Rights Act of 1964 (P.L. 88-352) which prohibits discrimination on the basis of race, color or national origin; (b) Title IX of the Education Amendments of 1972, as amended (20 U.S.C. §§1681-1683, and 1685-1686), which prohibits discrimination on the basis of sex; (c) Section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. §794), which prohibits discrimination on the basis of handicaps; (d) the Age Discrimination Act of 1975, as amended (42 U.S.C. §§6101-6107), which prohibits discrimination on the basis of age; (e) the Drug Abuse Office and Treatment Act of 1972 (P.L. 92-255), as amended, relating to nondiscrimination on the basis of drug abuse; (f) the Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment and Rehabilitation Act of 1970 (P.L. 91-616), as amended, relating to nondiscrimination on the basis of alcohol abuse or alcoholism; (g) §§523 and 527 of the Public Health Service Act of 1912 (42 U.S.C. §§290 dd-3 and 290 ee 3), as amended, relating to confidentiality of alcohol and drug abuse patient records; (h) Title VIII of the Civil Rights Act of 1968 (42 U.S.C. §§3601 et seq.), as amended, relating to nondiscrimination in the sale, rental or financing of housing; (i) any other nondiscrimination provisions in the specific statute(s) under which application for Federal assistance is being made; and, (j) the requirements of any other nondiscrimination statute(s) which may apply to the application.
7. Will comply, or has already complied, with the requirements of Titles II and III of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (P.L. 91-646) which provide for fair and equitable treatment of persons displaced or whose property is acquired as a result of Federal or federally-assisted programs. These requirements apply to all interests in real property acquired for project purposes regardless of Federal participation in purchases.
8. Will comply, as applicable, with provisions of the Hatch Act (5 U.S.C. §§1501-1508 and 7324-7328) which limit the political activities of employees whose principal employment activities are funded in whole or in part with Federal funds.

9. Will comply, as applicable, with the provisions of the Davis-Bacon Act (40 U.S.C. §§276a to 276a-7), the Copeland Act (40 U.S.C. §276c and 18 U.S.C. §874), and the Contract Work Hours and Safety Standards Act (40 U.S.C. §§327-333), regarding labor standards for federally-assisted construction subagreements.

10. Will comply, if applicable, with flood insurance purchase requirements of Section 102(a) of the Flood Disaster Protection Act of 1973 (P.L. 93-234) which requires recipients in a special flood hazard area to participate in the program and to purchase flood insurance if the total cost of insurable construction and acquisition is $10,000 or more.

11. Will comply with environmental standards which may be prescribed pursuant to the following: (a) institution of environmental quality control measures under the National Environmental Policy Act of 1969 (P.L. 91-190) and Executive Order (EO) 11514; (b) notification of violating facilities pursuant to EO 11738; (c) protection of wetlands pursuant to EO 11990; (d) evaluation of flood hazards in floodplains in accordance with EO 11988; (e) assurance of project consistency with the approved State management program developed under the Coastal Zone Management Act of 1972 (16 U.S.C. §§1451 et seq.); (f) conformity of Federal actions to State (Clean Air) Implementation Plans under Section 176(c) of the Clean Air Act of 1955, as amended (42 U.S.C. §§7401 et seq.); (g) protection of underground sources of drinking water under the Safe Drinking Water Act of 1974, as amended (P.L. 93-523); and, (h) protection of endangered species under the Endangered Species Act of 1973, as amended (P.L. 93-205).

12. Will comply with the Wild and Scenic Rivers Act of 1968 (16 U.S.C. §§1271 et seq.) related to protecting components or potential components of the national wild and scenic rivers system.

13. Will assist the awarding agency in assuring compliance with Section 106 of the National Historic Preservation Act of 1966, as amended (16 U.S.C. §470), EO 11593 (identification and protection of historic properties), and the Archaeological and Historic Preservation Act of 1974 (16 U.S.C. §§469a-1 et seq.).

14. Will comply with P.L. 93-348 regarding the protection of human subjects involved in research, development, and related activities supported by this award of assistance.

15. Will comply with the Laboratory Animal Welfare Act of 1966 (P.L. 89-544, as amended, 7 U.S.C. §§2131 et seq.) pertaining to the care, handling, and treatment of warm blooded animals held for research, teaching, or other activities supported by this award of assistance.

16. Will comply with the Lead-Based Paint Poisoning Prevention Act (42 U.S.C. §§4801 et seq.) which prohibits the use of lead-based paint in construction or rehabilitation of residence structures.

17. Will cause to be performed the required financial and compliance audits in accordance with the Single Audit Act Amendments of 1996 and OMB Circular No. A-133, "Audits of States, Local Governments, and Non-Profit Organizations."

18. Will comply with all applicable requirements of all other Federal laws, executive orders, regulations, and policies governing this program.

SIGNATURE OF AUTHORIZED CERTIFYING OFFICIAL	TITLE
APPLICANT ORGANIZATION	DATE SUBMITTED

Standard Form 424B (Rev. 7-97) Back

CERTIFICATIONS REGARDING LOBBYING; DEBARMENT, SUSPENSION AND OTHER RESPONSIBILITY MATTERS; AND DRUG-FREE WORKPLACE REQUIREMENTS

Applicants should refer to the regulations cited below to determine the certification to which they are required to attest. Applicants should also review the instructions for certification included in the regulations before completing this form. Signature of this form provides for compliance with certification requirements under 34 CFR Part 82, "New Restrictions on Lobbying," and 34 CFR Part 85, "Government-wide Debarment and Suspension (Nonprocurement) and Government-wide Requirements for Drug-Free Workplace (Grants)." The certifications shall be treated as a material representation of fact upon which reliance will be placed when the Department of Education determines to award the covered transaction, grant, or cooperative agreement.

1. LOBBYING

As required by Section 1352, Title 31 of the U.S. Code, and implemented at 34 CFR Part 82, for persons entering into a grant or cooperative agreement over $100,000, as defined at 34 CFR Part 82, Sections 82.105 and 82.110, the applicant certifies that:

(a) No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the making of any Federal grant, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal grant or cooperative agreement;

(b) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal grant or cooperative agreement, the undersigned shall complete and submit Standard Form - LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions;

(c) The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subgrants, contracts under grants and cooperative agreements, and subcontracts) and that all subrecipients shall certify and disclose accordingly.

2. DEBARMENT, SUSPENSION, AND OTHER RESPONSIBILITY MATTERS

As required by Executive Order 12549, Debarment and Suspension, and implemented at 34 CFR Part 85, for prospective participants in primary covered transactions, as defined at 34 CFR Part 85, Sections 85.105 and 85.110—

A. The applicant certifies that it and its principals:

(a) Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal department or agency;

(b) Have not within a three-year period preceding this application been convicted of or had a civil judgement rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State, or local) transaction or contract under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;

(c) Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, State, or local) with commission of any of the offenses enumerated in paragraph (2)(b) of this certification; and

(d) Have not within a three-year period preceding this application had one or more public transaction (Federal, State, or local) terminated for cause or default; and

B. Where the applicant is unable to certify to any of the statements in this certification, he or she shall attach an explanation to this application.

3. DRUG-FREE WORKPLACE (GRANTEES OTHER THAN INDIVIDUALS)

As required by the Drug-Free Workplace Act of 1988, and implemented at 34 CFR Part 85, Subpart F, for grantees, as defined at 34 CFR Part 85, Sections 85.605 and 85.610 -

A. The applicant certifies that it will or will continue to provide a drug-free workplace by:

(a) Publishing a statement notifying employees that the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance is prohibited in the grantee's workplace and specifying the actions that will be taken against employees for violation of such prohibition;

(b) Establishing an on-going drug-free awareness program to inform employees about:

(1) The dangers of drug abuse in the workplace;

(2) The grantee's policy of maintaining a drug-free workplace;

(3) Any available drug counseling, rehabilitation, and employee assistance programs; and

(4) The penalties that may be imposed upon employees for drug abuse violations occurring in the workplace;

(c) Making it a requirement that each employee to be engaged in the performance of the grant be given a copy of the statement required by paragraph (a);

(d) Notifying the employee in the statement required by paragraph (a) that, as a condition of employment under the grant, the employee will:

(1) Abide by the terms of the statement; and

(2) Notify the employer in writing of his or her conviction for a violation of a criminal drug statute occurring in the workplace no later than five calendar days after such conviction;

(e) Notifying the agency, in writing, within 10 calender days after receiving notice under subparagraph (d)(2) from an employee or otherwise receiving actual notice of such conviction. Employers of convicted employees must provide notice, including position title, to: Director, Grants Policy and Oversight Staff, U.S. Department of Education, 400 Maryland Avenue, S.W. (Room 3652, GSA Regional Office Building No. 3), Washington, DC 20202-4248. Notice shall include the identification number(s) of each affected grant;

(f) Taking one of the following actions, within 30 calendar days of receiving notice under subparagraph (d)(2), with respect to any employee who is so convicted:

(1) Taking appropriate personnel action against such an employee, up to and including termination, consistent with the requirements of the Rehabilitation Act of 1973, as amended; or

(2) Requiring such employee to participate satisfactorily in a drug abuse assistance or rehabilitation program approved for such purposes by a Federal, State, or local health, law enforcement, or other appropriate agency;

(g) Making a good faith effort to continue to maintain a drug-free workplace through implementation of paragraphs (a), (b), (c), (d), (e), and (f).

B. The grantee may insert in the space provided below the site(s) for the performance of work done in connection with the specific grant:

Place of Performance (Street address. city, county, state, zip code)

_____

_____

_____

Check [ ] if there are workplaces on file that are not identified here.

DRUG-FREE WORKPLACE
(GRANTEES WHO ARE INDIVIDUALS)

As required by the Drug-Free Workplace Act of 1988, and implemented at 34 CFR Part 85, Subpart F, for grantees, as defined at 34 CFR Part 85, Sections 85.605 and 85.610-

A. As a condition of the grant, I certify that I will not engage in the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance in conducting any activity with the grant; and

B. If convicted of a criminal drug offense resulting from a violation occurring during the conduct of any grant activity, I will report the conviction, in writing, within 10 calendar days of the conviction, to: Director, Grants Policy and Oversight Staff, Department of Education, 400 Maryland Avenue, S.W. (Room 3652, GSA Regional Office Building No. 3), Washington, DC 20202-4248. Notice shall include the identification number(s) of each affected grant.

As the duly authorized representative of the applicant, I hereby certify that the applicant will comply with the above certifications.

NAME OF APPLICANT	PR/AWARD NUMBER AND / OR PROJECT NAME
PRINTED NAME AND TITLE OF AUTHORIZED REPRESENTATIVE	
SIGNATURE	DATE

ED 80-0013 12/98

Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion — Lower Tier Covered Transactions

This certification is required by the Department of Education regulations implementing Executive Order 12549, Debarment and Suspension, 34 CFR Part 85, for all lower tier transactions meeting the threshold and tier requirements stated at Section 85.110.

Instructions for Certification

1. By signing and submitting this proposal, the prospective lower tier participant is providing the certification set out below.

2. The certification in this clause is a material representation of fact upon which reliance was placed when this transaction was entered into. If it is later determined that the prospective lower tier participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.

3. The prospective lower tier participant shall provide immediate written notice to the person to which this proposal is submitted if at any time the prospective lower tier participant learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.

4. The terms "covered transaction," "debarred," "suspended," "ineligible," "lower tier covered transaction," "participant," " person," "primary covered transaction," " principal," "proposal," and "voluntarily excluded," as used in this clause, have the meanings set out in the Definitions and Coverage sections of rules implementing Executive Order 12549. You may contact the person to which this proposal is submitted for assistance in obtaining a copy of those regulations.

5. The prospective lower tier participant agrees by submitting this proposal that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency with which this transaction originated.

6. The prospective lower tier participant further agrees by submitting this proposal that it will include the clause titled "Certification Regarding Debarment, Suspension, Ineligibility, and Voluntary Exclusion-Lower Tier Covered Transactions," without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions.

7. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that it is not debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant may decide the method and frequency by which it determines the eligibility of its principals. Each participant may but is not required to, check the Nonprocurement List.

8. Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of a participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.

9. Except for transactions authorized under paragraph 5 of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal Government, the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.

Certification

(1) The prospective lower tier participant certifies, by submission of this proposal, that neither it nor its principals are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or agency.

(2) Where the prospective lower tier participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

NAME OF APPLICANT	PR/AWARD NUMBER AND/OR PROJECT NAME
PRINTED NAME AND TITLE OF AUTHORIZED REPRESENTATIVE	
SIGNATURE	DATE

ED 80-0014, 9/90 (Replaces GCS-009 (REV.12/88), which is obsolete)

Certification of Eligibility for Federal Assistance in Certain Programs

I understand that 34 CFR 75.60, 75.61, and 75.62 require that I make specific certifications of eligibility to the U.S. Department of Education (ED) as a condition of applying for Federal funds in certain programs and that these requirements are in addition to any other eligibility requirements that ED imposes under program regulations. Under 34 CFR 75.60 – 75.62:

I. I certify that:

A. I do not owe a debt, or I am current in repaying a debt, or I am not in default (as that term is used at 34 CFR Part 668) on a debt:

1. To the Federal Government under a nonprocurement transaction (e.g., a previous loan, scholarship, grant, or cooperative agreement); or

2. For a fellowship, scholarship, stipend, discretionary grant, or loan in any program of ED that is subject to 34 CFR 75.60, 75.61, and 75.62, including:

- Federal Pell Grant Program (20 U.S.C. 1070a, et seq.);
- Federal Supplemental Educational Opportunity Grant (SEOG) Program (20 U.S.C. 1070(b), et seq.):
- State Student Incentive Grant Program (SSIG) 20 U.S.C. 1070c, et seq.);
- Federal Perkins Loan Program (20 U.S.C. 1087aa, et seq.);
- Income Contingent Direct Loan Demonstration Project (20 U.S.C. 1087a, note);
- Federal Stafford Loan Program, Federal Supplemental Loans for Students [SLS], Federal PLUS, or Federal Consolidation Loan Program (20 U.S.C. 1071, et seq.);
- William D. Ford Federal Direct Loan Program (20 U.S.C. 1087a, et. seq.);
- Cuban Student Loan Program (20 U.S.C. 2601, et seq.);
- Robert C. Byrd Honors Scholarship Program (20 U.S.C. 1070d-31, et seq.);
- Jacob K. Javits Fellows Program (20 U.S.C. 1134h-1134l);
- Patricia Roberts Harris Fellowship Program (20 U.S.C. 1134d-1134g);
- Christa McAuliffe Fellowship Program (20 U.S.C. 1105-1105i);
- Bilingual Education Fellowship Program (20 U.S.C. 3221-3262);
- Rehabilitation Long-Term Training Program (29 U.S.C. 774(b));
- Paul Douglas Teacher Scholarship Program (20 U.S.C. 1104, et seq.);
- Law Enforcement Education Program (42 U.S.C. 3775);
- Indian Fellowship Program (29 U.S.C. 774(b));
- Teacher Quality Enhancement Grants Program (20 U.S.C. 1021, et seq.);

OR

B. I have made arrangements satisfactory to ED to repay a debt as described in A.1. or A.2. (above) on which I had not been current in repaying or on which I was in default (as that term is used in 34 CFR Part 668).

II. I certify also that I have not been declared by a judge, as a condition of sentencing under section 5301 of the Anti-Drug Abuse Act of 1988 (21 U.S.C. 862), ineligible to receive Federal assistance for the period of this requested funding.

I understand that providing a false certification to any of the statements above makes me liable for repayment to ED for funds received on the basis of this certification, for civil penalties, and for criminal prosecution under 18 U.S.C. 1001.

_____ _____

(Signature) (Date)

_____

(Typed or Printed Name)

Name or number of ED program under which this certification is being made: _____

ED 80-0016 (Revised 2/01)

DISCLOSURE OF LOBBYING ACTIVITIES

Approved by OMB 0348-0046

Complete this form to disclose lobbying activities pursuant to 31 U.S.C. 1352

(See reverse for public burden disclosure.)

1. Type of Federal Action:	2. Status of Federal Action:	3. Report Type:
☐ a. contract b. grant c. cooperative agreement d. loan e. loan guarantee f. loan insurance	☐ a. bid/offer/application b. initial award c. post-award	☐ a. initial filing b. material change **For Material Change Only:** year _____ quarter _____ date of last report _____

4. Name and Address of Reporting Entity:	5. If Reporting Entity in No. 4 is a Subawardee, Enter Name and Address of Prime:
☐ Prime ☐ Subawardee Tier _____, *if known*: **Congressional District**, *if known*:	**Congressional District**, *if known*:
6. Federal Department/Agency:	**7. Federal Program Name/Description:** CFDA Number, *if applicable*: _____
8. Federal Action Number, *if known*:	**9. Award Amount**, *if known*: $
10. a. Name and Address of Lobbying Registrant (*if individual, last name, first name, MI*):	**b. Individuals Performing Services** (*including address if different from No. 10a*) (*last name, first name, MI*):

11. Information requested through this form is authorized by title 31 U.S.C. section 1352. This disclosure of lobbying activities is a material representation of fact upon which reliance was placed by the tier above when this transaction was made or entered into. This disclosure is required pursuant to 31 U.S.C. 1352. This information will be reported to the Congress semi-annually and will be available for public inspection. Any person who fails to file the required disclosure shall be subject to a civil penalty of not less that $10,000 and not more than $100,000 for each such failure.

Signature: _____

Print Name: _____

Title: _____

Telephone No.: _____ Date: _____

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Standard Form LLL (Rev. 7-97)

INSTRUCTIONS FOR COMPLETION OF SF-LLL, DISCLOSURE OF LOBBYING ACTIVITIES

This disclosure form shall be completed by the reporting entity, whether subawardee or prime Federal recipient, at the initiation or receipt of a covered Federal action, or a material change to a previous filing, pursuant to title 31 U.S.G. section 1352. The filing of a form is required for each payment or agreement to make payment to any lobbying entity for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employeeof a Member of Congress in connection with a covered Federal action. Complete all items that apply for both the initial filing and material change report. Refer to the implementing guidance published by the Office of Management and Budget for additional information.

1. Identify the type of covered Federal action for which lobbying activity is and/or has been secured to influence the outcome of a covered Federal action.

2. Identify the status of the covered Federal action.

3. Identify the appropriate classification of this report. If this is a followup report caused by a material change to the information previously reported, enter the year and quarter in which the change occurred. Enter the date of the last previously submitted report by this reporting entity for this covered Federal action.

4. Enter the full name, address. city, State and zip code of the reporting entity. Include Congressional District, if known. Check the appropriate classification of the reporting entity that designates if it is, or expects to be, a prime or subaward recipient. Identify the tier of the subawardee, e.g., the first subawardee of the prime is the 1st tier. Subawards include but are not limited to subcontracts, subgrants and contract awards under grants.

5. If the organization filing the report in item 4 checks "Subawardee," then enter the full name, address, city, State and zip code of the prime Federal recipient. Include Congressional District, if known.

6. Enter the name of the Federal agency making the award or loan commitment. Include at least one organizationallevel below agency name, if known. For example, Department of Transportation, United States Coast Guard.

7. Enter the Federal program name or description for the covered Federal action (item 1). If known, enter the full Catalog of Federal Domestic Assistance (CFDA) number for grants, cooperative agreements, loans, and loan commitments.

8. Enter the most appropriate Federal identifying number available for the Federal action identified in item 1 (e.g., Request for Proposal (RFP) number; Invitation for Bid (IFB) number; grant announcement number; the contract, grant, or loan award number; the application/proposal control number assigned by the Federal agency). Include prefixes, e.g., "RFP-DE-90-001."

9. For a covered Federal action where there has been an award or loan commitment by the Federal agency, enter the Federal amount of the award/loan commitment for the prime entity identified in item 4 or 5.

10. (a) Enter the full name, address, city, State and zip code of the lobbying registrant under the Lobbying Disclosure Act of 1995 engaged by the reporting entity identified in item 4 to influence the covered Federal action.

    (b) Enter the full names of the individual(s) performing services, and include full address if different from 10 (a). Enter Last Name, First Name, and Middle Initial (MI).

11. The certifying official shall sign and date the form, print his/her name, title, and telephone number.

According to the Paperwork Reduction Act, as amended, no persons are required to respond to a collection of information unless it displays a valid OMB Control Number. The valid OMB control number for this information collection is OMB No. 0348-0046. Public reporting burden for this collection of information is estimated to average 10 minutes per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Office of Management and Budget, Paperwork Reduction Project (0348-0046), Washington, DC 20503.

SURVEY ON ENSURING EQUAL OPPORTUNITY FOR APPLICANTS

Do not enter information below unless instructed to do so.

OMB No. 1890-0014 Exp. 1/31/2006

Purpose: This form is for applicants that are nonprofit private organizations (not including private universities). Please complete it to assist the Federal government in ensuring that all qualified applicants, small or large, non-religious or faith-based, have an equal opportunity to compete for Federal funding. Information provided on this form will not be considered in any way in making funding decisions and will not be included in the Federal grants database.

Instructions for Submitting Survey

If submitting hard copy, please place the completed survey in an envelope labeled "Applicant Survey." Seal the envelope and include it with your application package.

If submitting electronically, please include the PR Award Number assigned to your e-application in the box above entitled "***Do not enter information below unless instructed to do so.***" Place and seal the completed survey in an envelope and mail it to: Joyce I. Mays, Application Control Center, U.S. Department of Education, 7th and D Streets, SW, ROB-3, Room 3671, Washington, DC 20202-4725.

1. Does the applicant have 501(c)(3) status?

   ❑ Yes ❑ No

2. How many full-time equivalent employees does the applicant have? *(Check only one box).*

   ❑ 3 or Fewer ❑ 15-50
   ❑ 4-5 ❑ 51-100
   ❑ 6-14 ❑ over 100

3. What is the size of the applicant's annual budget? *(Check only one box.)*

   ❑ Less Than $150,000
   ❑ $150,000 - $299,999
   ❑ $300,000 - $499,999
   ❑ $500,000 - $999,999
   ❑ $1,000,000 - $4,999,999
   ❑ $5,000,000 or more

4. Is the applicant a faith-based/religious organization?

   ❑ Yes ❑ No

5. Is the applicant a non-religious community-based organization?

   ❑ Yes ❑ No

6. Is the applicant an intermediary that will manage the grant on behalf of other organizations?

   ❑ Yes ❑ No

7. Has the applicant ever received a government grant or contract (Federal, State, or local)?

   ❑ Yes ❑ No

8. Is the applicant a local affiliate of a national organization?

   ❑ Yes ❑ No

Survey Instructions on Ensuring Equal Opportunity for Applicants

1. 501(c)(3) status is a legal designation provided on application to the Internal Revenue Service by eligible organizations. Some grant programs may require nonprofit applicants to have 501(c)(3) status. Other grant programs do not.

2. For example, two part-time employees who each work half-time equal one full-time equivalent employee. If the applicant is a local affiliate of a national organization, the responses to survey questions 2 and 3 should reflect the staff and budget size of the local affiliate.

3. Annual budget means the amount of money your organization spends each year on all of its activities.

4. Self-identify.

5. An organization is considered a community-based organization if its headquarters/service location shares the same zip code as the clients you serve.

6. An "intermediary" is an organization that enables a group of small organizations to receive and manage government funds by administering the grant on their behalf.

7. Self-explanatory.

8. Self-explanatory

Paperwork Burden Statement

According to the Paperwork Reduction Act of 1995, no persons are required to respond to a collection of information unless such collection displays a valid OMB control number. The valid OMB control number for this information collection is 1890-0014. The time required to complete this information collection is estimated to average five (5) minutes per response, including the time to review instructions, search existing data resources, gather the data needed, and complete and review the information collection. **If you have any comments concerning the accuracy of the time estimate(s) or suggestions for improving this form, please write to:** U.S. Department of Education, Washington, D.C. 20202-4651. **If you have comments or concerns regarding the status of your individual submission of this form, write directly to:** Joyce I. Mays, Application Control Center, U.S. Department of Education, 7th and D Streets, SW, ROB-3, Room 3671, Washington, DC 20202-4725.

[FR Doc. 03–12119 Filed 5–14–03; 8:45 am]
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Federal Register
Vol. 68, No. 94
Thursday May 15, 2003

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Federal Register/Code of Federal Regulations	
General Information, indexes and other finding aids	202–741–6000
Laws	741–6000
Presidential Documents	
Executive orders and proclamations	741–6000
The United States Government Manual	741–6000
Other Services	
Electronic and on-line services (voice)	741–6020
Privacy Act Compilation	741–6064
Public Laws Update Service (numbers, dates, etc.)	741–6043
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FEDERAL REGISTER PAGES AND DATE, MAY

23183–23376	1
23377–23568	2
23569–23884	5
23885–24332	6
24333–24604	7
24605–24858	8
24859–25278	9
25279–25478	12
25479–25808	13
25809–26200	14
26201–26456	15

CFR PARTS AFFECTED DURING MAY

At the end of each month, the Office of the Federal Register publishes separately a List of CFR Sections Affected (LSA), which lists parts and sections affected by documents published since the revision date of each title.

3 CFR

Proclamations:
7668 23821
7669 23823
7670 23825
7671 23827
7672 23829
7673 24333
7674 25277
7675 26195
7676 26197
7677 26199
Executive Orders:
12865 (Revoked by 13298) 24857
13069 (Revoked by 13298) 24857
13098 (Revoked by 13298) 24857
13298 24857
13299 25477
13300 25807
Administrative Orders:
Memorandums:
Memorandum of May 6, 2003 25275
Presidential Determinations:
No. 2003-22 of May 6, 2003 25809

5 CFR

213 24605
Ch. XIV 23885
2424 23885
2429 23885
2471 23885
2472 23885
Proposed Rules:
2601 23876

7 CFR

6 25479
29 25484
46 23377
56 25484
301 ..... 24605, 24613
868 24589
932 23378
985 ..... 23569, 25486
989 25279
1410 24830
1424 24596
1710 24335
Proposed Rules:
274 23927
276 23927
278 23927
279 23927
280 23927
360 23425
1530 23230

9 CFR

Proposed Rules:
2 24052
130 25308

10 CFR

40 25281
70 23574
71 23574
72 23183
73 23574
150 25281
Proposed Rules:
20 23618
490 23620

11 CFR

Proposed Rules:
104 26237
107 26237
110 26237
9003 26237
9004 26237
9008 26237
9032 26237
9033 26237
9034 26237
9035 26237
9036 26237
9038 26237

12 CFR

21 25090
208 25090
211 25090
326 25090
563 25090
740 23381
748 25090
Proposed Rules:
613 ..... 23425, 23426

14 CFR

1 25486
11 25486
25 ..... 24336, 24338
39 ..... 23183, 23186, 23190, 23384, 23387, 23575, 23886, 24614, 24861, 25488, 25811, 26201
71 ..... 23577, 23579, 23580, 23581, 23682, 24340, 24341, 24342, 24864, 24866, 24868, 24869, 24870, 24871, 24872, 24874, 25489, 25491, 25492, 25493, 25494, 25495, 25684, 26202
73 25495
77 23583
97 ..... 23888, 23889
382 24874
Proposed Rules:
3 23808

25 26237
39 ..... 23231, 23235, 23427, 23620, 24383, 25543, 26239, 26242, 26244
71 ..... 23622, 23624, 23625, 23626
119 24810
121 24810
135 24810
145 24810
255 ..... 24896, 25844
330 23627
399 ..... 24896, 25844

15 CFR

0 24878
270 24343
902 24615

16 CFR

305 23584

Proposed Rules:

309 24669

17 CFR

42 25149
230 25788
232 ..... 24345, 25788
239 25788
240 25788
241 25281
249 25788
250 25788
259 25788
260 25788
269 25788
270 25131
274 25788

18 CFR

375 25814
376 25814

Proposed Rules:

35 24679

19 CFR

178 24052

20 CFR

Proposed Rules:

404 ..... 23192, 24896
416 ..... 23192, 24896

21 CFR

Ch. 1 24879
10 25283
14 25283
20 25283
310 24347
314 25283
358 24347
520 26204
522 26205
720 25283
1300 23195
1310 23195

Proposed Rules:

1 ..... 23630, 25242, 25188
11 25188
16 25242
101 23930
1308 26247
1310 24689

22 CFR

42 24638
121 25088
228 23891

23 CFR

140 24639
646 24639
661 24642

Proposed Rules:

630 ..... 23239, 24384

24 CFR

203 23370

25 CFR

Proposed Rules:

170 23631

26 CFR

1 ..... 23586, 24349, 24351, 24644, 24880
301 24644
602 24644

Proposed Rules:

1 ..... 23632, 23931, 24404, 24405, 24406, 24898, 24903, 25310, 25845
54 24406
602 24406

27 CFR

Proposed Rules:

4 24903
5 24903
7 24903
9 25851
13 24903

28 CFR

Proposed Rules:

513 25545

29 CFR

Proposed Rules:

1480 23634
1910 23528
4022 26206
4044 26206

30 CFR

36 23892
917 24644
948 24355
950 24647

31 CFR

103 ..... 25090, 25149, 25113, 25163
315 24794
351 24794
353 24794
359 24794
360 24794
363 24794

Proposed Rules:

103 ..... 23640, 23646, 23653, 25163

32 CFR

311 24880
505 25816
806B 24881

Proposed Rules:

701 24904

33 CFR

100 ..... 25817, 25818
110 25496
117 ..... 23390, 23590, 24882, 24883, 25818, 26208
165 ..... 23390, 23393, 23399, 23591, 23594, 23595, 23893, 23894, 23896, 24359, 24361, 24883, 25288, 25498, 25500, 25818, 26208

Proposed Rules:

62 25855
66 25855
67 25855
72 25855
165 ..... 23935, 24406, 24408, 26247
401 25546

34 CFR

674 25821
682 25821
685 25821

36 CFR

Proposed Rules:

251 ..... 25748, 25751
1280 23430

37 CFR

Proposed Rules:

262 23241

38 CFR

2 25503
4 25822

Proposed Rules:

39 23249

39 CFR

Proposed Rules:

111 23937

40 CFR

51 25684
52 ..... 23206, 23207, 23404, 23597, 23604, 24363, 24365, 24368, 24885, 25414, 25418, 25442, 25504, 26210, 26212
62 ..... 23209, 25291
63 ..... 23898, 24562, 24653
71 25507
80 24300
81 ..... 24368, 25418, 25442, 26212
89 25823
180 ..... 24370, 25824, 25831
271 ..... 23407, 23607
300 23211
312 24888
438 25686

Proposed Rules:

Ch. 1 ..... 24410, 25312
52 ..... 23270, 23430, 23661, 23662, 24416, 24417, 25547, 26248
60 24692
62 ..... 23272, 25313
63 26249
71 25548
80 24311
81 26248
146 ..... 23666, 23673
258 25550
300 23939

44 CFR

64 23408
67 23898

Proposed Rules:

67 23941

45 CFR

2 25838
32 24052
148 23410
301 25293
302 25293
303 25293
304 25293
307 25293
1309 23212

46 CFR

Proposed Rules:

540 23947

47 CFR

Ch. 1 25840
1 ..... 23417, 25841
2 25512
52 25843
73 ..... 23613, 23900, 23901, 25512, 25542, 26220
74 ..... 25512, 26220
80 25512
90 25512
97 25512

Proposed Rules:

1 23431
15 23677
64 25313
73 24417

48 CFR

511 24372
516 24372
532 24372
538 24372
546 24372
552 24372
1802 23423
1806 23423
1815 23423
1816 23423
1843 23423
1845 23424

Proposed Rules:

208 26265
219 26265
252 26265
245 25313

49 CFR

107 ..... 23832, 24653
171 ..... 23832, 24653
173 24653
176 23832
177 ..... 23832, 24653
180 24653
209 24891
383 23844
384 23844
571 ..... 23614, 24664
1570 23852
1572 23852

Proposed Rules:

193 23272
571 ..... 26269, 26384
572 24417
1137 ..... 23947, 25859

50 CFR

17 25934

216 24905
300 ..... 23224, 23901, 26230
600 ..... 23901, 26230
622 26230
648 ..... 24914, 25305
660 ..... 23901, 23913, 23924
679 ..... 23925, 24615, 24667, 24668, 26230

Proposed Rules:

18 24700
20 24324
216 24905
622 23686
648 ..... 23275, 23948, 23949, 24914

REMINDERS

The items in this list were editorially compiled as an aid to Federal Register users. Inclusion or exclusion from this list has no legal significance.

RULES GOING INTO EFFECT MAY 15, 2003

COMMERCE DEPARTMENT
National Oceanic and Atmospheric Administration
Fishery conservation and management:
Alaska: fisheries of Exclusive Economic Zone—
Pacific halibut; subsistence fishing; published 4-15-03
Alaska: fisheries of Exclusive Economic Zone—
Pacific halibut; subsistence fishing; correction; published 5-15-03

HEALTH AND HUMAN SERVICES DEPARTMENT
Food and Drug Administration
Animal drugs, feeds, and related products:
Carprofen; published 5-15-03
Fenbendazole suspension; published 5-15-03
Penicillin G potassium in drinking water; published 5-15-03
Xylazine injection; published 5-15-03

NATIONAL CREDIT UNION ADMINISTRATION
Credit unions:
Organization and operations—
Chartering and field of membership policies; update; published 4-15-03

TRANSPORTATION DEPARTMENT
Federal Aviation Administration
Air traffic operating and flight rules, etc.:
Area navigation and miscellaneous amendments; published 4-8-03
Airworthiness directives:
McDonnell Douglas; published 4-10-03
Class D airspace; published 10-23-02
Class D and Class E airspace; published 2-10-03
Class E airspace; published 2-19-03
Class E5 airspace; published 2-10-03
IFR altitudes; published 4-11-03
Prohibited areas; published 2-19-03
Restricted areas; published 1-23-03

TRANSPORTATION DEPARTMENT
National Highway Traffic Safety Administration
Motor vehicle safety standards:
Defect and noncompliance—
Reporting information and documentation; published 4-15-03

COMMENTS DUE NEXT WEEK

AGRICULTURE DEPARTMENT
Agricultural Marketing Service
Hass avocado promotion, research, and information order; comments due by 5-19-03; published 3-18-03 [FR 03-06510]

AGRICULTURE DEPARTMENT
Animal and Plant Health Inspection Service
Plant related quarantine; domestic:
Fire ant, imported; methoprene, authorized treatment; comments due by 5-20-03; published 3-21-03 [FR 03-06799]
User fees:
Export certificates for ruminants; comments due by 5-20-03; published 3-21-03 [FR 03-06797]

AGRICULTURE DEPARTMENT
Foreign Agricultural Service
Farmers; trade adjustment assistance; comments due by 5-23-03; published 4-23-03 [FR 03-10050]

COMMERCE DEPARTMENT
National Oceanic and Atmospheric Administration
Fishery conservation and management:
West Coast States and Western Pacific fisheries—
Pacific Coast groundfish; correction; comments due by 5-22-03; published 5-6-03 [FR 03-11084]
West Coast salmon; comments due by 5-21-03; published 5-6-03 [FR 03-11083]

EDUCATION DEPARTMENT
Elementary and secondary education:
Disadvantaged children; academic achievement improvement; comments due by 5-19-03; published 3-20-03 [FR 03-06653]

ENVIRONMENTAL PROTECTION AGENCY
Air pollution control:
Interstate ozone transport reduction—
Nitrogen oxides budget trading program; Section 126 petitions; findings of significant contribution and rulemaking; withdrawal provision; comments due by 5-24-03; published 4-4-03 [FR 03-08152]

ENVIRONMENTAL PROTECTION AGENCY
Air quality implementation plans; approval and promulgation; various States; air quality planning purposes; designation of areas:
Wisconsin; comments due by 5-19-03; published 4-17-03 [FR 03-09347]

ENVIRONMENTAL PROTECTION AGENCY
Air quality implementation plans; approval and promulgation; various States; air quality planning purposes; designation of areas:
Wisconsin; comments due by 5-19-03; published 4-17-03 [FR 03-09348]

ENVIRONMENTAL PROTECTION AGENCY
Air quality implementation plans; approval and promulgation; various States:
Louisiana; comments due by 5-21-03; published 4-21-03 [FR 03-09619]

ENVIRONMENTAL PROTECTION AGENCY
Air quality implementation plans; approval and promulgation; various States:
Louisiana; comments due by 5-21-03; published 4-21-03 [FR 03-09620]
Superfund program:
Toxic chemical release reporting; community right-to-know—
North American Industry Classification System; comments due by 5-20-03; published 3-21-03 [FR 03-06582]

FEDERAL ELECTION COMMISSION
Bipartisan Campaign Reform Act; implementation:
Presidential candidates and nominating conventions; public financing; comments due by 5-23-03; published 5-15-03 [FR 03-11978]

GOVERNMENT ETHICS OFFICE
Government ethics:
Post-employment conflict of interest restrictions; comments due by 5-19-03; published 2-18-03 [FR 03-03043]
Correction; comments due by 5-19-03; published 3-31-03 [FR 03-07539]

HEALTH AND HUMAN SERVICES DEPARTMENT
Food and Drug Administration
Human drugs:
Ophthalmic products for emergency first aid use (OTC); final monograph; amendment; comments due by 5-20-03; published 2-19-03 [FR 03-03927]

HOMELAND SECURITY DEPARTMENT
Coast Guard
Drawbridge operations:
Florida; comments due by 5-19-03; published 3-19-03 [FR 03-06637]
New Jersey; comments due by 5-19-03; published 3-20-03 [FR 03-06638]
Ports and waterways safety:
Long Island Sound Marine Inspection and Captain of Port Zone, CT; regulated navigation area and safety and security zones; comments due by 5-19-03; published 3-20-03 [FR 03-06642]

HOMELAND SECURITY DEPARTMENT
Customs Service
Articles conditionally free, subject to reduced rates, etc.:
African Growth and Opportunity Act; sub-Saharan Africa trade benefits; textile and apparel provisions; comments due by 5-20-03; published 3-21-03 [FR 03-06760]
Caribbean Basin Economic Recovery Act; textile and apparel provisions; comments due by 5-20-03; published 3-21-03 [FR 03-06755]

HOMELAND SECURITY DEPARTMENT
Customs Service
Merchandise, special classes, and financial and accounting procedures:
Patent Survey Program; discontinuation; comments due by 5-19-03; published 3-20-03 [FR 03-06756]

INTERIOR DEPARTMENT
Surface coal mining hearings and appeals; special rules; comments due by 5-19-03; published 3-20-03 [FR 03-06555]

LABOR DEPARTMENT
Mine Safety and Health Administration
Coal mine safety and health:
Underground mines—
Sanitary toilets; standards; comments due by 5-21-03; published 4-21-03 [FR 03-09656]

LABOR DEPARTMENT
Mine Safety and Health Administration
Coal mine safety and health:
Underground mines—
Sanitary toilets; standards; comments due by 5-21-03; published 4-21-03 [FR 03-09655]

LABOR DEPARTMENT
Mine Safety and Health Administration
Metal and nonmetal mine safety and health:
Seat belts for off-road work machines and wheeled agricultural tractors; comments due by 5-21-03; published 4-21-03 [FR 03-09658]

LABOR DEPARTMENT
Mine Safety and Health Administration
Metal and nonmetal mine safety and health:
Seat belts for off-road work machines and wheeled agricultural tractors; comments due by 5-21-03; published 4-21-03 [FR 03-09657]

LIBRARY OF CONGRESS
Copyright Office, Library of Congress
Copyright Arbitration Royalty Panel rules and procedures:
Digital performance of sound recordings; reasonable rates and terms determinations; comments due by 5-21-03; published 4-21-03 [FR 03-09783]

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION
Space flight:
Astronaut candidates; recruitment and selection; comments due by 5-23-03; published 4-23-03 [FR 03-10002]

NUCLEAR REGULATORY COMMISSION
Byproduct material; medical use:
Clarifications and amendments; comments due by 5-21-03; published 4-21-03 [FR 03-09601]

NUCLEAR REGULATORY COMMISSION
Byproduct material; medical use:
Clarifications and amendments; comments due by 5-21-03; published 4-21-03 [FR 03-09602]

PERSONNEL MANAGEMENT OFFICE
Health and counseling programs, Federal employees:
Child care costs for lower income employees; agency use of appropriated funds; comments due by 5-23-03; published 3-24-03 [FR 03-06887]

TRANSPORTATION DEPARTMENT
Procedural regulations:
Air carriers; compensation procedures; adjustment; comments due by 5-19-03; published 5-5-03 [FR 03-11185]

TRANSPORTATION DEPARTMENT
Federal Aviation Administration
Airworthiness directives:
Bell; comments due by 5-19-03; published 3-18-03 [FR 03-06136]

TRANSPORTATION DEPARTMENT
Federal Aviation Administration
Airworthiness directives:
Bombardier; comments due by 5-23-03; published 4-23-03 [FR 03-09690]

TRANSPORTATION DEPARTMENT
Federal Aviation Administration
Airworthiness directives:
General Electric Co.; comments due by 5-19-03; published 3-18-03 [FR 03-06044]

TRANSPORTATION DEPARTMENT
Federal Aviation Administration
Airworthiness directives:
Short Brothers and Harland Ltd.; comments due by 5-19-03; published 4-10-03 [FR 03-08750]
Airworthiness standards:
Special conditions—
Embraer Model ERJ-170 series airplanes; comments due by 5-23-03; published 4-23-03 [FR 03-10045]
Class E airspace; comments due by 5-19-03; published 4-3-03 [FR 03-08143]

TRANSPORTATION DEPARTMENT
Federal Aviation Administration
Class E airspace; comments due by 5-19-03; published 4-17-03 [FR 03-09506]

TRANSPORTATION DEPARTMENT
National Highway Traffic Safety Administration
Insurer reporting requirements:
Insurers required to file reports; list; comments due by 5-20-03; published 3-21-03 [FR 03-05629]

TREASURY DEPARTMENT
Foreign Assets Control Office
Cuban assets control regulations:
Family and educational travel transactions, remittances, support for Cuban people and humanitarian projects; technical amendments; comments due by 5-23-03; published 3-24-03 [FR 03-06808]

TREASURY DEPARTMENT
Internal Revenue Service
Excise taxes:
Structured settlement factoring transactions; cross-reference; comments due by 5-20-03; published 2-19-03 [FR 03-03865]

TREASURY DEPARTMENT
Currency and foreign transactions; financial reporting and recordkeeping requirements:
USA PATRIOT Act; implementation—
Nauru; special measures imposition due to designation as primary money laundering concern; comments due by 5-19-03; published 4-17-03 [FR 03-09410]
Terrorism Risk Insurance Program
State residual market insurance entities and State workers' compensation funds; comments due by 5-19-03; published 4-18-03 [FR 03-09613]

TREASURY DEPARTMENT
Terrorism Risk Insurance Program
Statutory conditions for Federal payment; comments due by 5-19-03; published 4-18-03 [FR 03-09611]

TREASURY DEPARTMENT
Terrorism Risk Insurance Program
Statutory conditions for Federal payment; cross-reference; comments due by 5-19-03; published 4-18-03 [FR 03-09612]

VETERANS AFFAIRS DEPARTMENT
Grants and cooperative agreements; availability, etc.:
Homeless Providers Grant and Per Diem Program; comments due by 5-19-03; published 3-19-03 [FR 03-06329]

LIST OF PUBLIC LAWS

This is a continuing list of public bills from the current session of Congress which have become Federal laws. It may be used in conjunction with "PLUS" (Public Laws Update Service) on 202–741–6043. This list is also available online at *http://www.nara.gov/fedreg/plawcurr.html*.

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H.R. 1770/P.L. 108–20
Smallpox Emergency Personnel Protection Act of 2003 (Apr. 30, 2003; 117 Stat. 638)

S. 151/P.L. 108–21
Prosecutorial Remedies and Other Tools to end the Exploitation of Children Today Act of 2003 (Apr. 30, 2003; 117 Stat. 650)
Last List April 29, 2003

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Contents

Federal Register
Vol. 68, No. 95
Friday, May 16, 2003

Advisory Council on Historic Preservation
See Historic Preservation, Advisory Council

Agriculture Department
See Commodity Credit Corporation
See Forest Service
See Rural Housing Service
NOTICES
Agency information collection activities; proposals, submissions, and approvals, 26559–26563

Antitrust Division
NOTICES
National cooperative research notifications:
GE Osmonics, Inc., 26647
Inter Company Collaboration for AIDS Drug Development, 26648
Open Mobile Alliance, 26648–26649
Open SystemC Initiative, 26649
Service Creation Community, 26649

Blind or Severely Disabled, Committee for Purchase From People Who Are
See Committee for Purchase From People Who Are Blind or Severely Disabled

Centers for Disease Control and Prevention
NOTICES
Grants and cooperative agreements; availability, etc.:
Antimicrobial Resistance; Applied Research; correction, 26618

Centers for Medicare & Medicaid Services
PROPOSED RULES
Medicare:
Inpatient rehabilitation facility prospective payment system (2004 FY), 26785–26837
Medicare and medicaid:
Skilled nursing facilities; prospective payment system and consolidated billing; update, 26757–26783
NOTICES
Agency information collection activities; proposals, submissions, and approvals, 26618–26620
Meetings:
Medicare—
Nursing home care computer software; Minimum Data Set, version 3.0; refinement; town hall meeting, 26621–26622

Children and Families Administration
NOTICES
Grants and cooperative agreements; availability, etc.:
Mentoring of Children of Prisoners Program, 26622–26628

Coast Guard
RULES
Ports and waterways safety:
Port Valdez and Valdez Narrows, AK; security zone, 26490–26492

Commerce Department
See Industry and Security Bureau
See International Trade Administration
See National Institute of Standards and Technology
See National Oceanic and Atmospheric Administration
NOTICES
Agency information collection activities; proposals, submissions, and approvals, 26567

Committee for Purchase From People Who Are Blind or Severely Disabled
NOTICES
Procurement list; additions and deletions, 26565–26567

Committee for the Implementation of Textile Agreements
NOTICES
Cotton, wool, and man-made textiles:
Vietnam, 26575–26576

Commodity Credit Corporation
RULES
Loan and purchase programs:
Farm and Ranch Lands Protection Program, 26461–26478

Defense Department
NOTICES
Federal Acquisition Regulation (FAR):
Agency information collection activities; proposals, submissions, and approvals, 26576

Delaware River Basin Commission
NOTICES
Meetings and hearings, 26576–26577

Education Department
NOTICES
Agency information collection activities; proposals, submissions, and approvals, 26577–26578
Grants and cooperative agreements; availability, etc.:
Elementary and secondary education—
Emergency Response and Crisis Management Program, 26578–26581
Professional Development for Arts Educators Program, 26951–26954
Postsecondary education—
Advanced Placement Test Fee Program, 26955–26957
Postsecondary education:
William D. Ford Federal Direct Loan Program—
Income contingent repayment plan formula; annual updates, 26561–26586
Reports and guidance documents; availability, etc.:
Electronic process (eZ-Audit) for submitting compliance and financial statement audits, 26586–26587

Employment and Training Administration
NOTICES
Adjustment assistance:
Gillette et al., 26651–26652
Rexnord Industries et al., 26652–26654
Agency information collection activities; proposals, submissions, and approvals, 26654–26673

Employment Standards Administration
NOTICES
Minimum wages for Federal and federally-assisted construction; general wage determination decisions, 26673

Energy Department
See Federal Energy Regulatory Commission
NOTICES
Environmental statements; availability, etc.:
West Valley Demonstration Project, NY, 26587–26588
Meetings:
Environmental Management Site-Specific Advisory Board——
Rocky Flats, CO, 26589

Environmental Protection Agency
RULES
Air pollutants, hazardous; national emission standards:
Brick and structural clay products manufacturing and clay ceramics manufacturing facilities, 26689–26755
Air quality implementation plans; approval and promulgation; various States:
District of Columbia, Maryland, and Virginia, 26495–26497
Tennessee, 26492–26495
PROPOSED RULES
Air quality implementation plans; approval and promulgation; various States:
Tennessee, 26556
NOTICES
Air pollution control:
Settlement agreements—
Antek Instruments, 26604–26605
Environmental statements; availability, etc.:
Agency statements—
Comment availability, 26605–26606
Weekly receipts, 26606–26607
Pesticide, food, and feed additive petitions:
KIM-C1, LLC, 26607–26611
Pesticides; emergency exemptions, etc.:
(Z,E)-3,13-octadecadienyl, etc., 26611–26613
Superfund; response and remedial actions, proposed settlements, etc.:
PCB Treatment Inc. Site, KS and MO, 26613–26616
Wade/ABM Site, PA, 26616
Water pollution control:
Great Lake System; bioaccumulative chemicals of concern mixing zones prohibition approved; water quality guidance, 26616–26618

Executive Office of the President
See Presidential Documents

Farm Credit Administration
PROPOSED RULES
Farm credit system:
Regulatory burden statement, 26551–26552

Federal Accounting Standards Advisory Board
NOTICES
Reports and guidance documents; availability, etc.:
Federal Financial Accounting Standards—
Eliminating Category National Defense Property, Plant and Equipment, 26618

Federal Aviation Administration
RULES
Airworthiness directives:
GE Aircraft Engines, 26478–26481
Raytheon, 26482–26484
Rolls-Royce plc, 26481–26482
Class E airspace; correction, 26687
Standard instrument approach procedures, 26484–26488
PROPOSED RULES
Airworthiness directives:
CFM International, S.A., 26553–26555
Eurocopter France, 26552–26553

Federal Bureau of Investigation
NOTICES
Meetings:
National Crime Prevention and Privacy Compact Council, 26649–26650

Federal Communications Commission
RULES
Digital television stations; table of assignments:
Montana, 26497
Vermont, 26497
PROPOSED RULES
Radio stations; table of assignments:
Texas, 26556–26557
Texas and Oklahoma, 26557

Federal Emergency Management Agency
NOTICES
Disaster and emergency areas:
Kansas, 26636
Missouri, 26636–26637

Federal Energy Regulatory Commission
NOTICES
Agency information collection activities; proposals, submissions, and approvals, 26589–26593
Electric rate and corporate regulation filings:
Duke Energy Vermillion, LLC, et al., 26595–26597
Environmental statements; availability, etc.:
Carolina Power & Light Co., 26597
Hydroelectric applications, 26597–26604
Practice and procedure:
Off-the-record communications, 26604
Applications, hearings, determinations, etc.:
MIGC, Inc., 26593
Natural Gas Pipeline Co. of America, 26594
PG&E Gas Transmission, Northwest Corp., 26594
Quonset Point Cogen, L.P., 26594–26595
Southern California Edison, 26595
Tennessee Gas Pipeline Co., 26595

Fish and Wildlife Service
RULES
Endangered and threatened species:
Black-footed ferrets; nonessential experimental population reintroduction in south-central South Dakota, 26498–26510
NOTICES
Environmental statements; availability, etc.:
Pacific Flyway; operational/experimental general swan hunting seasons establishment, 26642

Food and Drug Administration
NOTICES
Reports and guidance documents; availability, etc.:
Animal feed; use of material from deer and elk; industry draft guidance, 26628–26629

Forest Service
NOTICES
Environmental statements; notice of intent:
Black Hills National Forest, SD, 26563–26564
Chequamegon-Nicolet National Forest, WI, 26564–26565
Meetings:
Resource Advisory Committees—
Del Norte County, 26565
Siuslaw, 26565
Trinity County, 26565

General Services Administration
NOTICES
Federal Acquisition Regulation (FAR):
Agency information collection activities; proposals, submissions, and approvals, 26576

Health and Human Services Department
See Centers for Disease Control and Prevention
See Centers for Medicare & Medicaid Services
See Children and Families Administration
See Food and Drug Administration
See National Institutes of Health

Historic Preservation, Advisory Council
NOTICES
Army Alternate Procedures; amendment, 26559

Homeland Security Department
See Coast Guard
See Federal Emergency Management Agency
See Transportation Security Administration

Housing and Urban Development Department
RULES
FHA programs; introduction:
FHA single family appraiser roster; appraiser qualifications for placement, 26945–26950
PROPOSED RULES
Public and Indian housing:
Native American Housing Assistance and Self-Determination Negotiated Rulemaking Committee; meetings, 26555–26556
NOTICES
Grants and cooperative agreements; availability, etc.:
Facilities to assist homeless—
Excess and surplus Federal property, 26637–26640
Terrorist attacks of September 11, 2001; statutory and regulatory waivers granted to New York State for recovery, 26640–26642

Industry and Security Bureau
NOTICES
Export transactions:
Best practices for exporters/re-exporters and trade facilitation/freight forwarding companies regarding dual-use items transit, transshipment, and reexport, 26567–26569
List of unverified persons in foreign countries, guidance to exporters as to "red flags" (Supplement No. 3 to 15 CFR 732), 26569–26571

Interior Department
See Fish and Wildlife Service
See Land Management Bureau
See National Park Service

Internal Revenue Service
NOTICES
Meetings:
Art Advisory Panel, 26682
Taxpayer Advocacy Panels, 26682–26683

International Trade Administration
NOTICES
Antidumping:
Stainless steel wire rod from—
South Korea, 26571
Countervailing duties:
Hot-rolled carbon steel flat products from—
Argentina, 26572–26573
Applications, hearings, determinations, etc.:
University of—
Colorado et al., 26571
Wisconsin-Eau Claire, 26571–26572

Justice Department
See Antitrust Division
See Federal Bureau of Investigation
NOTICES
Grants and cooperative agreements; availability, etc.:
Community Oriented Policing Services Office—
Homeland Security Overtime Program, 26646–26647

Labor Department
See Employment and Training Administration
See Employment Standards Administration
NOTICES
Agency information collection activities; proposals, submissions, and approvals, 26650–26651

Land Management Bureau
NOTICES
Environmental statements; availability, etc.:
Ivanpah Energy Center, NV, 26642–26643
Upper Klamath River, OR and CA, 26643–26644
Meetings:
Carrizo Plain National Monument Advisory Committee, 26644–26645

Morris K. Udall Scholarship and Excellence in National Environmental Policy Foundation
NOTICES
Meetings:
National Environmental Conflict Resolution Advisory Committee, 26673–26674

National Aeronautics and Space Administration
NOTICES
Federal Acquisition Regulation (FAR):
Agency information collection activities; proposals, submissions, and approvals, 26576

National Institute of Standards and Technology
NOTICES
Information processing standards, Federal:
Security categorization of Federal information and information systems, 26573–26574
Meetings:
Malcolm Baldrige National Quality Award—
Board of Overseers, 26575

Panel of Judges, 26574–26575

National Institutes of Health
NOTICES
Inventions, Government-owned; availability for licensing, 26629–26632
Meetings:
Fogarty International Center Advisory Board, 26632
National Human Genome Research Institute, 26632–26633
National Institute of Child Health and Human Development, 26633
National Institute of Dental and Craniofacial Research, 26634
National Institute of Mental Health, 26633
National Institute of Nursing Research, 26635
National Institute on Drug Abuse, 26634–26635
Warren Grant Magnuson Clinical Center, 26635

National Oceanic and Atmospheric Administration
RULES
Fishery conservation and management:
Northeastern United States fisheries—Haddock, 26510
PROPOSED RULES
Fishery conservation and management:
West Coast States and Western Pacific fisheries—Pacific Coast groundfish, 26557–26558

National Park Service
NOTICES
Environmental statements; availability, etc.:
Glen Canyon National Recreation Area, AZ and UT; personal watercraft use, 26645–26646
Meetings:
Cape Cod National Seashore Advisory Commission, 26646
National Register of Historic Places:
Pending nominations, 26646

National Science Foundation
NOTICES
Agency information collection activities; proposals, submissions, and approvals, 26674–26675

Nuclear Regulatory Commission
PROPOSED RULES
Production and utilization facilities; domestic licensing:
Risk-informed categorization and treatment of structures, systems, and components for nuclear power reactors, 26511–26551
NOTICES
Meetings:
Licensing Support Network Advisory Review Panel, 26678
Applications, hearings, determinations, etc.:
BWX Technologies, Inc., 26675–26676
Nuclear Fuel Services Inc., 26676–26678

Occupational Safety and Health Review Commission
NOTICES
Reports and guidance documents; availability, etc.:
Agency Strategic Plan (2003-2008 FY), 26678–26679

Overseas Private Investment Corporation
NOTICES
Agency information collection activities; proposals, submissions, and approvals, 26679

Presidential Documents
ADMINISTRATIVE ORDERS
Iraq; suspension of the Iraq Sanctions Act and delegation of authority (Presidential Determination No. 2003-23 of May 7, 2003), 26459
Tibet; report to Congress on negotiations (Memorandum of May 7, 2003), 26457

Rural Housing Service
NOTICES
Grants and cooperative agreements; availability, etc.:
Multi-family and single family housing programs, 26927–26941
Section 514 Farm Labor Housing Loans and Section 516 Farm Labor Housing Grants for Off-Farm Housing, 26940–26943
Section 515 Rural Rental Housing Program, 26940–26941
Section 533 Housing Preservation Program, 26942–26943
Section 538 Guaranteed Rural Rental Housing Program, 26942–26943

Securities and Exchange Commission
RULES
Financial reporting matters:
Staff accounting bulletins; codification update, 26839–26925

Sentencing Commission, United States
See United States Sentencing Commission

Small Business Administration
NOTICES
Disaster loan areas:
Oklahoma, 26679
Tennessee, 26680

State Department
RULES
Claims and stolen property:
Stolen property under treaty with Mexico; CFR part removed, 26488
NOTICES
Art objects; importation for exhibition:
Manet and the American Civil War: The Battle of the "Kearsarge" and the "Alabama", 26680
Meetings:
Historical Diplomatic Documentation Advisory Committee, 26680–26681

Surface Transportation Board
NOTICES
Railroad operation, acquisition, construction, etc.:
Gulf & Ohio Railways Holding Co., Inc., et al., 26681
Union Pacific Railroad Co., 26681
Vermilion Valley Railroad Co., Inc., 26681–26682

Textile Agreements Implementation Committee
See Committee for the Implementation of Textile Agreements

Transportation Department
See Federal Aviation Administration
See Surface Transportation Board

Transportation Security Administration
NOTICES
Agency information collection activities; proposals, submissions, and approvals, 26637

Treasury Department
See Internal Revenue Service
RULES
Currency and foreign transactions; financial reporting and recordkeeping requirements:
Bank Secrecy Act; implementation—
Financial crimes enforcement network; foreign bank account report requirements; authority delegation, 26489
NOTICES
Meetings:
United States Postal Service, President's Commission, 26682

United States Sentencing Commission
NOTICES
Sentencing guidelines and policy statements for Federal courts, 26959–26979

Utah Reclamation Mitigation and Conservation Commission
NOTICES
Environmental statements; availability, etc.:
Duchesne and Strawberry Rivers, UT; rehabilitation/replacement of diversion dams, 26683–26684

Veterans Affairs Department
NOTICES
Meetings:
Gulf War Illnesses Research Advisory Committee, 26684
Vocational Rehabilitation and Employment Task Force, 26684–26685
Privacy Act:
Systems of records, 26685–26686

Separate Parts In This Issue

Part II
Environmental Protection Agency, 26689–26755

Part III
Health and Human Services Department, Centers for Medicare & Medicaid Services, 26757–26783

Part IV
Health and Human Services Department, Centers for Medicare & Medicaid Services, 26785–26837

Part V
Securities and Exchange Commission, 26839–26925

Part VI
Agriculture Department, Rural Housing Service, 26927–26943

Part VII
Housing and Urban Development Department, 26945–26950

Part VIII
Education Department, 26951–26954

Part IX
Education Department, 26955–26957

Part X
United States Sentencing Commission, 26959–26979

Reader Aids
Consult the Reader Aids section at the end of this issue for phone numbers, online resources, finding aids, reminders, and notice of recently enacted public laws.

To subscribe to the Federal Register Table of Contents LISTSERV electronic mailing list, go to http://listserv.access.gpo.gov and select Online mailing list archives, FEDREGTOC-L, Join or leave the list (or change settings); then follow the instructions.

CFR PARTS AFFECTED IN THIS ISSUE

A cumulative list of the parts affected this month can be found in the Reader Aids section at the end of this issue.

3 CFR
Administrative Orders:
Memorandum of May 7, 2003 26457
Presidential Determination No. 2003-23 of May 7, 2003 26459

7 CFR
1491 26461

10 CFR
Proposed Rules:
50 26511

12 CFR
Proposed Rules:
Ch. 6 26551

14 CFR
39 (3 documents) 26478, 26481, 26482
71 26687
97 (2 documents) 26484, 26486
Proposed Rules:
39 (2 documents) 26552, 26553

17 CFR
211 26840

22 CFR
32 26488

24 CFR
200 26946
Proposed Rules:
1000 26555

31 CFR
103 26489

33 CFR
165 26490

40 CFR
52 (2 documents) 26492, 26495
63 26690
Proposed Rules:
52 26556

42 CFR
Proposed Rules:
409 26758
412 26786
413 26758
440 26758
483 26758

47 CFR
73 (2 documents) 26497
Proposed Rules:
73 (2 documents) 26556, 26557

50 CFR
17 26498
648 26510
Proposed Rules:
660 26557

Federal Register
Vol. 68, No. 95
Friday, May 16, 2003

Presidential Documents

Title 3—

The President

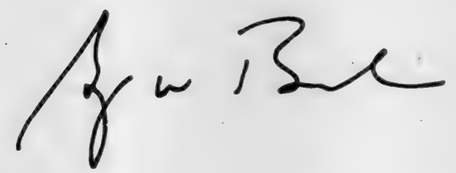
Memorandum of May 7, 2003

Report to the Congress on Tibet Negotiations

Memorandum for the Secretary of State

The provisions under the heading "Tibet Negotiations" in section 613(b) of the Tibetan Policy Act of 2002, as contained in the Foreign Relations Authorization Act, Fiscal Year 2003 (Public Law 107–228), state that a report must be prepared 180 days following enactment, and every 12 months thereafter, concerning the steps taken by the President and the Secretary to encourage the Government of the People's Republic of China to enter into dialogue with the Dalai Lama or his representatives leading to a negotiated agreement on Tibet. The report is also to address the status of any discussions between the People's Republic of China and the Dalai Lama or his representatives.

You are hereby authorized and directed to publish this memorandum in the **Federal Register** and to transmit the attached report to the appropriate committees of the Congress.



THE WHITE HOUSE,
Washington, May 7, 2003.

[FR Doc. 03–12486
Filed 5–15–03; 8:45 am]
Billing code 4710–10–P

Presidential Documents

Presidential Determination No. 2003–23 of May 7, 2003

Suspending the Iraq Sanctions Act, Making Inapplicable Certain Statutory Provisions Related to Iraq, and Delegating Authorities, under the Emergency Wartime Supplemental Appropriations Act, 2003

Memorandum for the Secretary of State [and] the Secretary of Commerce

By virtue of the authority vested in me by the Constitution and the laws of the United States, including sections 1503 and 1504 of the Emergency Wartime Supplemental Act, 2003, Public Law 108–11 (the "Act"), and section 301 of title 3, United States Code, I hereby:

(1) suspend the application of all of the provisions, other than section 586E, of the Iraq Sanctions Act of 1990, Public Law 101–513, and

(2) make inapplicable with respect to Iraq section 620A of the Foreign Assistance Act of 1961, Public Law 87–195, as amended (the "FAA"), and any other provision of law that applies to countries that have supported terrorism.

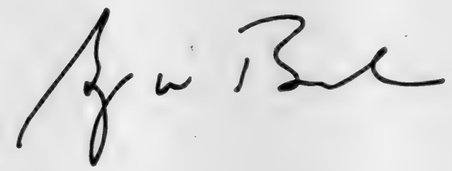
In addition, I delegate the functions and authorities conferred upon the President by:

(1) section 1503 of the Act to submit reports to the designated committees of the Congress to the Secretary of Commerce, or until such time as the principal licensing responsibility for the export to Iraq of items on the Commerce Control List has reverted to the Department of Commerce, to the Secretary of the Treasury; and,

(2) section 1504 of the Act to the Secretary of State.

The functions and authorities delegated herein may be further delegated and redelegated to the extent consistent with applicable law.

The Secretary of State is authorized and directed to publish this determination in the **Federal Register**.



THE WHITE HOUSE,
Washington, May 7, 2003.

[FR Doc. 03–12487
Filed 5–15–03; 8:45 am]
Billing code 4710–10–P

Rules and Regulations

Federal Register
Vol. 68, No. 95
Friday, May 16, 2003

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

DEPARTMENT OF AGRICULTURE

Commodity Credit Corporation

7 CFR Part 1491

RIN 0578–AA37

Farm and Ranch Lands Protection Program

AGENCY: Commodity Credit Corporation, Department of Agriculture (USDA).

ACTION: Final rule.

SUMMARY: This final rule sets forth the policies implementing the Farm and Ranch Lands Protection Program. The Farm Security and Rural Investment Act of 2002 repealed the Farmland Protection Program (FPP), established by the Federal Agriculture Improvement and Reform Act of 1996, and authorized a new farmland protection program. The new program will be called the Farm and Ranch Lands Protection Program (FRPP) to both distinguish it from the repealed program and to better describe the types of land the program seeks to protect. Under the FRPP, the Secretary of Agriculture, acting through the Natural Resources Conservation Service (NRCS), is authorized, on behalf of the Commodity Credit Corporation (CCC) and under its authorities, to purchase conservation easements or other interests in land for the purpose of protecting topsoil by limiting nonagricultural uses of the land. The final rule promulgates policy regarding the implementation of the FRPP, while the Request for Proposals (RFP), which will continue to be used, announces national fund availability and sets forth nationwide application procedures and ranking criteria. Conservation easements recorded on or following this date will be administered according to this final rule. Cooperative agreements signed on this date or following this date also will be administered according to this final rule.

DATES: This final rule is effective May 16, 2003.

ADDRESSES: This final rule can be accessed via the internet. Users can access the Natural Resources Conservation Service (NRCS) homepage at: *http://www.nrcs.usda.gov.*

FOR FURTHER INFORMATION CONTACT: Denise Coleman, Farm and Ranch Lands Protection Program Manager, Natural Resources Conservation Service, P.O. Box 2890, Washington, DC 20013–2890. Telephone: (202) 720–9476. Electronic mail *denise.coleman@usda.gov.* Persons with disabilities who require alternative means for communication (Braille, large print, audio tape, *etc.*) should contact the USDA Target Center at: (202) 720–2600 (voice and TDD).

SUPPLEMENTARY INFORMATION:

Executive Order 12866

This final rule has been reviewed under USDA procedures and Executive Order 12866 on Regulatory Planning and Review. The Office of Management and Budget (OMB) has determined that this final rule is not a significant rulemaking action. Therefore, no benefit cost assessment of potential impacts is necessary.

Regulatory Flexibility Act

Pursuant to 5 U.S.C. 605(c) of the Regulatory Flexibility Act, it has been determined that this final rule will not have a significant economic impact on a substantial number of small entities as defined by that Act. Therefore, a regulatory flexibility analysis is not required for this final rule. This final rule implements the Farm and Ranch Lands Protection Program, which involves the voluntary acquisition of interests in property by NRCS in partnership with State, local, and Tribal governments and nonprofit entities.

Small Business Regulatory Enforcement Fairness Act of 1996

This final rule is not a major rule as defined by Section 804 of the Small Business Regulatory Enforcement Fairness Act of 1996. This final rule will not result in annual effect on the economy of $100,000,000 or more, a major increase in costs or prices, or significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U. S.based companies to compete in domestic and export markets.

Environmental Analysis

An Environmental Assessment (EA) has been prepared to assist NRCS in determining whether this final rule would have a significant impact on the quality of the human environment such that an Environmental Impact Statement (EIS) should be prepared. Based on the results of the draft EA, NRCS has issued a Finding of No Significant Impact (FONSI). Copies of the EA and FONSI may be obtained from Denise Coleman, Farmland Protection and Community Planning Staff, Natural Resources Conservation Service, P.O. Box 2890, Washington, DC 20013–2890. The FRPP EA and FONSI will also be available at the following Internet address: *http://www.nrcs.usda.gov/programs/Env_Assess/FPP/FPP.html.*

Paperwork Reduction Act

Section 2702 of the Farm Security and Rural Investment Act of 2002 provides that the promulgation of this final rule is carried out without regard to Chapter 35 of Title 44, United States Code (commonly known as the Paperwork Reduction Act).

Executive Order 12988, Civil Justice Reform

This final rule has been reviewed in accordance with Executive Order 12988. NRCS has not identified any State or local laws or regulations that are in conflict with this regulation or that would impede full implementation of this rule. Nevertheless, in the event that such a conflict were to be identified, the final rule would preempt the State or local laws or regulations found to be in conflict. The provisions of this final rule are not retroactive. Before an action may be brought in a Federal court of competent jurisdiction, the administrative appeal rights afforded persons at 7 CFR part 614 must be exhausted.

Executive Order 13132, Federalism

This final rule has been reviewed in accordance with the requirements of Executive Order 13132, Federalism. NRCS has determined that the rule conforms to the Federalism principles set forth in the Executive Order; would not impose any compliance cost on the States; and would not have substantial direct effects on the States, on the relationship between the Federal Government and the States, or on the

distribution of power and responsibilities on the various levels of government.

Unfunded Mandates Reform Act of 1995

Pursuant to Title II of the Unfunded Mandates Reform Act of 1995, 2 U.S.C. 1531–1538, NRCS has assessed the effects of this rulemaking action of State, local, and Tribal governments, and the public. This action does not compel the expenditure of $100,000,000 or more by any State, local, or Tribal government, or anyone in the private sector; therefore, a statement under section 202 of the Act is not required.

Background Related to the Farm and Ranch Lands Protection Program

Urban sprawl continues to threaten the Nation's farm and ranch land. Social and economic changes over the past three decades have influenced the rate at which land is converted to nonagricultural uses. Population growth, demographic changes, large lot development, expansion of transportation systems, and economic prosperity have contributed to increased agricultural land conversion rates. Increased population, growing affluence, and an expanded transportation infrastructure have accelerated the depopulation of the urban centers and have resulted in the conversion of farm and ranch land. Between 1960 and 1990, metropolitan area population grew by 50 percent, while the acreage of developed land increased 100 percent. About 45 percent of new construction between the years of 1994 and 1997 occurred in rural areas, with nearly 80 percent being land bordering urban areas. Overall, this translates to over 2.2 million acres being converted per year (USDA, *Maintaining Farm and Forestland In Rapidly Growing Areas*, 2000).

According to the USDA National Resources Inventory (NRI), urban and built-up areas increased from 65.3 million acres in 1992, to 79 million acres in 1997, equaling an area approximately the size of Ohio. Perhaps more important than the overall rate of land conversion is the location and type of land subject to this change in land use. On average, prime and important farmlands are being converted at a rate of two to four times that of other lands. Based on NRI urban and built-up data for the 1980s, 46 percent of the land converted to urban and built-up uses comes from cropland and pasture, while 38 and 14 percent comes from forest land and range land, respectively. Much of the land being lost is prime, unique, or important farmland located near cities. Moreover, an end to farm and forest land conversion is not in sight. The National Home Builders Association forecasts an expansion of 1.3 to 1.5 million new homes per year through 2010 (USDA, *Maintaining Farm and Forestland In Rapidly Growing Areas*, 2000).

As a result of these land use changes, there is growing national interest in protecting farm and ranch lands. Once developed, productive topsoil is effectively lost forever, placing the Nation's future food security at risk. Furthermore, land use devoted to agriculture provides other significant public benefits, including environmental quality, historic preservation, and scenic beauty.

Overview of the Farm and Ranch Lands Protection Program

The FRPP is a voluntary program that helps farmers and ranchers keep their land in agriculture. The program provides matching funds to State, Tribal, and local governments, and non-governmental organizations with existing farmland protection programs to purchase conservation easements. NRCS is authorized by statute to purchase conservation easements, or other interests in land. NRCS cannot use FRPP funds to restore historical or archaeological resources, nor share in the cost of installing conservation practices.

Under the FRPP, NRCS solicits proposals from Federally recognized Indian Tribes, States, units of local government, and non-governmental organizations to cooperate in the acquisition of conservation easements on farms and ranches for the purpose of protecting topsoil from conversion to nonagricultural uses. Although NRCS has authority to acquire other interests in land, the FRPP will seek to fund the acquisition of conservation easements.

Discussion of Comments and Changes

The Natural Resources Conservation Service (NRCS), on behalf of the Commodity Credit Corporation (CCC), published a proposed rule on October 29, 2002 at 7 CFR 1491. NRCS received 296 timely filed letters containing nearly 800 comments. Respondents included the following: 1 Congressional representative, 1 Federal agency, 5 State agencies, 5 local governments, 59 non-governmental organizations, and 225 from individuals. Comments were received from California, Colorado, Connecticut, Delaware, Florida, Idaho, Illinois, Iowa, Kansas, Kentucky, Maine, Maryland, Massachusetts, Michigan, Minnesota, Mississippi, Missouri, Montana, Nebraska, New Hampshire, New Jersey, New Mexico, New York, North Carolina, Oklahoma, Oregon, Pennsylvania, Rhode Island, South Carolina, Tennessee, Texas, Vermont, Washington, West Virginia, Wisconsin, Wyoming, and the District of Columbia. Some letters and e-mails did not indicate from which State they originated. Some comments pertained to a specific situation or locality and were not national in scope; therefore, these comments were not addressed in the final rule.

The discussion that follows is organized in the same sequence as the proposed rule.

Subpart A—General Provisions

Section 1491.1 Applicability

This section addresses the scope of the Farm and Ranch Lands Protection Program. The Farm and Ranch Lands Protection Program is available in all 50 States, the District of Columbia, the Commonwealth of Puerto Rico, Guam, the Virgin Islands of the United States, American Samoa, and the Commonwealth of the Northern Mariana Islands. One respondent asked whether this final rule governs the policy for fiscal year 2002 applications. This final rule is effective upon publication. Conservation easements recorded on/or following this date will be administered according to this final rule. Cooperative agreements signed on this date or following this date also will be administered according to this final rule. One respondent asked that there be a discussion of how the final rule differs from the Request for Proposals, while one respondent requested that NRCS continue to use national Request for Proposal announcements, as it did under the Farmland Protection Program. The final rule promulgates policy regarding the implementation of the FRPP, while the Request for Proposals, which will continue to be used, announces national fund availability and sets forth nationwide application procedures and ranking criteria.

Three respondents indicated their overall support for the FRPP program and its proposed rule, while two respondents indicated that they did not support FRPP, contending that tax dollars should not be used on programs where the Federal government decides how private lands are to be used, and that a program such as FRPP invites more "boom and bust" land speculation. FRPP is a voluntary program that protects agricultural land from conversion to nonagricultural uses. FRPP, coupled with community planning and zoning, such as the use of agricultural districts, can help curb "boom and bust" land speculation and ensure that farm and ranch lands remain viable in communities across the Nation.

Two respondents indicated their support for the program's name change from the Farmland Protection Program to the Farm and Ranch Lands Protection Program. Another respondent supported the name change as long as east coast farms remained competitive in acquiring FRPP funds. As it always has, FRPP will continue to protect both farm and ranch land from conversion to nonagricultural uses. The reason for the name change is not to shift the Program's purpose, but rather to distinguish it from the repealed program and to better describe the types of land the Program seeks to protect.

Another respondent raised the concern that farms and ranches located outside of priority areas be protected. FRPP promotes flexibility and local decision making as it relates to parcel protection. Priority area designation is at the discretion of the State Conservationist, with advice from the State Technical Committee.

Section 1491.2 Administration

In this section, the roles and responsibilities of NRCS were identified. Three respondents indicated that FRPP duplicates many processes already in use by various State and local governments and non-governmental organizations. One of these respondents further went on to state that the FRPP provisions "go way beyond the necessary criteria needed for Federal reimbursement of the easement purchase price and challenge the rights of the State, County, or non-governmental organization as Grantee." For this reason, the respondents requested that NRCS enter into Memoranda of Understandings with existing State and local farmland protection programs under which non-Federal review procedures and selection criteria would suffice for Federal purposes.

The Farm Security and Rural Investment Act of 2002 states:

> The Secretary, acting through the Natural Resources Conservation Service, shall establish and carry out a farmland protection program under which the Secretary shall purchase conservation easements or other interests in eligible land that is subject to a pending offer from an eligible entity for the purpose of protecting topsoil by limiting nonagricultural uses of the land.

In accordance with this statutory language, the Farm and Ranch Lands Protection Program is not a grant program, rather it is a land procurement program that acquires an actual Federal interest in the Property. In the case of FRPP, the interest acquired is a contingent right. In order to carry out the intent of the statute, NRCS has been active in conducting eligibility determinations, ranking parcels based on its own criteria, and reviewing and approving conservation easements.

Moreover, even if FRPP was a grant program, memoranda of understandings (MOUs) or memoranda of agreements (MOAs) are not legally binding instruments. Therefore, the Federal government does not utilize MOUs or MOAs to provide Federal funds to recipients. NRCS understands the fact that a number of State and local farmland protection programs have a longer history of acquiring parcels than FRPP. Many of these State and local governments have well established procedures to acquire parcels. For this reason, NRCS has and will continue to work with established farmland protection programs utilizing the State Technical Committee. In consultation with the State Technical Committee, NRCS:

- Issues Statewide application guidance;
- Develops ranking criteria that meets the objectives of FRPP and the State and local farmland protection programs; and
- Establishes NRCS State policy as it relates to FRPP easement acquisition.

Eighteen respondents asked that NRCS address FRPP's association with other conservation programs administered by the United States Department of Agriculture (USDA). NRCS encourages landowners to utilize other conservation programs to protect natural resources on FRPP land. Landowners who enroll in FRPP are eligible to participate in USDA's cost share programs, including the Agricultural Management Assistance Program (AMA), Conservation Reserve Program (CRP), Environmental Quality Incentives Program (EQIP), Wildlife Habitat Incentives Program (WHIP), and the long-term contract options under the Wetlands Reserve Program (WRP) and Conservation Reserve and Enhancement Program (CREP). One respondent suggested that permanently protected lands, such as FRPP, receive priority ranking in other USDA programs. Current policy allows the NRCS State Conservationist to establish ranking criteria at the State level for other conservation programs. The NRCS State Conservationist has the authority to rank FRPP parcels higher than other parcels, if the State Conservationist deems it to be appropriate.

Thirteen respondents asked NRCS to address, as it relates to FRPP implementation, the Partnership and Cooperation provision that was authorized in the 2002 Farm Bill. Partnerships and Cooperation, as authorized under the Farm Security and Rural Investment Act of 2002 (Title XII, Subtitle E, Section 1243 (f)), offers new opportunities to address pressing conservation and natural resource needs. The provision provides authority for the Secretary of Agriculture to use resources provided under other conservation programs to enter into stewardship agreements with State and local agencies, Indian tribes, and non-governmental organizations. Under this provision, the State Conservationist, with advice from the State Technical Committee, may designate special projects to enhance technical and financial assistance provided to owners, operators, and producers, and to address natural resource issues related to agricultural production. The U.S. Department of Agriculture is presently working to define the operational aspects of Partnerships and Cooperation. The provision is unique among the new Farm Bill authorities in that it builds from seven core programs, including the Farm and Ranch Lands Protection, Wetlands Reserve, Environmental Quality Incentives, Conservation Reserve, Wildlife Habitat Incentives, Grassland Reserve, and Conservation Security Programs. A number of these core programs required rule development or revision, many of which are in various stages of completion. The results of these activities will influence the overall design for Partnerships and Cooperation.

Section 1491.3 Definitions

This section provides and defines the common terms used throughout the FRPP proposed rule.

Agricultural Uses

Two comments were received concerning this definition. One comment suggests that the term "agricultural uses" should include "the construction of on-farm structures necessary for farm operations," while the other comment suggests that agricultural uses be defined by the State's Purchase of Development Rights (PDR) Program, or where no PDR program exists, agricultural uses should be defined by the State agricultural use assessment program. NRCS prefers to continue to utilize the flexibility afforded by the proposed rule's definition, which allows agricultural uses to be defined at the State level; however, NRCS supports the latter comment of making the definition consistent with the PDR or State

agricultural use assessment programs' definitions. For this reason, the definition of agricultural uses has been modified in the final rule. To ensure that broad State definitions of agricultural uses do not conflict with FRPP's mandate to protect soils, NRCS has chosen to continue to retain the language: "NRCS reserves the right to impose greater deed restrictions on the property than allowable under a State definition of agriculture in order to protect topsoil."

Conservation Easement

Comments were received from one respondent who requested that the term "agricultural conservation easement" should be used instead of the generic term "conservation easement." NRCS has chosen to continue using the term "conservation easement" because it provides a greater flexibility to work with cooperating entities which may use conservation easements that seek to protect not only farm and ranch lands, but also multiple, compatible conservation values, such as open space, scenic, and wildlife values.

Conservation Plan

Ten respondents requested clarification on the scope of a conservation plan. Several were confused because the preamble stated that "all lands enrolled in FRPP must have a conservation plan developed based on the NRCS Field Office Technical Guide specifications and highly erodible land and wetland conservation provisions in accordance with 7 CFR part 12," while the proposed rule defined a conservation plan as a plan that covered only highly erodible cropland. In accordance with the Food Security Act of 1985, as amended, the authorizing FRPP legislation, a conservation plan under the FRPP will cover only highly erodible cropland. Conservation planning on other lands or on other resources is at the discretion of the NRCS State Conservationist and the cooperating entity.

In addition to the comments requesting clarification of the scope of the conservation plan, nineteen respondents requested that all lands enrolled under FRPP have a conservation plan that addresses all natural resources, not only soil erosion. These resources include: water, wildlife, air, and plants. Three sources noted that a conservation plan should address all natural resources as a benefit to the United States taxpayer. Two respondents suggested that resource concerns be addressed within a specified time frame. In addition to the nineteen respondents, several respondents asked that specific resources or management activities be addressed in the conservation plan. One respondent requested that water quality should be specifically addressed in the conservation plan, while another requested water quality and wildlife habitat be addressed. Another respondent requested that the conservation plan address pest and weed control, while another requested that all forest land have a forest stewardship plan. Nine respondents requested that a conservation plan be required, but the respondents gave no indication as to what level or whether all the land should be covered by a conservation plan.

Two respondents requested that NRCS consider only those lands with highly erodible soils, and that landowners never be required to have a higher level of planning than those mandated at the time of easement signature. One respondent indicated that planning only for highly erodible land was inadequate for their program. Based on these comments, NRCS has chosen an option that one respondent suggested. The rule will be modified to state that any higher level of conservation planning and implementation be at the discretion of the cooperating entity and the NRCS State Conservationist. By doing this, for FRPP purposes, farmers and ranchers would never be held to a higher erosion standard than at the time of easement signature; the conservation plan would only be required on highly erodible soil as legislatively mandated; yet more land and more resources may be addressed under a conservation plan if the NRCS State Conservationist and cooperating entity deem it to be appropriate.

Other respondents requested modifications to the proposed rule's definition of a conservation plan to incorporate greater landowner involvement. Two respondents suggested modifying the definition to read as follows: "A conservation plan meeting the NRCS Field Office Technical Guide will be developed by the landowner with NRCS assistance," while another respondent suggested the definition include the following statement: "technically feasible, based on local resource conditions, cost effective; and not cause undue economic hardship on the landowner." These suggestions echo NRCS' current conservation planning policy, which takes into account the landowner's needs and economic situation, as well as local resource conditions. For this reason, as well as the intent to mirror FRPP's authorizing legislation's conservation plan definition, NRCS has chosen not to alter the proposed rule's conservation plan definition.

Eligible Land

One respondent requested that NRCS modify its definition of eligible land to include lands that protect drinking water sources, while another respondent requested that NRCS include in its definition the qualifier that "eligible lands must be under active management that fits the definition of agriculture used by the existing State Purchase of Development Rights (PDR) program, where no such program exists, the definition of agriculture used by the State agricultural use assessment program." Another respondent requested that NRCS specify to what degree non-traditional farm, ranch, and forest land are eligible. The purpose of FRPP is to protect agricultural lands from conversion to nonagricultural uses. NRCS believes that the definition of eligible lands, as currently defined in the statute and the final rule, is broad enough to allow the NRCS State Conservationist to protect any farm and ranch land in any geographic area or under any land use that the State Conservationist, with advice from the State Technical Committee, chooses to protect, as long as it meets the program's broad eligibility guidelines. For this reason, NRCS has chosen to retain the proposed rule's eligible land definition.

Fair Market Value

Three respondents suggested that the definition of fair market value be revised. They indicated that the proposed rule's definition only refers to the fee simple value of a property, not the "before" and "after" values needed to determine the value of a conservation easement. NRCS agrees with amending the definition to account for how conservation easement values are derived. For this reason, NRCS amends the definition as follows:

> Fair market value is ascertained through standard real property appraisal methods. Fair market value is the amount in cash, for which in all probability the property would have sold on the effective date of the appraisal, after a reasonable exposure of time on the competitive market, from a willing and reasonably knowledgeable seller to a willing and reasonably knowledgeable buyer. Neither the seller nor the buyer act under any compulsion to buy or sell, giving due consideration to all available economic uses of the property at the time of the appraisal. In valuing FRPP easements, the certified general appraiser estimates both the fair market value of the whole property before the easement acquisition and the fair market value of the remainder property after the easement has been imposed. The difference between these two values is deemed the value of the conservation easement.

Farm Succession Plan

Thirteen respondents requested that Farm Succession Plan be added to the final rule's list of definitions. NRCS accepts this suggestion and adds the definition to read as follows:

> Farm or ranch succession plan is a general plan to address the continuation of some type of agricultural business on the conserved land; the farm or ranch succession plan may include specific intra-family succession agreements or strategies to address business asset transfer planning to create opportunities for beginning farmers and ranchers.

Historical and Archaeological Resources

Several respondents raised questions regarding the determination of what FRPP considers historical and archaeological resources. Most of the respondents recommended or provided comments on the second bullet in the proposed rule regarding which properties will be considered. One respondent suggested that the second bullet describing parcels eligible for the National Register is confusing, and suggested the following language: "Formally determined eligible for listing in the National Register of Historic Places by the Keeper of the National Register;" while another respondent suggested that the second bullet be worded as follows: "Be determined eligible for listing on the National Register of Historic Places through a written determination by a State Historic Preservation Officer (SHPO) or Tribal Historic Preservation Officer (THPO)." Regarding the first recommendation, because only the Keeper of the National Register may make formal determinations of eligibility, NRCS does not believe that the rule needs to add this reference. Regarding the second recommendation, NRCS does not have the authority to establish a new National Register eligibility determination process for the FRPP program, such as using written determinations by SHPOs and THPOs, beyond that which is currently in effect for compliance with section 106 of the National Historic Preservation Act.

In relation to the FRPP historical and archaeological definition, two other respondents suggested that a broader definition of historical and archaeological resources exists. One respondent suggested that where there is no formal listing in the State, refer instead to other inventories and have the SHPO or THPO provide an additional certification of significance, while another suggested that a fourth bullet be added: "Identified in a congressionally authorized study of U.S. battlefield sites, including the July 1993 report on the Nation's Civil War battlefields prepared by the Civil War Sites Advisory Commission." Regarding the suggestion that NRCS establish a new certification of significance process, NRCS believes a separate and distinct evaluation process beyond the current National Register programs and State and tribal register programs would cause confusion. Additionally, NRCS believes that by keeping the focus on existing registers and inventories, NRCS is supporting and strengthening our partners' programs without adding to their current workload. As it relates to the use of the inventory in the Civil War Sites Advisory Commission's 1993 Report, NRCS acknowledges the importance of these properties, but also recognizes that the inventory was developed, in part, for use by a Department of Interior battlefield protection program, one that has a much narrower focus than that of the FRPP (protection of farm and ranch lands across the entire United States). If NRCS elected to use this one very specialized list, it would have to also consider using other specialized lists of cultural resources (*i.e.* bridges, lighthouses, dams, industrial resources) developed for other programs. Additionally, it is most likely that the properties in this battlefield inventory are already in State inventories and registers. Another respondent questions what it meant to be "determined formally eligible on the National Register." NRCS believes that this language is clear and need not be further explained. Finally, one commenter suggested that the FRPP rule is more restrictive regarding determinations of eligibility than current historic preservation compliance guidelines. NRCS does not agree and does not want to establish a separate determination and evaluation process. This would undermine existing historic preservation evaluation and designation programs and would also risk further confusion.

Land Evaluation and Site Assessment System (LESA)

NRCS did not receive any comments on this definition, but for clarification NRCS has defined what is meant by "Federal" for the purposes of FRPP. For this reason, NRCS amends the definition to read as follows: "Land Evaluation and Site Assessment System (LESA) is a land evaluation system approved by the NRCS State Conservationist used to rank land for farm and ranch land protection purposes, based on soil potential for agriculture, as well as social and economic factors, such as location, access to markets, and adjacent land use. (For additional information see the Farmland Protection Policy Act regulation, 7 CFR part 658.)"

Non-Governmental Organization

Four respondents suggested inserting the word "and" in the definition for eligible non-governmental organizations to clarify that non-governmental organizations must be a conservation organization and must be recognized by the Internal Revenue Service as tax exempt by virtue of being operated for religious, charitable, scientific or similar purposes. Despite these suggestions, NRCS has chosen to retain the original definition which reflects FRPP's authorizing legislation:

> Non-governmental organization, is defined as any organization that:
> - Is organized for, and at all times since the formation of the organization, has been operated principally for one or more of the conservation purposes specified in clause (i), (ii), (iii), or (iv) of section 170(h)(4)(A) of the Internal Revenue code of 1986;
> - Is an organization that is described in section 501(c)(3)of that code that is exempt from taxation under 501(a) of that code;
> - Is described in section 509(a)(2) of that code; or
> - Is described in section 509(a)(3) of that code and is controlled by an organization described in section 509(a)(2) of that code.

Prime Farmland

One respondent requested that the term "prime farmland" be changed to "prime soils" since it is the soils that NRCS is describing in the definition. NRCS is choosing to retain the "prime farmland" definition to make it consistent with the definition from which it is derived in 7 CFR part 657. Two respondents asked whether land that grows Christmas trees, flowers, nursery stock and grapes for wine are considered prime since they are not producing food, feed, and forage. NRCS may consider these areas prime, unique, Statewide or locally important in accordance with 7 CFR part 657, since these areas have a special combination of soil quality, location, growing season, and moisture supply to produce these crops.

Ranch Land

Two respondents requested that the term "ranch land" be clarified so that it is more inclusive of many of the lands used in ranching across the country. Both respondents suggest that the following NRCS Pasture and Range Handbook definition be utilized.

> Land on which the historic climax plant community is predominantly grasses, grasslike plants, forbs, or shrubs. Includes

lands revegetated naturally or artificially when routine management of that vegetation is accomplished mainly through manipulation of grazing. Rangelands include natural grasslands, savannas, shrublands, most deserts, tundra, alpine communities, coastal marshes, and wet meadows.

NRCS believes that the aforementioned ranch land definition is too broad and that a broad definition of ranch land could lead to the protection of ranch land that does not meet the statute's intent of protecting prime, unique, and important soils. Moreover, such a definition may limit NRCS' flexibility to protect lands not included in this definition. Another respondent generally stated that eligibility criteria for prime, unique farm and ranch land should be broadened. For the aforementioned reasons, NRCS has chosen not to limit the enrollment of farm and ranch land to one single definition, but instead chooses to determine eligible farm and ranch lands through already established procedures. In determining eligible farm and ranch lands, NRCS will continue to use the procedures that identify important farm and ranch lands outlined in 7 CFR part 657. Under this rule, farm and ranch lands not considered prime and unique may be considered Statewide or locally important, if a State agency or local planning body determines the land to be of importance. If determined to be prime, unique, or Statewide or locally important, these soils are then eligible for FRPP assistance. NRCS believes this process provides sufficient flexibility to protect farm and ranch lands that may not meet the prime and unique definition, but at the same time assures that the Congressional intent of protecting land that has "prime, unique, or other productive soil," is maintained. For this reason, NRCS chooses to retain the original eligibility definition and process determining prime, unique, and important soils.

Section 1491.4 Program Requirements

Three respondents directly or indirectly referred to FRPP as a grant program and that NRCS does not need to substitute its judgment for that of State and local farmland protection programs. As explained previously, the Farm and Ranch Lands Protection Program is not a grant program, rather it is a program where the Federal Government acquires an interest in the Property for the purpose of protecting the resource. For this reason, NRCS has been active and will continue to be active in conducting eligibility determinations, ranking parcels based on its own criteria, and reviewing and approving conservation easements in order to meet the statutory requirements of the Program.

One respondent questioned FRPP's emphasis on topsoil, stating that "Too much emphasis is placed on protecting topsoil and prime and unique farmland, more of an emphasis should be placed on protecting rangeland and watersheds," while two other respondents believed that requiring a pending offer is unrealistic, burdensome, and requires an expense on the part of the partner. As a result, land deals often fall through because a pending offer is required. In response to these comments, NRCS refers to the FRPP authorizing legislation which sets forth FRPP's purpose, "protecting topsoil by limiting nonagricultural uses of the land." The statute further defines eligible land as "farm and ranch land that has prime, unique or other productive soil; or contains historical or archaeological sources; and is subject to a pending offer for purchase from an eligible entity." In order to comply with its authorizing legislation, NRCS has placed a program emphasis on protecting prime, unique, and important farm and ranch land, as well as requiring a pending offer from an eligible entity. One respondent stated that historical and archeological resources and a pending offer should be factors to consider, not essential to eligibility. NRCS, once again refers to FRPP's authorizing legislation which states that "eligible land means land on a farm or ranch that has prime, unique, or other productive soil; or contains historical or archaeological resources; and is subject to a pending offer for purchase from an eligible entity." NRCS is bound by the statute. Consequently, NRCS has determined that land on a farm or ranch must contain historical or archaeological resources or prime, unique, or other productive soil to be eligible. In either case, the land must also have a pending offer to be eligible for FRPP. One respondent stated that the proposed rule adequately reflects the intent of the statute as it relates to historical and archaeological resources, while one respondent questioned whether parts of a farm can be enrolled. NRCS will enroll all or part of a farm or ranch, so long as 50 percent of the farm or ranch land enrolled consists of prime, unique, or important soils, or contains historical and archaeological resources and is subject to a pending offer.

One respondent stated that all FRPP easements should be perpetual. NRCS agrees with this comment; however, in some States, perpetual easements are prohibited. As a result, NRCS has required that "all easements will be in perpetuity unless prohibited by State law."

Two respondents indicated their support of NRCS' criteria used to evaluate interested entities that wish to receive FRPP funds in 1491.4(c)(1–4). NRCS will continue to use these criteria to evaluate eligible entities, and to ensure the entities have the capacity to hold, manage, and enforce conservation easements.

Several respondents questioned NRCS' policy on only acquiring conservation easements on privately owned land. One respondent thought that State-owned prison farm and ranch land should be eligible for FRPP, while another respondent questioned whether lands temporarily bought in fee simple by the State or local government can be acquired under FRPP. With a vast majority of the Nation's farm and ranch land being privately owned, the demand for the protection of prime, unique, or important farmland on privately owned land exceeds available funds. As a result, NRCS will continue to place emphasis on protecting privately owned farm and ranch land; however, NRCS will assist public entities with protecting lands if the acquisition of land is temporary and the land will later be sold to a private land owner in fee simple. NRCS will not disburse Federal payment to the public entity until the fee simple rights are transferred to a private landowner.

Six respondents raised concerns about the adjusted gross income land eligibility requirement. Two respondents argued that the adjusted gross income limitation should not apply to FRPP since NRCS is getting equal value in the land and oftentimes at a bargain sale; therefore, the FRPP payment should not be considered a benefit, but rather an equal exchange between the landowner and the United States Department of Agriculture. One respondent stated that the sale of land should not be considered in computing the adjusted gross income limitation, while two respondents stated that this will limit high value land often owned by developers or other landowners, who derive a majority of their income from non-farm or ranch enterprises. One respondent requested that the adjusted gross income limitation be subject to regional variation, while another requested that NRCS explain how this affects corporate owners. Another respondent requested that NRCS specify the adjusted gross income limitation requirements in the final rule, while another respondent indicated that this is just another burdensome step in the easement acquisition process. One respondent requested that the cooperating entity not be held responsible for verification or auditing of the certification by the landowner.

In order to avoid a conflict with any policy contained within the Adjusted Gross Income Limitation final rule, NRCS directs respondents to the Adjusted Gross Income Limitation final rule, which is currently being promulgated. However, to clarify some matters raised during the FRPP proposed rule comment period, NRCS will briefly explain the adjusted gross income limitation and identify how this limitation relates to the FRPP. Section 1604 of the Farm Security and Rural Investment Act of 2002 (Pub. L. 1–7–171) prohibits individuals and entities exceeding an average adjusted gross income limitation of $2.5 million from receiving USDA payments, unless 75 percent or more of their adjusted gross income is derived from farming, ranching or forestry production. Landowners receiving FRPP payments would be subject to this adjusted gross income limitation. The proposed Adjusted Gross Income Limitation rule, 7 CFR part 1400.6, clarifies this income limitation, and sets forth the criteria to be applied in determining whether certain income limits have been exceeded by an individual. Policy on corporate ownership and land sale revenues, as well as administrative procedures, such as income verification, are addressed in 7 CFR part 1400.6. In order to comply with Section 1604 of the Farm Security and Rural Investment Act of 2002, NRCS will comply with the statute and final rule governing the adjusted gross income limitation.

Twelve respondents raised concerns regarding NRCS' appraisal policy. One respondent requested that all appraisals be done in accordance with the Uniform Appraisal Standards for Federal Land Acquisitions (UASFLA) and that they be reviewed by a Federal appraiser. The same respondent stated UASFLA standards must be used, since the Uniform Standards of Professional Appraisal Practice (USPAP) does not address the "before" and "after" technique used to evaluate conservation easements. To provide cooperating entities maximum flexibility and reduce transaction costs, appraisals conducted for the FRPP shall conform to USPAP or USFLA standards. NRCS acknowledges that the "before" and "after" technique is an appropriate methodology to use in order to determine conservation easement value, and shall be adopted by FRPP. One respondent requested that NRCS address in the final rule how appraisal reports should be submitted and how these reports will be used. Another respondent requested that the reproduction of appraisal reports for NRCS use be minimized and that an annual meeting between NRCS and the cooperating entity would suffice, while another respondent suggested that providing a copy of the appraisal report is possible, but providing priority rating criteria is not. NRCS concurs with the need to streamline the appraisal submission process. However, due to the complexity of the appraisal review process and the fact that this type of administration issue is more appropriate for manual policy, NRCS has addressed specific appraisal review and process issues in its current policy manual, CPM part 519. CPM part 519 can be accessed via the Internet at: *http://policy.nrcs.usda.gov/scripts/lpsiis.dll/M/M_440_519.htm.*

Two local government respondents requested that NRCS adopt alternative real estate evaluation systems used by local governments, which reduce easement acquisition costs, rather than requiring that appraisals be conducted. Considering these comments, NRCS has determined that the adoption of alternative evaluation systems, which under certain circumstances were permitted in the Farmland Protection Program, conflicts with the terms of the FRPP authorizing legislation that states "the Federal share cannot exceed 50 percent of the appraised fair market value of the conservation easement." For this reason, NRCS has determined that only appraisals are appropriate to value FRPP parcels.

In addition, the FRPP is subject to the Department of Transportation regulations at 49 CFR part 24, which the USDA has adopted by reference in its own regulations at 7 CFR 21.1. 49 CFR part 24 implements the Uniform Relocation Assistance and Real Property Policies Act of 1970 (the 1970 Act) and applies to real property acquisition, including the acquisition of partial interests, such as conservation easements. One of the main purposes of the 1970 Act is to ensure that owners of real property to be acquired by the Federal Government or through Federally-assisted acquisitions are treated fairly. Because the FRPP is a voluntary program, the FRPP is exempt from the regulations that govern Federal acquisition. However, FRPP must comply with the terms of the exemption that is set forth at 49 CFR 24.101. Accordingly, cooperating entities receiving FRPP funds must comply with the requirements of 49 CFR 24.101(a)(2) which provides that: (1) Prior to making an offer for the property, the FRPP cooperating entity must advise the landowner that it is unable to acquire the property (*e.g.* by eminent domain) in the event negotiations fail to result in an amicable agreement; and (2) inform the owner of what the FRPP cooperating entity believes to be the fair market value of the property. In order to determine the fair market value of a property, an appraisal by a State-certified general or licensed appraiser must be done.

Three respondents requested that NRCS reimburse the entity for the cost of appraisals, while another respondent requested that appraisals older than one year may be acceptable if agreed to by NRCS and the cooperating entity in a Memorandum of Understanding. NRCS is required by law not to exceed "50 percent of the appraised fair market value of the conservation easement." As a result of this statutory requirement, NRCS requires an appraisal. The appraisal shall not be more than one year old prior to easement closure, in order to ensure that the Federal share does not exceed 50 percent of the appraised fair market value. One respondent asked that the appraiser certification be addressed, as well as stated that the Uniform Standard of Professional Appraisal Practice (USPAP) system does not utilize the "before" and "after" technique for partial acquisitions. NRCS believes that the "before" and "after" technique is the appropriate method in valuing conservation easements for the purpose of FRPP. The "before" and "after" technique does not conflict with other methodologies used by USPAP and is therefore adopted as a recommended way to determine FRPP easement values. NRCS has addressed appraisal review in CPM part 519 including administrative and technical reviews of appraisals by NRCS. CPM part 519 can be accessed via the Internet at: *http://policy.nrcs.usda.gov/scripts/lpsiis.dll/M/M_440_519.htm.*

The same respondent suggested that the final rule insert the word "general" in the appraiser description to read "State certified general appraiser," while another respondent has asked that the Section 1491.4(e) be reworded as follows: "Prior to FRPP fund disbursement, the value of the conservation easement must be appraised." NRCS acknowledges that "State certified general appraiser" is the correct terminology, it also agrees with the second suggestion which inserts the clarifying language that the value of the conservation easement must be appraised. As a result, NRCS has changed the rule accordingly.

Six respondents provided comments on 1491.4(f), which stated that at the discretion of the Chief, a standard easement will be required as a condition

for program participation. Four respondents objected to the Chief requiring a standard easement, while two respondents suggested that NRCS utilize a standard conservation easement deed, but provide for the local entity to supply other language as needed to comply with their specific requirements. One respondent objected to NRCS' use of a standard easement template, since NRCS was not a Grantee and the Federal Government's right of asserting the use of a standard easement was questionable. Three other respondents suggested that NRCS develop a standard easement template in each State. One respondent further clarified that the standard easement template should be a part of a Memorandum of Understanding that is signed by the cooperating entity and NRCS. NRCS chooses to retain the flexibility to develop conservation easement deed template by retaining the proposed rule language, if it determines it to be appropriate in order to protect the interests of the United States. However, NRCS finds the current process in which NRCS and the Office of General Counsel review and approve conservation easement templates provided by the cooperating entity to be sufficient at this time. As it has previously done, NRCS and the Office of General Counsel will continue to review conservation easement template deeds to ensure that the easement deeds protect the Federal interest and uphold FRPP's policies and objectives. Where an easement sufficiently deviates from the agreed-to template, NRCS and OGC may review the easement deed.

As it relates to specific language within the proposed rule, another respondent inserted that "at the discretion of the Chief, a standard easement, or equivalent legal form which meets the intent of the 2002 Act, will be required as a condition of program participation." Some entities that partner with NRCS use other forms of deeds to convey the acquisition of development rights. For this reason, NRCS has chosen to adopt this suggestion. Section 1491.4(f) has been changed accordingly.

There was one comment on the confidentiality of information related to the agricultural operation as set forth in 1491.4(g). The respondent requested that information related to the agricultural operation, as well as other incidental information be held in confidence by the State or local farmland protection program and NRCS. The respondent further stated that NRCS should require confidentiality from the non-governmental organization as a condition of partnership with NRCS. Section 1244 of the Food Security Act of 1985, as amended, states that information provided to the Secretary or a contractor of the Secretary for the purpose of providing technical or financial assistance to an owner, operator, or producer with respect to any natural resources conservation program administered by NRCS or FSA shall not be considered to be public information and shall not be released to any person or Federal, State, local agency or Indian tribe outside the Department of Agriculture. The issue of requiring confidentiality from non-governmental organizations and other cooperating entities will be addressed in a regulation pertaining specifically to confidentiality, which is being developed by NRCS in accordance with Section 1244 of the Food Security Act of 1985, as amended.

Another respondent asked about the timing of the development of the conservation plan. The conservation plan will be developed prior to the payment disbursement made by NRCS to the cooperating entity. One respondent requested that NRCS take the lead in monitoring conservation plans and make the initial determination that the landowner is not in compliance, after which the Grantee will be required to take necessary action. As it relates to monitoring the conservation plan on highly erodible land, the respondent's suggestion is current NRCS policy. If the landowner is found out of compliance with a conservation plan on highly erodible land or is violating wetland conservation provisions, NRCS will work with the landowner to assist the landowner in getting back into compliance. If the landowner refuses to comply with the terms of the conservation plan and has been afforded all the appeal and other administrative rights in accordance with 7 CFR part 12, NRCS will report the conservation plan violation to the cooperating entity. At such time, the cooperating entity will consider such noncompliance with the conservation plan to be an easement violation and the cooperating entity will proceed with their administrative or judicial procedures as it relates to easement violations.

Section 1491.5 Application Procedures

This section articulates how interested entities apply for FRPP assistance. One respondent requested that NRCS require from entities a plan showing how the entity plans to spend FRPP money. The respondent also suggested that NRCS review the entity's management strategies, as well as their ability to manage. NRCS believes that these concerns are addressed during the application review and the ranking and evaluation of parcels as set forth in Section 1491.6. One respondent requested that a consistent date for annual applications be established to allow for coordination between the Federal and State programs. Two factors make the establishment of a fixed application date problematic. Historically, USDA waits until Congress appropriates funds through an appropriation law. Second, because FRPP is funded annually through CCC, the Office of Management and Budget must apportion the funds to NRCS, before NRCS can obligate the funds to eligible entities.

Section 1491.6 Ranking Considerations and Proposal Selection

This section outlines how NRCS will rank and evaluate proposals from eligible entities. It also examines criteria that may be used by the NRCS State Conservationist to evaluate parcels. A number of respondents commented on this section, particularly the criteria that may be used by the NRCS State Conservationist.

As it relates to overall program administration, two respondents requested that memoranda of understandings be signed with State and local programs to determine a mutually acceptable way for non-federal entities to review and select parcels based on FRPP criteria. The memoranda of understandings, between the NRCS State Conservationist and the State or local programs, would outline mutually acceptable criteria to use in evaluating FRPP proposals. Decisions on which parcels to fund would be made by the cooperating State or local program, not NRCS. In the opinion of the two respondents, it would provide the needed flexibility at the State level, while at the same time reduce duplicative efforts in evaluating parcels. One respondent requested that NRCS purchase properties in a geographic area and match FRPP dollars with State program dollars, not choosing actual parcels which to fund, but rather selecting specific geographic areas. A majority of these concerns regarding review and selection of parcels have been addressed in Section 1491.2 Administration. However, NRCS wishes to further clarify that the FRPP authorizing legislation has a specific purpose of protecting prime, unique, and other productive soil from conversion to non-agricultural uses. This purpose is not always the primary purpose of cooperating entities' programs. For these reasons, as well as the practical reason that NRCS has many parcels submitted by numerous cooperating entities, making execution of memoranda of understandings impractical. As a result, NRCS has chosen to retain the current procedures of selecting and evaluating parcels using uniform criteria at the State level.

Another respondent suggested that NRCS utilize a two-step process whereby eligible entities can be certified prior to the identification of eligible lands so that the cooperating entities might be poised to make an offer when eligible farmlands become available. This option is not possible under FRPP because the authorizing legislation requires that the entities have pending offers prior to NRCS awarding funds to eligible entities.

Four respondents requested clarification on how the National and State criteria are used in selecting parcels. The FRPP proposed rule set forth the national criteria used in determining State allocations. The national criteria are based on national agricultural land conversion rates as provided by the National Resources Inventory (NRI), as well as information gathered from interested entities through the FRPP State Plan process. This latter information includes but is not limited, to entity history, entity acquisition strategies, anticipated average FRPP cost per acre, and total acres needing to be protected in that fiscal year. The proposed rule also stated that national criteria, in addition to State criteria, will be used to evaluate parcels. Currently, FRPP policy states that parcels will be evaluated using State criteria and national criteria, with no less than 50 percent of the weight placed on national criteria. While criteria such as the NRI agricultural land conversion rates cannot be used beyond the State level, State conservationists have the flexibility to choose the national criteria which they deem appropriate. NRCS believes that the mix of national and State criteria allows national FRPP objectives to be met, while at the same time providing the NRCS State Conservationist the necessary flexibility needed to evaluate parcels at the State level. One respondent suggested that NRCS adopt a committee approach in developing ranking criteria, such as that used by USDA's Forest Legacy Program, while another respondent requests that NRCS develop a process for obtaining public input on ranking criteria. The final rule allows for the NRCS State Conservationist to develop ranking criteria with the advice from the State Technical Committee. In a majority of States, the NRCS State Conservationist currently develops ranking criteria based on the advice of the State Technical Committee. NRCS believes this committee approach allows for public input to be obtained.

Several respondents suggested on expanding FRPP ranking criteria. One respondent suggested that an emphasis be placed on watershed protection, while another suggested that agricultural economic viability of a farm or ranch be included as criteria. Another respondent suggested that FRPP criteria consider fish and wildlife habitat and water quality, as well as soils. One respondent questioned the applicability of the criteria, "proximity to other protected clusters" in areas where conservation easements are not utilized, while another respondent, in an area with increasing development pressures, suggested that NRCS consider the rate of land conversion relative to the remaining agriculture in the geographic area. This same respondent, as well as another respondent, suggested that NRCS evaluate parcels relative to specific geographic areas in which they were protecting. For example, the anticipated FRPP cost per acre or acreage to be protected should be considered in relation to the geographic area where the parcel is located. Another respondent suggested that LESA criteria should be modified so that sites near sewage lines, water lines, or other public utility lines should receive a higher ranking. NRCS has not changed the final rule as it relates to parcel ranking and evaluation because the agency believes that the State Technical Committee process, as well as the State Conservationist's ability to choose his or her own criteria to evaluate parcels, provide the NRCS State Conservationist the necessary flexibility to develop criteria and rank eligible parcels for funding.

Nineteen respondents requested that NRCS add the following to the list of possible State criteria: "History of an eligible entity's commitment to assisting beginning farmers and ranchers, to promoting opportunities in farming and ranching, and to farm and ranch succession and transfer planning," while another stressed the importance of funding entities who place priority on protecting parcels in zoned agricultural areas. To encourage that these farms and ranches remain agriculturally viable in the future, NRCS has added these suggestions for the NRCS State Conservationists to use in State ranking criteria, if they deem appropriate. Two respondents questioned what is meant by "degree of leveraging guaranteed by eligible entities." One of these respondents suggested that NRCS rephrase this criterion to read as follows: "Amount of the Federal share to be contributed to the acquisition of the conservation easement relative to the fair market value of the conservation easement." NRCS partially accepts this suggestion and has rephrased the criteria accordingly.

Section 1491.7 Funding Priorities

Several respondents requested that NRCS place a priority on a variety of factors when evaluating parcels. One respondent requested that the highest priority should be given to parcels and areas that protect drinking water sources. Twelve respondents requested that NRCS place a priority on those farms and ranches that have a comprehensive resource management system where all the natural resources are addressed on the farm or ranch, seventeen respondents requested that NRCS place a higher priority on applications from landowners who have developed farm or ranch succession or transfer plans with a preference for plans that will benefit beginning farmers and ranchers. One respondent requested that NRCS place a higher priority on lands and locations where parcel size, soils, markets, local farm infrastructure, proximity of other agriculture, and other considerations make it more likely that the protected lands will constitute or contribute to an economically viable, independent farming operation.

NRCS has incorporated some of these comments in the final rule; however, as indicated previously, the State Conservationist, with advice from the State Technical Committee, develops criteria used to select parcels in accordance with the statutory objectives of FRPP. In addition, the selection of one set of criteria over another is at the discretion of the State Conservationist. For this reason, NRCS has chosen to include these suggested priorities, but continues to encourage and permit the NRCS State Conservationist with advice from the State Technical Committee, to determine the ranking criteria preference based on State natural resource conditions, anticipated funding, geographic priority areas, and other factors deemed to be important in each State.

NRCS also received comments requesting clarification of the meaning of Section 1491.7. For example, one respondent requested clarification of what is meant by on-site and off-site conditions. Examples of what is meant by on-site or off-site conditions are respectively a farm that contains a hazardous waste site, or a ranch that neighbors a commercially zoned area. Where on-site or off-site conditions exist, NRCS may choose not to fund a

parcel because of the implications surrounding that acquisition. One respondent requested that NRCS clarify what is meant by multi-functional benefits, while another respondent requested that historical and archaeological protection be added to the lists of lands that provide multifunctional benefits where NRCS may place a higher priority. NRCS concurs with the second respondent and will add historical and archaeological protection to the list of multi-functional benefits. In response to the initial comment, NRCS believes that multi-functional benefits vary across the nation; therefore, these multi-functional benefits are best determined by the State Conservationist, with advice from the State Technical Committee. Another respondent asked how certain geographical areas will receive high priority. As it relates to multi-functional benefits in a general sense, NRCS believes that multi-functional benefits and geographic priority areas can best be determined at the State level, where local input is provided through the State Technical Committee on State ranking criteria.

Subpart B—Cooperative Agreements and Conservation Easement Deeds

Section 1491.20 Cooperative Agreements

The section outlines the process of how NRCS enters into cooperative agreements with eligible entities and what constitutes a cooperative agreement. One respondent indicated that NRCS must provide oversight of non-governmental organizations participating in FRPP to assure FRPP obligations are met. NRCS believes that the cooperative agreement, the contractual document between NRCS and the cooperating entity, binds the entity to perform duties and tasks in accordance with program policy and standards. NRCS oversight of these cooperative agreements ensures that NRCS program policy and objectives are met. Other comments received on topics contained within this section were addressed in other sections of the rule.

Section 1491.21 Funding

The Farm Security and Rural Investment Act of 2002 (2002 Act), provided policy direction for cost sharing in three areas:

- First, it specified that the Federal share could not exceed 50 percent of the appraised fair market value of the conservation easement.
- Second, it made it possible for landowner donations to be included as part of the entity's share.
- Third, it limited the amount of the donation that could be used as part of the entity's share to not more than 25 percent of the conservation easement's appraised fair market value.

The 2002 Act did not provide guidance on the minimum cash contribution by the entity. As a result, the proposed rule attempted to set forth cash requirements by the cooperating entity. Based on these three premises, the agency stated in the proposed rule that an entity may:

(1) Provide in cash, at least 25 percent of the appraised fair market value of the conservation easement, when accompanied by a landowner donation; or

(2) Provide in cash, at least 50 percent of the conservation easement purchase price. In this situation, the NRCS share cannot exceed the entity's contribution.

This proposal was met with a great deal of opposition primarily from the land trust community. Of the total 296 letters received, 214 objected to NRCS requiring cooperating entities to provide a minimum cash contribution. They maintain that by proposing a minimum cash contribution by the entity, NRCS is discouraging bargain sales by the landowner. While four respondents argued that if a land owner donated 50 percent of the easement's value and the Natural Resources Conservation Service (NRCS) paid 50 percent, the letter of the law could be met without any cash commitment from the land trust, fifty-five other respondents suggested a contribution provided by the entity but in a lesser degree to what NRCS proposed, stating that the requirement of a cash match will significantly restrict the number of properties that can be protected under FRPP. Forty-one respondents specifically stated that a landowner should be able to donate more than 25 percent of the appraised fair market value, and that the 25 percent contribution of the appraised fair market value limits the contribution by the landowner, while 175 respondents asked that the rules be rewritten to "base the required match for an easement on the price paid for the property not the price it would be on the open market." In response to all of the above comments, NRCS did not intend to mislead readers that a landowner donation be limited to 25 percent. On the contrary, land donations by the landowner are readily accepted, since the easement acquisition cost is less for both NRCS and the cooperating entity. To take advantage of sizeable landowner donations, NRCS clarified the final rule language by inserting the "50 percent of the purchase price" option.

In response to NRCS' proposed rule options, many within the land trust community countered NRCS' proposal by suggesting the elimination of any mention of the 25 percent of the appraised fair market value requirement and several respondents suggested the following or similar language:

"The entity must provide, in cash, an amount at least half of that provided by the NRCS."

The following table summarizes the FRPP and cooperating entity shares given the proposed rule's language and the above-mentioned language suggested by the land trust community. The analysis assumes that the appraised fair market value of the conservation easement is $100,000.

COMPARISON OF COST SHARING CRITERIA
PROPOSED FRPP RULE AND THE LAND TRUST SUGGESTION
[Dollars]

Land owner donation	Proposed rule		Land trust suggestion	
	Entity cash share	FRPP share	Entity cash share	FRPP share
Zero	$50,000	$50,000	$50,000	$50,000
10,000	40,000	50,000	40,000	50,000
25,000	25,000	50,000	25,000	50,000
40,000	25,000	35,000	20,000	40,000
55,000	22,500	22,500	15,000	30,000
70,000	15,000	15,000	10,000	20,000

Note that the cash shares for the cooperating entity and FRPP are identical from zero donation to a $25,000 (25 percent) donation level. At donation levels greater than $25,000 the cooperating entity contributions are greater with the proposed rule. In this example, if the landowner makes a $40,000 donation then the cash requirement is $5,000 greater in the proposed rule scenario as compared to the suggested change by the land trust community.

After considering these comments, NRCS has decided to retain the same funding options albeit with some clarification. NRCS believes that the final rule's language supports large bargain sales by the landowner and requires only that in these cases, the entity match NRCS' contribution dollar-for-dollar. Assuming a $100,000 easement, if the landowner chooses to donate 70 percent of the appraised fair market value, the actual easement purchase price would be $30,000. In this case, NRCS and the cooperating entity both contribute $15,000. By providing the option for the entity to choose either 25 percent of the appraised fair market value or 50 percent of the purchase price, NRCS is accommodating the cooperating entities desire to take advantage of bargain sales and at the same time, ensuring that the Federal investment is secured with some contribution by the cooperating entity. Consequently, the final rule adopts the language of the proposed rule.

Several respondents suggested that NRCS take into account donations of other lands by an entity, as a matching offer. NRCS interprets the statute to mean that an entity's contribution pertains specifically to the parcel of land, which is subject to a pending offer in which the Secretary is purchasing an interest. Using land as match for the purchase of such land is not within the statutory authority of the program.

Five respondents recommended that to the extent that they are ordinary, necessary and reasonable, administrative costs associated with NRCS requirements be reimbursable with FRPP funds, or at the very least count towards the entity's share. In accordance with the statute that authorizes NRCS to cost share only the purchase of a property interest, NRCS does not reimburse a cooperating entity's easement costs associated with easement acquisitions, nor do these easement acquisition costs count towards an entity's share of the contribution. One respondent requested that NRCS insert in the final rule that easement administrative and transaction costs will not be paid for using FRPP funds. NRCS agrees with this recommendation and has inserted this policy into the final rule.

One respondent requested that NRCS provide the option to the entity to issue landowner payments in installments. NRCS concurs with this recommendation. However, due to the complexity of the payment process, will address this issue in its policy manual, CPM part 519.

Section 1491.22 Conservation Easement Deeds

One respondent requested a clear articulation of FRPP's goals and objectives in Section 1491.22(a). NRCS agrees with the respondent and has inserted clauses under Section 1491.22(a) to more fully describe the goals and objectives of FRPP. As set forth in FRPP's authorizing legislation, the purpose of FRPP is to purchase conservation easements for the purpose of protecting topsoil by limiting nonagricultural uses of the land. With this in mind, NRCS has inserted the following goals into section 1491.22: (i) To protect the topsoil from conversion to nonagricultural uses; and (ii) to ensure that the agricultural capacity of the soils remains viable for future generations.

Several other respondents requested specifics on what is or should be allowed in FRPP. Two respondents stated that easements associated with FRPP should clearly provide for continued, active management of the farm, ranch and associated forest land. One respondent stated every conservation easement deed should require a farm succession plan. While NRCS encourages that these farms be actively farmed for perpetuity, the agency also recognizes that FRPP's authority is limited to protecting the soils, not ensuring that the farm or ranch be actively farmed for perpetuity, nor does the agency believe it is practicable to do so.

One of these respondents also asked that NRCS consider forestry as an agricultural use, making it clear that the conversion of farm to forest does not constitute a conversion to non-agricultural use. NRCS agrees with this response; however, NRCS believes that the majority of farms and ranches accepted into the program will not be converted into forestland because the quality of farm and ranch land that are accepted into the program would make conversion to forest land economically infeasible. Moreover, NRCS believes that the FRPP ranking criteria favor parcels that will remain agriculturally viable in the future. NRCS acknowledges that some parcels enrolled under FRPP may be converted to forest land in the future. Although the agency has attempted to structure the program so that the primary focus of the program is to protect high quality farmland that will be actively cropped or grazed, NRCS believes that it lacks the authority to mandate that farms and ranches remain actively farmed in perpetuity. NRCS believes that its authority extends only to ensure that the topsoil protected under FRPP easements is not converted to nonagricultural uses and that the agricultural capacity of the soils remains viable for future generations. Under this rationale, NRCS believes that the conversion of farm and ranch land to forest land retains the agricultural viability of the soils and that if future generations deemed it appropriate, the forest acreage could be harvested and the land could be tilled or grazed.

One respondent requested that NRCS clarify its association with other conservation programs. As previously discussed, NRCS encourages landowners to utilize other conservation programs to protect natural resources on FRPP land. Landowners who enroll in FRPP are eligible to participate in USDA's cost share programs, including the Agricultural Management Assistance Program (AMA), Conservation Reserve Program (CRP), Environmental Quality Incentives Program (EQIP), Wildlife Habitat Incentives Program (WHIP), and the long-term contract options under the Wetlands Reserve Program (WRP) and Conservation Reserve and Enhancement Program (CREP). However, NRCS believes that WRP 30-year and permanent easements, as well as CREP permanent easements which restore wetlands and limit agricultural uses, may undermine FRPP goals and objectives to protect the agricultural viability of topsoil for future generations. For this reason as well as the desire to maximize Federal dollars, NRCS has chosen to exclude WRP and CREP acreage from FRPP easements. For example, a landowner who wishes to enroll in both programs can continue to do so; however, the land under WRP easement must border the FRPP easement—the same acreage cannot be enrolled under both easements.

One respondent questioned the language in 1491.22(c) that required a review of the conservation easement by NRCS and the Office of General Counsel. The respondent argued that there is "no legal standing by the Federal government as Grantee." NRCS and the Office of General Counsel (OGC) refer once again to the statute that instructs the Secretary, acting through

NRCS, to purchase conservation easements. In interpreting the statute, NRCS has acquired an interest in the Property in the form of a contingent right. A contingent right in the conservation easement deed provides that all rights conveyed by the landowner under the easement deed shall become vested in the United States should the grantee abandon or attempt to terminate or extinguish the conservation easement. To ensure that the United States property interest is upheld and to ensure that the American taxpayer is acquiring legally sound conservation easement deeds, NRCS and OGC must review all conservation easement templates used by the cooperating entity. In the interest of time, NRCS and OGC try to negotiate standard deed templates with the cooperating entity. Once these standard easement templates meet OGC approval, the cooperating entity may use that template on all easement deeds acquired with FRPP funds.

Several respondents raised issues concerning the contingent right paragraph that is incorporated into every conservation easement deed acquired with FRPP funds. Three respondents requested that NRCS allow for a right of appeal to be granted to eligible entities regarding a determination by the Secretary that the entity has failed to enforce the easement. NRCS' authority is to purchase an interest in land. With this authority, NRCS purchases a contingent right in the land. This contingent right is activated only in cases, where the cooperating entity terminates, extinguishes or fails to uphold the conservation easement. NRCS has determined that it needs to have this absolute right in order to protect the Federal Government's property interest should the Federal Government determine that the Grantee has attempted to terminate, extinguish or fail to uphold the conservation easement. Another respondent objected to the Secretary having sole discretion in the contingent right paragraph and suggested that the contingent right paragraph be relaxed where conservation easements are co-held with State or local funds within the DelMarVa Conservation Corridor. For the reasons mentioned above, NRCS believes that it is in the interest of the Federal government to retain in the final rule, the contingent right that was set forth in the proposed rule. One respondent indicated that a Federal contingent right interest would not be acceptable to many landowners. The Federal contingent right interest may discourage some landowners from participating in FRPP. However, FRPP is a voluntary program, and landowners are not forced to participate if they find the contingent right paragraph, or other conservation easement provisions unacceptable. One respondent recommended that should the cooperating entity transfer the conservation easement, the landowner should have the right of first refusal for reacquiring the easement interest. The United States' contingent right to hold the conservation easement negates a landowner's right of first refusal. In addition, the right of first refusal by a landowner undermines the purpose of placing a conservation easement on the land.

Currently, NRCS signs the conservation easement deed, accepting NRCS' property interest in the deed of easement. One respondent requested that the requirement that NRCS sign the conservation easement deed be included in the rule, while another respondent recommended that NRCS require that easements be recorded and that the entity provide proof of recordation. NRCS concurs with these recommendations and has included these provisions in the final rule.

One respondent recommended that if NRCS requires implementation of the conservation plan, NRCS should also provide cost-share assistance to the landowner. A majority of farmers and ranchers are already subject to highly erodible land and wetland conservation requirements through participation in other USDA programs. Where financial assistance is needed to help a producer reduce soil erosion on highly erodible lands, cost-share assistance through programs, such as EQIP, is available. Another respondent suggested that a landowner be notified in writing about and consulted regarding conservation measures required on the Property. As indicated previously, this suggestion replicates NRCS" current conservation planning policy which takes into account a landowner's needs and economic situation, as well as local resource conditions.

One respondent raised a concern about the enforcement issues surrounding the conservation plan and the conservation easement, stating "the important matter is a commitment to conservation planning, not to a particular static conservation plan. Enforcement should be about ensuring maintenance of an evolving plan." NRCS believes that the conservation planning process is an evolving and interactive process; however, NRCS has decided that a landowner should not be required to maintain a higher standard of erosion reduction than the landowner originally agreed to at the time of easement signature. This does not mean however that the landowner is prohibited from achieving a higher standard of resource protection, if the landowner or cooperating entity deem appropriate. Another respondent recommended that if NRCS require an entity to enforce a conservation plan, the entity be required to be involved in conservation planning. NRCS has the responsibility to enforce the conservation plan as it relates to highly erodible land and wetland conservation provisions. If the landowner refuses to comply with these requirements and all the appeal rights and other waivers afforded the landowner in accordance with 7 CFR part 17 and 7 CFR part 614 have been exhausted, NRCS will report to the cooperating entity that the landowner is in violation of the easement. At this time, it becomes the responsibility of the cooperating entity to enforce the terms of the conservation easement.

Section 1491.23 Easement Modifications

Several respondents objected to or requested clarification on this section, which required that easement deed amendments be approved by NRCS. Three respondents requested that the final rule clarify who, within NRCS, is able to approve conservation easement modifications. NRCS has clarified this in the final rule by stating that the State Conservationist, with concurrence from the Office of General Counsel, shall approve or disapprove conservation easement modifications, in the form of deed amendments. One respondent supported NRCS approving easement modifications. They also suggested that NRCS establish a criterion that no amendment will be allowed if it would lower the net benefit of the easement for conservation. NRCS believes that a single criterion, such as lowering the net benefit of the conservation, is difficult to establish on a nationwide basis; therefore, NRCS has chosen to approve amendments on a case-by-case basis. One respondent asserted that the easement modification provisions are inconsistent and incompatible with their program and question NRCS and the Office of General Counsel's authority to accept or reject such modifications. It is not NRCS' intention to supersede the cooperating entity's decision to prohibit an easement amendment. However, where easement amendments are allowed, NRCS' response regarding easement modifications or amendments mirrors its response on easement review—

because the United States is buying an interest in the property, any modification or amendment shall be approved by NRCS and the Office of General Counsel. One respondent requested that NRCS interpret Section 1491.23 to give a cooperating entity the discretion to distinguish between a major and minor amendment. If appropriate, NRCS, with advice from the Office of General Counsel, will review and delegate authority for amendment review on a case-by-case basis as it relates to minor amendments.

Subpart C—General Administration

Section 1491.30 Violations and Remedies

Fifty-five respondents commented on this portion of the proposed rule. Fifty-two respondents recommended that section 1491.30(c) be reworded to allow for landowner notification prior to NRCS' entry on the property as it relates to conservation plan violations, while one respondent questioned the need to include this provision in the rule, but rather state it in the conservation easement deed. NRCS accepts the first set of recommendations and has modified the final rule provision to allow for landowner notification prior to NRCS entry. NRCS also addresses and inserts right of access provisions in all FRPP conservation easement deeds.

One respondent suggested that NRCS should contact the landowner, but it should not be prevented from exercising its imminent violation rights by rules outside of the easement or in the case of an emergency; therefore, they suggest that the wording be changed to NRCS notifies or reasonably attempts to notify. As a condition of program eligibility, landowners agree to allow NRCS to enter the land when they sign the AD–1026, Highly Erodible Land Conservation and Wetland Conservation Certification form; however, NRCS' policy is to make all reasonable advance notification to the landowner prior to any visit on the property.

One respondent has objected to NRCS accessing the easement area stating that it conflicts with the rights of the Grantee. The respondent notes that since neither NRCS nor CCC are Grantees of the recorded conservation easements, neither NRCS nor CCC have responsibilities under law to monitor, enforce or prosecute violators of FRPP easements. Therefore, NRCS should not impose rules and regulations covering these enforcement authorities already governed by State legislation. NRCS's monitoring responsibility relates only to the conservation plan, which is required by FRPP's authorizing legislation. Violations related to the conservation plan and any other such violations that NRCS may encounter while on the farm or ranch will be reported to the cooperating entity. NRCS does not assume the role of any monitoring beyond the conservation plan compliance provision of the Food Security Act of 1985, as amended.

One respondent requested that if enforcement language is required in the deed, the rule should contain such language. The final rule contains the general guidelines related to conservation plan compliance, while the cooperative agreement between NRCS and the cooperating entity will articulate any specific enforcement language as it relates to the conservation plan. One respondent asked whether lands that do not contain highly erodible soils or wetland resources need to be monitored by NRCS. Lands that do not contain highly erodible soils or wetland resources do not need to be monitored by NRCS, unless the State Conservationist and cooperating entity have entered into a cooperative agreement whereby they have agreed to assist the cooperating entity monitor non-highly erodible lands enrolled under FRPP. One respondent requested that NRCS articulate whether all easements prior to the publication of the final rule will be monitored. NRCS will monitor easements that were recorded prior to the publication of this final rule in accordance with the terms and conditions set forth in individual conservation easement deeds.

One respondent requested that the NRCS clarify that the landowner be liable for any costs incurred by the United States as it relates specifically to the conservation plan.

NRCS agrees with this respondents request for clarification and has reworded the last sentence of 1491.30(c) to read as follows: "The landowner shall be liable for any costs incurred by the United States as a result of the landowner's negligence or failure to comply with the easement requirements as it relates to conservation plan violations."

Two respondents requested that NRCS clarify section 1491.30(d) by adding "related to the FRPP easement." NRCS agrees with this recommendation and has redrafted this section to read as follows: "The United States shall be entitled to recover any and all administrative and legal costs, including attorney's fees or expenses, associated with any enforcement or remedial action related to the FRPP easement."

Two respondents requested that NRCS soften the indemnification language. One entity requested that the section be amended for cross indemnification, while another entity requested that the indemnification language read as follows: "(e) The conservation easement shall include an indemnification clause requiring landowners to indemnify, defend, and hold harmless the United States from any liability resulting from the negligent acts of the landowner." NRCS has chosen to retain the proposed rule's language as it relates to indemnification, which is similar to the second respondent's suggestion. In response to the first respondent's request for cross indemnification, NRCS does not have the authority to waive the Federal government's sovereign immunity.

Section 1491.31 Appeals

One respondent has objected to NRCS affording appeals to landowners and cooperating entities, asserting that it conflicts with the rights of the Grantee. The respondent notes that since neither NRCS nor CCC are Grantees of the recorded conservation easements with individual landowners, NRCS has no responsibilities under law to monitor, enforce or prosecute violators of easements. Therefore, NRCS should not impose rules and regulations covering these enforcement authorities already legislated by State legislation under which they are governed.

The Department of Agriculture Reform Act (Pub. L. 103–354; 7 U.S.C. 6991 et seq.), requires that USDA agencies covered by this Act develop and implement an informal and formal appeals policy. The USDA has developed regulations articulating how the appeal process works when making decisions over a disputed agency decision or determination. Accordingly, NRCS provides an appeal and mediation process to agency program participants where decisions and determinations made by the agency are disputed by the program participant. Under these provisions, program participant can mean the cooperating entity or the landowner, depending on the circumstance. Appealable items include, but are not limited to:

- The determination that the land is eligible;
- The determination that the conservation plan submitted by the landowner to the entity and further submitted to NRCS is not sufficient; and
- The determination by NRCS that the person farming the land under FRPP easement has violated the HELC or WC provisions.

Section 1491.32 Scheme and Device

One respondent has objected to the NRCS scheme and device provisions,

asserting that they conflict with the rights of the Grantee. The respondent notes that since neither NRCS nor CCC are Grantees of the recorded conservation easements with individual landowners, NRCS has no responsibilities under law to monitor, enforce or prosecute violators of easements. Therefore, NRCS should not impose rules and regulations covering these enforcement authorities already legislated by a State legislation under which they are governed. To clarify any confusion regarding the applicability of scheme and device provisions and to address the respondent's concerns, NRCS has removed the term "landowner" from the scheme and device paragraphs. However, NRCS has retained these paragraphs as drafted in the proposed rule in the event a cooperating entity with whom NRCS directly enters into a cooperative agreement commits waste, fraud, or abuse. These paragraphs have been edited to reflect this change in policy.

List of Subjects in 7 CFR Part 1491

Administrative practice and procedure, Agriculture, Soil conservation.

■ For the reasons stated in the preamble, the Commodity Credit Corporation amends chapter XIV by adding a new part 1491 as set forth below:

PART 1491—FARM AND RANCH LANDS PROTECTION PROGRAM

Subpart A—General Provisions

Sec.

1491.1 Applicability.
1491.2 Administration.
1491.3 Definitions.
1491.4 Program requirements.
1491.5 Application procedures.
1491.6 Ranking considerations and proposal selection.
1491.7 Funding priorities.

Subpart B—Cooperative Agreements and Conservation Easement Deeds ec.

1491.20 Cooperative agreements.
1491.21 Funding.
1491.22 Conservation easement deeds.
1491.23 Easement modifications.

Subpart C—General Administration

1491.30 Violations and remedies.
1491.31 Appeals.
1491.32 Scheme or device.

Authority: 16 U.S.C. 3838h–3838i.

Subpart A—General Provisions

§ 1491.1 Applicability.

(a) The regulations in this part set forth policies, procedures, and requirements for program implementation of the Farm and Ranch Lands Protection Program as administered by the Natural Resources Conservation Service (NRCS). FRPP cooperative agreements and easements signed on or after May 16, 2003, will be administered according to 7 CFR part 1491.

(b) The NRCS Chief may implement FRPP in any of the 50 States, the District of Columbia, the Commonwealth of Puerto Rico, Guam, the Virgin Islands of the United States, American Samoa, and the Commonwealth of the Northern Mariana Islands.

§ 1491.2 Administration.

(a) The regulations in this part will be administered under the general supervision and direction of the NRCS Chief.

(b) NRCS shall— (1) Provide overall program management and implementation leadership for FRPP;

(2) Develop, maintain, and ensure that policies, guidelines, and procedures are carried out to meet program goals and objectives;

(3) Ensure that the FRPP share of the cost of an easement or other deed restrictions in eligible land shall not exceed 50 percent of the appraised fair market value of the conservation easement;

(4) Determine land and entity eligibility;

(5) Ensure a conservation plan is developed in accordance with 7 CFR part 12;

(6) Make funding decisions and determine allocations of program funds;

(7) Coordinate with the Office of the General Counsel (OGC) to ensure the legal sufficiency of the cooperative agreement and the easement deed or other legal instrument;

(8) Sign and monitor cooperative agreements for the CCC with the selected entity;

(9) Monitor and ensure conservation plan compliance with highly erodible land and wetland provisions in accordance with 7 CFR part 12; and

(10) Provide leadership for establishing, implementing, and overseeing administrative processes for easements, easement payments, and administrative and financial performance reporting.

(c) NRCS may enter into cooperative agreements with eligible entities to assist NRCS with implementation of this part.

§ 1491.3 Definitions.

The following definitions may be applicable to this part:

Agricultural uses are defined by the State's Purchase of Development Rights (PDR) program, or where no PDR program exists, agricultural uses should be defined by the State agricultural use assessment program. (If the Agency finds that a State definition of agriculture is so broad that an included use could lead to the degradation of soils, NRCS reserves the right to impose greater deed restrictions on the property than allowable under that State definition of agriculture in order to protect topsoil.)

Chief means the Chief of NRCS, USDA.

Commodity Credit Corporation (CCC) is a Government-owned and operated entity that was created to stabilize, support, and protect farm income and prices. CCC is managed by a Board of Directors, subject to the general supervision and direction of the Secretary of Agriculture, who is an ex-officio director and chairperson of the Board. CCC provides the funding for FRPP, and NRCS administers FRPP on its behalf.

Conservation Easement means a voluntary, legally recorded restriction, in the form of a deed, on the use of property, in order to protect resources such as agricultural lands, historic structures, open space, and wildlife habitat.

Conservation Plan is the document that—

(1) Applies to highly erodible cropland;

(2) Describes the conservation system applicable to the highly erodible cropland and describes the decisions of the person with respect to location, land use, tillage systems, and conservation treatment measures and schedules;

(3) Is approved by the local soil conservation district in consultation with the local committees established under Section 8(b)(5) of the Soil Conservation and Domestic Allotment Act (16 U.S.C. 5909h(b)(5)) and the Secretary, or by the Secretary.

Contingent right is an interest in land held by the United States, which the United States may exercise under specific circumstances in order to enforce the terms of the conservation easement or hold title to the easement.

Eligible entities means Federally recognized Indian Tribes, States, units of local government, and certain non-governmental organizations, which have a farmland protection program that purchases agricultural conservation easements for the purpose of protecting topsoil by limiting conversion to non-agricultural uses of the land.

Additionally, to be eligible for FRPP, the entity must have pending offers, for acquiring conservation easements for the purpose of protecting agricultural land from conversion to non-agricultural uses.

Eligible land is privately owned land on a farm or ranch that has prime, unique, Statewide, or locally important soil, or contains historical or archaeological resources, and is subject to a pending offer by an eligible entity. Eligible land includes cropland, rangeland, grassland, and pasture land, as well as forest land that is an incidental part of an agricultural operation. Other incidental land that would not otherwise be eligible, but when considered as part of a pending offer, may be considered eligible, if inclusion of such land would significantly augment protection of the associated farm or ranch land.

Fair market value is ascertained through standard real property appraisal methods. Fair market value is the amount in cash, for which in all probability the property would have sold on the effective date of the appraisal, after a reasonable exposure of time on the open competitive market, from a willing and reasonably knowledgeable seller to a willing and reasonably knowledgeable buyer. Neither the seller nor the buyer act under any compulsion to buy or sell, giving due consideration to all available economic uses of the property at the time of the appraisal. In valuing conservation easements, the appraiser estimates both the fair market value of the whole property before the easement acquisition and the fair market value of the remainder property after the conservation easement has been imposed. The difference between these two values is deemed the value of the conservation easement.

Farm or Ranch Succession Plan is a general plan to address the continuation of some type of agricultural business on the conserved land; the farm or ranch succession plan may include specific intra-family succession agreements or strategies to address business asset transfer planning to create opportunities for beginning farmers and ranchers.

Field Office Technical Guide (FOTG) is the official document for NRCS guidelines, criteria, and standards for planning and applying conservation treatments and conservation management systems. The FOTG contains detailed information on the conservation of soil, water, air, plant, and animal resources applicable to the local area for which it is prepared.

Historical and archaeological resources must be:

(1) Listed in the National Register of Historic Places (established under the National Historic Preservation Act (NHPA), 16 U.S.C. 470, *et seq.*), or

(2) Formally determined eligible for listing in the National Register of Historic Places (by the State Historic Preservation Officer (SHPO) or Tribal Historic Preservation Officer (THPO) and the Keeper of the National Register in accordance with section 106 of the NHPA), or

(3) Formally listed in the State or Tribal Register of Historic Places of the SHPO (designated under section 101 (b)(1)(B) of the NHPA) or the THPO (designated under section 101(d)(1)(C) of the NHPA).

Land Evaluation and Site Assessment System (LESA) is the land evaluation system approved by the NRCS State Conservationist used to rank land for farm and ranch land protection purposes, based on soil potential for agriculture, as well as social and economic factors, such as location, access to markets, and adjacent land use. (For additional information see the Farmland Protection Policy Act rule at 7 CFR part 658.)

Landowner means a person, persons, estate, corporation, or other business or nonprofit entity having fee title ownership of farm or ranch land.

Natural Resources Conservation Service is an agency of the U.S. Department of Agriculture.

Non-governmental organization is defined as any organization that:

(1) Is organized for, and at all times since the formation of the organization, has been operated principally for one or more of the conservation purposes specified in clause (i), (ii), (iii), or (iv) of section 170(h)(4)(A) of the Internal Revenue Code of 1986;

(2) Is an organization described in section 501(c)(3) of that Code that is exempt from taxation under 501(a) of that Code;

(3) Is described in section 509(a)(2) of that Code; or

(4) Is described in section 509(a)(3) of that Code and is controlled by an organization described in section 509(a)(2) of that Code.

Other interests in land include any right in real property recognized by State law, including fee title. FRPP funds will only be used to purchase other interests in land with prior approval from the Chief.

Other productive soils are soils that are contained on farm or ranch land that is identified as farmland of Statewide or local importance and is used for the production of food, feed, fiber, forage, or oilseed crops. The appropriate State or local government agency determines Statewide or locally important farmland with concurrence from the State Conservationist. Generally, these farmlands produce high yields of crops when treated and managed according to acceptable farming methods. In some States and localities, farmlands of Statewide and local importance may include tracts of land that have been designated for agriculture by State law or local ordinance. 7 CFR part 657 sets forth the process for designating soils as Statewide or locally important.

Pending offer is a written bid, contract, or option extended to a landowner by an eligible entity to acquire a conservation easement before the legal title to these rights has been conveyed for the purpose of limiting non-agricultural uses of the land.

Prime and unique farmland are defined separately, as follows:

(1) Prime farmland is land that has the best combination of physical and chemical characteristics for producing food, feed, fiber, forage, oilseed, and other agricultural crops with minimum inputs of fuel, fertilizer, pesticides, and labor, without intolerable soil erosion, as determined by the Secretary.

(2) Unique farmland is land other than prime farmland that is used for the production of specific high-value food and fiber crops, as determined by the Secretary. It has the special combination of soil quality, location, growing season, and moisture supply needed to economically produce sustained high quality or high yields of specific crops when treated and managed according to acceptable farming methods. Examples of such crops include citrus, tree nuts, olives, cranberries, fruits, and vegetables. Additional information on the definition of prime, unique, or other productive soil can be found in 7 CFR part 657 and 7 CFR part 658.

Secretary is the Secretary of the U.S. Department of Agriculture.

State Technical Committee means a committee established by the Secretary of the U.S. Department of Agriculture in a State pursuant to 16 U.S.C. 3861 and 7 CFR part 610, subpart C.

State Conservationist means the NRCS employee authorized to direct and supervise NRCS activities in a State, the Caribbean Area (Puerto Rico and the Virgin Islands), or the Pacific Basin Area (Guam, American Samoa, and the Commonwealth of the Northern Mariana Islands).

§ 1491.4 Program requirements.

(a) Under the FRPP, the Secretary, on behalf of CCC, shall purchase conservation easements, in partnership with eligible entities, from landowners who voluntarily wish to protect their farm and ranch lands from conversion to nonagricultural uses. Eligible entities submit applications to NRCS State Offices to partner with NRCS to acquire conservation easements on farm and ranch land. NRCS enters into

cooperative agreements with selected entities and provides funds for up to 50 percent of the appraised market value for the easement purchase. In return, the entity agrees to acquire, hold, manage, and enforce the easement. A Federal contingent right interest in the property must be included in each easement deed for the protection of the Federal investment.

(b) The term of all easements will be in perpetuity unless prohibited by State law.

(c) To be eligible to receive FRPP funding, an entity must meet the definition of "eligible entity" as listed in § 1491.3. In addition, eligible entities wishing to receive FRPP funds must also demonstrate:

(1) A commitment to long-term conservation of agricultural lands;

(2) A capability to acquire, manage, and enforce easements;

(3) Sufficient number of staff dedicated to monitoring and easement stewardship; and

(4) The availability of funds.

(d) Eligible land must meet the definition of "eligible land" as provided in § 1491.3. In addition:

(1) Entire farms or ranches may be enrolled in FRPP.

(2) Farms must contain at least 50 percent of prime, unique, Statewide, or locally important soil, unless otherwise determined by the State Conservationist, or contain historical or archaeological resources.

(3) Eligible lands are farm and ranch lands subject to a pending offer, as defined in § 1491.3, for purchase of a conservation easement.

(4) Eligible land must be privately owned. NRCS will not enroll land in FRPP that is owned in fee title by an agency of the United States or State or local government, or land that is already subject to an easement or deed restriction that limits the conversion of the land to nonagricultural use, unless otherwise determined by the Secretary.

(5) Eligible land must be owned by landowners who certify that they do not exceed the adjusted gross income limitation eligibility requirements set forth in Section 1604 of the Farm Security and Rural Investment Act of 2002.

(e) Prior to FRPP fund disbursement, the value of the conservation easement must be appraised. Appraisals shall be completed and signed by a State-certified or licensed general appraiser and shall contain a disclosure statement by the appraiser. The appraisal shall conform to either the Uniform Standards of Professional Appraisal Practices or the Uniform Appraisal Standards for Federal Land Acquisitions.

(f) At the discretion of the Chief, a standard easement or equivalent legal form, which meets the intent of the 2002 Act, will be required as a condition for program participation.

(g) The landowner shall be responsible for complying with the Highly Erodible Land and Wetland Conservation provisions of the Food Security Act of 1985, as amended, and 7 CFR part 12.

§ 1491.5 Application procedures.

(a) When funds are available, NRCS publishes a Request for Proposals in the **Federal Register** or, at the discretion of the Chief, uses another process to solicit applications from eligible entities to cooperate in the acquisition of conservation easements on farms and ranches. Information required in the application will be set forth in the Request for Proposals.

(b) To participate, an eligible entity submits a proposal to NRCS for the acquisition of conservation easements on eligible farm or ranch land, on which the entity already has pending offers. An entity's application contains a request to fund one or more parcels. All applications must be submitted to the appropriate NRCS State Conservationist by the specified date, as indicated in the Request for Proposals.

§ 1491.6 Ranking considerations and proposal selection.

(a) Once the NRCS State Conservationist has assessed entity eligibility and land eligibility, the State Conservationist shall use National and State criteria to evaluate the land and rank parcels. Entities and parcels will be selected for participation based on the entities' responses to the Request for Proposals. Selection will be based on national ranking criteria set forth by the Chief in the Request for Proposals and State criteria as determined by the State Conservationist, with advice from the State Technical Committee.

(1) Examples of national criteria may include:

(i) Acreage of prime, unique, and important farm and ranch land to be protected;

(ii) Total acres of land to be protected with the requested award;

(iii) Acreage of prime, unique, and important farm and ranch land identified in the National Resources Inventory as converted to nonagricultural uses;

(iv) Total acres needing protection;

(v) Number or acreage of historical and archaeological resources to be protected on farm or ranch lands;

(vi) Anticipated average FRPP cost per acre;

(vii) Rate of land conversion (*e.g.*, local land use conversion rates);

(viii) Amount of the Federal share to be contributed to the acquisition of the conservation easement, as guaranteed by the eligible entity;

(ix) History of eligible entity's commitment to conservation planning and conservation practice implementation;

(x) History of an eligible entity's commitment to assisting beginning farmers and ranchers, to promoting opportunities in farming and ranching, and to farm and ranch succession transfer;

(xi) Eligible entity's history of acquiring, managing, holding, and enforcing conservation easements. This could include annual farmland protection expenditures, monetary donations received, accomplishments, and staffing levels;

(xii) A description of the eligible entity's farmland protection strategy and how the FRPP application submitted by the entity corresponds to the entity's strategic plan; and

(xiii) Eligible entity's estimated acres of unfunded proposed conservation easements on prime, unique, and important farm and ranch land.

(2) Examples of State or local criteria, as determined by the State Conservationist may include:

(i) Proximity of parcel to other protected clusters;

(ii) Proximity of parcel to other agricultural operations and infrastructure;

(iii) Parcel size;

(iv) Type of land use;

(v) Maximum FRPP cost expended per acre;

(vi) Amount of the Federal share to be contributed to the acquisition of the conservation easement, as guaranteed by the eligible entity;

(vii) History of an eligible entity's commitment to assisting beginning farmers and ranchers, to promoting opportunities in farming and ranching, and to farm and ranch succession transfer;

(viii) Existence of a parcel in an agriculturally zoned area.

(b) State ranking criteria will be developed on a State-by-State basis. Prior to proposal submission, interested entities should contact the State Conservationist located in their State for a full listing of applicable National and State ranking criteria.

(c) The NRCS State Conservationist may seek advice from the State Technical Committee (established pursuant to 16 U.S.C. 3861) in evaluating the merits of the applications.

§ 1491.7 Funding priorities.

(a) NRCS will only consider funding the acquisition of eligible land in the Program if the agricultural viability of the land can be demonstrated. For example, the land must be of sufficient size and have boundaries that allow for efficient management of the area. The land must also have access to markets for its products and a support infrastructure appropriate for agricultural production.

(b) NRCS may not fund the acquisition of eligible lands if NRCS determines that the protection provided by the FRPP would not be effective because of on-site or off-site conditions.

(c) NRCS will place a higher priority on easements acquired by entities that have extensive experience in managing and enforcing easements.

(d) During the application period, pending offers having appraisals completed and signed by State-certified general appraisers within the preceding one year shall receive higher funding priority by the NRCS State Conservationist. Before funding is released for easement acquisition, the cooperating entity must provide NRCS with a copy of the certified appraisal.

(e) NRCS may place a higher priority on lands and locations that help create a large tract of protected area for viable agricultural production and that are under increasing urban development pressure(s).

(f) NRCS may place a higher priority on lands and locations that link to other Federal, Tribal, or State governments or non-governmental organization efforts with complementary farmland protection objectives (*e.g.* open space, watershed and wildlife habitat protection).

(g) NRCS may place a higher priority on lands that provide multifunctional benefits including social, economic, historical and archaeological, and environmental benefits.

(h) NRCS may place a higher priority on certain geographic regions where the enrollment of particular lands may help achieve National, State, and regional goals and objectives, or enhance existing government or private conservation projects.

(i) NRCS may place a higher priority on farms or ranches that have or will have a greater variety of natural resources protected.

(j) NRCS may place a higher priority on farms or ranches that have a farm succession plan or similar plan established to encourage farm viability for future generations.

(k) NRCS may place a higher priority on the national ranking criteria listed in § 1491.6(a)(1) than State criteria, if the NRCS Chief deems appropriate.

Subpart B—Cooperative Agreements and Conservation Easement Deeds

§ 1491.20 Cooperative agreements.

(a) NRCS, on behalf of CCC, enters into a cooperative agreement with those entities selected for funding awards. Once a proposal is selected by the State Conservationist, the entity must work with the appropriate State Conservationist to finalize and sign the cooperative agreement incorporating all necessary FRPP requirements. The cooperative agreement addresses:

(1) The interests in land to be acquired, including the form of the easements to be used and terms and conditions;

(2) The management and enforcement of the rights acquired;

(3) The role of NRCS;

(4) The responsibilities of the easement manager on lands acquired with the assistance of FRPP; and

(5) Other requirements deemed necessary by NRCS to protect the interests of the United States.

(b) The cooperative agreement will also include an attachment listing the parcels accepted by the State Conservationist, landowners' names, addresses, location map(s), and other relevant information. An example of a cooperative agreement may be obtained from the State Conservationist.

§ 1491.21 Funding.

(a) The State Conservationist, in coordination with the cooperating entity, shall determine the NRCS share of the cost of purchasing a conservation easement.

(b) Under the FRPP, NRCS may provide up to 50 percent of the appraised fair market value of the conservation easement. Entities are required to supplement the NRCS share of the cost of the conservation easement.

(c) Landowner donations up to 25 percent of the appraised fair market value of the conservation easement may be considered part of the entity's matching offer.

(d) For the entity, two cost-share options are available when providing its matching offer.

(1) The entity may provide in cash at least 25 percent of the appraised fair market value of the conservation easement, or

(2) The entity may provide at least 50 percent of the purchase price in cash, of the conservation easement. This second option may be preferable to an entity in the case of a large bargain sale by the landowner. If this option is selected, the NRCS share cannot exceed the entity's contribution.

(e) FRPP funds may not be used for expenditures such as appraisals, surveys, title insurance, legal fees, costs of easement monitoring, and other related administrative and transaction costs incurred by the entity.

(f) If the State Conservationist determines that the purchase of two or more conservation easements are comparable in achieving FRPP goals, the State Conservationist shall not assign a higher priority to any one of these conservation easements based on lesser cost to FRPP.

§ 1491.22 Conservation easement deeds.

(a) Under FRPP, a landowner grants an easement to an eligible entity with which NRCS has entered into an FRPP cooperative agreement. The easement shall require that the easement area be maintained in accordance with FRPP goals and objectives for the term of the easement.

(b) Pending offers by an eligible entity must be for acquiring an easement in perpetuity, except where State law prohibits a permanent easement.

(c) The conveyance document or conservation easement deed used by the eligible entity may be reviewed and approved by the NRCS National Office and Office of the General Counsel (OGC) before being recorded.

(d) Since title to the easement is held by an entity other than the United States, the conveyance document must contain a "contingent right" clause that provides that all rights conveyed by the landowner under the document will become vested in the United States should the eligible entity (*i.e.*, the grantee[s]) abandon or attempt to terminate the conservation easement. In addition, the contingent right also provides, in part, that the Secretary takes title to the easement, if the eligible entity fails to uphold the easement or attempts to transfer the easement without first securing the consent of the Secretary.

(e) As a condition for participation, a conservation plan will be developed by NRCS in consultation with the landowner and implemented according to the NRCS Field Office Technical Guide and approved by the local conservation district. The conservation plan will be developed and managed in accordance with the Food Security Act of 1985, as amended, 7 CFR part 12 or subsequent regulations, and other requirements as determined by the State Conservationist. To ensure compliance with this conservation plan, the

easement will grant to the United States, through NRCS, its successors or assigns, a right of access to the easement area.

(f) The cooperating entity shall acquire, hold, manage and enforce the easement. The cooperating entity may have the option to enter into an agreement with governmental or private organizations to carry out easement stewardship responsibilities if approved by NRCS.

(g) Prior to fund disbursement, NRCS must sign the conservation easement, concurring with the terms of the conservation easement and accepting its interest in the conservation easement deed.

(h) All conservation easement deeds acquired with FRPP funds must be recorded. Proof of recordation shall be provided to NRCS by the cooperating entity.

§ 1491.23 Easement modifications.

(a) After an easement has been recorded, no amendments to the easement will be made without prior approval by NRCS State Conservationist and the USDA Office of General Counsel.

(b) Easement modifications will be approved only when easement is duly prepared and recorded in conformity with standard real estate practices, including requirements for title approval, subordination of liens, and recordation, and when the amendment is consistent with the purposes of the conservation easement.

Subpart C—General Administration

§ 1491.30 Violations and remedies.

(a) In the event of a violation of the terms of the easement, the cooperating entity shall notify the landowner. The landowner may be given reasonable notice and, where appropriate, an opportunity to voluntarily correct the violation in accordance with the terms of the conservation easement.

(b) In the event that the cooperating entity fails to enforce any of the terms of the easement as determined in the sole discretion of the Secretary, the Secretary and his or her successors and assigns shall have the right to enforce the terms of the easement through any and all authorities available under Federal or State law. In the event that the cooperating entity attempts to terminate, transfer, or otherwise divest itself of any rights, title, or interests of the easement or extinguish the easement or without the prior consent of the Secretary and payment of consideration to the United States, then, at the option of the Secretary, all right, title, and interest in the conservation easement shall become vested in the United States of America.

(c) Notwithstanding paragraph (a) of this section, NRCS, upon notification to the landowner, reserves the right to enter upon the easement area at any time to monitor conservation plan implementation or remedy deficiencies or easement violations, as it relates to the conservation plan. The entry may be made at the discretion of NRCS when the actions are deemed necessary to protect highly erodible soils and wetland resources. The landowner will be liable for any costs incurred by the United States as a result of the landowner's negligence or failure to comply with the easement requirements as it relates to conservation plan violations.

(d) The United States shall be entitled to recover any and all administrative and legal costs, including attorney's fees or expenses, associated with any enforcement or remedial action as it relates to the enforcement of the FRPP easement.

(e) The conservation easement shall include an indemnification clause requiring landowners to indemnify, defend, and hold harmless the United States from any liability resulting from the negligent acts of the landowner.

(f) In instances where an easement is terminated or extinguished, NRCS will collect CCC's share of the conservation easement based on the appraised fair market value of the conservation easement at the time the easement is extinguished or terminated. CCC's share shall be in proportion to its percentage of original investment.

§ 1491.31 Appeals.

(a) A person or cooperating entity which has submitted an FRPP proposal and is therefore participating in FRPP may obtain a review of any administrative determination concerning eligibility for participation utilizing the administrative appeal regulations provided in 7 CFR part 614.

(b) Before a person may seek judicial review of any action taken under this part, the person must exhaust all administrative appeal procedures set forth in paragraph (a) of this section, and for the purposes of judicial review, no decision shall be a final agency action except a decision of the U. S. Department of Agriculture under these provisions.

§ 1491.32 Scheme or device.

(a) If it is determined by the Secretary that a cooperating entity has employed a scheme or device to defeat the purposes of this part, any part of any program payment otherwise due or paid such a cooperating entity during the applicable period may be withheld or be required to be refunded with interest thereon, as determined appropriate by CCC.

(b) A scheme or device includes, but is not limited to, coercion, fraud, misrepresentation, depriving any other person or entity of payments for easements for the purpose of obtaining a payment to which a person would otherwise not be entitled.

Signed in Washington, DC, on May 8, 2003.

Bruce I. Knight,

Vice President, Commodity Credit Corporation and Chief, Natural Resources Conservation Service.

[FR Doc. 03–12064 Filed 5–15–03; 8:45 am]

BILLING CODE 3410–16–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2003–NE–16–AD; Amendment 39–13145; AD 2003–08–52]

RIN 2120–AA64

Airworthiness Directives; GE Aircraft Engines CT7–9B Turboprop Engines

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule; request for comments.

SUMMARY: This document publishes in the **Federal Register** an amendment adopting Airworthiness Directive (AD) 2003–08–52 that was sent previously to all known U.S. owners and operators of GE Aircraft Engines (GEAE) CT7–9B turboprop engines. This AD requires rigging the compressor variable geometry (VG) to VG schedule N. This AD is prompted by reports of 12 compressor stall events that occurred over a six-month period. The actions specified in this AD are intended to prevent a dual-engine in-flight shutdown or power loss due to a compressor stall during deceleration from takeoff power to climb power.

DATES: Effective June 2, 2003, to all persons except those persons to whom it was made immediately effective by emergency AD 2003–08–52, issued on April 15, 2003, which contained the requirements of this amendment. The Director of the Federal Register approved the incorporation by reference of certain publications listed in the regulations as of June 2, 2003.

We must receive any comments on this AD by July 15, 2003.

ADDRESSES: Use one of the following addresses to submit comments on this AD:

- By mail: The Federal Aviation Administration (FAA), New England Region, Office of the Regional Counsel, Attention: Rules Docket No. 2003–NE–16–AD, 12 New England Executive Park, Burlington, MA 01803–5299.
- By fax: (781) 238–7055.
- By e-mail: *9-ane-adcomment@faa.gov.*

You may get the service information referenced in this AD from GE Aircraft Engines Customer Support Center, M/D 285, 1 Neumann Way, Evendale, OH 45215, telephone (513) 552–3272, fax (513) 552–3329, e-mail *GEAE.csc@ae.ge.com.*

You may examine the AD docket, by appointment, at the FAA, New England Region, Office of the Regional Counsel, 12 New England Executive Park, Burlington, MA. You may examine the service information, by appointment, at the FAA, New England Region, Office of the Regional Counsel, 12 New England Executive Park, Burlington, MA; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Anthony W. Cerra Jr., Aerospace Engineer, Engine Certification Office, FAA, Engine and Propeller Directorate, 12 New England Executive Park, Burlington, MA 01803–5299, telephone (781) 238–7128; fax (781) 238–7199.

SUPPLEMENTARY INFORMATION: On April 15, 2003, we issued emergency AD 2003–08–52, that is applicable to GEAE CT7–9B turbofan engines. That emergency AD requires rigging the compressor VG to VG schedule N. That action was prompted by reports of 12 compressor stall events that occurred over a six-month period. This is in contrast to recent historical experience of four to six stall events per year. The stall events have occurred on deceleration when transitioning from takeoff power to climb power. Of the 10 events under investigation, nine had the compressor VG rigged to the VG schedule N1. The manufacturer's maintenance manuals and related service bulletins permit the compressor VG to be rigged to either the VG. schedule N or the VG schedule N1. The VG schedule N provides a higher stall margin at the expense of a small reduction of engine performance margin as compared to the VG schedule N1. Since 1992, the manufacturer has recommended that overhaul shops use the VG schedule N only. VG schedule N provides more stall margin on used engines, which inherently have a lower stall margin due to wear or deterioration. Other factors that contribute to lower stall margins include dirty compressors and the increased compressor clearances that occur during the first takeoff of the day. This condition, if not corrected, could result in a dual-engine in-flight shutdown or power loss due to a compressor stall during deceleration from takeoff power to climb power.

Relevant Service Information

We have reviewed and approved the technical contents of GEAE Alert Service Bulletin (ASB) No. CT7–TP S/B 72–A0328, Revision 1, dated April 8, 2003. That ASB describes procedures for rigging the compressor VG to the VG schedule N.

FAA's Determination and Requirements of This AD

The unsafe condition described previously is likely to exist or develop on other GEAE CT7–9B turboprop engines of the same type design. Therefore, we are issuing this AD to prevent a dual-engine in-flight shutdown or power loss due to a compressor stall during deceleration from takeoff power to climb power. This AD requires:

- If both engines on the airplane are rigged to VG schedule N1, rigging the compressor VG on one engine to VG schedule N within 30 flight hours (FH) or 3 days after the effective date of this AD, whichever occurs later and,
- Rigging the remaining engine compressor VG to VG schedule N within 100 FH or 10 days after the effective date of this AD, whichever occurs earlier.
- If only one engine is rigged to VG schedule N1, rigging the compressor VG to VG schedule N within 100 FH or 10 days after the effective date of this AD, whichever occurs earlier.

You must do the actions per GEAE ASB No. CT7–TP S/B 72–A0328, Revision 1, dated April 8, 2003, described previously.

FAA's Determination of the Effective Date

Since it was found that immediate corrective action was required, notice and opportunity for prior public comment were impracticable and contrary to the public interest and that good cause existed to make the AD effective immediately on April 15, 2003, to all known U.S. owners and operators of GEAE CT7–9B turboprop engines. These conditions still exist, and we are publishing the AD in the **Federal Register** as an amendment to section 39.13 of part 39 of the Federal Aviation Regulations (14 CFR part 39) to make it effective to all persons.

Changes to 14 CFR Part 39—Effect on the AD

On July 10, 2002, we issued a new version of 14 CFR part 39 (67 FR 47997, July 22, 2002), which governs our AD system. This regulation now includes material that relates to special flight permits, alternative methods of compliance, and altered products. This material previously was included in each individual AD. Since this material is included in 14 CFR part 39, we will not include it in future AD actions.

Interim Action

The investigation to determine the root causes of the decel stall events is ongoing. We may take further rulemaking action when we have identified the root causes.

Comments Invited

This AD is a final rule that involves requirements affecting flight safety and was not preceded by notice and an opportunity for public comment; however, we invite you to submit any written relevant data, views, or arguments regarding this AD. Send your comments to an address listed under **ADDRESSES.** Include "AD Docket No. 2003–NE–16–AD" in the subject line of your comments. If you want us to acknowledge receipt of your mailed comments, send us a self-addressed, stamped postcard with the docket number written on it; we will date-stamp your postcard and mail it back to you. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of the rule that might suggest a need to modify it. If a person contacts us through a nonwritten communication, and that contact relates to a substantive part of this AD, we will summarize the contact and place the summary in the docket. We will consider all comments received by the closing date and may amend the AD in light of those comments.

We are reviewing the writing style we currently use in regulatory documents. We are interested in your comments on whether the style of this document is clear, and your suggestions to improve the clarity of our communications with you. You may get more information about plain language at *http://www.plainlanguage.gov.*

Regulatory Findings

We have determined that this AD will not have federalism implications under Executive Order 13132. This AD will not have a substantial direct effect on

the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government.

For the reasons discussed above, I certify that the regulation:

1. Is not a "significant regulatory action" under Executive Order 12866;

2. Is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and

3. Will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

We prepared a summary of the costs to comply with this AD and placed it in the AD Docket. You may get a copy of this summary by sending a request to us at the address listed under **ADDRESSES.** Include "AD Docket No. 2003–NE–16–AD" in your request.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

■ Accordingly, under the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

■ 1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

■ 2. The FAA amends § 39.13 by adding the following new airworthiness directive:

2003–08–52 GE Aircraft Engines: Amendment 39–13145. Docket No. 2003–NE–16–AD.

Effective Date

(a) This amendment becomes effective June 2, 2003, to all persons except those persons to whom it was made immediately effective by emergency AD 2003–08–52, issued April 15, 2003.

Affected ADs

(b) None.

Applicability

(c) This AD applies to GEAE CT7–9B turboprop engines. These engines are installed on, but not limited to Saab Aircraft AB 340B airplanes.

Unsafe Condition

(d) This AD was prompted by reports of 12 compressor stall events that occurred over a six month period. The actions specified in this AD are intended to prevent a dual-engine in-flight shutdown or power loss due to a compressor stall during deceleration from takeoff power to climb power.

Compliance

(e) Compliance with the requirements of this AD is required as indicated unless already done.

Determining Compressor VG Rigging Schedule

(f) Determine which schedule was used to rig the compressor VG. The serial numbers (SNs) contained in Table 1 of this AD are known to have been rigged to VG schedule N1. Engines with SNs that are not listed in Table 1 might be rigged to VG schedule N1. You must review the engine records to determine if the engines are rigged to VG schedule N1 using GEAE Service Bulletin (SB) No. CT7–TP S/B 72–0241, dated April 6, 1990. Table 1 follows:

TABLE 1.—SNs OF ENGINES KNOWN TO HAVE BEEN RIGGED TO VG SCHEDULE N1

785102	785104	785106	785107	785109	785111
785112	785113	785117	785118	785125	785128
785129	785131	785133	785136	785138	785148
785150	785151	785152	785154	785160	785185
785188	785211	785231	785232	785234	785235
785237	785239	785241	785257	785259	785265
785266	785275	785322	785325	785326	785334
785375	785391	785400	785459	785460	785462
785465	785474	785476	785477	785480	785481
785487	785499	785506	785534	785538	785554
785569	785591	785592	785598	785603	785700
785759					

Rigging the Compressor VG to Schedule N

(g) If the compressor VGs of both engines on the airplane are rigged to VG schedule N using GEAE SB CT7–TP S/B 72–0328 dated June 9, 1992 or GEAE Alert Service Bulletin (ASB) CT7–TP S/B 72–A0328, Revision 1, dated April 8, 2003 no further action is required.

(h) If the compressor VGs on both engines on the airplane are rigged to VG schedule N1, do the following:

(1) Within 30 flight hours (FH) or 3 days after the effective date of this AD, whichever occurs later, rig the compressor VG on one engine to VG schedule N in accordance with 3.A.(1) through 3.A.(12) of the Accomplishment Instructions of GEAE ASB No. CT7–TP S/B 72–A0328, Revision 1, dated April 8, 2003.

(2) Within 100 FH or 10 days after the effective date of this AD, whichever occurs earlier, rig the compressor VG on the remaining engine to VG schedule N in accordance with 3.A.(1) through 3.A.(12) of the Accomplishment Instructions of GEAE ASB No. CT7–TP S/B 72–A0328, Revision 1, dated April 8, 2003.

(i) If the compressor VG on one engine on the airplane is rigged to VG schedule N1, within 100 FH or 10 days after the effective date of this AD, whichever occurs earlier, rig the compressor VG to VG schedule N in accordance with 3.A.(1) through 3.A.(12) of the Accomplishment Instructions of GEAE ASB No. CT7–TP S/B 72–A0328, Revision 1, dated April 8, 2003.

Installation of Engines With VG Schedule N1

(j) After the effective date of this AD, do not install any CT7–9B turboprop engine that is rigged to VG schedule N1 on to any Saab Aircraft AB 340B airplane.

Alternative Methods of Compliance

(k) Alternative methods of compliance must be requested in accordance with 14 CFR part 39.19, and must be approved by the Manager, Engine Certification Office, Federal Aviation Administration (FAA).

Material Incorporated by Reference

(l) The rigging of the compressor VG must be done in accordance with GE Aircraft Engines Alert Service Bulletin (ASB) No. CT7–TP S/B 72–A0328, Revision 1, dated April 8, 2003. The Director of the Federal Register approved the incorporation by reference of this service bulletin in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. You may get a copy from GE Aircraft Engines Customer Support Center, M/D 285, 1 Neumann Way, Evendale, OH 45215, telephone (513) 552–3272, fax (513) 552–3329, email *GEAE.csc@ae.ge.com*. You may review copies at the FAA, New England Region, Office of the Regional Counsel, 12 New England Executive Park, Burlington, MA; or at the Office of the Federal Register, 800 North Capitol Street, NW, suite 700, Washington, DC.

Related Information

(m) Additional information to help minimize the occurrence of multiple-engine in-flight shutdowns or power loss may be found in GEAE All Operator's Wire CT7–03–02, dated April 3, 2003.

Issued in Burlington, MA on May 7, 2003.

Jay J. Pardee,

Manager, Engine and Propeller Directorate, Aircraft Certification Service.

[FR Doc. 03–11972 Filed 5–15–03; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2002–NE–12–AD; Amendment 39–13148; AD 2003–10–03]

RIN 2120–AA64

Airworthiness Directives; Rolls-Royce plc Model RB211 Turbofan Engines

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), that is applicable to Rolls-Royce plc (RR) model RB211–535E4–37, RB211–535E4–B–37, and RB211–535E4–B–75 turbofan engines. This amendment requires removal from service of certain high pressure (HP) turbine discs before they reach newly established life limits. This amendment is prompted by the manufacturer's inspections and analysis of HP turbine discs that have accumulated high cycles. The actions specified by this AD are intended to prevent machining-induced cracking of the HP turbine disc which could cause an uncontained HP turbine disc failure and damage to the airplane.

DATES: Effective June 20, 2003.

ADDRESSES: Information regarding this action may be examined, by appointment, at the Federal Aviation Administration (FAA), New England Region, Office of the Regional Counsel, 12 New England Executive Park, Burlington, MA.

FOR FURTHER INFORMATION CONTACT: Ian Dargin, Aerospace Engineer, Engine Certification Office, FAA, Engine and Propeller Directorate, 12 New England Executive Park, Burlington, MA 01803–5299, telephone (781) 238–7178; fax (781) 238–7199.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an AD that is applicable to RR model RB211–535E4–B–37 and RB211–535E4–B–75 turbofan engines was published in the **Federal Register** on November 6, 2002 (67 FR 69160). That action proposed to require removal from service of certain HP turbine discs before they reach newly established life limits.

Comments

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the comments received.

Change Explanation for Cracking

One commenter states that the explanation for cracking in the HP disc rim cooling hole area is machining damage from new manufacture, and has nothing to do with the discs being sensitive to corrosion-induced cracking, as stated in the proposal. The commenter also states that RR had previously indicated that the proposed life reduction was due to the condition described in RR Mandatory Service Bulletin (MSB) No. 72–C817. This MSB states that HP turbine discs part numbers (P/Ns) UL10323, UL27680, and UL27681 are sensitive to cracking in the disc rim cooling hole area due to machining damage from new manufacture.

The FAA agrees. The cracking has been identified as occurring at the disc rim cooling hole area on the disc rear face. Although problems have been reported during overhaul, presumably due to rework or repair associated with, in part, corrosion, the primary explanation for this AD is machining damage. Therefore, in the final rule the explanation for cracking is changed to machining damage.

Clarification of Part Numbers

One commenter requests that HP turbine discs P/Ns UL39766 and UL39767 be removed from the applicability and disc P/N UL10323 be added. The commenter states that disc P/N UL39766 is not listed in the RR Engine Illustrated Parts Catalogue or the Time Limits Manual. The commenter states that disc P/N UL39767 was introduced by RR Service Bulletin (SB) No. 72–C817 and is not subject to damage by machining. The commenter also states that disc P/N UL10323 is listed in the Time Limits Manual with a life limit of 14,800 cycles-since-new (CSN). Service Bulletin No. 72–C817 lists disc P/N UL10323, indicating that it is sensitive to cracking due to machining damage from manufacture.

The FAA agrees. We determined that HP turbine disc P/N UL39766 was never produced by RR and is, therefore, removed from the final rule. Also, disc P/N UL39767 was introduced as a new part to replace disc P/N UL27681, and has, therefore, been removed from the final rule. Disc P/N UL10323 is affected by machining damage and is added to the final rule applicability with a life limit of 14,800 CSN.

Add Engine Model to Applicability

One commenter asks if the RB211–535E4–37 engine should be included in the applicability.

The FAA agrees that this AD should be applicable to engine model RB211–535E4–37. Therefore, this model is now listed in the final rule.

After careful review of the available data, including the comments noted above, the FAA has determined that air safety and the public interest require the adoption of the rule with the changes described previously. The FAA has determined that these changes will neither increase the economic burden on any operator nor increase the scope of the AD.

Economic Analysis

There are approximately 400 RR model RB211–535E4–37, RB211–535E4–B–37, and RB211–535E4–B–75 turbofan engines in the worldwide fleet containing the affected HP turbine discs, P/Ns UL10323, UL27680, and UL27681. The FAA estimates that 346 engines installed on airplanes of U.S. registry will be affected by this AD, that it will take approximately 112 work hours per engine to replace an affected disc, and that the average labor rate is $60 per work hour. The FAA estimates that the prorated cost of the life reduction per engine would be approximately $64,000. Based on these figures, the total cost of the AD to remove HP turbine discs P/Ns UL27680 and UL27681 from service before accumulating 15,000 cycles-since-new (CSN) and HP turbine discs P/N UL10323 from service before accumulating 14,800 CSN, rather than the former life limit of 20,000 CSN, is estimated to be $24,469,120.

Regulatory Analysis

This final rule does not have federalism implications, as defined in Executive Order 13132, because it would not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Accordingly, the FAA has not consulted with state authorities prior to publication of this final rule.

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a

"significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

Adoption of the Amendment

■ Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

■ 1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

■ 2. Section 39.13 is amended by adding a new airworthiness directive to read as follows:

2003–10–03 Rolls-Royce plc: Amendment 39–13148. Docket No. 2002–NE–12–AD.

Applicability: This airworthiness directive (AD) is applicable to model RB211–535E4–37, RB211–535E4–B–37 and RB211–535E4–B–75 turbofan engines with high pressure (HP) turbine disc, P/N UL10323, UL27680, and UL27681, installed. These engines are installed on, but not limited to Boeing 757 and Tupolev Tu204 airplanes.

Note 1: This AD applies to each engine identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For engines that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (d) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Compliance with this AD is required as indicated, unless already done.

To prevent machining-induced cracking of the HP turbine disc, which could cause an uncontained HP turbine disc failure and damage to the airplane, do the following:

(a) Remove HP turbine discs P/Ns UL27680 and UL27681 from service before accumulating 15,000 cycles-since-new (CSN).

(b) Remove HP turbine discs P/N UL10323 from service before accumulating 14,800 CSN.

(c) After the effective date of this AD, do not install any HP turbine disc P/N UL27680 or UL27681 that exceeds 15,000 CSN, or any HP turbine disc P/N UL10323 that exceeds 14,800 CSN.

Alternative Methods of Compliance

(d) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Engine Certification Office (ECO). Operators must submit their request through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, ECO.

Note 2: Information concerning the existence of approved alternative methods of compliance with this airworthiness directive, if any, may be obtained from the Engine Certification Office.

Special Flight Permits

(e) Special flight permits may be issued in accordance with §§ 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be done.

Effective Date

(f) This amendment becomes effective on June 20, 2003.

Issued in Burlington, Massachusetts, on May 9, 2003.

Jay J. Pardee,

Manager, Engine and Propeller Directorate, Aircraft Certification Service.

[FR Doc. 03–12109 Filed 5–15–03; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2003–CE–17–AD; Amendment 39–13150; AD 2003–10–05]

RIN 2120–AA64

Airworthiness Directives; Raytheon Aircraft Company Model 390 Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; request for comments.

SUMMARY: This amendment adopts a new airworthiness directive (AD) that applies to certain Raytheon Aircraft Company (Raytheon) Model 390 airplanes. This AD requires you to incorporate information into the FAA-approved Airplane Flight Manual (AFM) that would add requirements for "Landing Performance for Operation of the Airplane with Lift Dump Inoperative." This AD is the result of two accidents on the affected airplanes where a contributing factor was the lift dump spoilers failing to deploy when commanded after the initial landing. The FAA previously issued AD 2003–07–09 affecting certain Model 390 airplanes. However, the airplane serial numbers included in this AD were inadvertently omitted from AD 2003–07–09. The actions specified by this AD are intended to require the use of necessary flight information to prevent runway overruns based on insufficient wheel braking if the lift dump spoilers do not operate after landing touchdown. This could result in reduced or loss of control of the airplane.

DATES: This AD becomes effective on May 30, 2003.

The Director of the Federal Register previously approved the incorporation by reference of certain publications listed in the regulation as of April 7, 2003 (68 FR 16205, April 3, 2003).

The Federal Aviation Administration (FAA) must receive any comments on this rule on or before July 2, 2003.

ADDRESSES: Submit comments to FAA, Central Region, Office of the Regional Counsel, Attention: Rules Docket No. 2003–CE–17–AD, 901 Locust, Room 506, Kansas City, Missouri 64106. You may view any comments at this location between 8 a.m. and 4 p.m., Monday through Friday, except Federal holidays. You may also send comments electronically to the following address: *9–ACE–7–Docket@faa.gov*. Comments sent electronically must contain "Docket No. 2003–CE–17–AD" in the subject line. If you send comments electronically as attached electronic files, the files must be formatted in Microsoft Word 97 for Windows or ASCII text.

You may get the service information referenced in this AD from Raytheon Aircraft Company, 9709 E. Central, Wichita, Kansas 67201–0085; telephone: (800) 429–5372 or (316) 676–3140. You may view this information at FAA, Central Region, Office of the Regional Counsel, Attention: Rules Docket No. 2003–CE–17–AD, 901 Locust, Room 506, Kansas City, Missouri 64106; or at the Office of the Federal Register, 800 North Capitol Street, NW, suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Derek Morgan, Flight Test Engineer, FAA, Wichita Aircraft Certification Office, 1801 Airport Road, Room 100, Wichita, Kansas 67209; telephone: (316) 946–4172; facsimile: (316) 946–4107.

SUPPLEMENTARY INFORMATION:

Discussion

What Events Have Caused This AD?

The FAA has received information of an unsafe condition on Raytheon Model 390 airplanes. The current procedure for an annunciated lift dump failure is to increase landing distance by a factor of 1.53. In two recent accidents of these airplanes, the lift dump spoilers failed to deploy when commanded after touchdown.

Whether loss of lift dump is annunciated or unannunciated after touchdown, the pilot (in most instances) does not have enough time to take effective corrective action.

The FAA issued AD 2003–07–09 (68 FR 16203) on March 27, 2003, affecting certain Model 390 airplanes. However, airplane serial numbers RB–18 through RB–24 included in this AD were inadvertently omitted from AD 2003–07–09.

What Are the Consequences if the Condition Is Not Corrected?

Without requiring the use of necessary flight information, runway overruns based on insufficient wheel braking could occur if the lift dump spoilers do not operate after landing touchdown. This could result in reduced or loss of control of the airplane.

Is There Service Information That Applies to This Subject?

Raytheon has issued Temporary Change to the FAA Approved Airplane Flight Manual P/N 390–590001–0003BTC5A1, revised March 24, 2003. This document:

—Replaces the existing landing distance and brake energy charts with ones that reflect landing performance without the effects of lift dump spoilers; and

—Modifies all operating limitations to specify the use of these landing charts in determining the maximum landing weight.

Raytheon is working toward a design that would eliminate the need for this Temporary AFM Change.

The FAA's Determination and an Explanation of the Provisions of This AD

What Has FAA Decided?

The FAA has reviewed all available information, including the service information referenced above; and determined that:

—The unsafe condition referenced in this document exists or could develop on other Raytheon Model 390 airplanes of the same type design;

—The information specified in the previously-referenced service information should be incorporated into the FAA-approved AFM; and

—AD action should be taken in order to correct this unsafe condition.

What Does This AD Require?

This AD requires you to incorporate the previously-referenced service information into the FAA-approved AFM, which would add requirements for "Landing Performance for Operation of the Airplane with Lift Dump Inoperative."

As specified previously, Raytheon is working toward a design that would eliminate the need for these requirements. If completed, FAA will evaluate and determine whether additional regulatory action is necessary.

In preparation of this rule, we contacted type clubs and aircraft operators to obtain technical information and information on operational and economic impacts. We did not receive any information through these contacts. If received, we would have included, in the rulemaking docket, a discussion of any information that may have influenced this action.

How Does the Revision to 14 CFR Part 39 Affect This AD?

On July 10, 2002, FAA published a new version of 14 CFR part 39 (67 FR 47997, July 22, 2002), which governs FAA's AD system. This regulation now includes material that relates to special flight permits, alternative methods of compliance, and altered products. This material previously was included in each individual AD. Since this material is included in 14 CFR part 39, we will not include it in future AD actions.

Will I Have the Opportunity To Comment Prior to the Issuance of the Rule?

Because the unsafe condition described in this document could result in reduced or loss of control of the airplane during landing operations, we find that notice and opportunity for public prior comment are impracticable. Therefore, good cause exists for making this amendment effective in less than 30 days.

Comments Invited

How Do I Comment on This AD?

Although this action is in the form of a final rule and was not preceded by notice and opportunity for public comment, FAA invites your comments on the rule. You may submit whatever written data, views, or arguments you choose. You need to include the rule's docket number and submit your comments to the address specified under the caption **ADDRESSES.** We will consider all comments received on or before the closing date specified above. We may amend this rule in light of comments received. Factual information that supports your ideas and suggestions is extremely helpful in evaluating the effectiveness of the AD action and determining whether we need to take additional rulemaking action.

Are There Any Specific Portions of the AD I Should Pay Attention to?

We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of the rule that might suggest a need to modify the rule. You may view all comments we receive before and after the closing date of the rule in the Rules Docket. We will file a report in the Rules Docket that summarizes each FAA contact with the public that concerns the substantive parts of this AD.

How Can I Be Sure FAA Receives My Comment?

If you want us to acknowledge the receipt of your comments, you must include a self-addressed, stamped postcard. On the postcard, write "Comments to Docket No. 2003–CE–17–AD." We will date stamp and mail the postcard back to you.

Regulatory Impact

Does This AD Impact Various Entities?

These regulations will not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, FAA has determined that this final rule does not have federalism implications under Executive Order 13132.

Does This AD Involve a Significant Rule or Regulatory Action?

We have determined that this regulation is an emergency regulation that must be issued immediately to correct an unsafe condition in aircraft, and is not a significant regulatory action under Executive Order 12866. It has been determined further that this action involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979). If it is determined that this emergency regulation otherwise would be significant under DOT Regulatory Policies and Procedures, a final regulatory evaluation will be prepared

and placed in the Rules Docket (otherwise, an evaluation is not required). A copy of it, if filed, may be obtained from the Rules Docket.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by Reference, Safety.

Adoption of the Amendment

■ Accordingly, under the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

■ 1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

■ 2. FAA amends § 39.13 by adding a new airworthiness directive (AD) to read as follows:

2003–10–05 Raytheon Aircraft Company: Amendment 39–13150; Docket No. 2003–CE–17–AD.

(a) *What airplanes are affected by this AD?* This AD applies to Model 390 airplanes, serial numbers RB–18 through RB–24, that are certificated in any category.

(b) *Who must comply with this AD?* Anyone who wishes to operate any of the airplanes identified in paragraph (a) of this AD must comply with this AD.

(c) *What problem does this AD address?* The actions specified by this AD are intended to require the use of necessary flight information to prevent runway overruns based on insufficient wheel braking if the lift dump spoilers do not operate after landing touchdown. This could result in reduced or loss of control of the airplane.

(d) *What must I do to address this problem?* To address this problem, you must accomplish the following actions:

Actions	Compliance
(1) Incorporate information into the FAA-approved Airplane Flight Manual (AFM) that would add requirements for "Landing Performance for Operation of the Airplane with Lift Dump Inoperative." Accomplish this action by inserting Raytheon Temporary Change to the FAA Approved Airplane Flight Manual P/N 390–590001–0003BTC5A1, revised March 24, 2003.	Within the next 5 hours time-in-service (TIS) after May 30, 2003 (the effective date of this AD).
(2) The owner/operator holding at least a private pilot certificate as authorized by section 43.7 of the Federal Aviation Regulations (14 CFR 43.7) may incorporate into the AFM the information specified in paragraph (d)(1) of this AD. Make an entry into the aircraft records showing compliance with this portion of the AD in accordance with section 43.9 of the Federal Aviation Regulations (14 CFR 43.9).	Within the next 5 hours TIS after May 30, 2003 (the effective date of this AD).

(e) *Are special flight permits authorized for this AD?* Special flight permits are not authorized for this AD. On July 10, 2002, FAA published a new version of 14 CFR part 39 (67 FR 47997, July 22, 2002), which governs FAA's AD system. Part of this amendment to 14 CFR part 39 authorized special flight permits for all ADs, unless specified otherwise. Because the owner/operator holding an appropriate pilot's license may accomplish the action of this AD and the compliance time is 5 hours TIS after the AD effective date, FAA has determined that special flight permits are not necessary for this AD.

(f) *Can I comply with this AD in any other way?* To use an alternative method of compliance or adjust the compliance time, follow the procedures in 14 CFR 39.19. Send these requests to the Manager, Wichita Aircraft Certification Office (ACO). For information on any already approved alternative methods of compliance, contact Derek Morgan, Flight Test Engineer, FAA, Wichita Aircraft Certification Office, 1801 Airport Road, Room 100, Wichita, Kansas 67209; telephone: (316) 946–4172; facsimile: (316) 946–4107.

(g) *Are any service bulletins incorporated into this AD by reference?* Actions required by this AD must be done in accordance with Raytheon Temporary Change to the FAA Approved Airplane Flight Manual P/N 390–590001–0003BTC5A1, revised March 24, 2003. The Director of the Federal Register previously approved this incorporation by reference under 5 U.S.C. 552(a) and 1 CFR part 51 as of April 7, 2003 (68 FR 16205, April 3, 2003). You can get copies from Raytheon Aircraft Company, 9709 E. Central, Wichita, Kansas 67201–0085; telephone: (800) 429–5372 or (316) 676–3140. You may view this information at FAA, Central Region, Office of the Regional Counsel, 901 Locust, Room 506, Kansas City, Missouri, or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(h) *When does this amendment become effective?* This amendment becomes effective on May 30, 2003.

Issued in Kansas City, Missouri, on May 12, 2003.

Michael Gallagher,

Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 03–12240 Filed 5–15–03; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 97

[Docket No. 30368; Amdt. No. 3058]

Standard Instrument Approach Procedures; Miscellaneous Amendments

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule

SUMMARY: This amendment establishes, amends, suspends, or revokes Standard Instrument Approach Procedures (SIAPs) for operations at certain airports. These regulatory actions are needed because of changes occurring in the National Airspace System, such as the commissioning of new navigational facilities, addition of new obstacles, or changes in air traffic requirements. These change are designed to provide safe and efficient use of the navigable airspace and to promote safe flight operations under instrument flight rules at the affected airports.

DATES: This rule is effective May 16, 2003. the compliance date for each SIAP is specified in the amendatory provisions.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of May 16, 2003.

ADDRESSES: Availability of matter incorporated by reference in the amendment is as follows:

For Examination—

1. FAA Rules Docket, FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591;

2. The FAA Regional Office of the region in which affected airport is located; or

3. The Flight Inspection Area Office which originated the SIAP.

4. The Office of the Federal Register, 800 North Capitol Street, NW., Suite 700, Washington, DC

For Purchase—Individial SIAP copies may be obtained from:

1. FAA Public Inquiry Center (APA–200), FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591; or

2. The FAA Regional office of the region in which the affected airport is located.

By Subscription—Copies of all SIAPs, mailed once every 2 weeks, are for sale by the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402.

FOR FURTHER INFORMATION CONTACT: Donald P. Pate, Flight Procedure Standards Branch (AMCAFS–420), Flight technologies and Programs Division, Flight Standards Service, Federal Aviation Administration, Mike Monroney Aeronautical Center, 6500 South MacArthur Blvd. Oklahoma City, OK 73169 (Mail Address: P.O. Box 25082, Oklahoma City, OK 73125) telephone: (405) 965–4164.

SUPPLEMENTARY INFORMATION: This amendment to part 97 of the Federal Aviation Regulations (14 CFR part 97) establishes, amends, suspends, or revokes Standard Instrument Approach Procedures (SIAPs). The complete regulatory description on each SIAP is contained in the appropriate FAA Form 8260 and the National Flight Data Center (FDC)/Permanent (P) Notices to Airmen (NOTAM) which are incorporated by reference in the amendment under 5 U.S.C. 552(a), 1 CFR part 51, and § 97.20 of the Federal Aviation's Regulations (FAR). Materials incorporated by reference are available for examination or purchase as stated above.

The large number of SIAPs, their complex nature, and the need for a special format make their verbatim publication in the **Federal Register** expensive and impractical. Further, airmen do not use the regulatory text of the SIAPs, but refer to their graphic depiction of charts printed by publishers of aeronautical materials. Thus, the advantages of incorporation by reference are realized and publication of the complete description of each SIAP contained in FAA form documents is unnecessary. The provisions of this amendment state the affected CFR (and FAR) sections, with the types and effective dates of the SIAPs. This amendment also identifies the airport, its location, the procedure identification and the amendment number.

The Rule

This amendment to part 97 of the Federal Aviation Regulations (14 CFR part 97) establishes, amends, suspends, or revokes SIAPs. For safety and timeliness of change considerations, this amendment incorporates only specific changes contained in the content of the following FDC/P NOTAMs for each SIAP. The SIAP information in some previously designated FDC/Temporary (FDC/T) NOTAMs is of such duration as to be permanent. When conversion to FDC/P NOTAMs, the respective FDC/T NOTAMs have been canceled.

The FDC/P NOTAMs for the SIAPs contained in this amendment are based on the criteria contained in the U.S. Standard for Terminal Instrument Procedures (TERPS). In developing these chart changes to SIAPs by FED/P NOTAMs, the TERPS criteria were applied to only these specific conditions existing at the affected airports. All SIAP amendments in this rule have been previously issued by the FAA in a National Flight Data Center (FDC) Notice to Airmen (NOTAM) as an emergency action of immediate flight safety relating directly to published aeronautical charts. The circumstances which created the need for all these SIAP amendments requires making them effective in less than 30 days.

Further, the SIAPs contained in this amendment are based on the criteria contained in the TERPs. Because of the close and immediate relationship between these SIAPs and safety in air commerce. I find that notice and public procedure before adopting these SIAPs are impracticable and contrary to the public interest and, where applicable, that good cause exists for making these SIAPs effective in less than 30 days.

Conclusion

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) Is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. For the same reason, the FAA certifies that this amendment will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 97

Air traffic control, Airports, Incorporation by reference, and Navigation (air).

Issued in Washington, DC on May 9, 2003.

James J. Ballough,

Director, Flight Standards Service.

Adoption of the Amendment

■ Accordingly, pursuant to the authority delegated to me, part 97 of the Federal Aviation Regulations (14 CFR part 97) is amended by establishing, amending, suspending, or revoking Standard Instrument Approach Procedures, effective at 0901 UTC on the dates specified, as follows:

PART 97—STANDARD INSTRUMENT APPROACH PROCEDURES

■ 1. The authority citation for part 97 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40106, 40113, 40114, 40120, 44502, 44514, 44701, 44719, 44721–44722.

■ 2. Part 97 is amended to read as follows:

§§ 97.23, 97.25, 97.27, 97.29, 97.31, 97.33, and 97.35.

By amending: § 97.23 VOR, VOR/DME, VOR or TACAN, and VOR/DME or TACAN; § 97.25 LOC LOC/DME, LDA, LDA/DME, SDF, SDF/DME; § 97.27 NDB, NDB/DME; § 97.29 ILS, ILS/DME, ISMLS, MLS/DME, MLS/RNAV; § 97.31 RADAR SIAPs; § 97.33 RNAV SIAPs; and § 97.35 COPTER SIAPs, Identified as follows:

** * * Effective Upon Publication*

FDC date	State	City	Airport	FDC No.	Subject
04/21/03	LA	MONROE	MONROE REGIONAL	3/3081	VOR/DME RWY 4, AMDT 1
04/21/03	LA	MONROE	MONROE REGIONAL	3/3082	VOR RWY 4, AMDT 17A
04/21/03	TX	WICHITA FALLS	SHEPPARD AFB/WICHITA FALLS MUNI.	3/3091	RNAV (GPS) RWY 33L, ORIG
04/25/03	AZ	SAFFORD	SAFFORD REGIONAL	3/3202	GPS RWY 12, ORIG
04/25/03	AZ	SAFFORD	SAFFORD REGIONAL	3/3203	GPS RWY 30, ORIG

FDC date	State	City	Airport	FDC No.	Subject
04/29/03	AR	MOUNTAIN VIEW	MOUNTAIN VIEW WILCOX MEMORIAL FIELD.	3/3278	NDB–A, AMDT 2A
04/30/03	KY	LONDON	LONDON-CORBIN ARPT-MAGEE FIELD.	3/3120	GPS RWY 5, ORIG–A
04/30/03	KY	LONDON	LONDON-CORBIN ARPT-MAGEE FIELD.	3/3121	GPS RWY 23, ORIG–A
04/30/03	KY	LONDON	LONDON-CORBIN ARPT-MAGEE FIELD.	3/3122	VOR RWY 5, AMDT 12C
04/30/03	KY	LONDON	LONDON-CORBIN ARPT-MAGEE FIELD.	3/3123	VOR/DME RNAV RWY 5, AMDT 3C7
04/30/03	AZ	PHOENIX	PHOENIX SKY HARBOR INTL	3/3313	RNAV (GPS) RWY 25R, ORIG
04/30/03	AZ	PHOENIX	PHOENIX SKY HARBOR INTL	3/3314	RNAV (GPS) RWY 25L, ORIG
04/30/03	AZ	PHOENIX	PHOENIX SKY HARBOR INTL	3/3315	ILS RWY 25L, AMDT 1A
05/06/03	NY	ALBANY	ALBANY INTL	3/3407	ILS RWY 19, AMDT 21B
05/06/03	TX	CLEVELAND	CLEVELAND MUNI	3/3448	VOR–A, AMDT 4A

[FR Doc. 03–12174 Filed 5–15–03; 8:45 am]
BILLING CODE 4910-13-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 97

[Docket No. 30367; Amdt. No. 3057]

Standard Instrument Approach Procedures; Miscellaneous Amendments

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment establishes, amends, suspends, or revokes Standard Instrument Approach Procedures (SIAPs) for operations at certain airports. These regulatory actions are needed because of the adoption of new or revised criteria, or because of changes occurring in the National Airspace System, such as the commissioning of new navigational facilities, addition of new obstacles, or changes in air traffic requirements. These changes are designed to provide safe and efficient use of the navigable airspace and to promote safe flight operations under instrument flight rules at the affected airports.

DATES: This rule is effective May 16, 2003. The compliance date for each SIAP is specified in the amendatory provisions.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of May 16, 2003.

ADDRESSES: Availability of matters incorporated by reference in the amendment is as follows:

For Examination—

1. FAA Rules Docket, FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591;

2. The FAA Regional Office of the region in which the affected airport is located;

3. The Flight Inspection Area Office which originated the SIAP; or,

4. The Office of Federal Register, 800 North Capitol Street, NW., Suite 700, Washington, DC.

For Purchase—Individual SIAP copies may be obtained from:

1. FAA Public Inquiry Center (APA–200), FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591; or

2. The FAA Regional Office of the region in which the affected airport is located.

By Subscription—Copies of all SIAPs, mailed once every 2 weeks, are for sale by the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402.

FOR FURTHER INFORMATION CONTACT: Donald P. Pate, Flight Procedure Standards Branch (AMCAFS–420), Flight Technologies and Programs Division, Flight Standards Service, Federal Aviation Administration, Mike Monroney Aeronautical Center, 6500 South MacArthur Blvd., Oklahoma City, OK 73169 (Mail Address: P.O. Box 25082, Oklahoma City, OK 73125) telephone: (405) 954–4164.

SUPPLEMENTARY INFORMATION: This amendment to part 97 of the Federal Aviation Regulations (14 CFR part 97) establishes, amends, suspends, or revokes Standard Instrument Approach Procedures (SIAPs). The complete regulatory description of each SIAP is contained in official FAA form documents which are incorporated by reference in this amendment under 5 U.S.C. 552(a), 1 CFR part 51, and § 97.20 of the Federal Aviation Regulations (FAR). The applicable FAA Forms are identified as FAA Forms 8260–3, 8260–4, and 8260–5. Materials incorporated by reference are available for examination or purchase as stated above.

The large number of SIAPs, their complex nature, and the need for a special format make their verbatim publication in the **Federal Register** expensive and impractical. Further, airmen do not use the regulatory text of the SIAPs, but refer to their graphic depiction on charts printed by publishers of aeronautical materials. Thus, the advantages of incorporation by reference are realized and publication of the complete description of each SIAP contained in FAA form documents is unneccesary. The provisions of this amendment state the affected CFR (and FAR) sections, with the types and effective dates of the SIAPs. This amendment also identifies the airport, its location, the procedure identification and the amendment number.

The Rule

This amendment to part 97 is effective upon publication of each separate SIAP as contained in the transmittal. Some SIAP amendments may have been previously issued by the FAA in a National Flight Data Center (NFDC) Notice to Airmen (NOTAM) as an emergency action of immediate flight safety relating directly to published aeronautical charts. The circumstances which created the need for some SIAP amendments may require making them effective in less than 30 days. For the remaining SIAPs, an effective date at least 30 days after publication is provided.

Further, the SIAPs contained in this amendment are based on the criteria contained in the U.S. Standard for Terminal Instrument Procedures (TERPS). In developing these SIAPs, the TERPS criteria were applied to the conditions existing or anticipated at the affected airports. Because of the close and immediate relationship between these SIAPs and safety in air commerce, I find that notice and public procedure before adopting these SIAPs are impracticable and contrary to the public interest and, where applicable, that good cause exists for making some SIAPs effective in less than 30 days.

Conclusion

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) Is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. For the same reason, the FAA certifies that this amendment will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 97

Air traffic control, Airports, Incorporation by reference, and Navigation (air).

Issued in Washington, DC on May 9, 2003.

James J. Ballough,

Director, Flight Standards Service.

Adoption of the Amendment

■ Accordingly, pursuant to the authority delegated to me, part 97 of the Federal Aviation Regulations (14 CFR part 97) is amended by establishing, amending, suspending, or revoking Standard Instrument Approach Procedures, effective at 0901 UTC on the dates specified, as follows:

PART 97—STANDARD INSTRUMENT APPROACH PROCEDURES

■ 1. The authority citation for part 97 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40106, 40113, 40114, 40120, 44502, 44514, 44701, 44719, 44721–44722.

■ 2. Part 97 is amended to read as follows:

§§ 92.23, 97.25, 97.27, 97.29, 97.31, 97.33, and 97.35.

By amending: § 97.23 VOR, VOR/DME, VOR or TACAN, and VOR/DME or TACAN; § 97.25 LOC, LOC/DME, LDA, LDA/DME, SDF, SDF/DME; § 97.27 NDB, NDB/DME; § 97.29 ILS, ILS/DME, ISMLS, MLS, MLS/DME, MLS/RNAV; § 97.31 RADAR SIAPs; § 97.33 RNAV SIAPs; and § 97.35 COPTER SIAPs, identified as follows:

** * * Effective July 10, 2003*

Carlsbad, CA, McClellan-Palomar, RNAV (GPS) RWY 24, Orig-A
Daggett, CA, Barstow-Daggett, RNAV (GPS) RWY 26, Orig-A
Los Angeles, CA, Los Angeles Intl, RNAV (GPS) RWY 7R, Orig-A
Los Angeles, CA, Los Angeles Intl, RNAV (GPS) RWY 7L, Orig-A
Oakland, CA, Metropolitan Oakland Intl, RNAV (GPS) RWY 29, Orig-A
Oakland, CA, Metropolitan Oakland Intl, RNAV (GPS) RWY 11, Orig-A
Ontario, CA, Ontario Intl, RNAV (GPS) RWY 8R, Orig-B
Ontario, CA, Ontario Intl, RNAV (GPS) RWY 8L, Orig-B
Ontario, CA, Ontario Intl, RNAV (GPS) RWY 26R, Orig-B
Ontario, CA, Ontario Intl, RNAV (GPS) RWY 26L, Orig-A
Palmdale, CA, Palmdale Production Flt/Test Instln AF Plant 42, RNAV (GPS) RWY 25, Orig-A
Ramona, CA, Ramona, RNAV (GPS) RWY 9, Orig
Ramona, CA, Ramona, (GPS) RWY 9, Orig-A, CANCELLED
San Francisco, CA, San Francisco Intl, RNAV (GPS) Z RWY 19R, Orig-A
San Francisco, CA, San Francisco Intl, RNAV (GPS) Z RWY 19L, Orig-A
San Francisco, CA, San Francisco Intl, RNAV (GPS) Z RWY 10R, Orig-A
San Francisco, CA, San Francisco Intl, RNAV (GPS) RWY 28R, Amdt 1A
San Francisco, CA, San Francisco Intl, RNAV (GPS) RWY 28L, Orig-A
San Jose, CA, Norman Y. Mineta-San Jose International, RNAV (GPS) RWY 11, Orig-A
San Jose, CA, Norman Y. Mineta-San Jose International, RNAV (GPS) RWY 29, Orig-A
San Jose, CA, Norman Y. Mineta-San Jose International, RNAV (GPS) RWY 30R, Orig-A
Fort Lauderdale, FL, Fort Lauderdale-Hollywood Intl, RNAV (GPS) RWY 9L, Orig-A
Fort Lauderdale, FL, Fort Lauderdale-Hollywood Intl, RNAV (GPS) RWY 9R, Orig-A
Fort Lauderdale, FL, Fort Lauderdale-Hollywood Intl, RNAV (GPS) RWY 13, Orig-A
Fort Lauderdale, FL, Fort Lauderdale-Hollywood Intl, RNAV (GPS) RWY 27R, Orig-A
Miami, FL, Miami Intl, RNAV (GPS) RWY 9L, Orig-B
Miami, FL, Miami Intl, RNAV (GPS) RWY 9R, Orig-B
Miami, FL, Miami Intl, RNAV (GPS) RWY 12, Orig-C
Miami, FL, Miami Intl, RNAV (GPS) RWY 27L, Orig-B
Miami, FL, Miami Intl, RNAV (GPS) RWY 27R, Orig-B
Miami, FL, Miami Intl, RNAV (GPS) RWY 30, Orig-C
Naples, FL, Naples Muni, RNAV (GPS) RWY 5, Amdt 1A
Naples, FL, Naples Muni, RNAV (GPS) RWY 23, Orig-A
Sarasota/Bradenton, FL, Sarasota/Bradenton Intl, VOR RWY 14, Amdt 16C
Sarasota/Bradenton, FL, Sarasota/Bradenton Intl, VOR RWY 22, Amdt 10D
Sarasota/Bradenton, FL, Sarasota/Bradenton Intl, VOR RWY 32, Amdt 8D
Sarasota/Bradenton, FL, Sarasota/Bradenton Intl, RNAV (GPS) RWY 32, Orig
Sarasota/Bradenton, FL, Sarasota/Bradenton Intl, RNAV (GPS) RWY 22, Orig
Sarasota/Bradenton, FL, Sarasota/Bradenton Intl, RNAV (GPS) RWY 14, Orig
Sarasota/Bradenton, FL, Sarasota/Bradenton Intl, RNAV (GPS) RWY 4, Orig
Baxley, GA, Baxley Muni, NDB RWY 8, Amdt 1
Baxley, GA, Baxley Muni, GPS RWY 8, Orig, CANCELLED
Baxley, GA, Baxley Muni, RNAV (GPS) RWY 8, Orig
Montezuma, GA, Dr. C.P. Savage Sr., NDB RWY 18, Amdt 2
Montezuma, GA, Dr. C.P. Savage Sr., RNAV (GPS) RWY 36, Orig
Montezuma, GA, Dr. C.P. Savage Sr., RNAV (GPS) RWY 18, Orig
Hilo, HI, Hilo Intl, RNAV (GPS) RWY 26, Orig-A
Kailua-Kona, HI, Kona Intl at Keahole, RNAV (GPS) RWY 17, Orig-A
Kailua-Kona, HI, Kona Intl at Keahole, RNAV (GPS) Y RWY 35, Orig-A
Kailua-Kona, HI, Kona Intl at Keahole, RNAV (GPS) Z RWY 35, Orig-A
Hazard, KY, Wendell H. Ford, VOR/DME RWY 14, Amdt 1
Hazard, KY, Wendell H. Ford, GPS RWY 14, Orig, CANCELLED
Hazard, KY, Wendell H. Ford, RNAV (GPS) RWY 14, Orig
Jackson, KY, Julian Carroll, RNAV (GPS) RWY 1, Orig
Jackson, KY, Julian Carroll, VOR/DME RWY 1, Amdt 2
Homer, LA, Homer Municipal, NDB RWY 12, Amdt 2
Homer, LA, Homer Municipal, RNAV (GPS) RWY 12, Orig
Homer, LA, Homer Municipal, RNAV (GPS) RWY 30, Orig
Homer, LA, Homer Municipal, GPS RWY 30, Orig-B, CANCELLED
Portland, ME, Portland Intl Jetport, RNAV (GPS) RWY 36, Orig-A
Presque Isle, ME, Northern Maine Regional Airport at Presque Isle, RNAV (GPS) Z RWY 1, Orig-A
Boston, MA, General Edward Lawrence Logan Intl, RNAV (GPS) RWY 4R, Orig-D
Boston, MA, General Edward Lawrence Logan Intl, RNAV (GPS) RWY 15R Orig-B
Boston, MA, General Edward Lawrence Logan Intl, RNAV (GPS) RWY 27, Orig-A
Boston, MA, General Edward Lawrence Logan Intl, RNAV (GPS) RWY 33L, Orig-A
Provincetown, MA, Provincetown Muni, RNAV (GPS) RWY 7, Orig-A
Sault Ste Marie, MI, Chippewa County Intl, RNAV (GPS) RWY 16, Orig-A
Sault Ste Marie, MI, Chippewa County Intl, RNAV (GPS) RWY 34, Orig-A
Sidney, NE, Sidney Muni, VOR/DME OR TACAN RWY 12, Amdt 4B
Sidney, NE, Sidney Muni, RNAV (GPS) RWY 12, Orig
Sidney, NE, Sidney Muni, RNAV (GPS) RWY 30, Orig
Sidney, NE, Sidney Muni, GPS RWY 30, Orig-B CANCELLED

Ely, NV, Ely Airport-Yelland Field, VOR-A, Amdt 7
Ely, NV, Ely Airport-Yelland Field, VOR/DME–C, Amdt 2
Ely, NV, Ely Airport-Yelland Field, RNAV (GPS) RWY 18, Orig
Ely. NV, Ely Airport-Yelland Field, GPS RWY 18, Orig-A, CANCELLED
Henryetta, OK, Henryetta Muni, NDB RWY 36, Amdt 3
Henryetta, OK, Henryetta Muni, RNAV (GPS) RWY 36, Orig
Henryetta, OK, Henryetta Muni, GPS RWY 36, Orig-B, CANCELLED
Oklahoma City, OK, Will Rogers World, RNAV (GPS) RWY 13, Amdt 1
Hermiston, OR, Hermiston Muni, VOR/DME–A, Amdt 3
Hermiston, OR, Hermiston Muni, RNAV (GPS)–B, Orig
San Juan, PR, Luis Munoz Marin Intl, RNAV (GPS) RWY 8, Orig-A
San Juan, PR, Luis Munoz Marin Intl, RNAV (GPS) RWY 10, Orig-B
San Juan, PR, Luis Munoz Marin Intl, RNAV (GPS) RWY 26, Orig-A
Angleton/Lake Jackson, TX, Brazoria County, RNAV (GPS) RWY 17, Amdt 1A
Angleton/Lake Jackson, TX, Brazoria County, RNAV (GPS) RWY 35, Amdt 1A
Del Rio, TX, Del Rio Intl, RNAV (GPS) RWY 13, Orig-B
Harlingen, TX, Valley Intl, RNAV (GPS) RWY 13, Orig-B
Harlingen, TX, Valley Intl, RNAV (GPS) RWY 17L, Orig-B
Harlingen, TX, Valley Intl, RNAV (GPS) RWY 1R, Orig-B
Harlingen, TX, Valley Intl, RNAV (GPS) RWY 31, Orig-A
Harlingen, TX, Valley Intl, RNAV (GPS) RWY 35L, Orig-A
San Angelo, TX, San Angelo Regional/Mathis Field, VOR RWY 21, Amdt 17
San Angelo, TX, San Angelo Regional/Mathis Field, RNAV (GPS) RWY 21, Orig
San Angelo, TX, San Angelo Regional/Mathis Field, RNAV (GPS) RWY 21, Orig, CANCELLED
San Antonio, TX, San Antonio Intl, RNAV (GPS) RWY 3, Orig-A
San Antonio, TX, San Antonio Intl, RNAV (GPS) RWY 12R, Orig-A
San Antonio, TX, San Antonio Intl, RNAV (GPS) RWY 21, Orig-A
San Antonio, TX, San Antonio Intl, RNAV (GPS) RWY 30L, Orig-A
Burlington, VT, Burlington Intl, RNAV (GPS) Z RWY 15, Orig-A
Christiansted, VI, Henry E. Rohlsen, RNAV (GPS) RWY 10, Orig-B
Moses Lake, WA, Grant County Intl, RNAV (GPS) RWY 32R, Orig-A
Spokane, WA, Spokane Intl, RNAV (GPS) RWY 3, Orig-D
Spokane, WA, Spokane Intl, RNAV (GPS) RWY 21, Orig-C

* * * *Effective 15 May 2003*

Somerset, KY, Somerset-Pulaski County J.T. Wilson Field, RNAV (GPS) RWY 22, Orig

[FR Doc. 03–12175 Filed 5–15–03; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF STATE

22 CFR Part 32

[Public Notice 4365]

Stolen Property Under Treaty With Mexico

AGENCY: Department of State.

ACTION: Direct final rule.

SUMMARY: This final rule removes regulations which describe the documents required when making a request for a stolen vehicle under the Convention of October 6, 1936, between the United States and Mexico for the Recovery and Return of Stolen or Embezzled Motor Vehicles, Trailers, Airplanes, or Component Parts of Any of Them. This treaty is no longer in force; and therefore, the regulations implementing this treaty are obsolete.

DATES: This rule is effective July 15, 2003, without further action, unless adverse comment is received by June 16, 2003. If adverse comment is received, the Department of State will publish a timely withdrawal of the final rule in the **Federal Register**.

ADDRESSES: Send comments to Mike Meszaros, Overseas Citizen Services, A/OCS, Department of State, Washington, DC 20520.

FOR FURTHER INFORMATION CONTACT: Mike Meszaros, Overseas Citizen Services, Department of State, 202–312–9750.

SUPPLEMENTARY INFORMATION: This rule removes part 32 of title 22 of the Code of Federal Regulations. Part 32 describes the documents required when making a request for the return of stolen vehicles under the Convention of October 6, 1936, between the United States and Mexico for the Recovery and Return of Stolen or Embezzled Motor Vehicles, Trailers, Airplanes, or Component Parts of Any of Them. The 1936 treaty did not describe what documents should accompany a request for a stolen vehicle. Instead the two governments agreed to similar regulations describing what documents would accompany a request for return of a stolen vehicle (*see* **Federal Register** Doc. 38–2527, filed August 29, 1938). The Convention between the United States of America and the United Mexican States for the Recovery and Return of Stolen or Embezzled Vehicles and Aircraft, signed at Washington on January 15, 1981, and entered into force on June 28, 1983, replaced the 1936 treaty. The 1981 treaty specifically describes the documents that are required in connection with a request for the return of a stolen vehicle (*see* Article III), and no other regulations are needed to implement the 1981 treaty. Therefore, the regulations set forth in part 32 of title 22 of the Code of Federal Regulations are obsolete and their removal is appropriate.

Regulatory Analysis and Notices

This amendment involves a foreign affairs function of the United States and, therefore, is not subject to the procedures required by 5 U.S.C. 553 and 554. It is exempt from review under Executive Order 12866 but has been reviewed internally by the Department to ensure consistency with the purposes thereof. This rule does not require analysis under the Regulatory Flexibility Act or the Unfunded Mandates Reform Act. It has been found not to be a major rule within the meaning of the Small Business Regulatory Enforcement Fairness Act of 1996. It will not have substantial direct effects on the States, the relationship between the national government and the States, or the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this rule does not have sufficient federalism implications to warrant application of the consultation provisions of Executive Orders 12372 and 13132. This rule does not impose any new reporting or recordkeeping information collection requirements under the Paperwork Reduction Act, 44 U.S.C. chapter 35.

List of Subjects in 22 CFR Part 32

Alien property, Mexico, Stolen property, Treaties, Vehicles.

■ Accordingly, pursuant to the President's authority under the United States Constitution to conduct the foreign relations of the United States (Article II, section 2) as exercised by the Secretary of State on a day-to-day basis under 22 U.S.C. 2656 and pursuant to the authority of 22 U.S.C. 2651a, 22 CFR chapter I, subchapter D is amended by removing part 32 as follows:

PART 32—[REMOVED]

■ Part 32 is removed.

Dated: May 7, 2003.

Grant S. Green, Jr.,

Under Secretary for Management, Department of State.

[FR Doc. 03–12294 Filed 5–15–03; 8:45 am]

BILLING CODE 4710–10–P

DEPARTMENT OF THE TREASURY

31 CFR Part 103

RIN 1506–AA45

Financial Crimes Enforcement Network; Delegation of Enforcement Authority Regarding the Foreign Bank Account Report Requirements

AGENCY: Financial Crimes Enforcement Network (FinCEN), Treasury.

ACTION: Final rule.

SUMMARY: FinCEN is amending the regulations implementing the Bank Secrecy Act to reflect that enforcement authority with respect to the foreign bank account report requirements of 31 CFR part 103 has been delegated from FinCEN to the Commissioner of the Internal Revenue Service (IRS).

DATES: This final rule is effective May 16, 2003.

FOR FURTHER INFORMATION CONTACT: Office of Chief Counsel, FinCEN, (703) 905–3590 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

I. Background

The Bank Secrecy Act (BSA), Public Law 91–508, as amended, codified at 12 U.S.C. 1829b, 12 U.S.C. 1951–1959, and 31 U.S.C. 5311 *et seq.*, authorizes the Secretary of the Treasury, *inter alia*, to issue regulations requiring financial institutions and other persons to keep records and file reports that have a high degree of usefulness in criminal, tax, and regulatory matters, or in the conduct of intelligence or counterintelligence activitites, to protect against international terrorism, and to enforce any reporting or recordkeeping requirement through various means, including the assessment and collection of civil penalties. Regulations implementing the authority of the BSA appear at 31 CFR part 103. FinCEN, a bureau within the U.S. Department of the Treasury, administers and enforces the BSA and its implementing provisions pursuant to a delegation by the Secretary of the Treasury.

FinCEN recently delegated to the IRS the authority to enforce the FBAR requirements of 31 CFR part 103. Enforcement authority was delegated by means of a Memorandum of Agreement between FinCEN and the IRS, and includes the authority to assess and collect civil penalties for noncompliance with FBAR requirements. The reasons for delegating enforcement authority were laid out in Treasury/FinCEN's April 2002 report to Congress on the FBAR requirements, which was required to be submitted by § 361(b) of the USA PATRIOT Act of 2001, Pub. L. 107–56. Among the reasons cited for the possible delegation of enforcement authority were the nature of the FBAR requirements (*i.e.*, unlike with other BSA reports, the overwhelming majority of FBARs are filed by individual taxpayers, rather than financial institutions) and the greater resources available to the IRS to devote to FBAR compliance. IRS previously had been delegated the authority to investigate possible violations of 31 CFR 103.24. FinCEN is issuing this final rule to amend the relevant BSA regulations to reflect the delegation of FBAR enforcement authority.

II. Administrative Procedure Act

This final rule is being issued without notice and an opportunity for comment because it is a procedural rule, rather than a substantive rule. The delegation of enforcement authority described in this document has no substantive impact on those persons subject to the FBAR reporting and recordkeeping requirements. Rules of agency organization, procedure, or practice are not subject to notice and comment under the Administrative Procedure Act (5 U.S.C. 551 *et seq.*). *See* 5 U.S.C. 553(b)(3)(A).

III. Regulatory Flexibility Act

The requirements of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) do not apply to this final rule because the rule is not subject to the notice and comment requirements of the Administrative Procedure Act.

IV. Paperwork Reduction Act

This final rule contains no collection of information for purposes of the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)).

V. Executive Order 12866

It has been determined that this final rule is not a significant regulatory action for purposes of Executive Order 12866. Accordingly, a regulatory impact analysis is not required.

List of Subjects in 31 CFR Part 103

Administrative practice and procedure, Authority delegations (Government agencies), Banks and banking, Currency, Investigations, Law Enforcement, Reporting and recordkeeping requirements.

Authority and Issuance

For the reasons set forth in the preamble, part 103 of title 31 of the Code of Federal Regulations is amended as follows:

PART 103—FINANCIAL RECORDKEEPING AND REPORTING OF CURRENCY AND FINANCIAL TRANSACTIONS

■ 1. The authority citation for part 103 continues to read as follows:

Authority: 12 U.S.C. 1829b and 1951–1959; 31 U.S.C. 5311–5332; title III, secs. 312, 314, 352, Pub. L. 107–56, 115 Stat. 307.

■ 2. Section 103.56 is amended by adding new paragragh (g) to read as follows:

§ 103.56 Enforcement.

* * * * *

(g) The authority to enforce the provisions of 31 U.S.C. 5314 and §§ 103.24 and 103.32 of this part has been redelegated from FinCEN to the Commissioner of Internal Revenue by means of a Memorandum of Agreement between FinCEN and IRS. Such authority includes, with respect to 31 U.S.C. 5314 and §§ 103.24 and 103.32 of this part, the authority to: assess and collect civil penalties under 31 U.S.C. 5321 and 31 CFR 103.57; investigate possible civil violations of these provisions (in addition to the authority already provided at paragraph (c)(2)) of this section); employ the summons power of subpart F of part 103; issue administrative rulings under subpart G of part 103; and take any other action reasonably necessary for the enforcement of these and related provisions, including pursuit of injunctions.

3. Section 103.72 is amended by revising paragraph (b) to read as follows:

(b) *Internal Revenue Service.* Except with respect to § 103.23 of this part, the Commissioner, the Deputy Commissioner, or a delegate of either official, and, for the purposes of perfecting seizures and forfeitures related to civil enforcement of this part, the Chief (Criminal Investigation) or a delegate.

Dated: May 8, 2003.

James F. Sloan,

Director, Financial Crimes Enforcement Network.

[FR Doc. 03–12211 Filed 5–15–03; 8:45 am]

BILLING CODE 4810–02–P

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 165

[COTP Prince William Sound 03–001]

RIN 2115–97

Security Zone: Port Valdez and Valdez Narrows, Valdez, AK

AGENCY: Coast Guard, DOT.

ACTION: Temporary final rule; request for comments.

SUMMARY: The Coast Guard is establishing a temporary security zone encompassing the Trans-Alaska Pipeline (TAPS) Valdez Terminal Complex, Valdez, Alaska and TAPS Tank Vessels and a security zone in the Valdez Narrows, Port Valdez, Alaska. The security zones are necessary to protect the Alyeska Marine Terminal and Vessels from damage or injury from sabotage, destruction or other subversive acts. Entry of vessels into these security zones is prohibited unless specifically authorized by the Captain of the Port, Prince William Sound, Alaska.

DATES: This rule is effective from January 1, 2003 until June 30, 2003. Comments and related material must reach the Coast Guard by June 15, 2003.

ADDRESSES: Comments and material received from the public, as well as documents indicated in this preamble as being available in the docket are part of docket COTP Prince William Sound 03–001 and are available for inspection or copying at U.S. Coast Guard Marine Safety Office, PO Box 486, Valdez, Alaska 99686, between 7:30 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Lt. Chris Beadle, U.S. Coast Guard Marine Safety Office Valdez, Alaska, (907) 835–7222.

SUPPLEMENTARY INFORMATION:

Regulatory History

A notice of proposed rulemaking (NPRM) was not published for this regulation. In accordance with 5 U.S.C. 553(b)(B), the Coast Guard finds good cause exists for not publishing an NPRM. The Coast Guard is taking this action for the immediate protection of the national security interests in light or terrorist acts perpetrated on September 11, 2001. Also, in accordance with 5 U.S.C. 553(d)(3), the Coast Guard finds good cause to exist for making this regulation effective less than 30 days after publication in the **Federal Register**. Publication of a notice of proposed rulemaking and delay of effective date would be contrary to the public interest because immediate action is necessary to provide for the safety of the TAPS terminal and TAPS tank vessels. On November 7, 2001, we published three temporary final rules in the **Federal Register** (66 FR 56208, 56210, 56212) that created security zones effective through June 1, 2002. The section numbers and titles for these zones are—

§ 165.T17–003—Security zone; Trans-Alaska Pipeline Valdez Terminal Complex, Valdez, Alaska,

§ 165.T17–004—Security zones; Captain of the Port Zone, Prince William Sound, Alaska.

Then on June 4, 2002, we published a temporary final rule (67 FR 38389) that established security zones to replace these security zones that expired June 1, 2002. That rule issued in June, which expired July 30, 2002, created temporary § 165.T17–009, entitled "Port Valdez and Valdex Narrows, Valdez, Alaska".

Then on July 30, 2002 we published a temporary final rule rule (67 FR 19359) that established security zones to extend the temporary security zones that would have expired July 30, 2002. This extension was to allow for a Notice of Proposed Rulemaking process to be completed for permanent security zones to replace the temporary zones. Then on October 22, 2002, we published the Notice of Proposed Rulemaking that sought public comment on establishing the temporary security zones as permanent security zones. The comment period for this NPRM ended December 23, 2002. Although no comments were received that would result in changes to the proposed rule, an administrative omission was found that resulted in the need to issue a Supplemental Notice of Proposed Rulemaking (SNPRM) to address the "Collection of Information" section of the NPRM. This temporary final rule extends the temporary security zones to allow for the SNPRM process to be completed.

Discussion of the Rule

This temporary final rule establishes three security zones. The Trans-Alaska Pipeline (TAPS) Valdez Marine Terminal Security zone encompasses the waters of Port Valdez between Allison Creek to the east and Sawmill Spit to the west and offshore to marker buoys A and B (approximately 1.5 nautical miles offshore from the TAPS Terminal). The Tanker Moving Security Zone encompasses the waters within 200 yards of a TAPS Tanker within the Captain of the Port, Prince William Sound Zone. The Valdez Narrows Security Zone encompasses the waters 200 yards either side of the Tanker Optimum Trackline through Valdez Narrows between Entrance Island and Tongue Point. This zone is enforced only when a TAPS Tanker is in the zone. This temporary final rule reflects the changes to 33 CFR part 1701 submitted for regulatory review and publication as a Notice of Proposed Rulemaking (NPRM) in the **Federal Register**. The Coast Guard has worked closely with local and regional users of Port Valdez and Valdez Narrows waterways to develop these security zones and the NPRM in order to mitigate the impact on commercial and recreational users. This temporary final rule establishes a uniform transition from the temporary operating zones while the NPRM and SNPRM process is completed.

Request for Comments

Although the Coast Guard has good cause in implementing this regulation without a notice of proposed rulemaking, we want to afford the maritime community the opportunity to participate in this rulemaking by submitting comments and related material regarding the size and boundaries of these security zones in order to minimize unnecessary burdens. If you do so, please include your name and address, identify the docket number for this rulemaking, COTP Prince William Sound 03–001, indicate the specific section of this document to which each comment applies, and give the reason for each comment. Please submit all comments and related material in an unbound format, no larger than 81.2 by 11 inches, suitable for copying. If you would like to know they reached us, please enclose a stamped, self-addressed postcard or envelope. We will consider all comments and material received during the comment period. We may change this temporary final rule in view of them.

Regulatory Evaluation

This rule is not a significant regulatory action under section 3(f) of Executive Order 12866 and does not require an assessment of potential costs and benefits under section 6(a)(3) of that order. It has not been reviewed by the Office of Management and Budget under that order. It is not significant under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040; February 26, 1979). The Coast Guard expects the economic impact of this proposal to be so minimal that a full Regulatory Evaluation under paragraph 10e of the regulatory policies and procedures of DOT is unnecessary. Economic impact is expected to be minimal because of the short duration of this rule and the season in which it is in effect.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), we have considered whether this rule would have a significant economic impact on a substantial number of small entities. The term "small entities" comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000. The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities. The number of small entities impacted by this rule is expected to be minimal because of the short duration of the rule. Since the time frame this rule is in effect may cover commercial harvests of fish in the area, the entities most likely affected are commercial and native subsistence fishermen. The Captain of the Port will consider applications for entry into the security zone on a case-by-case basis; therefore, it is likely that very few, if any, small entities will be impacted by this rule. Those interested may apply for a permit to enter the zone by contacting Marine Safety Office, Valdez at the above contact number.

Assistant for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we offered to assist small entities in understanding the rule so that they could better evaluate its effects on them and participate in rulemaking process. Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1–888–REG–FAIR (1–888–734–3247).

Collection of Information

This rule contains no new information collection requirements under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*).

Federalism

The Coast Guard has analyzed this rule under the principles and criteria contained in Executive Order 13132 and has determined that this temporary final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Unfunded Mandates Reform Act

The Unfunded Mandate Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of $100,000,000 or more in any one year. Though this rule will not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

Taking of Private Property

This rule will not affect a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

Civil Justice Reform

This rule meets applicable standards in sections 3(a) and 3(b0(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

Protection of Children

We have analyzed this rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and does not create an environmental risk to health or risk to safety that may disproportionately affect children.

Indian Tribal Governments

This rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

Energy Effects

We have analyzed this rule under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. We have determined that it is not a "significant energy action" under that order because it is not a "significant regulatory action" under Executive Order 12866 and is not likely to have a significant adverse effect on the supply, distribution, or use of energy. It has not been designated by the Administrator of the Office of Information and Regulatory Affairs as a significant energy action. Therefore, it does not require a Statement of Energy Effects under Executive Order 13211

Environment

The Coast Guard considered the environmental impact of this rule and concluded that under Figures 2–1 paragraph 34(g) of Commandant Instruction M16745.1D, this rule is categorically excluded from further environmental documentation. A "Categorical Exclusion Determination" is available in the docket where indicated under **ADDRESSES**.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Safety measures, Vessels, Waterways.

■ For the reasons set forth in the preamble, the Coast Guard amends 33 CFR part 165 as follows:

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

■ 1. The authority citation for part 165 continues to read as follows:

Authority: 33 U.S.C. 1231; 50 U.S.C. 191; 33 CFR 1.05–1(g), 6.04–1, 6.04–6, and 160.5; 49 CFR 1.46.

■ 2. A new temporary § 165.T17–014 is added to read as follows:

§ 165.T17–016 Port Valdez and Valdez Narrows, Valdez, Alaska-security zones.

(a) The following areas are security zones—

(1) Trans-Alaska Pipeline (TAPS) Valdez Terminal complex (Terminal), Valdez, Alaska and TAPS Tank Vessels. All enclosed waters enclosed within a line beginning on the southern shoreline of Port Valdez at 61°042573 N, 146°262203 W; thence northerly to 61°062303 N, 146°262203 W; thence east to 61°062303 N, 146°212153 W, south to 61°02073 N, 146°212153 W; thence west along the shoreline and including the area 2000 yards inland along the shoreline to the beginning point. This security zone encompasses all waters approximately 1 mile north, east and west of the TAPS Terminal between Allison Creek (61°052073 N, 146°212153 W) and Sawmill Spit (61°042573 N, 146°262203 W).

(2) Tank Vessel Moving Security Zone. All waters within 200 yards of

any TAPS tank vessel maneuvering to approach, moor, unmoor or depart the TAPS Terminal or is transiting, maneuvering, laying to or anchored within the boundaries of the Captain of the Port, Prince William Sound Zone described in 33 CFR 3.85(b).

(3) Valdez Narrows, Port Valdez, Valdez, Alaska. All waters within 200 yards of the Valdez Narrows Tanker Optimum Track line bounded by a line beginning at 61°05216.03 N, 146°37220.03 W; thence south west to 61°04200.03 N, 146°39252.03 W; thence southerly to 61°02233.53 N, 146°41228.03 W; thence north west to 61°02240.53 N, 146°41247.53 W; thence north east to 61°04206.03 N, 146°40214.53 W; thence north east to 61°05223.03 N, 146°37240.03 W; thence south east back to the starting point at 61°05216.03 N, 146°37220.03.

(i) The Valdez Narrows Tanker Optimum Track line is a line commencing at 61°05223.03 N, 146°37222.53 W; thence south westerly to 61°04203.23 N, 146°40203.23 W; thence southerly to 61°032003 N, 146°412123W.

(ii) This security zone encompasses all waters approximately 200 yards either side of the Valdez Narrows Optimum Track line.

(b) Effective dates. This section is effective from January 1, 2003 until June 30, 2003.

(c) Authority. In addition to 33 U.S.C. 1281 and 49 CFR 1.46, the authority for this section includes 33 U.S.C. 1226.

(d) Regulations. (1) The general regulations governing security zones contained in 33 CFR 165.33 apply.

(2) Tank vessels transiting directly to the TAPS terminal complex, engaged in the movement of oil from the terminal or fuel to the terminal, and vessels used to provide assistance or support to the tank vessels directly transiting to the terminal, or to the terminal itself, and that have reported their movements to the Vessel Traffic Service may operate as necessary to ensure safe passage of tank vessels to and from the terminal.

(3) All persons and vessels must comply with the instructions of the Coast Guard Captain of the Port and the designated on-scene patrol personnel. These personnel comprise commissioned, warrant, and petty officers of the Coast Guard. Upon being hailed by a vessel displaying a U.S. Coast Guard ensign by siren, radio, flashing light, or other means, the operator of the vessel shall proceed as directed. Coast Guard Auxiliary and local or state agencies may be present to inform vessel operators of the requirements of this section and other applicable laws.

Dated: December 30, 2002.

M.A. Swanson,

Commander, United States Coast Guard, Captain of the Port, Prince William Sound, Alaska.

[FR Doc. 03–12183 Filed 5–15–03; 8:45 am]

BILLING CODE 4910–15–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[TN–248–2003217(a); FRL–7498–6]

Approval and Promulgation of Implementation Plans: Revisions to Tennessee State Implementation Plan: Transportation Conformity Rule

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is approving a revision to the Tennessee State Implementation Plan (SIP) submitted on March 19, 2002, with the exception of one state regulation pertaining to triggers. The revision contains the transportation conformity rule pursuant to the Clean Air Act as amended in 1990 (Act), including detailed consultation procedures for implementing the transportation conformity rule. The transportation conformity rule assures that projected emissions from transportation plans, improvement programs and projects in air quality nonattainment or maintenance areas stay within the motor vehicle emissions ceiling contained in the SIP. The transportation conformity SIP revision enables the State to implement and enforce the Federal transportation conformity requirement at the state level. This action streamlines the conformity process to allow direct consultation among agencies at the local level. This final approval action is limited to requirements for transportation conformity.

DATES: This direct final rule is effective July 15, 2003 without further notice, unless EPA receives adverse comment by June 16, 2003. If adverse comment is received, EPA will publish a timely withdrawal of the direct final rule in the **Federal Register** and inform the public that the rule will not take effect.

ADDRESSES: All comments should be addressed to: Kelly Sheckler at the EPA, Region 4 Air Planning Branch, 61 Forsyth Street, SW., Atlanta, Georgia 30303–8960.

Copies of documents relative to this action are available at the following address for inspection during normal business hours:

Environmental Protection Agency, Region 4, Air Planning Branch, 61 Forsyth Street, SW., Atlanta, Georgia 30303–8960. Kelly Sheckler, (404) 562–9042.

Tennessee Department of Environment and Conservation, Air Pollution Control, 9th Floor L & C Annex, 401 Church Street, Nashville, Tennessee 37243–1531.

FOR FURTHER INFORMATION CONTACT: Kelly Sheckler at (404) 562–9042, e-mail: *Sheckler.Kelly@epa.gov*

SUPPLEMENTARY INFORMATION: On March 19, 2002, Tennessee submitted a revision to the SIP, with the exception of one state regulation pertaining to triggers. The revision contains the transportation conformity rule pursuant to the Clean Air Act as amended in 1990 (Act), including detailed consultation procedures for implementing the transportation conformity rule. The information on this action is organized as follows:

I. Background
- A. What is a SIP?
- B. What is the Federal Approval Process for a SIP?
- C. What is Transportation Conformity?
- D. Why Must the State Submit a Transportation Conformity SIP?
- E. How Does Transportation Conformity Work?

II. Approval of the State Transportation Conformity Rule
- A. What Did the State Submit?
- B. What is EPA Approving Today and Why?
- C. How Did the State Satisfy the Interagency Consultation Process (40 CFR 93.105)?

III. Final Action

IV. Statutory and Executive Order Reviews

I. Background

A. What Is a SIP?

The states, under section 110 of the Act, must develop air pollution regulations and control strategies to ensure that state air quality meets National Ambient Air Quality Standards (NAAQS) established by EPA. The Act, under section 109, established these NAAQS which currently address six criteria pollutants. These pollutants are: carbon monoxide, nitrogen dioxide, ozone, lead, particulate matter, and sulfur dioxide.

Each state must send these regulations and control strategies to EPA for approval and incorporation into the Federally enforceable SIP, which protects air quality and contains emission control plans for NAAQS nonattainment areas. These SIPs can be extensive, containing state regulations or other enforceable documents and supporting information such as

emission inventories, monitoring networks, and modeling demonstrations.

B. What Is the Federal Approval Process for a SIP?

The states must formally adopt the regulations and control strategies consistent with state and Federal laws for incorporating the state regulations into the Federally enforceable SIP. This process generally includes a public notice, public comment period, public hearing, and a formal adoption by a state-authorized rulemaking body.

Once a state rule, regulation, or control strategy is adopted, the state will send these provisions to EPA for inclusion in the Federally enforceable SIP. EPA must then determine the appropriate Federal action, provide public notice, and request additional public comment on the action. The possible Federal actions include approval, disapproval, conditional approval and limited approval/disapproval. If adverse comments are received, EPA must consider and address the comments before taking final action.

EPA incorporates state regulations and supporting information (sent under section 110 of the Act) into the Federally approved SIP through the approval action. EPA maintains records of all such SIP actions in the CFR at title 40, part 52, entitled "Approval and Promulgation of Implementation Plans." The EPA does not reproduce the text of the Federally approved state regulations in the CFR. They are "incorporated by reference," which means that the specific state regulation is cited in the CFR and is considered a part of the CFR the same as if the text were fully printed in the CFR.

C. What Is Transportation Conformity?

Conformity first appeared as a requirement in the Act's 1977 amendments (Pub. L. 95–95). Although the Act did not define conformity, it stated that no Federal department could engage in, support in any way or provide financial assistance for, license or permit, or approve any activity which did not conform to a SIP which has been approved or promulgated.

The 1990 Amendments to the Act expanded the scope and content of the conformity concept by defining conformity to a SIP. Section 176(c) of the Act defines conformity as conformity to the SIP's purpose of eliminating or reducing the severity and number of violations of the NAAQS and achieving expeditious attainment of such standards. Also, the Act states "that no Federal activity will: (1) Cause or contribute to any new violation of any standard in any area, (2) increase the frequency or severity of any existing violation of any standard in any area, or (3) delay timely attainment of any standard or any required interim emission reductions or other milestones in any area." The requirements of section 176(c) of the Clean Air Act apply to all departments, agencies and instrumentalities of the Federal government. Transportation conformity refers only to the conformity of transportation plans, programs and projects that are funded or approved under title 23 U.S.C. or the Federal Transit Act (49 U.S.C. Chapter 53).

D. Why Must the State Submit a Transportation Conformity SIP?

A transportation conformity SIP is a plan which contains criteria and procedures for the State Department of Transportation (DOT), Metropolitan Planning Organizations (MPOs), and other state or local agencies to assess the conformity of transportation plans, programs and projects to ensure that they do not cause or contribute to new violations of a NAAQS in the area substantially affected by the project, increase the frequency or severity of existing violations of a standard in such area or delay timely attainment. 40 CFR part 51.390, subpart T requires states to submit a SIP that establishes criteria for conformity to EPA. 40 CFR part 93, subpart A, provides the criteria the SIP must meet to satisfy 40 CFR part 51.390.

EPA was required to issue criteria and procedures for determining conformity of transportation plans, programs, and projects to a SIP by section 176(c) of the Act. The Act also required the procedure to include a requirement that each state submit a revision to its SIP including conformity criteria and procedures. EPA published the first transportation conformity rule in the November 24, 1993, **Federal Register** (FR), and it was codified at 40 CFR part 51, subpart T and 40 CFR part 93, subpart A. The transportation conformity rule required the states to adopt and submit a transportation conformity SIP revision to the appropriate EPA Regional Office by November 25, 1994. The State of Tennessee submitted a transportation conformity SIP to the EPA Region 4 on November 15, 1994. EPA did not take action on this SIP because the Agency was in the process of revising the transportation conformity requirements. EPA revised the transportation conformity rule on August 7, 1995 (60 FR 40098), November 14, 1995 (60 FR 57179), and August 15, 1997 (62 FR 43780), and codified the revisions under 40 CFR part 51, subpart T and 40 CFR part 93, subpart A—Conformity to State or Federal Implementation Plans of Transportation Plans, Programs, and Projects Developed, Funded or Approved Under Title 23 U.S.C. of the Federal Transit Laws (62 FR 43780). EPA's action of August 15, 1997, required the states to change their rules and submit a SIP revision to EPA by August 15, 1998.

States may choose to develop in place of regulations, a memorandum of agreement (MOA) which establishes the roles and procedures for transportation conformity. The MOA includes the detailed consultation procedures developed for that particular area. The MOAs are enforceable through the signature of all the transportation and air quality agencies, including the Federal Highway Administration, Federal Transit Administration and the Environmental Protection Agency.

E. How Does Transportation Conformity Work?

The Federal or state transportation conformity rule applies to all NAAQS nonattainment and maintenance areas in the state. The MPO, the DOT (in absence of a MPO), State and local Air Quality Agencies , U.S. Environmental Protection Agency and U.S. Department of Transportation (USDOT) are involved in the process of making conformity determinations. Conformity determinations are made on programs and plans such as transportation improvement programs (TIP), transportation plans, and projects. The MPOs calculate the projected emissions that will result from implementation of the transportation plans and programs and compare those calculated emissions to the motor vehicle emissions budget established in the SIP. The calculated emissions must be equal to or smaller than the Federally approved motor vehicle emissions budget in order for USDOT to make a positive conformity determination with respect to the SIP.

II. Approval of the State Transportation Conformity Rule

A. What Did the State Submit?

The State of Tennessee chose to address the transportation conformity SIP requirements using state rules that incorporate by reference portions of the federal conformity rule and specific rules that provide the procedures for interagency consultation. The Transportation conformity rule, part 93.105, requires the state to develop specific procedures for consultation, resolution of conflict and public consultation. On March 19, 2002, the

State of Tennessee, through the Department of Environment and Conservation (DEC), submitted the rules for transportation conformity. DEC gave notice of rule-making proceedings to the public on April 6, 1998, held a public hearing on May 18, 1998 and the rules were approved by the Tennessee Air Pollution Control Board on September 13, 2000. These amendments to Department of Environment and Conservation Rule Chapter 1200–3–34, filed on August 31, 2001, became effective November 14, 2001.

B. What Is EPA Approving Today and Why?

EPA is approving the Tennessee transportation conformity rule submitted to the EPA Region 4 office on March 19, 2002, by the Technical Secretary of the Tennessee Air Pollution Control Board. One exception is the approval of one provision in 1200–3–34–.01 (2), where subpart A of the conformity rule 40 CFR part 93 is adopted by reference. 40 CFR part 93.104(e), was amended after the state went through its public adoption process. EPA amended 93.104(e) in August 2002, changing the starting point for eighteen month clocks from the date of SIP submittal to the date of adequacy determination of the motor vehicle emissions budgets. Refer to the August 6, 2002, final rule (67 FR 50808) for more details. Therefore, the Tennessee rule incorporating by reference the 40 CFR part 93, subpart A, will not include section 93.104(e).

Furthermore, Tennessee's incorporation by reference of the conformity rule did not include portions of the regulations affected by the federal court decision in *Environmental Defense Fund* v. *Environmental Protection Agency*, 167 F.3d 641 (D.C. Cir. 1999) and *Sierra Club* v. *EPA, et. al.*, 129 F. 3d 137 (D.C. Cir. 1997). These include the following sections: 93.102(c)(1), 93.102(d), 93.118(e)(1), 93.120(a)(2), 93.121(a)(1) and 93.124(b). For all those portions not incorporated by reference, the Federal transportation conformity rule will take precedence.

EPA has evaluated this SIP revision and determined that the SIP requirements of the Federal transportation conformity rule, as described in 40 CFR part 51, subpart T and 40 CFR part 93, subpart A, have been met. Therefore, EPA is approving this revision to the Tennessee SIP.

C. How Did the State Satisfy the Interagency Consultation Process (40 CFR 93.105)?

EPA's rule requires the states to develop their own processes and procedures for interagency consultation among Federal, state, and local agencies and resolution of conflicts meeting the criteria of 40 CFR 93.105. The SIP revision must include the process and procedures to be followed by the MPOs, DOT, Federal Highway Administration (FHWA), Federal Transit Administration (FTA), local transit operators, the state and local air quality agencies and EPA before making conformity determinations. The transportation conformity SIP revision must also include processes and procedures for the state and local air quality agencies and EPA to coordinate the development of applicable SIPs with MPOs, state DOTs, FHWA and FTA.

The State of Tennessee developed its statewide consultation rule based on the elements contained in state rule 1200–3–34 (3). The consultation process developed by the Tennessee Air Pollution Control Division (TAPCD) is unique to the state of Tennessee and is enforceable, effective November 14, 2001, signed by the City of Nashville Secretary of State on January 29, 2002.

III. Final Action

EPA is approving the aforementioned changes to the Tennessee SIP, with the exception of the incorporation of reference to 40 CFR part 93.104(e) in 1200–3–34–.01(3) which requires the state to comply with outdated conformity rule trigger provisions, because the state adopted this regulation prior to EPA's rulemaking amendment on August 6, 2002.

The EPA is publishing this rule without prior proposal because the Agency views this as a noncontroversial submittal and anticipates no adverse comments. However, in the proposed rules section of this **Federal Register** publication, EPA is publishing a separate document that will serve as the proposal to approve the SIP revision should adverse comments be filed. This rule will be effective July 15, 2003 without further notice unless the Agency receives adverse comments by June 16, 2003.

If the EPA receives such comments, then EPA will publish a document withdrawing the final rule and informing the public that the rule will not take effect. All public comments received will then be addressed in a subsequent final rule based on the proposed rule. The EPA will not institute a second comment period. Parties interested in commenting should do so at this time. If no such comments are received, the public is advised that this rule will be effective on July 15, 2003 and no further action will be taken on the proposed rule. Please note that if we receive adverse comment on an amendment, paragraph, or section of this rule and if that provision may be severed from the remainder of the rule, we may adopt as final those provisions of the rule that are not the subject of an adverse comment.

IV. Statutory and Executive Order Reviews:

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a "significant regulatory action" and therefore is not subject to review by the Office of Management and Budget. For this reason, this action is also not subject to Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use" (66 FR 28355, May 22, 2001). This action merely approves state law as meeting Federal requirements and imposes no additional requirements beyond those imposed by state law. Accordingly, the Administrator certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this rule approves pre-existing requirements under state law and does not impose any additional enforceable duty beyond that required by state law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4).

This rule also does not have tribal implications because it will not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000). This action also does not have Federalism implications because it does not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999). This action merely approves a state rule implementing a Federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. This rule also is not subject to Executive Order 13045 "Protection of Children from Environmental Health Risks and Safety Risks" (62 FR 19885, April 23, 1997), because it is not economically significant.

In reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. In this context, in the absence of a prior existing requirement for the State to use voluntary consensus standards (VCS), EPA has no authority to disapprove a SIP submission for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews a SIP submission, to use VCS in place of a SIP submission that otherwise satisfies the provisions of the Clean Air Act. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

The Congressional Review Act, 5 U.S.C. section 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a "major rule" as defined by 5 U.S.C. section 804(2).

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by July 15, 2003. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (*See* section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Intergovernmental relations, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Volatile organic compounds.

Dated: April 29, 2003.

Stanley L. Meiburg,

Acting Regional Administrator, Region 4.

■ Chapter I, title 40, *Code of Federal Regulations*, is amended as follows:

PART 52—[AMENDED]

■ 1. The authority for citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

Subpart RR—Tennessee

■ 2. Section 52.2220(c) is amended by adding in numerical order a new chapter heading No. "1200–3–34 Conformity", and an entry for "1200–3–34–.01" to read as follows:

§ 52.2220 Identification of plan.

* * * * *

(c) * * *

EPA APPROVED TENNESSEE REGULATIONS

State citation	Title/subject	State effective date	EPA approval date	Explanation
		Chapter 1200–3–34 Conformity		
Section 1200–3–34–.01.	Conformity of Transportation Plans, Programs, and Projects.	November 14, 2001.	May 16, 2003. [Insert citation of publication].	Except for the incorporation by reference of 40 CFR 93.104(e) of the Transportation Confirmity Rule.

* * * * *

[FR Doc. 03–12178 Filed 5–15–03; 8:45 am]

BILLING CODE 5560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[DC052–7007, MD143–3102, VA129–5065; FRL–7499–9]

Approval and Promulgation of Air Quality Implementation Plans; District of Columbia, Maryland; Virginia; Post 1996 Rate-of-Progress Plans and One-Hour Ozone Attainment Demonstrations; Correction

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule; correcting amendment.

SUMMARY: This document corrects an error and clarifies the preamble language of EPA's conditional approval of the severe ozone nonattainment area State Implementation Plan (SIP) revisions for the Metropolitan Washington severe ozone nonattainment area. This document also corrects several typographical errors in the preamble language of this conditional approval.

EFFECTIVE DATE: May 19, 2003.

FOR FURTHER INFORMATION CONTACT: Christopher Cripps, (215) 814–2179, or by e-mail at *cripps.christopher.@epa.gov.*

SUPPLEMENTARY INFORMATION: Throughout this document wherever "we," or "our" are used we mean EPA.

Date Conditional Approval Might Convert to Disapproval

On April 17, 2003, (68 FR 19106), we published a final rulemaking action announcing our conditional approval of severe ozone nonattainment area State Implementation Plan (SIP) revision for the Metropolitan Washington severe ozone nonattainment area. In the final rule language which is found on page 19131 of the April 17, 2003, final rule, EPA conditionally approved each Washington area jurisdiction's severe area SIP revisions contingent on that jurisdiction submitting SIP revisions by April 17, 2004 that satisfy certain conditions enumerated in the final rule text. In the second sentence of the Final Action section of the preamble on page 19130 in the first column of this April 17, 2003, final rule, EPA inadvertently stated that "[s]hould the Washington area jurisdictions fail to fulfill these conditions by May 19, 2003, this conditional approval will convert to a disapproval pursuant to Clean Air Act (CAA) section 110(k)." EPA intended that if a Washington area jurisdiction should fail to meet any condition for approval within one-year from the publication date of the final rule, *i.e.*, by April 17, 2004, the conditional approval would convert to a disapproval pursuant to CAA section 110(k). EPA did not intend that the date triggering disapproval pursuant to 110(k) of the CAA would be the May 19, 2003, effective date of the April 17, 2003 final action, which is nearly eleven months before the due date set forth in the text of the April 17, 2003, final rule. As stated above, EPA intended that should the Washington area jurisdictions fail to fulfill these conditions by April 17, 2004, the conditional approval will convert to a disapproval pursuant to CAA section 110(k).

In the preamble to the final rule published on April 17, 2003, on page 19130, in the first column, the second sentence of the Final Action section is corrected to read: "Should the Washington area jurisdictions fail to fulfill these conditions by April 17, 2004, this conditional approval will convert to a disapproval pursuant to CAA section 110(k)."

Typographical Errors

In the preamble to the final rule published in the **Federal Register** on April 17, 2003, on page 19120 in the second column, and on page 19122 in the first column, EPA incorrectly cited as 68 FR 3210 the volume and page numbers for the January 24, 2003, final action that reclassified the Washington area to severe nonattainment. The correct citation is 68 FR 3410, January 24, 2003.

In the preamble to the final rule published in the **Federal Register** on April 17, 2003, on page 19109 in the first column, and on page 19129 in the third column, EPA incorrectly stated the proposed rule for the April 17, 2003, final rule was published on February 4, 2003. The correct date is February 3, 2003 (68 FR 5246).

In the preamble to the final rule published in the **Federal Register** on April 17, 2003, on page 19126 in the third column, EPA incorrectly stated the publication date for 67 FR 21867 as May 1, 2000. The correct date is May 1, 2002 (67 FR 21867).

In the preamble to the final rule published in the **Federal Register** on April 17, 2003, on page 19117 in the first column, we presented a summary of air quality data to date. On page 19117 in the first column, EPA stated that "[a]nother one of these seven has data for the last 123 days of the ozone season (July 1, 2003, through October 31, 2003 inclusive)". EPA was referring to monitoring data for July 1, 2002 through October 31, 2002 not for July 1, 2003, through October 31, 2003.

Section 553 of the Administrative Procedure Act, 5 U.S.C. 553(b)(B), provides that, when an agency for good cause finds that notice and public procedure are impracticable, unnecessary or contrary to the public interest, the agency may issue a rule without providing notice and an opportunity for public comment. We have determined that there is good cause for making today's rule final without prior proposal and opportunity for comment because we are merely correcting an incorrect citation in a previous action. Thus, notice and public procedure are unnecessary. We find that this constitutes good cause under 5 U.S.C. 553(b)(B).

Statutory and Executive Order Reviews

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a "significant regulatory action" and is therefore not subject to review by the Office of Management and Budget. For this reason, this action is also not subject to Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use" (66 FR 28355 (May 22, 2001)). Because the agency has made a "good cause" finding that this action is not subject to notice-and-comment requirements under the Administrative Procedures Act or any other statute as indicated in the Supplementary Information section above, it is not subject to the regulatory flexibility provisions of the Regulatory Flexibility Act (5 U.S.C. 601 et seq), or to sections 202 and 205 of the Unfunded Mandates Reform Act of 1995 (UMRA) (Pub. L. 104–4). In addition, this action does not significantly or uniquely affect small governments or impose a significant intergovernmental mandate, as described in sections 203 and 204 of UMRA. This rule also does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), nor will it have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of governments, as specified by Executive Order 13132 (64 FR 43255, August 10, 1999). This rule also is not subject to Executive Order 13045 (62 FR 19885, April 23, 1997), because it is not economically significant.

This technical correction action does not involve technical standards; thus the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. The rule also does not involve special consideration of environmental justice related issues as required by Executive Order 12898 (59 FR 7629, February 16, 1994). In issuing this rule, EPA has taken the necessary steps to eliminate drafting errors and ambiguity, minimize potential litigation, and provide a clear legal standard for affected conduct, as required by section 3 of Executive Order 12988 (61 FR 4729, February 7, 1996). EPA has complied with Executive Order 12630 (53 FR 8859, March 15, 1998) by examining the takings implications of the rule in accordance with the "Attorney General's Supplemental Guidelines for the Evaluation of Risk and Avoidance of Unanticipated Takings" issued under the executive order. This rule does not impose an information collection burden under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq*).

The Congressional Review Act (5 U.S.C. 801 et seq.), as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. Section 808 allows the issuing agency to make a rule effective sooner than otherwise provided by the CRA if the agency makes a good cause finding that notice and public procedure is impracticable, unnecessary or contrary to the public interest. This determination must be supported by a brief statement. 5 U.S.C. 808(2). As stated previously, EPA had made such a good cause finding, including the reasons therefore, and established an effective date of May 19, 2003. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. This correction to the April 17, 2003, final rule (68 FR 19106) for the District of Columbia, Maryland, and Virginia is not a "major rule" as defined by 5 U.S.C. 804(2).

Dated: May 9, 2003.

Donald S. Welsh,

Regional, Administrator, Region III.

[FR Doc. 03–12473 Filed 5–15–03; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 03–1482, MB Docket No. 02–116, RM–10233]

Digital Television Broadcast Service; Billings, MT

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission, at the request of KTVQ Communications, Inc., substitutes DTV channel 10 for DTV channel 17 at Billings, Montana. *See* 67 FR 38056, May 13, 2002. DTV channel 10 can be allotted to Billings, Montana, in compliance with the principle community coverage requirements of Section 73.625(a) at reference coordinates 45–46–00 N. and 108–27–27 W. with a power of 160, HAAT of 165 meters and with a DTV service population of 139 thousand. Since the community of Billings is located within 400 kilometers of the U.S.-Canadian border, concurrence from the Canadian government has been obtained for this allotment. With this action, this proceeding is terminated.

DATES: Effective June 23, 2003.

FOR FURTHER INFORMATION CONTACT: Pam Blumenthal, Media Bureau, (202) 418–1600.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MB Docket No. 02–116, adopted April 30, 2003, and released May 9, 2003. The full text of this document is available for public inspection and copying during regular business hours in the FCC Reference Information Center, Portals II, 445 12th Street, SW., Room CY–A257, Washington, DC. This document may also be purchased from the Commission's duplicating contractor, Qualex International, Portals II, 445 12th Street, SW., CY–B402, Washington, DC, 20554, telephone 202–863–2893, facsimile 202–863–2898, or via e-mail *qualexint@aol.com*.

List of Subjects in 47 CFR Part 73

Digital television broadcasting, Television.

■ Part 73 of Title 47 of the Code of Federal Regulations is amended as follows:

PART 73—[AMENDED]

■ 1. The authority citation for Part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303, 334 and 336.

§ 73.622 [Amended]

■ 2. Section 73.622(b), the Table of Digital Television Allotments under Montana, is amended by removing DTV channel 17 and adding DTV channel 10 at Billings.

Federal Communications Commission.

Barbara A. Kreisman,

Chief, Video Division, Media Bureau.

[FR Doc. 03–12202 Filed 5–15–03; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 03–1440, MB Docket No. 02–82, RM–10408]

Digital Television Broadcast Service; Burlington, VT

AGENCY: Federal Communications Commission (FCC).

ACTION: Final rule.

SUMMARY: The Commission, at the request of C–22 FCC Licensee Subsidiary, LLC, substitutes DTV channel 13 for DTV channel 16 at Burlington, Vermont. *See* 67 FR 20940, April 29, 2002. DTV channel13 can be allotted to Burlington in compliance with the principle community coverage requirements of Section 73.625(a) at reference coordinates 44–31–40 N. and 72–48–58 W. with a power of 4.5, HAAT of 835 meters and with a DTV service population of 514 thousand. Since the community of Burlington is located within 400 kilometers of the U.S.-Canadian border, concurrence from the Canadian government has been obtained for this allotment. With this action, this proceeding is terminated.

DATES: Effective June 23, 2003.

FOR FURTHER INFORMATION CONTACT: Pam Blumenthal, Media Bureau, (202) 418–1600.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MB Docket No. 02–82, adopted April 28, 2003, and released May 8, 2003. The full text of this document is available for public inspection and copying during regular business hours in the FCC Reference Information Center, Portals II, 445 12th Street, SW., Room CY–A257, Washington, DC. This document may also be purchased from the Commission's duplicating contractor, Qualex International, Portals II, 445 12th Street, SW., CY–B402, Washington, DC, 20554, telephone 202–863–2893, facsimile 202–863–2898, or via e-mail *qualexint@aol.com*.

List of Subjects in 47 CFR Part 73

Digital television broadcasting, Television.

■ Part 73 of Title 47 of the Code of Federal Regulations is amended as follows:

PART 73—[AMENDED]

■ 1. The authority citation for Part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303, 334 and 336.

§ 73.622 [Amended]

■ 2. Section 73.622(b), the Table of Digital Television Allotments under Vermont, is amended by removing DTV channel 16 and adding DTV channel 13 at Burlington.

Federal Communications Commission.

Barbara A. Kreisman,

Chief, Video Division, Media Bureau.

[FR Doc. 03–12203 Filed 5–15–03; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018–AI60

Endangered and Threatened Wildlife and Plants; Establishment of Nonessential Experimental Population Status and Reintroduction of Black-Footed Ferrets in South-Central South Dakota

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), in cooperation with the Rosebud Sioux Tribe (Tribe), the U.S. Forest Service, and the U.S. Bureau of Indian Affairs, will reintroduce endangered black-footed ferrets (*Mustela nigripes*) into south-central South Dakota on the Rosebud Sioux Reservation. The purposes of the reintroduction are to implement actions required for recovery of the species and to evaluate and improve reintroduction techniques and management applications. We may release surplus captive-raised or wild-born black-footed ferrets annually for several years until a self-sustaining population is established. If this reintroduction program is successful, a wild population could be established in 5 years or less. The Rosebud Sioux Reservation black-footed ferret population will be established as a nonessential experimental population in accordance with section 10(j) of the Endangered Species Act of 1973, as amended (Act). We will manage this population under provisions of this special rule. An environmental assessment and finding of no significant impact have been prepared on this action.

DATES: The effective date of this rule is May 16, 2003.

ADDRESSES: You may inspect the complete file for this rule during normal business hours at the Ecological Services Office, 420 South Garfield Avenue, Suite 400, Pierre, South Dakota 57501, or telephone (605) 224–8693. You must make an appointment in advance if you wish to inspect the file.

FOR FURTHER INFORMATION CONTACT: Scott Larson or Pete Gober at the above address, telephone (605) 224–8963, extensions 27 and 24, respectively.

SUPPLEMENTARY INFORMATION:

Background

1. *Legislative:* Congress made significant changes to the Act in 1982 with the addition of section 10(j), which provides for the designation of specific reintroduced populations of listed species as "experimental populations." Previously, we had authority to reintroduce populations into unoccupied portions of a listed species' historical range when doing so would foster the conservation and recovery of the species. However, local citizens often opposed these reintroductions because they were concerned about placement of restrictions and prohibitions on Federal and private activities. Under section 10(j), the Secretary of the Department of the Interior can designate reintroduced populations established outside the species' current range, but within its historical range, as "experimental." On the basis of the best available information, we must determine whether an experimental population is "essential" or "nonessential" to the continued existence of the species. Regulatory restrictions are considerably reduced under a Nonessential Experimental Population (NEP) designation.

Under the Act, species listed as endangered or threatened are afforded protection primarily through the prohibitions of section 9 and the requirements of section 7. Section 9 of the Act prohibits the take of endangered wildlife. "Take" is defined by the Act as to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect, or to attempt to engage in any such conduct. Service regulations (50 CFR 17.31) generally extend the prohibition on take to threatened wildlife. Section 7 of the Act outlines the procedures for Federal interagency cooperation to conserve federally listed species and protect designated critical habitats. It mandates all Federal agencies to determine how to use their existing authorities to further the purposes of the Act to aid in recovering listed species. It also states that Federal agencies will, in consultation with the Service, ensure that any action they authorize, fund, or carry out is not likely to jeopardize the continued existence of a listed species or result in the destruction or adverse modification of designated critical habitat. Section 7 of the Act does not affect activities undertaken on private lands unless they are authorized, funded, or carried out by a Federal agency.

For purposes of section 9 of the Act, a population designated as experimental is treated as threatened regardless of the species' designation elsewhere in its range. Through section 4(d) of the Act, threatened designation allows us greater discretion in devising management programs and special regulations for such a population. Section 4(d) of the Act allows us to adopt whatever regulations are necessary to provide for the conservation of a threatened species. In these situations, the general regulations that extend most section 9 prohibitions to threatened species do not apply to that species, and the special 4(d) rule contains the prohibitions and exemptions necessary and appropriate to conserve that species. Regulations issued under section 4(d) for NEPs are usually more compatible with routine human activities in the reintroduction area.

For the purposes of section 7 of the Act, we treat NEPs as threatened species when the NEP is located within a National Wildlife Refuge or National Park, and thus section 7(a)(1) and the consultation requirements of section 7(a)(2) of the Act apply. Section 7(a)(1) requires all Federal agencies to use their authorities to conserve listed species. Section 7(a)(2) requires that Federal agencies, in consultation with the Service, ensure any actions they authorize, fund, or carry out are not likely to jeopardize the continued existence of a listed species or adversely modify its critical habitat. When NEPs are located outside a National Wildlife Refuge or National Park, we treat the population as proposed for listing and only two provisions of section 7 apply: section 7(a)(1) and section 7(a)(4). In these instances, NEPs provide additional flexibility because Federal agencies are not required to consult with us under section 7(a)(2). Section 7(a)(4) requires Federal agencies to confer with the Service on actions that are likely to jeopardize the continued existence of a proposed species. The results of a conference are advisory in nature and do not restrict agencies from carrying out, funding, or authorizing activities.

Individual animals used to establish an experimental population may come from a donor population, provided their removal will not create adverse impacts upon the parent population, and provided appropriate permits are issued in accordance with our regulations (50 CFR 17.22) prior to their removal. In this case, the donor ferret population is a captive-bred population, which was propagated with the intention of re-establishing wild populations to achieve recovery goals. In addition, wild progeny from other NEPs (and which also originated from captive sources)

may be directly translocated to the reintroduction site.

2. *Biological:* The black-footed ferret is a member of the Mustelid or weasel family; has a black facemask, black legs, and a black-tipped tail; is nearly 60 centimeters (2 feet) in length; and weighs up to 1.1 kilograms (2.5 pounds). It is the only ferret species native to North America. The historical range of the species, based on specimen collections, extends over 12 western States (Arizona, Colorado, Kansas, Montana, Nebraska, New Mexico, North Dakota, Oklahoma, South Dakota, Texas, Utah, and Wyoming) and the Canadian Provinces of Alberta and Saskatchewan. Prehistoric evidence indicates that ferrets once occurred from the Yukon Territory in Canada to Mexico and Texas (Anderson *et al.*, 1986).

Black-footed ferrets depend almost exclusively on prairie dog colonies for food, shelter, and denning (Henderson *et al.*, 1969, updated 1974; Forrest *et al.*, 1985). The range of the ferret coincides with that of prairie dogs (Anderson *et al.*, 1986), and ferrets with young have been documented only in the vicinity of active prairie dog colonies. Historically, black-footed ferrets have been reported in association with black-tailed prairie dog (*Cynomys ludovicianus*), white-tailed prairie dog (*Cynomys leucurus*), and Gunnison's prairie dog (*Cynomys gunnisoni*) towns (Anderson *et al.*, 1986).

Significant reductions in both prairie dog numbers and distribution occurred during the last century due to widespread poisoning of prairie dogs, the conversion of native prairie to farmland, and outbreaks of sylvatic plague, particularly in the southern portions of the ranges of several species of prairie dog in North America. Sylvatic plague arrived from Asia in approximately 1900 (Eskey and Haas, 1940). It is an exotic disease foreign to the evolutionary history of prairie dogs, which have little or no immunity to it. Black-footed ferrets also are highly susceptible to sylvatic plague (Williams *et al.*, 1991 and Williams *et al.*, 1994). This severe reduction in the availability of their principal prey species, in combination with other factors such as secondary poisoning from toxicants ingested by prairie dogs, resulted in the near extinction of the black-footed ferret in the wild by the early 1970s (U.S. Fish and Wildlife Service, 1988).

In 1974, a remnant wild population of ferrets in South Dakota, originally discovered in 1964, abruptly disappeared (Henderson *et al.*, 1969, updated 1974). As a result, we believed the species to be extinct. However, in 1981, a small population was discovered near Meeteetse, Wyoming (Schroeder and Martin, 1982). In 1985–86, the Meeteetse population declined to only 18 animals due to an outbreak of sylvatic plague and canine distemper (U.S. Fish and Wildlife Service, 1988). Following this critical decline, the remaining individuals were taken into captivity in 1986–1987 to serve as founders for a captive propagation program. Since that time, captive-breeding efforts have been highly successful and have facilitated ferret reintroductions over a broad area of formerly occupied range. Today, the captive population of juveniles and adults annually fluctuates between 300 and 600 animals depending on time of year, yearly reproductive success, and annual mortalities. The captive ferret population is currently divided among six captive-breeding facilities throughout the United States and Canada, with a small number on display for educational purposes at several facilities. Also, 65 to 90 ferrets are located at several field-based captive-breeding sites in Arizona, Colorado, Montana, and New Mexico.

3. *Recovery Goals/Objectives:* The recovery plan for the black-footed ferret (U.S. Fish and Wildlife Service, 1988) contains the following recovery objectives for reclassification of the species from endangered to threatened:

(a) Increasing the captive population of ferrets to 200 breeding adults by 1991 (achieved);

(b) Establishing a prebreeding population of 1,500 free-ranging breeding adults in 10 or more different populations, with no fewer than 30 breeding adults in each population by the year 2010 (ongoing); and,

(c) Encouraging the widest possible distribution of reintroduced animals throughout their historical range (ongoing).

Although several reintroduction efforts have occurred throughout the ferret's range, populations may have become self-sustaining at only one site in South Dakota (Lockhart, Black-footed Ferret Coordinator, pers. comm. 2002).

We can reclassify the black-footed ferret from endangered to threatened status when the recovery objectives listed above have been achieved, assuming that the mortality rate of established populations remains at or below a rate at which new populations become established or increase. We have been successful in rearing black-footed ferrets in captivity, and, in 1997, we reached captive-breeding program objectives.

In 1988, we divided the single captive population into three subpopulations to avoid the possibility of a catastrophic event (*e.g.*, contagious disease) eliminating the entire captive population. Additional breeding centers were added later, and presently there are six separate subpopulations in captivity. Current recovery efforts emphasize the reintroduction of animals back into the wild from the captive source stock. Surplus individuals produced in captivity are now available for use in reintroduction areas.

4. *Reintroduction Sites:* The Service, in cooperation with western State and Federal agencies, Tribal representatives, and conservation groups, evaluates potential black-footed ferret reintroduction sites and has previously initiated ferret reintroduction projects at several sites within the historical range of the black-footed ferret. The first reintroduction project occurred in Wyoming in 1991, and subsequent efforts have taken place in South Dakota and Montana in 1994, Arizona in 1996, a second effort in Montana in 1997, Colorado/Utah in 1999, a second site in South Dakota in 2000, and Mexico in 2001. The Service and the Black-footed Ferret Recovery Implementation Team (comprising 27 State and Federal agencies, Native American tribes, and conservation organizations) have identified the Rosebud Sioux Reservation (Reservation) as a high-priority black-footed ferret reintroduction site due to its extensive black-tailed prairie dog habitat and the absence of sylvatic plague (Black-footed Ferret Recovery Implementation Team, 2000).

In the early 1990s, the Bureau of Indian Affairs (1995) estimated the acreage of prairie dog colonies on Rosebud Tribal Trust lands at 18,000 hectares (ha) (45,000 acres (ac)). In the mid-1990s, the Tribe evaluated a black-footed ferret reintroduction effort and completed some of the activities (*i.e.*, habitat evaluations) necessary to begin such reintroduction efforts. In 2001, the Tribe began additional activities to work toward ferret reintroduction and has worked with the Service to gather information necessary to establish an NEP designation for any ferret reintroductions that may occur.

(a.) *Rosebud Sioux Reservation Experimental Population Reintroduction Area:* The area designated as the Rosebud Sioux Reservation Black-footed Ferret Experimental Population Area (Experimental Population Area) overlays all of Gregory, Mellette, Todd, and Tripp Counties in South Dakota. Any black-footed ferret found within these four counties will be considered part of an NEP. Within the Experimental Population Area, the primary

reintroduction area will be in large black-tailed prairie dog complexes located in Todd County near the town of Parmelee. The Town of Rosebud is approximately 10-air miles away and is the location of the Rosebud Sioux Tribal offices. Rosebud is approximately 160 kilometers (100 miles) south of Pierre, the capital of South Dakota.

The Experimental Population Area supports at least two large complexes of black-tailed prairie dog colonies located within the four-county area. These counties encompass approximately 1,391,862 ha (3,437,900 ac). Approximately 26 percent or 356,411 ha (880,336 ac) of the Experimental Population Area is Tribal and Allotted Trust lands of the Rosebud Sioux Tribe. The majority of this Tribal and Allotted Trust land is native rangeland used for grazing.

Approximately 70 percent of the land within the Experimental Population Area is owned by private landowners, although less than 20 percent of the land in the primary reintroduction area is privately owned. No ferrets will be released on private lands. Designating reintroduced ferrets as an NEP should minimize potential issues that may arise with a reintroduction in the vicinity of private lands. The Service, Tribe, and other cooperators agree that, if ferrets disperse onto private lands, program officials will capture and translocate the ferrets back to Tribal lands if requested by the landowner or if necessary for the protection of the ferrets. Any activity needing access to private lands will be conducted only with the permission of the landowner.

Black-footed ferret dispersal to and occupation of areas outside of the Experimental Population Area is unlikely to occur toward the east, north, and south due to the large size of the Experimental Population Area, the absence of suitable nearby habitat (*i.e.*, large contiguous prairie dog colonies), cropland barriers (*e.g.*, expansive cultivation over the eastern portion of the Experimental Population Area), and physical barriers (*e.g.*, the Missouri River to the east). Any expansion westerly from the reintroduction site will be handled by recapturing ferrets, upon request by a landowner, and bringing them into Experimental Population Area or handled through future cooperative efforts with the Pine Ridge Indian Reservation. The Tribe estimates a minimum of approximately 6,000 ha (15,000 ac) of black-tailed prairie dog colonies are potentially available to black-footed ferrets in a localized area in northwestern Todd County and could support over 150 ferret families (characterized as an adult female, 3 kits, and one-half adult male; *i.e.*, 1 adult male for every 2 adult females) (Biggins *et al.*, 1993). Large, contiguous prairie dog colonies and the absence of physical barriers between prairie dog colonies in this portion of the Reservation (the primary ferret release area) should facilitate ferret distribution throughout this complex.

(b.) *Primary Reintroduction Area:* The primary reintroduction area within the Experimental Population Area will occur on prairie dog colonies near Parmelee, in northwestern Todd County. The last remaining population of ferrets in South Dakota was known to exist in this area and adjacent Mellette County until the early 1970s (Henderson *et al.*, 1969, updated 1974). This population was studied and monitored extensively until it disappeared from the wild by 1974 (Henderson *et al.*, 1969, updated 1974). During monitoring efforts of this ferret population in the 1960s, researchers located eight road-killed ferrets during their years of work (Hillman and Linder, 1973). No road-killed ferrets have been turned in or noted from that area since the population was believed extirpated in the early 1970s. There have been many ferret surveys conducted in this area in the 1980s and 1990s with no ferrets being located (Hanebury, 1988; Bureau of Indian Affairs, 1995). The Tribe conducted additional ferret surveys in 2002 and did not locate any ferrets (Lonewolf, Rosebud Game Fish and Parks, pers. comm. 2002).

Black-footed ferrets will be released only if biological conditions are suitable and meet the management framework developed by the Tribe, in cooperation with the Bureau of Indian Affairs, the Service, and landowners/land managers. The Service will reevaluate ferret reintroduction efforts in the Experimental Population Area should any of the following conditions occur:

(i) Failure to maintain sufficient habitat on specific reintroduction areas to support at least 30 breeding adults after 5 years.

(ii) Failure to maintain sufficient prairie dog habitat in the primary reintroduction area as available in 2002.

(iii) A wild ferret population is found within the Experimental Population Area following the initial reintroduction and prior to the first breeding season. The only black-footed ferrets currently occurring in the wild result from reintroductions in Arizona, Colorado/Utah, Montana, South Dakota, Wyoming, and Mexico. Consequently, the discovery of a black-footed ferret population at the Experimental Population Area prior to the reintroduction would confirm the presence of a new population and would prevent designation of an experimental population for the area.

(iv) Discovery in any animal on or near the reintroduction area 6 months prior to the scheduled release of an active case of canine distemper or any other disease contagious to black-footed ferrets that the cooperators believe may compromise the reintroduction.

(v) Fewer than 20 captive black-footed ferrets are available for the first release.

(vi) Funding is not available to implement the reintroduction phase of the project on the Reservation.

(vii) Land ownership changes significantly or cooperators withdraw from the project.

All the above conditions will be based on information routinely collected by us or the Tribe (*see* "Paperwork Reduction Act" under the REQUIRED DETERMINATIONS section).

5. *Reintroduction Procedures:* In conformance with standard black-footed ferret reintroduction protocol, no fewer than 20 captive-raised or wild-translocated black-footed ferrets will be released in the Experimental Population Area in the first year of the program, and 20 or more animals will be released annually for the next 2 to 4 years. We anticipate releasing 50 or more ferrets in the first year and believe a self-sustaining wild population could be established on the Reservation within 5 years. Released ferrets will be excess to the needs of the captive-breeding program and their use will not affect the genetic diversity of the captive ferret population (ferrets used for reintroduction efforts can be replaced through captive breeding). In the future, it may be necessary to interchange ferrets from established, reintroduced populations to enhance the genetic diversity of the population on the Experimental Population Area.

Recent studies (Biggins *et al.*, 1998; Vargas *et al.*, 1998) have documented the importance of outdoor "preconditioning" experience on captive-reared ferrets prior to release in the wild. Ferrets exposed to natural prairie dog burrows in outdoor pens and natural prey prior to release survive in the wild at significantly higher rates than do cage-reared, non-preconditioned ferrets. At a minimum, all captive-reared ferrets released within the Experimental Population Area will receive adequate pre-conditioning treatments at existing pen facilities in South Dakota or other western States. In addition, we may translocate wild-born ferrets (from other NEPs with self-sustaining populations of ferrets) to the Experimental Population Area.

The Tribe will develop specific reintroduction plans and submit them in a proposal to the Service as part of an established, annual black-footed ferret allocation process. Ferret reintroduction cooperators submit proposals by mid-March of each year, and the Service makes preliminary allocation decisions (numbers of ferrets provided to specific projects) by May. Proposals submitted to the Service include updated information on habitat, disease, project/ferret status, proposed reintroduction and monitoring methods, and predator management. In this manner, the Service and reintroduction cooperators evaluate the success of the prior year's efforts and apply current knowledge to various aspects of reintroduction efforts, thereby providing greater assurance of long-range reintroduction success.

We will transport ferrets to identified reintroduction areas within the Experimental Population Area and release them directly from transport cages into prairie dog burrows. Depending on the availability of suitable vaccine, we will vaccinate released animals against certain diseases (especially canine distemper) and take appropriate measures to reduce predation from coyotes, badgers, and raptors, where warranted. All ferrets we release will be marked with passive integrated transponder tags (PIT tags), and we may promote radio-telemetry studies to document ferret behavior and movements. Other monitoring will include spotlight surveys, snow tracking surveys, and visual surveillance.

Since captive-born ferrets are more susceptible to predation, starvation, and environmental conditions than wild animals, up to 90 percent of the released ferrets could die during the first year of release. Mortality is usually highest during the first month following release. In the first year of the program, a realistic goal is to have at least 25 percent of the animals survive the first winter. The goal of the Reservation reintroduction project is to establish a free-ranging population of at least 30 adults within the Experimental Population Area within 5 years of release. At the release site, population demographics and potential sources of mortality will be monitored on an annual basis (for up to 5 years). We do not intend to change the nonessential designation for this experimental population unless we deem this reintroduction a failure or the black-footed ferret is recovered in the wild.

6. *Status of Reintroduced Population:* We determine this reintroduction to be nonessential to the continued existence of the species for the following reasons:

(a) The captive population (founder population of the species) is protected against the threat of extinction from a single catastrophic event by housing ferrets in six separate subpopulations. As a result, any loss of an experimental population in the wild will not threaten the survival of the species as a whole.

(b) The primary repository of genetic diversity for the species is 240 adult ferrets maintained in the captive-breeding population. Animals selected for reintroduction purposes are surplus to the captive population. Hence, any use of animals for reintroduction efforts will not affect the overall genetic diversity of the species.

(c) Captive-breeding can replace any ferrets lost during this reintroduction attempt. Juvenile ferrets produced in excess of the numbers needed to maintain the captive-breeding population are available for reintroduction.

This reintroduction will be the ninth release of ferrets back into the wild. The other experimental populations occur in Wyoming, southwestern South Dakota, north-central Montana (with two separate reintroduction efforts), Arizona, Colorado/Utah (a single reintroduction area that overlays both States), and north-central South Dakota. A population of ferrets also has been established in Mexico. Reintroductions are necessary to further the recovery of this species. The NEP designation alleviates landowner concerns about possible land use restrictions. This nonessential experimental designation provides a flexible management framework for protecting and recovering black-footed ferrets while ensuring that the daily activities of landowners are unaffected.

7. *Location of Reintroduced Population:* Section 10(j) of the Act requires that an experimental population be geographically separate from other wild populations of the same species. Since the mid-1980s, black-footed ferret surveys have been conducted in the Experimental Population Area or close by, and no wild ferrets have been located (Hanebury, 1988; Bureau of Indian Affairs, 1995; Lonewolf, Rosebud Game Fish and Parks, pers. comm. 2002). Over 120,000 ha (300,000 ac) of prairie dog colonies were surveyed for black-footed ferrets in the mid-1980s during a prairie dog control effort on the Oglala Sioux Tribe's Pine Ridge Indian Reservation (Superintendent Memorandum, 1989). No ferrets were located. In addition to these surveys, the Tribe and others have spent many hours surveying prairie dog colonies at the primary reintroduction site (Hanebury, 1988; Bureau of Indian Affairs, 1995). No ferrets or signs of ferrets (*e.g.*, skulls, feces, trenches) were located. Therefore, we conclude that wild ferrets are no longer present in the Experimental Population Area, and that this reintroduction will not overlap with any wild population.

All released ferrets and their offspring should remain in the Experimental Population Area due to the presence of prime habitat (*i.e.*, lands occupied by prairie dog colonies) and surrounding geographic barriers. We will capture any ferret that leaves the Experimental Population Area, attempt to identify its origin, and either return it to the release site, translocate it to another site, or place it in captivity. If a ferret leaves the primary reintroduction area but remains within the Experimental Population Area and occupies private property, the landowner can request its removal. Ferrets will remain on private lands only when the landowner does not object to their presence there.

We will mark all released ferrets and will attempt to determine the source of any unmarked animals found. Any ferret found outside the Experimental Population Area is considered endangered, as provided under the Act. We will undertake efforts to confirm whether any ferret found outside the Experimental Population Area originated from captive stock. If the animal is unrelated to members of this or other experimental populations (*i.e.*, it is from non-captive stock), we will place it in captivity as part of the breeding population to improve the overall genetic diversity of the captive population. Existing contingency plans allow for the capture and retention of up to nine ferrets shown not to be from any captive stock. In the highly unlikely event that a ferret from captive stock is found outside the Experimental Population Area, and if landowner permission is granted, we will move the ferret back to habitats that support the primary population(s) of ferrets.

8. *Management:* This reintroduction is undertaken in cooperation with the Rosebud Sioux Tribe, the Bureau of Indian Affairs, and the Forest Service in accordance with the "Cooperative Management Plan for Black-footed Ferrets, Rosebud Sioux Reservation." Copies of the Cooperative Management Plan may be obtained from the Rosebud Sioux Tribe, Game, Fish and Parks Department, P.O. Box 430, Rosebud, South Dakota 57570. In the future, we will evaluate whether other black-footed ferret reintroductions are feasible within the Experimental Population Area. Cooperating Tribes, agencies, and private landowners will be involved in the selection of any additional sites.

Management considerations of this reintroduction project include:

(a) *Monitoring:* Several monitoring efforts will occur during the first 5 years of the program. We will annually monitor prairie dog distribution and numbers, and the occurrence of sylvatic plague. Testing resident carnivores (*e.g.*, coyotes) for canine distemper will begin prior to the first ferret release and continue each year. We will monitor released ferrets and their offspring annually using spotlight surveys, snowtracking, other visual survey techniques, and possibly radio-telemetry on some individuals. The surveys will incorporate methods to monitor breeding success and long-term survival rates.

Through public outreach programs, we will inform the public and other appropriate State and Federal agencies about the presence of ferrets in the Experimental Population Area and the handling of any sick or injured ferrets. To meet our responsibilities to treat the Tribe on a Government-to-Government basis, we will request that the Tribe inform Tribal members of the presence of ferrets on Reservation lands and the proper handling of any sick or injured ferrets that are found. The Tribe will serve as the primary point of contact to report any injured or dead ferrets. Reports of injured or dead ferrets also must be provided to the Service Field Supervisor (*see* **ADDRESSES** section). It is important that we determine the cause of death for any ferret carcass found. Therefore, we request that discovered ferret carcasses not be disturbed but reported as soon as possible to appropriate Tribal and Service offices.

(b) *Disease:* The presence of canine distemper in any mammal on or near the reintroduction site will cause us to reevaluate the reintroduction program. Prior to releasing ferrets, we will establish the presence or absence of canine distemper in the release area by collecting at least 20 coyotes (and possibly other carnivores). Sampled predators will be tested for canine distemper and other diseases.

We will attempt to limit the spread of distemper by discouraging people from bringing unvaccinated pets into core ferret release areas. Any dead mammal or any unusual behavior observed in animals found within the area should be reported to us (*see* **ADDRESSES** section). Efforts are under way to develop an effective canine distemper vaccine for black-footed ferrets. Routine sampling for sylvatic plague in prairie dog towns will take place before and during the reintroduction effort, and annually thereafter.

(c) *Genetics:* Ferrets selected for reintroduction are excess to the needs of the captive population. Experimental populations of ferrets are usually less genetically diverse than overall captive populations. Selecting and reestablishing breeding ferrets that compensate for any genetic biases in earlier releases may correct this disparity. The ultimate goal is to establish wild ferret populations with the maximum genetic diversity that is possible from the founder ferrets. The eventual interchange of ferrets between established populations found elsewhere in the western United States will ensure that genetic diversity is maintained to the extent possible.

(d) *Prairie Dog Management:* We will work with the Tribe, affected landowners, and other Federal and State agencies to resolve any management conflicts in order to maintain: (1) Sufficient prairie dog acreage and density to support no less than 30 adult black-footed ferrets; and (2) suitable prairie dog habitat on core release areas at or above 2002 survey levels.

(e) *Mortality:* We will only reintroduce ferrets that are surplus to the captive-breeding program. Predator control, prairie dog management, vaccination, ferret preconditioning, and improved release methods should reduce mortality. Public education will help reduce potential sources of human-caused mortality.

The Act defines "incidental take" as take that is incidental to, and not the purpose of, the carrying out of an otherwise lawful activity such as recreation, livestock grazing, and other activities that are in accordance with Federal, Tribal, State, and local laws and regulations. A person may take a ferret within the Experimental Population Area provided that the take is unintentional and was not due to negligent conduct. Such conduct will not constitute "knowing take", and we will not pursue legal action. However, when we have evidence of knowing (*i.e.*, intentional) take of a ferret, we will refer matters to the appropriate authorities for prosecution. Any take of a black-footed ferret, whether incidental or not, must be reported to the local Service Field Supervisor (*see* **ADDRESSES** section) and should be reported to the Tribe as primary point of contact for this NEP. We expect levels of incidental take to be low since the reintroduction is compatible with existing land-use practices for the area.

Based on studies of wild black-footed ferrets at Meeteetse, Wyoming, and other places, black-footed ferrets can be killed by motor vehicles and dogs (Hillman and Linder, 1973; Schroeder and Martin, 1982). We expect a rate of mortality similar to what was documented at Meeteetse, and, therefore, we estimate a human-related annual mortality rate of about 12 percent or less of all reintroduced ferrets and their offspring. If this level is exceeded in any given year, we will develop and implement measures to reduce the level of mortality.

(f) *Special Handling:* Service employees and authorized agents acting on their behalf may handle black-footed ferrets for scientific purposes; to relocate ferrets to avoid conflict with human activities; for recovery purposes; to relocate ferrets to other reintroduction sites; to aid sick, injured, and orphaned ferrets; and to salvage dead ferrets. We will return to captivity any ferret we determine to be unfit to remain in the wild. We also will determine the disposition of all sick, injured, orphaned, and dead ferrets.

(g) *Coordination with Landowners and Land Managers:* The Service and cooperators identified issues and concerns associated with this ferret reintroduction before the development of the proposed rule. The reintroduction also has been discussed with potentially affected State agencies and landowners within the release area. Affected Tribes, State agencies, landowners, and land managers have indicated support for the reintroduction if ferrets released in the Experimental Population Area are established as an NEP and if land use activities in the Experimental Population Area are not constrained without the consent of affected landowners.

(h) *Potential for Conflict with Grazing and Recreational Activities:* We do not expect conflicts between livestock grazing and ferret management. Grazing and prairie dog management on private lands within the Experimental Population Area will continue without additional restriction during implementation of the ferret recovery activities. With proper management, we do not expect adverse impacts to ferrets from hunting, prairie dog shooting, prairie dog control, and trapping of furbearers or predators in the Experimental Population Area. If proposed prairie dog shooting or control locally may affect the ferret's prey base within the primary release area, State, Tribal, and Federal biologists will determine whether ferrets could be impacted and, if necessary, take steps to avoid such impacts. However, because of the NEP designation, these steps will be voluntary measures since any recommendations by biologists will be advisory only. If private activities impede the establishment of ferrets, we will work closely with the Tribe and landowners to suggest alternative procedures to minimize conflicts.

(i) *Protection of Black-footed Ferrets:* We will release ferrets in a manner that provides short-term protection from natural (*e.g.*, predators, disease, lack of prey base) and human-related sources of mortality. Improved release methods, vaccination, predator control, and management of prairie dog populations should help reduce natural mortality. Releasing ferrets in areas with little human activity and development will minimize human-related sources of mortality. We will work with the Tribe and landowners to help avoid certain activities that could impair ferret recovery.

(j) *Public Awareness and Cooperation:* We will inform the general public of the importance of this reintroduction project in the overall recovery of the black-footed ferret. The designation of the NEP for the Reservation and adjacent areas will provide greater flexibility in the management of the reintroduced ferrets. The NEP designation is necessary to secure needed cooperation of the Tribe, landowners, agencies, and other interests in the affected area.

Based on the above information, and using the best scientific and commercial data available (in accordance with 50 CFR 17.81), the Service finds that releasing black-footed ferrets into the Experimental Population Area will further the conservation of the species.

Previous Federal Action

The proposal to designate a NEP in south-central South Dakota was published in the **Federal Register** on September 11, 2002 (67 FR 57558) concurrent with a notice of a public hearing on September 26, 2002 at the Multi-Cultural Center in Mission, South Dakota. Informational meetings regarding the Rosebud ferret reintroduction effort were held on August 13, 15, and 16, 2002, at He Dog, Parmelee, and Rosebud Communities in Todd County, South Dakota and on August 29, 2002, at the Rosebud Casino located on the Rosebud Sioux Reservation. In addition, we have held numerous meetings with the various Tribal Council members and other interested parties throughout this rulemaking process.

Peer Review

In accordance with our policy on peer review published on July 1, 1994 (59 FR 34270), Interagency Cooperative Policy on Peer Review (Peer Review Policy), we requested the expert opinions of independent specialists regarding pertinent scientific or commercial data and assumptions relating to supportive biological and ecological information for this NEP rule. Reviewers were asked to review the proposed rule and the supporting data, to point out any mistakes in our data or analysis, and to identify any relevant data that we might have overlooked. We did not received any requests for substantive changes from these reviewers, but we did receive comments that the proposal had merit and recommendations of support.

Summary of Comments and Recommendations

The September 11, 2002, proposed rule and associated notifications requested all interested parties to submit factual reports or information that might contribute to the development of a final rule. Appropriate Federal and State agencies, county governments, scientific organizations, and other interested parties were contacted and requested to comment. Newspaper notices inviting public comment and advertising the public hearing on the proposal were published in South Dakota newspapers and broadcast on local radio stations in the reintroduction area. These included the *Todd County Tribune* in August and September 2002, and KINI radio announcements in August 2002.

The Service also mailed the proposed rule to 29 people representing individuals; State, Federal, and local governments; corporations; and nongovernmental organizations affiliated with environmental, grazing, and recreational interests in South Dakota. This mailing list was from previous meetings and open houses we conducted for other ferret reintroduction efforts in South Dakota. A total of seven written comments were received during the comment period.

In addition, we received seven comment letters prior to publication of the proposed rule. These were mainly letters encouraging the Service and the Tribe to proceed with a reintroduction effort on the Rosebud Reservation. All seven comment letters received prior to the publication of the proposed rule supported the reintroduction effort. Of the seven comment letters received during the comment period, two were opposed to the reintroduction efforts, three expressed concerns about the process of designating a 10(j) area and/or about prairie dogs and various control options, and two commenters supported the Rosebud reintroduction effort.

As mentioned above in "Previous Federal Actions," we also hosted informational meetings and a public hearing to explain this rulemaking. At the informational meetings, most participants were not supportive of a ferret reintroduction effort. At the public hearing conducted a few weeks after the informational meetings, the Tribe was able to discuss their entire Prairie Management Plan, of which the ferret reintroduction is one component. Many of the concerns expressed at the informational meetings, such as management of prairie dogs, loss of revenue from prairie dogs, and range improvements, are addressed in the Rosebud Prairie Management Plan. Consequently, attendees at the public hearing voiced few comments against the ferret reintroduction. However, it must be noted that very few (five) people provided comments at the public hearing. Most of the attendees asked questions and left without providing verbal or written comments during the public hearing. Most of the written and verbal comments received addressed the potential for the designation to interfere with current and proposed land uses within the experimental population boundary, the loss of revenue associated with prairie dog colonies, and the concern that the Service may change the NEP designation in the future. The following summary addresses the written and verbal comments received during the informational meetings, public hearing, and comment period. Our response to each issue is given below.

Issue 1: Some commenters were concerned that the Service will change the NEP designation in the future.

Service Response: As stated under "5. Reintroduction Procedures" in the **SUPPLEMENTARY INFORMATION** section of this final rule, we do not expect to change the designation unless the reintroduction effort fails or the species recovers. Presently, there are no proposals by the Service, or any requests on the part of other agencies or nongovernmental organizations, to amend this or any of the prior designations. Consequently, we anticipate that the NEP designation for south-central South Dakota will continue in the future. If the release fails, we may abandon the NEP designation because such a designation is unnecessary given the absence of the species in the area. Success under an NEP designation will argue against upgrading the designation to essential, or reinstating an endangered or threatened designation because of potential conflicts with ongoing activities in the area. If the Service and cooperating agencies are able to recover a species under an NEP designation, then we will have no cause to increase

the degree of protection allowed under the Act. In any case, making any change to the NEP designation will require a new proposed rule, a public comment period, public meetings, National Environmental Policy Act compliance, and other documentation prior to publication of a final rule to change or abandon the designation.

Issue 2: Some commenters raised concerns that ferrets may disperse from their release site, potentially affecting land uses in areas outside the release area, and cause the Service to impose stricter rules governing resource development activities outside the boundaries of the Experimental Population Area.

Service Response: Investigations of black-footed ferret dispersal at existing experimental release sites and research conducted at Meeteetse, Wyoming, confirm that ferret dispersal to areas outside of active prairie dog colonies is rare (Forrest *et al.*, 1985). Ferrets are not known to establish residence away from active prairie dog colonies (Henderson *et al.*, 1996 updated 1974; Hillman and Linder, 1973). Recent modifications to ferret husbandry techniques have been successful in developing captive-reared animals that stay nearer to release sites than the ferrets raised in captivity and released in earlier trials. The Rosebud Experimental Population Area encompasses sufficient prairie dog colonies believed to be necessary for long-term occupation by ferrets. Consequently, we believe it is unlikely that ferrets will disperse to and establish permanent residence within areas outside the Experimental Population Area. Contingencies stated earlier under "7. Location of Reintroduced Population" of the **SUPPLEMENTARY INFORMATION** section in this final rule allow for capture and return of ferrets to the Experimental Population Area, should this occur.

Issue 3: Some commenters expressed their opinion that releases should only occur on Rosebud Trust lands or lands of individuals who are cooperating with the Rosebud Sioux Tribe.

Service Response: Black-footed ferrets will only be released on Rosebud Trust lands and deeded land of those individuals who choose to cooperate with the Rosebud Sioux Tribe in this reintroduction.

Issue 4: Some commenters suggested that Gregory and Tripp Counties should not be included as part of the Experimental Population Area.

Service Response: The primary reintroduction area for ferrets in the Rosebud Experimental Population Area will occur in Todd County. Including Gregory, Mellette, and Tripp Counties in the Experimental Population Area only means that, if a ferret were to be located in those counties, it will be considered part of the NEP. The Tribe also has significant acreages of Trust land in those counties, but there is no intent to reintroduce ferrets in those counties. Including those counties will block-clear the area for prairie dog control purposes as well. Congress amended the Endangered Species Act to incorporate section 10(j) to enhance the opportunity for release of federally listed species on private lands. However, we believe that including most of Rosebud Trust lands within the Experimental Population Area will provide the flexibility for management of ferrets sought by the Tribe and the Service. The number of prairie dog colonies in Gregory and Tripp Counties is far smaller than in the proposed reintroduction site, and ferrets are not expected to inhabit those counties.

Issue 5: Some commenters expressed concern that the process has proceeded too fast and more comment time is needed.

Service Response: The Service and the Rosebud Sioux Tribe have been discussing ferret reintroduction on the Rosebud Reservation since 1996. Considerable progress was made toward that effort and Tribal resolutions were passed at that time, but ultimately the Tribe chose not to proceed. In 2001, the Tribe again expressed an interest and, in 2002, asked the Service to complete the process for an NEP designation. The Service has proceeded accordingly and will continue to follow the Tribal Council direction as to whether to proceed with reintroduction efforts. The ferret reintroduction effort will be managed and undertaken by the Rosebud Game, Fish, and Parks Department.

Issue 6: Some commenters stated that black-footed ferrets are not native to this area.

Service Response: The last remaining population of wild black-footed ferrets in South Dakota was known to exist in this area and adjacent Mellette County until the early 1970s (Henderson *et al.*, 1969, updated 1974). The Service and Tribe believe that black-footed ferrets are native to the Rosebud Reservation.

Issue 7: Some commenters state their concern that the proposed rule gives biologists too much authority to change plans and take steps as they deem necessary to avoid impacts to ferrets from activities that may impact prairie dogs.

Service Response: While biologists from different entities (*e.g.*, Service, Rosebud Sioux Tribe, Forest Service) may assist with this reintroduction effort, any comments from a biologist on effects of human activities on private lands that may affect the reintroduced ferrets are advisory in nature under this NEP designation. Prairie dog control on deeded land will remain with the landowners to be managed in compliance with State rules and other applicable Federal and local laws, while prairie dog control on Tribal lands will remain under the authority of the Rosebud Sioux Tribe. Landowners within the Experimental Population Area will still be allowed to conduct lawful control of prairie dogs. We do not anticipate any additional restrictions on grazing and prairie dog management on private lands within the Experimental Population Area during implementation of the ferret recovery activities.

Issue 8: Some commenters raised concern that this rule will have a substantial impact on private land and private property rights.

Service Response: Using section 10(j) of the Act to designate a reintroduced population of black-footed ferret as an NEP removes most regulatory burdens that might otherwise be associated with reintroduction of an endangered species. The remaining restrictions are related to intentional or negligent take of ferrets. For instance, deliberately shooting a ferret is a prohibited activity, but prairie dog control actions are not prohibited. In addition, any activity needing access to private lands will be conducted only with the permission of the landowner.

Issue 9: Some commenters suggested that the black-footed ferret should be delisted under the Act after a viable population is established and confined to Badlands National Park.

Service Response: At this time, the recovery goals for completely removing the species from the protections of the Act are not defined, but recovery of this species will depend on more than viable populations of ferrets at Badlands National Park or other National Parks. The Black-footed Ferret Recovery Plan (U.S. Fish and Wildlife Service, 1988) lists the requirements for downlisting the species from endangered to threatened, including "encouraging the widest possible distribution of reintroduced animals throughout their historical range." It is imperative that sites outside of the few National Parks with suitable prairie habitat are used to ensure the widest distribution of this species across its historic habitat and to avoid the possibility of a catastrophic event devastating the species once again.

Issue 10: Some commenters raised concerns that reintroduced ferrets may carry diseases.

Service Response: Under 8(b) "Disease" of the **SUPPLEMENTARY INFORMATION** section of this final rule, we address the implications of disease to the success of the actions under this rule. Management plans for ferret reintroductions in South Dakota also have contingencies developed relating to disease management. These contingencies include: Vaccinating all black-footed ferrets prior to release into pre-release conditioning pens, vaccinating black-footed ferret kits at least once prior to release, re-administering medications to ferrets captured during monitoring, discouraging presence of domestic dogs near the pre-conditioning pens, and encouraging routine vaccination of dogs. Management plans also call for continued monitoring of prairie dog populations and certain predators to determine if various disease outbreaks are occurring. It is the Service and Tribe's intent to avoid any disease outbreaks.

Issue 11: Commenters also expressed concern that prairie dog colonies on Tribal Trust lands could result in less revenue generated from grazing receipts for the Tribe and Allottees.

Service Response: The Rosebud Prairie Management Plan proposes to offset the loss of revenue to the Tribe and Allottees by making a payment to those entities with prairie dog colonies on Tribal Trust Lands. The efforts to develop a payment to offset revenue loss from prairie dogs was developed in response to comments received at informational meetings and incorporated into the Rosebud Prairie Management Plan.

Issue 12: Other commenters voiced concern that an incentive payment for prairie dogs might make individuals uninterested in prairie dog control.

Service Response: Any payments for prairie dog acreage will be at the discretion of the Rosebud Sioux Tribe.

Issue 13: Some commenters mentioned that prairie dog control and management is needed before reintroducing ferrets on Rosebud Reservation.

Service Response: The Rosebud Prairie Management Plan will actively manage the existing prairie dog population on Trust lands including prairie dog control and range improvements. Ferret reintroduction will not affect the ability to control prairie dogs in the counties designated as part of the Experimental Population Area.

Issue 14: Some commenters asked what the penalties are for killing black-footed ferrets while driving cars or conducting other activities in the Experimental Population Area.

Service Response: Section 8.(e) "Mortality" of this final rule addresses the issue of incidental take of black-footed ferrets within the Experimental Population Area. Basically, any take of a ferret within the experimental population boundary that is incidental to an otherwise lawful activity will not constitute "knowing take" for the purposes of this regulation. Consequently, we will investigate any ferret killed by an automobile or by other actions to determine if the death was entirely accidental, or whether there was any intention to deliberately kill the ferret. If the ferret was killed unintentionally and reasonable care was given to avoid the ferret, there will be no penalty for killing of the ferret. All ferret deaths must be reported (see **ADDRESSES** section) so that cause of death can be determined and to assist the Tribe in maintenance of its records on the status of the reintroduced population.

Issue 15: Some commenters asked, "What are the effects of the proposal on private lands?'

Service Response: This NEP designation will impose no additional restrictions on activities on private lands other than those that currently exist, except for restricting intentional take of the reintroduced ferrets. This NEP designation relaxes the consultation process under section 7 of the Act for any activity requiring Federal approval. For example, prairie dog control on private lands will continue to be subject to the rodenticide label restrictions. Killing a black-footed ferret on private lands requires reporting the incident to the proper authorities for determination of whether the take was incidental or intentional. The black-footed ferret management plans prepared for the Rosebud reintroduction effort predict that all current land uses on private lands in these areas will continue to operate following reintroduction of black-footed ferrets.

Effective Date Justification

We find good cause under the Administrative Procedure Act (5 U.S.C. 553(d)(3)) to make this rule effective upon publication. Making this rule effective immediately allows for the timely transfer of suitable black-footed ferret preconditioned animals or those that are wild-born to the Experimental Population Area. The following biological considerations necessitate this approach. Weather conditions may preclude the ability to trap and move wild-born ferrets. The opportunity to release ferrets on Rosebud Tribal Trust lands is dependent upon the availability of animals for translocation, which may be limited in the captive population. The success of the reintroduction effort may be related, at least in part, to the ability to release animals immediately upon publication of this rule. Therefore, we are making this rule effective immediately upon publication.

Required Determinations

Regulatory Planning and Review (E.O. 12866)

In accordance with the criteria in Executive Order 12866, the designation of NEP status for the black-footed ferret reintroduction into south-central South Dakota is not a significant regulatory action subject to Office of Management and Budget review. This rule will not have an annual economic effect of $100 million and will not have an adverse effect upon any economic sector, productivity, jobs, the environment, or other units of government. Therefore, a cost-benefit and economic analysis is not required.

Lands within the Experimental Population Area affected by this rule include Gregory, Mellette, Todd, and Tripp Counties in South Dakota. The primary reintroduction area where ferrets will be released is Rosebud Tribal Trust lands in Todd County, and most of the prairie dog colonies within the primary release area are on these lands. Prairie dog colonies off the Rosebud Tribal Trust lands but within the primary reintroduction area and those colonies within Experimental Population Area but outside the primary reintroduction area are not needed for the Reservation reintroduction effort to have a successful site. Land uses on private, Tribal, and State school lands will not be hindered by the proposal, and only voluntary participation by private landowners will occur.

This rule will not create inconsistencies with other agencies' actions or otherwise interfere with an action taken or planned by another agency. Federal agencies most interested in this rulemaking are primarily other Department of the Interior bureaus (*i.e.*, Bureau of Indian Affairs) and the Department of Agriculture (Forest Service). This rulemaking is consistent with the policies and guidelines of the other Interior bureaus. Because of the substantial regulatory relief provided by the NEP designation, we believe the reintroduction of the black-footed ferret in the areas described will not conflict with existing human activities or hinder public utilization of the area.

This rule will not materially affect entitlements, grants, user fees, loan programs, or the rights and obligations

of their recipients. This rule will not raise novel legal or policy issues. The Service has previously designated experimental populations of black-footed ferrets at seven other locations (in Colorado/Utah, Montana, South Dakota, Arizona, and Wyoming) and for other species at numerous locations throughout the nation.

Regulatory Flexibility Act

The Department of the Interior certifies that this document will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). The area affected by this rule consists of the Rosebud Indian Reservation, and private, Federal, and State lands that fall within the south-central tier of counties in South Dakota (Mellette, Todd, Tripp, and Gregory Counties). Reintroduction of ferrets allowed by this rule will not have any significant effect on recreational activities in the Experimental Population Area. We do not expect any closures of roads, trails, or other recreational areas. Suspension of prairie dog shooting for ferret management purposes will be localized and prescribed by the Tribe. We do not expect ferret reintroduction activities to affect grazing operations, resource development actions, or the status of any other plant or animal species within the release area. Because participation in ferret reintroduction by private landowners is voluntary, this rulemaking is not expected to have any significant impact on private activities in the affected area. The designation of the NEP in this rule will significantly reduce the regulatory requirements regarding the reintroduction of these ferrets, will not create inconsistencies with other agency actions, and will not conflict with existing or proposed human activity, or Tribal and public use of the land.

Small Business Regulatory Enforcement Fairness Act

This rule is not a major rule under 5 U.S.C. 804(2), the Small Business Regulatory Enforcement Fairness Act. This rule will not have an annual effect on the economy of $100 million or more for reasons outlined above. It will not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions. The rule does not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of United States-based enterprises to compete with foreign-based enterprises.

Unfunded Mandates Reform Act

The NEP designation will not place any additional requirements on any city, county, or other local municipalities. The specific site designated for release of the experimental population of ferrets is predominantly Rosebud Sioux Tribal Trust land administered by the Rosebud Sioux Tribe, who support this project. The State of South Dakota has expressed support for accomplishing the reintroduction through a nonessential experimental designation. Accordingly, this rule will not "significantly or uniquely" affect small governments. A Small Government Agency Plan is not required. Since this rulemaking does not require that any action be taken by local or State government or private entities, we have determined and certify pursuant to the Unfunded Mandates Reform Act, 2 U.S.C. 1502 *et seq.*, that this rulemaking will not impose a cost of $100 million or more in any given year on local or State governments or private entities (*i.e.*, it is not a "significant regulatory action" under the Act).

Takings (E.O. 12630)

In accordance with Executive Order 12630, the rule does not have significant takings implications. Designating reintroduced populations of federally listed species as NEPs significantly reduces the Act's regulatory requirements with respect to the reintroduced listed species within the NEP. Under NEP designations, the Act requires a Federal agency to confer with the Service if the agency determines its action within the NEP is likely to jeopardize the continued existence of the reintroduced species. However, even if an agency action totally eliminated a reintroduced species from an NEP and jeopardized the species' continued existence, the Act does not compel a Federal agency to stop a project, deny issuing a permit, or cease any activity. Additionally, regulatory relief can be provided regarding take of reintroduced species within NEPs, and a special rule has been developed stipulating that unintentional take (including killing or injuring) of the reintroduced black-footed ferrets will not be a violation of the Act, when such take is incidental to an otherwise legal activity (*e.g.*, livestock management, mineral development) that is in accordance with Federal, Tribal, State, and local laws and regulations.

Most of the lands within the primary reintroduction area are administered by the Rosebud Sioux Tribe. Multiple-use management of these lands by industry and recreation interests will not change as a result of the experimental designation. Private landowners within the Experimental Population Area will still be allowed to conduct lawful control of prairie dogs, and may elect to have black-footed ferrets removed from their land should ferrets move to private lands. Because of the substantial regulatory relief provided by NEP designations, we do not believe the reintroduction of ferrets will conflict with existing human activities or hinder public use of the area. The South Dakota Department of Game, Fish, and Parks has previously endorsed ferret reintroductions under NEP designations and continues to do so for this effort. The NEP designation will not require the South Dakota Department of Game, Fish, and Parks to specifically manage for reintroduced ferrets. A takings implication assessment is not required.

Federalism (E.O. 13132)

In accordance with Executive Order 13132, the rule does not have significant Federalism implications to warrant the preparation of a Federalism Assessment. As stated above, most of the lands within the primary reintroduction area are Tribal Trust lands, and multiple-use management of these lands will not change to accommodate black-footed ferrets. The designation will not impose any new restrictions on the State of South Dakota. The Service has coordinated extensively with the Tribe and State of South Dakota, and they endorse the NEP designation as the only feasible way to pursue ferret recovery in the area. A Federalism Assessment is not required.

Civil Justice Reform (E.O. 12988)

In accordance with Executive Order 12988, the Department of the Interior has determined that this rule does not unduly burden the judicial system and meets the applicable standards provided in sections 3(a) and 3(b)(2) of the order.

Paperwork Reduction Act

This regulation contains information collection requirements under the Paperwork Reduction Act (and approval by the Office of Management and Budget (OMB)) under 44 U.S.C. 3501 *et seq.* The collected information covers general take or removal, depredation-related take, and specimen collection. Authorization for this information collection has been approved by OMB and has been assigned OMB control number 1018–0095, which expires October 31, 2004. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a current valid OMB control number.

National Environmental Policy Act

We have analyzed this rule in accordance with the criteria of the National Environmental Policy Act of 1969. We have prepared an environmental assessment as defined under the authority of NEPA, which is available from the Service office identified in the **ADDRESSES** section. In that environmental assessment, we determined that this rule does not constitute a major Federal action significantly affecting the quality of the human environment.

Government-to-Government Relationship With Tribes (E.O. 13175)

In accordance with the President's memorandum of April 29, 1994, "Government-to-Government Relations with Native American Tribal Governments" (59 FR 22951), E.O. 13175, and 512 DM 2, we have closely coordinated this rule with the affected tribe, the Rosebud Sioux Tribe. Throughout development of this rule, we have maintained regular contact with the Rosebud Sioux Tribe and have received their support for this reintroduction and NEP designation.

Energy Supply, Distribution, or Use (E.O. 13211)

On May 18, 2001, the President issued Executive Order 13211 on regulations that significantly affect energy supply, distribution, and use. Executive Order 13211 requires agencies to prepare Statements of Energy Effects when undertaking certain actions. Because this final rule is not a significant regulatory action under Executive Order 12866, it is not expected to significantly affect energy supplies, distribution, and use. Therefore, this action is a not a significant energy action, and no Statement of Energy Effects is required.

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Authors

The primary authors of this rule are Mike Lockhart and Scott Larson (see **ADDRESSES** section).

List of Subjects in 50 CFR Part 17

Endangered and threatened species, Exports, Imports, Reporting and recordkeeping requirements, Transportation.

Regulations Promulgation

■ Accordingly, we amend part 17, subchapter B of chapter I, title 50 of the U.S. Code of Federal Regulations, as set forth below:

PART 17—[AMENDED]

■ 1. The authority citation for Part 17 continues to read as follows:

Authority: 16 U.S.C. 1361–1407; 16 U.S.C. 1531–1544; 16 U.S.C. 4201–4245; Pub. L. 99–625, 100 Stat. 3500; unless otherwise noted.

■ 2. Amend § 17.11(h) by revising the existing entry for "Ferret, black-footed" under "MAMMALS" to read as follows:

§ 17.11 Endangered and threatened wildlife.

* * * * *

(h) * * *

Species		Historic range	Vertebrate population where endangered or threatened	Status	When listed	Critical habitat	Special rules
Common name	Scientific name						
MAMMALS							
.	.	.	.	.	.	.	.
Ferret, black-footed	*Mustela nigripes* ...	Western U.S.A., Western Canada.	Entire, except where listed as an experimental population.	E	1, 3, 433, 545, 546, 582, 646, 703, 737.	NA	NA
Do	.....do	.....do	U.S.A. (specified portions of AZ, CO, MT, SD, UT, and WY, see 17.84(g)(9)).	XN	433, 545, 546, 582, 646, 703, 737.	NA	17.84(g)
.	.	.	.	.	.	.	.

■ 3. Amend § 17.84 by revising paragraphs (g)(1) and (g)(4)(iii) and by adding paragraphs (g)(6)(vii) and (g)(9)(vii) to read as follows, and by adding a map to follow the existing maps at the end of this paragraph (g):

§ 17.84 Special rules—vertebrates.

* * * * *

(g) Black-footed ferret (*Mustela nigripes*).

(1) The black-footed ferret populations identified in paragraph (g)(9)(i) through (vii) of this section are nonessential experimental populations. We will manage each of these populations in accordance with their respective management plans.

* * * * *

(4) * * *

(iii) To relocate a ferret that has moved outside the Little Snake Black-footed Ferret Management Area/Coyote Basin Primary Management Zone or the Rosebud Sioux Reservation Experimental Population Area when that relocation is necessary to protect the ferret or is requested by an affected landowner or land manager, or whose removal is requested pursuant to paragraph (g)(12) of this section.

* * * * *

(6) * * *

(vii) Report such taking in the Rosebud Sioux Reservation Experimental Population Area to the Field Supervisor, Ecological Services, U.S. Fish and Wildlife Service, Pierre, South Dakota (telephone 605/224–8693).

* * * * *

(9) * * *

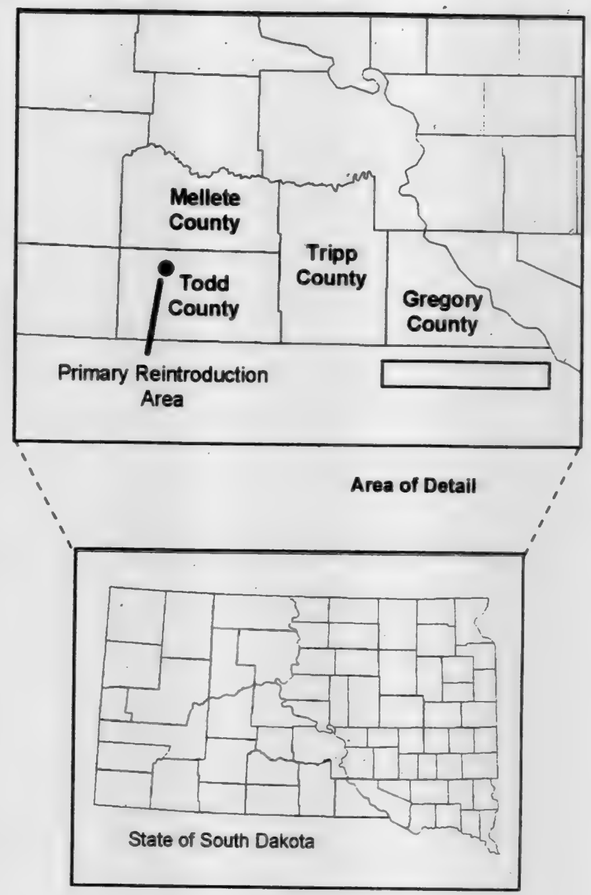
(vii) The Rosebud Sioux Reservation Experimental Population Area is shown on the map of south-central South Dakota at the end of paragraph (g) of this section. The boundaries of the nonessential experimental population area include all of Gregory, Mellette, Todd, and Tripp Counties in South Dakota. Any black-footed ferret found within these four counties will be considered part of the nonessential experimental population after the first breeding season following the first year of black-footed ferret release. A black-footed ferret occurring outside the nonessential experimental population area in south-central South Dakota will initially be considered as endangered but may be captured for genetic testing. If necessary, disposition of the captured animal may occur in the following ways:

(A) If an animal is genetically determined to have originated from the experimental population, we may return it to the reintroduction area or to a captive-breeding facility.

(B) If an animal is determined to be genetically unrelated to the experimental population, we will place it in captivity under an existing contingency plan. Up to nine black-footed ferrets may be taken for use in the captive-breeding program.

* * * * *

BILLING CODE 4310–55–P



Rosebud Sioux Tribe ITOPA SAPA KIN (Black-footed Ferret)
Experimental Population Area - South Dakota

Dated: April 16, 2003.

Paul Hoffman,

Acting Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 03–12199 Filed 5–15–03; 8:45 am]

BILLING CODE 4310–55–C

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[Docket No. 000407096–0096–01; I.D. 051203A]

Fisheries of the Northeastern United States; Northeast (NE) Multispecies Fishery; Commercial Haddock Harvest

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Removal of haddock daily trip limit.

SUMMARY: NMFS announces that the Administrator, Northeast Region, NMFS (Regional Administrator) is suspending the haddock daily trip limit for the groundfish fishery for the remainder of the 2003 fishing year. The Regional Administrator has projected that less than 75 percent of the haddock target total allowable catch (TAC) will be harvested for the 2003 fishing year under the restrictive daily trip limits. This action is intended to allow fishermen to catch the haddock TAC, without exceeding it.

DATES: Effective May 13, 2003 through April 30, 2004.

FOR FURTHER INFORMATION CONTACT: Susan Chinn, Fishery Management Specialist, 978–281–9218.

SUPPLEMENTARY INFORMATION: Framework Adjustment 33 to the NE Multispecies Fishery Management Plan, which became effective May 1, 2000, implemented the current haddock trip limit regulations (65 FR 21658, April 24, 2000). To ensure that haddock landings do not exceed the appropriate target TAC, Framework 33 established a haddock trip limit of 3,000 lb (1,360.8 kg) per NE multispecies day-at-sea (DAS) fished and a maximum trip limit of 30,000 lb (13,608 kg) of haddock for the period May 1 through September 30; and 5,000 lb (2,268 kg) of haddock per DAS and 50,000 lb (22,680 kg) per trip from October 1 through April 30. Framework 33 also provided a mechanism to adjust the haddock trip limit based upon the percentage of TAC that is projected to be harvested. Section 648.86(a)(1)(iii)(B) specifies that, if the Regional Administrator projects that less than 75 percent of the haddock target TAC will be harvested in the fishing year, the trip limit may be adjusted. Further, this section stipulates that NMFS will publish notification in the **Federal Register** informing the public of the date of any changes to the trip limit.

Based on the March, 2002, "Final Report of the Working Group on Re-Evaluation of Biological Reference Points for New England Groundfish," (Report) the appropriate Georges Bank haddock target TAC for the 2002 fishing year was estimated to be 17,337 mt. A subsequent assessment of Georges Bank haddock by the Groundfish Assessment Review Meeting (GARM, October 2002) calculated a stock size similar to that noted in the March, 2002, Report. Therefore, the target TAC for the 2003 fishing year remains at 17,337 mt. Based on recent historical fishing practices, the Regional Administrator has projected that less than 75 percent of the haddock target TAC for the 2003 fishing year will be harvested by April 30, 2004, and has therefore determined that suspending the 3,000–lb (1,360.8–kg) and 5,000–lb (2,268–kg) daily haddock trip limits through April 30, 2004, while retaining the associated 30,000–lb (13,608–kg) and 50,000–lb (22,680–kg) per trip possession limits for May 1 through September 30, 2003, and October 1 through April 30, 2004, respectively, will provide the industry with the opportunity to harvest the target TAC for the 2003 fishing year. In order to prevent the TAC from being exceeded, the Regional Administrator may adjust this possession limit again through publication of a notification in the **Federal Register**, pursuant to § 648.86(a)(1)(iii).

Classification

This action is required by 50 CFR part 648 and is exempt from review under Executive Order 12866.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: May 12, 2003.

Bruce C. Morehead,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 03–12299 Filed 5–13–03; 2:38 pm]

BILLING CODE 3510–22–S

Proposed Rules

Federal Register

Vol. 68, No. 95

Friday, May 16, 2003

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

NUCLEAR REGULATORY COMMISSION

10 CFR Part 50

RIN 3150–AG42

Risk-Informed Categorization and Treatment of Structures, Systems and Components for Nuclear Power Reactors

AGENCY: Nuclear Regulatory Commission.

ACTION: Proposed rule.

SUMMARY: The Nuclear Regulatory Commission (NRC) is proposing to amend its regulations to provide an alternative approach for establishing the requirements for treatment of structures, systems and components (SSCs) for nuclear power reactors using a risk-informed method of categorizing SSCs according to their safety significance. The proposed amendment would revise requirements with respect to "special treatment," that is, those requirements that provide increased assurance (beyond normal industrial practices) that SSCs perform their design basis functions. This proposed amendment would permit licensees (and applicants for licenses) to remove SSCs of low safety significance from the scope of certain identified special treatment requirements and revise requirements for SSCs of greater safety significance. In addition to the rulemaking and its associated analyses, the Commission is also proposing a draft regulatory guide to implement the rule.

DATES: Submit comments by July 30, 2003. Comments received after this date will be considered if it is practical to do so, but the Commission is able to ensure consideration only for comments received on or before this date.

ADDRESSES: You may submit comments by any one of the following methods. Please include the following number (RIN 3150–AG42) in the subject line of your comments. Comments on rulemakings submitted in writing or in electronic form will be made available to the public in their entirety on the NRC rulemaking web site. Personal information will not be removed from your comments.

Mail comments to: Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, ATTN: Rulemakings and Adjudications Staff.

E-mail comments to: *SECY@nrc.gov*. If you do not receive a reply e-mail confirming that we have received your comments, contact us directly at (301) 415–1966. You may also submit comments via the NRC's rulemaking web site at *http://ruleforum.llnl.gov*. Address questions about our rulemaking website to Carol Gallagher (301) 415–5905; email *cag@nrc.gov*.

Hand deliver comments to: 11555 Rockville Pike, Rockville, Maryland 20852, between 7:30 am and 4:15 pm Federal workdays. (Telephone (301) 415–1966).

Fax comments to: Secretary, U.S. Nuclear Regulatory Commission at (301) 415–1101.

Publicly available documents related to this rulemaking may be examined and copied for a fee at the NRC's Public Document Room (PDR), Public File Area O1 F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland. Selected documents, including comments, can be viewed and downloaded electronically via the NRC rulemaking web site at *http://ruleforum.llnl.gov*.

Publicly available documents created or received at the NRC after November 1, 1999, are available electronically at the NRC's Electronic Reading Room at *http://www.nrc.gov/NRC/ADAMS/index.html*. From this site, the public can gain entry into the NRC's Agencywide Document Access and Management System (ADAMS), which provides text and image files of NRC's public documents. If you do not have access to ADAMS or if there are problems in accessing the documents located in ADAMS, contact the NRC Public Document Room (PDR) Reference staff at 1–800–397–4209, 301–415–4737 or by email to *pdr@nrc.gov*.

FOR FURTHER INFORMATION CONTACT: Mr. Timothy Reed, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; telephone (301) 415–1462; e-mail: *tar@nrc.gov*.

SUPPLEMENTARY INFORMATION:

Table of Contents

I. Background
II. Rule Initiation
III. Proposed Regulations
IV. Public Input to the Proposed Rule
V. Section by Section Analysis
VI. Other Topics for Public Comment
VII. Guidance
VIII. Criminal Penalties
IX. Compatibility of Agreement State Regulations
X. Availability of Documents
XI. Plain Language
XII. Voluntary Consensus Standards
XIII. Finding of No Significant Environmental Impact
XIV. Paperwork Reduction Act Statement
XV. Regulatory Analysis
XVI. Regulatory Flexibility Act Certification
XVII. Backfit Analysis

I. Background

The NRC has established a set of regulatory requirements for commercial nuclear reactors to ensure that a reactor facility does not impose an undue risk to the health and safety of the public, thereby providing reasonable assurance of adequate protection to public health and safety. The current body of NRC regulations and their implementation are largely based on a "deterministic" approach.

This deterministic approach establishes requirements for engineering margin, quality assurance in design, manufacture, and construction. In addition, it assumes that adverse conditions can exist (*e.g.*, equipment failures and human errors) and establishes a specific set of design basis events (DBEs). The deterministic approach contains implied elements of probability (qualitative risk considerations), from the selection of accidents to be analyzed (*e.g.*, reactor vessel rupture is considered too improbable to be included) to the system level requirements for emergency core cooling (*e.g.*, safety train redundancy and protection against single failure). The deterministic approach then requires that the licensed facility include safety systems capable of preventing and/or mitigating the consequences of those DBEs to protect public health and safety. Those SSCs necessary to defend against the DBEs were defined as "safety-related," and these SSCs were the subject of many regulatory requirements designed to ensure that they were of high quality, high reliability, and had capability to perform during postulated design basis

conditions. Typically, the regulations establish the scope of SSCs that receive special treatment using one of three different terms: "safety-related," "important to safety," or "basic component." The terms "safety-related" and "basic component" are defined in the regulations, while "important to safety" (used principally in the general design criteria of Appendix A to 10 CFR part 50) is not explicitly defined.

These prescriptive requirements as to how licensees were to treat SSCs, especially those that are defined as "safety-related," are referred to in the rulemaking as "special treatment requirements." These requirements were developed to provide greater assurance that these SSCs would perform their functions under particular conditions (*e.g.*, seismic events, or harsh environments), with high quality and reliability, for as long as they are part of the plant. These include particular examination techniques, testing strategies, documentation requirements, personnel qualification requirements, independent oversight, etc. In many instances, these "special treatment" requirements were developed as a means to gain assurance when more direct measures, *e.g.*, testing under design basis conditions or routine operation, could not show that SSCs were functionally capable.

Special treatment requirements are imposed on nuclear reactor applicants and licensees through numerous regulations that have been issued since the 1960's. These requirements specify different scopes of equipment for different special treatment requirements depending on the specific regulatory concern, but are derived from consideration of the deterministic DBEs.

Treatment for an SSC, as a general term and as it will be used in this rulemaking, refers to activities, processes, and/or controls that are performed or used in the design, installation, maintenance, and operation of structures, systems, or components as a means of (1) specifying and procuring SSCs that satisfy performance requirements; (2) verifying over time that performance is maintained; (3) controlling activities that could impact performance; and (4) providing assessment and feedback of results to adjust activities as needed to meet desired outcomes. Treatment includes, but is not limited to, quality assurance, testing, inspection, condition monitoring, assessment, evaluation, and resolution of deviations. The distinction between "treatment" and "special treatment" is the degree of NRC specification as to what must be implemented for particular SSCs or for particular conditions.

Defense-in-depth is an element of the NRC's safety philosophy that employs successive measures to prevent accidents or mitigate damage if a malfunction, accident, or naturally caused event occurs at a nuclear facility. Defense-in-depth is a philosophy used by the NRC to provide redundancy as well as the philosophy of a multiple-barrier approach against fission product releases. The defense-in-depth philosophy ensures that safety will not be wholly dependent on any single element of the design, construction, maintenance, or operation of a nuclear facility. The net effect of incorporating defense-in-depth into design, construction, maintenance, and operation is that the facility or system in question tends to be more tolerant of failures and external challenges.

A probabilistic approach to regulation enhances and extends the traditional deterministic approach by allowing consideration of a broader set of potential challenges to safety, providing a logical means for prioritizing these challenges based on safety significance, and allowing consideration of a broader set of resources to defend against these challenges. Until the accident at Three Mile Island (TMI), the NRC only used probabilistic criteria in specialized areas, such as for certain man-made hazards and for natural hazards (with respect to initiating event frequency). The major investigations of the TMI accident recommended that probabilistic risk assessment (PRA) techniques be used more widely to augment traditional nonprobabilistic methods of analyzing plant safety.

In contrast to the deterministic approach, PRAs address credible initiating events by assessing the event frequency. Mitigating system reliability is then assessed, including the potential for common cause failures. The probabilistic treatment goes beyond the single failure requirements used in the deterministic approach. The probabilistic approach to regulation is therefore considered an extension and enhancement of traditional regulation by considering risk in a more coherent and complete manner.

The primary need for improving the implementation of defense-in-depth in a risk-informed regulatory system is guidance to determine how many measures are appropriate and how good these should be. Instead of merely relying on bottom-line risk estimates, defense-in-depth is invoked as a strategy to ensure public safety given there exists both unquantified and unquantifiable uncertainty in engineering analyses (both deterministic and risk assessments).

Risk insights can make the elements of defense-in-depth clearer by quantifying them to the extent practicable. Although the uncertainties associated with the importance of some elements of defense may be substantial, the fact that these elements and uncertainties have been quantified can aid in determining how much defense makes regulatory sense. Decisions on the adequacy of, or the necessity for, elements of defense should reflect risk insights gained through identification of the individual performance of each defense system in relation to overall performance.

The Commission published a Policy Statement on the Use of Probabilistic Risk Assessment (PRA) on August 16, 1995 (60 FR 42622). In the policy statement, the Commission stated that the use of PRA technology should be increased in all regulatory matters to the extent supported by the state of the art in PRA methods and data, and in a manner that supports the NRC's traditional defense-in-depth philosophy. The policy statement also stated that in making regulatory judgments, the Commission's safety goals for nuclear power reactors and subsidiary numerical objectives (on core damage frequency and containment performance) should be used with appropriate consideration of uncertainties.

To implement this Commission policy, the staff developed guidance on the use of risk information for reactor license amendments and issued Regulatory Guide (RG) 1.174. This RG provided guidance on an acceptable approach to risk-informed decision-making consistent with the Commission's policy, including a set of key principles. These principles include:

(1) Be consistent with the defense-in-depth philosophy;

(2) Maintain sufficient safety margins;

(3) Any changes allowed must result in only a small increase in core damage frequency or risk, consistent with the intent of the Commission's Safety Goal Policy Statement; and

(4) Incorporate monitoring and performance measurement strategies.

Regulatory Guide 1.174 states that consistency with the defense-in-depth philosophy will be preserved by ensuring that:

(1) A reasonable balance is preserved among prevention of accidents, prevention of barrier failure, and mitigation of consequences;

(2) An over-reliance on programmatic activities to compensate for weaknesses in equipment or device design is avoided;

(3) System redundancy, independence, and diversity are preserved commensurate with the expected frequency, consequences of challenges to the system, and uncertainties (*e.g.*, no risk outliers);

(4) Defenses against potential common cause failures are preserved, and the potential for the introduction of new common cause failure mechanisms is assessed;

(5) The independence of barriers is not degraded; and

(6) defenses against human errors are preserved.

II. Rule Initiation

In addition to RG 1.174, the NRC also issued other regulatory guides on risk-informed approaches for specific types of applications. These included RG 1.175, Risk-informed Inservice Testing, RG 1.176, Graded Quality Assurance, RG 1.177, Risk-informed Technical Specifications, and RG 1.178, Risk-informed Inservice Inspection. In this respect, the Commission has been successful in developing and implementing a regulatory means for considering risk insights into the current regulatory framework. One such risk-informed application, the South Texas Project (STP) submittal on graded quality assurance, is particularly noteworthy.

In March 1996, STP Nuclear Operating Company (STPNOC) requested that the NRC approve a revised Operations Quality Assurance Program (OQAP) that incorporated the methodology for grading quality assurance (QA) based on PRA insights. The STP graded QA proposal was an extension of the existing regulatory framework. Specifically, the STP approach continued to use the traditional safety-related categorization, but allowed for gradation of safety significance within the "safety-related" categorization (consistent with 10 CFR Part 50 Appendix B) through use of a risk-informed process. Following extensive discussions with the licensee and substantial review, the staff approved the proposed revision to the OQAP on November 6, 1997. Subsequent to NRC's approval, STPNOC identified implementation difficulties associated with the graded QA program. Despite the reduced QA requirement applied for a large number of SSCs in which the licensee judged to be of low safety significance, other regulatory requirements such as environmental qualification, the American Society of Mechanical Engineers (ASME) Boiler and Pressure Vessel Code, or seismic continue to impose substantial burdens. As a result, the replacement of such a low safety significant component needs to satisfy other special requirements during a procurement process. These requirements prevented STPNOC from realizing the full potential reduction in unnecessary regulatory burden for SSCs judged to have little or no safety importance. In an effort to achieve the full benefit of the graded QA program (and in fact go beyond the staff's previous approval of graded QA), STPNOC submitted a request, dated July 13, 1999, asking for an exemption from the scope of numerous special treatment regulations (including 10 CFR 50 Appendix B) for SSCs categorized as low safety significant or as non-risk significant. STPNOC's exemption was ultimately approved by the staff in August 2001 (further discussed in Section IV.4).

The experience with graded QA was a principal factor in the NRC's determination that rule changes would be necessary to proceed with some activities to risk-inform requirements. The Commission also believes that the development of PRA technology and decision-making tools for using risk information together with deterministic information supported rulemaking activities to allow the NRC to refocus certain regulatory requirements using this type of information.

Under Option 2 of SECY–98–300, "Options for Risk-Informed Revisions to 10 CFR Part 50—'Domestic Licensing of Production and Utilization Facilities,'" dated December 23, 1998, the NRC staff recommended that risk-informed approaches to the application of special treatment requirements be developed as one application of risk-informed regulatory changes. Option 2 (also referred to as RIP50 Option 2) addresses the implementation of changes to the scope of SSCs needing special treatment while still providing assurance that the SSCs will perform their design functions. Changes to the requirements pertaining to the design of the plant or the design basis accidents are not included in Option 2. These technical risk-informed changes are addressed under Option 3 of SECY–98–300. The Commission approved proceeding with Option 2 in a staff requirements memorandum (SRM) dated June 8, 1999.

The stated purpose of the "Option 2" rulemaking was to develop an alternative regulatory framework that enables licensees, using a risk-informed process for categorizing SSCs according to their safety significance (*i.e.*, a decision that considers both traditional deterministic insights and risk insights), to reduce unnecessary regulatory burden for SSCs of low safety significance by removing these SSCs from the scope of special treatment requirements. As part of this process, those SSCs found to be of risk-significance would be brought under a greater degree of regulatory control through the requirements being added to the rule designed to maintain consistency between actual performance and the performance considered in the assessment process that determines their significance. As a result, both the NRC staff and industry should be able to better focus their resources on regulatory issues of greater safety significance.

The Commission directed the staff to evaluate strategies to make the scope of the nuclear power reactor regulations that impose special treatment risk-informed. SECY–99–256, "Rulemaking Plan for Risk-Informing Special Treatment Requirements," dated October 29, 1999, was sent to the Commission to obtain approval for a rulemaking plan and issuance of an Advance Notice of Proposed Rulemaking (ANPR). By SRM dated January 31, 2000, the Commission approved publication of the ANPR and approved the rulemaking plan. The ANPR was published in the **Federal Register** on March 3, 2000 (65 FR 11488) for a 75-day comment period, which ended on May 17, 2000. In the rulemaking plan, the NRC proposed to create a new section within part 50, referred to as § 50.69, to contain these alternative requirements.

The Commission received more than 200 comments in response to the ANPR. The staff sent the Commission SECY–00–194 "Risk-Informing Special Treatment Requirements," dated September 7, 2000, which provided the staff's preliminary views on the ANPR comments and additional thoughts on the preliminary regulatory framework for implementing a rule to revise the scope of special treatment requirements for SSCs. The comments from the ANPR are further discussed in Section IV.1.0 below.

The concept developed for this proposed rule, discussed at length in the ANPR, was to apply treatment requirements based upon the safety-significance of SSCs, determined through consideration of both risk insights and deterministic information. Thus, the risk-informed approach discussed in this proposed rule for establishing an alternative scope of SSCs subject to special treatment requirements uses both risk and traditional deterministic methods in a blended "risk-informed" approach. The Commission finds the risk-informed

approach outlined in RG 1.174 is appropriate for use in this rulemaking.

It is important to note that this rulemaking effort, while intended to ensure that the scope of special treatment requirements imposed on SSCs is risk-informed, is not intended to allow for the elimination of SSC functional requirements, or to allow equipment that is required by the deterministic design basis to be removed from the facility (*i.e.*, changes to the design of the facility must continue to meet the current requirements governing design change, most notably § 50.59). Instead, this rulemaking should enable licensees and the staff to focus their resources on SSCs that make a significant contribution to plant safety by restructuring the regulations to allow an alternative risk-informed approach to special treatment. Conversely, for SSCs that do not significantly contribute to plant safety, this approach should allow an acceptable, though reduced, level of assurance that these SSCs will satisfy functional requirements.

III. Proposed Regulations

The Commission is proposing to establish § 50.69 as an alternative set of requirements whereby a licensee may undertake categorization of its SSCs using risk insights and adjust treatment requirements based upon their resulting significance. Under this approach, a licensee would be allowed to reduce special treatment requirements for SSCs that are determined to be of low safety significance and would enhance requirements for treatment of other SSCs that are found to be safety significant. The proposed requirements would establish a process by which a licensee would categorize SSCs using a risk-informed process, adjust treatment requirements consistent with the relative significance of the SSC, and manage the process over the lifetime of the plant. To implement these requirements, a risk-informed categorization process would be employed to determine the safety significance of SSCs and place the SSCs into one of four risk-informed safety class (RISC) categories. It is important that this categorization process be robust to enable the Commission to remove requirements for SSCs determined to be of low safety significance. The determination of safety significance would be performed by an integrated decisionmaking process which uses both risk insights and traditional engineering insights. The safety functions would include both the design basis functions (derived from the "safety-related" definition, which includes external events), as well as functions credited for severe accidents (including external events). Treatment requirements for the SSCs are applied as necessary to maintain functionality and reliability, and are a function of the category into which the SSC is categorized. Finally, assessment activities would be conducted to make adjustments to the categorization and treatment processes as needed so that SSCs continue to meet applicable requirements. The proposed rule also contains requirements for obtaining NRC approval of the categorization process and for maintaining plant records and reports.

III.1.0 Categorization of SSCs

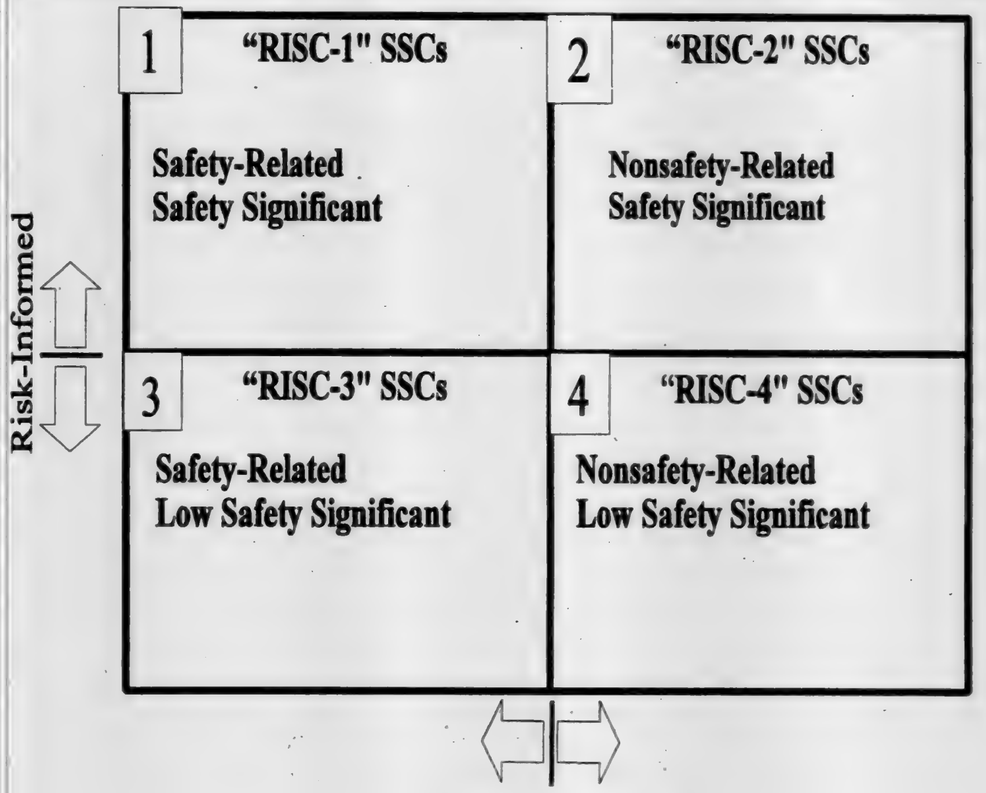
Section 50.69 would define four RISC categories into which SSCs are categorized. Four categories were chosen because it is the simplest approach for transitioning between the previous SSC classification scheme and the new scheme used in the proposed § 50.69. The depiction in Figure 1 provides a conceptual understanding of the new RISC categories. The figure depicts the current safety-related versus nonsafety-related SSC categorization scheme with an overlay of the new risk-informed categorization. In the traditional deterministic approach, SSCs were generally categorized as either "safety-related" (as defined in § 50.2) or nonsafety-related. This division is shown by the vertical line in the figure. Risk insights, including consideration of severe accidents, can be used to identify SSCs as being either safety-significant or low safety-significant (shown by the horizontal line). Hence, the application of a risk-informed categorization results in SSCs being grouped into one of four categories as represented by the four boxes in Figure 1.

Box 1 of Figure 1 depicts safety-related SSCs that a risk-informed categorization process determines are significant contributors to plant safety. These SSCs are termed RISC–1 SSCs. RISC–2 SSCs are nonsafety-related, and the risk-informed categorization determines them to be significant contributors to plant safety. The third category are those SSCs that are safety-related SSCs and that a risk-informed categorization process determines are not significant contributors to plant safety. These SSCs are termed RISC–3 SSCs. Finally, there are SSCs that are nonsafety-related and that a risk-informed categorization process determines are not significant contributors to plant safety. These SSCs are termed RISC–4 SSCs.

Section 50.69 would define the terminology "safety-significant function" as functions whose loss or degradation could have a significant adverse effect on defense-in-depth, safety margins or risk. This definition was chosen to be consistent with the concepts described in RG 1.174. The proposed rule would impose greater treatment requirements on SSCs that perform safety-significant functions (RISC–1 and RISC–2 SSCs) to ensure that defense-in-depth and safety margins are maintained. The proposed rule would also require that the change in risk associated with implementation of proposed § 50.69 be small.

III.2.0 Methodology for Categorization

The cornerstone of proposed § 50.69 is the establishment of a robust, risk-informed categorization process that provides high confidence that the safety significance of SSCs is correctly determined considering all relevant information. As such, all the categorization requirements incorporated into proposed § 50.69 are to achieve this objective. Essentially the process is structured to ensure that all relevant information pertaining to SSC safety significance is considered by a panel that has the expertise and capabilities for making a sound decision regarding the SSC's categorization, and that information is considered in a manner that ensures the Commission's criteria for risk-informed applications are satisfied (*i.e.*, that defense-in-depth is maintained, safety margins are maintained, any risk change is small, and a monitoring and performance assessment strategy is used). This process enables SSCs to be placed in the correct RISC category such that the appropriate treatment requirements will be applied commensurate with their safety significance. A safety-significant SSC is an SSC that performs a safety-significant function. The proposed rule would require that SSC safety significance be determined using quantitative information from an up-to-date PRA reasonably representing the current plant configuration, which as a minimum covers internal events at full power, and other available risk analyses and traditional engineering information to supplement the quantitative PRA results.



Section 50.69 would contain requirements to ensure that the PRA is adequate for this application. The proposed rule would require that as part of the categorization process defense-in-depth is considered, and that the revised treatment applied to RISC–3 SSCs be considered for its potential impact on risk. As an example, the Commission's position is that the containment and its systems are important in the preservation of the defense-in-depth philosophy (in terms of both large early and large late releases). As part of meeting the defense-in-depth principle, a licensee must demonstrate that the function of the containment as a barrier (including fission product retention and removal) is not significantly degraded when SSCs that support the functions are moved to RISC–3, Thus, the rule contains requirements for the IDP to consider defense-in-depth as part of the categorization process.

The risk insights and other traditional information are required to be evaluated by an Integrated Decision-Making Panel (IDP) comprised of expert, plant-knowledgeable members whose expertise includes PRA, safety analysis, plant operation, design engineering, and system engineering. Because the IDP makes the final determination about the safety significance of an SSC, it is important that the membership include a variety of expertise about the plant, how it is operated, and the safety analyses (both deterministic and probabilistic), so that all pertinent information is considered. Hence the available deterministic and probabilistic information pertaining to SSC safety significance is considered in the decision process. The information considered must reflect the as-built and as-operated plant, so that the decisions are based upon correct information, leading to proper categorization. Where applicable, the information is to come from a PRA that is adequate for this application (*i.e.*, categorization of SSC safety significance). From this perspective, the IDP decision process can be viewed as an extension of the previous process for determining SSC safety classification (*i.e.*, safety-related or nonsafety-related), in that it is making use of relevant risk information which was either not considered, or not available when the SSCs were initially classified. The IDP makes the final determination of the safety significance of SSCs using a process that takes all this information into consideration, in a structured, documented manner. The structure provides consistency to decisions that may be made over a period of time, and the documentation

gives both the licensee and the NRC the ability to understand the basis for the categorization decision, should questions arise at a later date.

The proposed rule would contain general requirements for consideration of SSCs, modes of operation or initiating events not modeled in the PRA. As a result, the implementing guidance plays a significant role in effective implementation, and bolsters the need for NRC review and approval of the categorization process before implementation. As noted in the ANPR, the Commission could include more requirements in the rule itself, rather than only being in the guidance. Public comment is requested on the merits of placing the additional detail shown in the guidance and discussed in Section V.4 of the Statement of Considerations (SOC) in the rule.

Implementation of the categorization process relies heavily on the skills, knowledge, and experience of the people that implement the process, in particular on the qualifications of IDP members. Therefore, the Commission concludes that requirements are necessary for the composition of the panel to be experienced personnel who possess diverse knowledge and insights in plant design and operation and who are capable in the use of deterministic knowledge and risk insights in making SSC classifications.

The PRA used to provide the risk information to the categorization process is required to be subjected to a peer review. The peer review focuses on the PRA completeness and technical adequacy for determining importance of particular SSCs, including consideration of the scope, level of detail, and technical quality of the PRA model, the assumptions made in the development of the results, and the uncertainties that impact the analysis. This provides assurance that for IDP decisions that utilize PRA information that the results of the categorization process provide a valid representation of the risk importance of SSCs.

Before implementation of § 50.69, the NRC will approve the categorization process, through a license amendment, because of the importance of the PRA and categorization process to successful implementation of the proposed rule. This review will determine whether the licensee's application satisfies the § 50.69 requirements, and consider the adequacy of the PRA, focusing on the results of the peer review and the actions taken by the licensee to address any peer review findings. The Commission has determined that a focused NRC staff review of the PRA is necessary because there are key assumptions and modeling parameters that can have a significant enough impact on the results such that NRC review of their adequacy for this application is considered necessary to verify that the overall categorization process will yield acceptable decisions.

Section 50.69(c)(iv) would require that a licensee or applicant provide reasonable confidence that for SSCs categorized as RISC–3, sufficient safety margins are maintained and that any potential changes in core damage frequency (CDF) and large early release frequency (LERF) resulting from the implementation of § 50.69 are small. That is, plants with total baseline CDF of 10^{-4} per year or less would be permitted CDF increases of up to 10^{-5} per year, and plants with total baseline CDF greater than 10^{-4} per year would be permitted CDF increases of up to 10^{-6} per year. Plants with total baseline LERFs of 10^{-5} per year or less would be permitted LERF increases of up to 10^{-6} per year, and plants with total baseline LERFs greater than 10^{-5} per year would be permitted LERF increases of up to 10^{-7} per year. However, if there is an indication that the baseline CDF or LERF may be considerably higher than these values, the focus of the licensee should be on finding ways to reduce risk and the licensee may be required to present arguments as to why steps should not be taken to reduce risk in order to consider the reduction in special treatment requirements. This is consistent with the guidance in Section 2.2.4 of RG 1.174. It should be noted that this allowed increase shall be applied to the overall categorization process, even for those licensees that will implement § 50.69 in a phased manner. Thus, the allowable potential increase in risk must be determined in a cumulative way for all the SSCs being recategorized.

Section 50.69 contains requirements for maintaining the design basis of the facility. These requirements, considered in conjunction with the requirements to maintain the potential change in risk as small (as discussed above), ensure that safety margins are maintained. The performance of candidate RISC–3 SSCs should not be significantly degraded by the removal of special treatment. This is because the licensee is required to implement processes that provide reasonable confidence that SSCs remain functional, that is, remain capable of performing their function with a reliability that is not significantly degraded to such an extent that there will be a significant number of failures that can lead to unacceptable increases in CDF or LERF.

The proposed rule would require applicants and licensees to perform evaluations to assess the potential impact on risk from changes to treatment. For SSCs modeled in the PRA, this would likely be accomplished by sensitivity studies to assess the impact of changes in SSC failure probabilities or reliabilities that might occur due to the revised treatment. For example, a licensee would be expected to increase the failure rates of RISC–3 SSCs by appropriate factors to understand the potential effect of applying reduced treatment to these SSCs (*e.g.*, reduced maintenance, testing, inspection, and quality assurance). For other SSCs, other types evaluations would be used to provide the basis for concluding that the potential increase in risk would be small. A licensee will need to submit its basis to support that the evaluations are bounding estimates of the potential change in risk and that programs already in existence or implemented for proposed § 50.69 can provide sufficient information that any potential risk change remains small over the lifetime of the plant. A licensee is required to consider potential effects of common-cause interaction susceptibility and potential impacts from known degradation mechanisms. To meet this requirement, a licensee would need to: (a) Maintain an understanding of common-cause effects and degradation mechanisms and their potential impact on RISC–3 SSCs; (b) maintain an understanding of the programmatic activities that provide defenses against common cause failures (CCFs) and failures resulting from degradation; and (c) factor this knowledge into the treatment applied to the RISC–3 SSCs.

The proposed rule focuses on common-cause effects because significant increases in common-cause failures could invalidate the evaluations, such as sensitivity studies, performed to show a small change in risk due to implementation of § 50.69. With respect to known degradation mechanisms, this is an acknowledgment that certain treatment requirements have evolved over time to deal with such mechanisms (*e.g.*, use of particular inspection techniques or frequencies), and that when contemplating changes to treatment, the lessons from this experience are to be taken into account.

For SSCs categorized by means other than PRA models, the licensee would need to provide a basis to conclude that the small increase in risk requirement would still be met in light of potential changes in treatment. All of these requirements are included in § 50.69 so that a licensee has a basis for concluding that the evaluations performed to show a small change in risk remain valid.

In addition, the rule would require that implementation be done for an entire system or structure and not for selected components within a system or structure. This required scope ensures that all safety functions associated with a system or structure are properly identified and evaluated when determining the safety significance of individual components within a system or structure and that the entire set of components that comprise a system or structure are considered and addressed.

III.3.0 Treatment Requirements

Treatment requirements are applied to SSCs commensurate with SSC safety significance and as a function of the RISC category into which the SSCs are categorized.

III.3.1 RISC–1 and RISC–2 Treatment

For SSCs determined by the IDP to be safety-significant (*i.e.*, RISC–1 and RISC–2 SSCs), § 50.69 would maintain the current regulatory requirements (*i.e.*, it does not remove any requirements from these SSCs) for special treatment. These current requirements are adequate for addressing design basis performance of these SSCs. Additional requirements are being added to these SSCs to ensure that their performance remains consistent with the assumed performance in the categorization process (including the PRA) for beyond design basis conditions. For example, in developing the PRA model, a licensee will make assumptions regarding the availability, capability, and reliability of RISC–1 and RISC–2 SSCs in performing specific functions under various plant conditions. These functions may be beyond the design basis for individual SSCs. Further, the conditions under which those functions are assumed to be performed may exceed the design-basis conditions for the applicable SSCs. In the proposed rule, a licensee would be required to ensure that the treatment applied to RISC–1 and RISC–2 SSCs is consistent with the performance credited in the categorization process. This includes credit with respect to prevention and mitigation of severe accidents. In some cases, licensees might need to enhance the treatment applied to RISC–1 or RISC–2 SSCs to support the credit taken in the categorization process, or conversely adjust the categorization assumptions to reflect actual treatment practices. In addition, requirements exist for monitoring and adjustment of treatment processes (or categorization decisions) as needed based upon performance.

III.3.2 RISC–3 Treatment

For RISC–3 SSCs, § 50.69 would impose requirements which are intended to maintain their design basis capability. Although individually RISC–3 SSCs are not significant contributors to plant safety, they do perform functions necessary to respond to certain design basis events of the facility. Thus, collectively, RISC–3 SSCs can be safety-significant and it is important to maintain their design basis functional capability. Maintenance of RISC–3 design basis functionality is important to ensuring that defense-in-depth and safety margins are maintained. As a result, § 50.69(d)(2) would require licensees or applicants to have processes in place that provide reasonable confidence in the capability of RISC–3 SSCs to perform their safety-related functions under design basis conditions throughout the service life. The proposed rule contains high-level requirements for the treatment of RISC–3 SSCs with respect to design control; procurement; maintenance, inspection, test, and surveillance; and corrective action. These alternative treatment requirements for RISC–3 SSCs represent a relaxation of those special treatment requirements that are removed for RISC–3 SSCs by the proposed rule. For example, the alternative treatment requirements for RISC–3 SSCs in proposed § 50.69 are less detailed than provided in the special treatment requirements, and allow significantly more flexibility by licensees in treating RISC–3 SSCs. The Commission is allowing greater flexibility and a lower level of assurance to be provided for RISC–3 SSCs in recognition of their low safety significance, and this recognition includes a consideration for the potential change in reliability that might occur when treatment is reduced from what had previously been required by the special treatment requirements.

The Commission is proposing to specify four processes that must be controlled and accomplished for RISC–3 SSCs: Design Control; Procurement; Maintenance, Inspection, Testing, and Surveillance; and Corrective Action. The high level RISC–3 requirements are structured to address the various key elements of SSC functionality by focusing in these areas. When SSCs are replaced, RISC–3 SSCs must remain capable of performing design basis functions. Hence, the high level requirements focus on maintaining this capability through design control and procurement requirements. During the operating life of a RISC–3 SSC, a sufficient level of confidence is necessary that the SSC continues to be able to perform its design basis function; hence, the inclusion of high level requirements for maintenance, inspection, test, and surveillance. Finally, when data is collected, it must be fed back into the categorization and treatment processes, and when important deficiencies are found, they must be corrected; hence, requirements are also provided in these areas.

In devising these requirements, the Commission has focused upon those critical aspects of the various processes that must exist to provide assurance of performance. Thus, in the design area, for instance, the design conditions under which equipment is expected to perform, such as environmental conditions or seismic conditions, are still to be met. As another example, in the procurement area, procured items are to satisfy their design requirements. These steps provide the basis for concluding that a newly designed and procured replacement item will be capable of meeting its design requirements, even though the special treatment requirements that previously existed are no longer being required.

In implementing the processes required by the proposed rule, licensees will need to obtain data or information sufficient to make a technical judgement that RISC–3 SSCs will remain capable of performing their safety-related functions under design basis conditions. These requirements are necessary because they require the licensee to obtain the data necessary to continue to conclude that RISC–3 SSCs remain capable of performing design basis functions, and to enable the licensee to take actions to restore equipment performance consistent with corrective action requirements included in the proposed rule.

Effective implementation of the treatment requirements provides reasonable confidence in the capability of RISC–3 SSCs to perform their safety function under normal and design basis conditions. This level of confidence is both less than that associated with RISC–1 SSCs, which are subject to all special treatment requirements, and consistent with their low safety significance.

It is noted that changes that affect any non-treatment aspects of an SSC (*e.g.*, changes to the SSC design basis functional requirements) are still required to be evaluated in accordance with other regulatory requirements such as § 50.59. Section 50.69(d)(2)(i), which focuses upon design control, is intended to draw a distinction between treatment (managed through § 50.69) and design changes (managed through other processes such as § 50.59). As

previously noted, this rulemaking is only risk-informing the scope of special treatment requirements. The process and requirements established in § 50.69 do not extend to making changes to the design basis of SSCs.

III.3.3 RISC–4 Treatment

Section § 50.69 would not impose treatment requirements on RISC–4 SSCs. Instead RISC–4 SSCs are simply removed from the scope of any applicable special treatment requirements. This is justified in view of their low significance considering both safety-related and risk information. Any changes (beyond changes to special treatment requirements) must be made per existing design change control requirements including § 50.59 as applicable.

III.4.0 Removal of RISC–3 and RISC–4 SSCs From the Scope of Special Treatment Requirements

RISC–3 and RISC–4 SSCs, through the application of § 50.69, are removed from the scope of specific special treatment requirements listed in proposed § 50.69. These requirements were initially identified in the ANPR based upon a set of criteria as to whether the regulation imposed requirements relating to quality assurance, qualification, documentation, testing, etc., that were intended to add assurance to performance of SSCs.

The special treatment requirements were originally imposed to provide a very high level of assurance that safety-related SSCs would perform when called upon with high reliability. As previously noted, the requirements include extensive quality assurance requirements, qualification testing requirements, as well as inservice inspection and testing requirements. These requirements can be quite demanding and expensive, as indicated in the data provided in the regulatory analysis on procurement costs. For those SSCs that this new categorization identifies as most safety-significant (RISC–1 and RISC–2), the existing special treatment requirements are being maintained because the Commission still desires a high level of assurance. However, the Commission concluded that for the less significant SSCs, it was no longer necessary to have the same high level of assurance that they would perform as specified. This is because some increased likelihood of failure can be tolerated without significantly impacting safety. Thus, the Commission decided to remove the RISC–3 and RISC–4 SSCs from those detailed, specific requirements that provided the very high level of assurance. However, the functional requirements for these SSCs remain. As an example, a RISC–3 component must still be designed to withstand any harsh environment it would experience under a design basis event, but the NRC will not require that this capability be demonstrated by a qualification test. Further, the performance (and treatment) of these RISC–3 SSCs remain under regulatory control, but in a different way. Instead of the special treatment requirements, the Commission has set forth more general requirements by which a licensee is to maintain functionality. These requirements give the licensee more latitude in applying its treatment processes to achieve performance objectives. The more general requirements that the Commission is specifying for the RISC–3 SSCs include steps to procure SSCs suitable for the conditions under which they are to perform, to conduct performance and/or condition monitoring and to take corrective action, as a means of maintaining functionality. As discussed elsewhere in this notice, the Commission concludes that the requirements in § 50.69 maintain adequate protection of public health and safety. Hence, implementation of § 50.69 should result in a better focus for both the licensee and the regulator on issues that pertain to plant safety, and is consistent with the Commission's policy statement for the use of PRA.

In some cases, the Commission concluded that the RISC–3 and RISC–4 SSCs could be totally removed from the scope of specific special treatment requirements while in other cases the Commission concluded that only partial removal was appropriate. The reduced assurance for the RISC–3 SSC would be provided by the alternative requirements being added by this proposed rule. Finally, there was a set of requirements initially identified as special treatment for which the Commission is not proposing to remove RISC–3 and RISC–4 SSCs from their scopes. These requirements are discussed at the end of this section (III.4.9).

III.4.1 Reporting Requirements Under 10 CFR Part 21 and § 50.55(e)

Section 206 of the Energy Reorganization Act of 1974 (ERA) requires the directors and responsible officers of nuclear power plant licensees and firms supplying "components of any facility or activity * * * licensed or otherwise regulated by the Commission" to "immediately report" to the Commission if they have information that "such facility, activity, or basic components supplied to such facility or activity either fails to comply with the AEA, or Commission rule, regulation, order or license "relating to substantial safety hazards," or contains a "defect which could create a substantial safety hazard * * *." *Id.*, paragraph (a). Congress adopted Section 206 to ensure that individuals, and responsible directors and officers of licensees and firms supplying important components to nuclear power plants notify the NRC in a timely fashion of potentially significant safety problems or non-compliance with NRC requirements. The NRC then may assess the reported information and take any necessary regulatory action in a timely fashion to protect public health and safety or common defense and security. Congress did not include definitions for the terms, "components," "basic components," or "substantial safety hazard," in Section 206, but instead directed the Commission to promulgate regulations defining these terms.

The Commission's regulations implementing Section 206 are set forth in 10 CFR Part 21 and § 50.55(e) for license holders and construction permit holders, respectively. The definitions of "basic component," "defect," and "substantial safety hazard" in Part 21 were established by the Commission based upon the premise that the deterministic regulatory paradigm embedded in the Commission's regulations would continue to be the appropriate basis for determining the safety significance of an SSC, and therefore the extent of the reporting obligation under Section 206. This is most evident in the § 21.3 definition of "basic component," which is very similar to the definition of "safety-related" SSCs in § 50.2 (originally embodied in § 50.49). Part 21 also recognizes that Congress did not intend that every potential noncompliance or "defect" in a component raises such significant safety issues that the NRC must be informed of every identified or potential noncompliance or defect. Instead, Congress limited the Section 206 reporting requirement to those instances of noncompliance and defects which represent a "substantial safety hazard." Thus, Part 21 limits the reporting requirement to instances of noncompliance and defects representing "substantial safety hazard," which Part 21 defines as:

> A loss of safety function to the extent there is a major reduction in the degree of protection afforded to public health and safety for any facility or activity licensed, other than for export, pursuant to parts 30, 40, 50, 60, 61, 63, 70, 71, or 72 of this chapter.

Finally, part 21 establishes that a licensee or vendor should "immediately report" potential noncompliance or defects to the NRC in a telephonic "notification" (*see* § 21.3) within two (2) days of receipt of information identifying a noncompliance or defect in a basic component (*see* § 21.21(d)). In addition, part 21 requires that vendors/suppliers of basic components must make notifications to purchasers or licensees of a reportable noncompliance or defect within five (5) working days of completion of evaluations for determining whether noncompliance or defect constitutes a substantial safety hazard (see § 21.21(b)). Thus, Part 21 establishes a reporting scheme for immediate reporting of the most safety-significant noncompliances and defects, as contemplated by Section 206 of the ERA.

Section 50.69 would substitute a risk-informed approach for regulating nuclear power plant SSCs for the current deterministic approach. Therefore, it is necessary from the standpoint of regulatory coherence to determine: (1) What categories of SSCs (*i.e.*, RISC–1, RISC–2, RISC–3 and RISC–4) should be subject to Part 21 and § 50.55(e) reporting under proposed § 50.69, and whether changes to Part 21 and/or § 50.55(e) are necessary to ensure proper reporting of substantial safety hazards; and (2) the appropriate reporting obligations of licensees and vendors under proposed § 50.69, and whether changes to Part 21 and/or § 50.55(e) are necessary to impose the intended reporting obligations on these entities under proposed § 50.69.

III.4.1.1 RISC–1, RISC–2, RISC–3, and RISC–4 SSCs

After consideration of the underlying purposes of Section 206 and the risk-informed approach embodied in § 50.69 (which blends both deterministic and risk information), the Commission believes that RISC–1 SSCs should be subject to the reporting requirements in Part 21 and § 50.55(e) because of their high safety significance. The NRC should be informed of any potential defects or noncompliance with respect to RISC–1 SSCs, so that it may evaluate the significance of the defects or noncompliance and take appropriate action. The fact that properly-categorized RISC–1 SSCs in all likelihood fall within the Commission's definition of "basic components" and are currently subject to Part 21 and § 50.55(e) provides confirmation that the Commission's determination is prudent.

Similarly, the Commission believes that SSCs which are categorized as RISC–4 should continue to be beyond the scope of, and not be subject to, Part 21 and § 50.55(e). SSCs properly categorized as RISC–4 have little or no risk significance, and it is highly unlikely that any significant regulatory action would be taken by the NRC based upon information on defects or instances of noncompliance in RISC–4 SSCs. Inasmuch as no regulatory purpose would be served by reporting for RISC–4 SSCs, the Commission proposes that RISC–4 SSCs should not be subject to part 21 or § 50.55(e). Again, the fact that SSCs properly categorized as RISC–4 do not otherwise fall within the definition of "basic component" and, therefore, are not subject to Part 21 and § 50.55(e), provides some confirmation of the prudence of the Commission's determination.

Thus, the most problematic issue from the standpoint of regulatory coherence, is determining the appropriate scope of reporting for RISC–2 and RISC–3 SSCs. For the reasons discussed below, the Commission proposes that neither RISC–2 nor RISC–3 SSCs be subject to part 21 and § 50.55(e) reporting requirements.

The Commission begins by considering the regulatory objective of Part 21 and § 50.55(e) reporting under Section 206, and believes that there are two parallel regulatory purposes inherent in these reporting schemes. The first objective is to ensure that the NRC is immediately informed of a potentially significant noncompliance or defect in supplied components (in the broad sense of "basic components" as defined in § 21.3), so that the NRC may make a determination as to whether such a safety hazard requires that immediate NRC regulatory action at one or more nuclear power plants be taken to ensure adequate protection to public health and safety or common defense and security. The second is to ensure that nuclear power plant licensees are immediately informed of a potentially significant noncompliance or defect in supplied components. Such reporting allows a licensee using such components to immediately evaluate the noncompliance or defect to determine if a safety hazard exists at the plant, and take timely corrective action as necessary. In both cases, the regulatory objective is limited to components which have the highest significance with respect to ensuring adequate protection to public health and safety and common defense and security, and whose failure or lack of proper functioning could create an imminent safety hazard such that immediate evaluation of the situation and implementation of necessary corrective action is necessary to ensure adequate protection. In the context of a construction permit, the safety hazard is two-fold: First, that a non-compliance or defect could be incorporated into construction where it could never be detected; and second, that a noncompliance or defect would, upon initial operation and without prior indications of failure, create a substantial safety hazard.

The Commission believes that the regulatory objectives embodied in Part 21 and § 50.55(e) reporting remain the same regardless of whether the nuclear power plant is operating under the existing, deterministic regulatory system or the proposed alternative, risk-informed system embodied in § 50.69. In both cases, the reporting scheme should focus on immediate reporting to the NRC and licensee of potentially significant noncompliances and defects that could create a safety hazard requiring immediate evaluation and corrective action to ensure continuing adequate protection. Accordingly, in determining whether RISC–2 and RISC–3 SSCs should be subject to part 21 reporting, the Commission assessed whether failure or malfunction of these SSCs could reasonably lead to a safety hazard such that immediate evaluation of the situation and implementation of necessary corrective action is necessary to ensure adequate protection.

For RISC–2 SSCs, the Commission does not believe their failure or malfunction could reasonably lead to a safety hazard such that immediate licensee and NRC evaluation of the situation and implementation of necessary corrective action is necessary to ensure adequate protection. Although a RISC–2 SSC may be of significance for particular sequences and conditions, for the reasons discussed below, the Commission believes that no RISC–2 SSC, in and of itself, is of such significance that its failure or lack of function would necessitate immediate notification and action by licensees and the NRC.

The categorization process embodied in § 50.69 determines the relative significance of SSCs, with those in RISC–1 and RISC–2 being more significant than those in RISC–3 or RISC–4. This does not mean that any RISC–2 SSC would rise to the level of necessitating immediate action if defects were identified.

Those SSCs that are viewed as being of sufficient safety significance to require Part 21 reporting are RISC–1 SSCs. It is the capability provided by these RISC–1 SSCs for purposes of satisfying safety-related functional requirements that also leads to RISC–1 SSCs as being safety-significant, as these

are key functions in prevention and mitigation of severe accidents. Thus, RISC–1 SSCs are generally significant for a range of events and conditions and as the primary means of accident prevention and mitigation, the Commission wants to continue to achieve the high level of quality, reliability, preservation of margins, and assurance of performance of current regulatory requirements.

By contrast, RISC–2 SSCs are less important than RISC–1 SSCs because they do not play a role in prevention and mitigation of design basis events (*i.e.*, the SSCs that maintain integrity of fission product barriers, that provide or support the primary success paths for shutdown, or that prevent or mitigate accidents that could lead to potential offsite exposures). They are not part of the reactor protection system or engineered safety features that perform critical safety functions such as reactivity control, inventory control and heat removal. When viewed from a deterministic standpoint, RISC–2 SSC are not considered to rise to the level of a potential substantial safety hazard. From the risk-informed perspective, SSCs may end up classified as RISC–2 for a number of reasons. The classification might occur because they: (i) Contribute to plant risk by initiating transients that could lead to severe accidents (if multiple failures of other mitigating SSCs were to occur), or (ii) they can reduce risk by providing backup mitigation to RISC–1 SSCs in response to an event. The Commission recognizes that, on its face, noncompliance by or defects in RISC–2 SSCs, which could increase risk, such as by more frequent initiation of a transient, may appear to constitute a "substantial safety hazard." However, upon closer examination, the Commission believes otherwise. The risk significance of such "transient initiating" RISC–2 SSCs depends upon their frequency of initiation, with resultant consequences depending upon the failure of multiple other components of varying types in different systems. Further, their risk significance, as identified by the categorization process, is a result of the reliability (failure rates) currently being achieved for these SSC being treated as commercial-grade components, which includes the possibility of noncompliances and defects. Because requirements on RISC–2 SSCs are not being reduced, there is no reason to believe that their performance would degrade as a result of implementation of § 50.69. In fact, by better understanding of their safety significance, and through the added requirements in this rule for RISC–2 SSCs for consistency between the categorization assumptions and how they are treated, performance should only be enhanced. As discussed in Sections III.3 and III.5 of this SOC, the Commission is proposing that additional regulatory controls be imposed on RISC–2 SSCs to prevent their performance from degrading. In addition, the Commission is proposing that licensees evaluate treatment being applied for consistency with key categorization assumptions, monitor the performance of these SSCs, take corrective actions, and report when a loss of a safety-significant function occurs. The requirements of the maintenance rule (§ 50.65 (a)(1) through (a)(3)) also continue to apply to these SSCs. Thus, there are requirements for corrective action by the licensee if noncompliances involving these SSCs are identified. The Commission concludes that these requirements are sufficient because no RISC–2 SSC is so significant as to necessitate immediate Commission (or licensee) action.

For RISC–2 SSCs that provide backup mitigation to RISC–1 SSCs, the Commission also finds it prudent and desirable from a risk-informed standpoint to provide an enhanced level of assurance that RISC–2 SSCs can perform their safety-significant functions, but the failure or malfunction of such RISC–2 SSCs also does not raise a concern about imminent safety hazards.

Moreover, over the last several years, the current fleet of power reactors have been subjected to a number of risk studies, including WASH–1400 (Reactor Safety Study), and other generic and plant-specific reviews. While some safety improvements have been identified as a result of these reviews, none has been of such significance as to require immediate action. This essentially means that no SSCs that would be categorized as RISC–2 SSC would rise to the level of significance that their failure or lack of functionality would constitute a substantial safety hazard requiring immediate regulatory action. For example, in the case of two key risk scenarios, Station Blackout and Anticipated Transient without Scram, the Commission imposed regulatory requirements to reduce risk from these events; however, the rules were promulgated as cost-beneficial safety improvements. The equipment used for station blackout or anticipated transients without scram would generally fall within the RISC–2 category. The Commission believes its conclusion about the relative significance of RISC–2 SSC is also supported by plant-specific risk studies, such as the IPE and IPEEE [1], conducted to identify (and correct) any plant-specific vulnerabilities to severe accident risk. NRC's review of the responses to the licensee submittals has not identified any situations requiring immediate action for protection of public health and safety. In addition, as part of license renewal reviews, the NRC reviews severe accident mitigation alternatives, to identify and evaluate plant design changes with the potential for improving severe accident safety performance. In the license renewals completed to date, only a few candidate SAMAs were found to be cost-beneficial (and none were considered necessary to provide adequate protection of public health and safety).

In sum, the Commission believes that in light of risk assessments and actions that have already been implemented, there would be no SSCs categorized under 50.69 as RISC–2 whose failure would represent a significant and substantial safety concern such that immediate notification and action is required. Accordingly, the results of these risk assessments provide additional confidence to the Commission that Part 21 requirements need not be imposed on RISC–2 SSCs.

The Commission believes that the multiple simultaneous failures of either RISC–2 or RISC–3 components, in the same or in different systems, is not a concern such that Part 21 reporting is necessary. Even for components of the same type, it is not likely that the installed components are identical in terms of their specific characteristics or operating and maintenance history such that a defect would lead to simultaneous failure of multiple components at the same time. For both RISC categories, there are requirements to collect data about performance of the SSCs, to review the data to determine if adverse performance is occurring and to take

[1] In Generic letter 88–20, dated November 23, 1988, licensees were requested to perform individual plant examinations to identify plant-specific vulnerabilities to severe accidents that might exist in their facilities and report the results to the Commission. As part of their review and report, licensees were asked to determine any cost-beneficial improvements to reduce risk. In supplement 4 to the generic letter dated June 28, 1991, this request was extended to include external events (earthquakes, fires, floods). The NRC staff reviewed the plant-specific responses and prepared a staff evaluation report on each submittal. Further, the set of results were presented in NUREG–1560, IPE Program: Perspectives on Reactor Safety and Plant Performance. A similar report on IPEEE results was issued as NUREG–1742. In addition, as discussed in SECY–00–0062, the staff has conducted IPE follow-up activities with owners groups and licensees to confirm that identified improvements have been implemented and if any other actions were warranted.

appropriate action (*e.g.*, correct failures and adjust treatment processes). Thus, it would be expected that degradation or problems affecting a component type would be detected and dealt with before multiple failures becomes likely. For many RISC–2 SSCs, failures tend to be self-revealing (as it is initiation of a transient as a result of failure of many RISC–2 SSC that makes them significant). For RISC–3 SSCs, requirements exist for design and procurement for any replacement components to meet their design conditions, thus making it unlikely that unsuitable components would be installed. Further, for the RISC–3 SSCs, evaluations will be performed, assuming significantly increased failure rates for large number of components occurring simultaneously to show that there is no more than a small (potential) change in risk. Therefore, the Commission believes appropriate regulatory attention has been given to the potential for multiple simultaneous failures.

The Commission also considered the question as to whether notification of component defects should be required from the perspective of other potentially-affected licensees. The set of SSCs that are RISC–2 would vary from site to site, because it depends upon specifics of plant design and operation, particularly for the balance-of-plant which typically differs more from plant to plant than does the nuclear steam supply part. Further, the suppliers of these components would then also vary. Therefore, the specific type of notifications under Part 21, for the purposes of NRC assessment of generic implications of component defects and to assure notification of licensees with the same components in service, would not fulfill a useful regulatory function. The Commission notes that although Part 21 and § 50.55(e) (component defect) reporting will not be required for RISC–2 SSCs, proposed § 50.69(g) contains enhanced reporting requirements applicable to loss of system function attributable to, *inter alia*, failure or lack of function of RISC–2 SSCs. This is discussed in greater detail in Section III.5.

The Commission does not believe that any changes to Part 21 are necessary to accomplish the Commission's proposal, and that this proposal is consistent with the statutory requirements in Section 206 of the ERA. Section 206 does not contain any definition of "substantial safety hazard," but contains a direction to the Commission to define this term by regulation. Nothing in the legislative history suggests that Congress had in mind a fixed and unchanging concept of "substantial safety hazard," or that the term was limited to deterministic regulatory principles. Hence, the Commission has broad discretion and authority to determine the appropriate scope of reporting under Section 206. The Commission believes that the current definition of "substantial safety hazard" in § 21.3 is broadly written to permit the Commission to determine that a RISC–2 SSC does not represent a "substantial safety hazard" as defined in § 21.3 in the context of a risk-informed regulatory approach.

Therefore, because of the more supporting role that the RISC–2 SSCs play with respect to ensuring critical safety functions, a noncompliance or defect in a RISC–2 SSC would not result in a safety hazard such that immediate licensee and NRC evaluation of the situation and implementation of necessary corrective action is necessary to ensure adequate protection. Thus, the Commission believes that a noncompliance or defect in a RISC–2 SSC does not constitute a substantial safety hazard for which reporting is necessary under Part 21. Accordingly, the Commission proposes that reporting requirements to comply with Section 206 of the ERA are not necessary for RISC–2 SSCs and that the scope of part 21 and § 50.55(e) reporting requirements should exclude RISC–2 SSCs.

The Commission also proposes that RISC–3 SSCs should not be subject to part 21 and § 50.55(e) reporting. A failure of a properly-categorized RISC–3 SSC should result in, at most, only a small change in risk, and should not result in a major degradation of essential safety-related equipment (see NUREG–0302, Rev. 1).[2] As discussed above, the body of regulatory requirements (the retained requirements and the requirements contained in this proposed rule) are sufficient such that simultaneous failures in multiple systems (as would be necessary to lead to a substantial safety hazard involving RISC–3 SSCs) would not occur. Thus, there is little regulatory need for the NRC to be informed of instances of noncompliance and defects with RISC–3 SSCs. This is consistent with the NRC's current position that a "substantial safety hazard" involves a major degradation of essential safety-related equipment (see NUREG–0302). Accordingly, the Commission proposes that RISC–3 SSCs should not be subject to reporting requirements of part 21 and § 50.55(e).

In sum, the Commission proposes that part 21 reporting requirements should extend only to SSCs classified as RISC–1 SSCs, since these SSCs are those that are important in ensuring public health and safety and minimizing risk. RISC–2 SSCs should not be subject to reporting because play a lesser role than RISC–1 SSC in protection of public health and safety and no regulatory purpose would be served by part 21 reporting (as discussed above). RISC–3 and RISC–4 SSCs have little or no risk significance and no regulatory purpose would be served by subjecting RISC–3 and RISC–4 SSCS to part 21 and § 50.55(e).

The Commission does not believe that any changes to part 21 or § 50.55(e) are necessary to accomplish the Commission's proposals with respect to RISC–2 and RISC–3 SSCs, and that this proposal is consistent with the statutory requirements in Section 206 of the ERA. As discussed above, Section 206 does not contain any definition of "substantial safety hazard," but contains a direction to the Commission to define this term by regulation. Nothing in the legislative history suggests that Congress had in mind a fixed and unchanging concept of "substantial safety hazard," or that the term was limited to deterministic regulatory principles. Hence, the Commission has broad discretion and authority to determine the appropriate scope of reporting under Section 206. The Commission believes that the current definition of "substantial safety hazard" in § 21.3 is broadly written to permit the Commission to interpret it as applying, in the context of a risk-informed regulatory approach, only to RISC–1 SSCs. As discussed earlier, § 50.69 embodies a risk-informed regulatory paradigm which is different in key respects from the Commission's historical deterministic approach, and applies the risk-informed approach to classifying a nuclear power plant's SSCs according to the SSC's risk significance. SSCs that are classified as RISC–1 are those that represent the most important SSCs from both a risk and deterministic standpoint: They perform the key functions of preventing, controlling and mitigating accidents and controlling risk. Failure of RISC–1 SSCs represent, from a risk-informed regulatory perspective, the most important and significant safety concerns (*i.e.*, a

[2] NUREG–0302, "Remarks Presented (Questions and Answers Discussed) At Public Regional Meetings to Discuss Regulations (10 CFR part 21) for Reporting of Defects and Noncompliances." Copies of NUREGs may be purchased from the Superintendent of Documents, U.S. Government Printing Office, P.O. Box 37082, Washington DC 20013–7082. Copies are also available from the National Technical Information Service, 5285 Port Royal Road, Springfield, VA 22161. A copy is also available for inspection and/or copying for a fee at the NRC Public Document Room, One White Flint North, 11555 Rockville Pike, Public File Area O1–F21, Rockville, MD.

"substantial safety hazard)." Therefore, the Commission believes that, in the context of the risk-informed regulatory approach embodied in § 50.69, it is reasonable for the Commission to interpret "substantial safety hazard" as applying to RISC–1 SSCs and that reporting under Section 206 may be limited to RISC–1 SSCs.

The Commission considered two alternative approaches for limiting the reporting requirements in part 21 and § 50.55(e) to RISC–1 SSCs: (i) Interpreting "basic component" to encompass a risk-informed view of what SSCs the term encompasses, and (ii) including a second definition of "basic component" in § 21.3, which would apply only to those portions of a plant which have been categorized in accordance with § 50.69, and would be defined as an SSC categorized as RISC–1 under § 50.69.

The Commission does not believe that the part 21 definition of "basic component" may easily be read as simultaneously permitting both a deterministic concept of basic component and risk-informed concept, inasmuch as the part 21 definition was drawn from, and was intended to be consistent with the definition of "safety-related SSC" in § 50.2. The § 50.2 definition of "safety-related SSC" refers to the ability of the SSC to remain functional during "design basis events." The term, "design basis events" in Commission practice has referred to the deterministic approach of defining the events and conditions (*e.g.*, shutdown, normal operation, accident) for which an SSC is expected to function (or not fail). Identification of design basis events is inherently different conceptually when compared to a risk-informed approach, which attempts to identify all possible outcomes (or a reasonable surrogate) and assign a probability to each outcome and consequence before integrating the probability of the total set of outcomes. The Commission rejected the second approach of adopting an alternative definition of "basic component," because a change to the definition in § 21.3 could be misunderstood as a change to the reporting requirements for licensees who choose not to comply with § 50.69.

III.4.1.2 Reporting Obligations of Vendors for RISC–3 SSCs

The reporting requirements of Section 206 apply to individuals, directors and responsible officers of a firm constructing, owning, operating or supplying the basic components of any NRC-licensed facility or activity. Nuclear power plant licensees and nuclear power plant construction permit holders are subject to reporting under Section 206, and part 21 and § 50.55(e) will continue to provide for such reporting by those entities. Section 206 also imposes a reporting obligation on "vendors" (*i.e.*, firms who supply basic components to nuclear power plant licensees and construction permit holders). The Commission does not intend to change the reporting obligations under part 21 or § 50.55(e) for licensees, construction permit holders, or vendors with respect to RISC–1 SSCs, and the Commission does not intend to require reporting under part 21 and § 50.55(e) for RISC–2, RISC–3 or RISC–4 SSCs.

Thus, a vendor who supplied a safety-related component to a licensee that was subsequently classified by the licensee as RISC–3 would no longer be legally obligated to comply with part 21 or § 50.55(e) reporting requirements. However, as a practical matter that vendor would likely continue to comply with part 21 or § 50.55(e). Vendors are informed of their part 21 or § 50.55(e) obligations as part of the contract supplying the basic component to the licensee/construction permit holder. Vendors supplying basic components that have been categorized as RISC–3 at the time of contract ratification would know that they have no part 21 or § 50.55(e) obligations. However, vendors that provide (or in the past provided) safety-related SSCs would not know, absent communication from the licensee or construction permit holder implementing § 50.69, whether the SSCs which they provided under contract as safety-related are now categorized as RISC–3, thereby removing the vendor's reporting obligation under either part 21 or § 50.55(e). Failing to inform a vendor that a safety-related SSC which it provided is no longer subject to part 21 or § 50.55(e) reporting because of its reclassification as a RISC–3 SSC could result in unnecessary reporting to the licensee and the NRC. It may also result in unnecessary expenditure of resources by the vendor in determining whether a problem with a supplied SSC rises to the level of a reportable defect or noncompliance under the existing provisions of part 21 and § 50.55(e).

To address the potential for unnecessary reporting under proposed § 50.69, the Commission considered including a new requirement in either proposed § 50.69, or part 21 and § 50.55(e). The new provision would require the licensee or construction permit holder to inform a vendor that a safety-related SSC which it provided has been categorized as RISC–3. After consideration, the Commission believes that it is unlikely that such a provision would result in any great reduction in the potential scope of reporting by vendors. The NRC does not receive many part 21 reports, so the overall reporting burden to be reduced may be insubstantial. Furthermore, the Commission believes that the proposal could cause confusion, inasmuch as a vendor may supply many identical components to a licensee/holder, with some of the items intended for use in SSCs categorized as RISC–3, and other items intended in non-safety-related applications. A vendor would have some difficulty in determining whether the problem with the supplied SSC potentially affects the SSC recategorized as RISC–3 (as opposed to the supplied SSC used in nonsafety-related applications). The Commission also believes there may be some value in notification of the NRC when defects are identified, as they may reveal issues about the quality processes, or implications for basic components at other facilities. Finally, the NRC notes that the vendor has already been compensated by the licensee for the burden associated with part 21 and § 50.55(e) as part of the initial procurement process. For these reasons, the Commission does not propose to adopt a provision in § 50.69, part 21 or § 50.55(e) requiring a licensee or construction permit holder to inform a vendor of safety-related SSCs that its SSCs have been categorized as RISC–3.

III.4.1.3 Criminal Liability Under Section 223.b. of the AEA

As discussed earlier, Section 206 of the AEA authorizes the imposition of civil penalties for a licensee's and vendor's failure to report instances of noncompliance or defects in "basic components" that create a "substantial safety hazard." However, in addition to the civil penalties authorized by Section 206, criminal penalties may be imposed under Section 223.b. of the AEA on an individual director, officer or employee of a firm that supplies components to a nuclear power plant, that knowingly and willfully violate regulations that results (or could have resulted) in a "significant impairment of a basic component * * *." Licensees, applicants and vendors should note the difference in the definition of "basic component" in part 21, versus the definition set forth in Section 223.b:

For the purposes of this subsection, the term "basic component" means a facility structure, system, component or part thereof necessary to assure—

(1) The integrity of the reactor coolant pressure boundary,

(2) The capability to shut-down the facility and maintain it in a safe shut-down condition, or

(3) The capability to prevent or mitigate the consequences of accidents which could result in an unplanned offsite release of quantities of fission products in excess of the limits established by the Commission.

The U.S. Department of Justice is responsible for prosecutorial decisions involving violations of Section 223.b.

III.4.1.4 Posting Requirements

Both AEA Section 223.b and ERA Section 206 require posting of their statutory requirements at the premises of all licensed facilities. This is implemented through 10 CFR Parts 19 and 21.

As a result of implementation of § 50.69, rights and responsibilities of licensee workers would be slightly different. For instance, SSCs categorized as RISC–3 would no longer be subject to Part 21. However, RISC–1 SSCs (and "safety-related" SSCs not yet categorized per § 50.69), are subject to the Part 21 requirements. No additional responsibilities for identification or notification are involved. The supporting information such as procedures to be made available to workers would need to reflect the reduction in scope of requirements. For the reasons already mentioned, the Commission concludes that there would be no impact on vendors with respect to posting requirements in that these changes in categorization would be "transparent" to them as suppliers.

III.4.2 Section 50.49 Environmental Qualification of Electrical Equipment

The general requirement that certain SSCs be designed to be compatible with environmental conditions associated with postulated accidents is contained in GDC–4. Section 50.49 was written to provide specific programmatic requirements for a qualification program and documentation for electrical equipment, and thus, is a special treatment requirement.

Section 50.49(b), imposes requirements on licensees to have an environmental qualification program that meets the requirements contained therein. It defines the scope of electrical equipment important to safety that must be included under the environmental qualification program. Further, this regulation specifies methods to be used for qualification of the equipment for identified environmental conditions and documentation requirements.

RISC–3 and RISC–4 SSCs would be removed from the scope of the requirements of § 50.49 through § 50.69(b)(2)(ii). For SSCs categorized as RISC–3 or RISC–4, the Commission has concluded that for low safety-significant SSCs, additional assurance, such as that provided by the detailed provisions in § 50.49 for testing, documentation files and application of margins, are not necessary (see Section III.4.0). The requirements from GDC–4 as they relate to RISC–3 and RISC–4 SSCs, and the design basis requirements for these SSCs, including the environmental conditions such as temperature and pressure, remain in effect. Thus, these SSCs must continue to remain capable of performing their safety-related functions under design basis environmental conditions.

III.4.3 Section 50.55a(f), (g), and (h) Codes and Standards

Section 50.69(b)(2)(iv), would remove RISC–3 SSCs from the scope of certain provisions of § 50.55a, relating to Codes and Standards. The provisions being removed are those that relate to "treatment" aspects, such as inspection and testing, but not those pertaining to design requirements established in § 50.55a. Each of the subsections being removed is discussed in the paragraphs below.

Section 50.55a(f) incorporates by reference provisions of the ASME Code as endorsed by NRC that contains inservice testing requirements. These are special treatment requirements. Through this proposed rulemaking, RISC–3 SSCs would be removed from the scope of these requirements, and instead would be subject to the requirements in § 50.69(d)(2)(iii). For the reasons discussed in Section III.4.0, the Commission has determined that for low safety-significant SSCs, it is not necessary to impose the specific detailed provisions of the Code, as endorsed by NRC, and these requirements can be replaced by the more "high-level" alternative treatment requirements, which allow greater flexibility to licensees in implementation.

Section 50.55a(g) incorporates by reference provisions of the ASME Code as endorsed by NRC that contains the inservice inspection, and repair and replacement requirements for ASME Class 2 and Class 3 SSCs. The Commission will not remove the repair and replacement provisions of the ASME BPV Code required by § 50.55a(g) for ASME Class 1 SSCs, even if they were categorized as RISC–3, because those SSCs constitute principal fission product barriers as part of the reactor coolant system or containment. For Class 2 and 3 SSCs that are shown to be of low safety-significance if categorized as RISC–3, the additional assurance from the specific provisions of the ASME Code is not considered necessary.

Section 50.55a(h) incorporates by reference the requirements in either Institute of Electrical and Electronics Engineers (IEEE) 279, "Criteria for Protection Systems for Nuclear Power Generating Stations," or IEEE 603–1991 "IEEE Standard Criteria for Safety Systems for Nuclear Power Generating Stations." Within these IEEE standards are special treatment requirements. Specifically, sections 4.3 and 4.4 of IEEE 279 and sections 5.3 and 5.4 of IEEE 603–1991 contain quality and environmental qualification requirements. RISC–3 SSCs are being removed from the scope of this special treatment requirement consistent with the Commission decision already discussed.

III.4.4 Section 50.65 Monitoring the Effectiveness of Maintenance

The Commission is proposing to remove RISC–3 and RISC–4 SSCs from the scope of the requirements of § 50.65 (except for paragraph (a)(4)). The basis for this includes Section III.4.0 and the following discussion.

Section 50.65, referred to as the Maintenance Rule, imposes requirements for licensees to monitor the effectiveness of maintenance activities for safety-significant plant equipment to minimize the likelihood of failures and events caused by the lack of effective maintenance. Specifically, § 50.65 requires the performance of SSCs defined in § 50.65(b) to be monitored against licensee established goals, in a manner sufficient to provide confidence that the SSCs are capable of fulfilling their intended functions. The rule further requires that where performance does not match the goals, appropriate corrective action shall be taken. Included within the scope of § 50.65(b) are SSCs that are relied upon to remain functional during design basis events or in emergency operating procedures, and nonsafety-related SSCs whose failure could result in the failure of a safety function or cause a reactor scram or activation of a safety-related system.

Sections 50.65(a)(1), (a)(2), and (a)(3) impose documentation and action requirements; thus, they are special treatment requirements. Upon implementation of § 50.69, a licensee would not be required to apply maintenance rule monitoring, goal setting, corrective action, alternate demonstration, or periodic evaluation treatments required by §§ 50.65(a)(1), (a)(2), and (a)(3) to RISC–3 and RISC–4

SSCs. The proposed rule does include in § 50.69(e)(3) provisions for a licensee to use performance information to feedback into its processes to adjust treatment (or categorization) when results so indicate. However, this requirement does not require the specific monitoring and goal setting as required in § 50.65, in consideration of the lesser safety-significance of these SSCs.

RISC–1 and RISC–2 SSCs that are currently within the scope of § 50.65(b) would remain subject to existing maintenance rule requirements. Any RISC–1 or RISC–2 function not currently within the scope of § 50.65(b) would be added to the scope of the maintenance rule (as a result of the requirement in § 50.69(e)(2) that requires monitoring, evaluation and appropriate action for these SSCs).

The proposed removal of RISC–3 and 4 SSCs from the scope of requirements does not include § 50.65(a)(4), which contains requirements to assess and manage the increase in risk that may result from proposed maintenance activities. The requirements in § 50.65(a)(4) remain in effect. It is noted that § 50.65(a)(4) already includes provisions by which a licensee can limit the scope of the assessment required to SSCs that a risk-informed evaluation process has shown to be significant to public health and safety. Thus, there is no need to revise the requirements to permit a licensee to apply requirements commensurate with safety-significance.

III.4.5 Sections 50.72 and 50.73 Reporting Requirements

This proposed rule would remove the requirements in §§ 50.72 and 50.73 for RISC–3 and RISC–4 SSCs. The basis for this removal follows.

Sections 50.72 and 50.73 contain requirements for licensees to report events involving certain SSCs. These reporting requirements are special treatment requirements . NRC requires event reports in part so that it can follow-up on corrective action for these circumstances. Through this rulemaking, the Commission proposes to remove RISC–3 and RISC–4 SSCs from the scope of these requirements. The low safety-significance of these SSCs does not warrant the burden associated with reporting events or conditions only affecting such SSCs, for the reasons already discussed.In particular, under NRC's risk-informed inspection process, NRC follow-up of corrective action will be focused upon safety-significant situations.

III.4.6 10 CFR Part 50 Appendix B Quality Assurance Requirements

This proposed rule would remove RISC–3 SSCs from the scope of requirements in Appendix B to 10 CFR Part 50. These requirements are currently not applicable to RISC–4 SSCs so there is no change for these SSCs. Appendix B contains requirements for a quality assurance program meeting specified attributes. While many of the general attributes are still appropriate for RISC–3 SSCs (and in some instances are included within the high-level requirements in § 50.69(d)(2)), it was considered simpler to remove RISC–3 SSCs from the scope of the existing requirements in Appendix B (with its attendant set of guidance and implementing documents), and to add back the minimum set of requirements viewed as necessary for RISC–3 SSCs, rather than to subdivide the existing Appendix B requirements for this purpose.

The intent of Appendix B to 10 CFR Part 50, and the complementary regulations is to provide quality assurance requirements for the design, construction, and operation of nuclear power plants. The quality assurance requirements of Appendix B are to provide adequate confidence that an SSC will perform satisfactorily in service; these requirements were developed to apply to safety-related SSCs. In the implementation of Appendix B, a licensee is bound to detailed and prescriptive quality requirements to apply to activities affecting those SSCs. As such, these requirements meet the Commission's definition of special treatment requirements. These requirements are removed from application to RISC–3 and RISC–4 SSCs because their low safety-significance does not warrant the level of quality requirements that currently exist with Appendix B.

III.4.7 10 CFR Part 50, Appendix J Containment Leakage Testing

The proposed rule would remove a subset of RISC–3 and RISC–4 SSCs from the scope of the requirements in Appendix J to Part 50 that pertain to containment leakage testing. Specifically, RISC–3 and RISC–4 SSCs that meet specified criteria would be removed from the scope of the requirements for Type B and Type C testing. The basis for the removal is described below.

One of the conditions of all operating licenses for water-cooled power reactors as specified in § 50.54(o) is that primary reactor containments shall meet the containment leakage test requirements set forth in Appendix J to 10 CFR Part 50. These test requirements provide for preoperational and periodic verification by tests of the leak-tight integrity of the primary reactor containment, and systems and components which penetrate containment of water-cooled power reactors, and establish the acceptance criteria for these tests. As such, these tests are special treatment requirements. The purposes of the tests are to assure that (a) leakage through the primary reactor containment, or through systems and components penetrating primary containment, shall not exceed allowable leakage rate values as specified in the technical specifications, and (b) periodic surveillance of reactor containment penetrations and isolation valves is performed so that proper maintenance and repairs are made during the service life of the containment, and systems and components penetrating primary containment. Appendix J includes two Options, Option A and Option B. Option A includes prescriptive requirements while Option B identifies performance-based requirements and criteria for preoperational and subsequent periodic leakage-rate testing. A licensee may choose either option for meeting the requirement of Appendix J.

The discussion contained in Appendix J to 10 CFR Part 50 can be divided into two categories. Parts of Appendix J contain testing requirements. Other parts contain information, such as definitions or clarifications, necessary to explain the testing requirements. A review of Appendix J did not identify any technical requirements other than those describing the methods of the required testing. Therefore, Appendix J was considered to be, in its entirety, a special treatment requirement.

The NRC believes that risk-informing this appendix may lead to less testing and therefore would reduce unnecessary regulatory burden on the licensees. Although the 1995 revision to Appendix J was characterized as risk-informed, the changes were not as extensive as those expected in the risk-informed Part 50 effort. The revision primarily decreased testing frequencies, whereas risk-informing the scope of SSCs that are subject to Appendix J testing would remove some components from testing (*i.e.*, to the extent that defense-in-depth is maintained in accordance with the risk-informed categorization process).

The proposed rule would exclude certain identified containment isolation valves from Type C testing. For RISC–3 components, which includes containment isolation valves, leak testing is not required. The reliability

strategy is to monitor and restore component functions once they are identified through the corrective action program or the periodic feedback process. Similarly, requirements for Type B testing of certain penetrations would not be required. The relief from testing is limited to components meeting specified criteria such that acceptable results for large early release and defense-in-depth are maintained.

III.4.7.1 Types of Tests Required by Appendix J

Appendix J testing is divided into three types: Type A, Type B, and Type C. Type A tests are intended to measure the primary reactor containment overall integrated leakage rate after the containment has been completed and is ready for operation, and at periodic intervals thereafter. Type B tests are intended to detect local leaks and to measure leakage across each pressure-containing or leakage-limiting boundary. Primary reactor containment penetrations required to be Type B tested are identified in Appendix J. Type C tests are intended to measure containment isolation valve leakage rates. The containment isolation valves required to be Type C tested are identified in Appendix J.

III.4.7.2 Reduction in Scope for Appendix J Testing

Type A Testing: The Commission concludes that Type A testing should continue to be required as described in Appendix J.

Type B Testing: The Commission concludes that Type B testing should continue to be required for air lock door seals, including door operating mechanism penetrations which are part of the containment pressure boundary and doors with resilient seals or gaskets except for seal-welded doors. Type B testing is not necessary for other penetrations that are determined to be of low safety significance and that meet one or both of the following criteria:

1. Penetrations pressurized with the pressure being continuously monitored.
2. Penetrations less than 1 inch in equivalent diameter.

Type C Testing: The Commission concludes that Type C testing is not necessary for valves that are determined to be of low safety significance and that meet one or more of the following criteria:

1. The valve is required to be open under accident conditions to prevent or mitigate core damage events.
2. The valve is normally closed and in a physically closed, water filled system.
3. The valve is in a physically closed system whose piping pressure rating exceeds the containment design pressure rating and that is not connected to the reactor coolant pressure boundary.
4. The valve size is 1-inch nominal pipe size or less.

III.4.7.3 Basis for Reduction of Scope

The first criterion for Type B testing deals with penetrations that are pressurized with the pressures in the penetrations being continuously monitored by licensees. The pressurization itself establishes a leak tight barrier, for such penetrations. The monitoring of the pressures in the penetrations, in conjunction with the proposed requirements for RISC 3 SSCs (including taking corrective action when an SSC fails) provide sufficient assurance, without the need for Type B testing, to ensure that these penetrations are functional.

The second criterion for reducing the scope of Type B testing (*i.e.*, penetrations less than 1 inch in equivalent diameter) is essentially the same as the fifth criterion for reducing the scope of Type C testing (*i.e.*, valve size is 1-inch or less). By definition penetrations of this size do not contribute to large early release.

The Commission finds that these criteria for reducing the scope of the Type C testing requirements are reasonable in that, even without Type C testing, the probability of significant leakage during an accident (that is, leakage to the extent that public health and safety is affected) is small. This is true even though some of the valves that satisfy these criteria may be fairly large.

Appendix J to 10 CFR part 50 deals only with leakage rate testing of the primary reactor containment and its penetrations. It assumes that containment isolation valves are in their safe position. No failure is assumed that would cause the containment isolation valves to be open when they are supposed to be closed. The valve would be open if needed to transmit fluid into or out of containment to mitigate an accident or closed if not needed for this purpose. For purposes of this evaluation, if a valve is open, it is assumed to be capable of being closed. Testing to ensure the capability of containment isolation valves to reach their safe position is not within the scope of Appendix J, and as such is not within the scope of this evaluation. Therefore, the valves addressed by this evaluation are considered to be closed, but may be leaking. The increase in risk due to this proposed revision affecting Appendix J is negligible.

Past studies (*e.g.*, NUREG–1150, "Severe Accident Risks: An Assessment for Five U.S. Nuclear Power Plants; Final Summary Report," dated December 1990) show that the overall reactor accident risks are not sensitive to variations in containment leakage rate. This is because reactor accident risk is dominated by accident scenarios in which the containment either fails or is bypassed. These very low probability scenarios dominate predicted accident risks due to their high consequences.

The Commission examined in more detail the effect of containment leakage on risk as part of the Appendix J to 10 CFR Part 50, Option B, rulemaking. The results of these studies are applicable to this evaluation. NUREG–1493, "Performance-Based Containment Leak-Test Program," dated September 1995, calculated the containment leakage necessary to cause a significant increase in risk and found that the leakage rate must typically be approximately 100 times the Technical Specification leak rate, L_a. It is improbable that even the leakage of multiple valves in the categories under consideration would exceed this amount. Operating experience shows that most measured leaks are much less than 100 times L_a. A more direct estimate of the increase in risk for the proposed revision to Appendix J can be obtained from the Electric Power Research Institute (EPRI) report TR–104285, "Risk Impact Assessment of Revised Containment Leak Rate Testing Intervals," dated August 1994. This report examined the change in the baseline risk (as determined by a plant's IPE risk assessment) due to extending the leakage rate test intervals. For the pressurized water reactor (PWR) large dry containment examined in the EPRI report, for example, the percent increase in baseline risk from extending the Type C test interval from 2 years to 10 years was less than 0.1 percent. While this result was for a test interval of 10 years vs. the current proposal to do no more Type C testing of the subject valves for the life of a plant, the analysis may reasonably apply to this situation because it contains several conservative assumptions which offset the 10-year time interval. These assumptions include the following:

1. The study used leakage rate data from operating plants. Any leakage over the plant's administrative leakage limit was considered a leakage failure. An administrative limit is a utility's internal limit and does not imply violation of any Appendix J limits. Therefore, the probability of a leakage failure is overestimated.
2. Failure of one valve to meet the administrative limit does not imply that the penetration would leak because

containment penetrations typically have redundant isolation valves. While one valve may leak, the other may remain leak-tight. The study assumed that failure of one valve in a series failed the penetration; however, the probability of failure was that for a single valve.

3. The analysis assumed possible leakage of all valves subject to Type C testing, not just those subject to the proposed revision.

According to this analysis, the proposed revision would not have a significant effect on risk. The NUREG–1493 analysis shows that the amount of leakage necessary to significantly increase risk is two orders of magnitude greater than a typical Technical Specification leakage rate limit. Therefore, the risk to the public will not significantly increase due to the proposed relief from the requirements of Appendix J to 10 CFR part 50.

III.4.8 Appendix A to 10 CFR Part 100 (and Appendix S to 10 CFR Part 50 (Seismic Requirements))

The proposed rule would remove RISC–3 and RISC–4 SSCs from the requirement in Appendix A to Part 100 to demonstrate that SSCs are designed to withstand the safe shutdown earthquake (SSE) by qualification testing or specific engineering methods. GDC 2 requires that SSCs "important to safety" be capable of withstanding the effects of natural phenomena such as earthquakes. The requirements of 10 CFR Part 100 pertain to reactor site criteria and its Appendix A addresses seismic and geologic siting criteria used by the Commission to evaluate suitability of plant design bases in consideration of these characteristics. Sections VI(a)(1) and (2) of Appendix A to 10 CFR Part 100 address the engineering design for the SSE and Operating Basis Earthquake (OBE), respectively. The rule change would exclude RISC–3 and RISC–4 SSCs from the scope of the requirements of sections VI(a)(1) and (2) of Appendix A to 10 CFR Part 100, only to the extent that the rule requires testing and specific types of analyses to demonstrate that safety-related SSCs are designed to withstand the SSE and OBE. It is only these aspects of Appendix A to 10 CFR Part 100 that are considered special treatment. As discussed in Section III.4.0, because of the low safety significance of the RISC–3 and RISC–4 SSCs, the additional assurance provided by qualification testing (or engineering analyses) is not considered necessary.

For current operating reactors, Appendix A to part 100 is applicable. For new plant applications, the seismic design requirements are set forth in Appendix S to Part 50. The NRC has determined that Appendix S does not need to be included in the proposed § 50.69 because the wording of the requirements with respect to "qualification" by testing or specific types of analysis is not present in this rule. Therefore, a rule change would not be necessary to permit a licensee to implement means other than qualification testing or the specified methods to demonstrate SSC capability.

III.4.9 Requirements Not Removed by § 50.69(b)(1)

In the following paragraphs, the Commission discusses certain rules that were considered as candidates for removal as requirements for RISC–3 and RISC–4 SSCs during development of this rulemaking. These rules were identified as candidate rules in SECY–99–256. They are not part of this rulemaking for the reasons presented.

III.4.9.1 Section 50.34 Contents of Applications

Section 50.34 identifies the required information that applicants must provide in preliminary and final safety analysis reports. Because § 50.69 contains the documentation requirements for licensees and applicants who choose to implement § 50.69, and these requirements do not conflict with § 50.34, it is not necessary to revise § 50.34 to implement § 50.69.

III.4.9.2 Section 50.36 Technical Specifications

Section 50.36 establishes operability, surveillance, limiting conditions for operation and other requirements on certain SSCs. To the extent that this rule specified testing and related requirements, it was considered as a candidate for being "special treatment". However, the Commission concluded that it was not appropriate to revise § 50.36 for several reasons. First, risk-informed criteria have already been established in § 50.36 for determining which SSCs should have TS requirements. Improved standard TS have already resulted in relocation of requirements for less important SSCs to other documents. Further, other improvement efforts are underway that could be implemented by individual licensees to make their plant-specific requirements more risk-informed. Thus, no changes to this rule (or its implementation) are necessary as part of § 50.69 to make the TS risk-informed or to accommodate the revised requirements of this proposed rule.

III.4.9.3 Section 50.44 Combustible Gas Control

Certain provisions within § 50.44 were identified as containing special treatment requirements in that they specified conformance with Appendix B for particular design features, specified requirements for qualification, and related statements. The Commission notes that a separate rulemaking is underway to "rebaseline" the requirements in § 50.44 using risk insights (see August 2, 2002; 67 FR 50374). Therefore, the NRC believes that there is no need to include those sections of (existing) § 50.44 as being removed for RISC–3 SSC. If portions of § 50.44 that were identified as special treatment requirements are retained, and/or relocated to other rules (and they are not necessary for RISC–3 SSCs), then there may be a need to reference these rules within § 50.69(b)(1) when § 50.69 is issued as a final rule.

III.4.9.4 Section 50.48 (Appendix R and GDC 3) Fire Protection

Initially, fire protection requirements were considered to be within the scope of this rulemaking effort. There are augmented quality provisions applied to fire protection systems and these augmented quality provisions are considered special treatment requirements. However, these provisions are not contained in the rules themselves. The Commission has developed a proposed rulemaking (see November 1, 2002; 67 FR 66578) to allow licensees to voluntarily adopt National Fire Protection Association (NFPA)-805 requirements in lieu of other fire protection requirements. NFPA–805 would permit a licensee to implement a risk-informed fire protection program as a voluntary alternative to compliance with § 50.48 and 10 CFR Part 50, Appendix R. Accordingly, changes to these regulations were not included in the scope of the § 50.69 rulemaking.

III.4.9.5 Section 50.59 Changes, Tests and Experiments

The Commission does not believe that a § 50.59 evaluation need be performed when a licensee implements § 50.69 by changing the special treatment requirement for RISC–3 and RISC–4 SSCs. Accordingly, § 50.69(f)(iii) contains language that removes the requirement for a § 50.59 evaluation of the changes in special treatment as part of implementation. The process of adjusting treatment for RISC–3 and RISC–4 SSCs does not need to be subject to § 50.59 because the rulemaking already provides the decision process for recategorization and determination of revision to requirements resulting from the categorization. Thus, subjecting the implementation steps as they relate to changes to treatment from what was described in the final safety analysis report (FSAR), to determine if NRC approval is needed of those changes, is an unnecessary step. Since it is only in the area of treatment for RISC–3 and RISC–4 SSCs that might be viewed as involving a reduction in requirements, these are the only aspects for which this rule provision would have any effect. As required by § 50.69(f)(ii), the licensee/applicant will be required to update the FSAR appropriately to reflect incorporation of its treatment processes into the FSAR.

However, it is important to recognize that changes that affect any non-treatment aspects of an SSC (*e.g.*, changes to the SSC design basis functional requirements) are required to be evaluated in accordance with the requirements of § 50.59. Section 50.69(d)(2)(i), which focuses upon design control, is intended to draw a distinction between treatment (managed through § 50.69) and design changes (managed through other processes such as § 50.59). As previously noted, this rulemaking is only risk-informing the scope of special treatment requirements. The process and requirements established in § 50.69 do not extend to making changes to the design basis of SSCs.

III.4.9.6 Appendix A to 10 CFR Part 50 General Design Criteria (GDC)

The NRC has concluded that the GDC of Appendix A to 10 CFR Part 50 do not need to be revised because they specify design requirements and do not specify special treatment requirements. Because this rulemaking is not revising the design basis of the facility, the GDC should remain intact and are not within the scope of § 50.69. This subject is discussed in more detail in the NRC's action on the South Texas exemption request, in which their request for exemption from certain GDCs was denied as being unnecessary to accomplish what was proposed (see Section IV.4.0).

III.4.9.7 10 CFR Part 52 Early Site Permits, Standard Design Certifications and Combined Operating Licenses

Part 52 contains, by cross-reference, regulations from other parts of Chapter 10 of the Code of Federal Regulations, most notably Part 50. Therefore, it was initially considered for inclusion in the rulemaking effort. However, with the proposed "applicability" paragraph (§ 50.69(b)) extending to applicants for a facility license or design certification under Part 52, the Commission presently sees no need for revisions to Part 52 itself.

III.4.9.8 10 CFR Part 54 License Renewal

In SECY–99–256, 10 CFR part 54, which provides license renewal requirements, was identified as a candidate regulation for removal from scope of applicability to low significance SSCs. The aging management requirements could be viewed as being special treatment requirements in that they provide assurance that SSCs will continue to meet their licensing basis requirements during the renewed license period. Section 54.4 explicitly defines the scope of the license renewal rule using the traditional deterministic approach. Part 54 imposes aging management requirements in § 54.21 on the scope of SSCs meeting § 54.4.

In SECY–00–0194, the NRC staff provided its preliminary view that RISC–3 SSCs should not be removed from the scope of part 54, and that licensees can renew their licenses in accordance with part 54 by demonstrating that the § 50.69 treatment provides adequate aging management in accordance with § 54.21. The NRC staff suggested that no changes are necessary to part 54 to implement § 50.69 either prior to renewing a licensing or after license renewal.

The goal of the license renewal program is to establish a stable, predictable, and efficient license renewal process. The Commission believes that a revision of part 54 at this time could have a significant effect on the stability and consistency of the processes established for preparation of license renewal applications, and for NRC staff review. Further, as discussed below, the Commission believes that the requirements in part 54 are compatible with the § 50.69 approach, including use of risk information in establishing treatment (aging management) requirements. Refer to Section V.3.0 for additional discussion regarding the implementation of § 50.69 for a facility that has already received a renewed license. Thus, part 54 requires no changes at this time. However, in the future, the Commission will consider whether revisions to the scope of part 54 are appropriate.

The use of risk in establishing the scoping criteria within part 54 was addressed by the Commission on May 8, 1995 (60 FR 22461), when amending part 54. In the 1995 amendment, the Commission stated that the current licensing basis for current operating plants is largely based on deterministic engineering criteria. Consequently, there was considerable logic in establishing license renewal scoping criteria that recognized the deterministic nature of a plant's licensing basis. Without the necessary regulatory requirements and appropriate controls for plant-specific PRAs, the Commission concluded that it was inappropriate to establish a license renewal scoping criterion that relied on plant-specific probabilistic analyses. Therefore, the Commission concluded further that within the construct of the final rule, PRA techniques were of very limited use for license renewal scoping (60 FR 22468).

The 1995 amendment to part 54 excluded active components to "reflect a greater reliance on existing licensee programs that manage the detrimental effects of aging on functionality, including those activities implemented to meet the requirements of the maintenance rule," (60 FR 22471). Although § 50.69 would remove RISC–3 components from the scope of the maintenance rule requirements in § 50.65(a)(1), (a)(2), and (a)(3), a licensee is required under the proposed § 50.69(d)(2) to provide confidence in the capability of RISC–3 SSCs to perform their safety-related functions under design-basis conditions when challenged. The SOC for part 54 also indicated the Commission's recognition that risk insights could be used in evaluating the robustness of an aging management program (60 FR 22468). The NRC staff has received and accepted one proposal (Arkansas Unit 1) for a risk-informed program for small-bore piping which demonstrates that risk arguments can be used to a degree.

III.4.9.9 Other Requirements

In the ANPR and related documents, the staff and stakeholders suggested a number of other regulatory requirements that might be candidates for inclusion in § 50.69. These included § 50.12 (exemptions), § 50.54(a), (p), and (q) (plan change control), and § 50.71(e) (FSAR updates). As the rulemaking progressed, the Commission concluded that these requirements did not need to be changed to allow a licensee to adopt § 50.69 as it is being proposed.

III.5.0 Evaluation and Feedback, Corrective Action and Reporting Requirements

The validity of the categorization process relies on ensuring that the performance and condition of SSCs continues to be maintained consistent with applicable assumptions. Changes in the level of treatment applied to an SSC might result in changes in the

reliability of the SSCs which are used in the categorization process. Additionally, plant changes, changes to operational practices, and industry operational experience may impact the categorization assumptions. Consequently, the proposed rule contains requirements for updating the categorization and treatment processes when conditions warrant to assure that continued SSC performance is consistent with the categorization process and results.

Specifically the proposed rule would require licensees to review in a timely manner but no longer than every 36 months, the changes to the plant, operational practices, applicable industry operational experience, and, as appropriate, update the PRA and SSC categorization. In addition, licensees would be required to obtain sufficient information on SSC performance to verify that the categorization process and its results remain valid. For RISC–1 SSCs, much of this information may be obtained from present programs for inspection, testing, surveillance, and maintenance. However for RISC–2 SSCs and for RISC–1 SSCs credited for beyond design basis accidents, licensees would need to ensure that sufficient information is obtained. For RISC–3 SSCs, there is a relaxation of requirements for obtaining information when compared to the applicable special treatment requirements; however sufficient information would need to be obtained, and rule requirements are being proposed to consider performance data, see if adverse changes in performance might occur, and to make necessary adjustments such that desired performance is achieved so that the evaluations conducted to meet § 50.69(c)(1)(iv) remain valid. The feedback and adjustment process is crucial to ensuring that the SSC performance is maintained consistent with the categorization process and its results.

Taking timely corrective action is an essential element for maintaining the validity of the categorization and treatment processes used to implement proposed § 50.69. For safety-significant SSCs, all current requirements would continue to apply and, as a consequence, Appendix B corrective action requirements would be applied to RISC–1 SSCs to ensure that conditions adverse to quality are corrected. For both RISC–1 and RISC–2 SSCs, requirements would be included in § 50.69(e)(2) for monitoring and for taking action when SSC performance degrades.

When a licensee or applicant determines that a RISC–3 SSC does not meet its established acceptance criteria for performance of design basis functions, the proposed rule would require that a licensee perform timely corrective action (§ 50.69(d)(2)(iv)). Further, as part of the feedback process, review of operational data may reveal inappropriate assumptions for reliability or performance and a licensee would need to re-visit the findings made in the categorization process or modify the treatment for the applicable SSCs (§ 50.69(e)(3)). These provisions would then restore the facility to the conditions that were considered in the categorization, and would also restore the capability of SSCs to perform their functions.

Finally, the proposed rule would require reports of events or conditions that would have prevented RISC–1 and RISC–2 SSCs from being able to perform their safety-significant functions. A new reporting requirement would be added in § 50.69(g) for events or conditions that would prevent RISC–2 SSCs from performing their safety-significant functions (if not otherwise reportable). Because the categorization process has determined that RISC–2 SSCs are of safety significance, NRC is interested in reports about circumstances where the safety-significant function would have been prevented because of events or conditions. This reporting will enable NRC to be aware of situations impacting those functions found to be significant under § 50.69, such that NRC can take any actions deemed appropriate.

Properly implemented, these requirements would ensure that validity of the categorization process and results are maintained throughout the operational life of the plant.

III.6.0 Implementation Process Requirements

The proposed rule would also contain requirements specifying how a licensee (or applicant) would be able to use the alternative requirements in lieu of the existing requirements. The rule would specify applicability requirements as well as requirements on the Commission approval process for implementation.

The Commission is making the provisions of § 50.69 available to both applicants for licenses or design certification rules and to holders of facility licenses for light-water reactors. The proposed rule would be limited to light-water reactors because it was developed to risk-inform the scope of special treatment requirements which are applied to light-water reactors. Consequently, the technical aspects of the rule (*e.g.*, providing reasonable confidence that risk increases (*e.g.*, changes in CDF and LERF are small) including the implementation guidance, are specific to light-water reactor designs.

Proposed § 50.69 would rely on robust categorization to provide high confidence that the safety significance of SSCs is correctly determined. To ensure a robust categorization is employed, proposed § 50.69 would require the categorization process to be reviewed and approved prior to implementation of § 50.69 either by following the license amendment process of § 50.90 or as part of the license application review. While detailed regulatory guidance has been developed to provide guidance for implementing categorization consistent with the proposed rule requirements, the Commission concluded that a prior review and approval was still necessary to enable the NRC staff to review the scope and quality of the plant-specific PRA taking into account peer review results. The NRC staff would also review other evaluations and approaches to be used such as margins-type analyses. Additionally, this review would examine any aspects of the proposed categorization guidance that are not consistent with the staff's regulatory guidance for implementing § 50.69. Thus, the proposed rule would require that a licensee who wishes to implement § 50.69 submit an application for license amendment to the NRC containing information about the categorization process and about the peer review process employed. An applicant would submit this information as part of its license application. The Commission will approve, by license amendment, a request to allow a licensee to implement § 50.69 if it is satisfied that the categorization process to be used meets the requirements in § 50.69. Commission action on an applicant's request would be part of the Commission decision on the license application.

The Commission is proposing that the approval for a licensee to implement § 50.69 be by license amendment. As discussed above, prior NRC review and approval of the licensee's proposed PRA, basis for sensitivity studies and evaluations, and results of PRA review process is required. This review will involve substantial professional judgment on the part of NRC reviewers, inasmuch as the rule does not contain objective, non-discretionary criteria for assessing the adequacy of the PRA process, PRA review results and sensitivity studies. Consistent with the Commission's decision in Cleveland Electric Illuminating Co. (Perry Nuclear Power Plant, Unit 1), CLI–96–13, 44 NRC 315 (1996), the proposed rule would require NRC approval to be provided by issuance of a license amendment. The Nuclear Energy Institute (NEI) submitted a paper, "License Amendments: Analysis of Statutory and Legal Requirements" (NEI Analysis) in a July 10, 2002, letter to the Director of NRR. In this analysis, NEI contends that approval of a licensee's/applicant's request to implement § 50.69 need not be accomplished by a license amendment. NEI essentially argues that the proposed rule does not increase the licensee's operating authority, but merely provides a "different means of complying with the existing regulations * * *" Id., p.8. The Commission disagrees with this position, inasmuch as proposed § 50.69 would permit the licensee/applicant, once having obtained approval from the NRC, to depart from compliance with the "special treatment" requirements set forth in those regulations delineated in § 50.69. NEI also argues that the NRC's review and approval of the SSC categorization process under proposed § 50.69 is analogous to the review and approval process in Perry, which the Commission determined did not require a license amendment. Unlike the Perry case, where the license already provided for the possibility of material withdrawal schedule changes and the governing American Society for Testing and Materials (ASTM) standard set forth objective, non-discretionary criteria for changes to the withdrawal schedule, § 50.69 does not contain such criteria for assessing the adequacy of the PRA process, PRA review results, and the sensitivity studies. Hence, the NRC's approval of a request to implement § 50.69 will involve substantial professional judgment and discretion. In sum, the Commission does not agree with NEI's assertion that the NRC's approval of a request to implement § 50.69 may be made without a license amendment in accordance with the Perry decision.

The Commission does not believe it necessary to perform a prior review of the treatment processes to be implemented for RISC–3 SSCs in lieu of the special treatment requirements. Instead, the NRC has developed proposed § 50.69 to contain requirements that ensure the categorization is robust to provide high confidence that SSC safety significance is correctly determined; sufficient requirements on RISC–3 SSCs to provide a level of assurance that these SSCs remain capable of performing their design basis functions commensurate with their low safety significance; and requirements for obtaining sufficient information concerning the performance of these SSCs to enable corrective actions to be taken before RISC–3 SSC reliability degrades beyond the values used in the evaluations conducted to satisfy § 50.69(c)(1)(iv). The NRC concludes that compliance with these requirements, in conjunction with inspection of § 50.69 licensees is a sufficient level of regulatory oversight for these SSCs.

The Commission recognizes that this proposed rule may have implications with respect to NRC's reactor oversight process including the inspection program, significance determination process, and enforcement approach. In its final decision on this rulemaking, the Commission proposes to document its conclusions as to whether new or revised inspection or enforcement guidance is necessary.

The Commission included requirements in the proposed rule for documenting categorization decisions to facilitate NRC oversight of a licensee's or applicant's implementation of the alternative requirements. The proposed rule would also include provisions to have the FSAR and other documents updated to reflect the revised requirements and progress in implementation. These requirements will allow the NRC and other stakeholders to remain knowledgeable about how a licensee is implementing its regulatory obligations as it transitions from past requirements to the revised requirements in § 50.69. As part of these provisions, the Commission has concluded that requiring evaluations under § 50.59 (for changes to the facility or procedures as described in the FSAR) or under § 50.54(a) (for changes to the quality assurance plan) is not necessary for those changes directly related to implementation of § 50.69. For implementation of treatment processes for low safety-significant SSC, in accordance with the rule requirements contained in § 50.69, the Commission concludes that requiring further review as to whether NRC approval might be required for such changes is unnecessary burden. If a licensee is satisfying the rule requirements, as applied to RISC–3 SSC, the Commission could not postulate circumstances under which NRC approval of such changes would be required. Thus, a licensee would be permitted to make changes concerning treatment requirements that might be contained in these documents. The Commission is limiting this relief to changes directly related to implementation (with respect to treatment processes). Changes that affect any non-treatment aspects of an SSC (*e.g.*, changes to the SSC design basis functional requirements) are still required to be evaluated in accordance with other regulatory requirements such as § 50.59. This rulemaking is only risk-informing the scope of special treatment requirements. The process and requirements established in § 50.69 do not extend to making changes to the design basis of SSCs.

III.7.0 Adequate Protection

The Commission believes that reasonable assurance of adequate protection of public health and safety will be provided by applying the following principles in the development and implementation of proposed § 50.69:

(1) The net increase in plant risk is small;

(2) Defense-in-depth is maintained;

(3) Safety margins are maintained; and

(4) Monitoring and performance assessment strategies are used.

As described previously, these principles were established in RG 1.174, which provided guidance on an acceptable approach to risk-informed decision-making consistent with the 1995 Commission policy on the use of PRA. Proposed § 50.69 was developed to incorporate these principles, both to ensure consistency with Commission policy, and to ensure that the proposed rule maintains adequate protection of public health and safety.

The following discusses how proposed § 50.69 meets the four criteria, and as a result, maintains adequate protection of public health and safety.

III.7.1 Net Increase In Risk is Small

Proposed § 50.69 requires the use of a robust, risk-informed categorization process that ensures that all relevant information concerning the safety significance of an SSC is considered by a competent and knowledgeable panel who makes the final determination of the safety significance of SSCs. The review and approval of the categorization process ensures that it meets the requirements of § 50.69(c) and that as a result, the correct SSC safety significance is determined with high confidence. Correctly determining safety significance of an SSC provides confidence that special treatment requirements are only removed from SSCs with low safety significance, and that these requirements continue to be satisfied for SSCs of safety significance. The proposed rule requires that the

potential net increase in risk from implementation of proposed § 50.69 be assessed, and that this risk change is small. These requirements to provide reasonable confidence that the net change in risk is small as part of the categorization decision, in conjunction with the proposed rule requirements for maintaining design basis functions, and the processes noted below for feedback and adjustment over time, all contribute to preventing risk from increasing beyond the ranges that the Commission has determined to be appropriate. As a result, these requirements are a contributing element for maintaining adequate protection of public health and safety.

III.7.2 Defense-in-Depth Is Maintained

Section 50.69 would require that the defense-in-depth philosophy be maintained as part of the categorization requirements of § 50.69(c)(1) and as a result, defense-in-depth is considered explicitly in the categorization process. Thus, SSCs that are important to defense-in-depth, as outlined in the implementation guidance, will be categorized as safety-significant (and will retain their treatment requirements). For safety-significant SSCs (*i.e.*, RISC–1 and RISC–2 SSCs), all current special treatment requirements would remain (*i.e.*, the proposed rule does not remove any of these requirements) to provide high confidence that they can perform design basis functions, and additionally requires sufficient treatment be applied to support the credit taken for these SSCs for beyond design basis events. For RISC–3 SSCs, proposed § 50.69 would impose high level treatment requirements that when effectively implemented, maintain the capability of RISC–3 SSCs to perform their design basis functions. Thus, the complement of SSCs installed at the facility that provide the defense-in-depth will continue to be available. The proposed rule does not change the design basis of the facility, which was established based upon defense-in-depth considerations. Accordingly, the Commission concludes that the proposed rule maintains defense-in-depth.

III.7.3. Safety Margins Are Maintained

Proposed § 50.69 maintains sufficient safety margins by a combination of:

(1) Maintaining all existing functional and treatment requirements on RISC–1 and RISC–2 SSCs and additionally ensuring that any credit for these SSCs for beyond design basis conditions is valid and maintained; (2) maintaining the design basis of the facility for all SSCs, including RISC–3 SSCs as described above; and (3) requiring a licensee to have reasonable confidence that the overall increase in risk that may result due to implementation of proposed § 50.69 is small.

Maintaining current requirements on RISC–1 and RISC–2 SSCs, and ensuring that credit taken for these SSCs in the PRA for beyond design basis events is maintained, provides assurance that the safety-significant SSCs continue to perform as assumed in the categorization process. Maintaining the design basis ensures that SSCs continue to be designed to criteria that ensure the SSCs perform their design basis functions, and therefore are nominally capable of performing their design basis functions. Because the only requirements that are relaxed are those related to treatment, existing safety margins for SSCs arising from the design technical and functional requirements would remain. The proposed rule would also require (through monitoring requirements) that the SSCs must be maintained such that they continue to be capable of performing their design basis functions. The reduction in treatment applied to RISC–3 SSCs may result in an increase in RISC–3 failure rates (*i.e.*, a reduction in RISC–3 reliability). To address how this relates to safety margin, proposed § 50.69 would require that there be reasonable confidence that any potential increases in CDF and LERF be small from assumed changes in reliability resulting from the treatment changes permitted by the proposed rule. As a result, individual SSCs continue to be capable of performing their design basis functions, as well as to perform any beyond design basis functions consistent with the categorization process and results. Therefore, the Commission concludes that the proposed rule preserves sufficient safety margins.

III.7.4 Monitoring and Performance Assessment Strategies Are Used

Proposed § 50.69(e) would contain requirements that ensure that the risk-informed categorization and treatment processes are maintained, and reflect operational practices, the facility configuration, and SSC performance. In addition, proposed § 50.69(g) would contain requirements that reports are made to NRC of conditions preventing SSCs from performing their safety-significant functions. Together, these requirements maintain the validity of the risk-informed categorization and treatment processes such that the above criteria will continue to be satisfied over the life of the facility.

III.7.5 Summary and Conclusions

Proposed § 50.69 would contain requirements such that the net risk increase from implementation of its requirements is small; defense-in-depth is maintained; safety margins are maintained; and monitoring and performance assessment strategies are used. Together, these requirements result in a proposed § 50.69 that is consistent with Commission policy on the use of PRA, and that maintains adequate protection of public health and safety.

IV. Public Input to the Proposed Rule

IV.1.0 Advance Notice of Proposed Rulemaking (ANPR) Comments

The Commission published an ANPR (March 3, 2000; 65 FR 11488) to solicit public input on the direction and scope of this rulemaking. A number of comments were received. The NRC staff provided its preliminary responses to the issues raised by the commenters in SECY–00–194, dated September 7, 2000. The Commission has considered these issues in developing the proposed rule. More detailed discussion of the comments and the Commission's preliminary positions are contained in a separate document (see Section X, Availability of Documents). A summary of some of the more substantive issues follows.

IV.1.1 Need for Prior NRC Review and PRA "Quality"

As originally envisioned in the ANPR, with development of a detailed Appendix T to contain the categorization process requirements, implementation of § 50.69 could be undertaken without a prior NRC review and approval. As the rulemaking, guidance development, and pilot reviews progressed, it became apparent that some degree of NRC review would be necessary to determine that the PRA was technically adequate to support its use in the categorization process. While the completion of documents such as the ASME Standard for Probabilistic Risk Assessments for Nuclear Power Plant Applications and completion of peer reviews can lead to improved PRAs, there is still some lack of definitive guidance on preparation of PRAs that would allow use of PRA results in the manner anticipated without some degree of NRC review of the PRA itself. Concerns were also raised that excessive detail in the rule might be problematic and require exemptions. Thus, the approach that has been developed is for a rule with the minimum elements of the categorization process defined in the rule, a requirement for NRC review and approval of the categorization process (including PRA peer review information) to be used, and detailed implementation guidance (in the form of a regulatory guide).

IV.1.2 Treatment Attributes

Many of the ANPR comments focused on what treatment requirements should be established for various RISC categories of SSC. For example, there were comments that the requirements should not be "added-on" to existing requirements, but should reflect the significance of the SSCs. The Statement of Considerations of this rulemaking provides details about the decisions the Commission has made concerning the appropriate treatment requirements to include for the various categories of SSCs.

IV.1.3 Selective Implementation

The Commission received a number of comments on selective implementation, both during the ANPR process and later. The Commission concludes that selective implementation of § 50.69 should be allowed to permit a licensee/applicant to depart from compliance with a limited set of the special treatment rules delineated in § 50.69(b)(1). This topic is discussed further in Section V.5.1. Because of the existing requirements that would remain in place, a licensee could choose not to revise requirements for all of the rules within the scope of § 50.69(b). However, there is no selective implementation for the overall requirements in § 50.69. Thus for example, a licensee could not elect to adopt paragraph (b)(1) and not (d)(2).

The other question was whether selective implementation with respect to the scope of SSCs to be categorized should be allowed. The Commission has determined that selective implementation on a system basis should be allowed, but not for components within a system. The rule includes specific language about this limitation. This required scope ensures that all safety functions associated with a system or structure are properly identified and evaluated when determining the safety significance of individual components within a system or structure and that the entire set of components that comprise a system or structure are considered and addressed. As further discussed in Section III.2, the implementation, including the categorization process must address an entire system or structure, not selected components within a system.

With respect to the question about categorizing only some systems, because the process of categorization of individual components within the systems can be time-consuming, categorization will occur over a period of time. In theory, certain systems might not be categorized at all. Initially there was some reservation that a licensee might only choose to categorize in systems where they anticipated relief from requirements (*i.e.*, with a large set of RISC–3 SSCs) and would not categorize a system that would have RISC–2 SSCs. The Commission notes that requirements remain for RISC–3 SSCs until they are recategorized, and both sets of requirements are intended to maintain the design basis functions of RISC–3 SSCs. However, in categorizing any SSC, the categorization process may result in making assumptions about other SSCs in the plant (through the PRA modeling and in the IDP). In other words, for some SSCs to be of low safety significance, it is necessary for other SSCs to be safety-significant. For example, a RISC–2 SSC may be credited in the categorization process and subsequently another SSC becomes RISC–3 (low safety-significant). If a licensee wants to selectively implement § 50.69 just for the system in which a particular RISC–3 SSC resides, then the licensee would also have to assure that the credit for the RISC–2 SSC is maintained also. To ensure that the categorization process is valid, such assumptions and credit must be retained over time, as determined by the PRA update process. Because the NRC will be reviewing the categorization process before implementation, NRC can determine if the categorization process is compatible with this approach.

IV.2.0 Draft Rule Comments

On November 29, 2001 (66 FR 59546), the NRC staff released draft rule language for proposed § 50.69, in response to guidance from the Commission dated August 2, 2001. The draft rule language was released to stakeholders as a means of obtaining early input from stakeholders about the rulemaking and how it would be implemented. The NRC staff received ten sets of comments from stakeholders in response to the FR notice. The NRC staff revised the draft rule and re-issued the revised language on April 5, 2002, taking into account the issues raised by the stakeholders. A third draft of the rule was made publicly available on August 2, 2002. Some revisions to the rule resulted from the input provided by the stakeholders and others were taken into account in the development of the SOC. The remaining discussion identifies the significant comments which resulted in changes to the draft rule.

Many of the comments received related to the way in which the high-level treatment requirements for RISC–3 SSCs were organized and worded. Based upon these comments, the NRC reduced the number of separate subsections (from 8 to 4), and simplified the wording by removing duplication of phrases. Suggested simplifications that were accepted were the deletion of details of the types of maintenance (corrective, predictive), and deletion of the words "design inputs." Some stakeholders, such as the NEI, stated that the requirements were overly prescriptive and were not consistent with the concept of removing SSCs from the scope of NRC special treatment requirements. The issue about level of detail is the topic that drew the most comment during the draft rule language process. At the same time, comments and input from other stakeholders (including the Advisory Committee on Reactor Safeguards (ACRS), were resulting in strengthening of the categorization process such that any individual SSC categorized as RISC–3 is of very low safety significance. Specific consideration was also added in the rule requirements to deal with potential common-cause failures. Based upon this evolution, concerns about prescriptiveness as stated in these comments led the Commission to simplify the requirements on treatment for RISC–3 SSCs.

Another part of the draft rule that drew comment was the requirement for monitoring of RISC–3 SSCs. Some of the comments indicated that this was not necessary for low safety-significant SSCs, and was inconsistent with the removal of maintenance rule monitoring (by removing § 50.65(a)(1) through (3) as requirements). In the proposed rule, the Commission has clarified that the type of monitoring of availability and failures under the maintenance rule is not necessary and that the type of monitoring appropriate for RISC–3 SSCs is the performance monitoring specified in § 50.69(d)(2)(iii) and the feedback specified in § 50.69(e)(3).

Other comments proposed that the scope of rules being removed should be expanded to include the requirements in § 50.55a (ASME code requirements), and Appendix A to Part 100. Rule language was added to accomplish this by listing specific subsections of § 50.55a and Appendix A to Part 100 in the list of requirements removed, and through other changes to the rule designed to maintain the necessary reliability of SSCs. The ASME provided comments on the draft rule language

stating that the risk-informed Code Cases and Standards developed by ASME should not be directly referenced in the rule, but that there should be a framework developed to ensure that the Code Cases are used, and that partial use does not occur. The proposed rule permits, but does not require, use of the Code Cases for purposes of meeting rule requirements. The Commission notes that these Code Cases cover both categorization and treatment requirements in the areas of inservice inspection, inservice testing, and repair/replacement. The Commission expects licensees will utilize the ASME Code Cases as part of their implementation of § 50.69.

Another commenter stated that the rule should be made applicable to applicants as well as license holders, and NRC agreed that this was appropriate and made revisions to the rule language to accommodate this. Another commenter stated that the wording of the requirement to "assure risk is small from changes to treatment" set an impossible standard, and that the rule wording should be revised to allow use of sensitivity studies to provide confidence that the risk is small. The NRC agreed with this comment and revised the rule wording in the manner suggested that the licensee provide reasonable confidence that the increase in risk is small through performance of appropriate evaluations, such as sensitivity studies for SSCs modeled in the PRA.

A commenter thought it was unnecessary to require that a schedule or scope of systems to be categorized be part of the submittal. It was noted that implementation of the rule would of necessity occur over time, and that existing requirements would remain in effect until SSCs were categorized. Thus, the commenter believes that a licensee should not be held to any particular schedule for implementation. The NRC's intent in requesting a schedule and scope was for informational purposes to know what requirements would be in effect, but agrees that a firm commitment to a schedule is not required. This part of the rule was removed, and instead there is a requirement to update the FSAR, in accordance with § 50.71(e), to reflect implementation as it occurs for particular systems.

IV.3.0 Pilot Plants

To aid in the development of the proposed rule and associated implementation guidance, several plants volunteered to conduct pilot activities with the objective of exercising the proposed NEI implementation guidance and using the feedback and lessons-learned to improve both the implementation guidance and the governing regulatory framework. The pilot effort was supported by three of the industry owners groups who identified pilots for their reactor types and participated by piloting sample systems using the draft NEI implementation guidance. Supporting the pilot effort were the Westinghouse Owners Group with lead plants Wolf Creek and Surry, the BWR Owners Group with lead plant Quad Cities, and the CE Owners Group with lead plant Palo Verde. The B&W Owners Group did not participate, but did follow the pilot activities.

The NRC staff's participation and principal point of interaction in the pilot effort was primarily in observation of the deliberations of the integrated decision-making panel (IDP). By observing the IDP, the NRC staff was able to view the culmination of the categorization effort and gain good insights regarding both the robustness of the categorization process in general, and the IDP decision-making process specifically. Following each of the pilot IDPs, the staff developed and issued a trip report containing the staff's observations.

The following points set forth the principal lessons learned and key feedback from the NRC staff's observations of the pilot activities.

- Potential treatment changes and their potential effects need to be understood by the IDP as part of the deliberations on categorization.
- The pilots showed the importance of documentation of the IDP decisions and the basis. The rule contains a requirement for the categorization basis to be documented (and records retained) in § 50.69(f).
- The pilots experienced difficulty in explicit consideration about safety margins, especially in view of the fact that functionality must be retained. In the first draft rule language posted, requirements were included for the IDP to consider safety margins in its deliberations. Based upon the pilot experience, NRC adjusted its approach to margins to include this in the section of the rule that requires consideration of effects of changes in treatment and the use of evaluations as the means of providing reasonable confidence safety margins are maintained.
- The need for a number of improvements to the implementation guidance in NEI 00–04 were noted, for instance, improvement in a defense-in-depth matrix presented therein, and the need for more specific guidance on making decisions where quantitative information is not available. These lessons-learned were factored into the revised version of NEI 00–04.
- During the pilot activity, pressure boundary ("passive") functions were also categorized using the draft version of an ASME Code Case on categorization available at that time. A separate categorization process was used for these passive functions because it was recognized by pilot participants that the approach for these SSCs must be somewhat different than for "active" functions because of such considerations as spatial interaction. Specifically, if a pressure boundary SSC failed, the resulting high-energy release or flooding might impact other equipment in physical proximity, so the process needed to account for those effects in addition to the significance of the SSC that initially failed. Improvements to the ASME Code Case for categorization of piping (and related components) were identified and fed back into the code development process.
- The pilot experiences also revealed the intricacies of the relationship between "functions" (which play a role in decisions on safety significance) and "components" (importance measures are associated with components and treatment is also generally applied on a component basis). Because a particular component may support more than one function, the categorization of the component needs to correspond with the most significant function and means must be provided for a licensee to "map" the components to the functions they support.
- At each pilot, the NRC noted that the IDP needed to include consideration of long term containment heat removal in characterizing SSCs. The NRC considers retention of long term containment heat removal capability important to defense-in-depth for light water reactors.
- Finally, a number of lessons were learned about how to conduct the IDP process, such as training needs, materials to be provided to the panel, etc. As a result of this feedback, NEI revised NEI 00–04 and developed draft revision C of the implementation guidance (discussed in Section VI).

IV.4.0 South Texas Exemption as Proof-of-Concept

A major element of the rulemaking plan described in SECY–99–256 was the review of the South Texas Project Nuclear Operating Company (STPNOC) exemption request. The review of the STPNOC exemption request was viewed as a proof-of-concept prototype for this rulemaking rather than a pilot because it preceded development of draft rule language or related implementation guidance.

By letter dated July 13, 1999, STPNOC requested approval of exemption requests to enable implementation of processes for categorizing the safety significance of SSCs and treatment of those SSCs consistent with its categorization process. The STPNOC process included many similar elements to that described in this rulemaking, but with some differences. Their process identified SSCs as being either high, medium, low or not risk-significant. The scope of the exemptions requested included only those safety-related SSCs that have been categorized as low safety-significant or as nonrisk significant using STPNOC's categorization process. The licensee indicated that the categorization and treatment processes would be implemented over the remaining licensed period of the facility. Thus, the basis for the exemptions granted was the staff's approval of the licensee's categorization process and alternative treatment elements, rather than a comprehensive review of the final categorization and treatment of each SSC (review of the process rather than the results is also the approach planned under the rulemaking). As a result of discussions with the NRC staff on a number of topics, STPNOC submitted a revised exemption request on August 31, 2000.

On November 15, 2000, the NRC staff issued a draft safety evaluation (SE), based on the revised exemption requests. Following the licensee's response to the draft SE, the staff prepared SECY–01–0103 dated June 12, 2001, to inform the Commission of the staff's finding regarding the STPNOC exemption review. The staff approved the STPNOC exemption requests by letter dated August 3, 2001 (ADAMS accession number ML011990368).

The NRC has applied lessons learned from the review of the STPNOC exemption request in developing proposed § 50.69 and the description of intended implementation of the rule in this SOC. For example, in the STPNOC review, the NRC staff reviewed the categorization process proposed by the licensee in detail. With respect to proposed § 50.69, the NRC continues to require a robust categorization with a detailed staff review.

The proposed rule specifies the requirement that the licensee provide reasonable confidence in functionality and further specifies some high-level requirements for SSC treatment. Under proposed § 50.69, the NRC does not plan to review each licensee's plan for SSC treatment in detail. Licensees will have to establish appropriate performance-based SSC treatment processes to maintain the validity of the categorization process and its results. The proposed rule would require that licensees adjust the categorization or treatment processes, as appropriate, in response to the SSC performance information obtained as part of the treatment process.

V. Section by Section Analysis

V.1.0 Section 50.8 Information Collection

This proposed rule includes a revision to § 50.8(b). This section pertains to approval by the Office of Management and Budget (OMB) of information collection requirements associated with particular NRC requirements. Because the new § 50.69 includes information collection requirements, a conforming change to § 50.8(b) is necessary to list § 50.69 as one of these rules. See also Section XIII of the SOC for discussion about information collection requirements of § 50.69.

V.2.0 Section 50.69(a) Definitions

Section 50.69(a) provides the definition for the four RISC categories and the definition of the term "safety-significant function." As discussed in Section II of the SOC, RISC–1 SSCs are those SSCs that are safety-related (as defined in § 50.2) and that are found to be safety-significant (using the risk-informed categorization process being established by this rule). RISC–2 SSCs are SSCs that do not meet the safety-related definition, but which are safety-significant. RISC–3 SSCs are safety-related but are low safety-significant. Finally, RISC–4 SSCs are not safety-related and are low safety-significant. The NRC selected the terms "safety-significant" and "low safety-significant" as the best representations of their meaning. Every component (if categorized) is either safety-significant or low safety-significant. The "low" category could include those SSCs that have no safety significance, as well as some SSCs that individually are not safety-significant, but collectively can have a significant impact on plant safety (and hence the need for maintaining the design basis capability of these SSCs). Similarly, within the category of "safety-significant," some SSCs are of more importance than others; so it did not appear appropriate to call them all "high safety-significant." The RISC definitions of paragraph (a) are used in subsequent paragraphs of § 50.69 where the treatment requirements are applied to SSCs as a function of RISC category.

The definitions provided in paragraph (a) are written in terms of SSCs that perform functions. In the categorization process, it is the various functions performed by systems that are assessed to determine their safety significance. For those functions of significance, the structures and components that support that function are then designated as being of that RISC category. Then, the treatment requirements are specified for the SSCs that perform those functions. Where an SSC performs functions that fall in more than one category, the treatment requirements derive from the more safety-significant function (*i.e.*, if a component has both a RISC–1 and a RISC–3 function, it is treated as RISC–1).

The rule also contains a definition of "safety-significant" function. NRC selected the term "safety-significant" instead of "risk-significant" because the categorization process employed in § 50.69 considers both probabilistic and deterministic information in the decision process. Thus, it is more accurate to represent the outcome as a determination of overall safety significance, including risk significance, and not just "risk-significant."

Those functions that are not determined to be safety-significant are considered to be low safety-significant. The determination as to which functions are safety-significant is done by following the categorization process outlined in paragraph (c), as implemented following the guidance in DG–1121, "Guidelines for Categorizing Structures, Systems, and Components in Nuclear Power Plants According to their Safety Significance."

V.3.0 Section 50.69(b) Applicability

Section § 50.69(b) provides that the rule may be voluntarily implemented by:

(1) Holders of § 50.21(b) or § 50.22 light water reactor (LWR) operating licenses;

(2) Holders of Part 54 renewed LWR licenses;

(3) A person seeking a design certification under Part 52 of this chapter; or

(4) Applicants for a LWR license under § 50.22 or under Part 52.

For current licensees, implementation will be through a license amendment as set forth in § 50.90. Until the request is approved, a licensee would continue to follow existing requirements. Upon approval of the categorization process (and review of the supporting PRA), the licensee can begin implementation by performing categorization of SSCs and revising treatment requirements accordingly.

Applicants would be permitted to implement the treatment requirements, although the process involved for them would likely be different, depending upon the stage at which they seek approval. An applicant would have to categorize its SSCs into the four RISC categories, which would first require the applicant to design the facility to meet the Part 50 requirements including classifying SSCs according to the safety-related definition of Part 50. The applicant could then use the provisions of § 50.69 (upon NRC approval) to categorize SSCs into the four RISC categories, and this in turn would enable the applicant to initially procure these SSCs to meet the applicable § 50.69 requirements.

For Part 54 license holders, implementation is the same as that for a holder of an operating license under Part 50, that is, to apply for an amendment to the (renewed) license. In the development of § 50.69, questions have been received regarding what would be the impact to licensees that implement the proposed § 50.69 and then apply to renew their license. Because Part 54 includes scoping criteria that bring safety-related components within its scope, these components could not be exempted without amending Part 54 to allow for their exclusion. However, there are still options available to applicants for renewal that have implemented § 50.69 first. Because § 50.69 includes alternative treatment requirements for RISC–3 components, an applicant may be able to provide an evaluation that justifies why these alternative treatment criteria (§ 50.69(d)(2)) provide a sufficient demonstration that aging management of the components will be achieved during the renewal period to ensure the functionality of the structure, system, or component. In addition, in the 1995 amendment to Part 54, the Commission recognized that risk insights could be used in evaluating the robustness of an aging management program. The NRC staff has already received and accepted one proposal (Arkansas Unit 1) for a risk-informed program for small-bore piping which demonstrates that risk arguments can be used to a degree.

For the case where a licensee renewed its license first and then implemented § 50.69, a licensee might revise some aging management programs for RISC–3 SSCs, consistent with the requirements of § 50.69. The Commission considers that there should be little or no impediment for doing so because the categorization process that allows for the reduction in the special treatment requirements for RISC–3 components is expected to provide an appropriate level of safety for the respective structures, systems and components.

Adopting the proposed § 50.69 requirements for an applicant that has not obtained a § 50.21(b) or § 50.22 operating license (*e.g.* for a construction permit holder), is not as straightforward, and requires that the applicant first design the facility to meet the current Part 50 requirements. Specifically, to use the proposed § 50.69 requirements requires that SSCs first be classified into the traditional safety-related and nonsafety-related classifications. This establishes the design basis for the facility, which as previously stated, the proposed § 50.69 is not changing. Once the SSC categorization has been done consistent with the safety-related definition in § 50.2, then proposed § 50.69 can be used to re-categorize SSCs into RISC–1, RISC–2, RISC–3, and RISC–4, and the alternative treatment requirements of proposed § 50.69 implemented. A new applicant who chooses to adopt these proposed § 50.69 requirements, must seek approval of the categorization process as part of its license application, and following NRC approval, would be able to procure RISC–3 SSCs to proposed § 50.69 requirements before initial plant operation. An applicant who references a certified design and wishes to implement § 50.69 would include the specified information as part of its application for a license. This does not mean that an applicant would actually construct the facility per all Part 50, and 100 requirements first, before applying § 50.69. Instead, the facility needs to be designed per these requirements, but following approval of application of § 50.69, RISC–3 SSCs could be procured per the requirements of § 50.69(d).

The rule provisions were devised to provide means for licensees and applicants for light water reactors to implement § 50.69. In view of some of the specific provisions of the rule, for example, "safety-related" definition and use of CDF/LERF metrics, the Commission is making this rule only applicable to light-water reactor designs.

An applicant for a design certification could request to implement § 50.69 with respect to categorizing SSCs. Because the rule requirements in § 50.69 include elements of procurement and installation, as well as inservice activities, implementation of the rule by a holder of a manufacturing license or by a design certification applicant would have implications for the eventual operator of the facility. The entity that actually constructs and operates the facility would also have to implement § 50.69 to maintain consistency with the categorization process and feedback requirements. Otherwise, the operator would be required to meet other Part 50 requirements, such as Appendix B or § 50.55a, which may not be compatible with the facility as manufactured by the manufacturing licensee. However, applicability of this proposed rule is not excluded for manufacturing licenses or design certificate applicants.

V.3.1 Section 50.69(b)(1) Removal of RISC–3 and RISC–4 SSCs From the Scope of Treatment Requirements

Section 50.69 (b)(1) of the proposed rule lists the specific special treatment requirements from whose scope the RISC–3 and RISC–4 SSCs are being removed through the application of § 50.69. In this paragraph, each of the rule requirements (or portions thereof) that are being removed by this rulemaking are listed in a separate item, numbered from § 50.69(b)(1)(i) through (ix). The basis for removal of these requirements was discussed earlier. These requirements are being removed due to the low safety significance of RISC–3 and RISC–4 SSCs as determined by an approved risk-informed categorization process meeting the requirements of § 50.69(c). The special treatment requirements for RISC–3 SSCs are replaced with the high level requirements in § 50.69(d)(2), which when effectively implemented by licensees to provide a sufficient level of confidence that RISC–3 SSCs continue to be capable of performing their safety-related functions under design basis conditions. Note that special treatment requirements are not removed from any SSCs until a licensee (or applicant) has categorized those SSCs using the requirements of § 50.69(c) to provide the documented basis for the decision that they are of low safety significance.

V.3.2 Section 50.69 (b)(2) Application Process

Proposed § 50.69(b)(2) would require a licensee who voluntarily seeks to implement § 50.69 to submit an application for a license amendment pursuant to § 50.90 that contains the following information:

(i) A description of the categorization process that meets the requirements of § 50.69(c).

(ii) A description of the measures taken to assure that the quality and level of detail of the systematic processes that evaluate the plant for internal and external events during normal operation, low power, and shutdown (including the plant-specific PRA, margins-type approaches, or other systematic evaluation techniques used to evaluate severe accident vulnerabilities) are adequate for the categorization of SSCs.

(iii) Results of the PRA review process to be conducted to meet § 50.69(c)(1)(i).

(iv) A description of, and basis for acceptability of, the evaluations to be conducted to satisfy § 50.69(c)(1)(iv). The evaluations shall include the effects of common cause interaction susceptibility, and the potential impacts from known degradation mechanisms for both active and passive functions, and address internally and externally initiated events and plant operating modes (*e.g.*, full power and shutdown conditions).

Regarding the categorization process description, the NRC expects that most licensees and applicants will commit to draft regulatory guide DG–1121 which endorses NEI 00–04, with some conditions and exceptions. If a licensee or applicant wishes to use a different approach, the submittal would need to provide sufficient description of how the categorization would be conducted. As part of the submittal, a licensee or applicant is to describe the measures they have taken to assure that the plant-specific PRA, as well as other methods used, are adequate for application to proposed § 50.69. The measures described would include such items as any peer reviews performed, any actions taken to address peer review findings that are important to categorization, and any efforts to compare the plant-specific PRA to the ASME PRA standard. The NRC has developed reviewer guidance applicable to these submittals and this is described below in Section VI.2. The licensee/applicant would also describe what measures they have used for the methods other than a PRA to determine their adequacy for this application.

Further, the licensee (or applicant) would be required to include information about the evaluations they intend to conduct to provide reasonable confidence that the increase in risk would be small. This would include any sensitivity studies for RISC–3 SSCs, including the basis for whatever change in reliability being assumed for these analyses. A licensee would need to provide sufficient information for the NRC describing the sensitivity studies and other evaluations, and the basis for their acceptability as appropriately representing the potential increase in risk from implementation of the revised requirements in this proposed rule.

As discussed elsewhere, the RISC–3 SSCs have low safety significance under § 50.69. The Commission expects licensees and applicants to implement effective treatment processes to maintain RISC–3 functionality that comply with § 50.69(d). Those processes do not need to be described to the NRC as part of the proposed § 50.69 submittal under § 50.69(b)(2).

V.3.3 Section 50.69(b)(3) Approval for Licensees

Section 50.69(b)(3) would further provide that the Commission will approve a licensee's implementation of this section by license amendment if it determines that the proposed process for categorization of RISC–1, RISC–2, RISC–3, and RISC–4 SSCs satisfies the requirements of § 50.69(c).

The NRC will review the description of the categorization process set forth in the application to confirm that it contains the elements required by the rule. The NRC will also review the information provided about the plant-specific PRA, including the peer review process to which it was subjected, and methods other than a PRA relied upon in the categorization process. The NRC intends to use review guidance (discussed in more detail in Section VI) for this purpose. The NRC will approve the licensee's use of § 50.69 by issuing a license amendment.

V.3.4 Section 50.69(b)(4) Process for Applicants

Section 50.69(b)(4) would require that an applicant for a license (or for a design certification) that chooses to implement proposed § 50.69 must submit the information listed in § 50.69(b)(2) as part of its application for a license. As previously discussed, the rule is structured to transition from the "safety-related" classification (and related treatment requirements) to a safety-significant classification. Thus, an applicant would first need to design the facility to meet applicable Part 50 design requirements, and then apply the requirements of § 50.69. The above-cited information must be submitted in addition to other technical information necessary to meet § 50.34. The NRC will provide its approval of implementation of § 50.69, if it concludes that the rule requirements would be met, as part of its action on the application for a license or the design certification rule. As noted in Section V.3.0, an applicant referencing a certified design that implemented § 50.69 would need to adopt the remaining provisions of § 50.69 or apply the other requirements in Part 50 to its processes.

V.4.0 Section 50.69(c) Categorization Process Requirements

Section 50.69(c) would establish the requirements for the risk-informed categorization process including requirements for the supporting PRA. Licensees or applicants who wish to adopt the requirements of § 50.69 will need to make a submittal (per § 50.69(b)(2) or § 50.69(b)(4)) that discusses how their proposed categorization process, supporting PRA, and evaluations meet the § 50.69(c) requirements. As described above in Section III.2.0, these requirements are intended to ensure that the risk-informed § 50.69 categorization process determines the safety significance of SSCs with a high level of confidence. The introductory paragraph states that SSCs must be categorized as RISC–1, 2, 3, or 4 by a process that determines whether the SSC performs one or more safety-significant functions and identifies those functions.

V.4.1 Section 50.69(c)(1)(i) Results and Insights From a Plant-Specific Probabilistic Risk Assessment

Section 50.69(c)(1)(i) contains the requirements for the PRA itself, and how it is to be used in the categorization process. The PRA must have sufficient capability and quality to support the categorization of the SSCs. How this is to be accomplished is discussed in Section V.4.1.1. The PRA and associated sensitivity studies are used primarily in the categorization of the SSCs as to their safety significance as discussed in Section V.4.1.2, and the PRA is also used to perform evaluations to assess the potential risk impact of the proposed change in treatment of the RISC–3 SSCs as discussed in Section V.4.4.

V.4.1.1 Scope, Capability, and Quality of the PRA to Support the Categorization Process

As required in § 50.69(c)(1)(ii), initiating events from sources both internal and external to the plant, and for all modes of operation, which would include low power and shutdown modes, must be considered when performing the categorization of SSCs. It is recognized that few licensees have fully developed PRA models that cover such a scope. However, as a minimum, the PRA to be used to support categorization under § 50.69(c)(1) must model internal initiating events occurring at full power operations. The PRA will have to be able to calculate both core damage frequency and large early release frequency in order to meet the requirement in § 50.69(c)(iv). The PRA must reasonably represent the current configuration and operating practices at the plant to meet § 50.69(c)(1)(ii). The PRA model should be of sufficient technical quality and level of detail to support the categorization process. This means that

it represents a coherent, integrated model, and have sufficient detail to support the initial categorization of SSCs into the safety-significant, and low safety-significant categories.

The quality and scope of the plant-specific PRA will be assessed by the NRC taking into account appropriate standards and peer review results. The NRC has also prepared a draft regulatory guide (DG–1122) on determining the technical adequacy of PRA results for risk-informed activities. As one step in the assurance of technical quality, the PRA must have been subjected to a peer review process assessed against a standard or set of acceptance criteria that is endorsed by the NRC. Thus, the NRC staff would use the NEI Peer Review Process as modified in the NRC's approval, or the ASME/ANS Peer Review Process, as modified in the NRC's approval. As discussed in Section VI, NRC has developed review guidelines for considering the sufficiency of a PRA that was subjected to the NEI peer review process, as it would be used in implementation of § 50.69. The submittal requirements listed in § 50.69(b)(2) include a requirement to provide information about the quality of the PRA analysis and about the peer review results.

V.4.1.2 Risk Categorization Process Based on PRA Information

For SSCs modeled in the PRA, the categorization process relies on the use of importance measures as a screening method to assign the preliminary safety significance of SSCs. (Other methodologies such as success path identification methodologies can also be used, however, this discussion will focus on the use of importance measures because these are the most commonly used tools to identify safety significance of SSCs, for example, in the implementation of § 50.65.) In addition to being a useful tool to help prioritize NRC staff and licensee resources, use of importance measures can provide a systematic means to identify improvements to current plant practices. The determination of the safety significance of SSCs by importance measures is also important because it can identify potential risk outliers and therefore, changes that exacerbate these outliers can be avoided; and it can facilitate IDP deliberations of SSCs that are not modeled in the PRA, for example, events from the ranked list can be used as surrogates for those SSCs that are not modeled or are only implicitly modeled in the PRA.

For SSCs modeled in the PRA, SSC importance must be determined based on both CDF and LERF. Importance measures should be chosen so that results can provide the IDP with information on the relative contribution of an SSC to total risk. Examples of importance measures that can accomplish this are the Fussell-Vesely (F–V) importance and the Risk Reduction Worth (RRW) importance. Importance measures should also be used to provide the IDP with information on the margin available should an SSC fail to function. The Risk Achievement Worth (RAW) importance and the Birnbaum importance are example measures that are suitable for this purpose.

In choosing screening criteria to be used with the PRA importance measures, it should be noted that importance measures do not directly relate to changes in the absolute value of risk. Therefore, the final criteria for categorizing SSCs into the safety-significant and the low safety-significant categories must be based on an assessment of the potential overall impact of SSC categorization and a comparison of this potential impact to the acceptance criteria for changes in CDF and LERF. However, typically in the initial screening stages, an SSC with F–V < 0.005 based on CDF and LERF, and RAW < 2 based on CDF and LERF can be considered as potentially low safety-significant. IDP consideration of §§ 50.69(c)(1)(ii), (c)(1)(iii), and (c)(1)(iv) should be carried out to confirm the low safety significance of these SSCs.

In determining the importance of SSCs, consideration should be given to the potential for the multiple failure modes for the SSC. PRA basic events represent specific failure events and failure modes of SSCs. The calculation of SSC importance should take into account the combined effects of all associated basic PRA events (such as failure to start and failure to run), including indirect contributions through associated common cause failure (CCF) event probabilities.

Another concern that arises because importance measures are typically evaluated on the basis of individual events is that single-event importance measures have the potential to dismiss all elements of a system or group, despite the system or group having a high importance when taken as a whole. (Conversely, there may be grounds for screening out groups of SSCs, owing to the unimportance of the systems of which they are elements.) One approach around this problem is to first determine the importance of system functions performed by the selected plant systems. If necessary, each component in a system is then evaluated to identify the system function(s) supported by that component. SSCs may be initially assigned the same category as the most limiting system function they support. System operating configuration, reliability history, recovery time available, and other factors can then be considered when evaluating the effect on categorization from an SSC's redundancy or diversity. The primary consideration in the process is whether the failure of an SSC will fail or severely degrade the safety function. If the answer is no, then a licensee may factor into the categorization the SSC's redundancy, as long as the SSC's reliability assumed in the categorization process and that of its redundant counterpart(s) have been taken into account.

When the PRA used in the importance analyses includes models for external initiating events and/or plant operating modes other than full power, caution should be used when considering the results of the importance calculations. The PRA models for external initiating events (*e.g.*, events initiated by fires or earthquakes), and for low power and shutdown plant operating modes may be more conservative and have a greater degree of uncertainty than for internal initiating events. Use of conservative models can influence the calculation of importance measures by moving more SSCs into the low safety significance category. Therefore, when PRA models for external event initiators and for the low power and shutdown modes of operation are available, the importance measures should be evaluated for each analysis separately, and the results of the analyses should be provided to the IDP.

As part of the demonstration of PRA adequacy, the sensitivity of SSC importance to uncertainties in the parameter values for component availability/reliability, human error probabilities, and CCF probabilities should be evaluated. Results of these sensitivity analyses should be provided to the IDP. In IDP deliberations on the sensitivity study results, the following should be considered:

(1) The change in event importance when the parameter value is varied over its uncertainty range for the event probability can in some cases provide SSC categorization results that are different. Therefore, in considering the sensitivity of component categorization to uncertainties in the parameter values, the IDP should ensure that SSC categorization is not affected by data uncertainties.

(2) PRAs typically model recovery actions, especially for dominant accident sequences. Estimating the success probability for the recovery actions involves a certain degree of subjectivity. The concerns in this case stem from situations where very high success probabilities are assigned to a sequence, resulting in related components being ranked as low risk contributors. Furthermore, it is not desirable for the categorization of SSCs to be impacted by recovery actions that sometimes are only modeled for the dominant scenarios. Sensitivity analyses should be used to show how the SSC categorization would change if recovery actions were removed. The IDP should ensure that the categorization is not unduly impacted by the modeling of recovery actions.

(3) CCFs are modeled in PRAs to account for dependent failures of redundant components within a system. CCF probabilities can impact PRA results by enhancing or obscuring the importance of components. A component may be ranked as a high risk contributor mainly because of its contribution to CCFs, or a component may be ranked as a low risk contributor mainly because it has negligible or no contribution to CCFs. The IDP should ensure that the categorization is not unduly impacted by the modeling of CCFs. The IDP should also be aware that removing or relaxing requirements may increase the CCF contribution, thereby changing the risk impact of an SSC.

V.4.2 Section 50.69(c)(1)(ii) Integrated Assessment of SSC Function Importance

Section 50.69(c)(1)(ii) contains requirements for an integrated, systematic process to address events including those not modeled in the PRA, including both design basis and severe accident functions. For various reasons, many SSCs in the plant will not be modeled explicitly in the PRA. Therefore, the categorization process must determine the safety significance of these SSCs by other means, as discussed below. Because importance measures are not available for use as screening, other criteria or considerations must be used by the IDP to determine the significance. To provide the necessary structure, the Commission is setting forth guidance on how these deliberations should be conducted; this information will also be included in the regulatory guidance for this proposed rule. These considerations were selected based upon NRC experience about what functions are important to prevention of core damage or large early release.

The proposed rule would also include requirements that all aspects of the processes used to categorize SSC must reasonably reflect the current plant configuration, operating practices and applicable operating experience. The terminology of "reasonably reflect" was selected to allow for appropriate PRA modeling and also to make clear that the PRA and processes do not need to be instantaneously revised when a plant change occurs (see also requirements in § 50.69(e)(1) on PRA updating).

V.4.2.1 Initiating Events and Plant Operating Modes Not Modeled in the PRA

When initiating events with frequencies of greater than 10^{-6} per year are not modeled in the PRA, or when the low power and shutdown plant operating modes are not modeled in the PRA, other means are needed to determine the safety significance to meet § 50.69(c)(1). The proposed implementation guidance contains information about how this can be accomplished by the IDP assessments. The licensee should demonstrate that the relaxation of regulatory requirements will not unacceptably degrade plant response capability and will not introduce risk vulnerabilities for the unmodeled initiating events or plant operating modes. For these unmodeled events, the IDP assessment should consider whether an SSC has an impact on the plant's capability to:

(1) Prevent or mitigate accident conditions,

(2) Reach and/or maintain safe shutdown conditions,

(3) Preserve the reactor coolant system pressure boundary integrity,

(4) Maintain containment integrity, or

(5) Allow monitoring of post-accident conditions.

In determining the importance of SSCs for each of these functions, the following factors should be considered:

- Safety function being satisfied by SSC operation
- Level of redundancy existing at the plant to fulfill the SSC's function
- Ability to recover from a failure of the SSC
- Performance history of the SSC
- Use of the SSC in the Emergency Operating Procedures or Severe Accident Management Guidelines

The licensee or applicant (through the IDP) must document the basis for the assignment of an SSC as RISC–3 based on the above considerations. Insights and results from risk assessment and risk management methodologies (for example the fire and external events screening methodologies, the seismic margins analyses, or the shutdown safety management models) may be used to help form this basis.

V.4.2.2 SSCs Not Modeled in the PRA

In addition to being safety-significant in terms of their contribution to CDF or LERF, SSCs can also be safety-significant in terms of other risk metrics or conditions. Therefore, for SSCs not modeled explicitly in the PRA, the IDP should verify low safety significance based on traditional engineering analyses and insights, operational experience, and information from licensing basis documents and design basis accident analyses. The IDP should assess the safety significance of these SSCs by determining if:

(1) Failure of the SSC will significantly increase the frequency of an initiating event, including those initiating events originally screened out in the PRA.

(2) Failure of the SSC will compromise the integrity of the reactor coolant pressure boundary. It is expected that a sufficiently robust categorization process would result in the reactor coolant pressure boundary being categorized as RISC–1.

(3) Failure of the SSC will fail a safety-significant function, including SSCs that are assumed to be inherently reliable in the PRA (*e.g.*, piping and tanks) and those that may not be explicitly modeled (*e.g.*, room cooling systems, and instrumentation and control systems). For example, it is expected for PWRs that a sufficiently robust categorization process would categorize high energy ASME Section III Class 2 piping of the main steam and feedwater systems as RISC–1.

(4) The SSC supports important operator actions required to mitigate an accident, including the operator actions taken credit for in the PRA.

(5) Failure of the SSC will result in failure of safety-significant SSCs (*e.g.*, through spatial interactions or through functional reliance on another SSC).

(6) Failure of the SSC will impact the plant's capability to reach and/or maintain safe shutdown conditions.

(7) The SSC is one of a redundant set that can be justifiably identified as a common cause failure group.

(8) The SSC is a part of a system that acts as a barrier to fission product release during severe accidents. It is expected that a sufficiently robust categorization process would result in fission product barriers (*e.g.*, the containment shell or liner) being categorized as RISC–1.

(9) The SSC is depended upon in the Emergency Operating Procedures or the Severe Accident Management Guidelines.

(10) Failure of the SSC will result in unintentional releases of radioactive

material in excess of 10 CFR part 100 guidelines even in the absence of severe accident conditions.

(11) The SSC is relied upon to control or to mitigate the consequences of transients and accidents.

If any of these conditions is true, the IDP should use a qualitative evaluation process to determine the impact of relaxing requirements on SSC reliability and performance. This evaluation should include identifying the functions being supported by SSC operation, the relationship between the SSC's failure modes and the functions being supported, the SSC failure modes for which the failure rate may increase, and the SSC failure modes for which detection could become or are more difficult. The IDP can then justify low safety significance of the SSC by demonstrating the following:

- The categorization is consistent with the defense-in-depth philosophy (per Section V.4.3 below).
- Operating experience indicates that degradation mechanisms (*e.g.*, for piping flow accelerated corrosion or microbiologically-induced corrosion), for passive and active SSCs are not present, relaxing the requirements will have minimal impact on the failure rate increase, and degradation in the ability of the SSC to perform its safety function can be detected in a timely fashion.
- Relaxing the requirements will have a minimal impact on the expected onsite occupational or offsite doses from transients and accidents that do not contribute to CDF or LERF.

V.4.3 Section 50.69(c)(1)(iii) Maintaining Defense-in-Depth Philosophy

Section 50.69(c)(1)(iii) requires that the categorization process maintain the defense-in-depth philosophy. To satisfy this requirement, when categorizing SSCs as low safety-significant, the IDP must demonstrate that the defense-in-depth philosophy is maintained. Defense-in-depth is considered adequate if the overall redundancy and diversity among the plant's systems and barriers is sufficient to ensure the risk acceptance guidelines discussed below in Section V.4.4 are met, and that:

- Reasonable balance is preserved among prevention of core damage, prevention of containment failure or bypass, and mitigation of consequences of an offsite release.
- System redundancy, independence, and diversity is preserved commensurate with the expected frequency of challenges, consequences of failure of the system, and associated uncertainties in determining these parameters.
- There is no over-reliance on programmatic activities and operator actions to compensate for weaknesses in the plant design, and
- Potential for common cause failures is taken into account.

The Commission's position is that the containment and its systems are important in the preservation of the defense-in-depth philosophy (in terms of both large early and large late releases). Therefore, as part of meeting the defense-in-depth principle, a licensee should demonstrate that the function of the containment as a barrier (including fission product retention and removal) is not significantly degraded when SSCs that support the functions are moved to RISC–3 (*e.g.*, containment isolation or containment heat removal systems). The concepts used to address defense-in-depth for functions required to prevent core damage may also be useful in addressing issues related to those SSCs that are required to preserve long-term containment integrity. One way to do this would be to show that these SSCs are not relied on to prevent late containment failure during core damage accidents. An alternative method would be to demonstrate that a potential decrease in reliability of RISC–3 SSCs that support the containment function does not have significant impact on the estimate of late containment failure probability. In essence, what the NRC expects is for a plant-specific understanding of the effects of containment systems on large late releases and an understanding of the credit given to these systems in maintaining the conditional probability for these releases. A licensee or applicant can qualitatively argue that an SSC is not relied upon to prevent large late containment failure and is thus low safety-significant from this standpoint. If an SSC plays a role in supporting the containment function in terms of large late releases, and if the licensee wants to categorize these SSCs as low safety-significant (for example, because of available redundant systems or trains or because failure is dominated by factors not related to the SSC), NRC would find acceptable the use of sensitivity studies to show that the effects on (*i.e.*, change in) the late containment failure probability is small (*i.e.*, less than a 10 percent increase from the base value) and that factors such as common cause failures or other dependencies are not important. Where a licensee categorizes containment isolation valves or penetrations as RISC–3, the licensee will need to address the impact of the proposed change in treatment on a case-by-case basis to ensure that the defense-in-depth principle continues to be satisfied.

V.4.4 Section 50.69(c)(1)(iv) Include Evaluations To Provide Reasonable Confidence That Sufficient Safety Margins Are Maintained and That Any Potential Increases in CDF and LERF Resulting From Changes in Treatment Permitted by Implementation of § 50.69(b)(1) and § 50.69(d)(2) Are Small

Section 50.69(c)(1)(iv) specifies that the categorization process include evaluations to provide reasonable confidence that as a result of implementation of revised treatment permitted for RISC–3 SSC, sufficient safety margins are maintained and any potential increases in CDF and LERF are small. Safety margins can be maintained if the licensee maintains the functionality of the SSCs following implementation of the revised requirements and if periodic maintenance, inspection, tests, and surveillance activities are adequate to prevent, detect and correct significant SSC performance and reliability degradation. Later sections of this SOC provide discussion on the proposed treatment processes the licensee will implement to provide reasonable confidence that RISC–3 SSCs remain capable of performing their safety functions under design basis conditions. The requirements of the rule to show that sufficient safety margins are maintained and that potential increases in risk are small are discussed below.

As part of their submittal, a licensee (or applicant) is to describe the evaluations to be conducted for purposes of meeting the requirement that there would be no more than a small (potential) increase in risk. For SSCs included in the PRA, the Commission expects that sensitivity studies (evaluations) would be done to provide a basis for concluding that even if reliability of these SSC should degrade because of the changes in treatment, the potential risk increase would be small. Satisfying the rule requirement that the risk increase is small presumes that the increase in failure rates assumed in the PRA sensitivity study bounds any reasonable estimate of the increase that may be expected as a result of the proposed changes in treatment.

The categorization process encompasses both active and passive functions of SSCs. Section 50.69(b)(2)(iv) includes the requirement that the change-in-risk evaluations performed to satisfy § 50.69(c)(1)(iv) must include potential impacts from known degradation mechanisms on both active and passive functions. It is necessary for a licensee to consider the impact that a change in treatment (as a result of removal of special treatment requirements) might have on the ability of the SSC to perform its design basis function and on reliability of SSCs. The purpose is to provide an understanding of the new treatment requirements and their effects on RISC–3 SSCs due to removal of special treatment requirements. This will help form the basis for the change-in-risk evaluations and will support developing a technical basis for concluding that SSC performance is consistent with the categorization process and its results and with those evaluations performed to show that there is a no more than a small increase in risk associated with implementation of § 50.69. The basis supporting the evaluations that examine potential SSC reliability changes due to treatment changes may be either qualitative or quantitative.

One mechanism that could lead to large increases in CDF/LERF is extensive, across system common cause failures. However, for such extensive CCFs to occur would require that the mechanisms that lead to failure, in the absence of special treatment, were sufficiently rapidly developing or are not self-revealing that there would be few opportunities for early detection and corrective action. Thus, when deciding how much to assume that SSC reliability might change, the applicant or licensee is expected to consider potential effects of common-cause interaction susceptibility, including cross-system interactions and potential impacts from known degradation mechanisms.

Those aspects of treatment that are necessary to prevent SSC degradation or failure from known degradation mechanisms, to the extent that the results of the evaluations are invalidated, must be retained. Identifying those aspects will involve an understanding of what the degradation mechanisms are and what elements of treatment are sufficient to prevent the degradation. As an example of how this would be implemented, the known existence of certain degradation mechanisms affecting pressure boundary SSC integrity might support retaining the current requirements on inspections or examinations or use of the risk-informed ASME Code Cases, as accepted by the NRC regulatory process. An alternative might be to relax certain elements of treatment, but retain those that were assessed to be the most effective in negating the degradation mechanisms. As another example, changing levels of treatment on several similar components that might be sensitive to CCF potential would require consideration as to whether the planned monitoring and corrective action program, or other aspects of treatment, would be effective in sufficiently minimizing CCF potential such that the evaluations remain bounding.

The treatment for all RISC–3 SSCs may not need to be the same. As an example, motor operated valves (MOVs) operating in a severe environment (*e.g.*, in the steam tunnel) would be more susceptible to failure because of grease degradation if they were not regularly maintained and tested. However, not all MOVs, even if they have the same design and are identical in other respects, will be exposed to the same environment. Therefore the other MOVs may not be as susceptible to failure as those in the steam tunnel and less frequent maintenance and testing would be acceptable. While it may be simpler to increase the unreliability or unavailability of all the RISC–3 SSCs by a certain bounding factor to demonstrate that the change in risk is small and acceptable, the above example suggests that it may also be appropriate to use different factors for different groups of SSCs depending on the impact of reducing treatment on those SSCs.

Section 50.69(c)(1)(iv) requires that the increase in the overall plant CDF and LERF resulting from potential decreases in the reliability of RISC–3 SSCs as a result of the changes in treatment be small. The rule further requires the licensee (or applicant) to describe the evaluations to be performed to meet this requirement. The Commission regards "small" changes for plants with total baseline CDF of 10^{-4} per year or less to be CDF increases of up to 10^{-5} per year, and plants with total baseline CDF greater than 10^{-4} per year to be CDF increases of up to 10^{-6} per year. However, if there is an indication that the CDF may be considerably higher than 10^{-4} per year, the focus of the licensee should be on finding ways to decrease rather than increase CDF and the licensee may be required to present arguments as to why steps should not be taken to reduce CDF in order for the reduction in special treatment requirements to be considered. For plants with total baseline LERFs of 10^{-5} per year or less, small LERF increases are considered to be up to 10^{-6} per year, and for plants with total baseline LERFs greater than 10^{-5} per year, LERF increases of up to 10^{-7} per year. Similarly, if there is an indication that the LERF may be considerably higher than 10^{-5} per year, the focus of the licensee should be on finding ways to decrease rather than increase LERF and the licensee may be required to present arguments as to why steps should not be taken to reduce LERF in order for the reduction in special treatment requirements to be considered. This is consistent with the guidance in Section 2.2.4 of RG 1.174. It should be noted that this allowed increase shall be applied to the overall categorization process, even for those licensees that will implement § 50.69 in a phased manner.

The licensee can choose a factor for the increase on unreliability such that the corrective action and feedback processes discussed in §§ 50.69(d)(2) and 50.69(e)(3) would provide sufficient data to substantiate that the increased unreliability used in the evaluations is not exceeded.

If a PRA model does not exist for the external initiating events or the low power and shutdown operating modes, justification should be provided, on the basis of bounding analyses or qualitative considerations, that the effect on risk (from the unmodeled events or modes of operation) is not significant and that the total effect on risk from modeled and unmodeled events and modes of operation is small, consistent with Section 2.2.4 of RG 1.174.

V.4.5 Section 50.69(c)(1)(v) System or Structure Level Review

Section 50.69(c)(1)(v) specifies that the categorization be done at the system or structure level, not for selected components within a system. A licensee or applicant is allowed to implement § 50.69 for a subset of the plant systems and structures (*i.e.*, partial implementation) and to phase in implementation over a period of time. However, the implementation, including the categorization process, must address entire systems or structures; not selected components within a system or structure.

V.4.6 Section 50.69(c)(2) Use of Integrated Decision-Making Panel (IDP)

Section 50.69(c)(2) sets forth the requirements for using an IDP to make the determination of safety significance, and for the composition of the IDP. The fundamental requirement for the categorization process (as stated in § 50.69 (c)(1)(ii)) is that it include use of an integrated systematic process. The determination of safety significance of SSCs is to be performed as part of an integrated decision-making process, which uses both risk insights and traditional engineering insights. In categorizing SSCs as low safety-significant, it should be demonstrated that the defense-in-depth philosophy is maintained, that sufficient safety margin is maintained, and that increases in risk

(if any) are small. To account for each of these factors and to account for risk insights not found in the plant-specific PRA, § 50.69(c)(2) requires that the final categorization of each SSC be performed using an integrated decision-making panel (IDP). A structured and systematic process using documented criteria shall be used to guide the decision-making process. Categorization is an iterative process based on expert judgment to integrate the qualitative and quantitative elements that impact SSC safety significance. The insights and varied experience of IDP members are relied on to ensure that the final result reflects a comprehensive and justifiable judgment.

The panel must be composed of experienced personnel who possess diverse knowledge and insights in plant design and operation and who are capable in the use of deterministic knowledge and risk insights in making SSC classifications. The NRC places significant reliance on the capability of a licensee to implement a robust categorization process that relies heavily on the skills, knowledge, and experience of the people that implement the process, in particular on the qualification of members of the IDP. The IDP should be composed of a group of at least five experts who collectively have expertise in plant operation, design (mechanical and electrical) engineering, system engineering, safety analysis, and probabilistic risk assessment. At least three members of the IDP should have a minimum of five years experience at the plant, and there should be at least one member of the IDP who has worked on the modeling and updating of the plant-specific PRA for a minimum of three years.

The IDP should be trained in the specific technical aspects and requirements related to the categorization process. Training should address at a minimum the purpose of the categorization; present treatment requirements for SSCs including requirements for design basis events; PRA fundamentals; details of the plant-specific PRA including the modeling, scope, and assumptions, the interpretation of risk importance measures, and the role of sensitivity studies and the change-in-risk-evaluations; and the defense-in-depth philosophy and requirements to maintain this philosophy.

The licensee or applicant (through the IDP) shall document its decision criteria for categorizing SSCs as safety-significant or low safety-significant pursuant to § 50.69(f)(1). Decisions of the IDP should be arrived at by consensus. Differing opinions should be documented and resolved, if possible. If a resolution cannot be achieved concerning the safety significance of an SSC, then the SSC should be classified as safety-significant. SSC categorization shall be revisited by the licensee or applicant (through the IDP) when the PRA is updated or when the other criteria used by the IDP are affected by changes in plant operational data or changes in plant design or plant procedures. Requirements for PRA updating are contained in § 50.69(e)(1).

V.5.0 Section 50.69(d) Requirements for Structures, Systems, and Components

After SSCs are categorized as either RISC–1, RISC–2, RISC–3, or RISC–4, then the § 50.69(d) requirements, which provide the treatment requirements applicable to each RISC category, are applied. Until a structure or system is categorized using this process, the existing requirements on SSCs in that structure or system are retained. Section 50.69(d) contains two sub-items. The first contains the requirements being imposed on RISC–1 and RISC–2 SSCs. The second section contains the "high-level" requirements that are being added for RISC–3 SSCs to provide necessary confidence that design basis capability will be retained for these SSCs. The list of existing special treatment requirements that are being removed through this rulemaking for RISC–3 and RISC–4 SSCs is contained in § 50.69(b)(1).

V.5.1 Section 50.69(d)(1) RISC–1 and RISC–2 Treatment

Section 50.69 (d)(1) requires that a licensee or applicant ensure that RISC–1 and RISC–2 SSCs perform their functions consistent with categorization process assumptions by evaluating treatment being applied to these SSCs to ensure that it supports the key assumptions in the categorization process that relate to their assumed performance. To meet this, a licensee should first evaluate the treatment being applied in light of the credit being taken in the categorization process, with appropriate adjustment of treatment or categorization to achieve consistency as necessary. For SSCs categorized as RISC–1 or RISC–2, all existing applicable requirements continue to apply. This includes any applicable special treatment requirements. The rule language notes that this evaluation is to focus upon those key assumptions in the PRA that relate to performance of particular SSCs. For example, if a relief valve was being credited with capability to relieve water (as opposed to its design condition of steam), such an evaluation would look at whether the component has been designed or otherwise determined to be able to perform as assumed. Other examples might be for the failure rates used in the PRA model. As a general matter, for those SSCs modeled in the PRA, conformance with industry standards on PRAs would also result in such evaluation steps being accomplished in order to help assure the PRA represents the facility.

If a § 50.69 licensee chooses to categorize a selective set of SSCs as RISC–3, and the categorization of SSCs as RISC–3 is based on credit taken for the performance of other plant SSCs (that would be RISC–1 or RISC–2, whether or not these SSCs are within the selective implementation set), then the licensee must ensure that consistency of performance with what was credited in the categorization. As discussed in Section V.4.5, selective implementation of components within a system is not permitted. This applies to credit taken in: 1) PRA models, inputs and assumptions; 2) screening and margin analyses; and 3) IDP deliberations. This implies that the licensee must ensure that the credited (RISC–2) SSCs perform their functions per § 50.69(d)(1), and the performance of these SSCs must be monitored per § 50.69(e)(2).

V.5.2 Section 50.69(d)(2) RISC–3 Treatment

Section 50.69(d)(2) contains, as an overall requirement for the treatment of RISC–3 SSCs, that licensees shall have processes to control the design; procurement; inspection, maintenance, testing, and surveillance; and corrective action, for RISC–3 SSCs to provide reasonable confidence in the capability of RISC–3 SSCs to perform their safety-related functions under design basis conditions throughout their service life. In other words, the Commission expects licensees to have sufficient treatment controls in place to have reasonable confidence that RISC–3 SSCs will be capable of performing their safety functions if they were called upon to perform those functions. Licensees may decide to apply current practices at their facilities or may establish new practices for the treatment of RISC–3 SSCs, provided the requirements of § 50.69 are satisfied.

During its review of the South Texas exemption request, the NRC staff identified several instances where the licensee's interpretation of the extent to which treatment could be relaxed for low-risk safety-related SSCs was not consistent with the staff's expectations under Option 2 of the NRC's risk-informed rulemaking initiative (*i.e.*, that

design basis functions be maintained). To ensure more consistent implementation of § 50.69, the SOC discusses some of these areas for the implementation of proposed § 50.69 about how the treatment processes for low-risk safety-related SSCs should be conducted. The Commission is also giving examples of what it considers good practice to achieve confidence of functionality. The Commission does not believe that it is necessary to include these "expectations" as specific requirements because there may be other means of achieving the specified outcome and failure to implement a particular expectation would not, by itself, be a regulatory concern. The Commission's intent is to place on the licensee the responsibility to determine the necessary treatment to maintain functionality without the Commission having to establish prescriptive requirements.

The categorization process assumes that the functionality of SSCs in performing their safety functions will be retained, although the treatment applied to RISC–3 SSCs may be reduced under proposed § 50.69. Further, the categorization process may include specific reliability assumptions for plant SSCs in performing their intended functions. Therefore, when establishing the performance-based treatment process for RISC–3 SSCs, the licensee should take these assumptions into account to support the evaluations of small increase in risk resulting from implementation of the changes in treatment. It is important to obtain sufficient information on SSC performance to allow the results of the categorization process to remain valid. The Commission considers the risk-informed, performance-based ASME Code Cases (as endorsed in § 50.55a) to be one acceptable method of establishing treatment processes that are consistent with the categorization process.

Proposed § 50.69 identifies four processes that must be controlled and accomplished for RISC–3 SSCs: Design Control; Procurement; Maintenance, Inspection, Testing, and Surveillance; and Corrective Action. The high level RISC–3 requirements are structured to address the various key elements of SSC functionality by focusing in several areas. When SSCs are replaced, RISC–3 SSCs must remain capable of performing design basis functions; hence, the high level requirements focus on maintaining this capability through design control and procurement requirements. During the operating life of a RISC–3 SSC, a sufficient level of confidence is necessary that the SSC continues to be able to perform its design basis functions; hence, the inclusion of high level requirements for maintenance, inspection, test, and surveillance. Finally, when data is collected, it must be fed back into the categorization and treatment processes, and when important deficiencies are found, they must be corrected; hence, requirements are also provided in these areas.

The Commission notes that use of voluntary consensus standards is an effective means of establishing treatment requirements to achieve functionality. As an example, ASME risk-informed Code Cases have been developed with the purpose of determining appropriate treatment requirements for low safety-significant SSCs in their specific functional areas. Further, the Commission expects that related standards (such as ASME Code Cases N–658 and N–660 on SSC categorization and treatment for purposes of repair and replacement) be used in conjunction with each other as intended by the accredited standards writing body. Where suitable standards do not exist or available standards are not sufficient, the Commission expects the licensee to establish sufficient controls to provide reasonable confidence in the functionality of RISC–3 SSCs, based upon such factors as operating experience and vendor recommendations. However, the Commission also notes that use of a voluntary consensus standard in and of itself might not be sufficient to maintain functionality for particular SSCs under certain service conditions, and that the licensee might need to supplement its processes to achieve the desired results.

The proposed rule would require the treatment processes for RISC–3 SSCs be implemented to provide reasonable confidence in the capability of RISC–3 SSCs to perform their safety-related functions under design basis conditions. That is to say, the pertinent requirements identified in § 50.69 for each process must be satisfied for RISC–3 SSCs unless the requirements are clearly not applicable or are not necessary in the particular circumstance to achieve functionality of the SSC. As an example, a licensee might determine that it is more efficient and effective to replace a particular component before the end of its design life rather than conducting maintenance to repair the component. Further, a licensee might determine that some maintenance activities are within the skill of the craft (such as replacing missing bolts on motor-operated valve switch compartments), such that detailed work orders would not be necessary. On the other hand, an activity to procure a replacement component with active functions that is not the same as the one being replaced would necessitate use of most of the specified processes, with a greater need for documentation and independent review to achieve the expected result.

As part of the high level requirement that RISC–3 SSCs be capable of performing their safety-related functions under design basis conditions, the Commission emphasizes that implementation of the processes must provide reasonable confidence of the future capability of the SSC (*i.e.*, not just confidence that the SSC works at a certain point in time but rather provides confidence that the component will work when called upon). The level of confidence can be less than was provided by the special treatment requirements listed in § 50.69(b)(1). As an example, exercising of a valve or simply starting a pump does not provide reasonable confidence in design basis capability, will not detect service-induced aging or degradation that could prevent the component from performing its design basis functions in the future, and is insufficient by itself to satisfy the intent of the rule.

A licensee implementing § 50.69 is responsible for implementing the treatment requirements for RISC–3 SSCs in an effective manner to maintain the capability to perform the safety functions under design basis conditions. A licensee should address the potential impact on the functionality of RISC–3 SSCs as a result of the changes to testing programs, such that the categorization process assumptions and results remain valid. To provide a basis to conclude that the potential increase in risk would be small, a licensee is required to conduct evaluations that assume failure rates that might occur as a result of the revisions to treatment. These evaluations would need to consider, for instance, any planned alteration in a licensee's program for diagnostic testing of motor-operated valves. If a likely result of a contemplated change in treatment is an increase in failure rate, outside the bounds of the evaluations, that change in treatment would not be acceptable under proposed § 50.69 because the criterion in § 50.69(c)(i)(iv) about providing reasonable confidence of a small increase in risk would not be met.

V.5.2.1 Section 50.69(d)(2)(i) Design Control Process

Section 50.69(d)(2)(i) specifies that the functional requirements and bases for RISC–3 SSCs be maintained and controlled. The functional requirements

and bases continue to apply unless they are specifically changed in accordance with the appropriate regulatory change control process (*e.g.*, § 50.59). The rule further states that RISC–3 SSCs must be capable of performing their safety-related functions under design basis conditions including (any applicable) design requirements for environmental conditions (temperature, pressure, humidity, chemical effects, radiation, and submergence), effects (aging and synergisms), and seismic conditions (design load combinations of normal and accident conditions with earthquake motions).

It is recognized that the level of confidence in the design basis capability of RISC–3 SSCs may be less than the confidence provided in the capability of RISC–1 SSCs to perform their safety functions. The proposed treatment requirements for the control of the design of RISC–3 SSCs are included, in part, to provide a basis for the assumption in the categorization process that these SSCs will continue to be capable of performing their safety-related functions under design basis conditions throughout their service life. The implementation of an effective design control process is crucial to the maintenance of the functionality of safety-related SSCs because many SSCs cannot be monitored or tested to demonstrate design basis capability or to identify potential degradation as part of normal plant operations. For instance, if the SSC were modified or replaced, the design control processes are important means by which the required capability is installed and maintained over the life of the component. Further, because it is not possible to test or monitor some SSCs under the conditions that they might experience in service, other means, such as control of design and procurement of SSCs, and condition monitoring, are used such that the SSCs are capable of performing their functions. The proposed rule would require that licensees have a design control process that maintains and applies design requirements to ensure that RISC–3 SSCs will be capable of performing their safety-related functions under design basis conditions. To meet this performance objective, the licensee's design control process would be expected to specify appropriate quality standards; select suitable materials, parts, and equipment; control design interfaces; coordinate participation of design organizations; verify design adequacy; and control design changes. The manner in which the design control requirements for RISC–3 SSCs are accomplished would be the responsibility of the licensees adopting § 50.69. The proposed rule would allow flexibility for licensees to focus their resources on the SSCs that are most safety-significant while implementing an effective design control process for RISC–3 SSCs. For example, licensees might provide design control for RISC–3 SSCs through application of (1) the process established under Criterion III of 10 CFR Part 50, Appendix B; (2) an augmented quality assurance program such as might have been established in response to regulatory guidance issued in conjunction with § 50.62 (for SSCs used to comply with anticipated transients without a plant scram; or (3) a plant-specific process currently in place or established to satisfy the treatment requirements of § 50.69.

The design control process under § 50.69 is intended to provide assurance that the proposed rule is satisfying the principle that the design requirements of RISC–3 SSCs would not be changed under § 50.69. For example, the design provisions of Section III of the ASME Boiler and Pressure Vessel Code (BPV Code) required by § 50.55a(c), (d), and (e) for RISC–3 SSCs are not affected by the proposed rule. Another example is a requirement for fracture toughness of particular materials that is part of a licensee's design requirements; such a requirement would continue to apply when repair or replacement of affected components is undertaken. Licensees would continue to be required by § 50.59 to evaluate proposed modifications to design requirements for safety-related SSCs, including those categorized as RISC–3.

For RISC–3 SSCs, the proposed rule would remove the requirements for a program for environmental qualification of electric equipment specified in § 50.49, "Environmental Qualification of Electric Equipment Important to Safety for Nuclear Power Plants." However, the proposed rule would not eliminate the requirements in 10 CFR part 50, Appendix A, "General Design Criteria for Nuclear Power Plants," that electric equipment important to safety be capable of performing their intended functions under the applicable environmental conditions. For example, Criterion 4 of 10 CFR part 50, Appendix A, "General Design Criteria for Nuclear Power Plants," requires that SSCs important to safety be designed to accommodate the effects of and to be compatible with the environmental conditions associated with normal operation, maintenance, testing, and postulated accidents. In accordance with § 50.69(d)(2), the licensee is required to design, procure, install, maintain, and monitor electric equipment important to safety such that they are capable of performing their intended functions under the environmental conditions listed in § 50.69(d)(2)(i) throughout their service life. Further, if RISC–3 electrical equipment is relied on to perform its safety-related function beyond its design life, licensees should have a basis justifying the continued capability of the equipment under adverse environmental conditions.

RISC–3 and RISC–4 SSCs would continue to be required to function under design basis seismic conditions, but would not be required to be qualified by testing or specific engineering methods in accordance with the requirements stated in 10 CFR part 100, Appendix A. A licensee who adopts the proposed rule would no longer be required to meet certain requirements in Appendix A to part 100, Sections VI(a)(1) and VI(a)(2), to the extent that those requirements have been interpreted as mandating qualification testing and specific engineering methods to demonstrate that RISC–3 SSCs are designed to withstand the Safe Shutdown Earthquake and Operating Basis Earthquake. The proposed rule does not remove the design requirements related to the capability of RISC–3 SSCs to remain functional considering Safe Shutdown Earthquake and Operating Basis Earthquake seismic loads, including applicable concurrent loads. These continue to be part of the design basis requirements or procurement requirement for replacement SSCs. The proposed rule would not change the design input earthquake loads (magnitude of the loads and number of events) or the required load combinations used in the design of RISC–3 SSCs. For example, for the replacement of an existing safety-related SSC that is subsequently categorized as RISC–3, the same seismic design loads and load combinations would still apply. The proposed rule would permit licensees to select a technically defensible method to show that RISC–3 SSCs will remain functional when subject to design earthquake loads. The level of confidence for the design basis capability of RISC–3 SSCs, including seismic capability, may be less than the confidence in the design basis capability of RISC–1 SSCs. The use of earthquake experience data has been mentioned as a potential method to demonstrate SSCs will remain functional during earthquakes. However, it would be difficult to rely on earthquake experience alone to demonstrate

functionality of SSCs if the design basis includes multiple earthquake events or combinations of loadings unless these specific conditions were enveloped by the experience data. Additionally, if the SSC is required to function during or after the earthquake, the experience data would need to contain explicit information that the SSC actually functioned during or after the design basis earthquake events as required by the SSC design basis. The successful performance of an SSC after the earthquake event does not demonstrate it would have functioned during the event. Qualification testing of an SSC would be necessary if no suitable alternative method is available for showing that the SSC will perform its design basis function during an earthquake.

Licensees are responsible for proper installation and post-installation testing of RISC–3 SSCs as part of design control and other treatment processes to provide reasonable confidence in the capability of SSCs to perform their functions. The Commission also expects licensees to control special processes associated with installation, such as welding, to provide reasonable confidence in the design basis capability of RISC–3 SSCs. Licensees would be expected to perform sufficient post-installation testing to verify that the installed SSC is operating within expected parameters and is capable of performing its safety functions under design basis conditions. In performing post-installation testing, licensees may apply engineering analyses to extrapolate the test data to demonstrate design basis capability.

V.5.2.2 Section 50.69(d)(2)(ii) Procurement Process

Section 50.69(d)(2)(ii) specifies that procured RISC–3 SSCs satisfy their design requirements. In order to obtain components that meet the requirements, the licensee would be expected to specify the technical requirements (including applicable design basis environmental and seismic conditions) for items to be procured. Further, the Commission expects licensees to use established methods (*e.g.*, vendor documentation, equivalency evaluation, technical evaluation, technical analysis, or testing) to develop a technical basis for the determination that the procured item can perform its safety-related function under design basis conditions, including applicable design basis environmental conditions (temperature, pressure, humidity, chemical effects, radiation, and submergence), and effects (aging and synergisms), and seismic conditions (design load combinations of normal and accident conditions with earthquake motions). In addition to appropriately specifying in the procurement the desired component, the licensee/applicant would also be expected to conduct activities upon receipt to confirm that the received component is what was ordered.

The proposed rule would allow more flexibility in the implementation of the procurement process for RISC–3 SSCs than currently provided by 10 CFR part 50, Appendix B. Nevertheless, licensees will continue to be responsible for implementing an effective procurement process for RISC–3 SSCs. Differences constituting a design change are expected to be documented and addressed under the licensee's design control process. As an example of one acceptable procurement process, a licensee might use an approach similar to that described below:

Vendor Documentation—Vendor documentation could be used when the performance characteristics for the SSC, as specified in vendor documentation (*e.g.*, catalog information, certificate of conformance), satisfy the SSC's design requirements. If the vendor documentation does not contain this level of detail, the design requirements could be provided in the procurement specifications. The vendor's acceptance of the stated design specifications provides sufficient confidence that the RISC–3 SSC would be capable of performing its safety-related functions under design basis conditions.

Equivalency Evaluation—An equivalency evaluation could be used when it is sufficient to determine that the procured SSC is equivalent to the SSC being replaced (*e.g.*, a like-for-like replacement).

Engineering Evaluation—For minor differences, a technical evaluation could be performed to compare the differences between the procured SSC and the design requirements of the SSC being replaced and determines that differences in areas such as material, size, shape, stressors, aging mechanisms, and functional capabilities would not adversely affect the ability to perform the safety-related functions of the SSC under design basis conditions.

Engineering Analysis—In cases involving substantial differences between the procured SSC and the design requirements of the SSC being replaced, a technical analysis could be conducted to determine that the procured SSC can perform its safety-related function under design basis conditions. The technical analysis would be based on one or more engineering methods that include, as necessary, calculations, analyses and evaluations by multiple disciplines, test data, or operating experience to support functionality of the SSC over its expected life.

Testing—Testing under simulated design basis conditions could be performed on the SSC.

V.5.2.3 Section 50.69(d)(2)(iii) Maintenance, Inspection, Test, and Surveillance Process

Section 50.69(d)(2)(iii) specifies that periodic maintenance, inspections, tests, and surveillance activities be established and conducted, and their results evaluated using prescribed acceptance criteria to determine that the RISC–3 SSCs will remain capable of performing their safety-related functions under design basis conditions until their next scheduled activity.

To meet this requirement, licensees are expected to establish the scope, frequency, and detail of predictive, preventive, and corrective maintenance activities (including post-maintenance testing) to support the determination that RISC–3 SSCs will remain capable of performing their safety-related functions under design basis conditions throughout their service life. For a RISC–3 SSC in service beyond its design life, the Commission expects licensees to have a basis to determine that the SSC will remain capable of performing its safety-related function. Following maintenance activities that affect the capability of an SSC to perform its safety-related function, licensees would be expected to perform post-maintenance testing to verify that the SSC is performing within expected parameters and is capable of performing its safety function under design basis conditions. Licensees may apply engineering analyses to extrapolate the test data to demonstrate design basis capability as part of post-maintenance testing. The Commission expects licensees to identify the preventive maintenance needed to preserve the capability of RISC–3 SSCs to perform their safety-related functions under applicable design basis environmental and seismic conditions for their expected service life.

To have reasonable confidence that SSCs can perform their functions, licensees must implement effective processes for inspection, testing, and surveillance of RISC–3 SSCs; they may apply their own individual approaches such that the requirements of § 50.69 are satisfied. As an example, the provisions for risk-informed inspection and testing in applicable ASME Code Cases would constitute one effective approach in satisfying the § 50.69 requirements. To prevent the occurrence of common-

cause problems that might invalidate the categorization process assumptions and results, effective implementation would include a determination of the functionality of safety-related SSCs checked using measuring and test equipment that was later found to be in error or defective.

With respect to RISC–3 pumps and valves, the Commission expects licensees to implement periodic testing or inspection, and evaluation of performance data, sufficient to provide reasonable confidence that these pumps and valves will be capable of performing their safety function under design basis conditions. To determine that SSC will remain capable until the next scheduled activity, a licensee would have to obtain sufficient operational information or performance data to provide reasonable confidence that the RISC–3 pumps and valves will be capable of performing their safety function if called upon to function under operational or design basis conditions over the interval between periodic testing or inspections. A licensee may develop the type and frequency of the test or inspection for RISC–3 pumps and valves where sufficient to conclude that the pump or valve will perform its safety function. These tests or inspections may be less rigorous and less frequent than those performed on RISC–1 pumps and valves. For example, a licensee might establish more relaxed criteria for grouping of similar RISC–3 components, or might apply less stringent test acceptance criteria for RISC–3 pumps and valves, than specified for RISC–1 components. The licensee could apply staggered test intervals for the RISC–3 components to provide confidence that the relaxed grouping or acceptance criteria had not resulted in SSC performance that is inconsistent with the categorization process or its assumptions. Licensees should note that performance data obtained for pumps and valves operating under normal conditions may not be capable of predicting their capability to perform safety functions under design basis conditions without additional evaluation or analysis. This does not mean that pumps and valves must be tested or inspected under design basis conditions. Methods exist for collecting performance data at conditions different than design basis conditions that can be used to reach conclusions regarding the design basis capability of components. Examples of such methods are described in Regulatory Guide 1.175, An Approach for Plant-Specific, Risk-Informed Decision making: Inservice Testing, and applicable risk-informed ASME Code Cases (*e.g.*, OMN–1, OMN–4, OMN–7, OMN–12) as accepted by 10 CFR 50.55a.

V.5.2.4 Section 50.69(d)(2)(iv) Corrective Action Process

Section 50.69(d)(2)(iv) would specify that conditions that could prevent a RISC–3 SSC from performing its safety-related functions under design basis conditions be identified, documented, and corrected in a timely manner. A licensee may obtain information from the inspection, test and surveillance activities discussed above, or from other sources, such as operating experience, that indicates that an SSC is not capable of performing its required functions and thus identifies that corrective action is needed.

In meeting proposed § 50.69, licensees may implement a corrective action process for RISC–3 SSCs that is different than the process established to satisfy 10 CFR Part 50, Appendix B. This more general requirement would allow a graded approach, as well as less stringent timeliness requirements. The Commission believes an effective corrective action process is crucial to maintaining the capability of RISC–3 SSCs to perform their safety-related functions because of the reduction in requirements for other processes for design control; procurement; and maintenance, inspection, test, and surveillance. For example, effective implementation of the corrective action process would include timely response to information from plant SSCs, overall plant operations, and industry generic activities that might reveal performance concerns for RISC–3 SSCs on both an individual and common-cause basis.

V.6.0 Section 50.69(e) Feedback and Process Adjustment

Section 50.69(e)(1) requires the updating of the PRA. The PRA configuration control program must incorporate a feedback process to update the PRA model. The program must require that plant data, design, and procedure changes that affect the PRA models or input parameters be incorporated into the model. This update is to account for plant-specific operating experience as well as general industry experience. In particular, the proposed rule would require the licensee to review changes to the plant, operational practices, applicable industry operational experience, and, as appropriate, update the PRA and SSC categorization in a timely manner but no longer than every 36 months for RISC–1, RISC–2, RISC–3 and RISC–4 SSCs. Changes must be evaluated with respect to the impact on CDF and LERF. If the change would result in a significant increase in the CDF or LERF or might change the categorization of SSCs, the PRA must be updated in a timely manner; in this context it would clearly not be timely to wait to update the PRA if there would be a significant change in risk. Other changes are to be incorporated within 36 months. The results of the updated PRA and the associated risk categorizations based on the updated PRA information should be used as part of the feedback and corrective action process, and SSCs must be re-categorized as needed.

Section 50.69(e)(2) and (e)(3) contains the requirements for feeding back into the categorization process SSC performance information and data, and for adjusting the categorization and treatment processes as appropriate, with the goal that the validity of the categorization process and its results are maintained. Further, the proposed rule would require the licensee to monitor the performance of RISC–1 and RISC–2 SSCs and make adjustments as necessary to either the categorization or treatment processes. To meet this requirement, the Commission expects licensees to monitor all functional failures (*i.e.*, not just maintenance preventable unavailabilities and failures as is currently required by § 50.65) so that they can determine when adjustments are needed. Licensee monitoring programs will also need to include the monitoring of SSCs that support beyond design basis functions (if applicable) that are not necessarily included in the scope of an existing maintenance rule monitoring program.

If a licensee chooses to categorize a selective set of SSCs as RISC–3, and the categorization of SSCs as RISC–3 is based on credit taken for the performance of other plant SSCs (whether or not these SSCs are within the selective implementation set), then the licensee must maintain the credited performance. This applies to credit taken in: (1) PRA models, inputs and assumptions; (2) screening and margin analyses; and (3) IDP deliberations. This implies that the licensee must ensure that the credited SSCs perform their functions per § 50.69(d)(1), and the performance of these SSCs must be monitored per § 50.69(e)(2).

For RISC–3 SSCs, the proposed rule would require the licensee to consider the performance data required by § 50.69(d)(2)(iii) to determine whether there are any adverse changes in performance such that the SSC unreliability values approach or exceed the values used in the evaluations conducted to meet § 50.69(c)(iv) and make adjustments as necessary to either

the categorization or treatment processes, to maintain categorization process results valid. Section 50.69(d)2)(iii) requires periodic maintenance, testing and surveillance activities for RISC–3 SSCs. Based upon review of this information, if SSC reliability degrades to the point that the evaluations done to show that the potential risk was small are no longer bounding, action is necessary to either adjust the treatment (to improve reliability) or to perform the categorization process again (to determine if any changes in categorization of SSC are necessary).

V.7.0 Section 50.69(f) Program Documentation and Change Control and Records

Section 50.69(f) contains administrative requirements for keeping information current, for handling planned changes to programs and processes and for records. Each subparagraph is discussed below.

Section 50.69(f)(1) states that the licensee or applicant shall document the basis for categorization of SSCs in accordance with this section before removing any requirements. The documentation is expected to address why a component was determined to be either safety-significant or low safety-significant based upon the requirements in § 50.69(c).

The Commission is not, except in limited instances, specifying particular records to retain. Since the licensee is responsible for compliance with the requirements, subject to NRC oversight and inspection, the licensee (or applicant) would need to be able to show that they have established the processes required by the rules and conducted activities sufficient to provide reasonable confidence in functionality of SSCs under design basis conditions.

Section 50.69(f)(2) specifies that the licensee must update its FSAR to reflect which systems have been categorized using the provisions of § 50.69, and thus, may have revised treatment applied to the structures and components within that system. This provision is included to maintain clear information, at a minimum level of detail, about which requirements a licensee is satisfying; detailed information about particular SSCs is not required to be submitted. For an applicant, this updating would be expected to be either part of the original application or as a supplement to the FSAR under § 50.34. For licensees, the updating must be in accordance with the provisions of § 50.71(e) for licensees.

Once the NRC has completed its review of a licensee's § 50.69 submittal as it relates to categorization, the licensee or applicant would be able to adjust its treatment processes provided that the rule requirements are met. NRC does not plan to perform a pre-implementation review of the revised treatment requirements under § 50.69(d). However, the Commission recognizes that existing information in the quality assurance (QA) plan or in the FSAR may need to be revised to reflect the changes to treatment that would be made as a result of implementation of § 50.69. Any revisions to these documents are to be submitted in accordance with the existing requirements of § 50.54(a)(2) and § 50.71(e) respectively. For instance, § 50.71(e) states that the FSAR is to contain the latest information developed and is to reflect information submitted to the Commission since the last update. The regulations further state in the cited sections how a licensee is to submit to the NRC revisions to the QA plan or to the FSAR. Information in these documents that would no longer be accurate upon implementation of § 50.69 must be updated. Details of the processes would be expected to be contained in plant procedures, procurement documents, surveillance records, etc.

Section 50.69(f)(3) specifies that for initial implementation of the rule, changes to the FSAR for implementation of this proposed rule need not include a supporting § 50.59 evaluation of changes directly related to implementation. Future changes to the treatment processes and procedures for § 50.69 implementation may be made, provided the requirements of the rule and § 50.59 continue to be met. While the licensee is to update its programs to reflect implementation of § 50.69, the Commission concluded that no additional review under § 50.59 is necessary for such changes, to these parts of the FSAR that might occur.

Section 50.69(f)(4) specifies that for initial implementation of the rule, changes to the quality assurance plan for implementation of this proposed rule need not include a supporting § 50.54(a) review of changes directly related to implementation. Future changes to the treatment processes and procedures for § 50.69 implementation may also be made, provided the requirements of the rule and § 50.54(a) continue to be met. While the licensee is to update its programs to reflect implementation of § 50.69, the Commission concluded that no additional review under § 50.54(a) is necessary for changes to these parts of the QA plan.

No specific change control process is being established for the categorization process outlined by § 50.69(c). Because the NRC is reviewing and approving a submittal containing the licensee or applicant's commitments for categorization, changes that would invalidate their submittal would also invalidate the approval. However, provided any revised process continues to conform with what was submitted or committed to (such as through a commitment to follow a particular RG), NRC review would not be needed of lower-tier changes (such as to implementing procedures) that might arise.

No explicit requirements are included in § 50.69 for the period for retention of records. The proposed rule would specify only a few specific types of records that must be prepared, *e.g.*, those for the basis for categorization in § 50.69(f)(1). In accordance with § 50.71(c), these records are to be maintained until the Commission terminates the facility license.

V.8.0 Section 50.69(g) Reporting

Section 50.69(g) provides a new reporting requirement applicable to events or conditions that would have prevented a RISC–1 or RISC–2 SSCs from performing a safety-significant function. Most events involving these SSCs will meet existing § 50.72 and § 50.73 reporting criteria. However, it is possible for events and conditions to arise that impact whether RISC–1 or RISC–2 SSCs would perform beyond design basis functions consistent with the assumptions made in the categorization process. This reporting requirement is intended to capture these situations. The reporting requirement is contained in § 50.69, rather than as a revision of § 50.73 so that its applicability only to those facilities that have implemented § 50.69 is clear. The existing reporting requirements in § 50.72 and § 50.73 would no longer apply to RISC–3 (and RISC–4) SSCs under the proposed rule.

VI. Other Topics for Public Comment

VI.1.0 Additional Potential Requirements for Public Comment

The cornerstone of proposed § 50.69 is a robust, risk-informed categorization process that provides high confidence that the safety significance of SSCs is correctly determined considering all relevant information. The categorization requirements incorporated into the proposed rule achieve this objective. The Commission proposes to remove

the RISC–3 and RISC–4 SSCs from the scope of special treatment requirements delineated in § 50.69(b)(1), and instead require the licensee to comply with more general, high level requirements for maintaining functionality. The proposed rule would allow appropriate flexibility for implementation while continuing to provide reasonable confidence that the SSCs will remain functional. As discussed elsewhere in this notice, the Commission concludes that the requirements in proposed § 50.69 would maintain adequate protection of public health and safety. Previous drafts of this proposed rule posted to the NRC web site, contained more detailed requirements in § 50.69(d)(2) for RISC–3 SSCs. The Commission believes that this level of detail is beyond what is necessary to provide reasonable confidence in RISC–3 design basis capability in light of the robust categorization requirements incorporated into proposed § 50.69. However, the Commission recognizes that some stakeholders may disagree and invites public comment on this matter. To facilitate public comment, example language is provided below that identifies (in quotations and brackets) those requirements that were considered for inclusion in § 50.69 (as well as where they would have appeared in the rule).

(2) RISC–3 SSCs. The licensee or applicant shall develop and implement processes to control the design; procurement; inspection, maintenance, testing, and surveillance; and corrective action for RISC–3 SSCs to provide reasonable confidence in the capability of RISC–3 SSCs to perform their safety-related functions under design basis conditions throughout their service life. ["These processes must meet voluntary consensus standards which are generally accepted in industrial practice, and address applicable vendor recommendations and operational experience. The implementation of these processes and the assessment of their effectiveness must be controlled and accomplished through documented procedures and guidelines. The treatment processes must be consistent with the assumptions credited in the categorization process."] The processes must meet the following requirements, as applicable: (i)Design Control. Design functional requirements and bases for RISC–3 SSCs must be maintained and controlled, ["including selection of suitable materials, methods, and standards; verification of design adequacy; control of installation and post-installation testing; and control of design changes"]. RISC–3 SSCs must be ["have a documented basis to demonstrate that they are"] capable of performing their safety-related functions including design requirements for environmental conditions (*i.e.*, temperature and pressure, humidity, chemical effects, radiation, and submergence) and effects (*i.e.*, aging and synergism); and seismic conditions (design load combinations of normal and accident conditions with earthquake motions). ["Replacements for ASME Class 2 and Class 3 SSCs or parts must meet either: (1) The requirements of the ASME Boiler & Pressure Vessel (BPV) Code; or (2) the technical and administrative requirements, in their entirety, of a voluntary consensus standard that is generally accepted in industrial practice applicable to replacement. ASME Class 2 and Class 3 SSCs and parts shall meet the fracture toughness requirements of the SSC or part being replaced."]

(ii) Procurement. Procured RISC–3 SSCs must satisfy their design requirements. ["Upon receipt, the licensee shall verify that the item received is the item that was ordered."]

(iii) Maintenance, Inspection, Testing, and Surveillance. Periodic maintenance, inspection, testing, and surveillance activities must be established and conducted using prescribed acceptance criteria, and their results evaluated to determine that RISC–3 SSCs will remain capable of performing their safety-related functions under design basis conditions until the next scheduled activity.

(iv) Corrective Action. Conditions that could prevent a RISC–3 SSC from performing its safety-related functions under design basis conditions must be identified, documented, and corrected in a timely manner. ["In the case of significant conditions adverse to quality, measures shall assure that the cause of the condition is determined and corrective action taken to preclude repetition."] The Commission is requesting comment as to whether any of these requirements (or other requirements) are necessary to provide reasonable confidence of SSC functionality commensurate with the safety significance of the RISC–3 SSC, *i.e.*, whether the requirements on categorization are sufficiently robust that the level of detail contained in the proposed rule on treatment is appropriate.

VI.2.0 Questions for Public Input

In addition to seeking comment on the proposed rule and its supporting documents, the Commission is also specifically seeking public comment on the following questions. Comments should be submitted as noted in the **ADDRESSES** section of this notice.

VI.2.1 PRA Requirements

The proposed rule requires as a minimum, a PRA that includes internal events, at power, which has been subjected to a peer review process. The PRA (for that scope) must be capable of determining both CDF and LERF (*i.e.*, provide level 2-type results). Proposed § 50.69 allows licensees to use non-PRA methods to address other modes and hazards in the categorization process (see in particular NEI 00–04 and DG–1121). The proposed rule requires the licensee to submit information about its PRA and these other methods, including information about the quality and level of detail about all of the methods to be used.

The Commission is seeking comment as to whether the NRC should amend the requirements in § 50.69(c) to require a level 2 internal and external initiating events, all-mode, peer-reviewed PRA that must be submitted to, and reviewed by, the NRC. Thus, instead of employing other methods to account for the contribution from modes and events not modeled in the PRA, this more comprehensive PRA would allow for quantification of the contribution from these scenarios. This approach would involve substantive changes in the implementing guidance as well. The Commission is interested in both the benefits of this approach as well as any implications for this specific application of risk insights. The Commission is also seeking comment on whether a different set of PRA requirements, from either of the alternatives described above, should be required for this application.

VI.2.2 Review and Approval of Treatment for RISC–3 SSCs

In the proposed rule, the Commission is proposing to review and approve the categorization process to be used by the licensee. For treatment requirements, the proposed rule sets forth high-level requirements, and does not require NRC review and approval of specific processes a licensee would implement to meet these requirements. Another way to structure the rule would be to require NRC review and approval of the licensee's proposed treatment program for RISC–3 SSCs. The Commission is interested in any benefits of this approach as well as any implications for this rulemaking and its associated guidance.

VI.2.3 Inspection and Enforcement

As discussed above, the Commission recognizes that the final rule may have implications with respect to NRC's reactor oversight process including the inspection program, and enforcement. In its final decision on this rulemaking, the Commission proposes to document its conclusions as to whether or not new or revised inspection or enforcement guidance is necessary. Public comment is requested on whether or not changes are needed in our inspection and enforcement programs to enable NRC to exercise the appropriate degree of regulatory oversight of these aspects of the facility operation.

VI.2.4 Operating Experience

One of the areas of uncertainty associated with this rulemaking has been the potential effects of changes in treatment on SSC reliability and common-cause failure potential. This is reflected in the requirement for evaluations (sensitivity studies) to provide reasonable confidence that any potential increase in risk would be small, with a basis provided for the factors to be assumed in these evaluations. Further, the rule requires the licensee to consider performance information to determine whether there are any adverse changes such that SSC unreliability values approach the values used in these evaluations, and to make necessary adjustments to the categorization and treatment processes. As discussed in Section VII.2, below, draft RG (DG–1121) provides some discussion about techniques that might be used in determining the factors for these evaluations. The Commission is interested in the role that relevant operational experience could play in reducing the uncertainty associated with the effects of treatment on performance and specifically seeks public comment as to what information might be available and how it could be used to support implementation of this rulemaking.

VII. Guidance

VII.1 Regulatory Guide and Implementation Guidance for § 50.69

The Nuclear Energy Institute (NEI) submitted a proposed implementation guide for this rulemaking in the form of NEI 00–04, "10 CFR 50.69 SSC Categorization Guideline." As part of the effort to develop the proposed rule, the NRC staff reviewed drafts of this document and in addition, NEI 00–04 was used in the pilot program discussed earlier. The objective of the staff's review was to determine the acceptability of the proposed implementing guidance with the intent that the NEI guidance could be endorsed in an NRC regulatory guide. The version of NEI 00–04, dated June 28, 2002, forms the basis for the draft regulatory guide.

The NRC staff's review of NEI 00–04 resulted in several areas where the staff would find it necessary to identify exceptions to NEI guidance or to include further guidance to supplement the document, as it is currently written. These areas are discussed in an attachment to the draft regulatory guide, DG–1121, "Guidelines for Categorizing Structures, Systems and Components in Nuclear Power Plants According to Their Safety Significance." Through this document, the Commission is also seeking public comment on the DG and the identified issues. Comments should be submitted as discussed under the **ADDRESSES** section. Availability of this document is noted in Section X.

VII.2 Review Guidance Concerning PRA Quality and Peer Review

The NRC has prepared a draft regulatory guide DG–1122, "An Approach for Determining the Technical Adequacy of Probabilistic Risk Assessment Results for Risk-Informed Activities." This guide provides guidance on the NRC position on voluntary consensus standards for PRA (in particular on the ASME standard for internal events PRAs) and industry PRA documents (*e.g.*, NEI 00–02, "Probabilistic Risk Assessment Peer Review Process Guideline"). Further, this guide will be modified to address PRA standards on fire, external events, and low power and shutdown modes, as they become available. The NRC has also developed a draft supporting Standard Review Plan, SRP 19.1, to provide guidance to the staff on how to determine whether a PRA providing results being used in a decision is technically adequate.

In a letter dated April 24, 2000, NEI requested the NRC staff review the suitability of the peer review process described in NEI 00–02 to address PRA quality issues for this application. NRC issued a request for additional information on September 19, 2000, to which NEI responded by letter dated January 18, 2001. By letter dated April 2, 2002 (ADAMS accession number ML020930632), the NRC staff sent to NEI, draft staff review guidance that was developed as a result of its review of NEI 00–02, for intended use for § 50.69 applications.

The staff review guidance is for a focused review of the plant-specific PRA based on a review of NEI 00–02 and NEI 00–04. In order to reach the conclusion that the PRA results support the proposed categorization, the review guidance is structured to lead the staff reviewer to either look for evidence that the impact of a given peer review issue on PRA results has been adequately addressed in the peer review report and, when necessary, has been identified for consideration by the IDP, or to request further information from the licensee.

VIII. Criminal Penalties

For the purposes of Section 223 of the Atomic Energy Act, as amended, the Commission is issuing the proposed rule to add § 50.69 under one or more of sections 161b, 161i, or 161o of the AEA. Willful violations of the rule would be subject to criminal enforcement. Criminal penalties, as they apply to regulations in Part 50 are discussed in § 50.111.

IX. Compatibility of Agreement State Regulations

Under the "Policy Statement on Adequacy and Compatibility of Agreement States Programs," approved by the Commission on June 20, 1997, and published in the **Federal Register** (62 FR 46517, September 3, 1997), this rule is classified as compatibility "NRC." Compatibility is not required for Category "NRC" regulations. The NRC program elements in this category are those that relate directly to areas of regulation reserved to the NRC by the AEA or the provisions of Title 10 of the Code of Federal Regulations, and although an Agreement State may not adopt program elements reserved to NRC, it may wish to inform its licensees of certain requirements via a mechanism that is consistent with the particular State's administrative procedure laws, but does not confer regulatory authority on the State.

X. Availability of Documents

The NRC is making the documents identified below available to interested persons through one or more of the following methods as indicated.

Public Document Room (PDR). The NRC Public Document Room is located at 11555 Rockville Pike, Rockville, Maryland.

Rulemaking Website (Web). The NRC's interactive rulemaking Website is located at *http://ruleforum.llnl.gov.* These documents may be viewed and downloaded electronically via this Website.

NRC's Public Electronic Reading Room (PERR). The NRC's public electronic reading room is located at *www.nrc.gov/reading-rm.html.*

Document	PDR	Web	PERR
Comments on the ANPR	X	X	Available.
Comments on the draft rule language	X	X	Available.
ANPR Comment Resolution	X	X	ML022630030.
Environmental Assessment	X	X	ML022630050.
Regulatory Analysis	X	X	ML022630028.
OMB Supporting Statement	X	X	ML031000685.
Industry Implementation Guidance	X	X	ML021910534.
Draft Regulatory Guide	X	X	ML022630041.

XI. Plain Language

The Presidential memorandum dated June 1, 1998, entitled "Plain Language in Government Writing" directed that the Government's writing be in plain language. This memorandum was published on June 10, 1998 (63 FR 31883). The NRC requests comments on the proposed rule specifically with respect to the clarity and reflectiveness of the language used. Comments should be sent to the address listed under the **ADDRESSES** caption of the preamble.

XII. Voluntary Consensus Standards

The National Technology Transfer and Advancement Act of 1995, Public Law 104–113, requires that Federal agencies use technical standards that are developed or adopted by voluntary consensus standards bodies unless using such a standard is inconsistent with applicable law or is otherwise impractical. In this proposed rule, the NRC proposes to use the following Government-unique standard (Draft NRC Regulatory Guide DG–1121, August 2002). The Commission notes the development of voluntary consensus standards on PRAs, such as an ASME Standard on Probabilistic Risk Assessment for Nuclear Power Plant Applications. DG–1121 and DG–1122 (PRA Technical Adequacy) discuss how this standard could be used for the purpose of the internal events, full-power PRA. In addition, the Commission acknowledges development of risk-informed Code cases by the ASME on categorization of certain components, particularly with respect to pressure boundary considerations. DG–1121 explicitly notes such Code cases and that they could be proposed by a licensee or applicant as part of the means for satisfying the rule requirements. The government standards would allow use of these voluntary consensus standards, but would not require their use. The Commission does not believe that these other standards are sufficient to provide the overall construct for the alternative approach to categorization and treatment of SSCs that is the goal of this rulemaking. For example, the current standards do not address all types of components that might be recategorized. PRA requirements for all initiating events and modes of operation, nor other parts of the approach laid out such as determining the basis for the evaluations to show a small increase in risk. The NRC is not aware of any voluntary consensus standard that could be used instead of the proposed Government-unique standards. The NRC will consider using a voluntary consensus standard if an appropriate standard is identified. If a voluntary consensus standard is identified for consideration, the submittal should explain how the voluntary consensus standard is comparable and why it should be used instead of the proposed standard.

XIII. Finding of No Significant Environmental Impact: Environmental Assessment: Availability

The Commission has determined under the National Environmental Policy Act of 1969, as amended, and the Commission's regulations in Subpart A of 10 CFR part 51, that this rule, if adopted, would not be a major Federal action significantly affecting the quality of the human environment and, therefore, an environmental impact statement is not required.

The determination of this environmental assessment is that there will be no significant offsite impact to the public from this action. However, the general public should note that the NRC is seeking public participation; availability of the environmental assessment is provided in Section X. Comments on any aspect of the environmental assessment may be submitted to the NRC as indicated under the **ADDRESSES** heading.

The NRC has sent a copy of the environmental assessment and this proposed rule to every State Liaison Officer and requested their comments on the environmental assessment.

XIV. Paperwork Reduction Act Statement

This proposed rule contains information collection requirements that are subject to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501, *et seq.*). This rule has been submitted to the Office of Management and Budget for review and approval of the information collection requirements.

The burden to the public for these information collections is estimated to average 1032 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the information collection. The U.S. Nuclear Regulatory Commission is seeking public comment on the potential impact of the information collections contained in the proposed rule and on the following issues:

1. Is the proposed information collection necessary for the proper performance of the functions of the NRC, including whether the information will have practical utility?
2. Is the estimate of burden accurate?
3. Is there a way to enhance the quality, utility, and clarity of the information to be submitted?
4. How can the burden of the information collection be minimized, including the use of automated collection techniques?

Send comments on any aspect of these proposed information collections, including suggestions for reducing the burden, to the Records Management Branch (T–6 E6), U. S. Nuclear Regulatory Commission, Washington DC 20555–0001, or by Internet electronic mail to *INFOCOLLECTS@NRC.GOV;* and to the Desk Officer, Office of Information and Regulatory Affairs, NEOB–10202, (3150–0011), Office of Management and Budget, Washington DC 20503.

Comments to OMB on the information collections or on the above issues should be submitted by June 16, 2003. Comments received after this date will be considered if it is practical to do so, but assurance of consideration cannot be given to comments received after this date.

Public Protection Notification

The NRC may not conduct or sponsor, and a person is not required to respond to, a request for information or an information collection requirement unless the requesting document displays a currently valid OMB control number.

XV. Regulatory Analysis

The Commission has prepared a draft regulatory analysis on this proposed regulation. The analysis examines the costs and benefits of the alternatives considered by the Commission. The Commission requests public comment on the draft regulatory analysis. Availability of the regulatory analysis is provided in Section X. Comments on the draft analysis may be submitted to the NRC as indicated under the **ADDRESSES** heading.

XVI. Regulatory Flexibility Certification

In accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)), the Commission certifies that this rule will not, if promulgated, have a significant economic impact on a substantial number of small entities. This proposed rule affects only the licensing and operation of nuclear power plants. The companies that own these plants do not fall within the scope of the definition of "small entities" set forth in the Regulatory Flexibility Act or the size standards established by the NRC (10 CFR 2.810).

XVII. Backfit Analysis

The NRC has determined that the backfit rule does not apply to this proposed rule; therefore, a backfit analysis is not required for this proposed rule. As a voluntary alternative to existing requirements, these amendments do not impose more stringent safety requirements on 10 CFR Part 50 licensees or applicants and thus do not constitute a backfit pursuant to § 50.109.

List of Subjects in 10 CFR Part 50

Antitrust, Classified information, Criminal penalties, Fire protection, Intergovernmental relations, Nuclear power plant and reactors, Radiation protection, Reactor siting criteria, Reporting and recordkeeping requirements.

For the reasons set out in the preamble and under the authority of the Atomic Energy Act of 1954, as amended; the Energy Reorganization Act of 1974, as amended; and 5 U.S.C. 553, the NRC is proposing to adopt the following amendments to 10 CFR Part 50.

PART 50—DOMESTIC LICENSING OF PRODUCTION AND UTILIZATION FACILITIES

1. The authority citation for Part 50 continues to read as follows:

Authority: Secs. 102, 103, 104, 105, 161, 182, 183, 186, 189, 68 Stat. 936, 938, 948, 953, 954, 955, 956, as amended, sec. 234, 83 Stat. 444, as amended (42 U.S.C. 2132, 2133, 2134, 2135, 2201, 2232, 2233, 2239, 2282); secs. 201, as amended, 202, 206, 88 Stat.1242, as amended, 1244, 1246 (42 U.S.C. 5841, 5842, 5846).

Section 50.7 also issued under Pub. L. 95–601, sec. 10, 92 Stat. 2951, as amended by Pub. L. 102–486, sec. 2902, 106 Stat. 3123 (42 U.S.C. 5851). Sections 50.10 also issued under secs. 101, 185, 68 Stat. 936, 955, as amended (42 U.S.C. 2131, 2235); sec. 102, Pub. L. 91–190, 83 Stat. 853 (42 U.S.C. 4332). Sections 50.13, 50.54(dd), and 50.103 also issued under sec. 108, 68 Stat. 939, as amended (42 U.S.C. 2138). Sections 50.23, 50.35, 50.55, and 50.56 also issued under sec. 185, 68 Stat. 955 (42 U.S.C. 2235). Sections 50.33a, 50.55a, and Appendix Q also issued under sec. 102, Pub. L. 91–190, 83 Stat. 853 (42 U.S.C. 4332). Sections 50.34 and 50.54 also issued under Pub. L. 97–415, 96 Stat. 2073 (42 U.S.C. 2239). Sections 50.78 also issued under sec. 122, 68 Stat. 939 (42 U.S.C. 2152). Sections 50.80, 50.81 also issued under sec. 184, 68 Stat. 954, as amended (42 U.S.C. 2234). Appendix F also issued under sec. 187, 68 Stat. 955 (42 U.S.C. 2237).

2. Section 50.8(b) is revised to read as follows:

§ 50.8 Information collection requirements: OMB approval.

(b) The approved information collection requirements contained in this part appear in §§ 50.30, 50.33, 50.33a, 50.34, 50.34a, 50.35, 50.36, 50.36a, 50.36b, 50.44, 50.46, 50.47, 50.48, 50.49, 50.54, 50.55, 50.55a, 50.59, 50.60, 50.61, 50.62, 50.63, 50.64, 50.65, 50.66, 50.68, 50.69, 50.71, 50.72, 50.74, 50.75, 50.80, 50.82, 50.90, 50.91, 50.120, and appendices A, B, E, G, H, I, J, K, M, N,O, Q, R, and S to this part.

3. Part 50 is amended by adding a new § 50.69 to read as follows:

§ 50.69 Risk-informed categorization and treatment of structures, systems and components for nuclear power reactors

(a) Definitions.

"Risk-Informed Safety Class (RISC)–1 structures, systems, and components (SSCs)" means safety-related SSCs that perform safety-significant functions.

"Risk-Informed Safety Class (RISC)–2 structures, systems and components (SSCs)" means nonsafety-related SSCs that perform safety-significant functions.

"Risk-Informed Safety Class (RISC)–3 structures, systems and components (SSCs)" means safety-related SSCs that perform low safety-significant functions.

"Risk-Informed Safety Class (RISC)–4 structures, systems and components (SSCs)" means nonsafety-related SSCs that perform low safety-significant functions.

"Safety-significant function" means a function whose degradation or loss could result in a significant adverse effect on defense-in-depth, safety margin, or risk.

(b) Applicability and scope of risk-informed treatment of SSCs and submittal/approval process.

(1) A holder of a license to operate a light water reactor (LWR) nuclear power plant under §§ 50.21(b) or 50.22, a holder of a renewed LWR license under Part 54 of this chapter, a person seeking a design certification under Part 52 of this chapter, or an applicant for a LWR license under § 50.22 or under Part 52, may voluntarily comply with the requirements in this section as an alternative to compliance with the following requirements for RISC–3 and RISC–4 SSCs:

(i) 10 CFR part 21.

(ii) 10 CFR 50.49.

(iii) 10 CFR 50.55(e).

(iv) The inservice testing requirements in 10 CFR 50.55a(f); the inservice inspection, and repair and replacement, requirements for ASME Class 2 and Class 3 SSCs in 10 CFR 50.55a(g); and the electrical component quality and qualification requirements in Section 4.3 and 4.4 of IEEE 279, and sections 5.3 and 5.4 of IEEE 603–1991, as incorporated by reference in 10 CFR 50.55a(h).

(v) 10 CFR 50.65, except for paragraph (a)(4).

(vi) 10 CFR 50.72.

(vii) 10 CFR 50.73.

(viii) Appendix B to 10 CFR part 50.

(ix) The Type B and Type C leakage testing requirements in both Options A and B of Appendix J to 10 CFR Part 50, for penetrations and valves meeting the following criteria:

(A) Containment penetrations that are either 1-inch nominal size or less, or continuously pressurized.

(B) Containment isolation valves that meet one or more of the following criteria:

(*1*) The valve is required to be open under accident conditions to prevent or mitigate core damage events;

(*2*) The valve is normally closed and in a physically closed, water-filled system;

(*3*) The valve is in a physically closed system whose piping pressure rating exceeds the containment design pressure rating and that is not connected to the reactor coolant pressure boundary; or

(*4*) The valve is 1-inch nominal size or less.

(x) Appendix A to Part 100, sections VI(a)(1) and VI(a)(2), to the extent that these regulations require qualification testing and specific engineering methods to demonstrate that SSCs are designed to withstand the Safe

Shutdown Earthquake and Operating Basis Earthquake.

(2) A licensee voluntarily choosing to implement this section shall submit an application for license amendment pursuant to § 50.90 that contains the following information:

(i) A description of the process for categorization of RISC–1, RISC–2, RISC–3 and RISC–4 SSCs.

(ii) A description of the measures taken to assure that the quality and level of detail of the systematic processes that evaluate the plant for internal and external events during normal operation, low power, and shutdown (including the plant-specific probabilistic risk assessment (PRA), margins-type approaches, or other systematic evaluation techniques used to evaluate severe accident vulnerabilities) are adequate for the categorization of SSCs.

(iii) Results of the PRA review process conducted to meet § 50.69 (c)(1)(i).

(iv) A description of, and basis for acceptability of, the evaluations to be conducted to satisfy § 50.69(c)(1)(iv). The evaluations shall include the effects of common cause interaction susceptibility, and the potential impacts from known degradation mechanisms for both active and passive functions, and address internally and externally initiated events and plant operating modes (*e.g.*, full power and shutdown conditions).

(3) The Commission will approve a licensee's implementation of this section if it determines that the process for categorization of RISC–1, RISC–2, RISC–3, and RISC–4 SSCs satisfies the requirements of § 50.69(c) by issuing a license amendment approving the licensee's use of this section.

(4) An applicant for a license voluntarily choosing to implement this section shall include the information in § 50.69(b)(2) as part of application for a license. The Commission will approve an applicant's implementation of this section if it determines that the process for categorization of RISC–1, RISC–2, RISC–3, and RISC–4 SSCs satisfies the requirements of § 50.69(c).

(c) SSC Categorization Process. (1) SSCs must be categorized as RISC–1, RISC–2, RISC–3, or RISC–4 SSCs using a categorization process that determines whether an SSC performs one or more safety-significant functions and identifies those functions. The process must:

(i) Consider results and insights from the plant-specific PRA. This PRA must at a minimum model severe accident scenarios resulting from internal initiating events occurring at full power operation. The PRA must be of sufficient quality and level of detail to support the categorization process, and must be subjected to a peer review process assessed against a standard or set of acceptance criteria that is endorsed by the NRC.

(ii) Determine SSC functional importance using an integrated, systematic process for addressing initiating events (internal and external), SSCs, and plant operating modes, including those not modeled in the plant-specific PRA. The functions to be identified and considered include design bases functions and functions credited for mitigation and prevention of severe accidents. All aspects of the integrated, systematic process used to characterize SSC importance must reasonably reflect the current plant configuration and operating practices, and applicable plant and industry operational experience.

(iii) Maintain the defense-in-depth philosophy.

(iv) Include evaluations that provide reasonable confidence that for SSCs categorized as RISC–3, sufficient safety margins are maintained and that any potential increases in core damage frequency (CDF) and large early release frequency (LERF) resulting from changes in treatment permitted by implementation of § 50.69(b)(1) and § 50.69(d)(2) are small.

(v) Be performed for entire systems and structures, not for selected components within a system or structure.

(2) The SSCs must be categorized by an Integrated Decision-making Panel (IDP) staffed with expert, plant-knowledgeable members whose expertise includes, at a minimum, PRA, safety analysis, plant operation, design engineering, and system engineering.

(d) *Alternative treatment requirements.* (1) *RISC–1 and RISC 2 SSCs.* The licensee or applicant shall ensure that RISC–1 and RISC–2 SSCs perform their functions consistent with the categorization process assumptions by evaluating treatment being applied to these SSCs to ensure that it supports the key assumptions in the categorization process that relate to their assumed performance.

(2) *RISC–3 SSCs.* The licensee or applicant shall develop and implement processes to control the design; procurement; inspection, maintenance, testing, and surveillance; and corrective action for RISC–3 SSCs to provide reasonable confidence in the capability of RISC–3 SSCs to perform their safety-related functions under design basis conditions throughout their service life. The processes must meet the following requirements, as applicable:

(i) *Design control.* Design functional requirements and bases for RISC–3 SSCs must be maintained and controlled. RISC–3 SSCs must be capable of performing their safety-related functions including design requirements for environmental conditions (*i.e.*, temperature and pressure, humidity, chemical effects, radiation and submergence) and effects (*i.e.*, aging and synergism); and seismic conditions (design load combinations of normal and accident conditions with earthquake motions);

(ii) *Procurement.* Procured RISC–3 SSCs must satisfy their design requirements;

(iii) *Maintenance, Inspection, Testing, and Surveillance.* Periodic maintenance, inspection, testing, and surveillance activities must be established and conducted using prescribed acceptance criteria, and their results evaluated to determine that RISC–3 SSCs will remain capable of performing their safety-related functions under design basis conditions until the next scheduled activity; and

(iv) *Corrective Action.* Conditions that could prevent a RISC–3 SSC from performing its safety-related functions under design basis conditions must be identified, documented, and corrected in a timely manner.

(e) *Feedback and process adjustment.* (1) *RISC–1, RISC–2, RISC–3 and RISC–4 SSCs.* In a timely manner but no longer than every 36 months, the licensee shall review changes to the plant, operational practices, applicable industry operational experience, and, as appropriate, update the PRA and SSC categorization.

(2) *RISC–1 and RISC–2 SSCs.* The licensee shall monitor the performance of RISC–1 and RISC–2 SSCs. The licensee shall make adjustments as necessary to either the categorization or treatment processes so that the categorization process and results are maintained valid.

(3) *RISC–3 SSCs.* The licensee shall consider data collected in § 50.69(d)(2)(iii) for RISC–3 SSCs to determine whether there are any adverse changes in performance such that the SSC unreliability values approach or exceed the values used in the evaluations conducted to satisfy § 50.69 (c)(1)(iv). The licensee shall make adjustments as necessary to either the categorization or treatment processes so that the categorization process and results are maintained valid.

(f) *Program documentation, change control and records.* (1) The licensee or applicant shall document the basis for its categorization of any SSC under paragraph (c) of this section before removing any requirements under § 50.69(b)(1) for those SSCs.

(2) Following implementation of this section, licensees and applicants shall update their final safety analysis report (FSAR) to reflect which systems have been categorized in accordance with § 50.71(e).

(3) When a licensee first implements this section for a SSC, changes to the FSAR for the implementation of the changes in accordance with § 50.69(d) need not include a supporting § 50.59 evaluation of the changes directly related to implementation. Thereafter, changes to the programs and procedures for implementation of § 50.69(d), as described in the FSAR, may be made if the requirements of this section and § 50.59 continue to be met.

(4) When a licensee first implements this section for a SSC, changes to the quality assurance plan for the implementation of the changes in accordance with § 50.69(d) need not include a supporting § 50.54(a) review of the changes directly related to implementation. Thereafter, changes to the programs and procedures for implementation of § 50.69(d), as described in the quality assurance plan may be made if the requirements of this section and § 50.54(a) continue to be met.

(g) *Reporting.* The licensee shall submit a licensee event report under § 50.73(b) for any event or condition that would have prevented RISC–1 or RISC–2 SSCs from performing a safety-significant function.

Dated at Rockville, Maryland this 6th day of May, 2003.

For the Nuclear Regulatory Commission.

Annette L. Vietti-Cook,

Secretary of the Commission.

[FR Doc. 03–11696 Filed 5–15–03; 8:45 am]

BILLING CODE 7590–01–U

FARM CREDIT ADMINISTRATION

12 CFR Chapter VI

RIN 3052–AC15

Statement on Regulatory Burden

AGENCY: Farm Credit Administration.

ACTION: Notice of intent; request for comment.

SUMMARY: The Farm Credit Administration (FCA, our, or we) is seeking public comment on the appropriateness of the requirements it imposes on the Farm Credit System (System). We ask for comments on our regulations and policies that may duplicate other requirements, are ineffective, or impose burdens that are greater than the benefits received. We are taking this action to improve the regulatory framework within which System institutions operate.

DATES: Please send your comments to the FCA by July 15, 2003.

ADDRESSES: You may send comments by electronic mail to *reg-comm@fca.gov*, through the Pending Regulations section of the FCA's interactive Web site at *http://www.fca.gov*, or through the Government-wide *http://www.regulations.gov* portal. You may also send written comments to Robert E. Donnelly, Acting Director, Regulation and Policy Division, Office of Policy and Analysis, Farm Credit Administration, 1501 Farm Credit Drive, McLean, Virginia 22102–5090 or by facsimile to (703) 734–5784. Copies of all comments we receive can be reviewed at our office in McLean, Virginia.

FOR FURTHER INFORMATION CONTACT: Lori Markowitz, Policy Analyst, Office of Policy and Analysis, Farm Credit Administration, McLean, VA 22102–5090, (703) 883–4498, TTY (703) 883–4434; or Dale Aultman, Policy Analyst, Office of Policy and Analysis, Farm Credit Administration, McLean, VA 22102–5090, (703) 883–4498, TTY (703) 883–4434; or Gary K. Van Meter, Senior Counsel, Regulatory Enforcement Division, Office of General Counsel, Farm Credit Administration, McLean, VA 22102–5090, (703) 883–4020, TTY (703) 883–4020.

SUPPLEMENTARY INFORMATION:

I. Objective

Consistent with law, safety, and soundness, the objective of this notice is to continue our efforts to identify and review FCA regulations and policies that:

- May duplicate other requirements;
- Are ineffective; or
- Impose burdens that are greater than the benefits received.

II. Background

The FCA is the independent Federal agency in the executive branch of the Government responsible for examining and regulating System institutions. As a Government-sponsored enterprise, the System primarily provides loans to farmers, ranchers, aquatic producers and harvesters, agricultural cooperatives, and rural utilities.

From 1988 through 1992, as part of our initial effort to eliminate regulatory burden, we reduced, by more than 70 percent, the number of matters that required "prior approval" by the FCA. In 1993, we took an additional step to provide relief by requesting public comments on regulatory requirements that are no longer necessary, which the FCA may have imposed on the System. *See* 58 FR 34003 (June 23, 1993). After reviewing the comments received, we eliminated or streamlined many regulatory requirements.

The Farm Credit System Reform Act of 1996 (Reform Act) states that we made considerable progress in reducing regulatory burden on System institutions. The Reform Act also requires that we continue our efforts to relieve regulatory burden.[1]

In 1998, we provided the public a summary of the actions we took in response to the 1993 solicitation and again requested public comments on regulatory requirements that are no longer necessary. *See* 63 FR 44176 (August 18, 1998) and 63 FR 64013 (November 18, 1998). After we reviewed and analyzed the comments received, we:

1. Repealed or amended 16 FCA regulations through a direct final rulemaking[2]—*See* 64 FR 43046 (August 9, 1999);

2. Informed the public of the regulations we retained without amendment because they either are required by the Farm Credit Act of 1971, as amended (Act), or protect the safety and soundness of the System—*See* 65 FR 21128 (April 20, 2000); and

3. Addressed other regulatory burden issues in separate regulatory projects and other guidance, including:

- Loan Purchases and Sales Final Regulation—*See* 67 FR 1281 (January 10, 2002);
- Stock Issuance Final Regulation—*See* 66 FR 16841 (March 28, 2001);
- Disclosure to Shareholders Final Regulation—*See* 66 FR 14299 (March 12, 2001);
- Investment Management Final Regulation—See 64 FR 28884 (May 28, 1999); and
- Policy and Reporting Changes for Young, Beginning, and Small Farmers and Ranchers Programs Bookletter—*See* BL–040 (December 11, 1998).

III. Continuing Efforts To Reduce Regulatory Burden

Future regulatory projects, including proposed regulations on Distressed Loan Restructuring (*See* 68 FR 5595, February 4, 2003) and Effective Interest Rates (See 68 FR 5587, February 4, 2003), will address many of the regulatory burden

[1] *See* Pub. L. 104–105, § 212, 110 Stat. 174 (1996).

[2] However, the amended regulation on approval of insider loans was subsequently withdrawn. *See* 64 FR 55621 (October 14, 1999).

comments from the 1998 notice. In addition, we will consider the remaining comments from our 1998 notice in subsequent rulemakings and other guidance.

IV. Requesting Comments

In light of changes in the financial industry and its customers since our 1998 notice, we request comments on any FCA regulations or other guidance [3] that may duplicate other requirements, are ineffective, or impose burdens that are greater than the benefits received.

Your comments are appreciated and will assist us in our continuing efforts to identify and reduce regulatory burden on System institutions. We will also continue our efforts to maintain and adopt regulations and policies that are necessary to implement the Act and ensure the safety and soundness of the System. These actions will enable the System to better serve America's farmers, ranchers, aquatic producers and harvesters, agricultural cooperatives, and rural utilities in changing agricultural credit markets.

Dated: May 13, 2003.

Jeanette C. Brinkley,

Secretary, Farm Credit Administration Board.

[FR Doc. 03–12264 Filed 5–15–03; 8:45 am]

BILLING CODE 6705–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2002–SW–44–AD]

RIN 2120–AA64

Airworthiness Directives; Eurocopter France Model AS350B, AS350BA, AS350B1, AS350B2, AS350B3, AS350C, AS350D, AS350D1, AS355E, AS355F, AS355F1, AS355F2, and AS355N Helicopters

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes superseding an existing airworthiness directive (AD) for the specified Eurocopter France (ECF) model helicopters. The existing AD requires inspecting the main rotor swashplate bearing (bearing) for play or binding, proper assembly and lubrication, and measuring the swashplate rotational torque. In addition, that AD requires plugging the nonrotating swashplate vent holes and barrel nut orifices. This amendment would eliminate most of those AD actions because they are now incorporated into the Airworthiness Limitations section of the maintenance manual but would retain the requirements for the initial and repetitive inspections and lubrication of the main rotor swashplate and clarify that repetitive maintenance of the main rotor swashplate and bearing is required at intervals not to exceed 100 hours time-in-service (TIS). This proposal is prompted by the need to clarify the AD wording to avoid any misinterpretation of the required interval for inspecting and lubricating the main rotor swashplate and bearing. The actions specified by the proposed AD are intended to prevent failure of the bearing and subsequent loss of control of the helicopter.

DATES: Comments must be received on or before July 15, 2003.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Office of the Regional Counsel, Southwest Region, Attention: Rules Docket No. 2002–SW–44–AD, 2601 Meacham Blvd., Room 663, Fort Worth, Texas 76137. You may also send comments electronically to the Rules Docket at the following address: *9-asw-adcomments@faa.gov*. Comments may be inspected at the Office of the Regional Counsel between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Jim Grigg, Aviation Safety Engineer, FAA, Rotorcraft Directorate, Rotorcraft Standards Staff, Fort Worth, Texas 76193–0110, telephone (817) 222–5490, fax (817) 222–5961.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments will be considered before taking action on the proposed rule. The proposals contained in this document may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their mailed comments submitted in response to this proposal must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. 2002–SW–44–AD." The postcard will be date stamped and returned to the commenter.

Discussion

On March 21, 1990, the FAA issued AD 89–21–01, Amendment 39–6562, Docket No. 89–ASW–53 (55 FR 12332, April 3, 1990), to require inspecting the bearing for play or binding, proper assembly and lubrication, and for measuring the swashplate rotational torque. In addition, that AD requires plugging the nonrotating swashplate vent holes and barrel nut orifices at specified hours TIS. The requirements of that AD are intended to prevent failure of the bearing, which could result in loss of helicopter control.

Since issuing that AD, an FAA inspector reports that the repetitive lubrication requirement in paragraph (c) of AD 89–21–01 requiring lubrication "within every 100 hours' additional time-in-service" is being misinterpreted by a certain operator to only require lubrication every 199 hours rather than the intended 100-hour interval. Therefore, the inspector recommends that AD 89–21–01 be rewritten to clearly state that lubrication of the bearings be required at intervals not to exceed 100 hours TIS. To remove any doubt as to the intended lubrication interval, we propose to adopt the suggested language. The additional requirements contained in AD 89–21–01 for inspecting and servicing the main rotor swashplate are omitted from this proposal because they are contained currently in the mandatory Airworthiness Limitations section of the Eurocopter Master Servicing Recommendations (maintenance manual) for the Model AS 350, dated April 26, 2001, and for the Model AS 355, dated May 31, 2001.

This unsafe condition is likely to exist or develop on other helicopters of the same type designs. Therefore, the proposed AD would supersede AD 89–21–01 to clarify that the required inspection and lubrication interval of the main rotor swashplate must be accomplished within 10 hours TIS, unless complied with previously, and thereafter at intervals not to exceed 100 hours TIS.

The FAA estimates that this proposed AD would affect 587 helicopters of U.S. registry, that it would take approximately 2 work hours per helicopter to accomplish the proposed actions, and that the average labor rate is $60 per work hour. Based on these figures, the total cost impact of the proposed AD on U.S. operators is estimated to be $422,640, assuming 6 inspections per year.

The regulations proposed herein would not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this proposal would not have federalism implications under Executive Order 13132.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by removing Amendment 39–6562 (55 FR 12332, April 3, 1990) and by adding a new airworthiness directive (AD) to read as follows:

Eurocopter France: Docket No. 2002–SW–44–AD. Supersedes AD 89–21–01, Amendment 39–6562, Docket No. 89–ASW–53.

Applicability: Model AS350B, AS350BA, AS350B1, AS350B2, AS350B3, AS350C, AS350D, AS350D1, AS355E, AS355F, AS355F1, AS355F2, and AS355N helicopters, certificated in any category.

Note 1: This AD applies to each helicopter identified in the preceding applicability provision, regardless of whether it has been otherwise modified, altered, or repaired in the area subject to the requirements of this AD. For helicopters that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (b) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

Note 2: The current Airworthiness Limitations sections of the Eurocopter AS 350 and AS 355 maintenance manuals contain requirements for inspecting and lubricating the main rotor swashplate at intervals not to exceed 100 hours time-in-service (TIS).

To prevent failure of the main rotor swashplate bearing and subsequent loss of control of the helicopter, accomplish the following:

(a) Within 10 hours time-in-service (TIS) and thereafter at intervals not to exceed 100 hours TIS, inspect and lubricate the main rotor swashplate.

Note 3: Eurocopter Master Servicing Recommendations, Airworthiness Limitations section, AS 350, dated April 26, 2001, and AS 355, dated May 31, 2001, pertain to the subject of this AD.

(b) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Regulations Group, Rotorcraft Directorate, FAA. Operators shall submit their requests through an FAA Principal Maintenance Inspector, who may concur or comment and then send it to the Manager, Regulations Group.

Note 4: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Regulations Group.

(c) Special flight permits will not be issued.

Issued in Fort Worth, Texas, on May 9, 2003.

Mark R. Schilling,

Acting Manager, Rotorcraft Directorate, Aircraft Certification Service.

[FR Doc. 03–12209 Filed 5–15–03; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2002–NE–26–AD]

RIN 2120–AA64

Airworthiness Directives; CFM International, S.A. CFM56–2C, –3 Series, and –5 Series Turbofan Engines

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: The Federal Aviation Administration (FAA) proposes to adopt a new airworthiness directive (AD) that is applicable to CFM International, S.A. CFM56–2C, –3, and –5 series turbofan engines. This proposal would require removing from service main fuel pumps with bronze bearings and installing main fuel pumps with aluminum/bronze alloy bearings. This proposal is prompted by several reports of indications of wear and failures of main fuel pump bronze bearings. The actions specified by the proposed AD are intended to prevent failures of main fuel pump bearings, resulting in fuel filter clogging, fuel flow degradation, fuel manifold and nozzle clogging resulting in diminished in-flight restart capability, low pressure turbine (LPT) case burn-through, inability to obtain a successful engine start, and damage to the airplane.

DATES: Comments must be received by July 15, 2003.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), New England Region, Office of the Regional Counsel, Attention: Rules Docket No. 2002–NE–26–AD, 12 New England Executive Park, Burlington, MA 01803–5299. Comments may be inspected at this location, by appointment, between 8 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays. Comments may also be sent via the Internet using the following address: *9-ane-adcomment@faa.gov*. Comments sent via the Internet must contain the docket number in the subject line.

FOR FURTHER INFORMATION CONTACT: Glorianne Niebuhr, Aerospace Engineer, Engine Certification Office, FAA, Engine and Propeller Directorate, 12 New England Executive Park, Burlington, MA 01803–5299; telephone (781) 238–7132; fax (781) 238–7199.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this action may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this action must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 2002–NE–26–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRM's

Any person may obtain a copy of this NPRM by submitting a request to the FAA, New England Region, Office of the Regional Counsel, Attention: Rules Docket No. 2002–NE–26–AD, 12 New England Executive Park, Burlington, MA 01803–5299.

Discussion

The FAA has become aware that since the introduction of main fuel pump bronze bearings into service on CFM56–2C, –3, and –5 series turbofan engines, wear of the backside of the bearings into the main fuel bearing plate has been observed. This can lead to fuel filter clogging, fuel flow degradation, fuel manifold and nozzle clogging resulting in diminished in-flight restart capability, LPT case burn-through, inability to obtain a successful engine start, and damage to the airplane. The main fuel pump manufacturer has determined that this wear is caused by the low coefficient of friction between the bronze bearings and the aluminum bearing plate which allowed relative movement of the bearing during operation. The main fuel pump manufacturer has shown that main fuel pumps with aluminum/bronze alloy bearings have a high coefficient of friction between the bearing and the aluminum bearing plate minimizing relative movement of the bearings and reducing wear. Use of main fuel pumps with aluminum/bronze alloy bearings decreases the risk of bearing failure which could lead to fuel filter clogging, fuel flow degradation, fuel manifold and nozzle clogging resulting in diminished in-flight restart capability, LPT case burn-through, inability to obtain a successful engine start, and damage to the airplane.

FAA's Determination of an Unsafe Condition and Proposed Actions

Since an unsafe condition has been identified that is likely to exist or develop on other CFM International, S.A. CFM56–2C, –3 series, and –5 series turbofan engines of the same type design, the proposed AD would require removal from service of certain part number main fuel pumps and installation of serviceable main fuel pumps. The actions would be required to be done at the next engine removal, engine module removal, or main fuel pump removal after the effective date of this AD, whichever is earlier, but no later than January 1, 2007.

Economic Analysis

There are approximately 6,048 CFM56–2C, –3 series, and –5 series turbofan engines of the affected design in the worldwide fleet. The FAA estimates that 2,249 engines installed on airplanes of U.S. registry would be affected by this proposed AD. A replacement fuel pump would cost approximately $74,000. Using average shop visitation rates, 562 engines are expected to be affected per year. Based on these figures, the total cost to replace fuel pumps for U.S. operators is estimated to be $41,588,000 per year.

Regulatory Analysis

This proposed rule does not have federalism implications, as defined in Executive Order 13132, because it would not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Accordingly, the FAA has not consulted with state authorities prior to publication of this proposed rule.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

CFM International, S.A.: Docket No. 2002–NE–26–AD.

Applicability: This airworthiness directive (AD) is applicable to CFM International, S.A. CFM56–2C, –3, and –5 series turbofan engines. These engines are installed on, but not limited to Airbus Industrie A319, A320, Boeing 737, and McDonnell Douglas DC–8 airplanes.

Note 1: This AD applies to each engine identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For engines that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (e) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Compliance with this AD is required at the next engine removal, engine module removal, or main fuel pump removal after the effective date of this AD, whichever is earlier, but no later than January 1, 2007, unless already done.

To prevent failures of main fuel pump bearings, resulting in fuel filter clogging, fuel flow degradation, fuel manifold and nozzle clogging resulting in diminished in-flight restart capability, low pressure turbine (LPT) case burn-through, inability to obtain a successful engine start, and damage to the airplane, do the following:

Main Fuel Pumps Installed on CFM56–2C Engines

(a) For CFM56–2C engines, do the following:

(1) Remove from service main fuel pumps part number (P/N) 301–779–002–0.

(2) For all CFM56–2C series engines that have incorporated CFM International (CFMI) Service Bulletin (SB) (CFM56–2C) 73–081, remove from service main fuel pumps P/N 301–776–101–0, P/N 301–776–102–0, P/N 301–776–103–0, P/N 301–776–104–0, P/N 301–776–105–0, P/N 301–776–106–0, P/N 301–776–108–0, P/N 301–776–109–0, P/N 301–776–110–0, P/N 301–776–111–0, P/N 301–776–112–0, P/N 301–776–113–0, P/N 301–778–801–0, P/N 301–778–802–0, P/N 301–778–804–0, and P/N 301–778–805–0.

(3) For all CFM56–2C engines that have incorporated CFMI SB (CFM56–2C) 73–078, remove from service main fuel pumps P/N 301–779–006–0.

(4) Install a serviceable main fuel pump. Information on converting removed pumps into serviceable pumps can be found in CFMI SB (CFM56–2C) 73–0104, Revision 2, dated July 27, 2000.

Main Fuel Pumps Installed on CFM56–3 Series Engines

(b) For CFM56–3 series engines, do the following:

(1) Remove main fuel pumps P/N 301–779–002–0.

(2) For all CFM56–3 series engines that have incorporated CFMI SB (CFM56–3) 73–082, remove from service main fuel pumps P/N 301–779–006–0.

(3) For all CFM56–3 series engines that have incorporated CFMI SB (CFM56–3) 73–087, remove from service main fuel pumps P/N 301–778–801–0, P/N 301–778–802–0, P/N 301–778–804–0, and P/N 301–778–805–0.

(4) Install a serviceable main fuel pump. Information on converting removed pumps into serviceable pumps can be found in CFMI SB (CFM56–3) 73–0120, Revision 4, dated July 27, 2000.

Main Fuel Pumps Installed on CFM56–5 Series Engines

(c) For CFM56–5 series engines, do the following:

(1) Remove main fuel pumps P/N 301–785–502–0.

(2) For all CFM56–5 series engines that have incorporated CFMI SB (CFM56–5A) 73–077, remove from service main fuel pumps P/N 301–785–504–0.

(3) Install a serviceable main fuel pump. Information on converting removed pumps into serviceable pumps can be found in CFMI SB (CFM56–5A) 73–0126, Revision 3, dated September 25, 2000.

Do Not Install Main Fuel Pumps

(d) After the effective date of this AD, do not install the following P/N main fuel pumps onto any engine:

(1) For all engines: (P/N) 301–779–002–0, P/N 301–779–006–0, P/N 301–785–502–0, and P/N 301–785–504–0.

(2) For CFM56–2C engines that have incorporated SB CFMI (CFM56–2C) 73–081 but have not incorporated SB CFMI SB (CFM56–2C) 73–0104: P/N 301–776–101–0, P/N 301–776–102–0, P/N 301–776–103–0, P/N 301–776–104–0, P/N 301–776–105–0, P/N 301–776–106–0, P/N 301–776–108–0, P/N 301–776–109–0, P/N 301–776–110–0, P/N 301–776–111–0, P/N 301–776–112–0, P/N 301–776–113–0, P/N 301–778–801–0, P/N 301–778–802–0, P/N 301–778–804–0, P/N 301–778–805–0.

(3) For CFM56–3 series engines that have incorporated SB CFMI (CFM56–3) 73–087 but have not incorporated CFMI SB (CFM56–3) 73–0120: P/N 301–778–801–0, P/N 301–778–802–0, P/N 301–778–804–0, and P/N 301–778–805–0.

Alternative Methods of Compliance

(e) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Engine Certification Office (ECO). Operators must submit their request through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, ECO.

Note 2: Information concerning the existence of approved alternative methods of compliance with this airworthiness directive, if any, may be obtained from the ECO.

Special Flight Permits

(f) Special flight permits may be issued in accordance with §§ 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be done.

Issued in Burlington, Massachusetts, on May 12, 2003.

Francis A. Favara,

Acting Manager, Engine and Propeller Directorate, Aircraft Certification Service.

[FR Doc. 03–12241 Filed 5–15–03; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

24 CFR Part 1000

[Docket No. FR–4676–N–07]

Native American Housing Assistance and Self-Determination Negotiated Rulemaking Committee; Meeting

AGENCY: Office of the Assistant Secretary for Public and Indian Housing, HUD.

ACTION: Notice of Negotiated Rulemaking Committee Meeting.

SUMMARY: This document announces a meeting of the Native American Housing Assistance and Self-Determination Negotiated Rulemaking Committee. The purpose of the Committee is to discuss and negotiate a proposed rule that would change the regulations for the Indian Housing Block Grant (IHBG) program allocation formula, and other regulatory issues that arise out of the allocation or reallocation of IHBG funds.

DATES: The committee meeting will be held on Wednesday, May 28, 2003, Thursday, May 29, 2003, and Friday, May 30, 2003. On May 28, 2003, and May 29, 2003, the meeting will begin at 9 am and end at 5 pm. On May 30, 2003, the meeting will begin at 9 am and end at 4 pm.

ADDRESSES: The meeting will take place at the Adams-Mark Hotel, 1550 Court Place Street, Denver, Colorado 80202; telephone (303) 893–3333 (this is not a toll-free number).

FOR FURTHER INFORMATION CONTACT: Rodger J. Boyd, Deputy Assistant Secretary for Native American Programs, Room 4126, Office of Public and Indian Housing, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410, telephone, (202) 401–7914 (this is not a toll-free number). Hearing or speech-impaired individuals may access this number via TTY by calling the toll-free Federal Information Relay Service at 1–800–877–8339.

SUPPLEMENTARY INFORMATION:

I. Background

HUD has established the Native American Housing Assistance and Self-Determination Negotiated Rulemaking Committee for the purposes of discussing and negotiating a proposed rule that would change the regulations for the Indian Housing Block Grant (IHBG) program allocation formula, and other regulatory issues that arise out of the allocation or reallocation of IHBG funds.

The IHBG program was established under the Native American Housing Assistance and Self-Determination Act of 1996 (25 U.S.C. 4101 *et seq.*) (NAHASDA). NAHASDA reorganized housing assistance to Native Americans by eliminating and consolidating a number of HUD assistance programs in a single block grant program. In addition, NAHASDA provides federal assistance for Indian tribes in a manner that recognizes the right of Indian self-determination and tribal self-government. Following the procedures of the Negotiated Rulemaking Act of 1990 (5 U.S.C. 561–570), HUD and its tribal partners negotiated the March 12, 1998 (63 FR 12349) final rule, which created a new 24 CFR part 1000

containing the IHBG program regulations.

II. Negotiated Rulemaking Committee Meeting

This document announces a meeting of the Native American Housing Assistance and Self-Determination Negotiated Rulemaking Committee. The committee meeting will take place as described in the **DATES** and **ADDRESSES** section of this document. The agenda planned for the meeting includes the discussion of proposed work groups and committee recommendations. The meeting will be open to the public without advance registration. Public attendance may be limited to the space available. Members of the public may be allowed to make statements during the meeting, to the extent time permits, and file written statements with the committee for its consideration. Written statements should be submitted to the address listed in the **FOR FURTHER INFORMATION** section of this document.

Dated: May 12, 2003.

Rodger J. Boyd,

Deputy Assistant Secretary for Native American Programs.

[FR Doc. 03–12206 Filed 5–15–03; 8:45 am]

BILLING CODE 4210–33–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[TN–248–200327(b); FRL–7498–7]

Approval and Promulgation of Implementation Plan: Revisions to Tennessee State Implementation Plan: Transportation Conformity Rule

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to approve a revision to the Tennessee State Implementation Plan (SIP) submitted on March 19, 2002, that contains transportation conformity rules. If EPA approves this transportation conformity SIP revision, the State will be able to implement and enforce the Federal transportation conformity requirements at the State level per EPA regulations—Conformity to State or Federal Implementation Plans of Transportation Plans, Programs, and Projects Developed, Funded or Approved Under Title 23 U.S.C. of the Federal Transit Laws. EPA's proposed action would streamline the conformity process and allow direct consultation among agencies at the local levels. EPA's proposed approval is limited to transportation conformity.

In the Final Rules section of this **Federal Register**, the EPA is approving the State's SIP revision as a direct final rule without prior proposal because the Agency views this as a noncontroversial submittal and anticipates no adverse comments. A detailed rationale for the approval is set forth in the direct final rule. If no significant, material, and adverse comments are received in response to this rule, no further activity is contemplated. If EPA receives adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this rule. The EPA will not institute a second comment period on this document. Any parties interested in commenting on this document should do so at this time.

DATES: Written comments must be received on or before June 16, 2003.

ADDRESSES: All comments should be addressed to: Kelly Sheckler at the EPA, Region 4 Air Planning Branch, 61 Forsyth Street, SW., Atlanta, Georgia 30303–8960.

Copies of documents relative to this action are available at the following address for inspection during normal business hours:

Environmental Protection Agency, Region 4, Air Planning Branch, 61 Forsyth Street, SW., Atlanta, Georgia 30303–8960. Kelly Sheckler, (404) 562–9042.

Tennessee Department of Environment and Conservation, Air Pollution Control, 9th Floor L & C Annex, 401 Church Street, Nashville, Tennessee 37243–1531.

FOR FURTHER INFORMATION CONTACT: Kelly Sheckler at (404) 562–9042, e-mail: *Sheckler.Kelly@epa.gov.*

SUPPLEMENTARY INFORMATION: For additional information see the direct final rule which is published in the rules section of this **Federal Register**.

Dated: April 29, 2003.

Stanley L. Meiburg,

Acting Regional Administrator, Region 4.

[FR Doc. 03–12179 Filed 5–15–03; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 03–1534, MB Docket No. 03–116]

Radio Broadcasting Services; Archer City, TX

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comment on a Commission proposal to substitute Channel 248C2 for Channel 248C1 at Archer City, Texas. As a result, the allotment at Archer City, Texas would conform with the outstanding Station KRZB construction permit. The coordinates for the Channel 248C2 allotment of Archer City, Texas, would be 33–51–40 and 98–38–52.

DATES: Comments must be filed on or before June 30, 2003, and reply comments on or before July 15, 2003.

ADDRESSES: Federal Communications Commission, 445 Twelfth Street, SW., Washington, DC. 20554.

FOR FURTHER INFORMATION CONTACT: Robert Hayne, Media Bureau, (202) 418–2177.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rule Making, MB Docket No. 03–116, adopted May 7, 2003, and released May 8, 2003. The full text of this Commission decision is available for inspection and copying during normal business hours in the Commission's Reference Center 445 Twelfth Street, SW., Washington, DC 20554. The complete text of this decision may also be purchased from the Commission's duplicating contractor, Qualex International Portals II, 445 12th Street, SW., Room CY–B402, Washington, DC, 20554, telephone 202–863–2893, facsimile 202–863–2898, or via e-mail *qualexint@aol.com.*

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contact.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio, Radio broadcasting.

For the reasons discussed in the preamble, the Federal Communications Commission proposes to amend 47 CFR part 73 as follows:

PART 73—RADIO BROADCAST SERVICES

1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303, 334 and 336.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Texas, is amended by adding Channel 248C2 and removing Channel 248C1 at Archer City.

Federal Communications Commission.

Peter H. Doyle,

Chief, Audio Division, Media Bureau.

[FR Doc. 03–12201 Filed 5–15–03; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 03–1533; MM 00–148; RM–9939, RM–10198]

Radio Broadcasting Services; Archer City, TX, Ardmore, OK, Converse, TX, Durant, OK, Elk City, OK, Flatonia, TX, Georgetown, TX, Healdton, OK, Ingram, TX, Keller, TX, Knox City, TX, Lakeway, TX, Lago Vista, TX, Llano, TX, Lawton, OK, McQueeney, TX, Nolanville, TX, Quanah, TX, Purcell, OK, San Antonio, Seymour, Waco and Wellington, TX

AGENCY: Federal Communications Commission.

ACTION: Proposed rule, dismissal.

SUMMARY: This document dismisses a proposal filed by Nation Wide Radio Stations for the allotment of Channel 233C3 to Quanah, Texas. This document also dismisses a Counterproposal jointly filed by First Broadcasting Company, L.P., Rawhide Radio, L.L.C., Next Media Licensing, Inc., Capstar TX Limited Partnership and Clear Channel Broadcast Licenses, Inc. *See* 65 FR 53689, published September 5, 2000. With this action, the proceeding is terminated.

FOR FURTHER INFORMATION CONTACT: Robert Hayne, Media Bureau (202) 418–2177.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's *Report and Order* in MM Docket No. 00–148, adopted May 7, 2003, and released May 8, 2003. The full text of this decision is available for inspection and copying during normal business hours in the FCC's Reference Information Center at Portals II, CY–A257, 445 12th Street, SW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, Qualex International, Portals II, 445 12th Street, SW., Room CY–B402, Washington, DC 20554, telephone 202–863–2893, facsimile 202–863–2898, or via e-mail *qualexint@aol.com.*

Federal Communications Commission.

Peter H. Doyle,

Chief, Audio Division, Media Bureau.

[FR Doc. 03–12204 Filed 5–15–03; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 660

[I.D. 050703A]

Fisheries off the West Coast States and in the Western Pacific; Pacific Coast Groundfish Fishery; Amending the Notice to Prepare a Programmatic Environmental Impact Statement for Fishing Conducted Under the Pacific Coast Groundfish Fishery Management Plan (FMP)

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of intent to revise the scope of a Programmatic Environmental Impact Statement (PEIS); request for written comments.

SUMMARY: On April 10, 2001, NOAA announced in the **Federal Register** its intention to prepare a PEIS, in accordance with the National Environmental Policy Act (NEPA), to assess the impacts of Federal management of the Pacific Coast groundfish fishery on the human environment. The proposed scope of the PEIS analysis included many issues related to the conduct of the fishery, including the effects of the groundfish fishery on essential fish habitat (EFH). As a result of public comments received during the scoping process, NMFS enhanced the description of the purpose and need for NMFS' action, clearly identified significant issues related to the proposed action, and a distinction between proposed actions related to EFH and the broader management program for Pacific groundfish. To avoid confusion as a result of this distinction, NMFS decided to prepare a separate EIS to address EFH issues. Subsequent to that decision, the Pacific Fishery Management Council (Council) and NMFS have taken a number of management actions to prevent overfishing and to rebuild overfished groundfish stocks. In addition, a number of court cases have affected the fishery regulatory processes and have required additional analysis of environmental impacts of the Federal groundfish fishery management program. NMFS believes these events and activities have influenced the purpose of and need for action and is considering revision to the scope of the alternatives and analysis. The intent of this document is to describe the rationale for revising the purpose and need for action and the scope of the analysis.

DATES: Written comments will be accepted on or before June 13, 2003. A public scoping meeting is scheduled for June 16, 2003 (see **SUPPLEMENTARY INFORMATION**).

ADDRESSES: Written comments on suggested alternatives and potential impacts, and any other issues or concerns related to the proposed action which should be analyzed in detail in the PEIS, as described in this scoping notice, should be sent to Robert Lohn, Administrator, Northwest Region, NMFS, 7600 Sand Point Way N.E., BIN C15700, Bldg. 1, Seattle, WA 98115 0070. Comments also may be sent via facsimile (fax) to 206 526 6736. Comments will not be accepted if submitted via e-mail or Internet.

FOR FURTHER INFORMATION CONTACT: Jim Glock, Northwest Region, NMFS, 503–231–2178; fax: 503–872–2737 and email: *jim.glock@noaa.gov.*

SUPPLEMENTARY INFORMATION:

Electronic Access

This **Federal Register** scoping notice is also available on the Government Printing Office's website at: *http://www.nwr.noaa.gov/1sustfsh/gdfsh01.htm.*

Background

In June 2001, NMFS concluded the initial scoping process for a PEIS on the Federal management of the Pacific Coast Groundfish Fishery and published a summary report. Scoping was initiated on April 10, 2001, through publication of a Notice of Intent (66 FR 18586). The report was initially published on the NMFS, Northwest Region website in August 2001 to provide a summary of all comments received and key issues identified during the scoping process. In February 2002 NMFS clarified the purpose and need for Federal action and revised the scope of analysis, which resulted in the preparation of two separate EISs. The PEIS was intended to be a broad analysis of the Federal fishery management program, and the additional EIS was specific to the designation of EFH and associated management measures, including measures to reduce effects of fishing on EFH. This separation was intended to improve public understanding and participation in the NEPA process, make

each EIS more useful in future management decisions, and to more clearly distinguish between programmatic groundfish fishery management and specific EFH issues.

NMFS had intended the PEIS to analyze continued management of the Pacific Coast groundfish fishery pursuant to the FMP, and to consider alternative groundfish management programs. The Council prepared the original FMP and an EIS in the late 1970s, and NMFS implemented the FMP in 1982. Since then, the Council has amended the FMP 13 times and has three additional amendments in process. These amendments were in response to development of the commercial and recreational groundfish fisheries, changes in the groundfish resources, and amendments to the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act). NMFS initiated this PEIS to update the original EIS to reflect changes in the fishery and to evaluate the impacts of the Federal groundfish management program on the human environment, including the marine fish resources, the physical ocean environment and ecosystem, and human society.

The Council established an ad hoc Groundfish PEIS Oversight Committee (Committee) shortly after NMFS began preparation of the draft PEIS. The Committee met twice during 2002 to advise the drafting team and help develop a range of alternatives for managing the Pacific Coast groundfish fishery. The Council adopted the alternatives recommended by the Committee in October 2002. The Committee met again on April 22–23, 2003, and reviewed the status of the PEIS and the alternatives under consideration. The Committee reviewed the events leading up to initiation of the PEIS and subsequent to the initial scoping period. The consensus of the Committee was to narrow the scope of the PEIS to deal with bycatch issues. The Committee prepared a revised set of alternatives to encompass the range of approaches to resolve bycatch and incidental catch monitoring, reporting and reduction issues. The following chronology summarizes the basis for the Committee's recommendation to focus this PEIS more narrowly on bycatch.

Immediately before and since the initial scoping period (April-June, 2001), several events and activities have occurred that have substantially affected the groundfish management program. In December 2000, NMFS approved Amendment 13 to the FMP, which was designed to implement bycatch management measures to bring the FMP into compliance with the Magnuson-Stevens Act. In January 2001, NMFS determined that widow and darkblotched rockfishes were overfished, and implemented the Council's recommendations to impose broad harvest reductions to restrict the take of canary rockfish (also designated overfished) and darkblotched rockfish. Soon after the PEIS scoping comment period closed, a group of environmental organizations filed suit on NMFS' approval of Amendment 13, claiming NMFS had not considered all reasonable bycatch management and reduction alternatives. As explained below, the Court ultimately agreed with the plaintiffs.

NMFS prepared a scoping summary report and made it available in August 2001. The agency immediately began working with the Council to develop a range of alternatives for consideration and analysis in the PEIS. In January 2002, yelloweye rockfish and Pacific whiting were determined to be overfished. In February 2002, NMFS determined the analytical requirements for a programmatic EIS were different from those envisioned for EFH, and decided to prepare a separate EIS to deal exclusively with EFH issues. In April, Amendment 13 was declared invalid by Federal District Court and remanded to the agency. In June, initial rebuilding analyses for bocaccio and canary rockfish indicated extensive harvest restrictions were needed immediately in order to meet the rebuilding mandates. In response, the Council delayed adoption of the PEIS alternatives in order to concentrate on preparing an immediate response to the new scientific information. Major groundfish fishery closures were imposed mid-season, and proposals for further restrictions were developed and evaluated as part of the annual management process for the 2003 fishing year. The Council prepared an EIS in conjunction with its management recommendations (referred to as the "annual specifications"), evaluating the impacts of the proposed management measures on the biological resources and the social and economic environment. NMFS approved the Council's recommendations and issued a rule effectively closing much of the outer continental shelf from the border with Canada to the border with Mexico. Vessel catch allowances were developed through the use of a computer model that applies observed catch ratios of various depleted and healthy stocks to the available amounts of overfished stocks. In April 2003, NMFS and the Council became aware that data from the 2001–2002 Federal observer program clearly demonstrated some ratios substantially underestimated the catches of bocaccio and canary rockfish. NMFS implemented additional fishery restrictions on May 1, 2003 (68 FR 23901, May 6, 2003).

NMFS believes the most critical need at this time is improvement of the catch monitoring program and development of a system to enhance individual vessel flexibility and accountability, including opportunities and incentives to improve the selectivity of fishing operations. The current management program provides little opportunity or incentive for individuals to improve their catch selectivity (i.e., avoid overfished species). Changes to the bycatch reduction program may require revisions to the catch and bycatch reporting and monitoring systems. NMFS believes these issues should be the sole focus of the current PEIS. The current need is to focus the analysis on bycatch, incidental catch, and discard issues. A determination will be made after consulting with the Council at its June 2003 meeting.

NMFS invites written public comment on these issues until June 13. On June 16, 2003, at 7:30 p.m., NMFS will hold a public forum in conjunction with the Council meeting in Foster City, CA. Scoping documents which identify the management issues, initial alternatives, and an outline of the proposed analysis are available on request (see FOR FURTHER INFORMATION CONTACT, above) and will also be posted on the NOAA Fisheries Northwest Region website (*http://www.nwr.noaa.gov/1sustfsh/gdfsh01.htm*). Additional copies will be available at the scoping meeting.

Special Accommodations

These meetings are accessible to people with physical disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Carolyn Porter, 503–820–2280 (voice) or 503–820–2299 (fax), at least 5 days prior to the scheduled meeting date.

Authority: 16 U.S.C. 1801 *et. seq.*

Dated: May 12, 2003.

Bruce C. Morehead,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 03–12315 Filed 5–15–03; 8:45 am]

BILLING CODE 3510–22–S

Notices

Federal Register

Vol. 68, No. 95

Friday, May 16, 2003

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

ADVISORY COUNCIL ON HISTORIC PRESERVATION

Draft Amendment to the Army Alternate Procedures

AGENCY: Advisory Council on Historic Preservation.

ACTION: Notice of intent to amend the Army Alternate Procedures.

SUMMARY: The Advisory Council on Historic Preservation ("ACHP") proposes to amend the Army Alternate Procedures ("AAP") which were approved by the ACHP on July 13, 2001. The AAP provide the Army with an alternate way to comply with the historic preservation review process mandated by the National Historic Preservation Act. The proposed amendment will allow the Chairman of the ACHP to approve administrative and technical amendments to the AAP.

DATES: Submit comments on or before June 16, 2003.

ADDRESSES: Address all comments concerning this proposed amendment to Mr. David Berwick, Army Program Manager, Advisory Council on Historic Preservation, 1100 Pennsylvania Avenue, NW., Suite 809, Washington, DC 20004. Fax (202) 606–8672. You may submit electronic comments to: *dberwick@achp.gov*.

FOR FURTHER INFORMATION CONTACT: Mr. David Berwick, 202–606–8505.

SUPPLEMENTARY INFORMATION: Section 106 of the National Historic Preservation Act requires Federal agencies to consider the effects of their undertakings on historic properties and provide the ACHP a reasonable opportunity to comment with regard to such undertakings. The Council has issued the regulations that set forth the process through which Federal Agencies comply with these responsibilities. Those regulations are codified under 36 CFR part 800 ("Section 106 regulations").

The ACHP can allow agencies to streamline the regular Section 106 review process through alternate procedures authorized pursuant to 36 CFR 800.14(a). Instead of going through each of the steps detailed in subpart B of the Section 106 regulations, an agency can meet its Section 106 responsibilities by following an alternate procedure approved for agency implementation by the ACHP.

On July 13, 2001, the ACHP approved the Alternate Procedures proposed by the Department of the Army ("Army") for implementation at its installations. These procedures allow installation commanders to elect to follow the AAP or continue to follow the ACHP's Section 106 regulations. As currently written, neither the AAP nor the Section106 regulations provide a process for amending previously approved alternate procedures without going back to the ACHP membership for approval.

Both the Army and the ACHP have determined that there may be times at which the AAP need to be revised to take into account changes internal to the Army. The proposed amendment would allow administrative and technical changes to be made to the AAP, and approval of these changes would be made by the Chairman of the ACHP. Changes allowed under this amendment would be changes to the AAP of a minor nature that do not have an effect on the roles of consulting parties in the process. The amendment would limit changes to those having an effect solely on the Army. Changes that would affect the role of consulting parties under the AAP would continue to require the approval of the full ACHP membership after consultation with consulting parties and the general public.

You can find a full copy of the present version of the AAP at 67 FR 10138 (March 6, 2002) and on the Internet at *http://www.achp.gov/army.html*.

Amendment to the Army Alternate Procedures

For the reasons stated above, the ACHP proposes to amend the AAP as follows:

Add the following subsection to the end of section 7.1 (Council Review of Army Section 106 Compliance) of the AAP:

(d) Upon request by Headquarters, Department of the Army, the Council may adopt technical and/or administrative amendments to the Army Alternate Procedures. Such amendments will take effect upon approval by the Council's Chairman. The Council shall publish in the **Federal Register** a notice of such amendment within 30 days after their approval. Technical and administrative amendments shall not modify the role of consulting parties in the Army Alternate Procedures.

Authority: 36 CFR 800.14(A).

Dated: May 12, 2003.

Sharon Conway,

Acting Executive Director.

[FR Doc. 03–12200 Filed 5–15–03; 8:45 am]

BILLING CODE 4310–10–M

DEPARTMENT OF AGRICULTURE

Submission for OMB Review; Comment Request

May 9, 2003.

The Department of Agriculture has submitted the following information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Comments regarding (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of burden including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology should be addressed to: Desk Officer for Agriculture, Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Washington, DC 20503 *and* to Departmental Clearance Office, USDA, OCIO, Mail Stop 7602, Washington, DC 20250–7602. Comments regarding these information collections are best assured of having their full effect if received within 30 days of this notification.

Copies of the submission(s) may be obtained by calling (202) 720–6746.

An agency may not conduct or sponsor a collection of information unless the collection of information displays a currently valid OMB control number and the agency informs potential persons who are to respond to the collection of information that such persons are not required to respond to the collection of information unless it displays a currently valid OMB control number.

Economic Research Service

Title: Estimating Consumer Benefits of Improving Food Safety.

OMB Control Number: 0536–NEW.

Summary of Collection: The U.S. Department of Agriculture has the responsibility to ensure that meat and poultry products are safe for human consumption. The Economic Research Service (ERS) has the responsibility to conduct economic research on the economic benefits and costs of policies and program designed to reduce and prevent illnesses caused by microbial pathogens. ERS has estimated the cost of medical treatment and lost productivity and premature death from diseases caused by five microbial pathogens at $6.9 billion annually. These costs understate the true social costs of these illnesses since they do not measure the consumer's willingness to pay to prevent food borne disease. ERS will collect information using two surveys.

Need and Use of the Information: ERS will collect information to determine (1) the extent to which a willingness to pay approach would boost assessments of the economic value of reductions in foodborne illnesses, and (2) to identify factors that influence consumers' valuation of these reductions, including personal and household characteristics, and information the consumer receives about foodborne illness.

Description of Respondents: Individuals or households.

Number of Respondents: 2,900.

Frequency of Responses: Reporting; Other (once and 3 times).

Total Burden Hours: 1,950.

Animal & Plant Health Inspection Service

Title: National Poultry Improvement Plan (NPIP).

OMB Control Number: 0579–0007.

Summary of Collection: The National Poultry Improvement Plan (NPIP) is a voluntary Federal-State-industry mechanism for controlling certain poultry diseases and for improving poultry flocks and products through disease control techniques. The National Turkey Improvement Plan was combined with the NPIP in 1970 to create the NPIP, as it now exists. Emu, rhea, ostrich, and cassowary breeding flocks are also allowed participation in the plan. The effective implementation of the NPIP necessitates the use of several information collection activities, including sentinel bird identification, as well as the creation and submission of flock testing reports, sales reports, breeding flock participation summaries, hatchery participation summaries, salmonella investigation reports, salmonella serotyping requests, and small chick order printouts. Authority for this program is contained in the U.S. Department of Agriculture Organic Act of 1944, as amended (7 U.S.C. 429). The cooperative work is carried out through a Memorandum of Understanding with the participating States.

Need and Use of the Information: Information is collected from various types of poultry breeders and flock owners to determine the number of eggs hatched and sold as well as to report outbreaks of diseases. This information allows APHIS officials to track, control, and prevent many types of poultry diseases.

Description of Respondents: State, Local or Tribal Government; Federal Government; Farms.

Number of Respondents: 19,086.

Frequency of Responses: Recordkeeping; Reporting: On occasion.

Total Burden Hours: 37,899.

Animal & Plant Health Inspection Service

Title: Animal Welfare.

OMB Control Number: 0579–0036.

Summary of Collection: The Laboratory Animal Welfare Act (AWA) (Pub. L. 89–544) enacted August 24, 1966, required the U.S. Department of Agriculture, to regulate the humane care and handling of dog, cats, guinea pigs, hamster, rabbits, and nonhuman primates. The legislation was the result of extensive demand by organized animal welfare groups and private citizens requesting a Federal law covering the transportation, care, and handling of laboratory animals. The Animal and Plant Health Inspection Service (APHIS), Regulatory Enforcement and Animal Care (AC) has the responsibility to enforce the Animal Welfare Act (7 U.S.C. 2131–2156) and the provisions of 9 CFR, Subchapter A, which implements the Animal Welfare Act. The purpose of the AWA is to insure that animal use in research facilities or exhibition purposes are provided humane care and treatment. APHIS will collect information using several forms.

Need and Use of the Information: APHIS will collect health certificates, program of veterinary care, application for license and record of acquisition, disposition and transportation of animals. The information is used to ensure those dealers, exhibitors, research facilities, carriers, etc., are in compliance with the Animal Welfare Act and regulations and standards promulgated under this authority of the Act.

Description of Respondents: Business or other for-profit.

Number of Respondents: 7,288.

Frequency of Responses: Recordkeeping; Reporting: On occasion.

Total Burden Hours: 98,501.

Food Safety and Inspection Service

Title: Exportation, Transportation, and Importation of Meat and Poultry Products.

OMB Control Number: 0583–0094.

Summary of Collection: The Food Safety and Inspection Service. (FSIS) has been delegated the authority to exercise the functions of the Secretary as provided in the Federal Meat Inspection Act (FMIA) (21 U.S.C. 601 *et seq.*) and the Poultry Products Inspection Act (PPIA) (21 U.S.C. 451 *et seq.*). These statutes mandate that FSIS protect the public by ensuring that meat and poultry products are safe, wholesome, unadulterated, and properly labeled and packaged. FSIS requires that meat and poultry establishments exporting products to foreign countries complete an export certificate. Meat and poultry products not marked with the mark of inspection and shipped from one official establishment to another for further processing must be transported under FSIS seal to prevent such unmarked product from entering into commerce. To track product shipped under seal, FSIS requires shipping establishments to complete a form that identifies the type, amount, and weight of the product. Foreign countries exporting meat and poultry products to the U.S. must establish eligibility for importation of product into the U.S., and annually certify that their inspection systems are "equivalent to" the U.S. inspection system. Meat and poultry products intended for import into the U.S. must be accompanied by a health certificate, signed by an official of the foreign government, stating that the products have been produced by certified foreign establishments.

Need and Use of the Information: FSIS will collect information to identify the type, amount, weight, destination, and originating country of the meat and poultry. FSIS will use the information to verify that a meat or poultry product intended for import has been prepared in a plant certified to prepare product for export to the U.S. FSIS will use the information from the forms in its annual Report to Congress.

Description of Respondents: Business or other for-profit.

Number of Respondents: 5,533.

Frequency of Responses: Recordkeeping; Reporting: On occasion.

Total Burden Hours: 127,838.

Food and Nutrition Service

Title: 7 CFR Part 245 Determining Eligibility for Free and Reduced Price Meals.

OMB Control Number: 0584–0026.

Summary of Collection: Under the National School Lunch Program (NSLP), each school year food authorities distribute applications for free and reduce price meals benefits to households of enrolled children. Households who want to receive free and reduced price meal benefits for their children complete the information required on the application and return the application to the school food authority. As specified in 7 CFR 245.6a, school food authorities must verify the eligibility information on a sample of the free and reduced price meal applications approved in any given school year. Several data sources including the eligibility verification performed by school districts indicate that a significant and increasing number of ineligible children are being certified for free and reduced price meals benefits. The Food and Nutrition Service (FNS) amended the reporting and recordkeeping requirements relating to the verification of applications for free and reduced price meal benefits. School food authorities will be required to report verification activity and results to their respective State agencies. The State agencies will summarize and report school food authority level data to FNS.

Need and Use of the Information: FNS will collect information using various forms to evaluate the results in the context of State and nationwide data. The data collection will result in improvement of FNS understanding of the operations of the eligibility determination and verification process in the targeting of monitoring and technical assistance efforts and resources on areas of households with the likelihood of problems. Without the information NSLP integrity is compromised, Federal and State education funds are being mistreated, and FNS Audit/Financial Statements are jeopardized.

Description of Respondents: Individuals or household; Not-for-profit institutions; State, Local, or Tribal Government.

Number of Respondents: 4,260,544.

Frequency of Responses: Recordkeeping; Reporting: Biennially; Annually; Other (triennially).

Total Burden Hours: 1,048,769.

Food and Nutrition Service

Title: Report of School Program Operations.

OMB Control Number: 0584–0280.

Summary of Collection: The National School Lunch Act, as amended, authorizes the Summer Food Service Program (SFSP) for Children, which is administered by the Food and Nutrition Service (FNS). The purpose of the SFSP is to provide nutrition meals to children from low-income areas during periods when schools are not in session. Information is gathered from state agencies and other organizations wishing to participate in the program to determine eligibility. If selected, additional reporting requirements apply to determine the amount of meals served and other program volume information. FNS uses a variety of forms to collect information.

Need and Use of the Information: FNS uses the information collected to determine an organization's eligibility, to monitor program performance for compliance and reimbursement purposes.

Description of Respondents: Individuals or household; Not-for-profit institutions; Federal Government; State, Local, or Tribal Government.

Number of Respondents: 76,737.

Frequency of Responses: Recordkeeping; Reporting: On occasion; Quarterly; Monthly.

Total Burden Hours: 328,068.

National Agricultural Statistics Service

Title: Floriculture Survey.

OMB Control Number: 0535–0093.

Summary of Collection: The primary function of the National Agricultural Statistics (NASS) is to prepare current official State and national estimates of crop and livestock production. Since 1985 Congress has provided funds to conduct an annual Commercial Floriculture Survey that provides basic data on this important and growing industry. General authority for these data collection activities is granted under U.S. Code Title 7, Section 2204. This statute specifies that "The Secretary of Agriculture shall procure and preserve all information concerning agriculture which can be obtain by the collection of statistics * * * and shall distribute them among agriculturists". The floriculture industry accounts for about 7 percent of agricultural cash receipts at the U.S. level. A survey is conducted in 36 states, which ensures 97 percent coverage of the U.S. value of production.

Need and Use of the Information: NASS will collect information to assess alternative agriculture opportunities. Data from the survey will provide statistics for Federal and State agencies to monitor the use of agricultural chemicals. If the information is not collected, data users could not keep abreast of changes.

Description of Respondents: Farms; Business or other for-profit.

Number of Respondents: 13,700.

Frequency of Responses: Reporting: Annually.

Total Burden Hours: 6,587.

Rural Utilities Service

Title: Request for Approval to Sell Capital Assets.

OMB Control Number: 0572–0020.

Summary of Collection: The Rural Utilities Service (RUS) is a credit agency of the U.S. Department of Agriculture (USDA). It makes mortgage loans and loan guarantees to finance electric, telecommunications, and water and waste facilities in rural areas. In addition to providing loans and loan guarantees, one of RUS' main objectives is to safeguard loan security until the loan is repaid. RUS manages loan programs in accordance with the Rural Electrification Act of 1936, 7 U.S.C. 901 *et. seq.*, as amended, (RE ACT) and as prescribed by Office of Management and Budget (OMB) Circular A–129, Policies for Federal Credit Programs and Non-Tax Receivables, which states that agencies must, based on a review of a loan application, determine that an applicant complies with statutory, regulatory, and administrative eligibility requirements for loan assistance.

Need and Use of the Information: RUS borrower will use form 369, Request for Approval to sell capital assets, to seek agency permission to sell some of its assets. The form is used to collect detailed information regarding the proposed sale of a portion of the borrower's systems. RUS will collect information to determine whether or not the agency should approve a sale and to keep track of what property exists to secure the loan. If the information in Form 369 is not collected when capital assets are sold, the capital assets securing the Government's loans could be liquidated and the Government's security either eliminated entirely or diluted to an undesirable level.

Description of Respondents: Not-for-profit institutions; Business or other for-profit.
Number of Respondents: 5.
Frequency of Responses: Recordkeeping; Reporting: On occasion.
Total Burden Hours: 15.

Rural Utilities Service

Title: Lien Accommodations and Subordinations 7 CFR Part 1717, Subpart R and S.
OMB Control Number: 0572–0100.
Summary of Collection: The Rural Electrification Act (RE Act) of 1936, 7 U.S.C. 901 *et. seq.*, as amended, authorizes and empowers the Administrator of the Rural Utilities Service (RUS) to make loans in the several States and territories of the United States for rural electrification and the furnishing electric energy to persons in rural areas who are not receiving central station service. The RE Act also authorizes and empowers the Administrator of RUS to provide financial assistance to borrowers for purposes provided in the RE Act by accommodating or subordinating loans made by the National Rural Utilities Cooperative Finance Corporation, the Federal Financing Bank, and other lending agencies.
Need and Use of the Information: RUS will used the information to determine an applicant's eligibility for a lien accommodation or lien subordination under the RE Act; monitor the compliance of borrowers with debt covenants and regulatory requirements in order to protect loan security; and subsequently to granting the lien accommodation of lien subordination, administer each so as to minimize its cost to the Government. If the information were not collected, RUS would not be able to accomplish their statutory goals.
Description of Respondents: Not-for-profit institutions; Business or other for-profit.
Number of Respondents: 6.
Frequency of Responses: Reporting: On occasion.
Total Burden Hours: 19.

Rural Utilities Service

Title: 7 CFR 1717 Subpart D, Mergers and Consolidations of Electric Borrowers.
OMB Control Number: 0572–0114.
Summary of Collection: The Rural Utilities Service (RUS) is a credit agency of the U.S. Department of Agriculture. It makes mortgage loans and loan guarantees to finance electric, telecommunications, water and waste and water facilities in rural areas. Loan programs are managed in accordance with the Rural Electrification Act (RE Act) of 1936, 7 U.S.C. 901 *et seq.*, as amended and as prescribed by the Office of Management and Budget (OMB) Circular A–129, Policies for Federal Credit Programs and Non-tax Receivable, states that agencies must base on a review of a loan application determine that an applicant complies with statutory, regulatory, and administrative eligibility requirements for loan assistance.
Need and Use of the Information: RUS will collect information to streamline procedures and allow borrowers the flexibility to meet new business challenges and opportunities. The information is necessary for RUS to conduct business with successor entity while protecting the security of Government loans and avoiding defaults and to grant merger approval when required.
Description of Respondents: Business or other for-profit.
Number of Respondents: 18.
Frequency of Responses: Reporting: On occasion.
Total Burden Hours: 184.

Rural Housing Service

Title: 7 CFR 1944–N, "Housing Preservation GrantProgram".
OMB Control Number: 0575–0115.
Summary of Collection: The Rural Housing Service (RHS) is authorized to make grants to eligible applicants to provide repair and rehabilitation assistance so that very low and low-income rural residents can obtain adequate housing. Such assistance is made by grantees to very low and low-income persons, and to co-ops. Grant funds are used by grantees to make loans, grants, or other comparable assistance to eligible homeowners, rental unit owners, and co-ops for repair and rehabilitation of dwellings to bring them up to code or minimum property standards. These grants were established by Public Law 98–181, the Housing Urban Rural Recovery Act of 1983, which amended the Housing Act of 1949 (Pub. L. 93–383).
Need and Use of the Information: RHS will collect information to determine eligibility for a grant to justify its selection of the applicant for funding; to report program accomplishments and to justify and support expenditure of grant funds. RHS uses the information to determine if the grantee is complying with its grant agreement and to make decisions regarding continuing with modifying, or terminating grant assistance. If the information is not collected and presented to RHS, the Agency could not monitor the program or justify disbursement of grant funds.
Description of Respondents: Not-for-profit institutions; Business or other for-profit; Individuals or households; State, Local or Tribal Government
Number of Respondents: 2,050.
Frequency of Responses: Recordkeeping; Reporting: On occasion; Quarterly.
Total Burden Hours: 10,814.

Agricultural Marketing Service

Title: Customer Service Survey for USDA—Donated FoodProducts.
OMB Control Number: 0581–0193.
Summary of Collection: The Agricultural Marketing Act of 1946 authorizes the Secretary of Agriculture to provide consumers with voluntary Federal meat grading and certification services that facilitate the marketing of meat and meat products. These services are provided under the authority of 7 CFR part 54—Meats, Prepared Meats, and Meat Products (Grading, Certification, and Standards). An annual customer service survey is used to gather information from its customers to determine the quality of service provided. Once an applicant request services, there is no way to determine the quality of service that is provided.
Need and Use of the Information: Agricultural Marketing Service will collect information to evaluate services and assist in planning and managing the program. The information from the survey is strictly voluntary and will be used to continually improve the services.
Description of Respondents: Business or other-for-profit.
Number of Respondents: 450.
Frequency of Responses: Reporting: Annually.
Total Burden Hours: 32.

Food and Nutrition Service

Title: Food Stamp Program—Store Applications.
OMB Control Number: 0584–0008.
Summary of Collection: Section 9(a) of the Food Stamp Act of 1977 as amended, (7 U.S.C. 2011 *et seq.*) requires retail food stores to submit applications tc the Food and Nutrition Service (FNS) for approval prior to participating in the Food Stamp Program. FNS field offices review retailer applications to ensure that the store is eligible and then authorize or deny a store to accept and redeem Food Stamp Program benefits. The need to collect information is established under the Act to determine the eligibility of retail food stores, wholesale food concerns, and food service organizations applying for authorization to accept and redeem food stamp benefits, to monitor these firms for continued eligibility, to sanction stores for non-compliance with the Act, and for program management. FNS will collect information using forms FNS–252, Food Stamp Program Application for Store, and FNS 252–2, Meal Service Application.
Need and Use of the Information: FNS will collect information to determine a firm's eligibility for participation in the Food Stamp Program, program administration, compliance monitoring, investigations, and for sanctioning stores found to be violating the program. FNS is also responsible for requiring updates to application information and reviewing that information to determine whether or not the retail food store, wholesale food concern, or food service organization continues to meet eligibility requirements. Owners Employer Identification Numbers (EIN) and Social Security Numbers (SSN) may be disclosed to and used by Federal agencies or instrumentalities that otherwise gave access to EINs and SSNs. FNS and other Federal Government agencies examine such information during compliance reviews, audit review, special studies or evaluation efforts.
Description of Respondents: Business or other for-profit; Not-for-profit institutions; Farms; Federal Government.
Number of Respondents: 34,888.
Frequency of Responses: Third party disclosure; Reporting: On occasion.
Total Burden Hours: 7,309.

Sondra Blakey,
Departmental Information Collection Clearance Officer.

[FR Doc. 03–12067 Filed 5–15–03; 8:45 am]
BILLING CODE 3410–01–P

DEPARTMENT OF AGRICULTURE

Forest Service

Black Hills National Forest, Mystic Ranger District, South Dakota, Prairie Project Area Proposal and Analysis

AGENCY: Forest Service, USDA.

ACTION: Revised notice of intent to prepare an environmental impact statement.

SUMMARY: This notice revises an earlier Notice of Intent to prepare an environmental impact statement on a proposal to implement multiple resource management actions within the Prairie Project Area as directed by the Black Hills National Forest Land and Resource Management Plan and National level initiatives and policy such as the National Fire Plan and the Healthy Forest Initiative. The Prairie Project Area covers about 29,000 acres of National Forest System land and about 6,300 acres of interspersed private land within the lower rapid Creek watershed directly west of Rapid City, South Dakota. Proposed actions include: *Promoting natural fuel breaks* (via vegetation treatment) to reduce potential for large-scale intense wildfire; *Reducing fuels* that currently exist and fuel created by vegetation treatment within the wildland-urban interface; *Improving wildlife habitat* to protect critical big game winter range and habitat for a variety of plant and animal species; Supporting the preceding actions using commercial and non-commercial *Vegetation treatments* on an estimated 11,900 acres to reduce the density of pine trees; *Providing a mix of motorized and non-motorized use* opportunities.

DATES: The draft environmental impact statement is expected to be available for public review by May 2003 and the final environmental impact statement is expected to be completed by September 2003.

ADDRESSES: Send written comments on the DEIS to Robert J. Thompson, District Ranger, Black Hills National Forest, Mystic Ranger District, 803 Soo San Drive, Rapid City, South Dakota 57702. Telephone Number (605) 343–1567. Email: *mailroom__r2__blackhills@fs.fed.us.* With "Prairie" as subject.

FOR FURTHER INFORMATION CONTACT: Phill Grumstrup, Project Coordinator, Black Hills National Forest, Mystic Ranger District, at above address, phone (605) 343–1567.

SUPPLEMENTARY INFORMATION:

This revised Notice of Intent updates the original NOI which appeared Friday, July 12, 2002, in the **Federal Register** (67 FR pg. 46165). The actions proposed are in response to management direction provided by the Black Hills National Forest Land and Resource Management Plan (Forest Plan) and National-level initiatives and policy cited in the summary above. The site specific actions are proposed to reduce the potential for catastrophic wildfire in this ponderosa pine-dominated urban-interface setting. The project area lies along the east side of the Black Hills National Forest and directly west of Rapid City, South Dakota. Issues include: Fire and fuels hazard in the wildland-urban interface; support and opposition to vegetation treatment such as timber harvest; impacts of vegetation treatment and multiple forest uses on wildlife habitat; conflicting motorized and non-motorized use and travel management issues; maintaining and improving developed and dispersed recreation opportunities.

Purpose and Need for Action

The purpose of and need for the actions proposed in the Prairie Project is to: Reduce the potential for large-scale intense wildfire, reduce fuel loads and assure access for fire protection; protect big game winter range and provide habitat for a variety of plant and animal species; and provide for a variety of recreation opportunities including motorized and non-motorized uses while moving toward or meeting related Forest Plan Goals and Objectives, consistent with Forest Plan Standards and Guidelines.

Proposed Action

This revised NOI identifies the changes made to the proposed action since the original NOI was published. Adjustments to the proposed acres are the result of strong public feedback asking the agency to be aggressive with fuels reduction and requesting that vegetative treatments be expanded to areas not initially covered in the proposal. Expanding the treatments is necessary to efficiently reduce the potential for catastrophic wildfire to communities at risk in this wildland-urban interface area. Specific adjustments to the proposed action are described below. Proposed actions include the following:

- There is no change in the range of activities and treatments proposed. The treatment acres relative to fuel breaks and thinning of ponderosa pine, and prescribed burning have increased.
- Reduce the potential for large-scale, intense wildfire by expanding the area treated to reduce the density of pine from the initially proposed 8,000 acres to about 11,900 acres. This may be done by using commercial timber harvest to thin out commercial size trees and using other methods to thin small, non-commercial size trees, removing conifers from hardwood stands such as aspen, bur oak and birch and by expanding and/or creating meadows. Thinning trees will reduce the potential for spreading crown fires by providing fuels breaks, lessening the risk from insects and disease, and by improving stand growth and vigor. Wood fiber will be provided to the local economy as a by-product of these actions.
- Reduce the amount of fuel that currently exists and fuel created by vegetation treatment activities. Treatment could include lopping, chipping, crushing, piling and burning; construction of up to 30 miles of

constructed fuel breaks adjacent to private property, particularly those properties with houses and subdivisions; and increased prescribed burning of 4,000 acres to about 7,500 acres in order to have a greater impact on reducing fuels and the threat of wildfire.

• Manage big game winter range by providing openings for forage and protecting game animals during the critical winter period over a large portion of the area by expanding area closures to off-road motorized use seasonally or year-round.

• Provide a mix of motorized and non-motorized opportunities in the area by designating some areas for off-road ATV/4-wheeler use and other areas for non-motorized uses such as hiking, mountain biking and walk-in hunting.

• It is anticipated that one or more Forest Plan Amendments may be necessary to implement the proposed action or action alternatives.

Responsible Official

The Responsible Official for this decision will be John C. Twiss, Forest Supervisor, Black Hills National Forest, 25041 North Hwy. 16, Custer, SD 57730.

Nature of Decision To Be Made

The decision to be made is whether or not to implement the proposed action or alternatives at this time.

Scoping Process

Comments and input regarding the proposal have been received from the public and other groups and agencies during the 30-day (plus) public comment period that took place in July and August 2002. Response to the draft EIS will be sought from the interested public beginning in May 2003.

Comment Requested

This revised notice of intent simply identifies the adjustment and refinement of the original proposed action in response to public comment and feedback. There will be no additional scoping on this revised NOI. The next opportunity to comment will be on the Draft EIS. Comments on the DEIS will be requested during the 45 day comment period following the Notice of Availability, anticipated to be published in the **Federal Register** in May 2003 (*See* discussion below).

Early Notice of Importance of Public Participation in Subsequent Environmental Review

A draft environmental impact statement is being prepared for comment. The comment period on the draft environmental impact statement will be for 45 days from the date the Environmental Protection Agency publishes the Notice of Availability in the **Federal Register** in May 2003. The Forest Service believes, at this stage, it is important to give reviewers notice of several court rulings related to public participation in the environmental review process. First, reviewers of draft environmental impact statements must structure their participation in the environmental review of the proposal so that it is meaningful and alerts an agency to the reviewer's position and contentions. *Vermont Yankee Nuclear Power Corp.* v. *NRDC*, 435 U.S. 519, 553 (1978). Also, environmental objections that could be raised at the draft environmental impact statement stage but that are not raised until after completion of the final environmental impact statement may be waived or dismissed by the courts. *City of Angoon* v. *Hodel*, 803 F.2d 1016, 1022 (9th Cir. 1986) and *Wisconsin Heritages, Inc.* v. *Harris*, 490 F. Supp. 1334, 1338 (E.D. Wis. 1980). Because of these court rulings, it is very important that those interested in this proposed action participate by the close of the 45 day comment period so that substantive comments and objections are made available to the Forest Service at a time when it can meaningfully consider them and respond to them in the final environmental impact statement.

To assist the Forest Service in identifying and considering issues and concerns on the proposed action, comments on the draft environmental impact statement should be as specific as possible. It is also helpful if comments refer to specific pages or chapters of the draft statement. Comments may also address the adequacy of the draft environmental impact statement or the merits of the alternatives formulated and discussed in the statement. Reviewers may wish to refer to the Council on Environmental Quality Regulations for implementing the procedural provisions of the National Environmental Policy Act at 40 CFR 1503.3 in addressing these points.

(Authority: 40 CFR 1501.7 and 1508.22; Forest Service Handbook 1909.15, Section 21)

Dated: May 12, 2003.

William G. Schleining,

Acting Forest Supervisor.

[FR Doc. 03–12235 Filed 5–15–03; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Forest Service

Sunken Moose Project; Chequamegon-Nicolet National Forest, Bayfield County, WI

AGENCY: Forest Service, USDA.

ACTION: Revised notice, intent to prepare an environmental impact statement.

SUMMARY: The Forest Service proposes to implement land management activities consistent with direction in the 1986 Chequamegon National Forest Land and Resource Management Plan. Activities are proposed on National Forest in an area called "Sunken Moose." This notice revises the "responsible official" and updates expected statement dates.

DATES: The draft environmental impact statement is expected May 2003 and the final environmental impact statement is expected September 2003.

Responsible Official: This Notice revises the responsible official from Washburn District Ranger to: Anne F. Archie, Forest Supervisor, Chequamegon-Nicolet National Forest, Park Falls, Wisconsin.

ADDRESSES: Send written comments to Anne F. Archie, Forest Supervisor, Chequamegon-Nicolet National Forest, 1170 4th Avenue S, Park Falls, WI 54552.

FOR FURTHER INFORMATION CONTACT: Ray Kiewit, Project Leader, Washburn Ranger District, P.O. Box 578, Washburn, WI 54891 (phone 715/373–2667; or visit Sunken Moose Web site at *www.fs.fed.us/r9,cnnf/natres/eis/wash/sunken_moose/index.html*).

SUPPLEMENTARY INFORMATION: The original notice of intent to prepare the Sunken Moose environmental impact statement was published in the **Federal Register** on April 24, 2001 (Vol. 66, No. 79, page 20625, Tuesday, April 24, 2001/Notices). A revised notice of intent was published in the **Federal Register** on April 16, 2002 (Vol. 67, No. 73, Tuesday, April 16, 2002/Notices). The April 16, 2002 revision modified the purpose and need of the proposal.

Dated: May 8, 2003.

Anne F. Archie,

Forest Supervisor, Chequamegon-Nicolet National Forest; Park Falls, WI 54552.

[FR Doc. 03–12233 Filed 5–15–03; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Forest Service

McCaslin Project; Chequamegon-Nicolet National Forest, Oconto and Forest Counties, WI

AGENCY: Forest Service, USDA.

ACTION: Revised notice, intent to prepare an environmental impact statement.

SUMMARY: The Forest Service proposes to implement land management activities consistent with direction in the 1986 Nicolet National Forest Land and Resource Management Plan. Activities are proposed on National Forest in an area called "McCaslin ". This notice revises the "responsible official" and updates expected statement dates.

DATES: The final environmental impact statement is expected June 2003.

Responsible Official: This Notice revises the responsible official from Lakewood/Laona District Ranger to: Anne F. Archie, Forest Supervisor, Chequamegon-Nicolet National Forest, Park Falls, Wisconsin.

ADDRESSES: Send written comments to Anne F. Archie, Forest Supervisor, Chequamegon-Nicloet National Forest, 1170 4th Avenue S, Park Falls, WI 54552.

FOR FURTHER INFORMATION CONTACT: John Lampereur, Project Leader, Lakewood District Office, 15085 State Road 32, Lakewood, WI, 54138 (phone (715) 276–6333; or visit the McCaslin Web site at *http://www.fs.fed.us/r9/cnnf/natres/eis/wash/mccaslin/index.html*).

SUPPLEMENTARY INFORMATION: The original notice of intent to prepare the McCaslin environmental impact statement was published in the **Federal Register** on April 5, 2001 (Vol 66, No 66 page 18070, Thursday, April 5, 2001/ Notices).

Dated: May 8, 2003.

Anne F. Archie,

Forest Supervisor, Chequamegon-Nicolet National Forest.

[FR Doc. 03–12234 Filed 5–15–03; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Forest Service

Siuslaw Resource Advisory Committee

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The Siuslaw Resource Advisory Committee will meet in Corvallis, OR. The purpose of the meeting is to determine how to spend Title II Payments to Counties Funds. The agenda includes: Review overhead assessments, FY02 and FY03 Projects, FY04 project review and selection; and a public forum.

DATES: The meeting will be held June 5, 2003 beginning at 10 a.m.

ADDRESSES: The meeting will be held at the Florence Convention & Performing Arts Center, 715 Quince Street, Florence, OR.

FOR FURTHER INFORMATION CONTACT: Linda Stanley, Community Development Specialist, Siuslaw National Forest, 541/750–7210 or write to Forest Supervisor, Siuslaw National Forest, PO Box 1148, Corvallis, OR 97339.

SUPPLEMENTARY INFORMATION: A public input period will begin at 3:15 p.m. The meeting is expected to adjourn at 4 p.m.

Dated: May 9, 2003.

Mary Zuschlag,

Natural Resource Staff Officer.

[FR Doc. 03–12232 Filed 5–15–03; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Forest Service

Del Norte County Resource Advisory Committee

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The Del Norte County Resource Advisory Committee (RAC) will meet on June 3, 2003 in Crescent City, California. The purpose of the meeting is to discuss the selection of Title II projects under Public Law 106–393, H.R. 2389, the Secure Rural Schools and Community Self-Determination Act of 2000, also called the "Payments to States" Act.

DATES: The meeting will be held on June 3, 2003 from 6 to 8:30 p.m.

ADDRESSES: The meeting will be held at the Del Norte County Unified School District Board Room, 301 West Washington, Crescent City, California.

FOR FURTHER INFORMATION CONTACT: Laura Chapman, Committee Coordinator, USDA, Six Rivers National Forest, 1330 Bayshore Way, Eureka, CA 95501. Phone: (707) 441–3549. Email: *lchapman@fs.fed.us.*

SUPPLEMENTARY INFORMATION: RAC members will discuss and vote on potential Title II projects for fiscal year 2004. The meeting is open to the public. Public input opportunity will be provided and individuals will have the opportunity to address the committee at that time.

Dated: May 9, 2003.

S.E. 'Lou' Woltering,

Forest Supervisor.

[FR Doc. 03–12236 Filed 5–15–03; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Forest Service

Trinity County Resource Advisory Committee

AGENCY: USDA Forest Service.

ACTION: Notice of meeting.

SUMMARY: The Trinity County Resource Advisory Committee (RAC) will meet on June 30, 2003 in Weaverville, California. The purpose of the meeting is to discuss the selection of Title II projects under Public Law 106–393, H.R. 2389, the Secure Rural Schools and Community Self-Determination Act of 2000, also called the "Payments to States" Act.

DATES: The meeting will be held on June 30, 2003 from 6:30 to 8:30 p.m.

ADDRESSES: The meeting will be held at the Trinity County Office of Education, 201 Memorial Drive, Weaverville, California.

FOR FURTHER INFORMATION CONTACT: Laura Chapman, Committee Coordinator, USDA, Six Rivers National Forest, 1330 Bayshore Way, Eureka, CA 95501. Phone: (707) 441–3549. Email: *1chapman@fs.fed.us.*

SUPPLEMENTARY INFORMATION: RAC members will discuss projects proposed for Title II funding in fiscal year 2004. The meeting is open to the public. Public input opportunity will be provided and individuals will have the opportunity to address the committee at that time.

Dated: May 9, 2003.

S.E. "Lou" Woltering,

Forest Supervisor.

[FR Doc. 03–12237 Filed 5–15–03; 8:45 am]

BILLING CODE 3410–11–M

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

Procurement List; Additions and Deletions

AGENCY: Committee for Purchase from People Who Are Blind or Severely Disabled.

ACTION: Additions to and Deletions from Procurement List.

SUMMARY: This action adds to the Procurement List services to be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities, and deletes from the Procurement List products previously furnished by such agencies.

EFFECTIVE DATE: June 15, 2003.

ADDRESSES: Committee for Purchase From People Who Are Blind or Severely Disabled, Jefferson Plaza 2, Suite 10800, 1421 Jefferson Davis Highway, Arlington, Virginia 22202–3259.

FOR FURTHER INFORMATION CONTACT: Sheryl D. Kennerly, (703) 603–7740.

SUPPLEMENTARY INFORMATION:

Additions

On December 27, 2002, and March 21, 2003, the Committee for Purchase From People Who Are Blind or Severely Disabled published notice (67 FR 79045, and 68 FR 13895) of proposed additions to the Procurement List.

After consideration of the material presented to it concerning capability of qualified nonprofit agencies to provide the services and impact of the additions on the current or most recent contractors, the Committee has determined that the services listed below are suitable for procurement by the Federal Government under 41 U.S.C. 46–48c and 41 CFR 51–2.4. I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organizations that will furnish the services to the Government.

2. The action will result in authorizing small entities to furnish the services to the Government.

3. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with the services proposed for addition to the Procurement List.

Accordingly, the following services are added to the Procurement List:

Services

Service Type/Location: Document Destruction, Aberdeen Proving Ground, Northeast Civilian Personnel Operation Center, Aberdeen Proving Ground, Maryland.
NPA: The Arc Northern Chesapeake Region, Incorporated, Aberdeen, Maryland.
Contract Activity: Northeast Civilian Personnel Operation Center, Aberdeen Proving Ground.
Service Type/Location: Janitorial/Custodial, U.S. Army Corps of Engineers, Saylorville Lake Project, Johnston, Iowa.
NPA: Goodwill Solutions, Inc., Des Moines, Iowa.
Contract Activity: U.S. Army Corps of Engineers—Contracting Div, Rock Island, Illinois.

Deletions

On March 14, 2003, the Committee for Purchase From People Who Are Blind or Severely Disabled published notice (68 F.R. 12340) of proposed deletions to the Procurement List. After consideration of the relevant matter presented, the committee has determined that the products listed below are no longer suitable for procurement by the Federal Government under 41 U.S.C. 46–48c and 41 CFR 51–2.4.

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action may not result in any additional reporting, recordkeeping or other compliance requirements for small entities.

2. The action may result in authorizing small entities to furnish the products to the Government.

3. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with the products deleted from the Procurement List.

Accordingly, the following products are deleted from the Procurement List:

Products

Product/NSN: Case, Plotting Board, 1220–01–055–6137.
NPA: North Bay Rehabilitation Services, Inc., Rohnert Park, California.
Contract Activity: Department of the Army, Rock Island, Illinois.
Product/NSN: Patient Utility Kit 6530–01–166–3499.
NPA: CCI Enterprises, Inc., Milwaukie, Oregon.
Contract Activity: Defense Supply Center Philadelphia, Philadelphia, Pennsylvania.

Sheryl D. Kennerly,

Director, Information Management.

[FR Doc. 03–12288 Filed 5–15–03; 8:45 am]

BILLING CODE 6353–01–P

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

Procurement List; Proposed Additions

AGENCY: Committee for Purchase from People Who Are Blind or Severely Disabled.

ACTION: Proposed additions to procurement list.

SUMMARY: The Committee is proposing to add to the Procurement List products and services to be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities.

Comments Must Be Received On or Before: June 15, 2003.

ADDRESSES: Committee for Purchase From People Who Are Blind or Severely Disabled, Jefferson Plaza 2, Suite 10800, 1421 Jefferson Davis Highway, Arlington, Virginia 22202–3259.

FOR FURTHER INFORMATION CONTACT: Sheryl D. Kennerly, (703) 603–7740.

SUPPLEMENTARY INFORMATION: This notice is published pursuant to 41 U.S.C 47(a) (2) and 41 CFR 51–2.3. Its purpose is to provide interested persons an opportunity to submit comments of the proposed actions. If the Committee approves the proposed additions, the entities of the Federal Government identified in the notice for each product or service will be required to procure the products and services listed below from nonprofit agencies employing persons who are blind or have other severe disabilities.

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. If approved, the action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organizations that will furnish the products and services to the Government.

2. If approved, the action will result in authorizing small entities to furnish the products and services to the Government.

3. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with the products and services proposed for addition to the Procurement List. Comments on this certification are invited. Commenters should identify the statement(s) underlying the certification on which they are providing additional information.

The following products and services are proposed for addition to Procurement List for production by the nonprofit agencies listed:

Products

Product/NSN: Supply Cup 7510–00–161–6211
NPA: The Lighthouse for the Blind in New Orleans, New Orleans, Louisiana
Contract Activity: Office Supplies & Paper Products Acquisition Center, New York, New York
Product/NSN: Tape Refill w/American Flag on the core 7520–00–NIB–1579
NPA: The Lighthouse for the Blind in New Orleans, New Orleans, Louisiana
Contract Activity: Office Supplies & Paper Products Acquisition Center, New York, New York

Services

Service Type/Location: Custodial Service GSA Leased Space for the Internal Revenue Service, Bronx, New York
NPA: Goodwill Industries of Greater New York and Northern New Jersey, Inc. Astoria, New York
Contract Activity: GSA, Property Management Center, New York, New York
Service Type/Location: Janitorial/Custodial U.S. Army Reserve Center, Calle Lee, Los Alamitos, California
NPA: Lincoln Training Center and Rehabilitation Workshop, South El Monte, California
Contract Activity: 63rd Regional Support Command, Los Alamitos, California
Service Type/Location: Janitorial/Custodial U.S. Army Reserve Center, Garden Grove, Garden Grove, California
NPA: Lincoln Training Center and Rehabilitation Workshop, South El Monte, California
Contract Activity: 63rd Regional Support Command, Los Alamitos, California
Service Type/Location: Janitorial/Custodial U.S. Army Reserve Center, Eau Claire, Wisconsin
NPA: L.E. Phillips Career Development Center, Inc., Eau Claire, Wisconsin
Contract Activity: Headquarters, 88th Regional Support Command, Fort Snelling, Minnesota
Service Type/Location: Janitorial/Custodial U.S. Army Reserve Center, Fairmont, West Virginia
U.S. Army Reserve Center, Grafton, West Virginia
U.S. Army Reserve Center, New Martinsville, West Virginia
NPA: PACE Training and Evaluation Center, Inc., Star City, West Virginia
Contract Activity: 99th Regional Support Command, Coraopolis, Pennsylvania
Service Type/Location: Janitorial/Custodial U.S. Army Reserve Center, Walker, Michigan
NPA: Hope Network Services Corporation, Grand Rapids, Michigan
Contract Activity: Headquarters, 88th Regional Support Command, Fort Snelling, Minnesota
Service Type/Location: Receiving, Shipping, Handling & Custodial Service Brunswick Naval Air Station, Topsham, Maine
NPA: Pathways, Inc., Auburn, Maine
Contract Activity: Defense Commissary Agency (DeCA), Ft. Lee, Virginia

Sheryl D. Kennerly,

Director, Information Management.

[FR Doc. 03–12289 Filed 5–15–03; 8:45 am]

BILLING CODE 6353–01–P

DEPARTMENT OF COMMERCE

[I.D. 051303A]

Submission for OMB Review; Comment Request

The Department of Commerce has submitted to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Agency: National Oceanic and Atmospheric Administration (NOAA).
Title: Groundfish Tagging Program.
Form Number(s): None.
OMB Approval Number: 0648–0276.
Type of Request: Regular submission.
Burden Hours: 98.
Number of Respondents: 420.
Average Hours Per Response: 5 minutes for a regular tag and 20 minutes for an electronic tag.
Needs and Uses: The Groundfish Tagging Program provides scientists with information necessary for the effective conservation, management, and scientific understanding of the groundfish fishery off Alaska and the Pacific Northwest. Persons recovering tagged fish are requested to supply certain information about the recovery - date of catch, location, tag number, etc. Scientists use such information to analyze distribution of fish, their movements, and other important parameters, and use results in population assessment models and to develop allocation systems.
Affected Public: Business or other for-profit organizations, individuals or households.
Frequency: On occasion.
Respondent's Obligation: Voluntary.
OMB Desk Officer: David Rostker, (202) 395–3897.Copies of the above information collection proposal can be obtained by calling or writing Diana Hynek, Departmental Paperwork Clearance Officer, (202) 482–0266, Department of Commerce, Room 6625, 14th and Constitution Avenue, NW, Washington, DC 20230 (or via the Internet at dHynek@doc.gov).Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to David Rostker, OMB Desk Officer, Room 10202, New Executive Office Building, Washington, DC 20503.

Dated: May 8, 2003.

Gwellnar Banks,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. 03–12316 Filed 5–15–03; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

Bureau of Industry and Security

[Docket No. 030505114–3114–01]

Best Practices for Exporters/Re-Exporters and Trade Facilitation/Freight Forwarding Companies Regarding the Transit, Transshipment, and Reexport of Dual-Use Items

AGENCY: Bureau of Industry and Security, Commerce.

ACTION: Notice of Inquiry.

SUMMARY: The Bureau of Industry and Security (BIS) is seeking public comments on the following proposed "Best Practices for Exporters/Re-exporters and Trade Facilitation/Freight Forwarding Companies Regarding the Transit, Transshipment, and Reexport of Dual-Use Items." BIS will consider all comments timely submitted before finalizing these Best Practices.

DATES: Comments must be received before June 16, 2003.

ADDRESSES: Comments may be submitted by e-mail to *rcupitt@bis.doc.gov*, by fax at (202) 482–2387, or on paper to Rick Cupitt, Office of the Under Secretary for Industry and Security, Bureau of Industry and Security, Room H3898, U.S. Department of Commerce, 14th Street and Pennsylvania Avenue, NW., Washington, DC 20230.

FOR FURTHER INFORMATION CONTACT: Rick Cupitt, Office of the Under Secretary for Industry and Security at *rcupitt@bis.doc.gov* or (202) 482–1459.

SUPPLEMENTARY INFORMATION:

Background

This document sets forth "best practices" for exporters/re-exporters and trade facilitation/freight forwarding companies regarding the transit, transshipment, and re-export of dual-use items. The best practices identified herein represent the types of practices that many companies already observe, which is consistent with the broader view of the Department of Commerce (DOC) that implementing effective export compliance programs is an important component of responsible corporate citizenship and good business practices generally.

Overview

Dual-use export control laws are predicated on the security and reliability of supply chains. Both the licensing of export transactions in dual-use items and the allowance of license-excepted transactions in such items are premised on the assurance that such

items: (i) Will not be used for a prohibited end-use, (ii) will be in the possession of the person or organization contemplated as the end-user at the time of export, and (iii) will be utilized in the country contemplated as the country of end-use when the item is exported. The diversion of controlled goods or technologies—even inadvertently—from such contemplated end-use, end-user, or destination constitutes a serious threat to the efficacy of export control regimes. Such diversion undermines efforts to counter the proliferation of weapons of mass destruction, terrorism, and other threats to national and international security.

Global "transshipment hubs"—*i.e.*, countries or areas that function as major hubs for the trading and shipment of cargo—pose special risks of diversion. The concentrated presence of commercial infrastructure (*e.g.*, trading companies, brokerages, and free trade zones) that facilitates large volumes of transit, transshipment, import and re-export traffic through such points make transshipment hubs particularly vulnerable to the diversion of sensitive items to illicit purposes.

To combat this risk, the United States Government has implemented a number of initiatives to work with industry and foreign governments. DOC, for example, has launched the Transshipment Country Export Control Initiative (TECI). TECI seeks to channel existing and new export control practices toward countering the diversion of controlled items through global transshipment hubs. TECI has two principal prongs. Under the first prong, DOC seeks to improve cooperation and communication with relevant agencies in key transshipment hubs charged with administering export and trade control laws.[1] Such efforts are already underway with respect to a number of key transshipment countries and will be launched with respect to others in the near future.

Under TECI's second prong, DOC seeks to work with the private sector businesses and individuals involved in the transshipment of goods to enhance their ability to prevent the diversion of controlled items. In the course of this dialogue, a number of organizations have noted the absence of a clearly stated set of export control "best practices" tailored to the particular activities and circumstances of entities that facilitate the export or re-export of dual-use items to, from, or through transshipment hubs (such "Trade Facilitators/Freight Forwarders" include freight forwarders, brokers, air and marine cargo carriers, express shipment carriers, port operators, and port authorities) as well as entities that export dual-use items to transhipment hubs or that re-export such items from such hubs ("Exporters/Re-exporters"). The absence of a single organization or forum representing these many diverse businesses involved in transshipment makes it unlikely that such a set of best practices would be developed without DOC coordination.

Set forth below, for public comment, is a draft set of best practices for use by Trade Facilitators/Freight Forwarders and Exporters/Re-Exporters in guiding the export control compliance activities of companies involved in the transshipment, transit, and re-export of dual-use items. They are based on input provided at DOC-sponsored export control compliance seminars and other events, and on the observations of best practices by DOC staff and export control practitioners involved in both the administration and enforcement of export controls.

The publication of these best practices creates no legal obligation to comply with such practices on the part of any person. Compliance with these best practices creates no defense to liability for the violation of export control laws. However, demonstrated compliance with these best practices by a company will be considered an important mitigating factor in administrative prosecutions arising out of violations of the Export Administration Regulations by that company.

Best Practices for Exporters/Re-Exporters and Trade Facilitation/ Freight Forwarding Companies Regarding the Transit, Transshipment, and Reexport of Dual-Use Items

Purpose

To help industry, and in particular Trade Facilitators/Freight Forwarders and Exporters/Re-Exporters, contribute to a reduction in the illicit transshipment, transit, or re-export of dual-use items subject to U.S. and foreign export controls, and to facilitate legitimate global commerce by improving the capacity to distinguish between licit and illicit transactions.

Principles

1. Industry and government should work together to foster secure trade that reduces the risk of diversion of items subject to export controls.

2. Secure trade will reduce the diversion of dual-use items to prohibited end-uses, end-users, and destinations.

3. Secure trade will encourage the more expeditious movement of legitimate trade through borders and ports.

4. Industry can achieve secure trade objectives through appropriate export management practices.

Scope

The best practices identified herein:

1. Are designed Trade Facilitators/ Freight Forwarders and Exporters/Re-Exporters. The terms "Company" and "Companies", when used herein, refer to all of these types of entities;

2. Are designed to apply to transactions subject to the jurisdiction of the Department of Commerce; and

3. Complement the set of Best Practices for Exporters/Shippers found in the U.S. Department of Commerce Export Management System. Additional information on the Export Management System resides on the BIS Web site at *http://www.bis.doc.gov/ExportManagementSystems/Default.htm*.

Company Policy and Company Management

1. Each Company should develop a written policy against allowing its exports or services to contribute to terrorism or programs of proliferation concern.

2. Each Company should identify one person, who reports to the Company's Chief Executive Officer, General Counsel, or other senior management official (but not to a sales or marketing official), as the ultimate party responsible for oversight of the Company's export control compliance program.

3. Each Company should create an export control compliance program. Companies should integrate this compliance program into its overall regulatory compliance, security, and ethics programs.

4. Each Company should ensure that relevant Company personnel receive regular training in export control compliance responsibilities, and should consider offering to its employees incentives for compliance (and disincentives for noncompliance) with their export control responsibilities.

5. Exporters/Re-Exporters should seek to utilize only those Trade Facilitators/ Freight Forwarders that also observe these best practices.

Compliance Activities: General

6. An Exporter/Re-Exporter should classify each of its products according to the requirements of the Export Administration Regulations (EAR), 15 CFR Parts 730–774 (2003), and should communicate the appropriate Export Control Classification Number (ECCN) or other classification information for each export to the Trade Facilitator/ Freight Forwarder and the end-user involved in that export (even if the shipment is made under an EAR License Exception). Each Company involved in the transaction should also maintain a record of such classification for every export.

7. A Company should screen all parties to the transaction against all relevant lists (such as the Denied Persons List, Unverified List, Entities List, and lists of U.S. Government-sanctioned parties), and should maintain a record of such screening.

8. A Company should screen all exports/re-exports against a list of embargoed destinations, and should maintain a record of such screening.

Compliance Activities: Transshipment Hub[2]-Specific

9. With respect to transactions to, from, or through transshipment hubs, Exporters/Re-Exporters should take appropriate steps to know who the end-user is and to determine whether the item will be re-exported or incorporated in an item to be re-exported. An Exporter/Re-Exporter of a dual-use item under license should inform the end-user, distributor, or other appropriate recipient of the item of the license terms and conditions for such export.

10. With respect to transactions to, from, or through transshipment hubs, Companies should have in place compliance and/or business procedures to be immediately responsive to theft or unauthorized delivery. This include procedures—including documented confirmation—to ensure that the item exported has reached the proper end-user.

11. With respect to transactions to, from, or through transshipment hubs, Companies should pay heightened attention to the Red Flag Indicators on the BIS Web site (*see http://www.bis.doc.gov/Enforcement/redflags.htm*) and in the "Know Your Customer Guidance" set forth in Supplement 3 to part 732 of the EAR.

Responding to Suspicious Transactions

12. When a Company encounters a suspicious transaction, it should halt the shipment and consult with its export control compliance specialist. If the transaction is determined to involve a potential or actual violation of the EAR, the Company should contact BIS or another U.S. law enforcement agency immediately and maintain all relevant records.

Request for Comments

Parties submitting comments are asked to be as specific as possible. BIS encourages interested persons who wish to comment to do so at the earliest possible time. The period for submission of comments will close June 16, 2003. BIS will consider comments on any aspect or consequence of any part or all of this proposal. Comments received after the end of the comment period will be considered if possible, but their consideration cannot be assured. BIS will not accept comments accompanied by a request that a part or all of the material be treated confidentially because of its business proprietary nature or for any other reason. BIS will return such comments and materials to the persons submitting them and will not consider them in developing any final "Best Practices" document that it may publish. All comments on this proposal will be a matter of public record and will be available for public inspection and copying. All comments must be submitted in writing (including facsimile or e-mail).

The public record concerning these comments will be maintained in the Bureau of Industry and Security, Office of Administration, U.S. Department of Commerce, Room 6883, 14th and Constitution Avenue, NW., Washington, DC 20230; (202) 482–0637. This component does not maintain a separate public inspection facility. Requesters should first view BIS's FOIA website (which can be reached through *http://www.bis.doc.gov/foia*). If the records sought cannot be located at this site, or if the requester does not have access to a computer, please call the phone number above for assistance.

Kenneth I. Juster,

Under Secretary for Industry and Security.

[FR Doc. 03–12265 Filed 5–15–03; 8:45 am]

BILLING CODE 3510–33–P

[1] A number of U.S. Government agencies, including the DOC, also work with the governments of those hubs to strengthen their indigenous export control regimes, including conducting technical assistance activities as part of the Export Control and Related Border Security Assistance (EXBS) Program managed by the U.S. Department of State.

[2] DOC's TECI has focused its efforts on the following transshipment hubs: Cyprus, Hong Kong, Malaysia, Malta, Panama, Singapore, Taiwan, Thailand, and the United Arab Emirates.

DEPARTMENT OF COMMERCE

Bureau of Industry and Security

[Docket No. 030509121–3121–01]

Addition of Persons to Unverified List—Guidance as to "Red Flags" Under Supplement No. 3 to 15 CFR Part 732

AGENCY: Bureau of Industry and Security, Commerce.

ACTION: Notice.

SUMMARY: On June 14, 2002, the Bureau of Industry and Security ("BIS") published a notice in the **Federal Register** that set forth a list of persons in foreign countries who were parties to past export transactions where pre-license checks ("PLC") or post-shipment verifications ("PSV") could not be conducted for reasons outside the control of the U.S. Government ("Unverified List"). This notice also advised exporters that the involvement of a listed person as a party to a proposed transaction constitutes a "red flag" as described in the guidance set forth in Supplement No. 3 to 15 CFR part 732, requiring heightened scrutiny by the exporter before proceeding with such a transaction. The notice also stated that, when warranted, BIS would add persons to the Unverified List. This notice adds Lucktrade International PTE Ltd. and Peluang Teguh which are located in Singapore, and Lucktrade International which is located in Hong Kong to the Unverified List.

DATES: This notice is effective May 16, 2003.

FOR FURTHER INFORMATION CONTACT: Thomas W. Andrukonis, Office of Enforcement Analysis, Bureau of Industry and Security, Telephone: (202) 482–4255.

SUPPLEMENTARY INFORMATION: In administering export controls under the Export Administration Regulations (15 CFR parts 730 to 774) ("EAR"), BIS carries out a number of preventive enforcement activities with respect to individual export transactions. Such activities are intended to assess diversion risks, identify potential violations, verify end-uses, and determine the suitability of end-users to receive U.S. commodities or technology. In carrying out these activities, BIS officials, or officials of other federal agencies acting on BIS's behalf, selectively conduct PLCs to verify the bona fides of the transaction and the suitability of the end-user or ultimate consignee. In addition, such officials sometimes carry out PSVs to ensure that U.S. exports have actually been

delivered to the authorized end-user, are being used in a manner consistent with the terms of a license or license exception, and are otherwise consistent with the EAR.

In certain instances BIS officials, or other federal officials acting on BIS's behalf, have been unable to perform a PLC or PSV with respect to certain export control transactions for reasons outside the control of the U.S. Government (including a lack of cooperation by the host government authority, the end-user, or the ultimate consignee). In a notice issued on June 14, 2002 (67 FR 40910), BIS set forth an Unverified List of certain foreign end-users and consignees involved in such transactions.

The June 14 notice also advised exporters that participation of a person on the Unverified List in a proposed transaction will be considered by BIS to raise a "red flag" under the "Know Your Customer" guidance set forth in Supplement No. 3 to 15 CFR part 732 of the EAR. Under that guidance, whenever there is a "red flag," exporters have an affirmative duty to inquire, verify, or otherwise substantiate the proposed transaction to satisfy themselves that the transaction does not involve a proliferation activity prohibited in 15 CFR part 744, and does not violate the EAR.

The **Federal Register** notice further stated that BIS may periodically add persons to the Unverified List based on the criteria set forth above, and remove names of persons from the Unverified List when warranted. BIS has attempted, and was unable to conduct, a PSV in transactions involving the following persons:

Lucktrade International PTE Ltd., 35 Tannery Road #01–07 Tannery Block, Ruby Industrial Complex, Singapore 347740.

Peluag Teguh, 203 Henderson Road #09–05H, Henderson Industrial Park, Singapore.

Lucktrade International, P.O. Box 91150, Tsim Sha Tsui, Hong Kong.

This notice advises exporters that Lucktrade International PTE Ltd.; Pelaug Teguh; and Lucktrade International are added to the Unverified List, and a "red flag" now exists for transactions involving these persons due to their inclusion on the Unverified List. As a result, exporters have an affirmative duty to inquire, verify, or otherwise substantiate the proposed transaction to satisfy themselves that the transaction does not involve a proliferation activity prohibited in 15 CFR part 744, and does not violate the EAR.

The Unverified List, as modified by this notice, is set forth below.

Dated: May 12, 2003.

Thomas W. Andrukonis,

Acting Assistant Secretary for Export Enforcement.

Unverified List

(as of May 16, 2003)

The Unverified List includes names and countries of foreign persons who in the past were parties to a transaction with respect to which BIS could not conduct a pre-license check ("PLC") or a post-shipment verification ("PSV") for reasons outside of the U.S. Government's control. Any transaction to which a listed person is a party will be deemed by BIS to raise a "red flag" with respect to such transaction within the meaning of the guidance set forth in Supplement No. 3 to 15 CFR part 732. The "red flag" applies to the person on the Unverified List regardless of where the person is located in the country included on the list.

Name	Country	Last known address
Lucktrade International	Hong Kong Special Administrative Region.	P.O. Box 91150, Tsim Sha Tsui, Hong Kong.
Brilliant Intervest	Malaysia	14–1, Persian 65C, Jalan Pahang Barat, Kuala Lumpur, 53000.
Dee Communications M SDN, BHD	Malaysia	G5/G6, Ground Floor, Jin Gereja, Johor Bahru.
Shaanxi Telecom Measuring Station.	People's Republic of China	39 Jixiang Road, Yanta District Xian, Shaanxi.
Yunma Aircraft Mfg.	People's Republic of China	Yaopu Anshun, Guizhou.
Civil Airport Construction Corporation.	People's Republic of China	111 Bei Sihuan Str. East Chao Yang District, Beijing.
Power Test & Research Institute of Guangzhou..	People's Republic of China	No. 38 East Huangshi Road, Guangzhou.
Beijing San Zhong Electronic Equipment Engineer Co., Ltd.	People's Republic of China	Hai Dian Fu Yuau Men Hao 1 Hao, Beijing.
Huabei Petroleum Administration Bureau Logging Company.	People's Republic of China	South Yanshan Road Ren Qiu City, Hebei.
Daqing Production Logging Institute	People's Republic of China	No. 3 Fengshou Village Sartu District Daqing City, Heilongjiang.
Peluang Teguh	Singapore	203 Henderson Road, #09–05H, Henderson Industrial Park, Singapore.
Lucktrade International PTE Ltd	Singapore	35 Tannery Road, #01–07 Tannery Block, Ruby Industrial Complex, Singapore 347740.
Arrow Electronics Industries	United Arab Emirates	204 Arbift Tower, Benyas Road, Dubai.

[FR Doc. 03–12266 Filed 5–15–03; 8:45 am]
BILLING CODE 3510–33–M

DEPARTMENT OF COMMERCE

International Trade Administration

[A–580–829]

Stainless Steel Wire Rod from South Korea: Extension of Time Limit for Preliminary Results of Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: May 16, 2003.

FOR FURTHER INFORMATION CONTACT: Karine Gziryan, Jeffrey Pedersen or Crystal Scherr Crittenden, AD/CVD Enforcement, Office 4, Group II, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone (202) 482–4081, (202) 482–2747, or (202) 482–0989, respectively.

SUPPLEMENTARY INFORMATION:

TIME LIMITS:

Statutory Time Limits

Section 751(a)(3)(A) of the Tariff Act of 1930, as amended (the Act), requires the Department of Commerce (the Department) to make a preliminary determination within 245 days after the last day of the anniversary month of an order or finding for which a review is requested and a final determination within 120 days after the date on which the preliminary determination is published. However, if it is not practicable to complete the review within these time periods, section 751(a)(3)(A) of the Act allows the Department to extend the 245–day time limit for the preliminary determination to a maximum of 365 days and the time limit for the final determination to 180 days (or 300 days if the Department does not extend the time limit for the preliminary determination) from the date of publication of the preliminary determination.

Background

On October 24, 2002, the Department published a notice of initiation of administrative review of the antidumping duty order on stainless steel wire rod from South Korea, covering the period September 1, 2001, through August 31, 2002. *See Initiation of Antidumping and Countervailing Duty Administrative Reviews*, 67 FR 65336 (October 24, 2002). The preliminary results are currently due no later than June 2, 2003.

Extension of Time Limit for Preliminary Results of Review

We determine that it is not practicable to complete the preliminary results of this review within the original time limit. Therefore, the Department is extending the time limit for completion of the preliminary results until no later than September 30, 2003. *See* Decision Memorandum from Thomas F. Futtner to Holly A. Kuga, dated concurrently with this notice, which is on file in the Central Records Unit, Room B–099 of the Department's main building. We intend to issue the final results no later than 120 days after the publication of the preliminary results notice.

This extension is in accordance with section 751(a)(3)(A) of the Act.

Dated: May 9, 2003.

Holly A. Kuga,

Acting Deputy Assistant Secretary for Import Administration, Group II.

[FR Doc. 03–12312 Filed 5–15–03; 8:45 am]
BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

Applications for Duty-Free Entry of Scientific Instruments

Pursuant to section 6(c) of the Educational, Scientific and Cultural Materials Importation Act of 1966 (Pub. L. 89–651; 80 Stat. 897; 15 CFR part 301), we invite comments on the question of whether instruments of equivalent scientific value, for the purposes for which the instruments shown below are intended to be used, are being manufactured in the United States.

Comments must comply with 15 CFR 301.5(a)(3) and (4) of the regulations and be filed within 20 days with the Statutory Import Programs Staff, U.S. Department of Commerce, Washington, DC 20230. Applications may be examined between 8:30 a.m. and 5 p.m. in Suite 4100W, U.S. Department of Commerce, Franklin Court Building, 1099 14th Street, NW., Washington, DC.

Docket Number: 03–021.

Applicant: University of Colorado, JILA, UCB 440, JILA Building, Room S/175, Boulder, CO 80309.

Instrument: YAG Laser and Intensity Noise Eater.

Manufacturer: InnoLight GmbH, Germany.

Intended Use: The instrument is intended to be used to study gases of the alkalis potassium and rubidium. Experiments to be conducted will involve optically trapping and manipulating the ultracold gases using light from the laser for understanding metals, insulators, and superconductors and the phase transitions between them.

Application accepted by Commissioner of Customs: April 23, 2003.

Docket Number: 03–022.

Applicant: University of California, Berkeley, Physics Department, 366 Le Conte Hall, #7300, Berkeley, CA 94720–7300.

Instrument: Low Temperature UHV Scanning Tunneling Microscope.

Manufacturer: Omicron Vakuumphysik GmbH, Germany.

Intended Use: The instrument is intended to be used to study magnetic nanostructures at metal and semiconductor surfaces. One of the main goals is to determine if magnetic nanostructures are suitable for use as "quantum bits" in a quantum computer (qubits) and if it is possible to detect and control the quantum states of a single spin center, and determine its level of quantum decoherence.

Application accepted by Commissioner of Customs: April 29, 2003.

Gerald A. Zerdy,

Program Manager, Statutory Import Programs Staff.

[FR Doc. 03–12310 Filed 5–15–03; 8:45 am]
BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

University of Wisconsin—Eau Claire; Notice of Decision on Application for Duty-Free Entry of Scientific Instrument

This decision is made pursuant to Section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89–651, 80 Stat. 897; 15 CFR part 301). Related records can be viewed between 8:30 a.m. and 5 p.m. in Suite 4100W, U.S. Department of Commerce, Franklin Court Building, 1099 14th Street, NW., Washington, DC.

Docket Number: 03–016.

Applicant: University of Wisconsin—Eau Claire, Eau Claire, WI 54701.

Instrument: Automatic Fusion Machine, Model AutoFluxer 4.

Manufacturer: Breitlander Eichproben und Labormaterial GmbH, Germany.

Intended Use: See notice at 68 FR 16472, April 4, 2003.

Comments: None received.

Decision: Approved. No instrument of equivalent scientific value to the foreign

instrument, for such purposes as it is intended to be used, is being manufactured in the United States.

Reasons: The foreign instrument provides fused glass beads which presents a homogeneous smooth surface to an x-ray fluorescence spectrometer by melting whole rock powder samples under computer control at temperatures to 1600° C. The Los Alamos National Laboratory advised May 2, 2003 that (1) this capability is pertinent to the applicant's intended purpose and (2) it knows of no domestic instrument or apparatus of equivalent scientific value to the foreign instrument for the applicant's intended use.

We know of no other instrument or apparatus of equivalent scientific value to the foreign instrument which is being manufactured in the United States.

Gerald A. Zerdy,

Program Manager, Statutory Import Programs Staff.

[FR Doc. 03–12311 Filed 5–15–03; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[C–357–815]

Notice of Intent to Rescind Countervailing Duty Administrative Review: Certain Hot-Rolled Carbon Steel Flat Products from Argentina

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of Intent to Rescind Countervailing Duty Administrative Review.

SUMMARY: On October 24, 2002, the Department of Commerce (the Department) initiated an administrative review of the countervailing duty order on certain hot-rolled carbon steel flat products from Argentina (hot-rolled products), covering the period January 1, 2001 through December 31, 2001, and one manufacturer/exporter of the subject merchandise, Siderar Sociedad Anomina Industrial & Commercial (Siderar). *See Initiation of Antidumping and Countervailing Duty Administrative Reviews*, 67 FR 65336 (October 24, 2002). The Department intends to rescind this review due to Siderar's lack of shipments during the period of review.

EFFECTIVE DATE: May 16, 2003.

FOR FURTHER INFORMATION CONTACT: Stephanie Moore or Cindy Robinson, AD/CVD Enforcement, Office 6, Group II, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, D.C. 20230; telephone: (202) 482–3692 or (202) 482–3797, respectively.

SUPPLEMENTARY INFORMATION:

Background

On September 30, 2002, the Department received a letter from Siderar requesting an administrative review of the countervailing order on hot-rolled products from Argentina. On October 24, 2002, the Department initiated an administrative review of this order for the period January 1, 2001 through December 31, 2001 (period of review). On November 19, 2002, the Department held an *ex parte* meeting with representatives of the Government of Argentina and Siderar. *See* Memorandum to the File from Melissa G. Skinner, Director dated November 20, 2002, which is on file in the Central Records Unit (CRU), Room B-099, Main Building of the Department of Commerce. At that meeting, Siderar informed the Department that it did not have any shipments of the subject merchandise to the United States during the period of review (POR). On January 22, 2003, the Department conducted a customs query to ascertain whether there were any entries, exports, or sales of the subject merchandise from Siderar during the POR; the query showed that there were none. *See* Memorandum to The File from Team regarding Customs Query dated May 8, 2003, the public version of which is on file in the CRU.

On February 11, 2003, petitioners requested that the Department rescind the initiation and terminate the administrative review based on Siderar's statement that it had no shipments. *See* letter from Dewey Ballantine LLP on behalf of domestic producers Bethlehem Steel Corporation, United States Steel Corporation and National Steel Corp., on file in the CRU. On March 7, 2003, Siderar submitted a letter responding to petitioners' comments and acknowledging that it had no shipments of subject merchandise to the United States during the POR. *See* letter from White & Case on behalf of Siderar, on file in the CRU.

Scope of the Review

Imports covered by this review are shipments of certain hot-rolled carbon-quality steel from Argentina: (1) universal mill plates (*i.e.*, flat-rolled products rolled on four faces or in a closed box pass, of a width exceeding 150 mm but not exceeding 1250 mm, and of a nominal or actual thickness of not less than 4 mm, which are cut-to-length (not in coils) and without patterns in relief), of iron or non-alloy-quality steel; and (2) flat-rolled products, hot-rolled, of a nominal or actual thickness of 4.75 mm or more and of a width which exceeds 150 mm and measures at least twice the thickness, and which are cut-to-length (not in coils). Steel products included in the scope are of rectangular, square, circular or other shape and of rectangular or non-rectangular cross-section where such non-rectangular cross-section is achieved subsequent to the rolling process (*i.e.*, products which have been "worked after rolling")–for example, products which have been beveled or rounded at the edges. Steel products that meet the noted physical characteristics that are painted, varnished or coated with plastic or other non-metallic substances are included within this scope. Also, specifically included in the scope are high strength, low alloy (HSLA) steels. HSLA steels are recognized as steels with micro-alloying levels of elements such as chromium, copper, niobium, titanium, vanadium, and molybdenum. Steel products included in this scope, regardless of Harmonized Tariff Schedule of the United States (HTSUS) definitions, are products in which: (1) iron predominates, by weight, over each of the other contained elements; (2) the carbon content is two percent or less, by weight; and (3) none of the elements listed below is equal to or exceeds the quantity, by weight, respectively indicated: 1.80 percent of manganese, or 1.50 percent of silicon, or 1.00 percent of copper, or 0.50 percent of aluminum, or 1.25 percent of chromium, or 0.30 percent of cobalt, or 0.40 percent of lead, or 1.25 percent of nickel, or 0.30 percent of tungsten, or 0.10 percent of molybdenum, or 0.10 percent of niobium, or 0.41 percent of titanium, or 0.15 percent of vanadium, or 0.15 percent zirconium. All products that meet the written physical description, and in which the chemistry quantities do not equal or exceed any one of the levels listed above, are within the scope unless otherwise specifically excluded. The following products are specifically excluded from the scope: (1) products clad, plated, or coated with metal, whether or not painted, varnished or coated with plastic or other non-metallic substances; (2) SAE grades (formerly AISI grades) of series 2300 and above; (3) products made to ASTM A710 and A736 or their proprietary equivalents; (4) abrasion-resistant steels (*i.e.*, USS AR 400, USS AR 500); (5) products made to ASTM A202, A225, A514 grade S, A517 grade S, or their proprietary equivalents; (6) ball bearing steels; (7) tool steels; and (8) silicon manganese steel or silicon electric steel.

The products covered by this review are provided for under the following HTSUS item numbers: 7208.40.3030, 7208.40.3060, 7208.51.0030, 7208.51.0045, 7208.51.0060, 7208.52.0000, 7208.53.0000, 7208.90.0000, 7210.70.3000, 7210.90.9000, 7211.13.0000, 7211.14.0030, 7211.14.0045, 7211.90.0000, 7212.40.1000, 7212.40.5000, 7212.50.0000, 7225.40.3050, 7225.40.7000, 7225.50.6000, 7225.99.0090, 7226.91.5000, 7226.91.7000, 7226.91.8000, 7226.99.0000.

Although the HTSUS subheadings are provided for convenience and Customs purposes, the written description of the scope of this proceeding is dispositive.

Rescission of Review

In their February 11, 2003, request that the Department rescind the review, petitioners asserted that the Department's consistent practice has been to rescind an administrative review upon learning that no shipments of subject merchandise occurred during the relevant POR. They cited to several notices in which the Department rescinded antidumping administrative reviews on the basis of lack of shipments. Petitioners also cited to the preliminary results of *Carbon Steel Wire Rod from New Zealand*, 56 FR 33253 (July 19, 1991) and the preliminary results of *Brass Sheet and Strip from Brazil*, 56 FR 33252 (July 19, 1991) as the only two instances they could locate where the Department decided to complete administrative reviews of countervailing duty (CVD) orders for a POR during which no shipments of the subject merchandise occurred. However, they asserted that both of these reviews preceded the Uruguay Round Agreements Act (URAA) and involved a program-wide change in which the subsidy programs to be reviewed had been terminated. Given the post-URAA regulations and practice and the lack of a program-wide change, petitioners argued that the Department should promptly rescind the instant review.

On March 7, 2003, Siderar confirmed that it did not have any shipments of subject merchandise to the United States during the POR. However, Siderar submitted that the Department has the discretion to conduct an administrative review in this case for the purpose of adjusting Siderar's deposit rate. Siderar stated that it requested this administrative review for the sole purpose of having the Department's determination in the recently completed investigation of cold rolled products from Argentina[1] extended to this case and having the CVD deposit adjusted accordingly. Siderar stated that the factual circumstances of this case are clear and not in dispute.

In support of its position that the Department has the discretion to conduct a CVD administrative review for the purpose of adjusting the cash deposit rate even in the absence of shipments during the review period, Siderar pointed out that the Department has done so in the past. Siderar cited *Carbon Steel Wire Rod From New Zealand*,[2] where a program-wide change involving the termination of two government programs took place, and to precedent.[3] Siderar asserted that, in that case, the Department concluded that Section 751 of the Tariff Act of 1930, as amended (the Act) (19 U.S.C. § 1675 (a)(1)) authorizes it to conduct annual administrative reviews to determine the amount of any net countervailing subsidy and estimated duty to be deposited, even in the absence of entries, shipments, or exports. Siderar acknowledged that the issue in this review does not involve a "program-wide change." However, it argued that the Department's determination in Cold Rolled has the same effect as a program-wide change in that it removes the legal and factual basis for the collection of deposits at the rate previously established. See the letter from Siderar to the Department dated March 7, 2003, which is on file in the CRU.

We agree with petitioners that it has been the Department's practice to rescind administrative reviews when we find a lack of exports. *See Certain Hot-Rolled Lead and Bismuth Carbon Steel Products From Germany: Notice of Termination of Countervailing Duty Administrative Review*, 64 FR 44489 (August 16, 1999), and *Final Results and Partial Rescission of Countervailing Duty Administrative Review: Stainless Steel Sheet and Strip From the Republic of Korea*, 68 FR 13267 (March 19, 2003).

In accordance with the Department's regulations, and consistent with its practice, the Department intends to rescind the administrative review of hot-rolled products from Argentina for the period January 1, 2001 to December 31, 2001 due to no shipments during the POR. *See* 19 CFR section 351.213(d)(3), which states in pertinent part: "The Secretary may rescind an administrative review under this section, in whole or only with respect to a particular exporter or producer, if during the POR, there were no entries, exports, or sales of the subject merchandise."

This notice is in accordance with section 751(a)(1) of the Act, and section 351.213(d) of the Department's regulations.

Dated: May 9, 2003.

Holly A. Kuga,

Acting Deputy Assistant Secretary for Import Administration.

[FR Doc. 03–12313 Filed 5–15–03; 8:45 am]

BILLING CODE 3510–DS–S

[1] *See Final Negative Countervailing Duty Determination: Certain Cold-Rolled Carbon Steel Flat Products From Argentina*, 67 FR 62106 (October 3, 2002) (*Cold Rolled*); Issues and Decision Memorandum of September 23, 2002 from Richard W. Moreland to Faryar Shirzad.

[2] *Carbon Steel Wire Rod From New Zealand: Final Results of Countervailing Duty Administrative Review (Carbon Steel Wire from New Zealand)*, 56 FR 28863 (June 25, 1991).

[3] *See Certain Electrical Aluminum Redraw Rod from Venezuela: Final Results of Countervailing Duty Administrative Review*, 56 FR at 14232 (April 8, 1991) ("where the Department Conducted a review and changed the case deposit rate as a result of a program-wide change despite no entries or exports") 56 FR at 28864.

DEPARTMENT OF COMMERCE

National Institute of Standards and Technology

[Docket No. 030429105–3105–01]

Announcing Draft Federal Information Processing Standard (FIPS) 199 on Standards for Security Categorization of Federal Information and Information Systems; and Request for Comments

AGENCY: National Institute of Standards and Technology (NIST), Commerce.

ACTION: Notice; request for comments.

SUMMARY: Draft FIPS 199 defines requirements to be used by Federal agencies to categorize information and information systems, and to provide appropriate levels of information security according to a range of risk levels. This draft standard establishes three potential levels of risk (low, moderate, and high) for each of the security objectives of confidentiality, integrity, and availability. The levels of risk are based on what is known about the potential impact or harm. Harmful events can impact agency operations (including mission, functions, image or reputation), agency assets, or individuals (including privacy). The levels of risk consider both impact and threat, but are more heavily weighted toward impact. Federal information systems, which are often interconnected and interdependent, are vulnerable to a variety of threats (both malicious and unintentional) that could compromise the security of information and information systems.

NIST invites public comments on the Draft FIPS on Standards for Security Categorization of Federal Information

and Information Systems. After the comment period closes, NIST will analyze the comments, make appropriate changes to the document, and then propose the draft standard to the Secretary of Commerce for approval as FIPS PUB 199.

DATES: Comments on the Draft FIPS on Standards for Security Categorization of Federal Information and Information Systems must be received on or before August 14, 2003.

ADDRESSES: Written comments concerning the Draft FIPS on Standards for Security Categorization of Federal Information and Information Systems may be sent by regular mail to: Information Technology Laboratory, ATTN: Draft FIPS 199, Mail Stop 8930, 100 Bureau Drive, Stop 8930, National Institute of Standards and Technology, Gaithersburg, MD 20899–8930. Electronic comments should be sent to: *fips.comments@nist.gov*.

Comments received in response to this notice will be published electronically at: *http://csrc.nist.gov/publications/*.

Specifications: Specifications for the Draft FIPS on Standards for Security Categorization of Federal Information and Information Systems are available through the Computer Security Resource Center: *http://csrc.nist.gov/publications/*.

FOR FURTHER INFORMATION CONTACT: Dr. Ron S. Ross (301) 975–5390, National Institute of Standards and Technology, Attn: Computer Security Division 100 Bureau Drive (Mail Stop 8930), Gaithersburg, MD 20899–8930, Email: *rross@nist.gov*.

SUPPLEMENTARY INFORMATION: Under section 5131 of the Information Technology Management Reform Act of 1996 and sections 302–3 of the Federal Information Security Management Act of 2002 (Pub. L. 107–347), the Secretary of Commerce is authorized to approve standards and guidelines for Federal information systems and to make standards compulsory and binding for Federal agencies as necessary to improve the efficiency or security of Federal information systems. The National Institute of Standards and Technology is authorized to develop standards, guidelines, and associated methods and techniques for information systems, other than national security systems, to provide for adequate information security for agency operations and assets.

The Federal Information Security Management Act (FISMA) requires each Federal agency to develop, document, and implement an agency-wide information security program that will provide information security for the information and information systems supporting the operations and assets of the agency, including those provided or managed by another agency, contractor, or other source.

To enable agencies to carry out this responsibility, the FISMA specifically tasked NIST to develop a standard to categorize information and information systems. In addition, NIST was tasked to develop guidelines recommending the types of information to be included in each category, and to develop minimum information security requirements (*i.e.*, management, operational, and technical security controls) for the information and information systems in each category.

In response to the mandate, NIST developed FIPS 199. Draft FIPS 199 defines requirements to be used by Federal agencies to categorize information and information systems, and to provide appropriate levels of information security according to a range of risk levels. This draft standard establishes three potential levels of risk (low, moderate, and high) for each of the security objectives of confidentiality, integrity, and availability. The levels of risk are based on what is known about the potential impact or harm. Harmful events can impact agency operations (including mission, functions, image or reputation), agency assets, or individuals (including privacy). The levels of risk consider both impact and threat, but are more heavily weighted toward impact. Federal information systems, which are often interconnected and interdependent, are vulnerable to a variety of threats (both malicious and unintentional) that could compromise the security of information and information systems.

This standard for categorizing information and information systems supports the implementation of a common framework that will promote the effective government-wide management and oversight of Federal agency information security programs. The common framework will facilitate the coordination of information security efforts throughout the civilian, national, security, and law enforcement communities, and will enable consistent reporting by agencies to the Office of Management and Budget (OMB) and Congress on the adequacy and effectiveness of information security policies, procedures, and practices.

NIST is in the process of developing guidance documents for the second and third tasks mandated by the FISMA and will make these documents available for public comment when they are finalized. For the second assigned task, NIST plans guidelines to help agencies identify, in a consistent manner, the types of information and information systems, (*e.g.*, privacy, medical, proprietary, financial, contractor sensitive, mission critical) appropriate for each category of information and information system. For the third task, NIST plans to develop standards that will describe the minimum sets of security controls for each defined category of information and information system.

Authority: Federal Information Processing Standards Publications (FIPS PUBS) are issued by the National Institute of Standards and Technology after approval by the Secretary of Commerce, pursuant to section 5131 of the Information Technology Management Reform Act of 1996 (Pub. L. 104–106), the Federal Information Security Management Act of 2002 (Pub. L. 107–347), and Appendix III to Office of Management and Budget Circular A–130.

Executive Order 12866: This notice has been determined to be not significant under Executive Order 12866.

Dated: May 9, 2003.

Karen H. Brown,

Deputy Director, NIST.

[FR Doc. 03–12319 Filed 5–15–03; 8:45 am]

BILLING CODE 3510–13–P

DEPARTMENT OF COMMERCE

National Institute of Standards and Technology

Judges Panel of the Malcolm Baldrige National Quality Award

AGENCY: National Institute of Standards and Technology, Department of Commerce.

ACTION: Notice of closed meeting.

SUMMARY: Pursuant to the Federal Advisory Committee Act, 5 U.S.C. app. 2, notice is hereby given that the Judges Panel of the Malcolm Baldrige National Quality Award will meet Wednesday, June 4, 2003. The Judges Panel is composed of nine members prominent in the field of quality management and appointed by the Secretary of Commerce. The purpose of this meeting is to Review the 2003 Baldrige Award Cycle; Discussion of Senior Examiner Training for Site Visits and Final Judging Interaction; Judges' Survey of Applicants; and Judging Process Improvement for Final Judges' Meeting Preparation. The applications under review contain trade secrets and proprietary commercial information submitted to the Government in confidence.

DATES: The meeting will convene June 4, 2003, at 11 a.m. and adjourn at 4:30 p.m. on June 4, 2003. The entire meeting will be closed.

ADDRESSES: The meeting will be held at the National Institute of Standards and Technology, Building 222, Red Training Room, Gaithersburg, Maryland 20899.

FOR FURTHER INFORMATION CONTACT: Dr. Harry Hertz, Director, National Quality Program, National Institute of Standards and Technology, Gaithersburg, Maryland 20899, telephone number (301) 975–2361.

SUPPLEMENTARY INFORMATION: The Assistant Secretary for Administration, with the concurrence of the General Counsel, formally determined on December 3, 2002, that the meeting of the Judges Panel will be closed pursuant to section 10(d) of the Federal Advisory Committee Act, 5 U.S.C. app. 2, as amended by section 5(c) of the Government in the Sunshine Act, Pub. L. 94–409. The meeting, which involves examination of Award applicant data from U.S. companies and a discussion of this data as compared to the Award criteria in order to recommend Award recipients, may be closed to the public in accordance with section 552b(c)(4) of title 5, United States Code, because the meetings are likely to disclose trade secrets and commercial or financial information obtained from a person which is privileged or confidential.

Dated: May 9, 2003.

Karen H. Brown,

Deputy Director.

[FR Doc. 03–12317 Filed 5–15–03; 8:45 am]

BILLING CODE 3510–13–P

DEPARTMENT OF COMMERCE

National Institute of Standards and Technology

Malcolm Baldrige National Quality Award Board of Overseers

AGENCY: National Institute of Standards and Technology, Department of Commerce.

ACTION: Notice of public meeting.

SUMMARY: Pursuant to the Federal Advisory Committee Act, 5 U.S.C. app. 2, notice is hereby given that there will be a meeting of the Board of Overseers of the Malcolm Baldrige National Quality Award on June 5, 2003. The Board of Overseers is composed of 11 members prominent in the field of quality management and appointed by the Secretary of Commerce, assembled to advise the Secretary of Commerce on the conduct of the Baldrige Award. The purpose of this meeting is to discuss and review information received from the National Institute of Standards and Technology with the members of the Judges Panel of the Malcolm Baldrige National Quality Award. The agenda will include: Discussions on Preparing for a Baldrige Non-Profit Category, Should We Guarantee Stage 2 Review to State Award Recipients?, Baldrige Program Metrics; Booz Allen CEO Study Status and Directions, and BNQP Hosin for 2004, a Program Update and Issues from June 4 Judges' Meeting. All visitors to the National Institute of Standards and Technology site will have to pre-register to be admitted. Please submit your name, time of arrival, email address and phone number to Virginia Davis no later than Monday, June 2, 2003, and she will provide you with instructions for admittance. Ms. Davis' email address is *virginia.davis@nist.gov* and her phone number is 301/975–2361.

DATES: The meeting will convene June 5, 2003, at 8:30 a.m. and adjourn at 3 p.m. on June 5, 2003.

ADDRESSES: The meeting will be held at the National Institute of Standards and Technology, Administration Building. Lecture Room B, Gaithersburg, Maryland 20899. Please note admittance instructions under **SUMMARY** paragraph.

FOR FURTHER INFORMATION CONTACT: Dr. Harry Hertz, Director, National Quality Program, National Institute of Standards and Technology, Gaithersburg, Maryland 20899, telephone number (301) 975–2361.

Dated: May 9, 2003.

Karen H. Brown,

Deputy Director.

[FR Doc. 03–12318 Filed 5–15–03; 8:45 am]

BILLING CODE 3510–13–P

COMMITTEE FOR THE IMPLEMENTATIONS OF TEXTILE AGREEMENTS

Establishment of Import Limits for Certain Cotton, Wool and Man-Made Fiber Textiles and Textile Products Produced or Manufactured in the Socialist Republic of Vietnam

May 12, 2003.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner, Bureau of Customs and Border Protection establishing limits

EFFECTIVE DATE: May 16, 2003.

FOR FURTHER INFORMATION CONTACT: Ross Arnold, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce (202) 482–4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port, call (202) 927–5850, or refer to the Bureau of Customs and Border Protection website at http://www.customs.gov. For information on embargoes and quota re-openings, refer to the Office of Textiles and Apparel website at http://otexa.ita.doc.gov.

SUPPLEMENTARY INFORMATION:

Authority: Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Executive Order 11651 of March 3, 1972, as amended.

Consultations on textiles were held with the Government of the Socialist Republic of Vietnam February 20-21 and April 9-18, 2003. On April 25, 2003, representatives of the United States and Vietnam initialed a bilateral textile agreement; this agreement will enter into force upon translation and signature. Pending translation and signature, and in order to carry out the WTO Agreement on Textiles and Clothing, the attached directive to the Commissioner of Customs and Border Protection imposes limits consistent with those provided for in the initialed bilateral textile agreement. These limits apply to goods exported on or after May 1, 2003.

These limits may be revised if Vietnam becomes a member of the World Trade Organization (WTO) and the United States applies the WTO agreement to Vietnam.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 68 FR 1599, published on January 13, 2003).

James C. Leonard III,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

May 12, 2003.

Commissioner,

Bureau of Customs and Border Protection, Washington, DC 20229.

Dear Commissioner: Pursuant to section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); and Executive Order 11651 of March 3, 1972, as amended, you are directed to prohibit, effective on May 16, 2003, entry into the United States for consumption and withdrawal from warehouse for consumption of cotton, wool

and man-made fiber textiles and textile products in the following categories, produced or manufactured in Vietnam and exported during the eight period beginning on May 1, 2003 and extending through December 31, 2003 in excess of the following levels of restraint:

Category	Restraint limit
200	200,000 kilograms.
301	453,333 kilograms.
332	666,667 dozen pairs.
333	24,000 dozen.
334/335	450,000 dozen.
338/339	9,333,333 dozen.
340/640	1,333,333 dozen.
341/641	508,465 dozen.
342/642	369,789 dozen.
345	200,000 dozen.
347/348	4,666,667 dozen.
351/651	321,333 dozen.
352/652	1,233,333 dozen.
359–C/659–C[1]	216,667 kilograms.
359-S/659-S[2]	350,000 kilograms.
434	10,800 dozen.
435	26,667 dozen.
440	1,667 dozen.
447	34,667 dozen.
448	21,333 dozen.
620	4,242,667 square meters.
632	333,333 dozen pairs.
638/639	847,333 dozen.
645/646	133,333 dozen.
647/648	1,315,545 dozen.

[1] Category 359-C: only HTS numbers 6103.42.2025, 6103.49.8034, 6104.62.1020, 6104.69.8010, 6114.20.0048, 6114.20.0052, 6203.42.2010, 6203.42.2090, 6204.62.2010, 6211.32.0010, 6211.32.0025 and 6211.42.0010; Category 659-C: only HTS numbers 6103.23.0055, 6103.43.2020, 6103.43.2025, 6103.49.2000, 6103.49.8038, 6104.63.1020, 6104.63.1030, 6104.69.1000, 6104.69.8014, 6114.30.3044, 6114.30.3054, 6203.43.2010, 6203.43.2090, 6203.49.1010, 6203.49.1090, 6204.63.1510, 6204.69.1010, 6210.10.9010, 6211.33.0010, 6211.33.0017 and 6211.43.0010.

[2] Category 359-S: only HTS numbers 6112.39.0010, 6112.49.0010, 6211.11.8010, 6211.11.8020, 6211.12.8010 and 6211.12.8020; Category 659-S: only HTS numbers 6112.31.0010, 6112.31.0020, 6112.41.0010, 6112.41.0020, 6112.41.0030, 6112.41.0040, 6211.11.1010, 6211.11.1020, 6211.12.1010 and 6211.12.1020.

Textile products in the above categories exported to the United States prior to May 1, 2003 shall not be subject to this directive.

Textile products in the above categories which have been released from the custody of the Bureau of Customs and Border Protection under the provisions of 19 U.S.C. 1448(b) or 1484(a)(1) prior to the effective date of this directive shall not be denied entry under this directive.

These limits may be revised if Vietnam becomes a member of the World Trade Organization (WTO) and the United States applies the WTO agreement to Vietnam.

In carrying out the above directions, the Commissioner of Customs and Border Protection should construe entry into the United States for consumption to include entry for consumption into the Commonwealth of Puerto Rico.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception of the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

James C. Leonard III,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 03–12314 Filed 5–15–03; 8:45 am]

BILLING CODE 3510–DR–S

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[OMB Control No. 9000–0150]

Federal Acquisition Regulation; Submission for OMB Review; Small Disadvantaged Business Procurement Credits

AGENCIES: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Notice of request for public comments regarding an extension to an existing OMB clearance (9000–0150).

SUMMARY: Under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the Federal Acquisition Regulation (FAR) Secretariat has submitted to the Office of Management and Budget (OMB) a request to review and approve an extension of a currently approved information collection requirement concerning small business procurement credit programs. A request for public comments was published in the **Federal Register** at 68 FR 12685 on March 17, 2003. No comments were received.

Public comments are particularly invited on: Whether this collection of information is necessary for the proper performance of functions of the FAR, and whether it will have practical utility; whether our estimate of the public burden of this collection of information is accurate, and based on valid assumptions and methodology; ways to enhance the quality, utility, and clarity of the information to be collected; and ways in which we can minimize the burden of the collection of information on those who are to respond, through the use of appropriate technological collection techniques or other forms of information technology.

DATES: Submit comments on or before June 16, 2003.

ADDRESSES: Submit comments including suggestions for reducing this burden to the General Services Administration, FAR Secretariat (MVA), 1800 F Street, NW., Room 4035, Washington, DC 20405.

FOR FURTHER INFORMATION CONTACT: Rhonda Cundiff, Acquisition Policy Division, GSA, 501–0044.

SUPPLEMENTARY INFORMATION:

A. Purpose

This FAR requirement concerning small disadvantaged procurement credit programs implements the Department of Justice proposal to reform affirmative action in Federal procurement, which was designed to ensure compliance with the constitutional standards established by the Supreme Court. The credits include price evaluation factor targets and certifications.

B. Annual Reporting Burden

Number of Respondents: 20,340.
Responses Per Respondent: 8.97.
Total Responses: 183,257.
Average Burden Hours Per Response: 2.09.
Total Burden Hours: 383,007.
Obtaining Copies of Proposals: Requesters may obtain a copy of the information collection documents from the General Services Administration, FAR Secretariat (MVA), Room 4035, Washington, DC 20405, telephone (202) 501–4755. Please cite OMB Control No: 9000–0150, Small Disadvantaged Business Procurement Credit Programs, in all correspondence.

Dated: May 9, 2003.

Ralph J. Destefano,

Acting Director, Acquisition Policy Division.

[FR Doc. 03–12226 Filed 5–15–03; 8:45 am]

BILLING CODE 6820–EP–P

DELAWARE RIVER BASIN COMMISSION

Notice of Public Hearing; Proposal To Revise the Fee Schedule for the Review of Projects Under Section 3.8 and Article 10 of the Delaware River Basin Compact

AGENCY: Delaware River Basin Commission.

ACTION: Notice of public meeting.

SUMMARY: The Commission will hold a public hearing and solicit comment on proposed changes to the fee schedule for the review of projects under Section 3.8 and Article 10 of the Delaware River Basin Compact. The Commission instituted project review fees in 1972, in order to allocate to applicants a portion of the cost of reviewing water resource projects. The fees, which are paid to the Commission at the time applications are filed, were increased only once, in 1991, and have not been revised since.

The substantive revisions include the following: Instituting filing fees for projects sponsored by political subdivisions of the basin states; for public projects costing less than $250,000, charging a fee of $250; for privately sponsored projects costing $250,000 or less, increasing the fee from $250 to $500; for projects costing from $250,001 to $10,000,000, increasing the fee from 0.1 to 0.2 percent of project cost; and for projects costing over $10,000,000, increasing the fee from 0.04 to 0.06 percent of project cost, not to exceed $50,000. In addition, the surcharge for any project resulting in an out-of-basin diversion is proposed to be increased from 50 percent to double the fee calculated in accordance with the foregoing. The method of calculating project costs is proposed to remain unchanged. New fees are proposed to be instituted for two types of actions: (1) A fee of $5,000 is proposed for a request for an emergency certificate under Section 2.3.9B of the Commission's Rules of Practice and Procedure to waive or amend a docket condition; and (2) a fee of $500 is proposed for the transfer of a docket upon a change of ownership as defined in Resolution No. 87–15. In all cases, if the fixed fee or fee calculated in accordance with the prescribed formulas is deemed by the executive director to be insufficient due to exceptional costs associated with Commission review, it is proposed that the Commission may charge the applicant 100 percent of all costs deemed by the executive director to be exceptional. The revised fee schedule is proposed to become effective on July 1, 2003 for all applications submitted on or after July 1, 2003.

DATES: The public hearing will be held on June 26, 2003 during the Commission's regular business meeting, which will begin at 1 p.m. The hearing will continue until all those present who wish to testify are afforded an opportunity to do so. Persons wishing to testify are asked to register in advance with the Commission Secretary, by phoning 609–883–9500 x203. Written comments will be accepted through the close of the public hearing.

ADDRESSES: The public hearing will be held at the Commission's offices at 25 State Police Drive in West Trenton, New Jersey. Directions are posted on the Commission's Web site at *http://www.drbc.net*. Written comments may be submitted electronically to *fees@drbc.state.nj.us*, with a subject line reading "FEES," or in hard copy to the Commission Secretary, DRBC, PO Box 7360, West Trenton, NJ 08628–0360. The full name, street or post office address, and telephone number for the entity or individual submitting the comment must appear on all submissions.

FOR FURTHER INFORMATION CONTACT: Please contact Pamela M. Bush at 609–883–9500, ext. 203 with questions about the hearing process and comment period or the proposed changes in the project review fee schedule.

SUPPLEMENTARY INFORMATION: A draft resolution containing the proposed new fee schedule may be viewed on the Commission's Web site, *http://www.drbc.net*. The current fee schedule, set forth in Resolution No. 91–3, also may be viewed on the web site.

Dated: May 12, 2003.

Pamela M. Bush,

Commission Secretary.

[FR Doc. 03–12230 Filed 5–15–03; 8:45 am]

BILLING CODE 6360–01–P

DEPARTMENT OF EDUCATION

Notice of Proposed Information Collection Requests

AGENCY: Department of Education.

SUMMARY: The Leader, Regulatory Management Group, Office of the Chief Information Officer, invites comments on the proposed information collection requests as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before July 15, 2003.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Leader, Regulatory Management Group, Office of the Chief Information Officer, publishes that notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, *e.g.*, new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. OMB invites public comment.

The Department of Education is especially interested in public comment addressing the following issues: (1) Is this collection necessary to the proper functions of the Department; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the Department enhance the quality, utility, and clarity of the information to be collected; and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology.

Dated: May 8, 2003.

John D. Tressler,

Leader, Regulatory Management Group, Office of the Chief Information Officer.

Federal Student Aid

Type of Review: Extension.
Title: Lender's Request for Payment of Interest and Special Allowance—LaRS.
Frequency: Quarterly, Annually.
Affected Public: State, Local, or Tribal Gov't, SEAs or LEAs; Businesses or other for-profit.
Reporting and Recordkeeping Hour Burden:
Responses: 14,184.
Burden Hours: 34,573.
Abstract: The Lender's Request for Payment of Interest and Special Allowance—LaRS (ED Form 799) is used by approximately 3,546 lenders participating in the Title IV, Part B loan programs. The ED Form 799 is used to pay interest and special allowance to holders of the Part B loans; and to capture quarterly data from lender's loan portfolio for financial and budgetary projections.

Requests for copies of the proposed information collection request may be accessed from *http://edicsweb.ed.gov*, by selecting the "Browse Pending Collections" link and by clicking on link number 2273. When you access the information collection, click on "Download Attachments" to view. Written requests for information should be addressed to Vivian Reese, Department of Education, 400 Maryland Avenue, SW., Room 4050, Regional Office Building 3, Washington, DC 20202–4651 or to the e-mail address *vivian_reese@ed.gov*. Requests may also be electronically mailed to the internet address *OCIO_RIMG@ed.gov* or faxed to

(202) 708–9346. Please specify the complete title of the information collection when making your request.

Comments regarding burden and/or the collection activity requirements should be directed to Joe Schubart at (202) 708–9266 or via his e-mail address *Joe.Schubart@ed.gov.* Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

Federal Student Aid

Type of Review: Extension of a currently approved collection.

Title: National Student Loan Data System (NSLDS) (JS).

Frequency: On Occasion Weekly Monthly Quarterly.

Affected Public: Not-for-profit institutions (primary), Businesses or other for-profit, State, Local, or Tribal Gov't, SEAs or LEAs.

Reporting and Recordkeeping Hour Burden:

Responses: 29952.

Burden Hours: 179712.

Abstract: The U.S. Department of Education will collect data from postsecondary schools and guaranty agencies about federal Perkins loans, federal family education loans, and William D. Ford direct student loans to be used to determine eligibility for Title IV student financial aid.

Requests for copies of the proposed information collection request may be accessed from *http://edicsweb.ed.gov,* by selecting the "Browse Pending Collections" link and by clicking on link number 2278. When you access the information collection, click on "Download Attachments" to view. Written requests for information should be addressed to Vivian Reese, Department of Education, 400 Maryland Avenue, SW., Room 4050, Regional Office Building 3, Washington, DC 20202–4651 or to the e-mail address *vivian_reese@ed.gov.* Requests may also be electronically mailed to the internet address *OCIO_RIMG@ed.gov* or faxed to (202) 708–9346. Please specify the complete title of the information collection when making your request.

Comments regarding burden and/or the collection activity requirements should be directed to Joe Schubart at his e-mail address *joe.schubart@ed.gov.* Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

[FR Doc. 03–12224 Filed 5–15–03; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Submission for OMB Review; Comment Request

AGENCY: Department of Education.

SUMMARY: The Leader, Regulatory Management Group, Office of the Chief Information Officer invites comments on the submission for OMB review as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before June 16, 2003.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Karen Lee, Desk Officer, Department of Education, Office of Management and Budget, 725 17th Street, NW., Room 10235, New Executive Office Building, Washington, DC 20503 or should be electronically mailed to the internet address *Karen_F._Lee@omb.eop.gov.*

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Leader, Regulatory Management Group, Office of the Chief Information Officer, publishes that notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, *e.g.* new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. OMB invites public comment.

Dated: May 12, 2003.

John D. Tressler,

Leader, Regulatory Management Group, Office of the Chief Information Officer.

Office of Postsecondary Education

Type of Review: Revision of a currently approved collection.

Title: Performance Report for the Jacob K. Javits Fellowship Program (JS).

Frequency: Annually.

Affected Public: Not-for-profit institutions (primary). Businesses or other for-profit.

Reporting and Recordkeeping Hour Burden:

Responses: 115.

Burden Hours: 690.

Abstract: This information collection provides the U.S. Department of Education with information needed to determine if grantees have made substantial progress toward meeting the program's objectives and allow program staff to monitor and evaluate the program. The Congress has mandated (through the Government's Performance and Results Act of 1993) that the U.S. Department of Education provide documentation about the progress being made by the program.

Requests for copies of the submission for OMB review; comment request may be accessed from *http://edicsweb.ed.gov,* by selecting the "Browse Pending Collections" link and by clicking on link number 2256. When you access the information collection, click on "Download Attachments" to view. Written requests for information should be addressed to Vivian Reese, Department of Education, 400 Maryland Avenue, SW., Room 4050, Regional Office Building 3, Washington, DC 20202–4651 or to the e-mail address *vivan.reese@ed.gov.* Requests may also be electronically mailed to the internet address *OCIO_RIMG@ed.gov* or faxed to (202) 708–9346. Please specify the complete title of the information collection when making your request.

Comments regarding burden and/or the collection activity requirements should be directed to Joe Schubart at his e-mail address *joe.schubart@ed.gov.* Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

[FR Doc. 03–12225 Filed 5–15–03; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

[CFDA No. 84.184E]

Office of Safe and Drug-Free Schools—Emergency Response and Crisis Management Grant Program; Notice Inviting Applications for New Awards for Fiscal Year (FY) 2003

Purpose: The Emergency Response and Crisis Management Program provides grants to local educational agencies (LEAs) to improve and strengthen emergency response and crisis management plans, including training school personnel, students, and parents in emergency response procedures and coordinating with local law enforcement, public safety, health, and mental health agencies.

Eligible Applicants: LEAs with a significant need for emergency preparedness improvements and a lack of fiscal capacity to implement these improvements.

Applications Available: May 16, 2003.

Deadline for Transmittal of Applications: June 30, 2003.

Deadline for Intergovernmental Review: August 29, 2003.

Estimated Available Funds: $38 million.

Estimated Range of Awards: $100,000–$500,000.

Estimated Average Size of Awards: We estimate that: A small school district (with 1–20 school facilities) will need up to $100,000 for the 18-month period; a medium-size school district (with between 21 and 75 school facilities) will need a maximum of $250,000 for the 18-month period; and a large-size school district (with 76 or more school facilities) will need a maximum of $500,000 for the 18-month period. Applicants requesting funds in excess of the recommended amounts will need to justify their need for those funds.

Estimated Number of Awards: 150.

Note: The Department is not bound by any estimate in this notice.

Project Period: Up to 18 months.

Applicable Regulations: (a) The Education Department General Administrative Regulations in 34 CFR parts 75, 77, 79, 80, 81, 82, 85, 97, 98, and 99. (b) The regulations in 34 CFR part 299.

General: Contingent upon the availability of funds, we may make additional awards in FY 2004 from the rank-ordered list of unfunded applications from this competition.

Participation by Private-School Children and Teachers: LEAs that receive a grant are required to provide for the equitable participation of eligible private-school children and their teachers or other educational personnel. In order to ensure that grant program activities address the needs of private-school children, timely and meaningful consultation with appropriate private school officials must occur during the design and development of the program. Administrative direction and control over grant funds must remain with the grantee.

Maintenance of Effort: LEAs may receive a grant only if the State educational agency finds that the combined fiscal effort per student or the aggregate expenditures of the agency and the State with respect to the provision of free public education by the agency for the preceding fiscal year was not less than 90 percent of the combined effort or aggregate expenditures for the second preceding fiscal year.

Absolute Priority: We give an absolute preference to applications that meet the following priority, and fund under this competition only those applications that meet the following absolute priority: LEA projects to improve and strengthen emergency response and crisis management plans, including training school personnel, students and parents in emergency response procedures and coordinating with local law enforcement, public safety, health, and mental health agencies.

To be considered for a grant award, applications must include an agreement that details the participation of the LEA and the following five community-based partners from the local area: Law enforcement, public safety, health, mental health, and the head of your local government (for example your mayor, city manager, or county executive). The agreement must detail the roles and responsibilities each of the required partners will have in improving and strengthening the plan. The agreement must also reflect each partner's agreement to receive a final copy of the plan. Finally, your agreement must include an authorized signature representing the LEA and each community-based partner.

If one or more of these five partners is not present in your community, or cannot feasibly participate, the agreement must explain the absence of each missing partner. Every application must include signatures representing at least the LEA and two of the required five partners, and explanations for the absence any of the remaining required partners.

Applications that fail to include the required agreement (with signatures and explanations for missing signatures as specified) will not be read.

Although this program requires partnerships with other parties, administrative direction and fiscal control for the project must remain with the local educational agency.

Selection Criteria: We use the following selection criteria to evaluate applications for new grants under this competition. The maximum score for all of these criteria is 100 points. The maximum score for each criterion or factor under that criterion is indicated in parentheses.

(1) *Need for project.* (25 points)

In determining the need for the proposed project, the following factors are considered:

(a) The magnitude of the need for the services to be provided or the activities to be carried out by the proposed project (15 points).

Note: Under this factor we will look for a clear and convincing demonstration of significant need—such as a recent vulnerability and needs assessment—to improve and strengthen the LEA's emergency response and crisis management plan, as well as how the proposed plan will address need.

(b) The extent to which specific gaps and weaknesses in services, infrastructure, or opportunities have been identified and will be addressed by the proposed project, including the nature and magnitude of those gaps or weaknesses (10 points).

Note: Under this factor we will look at the extent to which the applicant demonstrates a lack of fiscal capacity to implement needed improvements to its emergency response/crisis management plan.

(2) *Significance.* (25 points)

In determining the significance of the proposed project, the following factors are considered:

(a) The likelihood that the proposed project will result in system change and improvement (10 points).

(b) The extent to which the proposed project is likely to build local capacity to provide, improve, or expand services that address the needs of the target population (15 points).

Note: Under the Significance criterion, we will look for the applicant's identification of the vulnerabilities to which its school facilities may be exposed and its comprehensive approach to addressing those vulnerabilities in the proposed emergency response/crisis management plan. We expect that applicants will propose comprehensive approaches that do not rely solely on equipment and technology purchases, and address the four phases of crisis planning—mitigation/prevention, preparedness, response and recovery.

(3) *Quality of the project design.* (35 points)

In determining the quality of the design of the proposed project, the following factors are considered:

(a) The extent to which the proposed project is designed to build capacity and yield results that will extend beyond the period of Federal financial assistance (10 points).

Note: Under this factor we will look for the applicant's intent to develop a plan that will respond to emerging potential crises and is practiced, updated, and revised frequently.

(b) The extent to which the design of the proposed project reflects up-to-date

knowledge from research and effective practice (20 points).

Note: Under this factor we will look for the applicant's inclusion of the four phases (mitigation/prevention, preparedness, response, and recovery) in "Practical Information on Crisis Planning: A Guide for Schools and Communities" (available online at *http://www.ed.gov/emergencyplan*) and a clear description of how the proposed project will address those four phases.

(c) The extent to which the proposed project encourages parental involvement. (5 points)

(4) *Quality of the project evaluation.* (5 points)

In determining the quality of the evaluation, the following factor is considered:

(a) The extent to which the methods of evaluation include the use of objective performance measures that are clearly related to the intended outcomes of the project and will produce quantitative and qualitative data to the extent possible. (5 points)

(5) *Quality of the management plan.* (10 points)

In determining the quality of the management plan, the following factor is considered:

(a) How the applicant will ensure that a diversity of perspectives are brought to bear in the operation of the proposed project, including those of parents, teachers, the business community, a variety of disciplinary and professional fields, recipients or beneficiaries of services, or others, as appropriate. (10 points)

Note: Under this criterion we will look at the quality of the applicant's planned coordination and collaboration with the head of the local government, and community-based law enforcement, public safety, health, and mental health agencies in the strengthening and improvement of the plan. This description should go beyond simply the roles and responsibilities discussed in the absolute priority.

Waiver of Proposed Rulemaking: Under the Administrative Procedure Act (5 U.S.C. 553), the Secretary generally offers interested parties the opportunity to comment on proposed rules. Section 437(d)(1) of the General Education Provisions Act, however, exempts from this requirement rules that apply to the first competition under a new or substantially revised program authority. This is the first competition under the Emergency Response and Crisis Management Grant Program. These rules will apply to the FY 2003 grant competition only.

For Applications Contact: Education Publications Center (ED Pubs), P.O. Box 1398, Jessup, MD 20794–1398. Telephone (toll free): 1–877–433–7827. Fax: (301) 470–1244. If you use a telecommunications device for the deaf, you may call 1–877–576–7734. You may also contact ED Pubs at its Web site: *http://www.ed.gov/pubs/edpubs/html.*

Or you may contact ED Pubs at its e-mail address: *edpubs@inet.ed.gov.*

If you request an application from ED Pubs, be sure to identify this competition as follows: CFDA No. 84.184.E. Individuals with disabilities may obtain this document in an alternative format (*e.g.*, Braille, large print, audiotape, or computer diskette) on request to the contact person listed below.

Pilot Project for Electronic Submission of Applications: In FY 2003, the U.S. Department of Education is continuing to expand its pilot project for electronic submission of applications to include additional formula grant programs and additional discretionary grant competitions. The Emergency Response and Crisis Management Grant Program (CFDA #84.184.E) is one of the programs included in the pilot project. If you are an applicant under this grant program, you may submit your application to us in either electronic or paper format.

The pilot project involves the use of the Electronic Grant Application System (e-Application) portion of the Grant Administration and Payment System (GAPS). Users of e-Application will be entering data on-line while completing their applications. You may not e-mail a soft copy of a grant application to us. If you participate in this voluntary pilot project by submitting an application electronically, the data you enter on-line will be saved into a database. We request your participation in e-Application. We shall continue to evaluate its success and solicit suggestions for improvement.

If you participate in e-Application, please note the following:

- Your participation is voluntary.
- You will not receive any additional point value because you submit a grant application in electronic format, nor will we penalize you if you submit an application in paper format. When you enter the e-Application system, you will find information about its hours of operation.
- You may submit all documents electronically, including the Application for Federal Assistance (ED 424), Budget Information—Non-Construction Programs (ED 524), and all necessary assurances and certifications.
- After you electronically submit your application, you will receive an automatic acknowledgement, which will include a PR/Award number (an identifying number unique to your application).
- Within three working days after submitting your electronic application, fax a signed copy of the Application for Federal Assistance (ED 424) to the Application Control Center after following these steps:

(1) Print ED 424 from the e-Application system.

(2) The institution's Authorizing Representative must sign this form.

(3) Place the PR/Award number in the upper right hand corner of the hard copy signature page of the ED 424.

(4) Fax the signed ED 424 to the Application Control Center at (202) 260–1349.

- We may request that you give us original signatures on all other forms at a later date.
- Closing Date Extension in Case of System Unavailability: If you elect to participate in the e-Application pilot for the Emergency Response and Crisis Management Grant Program and you are prevented from submitting your application on the closing date because the e-Application system is unavailable, we will grant you an extension of one business day in order to transmit your application electronically, by mail, or by hand delivery. For us to grant this extension—

(1) You must be a registered user of e-Application, and have initiated an e-Application for this competition; and

(2)(a) The e-Application system must be unavailable for 60 minutes or more between the hours of 8:30 and 3:30 p.m., Washington, DC time, on the deadline date; or

(b) The e-Application system must be unavailable for any period of time during the last hour of operation (that is, for any period of time between 3:30 and 4:30 p.m., Washington, DC time) on the deadline date.

The Department must acknowledge and confirm these periods of unavailability before granting you an extension. To request this extension you must contact either (1) the person listed elsewhere in this notice under **FOR FURTHER INFORMATION CONTACT** or (2) the e-GRANTS help desk at 1–888–336–8930.

You may access the electronic grant application for the Emergency Response and Crisis Management Grant Program at: *http://e-grants.ed.gov.*We have included additional information about the e-Application pilot project (see Parity Guidelines between Paper and Electronic Applications) in the application package. If you want to apply for a grant and be considered for funding, you must meet the deadline requirements included in this notice.

FOR FURTHER INFORMATION CONTACT: Connie Ann Deshpande or Jennifer Medearis, U.S. Department of Education, 400 Maryland Avenue, SW., Room 3E332, Washington, DC 20202–6450. Connie Deshpande: Telephone: (202) 401–2140; email address: Connie.Deshpande@ed.gov; Jennifer Medearis: Telephone: (202) 260–5571; email address: *Jennifer.Medearis@ed.gov.* If you use a telecommunications device for the deaf (TDD), you may call the Federal Information Relay Service (FIRS) at 1–888–877–8339.

Electronic Access to This Document

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To use PDF, you must have Adobe Acrobat Reader, which is available free at this site. If you have questions about using PDF, call the U.S. Government Printing Office (GPO) toll free at 1–888–293–6498; or in the Washington, DC area at (202) 512–1530.

Note: The official version of this document is the document published in the **Federal Register**. Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available on GPO Access at: *http://www.access.gpo.gov/nara/index.html*

(Catalog of Federal Domestic Assistance Number 84.184.E, Safe and Drug-Free Schools and Community Act National Programs—Emergency Response and Crisis Management Grant Program)

Program Authority: 20 U.S.C. 7131.

Dated: May 13, 2003.

Judge Eric Andell,

Deputy Under Secretary for Safe and Drug-Free Schools.

[FR Doc. 03–12394 Filed 5–15–03; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

William D. Ford Federal Direct Loan Program

AGENCY: Department of Education.

ACTION: Notice of the annual updates to the Income Contingent Repayment (ICR) plan formula for 2003.

SUMMARY: The Secretary announces the annual updates to the ICR plan formula for 2003. Under the William D. Ford Federal Direct Loan (Direct Loan) Program, borrowers may choose to repay their student loans under the ICR plan, which bases the repayment amount on the borrower's income, family size, loan amount, and interest rate. Each year, we adjust the formula for calculating a borrower's payment to reflect changes due to inflation. This notice contains the adjusted income percentage factors for 2003 and charts showing sample repayment amounts based on the adjusted ICR plan formula. It also contains examples of how the calculation of the monthly ICR amount is performed and a constant multiplier chart for use in performing the calculations. The adjustments for the ICR plan formula contained in this notice are effective from July 1, 2003 to June 30, 2004.

FOR FURTHER INFORMATION CONTACT: Don Watson, U.S. Department of Education, Room 092B1, UCP, 400 Maryland Avenue, SW., Washington, DC 20202–5400. Telephone: (202) 377–4008. If you use a telecommunications device for the deaf (TDD), you may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

Individuals with disabilities may obtain this document in an alternative format (*e.g.*, Braille, large print, audiotape, or computer diskette) on request to the contact person listed in the preceding paragraph.

SUPPLEMENTARY INFORMATION: Direct Loan Program borrowers may choose to repay their Direct Loans under the ICR plan. The attachment to this notice provides updates to examples of how the calculation of the monthly ICR amount is performed, the income percentage factors, the constant multiplier chart, and charts showing sample repayment amounts.

We have updated the income percentage factors to reflect changes based on inflation. We have revised the income percentage factors table by changing the dollar amounts of the incomes shown by a percentage equal to the estimated percentage change in the Consumer Price Index for all urban consumers from December 2002 to December 2003. Further, we provide examples of monthly repayment amount calculations and two charts that show sample repayment amounts for single and married or head-of-household borrowers at various income and debt levels based on the updated income percentage factors.

The updated income percentage factors, at any given income, may cause a borrower's payments to be slightly lower than they were in prior years. This updated amount more accurately reflects the impact of inflation on a borrower's current ability to repay.

Electronic Access to This Document

You may review this document, as well as all other Department of Education documents published in the **Federal Register**, in text or Adobe Portable Document Format (PDF) on the Internet at the following site: *http://www.ed.gov/legislation/FedRegister.*

To use PDF, you must have Adobe Acrobat Reader, which is available free at this site. If you have questions about using PDF, call the U.S. Government Printing Office (GPO), toll free at 1–888–293–6498; or in the Washington, DC area at (202) 512–1530.

Note: The official version of this document is the document published in the **Federal Register**. Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available on GPO Access at: *http://www.access.gpo.gov/nara/index.html.*

Program Authority: 20 U.S.C. 1087 *et seq.*

Dated: May 13, 2003.

Theresa S. Shaw,

Chief Operating Officer, Federal Student Aid.

Attachment—Examples of the Calculations of Monthly Repayment Amounts

Example 1. This example assumes you are a single borrower with $15,000 in Direct Loans, the interest rate being charged is 8.25 percent, and you have an adjusted gross income (AGI) of $33,042.

Step 1: Determine your annual payments based on what you would pay over 12 years using standard amortization. To do this, multiply your loan balance by the constant multiplier for 8.25 percent interest (0.131545). The constant multiplier is a factor used to calculate amortized payments at a given interest rate over a fixed period of time. (The 8.25 percent interest rate used in this example is the maximum interest rate that may be charged for all Direct Loans excluding Direct PLUS Loans and certain Direct PLUS Consolidation Loans; your actual interest rate may be lower. You can view the constant multiplier chart at the end of this notice to determine the constant multiplier that you should use for the interest rate on your loan. If your exact interest rate is not listed, use the next highest for estimation purposes.)

- 0.131545 × $15,000 = $1,973.18

Step 2: Multiply the result of Step 1 by the income percentage factor shown in the income percentage factors table that corresponds to your income and then divide the result by 100. (If your income is not listed in the income percentage factors table, calculate the applicable income percentage factor by following the instructions under the "Interpolation" heading later in this notice.):

- 88.77 × $1,973.18 ÷ 100 = $1,751.59

Step 3: Determine 20 percent of your discretionary income (your discretionary income is your AGI minus the HHS Poverty Guideline amount for your family size). Because you are a single borrower, subtract the poverty level for a family of one, as published in the **Federal Register** on February 7, 2003 (68 FR 6456), from your AGI and multiply the result by 20 percent:

- $33,042 − $8,980 = $24,062
- $24,062 × 0.20 = $4,812.40

Step 4: Compare the amount from Step 2 with the amount from Step 3. The lower of the two will be your annual payment amount. In this example, you will be paying the amount calculated under Step 2. To determine your monthly repayment amount, divide the annual amount by 12.

- $1,751.59 ÷ 12 = $145.97

Example 2. In this example, you are married. You and your spouse have a combined AGI of $62,439 and are repaying your loans jointly under the ICR plan. You have no children. You have a Direct Loan balance of $10,000, and your spouse has a Direct Loan balance of $15,000. Your interest rate is 8.25 percent.

Step 1: Add your and your spouse's Direct Loan balances together to determine your aggregate loan balance:

- $10,000 + $15,000 = $25,000

Step 2: Determine the annual payment based on what you would pay over 12 years using standard amortization. To do this, multiply your aggregate loan balance by the constant multiplier for 8.25 percent interest (0.131545). (The 8.25 percent interest rate used in this example is the maximum interest rate that may be charged for all Direct Loans excluding Direct PLUS Loans and certain Direct PLUS Consolidation Loans; your actual interest rate may be lower. You can view the constant multiplier chart at the end of this notice to determine the constant multiplier that you should use for the interest rate on your loan. If your exact interest rate is not listed, use the next highest for estimation purposes.)

- 0.131545 × $25,000 = $3,288.63

Step 3: Multiply the result of Step 2 by the income percentage factor shown in the income percentage factors table that corresponds to your and your spouse's income and then divide the result by 100. (If your and your spouse's aggregate income is not listed in the income percentage factors table, calculate the applicable income percentage factor by following the instructions under the "Interpolation" heading later in this notice.):

- 109.40 × $3,288.63 ÷ 100 = $3,597.76

Step 4: Determine 20 percent of your discretionary income. To do this, subtract the poverty level for a family of two, as published in the **Federal Register** on February 7, 2003 (68 FR 6456), from your combined AGI and multiply the result by 20 percent:

- $62,439 − $12,120 = $50,319
- $50,319 × 0.20 = $10,063.80

Step 5: Compare the amount from Step 3 with the amount from Step 4. The lower of the two will be your annual payment amount. You and your spouse will pay the amount calculated under Step 3. To determine your monthly repayment amount, divide the annual amount by 12.

- $3,597.76 ÷ 12 = $299.81

Interpolation: If your income does not appear on the income percentage factors table, you will have to calculate the income percentage factor through interpolation. For example, assume you are single and your income is $25,000.

Step 1: Find the closest income listed that is less than your income of $25,000 and the closest income listed that is greater than your income of $25,000.

Step 2: Subtract the lower amount from the higher amount (for this discussion, we will call the result the "income interval"):

- $26,306 − $22,108 = $4,198

Step 3: Determine the difference between the two income percentage factors that are given for these incomes (for this discussion, we will call the result, the "income percentage factor interval"):

- 80.33% − 71.89% = 8.44%

Step 4: Subtract from your income the closest income shown on the chart that is less than your income of $25,000:

- $25,000 − $22,108 = $2,892

Step 5: Divide the result of Step 4 by the income interval determined in Step 2:

- $2,892 ÷ $4,198 = 0.6889

Step 6: Multiply the result of Step 5 by the income percentage factor interval:

- 8.44% × 0.6889 = 5.8143%

Step 7: Add the result of Step 6 to the lower of the two income percentage factors used in Step 3 to calculate the income percentage factor interval for $25,000 in income:

- 5.8143% + 71.89% = 77.70% (rounded to the nearest hundredth)

The result is the income percentage factor that will be used to calculate the monthly repayment amount under the ICR plan.

2003 Income Percentage Factors

[Based on Annual Income]

Single		Married/head of household	
Income	% Factor	Income	% Factor
8,637	55.00	8,637	50.52
11,885	57.79	13,629	56.68
15,293	60.57	16,243	59.56
18,779	66.23	21,234	67.79
22,108	71.89	26,306	75.22
26,306	80.33	33,042	87.61
33,042	88.77	41,439	100.00
41,440	100.00	49,840	100.00
49,840	100.00	62,439	109.40
59,901	111.80	83,435	125.00
76,701	123.50	112,831	140.60
108,633	141.20	157,799	150.00
124,558	150.00	257,856	200.00
221,860	200.00		

Constant Multiplier Chart for 12-Year Amortization

Interest rate percent	Annual constant multiplier
4.06	0.105413
4.86	0.110146
7.00	0.123406
7.25	0.125011
7.46	0.126368

Constant Multiplier Chart for 12-Year Amortization—Continued

Interest rate percent	Annual constant multiplier
7.50	0.126627
7.75	0.128255
8.00	0.129894
8.25	0.131545
8.50	0.133207

Constant Multiplier Chart for 12-Year Amortization—Continued

Interest rate percent	Annual constant multiplier
8.75	0.134880
9.00	0.136564

BILLING CODE 4000–01–P

Sample First-Year Monthly Repayment Amounts for a Single Borrower at Various Income and Debt Levels

Income	Initial Debt																			
	$ 2,500	$ 5,000	$ 7,500	$ 10,000	$ 12,500	$ 15,000	$ 17,500	$ 20,000	$ 22,500	$ 25,000	$ 30,000	$ 35,000	$ 40,000	$ 45,000	$ 50,000	$ 55,000	$ 60,000	$ 65,000	$ 70,000	$ 75,000	$ 80,000	$ 85,000	$ 90,000	$ 100,000
$ 1,000	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
2,000	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
3,000	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
4,000	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
5,000	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
6,000	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
7,000	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
8,000	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
9,000	5	5	5	5	5	5	5	5	5	5	5	5	5	5	5	5	5	5	5	5	5	5	5	5
10,000	15	17	17	17	17	17	17	17	17	17	17	17	17	17	17	17	17	17	17	17	17	17	17	17
12,500	16	32	48	[illegible]	99	99	99	99	99	99	99	99	99	99	99	99	99	99	99	99	99	99	99	99
15,000	17	33	50	66	83	99	100	100	100	100	[illegible]	100	100	100	100	100	100	100	100	100	100	100	100	100
17,500	18	35	53	70	88	105	123	140	142	142	142	142	142	142	142	142	142	142	142	141	141	142	142	142
20,000	19	37	56	75	94	112	131	150	168	184	184	184	184	184	184	184	184	184	184	184	184	184	184	184
22,500	[illegible]	60	80	100	120	139	159	179	199	215	225	225	225	225	225	225	225	225	223	225	225	225	225	225
25,000	21	43	64	85	106	128	149	170	192	213	256	267	267	267	267	267	267	267	267	267	267	267	267	267
30,000	23	47	70	93	116	140	163	186	210	233	279	326	330	330	330	330	330	330	330	330	330	330	330	330
35,000	25	[illegible]	75	100	125	150	175	200	225	250	300	350	393	434	434	434	434	434	434	434	434	434	434	434
40,000	27	54	81	108	134	161	188	215	242	269	323	376	430	484	517	517	517	517	517	517	517	517	517	517
45,000	27	55	82	110	137	164	192	219	247	274	329	384	439	493	549	600	600	600	600	600	600	600	600	600
50,000	27	55	82	110	137	165	192	220	247	275	329	384	439	493	549	604	658	684	684	684	684	684	684	684
55,000	29	58	87	116	145	174	203	233	262	291	349	407	465	523	581	639	698	756	767	767	767	767	767	767
60,000	31	61	92	123	153	184	215	245	276	307	368	429	491	552	613	674	736	797	850	850	850	850	850	850
65,000	32	63	95	126	158	190	221	253	285	316	379	443	506	569	632	695	759	822	885	934	934	934	934	934
70,000	33	65	97	130	163	195	228	261	293	326	391	456	521	586	651	716	782	847	912	977	1017	1017	1017	1017
75,000	34	67	101	134	168	201	235	268	302	335	402	469	536	603	670	737	805	872	939	1006	1073	1100	1100	1100
80,000	34	69	103	137	172	206	240	275	309	343	412	481	550	618	687	756	824	893	962	1030	1099	1168	1184	1184
85,000	35	70	105	140	176	211	246	281	316	351	421	491	562	632	703	772	843	913	983	1053	1123	1194	1264	1267
90,000	36	72	108	143	179	215	251	287	323	359	430	502	574	646	717	789	861	933	1004	1076	1148	1219	1291	1350
95,000	37	73	110	147	183	220	258	293	330	366	440	513	586	659	733	806	879	952	1026	1099	1172	1245	1318	1434
100,000	37	75	112	150	187	224	262	299	336	374	449	523	598	673	748	822	897	972	1047	1122	1198	1271	1346	1495

Sample repayment amounts are based on an interest rate of 8.25%.

Sample First-Year Monthly Repayment Amounts for a Married or Head-of-Household Borrower at Various Income and Debt Levels

Income	Family Size = 3 Initial Debt																			
	$ 2,500	$ 5,000	$ 7,500	$ 10,000	$ 12,500	$ 15,000	$ 17,500	$ 20,000	$ 22,500	$ 25,000	$ 30,000	$ 35,000	$ 40,000	$ 45,000	$ 50,000	$ 55,000	$ 60,000	$ 65,000	$ 70,000	$ 75,000	$ 80,000	$ 85,000	$ 90,000	$ 100,000
$ 1,000	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
2,000	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
3,000	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
4,000	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
5,000	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
6,000	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
7,000	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
8,000	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
9,000	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
10,000	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
12,500	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
15,000	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
17,500	17	34	37	37	37	37	37	37	37	37	37	37	37	37	37	37	37	37	37	37	37	37	37	37
20,000	18	36	54	72	79	79	79	79	79	79	79	79	79	79	79	79	79	79	79	79	79	79	79	79
22,500	19	38	57	76	95	115	121	121	121	121	121	121	121	121	121	121	121	121	121	121	121	121	121	121
25,000	20	40	60	80	100	121	141	161	161	161	162	162	162	162	162	162	162	162	162	162	162	162	162	162
30,000	22	45	67	90	112	135	157	180	202	225	246	246	246	246	246	246	246	246	246	246	246	246	246	246
35,000	23	50	74	99	124	149	174	198	223	248	298	329	329	329	329	329	329	329	329	329	329	329	329	329
40,000	27	54	80	107	134	161	188	215	241	268	322	376	412	412	412	412	412	412	412	412	412	412	412	412
45,000	27	55	82	110	137	164	192	220	247	274	329	384	439	493	549	579	579	579	579	579	579	579	579	579
50,000	27	55	82	110	137	165	192	220	247	274	329	384	439	493	549	604	658	662	662	662	662	662	662	662
55,000	28	57	85	114	142	171	199	228	256	285	342	398	455	512	569	626	682	739	746	746	746	746	746	746
60,000	29	59	88	118	147	177	206	236	265	295	354	413	472	531	590	649	708	766	823	829	829	829	829	829
65,000	31	61	91	122	153	183	214	244	274	305	366	427	488	549	610	671	732	793	854	912	912	912	912	912
70,000	33	63	95	126	158	189	221	252	284	315	378	441	504	567	630	693	757	820	883	946	1007	1074	1079	1079
75,000	33	65	98	130	163	195	228	260	293	326	391	456	521	586	651	716	781	846	911	976	1042	1107	1162	1162
80,000	34	67	101	134	168	201	235	268	302	335	403	469	536	603	670	737	805	872	940	1007	1074	1079	1079	1079
85,000	34	69	103	138	172	207	241	275	310	345	414	483	552	621	690	759	828	897	966	1035	1103	1162	1162	1162
90,000	35	70	106	141	176	211	246	282	317	352	423	493	563	634	704	775	845	916	986	1056	1127	1197	1246	1246
95,000	36	72	108	144	180	216	252	288	323	359	431	503	575	647	719	791	863	934	1006	1078	1150	1222	1294	1329
100,000	37	73	110	147	183	220	257	293	330	367	440	513	587	660	733	807	880	953	1027	1100	1173	1247	1320	1412

Sample repayment amounts are based on an interest rate of 8.25%.

[FR Doc. 03–12283 Filed 5–15–03; 8:45 am]
BILLING CODE 4000–01–C

DEPARTMENT OF EDUCATION

Student Assistance General Provisions

AGENCY: Department of Education.

ACTION: Notice implementing a new electronic process(eZ-Audit) for submitting compliance and financial statement audits.

SUMMARY: The Secretary gives notice that on June 16, 2003, the Department will fully implement the eZ-Audit process under which an institution that participates, or seeks to participate, in the Federal student aid programs submits its compliance and financial statement audit information electronically. The Federal student aid programs are authorized under Title IV of the Higher Education Act of 1965, as amended (Title IV, HEA Programs). This notice applies to any compliance or financial statement audits that an institution is required to submit under 34 CFR 600.20(a) or (b) to begin or continue participating in the Title IV, HEA Programs, any financial statement audits required for an institution that undergoes a change in ownership resulting in a change in control as provided under 34 CFR 600.20(g), any compliance and financial statement audits that an institution is required to submit annually under 34 CFR 668.23, and any compliance and financial statement audits required of an institution that ceases to participate in the Title IV, HEA Programs as provided under 34 CFR 668.26(b).

Effective immediately, institutions may voluntarily begin using eZ-Audit to submit any required audits. Beginning on June 16, 2003, all institutions are required to use eZ-Audit for submitting electronically any required audit that is due on or after that date. However, if an institution is unable to use eZ-Audit to submit its first audit that is due on or after June 16, 2003, it should contact the person identified below to make alternative arrangements for submitting that audit.

FOR FURTHER INFORMATION CONTACT: Ti Baker, Management and Program Analyst, Schools Channel, Federal Student Aid, U.S. Department of Education, Union Center Plaza, 074G2, 830 First Street, Washington, DC 20202. Telephone: (202) 377–3156, Fax: (202) 275–5726, or via Internet: *fsaezaudit@ed.gov*.

If you use a telecommunications device for the deaf (TDD), you may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

Individuals with disabilities may obtain this document in an alternative format (*e.g.*, Braille, large print, audiotape, or computer diskette) on request to the program contact person listed under **FOR FURTHER INFORMATION CONTACT.**

SUPPLEMENTARY INFORMATION: eZ-Audit is a web-based process designed to facilitate the submission of compliance and financial statement audits; expedite the review of those audits by the Department, and provide more timely and useful information to institutions regarding the Department's review. This notice deals only with the procedures for submitting audits under the eZ-Audit process. More detailed information about other aspects of the eZ-Audit process is available under the Electronic Announcements section at *http://www.IFAP.ed.gov*.

Proprietary institutions are required to submit audits directly to the Department regardless of the reason those audits are required. Currently, all non-profit and public institutions are required to conduct and submit annual compliance and financial statement audits in accordance with Office of Management and Budget (OMB) Circular A–133. Under OMB Circular A–133, these institutions submit their annual audits to the Federal Audit Clearinghouse (Clearinghouse) that in turn provides copies to the Department and other Federal agencies. For any other audits that a non-profit or public institution is required to conduct under the Title IV, HEA Program regulations, those audits are submitted directly to the Department.

OMB Circular A–133 also provides that in response to a request from a Federal agency, non-profit and public institutions must submit their annual audits directly to that agency. Accordingly, the Department hereby requests non-profit and public institutions to submit copies of their OMB Circular A–133 annual audits directly to us through eZ-Audit. The Department makes this request to maximize the utility of eZ-Audit by establishing a uniform process under which all institutions submit any audit required under the Title IV, HEA Program regulations. We note that non-profit and public institutions whose annual audits are conducted in accordance with OMB Circular A–133 must continue to submit those audits to the Clearinghouse.

The Department will carefully monitor the utility of the eZ-Audit approach in identifying fraud and reducing error in Federal student aid programs and improving the validity and reliability of the data reported. The Department will also ensure that it minimizes the burden associated with submitting audits under this approach.

After completing the first cycle of audits under this approach, the Department will implement any reforms necessary to enhance the utility of the data it receives and reduce burden on institutions. Moreover, the Department will consider modifying the eZ-Audit process in view of any significant changes the Clearinghouse may make in accepting electronic audit submissions and in response to the continuing efforts by the accounting community to standardize the format and presentation of electronic audit data.

eZ-Audit Process

An authorized person at an institution submits required audits on behalf of the institution by (1) accessing the appropriate page on the eZ-Audit website using identity credentials issued to the institution by the Department, (2) entering general information about the institution's compliance audit, (3) entering general information and specific financial data from the institution's audited financial statements, and (4) attaching authentic copies of the signed audits.

Identity Credentials

An institution obtains credentials for accessing the eZ-Audit system by completing and signing registration materials described under the Electronic Announcements section at *http://www.IFAP.ed.gov*, and submitting them to: The U.S. Department of Education, Federal Student Aid, *Attention:* Ti Baker,830 First Street, NE.,Washington, DC 20202.

After receiving the registration materials, the Department will send electronically identity credentials (initially a username and password) to the institution. Although we expect to be able to issue identity credentials within a few days after receiving a request, an institution should submit its registration materials as soon as possible to ensure that it can use the eZ-Audit system to submit required audits on and after June 2, 2003.

Entering Information About the Audits

An institution enters general and specific information about its compliance audits and financial statements on the appropriate eZ-Audit web pages. General information is used to determine whether the audits are materially complete and conducted in accordance with applicable standards. Specific financial data is used to make a preliminary determination as to whether a non-profit or for-profit institution is financially responsible under 34 CFR part 668, subpart L of the Student Assistance General Provisions regulations (or in the case of a change in ownership resulting in a change in control, whether the institution satisfies the financial ratio requirements under 34 CFR 668.15).

Attaching an Authentic Copy of the Audits

After an institution enters all requested information, it must attach (or upload) to the eZ-Audit Web page an electronic copy of any required compliance and financial statement audits that were prepared and signed by the independent auditor(s) engaged by the institution to conduct those audits. The electronic copy of any required audit must be a read-only Portable Document Format (PDF) file made using Adobe Acrobat version 5.0 or higher.

Electronic Access to This Document

You may view this document, as well as all other Department of Education documents published in the **Federal Register**, in text or Adobe Portable Document Format on the Internet at the following site: *http://www.ed.gov/legislation/FedRegister*.

To use PDF you must have Adobe Acrobat Reader, which is available free at this site. If you have questions about using PDF, call the U.S. Government Printing Office (GPO), toll free, at 1–888–293–6498; or in the Washington, DC, area at (202) 512–1530.

Note: The official version of this document is the document published in the **Federal Register**. Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available on GPO Access at: *http://www.access.gpo.gov/nara/index.html*.

Program Authority: 20 U.S.C. 1099c.

Dated: May 13, 2003.

Theresa S. Shaw,

Chief Operating Officer, Federal Student Aid.

[FR Doc. 03–12286 Filed 5–15–03; 8:45 am]
BILLING CODE 4001–01–P

DEPARTMENT OF ENERGY

Notice of Availability of the West Valley Demonstration Project Draft Waste Management Environmental Impact Statement

AGENCY: Department of Energy.

ACTION: Notice of availability.

SUMMARY: The Department of Energy (DOE) announces the availability of the West Valley Demonstration Project (WVDP) Draft Waste Management Environmental Impact Statement (EIS) for public review and comment. This Draft EIS has been prepared in accordance with the requirements of the National Environmental Policy Act of 1969 as amended (NEPA)(42 U.S.C. 4321 *et seq.*); Council on Environmental Quality regulations implementing NEPA (40 Code of Federal Regulations (CFR) Parts 1500–1508); and DOE NEPA Implementing Procedures (10 CFR part 1021).

DOE's proposed action (and preferred alternative) is to ship radioactive wastes that are either currently in storage on the WVDP site, or that will be generated from WVDP operations over the next ten years, to offsite disposal locations, and to continue managing its onsite waste storage tanks. The potential environmental consequences of the proposed action are evaluated in this Draft EIS, including impacts to workers and the public from waste transportation and waste management. The Draft EIS also analyzes a No Action Alternative, under which most wastes would continue to be stored over the next ten years, and an alternative under which certain wastes would be shipped to interim offsite storage locations prior to disposal, along with the addition of retrievable grout to the waste storage tanks for interim stabilization. Indefinite waste storage onsite was considered but not analyzed.

The public is invited to comment on the Draft EIS during a 45-day public comment period, which ends on June 30, 2003. All comments received during the public comment period will be considered in preparing the Final EIS. Comments received after the public comment period ends will be considered to the extent practicable.

ADDRESSES: Requests for information about this Draft EIS should be directed to: Daniel W. Sullivan, EIS Document Manager, DOE West Valley Area Office, 10282 Rock Springs Road, WV–49, West Valley, New York 14171–9799, Telephone: (716) 942–4016.

Copies of the document can be requested by telephone at (716) 942–2152 or (800) 633–5280.

Written comments on the Draft EIS can be mailed to: Daniel W. Sullivan, WVDP WM EIS, 10282 Rock Springs Road, WV–49, West Valley, New York 14171–9799.

Written comments may also be submitted by fax to: (716) 942–4199, or submitted electronically to *allens@wvnsco.com*.

Oral comments on the Draft EIS will be accepted only during the public hearing scheduled for the date and location provided in the **DATES** section of this Notice.

For information regarding the DOE NEPA process, please contact: Ms. Carol M. Borgstrom, Director, Office of NEPA Policy and Compliance, (EH–42), U.S. Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585, Telephone: (202) 586–4600, or leave a message at (800) 472–2756.

The Draft EIS will be available at *http://tis.eh.doe.gov/nepa/docs.docs.htm* or *www.wv.doe.gov*. Copies of the Draft EIS and supporting technical reports also are available for review at the locations listed in the **SUPPLEMENTARY INFORMATION** section of this Notice.

DATES: The public is invited to submit written and/or oral comments on the Draft EIS. The comment period on the Draft EIS begins on the date of this Notice and ends on June 30, 2003. DOE will consider all comments postmarked by that date in preparing the Final EIS. Comments postmarked after that date will be considered to the extent practicable.

DOE will hold public hearings on June 11, 2003, at: Ashford Office Complex, 9030 Route 219, Town of Ashford, Buffalo, New York, 1:30 p.m. to 3:30 p.m.,7:00 p.m. to 9:00 p.m.

Requests to speak at the public hearings can be made by calling or writing the EIS Document Manager (see **ADDRESSES**, above). Requests to speak that have not been submitted prior to the hearing will be accepted in the order in which they are received during the hearing. Speakers are encouraged to provide written versions of their oral comments for the record. Each speaker will be allowed five minutes to present comments unless more time is requested and available. Comments will be recorded by a court reporter and will become part of the public hearing record.

SUPPLEMENTARY INFORMATION: The WVDP is located on the Western New York Nuclear Service Center (also referred to as the Center). The Center comprises approximately 13.5 square kilometers (five square miles) in West Valley, New York, and is located in the town of Ashford, approximately 50 kilometers (30 miles) southeast of Buffalo, New York. The Center was the site of the world's first commercial nuclear fuel reprocessing plant, which was the only one to have operated in the United States. The Center operated under a license issued by the Atomic

Energy Commission (now the U. S. Nuclear Regulatory Commission [NRC]) in 1966 to Nuclear Fuel Services, Incorporated, and the New York State Atomic and Space Development Authority, now known as the New York State Energy Research and Development Authority (NYSERDA).

During reprocessing, spent nuclear fuel from commercial nuclear power plants and DOE sites was chopped, dissolved, and processed by a solvent extraction system to recover uranium and plutonium. Fuel reprocessing ended in 1972 when the plant was shut down for modifications to increase its capacity, reduce occupational radiation exposure, and reduce radioactive effluents.

In 1976, Nuclear Fuel Services estimated that over $600 million would be required to modify the facility to increase its capacity and to comply with changes in regulatory standards. As a result, the company decided to withdraw from the nuclear fuel reprocessing business and exercise its contractual right to yield responsibility for the Center to NYSERDA. Nuclear Fuel Services withdrew from the Center without removing any of the in-process nuclear wastes. NYSERDA now holds title to and manages the Center on behalf of the people of the State of New York.

In 1980, Congress passed the WVDP Act (Pub. L. 96–368). This Act requires DOE to demonstrate that the liquid high-level radioactive waste (HLW) from reprocessing can be safely managed by solidifying it at the Center and transporting it to a geologic repository for permanent disposal. In addition to HLW, the WVDP also manages low-level radioactive waste (LLW), transuranic (TRU) waste, and mixed waste (radioactive and hazardous) generated as a result of Project activities.

The Project Facilities and areas storing the waste are: the Process Building, which includes approximately 70 rooms and cells that comprised the NRC-licensed spent nuclear fuel reprocessing operations (one of the cells—the Chemical Process Cell—now serves as the storage facility for the vitrified HLW canisters); the Tank Farm, which includes the underground HLW storage tanks; Waste Storage Areas, which include several facilities such as Lag Storage Areas and the Chemical Process Cell Waste Storage Area; and the Radwaste Treatment System Drum Cell (Drum Cell), which stores cement-filled drums of stabilized LLW.

The scope of this Draft EIS departs from that which was announced in a March 2001 Notice of Intent (NOI) (66 FR 16447, March 26, 2001). The scope is now limited to onsite waste management and offsite waste transportation activities, and no longer includes decontamination activities as proposed in the NOI. DOE modified the scope of this EIS as a result of public comments received during scoping and the Department's further evaluation of activities that might be required independently of final decisions on decommissioning and/or long-term stewardship (LTS) at the WVDP. DOE published an Advance NOI (66 FR 56090, November 6, 2001) inviting preliminary public comment on a proposed scope for a decommissioning and/or LTS EIS and recently published an NOI (68 FR 12004, March 13, 2003).

Description of Alternatives

DOE analyzed three alternatives in the Draft EIS. Under the No Action Alternative, Continuation of Ongoing Waste Management Activities, waste management would include continued storage of most of the existing LLW, the TRU waste, and the HLW, and limited shipments of some LLW to offsite disposal. The emptied HLW storage tanks and their surrounding vaults would continue to be ventilated to manage moisture levels as a corrosion prevention measure.

Under Alternative A, Offsite Shipment of HLW, LLW, Mixed LLW, and TRU Wastes to Disposal and Ongoing Management of the Waste Storage Tanks (DOE's preferred alternative), DOE would ship the LLW and mixed LLW to one of two DOE potential disposal sites (in Washington or Nevada) or to a commercial disposal site (such as the Envirocare facility in Utah), ship TRU waste to the Waste Isolation Pilot Plant (WIPP) in New Mexico, and ship the HLW to the proposed Yucca Mountain HLW Repository in Nevada. LLW and mixed LLW would be shipped over the next ten years. TRU waste shipments to WIPP could occur within the next ten years if the TRU waste is determined to meet all the requirements for disposal in this repository; however, if some or all of WVDP's TRU waste does not meet these requirements, the Department would need to explore other alternatives for disposal of this waste. Offsite disposal of HLW would occur at the proposed Yucca Mountain HLW Repository sometime after 2025, assuming a license to operate is granted by NRC and a disposal contract between DOE and the State of New York is in place. The HLW storage tanks would continue to be managed as described under the No Action Alternative.

Under Alternative B, Offsite Shipment of LLW and Mixed LLW to Disposal, Shipment of HLW and TRU Waste to Interim Storage, and Interim Stabilization of the Waste Storage Tanks, the LLW and mixed LLW would be shipped offsite for disposal at the same locations as Alternative A. TRU wastes would be shipped for interim storage at one of five DOE sites: Hanford Site in Washington; Idaho National Engineering and Environmental Laboratory; Oak Ridge National Laboratory in Tennessee; Savannah River Site (SRS) in South Carolina; or WIPP in New Mexico. TRU wastes would subsequently be shipped to WIPP (or would remain at WIPP) for disposal. The HLW would be shipped to SRS or Hanford for interim storage with subsequent shipment toYucca Mountain for disposal. The HLW storage tanks and their surrounding vaults would be partially filled with a retrievable grout to provide for interim stabilization of the tanks.

Availability of the Draft EIS

Copies of this Draft EIS have been distributed to Federal, State, and local officials, Members of Congress, and agencies, organizations, and individuals who may be interested or affected. This Draft EIS will be available on the Internet at: *http://tis.eh.doe.gov/nepa/docs.docs.htm* or *http://www.wv.doe.gov*. Additional copies can also be requested by telephone at (716) 942–2152 or (800) 633–5280.

Copies of the Draft EIS and supporting technical reports are also available for public review at the locations listed below.

Hulbert Library of the Town of Concord, 18 Chapel Street, Springville, New York 14141

Central Library of the Buffalo and Erie County Public Library System, Science and Technology Department, Lafayette Square, Buffalo, New York 14203

West Valley Central School Library, 5359 School Street, West Valley, New York 14171

The Olean Public Library, 134 North 2nd Street, Olean, New York 14760

Ashford Office Complex, 9030 Route 219, West Valley, New York 14171

Issued in Washington, DC, on May 2, 2003.

Jessie Hill Roberson,

Assistant Secretary for Environmental Management.

[FR Doc. 03–12280 Filed 5–15–03; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Environmental Management Site-Specific Advisory Board, Rocky Flats

AGENCY: Department of Energy.

ACTION: Notice of open meeting.

SUMMARY: This notice announces a meeting of the Environmental Management Site-Specific Advisory Board (EM SSAB), Rocky Flats. The Federal Advisory Committee Act (Pub. L. No. 92–463, 86 Stat. 770) requires that public notice of these meeting be announced in the **Federal Register**.

DATES: Thursday, June 5, 2003, 6 p.m. to 9:30 p.m.

ADDRESSES: Jefferson County Airport, Terminal Building, Mount Evans Room, 11755 Airport Way, Broomfield, CO.

FOR FURTHER INFORMATION CONTACT: Ken Korkia, Board/Staff Coordinator, Rocky Flats Citizens Advisory Board, 9035 North Wadsworth Parkway, Suite 2250, Westminster, CO, 80021; telephone (303) 420–7855; fax (303) 420–7579.

SUPPLEMENTARY INFORMATION: Purpose of the Board: The purpose of the Board is to make recommendations to DOE and its regulators in the areas of environmental restoration, waste management, and related activities.

Tentative Agenda:

1. Presentation and discussion of management alternatives related to the Comprehensive Conservation Plan for the Rocky Flats National Wildlife Refuge.
2. Discussion of draft recommendations and comments related to the Building 776 demolition strategy and revisions to the Decommissioning Operations Plan.
3. Draft letter of recommendation regarding deer organ testing.
4. Presentation and discussion of remediation alternatives for the Original Landfill.
5. Other Board business may be conducted as necessary.

Public Participation: The meeting is open to the public. Written statements may be filed with the Board either before or after the meeting. Individuals who wish to make oral statements pertaining to agenda items should contact Ken Korkia at the address or telephone number listed above. Requests must be received at least five days prior to the meeting and reasonable provisions will be made to include the presentation in the agenda. The Deputy Designated Federal Officer is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business. Each individual wishing to make public comment will be provided a maximum of five minutes to present their comments.

Minutes: The minutes of this meeting will be available for public review and copying at the Public Reading Room located at the Office of the Rocky Flats Citizens Advisory Board, 9035 North Wadsworth Parkway, Suite 2250, Westminister, CO 80021; telephone (303) 420–7855. Hours of operations for the Public Reading Room are 8:30 a.m. to 4:30 p.m., Monday-Friday, except Federal holidays. Minutes will also be made available by writing or calling Deborah French at the address or telephone number listed above. Board meeting minutes are posted on RFCAB's Web site within one month following each meeting at: *http://www.rfcab.org/Minutes.HTML.*

Issued at Washington, DC, on May 12, 2003.

Rachel M. Samuel,

Deputy Advisory Committee Management Officer.

[FR Doc. 03–12279 Filed 5–15–03; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. IC03–567–000, FERC–567]

Commission Information Collection Activities, Proposed Collection; Comment Request; Extension

May 9, 2003.

AGENCY: Federal Energy Regulatory Commission.

ACTION: Notice.

SUMMARY: In compliance with the requirements of section 3506(c)(2)(a) of the Paperwork Reduction Act of 1995, 44 U.S.C. 3506(c)(2)(A), the Federal Energy Regulatory Commission (Commission) is soliciting public comment on the specific aspects of the information collection described below.

DATES: Comments on the collection of information are due by July 11, 2003.

ADDRESSES: Copies of the proposed collection of information can be obtained from Michael Miller, Office of the Executive Director, ED–30, 888 First Street NE., Washington, DC 20426. Comments may be filed either in paper format or electronically. Those parties filing electronically do not need to make a paper filing.

For paper filings, the original and 14 copies of such comments should be submitted to the Office of the Secretary, Federal Energy Regulatory Commission, 888 First Street, NE. Washington, DC 20426 and refer to Docket No. IC03–567–000.

Documents filed electronically via the Internet must be prepared in WordPerfect, MS Word, Portable Document Format, or ASCII format. To file the document, access the Commission's Web site at *http://www.ferc.gov* and click on "Make an E-filing," and then follow the instructions for each screen. First time users will have to establish a user name and password. The Commission will send an automatic acknowledgment to the sender's E-mail address upon receipt of comments. User assistance for electronic filings is available at 202–502–8258 or by e-mail to *efiling@ferc.gov*. Comments should not be submitted to the e-mail address.

All comments may be viewed, printed or downloaded remotely via the Internet through FERC's homepage using the FERRIS link. For user assistance, contact *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676 or for TTY, contact (202) 502–8659.

FOR FURTHER INFORMATION CONTACT: Michael Miller may be reached by telephone at (202) 502–8415, by fax at (202) 208–2425, and by e-mail at *michael.miller@ferc.gov*.

SUPPLEMENTARY INFORMATION: The information collected under the requirements of FERC–567 "Gas Pipeline Certificates: Annual Reports of System Flow Diagrams and System Capacity" (OMB No. 1902–0005) is used by the Commission to implement the statutory provisions of sections 4, 5, 6, 7, 9, 10(a) and 16 of the Natural Gas Act (NGA), 15 U.S.C. 717–717w and title III, sections 301(a), 303(a), 304(d), title IV, sections 401 and 402, title V, section 508 of the Natural Gas Policy Act (Pub. L. 95–621). The information collected under the requirements of FERC–567 is used by the Commission to obtain accurate data on pipeline facilities. Specifically, the FERC–567 data is used in determining the configuration and location of installed pipeline interconnections and receipt and delivery points; and developing and evaluating alternatives to proposed facilities as a means to mitigate environmental impact of new pipeline construction.

FERC–567 also contains valuable information that can be used to assist federal officials in maintaining adequate natural gas service in times of national emergency. The Commission implements these filing requirements in the Code of Federal Regulations (CFR) under 18 CFR part 260.8 and 284.13.

Action: The Commission is requesting a three-year extension of the current

expiration date, with no changes to the existing collection of data.

Burden Statement: Public reporting burden for this collection is estimated as:

Number of respondents annually (1)	Number of responses per respondent (2)	Average burden hours per response (3)	Total annual burden hours (1)×(2)×(3)
91	1,714*	81.58	12,724

*Derived by dividing the total number of response expected annually (156) by the number of respondents(91) and rounding to three places.

Estimated cost burden to respondents: 12,724 hours / 2,080 hours per year x $117,041 per year = $715,976. The cost per respondent is equal to $ 7,868.

The reporting burden includes the total time, effort, or financial resources expended to generate, maintain, retain, disclose, or provide the information including: (1) Reviewing instructions; (2) developing, acquiring, installing, and utilizing technology and systems for the purposes of collecting, validating, verifying, processing, maintaining, disclosing and providing information; (3) adjusting the existing ways to comply with any previously applicable instructions and requirements; (4) training personnel to respond to a collection of information; (5) searching data sources; (6) completing and reviewing the collection of information; and (7) transmitting, or otherwise disclosing the information.

The estimate of cost for respondents is based upon salaries for professional and clerical support, as well as direct and indirect overhead costs. Direct costs include all costs directly attributable to providing this information, such as administrative costs and the cost for information technology. Indirect or overhead costs are costs incurred by an organization in support of its mission. These costs apply to activities which benefit the whole organization rather than any one particular function or activity.

Comments are invited on: (1) Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information will have practical utility; (2) the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology *e.g.*, permitting electronic submission of responses.

Magalie R. Salas,

Secretary.

[FR Doc. 03–12322 Filed 5–15–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. IC03–585–000, FERC–585]

Commission Information Collection Activities, Proposed Collection; Comment Request; Extension

May 9, 2003.

AGENCY: Federal Energy Regulatory Commission.

ACTION: Notice.

SUMMARY: In compliance with the requirements of section 3506(c)(2)(a) of the Paperwork Reduction Act of 1995, 44 U.S.C. 3506(c)(2)(A), the Federal Energy Regulatory Commission (Commission) is soliciting public comment on the specifics of the information collection described below.

DATES: Comments on the collection of information are due by July 11, 2003.

ADDRESSES: Copies of the proposed collection of information can be obtained from Michael Miller, Office of the Executive Director, ED–30, 888 First Street NE., Washington, DC 20426. Comments may be filed either in paper format or electronically. Those parties filing electronically do not need to make a paper filing.

For paper filings, the original and 14 copies of such comments should be submitted to the Office of the Secretary, Federal Energy Regulatory Commission, 888 First Street, NE. Washington, DC 20426 and refer to Docket No. IC03–585–000.

Documents filed electronically via the Internet must be prepared in WordPerfect, MS Word, Portable Document Format, or ASCII format. To file the document, access the Commission's Web site at *http://www.ferc.gov* and click on "Make an E-filing," and then follow the instructions for each screen. First time users will have to establish a user name and password. The Commission will send an automatic acknowledgment to the sender's E-mail address upon receipt of comments. User assistance for electronic filings is available at 202–502–8258 or by e-mail to *efiling@ferc.gov*. Comments should not be submitted to the e-mail address.

All comments may be viewed, printed or downloaded remotely via the Internet through FERC's homepage using the FERRIS link. For user assistance, contact *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676 or for TTY, contact (202) 502–8659.

FOR FURTHER INFORMATION CONTACT: Michael Miller may be reached by telephone at (202)502–8415, by fax at (202)208–2425, and by e-mail at *michael.miller@ferc.gov*.

SUPPLEMENTARY INFORMATION: The information collected under the requirements of FERC–585 "Reporting of Electric Energy Shortages and Contingency Plans Under PURPA" (OMB Control No. 1902–0138) is used by the Commission to implement the statutory provisions of sections 206 of the Public Utility Regulatory Policies Act of 1979 (PURPA) Pub. L. 95–617, 92 Stat. 3117 added to the Federal Power Act (FPA) section 202, subsection (g). FPA section 202(g) requires the Commission to establish rules requiring each public utility to report to FERC and appropriate State regulatory authorities any anticipated shortage of electric energy or capacity which would affect the utility's ability to serve its wholesale customers; and submit to the Commission and the appropriate State regulatory authority, and periodically revise contingency plans respecting shortages of electric energy or capacity which would equitably accommodate service to both direct retail customers and those served by utilities supplied at wholesale by the public utility.

The Commission uses the information to evaluate and formulate appropriate options for action in the event an unanticipated shortage is reported and/or materializes. Without this information, the Commission and State agencies would be unable to: (1) examine and approve or modify utility actions, (2) prepare a response to anticipated disruptions in electric energy, and (3) ensure equitable treatment of all public utility customers under the shortage situations. The Commission implements these filing requirements in the Code of Federal Regulations (CFR) under 18 CFR part 294.

Action: The Commission is requesting a three-year extension of the current expiration date, with no changes to the existing collection of data.*Burden Statement:* Public reporting burden for this collection is estimated as:

Number of respondents annually (1)	Number of responses per respondent (2)	Average burden hours per response (3)	Total annual burden hours (1)×(2)×(3)
7	1	73	511

Estimated cost burden to respondents: 511 hours/2,080 hours per year × $117,041 per year = $28,754. The cost per respondent is equal to $ 4,108.

The reporting burden includes the total time, effort, or financial resources expended to generate, maintain, retain, disclose, or provide the information including: (1) Reviewing instructions; (2) developing, acquiring, installing, and utilizing technology and systems for the purposes of collecting, validating, verifying, processing, maintaining, disclosing and providing information; (3) adjusting the existing ways to comply with any previously applicable instructions and requirements; (4) training personnel to respond to a collection of information; (5) searching data sources; (6) completing and reviewing the collection of information; and (7) transmitting, or otherwise disclosing the information.

The estimate of cost for respondents is based upon salaries for professional and clerical support, as well as direct and indirect overhead costs. Direct costs include all costs directly attributable to providing this information, such as administrative costs and the cost for information technology. Indirect or overhead costs are costs incurred by an organization in support of its mission. These costs apply to activities which benefit the whole organization rather than any one particular function or activity.

Comments are invited on: (1) Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information will have practical utility; (2) the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology *e.g.*, permitting electronic submission of responses.

Magalie R. Salas,

Secretary.

[FR Doc. 03–12323 Filed 5–15–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. IC03–716–000, FERC–716]

Commission Information Collection Activities, Proposed Collection; Comment Request; Extension

May 12, 2003.

AGENCY: Federal Energy Regulatory Commission.

ACTION: Notice.

SUMMARY: In compliance with the requirements of section 3506(c)(2)(a) of the Paperwork Reduction Act of 1995, 44 U.S.C. 3506(c)(2)(A), the Federal Energy Regulatory Commission (Commission) is soliciting public comment on the specific aspects of the information collection described below.

DATES: Comments on the collection of information are due by July 11, 2003.

ADDRESSES: Copies of the proposed collection of information can be obtained from Michael Miller, Office of the Executive Director, ED–30, 888 First Street NE., Washington, DC 20426. Comments may be filed either in paper format or electronically. Those parties filing electronically do not need to make a paper filing.

For paper filings, the original and 14 copies of such comments should be submitted to the Office of the Secretary, Federal Energy Regulatory Commission, 888 First Street, NE. Washington, DC 20426 and refer to Docket No. IC03–716–000.

Documents filed electronically via the Internet must be prepared in WordPerfect, MS Word, Portable Document Format, or ASCII format. To file the document, access the Commission's Web site at *http://www.ferc.gov* and click on "Make an E-filing," and then follow the instructions for each screen. First time users will have to establish a user name and password. The Commission will send an automatic acknowledgment to the sender's E-mail address upon receipt of comments. User assistance for electronic filings is available at 202–502–8258 or by e-mail to *efiling@ferc.gov*. Comments should not be submitted to the e-mail address.

All comments may be viewed, printed or downloaded remotely via the Internet through FERC's homepage using the FERRIS link. For user assistance, contact *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676 or for TTY, contact (202)502–8659.

FOR FURTHER INFORMATION CONTACT: Michael Miller may be reached by telephone at (202) 502–8415, by fax at (202)208–2425, and by e-mail at *michael.miller@ferc.gov*.

SUPPLEMENTARY INFORMATION: The information collected under the requirements of FERC–716 "Good Faith Request for Transmission Service and Response by Transmitting Utility Under Sections 211(a) and 213(a) of the Federal Power Act" (OMB Control No. 1902–0170) is used by the Commission to implement the statutory provisions of sections 211 and 213 of the Federal Power Act (FPA) as amended and added by the Energy Policy Act of 1992. The information is not filed with the Commission, however, the request and response may be analyzed as part of a section 211 proceeding. This collection of information covers the information that must be contained in the request and in the response.

The Energy Policy Act of 1992 amended section 211 of the FPA and expanded the Commission's authority to order transmission service. Under the revised section 211, the Commission may order transmission services if it finds that such action would be in the public interest, would not unreasonably impair the continued reliability of

electric systems affected by the order, and would meet the requirements of amended section 211 of the FPA.

The Commission's policy statement in Pub. L. 93–3, Policy Statement Regarding Good Faith Requests for Transmission Services and Responses by Transmitting Utilities Under Section 211(a) and 213(a) of the Federal Power Act, as Amended, implemented a data exchange between a transmission requester and a transmitting utility prior to the submission of section 211 request with the Commission. Components of the data exchange are identified in the Code of Federal Regulations (CFR), 18 CFR 2.20. The general policy sets forth standards by which the Commission determines whether and when a valid good faith request for transmission has been made under section 211 of the FPA. In developing the standards, the Commission sought to encourage an open exchange of information with a reasonable degree of specificity and completeness between the party requesting transmission services and the transmitting utility. As a result, twelve components of a good faith estimate are identified under 18 CFR 2.20. Information in the data exchange is not filed as noted above with the Commission, unless negotiations between the transmission requestor and the transmitting utility have not been successful and the transmission requestor files a section 211 request (FERC–716A, 1902–0168) with the Commission. The request and response may be analyzed by the Commission as part of the section 211 proceeding.

Action: The Commission is requesting a three-year extension of the current expiration date, with no changes to the existing collection of data.

Burden Statement: Public reporting burden for this collection is estimated as:

Number of respondents annually (1)	Number of responses per respondent (2)	Average burden hours per response (3)	Total annual burden hours (1)×(2)×(3)
10	1	100	1,000

Estimated cost burden to respondents: 1,000 hours / 2,080 hours per year × $117,041 per year = $56,270. The cost per respondent is equal to $ 5,627.

The reporting burden includes the total time, effort, or financial resources expended to generate, maintain, retain, disclose, or provide the information including: (1) Reviewing instructions; (2) developing, acquiring, installing, and utilizing technology and systems for the purposes of collecting, validating, verifying, processing, maintaining, disclosing and providing information; (3) adjusting the existing ways to comply with any previously applicable instructions and requirements; (4) training personnel to respond to a collection of information; (5) searching data sources; (6) completing and reviewing the collection of information; and (7) transmitting, or otherwise disclosing the information.

The estimate of cost for respondents is based upon salaries for professional and clerical support, as well as direct and indirect overhead costs. Direct costs include all costs directly attributable to providing this information, such as administrative costs and the cost for information technology. Indirect or overhead costs are costs incurred by an organization in support of its mission. These costs apply to activities which benefit the whole organization rather than any one particular function or activity.

Comments are invited on: (1) Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information will have practical utility; (2) the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology *e.g.*, permitting electronic submission of responses.

Magalie R. Salas,

Secretary.

[FR Doc. 03–12324 Filed 5–15–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. IC03–716A–000, FERC–716A]

Commission Information Collection Activities, Proposed Collection; Comment Request; Extension

May 9, 2003.

AGENCY: Federal Energy Regulatory Commission.

ACTION: Notice.

SUMMARY: In compliance with the requirements of section 3506(c)(2)(a) of the Paperwork Reduction Act of 1995, 44 U.S.C. 3506(c)(2)(A), the Federal Energy Regulatory Commission (Commission) is soliciting public comment on the specific aspects of the information collection described below.

DATES: Comments on the collection of information are due by July 11, 2003.

ADDRESSES: Copies of the proposed collection of information can be obtained from Michael Miller, Office of the Executive Director, ED–30, 888 First Street NE., Washington, DC 20426. Comments may be filed either in paper format or electronically. Those parties filing electronically do not need to make a paper filing.

For paper filings, the original and 14 copies of such comments should be submitted to the Office of the Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426 and refer to Docket No. IC03–716A–000.

Documents filed electronically via the Internet must be prepared in WordPerfect, MS Word, Portable Document Format, or ASCII format. To file the document, access the Commission's Web site at *http://www.ferc.gov* and click on "Make an E-filing," and then follow the instructions for each screen. First time users will have to establish a user name and password. The Commission will send an automatic acknowledgment to the sender's E-mail address upon receipt of comments. User assistance for electronic filings is available at 202–502–8258 or by e-mail to *efiling@ferc.gov*. Comments should not be submitted to the e-mail address.

All comments may be viewed, printed or downloaded remotely via the Internet through FERC's homepage using the FERRIS link. For user assistance, contact *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676 or for TTY, contact (202) 502–8659.

FOR FURTHER INFORMATION CONTACT: Michael Miller may be reached by telephone at (202)502–8415, by fax at (202)208–2425, and by e-mail at *michael.miller@ferc.gov*.

SUPPLEMENTARY INFORMATION: The information collected under the requirements of FERC–716A "Application for Transmission Services Under Section 211 of the Federal Power Act" (OMB No. 1902–0168) is used by the Commission to implement the statutory provisions of section 211 of the Federal Power Act(FPA), 16 U.S.C. 824) as amended by the Energy Policy Act 1992 (Pub. L. 102–486) 106 Stat. 2776. Under section 211, the Commission may order transmission services if it finds that such action would be in the public interest and would not unreasonably impair the continued reliability of systems affected by the order. Section 211 allows any electric utility, Federal power marketing agency or any other person generating electric energy for sale or resale to apply **Federal Register**, and notify the affected parties.

The Commission uses the information to carry out its responsibilities under part II of the Federal Power Act. The Commission implements these filing requirements in the Code of federal Regulations (CFR) under 18 CFR part 36.

Action: The Commission is requesting a three-year extension of the current expiration date, with no changes to the existing collection of data.

Burden Statement: Public reporting burden for this collection is estimated as:

Number of respondents annually (1)	Number of responses per respondent (2)	Average burden hours per response (3)	Total annual burden hours (1)×(2)×(3)
10	1	2.5 hours	25 hours

Estimated cost burden to respondents: 25 hours/2,080 hours per year × $117,041 per year = $1,407. The cost per respondent is equal to $ 141.

The reporting burden includes the total time, effort, or financial resources expended to generate, maintain, retain, disclose, or provide the information including: (1) Reviewing instructions; (2) developing, acquiring, installing, and utilizing technology and systems for the purposes of collecting, validating, verifying, processing, maintaining, disclosing and providing information; (3) adjusting the existing ways to comply with any previously applicable instructions and requirements; (4) training personnel to respond to a collection of information; (5) searching data sources; (6) completing and reviewing the collection of information; and (7) transmitting, or otherwise disclosing the information.

The estimate of cost for respondents is based upon salaries for professional and clerical support, as well as direct and indirect overhead costs. Direct costs include all costs directly attributable to providing this information, such as administrative costs and the cost for information technology. Indirect or overhead costs are costs incurred by an organization in support of its mission. These costs apply to activities which benefit the whole organization rather than any one particular function or activity.

Comments are invited on: (1) Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information will have practical utility; (2) the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology *e.g.*, permitting electronic submission of responses.

Magalie R. Salas,

Secretary.

[FR Doc. 03–12325 Filed 5–15–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP03–471–000]

MIGC, Inc.; Notice of Compliance Filing

May 9, 2003.

Take notice that on May 7, 2003, MIGC, Inc. (MIGC) tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1, the following tariff sheets, to become effective July 1, 2003:

Fifth Revised Sheet No. 48
Second Revised Sheet No. 49A
Seventh Revised Sheet No. 52
Fourth Revised Sheet No. 84
Fourth Revised Sheet No. 87
Original Sheet No. 87A
Original Sheet No. 87B
Fourth Revised Sheet No. 88
Sixth Revised Sheet No. 89

MIGC asserts that the purpose of this filing is to comply with the Commission's order issued March 12, 2003, in Docket No. RM96–1–024, requiring all interstate pipelines to file tariff sheets in compliance with Order No. 587–R.

MIGC states that copies of the filing are being served on all jurisdictional customers and interested State Commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with sections 385.214 or 385.211 of the Commission's rules and regulations. All such motions or protests must be filed in accordance with section 154.210 of the Commission's regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link.

Comment Date: May 19, 2003.

Magalie R. Salas,

Secretary.

[FR Doc. 03–12337 Filed 5–15–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP99–176–086]

Natural Gas Pipeline Company of America; Notice of Negotiated Rate

May 9, 2003.

Take notice that on May 5, 2003, Natural Gas Pipeline Company of America(Natural) tendered for filing to become part of its FERC Gas Tariff, Sixth Revised Volume No. 1, certain tariff sheets, to be effective May 3, 2003.

Natural states that the purpose of this filing is to implement an amendment to an existing negotiated rate transaction with Aquila Merchant Services, Inc. (Aquila) under Natural's Rate Schedule FTS pursuant to section 49 of the General Terms and Conditions of Natural's Tariff.

Natural states that copies of the filing are being mailed to all parties set out on the official service list at Docket No. RP99–176.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with sections 385.214 or 385.211 of the Commission's rules and regulations. All such motions or protests must be filed in accordance with section 154.210 of the Commission's regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link.

Comment Date: May 19, 2003.

Magalie R. Salas,

Secretary.

[FR Doc. 03–12339 Filed 5–15–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP99–518–043]

PG&E Gas Transmission, Northwest Corporation; Notice of Negotiated Rate

May 9, 2003.

Take notice that on May 5, 2003, PG&E Gas Transmission, Northwest Corporation (GTN) tendered for filing to be part of its FERC Gas Tariff, Second Revised Volume No. 1–A, Twelfth Revised Sheet No. 15.

GTN states that this sheet is being filed to reflect the implementation of one new negotiated rate agreement. GTN requests that the Commission accept the proposed tariff sheet to be effective May 3, 2003.

GTN further states that a copy of this filing has been served on GTN's jurisdictional customers and interested state regulatory agencies.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with sections 385.214 or 385.211 of the Commission's rules and regulations. All such motions or protests must be filed in accordance with section 154.210 of the Commission's regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link.

Comment Date: May 19, 2003.

Magalie R. Salas,

Secretary.

[FR Doc. 03–12340 Filed 5–15–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. ER03–505–000]

Quonset Point Cogen, L.P.; Notice of Issuance of Order

May 9, 2003.

Quonset Point Cogen, L.P. (Quonset) filed an application for market-based rate authority, with an accompanying tariff. The proposed tariff provides for the sale of capacity and energy at market-based rates. Quonset also requested waiver of various Commission regulations. In particular, Quonset requested that the Commission grant blanket approval under 18 CFR part 34 of all future issuances of securities and assumptions of liability by Quonset.

On April 2, 2003, pursuant to delegated authority, the Director, Division of Tariffs and Market Development—South, granted the request for blanket approval under part 34, subject to the following:

Any person desiring to be heard or to protest the blanket approval of issuances of securities or assumptions of liability by Quonset should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with rules 211 and 214 of the Commission's rules of practice and procedure (18 CFR 385.211 and 385.214).

Notice is hereby given that the deadline for filing motions to intervene or protests, as set forth above, is May 19, 2003.

Absent a request to be heard in opposition by the deadline above, Quonset are authorized to issue securities and assume obligations or liabilities as a guarantor, indorser, surety, or otherwise in respect of any security of another person; provided that such issuance or assumption is for some lawful object within the corporate purposes of Quonset, compatible with the public interest, and is reasonably necessary or appropriate for such purposes.

The Commission reserves the right to require a further showing that neither public nor private interests will be adversely affected by continued approval of Quonset's issuances of securities or assumptions of liability.

Copies of the full text of the Order are available from the Commission's Public Reference Branch, 888 First Street, NE., Washington, DC 20426. The Order may also be viewed on the Commission's Web site at *http://www.ferc.gov*, using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number filed to access the document. Comments, protests, and interventions may be filed electronically via the internet in lieu of paper. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link. The Commission strongly encourages electronic filings.

Magalie R. Salas,

Secretary.

[FR Doc. 03–12321 Filed 5–15–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 344]

Southern California Edison; Notice of Authorization for Continued Project Operation

May 9, 2003.

Southern California Edison, licensee for the San Gorgonio Project No. 344, did not file an application for new or subsequent license, which was due by April 26, 2001, pursuant to the Federal Power Act (FPA) and the Commission's regulations thereunder. Project No. 344 is located on the San Gorgonio River in San Bernardino County, California.

The license for Project No. 344 was issued for a period ending April 26, 2003. Section 15(a)(1) of the FPA, 16 U.S.C. 808(a)(1), requires the Commission, at the expiration of a license term, to issue from year to year an annual license to the then licensee under the terms and conditions of the prior license until a new license is issued, or the project is otherwise disposed of as provided in section 15 or any other applicable section of the FPA. If the project's prior license waived the applicability of section 15 of the FPA, then, based on section 9(b) of the Administrative Procedure Act, 5 U.S.C. 558(c), and as set forth at 18 CFR 16.21(a), if the licensee of such project has filed an application for a subsequent license, the licensee may continue to operate the project in accordance with the terms and conditions of the license after the minor or minor part license expires, until the Commission acts on its application. If the licensee of such a project has not filed an application for a subsequent license, then it may be required, pursuant to 18 CFR 16.21(b), to continue project operations until the Commission issues someone else a license for the project or otherwise orders disposition of the project.

If the project is subject to section 15 of the FPA, notice is hereby given that an annual license for Project No. 344 is issued to Southern California Edison for a period effective April 27, 2003, through April 26, 2004, or until the issuance of a new license for the project or other disposition under the FPA, whichever comes first. If issuance of a new license (or other disposition) does not take place on or before April 27, 2004, notice is hereby given that, pursuant to 18 CFR 16.18(c), an annual license under section 15(a)(1) of the FPA is renewed automatically without further order or notice by the Commission, unless the Commission orders otherwise.

If the project is not subject to section 15 of the FPA, notice is hereby given that Southern California Edison is authorized to continue operation of the San Gorgonio Project No. 344 until such time as the Commission acts on its application for subsequent license.

Magalie R. Salas,

Secretary.

[FR Doc. 03–12332 Filed 5–15–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP96–312–122]

Tennessee Gas Pipeline Company; Notice of Negotiated Rate Tariff Filing

May 9, 2003.

Take notice that on May 2, 2003, Tennessee Gas Pipeline Company (Tennessee), tendered for filing its Negotiated Rate Tariff Filing.

Tennessee states that its filing requests that the Commission approve an April 23, 2003, negotiated rate arrangement between Tennessee and CIMA Energy, L.L.C. Tennessee also states that it requests that the Commission grant all necessary waivers to provide such approval effective February 1, 2003.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with sections 385.214 or 385.211 of the Commission's rules and regulations. All such motions or protests must be filed in accordance with section 154.210 of the Commission's regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link.

Comment Date: May 14, 2003.

Magalie R. Salas,

Secretary.

[FR Doc. 03–12338 Filed 5–15–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER00–1783–003, et al.]

Duke Energy Vermillion, LLC, et al.; Electric Rate and Corporate Filings

May 8, 2003.

The following filings have been made with the Commission. The filings are listed in ascending order within each docket classification.

1. Duke Energy Vermillion, LLC

[Docket No. ER00–1783–003]

Take notice that on May 5, 2003, Duke Energy Vermillion, LLC (Duke Vermillion) tendered for filing with the Federal Energy Regulatory Commission (Commission) its triennial market power analysis in compliance with the Commission's Order granting it market-based rate authority in Docket No. ER00–1783–000 and ER00–1783–001 on May 4, 2000.

Duke Vermillion states that copies of this filing were served upon those parties on the official service list.

Comment Date: May 27, 2003.

2. California Independent System

[Docket Nos. ER03–218–003 and ER03–219–003]

Take notice that on May 5, 2003, California Independent System Operator Corporation (ISO) tendered for filing with the Federal Energy Regulatory Commission (Commission) a Motion to Withdraw Elements of Compliance

Filing that was filed with the Commission on April 15, 2003 in compliance with the Commission's January 24, 2003 order in Docket Nos. ER03–218–000 and ER03–219–000.

Comment Date: May 27, 2003.

3. American Electric Power Service Corporation

[Docket No. ER03–242–002]

Take notice that on April 30, 2003, American Electric Power Service Corporation, on behalf of certain operating companies of the American Electric Power System (collectively AEP) tendered for filing with the Federal Energy Regulatory Commission (Commission) a request for permission to withdraw the rate filing made in Docket No. ER03–242–000 on December 3, 2003.

AEP states that copies of this filing have been served on the parties to this docket and on the public service commissions of Indiana, Kentucky, Michigan, Ohio, Tennessee, Virginia and West Virginia.

Comment Date: May 15, 2003.

4. The New PJM Companies: American Electric Power Service Corporation

On Behalf of its Operating Companies: Appalachian Power Company, Columbus Southern Power Company, Indiana Michigan Power Company, Kentucky Power Company, Kingsport Power Company, Ohio Power Company, and Wheeling Power Company

Commonwealth Edison Company and Commonwealth Edison Company of Indiana, Inc; The Dayton Power and Light Company; Virginia Electric and Power Company; and PJM Interconnection, L.L.C.

[Docket No. ER03–262–004]

Take notice that on May 1, 2003, American Electric Power Service Corporation (AEP), Commonwealth Edison Company (ComEd), Dayton Power and Light Company, and Virginia Electric and Power Company (collectively referred to as the New PJM Companies), and PJM Interconnection, L.L.C. (PJM), jointly submitted this filing with the Federal Energy Regulatory Commission (Commission) in compliance with the Commission's order of April 1, 2003, in the above-referenced proceeding, American Electric Power Service Corporation, *et al.*, 103 FERC ¶ 61,008 (2003).

New PJM Companies and PJM state that a paper copy of the transmittal letter describing this filing was served on all state public utility commissions having jurisdiction over the New PJM Companies, all PJM members and all transmission customers of the New PJM Companies. In addition, PJM Companies state that the filing, in its entirety, is being posted on the PJM Web site (*http://www.pjm.com*) to download by any interested party.

Comment Date: May 22, 2003.

5. Idaho Power Company

[Docket Nos. ER03–487–001 and ER03–488–001]

Take notice that on May 1, 2003, Idaho Power Company (Idaho Power) filed with the Federal Energy Regulatory Commission (Commission) its compliance filing pursuant to the Commission's order issued March 31, 2003,102 FERC 61,351.

Comment Date: May 22, 2003.

6. New England Power Company

[Docket No. ER03–678–001]

Take notice that on May 5, 2003, New England Power Company (NEP) tendered for filing with the Federal Energy Regulatory Commission (Commission) an amendment to its March 31, 2003 filing in this docket. The filing concerns a Third Revised Service Agreement No. 20 between NEP and its affiliate, Massachusetts Electric Company (MECO), under NEP's FERC Electric Tariff, Original Volume No. 1.

NEP states that copies of this filing have been served on MECO and regulators in the state of Massachusetts.

Comment Date: May 27, 2003.

7. American Transmission Company LLC

[Docket No. ER03–780–001]

Take notice that on May 5, 2003, American Transmission Company LLC (ATCLLC) tendered for filing a revised Service Agreement designation for the Generation-Transmission Interconnection Agreement between ATCLLC and Wisconsin Public Service Corporation that was filed on April 28, 2003. ATCLLC requests an effective date of March 28, 2003.

Comment Date: May 27, 2003.

8. Midwest Energy, Inc.

[Docket No. ER03–812–000]

Take notice that on May 5, 2003, Midwest Energy, Inc. (Midwest) tendered for filing with the Federal Energy Regulatory Commission (Commission) the Transaction Service Agreement entered into between Midwest and Public Service Company of Colorado.

Midwest states that it is serving copies of the instant filing on the Kansas Corporation Commission.

Comment Date: May 27, 2003.

9. Midwest Energy, Inc.

[Docket No. ER03–813–000]

Take notice that on May 5, 2003, Midwest Energy, Inc. (Midwest) tendered for filing with the Federal Energy Regulatory Commission (Commission) the Transaction Service Agreement entered into between Midwest and Southwestern Public Service Company.

Midwest states that it is serving copies of the instant filing on the Kansas Corporation Commission.

Comment Date: May 27, 2003.

10. Midwest Energy, Inc.

[Docket No. ER03–814–000]

Take notice that on May 5, 2003, Midwest Energy, Inc. (Midwest) tendered for filing with the Federal Energy Regulatory Commission (Commission) the Transaction Service Agreement entered into between Midwest and Northern States Power Company.

Midwest states that it is serving copies of the instant filing on the Kansas Corporation Commission.

Comment Date: May 27, 2003.

11. FPL Energy Services, Inc.

[Docket No. ER03–815–000]

Take notice that on May 5, 2003, FPL Energy Services, Inc. tendered for filing with the Federal Energy Regulatory Commission (Commission) a Notice of Cancellation pursuant to sections 35.15 and 131.53 of the Commission's regulations, 18 CFR 35.15 and 131.53, in order to reflect the cancellation of its market-based rate tariff, designated as Rate Schedule FERC No. 1, originally accepted for filing in Docket No. ER99–2337–000.

Comment Date: May 27, 2003.

12. Commonwealth Edison Company

[Docket No. ER03–816–000]

Take notice that on May 5, 2003, Commonwealth Edison Company (ComEd) tendered for filing with the Federal Energy Regulatory Commission (Commission) a Service Agreement and associated Dynamic Scheduling Agreement between ComEd and Alliant Energy under ComEd's Open Access Transmission Tariff. ComEd requests an effective date of April 1, 2003.

ComEd states that copies of the filing were served upon Alliant Energy and the Illinois Commerce Commission.

Comment Date: May 27, 2003.

13. New England Power Pool

[Docket No. ER03–817–000]

Take notice that on May 2, 2003, the New England Power Pool (NEPOOL) Participants Committee filed for acceptance materials to: (1) Permit NEPOOL to expand its membership to include Connecticut Resources Recovery Authority (CRRA), Cinergy Services, Inc. (CSI), FPL Energy New England Transmission, LLC (FPL NET), Millennium Power Partners, LP (Millennium), and Rainbow Energy Marketing Corporation (Rainbow); and (2) to terminate the membership of PECO Energy Company—Power Team (PECO).

The NEPOOL Participants Committee requests the following effective dates:April 1, 2003 for the termination of PECO; May 1, 2003 for the commencement of participation in NEPOOL by CSI, Millennium, and Rainbow; July 1, 2003 for commencement of participation in NEPOOL by CRRA; and an effective date for commencement of participation in NEPOOL by FPL NET as of the date the Commission approves in Docket No. EC03–69–000 the transfer of certain jurisdictional assets related to the interconnecting transmission facilities for the Seabrook Nuclear Generating Station from FPL Energy Seabrook, LLC to FPL NET.

The Participants Committee states that copies of these materials were sent to the New England state governors and regulatory commissions and the Participants in NEPOOL.

Comment Date: May 23, 2003.

Standard Paragraph

Any person desiring to intervene or to protest this filing should file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. All such motions or protests should be filed on or before the comment date, and, to the extent applicable, must be served on the applicant and on any other person designated on the official service list. This filing is available for review at the Commission or may be viewed on the Commission's Web site at *http://www.ferc.gov*, using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or for TTY, contact (202) 502–8659. Protests and interventions may be filed electronically via the Internet in lieu of paper; *see* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link. The Commission strongly encourages electronic filings.

Magalie R. Salas,

Secretary.

[FR Doc. 03–12256 Filed 5–15–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 2206–021]

Carolina Power & Light Company; Notice of Availability of Draft Environmental Assessment

May 9, 2003.

A draft environmental assessment (DEA) is available for public review. The DEA analyzes the environmental impacts of a Shoreline Management Plan (SMP) filed for the Tillery Development of the Yadkin—Pee Dee River Project. The project is located on the Yadkin—Pee Dee River in Anson, Richmond, Montgomery, and Stanly Counties, North Carolina. The Tillery Development is located on the Pee Dee River in Stanly and Montgomery counties, North Carolina. Lake Tillery, the upper reservoir of the Yadkin—Pee Dee Project, is owned and operated by Carolina Power & Light Company (CP&L).

The DEA was written by staff in the Office of Energy Projects, Federal Energy Regulatory Commission. Commission staff concludes that approving the SMP would not constitute a major Federal action significantly affecting the quality of the human environment. The DEA is available for review at the Commission or may be viewed on the Commission's Web site at *http://www.ferc.gov*, using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number filed to access the document. For assistance, contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or for TTY, contact (202) 502–8659.

Anyone may file comments on the DEA. The public as well as Federal and state resource agencies are encouraged to provide comments. All written comments must be filed within 45 days of the issuance date of this notice shown above. Send an original and eight copies of all comments marked with the project number, P–2206–021, to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. Comments, protests and interventions may be filed electronically via the Internet in lieu of paper; *see* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link. The Commission strongly encourages electronic filings.

If you have any questions regarding this notice, please call Shana High at (202) 502–8674.

Magalie R. Salas,

Secretary.

[FR Doc. 03–12330 Filed 5–15–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Application Accepted for Filing and Soliciting Motions To Intervene, Protests, and Comments

May 9, 2003.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Type of Application:* Preliminary permit.

b. *Project No.:* 12184–000.

c. *Date filed:* June 4, 2002.

d. *Applicant:* Sardis Lake Hydro, LLC.

e. *Name of Project:* Sardis Lake Project.

f. *Location:* On Jackfork Creek, Pushmataha, Latimer, LeFlore, McCurtain, Choctaw, Bryan, Atoka, and Pittsburg Counties, Oklahoma utilizing the Sardis Lake Dam administered by the U.S. Army Corps of Engineers.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact:* Mr. Brent L. Smith, President, Northwest Power Services, Inc., Agent for Sardis Lake Hydro, LLC, P.O. Box 535, Rigby, ID 83442, (208) 745–8630, E-mail *npsihydro@aol.com*.

i. *FERC Contact:* Robert Bell, (202) 505–6062.

j. *Deadline for filing comments, protests, and motions to intervene:* 60 days from the issuance date of this notice.

The Commission's rules of practice and procedure require all interveners filing documents with the Commission to serve a copy of that document on each person in the official service list for the project. Further, if an intervener files comments or documents with the Commission relating to the merits of an

issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

k. *Description of Project:* The proposed project would utilize the existing U.S. Army Corps of Engineers' Sardis Lake Dam and would consist of: (1) a proposed intake structure, (2) a proposed 200-foot-long, 60-inch-diameter steel penstock, (3) a proposed powerhouse containing one generating unit having an installed capacity of 1.2 MW, (4) a proposed 1-mile-long, 15 kV transmission line, and (5) appurtenant facilities.

The applicant estimates that the average annual generation would be 4.496 GWh and would be sold to a local utility.

l. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, call toll-free 1–866–208–3676 or e-mail *FERCOnlineSupport@ferc.gov*. For TTY, call (202) 502–8659. A copy is also available for inspection and reproduction at the address in item h above.

m. *Competing Preliminary Permit*—Anyone desiring to file a competing application for preliminary permit for a proposed project must submit the competing application itself, or a notice of intent to file such an application, to the Commission on or before the specified comment date for the particular application (*see* 18 CFR 4.36). Submission of a timely notice of intent allows an interested person to file the competing preliminary permit application no later than 30 days after the specified comment date for the particular application. A competing preliminary permit application must conform with 18 CFR 4.30(b) and 4.36.

n. *Competing Development Application*—Any qualified development applicant desiring to file a competing development application must submit to the Commission, on or before a specified comment date for the particular application, either a competing development application or a notice of intent to file such an application. Submission of a timely notice of intent to file a development application allows an interested person to file the competing application no later than 120 days after the specified comment date for the particular application. A competing license application must conform with 18 CFR 4.30(b) and 4.36.

o. *Notice of Intent*—A notice of intent must specify the exact name, business address, and telephone number of the prospective applicant, and must include an unequivocal statement of intent to submit, if such an application may be filed, either a preliminary permit application or a development application (specify which type of application). A notice of intent must be served on the applicant(s) named in this public notice.

p. *Proposed Scope of Studies under Permit*—A preliminary permit, if issued, does not authorize construction. The term of the proposed preliminary permit would be 36 months. The work proposed under the preliminary permit would include economic analysis, preparation of preliminary engineering plans, and a study of environmental impacts. Based on the results of these studies, the Applicant would decide whether to proceed with the preparation of a development application to construct and operate the project.

q. *Comments, Protests, or Motions to Intervene*—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of rules of practice and procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

r. *Filing and Service of Responsive Documents*—Any filings must bear in all capital letters the title "COMMENTS", "RECOMMENDATIONS FOR TERMS AND CONDITIONS", "PROTEST", OR "MOTION TO INTERVENE", as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing an original and eight copies to: Magalie R. Salas, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. A copy of any motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

s. *Agency Comments:* Federal, State, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

Magalie R. Salas,

Secretary.

[FR Doc. 03–12326 Filed 5–15–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Application for Amendment of Exemption and Soliciting Comments, Motions To Intervene, and Protests

May 12, 2003.

Take notice that the following application has been filed with the Commission and is available for public inspection:

a. *Application Type:* Amendment of license to change project boundary.

b. *Project No:* 1417–126.

c. *Date Filed:* March 6, 2003, and supplemented on May 6, 2003.

d. *Applicant:* Central Nebraska Public Power and Irrigation District (Central).

e. *Name of Project:* Kingsley Dam Project.

f. *Location:* The project is located on the North Platte and Platte Rivers in Garden, Keith, Lincoln, Dawson, and Gosper Counties, Nebraska.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791a–825r.

h. *Applicant Contact:* Jeremiah Maher, Environmental Resources Manager, Central Nebraska Public Power and Irrigation District, 415 Lincoln St., P.O. Box 740, Holdrege, NE 68949–0740, (308) 995–8601.

i. *FERC Contact:* Any questions on this notice should be addressed to Mr. Robert Shaffer at (202) 502–8944, or e-mail address: *robert.shaffer@ferc.gov*.

j. *Deadline for filing comments and or motions:* June 13, 2003.

k. *Description of Request:* Central proposes to change the project boundary at Johnson Lake, which is located in Gosper and Dawson Counties, Nebraska. Central proposes to modify the project boundary by removing 101.7 acres and adding 12.1 acres, to assure the adequacy of lands for project's operational functions. Central states that it made the filing pursuant to the plan for reviewing the project's boundary, which is part of Central's Land and Shoreline Management Plan that was approved in an October 7, 2002, Commission Order.

l. *Locations of the Application:* A copy of the application is available for inspection and reproduction at the Commission's Public Reference Room, located at 888 First Street, NE., Room 2A, Washington, DC 20426, or by calling (202) 502–8371. This filing may also be viewed on the Commission's Web site at *http://www.ferc.gov* using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, call 1–866–208–3676 or e-mail *FERCOnlineSupport@ferc.gov*. For TTY, call (202) 502–8659. A copy is also available for inspection and reproduction at the address in item (h) above.

m. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

n. *Comments, Protests, or Motions to Intervene*—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of rules of practice and procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

o. *Filing and Service of Responsive Documents*—Any filings must bear in all capital letters the title "COMMENTS", "RECOMMENDATIONS FOR TERMS AND CONDITIONS", "PROTEST", OR "MOTION TO INTERVENE", as applicable, and the Project Number of the particular application to which the filing refers. All documents (original and eight copies) should be filed with: Magalie R. Salas, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. A copy of any motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

p. *Agency Comments:* Federal, State, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

q. Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site at *http://www.ferc.gov* under the "e-Filing" link.

Magalie R. Salas,

Secretary.

[FR Doc. 03–12327 Filed 5–15–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Application for Amendment of License and Soliciting Comments, Motions To Intervene, and Protests

May 9, 2003.

Take notice that the following application has been filed with the Commission and is available for public inspection:

a. *Application Type:* Amendment to recreation plan.

b. *Project No:* 2100–119.

c. *Date Filed:* April 4, 2003.

d. *Applicant:* California Department of Water Resources.

e. *Name of Project:* Feather River Project.

f. *Location:* The project is in Butte County, near the City of Oroville. Lake Oroville is one the project reservoirs and is located on the Feather River.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791 (a), 825(r), 799 and 801.

h. *Applicant Contact:* Mr. Daniel F. Peterson, Chief of the Department of Environmental Assessment Branch, California Department of Water Resources, (916) 653–9978.

i. *FERC Contact:* Any questions on this notice should be addressed to Mr. Brian Romanek at (202) 502–6175, or e-mail address: *brian.romanek@ferc.gov*.

j. *Deadline for filing comments and or motions:* June 9, 2003.

All documents (original and eight copies) should be filed with: Ms. Magalie Roman Salas, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington DC 20426. Please include the project number (P–2100–119) on any comments or motions filed. Comments, protests, and interventions may be filed electronically via the internet in lieu of paper. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link. The Commission strongly encourages e-filings.

k. *Description of Request:* The licensee filed a request to amend the approved project recreation plan to convert recreational trails within the project to "shared use" trails as opposed to the present designated use trails. The shared use system would allow concurrent use of the same trail by hikers, bicyclists, and equestrians. Under the present plan some trails are designated for hiker and equestrian use only.

l. Location of the Application: This filing is available for review at the Commission in the Public Reference Room 888 First Street, NE., Room 2A, Washington, DC 20426 or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, call toll-free 1–866–208–3676 or e-mail *FERCOnlineSupport@ferc.gov*. For TTY, call (202) 502–8659. A copy is also available for inspection and reproduction at the address in item h above.

m. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

n. *Comments, Protests, or Motions to Intervene*—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of rules of practice and procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

o. *Filing and Service of Responsive Documents*—Any filings must bear in all capital letters the title "COMMENTS", "RECOMMENDATIONS FOR TERMS AND CONDITIONS", "PROTEST", OR "MOTION TO INTERVENE", as applicable, and the Project Number of the particular application to which the filing refers. A copy of any motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

p. *Agency Comments:* Federal, State, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file

comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

Magalie R. Salas,

Secretary.

[FR Doc. 03–12328 Filed 5–15–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Combined Initial Information Meeting and Scoping Meeting, Project Site Visit, and Solicitation of Scoping Comments for an Applicant-Prepared Environmental Assessment Using the Alternative Licensing Process

May 12, 2003.

a. *Type of Application:* Alternative licensing process.

b. *Project No.:* 2204–019.

c. *Applicant:* City and County of Denver, Colorado.

d. *Name of Project:* Williams Fork Reservoir Project.

e. *Location:* On the Williams Fork River near its confluence with the Colorado River at Parshall, in Grand County, Colorado. No federal lands would be affected.

f. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)–825(r).

g. *Applicant Contact:* Kevin Urie, Denver Water, 1600 W. 12th Ave., Denver, CO 80204, (303) 628–5987.

h. *FERC Contact:* Dianne Rodman, at (202) 502–6077 or *dianne.rodman@ferc.gov.*

j. *Deadline for filing scoping comments:* August 4, 2003.

Comments should be addressed to: Mr. Kevin Urie, Project Coordinator—Williams Fork Project Relicensing, Denver Water, 1600 W. 12th Ave., Denver, CO 80204.

All documents (original and eight copies) should also be filed with: Magalie R. Salas, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

The Federal Energy Regulatory Commission's (Commission) rules of practice and procedure require all interveners filing documents with the Commission to serve a copy of that document on each person on the official service list for the project. Further, if an intervener files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

Scoping comments may be filed electronically via the Internet in lieu of paper. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site (*http://www.ferc.gov*) under the "e-Filing" link.

k. The existing project consists of: (1) The 209-foot-high, 670-foot-long concrete thin arch dam with a crest elevation of 7,814 feet above mean sea level (msl); (2) the Williams Fork reservoir with a surface area of 1,628 acres and storage of 96,822 acre-feet at elevation 7,811 feet msl; (3) a reinforced concrete penstock intake on the face of the dam, with a 7-foot by 5-foot fixed wheel penstock gate controlling flows into a 66-inch-diameter steel penstock running through the dam; (4) river outlet works on the face of the dam, leading to a 54-inch-diameter steel embedded pipe that conveys water to the outlet works valves; (5) a 66-foot-long, 30-foot-wide, 60-foot-high concrete powerhouse at the toe of the dam, containing one vertical-axis turbine/generator with a capacity of 3,150 kilowatts (kW); (6) a tailrace excavated in the streambed rock, carrying the combined powerhouse and river outlet discharges; (7) a 60-foot by 40-foot switchyard; (8) and appurtenant equipment.

The applicant proposes to submit a license application that may request the Commission to first review the application for a small hydroelectric power project exemption from licensing, or alternatively for a new license. Under the exemption alternative, the applicant would increase the project's generating capacity to 3,650 kW by installing a second turbine/generator. Under the relicensing alternative, the applicant would to continue to operate the existing turbine/generator with a 3,150–kW capacity and would not install a second unit.

Scoping Process

The City and County of Denver, Colorado, acting by and through its Board of Water Commissioners (Denver Water), intends to utilize the Commission's alternative licensing process (ALP). Under the ALP, Denver Water intends to prepare an Applicant Prepared Environmental Assessment (APEA) and exemption/license application for the Williams Fork Reservoir Hydroelectric Project.

Denver Water expects to file with the Commission, the APEA and the exemption/license application for the Williams Fork Reservoir Hydroelectric Project by December 31, 2004. Although Denver Water's intent is to prepare an EA, there is the possibility that an Environmental Impact Statement (EIS) will be required. Nevertheless, this meeting will satisfy the NEPA scoping requirements, irrespective of whether an EA or EIS is issued by the Commission.

The purpose of this notice is to inform you of the opportunity to participate in the upcoming scoping meetings identified below, and to solicit your scoping comments.

Site Visit

On Wednesday, June 4, 2003, from 11 a.m. until 3:30 p.m., a site visit of the project will be conducted. The site visit is intended to provide the opportunity for interested individuals to learn more about the project, its operations, and the surrounding environment. Those wishing to attend should meet in Kremmling, Colorado by 11 a.m. at the Colorado State University Cooperative Extension of Grand County office (210 11th Street, Fairgrounds, Kremmling, CO, (970) 724–3436). Please contact Mr. Joe Sloan of Denver Water at (303) 628–6320 by May 26, 2003, if you plan to attend the site visit.

Scoping Meetings

Denver Water and the Commission staff will hold two scoping meetings, one in the daytime and one in the evening, to help us identify the scope of issues to be addressed in the APEA.

The daytime scoping meeting will focus on resource agency concerns, while the evening scoping meeting is primarily for public input. All interested individuals, organizations, and agencies are invited to attend one or both of the meetings, and to assist the staff in identifying the environmental issues that should be analyzed in the APEA. The times and locations of these meetings are as follows:

Daytime Meeting

Thursday, June 5, 2003, 1 p.m. to 4 p.m. Colorado State Cooperative Extension, 210 11th Street, Fairgrounds, Kremmling, CO.

Evening Meeting

Thursday, June 5, 2003, 6 p.m. to 9 p.m. Colorado State Cooperative Extension, 210 11th Street, Kremmling, CO.

To help focus discussions, an initial information package (IIP) and Scoping Document 1 was mailed in April 2003, outlining the subject areas to be addressed in the APEA to the parties on the mailing list. Copies of the IIP and SD1 also will be available at the scoping meetings. The IIP and SD1 are available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at 1–866–208–3676, or for TTY, (202) 502–8659.

Register online at *http://www.ferc.gov/esubscribenow.htm* to be notified via email of new filings and issuances related to this or other pending projects. For assistance, contact FERC Online Support.

Based on all written comments received, a Scoping Document 2 (SD2) may be issued. SD2 will include a revised list of issues, based on the scoping sessions.

Objectives

At the scoping meetings, the staff will: (1) Summarize the environmental issues tentatively identified for analysis in the APEA; (2) solicit from the meeting participants all available information, especially quantifiable data, on the resources at issue; (3) encourage statements from experts and the public on issues that should be analyzed in the APEA, including viewpoints in opposition to, or in support of, the staff's preliminary views; (4) determine the resource issues to be addressed in the APEA; and (5) identify those issues that require a detailed analysis, as well as those issues that do not require a detailed analysis.

Procedures

The meetings will be recorded by a stenographer and will become part of the formal record of the Commission proceeding on the project.

Individuals, organizations, and agencies with environmental expertise and concerns are encouraged to attend the meetings and to assist Denver Water in defining and clarifying the issues to be addressed in the APEA.

Magalie R. Salas,

Secretary.

[FR Doc. 03–12329 Filed 5–15–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Application Accepted for Filing and Soliciting Comments, Motions To Intervene, and Protests

May 12, 2003.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Type of Application:* License amendment for non-project use of project lands and waters.

b. *Project No:* 2376–035.

c. *Date Filed:* March 19, 2003.

d. *Applicant:* American Electric Power.

e. *Name of Project:* Reusens Project.

f. *Location:* Reusens Project reservoir on the James River, in Amherst County, Virginia.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact:* Mr. J. L. Fariss, American Electric Power, P.O. Box 2021, Roanoke, VA 24022.

i. *FERC Contact:* Ms. Monica Maynard (202) 502–6013.

j. *Deadline for filing motions to intervene, protests and comments:* June 13, 2003.

The Commission's rules of practice and procedure require all interveners filing documents with the Commission to serve a copy of that document on each person in the official service list for the project. Further, if an intervener files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

k. *Description of Proposed Action:* The Applicant seeks to allow the Amherst County Service Agency (ACSA) withdraw up to 2 MGD from the James River within the Reusens Project boundary during drought emergencies. The Applicant would allow the ACSA to temporarily install a pump and screened intake pipe to move water from the project reservoir into pipe leading to its water drinking water supply system during drought emergency conditions.

l. The filings are available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, call toll-free 1–866–208–3676 or e-mail *FERCOnlineSupport@ferc.gov.* For TTY, call (202) 502–8659. A copy is also available for inspection and reproduction at the addresses in item h.

m. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

n. Comments, Protests, or Motions to Intervene—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of rules of practice and procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

o. *Filing and Service of Responsive Documents*—Any filings must bear in all capital letters the title "COMMENTS", "RECOMMENDATIONS FOR TERMS AND CONDITIONS", "PROTEST", OR "MOTION TO INTERVENE", as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing the original and the number of copies provided by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. A copy of any motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

p. *Agency Comments:* Federal, State, and local agencies are invited to file comments on the described applications. A copy of the applications may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

q. Comments, protests and interventions may be filed electronically in the Internet in lieu of paper. The Commission strongly encourages electronic filings. *See* CFR 18 385.2001(a)(1)(iii) and the instructions

on the Commission's Web site, *http://ferc.gov*, under the "e-filing" link.

Magalie R. Salas,

Secretary.

[FR Doc. 03–12331 Filed 5–15–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice Soliciting Scoping Comments

May 12, 2003.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Type of Application:* Subsequent Minor License.

b. *Project No.:* 4914–010.

c. *Date Filed:* November 20, 2002.

d. *Applicant:* International Paper Company.

e. *Name of Project:* Nicolet Mill Dam Project.

f. *Location:* At the U.S. Army Corps of Engineers' De Pere Dam, on the Fox River, in the City of De Pere, Brown County, Wisconsin.

g. *Filed Pursuant to:* Federal Power Act 16 U.S.C.791(a)–825(r).

h. *Applicant Contact:* Thomas Piette, International Paper Company, 200 Main Avenue, De Pere, WI 54115, (920) 336–4211.

i. *FERC Contact:* Peter Leitzke, (202) 502–6059 or *peter.leitzke@ferc.gov*.

j. *Deadline for filing scoping comments:* June 26, 2003.

All documents (original and eight copies) should be filed with: Magalie R. Salas, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. Please include the project number (P–4914–010) on any comments or motions filed.

The Commission's rules of practice and procedure require all interveners filing documents with the Commission to serve a copy of that document on each person on the official service list for the project. Further, if an intervener files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

Scoping comments may be filed electronically via the Internet in lieu of paper. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site, *http://www.ferc.gov*, under the "e-Filing" link.

k. This application is not ready for environmental analysis at this time.

l. The existing Nicolet Mill Dam Project consists of the following existing facilities: (1) A 13.6 foot-high, 400-foot-long diversion structure attached to the westerly end of the U.S. Army Corps of Engineers' De Pere Dam; (2) intake works consisting of 28 gates screened with steel racks; (3) a powerhouse containing eight 135-kilowatt (kW) generating units with a total installed capacity of 1,080 kW; and (4) other appurtenances.

m. A copy of the application is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "FERRIS" link. Enter the docket number excluding the last three digits (P–4914) in the docket number field to access the document. For assistance, contact FERC Online Asupport at *FERCOlineSupport@ferc.gov* or call 1–866–208–3676 or for TTY, (202) 502–8659. A copy is also available for inspection and reproduction at the address in item h above.

Register online at *http://www.ferc.gov/esubscribenow.htm* to be notified via email of new filings and issuances related to this or other pending projects. For assistance, contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at 1–866–208–3676, or for TTY, (202) 502–8659.

n. *Scoping Process:* The Commission staff intends to prepare an Environmental Assessment (EA) for the Nicolet Mill Dam Project (FERC No. 4914–010) in accordance with the National Environmental Policy Act. The EA will consider both site-specific and cumulative environmental impacts and reasonable alternatives to the proposed action.

Commission staff does not propose to conduct any on-site scoping meetings at this time. Instead, we will solicit comments, recommendations, information, and alternatives by issuing a Scoping Document (SD).

Copies of the SD outlining the subject areas to be addressed in the EA were distributed to the parties on the Commission's mailing list. Copies of the SD may be viewed on the Web at *http://www.ferc.gov* using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, call 1–866–208–3676 or for TTY (202) 502–8659.

Magalie R. Salas,

Secretary.

[FR Doc. 03–12333 Filed 5–15–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Application for Surrender of Exemption and Soliciting Comments, Motions To Intervene, and Protests

May 9, 2003.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Type of Application:* Surrender of conduit exemption.

b. *Project No.:* 6270–004.

c. *Date Filed:* January 28, 2003.

d. *Applicant:* Moon Lake Water Users Association.

e. *Name of Project:* Big Sand Wash Project.

f. *Location:* On the "C" Canal in Duchesne County, Utah.

g. *Filed pursuant to:* Federal Power Act, 16 U.S.C. 791a–825r.

h. *Applicant Contact:* Mr. Lynn R. Winterton, Moon Lake Water Users Association, 263 East Lagoon Street, Roosevelt, Utah, (435) 722–2002.

i. *FERC Contact:* Regina Saizan, (202) 502–8765.

j. *Deadline for filing motions to intervene, protests and comments:* June 9, 2003.

The Commission's rules of practice and procedure require all interveners filing a document with the Commission to serve a copy of that document on each person in the official service list for the project. Further, if an intervener files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the documents on that resource agency.

k. *Description of Proposed Action:* The proposed Uintah Basin Replacement Project authorized by section 203(a)(1–4) of Pub. L. 102–575 includes the enlargement of the Big Sand Wash Reservoir. The enlargement of the storage area will inundate the applicant's hydropower project. Consequently, the applicant seeks Commission approval to surrender its conduit exemption.

l. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, call toll-free 1–866–208–3676 or e-mail *FERCOnlineSupport@ferc.gov*. For TTY, call (202) 502–8659. A copy is also available for inspection and reproduction at the addresses in item h.

m. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

n. *Comments, Protests, or Motions to Intervene*—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of rules of practice and procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

o. Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title "COMMENTS", "RECOMMENDATIONS FOR TERMS AND CONDITIONS", "PROTEST", OR "MOTION TO INTERVENE", as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing an original and eight copies to: Magalie R. Salas, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. An additional copy must be sent to Director, Division of Hydropower Administration and Compliance, Federal Energy Regulatory Commission, at the above-mentioned address. A copy of any motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

Comments, protests, and motions to intervene may be filed electronically via the Internet in lieu of paper; *see* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link. The Commission strongly encourages electronic filings.

p. *Agency Comments:* Federal, State, and local agencies are invited to file comments on the described applications. A copy of the applications may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

Magalie R. Salas,

Secretary.

[FR Doc. 03–12334 Filed 5–15–03; 8:45 am]

BILLING CODE 5717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Scoping Meetings, Site Visit, Scoping Document 1 and Soliciting Scoping Comments

May 9, 2003.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Type of Application:* Surrender application.

b. *Project No.:* 696–013.

c. *Date filed:* December 31, 2003.

d. *Applicant:* PacifiCorp.

e. *Name of Project:* American Fork Hydroelectric Project.

f. *Location:* On American Fork Creek, near the City of American Fork, Utah County, Utah, about 3 miles east of Highland, Utah. The project affects about 28.8 acres of federal lands within the Uinta National Forest and 2,000 feet of the project flowline passes through the Timpanogos Cave National Monument, administered by the U.S. Department of the Interior, National Park Service (NPS).

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. Applicant Contact Monte Garrett, Licensing Manager, PacifiCorp, 825 NE. Multnomah, suite 1500, Portland, Oregon, 97232 (503) 813–6629.

i. *FERC Contact:* Kenneth Hogan (202) 502–8434, e-mail at *kenneth.hogan@ferc.gov*.

j. *Deadline for filing scoping comments:* 60 days from the date of this notice.

All documents (original and eight copies) should be filed with: Magalie R. Salas, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

The Commission's rules of practice and procedure require all interveners filing documents with the Commission to serve a copy of that document on each person on the official service list for the project. Further, if an intervener files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

Scoping comments may be filed electronically via the Internet in lieu of paper. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site, *http://www.ferc.gov*, under the "e-Filing" link.

k. This application is not ready for environmental analysis at this time.

l. *Description of the Project:* The existing project consists of: (1) A 29-foot 9-inch wide and 4.5-foot-high reinforced concrete diversion dam; (2) a 6-foot-wide 6-foot-long intake; (3) a 6-foot-long 6-foot-wide manually operated sluice gate; (4) a 2-foot-long 2-foot-wide manually operated upstream sluice gate; (5) a 28-inch-diameter welded steel pipe flowline approximately 11,666-foot-long which transitions into a 33-inch-diameter riveted steel penstock 253-foot-long that transitions into a 20-inch-diameter riveted steel penstock 61-foot-long; (6) an approximately 2,700-square-foot brick powerhouse; (7) one turbine generator unit with a rated capacity of 1,050 kilowatts; and (8) other appurtenances.

m. A copy of the application is on file with the Commission and is available for public inspection. This filing is available for review at the Commission or may be viewed on the Commission's Web site at *http://www.ferc.gov*, using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number filed to access the document. For assistance, contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or for TTY, contact (202) 502–8659. A copy is also available for inspection and reproduction at the address in item h above.

n. *Scoping Process:* The Commission intends to prepare an environmental assessment (EA) for the surrender of the license for the project in accordance with the National Environmental Policy Act. The EA may consider reasonable alternatives to the proposed action.

Scoping Meetings and Site Visit

FERC staff will conduct a site visit, an agency scoping meeting and a public scoping meeting. The site visit will consist of a tour of project facilities and lands and any pertinent surrounding features. The agency scoping meeting will focus on resource agency and non-governmental organization (NGO) concerns, while the public scoping meeting is primarily for public input. All interested individuals, organizations, and agencies are invited to attend one or both of the meetings,

and to assist the staff in identifying the scope of the environmental issues that should be analyzed in the EA. The times and locations of the site visit and meetings are as follows:

Site Visit:
June 3, 2003.
Time: 10 a.m.
Timpanogos Cave National Monument's Visitors Center, Rural Route 3, Box 200, American Fork, Utah.

Public Scoping Meeting:
June 3, 2003.
Time: 7 p.m.
American Fork High School, 510 North 600 East, American Fork, Utah 84003. (801) 756–8547.

Agency Scoping Meeting:
June 4, 2003.
Time: 10 a.m.
American Fork High School, 510 North 600 East, American Fork, Utah 84003. (801) 756–8547.

Copies of SD1 outlining the subject areas to be addressed in the EA were distributed to the parties on the Commission's mailing list. Copies of SD1 are available for review at the Commission or may be viewed on the Commission's Web site at *http://www.ferc.gov*, using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number filed to access the document. For assistance, contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or for TTY, contact (202) 502–8659.

As part of scoping the staff will: (1) Summarize the environmental issues tentatively identified for analysis in the EA; (2) solicit from comments all available information, especially quantifiable data, on the resources at issue; (3) encourage comments from experts and the public on issues that should be analyzed in the EA, including viewpoints in opposition to, or in support of, the staff's preliminary views; (4) determine the resource issues to be addressed in the EA; and (5) identify those issues that require a detailed analysis, as well as those issues that do not require a detailed analysis. Consequently, interested entities are requested to file with the Commission any data and information concerning environmental resources and land uses in the project area and the subject project's impacts to the aforementioned.

o. The tentative schedule for preparing the American Fork Surrender Application EA is:

Major milestone	Target date
Ready for Environmental Analysis Notice.	October, 2003.
Draft EA Issued	January, 2004.
Final EA Issued	April, 2004.

Magalie R. Salas,
Secretary.
[FR Doc. 03–12335 Filed 5–15–03; 8:45 am]
BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RM98–1–000]

Regulations Governing Off-the-Record Communications; Public Notice

May 9, 2003.

This constitutes notice, in accordance with 18 CFR 385.2201(h), of the receipt of exempt and prohibited off-the-record communications.

Order No. 607 (64 FR 51222, September 22, 1999) requires Commission decisional employees, who make or receive an exempt or a prohibited off-the-record communication relevant to the merits of a contested on-the-record proceeding, to deliver a copy of the communication, if written, or a summary of the substance of any oral communication, to the Secretary.

Prohibited communications will be included in a public, non-decisional file associated with, but not part of, the decisional record of the proceeding. Unless the Commission determines that the prohibited communication and any responses thereto should become part of the decisional record, the prohibited off-the-record communication will not be considered by the Commission in reaching its decision. Parties to a proceeding may seek the opportunity to respond to any facts or contentions made in a prohibited off-the-record communication, and may request that the Commission place the prohibited communication and responses thereto in the decisional record. The Commission will grant such requests only when it determines that fairness so requires.

Any person identified below as having made a prohibited off-the-record communication should serve the document on all parties listed on the official service list for the applicable proceeding in accordance with rule 2010, 18 CFR 385.2010.

Exempt off-the-record communications will be included in the decisional record of the proceeding, unless the communication was with a cooperating agency as described by 40 CFR 1501.6, made under 18 CFR 385.2201(e)(1)(v).

The following is a list of prohibited and exempt communications recently received in the Office of the Secretary. The communications listed are grouped by docket numbers. These filings are available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or for TTY, contact (202) 502–8659.

Prohibited

Docket No.	Date filed	Presenter or requester
1. Project Nos. 637–022, 460–0004–30–03 and 2342–011.	.....	Mary Morton/ Jamie Simler [1].
2. EL01–10–000.	4–30–03	Mary Morton/ Jamie Simler [2].
3. Project No. 2342–000.	5–1–03	Keith Bonney.

[1] Memorandum of site visits to Pacific Northwest hydro projects.
[2] Memorandum of site visit to Cushman hydro project.

Exempt

Docket No.	Date filed	Presenter or requester
1. CP01–409–000.	5–1–03	Charles Brown.
2. Project No. 477–000.	5–8–03	David Heintzman.
3. Project No. 255–058.	5–8–03	F. Allen Wiley.

Magalie R. Salas,
Secretary.
[FR Doc. 03–12336 Filed 5–15–03; 8:45 am]
BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7499–6]

Proposed Settlement Agreement

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of proposed settlement agreement; request for public comment.

SUMMARY: In accordance with section 113(g) of the Clean Air Act, as amended, 42 U.S.C. 7413(g), notice is hereby given of a proposed settlement agreement in the following case filed in the U.S. Court of Appeals for the District of Columbia Circuit: *Antek Instruments* v. *EPA*, No. 00–1149. This case concerns the U.S. Environmental Protection Agency's (EPA) promulgation of regulations requiring refiners and importers of gasoline to control sulfur content in their product and to test for sulfur content using a specified test procedure.

DATES: Written comments on the proposed settlement agreement must be received by June 16, 2003.

ADDRESSES: Copies of the proposed settlement are available from Phyllis Cochran, Air and Radiation Division (2344A), Office of General Counsel, U.S. Environmental Protection Agency, 1200 Pennsylvania Avenue, NW., Washington, DC 20460, (202)564–7606. Written comments should be sent to Susmita Dubey at the above address and must be submitted on or before June 16, 2003.

SUPPLEMENTARY INFORMATION: In February 2000, EPA promulgated regulations limiting sulfur content in gasoline. 65 FR 6698 (April 10, 2000). The regulations include a requirement that gasoline refiners and importers test their product for sulfur content using a specified test procedure. Antek Instruments filed a petition challenging the final rule. EPA and Antek entered into negotiations and have reached a proposed settlement of this litigation. The proposed settlement agreement outlines a rulemaking proposal to identify alternative sulfur test procedures that can be used to satisfy the regulatory testing requirement, if the resulting test result is correlated with the rule's primary test method.

For a period of thirty (30) days following the date of publication of this notice, EPA will receive written comments relating to the proposed settlement agreement from persons who were not named as parties or interveners to the litigation in question. EPA or the Department of Justice may withdraw or withhold consent to the proposed settlement agreement if the comments disclose facts or considerations that indicate that such consent is inappropriate, improper, inadequate, or inconsistent with the requirements of the Act. Unless EPA or the Department of Justice determine, based on any comment which may be submitted, that consent to the settlement agreement should be withdrawn, the terms of the agreement will be affirmed.

Dated: May 8, 2003.
Lisa K. Friedman,
Associate General Counsel, Air and Radiation Law Office.
[FR Doc. 03–12358 Filed 5–15–03; 8:45 am]
BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[ER–FRL–6640–3]

Environmental Impact Statements and Regulations; Availability of EPA Comments

Availability of EPA comments prepared pursuant to the Environmental ReviewProcess (ERP), under section 309 of the Clean Air Act and section 102(2)(c) of the National Environmental Policy Act as amended. Requests for copies of EPA comments can be directed to the Office of Federal Activities at (202) 564–7167. An explanation of the ratings assigned to draft environmental impact statements (EISs) was published in the **Federal Register** dated April 1, 2003 (68 FR 16511).

Draft EISs

ERP No. D–COE–E32180–FL Rating EC1, Miami Harbor Navigation Improvements Project to Study the Feasibility of Widening and Deepening Portions of the Port, Miami-Dade County, FL.

Summary: EPA expressed some environmental concerns about the unavoidable project impacts to sensitive biological resources, but concluded the proposed mitigation plan should adequately address these losses in the long-term.

ERP No. D–FHW–H40178–MO Rating EC2, I–64/US 40 Corridor, Reconstruction of the existing I–64/US 40 Facility with New Interchange Configurations and Roadway, Funding, City of St.Louis, St. Louis County, MO.

Summary: EPA has environmental concerns regarding the proposed project on the basis of the degree of information provided to ensure compliance with section 4(f). EPA requests that consultation with the State HistoricalPreservation Officer (SHPO) be undertaken to identify appropriate mitigation measures for the properties that will be adversely impacted if the preferred alternative is selected. EPA also requests that identified Environmental Justice communities be evaluated for opportunities to reduce cumulative environmental and human health burdens through project implementation.

ERP No. D–NRC–H06005–NE Rating EC2, GENERIC EIS—Fort Calhoun Station, Unit 1, Renewal of the Operating Licenses (OLs) for an Additional 20 Years, Supplement 12 (NUREG–1437)Omaha Public Power District, Washington County, NE.

Summary: EPA expressed environmental concerns with the proposed re-licensing on the basis of the long (10 year) lead time before the current license expires. EPA recommended that the NRC improve cumulative effects information on current and future heat contributors to the Missouri River, and that NRC detail possible cooling strategies if faced with limited Missouri River assimilative capacity (heat) in the future.

ERP No. DS–AFS–L65300–ID Rating LO, Goose Creek Watershed Project, Reviewing and Updating Information on the Pileated Woodpecker and Soil Impacts, Payette National Forest, New Meadows Ranger District, Adams County, ID.

Summary: EPA has no concerns with the proposed action; however, EPA suggests including information on the potential cumulative effects of 5 other proposed timber sale projects on pileated woodpecker habitat within the National Forest.

ERP No. DS–AFS–L65325–ID Rating LO, Sloan-Kennally Timber Sale Project, Reviewing and Updating Information on the Pileated Woodpecker and Soil Impacts, Payette National Forest, McCallRanger District, Adams County, ID.

Summary: EPA has no significant concerns with the proposed action; however, EPA suggests including information on the potential cumulative effects of 5 other proposed timber sale projects on pileated woodpecker habitat within the National Forest.

ERP No. DS–AFS–L65336–ID Rating LO, Brown Creek Timber Sale Project, Reviewing and Updating Information on the Pileated Woodpecker and Soil Impacts, Payette National Forest, New Meadow Ranger District, Adams County, ID.

Summary: EPA expressed no concerns with the proposed action; however, EPA suggests including information on the potential cumulative effects of 5 other proposed projects on pileated woodpecker habitat within the National Forest.

ERP No. DS–AFS–L65346–ID Rating LO, Middle Fork Weiser River Watershed Project, Reviewing and Updating Information on the Pileated Woodpecker and Soil Impacts, Payette National Forest, Council Ranger District, Adams County, ID.

Summary: EPA has no concerns with the proposed action; however, EPA suggests including information on the

potential cumulative effects of 5 other proposed timber sale projects on pileated woodpecker habitat within the National Forest.

ERP No. DS–AFS–L65379–ID Rating LO, Little Weiser Landscape Vegetation Management Project, Reviewing and Updating Information on the Pileated Woodpecker and Soil Impacts, Payette National Forest, Adams County, ID.

Summary: EPA has no concerns with the proposed action; however, EPA suggests including information on the potential cumulative effects of 5 other proposed timber sale projects on pileated woodpecker habitat within the National Forest.

Final EISs

ERP No. F–BLM–G65083–NM Farmington Resource Management Plan, Implementation, Managing Public Lands within the Farmington Field Office (FF0) Boundaries and Federal Oil and Gas Resources within the New Mexico Portion of San Juan Basin, San Juan, McKinley, Rio Arriba and Sandoval Counties, NM.

Summary: EPA's comments on air quality impacts and mitigation have been addressed with additional air quality analysis and assurance that the NMAQB air permitting program will minimize air quality impacts. The FourCorners Ozone Task Force will offer future recommendations to BLM for consideration in the plan.

ERP No. F–FHW–E40788–AL Memphis to Atlanta Corridor Construction, I–65 in North Central Alabama eastward to the Georgia State Line, U.S. Army COE Section 404, U.S. Coast Guard and NPDES Permits, Limestone, Morgan, Madison, Jackson, Marshall, DeKalb and CherokeeCounties, AL.

Summary: EPA continues to have environmental concerns with the proposed project regarding impacts to wetlands and aquatic resources, storm water, noise, relocations and other natural habitat impacts. EPA recommends that tangible minimization and/or mitigation commitments for these impacts be developed and implemented.

ERP No. F–FHW–E40789–MS East Harrison County Connector Construction, I–10 to U.S. 90, Funding, U.S. Army COE and US Coast Guard Permits Issuance and Possible Transfer of Federal Lands, Harrison County, MS.

Summary: EPA continues to have environmental concerns with impacts arising from the proposed project relating to noise, floodplains, wetlands and historic properties. EPA wishes to reiterate the importance of MDOT and FHWA's commitment to provide wetland and noise mitigation for impacts attributable to the proposed project.

ERP No. F–FHW–H40170–MO US 50 East-Central Corridor Highway Improvements, US 50 to US 63 east of Jefferson City, Funding and Major Transportation Investment Analysis, Osage, Gasconade and Franklin Counties, MO.

Summary: The FEIS adequately supplements information needs and addresses the concerns that EPA had expressed in the review of the DEIS for this project. Consequently, EPA has no objections.

ERP No. F–FHW–K40245–CA CA–78/111 Brawley Bypass, Construction of an Expressway from CA–86 to CA–111, City of Brawley, Funding, Imperial County, CA.

Summary: EPA has continuing environmental concerns about air quality impacts arising from the proposed project, particularly regarding PM–10. EPA supports the commitment to offset the loss of prime farmland from the project by purchasing conservation easements. EPA requests that unresolved air quality issues and mitigation for farmland impacts be addressed in the Record of Decision.

ERP No. F–NPS–D61054–VA Jamestown Project, Improvements at the Jamestown Unit of Colonial National Park and the JamestownNational Historic Site, Implementation, James City County, VA.

Summary: EPA expressed lack of objections with the proposed action.

ERP No. F–SFW–G91002–NM Rio Grande Silvery Minnow (Hybognathus amarus) Critical Habitat Designation, Implementation, Bernalillo, Sandoval, Socorro and Valencia Counties, NM.

Summary: EPA has no objection to the selection of the preferred plan of action. EPA's comments on the Draft EIS were addressed.

Dated: May 13, 2003.

Joseph C. Montgomery,

Director, NEPA Compliance Division, Office of Federal Activities.

[FR Doc. 03–12350 Filed 5–15–03; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[ER–FRL–6640–2]

Environmental Impact Statements; Notice of Availability

Responsible Agency: Office of Federal Activities, General Information (202) 5647167 or *http://www.epa.gov/compliance/nepa/.*

Weekly receipt of Environmental Impact Statements

Filed May 5, 2003, through May 9, 2003, Pursuant to 40 CFR 1506.9.

EIS No. 030209, DRAFT EIS, AFS, WA, 49 Degrees North Mountain Resort Revised Master Development Plan, Implementation, Colville National Forest, Newport Ranger District, Stevens County, WA, Comment Period Ends: June 30, 2003, Contact: Lynn Kaney (509) 447–7300.

This document is available on the Internet at: *http://www.fs.fed.us/r6/colville.*

EIS No. 030210, DRAFT EIS, BLM, OR, CA, Upper Klamath River Management Plan, Resource Management Plan Amendments, Implementation, Upper Klamath River stretch between Lake Ewauna, OR, south to Irongate Dam in CA, Comment Period Ends: August 14, 2003, Contact: Larry Frazier (541) 883–6916.

This document is available on the Internet at: *http://www.or.blm.gov/Lakeview/kfra/index.htm.*

EIS No. 030211, DRAFT EIS, COE, MS, Royal D'Iberville Hotel and Casino Development Project, Construction and Operation, U.S. Army COE Section 10 and 404 Permits, NPDES Permit, City of D'Iberville on the Back Bay, Mississippi Gulf Coast, Harrison, MS, Comment Period Ends: June 30, 2003, Contact: Susan Ivester Rees (251) 694–4141.

EIS No. 030212, FINAL EIS, COE, TX, Bayport Channel Container/Cruise Terminal Project, To Construct and Operate a Marine Terminal Complex on the Bayport Ship Channel, Issuance of Permit, Section 404 and 10 Permits, Harris County, TX, Wait Period Ends: June 16, 2003, Contact: Fred Anthamatten (409) 766–3943.

EIS No. 030213, DRAFT EIS, NRC, SC, H.B. Robinson Steam Electric Plant, Unit No. 2 (RNP), Application for Operating License Renewal of Nuclear Plants for 20-Year, Supplement 13 located on the Shore of Lake Robinson, Darlington and Chesterfield Counties, SC, Comment Period Ends: July 20, 2003, Contact: Richard L. Emch (301) 415–1590.

EIS No. 030214, DRAFT EIS, AFS, KY, Daniel Boone National Forest Project, Proposal to Revise the Land and Resource Management Plan, Implementation, Winchester, Several Counties, KY, Comment Period Ends: August 14, 2003, Contact: Rick Wilcox (859) 745–3156.

This document is available on the Internet at: *http://www.southregion.fs.fed/boone/.*

EIS No. 030215, FINAL EIS, FHW, SC, Dave Lyle Boulevard Extension, New Location from the S.C. Route 161/Dave Lyle Boulevard Intersection in York County To S.C. Route 75, in the vicinity of the U.S. Route 521/S.C., York County Metropolitan Road Corridor Project, Funding, York and Lancaster Counties, SC, Wait Period Ends: June 16, 2003, Contact: Patrick Tyndall (803) 765–5460.

EIS No. 030216, DRAFT EIS, FHW, OH, OH–161/37 Improvement, from OH–161 (New Albany Bypass) to west of OH–161/37 Interchange with OH–16, Funding, Franklin and Licking Counties, OH, Comment Period Ends: July 18, 2003, Contact: Larry Anderson (614) 469–6896.

EIS No. 030217, DRAFT EIS, NSA, NM, Chemistry and Metallurgy Research Building Replacement Project, Consolidation and Relocation, Los Alamos National Laboratory, Los Alamos County, NM, Comment Period Ends: June 30, 2003, Contact: Elizabeth Withers (505) 667–8690.

EIS No. 030218, FINAL EIS, FRC, WY, MT, ND, Grasslands Pipeline Project, Interstate Natural Gas Pipeline System Construction and Operation, Docket No. CP02–037–000, WY, ND and MT, Wait Period Ends: June 16, 2003, Contact: Rich McGuire (202) 502–6177.

This document is available on the Internet at: *http://www.ferc.gov.*

EIS No. 030219, FINAL EIS, BLM, NV, Ivanpah Energy Center Project, 500 Megawatt (MW) Gas-Fired Electric Power Generating Station Construction and Operation, Approval, Right-of-Way Grant, BLM Temporary Use Permit, FHWA Permit to Cross Federal Aid Highway, U.S. Army COE Section 10 and 404 Permits and NPDES Permit Issuance, Clark County, NV, Wait Period Ends: June 16, 2003, Contact: Jerrold E. Crockford (505) 599–6333.

EIS No. 030220, FINAL EIS, AFS, WI, Cayuga Project Area, Various Resource Management Projects, Chequamegon-Nicolet National Forest, Great Divide Ranger District, Ashland County, WI, Wait Period Ends: June 16, 2003, Contact: Debra Sigmund (715) 634–4821.

This document is available on the Internet at: *http://www.fs.fed.us/r9/cnnf/natres/index.html.*

EIS No. 030221, FINAL EIS, NOA, Amendment 13 to the Fishery Management Plan for Summer Flounder, Scup, and Black Sea Bass, Implementation, in the Western Atlantic Ocean, from Cape Harteras, NC, northward to the US-Canadian Border, Wait Period Ends: June 16, 2003, Contact: Steven Kokkinakis (202) 482–3639.

EIS No. 030222, FINAL SUPPLEMENT, COE, CA, Bel Marin Keys Unit V Expansion of the Hamilton Wetland Restoration Project, New and Updated Information, Application for Approval of Permits, Novato Creek, Marin County, CA, Wait Period Ends: June 16, 2003, Contact: Eric Jolliffe (415) 977–8543.

This document is available on the Internet at: *http://www.coastalconservancy.ca.gov/belmarin.*

EIS No. 030223, FINAL EIS, AFS, MT, Post Fire Vegetation and Fuels Management Project, Fuel Reduction, Bark Beetle Sanitation and Maintenance, and/or Restoration of Vegetative Communities, Beaverhead Deerlodge National Forest, Wisdom and Pintler Ranger Districts, Beaverhead and Deerlodge Counties, MT, Wait Period Ends: June 16, 2003, Contact: Amy Nerbun (406) 683–3948.

EIS No. 030224, DRAFT EIS, DOE, NY, West Valley Demonstration Project, Waste Management, Onsite Management and Offsite Transportation of Radioactive Waste, West Valley, Cattaraugus County, NY, Comment Period Ends: June 30, 2003, Contact: Daniel W. Sullivan (800) 633–5280.

Amended Notices

EIS No. 030198, DRAFT EIS, AFS, NV, Jarbidge Canyon Project, To Implement a Road Management Plan and Construct a Water Projects along the Charleston-Jarbidge Road, and Reconstruct the South Canyon Road, Humbolt-Toiyabe National Forest, Jarbidge Ranger District, ELko County, NV, Comment Period Ends: June 23, 2003, Contact: Jim Winfrey (775) 778–0229.

Revision of FR Notice Published on 5/9/2003: Correction to Contact Person Telephone Number.

EIS No. 030204, FINAL EIS, STB, TX, Bayport Loop New Rail Line, Construction and Operation, Finance Docket No. 34079, Houston, Harris County, TX, Wait Period Ends: June 9, 2003, Contact: Dana White (888) 229–7857.

Revision of FR Notice Published on 5/9/2003: Correction of EIS Status from Draft EIS to Final EIS. Correction of CEQ Comment Period Ending 6/23/2003 to Wait Period Ending 6/9/2003.

Dated: May 13, 2003.

Jóseph C. Montgomery,

Director, NEPA Compliance Division, Office of Federal Activities.

[FR Doc. 03–12351 Filed 5–15–03; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[OPP–2003–0128; FRL–7303–2]

Forchlorfenuron; Notice of Filing a Pesticide Petition to Establish a Tolerance for a Certain Pesticide Chemical in or on Food

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces the initial filing of a pesticide petition proposing the establishment of regulations for residues of a certain pesticide chemical in or on various food commodities.

DATES: Comments, identified by docket ID number OPP–2003–0128, must be received on or before June 16, 2003.

ADDRESSES: Comments may be submitted electronically, by mail, or through hand delivery/courier. Follow the detailed instructions as provided in Unit I. of the **SUPPLEMENTARY INFORMATION.**

FOR FURTHER INFORMATION CONTACT: Dennis McNeilly, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 308–6742; e-mail address: mcneilly.dennis@epa.gov.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

You may be potentially affected by this action if you are an agricultural producer, food manufacturer, or pesticide manufacturer. Potentially affected entities may include, but are not limited to:

- Crop production (NAICS 111)
- Animal production (NAICS 112)
- Food manufacturing (NAICS 311)
- Pesticide manufacturing (NAICS 32532)

This listing is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in this unit could also be affected. The North American Industrial Classification System (NAICS) codes have been provided to

assist you and others in determining whether this action might apply to certain entities. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

B. How Can I Get Copies of this Document and Other Related Information?

1. *Docket.* EPA has established an official public docket for this action under docket identification (ID) number OPP–2003–0128. The official public docket consists of the documents specifically referenced in this action, any public comments received, and other information related to this action. Although a part of the official docket, the public docket does not include Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. The official public docket is the collection of materials that is available for public viewing at the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA. This docket facility is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The docket telephone number is (703) 305–5805.

2. *Electronic access.* You may access this **Federal Register** document electronically through the EPA Internet under the "**Federal Register**" listings at *http://www.epa.gov/fedrgstr/*.

An electronic version of the public docket is available through EPA's electronic public docket and comment system, EPA Dockets. You may use EPA Dockets at *http://www.epa.gov/edocket/* to submit or view public comments, access the index listing of the contents of the official public docket, and to access those documents in the public docket that are available electronically. Although not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the docket facility identified in Unit I.B.1. Once in the system, select "search," then key in the appropriate docket ID number.

Certain types of information will not be placed in the EPA Dockets. Information claimed as CBI and other information whose disclosure is restricted by statute, which is not included in the official public docket, will not be available for public viewing in EPA's electronic public docket. EPA's policy is that copyrighted material will not be placed in EPA's electronic public docket but will be available only in printed, paper form in the official public docket. To the extent feasible, publicly available docket materials will be made available in EPA's electronic public docket. When a document is selected from the index list in EPA Dockets, the system will identify whether the document is available for viewing in EPA's electronic public docket. Although not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the docket facility identified in Unit I.B. EPA intends to work towards providing electronic access to all of the publicly available docket materials through EPA's electronic public docket.

For public commenters, it is important to note that EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing in EPA's electronic public docket as EPA receives them and without change, unless the comment contains copyrighted material, CBI, or other information whose disclosure is restricted by statute. When EPA identifies a comment containing copyrighted material, EPA will provide a reference to that material in the version of the comment that is placed in EPA's electronic public docket. The entire printed comment, including the copyrighted material, will be available in the public docket.

Public comments submitted on computer disks that are mailed or delivered to the docket will be transferred to EPA's electronic public docket. Public comments that are mailed or delivered to the docket will be scanned and placed in EPA's electronic public docket. Where practical, physical objects will be photographed, and the photograph will be placed in EPA's electronic public docket along with a brief description written by the docket staff.

C. How and To Whom Do I Submit Comments?

You may submit comments electronically, by mail, or through hand delivery/courier. To ensure proper receipt by EPA, identify the appropriate docket ID number in the subject line on the first page of your comment. Please ensure that your comments are submitted within the specified comment period. Comments received after the close of the comment period will be marked "late." EPA is not required to consider these late comments. If you wish to submit CBI or information that is otherwise protected by statute, please follow the instructions in Unit I.D. Do not use EPA Dockets or e-mail to submit CBI or information protected by statute.

1. *Electronically.* If you submit an electronic comment as prescribed in this unit, EPA recommends that you include your name, mailing address, and an e-mail address or other contact information in the body of your comment. Also include this contact information on the outside of any disk or CD ROM you submit, and in any cover letter accompanying the disk or CD ROM. This ensures that you can be identified as the submitter of the comment and allows EPA to contact you in case EPA cannot read your comment due to technical difficulties or needs further information on the substance of your comment. EPA's policy is that EPA will not edit your comment, and any identifying or contact information provided in the body of a comment will be included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment.

i. *EPA Dockets.* Your use of EPA's electronic public docket to submit comments to EPA electronically is EPA's preferred method for receiving comments. Go directly to EPA Dockets at *http://www.epa.gov/edocket*, and follow the online instructions for submitting comments. Once in the system, select "search," and then key in docket ID number OPP–2003–0128. The system is an "anonymous access" system, which means EPA will not know your identity, e-mail address, or other contact information unless you provide it in the body of your comment.

ii. *E-mail.* Comments may be sent by e-mail to *opp-docket@epa.gov*, Attention: Docket ID Number OPP–2003–0128. In contrast to EPA's electronic public docket, EPA's e-mail system is not an "anonymous access" system. If you send an e-mail comment directly to the docket without going through EPA's electronic public docket, EPA's e-mail system automatically captures your e-mail address. E-mail addresses that are automatically captured by EPA's e-mail system are included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket.

iii. *Disk or CD ROM.* You may submit comments on a disk or CD ROM that you mail to the mailing address identified in Unit I.C.2. These electronic submissions will be accepted in WordPerfect or ASCII file format. Avoid the use of special characters and any form of encryption.

2. *By mail.* Send your comments to: Public Information and Records Integrity Branch (PIRIB) (7502C), Office of Pesticide Programs (OPP), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001, Attention: Docket ID Number OPP–2003–0128.

3. *By hand delivery or courier.* Deliver your comments to: Public Information and Records Integrity Branch (PIRIB), Office of Pesticide Programs (OPP), Environmental Protection Agency, Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA, Attention: Docket ID Number OPP–2003–0128. Such deliveries are only accepted during the docket's normal hours of operation as identified in Unit I.B.1.

D. How Should I Submit CBI To the Agency?

Do not submit information that you consider to be CBI electronically through EPA's electronic public docket or by e-mail. You may claim information that you submit to EPA as CBI by marking any part or all of that information as CBI (if you submit CBI on disk or CD ROM, mark the outside of the disk or CD ROM as CBI and then identify electronically within the disk or CD ROM the specific information that is CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

In addition to one complete version of the comment that includes any information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket and EPA's electronic public docket. If you submit the copy that does not contain CBI on disk or CD ROM, mark the outside of the disk or CD ROM clearly that it does not contain CBI. Information not marked as CBI will be included in the public docket and EPA's electronic public docket without prior notice. If you have any questions about CBI or the procedures for claiming CBI, please consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

E. What Should I Consider as I Prepare My Comments for EPA?

You may find the following suggestions helpful for preparing your comments:

1. Explain your views as clearly as possible.

2. Describe any assumptions that you used.

3. Provide copies of any technical information and/or data you used that support your views.

4. If you estimate potential burden or costs, explain how you arrived at the estimate that you provide.

5. Provide specific examples to illustrate your concerns.

6. Make sure to submit your comments by the deadline in this notice.

7. To ensure proper receipt by EPA, be sure to identify the docket ID number assigned to this action in the subject line on the first page of your response. You may also provide the name, date, and **Federal Register** citation.

II. What Action is the Agency Taking?

EPA has received a pesticide petition as follows proposing the establishment and/or amendment of regulations for residues of a certain pesticide chemical in or on various food commodities under section 408 of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a. EPA has determined that this petition contains data or information regarding the elements set forth in FFDCA section 408(d)(2); however, EPA has not fully evaluated the sufficiency of the submitted data at this time or whether the data support granting of the petition. Additional data may be needed before EPA rules on the petition.

List of Subjects

Environmental protection, Agricultural commodities, Feed additives, Food additives, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: May 7, 2003.

Debra Edwards,

Director, Registration Division, Office of Pesticide Programs.

Summary of Petition

The petitioner's summary of the pesticide petition is printed below as required by FFDCA section 408(d)(3). The summary of the petition was prepared by the petitioner and represents the view of the petitioner. The petition summary announces the availability of a description of the analytical methods available to EPA for the detection and measurement of the pesticide chemical residues or an explanation of why no such method is needed.

KIM-C1, LLC

PP 3F6550

EPA has received a pesticide petition (3F6550) from KIM-C1, LLC, c/o Siemer & Associates, Inc., 4672 W. Jennifer, Ste. 103, Fresno, CA 93722 proposing, pursuant to section 408(d) of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a(d), to amend 40 CFR part 180 by establishing a tolerance for residues of Forchlorfenuron (CPPU) in or on the raw agricultural commodities grapes and kiwifruit and the processed commodity raisins at 0.03 parts per million (ppm). EPA has determined that the petition contains data or information regarding the elements set forth in section 408(d)(2) of the FFDCA; however, EPA has not fully evaluated the sufficiency of the submitted data at this time or whether the data supports granting of the petition. Additional data may be needed before EPA rules on the petition.

A. Residue Chemistry

1. *Plant metabolism.* ^{14}C radiolabel studies were conducted on apples, grapes, and kiwifruit. Results of these three studies showed that the metabolism of CPPU in apples, grapes, and kiwifruit is similar, if not identical. Metabolism of CPPU in these crops involved hydroxylation of the phenyl-ring to form 3-hydroxy-CPPU or 4-hydroxy-CPPU followed by conjugation with glucose to form β-glycosides. These studies were conducted using CPPU at 15 ppm and 75 ppm. Most of the residue remained on the treated surface and was primarily associated with pulp tissue. Very little radioactivity was found in the juice.

2. *Analytical method.* Two analytical methods, both based on high performance liquid chromatography (HPLC) procedures have been developed. The first used a visible ultraviolet (UV) detector while the second used a Mass Spec detector. Since the Mass Spec detector is capable of both qualitative as well as quantitative measurement it is the preferred method. The level of quantification (LOQ) in whole grape fruit was 0.01 ppm; the level of detection (LOD) was 0.003 ppm. In grape juice, the LOQ was 0.002 ppm and the LOD was 0.007 ppm (0.7 parts per billion (ppb)). In raisins, the LOQ was 0.01 ppm and the LOD was 0.003 ppm.

3. *Magnitude of residues.* The magnitude of the residues in or on grapes, excluding outliers three standard deviations beyond the mean, are 0.03 ppm. One outlier was at 0.04 ppm. Grape juice residues are below 0.01 ppm. Raisin residues are at or below 0.02 ppm while kiwifruit will be at or below 0.1 ppm.

B. Toxicological Profile

A full battery of toxicology testing including studies of acute, subchronic, chronic, oncogenicity, developmental, reproductive and genotoxicity effect is available for CPPU. The acute toxicity of

CPPU is low by all routes. The lowest subchronic study no observed effect level (NOEL) value is 16.8 milligrams/kilogram/day (mg/kg/day) obtained from the dog 90–day toxicity study. Chronic studies indicate that CPPU is not carcinogenic. The lowest chronic dietary NOEL is 7 mg/kg/day from male rats fed CPPU for 104 weeks. CPPU showed no evidence of developmental toxicity in rats and rabbits. In a rat reproduction study, reproductive effects were only observed at maternally toxic doses. Finally, genetic toxicity studies indicate that CPPU is not genotoxic. For the purposes of dietary risk analysis, 0.07 mg/kg/day is proposed for the chronic Population Adjusted Dose (cPAD). The cPAD is based on a chronic endpoint of 7 mg/kg/day which is the NOEL for males from the rat chronic/oncogenicity feeding study and an uncertainty factor of 100. No acute toxicity endpoint could be identified and therefore an acute dietary risk assessment is considered unnecessary.

1. *Acute toxicity.* The acute toxicity of CPPU is low by all routes. The battery of acute toxicity studies place CPPU into Toxicity Category III. CPPU has low acute toxicity when administered orally, dermally or via inhalation to rats. It is not a skin irritant and is only a mild eye irritant. CPPU is not a skin sensitizer.

2. *Genotoxicity.* The genotoxic potential of CPPU was studied *in vitro* in bacteria and mammalian cells and *in vivo* in the unscheduled DNA synthesis test. The test systems assayed did not show any evidence of genotoxicity except in the bacterial mutagenicity assay, strain TA1535, without metabolic activation. The weight of the evidence indicates that CPPU does not possess significant genotoxicity concerns.

3. *Reproductive and developmental toxicity.* Developmental effects of CPPU were studied in rats and rabbits and multigenerational effects on reproduction were studied in rats.

i. *Rat developmental.* In the developmental toxicity study conducted with rats, CPPU was administered by gavage at levels of 0, 100, 200 and 400 mg/kg/day. The maternal and developmental no observed adverse effect levels (NOAELs) are 200 mg/kg/day based on reduced body weights, body weight gain and food consumption and an increased incidence of alopecia in dams. There were no developmental effects.

ii. *Rabbit developmental.* In the rabbit developmental study, gavage doses of 0, 25, 50 and 100 mg/kg/day were administered. Maternal toxicity (decreased body weight and body weight gains) was observed at 50 mg/kg/day and above. The maternal NOAEL is 25 mg/kg/day and the developmental NOAEL is 100 mg/kg/day. There were no developmental effects.

iii. *Reproduction.* In the rat reproduction study, CPPU was administered in the diet at levels of 0, 150, 2,000, and 7,500 ppm for two generations. There were no adverse effects of CPPU on reproductive success. Parental toxicity consisted of clinical signs, inhibition of body weight gain, reduced food consumption, and macroscopic and microscopic effects in the kidney. Reproductive toxicity at the highest dose consisted of slightly reduced live litter sizes in the F_2 litters. In the pups, body weights and survival (late lactation period) were reduced and at the high dose, pup mortality and emaciation was increased. The parental, pup, and reproductive NOAELs are 150 ppm, 150 ppm, and 2,000 ppm, respectively.

4. *Subchronic toxicity.* Subchronic toxicity studies have been conducted with CPPU in the rat, mouse, and dog.

i. *Rats.* CPPU technical was tested in rats in a 3–month study at dietary levels of 0, 200, 1,000 and 5,000 ppm. Observations were decreased body weight, body weight gain and food efficiency. The NOAEL in males is 5,000 ppm (400 mg/kg/day) and in females is 1,000 ppm (84 mg/kg/day).

ii. *Mice.* A 13–week feeding study in mice was conducted at dose levels of 0, 900, 1,800, 3,500 and 7,000 ppm. Effects included decreased body weight and food consumption, increased relative liver weight and lymphocytic cell infiltration in the kidneys. The NOAEL is 3,500 ppm (609 mg/kg/day in males and 788 mg/kg/day in females).

iii. *Dogs.* A 13–week dietary toxicity study was conducted in beagle dogs at dose levels of 0, 50, 500 and 5,000 ppm. Effects included decreased body weight gain, food consumption and food efficiency. The NOAEL for both sexes was 500 ppm (16.8 mg/kg/day in males and 19.1 mg/kg/day in females).

5. *Chronic toxicity.* CPPU has been tested in chronic studies in dogs, rats, and mice.

i. *Rats.* In a 104–week chronic/oncogenicity study in rats, CPPU was administered at dose levels of 0, 150, 2,000 and 7,500 ppm in the diet. Findings were decreased body weight, body weight gain and food consumption, and organ weight and histopathological effects in the kidney. No oncogenicity was found. The NOAEL for this study is 150 ppm (7 mg/kg/day in males and 9 mg/kg/day in females).

ii. *Mice.* CPPU was administered in the diet to mice for 78–weeks at dose levels of 0, 10 and 1,000 mg/kg/day. Observations were decreased body weight and body weight gain, food consumption, increased kidney weights and incidence of chronic kidney histopathological lesions. The NOAEL for both sexes is 10 mg/kg/day.

iii. *Dogs.* In a 12–month study, CPPU was administered in the diet to dogs at dose levels of 0, 150, 3,000 and 7,500 ppm. Observations included reduced body weight, body weight gain and food consumption and various hematology changes. The NOAEL for both sexes was 3,000 ppm (87 mg/kg/day in males and 91 mg/kg/day in females).

iv. *Carcinogenicity.* CPPU did not produce carcinogenicity in chronic studies with rats or mice. The oncogenicity classification of CPPU will be "E" (no evidence of carcinogenicity for humans).

6. *Animal metabolism.* A rat metabolism study indicates that CPPU is almost completely absorbed and most of the ^{14}C-CPPU-derived radioactivity is rapidly eliminated primarily via the urine. The majority of the metabolism of CPPU was via hydroxylation of the phenyl ring. The sulfate conjugate of hyrdoxyl CPPU was the major metabolite excreted in the urine, accounting for as much as approximately 96% of the urinary radioactivity. Tissue residues accounted for less than 1% of the administered dose at 168 hours post-dosing.

7. *Metabolite toxicology.* Metabolites occur at levels below 0.1 ppm and therefore are below levels required to be assayed in animal testing.

8. *Endocrine disruption—Potential endocrine effects.* No special studies to investigate the potential for endocrine effects of CPPU have been performed. However, as summarized above, a large and detailed toxicology data base exists for the compound including studies in all required categories. These studies include acute, sub-chronic, chronic, developmental, and reproductive toxicology studies including detailed histology and histopathology of numerous tissues, including endocrine organs, following repeated or long-term exposures. These studies are considered capable of revealing endocrine effects. The results of all of these studies show no evidence of any endocrine-mediated effects and no pathology of the endocrine organs. Consequently, it is concluded that CPPU does not possess estrogenic or endocrine disrupting properties.

C. Aggregate Exposure

1. *Dietary exposure.* This dietary risk assessment was conducted by Infoscientific.com for KIM-C1, LLC. The dietary exposure assessment was conducted for foods containing forchlorfenuron: Chemical Abstracts Service (CAS): 68157–60–8 (CPPU) by using the CARES (Cumulative and Aggregate Risk Evaluation System) model. The data input included the following categories of data for performing the dietary exposure assessment: Subpopulations of interest, (infants 1 to 2 years of age and adults 20 to 49 years of age); List of foods which were: blueberry, grape, grape juice, grape raisin, grape wine/sherry, and kiwifruit; food residues which were: 0.001 (blueberry baby food), 0.0007 for grape juice, 0.0007 for grape juice in baby food, 0.03 for raisins, 0.007 for grape as wine/sherry, and 0.01 for kiwifruit; and toxicological benchmarks which were 0.07 mg/kg/day for the oral no observed effect level (NOEL) on a chronic (365–day) basis and 25 mg/kg/day for the oral NOEL based on an acute (1–day) basis. The FCID (Food Consumption Information Database) data set was used to obtain food consumption data in grams per kilogram of body weight.

i. *Food.* The chronic dietary exposure calculations for infants (1 to 2 years old) indicate that over a period of one year:

- 99.9% of infants would ingest less than 0.0000515 mg/kg/day (0.071% of Oral NOEL)
- 99.0% of infants would ingest less than 0.0000469 mg/kg/day (0.067% of Oral NOEL)
- 95.0% of infants would ingest less than 0.0000429 mg/kg/day (0.061% of Oral NOEL)

Similar dietary exposure calculations for adults (20 to 49 years old) indicate that:

- 99.9% of adults would ingest less than 0.0000076 mg/kg/day (0.011% of Oral NOEL)
- 99.0% of adults would ingest less than 0.0000067 mg/kg/day (0.010% of Oral NOEL)
- 95% of adults would ingest less than 0.0000060 mg/kg/day (0.009% of Oral NOEL)

Blueberries have not been included in the petition for registration even though they were included in the dietary risk assessment which is shown above. Even with the blueberries included in the risk assessment the total percent of the oral NOEL on a chronic basis represents only 0.0229% of the oral NOEL. On this basis, there cannot be any anticipated harmful effects to public health.

Acute (1–day) Exposure does not represent any hazard since no acute exposure was identified in this risk assessment.

ii. *Drinking water.* The very low use rate of CPPU, i.e. 10 grams active ingredient or less per acre if used constantly for 20 years would apply less than 0.5 pounds of CPPU per acre during that 20 year period. Computer modeling, using the conservative pesticide root zone model (PRZM) means of analysis has shown that no CPPU would reach ground water, even in sandy loam soils. The results of this risk analysis supported an unambiguous conclusion of "essentially zero risk to ground water" even under reasonable worst-case assumptions. Concentrations are not predicted to exceed 15 to 20 ppb of CPPU in the soil in the upper soil horizons, even following yearly applications for as long as 30 years. No secondary exposure is anticipated as a result of contamination of drinking water.

2. *Non-dietary exposure.* No non-dietary exposure is expected since CPPU is not anticipated to be found in the drinking water. This material does not translocate in plants and thus secondary exposure through plants growing in soil receiving CPPU is not anticipated. The extremely low application rates will not result in significant buildup in the environment. Data indicate that any parent material of CPPU left in the soil will be strongly bound to soil particles and will not move.

D. Cumulative Effects

There are no cumulative effects expected since CPPU is not taken up by plants from the soil. It slowly degrades to mineral end points. Its low use rates and infrequent applications are not conducive to build in the environment.

E. Safety Determination

1. *U.S. population.* As pointed out above in dietary exposure-food the percentage of the reference dose consumed by treating the subject crops represents less than 1% of the estimated safe level for the most sensitive segment of the population, non-nursing infants.

2. *Infants and children.* No developmental, reproductive or fetotoxic effects have been associated with CPPU. The calculation of safety margins with respect to these segments of the population were taken into consideration in the CARES (Cumulative and Aggregate Risk Evaluation System) model estimates with respect to the risk associated with the percentage of the reference dose being consumed.

F. International Tolerances

There is no CODEX maximum residue level established for CPPU. However, CPPU is registered for use on grapes and other crops in Japan, Chile, Mexico, and South Africa.

[FR Doc. 03–12360 Filed 5–15–03; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[OPP–2003–0168; FRL–7306–6]

(Z,E)-3,13-octadecadienyl and (Z,Z)-3,13-octadecadienyl; Receipt of Application for Emergency Exemption, Solicitation of Public Comment

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has received a specific exemption request from the Oregon Department of Agriculture and the Washington State Department of Agriculture to use the pesticides (*Z,E*)-3,13-octadecadienyl and (*Z,Z*)-3,13-octadecadienyl to treat up to 32,000 acres of hybrid poplar grown for pulp and saw timber to control poplar clearwig moth (WPCM). The Applicant proposes the use of two new pheromones which have not been registered by EPA. EPA is soliciting public comment before making the decision whether or not to grant the exemption.

DATES: Comments, identified by docket ID number OPP–2003–0168, must be received on or before May 21, 2003.

ADDRESSES: Comments may be submitted electronically, by mail, or through hand delivery/courier. Follow the detailed instructions as provided in Unit I. of the **SUPPLEMENTARY INFORMATION**.

FOR FURTHER INFORMATION CONTACT: Barbara Madden, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 305–6463; fax number: (703) 308–5433; e-mail address: Madden.Barbara@epa.gov.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

You may be potentially affected by this action if you are a federal or state government agency (NAICS 9241) involved in administration of environmental quality programs (i.e., Departments of Agriculture, Environment, etc).

This listing is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be

affected by this action. Other types of entities not listed in this unit could also be affected. The North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether this action might apply to certain entities. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT.**

B. How Can I Get Copies of this Document and Other Related Information?

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2. *Electronic access.* You may access this **Federal Register** document electronically through the EPA Internet under the "**Federal Register**" listings at *http://www.epa.gov/fedrgstr/*.

An electronic version of the public docket is available through EPA's electronic public docket and comment system, EPA Dockets. You may use EPA Dockets at *http://www.epa.gov/edocket/* to submit or view public comments, access the index listing of the contents of the official public docket, and to access those documents in the public docket that are available electronically. Once in the system, select "search," then key in the appropriate docket ID number.

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C. How and to Whom Do I Submit Comments?

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1. *Electronically.* If you submit an electronic comment as prescribed in this unit, EPA recommends that you include your name, mailing address, and an e-mail address or other contact information in the body of your comment. Also include this contact information on the outside of any disk or CD ROM you submit, and in any cover letter accompanying the disk or CD ROM. This ensures that you can be identified as the submitter of the comment and allows EPA to contact you in case EPA cannot read your comment due to technical difficulties or needs further information on the substance of your comment. EPA's policy is that EPA will not edit your comment, and any identifying or contact information provided in the body of a comment will be included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment.

i. *EPA Dockets.* Your use of EPA's electronic public docket to submit comments to EPA electronically is EPA's preferred method for receiving comments. Go directly to EPA Dockets at *http://www.epa.gov/edocket*, and follow the online instructions for submitting comments. Once in the system, select "search," and then key in docket ID number OPP–2003–0168. The system is an "anonymous access" system, which means EPA will not know your identity, e-mail address, or other contact information unless you provide it in the body of your comment.

ii. *E-mail.* Comments may be sent by e-mail to opp-docket@epa.gov, Attention: Docket ID Number OPP–2003–0168. In contrast to EPA's electronic public docket, EPA's e-mail system is not an "anonymous access" system. If you send an e-mail comment directly to the docket without going through EPA's electronic public docket, EPA's e-mail system automatically captures your e-mail address. E-mail addresses that are automatically captured by EPA's e-mail system are included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket.

iii. *Disk or CD ROM.* You may submit comments on a disk or CD ROM that you mail to the mailing address identified in Unit I.C.2. These electronic submissions will be accepted in WordPerfect or ASCII file format. Avoid the use of special characters and any form of encryption.

2. *By mail.* Send your comments to: Public Information and Records Integrity Branch (PIRIB) (7502C), Office of Pesticide Programs (OPP), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001, Attention: Docket ID Number OPP–2003–0168.

3. *By hand delivery or courier.* Deliver your comments to: Public Information and Records Integrity Branch (PIRIB), Office of Pesticide Programs (OPP), Environmental Protection Agency, Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA, Attention: Docket ID Number OPP–2003–0168. Such deliveries are only accepted during the docket's normal hours of operation as identified in Unit I.B.1.

D. How Should I Submit CBI to the Agency?

Do not submit information that you consider to be CBI electronically through EPA's electronic public docket or by e-mail. You may claim information that you submit to EPA as CBI by marking any part or all of that information as CBI (if you submit CBI on disk or CD ROM, mark the outside of the disk or CD ROM as CBI and then identify electronically within the disk or CD ROM the specific information that is CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

In addition to one complete version of the comment that includes any information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket and EPA's electronic public docket. If you submit the copy that does not contain CBI on disk or CD ROM, mark the outside of the disk or CD ROM clearly that it does not contain CBI. Information not marked as CBI will be included in the public docket and EPA's electronic public docket without prior notice. If you have any questions about CBI or the procedures for claiming CBI, please consult the person listed under **FOR FURTHER INFORMATION CONTACT.**

II. Background

What Action is the Agency Taking?

Under section 18 of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) (7 U.S.C. 136p), at the discretion of the Administrator, a Federal or State agency may be exempted from any provision of FIFRA if the Administrator determines that emergency conditions exist which require the exemption. The Oregon Department of Agriculture and the Washington State Department of Agriculture have requested the Administrator to issue specific exemptions for the use of (*Z,E*)-3,13-octadecadienyl and (*Z,Z*)-3,13-octadecadienyl on hybrid poplar grown for pulp and saw timber to control poplar clearwig moth (WPCM). Information in accordance with 40 CFR part 166 was submitted as part of this request.

As part of this request, the Applicants assert that higher trap captures of male WPCM have been observed in areas where poplar trees are being harvested. WPCMs have become the number one pest in poplar plantings in Oregon and Washington. WPCM spend most of their life cycle in the heartwood of trees, away from contact of even systemic insecticides. Repeated use of registered pesticides has failed to control adult males. However, males are exceptionally responsive to sex pheromones. The greatest damage to pulp wood production is damage in the newly planted trees. Young trees and limbs of larger trees damaged by the burrowing activity of WPCM larvae are very prone to wind-throw. Trees less than 2 years old will need to be replaced. Burrowing activity of the larvae downgrades the value of the pulp from quality bond paper to discolored, less valuable product. Net losses are estimated to be 22% in 2003 and future losses could reach 41% to 56%.

The Applicant proposes to use three different formulations containing the same active ingredients (ai) (*Z,E*)-3,13-octadecadienyl and (*Z,Z*)-3,13-octadecadienyl. A stationary, retrievable, hand applied dispenser to protect newly planted trees; a battery operated puffer-type dispenser to protect 2 and 3–year old trees up to 15 meters tall, and a flowable pheromone formulation will be used to protect mature tress (greater than 15 meters in height). All three formulations are a 4:1 ratio of *Z,E*: *Z,Z*-3,13-octadecadienyl straight-chain 18 carbon alcohols that serves as the sex pheromone of the WPCM. The dispensers are placed in 1–year old plantings at one dispenser per five trees. Each dispenser contains approximately 24 milligrams (mg) active ingredient. A maximum of three applications may be made to newly planted trees. The puffers will be applied by placing two dispensers per acre. Each dispenser will be loaded with a canister containing 2.5 gal ai and releasing mg quantities per day. After the initial placement of the puffer dispensers there may be a need for one replacement. The flowable formulation will be applied at a rate of 1.25 gal ai per acre per application with sequential applications being made 30 days apart between May 1 and October 1, 2003, with a maximum of six applications. Up to 32,000 acres of poplar trees in Oregon and Washington may be treated.

This notice does not constitute a decision by EPA on the application itself. The regulations governing section 18 of FIFRA require publication of a notice of receipt of an application for a specific exemption proposing use of new chemicals (i.e., active ingredients) which have not been registered by EPA. The notice provides an opportunity for public comment on the application.

The Agency, will review and consider all comments received during the comment period in determining whether to issue the specific exemption requested by the Oregon Department of Agriculture and the Washington Department of Agriculture.

List of Subjects

Environmental protection, Pesticides and pests.

Dated: May 6, 2003.

Debra Edwards,

Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 03–12361 Filed 5–15–03; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7499–5]

Notice of Proposed Administrative Order on Consent Pursuant to Section 122(g)(4) and (7) of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), PCB Treatment, Inc., Kansas City, KS, and Kansas City, MO, Docket No. CERCLA 07–2002–0209

AGENCY: Environmental Protection Agency.

ACTION: Notice of Proposed Administrative Order on Consent, PCB Treatment, Inc. Superfund Site, Kansas City, Kansas, and Kansas City, Missouri

SUMMARY: Notice is hereby given that a proposed administrative order on consent between Transformer Services, Inc. and the United States Environmental Protection Agency (EPA) was signed by the United States Environmental Protection Agency (EPA) on March 21, 2003 and approved by the United States Department of Justice (DOJ) on April 16, 2003. This settlement relates to the PCB Treatment Inc. Superfund Site (Site).

DATES: EPA will receive, for a period of thirty (30) days from the date of this publication, comments relating to the proposed agreement.

ADDRESSES: Comments should be addressed to Audrey Asher, Senior Assistant Regional Counsel, United States Environmental Protection Agency, Region VII, 901 N. Fifth Street, Kansas City, Kansas 66101 and should refer to *the PCB Treatment, Inc. Superfund Site Administrative Order on Consent, CERCLA Docket No. 07–2002–0209.*

The proposed agreement may be examined or obtained in person or by mail at the office of the United States Environmental Protection Agency, Region VII, 901 North Fifth Street, Kansas City, KS 66101 (913) 551–7255.

SUPPLEMENTARY INFORMATION: The Site consists of two facilities, about two miles apart, located in the industrial areas of Kansas City, Kansas at 45 Ewing Street and Kansas City, Missouri at 2100 Wyandotte Street. The facilities were formerly operated by PCB Treatment Inc., now a defunct corporation. Between 1982 and 1987, PCB Treatment, Inc. and its subsidiaries or affiliates treated and stored PCBs contained in used transformers, capacitors, oil, equipment, and other materials at the Wyandotte facility and the Ewing facility. During its period of operations, spills of PCB contaminated waste occurred.

Samples collected at the Site in the late 1990s indicated that the PCB contamination at Ewing Street exceeded 1,790 parts per million (ppm) in the building and 1,450 ppm in the soils. At Wyandotte Street, the PCB contamination exceeded 23,800 ppm in the building and 800 ppm in the soils.

Over 1000 parties arranged for disposal of PCB wastes at the Site. EPA identified a large number of these parties, including Transformer Services, Inc., as *de minimis* parties. EPA offered settlements to the *de minimis* parties based on their allocated share of the waste plus a premium. The payments by the *de minimis* parties have been placed in a Special Account that will be used towards the cleanup of the Site, estimated to cost $35,000,000. Based on financial information submitted by Transformer Services, Inc., EPA determined that Transformer Services, Inc. demonstrated an inability to pay its allocated share, and qualifies for a reduction in the settlement amount. This proposed settlement requires Transformer Services, Inc. to pay $44,000 to resolve its liability at the Site. Through this settlement, and subject to certain reopeners, EPA covenants not to sue Transformer Services, Inc. for injunctive relief or response costs concerning the Site. In addition, Transformer Services, Inc. receives contribution protection for matters addressed in the settlement.

Dated: May 2, 2003.

Gale Hutton,

Acting Regional Administrator, United States Environmental Protection Agency, Region VII.

[FR Doc. 03–12352 Filed 5–15–03; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7499–4]

Notice of Proposed Administrative Order on Consent Pursuant to Section 122(g)(4) of the Comprehensive Environmental Response Compensation and Liability Act (CERCLA), PCB Treatment, Inc. Superfund Site, Kansas City, KS, and Kansas City, MO, Docket No. CERCLA 07–2002–0003

AGENCY: Environmental Protection Agency.

ACTION: Notice of proposed administrative order on consent, PCB Treatment, Inc. Superfund Site, Kansas City, Kansas, and Kansas City, Missouri.

SUMMARY: Notice is hereby given that a proposed administrative order on consent betweenDenton County Electric Cooperative, Inc. and the United States Environmental Protection Agency (EPA) was approved by the United States Department of Justice (DOJ) on April 16, 2003 and signed by the United States Environmental Protection Agency (EPA) on April 28, 2003. This settlement relates to the PCB Treatment Inc. Superfund Site (Site).

DATES: EPA will receive, until June 16, 2003, comments relating to the proposed agreement.

ADDRESSES: Comments should be addressed to Audrey Asher, Senior Assistant Regional Counsel, United States Environmental Protection Agency, Region VII, 901 N. Fifth Street, Kansas City, Kansas 66101 and should refer to *the PCB Treatment, Inc. Superfund Site Administrative Order on Consent, CERCLA Docket No. 07–2002–0003.*

The proposed agreement may be examined or obtained in person or by mail at the office of the United States Environmental Protection Agency, Region VII, 901 North Fifth Street, Kansas City, KS 66101 (913) 551–7255.

SUPPLEMENTARY INFORMATION: The Site consists of two facilities, about two miles apart, located in the industrial areas of Kansas City, Kansas at 45 Ewing Street and Kansas City, Missouri at 2100 Wyandotte Street. The facilities were formerly operated by PCB Treatment, Inc., now a defunct corporation. Between 1982 and 1987, PCB Treatment, Inc. and its subsidiaries or affiliates treated and stored PCBs contained in used transformers, capacitors, oil, equipment, and other materials at the Wyandotte facility and the Ewing facility. During its period of operations, spills of PCB contaminated waste occurred.

Samples collected at the Site in the late 1990s indicated that the PCB contamination at Ewing Street exceeded 1,790 parts per million (ppm) in the building and 1,450 ppm in the soils. At Wyandotte Street, the PCB contamination exceeded 23,800 ppm in the building and 800 ppm in the soils.

Over 1000 parties arranged for disposal of PCB wastes at the Site. EPA identified a large number of these parties, including Denton County Electric Cooperative, Inc., as *de minimis* parties. EPA offered settlements to the *de minimis* parties based on their allocated share of the waste plus a premium. The payments by the *de minimis* parties have been placed in a Special Account that will be used towards the cleanup of the Site, estimated to cost $35,000,000.

Denton County Electric Cooperative, Inc. filed for protection under Chapter 11 of the Bankruptcy Code in the United States Bankruptcy Court for the Northern District of Texas and subsequently accepted EPA's offer to settle as a *de minimis* party, subject to approval of the United States Bankruptcy Court.

Through this settlement, and subject to the Bankruptcy Court approval, Denton County Electric Cooperative, Inc. will pay $6,742.19 to the EPA Hazardous Substance Superfund, PCB Treatment, Inc. Special Account. Subject to certain reopeners, EPA covenants not to sue Denton County Electric Cooperative, Inc. for injunctive relief or response costs concerning the Site. In addition, Denton County Electric Cooperative, Inc. receives contribution protection for matters addressed in the settlement.

Dated: May 2, 2003.

Gale Hutton,

Acting Regional Administrator, United States Environmental Protection Agency, Region VII.

[FR Doc. 03–12353 Filed 5–15–03; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7499–3]

Notice of Proposed Administrative Order on Consent Pursuant to Section 122(g)(4) and (7) of the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA), PCB Treatment, Inc. Superfund Site, Kansas City, KS, and Kansas City, MO, Docket No. CERCLA 07–2003–0079

AGENCY: Environmental Protection Agency.

ACTION: Notice of proposed administrative order on consent, PCB Treatment, Inc. Superfund Site, Kansas City, Kansas, and Kansas City, Missouri.

SUMMARY: Notice is hereby given that a proposed administrative order on consent between Midwest Energy, Inc. and the United States Environmental Protection Agency (EPA) was signed by the United States Environmental Protection Agency (EPA) on March 21, 2003 and approved by the United States Department of Justice (DOJ) on April 16, 2003. This settlement relates to the PCB Treatment Inc. Superfund Site (Site).

DATES: EPA will receive, until June 16, 2003, comments relating to the proposed agreement.

ADDRESSES: Comments should be addressed to Audrey Asher, Senior Assistant Regional Counsel, United States Environmental Protection Agency, Region VII, 901 N. Fifth Street, Kansas City, Kansas 66101 and should refer to *the PCB Treatment, Inc. Superfund Site Administrative Order on Consent, CERCLA Docket No. 07–2003–0079.*

The proposed agreement may be examined or obtained in person or by mail at the office of the United States Environmental Protection Agency, Region VII, 901 North Fifth Street, Kansas City, KS 66101 (913) 551–7255.

SUPPLEMENTARY INFORMATION: The Site consists of two facilities, about two miles apart, located in the industrial areas of Kansas City, Kansas at 45 Ewing Street and Kansas City, Missouri at 2100 Wyandotte Street. The facilities were formerly operated by PCB Treatment, Inc., now a defunct corporation. Between 1982 and 1987, PCB Treatment, Inc. and its subsidiaries or affiliates treated and stored PCBs contained in used transformers, capacitors, oil, equipment, and other materials at the Wyandotte facility and the Ewing facility. During its period of operations, spills of PCB contaminated waste occurred.

Samples collected at the Site in the late 1990s indicated that the PCB contamination at Ewing Street exceeded 1,790 parts per million (ppm) in the building and 1,450 ppm in the soils. At Wyandotte Street, the PCB contamination exceeded 23,800 ppm in the building and 800 ppm in the soils.

Over 1000 parties arranged for disposal of PCB wastes at the Site. EPA identified a large number of these parties, including Midwest Energy, Inc., as *de minimis* parties. EPA offered settlements to the *de minimis* parties based on their allocated share of the waste plus a premium. The payments by the *de minimis* parties have been placed in a Special Account that will be used towards the cleanup of the Site, estimated to cost $35,000,000. Based on financial information submitted by Midwest Energy, Inc., EPA determined that Midwest Energy, Inc. demonstrated an inability to pay its allocated share, and qualifies for a reduction in the settlement amount. This proposed settlement requires Midwest Energy, Inc. to pay $200,000 to resolve its liability at the Site. Through this settlement, and subject to certain reopeners, EPA covenants not to sue Midwest Energy, Inc. for injunctive relief or response costs concerning the Site. In addition, Midwest Energy, Inc. receives contribution protection for matters addressed in the settlement.

Dated: May 2, 2003.

Gale Hutton,

Acting Regional Administrator, United States Environmental Protection Agency, Region VII.

[FR Doc. 03–12354 Filed 5–15–03; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7499–2]

Notice of Proposed Administrative Order on Consent Pursuant to Section 122(g)(4) and (7) of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), PCB Treatment, Inc. Superfund Site, Kansas City, KS, and Kansas City, MO; Docket No. CERCLA 07–2003–0067

AGENCY: Environmental Protection Agency.

ACTION: Notice of proposed administrative order on consent, PCB Treatment, Inc. Superfund Site, Kansas City, Kansas, and Kansas City, Missouri.

SUMMARY: Notice is hereby given that a proposed administrative order on consent between Northwest Automatic Products, Inc. and the United States Environmental Protection Agency (EPA) was signed by the United States Environmental Protection Agency (EPA) on March 21, 2003 and approved by the United States Department of Justice (DOJ) on April 16, 2003. This settlement relates to the PCB Treatment Inc. Superfund Site (Site).

DATES: EPA will receive, until June 16, 2003, comments relating to the proposed agreement.

ADDRESSES: Comments should be addressed to Audrey Asher, Senior Assistant Regional Counsel, United States Environmental Protection Agency, Region VII, 901 N. Fifth Street, Kansas City, Kansas 66101 and should refer to *the PCB Treatment, Inc. Superfund Site Administrative Order on Consent, CERCLA Docket No. 07–2003–0067.*

The proposed agreement may be examined or obtained in person or by mail at the office of the United States Environmental Protection Agency, Region VII, 901 North Fifth Street, Kansas City, KS 66101 (913) 551–7255.

SUPPLEMENTARY INFORMATION: The Site consists of two facilities, about two miles apart, located in the industrial areas of Kansas City, Kansas at 45 Ewing Street and Kansas City, Missouri at 2100 Wyandotte Street. The facilities were formerly operated by PCB Treatment, Inc., now a defunct corporation. Between 1982 and 1987, PCB Treatment, Inc. and its subsidiaries or affiliates treated and stored PCBs contained in used transformers, capacitors, oil, equipment, and other materials at the Wyandotte facility and the Ewing facility. During its period of operations, spills of PCB contaminated waste occurred.

Samples collected at the Site in the late 1990s indicated that the PCB contamination at Ewing Street exceeded 1,790 parts per million (ppm) in the building and 1,450 ppm in the soils. At Wyandotte Street, the PCB contamination exceeded 23,800 ppm in the building and 800 ppm in the soils.

Over 1000 parties arranged for disposal of PCB wastes at the Site. EPA identified a large number of these parties, including Northwest Automatic Products, Inc., as *de minimis* parties. EPA offered settlements to the *de minimis* parties based on their allocated share of the waste plus a premium. The payments by the *de minimis* parties have been placed in a Special Account that will be used towards the cleanup of the Site, estimated to cost $35,000,000. Based on financial information submitted by Northwest Automatic Products, Inc., EPA determined that

NorthwestAutomatic Products, Inc. demonstrated an inability to pay its allocated share, and qualifies for a reduction in the settlement amount. This proposed settlement requires Northwest Automatic Products, Inc. to pay $10,000 to resolve its liability at the Site. Through this settlement, and subject to certain reopeners, EPA covenants not to sue Northwest Automatic Products, Inc. for injunctive relief or response costs concerning the Site. In addition, Northwest Automatic Products, Inc. receives contribution protection for matters addressed in the settlement.

Dated: May 2, 2003.

Gale Hutton,

Acting Regional Administrator, United States Environmental Protection Agency, Region VII.

[FR Doc. 03–12355 Filed 5–15–03; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7499–1]

Notice of Proposed Purchaser Agreement Pursuant to the Comprehensive Environmental Response, Compensation and Liability Act of 1980, As Amended

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice; request for public comment.

SUMMARY: In accordance with the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended by the Superfund Amendments and Reauthorization Act of 1986, ("CERCLA"), 42 U.S.C. 9601–9675, notice is hereby given that a proposed prospective purchaser agreement ("Purchaser Agreement") associated with the Wade/ABM Superfund Site, Chester City, Delaware County, Pennsylvania was executed by the Environmental Protection Agency and the Department of Justice and is now subject to public comment, after which the United States may modify or withdraw its consent if comments received disclose facts or considerations which indicate that the Purchaser Agreement is inappropriate, improper, or inadequate. The Purchaser Agreement would resolve certain potential EPA claims under sections 106 and 107 of CERCLA, 42 U.S.C. 9606, 9607, against the Chester Parking Authority ("Purchaser"). The settlement would require the Purchaser to, among other things, pay $1,000 to defray the United States' administrative costs incurred in preparing the Purchaser Agreement, upgrade the existing containment and storm water management controls, implement the institutional controls detailed in the Purchaser Agreement, and redevelop the subject property as a parking facility.

For thirty (30) days following the date of publication of this notice, the Agency will receive written comments relating to the Purchaser Agreement. The Agency's response to any comments received will be available for public inspection at the U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, PA 19103.

DATES: Comments must be submitted on or before June 16, 2003.

ADDRESSES: The Purchaser Agreement and additional background information relating to the Purchaser Agreement are available for public inspection at the U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, PA 19103. A copy of the Purchaser Agreement may be obtained from Thomas A. Cinti (3RC42), Senior Assistant Regional Counsel, U.S. Environmental Protection Agency, 1650 Arch Street, Philadelphia, PA 19103. Comments should reference the "Wade/ABM Superfund Site, Prospective Purchaser Agreement" and "EPA Docket No. CERC–03–2002–0293PP," and should be forwarded to Thomas A. Cinti at the above address.

FOR FURTHER INFORMATION CONTACT: Thomas A. Cinti (3RC42), Senior Assistant Regional Counsel, U.S. Environmental Protection Agency, 1650 Arch Street, Philadelphia, PA 19103, Phone: (215) 814–2634.

Dated: May 8, 2003.

James W. Newsom,

Acting Regional Administrator, Region III.

[FR Doc. 03–12357 Filed 5–15–03; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7498–9]

Notice of Approval of Submissions To Prohibit Mixing Zones for Bioaccumulative Chemicals of Concern Pursuant to Section 118 of the Clean Water Act and the Water Quality Guidance for the Great Lakes System for the States of Illinois, Indiana, Michigan, Minnesota, Ohio and Wisconsin

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: Notice is hereby given of approval of submissions by the States of Illinois, Indiana, Michigan, Minnesota, Ohio and Wisconsin to prohibit mixing zones for bioaccumulative chemicals of concern (BCCs) in the Great Lakes System pursuant to section 118(c) of the Clean Water Act and the Water Quality Guidance for the Great Lakes System, as amended.

DATES: EPA's approval is effective on May 16, 2003.

FOR FURTHER INFORMATION CONTACT: Mery Jackson-Willis, U.S. EPA, Region 5, 77 West Jackson Blvd., Chicago, IL 60604, or telephone her at (312) 353–3717. Copies of materials considered by EPA in its decision are available for review by appointment at U.S. EPA Region 5, 77 West Jackson Blvd, Chicago, IL 60604. Appointments may be made by calling Ms. Jackson-Willis.

SUPPLEMENTARY INFORMATION: On March 23, 1995, EPA published the Final Water Quality Guidance for the Great Lakes System (Guidance). *See* 60 FR 15366. The 1995 Guidance established minimum water quality standards, antidegradation policies, and implementation procedures for the waters of the Great Lakes System in the States of Illinois, Indiana, Michigan, Minnesota, New York, Ohio, Pennsylvania and Wisconsin. Specifically, the 1995 Guidance specified numeric criteria for selected pollutants to protect aquatic life, wildlife and human health within the Great Lakes System and provided methodologies to derive numeric criteria for additional pollutants discharged to these waters. The 1995 Guidance also included minimum implementation procedures and an antidegradation policy.

The 1995 Guidance, which was codified at 40 CFR part 132, required the Great Lakes States to adopt and submit to EPA for approval water quality criteria, methodologies, policies and procedures that are consistent with the Guidance. 40 CFR 132.4 & 132.5. EPA is required to approve of the State's submission within 90 days or notify the State that EPA has determined that all or part of the submission is inconsistent with the Clean Water Act (CWA) or the Guidance and identify any necessary changes to obtain EPA approval. If the State fails to make the necessary changes within 90 days after the notification, EPA must publish a notice in the **Federal Register** identifying the approved and disapproved elements of the submission and a final rule identifying the provisions of part 132 that shall apply for discharges within the State.

Soon after being published, the Guidance was challenged in the U.S. Court of Appeals for the District of Columbia Circuit. On June 6, 1997, the Court issued a decision upholding virtually all of the provisions contained in the 1995 Guidance (*American Iron and Steel Institute, et al.* v. *EPA*, 115 F.3d 979 (D.C. Cir. 1997)); however, the Court vacated the provisions of the Guidance that would have eliminated mixing zones for BCCs (115 F.3d at 985). The Court held that EPA had "failed to address whether the measure is cost-justified," and remanded the provision to EPA for an opportunity to address this issue (115 F.3d at 997). In response to the Court's remand, EPA reexamined the factual record, including its cost analyses, and published the Proposal to Amend the Final Water Quality Guidance for the Great Lakes System to Prohibit Mixing Zones for Bioaccumulative Chemicals of Concern in the **Federal Register** on October 4, 1999 (64 FR 53632). EPA received numerous comments, data, and information from commenters in response to the proposal.

After reviewing and analyzing the information in the rulemaking record, including those comments, on November 13, 2000, EPA published the final rule amending the Final Water Quality Guidance for the Great Lakes System to Prohibit Mixing Zones for Bioaccumulative Chemicals of Concern, to be codified in appendix F, procedure 3.C of 40 CFR part 132. As amended, the Guidance requires that States adopt mixing zone provisions that prohibit mixing zones for new discharges of BCCs effective immediately upon adoption of the provision by the State, and to prohibit mixing zones for existing discharges of BCCs after November 15, 2010, except where a mixing zone is determined by the State to be necessary to support water conservation measures and overall load reductions of BCCs or where a mixing zone is determined by the State to be necessary for technical or economic reasons. Under the amended Guidance, States were given two years to adopt and submit revised water quality standards conforming with the amended Guidance.

EPA has conducted its review of the States' submissions to prohibit mixing zones for BCCs in accordance with the requirements of section 118(c)(2) of the CWA and 40 CFR part 132. Section 118 requires that States adopt policies, standards and procedures that are "consistent with" the Guidance. EPA has interpreted the statutory term "consistent with" to mean "as protective as" the corresponding requirements of the Guidance. Thus, the Guidance gives States the flexibility to adopt requirements that are not the same as the Guidance, provided that the State's provisions afford at least as stringent a level of environmental protection as that provided by the corresponding provision of the Guidance. In making its evaluation, EPA has considered the language of each State's standards, policies and procedures, as well as any additional information provided by the State clarifying how it interprets or will implement its provisions.

In this proceeding, EPA has reviewed the States' submissions to determine their consistency only with respect to appendix F, procedure 3.C of 40 CFR part 132. EPA has not reopened part 132 in any respect, and today's action does not affect, alter or amend in any way the substantive provisions of part 132. To the extent any members of the public commented during this proceeding that any provision of part 132 is unjustified as a matter of law, science or policy, those comments are outside the scope of this proceeding.

Today's notice identifies the elements of the States' Great Lakes BCC mixing zone provisions that EPA is approving today. Additional explanations of EPA's review of and conclusions regarding the States' submissions on this issue are contained in the administrative record for today's actions in documents prepared for each State.

1. The State of Illinois

Illinois' regulations for mixing zones for BCCs are found at Title 35: Environmental Protection, Subtitle C: Water Pollution, Chapter I: Pollution Control Board, Part 302: Water Quality Standards, Subpart E: Lake Michigan Basin Water Quality Standards, Section 302.530: Supplemental Mixing Provisions for Bioaccumulative Chemicals of Concern. Illinois adopted its BCC mixing zone provisions at the same time it adopted its other Great Lakes water quality standards. Illinois' supplemental mixing provisions for BCCs at 302.530 prohibit mixing zones for new discharges of BCCs commencing on or after December 24, 1997, prohibit mixing zones for existing discharges after March 23, 2007 except where a continued mixing zone is necessary for water conservation that will result in an overall reduction in BCC mass loadings to the Lake Michigan Basin or where a mixing zone is determined to be necessary based on technical or economic grounds. EPA reviewed Illinois' rules at 302.503 and determined that they are consistent with the requirements of the amended Guidance. EPA therefore approves of Illinois' rules at 302.530.

2. The State of Indiana

Indiana's mixing zone provisions for BCCs are found at 327 IAC 5–2–11.4(b)(1). Indiana's rules prohibit mixing zones for BCCs for new discharges of BCCs and existing and new discharges of BCCs to the open waters of Lake Michigan. Mixing zones for existing discharges of BCCs to waters other than the open waters of Lake Michigan will be prohibited beginning January 1, 2004 with the exceptions allowed under the amended Guidance for water conservation measures and technical and economic considerations. Indiana adopted its rules prohibiting mixing zones at the same time it adopted its original Great Lakes rules. EPA reviewed Indiana's rules at 327 IAC 5–2–11.4(b)(1) and determined that they are consistent with the requirements of the amended Guidance. EPA therefore approves of Indiana's rules at 327 IAC 5–2–11.4(b)(1).

3. The State of Michigan

Michigan's regulations for mixing zones for BCCs are found at R 323.1082(6). Michigan adopted its BCC mixing zone provisions at the same time it adopted its other Great Lakes water quality standards. Michigan's mixing provisions for BCCs at R 323.1082(6) prohibit mixing zones for new discharges of BCCs, prohibit mixing zones for existing discharges after March 23, 2007 except where a continued mixing zone is necessary for water conservation that will result in an overall reduction in BCC mass loadings or where a mixing zone is determined to be necessary based on technical or economic grounds. EPA reviewed Michigan's rules at R 323.1082(6) and determined that they are consistent with the requirements of the amended Guidance. EPA therefore approves of Michigan's rules at R 323.1082(6).

4. The State of Minnesota

Minnesota's regulations for mixing zones for BCCs are found at 7052.0210, subpart 3, of Minnesota's administrative code. Minnesota adopted its BCC mixing zone provisions at the same time it adopted its other Great Lakes water quality standards. Minnesota's mixing provisions for BCCs at 7052.0210, subpart 3 prohibit mixing zones for new discharges of BCCs as of March 9, 1998 and for existing discharges after March 23, 2007, except where a continued mixing zone is necessary for water conservation that will result in an overall reduction in BCC mass loadings or where a mixing zone is determined

to be necessary based on technical or economic grounds. EPA reviewed Minnesota's rules at 7052.0210, subpart 3 and determined that they are consistent with the requirements of the amended Guidance. EPA therefore approves of Minnesota's rules at 7052.0210, subpart 3.

5. The State of Ohio

Ohio's regulations for mixing zones for BCCs are found at OAC 3745–2–05 and 3745–2–08. Ohio's rules for mixing zones for BCCs were adopted on August 30, 2002, and became effective on December 30, 2002. Ohio's mixing provisions for BCCs at OAC 3745–2–05 prohibit mixing zones for new discharges of BCCs as of the effective date of the rule, December 30, 2002, and for existing discharges after November 15, 2010, except where a continued mixing zone is necessary for water conservation that will result in an overall reduction in BCC mass loadings or where a mixing zone is determined to be necessary based on technical or economic grounds. EPA reviewed Ohio's rules at OAC 3745–2–05 and 3745–2–08 and determined that they are consistent with the requirements of the amended Guidance. EPA therefore approves of Ohio's rules at OAC 3745–2–05 and 3745–2–08.

6. The State of Wisconsin

Wisconsin's regulations for mixing zones for BCCs are found at NR 106.06(2). Wisconsin's rules for mixing zones for BCCs were adopted at the same time as Wisconsin adopted its other Great Lakes rules. Wisconsin's mixing provisions for BCCs at NR 106.06(2) prohibit mixing zones for new discharges of BCCs as of March 23, 1997. Wisconsin's rules do not address mixing zones for BCCs for existing discharges, except to state in a note included within Wisconsin's rules at NR 106.06(2) that Wisconsin is aware of the requirement to prohibit mixing zones for BCCs for existing discharges and will adopt rules prohibiting mixing zones for BCCs for existing discharges prior to the effective date of the prohibition. EPA reviewed Wisconsin's rules at NR 106.06(2) and determined that they are consistent with the requirements of the amended Guidance that have immediate force and effect. EPA therefore approves of Wisconsin's rules at NR 106.06(2). EPA will review the rules to be developed by Wisconsin to implement the mixing zone prohibition for BCCs for existing Great Lakes dischargers when they are developed and submitted to EPA. If Wisconsin fails to adopt and submit to EPA rules to ensure that the prohibition takes effect in Wisconsin on or before November 15, 2010, EPA will take the necessary actions to ensure that mixing zones are prohibited for existing discharges of BCCs for waters of the Great Lakes System in the State of Wisconsin by that date.

David A. Ullrich,

Acting Regional Administrator, Region 5.

[FR Doc. 03–12356 Filed 5–15–03; 8:45 am]

BILLING CODE 0560–50–P

FEDERAL ACCOUNTING STANDARDS ADVISORY BOARD

Notice of Issuance of Statement of Federal Financial Accounting Standards (SFFAS) No. 23)

Board Action: Pursuant to the Federal Advisory Committee Act (Pub. L. 92–463), as amended, and the FASAB Rules of Procedure, as amended in October, 1999, notice is hereby given that the Federal Accounting Standards Advisory Board has issued Statement of Federal Financial Accounting Standards (SFFAS) No. 23, *Eliminating the Category National Defense Property, Plant and Equipment.*

The Board approved the Statement in February 2003, and submitted it to FASAB principals for a 90-day review. The review period closed on May 8, 2003.

SFFAS No. 23 represents a major step in the process of ensuring accountability for all operating property, plant, and equipment through the framework of generally accepted accounting principles.

The standards prescribed in SFFAS No. 23 are effective for periods beginning after September 30, 2002. Hard copies of the statement will be mailed to the FASAB mailing list. It is also available on the FASAB Web site at *www.fasab.gov* or by calling 202–512–7350.

FOR FURTHER INFORMATION CONTACT: Wendy Comes, Executive Director, 441 G St., NW., Mail Stop 6K17V, Washington, DC 20548, or call (202) 512–7350.

Authority: Federal Advisory Committee Act. Pub. L. No. 92–463.

Dated: May 9, 2003.

Wendy M. Comes,

Executive Director.

[FR Doc. 03–12210 Filed 5–15–03; 8:45 am]

BILLING CODE 1610–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Agency for Toxic Substances and Disease Registry

[Program Announcement 03120]

Applied Research on Antimicrobial Resistance: Characterization of Strains of Community-Associated MRSA; Notice of Availability of Funds; Amendment

A notice announcing the availability of Fiscal Year 2003 funds for a grant program to support applied research on antimicrobial resistance was published in the **Federal Register** dated May 5, 2003, Volume 68, Number 86, pages 23720–23722. The notice is amended as follows: Page 23721, first column, first paragraph, lines five through six, remove the phrase "Multi Locus Sub Typing" and replace with "Multi Locus Sequence Typing".

Dated: May 12, 2003.

Sandra R. Manning,

Director, Procurement and Grants Office, Centers for Disease Control and Prevention.

[FR Doc. 03–12238 Filed 5–15–03; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare and Medicaid Services

[Document Identifier: CMS–R–77, CMS–1537, CMS–10067, CMS–R–200, CMS–R–247, CMS–1515/1572, and CMS–668B]

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Centers for Medicare and Medicaid Services, HHS.

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Centers for Medicare and Medicaid Services (CMS) (formerly known as the Health Care Financing Administration (CMS)), Department of Health and Human Services, is publishing the following summary of proposed collections for public comment. Interested persons are invited to send comments regarding this burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the agency's functions;

(2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

1. *Type of Information Collection Request:* Extension of a currently approved collection; *Title of Information Collection:* Limitation on Liability and Information Collection Requirements Referenced in 42 CFR 411.404, 411.406, and 411.408; *Form No.:* CMS–R–77) (OMB# 0938–0465); *Use:* The Medicare program requires to provide written notification of noncovered services to beneficiaries by the providers, practitioners and suppliers. The notification gives the beneficiary, provider, practitioner or supplier knowledge that Medicare will not pay for items or services mentioned in the notification. After this notification, any future claim for the same or similar services will not be paid by the program and the affected parties will be liable for the noncovered services.; *Frequency:* Other: as needed; *Affected Public:* Individuals or Households; *Number of Respondents:* 900,898; *Total Annual Responses:* 3,603,592; *Total Annual Hours:* 300,299.

2. *Type of Information Collection Request:* Reinstatement, without change, of a previously approved collection for which approval has expired; *Title of Information Collection:* Medicare/Medicaid Hospital Survey Report Form and Supporting Regulations in 42 CFR 482.2 through 482.57; *Form No.:* CMS–1537 (OMB# 0938–0382); *Use:* Section 1861(e) of the Social Security Act (the Act) provides that hospitals participating in Medicare under the Act must meet specific requirements. These requirements are presented as Condition of Participation. State agencies must determine compliance with these conditions through the use of this report form.; *Frequency:* Other: 3–5 years; *Affected Public:* State, Local, or Tribal Government, Business or other for-profit, Not-for-profit institutions; *Number of Respondents:* 3323; *Total Annual Responses:* 3323; *Total Annual Hours:* 553.

3. *Type of Information Collection Request:* New collection; *Title of Information Collection:* Pharmacy Plus Template for Low Income Seniors under Medicaid; *Form No.:* CMS–10067 (OMB# 0938–0889); *Use:* The template for the Pharmacy Plus program for low income seniors under Medicaid will enable states to apply, via a standard format, to provide a drug benefit to elderly recipients; use of this format will expedite the process of obtaining CMS review and approval of an application; *Frequency:* Other: 3 years after initial submission for the 1915(c) waiver; 5 years after initial submission for the 1115 demonstration; *Affected Public:* State Government; *Number of Respondents:* 51; *Total Annual Responses:* 25; *Total Annual Hours:* 115.

4. *Type of Information Collection Request:* Revision of a currently approved collection; *Title of Information Collection:* Health Plan Employer Data and Information Set (HEDIS) and Health Outcome Survey (HOS) and supporting regulations at 42 CFR 422.152; *Form No.:* CMS–R–200) (OMB# 0938–0701); *Use:* The Centers for Medicare and Medicaid Services (formerly HCFA) collects quality performance measures in order to hold the Medicare managed care industry accountable for the care being delivered, to enable quality improvement, and to provide quality information to Medicare beneficiaries in order to promote informed choice. It is critical to CMS's mission that we collect and disseminate information that will help beneficiaries choose among health plans, contribute to improved quality of care through identification of improvement opportunities, and assist CMS in carrying out its oversight and purchasing responsibilities.; *Frequency:* Annually; *Affected Public:* Business or other for-profit, Not-for-profit institutions, and Individuals or Households; *Number of Respondents:* 166,709; *Total Annual Responses:* 70,992; *Total Annual Hours:* 498,436.

5. *Type of Information Collection Request:* Extension of a currently approved collection; *Title of Information Collection:* Expanded Coverage for Diabetes Outpatient Self-Management Training Services and Supporting Regulations Contained in 42 CFR 410.141–410.145 and 414.63.; *Form No.:* CMS–R–247) (OMB# 0938–0818); *Use:* 42 CFR 410.141–410.145 and 414.63 provide for uniform coverage of diabetes outpatient self-management training services. These services include educational and training services furnished to a beneficiary with diabetes by an entity approved to furnish the services. The physician or qualified nonphysician practitioner treating the beneficiary's diabetes certifies that these services are needed as part of a comprehensive plan of care. The regulations set forth the quality standards that an entity is required to meet in order to participate in furnishing diabetes outpatient self-management training services.; *Frequency:* On occasion; *Affected Public:* Business or other for-profit; *Number of Respondents:* 1708; *Total Annual Responses:* 6832; *Total Annual Hours:* 53,013.5.

6. *Type of Information Collection Request:* Extension of a currently approved collection; *Title of Information Collection:* Home Health Agency Survey and Deficiencies Report, Home Health Functional Assessment Instrument and Supporting Regulations in 42 CFR Part 484.1—484.52; *Form No.:* CMS–1515/1572 (OMB# 0938–0355); *Use:* In order to participate in the Medicare program as a Home Health Agency (HHA) provider, the HHA must meet Federal Standards. These forms are used to record information about patients' health and provider compliance with requirements; *Frequency:* Annually; *Affected Public:* Business or other for-profit, Not-for-profit institutions; *Number of Respondents:* 7,000; *Total Annual Responses:* 14,000; *Total Annual Hours:* 14,000.

7. *Type of Information Collection Request:* Extension of a currently approved collection; *Title of Information Collection:* Post Laboratory Survey Questionnaire—Laboratory, and Supporting Regulations in 42 CFR 493; *Form No.:* CMS–668B (OMB# 0938–0653); *Use:* To provide an opportunity and a mechanism for CLIA laboratories surveyed by CMS or CMS" agent to express their satisfaction and concerns about the CLIA survey process; *Frequency:* Biennially; *Affected Public:* Business or other for-profit, Not-for-profit institutions; *Number of Respondents:* 22,500; *Total Annual Responses:* 11,250; *Total Annual Hours:* 2,813.

To obtain copies of the supporting statement and any related forms for the proposed paperwork collections referenced above, access CMS's Web Site address at *http://cms.hhs.gov/regulations/pra/default.asp*, or E-mail your request, including your address, phone number, OMB number, and CMS document identifier, to *Paperwork@hcfa.gov*, or call the Reports Clearance Office on (410) 786–1326. Written comments and recommendations for the proposed information collections must be mailed within 60 days of this notice directly to the CMS Paperwork Clearance Officer designated at the following address: CMS, Office of Strategic Operations and Regulatory Affairs, Division of Regulations Development and Issuances, Attention: Dawn Willinghan, Room: C5–14–03, 7500 Security Boulevard, Baltimore, Maryland 21244–1850

Dated: May 8, 2003.

Dawn Willinghan,

CMS Reports Clearance Officer, Division of Regulations Development and Issuances, Office of Strategic Operations and Strategic Affairs.

[FR Doc. 03–12227 Filed 5–15–03; 8:45 am]

BILLING CODE 4120–03–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare and Medicaid Services

[Document Identifier: CMS–R–38, CMS–R–30, CMS–1957, CMS–R–48, CMS–43, and CMS–R–143]

Agency Information Collection Activities: Submission for OMB Review; Comment Request

AGENCY: Centers for Medicare and Medicaid Services, HHS.

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Centers for Medicare and Medicaid Services (CMS) (formerly known as the Health Care Financing Administration (HCFA), Department of Health and Human Services, is publishing the following summary of proposed collections for public comment. Interested persons are invited to send comments regarding this burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

1. *Type of Information Collection Request:* Extension of a currently approved collection; *Title of Information Collection:* Conditions for Coverage for Rural Health Clinics—42 CFR 491.9 Subpart A; *Form No.:* CMS–R–38 (OMB #0938–0334); *Use:* This information is needed to determine if rural health clinics meet the requirements for approval for Medicare Participation.; *Frequency:* Initial Application for Medicare approval; *Affected Public:* Business or other for-profit, State, Local, or Tribal Gov't., and not-for-profit institutions, Individuals or households, Farms, and Federal Government; *Number of Respondents:* 3,305; *Total Annual Responses:* 3,305; *Total Annual Hours:* 8,580.

2. *Type of Information Collection Request:* Reinstatement, with change, of a previously approved collection for which approval has expired; *Title of Information Collection:* Information Collection Requirements in the Hospice Conditions for Coverage and supporting regulations in 42 CFR 418.22; 418.24; 418.28; 418.56(b),(e)(1), (e)(3); 418.58; 418.70(e); 418.83; 418.86(b); and 418.100(b).; *Form No.:* CMS–R–30 (OMB #0938–0302); *Use:* Establishes standards for hospices that wish to participate in the Medicare program. The regulations establish standards for eligibility, reimbursement standards, and procedure, and delineate conditions that hospices must meet to be approved for participation in Medicare.; *Frequency:* Record Keeping; On occasion; *Affected Public:* Business or other for-profit; *Number of Respondents:* 2,311; *Total Annual Responses:* 2,311; *Total Annual Hours:* 10,821,923.

3. *Type of Information Collection Request:* Extension of a currently approved collection; *Title of Information Collection:* SSO Report of State Buy-In Problems and Supporting Regulation at 42 CFR 407.40; *Form No.:* HCFA–1957; *Use:* The HCFA–1957 is issued to assist with communications between the Social Security District Offices, Medicaid State Agencies and HCFA Central Offices in the resolution of beneficiary entitlement under state buy-ins. It is used when a problem arises which cannot be resolved thru normal data exchange. *Frequency:* On occasion; *Affected Public:* Individuals or Households, State, Local or Tribal Government; *Number of Respondents:* 3,000; *Total Annual Hours:* 1075.

4. *Type of Information Collection Request:* Revision of a currently approved collection; *Title of Information Collection:* Hospital COP–42 CFR 482.12, 482.13, 482.22, 482.27, 482.30, 482.41, 482.43, 482.53, 482.56, 482.57, 482.60, 482.61, 482.62, 482.66, 485.618, and 485.631; *Form No.:* CMS–R–48 (OMB # 0938–0328); *Use:* Hospitals seeking to participate in the Medicare and Medicaid programs must meet the Conditions of Participation (COP) for Hospitals, 42 CFR Part 482. The information collection requirements contained in this package are needed to implement the Medicare and Medicaid COP for hospitals.; *Frequency:* Annually; *Affected Public:* Business or other for-profit, Not-for-profit institutions, Federal Government, State, Local, or Tribal Gov.; *Number of Respondents:* 6,017; *Total Annual Responses:* 6,017; *Total Annual Hours:* 4,798,575.40.

5. *Type of Information Collection Request:* Extension of a currently approved collection; *Title of Information Collection:* Application for Health Insurance Benefits Under Medicare for Individuals with Chronic Renal Disease and Supporting Regulations in 42 CFR 406.7 and .13; *Form No.:* 0938–0080; *Use:* The CMS–43 is used to establish entitlement to Medicare by individuals with End Stage Renal Disease; *Frequency:* One-time only; *Affected Public:* Individuals or Households, Federal Government, State, Loval, or Tribal Gov.; *Number of Respondents:* 60,000; *Total Annual Responses:* 60,000; *Total Annual Hours:* 26,000.

6. *Type of Information Collection Request:* Extension of a currently approved collection; *Title of Information Collection:* Analysis of Malpractice Premium Data; *Form No.:* CMS–R–143 (OMB #0938–0575); *Use:* Survey of medical liability insurers for use in computing the malpractice component of the geographic practice cost index and the malpractice relation value units.; *Frequency:* Every 3 years.; *Affected Public:* State, Local, or Tribal Gov't., Business or other for-profit, and not-for-profit insitutions; *Number of Respondents:* 50; *Total Annual Responses:* 50; *Total Annual Hours:* 150.

To obtain copies of the supporting statement and any related forms for the proposed paperwork collections referenced above, access CMS Web Site address at *http://cms.hhs.gov/regulations/pra/default.asp*, or E-mail your request, including your address, phone number, OMB number, and CMS document identifier, to *Paperwork@hcfa.gov*, or call the Reports Clearance Office on (410) 786–1326. Written comments and recommendations for the proposed information collections must be mailed within 30 days of this notice directly to the OMB desk officer: OMB Human Resources and Housing Branch, Attention: Brenda Aguilar, New Executive Office Building, Room 10235, Washington, Dc 20503, Fax Number: (202) 395–6974.

Dated: May 8, 2003.

Dawn Willinghan,

CMS Reports Clearance Officer, Division of Regulations Development and Issuances, Office of Strategic Operations and Regulatory Affairs.

[FR Doc. 03–12228 Filed 5–15–03; 8:45 am]

BILLING CODE 4120–03–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

[CMS–4060–N]

Medicare Program; Town Hall Meeting on the Refinement of the Minimum Data Set (MDS), Version 3.0

AGENCY: Centers for Medicare & Medicaid Services (CMS), HHS.

ACTION: Notice of meeting.

SUMMARY: This notice announces a town hall meeting to allow the public to discuss and give general comments about the revisions to the Minimum Data Set, version 3.0. Specifically, the meeting will attempt to elicit the individual comments and experiences of nursing home providers, consumers, resident advocates, and provider groups related to proposed revisions to the Minimum Data Set; to solicit recommendations on how to continue to improve the instrument and to seek ideas to reduce burden. Beneficiaries, providers, physicians, nursing home staff and industry representatives, MDS specialists, and other interested parties are invited to this meeting to present their individual views about the instrument and to learn about plans for revision of the instrument, the user's manual, care planning protocols and accompanying software. The meeting is open to the public.

DATES: Meeting Date: The town hall meeting announced in this notice will be held on Monday, June 2, 2003, from 12:30 p.m. to 4 p.m. eastern daylight saving time.

ADDRESSES: The town hall meeting will be held in the auditorium at the Centers for Medicare & Medicaid Services, 7500 Security Boulevard, Baltimore, MD 21244. Directions are available at *http://www.cms.hhs.gov*.

FOR FURTHER INFORMATION CONTACT: Bob Connolly 410–786–6882 or Rita Shapiro 410–786–2177. You may also send comments or inquiries about this meeting via e-mail to *mds30comments@cms.hhs.gov*.

SUPPLEMENTARY INFORMATION:

I. Background

Amidst growing interest and concern about quality in nursing homes during the early 1980s, the Congress and the Department of Health and Human Services (DHHS), in 1983, commissioned an important study on nursing home quality to be conducted by the Institute of Medicine (IoM). The IoM study, "Improving the Quality of Care in Nursing Homes" (1986), reported widespread quality of care problems and recommended the strengthening of Federal regulations for nursing homes. Shortly thereafter, the Congress passed the Omnibus Reconciliation Act of 1987, which required the Secretary to develop a standardized instrument to provide information on resident status that would assist facilities in assessing resident needs and strengths and in developing appropriate care planning. In 1990, we developed the Resident Assessment Instrument (RAI), a standardized assessment instrument required for all residents in Medicare and Medicaid certified nursing homes. The RAI includes the Minimum Data Set (MDS), a set of resident status information collected periodically on every resident living in certified nursing homes. In 1995, we released a second-generation instrument, known as the MDS version 2.0. Version 2.0 was implemented in most homes in 1996. Our longstanding intention to computerize the MDS was fulfilled in 1998 when we funded the development of an infrastructure for automating the transmission of MDS data. Beginning on June 22, 1998, all certified long term care facilities were required to begin transmitting encoded MDS 2.0 data to States. States are also required to transmit these MDS records to a central repository we established.

The original MDS and its subsequent enhanced versions (for example, the quarterly MDS, the Medicare Prospective Payment Assessment Form, and the discharge tracking form) have been integral to the development and implementation of the Medicare prospective payment system as well as approaches to the measurement and improvement of health care outcomes (quality of care) in nursing homes. For example, the Nursing Home Public Reporting Quality Initiative relies on quality measures derived from information submitted by every nursing home using the MDS. In addition, State survey and certification of nursing homes has been refined through the use of MDS-derived quality indicators which can flag resident outcomes that require further investigation by the State surveyor which helps focus the onsite review process to better identify quality of care problems.

While the MDS has revolutionized the way we assess and monitor nursing home care, the MDS was developed over a decade ago and, therefore, requires some revisions to incorporate advances in care. In addition, the MDS tool was originally designed for a long-stay, custodial care population and some items are also relevant to short stay residents. Since its development, the nursing home industry has experienced an increase in the number of short-stay, rehabilitation-intensive admissions as well as a number of homes that specialize in distinct populations such as pediatrics residents whose unique care needs are not perfectly captured by the MDS 2.0. Finally, we have expanded our relationship with external groups with the goal of creating an instrument that can be used to complement current nursing home paper work rather than duplicating efforts already undertaken by nursing home staff in their effort to properly assess and manage their population.

We have contracted to complete validation testing of the MDS 3.0 items by December 2004. Feedback from the Town Hall meeting will be used to advise the validation process and provide us with important information regarding clinical improvements and provider burden. To be considered to make formal comments, commenters must follow the registration procedures described in the **DATES, ADDRESSES,** and **Registration Instructions** sections of this notice.

II. Meeting Format

The meeting will begin with an overview of the goals of the meeting, a review of the feedback received to date and how this feedback has been translated into changes to the draft MDS version 3.0. The timeline for revisions to the MDS 3.0 and plans for implementation will be discussed as well as the plans for evaluating the new instrument prior to its release. The implications of the revised instrument on various CMS operations, including survey and certification of nursing homes, public reporting of quality measures, the resource utilization groups and prospective payment system, software and data transmission, and care planning using the Resident Assessment Protocols (RAPs) will be discussed. The validation contractor will be introduced and a formal moderator will facilitate the meeting. We request written comments prior to the meeting and will entertain public comments from consumers, providers, provider and professional organizations from the Baltimore audience and Regional Office teleconferencing participants. Comments are requested about MDS 3.0, its content, and ways to further reduce the burden of MDS data collection. Comments can address the implications of the revised instrument such as impacts on payment, survey processes, quality indicators, publicly reported quality measures, resident

assessment protocols, RAVEN and information technologies, item-by-item comments on new MDS 3.0 items or deletions of current MDS 2.0 items. Information from this Town Hall Meeting will be used to advise the work of the validation contractor.

On April 3, 2003, a draft version of the MDS 3.0 instrument was posted to the following Web site: *http://www.cms.hhs.gov/providers/nursinghomes/nhi*. Beginning on or about May 19, 2003 information about the MDS 3.0 town hall meeting will be posted at the same Web site address and interested parties will find an agenda for the meeting and handouts to be used during the discussions.

We will limit the time for participants to make formal statements according to the number of registered participants and the number of written comments. Individuals who wish to make formal statements must contact Bob Connolly or Rita Shapiro as soon as possible. Those individuals must subsequently submit their formal statement in writing no later than 5 p.m., Friday, May 23, 2003. Send written submissions to: Rita Shapiro, Division of Ambulatory and Post Acute Care (DAPAC), Centers for Medicare & Medicaid Services, 7500 Security Boulevard, Mail Stop S3–02–01, Baltimore, Maryland 21244 or *mds30comments@cms.hhs.gov*. Open microphone town hall segments will provide opportunities for comments from individuals not registered to speak on the day of the meeting.

III. Registration Instructions

The Division of Acute and Post Acute Care is coordinating meeting registration. While there is no registration fee, all individuals must register to attend. Because this meeting will be located on Federal property, for security reasons, any persons wishing to attend this meeting must call Bob Connolly or Rita Shapiro or e-mail *mds30comments@cms.hhs.gov* to register by close of business on May 27, 2003. Attendees must show photographic identification to the Federal Protective Service or Guard Service personnel before they will be permitted to enter the building. Individuals who have not registered in advance will not be allowed to enter the building to attend the meeting. Seating capacity is limited to the first 250 registrants. Our Atlanta, Boston, Chicago, Dallas, Denver, Kansas City, New York, Philadelphia, San Francisco, and Seattle, regional offices will host a Satellite Broadcast of the meeting for participants wanting to participate at these locations. These teleconference lines will be allotted on a first come, first serve basis.

Individuals requiring sign language interpretation for the hearing impaired or other special accommodations should contact Bob Connolly or Rita Shapiro at least 10 days before the meeting.

Authority: Sections 1102 and 1871 of the Social Security Act (42 U.S.C. 1302 and 1395hh)

(Catalog of Federal Domestic Assistance Program No. 93.773, Medicare—Hospital Insurance; and Program No. 93.774, Medicare—Supplementary Medical Insurance Program)

Dated: May 12, 2003.

Thomas A. Scully,

Administrator, Centers for Medicare & Medicaid Services.

[FR Doc. 03–12229 Filed 5–15–03; 8:45 am]

BILLING CODE 4120–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

[Program Announcement No. ACYF/FYSB 2003–02]

Announcement of the Availability of Financial Assistance and Request for Applications for Mentoring Children of Prisoners Grants

AGENCY: Administration on Children, Youth and Families, ACF, DHHS.

ACTION: Notice.

CFDA Number: The Catalog of Federal Domestic Assistance number is 93.616.

SUMMARY: The Family and Youth Services Bureau (FYSB) within the Administration on Children, Youth and Families (ACYF), Administration for Children and Families (ACF) announces the availability of financial assistance and request for applications for the FY 2003 Mentoring Children of Prisoners Program activities under section 439, Title IV–B, subpart 2 of the Social Security Act, as amended. The purpose of this program is to make competitive grants to applicants in urban, suburban, rural, and tribal populations with substantial numbers of children of incarcerated parents and to support the establishment and operation of programs using a network of public and private entities to provide mentoring services for these children.

This Program Announcement and its application forms are also available by calling or writing to the ACYF Operations Center at the address below: Educational Services, Inc., ACYF Operations Center, *Attention:* Sylvia Johnson, 1150 Connecticut Avenue, NW., Suite 1100, Washington, DC 20036, *Telephone:* 1–800–351–2293, *Email: FYSB@esilsg.org*, or by downloading the announcement from the FYSB Web site at *http://www.acf.hhs.gov/programs/fysb*.

DATES: The deadline for submitting a grant application under this announcement is July 15, 2003. Applications must be hard copy. One signed original and two copies must be submitted.

Application Mailing and Delivery Instructions: The closing time and date for receipt of applications is 4:30 p.m. (Eastern Time Zone). Mailed applications shall be considered as meeting an announced deadline if they are postmarked on or before the published deadline time and date. Applicants are responsible for mailing applications well in advance, when using all mail services, to ensure that the applications are received on or before the deadline time and date.

Applications handcarried by applicants, applicant couriers, other representatives of the applicant, or by overnight/express mail couriers shall be considered as meeting an announced deadline date if they are received on or before the published deadline date, between the hours of 8 a.m. and 4:30 p.m., EST, at the ACYF Operations Center between Monday and Friday (excluding Federal Holidays). The address must appear on the envelope/package containing the application to the Attention of Sylvia Johnson. Applicants are cautioned that express/overnight mail services do not always deliver as agreed.

ACF cannot accommodate transmission of applications by fax or through other electronic media. Therefore, applications transmitted to ACF electronically will not be considered in the current competition.

Extension of Deadline: ACF may extend application deadlines when circumstances such as acts of God (floods, hurricanes, etc.) occur, or when there are widespread disruptions of mail service, or in other rare cases. A determination to extend or waive deadline requirements rests with the Chief Grants Management Officer.

The Administration for Children and Families will not accept applications delivered by fax or e-mail regardless of date or time of submission and receipt.

Late Applications. Applications which do not meet the criteria stated above or are not received or postmarked by the deadline date are considered late applications. The Administration for Children and Families will notify each late applicant that its application will not be considered in the current competition.

FOR FURTHER INFORMATION CONTACT: ACYF Operations Center at the address and telephone number above, or for program information contact: Linda V. Barnett, Youth Services Program Specialist, Administration on Children, Youth and Families, Family and Youth Services Bureau, 330 C Street, SW., Washington DC 20447, (202) 205–8102, or Sylvia Johnson, Grants Management Officer, Office of Administration, (202) 401–4524.

Table of Contents

Background on Mentoring Children of Prisoners
General Information
- Preference for Geographic Distribution
- Eligibility
- Project Period
- Estimated Range of Awards
- Applicants Share of Project Cost

Application Requirements
- Statutory Priority
- Program Guidance
- Assurances and Requirements

Definitions
Evaluation Criteria Section
- Objectives and Need for Assistance
- Approach
- Results or Benefits Expected
- Staff Position Data and Organizational Profiles
- Budget and Budget Justification

Submission Guidelines
Paperwork Reduction Act
- Authorizing Legislation

Non-Profit Status

"Across our Nation, many Americans are responding to the call to service by mentoring a child in need. By offering love, guidance, and encouragement, mentors put hope in children's hearts, and help ensure that young people realize their full potential."

President George W. Bush,

January 2003

Background on Mentoring Children of Prisoners

Witnessing and living with the arrest and incarceration of a parent is devastating for children and families. The living conditions, family configurations, and problems faced by the parents make it likely that significant numbers of children of prisoners will suffer emotional and behavioral difficulties. Often economic, social, and emotional burdens are placed on families and caretakers, especially children. Relationships are disrupted and any existing stability is shattered. As a result, the majority of these children experience multiple changes of caregivers and/or living arrangements.

What Are the Effects of Incarceration on the Child?

Research has found that significant physical absence of a parent has profound effects on child development. Children of incarcerated parents are seven times more likely to become involved in the juvenile and adult criminal justice systems. Parental arrest and confinement often lead to stress, trauma, stigmatization , and separation problems which may be compounded by existing poverty, violence, substance abuse, high-crime environments, child abuse and neglect, multiple caregivers and/or prior separations. These children are more likely to develop attachment disorders and often exhibit broad varieties of behavioral, emotional, health, and educational difficulties. Many children of incarcerated parents are angry and lash out at others resulting in confrontations with law enforcement. Lacking the support of families, schools, and other community institutions, they often do not develop values and social skills leading to the formation of successful relationships.

Who Are the Children?

Between 1991 and 1999, the number of children with a parent in a Federal or state correctional facility increased by more than 100 percent, from approximately 900,000 to approximately 2,000,000. Like their parents, children of criminal offenders reflect the racial disparities of the justice system. Seven percent of African American children have an incarcerated parent, almost three percent of Hispanic children have an incarcerated parent, while less than one percent of white children have an incarcerated parent.

Who Are the Parents?

According to the national data from the Bureau of Justice Statistics, in 2001, 3.5 million parents were supervised by the correctional system. Prior to incarceration, 64 percent of female prisoners and 44 percent of male prisoners in state facilities lived with their children. During incarceration, nearly 90 percent of children of incarcerated fathers lived with their mothers and 79 percent of children of incarcerated mothers lived with a grandparent or other relative. Although research has indicated that parents and children should visit one another, less than 50 percent of prisoners receive visits from their children. In a number of cases, the caregiver may not want the child to visit the inmate and prisons are often located far away from the urban areas where most children of prisoners live. According to the Bureau of Prisons, there is evidence to suggest that inmates who are connected to their children and families are more likely to avoid negative incidents and have reduced sentences.

Who Are the Mentors?

Mentors are recruited from a variety of sources including congregations, faith and community-based organizations, non-profit organizations, service organizations, and the business community. Research has shown that the health and productivity of mentors is enhanced by their connection to a child in need.

How Can Mentoring Help?

It has been demonstrated that mentoring is a potent force for improving youth outcomes. Mentoring increases the likelihood of regular school attendance and academic achievement. It also decreases the chances of engaging in self-destructive or violent behavior. A trusting relationship with a caring adult will provide stability and often have a profound, life-changing effect on the child. Mentoring provides the incarcerated parent with the assurance that somebody is there to look after the best interests of their child.

What Are Possible Outcomes?

Research confirms the societal benefits of mentoring efforts with children. Specifically, data indicates that mentoring programs have reduced first time drug use by almost fifty percent and first-time alcohol use by thirty-three percent. Also, caregiver and peer relationships are shown to improve. In addition, mentored youth displayed greater confidence in their schoolwork and improved their academic performance.

How Are Matches Initiated and Monitored?

Parents, incarcerated parents, caretakers, schools, courts, social service organizations, or congregations will identify children in need of a mentor and initiate the referral to a mentoring organization. The mentoring organization will facilitate and monitor the match by providing parents and other stakeholders' opportunities to provide evaluative feedback on the match. The mentoring organization will develop and distribute status reports to appropriate stakeholders.

What Happens When Parents Return Home From Prison?

Mentors are not meant to be "replacement parents." In situations where incarcerated parents are actively

engaged in the mentoring process, through visits, phone conversations or letters, reunification is a natural process with realistic expectations. Mentors can help facilitate a smooth reentry by helping parents reconnect with their child and are often invited to continue to be a supportive resource well after the return of the parent.

What Is the Family and Youth Services Bureau?

For over thirty years, the Family and Youth Services Bureau (FYSB) within the Administration for Children and Families (ACF) has provided grants at the local level to faith-based organizations and community-based organizations serving a population of vulnerable youth, including runaway, homeless, and street youth.

General Information

Preference for Geographic Distribution

A wide geographic distribution of applicants will be considered, including applicants from urban, suburban, rural and tribal communities, in addition to the rank order of scored applications.

Eligibility

Those eligible to apply for funding under this grant competition include faith and community-based organizations, tribal governments or consortia, and state or local governments where substantial numbers of children of prisoners live. Applicants must apply to establish new programs or to expand existing programs utilizing a network of public and private community entities to provide mentoring services for children of prisoners. Collaboration among eligible entities is strongly encouraged. All eligible organizations, including faith-based organizations, are eligible to compete on equal footing for Federal financial assistance used to support social service programs. No organization may be discriminated against on the basis of religion in the administration or distribution of Federal financial assistance under social service programs. Faith-based organizations are eligible to compete for Federal financial assistance while retaining their identity, mission, religious references, and governance. However, faith-based organizations that receive funding may not use Federal financial assistance, including funds, to meet any cost-sharing requirements, to support inherently religious activities, such as worship, religious instruction, or prayer. In addition, any participation in these activities by beneficiaries must be voluntary.

Project Period

This announcement invites applications for project periods of up to three years. Awards will be made on a competitive basis for a one-year budget period, although project periods may be for up to three years. Applications for continuation grants funded under these awards beyond the one-year budget period, but within the three-year project period, will be entertained in subsequent years on a noncompetitive basis, subject to the availability of funds, satisfactory progress of the grantee, and a determination that continued funding would be in the best interest of the Government.

Estimated Range of Awards

The Family and Youth Services Bureau expects to award approximately $9,500,000 for new competitive grants for Fiscal Year 2003. Grants will range from $100,000 to $1,000,000 depending on the scope of the project and the availability of funds. The ceiling on funding was lowered from the authorizing legislation because of a reduced appropriation. If a program shows a significant growth in the second year, and depending on fund availability, supplemental funds may be added to the existing award. Please note that an automatic increase of funds is not implied, nor are any additional funds guaranteed.

Applicant Share of Project Cost

For the first and second years of the grant, grantees must provide at least 25 percent of the approved project cost. After the second year of the grant, the amount that the grantees must provide increases to 50 percent. The total approved cost of the project is the sum of the Federal share and the non-Federal share. For example if the total project cost of a program is $200,000 then the applicant must demonstrate a commitment of at least a $50,000 match and request funding of $150,000 from the Federal government. The Federal share may be matched by cash or in-kind contributions, although applicants are encouraged to meet their requirement through cash contributions. In determining the amount of the non-Federal share, the fair market value will be attributed to goods, services (excluding mentoring time and services) and facilities contributed from non-Federal sources. Grantees will be held accountable for commitments of required non-Federal funds. Failure to provide the required match will result in disallowance of Federal funds.

Application Requirements

To be considered for a grant, each application must be submitted in accordance with the guidance provided below. The application must be signed by an individual authorized to act for the applicant agency and to assume responsibility for the obligations imposed by terms and conditions of the grant award. If more than one agency is involved in submitting a single application, one entity must be identified as the applicant organization that will have legal responsibility for the grant.

Statutory Priority

This grant competition focuses exclusively on projects designed to meet the statutory priority in Title I, subtitle B, section 121 as amended by the Act known as "Promoting Safe and Stable Families Amendments of 2001".

Program Guidance

To be eligible for funding, a project must propose mentoring programs and activities to serve the children of prisoners in areas with a comparative severity of need for mentoring services, taking into consideration data on the numbers of children (and in particular of low-income children) with an incarcerated parent (or parents) in the service area.

Projects funded under this program must:

1. Link children with mentors who have:
   - Received training and support in mentoring;
   - Completed screening and reference checks, including child and domestic abuse records checks and criminal background checks;
   - Expressed an interest in working with children in disadvantaged situations.
2. Incorporate the elements of Positive Youth Development by providing youth with:
   - Safe and trusting relationships;
   - Healthy messages about life and social behavior;
   - Guidance from a positive adult role model;
   - Increased participation in, and enhanced their ability to benefit from, education;
   - Participation in civic service and community activities;
3. Develop a plan for the whole family:
   - Connect the child with the imprisoned parent with permission from other spouse or guardian when appropriate;
   - Support caregivers with training, and help navigating the services provided by the mentoring network.

Assurances and Requirements

In addition to the standard assurances of safety, applicants must provide the following assurances:

- Mentors will not be assigned more children than can be served without undermining the mentor's ability to be effective.
- Grantees will recruit mentors who are committed to spending at least one hour per week with assigned children for a period of at least one year.
- The mentoring program will provide children with emotional and academic support as well as exposure to a variety of experiences that they might not otherwise encounter.
- The program will be monitored to ensure that each child benefits from the match. If the match is not found to be beneficial to the child a new mentor will be assigned.
- The program will cooperate with any research or evaluation efforts sponsored by the Administration for Children and Families.
- The program will submit quarterly program reports and annual financial reports, as instructed by FYSB.
- The program will set aside funding for travel to inform the Bureau and meet with other grantees at an annual sharing and technical assistance meeting.

Definitions

Children of Prisoners: Children, where one or both parents are incarcerated in a Federal, state or local correctional facility, on parole or on probation. Children will be 4 years to 15 years of age from childhood to adolescence when they begin to receive services.

Mentoring: A structured, managed program in which children are appropriately matched with screened and trained adult volunteers for one-to-one relationships. This involves meetings and activities on a regular basis between the mentors and children to support a child's need for a caring and supportive adult in their life.

Prisoner: Adult who is incarcerated in a Federal, state, or local correctional facility or is on parole or probation.

Caretaker: The parent or legal guardian charged with the responsibility of caring for a child while the parent is incarcerated.

Mentoring Organization: The organization that coordinates the local community and faith-based organizations and entities participating in the provision of mentoring services and the mentoring support network. Mentoring organizations will be responsible for the application and performance of the grant. They also will be responsible for providing the cash or in-kind contribution.

Mentoring Services: Those services and activities that support a structured, managed program of mentoring, including the management of trained personnel in partnership with sponsoring local organizations. Services will include: outreach to and screening of eligible children; screening and training of adult volunteers; matching of children with suitable adult mentors; support and oversight of the mentoring relationship; and establishment of goals and evaluations of outcomes for mentored children. Mentoring services also will make appropriate referrals to partner organizations when the health and safety of a child is an issue.

Mentoring Support Network: Private non-profit organizations, faith-based organizations, community-based organizations, professional, medical and public service providers in the community that, through referral, will support the health and well-being of the child, caretaker(s) and other siblings.

Evaluation Criteria Section

The following specific criteria will be used. The maximum total score for all criteria is 100 points. The possible score for each criterion is indicated in parentheses.

Objectives and Need for Assistance

Clearly identify the physical, economic, social, financial, institutional, and/or other problem(s) requiring a solution. The need for assistance must be demonstrated and the principal and subordinate objectives of the project must be clearly stated; supporting documentation, such as letters of support and testimonials from concerned interests other than the applicant, may be included. Any relevant data based on planning studies should be included or referred to in the endnotes/footnotes. Incorporate demographic data and participant/beneficiary information, as needed. In developing the project description, the applicant may volunteer or be requested to provide information on the total range of projects currently being conducted and supported (or to be initiated), some of which may be outside the scope of the program announcement.

Approach

Outline a plan of action that describes the scope and detail of how the proposed work will be accomplished. Account for all functions or activities identified in the application. Cite factors that might accelerate or decelerate the work and state your reason for taking the proposed approach rather than others. Describe any unusual features of the project such as design or technological innovations, reductions in cost or time, or extraordinary social and community involvement.

Provide quantitative monthly or quarterly projections of the accomplishments to be achieved for each function or activity in such terms as the number of people to be served and the number of activities accomplished. For example, describe the tasks needed to accomplish the proposed project in Phases 2 and 3 and any relevant data source to support the work. When activities and functions cannot be quantified, list them in chronological order to show the schedule of accomplishments and their target dates. If any data is to be collected, maintained, and/or disseminated, clearance may be required from the U.S. Office of Management and Budget (OMB). This clearance pertains to any "collection of information that is conducted or sponsored by ACF."

List organizations, cooperating entities, consultants, or other key individuals who will work on the project along with a short description of the nature of their effort or contribution.

Results or Benefits Expected

Identify the results and benefits to be derived.

Staff Position Data and Organizational Profiles

Provide information on the applicant organization(s) and cooperating partners such as organizational charts, financial statements, audit reports or statements from CPAs/Licensed Public Accountants, Employer Identification Numbers, names of bond carriers, contact persons and telephone numbers, child care licenses and other documentation of professional accreditation, information on compliance with Federal/State/local government standards, documentation of experience in the program area, and other pertinent information. Any non-profit organization submitting an application must submit proof of its non-profit status in its application at the time of submission.

The non-profit agency can accomplish this by providing a copy of the applicant's listing in the Internal Revenue Service's (IRS) most recent list of tax-exempt organizations described in Section 501(c)(3) of the IRS code, or by providing a copy of the currently valid IRS tax exemption certificate, or by

providing a copy of the articles of incorporation bearing the seal of the State in which the corporation or association is domiciled.

Budget and Budget Justification

Provide line item detail and detailed calculations for each budget object class identified on the Budget Information form. Detailed calculations must include estimation methods, quantities, unit costs, and other similar quantitative detail sufficient for the calculation to be duplicated. The detailed budget must also include a breakout by the funding sources identified in Block 15 of the SF–424.

Provide a narrative budget justification that describes how the categorical costs are derived. Discuss the necessity, reasonableness, and allocation of the proposed costs.

Personnel

Description: Cost of new employee salaries and wages.

Justification: Identify the project director or principal investigator, if known. For each staff person, provide the title, time commitment to the project (in months), time commitment to the project (as a percentage or full-time equivalent), annual salary, grant salary, wage rates, etc. Do not include the costs of consultants or personnel costs of delegate agencies or of specific project(s) or businesses to be financed by the applicant.

Fringe Benefits

Description: Costs of employee fringe benefits unless treated as part of an approved indirect cost rate.

Justification: Provide a breakdown of the amounts and percentages that comprise fringe benefit costs such as health insurance, FICA, retirement insurance, taxes, etc.

Travel

Description: Costs of project-related travel by employees of the applicant organization (does not include costs of consultant travel).

Justification: For each trip, show the total number of traveler(s), travel destination, duration of trip, per diem, mileage allowances, if privately owned vehicles will be used, and other transportation costs and subsistence allowances. Travel costs for key staff to attend ACF-sponsored workshops should be detailed in the budget.

Equipment

Description: "Equipment" means an article of nonexpendable, tangible personal property having a useful life of more than one year and an acquisition cost which equals or exceeds the lesser of (a) the capitalization level established by the organization for the financial statement purposes, or (b) $5,000. (Note: Acquisition cost means the net invoice unit price of an item of equipment, including the cost of modifications, attachments, accessories, or auxiliary apparatus necessary to make it usable for the purpose for which it is acquired. Ancillary charges, such as taxes, duty, protective in-transit insurance, freight, and installation shall be included in or excluded from acquisition cost in accordance with organization's regular written accounting practices.)Justification: For each type of equipment requested, provide a description of the equipment, the cost per unit, the number of units, the total cost, and a plan for use on the project, as well as use or disposal of the equipment after the project ends. An applicant organization that uses its own definition for equipment should provide a copy of its policy, which includes the equipment definition.

Supplies

Description: Costs of all tangible personal property other than that included under the Equipment category.

Justification: Specify general categories of supplies and their costs. Show computations and provide other information that supports the amount requested.

Contractual

Description: Costs of all contracts for services and goods except for those that belong under other categories such as equipment, supplies, construction, etc. Third-party evaluation contracts (if applicable) and contracts with secondary recipient organizations, including delegate agencies and specific project(s) or businesses to be financed by the applicant, should be included under this category.

Justification: All procurement transactions shall be conducted in a manner to provide, to the maximum extent practical, open and free competition. Recipients and sub-recipients, other than States that are required to use part 92 procedures, must justify any anticipated procurement action that is expected to be awarded without competition and exceed the simplified acquisition threshold fixed at 41 U.S.C. 403(11) (currently set at $100,000). Recipients might be required to make available to ACF pre-award review and procurement documents, such as request for proposals or invitations for bids; independent cost estimates, etc.

Note: Whenever the applicant intends to delegate part of the project to another agency, the applicant must provide a detailed budget and budget narrative for each delegate agency, by agency title, along with the required supporting information referred to in these instructions.

Indirect Charges

Description: Total amount of indirect costs. The Department of Health and Human Services (HHS) or another cognizant Federal agency should use this category only when the applicant currently has an indirect cost rate approval.

Justification: An applicant that will charge indirect costs to the grant must enclose a copy of the current rate agreement. If the applicant organization is in the process of initially developing or renegotiating a rate, it should immediately upon notification that an award will be made, develop a tentative indirect cost rate proposal based on its most recently completed fiscal year in accordance with the principles set forth in the cognizant agency's guidelines for establishing indirect cost rates and submit it to the cognizant agency. Applicants awaiting approval of their indirect cost proposals may also request indirect costs. It should be noted that when an indirect cost rate is requested, those costs included in the indirect cost pool should not also be charged as direct costs to the grant. Also, if the applicant is requesting a rate which is less than what is allowed under the program, the authorized representative of the applicant organization must submit a signed acknowledgement that the applicant is accepting a lower rate than allowed.

Program Income

Description: The estimated amount of income, if any, expected to be generated from this project.

Justification: Describe the nature, source and anticipated use of program income in the budget or refer to the pages in the application that contain this information.

Federal and Non-Federal Resources

Both Federal and non-Federal resources shall be detailed and justified in the budget and narrative justification. For purposes of preparing the budget and budget justification, "Federal resources" refers only to the ACF grant for which you are applying. Non-Federal resources are all other Federal and non-Federal resources. It is suggested that budget amounts and computations be presented in a columnar format: First column, categories; second column, Federal budget; third column(s), non-Federal budget; and last column, total budget. The budget justification should be in narrative form.

Submission Guidelines

Project Summary Abstract: Provide a one page (or less) summary of the project description with reference to the funding request.

Full Project Description and Evaluation Criteria: Describe the project clearly in 30 pages or less (not counting supplemental documentation, letters of support or agreements) using the following outline and guidelines.

Applicants are required to submit a full project description and must prepare the project description statement in accordance with the following instructions. The pages of the project description must be numbered and are limited to 30 typed pages starting on page 1 of "Objectives and Need for Assistance". The description must be doubled-spaced, printed on only one side, with at least ½ inch margins. Pages over the limit will be removed from the competition and will not be reviewed.

It is in the applicant's best interest to ensure that the project description is easy to read, logically developed in accordance with the evaluation criteria and adheres to page limitations. In addition, applicants should be mindful of the importance of preparing and submitting applications using language, terms, concepts, and descriptions that are generally known to the targeted youth and broader youth services fields. The maximum number of pages for supplemental documentation is 10 pages. The supplemental documentation, subject to the 10-page limit, must be numbered and might include brief resumes, position descriptions, proof of non-profit status (if applicable), news clippings, press releases, etc. Supplemental documentation over the 10-page limit will not be reviewed. Applicants must include letters of support or agreement, if appropriate or applicable, in reference to the project description. Letters of support are not counted as part of the 30-page project description limit or the 10-page supplemental documentation limit. (**Note:** Applicable agreements are those between grantees and sub-grantees or sub-contractors or other cooperating entities which support or complement the provision of mandated services to children of prisoners.)

Objectives and Need for Assistance (15 Points)

In determining the need for assistance for the proposed project, the following factors are considered:

- The conditions and characteristics of youth and families affected by incarceration in the service delivery area. The description must demonstrate an awareness of the special needs of this population, including service delivery gaps and the magnitude of the problem within the service delivery area. (5 points)
- Calculate the number of children with parents in prison and project the number of mentor-child matches proposed to be established and maintained annually under the program. (5 points)
- The extent to which there are existing support services for this population of youth, with specific references to coordination of courts, health and mental health care, social services, school and child welfare. It must be clear that the mentoring program will complement and enhance, not duplicate available services and that the mentoring program will work in conjunction with these services to produce better outcomes for children and families. (5 points)

Results and Benefits Expected (20 Points)

In determining the quality of expected benefits the following factors are considered:

- The extent to which goals, objectives and outcomes to be achieved by the proposed project are clearly specified and measurable. (10 points)
- The extent to which the methods of evaluation will provide performance feedback and permit periodic assessment of progress toward achieving intended outcomes.(5 points)
- The extent to which outcomes reflect gains in positive social behaviors, youth engagement and asset acquisition. (5 points)

Approach (30 Points)

In determining the quality of the project design or approach the following factors are considered:

- The detailed plan designed to identify, screen and recruit mentors. Provide detailed volunteer screening procedures to ensure that the mentor poses no safety risk to the child and has the necessary skills to participate in a mentoring relationship. Preferences will be given to programs that plan to recruit and train mentors within the service delivery area. (10 points)
- The resources that will be dedicated to supporting the needs of caretakers and other children in the family setting. Also, when appropriate, the extent that the program proposes to work with incarcerated parents and addresses their re-entry. (5 points)
- The training process for mentors which will ensure their ability to successfully mentor this special population. The extent that training is based on best practices supported by research. (5 points)
- The quality of the mechanism that will be used to match children with mentors, demonstrating sensitivity to the diverse needs of the children and the support provided for mentors in order to sustain long-term mentoring relationships.(5 points)
- The level of supervision, oversight and monitoring of the child and mentor relationships and activities. State the expected ratio of staff to mentors. Provide a detailed plan for collecting, on a monthly basis, data documenting meetings and activities by trained volunteer coordinators to ensure personal oversight and safety of the children and their mentors. (5 points)

Staff Position Data and Organizational Profiles (25 Points)

In reviewing the required staff and position data and the organizational profile, the following factors are considered:

- A demonstrated history of providing services to youth and families in disadvantaged situations, along with the ability to partner and build coalitions at the community level. (10 points)
- A specific definition of the area where services are to be delivered. (Maps and graphic aids may be attached as part of the supplementary documentation) (5 points)
- The extent to which community stakeholders, including parents, incarcerated parents, local community organizations, schools, government, caretakers and children, have participated in the project design. List and describe how these partners will participate in the mentoring network. Include an organizational chart. (5 points)
- Quality of skills, knowledge and experience of the project director and project staff. Job descriptions should be included, as well as a description of staff training and specific cultural diversity training related to mentoring the target population.(5 points)

Budget and Budget Justification (10 Points)

In determining the soundness of the budget and budget justification, the following factors are considered:

• The extent to which costs of the proposed program are reasonable and justified in terms of numbers of children of prisoners, types and quantities of services to be provided, and the anticipated results and benefits. Discussion should refer to the budget information presented on Standard Form 424 and 424A and the applicant's budget justification. (5 points)

• Identification of fiscal control and accounting procedures that will be used to ensure the prudent use, proper disbursement, and accurate accounting of federal funds received, as well as the accounting of cash and in-kind for the non-federal match. (5 points)

Assurances and Certifications

Forms and Certifications: Fill out Standard Forms 424 and 424A and the associated certifications and assurances in Appendix A based on the instructions on the forms.

Application requesting financial assistance for non-construction projects must file the Standard Form 424B, "Assurances: Non-Construction Programs." Applicants must sign and return the Standard Form 424B with their applications.

Lobbying

Applicants must provide a certification regarding lobbying when applying for an award in excess of $100,000. Applicants who have used non-Federal funds for lobbying activities in conjunction with receiving assistance under this announcement shall complete a disclosure form to report lobbying. Applicants must sign and return the disclosure form, if applicable, with their applications.

Drug Free Workplace

Applicants must make the appropriate certification of their compliance with the Drug-Free Workplace Act of 1988. By signing and submitting the application, the applicant is providing the certification and need not mail back the certification with the application.

Certification of Debarment

Applicant must make the appropriate certification that they are not presently debarred, suspended, or otherwise ineligible for an award. By signing and submitting the application, the applicant is providing the certification and need not mail back the certification with the application.

Paperwork Reduction Act of 1995 (Public Law 104–13)

Public reporting burden for this collection of information is estimated to average 20 hours per overall response, including the time for reviewing instructions, gathering and maintaining the data needed, and reviewing the collection of information.

The Uniform Project Description is approved under OMB control number 0970–0139, which expires 12/31/2003. An agency may not conduct or sponsor and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

Authorizing Legislation

Grants for Mentoring Children of Prisoners (MCIP) programs are authorized by further amending and by adding at the end of subpart 2 of part B of Title IV (U.S.C. 629–629e) the Safe and Stable Families Act of 2001, (Public Law 107–133). Text of this statute may be found at *http://www.acf.hhs.gov/programs/fysb.*

Notification Under Executive Order 12372

This program is covered under Executive Order (E.O.) 12372, "Intergovernmental Review of Federal Programs", and 45 CFR part 100, "Intergovernmental Review of Department of Health and Human Services Programs and Activities". Under the Order, States may design their own processes for reviewing and commenting on proposed Federal assistance under covered programs.

As of January 16, 2003, of the most recent SPOC list, the following jurisdictions have elected not to participate in the Executive Order process. Applicants from these jurisdictions or for projects administered by Federally-recognized Indian Tribes need take no action in regard to E.O. 12372: Alabama, Alaska, Arizona, Colorado, Connecticut, Hawaii, Idaho, Indiana, Kansas, Louisiana, Massachusetts, Minnesota, Montana, Nebraska, New Jersey, New York, Ohio, Oklahoma, Oregon, Palau, Pennsylvania, South Dakota, Tennessee, Vermont, Virginia, Washington and Wyoming. **Note:** Inquiries about obtaining a Federal grant should not be sent to OMB. The best source for this information is the CFDA. The official list of the jurisdictions elected not to participate in E.O. 12372 can be found at *http://www.whitehouse.gov/omb/grants/spoc.html.*

Although the jurisdictions listed above no longer participate in the process, entities which have met the eligibility requirements of the program are still eligible to apply for a grant even if a State, Territory, Commonwealth, etc. does not have a SPOC. All remaining jurisdictions participate in the Executive Order process and have established SPOCs. Applicants from participating jurisdictions should contact their SPOCs as soon as possible to alert them of the prospective applications and receive instructions. Applicants must submit any required material to the SPOCs as soon as possible so that the program office can obtain and review SPOC comments as part of the award process. The applicant must submit all required materials, if any, to the SPOC and indicate the date of this submittal (or the date of contact if no submittal is required) on the Standard Form 424, item 16a. Under 45 CFR 100.8(a)(2). A SPOC has 60 days from the application deadline to comment on proposed new or competing continuation awards. SPOCs are encouraged to eliminate the submission of routine endorsements as official recommendations. Additionally, SPOCs are requested to clearly differentiate between mere advisory comments and those official State process recommendations, which may trigger the "accommodate or explain" rule.

When comments are submitted directly to ACF, they should be addressed to: Department of Health and Human Services, Administration for Children and Families, Office of Grants Management, Division of Discretionary Grants, 370 L'Enfant Promenade SW., Mail Stop 6C–462, Washington, DC 20447. (**Note:** State/Territory participation in the intergovernmental review process does not signify applicant eligibility for financial assistance under a program. A potential applicant must meet the eligibility requirements of the program for which it is applying prior to submitting an application to its SPOC, if applicable, or to ACF.)

Dated: May 12, 2003.

Wade F. Horn,

Assistant Secretary, Administration for Children and Families.

[FR Doc. 03–12242 Filed 5–15–03; 8:45 am]

BILLING CODE 4184–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 03D–0186]

Draft Guidance for Industry: Use of Material From Deer and Elk in Animal Feed; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of a draft guidance for industry (#158) entitled "Use of Material From Deer and Elk in Animal Feed." This draft guidance document, when finalized, will describe FDA's current thinking regarding the use in animal feed of material from deer and elk that are positive for chronic wasting disease (CWD) or are at high risk for CWD.

DATES: Submit written or electronic comments on the draft guidance at any time, however, comments should be submitted by June 16, 2003, to ensure their adequate consideration in preparation of the final document. FDA is requesting comments within 30 days, rather than within a longer period, because of the need to finalize the guidance in late August, prior to the start of the next deer hunting season.

ADDRESSES: Submit written requests for single copies of the draft guidance to the Communications Staff (HFV–12), Center for Veterinary Medicine (CVM), Food and Drug Administration, 7519 Standish Pl., Rockville, MD 20855. Send one self-addressed adhesive label to assist that office in processing your requests. Submit electronic comments on the draft guidance to http://www.fda.gov/dockets/ecomments. Submit written comments to the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. Comments should be identified with the full title of the draft guidance and the docket number found in brackets in the heading of this document. See the **SUPPLEMENTARY INFORMATION** section for electronic access to the draft guidance document.

FOR FURTHER INFORMATION CONTACT: Burt Pritchett, CVM (HFV–222), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301–827–0177, e-mail: bpritche@cvm.fda.gov.

SUPPLEMENTARY INFORMATION:

I. Background

CWD is a neurological (brain) disease of farmed and wild deer and elk that belong in the cervidae animal family (cervids). CWD belongs to a family of animal and human diseases called transmissible spongiform encephalopathies (TSEs). These include (1) Bovine spongiform encephalopathy (BSE or "mad cow" disease) in cattle; (2) scrapie in sheep and goats; and (3) classical and variant Creutzfeldt-Jakob diseases (CJD and vCJD) in humans. There is no known treatment for these diseases and there is no vaccine to prevent them. In addition, although validated postmortem diagnostic tests are available, there are no validated diagnostic tests for CWD that can be used to test for the disease in live animals.

Under FDA's BSE feed regulation (21 CFR 589.2000), most material from deer and elk is prohibited for use in feed for ruminant animals. This draft guidance document describes FDA's recommendations regarding the use in all animal feed of all material from deer and elk that are positive for CWD or are considered at high risk for CWD.

The potential risks from CWD to humans or noncervid animals such as poultry or swine are not well understood. However, because of recent recognition that CWD is spreading rapidly in white-tailed deer and because CWD's route of transmission is poorly understood, FDA is making recommendations regarding the use in animal feed of rendered materials from deer and elk that are CWD positive or that are at high risk for CWD.

II. Significance of Guidance

This draft level 1 guidance is being issued consistent with FDA's good guidance practices regulation (21 CFR 10.115). This draft guidance, when finalized, will represent the agency's current thinking on the topic. It does not create or confer any rights for or on any person and does not operate to bind FDA or the public. An alternate method may be used as long as it satisfies the requirements of applicable statutes and regulations.

III. Paperwork Reduction Act of 1995

FDA tentatively concludes that this draft guidance contains no collections of information. Therefore, clearance by the Office of Management and Budget under the Paperwork Reduction Act of 1995 is not required.

IV. Comments

This draft guidance is being distributed for comment purposes only and is not intended for implementation at this time. Interested persons may submit to the Dockets Management Branch (see **ADDRESSES**) written or electronic comments regarding this draft guidance document. Two paper copies of any mailed comments are to be submitted, except that individuals may submit one paper copy. Comments should be identified with the docket number found in brackets in the heading of this document. A copy of the document and received comments are available for public examination in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

V. Electronic Access

Copies of the draft guidance document entitled "Use of Material From Deer and Elk in Animal Feed" may be obtained from the CVM home page (http://www.fda.gov/cvm) and from the Dockets Management Branch Web site (http://www.fda.gov/ohrms/dockets/default.htm).

Dated: May 6, 2003.

Jeffrey Shuren,

Assistant Commissioner for Policy.

[FR Doc. 03–12363 Filed 5–15–03; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Government-Owned Inventions; Availability for Licensing

AGENCY: National Institutes of Health, Public Health Service, DHHS.

ACTION: Notice.

SUMMARY: The inventions listed below are owned by agencies of the U.S. Government and are available for licensing in the U.S. in accordance with 35 U.S.C. 207 to achieve expeditious commercialization of results of Federally-funded research and development. Foreign patent applications are filed on selected inventions to extend market coverage for companies and may also be available for licensing.

ADDRESSES: Licensing information and copies of the U.S. patent applications listed below may be obtained by writing to the indicated licensing contact at the Office of Technology Transfer, National Institutes of Health, 6011 Executive Boulevard, Suite 325, Rockville, Maryland 20852–3804; telephone: 301/496–7057; fax: 301/402–0220. A signed Confidential Disclosure Agreement will be required to receive copies of the patent applications.

Method of Treating Ischemia/Reperfusion Injury with Nitroxyl Anion Donors

David Wink *et al.* (NCI).

DHHS Reference No. E–175–2002/0

Filed June 14, 2002, and DHHS Reference No. E–076–2003/0

Filed June 17, 2002.

Licensing Contact: Fatima Sayyid; 301/435–4521; *sayyidf@od.nih.gov.*

Ischemia/reperfusion injury refers to tissue damage caused by oxygen deprivation followed by reoxygenation causing oxidative stress.

The present invention relates to the administration of a nitroxyl anion donating compound prior to ischemia to attenuate ischemia/reperfusion injury. Accordingly, nitroxyl anion donating compounds such as Angeli's salt would be useful treatment agents to prevent or protect against such adverse conditions especially since the beneficial effect is a surprising result given that nitroxyl anion was previously reported to increase ischemia/reperfusion injury.

Preparation and Medical Uses of Novel Nitric Oxide Releasing Imidates, Amidines Derived Therefrom, and Enamines

Joseph Hrabie, Ernst Arnold, and Larry Keefer (NCI).

DHHS Reference Nos. E–149–2001

Filed June 13, 2001 and E–276–2002

Filed July 18, 2002.

Licensing Contact: Norbert Pontzer; 301/435–5502; *pontzern@od.nih.gov.*

Nucleophile/nitric oxide adducts (N_2O_2-diazeniumdiolates) spontaneously dissociate at physiological pH to release nitric oxide (NO) by stable first order kinetics. The bulk of the known and patented NIH compositions and methods using diazeniumdiolates are derived from amine nucleophiles. The formation of these amine-derived diazeniumdiolates requires exposure of the nucleophile to NO gas with the attendant occurrence of possible unwanted side reactions, or preparation of O_2 alkylated diazeniumdiolates that may release toxic by-products. Also, amine-derived diazeniumdiolates may dissociate into carcinogenic N-nitroso compounds and the primary amines may decompose into unstable diazotates. These inventors thus developed diazeniumdiolates in which the N_2O_2-functional groups are bonded to carbon atoms. This work has resulted in imidoester-, amidine- and enamine-derived diazeniumdiolates that spontaneously release NO under physiological conditions.

Previous amidine-linked NO releasing compounds were prepared using NO gas after acetamidation of amine groups. This invention provides a simple, robust method of preparing diazeniumdiolated imidates from cyano compounds. As with other imidoesters, these diazeniumdiolated imidoesters react with nucleophiles allowing formation of a wide range of NO releasing derivatives. For example, imidoesters are extensively used as protein crosslinking reagents because they react with primary amines to form amidine bonds. These already diazeniumdiolated and purified imidoesters can thus be used to directly attach amidine NO-releasing groups onto molecules such as peptides and medicinals without exposing them to NO gas or its potentially toxic by-products. Some of these compounds may also release nitroxyl (HNO, NO) in solution under physiological conditions. *See* Arnold *et al.*, Tetrahedron Lett., 41, 8421–8424(2000).

Postnatal Stem Cells and Uses Thereof

Drs. Songtao Shi and Pamela Robey (NIDCR).

DHHS Reference No. E–018–2003/0–PCT–01.

Licensing Contact: Marlene Shinn-Astor; 301/435–4426; *shinnm@od.nih.gov.*

Many individuals with ongoing and severe dental problems are faced with the prospect of permanent tooth loss. Examples of such dental problems include: dentinal degradation due to chronic dental disease (caries or periodontal); mouth injury; or through surgical removal, such as with tumors associated with the jaw. For many, a technology that offers a possible alternative to artificial dentures by designing and transplanting a set of living teeth fashioned from an individual's own pulp cells would greatly improve their quality of life.

The NIH announces a new technology wherein human postnatal deciduous dental pulp stem cells commonly known as "baby teeth", are used to create dentin and have been shown to differentiate into cells of specialized function such as neural cells, adipocytes, and odontoblasts. It is believed that these cells could be manipulated to repair damaged teeth, induce the regeneration of bone, and treat neural injury or disease.

This research is described, in part, in Miura *et al.*, "SHED: Stem cells from human exfoliated deciduous teeth," Proc. Natl. Acad. Sci. USA, vol. 100 (no. 10; May 13, 2003) pp. 5807–5812.

Methanocarba Cycloalkyl Nucleoside Analogues

Dr. Kenneth Jacobson (NIDDK).

Serial No. 10/169,975

Filed July 12, 2002, (and related National Stage patent applications).

Licensing Contact: Marlene Shinn-Astor; 301/435–4426; *shinnm@od.nih.gov.*

Purines such as adenosine and ATP have been shown to play a wide array of roles in biological systems such as inter alia, modulator of vasodilation and hypotension, muscle relaxant, central depressant, inhibitor of platelet aggregation, regulator of energy supply/demand, responder to oxygen availability, neurotransmitter and neuromodulator. All P1 and P2 receptor nucleoside ligands suffer from chemical instability that is caused by the labile glycosidic linkage in the sugar moiety of the nucleoside. However, it has been found that relatively few ribose modifications are tolerated by the presently known agonists and antagonists of P1 and P2 receptors.

The NIH announces a new technology wherein a new class of nucleoside and nucleotide analogs has been identified that serve as selective agonists or antagonists for P1 and P2 receptors. The technology relates to a chemical modification of purines and pyrimidines, which provide enhanced therapeutic profile and potentially greater in vivo stability, because of the absence of a glycosidic bond. The P2Y receptor agonists and antagonists could potentially be used in immune modulation, inflammation, cardiovascular diseases, neurodegeneration, diabetes, and cancer. In addition, the A3 receptor agonists and antagonists could be useful in cardioprotection, neuroprotection, and asthma.

This research is described, in part, in J. Med. Chem., 2000, 43:2196–2203 and J. Med. Chem., 2002, 45:208–218.

Orally Active Derivatives of 1,3,5(10)-estratriene

H.K. Kim, *et al.* (NICHD).

U.S. Patent 5,554,603

Issued Sep. 10, 1996.

Licensing Contact: Marlene Shinn-Astor; 301/435–4426; *shinnm@od.nih.gov.*

The utility of estrogenic substances in the practice of medicine is well documented. Estrogens may be used for the replacement of the natural hormone, estradiol, in hypogonadism, and following the removal of the ovaries or cessation of ovarian activity during menopause. They are also widely employed as a component of oral contraceptives. However, the orally active synthetic estrogens are associate with a number of side effects such as enhanced risk of endometrial carcinoma; induction of malignant carcinoma especially in the cervix, breast, vagina and liver; promotion of gallbladder disease, thromboembolic and thrombotic diseases, myocardial infarction, hepatic adenoma, elevated blood pressure, and hypercalcemia; and a worsening of glucose tolerance can occur.

The NIH announces a new family of novel, active estrogens that are esters of estradiol. These esters possess enhanced estrogenic activity following oral administration in the absence of a 17-ethynyl alcohol which has been implicated in many side effects. It is anticipated that these esters could be used in all instances where estrogen is prescribed as a treatment.

Additional information about these esters may be found in U.S. Patent 5,554,603.

Dated: May 9, 2003.

Steven M. Ferguson,

Acting Director, Division of Technology Development and Transfer, Office of Technology Transfer, National Institutes of Health.

[FR Doc. 03–12277 Filed 5–15–03; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Government-Owned Inventions; Availability for Licensing

AGENCY: National Institutes of Health, Public Health Service, DHHS.

ACTION: Notice.

SUMMARY: The inventions listed below are owned by agencies of the U.S. Government and are available for licensing in the U.S. in accordance with 35 U.S.C. 207 to achieve expeditious commercialization of results of Federally-funded research and development. Foreign patent applications are filed on selected inventions to extend market coverage for companies and may also be available for licensing.

ADDRESSES: Licensing information and copies of the U.S. patent applications listed below may be obtained by writing to the indicated licensing contact at the Office of Technology Transfer, National Institutes of Health, 6011 Executive Boulevard, Suite 325, Rockville, Maryland 20852–3804; telephone: 301/496–7057; fax: 301/402–0220. A signed Confidential Disclosure Agreement will be required to receive copies of the patent applications.

Methods and Apparatus for Performing Multiple Simultaneous Manipulations of Biomolecules in a Two-Dimensional Array

Michael Emmert-Buck, *et al.* (NCI).

DHHS Reference No. E–339–2002/0

Filed Nov. 25, 2002.

Licensing Contact: Susan Ano; 301/435–5515; *anos@od.nih.gov.*

This technology concerns a method and apparatus for accomplishing and/or facilitating the analysis of multiple biomolecules separated in a two-dimensional array, such as gel, membrane, tissue biopsy, etc. The invention employs a separator, termed an External Movement Inhibitor Device, that allows biomolecules to be transferred from an array such as those listed above to another support system while maintaining the two-dimensional spatial relationship of the biomolecules as in the array. The biomolecules can subsequently be subjected to various manipulations such as amplification, reverse transcription, labeling, cloning, etc., after which multiple well-established methods for quantitative and qualitative analysis can be used. The technology allows detection/analysis of all molecules regardless of their abundance.

Methods for Assessing the Ability of HIV Patients to Restrict HIV Replication

Mark Connors, Stephen Migueles (NIAID).

DHHS Reference No. E–260–2002/0

Filed Sep. 20, 2002.

Licensing Contact: Susan Ano; 301/435–5515; *anos@od.nih.gov.*

One of the current obstacles for the design and testing of effective vaccines and immunotherapies of HIV is the lack of in vitro correlates that will predict the ability to restrict virus replication. This invention relates to methods for evaluating the effectiveness of HIV therapies and vaccines and methods for assessing the ability of HIV patients to restrict virus replication. Upon restimulation of $CD8^+$ T cells, the expression of perforin in these cells, and the cell cycle stage of these cells may be measured and used as in vitro markers for monitoring the patient's ability to restrict HIV replication and the effectiveness of the therapies and vaccines applied. Significant proliferation of $CD8^+$ T cells, the presence of perforin in these cells, and the ability of these cells to progress beyond the G_1 stage signify the patient's ability to restrict HIV replication and a favorable effect of the therapies or vaccines. These methods may be advantageously applied in conjunction with other measurements of HIV specific immune response such as HLA tetramers.

Safer Attenuated Virus Vaccines with Missing or Diminished Latency of Infection

Jeffrey Cohen (NIAID), Edward Cox (FDA), Lesley Pesnicak (NIAID).

DHHS Reference No. E–250–2002/0

Filed Nov. 5, 2002.

Licensing Contact: Susan Ano; 301/435–5515; *anos@od.nih.gov.*

This technology describes viruses that have weakened ability to establish and/or maintain latency and their use as live vaccines. The viruses have one or more genetic mutations that allow for continued replication but that inhibit latency. The vaccine materials and methods for their construction are exemplified with the virus that causes chickenpox and whose latent infection results in shingles, a condition that affects up to an estimated 1 million people per year in the United States alone. Specific examples of gene deletion are described. Furthermore, replacement of these deleted genes with other desirable viral antigen encoding sequence(s) and/or cytokine genes in order to enhance a desired immunological response is also described. Aspects of this technology are relevant to other live virus vaccines, thus increasing the safety of such vaccines.

HTLV–1 Cell Binding and Inhibition

Bishop Hague, Tong Mao Zhao, Thomas Kindt (NIAID).

DHHS Reference No. E–240–2002/0

Filed Oct 30, 2002.

Licensing Contact: Susan Ano; 301/435–5515; *anos@od.nih.gov.*

This technology describes methods for inhibiting human T-cell lymphotropic virus type I (HTLV–I) infection in cells and for reducing viral load or titer in infected individuals. As many as 20 million people worldwide are infected with HTLV–I, and approximately 1 million will develop adult T-cell leukemia/lymphoma, myelopathy, or tropic spastic paraparesis (a condition similar to multiple sclerosis) as a result of infection. Previous treatments have proven ineffective. The current invention relates to the surprising results that adenosine receptor antagonists specific for type A2A and A2B adenosine receptors prevent binding of HTLV–I to cells. Such antiviral use of adenosine receptor antagonists has not been suggested elsewhere. This technology also has veterinary application, as such treatment methods could be used against feline leukemia virus infections.

Flp-in T-Rex Jurkat Cell Line

Steven Zeichner, Naoto Yoshizuka (NCI).

DHHS Reference No. E–161–2003.

Licensing Contact: Michael Shmilovich; 301/435–5019; *mish@codon.nih.gov.*

This Flp-in T-Rex Jurkat cell line offers rapid and efficient generation of cell lines containing a gene of interest

by FRT-Flp recombinase mediated integration.

A cell line can be stably transformed with both the pFRT/lacZeo (already in the parental Flp-in Jurkat cell line) and the pcDNA6/TR plasmids. A gene of interest is cloned into plasmid, pcDNA5/FRT/TO. When pcDNA5/FRT/TO, including the gene of interest, is co-transfected along with a plasmid supplying a source of Flp recombinase into the cell line, the recombinase mediates the insertion of the gene of interest into the Flp recombination target (FRT) site in the pFRT/lacZeo plasmid that becomes integrated into the DNA of the cell line. The gene of interest can then be expressed in a tetracycline inducible fashion.

Method of Assessing Ischemia in a Patient

Steven Warach and Lawrence Latour (NINDS).

DHHS Reference No. E–082–2002 Filed Mar. 17, 2002.

Licensing Contact: Michael Shmilovich; 301/435–5019; *mish@codon.nih.gov.*

Hyperintense acute reperfusion marker (HARM) is well correlated with reperfusion and is a precursor to or concomitant with reperfusion injury and hemorrhagic transformation. The inventors have developed a novel technique of assessing early blood brain barrier disruption associated with ischemic stroke in a patient by administering a contrast agent to the patient, acquiring a fluid-attenuated inversion-recovery (FLAIR) image, and observing the presence or absence of HARM on the acquired image. The technique can also be used to determine the effectiveness of a therapeutic protocol for the treatment or prevention of reperfusion injury or hemorrhagic transformation in a patient that has suffered an ischemic event.

Dated: May 9, 2003.

Steven M. Ferguson,

Acting Director, Division of Technology Development and Transfer, Office of Technology Transfer, National Institutes of Health.

[FR Doc. 03–12278 Filed 5–15–03; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Fogarty International Center; Notice of Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of a meeting of the Fogarty International Center Advisory Board.

The meeting will be open to the public as indicated below, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and/or contract proposals and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications and/or contract proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Fogarty International Center Advisory Board.

Date: May 20, 2003.

Closed: 9 a.m. to 11 a.m.

Agenda: To review and evaluate grant applications and/or proposals.

Place: National Institutes of Health, Lawton Chiles International House, Bethesda, MD 20892.

Open: 11 a.m. to 12 p.m.

Agenda: A Report of the FIC Director on updates and overviews of new FIC initiatives.

Place: National Institutes of Health, Lawton Chiles International House, Bethesda, MD 20892.

Contact Person: Irene W. Edwards, Information Officer, Fogarty International Center, National Institutes of Health, Building 31, Room B2C08, 31 Center Drive MSC 2220, Bethesda, MD 20892, 301–496–2075.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Information is also available on the Institute's/Center's home page: *http://www.nih.gov/fic/about/advisory.html.* where an agenda and any additional information for the meeting will be posed when available.

(Catalogue of Federal Domestic Assistance Program Nos. 93.106, Minority International Research Training Grant in the Biomedical and Behavioral Sciences; 93.154, Special International Postdoctoral Research Program in Acquired Immunodeficiency Syndrome; 93.168, International Cooperative Biodiversity Groups Program; 93.934, Fogarty International Research Collaboration Award; 93.989, Senior International Fellowship Awards Program, National Institutes of Health, HHS)

Dated: May 12, 2003.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 03–12274 Filed 5–15–03; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Human Genome Research Institute; Notice of Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of a meeting of the National Advisory Council for Human Genome Research.

The meeting will be open to the public as indicated below, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and/or contract proposals and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications and/or contract proposals, the disclosure of which constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Advisory Council for Human Genome Research.

Date: May 19, 2003.

Open: 8:30 a.m. to 12:30 p.m.

Agenda: To discuss matters of program relevance.

Place: National Institutes of Health, Natcher Building, 45 Center Drive, Bethesda, MD 20892.

Closed: 1:30 p.m. to adjournment at 5 p.m.

Agenda: To review and evaluate grant applications and/or proposals.

Place: National Institutes of Health, Natcher Building, 45 Center Drive, Bethesda, MD 20892.

Contact Person: Mark S. Guyer, Director for Extramural Research, Assistant Director for Scientific Coordination, National Human Genome Research Institute, 31 Center Drive, MSC 2033, Building 31, Room B2B07, Bethesda, MD 20892–2033, 301–435–5536, *guyerm@mail.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.172, Human Genome Research, National Institutes of Health, HHS)

Dated: May 12, 2003.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 03–12275 Filed 5–15–03; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Human Genome Research Institute; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended.The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Human Genome Research Institute Initial Review Group, Genome Research Review Committee.

Date: June 6, 2003.

Time: 12 p.m. to 4 p.m.

Agenda: To review and evaluate grant applications.

Place: NIH, 31, B2B32, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Ken D. Nakamura, PhD, Scientific Review Administrator, Office of Review, National Human Genome Research Institute, National Institutes of Health, Bethesda, MD 20892, 301–402–0838.

(Catalogue of Federal Domestic Assistance Program Nos. 93.172, Human Genome Research, National Institutes of Health, HHS).

Dated: May 12, 2003.

LaVerne Y. Springfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 03–12276 Filed 5–15–03; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Child Health and Human Development; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Child Health and Human Development Special Emphasis Panel, Macrophages, Oxidation and Endometriosis.

Date: June 2, 2003.

Time: 9 a.m. to 3 p.m.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn Select Bethesda, 8120 Wisconsin Ave., Bethesda, MD 20814.

Contact Person: Jon M. Ranhand, PhD, Scientist Review Administrator, Division of Scientific Review, National Institute of Child Health, and Human Development, NIH, 6100 Executive Blvd., Room 5E03, Bethesda, MD 20892, (301) 435–6884.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.864, Population Research; 93.865, Research for Mothers and Children; 93.929, Center for Medical Rehabilitation Research; 93.209, Contraception and Infertility Loan Repayment Program, National Institutes of Health, HHS)

Dated: May 12, 2003.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 03–12267 Filed 5–15–03; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Mental Health; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Mental Health Initial Review Group, Interventions Research Review Committee.

Date: June 10–11, 2003.

Time: June 10, 2003, 9 a.m. to 4 p.m.

Agenda: To review and evaluate grant applications.

Place: St. Gregory Hotel, 2033 M Street, NW., Washington, DC 20036.

Time: June 11, 2003, 9 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: St. Gregory Hotel, 2033 M Street, NW., Washington, DC 20036.

Contact Person: David I. Sommers, PhD, Scientific Review Administrator, Division of Extramural Activities, National Institute of Mental Health, NIH, Neuroscience Center, 6001 Executive Blvd., Room 6144, MSC 9606, Bethesda, MD 20892–9606. 301–443–6470. *dsommers@mail.nih.gov.*

Name of Committee: National Institute of Mental Health Special Emphasis Panel, Women's Mental Health.

Date: June 10, 2003.

Time: 4 p.m. to 6 p.m.

Agenda: To review and evaluate grant applications.

Place: St. Gregory Hotel, 2033 M Street, NW., Washington, DC 20036.

Contact Person: David I. Sommers, PhD, Scientific Review Administrator, Division of Extramural Activities, National Institute of Mental Health, NIH, Neuroscience Center, 6001 Executive Blvd., Room 6144, MSC 9606, Bethesda, MD 20892–9606. 301–443–7861. *dsommers@mail.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.242, Mental Health Research Grants; 93.281, Scientist Development Award, Scientist Development Award for Clinicians, and Research Scientist Award; 93.282, Mental Health National Research Service Awards for Research Training, National Institutes of Health, HHS.)

Dated: May 12, 2003.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 03–12268 Filed 5–15–03; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Dental & Craniofacial Research; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Dental and Craniofacial Research Special Emphasis Panel, 03–53, Review of R13s.
Date: May 27, 2003.
Time: 1 p.m. to 3 p.m.
Agenda: To review and evaluate grant applications.
Place: National Institutes of Health, Natcher Building, 45 Center Drive, Bethesda, MD 20892. (Telephone conference call).
Contact Person: H. George Hausch, PhD, Acting Director, 4500 Center Drive, Natcher Building, Rm. 4AN44F, National Institutes of Health, Bethesda, MD 20892. (301) 594–2372.
This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: National Institute of Dental and Craniofacial Research Special Emphasis Panel, 03–70, Review of K22 Grants.
Date: June 19, 2003.
Time: 10 a.m. to 11:30 a.m.
Agenda: To review and evaluate grant applications.
Place: Hyatt Regency Bethesda, One Bethesda Metro Center, 7400 Wisconsin Avenue, Bethesda, MD 20814.
Contact Person: Lynn M. King, PhD, Scientific Review Administrator, Scientific Review Branch, 45 Center Dr., Rm 4AN–38K, National Institute of Dental & Craniofacial Research, National Institutes of Health, Bethesda, MD 20892–6402. (301) 594–5006.

Name of Committee: National Institute of Dental and Craniofacial Research Special Emphasis Panel, 03–73, Review of K22s.
Date: June 19, 2003.
Time: 11:30 a.m. to 12:30 p.m.
Agenda: To review and evaluate grant applications.
Place: Hyatt Regency Bethesda, One Bethesda Metro Center, 7400 Wisconsin Avenue, Bethesda, MD 20814.
Contact Person: Lynn M King, PhD, Scientific Review Administrator, Scientific Review Branch, 45 Center Dr., Rm 4AN–38K, National Institute of Dental & Craniofacial Research, National Institutes of Health, Bethesda, MD 20892–6402. (301) 594–5006.

Name of Committee: National Institute of Dental and Craniofacial Research Special Emphasis Panel, 03–67, Review of R44s.
Date: July 16, 2003.
Time: 2 p.m. to 3:30 p.m.
Agenda: To review and evaluate grant applications.
Place: National Institutes of Health, Natcher Building, 45 Center Drive, Bethesda, MD 20892. (Telephone conference call.)
Contact Person: Philip Washko, PhD, DMD, Scientific Review Administrator, 45 Center Drive, Natcher Building, Rm. 4AN44F, National Institutes of Health, Bethesda, MD 20892. (301) 594–2372.

(Catalogue of Federal Domestic Assistance Program Nos. 93.121, Oral Disease and Disorders Research, National Institutes of Health, HHS)

Dated: May 12, 2003.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 03–12269 Filed 5–15–03; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Drug Abuse; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute on Drug Abuse Special Emphasis Panel, Diffusion of HIV Infection through Sexual Risk Behaviors of Drug Users.
Date: June 5, 2003.
Time: 8:30 a.m. to 5 p.m.
Agenda: To review and evaluate grant applications.
Place: Marriott Key Bridge, 1401 Lee Highway, Arlington, VA 22209.
Contact Person: William C. Grace, PhD, Deputy Director, Office of Extramural Affairs, National Institute on Drug Abuse, National Institutes of Health, DHHS, 6001 Executive Boulevard, Room 3158, MSC 9547, Bethesda, MD 20892–9547, (301) 443–2755.

Name of Committee: National Institute on Drug Abuse Initial Review Group, Medication Development Research Subcommittee.
Date: June 9, 2003.
Time: 8 a.m. to 6 p.m.
Agenda: To review and evaluate grant applications.
Place: Westin Grand, 2350 M Street, NW, Washington, DC 20037.
Contact Person: Khursheed Asghar, PhD, Chief, Basic Sciences Review Branch, Office of Extramural Affairs, National Institute on Drug Abuse, National Institutes of Health, 6001 Executive Boulevard, Room 3158, Msc 9547, Bethesda, MD 20892–9547, (301) 443–2755.

Name of Committee: National Institute on Drug Abuse Initial Review Group, Health Services Research Subcommittee.
Date: June 10–11, 2003.
Time: 9 a.m. to 5 p.m.
Agenda: To review and evaluate grant applications.
Place: Hyatt Regency Bethesda, One Bethesda Metro Center, 7400 Wisconsin Avenue, Bethesda, MD 20814.
Contact Person: Marina L. Volkov, PhD, Health Scientist Administrator, Office of Extramural Affairs, National Institute on Drug Abuse, National Institutes of Health, DHHS, 6001 Executive Boulevard, Room 3158, MSC 9547, Bethesda, MD 20892–9547, (301) 435–1433.

Name of Committee: National Institute on Drug Abuse Initial Review Group, Treatment Research Subcommittee.
Date: June 10–11, 2003.
Time: 9 a.m to 12 p.m.
Agenda: To review and evaluate grant applications.
Place: Hyatt Regency Bethesda, One Bethesda Metro Center, 7400 Wisconsin Avenue, Bethesda, MD 20814.
Contact Person: Kesinee Nimit, MD, Health Scientist Administrator, Office of Extramural Affairs, National Institute on Drug Abuse, NIH, DHHS, Neuroscience Center, Rm. 3158, MSC 9547, 6001 Executive Boulevard, Bethesda, MD 20892–9547, (301) 435–1432.

Name of Committee: National Institute on Drug Abuse Special Emphasis Panel, Member Conflict A.
Date: June 10, 2003.
Time: 2 p.m. to 4:30 p.m.
Agenda: To review and evaluate grant applications.
Place: Hyatt Regency Bethesda, One Bethesda Metro Center, 7400 Wisconsin Avenue, Bethesda, MD 20814.
Contact Person: Mark R. Green, PhD, Chief, CEASRB, Office of Extramural Affairs, National Institute on Drug Abuse, National Institutes of Health, DHHS, Room 3158, MSC 9547, 6001 Executive Boulevard, Bethesda, MD 20892–9547, (301) 435–1431.

Name of Committee: National Institute on Drug Abuse Special Emphasis Panel, Member Conflict B.
Date: June 11, 2003.
Time: 8:30 a.m. to 9 a.m.
Agenda: To review and evaluate grant applications.
Place: Hyatt Regency Bethesda, One Bethesda Metro Center, 7400 Wisconsin Avenue, Bethesda, MD 20814.
Contact Person: Mark R. Green, PhD, Chief, CEASRB, Office of Extramural Affairs, National Institute on Drug Abuse, National Institutes of Health, DHHS, Room 3158, MSC 9547, 6001 Executive Boulevard, Bethesda, MD 20892–9547, (301) 435–1431.

Name of Committee: National Institute on Drug Abuse Special Emphasis Panel, Centers Review Committee.
Date: July 1, 2003.
Time: 8:30 a.m. to 5 p.m.
Agenda: To review and evaluate grant applications.
Place: Ritz-Carlton Hotel at Pentagon City, 1250 South Hayes Street, Arlington, VA 22202.
Contact Person: Rita Liu, PhD, Health Scientist Administrator, Office of Extramural Affairs, National Institute on Drug Abuse, National Institutes of Health, DHHS, 6001 Executive Boulevard, Room 3158, MSC 9547, Bethesda, MD 20892–9547, (301) 435—1388.

Name of Committee: National Institute on Drug Abuse Initial Review Group, Training and Career Development Subcommittee.
Date: July 14–16, 2003.
Time: 9 a.m. to 6 p.m.
Agenda: To review and evaluate grant applications.
Place: Ritz-Carlton Hotel at Pentagon City, 1250 South Hayes Street, Arlington, VA 22202.
Contact Person: Mark Swieter, PhD, Health Scientist Administrator, Office of Extramural Affairs, National Institute on Drug Abuse, National Institutes of Health, DHHS, 6001 Executive Boulevard, Room 3158, MSC 9547, Bethesda, MD 20892–9547, (301) 435–1389.

(Catalogue of Federal Domestic Assistance Program Nos. 93.277, Drug Abuse Scientist Development Award for Clinicians, Scientist Development Awards, and Research Scientist Awards; 93.278, Drug Abuse National Research Service Awards for Research Training; 93.279, Drug Abuse Research Programs, National Institutes of Health, HHS)

Dated: May 12, 2003.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 03–12270 Filed 5–15–03; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Drug Abuse; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The contract proposals and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the contract proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute on Drug Abuse Special Emphasis Panel "Virtual Reality-Enhanced Therapy System for Treating Joint Pain" (Topic 048).
Date: June 18, 2003.
Time: 1:30 p.m. to 2:30 p.m.
Agenda: To review and evaluate contract proposals.
Place: National Institutes of Health, Neuroscience Center, 6001 Executive Boulevard, Rockville, MD 20852, (Telephone Conference Call).
Contact Person: Eric Zatman, Contract Review Specialist, Office of Extramural Affairs, National Institutes on Drug Abuse, National Institutes of Health, DHHS, 6001 Executive Boulevard, Room 3158, MSC 9547, Bethesda, MD 20892–9547, (301) 435–1438.

(Catalogue of Federal Domestic Assistance Program Nos. 93.277, Drug Abuse Scientist Development Award for Clinicians, Scientist Development Awards, and Research Scientist Awards; 93.278, Drug Abuse National Research Service Awards for Research Training; 93.279, Drug Abuse Research Programs, National Institutes of Health, HHS)

Dated: May 12, 2003.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 03–12271 Filed 5–15–03; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Nursing Research; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with provisions set forth in sections 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such a patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Nursing Research Initial Review Group.
Date: June 17–18, 2003.
Time: 8:15 a.m. to 5 p.m.
Agenda: To review and evaluate grant applications.
Place: Bethesda Marriott Suites, 6711 Democracy Boulevard, Bethesda, MD 20817.
Contact Person: Jeffrey M. Chernak, PhD, Scientific Review Administrator, Office of Review, National Institute of Nursing Research, 6701 Democracy Plaza, Suite 712, MSC 4870, Bethesda, MD 20817, (301) 402–6959, *chernak@nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.361, Nursing Research, National Institute of Health, HHS)

Dated: May 12, 2003.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 03–12272 Filed 5–12–03; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Clinical Center; Amended Notice of Meeting

Notice is hereby given of a change in the meeting of The Board of Scientific Counselors of the Warren Grant Magnuson Clinical Center, June 9, 2003, 8 a.m. to June 10, 2003, 5 p.m., National Institutes of Health, Building 10, 10 Center Drive, Medical Board Room 2C116, Bethesda, MD 20892 which was published in the **Federal Register** on May 6, 2003, 66 87 24010.

The meeting will be closed in accordance with the provisions set forth is section 552b(c)(6), Title 5 U.S.C. as amended for review, discussion, and evaluation of individual intramural programs and projects conducted by the Clinical Center. The meeting is closed to the public.

Dated: May 12, 2003.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 03–12273 Filed 5–15–03; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[FEMA–1462–DR]

Kansas; Major Disaster and Related Determinations

AGENCY: Federal Emergency Management Agency, Emergency Preparedness and Response Directorate, Department of Homeland Security.

ACTION: Notice.

SUMMARY: This is a notice of the Presidential declaration of a major disaster for the State of Kansas (FEMA–1462–DR), dated May 6, 2003, and related determinations.

EFFECTIVE DATE: May 6, 2003.

FOR FURTHER INFORMATION CONTACT: Magda Ruiz, Recovery Division, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–2705.

SUPPLEMENTARY INFORMATION: Notice is hereby given that, in a letter dated May 6, 2003, the President declared a major disaster under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121–5206 (the Stafford Act), as follows:

I have determined that the damage in certain areas of the State of Kansas resulting from severe storms, tornadoes, and flooding on May 4, 2003, and continuing, is of sufficient severity and magnitude to warrant a major disaster declaration under the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121–5206 (the Stafford Act). I, therefore, declare that such a major disaster exists in the State of Kansas.

In order to provide Federal assistance, you are hereby authorized to allocate from funds available for these purposes, such amounts as you find necessary for Federal disaster assistance and administrative expenses.

You are authorized to provide Individual Assistance and assistance for debris removal (Category A) and emergency protective measures (Category B) under the Public Assistance program in the designated areas, and Hazard Mitigation throughout the State, and any other forms of assistance under the Stafford Act you may deem appropriate subject to completion of Preliminary Damage Assessments. Consistent with the requirement that Federal assistance be supplemental, any Federal funds provided under the Stafford Act for Public Assistance, Hazard Mitigation, and the Other Needs Assistance under Section 408 of the Stafford Act will be limited to 75 percent of the total eligible costs.

Further, you are authorized to make changes to this declaration to the extent allowable under the Stafford Act.

The time period prescribed for the implementation of section 310(a), Priority to Certain Applications for Public Facility and Public Housing Assistance, 42 U.S.C. 5153, shall be for a period not to exceed six months after the date of this declaration.

The Federal Emergency Management Agency (FEMA) hereby gives notice that pursuant to the authority vested in the Undersecretary for Emergency Preparedness and Response, Department of Homeland Security, under Executive Order 12148, as amended, Michael J. Hall, of FEMA is appointed to act as the Federal Coordinating Officer for this declared disaster.

I do hereby determine the following areas of the State of Kansas to have been affected adversely by this declared major disaster:

Cherokee, Crawford, Labette, Leavenworth, Miami, Neosho and Wyandotte Counties for Individual Assistance.

Cherokee, Crawford, Labette, Leavenworth, Miami, Neosho and Wyandotte for debris removal (Category A) and emergency protective measures (Category B) under the Public Assistance program.

All counties within the State of Kansas are eligible to apply for assistance under the Hazard Mitigation Grant Program.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 83.537, Community Disaster Loans; 83.538, Cora Brown Fund Program; 83.539, Crisis Counseling; 83.540, Disaster Legal Services Program; 83.541, Disaster Unemployment Assistance (DUA); 83.556, Fire Management Assistance; 83.558, Individual and Household Housing; 83.559, Individual and Household Disaster Housing Operations; 83.560 Individual and Household Program-Other Needs, 83.544, Public Assistance Grants; 83.548, Hazard Mitigation Grant Program.)

Michael D. Brown,

Undersecretary, Emergency Preparedness and Response.

[FR Doc. 03–12281 Filed 5–15–03; 8:45 am]

BILLING CODE 6718–02–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[FEMA–1463–DR]

Missouri; Major Disaster and Related Determinations

AGENCY: Federal Emergency Management Agency, EmergencyPreparedness and Response Directorate, Department of HomelandSecurity.

ACTION: Notice.

SUMMARY: This is a notice of the Presidential declaration of a major disaster for the State of Missouri (FEMA–1463–DR), dated May 6, 2003, and related determinations.

EFFECTIVE DATE: May 6, 2003.

FOR FURTHER INFORMATION CONTACT: Magda Ruiz, Recovery Division, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–2705.

SUPPLEMENTARY INFORMATION: Notice is hereby given that, in a letter dated May 6, 2003, the President declared a major disaster under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121–5206 (the Stafford Act), as follows:

I have determined that the damage in certain areas of the State of Missouri, resulting from severe storms, tornadoes, and flooding on May 4, 2003, and continuing is of sufficient severity and magnitude to warrant a major disaster declaration under the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121–5206 (the Stafford Act). I, therefore, declare that such a major disaster exists in the State of Missouri.

In order to provide Federal assistance, you are hereby authorized to allocate from funds available for these purposes, such amounts as you find necessary for Federal disaster assistance and administrative expenses.

You are authorized to provide Individual Assistance and assistance for debris removal (Category A) and emergency protective measures (Category B) under the Public Assistance program in the designated areas, and Hazard Mitigation throughout the State, and any other forms of assistance under the Stafford Act you may deem appropriate subject to completion of Preliminary Damage Assessments. Consistent with the requirement that Federal assistance be supplemental, any Federal funds provided under the Stafford Act for Public Assistance, Hazard Mitigation, and the Other Needs Assistance under Section 408 of the Stafford Act will be limited to 75 percent of the total eligible costs.

Further, you are authorized to make changes to this declaration to the extent allowable under the Stafford Act.

The time period prescribed for the implementation of section 310(a), Priority to Certain Applications for Public Facility and Public Housing Assistance, 42 U.S.C. 5153, shall be for a period not to exceed six months after the date of this declaration.

The Federal Emergency Management Agency (FEMA) hereby gives notice that pursuant to the authority vested in the Undersecretary for Emergency Preparedness and Response, Department of Homeland Security, under Executive Order 12148, as amended, Michael L. Karl, of FEMA is appointed to act as the Federal Coordinating Officer for this declared disaster.

I do hereby determine the following areas of the State of Missouri to have been affected adversely by this declared major disaster:

Barry, Barton, Bates, Benton, Buchanan, Camden, Cass, Cedar, Christian, Clay, Clinton, Cooper, Dade, Dallas, Douglas, Greene, Henry, Hickory, Jackson, Jasper, Johnson, Laclede, Lafayette, Lawrence, McDonald, Miller, Morgan, Newton, Pettis, Platte, Polk, Pulaski, Ray, Saline, St. Clair, Stone, Taney, Vernon, and Webster Counties for Individual Assistance Program.

Barton, Camden, Cass, Cedar, Christian, Clay, Dallas, Greene, Jackson, Jasper, Johnson, Lawrence, Platte, and Polk Counties for debris removal (Category A) and emergency protective measures (Category B) under the Public Assistance Program.

All counties within the State of Missouri are eligible to apply for assistance under the Hazard Mitigation Grant Program.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 83.537, Community Disaster Loans; 83.538, Cora Brown Fund Program; 83.539, Crisis Counseling; 83.540, Disaster Legal Services Program; 83.541, Disaster Unemployment Assistance (DUA); 83.556, Fire Management Assistance; 83.558, Individual and Household Housing; 83.559, Individual and Household Disaster Housing Operations; 83.560 Individual and Household Program-Other Needs, 83.544, Public Assistance Grants; 83.548, Hazard Mitigation Grant Program.)

Michael D. Brown,

Undersecretary, Emergency Preparedness and Response.

[FR Doc. 03–12282 Filed 5–15–03; 8:45 am]

BILLING CODE 6718–02–P

DEPARTMENT OF HOMELAND SECURITY

Transportation Security Administration

Reports, Forms, and Record Keeping Requirements: Agency Information Collection Activity Under OMB Review; Security Programs for Indirect Air Carriers

AGENCY: Transportation Security Administration (TSA), DHS.

ACTION: Notice.

SUMMARY: This notice announces that TSA has forwarded the Information Collection Request (ICR) abstracted below to the Office of Management and Budget (OMB) for review and clearance of an extension of the currently approved collection under the Paperwork Reduction Act. The ICR describes the nature of the information collection and its expected burden. TSA published a **Federal Register** notice, with a 60-day comment period soliciting comments, of the following collection of information on December 20, 2002.

DATES: Send your comments by June 16, 2003. A comment to OMB is most effective if OMB receives it within 30 days of publication.

ADDRESSES: Address your comments to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725 17th Street, NW., Washington, DC 20503, Attention: DOT-TSA Desk Officer.

FOR FURTHER INFORMATION CONTACT: Rafael H. Ramos, Aviation Operations, Transportation Security Administration HQ, West Tower, Floor 11, TSA–7, 400 Seventh Street, SW., Washington, DC 20590–0001; telephone (571) 227–2227; facsimile (571) 227–1947; e-mail *rafael.ramos1@dhs.gov*.

SUPPLEMENTARY INFORMATION:

Transportation Security Administration (TSA)

Title: Indirect Air Carrier Security.

Type of Request: Extension of a currently approved collection.

OMB Control Number: 1652–0004.

Forms(s): NA.

Affected Public: A total of 3,760 Indirect Air Carriers.

Abstract: This rule prescribes aviation security rules governing each person (including air freight forwarder and any cooperative shippers' association) engaged, or who intends to be engaged indirectly in the air transportation of package cargo that is intended for carriage aboard a passenger-carrying air carrier aircraft inside the United States.

Estimated Annual Burden Hours: An estimated 1,323 hours annually.

TSA is soliciting comments to—

(1) evaluate whether the proposed information requirement is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) evaluate the accuracy of the agency's estimate of the burden;

(3) enhance the quality, utility, and clarity of the information to be collected; and

(4) minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Issued in Arlington, Virginia, on May 8, 2003.

Susan T. Tracey,

Deputy Chief Administrative Officer.

[FR Doc. 03–12214 Filed 5–15–03; 8:45 am]

BILLING CODE 4910–62–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4809–N–20]

Federal Property Suitable as Facilities To Assist the Homeless

AGENCY: Office of the Assistant Secretary for Community Planning and Development, HUD.

ACTION: Notice.

SUMMARY: This Notice identifies unutilized, underutilized, excess, and surplus Federal property reviewed by HUD for suitability for possible use to assist the homeless.

FOR FURTHER INFORMATION CONTACT: Mark Johnston, room 7266, Department of Housing and Urban Development, 451 Seventh Street SW., Washington, DC 20410; telephone (202) 708–1234; TTY number for the hearing- and speech-impaired (202) 708–2565 (these telephone numbers are not toll-free), or call the toll-free Title V information line at 1–800–927–7588.

SUPPLEMENTARY INFORMATION: In accordance with 24 CFR part 581 and section 501 of the Stewart B. McKinney Homeless Assistance Act (42 U.S.C. 11411), as amended, HUD is publishing this Notice to identify Federal buildings and other real property that HUD has reviewed for suitability for use to assist the homeless. The properties were reviewed using information provided to HUD by Federal landholding agencies regarding unutilized and underutilized buildings and real property controlled by such agencies or by GSA regarding its inventory of excess or surplus Federal property. This Notice is also published in order to comply with the December 12, 1988 Court Order in *National Coalition for the Homeless* v. *Veterans Administration*, No. 88–2503–OG (D.D.C.).

Properties reviewed are listed in this Notice according to the following categories: Suitable/available, suitable/unavailable, suitable/to be excess, and unsuitable. The properties listed in the three suitable categories have been reviewed by the landholding agencies, and each agency has transmitted to HUD: (1) Its intention to make the property available for use to assist the homeless, (2) its intention to declare the property excess to the agency's needs, or (3) a statement of the reasons that the property cannot be declared excess or made available for use as facilities to assist the homeless.

Properties listed as suitable/available will be available exclusively for homeless use for a period of 60 days from the date of this Notice. Where

property is described as for "off-site use only" recipients of the property will be required to relocate the building to their own site at their own expense. Homeless assistance providers interested in any such property should send a written expression of interest to HHS, addressed to Shirley Kramer, Division of Property Management, Program Support Center, HHS, room 5B–41, 5600 Fishers Lane, Rockville, MD 20857; (301) 443–2265. (This is not a toll-free number.) HHS will mail to the interested provider an application packet, which will include instructions for completing the application. In order to maximize the opportunity to utilize a suitable property, providers should submit their written expressions of interest as soon as possible. For complete details concerning the processing of applications, the reader is encouraged to refer to the interim rule governing this program, 24 CFR part 581.

For properties listed as suitable/to be excess, that property may, if subsequently accepted as excess by GSA, be made available for use by the homeless in accordance with applicable law, subject to screening for other Federal use. At the appropriate time, HUD will publish the property in a Notice showing it as either suitable/available or suitable/unavailable.

For properties listed as suitable/unavailable, the landholding agency has decided that the property cannot be declared excess or made available for use to assist the homeless, and the property will not be available.

Properties listed as unsuitable will not be made available for any other purpose for 20 days from the date of this Notice. Homeless assistance providers interested in a review by HUD of the determination of unsuitability should call the toll free information line at 1–800–927–7588 for detailed instructions or write a letter to Mark Johnston at the address listed at the beginning of this Notice. Included in the request for review should be the property address (including zip code), the date of publication in the **Federal Register**, the landholding agency, and the property number.

For more information regarding particular properties identified in this Notice (*i.e.*, acreage, floor plan, existing sanitary facilities, exact street address), providers should contact the appropriate landholding agencies at the following addresses: ARMY: Ms. Julie Jones-Conte, Department of the Army, Office of the Assistant Chief of Staff for Installation Management, Attn: DAIM–MD, Room 1E677, 600 Army Pentagon, Washington, DC 20310–600; (703) 692–9223; COE: Ms. Shirley Middleswarth, Army Corps of Engineers, Civil Division, Directorate of Real Estate, 441 G Street, NW., Washington, DC 20314–1000; (202) 761–7425; GSA: Mr. Brian K. Polly, Assistant Commissioner, General Services Administration, Office of Property Disposal, 18th and F Streets, NW., Washington, DC 20405; (202) 501–0052; INTERIOR: Ms. Linda Tribby, Acquisition & Property Management, Department of the Interior, 1849 C Street, NW., MS5512, Washington, DC 20240; (202) 219–0728; NAVY: Mr. Charles C. Cocks, Director, Department of the Navy, Real Estate Policy Division, Naval Facilities Engineering Command, Washington Navy Yard, 1322 Patterson Ave., SE., Suite 1000, Washington, DC 20374–5065; (202) 685–9200; (These are not toll-free numbers).

Dated: May 8, 2003.

Mark R. Johnston,

Deputy Director, Office of Special Needs Assistance Programs.

TITLE V, FEDERAL SURPLUS PROPERTY PROGRAM FEDERAL REGISTER REPORT FOR 5/16/03

Suitable/Available Properties

Buildings (by State)

California

Bell Federal Service Center
5600 Rickenbacker Road
Bell Co: Los Angeles, CA 90201–
Landholding Agency: GSA
Property Number: 54200320009
Status: Excess
Comment: 9 bldgs., various sq. ft., need repair, portion occupied, restricted access, presence of asbestos/lead paint/PCBs, most recent use—warehouse/office
GSA Number: 9–G–CA–1575

Illinois

8 Bldgs.
various locations
Bolingbrook Co: Will IL 48730–
Landholding Agency: GSA
Property Number: 54200320010
Status: Excess
Comment: 4 frame duplex structures and 4 frame single family homes, 1300 to 1500 sq. ft. each, possible lead paint
GSA Number: 1–U–IL–728

12 Residences
various locations
Prairie View Twp Co: Lake IL 48730–
Landholding Agency: GSA
Property Number: 54200320011
Status: Excess
Comment: 1150 sq. ft. each, possible asbestos/lead paint
GSA Number: 1–U–IL–727

West Virginia

Buckland/Tract 104–01
New River Gorge National River
Hinton Co: Raleigh WV 25951–
Landholding Agency: Interior
Property Number 61200320007
Status: Excess
Comment: 522 sq. ft. dwelling, needs major rehab, off-site use only

Weaver/Tract 102–17
New River Gorge National River
Hinton Co: Raleigh WV 25951–
Landholding Agency: Interior
Property Number: 61200320008
Status: Excess
Comment: 4036 sq. ft. dwelling w/ deteriorated shed, needs major rehab, off-site use only

Hobbs/Tract 108–25
New River Gorge National River
Hinton Co: Summers WV 25951–
Landholding Agency: Interior
Property Number: 61200320009
Status: Excess
Comment: 1295 sq. ft. dwelling w/ deteriorated garage and sheds, needs major rehab, off-site use only

Virginia

1.0 acre
Naval Station
St. Juliens Creek Annex
Portsmouth Co: VA
Landholding Agency: Navy
Property Number: 77200320033
Status: Unutilized
Comment: Grassy field, restricted access

Alaska

Warehouse
Naval Arctic Research Lab
Point McIntyre Co: AK
Landholding Agency: Navy
Property Number: 77200320019
Status: Excess
Reason: Extensive deterioration

Garage
Naval Arctic Research Lab
Point McIntyre Co: AK
Landholding Agency: Navy
Property Number: 77200320020
Status: Excess
Reason: Extensive deterioration

Operations Bldg.
Naval Arctic Research Lab
Point McIntyre Co: AK
Landholding Agency: Navy
Property Number: 77200320021
Status: Excess
Reason: Extensive deterioration

California

Bldg. 2203
Marine Corps Base
Camp Pendleton Co: CA
Landholding Agency: Navy
Property Number: 77200320022
Status: Excess
Reason: Extensive deterioration

Bldg. 2683
Marine Corps Base
Camp Pendleton Co: CA 92055–
Landholding Agency: Navy
Property Number: 77200320023
Status: Excess
Reason: Extensive deterioration

Bldg. 2685
Marine Corps Base
Camp Pendleton Co: CA 92055–
Landholding Agency: Navy
Property Number: 77200320024
Status: Excess
Reason: Extensive deterioration

Bldg. 2692
Marine Corps Base
Camp Pendleton Co: CA 92055–
Landholding Agency: Navy
Property Number: 77200320025
Status: Excess
Reason: Extensive deterioration

Bldg. 20735
Marine Corps Base
Camp Pendleton Co: CA 92055–
Landholding Agency: Navy
Property Number: 77200320026
Status: Excess
Reason: Extensive deterioration

Bldg. 21546
Marine Corps Base
Camp Pendleton Co: CA 92055–
Landholding Agency: Navy
Property Number: 77200320027
Status: Excess
Reason: Extensive deterioration

Bldg. 26034
Marine Corps Base
Camp Pendleton Co: CA 92055–
Landholding Agency: Navy
Property Number: 77200320028
Status: Excess
Reason: Extensive deterioration

Kansas

Bldg. M37
Minooka Park
Sylvan Grove Co: Russell KS 67481–
Landholding Agency: COE
Property Number: 31200320002
Status: Excess
Reason: Extensive deterioration

Bldg. M38
Minooka Park
Sylvan Grove Co: Russell KS 67481–
Landholding Agency: COE
Property Number: 31200320003
Status: Excess
Reason: Extensive deterioration

Bldg. L19
Lucas Park
Sylvan Grove Co: Russell KS 67481–
Landholding Agency: COE
Property Number: 31200320004
Status: Unutilized
Reason: Extensive deterioration

North Carolina

Bldg. 13
Marine Corps Air Station
Cherry Point
Havelock Co: Craven NC 28533–
Landholding Agency: Navy
Property Number: 77200320034
Status: Unutilized
Reason: Secured Area

Bldg. 74, 75
Marine Corps Air Station
Cherry Point
Havelock Co: Craven NC 28533–
Landholding Agency: Navy
Property Number: 77200320036
Status: Unutilized
Reason: Secured Area

Bldgs. 478
Marine Corps Air Station
Cherry Point
Havelock Co: Craven NC 28533–
Landholding Agency: Navy
Property Number: 77200320035
Status: Unutilized
Reason: Secured Area

Bldg. 933
Marine Corps Air Station
Cherry Point
Havelock Co: Craven NC 28533–
Landholding Agency: Navy
Property Number: 77200320037
Status: Unutilized
Reason: Secured Area

Bldg. 1024
Marine Corps Air Station
Cherry Point
Havelock Co: Craven NC 28533–
Landholding Agency: Navy
Property Number: 77200320038
Status: Unutilized
Reason: Secured Area

Bldg. 1198
Marine Corps Air Station
Cherry Point
Havelock Co: Craven NC 28533–
Landholding Agency: Navy
Property Number: 77200320039
Status: Unutilized
Reason: Secured Area

Bldg. 1228
Marine Corps Air Station
Cherry Point
Havelock Co: Craven NC 28533–
Landholding Agency: Navy
Property Number: 77200320040
Status: Unutilized
Reason: Secured Area

Bldg. 1390
Marine Corps Air Station
Cherry Point
Havelock Co: Craven NC 28533–
Landholding Agency: Navy
Property Number: 77200320041
Status: Unutilized
Reason: Secured Area

Bldg. 1647
Marine Corps Air Station
Cherry Point
Havelock Co: Craven NC 28533–
Landholding Agency: Navy
Property Number: 77200320042
Status: Unutilized
Reason: Secured Area

Bldg. 1655
Marine Corps Air Station
Cherry Point
Havelock Co: Craven NC 28533–
Landholding Agency: Navy
Property Number: 77200320043
Status: Unutilized
Reason: Secured Area

Bldg. 1902
Marine Corps Air Station
Cherry Point
Havelock Co: Craven NC 28533–
Landholding Agency: Navy
Property Number: 77200320044
Status: Unutilized
Reason: Secured Area

Bldg. 3669
Marine Corps Air Station
Cherry Point
Havelock Co: Craven NC 28533–
Landholding Agency: Navy
Property Number: 77200320045
Status: Unutilized
Reason: Secured Area

Bldgs. 3761, 3763
Marine Corps Air Station
Cherry Point
Havelock Co: Craven NC 28533–
Landholding Agency: Navy
Property Number: 77200320046
Status: Unutilized
Reason: Secured Area

Bldg. 4000
Marine Corps Air Station
Cherry Point
Havelock Co: Craven NC 28533–
Landholding Agency: Navy
Property Number: 77200320047
Status: Unutilized
Reason: Secured Area

Bldg. 4063
Marine Corps Air Station
Cherry Point
Havelock Co: Craven NC 28533–
Landholding Agency: Navy
Property Number: 77200320048
Status: Unutilized
Reason: Secured Area

Bldg. 4263
Marine Corps Air Station
Cherry Point
Havelock Co: Craven NC 28533–
Landholding Agency: Navy
Property Number: 77200320049
Status: Unutilized
Reason: Secured Area

Bldg. 4329
Marine Corps Air Station
Cherry Point
Havelock Co: Craven NC 28533–
Landholding Agency: Navy
Property Number: 77200320050
Status: Unutilized
Reason: Secured Area

Tennessee

Bldg. 119
Holston Army Amo Plant
Kingsport Co: Hawkins TN 37660–
Landholding Agency: Army
Property Number: 21200320176
Status: Underutilized
Reasons: Within 2000 ft. of flammable or explosive material—Secured Area

Texas

Facility 13
Naval Air Station
Corpus Christi Co: Nueces TX 78419–5021
Landholding Agency: Navy
Property Number: 77200320051
Status: Excess
Reason: Extensive deterioration

Facility 94
Naval Air Station
Corpus Christi Co: Nueces TX 78419–5021
Landholding Agency: Navy
Property Number: 77200320052
Status: Excess
Reason: Extensive deterioration

Facility 1777
Naval Air Station
Corpus Christi Co: Nueces TX 78419–5021
Landholding Agency: Navy
Property Number: 77200320053
Status: Excess
Reason: Extensive deterioration

Washington

Bldg. 1707
102 Hwy Heights
Mesa Co: Franklin WA 99343–
Landholding Agency: Interior
Property Number: 61200320002
Status: Unutilized
Reason: Extensive deterioration

Bldg. 1702
102 Hwy Heights
Mesa Co: Franklin WA 99343–
Landholding Agency: Interior
Property Number: 61200320003
Status: Unutilized
Reason: Extensive deterioration

Bldg. 1806
Mesa Pumping Plant
Mesa Co: Franklin WA 99343–
Landholding Agency: Interior
Property Number: 61200320004
Status: Unutilized
Reason: Extensive deterioration

Bldg. 1202
508 S. Mample
Warden Co: Grant WA 98857–
Landholding Agency: Interior
Property Number: 61200320005
Status: Unutilized
Reason: Extensive deterioration

Bldg. 1203
512 S. Mample
Warden Co: Grant WA 98857–
Landholding Agency: Interior
Property Number: 61200320006
Status: Unutilized
Reason: Extensive deterioration

West Virginia

Thompson/Tract 112–23
New River Gorge
Meadow Creek Co: Summers WV 25977–
Landholding Agency: Interior
Property Number: 61200320010
Status: Excess
Reason: Extensive deterioration

Bowles/Tract 128–01
New River Gorge National River
Prince Co: Fayette WV 25907–
Landholding Agency: Interior
Property Number: 61200320011
Status: Excess
Reason: Extensive deterioration

Kessler/Tract 128–01
New River Gorge National River
Prince Co: Fayette WV 25907–
Landholding Agency: Interior
Property Number: 61200320012
Status: Excess
Reason: Extensive deterioration

Plumley/Tract 128–01
New River Gorge National River
Prince Co: Fayette WV 25907–
Landholding Agency: Interior
Property Number: 61200320013
Status: Excess
Reason: Extensive deterioration

Willis/Tract 128–01
New River Gorge National River
Prince Co: Fayette WV 25907–
Landholding Agency: Interior
Property Number: 61200320014
Status: Excess
Reason: Extensive deterioration

Land (by State)

Puerto Rico

Site 1
Naval Station Roosevelt Roads
Ceiba Co: PR 00735–
Landholding Agency: Navy
Property Number: 77200320029
Status: Unutilized
Reason: Secured Area

Site 2
Naval Station Roosevelt Roads
Ceiba Co: PR 00735–
Landholding Agency: Navy
Property Number: 772003230030
Status: Unutilized
Reason: Secured Area

Site 3
Naval Station Roosevelt Roads
Ceiba Co: PR 00735–
Landholding Agency: Navy
Property Number: 77200320031
Status: Unutilized
Reason: Secured Area

Site 4
Naval Station Roosevelt Roads
Ceiba Co: PR 00735–
Landholding Agency: Navy
Property Number: 77200320032
Status: Unutilized
Reason: Secured Area

Tennessee

Tract 2321
J. Percy Priest Dam and Reservoir
Murfreesboro Co: Rutherford TN 37130–
Location: South of Old Jefferson Pike
Landholding Agency: COE
Property Number: 31199010935
Status: Excess
Reason: landlocked

[FR Doc. 03–12125 Filed 5–15–03; 8:45 am]

BILLING CODE 4210–29–m

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4732–N–05]

Modification of the Statutory and Regulatory Waivers Granted to New York State for Recovery From the September 11, 2001 Terrorist Attacks

AGENCY: Office of the Assistant Secretary for Community Planning and Development, HUD.

ACTION: Notice of waivers granted.

SUMMARY: This notice advises the public of modifications of the waivers of regulations and statutory provisions granted to the State of New York for the purpose of assisting in the recovery from the September 11, 2001, terrorist attacks on New York City. This notice describes an eligibility waiver and a change to alternative requirements related to public benefit documentation for the Empire State Development Corporation's bridge loan program; describes an eligibility waiver related to special entities under the Community Development Block Grant program; describes a waiver of a regulatory application fee provision; and applies the waivers and alternate requirements to a third grant.

DATES: *Effective Date:* May 21, 2003.

FOR FURTHER INFORMATION CONTACT: Jan C. Opper, Senior Program Officer, Office of Block Grant Assistance, Department of Housing and Urban Development, Room 7286, 451 Seventh Street, SW., Washington, DC 20410, telephone number (202) 708–3587. Persons with hearing or speech impairments may access this number via TTY by calling the Federal Information Relay Service at (800) 877–8339. FAX inquiries may be sent to Mr. Opper at (202) 401–2044. (Except for the "800" number, these telephone numbers are not toll-free.)

SUPPLEMENTARY INFORMATION:

Authority to Grant Waivers

Section 434 of the Departments of Veterans Affairs and Housing and Urban Development, and Independent Agencies Appropriations Act, 2002 (Pub. L. 107–73, approved November 26, 2001) provides for the use of the disaster recovery supplemental appropriations of CDBG funds for grants to New York State for properties and businesses damaged by, and economic revitalization related to, the September 11, 2001 terrorist attacks on New York City.

The 2002 Supplemental Appropriations Act For Further Recovery From And Response To Terrorist Attacks On The United States (Pub. L. 107–206, approved August 2, 2002) provides for the use of the disaster recovery funds appropriated under it for assistance for properties and businesses (including the restoration of utility infrastructure) damaged by, and for economic revitalization directly related to, the terrorist attacks on the United States that occurred on September 11, 2001, in New York City and for reimbursement to the State and City of New York for expenditures incurred from the regular Community Development Block Grant formula allocation used to achieve these same purposes.

The third proviso of section 434 of Pub. L. 107–73 and Pub. L. 107–206 under the title of "COMMUNITY DEVELOPMENT FUND" authorizes the Secretary to "waive, or specify alternative requirements for, any provision of any statute or regulation that the Secretary administers in connection with the obligation by the Secretary or the use by the recipient of these funds (except for requirements related to fair housing,

nondiscrimination, labor standards, and the environment)."

The Department finds that the following waivers and alternative requirements (together with previously granted waivers and alternative requirements) are necessary to facilitate the use of the $700 million awarded to New York State's Empire State Development Corporation (ESDC) and the $2.0 billion awarded and $783 million awaiting award to New York State's Lower Manhattan Development Corporation (LMDC) (collectively, the grantees).

The Department also finds that such uses of funds, as described below, are not inconsistent with the overall purpose of the Housing and Community Development Act of 1974 (42 U.S.C. 5301 *et seq.*), or the Cranston-Gonzalez National Affordable Housing Act (42 U.S.C. 12701 *et seq.*).

Except as noted by published waivers and alternative requirements, statutory and regulatory provisions governing the Community Development Block Grant program for states, including those at 24 CFR part 570, subpart I, shall apply to the use of these funds.

In **Federal Register** notices of March 18, 2002, at 67 FR 12042 (effective March 25, 2002) and May 22, 2002, at 67 FR 36017 (effective May 28, 2002), the Department promulgated waivers and alternative requirements necessary to facilitate the use of both $700 million in disaster recovery funds awarded to New York State's Empire State Development Corporation and $2.0 billion awarded to New York State's Lower Manhattan Development Corporation.

This notice waives requirements at 42 U.S.C. 5305(a)(15) to the extent necessary to allow a national for-profit community development institution that otherwise meets CDBG eligibility requirements to qualify as a local development corporation. The entity seeking to participate in the ESDC business recovery loan program does not qualify because it is both national and for-profit. This waiver is necessary to support the unique circumstances of this grant: ESDC is a state grantee carrying out activities in an entitlement jurisdiction. The law permits states to select national nonprofits to carry out activities under this provision. The CDBG entitlement regulation, which serves as a guide for state grantees, permits either non- or for-profit local development corporations and neighborhood based organizations to qualify, if they otherwise meet regulatory qualification requirements. ESDC competitively selected several organizations to carry out community development lending activities under this provision. All but one of the organizations qualify under either the state approach or the entitlement approach. This waiver permits ESDC to fund one organization that is similar in purpose and function to the other groups and has a similar scope of activities.

This notice also modifies the published alternate requirements related to reports and documentation for the bridge loan program implemented by ESDC in the immediate wake of the disaster. The bridge loan program is unlike the other activities because ESDC is not providing assistance directly to affected businesses; lending institutions are. What ESDC provides is a loss reserve account, designed to support private sector lenders that wished to take more risks in the wake of the disaster than would otherwise be permitted such institutions by oversight regulatory agencies. These lenders collected information sufficient to meet core CDBG requirements related to a special economic development activity undertaken under the urgent need national objective, but the program was implemented so rapidly that it predated the additional requirements of the referenced notices related to documentation of salary ranges and job types. HUD approved the action plan containing the bridge loan activity and is now clarifying in this notice what documentation requirements apply.

This notice also waives the CDBG regulations at 24 CFR 570.489(a)(2) to allow the grantees to charge registration fees where such fees are nominal and intended to discourage frivolous applications. The provision in the regulations banning fees for applications is intended to keep states from charging fees to units of general local government seeking to participate in the CDBG program. Such local governments carry out activities directly and may charge application fees. A previously granted waiver allows the state to carry out activities directly under these grants. This waiver is a companion to the previously granted waiver and it allows the state the same opportunity to charge application fees allowed other entities carrying out state CDBG activities directly.

Finally, this notice makes the waivers and requirements of this notice and of the previous notices cited above applicable to funds appropriated under the 2002 Supplemental Appropriations Act for Further Recovery From and Response to Terrorist Attacks on the United States (Pub. L. 107–206, approved August 2, 2002). This law provides an additional $783 million to the state of New York through the LMDC for the same uses as the previous CDBG disaster appropriations to New York, including restoration of utility infrastructure, of which $33 million is directed by the relevant conference report to assist World Trade Center firms that suffered a disproportionate loss of their workforce and that intend to reestablish operations in New York City.

The text below indicates the paragraph being updated.

Description of Modifications

1. Paragraph 12 of the notice published at FR 67 FR 36017 (May 22, 2002) is amended to read as follows:

12. Public benefit standards for economic development activities. Currently, grantees are limited in the amount of CDBG assistance they may spend per job retained or created (or per low- and moderate-income person to whom goods or services are provided by the activity) that will be considered to meet public benefit standards. Public benefit standards at 42 U.S.C. 5305(e)(3) and 24 CFR 570.482(f)(1), (2), (3), (4)(i), (5), and (6) are waived, except that, the grantee shall report and maintain documentation on the creation and retention of (a) total jobs, (b) number of jobs within certain salary ranges, and (c) types of jobs. For the bridge loan program included in the Empire State Development Corporation's January 30, 2002, Action Plan, the grantee shall report and maintain public benefit documentation only on the total number of jobs created and retained. Paragraph (g) of 24 CFR 570.482, regarding amendments to economic development projects after review determinations, is also waived to the extent its provisions are related to public benefit.

Paragraph 16 of the notice published at 67 FR 36017 (May 22, 2002) is amended to read as follows:

16. Performance reports. Generally, grantees submit an annual performance report ninety days after the jurisdiction's program year. The conferees for Pub. L. 107–73 directed that HUD submit reports to the Committees on Appropriations quarterly on the obligation and expenditure of the CDBG funds appropriated under the Emergency Response Fund. Therefore, 42 U.S.C. 12708(a)(1) and 24 CFR 91.520 are waived with respect to these funds, and HUD is establishing an alternative requirement that the State must submit a quarterly report, as HUD prescribes, no later than 30 days following each calendar quarter, beginning after the first full calendar quarter after grant award and continuing until all funds have been expended and the

expenditures reported. Each quarterly report will include information on the project name, activity, location, national objective, funds budgeted and expended, Federal source and funds (other than CDBG disaster funds), numbers and North American Industry Classification System (NAICS) codes of businesses assisted by activity, total number of jobs created and retained by activity, numbers of such jobs by salary ranges (to be defined by HUD), and number of properties and housing units assisted; for activities benefiting low- and moderate income persons, the number of jobs taken by persons of low- and moderate-income, and the number of low- and moderate-income households benefiting. For the bridge loan program included in the Empire State Development Corporation's January 30, 2002, Action Plan, the grantee is not required to report by salary ranges on the number of created and retained jobs. Quarterly reports must be submitted using HUD's web-based Disaster Recovery Grant Reporting system. Annually (*i.e.*, with every fourth submission), the report shall include a financial reconciliation of funds budgeted and expended, and calculation of the status of administrative costs.

3. Provisions of 42 U.S.C. 5305(a)(15) are hereby waived solely to allow a national for-profit community development institution that otherwise meets eligibility requirements under that provision and is participating in Empire State Development Corporation's business recovery loan fund program to qualify as an eligible local development corporation under that provision.

4. The regulation at 24 CFR 570.489(a)(2) is waived to allow the grantees to charge registration or application fees to entities seeking to participate in grant-funded activities where such fees are nominal and intended to discourage frivolous applications.

5. The requirements of this notice and previous **Federal Register** notices at 67 FR 12042 (March 18, 2002) and at 67 FR 36017 (May 22, 2002) apply to the $783 million grant funded under the 2002 Supplemental Appropriations Act for Further Recovery From and Response to Terrorist Attacks on the United States (Pub. L. 107–206, approved August 2, 2002).

Section 434 of Public Law 107–73 requires HUD to publish these waivers in the **Federal Register** no later than five days before their effective date. The effective date of these waivers is May 21, 2003.

Dated: May 12, 2003.

Roy A. Bernardi,

Assistant Secretary for Community Planning and Development.

[FR Doc. 03–12207 Filed 5–15–03; 8:45 am]

BILLING CODE 4210–29–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Draft Environmental Assessment on the Proposal To Establish Operational/Experimental General Swan Hunting Seasons in the Pacific Flyway

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of availability.

SUMMARY: This notice advises the public that a Draft Environmental Assessment on the Continuation of General Swan Hunting Seasons in Portions of the Pacific Flyway is available for public review. Comments and suggestions are requested.

DATES: You must submit comments on the Draft Environmental Assessment by June 16, 2003.

ADDRESSES: Copies of the Draft Environmental Assessment (DEA) can be obtained by writing to Robert Trost, Pacific Flyway Representative, U.S. Fish and Wildlife Service, Division of Migratory Bird Management, 911 N.E. 11th Avenue, Portland, Oregon 97232–4181. The DEA may also be viewed via the Fish and Wildlife Service Home Page at *http://migratorybirds.fws.gov*. Written comments can be sent to the address above. All comments received, including names and addresses, will become part of the public record. You may inspect comments during normal business hours at the same address.

FOR FURTHER INFORMATION CONTACT: Robert Trost, Pacific Flyway Representative, (503) 231–6162.

SUPPLEMENTARY INFORMATION: The DEA includes a review of the 5-year experimental general swan hunting seasons that took place from 1995 to 2000, as well as a summary of the results of subsequent 2000–02 hunting seasons. Information from the most recent breeding and wintering populations surveys is also included in the new DEA. Three alternatives are proposed to address the future of operational swan hunting seasons in Utah, Nevada, and the Pacific Flyway portion of Montana. The issuance of a new DEA fulfills the Service commitment to assess the Pacific Flyway swan seasons at the end of the 2002–03 hunting season as established in the most recent DEA on the issue, the availability of which was announced in the April 25, 2001, **Federal Register** (66 FR 20828). The DEA focuses on the issue of whether or not to establish an operational approach for swan hunting. Related efforts to address population status and distributional concerns regarding the Rocky Mountain Population of trumpeter swans are also discussed. Three alternatives, including the proposed action, are considered.

Dated: April 30, 2003.

Matt Hogan,

Acting Director, Fish and Wildlife Service.

[FR Doc. 03–12343 Filed 5–15–03; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[NV–050–02–5101–ER–F331; N–75493, N–75471, N–75472, N–75474, N–75475,N–75476, N–75477]

Notice of Availability of the Final Environmental Impact Statement for Ivanpah Energy Center

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Availability (NOA) of the Final Environmental Impact Statement (FEIS) for Ivanpah Energy Center (Ivanpah); and to announce locations where copies of the FEIS can be obtained for reading.

SUMMARY: Pursuant to Section 102 (2)(C) of the National Environmental Policy Act (NEPA) of 1969, a FEIS has been prepared by the Bureau of Land Management (BLM), Las Vegas Field Office for Ivanpah. Western Area Power Administration (WAPA) is a cooperating agency. The FEIS was prepared to analyze the impacts of issuing rights-of-way for a gas-fired electric power plant and ancillary facilities (including, electric transmission lines, interconnection at WAPA's Mead substation, electric substations, water pipeline, access roads, and telecommunication facilities).

DATES: A 30-day availability period will start when the Environmental Protection Agency publishes their NOA and filing of the FEIS in the **Federal Register**. Upon completion of the 30-day availability period, the BLM will respond to all comments received on the FEIS and then will issue a Record of Decision (ROD). The local media will announce the ROD. Copies of the ROD will be sent to those who requested a copy, made substantive comments, or those known to have expressed a strong interest in the project.

ADDRESSES: Public reading copies of the FEIS will be available for reading at public libraries located at the following addresses:

- 650 West Quartz Avenue, Sandy Valley, NV
- 365 West San Pedro, Goodsprings, NV
- 4280 South Jones Blvd., Las Vegas, NV

A limited number of copies of the document will be available at the following BLM and WAPA offices:

- Bureau of Land Management, Nevada State Office, 1340 Financial Blvd., Reno, NV
- Bureau of Land Management, Las Vegas Field Office, 4701 Torrey Pines Drive, Las Vegas, NV
- Western Area Power Administration, Corporate Service Office, A7400, 12155 West Alameda Parkway, Lakewood, CO
- Western Area Power Administration, Desert Southwest Regional Office, 615 South 43rd Avenue, Phoenix, AZ

FOR FURTHER INFORMATION CONTACT: Jerry Crockford, Project Manager, Bureau of Land Management, Las Vegas Field Office, 4701 N. Torrey Pines Drive, Las Vegas, NV 89130–2301 or Bureau of Land Management, Farmington Field Office, 1235 La Plata Highway, Suite A, Farmington, NM 87401; telephone (505) 599–6333, cellular telephone (505) 486–4255.

SUPPLEMENTARY INFORMATION: The FEIS addresses the proposed action and two alternatives.

The proposed action can be summarized as: Constructing, operating, and maintaining a 500 megawatt gas-turbine combined-cycle power plant in the Ivanpah Valley, approximately 20 miles south of Las Vegas, Nevada. Except for a related electric transmission line, the proposed generating facility and most ancillary facilities are located on 30-acres of public land administered by the BLM, in the MDBM, T. 25 S., R. 58 E., sec. 1, and T. 25 S., R. 59 E., sec. 6. The facility would use a refrigerated air system to reduce cooling water requirements normally associated with combined-cycle power plants. Power generated from Ivanpah would enter the southern Nevada power grid through WAPA's Mead Substation, in Eldorado Valley.

The proposed plant site is located 2.5-miles southeast of the town of Goodsprings, Nevada. The proposed action includes the following ancillary facilities: a 12-inch diameter gas pipeline interconnection to the adjacent Kern River Gas Transmission (KRGT) gas pipeline; a four-inch diameter water pipeline originating from the Southern Nevada Correctional Center (SNCC) in Jean, Nevada, to supply water processed through a planned water treatment facility to provide process water for plant operations; a telecommunications line; a 230 kilovolt (kV) substation; the following 230 kV transmission lines: (1) Two 230 kV lines from the proposed Ivanpah Substation to the Pahrump-Mead 230 kV line corridor; (2) a 43-mile 230 kV line from the Ivanpah Substation to the WAPA Mead Substation, in Eldorado Valley, Nevada; and (3) two 230 kV lines from the Ivanpah Substation to the Table Mountain Substation and Valley Electric Association's Pahrump-Mead Transmission Line; and the following fiber optic lines: (1) An optical-fiber ground wire (OPGW) shield wire as an integral part of the Ivanpah-Mead #2 transmission line; and (2) an OPGW as an integral part of the Table Mountain-Ivanpah #1 transmission line. Access to Ivanpah would be via an existing, unimproved road connected to State Highway 161.

An alternative plant site, located in Primm, Nevada, would be co-located with the Reliant Bighorn Power Plant (Bighorn), on a 30-acre parcel on private property. Ancillary facilities to the alternative plant site includes: An 11 mile long water supply pipeline from SNCC to the power plant; a 40-mile long transmission line to interconnect the plant to the WAPA Mead Substation; approximately 14 miles of transmission lines to interconnect the facility to the proposed Table Mountain Substation and the Valley Electric Association's Pahrump-Mead transmission line; a 3.2-mile natural gas pipeline connecting to KRGT natural gas pipeline; use of existing access roads; and telecommunications facilities. This is the Agencies' Preferred Alternative. However, this site is presently unavailable due to some business considerations that the owners of the Bighorn site have yet to make.

The plant will require approximately 22 months for construction. The plant will be built to operate continuously, except for semi-annual maintenance shutdowns, with a projected 40-year life. Power will be sold into the commercial power markets of Nevada, California, and Arizona.

Under the No Action Alternative, BLM would not issue right-of-way grants for the Ivanpah Energy Center and ancillary facilities. The project including the power plant, electric transmission lines, substation interconnection, electric substations, water pipeline; access road, telecommunication facilities, and temporary use areas would not be constructed. The area proposed for Ivanpah Energy Center would remain undeveloped. An identified energy need would not be met by this alternative.

Public participation is encouraged throughout processing of this project. Comments presented throughout the process will be considered.

Dated: March 5, 2003.

Mark T. Morse,

Field Manager.

[FR Doc. 03–12131 Filed 5–15–03; 8:45 am]

BILLING CODE 4310–HC–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[OR–014–6350–DS; GP–2–0236]

Notice of availability for the Draft Upper Klamath River Management Plan/ Environmental Impact Statement and Resource Management Plan Amendments

ACTION: Notice of availability for the Draft Upper Klamath River Management Plan/ Environmental Impact Statement and Resource Management Plan Amendments (River Plan/DEIS).

SUMMARY: In accordance with the Federal Land Policy and Management Act and the National Environmental Policy Act (NEPA), this document provides notice that the Bureau of Land Management (BLM) intends to make the River Plan/DEIS available for public review and comment. This plan encompasses portions of the upper Klamath River in southern Oregon and northern California. This plan will provide direction for management of the public lands within the planning area for at least 15 to 20 years after the plan is completed. A decision on this DEIS will be signed by the State Directors of Oregon/Washington and California, and will amend both the BLM Klamath Falls Resource Area (Oregon), and the Redding (California) Resource Management Plans.

The Wild and Scenic Rivers Act requires a management plan be completed for a designated wild and scenic river, and State Scenic Waterway. Within Oregon, the State of Oregon designated an 11-mile segment of the Klamath River a State Scenic Waterway in 1988. In addition, at the request of the Governor of Oregon, the Klamath River was designated as a Scenic River (part of the Wild and Scenic Rivers system), by the Secretary of the Interior in 1994. In California, the segment of the Klamath River within the planning

area was determined to be eligible for inclusion as a scenic river under the Wild and Scenic River Act, and is currently under interim protective management until a designation decision is made. This plan considers management of land both within and adjacent to the scenic river corridor. The plan is being developed jointly by the BLM Lakeview District (Klamath Falls Resource Area), Oregon, and the Redding Resource Area, California. The Oregon Parks and Recreation Department is a cooperating agency in the development of this DEIS and has developed proposed administrative rules in the river management plan for private lands that occur within the State Scenic Waterway.

The BLM has coordinated closely with numerous interested parties to identify the various management actions and alternatives that are best suited to the needs of the resources and has considered the input from the public. This notice initiates the public review process on the River Plan/DEIS. The public is invited to review and comment on the range and adequacy of the draft alternatives and associated environmental effects.

DATES: The comment period will end 90 days after publication of the Environmental Protection Agency's Notice of Availability of this River Management Plan and Draft Environmental Impact Statement in the **Federal Register**. All individuals, organizations, agencies, and tribes with a known interest in this planning effort have been offered a copy of the document for review. Documents may also be examined at the Klamath Falls Resource Area office, 2795 Anderson Avenue, Building 25, Klamath Falls, Oregon, 97603, at local libraries, and on the Web site: *http://www.or.blm.gov/Lakeview/kfra/index.htm*.

Public Participation

Public meetings will be held during the comment period. In order to ensure local community participation and input, public meetings will be held in Klamath Falls, Oregon, Yreka, California, and Copco, California. Specific dates and locations of meetings and comment deadlines will be announced through the local news media, newsletters and the BLM web site. At least 15 days public notice will be given for activities where the public is invited to attend.

Comments on the River Plan/DEIS should be received on or before the end of the comment period at the address listed below. For comments to be most helpful, they should relate to specific concerns or conflicts that can be addressed by the BLM. These concerns must also be able to be resolved through this planning process. Comments, including names and street addresses of respondents, will be available for public review at the above address during regular business hours (8 a.m. to 5 p.m.), Monday through Friday, except holidays, and may be published as part of the EIS, or other related documents. Individual respondents may request confidentiality. If you wish to withhold your name or street address from public review or from disclosure under the Freedom of Information Act, you must state this prominently at the beginning of your written comment. Such requests will be honored to the extent allowed by law. All submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, will be made available for public inspection in their entirety.

ADDRESSES FOR COMMENTS: Written comments should be sent to Teresa A. Raml, Field Manager, Bureau of Land Management, 2795 Anderson Ave., Building 25, Klamath Falls, Oregon 97603. Comments may also be e-mailed to: *krmp@or.blm.gov*.

FOR FURTHER INFORMATION CONTACT: For further information and/or to have your name added to our mailing list, contact Larry Frazier, Project Leader (541–883–6916), or email your request to: *krmp@or.blm.gov*.

SUPPLEMENTARY INFORMATION: The total planning area encompasses approximately 20,000 acres of land in Oregon and California. At the written request of PacifiCorp, the major private landowner within the river corridor, approximately 6,000 acres of their private lands, primarily located within the California portion of the planning area, have been considered in this plan. PacifiCorp is considering several management options for the lands that are surplus to their needs for power production. Among these options are a long-term cooperative management agreement with BLM, and sale or other form of disposal of their lands.The River Plan/DEIS considers and analyzes four alternatives including the No Action alternative. These alternatives have been developed based on public input during and following initial scoping, and numerous meetings with local governments, tribes and the Upper Basin Subcommittee of the Klamath Provincial Advisory Committee (Klamath PAC). The alternatives provide for variable levels of maintenance or enhancement of resource values and propose a wide array of alternative land management actions. The "Preferred" Alternative proposes actions to enhance the values identified in the Wild and Scenic River designation and restore natural resources that are in a degraded condition, while minimizing resource management conflicts with recreation use. A final environmental impact statement and proposed Klamath River Management Plan is expected to be available for public review in mid-2003.

Dated: May 5, 2003.

Teresa A. Raml,

Field Manager, Klamath Falls Resource Area.

[FR Doc. 03–11630 Filed 5–15–03; 8:45 am]

BILLING CODE 4310–33–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[CA–169–1610–DU]

Notice of Public Meeting, Carrizo Plain National Monument AdvisoryCommittee

ACTION: Meeting notice.

SUMMARY: In accordance with the Federal Land Policy and Management Act (FLPMA) and the Federal Advisory Committee Act of 1972 (FACA), the U.S. Department of the Interior, Bureau of Land Management (BLM) National Monument Advisory Committee for the Carrizo Plain National Monument will meet as indicated below.

DATES: The meeting will be held Saturday, June 7, 2003 at the Carrisa Plains Elementary School, State Highway 58, near California Valley and Simmler, CA, beginning at 10 a.m. and continuing until 5 p.m. There will be a public comment period from 3 p.m. until 4 p.m.

SUPPLEMENTARY INFORMATION: The nine-member Carrizo Plain National Monument Advisory Committee advises the Secretary of the Interior, through the Bureau of Land Management, on a variety of public land issues associated with public land management in the Carrizo Plain National Monument in central California. At this meeting, monument staff will be presenting a progress report on the new Carrizo Plain National Monument Resource Management Plan, including alternatives. The meeting is open to the public. The public may present written comments to the committee and time will be allocated for hearing public comments. Depending on the number of persons wishing to comment and the time available, the time for individual oral comments may be limited. Individuals who plan to attend and need special assistance such as sign language interpretation or other reasonable accommodations should contact the BLM as indicated above.

FOR FURTHER INFORMATION CONTACT: Marlene Braun, Carrizo Plain National Monument Manager, 3801 Pegasus Drive, Bakersfield, CA 93308, telephone (661) 391–6119.

Dated: May 9, 2003.

John Dearing,

Public Affairs Specialist.

[FR Doc. 03–12212 Filed 5–15–03; 8:45 am]

BILLING CODE 4310–40–P

DEPARTMENT OF THE INTERIOR

National Park Service

Final Environmental Impact Statement, Personal Watercraft Rule-Making, Glen Canyon National Recreation Area, Arizona and Utah

AGENCY: National Park Service, Department of the Interior.

ACTION: Notice of availability of the Final Environmental Impact Statement, Personal Watercraft Rule-Making, Glen Canyon National Recreation Area.

SUMMARY: Pursuant to § 102(2)(C) of the National Environmental Policy Act of 1969 (Pub L. 91–190, as amended) and the Council on Environmental Quality Regulations (40 CFR part 1500–1508), the National Park Service (NPS), Department of the Interior, announces the availability of the Final Environmental Impact Statement (FEIS), Personal Watercraft (PWC) Rule-Making, Glen Canyon National Recreation Area (NRA), Arizona and Utah. The FEIS assesses the potential impacts of PWC use for Glen Canyon NRA. The FEIS describes and analyzes three alternatives to manage PWC on Lake Powell to provide for the long-term protection of park resources while allowing a range of recreational opportunities to support visitor needs. Each alternative identifies proposed actions related to visitor use zones and accessible developed areas, facilities and recreational services, visitor safety and conflicts, resource protection, and park operations.

The FEIS will be used to make reasoned decisions about whether to continue PWC use at Glen Canyon NRA. The NPS determination will be based on the unit's enabling statute, mission, management objectives, resources, values, and other uses, as well as impacts from PWC on the unit. Consistent with *Bluewater Network* v. *Stanton*, No. CV002093 (D.D.C. 2000) and the settlement agreement approved by the court on April 11, 2001, the FEIS includes an evaluation of various PWC use alternatives to determine their effects on water quality, air quality, the soundscape, wildlife, wildlife habitat, shoreline vegetation, visitor conflicts, safety, and other appropriate topics.

Public meetings were initiated in August 2001 to solicit early input into the scope and range of issues to be analyzed. A notice of intent announcing the decision to prepare the environmental impact statement was published in the **Federal Register** on August 1, 2001. Scoping comments continued to be accepted and considered within the planning process.

During this comment period, the NPS facilitated several hundred discussions and briefings with congressional delegations, local elected officials, tribal representatives, public service organizations, educational institutions, and other interested members of the public. Over 3,500 letters and e-mail messages concerning PWC use on Lake Powell were received. The major issues raised during this period are summarized in Chapter 1, Purpose of and Need for Action.

The FEIS includes two "action" alternatives and one "no action" (existing conditions) alternative. Under each of the action alternatives, a Special Regulation would be promulgated to address the continued use of PWC in the NRA, in accordance with the settlement agreement signed by the United States District Court for the District of Columbia on April 11, 2001. This agreement between the NPS and Bluewater Network requires all park units wishing to continue PWC use to promulgate special regulations after an environmental analysis is conducted in accordance with the 1969 National Environmental Policy Act.

The alternatives presented in the draft environmental impact statement (DEIS) were modified in the FEIS in response to over 30,000 public and agency comments received on the DEIS. The primary modifications to Alternatives A and B include conducting a 3-year pilot study to identify and develop conflict resolution techniques and preparing a comprehensive lake management plan to address all uses of Lake Powell. Additionally, Alternative B was modified to include compliance with 2006 emission standards (described below) and with more geographic restrictions. The alternatives in the FEIS are summarized as follows.

Alternative A, Continue PWC Use as Currently Managed under a Special Regulation, would allow PWC use identical to that before September 2002 under a special regulation. PWC use would be authorized for all areas of the recreation area above Glen Canyon Dam except where prohibited by the Superintendent's Compendium, 2002. Alternative A would also include a 3-year pilot study to identify the techniques and area restrictions that would be most effective in reducing visitor conflicts. The pilot study would support the development of a comprehensive lake management plan which would consider all activities on Lake Powell, including the potential impacts of all watercraft, to better protect recreation area resources, improve visitor safety, and reduce conflicts.

Alternative B (the modified preferred alternative), Promulgate a Special Regulation to Continue PWC Use with Additional Management Restrictions, would be similar to Alternative A. However, it would include additional geographic restrictions on PWC use in portions of the Colorado, Escalante, Dirty Devil, and San Juan Rivers to increase protection of environmental values and reduce visitor conflict and would implement a flat wake zone. This alternative would also require that PWC in the recreation area meet the 2006 U.S. Environmental Protection Agency emissions standards by the end of 2012 and in subsequent years. PWC not meeting the standards would no longer be permitted to operate within Glen Canyon NRA beginning in 2013. In addition, Alternative B also would include strategies to better protect recreation area resources, improve visitor safety, and reduce conflicts. These strategies would include conducting a 3-year pilot study to identify the techniques and area restrictions that would be most effective in reducing conflicts and preparing a comprehensive lake management plan addressing all uses.

Under Alternative C, No Action (PWC Use Eliminated), the NPS would not take action to promulgate a special regulation that would allow PWC use. Therefore, under the provisions of the March 21, 2000 final rule, all PWC use would be permanently eliminated from the recreation area.

DATES: The National Park Service will execute a Record of Decision (ROD) no sooner than 30 days following publication of the notice of availability of the Final Environmental Impact Statement in the **Federal Register** by the Environmental Protection Agency.

ADDRESSES: Information will be available for public review at the Carl Hayden Visitor Center, Glen Canyon Dam, 1000 Hwy. 89, Page, Arizona 86040, (928) 608–6404, in the office of

the Superintendent, Park Headquarters, 691 Scenic View Drive, Page, Arizona 86040, (928) 608–6200, and at the following Web site, *http://www.nps.gov/glca/plan.htm*.

FOR FURTHER INFORMATION CONTACT: Brian Wright, Glen Canyon National Recreation Area, (928) 608–6272.

Dated: May 1, 2003.

Karen Wade,

Director, Intermountain Region, National Park Service.

[FR Doc. 03–12341 Filed 5–15–03; 8:45 am]

BILLING CODE 4312–EF–P

DEPARTMENT OF THE INTERIOR

National Park Service

Cape Cod National Seashore; South Wellfleet, Massachusetts; Cape Cod National Seashore Advisory Commission Two Hundred Forty-Second Meeting; Notice of Meeting

Notice is hereby given in accordance with the Federal Advisory Committee Act (Pub. L. 92–463, 86 Stat. 770, 5 U.S.C. App 1, section 10), that a meeting of the Cape Cod National Seashore Advisory Commission will be held on May 30, 2003.

The Commission was reestablished pursuant to Public Law 87–126 as amended by Public Law 105–280. The purpose of the Commission is to consult with the Secretary of the Interior, or his designee, with respect to matters relating to the development of Cape Cod National Seashore, and with respect to carrying out the provisions of sections 4 and 5 of the Act establishing the Seashore.

The Commission members will meet at 1 p.m. at Headquarters, Marconi Station, Wellfleet, Massachusetts for the regular business meeting to discuss the following:

1. Adoption of Agenda
2. Approval of minutes of previous meeting (April 4, 2003)
3. Reports of Officers
4. Reports of Subcommittees
   Nickerson Fellowship Subcommittee
5. Superintendent's Report
   Salt Pond Visitor Center
   Sustainable Practices
   Wetlands Restoration
   Highlands Center
   UMass/NPS Outer Cape Study
   News from Washington
6. Old Business
   Invasive Species
   Dune Shack Subcommittee Report
7. New Business
8. Date and agenda for next meeting
9. Public comment and
10. Adjournment

The meeting is open to the public. It is expected that 15 persons will be able to attend the meeting in addition to Commission members.

Interested persons may make oral/written presentations to the Commission during the business meeting or file written statements. Such requests should be made to the park superintendent at least seven days prior to the meeting. Further information concerning the meeting may be obtained from the Superintendent, Cape Cod National Seashore, 99 Marconi Site Road, Wellfleet, MA 02667.

Dated: May 6, 2003.

Maria Burks,

Superintendent.

[FR Doc. 03–12320 Filed 5–15–03; 8:45 am]

BILLING CODE 4310–WV–P

DEPARTMENT OF THE INTERIOR

National Park Service

National Register of Historic Places; Notification of Pending Nominations

Nominations for the following properties being considered for listing in the National Register were received by the National Park Service before April 26, 2003.

Pursuant to section 60.13 of 36 CFR part 60 written comments concerning the significance of these properties under the National Register criteria for evaluation may be forwarded by United States Postal Service, to the National Register of Historic Places, National Park Service, 1849 C St. NW, 2280, Washington, DC 20240; by all other carriers, National Register of Historic Places, National Park Service,1201 Eye St. NW, 8th floor, Washington DC 20005; or by fax, 202–371–6447. Written or faxed comments should be submitted by June 2, 2003.

Carol D. Shull,

Keeper of the National Register of Historic Places.

ARKANSAS

Woodruff County

Augusta Memorial Park Historic Section,Bounded by Iris, Rose, Hough Drives and AR 33B,Augusta, 03000507

FLORIDA

Gulf County

Port Theatre, 314 Reid Ave.,Port St. Joe, 03000508

Leon County

Greenwood Cemetery,Old Bainbridge Rd.,Tallahassee, 03000510

Orange County

1890 Windermere School,113 W. Seventh Ave.,Windermere, 03000509

NEW YORK

Livingston County

Kellogg, J. Francis, House,255 Genesee St.,Avon, 03000511

OKLAHOMA

Cherokee County

Tahlequah Carnegie Library,120 S. College,Tahlequah, 03000516

Grady County

New Hope Baptist Church,1202 S. Shepherd St.,Chickasha, 03000515

Payne County

Cushing American Legion Building,212 S. Noble,Cushing, 03000514

Pittsburg County

OKLA Theater,18 E. Choctaw,McAlester, 03000513

Stephens County

Foreman, W.T., House,814 W. Oak Ave.,Duncan, 03000512

RHODE ISLAND

Kent County

Briggs, Richard, Farm,830 South Rd.,East Greenwich, 03000517

A request for REMOVAL has been made for the following resources:

MISSOURI

Lafayette County

Eneberg, John F., House(Lexington MRA)157 N. 10th St.Lexington, 93000551

[FR Doc. 03–12342 Filed 5–15–03; 8:45 am]

BILLING CODE 4312–51–P

DEPARTMENT OF JUSTICE

Office of Community Oriented Policing Services FY 2003 Community Policing Discretionary Grants

AGENCY: Office of Community Oriented Policing Services, U.S. Department of Justice.

ACTION: Notice of funding availability.

SUMMARY: The U.S. Department of Justice Office of Community Oriented Policing Services (COPS) announces the availability of Homeland Security Overtime Program (HSOP) grants to pay up to 75 percent of anticipated overtime costs and appropriate fringe benefits for non-supervisory sworn personnel (above and beyond what is currently budgeted, or will be budgeted for overtime during the grant period). Funds may be used for a period of one year, and will cover up to 75 percent of a department's anticipated overtime costs up to the maximum allowable

based on the following funding criteria. Law Enforcement agencies can apply for funding based on the size of the population they serve or the size of their current budgeted sworn strength at the time of application.

Agency serving populations:	or	*An actual sworn force:*	*Can apply for:* (dollars)
Under 24,999		1–49	25,000
From 25,000 to 49,999		50–99	50,000
From 50,000 to 99,999		100–199	100,000
From 100,000 to 249,999		200–499	250,000
From 250,000 to 499,999		500–999	500,000
From 500,000 to 999,999		1,000–1,999	1,000,000
Over 1,000,000		Above 2,000	3,000,000

A minimum 25 percent local cash match, paid with state or local funds, is required. To qualify for funding, overtime must be accrued after the grant award start date and must supplement the agency's state or locally-funded officer overtime budgets. Funding may be used once the anticipated overtime begins on or after the date of the award, and will be paid over the course of the grant. HSOP grants cannot be used to reimburse grantees for overtime expenditures that occur prior to the award start date. All policing agencies with primary law enforcement authority are eligible to apply for this program.

DATES: The priority consideration deadline for Homeland Security Overtime Program (HSOP) funding is postmarked June 13, 2003. The second and final deadline date for all HSOP applications is postmarked June 27, 2003. All HSOP applications must be postmarked by the final deadline date to be eligible. Applications postmarked after the final deadline date will not be considered. All grant awards are subject to the availability of funds. In the event that HSOP funding requests exceed available grant funds, applications may be considered in subsequent fiscal years subject to the availability of funding. Since funding is limited under HSOP, we encourage interested agencies to apply early.

ADDRESSES: To obtain a copy of an application or for additional information, call the U.S. Department of Justice Response Center at 1–800–421–6770. The HSOP application kit and information on the COPS Office are also available on the Internet via the COPS Web site at: *www.cops.usdoj.gov*.

SUPPLEMENTARY INFORMATION:

Overview

The Violent Crime Control and Law Enforcement Act of 1994 (Pub. L. 103–322) authorizes the Department of Justice to make grants to increase deployment of law enforcement officers devoted to community policing on the streets and rural routes of this nation.

The Homeland Security Overtime Program (HSOP) enables interested agencies to supplement their current overtime budget through federal grants for one year. HSOP grants can be used to pay officer overtime during homeland security training sessions and other law enforcement activities that are designed to assist in the prevention of acts of terrorism and other violent and drug-related crimes. All policing agencies possessing primary law enforcement authority are eligible to apply for this program.

Grants will be made for up to 75 percent of the overtime and appropriate fringe benefits for anticipated overtime for one year, up to the maximum based on the aforementioned funding categories, with a required minimum 25 percent local cash match to be paid with state or local funds. The use of federally funded overtime can not begin until on or after the award start date. Waivers of the local match will not be available for grants awarded under this particular program.

COPS grant funds may not be used to replace funds that eligible agencies otherwise would have budgeted and expended for overtime in the absence of the grant. Agencies may not rely on the availability of HSOP grant funding to reduce the amount of state or local funds budgeted and expended for officer overtime in their current or future budget cycle. In other words, any federally funded overtime must be in addition to, and not in lieu of, overtime that otherwise would have been locally budgeted and expended.

An award under the COPS Homeland Security Overtime Program will not affect the consideration of an agency's eligibility for a grant under other COPS programs.

The Catalog of Federal Domestic Assistance (CFDA) reference for this program is 16.710.

Dated: April 25, 2003.

Carl R. Peed,

Director, Office of Community Oriented Policing Services.

[FR Doc. 03–12213 Filed 5–15–03; 8:45 am]

BILLING CODE 4410–AT–M

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—GE Osmonics, Inc.

Notice is hereby given that, on April 22, 2003, pursuant to section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* ("the Act"), GE Osmonics, Inc. has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing (1) The identities of the parties and (2) the nature and objectives of the venture. The notifications were filed for the purpose of invoking the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Pursuant to section 6(b) of the Act, the identities of the parties are GE Osmonics, Inc., Minnetonka, MN; and SmithKline Beecham Corporation, King of Prussia, PA. The nature and objectives of the venture are to develop solvent-compatible membranes and membrane systems for separations in the food, pharmaceutical, and petrochemical industries. The activities of this Joint Development project are partially funded by an award from the Advanced Technology Program, National Institute of Standards and Technology, U.S. Department of Commerce, Award # 70NANB8H4028.

Constance K. Robinson,

Director of Operations, Antitrust Division.

[FR Doc. 03–12218 Filed 5–15–03; 8:45 am]

BILLING CODE 4410–11–M

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—Inter Company Collaboration for Aids Drug Development

Notice is hereby given that, on April 4, 2003, pursuant to section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* ("the Act"), Inter Company Collaboration for AIDS Drug Development ("the Collaboration") has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership status. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, although there are no other changes in the membership, Collaboration member Gilead Sciences, Inc. of Foster City, CA, has acquired Collaboration member Triangle Pharmaceuticals, Inc. of Durham, NC by merging Triangle with a wholly-owned subsidiary of Gilead.

No other changes have been made in either the membership or planned activity of the group research project. Membership in this group research project remains open, and Inter Company Collaboration for AIDS Drug Development intends to file additional written notification disclosing all changes in membership.

On May 27, 1993, Inter Company Collaboration for AIDS Drug Development filed its original notification pursuant to section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to section 6(b) of the Act on July 6, 1993 (58 FR 36223).

The last notification was filed with the Department on November 8, 2001. A notice was published in the **Federal Register** pursuant to section 6(b) of the Act of February 15, 2002 (67 FR 7201).

Constance K. Robinson,

Director of Operations, Antitrust Division.

[FR Doc. 03–12219 Filed 5–15–03; 8:45 am]

BILLING CODE 4410–11–M

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—The Open Mobile Alliance

Notice is hereby given that, on April 7, 2003, pursuant to section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* ("the Act"), The Open Mobile Alliance ("OMA") has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership status. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specific circumstances. Specifically, 3G LAB Limited, Cambridge, United Kingdom; 724 Solutions, Inc., Toronto, Ontario, Canada; Actix Ltd., London, United Kingdom; Ad Vitam, Pont-Du-Chateau, France; AePona Ltd., Belfast, United Kingdom; Appium Technologies AB, Malmo, Sweden; Approad Nordic AB, Stockholm, Sweden; Bechtel Telecommunications, Frederick, MD; Beep Science AS, Oslo, Norway; British Telecommunications PLC, London, United Kingdom; Cap Gemini Ernst & Young, Paris, France; Cash-U Mobile Technologies Ltd., Netanya, Israel; CELLon France S.A.S., Le mans Cedex 9, France; CellVision AS, Lysaker, Norway; Coremedia AG, Hamburg, Germany; Enea Data AB, Taby, Sweden; Fast Link Communication Corp., Taipei, Taiwan; FastMobile Ltd, Kent, United Kingdom; fg microtec GmbH, Munich, Germany; Huawei Technologies Co.,Ltd, Shenzhen, People's Republic of China; IGEL Co., Ltd., Tokyo, Japan; Innoace Co., Ltd., Seoul, Republic of Korea; InterGrafx, Pasadena, CA; M-Spatial Limited, Cambridge, United Kingdom; Mapinfo Corporation, Troy, NY; Microcell SA, Baar, Switzerland; Miranet AB, Stockholm, Sweden; MobiLab Co., Ltd, Daegu, Korea; Mobile Cohesion, Belfast, United Kingdom; Mobitel D.D., Ljubljana, Slovenia; MontaVista Software, Sunnyvalle, CA; Musiwave, Paris, France; Northstream AB, Solna, Sweden; P-Cube Ltd., Herzliya, Israel; Red Bend, Rosh Ha' ayin, Israel; SBC Technology Resources, Inc., Austin, TX; Smartner Information Systems, Ltd., Helsinki, Finland; Starhub Pte Ltd, Singapore, Singapore; Synthesis AG, Zurich, Switzerland; Telecordia Technologies, Inc., Morristown, NJ; Teltier Technologies, Clark, NJ; Telus Mobility, Scarborough, Ontario, Canada; Tira Wireless, Toronto, Ontario, Canada; Ubiquity Software Corporation, Newport South Wales, United Kingdom; Ulticom, Inc., Mt. Laurel, NJ; VengiTech, Oulu, Finland; Viair, Inc., Seattle, WA; Yomi PLC, Jyvaskyla, Finland; ZTE Corporation, Shenzhen, People's Republic of China; Inventec Electronics (Nanjing) Co., Ltd., Nanjing, People's Republic of China; and Infobank Corporation, Seoul, Republic of Korea have been added as parties to this venture. Ericsson AB, Research Triangle Park, NC has changed its name to Ericsson. FolloWAP, Inc., New York, NY has changed its name to Followap. Logica, Dublin, Ireland has changed its name to LogicaCMG. T-Motion PLC, London, United Kingdom has changed its name to T-Mobile International UK Limited.

The following companies had their memberships cancelled: ACL Wireless Limited, New Delhi, India; Aether Systems, Inc., Owings Mills, MD; ATI Technologies Inc., Thornhill, Ontario, Canada; BlueLabs South AB, Malmo, Sweden; Captaris, Owings Mills, MD; CellPoint AB, Kista, Sweden; Comsys Communications and Signal, Herzelia, Israel; Cybiko Advanced technologies, Bloomingdale, IL; CycleLogic Mobile Solutions, Miami, FL; Denso Corporation, Kariya-shi, Aichi-Ken, Japan; dmates as, Oslo, Norway; Documentum, Inc., Pleasanton, CA; EverInTouch, LTD, Old Coulsdon, Surrey, United Kingdom; EWAP Digital Systems Co., LTD, Beijing, People's Republic of China; Exomi Oy, Herndon, VA; Hillcast Technologies Inc., Austin, TX; ICONA s.p.a., Milan, Italy; Insignia Solutions Inc., Fremont, CA; Locus Portal Corporation, Helsinki, Finland; Malibu Telecom Oy, Espoo, Finland; MediaSolv.com, Inc., San Jose, CA; Mercator Partners, LLC, Concord, MA; Mermit Business Applications Oy, Espoo, Finland; Mobilespring, New York, NY; Niragongo Inc., Herzliya, Israel; Nissan Motor Co., Ltd, Kanagawa, Japan; Racal Instruments, Slough, Berkshire, United Kingdom; Rogers Wireless Inc., Toronto, Ontario, Canada; Softbank Mobile Corp., Tokyo, Japan; Starfish Software, Inc., Scotts Valley, CA; Tahoe Networks, San Jose, CA; Taral Networks, Inc., Kanata, Ontario, Canada; TeleMessage Ltd., Petach Tikvah, Israel; Tircomtek Co., Ltd., Seoul, Republic of Korea; Turkcell, Istanbul, Turkey; Unisys Corporation, Plano, TX; VerdiSoft Corporation, Palo Alto, CA; Vimatix, Inc., Wilmington, DE; WDC Solutions Pvt Ltd., Banagalore, India; whereonearth, London, United Kingdom; and YesMobile Taipei Ltd, Taipei City, Taiwan.

The following companies have resigned: Aspiro AB, Malmo, Sweden; BSQUARECorporation, Bellevue, WA; Cellnext Solutions Limited, New Delhi, India; Commtag Limited, Cambridge, United Kingdom; Cosilient Technologies Corporation, St. John's Newfoundland, Canada; J-Phone Co., Ltd., Tokyo, Japan; Kalador Entertainment Inc., Delta, British Columbia, Canada; M.I.M.T. AB, Malmo, Sweden; Metrowalker Ltd., Quarry Bay, Hong Kong, Hong Kong-China; NTRU Cryptosystems, Inc., Burlington, MA; Oksijen, Teknoloji Gelistirme ve Bilisim, Istanbul, Turkey; Spirent Communications, Inc., Eatontown, NJ; T-Mobile International UK Limited, London, United Kingdom; T-Mobile UK, Borehamwood, Hertfordshire, United Kingdom; T-Mobile USA, Bellevue, WA; Varetis AG, Munich, Germany; and Vizzavi—Europe, London, United Kingdom.

No other changes have been made in either the membership or planned activity of the group research project. Membership in this group research project remains open, and OMA intends to file additional written notification disclosing all changes in membership.

On March 18, 1998, OMA filed its original notification pursuant to section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to section 6(b) of the Act on December 31, 1998 (63 FR 72333).

The last notification was filed with the Department on January 16, 2003. A notice for this filing has not yet been published in the **Federal Register**.

Constance K. Robinson,

Director of Operations, Antitrust Division.

[FR Doc. 03–12220 Filed 5–15–03; 8:45 am]

BILLING CODE 4410–11–M

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—Open SystemC Initiative (OSCI)

Notice is hereby given that, on April 22, 2003, pursuant to section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* ("the Act"), Open SystemC Initiative (OSCI) has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership status. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, Matsushita Electric Industrial Co., Ltd., Osaka, JAPAN has been added as a party to this venture.

No other changes have been made in either the membership or planned activity of the group research project. Membership in this group research project remains open, and OSCI intends to file additional written notification disclosing all changes in membership.

On October 9, 2001, OSCI filed its original notification pursuant to section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to section 6(b) of the Act on January 3, 2002 (67 FR 350).

The last notification was filed with the Department on January 10, 2003. A notice was published in the **Federal Register** pursuant to section 6(b) of the Act on February 14, 2003 (68 FR 7613).

Constance K. Robinson,

Director of Operations, Antitrust Division.

[FR Doc. 03–12216 Filed 5–15–03; 8:45 am]

BILLING CODE 4410–11–M

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—Service Creation Community (SCC)

Notice is hereby given that, on February 4, 2003, pursuant to section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* ("the Act"), Service Creation Community (SCC) has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing (1) the identities of the parties and (2) the nature and objectives of the venture. The notifications were filed for the purpose of invoking the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Pursuant to section 6(b) of the Act, the identities of the parties are Accenture, Dallas, TX; ADC Telecommunications, Rumson, NJ; AirFiber, San Diego, CA; American Management Systems, Fairfax, VA; Array Networks, Campbell, CA; BT, Billericay, United Kingdom; Convedia Corporation, Vancouver, British Columbia, Canada; Eureka Soft, Cedex, France; Infonautics Consulting, Inc., Ramsey, NJ; Juniper Networks, Sunnyvale, CA; Kabira Technologies, San Rafael, CA; Maranti Networks, San Jose, CA; Microsoft Corporation, Redmond, WA; Net.com, Fremont, CA; Olsen Consulting, Staten Island, NY; Oracle, St. Louis, MO; Paradyne, Largo, FL; Pingtel, Woburn, MA; Polycom Inc., Pleasanton, CA; Telechoice, Dallas, TX; Siemens, Boca Raton, FL; Tony Fisch Consulting, Los Angeles, CA; and Yipes, San Francisco, CA.

The nature and objectives of the venture are to rapidly build and deliver revenue-generating applications, content, and network services to business and residential consumers, enabling the service provider to achieve a faster return on investment.

Constance K. Robinson,

Director of Operations, Antitrust Division.

[FR Doc. 03–12217 Filed 5–15–03; 8:45 am]

BILLING CODE 4410–11–M

DEPARTMENT OF JUSTICE

Federal Bureau of Investigation

Meeting of the Compact Council for the National Crime Prevention and Privacy Compact

AGENCY: Federal Bureau of Investigation.

ACTION: Meeting notice.

SUMMARY: The purpose of this notice is to announce a meeting of the Compact Council created by the National Crime Prevention and Privacy Compact Act of 1998 (Compact). Thus far, the federal government and 16 states are parties to the Compact which governs the exchange of criminal history records for licensing, employment, and similar purposes. The Compact also provides a legal framework for the establishment of a cooperative federal-state system to exchange such records.

The United States Attorney General appointed 15 persons from federal and state agencies to serve on the Compact Council. The Council will prescribe system rules and procedures for the effective and proper operation of the Interstate Identification Index system.

Matters for discussion are expected to include: (1) Discussion on Noncriminal Justice Outsourcing Initiatives and the Development of a Security and Management Control Outsourcing Standard; (2) Release of Expunged Record Data from State Central Repositories; (3) Utilizing the Delayed Fingerprint Submission Rule for Hazardous Material Endorsement Criminal History Record Checks; (4) Critique on the Draft Compliance (Sanctions) Rule; (5) Comments from the November 2002 **Federal Register**

Publication—Proposed Dispute Adjudication Rule; (6) Searching Federal Civil Fingerprint Records on Applicants in Positions of Trust; (7) Extending Federal Civil Criminal Justice Applicant Background Investigation to include criminal records checks of Friends, Relatives and Associates.

The meeting will be open to the public on a first-come, first-seated basis. Any member of the public wishing to file a written statement with the Compact Council or wishing to address this session of the Compact Council should notify Mr. Todd C. Commodore at (304) 625–2803, at least 24 hours prior to the start of the session. The notification should contain the requestor's name and corporate designation, consumer affiliation, or government designation, along with a short statement describing the topic to be addressed, and the time needed for the presentation. Requestors will ordinarily be allowed up to 15 minutes to present a topic.

DATES AND TIMES: The Compact Council will meet in open session from 9 a.m. until 5 p.m., on June 24–25, 2003.

ADDRESSES: The meeting will take place at the Holiday Inn Sunspree Resort, 315 Yellowstone Avenue, West Yellowstone, Montana, telephone (406) 646–7365.

FOR FURTHER INFORMATION CONTACT: Inquiries may be addressed to Mr. Todd C. Commodore, FBI Compact Officer, Compact Council Office, Module C3, 1000 Custer Hollow Road, Clarksburg, West Virginia 26306–0148, telephone (304) 625–2803, facsimile (304) 625–5388.

Dated: April 4, 2003.

Monte C. Strait,

Section Chief, Programs Development Section, Criminal Justice Information Services Division, Federal Bureau of Investigation.

[FR Doc. 03–12287 Filed 5–15–03; 8:45 am]

BILLING CODE 4410–02–M

DEPARTMENT OF LABOR

Office of the Secretary

Submission for OMB Review; Comment Request

May 5, 2003.

The Department of Labor (DOL) has submitted the following public information collection request (ICR) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995 (Pub L. 104–13, 44 U.S.C. Chapter 35). A copy of this ICR, with applicable supporting documentation, may be obtained by calling the Department of Labor. To obtain documentation contact Darrin King on 202–693–4129 (this is not a toll-free number) or E-Mail: *King.Darrin@dol.gov.*

Comments should be sent to Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for the Department of Labor, Departmental Manager, Office of Management and Budget, Room 10235, Washington, DC 20503 (202–395–7316), within 30 days from the date of this publication in the **Federal Register**.

The OMB is particularly interested in comments which:

* Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

* Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

* Enhance the quality, utility, and clarity of the information to be collected; and

* Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

Type of Review: Extension of a currently approved collection.

Agency: Office of the Assistant Secretary for Administration and Management, Departmental Management.

Title: Customer Satisfaction Surveys and Conference Evaluations Generic Clearance.

OMB Number: 1225–0059.

Affected Public: Individuals or households; Business or other for-profit; Not-for-profit institutions; Farms; Federal Government; State, Local, or Tribal government;

Total Respondents: Varies by survey/evaluation; may range from as few as 10 to over 78,000 for an estimated total of 198,503.

Frequency: On occasion.

Annual Responses: Varies by survey/evaluation; may range from as few as 10 to over 78,000 for an estimated total of 198,503.

Average Time Per Response: Varies by survey/evaluation with an average of 3 minutes per customer survey or conference evaluation.

Total Burden Hours: 9,925.

Total Burden Cost (capital/startup): $0.

Total Burden Cost (operating/maintenance): $0.

Description: The Department of Labor is seeking OMB approval to continue conducting a variety of voluntary customer satisfaction surveys and conference evaluations, which will be specifically designed to gather information from a customer's perspective as prescribed by E.O. 12862, Setting Customer Satisfaction Standards, September 11, 1993.

Ira L. Mills,

Departmental Clearance Officer.

[FR Doc. 03–12292 Filed 5–15–03; 8:45 am]

BILLING CODE 4510–23–M

DEPARTMENT OF LABOR

Office of the Secretary

Submission for OMB Review; Comment Request

May 5, 2003.

The Department of Labor (DOL) has submitted the following public information collection request (ICR) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. Chapter 35). A copy of each individual ICR, with applicable supporting documentation, may be obtained by calling the Department of Labor. To obtain, contact Darrin King on 202–693–4129 (this is not a total-free number) or E-Mail: *King.Darrin@dol.gov.*

Comments should be sent to Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for the Mine Safety and Health Administration, Office of Management and Budget, Room 10235, Washington, DC 20503 ((202) 395–7316), within 30 days from the date of this publication in the **Federal Register.**

The OMB is particularly interested in comments which:

* Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

* Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

* Enhance the quality, utility, and clarity of the information to be collected; and

* Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

Agency: Mine Safety and Health Administration (MSHA).

Type of Review: Revision of a currently approved collection.

Title: Qualification and Certification Program.

OMB Number: 1219–0069.

Type of response: Reporting.

Frequency: On Occasion.

Affected Public: Business or other for-profit.

Number of Respondents: 684.

Annual Responses: 684.

Average Response Time: 10 minutes.

Total Burden Hours: 114.

Total Annualized Capital/startup Costs: $0.

Total Annual (operating/maintaining): $253.

Description: 30 CFR 75.100, 75.155, 77.100, and 77.105 require persons performing tasks and certain required examinations at coal mines which are related to miner safety and health, and which required specialized experience, are required to be either "certified" or "qualified." The regulations recognize State certification and qualification programs. However, where state programs are not available, under the Mine Act and MSHA standards, the Secretary may certify and qualify persons for as long as they continue to satisfy the requirements needed to obtain the certification or qualification, fulfill any applicable retraining requirements, and remain employed at the same mine or by the same independent contractor. MSHA Forms 5000–4 and 5000–7 provide the coal mining industry with a standardized reporting format that expedites the certification process while ensuring compliance with the regulation. The information provided on the forms enables the Secretary of Labor's delegate—MSHA, Qualification and Certification Unit—to determine if the applicants satisfy the requirements to obtain the certification or qualification.

MSHA is presently in the process of streamlining its Forms. Forms 5000–4 and 5000–7 will be combined into one form 5000–41 for future use by coal mine operators. MSHA is requesting approval of this form.

Ira L. Mills,

Departmental Clearance Officer.

[FR Doc. 03–12293 Filed 5–15–03; 8:45 am]

BILLING CODE 4510–43–M

DEPARTMENT OF LABOR

Employment and Training Administration

Investigations Regarding Certifications of Eligibility To Apply for Worker Adjustment Assistance

Petitions have been filed with the Secretary of Labor under section 221(a) of the Trade Act of 1974 ("the Act") and are identified in the Appendix to this notice. Upon receipt of these petitions, the Director of the Division of Trade Adjustment Assistance, Employment and Training Administration, has instituted investigations pursuant to section 221(a) of the Act.

The purpose of each of the investigations is to determine whether the workers are eligible to apply for adjustment assistance under Title II, Chapter 2, of the Act. The investigations will further relate, as appropriate, to the determination of the date on which total or partial separations began or threatened to begin and the subdivision of the firm involved.

The petitioners or any other persons showing a substantial interest in the subject matter of the investigations may request a public hearing, provided such request is filed in writing with the Director, Division of Trade Adjustment Assistance, at the address shown below, not later than May 27, 2003.

Interested persons are invited to submit written comments regarding the subject matter of the investigations to the Director, Division of Trade Adjustment Assistance, at the address shown below, not later than May 27, 2003.

The petitions filed in this case are available for inspection at the Office of the Director, Division of Trade Adjustment Assistance, Employment and Training Administration, U.S. Department of Labor, Room C–5311, 200 Constitution Avenue, NW., Washington, DC 20210.

Signed at Washington, DC, this 9th day of May 2003.

Terrence Clark,

Acting Director, Division of Trade Adjustment Assistance.

APPENDIX

[Petitions Instituted Between 04/28/2003 and 05/02/2003]

TA–W	Subject firm (petitioners)	Location	Date of institution	Date of petition
51,612	Gillette (Wrks)	Boston, MA	04/28/2003	04/25/2003
51,613	Autoliv ASP, Inc. (Comp)	Ogden, UT	04/28/2003	04/28/2003
51,614	Nevamar Company (Comp)	Hampton, SC	04/28/2003	04/25/2003
51,615	Honeywell Airframe Systems (Comp)	Torrance, CA	04/28/2003	04/25/2003
51,616	Chandlers (ME)	Portland, ME	04/28/2003	04/14/2003
51,617	Ebara Solar, Inc. (Wkrs)	Belle Vernon, PA	04/28/2003	04/23/2003
51,618	Velan Valve Corporation (IAM)	Williston, VT	04/28/2003	04/27/2003
51,619	Sterling and Adams Bentwood (Wkrs)	Lenoir, NC	04/28/2003	04/25/2003
51,620	Fishing Vessel (F/V) Misty Dawn (Comp)	King Cove, AK	04/28/2003	04/22/2003
51,621	Stora Enso North America (Comp)	Wisc. Rapids, WI	04/29/2003	04/02/2003
51,622	Casco Products (IUE)	Bridgeport, CT	04/29/2003	04/28/2003
51,623	Harman Wisconsin, Inc. (Comp)	Prairie du Chie, WI	04/29/2003	04/25/2003
51,624	Stream International (Wkrs)	Silver City, NM	04/29/2003	04/22/2003
51,625	Motorola, Inc. (Wkrs)	Elgin, IL	04/29/2003	04/28/2003
51,626	Avaya (CO)	Westminster, CO	04/29/2003	04/25/2003
51,627	Reliant Manufacturing (CO)	Longmont, CO	04/29/2003	04/25/2003
51,628	Boeing Aerospace Operations (CA)	Long Beach, CA	04/29/2003	04/28/2003
51,629	Ridgeway Clocks (Comp)	Ridgeway, VA	04/29/2003	04/28/2003
51,630	J.C. Viramontes, Inc. (Comp)	El Paso, TX	04/29/2003	04/08/2003
51,631	Teleflex Automotive (MI)	Hillsdale, MI	04/29/2003	04/24/2003
51,632	Fishing Vessel (F/V) Capt'n Jay (Wkrs)	Chignik, AK	04/29/2003	04/28/2003
51,633	Fishing Vessel (F/V) Jackie (Comp)	Metlakatla, AK	04/29/2003	04/23/2003
51,634	Ronald Wassillie (Comp)	New Halen, AK	04/29/2003	04/21/2003

APPENDIX—Continued

[Petitions Instituted Between 04/28/2003 and 05/02/2003]

TA–W	Subject firm (petitioners)	Location	Date of institution	Date of petition
51,635	Rustler Fish Company (Comp)	Haines, AK	04/30/2003	04/29/2003
51,636	Hess-Armaclad, Inc. (Comp)	Quincy, PA	04/30/2003	04/28/2003
51,637	Mell Trimming Co., Inc. (Comp)	New York, NY	04/30/2003	04/15/2003
51,638	Keystone Powdered Metal Co. (Comp)	St. Mary's, PA	04/30/2003	04/21/2003
51,639	Samuel Strapping (USWA)	Winchester, TN	04/30/2003	03/11/2003
51,640	Gupta Permold Corporation (Wkrs)	Pittsburgh, PA	04/30/2003	04/24/2003
51,641	TMD Friction, Inc. (Comp)	Dublin, VA	04/30/2003	04/29/2003
51,642	Sweet-Orr (Wkrs)	Anniston, AL	04/30/2003	04/24/2003
51,643	JLG Industries, Inc. (Wkrs)	McConnellsburg, PA	04/30/2003	04/01/2003
51,644	Nichrin Coupler Tec. (Wkrs)	El Paso, TX	04/30/2003	04/10/2003
51,645	Koch Nitrogen (PACE)	Sterlington, LA	04/30/2003	04/21/2003
51,646	Viasystems Wire Harness Industries, Inc. (Comp).	Bucyrus, OH	04/30/2003	04/30/2003
51,647	Sanmina-SCI Corporation (Wkrs)	Woburn, MA	04/30/2003	04/30/2003
51,648	US Steel (ICWUC)	Granite City, IL	04/30/2003	04/24/2003
51,649	Pur Water Purification (Comp)	Brooklyn Park, MN	04/30/2003	04/28/2003
51,650	Markwins Beauty Products, Inc. (UFCW)	N. Arlington, NJ	04/30/2003	04/10/2003
51,651	Solectron Global Services (OR)	Hillsboro, OR	04/30/2003	04/29/2003
51,652	Siegel-Roberts (Wkrs)	Portageville, MO	04/30/2003	04/03/2003
51,653	Aid Temporary Services (Wkrs)	Oscelo, AR	04/30/2003	04/29/2003
51,654	Tubelite, Inc. (Comp)	Reed City, MI	05/01/2003	04/22/2003
51,655	Timeplex LLC (Wkrs)	Hackensack, NJ	05/01/2003	04/28/2003
51,656	Springs Industries (Wkrs)	Lancaster, SC	05/01/2003	04/26/2003
51,657	Lucent Technologies (MA)	N. Andover, MA	05/01/2003	05/01/2003
51,658	Ellis Hosiery (Wkrs)	Hickory, NC	05/01/2003	04/30/2003
51,659	Brookline, Inc. (Comp)	Charlotte, NC	05/01/2003	04/30/2003
51,660	Leonard Kunkin Associates (Comp)	Sanderton, PA	05/01/2003	04/30/2003
51,661	Preco Electronics, Inc. (Comp)	Boise, ID	05/01/2003	04/30/2003
51,662	SDS Services (Wkrs)	Danville, KY	05/01/2003	04/23/2003
51,663	Anderson Pattern, Inc. (IAMAW)	Muskegon Hts., MI	05/01/2003	04/20/2003
51,664	Parker-Keeper Inc. (Wkrs)	Springfield, KY	05/01/2003	03/17/2003
51,665	Cord Master Engineering (Comp)	North Adams, MA	05/02/2003	05/01/2003
51,666	International Terra Cotta, Inc. (Comp)	Los Angeles, CA	05/02/2003	05/01/2003
51,667	American Candy Co. (Wkrs)	Selma, AL	05/02/2003	04/11/2003
51,668	Creative Dyeing Inc. (Comp)	Mt. Holly, NC	05/02/2003	04/28/2003
51,669	Premcor (Wkrs)	Hartford, IL	05/02/2003	03/01/2003
51,670	Honeywell (Comp)	El Paso, TX	05/02/2003	04/30/2003
51,671	Hebron Apparel (Wkrs)	Cades, SC	05/02/2003	04/23/2003
51,672	GE Industrial Systems (Comp)	Shreveport, LA	05/02/2003	05/01/2003
51,673	Suntron Corporation (Comp)	Phoenix, AZ	05/02/2003	05/01/2003
51,674	Celeste Industries (MD)	Easton, MD	05/02/2003	05/01/2003
51,675	Aero-Motive Company (Wkrs)	Kalamazoo, MI	05/02/2003	05/01/2003
51,676	F/V Eileen J II (Wkrs)	Bethel, AK	05/02/2003	04/24/2003

[FR Doc. 03–12291 Filed 5–15–03; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

Investigations Regarding Certifications of Eligibility To Apply for Worker Adjustment Assistance

Petitions have been filed with the Secretary of Labor under section 221(a) of the Trade Act of 1974 ("the Act") and are identified in the Appendix to this notice. Upon receipt of these petitions, the Director of the Division of Trade Adjustment Assistance, Employment and Training Administration, has instituted investigations pursuant to section 221(a) of the Act.

The purpose of each of the investigations is to determine whether the workers are eligible to apply for adjustment assistance under Title II, Chapter 2, of the Act. The investigations will further relate, as appropriate, to the determination of the date on which total or partial separations began or threatened to begin and the subdivision of the firm involved.

The petitioners or any other persons showing a substantial interest in the subject matter of the investigations may request a public hearing, provided such request in filed in writing with the Director, Division of Trade Adjustment Assistance, at the address shown below, not later than May 27, 2003.

Interested persons are invited to submit written comments regarding the subject matter of the investigations to the Director, Division of Trade Adjustment Assistance, at the address shown below, not later than May 27, 2003.

The petitions filed in this case are available for inspection at the Office of the Director, Division of Trade Adjustment Assistance, Employment and Training Administration, U.S. Department of Labor, Room C–5311, 200 Constitution Avenue, NW., Washington, DC 20210.

Signed at Washington, DC, this 28th day of April, 2003.

Terrence Clark,

Acting Director, Division of Trade Adjustment Assistance.

APPENDIX

[Petitions Instituted Between 04/22/2003 and 04/25/2003]

TA–W	Subject firm (petitioners)	Location	Date of institution	Date of petition
51,543	Rexnord Industries (Comp)	Morganton, NC	04/22/2003	04/21/2003
51,544	Paramount Apparel International, Inc. (Wkrs)	Winona, MO	04/22/2003	04/15/2003
51,545	Temple-Inland Forest Products Corp. (Comp)	Mt. Jewett, PA	04/22/2003	04/14/2003
51,546	Farley's and Sathers Candy Co., Inc. (Comp)	New Orleans, LA	04/22/2003	04/18/2003
51,547	Datacard Corporation (Wkrs)	Minnetonka, MN	04/22/2003	04/18/2003
51,548	Cypress Semiconductor (Wkrs)	Colorado Spgs., CO	04/22/2003	04/15/2003
51,549	Virtual Magic Animation, Inc. (Comp)	N. Hollywood, CA	04/22/2003	04/18/2003
51,550	Square D Company (Comp)	Asheville, NC	04/22/2003	04/21/2003
51,551	Comp-U-Solve International, Inc. (Comp)	Elgin, IL	04/22/2003	04/15/2003
51,552	Celestica (Comp)	Westminster, CO	04/22/2003	04/21/2003
51,553	Arvin Meritor (Comp)	Loudon, TN	04/22/2003	04/09/2003
51,554	Greensboro Apparel (Wkrs)	Greensboro, AL	04/22/2003	04/21/2003
51,555	BASF Corporation (Comp)	Anderson, SC	04/22/2003	04/21/2003
51,556	Sylvan America, Inc. (Wkrs)	Kittanning, PA	04/22/2003	04/15/2003
51,557	Agilent Technologies (Comp)	Colorado Spgs., Co	04/22/2003	04/21/2003
51,558	Lexington Fabrics, Inc. (Comp)	Florence, AL	04/22/2003	04/15/2003
51,559	Providence Steel, Inc. (Comp)	Providence, RI	04/22/2003	04/18/2003
51,560	Brazeway, Inc. (Wkrs)	Dewitt, IA	04/22/2003	04/15/2003
51,561	Motorola (Comp)	Tewksbury, MA	04/22/2003	04/18/2003
51,562	Interflex Group (The) (Wkrs)	Ashland, VA	04/22/2003	04/16/2003
51,563	Omnglow Corporation (Comp)	W. Springfield, MA	04/22/2003	04/21/2003
51,564	Alphabet (Comp)	Mebane, NC	04/23/2003	04/08/2003
51,565	ThyssenKrupp Budd (UAW)	Philadelphia, PA	04/23/2003	04/22/2003
51,566	Silver Bay Logging, Inc. (Wkrs)	Wrangell, AK	04/23/2003	04/22/2003
51,567	BGF Industries, Inc. (Comp)	South Hill, VA	04/23/2003	04/22/2003
51,568	Wellington Home Products (Comp)	Washington, GA	04/23/2003	04/22/2003
51,569	Arris Group (Wkrs)	Rockfalls, IL	04/23/2003	04/11/2003
51,570	Lydall Composite Materials (Wkrs)	Covington, TN	04/23/2003	04/21/2003
51,571	Shoals Graphics (Comp)	Florence, AL	04/23/2003	04/14/2003
51,572	Lonestar Cutting Services (Wkrs)	El Paso, TX	04/24/2003	04/14/2003
51,573	Agilent Technologies (Comp)	Loveland, CO	04/24/2003	04/21/2003
51,574	Gator Industries (Wkrs)	Hialeah, FL	04/24/2003	04/11/2003
51,575	C P Shades (Wkrs)	Sausalito, CA	04/24/2003	04/15/2003
51,576	Galt Black Warehouse (Comp)	Bangor, ME	04/24/2003	04/09/2003
51,577	ACS (Comp)	El Paso, TX	04/24/2003	04/29/2003
51,578	Earthlink, Inc. (Wkrs)	Pasadena, CA	04/24/2003	04/23/2003
51,579	Peavey Electronics, Inc. (Wkrs)	Leaksville, MS	04/24/2003	04/15/2003
51,580	Plexus (Wkrs)	San Diego, CA	04/24/2003	04/16/2003
51,581	Keykert USA, Inc. (Comp)	Webberville, MI	04/24/2003	04/24/2003
51,582	Jagger Brothers (Comp)	Springvale, ME	04/24/2003	04/14/2003
51,583	Lear Corporation (Comp)	Traverse City, MI	04/24/2003	04/23/2003
51,584	General Electric Power Systems (Wkrs)	Bangor, ME	04/24/2003	04/28/2003
51,585	Masonite International (Wkrs)	Lisbon Falls, ME	04/24/2003	04/11/2003
51,586	Solutia (Wkrs)	Trenton, MI	04/24/2003	04/20/2003
51,587	Nestle Confections and Snacks (RWDSU)	Fulton, NY	04/24/2003	04/14/2003
51,588	Zachry Construction Corp. (Wkrs)	Natchez, MS	04/24/2003	04/04/2003
51,589	Oxford Wire and Cable Services (Comp)	Oxford, MS	04/24/2003	04/17/2003
51,590	Ansell Protective Clothing (Comp)	Thomasville, NC	04/24/2003	04/15/2003
51,591	Fayscott (Comp)	Dexter, ME	04/24/2003	04/16/2003
51,592	Woodard, LLC (Comp)	Salisbury, NC	04/24/2003	04/24/2003
51,593	Draka USA (Wkrs)	Schulkill Haven, PA	04/24/2003	04/16/2003
51,594	Jacobs Textiles (NJ)	Fervington, NJ	04/24/2003	04/23/2003
51,595	Paradise Fisheries (Comp)	Kodiak, AK	04/25/2003	04/21/2003
51,596	State of Alaska Commercial Fisheries (Comp)	Nondalton, AK	04/25/2003	04/18/2003
51,597	F/V Melina (Comp)	Old Harbor, AK	04/25/2003	04/24/2003
51,598	PCS (Wkrs)	North Brook, IL	04/25/2003	04/25/2003
51,599	TekSystems (Wkrs)	Edina, MN	04/25/2003	04/22/2003
51,600	Wheatland Tub Co. (USWA)	Wheatland, PA	04/25/2003	04/22/2003
51,601	Schroder Boards (Comp)	Bingen, WA	04/25/2003	04/18/2003
51,602	Sara Lee Intimate Apparel (Comp)	Woolwine, VA	04/25/2003	04/28/2003
51,603	Sony Semiconductor (Wkrs)	San Antonio, TX	04/25/2003	04/23/2003
51,604	Nortel Networks (Wkrs)	Bohemia, NY	04/25/2003	04/25/2003
51,605	Daws Manufacturing Co., Inc. (Comp)	Parsons, TN	04/25/2003	04/23/2003
51,606	Descartes US Holdings (Wkrs)	Pittsburgh, PA	04/25/2003	04/24/2003
51,607	Spicer Drivershaft Mfg., Inc. (UAW)	Lima, OH	04/25/2003	04/22/2003
51,608	Precision Components Corp. (Comp)	York, PA	04/25/2003	04/25/2003
51,609	Motorola (FLA)	Sunrise, FL	04/25/2003	04/28/2003
51,610	Asyst Technologies (Comp)	Williston, VT	04/25/2003	04/22/2003
51,611	National Steel Corp. (Comp)	Mishawaka, IN	04/25/2003	04/08/2003

[FR Doc. 03–12290 Filed 5–15–03; 8:45 am]
BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

Proposed Collection; Comment Request

ACTION: Notice.

SUMMARY: The Department of Labor, as part of its continuing effort to reduce paperwork and respondent burden, conducts a preclearance consultation program to provide the general public and Federal agencies with an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA95) (44 U.S.C. 3506(c)(2)(A)). This program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed. Currently, the Employment and Training Administration is soliciting comments concerning revisions to the collection of data contained in the Workforce Investment Act (WIA) National Emergency Grant (NEG) application procedures and project oversight and reporting requirements (OMB approval no. 1205–0439, expiring 5/30/03).

OMB granted emergency approval for the use of the forms (ETA 9103, 9014, and 9106) for Trade Health Insurance Coverage Assistance NEGs. Those approved forms have been revised to enable their use for Regular, Disaster and Trade-WIA Dual Enrollment NEGs and two proposed additional forms have been added to this request.

Attached is a copy of the proposed application procedures and project application review process, and project oversight and reporting requirements for the Workforce Investment Act (WIA)National Emergency Grants (NEG).

A copy of this information collection request, with applicable supporting documentation and application procedures, may be obtained by calling the Department of Labor. To obtain documentation contact Darrin King on 202–693–4129 or e-mail: *king.darrin@doleta.gov*.

DATES: Written comments must be submitted to the office listed in the addressee section below on or before July 15, 2003.

ADDRESSEE: Shirley M. Smith, Administrator, Office of National Response, Employment and Training Administration, United States Department of Labor, 200 Constitution Avenue, NW., Room N–5426, Washington, DC 20210, 202–693–3500 (this is not a toll-free number)

SUPPLEMENTARY INFORMATION:

I. Background

Authorized by section 173 of the Workforce Investment Act (WIA), as amended, National Emergency Grants (NEG) are discretionary grants awarded by the Secretary of Labor(the Secretary) intended to complement the resources and service capacity at the state and local area levels by providing supplemental funding for workforce development and employment services and other adjustment assistance for dislocated workers and other eligible individuals as defined in sections 101, 134 and 173 of WIA; sections 113, 114 and 203 of the Trade Act of 2002; and 20 CFR 671.140.

Funds are available for obligation by the Secretary under sections 132 and 173 of the WIA, and section 203 of the Trade Act of 2002. Applications will be accepted on an ongoing basis as the need for funds arises at the state and local level.

The provisions of WIA and the Regulations define four NEG project types:

- *Regular,* which encompasses plant closures, mass layoffs, and multiple layoffs in a single community.
- *Disaster,* which includes all eligible FEMA-declared natural and manmade disaster events.
- *Trade-WIA Dual Enrollment,* which provides funding to ensure that a full range of services is available to trade-impacted individuals eligible under the Trade Adjustment Assistance program provisions of the Trade Act of 2002.
- *Trade Health Insurance Coverage Assistance,* which provides specialized health coverage, support services, and income assistance to targeted individuals defined in the Trade Adjustment Assistance Reform Act of 2002.

II. Review Focus

The Department of Labor is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submissions of responses.

III. Current Actions

The Employment and Training Administration (ETA) of the U.S. Department of Labor (DOL) is announcing proposed application and reporting procedures to enable eligible entities to access funds for National Emergency Grant (NEG) programs under section 173 of the Workforce Investment Act (WIA), as amended. Applications will be accepted on an ongoing basis as the need for funds arises at the state and local level.

The application procedures, application review process, and project oversight and reporting requirements described in this notice are issued under the WIA regulations at 20 CFR 671.125.

Applications for NEG funds may be submitted at any time. The maximum allowable project performance periods are defined by the months remaining in the Program Year in which the grant award is made plus the subsequent two Program Years. The Program Year for these projects is the twelve month period July 1–June 30.

USDOL/ETA expects that the project performance period in any NEG application will reflect a time efficient approach to returning eligible individuals to appropriate employment consistent with the performance goals that apply to NEG projects.

Consistent with the Government Paperwork Elimination Act, the information collection including the application and the reporting form is fully in an electronic format. Electronic applications are intended to provide ease of completion as well as timely processing. The information in the grant application collection will provide the grant officer with the necessary information during the application review process in order to be able to make consistent and objective funding decisions based on the stated funding request evaluation criteria. The quarterly reports information collection will assure accountability and measure actual project performance to date.

USDOL/ETA is committed to making a decision to approve or disapprove all submitted applications within 15 working days from receipt of a complete and responsive application.

Type of Review: Revision.
Title: Workforce Investment Act: National Emergency Grants (NEG)—Application and Reporting Procedures.
OMB Number: 1205–0439.
Affected Public: State, local, or tribal government.
Burden Hours: 1,171.

ESTIMATED TOTAL ANNUALIZED HOUR BURDEN

Reference	Expected total respondents*	Frequency	Expected total responses*	Avg. time per response	Expected burden* (hours)
SF 424	150	1 per project	150	45 minutes	113.0
Narrative Summary	150	1 per project	150	1.0 hour	150.0
ETA 9103	150	1 per project	150	90 minutes	225.0
ETA 9105	75	1 per project	75	30 minutes	38
ETA 9106	150	1 per project	150	1.0 hour	150.0
ETA 9107	100	1 per project	100	30 minutes	50.0
Expenditure Status Report	50	1 per project	50	1.0 hour	50.0
TAA Certification Report	50	1 per project	50	30 minutes	25.0
Reports: ETA 9104	150	quarterly per project	600	30 minutes	300.0
Grant Modifications	140	1 per project	140	30 minutes	70.0
Total			1615		1126

*Actual number will vary based on state and local needs.

Total Burden Cost (capital/startup): 0.
Total Burden Cost (operating/maintaining): 0.

Comments submitted in response to this comment request will be summarized and/or included in the request for Office of Management and Budget approval of the information collection request; they will also become a matter of public record.

Dated: May 12, 2003.

Emily Stover DeRocco,

Assistant Secretary, Employment and Training Administration.

ATTACHMENT

Workforce Investment Act: Application Procedures for National Emergency Grants

Overview

The Employment and Training Administration (ETA) of the U.S. Department of Labor (DOL) is announcing policies and procedures for accessing funds to implement National Emergency Grant (NEG) programs under section 173 of the Workforce Investment Act (WIA), as amended. Funds are available for obligation by the Secretary of Labor (the Secretary) under sections 132 and 173 of the WIA, and section 203 of the Trade Adjustment Assistance Reform Act of 2002. Applications will be accepted on an ongoing basis as the need for funds arises at the state and local level. Applicants are strongly encouraged to submit applications as early as possible following notice of an eligible dislocation event. Grant awards will be made only to the extent that funds remain available.

This application package provides information and procedures by which eligible entities can apply for National Emergency Grant funds to provide workforce development and employment services, and other adjustment assistance for dislocated workers and other eligible individuals as defined in sections 101, 134 and 173 of WIA; sections 113, 114 and 203 of the Trade Adjustment Assistance Reform Act of 2002; and 20 CFR 671.140. It consists of the following eight parts and two appendices:

- Part I provides background about the purpose and use of NEGs.
- Part II describes eligibility, including eligible circumstances for funding, eligible entities for grant awards, and eligible individuals for assistance.
- Part III identifies the policies governing administrative and project design requirements on NEGs.
- Part IV provides an overview of the application submission requirements for each type of NEG project;
- Part V identifies the elements in the application review process including the criteria that will be used to determine the appropriateness of the request for funds.
- Part VI describes alternative approaches to grant funding and the requirements associated with partial funding requests and actions.
- Part VII describes the follow-up planning, oversight and reporting requirements for awarded grants.
- Part VIII describes the grant modification process.

Appendix A contains copies of the required grant application forms. The forms are in an electronic format to facilitate easy completion and timely submission of the application. The Department seeks to establish a process that provides both timely submission of applications for funding, in relation to worker eligibility for assistance, and timely processing of such applications. The electronic formats have been developed to facilitate accomplishment of this objective.

Appendix B contains a directory of Regional Office contacts.

Applications for NEG funds may be submitted at any time. The maximum allowable project performance periods are defined by the months remaining in the Program Year in which the grant award is made plus the subsequent two Program Years. The Program Year for these projects is the 12 month period July 1—June 30. The Employment and Training Administration expects that the project performance period in any NEG application will reflect a time efficient approach to returning eligible individuals to appropriate employment consistent with the performance goals that apply to NEG projects.

The application procedures, application review process, and project oversight and reporting requirements described in this notice are issued under the WIA regulations at 20 CFR 671.125.

Applications must be filed electronically using the Web site *http://testetareports.doleta.gov*. To submit an application electronically, applicants will need to use a PIN # that has been assigned to them by ETA. A PIN # can be obtained by contacting the appropriate Regional Office.

For further information you may contact Shirley M. Smith, Administrator, Office of National Response at (202) 693–3501. (This is not a toll-free number.) A user's guide on preparing and submitting an application electronically and technical assistance on application requirements are available from Regional Offices of ETA and from the Office of National Response, Employment and Training Administration, U.S. Department of Labor, Room N–5426, 200 Constitution Avenue, NW., Washington, DC 20210.

Part I: Background

National Emergency Grants are discretionary awards by the Secretary of Labor and are intended to complement resources and service capacity at the State and local area levels by providing supplemental funding for workforce development and employment services and other adjustment assistance for dislocated workers and other eligible individuals, as defined in sections 101, 134 and 173 of WIA: sections 113, 114 and 203 of the Trade Adjustment Assistance Reform Act of 2002: and 20 CFR 671.140. To be effective, NEG funding actions must be timely in relation to

the need for assistance. At the same time, effective use of NEG funds requires reasonable, informed estimates of the amount of funds needed to respond to eligible events AND responsive implementation plans for assisting the affected workers.

Responsive and responsible use of NEG funds requires a system-based collaboration between the State and local entities that are charged with providing assistance to workers affected by significant dislocation events, and the Federal agency that manages the national fund account. This collaboration must operate in a manner that "puts the right amount of money in the right place at the right time." Inefficiencies in this collaboration are defined by both delayed funding actions (*i.e.*, in relation to the time at which services are needed by eligible workers) and unexpended funds caused by inaccurate estimates of the amount of funding needed to respond to the dislocation event. Correcting these inefficiencies is a shared responsibility by the applicant/grantee and ETA.

The approach to NEG grant awards will be based on quick turnaround initial funding actions where the following can be demonstrated:

- There is an eligible circumstance for funding, with a group of workers who are currently eligible to receive assistance.
- An early intervention strategy has been initiated.*
- Per-participant expenditure levels are consistent with the formula program experience in the proposed project area.*
- There is a plan for timely enrollment of eligible workers into assistance and expenditure of requested funds.
- Overall project performance goals are consistent with the Secretary's goals for dislocated worker assistance.
- Other available funding sources are inadequate to fully fund the level of assistance needed.*

(**Note:** *These do not apply to Disaster and Trade Health Coverage Assistance projects. In addition, the early intervention requirement does not apply to Trade-WIA Dual Enrollment projects.)

ETA is committed to making a decision to approve or disapprove all submitted applications within 15 working days from receipt of a complete and responsive application. Note, however, that if the applicant chooses to submit an unrequested revision to a previously submitted application that is undergoing review, the 15-day processing time period starts over. Additionally, because experience with worker dislocations has consistently demonstrated that actual project requirements often vary from initial planning assumptions (*i.e.*, on factors such as participation levels and intensity of reemployment assistance needs), most NEG requests will be funded incrementally.

Grant recipients will be expected to develop a more complete project operational plan, including project operator agreements and participant registration and assessment information, which should be available for review at the state or grantee level approximately 90 days after the grant award decision. This plan and project implementation experience to date will help verify the full amount of NEG funding needed to adequately respond to the dislocation event.

Part II

A. Eligible Circumstances for Funding

NEG funds may be used to provide assistance in the following circumstances:

- Plant closures and mass layoffs affecting 50 or more workers at a single site of employment;
- Closures and realignments of military installations;
- Multiple layoffs in a single local community that have significantly increased the total number of unemployed individuals in the community; *
- Emergencies or disasters that have been declared eligible for public assistance by the Federal Emergency Management Agency (FEMA); and
- Special assistance, including health coverage assistance, to trade-impacted workers and other individuals eligible under the Trade Adjustment Assistance Reform Act of 2002.

The Secretary may determine that other circumstances are appropriate for NEG funding.

(*In order to qualify under this criterion, the applicant must demonstrate that there is significant economic impact upon the community by indicating such conditions as:

—The "community" is a local area labor market or, if smaller, another geographical entity for which monthly unemployment information is available.

Note: This criterion cannot be applied at the state level although the state may be the grant applicant.

—The total layoffs in the community occurring during the reference period have resulted in an increase in the unemployment rate by at least one percentage point (*e.g.*, from 4% to 5%).

(In order to assure the timely nature of these applications, the "Reference Period" should be a period of time of no less than three months and no greater than six months for which monthly unemployment information is publicly available. The months included in the "Reference Period" cannot overlap with any months included in the time period used in calculating the current program year's formula funding state allotments. The percentage point increase calculation will be based on the unemployment rate of the last month in the "Reference Period" and the month immediately prior to the first month in the "Reference Period.")

—The request includes only those layoffs that have occurred within the reference period used for the unemployment rate computation or later.

—The level of formula funds usage, as described in part IV, section A.7, for both the local area and the state's reserve exceeds 50% in the first quarter of the program year, 70% in the second quarter and 85% in the last two quarters of the program year.)

The provisions of WIA and the Regulations define four NEG project types:

- *Regular*, which encompasses plant closures, mass layoffs, and multiple layoffs in a single community.
- *Disaster*, which includes all eligible FEMA-declared natural and manmade disaster events.
- *Trade-WIA Dual Enrollment*, which provides funding to ensure that a full range of services is available to individuals eligible through a certification under the provisions of the Trade Adjustment Assistance Reform Act of 2002.
- *Trade Health Coverage Assistance*, which provides special health coverage assistance through partial payment of health insurance premium costs under approved plans, support services, and income assistance to targeted individuals defined in the Trade Adjustment Assistance Reform Act of 2002.

B. Eligible Entities for Grant Awards

Entities that are eligible to receive a NEG grant for a Regular Project are:

- For Intrastate Projects:

—The designated state WIA program grantee agency.

—A Local Area Workforce Investment Board (or its fiscal agent).

—A designated organization receiving WIA funding through the Native American Program provision of the Act;

- For Interstate Projects:

—A consortium of states.

—A consortium of local Boards.

For interstate projects, one state must be designated to serve as the grant applicant and recipient. The Secretary may consider applications from other entities where it can be demonstrated that the entity will provide the most effective response to the applicable dislocation(s).

Because NEG grants are a source of supplemental funding to the existing dislocated worker service structure, DOL expects that states, as the entities responsible for ensuring the effective use of all dislocated worker funds within the State, will assume the role of grantee in most instances.

Eligible applicants for Disaster projects and projects to provide special assistance to trade-impacted workers are limited to States. In those cases where the State is the grantee but the project will operate in one or more designated local areas, the State may want to consult with applicable local area Workforce Investment Boards in the development of applications for NEG funds.

C. Eligible Individuals for Assistance

Individuals who are eligible for assistance vary by type of NEG project. The categories of eligible individuals are:

1. A dislocated worker: a. An individual who:

(1) Has been terminated or laid off, or has received a notice of termination or layoff, from employment;

(2) Is eligible for or has exhausted entitlement to unemployment compensation, or has been employed for a duration sufficient to demonstrate to appropriate staff of the One-Stop Center attachment to the workforce but is not eligible for unemployment compensation due to insufficient earnings or having performed services for an employer not covered under the state's unemployment compensation law; and

(3) Is unlikely to return to a previous industry or occupation.

b. An individual who:

(1) Has been terminated or laid off, or has received a notice of termination or layoff, from employment as a result of any permanent closure of, or any substantial layoff at, a plant, facility or enterprise; or

(2) Is employed at a facility at which the employer has made a general announcement that such facility will close within 180 days; or is employed at a facility at which the employer has made a general announcement that such facility will close. (**Note:** Eligibility for other than Core Services requires an announcement by the employer that the facility will close within 180 days.)

c. An individual who was self-employed but is unemployed as a result of general economic conditions in the community in which the individual resides or because of natural disasters.

d. An individual who has been providing unpaid services to family members in the home and who:

(1) Has been dependent on the income of another family member but is no longer supported by that income; and

(2) Is unemployed or underemployed and is experiencing difficulty in obtaining or upgrading employment.

2. A civilian employee of the Department of Defense or the Department of Energy employed at a military installation that is being closed, or that will undergo realignment, within the next 24 months.

3. An individual who is employed in a nonmanagerial position with a Department of Defense contractor, and who is determined to be at risk of termination from employment as a result of reductions in defense expenditures, and whose employer is converting operations from defense to non-defense applications in order to prevent worker layoffs.

4. A member of the Armed Forces who:

a. Was on active duty or full-time National Guard duty;

b. Is involuntarily separated from active duty or full-time National Guard duty, or is separated from active duty or full-time National Guard duty pursuant to a special separation benefits program or voluntary separation incentive program;

c. Is not entitled to retired or retained pay incident to the separation described in (b); and

d. Applies for employment and training assistance before the end of the 180 day period beginning on the date of separation.

5. An individual who is temporarily or permanently laid off as a consequence of a disaster event qualifying for public assistance through a FEMA declaration.

6. An individual who is long-term unemployed.

7. For Trade-WIA Dual Enrollment Projects, an individual covered by a certification under the Trade Adjustment Assistance Reform Act of 2002 who also qualifies as an eligible dislocated worker.

8. For Trade Health Coverage Assistance Projects:

a. An individual who is eligible for a trade readjustment allowance (TRA) under the TAA program, or would be eligible for TRA except that he/she has not yet exhausted his/her unemployment insurance (UI) benefits;

b. A qualified family member of an eligible individual under "a";

c. Recipients of pension benefits through the Pension Benefit Guaranty Corporation.

Not all of these groups are eligible for each type of NEG project assistance. The following table summarizes the relationship between eligible individuals and eligible NEG project types.

	Regular	Disaster	Trade Adjustment Assistance	
			Dual enrollment	Health coverage & related
Dislocated Worker	X	X		
DoD/DoE Civilian Employee	X			
DoD Contractor Employee	X			
Member of Armed Forces	X			
Laid off as result of Disaster		X		
Long-term Unemployed		X		
Trade-impacted			X	X
Qualified Dependent of Eligible Trade-Impacted Worker				X
PBGC Pension Recipient				X

Part III: Administrative and Project Design Requirements

A. General

Grantee organizations, administrative entities, project operators and service providers are subject to the WIA law, regulations, grant application instructions, the terms and conditions of the grant and any subsequent modifications, and to all other applicable Federal laws (including provisions in Federal appropriations laws). Since eligible applicants are generally limited to State, Native American tribal entities, and local Boards that are established through WIA, NEG grantees will be subject to all administrative system requirements that apply to the use of WIA formula funds for dislocated workers, except as otherwise provided in these instructions. Any other entity that seeks to apply for NEG funds will be required to demonstrate its ability to meet these same administrative system requirements.

B. Cost Limitations

Administrative cost limitations shall apply to all NEG grant awards. Cost limitations shall apply to actual expenditures. In general, a 10 percent (10%) limit will apply to all NEG projects.

On projects where the state is the grantee, but services are being provided through one or more local area project operators, the 10 percent cost limit will apply to local area expenditures. In these grants the state may retain an additional amount to perform state-level management and oversight functions in support of the grant. This amount should not exceed 1.5 percent of the total local area funding.

Any costs associated with administering a system of needs-related or health coverage payments must be separately identified in the application budget and justified in the narrative.

Although administrative cost limits on NEG projects are subject to negotiation with the Grant Officer, ETA expects that most projects will be able to be implemented within the above cited limits. Any request for a higher limit will have to be clearly and fully justified in terms of unusual project operating circumstances. Applicants should recognize that any such request will have to be negotiated with the Grant Officer and will delay the timing of the funding action.

C. Indirect Costs

If an indirect cost rate is applied in calculating administrative costs, the applicant must include information from the most recent approval document that identifies the approved indirect cost rate and base, the cognizant approval agency, and the date of the approval. Generally, indirect costs will only be approved at the grantee level. If an application includes indirect costs at the project operator level, the grantee will be responsible for verifying the appropriate documentation to support the costs.

D. Early Intervention

For Regular projects, all NEG applications are expected to be the result of an early intervention process that has been activated through the State's Rapid Response system. As appropriate, the early intervention

process may include the use of formula funds to initiate core and intensive, and even training services. In cases where formula funds have been used to provide services (excluding Rapid Response) to the eligible target group prior to grant award and the availability of formula funds in the state is limited, the Grant Officer may authorize the use of grant funds to reimburse the cost of such services. However, approval for using grant funds for such costs will be limited to costs incurred within the 90-day period preceding the date of receipt of the application. For Regular projects, ETA expects that applications for NEG funding will be submitted within 90 days of the dislocation event(s) or the date on which the target group of workers included in the application become eligible for assistance.

In general, the initiation of early intervention activities will be a pre-condition for the award of NEG funds for Regular projects. If early intervention through Rapid Response has not been feasible, the applicant must document the circumstances that prevented initiation of early intervention in the application.

E. Allowable Activities and Services

NEG funds may be used to provide services of the type described in section 134(d)(2), (3), (4) and (e)(2) and (3) of WIA. For Disaster projects, NEG funds may also be used for temporary employment assistance to provide food, clothing, shelter and related humanitarian assistance; and to perform demolition, cleaning, repair, renovation and reconstruction of damaged and destroyed structures, facilities and lands located within the designated disaster area. For Trade Health Coverage Assistance projects, funds may also be used for the activities and services described in WIA sections 173 (f) and (g). Additional guidance on the use of funds for these activities and services will be provided through Training and Employment Guidance Letters (TEGLs).

F. Project Design and Service Operations

Project operations should be consistent with the established policies and procedures of the State and/or local Board(s) in the area in which the project is to operate. ETA expects that such policies and procedures are flexible enough to respond to the needs of any eligible dislocated worker, including those who are eligible for assistance through NEG funding. Where variations may be appropriate to respond to the needs of special populations (*e.g.*, limited English speaking) who comprise the target group, these will have to be explained and justified in the application.

G. Temporary Employment (Disaster Projects ONLY)

Temporary job creation is limited to public and private non-profit agencies. An individual participant on a Disaster project may be employed for a maximum of six months, or 1,040 hours, whichever is longer. The maximum level of wages paid to a participant is limited to $12,000 excluding the cost of fringe benefits. Fringe benefits should be paid in accordance with the policies of the employer of record for temporarily employed workers. If a higher wage level for some participants is critical to the success of clean-up efforts on the project, the applicant may request a higher limit from the Grant Officer.

H. Integration With Other Resources

The services provided to eligible workers in the large majority of Regular and Trade Adjustment Assistance projects should be financed from multiple sources, including WIA formula, One-Stop partner and other public and private (*e.g.*, employer) funds. In addition, grantees will be expected to make a maximum effort to assist each project participant to apply and qualify for available sources of financial assistance, consistent with the provisions of § 663.320 of the WIA Regulations.

I. Coordination With Trade Act Funds

ETA expects that states will have in place efficient procedures for dual enrollment of eligible workers in both the TAA and WIA programs. Receipt of NEG funds to provide services to TAA eligible workers will be predicated on the existence of such procedures.

J. Performance Outcomes

ETA expects that NEG-funded projects will achieve quality employment and earnings outcomes for the individuals who are served. Each NEG project will be required to achieve performance outcomes for eligible workers that are at least as high as the higher of the corresponding goals set by the Secretary and those negotiated with the applicable state or local Board.

Employment-related performance measures will not apply to Trade Health Coverage Assistance projects.

K. Project Management

ETA expects that NEG-funded projects will be organized to provide the most responsive services from the perspective of the customer (*i.e.*, the dislocated worker). There may be instances in which a project will operate in multiple local workforce areas. Except in the limited cases where projects may span large areas of the state and involve workers from widely dispersed areas and different labor market conditions, the projects should be designed and managed to operate under a consistent set of service policies and procedures that are agreed to by all of the local Boards involved.

Where a single project will operate in multiple local areas, ETA will award the grant to the state or to one of the local Boards that has been designated as grant recipient through an agreement executed by all of the local Boards involved. The grant will be structured to operate on a full service area basis, and the grantee will have full authority to move funds between designated project operators consistent with where eligible workers are seeking services. In these cases, the service policies and procedures applying to the project can be those of the state, of the local Board designated as grant recipient, or ones jointly developed by all of the local Boards as part of the agreement. This principle will also apply to projects that will operate on an interstate basis, that is, an agreement will have to be executed among all of the involved states and the agreement will need to designate one of the states to be the grant recipient, as well as identify the service policies and procedures that will apply.

Part IV: Application Submission Requirements

To be considered for funding, an application must include the information identified in this section. The information requirements are organized by type of NEG project since the requirements vary by project type.

A. Regular Projects

1. Completed and signed *SF 424–Application for Federal Assistance.* This form is the required application for Federal funds. The authorized signatory of the applicant will be issued a unique Personal Identification Number (PIN). The entry of this PIN on the SF 424 constitutes the authorized signature.

2. *Project Synopsis Form (ETA 9106).* This form summarizes key aspects of the proposed project such as project type, type of eligible event, key contact information, planned number of participants, performance measures, and explanation of why requested funds are needed.

3. *Employer Data Form (ETA 9105).* This form provides employer and dislocation site-specific information needed to validate the eligibility of the dislocation event(s) and the target group of workers for NEG assistance. Information includes name and location of employer, date and type of worker notification, date(s) of layoff and number of workers affected, date(s) and types of Rapid Response activities.

4. *Project Operator Data Form (ETA 9107).* This form includes key contact and project scope information (*e.g.*, number of participants, total budget, service area) for each project operator. This form must be completed and submitted only to the degree that Project Operators have been identified at the time of application. This information should be submitted as Project Operators are identified and agreements executed. However, if the applicant is submitting a full funding request, it is expected that Project Operators will have been identified and the contact information on the form should be completed.

5. *Planning Form (ETA 9103).* This form provides cumulative quarterly estimates on project scope (*e.g.*, number of participants, exits), design (*e.g.*, mix of activities), and budget (*e.g.*, costs by type of activity, administrative costs).

6. *Narrative Summary.* This form allows the applicant to provide any explanations/justifications needed for entries in the above forms. Narrative explanations are required in the following instances:

—A notification was made by the employer but no Rapid Response activities have been initiated.
—Some of the affected layoffs have occurred more than 4 months prior to the date of submission of the application.
—The application is being submitted to address "community impact layoffs." The narrative must provide specific information in relation to the specific requirements for meeting this criterion (*see* definition in part II.A of these guidelines).
—The number of planned participants is greater than 50% of the total number of affected workers.
—Either the planned entered employment rate or the planned average wage replacement rate is less than the higher of the corresponding goals set by the Secretary and those negotiated with the applicable State or local Board.
—The planned cost per participant on the project is greater than the cost per participant in the applicant's formula program for dislocated workers.
—There are participants receiving NRPs, which requires explaining how the planned number of recipients and the NRP cost per participant were determined.
—Indirect costs are included in the budget, which requires identifying the following: cognizant approval agency, approved cost rate and base, and date of approval.
—"Other" costs—at either the State or local level—are included in the budget, which requires identifying the specific cost items and amounts.
—Administrative costs related to NRPs are included in the budget, which requires explaining how the administrative cost estimate was derived (*i.e.*, based on number of check payments and check processing costs).
—Administrative expenses at the local/project level, excluding NRPs, are greater than 10% of total expenses.
—In projects where the state is the grantee but the project is implemented through local project operators, State-level management and oversight expenses are greater than 1.5% of total local expenses.

The applicant is free to include narrative explanations of other special factors, but the narrative should not exceed five pages.

7. *Current Obligation and Expenditure Status Report.* The applicant must include, as an attachment to its grant submission, information which presents the current status (*i.e.*, through the most recent month for which information is available) of accrued expenditures and obligations, both for available WIA formula funds in the current Program Year and for each active NEG grant in the applicant's service area. The status report must address the following factors:

—Total available funds;
—Total accrued expenditures;
—Total unexpended but obligated funds in ITAs for currently enrolled participants;
  —Amount for this PY;
  —Amount for next PY;
—Total unexpended but obligated funds for fixed staff costs;
  —Total unexpended but obligated funds for fixed facilities costs;
  —Total unexpended but obligated funds for other (identify) fixed costs.

For formula funds, available funds and obligations for fixed costs are for the current Program Year. For active NEG projects, the available funds and obligations for fixed costs are for the approved budget and project period.

B. Disaster Projects

1. Completed and signed *SF 424–Application for Federal Assistance.* This form is the required application for Federal funds. The authorized signatory of the applicant will be issued a unique Personal Identification Number (PIN). The entry of this PIN on the SF 424 constitutes the authorized signature.

2. *Project Synopsis Form (ETA 9106).* This form summarizes key aspects of the proposed project such as project type, type of eligible event, key contact information, types of eligible individuals to be included in the target group for the project, planned number of participants, performance measures, and contact information. This form includes an entry for the FEMA declaration that qualifies the event as eligible for NEG assistance. This may not be available at the time the application is submitted and, if not, will be entered by DOL/ETA.

3. *Project Operator Data Form (ETA 9105).* This form includes key contact and project scope information (*e.g.*, number of participants, total budget, service area) for each project operator. This form must be completed and submitted only to the degree that ProjectOperators have been identified at the time of application. This information should be submitted as Project Operators are identified and agreements executed. However, if the applicant is submitting a full funding request, it is expected that Project Operators will have been identified and the contact information on the form should be completed.

4. *Planning Form (ETA 9103).* This form provides cumulative quarterly estimates on project scope (*e.g.*, number of participants, exits), design (*e.g.*, mix of activities), and budget (*e.g.*, costs by type of activity, administrative costs).

5. *Narrative Summary.* This form allows the applicant to provide any explanations/justifications needed for entries on the above forms. Narrative explanations will be required in the following instances:

—Dislocated workers and long-term unemployed are included in the target group, but no workforce development services are proposed beyond temporary job creation.
—Either the planned entered employment rate or the planned average wage replacement rate for participants receiving workforce development services is less than the higher of the corresponding goals set by the Secretary and those negotiated with the applicable state or local Board.
—There are participants receiving NRPs, which requires explaining how the planned number of recipients and the NRP cost per participant were determined.
—Indirect costs are included in the budget, which requires identifying the following: cognizant approval agency, approved cost rate and base, and date of approval.
—"Other" costs—at either the State or local level—are included in the budget, which requires identifying the specific cost items and amounts.
—Administrative costs related to NRPs are included in the budget, which requires explaining how the administrative cost estimate was derived (*i.e.*, based on number of check payments and check processing costs).
—Administrative expenses excluding NRPs are greater than 10% of total expenses.
—In projects where the state is the grantee but the project is implemented through local project operators, State-level management and oversight expenses are greater than 1.5% of total local expenses.

The applicant is free to include narrative explanations of other special factors, but the narrative should not exceed five pages.

C. Trade Adjustment Assistance Projects

These projects are limited to assistance to eligible individuals as identified in the Trade Adjustment Assistance Reform Act of 2002. NEG funds can be used in two ways:

—To provide funding to ensure that a full range of services is available to trade-impacted individuals eligible under the provisions of the Trade Adjustment Assistance Reform Act of 2002.
—To pay for costs of health insurance premiums, supportive services (*e.g.*, transportation, child care, dependent care), and income assistance (*e.g.*, needs-related payments) for eligible individuals under the provisions of section 173(g) of the Workforce Investment Act, as amended by the Trade Adjustment Assistance Reform Act of 2002.

Each of these uses is supported by a separate appropriation. Therefore, a separate NEG application will be required for each use for which an applicant is seeking funds. Instructions for applying for NEG funds to pay the costs of allowable system-building activities under section 173(f) have been separately issued.

1. Trade-WIA Dual Enrollment Project

a. Completed and signed *SF 424–Application for Federal Assistance.* This form is the required application for Federal funds. The authorized signatory of the applicant will be issued a unique Personal Identification Number (PIN). The entry of this PIN on the SF 424 constitutes authorized signature.

b. *Project Synopsis Form (ETA 9106).* This form summarizes key aspects of the proposed project such as project type, key contact information, planned number of participants, performance measures, and explanation of why the requested funds are needed.

c. *Project Operator Data Form (ETA 9107).* This form includes key contact and project scope information (*e.g.*, number of participants, total budget, service area) for each project operator. This form must be completed and submitted only to the degree that Project Operators have been identified at the time of application. This information should be submitted as Project Operators are identified and agreements executed. However, if the applicant is submitting a full funding request, it is expected that Project Operators will have been identified and the contact information on the form should be completed.

d. *Planning Form (ETA 9103).* This form provides cumulative quarterly estimates on project scope (*e.g.*, number of participants, exits), design (*e.g.*, mix of activities), and budget (*e.g.*, costs by type of activity, administrative costs).

e. *Narrative Summary.* This form allows the applicant to provide any explanations/justifications needed for entries on the above

forms. Narrative explanations will be required in the following instances:

—Either the planned entered employment rate or the planned average wage replacement rate is less than the higher of the corresponding goals set by the Secretary and those negotiated with the applicable state or local Board-Indirect costs are included in the budget, which requires identifying the following: cognizant approval agency, approved cost rate and base, and date of approval.
—"Other Program" costs—at either the state or local level—are included in the budget, which requires identifying the specific cost items and amounts.
—Administrative expenses are greater than 10% of total expenses.
—In projects where the state is the grantee but the project is implemented through local project operators, State-level management and oversight expenses are greater than 1.5% of total local expenses.

The applicant is free to include narrative explanations of other special factors, but the narrative should not exceed five pages.

f. *TAA Certification Report.* The applicant must include, as an attachment to its grant submission, information which identifies by employer the TAA Trade Certification numbers and the number of workers covered in the certifications. In cases where a petition has been filed but the certification is pending, identify the TAA Trade Petition number, the date the petition was filed, and the number of workers covered in the petition.

g. *Current Obligation and Expenditure Status Report.* The applicant must include, as an attachment to its grant submission, information which presents the current status (*i.e.*, through the most recent month for which information is available) of accrued expenditures and obligations, for both available WIA formula and Trade Act funds in the current Program Year. The status report must address the following factors:

—Total available funds;
—Total accrued expenditures;
—Total unexpended but obligated funds in ITAs for currently enrolled participants;
  —Amount for this PY;
  —Amount for next PY;
—Total unexpended but obligated funds for fixed staff costs;
—Total unexpended but obligated funds for fixed facilities costs;
—Total unexpended but obligated funds for other (identify) fixed costs.

For formula funds, available funds and obligations for fixed costs are for the current Program Year. For active NEG projects, the available funds and obligations for fixed costs are for the approved budget and project period.

2. Trade Health Coverage Assistance

a. Completed and signed *SF 424—Application for Federal Assistance.* This form is the required application for Federal funds. The authorized signatory of the applicant will be issued a unique Personal Identification Number (PIN). The entry of this PIN on the SF 424 constitutes the authorized signature.

b. *Project Synopsis form (ETA 9106).* This form summarizes key aspects of the proposed project such as project type, planned number of participants, and contact information. It also includes identification of the types of health insurance coverage options that will be available to project participants.

c. *Planning Form (ETA 9103).* This form provides cumulative quarterly estimates on project scope (*e.g.*, number of participants, exits), design (*e.g.*, mix of services), and budget (*e.g.*, costs by type of activity, administrative costs).

d. *Narrative Summary.* Describe steps taken to consult and coordinate with appropriate state executive agencies and other appropriate parties in order to ensure that the use of NEG funds to provide health coverage assistance to eligible individuals will be consistent with the policies and procedures of those agencies. A narrative explanation must also be provided in cases where one or more of the following are reflected in the project plan:

—There are participants receiving NRPs, which requires explaining how the planned number of recipients and the NRP cost per participant were determined.
—Indirect costs are included in the budget, which requires identifying the following: Cognizant approval agency, approved cost rate and base, and date of approval.
—"Other" costs are included in the budget, which requires identifying the specific cost items and amounts.
—Administrative costs related to processing payments for qualified health insurance coverage and NRPs are included in the budget, which requires explaining how the administrative cost estimate was derived (*i.e.*, based on number of check payments and check processing costs).
—Administrative expenses excluding NRPs and health insurance coverage assistance are greater than 10% of total expenses.

The applicant is free to include narrative explanations of other special factors, but the narrative should not exceed five pages.

e. *TAA Certification Report.* The applicant must include, as an attachment to its grant submission, information that identifies by employer the TAA Trade Certification numbers and the number of workers covered in the certifications. In cases where a petition has been filed and certification is pending, identify the TAA Trade Petition number, the date the petition was filed, and the number of workers covered in the petition.

Part V: Application Review Process

To be considered for funding, an application must demonstrate that the proposed project meets the purpose of and is consistent with the Act and Regulations and provides all of the information required by these guidelines. Applications that are not completely in accordance with the requirements or do not contain all required submission forms will not be considered as submitted and will not be evaluated for funding until all required information and documentation is provided. Complete applications will be evaluated for responsiveness to the criteria identified in this part. Just as with the submission requirements, the criteria are generally similar for each type of NEG project but there are variations. The specific criteria by type of project are itemized in the following sections.

A. Regular Projects

1. *Eligibility:* To ensure that NEG funds are only awarded to eligible dislocation events and where there is a verifiable target group that is both eligible and in need of assistance.

a. Information demonstrates that the dislocation events cited are eligible for NEG funding.

b. Information demonstrates that identified workers in the target group are currently eligible for assistance.

c. Information indicates that the affected workers are still in need of assistance.

2. *Early Intervention:* To ensure that required Rapid Response is being implemented.

a. Information indicates that timely and appropriate Rapid Response actions have been taken.

b. Information indicates that some effort has been made to contact affected workers and/or their representatives.

3. *Reasonableness of Proposed Services and Costs:* To ensure that NEG projects are designed and operated in accordance with the Federal requirements and the State and local policies that apply to formula-funded dislocated worker programs in the proposed project area, OR, if different, that they are fully justified in terms of target group and reemployment barriers.

a. The planned average cost per participant for the project is within a reasonable range of the state's actual average cost per participant reported for the prior Program Year.

b. The percentage of planned participants receiving needs-related payments (NRPs) in the project is justified in terms of formula program experience or target group characteristics and reemployment barriers.

c. The indirect costs are justified by identifying: (1) The approved indirect cost rate and base; (2) the cognizant approval agency; (3) the date of the approval.

d. "Other" expenditures that are included in the budget—at either the State or local level -are identified and justified in the narrative.

e. The ratio of planned participants to affected workers is reasonable in light of prior experience with NEG projects and with the results of Rapid Response/early intervention activities.

f. Total administrative costs are within the cost limitations at both the state and local project levels, OR are explained and justified.

4. *Timeliness of Assistance:* To ensure that project implementation will reflect timely assistance to affected workers, consistent with the initiation of Rapid Response and other early intervention activities; and to ensure that the rate of expenditures is consistent with rate of on-board participants by service type (*e.g.*, core/intensive, training).

a. All planned participants are enrolled in services in a timely manner and consistent with availability of funds to complete services.

b. Rates of expenditure for Core/Intensive and Supportive Services are consistent with the rates of enrollment in those services quarter-to-quarter.

c. Rates of expenditure for Training Services and NRPs (if applicable) are consistent with the rates of enrollment in those services quarter-to-quarter.

5. *Adequacy of Planned Performance:* To verify that planned performance on NEG projects is appropriate.

a. The planned levels of performance on each applicable performance measure equal to or greater than the higher of the negotiated state goal or the Secretary's goal. OR

b. The application includes specific employment barriers-related information on the project's target group to justify a lower level of performance.

6. *Need for Funds:* To ensure that other funds are not available and/or have not been committed to meet the needs of the workers covered in the application.

a. No other funding exists which provides the same services to the same target group.

b. Available information on expenditures of other dislocated worker funds in the state indicates the need for the requested funds.

B. Disaster Projects

1. *Eligibility:* To ensure that NEG funds are only awarded to eligible dislocation events and where there is a verifiable target group that is both eligible and in need of assistance.

a. FEMA has issued a public declaration that the event is eligible for public assistance.

2. *Reasonableness of Proposed Services and Costs:* To ensure that NEG projects are designed and operated in accordance with the Federal requirements and the State and local policies that apply to formula-funded dislocated worker programs in the proposed project area, OR, if different, that they are fully justified in terms of target group and reemployment barriers.

a. If long-term unemployed and dislocated workers are part of the target group, then the project design includes workforce development services designed to move them into permanent employment.

b. If workforce development services are included in the project design, then:

(1) The planned average cost per participant for the project is within a reasonable range of the state's actual average cost per participant reported for the prior Program Year.

(2) The percentage of planned participants receiving needs-related payments (NRPs) in the project is justified in terms of formula program experience or target group characteristics and reemployment barriers.

c. The indirect costs are justified by identification of: (1) The approved indirect cost rate and base; (2) the cognizant approval agency; (3) the date of the approval.

d. "Other" expenditures that are included in the budget—at either the State or local level—are identified and justified in the narrative.

e. Total administrative costs are within the cost limitation, or are explained and justified.

3. *Timeliness of Assistance:* To ensure that project implementation will reflect timely response to the emergency situation.

a. All planned temporary jobs are filled within the first three quarters of project operation.

b. Information indicates that participants are completing temporary jobs prior to substantially undertaking workforce development activities.

4. *Adequacy of Planned Performance:* For participants receiving workforce development services, to verify that planned performance on NEG projects appropriate.

a. The planned levels of performance on each applicable performance measure equal to or greater than the higher of the negotiated state goal or the Secretary's goal, or

b. The application includes specific employment barriers-related information on the project's target group to justify a lower level of performance.

5. *Need for Funds:* To ensure that other funds are not available and/or have not been committed to meet the needs of the workers covered in the application.

a. There are no other NEG disaster projects in the state that are underexpended according to their approved Implementation Plan and where the funds could be redirected to this project.

C. Dual Enrollment Projects

1. *Eligibility:* To ensure that NEG funds are only awarded to eligible dislocation events and where there is a verifiable target group that is both eligible and in need of assistance.

a. TAA certifications and/or other appropriate documentation to demonstrate eligibility is provided in the application or can be accessed from other sources in DOL/ETA.

2. *Reasonableness of Proposed Services and Costs:* To ensure that NEG projects are designed and operated in accordance with the applicable Federal requirements and the State and local policies in the proposed project area.

a. The average cost per participant for the project is within a reasonable range of the state's actual average cost per participant reported for the prior Program Year.

b. The indirect costs are justified by identifying: (1) The approved indirect cost rate and base; (2) the cognizant approval agency; (3) the date of the approval.

c. "Other" expenditures that are included in the budget—at either the State or local level—are identified and justified in the narrative.

d. Total administrative costs are within the cost limitation, OR are explained and justified.

3. *Adequacy of Planned Performance:* to verify that planned performance on NEG projects appropriate.

a. The planned levels of performance on each applicable performance measure equal to or greater than the higher of the negotiated state goal or the Secretary's goal, or

b. The application includes specific employment barriers-related information on the project's target group to justify a lower level of performance.

4. *Need for Funds:* To ensure that other funds are not available and/or have not been committed to meet the needs of the workers covered in the application.

a. No other funding exists which provides the same services to the same target group.

b. A state verification of the need for the requested funds is provided.

c. Available information on expenditures of other dislocated worker funds, including Trade Act funds, in the state indicates the need for the requested funds.

D. Health Coverage Assistance Projects

1. *Eligibility:* To ensure that NEG funds are only awarded to provide health coverage assistance and supportive services to eligible trade-impacted workers and other eligible individuals, as specified in the Trade Adjustment Assistance Reform Act of 2002.

a. TAA certifications and/or other appropriate documentation to demonstrate eligibility is either provided in the application or can be accessed from other sources in DOL/ETA.

2. *Reasonableness of Proposed Services and Costs:* To ensure that NEG funds are utilized in a manner consistent with the Federal requirements and the State and local policies that apply to trade assistance programs in the proposed project area.

a. The indirect costs are justified by identifying: (1) The approved indirect cost rate and base; (2) the cognizant approval agency; (3) the date of the approval.

b. "Other" expenditures that are included in the budget are identified and justified in the narrative.

c. Total administrative costs, exclusive of health coverage payment processing costs, are within the cost limitation, OR are explained and justified.

d. The basis for administrative costs to process health coverage payments is justified.

Part VI: Funding Approaches

Applications for NEG funds can be funded in whole or in part. Full or partial funding can be at the applicant's request or at the Secretary's discretion. The applicant may request partial funding when the dislocation event is an emergency (*i.e.*, regular projects where there was no advance notification of the layoffs, or any disaster projects) and there is insufficient time to develop an appropriate estimate of the amount of funding that will be needed to respond to the event. In cases where the applicant requests partial funding, the applicant should only request a partial amount of project funding needed in the initial application. After the project design uncertainties have been resolved and the initial partial funding application has been approved, the applicant must complete a new application for the remaining amount of project funding needed.

Where the applicant is submitting a partial funding request due to an emergency situation, the application must be submitted within 15 calendar days of the emergency, unless logistical barriers (*e.g.*, damaged communication systems resulting from a natural disaster) prevent submission within this timeframe.

The following minimum submission requirements shall apply to a partial funding request:

For Regular Projects

—SF 424;
—Project Synopsis Form (ETA 9106) (entries are not required for Planned Cost per Participant, Planned Entered Employment Rate, Planned Wage Replacement Rate and Project Operator Listing);
—Employer Data Form (ETA 9105).

For Disaster Projects

—SF 424;
—Project Synopsis Form (ETA 9106) (entries are not required for Planned Cost per Participant, Planned Entered Employment Rate, Planned Wage Replacement Rate and Project Operator Listing).

As noted previously, most NEG grant awards will be funded incrementally at the Secretary's discretion, with the multiple disbursements of funds all based on the single application. In these cases, a maximum funding level will be approved by the Secretary, but a lesser amount will be initially awarded. The grantee will be required to submit, at a later date, supplemental information in order to request the balance of funds. This information will be specified in the grant award letter, but will include, at a minimum, current information on actual participant levels, performance outcomes, and expenditures.

Part VII: Post-Grant Award Requirements

A. Follow-Up Planning Requirements

Recipients of a NEG will be required to develop a more complete project operational plan as follow-up to the grant award. This plan should be completed within 90 days of grant award and be available for review at the office of the grant recipient. The information in this plan will be used to verify the feasibility of the project design and planned levels of performance based on actual project implementation experience. The content of the plan will vary by type of project but, in general, will need to address factors such as status of Rapid Response activities (for Regular projects), participant enrollments, needs of participants for specific services, implementation schedules, project operator agreements and budgets, and project management and staffing structure.

B. Project Oversight

In addition to the review of the Project Operational Plan, each project will be reviewed at the project midpoint. The purpose of this review will be to verify core compliance factors such as participant eligibility and adequate financial management, assess the effectiveness of participant service policies and processes in achieving project performance goals, and evaluate the need for funds to complete the project.

C. Project Performance Reporting

Each grant recipient will be required to submit to the Grant Officer a Quarterly Report Form (ETA 9104) on actual performance to-date. The report will include the same factors as the Cumulative Quarterly Planning Form (ETA 9103) in the grant document. A copy of this form is included in Appendix A.

Part VIII: Grant Modifications

Grant modifications will be required in the following circumstances:

—To increase or change the approved Project Operators.
—When end-of-project performance is expected to vary by more than 10% from the approved plan regarding: Total participants, participants to be enrolled in training, or expenditures for training.
—To increase the number of participants receiving NRPs/health coverage assistance and/or the amount of expenditures for NRPs/health coverage assistance.
—To increase the approved amounts of administrative costs.
—To change the performance period for the project.
—When actual end-of-project expenditures will be less than the amount of awarded funds.

Grant modifications must be submitted to the Grant Officer. They must be submitted electronically.

Grant modifications will not be accepted within 90 days prior to the scheduled expiration date of the project.

Where there is a need to increase the amount of approved funding a new application for NEG funds must be submitted. To expand the layoff dates, and number of eligible workers, at a dislocation site already included in the approved grant without increasing the amount of approved funding, the grantee may submit a modification that would include additional Employer Data Form(s) for the applicable layoffs and, if needed, a revised Planning Form. A new application is required for the addition of new dislocation sites and target groups of eligible workers.

BILLING CODE 4510-30-P

Appendix A

Appendix A – e-Application and Reporting Forms

Application for Federal Assistance Form (SF 424)

B.

OMB Approval No. 1205-0439
Expiration date: 05/31/2003

Project Synopsis Form

State of ___	Amount of Funding Request $_____	Amount Approved by DOL $_____
Project Name:		
Project Type: __Regular __Disaster __Trade Dual Enrollment __Trade Act Health Insurance		
Eligible Event: __Plant Closure __Mass Layoff __Community Impact Layoffs __Disaster __Military Installation		
Application Type: __Full Funding __Partial (reason: _____)		
For Disaster Project Application ONLY: Name/Description of Disaster Event: _____ Date of FEMA Declaration of Eligibility for Public Assistance: _____ Target Groups (check all that apply): __Unemployed due to Disaster __Long-Term Unemployed __Dislocated Workers		
For Trade Act Health Coverage Project Application ONLY: State-based Qualified Health Insurance Coverage Programs Selected by State __Continuation Provision __High-Risk Pool __State Employees __State Employee-Comparable __Joint State-Private Nonpool __Joint State-Private Pool __Nonfederally Financed		
Applicant Contact Person:		
Street Address 1:		
Street Address 2:		
City: _____ State: ___ Zip Code: _____		
Telephone:		
FAX:		
Email:		
Planned Number of Participants:		Planned Entered Employment Rate: ___%
Planned Cost per Participant: $		Planned Wage Replacement Rate: ___%
% of Planned Participants Receiving NRPs: ___%		
Counties included in Project Service Area:		
Requested Funds Needed because:		
Project Operator Listing:		

ETA 9106
(January 2003)

The reporting requirements are approved by OMB according to the Paperwork Reduction Act of 1995 under OMB approval No. 1205-0439. NOTE: Persons are not required to respond to this collection of information unless it displays a currently valid OMB control number. Respondent's obligation to reply to these reporting requirements are mandatory (PL: 107-210). Public reporting burden for this collection of information is estimated at one hour.
Send comments regarding this burden or any other aspect of this collection, including suggestions for reducing the burden to the U.S. Department of Labor, Office of National Response, Room N-5422, Washington, D.C. 20210
(Paperwork Reduction Project 1205-0439).

C.

OMB Approval No. 1205-XXXX
Expiration date: xx/xx/xx

Employer Data Form

Company/Industry	Location of Facility	Notification Issued?	Date of Notification	Layoff Date(s)	Number of Affected Workers
		__WARN __Public Announcement by Employer __Other(specify) __None			__Check if Closure

Company/Industry	Date(s) of Rapid Response Actions	# of Workers Contacted	TAA Petition	Labor Organization Representation
(should be same as above)	Contact with Employer: _____ Contact with Workers: _____ __None		Date Filed: _____ __Number of Workers Covered __Not applicable	

Type of Business	

ETA 9105
(February 2003)

The reporting requirements are approved by OMB according to the Paperwork Reduction Act of 1995 under OMB approval No. 1205-XXXX. NOTE: Persons are not required to respond to this collection of information unless it displays a currently valid OMB control number. Respondent's obligation to reply to these reporting requirements are mandatory (PL: 107-210). Public reporting burden for this collection of information is estimated at 30 minutes.
Send comments regarding this burden or any other aspect of this collection, including suggestions for reducing the burden to the U.S. Department of Labor, Office of National Response, Room N-5422, Washington, D.C. 20210
(Paperwork Reduction Project 1205-XXXX).

D.

OMB Approval No. 1205-XXXX
Expiration date: xx/xx/xx

Project Operator Data Form

Project Operator:
Street Address 1:
Street Address 2:
City: State: Zip Code:
Contact Person:
Telephone:
FAX:
Email:
Project Duration: Start End
Funding Level: $
Number of Participants:
Counties included in Service Area:

ETA 9107
(February 2003)

The reporting requirements are approved by OMB according to the Paperwork Reduction Act of 1995 under OMB approval No. 1205-XXXX. NOTE: Persons are not required to respond to this collection of information unless it displays a currently valid OMB control number. Respondent's obligation to reply to these reporting requirements are mandatory (PL: 107-210). Public reporting burden for this collection of information is estimated at 30 minutes.
Send comments regarding the burden estimate or any other aspect of this collection, including suggestions for reducing this burden to the U.S. Department of Labor, Office of National Response, Room N-5422, Washington D.C. 20210.
(Paperwork Reduction Project 1205-XXXX).

E.

OMB Approval No. 1205-0439
Expiration date: 05/31/2003

Planning Form

1. Regular Projects

All quarterly entries are CUMULATIVE over all previous quarters.

PERFORMANCE FACTOR	PROGRAM YEAR QUARTER							
IMPLEMENTATION SCHEDULE								
TOTAL PARTICIPANTS								
Enrolled in Core Services								
Enrolled in Intensive Services								
Enrolled in Training								
Receiving Support Services								
Rec. Needs-Related Payments								
Exits								
Entering Employment at Exit								
EXPENDITURE SCHEDULE								
TOTAL EX-PENDITURES: STATE/GRANTEE LEVEL								
NRPs								
Other								
Total Admin., excl. NRPs								
- Indirect								
NRP Admin.								
TOTAL EXPENDI-TURES: LOCAL/ PROJECT OP-ERATOR LEVEL								
Core Services								
Intensive Services								
Training								
Support Services								
NRPs								
Other								
Total Admin. excl. NRPs								
- Indirect								
NRP Admin.								
TOTAL EXPENDI-TURES: STATE AND								

PERFORMANCE FACTOR	PROGRAM YEAR QUARTER							
LOCAL								

2. Disaster Projects

All quarterly entries are CUMULATIVE over all previous quarters.

PERFORMANCE FACTOR	PROGRAM YEAR QUARTER							
IMPLEMENTATION SCHEDULE								
TOTAL PARTICIPANTS								
Enrolled in Core Services								
Enrolled in Intensive Services								
Enrolled in Training								
Receiving Support Services								
Rec. Needs-Related Payments								
Employed in Temp. Disaster Relief Asst.								
Exits								
Entering Employment at Exit								
EXPENDITURE SCHEDULE								
TOTAL EXPENDI-TURES: STATE/ GRANTEE LEVEL								
Support Services								
NRPs								
Other								
Total Admin., excl. NRPs								
- Indirect								
NRP Admin.								
TOTAL EXPENDI-TURES: LOCAL/ PROJECT OPERA-TOR LEVEL								
Participant Wages								
Participant FBs								
Core Services								
Intensive Services								
Training								
Support Services								
NRPs								
Other								
Total Admin., excl.								

PERFORMANCE FACTOR	PROGRAM YEAR QUARTER							
NRPs								
- Indirect								
NRP Admin.								
TOTAL EXPENDI-TURES: STATE AND LOCAL								

3. Trade-WIA Dual Enrollment

All quarterly entries are CUMULATIVE over all previous quarters.

PERFORMANCE FACTOR	PROGRAM YEAR QUARTER							
IMPLEMENTATION SCHEDULE								
TOTAL PARTICIPANTS								
Enrolled in Core Services								
Enrolled in Intensive Services								
Enrolled in Training								
Receiving Support Services								
Exits								
Entering Employment at Exit								
TOTAL EXPENDI-TURES: STATE/ GRANTEE LEVEL								
Support Services								
Other								
Total Admin								
- Indirect								
EXPENDITURE SCHEDULE								
TOTAL EXPENDI-TURES: LOCAL/ PROJECT OPERA-TOR LEVEL								
Core Services								
Intensive Services								
Training								
Support Services								
Other								
Total Admin.								
- Indirect								
TOTAL EXPENDI-TURES: STATE AND LOCAL								

4. Trade Health Insurance Coverage Assistance

All quarterly entries are CUMULATIVE over all previous quarters.

PERFORMANCE FACTOR	PROGRAM YEAR QUARTER							
IMPLEMENTATION SCHEDULE								
TOTAL PARTICIPANTS								
Receiving Support Services								
Rec. Needs-Related Payments								
Rec. Health Coverage Payments								
EXPENDITURE SCHEDULE								
TOTAL EXPENDI-TURES								
NRPs								
Support Services								
Other								
Health Coverage Payments								
Total Admin. excl. NRPs/Health Coverage Payments								
- Indirect								
NRP Admin.								
Health Coverage Payment. Admin.								

ETA 9103
(January 2003)

The reporting requirements are approved by OMB according to the Paperwork Reduction Act of 1995 under OMB approval No. 1205-0439. NOTE: Persons are not required to respond to this collection of information unless it displays a currently valid OMB control number. Respondent's obligation to reply to these reporting requirements are mandatory (PL: 107-210). Public reporting burden for this collection of information is estimated at 90 minutes.
Send comments regarding the burden estimate or any other aspect of this collection, including suggestions for reducing this burden to the U.S. Department of Labor, Office of National Response, Room N-5422, Washington D.C. 20210.
(Paperwork Reduction Project 1205-0439).

F.
0439

OMB Approval No. 1205-

Expiration date:

05/31/2003

Quarterly Report Form

Grantee:
Grant Number:
Project Number:
Performance Period Covered by this Report: _____ through _____

PERFORMANCE FACTOR	REGULAR	DISASTER	DUAL ENROLLMENT	TRADE ACT HEALTH INSURANCE
TOTAL PARTICIPANTS				
Enrolled in Core Services				
Enrolled in Intensive Services				
Enrolled in Training				
Receiving Support Services				
Rec. Needs-Related Payments				
Employed in Temp. Disaster Relief Asst.				
Rec. Health Coverage Payments				
Exits				
Entering Employment at Exit				
TOTAL EXPENDITURES: STATE/GRANTEE LEVEL				
NRPs				
Support Services				
Health coverage Payments				
Other				
Total Admin., excl. NRPs/Health Coverage Payments				
- Indirect				
NRP Admin.				
Health Coverage Payment Admin.				
TOTAL EXPENDITURES: LOCAL/ PROJECT OPERATOR LEVEL				
Participant Wages				
Participant FBs				
Core Services				
Intensive Services				
Training				
Support Services				
NRPs				
Other				
Total Admin. excl. NRPs				
- Indirect				
NRP Admin.				
TOTAL EXPENDITURES: STATE AND LOCAL				

ETA 9104
(January 2003)

The reporting requirements are approved by OMB according to the Paperwork Reduction Act of 1995 under OMB approval No. 1205-0439. NOTE: Persons are not required to respond to this collection of information unless it displays a currently valid OMB control number. Respondent's obligation to reply to these reporting requirements are mandatory (PL: 107-210). Public reporting burden for this collection of information is estimated at 30 minutes.
Send comments regarding the burden estimate or any other aspect of this collection, including suggestions for reducing this burden to the U. S. Department of Labor, Office of National Response, Room N-5422, Washington D.C. 20210.
(Paperwork Reduction Project 1205-0439)

Appendix B – Directory of Regional Offices of USDOL/ETA

REGION 1 – BOSTON

Joseph F. Stoltz
Regional Administrator
U.S. Department of Labor/ETA
JFK Federal Building
Room E-350
Boston, MA 02203
(617) 788-0170
FAX: 617-788-0101

REGION 1 – NEW YORK

Patrick Rowe
Acting Regional Administrator
U.S. Department of Labor/ETA
201 Varick Street, Room 755
New York, NY 10014
(212) 337-2139
FAX: 212-337-2144

REGION 2 – PHILADELPHIA

Lenita Jacobs-Simmons
Regional Administrator
U.S. Department of Labor/ETA
The Curtis Center
170 S. Independence Mall West, Suite 825 East
Philadelphia, PA 19106-3315
(215) 861-5205
FAX: 215-861-5260

REGION 3 – ATLANTA

Helen Parker
Regional Administrator
U.S. Department of Labor/ETA
Atlanta Federal Center
61 Forsyth Street, SW, Room 6M12
Atlanta, GA 30303
(404) 562-2092
FAX: 404-562-2149

REGION 4 – DALLAS/DENVER

Joseph C. Juarez
Regional Administrator
U.S. Department of Labor/ETA
Federal Building
525 Griffin Street, Room 317
Dallas, TX 75202
(214) 767-8263
FAX: 214-767-5113

REGION 5 – CHICAGO/KANSAS CITY

Byron Zuidema
Regional Administrator
U.S. Department of Labor/ETA
230 S. Dearborn Street, Room 628
Chicago, IL 60604
(312) 596-5403
FAX: 312-596-5402

REGION 6 – SANFRANCISCO/SEATTLE

Armando Quiroz
Regional Administrator
U.S. Department of Labor/ETA
71 Stevenson Street, Room 830
San Francisco, CA 94119-3767
(415) 975-4610
FAX: 415-975-4612

[FR Doc. 03–12248 Filed 5–15–03; 8:45 am]
BILLING CODE 4510–30–C

DEPARTMENT OF LABOR

Employment Standards Administration

Wage and Hour Division; Minimum Wages for Federal and Federally Assisted Construction; General Wage Determination Decisions

General wage determination decisions of the Secretary of Labor are issued in accordance with applicable law and are based on the information obtained by the Department of Labor from its study of local wage conditions and data made available from other sources. They specify the basic hourly wage rates and fringe benefits which are determined to be prevailing for the described classes of laborers and mechanics employed on construction projects of a similar character and in the localities specified therein.

The determinations in these decisions of prevailing rates and fringe benefits have been made in accordance with 29 CFR part 1, by authority of the Secretary of Labor pursuant to the provisions of the Davis-Bacon Act of March 3, 1931, as amended (46 Stat. 1494, as amended, 40 U.S.C. 276a) and of other Federal statutes referred to in 29 CFR part 1, Appendix, as well as such additional statutes as may from time to time be enacted containing provisions for the payment of wages determined to be prevailing by the Secretary of Labor in accordance with the Davis-Bacon Act. The prevailing rates and fringe benefits determined in these decisions shall, in accordance with the provisions of the foregoing statutes, constitute the minimum wages payable on Federal and federally assisted construction projects to laborers and mechanics of the specified classes engaged on contract work of the character and in the localities described therein.

Good cause is hereby found for not utilizing notice and public comment procedure thereon prior to the issuance of these determinations as prescribed in 5 U.S.C. 553 and not providing for delay in the effective date as prescribed in that section, because the necessity to issue current construction industry wage determinations frequently and in large volume causes procedures to be impractical and contrary to the public interest.

General wage determination decisions, and modifications and supersedeas decisions thereto, contain no expiration dates and are effective from their date of notice in the **Federal Register**, or on the date written notice is received by the agency, whichever is earlier. These decisions are to be used in accordance with the provisions of 29 CFR parts 1 and 5. Accordingly, the applicable decision, together with any modifications issued, must be made a part of every contract for performance of the described work within the geographic area indicated as required by an applicable Federal prevailing wage law and 29 CFR part 5. The wage rates and fringe benefits, notice of which is published herein, and which are contained in the Government Printing Office (GPO) document entitled "General Wage Determinations Issued Under The Davis-Bacon And Related Acts," shall be the minimum paid by contractors and subcontractors to laborers and mechanics.

Any person, organization, or governmental agency having an interest in the rates determined as prevailing is encouraged to submit wage rate and fringe benefit information for consideration by the Department.

Further information and self-explanatory forms for the purpose of submitting this data may be obtained by writing to the U.S. Department of Labor, Employment Standards Administration, Wage and Hour Division, Division of Wage Determinations, 200 Constitution Avenue, NW., Room S–3014, Washington, DC 20210.

Modification to General Wage Determination Decisions

The number of the decisions listed to the Government Printing Office document entitled "General Wage Determinations Issued Under the Davis-Bacon and related Acts" being modified are listed by Volume and State. Dates of publication in the **Federal Register** are in parentheses following the decisions being modified.

Volume I
None
Volume II
None
Volume III
None
Volume IV
None
Volume V
None
Volume VI
None
Volume VII
None

General Wage Determinations Publication

General wage determinations issued under the Davis-Bacon and related Acts, including those noted above, may be found in the Government Printing Office (GPO) document entitled "General Wage Determinations Issued Under the Davis-Bacon and Related Acts". This publication is available at each of the 50 Regional Government Depository Libraries and many of the 1,400 Government Depository Libraries across the country.

General wage determinations issued under the Davis-Bacon and related Acts are available electronically at no cost on the Government Printing Office site at *http://www.access.gpo.gov/davisbacon.* They are also available electronically by subscription to the Davis-Bacon Online Service (*http://davisbacon.fedworld.gov*) of the National Technical Information Service (NTIS) of the U.S. Department of Commerce at 1–800–363–2068. This subscription offers value-added features such as electronic delivery of modified wage decisions directly to the user's desktop, the ability to access prior wage decisions issued during the year, extensive Help desk Support, etc.

Hard-copy subscriptions may be purchased from: Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402. (202) 512–1800.

When ordering hard-copy subscription(s), be sure to specify the State(s) of interest, since subscriptions may be ordered for any or all of the six separate Volumes, arranged by State. Subscriptions include an annual edition (issued in January or February) which includes all current general wage determinations for the States covered by each volume. Throughout the remainder of the year, regular weekly updates will be distributed to subscribers.

Signed in Washington, DC this 7th day of May, 2003.

Carl Poleskey,
Chief, Branch of Construction Wage Determinations.

[FR Doc. 03–11887 Filed 5–15–03; 8:45 am]
BILLING CODE 4510–27–M

MORRIS K. UDALL SCHOLARSHIP AND EXCELLENCE IN NATIONAL ENVIRONMENTAL POLICY FOUNDATION

Notice of Federal Advisory Committee Meeting

Authority: 5 U.S.C. Appendix; 20 U.S.C. 5601–5609.

AGENCY: U.S. Institute for Environmental Conflict Resolution, Morris K. Udall Foundation.

ACTION: Notice of meeting.

SUMMARY: The National Environmental Conflict Resolution (ECR) Advisory Committee, of the U.S. Institute for Environmental Conflict Resolution, will conduct a public meeting on Monday and Tuesday, June 9–10, 2003, at Coolfont Resort and Conference Center, Cold Run Valley Road, Berkeley Springs, West Virginia. The meeting will occur from 8 a.m. to approximately 3 p.m. on June 9, and from 8 a.m. to approximately 2 p.m. on June 10.

Members of the public may attend the meeting in person. Seating is limited and is available on a first-come, first-served basis. During this meeting, the Committee will discuss: Committee organizational details; environmental conflict resolution (ECR) processes in connection with section 101 of the National Environmental Policy Act (NEPA); best practices in ECR; reports of subcommittees on NEPA Section 101, best practices, and affected communities; and plan for future committee work. Members of the public may make oral comments at the meeting or submit written comments. In general, each individual or group making an oral presentation will be limited to five minutes, and total oral comment time will be limited to one-half hour each day. Written comments may be submitted by mail or by e-mail to *memerson@ecr.gov*. Written comments received in the Institute office far enough in advance of a meeting may be provided to the Committee prior to the meeting; comments received too near the meeting date to allow for distribution will normally be provided to the Committee at the meeting. Written comments may be provided to the Committee until 5 p.m. on Tuesday, June 2, 2003, at the address below, or in person at the time of the meeting. Comments submitted during or after the meeting will be accepted but may not be provided to the Committee until after that meeting.

FOR FURTHER INFORMATION CONTACT: Any member of the public who desires further information concerning the meeting or wishes to submit oral or written comments should contact Melanie Emerson, Program Associate, U.S. Institute for Environmental Conflict Resolution, 130 S. Scott Avenue, Tucson, AZ 85701; phone (520) 670–5299, fax (520) 670–5530, or e-mail at *memerson@ecr.gov*. Requests to make oral comments must be in writing (or by e-mail) to Ms. Emerson and be received no later than 5 p.m. Mountain Standard Time on Tuesday, June 2, 2003. Copies of the draft meeting agenda may be obtained from Ms. Emerson at the address, phone and e-mail address listed above.

Dated: May 12, 2003.

Christopher L. Helms,

Executive Director, Federal Register Liaison Officer.

[FR Doc. 03–12239 Filed 5–15–03; 8:45 am]

BILLING CODE 6820–FN–P

NATIONAL SCIENCE FOUNDATION

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: National Science Foundation.

ACTION: Submission for OMB review; comment request.

SUMMARY: Under the Paperwork Reduction Act of 1995, Pub. L. 104–13 (44 U.S.C. 3501 *et seq.*), and as part of its continuing effort to reduce paperwork and respondent burden, the National Science Foundation (NSF) is inviting the general public and other Federal agencies to comment on this proposed continuing information collection. This is the second notice for public comment; the first was published in the **Federal Register** at 67 FR 79161 on December 27, 2002 and no comments were received. NSF is forwarding the proposed submission to the Office of Management and Budget (OMB) for clearance simultaneously with the publication of this second notice.

DATES: Comments regarding these information collections are best assured of having their full effect if received by OMB within 30 days of publication in the **Federal Register**.

ADDRESSES: Written comments regarding (a) whether the collection of information is necessary for the proper performance of the functions of NSF, including whether the information will have practical utility; (b) the accuracy of NSF's estimate of burden including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility and clarity of the information to be collected; or (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology should be addressed to: Office of Information and Regulatory Affairs of OMB, Attention: Desk Officer for National Science Foundation, 725 17th Street, NW., Room 10235, Washington, DC 20503, and to Teresa R. Pierce, Reports Clearance Officer, National Science Foundation, 4201 Wilson Boulevard, Suite 295, Arlington, Virginia 22230 or send e-mail to *tpierce@nsf.gov*. Copies of the submission may be obtained by calling (703) 292–7555.

FOR FURTHER INFORMATION CONTACT: Teresa R. Pierce, NSF Reports Clearance Officer at (703) 292–7555 or send e-mail to *tpierce@nsf.gov*.

An agency may not conduct or sponsor a collection of information unless the collection of information displays a currently valid OMB control number and the agency informs potential persons who are to respond to the collection of information that such persons are not required to respond to the collection of information unless it displays a currently valid OMB control number.

SUPPLEMENTARY INFORMATION:

Title of Collection: 2003 National Survey of Recent College Graduates

OMB Approval Number: 3145–0077.

Abstract: The National Survey of Recent College Graduates (NSRCG) has been conducted biennially since 1974. The 2003 NSRCG will consist of a sample of individuals who have completed bachelor's and master's degrees in science and engineering from U.S. institutions.

The purpose of this study is to provide national estimates on the new entrants in the science and engineering workforce and to provide estimates on the characteristics of recent bachelor's and master's graduates with science and engineering degrees. The study is one of three components of the Scientists and Engineers Statistical Data System (SESTAT), which produces national estimates of the size and characteristics of the nation's science and engineering population.

The National Science Foundation Act of 1950, as subsequently amended, includes a statutory charge "to provide a central clearinghouse for the collection, interpretation, and analysis of data on scientific and engineering resources, and to provide a source of information for policy formulation by other agencies of the Federal Government." The NSRCG is designed to comply with these mandates by providing information on the supply and utilization of the nation's recent bachelor's and master's level scientists and engineers. Collected data will be used to produce estimates of the characteristics of these individuals. They will also provide necessary input into the SESTAT labor force data system, which produces national estimates of the size and characteristics of the country's science and engineering population. The Foundation uses this information to prepare congressionally mandated reports such as *Women, Minorities and Persons with Disabilities in Science and Engineering* and *Science and Engineering Indicators*. NSF publishes statistics from the survey in many reports, but primarily in the biennial series, Characteristics of Recent Science and Engineering Graduates in the United States. A public release file of collected data, designed to protect respondent confidentiality, also will be made available to researchers on CD–ROM and on the World Wide Web.

Mathematica Policy Research, Inc. of Princeton, New Jersey will conduct the study for NSF. Data are obtained by mail questionnaire, computer assisted telephone interviews and web survey beginning October 2003. The survey will be collected in conformance with the Privacy Act of 1974, the National Science Foundation Act of 1950, as amended, and the Confidential Information Protection and Statistical Act of 2002. The individual's response to the survey is voluntary. NSF will insure that all information collected will be kept strictly confidential and will be used only for research or statistical purposes and for preparing scientific reports and articles.

Expected Respondents: A statistical sample of approximately 18,000 bachelor's and master's degree recipients in science, engineering, and health will be contacted in 2003. A total response rate in 2001 was 80%.

Burden on the Public: The amount of time to complete the questionnaire may vary depending on an individual's circumstances; however, on average it will take approximately 25 minutes to complete the survey. The total annual burden will be 6,000 hours during the year.

Dated: May 12, 2003.

Teresa R. Pierce,

Reports Clearance Officer, National Science Foundation.

[FR Doc. 03–12215 Filed 5–15–03; 8:45 am]

BILLING CODE 7555–01–M

NUCLEAR REGULATORY COMMISSION

[Docket No. 70–27, License No. SNM–42, EA 03–087]

In the Matter of BWX Technologies, Lynchburg, VA; Order Modifying License (Effective Immediately)

BWX Technologies, Inc., ("BWXT" or the "licensee") is the holder of Special Nuclear Material License No. SNM–42 issued by the U.S. Nuclear Regulatory (NRC or Commission) pursuant to Title 10 of the Code of Federal Regulations (10 CFR) part 70. BWXT is authorized by its license to receive, possess, and transfer special nuclear material in accordance with the Atomic Energy Act of 1954, as amended, and 10 CFR part 70. The BWXT license, originally issued on August 22, 1956, was last renewed on October 2, 1995, and is due to expire on September 30, 2005.

On September 11, 2001, terrorists simultaneously attacked targets in New York, NY, and Washington, DC, utilizing large commercial aircraft as weapons. In response to the attacks and intelligence information subsequently obtained, the Commission issued a number of Safeguards and Threat Advisories to its licensees and eventually Orders to selected licensees, including BWXT, to strengthen licensees' capabilities and readiness to respond to a potential attack on a nuclear facility. The Commission has also communicated with other Federal, State and local government agencies and industry representatives to discuss and evaluate the current threat environment in order to assess the nature of the current threat. In addition, the Commission has been conducting a comprehensive review of its safeguards and security programs and requirements. As part of this review, the Commission issued an Order to BWXT on August 21, 2002, to implement interim compensatory measures (ICMs) to enhance physical security of licensed operations at this facility.

As a result of information provided by the intelligence community concerning the nature of the threat and the Commission's assessment of this information, the Commission has determined that a revision is needed to the Design Basis Threat (DBT) specified in 10 CFR 73.1. Therefore, the Commission is imposing a revised DBT, as set forth in Attachment 1 [1] of this Order. The DBT, which supercedes the DBT specified in 10 CFR 73.1, provides the Commission with reasonable assurance that the public health and safety and common defense and security continue to be adequately protected in the current threat environment. The requirements of this Order will remain in effect until the Commission determines otherwise. To address the DBT set forth in Attachment 1 of this Order, BWXT is required to revise its physical security plan, safeguards contingency plan, and guard training and qualification plan that are required by 10 CFR 70.22.

In order to provide assurance that BWXT is implementing prudent measures to protect against the DBT, Materials License SNM–42 shall be modified to require that the physical security plans, including pertinent requirements of the Order issued on August 21, 2002, safeguards contingency plan, and the guard training and qualification plan, required by 10 CFR 70.22 be revised to provide protection against this DBT. Upon completion of NRC review and approval of the revised physical security plan, including pertinent requirements of the Order issued on August 21, 2002, safeguards contingency plan, and the guard training and qualification plan, and their full implementation, the Commission will consider requests to relax or rescind, either in whole or in part, the requirements of the Order issued on August 21, 2002, imposing ICMs. In addition, pursuant to 10 CFR 2.202, 70.32, and 70.81, I find that, in the circumstances described above, the public health, safety and interest and the common defense and security require that this Order be immediately effective.

Accordingly, pursuant to sections 53, 161b, 161i, 161o, 182 and 186 of the Atomic Energy Act of 1954, as amended, and the Commission's regulations in 10 CFR 2.202, 70.32, and 70.81, *it is hereby ordered, effective immediately,* that material license SNM–42 is modified as follows:

A. 1. BWXT shall, notwithstanding the provisions of any Commission regulation, license, or order to the contrary, revise its physical protection plan, safeguards contingency plan, and guard training and qualification plan prepared pursuant to 10 CFR 70.22 to provide protection against the DBT set forth in Attachment 1 to this Order. BWXT shall submit the revised physical security plan, revised safeguards contingency plan, and revised guard training and qualification plan including an implementation schedule, to the Commission for review and approval no later than April 29, 2004.

2. The revised physical security plan, revised safeguards contingency plan, and revised guard training and qualification plan must be fully implemented by the licensee by October 29, 2004.

B. 1. BWXT shall, within twenty (20) days of the date of this Order, notify the Commission, (1) if it is unable to comply with any of the requirements of this Order, (2) if compliance with any of the requirements is unnecessary in its specific circumstances, or (3) if

[1] Attachment 1 contains classified information and will not be released to the public.

implementation of any of the requirements would cause BWXT to be in violation of the provisions of any Commission regulation or its facility license. The notification shall provide BWXT's justification for seeking relief from, or variation of, any specific requirement.

2. If BWXT considers that implementation of any of the requirements of this Order would adversely impact safe operation of its facility, BWXT must notify the Commission, within twenty (20) days of this Order, of the adverse safety impact, the basis for its determination that the requirement has an adverse safety impact, and either a proposal for achieving the same objectives of this Order, or a schedule for modifying the facility to address the adverse safety condition. If neither approach is appropriate, BWXT must supplement its response to Condition B.1 of this Order to identify the condition as a requirement with which it cannot comply, with attendant justifications as required in Condition B.1.

C. BWXT shall report to the Commission, in writing, when it has fully implemented the approved revisions to its physical security plan, safeguards contingency plan, and guard training and qualification plan to protect against the DBT described in Attachment 1 to this Order.

D. Notwithstanding the provisions of any Commission regulation, license or order to the contrary, all measures implemented or actions taken in response to this Order shall be maintained until the Commission determines otherwise, except that BWXT may make changes to their revised physical security plan, safeguards contingency plan, and guard training and qualification plan if authorized by 10 CFR 73.32 (e) or (g).

BWXT's responses to Conditions A.1, B.1, B.2, and C above, shall be submitted in accordance with 10 CFR 70.5. In addition, BWXT's submittals that contain classified information shall be properly marked and handled in accordance with 10 CFR 95.39.

The Director, Office of Nuclear Material Safety and Safeguards may, in writing, relax or rescind any of the above conditions upon demonstration by BWXT of good cause.

IV

In accordance with 10 CFR 2.202; BWXT must, and any other person adversely affected by this Order may, submit an answer to this Order, and may request a hearing on this Order, within twenty (20) days of the date of this Order. Where good cause is shown, consideration will be given to extending the time to request a hearing. A request for extension of time in which to submit an answer or request a hearing must be made in writing to the Director, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and include a statement of good cause for the extension. The answer may consent to this Order. Unless the answer consents to this Order, the answer shall, in writing and under oath or affirmation, specifically set forth the matters of fact and law on which BWXT or other person adversely affected relies and the reasons as to why the Order should not have been issued. Any answer or request for a hearing shall be submitted to the Secretary, Office of the Secretary of the Commission, U.S. Nuclear Regulatory Commission, ATTN: Rulemakings and Adjudications Staff, Washington, DC 20555. Copies also shall be sent to the Director, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555; to the Assistant General Counsel for Materials Litigation and Enforcement at the same address; to the Regional Administrator for NRC Region II and to BWXT if the answer or hearing request is by a person other than the licensee. Because of possible disruptions in delivery of mail to United States Government offices, it is requested that answers and requests for hearing be transmitted to the Secretary of the Commission either by means of facsimile transmission to 301–415–1101 or by e-mail to *hearingdocket@nrc.gov* and also to the Office of the General Counsel either by means of facsimile transmission to 301–415–3725 or by e-mail to *OGCMailCenter@nrc.gov*. If a person other than the licensee requests a hearing, that person shall set forth with particularity the manner in which his or her interest is adversely affected by this Order and shall address the criteria set forth in 10 CFR 2.714(d).

If a hearing is requested by BWXT or a person whose interest is adversely affected, the Commission will issue an Order designating the time and place of any hearing. If a hearing is held, the issue to be considered at such hearing shall be whether this Order should be sustained.

Pursuant to 10 CFR 2.202(c)(2)(i), BWXT may, in addition to demanding a hearing, at the time the answer is filed or sooner, move the presiding officer to set aside the immediate effectiveness of the Order on the ground that the Order, including the need for immediate effectiveness, is not based on adequate evidence but on mere suspicion, unfounded allegations, or error.

In the absence of any request for hearing, or written approval of an extension of time in which to request a hearing, the provisions specified in Section III above shall be final twenty (20) days from the date of this Order without further order or proceedings. If an extension of time for requesting a hearing has been approved, the provisions specified in Section III shall be final when the extension expires if a hearing request has not been received. An answer or a request for hearing shall not stay the immediate effectiveness of this order.

For the Nuclear Regulatory Commission.
Dated this 29th day of April, 2003.

Martin J. Virgilio,

Director, Office of Nuclear Material Safety and Safeguards.

[FR Doc. 03–12255 Filed 5–15–03; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 70–143, License No. SNM–124, EA 03–087]

In the Matter of Nuclear Fuel Services Inc., Erwin, TN; Order Modifying License (Effective Immediately)

Nuclear Fuel Services Inc., ("NFS" or the "licensee") is the holder of Special Nuclear Material License No. SNM–124 issued by the U.S. Nuclear Regulatory (NRC or Commission) pursuant to Title 10 of the Code of Federal Regulations (10 CFR) part 70. NFS is authorized by its license to receive, possess, and transfer special nuclear material in accordance with the Atomic Energy Act of 1954, as amended, and 10 CFR part 70. The NFS license, originally issued on September 18, 1957, was last renewed on July 2, 1999, and is due to expire on July 31, 2009.

On September 11, 2001, terrorists simultaneously attacked targets in New York, NY, and Washington, DC, utilizing large commercial aircraft as weapons. In response to the attacks and intelligence information subsequently obtained, the Commission issued a number of Safeguards and Threat Advisories to its licensees and eventually Orders to selected licensees, including NFS, to strengthen licensees' capabilities and readiness to respond to a potential attack on a nuclear facility. The Commission has also communicated with other Federal, State and local government agencies and industry representatives to discuss and evaluate the current threat environment in order to assess the nature of the current threat. In addition, the

Commission has been conducting a comprehensive review of its safeguards and security programs and requirements. As part of this review, the Commission issued an Order to NFS on August 21, 2002, to implement interim compensatory measures (ICMs) to enhance physical security of licensed operations at this facility.

As a result of information provided by the intelligence community concerning the nature of the threat and the Commission's assessment of this information, the Commission has determined that a revision is needed to the Design Basis Threat (DBT) specified in 10 CFR 73.1. Therefore, the Commission is imposing a revised DBT, as set forth in Attachment 1 [1] of this Order. The DBT, which supercedes the DBT specified in 10 CFR 73.1, provides the Commission with reasonable assurance that the public health and safety and common defense and security continue to be adequately protected in the current threat environment. The requirements of this Order will remain in effect until the Commission determines otherwise. To address the DBT set forth in Attachment 1 of this Order, NFS is required to revise its physical security plan, safeguards contingency plan, and guard training and qualification plan that are required by 10 CFR 70.22.

In order to provide assurance that NFS is implementing prudent measures to protect against the DBT, Materials License SNM–124 shall be modified to require that the physical security plan, safeguards contingency plan, and the guard training and qualification plan, required by 10 CFR 70.22 be revised to provide protection against this DBT. Upon completion of NRC review and approval of the revised physical security plan, including pertinent requirements of the Order issued on August 21, 2002, safeguards contingency plan, and the guard training and qualification plan, and their full implementation, the Commission will consider requests to relax or rescind, either in whole or in part, the requirements of the Order issued on August 21, 2002, imposing ICMs. In addition, pursuant to 10 CFR 2.202, 70.32, and 70.81, I find that, in the circumstances described above, the public health, safety and interest and the common defense and security require that this Order be immediately effective.

Accordingly, pursuant to sections 53, 161b, 161i, 161o, 182 and 186 of the Atomic Energy Act of 1954, as amended, and the Commission's regulations in 10 CFR 2.202, 70.32, and 70.81, it is hereby ordered, effective immediately, that material license SNM–124 is modified as follows:

A. 1. NFS shall, notwithstanding the provisions of any Commission regulation, license, or order to the contrary, revise its physical protection plan, safeguards contingency plan, and guard training and qualification plan prepared pursuant to 10 CFR 70.22 to provide protection against the DBT set forth in Attachment 1 to this Order. NFS shall submit the revised physical security plan, revised safeguards contingency plan, and revised guard training and qualification plan including an implementation schedule, to the Commission for review and approval no later than April 29, 2004.

2. The revised physical security plan, revised safeguards contingency plan, and revised guard training and qualification plan must be fully implemented by the licensee by October 29, 2004.

B. 1. NFS shall, within twenty (20) days of the date of this Order, notify the Commission, (1) if it is unable to comply with any of the requirements of this Order, (2) if compliance with any of the requirements is unnecessary in its specific circumstances, or (3) if implementation of any of the requirements would cause NFS to be in violation of the provisions of any Commission regulation or its facility license. The notification shall provide NFS's justification for seeking relief from, or variation of, any specific requirement.

2. If NFS considers that implementation of any of the requirements of this Order would adversely impact safe operation of its facility, NFS must notify the Commission, within twenty (20) days of this Order, of the adverse safety impact, the basis for its determination that the requirement has an adverse safety impact, and either a proposal for achieving the same objectives of this Order, or a schedule for modifying the facility to address the adverse safety condition. If neither approach is appropriate, NFS must supplement its response to Condition B.1 of this Order to identify the condition as a requirement with which it cannot comply, with attendant justifications as required in Condition B.1.

C. NFS shall report to the Commission, in writing, when it has fully implemented the approved revisions to its physical security plan, safeguards contingency plan, and guard training and qualification plan to protect against the DBT described in Attachment 1 to this Order.

D. Notwithstanding the provisions of any Commission regulation, license or order to the contrary, all measures implemented or actions taken in response to this Order shall be maintained until the Commission determines otherwise, except that NFS may make changes to their revised physical security plan, safeguards contingency plan, and guard training and qualification plan if authorized by 10 CFR 73.32(e) or (g).

NFS's responses to Conditions A.1, B.1, B.2, and C above, shall be submitted in accordance with 10 CFR 70.5. In addition, NFS's submittals that contain classified information shall be properly marked and handled in accordance with 10 CFR 95.39.

The Director, Office of Nuclear Material Safety and Safeguards may, in writing, relax or rescind any of the above conditions upon demonstration by NFS of good cause.

In accordance with 10 CFR 2.202, NFS must, and any other person adversely affected by this Order may, submit an answer to this Order, and may request a hearing on this Order, within twenty (20) days of the date of this Order. Where good cause is shown, consideration will be given to extending the time to request a hearing. A request for extension of time in which to submit an answer or request a hearing must be made in writing to the Director, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and include a statement of good cause for the extension. The answer may consent to this Order. Unless the answer consents to this Order, the answer shall, in writing and under oath or affirmation, specifically set forth the matters of fact and law on which NFS or other person adversely affected relies and the reasons as to why the Order should not have been issued. Any answer or request for a hearing shall be submitted to the Secretary, Office of the Secretary of the Commission, U.S. Nuclear Regulatory Commission, ATTN: Rulemakings and Adjudications Staff, Washington, DC 20555. Copies also shall be sent to the Director, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555; to the Assistant General Counsel for Materials Litigation and Enforcement at the same address; to the Regional Administrator for NRC Region II and to NFS if the answer or hearing request is by a person other than the licensee. Because of possible disruptions in delivery of mail to United States Government offices, it is requested that answers and requests for hearing be transmitted to the Secretary

[1] Attachment 1 contains classified information and will not be released to the public.

of the Commission either by means of facsimile transmission to 301–415–1101 or by e-mail to *hearingdocket@nrc.gov* and also to the Office of the General Counsel either by means of facsimile transmission to 301–415–3725 or by e-mail to *OGCMailCenter@nrc.gov*. If a person other than the licensee requests a hearing, that person shall set forth with particularity the manner in which his or her interest is adversely affected by this Order and shall address the criteria set forth in 10 CFR 2.714(d).

If a hearing is requested by NFS or a person whose interest is adversely affected, the Commission will issue an Order designating the time and place of any hearing. If a hearing is held, the issue to be considered at such hearing shall be whether this Order should be sustained.

Pursuant to 10 CFR 2.202(c)(2)(i), NFS may, in addition to demanding a hearing, at the time the answer is filed or sooner, move the presiding officer to set aside the immediate effectiveness of the Order on the ground that the Order, including the need for immediate effectiveness, is not based on adequate evidence but on mere suspicion, unfounded allegations, or error.

In the absence of any request for hearing, or written approval of an extension of time in which to request a hearing, the provisions specified in Section III above shall be final twenty (20) days from the date of this Order without further order or proceedings. If an extension of time for requesting a hearing has been approved, the provisions specified in Section III shall be final when the extension expires if a hearing request has not been received. An answer or a request for hearing shall not stay the immediate effectiveness of this order.

Dated this 29th day of April, 2003.

For the Nuclear Regulatory Commission.

Martin J. Virgilio,

Director, Office of Nuclear Material Safety and Safeguards.

[FR Doc. 03–12257 Filed 5–15–03; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Licensing Support Network; Advisory Review Panel

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of public meeting.

SUMMARY: The Licensing Support Network Advisory Review Panel (LSNARP) will hold its next meeting on Tuesday and Wednesday, June 3–4, 2003, at the Alexis Park, located at 375 East Harmon, Las Vegas, Nevada 89109. The meeting will be open to the public pursuant to the Federal Advisory Committee Act (Pub. L. 94–463, 86 Stat. 770–776).

Agenda: The meeting will be held from 8:30 a.m. to 5 p.m. on Tuesday, June 3 and from 8:30 to close of business on Wednesday, June 4. The preliminary agenda includes the topics listed below. Additional details regarding timing of presentations and changes to the agenda may be obtained through the contacts listed below and will be announced prior to the meeting.

1. Introductory Remarks—NRC/LSNARP
   NRC Organizational responsibilities and roles
2. LSN Status Report—NRC–ASLBP/LSN Administrator
   Status and Schedule for document loading—NRC/DOE/Potential Parties
3. Large Document Summary Paper (review of 4 options)—NRC–OCIO
4. Large Document Draft Guidance—NRC–OCIO
5. Discussion of LSNARP membership on Options and Guidance—LSNARP
6. Scope of documents to be loaded on LSN—NRC–OGC
   Document Duplication
   Status of Revised Topical Guidelines
   Meaning of Certification
7. Need for Part 2 rule changes/schedule—NRC–OGC
   Electronic and/or CD-submittal
   Ambiguities in rule
   Document Duplication

SUPPLEMENTARY INFORMATION: The LSN is an internet based electronic discovery database being developed to aid the NRC in complying with the schedule for decision on the construction authorization for the high-level waste repository contained in section 114(d) of the Nuclear Waste Policy Act of 1982, as amended. In 1998, the NRC Rules of Practice in 10 CFR part 2, subpart J, were modified to provide for the creation and operation of the LSN, an internet-based technological solution to the submission and management of records and documents relating to the licensing of a geologic repository for the disposal of high-level radioactive waste. (63 FR 71729) Pursuant to 10 CFR 2.1011(d), the agency has chartered the LSNARP, an advisory committee that provides advice to the NRC on fundamental issues relating to LSN design, operation, maintenance, and compliance monitoring.

FOR FURTHER INFORMATION CONTACT: U.S. Nuclear Regulatory Commission, Office of the Secretary, Mail Stop O–16 C1, Washington, DC 20555–0001; Attn: Andrew Bates (telephone 301–415–1963; e-mail *ALB@NRC.GOV*) or Atomic Safety and Licensing Board Panel, Mail Stop T–3 F23, Attn: Jack G. Whetstine (telephone 301–415–7391; e-mail *JGW@NRC.GOV*).

Public Participation: Interested persons may make oral presentations to the LSNARP or file written statements. An oral presentations request should be made to one of the contact persons listed above as far in advance as practicable so that appropriate arrangements can be made.

Dated: May 9, 2003.

Andrew L. Bates,

Advisory Committee Management Officer.

[FR Doc. 03–12254 Filed 5–15–03; 8:45 am]

BILLING CODE 7590–01–P

OCCUPATIONAL SAFETY AND HEALTH REVIEW COMMISSION

Government Performance and Results Act of 1993; Revised Strategic Plan

AGENCY: Occupational Safety and Health Review Commission.

ACTION: Notice of request for commission.

SUMMARY: The Occupational Safety and Health Review Commission (Review Commission) announces the availability of its revised Strategic Plan for fiscal years 2003–2008 for public comment. Prepared in accordance with the Government Performance and Results Act of 1993, the revised Strategic Plan may be viewed at the Review Commission's Web site, *http://www.oshrc.gov* under "What's New." The revised Strategic Plan defines the Review Commission's strategic goal and objectives, and the methods for achieving them. The Review Commission seeks the views of those who practice before it and those who are affected by its case dispositions.

DATES: Comments should be submitted on or before June 16, 2003. The revised Strategic Plan will become effective in October 2003, without any further notice in the **Federal Register**, unless comments or government approval procedures necessitate otherwise.

ADDRESSES: Submit any written comments to Patricia A. Randle, Executive Director, Occupational Safety and Health Review Commission, 1120 20th St., NW., Ninth Floor, Washington, DC 20036–3419.

FOR FURTHER INFORMATION CONTACT: Patricia A. Randle, Executive Director, Occupational Safety and Health Review Commission, 1120 20th St., NW., Ninth Floor, Washington, DC 20036–3419, telephone (202) 606–5380.

SUPPLEMENTARY INFORMATION: The Government Performance and Results Act requires the development of strategic plans and performance measures in the Federal government. It also requires that agencies review and update their strategic plans every three years.

The Review Commission continues to pursue its commitment to providing superior service to the public. This plan changes the 2000–2005 strategic goals and performance objectives. It maintains and revises the public service goal, and eliminate its two strategic goals—external and organizational. However, the Review Commission will continue to make the strategic goals a priority within the agency and its progress with respect to them will be monitored for effectiveness. The revised Strategic Plan is intended to focus on the Review Commission's primary public service mission and will enhance and improve the agency's effectiveness and public accountability.

Your comments on the revised Strategic Plan will be useful and will provide the agency with additional information to facilitate the agency's continued ability to provide superior public service.

(Authority: 5 U.S.C. 306(d))

Dated: May 12, 2003.

W. Scott Railton,

Chairman.

[FR Doc. 03–12258 Filed 5–15–03; 8:45 am]

BILLING CODE 7600–01–M

OVERSEAS PRIVATE INVESTMENT CORPORATION

Submission for OMB Review; Comment Request

AGENCY: Overseas Private Investment Corporation (OPIC).

ACTION: Request for comments.

SUMMARY: Under the provision of the Paperwork Reduction Act (44 U.S.C. Chapter 35), agencies are required to publish a Notice in the **Federal Register** notifying the public that Agency is preparing an information collection request for OMB review and approval and to request public review and comment on the submission.

At OPIC's request, OMB is reviewing this information collection for emergency processing for 90 days, under OMB control number 3420–0011.

Comments are being solicited on the need for the information, its practical utility, the accuracy of the Agency's burden estimate, and on ways to minimize the reporting burden, including automated collection techniques and uses of other forms of technology. The proposed form under review is summarized below.

DATES: Comments must be received on or before June 16, 2003.

ADDRESSES: Copies of the subject form and the request for review prepared for submission to OMB may be obtained from the Agency submitting officer. Comments on the form should be submitted to the Agency Submitting Officer.

FOR FURTHER INFORMATION CONTACT: OPIC Agency Submitting Officer: Bruce Campbell, Record Manager, Overseas Private Investment Corporation, 1100 New York Avenue, NW., Washington, DC 20527; (202) 336–8563.

Summary Form Under Review

Type of Request: Revised form.

Title: Application for Political Risk Investment Insurance.

Form Number: OPIC–52.

Frequency of Use: Once per investor per project.

Type of Respondents: Business or other institution (except farms); individuals.

Standard Industrial Classification Codes: All.

Description of Affected Public: U.S. companies or citizens investing overseas.

Reporting Hours: 7 hours per project.

Number of Responses: 150 per year.

Federal Cost: $28,350.

Authority for Information Collection: Sections 231, 234(a), 239(d), and 240A of the Foreign Assistance Act of 1961, as amended.

Abstract (Needs and Uses): The application is the principle document used by OPIC to determine the investor's and the project's eligibility for political risk insurance, assess the environmental impact and developmental effects of the project, measure the economic effects for the U.S. and the host country economy, and collect information for insurance underwriting analysis.

Dated: May 12, 2003.

Eli Landy,

Senior Counsel, Administrative Affairs, Department of Legal Affairs.

[FR Doc. 03–12231 Filed 5–15–03; 8:45 am]

BILLING CODE 3210–01–M

SMALL BUSINESS ADMINISTRATION

[Declaration of Disaster #3499]

State of Oklahoma

As a result of the President's major disaster declaration on May 10, 2003, I find that Canadian, Cleveland, Grady, Kingfisher, Lincoln, Logan, McClain, Oklahoma and Pottawatomie Counties in the State of Oklahoma constitute a disaster area due to damages caused by severe storms and tornadoes occurring on May 8, 2003 and continuing. Applications for loans for physical damage as a result of this disaster may be filed until the close of business on July 9, 2003 and for economic injury until the close of business on February 10, 2004 at the address listed below or other locally announced locations: U.S. Small Business Administration, Disaster Area 3 Office, 4400 Amon Carter Blvd., Suite 102, Fort Worth, TX 76155.

In addition, applications for economic injury loans from small businesses located in the following contiguous counties may be filed until the specified date at the above location: Blaine, Caddo, Comanche, Creek, Garfield, Garvin, Major, Noble, Okfuskee, Payne, Pontotoc, Seminole and Stephens in the State of Oklahoma.

The interest rates are:

	Percent
For Physical Damage:	
Homeowners With Credit Available Elsewhere:	5.625
Homeowners Without Credit Available Elsewhere:	2.812
Businesses With Credit Available Elsewhere:	5.906
Businesses and Non-Profit Organizations Without Credit Available Elsewhere:	2.953
Others (Including Non-Profit Organizations) With Credit Available Elsewhere:	5.500
For Economic Injury:	
Businesses and Small Agricultural Cooperatives Without Credit Available Elsewhere:	2.953

The number assigned to this disaster for physical damage is 349912 and for economic injury the number is 9V2700.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008).

Dated: May 12, 2003.

Cheri C. Wolff,

Acting Associate Administrator for Disaster Assistance.

[FR Doc. 03–12253 Filed 5–15–03; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[Declaration of Disaster #3498]

State of Tennessee

As a result of the President's major disaster declaration on May 8, 2003, I find that Carroll, Cheatham, Chester, Crockett, Dickson, Dyer, Gibson, Hardeman, Haywood, Henderson, Henry, Houston, Lake, Lauderdale, Madison, Montgomery, Obion, Robertson, Stewart and Weakley Counties in the State of Tennessee constitute a disaster area due to damages caused by severe storms, tornadoes and flooding occurring on May 4, 2003 and continuing. Applications for loans for physical damage as a result of this disaster may be filed until the close of business on July 7, 2003 and for economic injury until the close of business on February 6, 2004 at the address listed below or other locally announced locations: U.S. Small Business Administration, Disaster Area 2 Office, One Baltimore Place, Suite 300, Atlanta, GA 30308.

In addition, applications for economic injury loans from small businesses located in the following contiguous counties may be filed until the specified date at the above location: Benton, Davidson, Decatur, Fayette, Hardin, Hickman, Humphreys, McNairy, Sumner, Tipton and Williamson in the State of Tennessee; Calloway, Christian, Fulton, Graves, Hickman, Logan, Simpson, Todd and Trigg counties in the State of Kentucky; New Madrid and Pemiscot counties in the State of Missouri; Mississippi county in the State of Arkansas; and Alcorn, Benton and Tippah counties in the State of Mississippi.

The interest rates are:

	Percent
For Physical Damage:	
Homeowners With Credit Available Elsewhere	5.625
Homeowners Without Credit Available Elsewhere	2.812
Businesses With Credit Available Elsewhere	5.906
Businesses and Non-Profit Organizations Without Credit Available Elsewhere	2.953
Others (Including Non-Profit Organizations) With Credit Available Elsewhere	5.500
For Economic Injury:	
Businesses and Small Agricultural Cooperatives Without Credit Available Elsewhere	2.953

The number assigned to this disaster for physical damage is 349812. For economic injury the number is 9V2200 for Tennessee; 9V2300 for Kentucky; 9V2400 for Missouri; 9V2500 for Arkansas; and 9V2600 for Mississippi.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008).

Dated: May 12, 2003.

Cheri C. Wolff,

Acting Associate Administrator for Disaster Assistance.

[FR Doc. 03–12252 Filed 5–15–03; 8:45 am]

BILLING CODE 8025–01–P

DEPARTMENT OF STATE

[Public Notice 4367]

Culturally Significant Objects Imported for Exhibition Determinations: "Manet and the American Civil War: The Battle of the 'Kearsarge' and the 'Alabama'"

AGENCY: Department of State.

ACTION: Notice.

SUMMARY: Notice is hereby given of the following determinations: Pursuant to the authority vested in me by the Act of October 19, 1965 (79 Stat. 985; 22 U.S.C. 2459), Executive Order 12047 of March 27, 1978, the Foreign Affairs Reform and Restructuring Act of 1998 (112 Stat. 2681, *et seq.*; 22 U.S.C. 6501 *note, et seq.*), Delegation of Authority No. 234 of October 1, 1999, and Delegation of Authority No. 236 of October 19, 1999, as amended, I hereby determine that the objects to be included in the exhibition "Manet and the American Civil War: The Battle of the 'Kearsarge' and the 'Alabama'," imported from abroad for temporary exhibition within the United States, are of cultural significance. The objects are imported pursuant to loan agreements with the foreign owners. I also determine that the exhibition or display of the exhibit objects at the Metropolitan Museum of Art, from on or about June 2, 2003 until on or about August 17, 2003, and at possible additional venues yet to be determined, is in the national interest. Public Notice of these Determinations is ordered to be published in the **Federal Register.**

FOR FURTHER INFORMATION CONTACT: For further information, including a list of the exhibit objects, contact Orde F. Kittrie, Attorney-Adviser, Office of the Legal Adviser, U.S. Department of State, (telephone: 202/401–4779). The address is U.S. Department of State, SA–44, 301 4th Street, SW., Room 700, Washington, DC 20547–0001.

Dated: May 12, 2003.

C. Miller Crouch,

Principal Deputy Assistant Secretary for Educational and Cultural Affairs, Department of State.

[FR Doc. 03–12295 Filed 5–15–03; 8:45 am]

BILLING CODE 4710–08–P

DEPARTMENT OF STATE

[Public Notice 4306]

Advisory Committee on Historical Diplomatic Documentation; Notice of Meeting

The Advisory Committee on Historical Diplomatic Documentation will meet in the Department of State, 2201 C Street, NW., Washington, DC, June 4–5, 2003, in Conference Room 1205. Prior notification and a valid government-issued photo ID (such as driver's license, passport, U. S. government or military ID) are required for entrance into the building. Members of the public planning to attend must notify Gloria Walker, Office of the Historian (202–663–1124) no later than May 28, 2003 to provide date of birth, valid government-issued photo identification number and type (such as driver's license number/state, passport number/country, or U.S. government ID number/agency or military ID number/branch), and relevant telephone numbers. If you cannot provide one of the enumerated forms of ID, please consult with Gloria Walker for acceptable alternative forms of picture identification.

The Committee will meet in open session from 1:30 p.m. through 3 p.m. on Wednesday, June 4, 2003, to discuss declassification and transfer of Department of State records to the National Archives and Records Administration and the status of the *Foreign Relations* series. The remainder of the Committee's sessions from 3:15 p.m. until 4:30 p.m. on Wednesday, June 4, 2003, and 9 a.m. until 1 p.m. on Thursday, June 5, 2003, will be closed in accordance with section 10(d) of the Federal Advisory Committee Act (Pub. L. 92–463). The agenda calls for discussions of agency declassification decisions concerning the *Foreign Relations* series and other declassification issues. These are matters not subject to public disclosure under 5 U.S.C.552b(c)(1) and the public interest requires that such activities be withheld from disclosure.

Questions concerning the meeting should be directed to Marc J. Susser, Executive Secretary, Advisory Committee on Historical Diplomatic Documentation, Department of State, Office of the Historian, Washington, DC 20520, telephone (202) 663–1123, (e-mail *history@state.gov*).

Dated: April 30, 2003.

Marc J. Susser,

Executive Secretary, Advisory Committee on Historical Diplomatic Documentation, Department of State.

[FR Doc. 03–12297 Filed 5–15–03; 8:45 am]

BILLING CODE 4710–11–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Finance Docket No. 34299]

Gulf & Ohio Railways Holding Co., Inc., H. Peter Claussen and Linda C. Claussen—Continuance in Control Exemption—Chattahoochee & Gulf Railroad Co., Inc.

AGENCY: Surface Transportation Board, DOT.

ACTION: Notice of exemption.

SUMMARY: The Board grants an exemption, under 49 U.S.C. 10502, from the prior approval requirements of 49 U.S.C. 11323–25 for Gulf & Ohio Railways Holding Co., Inc., a noncarrier, and H. Peter Claussen and Linda C. Claussen (collectively, Petitioners), to continue in control of Chattahoochee & Gulf Railroad Co., Inc. (CGR), upon CGR's becoming a rail carrier pursuant to a related transaction in STB Finance Docket No. 34298.[1]

DATES: This exemption will be effective June 15, 2003. Petitions to stay must be filed by June 2, 2003. Petitions to reopen must be filed by June 10, 2003.

ADDRESSES: Send an original and 10 copies of all pleadings, referring to STB Finance Docket No. 34299, to: Surface Transportation Board, 1925 K Street, NW., Washington, DC 20423–0001. In addition, send one copy of pleadings to Troy W. Garris, Weiner Brodsky Sidman Kider PC, 1300 19th Street, NW., Fifth Floor, Washington, DC 20036–1609.

FOR FURTHER INFORMATION CONTACT: Beryl Gordon, (202) 565–1600 (assistance for the hearing impaired is available through the Federal Information Relay Service (FIRS) at 1–800–877–8339).

SUPPLEMENTARY INFORMATION: Additional information is contained in the Board's decision. Copies of the decision may be purchased from Dā 2 Dā Legal Copy Service by calling (202) 293–7776 (assistance for the hearing impaired is available through FIRS at 1–800–877–8339) or by visiting Suite 405, 1925 K Street, NW., Washington, DC 20006.

Board decisions and notices are available on our Web site at *http://www.stb.dot.gov.*

Decided: May 9, 2003.

By the Board, Chairman Nober and Commissioner Morgan.

Vernon A. Williams,

Secretary.

[FR Doc. 03–12260 Filed 5–15–03; 8:45 am]

BILLING CODE 4915–00–P

[1] *Chattahoochee & Gulf Railroad Co., Inc.—Acquisition and Operation Exemption-Line of Central of Georgia Railroad Company,* STB Finance Docket No. 34298 (STB served Mar. 26, 2003).

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Finance Docket No. 34316 (Sub-No. 1)]

The Burlington Northern and Santa Fe Railway Company—Trackage Rights Exemption—Union Pacific Railroad Company

AGENCY: Surface Transportation Board, DOT.

ACTION: Petition for partial revocation.

SUMMARY: The Board, under 49 U.S.C. 10502, exempts the temporary trackage rights arrangement between The Burlington Northern and Santa Fe Railway Company (BNSF) and Union Pacific Railroad Company (UP) described in STB Finance Docket No. 34316,[1] to permit them to expire upon completion of the construction of BNSF's rail line between Kamey and Seadrift, TX.[2]

DATES: This exemption is effective on June 15, 2003. Petitions to stay must be filed by May 27, 2003. Petitions to reopen must be filed by June 5, 2003.

ADDRESSES: An original and 10 copies of all pleadings referring to STB Finance Docket No. 34316 (Sub-No. 1) must be filed with the Surface Transportation Board, 1925 K Street, NW., Washington, DC 20423–0001. In addition, a copy of all pleadings must be served on petitioner's representative: Sarah W. Bailiff, Senior General Attorney, The Burlington Northern and Santa Fe Railway Company, P.O. Box 961039, Fort Worth, TX 76161–0039.

FOR FURTHER INFORMATION CONTACT: Beryl Gordon, (202) 565–1600. (Assistance for the hearing impaired is available through the Federal Information Relay Service (FIRS) at 1–800–877–8339.)

SUPPLEMENTARY INFORMATION: Additional information is contained in the Board's decision. Copies of the decision may be purchased from Dā 2 Dā Legal Copy Service by calling (202) 293–7776 (assistance for the hearing impaired is available through FIRS at 1–800–877–8339) or by visiting Suite 405, 1925 K Street, NW., Washington, DC 20006.

Board decisions and notices are available on our Web site at *http://www.stb.dot.gov.*

Decided: May 9, 2003.

By the Board, Chairman Nober and Commissioner Morgan.

Vernon A. Williams,

Secretary.

[FR Doc. 03–12261 Filed 5–15–03; 8:45 am]

BILLING CODE 4915–00–P

[1] The temporary trackage rights exempted in *The Burlington Northern and Santa Fe Railway Company—Trackage Rights Exemption—Union Pacific Railroad Company,* STB Finance Docket No. 34316 (STB served Mar. 12, 2003) are over UP's Port Lavaca Subdivision from milepost 15.4 to milepost 14.2 and from milepost 6.95 to milepost 6.0. These segments are on either side of a 7.25-mile portion of UP's Port Lavaca Subdivision over which BNSF was granted an exemption for overhead trackage rights in the same notice. This petition does not involve those overhead trackage rights.

[2] BNSF was granted authority to construct and operate a railroad line in *The Burlington Northern and Santa Fe Railway Company—Construction and Operation Exemption—Seadrift and Kamey, TX,* STB Finance Docket No. 34003 (STB served Jan. 25, 2002). BNSF estimates that the construction will be completed before the end of June 2003.

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Finance Docket No. 34340]

Vermilion Valley Railroad Company, Inc.—Operation Exemption—FNG Logistics Co.

Vermilion Valley Railroad Company, Inc. (VVRR), a noncarrier, has filed a verified notice of exemption under 49 CFR 1150.31 to operate approximately 5.91 miles of railroad owned by FNG Logistics Co. (FNG) between milepost QSO–5.18 near the Illinois/Indiana State line and milepost QSO–11.09 near Olin, in Vermillion and Warren Counties, IN.[1] FNG certifies that its projected revenues as a result of this transaction will not exceed those that would qualify it as a Class III rail carrier.

The transaction was scheduled to be consummated on or about April 30, 2003, the effective date of the exemption (7 days after the exemption was filed).

[1] The subject line was acquired by Flex-N-Gate Corporation (Flex) under the Board's offer of financial assistance procedures at 49 U.S.C. 10904 and 49 CFR 1152.27 in *New York Central Lines, LLC—Abandonment Exemption—in Vermillion and Warren Counties, IN,* STB Docket No. AB–565 (Sub-No. 4X) (STB served Sept. 17, 2002). In a motion filed on April 22, 2003, Flex and FNG, a wholly owned subsidiary of Flex, requested permission to substitute FNG for Flex as the purchaser of the line. That request was granted by decision served on April 28, 2003.

If the verified notice contains false or misleading information, the exemption is void *ab initio*. Petitions to reopen the proceeding to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction.

An original and 10 copies of all pleadings, referring to STB Finance Docket No. 34340, must be filed with the Surface Transportation Board, 1925 K Street, N.W., Washington, DC 20423–0001. In addition, a copy of each pleading must be served on Daniel A. LaKemper, P.O. Box 185, Morton, IL 61550.

Board decisions and notices are available on our Web site at *http://www.stb.dot.gov*.

Decided: May 7, 2003.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 03–11878 Filed 5–15–03; 8:45 am]

BILLING CODE 4915–00–P

DEPARTMENT OF THE TREASURY

President's Commission on the United States Postal Service

AGENCY: Department of the Treasury, Departmental Offices.

ACTION: Notice of meeting.

SUMMARY: Notice is given of a meeting of the President's Commission on the United States Postal Service.

DATES: The meeting will be held on Wednesday, May 28, 2003, from approximately 2 p.m. to 5 p.m. e.s.t.

ADDRESSES: The meeting will be held in Room 216 of the Hart Senate Office Building, 2nd and C Streets, NE., Washington, DC 20510.

FOR FURTHER INFORMATION CONTACT: Roger Kodat, Designated Federal Official, 202–622–7073.

SUPPLEMENTARY INFORMATION: At the public meeting, the Commission will continue its examination of the issues outlined in Executive Order 13278. Witnesses will testify at the invitation of the Commission. Seating is limited.

Dated: May 12, 2003.

Roger Kodat,

Designated Federal Official.

[FR Doc. 03–12222 Filed 5–13–03; 11:16 am]

BILLING CODE 4811–16–P

DEPARTMENT OF THE TREASURY

President's Commission on the United States Postal Service

AGENCY: Department of the Treasury, Departmental Offices.

ACTION: Notice of meeting.

SUMMARY: Notice is given of a meeting of the President's Commission on the United States Postal Service.

DATES: The meeting will be held on Thursday, May 29, 2003, from approximately 8:30 a.m. to 12:30 p.m. e.s.t.

ADDRESSES: The meeting will be held in Room 216 of the Hart Senate Office Building, 2nd and C Streets, NE., Washington, DC 20510.

FOR FURTHER INFORMATION CONTACT: Roger Kodat, Designated Federal Official, 202–622–7073.

SUPPLEMENTARY INFORMATION: At the public meeting, the Commission will continue its examination of the issues outlined in Executive Order 13278. Witnesses will include Postmaster General John E. Potter and Comptroller General of the United States David M. Walker. Seating is limited.

Dated: May 12, 2003.

Roger Kodat,

Designated Federal Official.

[FR Doc. 03–12223 Filed 5–13–03; 11:17 am]

BILLING CODE 4811–16–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Art Advisory Panel—Notice of Closed Meeting

AGENCY: Internal Revenue Service, Treasury.

ACTION: Notice of closed meeting of Art Advisory Panel.

SUMMARY: Closed meeting of the Art Advisory Panel will be held in Washington, DC.

DATES: The meeting will be held June 11, 2003.

ADDRESSES: The closed meeting of the Art Advisory Panel will be held on June 11, 2003, in Room 4200E beginning at 10 a.m., Franklin Court Building, 1099 14th Street, NW., Washington, DC 20005.

FOR FURTHER INFORMATION CONTACT: Karen Carolan, C:AP:AS, 1099 14th Street, NW., Washington, DC 20005. Telephone (202) 694–1861 (not a toll free number).

SUPPLEMENTARY INFORMATION: Notice is hereby given pursuant to section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. (1988), that a closed meeting of the Art Advisory Panel will be held on June 11, 2003, in Room 4200E beginning at 10:00 a.m., Franklin Court Building, 1099 14th Street, NW., Washington, DC 20005.

The agenda will consist of the review and evaluation of the acceptability of fair market value appraisals of works of art involved in Federal income, estate, or gift tax returns. This will involve the discussion of material in individual tax returns made confidential by the provisions of 26 U.S.C. 6103.

A determination as required by section 10(d) of the Federal Advisory Committee Act has been made that this meeting is concerned with matters listed in section 552b(c)(3), (4), (6), and (7), and that the meeting will not be open to the public.

David B. Robison,

Chief, Appeals.

[FR Doc. 03–12345 Filed 5–15–03; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Open Meeting of the Taxpayer Advocacy Panel, E-Filing Issue Committee

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice.

SUMMARY: An open meeting of the Taxpayer Advocacy Panel, E-Filing Issue Committee, will be conducted.

DATES: The meeting will be held Saturday, June 7, 2003, from 8 a.m. to 5 p.m.

FOR FURTHER INFORMATION CONTACT: Mary Ann Delzer at 1–888–912–1227, or (414) 297–1604.

SUPPLEMENTARY INFORMATION: Notice is hereby given pursuant to section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. (1988) that an open meeting of the Taxpayer Advocacy Panel, E-Filing Issue Committee, will be held Saturday, June 7, 2003, from 8 a.m. to 5 p.m. The Taxpayer Advocacy Panel is soliciting public comment, ideas, and suggestions on improving customer service at the Internal Revenue Service. You can submit written comments to the panel by faxing to (414) 297–1623, or by mail to Taxpayer Advocacy Panel, Stop 1006MIL, 310 West Wisconsin Avenue, Milwaukee, WI 53203–2221. Public comments will also be welcome during the meeting. Please contact Mary Ann Delzer at 1–888–912–1227 or (414) 297–1604 for more information.

The agenda will include the following: Various IRS issues.

Note: Last minute changes to the agenda are possible and could prevent effective advance notice.

Dated: May 9, 2003.

Tersheia D. Carter,

Acting Director, Taxpayer Advocacy Panel.

[FR Doc. 03–12346 Filed 5–15–03; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Open Meeting of the Taxpayer Advocacy Panel (TAP) Multilingual Initiative Issue (MLI) Committee Will Be Conducted (Via Teleconference)

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice.

SUMMARY: An open meeting of the Taxpayer Advocacy Panel (TAP) Multilingual Initiative Issue (MLI) Committee will be conducted (via teleconference).

DATES: The meeting will be held Thursday, June 19, 2003.

FOR FURTHER INFORMATION CONTACT: Inez E. De Jesus at 1–888–912–1227, or 954–423–7977.

SUPPLEMENTARY INFORMATION: Notice is hereby given pursuant to section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. (1988) that an open meeting of the Taxpayer Advocacy Panel Multilingual Initiative Issue Committee will be held Thursday, June 19, 2003 from 1 p.m. e.s.t. to 2 p.m. e.s.t. via a telephone conference call. The Taxpayer Advocacy Panel is soliciting public comments, ideas and suggestions on improving customer service at the Internal Revenue Service. Individual comments will be limited to 5 minutes. If you would like to have the TAP consider a written statement, please call 1–888–912–1227 or 954–423–7977, or write Inez E. De Jesus, TAP Office, 1000 South Pine Island Rd., Suite 340, Plantation, FL 33324. Due to limited conference lines, notification of intent to participate in the telephone conference call meeting must be made with Inez E. De Jesus. Ms. De Jesus can be reached at 1–888–912–1227 or 954–423–7977.

The agenda will include the following: Various IRS issues.

Note: Last minute changes to the agenda are possible and could prevent effective advance notice.

Dated: May 12, 2003.

Tersheia D. Carter,

Acting Director, Taxpayer Advocacy Panel.

[FR Doc. 03–12347 Filed 5–15–03; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Open Meeting of the Taxpayer Advocacy Panel (TAP) Multilingual Initiative Issue (MLI) Committee Will Be Conducted (Via Teleconference)

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice.

SUMMARY: An open meeting of the Taxpayer Advocacy Panel (TAP) Multilingual Initiative Issue (MLI) Committee will be conducted (via teleconference).

DATES: The meeting will be held Friday, June 13, 2003.

FOR FURTHER INFORMATION CONTACT: Inez E. De Jesus at 1–888–912–1227, or 954–423–7977.

SUPPLEMENTARY INFORMATION: Notice is hereby given pursuant to section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. (1988) that an open meeting of the Taxpayer Advocacy Panel Multilingual Initiative Issue Committee will be held Friday, June 13, 2003 from 1 p.m. e.s.t. to 2 p.m. e.s.t. via a telephone conference call. The Taxpayer Advocacy Panel is soliciting public comments, ideas and suggestions on improving customer service at the Internal Revenue Service. Individual comments will be limited to 5 minutes. If you would like to have the TAP consider a written statement, please call 1–888–912–1227 or 954–423–7977, or write Inez E. De Jesus, TAP Office, 1000 South Pine Island Rd., Suite 340, Plantation, FL 33324. Due to limited conference lines, notification of intent to participate in the telephone conference call meeting must be made with Inez E. De Jesus. Ms. De Jesus can be reached at 1–888–912–1227 or 954–423–7977.

The agenda will include the following: Various IRS issues.

Note: Last minute changes to the agenda are possible and could prevent effective advance notice.

Dated: May 12, 2003.

Tersheia D. Carter,

Acting Director, Taxpayer Advocacy Panel.

[FR Doc. 03–12348 Filed 5–16–03; 8:45 am]

BILLING CODE 4830–01–P

UTAH RECLAMATION MITIGATION AND CONSERVATION COMMISSION

Notice of Availability of the Final Environmental Assessment and Finding of No Significant Impact for the Rehabilitation or Replacement of Diversion Dams on the Duchesne and Strawberry Rivers in Utah

AGENCY: Utah Reclamation Mitigation and Conservation Commission (Mitigation Commission).

ACTION: Notice of availability of the Final Environmental Assessment and Finding of No Significant Impact for the rehabilitation or replacement of diversion dams on the Duchesne and Strawberry Rivers in Utah.

SUMMARY: The Central Utah Project Completion Act (Pub. L. 102–575) authorized Federal funds to rehabilitate diversion dams on the Duchesne and Strawberry Rivers in Utah. The project is needed to reduce adverse effects on fish and wildlife resources.

The Final Environmental Assessment (EA) was prepared as a Programmatic document. It discusses potential environmental impacts associated with reconstructing and operating an unspecified diversion dam on the Duchesne or Strawberry River. The new diversion dam could serve single or multiple diversion rights. Potential environmental impacts addressed in the document are those impacts that would be expected regardless of which diversion dam is rehabilitated. Potential impacts to wetlands, threatened and endangered species and cultural resources are generally site specific and/or require special permits. Potential impacts to these environmental disciplines would be addressed in a Supplemental Environmental Assessment (SEA), if needed.

After considering the public comments received during scoping and agency consultation, and the analyses in the EA of environmental effects, it is my decision to select Alternative 3 for implementation, excepting the combination of the Farm Creek, Jasper-Pike and New Tabby diversions. With Alternative 3, several of the existing diversions on the Duchesne River and several of the existing diversions on the Strawberry River would be combined and new diversion dams that would serve multiple diversion rights would be constructed. This would involve transferring points of diversion from the downstream diversion(s) to the upstream diversion that would be constructed. Diversions would be combined only when the involved water rights would not be adversely affected.

However, not every diversion structure can be potentially combined with one or more of the other diversions. The combination of the Farm Creek, Jasper-Pike and New Tabby diversions as described under Alternative 3 is not approved to be combined into a single diversion because cumulative depletions of stream flows in the intervening approximately 1.4 miles of Duchesne River channel between the Farm Creek and Jasper-Pike diversions would cause a substantial adverse impact that would not be compensated for by the elimination of one or two of the diversions from the river. Alternative 3 was formulated to include consolidation of diversions that appeared feasible and reasonable based on physical and logistical considerations. At this time, potential legal, social, and institutional constraints have only been considered at a cursory level. Further examination of consolidation options could preclude some projects from being implemented. In those instances wherein Alternative 3 is determined not to be feasible, and in the case of the Farm Creek, Jasper-Pike and New Tabby diversions, Alternative 2 is selected for implementation. Alternative 2 involves the rehabilitation or construction of a new diversion facility on the Duchesne or Strawberry River at or in very close proximity to the location of the existing diversions.

The Final Environmental Assessment is a programmatic analysis. Potential environmental impacts addressed in the EA are those impacts that would be expected regardless of the diversion dam that is rehabilitated. Potential impacts to wetlands, threatened and endangered species and cultural resources generally are site specific and/or require special permits. As a subsequent decision to rehabilitate or reconstruct a particular diversion structure is made, the site-specific impacts will be assessed using a site-specific environmental evaluation checklist. If no additional impacts beyond those assessed in this EA are identified, the checklist will be approved as a decision document, and no further NEPA analysis will be conducted.

If any item on the checklist has not been satisfied, or if a project is expected to create impacts not described in the EA, to create impacts greater in magnitude or duration than described in the EA or would require mitigation measures that are not described in the EA to keep impacts below significant levels, a Supplemental EA (SEA) to address site specific impacts would be prepared for each diversion dam concurrent with the preparation of the final engineering or design report for a specific structure.

The EA was developed with the public in accordance with the Commission's National Environmental Policy Act (NEPA) rule (43 CFR part 10010.20). The Final EA and Decision Notice were sent to 28 agencies and individuals on May 2, 2003.

The EA is related to other potential future actions, specifically the detailed design and implementation of diversion dam replacements or rehabilitation. The programmatic perspective has been considered in the document. Future construction projects may require separate or supplemental NEPA compliance.

ADDRESSES: Address all comments and/or requests for further information to Mark Holden, Projects Manager, Utah Reclamation Mitigation and Conservation Commission, 102 West 500 South, Suite 315, Salt Lake City, UT, 84101.

FOR FURTHER INFORMATION CONTACT: Mark Holden, Projects Manager, 801–524–3146 *mholden@uc.usbr.gov.*

Dated: May 2, 2003.

Michael C. Weland,

Utah Reclamation Mitigation and Conservation Commission Executive Director.

[FR Doc. 03–12140 Filed 5–15–03; 8:45 am]

BILLING CODE 4310–05–P

DEPARTMENT OF VETERANS AFFAIRS

Research Advisory Committee On Gulf War Illnesses; Notice of Meeting

The Department of Veterans Affairs (VA) gives notice under Public Law 92–463 (Federal Advisory Committee Act) that the Research Advisory Committee on Gulf War Veterans' Illnesses will meet on June 16–17, 2003, at the Department of Veterans Affairs, 810 Vermont Avenue, NW., Room 230, Washington, DC. The meeting on June 16 will convene at 8:30 a.m. and adjourn at 5 p.m. The meeting on June 17 will convene at 8:30 a.m. and adjourn at 3:30 p.m. Both meetings will be open to the public.

The purpose of the Committee is to provide advice and make recommendations to the Secretary of Veterans Affairs on proposed research studies, research plans and research strategies relating to the health consequences of military service in the Southwest Asia theater of operations during the Persian Gulf War.

On June 16, the Committee will hear research presentations from representatives of the Midwest Research Institute, Lawrence Livermore National Laboratories and Lovelace Respiratory Research Institute. The Committee will also receive an update on VA research from the VA's Chief Research and Development Officer. On June 17, the Committee will hear presentations on and discuss new research and reports. The Committee plans to discuss and develop recommendations and a work plan. Time will be available for public comment on both days.

Members of the public may submit written statements for the Committee's review to Ms. Laura O'Shea, Committee Manager, Department of Veterans Affairs (008A1), 810 Vermont Avenue, NW., Washington, DC 20420. Any member of the public wishing further information should contact Ms. Laura O'Shea at (202) 273–5031.

Dated: May 7, 2003.

By Direction of the Secretary.

E. Philip Riggin,

Committee Management Officer.

[FR Doc. 03–12250 Filed 5–15–03; 8:45 am]

BILLING CODE 8320–01–M

DEPARTMENT OF VETERANS AFFAIRS

VA Vocational Rehabilitation and Employment Task Force; Notice of Meeting

The Department of Veterans Affairs (VA) gives notice under Public Law 92–463 (Federal Advisory Committee Act) that a meeting of the VA Vocational Rehabilitation and Employment (VR&E) Task Force will be held on Thursday, May 29, 2003, from 9 a.m. to 5 p.m., and on Friday, May 30, 2003, from 9 a.m. to 2 p.m., in Room 230, Department to Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC. The meeting is open to the public.

The purpose of the Task Force is to conduct an independent review of the VR&E Program within the Veterans Benefits Administration (VBA). The Task Force will provide recommendations to the Secretary of Veterans Affairs on improving the Department's ability to provide comprehensive services and assistance to veterans with service-connected disabilities and employment handicaps in becoming employable, and obtaining and maintaining suitable employment. The Task Force will also assess independent living services provided by VBA.

Both sessions of the May 29–30 meeting will focus on briefings for Task Force members by providers of vocational rehabilitation services and those who oversee VA's delivery of vocational rehabilitation and employment services. On May 29, presentations will be made by the General Accounting Office, VA's Office of Inspector General, congressional committee staff and the State Directors of Veterans Affairs. On May 30, the Task Force will be briefed by the Department of Labor, Department of Education and VA's Veterans Health Administration and Veterans Benefits Administration.

No time will be allocated for receiving oral presentations from the public. Interested parties who wish to attend the meeting should have adequate identification for entry into the building and will be subject to a security screening process. Members of the public may submit written comments for review by the Committee to: Mr. John O'Hara, Executive Director, VA Vocational Rehabilitation and Employment Task Force, VA Office of Policy, Planning, and Preparedness (008B), 810 Vermont Avenue, NW., Washington, DC 20420. Mr. O'Hara can be reached at (202) 273–5130; fax number (202) 273–5991 and e-mail address *john.o'hara@mail.va.gov.*

Dated: May 9, 2003.

By Direction of the Secretary:

E. Philip Riggin,

Committee Management Officer.

[FR Doc. 03–12249 Filed 5–15–03; 8:45 am]

BILLING CODE 8320–01–M

DEPARTMENT OF VETERANS AFFAIRS

Privacy Act of 1974; System of Records

AGENCY: Department of Veterans Affairs (VA).

ACTION: Notice of new system of records—Center for Veterans Enterprise VA VetBiz Vendor Information Pages (123VA00VE).

SUMMARY: The Privacy Act of 1974, 5 U.S.C. 522a(e), requires that all agencies publish in the **Federal Register** a notice of the existence and character of their systems of records. Notice is hereby given that VA is establishing a new system of records entitled "VA VetBiz Vendor Information Pages" (123VA00VE).

DATES: Comments on the establishment of this new system of records must be received no later than June 16, 2003. If no public comment is received, the new system will become effective June 16, 2003.

ADDRESSES: You may mail or hand-deliver written comments concerning the proposed new system of records to the Office of Regulations Management (02D), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420; or fax comments to (202) 273–9289; or e-mail comments to *OGCRegulations@mail.va.gov.* All relevant material received before June 16, 2003, will be considered. Comments will be available for public inspection at the above address in the Office of Regulation Policy and Management, room 1158, between the hours of 8 a.m. and 4:30 p.m., Monday through Friday (except holidays).

FOR FURTHER INFORMATION CONTACT: Ms. Gail Wegner (00VE), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420, telephone number (202) 254–0233.

SUPPLEMENTARY INFORMATION: Public Law 106–50, section 302 requires, in pertinent part:

(5) Establishment of an information clearinghouse to collect and distribute information, including by electronic means, on the assistance programs of Federal, State, and local governments, and of the private sector, including information on office locations, key personnel, telephone numbers, mail and electronic addresses, and contracting and subcontracting opportunities.

(6) Provision of Internet or other distance learning academic instruction for veterans in business subjects, including accounting, marketing, and business fundamentals.

(7) Compilation of a list of small business concerns owned and controlled by service-disabled veterans that provide products or services that could be procured by the United States and delivery of such list to each department and agency of the United States. Such list shall be delivered in hard copy and electronic form and shall include the name and address of each such small business concern and the products or services that it provides."

Section 604 requires:

(b) Identification of Small Business Concerns Owned by Eligible Veterans. Each fiscal year, the Secretary of Veterans Affairs shall, in consultation with the Assistant Secretary of Labor for Veterans' Employment and Training and the Administrator of the Small Business Administration, identify small business concerns owned and controlled by veterans in the United States. The Secretary shall inform each small business concern identified under this paragraph that information on Federal procurement is available from the Administrator.

This new system of records will be used to maintain and access an automated database containing the information on veteran-owned businesses set forth in the law (section 302, paragraph (7) and section 604, paragraph (b)). While corporations do not have any Privacy Act rights, it is not entirely clear whether individuals acting in an entrepreneurial capacity, such as a sole proprietor of a small business, have Privacy Act rights. Hence, the adoption of this system of records.

The automated database is known as the VA VetBiz Vendor Information Pages (VIP). The database includes data on veteran-owned businesses extracted from the Small Business Administration's Procurement Marketing and Access Network (Pro-Net) database, the Central Contractor Registration database, and other databases. It will be augmented with voluntarily submitted data provided by veteran-owned businesses wishing to do business with the Federal government and private entities either in a capacity as a prime contractor or as a subcontractor.

The information in this system will be maintained in electronic form. The information in these records will be freely available to government agencies, companies, and the general public via the Internet.

A "Report of Intention to Publish a **Federal Register** Notice of a New System of Records' and an advance copy of the new system notice have been provided to the Chairmen of the House Committee on Governmental Reform and the Senate Committee on Governmental Affairs, and the Director, Office of Management and Budget (OMB), as required by provisions of title 5, U.S.C. 522a (Privacy Act), and guidelines issued by OMB (61 FR 6428) (1996).

Approved: May 2, 2003.

Anthony J. Principi,

Secretary of Veterans Affairs.

123 VA00VE

SYSTEM NAME:

Center for Veterans Enterprise (CVE) VA VetBiz Vendor Information Pages (123VA00VE).

SYSTEM LOCATION:

Records are maintained at the Center for Veterans Enterprise's office in VA Headquarters, Washington, DC. VA's Automation Center, 1615 E. Woodward Street, Austin, Texas 78772, maintains the computerized database and Web site.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

The system of records will cover all companies owned by veterans that wish to be a part of the system of records, including those already registered in the SBA Pro-Net database and/or the Central Contractor Registration database.

CATEGORIES OF RECORDS IN THE SYSTEM:

The records will contain data on veteran-owned companies who have contacted the Center for Veterans Enterprise or have been extracted from e-government databases to which the companies have voluntarily submitted the data as a part of the marketing efforts to the federal government. The records may include business addresses and other contact information, information concerning products/services offered, information pertaining to the business, including Federal contracts, certifications, and security clearances held.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Pub. L. 106–50, as amended.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

1. Federal, State, and local government personnel will access the system to find veteran-owned businesses to contract with and for purposes of market research in compliance with their respective procurement regulations and procedures.

2. The general public, including companies and corporate entities, will access the system, via Internet, to review the information and to locate potential subcontractors and/or potential teaming partners for purposes of complying with applicable regulations concerning use of veteran-owned businesses.

3. The Center for Veterans Enterprise will use the records and reports derived from the database to manage their responsibilities under the Veterans Entrepreneurship and Small Business Development Act of 1999.

COMPATIBILITY OF THE PROPOSED ROUTINE USES:

The Privacy Act permits disclosure of information about individuals without their consent for a routine use when the information will be used for a purpose that is compatible with the purpose for which the information is collected. In all of the routine use disclosures described above, the recipient of the information will use the information in connection with a matter relating to one of VA's programs.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

The VetBiz VIP will be stored in an automated, computerized database. The system will operate on servers located at VA's Austin Automation Center (AAC), 1615 E. Woodward Street, Austin, Texas 78772. Data backups will reside on appropriate media according to normal system backup plans for the AAC. The system will be managed by the Center for Veterans Enterprise in VA Headquarters, Washington, DC.

RETRIEVABILITY:

Automated records may be retrieved by business name, type, location, previous experience, certifications (*e.g.* HUBZone, 8(a), etc.), product identifiers (*e.g.*, NAICS), and federal identifiers (*e.g.* CAGE Code, Pro-Net identification number, etc.).

SAFEGUARDS:

Read access to the system is via Internet access. AAC and CVE personnel will have access to the system via VA Intranet and local connections for management and maintenance purposes and tasks. Access to the Intranet portion of the system is via user-id and password at officially approved access points. Veteran-owned businesses will establish and maintain user-ids and passwords for accessing their corporate information under system control. Policy regarding issuance of user-ids and passwords is formulated in VA by the Office of Information and Technology, Washington, DC.

RETENTION AND DISPOSAL:

Records will be maintained and disposed of in accordance with the records disposal authority approved by the Archivist of the United States, the National Archives and Records Administration, and published in Agency Records Control Schedules.

SYSTEM MANAGER(S) AND ADDRESS:

Deputy Director, Center for Veterans Enterprise (00VE), 810 Vermont Avenue, NW., Washington, DC 20420.

NOTIFICATION PROCEDURES:

Individuals wishing to inquire whether this system of records contains information about themselves should contact the Deputy Director, Center for Veterans Enterprise (00VE), 810 Vermont Avenue, NW., Washington, DC 20420.

RECORD ACCESS PROCEDURE:

Individuals seeking access to records about themselves contained in this system of records may access the records via the Internet, or submit a written request to the system manager.

CONTESTING RECORD PROCEDURES:

An individual who wishes to contest records maintained under his or her name or other personal identifier may write or call the system manager. VA's rules for accessing records and contesting contents and appealing initial agency determinations are published in regulations set forth in the Code of Federal Regulations. *See* 38 CFR 1.577, 1.578.

RECORD SOURCE CATEGORIES:

The information in this system of records is obtained from the following sources: a. Information voluntarily submitted by the business; b. information gathered from VA contracting activities; and c. information extracted from other business databases.

[FR Doc. 03–12251 Filed 5–15–03; 8:45 am]
BILLING CODE 8320–01–P

Corrections

Federal Register
Vol. 68, No. 95
Friday, May 16, 2003

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2003–14936; Airspace Docket No. 03–ACE–39]

Modification of Class E Airspace; Muscatine, IA

Correction

In rule document 03–11642 beginning on page 24871 in the issue of Friday, May 9, 2003, make the following correction:

§71.1 [Corrected]

On page 24872, in the third column, in §71.1, under **ACE IA E5 Muscatine, IA**, in the 10th line, "northwest" should read, "northeast".

[FR Doc. C3–11642 Filed 5–15–03; 8:45 am]
BILLING CODE 1505–01–D

Federal Register

Friday,
May 16, 2003

Part II

Environmental Protection Agency

40 CFR Part 63

National Emission Standards for Hazardous Air Pollutants for Brick and Structural Clay Products Manufacturing; and National Emission Standards for Hazardous Air Pollutants for Clay Ceramics Manufacturing; Final Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 63

[OAR–2002–0054 and OAR–2002–0055, FRL–7459–9]

RIN 2060–A167 and 2060–A168

National Emission Standards for Hazardous Air Pollutants for Brick and Structural Clay Products Manufacturing; and National Emission Standards for Hazardous Air Pollutants for Clay Ceramics Manufacturing

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This action promulgates national emission standards for hazardous air pollutants (NESHAP) for new and existing sources at brick and structural clay products (BSCP) manufacturing facilities and NESHAP for new and existing sources at clay ceramics manufacturing facilities. This action will implement section 112(d) of the Clean Air Act (CAA) by requiring major sources to meet hazardous air pollutant (HAP) emission standards reflecting the application of the maximum achievable control technology (MACT). The two subparts will protect air quality and promote the public health by reducing emissions of several of the HAP listed in section 112(b)(1) of the CAA. The rules will reduce HAP emissions from existing sources by 2,300 tons per year nationwide, with hydrogen fluoride (HF) and hydrogen chloride (HCl) accounting for 2,290 tons per year (99.6 percent) of the total HAP emissions reductions from existing sources. The associated metals (antimony, arsenic, beryllium, cadmium, chromium, cobalt, mercury, manganese, nickel, lead, and selenium) reductions from existing sources account for approximately 6 tons per year nationwide (0.4 percent). Exposure to these substances has been demonstrated to cause adverse health effects such as irritation of the lung, skin, and mucus membranes, effects on the central nervous system, and kidney damage. The EPA has classified three of the HAP as known human carcinogens, four as probable human carcinogens, and one as a possible human carcinogen. We estimate that the two subparts will reduce nationwide emissions of HAP from these facilities by approximately 2,100 megagrams per year (Mg/yr)(2,300 tons per year (tpy)), a reduction of approximately 35 percent from the current level of emissions.

EFFECTIVE DATE: The final rule is effective May 16, 2003.

ADDRESSES: Docket No. OAR–2002–0054 contains supporting documentation used in developing the final BSCP rule. Docket No. OAR–2002–0055 contains supporting documentation used in developing the final clay ceramics rule. The dockets are located at the Air and Radiation Docket and Information Center in the EPA Docket Center, (EPA/DC) EPA West, Room B102, 1301 Constitution Avenue, NW., Washington, DC 20460, telephone (202) 566–1744. The dockets are available for public inspection from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding Federal holidays.

FOR FURTHER INFORMATION CONTACT: For further information concerning applicability and rule determinations, contact the appropriate State or local agency representative. If no State or local representative is available, contact the EPA Regional Office staff listed in 40 CFR 63.13. For information concerning the analyses performed in developing the final rules, contact Ms. Mary Johnson, Combustion Group, Emission Standards Division (MC–C439–01), U.S. EPA, Research Triangle Park, North Carolina 27711, telephone number (919) 541–5025, e-mail address: *johnson.mary@epa.gov*.

SUPPLEMENTARY INFORMATION: *Regulated Entities.* Entities potentially regulated by this action are those industrial facilities that manufacture BSCP and clay ceramics. Brick and structural clay products manufacturing is classified under Standard Industrial Classification (SIC) codes 3251, Brick and Structural Clay Tile; 3253, Ceramic Wall and Floor Tile; and 3259, Other Structural Clay Products. The North American Industry Classification System (NAICS) codes for BSCP manufacturing are 327121, Brick and Structural Clay Tile; 327122, Ceramic Wall and Floor Tile Manufacturing; and 327123, Other Structural Clay Products. Clay ceramics manufacturing is classified under SIC codes 3253, Ceramic Wall and Floor Tile; and 3261, Vitreous Plumbing Fixtures (Sanitaryware). The NAICS codes for clay ceramics manufacturing are 327122, Ceramic Wall and Floor Tile Manufacturing; and 327111, Vitreous China Plumbing Fixture and China and Earthenware Bathroom Accessories Manufacturing. Regulated categories and entities are shown in Table 1 of this preamble.

TABLE 1.—REGULATED CATEGORIES AND ENTITIES

Category	SIC	NAICS	Examples of potentially regulated entities
Industrial	3251	327121	Brick and structural clay tile manufacturing facilities (BSCP NESHAP)
Industrial	3253	327122	Ceramic wall and floor tile manufacturing facilities (Clay Ceramics NESHAP) and extruded tile manufacturing facilities (BSCP NESHAP).
Industrial	3259	327123	Other structural clay products manufacturing facilities (BSCP NESHAP)
Industrial	3261	327111	Vitreous plumbing fixtures (sanitaryware) manufacturing facilities (Clay Ceramics NESHAP).

This table is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be regulated by this action. To determine whether your facility is regulated by this action, you should examine the applicability criteria in § 63.8385 of today's final BSCP rule and § 63.8535 of today's final clay ceramics rule. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed in the preceding **FOR FURTHER INFORMATION CONTACT SECTION.**

Electronic Docket (E-Docket). The EPA has established official public dockets for this action under Docket ID No. OAR–2002–0054 for the final BSCP rule and Docket ID No. OAR–2002–0055 for the final clay ceramics rule. The official public dockets are the collection of materials that is available for public viewing at the EPA Docket Center (Air Docket), EPA West, Room B102, 1301 Constitution Avenue, NW., Washington, DC 20460. The Docket Center is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Reading Room is (202) 566–1744, and the telephone number for the Air Docket is (202) 566–1742. A reasonable fee may be charged for copying docket materials.

Electronic Access. Electronic versions of the public dockets are available through EPA's electronic public docket and comment system, EPA Dockets. You may use EPA Dockets at *http://www.epa.gov/edocket/* to view public comments, access the indexes of the contents of the official public dockets, and to access those documents in the public dockets that are available electronically. Once in the system, select "search" and key in the appropriate docket identification number. Although not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the docket facility identified in this document.

Worldwide Web (WWW). In addition to being available in the dockets, an electronic copy of today's document also will be available on the WWW. Following the Administrator's signature, a copy of this action will be posted at *www.epa.gov/ttn/oarpg* on EPA's Technology Transfer Network (TTN) policy and guidance page for newly proposed or promulgated rules. The TTN provides information and technology exchange in various areas of air pollution control. If more information regarding the TTN is needed, call the TTN HELP line at (919) 541–5384.

Judicial Review. Under section 307(b)(1) of the CAA, judicial review of the final rule is available only by filing a petition for review in the U.S. Court of Appeals for the District of Columbia Circuit by July 15, 2003. Under section 307(d)(7)(B) of the CAA, only an objection to the final rule that was raised with reasonable specificity during the period for public comment can be raised during judicial review. Moreover, under section 307(b)(2) of the CAA, the requirements established by the final rule may not be challenged separately in any civil or criminal proceedings brought by EPA to enforce the requirements.

Outline. The information presented in this preamble is organized as follows:

I. Background
A. What Is the Source of Authority for Development of NESHAP?
B. What Criteria Are Used in the Development of NESHAP?
C. How Were the Final Rules Developed?
D. What Are the Health Effects of Pollutants Emitted From the Brick and Structural Clay Products Manufacturing and Clay Ceramics Manufacturing Source Categories?
II. Summary of Responses to Major Comments and Changes to the Brick and Structural Clay Products Manufacturing Proposed NESHAP
A. Air Pollution Control Devices
B. Affected Source
C. Existing Source MACT
D. New Source MACT
E. Cost and Economic Impacts
F. Test Data and Emission Limits
G. Monitoring Requirements
H. Startup, Shutdown, and Malfunction
I. Risk-Based Approaches
III. Summary of the Final Brick and Structural Clay Products Manufacturing NESHAP
A. What Source Category Is Regulated by the Final Rule?
B. What Are the Affected Sources?
C. When Must I Comply With the Final Rule?
D. What Are the Emission Limits?
E. What Are the Operating Limits?
F. What Are the Performance Test and Initial Compliance Requirements?
G. What Are the Continuous Compliance Requirements?
H. What Are the Notification, Recordkeeping, and Reporting Requirements?
IV. Summary of Environmental, Energy, and Economic Impacts for the Final Brick and Structural Clay Products Manufacturing NESHAP
A. What Are the Air Quality Impacts?
B. What Are the Water and Solid Waste Impacts?
C. What Are the Energy Impacts?
D. Are There any Additional Environmental and Health Impacts?
E. What Are the Cost Impacts?
F. What Are the Economic Impacts?
V. Summary of Responses to Major Comments and Changes to the Clay Ceramics Manufacturing Proposed NESHAP
A. Affected Source
B. Existing Source MACT
C. New Source MACT
D. Cost and Economic Impacts
E. Test Data and Emission Limits
F. Monitoring Requirements
G. Startup, Shutdown, and Malfunction
VI. Summary of the Final Clay Ceramics Manufacturing NESHAP
A. What Source Category Is Regulated by the Final Rule?
B. What Are the Affected Sources?
C. When Must I Comply With the Final Rule?
D. What Are the Emission Limits?
E. What Are the Operating Limits?
F. What Are the Work Practice Standards?
G. What Are the Performance Test and Initial Compliance Requirements for Sources Subject to Emission Limits?
H. What Are the Initial Compliance Requirements for Sources Subject to a Work Practice Standard?
I. What Are the Continuous Compliance Requirements for Sources Subject to Emission Limits?
J. What Are the Continuous Compliance Requirements for Sources Subject to a Work Practice Standard?
K. What Are the Notification, Recordkeeping, and Reporting Requirements for Sources Subject to Emission Limits?
L. What Are the Notification, Recordkeeping, and Reporting Requirements for Sources Subject to a Work Practice Standard?
VII. Summary of Environmental, Energy, and Economic Impacts for the Final Clay Ceramics Manufacturing NESHAP
A. What Are the Air Quality Impacts?
B. What Are the Water and Solid Waste Impacts?
C. What Are the Energy Impacts?
D. Are there any Additional Environmental and Health Impacts?
E. What Are the Cost Impacts?
F. What Are the Economic Impacts?
VIII. Statutory and Executive Order Reviews
A. Executive Order 12866, Regulatory Planning and Review
B. Paperwork Reduction Act
C. Regulatory Flexibility Act
D. Unfunded Mandates Reform Act
E. Executive Order 13132, Federalism
F. Executive Order 13175, Consultation and Coordination With Indian Tribal Governments
G. Executive Order 13045, Protection of Children From Environmental Health & Safety Risks
H. Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use
I. National Technology Transfer and Advancement Act
J. Congressional Review Act

I. Background

A. What Is the Source of Authority for Development of NESHAP?

Section 112 of the CAA requires us to list categories and subcategories of major and area sources of HAP and to establish NESHAP for the listed source categories and subcategories. Clay products manufacturing was listed as a category of major sources on the initial source category list published in the **Federal Register** on July 16, 1992 (57 FR 31576). In the July 22, 2002 **Federal Register** notice (67 FR 47894) that proposed NESHAP for BSCP manufacturing and clay ceramics manufacturing, the clay products manufacturing source category was replaced by the BSCP manufacturing source category and the clay ceramics manufacturing source category. Today's action contains final rules for the two source categories. Major sources of HAP are those stationary sources or groups of stationary sources that are located within a contiguous area and under common control that emit or have the potential to emit considering controls, in the aggregate, 9.07 Mg/yr (10 tpy) or more of any one HAP or 22.68 Mg/yr (25 tpy) or more of any combination of HAP. Area sources are those stationary sources that are not major sources.

B. What Criteria Are Used in the Development of NESHAP?

Section 112 of the CAA requires that we establish NESHAP for the control of HAP from both new and existing major

sources. The CAA requires the NESHAP to reflect the maximum degree of reduction in emissions of HAP that is achievable. This level of control is commonly referred to as MACT.

The MACT floor is the minimum control level allowed for NESHAP and is defined under section 112(d)(3) of the CAA. In essence, the MACT floor ensures that the standards are set at a level that assures that all major sources achieve the level of control at least as stringent as that already achieved by the better-controlled and lower-emitting sources in each source category or subcategory. For new sources, the MACT floor cannot be less stringent than the emission control that is achieved in practice by the best-controlled similar source. The MACT standards for existing sources can be less stringent than standards for new sources, but they cannot be less stringent than the average emission limitation achieved by the best-performing 12 percent of existing sources in the category or subcategory for which the Administrator has emissions information (or the best-performing 5 sources for which the Administrator has or could reasonably obtain emissions information for categories or subcategories with fewer than 30 sources).

In developing MACT, we also consider control options that are more stringent than the floor. We may establish standards more stringent than the floor based on the consideration of cost of achieving the emissions reductions, any health and environmental impacts, and energy requirements.

C. How Were the Final Rules Developed?

We proposed standards for BSCP manufacturing and clay ceramics manufacturing on July 22, 2002 (67 FR 47894). The preamble for the proposed standards described the rationale for the proposed standards. Public comments were solicited at the time of proposal. The public comment period lasted from July 22, 2002 to September 20, 2002. Industry representatives, regulatory agencies, environmental groups, and the general public were given the opportunity to comment on the proposed rules and to provide additional information during the public comment period. We also offered at proposal the opportunity for oral presentation of data, views, or arguments concerning the proposed rules. A public hearing on the proposed BSCP rule was held on August 21, 2002, during which 21 presentations were made. Following the public hearing, we met with representatives of industry and environmental groups on several occasions.

We received a total of 80 public comment letters on the proposed BSCP rule and 9 public comments letters on the proposed clay ceramics rule. Comments were submitted by industry trade associations, BSCP and clay ceramics manufacturing companies, State regulatory agencies and their representatives, and environmental groups. Today's final rules reflect our consideration of all of the comments received. Major public comments on the proposed rules, along with our responses to those comments, are summarized in this preamble.

D. What Are the Health Effects of Pollutants Emitted From the Brick and Structural Clay Products Manufacturing and Clay Ceramics Manufacturing Source Categories?

Today's proposed rules protect air quality and promote the public health by reducing emissions of some of the HAP listed in section 112(b)(1) of the CAA. Emissions data collected during development of the proposed rules show that HF, HCl, and small amounts of metals (antimony, arsenic, beryllium, cadmium, chromium, cobalt, mercury, manganese, nickel, lead, and selenium) are emitted from BSCP and clay ceramics manufacturing facilities. Exposure to these HAP is associated with a variety of adverse health effects. These adverse health effects include chronic health disorders (*e.g.*, irritation of the lung, skin, and mucus membranes, effects on the central nervous system, and damage to the kidneys), and acute health disorders (*e.g.*, lung irritation and congestion, alimentary effects such as nausea and vomiting, and effects on the kidney and central nervous system). We have classified three of the HAP as human carcinogens, four as probable human carcinogens, and one as a possible human carcinogen. We do not know the extent to which the adverse health effects described above occur, or if any adverse effects occur, in the populations surrounding these facilities. However, to the extent the adverse effects do occur, today's proposed rules would reduce emissions and subsequent exposures. The majority of the emissions reductions from this rule are HF (1900 tons per year nationwide) and HCl (390 tons per year nationwide), while the rule will only reduce emissions of the HAP metals listed below by a small amount (approximately 6 tons nationwide per year).

1. Hydrogen Fluoride

Acute (short-term) inhalation exposure to gaseous HF can cause severe respiratory damage in humans, including severe irritation and pulmonary edema. Chronic (long-term) exposure to fluoride at low levels has a beneficial effect of dental cavity prevention and may also be useful for the treatment of osteoporosis. Exposure to higher levels of fluoride may cause dental fluorosis or mottling, while very high exposures through drinking water or air can result in crippling skeletal fluorosis. One study reported menstrual irregularities in women occupationally exposed to fluoride. We have not classified HF for carcinogenicity.

2. Hydrogen Chloride

Hydrogen chloride, also called hydrochloric acid, is corrosive to the eyes, skin, and mucous membranes. Acute (short-term) inhalation exposure may cause eye, nose, and respiratory tract irritation and inflammation and pulmonary edema in humans. Chronic (long-term) occupational exposure to HCl has been reported to cause gastritis, bronchitis, and dermatitis in workers. Prolonged exposure to low concentrations may also cause dental discoloration and erosion. No information is available on the reproductive or developmental effects of HCl in humans. In rats exposed to HCl by inhalation, altered estrus cycles have been reported in females and increased fetal mortality and decreased fetal weight have been reported in offspring. We have not classified HCl for carcinogenicity.

3. Antimony

Acute (short-term) exposure to antimony by inhalation in humans results in effects on the skin and eyes. Respiratory effects, such as inflammation of the lungs, chronic bronchitis, and chronic emphysema, are the primary effects noted from chronic (long-term) exposure to antimony in humans via inhalation. Human studies are inconclusive regarding antimony exposure and cancer, while animal studies have reported lung tumors in rats exposed to antimony trioxide via inhalation. Effects of oral exposure to antimony are not well-described, but a single study has reported decreased longevity and changes in serum glucose and cholesterol in rats. We have not classified antimony for carcinogenicity.

4. Arsenic

Acute (short-term) high-level inhalation exposure to arsenic dust or fumes has resulted in gastrointestinal effects (nausea, diarrhea, abdominal pain), and central and peripheral nervous system disorders. Chronic (long-term) inhalation exposure to inorganic arsenic in humans is associated with irritation of the skin and mucous membranes. Human data suggest a relationship between inhalation exposure of women working at or living near metal smelters and an increased risk of reproductive effects, such as spontaneous abortions. Inorganic arsenic exposure in humans by the inhalation route has been shown to be strongly associated with lung cancer, while ingestion of inorganic arsenic in humans has been linked to a form of skin cancer and also to bladder, liver, and lung cancer. We have classified inorganic arsenic as a Group A, human carcinogen.

5. Beryllium

Acute (short-term) inhalation exposure to high levels of beryllium has been observed to cause inflammation of the lungs or acute pneumonitis (reddening and swelling of the lungs) in humans; after exposure ends, these symptoms may be reversible. Chronic (long-term) inhalation exposure of humans to beryllium has been reported to cause chronic beryllium disease (berylliosis), in which granulomatous (noncancerous) lesions develop in the lung. Inhalation exposure to beryllium has been demonstrated to cause lung cancer in rats and monkeys. Human studies are limited, but suggest a causal relationship between beryllium exposure and an increased risk of lung cancer. Oral exposure to beryllium was found to cause stomach lesions in dogs, but effects on humans are not well-described. We have classified beryllium as a Group B1, probable human carcinogen, when inhaled; data are inadequate to determine whether beryllium is carcinogenic when ingested.

6. Cadmium

The acute (short-term) effects of cadmium inhalation in humans consist mainly of effects on the lung, such as pulmonary irritation. Chronic (long-term) inhalation or oral exposure to cadmium leads to a build-up of cadmium in the kidneys that can cause kidney disease. Cadmium has been shown to be a developmental toxicant in animals, resulting in fetal malformations and other effects, but no conclusive evidence exists in humans. An association between cadmium inhalation exposure and an increased risk of lung cancer has been reported from human studies, but these studies are inconclusive due to confounding factors. Animal studies have demonstrated an increase in lung cancer from long-term inhalation exposure to cadmium. We have classified cadmium as a Group B1, probable human carcinogen when inhaled; data are inadequate to determine whether cadmium is carcinogenic when ingested.

7. Chromium

Chromium may be emitted in two forms, trivalent chromium (chromium III) or hexavalent chromium (chromium VI). The respiratory tract is the major target organ for chromium VI toxicity, for acute (short-term) and chronic (long-term) inhalation exposures. Shortness of breath, coughing, and wheezing have been reported from acute exposure to chromium VI, while perforations and ulcerations of the septum, bronchitis, decreased pulmonary function, pneumonia, and other respiratory effects have been noted from chronic exposure. Limited human studies suggest that chromium VI inhalation exposure may be associated with complications during pregnancy and childbirth, while animal studies have not reported reproductive effects from inhalation exposure to chromium VI. Human and animal studies have clearly established that inhaled chromium VI is a carcinogen, resulting in an increased risk of lung cancer. We have classified chromium VI as a Group A, human carcinogen by the inhalation exposure route. Oral exposure of humans to chromium VI has been reported to cause sores in the mouth, gastrointestinal effects, and elevated white blood cell counts. Animal studies of oral chromium VI exposure have reported testicular degeneration and fetal damage in mice and rats. Chromium IV is also a potent contact sensitizer, producing allergic dermatitis in previously-exposed humans. Data are inadequate to determine if chromium VI is carcinogenic by oral exposure.

Chromium III is much less toxic than chromium VI. The respiratory tract is also the major target organ for chromium III toxicity, similar to chromium VI. Chromium III is an essential element in humans, with a daily oral intake of 50 to 200 micrograms per day (µg/d) recommended for an adult. Data on adverse effects of high oral exposures of chromium III are not available for humans, but a study with mice suggests possible damage to the male reproductive tract. We have not classified chromium III for carcinogenicity.

8. Cobalt

Acute (short-term) exposure to high levels of cobalt by inhalation in humans and animals results in respiratory effects such as a significant decrease in ventilatory function, congestion, edema, and hemorrhage of the lung. Respiratory effects are also the major effects noted from chronic (long-term) exposure to cobalt by inhalation, with respiratory irritation, wheezing, asthma, pneumonia, and fibrosis noted. Cardiac effects, congestion of the liver, kidneys, and conjunctiva, and immunological effects have also been associated with cobalt inhalation in humans. Cobalt is an essential element in humans, as a constituent of vitamin B12, but excessive oral intake has been reported to damage the heart, and to cause gastrointestinal effects and contact dermatitis. Human and animal studies are inconclusive with respect to potential carcinogenicity of cobalt. We have not classified cobalt for carcinogenicity.

9. Mercury

Mercury exists in three forms: Elemental mercury, inorganic mercury compounds (primarily mercuric chloride), and organic mercury compounds (primarily methylmercury). Each form exhibits different health effects. Brick, structural clay products, and clay ceramics manufacturing may release elemental or inorganic mercury, but not methylmercury. However, elemental and inorganic mercury are deposited on surface water, where they are converted to methylmercury, an important food contaminant.

Acute (short-term) exposure to high levels of elemental mercury in humans results in central nervous system (CNS) effects such as tremors, mood changes, and slowed sensory and motor nerve function. High inhalation exposures can also cause kidney damage and effects on the gastrointestinal tract and respiratory system. Chronic (long-term) inhalation exposure to elemental mercury in humans also affects the CNS, with effects such as increased excitability, irritability, excessive shyness, and tremors. Data on toxic effects of oral exposure to elemental mercury are sparse. We have not classified elemental mercury for carcinogenicity.

Acute exposure to inorganic mercury by the oral route may result in effects such as nausea, vomiting, and severe abdominal pain. The major effect from chronic exposure, either oral or inhalation, to inorganic mercury is kidney damage. Reproductive and developmental animal studies have reported effects such as alterations in

testicular tissue, increased embryo resorption rates, and abnormalities of development. Mercuric chloride (an inorganic mercury compound) exposure has been shown to result in forestomach, thyroid, and renal tumors in experimental animals. We have classified mercuric chloride as a Group C, possible human carcinogen.

Both acute and chronic oral exposure to methylmercury have been found to cause developmental damage to the central nervous system in fetuses and children, with effects including mental retardation, deafness, blindness, and cerebral palsy. Lower exposures may cause developmental delays and abnormal reflexes. The most important source of methylmercury exposure for most people is eating fish. Although fish is an important part of a balanced diet federal and state fish advisories recommend limiting intake of certain fish that contain elevated methylmercury levels.

10. Manganese

Health effects in humans have been associated with both deficiencies and excess intakes of manganese. Chronic (long-term) exposure to low levels of manganese in the diet is considered to be nutritionally essential in humans, with a recommended daily allowance of 2 to 5 milligrams per day (mg/d). Chronic inhalation exposure to high levels of manganese by inhalation in humans results primarily in CNS effects. Visual reaction time, hand steadiness, and eye-hand coordination were affected in chronically-exposed workers. Manganism, characterized by feelings of weakness and lethargy, tremors, a mask-like face, and psychological disturbances, may result from chronic exposure to higher levels. Impotence and loss of libido have been noted in male workers afflicted with manganism attributed to inhalation exposures. We have classified manganese as Group D, not classifiable as to human carcinogenicity.

11. Nickel

Nickel is an essential element in some animal species, and it has been suggested it may be essential for human nutrition. Nickel dermatitis, consisting of itching of the fingers, hands, and forearms, is the most common effect in humans from chronic (long-term) skin contact with nickel. Respiratory effects have also been reported in humans from inhalation exposure to nickel. No information is available regarding the reproductive or developmental effects of nickel in humans, but animal studies have reported such effects. Human and animal studies have reported an increased risk of lung and nasal cancers from exposure to nickel refinery dusts and nickel subsulfide. Animal inhalation studies of soluble nickel compounds (*i.e.*, nickel carbonyl) have reported lung tumors. Dermal exposure to nickel may produce contact dermatitis. Adverse effects of oral nickel exposure are not well-described. We have classified nickel refinery dust and nickel subsulfide as Group A, human carcinogens, and nickel carbonyl as a Group B2, probable human carcinogen, by inhalation exposure.

12. Lead

Lead is a very toxic element, causing a variety of effects at low oral or inhaled dose levels. Brain damage, kidney damage, and gastrointestinal distress may occur from acute (short-term) exposure to high levels of lead in humans. Chronic (long-term) exposure to lead in humans results in effects on the blood, CNS, blood pressure, and kidneys. Children are particularly sensitive to the chronic effects of lead, with slowed cognitive development, reduced growth, and other effects reported. Reproductive effects, such as decreased sperm count in men and spontaneous abortions in women, have been associated with lead exposure. The developing fetus is at particular risk from maternal lead exposure, with low birth weight and slowed postnatal neurobehavioral development noted. Human studies are inconclusive regarding lead exposure and cancer, while animal studies have reported an increase in kidney cancer from lead exposure by the oral route. We have classified lead as a Group B2, probable human carcinogen.

13. Selenium

Selenium is a naturally occurring substance that is toxic at high concentrations but is also a nutritionally essential element. Acute (short-term) exposure to elemental selenium, hydrogen selenide, and selenium dioxide by inhalation results primarily in respiratory effects, such as irritation of the mucous membranes, pulmonary edema, severe bronchitis, and bronchial pneumonia. Studies of humans chronically (long-term) exposed to high levels of selenium in food and water have reported discoloration of the skin, pathological deformation and loss of nails, loss of hair, excessive tooth decay and discoloration, lack of mental alertness, and listlessness. The consumption of high levels of selenium by pigs, sheep, and cattle has been shown to interfere with normal fetal development and to produce birth defects. Results of human and animal studies suggest that supplementation with some forms of selenium may result in a reduced incidence of several tumor types. One selenium compound, selenium sulfide, is carcinogenic in animals exposed orally. We have classified elemental selenium as a Group D, not classifiable as to human carcinogenicity, and selenium sulfide as a Group B2, probable human carcinogen.

II. Summary of Responses to Major Comments and Changes to the Brick and Structural Clay Products Manufacturing Proposed NESHAP

In response to the public comments received on the proposed BSCP rule, we made several changes in developing today's final BSCP rule. The major comments and our responses and rule changes are summarized in the following sections. A more detailed summary can be found in the Response-to-Comments document, which is available from several sources (see **SUPPLEMENTARY INFORMATION** section).

A. Air Pollution Control Devices

The most significant change to the proposed BSCP rule concerns our conclusions regarding the effective application of air pollution control devices (APCD) to existing kilns. The EPA received numerous comments from industry representatives, kiln manufacturers, and air pollution control device vendors on issues related to the application and performance of APCD. The MACT floor in the proposed rule was based on the use of dry lime injection fabric filters (DIFF), dry lime scrubber/fabric filters (DLS/FF), or wet scrubbers (WS). Another technology commonly used to control emissions from brick kilns, dry limestone adsorbers (DLA), was not considered to be a MACT floor technology at the time of proposal because we had concerns with monitoring options and our data indicated that the DLA could not achieve HAP emissions reductions equivalent to the reductions achieved by DIFF, DLS/FF, or WS technologies. However, as discussed in the paragraphs below, many commenters reported disadvantages of the DIFF, DLS/FF, and WS technologies for BSCP kilns and provided information to address our concerns about DLA technology. Consequently, the final rule allows some sources to use the DLA technology.

Several commenters argued that DIFF, DLS/FF, and WS technologies are not proven or commercially available for BSCP kilns. Commenters pointed out that, with the exception of one facility, full-scale WS have never been used on

BSCP kilns, although some short-term pilot tests of WS have been conducted. The commenters pointed out that injection systems (such as DIFF and DLS/FF) and wet control devices need a certain airflow to operate properly, and different products may require different airflows, some of which could be outside of the range within which the APCD operates properly. In addition, commenters pointed out that during kiln slowdowns (which could be caused by a situation such as an economic slowdown), the APCD may not be able to operate at all because of reduced kiln airflow.

Several commenters expressed concerns about waste disposal. Commenters stated that DIFF and DLS/FF systems produce large amounts of solid waste that is difficult and expensive to dispose of. Commenters stated that WS would not be viable options for many BSCP plants because of wastewater treatment issues (*e.g.*, limited or no sewer access, wastewater treatment costs). Commenters added that recycling of WS wastewater back into the brick body is not an option because of problems created by the soluble salts in the water (*e.g.*, scumming and efflorescence) and because the volume of wastewater generated would exceed process water needs even if recycling were possible.

Commenters also raised concerns about retrofitting existing BSCP kilns with DIFF, DLS/FF, and WS technologies. Commenters pointed out that brick color, the primary factor in brick sales, is affected by kiln airflow. Thus, retrofitting with an APCD that changes the kiln airflow would change the recipes for the manufacture of brick in a tunnel kiln. Thus, years of experience in the colors produced by the unique firing characteristics of a kiln would be lost. Implications are serious if a facility cannot match its existing product line.

The commenters also charged that we did not account for other retrofitting problems associated with installing DIFF, DLS/FF, or WS on older kilns, and the costs associated with these problems. Commenters also described how attempts at retrofitting kilns with these APCD have resulted in significant amounts of kiln downtime and permanent reductions in kiln production capacities. As stated by the commenters, none of the retrofits have been entirely successful in terms of reducing emissions while not disrupting the production process, and several have had dramatic negative impacts on the production process. At one facility that retrofitted two kilns with DIFF, the capacities of the two kilns decreased from 13.5 cars per day to 12.2 cars per day because of changes in the kiln airflow that resulted from the retrofit. This resulted in a loss of revenue of about $1 million per year. Another retrofit DIFF (multi-stage injection system) installation at a different facility was reported to be extremely problematic, and the cost of the APCD, which was originally estimated at $1 million, is now over $2 million and the system is still not operating correctly more than 2 years later. The facility has experienced numerous problems with the basic design of the unit, including improperly designed dampers and reagent feeding systems. A facility representative stated that the problems are largely due to the fact that few systems have been developed for brick kiln operations; therefore, vendors are still learning (often on the industry's nickel) how to design these systems. In the facility's public comments, they stated that they plan to never build another hot baghouse (DIFF or DLS/FF) due to the massive operating problems associated with them. A retrofit DLS/FF system, the only one that has been attempted in the U.S. to date, also was problematic. The facility stated that they have experienced maintenance and material quality problems that have resulted in kiln downtime. The facility added that the problems stem from the fact that the system is a prototype without a substantial operational, troubleshooting and maintenance history, which has left the facility in the position of having to diagnose and solve the problems as the system operates. In addition, the company that installed this system is no longer quoting systems to the BSCP industry.

Numerous commenters recommended that EPA allow use of DLA. The commenters described the operating benefits of DLA, including ease of operation, low operating cost, little down time, and the ability to handle kiln fluctuations with changing throughputs. Most importantly, DLA do not impact kiln operation. The commenters pointed out that DLA do not require a minimum airflow like DIFF, DLS/FF, or WS technologies. One commenter pointed out that once a DLA is designed for maximum airflow, any fluctuations below this maximum only create more contact time between the kiln exhaust gases and the limestone, which would likely increase the effectiveness of the DLA and would not impact the operation of the kiln. The commenters pointed out that DLA have been used extensively in Europe for many years and also are the most prevalent APCD used in the BSCP industry in the United States. Many commenters stated that DLA should be allowed if they can meet the BSCP standards. The commenters indicated that plants should not have to request site-specific monitoring parameters for DLA because they are the most prevalent technology. In addition, some commenters discussed the high costs and limited additional HAP reduction associated with replacing existing DLA with a DIFF system.

Several commenters felt that EPA disregarded or "bashed" DLA and disagreed with EPA's conclusions regarding DLA in the preamble to the proposed rule. Specifically, the commenters disagreed that: DLA generate particulate matter (PM) emissions; long-term test data that demonstrate DLA performance over the life of the sorbent are not available; DLA limestone is not continuously replaced; and the performance of DLA decreases as the sorbent is re-used because the ability of the sorbent to adsorb HF and HCl decreases.

We disagree with commenters that the use of DIFF has not been proven in the brick industry. The DIFF and DLS/FF systems are a proven control technology for kilns with a given minimum airflow rate. We do, however, believe that retrofitting existing kilns with DIFF or DLS/FF systems is not feasible in many cases. We recognize that WS may not be practical or low-cost for most facilities, but believe they could be a legitimate option for some facilities (*e.g.*, facilities with sewer access). We acknowledge that retrofitting existing BSCP kilns with certain APCD (particularly those that affect kiln airflow) can alter time-honored recipes for brick color, thereby changing the product. We acknowledge that DLA are used extensively around the world to control emissions from brick kilns. In developing the description of DLA technology for the preamble to the proposed rule, we used the technical data available to us at the time. We had no intention of "bashing" DLA but simply reported the data at hand.

After consideration of the comments received regarding DIFF, DLS/FF, WS, and DLA technologies, we have come to new conclusions regarding the effective application of these devices. We now believe that DLA are the only currently available technology that can be used to retrofit existing kilns without potentially significant impacts on the production process, and we have revised today's final rule accordingly. In addition, we believe that, because of the retrofit concerns that we have identified, it is not technologically and economically feasible for an existing

small tunnel kiln that would otherwise meet the criteria for reconstruction in 40 CFR 63.2 and whose design capacity is increased such that it is equal to or greater than 9.07 Mg/hr (10 tph) of fired product (for the remainder of this preamble, these sources will be referred to as "existing small kilns that are rebuilt such that they become large kilns") to meet the relevant standards (*i.e.*, new source MACT) by retrofitting with a DIFF, DLS/FF, or WS. In addition, we believe that it is not technologically and economically feasible for an existing large DLA-controlled kiln that would otherwise meet the criteria for reconstruction in 40 CFR 63.2 (for the remainder of this preamble, these sources will be referred to as "existing large DLA-controlled kilns that are rebuilt") to meet the relevant (*i.e.*, new source MACT) standards by retrofitting with a DIFF, DLS/FF, or WS. Accordingly, we have added regulatory language in 40 CFR 63.8390(i) to provide that an existing small kiln that is rebuilt such that it becomes a large kiln and an existing large DLA-controlled tunnel kiln that is rebuilt do not meet the definition of reconstruction in 40 CFR 63.2 and are not subject to the same requirements as new and reconstructed large tunnel kilns. However, it is technologically and economically feasible for both types of kilns described in 40 CFR 63.8390(i) to retrofit with a DLA (or to continue operating an existing DLA) and we have revised today's final rule to require that such kilns meet emission limits that correspond to the level of control provided by a DLA. We continue to believe that DIFF, DLS/FF, and WS are appropriate technologies for new large tunnel kilns and for reconstructed large tunnel kilns that were equipped with DIFF, DLS/FF, or WS prior to reconstruction. However, DLA are the only APCD that have been demonstrated on small tunnel kilns (which have smaller airflows than large tunnel kilns), and, therefore, the requirements for new and reconstructed small tunnel kilns are based on the level of control that can be achieved by a DLA. We note that facilities have the flexibility to select any control device or technique that ensures that emissions from their brick kilns are in compliance with the emission limits set forth in the final rule. Each of the APCD described above have advantages and disadvantages to their use, and the selection of the APCD to meet the requirements of the final rule will be dependent on site-specific parameters.

B. Affected Source

1. Production-Rate Limit

The proposed rule subcategorized tunnel kilns based on a 9.07 Mg/hr (10 tph) design capacity. We requested comment on the appropriate design capacity-based subcategorization level in the preamble to the proposed rule. We received numerous comments regarding subcategorization of tunnel kilns. While some commenters agreed with the 9.07 Mg/hr (10 tph) distinction among tunnel kiln subcategories, several commenters thought that the 9.07 Mg/hr (10 tph) limit was arbitrarily assigned. The commenters charged that EPA did not use all available data in determining the appropriate size cutoff. Many commenters argued that the design capacity limit should be higher based on available data (*i.e.*, 10.1 Mg/hr (11.1 tph) or 12.1 Mg/hr (13.3 tph)). The commenters disagreed that the cutoff should be rounded down from 10.1 Mg/hr (11.1 tph) to 9.07 Mg/hr (10 tph).

Some commenters noted that a design capacity distinction gives a competitive advantage to facilities operating smaller kilns. One commenter disagreed that there was a technological basis for differentiating among tunnel kilns producing above or below 9.07 Mg/hr (10 tph). The commenter stated that EPA may not subcategorize tunnel kilns to reduce costs.

Through subcategorization, we are able to define subsets of similar emission sources within a source category if differences in emissions characteristics, processes, APCD viability, or opportunities for pollution prevention exist within the source category. Section 112(d)(1) of the CAA states "the Administrator may distinguish among classes, types, and sizes of sources within a category or subcategory" in establishing emission standards. Thus, we have discretion in determining appropriate subcategories based on classes, types, and sizes of sources. We used this discretion in developing subcategories for the BSCP source category. We first subcategorized kilns based on type (*i.e.*, periodic kilns versus tunnel kilns). We then further subcategorized tunnel kilns based on kiln size. Our distinctions are based on technological differences in the equipment. For example, periodic kilns are smaller than tunnel kilns and operate in batch cycles, whereas tunnel kilns operate continuously. There are also differences in the effective application of air pollution controls. To our knowledge, HAP emissions from periodic kilns have not successfully been controlled. Similarly, we distinguished between tunnel kilns with design capacities above and below 9.07 Mg/hr (10 tph) at proposal in part because the APCD we believed to be the best performers (DIFF, DLS/FF, and WS) were not demonstrated on existing tunnel kilns with design capacities below roughly 9.07 Mg/hr (10 tph). For the reasons discussed below, we revisited the appropriate subcategorization level in response to comments on the proposal when developing today's final rule. While we continue to believe that 9.07 Mg/hr (10 tph) is the appropriate subcategorization level, our reasons for choosing that level have changed since proposal in light of new information that we received during the public comment period about DLA controls and the three proposed MACT controls (DIFF, DLS/FF, and WS).

As discussed earlier, numerous commenters pointed out serious concerns regarding retrofitting existing kilns with APCD such as DIFF, DLS/FF, and WS. Therefore, we now consider DLA to be the only currently available technology that can be used to retrofit existing kilns, including existing small kilns that are rebuilt such that they become large kilns and existing large DLA-controlled kilns that are rebuilt, without potentially significant impacts on the production process.

In response to comments suggesting that we include new data in our analyses, we updated our data base with information on new kilns, new APCD (except those controls that we consider to achieve the lowest achievable emission rate (LAER) as specified in section 112(d)(3)(A) of the CAA), changes in kiln capacities, and changes in facility ownership. We used the information submitted by commenters and made followup calls to States and individual facilities for additional clarification as necessary to update our data base.

We used our updated data base in reevaluating all aspects of the proposed standards. The smallest tunnel kiln with MACT floor controls (*i.e.*, with DLA controls reflecting the existing source MACT floor under today's final rule) in our updated database has a capacity of 8.3 Mg/hr (9.1 tph). Rounding up to the nearest integer, based on current application of APCD to BSCP tunnel kilns, we believe that 9.07 Mg/hr (10 tph) continues to be an appropriate subcategorization level. Commenters have stated that a smaller tunnel kiln (*e.g.*, 4.5 Mg/hr (5 tph) capacity) is dissimilar from a larger tunnel kiln (*e.g.*, 13.6 Mg/hr (15 tph) capacity), especially with regard to the airflow, which is a key operating parameter for APCD. Airflow is particularly important for lime injection-type systems (DIFF and DLS/FF), because the injected lime is carried through the reaction chamber (or duct) by the kiln exhaust gas. For a given lime injection rate, if a minimum exhaust flow is not maintained, the sorbent can settle in the duct work and cause APCD malfunction. Furthermore, APCD malfunctions can affect the airflow within the kiln, and can destroy product that is in the kiln. We believe that DIFF and DLS/FF systems, if attempted on smaller kilns, would experience more difficulties with respect to airflow than systems on larger kilns because as the design airflow decreases, the acceptable operating range also would be expected to decrease. Any fluctuation in airflow would be expected to have a greater impact on APCD operation as the size of the system decreases. Given the technological concerns and the capacities of currently-controlled tunnel kilns, we maintain that a design capacity-based subcategorization level of 9.07 Mg/hr (10 tph) is appropriate for existing tunnel kilns.

We acknowledge the comments suggesting that 10.1 Mg/hr (11.1 tph) should be the size cutoff based on the smallest DIFF-controlled tunnel kiln. However, because we now consider that the performance of a DLA represents the MACT floor for existing sources (and DIFF, DLS/FF, and WS also can meet the emission limits), we considered the smallest non-LAER DLA-controlled kiln in setting the subcategorization level. We disagree that 12.1 Mg/hr (13.3 tph) would have been the proper level for proposal or for the final rule. We believe that consideration of technological differences and the effective application of APCD to kilns of different sizes is the appropriate method of selecting a subcategorization level. We maintain that 9.07 Mg/hr (10 tph) is appropriate.

We understand that, regardless of the particular subcategorization level selected, there will be facilities that operate kilns with throughputs slightly above the level and some that operate kilns at slightly below the level. Facilities operating kilns slightly above the subcategorization level have the option of accepting a federally enforceable permit limit to limit their throughput to below the level. Facilities operating just below the level must make careful decisions regarding expansion of their kilns. We acknowledge that facilities operating near the subcategorization level must make decisions regarding permit limits and expansions based on facility-specific considerations (*e.g.*, control costs, impact on revenue). However, as some commenters have pointed out, cost is not an appropriate criteria for us to use in establishing subcategories, because our discretion for establishing subcategories is limited, under the CAA, to distinguishing among classes, types, and sizes of sources.

2. R&D Kiln Definition

One commenter requested that we change the definition of research and development (R&D) kiln so that it is consistent with the definition of R&D in section 112(c)(7) of the CAA and most other NESHAP. Therefore, today's final rule includes a revised definition of research and development kiln that is consistent with section 112(c)(7) of the CAA and other NESHAP.

C. Existing Source MACT

1. Consideration of Synthetic Area Sources in the MACT Floor Determinations for Existing Sources

In the preamble to the proposed BSCP rule, we requested comment on inclusion of synthetic area sources (also called synthetic minor sources) in the MACT floor determinations for existing tunnel kilns. For the remainder of this preamble, we will refer to these sources as synthetic minor sources. Synthetic minor sources are those facilities that emit fewer than 10 tons per year of any HAP and fewer than 25 tons per year of any combination of HAP because they use some emission control device (or devices), the operation of which is required by a Federally Enforceable State Operating Permit (FESOP). In the absence of such controls, these sources would be major.

Inclusion of synthetic minor sources in the MACT floor determination was an issue prior to proposal because whether or not synthetic minor sources were included would affect the level of control represented by the floor determinations for existing large tunnel kilns (*i.e.*, tunnel kilns with design capacities equal to or greater than 9.07 Mg/hr (10 tph)). Had synthetic minor sources been excluded, the MACT floor for existing tunnel kilns would have been "no emissions reductions." With synthetic minor sources included (as we proposed), the MACT floor for existing tunnel kilns was based on a DIFF, DLS/FF or WS.

Industry representatives asserted, prior to proposal, that the BSCP MACT floor determination should not include synthetic minor sources. We rejected the idea of excluding synthetic minor sources from the MACT floor determination for several reasons discussed in the preamble to the proposed rule. (See 67 FR 47894, 47911–47912, July 22, 2002.)

Nevertheless, because of the industry representatives' arguments, we requested comment from all interested parties on inclusion of synthetic minor sources in MACT floor determinations.

Following proposal, numerous industry representatives commented on the issue of whether to include synthetic minor sources in MACT floor determinations. The industry representatives commented that only major sources are included in the listed BSCP source category, and therefore, only major sources are to be used in the MACT floor determination. The commenters referenced section 112(a)(1) of the CAA, which defines major source as a source that "emits or has the potential to emit *considering controls* 10 tons per year * * *" (emphasis added), and stated that by definition, synthetic minor sources are not major sources. The commenters noted that EPA did not include true area sources (or minor sources) in the MACT floor determination and stated that synthetic minor sources should be treated similarly for purposes of establishing MACT floors.

An environmental group also commented on the issue of including synthetic minor sources in MACT floor determinations. The commenter supported EPA's decision to include synthetic minor sources in the MACT floor for BSCP. The commenter stated that the CAA requires EPA to include synthetic minor sources in MACT floor determinations. The commenter stated that excluding consideration of the best-controlled sources (which became synthetic minor sources as a result of effective controls) would contradict the CAA section 112(d) MACT floor methodology established by Congress. The commenter argued that such exclusion would weaken emission standards required for existing sources, and increase the levels of air toxics released into the environment.

Section 112(d) of the CAA directs us to establish emission standards for each category or subcategory of major sources and minor sources of HAP listed for regulation pursuant to section 112(c) of the CAA. Each such standard must reflect a minimum level of control known as the MACT floor. (See CAA section 112(d).) However, section 112 of the CAA does not specifically address synthetic minor or synthetic area sources, which include those sources that emit fewer than 10 tons per year of any HAP or fewer than 25 tons per year of any combination of HAP because they use some emission control device(s), pollution prevention techniques or other measures (collectively referred to as controls in this preamble) adopted

under Federal or State regulations. If not for the enforceable controls they have implemented, synthetic minor sources would be major sources under section 112 of the CAA.

We believe that the better interpretation of the CAA's plain language and legislative history requires that synthetic minor sources be included in MACT floor determinations. First, the plain language of the statute makes clear that our MACT floor determinations are to reflect the best sources in a category. For new sources in a category or subcategory, the MACT floor shall not be less stringent than the emission control that is achieved in practice by the *best-controlled* similar source, as determined by EPA. (See CAA section 112(d)(3), emphasis added.) For existing sources in a category or subcategory with 30 or more sources, the MACT floor may be less stringent than the floor for new sources in the same category or subcategory but shall not be less stringent than the average emission limitation achieved by the *best performing* 12 percent of the existing sources (for which the Administrator has emissions information). (See CAA section 112(d)(3)(A), emphasis added.[1]) Thus, section 112(d)(3) of the CAA requires that MACT floors reflect what the best-controlled new sources and the best-performing existing sources achieve in practice. These phrases contain no exemptions and are not limited by references to sources with or without controls. Therefore, they suggest that all of the best-controlled or best-performing sources should be considered in MACT floor determinations, regardless of whether or not such sources rely upon controls.

Furthermore, section 112(d)(3) of the CAA expressly excludes certain sources that meet LAER requirements from MACT floor determinations for existing sources. (See CAA section 112(d)(3)(A).) The fact that Congress expressly excluded such LAER sources but did not also exclude synthetic minor sources suggests that no exclusion was intended for synthetic minor sources. Indeed, nothing in the statute suggests that EPA should exclude a control technology from its consideration of the MACT floor because the technology is so effective that it reduces source emissions such that the source is no longer a major source of HAP. (See 67 FR 36,460 and 36,464, May 23, 2002, stating this rationale for including synthetic minor sources in the floor determination for the proposed NESHAP for municipal solid waste landfills.)

Some commenters argue that because the BSCP source category only includes major sources and synthetic minor sources are non-major by definition, synthetic minor sources (like true area sources) fall outside the regulated source category and should not be considered in MACT floor determinations. EPA agrees that the BSCP source category includes only major sources. (See 67 FR 47,894 and 47,898, July 22, 2002.) However, EPA disagrees that the CAA contemplates that synthetic minor sources must be treated like true area sources and excluded from MACT floor determinations. Section 112(a) of the CAA defines a major source as:

> any stationary source or group of stationary sources located within a contiguous area and under common control that emits or has the potential to emit considering controls, in the aggregate, 10 tons per year or more of any hazardous air pollutant or 25 tons per year or more of any combination of hazardous air pollutants * * *.

(*See* CAA section 112(a)(1).) An area source is defined as any stationary source of hazardous air pollutants that is not a major source. (See CAA section 112(a)(1).) In the major source definition, the reference to a source's potential to emit considering controls allows the interpretation that a source's potential to emit before and after controls is relevant, such that synthetic minor sources may be considered within the meaning of this definition and included in MACT floor determinations for categories of major sources.[2] Some commenters appear to suggest that the reference to a source's potential to emit considering controls can only mean a source's potential to emit after controls have been implemented. While it is possible to read the phrase in this manner in isolation, this interpretation would have the effect of excluding the best-performing sources in a category from MACT floor determinations and therefore would be contrary to the statutory mandate that EPA set MACT floors based on the levels the best-controlled new sources and the best-performing existing sources achieve in practice. We believe the statutory reference to potential to emit considering controls should be read in a manner consistent with the other requirements of section 112(d) of the CAA to allow for the consideration of synthetic minor sources in MACT floor determinations for categories of major sources.

In addition, the legislative history suggests that synthetic minor sources should be included in MACT floor determinations. In a floor statement, Senator Durenberger stated that in implementing section 112(d)(3) of the CAA, "the [Senate] managers intend the Administrator to take whatever steps are necessary to assure that [the Administrator] has collected data on *all of the better-performing sources within each category*. [The Administrator] must have a data-gathering program sufficient to assure that [EPA] does not miss *any sources that have superior levels of emission control*." (See Environment and Natural Resources Policy Division, Congressional Research Service, 103d Cong., S.Prt. 103–38 (prepared for the U.S. Senate Committee on Environment and Public Works), A Legislative History of the Clean Air Act Amendments of 1990 at 870, Nov. 1993, emphasis added.) This statement underscores that Congress intended for MACT floor determinations to reflect consideration of all of the sources in each category with the best emission controls. We believe it would be inconsistent with Congress's intent and the plain language of the CAA to exclude synthetic minor sources—those sources with superior controls which became synthetic minor sources by implementing such controls—from MACT floor determinations.

We believe that the inclusion of synthetic minor sources in MACT floor determinations is justified because of the reasons explained above. Even if the MACT floor determination had been "no emissions reductions" we believe that a departure from the MACT floor to a beyond-the-floor standard, based on DLA technology, is viable because the benefits associated with the emissions reductions will exceed the cost of installing and operating the technology.

2. MACT Floors for Existing Sources

Some commenters questioned how the MACT floor for existing sources was

[1] If a category or subcategory has fewer than 30 sources, the floor shall be "the average emission limitation achieved by the *best performing* 5 sources (for which the Administrator has or could reasonably obtain emissions information) in the category or subcategory." (See CAA section 112(d)(3)(B), emphasis added.)

[2] We believe this approach is not inconsistent with our policy that existing sources that limit their potential to emit to below the major source threshold prior to the first compliance deadline under a MACT standard will not be subject to the standard, as one commenter suggests. (See Memorandum from John S. Seitz, Director, Office of Air Quality Planning and Standards, EPA, to EPA Regions, "Potential to Emit for MACT Standards—Guidance on Timing Issues," May 16, 1995.) Including synthetic minor sources in MACT floor determinations ensures that MACT floors reflect the best-performing sources, as the CAA requires. At the same time, our policy recognizes that sources that already achieve or perform better than the MACT floors need not be subject to the MACT standards.

set. Some commenters thought that control devices installed for sulfur oxides (SO_x) control (rather than for HAP control) should not be considered in the MACT floor. Other commenters felt that costs should be a consideration.

One commenter charged that EPA has simply set MACT floors based on control technology type and that EPA did not identify the relevant best performers and set floors reflecting their average emission level. The commenter noted that factors other than control device type affect emissions and that EPA must consider all non-negligible factors in setting MACT floors and considering beyond-the-floor measures. The commenter stated that if EPA believes it is unworkable to consider all factors, then perhaps EPA should base standards on actual emissions data which reflects all the factors influencing a source's performance. The commenter also noted that EPA picked the worst performance of any source that used the chosen technology to set the floor for PM.

A detailed discussion of how we determined the MACT floor for existing large tunnel kilns (*i.e.*, tunnel kilns with design capacities equal to or greater than 9.07 Mg/hr (10 tph)) is provided below. Although the discussion in the example below focuses on existing large tunnel kilns that exhaust directly to the atmosphere or to an APCD, the same MACT floor methodology was used for existing large tunnel kilns that exhaust to sawdust dryers prior to exhausting to the atmosphere, existing small tunnel kilns that exhaust directly to the atmosphere or to an APCD, existing small sawdust-fired tunnel kilns that duct to sawdust dryers, and existing periodic kilns. Details of these MACT floor determinations were discussed in the preamble to the proposed rule. (See 67 FR 47909–47912, July 22, 2002.) Section 112(d)(3) is the section of the CAA that dictates how we must establish MACT floors. Section 112(d)(3) of the CAA states that:

> The maximum degree of reduction in emissions that is deemed achievable for new sources in a category or subcategory shall not be less stringent than the emission control that is achieved in practice by the best controlled similar source, as determined by the Administrator. Emission standards promulgated under this subsection for existing sources in a category or subcategory may be less stringent than standards for new sources in the same category or subcategory but shall not be less stringent, and may be more stringent than—
>
> (A) Rhe average emission limitation achieved by the best performing 12 percent of the existing sources (for which the Administrator has emissions information), excluding those sources that have, within 18 months before the emission standard is proposed or within 30 months before such standard is promulgated, whichever is later, first achieved a level of emission rate or emission reduction which complies, or would comply if the source is not subject to such standard, with the lowest achievable emission rate (as defined by section 171) applicable to the source category and prevailing at the time, in the category or subcategory for categories and subcategories with 30 or more sources * * *.

With the exception of the LAER provisions in section 112(d)(3)(A) of the CAA, the CAA requires us to base the MACT floor on the best-performing sources without consideration of why facilities decided to control emissions. Therefore, if an APCD is reducing HAP emissions (*e.g.*, HF, HCl, or HAP metals), it is irrelevant if sources installed APCD for SO_X or visible emissions control for purposes of conducting MACT floor determinations.

We determined the MACT floor control level for existing sources using the following general procedure:

(1) We reviewed available data on pollution prevention techniques (including substitution of raw materials and/or fuels) and the performance of add-on control devices to determine the techniques that were viable for and effective at reducing HAP emissions;

(2) For each subcategory, we ranked the kilns from the best performing to the worst performing based on the emission reduction technique used on the kilns;

(3) For each subcategory, we then identified the 94th percentile kiln and the emission reduction technique that represented the MACT floor technology; and

(4) For each subcategory, we then selected production-based or percent-reduction emission limits that correspond to the 94th percentile kiln and emission reduction technique, and we based our selections on the available data while considering variability in the performance of a given emission reduction technique.

To identify the best-performing emission reduction techniques, we reviewed available data on pollution prevention techniques (*i.e.*,, substitution of raw materials and/or fuels) and the performance of add-on control devices. We determined that substitution of raw materials and/or fuels is not an option because substitution of raw materials and/or fuels could affect the ability of a facility to duplicate its current product line. In addition, it is impractical for facilities to import, from a distance of more than a few miles, the large amounts of raw material that are required (most facilities are located in close proximity to their raw material source). With respect to use of low-HAP fuels, our available test data for the BSCP industry do not show identifiable differences in emissions based on kiln fuel type; that is, the contribution of raw materials to HAP emissions far outweighs the contribution of the fuels. In addition, fuel type can impact the color of a product, and any requirement that would require a kiln to change fuel type could cause the kiln to be unable to match an existing product line. While we agree that factors other than APCD type can affect emissions, we do not have the data to determine the specific degree of the effect of factors other than APCD on emissions, and we believe that, for the BSCP industry, factors other than APCD use are not viable MACT floor or beyond-the-floor control options. Our data show that add-on APCD have a large effect on emissions, and further show that the presence or absence of an APCD is likely the greatest factor in determining a BSCP kiln's actual performance. It follows that the subset of BSCP kilns that are the best performers are those with add-on APCD. Therefore, our analysis focused on the performance of add-on control devices.

Prior to proposal we concluded that the best-performing add-on control devices were DIFF, DLS/FF, and WS. Based on the comments received following proposal (as discussed elsewhere in this preamble) regarding retrofit concerns with these technologies, we now believe that DLA are the only currently available technology that can be used to retrofit existing large kilns without potentially significant impacts on the production process. Thus, DLA are the best-performing APCD for existing large tunnel kilns.

We ranked the kilns within each subcategory according to APCD use. Information on the number of kilns and the types of APCD was based primarily on responses to a survey of the industry and additional information gathered following the survey including public comments on the proposed rule. Equipment in use at major sources and synthetic minor sources was used in the equipment ranking. In accordance with section 112(d)(3)(A) of the CAA, equipment at kilns that achieved LAER less than 18 months before proposal was not included in the equipment ranking. When we ranked the large tunnel kilns, we treated kilns equipped with DLA as the best-controlled sources, although DIFF, DLS/FF, and WS also can achieve the level of performance of a DLA. We ranked the kilns by APCD rather than actual unit-specific emissions reductions because we do not have emissions test data for all kilns.

Section 112(d)(3) of the CAA specifies that we set standards for existing sources that are no less stringent than the average emission limitation achieved by the best-performing 12 percent of existing sources (for which the Administrator has emissions information) where there are 30 or more sources in the category or subcategory. Our interpretation of average emission limitation is that it is a measure of central tendency, such as the arithmetic mean or the median. If the median is used when there are at least 30 sources, then the emission level achievable by the source and its APCD that is at the bottom of the top 6 percent of the best-performing sources (*i.e.*, the 94th percentile) represents the MACT floor control level. We based our MACT floors for each BSCP subcategory on this interpretation. Nineteen percent (22 of 115) of the existing large tunnel kilns located at synthetic minor sources or major sources are controlled by a DLA (12), DIFF (4), DLS/FF (4), or WS (2). Because more than 6 percent of the large tunnel kilns reduce emissions by some technique, emissions reductions from these kilns are required under the CAA. We then considered which of these controls are proven to be applicable to existing tunnel kilns, and we ranked these kilns to determine the appropriate MACT emission limits. We consider the 12 DLA to be equivalent and believe that this type of control can be applied to any existing large tunnel kiln without causing potentially significant production problems. We consider the performance of all of the DLA to be equivalent because there currently are two types of DLA in the industry (supplied by two manufacturers), and we have test data for both designs that show HF removal efficiencies that are within 1 percent of one another. We excluded DIFF and DLS/FF from our ranking of controls for existing sources because of the reported problems caused by applying DIFF and DLS/FF to existing kilns. We excluded WS from our ranking of controls for existing sources because many facilities do not have proven wastewater disposal options. Therefore, we only considered DLA in our ranking, and accordingly, the 94th percentile source (the 7th best-controlled source) is a DLA-controlled kiln. Therefore, the MACT floors for existing large tunnel kilns are based on the level of control achieved by a DLA. We have DLA outlet test data for 7 of the 12 existing large DLA-controlled tunnel kilns, and therefore, we are confident that our test data are within the best-controlled 6 percent of sources. Furthermore, the single best-performing source, based on our available DLA outlet data, is one of the three sources for which a control efficiency is available.

Section 112(d)(2) of the CAA dictates how we must establish MACT. The MACT can either be established at the MACT floor, or can be some control level more stringent than the MACT floor or beyond-the-floor. Section 112(d)(2) of the CAA states that:

> Emissions standards promulgated under this subsection and applicable to new or existing sources of hazardous air pollutants shall require the maximum degree of reduction in emissions of the hazardous air pollutants subject to this section (including a prohibition on such emissions, where achievable) that the Administrator, taking into consideration the cost of achieving such emission reduction, and any non-air quality health and environmental impacts and energy requirements, determines is achievable for new or existing sources in the category or subcategory to which such emission standard applies * * *.

Although section 112(d)(3) of the CAA does not allow us to consider cost when determining MACT floors, we do consider costs when we examine beyond-the-floor control options according to section 112(d)(2) of the CAA. We acknowledge the commenters' concerns regarding the cost of the proposed standards. We determined that beyond-the-floor control measures would not be appropriate for existing large BSCP kilns because of retrofit costs arising from technical difficulties in retrofitting DIFF, DLS/FF, or WS. Thus, the emission limits for existing large tunnel kilns in today's final rule are based on the level of control achievable with a DLA.

It is our goal to set emission standards that reflect the performance of the best-controlled sources. Once we identified the subset of the best-controlled BSCP sources (*i.e.*, DLA-controlled kilns), we used the highest emission level associated with these best performers to set the emission standard because it was our intent to set emission limits that reflect the performance that the best-controlled sources continually achieve considering variability. All sources, including the best-controlled sources, have variability in emissions. For example, data (individual test runs) from two tests conducted on one DLA-controlled kiln showed HF control efficiencies that ranged from 91.6 percent to 96.4 percent. This variability may result from APCD performance, and also could result from uncertainty associated with the test methods. Commenters have agreed with our approach to setting the production-based emission limits at or slightly higher than the highest data point, because this approach accounts for variability in the performance of individual sources, variability that could exist across the industry, and uncertainty in the test methods used to measure emissions. Furthermore, use of the highest emission level associated with the best performers prevents sources within the best-controlled subset from having to remove their existing APCD and replace it with a new one that may or may not achieve slightly better performance.

We believe and intend that a well-operated DLA will achieve the emission limits set forth in this rulemaking. However, concerns have recently been raised that if high concentrations of sulfur exist in the kiln exhaust gas stream, the ability of a well-operated DLA to reduce the target acid gas HAP emissions (*i.e.*, HF and HCl) may be compromised. The data we have does not suggest that these concerns are justified. If the EPA receives information showing that they are, EPA will take prompt action to resolve the issue through rulemaking and ensure that a facility with a well-operated DLA will be in compliance with the rule. The EPA will also work with any affected facilities to ensure that they are not subject to inappropriate sanctions before we are able to complete such a rulemaking.

D. New Source MACT

Several commenters disagreed that a large (design capacity equal to or greater than 9.07 Mg/hr (10 tph) of fired product) tunnel kiln equipped with DIFF, DLS/FF or WS was the best-controlled similar source for all new tunnel kilns. The commenters expressed concern that the DIFF, DLS/FF or WS controls proposed for all new tunnel kilns have not been demonstrated on smaller kilns. The commenters argued that emissions from small (*e.g.*, less than 9.07 Mg/hr (10 tph)) and large tunnel kilns are different because the required airflow and pollutant loading is different. The commenters stated that controls such as DIFF, DLS/FF, or WS do not decrease in size or cost for kilns below 9.07 Mg/hr (10 tph) design capacity. The commenters thought that the proposed standards for new tunnel kilns would prevent future construction of and upgrades to smaller kilns. The commenters recommended that a throughput cutoff be provided for new and reconstructed kilns. One commenter suggested that EPA create a size-cutoff for new kilns, where the best-controlled similar source for smaller new kilns is a DLA-controlled kiln, and DLS/FF, DIFF, or WS for the larger

kilns. One commenter noted the potential of existing kilns triggering new source requirements during reconstruction. The commenter requested that the ability of small businesses to overhaul existing kilns be addressed in the final rule.

These commenters have addressed several related issues including the selection of the best-controlled similar source, differences between small and large tunnel kilns, the feasibility of the proposed MACT-level controls in controlling emissions from smaller tunnel kilns or reconstructed tunnel kilns, and the costs of new controls. In responding to these comments, we have re-evaluated our analysis of MACT for new and reconstructed tunnel kilns. In the original MACT analysis developed for the proposed rule, we recognized the inherent differences between small and large tunnel kilns and established a subcategorization level of 9.07 Mg/hr (10 tph). The proposed 9.07 Mg/hr (10 tph) subcategorization level applied to both existing and new tunnel kilns. For new and reconstructed sources, we selected the best-controlled similar source (DIFF, DLS/FF, WS) that would be applied to all new sources regardless of size. In re-evaluating this analysis and in light of several comments that described the inherent differences and issues with the application of DIFF, DLS/FF, and WS control technologies to small tunnel kilns or reconstructed tunnel kilns, we have revised MACT for new sources. We also have added language in 40 CFR 63.8390(i) to provide that it is not technologically and economically feasible for two types of existing kilns that would otherwise meet the criteria for reconstruction under 40 CFR 63.2 to meet the relevant standards—*i.e.*, new source MACT—and that such kilns do not fall within the definition of reconstruction and are not subject to new source MACT requirements. The two types of kilns are existing small kilns that are rebuilt such that they become large kilns and existing large DLA-controlled tunnel kilns that are rebuilt. Today's final emission limits for those kilns and for new and reconstructed small tunnel kilns are based on the performance of DLA control technology. The final emission limits for new large tunnel kilns are based on the performance of DIFF, DLS/FF, and WS control technology. In addition, existing large tunnel kilns equipped with DIFF, DLS/FF or WS are reconstructed sources subject to new source MACT requirements if they meet the criteria for reconstruction in 40 CFR 63.2. Such kilns must continue to meet new source MACT limits, which are based on the performance of DIFF, DLS/FF, and WS.

We agree with the commenters that DIFF, DLS/FF, and WS control technologies have not been demonstrated on small kilns. However, we believe that the 9.07 Mg/hr (10 tph) size represents the threshold where emission control using DIFF, DLS/FF, or WS is technically feasible and demonstrated. Smaller kilns have smaller airflow rates than larger kilns and any fluctuations in airflow rates can have a significant impact on the ability of DIFF, DLS/FF, or WS to operate correctly. For new and reconstructed small kilns, the DLA control technology has been demonstrated to perform adequately despite the lower airflow rates; DLA control systems are not as sensitive to airflow changes as DIFF, DLS/FF, or WS control systems. In addition, existing small kilns that are rebuilt such that they become large kilns and existing large DLA-controlled kilns that are rebuilt are based on the use of a DLA, which is considerably less expensive than the other MACT controls. The revised standards should minimize the commenters' concerns over the costs of reconstructing older kilns.

E. Cost and Economic Impacts

Numerous comments were received regarding costs of the proposed rule. Commenters contended that EPA did not consider the full costs of the rule (*e.g.*, costs associated with problems retrofitting existing kilns). In general, commenters indicated that the economic impacts to brick industry would be severe. Several commenters pointed out that the brick industry is losing market share to cheaper building materials (*e.g.*, vinyl) that are more detrimental to the environment. The commenters stated that the proposed rule would have a negative effect on the future of many small businesses and the communities where they are located. The commenters expressed concern that the proposed rule would limit the opportunity for continued operation or expansion of brick plants throughout the U.S. The commenters noted that increased production costs would increase brick prices, causing brick to become less competitive with other materials and brick imports to rise, putting small U.S. companies out of business. Several commenters stated that the costs of the rule as proposed would prevent their company from ever replacing, performing a major repair on, or upgrading their existing kiln. Some commenters stated that the rule as proposed would eventually cause their company to go out of business. Some commenters added that they live in an economically depressed area and other jobs are not readily available.

One commenter disagreed with the Administrator's certification that the proposed rule would not create a significant impact on a substantial number of small entities. The commenter submitted an Economic Impacts Analysis (EIA). The commenter calculated and presented the Sales Test, Cash Flow Test, and Profit Test criteria which the commenter believes shows a greater number of small businesses at risk than does EPA's EIA. In addition, the commenter provided several specific comments on EPA's EIA. The commenter argued that the rule as proposed is a significant rulemaking per Executive Order (E.O.) 12866. A few commenters provided specific comments on the monitoring, reporting, and recordkeeping costs in the Office of Management and Budget (OMB) 83–I form and supporting statement.

Commenters also questioned the environmental benefits of the BSCP rule as proposed. One commenter questioned why the BSCP rule is necessary if brick manufacturing emissions are not causing public health problems or adverse environmental effects. Another commenter argued that there is no epidemiological evidence that anyone in North America has been harmed by brick plant HF emissions and that cancer incidence in brick plant workers is not higher than for the general population.

As previously mentioned in this preamble, section 112(b) of the CAA contains a list of HAP identified by Congress and authorizes EPA to add to that list pollutants that present or may present a threat of adverse effects to human health or the environment. Section 112(c) of the CAA requires us to list all categories and subcategories of major and area sources of HAP and to

establish NESHAP for the listed source categories and subcategories under section 112(d) of the CAA. Because BSCP manufacturing is a listed source category containing major sources of HAP, we are required by the CAA to establish NESHAP for BSCP manufacturing.

As stated previously, MACT can either be established at the MACT floor, or can be some control level more stringent than the MACT floor or beyond the floor. Section 112(d)(3) of the CAA does not allow us to consider cost when determining MACT floors. We are only allowed to consider costs when we examine beyond-the-floor control options according to section 112(d)(2) of the CAA. We acknowledge the commenters' concerns regarding the cost of the proposed rule. At proposal, we determined that beyond-the-floor control measures would not be appropriate for the BSCP industry, in part because of costs.

Following proposal, we reevaluated the MACT floors for existing tunnel kilns and have revised the standards to incorporate use of DLA on existing large tunnel kilns. We also revised the MACT standards for new and reconstructed small tunnel kilns, existing small kilns that are rebuilt such that they become large kilns, and existing large DLA-controlled tunnel kilns that are rebuilt such that the standards are based on the level of performance that can be achieved by a DLA. (MACT requirements for existing small tunnel kilns and new and reconstructed large tunnel kilns remain unchanged.) We continue to agree that beyond-the-floor control measures are not warranted for the BSCP industry. The revised MACT standards for new and reconstructed small tunnel kilns, existing small kilns that are rebuilt such that they become large kilns, and existing large DLA-controlled kilns that are rebuilt are the same as the revised standards for existing large tunnel kilns. These revised standards are less costly and should reduce concerns regarding cost of retrofitting or rebuilding existing kilns and starting up new small kilns. Environmental benefits of today's final BSCP rule are discussed later in this preamble.

EPA reviewed the economic impact analysis report submitted by the commenter. We have revised our EIA to identify additional small businesses affected by the rule. We have also incorporated the lower revised cost estimates into the EIA. Impacts on small businesses are considerably lower in the revised analysis and prices are predicted to rise by less than one percent on average. The results of our revised EIA, as well as a discussion of the impact of today's final rule on small businesses, are presented later in this preamble.

Comments on the costs of monitoring, reporting, and recordkeeping were incorporated into the revised OMB 83–I form and supporting statement as appropriate. A discussion of the OMB 83–I form and supporting statement prepared in compliance with the Paperwork Reduction Act is presented later in this preamble.

F. Test Data and Emission Limits

1. HF and HCl Emission Limits

Commenters stated that the test data EPA used to set the HF and HCl limits are questionable. An independent consultant, hired by the BSCP industry, reviewed the data and determined that six of the seven test runs used the wrong filter media. A glass filter media was used instead of a Teflon filter. The commenter suggested that, as a result, the data could be biased. One commenter also charged that EPA removed high test runs without any technical basis even though all of these runs met the same quality control (QC) criteria as other runs. Finally, one commenter stated that EPA's use of both HF and total fluorides (TF) data to develop the average uncontrolled HF emission factor (which was used in developing the HF emission limit) was unsupported, and the commenter believes that EPA should use only the HF test data because HF is the regulated pollutant.

We have reviewed the emission tests mentioned by the commenter and agree that there are some problems with most of the available test data, and we have accounted for any potential bias by revising the emission limits. In consultation with EPA's Emission Measurement Center (EMC), we used a conservative approach to determine the possible impact of the bias on the percent reduction emission limits. The analysis showed that our available percent reduction data could be as much as about 5 percent high, and we, therefore, decreased the corresponding HF and HCl percent reduction requirements by 5 percent and adjusted the corresponding production-based emission limits accordingly. In response to the commenter's assertion that we dropped two test runs without a technical reason, we examined the test runs in question and incorporated one of the two runs back into the data set used for developing the standards. Finally, in response to the appropriateness of using TF data in calculating the average HF emission factor, while the average of the TF and HF data sets suggest that TF and HF measurements are similar, we recognize the inconsistencies between the few available side-by-side HF and TF tests and we, therefore, decided to remove the TF data from the HF emission factor calculation. Based on the three issues discussed above, we revised the emission limits for kilns where MACT is based on use of DIFF, DLS/FF, or WS (*i.e.*, for new large kilns). Today's final rule requires new large kilns to limit HF emissions to 0.029 kilograms per megagram (kg/Mg) (0.057 pounds per ton (lb/ton)) of fired product or reduce HF emissions by 90 percent; and limit HCl emissions to 0.028 kg/Mg (0.056 lb/ton) or reduce HCl emissions by 85 percent.

The revised HF and HCl emission limits for existing large tunnel kilns, new and reconstructed small tunnel kilns, existing small kilns that are rebuilt such that they become large kilns, and existing large DLA-controlled tunnel kilns that are rebuilt are based on the use of a DLA for HAP reduction. Two HF emission tests (both conducted on the same source) and two total fluorides emission test are available for DLA-controlled kilns, and the tests showed HF or TF control efficiencies of 92.3 percent (HF), 96.4 percent (HF), 93.3 percent (TF), and 93.5 percent (TF). Similar to the DIFF and DLS/FF tests, we identified problems with the two HF emission tests that could have biased the control efficiencies high. To account for this uncertain bias, and considering typical vendor guarantees for DLA systems (vendors will guarantee 90 percent HF reduction unless a lesser percentage meets the customer's need, in which case the vendors typically provide lower guarantees), we selected a percent reduction emission limit of 90 percent for HF. We applied this 90 percent reduction to the revised average HF emission factor of 0.29 kg/Mg (0.57 lb/ton) to calculate a production-based HF emission limit of 0.029 kg/Mg (0.057 lb/ton). Control efficiency data for HCl are available from two tests on a single DLA-controlled kiln. The tests averaged 30.7 percent control, and we selected a percent reduction HCl emission limit of 30 percent. We applied this 30 percent reduction to the average HCl emission factor of 0.19 kg/Mg (0.37 lb/ton) to calculate a production-based HCl emission limit of 0.13 kg/Mg (0.26 lb/ton).

Percent of HAP metals in PM. Several commenters noted that HAP metals and PM data from four facilities (0.16 percent, 0.99 percent, 2.8 percent, and 4.5 percent) were used to arrive at 1.9 percent of the PM is PM HAP. The commenters stated that EPA included an invalid, high data point for manganese in developing the percentage of PM that is PM HAP. We have examined the test run mentioned by the commenters and agree that the run should be voided. Our revised analyses now indicate that the overall percentage of PM that is HAP metals is 0.72 percent.

PM limit. Other commenters argued that a PM limit for brick kilns is unnecessary. One commenter noted that metals occur naturally in clays or shales used to make bricks and that PM emissions from BSCP plants are clay dust. The commenter argued that metals are locked into the structure of the clay dust and are not bio-available to affect humans through respiratory adsorption, ingestion, or dermal contact. Some commenters noted that there is limited information on the amount of HAP metals in the PM emitted. Commenters pointed out that EPA is not setting a PM limit for clay refractory kilns. Some commenters disagreed that PM is an adequate surrogate for HAP metals emissions. Commenters also requested that a percent reduction alternative be allowed for the PM standard, similar to the percent reduction limits for HF and HCl.

We agree that PM emitted from BSCP facilities is largely clay dust, and that metals are naturally occurring in clays and shales used to make bricks. Many BSCP facilities apply surface coatings or body additives containing HAP metals to their products, and these coatings are another potential source of HAP metals emissions. These types of additives and coatings are not used in the manufacture of clay refractories.

We have four emission tests for HAP metals from tunnel kilns and all of these tests measured some level of HAP metals emissions including emissions of antimony, arsenic, beryllium, cadmium, chromium, cobalt, mercury, manganese, nickel, lead, and selenium. Based on these data, we believe that all kilns emit some level of HAP metals and, therefore, we are regulating HAP metals emissions. Test data for HAP metals are not available for clay refractories kilns.

We are unaware of any information to support the idea that the HAP metals are locked into the structure of the clay and are not bio-available to affect humans. In the absence of such information and in the interest of protecting public health, we assume conservatively that the HAP metals are bio-available and could affect human health. This assumption is consistent with the conservative approach embodied in the CAA section 112(b)(2) directive that EPA add pollutants to the statutory list of HAP that "may" present adverse risks to human health and the environment through various exposure routes.

We used PM as a surrogate for HAP metals so that individual emission limits would not be based on the limited and variable data. We examined the available HAP metals test data and calculated that about 95 percent of the HAP metals emissions are in particulate form. Furthermore, the types of control technologies used on BSCP kilns remove PM and would indiscriminately remove particulate HAP metals. The United States Court of Appeals for the District of Columbia Circuit stated in a December 15, 2000 decision (in response to the National Lime Association (NLA) challenge of the use of PM as a surrogate for HAP metals), "if HAP metals are invariably present in cement kiln PM, then even if the ratio of metals to PM is small and variable, or simply unknown, PM is a reasonable surrogate for the metals—assuming * * * that PM control technology indiscriminately captures HAP metals along with other particulates." Our use of PM as a surrogate for HAP metals in the final BSCP rule is consistent with this decision.

We typically do not include percent reduction as an alternative for PM because a percent reduction standard rewards those facilities that have high inlet PM loadings. We believe that this is different from the percent reduction standards for HF and HCl because facilities do not typically have options for reducing the uncontrolled levels of HF or HCl. Therefore, we are not providing an alternative percent reduction standard for PM.

The revised PM emission limit for existing large tunnel kilns, new and reconstructed small tunnel kilns, existing small kilns that are rebuilt such that they become large kilns, and existing large DLA-controlled tunnel kilns that are rebuilt is based on the use of a DLA. Data from four tests conducted at the outlets of DLA were available for establishing a production-based emission limit, and we selected the highest PM data point as the emission limit in order to account for variability. Today's final rule contains a PM emission limit of 0.21 kg/Mg (0.42 lb/ton) of fired product for existing large tunnel kilns, new and reconstructed small tunnel kilns, existing small kilns that are rebuilt such that they become large kilns, and existing large DLA-controlled tunnel kilns that are rebuilt. The PM emission limit for new and reconstructed large tunnel kilns is unchanged from proposal (0.060 kg/Mg (0.12 lb/ton) of fired product).

G. Monitoring Requirements

Numerous comments were received on the proposed monitoring requirements. Some commenters felt that the monitoring, reporting, and recordkeeping requirements were unreasonable. Commenters noted that the monitoring requirements would require additional and higher skilled personnel.

Under section 114(a)(3) of the CAA, owners or operators of major sources are required to conduct enhanced monitoring of affected sources to ensure compliance with applicable emission standards. In response to this mandate, we have incorporated continuous compliance requirements into all part 63 standards, generally in the form of continuous emissions monitoring or continuous parameter monitoring. We believe that continuous monitoring is needed to ensure that emission controls are operated properly. However, 40 CFR 63.8(f) allows owners and operators of affected sources to request approval for alternative monitoring procedures to demonstrate compliance with emission limitations.

Although we have eliminated some of the proposed monitoring requirements (such as fabric filter inlet temperature monitoring) from today's final rule, we have retained most of the proposed monitoring requirements. We believe that those monitoring requirements are the minimum needed to ensure continuous compliance with the emission limits.

1. Operation, Maintenance, and Monitoring (OM&M) Plan

Some commenters felt that development of an OM&M plan was overly burdensome. One commenter thought the requirement to include OM&M procedures for kiln operation was unjustified. Another commenter noted possible contradictions of OM&M plan requirements and Table 7 of the proposed BSCP rule (the table showing applicability of the General Provisions to part 63).

After reviewing these comments, we decided that OM&M plans do not have to include procedures for monitoring the operation and maintenance of tunnel kilns, and we have written the final rule accordingly. However, we continue to believe that site-specific OM&M plans are necessary to ensure continued proper operation of any control device that is used to comply with the final rule.

Regarding the apparent contradictions between 40 CFR 63.8425(b)(8) through (10) and Table 7 of the proposed rule, we did not cite the General Provisions

to part A in the proposed 40 CFR 63.8425 (b)(8) through (10), but specified that OM&M plans must include operation and maintenance, quality assurance, and reporting and recordkeeping procedures that are consistent with the General Provisions. Therefore, we believe there is no contradiction between 40 CFR 63.8425 (b)(8) through (10) and Table 7 of the proposed rule. However, we did clarify in Table 7 of the final rule that 40 CFR 63.8(c)(4) does not apply to subpart JJJJJ because 40 CFR 63.8425 and 63.8465 specify the requirements for continuous monitoring systems (CMS).

Some commenters requested clarification on whether OM&M plans (and startup, shutdown, and malfunction plans (SSMP)) are required for kilns that would not be subject to control requirements (*e.g.*, existing small tunnel kilns). Another commenter questioned if an OM&M plan would be required if compliance is achieved without a control device. The BSCP NESHAP applies only to affected sources. Under today's final rule, an existing small tunnel kiln is not an affected source. Therefore, the requirements for OM&M plans, SSMP, and other monitoring, notification, reporting, and recordkeeping requirements do not apply to those kilns. Owners or operators will be required to prepare an OM&M plan and SSMP for any kiln that is an affected source even if the kiln can meet the emission limits without the use of a control device.

2. Bag Leak Detectors

Commenters indicated that bag leak detectors are unnecessary, overly protective, and maintenance intensive. The commenters noted that bag failure is noticeable because PM emissions would be visible at the stack. Several commenters requested that opacity or visible emissions (VE) determinations be allowed as opposed to bag leak detectors.

We agree with the commenters that periodic VE checks should provide a reasonable alternative to bag leak detectors, and we have written the final rule accordingly. In today's final rule, owners and operators of affected kilns that are controlled with a DLS/FF or DIFF can choose between installing a bag leak detection system or performing daily VE checks. Today's final rule also includes a provision for decreasing the frequency of VE checks provided no VE are observed.

3. Water Injection Rate Monitoring on DLS/FF

Three commenters stated that DLS/FF water injection rate monitoring has nothing to do with HF or HCl removal (but is important for sulfur dioxide (SO_2) removal) and recommended that the provision for monitoring DLS/FF water injection rate be eliminated.

After reviewing the available information, we decided to eliminate the requirement for water injection rate monitoring on affected DLS/FF-controlled kilns. Water injection is used to enhance the removal of SO_2 by a DLS/FF, but has little effect on removal of HF and HCl.

4. Fabric Filter Inlet Temperature

Several commenters recommended that the requirement to monitor fabric filter inlet temperature be eliminated from the rule as proposed. The commenters explained that it would be impractical to hold the fabric filter inlet temperature to within 25 degrees below the average established during the performance test. The fabric filter inlet temperature varies frequently, much more than 25 degrees, because of many process factors. Other commenters noted that fabric filter inlet temperature has little relevancy to acid gas control. One commenter stated that control systems using hydrated lime are generally known to have increased HCl and HF removal when temperatures increase.

As a result of these comments, we have eliminated the requirement for monitoring fabric filter inlet temperatures on affected kilns that are controlled with a DLS/FF or DIFF. We believe that the other monitoring requirements (*e.g.*, lime feed rate monitoring and periodic VE checks) that we have incorporated into the final rule are adequate for ensuring continuous compliance with the emission limits.

5. DLA Parameter Monitoring

Many commenters suggested potential parametric monitoring requirements for DLA that could be used to demonstrate continuous compliance. Various commenters suggested documenting use, on a continuous basis, of the same limestone that was used during the performance test demonstrating compliance. Other suggestions included monitoring pressure drop (demonstrating airflow); limestone flow; and inlet and/or exhaust gas temperature.

We have incorporated parameter monitoring requirements for DLA into the final rule based on information provided by commenters and a recent site visit to a facility operating a DLA. Today's final rule will require owners and operators of affected kilns with DLA to continuously monitor the pressure drop across the DLA; perform a daily visual check of the limestone hopper and storage bin (located at the top of the DLA), and record the limestone feeder setting daily; and perform periodic VE observations. In addition, owners and operators will be required to document the source of the limestone used during the most recent performance test and maintain records that demonstrate that the source of limestone has not changed.

6. Continuous Emission Monitoring Systems

In the preamble to the proposed rule, we requested comment on requiring the application of PM continuous emission monitoring systems (CEMS) as a method to assure continuous compliance with the proposed PM emission limits for BSCP tunnel kilns. While we believe there is evidence that PM CEMS should work on BSCP tunnel kilns, we received no comments in support of requiring PM CEMS. Commenters opposed use of CEMS when less expensive, but effective, parametric monitoring alternatives are available. Therefore, today's final rule does not require use of PM CEMS or any other type of CEMS. We believe that the parameter monitoring requirements specified in the final rule are adequate for ensuring continuous compliance.

7. Establishing/Re-Establishing Production Rate

Several commenters requested that the process weight threshold be based on average annual throughput instead of hourly or monthly throughput. One commenter pointed out that the nature of brick production does not allow for spikes in emissions. Several commenters stated that the averaging period used to determine the MACT floor applicability to existing tunnel kilns must have the same production averaging basis as the data used in setting the subcategorization level. The commenters stated that it is not reasonable to base the standard on a 12-month averaging period and then enforce the floor on an instantaneous or 30-day rolling averaging period.

One commenter requested clarification as to whether EPA would require a retest if the maximum production level of a kiln would be higher than the level observed during the performance test. The commenter added that several States recognize that capacity and maximum production are difficult figures to calculate for a brick kiln because they are highly dependent on the specific characteristics of a product (size, percent void).

We agree with the commenters that a kiln's process weight threshold (*e.g.*, design capacity level) should be based on average annual tonnage rather than on the proposed 30-day rolling average. We have revised the final BSCP rule accordingly to require the ton per hour production capacity of a kiln to be calculated based on the maximum amount of BSCP (in tons) that can be produced in a 12-month period divided by 8,760 hours per year.

Regarding the question of whether we will require a retest if the maximum production level of a kiln is higher than the level observed during the performance test, a retest will be required because an increase in production is likely to increase emissions, and the operating limits that are based on the performance test would no longer demonstrate continuous compliance with the emission limits.

8. Test Methods

One commenter requested that we allow any of the applicable EPA Method 5 variations to demonstrate compliance with the PM standard. The commenter pointed out that a facility with high SO_2 could reduce the potential for SO_2 to be counted as PM by using EPA Method 5B. We are not including EPA Method 5B as a test method because our emission limit is based on EPA Method 5 and includes tests on sources with high SO_2 emissions. Individual facilities will have the option of requesting an alternative test method.

One commenter on the proposed clay ceramics rule requested that the final rule provide facilities with the option to use either EPA Method 26A or EPA Method 320 for all required stack testing for HF and HCl. This comment applies for both BSCP and clay ceramics. Therefore, we have modified today's final BSCP rule to include EPA Method 320 as an alternative to EPA Method 26A.

H. Startup, Shutdown, and Malfunction

1. APCD Bypass

Several commenters stated that the BSCP rule, as proposed, would not allow the kiln control device to be bypassed at any time. Various commenters stated that the proposed MACT controls (DIFF, DLS/FF, or WS) must maintain a given flow to perform efficiently. Thus, the APCD would dictate how the kiln is operated. During initial kiln startup or subsequent kiln startups or shutdowns, airflow temperatures and volumes would be below APCD design volumes. The heat from the furnace zone could damage the kiln walls and cars if not vented. Therefore, the ability to bypass during startups, routine maintenance, and emergency shutdowns of the APCD is needed.

Several commenters noted that brick kilns are constant flow devices that cannot just be turned off without detrimental impact to large volumes of product (*e.g.*, character, color, and quality of brick) and the kiln itself. The commenters stated that days to weeks may be needed to properly shut down a brick kiln. One commenter noted that kilns operate continuously 2 to 3 years before being shut down for routine maintenance.

Commenters stated that short periods of bypass are necessary to conduct routine preventive maintenance inspections of APCD. Commenters pointed out that the control devices currently employed have and use bypass capability for routine maintenance and emergency repairs.

We generally agree with the commenters that some provision is needed to allow the control device on tunnel kilns to be bypassed for routine maintenance of the control device, and we have revised the rule accordingly. Under 40 CFR 63.8420(e) of today's final rule, owners and operators of an affected tunnel kiln can bypass the kiln control device for a cumulative period of up to 4 percent of the annual operating hours for the kiln. Based on the data and other information submitted by commenters on the proposed rule, we believe that the amount of time equating to 4 percent of annual kiln operating hours is adequate for completing routine maintenance on the types of controls that are likely to be used to comply with the BSCP NESHAP.

To comply with this bypass provision, owners or operators must submit a request to us for a routine control device maintenance exemption. The request must justify the need for the routine maintenance on the control device and the time required to complete the maintenance activities. The request also must describe the maintenance activities and the frequency of the maintenance activities, explain why the maintenance cannot be accomplished during kiln shutdowns, and describe how emissions will be minimized during the period when the kiln is operating and the control device is offline. Upon approval, the request for exemption must be incorporated by reference in, and attached to, the affected source's title V permit. During any period when the kiln is operating and the kiln control device is offline, the owner or operator must minimize HAP emissions. The duration of such periods also must be minimized.

We also note that the bypass provision included in today's final rule does not apply to startups, shutdowns, or malfunctions. 40 CFR 63.6(f)(1) explicitly states that nonopacity emission standards, such as the proposed emission limits for HF, HCl, and PM, "* * * apply at all times except during periods of startup, shutdown, and malfunction * * *" Startups, shutdowns, and malfunctions must be addressed in a facility's SSMP.

2. Initial Startup

Commenters stated that it is impractical to meet emission standards during initial startup of a tunnel kiln. The commenters indicated that it can take from weeks to a year to bring new BSCP kilns online. In addition, APCD such as DIFF, DLS/FF, or WS cannot be brought online until adequate temperature and airflow ranges are met. The commenters indicated that roughly 75 percent of design gas flow rate or kiln production rate must be obtained before a DIFF or DLS/FF could begin to operate properly. Another commenter stated that the proposed initial testing deadline (180 days following the compliance date) would not provide enough time for a new kiln to come up-to-speed.

We recognize that an extended period of time may be needed for the initial startup of a new kiln and have added a definition of initial startup to the BSCP final rule to address the concerns expressed by the commenters. The definition differentiates between DLA-controlled kilns and DIFF-, DLS/FF-, or WS-controlled kilns, because DLA are not sensitive to airflow and only require that the kiln gases are hot enough to avoid condensation in the DLA. Avoiding condensation is necessary because water and calcium carbonate (limestone) combine to make cement, and any introduction of water in the DLA reaction chamber could cause the limestone to be cemented together. In the final rule, we provided the following definition: "Initial startup" means: (1) For a new or reconstructed tunnel kiln controlled with a DLA, and for a tunnel kiln that would be considered reconstructed but for 40 CFR 63.8390(i)(1) or 40 CFR 63.8390(i)(2), the time at which the temperature in the kiln first reaches 260 °C (500 °F) and the kiln contains product; or (2) for a new or reconstructed tunnel kiln controlled with a DIFF, DLS/FF, or WS, the time at which the kiln first reaches a level of production that is equal to 75 percent of the kiln design capacity or 12 months

after the affected source begins firing BSCP, whichever is earlier. Although some commenters suggested that initial startup for DIFF-, DLS/FF-, and WS-controlled kilns be defined in terms of airflow, we defined initial startup in terms of production rate for DIFF-, DLS/FF-, and WS-controlled kilns because the final rule requires owners and operators of affected sources to monitor production rate, whereas flowrate monitoring is not required under today's final rule. We included the stipulation for DIFF-, DLS/FF-, and WS-controlled kilns that initial startup occurs no later than 12 months after the new kiln begins firing BSCP to prevent facilities from operating an affected new or reconstructed kiln at just less than 75 percent of the kiln design capacity long term to circumvent the final rule. A similar stipulation is not necessary for DLA-controlled kilns because the kiln temperature requirement is such that the kiln cannot produce BSCP until well after the temperature is reached.

By defining initial startup in today's final rule, we also have clarified the compliance date for new and reconstructed sources, which is specified in terms of the initial startup. Thus, new and reconstructed DIFF-, DLS/FF-, and WS-controlled tunnel kilns beginning operation after the promulgation date will be allowed to reach 75 percent of the kiln design capacity before initial startup is triggered and the APCD must come online. New and reconstructed DLA-controlled tunnel kilns, and tunnel kilns that would be considered reconstructed but for 40 CFR 63.8390(i)(1) or 40 CFR 63.8390(i)(2), beginning operation after the promulgation date will trigger initial startup when the temperature in the kiln first reaches 260°C (500°F) and the kiln contains product. Performance testing is required 180 days following the compliance date (*i.e.*, 180 days following initial startup). Facilities wishing to conduct performance testing to determine the level of air pollution control necessary may conduct such testing prior to achieving initial startup.

3. Startup

Two commenters expressed concern with how startup is defined with respect to the proposed rule. The commenters stated that, under the proposed rule, a kiln could be considered to be operating if only one burner was operating. However, a kiln could have as many as 100 burners or more. To clarify what constitutes kiln startup we added to today's final rule a definition of "startup" that incorporates "starting the production process."

4. Deviations

One commenter felt that the requirement of reporting emissions as deviations during startup, shutdown, or malfunction (SSM) is inappropriate because facilities are not required to be in compliance with the emission limitations during SSM. Another commenter requested that EPA make it clear the deviations are not necessarily an indication of noncompliance or excess emissions.

The term deviation applies to events during which an affected source fails to meet an emission limitation or comply with another requirement of the final rule. Deviations are not synonymous with violations; depending on the circumstances, a deviation may or may not be a violation of an applicable requirement. We agree with the commenter that an affected source need not be in compliance with emission limits during periods of SSM. Although we consider non-compliance with emission limits during startup, shutdown, and malfunction to be deviations from the emission limits, we do not consider these deviations to be violations of the emission limits. 40 CFR 63.7(e)(1) specifies that, "Operations during periods of startup, shutdown, and malfunction shall not constitute representative conditions for the purpose of a performance test, nor shall emissions in excess of the level of the relevant standard during periods of startup, shutdown, and malfunction be considered a violation of the relevant standard unless otherwise specified in the relevant standard or a determination of noncompliance is made under 40 CFR 63.6(e)." As indicated in Table 7 of the final rule, this language of the general provisions to part 63 does apply to subpart JJJJJ. The definition of deviation included in today's final rule is consistent with how deviation is defined in other NESHAP, and has not been changed since proposal.

I. Risk-Based Approaches

The preamble to the proposed BSCP rule requested comment on whether there might be further ways to structure the BSCP rule to focus on the facilities which pose significant risks and avoid the imposition of high costs on facilities that pose little risk to public health and the environment. Specifically, we requested comment on the technical and legal viability of two risk-based approaches: (1) An applicability cutoff for threshold pollutants under the authority of CAA section 112(d)(4); and (2) subcategorization and delisting under the authority of CAA sections 112(c)(1) and 112(c)(9).[3] We indicated that we would evaluate all comments before determining whether either approach would be included in the final BSCP rule. Numerous commenters submitted detailed comments on these risk-based approaches. These comments are summarized in the BSCP Response-to-Comments document (see **SUPPLEMENTARY INFORMATION** section).

Based on our consideration of the comments received and other factors, we have decided not to include the risk-based approaches in today's final BSCP rule. The risk-based approaches described in the proposed BSCP rule and addressed in the comments we received raise a number of complex issues. In addition, we are under time pressure to complete the BSCP rule, because the statutory deadline for promulgation has passed and a deadline suit has been filed against EPA. (See Sierra Club v. Whitman, Civil Action No. 1:01CV01537 (D.D.C.).) Given the range of issues raised by the risk-based approaches and the need to promulgate a final rule expeditiously, we believe that it is appropriate not to include any risk-based approaches in today's final BSCP rule. Nonetheless, we expect to continue to consider risk-based approaches in connection with other proposed NESHAP where we have described and solicited comment on such approaches. Finally, while we are not including risk-based approaches in today's final BSCP rule, we have included a number of other measures that we expect will reduce the costs and burdens on the affected sources.

III. Summary of the Final Brick and Structural Clay Products Manufacturing NESHAP

A. What Source Category Is Regulated by the Final Rule?

Today's final rule for BSCP manufacturing applies to BSCP manufacturing facilities that are, are located at, or are part of, a major source of HAP emissions. The BSCP manufacturing source category includes those facilities that manufacture brick (including, but not limited to, face brick, structural brick, and brick pavers); clay pipe; roof tile; extruded floor and wall tile; and/or other extruded, dimensional clay products. Brick and structural clay products primarily are produced from common clay and shale. Production of BSCP typically consists of processing and handling the raw materials, forming and cutting bricks and shapes, and drying and firing the bricks and shapes. One by-product of brick manufacturing is crushed brick, which is produced at some facilities by crushing reject bricks.

There are a total of 189 domestic BSCP manufacturing facilities; 170 of these facilities primarily produce brick, and 19 of these facilities primarily produce structural clay products. The 189 BSCP manufacturing facilities are located in 39 States and are owned by 89 companies. Seventy-six of the companies are small businesses, and these 76 companies own 92 of the BSCP manufacturing facilities. Thirteen of the companies are large businesses, and these 13 companies own 97 BSCP manufacturing facilities.

All BSCP are fired either in continuous (tunnel or roller) or batch (periodic) kilns. Because the vast majority of continuous kilns are tunnel kilns, continuous kilns, including roller kilns, will be referred to as tunnel kilns for the remainder of this preamble. A total of 314 permitted and operable tunnel kilns were reported by industry; 302 of these kilns are located at facilities that are estimated, based on uncontrolled emissions, to be major sources. Of the 302 tunnel kilns located at major sources, 275 are located at brick manufacturing facilities and 27 are located at structural clay products manufacturing facilities. A total of 227 permitted and operable periodic kilns were reported by industry; 164 of these kilns are located at facilities that are estimated to be major sources. Of the 164 periodic kilns located at major sources, 81 are located at brick manufacturing facilities and 83 are located at structural clay products manufacturing facilities.

The primary HAP emissions sources at BSCP manufacturing plants are tunnel kilns and periodic kilns, which emit HF, HCl, and HAP metals. Kilns also emit PM and SO_2. Other sources of HAP emissions at BSCP manufacturing plants are the raw material processing and handling equipment. The APCD that are used by the industry to control emissions from kilns include DIFF, DLS/FF, DLA, WS, and fabric filters.

B. What Are the Affected Sources?

The existing affected source, which is the portion of each source in the category for which we are setting emission standards, is any existing large tunnel kiln. Large tunnel kilns have a design capacity equal to or greater than 9.07 Mg/hr (10 tph) of fired product. Such tunnel kilns may be fired by natural gas or other fuels, including sawdust. Sawdust firing typically involves the use of a sawdust dryer because sawdust typically is purchased wet and needs to be dried before it can be used as fuel. Consequently, some sawdust-fired tunnel kilns have two process streams, including: A process stream that exhausts directly to the atmosphere or to an APCD, and a process stream in which the kiln exhaust is ducted to a sawdust dryer where it is used to dry sawdust before being emitted to the atmosphere.

Today's final rule focuses on those process streams from existing large tunnel kilns that exhaust directly to the atmosphere or to an APCD. For existing large tunnel kilns that do not have sawdust dryers, the kiln exhaust process stream (*i.e.*, the only process stream) is subject to the requirements of today's final rule. In accordance with CAA section 112(d)(1), we have divided tunnel kilns that duct exhaust to sawdust dryers into two classes for purposes of regulation. For existing large tunnel kilns that ducted exhaust to sawdust dryers prior to July 22, 2002, only the process stream that is emitted directly to the atmosphere or to an APCD is subject to the requirements of today's final rule; any process stream from such kilns that is ducted to a sawdust dryer is not subject to those requirements.

By contrast, for existing large tunnel kilns that first duct exhaust to sawdust dryers on or after July 22, 2002, all of the exhaust (*i.e.*, both the process stream that is emitted directly to the atmosphere or to an APCD and the process stream that is ducted to a sawdust dryer) is subject to the same level of control requirement as a new tunnel kiln.

In addition, each new or reconstructed tunnel kiln is an affected source and all process streams from new or reconstructed tunnel kilns are subject to the requirements of today's final rule. The requirements of today's final rule for new and reconstructed tunnel kilns are different for small and large kilns. Small tunnel kilns have design capacities less than 9.07 Mg/hr (10 tph) of fired product, and large tunnel kilns have design capacities equal to or greater than 9.07 Mg/hr (10 tph) of fired product. A source is a new affected source if construction began on or after July 22, 2002. An affected source is reconstructed if the criteria defined in 40 CFR 63.2 are met, as qualified by 40 CFR 63.8390(i). An affected source is existing if it is not new or reconstructed.

An existing tunnel kiln with a federally enforceable permit condition that restricts kiln operation to less than 9.07 Mg/hr (10 tph) of fired product on an annual average basis is not subject to the requirements of today's final rule. Kilns that are used exclusively for R&D and not used to manufacture products for commercial sale, except in a *de minimis* manner, are not subject to the requirements of today's final rule. Finally, kilns that are used exclusively for setting glazes on previously fired products are not subject to the requirements of today's final rule.

C. When Must I Comply With the Final Rule?

Existing affected sources must comply within 3 years of May 16, 2003. New and reconstructed affected sources with an initial startup before May 16, 2003 must comply no later than May 16, 2003. New and reconstructed affected sources with an initial startup after May 16, 2003 must comply upon initial sfartup. Existing area sources that subsequently become major sources have 3 years from the date they become major sources to come into compliance. Any portion of existing facilities that become new or reconstructed major sources and any new or reconstructed area sources that become major sources must be in compliance upon initial startup.

D. What Are the Emission Limits?

Today's final rule includes emission limits in the form of production-based mass emission limits and percent reduction requirements. In establishing the HAP emission limits, we selected PM as a surrogate for HAP metals (including mercury in particulate form). Today's final rule contains HF, HCl, and PM emission limits for existing, new, and reconstructed affected sources at BSCP manufacturing facilities, as well as for the following affected sources that would be considered reconstructed but for 40 CFR 63.8390(i): Existing small tunnel kilns whose design capacity is increased such that it is equal to or greater than 9.07 Mg/hr (10 tph) of fired product or existing large DLA-controlled kilns.

If you own or operate an existing large tunnel kiln, a new or reconstructed small tunnel kiln, an existing small kiln that is rebuilt such that it becomes a large kiln, or an existing large DLA-controlled kiln that is rebuilt, you must meet an HF emission limit of 0.029 kg/Mg (0.057 lb/ton) of fired product or reduce uncontrolled HF emissions by at least 90 percent for affected process streams. You must meet an HCl emission limit of 0.13 kg/Mg (0.26 lb/ton) of fired product or reduce uncontrolled HCl emissions by at least 30 percent. You are required to meet a PM emission limit of 0.21 kg/Mg (0.42 lb/ton) of fired product.

[3] See 68 FR 1276 (January 9, 2003) (Plywood and Composite Wood Products Proposed NESHAP) and docket number A–98–44, Item No. II–D–525 (White papers submitted to EPA outlining the risk-based approaches).

If you own or operate a new or reconstructed large tunnel kiln, you must meet an HF emission limit of 0.029 kg/Mg (0.057 lb/ton) of fired product or reduce uncontrolled HF emissions by at least 90 percent for all process streams. You must meet an HCl emission limit of 0.028 kg/Mg (0.056 lb/ton) of fired product or reduce uncontrolled HCl emissions by at least 85 percent. You are required to meet a PM emission limit of 0.060 kg/Mg (0.12 lb/ton) of fired product.

E. What Are the Operating Limits?

In addition to the emission limits, today's final rule includes operating limits that apply to APCD used to comply with the final rule. The operating limits require you to maintain certain process or APCD parameters within levels established during performance tests. Each facility affected by today's final rule is required to prepare, implement, and revise, as necessary, an OM&M plan. The OM&M plan generally specifies the operating parameters to be monitored; the frequency that parameter values will be determined; the limits for each parameter; procedures for proper operation and maintenance of APCD and monitoring equipment; procedures for responding to parameter deviations; and procedures for documenting compliance.

We have established operating limits for DLA, DIFF, DLS/FF, and WS. If you operate a DLA, you must maintain the average pressure drop across the DLA for each 3-hour block period at or above the average pressure drop established during the performance test. You also must maintain an adequate amount of limestone in the limestone hopper, storage bin (located at the top of the DLA), and DLA at all times. In addition, you must maintain the limestone feeder setting at or above the level established during the performance test and you must use the same grade of limestone from the same source as was used during the performance test. Finally, you must maintain no VE from the DLA stack.

If you operate a DIFF or DLS/FF, you must maintain free-flowing lime in the feed hopper or silo and to the APCD at all times and maintain the feeder setting at or above the level established during your performance test. In addition, you have the option of using a bag leak detection system or monitoring VE. If you use a bag leak detection system, you must initiate corrective action within 1 hour of a bag leak detection system alarm and complete corrective actions according to your OM&M plan, and operate and maintain the fabric filter such that the alarm is not engaged for more than 5 percent of the total operating time in a 6-month reporting period. If you monitor VE, you must maintain no VE from the DIFF or DLS/FF stack.

If you operate a WS, you are required to maintain the average scrubber pressure drop, the average scrubber liquid pH, the average scrubber liquid flow rate, and the average chemical addition rate, if applicable, for each 3-hour block period at or above the average values established during your performance test.

If you own or operate an affected source equipped with an alternative APCD or technique not listed in the rule, you must establish operating limits for the appropriate operating parameters subject to prior written approval by the Administrator as described in 40 CFR 63.8(f). You are required to submit a request for approval of alternative monitoring procedures that includes a description of the alternative APCD or technique, the type of monitoring device or procedure that you would use, the appropriate operating parameters that you would monitor, and the frequency that the operating parameter values would be determined and recorded. You must establish site-specific operating limits during your performance test based on the information included in the approved alternative monitoring procedures request. You are required to install, operate, and maintain the parameter monitoring system for the alternative APCD or technique according to your OM&M plan.

F. What Are the Performance Test and Initial Compliance Requirements?

We are requiring owners and operators of all affected sources to conduct an initial performance test using specified EPA test methods to demonstrate initial compliance with the emission limits. A performance test must be conducted before renewing your 40 CFR part 70 operating permit or at least every 5 years following the initial performance test, as well as when an operating limit parameter value is being revised. You must test at the outlet of the APCD and prior to any releases to the atmosphere for all affected sources. If meeting the percent reduction emission limits for HF or HCl, you must also test at the APCD inlet. You must conduct each test while operating at the maximum production level.

Under today's final rule, you are required to measure emissions of HF, HCl, and PM. You must measure HF and HCl emissions using EPA Method 26A, "Determination of Hydrogen Halide and Halogen Emissions from Stationary Sources-Isokinetic Method," 40 CFR part 60, appendix A, or any other alternative method that has been approved by the Administrator under 40 CFR 63.7(f) of the general provisions. The EPA Method 26, "Determination of Hydrogen Chloride Emissions from Stationary Sources," 40 CFR part 60, appendix A, may be used when no acid particulate matter (*e.g.*, HF or HCl dissolved in water droplets emitted by sources controlled by a WS) is present. As an alternative to using EPA Methods 26A or 26, you may measure HF and HCl emissions using EPA Method 320 "Measurement of Vapor Phase Organic and Inorganic Emission by Extractive FTIR" 40 CFR part 63, appendix A. When using EPA Method 320, you must follow the analyte spiking procedures of section 13 of Method 320 unless you can demonstrate that the complete spiking procedure has been conducted at a similar source. Particulate matter emissions must be measured using EPA Method 5, "Determination of Particulate Emissions from Stationary Sources," 40 CFR part 60, appendix A, or any other approved alternative method.

To determine initial compliance with the production-based mass emission limits for HF, HCl, and PM, you must calculate the mass emissions per unit of production for each test run using the mass emission rates of HF, HCl, and PM and the production rate (on a fired-product basis) measured during your performance test. To determine initial compliance with any of the percent reduction emission limits, you must calculate the percent reduction for each test run using the mass emission rates, measured during your performance test, of the specific HAP (HF or HCl) entering and exiting the APCD.

Prior to your initial performance test, you are required to install the CMS (*e.g.*, continuous parameter monitoring system) equipment to be used to demonstrate continuous compliance with the operating limits. During your initial test, you must use the CMS to establish site-specific operating parameter values that represent your operating limits.

If you operate a DLA, you must continuously measure the pressure drop across the DLA during the performance test and determine the 3-hour block average pressure drop. You also must maintain an adequate amount of limestone in the limestone hopper, storage bin (located at the top of the DLA), and DLA at all times. In addition, you must establish your limestone feeder setting one week prior to the performance test and maintain the feeder setting for the one-week period that precedes the performance test and during the performance test. Finally, you are required to document the source and grade of the limestone used during the performance test.

If you operate a DIFF or DLS/FF, you are required to ensure that lime in the feed hopper or silo and to the APCD is free-flowing at all times during the performance test, and you are required to record the feeder setting for the three test runs. If the lime feed rate varies, you are required to determine the average feed rate from the three test runs. If you use a bag leak detection system, you must submit analyses and supporting documentation demonstrating conformance with EPA guidance and specifications for bag leak detection systems.

If you operate a WS, you are required to continuously measure the scrubber pressure drop, the scrubber liquid pH, the scrubber liquid flow rate, and the chemical addition rate (if applicable). For each WS parameter, you are required to determine and record the average values for the three test runs and the 3-hour block average value.

G. What Are the Continuous Compliance Requirements?

Today's final rule requires that you demonstrate continuous compliance with each emission limitation that applies to you. You must follow the requirements in your OM&M plan and document conformance with your OM&M plan. You are required to operate a CMS to monitor the operating parameters established during your initial performance test as described in the following paragraphs. The CMS must collect data at least every 15 minutes, and you need to have at least three of four equally spaced data values (or at least 75 percent if you collect more than four data values per hour) per hour (not including startup, shutdown, malfunction, out-of-control periods, or periods of routine control device maintenance covered by a routine control device maintenance exemption) to have a valid hour of data. You must operate the CMS at all times when the process is operating. You also have to conduct proper maintenance of the CMS, including inspections, calibrations, and validation checks, and maintain an inventory of necessary parts for routine repairs of the CMS. Using the recorded readings, you must calculate and record the 3-hour block average values of each operating parameter. To calculate the average for each 3-hour averaging period, you must have at least 75 percent of the recorded readings for that period (not including startup, shutdown, malfunction, out-of-control periods, or periods of routine control device maintenance covered by a routine control device maintenance exemption).

If you operate a DLA, you must collect and record data documenting the DLA pressure drop and reduce the data to 3-hour block averages. You must maintain the average pressure drop across the DLA for each 3-hour block period at or above the average pressure drop established during the performance test. You also must verify that the limestone hopper, storage bin (located at the top of the DLA), and DLA contain an adequate amount of limestone by performing a daily visual check of the limestone hopper and the storage bin, and if the hopper or storage bin do not contain adequate limestone you must promptly initiate and complete corrective actions according to your OM&M plan. You also must record the limestone feeder setting daily to verify that the feeder setting is being maintained at or above the level established during the performance test. You also must use the same grade of limestone from the same source as was used during the performance test and maintain records of the source and type of limestone. Finally, you must perform daily, 15-minute VE observations in accordance with the procedures of EPA Method 22, "Visual Determination of Fugitive Emissions from Material Sources and Smoke Emissions from Flares," 40 CFR part 60, appendix A. During the VE observations, the kiln must be operating under normal conditions. If VE are observed, you must promptly initiate and complete corrective actions according to your OM&M plan. If no VE are observed in 30 consecutive daily EPA Method 22 tests, you may decrease the frequency of EPA Method 22 testing from daily to weekly for that kiln stack. If VE are observed during any weekly test, you must promptly initiate and complete corrective actions according to your OM&M plan and you must resume EPA Method 22 testing of that kiln stack on a daily basis until no VE are observed in 30 consecutive daily tests, at which time you may again decrease the frequency of EPA Method 22 testing to a weekly basis.

For DIFF and DLS/FF systems, you must maintain free-flowing lime in the feed hopper or silo and to the APCD at all times. If lime is found not to be free flowing via the output of a load cell, carrier gas/lime flow indicator, carrier gas pressure drop measurement system, or other system, you must promptly initiate and complete corrective actions according to your OM&M plan. You also have to maintain the feeder setting at or above the level established during your performance test and record the feeder setting once each shift. If you use a bag leak detection system, you must initiate corrective action within 1 hour of a bag leak detection system alarm and complete corrective actions according to your OM&M plan. You also must operate and maintain the fabric filter such that the alarm is not engaged for more than 5 percent of the total operating time in a 6-month block reporting period. In calculating this operating time fraction, if inspection of the fabric filter demonstrates that no corrective action is required, no alarm time is counted. If corrective action is required, each alarm must be counted as a minimum of 1 hour, and if you take longer than 1 hour to initiate corrective action, the alarm time must be counted as the actual amount of time taken to initiate corrective action. As an alternative to using a bag leak detection system, you may monitor VE. If you choose to monitor VE, you must perform daily, 15-minute VE observations in accordance with the procedures of EPA Method 22. During the VE observations, the kiln must be operating under normal conditions. If VE are observed, you must promptly initiate and complete corrective actions according to your OM&M plan. If no VE are observed in 30 consecutive daily EPA Method 22 tests, you may decrease the frequency of EPA Method 22 testing from daily to weekly for that kiln stack. If VE are observed during any weekly test, you must promptly initiate and complete corrective actions according to your OM&M plan and you must resume EPA Method 22 testing of that kiln stack on a daily basis until no VE are observed in 30 consecutive daily tests, at which time you may again decrease the frequency of EPA Method 22 testing to a weekly basis.

For WS, you are required to continuously maintain the 3-hour block averages for scrubber pressure drop, scrubber liquid pH, scrubber liquid flow rate, and chemical addition rate (if applicable) at or above the minimum values established during your performance test.

H. What Are the Notification, Recordkeeping, and Reporting Requirements?

We are requiring owners and operators of all affected sources to submit initial notifications, notifications of performance tests, and notifications of compliance status by the specified dates in the final rule, which may vary depending on whether the affected source is new or existing. In addition to the information specified in 40 CFR

63.9(h)(2)(i), you are required to include the following in your notification of compliance status: (1) The operating limit parameter values established for each affected source (with supporting documentation) and a description of the procedure used to establish the values, and (2) if applicable, analysis and supporting documentation demonstrating conformance with EPA guidance and specifications for bag leak detection systems.

We are requiring owners and operators of all affected sources to submit semiannual compliance reports containing statements and information concerning emission limitation deviations, out-of-control CMS, periods of startup, shutdown, or malfunction, when actions consistent with your approved SSMP were taken, and periods of routine control device maintenance for facilities obtaining a routine control device maintenance exemption. In addition, if you undertake an action that is inconsistent with your approved SSMP, then you are required to submit a startup, shutdown, and malfunction report within 2 working days of starting such action and within 7 working days of ending such action unless you have made alternative arrangements with the permitting authority.

We are requiring owners and operators of all affected sources to maintain records for at least 5 years from the date of each record. You must retain the records onsite for at least the first 2 years but may retain the records offsite for the remaining 3 years. You are required to keep a copy of each notification and report, along with supporting documentation. You are required to keep records related to the following: (1) Records of startup, shutdown, or malfunction; (2) records of performance tests; (3) records to show continuous compliance with each emission limitation; (4) if a bag leak detection system is used, records of each bag leak detection system alarm, including the time of the alarm, the time corrective action was initiated and completed, and a description of the cause of the alarm and the corrective action taken; (5) if VE measurements are taken, records of VE observations; (6) records of each operating limit parameter value deviation, including the date, time, and duration of the deviation, a description of the cause of the deviation and the corrective action taken, and whether the deviation occurred during a period of startup, shutdown, or malfunction; (7) records of routine control device maintenance for facilities obtaining a routine control device maintenance exemption, including a copy of the approved request for a routine control device maintenance exemption; (8) records of production rate; (9) records for any approved alternative monitoring or test procedures; and (10) current copies of your SSMP and OM&M plan, including any revisions, with records documenting conformance.

IV. Summary of Environmental, Energy, and Economic Impacts for the Final Brick and Structural Clay Products Manufacturing NESHAP

A. What Are the Air Quality Impacts?

At the current level of control and 1996 production levels, nationwide emissions of HAP from the 169 BSCP facilities estimated to be major sources are about 6,000 Mg/yr (6,600 tpy). Under today's final rule, it is assumed that DLA will be installed on 89 tunnel kilns with production capacities equal to or greater than 9.07 Mg (10 tph)(that currently are not controlled with a DLA, DIFF, DLS/FF, or WS). This will result in an estimated reduction in nationwide HAP emissions of 2,100 Mg/yr (2,300 tpy).

Hydrogen fluoride emissions account for approximately 60 percent of the baseline HAP emissions. Hydrogen chloride emissions account for approximately 40 percent, with HAP metals comprising less than 1 percent of the baseline HAP emissions. Estimated nationwide emissions of HF, HCl, and HAP metals from existing major source BSCP facilities at the current level of control are 3,500 Mg/yr (3,900 tpy), 2,400 Mg/yr (2,600 tpy), and 24 Mg/yr (26 tpy), respectively. Implementation of today's final rule is estimated to reduce nationwide HF emissions from existing tunnel kilns by about 1,700 Mg/yr (1,900 tpy), and HCl will be reduced by 350 Mg/yr (390 tpy). Emissions of HAP metals are estimated to be reduced by 5.4 Mg/yr (5.9 tpy). Implementation of today's final rule also is estimated to reduce PM and SO_2 emissions by 740 Mg/yr (820 tpy) and 2,500 Mg/yr (2,800 tpy), respectively.

To project air quality impacts for new sources, we assumed that two large model tunnel kilns (each with a 13.6 Mg/hr (15 tph) capacity and equipped with DIFF) and one medium model tunnel kiln (with an 8.2 Mg/hr (9 tph) capacity and equipped with a DLA), will begin operation at the beginning of the first year following promulgation. We estimate that by implementing today's final rule, HF emissions from new sources will be reduced by 87 Mg/yr (96 tpy), HCl emissions will be reduced by 47 Mg/yr (52 tpy), and HAP metals emissions will be reduced by 0.48 Mg/yr (0.53 tpy). We also estimate that PM and SO_2 emissions from the new kilns will be reduced by 67 Mg/yr (74 tpy) and 170 Mg/yr (190 tpy), respectively.

Secondary air impacts associated with today's final BSCP rule are direct impacts that result from the operation of any new or additional APCD. The generation of electricity required to operate the APCD on new and existing kilns will result in 11 Mg/yr (12 tpy) of nitrogen oxides (NO_X) emissions in the first year following compliance with today's final rule. The electricity is assumed to be generated by natural gas-fired turbines.

B. What Are the Water and Solid Waste Impacts?

Because compliance with today's final rule is based on the use of DLA or DIFF, no water pollution impacts are estimated. However, facilities with available wastewater disposal options may choose to use wet scrubbers. Based on available information, each scrubber-controlled kiln could generate as much as about 5 million gallons per year of waste water (based on a 10 gallon per minute scrubber blowdown, which is the maximum permitted amount in the industry).

The solid waste disposal impacts that result from the use of DLA include the disposal of the spent limestone that is discharged from the DLA. We calculated the solid waste by taking the difference between the amount of limestone charged into the DLA and the amount of reacted limestone and then adding the amount of reaction products and PM captured. Implementation of today's final rule is estimated to increase solid waste from existing sources by 65,200 Mg/yr (71,900 tpy).

To project solid waste impacts for new sources, we assumed that two large model tunnel kilns (equipped with DIFF) and one medium model tunnel kiln (equipped with a DLA) will begin operation at the beginning of the first year following promulgation of the final rule. The analysis of solid waste from DLA is discussed in the previous paragraph. The solid waste disposal impacts that result from the use of DIFF include the disposal of the spent lime (or other sorbent) that is injected into the kiln exhaust stream and subsequently captured by a fabric filter. We calculated the solid waste by taking the difference between the amount of lime injected into the system and the amount of reacted lime, and then adding the amount of reaction products and PM captured. Stoichiometric ratios of 1.0 to 2.0 have been reported for the DIFF and DLS/FF in use in the brick manufacturing industry. The average stoichiometric ratio of 1.35 was used in this analysis. We estimate that implementing today's final rule will result in the generation of 1,410 Mg/yr (1,550 tpy) of solid waste from new sources.

C. What Are the Energy Impacts?

Energy impacts consist of the electricity needed to operate the APCD. Electricity requirements are driven primarily by the size of the fan needed in the APCD. We estimate the increase in electricity consumption that will result from implementation of the final rule to be 89 terajoules per year (84 billion British thermal units (Btu) per year) for existing sources.

To project energy impacts for new sources, we assumed that two large model tunnel kilns (equipped with DIFF) and one medium model tunnel kiln (equipped with a DLA) will begin operation at the beginning of the first year following promulgation of the final rule. We estimate the increase in energy consumption that will result from implementation of today's final rule to be 7.8 terajoules per year (7.4 billion Btu per year) for new sources.

D. Are There Any Additional Environmental and Health Impacts?

Reducing HAP emissions under today's final rule will lower occupational HAP exposure levels. The operation of APCD may increase occupational noise levels.

E. What Are the Cost Impacts?

For existing sources, nationwide total capital costs to implement today's final rule are estimated at $63 million, with total annualized costs of $24 million. The capital costs include the purchase and installation of DLA and monitoring equipment on 89 existing large tunnel kilns. The annualized costs include annualized capital costs of the control and monitoring equipment, operation and maintenance expenses, emission testing costs, and recordkeeping and reporting costs associated with installing and operating these 89 DLA, as well as the monitoring, recordkeeping and reporting, and emission testing costs on 20 additional APCD that currently are installed on existing large tunnel kilns.

To project costs for new sources, we assumed that two large model tunnel kilns (equipped with DIFF) and one medium model tunnel kiln (equipped with a DLA) will begin operation at the beginning of the first year following promulgation of the final rule. We estimate the capital costs associated with implementation of today's final rule to be $2.8 million for these three new sources. We estimate the annualized costs associated with implementation of today's final rule to be $1.14 million per year for new sources in the first year following promulgation of the rule.

We calculated the cost estimates using cost algorithms that are based on procedures from EPA's Office of Air Quality Planning and Standards (OAQPS) Control Cost Manual (EPA 450/3–90–006, January 1990) and cost information provided by the BSCP industry. We estimated costs by developing model process units that correspond to the various sizes of kilns found at BSCP manufacturing facilities and assigning the model process units to each facility based on the kiln sizes at each facility. The facility costs were summed to determine total industry costs.

F. What Are the Economic Impacts?

We conducted a detailed economic impact analysis to determine the market- and industry-level impacts associated with today's final rule. The compliance costs of today's final rule are expected to increase the price of brick and reduce their domestic production and consumption. We project the price of brick to increase by just less than 1 percent and project no change in price for structural clay products. Domestic production of brick is expected to decline by close to 1 percent. In addition, foreign brick imports are estimated to increase while exports decrease, both by just under 1 percent. Since there is no expected change in the price of structural clay products, we predict no change in domestic production or foreign imports of structural clay products.

In terms of industry impacts, the brick producers are projected to experience a decrease in operating profits of about 10 percent, which reflects the compliance costs associated with brick production and the resulting reductions in revenues due to the increase in the price of brick and the reduced quantity purchased. Through the market impacts described above, today's final rule would create both positive and negative financial impacts on facilities within the BSCP manufacturing industry. The majority of facilities, almost 71 percent, are expected to experience profit increases with today's final rule; however, there are some facilities projected to lose profits (about 29 percent). Furthermore, the economic impact analysis indicates that of the 189 BSCP manufacturing facilities, two brick facilities are at risk of closure because of today's final rule, while none of the structural clay products facilities are at risk to close.

Based on the market analysis, the annual social costs of today's final rule are projected to be $23.3 million. This differs from the annual engineering costs of today's final rule because the social costs account for producer and consumer behavior. These social costs are distributed across the many consumers and producers of brick. Since there are no price changes occurring in the structural clay products market, the social costs of today's final rule are confined to the brick industry. The consumers of brick are expected to incur $14.7 million in costs associated with today's final rule, with domestic consumers bearing $14.6 million and foreign consumers bearing $0.07 million. Brick producers, in aggregate, are expected to bear the remaining $8.6 million annually in costs. Domestic producers incur $8.67 million while foreign producers gain $0.04 million annually.

We estimate that 15 new kilns will be built during the 5 years after promulgation of today's final rule. The total compliance costs associated with these kilns are projected to be less than 0.6 percent of the industry's value of shipments. The economic impact analysis estimated the impact of today's final rule on these new sources through a sensitivity analysis. According to that analysis, it is projected that anywhere from three to six of these new kilns will be delayed in coming on-line in the BSCP manufacturing industry due to today's final rule.

V. Summary of Responses to Major Comments and Changes to the Clay Ceramics Manufacturing Proposed NESHAP

In response to the public comments received on the proposed clay ceramics rule, we made several changes in developing today's final clay ceramics rule. The major comments and our responses and rule changes are summarized in the following sections. A more detailed summary can be found in the Response-to-Comments document, which is available from several sources (see **SUPPLEMENTARY INFORMATION** section).

A. Affected Source

1. Subcategories of Clay Ceramics Kilns

We proposed two subcategories of clay ceramics kilns: Continuous (tunnel or roller) kilns and batch (periodic) kilns. Based on the public comments received regarding APCD applicability, as described in section V.C of this preamble, we revised the subcategorization structure for today's final rule. Today's final rule is based on

four subcategories of clay ceramics kilns: Ceramic tile or sanitaryware tunnel kilns with design capacities less than 9.07 Mg/hr (10 tph) of fired product, ceramic tile or sanitaryware tunnel kilns with design capacities equal to or greater than 9.07 Mg/hr (10 tph) of fired product, ceramic tile roller kilns, and periodic kilns.

2. R&D Kiln Definition

One commenter requested that we change the definition of research and development kiln so that it is consistent with the definition of R&D in section 112(c)(7) of the CAA and most other NESHAP. Therefore, today's final rule includes a revised definition of research and development kiln that is consistent with section 112(c)(7) of the CAA and other NESHAP.

3. Facilities Co-Located With Major Sources

Commenters indicated that considering a clay ceramics facility a major source because it is co-located with a major source (under a separate NESHAP) puts those facilities at a competitive disadvantage with competitors operating facilities that are not co-located. We understand these commenters' concerns. However, section 112 of the CAA requires us to regulate HAP emissions from all major source facilities, regardless of the processes or operations that make those facilities major sources. Thus, today's final rule applies for both co-located and stand-alone clay ceramics manufacturing facilities that are major sources.

B. Existing Source MACT

Four commenters concurred with the existing MACT floor of "no emissions reductions" for existing clay ceramics sources. To the contrary, one commenter charged that EPA has simply set MACT floors based on control technology type and that EPA did not identify the relevant best performers and set floors reflecting their average emission level. The commenter noted that factors other than control device type affect emissions and that EPA must consider all non-negligible factors in setting MACT floors and considering beyond-the-floor measures. The commenter stated that if EPA believes it is unworkable to consider all factors, then perhaps EPA should base standards on actual emissions data which reflects all the factors influencing a source's performance.

We reevaluated our existing source MACT determinations following proposal based on consideration of factors other than APCD type. We agree that factors other than APCD type (*e.g.*, kiln design, fuel type, raw materials, additives and surface coatings) can affect emissions from clay ceramics kilns. We acknowledged the effect of kiln design on emissions by creating separate subcategories for periodic, roller, and tunnel kilns. We maintain that low-HAP raw material use is not a viable MACT option because, similar to the BSCP industry, all facilities use product-specific raw materials that are integral to the various products. Changes in raw materials would change the end products, and because of this, it would not be feasible for facilities to meet requirements based on the use of low-HAP raw materials. With respect to requiring kilns to fire low-HAP fuels, all clay ceramics kilns for which we have information are fired with natural gas or propane. Therefore, we are not concerned that a requirement to use natural gas (or equivalent fuel) to fire all existing kilns would have any impact on the end products of existing kilns, as would be the case in the BSCP industry. Therefore, the MACT floor for all existing clay ceramics periodic kilns, tunnel kilns, and roller kilns is based on firing the kilns with natural gas or an equivalent fuel (such as propane or other clean-burning fuel), and we added a work practice standard to the final rule that covers this requirement. We considered developing emission limitations based on firing natural gas, but the available data are insufficient for us to determine the contribution of kiln fuel to HAP emissions, and we believe that a work practice standard is the only feasible means of addressing the commenter's concern that we did not consider options besides APCD use.

C. New Source MACT

At proposal, we concluded that MACT for new and reconstructed periodic kilns was "no emissions reductions." We concluded that MACT for new and reconstructed tunnel and roller kilns was the level of control achievable with a DIFF, DLS/FF, or WS because the best-controlled similar source (a BSCP tunnel kiln) had this level of control.

Following proposal, several commenters argued that clay ceramics kilns are different from BSCP kilns, and that EPA should not consider BSCP tunnel kilns to be the best-controlled similar source. The commenters noted that clay ceramics kilns typically have much lower throughput than BSCP kilns and that the exhaust from clay ceramics kilns contains lower pollutant concentrations than BSCP kiln exhaust. Commenters stated that the lower pollutant concentrations in clay ceramics kiln exhaust would result in the inability to achieve high removal efficiencies. The commenters suggested that the proposed control technologies are not transferable to clay ceramics kilns and noted that none of the technologies are currently in use on domestic clay ceramics kilns. The commenters suggested that the best-controlled similar source should come from the sources in the clay ceramics source category, which would result in a new source MACT floor of "no emissions reductions" for clay ceramics kilns.

One commenter stated that, whereas brick products are fired unglazed, most sanitaryware products have a ceramic glaze applied before firing, which melts in the kiln, evenly covering the surface of the piece, helping to seal the surface and hinder the emission of by-products typically associated with the clay raw material.

One commenter suggested that MACT for new clay ceramics kilns be applied only to large kilns (*i.e.*, kilns with a design capacity equal to or greater than 9.07 Mg/hr (10 tph) of fired product). The commenter suggested (based on their conversation with an APCD vendor) that DIFF systems may not be readily available for small (less than 9.07 Mg/hr (10 tph)) clay ceramics kilns.

One commenter requested that EPA distinguish between ceramic tile tunnel and roller kilns. The commenter stated that the two major design differences between BSCP periodic and new BSCP tunnel kilns are the same dissimilarities exhibited between clay ceramics tunnel and roller kilns. The commenter also provided reasons why clay ceramics roller kilns are different from BSCP tunnel kilns. The commenter stated that BSCP tunnel kilns are made of brick lined with refractory materials, have a high profile (tall) design, and require setting and stacking product on rail cars which move on floor rails. Bricks are fired on a 15 to 24 hour cycle. Ceramic tile roller kilns are designed in modular units with a low (short) profile (which affects the excess airflow), have different firing curves and flow characteristics, process a single row of tile moved by roller, and utilize high velocity burners for turbulent airflow. The tiles are not stacked and are fired on a 40 to 60 minute cycle. The commenter stated that firing time has a significant effect on the evolution of HF emissions (roller kilns exhibit significantly lower HF emissions) and provided detail of firing curves/emission estimates for the two types of kilns. In addition, the commenter stated that APCD available for BSCP tunnel kilns are not readily available for roller kilns.

We acknowledge that the control technologies (DIFF, DLS/FF, and WS) that formed the basis for the proposed emission limits for new and reconstructed clay ceramics kilns are not currently in use on any domestic clay ceramics kiln. However, section 112(d) of the CAA requires us to establish emission limits for new sources based on the performance of the best-controlled similar source. The CAA does not specify that the similar source must be within the same source category. To the contrary, our interpretation of section 112(d) of the CAA is that we are obligated to consider similar sources from other source categories in determining the best-controlled similar source for establishing MACT for new sources.

We have reevaluated our subcategory and best-controlled similar source determinations for new and reconstructed clay ceramics kilns. We maintain that MACT for new and reconstructed periodic kilns does not require use of add-on APCD because the best-controlled similar source is uncontrolled. In addition, based on the comments received and other information, we have concluded that there are significant differences between clay ceramics tunnel kilns and roller kilns. We believe that differences in the operation of BSCP tunnel kilns and tile roller kilns, particularly with respect to the duration of firing, result in emission characteristics that are likely to be very dissimilar. As a result, we cannot assume that APCD that have been demonstrated to be effective for reducing HF and HCl emissions from BSCP tunnel kilns are feasible for tile roller kilns. Therefore, we have concluded that BSCP tunnel kilns cannot be considered similar sources to tile roller kilns, and we have determined that MACT for new and reconstructed clay ceramics tile roller kilns does not include control with an add-on APCD.

We disagree that there are technological differences between clay ceramics tunnel kilns and BSCP tunnel kilns. Some tunnel kilns actually produce both ceramic tile and structural clay tile (a structural clay product). Regarding the effect of glazing on emissions, we cannot refute that the glazes applied to sanitaryware form a seal that could prevent further release of certain pollutants from the body of the ware. However, we have no information that indicates that the sealing becomes effective before HF and HCl are released. To the contrary, we have data from several tests on sanitaryware kilns that quantify HF emissions, and the tests indicate that uncontrolled emissions are within the range emitted from BSCP kilns.

We maintain that the best-controlled similar source for a clay ceramics tunnel kiln is a BSCP tunnel kiln. As discussed in section II.D of this preamble, MACT for new and reconstructed BSCP tunnel kilns with design capacities less than 9.07 Mg/hr (10 tph) of fired product is based on use of a DLA, while MACT for new and reconstructed BSCP tunnel kilns with design capacities equal to or greater than 9.07 Mg/hr (10 tph) of fired product is based on use of DIFF, DLS/FF, or WS. Thus, we have adopted the same requirements for new and reconstructed clay ceramics tunnel kilns. New and reconstructed clay ceramics tile and sanitaryware tunnel kilns with design capacities less than 9.07 Mg/hr (10 tph) of fired product will be required to meet emission limits based on the levels of control that can be achieved by a kiln controlled with a DLA. The emission limits for HF are 0.029 kg/Mg (0.057 lb/ton) or at least 90 percent reduction. For HCl, the emission limits are 0.13 kg/Mg (0.26 lb/ton) or at least 30 percent reduction. For PM, which is used as a surrogate for HAP metals, the emission limit is 0.21 kg/Mg (0.42 lb/ton). For new and reconstructed clay ceramics tile and sanitaryware tunnel kilns with design capacities equal to or greater than 9.07 Mg/hr (10 tph) of fired product, we have revised the emission limits (based on the levels of control that can be achieved by a kiln controlled with a DIFF, DLS/FF, or WS) to reflect new data that were considered in the development of the final BSCP rule, as discussed in section II.F of this preamble. The revised HF emission limits are 0.029 kg/Mg (0.057 lb/ton) or at least 90 percent reduction. The revised HCl emission limits are 0.028 kg/Mg (0.056 lb/ton) or at least 85 percent reduction. The PM emission limit remains unchanged (from proposal) at 0.060 kg/Mg (0.12 lb/ton).

Similar to the requirements for existing sources, we added a work practice standard that requires facilities to use natural gas, or an equivalent fuel, to fire all new or reconstructed clay ceramics periodic kilns, tunnel kilns, and roller kilns, except during periods of natural gas curtailment or other periods when natural gas is not available.

Similar to the requirements for BSCP tunnel kilns, two types of clay ceramics tunnel kilns that would otherwise be considered reconstructed do not meet the definition of reconstruction in 40 CFR 63.2. We have added language in 40 CFR 63.8450(f) to provide that it is not technologically and economically feasible for these two types of existing kilns that would otherwise meet the criteria for reconstruction under 40 CFR 63.2 to meet the relevant standards—*i.e.*, new source MACT. The two types of kilns are existing tunnel kilns with design capacities less than 9.07 Mg/hr (10 tph) of fired product whose design capacities are increased such that they are equal to or greater than 9.07 Mg/hr (10 tph) of fired product, and existing DLA-controlled tunnel kilns with design capacities equal to or greater than 9.07 Mg/hr (10 tph) of fired product. These sources will be required to meet emission limits based on the levels of control that can be achieved by a kiln controlled with a DLA. They also will be subject to the work practice standard that requires facilities to use natural gas, or an equivalent fuel, to fire all kilns, except during periods of natural gas curtailment or other periods when natural gas is not available.

We acknowledge that the higher airflow rates that are characteristic of clay ceramics kilns result in lower pollutant concentrations in the exhaust stream, and that control efficiency limits (or percentage reduction limits) are more difficult to achieve when exhaust gas concentrations are lower. For that reason, we proposed and are promulgating today production-based mass emission limits as alternatives to the HF and HCl percentage reduction limits. Exhaust gas concentrations have no effect on mass emission rates, provided the concentrations are above the test method detection limit. The mass emission rate (*e.g.*, pounds of pollutant emitted per hour) for a source is unchanged regardless of how much dilution air is introduced. Therefore, even though a clay ceramics kiln with a diluted exhaust stream may not be able to meet the percentage HF and HCl reduction limits, the available data indicate that a kiln that is controlled to the new source MACT level will be able to meet the production-based emission limits for HF and HCl, as well as the production-based limit for PM.

D. Cost and Economic Impacts

Several commenters stated that EPA underestimated the cost per ton of pollutant removed at proposal. In general, the commenters felt the costs were unreasonable. Commenters questioned the public health benefits of the proposed clay ceramics rule.

One commenter stated that EPA entirely misunderstood the economic state of the ceramic tile industry in the U.S., and therefore, grossly underestimated the economic impact of

the proposed rule on the industry. The commenter challenged the assumptions presented in the algorithms on which the cost analysis is based, charging that they bear no reasonable relationship to reality in the industry and that the APCD strategies are not actually feasible for implementation. The commenter also argued that the economic analysis of the MACT floor for reconstructed and new ceramic clay roller kilns does not support DIFF-, DLS/FF- or WS-based controls.

We acknowledge the commenters' statements about the high cost effectiveness of the proposed rule. As discussed previously, we have revised the rule, as proposed, such that it is now less costly. Under today's final rule, new clay ceramic roller kilns will not be subject to emission limits. In addition, we have subcategorized clay ceramics tunnel kilns by design capacity. New and reconstructed tunnel kilns with design capacities less than 9.07 Mg/hr (10 tph) of fired product and tunnel kilns that would be considered reconstructed but for 40 CFR 63.8540(f)(1) or 40 CFR 63.8540(f)(2) will be required to meet emission limits based on the levels of control that can be achieved by a DLA. In addition to the changes mentioned above, we have added a work practice standard that requires facilities to use natural gas, or an equivalent fuel, to fire all clay ceramics kilns, except during periods of natural gas curtailment or other periods when natural gas is not available. The costs associated with this change are minimal. Based on these changes, there will be no control cost for new roller kilns and the control cost for new and reconstructed tunnel kilns with design capacities less than 9.07 Mg/hr (10 tph) of fired product and tunnel kilns that would be considered reconstructed but for 40 CFR 63.8540(f)(1) or 40 CFR 63.8540(f)(2) will be lower than at proposal. Most of the new tunnel kilns constructed will likely be in this smaller size category. New clay ceramics tunnel kilns with design capacities equal to or greater than 9.07 Mg/hr (10 tph) are still required to meet emission limits based on the use of DIFF, DLS/FF or WS technologies. However, the HF and HCl emission limits are slightly less stringent than at proposal (due to the inclusion of new test data). The PM emission limit for new clay ceramics tunnel kilns with design capacities equal to or greater than 9.07 Mg/hr (10 tph) is unchanged from the proposed requirements for all new kilns.

Public health benefits are likely to be realized due to the reduced emissions and reduced exposures to emissions as a result of today's final rule. However, we have not quantified these public health benefits because we are not required to do so under the CAA.

We disagree with the commenter's statement that the economic impacts of the rule on the ceramic tile industry have been grossly underestimated. Based on revisions to the final rule as described above, we expect minimal impacts on existing sources, based on recordkeeping and reporting costs associated with the work practice standard for existing kilns, and we estimate that only one new source will be impacted by the final rule in the first five years following promulgation. Therefore, the EIA at proposal overestimated the impacts on the industry. Thus, it is very unlikely that the one new source affected by the rule or the addition of a work practice standard that requires all kilns to be fired with natural gas (or equivalent fuel) will be able to influence industry prices or foreign competition.

E. Test Data and Emission Limits

One commenter implied that there are no data to suggest that HCl is emitted from ceramic tile kilns. Another commenter stated that limits for HCl and PM are irrelevant and that we should only set an emission limit for HF (the largest single HAP emitted from the kilns). The commenter believes that there is no need to establish an emission limitation for HCl or PM because any control system designed to achieve the required HF reduction will also reduce HCl and PM. One commenter disagreed that PM is an adequate surrogate for HAP metals emissions.

We are required by section 112(d) of the CAA to establish emission limits for listed HAP emitted from major sources. Section 112(b) of the CAA lists HCl and various HAP metals. We believe that PM is an adequate surrogate for HAP metals for the reasons discussed in section II.F of this preamble.

We acknowledge that we have no test data that demonstrate that HCl is emitted from clay ceramics kilns. However, we do have data that show that chlorides are present in many clay materials, and that HCl is emitted from various types of clays when heated above a minimum temperature. The data include raw material analyses and emission test reports of HCl emissions for the BSCP manufacturing, lightweight aggregate manufacturing, and kaolin processing industries. Because of the similarities in raw materials used in those industries and the raw materials used to manufacture clay ceramics, we assume that clay ceramics kilns also emit HCl.

We agree that HF emission rates from clay ceramics kilns generally are greater than the corresponding emission rates for HCl or metal HAP. We also agree that emission controls that are used to meet the emission limits for HF are likely to reduce emissions of HCl and SO_x as well. However, as stated previously, the CAA requires us to set emission limits for all listed HAP based on MACT. The data indicated that there are existing controls on similar sources that achieve significant reductions in emissions of HCl and PM (as a surrogate for metal HAP). Therefore, we are required to establish emission limits for HCl and metal HAP. We also note that, if HCl and PM emissions from any affected source are negligible or are automatically controlled by HF control devices, complying with the HCl and PM emission limits should not present a problem.

F. Monitoring Requirements

1. Fabric Filter Inlet Temperature

Two commenters disagreed with the proposed fabric filter inlet temperature monitoring requirement. One commenter stated that control systems using hydrated lime are generally known to have increased HCl and HF removal when temperatures increase. The other commenter suggested that the only limit on fabric filter inlet temperature should be based on manufacturer's specifications for protection of the equipment.

We have eliminated the requirement for monitoring fabric filter inlet temperatures on affected kilns that are controlled with a DLS/FF or DIFF. We believe that the other monitoring requirements (*e.g.*, lime feed rate monitoring and periodic VE checks) that we have incorporated into today's final rule are adequate for ensuring continuous compliance with the emission limits.

2. Bag Leak Detection Systems and Visible Emissions

One commenter suggested changes to the amount of bag leak detector alarm time that must be recorded. We have not changed the requirements for recording bag leak detection system downtime. However, we have incorporated into today's final rule an option for owners and operators of affected kilns that are controlled with a DLS/FF, or DIFF to perform daily VE checks rather than using bag leak detection systems. Visible emissions checks are required for DLA-controlled kilns. Today's final rule also includes a provision for decreasing the frequency of VE checks provided no VE are observed.

3. Continuous Emissions Monitoring Systems

In the preamble to the proposed rule, we requested comment on requiring the application of PM CEMS as a method to assure continuous compliance with the proposed PM emission limits. Commenters opposed use of CEMS when less expensive, but effective, parametric monitoring alternatives are available. Therefore, today's final rule does not require use of PM CEMS or any other type of CEMS. We believe that the parameter monitoring requirements specified in the final rule are adequate for ensuring continuous compliance.

4. Test Methods

One commenter requested that the final clay ceramics rule provide facilities with the option to use either EPA Method 26A or EPA Method 320 for all required stack testing for HF emissions, HCl emissions, or both. Because EPA Method 320 will provide accurate HF and HCl measurements, we have modified today's final clay ceramics rule to include EPA Method 320 as an alternative to EPA Method 26A.

G. Startup, Shutdown, and Malfunction

1. Bypass

One commenter requested that EPA allow for use of the bypass stack during periods of APCD maintenance. Similar comments were received on the proposed BSCP rule. Therefore, today's final clay ceramics rule allows for bypass of the APCD during periods of routine control device maintenance for up to 4 percent of the annual kiln operating hours. Section II.H of this preamble presents details on use of this routine control device maintenance exemption.

2. Initial Startup

Commenters on both the proposed BSCP rule and clay ceramics rule pointed out that it is impractical to meet emission standards during initial startup of a tunnel kiln. Thus, as discussed in section II.H of this preamble, we have added a definition of initial startup to today's final clay ceramics rule to address the concerns expressed by the commenters.

VI. Summary of the Final Clay Ceramics Manufacturing NESHAP

A. What Source Category Is Regulated by the Final Rule?

Today's final rule for clay ceramics manufacturing applies to clay ceramics manufacturing facilities that are, are located at, or are part of, a major source of HAP emissions. The clay ceramics manufacturing source category includes those facilities that manufacture pressed floor tile, pressed wall tile, and other pressed tile; or sanitaryware (toilets and sinks). Clay ceramics are primarily composed of clay and shale, and may include many different additives, including silica, talc, and various high purity powders produced by chemical synthesis. Clay ceramics manufacturing generally includes raw material processing and handling and forming of the tile or sanitaryware shapes, followed by drying, glazing, and firing. Most clay ceramics are coated with a glaze prior to firing. The clay ceramics industry also includes dinnerware and pottery manufacturing, but these industry segments are not covered by today's final rule because we determined that there are no dinnerware or pottery manufacturing facilities that are major sources of HAP.

Available information shows a total of 58 facilities that produce clay ceramics. Thirty-two of these facilities, located in 16 States, primarily produce pressed tile, while 26 of these facilities, located in 15 States, primarily produce sanitaryware. Eight of the 58 clay ceramics manufacturing facilities are estimated to be major sources. Thirteen clay ceramics facilities are owned by small businesses, and none of the small business-owned facilities are estimated to be major sources.

All clay ceramics are fired in kilns. Firing may be performed in one or more stages. Tile can be fired in either continuous (tunnel or roller) or batch (periodic) kilns, but most facilities use either tunnel or roller kilns for tile production. Periodic kilns are usually used at smaller facilities or are used primarily for second-firing a product after a glaze has been applied.

The sanitaryware industry uses either tunnel kilns or periodic kilns for firing. Tunnel kilns account for most sanitaryware firing; periodic kilns are used primarily for refiring rejected pieces that have been repaired and re-glazed. Some smaller facilities use periodic kilns for all firing operations.

The primary HAP emission sources at clay ceramics manufacturing plants are roller, tunnel, and periodic kilns which emit HF, HCl, and HAP metals. Kilns also emit PM and SO_2. Currently, no APCD are used by the clay ceramics industry to control emission from kilns, although the industry's emissions are minimized because the kilns fire clean-burning fuels. Other sources of HAP emissions at clay ceramics manufacturing plants are the raw material processing and handling equipment.

B. What Are the Affected Sources?

The affected sources, which are the portions of each source in the category for which we are setting emission standards, include each existing, new, or reconstructed periodic kiln, tunnel kiln, and roller kiln. Each tunnel kiln that meets the description in 40 CFR 63.8540(f)(1) or 40 CFR 63.8540(f)(2) also is an affected source. All affected sources are subject to the work practice standard in today's final rule. In addition, today's final rule contains different emission limits, based on design capacity, for new and reconstructed tunnel kilns, and also includes emission limits for tunnel kilns that would otherwise meet the criteria for reconstruction but for 40 CFR 63.8540(f)(1) or 40 CFR 63.8540(f)(2). The tunnel kiln subcategories are tunnel kilns with design capacities less than 9.07 Mg/hr (10 tph) of fired product and tunnel kilns with design capacities equal to or greater than 9.07 Mg/hr (10 tph) of fired product. Kilns that are used exclusively for R&D and not used to manufacture products for commercial sale, except in a *de minimis* manner, are not subject to the requirements of today's final rule. Kilns that are used exclusively for refiring or for setting glazes on previously fired products are not subject to the requirements of today's final rule.

A source is a new affected source if construction began on or after July 22, 2002. An affected source is reconstructed if the criteria defined in 40 CFR 63.2 are met, as qualified by 40 CFR 63.8540(f). An affected source is existing if it is not new or reconstructed and does not meet the descriptions in 40 CFR 63.8540(f). As indicated, affected sources described in 40 CFR 63.8540(f) also are subject to today's final rule.

C. When Must I Comply With the Final Rule?

New and reconstructed affected sources and affected sources that would be considered reconstructed but for 40 CFR 63.8540(f)(1) or 40 CFR 63.8540(f)(2) with an initial startup before May 16, 2003 must comply no later than May 16, 2003. New and reconstructed affected sources and affected sources that would be considered reconstructed but for 40 CFR 63.8540(f)(1) or 40 CFR 63.8540(f)(2) with an initial startup after May 16, 2003 must comply upon initial startup. Any portion of existing facilities that become new or reconstructed major sources and any new or reconstructed area sources that become major sources must be in compliance upon initial startup.

If you have an existing affected source, you must comply with the work practice standards within 3 years of May 16, 2003.

D. What Are the Emission Limits?

Today's final rule includes emission limits in the form of production-based mass emission limits and percent reduction requirements. In establishing the HAP emission limits, we selected PM as a surrogate for HAP metals, including mercury in particulate form. Today's final rule includes HF, HCl, and PM emission limits for new and reconstructed affected sources at clay ceramics manufacturing facilities, as well as for the following affected sources that would be considered reconstructed but for 40 CFR 63.8540(f): Existing tunnel kilns with design capacities less than 9.07 Mg/hr (10 tph) of fired product whose design capacities are increased such that they are equal to or greater than 9.07 Mg/hr (10 tph) of fired product, and existing DLA-controlled tunnel kilns with design capacities equal to or greater than 9.07 Mg/hr (10 tph) of fired product.

If you own or operate a new or reconstructed tunnel kiln with a design capacity less than 9.07 Mg/hr (10 tph) of fired product or a tunnel kiln that would be considered reconstructed but for 40 CFR 63.8540(f)(1) or 40 CFR 63.8540(f)(2), you are required to meet an HF emission limit of 0.029 kg/Mg (0.057 lb/ton) of fired product or reduce uncontrolled HF emissions by at least 90 percent. You also are required to meet an HCl emission limit of 0.13 kg/Mg (0.26 lb/ton) of fired product or reduce uncontrolled HCl emissions by at least 30 percent. Finally, you are required to meet a PM emission limit of 0.21 kg/Mg (0.42 lb/ton) of fired product.

If you own or operate a new or reconstructed tunnel kiln with a design capacity equal to or greater than 9.07 Mg/hr (10 tph) of fired product, you are required to meet an HF emission limit of 0.029 kg/Mg (0.057 lb/ton) of fired product or reduce uncontrolled HF emissions by at least 90 percent. You also are required to meet an HCl emission limit of 0.028 kg/Mg (0.056 lb/ton) of fired product or reduce uncontrolled HCl emissions by at least 85 percent. Finally, you are required to meet a PM emission limit of 0.06 kg/Mg (0.12 lb/ton) of fired product.

E. What Are the Operating Limits?

The operating limits for new and reconstructed clay ceramics tunnel kilns and tunnel kilns that would be considered reconstructed but for 40 CFR 63.8540(f)(1) or 40 CFR 63.8540(f)(2) are the same as those for new and reconstructed BSCP tunnel kilns. These operating limits are presented in section III.E of this preamble.

F. What Are the Work Practice Standards?

If you have an existing, new, or reconstructed clay ceramics periodic kiln, tunnel kiln, or roller kiln, or a tunnel kiln that would be considered reconstructed but for 40 CFR 63.8540(f)(1) or 40 CFR 63.8540(f)(2), you must use natural gas, or an equivalent fuel, as the kiln fuel at all times except during periods of natural gas curtailment or other periods when natural gas is not available.

G. What Are the Performance Test and Initial Compliance Requirements for Sources Subject to Emission Limits?

The performance test and initial compliance requirements for new and reconstructed clay ceramics tunnel kilns and tunnel kilns that would be considered reconstructed but for 40 CFR 63.8540(f)(1) or 40 CFR 63.8540(f)(2) are the same as those for new and reconstructed BSCP tunnel kilns. These requirements are presented in section III.F of this preamble.

H. What Are the Initial Compliance Requirements for Sources Subject to a Work Practice Standard?

For each existing, new, or reconstructed clay ceramics periodic kiln, tunnel kiln, or roller kiln, and each tunnel kiln that would be considered reconstructed but for 40 CFR 63.8540(f)(1) or 40 CFR 63.8540(f)(2), you must indicate, in your initial notification, that you use natural gas, or an equivalent fuel, as the kiln fuel, and certify that such information is true, accurate, and complete.

I. What Are the Continuous Compliance Requirements for Sources Subject to Emission Limits?

The continuous compliance requirements for new and reconstructed clay ceramics tunnel kilns and tunnel kilns that would be considered reconstructed but for 40 CFR 63.8540(f)(1) or 40 CFR 63.8540(f)(2) are the same as those for new and reconstructed BSCP tunnel kilns. These requirements are presented in section III.G of this preamble.

J. What Are the Continuous Compliance Requirements for Sources Subject to a Work Practice Standard?

For each existing, new, or reconstructed clay ceramics periodic kiln, tunnel kiln, or roller kiln, and each tunnel kiln that would be considered reconstructed but for 40 CFR 63.8540(f)(1) or 40 CFR 63.8540(f)(2), you must use natural gas, or an equivalent fuel, as the kiln fuel, and document the type of fuel used. The type of fuel used, along with other compliance information, must be certified as part of your compliance reports. During periods of natural gas curtailment or other periods when natural gas is unavailable, you are allowed to use an alternative fuel. However, if you use an alternative fuel, you must meet the notification requirements specified in 40 CFR 63.8630(g) and the reporting requirements specified in 40 CFR 63.8635(g).

K. What Are the Notification, Recordkeeping, and Reporting Requirements for Sources Subject to Emission Limits?

The notification, recordkeeping, and reporting requirements for new and reconstructed clay ceramics tunnel kilns and tunnel kilns that would be considered reconstructed but for 40 CFR 63.8540(f)(1) or 40 CFR 63.8540(f)(2) are the same as those for new and reconstructed BSCP tunnel kilns. These requirements are presented in section III.H of this preamble.

L. What Are the Notification, Recordkeeping, and Reporting Requirements for Sources Subject to a Work Practice Standard?

If you operate an existing, new, or reconstructed clay ceramics periodic kiln, tunnel kiln, or roller kiln, or a tunnel kiln that would be considered reconstructed but for 40 CFR 63.8540(f)(1) or 40 CFR 63.8540(f)(2), you must submit an initial notification that indicates that you use natural gas, or an equivalent fuel, as the kiln fuel. You must keep records that document your kiln fuel, and if you must use an alternative fuel due to a natural gas curtailment or other interruption of natural gas supply, you must submit a notification of alternative fuel use that includes the information specified in 40 CFR 63.8630(g). You must submit a report of alternative fuel use within 10 working days after terminating the use of the alternative fuel. The report must include the information specified in 40 CFR 63.8635(g).

VII. Summary of Environmental, Energy, and Economic Impacts for the Final Clay Ceramics Manufacturing NESHAP

A. What Are the Air Quality Impacts?

Because the only requirements for existing sources under today's final rule are work practice standards that we believe that all facilities are already meeting, no air quality impacts are projected for existing sources. To project air quality impacts for new sources, we assumed that one sanitaryware tunnel kiln (3.6 Mg/hr (4 tph) capacity) equipped with a DLA will begin operation at the beginning of the first year following promulgation of the rule. We estimate that by implementing the rule, HF emissions from this new source will be reduced by 4.9 Mg/yr (5.4 tpy), HCl emissions will be reduced by 1.0 Mg/yr (1.1 tpy), and HAP metals emissions will be reduced by 0.028 Mg/yr (0.031 tpy). We also estimate that PM and SO_2 emissions from the new kiln will be reduced by 3.9 Mg/yr (4.3 tpy) and 13 Mg/yr (14 tpy), respectively.

Secondary air impacts associated with today's final clay ceramics rule are direct impacts that result from the operation of any new APCD. The generation of electricity required to operate the control device on the projected new kiln will result in 0.09 tpy of NO_X emissions in the first year following promulgation of the rule. The electricity was assumed to be generated by natural gas-fired turbines.

B. What Are the Water and Solid Waste Impacts?

Because the only requirements for existing sources under today's final rule are work practice standards that we believe that all facilities are already meeting, no water and solid waste impacts are projected for existing sources. Our analyses are based on the use of DLA for controlling new kilns and, therefore, no water impacts are projected for new sources. To project solid waste impacts for new sources, we assumed that one sanitaryware tunnel kiln equipped with a DLA will begin operation at the beginning of the first year following promulgation of the rule. The solid waste disposal impacts that result from the use of DLA will include the disposal of spent limestone. We calculated the solid waste by taking the difference between the amount of limestone charged into the DLA and the amount of reacted limestone and then adding the amount of reaction products and PM captured. We estimate that implementing the rule will result in the generation of 290 Mg/yr (320 tpy) of solid waste from the new source.

C. What Are the Energy Impacts?

Because the only requirements for existing sources under today's final rule are work practice standards that we believe that all facilities are already meeting, no energy impacts are projected for existing sources. To project energy impacts for new sources, we assumed that one sanitaryware tunnel kiln equipped with a DLA will begin operation at the beginning of the first year following promulgation of the rule. Energy impacts consist of the electricity needed to operate the DLA. Electricity requirements are driven primarily by the size of the fan needed in the control device. We estimate the increase in energy consumption that would result from implementation of the rule to be 710 gigajoules per year (670 million Btu per year).

D. Are There Any Additional Environmental and Health Impacts?

Reducing HAP emissions under today's final rule will lower occupational HAP exposure levels. The operation of APCD may increase occupational noise levels.

E. What Are the Cost Impacts?

Because the only requirements for existing sources under today's final rule are work practice standards that we believe that all facilities are already meeting, cost impacts projected for existing sources are based only on recordkeeping and reporting requirements associated with the work practice standard. These costs are $1,193 per year for each of the eight major source facilities, and the total annual cost to the industry for existing sources is $9,533. To project costs for new sources, we assumed that one sanitaryware tunnel kiln, equipped with a DLA, will be built during the first year following promulgation. We estimate the capital costs associated with implementation of the rule to be $510,000 for new sources. The capital costs include the purchase and installation of DLA and monitoring equipment. We estimate the annualized costs associated with implementation of the rule to be $170,000 per year for new sources. The annualized costs include annualized capital costs of the control and monitoring equipment, operation and maintenance expenses, emission testing costs, and recordkeeping and reporting costs associated with installing and operating the DLA.

We calculated the cost estimates using cost algorithms that are based on procedures from EPA's OAQPS Control Cost Manual (EPA 450/3–90–006, January 1990) and cost information provided by the BSCP industry and control device vendors. We estimated costs by developing model process units that correspond to the various sizes of kilns found at clay ceramics manufacturing facilities.

F. What Are the Economic Impacts?

We did not prepare a revised economic impact analysis for the clay ceramics industry because the requirements of the final rule will result in a decrease in cost impacts on the industry. Specifically, new and reconstructed roller kilns, which would have been subject to emission limits in the rule as proposed, are not subject to emission limits in the final rule. In addition, the requirements for clay ceramics tunnel kilns with design capacities less than 9.07 Mg/hr (10 tph) are based on control with a DLA rather than the more costly DIFF, DLS/FF, or WS systems on which the proposed rule was based.

The goal of the economic impact analysis is to estimate the market response of clay ceramics manufacturing producers to today's final rule and to determine the economic effects that may result due to the final rule. Because the MACT floor for existing clay ceramics kilns is based on firing natural gas, or an equivalent fuel, and all clay ceramics kilns for which we have data are fired by natural gas or propane, the compliance costs for existing sources associated with today's final rule consist only of recordkeeping and reporting costs and are minimal. The aggregate price of ceramic products is, therefore, expected to remain the same. Because the prices of ceramic products are not expected to change due to today's final rule, there are no projected changes in domestic production, domestic consumption, or foreign trade. Therefore, no economic impacts on existing major sources are expected from today's final rule.

Unlike existing sources, new and reconstructed tunnel kilns used to produce clay ceramics will face positive compliance costs associated with the installation and operation of APCD. We estimate that one new 3.6 Mg/hr (4 tph) capacity tunnel kiln will be constructed in the sanitaryware industry during the first 5 years after the rule is promulgated. Industry compliance costs associated with this kiln are expected to be less than 0.1 percent of industry value of shipments for the sanitaryware industry. No level of cost-to-sales for sanitaryware kilns could be developed due to the diversity of product types that they produce.

VIII. Statutory and Executive Order Reviews

A. Executive Order 12866, Regulatory Planning and Review

Under Executive Order 12866 (58 FR 51735, October 4, 1993), EPA must determine whether the regulatory action

is "significant" and, therefore, subject to review by the OMB and the requirements of the Executive Order. The Executive Order defines "significant regulatory action" as one that is likely to result in a rule that may:

(1) Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities;

(2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs, or the rights and obligations of recipients thereof; or

(4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

Pursuant to the terms of Executive Order 12866, it has been determined that today's BSCP final rule is a "significant regulatory action" because it raises novel legal or policy issues within the meaning of paragraph (4) above. Consequently, today's final BSCP rule was submitted to OMB for review under Executive Order 12866. Any written comments from OMB and written EPA responses are available in the docket (see **ADDRESSES** section of this preamble).

Pursuant to the terms of Executive Order 12866, it has been determined that the clay ceramics final rule does not constitute a "significant regulatory action" because it does not meet any of the above criteria. Consequently, today's final clay ceramics rule was not submitted to OMB for review under Executive Order 12866.

B. Paperwork Reduction Act

The information collection requirements in today's final rules will be submitted for approval to OMB under the requirements of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* The EPA has prepared an Information Collection Request (ICR) document for each of the rules (ICR No. 2022.01 for BSCP manufacturing and ICR No. 2023.01 for clay ceramics manufacturing), and a copy of either document may be obtained from Susan Auby by mail at Office of Environmental Information, Collection Strategies Division (2822T), U.S. EPA, 1200 Pennsylvania Avenue, NW, Washington, DC 20460; by e-mail at *auby.susan@epa.gov*; or by calling (202) 566–1672. You may also download a copy off the Internet at *http://www.epa.gov/icr*. The information requirements are not enforceable until OMB approves them.

The information requirements are based on notification, recordkeeping, and reporting requirements in the NESHAP General Provisions (40 CFR part 63, subpart A), which are mandatory for all operators subject to national emission standards. These recordkeeping and reporting requirements are specifically authorized by section 114 of the CAA (42 U.S.C. 7414). All information submitted to EPA pursuant to the recordkeeping and reporting requirements for which a claim of confidentiality is made is safeguarded according to EPA's policies set forth in 40 CFR part 2, subpart B.

Today's final BSCP rule will not require any notifications or reports beyond those required by the NESHAP General Provisions. The recordkeeping requirements require only the specific information needed to assure compliance.

With one exception, today's final clay ceramics rule will not require any notifications or reports beyond those required by the NESHAP General Provisions. The exception applies to affected sources that are subject to limits on the type of fuel used. In such cases, the owner or operator may use an alternative fuel under certain conditions but must submit a notification before using the alternative fuel and must report on alternative fuel use after terminating use of the alternative fuel. The recordkeeping requirements require only the specific information needed to assure compliance.

The annual monitoring, reporting, and recordkeeping burden for the collection of information required by today's final BSCP manufacturing rule (averaged over the first 3 years after the effective date of the final rule) is estimated to be 17,471 labor hours per year at a total annual labor cost of $900,328. This burden estimate includes a one-time submission of an OM&M plan; one-time submission of a SSMP, with immediate reports for any event when the procedures in the plan were not followed; semiannual compliance reports; maintenance inspections; notifications; and recordkeeping. Total annualized capital/startup costs associated with the monitoring requirements over the 3-year period of the ICR are estimated at $115,111, with operation and maintenance costs of $4,853/yr.

The annual monitoring, reporting, and recordkeeping burden for the collection of information required by today's final clay ceramics manufacturing rule (averaged over the first 3 years after the effective date of the final rule) is estimated to be 185 labor hours per year at a total annual labor cost of $9,533. This burden estimate includes a one-time submission of an OM&M plan; one-time submission of a SSMP, with immediate reports for any event when the procedures in the plan were not followed; semiannual compliance reports; maintenance inspections; notifications; and recordkeeping. Total annualized capital/startup costs associated with the monitoring requirements over the 3-year period of the ICR are estimated at $1,824, with operation and maintenance costs of $358/yr.

Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

An Agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR part 9 and 48 CFR chapter 15. The OMB control numbers for the information collection requirements in the final rules will be listed in an amendment to 40 CFR part 9 in a subsequent **Federal Register** document after OMB approves the ICRs.

C. Regulatory Flexibility Act

The EPA has determined that it is not necessary to prepare a regulatory flexibility analysis in connection with this action. After considering the economic impacts of today's final rule on small entities in the two source categories, the EPA has determined that this action will not have a significant economic impact on a substantial number of small entities. Although today's final rule will not have a significant economic impact on a substantial number of small entities, we have nonetheless tried to minimize the impact of the final rule on small entities. For both the BSCP manufacturing and clay ceramics

manufacturing source categories, we exercised flexibility in minimizing impacts on small entities through subcategorization of tunnel kilns by size, which still benefits the environment by requiring greater emissions reductions from the larger kilns. In addition, for the BSCP manufacturing source category, we contacted the small entities estimated to incur impacts in excess of 1 percent of sales to explain the rule's regulatory approach, as well as a potential alternative to installing an APCD. Facilities with existing tunnel kilns operating at or near 10 tph could accept a permit condition that restricts kiln production to less than 10 tph and, therefore, places the kiln in the subcategory unaffected by the standards for existing kilns.

For purposes of assessing the impact of today's action on small entities, small entities are defined as: (1) A small business according to Small Business Administration (SBA) size standards; (2) a small governmental jurisdiction that is a government of a city, county, town, school district or special district with a population of less than 50,000; and (3) a small organization that is any not-for-profit enterprise which is independently owned and operated and is not dominant in its field. The following two sections provide descriptions of the small business assessments for the two categories of sources addressed by today's action.

1. Brick and Structural Clay Products (BSCP) Manufacturing

Small Business Administration size standards for BSCP manufacturing, by NAICS code, are shown in Table 2 of this preamble.

TABLE 2.—SMALL BUSINESS SIZE STANDARDS FOR BSCP MANUFACTURING

NAICS code	Size standard, number of employees
327121	500
327122	500
327123	500
327125	750
327993	750

We have determined that 76 of the 89 companies owning BSCP manufacturing facilities are small businesses. Although small businesses represent 86 percent of the companies within the source category, they are expected to incur about 21 percent of the total industry engineering compliance costs of $24 million. Additionally, 61 of the 76 small businesses will incur no costs. Under the final rule, we estimate that three small firms in this source category may experience an impact less 1 percent of sales, nine small firms in this source category may experience an impact between 1 percent and 3 percent of sales, and 3 small businesses (or 20 percent) may experience an impact greater than 3 percent of sales.

We also conducted an economic impact analysis that accounted for firm behavior to provide an estimate of the facility and market impacts of the proposed rule. The analysis projected that of the 189 facilities in this source category, two facilities are at risk of closure. Neither of these facilities is owned by a small business. The median compliance cost is below 1 percent of sales for both small and large firms affected by the proposed rule (0.0 and 0.1 percent for small and large firms, respectively).

Fifteen new BSCP manufacturing sources are projected to be constructed during the five years after promulgation of the rule. Industry compliance costs associated with these sources are anticipated to be less than 0.6 percent of the BSCP manufacturing industry's value of shipments. According to the new source economic impact analysis, three to six of these new sources may be delayed in coming on-line due to the compliance costs they would face. We cannot determine with certainty whether these new sources will be built by large or small companies. Regardless, impacts at the company level are not expected to be significant for a substantial number of small entities.

2. Clay Ceramics Manufacturing

Small Business Administration size standards for clay ceramics manufacturing, by NAICS code, are shown in Table 3 of this preamble.

TABLE 3.—SMALL BUSINESS SIZE STANDARDS FOR CLAY CERAMICS MANUFACTURING

NAICS code	Size standard, number of employees
326191	500
327111	750
327112	500
327122	500
327123	500
327125	750
335121	500
421220	100
421320	100

The EPA identified 13 of the 29 companies owning clay ceramics manufacturing facilities as small businesses. Because the clay ceramics manufacturing final rule does not include emissions limits for existing kilns and includes only a work practice standard that requires that existing kilns are fired with natural gas, a firm's existing kilns will be minimally impacted by the final rule. One new sanitaryware manufacturing source is projected to be constructed in the first five years following promulgation of the rule. Industry compliance costs associated with this source are expected to be less than 0.1 percent of industry value of shipments for the sanitaryware industry segments. No level of cost-to-sales for the new sanitaryware manufacturing source could be developed due to the diversity of product types produced. Thus, new clay ceramics manufacturing sources are expected to face positive compliance costs; however, we cannot determine with certainty whether these sources will be built by large or small companies. Regardless, impacts at the company level are not expected to be significant for a substantial number of small entities.

D. Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Pub. L. 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. Under section 202 of the UMRA, the EPA generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with "Federal mandates" that may result in expenditures by State, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more in any 1 year. Before promulgating an EPA rule for which a written statement is needed, section 205 of the UMRA generally requires EPA to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective, or least burdensome alternative that achieves the objectives of the rule. The provisions of section 205 do not apply when they are inconsistent with applicable law. Moreover, section 205 allows EPA to adopt an alternative other than the least costly, most cost-effective, or least burdensome alternative if the Administrator publishes with the final rule an explanation why that alternative was not adopted. Before EPA establishes any regulatory requirements that may significantly or uniquely affect small governments, including tribal governments, it must have developed,

under section 203 of the UMRA, a small government agency plan. The plan must provide for notifying potentially affected small governments, enabling officials of affected small governments to have meaningful and timely input in the development of EPA's regulatory proposals with significant Federal intergovernmental mandates, and informing, educating, and advising small governments on compliance with the regulatory requirements.

The EPA has determined that today's final rules do not contain a Federal mandate that may result in expenditures of $100 million or more for State, local, and tribal governments, in the aggregate, or the private sector in any 1 year. The total annual cost for today's final BSCP rule for any 1 year is estimated at $24 million. The total annual cost for today's final clay ceramics rule for any 1 year is estimated at $9,500. Thus, today's final rules are not subject to the requirements of sections 202 and 205 of the UMRA. In addition, the EPA has determined that today's final rules contain no regulatory requirements that might significantly or uniquely affect small governments because they contain no regulatory requirements that apply to such governments or impose obligations upon them. Therefore, today's final rules are not subject to the requirements of section 203 of the UMRA.

E. Executive Order 13132, Federalism

Executive Order 13132 (64 FR 43255, August 10, 1999) requires EPA to develop an accountable process to ensure "meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications." "Policies that have federalism implications" is defined in the Executive Order to include regulations that have "substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government." Under Executive Order 13132, the EPA may not issue a regulation that has federalism implications, that imposes substantial direct compliance costs, and that is not required by statute, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by State and local governments, or EPA consults with State and local officials early in the process of developing the proposed regulation. The EPA also may not issue a regulation that has federalism implications and that preempts State law unless EPA consults with State and local officials early in the process of developing the proposed regulation.

If EPA complies by consulting, Executive Order 13132 requires EPA to provide to OMB, in a separately identified section of the preamble to the rule, a federalism summary impact statement (FSIS). The FSIS must include a description of the extent of EPA's prior consultation with State and local officials, a summary of the nature of their concerns and EPA's position supporting the need to issue the regulation, and a statement of the extent to which the concerns of State and local officials have been met. Also, when EPA transmits a draft final rule with federalism implications to OMB for review pursuant to Executive Order 12866, it must include a certification from EPA's Federalism Official stating that EPA has met the requirements of Executive Order 13132 in a meaningful and timely manner.

Today's final rules do not have federalism implications. They will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132. None of the affected facilities are owned or operated by State governments, and the final rule requirements will not supercede State regulations that are more stringent. Thus, the requirements of Executive Order 13132 do not apply to the final rules.

F. Executive Order 13175, Consultation and Coordination With Indian Tribal Governments

Executive Order 13175 (65 FR 67249, November 6, 2000) requires EPA to develop an accountable process to ensure "meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications." "Policies that have tribal implications" are defined in the Executive Order to include regulations that have "substantial direct effects on one or more Indian tribes, on the relationship between the Federal government and the Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes."

Today's final rules do not have tribal implications. They will not have substantial direct effects on tribal governments, on the relationship between the Federal government and Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes, as specified in Executive Order 13175. No tribal governments are known to own or operate BSCP or clay ceramics manufacturing facilities. Thus, Executive Order 13175 does not apply to the final rules.

G. Executive Order 13045, Protection of Children From Environmental Health & Safety Risks

Executive Order 13045 (62 FR 19885, April 23, 1997) applies to any rule that: (1) Is determined to be "economically significant" as defined under Executive Order 12866, and (2) concerns the environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the EPA must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by EPA.

The EPA interprets Executive Order 13045 as applying only to those regulatory actions that are based on health or safety risks, such that the analysis required under section 5–501 of the Executive Order has the potential to influence the rule. Today's final rules are not subject to Executive Order 13045 because they are based on technology performance and not on health or safety risks.

H. Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use

Executive Order 13211 (66 FR 28355, May 22, 2001) provides that agencies shall prepare and submit to the Administrator of the Office of Information and Regulatory Affairs, OMB, a Statement of Energy Effects for certain actions identified as "significant energy actions." Section 4(b) of Executive Order 13211 defines "significant energy actions" as "any action by an agency (normally published in the **Federal Register**) that promulgates or is expected to lead to the promulgation of a final rule or regulation, including notices of inquiry, advance notices of proposed rulemaking, and notices of proposed rulemaking: (1)(i) That is a significant regulatory action under Executive Order 12866 or any successor order, and (ii) is likely to have a significant adverse effect on the supply, distribution, or use of energy; or (2) that is designated by the Administrator of the Office of Information and Regulatory Affairs as a significant energy action." Today's final clay ceramics manufacturing rule is not subject to Executive Order 13211 because it is not a significant regulatory action under Executive Order 12866. Although today's final BSCP rule is considered to be a significant regulatory action under Executive Order 12866, it is not a "significant energy action" because it is not likely to have a significant adverse effect on the supply, distribution, or use of energy. The basis for the determination is as follows.

Today's final BSCP rule affects manufacturers in the BSCP (NAICS 327121), extruded tile (NAICS 327122), and other structural clay products (NAICS 327123) industries. There is no crude oil, fuel, or coal production from these industries. Hence, there is no direct effect on such energy production related to implementation of the BSCP rule. In fact, as previously mentioned in this preamble, there will be an increase in energy consumption, and hence an increase in energy production, resulting from installation of APCD likely needed for sources to meet the requirements of the final BSCP rule. This increase in energy consumption is equal to approximately 27 million kilowatt-hours/year (kWh/yr) for electricity. The electricity increase is considered negligible, equivalent to 0.0007 percent of 1999 U.S. electricity production.[4] There is no expected increase in natural gas consumption. It should be noted, however, that the estimated decrease in BSCP production resulting from producer's and consumer's reactions to the final BSCP rule will offset this effect on such energy production. It is likely that the output reduction in the industries will lead to less energy use by these industries and thus some reduction in overall energy production.

Given the negligible change in energy consumption resulting from the final BSCP rule, we do not expect any price increase for any energy type. The cost of energy distribution should not be affected by the final BSCP rule at all since the final rule does not affect energy distribution facilities. Finally, with changes in net exports being a minimal percentage of domestic output from the affected industries, there will be only a negligible change in international trade, and hence in dependence on foreign energy supplies. No other adverse outcomes are expected to occur with regards to energy supplies.

Therefore, we conclude that today's final BSCP rule is not likely to have a significant adverse effect on the supply, distribution, or use of energy.

[4] U.S. Department of Energy, Energy Information Administration. Annual Energy Review, End-Use Energy Consumption for 1998. Located on the Internet at *http://www.eia.doe.gov.*

I. National Technology Transfer and Advancement Act

Section 12(d) of the National Technology Transfer and Advancement Act (NTTAA) of 1995 (Pub. L. No. 104–113; 15 U.S.C. 272 note) directs EPA to use voluntary consensus standards in their regulatory and procurement activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (*e.g.*, materials specifications, test methods, sampling procedures, business practices) developed or adopted by one or more voluntary consensus bodies. The NTTAA directs EPA to provide Congress, through annual reports to OMB, with explanations when an agency does not use available and applicable voluntary consensus standards.

The final rules involve technical standards. The EPA cites the following standards in the final rules: EPA Methods 1, 1A, 2, 2A, 2C, 2D, 2F, 2G, 3, 4, 5, 22, 26, 26A, and 320 of 40 CFR part 60, appendix A. Consistent with the NTTAA, EPA conducted searches to identify voluntary consensus standards in addition to these EPA methods. No applicable voluntary consensus standards were identified for EPA Methods 1A, 2A, 2D, 2F, 2G, and 22. The search and review results have been documented and are in the dockets for the final rules.

The search for emissions measurement procedures identified 11 voluntary consensus standards. The EPA determined that eight of these 11 standards identified for measuring emissions of the HAPs or surrogates subject to emission standards in the final rules were impractical alternatives to EPA test methods for the purposes of the final rules. Therefore, EPA does not intend to adopt these standards at this time. The reasons for this determination for the 11 methods are discussed in the dockets for the final rules.

Two of the 11 voluntary consensus standards identified in this search were not available at the time the review was conducted for the purposes of the final rules because they are under development by a voluntary consensus body: ASME/BSR MFC 13M, "Flow Measurement by Velocity Traverse," for EPA Method 2 (and possibly 1); and ASME/BSR MFC 12M, "Flow in Closed Conduits Using Multiport Averaging Pitot Primary Flowmeters," for EPA Method 2.

In response to public comments received, we considered and decided to include EPA Method 320 as an option for measuring HF and HCl. The voluntary consensus standard ASTM D6348–98, "Determination of Gaseous Compounds by Extractive Direct Interface Fourier Transform (FTIR) Spectroscopy," has been reviewed by the EPA as a potential alternative to EPA Method 320. Suggested revisions to ASTM D6348–98 that would allow the EPA to accept ASTM D6348–98 as an acceptable alternative were sent to ASTM by the EPA. The ASTM Subcommittee D22–03 is currently undertaking a revision of ASTM D6348–98. Because of this, we are not citing this standard as an acceptable alternative for EPA Method 320 in the final rules today. However, upon successful ASTM balloting and demonstration of technical equivalency with the EPA FTIR methods, the revised ASTM standard could be incorporated by reference for EPA regulatory applicability. In the interim, facilities have the option to request ASTM D6348–98 as an alternative test method under 40 CFR 63.7(f) and 40 CFR 63.8(f) on a case-by-case basis.

Table 3 of the final BSCP rule and Table 4 of the final clay ceramics rule list the EPA testing methods included in the rules. Under 40 CFR 63.7(f) and 40 CFR 63.8(f), a source may apply to EPA for permission to use alternative test methods or alternative monitoring requirements in place of any of the EPA testing methods, performance specifications, or procedures.

J. Congressional Review Act

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. The EPA will submit a report containing today's final rules and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rules in the **Federal Register**. Neither of today's rules are "major rules" as defined by 5 U.S.C. 804(2). The final rules will be effective on May 16, 2003.

List of Subjects in 40 CFR Part 63

Administrative practice and procedure, Air pollution control, Hazardous substances, Intergovernmental relations, Reporting and recordkeeping requirements.

Dated: February 28, 2003.

Christine Todd Whitman,

Administrator.

■ For the reasons stated in the preamble, title 40, chapter I, part 63 of the Code of the Federal Regulations is amended as follows:

PART 63—[AMENDED]

■ 1. The authority citation for part 63 continues to read as follows:

Authority: 42 U.S.C. 7401, *et seq.*

■ 2. Part 63 is amended by adding subpart JJJJJ to read as follows:

Subpart JJJJJ—National Emission Standards for Hazardous Air Pollutants for Brick and Structural Clay Products Manufacturing

Sec.

What This Subpart Covers

63.8380 What is the purpose of this subpart?
63.8385 Am I subject to this subpart?
63.8390 What parts of my plant does this subpart cover?
63.8395 When do I have to comply with this subpart?

Emission Limitations

63.8405 What emission limitations must I meet?
63.8410 What are my options for meeting the emission limitations?

General Compliance Requirements

63.8420 What are my general requirements for complying with this subpart?
63.8425 What do I need to know about operation, maintenance, and monitoring plans?

Testing and Initial Compliance Requirements

63.8435 By what date must I conduct performance tests?
63.8440 When must I conduct subsequent performance tests?
63.8445 How do I conduct performance tests and establish operating limits?
63.8450 What are my monitoring installation, operation, and maintenance requirements?
63.8455 How do I demonstrate initial compliance with the emission limitations?

Continuous Compliance Requirements

63.8465 How do I monitor and collect data to demonstrate continuous compliance?
63.8470 How do I demonstrate continuous compliance with the emission limitations?

Notifications, Reports, and Records

63.8480 What notifications must I submit and when?
63.8485 What reports must I submit and when?
63.8490 What records must I keep?
63.8495 In what form and for how long must I keep my records?

Other Requirements and Information

63.8505 What parts of the General Provisions apply to me?
63.8510 Who implements and enforces this subpart?
63.8515 What definitions apply to this subpart?

Tables to Subpart JJJJJ of Part 63

Table 1 to Subpart JJJJJ of Part 63—Emission Limits
Table 2 to Subpart JJJJJ of Part 63—Operating Limits
Table 3 to Subpart JJJJJ of Part 63—Requirements for Performance Tests
Table 4 to Subpart JJJJJ of Part 63—Initial Compliance with Emission Limitations
Table 5 to Subpart JJJJJ of Part 63—Continuous Compliance with Emission Limits and Operating Limits
Table 6 to Subpart JJJJJ of Part 63—Requirements for Reports
Table 7 to Subpart JJJJJ of Part 63—Applicability of General Provisions to Subpart JJJJJ

What This Subpart Covers

§ 63.8380 What is the purpose of this subpart?

This subpart establishes national emission limitations for hazardous air pollutants (HAP) emitted from brick and structural clay products (BSCP) manufacturing facilities. This subpart also establishes requirements to demonstrate initial and continuous compliance with the emission limitations.

§ 63.8385 Am I subject to this subpart?

You are subject to this subpart if you own or operate a BSCP manufacturing facility that is, is located at, or is part of, a major source of HAP emissions according to the criteria in paragraphs (a) and (b) of this section.

(a) A BSCP manufacturing facility is a plant site that manufactures brick (including, but not limited to, face brick, structural brick, and brick pavers); clay pipe; roof tile; extruded floor and wall tile; and/or other extruded, dimensional clay products. Brick and structural clay products manufacturing facilities typically process raw clay and shale, form the processed materials into bricks or shapes, and dry and fire the bricks or shapes.

(b) A major source of HAP emissions is any stationary source or group of stationary sources within a contiguous area under common control that emits or has the potential to emit any single HAP at a rate of 9.07 megagrams (10 tons) or more per year or any combination of HAP at a rate of 22.68 megagrams (25 tons) or more per year.

§ 63.8390 What parts of my plant does this subpart cover?

(a) This subpart applies to each existing, new, or reconstructed affected source at a BSCP manufacturing facility.

(b) The existing affected source is an existing tunnel kiln with a design capacity equal to or greater than 9.07 megagrams per hour (Mg/hr) (10 tons per hour (tph)) of fired product according to paragraphs (b)(1) through (3) of this section. For the remainder of this subpart, a tunnel kiln with a design capacity equal to or greater than 9.07 Mg/hr (10 tph) of fired product will be called a large tunnel kiln, and a tunnel kiln with a design capacity less than 9.07 Mg/hr (10 tph) of fired product will be called a small tunnel kiln.

(1) For existing tunnel kilns that do not have sawdust dryers, the kiln exhaust process stream (*i.e.*, the only process stream) is subject to the requirements of this subpart.

(2) For existing tunnel kilns that ducted exhaust to sawdust dryers prior to July 22, 2002, only the kiln exhaust process stream (*i.e.*, the process stream that exhausts directly to the atmosphere or to an air pollution control device (APCD)) is subject to the requirements of this subpart. As such, any process stream that is ducted to a sawdust dryer is not subject to these requirements.

(3) For existing tunnel kilns that first ducted exhaust to sawdust dryers on or after July 22, 2002, all of the exhaust (*i.e.*, all process streams) is subject to the requirements of this subpart.

(c) An existing small tunnel kiln whose design capacity is increased such that it is equal to or greater than 9.07 Mg/hr (10 tph) of fired product is subject to the requirements of this subpart.

(d) An existing tunnel kiln with a federally enforceable permit condition that restricts kiln operation to less than 9.07 Mg/hr (10 tph) of fired product on a 12-month rolling average basis is not subject to the requirements of this subpart.

(e) Each new or reconstructed tunnel kiln is an affected source regardless of design capacity. All process streams from each new or reconstructed tunnel kiln are subject to the requirements of this subpart.

(f) Kilns that are used exclusively for research and development (R&D) and are not used to manufacture products for commercial sale, except in a de minimis manner, are not subject to the requirements of this subpart.

(g) Kilns that are used exclusively for setting glazes on previously fired products are not subject to the requirements of this subpart.

(h) A source is a new affected source if construction of the affected source began after July 22, 2002, and you met the applicability criteria at the time you began construction.

(i) An affected source is reconstructed if you meet the criteria as defined in § 63.2, except as provided in paragraphs (i)(1) and (i)(2) of this section.

(1) It is not technologically and economically feasible for an existing small tunnel kiln whose design capacity is increased such that it is equal to or greater than 9.07 Mg/hr (10 tph) of fired product to meet the relevant standards (*i.e.*, new source maximum achievable control technology (MACT)) by retrofitting with a dry lime injection fabric filter (DIFF), dry lime scrubber/fabric filter (DLS/FF), or wet scrubber (WS).

(2) It is not technologically and economically feasible for an existing large dry limestone adsorber (DLA)-controlled kiln to meet the relevant standards by retrofitting with a DIFF, DLS/FF, or WS.

(j) An affected source is existing if it is not new or reconstructed.

§ 63.8395 When do I have to comply with this subpart?

(a) If you have a new or reconstructed affected source, you must comply with this subpart according to paragraphs (a)(1) and (2) of this section.

(1) If the initial startup of your affected source is before May 16, 2003, then you must comply with the applicable emission limitations in Tables 1 and 2 to this subpart no later than May 16, 2003.

(2) If the initial startup of your affected source is after May 16, 2003, then you must comply with the applicable emission limitations in Tables 1 and 2 to this subpart upon initial startup of your affected source.

(b) If you have an existing affected source, you must comply with the applicable emission limitations in Tables 1 and 2 to this subpart no later than May 16, 2003.

(c) If you have an existing area source that increases its emissions or its potential to emit such that it becomes a major source of HAP, you must be in compliance with this subpart according to paragraphs (c)(1) and (2) of this section.

(1) Any portion of the existing facility that is a new affected source or a new reconstructed source must be in compliance with this subpart upon startup.

(2) All other parts of the existing facility must be in compliance with this subpart by 3 years after the date the area source becomes a major source.

(d) If you have a new area source (*i.e.*, an area source for which construction or reconstruction commenced after July 22, 2002) that increases its emissions or its potential to emit such that it becomes a major source of HAP, you must be in compliance with this subpart upon initial startup of your affected source as a major source.

(e) You must meet the notification requirements in § 63.8480 according to the schedule in § 63.8480 and in 40 CFR part 63, subpart A. Some of the notifications must be submitted before you are required to comply with the emission limitations in this subpart.

Emission Limitations

§ 63.8405 What emission limitations must I meet?

(a) You must meet each emission limit in Table 1 to this subpart that applies to you.

(b) You must meet each operating limit in Table 2 to this subpart that applies to you.

§ 63.8410 What are my options for meeting the emission limitations?

To meet the emission limitations in Tables 1 and 2 to this subpart, you must use one or more of the options listed in paragraphs (a) and (b) of this section.

(a) *Emissions control system.* Use an emissions capture and collection system and an APCD and demonstrate that the resulting emissions or emissions reductions meet the emission limits in Table 1 to this subpart, and that the capture and collection system and APCD meet the applicable operating limits in Table 2 to this subpart.

(b) *Process changes.* Use low-HAP raw materials or implement manufacturing process changes and demonstrate that the resulting emissions or emissions reductions meet the emission limits in Table 1 to this subpart.

General Compliance Requirements

§ 63.8420 What are my general requirements for complying with this subpart?

(a) You must be in compliance with the emission limitations (including operating limits) in this subpart at all times, except during periods of startup, shutdown, and malfunction and during periods of routine control device maintenance as specified in paragraph (e) of this section.

(b) Except as specified in paragraph (e) of this section, you must always operate and maintain your affected source, including air pollution control and monitoring equipment, according to the provisions in § 63.6(e)(1)(i). During the period between the compliance date specified for your affected source in § 63.8395 and the date upon which continuous monitoring systems (CMS) (*e.g.*, continuous parameter monitoring systems) have been installed and verified and any applicable operating limits have been set, you must maintain a log detailing the operation and maintenance of the process and emissions control equipment.

(c) You must develop and implement a written startup, shutdown, and malfunction plan (SSMP) according to the provisions in § 63.6(e)(3).

(d) You must prepare and implement a written operation, maintenance, and monitoring (OM&M) plan according to the requirements in § 63.8425.

(e) If you own or operate an affected kiln and must perform routine maintenance on the control device for that kiln, you may bypass the kiln control device and continue operating the kiln upon approval by the Administrator provided you satisfy the conditions listed in paragraphs (e)(1) through (5) of this section.

(1) You must request a routine control device maintenance exemption from the Administrator. Your request must justify the need for the routine maintenance on the control device and the time required to accomplish the maintenance activities, describe the maintenance activities and the frequency of the maintenance activities, explain why the maintenance cannot be accomplished during kiln shutdowns, describe how you plan to minimize emissions to the greatest extent possible during the maintenance, and provide any other documentation required by the Administrator.

(2) The routine control device maintenance exemption must not exceed 4 percent of the annual operating uptime for each kiln.

(3) The request for the routine control device maintenance exemption, if approved by the Administrator, must be incorporated by reference in and attached to the affected source's title V permit.

(4) You must minimize HAP emissions during the period when the kiln is operating and the control device is offline.

(5) You must minimize the time period during which the kiln is operating and the control device is offline.

(f) You must be in compliance with the provisions of subpart A of this part, except as noted in Table 7 to this subpart.

§ 63.8425 What do I need to know about operation, maintenance, and monitoring plans?

(a) You must prepare, implement, and revise as necessary an OM&M plan that includes the information in paragraph (b) of this section. Your OM&M plan must be available for inspection by the permitting authority upon request.

(b) Your OM&M plan must include, as a minimum, the information in paragraphs (b)(1) through (13) of this section.

(1) Each process and APCD to be monitored, the type of monitoring device that will be used, and the operating parameters that will be monitored.

(2) A monitoring schedule that specifies the frequency that the parameter values will be determined and recorded.

(3) The limits for each parameter that represent continuous compliance with the emission limitations in § 63.8405. The limits must be based on values of the monitored parameters recorded during performance tests.

(4) Procedures for the proper operation and routine and long-term maintenance of each APCD, including a maintenance and inspection schedule that is consistent with the manufacturer's recommendations.

(5) Procedures for installing the CMS sampling probe or other interface at a measurement location relative to each affected process unit such that the measurement is representative of control of the exhaust emissions (*e.g.*, on or downstream of the last APCD).

(6) Performance and equipment specifications for the sample interface, the pollutant concentration or parametric signal analyzer, and the data collection and reduction system.

(7) Continuous monitoring system performance evaluation procedures and acceptance criteria (*e.g.*, calibrations).

(8) Procedures for the proper operation and maintenance of monitoring equipment consistent with the requirements in §§ 63.8450 and 63.8(c)(1), (3), (4)(ii), (7), and (8).

(9) Continuous monitoring system data quality assurance procedures consistent with the requirements in § 63.8(d).

(10) Continuous monitoring system recordkeeping and reporting procedures consistent with the requirements in § 63.10(c), (e)(1), and (e)(2)(i).

(11) Procedures for responding to operating parameter deviations, including the procedures in paragraphs (b)(11)(i) through (iii) of this section.

(i) Procedures for determining the cause of the operating parameter deviation.

(ii) Actions for correcting the deviation and returning the operating parameters to the allowable limits.

(iii) Procedures for recording the times that the deviation began and ended and corrective actions were initiated and completed.

(12) Procedures for keeping records to document compliance.

(13) If you operate an affected kiln and you plan to take the kiln control device out of service for routine maintenance, as specified in § 63.8420(e), the procedures specified in paragraphs (b)(13)(i) and (ii) of this section.

(i) Procedures for minimizing HAP emissions from the kiln during periods of routine maintenance of the kiln control device when the kiln is operating and the control device is offline.

(ii) Procedures for minimizing the duration of any period of routine maintenance on the kiln control device when the kiln is operating and the control device is offline.

(c) Changes to the operating limits in your OM&M plan require a new performance test. If you are revising an operating limit parameter value, you must meet the requirements in paragraphs (c)(1) and (2) of this section.

(1) Submit a notification of performance test to the Administrator as specified in § 63.7(b).

(2) After completing the performance tests to demonstrate that compliance with the emission limits can be achieved at the revised operating limit parameter value, you must submit the performance test results and the revised operating limits as part of the Notification of Compliance Status required under § 63.9(h).

(d) If you are revising the inspection and maintenance procedures in your OM&M plan, you do not need to conduct a new performance test.

Testing and Initial Compliance Requirements

§ 63.8435 By what date must I conduct performance tests?

You must conduct performance tests within 180 calendar days after the compliance date that is specified for your source in § 63.8395 and according to the provisions in § 63.7(a)(2).

§ 63.8440 When must I conduct subsequent performance tests?

(a) You must conduct a performance test before renewing your 40 CFR part 70 operating permit or at least every 5 years following the initial performance test.

(b) You must conduct a performance test when you want to change the parameter value for any operating limit specified in your OM&M plan.

§ 63.8445 How do I conduct performance tests and establish operating limits?

(a) You must conduct each performance test in Table 3 to this subpart that applies to you.

(b) Before conducting the performance test, you must install and calibrate all monitoring equipment.

(c) Each performance test must be conducted according to the requirements in § 63.7 and under the specific conditions in Table 3 to this subpart.

(d) You must test while operating at the maximum production level.

(e) You may not conduct performance tests during periods of startup, shutdown, or malfunction, as specified in § 63.7(e)(1).

(f) You must conduct at least three separate test runs for each performance test required in this section, as specified in § 63.7(e)(3). Each test run must last at least 1 hour.

(g) You must use the data gathered during the performance test and the equations in paragraphs (g)(1) and (2) of this section to determine compliance with the emission limitations.

(1) To determine compliance with the production-based hydrogen fluoride (HF), hydrogen chloride (HCl), and particulate matter (PM) emission limits in Table 1 to this subpart, you must calculate your mass emissions per unit of production for each test run using Equation 1 of this section:

$$MP = \frac{ER}{P} \qquad \text{(Eq. 1)}$$

Where:

MP=mass per unit of production, kilograms (pounds) of pollutant per megagram (ton) of fired product

ER=mass emission rate of pollutant (HF, HCl, or PM) during each performance test run, kilograms (pounds) per hour

P=production rate during each performance test run, megagrams (tons) of fired product per hour.

(2) To determine compliance with the percent reduction HF and HCl emission limits in Table 1 to this subpart, you must calculate the percent reduction for each test run using Equation 2 of this section:

$$PR = \frac{ER_i - ER_o}{ER_i}\ (100) \qquad \text{(Eq. 2)}$$

Where:

PR=percent reduction, percent

ER_i=mass emission rate of specific HAP (HF or HCl) entering the APCD, kilograms (pounds) per hour

ER_o=mass emission rate of specific HAP (HF or HCl) exiting the APCD, kilograms (pounds) per hour.

(h) You must establish each site-specific operating limit in Table 2 to this subpart that applies to you as specified in Table 3 to this subpart.

(i) For each affected kiln that is equipped with an APCD that is not addressed in Table 2 to this subpart or that is using process changes as a means of meeting the emission limits in Table 1 to this subpart, you must meet the requirements in § 63.8(f) and paragraphs (i)(1) and (2) of this section.

(1) Submit a request for approval of alternative monitoring procedures to the Administrator no later than the notification of intent to conduct a performance test. The request must contain the information specified in paragraphs (i)(1)(i) through (iv) of this section.

(i) A description of the alternative APCD or process changes.

(ii) The type of monitoring device or procedure that will be used.

(iii) The operating parameters that will be monitored.

(iv) The frequency that the operating parameter values will be determined and recorded to establish continuous compliance with the operating limits.

(2) Establish site-specific operating limits during the performance test based on the information included in the approved alternative monitoring procedures request and, as applicable, as specified in Table 3 to this subpart.

§ 63.8450 What are my monitoring installation, operation, and maintenance requirements?

(a) You must install, operate, and maintain each CMS according to your OM&M plan and the requirements in paragraphs (a)(1) through (5) of this section.

(1) Conduct a performance evaluation of each CMS according to your OM&M plan.

(2) The CMS must complete a minimum of one cycle of operation for each successive 15-minute period. To have a valid hour of data, you must have at least three of four equally spaced data values (or at least 75 percent if you collect more than four data values per hour) for that hour (not including startup, shutdown, malfunction, out-of-control periods, or periods of routine control device maintenance covered by a routine control device maintenance exemption as specified in § 63.8420(e)).

(3) Determine and record the 3-hour block averages of all recorded readings, calculated after every 3 hours of operation as the average of the previous 3 operating hours. To calculate the average for each 3-hour average period, you must have at least 75 percent of the recorded readings for that period (not including startup, shutdown, malfunction, out-of-control periods, or periods of routine control device maintenance covered by a routine control device maintenance exemption as specified in § 63.8420(e)).

(4) Record the results of each inspection, calibration, and validation check.

(5) At all times, maintain the monitoring equipment including, but not limited to, maintaining necessary parts for routine repairs of the monitoring equipment.

(b) For each liquid flow measurement device, you must meet the requirements in paragraphs (a)(1) through (5) and paragraphs (b)(1) through (3) of this section.

(1) Locate the flow sensor in a position that provides a representative flowrate.

(2) Use a flow sensor with a minimum measurement sensitivity of 2 percent of the liquid flowrate.

(3) At least semiannually, conduct a flow sensor calibration check.

(c) For each pressure measurement device, you must meet the requirements in paragraphs (a)(1) through (5) and paragraphs (c)(1) through (7) of this section.

(1) Locate the pressure sensor(s) in or as close to a position that provides a representative measurement of the pressure.

(2) Minimize or eliminate pulsating pressure, vibration, and internal and external corrosion.

(3) Use a gauge with a minimum measurement sensitivity of 0.5 inch of water or a transducer with a minimum measurement sensitivity of 1 percent of the pressure range.

(4) Check the pressure tap daily to ensure that it is not plugged.

(5) Using a manometer, check gauge calibration quarterly and transducer calibration monthly.

(6) Any time the sensor exceeds the manufacturer's specified maximum operating pressure range, conduct calibration checks or install a new pressure sensor.

(7) At least monthly, inspect all components for integrity, all electrical connections for continuity, and all mechanical connections for leakage.

(d) For each pH measurement device, you must meet the requirements in paragraphs (a)(1) through (5) and paragraphs (d)(1) through (4) of this section.

(1) Locate the pH sensor in a position that provides a representative measurement of pH.

(2) Ensure the sample is properly mixed and representative of the fluid to be measured.

(3) Check the pH meter's calibration on at least two points every 8 hours of process operation.

(4) At least monthly, inspect all components for integrity and all electrical connections for continuity.

(e) For each bag leak detection system, you must meet the requirements in paragraphs (e)(1) through (11) of this section.

(1) Each triboelectric bag leak detection system must be installed, calibrated, operated, and maintained according to the "Fabric Filter Bag Leak Detection Guidance," (EPA–454/R–98–015, September 1997). This document is available from the U.S. Environmental Protection Agency (U.S. EPA); Office of Air Quality Planning and Standards; Emissions, Monitoring and Analysis Division; Emission Measurement Center (MD–19), Research Triangle Park, NC 27711. This document is also available on the Technology Transfer Network (TTN) under Emission Measurement Center Continuous Emission Monitoring. Other types of bag leak detection systems must be installed, operated, calibrated, and maintained in a manner consistent with the manufacturer's written specifications and recommendations.

(2) The bag leak detection system must be certified by the manufacturer to be capable of detecting PM emissions at concentrations of 10 milligrams per actual cubic meter (0.0044 grains per actual cubic foot) or less.

(3) The bag leak detection system sensor must provide an output of relative PM loadings.

(4) The bag leak detection system must be equipped with a device to continuously record the output signal from the sensor.

(5) The bag leak detection system must be equipped with an audible alarm system that will sound automatically when an increase in relative PM emissions over a preset level is detected. The alarm must be located where it is easily heard by plant operating personnel.

(6) For positive pressure fabric filter systems, a bag leak detector must be installed in each baghouse compartment or cell.

(7) For negative pressure or induced air fabric filters, the bag leak detector must be installed downstream of the fabric filter.

(8) Where multiple detectors are required, the system's instrumentation and alarm may be shared among detectors.

(9) The baseline output must be established by adjusting the range and the averaging period of the device and establishing the alarm set points and the alarm delay time according to section 5.0 of the "Fabric Filter Bag Leak Detection Guidance."

(10) Following initial adjustment of the system, the sensitivity or range, averaging period, alarm set points, or alarm delay time may not be adjusted except as detailed in your OM&M plan. In no case may the sensitivity be increased by more than 100 percent or decreased more than 50 percent over a 365-day period unless such adjustment follows a complete fabric filter inspection that demonstrates that the fabric filter is in good operating condition. Record each adjustment.

(11) Record the results of each inspection, calibration, and validation check.

(f) For each lime or chemical feed rate measurement device, you must meet the requirements in paragraphs (a)(1) through (5) and paragraphs (f)(1) and (2) of this section.

(1) Locate the measurement device in a position that provides a representative feed rate measurement.

(2) At least semiannually, conduct a calibration check.

(g) For each limestone feed system on a DLA, you must meet the requirements in paragraphs (a)(1),(4), and (5) of this section and must ensure on a monthly basis that the feed system replaces limestone at least as frequently as the schedule set during the performance test.

(h) Requests for approval of alternate monitoring procedures must meet the requirements in §§ 63.8445(i) and 63.8(f).

§ 63.8455 How do I demonstrate initial compliance with the emission limitations?

(a) You must demonstrate initial compliance with each emission limitation that applies to you according to Table 4 to this subpart.

(b) You must establish each site-specific operating limit in Table 2 to this subpart that applies to you according to the requirements in § 63.8445 and Table 3 to this subpart.

(c) You must submit the Notification of Compliance Status containing the results of the initial compliance demonstration according to the requirements in § 63.8480(e).

Continuous Compliance Requirements

§ 63.8465 How do I monitor and collect data to demonstrate continuous compliance?

(a) You must monitor and collect data according to this section.

(b) Except for periods of monitor malfunctions, associated repairs, and required quality assurance or control activities (including, as applicable, calibration checks and required zero and span adjustments), you must monitor continuously (or collect data at all required intervals) at all times that the affected source is operating. This includes periods of startup, shutdown, malfunction, and routine control device maintenance as specified in § 63.8420(e) when the affected source is operating.

(c) You may not use data recorded during monitoring malfunctions, associated repairs, out-of-control periods, or required quality assurance or control activities for purposes of calculating data averages. A monitoring malfunction is any sudden, infrequent, not reasonably preventable failure of the monitoring system to provide valid data. Monitoring failures that are caused in part by poor maintenance or careless operation are not malfunctions. You must use all the valid data collected during all other periods in assessing compliance. Any averaging period for which you do not have valid monitoring data and such data are required constitutes a deviation from the monitoring requirements.

§ 63.8470 How do I demonstrate continuous compliance with the emission limitations?

(a) You must demonstrate continuous compliance with each emission limit and operating limit in Tables 1 and 2 to this subpart that applies to you according to the methods specified in Table 5 to this subpart.

(b) For each affected kiln that is equipped with an APCD that is not addressed in Table 2 to this subpart, or that is using process changes as a means of meeting the emission limits in Table 1 to this subpart, you must demonstrate continuous compliance with each emission limit in Table 1 to this subpart, and each operating limit established as required in § 63.8445(i)(2) according to the methods specified in your approved alternative monitoring procedures request, as described in §§ 63.8445(i)(1) and 63.8(f).

(c) You must report each instance in which you did not meet each emission limit and each operating limit in this subpart that applies to you. This includes periods of startup, shutdown, malfunction, and routine control device maintenance. These instances are deviations from the emission limitations in this subpart. These deviations must be reported according to the requirements in § 63.8485.

(d) During periods of startup, shutdown, and malfunction, you must operate according to your SSMP.

(e) Consistent with §§ 63.6(e)and 63.7(e)(1), deviations that occur during a period of startup, shutdown, or malfunction are not violations if you demonstrate to the Administrator's satisfaction that you were operating according to an SSMP that satisfies the requirements of § 63.6(e) and your OM&M plan. The Administrator will determine whether deviations that occur during a period of startup, shutdown, or malfunction are violations, according to the provisions in § 63.6(e).

(f) Deviations that occur during periods of control device maintenance covered by an approved routine control device maintenance exemption according to § 63.8420(e) are not violations if you demonstrate to the Administrator's satisfaction that you were operating in accordance with the approved routine control device maintenance exemption.

(g) You must demonstrate continuous compliance with the operating limits in Table 2 to this subpart for visible emissions (VE) from tunnel kilns equipped with DLA, DIFF, or DLS/FF by monitoring VE at each kiln stack according to the requirements in paragraphs (g)(1) through (3) of this section.

(1) Perform daily VE observations of each kiln stack according to the procedures of Method 22 of 40 CFR part 60, appendix A. You must conduct the Method 22 test while the affected source is operating under normal conditions. The duration of each Method 22 test must be at least 15 minutes.

(2) If VE are observed during any daily test conducted using Method 22 of 40 CFR part 60, appendix A, you must promptly initiate and complete corrective actions according to your OM&M plan. If no VE are observed in 30 consecutive daily Method 22 tests for any kiln stack, you may decrease the frequency of Method 22 testing from daily to weekly for that kiln stack. If VE are observed during any weekly test, you must promptly initiate and complete corrective actions according to your OM&M plan, resume Method 22 testing of that kiln stack on a daily basis, and maintain that schedule until no VE are observed in 30 consecutive daily tests, at which time you may again decrease the frequency of Method 22 testing to a weekly basis.

(3) If VE are observed during any test conducted using Method 22 of 40 CFR part 60, appendix A, you must report these deviations by following the requirements in § 63.8485.

Notifications, Reports, and Records

§ 63.8480 What notifications must I submit and when?

(a) You must submit all of the notifications in §§ 63.7(b) and (c), 63.8(f)(4), and 63.9 (b) through (e), (g)(1), and (h) that apply to you, by the dates specified.

(b) As specified in § 63.9(b)(2) and (3), if you start up your affected source before May 16, 2003, you must submit an Initial Notification not later than 120 calendar days after May 16, 2003.

(c) As specified in § 63.9(b)(3), if you start up your new or reconstructed affected source on or after May 16, 2003, you must submit an Initial Notification not later than 120 calendar days after you become subject to this subpart.

(d) If you are required to conduct a performance test, you must submit a notification of intent to conduct a performance test at least 60 calendar days before the performance test is scheduled to begin, as required in § 63.7(b)(1).

(e) If you are required to conduct a performance test as specified in Table 3 to this subpart, you must submit a Notification of Compliance Status as specified in § 63.9(h) and paragraphs (e)(1) and (2) of this section.

(1) For each compliance demonstration that includes a performance test conducted according to the requirements in Table 3 to this subpart, you must submit the Notification of Compliance Status, including the performance test results, before the close of business on the 60th calendar day following the completion of the performance test, according to § 63.10(d)(2).

(2) In addition to the requirements in § 63.9(h)(2)(i), you must include the information in paragraphs (e)(2)(i) and (ii) of this section in your Notification of Compliance Status.

(i) The operating limit parameter values established for each affected source with supporting documentation and a description of the procedure used to establish the values.

(ii) For each APCD that includes a fabric filter, if a bag leak detection system is used, analysis and supporting documentation demonstrating conformance with EPA guidance and specifications for bag leak detection systems in § 63.8450(e).

(f) If you request a routine control device maintenance exemption according to § 63.8420(e), you must submit your request for the exemption no later than 30 days before the compliance date.

§ 63.8485 What reports must I submit and when?

(a) You must submit each report in Table 6 to this subpart that applies to you.

(b) Unless the Administrator has approved a different schedule for submission of reports under § 63.10(a), you must submit each report by the date in Table 6 to this subpart and as specified in paragraphs (b)(1) through (5) of this section.

(1) The first compliance report must cover the period beginning on the compliance date that is specified for your affected source in § 63.8395 and ending on June 30 or December 31, and lasting at least 6 months, but less than 12 months. For example, if your compliance date is March 1, then the first semiannual reporting period would begin on March 1 and end on December 31.

(2) The first compliance report must be postmarked or delivered no later than July 31 or January 31 for compliance periods ending on June 30 and December 31, respectively.

(3) Each subsequent compliance report must cover the semiannual reporting period from January 1 through June 30 or the semiannual reporting period from July 1 through December 31.

(4) Each subsequent compliance report must be postmarked or delivered no later than July 31 or January 31 for compliance periods ending on June 30 and December 31, respectively.

(5) For each affected source that is subject to permitting regulations pursuant to 40 CFR part 70 or 40 CFR part 71, if the permitting authority has established dates for submitting semiannual reports pursuant to 40 CFR 70.6(a)(3)(iii)(A) or 40 CFR 71.6(a)(3)(iii)(A), you may submit the first and subsequent compliance reports according to the dates the permitting authority has established instead of according to the dates in paragraphs (b)(1) through (4) of this section.

(c) The compliance report must contain the information in paragraphs (c)(1) through (7) of this section.

(1) Company name and address.

(2) Statement by a responsible official with that official's name, title, and signature, certifying that, based on information and belief formed after reasonable inquiry, the statements and information in the report are true, accurate, and complete.

(3) Date of report and beginning and ending dates of the reporting period.

(4) If you had a startup, shutdown or malfunction during the reporting period and you took actions consistent with your SSMP and OM&M plan, the compliance report must include the information specified in § 63.10(d)(5)(i).

(5) A description of control device maintenance performed while the control device was offline and the kiln controlled by the control device was operating, including the information specified in paragraphs (c)(5)(i) through (iii) of this section.

(i) The date and time when the control device was shutdown and restarted.

(ii) Identification of the kiln that was operating and the number of hours that the kiln operated while the control device was offline.

(iii) A statement of whether or not the control device maintenance was included in your approved routine control device maintenance exemption developed as specified in § 63.8420(e). If the control device maintenance was included in your approved routine control device maintenance exemption, then you must report the information in paragraphs (c)(5)(iii)(A) through (C) of this section.

(A) The total amount of time that the kiln controlled by the control device operated during the current semiannual compliance period and during the previous semiannual compliance period.

(B) The amount of time that each kiln controlled by the control device operated while the control device was offline for maintenance covered under the routine control device maintenance exemption during the current semiannual compliance period and during the previous semiannual compliance period.

(C) Based on the information recorded under paragraphs (c)(5)(iii)(A) and (B) of this section, compute the annual percent of kiln operating uptime during which the control device was offline for routine maintenance using Equation 1 of this section.

$$RM = \frac{DT_p + DT_c}{KU_p + KU_c}(100) \qquad \text{(Eq. 1)}$$

Where:

RM=Annual percentage of kiln uptime during which control device was offline for routine control device maintenance

DT_p=Control device downtime claimed under the routine control device maintenance exemption for the previous semiannual compliance period

DT_c=Control device downtime claimed under the routine control device maintenance exemption for the current semiannual compliance period

KU_p=Kiln uptime for the previous semiannual compliance period
KU_c=Kiln uptime for the current semiannual compliance period

(6) If there are no deviations from any emission limitations (emission limits or operating limits) that apply to you, the compliance report must contain a statement that there were no deviations from the emission limitations during the reporting period.

(7) If there were no periods during which the CMS was out-of-control as specified in your OM&M plan, the compliance report must contain a statement that there were no periods during which the CMS was out-of-control during the reporting period.

(d) For each deviation from an emission limitation (emission limit or operating limit) that occurs at an affected source where you are not using a CMS to comply with the emission limitations in this subpart, the compliance report must contain the information in paragraphs (c)(1) through (5) and paragraphs (d)(1) and (2) of this section. This includes periods of startup, shutdown, malfunction, and routine control device maintenance.

(1) The total operating time of each affected source during the reporting period.

(2) Information on the number, duration, and cause of deviations (including unknown cause, if applicable), as applicable, and the corrective action taken.

(e) For each deviation from an emission limitation (emission limit or operating limit) occurring at an affected source where you are using a CMS to comply with the emission limitations in this subpart, you must include the information in paragraphs (c)(1) through (5) and paragraphs (e)(1) through (13) of this section. This includes periods of startup, shutdown, malfunction, and routine control device maintenance.

(1) The total operating time of each affected source during the reporting period.

(2) The date and time that each malfunction started and stopped.

(3) The date and time that each CMS was inoperative, except for zero (low-level) and high-level checks.

(4) The date, time, and duration that each CMS was out-of-control, including the pertinent information in your OM&M plan.

(5) The date and time that each deviation started and stopped, and whether each deviation occurred during a period of startup, shutdown, or malfunction; during routine control device maintenance covered in your approved routine control device maintenance exemption; or during another period.

(6) A description of corrective action taken in response to a deviation.

(7) A summary of the total duration of the deviation during the reporting period and the total duration as a percent of the total source operating time during that reporting period.

(8) A breakdown of the total duration of the deviations during the reporting period into those that were due to startup, shutdown, control equipment problems, process problems, other known causes, and other unknown causes.

(9) A summary of the total duration of CMS downtime during the reporting period and the total duration of CMS downtime as a percent of the total source operating time during that reporting period.

(10) A brief description of the process units.

(11) A brief description of the CMS.

(12) The date of the latest CMS certification or audit.

(13) A description of any changes in CMS, processes, or control equipment since the last reporting period.

(f) If you have obtained a title V operating permit according to 40 CFR part 70 or 40 CFR part 71, you must report all deviations as defined in this subpart in the semiannual monitoring report required by 40 CFR 70.6(a)(3)(iii)(A) or 40 CFR 71.6(a)(3)(iii)(A). If you submit a compliance report according to Table 6 to this subpart along with, or as part of, the semiannual monitoring report required by 40 CFR 70.6(a)(3)(iii)(A) or 40 CFR 71.6(a)(3)(iii)(A), and the compliance report includes all required information concerning deviations from any emission limitation (including any operating limit), then submitting the compliance report will satisfy any obligation to report the same deviations in the semiannual monitoring report. However, submitting a compliance report will not otherwise affect any obligation you may have to report deviations from permit requirements to the permitting authority.

§ 63.8490 What records must I keep?

(a) You must keep the records listed in paragraphs (a)(1) through (4) of this section.

(1) A copy of each notification and report that you submitted to comply with this subpart, including all documentation supporting any Initial Notification or Notification of Compliance Status that you submitted, according to the requirements in § 63.10(b)(2)(xiv).

(2) The records in § 63.6(e)(3)(iii) through (v) related to startup, shutdown, and malfunction.

(3) Records of performance tests as required in § 63.10(b)(2)(viii).

(4) Records relating to control device maintenance and documentation of your approved routine control device maintenance exemption, if you request such an exemption under § 63.8420(e).

(b) You must keep the records required in Table 5 to this subpart to show continuous compliance with each emission limitation that applies to you.

(c) You must also maintain the records listed in paragraphs (c)(1) through (6) of this section.

(1) For each bag leak detection system, records of each alarm, the time of the alarm, the time corrective action was initiated and completed, and a brief description of the cause of the alarm and the corrective action taken.

(2) For each deviation of an operating limit parameter value, the date, time, and duration of the deviation, a brief explanation of the cause of the deviation and the corrective action taken, and whether the deviation occurred during a period of startup, shutdown, or malfunction.

(3) For each affected source, records of production rates on a fired-product basis.

(4) Records for any approved alternative monitoring or test procedures.

(5) Records of maintenance and inspections performed on the APCD.

(6) Current copies of your SSMP and OM&M plan, including any revisions, with records documenting conformance.

§ 63.8495 In what form and for how long must I keep my records?

(a) Your records must be in a form suitable and readily available for expeditious review, according to § 63.10(b)(1).

(b) As specified in § 63.10(b)(1), you must keep each record for 5 years following the date of each occurrence, measurement, maintenance, corrective action, report, or record.

(c) You must keep each record onsite for at least 2 years after the date of each occurrence, measurement, maintenance, corrective action, report, or record, according to § 63.10(b)(1). You may keep the records offsite for the remaining 3 years.

Other Requirements and Information

§ 63.8505 What parts of the General Provisions apply to me?

Table 7 to this subpart shows which parts of the General Provisions in §§ 63.1 through 63.15 apply to you.

§ 63.8510 Who implements and enforces this subpart?

(a) This subpart can be implemented and enforced by us, the U.S. EPA, or a delegated authority such as your State, local, or tribal agency. If the U.S. EPA Administrator has delegated authority to your State, local, or tribal agency, then that agency, in addition to the U.S. EPA, has the authority to implement and enforce this subpart. You should contact your U.S. EPA Regional Office to find out if implementation and enforcement of this subpart is delegated to your State, local, or tribal agency.

(b) In delegating implementation and enforcement authority of this subpart to a State, local, or tribal agency under section 40 CFR part 63, subpart E, the authorities contained in paragraph (c) of this section are retained by the Administrator of the U.S. EPA and are not transferred to the State, local, or tribal agency.

(c) The authorities that cannot be delegated to State, local, or tribal agencies are as specified in paragraphs (c)(1) through (4) of this section.

(1) Approval of alternatives to the applicability requirements in §§ 63.8385 and 63.8390, the compliance date requirements in § 63.8395, and the non-opacity emission limitations in § 63.8405.

(2) Approval of major changes to test methods under § 63.7(e)(2)(ii) and (f) and as defined in § 63.90.

(3) Approval of major changes to monitoring under § 63.8(f) and as defined in § 63.90.

(4) Approval of major changes to recordkeeping and reporting under § 63.10(f) and as defined in § 63.90.

§ 63.8515 What definitions apply to this subpart?

Terms used in this subpart are defined in the Clean Air Act, in § 63.2, and in this section as follows:

Air pollution control device (APCD) means any equipment that reduces the quantity of a pollutant that is emitted to the air.

Bag leak detection system means an instrument that is capable of monitoring PM loadings in the exhaust of a fabric filter in order to detect bag failures. A bag leak detection system includes, but is not limited to, an instrument that operates on triboelectric, light-scattering, light-transmittance, or other effects to monitor relative PM loadings.

Brick and structural clay products (BSCP) manufacturing facility means a plant site that manufactures brick (including, but not limited to, face brick, structural brick, and brick pavers); clay pipe; roof tile; extruded floor and wall tile; and/or other extruded, dimensional clay products. Brick and structural clay products manufacturing facilities typically process raw clay and shale, form the processed materials into bricks or shapes, and dry and fire the bricks or shapes.

Deviation means any instance in which an affected source subject to this subpart, or an owner or operator of such a source:

(1) Fails to meet any requirement or obligation established by this subpart including, but not limited to, any emission limitation (including any operating limit) or work practice standard;

(2) Fails to meet any term or condition that is adopted to implement an applicable requirement in this subpart for any affected source required to obtain such a permit; or

(3) Fails to meet any emission limitation (including any operating limit) or work practice standard in this subpart during startup, shutdown, or malfunction, regardless of whether or not such failure is permitted by this subpart.

Dry lime injection fabric filter (DIFF) means an APCD that includes continuous injection of hydrated lime or other sorbent into a duct or reaction chamber followed by a fabric filter.

Dry lime scrubber/fabric filter (DLS/FF) means an APCD that includes continuous injection of humidified hydrated lime or other sorbent into a reaction chamber followed by a fabric filter. These systems typically include recirculation of some of the sorbent.

Dry limestone adsorber (DLA) means an APCD that includes a limestone storage bin, a reaction chamber that is essentially a packed tower filled with limestone, and may or may not include a peeling drum that mechanically scrapes reacted limestone to regenerate the stone for reuse.

Emission limitation means any emission limit or operating limit.

Fabric filter means an APCD used to capture PM by filtering a gas stream through filter media; also known as a baghouse.

Initial startup means:

(1) For a new or reconstructed tunnel kiln controlled with a DLA, and for a tunnel kiln that would be considered reconstructed but for § 63.8390(i)(1) or § 63.8390(i)(2), the time at which the temperature in the kiln first reaches 260 °C (500 °F) and the kiln contains product; or

(2) For a new or reconstructed tunnel kiln controlled with a DIFF, DLS/FF, or WS, the time at which the kiln first reaches a level of production that is equal to 75 percent of the kiln design capacity or 12 months after the affected source begins firing BSCP, whichever is earlier.

Kiln exhaust process stream means the portion of the exhaust from a tunnel kiln that exhausts directly to the atmosphere (or to an APCD), rather than to a sawdust dryer.

Large tunnel kiln means a tunnel kiln (existing, new, or reconstructed) with a design capacity equal to or greater than 9.07 Mg/hr (10 tph) of fired product.

Particulate matter (PM) means, for purposes of this subpart, emissions of PM that serve as a measure of total particulate emissions, as measured by Method 5 (40 CFR part 60, appendix A), and as a surrogate for metal HAP contained in the particulates including, but not limited to, antimony, arsenic, beryllium, cadmium, chromium, cobalt, lead, manganese, mercury, nickel, and selenium.

Plant site means all contiguous or adjoining property that is under common control, including properties that are separated only by a road or other public right-of-way. Common control includes properties that are owned, leased, or operated by the same entity, parent entity, subsidiary, or any combination thereof.

Research and development kiln means any kiln whose purpose is to conduct research and development for new processes and products and is not engaged in the manufacture of products for commercial sale, except in a de minimis manner.

Responsible official means responsible official as defined in 40 CFR 70.2.

Small tunnel kiln means a tunnel kiln (existing, new, or reconstructed) with a design capacity less than 9.07 Mg/hr (10 tph) of fired product.

Startup means the setting in operation of an affected source and starting the production process.

Tunnel kiln means any continuous kiln that is used to fire BSCP. Some tunnel kilns have two process streams, including a process stream that exhausts directly to the atmosphere or to an APCD, and a process stream in which the kiln exhaust is ducted to a sawdust dryer where it is used to dry sawdust before being emitted to the atmosphere.

Tunnel kiln design capacity means the maximum amount of brick, in Mg (tons), that a kiln is designed to produce in one year divided by the number of hours in a year (8,760 hours). If a kiln is modified to increase the capacity, the design capacity is considered to be the capacity following modifications.

Wet scrubber (WS) means an APCD that uses water, which may include caustic additives or other chemicals, as the sorbent. Wet scrubbers may use any

of various design mechanisms to increase the contact between exhaust gases and the sorbent.

Tables to Subpart JJJJJ of Part 63

As stated in § 63.8405, you must meet each emission limit in the following table that applies to you:

TABLE 1 TO SUBPART JJJJJ OF PART 63.—EMISSION LIMITS

For each . . .	You must meet the following emission limits . . .	Or you must comply with the following . . .
1. Existing large tunnel kiln (design capacity ≥10 tph of fired product), excluding any process stream that is ducted to a sawdust dryer prior to July 22, 2002; or including any process stream that exhausts directly to the atmosphere or to an APCD and any process stream that is first ducted to a sawdust on or after July 22, 2002; each new or reconstructed small tunnel kiln (design capacity <10 tph of fired product), including all process streams; each tunnel kiln that would be considered reconstructed but for § 63.8390(i)(1), including all process streams; and each large tunnel kiln previously equipped with a DLA that would be considered reconstructed but for § 63.8390(i)(2), including all process streams.	a. HF emissions must not exceed 0.029 kilograms per megagram (kg/Mg) (0.057 pounds per ton (lb/ton)) of fired product.	Reduce uncontrolled HF emissions by at least 90 percent.
	b. HCl emissions must not exceed 0.13 kg/Mg (0.26 lb/ton) of fired product.	Reduce uncontrolled HCl emissions by at least 30 percent.
	c. PM emissions must not exceed 0.21 kg/Mg (0.42 lb/ton) of fired product.	Not applicable.
2. New or reconstructed large tunnel kiln, including all process streams.	a. HF emissions must not exceed 0.029 kg/Mg (0.057 lb/ton) of fired product.	Reduce uncontrolled HF emissions by at least 90 percent.
	b. HCl emissions must not exceed 0.028 kg/Mg (0.056 lb/ton) of fired product.	Reduce uncontrolled HCl emissions by at least 85 percent.
	c. PM emissions must not exceed 0.060 kg/Mg (0.12 lb/ton) of fired product.	Not applicable.

As stated in § 63.8405, you must meet each operating limit in the following table that applies to you:

TABLE 2 TO SUBPART JJJJJ OF PART 63.—OPERATING LIMITS

For each . . .	You must . . .
1. Kiln equipped with a DLA	a. Maintain the average pressure drop across the DLA for each 3-hour block period at or above the average pressure drop established during the performance test; and b. Maintain an adequate amount of limestone in the limestone hopper, storage bin (located at the top of the DLA), and DLA at all times; maintain the limestone feeder setting at or above the level established during the performance test; and c. Use the same grade of limestone from the same source as was used during the performance test; maintain records of the source and grade of limestone; and d. Maintain no VE from the DLA stack.
2. Kiln equipped with a DIFF or DLS/FF	a. If you use a bag leak detection system, initiate corrective action within 1 hour of a bag leak detection system alarm and complete corrective actions in accordance with your OM&M plan; operate and maintain the fabric filter such that the alarm is not engaged for more than 5 percent of the total operating time in a 6-month block reporting period; or maintain no VE from the DIFF or DLS/FF stack; and b. Maintain free-flowing lime in the feed hopper or silo and to the APCD at all times for continuous injection systems; maintain the feeder setting at or above the level established during the performance test for continuous injection systems.
3. Kiln equipped with a WS	a. Maintain the average scrubber pressure drop for each 3-hour block period at or above the average pressure drop established during the performance test; and b. Maintain the average scrubber liquid pH for each 3-hour block period at or above the average scrubber liquid pH established during the performance test; and c. Maintain the average scrubber liquid flow rate for each 3-hour block period at or above the average scrubber liquid flow rate established during the performance test; and d. If chemicals are added to the scrubber water, maintain the average scrubber chemical feed rate for each 3-hour block period at or above the average scrubber chemical feed rate established during the performance test.

As stated in § 63.8445, you must conduct each performance test in the following table that applies to you:

TABLE 3 TO SUBPART JJJJJ OF PART 63.—REQUIREMENTS FOR PERFORMANCE TESTS

For each . . .	You must . . .	Using . . .	According to the following requirements . . .
1. Kiln	a. Select locations of sampling ports and the number of traverse points.	Method 1 or 1A of 40 CFR part 60, appendix A.	Sampling sites must be located at the outlet of the APCD and prior to any releases to the atmosphere for all affected sources. If you choose to meet the percent emission reduction requirements for HF or HCl, a sampling site must also be located at the APCD inlet.
	b. Determine velocities and volumetric flow rate.	Method 2 of 40 CFR part 60, appendix A.	You may use Method 2A, 2C, 2D, 2F, or 2G of 40 CFR part 60, appendix A, as appropriate, as an alternative to using Method 2 of 40 CFR part 60, appendix A.
	c. Conduct gas molecular weight analysis.	Method 3 of 40 CFR part 60, appendix A.	You may use Method 3A or 3B of 40 CFR part 60, appendix A, as appropriate, as an alternative to using Method 3 of 40 CFR part 60, appendix A.
	d. Measure moisture content of the stack gas.	Method 4 of 40 CFR part 60, appendix A.	
	e. Measure HF and HCl emissions.	Method 26A of 40 CFR part 60, appendix A; or	Conduct the test while operating at the maximum production level. You may use Method 26 of 40 CFR part 60, appendix A, as an alternative to using Method 26A of 40 CFR part 60, appendix A, when no acid PM (*e.g.*, HF or HCl dissolved in water droplets emitted by sources controlled by a WS) is present.
		Method 320 of 40 CFR part 63, appendix A.	Conduct the test while operating at the maximum production level. When using Method 320 of 40 CFR part 63, appendix A, you must follow the analyte spiking procedures of section 13 of Method 320 of 40 CFR part 63, appendix A, unless you can demonstrate that the complete spiking procedure has been conducted at a similar source.
	f. Measure PM emissions.	Method 5 of 40 CFR part 60, appendix A.	Conduct the test while operating at the maximum production level.
2. Kiln that is complying with production-based emission limits.	Determine the production rate during each test run in order to determine compliance with production-based emission limits.	Production data collected during the performance tests (*e.g.*, no. of pushes per hour, no. of bricks per kiln car, weight of a typical fired brick).	You must measure and record the production rate, on a fired-product basis, of the affected source for each of the three test runs.
3. Kiln equipped with a DLA	a. Establish the operating limit for the average pressure drop across the DLA.	Data from the pressure drop measurement device during the performance test.	You must continuously measure the pressure drop across the DLA, determine and record the block average pressure drop values for the three test runs, and determine and record the 3-hour block average of the recorded pressure drop measurements for the three test runs.

TABLE 3 TO SUBPART JJJJJ OF PART 63.—REQUIREMENTS FOR PERFORMANCE TESTS—Continued

For each . . .	You must . . .	Using . . .	According to the following requirements . . .
	b. Establish the operating limit for the limestone feeder setting.	Data from the limestone feeder during the performance test.	You must ensure that you maintain an adequate amount of limestone in the limestone hopper, storage bin (located at the top of the DLA), and DLA at all times during the performance test. You must establish your limestone feeder setting one week prior to the performance test and maintain the feeder setting for the one-week period that precedes the performance test and during the performance test.
	c. Document the source and grade of limestone used.	Records of limestone purchase.	
4. Kiln equipped with a DIFF or DLS/FF.	Establish the operating limit for the lime feeder setting.	Data from the lime feeder during the performance test.	For continuous lime injection systems, you must ensure that lime in the feed hopper or silo and to the APCD is free-flowing at all times during the performance test and record the feeder setting for the three test runs. If the feed rate setting varies during the three test runs, determine and record the average feed rate from the three test runs.
5. Kiln equipped with a WS	a. Establish the operating limit for the average scrubber pressure drop.	Data from the pressure drop measurement device during the performance test.	You must continuously measure the scrubber pressure drop, determine and record the block average pressure drop values for the three test runs, and determine and record the 3-hour block average of the recorded pressure drop measurements for the three test runs.
	b. Establish the operating limit for the average scrubber liquid pH.	Data from the pH measurement device during the performace test.	You must continuously measure the scrubber liquid pH, determine and record the block average pH values for the three test runs, and determine and record the 3-hour block average of the recorded pH measurements for the three test runs.
	c. Establish the operating limit for the average scrubber liquid flow rate.	Data from the flow rate measurement device during the performance test.	You must continuously measure the scrubber liquid flow rate, determine and record the block average flow rate values for the three test runs, and determine and record the 3-hour block average of the recorded flow rate measurements for the three test runs.
6. Kiln equipped with a WS that includes chemical addition to the water.	Establish the operating limit for the average scrubber chemical feed rate.	Data from the chemical feed rate measurement device during the performance test.	You must continuously measure the scrubber chemical feed rate, determine and record the block average chemical feed rate values for the three test runs, and determine and record the 3-hour block average of the recorded chemical feed rate measurements for the three test runs.

As stated in § 63.8455, you must demonstrate initial compliance with each emission limitation that applies to you according to the following table:

TABLE 4 TO SUBPART JJJJJ OF PART 63.—INITIAL COMPLIANCE WITH EMISSION LIMITATIONS

For each . . .	For the following emission limitation . . .	You have demonstrated initial compliance if . . .
1. Existing large tunnel kiln (design capacity ≥10 tph of fired product), excluding any process stream that is ducted to a sawdust dryer prior to July 22, 2002; or including any process stream that exhausts directly to the atmosphere or to an APCD and any process stream that is first ducted to a sawdust dryer on or after July 22, 2002; each new or reconstructed small tunnel kiln (design capacity <10 tph of fired product), including all process streams; each tunnel kiln that would be considered reconstructed but for § 63.8390(i)(1), including all process streams; and each large tunnel kiln previously equipped with a DLA that would be considered reconstructed but for § 63.8390(i)(2), including all process streams.	a. HF emissions must not exceed 0.029 kg/Mg (0.057 lb/ton) of fired product; or uncontrolled HF emissions must be reduced by at least 90 percent; and	i. The HF emissions measured using Method 26A of 40 CFR part 60, appendix A or Method 320 of 40 CFR part 63, appendix A over the period of the initial performance test, according to the calculations in § 63.8445(g)(1), do not exceed 0.029 kg/Mg (0.057 lb/ton); or uncontrolled HF emissions measured using Method 26A of 40 CFR part 60, appendix A or Method 320 of 40 CFR part 63, appendix A over the period of the initial performance test are reduced by at least 90 percent, according to the calculations in § 63.8445(g)(2); and ii. You establish and have a record of the operating limits listed in Table 2 to this subpart over the 3-hour performance test during which HF emissions did not exceed 0.029 kg/Mg (0.057 lb/ton) or uncontrolled HF emissions were reduced by at least 90 percent.
	b. HCl emissions must not exceed 0.13 kg/Mg (0.26 lb/ton) of fired product; or uncontrolled HCl emissions must be reduced by at least 30 percent; and	i. The HCl emissions measured using Method 26A of 40 CFR part 60, appendix A or Method 320 of 40 CFR part 63, appendix A over the period of the initial performance test, according to the calculations in § 63.8445(g)(1), do not exceed 0.13 kg/Mg (0.26 lb/ton); or uncontrolled HCl emissions measured using Method 26A of 40 CFR part 60, appendix A or Method 320 of 40 CFR part 63, appendix A over the period of the initial performance test are reduced by at least 30 percent, according to the calculations in § 63.8445(g)(2); and ii. You establish and have a record of the operating limits listed in Table 2 to this subpart over the 3-hour performance test during which HCl emissions did not exceed 0.13 kg/Mg (0.26 lb/ton) or uncontrolled HCl emissions were reduced by at least 30 percent.
	c. PM emissions must not exceed 0.21 kg/Mg (0.42 lb/ton) of fired product.	i. The PM emissions measured using Method 5 of 40 CFR part 60, appendix A, over the period of the initial performance test, according to the calculations in § 63.8445(g)(1), do not exceed 0.21 kg/Mg (0.42 lb/ton); and ii. You establish and have a record of the operating limits listed in Table 2 to this subpart over the 3-hour performance test during which PM emissions did not exceed 0.21 kg/Mg (0.42 lb/ton).
2. New or reconstructed large tunnel kiln, including all process streams.	a. HF emissions must not exceed 0.029 kg/Mg (0.057 lb/ton) of fired product; or uncontrolled HF emissions must be reduced by at least 90 percent; and	i. The HF emissions measured using Method 26A of 40 CFR part 60, appendix A or Method 320 of 40 CFR part 63, appendix A over the period of the initial performance test, according to the calculations in § 63.8445(g)(1), do not exceed 0.029 kg/Mg (0.057 lb/ton); or uncontrolled HF emissions measured using Method 26A of 40 CFR part 60, appendix A or Method 320 of 40 CFR part 63, appendix A over the period of the initial performance test are reduced by at least 90 percent, according to the calculations in § 63.8445(g)(2); and

TABLE 4 TO SUBPART JJJJJ OF PART 63.—INITIAL COMPLIANCE WITH EMISSION LIMITATIONS—Continued

For each . . .	For the following emission limitation . . .	You have demonstrated initial compliance if . . .
		ii. You establish and have a record of the operating limits listed in Table 2 to this subpart over the 3-hour performance test during which HF emissions did not exceed 0.029 kg/Mg (0.057 lb/ton) or uncontrolled HF emissions were reduced by at least 90 percent.
	b. HCl emissions must not exceed 0.028 kg/Mg (0.056 lb/ton) of fired product; or uncontrolled HCl emissions must be reduced by at least 85 percent; and	i. The HCl emissions measured using Method 26A of 40 CFR part 60, appendix A or Method 320 of 40 CFR part 63, appendix A over the period of the initial performance test, according to the calculations in §63.8445(g)(1), do not exceed 0.028 kg/Mg (0.056 lb/ton); or uncontrolled HCl emissions measured using Method 26A of 40 CFR part 60, appendix A or Method 320 of 40 CFR part 63, appendix A over the period of the initial performance test are reduced by at least 85 percent, according to the calculations in §63.8445(g)(2); and
		ii. You establish and have a record of the operating limits listed in Table 2 to this subpart over the 3-hour performance test during which HCl emissions did not exceed 0.028 kg/Mg (0.056 lb/ton) or uncontrolled HCl emissions were reduced by at least 85 percent.
	c. PM emissions must not exceed 0.060 kg/Mg (0.12 lb/ton) of fired product.	i. The PM emissions measured using Method 5 of 40 CFR part 60, appendix A, over the period of the initial performance test, according to the calculations in §63.8445(g)(1), do not exceed 0.060 kg/Mg (0.12 lb/ton); and
		ii. You establish and have a record of the operating limits listed in Table 2 to this subpart over the 3-hour performance test during which PM emissions did not exceed 0.060 kg/Mg (0.12 lb/ton).

As stated in §63.8470, you must demonstrate continuous compliance with each emission limit and operating limit that applies to you according to the following table:

TABLE 5 TO SUBPART JJJJJ OF PART 63.—CONTINUOUS COMPLIANCE WITH EMISSION LIMITS AND OPERATING LIMITS

For each . . .	For the following emission limits and operating limits . . .	You must demonstrate continuous compliance by . . .
1. Kiln equipped with a DLA	Each emission limit in Table 1 to this subpart and each operating limit in Item 1 of Table 2 to this subpart for kilns equipped with a DLA.	i. Collecting the DLA pressure drop data according to §63.8450(a); reducing the DLA pressure drop data to 3-hour block averages according to §63.8450(a); maintaining the average pressure drop across the DLA for each 3-hour block period at or above the average pressure drop established during the performance test; and ii. Verifying that the limestone hopper and storage bin (located at the top of the DLA) contain adequate limestone by performing a daily visual check; and iii. Recording the limestone feeder setting daily to verify that the feeder setting is being maintained at or above the level established during the performance test; and iv. Using the same grade of limestone from the same source as was used during the performance test; maintaining records of the source and type of limestone; and v. Performing VE observations of the DLA stack at the frequency specified in §63.8470(g) using Method 22 of 40 CFR part 60, appendix A; maintaining no VE from the DLA stack.

TABLE 5 TO SUBPART JJJJJ OF PART 63.—CONTINUOUS COMPLIANCE WITH EMISSION LIMITS AND OPERATING LIMITS—Continued

For each . . .	For the following emission limits and operating limits . . .	You must demonstrate continuous compliance by . . .
2. Kiln equipped with a DIFF or DLS/FF.	Each emission limit in Table 1 to this subpart and each operating limit in Item 2 of Table 2 to this subpart for kilns equipped with DIFF or DLS/FF.	i. If you use a bag leak detection system, initiating corrective action within 1 hour of a bag leak detection system alarm and completing corrective actions in accordance with your OM&M plan; operating and maintaining the fabric filter such that the alarm is not engaged for more than 5 percent of the total operating time in a 6-month block reporting period; in calculating this operating time fraction, if inspection of the fabric filter demonstrates that no corrective action is required, no alarm time is counted; if corrective action is required, each alarm is counted as a minimum of 1 hour; if you take longer than 1 hour to initiate corrective action, the alarm time is counted as the actual amount of time taken by you to initiate corrective action; or performing VE observations of the DIFF or DLS/FF stack at the frequency specified in §63.8470(g) using Method 22 of 40 CFR part 60, appendix A; maintaining no VE from the DIFF or DLS/FF stack; and ii. Verifying that lime is free-flowing via a load cell, carrier gas/lime flow indicator, carrier gas pressure drop measurement system, or other system; recording all monitor or sensor output, and if lime is found not to be free flowing, promptly initiating and completing corrective actions in accordance with your OM&M plan; recording the feeder setting once during each shift of operation to verify that the feeder setting is being maintained at or above the level established during the performance test.
3. Kiln equipped with a WS	Each emission limit in Table 1 to this subpart and each operating limit in Item 3 of Table 2 to this subpart for kilns equipped with WS.	i. Collecting the scrubber pressure drop data according to §63.8450(a); reducing the scrubber pressure drop data to 3-hour block averages according to §63.8450(a); maintaining the average scrubber pressure drop for each 3-hour block period at or above the average pressure drop established during the performance test; and ii. Collecting the scrubber liquid pH data according to §63.8450(a); reducing the scrubber liquid pH data to 3-hour block averages according to §63.8450(a); maintaining the average scrubber liquid pH for each 3-hour block period at or above the average scrubber liquid pH established during the performance test; and iii. Collecting the scrubber liquid flow rate data according to §63.8450(a); reducing the scrubber liquid flow rate data to 3-hour block averages according to §63.8450(a); maintaining the average scrubber liquid flow rate for each 3-hour block period at or above the average scrubber liquid flow rate established during the performance test; and iv. If chemicals are added to the scrubber water, collecting the scrubber chemical feed rate data according to §63.8450(a); reducing the scrubber chemical feed rate data to 3-hour block averages according to §63.8450(a); maintaining the average scrubber chemical feed rate for each 3-hour block period at or above the average scrubber chemical feed rate established during the performance test.

As stated in §63.8485, you must submit each report that applies to you according to the following table:

TABLE 6 TO SUBPART JJJJJ OF PART 63.—REQUIREMENTS FOR REPORTS

You must submit . . .	The report must contain . . .	You must submit the report . . .
1. A compliance report	a. If there are no deviations from any emission limitations (emission limits, operating limits) that apply to you, a statement that there were no deviations from the emission limitations during the reporting period. If there were no periods during which the CMS was out-of-control as specified in your OM&M plan, a statement that there were no periods during which the CMS was out- of-control during the reporting period.	Semiannually according to the requirements in §63.8485(b).

TABLE 6 TO SUBPART JJJJJ OF PART 63.—REQUIREMENTS FOR REPORTS—Continued

You must submit . . .	The report must contain . . .	You must submit the report . . .
	b. If you have a deviation from any emission limitation (emission limit, operating limit) during the reporting period, the report must contain the information in § 63.8485(d) or (e). If there were periods during which the CMS was out-of-control, as specified in your OM&M plan, the report must contain the information in § 63.8485(e).	Semiannually according to the requirements in § 63.8485(b).
	c. If you had a startup, shutdown or malfunction during the reporting period and you took actions consistent with your SSMP, the compliance report must include the information in § 63.10(d)(5)(i).	Semiannually according to the requirements in § 63.8485(b).
2. An immediate startup, shutdown, and malfunction report if you took actions during a startup, shutdown, or malfunction during the reporting period that are not consistent with your SSMP.	a. Actions taken for the event according to the requirements in § 63.10(d)(5)(ii).	By fax or telephone within 2 working days after starting actions inconsistent with the plan.
	b. The information in § 63.10(d)(5)(ii)	By letter within 7 working days after the end of the event unless you have made alternative arrangements with the permitting authority.

As stated in § 63.8505, you must comply with the General Provisions in §§ 63.1 through 63.15 that apply to you according to the following table:

TABLE 7 TO SUBPART JJJJJ OF PART 63.—APPLICABILITY OF GENERAL PROVISIONS TO SUBPART JJJJJ

Citation	Subject	Brief description	Applies to subpart JJJJJ
§ 63.1	Applicability	Initial applicability determination; applicability after standard established; permit requirements; extensions, notifications.	Yes.
§ 63.2	Definitions	Definitions for part 63 standards	Yes.
§ 63.3	Units and Abbreviations	Units and abbreviations for part 63 standards	Yes.
§ 63.4	Prohibited Activities	Compliance date; circumvention; severability	Yes.
§ 63.5	Construction/Reconstruction	Applicability; applications; approvals	Yes.
§ 63.6(a)	Applicability	General Provisions (GP) apply unless compliance extension; GP apply to area sources that become major.	Yes.
§ 63.6(b)(1)–(4)	Compliance Dates for New and Reconstructed sources.	Standards apply at effective date; 3 years after effective date; upon startup; 10 years after construction or reconstruction commences for section 112(f).	Yes.
§ 63.6(b)(5)	Notification	Must notify if commenced construction or reconstruction after proposal.	Yes.
§ 63.6(b)(6)	[Reserved].		
§ 63.6(b)(7)	Compliance Dates for New and Reconstructed area Sources That Become Major.	Area sources that become major must comply with major source standards immediately upon becoming major, regardless of whether required to comply when they were area sources.	Yes.
§ 63.6(c)(1)–(2)	Compliance Dates for Existing Sources	Comply according to date in subpart, which must be no later than 3 years after effective date; for section 112(f) standards, comply within 90 days of effective date unless compliance extension.	Yes.
§ 63.6(c)(3)–(4)	[Reserved]..		
§ 63.6(c)(5)	Compliance Dates for Existing area Sources That Become Major.	Area sources that become major must comply with major source standards by date indicated in subpart or by equivalent time period (for example, 3 years).	Yes.
§ 63.6(d)	[Reserved].		
§ 63.6(e)(1)–(2)	Operation & Maintenance	Operate to minimize emissions at all times; correct malfunctions as soon as practicable; requirements independently enforceable; information Administrator will use to determine if operation and maintenance requirements were met.	Yes.
§ 63.6(e)(3)	Startup, Shutdown, and Malfunction Plan (SSMP).	Requirement for startup, shutdown, and malfunction (SSM) and SSMP; content of SSMP.	Yes.
§ 63.6(f)(1)	Compliance Except During SSM	You must comply with emission standards at all times except during SSM.	Yes.
§ 63.6(f)(2)–(3)	Methods for Determining Compliance ..	Compliance based on performance test, operation and maintenance plans, records, inspection.	Yes.
§ 63.6(g)	Alternative Standard	Procedures for getting an alternative standard	Yes.
§ 63.6(h)	Opacity/VE Standards	Requirements for opacity and VE standards	No, not applicable.

TABLE 7 TO SUBPART JJJJJ OF PART 63.—APPLICABILITY OF GENERAL PROVISIONS TO SUBPART JJJJJ—Continued

Citation	Subject	Brief description	Applies to subpart JJJJJ
§ 63.6(i)	Compliance Extension	Procedures and criteria for Administrator to grant compliance extension.	Yes.
§ 63.6(j)	Presidential Compliance Exemption	President may exempt source category	Yes.
§ 63.7(a)(1)–(2)	Performance Test Dates	Dates for conducting initial performance testing and other compliance demonstrations; must conduct 180 days after first subject to rule.	Yes.
§ 63.7(a)(3)	Section 114 Authority	Administrator may require a performance test under CAA section 114 at any time.	Yes.
§ 63.7(b)(1)	Notification of Performance Test	Must notify Administrator 60 days before the test	Yes.
§ 63.7(b)(2)	Notification of Rescheduling	Must notify Administrator 5 days before scheduled date of rescheduled date.	Yes.
§ 63.7(c)	Quality Assurance(QA)/Test Plan	Requirements; test plan approval procedures; performance audit requirements; internal and external QA procedures for testing.	Yes.
§ 63.7(d)	Testing Facilities	Requirements for testing facilities	Yes.
§ 63.7(e)(1)	Conditions for Conducting Performance Tests.	Performance tests must be conducted under representative conditions.	No, § 63.8445 specifies requirements.
		Cannot conduct performance tests during SSM; not a violation to exceed standard during SSM.	Yes.
§ 63.7(e)(2)–(3)	Conditions for Conducting Performance Tests.	Must conduct according to subpart and EPA test methods unless Administrator approves alternative; must have at least three test runs of at least 1 hour each; compliance is based on arithmetic mean of three runs; conditions when data from an additional test run can be used.	Yes.
§ 63.7(f)	Alternative Test Method	Procedures by which Administrator can grant approval to use an alternative test method.	Yes.
§ 63.7(g)	Performance Test Data Analysis	Must include raw data in performance test report; must submit performance test data 60 days after end of test with the notification of compliance status.	Yes.
§ 63.7(h)	Waiver of Tests	Procedures for Administrator to waive performance test	Yes.
§ 63.8(a)(1)	Applicability of Monitoring Requirements.	Subject to all monitoring requirements in subpart	Yes.
§ 63.8(a)(2)	Performance Specifications	Performance Specifications in appendix B of 40 CFR part 60 apply.	Yes.
§ 63.8(a)(3)	[Reserved].		
§ 63.8(a)(4)	Monitoring with Flares	Requirements for flares in § 63.11 apply	No, not applicable.
§ 63.8(b)(1)	Monitoring	Must conduct monitoring according to standard unless Administrator approves alternative.	Yes.
§ 63.8(b)(2)–(3)	Multiple Effluents and Multiple Monitoring Systems.	Specific requirements for installing and reporting on monitoring systems.	Yes.
§ 63.8(c)(1)	Monitoring System Operation and Maintenance.	Maintenance consistent with good air pollution control practices.	Yes.
§ 63.8(c)(1)(i)	Routine and Predictable SSM	Reporting requirements for SSM when action is described in SSMP.	Yes.
§ 63.8(c)(1)(ii)	SSM not in SSMP	Reporting requirements for SSM when action is not described in SSMP.	Yes.
§ 63.8(c)(1)(iii)	Compliance with Operation and Maintenance Requirements.	How Administrator determines if source complying with operation and maintenance requirements.	Yes.
§ 63.8(c)(2)–(3)	Monitoring System Installation	Must install to get representative emission and parameter measurements.	Yes.
§ 63.8(c)(4)	CMS Requirements	Requirements for CMS	No, §§ 63.8425 and 63.8465 specify requirements.
§ 63.8(c)(5)	Continuous Opacity Monitoring System (COMS) Minimum Procedures.	COMS minimum procedures	No, not applicable.
§ 63.8(c)(6)	CMS Requirements	Zero and high level calibration check requirements	No, § 63.8425 specifies requirements.
§ 63.8(c)(7)–(8)	CMS Requirements	Out-of-control periods	No, § 63.8425 specifies requirements.
§ 63.8(d)	CMS Quality Control	Requirements for CMS quality control	No, § 63.8425 specifies requirements.
§ 63.8(e)	CMS Performance Evaluation	Requirements for CMS performance evaluation	No, § 63.8425 specifies requirements.
§ 63.8(f)(1)–(5)	Alternative Monitoring Method	Procedures for Administrator to approve alternative monitoring.	Yes.

TABLE 7 TO SUBPART JJJJJ OF PART 63.—APPLICABILITY OF GENERAL PROVISIONS TO SUBPART JJJJJ—Continued

Citation	Subject	Brief description	Applies to subpart JJJJJ
§63.8(f)(6)	Alternative to Relative Accuracy Test	Procedures for Administrator to approve alternative relative accuracy test for continuous emissions monitoring systems (CEMS).	No, not applicable.
§63.8(g)	Data Reduction	COMS and CEMS data reduction requirements	No, not applicable.
§63.9(a)	Notification Requirements	Applicability; State delegation	Yes.
§63.9(b)	Initial Notifications	Requirements for initial notifications	Yes.
§63.9(c)	Request for Compliance Extension	Can request if cannot comply by date or if installed BACT/LAER.	Yes.
§63.9(d)	Notification of Special Compliance Requirements for New Source.	For sources that commence construction between proposal and promulgation and want to comply 3 years after effective date.	Yes.
§63.9(e)	Notification of Performance Test	Notify Administrator 60 days prior	Yes.
§63.9(f)	Notification of VE/Opacity Test	Notify Administrator 30 days prior	No, not applicable.
§63.9(g)(1)	Additional Notifications When Using CMS.	Notification of performance evaluation	Yes.
§63.9(g)(2)–(3)	Additional Notifications When Using CMS.	Notification of COMS data use; notification that relative accuracy alternative criterion were exceeded.	No, not applicable.
§63.9(h)	Notification of Compliance Status	Contents; submittal requirements	Yes.
§63.9(i)	Adjustment of Submittal Deadlines	Procedures for Administrator to approve change in when notifications must be submitted.	Yes.
§63.9(j)	Change in Previous Information	Must submit within 15 days after the change	Yes.
§63.10(a)	Recordkeeping/Reporting	Applicability; general information	Yes.
§63.10(b)(1)	General Recordkeeping Requirements	General requirements	Yes.
§63.10(b)(2)(i)–(v)	Records Related to SSM	Requirements for SSM records	Yes.
§63.10(b)(2)(vi)–(xii) and (xiv).	CMS Records	Records when CMS is malfunctioning, inoperative or out-of-control.	Yes.
§63.10(b)(2)(xiii)	Records	Records when using alternative to relative accuracy test	No, not applicable.
§63.10(b)(3)	Records	Applicability Determinations	Yes.
§63.10(c)(1)–(15)	Records	Additional records for CMS	No, §§63.8425 and 63.8490 specify requirements.
§63.10(d)(1) and (2).	General Reporting Requirements	Requirements for and reporting; performance test results reporting.	Yes.
§63.10(d)(3)	Reporting Opacity or VE Observations	Requirements for reporting opacity and VE	No, not applicable.
§63.10(d)(4)	Progress Reports	Must submit progress reports on schedule if under compliance extension.	Yes.
§63.10(d)(5)	SSM Reports	Contents and submission	Yes.
§63.10(e)(1)–(3)	Additional CMS Reports	Requirements for CMS reporting	No, §§63.8425 and 63.8485 specify requirements.
§63.10(e)(4)	Reporting COMS data	Requirements for reporting COMS data with performance test data.	No, not applicable.
§63.10(f)	Waiver for Recordkeeping/Reporting	Procedures for Administrator to waive	Yes.
§63.11	Flares	Requirement for flares	No, not applicable.
§63.12	Delegation	State authority to enforce standards	Yes.
§63.13	Addresses	Addresses for reports, notifications, requests	Yes.
§63.14	Incorporation by Reference	Materials incorporated by reference	Yes.
§63.15	Availability of Information	Information availability; confidential information	Yes.

3. Part 63 is amended by adding subpart KKKKK to read as follows:

Subpart KKKKK—National Emission Standards for Hazardous Air Pollutants for Clay Ceramics Manufacturing

Sec.

What This Subpart Covers

63.8530 What is the purpose of this subpart?
63.8535 Am I subject to this subpart?
63.8540 What parts of my plant does this subpart cover?
63.8545 When do I have to comply with this subpart?

Emission Limitations and Work Practice Standards

63.8555 What emission limitations and work practice standards must I meet?
63.8560 What are my options for meeting the emission limitations and work practice standards?

General Compliance Requirements

63.8570 What are my general requirements for complying with this subpart?
63.8575 What do I need to know about operation, maintenance, and monitoring plans?

Testing and Initial Compliance Requirements

63.8585 By what date must I conduct performance tests?
63.8590 When must I conduct subsequent performance tests?
63.8595 How do I conduct performance tests and establish operating limits?
63.8600 What are my monitoring installation, operation, and maintenance requirements?
63.8605 How do I demonstrate initial compliance with the emission limitations and work practice standards?

Continuous Compliance Requirements

63.8615 How do I monitor and collect data to demonstrate continuous compliance?
63.8620 How do I demonstrate continuous compliance with the emission limitations and work practice standards?

Notifications, Reports, and Records

63.8630 What notifications must I submit and when?
63.8635 What reports must I submit and when?
63.8640 What records must I keep?
63.8645 In what form and for how long must I keep my records?

Other Requirements and Information

63.8655 What parts of the General Provisions apply to me?
63.8660 Who implements and enforces this subpart?
63.8665 What definitions apply to this subpart?

Tables to Subpart KKKKK of Part 63

Table 1 to Subpart KKKKK of Part 63—Emission Limits
Table 2 to Subpart KKKKK of Part 63—Operating Limits
Table 3 to Subpart KKKKK of Part 63—Work Practice Standards
Table 4 to Subpart KKKKK of Part 63—Requirements for Performance Tests
Table 5 to Subpart KKKKK of Part 63—Initial Compliance with Emission Limitations and Work Practice Standards
Table 6 to Subpart KKKKK of Part 63—Continuous Compliance with Emission Limitations and Work Practice Standards
Table 7 to Subpart KKKKK of Part 63—Requirements for Reports
Table 8 to Subpart KKKKK of Part 63—Applicability of General Provisions to Subpart KKKKK

What This Subpart Covers

§63.8530 What is the purpose of this subpart?

This subpart establishes national emission limitations and work practice standards for hazardous air pollutants (HAP) emitted from clay ceramics manufacturing facilities. This subpart also establishes requirements to demonstrate initial and continuous compliance with the emission limitations and work practice standards.

§63.8535 Am I subject to this subpart?

You are subject to this subpart if you own or operate a clay ceramics manufacturing facility that is, is located at, or is part of a major source of HAP emissions according to the criteria in paragraphs (a) and (b) of this section.

(a) A clay ceramics manufacturing facility is a plant site that manufactures pressed floor tile, pressed wall tile, other pressed tile, or sanitaryware (*e.g.*, sinks and toilets). Clay ceramics manufacturing facilities typically process clay, shale, and various additives; form the processed materials into tile or sanitaryware shapes; and dry and fire the ceramic products. Glazes are applied to many tile and sanitaryware products.

(b) A major source of HAP emissions is any stationary source or group of stationary sources within a contiguous area under common control that emits or has the potential to emit any single HAP at a rate of 9.07 megagrams (10 tons) or more per year or any combination of HAP at a rate of 22.68 megagrams (25 tons) or more per year.

§63.8540 What parts of my plant does this subpart cover?

(a) This subpart applies to each existing, new, or reconstructed affected source at a clay ceramics manufacturing facility and to each affected source described in paragraphs (f)(1) or (f)(2) of this section.

(b) Each existing, new, or reconstructed periodic kiln, tunnel kiln, and roller kiln is an affected source regardless of design capacity. Each source that meets the description in paragraphs (f)(1) or (f)(2) also is an affected source.

(c) Kilns that are used exclusively for research and development (R&D) and are not used to manufacture products for commercial sale, except in a *de minimis* manner, are not subject to the requirements of this subpart.

(d) Kilns that are used exclusively for setting glazes on previously fired products or for refiring are not subject to the requirements of this subpart.

(e) A source is a new affected source if construction of the affected source began after July 22, 2002, and you met the applicability criteria at the time you began construction.

(f) An affected source is reconstructed if you meet the criteria as defined in §63.2, except as provided in paragraphs (f)(1) and (f)(2) of this section.

(1) It is not technologically and economically feasible for an existing tunnel kiln whose design capacity is less than 9.07 megagrams per hour (Mg/hr) (10 tons per hour (tph)) of fired product but is increased such that it is equal to or greater than 9.07 Mg/hr (10 tph) of fired product to meet the relevant standards (*i.e.*, new source maximum achievable control technology (MACT)) by retrofitting with a dry lime injection fabric filter (DIFF), dry lime scrubber/fabric filter (DLS/FF), or wet scrubber (WS).

(2) It is not technologically and economically feasible for an existing dry limestone adsorber (DLA)-controlled kiln whose design capacity is equal to or greater than 9.07 Mg/hr (10 tph) of fired product to meet the relevant standards by retrofitting with a DIFF, DLS/FF, or WS.

(g) An affected source is existing if it is not new or reconstructed and does not meet the descriptions provided in paragraphs (f)(1) and (f)(2) of this section.

§63.8545 When do I have to comply with this subpart?

(a) If you have a new or reconstructed affected source or an affected source described in §63.8540(f)(1) or §63.8540(f)(2), you must comply with this subpart according to paragraphs (a)(1) and (2) of this section.

(1) If the initial startup of your affected source is before May 16, 2003, then you must comply with the applicable emission limitations and work practice standards in Tables 1, 2, and 3 to this subpart no later than May 16, 2003.

(2) If the initial startup of your affected source is after May 16, 2003, then you must comply with the applicable emission limitations and work practice standards in Tables 1, 2, and 3 to this subpart upon initial startup of your affected source.

(b) If you have an existing affected source, you must comply with the work practice standards for existing sources in Table 3 to this subpart no later than May 16, 2003.

(c) If you have an existing area source that increases its emissions or its potential to emit such that it becomes a major source of HAP by adding a new affected source or by reconstructing, you must be in compliance with this subpart upon initial startup of your affected source as a major source.

(d) If you have a new area source (*i.e.*, an area source for which construction or reconstruction was commenced after July 22, 2002) that increases its emissions or its potential to emit such that it becomes a major source of HAP, you must be in compliance with this subpart upon initial startup of your affected source as a major source.

(e) You must meet the notification requirements in §63.8630 according to the schedule in §63.8630 and in 40 CFR part 63, subpart A. Some of the notifications must be submitted before you are required to comply with the emission limitations in this subpart.

Emission Limitations and Work Practice Standards

§63.8555 What emission limitations and work practice standards must I meet?

(a) You must meet each emission limit in Table 1 to this subpart that applies to you.

(b) You must meet each operating limit in Table 2 to this subpart that applies to you.

(c) You must meet each work practice standard in Table 3 to this subpart that applies to you.

§ 63.8560 What are my options for meeting the emission limitations and work practice standards?

(a) To meet the emission limitations in Tables 1 and 2 to this subpart, you must use one or more of the options listed in paragraphs (a)(1) and (2) of this section.

(1) *Emissions control system.* Use an emissions capture and collection system and an air pollution control device (APCD) and demonstrate that the resulting emissions or emissions reductions meet the emission limits in Table 1 to this subpart, and that the capture and collection system and APCD meet the applicable operating limits in Table 2 to this subpart.

(2) *Process changes.* Use low-HAP raw materials or implement manufacturing process changes and demonstrate that the resulting emissions or emissions reductions meet the emission limits in Table 1 to this subpart.

(b) To meet the work practice standards in Table 3 to this subpart, for each affected kiln, you must use natural gas, or an equivalent fuel (such as propane or other clean burning fuel), as the kiln fuel at all times except during periods of natural gas curtailment or other periods when natural gas is not available.

General Compliance Requirements

§ 63.8570 What are my general requirements for complying with this subpart?

(a) You must be in compliance with the emission limitations (including operating limits) in this subpart at all times, except during periods of startup, shutdown, and malfunction and during periods of routine control device maintenance as specified in paragraph (e) of this section.

(b) Except as specified in paragraph (e) of this section, you must always operate and maintain your affected source, including air pollution control and monitoring equipment, according to the provisions in § 63.6(e)(1)(i). During the period between the compliance date specified for your affected source in § 63.8545 and the date upon which continuous monitoring systems (CMS) (*e.g.*, continuous parameter monitoring systems) have been installed and verified and any applicable operating limits have been set, you must maintain a log detailing the operation and maintenance of the process and emissions control equipment.

(c) For each kiln that is subject to the emission limits specified in Table 1 to this subpart, you must develop and implement a written startup, shutdown, and malfunction plan (SSMP) according to the provisions in § 63.6(e)(3).

(d) For each kiln that is subject to the emission limits specified in Table 1 to this subpart, you must prepare and implement a written operation, maintenance, and monitoring (OM&M) plan according to the requirements in § 63.8575.

(e) If you own or operate a kiln that is subject to the emission limits specified in Table 1 to this subpart and must perform routine maintenance on the control device for that kiln, you may bypass the kiln control device and continue operating the kiln upon approval by the Administrator provided you satisfy the conditions listed in paragraphs (e)(1) through (5) of this section.

(1) You must request a routine control device maintenance exemption from the Administrator. Your request must justify the need for the routine maintenance on the control device and the time required to accomplish the maintenance activities, describe the maintenance activities and the frequency of the maintenance activities, explain why the maintenance cannot be accomplished during kiln shutdowns, describe how you plan to minimize emissions to the greatest extent possible during the maintenance, and provide any other documentation required by the Administrator.

(2) The routine control device maintenance exemption must not exceed 4 percent of the annual operating uptime for each kiln.

(3) The request for the routine control device maintenance exemption, if approved by the Administrator, must be incorporated by reference in and attached to the affected source's title V permit.

(4) You must minimize HAP emissions during the period when the kiln is operating and the control device is offline.

(5) You must minimize the time period during which the kiln is operating and the control device is offline.

(f) You must be in compliance with the work practice standards in this subpart at all times, except during periods of natural gas curtailment or other periods when natural gas is not available.

(g) You must be in compliance with the provisions of subpart A of this part, except as noted in Table 8 to this subpart.

§ 63.8575 What do I need to know about operation, maintenance, and monitoring plans?

(a) For each kiln that is subject to the emission limits specified in Table 1 to this subpart, you must prepare, implement, and revise as necessary an OM&M plan that includes the information in paragraph (b) of this section. Your OM&M plan must be available for inspection by the permitting authority upon request.

(b) Your OM&M plan must include, as a minimum, the information in paragraphs (b)(1) through (13) of this section.

(1) Each process and APCD to be monitored, the type of monitoring device that will be used, and the operating parameters that will be monitored.

(2) A monitoring schedule that specifies the frequency that the parameter values will be determined and recorded.

(3) The limits for each parameter that represent continuous compliance with the emission limitations in § 63.8555. The limits must be based on values of the monitored parameters recorded during performance tests.

(4) Procedures for the proper operation and routine and long-term maintenance of each APCD, including a maintenance and inspection schedule that is consistent with the manufacturer's recommendations.

(5) Procedures for installing the CMS sampling probe or other interface at a measurement location relative to each affected process unit such that the measurement is representative of control of the exhaust emissions (*e.g.*, on or downstream of the last APCD).

(6) Performance and equipment specifications for the sample interface, the pollutant concentration or parametric signal analyzer, and the data collection and reduction system.

(7) Continuous monitoring system performance evaluation procedures and acceptance criteria (*e.g.*, calibrations).

(8) Procedures for the proper operation and maintenance of monitoring equipment consistent with the requirements in §§ 63.8600 and 63.8(c)(1), (3), (4)(ii), (7), and (8).

(9) Continuous monitoring system data quality assurance procedures consistent with the requirements in § 63.8(d).

(10) Continuous monitoring system recordkeeping and reporting procedures consistent with the requirements in § 63.10(c), (e)(1), and (e)(2)(i).

(11) Procedures for responding to operating parameter deviations, including the procedures in paragraphs (b)(11)(i) through (iii) of this section.

(i) Procedures for determining the cause of the operating parameter deviation.

(ii) Actions for correcting the deviation and returning the operating parameters to the allowable limits.

(iii) Procedures for recording the times that the deviation began and ended, and corrective actions were initiated and completed.

(12) Procedures for keeping records to document compliance.

(13) If you operate an affected kiln and you plan to take the kiln control device out of service for routine maintenance, as specified in § 63.8570(e), the procedures specified in paragraphs (b)(13)(i) and (ii) of this section.

(i) Procedures for minimizing HAP emissions from the kiln during periods of routine maintenance of the kiln control device when the kiln is operating and the control device is offline.

(ii) Procedures for minimizing the duration of any period of routine maintenance on the kiln control device when the kiln is operating and the control device is offline.

(c) Changes to the operating limits in your OM&M plan require a new performance test. If you are revising an operating limit parameter value, you must meet the requirements in paragraphs (c)(1) and (2) of this section.

(1) Submit a notification of performance test to the Administrator as specified in § 63.7(b).

(2) After completing the performance test to demonstrate that compliance with the emission limits can be achieved at the revised operating limit parameter value, you must submit the performance test results and the revised operating limits as part of the Notification of Compliance Status required under § 63.9(h).

(d) If you are revising the inspection and maintenance procedures in your OM&M plan, you do not need to conduct a new performance test.

Testing and Initial Compliance Requirements

§ 63.8585 By what date must I conduct performance tests?

For each kiln that is subject to the emission limits specified in Table 1 to this subpart, you must conduct performance tests within 180 calendar days after the compliance date that is specified for your source in § 63.8545 and according to the provisions in § 63.7(a)(2).

§ 63.8590 When must I conduct subsequent performance tests?

(a) For each kiln that is subject to the emission limits specified in Table 1 to this subpart, you must conduct a performance test before renewing your 40 CFR part 70 operating permit or at least every 5 years following the initial performance test.

(b) You must conduct a performance test when you want to change the parameter value for any operating limit specified in your OM&M plan.

§ 63.8595 How do I conduct performance tests and establish operating limits?

(a) You must conduct each performance test in Table 4 to this subpart that applies to you.

(b) Before conducting the performance test, you must install and calibrate all monitoring equipment.

(c) Each performance test must be conducted according to the requirements in § 63.7 and under the specific conditions in Table 4 to this subpart.

(d) You must test while operating at the maximum production level.

(e) You may not conduct performance tests during periods of startup, shutdown, or malfunction, as specified in § 63.7(e)(1).

(f) You must conduct at least three separate test runs for each performance test required in this section, as specified in § 63.7(e)(3). Each test run must last at least 1 hour.

(g) You must use the data gathered during the performance test and the equations in paragraphs (g)(1) and (2) of this section to determine compliance with the emission limitations.

(1) To determine compliance with the production-based hydrogen fluoride (HF), hydrogen chloride (HCl), and particulate matter (PM) emission limits in Table 1 to this subpart, you must calculate your mass emissions per unit of production for each test run using Equation 1 of this section:

$$MP = \frac{ER}{P} \qquad \text{(Eq. 1)}$$

Where:

MP=mass per unit production, kilograms (pounds) of pollutant per megagram (ton) of fired product

ER=mass emission rate of pollutant (HF, HCl, or PM) during each performance test run, kilograms (pounds) per hour

P=production rate during each performance test run, megagrams (tons) of fired product per hour.

(2) To determine compliance with the percent reduction HF and HCl emission limits in Table 1 to this subpart, you must calculate the percent reduction for each test run using Equation 2 of this section:

$$PR = \frac{ER_i - ER_o}{ER_i}(100) \qquad \text{(Eq. 2)}$$

Where:

PR=percent reduction, percent

ER_i=mass emission rate of specific HAP (HF or HCl) entering the APCD, kilograms (pounds) per hour

ER_o=mass emission rate of specific HAP (HF or HCl) exiting the APCD, kilograms (pounds) per hour.

(h) You must establish each site-specific operating limit in Table 2 to this subpart that applies to you as specified in Table 4 to this subpart.

(i) For each kiln that is subject to the emission limits specified in Table 1 to this subpart and is equipped with an APCD that is not addressed in Table 2 to this subpart or that is using process changes as a means of meeting the emission limits in Table 1 to this subpart, you must meet the requirements in § 63.8(f) and paragraphs (i)(1) and (2) of this section.

(1) Submit a request for approval of alternative monitoring procedures to the Administrator no later than the notification of intent to conduct a performance test. The request must contain the information specified in paragraphs (i)(1)(i) through (iv) of this section.

(i) A description of the alternative APCD or process changes.

(ii) The type of monitoring device or procedure that will be used.

(iii) The operating parameters that will be monitored.

(iv) The frequency that the operating parameter values will be determined and recorded to establish continuous compliance with the operating limits.

(2) Establish site-specific operating limits during the performance test based on the information included in the approved alternative monitoring procedures request and, as applicable, as specified in Table 4 to this subpart.

§ 63.8600 What are my monitoring installation, operation, and maintenance requirements?

(a) You must install, operate, and maintain each CMS according to your OM&M plan and the requirements in paragraphs (a)(1) through (5) of this section.

(1) Conduct a performance evaluation of each CMS according to your OM&M plan.

(2) The CMS must complete a minimum of one cycle of operation for each successive 15-minute period. To have a valid hour of data, you must have

at least three of four equally spaced data values (or at least 75 percent if you collect more than four data values per hour) for that hour (not including startup, shutdown, malfunction, out-of-control periods, or periods of routine control device maintenance covered by a routine control device maintenance exemption as specified in § 63.8570(e)).

(3) Determine and record the 3-hour block averages of all recorded readings, calculated after every 3 hours of operation as the average of the previous 3 operating hours. To calculate the average for each 3-hour average period, you must have at least 75 percent of the recorded readings for that period (not including startup, shutdown, malfunction, out-of-control periods, or periods of routine control device maintenance covered by a routine control device maintenance exemption as specified in § 63.8570(e)).

(4) Record the results of each inspection, calibration, and validation check.

(5) At all times, maintain the monitoring equipment including, but not limited to, maintaining necessary parts for routine repairs of the monitoring equipment.

(b) For each liquid flow measurement device, you must meet the requirements in paragraphs (a)(1) through (5) and paragraphs (b)(1) through (3) of this section.

(1) Locate the flow sensor in a position that provides a representative flowrate.

(2) Use a flow sensor with a minimum measurement sensitivity of 2 percent of the liquid flowrate.

(3) At least semiannually, conduct a flow sensor calibration check.

(c) For each pressure measurement device, you must meet the requirements in paragraphs (a)(1) through (5) and paragraphs (c)(1) through (7) of this section.

(1) Locate the pressure sensor(s) in or as close to a position that provides a representative measurement of the pressure.

(2) Minimize or eliminate pulsating pressure, vibration, and internal and external corrosion.

(3) Use a gauge with a minimum measurement sensitivity of 0.5 inch of water or a transducer with a minimum measurement sensitivity of 1 percent of the pressure range.

(4) Check the pressure tap daily to ensure that it is not plugged.

(5) Using a manometer, check gauge calibration quarterly and transducer calibration monthly.

(6) Any time the sensor exceeds the manufacturer's specified maximum operating pressure range, conduct calibration checks or install a new pressure sensor.

(7) At least monthly, inspect all components for integrity, all electrical connections for continuity, and all mechanical connections for leakage.

(d) For each pH measurement device, you must meet the requirements in paragraphs (a)(1) through (5) and paragraphs (d)(1) through (4) of this section.

(1) Locate the pH sensor in a position that provides a representative measurement of pH.

(2) Ensure the sample is properly mixed and representative of the fluid to be measured.

(3) Check the pH meter's calibration on at least two points every 8 hours of process operation.

(4) At least monthly, inspect all components for integrity and all electrical connections for continuity.

(e) For each bag leak detection system, you must meet the requirements in paragraphs (e)(1) through (11) of this section.

(1) Each triboelectric bag leak detection system must be installed, calibrated, operated, and maintained according to the "Fabric Filter Bag Leak Detection Guidance," (EPA–454/R–98–015, September 1997). This document is available from the U.S. Environmental Protection Agency (U.S. EPA); Office of Air Quality Planning and Standards; Emissions, Monitoring and Analysis Division; Emission Measurement Center (MD–19), Research Triangle Park, NC 27711. This document is also available on the Technology Transfer Network (TTN) under Emission Measurement Center, Continuous Emission Monitoring. Other types of bag leak detection systems must be installed, operated, calibrated, and maintained in a manner consistent with the manufacturer's written specifications and recommendations.

(2) The bag leak detection system must be certified by the manufacturer to be capable of detecting PM emissions at concentrations of 10 milligrams per actual cubic meter (0.0044 grains per actual cubic foot) or less.

(3) The bag leak detection system sensor must provide an output of relative PM loadings.

(4) The bag leak detection system must be equipped with a device to continuously record the output signal from the sensor.

(5) The bag leak detection system must be equipped with an audible alarm system that will sound automatically when an increase in relative PM emissions over a preset level is detected. The alarm must be located where it is easily heard by plant operating personnel.

(6) For positive pressure fabric filter systems, a bag leak detector must be installed in each baghouse compartment or cell.

(7) For negative pressure or induced air fabric filters, the bag leak detector must be installed downstream of the fabric filter.

(8) Where multiple detectors are required, the system's instrumentation and alarm may be shared among detectors.

(9) The baseline output must be established by adjusting the range and the averaging period of the device and establishing the alarm set points and the alarm delay time according to section 5.0 of the "Fabric Filter Bag Leak Detection Guidance."

(10) Following initial adjustment of the system, the sensitivity or range, averaging period, alarm set points, or alarm delay time may not be adjusted except as detailed in your OM&M plan. In no case may the sensitivity be increased by more than 100 percent or decreased more than 50 percent over a 365-day period unless such adjustment follows a complete fabric filter inspection which demonstrates that the fabric filter is in good operating condition. Record each adjustment.

(11) Record the results of each inspection, calibration, and validation check.

(f) For each lime or chemical feed rate measurement device, you must meet the requirements in paragraphs (a)(1) through (5) and paragraphs (f)(1) and (2) of this section.

(1) Locate the measurement device in a position that provides a representative feed rate measurement.

(2) At least semiannually, conduct a calibration check.

(g) For each limestone feed system on a DLA, you must meet the requirements in paragraphs (a)(1), (4), and (5) of this section and must ensure on a monthly basis that the feed system replaces limestone at least as frequently as the schedule set during the performance test.

(h) Requests for approval of alternate monitoring procedures must meet the requirements in §§ 63.8595(i) and 63.8(f).

§ 63.8605 How do I demonstrate initial compliance with the emission limitations and work practice standards?

(a) You must demonstrate initial compliance with each emission limitation and work practice standard that applies to you according to Table 5 to this subpart.

(b) You must establish each site-specific operating limit in Table 2 to this subpart that applies to you according to the requirements in § 63.8595 and Table 4 to this subpart.

(c) You must submit the Notification of Compliance Status containing the results of the initial compliance demonstration according to the requirements in § 63.8630(e).

Continuous Compliance Requirements

§ 63.8615 How do I monitor and collect data to demonstrate continuous compliance?

(a) You must monitor and collect data according to this section.

(b) Except for periods of monitor malfunctions, associated repairs, and required quality assurance or control activities (including, as applicable, calibration checks and required zero and span adjustments), you must monitor continuously (or collect data at all required intervals) at all times that the affected source is operating. This includes periods of startup, shutdown, malfunction, and routine control device maintenance as specified in § 63.8570(e) when the affected source is operating.

(c) You may not use data recorded during monitoring malfunctions, associated repairs, out-of-control periods, or required quality assurance or control activities for purposes of calculating data averages. A monitoring malfunction is any sudden, infrequent, not reasonably preventable failure of the monitoring system to provide valid data. Monitoring failures that are caused in part by poor maintenance or careless operation are not malfunctions. You must use all the valid data collected during all other periods in assessing compliance. Any averaging period for which you do not have valid monitoring data and such data are required constitutes a deviation from the monitoring requirements.

§ 63.8620 How do I demonstrate continuous compliance with the emission limitations and work practice standards?

(a) You must demonstrate continuous compliance with each emission limit, operating limit, and work practice standard in Tables 1, 2, and 3 to this subpart that applies to you according to the methods specified in Table 6 to this subpart.

(b) For each kiln that is subject to the emission limits specified in Table 1 to this subpart and is equipped with an APCD that is not addressed in Table 2 to this subpart, or that is using process changes as a means of meeting the emission limits in Table 1 to this subpart, you must demonstrate continuous compliance with each emission limit in Table 1 to this subpart, and each operating limit established as required in § 63.8595(i)(2) according to the methods specified in your approved alternative monitoring procedures request, as described in §§ 63.8595(i)(1) and 63.8(f).

(c) You must report each instance in which you did not meet each emission limit and operating limit in this subpart that applies to you. This includes periods of startup, shutdown, malfunction, and routine control device maintenance. These instances are deviations from the emission limitations in this subpart. These deviations must be reported according to the requirements in § 63.8635.

(d) During periods of startup, shutdown, and malfunction, you must operate according to your SSMP.

(e) Consistent with §§ 63.6(e) and 63.7(e)(1), deviations that occur during a period of startup, shutdown, or malfunction are not violations if you demonstrate to the Administrator's satisfaction that you were operating according to an SSMP that satisfies the requirements of § 63.6(e) and your OM&M plan. The Administrator will determine whether deviations that occur during a period of startup, shutdown, or malfunction are violations, according to the provisions in § 63.6(e).

(f) Deviations that occur during periods of control device maintenance covered by an approved routine control device maintenance exemption according to § 63.8570(e) are not violations if you demonstrate to the Administrator's satisfaction that you were operating in accordance with the approved routine control device maintenance exemption.

(g) You must demonstrate continuous compliance with the operating limits in Table 2 to this subpart for visible emissions (VE) from tunnel kilns equipped with DLA, DIFF, or DLS/FF by monitoring VE at each kiln stack according to the requirements in paragraphs (g)(1) through (3) of this section.

(1) Perform daily VE observations of each kiln stack according to the procedures of Method 22 of 40 CFR part 60, appendix A. You must conduct the Method 22 test while the affected source is operating under normal conditions. The duration of each Method 22 test must be at least 15 minutes.

(2) If VE are observed during any daily test conducted using Method 22 of 40 CFR part 60, appendix A, you must promptly initiate and complete corrective actions according to your OM&M plan. If no VE are observed in 30 consecutive daily Method 22 tests for any kiln stack, you may decrease the frequency of Method 22 testing from daily to weekly for that kiln stack. If VE are observed during any weekly test, you must promptly initiate and complete corrective actions according to your OM&M plan, resume Method 22 testing of that kiln stack on a daily basis, and maintain that schedule until no VE are observed in 30 consecutive daily tests, at which time you may again decrease the frequency of Method 22 testing to a weekly basis.

(3) If VE are observed during any test conducted using Method 22 of 40 CFR part 60, appendix A, you must report these deviations by following the requirements in § 63.8635.

Notifications, Reports, and Records

§ 63.8630 What notifications must I submit and when?

(a) You must submit all of the notifications in §§ 63.7(b) and (c), 63.8(f)(4), and 63.9 (b) through (e), (g)(1), and (h) that apply to you, by the dates specified.

(b) As specified in § 63.9(b)(2) and (3), if you start up your affected source before May 16, 2003, you must submit an Initial Notification not later than 120 calendar days after May 16, 2003.

(c) As specified in § 63.9(b)(3), if you start up your new or reconstructed affected source or affected source described in § 63.8540(f)(1) or § 63.8540(f)(2) on or after May 16, 2003, you must submit an Initial Notification not later than 120 calendar days after you become subject to this subpart.

(d) If you are required to conduct a performance test, you must submit a written notification of intent to conduct a performance test at least 60 calendar days before the performance test is scheduled to begin, as required in § 63.7(b)(1).

(e) If you are required to conduct a performance test or other initial compliance demonstration as specified in Tables 4 and 5 to this subpart, you must submit a Notification of Compliance Status as specified in § 63.9(h) and paragraphs (e)(1) through (3) of this section.

(1) For each compliance demonstration that includes a performance test conducted according to the requirements in Table 4 to this subpart, you must submit the Notification of Compliance Status, including the performance test results, before the close of business on the 60th calendar day following the completion of the performance test, according to § 63.10(d)(2).

(2) In addition to the requirements in § 63.9(h)(2)(i), you must include the information in paragraphs (e)(2)(i) and (ii) of this section in your Notification of Compliance Status:

(i) The operating limit parameter values established for each affected source with supporting documentation and a description of the procedure used to establish the values.

(ii) For each APCD that includes a fabric filter, if a bag leak detection system is used, analysis and supporting documentation demonstrating conformance with EPA guidance and specifications for bag leak detection systems in § 63.8600(e).

(3) For each compliance demonstration required in Table 5 to this subpart that does not include a performance test (*i.e.*, compliance demonstration for the work practice standard), you must submit the Notification of Compliance Status before the close of business on the 30th calendar day following the completion of the compliance demonstration.

(f) If you request a routine control device maintenance exemption according to § 63.8570(e), you must submit your request for the exemption no later than 30 days before the compliance date.

(g) If you own or operate an affected kiln that is subject to the work practice standards specified in Table 3 to this subpart, and you intend to use a fuel other than natural gas or equivalent to fire the affected kiln, you must submit a notification of alternative fuel use within 48 hours of the declaration of a period of natural gas curtailment or supply interruption, as defined in § 63.8665. The notification must include the information specified in paragraphs (g)(1) through (5) of this section.

(1) Company name and address.

(2) Identification of the affected kiln.

(3) Reason you are unable to use natural gas or equivalent fuel, including the date when the natural gas curtailment was declared or the natural gas supply interruption began.

(4) Type of alternative fuel that you intend to use.

(5) Dates when the alternative fuel use is expected to begin and end.

§ 63.8635 What reports must I submit and when?

(a) You must submit each report in Table 7 to this subpart that applies to you.

(b) Unless the Administrator has approved a different schedule for submission of reports under § 63.10(a), you must submit each report by the date in Table 7 to this subpart and as specified in paragraphs (b)(1) through (5) of this section.

(1) The first compliance report must cover the period beginning on the compliance date that is specified for your affected source in § 63.8545 and ending on June 30 or December 31, and lasting at least 6 months, but less than 12 months. For example, if your compliance date is March 1, then the first semiannual reporting period would begin on March 1 and end on December 31.

(2) The first compliance report must be postmarked or delivered no later than July 31 or January 31 for compliance periods ending on June 30 and December 31, respectively.

(3) Each subsequent compliance report must cover the semiannual reporting period from January 1 through June 30 or the semiannual reporting period from July 1 through December 31.

(4) Each subsequent compliance report must be postmarked or delivered no later than July 31 or January 31 for compliance periods ending on June 30 and December 31, respectively.

(5) For each affected source that is subject to permitting regulations pursuant to 40 CFR part 70 or 40 CFR part 71, and if the permitting authority has established dates for submitting semiannual reports pursuant to 40 CFR 70.6(a)(3)(iii)(A) or 40 CFR 71.6(a)(3)(iii)(A), you may submit the first and subsequent compliance reports according to the dates the permitting authority has established instead of according to the dates in paragraphs (b)(1) through (4) of this section.

(c) The compliance report must contain the information in paragraphs (c)(1) through (7) of this section.

(1) Company name and address.

(2) Statement by a responsible official with that official's name, title, and signature, certifying that, based on information and belief formed after reasonable inquiry, the statements and information in the report are true, accurate, and complete.

(3) Date of report and beginning and ending dates of the reporting period.

(4) If you had a startup, shutdown or malfunction during the reporting period and you took actions consistent with your SSMP and OM&M plan, the compliance report must include the information specified in § 63.10(d)(5)(i).

(5) A description of control device maintenance performed while the control device was offline and the kiln controlled by the control device was operating, including the information specified in paragraphs (c)(5)(i) through (iii) of this section.

(i) The date and time when the control device was shutdown and restarted.

(ii) Identification of the kiln that was operating and the number of hours that the kiln operated while the control device was offline.

(iii) A statement of whether or not the control device maintenance was included in your approved routine control device maintenance exemption developed as specified in § 63.8570(e). If the control device maintenance was included in your approved routine control device maintenance exemption, then you must report the information in paragraphs (c)(5)(iii)(A) through (C) of this section.

(A) The total amount of time that the kiln controlled by the control device operated during the current semiannual compliance period and during the previous semiannual compliance period.

(B) The amount of time that each kiln controlled by the control device operated while the control device was offline for maintenance covered under the routine control device maintenance exemption during the current semiannual compliance period and during the previous semiannual compliance period.

(C) Based on the information recorded under paragraphs (c)(5)(iii)(A) and (B) of this section, compute the annual percent of kiln operating uptime during which the control device was offline for routine maintenance using Equation 1 of this section.

$$RM = \frac{DT_p + DT_c}{KU_p + KU_c}(100) \qquad \text{(Eq. 1)}$$

Where:

RM=Annual percentage of kiln uptime during which control device is down for routine control device maintenance

DT_p=Control device downtime claimed under the routine control device maintenance exemption for the previous semiannual compliance period

DT_c=Control device downtime claimed under the routine control device maintenance exemption for the current semiannual compliance period

KU_p=Kiln uptime for the previous semiannual compliance period

KU_c=Kiln uptime for the current semiannual compliance period

(6) If there are no deviations from any emission limitations (emission limits or operating limits) or work practice standards that apply to you, the compliance report must contain a statement that there were no deviations from the emission limitations or work practice standards during the reporting period.

(7) If there were no periods during which the CMS was out-of-control as specified in your OM&M plan, the compliance report must contain a statement that there were no periods during which the CMS was out-of-control during the reporting period.

(d) For each deviation from an emission limitation (emission limit or operating limit) that occurs at an affected source where you are not using a CMS to comply with the emission limitations in this subpart, the compliance report must contain the information in paragraphs (c)(1) through (5) and paragraphs (d)(1) and (2) of this section. This includes periods of startup, shutdown, malfunction, and routine control device maintenance.

(1) The total operating time of each affected source during the reporting period.

(2) Information on the number, duration, and cause of deviations (including unknown cause, if applicable), as applicable, and the corrective action taken.

(e) For each deviation from an emission limitation (emission limit or operating limit) occurring at an affected source where you are using a CMS to comply with the emission limitations in this subpart, you must include the information in paragraphs (c)(1) through (5) and paragraphs (e)(1) through (13) of this section. This includes periods of startup, shutdown, malfunction, and routine control device maintenance.

(1) The total operating time of each affected source during the reporting period.

(2) The date and time that each malfunction started and stopped.

(3) The date and time that each CMS was inoperative, except for zero (low-level) and high-level checks.

(4) The date, time, and duration that each CMS was out-of-control, including the pertinent information in your OM&M plan.

(5) The date and time that each deviation started and stopped, and whether each deviation occurred during a period of startup, shutdown, or malfunction; during routine control device maintenance covered in your approved routine control device maintenance exemption; or during another period.

(6) A description of corrective action taken in response to a deviation.

(7) A summary of the total duration of the deviation during the reporting period and the total duration as a percent of the total source operating time during that reporting period.

(8) A breakdown of the total duration of the deviations during the reporting period into those that are due to startup, shutdown, control equipment problems, process problems, other known causes, and other unknown causes.

(9) A summary of the total duration of CMS downtime during the reporting period and the total duration of CMS downtime as a percent of the total source operating time during that reporting period.

(10) A brief description of the process units.

(11) A brief description of the CMS.

(12) The date of the latest CMS certification or audit.

(13) A description of any changes in CMS, processes, or control equipment since the last reporting period.

(f) If you have obtained a title V operating permit according to 40 CFR part 70 or 40 CFR part 71, you must report all deviations as defined in this subpart in the semiannual monitoring report required by 40 CFR 70.6(a)(3)(iii)(A) or 40 CFR 71.6(a)(3)(iii)(A). If you submit a compliance report according to Table 7 to this subpart along with, or as part of, the semiannual monitoring report required by 40 CFR 70.6(a)(3)(iii)(A) or 40 CFR 71.6(a)(3)(iii)(A), and the compliance report includes all required information concerning deviations from any emission limitation (including any operating limit), then submitting the compliance report will satisfy any obligation to report the same deviations in the semiannual monitoring report. However, submitting a compliance report will not otherwise affect any obligation you may have to report deviations from permit requirements to the permitting authority.

(g) If you own or operate an affected kiln that is subject to the work practice standard specified in Table 3 to this subpart, and you use a fuel other than natural gas or equivalent to fire the affected kiln, you must submit a report of alternative fuel use within 10 working days after terminating the use of the alternative fuel. The report must include the information in paragraphs (g)(1) through (6) of this section.

(1) Company name and address.

(2) Identification of the affected kiln.

(3) Reason for using the alternative fuel.

(4) Type of alternative fuel used to fire the affected kiln.

(5) Dates that the use of the alternative fuel started and ended.

(6) Amount of alternative fuel used.

§ 63.8640 What records must I keep?

(a) You must keep the records listed in paragraphs (a)(1) through (4) of this section.

(1) A copy of each notification and report that you submitted to comply with this subpart, including all documentation supporting any Initial Notification or Notification of Compliance Status that you submitted, according to the requirements in § 63.10(b)(2)(xiv).

(2) The records in § 63.6(e)(3)(iii) through (v) related to startup, shutdown, and malfunction.

(3) Records of performance tests as required in § 63.10(b)(2)(viii).

(4) Records relating to control device maintenance and documentation of your approved routine control device maintenance exemption, if you request such an exemption under § 63.8570(e).

(b) You must keep the records required in Table 6 to this subpart to show continuous compliance with each emission limitation that applies to you.

(c) You must also maintain the records listed in paragraphs (c)(1) through (7) of this section.

(1) For each bag leak detection system, records of each alarm, the time of the alarm, the time corrective action was initiated and completed, and a brief description of the cause of the alarm and the corrective action taken.

(2) For each deviation of an operating limit parameter value, the date, time, and duration of the deviation, a brief explanation of the cause of the deviation and the corrective action taken, and whether the deviation occurred during a period of startup, shutdown, or malfunction.

(3) For each kiln that is subject to the emission limits in Table 1, records of production rates on a fired-product weight basis.

(4) For each kiln that is subject to the emission limits in Table 1, records for any approved alternative monitoring or test procedures.

(5) For each kiln that is subject to the emission limits in Table 1, records of maintenance and inspections performed on the APCD.

(6) For each kiln that is subject to the emission limits in Table 1, current copies of your SSMP and OM&M plan, including any revisions, with records documenting conformance.

(7) Records that document compliance with any work practice standard that applies to you.

§ 63.8645 In what form and for how long must I keep my records?

(a) Your records must be in a form suitable and readily available for expeditious review, according to § 63.10(b)(1).

(b) As specified in § 63.10(b)(1), you must keep each record for 5 years following the date of each occurrence, measurement, maintenance, corrective action, report, or record.

(c) You must keep each record onsite for at least 2 years after the date of each occurrence, measurement, maintenance,

corrective action, report, or record, according to § 63.10(b)(1). You may keep the records offsite for the remaining 3 years.

Other Requirements and Information

§ 63.8655 What parts of the General Provisions apply to me?

Table 8 to this subpart shows which parts of the General Provisions in §§ 63.1 through 63.15 apply to you.

§ 63.8660 Who implements and enforces this subpart?

(a) This subpart can be implemented and enforced by us, the U.S. EPA, or a delegated authority such as your State, local, or tribal agency. If the U.S. EPA Administrator has delegated authority to your State, local, or tribal agency, then that agency, in addition to the U.S. EPA, has the authority to implement and enforce this subpart. You should contact your U.S. EPA Regional Office to find out if implementation and enforcement of this subpart is delegated to your State, local, or tribal agency.

(b) In delegating implementation and enforcement authority of this subpart to a State, local, or tribal agency under section 40 CFR part 63, subpart E, the authorities contained in paragraph (c) of this section are retained by the Administrator of the U.S. EPA and are not transferred to the State, local, or tribal agency.

(c) The authorities that cannot be delegated to State, local, or tribal agencies are as specified in paragraphs (c)(1) through (4) of this section.

(1) Approval of alternatives to the applicability requirements in §§ 63.8535 and 63.8540, the compliance date requirements in § 63.8545, and the non-opacity emission limitations in § 63.8555.

(2) Approval of major changes to test methods under § 63.7(e)(2)(ii) and (f) and as defined in § 63.90.

(3) Approval of major changes to monitoring under § 63.8(f) and as defined in § 63.90.

(4) Approval of major changes to recordkeeping and reporting under § 63.10(f) and as defined in § 63.90.

§ 63.8665 What definitions apply to this subpart?

Terms used in this subpart are defined in the Clean Air Act, in § 63.2, and in this section as follows:

Air pollution control device (APCD) means any equipment that reduces the quantity of a pollutant that is emitted to the air.

Bag leak detection system means an instrument that is capable of monitoring PM loadings in the exhaust of a fabric filter in order to detect bag failures. A bag leak detection system includes, but is not limited to, an instrument that operates on triboelectric, light-scattering, light-transmittance, or other effects to monitor relative PM loadings.

Clay ceramics manufacturing facility means a plant site that manufactures pressed floor tile, pressed wall tile, other pressed tile, or sanitaryware (*e.g.*, sinks and toilets). Clay ceramics manufacturing facilities typically process clay, shale, and various additives, form the processed materials into tile or sanitaryware shapes, and dry and fire the ceramic products. Glazes are applied to many tile and sanitaryware products.

Deviation means any instance in which an affected source subject to this subpart, or an owner or operator of such a source:

(1) Fails to meet any requirement or obligation established by this subpart including, but not limited to, any emission limitation (including any operating limit) or work practice standard;

(2) Fails to meet any term or condition that is adopted to implement an applicable requirement in this subpart for any affected source required to obtain such a permit; or

(3) Fails to meet any emission limitation (including any operating limit) or work practice standard in this subpart during startup, shutdown, or malfunction, regardless of whether or not such failure is permitted by this subpart.

Dry lime injection fabric filter (DIFF) means an APCD that includes continuous injection of hydrated lime or other sorbent into a duct or reaction chamber followed by a fabric filter.

Dry lime scrubber/fabric filter (DLS/FF) means an APCD that includes continuous injection of humidified hydrated lime or other sorbent into a reaction chamber followed by a fabric filter. These systems typically include recirculation of some of the sorbent.

Dry limestone adsorber (DLA) means an APCD that includes a limestone storage bin, a reaction chamber that is essentially a packed tower filled with limestone, and may or may not include a peeling drum that mechanically scrapes reacted limestone to regenerate the stone for reuse.

Emission limitation means any emission limit or operating limit.

Fabric filter means an APCD used to capture PM by filtering a gas stream through filter media; also known as a baghouse.

Initial startup means:

(1) For a new or reconstructed tunnel kiln controlled with a DLA, and for a tunnel kiln that would be considered reconstructed but for § 63.8540(f)(1) or § 63.8540(f)(2), the time at which the temperature in the kiln first reaches 260 °C (500 °F) and the kiln contains product; or

(2) For a new or reconstructed tunnel kiln controlled with a DIFF, DLS/FF, or WS, the time at which the kiln first reaches a level of production that is equal to 75 percent of the kiln design capacity or 12 months after the affected source begins firing clay ceramics, whichever is earlier.

Particulate matter (PM) means, for purposes of this subpart, emissions of PM that serve as a measure of total particulate emissions, as measured by Method 5 (40 CFR part 60, appendix A), and as a surrogate for metal HAP contained in the particulates including, but not limited to, antimony, arsenic, beryllium, cadmium, chromium, cobalt, lead, manganese, mercury, nickel, and selenium.

Period of natural gas curtailment or supply interruption means a period of time during which the supply of natural gas to an affected facility is halted for reasons beyond the control of the facility. An increase in the cost or unit price of natural gas does not constitute a period of natural gas curtailment or supply interruption.

Plant site means all contiguous or adjoining property that is under common control, including properties that are separated only by a road or other public right-of-way. Common control includes properties that are owned, leased, or operated by the same entity, parent entity, subsidiary, or any combination thereof.

Research and development kiln means any kiln whose purpose is to conduct research and development for new processes and products and is not engaged in the manufacture of products for commercial sale, except in a *de minimis* manner.

Responsible official means responsible official as defined in 40 CFR 70.2.

Startup means the setting in operation of an affected source and starting the production process.

Tunnel kiln means any continuous kiln that is not a roller kiln that is used to fire clay ceramics.

Tunnel kiln design capacity means the maximum amount of clay ceramics, in Mg (tons), that a kiln is designed to produce in one year divided by the number of hours in a year (8,760 hours). If a kiln is modified to increase the capacity, the design capacity is considered to be the capacity following modifications.

Wet scrubber (WS) means an APCD that uses water, which may include caustic additives or other chemicals, as the sorbent. Wet scrubbers may use any of various design mechanisms to increase the contact between exhaust gases and the sorbent.

Work practice standard means any design, equipment, work practice, operational standard, or combination thereof, that is promulgated pursuant to section 112(h) of the Clean Air Act.

Tables to Subpart KKKKK of Part 63

As stated in § 63.8555, you must meet each emission limit in the following table that applies to you:

TABLE 1 TO SUBPART KKKKK OF PART 63.—EMISSION LIMITS

For each . . .	You must meet the following emission limits . . .	Or you must comply with the following . . .
1. New or reconstructed tunnel kiln with a design capacity less than 9.07 Mg/hr (10 tph) of fired product; each tunnel kiln that would be considered reconstructed but for § 63.8540(f)(1); and each tunnel kiln that would be considered reconstructed but for § 63.8540(f)(2).	a. HF emissions must not exceed 0.029 kilograms per megagram (kg/Mg) (0.057 pounds per ton (lb/ton)) of fired product.	Reduce uncontrolled HF emissions by at least 90 percent.
	b. HCl emissions must not exceed 0.13 kg/Mg (0.26 lb/ton) of fired product.	Reduce uncontrolled HCl emissions by at least 30 percent.
	c. PM emissions must not exceed 0.21 kg/Mg (0.42 lb/ton) of fired product.	Not applicable.
2. New or reconstructed tunnel kiln with a design capacity equal to or greater than 10 tph of fired product.	a. HF emissions must not exceed 0.029 kg/Mg (0.057 lb/ton) of fired product.	Reduce uncontrolled HF emissions by at least 90 percent.
	b. HCl emissions must not exceed 0.028 kg/Mg (0.056 lb/ton) of fired product.	Reduce uncontrolled HCl emissions by at least 85 percent.
	c. PM emissions must not exceed 0.060 kg/Mg (0.12 lb/ton) of fired product.	Not applicable.

As stated in § 63.8555, you must meet each operating limit in the following table that applies to you:

TABLE 2 TO SUBPART KKKKK OF PART 63.—OPERATING LIMITS

For each . . .	You must . . .
1. Kiln equipped with a DLA	a. Maintain the average pressure drop across the DLA for each 3-hour block period at or above the average pressure drop established during the performance test; and b. Maintain a sufficient amount of limestone in the limestone hopper, storage bin (located at the top of the DLA), and DLA at all times; maintain the limestone feeder setting at or above the level established during the performance test; and c. Use the same grade of limestone from the same source as was used during the performance test; maintain records of the source and grade of limestone; and d. Maintain no VE from the DLA stack.
2. Kiln equipped with a DIFF or DLS/FF.	a. If you use a bag leak detection system, initiate corrective action within 1 hour of a bag leak detection system alarm and complete corrective actions in accordance with your OM&M plan; operate and maintain the fabric filter such that the alarm is not engaged for more than 5 percent of the total operating time in a 6-month block reporting period; or maintain no VE from the DIFF or DLS/FF stack; and b. Maintain free-flowing lime in the feed hopper or silo and to the APCD at all times for continuous injection systems; maintain the feeder setting at or above the level established during the performance test for continuous injection systems.
3. Kiln equipped with a WS	a. Maintain the average scrubber pressure drop for each 3-hour block period at or above the average pressure drop established during the performance test; and b. Maintain the average scrubber liquid pH for each 3-hour block period at or above the average scrubber liquid pH established during the performance test; and c. Maintain the average scrubber liquid flow rate for each 3-hour block period at or above the average scrubber liquid flow rate established during the performance test; and d. If chemicals are added to the scrubber water, maintain the average scrubber chemical feed rate for each 3-hour block period at or above the average scrubber chemical feed rate established during the performance test.

As stated in § 63.8555, you must comply with each work practice standard in the following table that applies to you:

TABLE 3 TO SUBPART KKKKK OF PART 63.—WORK PRACTICE STANDARDS

For . . .	You must . . .	According to one of the following requirements . . .
Each existing, new, or reconstructed periodic kiln, tunnel kiln, or roller kiln; each tunnel kiln that would be considered reconstructed but for § 63.8540(f)(1); and each tunnel kiln that would be considered reconstructed but for § 63.8540(f)(2).	Minimize fuel-based HAP emissions.	Use natural gas, or equivalent, as the kiln fuel, except during periods of natural gas curtailment or supply interruption, as defined in § 63.8665.

As stated in § 63.8595, you must conduct each performance test in the following table that applies to you:

TABLE 4 TO SUBPART KKKKK OF PART 63.—REQUIREMENTS FOR PERFORMANCE TESTS

For each . . .	You must . . .	Using . . .	According to the following requirements . . .
1. New or reconstructed tunnel kiln; each tunnel kiln that would be considered reconstructed but for § 63.8540(f)(1); and each tunnel kiln that would be considered reconstructed but for § 63.8540(f)(2).	a. Select locations of sampling ports and the number of traverse points.	Method 1 or 1A of 40 CFR part 60, appendix A.	Sampling sites must be located at the outlet of the APCD and prior to any releases to the atmosphere for all affected sources. If you choose to meet the percent emission reduction requirements for HF or HCl, a sampling site must also be located at the APCD inlet.
	b. Determine velocities and volumetric flow rate.	Method 2 of 40 CFR part 60, appendix A.	You may use Method 2A, 2C, 2D, 2F, or 2G of 40 CFR part 60, appendix A, as appropriate, as an alternative to using Method 2 of 40 CFR part 60, appendix A.
	c. Conduct gas molecular weight analysis.	Method 3 of 40 CFR part 60, appendix A.	You may use Method 3A or 3B of 40 CFR part 60, appendix A, as appropriate, as an alternative to using Method 3 of 40 CFR part 60, appendix A.
	d. Measure moisture content of the stack gas.	Method 4 of 40 CFR part 60, appendix A.	
	e. Measure HF and HCl emissions.	Method 26A of 40 CFR part 60, appendix A; or	Conduct the test while operating at the maximum production level. You may use Method 26 of 40 CFR part 60, appendix A, as an alternative to using Method 26A of 40 CFR part 60, appendix A, when no acid PM (*e.g.*, HF or HCl dissolved in water droplets emitted by sources controlled by a WS) is present.
		Method 320 of 40 CFR part 63, appendix A.	Conduct the test while operating at the maximum production level. When using Method 320 of 40 CFR part 63, appendix A, you must follow the analyte spiking procedures of section 13 of Method 320 of 40 CFR part 63, appendix A, unless you can demonstrate that the complete spiking procedure has been conducted at a similar source.
	f. Measure PM emissions	Method 5 of 40 CFR part 60, appendix A.	Conduct the test while operating at the maximum production level.
2. Kiln that is complying with production-based emission limits.	Determine the production rate during each test run in order to determine compliance with production-based emission limits.	Production data collected during the performance tests (*e.g.*, the number of ceramic pieces and weight per piece in the kiln during a test run divided by the amount of time to fire a piece).	You must measure and record the production rate, on a fired-product weight basis, of the affected kiln for each of the three test runs.
3. Kiln equipped with a DLA.	a. Establish the operating limit for the average pressure drop across the DLA.	Data from the pressure drop measurement device during the performance test.	You must continuously measure the pressure drop across the DLA, determine and record the block average pressure drop values for the three test runs, and determine and record the 3-hour block average of the recorded pressure drop measurements for the three test runs.
	b. Establish the operating limit for the limestone feeder setting.	Data from the limestone feeder during the performance test.	You must ensure that you maintain an adequate amount of limestone in the limestone hopper, storage bin (located at the top of the DLA), and DLA at all times during the performance test. You must establish your limestone feeder setting one week prior to the performance test and maintain the feeder setting for the one-week period that precedes the performance test and during the performance test.
	c. Document the source and grade of limestone used.	Records of limestone purchase.	
4. Kiln equipped with a DIFF or DLS/FF	Establish the operating limit for the lime feeder setting.	Data from the lime feeder during the performance test.	For continuous lime injection systems, you must ensure that lime in the feed hopper or silo and to the APCD is free-flowing at all times during the performance test and record the feeder setting for the three test runs. If the feed rate setting varies during the three test runs, determine and record the average feed rate from the three test runs.
5. Kiln equipped with a WS	a. Establish the operating limit for the average scrubber pressure drop.	Data from the pressure drop measurement device during the performance test.	You must continuously measure the scrubber pressure drop, determine and record the block average pressure drop values for the three test runs, and determine and record the 3-hour block average of the recorded pressure drop measurements for the three test runs.
	b. Establish the operating limit for the average scrubber liquid pH.	Data from the pH measurement device during the performance test.	You must continuously measure the scrubber liquid pH, determine and record the block average pH values for the three test runs, and determine and record the 3-hour block average of the recorded pH measurements for the three test runs.
	c. Establish the operating limit for the average scrubber liquid flow rate.	Data from the flow rate measurement device during the performance test.	You must continuously measure the scrubber liquid flow rate, determine and record the block average flow rate values for the three test runs, and determine and record the 3-hour block average of the recorded flow rate measurements for the three test runs.
6. Kiln equipped with a WS that includes chemical addition to the water.	Establish the operating limit for the average scrubber chemical feed rate.	Data from the chemical feed rate measurement device during the performance test.	You must continuously measure the scrubber chemical feed rate, determine and record the block average chemical feed rate values for the three test runs, and determine and record the 3-hour block average of the recorded chemical feed rate measurements for the three test runs.

As stated in § 63.8605, you must demonstrate initial compliance with each emission limitation that applies to you according to the following table:

TABLE 4 TO SUBPART KKKKK OF PART 63.—REQUIREMENTS FOR PERFORMANCE TESTS—Continued

For each . . .	You must . . .	Using . . .	According to the following requirements . . .

TABLE 5 TO SUBPART KKKKK OF PART 63.—INITIAL COMPLIANCE WITH EMISSION LIMITATIONS AND WORK PRACTICE STANDARDS

For each . . .	For the following . . .	You have demonstrated initial compliance if . . .
1. New or reconstructed tunnel kiln with a design capacity less than 9.07 Mg/hr (10 tph) of fired product; each tunnel kiln that would be considered reconstructed but for §63.8540(f)(1); and each tunnel kiln that would be considered reconstructed but for §63.8540(f)(2).	a. HF emissions must not exceed 0.029 kg/Mg (0.057 lb/ton) of fired product; or uncontrolled HF emissions must be reduced by at least 90 percent; and.	i. The HF emissions measured using Method 26A of 40 CFR part 60, appendix A or Method 320 of 40 CFR part 63, appendix A over the period of the initial performance test, according to the calculations in §63.8595(g)(1), do not exceed 0.029 kg/Mg (0.057 lb/ton); or uncontrolled HF emissions measured using Method 26A of 40 CFR part 60, appendix A or Method 320 of 40 CFR part 63, appendix A over the period of the initial performance test are reduced by at least 90 percent, according to the calculations in §63.8595(g)(2); and ii. You establish and have a record of the operating limits listed in Table 2 to this subpart over the 3-hour performance test during which HF emissions did not exceed 0.029 kg/Mg (0.057 lb/ton) or uncontrolled HF emissions were reduced by at least 90 percent.
	b. HCl emissions must not exceed 0.13 kg/Mg (0.26 lb/ton) of fired product; or uncontrolled HCl emissions must be reduced by at least 30 percent; and	i. The HCl emissions measured using Method 26A of 40 CFR part 60, appendix A or Method 320 of 40 CFR part 63, appendix A over the period of the initial performance test, according to the calculations in §63.8595(g)(1), do not exceed 0.13 kg/Mg (0.26 lb/ton); or uncontrolled HCl emissions measured using Method 26A of 40 CFR part 60, appendix A or Method 320 of 40 CFR part 63, appendix A over the period of the initial performance test are reduced by at least 30 percent, according to the calculations in §63.8595(g)(2); and ii. You establish and have a record of the operating limits listed in Table 2 to this subpart over the 3-hour performance test during which HCl emissions did not exceed 0.13 kg/Mg (0.26 lb/ton) or uncontrolled HCl emissions were reduced by at least 30 percent.
	c. PM emissions must not exceed 0.21 kg/Mg (0.42 lb/ton) of fired product.	i. The PM emissions measured using Method 5 of 40 CFR part 60, appendix A, over the period of the initial performance test, according to the calculations in §63.8595(g)(1), do not exceed 0.21 kg/Mg (0.42 lb/ton); and ii. You establish and have a record of the operating limits listed in Table 2 to this subpart over the 3-hour performance test during which PM emissions did not exceed 0.21 kg/Mg (0.42 lb/ton).
2. New or reconstructed tunnel kiln with a design capacity equal to or greater than 10 tph of fired product.	a. HF emissions must not exceed 0.029 kg/Mg (0.057 lb/ton) of fired product; or uncontrolled HF emissions must be reduced by at least 90 percent; and	i. The HF emissions measured using Method 26A of 40 CFR part 60, appendix A or Method 320 of 40 CFR part 63, appendix A over the period of the initial performance test, according to the calculations in §63.8595(g)(1), do not exceed 0.029 kg/Mg (0.057 lb/ton); or uncontrolled HF emissions measured using Method 26A of 40 CFR part 60, appendix A or Method 320 of 40 CFR part 63, appendix A over the period of the initial performance test are reduced by at least 90 percent, according to the calculations in §63.8595(g)(2); and ii. You establish and have a record of the operating limits listed in Table 2 to this subpart over the 3-hour performance test during which HF emissions did not exceed 0.029 kg/Mg (0.057 lb/ton) or uncontrolled HF emissions were reduced by at least 90 percent.
	b. HCl emissions must not exceed 0.028 kg/Mg (0.056 lb.ton) of fired product; or uncontrolled HCl emissions must be reduced by at least 85 percent; and	i. The HCl emissions measured using Method 26A of 40 CFR part 60, appendix A or Method 320 of 40 CFR part 63, appendix A over the period of the initial performance test, according to the calculations in §63.8595(g)(1), do not exceed 0.028 kg/Mg (0.056 lb/ton); or uncontrolled HCl emissions measured using Method 26A of 40 CFR part 60, appendix A or Method 320 of 40 CFR part 63, appendix A over the period of the initial performance test are reduced by at least 85 percent, according to the calculations in §63.8595(g)(2); and ii. You establish and have a record of the operating limits listed in Table 2 to this subpart over the 3-hour performance test during which HCl emissions did not exceed 0.028 kg/Mg (0.056 lb/ton) or uncontrolled HCl emissions were reduced by at least 85 percent.
	c. PM emissions must not exceed 0.060 kg/Mg (0.12 lb/ton) of fired product.	i. The PM emissions measured using Method 5 of 40 CFR part 60, appendix A, over the period of the initial performance test, according to the calculations on §63.8595(g)(1), do not exceed 0.060 kg/Mg (0.12 lb/ton); and ii. You establish and have a record of the operating limits listed in Table 2 to this subpart over the 3-hour performance test during which PM emissions did not exceed 0.060 kg/Mg (0.12 lb/ton).

TABLE 5 TO SUBPART KKKKK OF PART 63.—INITIAL COMPLIANCE WITH EMISSION LIMITATIONS AND WORK PRACTICE STANDARDS—Continued

For each . . .	For the following . . .	You have demonstrated initial compliance if . . .
3. Existing, new, or reconstructed periodic kiln, tunel kiln, or roller kiln; each tunnel kiln that would be considered reconstructed but for §63.8540(f)(1); and each tunnel kiln that would be considered reconstructed but for §63.8540(f)(2).	Minimize fuel-based HAP emissions.	You use natural gas, or equivalent, as the kiln fuel.

As stated in §63.8620, you must demonstrate continuous compliance with each emission limit and operating limit that applies to you according to the following table:

TABLE 6 TO SUBPART KKKKK OF PART 63.—CONTINUOUS COMPLIANCE WITH EMISSION LIMITATIONS AND WORK PRACTICE STANDARDS

For each . . .	For the following . . .	You must demonstrate continuous compliance by . . .
1. Kiln equipped with a DLA	a. Each emission limit in Table 1 to this subpart and each operating limit in Item 1 of Table 2 to this subpart for kilns equipped with a DLA.	i. Collecting the DLA pressure drop data according to §63.8600(a); reducing the DLA pressure drop data to 3-hour block averages according to §63.8600(a); maintaining the average pressure drop across the DLA for each 3-hour block period at or above the average pressure drop established during the performance test; and ii. Verifying that the limestone hopper and storage bin (located at the top of the DLA) contain adequate limestone by performing a daily visual check; and iii. Recording the limestone feeder setting daily to verify that the feeder setting is being maintained at or above the level established during the performance test; and iv. Using the same grade of limestone from the same source as was used during the performance test; maintaining records of the source and type of limestone; and v. Performing VE observations of the DLA stack at the frequency specified in §63.8620(g) using Method 22 of 40 CFR part 60, appendix A; maintaining no VE from the DLA stack.
2. Kiln equipped with a DIFF or DLS/FF.	a. Each emission limit in Table 1 to this subpart and each operating limit in Item 2 of Table 2 to this subpart for kilns equipped with DIFF or DLS/FF.	i. If you use a bag leak detection system, initiating corrective action within 1 hour of a bag leak detection system alarm and completing corrective actions in accordance with your OM&M plan; operating and maintaining the fabric filter such that the alarm is not engaged for more than 5 percent of the total operating time in a 6-month block reporting period; in calculating this operating time fraction, if inspection of the fabric filter demonstrates that no corrective action is required, no alarm time is counted; if corrective action is required, each alarm is counted as a minimum of 1 hour; if you take longer than 1 hour to initiate corrective action, the alarm time is counted as the actual amount of time taken by you to initiate corrective action; or performing VE observations of the DIFF or DLS/FF stack at the frequency specified in §63.8620(g) using Method 22 of 40 CFR part 60, appendix A; maintaining no VE from the DIFF or DLS/FF stack; and ii. Verifying that lime is free-flowing via a load cell, carrier gas/lime flow indicator, carrier gas pressure drop measurement system, or other system; recording all monitor or sensor output, and if lime is found not to be free flowing, promptly initiating and completing corrective actions in accordance with your OM&M plan; recording the feeder setting once each shift of operation to verify that the feeder setting is being maintained at or above the level established during the performance test.
3. Kiln equipped with a WS	a. Each emission limit in Table 1 to this subpart and each operating limit in Item 3 of Table 2 to this subpart for kilns equipped with WS.	i. Collecting the scrubber pressure drop data according to §63.8600(a); reducing the scrubber pressure drop data to 3-hour block averages according to §63.8600(a); maintaining the average scrubber pressure drop for each 3-hour block period at or above the average pressure drop established during the performance test; and ii. Collecting the scrubber liquid pH data according to §63.8600(a); reducing the scrubber liquid pH data to 3-hour block averages according to §63.8600(a); maintaining the average scrubber liquid pH for each 3-hour block period at or above the average scrubber liquid pH established during the performance test; and

TABLE 6 TO SUBPART KKKKK OF PART 63.—CONTINUOUS COMPLIANCE WITH EMISSION LIMITATIONS AND WORK PRACTICE STANDARDS—Continued

For each . . .	For the following . . .	You must demonstrate continuous compliance by . . .
		iii. Collecting the scrubber liquid flow rate data according to §63.8600(a); reducing the scrubber liquid flow rate data to 3-hour block averages according to §63.8600(a); maintaining the average scrubber liquid flow rate for each 3-hour block period at or above the average scrubber liquid flow rate established during the performance test; and iv. If chemicals are added to the scrubber water, collecting the scrubber chemical feed rate data according to §63.8600(a); reducing the scrubber chemical feed rate data to 3-hour block averages according to §63.8600(a); maintaining the average scrubber chemical feed rate for each 3-hour block period at or above the average scrubber chemical feed rate established during the performance test.
4. Existing, new, or reconstructed periodic kiln, tunnel kiln, or roller kiln; each tunnel kiln that would be considered reconstructed but for §63.8540 (f)(1); and each tunnel kiln that would be considered reconstructed but for §63.8540(f)(2).	Minimize fuel-based HAP emissions.	i. Maintaining records documenting your use of natural gas, or an equivalent fuel, as the kiln fuel at all times except during periods of natural gas curtailment or supply interruption; and ii. If you intend to use an alternative fuel, submitting a notification of alternative fuel use within 48 hours of the declaration of a period of natural gas curtailment or supply interruption, as defined in §63.8665; and iii. Submitting a report of alternative fuel use within 10 working days after terminating the use of the alternative fuel, as specified in §63.8635(g).

As stated in §63.8635, you must submit each report that applies to you according to the following table:

TABLE 7 TO SUBPART KKKKK OF PART 63.—REQUIREMENTS FOR REPORTS

You must submit . . .	The report must contain . . .	You must submit the report . . .
1. A compliance report	a. If there are no deviations from any emission limitations or work practice standards that apply to you, a statement that there were no deviations from the emission limitations or work practice standards during the reporting period. If there were no periods during which the CMS was out-of-control as specified in your OM&M plan, a statement that there were no periods during which the CMS was out-of-control during the reporting period.	Semiannually according to the requirements in §63.8635(b).
	b. If you have a deviation from any emission limitation (emission limit, operating limit) during the reporting period, the report must contain the information in §63.8635(d) or (e). If there were periods during which the CMS was out-of-control, as specified in your OM&M plan, the report must contain the information in §63.8635(e).	Semiannually according to the requirements in §63.8635(b).
	c. If you had a startup, shutdown, or malfunction during the reporting period and you took actions consistent with your SSMP, the compliance report must include the information in §63.10(d)(5)(i).	Semiannually according to the requirements in §63.8635(b).
2. An immediate startup, shutdown, and malfunction report if you took actions during a startup, shutdown, or malfunction during the reporting period that are not consistent with your SSMP.	a. Actions taken for the event according to the requirements in §63.10(d)(5)(ii).	By fax or telephone within 2 working days after starting actions inconsistent with the plan.
	b. The information in §63.10(d)(5)(ii)	By letter within 7 working days after the end of the event unless you have made alternative arrangements with the permitting authority.
3. A report of alternative fuel use	The information in §63.8635(g)	If you are subject to the work practice standards specified in Table 3 to this subpart, and you use an alternative fuel to fire an affected kiln, by letter within 10 working days after terminating the use of the alternative fuel.

As stated in §63.8655, you must comply with the General Provisions in §§63.1 through 63.15 that apply to you according to the following table:

TABLE 8 TO SUBPART KKKKK OF PART 63.—APPLICABILITY OF GENERAL PROVISIONS TO SUBPART KKKKK

Citation	Subject	Brief description	Applies to subpart KKKKK
§63.1	Applicability	Initial applicability determination; applicability after standard established; permit requirements; extensions, notifications..	Yes.
§63.2	Definitions	Definitions for part 63 standards	Yes.
§63.3	Units and Abbreviations	Units and abbreviations for part 63 standards	Yes.
§63.4	Prohibited Activities	Compliance date; circumvention; severability	Yes.
§63.5	Construction/Reconstruction	Applicability; applications; approvals	Yes.
§63.6(a)	Applicability	General Provisions (GP) apply unless compliance extension; GP apply to area sources that become major.	Yes.
§63.6(b)(1)–(4)	Compliance Dates for New and Reconstructed Sources.	Standards apply at effective date; 3 years after effective date; upon startup; 10 years after construction or reconstruction commences for section 112(f).	Yes.
§63.6(b)(5)	Notification	Must notify if commenced construction or reconstruction after proposal.	Yes.
§63.6(b)(6)	[Reserved].		
§63.6(b)(7)	Compliance Dates for New and Reconstructed area Sources That Become Major.	Area sources that become major must comply with major source standards immediately upon becoming major, regardless of whether required to comply when they were area sources.	Yes.
§63.6(c)(1)–(2)	Compliance Dates for Existing Sources	Comply according to date in subpart, which must be no later than 3 years after effective date; for section 112(f) standards, comply within 90 days of effective date unless compliance extension.	Yes.
§63.6(c)(3)–(4)	[Reserved].		
§63.6(c)(5)	Compliance Dates for Existing Area Sources That Become Major.	Area sources that become major must comply with major source standards by date indicated in subpart or by equivalent time period (for example, 3 years).	Yes.
§63.6(d)	[Reserved].		
§63.6(e)(1)–(2)	Operation & Maintenance	Operate to minimize emissions at all times; correct malfunctions as soon as practicable; requirements independently enforceable; information Administrator will use to determine if operation and maintenance requirements were met.	Yes.
§63.6(e)(3)	Startup, Shutdown, and Malfunction Plan (SSMP).	Requirement for startup, shutdown, and malfunction (SSM) and SSMP; content of SSMP.	Yes.
§63.6(f)(1)	Compliance Except During SSM	You must comply with emission standards at all times except during SSM.	Yes.
§63.6(f)(2)–(3)	Methods for Determining Compliance	Compliance based on performance test, operation and maintenance plans, records, inspection.	Yes.
§63.6(g)	Alternative Standard	Procedures for getting an alternative standard	Yes.
§63.6(h)	Opacity/VE Standards	Requirements for opacity and VE standards	No, not applicable.
§63.6(i)	Compliance Extension	Procedures and criteria for Administrator to grant compliance extension.	Yes.
§63.6(j)	Presidential Compliance Exemption	President may exempt source category	Yes.
§63.7(a)(1)–(2)	Performance Test Dates	Dates for conducting initial performance testing and other compliance demonstrations; must conduct 180 days after first subject to rule.	Yes.
§63.7(a)(3)	Section 114 Authority	Administrator may require a performance test under CAA section 114 at any time.	Yes.
§63.7(b)(1)	Notification of Performance Test	Must notify Administrator 60 days before the test.	Yes.
§63.7(b)(2)	Notification of Rescheduling	Must notify Administrator 5 days before scheduled date of rescheduled date.	Yes.
§63.7(c)	Quality Assurance (QA)/Test Plan	Requirements; test plan approval procedures; performance audit requirements; internal and external QA procedures for testing.	Yes.
§63.7(d)	Testing Facilities	Requirements for testing facilities	Yes.
§63.7(e)(1)	Conditions for Conducting Performance Tests	Performance tests must be conducted under representative conditions.	No, §63.8595 specifies requirements.
		Cannot conduct performance tests during SSM; not a violation to exceed standard during SSM.	Yes.

TABLE 8 TO SUBPART KKKKK OF PART 63.—APPLICABILITY OF GENERAL PROVISIONS TO SUBPART KKKKK—Continued

Citation	Subject	Brief description	Applies to subpart KKKKK
§ 63.7(e)(2)–(3)	Conditions for Conducting Performance Tests	Must conduct according to subpart and EPA test methods unless Administrator approves alternative; must have at least three test runs of at least 1 hour each; compliance is based on arithmetic mean of three runs; conditions when data from an additional test run can be used.	Yes.
§ 63.7(f)	Alternative Test Method	Procedures by which Administrator can grant approval to use an alternative test method.	Yes.
§ 63.7(g)	Performance Test Data Analysis	Must include raw data in performance test report; must submit performance test data 60 days after end of test with the notification of compliance status.	Yes.
§ 63.7(h)	Waiver of Tests	Procedures for Administrator to waive performance test.	Yes.
§ 63.8(a)(1)	Applicability of Monitoring Requirements	Subject to all monitoring requirements in subpart	Yes.
§ 63.8(a)(2)	Performance Specifications	Performance Specifications in appendix B of 40 CFR part 60 apply.	Yes.
§ 63.8(a)(3)	[Reserved].		
§ 63.8(a)(4)	Monitoring with Flares	Requirements for flares in § 63.11 apply	No, not applicable.
§ 63.8(b)(1)	Monitoring	Must conduct monitoring according to standard unless Administrator approves alternative.	Yes.
§ 63.8(b)(2)–(3)	Multiple Effluents and Multiple Monitoring Systems.	Specific requirements for installing and reporting on monitoring systems.	Yes.
§ 63.8(c)(1)	Monitoring System Operation and Maintenance	Maintenance consistent with good air pollution control practices.	Yes.
§ 63.8(c)(1)(i)	Routine and Predictable SSM	Reporting requirements for SSM when action is described in SSMP.	Yes.
§ 63.8(c)(1)(ii)	SSM not in SSMP	Reporting requirements for SSM when action is not described in SSMP.	Yes.
§ 63.8(c)(1)(iii)	Compliance with Operation and Maintenance Requirements.	How Administrator determines if source complying with operation and maintenance requirements.	Yes.
§ 63.8(c)(2)–(3)	Monitoring System Installation	Must install to get representative emission and parameter measurements.	Yes.
§ 63.8(c)(4)	CMS Requirements	Requirements for CMS	No, §§ 63.8575 and 63.8615 specify requirements.
§ 63.8(c)(5)	Continuous Opacity Monitoring System (COMS) Minimum Procedures.	COMS minimum procedures	No, not applicable.
§ 63.8(c)(6)	CMS Requirements	Zero and high level calibration check requirements.	No, § 63.8575 specifies requirements.
§ 63.8(c)(7)–(8)	CMS Requirements	Out-of-control periods	No, § 63.8575 specifies requirements.
§ 63.8(d)	CMS Quality Control	Requirements for CMS quality control	No, § 63.8575 specifies requirements.
§ 63.8(e)	CMS Performance Evaluation	Requirements for CMS performance evaluation	No, § 63.8575 specifies requirements.
§ 63.8(f)(1)–(5)	Alternative Monitoring Method	Procedures for Administrator to approve alternative monitoring.	Yes.
§ 63.8(f)(6)	Alternative to Relative Accuracy Test	Procedures for Administrator to approve alternative relative accuracy test for continuous emission monitoring systems (CEMS).	No, not applicable.
§ 63.8(g)	Data Reduction	COMS and CEMS data reduction requirements	No, not applicable.
§ 63.9(a)	Notification Requirements	Applicability; State delegation	Yes.
§ 63.9(b)	Initial Notifications	Requirements for initial notifications	Yes.
§ 63.9(c)	Request for Compliance Extension	Can request if cannot comply by date or if installed BACT/LAER.	Yes.
§ 63.9(d)	Notification of Special Compliance Requirements for New Source.	For sources that commence construction between proposal and promulgation and want to comply 3 years after effective date.	Yes.
§ 63.9(e)	Notification of Performance Test	Notify Administrator 60 days prior	Yes.
§ 63.9(f)	Notification of VE/Opacity Test	Notify Administrator 30 days prior	No, not applicable.
§ 63.9(g)(1)	Additional Notifications When Using CMS	Notification of performance evaluation	Yes.
§ 63.9(g)(2)–(3)	Additional Notifications When Using CMS	Notification of COMS data use; notification that relative accuracy alternative criterion were exceeded..	No, not applicable.

TABLE 8 TO SUBPART KKKKK OF PART 63.—APPLICABILITY OF GENERAL PROVISIONS TO SUBPART KKKKK—Continued

Citation	Subject	Brief description	Applies to subpart KKKKK
§ 63.9(h)	Notification of Compliance Status	Contents; submittal requirements	Yes.
§ 63.9(i)	Adjustment of Submittal Deadlines	Procedures for Administrator to approve change in when notifications must be submitted.	Yes.
§ 63.9(j)	Change in Previous Information	Must submit within 15 days after the change	Yes.
§ 63.10(a)	Recordkeeping/Reporting	Applicability; general information	Yes.
§ 63.10(b)(1)	General Recordkeeping Requirements	General requirements	Yes.
§ 63.10(b)(2)(i)–(v)	Records Related to SSM	Requirements for SSM records	Yes.
§ 63.10(b)(2)(vi)–(xii) and (xiv).	CMS Records	Records when CMS is malfunctioning, inoperative or out-of-control.	Yes.
§ 63.10(b)(2)(xiii)	Records	Records when using alternative to relative accuracy test.	No, not applicable.
§ 63.10(b)(3)	Records	Applicability Determinations	Yes.
§ 63.10(c)(1)–(15)	Records	Additional records for CMS	No, §§ 63.8575 and 63.8640 specify requirements.
§ 63.10(d)(1) and (2)	General Reporting Requirements	Requirements for reporting; performance test results reporting.	Yes.
§ 63.10(d)(3)	Reporting Opacity or VE Observations	Requirements for reporting opacity and VE	No, not applicable.
§ 63.10(d)(4)	Progress Reports	Must submit progress reports on schedule if under compliance extension.	Yes.
§ 63.10(d)(5)	SSM Reports	Contents and submission	Yes.
§ 63.10(e)(1)–(3)	Additional CMS Reports	Requirements for CMS reporting	No, §§ 63.8575 and 63.8635 specify requirements.
§ 63.10(e)(4)	Reporting COMS data	Requirements for reporting COMS data with performance test data.	No, not applicable.
§ 63.10(f)	Waiver for Recordkeeping/Reporting	Procedures for Administrator to waive	Yes.
§ 63.11	Flares	Requirement for flares	No, not applicable.
§ 63.12	Delegation	State authority to enforce standards	Yes.
§ 63.13	Addresses	Addresses for reports, notifications, requests	Yes.
§ 63.14	Incorporation by Reference	Materials incorporated by reference	Yes.
§ 63.15	Availability of Information	Information availability; confidential information	Yes.

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Federal Register

Friday,
May 16, 2003

Part III

Department of Health and Human Services

Centers for Medicare & Medicaid Services

42 CFR Parts 409, 413, 440, and 483
Medicare Program; Prospective Payment System and Consolidated Billing for Skilled Nursing Facilities—Update; Proposed Rule

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

42 CFR Parts 409, 413, 440, and 483

[CMS–1469–P]

RIN 0938–AL20

Medicare Program; Prospective Payment System and Consolidated Billing for Skilled Nursing Facilities—Update

AGENCY: Centers for Medicare & Medicaid Services (CMS), HHS.

ACTION: Proposed rule.

SUMMARY: This proposed rule would update the payment rates used under the prospective payment system (PPS) for skilled nursing facilities (SNFs), for fiscal year (FY) 2004, as required by statute. Annual updates to the PPS rates are required by section 1888(e) of the Social Security Act (the Act), as amended by the Medicare, Medicaid, and SCHIP Balanced Budget Refinement Act of 1999 (BBRA), and the Medicare, Medicaid, and State Children's Health Insurance Program (SCHIP) Benefits Improvement and Protection Act of 2000 (BIPA), relating to Medicare payments and consolidated billing for SNFs.

DATES: We will consider comments if we receive them at the appropriate address, as provided below, no later than 5 p.m. on July 7, 2003.

ADDRESSES: Mail written comments (one original and three copies) to the following address: Centers for Medicare & Medicaid Services, Department of Health and Human Services, Attention: CMS–1469–P, PO Box 8013, Baltimore, MD 21244–8013.

If you prefer, you may deliver your written comments (one original and three copies) to one of the following addresses: Hubert H. Humphrey Building, Room 443-G, 200 Independence Avenue, SW., Washington, DC 20201, or Centers for Medicare & Medicaid Services, Room C5–14–03, 7500 Security Boulevard, Baltimore, MD 21244–8013.

Comments mailed to those addresses designated for courier delivery may be delayed and could be considered late. Because of staffing and resource limitations, we cannot accept comments by facsimile (FAX) transmission. Please refer to file code CMS–1469–P on each comment. Comments received timely will be available for public inspection as they are received, generally beginning approximately 3 weeks after publication of this document, in Room C5–12–08 of the Centers for Medicare & Medicaid Services, 7500 Security Boulevard, Baltimore, Maryland, Monday through Friday of each week from 8:30 a.m. to 4 p.m. Please call (410) 786–7197 to make an appointment to view comments.

FOR FURTHER INFORMATION CONTACT:

John Davis, (410) 786–0008 (for information related to the Wage Index, and for information related to swing-bed providers).

Ellen Gay, (410) 786–4528 (for information related to the case-mix classification methodology, and for information related to swing-bed providers).

Bill Ullman, (410) 786–5667 (for information related to level of care determinations, consolidated billing, and general information).

SUPPLEMENTARY INFORMATION:

Copies: To order copies of the **Federal Register** containing this document, send your request to: New Orders, Superintendent of Documents, PO Box 371954, Pittsburgh, PA 15250–7954. The cost for each copy is $9. Please specify the date of the issue requested and enclose a check or money order payable to the Superintendent of Documents, or enclose your Visa or Master Card number and expiration date. Credit card orders can also be placed by calling the order desk at (202) 512–1800 (or toll free at 1–888–293–6498) or by faxing to (202) 512–2250. You can also view and photocopy the **Federal Register** document at most libraries designated as Federal Depository Libraries and at many other public and academic libraries throughout the country that receive the **Federal Register**.

To assist readers in referencing sections contained in this document, we are providing the following Table of Contents.

Table of Contents

I. Background
A. Current System for Payment of Skilled Nursing Facility Services Under Part A of the Medicare Program
B. Requirements of the Balanced Budget Act of 1997 (the BBA) for Updating the Prospective Payment System for Skilled Nursing Facilities
C. The Medicare, Medicaid, and SCHIP Balanced Budget Refinement Act of 1999 (the BBRA)
D. The Medicare, Medicaid, and SCHIP Benefits Improvement and Protection Act of 2000 (the BIPA)
E. Skilled Nursing Facility Prospective Payment—General Overview
1. Payment Provisions—Federal Rates
2. Payment Provisions—Initial Transition Period
F. Skilled Nursing Facility Market Basket Index
II. Update of Payment Rates Under the Prospective Payment System for Skilled Nursing Facilities
A. Federal Prospective Payment System
1. Costs and Services Covered by the Federal Rates
2. Methodology Used for the Calculation of the Federal Rates
B. Case-Mix Adjustment
C. Wage Index Adjustment to Federal Rates
D. Updates to the Federal Rates
E. Relationship of RUG-III Classification System to Existing Skilled Nursing Facility Level-of-Care Criteria
F. Initial Three-year Transition Period
G. Example of Computation of Adjusted PPS Rates and SNF Payment
III. The Skilled Nursing Facility Market Basket Index
A. Use of the Skilled Nursing Facility Market Basket Percentage
B. Federal Rate Update Factor
IV. Consolidated Billing
V. Application of the SNF PPS to SNF Services Furnished by Swing-Bed Hospitals
VI. Distinct Part Definition
A. Background
B. Proposed Revision
VII. Provisions of the Proposed Rule
VIII. Collection of Information Requirements
IX. Regulatory Impact Analysis
A. Overall Impact
B. Anticipated Effects
C. Alternatives Considered
D. Conclusion
Regulation Text

In addition, because of the many terms to which we refer by abbreviation in this proposed rule, we are listing these abbreviations and their corresponding terms in alphabetical order below:

ADL	Activity of Daily Living
AHE	Average Hourly Earnings
ARD	Assessment Reference Date
BBA	Balanced Budget Act of 1997, Pub.L. 105–33
BBRA	Medicare, Medicaid and SCHIP Balanced Budget Refinement Act of 1999, Pub.L. 106–113
BEA	(U.S.) Bureau of Economic Analysis
BIPA	Medicare, Medicaid, and SCHIP Benefits Improvement and Protection Act of 2000, Pub.L. 106–554
CAH	Critical Access Hospital
CFR	Code of Federal Regulations
CMS	Centers for Medicare & Medicaid Services
CPT	(Physicians') Current Procedural Terminology
DRG	Diagnosis Related Group
FI	Fiscal Intermediary
FR	Federal Register
FY	Fiscal Year
GAO	General Accounting Office
HCPCS	Healthcare Common Procedure Coding System
ICD–9–CM	International Classification of Diseases, Ninth Edition, Clinical Modification
IFC	Interim Final Rule with Comment Period
MDS	Minimum Data Set
MEDPAR	Medicare Provider Analysis and Review File
MIP	Medicare Integrity Program
MSA	Metropolitan Statistical Area
NECMA	New England County Metropolitan Area
OIG	Office of the Inspector General
OMRA	Other Medicare Required Assessment
PCE	Personal Care Expenditures
PPI	Producer Price Index
PPS	Prospective Payment System
PRM	Provider Reimbursement Manual
RAI	Resident Assessment Instrument
RAP	Resident Assessment Protocol
RAVEN	Resident Assessment Validation Entry
RFA	Regulatory Flexibility Act, Pub. L. 96–354
RIA	Regulatory Impact Analysis
RUG	Resource Utilization Groups
SCHIP	State Children's Health Insurance Program
SNF	Skilled Nursing Facility
STM	Staff Time Measure
UMRA	Unfunded Mandates Reform Act, Pub. L. 104–4

I. Background

On July 31, 2002, we published a notice in the **Federal Register** (67 FR 49798) that set forth updates to the payment rates used under the prospective payment system (PPS) for skilled nursing facilities (SNFs), for fiscal year (FY) 2003. Annual updates to the PPS rates are required by section 1888(e) of the Social Security Act (the Act), as amended by the Medicare, Medicaid, and SCHIP Balanced Budget Refinement Act of 1999 (the BBRA) and the Medicare, Medicaid, and SCHIP Benefits Improvement and Protection Act of 2000 (the BIPA), relating to Medicare payments and consolidated billing for SNFs.

A. Current System for Payment of Skilled Nursing Facility Services Under Part A of the Medicare Program

Section 4432 of the Balanced Budget Act of 1997 (the BBA) amended section 1888 of the Act to provide for the implementation of a per diem PPS for SNFs, covering all costs (routine, ancillary, and capital-related) of covered SNF services furnished to beneficiaries under Part A of the Medicare program, effective for cost reporting periods beginning on or after July 1, 1998. We propose to update the per diem payment rates for SNFs for FY 2004. Major elements of the SNF PPS include:

• *Rates.* Per diem Federal rates were established for urban and rural areas using allowable costs from FY 1995 cost reports. These rates also included an estimate of the cost of services that, before July 1, 1998, had been paid under Part B but were furnished to Medicare beneficiaries in a SNF during a Part A covered stay. The rates were adjusted annually using a SNF market basket index. Rates were case-mix adjusted using a classification system (Resource Utilization Groups, version III (RUG–III)) based on beneficiary assessments (using the Minimum Data Set (MDS) 2.0). The rates were also adjusted by the hospital wage index to account for geographic variation in wages. (In section II.C of this preamble, we discuss the wage index adjustment in detail.) A correction notice was published on December 27, 2002 (67 FR 79123) that announced corrections to several of the wage factors. Additionally, as noted in the July 31, 2002 update notice (67 FR 49798), section 101 of the BBRA and certain sections of the BIPA also affect the payment rate.

• *Transition.* The SNF PPS included an initial 3-year, phased transition that blended a facility-specific payment rate with the Federal case-mix adjusted rate. For each cost reporting period after a facility migrated to the new system, the facility-specific portion of the blend decreased and the Federal portion increased in 25 percentage point increments. For most facilities, the facility-specific rate was based on allowable costs from FY 1995; however, since the last year of the transition was FY 2001, all facilities were paid at the full Federal rate by the following fiscal year (FY 2002). Therefore, we are no longer including adjustment factors related to facility-specific rates for the coming fiscal year.

• *Coverage.* The establishment of the SNF PPS did not change Medicare's fundamental requirements for SNF coverage. However, because RUG–III classification is based, in part, on the beneficiary's need for skilled nursing care and therapy, we have attempted, where possible, to coordinate claims review procedures involving level of care determinations with the outputs of beneficiary assessment and RUG–III classifying activities. We discuss this coordination in greater detail in section II.E of this preamble. Another SNF benefit requirement is that the SNF in which the services are furnished must be certified by Medicare as meeting the requirements for program participation contained in section 1819 of the Act. This provision of the law defines a SNF as "* * * an institution (or a distinct part of an institution). * * *" In section VI of this preamble, we discuss a clarification that we propose to make in defining the term "distinct part" with respect to SNFs.

In addition, we are taking this opportunity to make a technical correction in a cross-reference that appears in § 409.20(c) of the regulations. Section 409.20 provides a general introduction to the subsequent sections (§ 409.21 through § 409.36) that set forth the specific requirements pertaining to the SNF benefit. However, in referring to the sections that follow, the cross-reference in § 409.20(c) concerning terminology inadvertently omits a reference to § 409.21, and we would now correct that omission by revising the cross-reference to read "§ 409.21 through § 409.36".

• *Consolidated Billing.* The SNF PPS includes a consolidated billing provision (described in greater detail in section IV of this proposed rule) that requires a SNF to submit consolidated Medicare bills for almost all of the services that its residents receive during the course of a covered Part A stay. (In addition, this provision places with the SNF the Medicare billing responsibility for physical, occupational, and speech-language therapy that the resident receives during a noncovered stay.) The statute excludes from the consolidated billing provision a small list of services—primarily those of physicians and certain other types of practitioners—which remain separately billable to Part B by the outside entity that furnishes them.

• *Application of the SNF PPS to SNF services furnished by swing-bed hospitals.* Section 1883 of the Act permits certain small, rural hospitals to enter into a Medicare swing-bed agreement, under which the hospital can use its beds to provide either acute or SNF care, as needed. For critical access hospitals (CAHs), Part A pays on a reasonable cost basis for SNF services furnished under a swing-bed agreement. However, in accordance with section 1888(e)(7) of the Act, such services furnished by non-CAH rural hospitals are paid under the SNF PPS, effective with cost reporting periods beginning on or after July 1, 2002. A more detailed discussion of this provision appears in section V of this proposed rule.

B. Requirements of the Balanced Budget Act of 1997 (the BBA) for Updating the Prospective Payment System for Skilled Nursing Facilities

Section 1888(e)(4)(H) of the Act requires that we publish in the **Federal Register:**

1. The unadjusted Federal per diem rates to be applied to days of covered SNF services furnished during the FY.

2. The case-mix classification system to be applied with respect to these services during the FY.

3. The factors to be applied in making the area wage adjustment with respect to these services.

In the July 30, 1999 final rule (64 FR 41670), we indicated that we would announce any changes to the guidelines for Medicare level of care determinations related to modifications in the RUG–III classification structure (see section II.E of this preamble).

Along with a number of other revisions discussed later in this preamble, this proposed rule provides the annual updates to the Federal rates as mandated by the Act.

C. The Medicare, Medicaid, and SCHIP Balanced Budget Refinement Act of 1999 (the BBRA)

There were several provisions in the BBRA that resulted in adjustments to the SNF PPS. These provisions were described in detail in the final rule that we published in the **Federal Register** on July 31, 2000 (65 FR 46770). In particular, section 101 of the BBRA provided for a temporary 20 percent increase in the per diem adjusted payment rates for 15 specified RUG–III groups (SE3, SE2, SE1, SSC, SSB, SSA, CC2, CC1, CB2, CB1, CA2, CA1, RHC, RMC, and RMB). Under the law, this temporary increase remains in effect until the later of October 1, 2000, or the implementation of case-mix refinements in the PPS. Section 101 also included a 4 percent across-the-board increase in the adjusted Federal per diem payment rates each year for FYs 2001 and 2002, exclusive of the 20 percent increase. Accordingly, this 4 percent temporary increase has now expired.

We included further information on all of the provisions of the BBRA that affect the SNF PPS in Program Memoranda A–99–53 and A–99–61 (December 1999), and Program Memorandum AB–00–18 (March 2000). In addition, for swing-bed hospitals with more than 49 (but less than 100) beds, section 408 of the BBRA provided for the repeal of certain statutory restrictions on length of stay and aggregate payment for patient days, effective with the end of the SNF PPS transition period described in section 1888(e)(2)(E) of the Act. In the July 31, 2001 final rule (66 FR 39562), we made conforming changes to the regulations in § 413.114(d), effective for services furnished in cost reporting periods beginning on or after July 1, 2002.

D. The Medicare, Medicaid, and SCHIP Benefits Improvement and Protection Act of 2000 (the BIPA)

The BIPA also included several provisions that resulted in adjustments to the PPS for SNFs. These provisions were described in detail in the final rule that we published in the **Federal Register** on July 31, 2001 (66 FR 39562) as follows:

- Section 203 of the BIPA exempted critical access hospital (CAH) swing-beds from the SNF PPS; we included further information on this provision in Program Memorandum A–01–09 (January 16, 2001).
- Section 311 of the BIPA eliminated the one percent reduction in the SNF market basket that the statutory update formula had previously specified for FY 2001, and changed the one percent reduction specified for FYs 2002 and 2003 to a 0.5 percent reduction. This section also required us to conduct a study of alternative case-mix classification systems for the SNF PPS, and to submit a report to the Congress by January 1, 2005.
- Section 312 of the BIPA provided for a temporary 16.66 percent increase in the nursing component of the case-mix adjusted Federal rate for services furnished on or after April 1, 2001, and before October 1, 2002. Accordingly, this temporary increase has now expired. This section also required the General Accounting Office (GAO) to conduct an audit of SNF nursing staff ratios and submit a report to the Congress on whether the temporary increase in the nursing component should be continued.
- Section 313 of the BIPA repealed the consolidated billing requirement for services (other than physical, occupational, and speech-language therapy) furnished to SNF residents during noncovered stays, effective January 1, 2001.
- Section 314 of the BIPA adjusted the payment rates for all of the rehabilitation RUGs to correct an anomaly under which the existing payment rates for the RHC, RMC, and RMB rehabilitation groups were higher than the rates for some other, more intensive rehabilitation RUGs.
- Section 315 of the BIPA authorized us to establish a geographic reclassification procedure that is specific to SNFs, but only after collecting the data necessary to establish a SNF wage index that is based on wage data from nursing homes.

We included further information on several of these provisions in Program Memorandum A–01–08 (January 16, 2001).

E. Skilled Nursing Facility Prospective Payment—General Overview

We implemented the Medicare SNF PPS for cost reporting periods beginning on or after July 1, 1998. Under the PPS, we pay SNFs through prospective, case-mix adjusted per diem payment rates applicable to all covered SNF services. These payment rates cover all the costs of furnishing covered skilled nursing services (routine, ancillary, and capital-related costs) other than costs associated with approved educational activities. Covered SNF services include post-hospital services for which benefits are provided under Part A and all items and services that, before July 1, 1998, had been paid under Part B (other than physician and certain other services specifically excluded under the BBA) but furnished to Medicare beneficiaries in a SNF during a covered Part A stay. A complete discussion of these provisions appears in the May 12, 1998 interim final rule (63 FR 26252).

1. Payment Provisions—Federal Rate

The PPS uses per diem Federal payment rates based on mean SNF costs in a base year updated for inflation to the first effective period of the PPS. We developed the Federal payment rates using allowable costs from hospital-based and freestanding SNF cost reports for reporting periods beginning in FY 1995. The data used in developing the Federal rates also incorporated an estimate of the amounts that would be payable under Part B for covered SNF services furnished to individuals during the course of a covered Part A stay in a SNF.

In developing the rates for the initial period, we updated costs to the first effective year of PPS (the 15-month period beginning July 1, 1998) using a SNF market basket, and then standardized for the costs of facility differences in case-mix and for geographic variations in wages. Providers that received new provider exemptions from the routine cost limits were excluded from the database used to compute the Federal payment rates, as well as costs related to payments for exceptions to the routine cost limits. In accordance with the formula prescribed in the BBA, we set the Federal rates at a level equal to the weighted mean of freestanding costs plus 50 percent of the difference between the freestanding mean and weighted mean of all SNF costs (hospital-based and freestanding) combined. We computed and applied separately the payment rates for facilities located in urban and rural areas. In addition, we adjusted the portion of the Federal rate attributable to wage-related costs by a wage index.

The Federal rate also incorporates adjustments to account for facility case-mix, using a classification system that accounts for the relative resource utilization of different patient types. This classification system, Resource Utilization Groups, version III (RUG–III), uses beneficiary assessment data from the Minimum Data Set (MDS) completed by SNFs to assign beneficiaries to one of 44 RUG–III groups. The May 12, 1998 interim final rule (63 FR 26252) included a complete and detailed description of the RUG–III classification system, and a further discussion appears in section II.B of this preamble.

The Federal rates in this proposed rule reflect an update to the rates that we published in the July 31, 2002 **Federal Register** (67 FR 49798) equal to the full change in the SNF market basket index. According to section 1888(e)(4)(E)(ii)(IV) of the Act, for FY 2004, we would update the rate by adjusting the current rates by the full SNF market basket index.

2. Payment Provisions—Initial Transition Period

The SNF PPS included an initial, phased transition from a facility-specific rate (which reflected the individual facility's historical cost experience) to the Federal case-mix adjusted rate. The transition extended through the facility's first three cost reporting periods under the PPS, up to, and potentially including, the one that began in FY 2001. Furthermore, pursuant to section 102 of BBRA, a facility could nonetheless elect to be paid entirely under the Federal rates.

Accordingly, starting with cost reporting periods beginning in FY 2002, we base payments entirely on the Federal rates and, as mentioned previously in this preamble, we no longer include adjustment factors related to facility-specific rates for the coming fiscal year.

F. Skilled Nursing Facility Market Basket Index

Section 1888(e)(5) of the Act requires us to establish a SNF market basket index that reflects changes over time in the prices of an appropriate mix of goods and services included in the covered SNF services. The SNF market basket index is used to update the Federal rates on an annual basis, and is discussed in greater detail in section III of this preamble.

II. Update of Payment Rates Under the Prospective Payment System for Skilled Nursing Facilities

A. Federal Prospective Payment System

This proposed rule sets forth a schedule of Federal prospective payment rates applicable to Medicare Part A SNF services beginning October 1, 2003. The schedule incorporates per diem Federal rates that provide Part A payment for all costs of services furnished to a beneficiary in a SNF during a Medicare-covered stay.

1. Costs and Services Covered by the Federal Rates

The Federal rates apply to all costs (routine, ancillary, and capital-related costs) of covered SNF services other than costs associated with approved educational activities as defined in § 413.85. Under section 1888(e)(2) of the Act, covered SNF services include post-hospital SNF services for which benefits are provided under Part A (the hospital insurance program), as well as all items and services (other than those services excluded by statute) that, before July 1, 1998, were paid under Part B (the supplementary medical insurance program) but furnished to Medicare beneficiaries in a SNF during a Part A covered stay. (These excluded service categories are discussed in greater detail in section V.B.2 of the May 12, 1998 interim final rule (63 FR 26295–97)).

2. Methodology Used for the Calculation of the Federal Rates

The proposed FY 2004 rates would reflect an update using the full amount of the latest market basket index. The FY 2004 market basket increase factor is 2.9 percent. Consistent with previous years, this factor may be revised in the final rule when later forecast data are available. For a complete description of the multi-step process, see the May 12, 1998 interim final rule (63 FR 26252). We note that in accordance with section 101(a) of the BBRA and section 314 of the BIPA, the existing, temporary increase in the per diem adjusted payment rates of 20 percent for certain specified RUGs (and 6.7 percent for certain others) remains in effect until the implementation of case-mix refinements. As we discuss elsewhere in this proposed rule, while we are proceeding with our ongoing research in this area, we are not proposing to implement case-mix refinements in this proposed rule.

We used the SNF market basket to adjust each per diem component of the Federal rates forward to reflect cost increases occurring between the midpoint of the Federal fiscal year beginning October 1, 2002, and ending September 30, 2003, and the midpoint of the Federal fiscal year beginning October 1, 2003, and ending September 30, 2004, to which the payment rates apply. In accordance with section 1888(e)(4)(E)(ii)(IV) of the Act, the payment rates for FY 2004 are updated by a factor equal to the market basket index percentage increase to determine the payment rates for FY 2004. The rates would be further adjusted by a wage index budget neutrality factor, described later in this section. Tables 1 and 2 reflect the updated components of the unadjusted Federal rates for FY 2004.

TABLE 1.—UNADJUSTED FEDERAL RATE PER DIEM: URBAN

Rate component	Nursing—case-mix	Therapy—case-mix	Therapy—non-case-mix	Non-case-mix
Per Diem Amount	$125.15	$94.27	$12.42	$63.87

TABLE 2.—UNADJUSTED FEDERAL RATE PER DIEM: RURAL

Rate component	Nursing—case-mix	Therapy—case-mix	Therapy-non-case-mix	Non-case-mix
Per Diem Amount	$119.57	$108.70	$13.26	$65.06

B. Case-Mix Adjustment

Under the BBA, we must publish the SNF PPS case-mix classification methodology applicable for the next Federal FY before August 1 of each year. As noted in the following discussion, we are proceeding with our ongoing research regarding possible refinements in the existing case-mix classification system, but we are not proposing to implement the refinements in this proposed rule.

As discussed previously in this preamble, section 101(a) of the BBRA provided for a temporary 20 percent increase in the per diem adjusted payment rates for 15 specified RUG–III groups. This legislation specified that the 20 percent increase would be effective for SNF services furnished on or after April 1, 2000, and would continue until the later of: (1) October 1, 2000, or (2) implementation of a refined case-mix classification system under section 1888(e)(4)(G)(i) of the Act that would better account for medically complex patients.

In the SNF PPS proposed rule for FY 2001 (65 FR 19190, April 10, 2000), we proposed making an extensive, comprehensive set of refinements to the existing case-mix classification system that collectively would have significantly expanded the existing 44-group structure. However, when our subsequent validation analyses indicated that the refinements would afford only a limited degree of improvement in explaining resource utilization relative to the significant increase in complexity that they would entail, we decided not to implement them at that time (see the FY 2001 final rule published July 31, 2000 (65 FR 46773)). Nevertheless, since the BBRA provision had demonstrated a Congressional interest in improving the ability of the payment system to account for the care furnished to medically complex patients in SNFs, we continued to conduct research in this area.

The Congress subsequently enacted section 311(e) of the BIPA, which directed us to conduct a study of the different systems for categorizing patients in Medicare SNFs in a manner that accounts for the relative resource utilization of different patient types, and to issue a report with any appropriate recommendations to the Congress by January 1, 2005. The lengthy timeframe for conducting the study, and its broad mandate to consider various classification systems and the full range of patient types, stood in sharp contrast to the BBRA language regarding more incremental refinements to the existing case-mix classification system under section 1888(e)(4)(G)(i) of the Act, and made clear that implementing the latter type of refinements to the existing system in order to better account for medically complex patients need not await the completion of the more comprehensive changes envisioned in the BIPA. Accordingly, we considered the possibility of including such refinements as part of last year's annual update of the SNF payment rates.

However, in the July 31, 2002 update notice (67 FR 49801), we determined that, while the research gives a sound basis for developing improvements to the SNF PPS, we need additional time to review and analyze the implications. Therefore, we decided not to implement any case-mix refinements at that time, leaving the current classification system in place. This also left in place the temporary add-on payments enacted in section 101(a) of the BBRA.

Accordingly, the payment rates set forth in this proposed rule reflect the continued use of the 44-group RUG–III classification system discussed in the May 12, 1998 interim final rule (63 FR 26252). Consequently, in this proposed rule, we will also maintain the add-ons to the Federal rates for the specified RUG–III groups required by section 101(a) of the BBRA and subsequently modified by section 314 of the BIPA. The case-mix adjusted payment rates are listed separately for urban and rural SNFs in Tables 3 and 4, with the corresponding case-mix values. These tables do not reflect the add-ons to the specified RUG–III groups provided for in the BBRA, which are applied only after all other adjustments (wage and case-mix) have been made.

Meanwhile, we are continuing to explore both short-term and longer-range revisions to our case-mix classification methodology. In July 2001, we awarded a contract to the Urban Institute for performance of research to aid us in making incremental refinements to the case-mix classification system under section 1888(e)(4)(G)(i) of the Act and starting the case-mix study mandated by section 311(e) of the BIPA. The results of the research in which we are currently engaged will be included in the report to the Congress that section 311(e) of the BIPA requires us to submit by January 1, 2005. As we noted in the May 10, 2001 proposed rule (66 FR 23990), this research may also support a longer term goal of developing more integrated approaches for the payment and delivery system for Medicare post acute services generally. This broader, ongoing research project will pursue several avenues in studying various case-mix classification systems. We have encouraging preliminary results from incorporating comorbidities and complications into the classification strategy, and will thoroughly explore and evaluate this and other approaches in our ongoing work.

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Table 3
CASE-MIX ADJUSTED FEDERAL RATES AND ASSOCIATED INDEXES
URBAN

RUG-III Category	Nursing Index	Therapy Index	Nursing Compo-nent	Therapy Compo-nent	Non-case Mix Therapy Comp	Non-case Mix Compo-nent	Total Rate
RUC	1.30	2.25	162.70	212.11		63.87	438.68
RUB	0.95	2.25	118.89	212.11		63.87	394.87
RUA	0.78	2.25	97.62	212.11		63.87	373.60
RVC	1.13	1.41	141.42	132.92		63.87	338.21
RVB	1.04	1.41	130.16	132.92		63.87	326.95
RVA	0.81	1.41	101.37	132.92		63.87	298.16
RHC	1.26	0.94	157.69	88.61		63.87	310.17
RHB	1.06	0.94	132.66	88.61		63.87	285.14
RHA	0.87	0.94	108.88	88.61		63.87	261.36
RMC	1.35	0.77	168.95	72.59		63.87	305.41
RMB	1.09	0.77	136.41	72.59		63.87	272.87
RMA	0.96	0.77	120.14	72.59		63.87	256.60
RLB	1.11	0.43	138.92	40.54		63.87	243.33
RLA	0.80	0.43	100.12	40.54		63.87	204.53
SE3	1.70		212.76		12.42	63.87	289.05
SE2	1.39		173.96		12.42	63.87	250.25
SE1	1.17		146.43		12.42	63.87	222.72
SSC	1.13		141.42		12.42	63.87	217.71
SSB	1.05		131.41		12.42	63.87	207.70
SSA	1.01		126.40		12.42	63.87	202.69
CC2	1.12		140.17		12.42	63.87	216.46
CC1	0.99		123.90		12.42	63.87	200.19
CB2	0.91		113.89		12.42	63.87	190.18
CB1	0.84		105.13		12.42	63.87	181.42
CA2	0.83		103.87		12.42	63.87	180.16
CA1	0.75		93.86		12.42	63.87	170.15
IB2	0.69		86.35		12.42	63.87	162.64
IB1	0.67		83.85		12.42	63.87	160.14
IA2	0.57		71.34		12.42	63.87	147.63
IA1	0.53		66.33		12.42	63.87	142.62
BB2	0.68		85.10		12.42	63.87	161.39
BB1	0.65		81.35		12.42	63.87	157.64

BA2	0.56	[redacted]	70.08	[redacted]	12.42	63.87	146.37
BA1	0.48		60.07		12.42	63.87	136.36
PE2	0.79		98.87		12.42	63.87	175.16
PE1	0.77		96.37		12.42	63.87	172.66
PD2	0.72		90.11		12.42	63.87	166.40
PD1	0.70		87.61		12.42	63.87	163.90
PC2	0.65		81.35		12.42	63.87	157.64
PC1	0.64		80.10		12.42	63.87	156.39
PB2	0.51		63.83		12.42	63.87	140.12
PB1	0.50		62.58		12.42	63.87	138.87
PA2	0.49		61.32		12.42	63.87	137.61
PA1	0.46		57.57		12.42	63.87	133.86

Table 4
CASE-MIX ADJUSTED FEDERAL RATES AND ASSOCIATED INDEXES
RURAL

RUG-III Category	Nursing Index	Therapy Index	Nursing Component	Therapy Component	Non-case Mix Therapy Comp	Non-case Mix Component	Total Rate
RUC	1.30	2.25	155.44	244.58	[redacted]	65.06	465.08
RUB	0.95	2.25	113.59	244.58		65.06	423.23
RUA	0.78	2.25	93.26	244.58		65.06	402.90
RVC	1.13	1.41	135.11	153.27		65.06	353.44
RVB	1.04	1.41	124.35	153.27		65.06	342.68
RVA	0.81	1.41	96.85	153.27		65.06	315.18
RHC	1.26	0.94	150.66	102.18		65.06	317.90
RHB	1.06	0.94	126.74	102.18		65.06	293.98
RHA	0.87	0.94	104.03	102.18		65.06	271.27
RMC	1.35	0.77	161.42	83.70		65.06	310.18
RMB	1.09	0.77	130.33	83.70		65.06	279.09
RMA	0.96	0.77	114.79	83.70		65.06	263.55
RLB	1.11	0.43	132.72	46.74		65.06	244.52
RLA	0.80	0.43	95.66	46.74		65.06	207.46
SE3	1.70	[redacted]	203.27	[redacted]	13.26	65.06	281.59
SE2	1.39		166.20		13.26	65.06	244.52
SE1	1.17		139.90		13.26	65.06	218.22
SSC	1.13		135.11		13.26	65.06	213.43
SSB	1.05		125.55		13.26	65.06	203.87
SSA	1.01		120.77		13.26	65.06	199.09
CC2	1.12		133.92		13.26	65.06	212.24
CC1	0.99		118.37		13.26	65.06	196.69
CB2	0.91		108.81		13.26	65.06	187.13
CB1	0.84		100.44		13.26	65.06	178.76
CA2	0.83		99.24		13.26	65.06	177.56
CA1	0.75		89.68		13.26	65.06	168.00
IB2	0.69		82.50		13.26	65.06	160.82
IB1	0.67		80.11		13.26	65.06	158.43
IA2	0.57		68.15		13.26	65.06	146.47
IA1	0.53		63.37		13.26	65.06	141.69
BB2	0.68		81.31		13.26	65.06	159.63
BB1	0.65		77.72		13.26	65.06	156.04

BA2	0.56	66.96	13.26	65.06	145.28
BA1	0.48	57.39	13.26	65.06	135.71
PE2	0.79	94.46	13.26	65.06	172.78
PE1	0.77	92.07	13.26	65.06	170.39
PD2	0.72	86.09	13.26	65.06	164.41
PD1	0.70	83.70	13.26	65.06	162.02
PC2	0.65	77.72	13.26	65.06	156.04
PC1	0.64	76.52	13.26	65.06	154.84
PB2	0.51	60.98	13.26	65.06	139.30
PB1	0.50	59.79	13.26	65.06	138.11
PA2	0.49	58.59	13.26	65.06	136.91
PA1	0.46	55.00	13.26	65.06	133.32

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C. Wage Index Adjustment to Federal Rates

Section 1888(e)(4)(G)(ii) of the Act requires that we adjust the Federal rates to account for differences in area wage levels, using a wage index that we find appropriate. Since the inception of a PPS for SNFs, we have used hospital wage data in developing a wage index to be applied to SNFs. We propose to continue that practice for FY 2004.

Section 315 of the BIPA authorizes us to establish a reclassification system for SNFs, similar to the hospital methodology. This geographic reclassification system cannot be implemented until we have collected the data necessary to establish an area wage index for SNFs based on their wage data. We presented a comprehensive discussion of this wage data in the May 10, 2001 proposed rule (66 FR 23984) and the July 31, 2001 final rule (66 FR 39562).

In the May 10, 2001 proposed rule, we published a wage index prototype based on SNF data, along with the wage index based on the hospital wage data that was used in the preceding year's final rule (July 31, 2000, 65 FR 46770). In addition, we included a discussion of the wage index computations for the SNF prototype. We also indicated our concern about the reliability of the existing data used in establishing a SNF wage index, in view of the significant variations in the SNF-specific wage data and the large number of SNFs that are unable to provide adequate wage and hourly data. Accordingly, we expressed the belief that a wage index based on hospital wage data remains the best and most appropriate to use in adjusting payments to SNFs, since both hospitals and SNFs compete in the same labor markets.

In the July 31, 2001 final rule (66 FR 39579), we indicated that we had decided not to adopt the SNF-specific wage index prototype from the proposed rule, citing concerns such as the significant amount of volatility in the data. In addition, while we acknowledged that auditing all SNFs would provide more accurate and reliable data, we observed that this would place a burden on providers in terms of recordkeeping and completion of the cost report worksheet. We also noted that adopting such an approach would require a significant commitment of resources by us and by our contractors:

Developing a desk review and audit program similar to that required in the hospital setting would require significant resources. The fiscal intermediaries (FIs) that are involved in preparing the hospital wage data currently spend considerable resources to ensure the accuracy of the wage data submitted by approximately 6,000 hospitals. This process involves editing, reviewing, auditing, and performing desk reviews of the data. Requiring FIs to do the same for the approximately 14,000 SNFs would nearly triple the FIs' workload and budgets in this area. (66 FR 39579).

While we continue to believe that the development of a SNF-specific wage index potentially could improve the accuracy of SNF payments, we do not regard an undertaking of this magnitude as being feasible within the current level of programmatic resources. However, we remain willing to consider the adoption of a SNF-specific wage index should sufficient staffing and budgetary resources to support it become available in the future.

We also propose to continue use of the FY 2003 wage index to adjust SNF PPS payments beginning October 1, 2003. The wage indexes published on July 31, 2002 (67 FR 49798) have undergone a number of changes to reflect certain changes in the data that were not foreseen prior to publication. For example, the Killeen-Temple, Texas Metropolitan Statistical Area (MSA) had two changes to its wage index during the course of the year. While this is consistent with the regulations governing mid-year corrections in the hospital wage index, it results in uncertainty for SNFs in knowing the wage index that will be applied to their payments at the beginning of the year. Such changes also prevent us from calculating the most accurate wage index budget neutrality factor, discussed later in this section. It is our intent that, for each future year, we will use a wage index based on the most recently published final hospital wage index data. In using the most recently published final data, we can be assured that the wage index published in each year's update will be used throughout the year to adjust payments. Therefore, providers and other interested parties who use the wage indexes to prepare budget and payment forecasts can be assured that the wage index will not change, thus also assuring the prospective nature of the SNF payment system. The policy of using the most recently published hospital wage index would also conform to the approach currently used in Medicare payment systems for other provider types, including home health agencies (HHAs) and inpatient rehabilitation hospitals.

The wage index adjustment would be applied to the proposed labor-related portion of the Federal rate, which is 76.435 percent of the total rate. This percentage reflects the labor-related relative importance for FY 2004. The labor-related relative importance is calculated from the SNF market basket, and approximates the labor-related portion of the total costs after taking into account historical and projected price changes between the base year and FY 2004. The price proxies that move the different cost categories in the market basket do not necessarily change at the same rate, and the relative importance captures these changes. Accordingly, the relative importance figure more closely reflects the cost share weights for FY 2004 than the base year weights from the SNF market basket.

We calculate the labor-related relative importance for FY 2004 in four steps. First, we compute the FY 2004 price index level for the total market basket and each cost category of the market basket. Second, we calculate a ratio for each cost category by dividing the FY 2004 price index level for that cost category by the total market basket price index level. Third, we determine the FY 2004 relative importance for each cost category by multiplying this ratio by the base year (FY 1997) weight. Finally, we sum the FY 2004 relative importance for each of the labor-related cost categories (wages and salaries, employee benefits, nonmedical professional fees, labor-intensive services, and capital-related expenses) to produce the FY 2004 labor-related relative importance. Tables 5 and 6 show the Federal rates by labor-related and non-labor-related components.

TABLE 5.—CASE-MIX ADJUSTED FEDERAL RATES FOR URBAN SNFS BY LABOR AND NON-LABOR COMPONENT

RUG III category	Total rate	Labor portion	Non-labor portion
RUC	438.68	335.31	103.37
RUB	394.87	301.82	93.05
RUA	373.60	285.56	88.04
RVC	338.21	258.51	79.70
RVB	326.95	249.90	77.05
RVA	298.16	227.90	70.26
RHC	310.17	237.08	73.09
RHB	285.14	217.95	67.19
RHA	261.36	199.77	61.59
RMC	305.41	233.44	71.97
RMB	272.87	208.57	64.30
RMA	256.60	196.13	60.47
RLB	243.33	185.99	57.34
RLA	204.53	156.33	48.20
SE3	289.05	220.94	68.11
SE2	250.25	191.28	58.97
SE1	222.72	170.24	52.48
SSC	217.71	166.41	51.30
SSB	207.70	158.76	48.94
SSA	202.69	154.93	47.76
CC2	216.46	165.45	51.01

TABLE 5.—CASE-MIX ADJUSTED FEDERAL RATES FOR URBAN SNFS BY LABOR AND NON-LABOR COMPONENT—Continued

RUG III category	Total rate	Labor portion	Non-labor portion
CC1	200.19	153.02	47.17
CB2	190.18	145.36	44.82
CB1	181.42	138.67	42.75
CA2	180.16	137.71	42.45
CA1	170.15	130.05	40.10
IB2	162.64	124.31	38.33
IB1	160.14	122.40	37.74
IA2	147.63	112.84	34.79
IA1	142.62	109.01	33.61
BB2	161.39	123.36	38.03
BB1	157.64	120.49	37.15
BA2	146.37	111.88	34.49
BA1	136.36	104.23	32.13
PE2	175.16	133.88	41.28
PE1	172.66	131.97	40.69
PD2	166.40	127.19	39.21
PD1	163.90	125.28	38.62
PC2	157.64	120.49	37.15
PC1	156.39	119.54	36.85
PB2	140.12	107.10	33.02
PB1	138.87	106.15	32.72
PA2	137.61	105.18	32.43
PA1	133.86	102.32	31.54

TABLE 6.—CASE-MIX ADJUSTED FEDERAL RATES FOR RURAL SNFS BY LABOR AND NON-LABOR COMPONENT

RUG III category	Total rate	Labor portion	Non-labor portion
RUC	465.08	355.48	109.60
RUB	423.23	323.50	99.73
RUA	402.90	307.96	94.94
RVC	353.44	270.15	83.29
RVB	342.68	261.93	80.75
RVA	315.18	240.91	74.27
RHC	317.90	242.99	74.91
RHB	293.98	224.70	69.28
RHA	271.27	207.35	63.92
RMC	310.18	237.09	73.09
RMB	279.09	213.32	65.77
RMA	263.55	201.44	62.11
RLB	244.52	186.90	57.62
RLA	207.46	158.57	48.89
SE3	281.59	215.23	66.36
SE2	244.52	186.90	57.62
SE1	218.22	166.80	51.42
SSC	213.43	163.14	50.29
SSB	203.87	155.83	48.04
SSA	199.09	152.17	46.92
CC2	212.24	162.23	50.01
CC1	196.69	150.34	46.35
CB2	187.13	143.03	44.10
CB1	178.76	136.64	42.12
CA2	177.56	135.72	41.84
CA1	168.00	128.41	39.59
IB2	160.82	122.92	37.90
IB1	158.43	121.10	37.33
IA2	146.47	111.95	34.52
IA1	141.69	108.30	33.39
BB2	159.63	122.01	37.62
BB1	156.04	119.27	36.77

TABLE 6.—CASE-MIX ADJUSTED FEDERAL RATES FOR RURAL SNFS BY LABOR AND NON-LABOR COMPONENT—Continued

RUG III category	Total rate	Labor portion	Non-labor portion
BA2	145.28	111.04	34.24
BA1	135.71	103.73	31.98
PE2	172.78	132.06	40.72
PE1	170.39	130.24	40.15
PD2	164.41	125.67	38.74
PD1	162.02	123.84	38.18
PC2	156.04	119.27	36.77
PC1	154.84	118.35	36.49
PB2	139.30	106.47	32.83
PB1	138.11	105.56	32.55
PA2	136.91	104.65	32.26
PA1	133.32	101.90	31.42

Section 1888(e)(4)(G)(ii) of the Act also requires that we apply this wage index in a manner that does not result in aggregate payments that are greater or lesser than would otherwise be made in the absence of the wage adjustment. In this sixth PPS year (Federal rates effective October 1, 2003), we are reapplying, or applying, the wage index applicable to SNF payments using the hospital wage data applicable to FY 2003 payments (as discussed earlier in this section) and applying an adjustment to fulfill the budget neutrality requirement. This requirement will be met by multiplying each of the components of the unadjusted Federal rates by a factor equal to the ratio of the volume weighted mean wage adjustment factor (using the wage index from the previous year) to the volume weighted mean wage adjustment factor, using the wage index for the FY beginning October 1, 2003. The same volume weights are used in both the numerator and denominator and will be derived from 1997 Medicare Provider Analysis and Review File (MEDPAR) data. The wage adjustment factor used in this calculation is defined as the labor share of the rate component multiplied by the wage index plus the non-labor share. Because the wage index applicable to FY 2004 is the same as that for FY 2003 and new data on the distribution of days by MSA is not yet available, the proposed budget neutrality factor for this year is 1.000. However, this may change in the final rule. In order to give the public a sense of the magnitude of this adjustment, last year's factor was 0.9997.

Finally, since we propose to use the FY 2003 wage index, we are republishing it in this proposed rule. The wage index applicable to FY 2004 can be found in Table 7 and Table 8 of this proposed rule. The tables reflect the mid-year corrections made to the hospital wage data since the publication of the SNF update notice for FY 2003 payments (please see our correction notice that was published in the **Federal Register** on December 27, 2002 (67 FR 79123)).

TABLE 7.—WAGE INDEX FOR URBAN AREAS

Urban area (constituent counties or county equivalents)	Wage index
0040 Abilene, TX	0.7792
Taylor, TX	
0060 Aguadilla, PR	0.4587
Aguada, PR	
Aguadilla, PR	
Moca, PR	
0080 Akron, OH	0.9600
Portage, OH	
Summit, OH	
0120 Albany, GA	1.0594
Dougherty, GA	
Lee, GA	
0160 Albany-Schenectady-Troy, NY	0.8384
Albany, NY	
Montgomery, NY	
Rensselaer, NY	
Saratoga, NY	
Schenectady, NY	
Schoharie, NY	
0200 Albuquerque, NM	0.9315
Bernalillo, NM	
Sandoval, NM	
Valencia, NM	
0220 Alexandria, LA	0.7859
Rapides, LA	
0240 Allentown-Bethlehem-Easton, PA	0.9735
Carbon, PA	
Lehigh, PA	
Northampton, PA	
0280 Altoona, PA	0.9225
Blair, PA	
0320 Amarillo, TX	0.9034
Potter, TX	
Randall, TX	
0380 Anchorage, AK	1.2358
Anchorage, AK	
0440 Ann Arbor, MI	1.1103
Lenawee, MI	
Livingston, MI	
Washtenaw, MI	
0450 Anniston, AL	0.8044
Calhoun, AL	
0460 Appleton-Oshkosh-Neenah, WI	0.8997
Calumet, WI	
Outagamie, WI	
Winnebago, WI	
0470 Arecibo, PR	0.4337
Arecibo, PR	
Camuy, PR	
Hatillo, PR	
0480 Asheville, NC	0.9876
Buncombe, NC	
Madison, NC	
0500 Athens, GA	1.0211
Clarke, GA	
Madison, GA	
Oconee, GA	

TABLE 7.—WAGE INDEX FOR URBAN AREAS—Continued

Urban area (constituent counties or county equivalents)	Wage index
0520 Atlanta, GA	0.9991
Barrow, GA	
Bartow, GA	
Carroll, GA	
Cherokee, GA	
Clayton, GA	
Cobb, GA	
Coweta, GA	
De Kalb, GA	
Douglas, GA	
Fayette, GA	
Forsyth, GA	
Fulton, GA	
Gwinnett, GA	
Henry, GA	
Newton, GA	
Paulding, GA	
Pickens, GA	
Rockdale, GA	
Spalding, GA	
Walton, GA	
0560 Atlantic City-Cape May, NJ	1.1017
Atlantic City, NJ	
Cape May, NJ	
0580 Auburn-Opelika, AL	0.8325
Lee, AL	
0600 Augusta-Aiken, GA–SC	1.0264
Columbia, GA	
McDuffie, GA	
Richmond, GA	
Aiken, SC	
Edgefield, SC	
0640 Austin-San Marcos, TX	0.9637
Bastrop, TX	
Caldwell, TX	
Hays, TX	
Travis, TX	
Williamson, TX	
0680 Bakersfield, CA	0.9877
Kern, CA	
0720 Baltimore, MD	0.9929
Anne Arundel, MD	
Baltimore, MD	
Baltimore City, MD	
Carroll, MD	
Harford, MD	
Howard, MD	
Queen Annes, MD	
0733 Bangor, ME	0.9664
Penobscot, ME	
0743 Barnstable-Yarmouth, MA	1.3202
Barnstable, MA	
0760 Baton Rouge, LA	0.8294
Ascension, LA	
East Baton Rouge, LA	
Livingston, LA	
West Baton Rouge, LA	
0840 Beaumont-Port Arthur, TX	0.8324
Hardin, TX	
Jefferson, TX	
Orange, TX	
0860 Bellingham, WA	1.2282
Whatcom, WA	
0870 Benton Harbor, MI	0.8965
Berrien, MI	
0875 Bergen-Passaic, NJ	1.2150
Bergen, NJ	
Passaic, NJ	
0880 Billings, MT	0.9022
Yellowstone, MT	

TABLE 7.—WAGE INDEX FOR URBAN AREAS—Continued

Urban area (constituent counties or county equivalents)	Wage index
0920 Biloxi-Gulfport-Pascagoula, MS	0.8757
Hancock, MS	
Harrison, MS	
Jackson, MS	
0960 Binghamton, NY	0.8341
Broome, NY	
Tioga, NY	
1000 Birmingham, AL	0.9222
Blount, AL	
Jefferson, AL	
St. Clair, AL	
Shelby, AL	
1010 Bismarck, ND	0.7972
Burleigh, ND	
Morton, ND	
1020 Bloomington, IN	0.8907
Monroe, IN	
1040 Bloomington-Normal, IL	0.9109
McLean, IL	
1080 Boise City, ID	0.9310
Ada, ID	
Canyon, ID	
1123 Boston-Worcester-Lawrence-Lowell-Brockton, MA–NH	1.1229
Bristol, MA	
Essex, MA	
Middlesex, MA	
Norfolk, MA	
Plymouth, MA	
Suffolk, MA	
Worcester, MA	
Hillsborough, NH	
Merrimack, NH	
Rockingham, NH	
Strafford, NH	
1125 Boulder-Longmont, CO	0.9689
Boulder, CO	
1145 Brazoria, TX	0.8535
Brazoria, TX	
1150 Bremerton, WA	1.0944
Kitsap, WA	
1240 Brownsville-Harlingen-San Benito, TX	0.8880
Cameron, TX	
1260 Bryan-College Station, TX	0.8821
Brazos, TX	
1280 Buffalo-Niagara Falls, NY	0.9365
Erie, NY	
Niagara, NY	
1303 Burlington, VT	1.0052
Chittenden, VT	
Franklin, VT	
Grand Isle, VT	
1310 Caguas, PR	0.4371
Caguas, PR	
Cayey, PR	
Cidra, PR	
Gurabo, PR	
San Lorenzo, PR	
1320 Canton-Massillon, OH	0.8932
Carroll, OH	
Stark, OH	
1350 Casper, WY	0.9690
Natrona, WY	
1360 Cedar Rapids, IA	0.9056
Linn, IA	
1400 Champaign-Urbana, IL	1.0635
Champaign, IL	

TABLE 7.—WAGE INDEX FOR URBAN AREAS—Continued

Urban area (constituent counties or county equivalents)	Wage index
1440 Charleston-North Charleston, SC	0.9235
Berkeley, SC	
Charleston, SC	
Dorchester, SC	
1480 Charleston, WV	0.8598
Kanawha, WV	
Putnam, WV	
1520 Charlotte-Gastonia-Rock Hill, NC–SC	0.9875
Cabarrus, NC	
Gaston, NC	
Lincoln, NC	
Mecklenburg, NC	
Rowan, NC	
Stanly, NC	
Union, NC	
York, SC	
1540 Charlottesville, VA	1.0438
Albemarle, VA	
Charlottesville City, VA	
Fluvanna, VA	
Greene, VA	
1560 Chattanooga, TN–GA	0.8976
Catoosa, GA	
Dade, GA	
Walker, GA	
Hamilton, TN	
Marion, TN	
1580 Cheyenne, WY	0.8628
Laramie, WY	
1600 Chicago, IL	1.1044
Cook, IL	
De Kalb, IL	
Du Page, IL	
Grundy, IL	
Kane, IL	
Kendall, IL	
Lake, IL	
McHenry, IL	
Will, IL	
1620 Chico-Paradise, CA	0.9745
Butte, CA	
1640 Cincinnati, OH–KY–IN	0.9381
Dearborn, IN	
Ohio, IN	
Boone, KY	
Campbell, KY	
Gallatin, KY	
Grant, KY	
Kenton, KY	
Pendleton, KY	
Brown, OH	
Clermont, OH	
Hamilton, OH	
Warren, OH	
1660 Clarksville-Hopkinsville, TN–KY	0.8406
Christian, KY	
Montgomery, TN	
1680 Cleveland-Lorain-Elyria, OH	0.9670
Ashtabula, OH	
Geauga, OH	
Cuyahoga, OH	
Lake, OH	
Lorain, OH	
Medina, OH	
1720 Colorado Springs, CO	0.9916
El Paso, CO	
1740 Columbia, MO	0.8496

TABLE 7.—WAGE INDEX FOR URBAN AREAS—Continued

Urban area (constituent counties or county equivalents)	Wage index
Boone, MO	
1760 Columbia, SC	0.9307
Lexington, SC	
Richland, SC	
1800 Columbus, GA–AL	0.8374
Russell, AL	
Chattanoochee, GA	
Harris, GA	
Muscogee, GA	
1840 Columbus, OH	0.9751
Delaware, OH	
Fairfield, OH	
Franklin, OH	
Licking, OH	
Madison, OH	
Pickaway, OH	
1880 Corpus Christi, TX	0.8729
Nueces, TX	
San Patricio, TX	
1890 Corvallis, OR	1.1453
Benton, OR	
1900 Cumberland, MD–WV	0.7847
Allegany, MD	
Mineral, WV	
1920 Dallas, TX	0.9998
Collin, TX	
Dallas, TX	
Denton, TX	
Ellis, TX	
Henderson, TX	
Hunt, TX	
Kaufman, TX	
Rockwall, TX	
1950 Danville, VA	0.8859
Danville City, VA	
Pittsylvania, VA	
1960 Davenport-Moline-Rock Island, IA–IL	0.8835
Scott, IA	
Henry, IL	
Rock Island, IL	
2000 Dayton-Springfield, OH	0.9282
Clark, OH	
Greene, OH	
Miami, OH	
Montgomery, OH	
2020 Daytona Beach, FL	0.9071
Flagler, FL	
Volusia, FL	
2030 Decatur, AL	0.8973
Lawrence, AL	
Morgan, AL	
2040 Decatur, IL	0.8055
Macon, IL	
2080 Denver, CO	1.0601
Adams, CO	
Arapahoe, CO	
Broomfield, CO	
Denver, CO	
Douglas, CO	
Jefferson, CO	
2120 Des Moines, IA	0.8791
Dallas, IA	
Polk, IA	
Warren, IA	
2160 Detroit, MI	1.0448
Lapeer, MI	
Macomb, MI	
Monroe, MI	
Oakland, MI	
St Clair, MI	
Wayne, MI	
2180 Dothan, AL	0.8137
Dale, AL	
Houston, AL	
2190 Dover, DE	0.9356
Kent, DE	
2200 Dubuque, IA	0.8795
Dubuque, IA	
2240 Duluth-Superior, MN–WI	1.0368
St Louis, MN	
Douglas, WI	
2281 Dutchess County, NY	1.0684
Dutchess, NY	
2290 Eau Claire, WI	0.8952
Chippewa, WI	
Eau Claire, WI	
2320 El Paso, TX	0.9265
El Paso, TX	
2330 Elkhart-Goshen, IN	0.9722
Elkhart, IN	
2335 Elmira, NY	0.8416
Chemung, NY	
2340 Enid, OK	0.8376
Garfield, OK	
2360 Erie, PA	0.8925
Erie, PA	
2400 Eugene-Springfield, OR	1.0944
Lane, OR	
2440 Evansville-Henderson, IN–KY	0.8177
Posey, IN	
Vanderburgh, IN	
Warrick, IN	
Henderson, KY	
2520 Fargo-Moorhead, ND–MN	0.9684
Clay, MN	
Cass, ND	
2560 Fayetteville, NC	0.8889
Cumberland, NC	
2580 Fayetteville-Springdale-Rogers, AR	0.8100
Benton, AR	
Washington, AR	
2620 Flagstaff, AZ–UT	1.0682
Coconino, AZ	
Kane, UT	
2640 Flint, MI	1.1135
Genesee, MI	
2650 Florence, AL	0.7792
Colbert, AL	
Lauderdale, AL	
2655 Florence, SC	0.8780
Florence, SC	
2670 Fort Collins-Loveland, CO	1.0066
Larimer, CO	
2680 Ft Lauderdale, FL	1.0297
Broward, FL	
2700 Fort Myers-Cape Coral, FL	0.9680
Lee, FL	
2710 Fort Pierce-Port St Lucie, FL	0.9823
Martin, FL	
St Lucie, FL	
2720 Fort Smith, AR–OK	0.7895
Crawford, AR	
Sebastian, AR	
Sequoyah, OK	
2750 Fort Walton Beach, FL	0.9693
Okaloosa, FL	
2760 Fort Wayne, IN	0.9457
Adams, IN	
Allen, IN	
De Kalb, IN	
Huntington, IN	
Wells, IN	
Whitley, IN	
2800 Fort Worth-Arlington, TX	0.9446
Hood, TX	
Johnson, TX	
Parker, TX	
Tarrant, TX	
2840 Fresno, CA	1.0169
Fresno, CA	
Madera, CA	
2880 Gadsden, AL	0.8505
Etowah, AL	
2900 Gainesville, FL	0.9871
Alachua, FL	
2920 Galveston-Texas City, TX	0.9465
Galveston, TX	
2960 Gary, IN	0.9584
Lake, IN	
Porter, IN	
2975 Glens Falls, NY	0.8281
Warren, NY	
Washington, NY	
2980 Goldsboro, NC	0.8892
Wayne, NC	
2985 Grand Forks, ND–MN	0.8897
Polk, MN	
Grand Forks, ND	
2995 Grand Junction, CO	0.9456
Mesa, CO.	
3000 Grand Rapids-Muskegon-Holland, MI	0.9525
Allegan, MI	
Kent, MI	
Muskegon, MI	
Ottawa, MI	
3040 Great Falls, MT	0.8950
Cascade, MT	
3060 Greeley, CO	0.9237
Weld, CO	
3080 Green Bay, WI	0.9502
Brown, WI	
3120 Greensboro-Winston-Salem-High Point, NC	0.9282
Alamance, NC	
Davidson, NC	
Davie, NC	
Forsyth, NC	
Guilford, NC	
Randolph, NC	
Stokes, NC	
Yadkin, NC	
3150 Greenville, NC	0.9100
Pitt, NC	
3160 Greenville-Spartanburg-Anderson, SC	0.9122
Anderson, SC	
Cherokee, SC	
Greenville, SC	
Pickens, SC	
Spartanburg, SC	
3180 Hagerstown, MD	0.9268
Washington, MD	
3200 Hamilton-Middletown, OH	0.9418
Butler, OH	

TABLE 7.—WAGE INDEX FOR URBAN AREAS—Continued

Urban area (constituent counties or county equivalents)	Wage index
3240 Harrisburg-Lebanon-Carlisle, PA	0.9223
Cumberland, PA	
Dauphin, PA	
Lebanon, PA	
Perry, PA	
3283 Hartford, CT	1.1549
Hartford, CT	
Litchfield, CT	
Middlesex, CT	
Tolland, CT	
3285 Hattiesburg, MS	0.7659
Forrest, MS	
Lamar, MS	
3290 Hickory-Morganton-Lenoir, NC	0.9028
Alexander, NC	
Burke, NC	
Caldwell, NC	
Catawba, NC	
3320 Honolulu, HI	1.1457
Honolulu, HI	
3350 Houma, LA	0.8317
Lafourche, LA	
Terrebonne, LA	
3360 Houston, TX	0.9892
Chambers, TX	
Fort Bend, TX	
Harris, TX	
Liberty, TX	
Montgomery, TX	
Waller, TX	
3400 Huntington-Ashland, WV–KY–OH	0.9636
Boyd, KY	
Carter, KY	
Greenup, KY	
Lawrence, OH	
Cabell, WV	
Wayne, WV	
3440 Huntsville, AL	0.8903
Limestone, AL	
Madison, AL	
3480 Indianapolis, IN	0.9717
Boone, IN	
Hamilton, IN	
Hancock, IN	
Hendricks, IN	
Johnson, IN	
Madison, IN	
Marion, IN	
Morgan, IN	
Shelby, IN	
3500 Iowa City, IA	0.9587
Johnson, IA	
3520 Jackson, MI	0.9532
Jackson, MI	
3560 Jackson, MS	0.8607
Hinds, MS	
Madison, MS	
Rankin, MS	
3580 Jackson, TN	0.9275
Chester, TN	
Madison, TN	
3600 Jacksonville, FL	0.9381
Clay, FL	
Duval, FL	
Nassau, FL	
St. Johns, FL	
3605 Jacksonville, NC	0.8239
Onslow, NC	
3610 Jamestown, NY	0.7976
Chautauqua, NY	
3620 Janesville-Beloit, WI	0.9849
Rock, WI	
3640 Jersey City, NJ	1.1190
Hudson, NJ	
3660 Johnson City-Kingsport-Bristol, TN–VA	0.8268
Carter, TN	
Hawkins, TN	
Sullivan, TN	
Unicoi, TN	
Washington, TN	
Bristol City, VA	
Scott, VA	
Washington, VA	
3680 Johnstown, PA	0.8329
Cambria, PA	
Somerset, PA	
3700 Jonesboro, AR	0.7749
Craighead, AR	
3710 Joplin, MO	0.8613
Jasper, MO	
Newton, MO	
3720 Kalamazoo-Battle Creek, MI	1.0595
Calhoun, MI	
Kalamazoo, MI	
Van Buren, MI	
3740 Kankakee, IL	1.0790
Kankakee, IL	
3760 Kansas City, KS–MO	0.9736
Johnson, KS	
Leavenworth, KS	
Miami, KS	
Wyandotte, KS	
Cass, MO	
Clay, MO	
Clinton, MO	
Jackson, MO	
Lafayette, MO	
Platte, MO	
Ray, MO	
3800 Kenosha, WI	0.9686
Kenosha, WI	
3810 Killeen-Temple, TX	1.0399
Bell, TX	
Coryell, TX	
3840 Knoxville, TN	0.8970
Anderson, TN	
Blount, TN	
Knox, TN	
Loudon, TN	
Sevier, TN	
Union, TN	
3850 Kokomo, IN	0.8971
Howard, IN	
Tipton, IN	
3870 La Crosse, WI–MN	0.9400
Houston, MN	
La Crosse, WI	
3880 Lafayette, LA	0.8452
Acadia, LA	
Lafayette, LA	
St. Landry, LA	
St. Martin, LA	
3920 Lafayette, IN	0.9278
Clinton, IN	
Tippecanoe, IN	
3960 Lake Charles, LA	0.7965
Calcasieu, LA	
3980 Lakeland-Winter Haven, FL	0.9357
Polk, FL	
4000 Lancaster, PA	0.9078
Lancaster, PA	
4040 Lansing-East Lansing, MI	0.9726
Clinton, MI	
Eaton, MI	
Ingham, MI	
4080 Laredo, TX	0.8472
Webb, TX	
4100 Las Cruces, NM	0.8745
Dona Ana, NM	
4120 Las Vegas, NV–AZ	1.1521
Mohave, AZ	
Clark, NV	
Nye, NV	
4150 Lawrence, KS	0.8323
Douglas, KS	
4200 Lawton, OK	0.8315
Comanche, OK	
4243 Lewiston-Auburn, ME	0.9179
Androscoggin, ME	
4280 Lexington, KY	0.8581
Bourbon, KY	
Clark, KY	
Fayette, KY	
Jessamine, KY	
Madison, KY	
Scott, KY	
Woodford, KY	
4320 Lima, OH	0.9483
Allen, OH	
Auglaize, OH	
4360 Lincoln, NE	0.9892
Lancaster, NE	
4400 Little Rock-North Little Rock, AR	0.9097
Faulkner, AR	
Lonoke, AR	
Pulaski, AR	
Saline, AR	
4420 Longview-Marshall, TX	0.8629
Gregg, TX	
Harrison, TX	
Upshur, TX	
4480 Los Angeles-Long Beach, CA	1.2001
Los Angeles, CA	
4520 Louisville, KY–IN	0.9276
Clark, IN	
Floyd, IN	
Harrison, IN	
Scott, IN	
Bullitt, KY	
Jefferson, KY	
Oldham, KY	
4600 Lubbock, TX	0.9646
Lubbock, TX	
4640 Lynchburg, VA	0.9219
Amherst, VA	
Bedford City, VA	
Bedford, VA	
Campbell, VA	
Lynchburg City, VA	
4680 Macon, GA	0.9204
Bibb, GA	
Houston, GA	
Jones, GA	
Peach, GA	

TABLE 7.—WAGE INDEX FOR URBAN AREAS—Continued

Urban area (constituent counties or county equivalents)	Wage index
Twiggs, GA	
4720 Madison, WI	1.0467
Dane, WI	
4800 Mansfield, OH	0.8900
Crawford, OH	
Richland, OH	
4840 Mayaguez, PR	0.4914
Anasco, PR	
Cabo Rojo, PR	
Hormigueros, PR	
Mayaguez, PR	
Sabana Grande, PR	
San German, PR	
4880 McAllen-Edinburg-Mission, TX	0.8428
Hidalgo, TX	
4890 Medford-Ashland, OR	1.0498
Jackson, OR	
4900 Melbourne-Titusville-Palm Bay, FL	1.0253
Brevard, Fl	
4920 Memphis, TN–AR–MS	0.8920
Crittenden, AR	
De Soto, MS	
Fayette, TN	
Shelby, TN	
Tipton, TN	
4940 Merced, CA	0.9742
Merced, CA	
5000 Miami, FL	0.9802
Dade, FL	
5015 Middlesex-Somerset-Hunterdon, NJ	1.1213
Hunterdon, NJ	
Middlesex, NJ	
Somerset, NJ	
5080 Milwaukee-Waukesha, WI	0.9893
Milwaukee, WI	
Ozaukee, WI	
Washington, WI	
Waukesha, WI	
5120 Minneapolis-St. Paul, MN–WI	1.0903
Anoka, MN	
Carver, MN	
Chisago, MN	
Dakota, MN	
Hennepin, MN	
Isanti, MN	
Ramsey, MN	
Scott, MN	
Sherburne, MN	
Washington, MN	
Wright, MN	
Pierce, WI	
St. Croix, WI	
5140 Missoula, MT	0.9157
Missoula, MT	
5160 Mobile, AL	0.8108
Baldwin, AL	
Mobile, AL	
5170 Modesto, CA	1.0498
Stanislaus, CA	
5190 Monmouth-Ocean, NJ	1.0674
Monmouth, NJ	
Ocean, NJ	
5200 Monroe, LA	0.8137
Ouachita, LA	
5240 Montgomery, AL	0.7734
Autauga, AL	
Elmore, AL	
Montgomery, AL	
5280 Muncie, IN	0.9284
Delaware, IN	
5330 Myrtle Beach, SC	0.8976
Horry, SC	
5345 Naples, FL	0.9754
Collier, FL	
5360 Nashville, TN	0.9578
Cheatham, TN	
Davidson, TN	
Dickson, TN	
Robertson, TN	
Rutherford, TN	
Sumner, TN	
Williamson, TN	
Wilson, TN	
5380 Nassau-Suffolk, NY	1.3357
Nassau, NY	
Suffolk, NY	
5483 New Haven-Bridgeport-Stamford-Waterbury-Danbury, CT	1.2408
Fairfield, CT	
New Haven, CT	
5523 New London-Norwich, CT	1.1767
New London, CT	
5560 New Orleans, LA	0.9046
Jefferson, LA	
Orleans, LA	
Plaquemines, LA	
St. Bernard, LA	
St. Charles, LA	
St. James, LA	
St. John The Baptist, LA	
St. Tammany, LA	
5600 New York, NY	1.4414
Bronx, NY	
Kings, NY	
New York, NY	
Putnam, NY	
Queens, NY	
Richmond, NY	
Rockland, NY	
Westchester, NY	
5640 Newark, NJ	1.1381
Essex, NJ	
Morris, NJ	
Sussex, NJ	
Union, NJ	
Warren, NJ	
5660 Newburgh, NY–PA	1.1387
Orange, NY	
Pike, PA	
5720 Norfolk-Virginia Beach-Newport News, VA–NC	0.8574
Currituck, NC	
Chesapeake City, VA	
Gloucester, VA	
Hampton City, VA	
Isle of Wight, VA	
James City, VA	
Mathews, VA	
Newport News City, VA	
Norfolk City, VA	
Poquoson City, VA	
Portsmouth City, VA	
Suffolk City, VA	
Virginia Beach City, VA	
Williamsburg City, VA	
York, VA	
5775 Oakland, CA	1.5072
Alameda, CA	
Contra Costa, CA	
5790 Ocala, FL	0.9402
Marion, FL	
5800 Odessa-Midland, TX	0.9397
Ector, TX	
Midland, TX	
5880 Oklahoma City, OK	0.8900
Canadian, OK	
Cleveland, OK	
Logan, OK	
McClain, OK	
Oklahoma, OK	
Pottawatomie, OK	
5910 Olympia, WA	1.0960
Thurston, WA	
5920 Omaha, NE–IA	0.9978
Pottawattamie, IA	
Cass, NE	
Douglas, NE	
Sarpy, NE	
Washington, NE	
5945 Orange County, CA	1.1474
Orange, CA	
5960 Orlando, FL	0.9640
Lake, FL	
Orange, FL	
Osceola, FL	
Seminole, FL	
5990 Owensboro, KY	0.8344
Daviess, KY	
6015 Panama City, FL	0.8865
Bay, FL	
6020 Parkersburg-Marietta, WV–OH	0.8127
Washington, OH	
Wood, WV	
6080 Pensacola, FL	0.8610
Escambia, FL	
Santa Rosa, FL	
6120 Peoria-Pekin, IL	0.8739
Peoria, IL	
Tazewell, IL	
Woodford, IL	
6160 Philadelphia, PA–NJ	1.0713
Burlington, NJ	
Camden, NJ	
Gloucester, NJ	
Salem, NJ	
Bucks, PA	
Chester, PA	
Delaware, PA	
Montgomery, PA	
Philadelphia, PA	
6200 Phoenix-Mesa, AZ	0.9820
Maricopa, AZ	
Pinal, AZ	
6240 Pine Bluff, AR	0.7962
Jefferson, AR	
6280 Pittsburgh, PA	0.9365
Allegheny, PA	
Beaver, PA	
Butler, PA	
Fayette, PA	
Washington, PA	
Westmoreland, PA	
6323 Pittsfield, MA	1.0235
Berkshire, MA	

TABLE 7.—WAGE INDEX FOR URBAN AREAS—Continued

Urban area (constituent counties or county equivalents)	Wage index
6340 Pocatello, ID	0.9372
Bannock, ID	
6360 Ponce, PR	0.5169
Guayanilla, PR	
Juana Diaz, PR	
Penuelas, PR	
Ponce, PR	
Villalba, PR	
Yauco, PR	
6403 Portland, ME	0.9794
Cumberland, ME	
Sagadahoc, ME	
York, ME	
6440 Portland-Vancouver, OR–WA	1.0667
Clackamas, OR	
Columbia, OR	
Multnomah, OR	
Washington, OR	
Yamhill, OR	
Clark, WA	
6483 Providence-Warwick-Pawtucket, RI	1.0854
Bristol, RI	
Kent, RI	
Newport, RI	
Providence, RI	
Washington, RI	
6520 Provo-Orem, UT	0.9984
Utah, UT	
6560 Pueblo, CO	0.8820
Pueblo, CO	
6580 Punta Gorda, FL	0.9218
Charlotte, FL	
6600 Racine, WI	0.9334
Racine, WI	
6640 Raleigh-Durham-Chapel Hill, NC	0.9990
Chatham, NC	
Durham, NC	
Franklin, NC	
Johnston, NC	
Orange, NC	
Wake, NC	
6660 Rapid City, SD	0.8846
Pennington, SD	
6680 Reading, PA	0.9295
Berks, PA	
6690 Redding, CA	1.1135
Shasta, CA	
6720 Reno, NV	1.0648
Washoe, NV	
6740 Richland-Kennewick-Pasco, WA	1.1491
Benton, WA	
Franklin, WA	
6760 Richmond-Petersburg, VA	0.9477
Charles City County, VA	
Chesterfield, VA	
Colonial Heights City, VA	
Dinwiddie, VA	
Goochland, VA	
Hanover, VA	
Henrico, VA	
Hopewell City, VA	
New Kent, VA	
Petersburg City, VA	
Powhatan, VA	
Prince George, VA	
Richmond City, VA	
6780 Riverside-San Bernardino, CA	1.1365
Riverside, CA	
San Bernardino, CA	
6800 Roanoke, VA	0.8614
Botetourt, VA	
Roanoke, VA	
Roanoke City, VA	
Salem City, VA	
6820 Rochester, MN	1.2139
Olmsted, MN	
6840 Rochester, NY	0.9194
Genesee, NY	
Livingston, NY	
Monroe, NY	
Ontario, NY	
Orleans, NY	
Wayne, NY	
6880 Rockford, IL	0.9625
Boone, IL	
Ogle, IL	
Winnebago, IL	
6895 Rocky Mount, NC	0.9228
Edgecombe, NC	
Nash, NC	
6920 Sacramento, CA	1.1500
El Dorado, CA	
Placer, CA	
Sacramento, CA	
A6960 Saginaw-Bay City-Midland, MI	0.9650
Bay, MI	
Midland, MI	
Saginaw, MI	
6980 St Cloud, MN	0.9700
Benton, MN	
Stearns, MN	
7000 St Joseph, MO	0.9544
Andrews, MO	
Buchanan, MO	
7040 St Louis, MO–IL	0.8855
Clinton, IL	
Jersey, IL	
Madison, IL	
Monroe, IL	
St. Clair, IL	
Franklin, MO	
Jefferson, MO	
Lincoln, MO	
St. Charles, MO	
St. Louis, MO	
St. Louis City, MO	
Warren, MO	
7080 Salem, OR	1.0500
Marion, OR	
Polk, OR	
7120 Salinas, CA	1.4623
Monterey, CA	
7160 Salt Lake City-Ogden, UT	0.9945
Davis, UT	
Salt Lake, UT	
Weber, UT	
7200 San Angelo, TX	0.8374
Tom Green, TX	
7240 San Antonio, TX	0.8753
Bexar, TX	
Comal, TX	
Guadalupe, TX	
Wilson, TX	
7320 San Diego, CA	1.1131
San Diego, CA	
7360 San Francisco, CA	1.4142
Marin, CA	
San Francisco, CA	
San Mateo, CA	
7400 San Jose, CA	1.4145
Santa Clara, CA	
7440 San Juan-Bayamon, PR	0.4741
Aguas Buenas, PR	
Barceloneta, PR	
Bayamon, PR	
Canovanas, PR	
Carolina, PR	
Catano, PR	
Ceiba, PR	
Comerio, PR	
Corozal, PR	
Dorado, PR	
Fajardo, PR	
Florida, PR	
Guaynabo, PR	
Humacao, PR	
Juncos, PR	
Los Piedras, PR	
Loiza, PR	
Luguillo, PR	
Manati, PR	
Morovis, PR	
Naguabo, PR	
Naranjito, PR	
Rio Grande, PR	
San Juan, PR	
Toa Alta, PR	
Toa Baja, PR	
Trujillo Alto, PR	
Vega Alta, PR	
Vega Baja, PR	
Yabucoa, PR	
7460 San Luis Obispo-Atascadero-Paso Robles, CA	1.1271
San Luis Obispo, CA	
7480 Santa Barbara-Santa Maria-Lompoc, CA	1.0481
Santa Barbara, CA	
7485 Santa Cruz-Watsonville, CA	1.3646
Santa Cruz, CA	
7490 Santa Fe, NM	1.0712
Los Alamos, NM	
Santa Fe, NM	
7500 Santa Rosa, CA	1.3046
Sonoma, CA	
7510 Sarasota-Bradenton, FL	0.9425
Manatee, FL	
Sarasota, FL	
7520 Savannah, GA	0.9376
Bryan, GA	
Chatham, GA	
Effingham, GA	
7560 Scranton-Wilkes-Barre-Hazleton, PA	0.8599
Columbia, PA	
Lackawanna, PA	
Luzerne, PA	
Wyoming, PA	
7600 Seattle-Bellevue-Everett, WA	1.1474
Island, WA	
King, WA	
Snohomish, WA	

TABLE 7.—WAGE INDEX FOR URBAN AREAS—Continued

Urban area (constituent counties or county equivalents)	Wage index
7610 Sharon, PA Mercer, PA	0.7869
7620 Sheboygan, WI Sheboygan, WI	0.8697
7640 Sherman-Denison, TX Grayson, TX	0.9255
7680 Shreveport-Bossier City, LA Bossier, LA Caddo, LA Webster, LA	0.8987
7720 Sioux City, IA–NE Woodbury, IA Dakota, NE	0.9046
7760 Sioux Falls, SD Lincoln, SD Minnehaha, SD	0.9257
7800 South Bend, IN St. Joseph, IN	0.9802
7840 Spokane, WA Spokane, WA	1.0852
7880 Springfield, IL Menard, IL Sangamon, IL	0.8659
7920 Springfield, MO Christian, MO Greene, MO Webster, MO	0.8424
8003 Springfield, MA Hampden, MA Hampshire, MA	1.0927
8050 State College, PA Centre, PA	0.8941
8080 Steubenville-Weirton, OH–WV Jefferson, OH Brooke, WV Hancock, WV	0.8804
8120 Stockton-Lodi, CA San Joaquin, CA	1.0506
8140 Sumter, SC Sumter, SC	0.8273
8160 Syracuse, NY Cayuga, NY Madison, NY Onondaga, NY Oswego, NY	0.9714
8200 Tacoma, WA Pierce, WA	1.0940
8240 Tallahassee, FL Gadsden, FL Leon, FL	0.8504
8280 Tampa-St Petersburg-Clearwater, FL Hernando, FL Hillsborough, FL Pasco, FL Pinellas, FL	0.9065
8320 Terre Haute, IN Clay, IN Vermillion, IN Vigo, IN	0.8599
8360 Texarkana, AR-Texarkana, TX Miller, AR Bowie, TX	0.8088
8400 Toledo, OH Fulton, OH Lucas, OH Wood, OH	0.9810
8440 Topeka, KS Shawnee, KS	0.9199
8480 Trenton, NJ Mercer, NJ	1.0432
8520 Tucson, AZ Pima, AZ	0.8911
8560 Tulsa, OK Creek, OK Osage, OK Rogers, OK Tulsa, OK Wagoner, OK	0.8332
8600 Tuscaloosa, AL Tuscaloosa, AL	0.8130
8640 Tyler, TX Smith, TX	0.9521
8680 Utica-Rome, NY Herkimer, NY Oneida, NY	0.8465
8720 Vallejo-Fairfield-Napa, CA Napa, CA Solano, CA	1.3354
8735 Ventura, CA Ventura, CA	1.1096
8750 Victoria, TX Victoria, TX	0.8756
8760 Vineland-Millville-Bridgeton, NJ Cumberland, NJ	1.0031
8780 Visalia-Tulare-Porterville, CA Tulare, CA	0.9418
8800 Waco, TX McLennan, TX	0.8073
8840 Washington, DC–MD–VA–WV District of Columbia, DC Calvert, MD Charles, MD Frederick, MD Montgomery, MD Prince Georges, MD Alexandria City, VA Arlington, VA Clarke, VA Culpeper, VA Fairfax, VA Fairfax City, VA Falls Church City, VA Fauquier, VA Fredericksburg City, VA King George, VA Loudoun, VA Manassas City, VA Manassas Park City, VA Prince William, VA Spotsylvania, VA Stafford, VA Warren, VA Berkeley, WV Jefferson, WV	1.0851
8920 Waterloo-Cedar Falls, IA Black Hawk, IA	0.8060
8940 Wausau, WI Marathon, WI	0.9782
8960 West Palm Beach-Boca Raton, FL Palm Beach, FL	0.9939
9000 Wheeling, OH–WV Belmont, OH Marshall, WV Ohio, WV	0.7670
9040 Wichita, KS Butler, KS Harvey, KS Sedgwick, KS	0.9520
9080 Wichita Falls, TX Archer, TX Wichita, TX	0.8498
9140 Williamsport, PA Lycoming, PA	0.8544
9160 Wilmington-Newark, DE–MD New Castle, DE Cecil, MD	1.1173
9200 Wilmington, NC New Hanover, NC Brunswick, NC	0.9640
9260 Yakima, WA Yakima, WA	1.0569
9270 Yolo, CA Yolo, CA	0.9434
9280 York, PA York, PA	0.9026
9320 Youngstown-Warren, OH Columbiana, OH Mahoning, OH Trumbull, OH	0.9358
9340 Yuba City, CA Sutter, CA Yuba, CA	1.0276
9360 Yuma, AZ Yuma, AZ	0.8589

TABLE 8.—WAGE INDEX FOR RURAL AREAS

Rural area	Wage index
Alabama	0.7660
Alaska	1.2293
Arizona	0.8493
Arkansas	0.7666
California	0.9899
Colorado	0.9015
Connecticut	1.2394
Delaware	0.9128
Florida	0.8827
Georgia	0.8230
Guam	0.9611
Hawaii	1.0255
Idaho	0.8747
Illinois	0.8204
Indiana	0.8755
Iowa	0.8315
Kansas	0.7900
Kentucky	0.8079
Louisiana	0.7580
Maine	0.8874
Maryland	0.8946
Massachusetts	1.1288
Michigan	0.9009
Minnesota	0.9151
Mississippi	0.7680
Missouri	0.7881
Montana	0.8481
Nebraska	0.8204
Nevada	0.9577
New Hampshire	0.9839
New Jersey [1]	
New Mexico	0.8872
New York	0.8542
North Carolina	0.8669
North Dakota	0.7788
Ohio	0.8613
Oklahoma	0.7590
Oregon	1.0259
Pennsylvania	0.8462
Puerto Rico	0.4356
Rhode Island [1]	
South Carolina	0.8607
South Dakota	0.7815
Tennessee	0.7877
Texas	0.7821
Utah	0.9312
Vermont	0.9345
Virginia	0.8504
Virgin Islands	0.7845
Washington	1.0179
West Virginia	0.7975
Wisconsin	0.9162
Wyoming	0.9007

[1] All counties within the State are classified urban.

D. Updates to the Federal Rates

In accordance with section 1888(e)(4)(E) of the Act, the proposed payment rates listed here reflect an update equal to the full SNF market basket, which equals 2.9 percent. We will continue to publish the rates, wage index, and case-mix classification methodology in the **Federal Register** before August 1 preceding the start of each succeeding fiscal year We discuss the Federal rate update factor in greater detail in section III.B of this preamble.

E. Relationship of RUG–III Classification System to Existing Skilled Nursing Facility Level-of-Care Criteria

As discussed in § 413.345, we include in each update of the Federal payment rates in the **Federal Register** the designation of those specific RUGs under the classification system that represent the required SNF level of care, as provided in § 40930. This designation reflects an administrative presumption under the current 44-group RUG–III classification system. Our presumption is that any beneficiary who is correctly assigned to one of the upper 26 RUG–III groups in the initial 5-day, Medicare-required assessment is automatically classified as meeting the SNF level of care definition up to the assessment reference date for that assessment.

Any beneficiary assigned to any of the lower 18 groups is not automatically classified as either meeting or not meeting the definition, but instead receives an individual level of care determination using the existing administrative criteria This presumption recognizes the strong likelihood that beneficiaries assigned to one of the upper 26 groups during the immediate post-hospital period require a covered level of care, which would be significantly less likely for those beneficiaries assigned to one of the lower 18 groups.

In this proposed rule, we are continuing the existing designation of the upper 26 RUG–III groups for purposes of this administrative presumption Accordingly, we are designating the following RUG–III classifications:

- All groups within the Ultra High Rehabilitation category;
- All groups within the Very High Rehabilitation category;
- All groups within the High Rehabilitation category;
- All groups within the Medium Rehabilitation category;
- All groups within the Low Rehabilitation category;
- All groups within the Extensive Services category;
- All groups within the Special Care category; and
- All groups within the Clinically Complex category.

F. Initial Three-Year Transition Period

As noted previously, the rates that we now propose are for the sixth year of the SNF PPS. As a result, the PPS is no longer operating under the initial three-year transition period from facility-specific to Federal rates; therefore, payment now equals 100 percent of the adjusted Federal per diem rate

G. Example of Computation of Adjusted PPS Rates and SNF Payment

Using the model SNF (XYZ) described in Table 9, the following shows the adjustments made to the Federal per diem rate to compute the provider's actual per diem PPS payment. XYZ's 12-month cost reporting period begins October 1, 2004. XYZ's total PPS payment would equal $20,017. The Labor and Non-labor columns are derived from Table 5. In addition, the adjustments for certain specified RUG–III groups enacted in section 101(a) of the BBRA (as amended by section 314 of the BIPA) remain in effect, and are reflected in Table 9.

TABLE 9.—SNF XYZ: LOCATED IN STATE COLLEGE, PA

[Wage Index: 0.8941]

RUG group	Labor	Wage index	Adj. labor	Non-labor	Adj. rate	Percent adjustment	Medicare days	Payment
RVC	$258.51	0.8941	$231.13	$79.70	$310.83	[1] $331.66	14	$4,643
RHA	199.77	0.8941	178.61	61.59	240.20	[1] 256.29	16	4,101
SSC	166.41	0.8941	148.79	51.30	200.09	[2] 240.11	30	7,203
IA2	112.84	0.8941	100.89	34.79	135.68	135.68	30	4,070
Total							90	20,017

[1] Reflects a 6.7 percent adjustment from section 314 of the BIPA.
[2] Reflects a 20 percent adjustment from section 101(a) of the BBRA.

III. The Skilled Nursing Facility Market Basket Index

Section 1888(e)(5)(A) of the Act requires us to establish an SNF market basket index (input price index) that reflects changes over time in the prices of an appropriate mix of goods and services included in the SNF PPS. This proposed rule incorporates the latest available projections of the SNF market basket index. The final rule will incorporate updated projections based on the latest available projections at that time. Accordingly, we have developed an SNF market basket index that encompasses the most commonly used cost categories for SNF routine services, ancillary services, and capital-related expenses. In the July 31, 2001 **Federal Register** (66 FR 39562), we included a complete discussion on the rebasing of the SNF market basket to FY 1997. There are 21 separate cost categories and respective price proxies. These cost

categories were illustrated in Table 10.A, Table 10.B, and Appendix A, along with other relevant information, in the July 31, 2001 **Federal Register**.

Each year, we calculate a revised labor-related share based on the relative importance of labor-related cost categories in the input price index. Table 10 summarizes the updated labor-related share for FY 2004. The forecasted rates of growth used to compute the proposed SNF market basket percentage described in section II.D of this proposed rule are shown in Table 11.

TABLE 10.—FY 2004 LABOR-RELATED SHARE

Cost category	FY 2003 relative importance	FY 2004 relative importance
Wages and Salaries	54.796	55.143
Employee Benefits	11.232	11.269
Nonmedical Professional Fees	2.652	2.661
Labor-intensive Services	4.124	4.137
Capital-related	3.324	3.226
Total	76.128	76.435

TABLE 11.—SNF TOTAL COST MARKET BASKET CHANGE FY 1998 THROUGH FY 2004

Fiscal years beginning October 1	Skilled nursing facility total cost market basket
October 1997, FY 1998	2.8
October 1998, FY 1999	3.0
October 1999, FY 2000	4.0
October 2000, FY 2001	4.9
October 2001, FY 2002	3.4
October 2002, FY 2003	3.1
October 2003, FY 2004	2.9

Source: (Table 10) Global Insights, Inc., DRI–WEFA, 4th Quarter, 2002.
Source: (Table 11) Global Insights Inc., DRI–WEFA, 4th Quarter, 2002.
@USAMACRO/MODTREND@CISSIM/CNTL25R2.SIM
Released by CMS, OACT, National Health Statistics Group.

A. Use of the Skilled Nursing Facility Market Basket Percentage

Section 1888(e)(5)(B) of the Act defines the SNF market basket percentage as the percentage change in the SNF market basket index, as described in the previous section, from the average index level of the prior fiscal year to the average index level of the current fiscal year. For the Federal rates established in this proposed rule, this percentage increase in the SNF market basket index would be used to compute the update factor occurring between FY 2003 and FY 2004. We used the Global Insights, Inc. (formerly DRI–WEFA), 4th quarter 2002 forecasted percentage increase in the FY 1997-based SNF market basket index for routine, ancillary, and capital-related expenses, described in the previous section, to compute the update factor.

B. Federal Rate Update Factor

Section 1888(e)(4)(E)(ii)(IV) of the Act requires that the update factor used to establish the FY 2004 Federal rates be at a level equal to the full market basket percentage change. Accordingly, to establish the update factor, we determined the total growth from the average market basket level for the period of October 1, 2002 through September 30, 2003 to the average market basket level for the period of October 1, 2003 through September 30, 2004. Using this process, the update factor for FY 2004 SNF Federal rates is 2.9 percent.

We used this revised update factor to compute the Federal portion of the SNF PPS rate shown in Tables 1 and 2.

IV. Consolidated Billing

As established by section 4432(b) of the BBA, the consolidated billing requirement places with the SNF the Medicare billing responsibility for virtually all of the services that the SNF's residents receive, except for a small number of services that the statute specifically identifies as being excluded from this provision. Section 103 of the BBRA amended this provision by further excluding a number of high-cost, low probability services (identified by Healthcare Common Procedure Coding System (HCPCS) codes) within several broader categories that otherwise remained subject to the provision. Section 313 of the BIPA further amended this provision by repealing its Part B aspect, that is, its applicability to services furnished to a resident during a SNF stay that Medicare does not cover. (However, physical, occupational, and speech-language therapy remain subject to consolidated billing, regardless of whether the resident who receives these services is in a covered Part A stay.)

To date, the Congress has enacted no further legislation affecting the consolidated billing provision. However, as we noted in the proposed rule of April 10, 2000 (65 FR 19232), section 1888(e)(2)(A)(iii) of the Act, as added by section 103 of the BBRA, not only identified for exclusion from this provision a number of particular service codes within four specified categories (that is, chemotherapy items, chemotherapy administration services, radioisotope services, and customized prosthetic devices), but " * * * also gives the Secretary the authority to designate additional, individual services for exclusion within each of the specified service categories." In that proposed rule, we also noted that the BBRA Conference report (H.R. Conf. Rep. No. 106–479 at 854) characterizes the individual services that this legislation targets for exclusion as "* * * high-cost, low probability events that could have devastating financial impacts because their costs far exceed the payment [SNFs] receive under the prospective payment system * * *" According to the conferees, section 103(a) "is an attempt to exclude from the PPS certain services and costly items that are provided infrequently in SNFs * * *" By contrast, we noted that the Congress declined to designate for exclusion any of the remaining services within those four categories (thus leaving all of those services subject to SNF consolidated billing), because they are relatively inexpensive and are furnished routinely in SNFs.

As we further explained in the final rule of July 31, 2000 (65 FR 46790), any additional service codes that we might designate for exclusion under our discretionary authority must meet the same criteria that the Congress used in identifying the original codes excluded from consolidated billing under section 103(a) of the BBRA: they must fall within one of the four service categories specified in the BBRA, and they also must meet the same standards of high cost and low probability in the SNF setting. Accordingly, we characterized this statutory authority to identify additional service codes for exclusion "* * * as essentially affording the flexibility to revise the list of excluded codes in response to changes of major significance that may occur over time (for example, the development of new medical technologies or other advances in the state of medical practice)" (65 FR 46791). In view of the amount of time that has elapsed since we made that statement, we believe it is appropriate at this point to invite public comments that identify codes in any of these four service categories representing recent medical advances that might meet the BBRA criteria for exclusion from SNF consolidated billing.

We note that the original BBRA legislation (as well as the implementing regulations) identified a set of excluded services by means of specifying HCPCS codes that were in effect as of a particular date (that is, July 1, 1999).

Identifying the excluded services in this manner made it possible for us to utilize a Program Memorandum as the vehicle for accomplishing routine updates of the excluded codes, in order to reflect any minor revisions that might subsequently occur in the coding system itself (for example, the assignment of a different code number to the same service). Accordingly, for any new services that would actually represent a substantive change in the scope of services that are excluded from the SNF consolidated billing provision, we would identify these additional excluded services by means of the HCPCS codes that are in effect as of a specific date (in this case, October 1, 2002). By making any new exclusions in this manner, we could similarly accomplish routine future updates of these additional codes through the issuance of a Program Memorandum.

V. Application of the SNF PPS to SNF Services Furnished by Swing-Bed Hospitals

In the July 31, 2001 final rule (66 FR 39562), we announced the conversion of swing-bed hospitals to the SNF PPS, effective with the start of the provider's first cost reporting period beginning on or after July 1, 2002. We selected this date consistent with the statutory provision to integrate swing-bed hospitals into the SNF PPS by the end of the SNF transition period, that is, June 30, 2002.

By July 31, 2003, the SNF PPS will cover all swing-bed hospitals. Therefore, all rates and wage indexes outlined in earlier sections of this notice for SNF PPS also apply to all swing-bed hospitals. A complete discussion of assessment schedules, the MDS and the transmission software, Raven-SB for Swing Beds can be found in the July 31, 2001 final rule (66 FR 39562). The latest changes in the MDS for swing-bed hospitals are listed on our SNF PPS Web site, *http://.www.cms.hhs.gov/providers/snfpps/default.asp*.

VI. Distinct Part Definition

While some SNFs function as separate, independent entities, we have recognized since the inception of the Medicare program that it is also possible for a SNF to operate as a component, or "distinct part," of a larger organization. As indicated in the discussion below, the predominant organizational form for such distinct part SNFs has been that of a component of a hospital that furnishes SNF services within the larger hospital complex. However, most program requirements that address SNF distinct parts have focused on operating and cost reporting procedures, without precisely defining what a "distinct part" is. The definition of a distinct part is particularly meaningful in today's environment, since entities other than hospitals are increasingly exploring diversification to provide SNF services. In addition, the growing frequency of hospital mergers (in which each of the merging hospitals brings its own distinct part SNF into the merger) has created situations where the newly-merged hospital entity includes the merger of components that are furnishing SNF services at two different physical locations; that is, the creation of a "composite" distinct part SNF. Moreover, such a hospital might additionally purchase a freestanding SNF for use in placing those of its inpatients who are ready for hospital discharge.

As a result of these changes in facility practices, it has become increasingly important to document the assumptions used historically to survey and certify distinct part units. The purpose of this portion of the proposed rule is to clarify the definition of a "distinct part," to provide more precise guidance to providers and State licensure and certification agencies. This guidance will assist providers in understanding the criteria that govern the financial and organizational structure of such entities, which will facilitate the application and certification process. In this proposed rule, we also explain how the survey and certification requirements are being applied to distinct parts in separate physical locations.

This proposal is not expected to have any adverse financial impact on hospitals or other entities exploring or operating distinct part SNFs. In fact, clarifying our expectations regarding operating criteria could enable providers to identify as duplicative or unnecessary certain procedures that they may have adopted before these clarifications were available, but that are not actually required by our programs. We are also evaluating ways to ensure that the survey and certification process includes ongoing monitoring of changes in distinct part status, and we invite comments on appropriate ways to accomplish this.

Similarly, we do not anticipate any negative impact on beneficiary access to care or on the quality of care furnished in distinct part SNFs. Distinct part SNFs already operate under the same benefit, eligibility, and coverage regulations as freestanding SNFs, and beneficiaries who reside in a distinct part SNF also have the same rights and protections as beneficiaries residing in freestanding SNFs. In fact, in this proposed rule, we clarify how certain resident rights and protections should be administered in composite distinct part SNFs. We anticipate that this clarification of our expectations will promote improved provider compliance with these program requirements.

A. Background

As noted in section I.A of this preamble, services are covered under the Part A SNF benefit only when furnished in a SNF that Medicare has certified as meeting the requirements for program participation contained in section 1819 of the Act. This section of the Act defines a SNF in terms of being "* * * an institution (or a distinct part of an institution) * * *." The committee report that accompanied the original Medicare legislation (cited below) contained the following explanation of the distinct part concept as applied to "posthospital extended care facilities," or SNFs: "* * * A posthospital extended care facility could be an institution, such as a skilled nursing home, or a distinct part of an institution, such as a ward or wing of a hospital or a section of a facility another part of which might serve as an old-age home." (Senate Finance Committee Rep. No. 404, 89th Cong., 1st Sess. 31–32 (1965)).

Under the reasonable cost payment methodology that applied to covered Part A SNF stays prior to the inception of the SNF PPS, a determination that a SNF was a distinct part of a hospital (or "hospital-based") rather than a freestanding facility directly affected the amount of the SNF's Medicare payment. This is because that payment methodology set higher limits on routine service costs for hospital-based SNFs than for freestanding facilities.

In the **Federal Register** of September 4, 1980 (45 FR 58701), we defined a "hospital-based SNF" for this purpose as being an integral and subordinate part of a hospital that is operated with other departments of the hospital under common licensure, governance, and professional supervision, with all services of both the hospital and the SNF being fully integrated. In addition, we included the following specific criteria:

- The SNF and hospital are subject to the bylaws and operating decisions of a common governing board;
- The SNF and hospital are financially integrated as evidenced by the cost report, which must reflect the certified or noncertified SNF beds of the hospital, the allocation of hospital overhead to the SNF through the required stepdown methodology, and common billing for all services of both facilities.

• While colocation is not an essential factor, the distance between the two facilities must be reasonable.

• The existence of a transfer agreement or a shared service agreement between the SNF and the hospital does not determine a SNF to be hospital-based and is not considered in determining the status of the facility.

We recognize that the April 7, 2000 final rule for the PPS for outpatient hospital services promulgated a set of criteria for use in determining whether an entity is "provider-based" (65 FR 18504), including several criteria that were similar to the 1980 hospital-based criteria for SNFs. However, SNFs are not subject to the provider-based regulations (see § 413.65(a)(1)(ii)(D)).

B. Proposed Revision

It has been noted that the regulations at § 413.65 already set forth detailed criteria for determining provider-based status in other settings, but that no similar regulations exist with regard to SNFs. The need to clarify the criteria for identifying distinct parts is especially pronounced in the context of survey and certification procedures.

In addition, the concept of a distinct part is actually broader than that of a "hospital-based" facility, in that the former can encompass situations in which a SNF is a part of a larger institution that is not a hospital (for example, a domiciliary or "board and care" facility). Further, the distinct part concept applies to Medicaid nursing facilities (NFs) as well as to SNFs, and involves not only payment issues, but also the requirements specified in the regulations at part 483, subpart B (the requirements for program participation for long-term care facilities (that is, SNFs and NFs)). Further, while the regulations at § 483.5 (which define a long-term care facility in this context) refer to the existence of "distinct part" SNFs and NFs, they do not currently contain a specific definition of this term.

Accordingly, in this proposed rule, we propose to add a number of specific criteria that would serve to determine whether a SNF or NF can be designated as a distinct part of a hospital or other entity, in the requirements for participation for long-term care facilities in subpart B of part 483. These proposed revisions would essentially reflect the 1980 "hospital-based" criteria discussed previously (which focus primarily on such elements as common ownership and control, financial integration, and location), and would also incorporate existing criteria included in the State Operations Manual and in Survey and Certification Letters into a single regulation. We also propose to make a number of conforming changes elsewhere in subpart B of part 483 of the regulations (specifically §§ 483.10 and 483.12), as well as to other distinct part references that appear in parts 413 and 440.

At § 483.5, we would define a distinct part as a physically identifiable component of an institution (for example, a hospital, or a board and care facility) or institutional complex (for example, a hospital or continuing care retirement community that includes various subprovider units and occupies several buildings) that is certified as meeting the applicable statutory requirements for SNFs or NFs in sections 1819 or 1919 of the Act, respectively, as well as the participation requirements for long-term care facilities set forth in subpart B of part 483. A SNF or NF distinct part may be comprised of one or more buildings or designated parts of buildings (that is, wings, wards, or floors) that are located in the same physical area immediately adjacent to the institution's main buildings, other areas and structures that are not strictly contiguous to the main buildings but are within close proximity of the main buildings, and any other areas that we determine, on an individual basis, to be part of the institution's campus. A distinct part must include all of the beds within the designated area, and cannot consist of a random collection of individual rooms or beds that are scattered throughout the physical plant.

In addition, we would set forth a number of specific criteria for use in determining whether a SNF or NF can be considered a distinct part of a larger institution, as follows:

• The SNF or NF must be operated under common ownership and control (that is, common governance) by the institution of which it is a distinct part, as evidenced by the following:

(1) The SNF or NF is wholly owned by the institution of which it is a distinct part;

(2) The SNF or NF is subject to the by-laws and operating decisions of a common governing body;

(3) The institution of which the SNF or NF is a distinct part has final responsibility for the distinct part's administrative decisions and personnel policies, and final approval for the distinct part's personnel actions; and

(4) The SNF or NF functions as an integral and subordinate part of the institution to which it is based, with significant common resource usage of buildings, equipment, personnel, and services.

• The administrator of the SNF or NF reports to and is directly accountable to the management of the institution of which the SNF or NF is a distinct part.

• The SNF or NF must have a designated medical director who is responsible for implementing care policies and coordinating medical care, and who is directly accountable to the management of the institution of which it is a distinct part.

• The SNF or NF is financially integrated with the institution of which it is a distinct part, as evidenced by the sharing of income and expenses with that institution, and the reporting of its costs on that institution's cost report.

• A single institution can have a maximum of only one distinct part SNF and one distinct part NF. (If an institution exercises the option to have both a distinct part SNF and a distinct part NF, its SNF and NF distinct parts may overlap entirely, partially, or not at all. Further, if the SNF and NF distinct parts partially overlap, the area of overlap would not represent a separate, dually-certified "SNF/NF.")

• An institution cannot designate itself as a SNF or NF distinct part, but instead must submit a written request to us to determine if it may be considered a distinct part, along with documentation that demonstrates that it meets the criteria set forth above. The effective date of approval of a distinct part is the date that we determine all requirements (including enrollment with the fiscal intermediary) are met for approval, and cannot be made retroactive. If a distinct part is established without our notification and approval, CMS will determine the distinct part has not been appropriately designated as such from the date that the entity began its operation. CMS must approve all proposed changes in the number of beds in the approved distinct part. (Such modifications would be subject to the applicable requirements governing changes in bed size or location in SNFs and NFs, as set forth in section 2337 of the Provider Reimbursement Manual, Part 1 (CMS Pub. 15–1), and in section 3202 of the State Operations Manual (CMS Pub. 7).)

We note that our proposed definition of distinct parts does not represent an additional burden on SNFs; rather, it would simply add increased clarity and specificity to the process of determining distinct part status. We believe that establishing more definitive criteria in this area will actually help reduce the existing burden on SNFs by adding greater clarity and predictability to the process of determining a SNF's distinct part status.

Further, we note that the numerous requests that we have received for clarification of the distinct part criteria have arisen, in part, from a June 4, 1996, memorandum in which we reiterated our longstanding interpretation that sections 1819(a) and 1919(a) of the Act allow for a maximum of one distinct part SNF (and one distinct part NF) within a single institution. We issued this memorandum in response to an increasing number of situations involving the merger of two hospitals on separate campuses, each of which brings its own distinct part SNF into the merger. Under our policy of allowing only one distinct part SNF per institution, such a merger would result in the creation of a single distinct part SNF consisting of two noncontiguous units in different locations (as opposed, for example, to a distinct part consisting of noncontiguous wards, wings, or floors that are all located within the same building or campus).

In this proposed rule, we refer to such a configuration as a "composite distinct part." A composite distinct part could also be created when a hospital that already has a distinct part SNF acquires an additional nursing home that is not co-located on the hospital's campus. This, in turn, has raised a number of questions and concerns regarding the treatment of such entities under the survey and certification process, which we now propose to address as well.

Accordingly, we propose to establish certain additional criteria that would apply specifically to a composite distinct part SNF or NF of a hospital, or of a nonhospital organization such as a continuing care retirement community (CCRC). Under these criteria, a composite distinct part would be treated as a single distinct part of the institution to which it is based and, as such, would have only one provider agreement. It should be noted that in establishing criteria specific to composite distinct parts, it is not our intent to create a new category of nursing homes, but rather, simply to address certain survey and certification issues that arise from the use of this particular type of configuration. By explicitly recognizing composite distinct parts, we can help ensure that survey and other program oversight functions are coordinated and uniformly administered. Since the designation of a composite distinct part is not designed to supersede or replace existing policies, the use of a composite SNF or NF configuration is limited to facilities within the same State. Further, in order to ensure quality of care and quality of life for all residents, the constituent components of a composite distinct part would be required to meet all of the participation requirements set forth in subpart B of part 483 independently in each location.

We also wish to take this opportunity to provide clarification regarding the logistics of applying the survey and certification process to a composite distinct part that consists of components in different locations. Specifically, we note that for such facilities, surveyors will place particular emphasis on the following requirements, which must be met independently in each location of the composite distinct part:

• Posting of resident's rights (§ 483.10(b));

• Posting of names, addresses, and telephone numbers of all pertinent State client advocacy groups (§ 483.10(b)(7)(iii));

• Prominently displayed facility information (§ 483.10(b)(10));

• Readily available survey results (§ 483.10(g));

• Organized resident and family groups (§ 483.15(c));

• Equal access by residents to activities and social services (§ 483.15(b), § 483.15(f), and § 483.15(g));

• Except where waived, the services of a registered nurse for at least 8 consecutive hours a day, 7 days a week (§ 483.30(b));

• Designating a person to serve as director of food services who receives frequently scheduled consultation from a qualified dietitian, unless a qualified dietitian is employed on a full-time basis (§ 483.35(a)); and

• The physical environment requirements, including life safety, and provisions for space and equipment in dining, health services, recreation and program areas, to enable staff to provide residents with needed services as required by these standards and as identified in each resident's plan of care (§ 483.15(h) and § 483.70).

We also propose to amend the regulations at § 483.12, to establish a resident's right to remain in (or return to) the same location of the composite distinct part to which he or she was originally admitted. To avoid any confusion regarding the distinct part criteria applicable to SNFs, we would amend the provider-based regulations at § 413.65(a)(1)(ii)(D) to include a cross-reference to the new distinct part criteria. Currently, the regulations at § 413.65(a)(1)(ii)(D) indicate only that provider-based determinations under these regulations do not apply to SNFs. We would amend § 413.65(a)(1)(ii)(D) by adding a parenthetical statement indicating that determinations for SNFs are made under the regulations at § 483.5.

We are also taking this opportunity to correct a typographical error that currently appears in the regulations text at § 483.20(k)(1) (regarding the required comprehensive care plan for long-term care facility residents), in which the word "describe" is misspelled as "describer."

VII. Provisions of the Proposed Rule

In this proposed rule, we propose to make the following revisions to the existing text of the regulations:

• In § 409.20, we would make a technical correction to the cross-reference that appears in paragraph (c).

• We would revise § 483.5 to include specific definitions of the terms "distinct part" and "composite distinct part." In addition, we would make conforming changes elsewhere in subpart B of part 483 of the regulations, as well as in parts 413 and 440, and we would correct a typographical error that currently appears in the regulations text at § 483.20(k)(1).

VIII. Collection of Information Requirements

This document does not impose information collection and recordkeeping requirements. Consequently, it need not be reviewed by the Office of Management and Budget under the authority of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

IX. Regulatory Impact Analysis

A. Overall Impact

We have examined the impacts of this proposed rule as required by Executive Order 12866 (September 1993, Regulatory Planning and Review), the Regulatory Flexibility Act (RFA) (September 16, 1980, Pub. L. 96–354), section 1102(b) of the Social Security Act, (the Act) the Unfunded Mandates Reform Act of 1995 (UMRA), (Pub. L. 104–4), and Executive Order 13132.

Executive Order 12866 (as amended by Executive Order 13258, which merely assigns responsibility of duties) directs agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). A regulatory impact analysis (RIA) must be prepared for major rules with economically significant effects ($100 million or more in any 1 year). This proposed rule is a major rule, as defined in Title 5, United States Code, section 804(2), because we estimate the

impact of the update will be to increase payments to SNFs by approximately $400 million. The update set forth in this proposed rule applies to payments in FY 2004. Accordingly, the analysis that follows describes the impact of this one fiscal year only. In accordance with the requirements of the Act, we will publish a notice for each subsequent fiscal year that will provide for an update to the payment rates and that will include an associated impact analysis.

The RFA requires agencies to analyze options for regulatory relief of small businesses. For purposes of the RFA, small entities include small businesses, nonprofit organizations, and government agencies. Most SNFs and most other providers and suppliers are small entities, either by their nonprofit status or by having revenues of $11.5 million or less in any 1 year. For purposes of the RFA, approximately 53 percent of SNFs are considered small businesses according to the Small Business Administration's latest size standards with total revenues of $11.5 million or less in any 1 year (for further information, see 65 FR 69432, November 17, 2000). Individuals and States are not included in the definition of a small entity.

This proposed rule would update the SNF PPS rates published in the July 31, 2002 update notice (67 FR 49798), thereby increasing aggregate payments by an estimated $400 million. Accordingly, we certify that this proposed rule would not have a significant impact on small entities.

In addition, section 1102(b) of the Act requires us to prepare a regulatory impact analysis if a rule may have a significant impact on the operations of a substantial number of small rural hospitals. For a proposed rule, this analysis must conform to the provisions of section 603 of the RFA. For purposes of section 1102(b) of the Act, we define a small rural hospital as a hospital that is located outside of a Metropolitan Statistical Area and has fewer than 100 beds. Because the payment rates set forth in this proposed rule also affect rural hospital swing-bed services, we believe that this proposed rule would have an impact on small rural hospitals (this impact is discussed later in this section). However, because this incremental increase in payments for Medicare swing-bed services is relatively minor in comparison to overall rural hospital revenues, this notice will not have a significant impact on the overall operations of these small rural hospitals.

Section 202 of the Unfunded Mandates Reform Act of 1995 also requires that agencies assess anticipated costs and benefits before issuing any rule that may result in an expenditure in any 1 year by State, local, or tribal governments, in the aggregate, or by the private sector, of $110 million or more. This proposed rule would have no substantial effect on State, local, or tribal governments. We believe the private sector cost of this proposed rule falls below these thresholds as well.

Executive Order 13132 establishes certain requirements that an agency must meet when it promulgates a proposed rule (and subsequent final rule) that imposes substantial direct requirement costs on State and local governments, preempts State law, or otherwise has Federalism implications. As stated above, this proposed rule would have no substantial effect on State and local governments.

The purpose of this proposed rule is not to initiate significant policy changes with regard to the SNF PPS; rather, it is to provide an update to the rates for FY 2004 and to address a number of policy issues related to the PPS. We believe that the revisions and clarifications mentioned elsewhere in the preamble (for example, with respect to determining distinct part status) will have, at most, only a negligible overall effect upon the regulatory impact estimate specified in the rule. As such, these revisions would not represent an additional burden to the industry.

B. Anticipated Effects

This proposed rule sets forth updates of the SNF PPS rates contained in the July 31, 2002 update (67 FR 49798). The impact analysis of this proposed rule represents the projected effects of the changes in the SNF PPS from FY 2003 to FY 2004. We estimate the effects by estimating payments while holding all other payment variables constant. We use the best data available, but we do not attempt to predict behavioral responses to these changes, and we do not make adjustments for future changes in such variables as days or case-mix.

This analysis incorporates the latest estimates of growth in service use and payments under the Medicare SNF benefit, based on the latest available Medicare claims from 2001. We note that certain events may combine to limit the scope or accuracy of our impact analysis, because such an analysis is future-oriented and, thus, very susceptible to forecasting errors due to other changes in the forecasted impact time period. Some examples of such possible events are newly-legislated general Medicare program funding changes by the Congress, or changes specifically related to SNFs. In addition, changes to the Medicare program may continue to be made as a result of the BBA, the BBRA, the BIPA, or new statutory provisions. Although these changes may not be specific to the SNF PPS, the nature of the Medicare program is such that the changes may interact, and the complexity of the interaction of these changes could make it difficult to predict accurately the full scope of the impact upon SNFs.

As mentioned previously, we propose to continue use of the FY 2003 wage index to adjust SNF PPS payments beginning October 1, 2003, in order to assure that the wage index published in each year's update will be used throughout the year to adjust payments. Therefore, the wage index has not changed and provides no additional impact on payment rates.

In accordance with section 1888(e)(4)(E) of the Act, the payment rates for FY 2004 are updated by a factor equal to the market basket index percentage increase to determine the payment rates for FY 2004. We note that in accordance with section 101(a) of the BBRA and section 314 of the BIPA, the existing, temporary increase in the per diem adjusted payment rates of 20 percent for certain specified RUGs (and 6.7 percent for certain others) remains in effect until the implementation of case-mix refinements. Because there have been no other revisions or clarifications affecting the payment rates for this proposed rule, the amount of the full market basket update is the only impact on facility payment rates. This leads to an increase in payments to SNFs of approximately $400 million (including approximately $6.4 million for swing-bed facilities, as discussed below), which is the full impact of this proposed rule with respect to SNFs.

Since the impact is limited to the 2.9 percentage increase due to the market basket update, the impact is the same for every facility without regard to Census region, ownership type, or urban/rural designation. For this reason, we have not included an impact table as we have in previous years.

With regard to the specific impact on swing-bed providers, in the July 31, 2002 update notice (67 FR 49798), we projected payments for these providers under the SNF PPS by first using the MEDPAR analog to assign 1999 claims records to a RUG-III group, then applying FY 2003 payment rates to calculate annual estimated payments.

For the purpose of this proposed rule, we have used the MEDPAR analog classification, and estimated current SNF PPS reimbursement as if the swing-bed providers were fully phased into the SNF PPS in FY 2002. Then, using the same MEDPAR analog classifications, we applied the FY 2004 changes for a fully phased-in swing-bed population. We estimate that the overall impact on swing-bed facilities will be an increase in payments of approximately 2.9 percent, or $6.4 million.

C. Alternatives Considered

Section 1888(e) of the Act establishes the SNF PPS for the payment of Medicare SNF services for cost reporting periods beginning on or after July 1, 1998. This section of the statute prescribes a detailed formula for calculating payment rates under the SNF PPS, and does not provide for the use of any alternative methodology. It specifies that the base year cost data to be used for computing the RUG-III payment rates must be from FY 1995 (October 1, 1994, through September 30, 1995.) In accordance with the statute, we also incorporated a number of elements into the SNF PPS, such as case-mix classification methodology, the MDS assessment schedule, a market basket index, a wage index, and the urban and rural distinction used in the development or adjustment of the Federal rates. Further, section 1888(e)(4)(H) of the Act specifically requires us to publish the payment rates for each new fiscal year in the **Federal Register**, and to do so prior to the August 1 that precedes the start of the new fiscal year. Accordingly, based upon the prescriptive nature of the statute, we are not pursuing alternatives.

D. Conclusion

For the reasons set forth in the preceding discussion, we are not preparing analyses for either the RFA or section 1102(b) of the Act because we have determined, and we certify, that this proposed rule will not have a significant economic impact on a substantial number of small entities or a significant impact on the operations of a substantial number of small rural hospitals.

Finally, in accordance with the provisions of Executive Order 12866, this regulation was reviewed by the Office of Management and Budget.

List of Subjects

42 CFR Part 409

Health facilities, Medicare.

42 CFR Part 413

Health facilities, Kidney diseases, Medicare, Reporting and recordkeeping requirements.

42 CFR Part 440

Grants programs—health, Medicaid.

42 CFR Part 483

Grants programs—health, Health facilities, Health professions, Health records, Medicaid, Medicare, Nursing homes, Nutrition, Reporting and recordkeeping requirements, Safety.

For the reasons set forth in the preamble, the Centers for Medicare & Medicaid Services proposes to amend 42 CFR chapter IV as follows:

PART 409—HOSPITAL INSURANCE BENEFITS

1. The authority citation for part 409 continues to read as follows:

Authority: Secs. 1102 and 1871 of the Social Security Act (42 U.S.C. 1302 and 1395hh).

Subpart C—Posthospital SNF Care

2. In § 409.20, the introductory text to paragraph (c) is revised to read as follows:

§ 409.20 Coverage of services.

* * * * * *

(c) * * *

In § 409.21 through § 409.36—.

* * * * * *

PART 413—PRINCIPLES OF REASONABLE COST REIMBURSEMENT; PAYMENT FOR END-STAGE RENAL DISEASE SERVICES; PROSPECTIVELY DETERMINED PAYMENT RATES FOR SKILLED NURSING FACILITIES

1. The authority citation for part 413 continues to read as follows:

Authority: Secs. 1102, 1812(d), 1814(b), 1815, 1833(a), (i) and (n), 1861(v), 1871, 1881, 1883, and 1886 of the Social Security Act (42 U.S.C. 1302, 1395d(d), 1395f(b), 1395g, 1395l(a), (i), and (n), 1395x(v), 1395hh, 1395rr, 1395tt, and 1395ww).

SUBPART E—PAYMENTS TO PROVIDERS

2. In § 413.65, paragraph (a)(1)(ii)(D) is revised to read as follows:

§ 413.65 Requirements for a determination that a facility or organization has provider-based status.

(a) *Scope and definitions.* (1) *Scope.*

(ii) * * *

(D) Skilled nursing facilities (SNFs) (determinations for SNFs are made in accordance with the criteria set forth in § 483.5 of this chapter).

* * * * * *

PART 440—SERVICES: GENERAL PROVISIONS

1. The authority citation for part 440 continues to read as follows:

Authority: Sec. 1102 of the Social Security Act (42 U.S.C. 1302).

Subpart A—Definitions

2. In § 440.40, paragraph (a)(1)(ii)(A) is revised to read as follows:

§ 440.40 Nursing facility services for individuals age 21 or older (other than services in an institution for mental disease), EPSDT, and family planning services and supplies.

(a) * * *

(1) * * *

(ii) * * *

(A) A facility or distinct part (as defined in § 483.5(b) of this chapter) that is certified to meet the requirements for participation under subpart B of part 483 of this chapter, as evidenced by a valid agreement between the Medicaid agency and the facility for providing nursing facility services and making payments for services under the plan; or

* * * * * *

2. In § 440.155(c), the introductory text is revised to read as follows:

§ 440.155 Nursing facility services, other than in institutions for mental diseases.

* * * * * *

(c) "Nursing facility services" may include services provided in a distinct part (as defined in § 483.5(b) of this chapter) of a facility other than a nursing facility if the distinct part (as defined in § 483.5(b) of this chapter)—

* * * * * *

PART 483—REQUIREMENTS FOR STATES AND LONG TERM CARE FACILITIES

1. The authority citation for part 483 continues to read as follows:

Authority: Secs. 1102 and 1871 of the Social Security Act (42 U.S.C. 1302 and 1395hh).

Subpart B—Requirements for Long Term Care Facilities

2. Section 483.5 is revised to read as follows:

§ 483.5 Definitions.

(a) *Facility defined.* For purposes of this subpart, *facility* means a skilled nursing facility (SNF) that meets the requirements of sections 1819 (a), (b), (c), and (d) of the Act, or a nursing facility (NF) that meets the requirements of sections 1919 (a), (b), (c), and (d) of the Act. "Facility" may include a distinct part of an institution (as defined in paragraph (b) of this section and specified in § 440.40 and § 440.155 of this chapter), but does not include an institution for the mentally retarded or persons with related conditions

described in § 440.150 of this chapter. For Medicare and Medicaid purposes (including eligibility, coverage, certification, and payment), the "facility" is always the entity that participates in the program, whether that entity is comprised of all of, or a distinct part of, a larger institution. For Medicare, a SNF (see section 1819(a)(1) of the Act), and for Medicaid, a NF (see section 1919(a)(1) of the Act) may not be an institution for mental diseases as defined in § 435.1009 of this chapter.

(b) *Distinct part.*

(1) *Definition.* A distinct part SNF or NF is a physically identifiable component of an institution (for example, a hospital) or institutional complex (for example, a hospital that includes various subprovider units and occupies several buildings) that meets the requirements of this paragraph and of paragraph (b)(2) of this section, and is certified as meeting the applicable statutory requirements for SNFs or NFs in sections 1819 or 1919 of the Act, respectively. A SNF or NF distinct part may be comprised of one or more buildings or designated parts of buildings (that is, wings, wards, or floors) that are: in the same physical area immediately adjacent to the institution's main buildings; other areas and structures that are not strictly contiguous to the main buildings but are located within close proximity of the main buildings; and any other areas that CMS determines on an individual basis, to be part of the institution's campus. A distinct part must include all of the beds within the designated area, and cannot consist of a random collection of individual rooms or beds that are scattered throughout the physical plant. The term "distinct part" also includes a composite distinct part that meets the additional requirements of paragraph (c) of this section.

(2) *Requirements.* In addition to meeting the participation requirements for long-term care facilities set forth elsewhere in this subpart, a SNF or NF also must meet all of the following requirements in order to be designated as a distinct part of an institution for payment or other purposes:

(i) The SNF or NF must be operated under common ownership and control (that is, common governance) by the institution of which it is a distinct part, as evidenced by the following:

(A) The SNF or NF is wholly owned by the institution of which it is a distinct part.

(B) The SNF or NF is subject to the by-laws and operating decisions of a common governing body.

(C) The institution of which the SNF or NF is a distinct part has final responsibility for the distinct part's administrative decisions and personnel policies, and final approval for the distinct part's personnel actions.

(D) The SNF or NF functions as an integral and subordinate part of the institution to which it is based, with significant common resource usage of buildings, equipment, personnel, and services.

(ii) The administrator of the SNF or NF reports to and is directly accountable to the management of the institution of which the SNF or NF is a distinct part.

(iii) The SNF or NF must have a designated medical director who is responsible for implementing care policies and coordinating medical care, and who is directly accountable to the management of the institution of which it is a distinct part.

(iv) The SNF or NF is financially integrated with the institution of which it is a distinct part, as evidenced by the sharing of income and expenses with that institution, and the reporting of its costs on that institution's cost report.

(v) A single institution can have a maximum of only one distinct part SNF and one distinct part NF.

(vi) An institution cannot designate itself as an SNF or NF distinct part, but instead must submit a written request to CMS to determine if it may be considered a distinct part, along with documentation that demonstrates that it meets the criteria set forth above. The effective date of approval of a distinct part is the date that CMS determines all requirements (including enrollment with the fiscal intermediary) are met for approval, and cannot be made retroactive. If a distinct part is established without CMS's notification and approval, CMS will determine the distinct part has not been appropriately designated as such from the date that the entity began its operation. CMS must approve all proposed changes in the number of beds in the approved distinct part.

(c) *Composite distinct part.*

(1) *Definition.* A composite distinct part is a distinct part consisting of two or more noncontiguous components that are not located within the same campus, as defined in § 413.65(a)(2) of this chapter.

(2) *Requirements.* In addition to meeting the requirements of paragraph (b) of this section, a composite distinct part also must meet all of the following requirements:

(i) An SNF or NF that is a composite of more than one location will be treated as a single distinct part of the institution to which it is based. As such, the composite distinct part will have only one provider agreement.

(ii) If there is a change of ownership of a composite distinct part SNF or NF, the assignment of the provider agreement to the new owner will apply to all of the approved locations that comprise the composite distinct part SNF or NF.

(iii) If two or more hospitals (each with a distinct part SNF or NF) merge, CMS must approve the existing SNFs or NFs as meeting the requirements of this paragraph before they can be merged and considered a single distinct part of the hospital that survives the merger. In making such a determination, CMS will consider whether its approval or disapproval of a proposed merger promotes the effective and efficient use of public monies without sacrificing the quality of care.

(iv) To ensure quality of care and quality of life for all residents, the various components of a composite distinct part must meet all of the requirements for participation independently in each location.

3. In § 483.10, the following new paragraph (b)(12) is added to read as follows:

§ 483.10 Resident rights.

* * * * *

(b) * * *

(12) *Admission to a composite distinct part.* In its admission agreement, a facility that is a composite distinct part (as defined in § 483.5(c) of this subpart) must disclose its physical configuration, including the various locations that comprise the composite distinct part, and must specify the policies that apply to room changes between its different locations under § 483.12(a)(8) of this subpart.

* * * * *

4. In § 483.12, the following changes are made:

A. A new paragraph (a)(8) is added.

B. A new paragraph (b)(4) is added.

The additions read as follows:

§ 483.12 Admission, transfer, and discharge rights.

(a) * * *

(8) *Room changes in a composite distinct part.* Room changes in a facility that is a composite distinct part (as defined in § 483.5(c) of this subpart) must be limited to moves within the particular building in which the resident resides, unless the resident voluntarily agrees to move to another of the composite distinct part's locations.

* * * * *

(b) * * *

(4) *Readmission to a composite distinct part.* When the nursing facility to which a resident is readmitted is a composite distinct part (as defined in § 483.5(c) of this subpart), the resident must be permitted to return to an available bed in the particular location of the composite distinct part in which he or she resided previously. If a bed is not available in that location at the time of readmission, the resident must be given the option to return to that location upon the first availability of a bed there.

* * * * *

§ 483.20 [Amended]

3. In § 483.20(k)(1), the word "describer" is revised to read "describe".

(Catalog of Federal Domestic Assistance Program No. 93.773, Medicare-Hospital Insurance Program; and No. 93.774, Medicare-Supplementary Medical Insurance Program)

Dated: January 29, 2003.

Thomas A. Scully,

Administrator, Centers for Medicare & Medicaid Services.

Dated: April 21, 2003.

Tommy G. Thompson,

Secretary.

[FR Doc. 03–11854 Filed 5–8–03; 1:10 pm]

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Friday,
May 16, 2003

Part IV

Department of Health and Human Services

Centers for Medicare & Medicaid Services

42 CFR Part 412

Medicare Program; Inpatient Rehabilitation Facility Prospective Payment System for FY 2004; Proposed Rule

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

42 CFR Part 412

[CMS–1474–P]

RIN 0938–AL95

Medicare Program; Inpatient Rehabilitation Facility Prospective Payment System for FY 2004

AGENCY: Centers for Medicare & Medicaid Services (CMS), HHS.

ACTION: Proposed rule.

SUMMARY: This proposed rule updates the prospective payment rates for inpatient rehabilitation facilities (IRFs) for Federal fiscal year 2004 as required under section 1886(j)(3)(C) of the Social Security Act (the Act). Section 1886(j)(5) of the Act requires the Secretary of Health and Human Services (the Secretary) to publish in the **Federal Register** on or before August 1 before each fiscal year, the classification and weighting factors for the IRF case-mix groups and a description of the methodology and data used in computing the prospective payment rates for that fiscal year. In addition, in this proposed rule, we are proposing new policies, and changing or clarifying existing policies regarding the prospective payment system (PPS) within the authority granted under sections 1886(j) and 1886(d) of the Act.

DATES: We will consider comments if we receive them at the appropriate addresses, as provided below, no later than 5 p.m. on July 7, 2003.

ADDRESSES: In commenting, please refer to file code CMS–1474–P. Because of staff and resource limitations, we cannot accept comments by facsimile (FAX) transmission or e-mail.

Mail written comments (one original and two copies) to the following address only: Centers for Medicare & Medicaid Services, Department of Health and Human Services, Attention: CMS–1474–P, P.O. Box 8010, Baltimore, MD 21244–8010.

Please allow sufficient time for mailed comments to be timely received in the event of delivery delays. If you prefer, you may deliver (by hand or courier) your written comments (one original and two copies) to one of the following addresses: Room 445–G, Hubert H. Humphrey Building, 200 Independence Avenue, SW., Washington, DC 20201, or Room C5–14–03, 7500 Security Boulevard, Baltimore, MD 21244–1850.

(Because access to the interior of the HHH Building is not readily available to persons without Federal Government identification, commenters are encouraged to leave their comments in the CMS drop slots located in the main lobby of the building. A stamp-in clock is available for persons wishing to retain a proof of filing by stamping in and retaining an extra copy of the comments being filed.) Comments mailed to the addresses indicated as appropriate for hand or courier delivery may be delayed and could be considered late.

For information on viewing public comments, see the beginning of the **SUPPLEMENTARY INFORMATION** section.

FOR FURTHER INFORMATION CONTACT: Robert Kuhl, (410) 786–4597, Pete Diaz (410) 786–1235 or Nora Hoban, (410) 786–0675.

SUPPLEMENTARY INFORMATION: *Inspection of Public Comments:* Comments received timely will be available for public inspection as they are received, generally beginning approximately 3 weeks after publication of a document, at the headquarters of the Centers for Medicare & Medicaid Services, 7500 Security Boulevard, Baltimore, Maryland 21244, Monday through Friday of each week from 8:30 a.m. to 4 p.m. To schedule an appointment to view public comments, phone (410) 786–9994.

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Table of Contents

I. Background
A. Requirements for Updating the Prospective Payment Rates for Inpatient Rehabilitation Facilities (IRFs)
B. General Overview of the Current IRF PPS
C. Operational Overview of the Current IRF PPS
D. Proposals for FY 2004
II. Requirements and Conditions for Payment Under the IRF PPS
A. Background of Subpart B Provisions
B. Regulatory Background of the 75 Percent Rule
C. CMS Evaluation of the 75 Percent Rule
III. Research to Support Case-Mix Refinements to the IRF PPS
A. Research on IRFs
B. RAND Research Background
C. Data for Continuing Research
D. Staff Time Measurement Data
E. Monitoring
F. Need to Develop Quality Indicators for IRFs
IV. The IRF PPS Patient Assessment Process
A. Background
B. Patient Rights
C. When the IRF–PAI Must Be Completed
D. Transmission of IRF–PAI Data
E. Proposed Revision of the Definition of Discharge
F. Waiver of the Penalty for Transmitting the IRF–PAI Data Late
G. General Information Regarding the IRF–PAI Assessment Process
V. Patient Classification System for the IRF PPS
VI. Proposed Fiscal Year 2004 Federal Prospective Payment Rates
A. Expiration of the IRF PPS Transition Period
B. Description of the Proposed IRF Standardized Payment Amount
C. Proposed Adjustments to Determine the Proposed FY 2004 Standard Payment Conversion Factor
1. IRF Market Basket Index
2. Proposed Area Wage Adjustment
3. Updated Wage Data
4. Proposed Updated Labor-Related Share
5. Proposed Budget Neutral Wage Adjustment Update Methodology
D. Proposed Update of Payment Rates Under the IRF PPS for FY 2004
E. Examples of Computing the Total Proposed Adjusted IRF Prospective Payments
F. Computing Total Payments Under the IRF PPS for the Transition Period
G. IRF-specific Wage Data
H. Proposed Adjustment for High-Cost Outliers under the IRF Prospective Payment System
1. Current Outlier Payment Provision under the IRF PPS
2. Proposed Changes to the IRF Outlier Payment Methodology
3. Proposed Adjustment to IRF Outlier Payments
4. Proposed Change to the Methodology for Calculating the Federal Prospective Payment Rates
VII. Provisions of the Proposed Rule
VIII. Collection of Information Requirements
IX. Responses to Comments
X. Regulatory Impact Analysis Regulations Text

Addendum—Tables

1—Proposed Relative Weights for Case-Mix Groups (CMGs)
2—Proposed Fiscal Year 2004 Federal Prospective Payments for Case-Mix Groups (CMGs)
3A—Proposed Urban Wage Index
3B—Proposed Rural Wage Index
4—Acceptable Impairment Group Codes
5—Acceptable ICD–9–CM Codes

Addendum—Charts

1—Estimates on Compliance With the 75 Percent Rule (2002 Data)
2—Example of Applying The Patient Assessment Instrument Discharge Assessment and Transmission Dates
3—Excluded Hospital With Capital Input Price Index (FY 1992 and Proposed FY 1997) Structure and Weights
4—Proposed Excluded Hospital with Capital Input Price Index (FY 1997) Vintage Weights
5—Percent Changes in the 1992-based and proposed 1997-based Excluded Hospital with Capital Market Baskets, FY 1999–2004
6—Proposed FY 2004 Labor-Related Share Relative Importance
7—Examples of Computing an IRF's Proposed Federal Prospective Payment
8—Projected Impact of Proposed FY 2004 Update

Appendix

Appendix A—Methodology to Determine Compliance With the 75 Percent Rule
Appendix B—Inpatient Rehabilitation Facility Patient Privacy Forms Privacy Act Statement—Health Care Records, Data Collection Information Summary for Patients in Inpatient Rehabilitation Facilities

I. Background

A. Requirements for Updating the Prospective Payment Rates for Inpatient Rehabilitation Facilities (IRFs)

On August 7, 2001, we published a final rule entitled "Medicare Program; Prospective Payment System for Inpatient Rehabilitation Facilities (CMS–1069–F)" in the **Federal Register** (66 FR 41316), that established a PPS for IRFs as authorized under section 1886(j) of the Act and codified at subpart P of part 412 of the Medicare regulations. In the August 7, 2001 final rule, we set forth per discharge Federal prospective payment rates for fiscal year (FY) 2002 that provided payment for inpatient operating and capital costs of furnishing covered rehabilitation services (that is, routine, ancillary, and capital costs) but not costs of approved educational activities, bad debts, and other services or items that are outside the scope of the IRF PPS. The provisions of that final rule were effective for cost reporting periods beginning on or after January 1, 2002. (On July 1, 2002, we also published a correcting amendment to the final rule (CMS–1069–F2) in the **Federal Register** (67 FR 44073). Any reference to the August 7, 2001 final rule in this proposed rule includes the provisions effective in the correcting amendment.)

Section 1886(j)(5) of the Act and § 412.628 of the regulations require the Secretary to publish in the **Federal Register**, on or before August 1 of the preceding fiscal year, the classifications and weighting factors for the IRF case-mix groups (CMGs) and a description of the methodology and data used in computing the prospective payment rates for the upcoming fiscal year. On August 1, 2002, we published a notice in the **Federal Register** (67 FR 49928) to update the IRF Federal prospective payment rates from FY 2002 to FY 2003 using the methodology described in § 412.624 of the regulations. As stated in that notice, we used the same classifications and weighting factors for the IRF CMGs that were set forth in the August 7, 2001 final rule to update the IRF Federal prospective payment rates from FY 2002 to FY 2003. The FY 2003 Federal prospective payment rates are effective for discharges on or after October 1, 2002 and before October 1, 2003.

In this proposed rule, we are proposing to update the IRF Federal prospective payment rates from FY 2003 to FY 2004 using the methodology described in § 412.624 of the regulations. See section VI of this proposed rule for further discussion of the proposed FY 2004 Federal prospective payment rates. The proposed FY 2004 Federal prospective payment rates will be effective for discharges on or after October 1, 2003 and before October 1, 2004.

B. General Overview of the Current IRF PPS

Section 4421 of the Balanced Budget Act of 1997 (BBA) (Pub. L. 105–33), as amended by section 125 of the Medicare, Medicaid, and SCHIP Balanced Budget Refinement Act of 1999 (BBRA) (Pub. L. 106–113), and by section 305 of the Medicare, Medicaid, and SCHIP Benefits Improvement and Protection Act of 2000 (BIPA) (Pub. L. 106–554), provides for the implementation of a per discharge PPS, through new section 1886(j) of the Act, for inpatient rehabilitation hospitals and inpatient rehabilitation units of a hospital (IRFs). Payments under the IRF PPS encompass inpatient operating and capital costs of furnishing covered rehabilitation services (that is, routine, ancillary, and capital costs) but not costs of approved educational activities, bad debts, and other services or items outside the scope of the IRF PPS. Although a complete discussion of the IRF PPS provisions appears in the August 7, 2001 final rule (66 FR 41316), we provide below a general description of the IRF PPS.

The IRF PPS, as described in the August 7, 2001 final rule, uses Federal prospective payment rates across 100 distinct CMGs. Ninety-five CMGs were constructed using rehabilitation impairment categories, functional status (both motor and cognitive), and age (in some cases, cognitive status and age may not be a factor in defining a CMG). Five special CMGs were constructed to account for very short stays and for patients who expire in the IRF.

For each of the CMGs, we developed relative weighting factors to account for a patient's clinical characteristics and expected resource needs. Thus, the weighting factors account for the relative difference in resource use across all CMGs. Within each CMG, the weighting factors were "tiered" based on the estimated effect that the existence of certain comorbidities have on resource use.

The Federal PPS rates were established using a standardized payment amount (also referred to as the budget neutral conversion factor in the August 7, 2001 final rule (66 FR 41364 through 41367)). For each of the tiers within a CMG, the relative weighting factors were applied to the budget neutral conversion factor to compute the unadjusted Federal prospective payment rates. Adjustments that account for geographic variations in wages (wage index), the percentage of low-income patients (LIPs), and location in a rural area would be applied to the IRF's unadjusted Federal prospective payment rates. In addition, adjustments would be made to account for the early transfer of a patient, interrupted stays, and high cost outliers.

Lastly, the IRF's final prospective payment amount would be determined under the transition methodology prescribed in section 1886(j) of the Act. Specifically, for cost reporting periods that began on or after January 1, 2002 and before October 1, 2002, section 1886(j)(1) of the Act and § 412.626 of the regulations provide that IRFs transition into the prospective payment systems receiving a "blended payment." For cost reporting periods that began on or after January 1, 2002 and before October 1, 2002, these blended payments consisted of 66⅔ percent of the Federal IRF PPS rate and 33⅓ percent of the payment that the IRF would have been paid had the IRF PPS not been implemented. However, during the transition period, an IRF with a cost reporting period beginning on or after January 1, 2002 and before October 1, 2002 could have elected to bypass this blended payment

and be paid 100 percent of the Federal IRF PPS rate. For cost reporting periods beginning on or after October 1, 2002 (FY 2003), however, the transition methodology expired, and payments for all IRFs consist of 100 percent of the Federal IRF PPS.

We established a CMS website that contains useful information regarding the IRF PPS. The website URL is *www.cms.hhs.gov/providers/irfpps/default.asp* and may be accessed to download or view publications, software, and other information pertinent to the IRF PPS.

C. Operational Overview of the Current IRF PPS

As described in the August 7, 2001 final rule, upon the admission and discharge of a Medicare Part A fee-for-service patient, the IRF is required to complete the appropriate sections of a patient assessment instrument, the Inpatient Rehabilitation Facility—Patient Assessment Instrument (IRF-PAI). All required data must be electronically encoded into the IRF's PAI software product. Generally, the software product includes patient grouping programming called the GROUPER software. The GROUPER software uses specific PAI data elements to classify (or group) the patient into a distinct CMG and account for the existence of any relevant comorbidities. The GROUPER software produces a 5-digit CMG number. The first digit is an alpha-character that indicates the comorbidity tier. The last 4 digits represent the distinct CMG number. (Free downloads of the Inpatient Rehabilitation Validation and Entry (IRVEN) software product, including the GROUPER software, are available at the CMS website at *www.cms.hhs.gov/providers/irfpps/default.asp).*

Once the patient is discharged, the IRF completes the Medicare claim (UB–92 or its equivalent) using the 5-digit CMG number and sends it to the appropriate Medicare fiscal intermediary (FI). (Claims submitted to Medicare must comply with the electronic claim requirements contained at *www.cms.hhs.gov/providers/edi/default.asp,* as reported in the Health Insurance Portability and Accountability Act (HIPAA) program claim memoranda issued by CMS and also published at that web site, and as listed in the addenda to the Medicare Intermediary Manual, Part 3, section 3600. Instructions for the limited number of claims submitted to Medicare on paper are located in section 3604 of Part 3 of the Medicare Intermediary Manual.) The Medicare FI processes the claim through its software system. This software system includes pricing programming called the PRICER software. The PRICER software uses the CMG number, along with other specific claim data elements and provider-specific data, to adjust the IRF's prospective payment for interrupted stays, transfers, short stays, and deaths and then applies the applicable adjustments to account for the IRF's wage index, percentage of LIPs, rural location, and outlier payments.

D. Proposals for FY 2004

In this proposed rule, we are proposing to update the data used to compute the IRF wage indices. In the August 7, 2001 final rule, we used FY 1997 acute care hospital wage data to compute the IRF wage indices for FY 2002. The August 1, 2002 notice that set forth the updated FY 2003 IRF Federal prospective payment rates also used 1997 acute care hospital wage data to compute the FY 2003 IRF wage indices.

In this proposed rule, we are proposing to update the IRF wage indices for FY 2004 by using FY 1999 acute care hospital data. We believe that the FY 1999 acute care hospital data are the best available because they are currently the most recent complete final data. However, any adjustments or updates made under section 1886(j)(6) of the Act must be made in a budget neutral manner. Therefore, in section VI of this proposed rule, we are proposing a methodology to update the wage indices for FY 2004 using 1999 acute care hospital data in a budget neutral manner.

In this proposed rule, we are also proposing to update the underlying data used to compute the IRF market basket index. As explained in Appendix D of the August 7, 2001 final rule, we used 1992 cost report data as the underlying data to develop the excluded hospital with capital market basket that formed the basis of the FY 2002 and FY 2003 IRF market basket index. In section VI of this proposed rule, we are proposing to use 1997 cost report data, the most recent data available, to form the basis of the FY 2004 IRF market basket index.

In section II of this proposed rule, we are proposing to modify or clarify certain criteria for a hospital or a hospital unit to be classified as an IRF. As stated in the August 7, 2001 final rule, we did not change the survey and certification procedures applicable to entities seeking classification as an IRF. Currently, to be paid under the IRF PPS, a hospital or unit of a hospital must first be deemed to be excluded from the diagnosis-related group (DRG)-based acute care hospital PPS under the general requirements in subpart B of part 412 of the regulations. Second, the excluded hospital or unit must meet the conditions for payment under the IRF PPS at § 412.604 of the regulations.

Lastly, we are proposing, in various sections of this proposed rule, to modify or clarify existing provisions of the IRF PPS. However, we are not proposing refinements to the FY 2002 case-mix classification system (the CMGs and the corresponding relative weights) and the case-level and facility-level adjustments, due to the lack of available data to make such changes.

II. Requirements and Conditions for Payment Under the IRF PPS

As issued in the August 7, 2001 final rule, § 412.604 "Conditions for payment under the prospective payment system for inpatient rehabilitation facilities" describes the conditions that must be met for an IRF to be paid under the IRF PPS. Section 412.604(a) states the general requirements for payment to be made under the IRF PPS and the effects on Medicare payment if the conditions described therein are not met. Section 412.604(b) states the existing regulatory provisions that must be met for a hospital or unit of a hospital to be excluded from the acute care inpatient hospital PPS and to be classified as an IRF. Section 412.604(c) requires an IRF to complete a patient assessment instrument for each Medicare Part A fee-for-service patient admitted. Section 412.604(d) describes the limitations on IRFs for charging beneficiaries that receive Medicare covered services. Section 412.604(e) describes the requirements associated with furnishing inpatient hospital services directly or under arrangement. Section 412.604(f) states the reporting and recordkeeping requirements that IRFs must meet.

In this section of the proposed rule, we describe proposed changes, if any, to the conditions or underlying requirements of § 412.604.

Section 412.604(a) General Requirements

Under paragraph (a)(2), we propose to change the word "we" to "CMS or its Medicare fiscal intermediary" to read as follows:

"If an inpatient rehabilitation facility fails to comply fully with these conditions with respect to inpatient hospital services furnished to one or more Medicare Part A fee-for-service beneficiaries, CMS or its Medicare fiscal intermediary may, as appropriate—

(i) Withhold (in full or in part) or reduce Medicare payment to the inpatient rehabilitation facility until the facility provides adequate assurances of compliance; or

(ii) Classify the inpatient rehabilitation facility as an inpatient hospital that is subject to the conditions of subpart C of this part and is paid under the prospective payment systems specified in § 412.1(a)(1)."

Section 412.604(b) Inpatient Rehabilitation Facilities Subject to the Prospective Payment System

Section 412.604(b) states that, "subject to the special payment provisions of § 412.22(c), an inpatient rehabilitation facility must meet the general criteria set forth in § 412.22 and the criteria to be classified as a rehabilitation hospital or rehabilitation unit set forth in § 412.23(b), § 412.25, and § 412.29 for exclusion from the inpatient hospital prospective payment systems specified in § 412.1(a)(1)." The general criteria set forth in § 412.22 and the criteria to be classified as a rehabilitation hospital or rehabilitation unit set forth in § 412.23(b), § 412.25, and § 412.29 are under subpart B of part 412 of the regulations. In the August 7, 2001 final rule implementing the IRF PPS, we did not make any changes to the exclusion criteria and requirements to be classified as an IRF under subpart B of part 412. Since the implementation of the IRF PPS, a number of questions have been raised on the application of some of these requirements and the necessity of other criteria. Below, we will discuss each requirement as it relates to the classification of an IRF.

A. Background of Subpart B Provisions

Section 601 of the Social Security Amendments of 1983 (Pub. L. 98–21) added section 1886 to the Act that established a PPS for acute care inpatient hospital services for cost reporting periods beginning on or after October 1, 1983. Under section 1886(d)(1)(B) of the Act, several types of hospitals and units of hospitals are excluded from the inpatient hospital PPS. Sections 1886(d)(1)(B)(ii) and 1886(d)(1)(B) of the Act specify that rehabilitation hospitals and rehabilitation units of hospitals (as defined by the Secretary) are excluded from the inpatient PPS.

Extensive discussion and public comments on developing the criteria under which a hospital or unit of a hospital can be excluded from the inpatient PPS as an IRF began with the September 1, 1983 publication of the interim final rule with comment period in the **Federal Register** (48 FR 39752). (That interim final rule discussed the provisions necessary to implement section 1886 of the Act.) On January 3, 1984, we published a final rule (49 FR 234) that responded to public comments on the provisions of the September 1, 1983 interim final rule and established the initial set of criteria that must be met by a hospital or unit of a hospital seeking exclusion from the inpatient hospital PPS as an IRF. Since the publication of these earlier rules, the criteria to be an IRF have been revised and codified at subpart B of part 412 of the current Medicare regulations.

Section 412.20 Hospital Services Subject to the Prospective Payment Systems

In the August 7, 2001 final rule, we added § 412.20(b) stating that covered inpatient hospital services furnished to Medicare beneficiaries by a rehabilitation hospital or rehabilitation unit that meet the conditions of § 412.604 are paid under the PPS described in subpart P of this part.

In this proposed rule, we are proposing to redesignate current § 412.20(b) as paragraph (b)(1) of § 412.20 and add paragraph (b)(2) to ensure that inpatient hospital services will not be paid under the IRF PPS if the services are paid by a health maintenance organization (HMO) or competitive medical plan (CMP) that elects not to have CMS make payments to an IRF for services, which are inpatient hospital services, furnished to the HMO's or CMP's Medicare enrollees under part 417 of this chapter. This proposed provision is similar to the provision at § 412.20(b)(3) that prohibits payments under the acute care hospital PPS for similar HMO or CMP services.

Section 412.22 Excluded Hospitals and Hospital Units: General Rules

Section 412.22(h) describes the requirements to be a satellite facility that is excluded from the acute care hospital PPS. The following describes our proposal to eliminate the provision that limits the bed size of a satellite IRF.

In the July 30, 1999 **Federal Register** (64 FR 41540), we revised § 412.22(h) to require that in order to be excluded from the acute care hospital inpatient PPS, a satellite of a hospital: (1) Effective for cost reporting periods beginning on or after October 1, 2002, is not under the control of the governing body or chief executive officer of the hospital in which it is located, and furnishes inpatient care through the use of medical personnel who are not under the control of the medical staff or chief medical officer of the hospital in which it is located; (2) must maintain admission and discharge records that are separately identified from those of the hospital in which it is located and are readily available; (3) cannot commingle beds with beds of the hospital in which it is located; (4) must be serviced by the same FI as the hospital of which it is a part; (5) must be treated as a separate cost center of the hospital of which it is a part; (6) for cost reporting and apportionment purposes, must use an accounting system that properly allocates costs and maintains adequate data to support the basis of allocation; and (7) must report costs in the cost report of the hospital of which it is a part, covering the same fiscal period and using the same method of apportionment as the hospital of which it is a part. In addition, the satellite facility must independently comply with the qualifying criteria for exclusion from the acute care hospital inpatient PPS. Lastly, the total number of State-licensed and Medicare-certified beds (including those of the satellite facility) for a hospital (other than a children's hospital) that was excluded from the acute care hospital inpatient PPS for the most recent cost reporting period beginning before October 1, 1997, may not exceed the hospital's number of beds on the last day of that cost reporting period.

In § 412.22(h)(1), we define a satellite as "a part of a hospital that provides inpatient services in a building also used by another hospital, or in one or more entire buildings located on the same campus as buildings used by another hospital." Satellite arrangements exist when an existing hospital that is excluded from the acute care hospital inpatient PPS and that is either a freestanding hospital or a hospital-within-a-hospital under § 412.22(e) shares space in a building or on a campus occupied by another hospital in order to establish an additional location for the excluded hospital. The July 30, 1999 acute care hospital inpatient PPS final rule (64 FR 41532–41534) includes a detailed discussion of our policies regarding Medicare payments for satellite facilities of hospitals excluded from the acute care hospital inpatient PPS.

In accordance with section 1886(b) of the Act, as amended by sections 4414 and 4416 of Pub. L. 105–33, we established two different target limits on payments to excluded hospitals, depending upon when the IRF was established. The target amount limit for an IRF with a cost reporting period beginning before October 1, 1997 was set at the 75th percentile of the target amounts of IRFs, as specified in § 413.40(c)(4)(iii), updated to the applicable cost reporting period. For IRFs with a cost reporting period beginning on or after October 1, 1997, under section 4416 of Pub. L. 105–33, the payment amount for the hospital's

first two 12-month cost reporting periods, as specified at § 413.40(f)(2)(ii)(A) and (B), could not exceed 110 percent of the national median of target amounts of IRFs for cost reporting periods ending during FY 1996, updated by the hospital market basket increase percentage to the first cost reporting period in which the IRF receives payment.

Because we were concerned that a number of pre-1997 excluded hospitals (including IRFs), governed by § 413.40(c)(4)(iii), would seek to create satellite arrangements in order to avoid the effect of the lower payment caps that would apply to new hospitals under § 413.40(f)(2)(ii), we established rules regarding the exclusion of and payments to satellites of existing facilities. If the number of beds in the hospital or unit (including both the base hospital or unit and the satellite location) exceeds the number of State-licensed and Medicare-certified beds in the hospital or unit on the last day of the hospital's or unit's last cost reporting period beginning before October 1, 1997, the facility would be paid under the acute care hospital inpatient DRG system. Therefore, while an excluded hospital or unit could "transfer" bed capacity from a base facility to a satellite, if it increased total bed capacity beyond the level it had in the most recent cost reporting period before October 1, 1997 (see 64 FR 41532–41533, July 30, 1999), the hospital will not be paid as a hospital excluded from the acute care hospital inpatient PPS. However, no similar limitation was imposed with respect to the number of total beds in excluded hospitals and units and satellite facilities of those excluded hospitals and units established after October 1, 1997, since those excluded hospitals and units were subject to the lower payment limits of section 4416 of Pub. L. 105–33, and would, therefore, not benefit from the higher payment cap on target amounts under § 413.40(c)(4) by creating a satellite facility.

On March 22, 2002, we published a proposed rule in the **Federal Register** (67 FR 13416) that set forth the proposed Medicare PPS for long-term care hospitals (LTCHs). Discussion of the comments received on that LTCH proposed rule and our responses were published in a final rule on August 30, 2002 **Federal Register** (67 FR 55954). Specific comments received were discussed on page 56013 of the LTCH final rule that urged us to eliminate the bed-number criteria in § 412.22(h)(2)(i) for pre-1997 IRFs since the applicable PPS is fully phased in. The rationale for the bed-number criteria provision at § 412.22(h)(2)(i) was the potential for circumventing the PPS by creating a satellite location that could have their payment based on a higher TEFRA target amount cap. However, once an IRF's payment under the IRF PPS does not include a TEFRA-based payment (referred to as the facility-specific payment under the transition period described in § 412.626) and is based on 100 percent of the Federal prospective payment rate, we believe that the need for the bed-number criteria does not exist because IRF prospective payments will be the same regardless of when the IRF was established. Because all IRFs will be paid 100 percent of the proposed FY 2004 Federal prospective payment rates, we are proposing to eliminate the bed-number criteria by amending § 412.22(h) for freestanding satellite IRFs. We are also proposing to eliminate the bed-number criteria for IRF satellite units of a hospital by amending § 412.25(e) to conform with the proposed change in § 412.22(h).

Section 412.23 Excluded Hospitals: Classifications

Classification as an IRF—"The 75 Percent Rule"

Under the § 412.23(b)(2) of the regulations, a facility may be classified as an IRF if it can show that during its most recent 12-month cost reporting period it served an inpatient population of whom at least 75 percent required intensive rehabilitation services for the treatment of one or more of the following conditions:

1. Stroke.
2. Spinal cord injury.
3. Congenital deformity.
4. Amputation.
5. Major multiple trauma.
6. Fracture of femur (hip fracture).
7. Brain injury.
8. Polyarthritis, including rheumatoid arthritis.
9. Neurological disorders, including multiple sclerosis, motor neuron diseases, polyneuropathy, muscular dystrophy, and Parkinson's disease.
10. Burns.

Under § 412.604(b), the requirement at § 412.23(b)(2) must be met as one of the conditions for payment under the IRF PPS. However, even before the implementation of the IRF PPS, the rehabilitation industry expressed an interest in having CMS re-examine the regulatory criteria used to determine the classification of a unit or hospital as an IRF. Recently this interest has focused on the regulatory requirement at § 412.23(b)(2) commonly known as the "75 Percent Rule."

B. Regulatory Background of the 75 Percent Rule

We initially stipulated the "75 percent" requirement in the September 1, 1983, interim final rule with comment period entitled "Medicare Program; Prospective Payments for Medicare Inpatient Hospital Services" (48 FR 39752). That rule implemented the Social Security Amendments of 1983 (Pub. L. 98–21), changing the method of payment for inpatient hospital services from a cost-based, retrospective reimbursement system to a diagnosis specific PPS. However, the rule stipulated that in accordance with sections 1886(d)(1)(B) and 1886(d)(1)(B)(ii) of the Act both a rehabilitation unit, which is a distinct part of a hospital, and a rehabilitation hospital were excluded from the inpatient hospital PPS. We noted that sections 1886(d)(1)(B) and 1886(d)(1)(B)(ii) of the Act also gave the Secretary discretion in defining what is a "rehabilitation unit" and a "rehabilitation hospital."

In order to define a rehabilitation hospital we consulted with the Joint Commission on Accreditation of Hospitals (JCAH), and other accrediting organizations. (JCAH is currently known as the Joint Commission on Accreditation of Hospital Organizations.) The criteria we included in our definition of a rehabilitation hospital incorporated some of the accreditation requirements of these organizations. The definition also included other criteria, which we believed distinguished a rehabilitation hospital from a hospital that furnished general medical and surgical services as well as some rehabilitation services. One criterion was that "The hospital must be primarily engaged in furnishing intensive rehabilitation services as demonstrated by patient medical records showing that, during the hospital's most recently completed 12-month cost reporting period, at least 75 percent of the hospital's inpatients were treated for one or more conditions specified in these regulations that typically require intensive inpatient rehabilitation." (48 FR 39756) This requirement was originally specified in § 405.471(c)(2)(ii) of the regulations. We included this requirement, as a defining feature of a rehabilitation hospital, because we believed "that examining the types of conditions for which a hospital's inpatients are treated, and the proportion of patients treated for conditions that typically require intensive inpatient rehabilitation, will help distinguish those hospitals in which the provisions of rehabilitation

services is a primary, rather than a secondary, goal." (48 FR 39756) Using a similar line of reasoning, we made compliance with the 75 percent rule one of the characteristics that defined a rehabilitation unit.

The original medical conditions specified in § 405.471(c)(2)(ii) were stroke, spinal cord injury, congenital deformity, amputation, major multiple trauma, fracture of femur (hip fracture), brain injury, and polyarthritis, including rheumatoid arthritis. This list of 8 medical conditions was partly based upon the information contained in a document entitled "Sample Screening Criteria for Review of Admissions to Comprehensive Medical Rehabilitation Hospitals/Units." This document was a product of the Committee on Rehabilitation Criteria for PSRO of the American Academy of Physical Medicine and Rehabilitation and the American Congress of Rehabilitation Medicine. In addition, we received input from with the National Association of Rehabilitation Facilities, and the American Hospital Association.

On January 3, 1984, we published a final rule entitled "Medicare Program; Prospective Payment for Medicare Inpatient Hospital Services" (49 FR 234). On page 240 of that final rule, we summarized comments that requested inclusion of neurological disorders, burns, chronic pain, pulmonary disorders, and cardiac disorders in the 75 percent rule's list of medical conditions. Our analysis of these comments led us to agree that neurological disorders (including multiple sclerosis, motor neuron diseases, polyneuropathy, muscular dystrophy, and Parkinson's disease) and burns should be added to the 75 percent rule's original list of 8 medical conditions. (49 FR 240) We did not agree with comments that we lower from 75 to 60 the percentage of patients that must meet one of the medical conditions. Nor did we agree with comments urging us to use IRF resource consumption, instead of a percentage of patients that must have one or more of the specified medical conditions, to help define what is an IRF. (49 FR 239–240) We also rejected suggestions, which proposed that when an IRF could not meet the 75 percent rule the facility could still be defined as an IRF based on the types of services it furnished.

On August 31, 1984, we published a final rule entitled "Medicare Program; Changes to the Inpatient Hospital Prospective Payment System and Fiscal Year 1985 Rates" (49 FR 34728). In that rule we explained how the 75 percent rule applied to a new rehabilitation unit or rehabilitation hospital, or when a rehabilitation unit wanted to expand its size by adding beds.

On March 29, 1985, we published a final rule entitled "Medicare Program; Prospective Payment System for Hospital Inpatient Services; Redesignation of Rules" (50 FR 12740). That rule redesignated provisions of § 405.471 that addressed the 75 percent rule into § 412.23.

On August 30, 1991, we published a final rule entitled "Medicare Program; Changes to the Inpatient Hospital Prospective Payment System and Fiscal Year 1992 Rates" (56 FR 43196). Since October 1, 1983, the regulations allowed a new rehabilitation hospital or new rehabilitation unit, or an existing excluded rehabilitation unit which was to be expanded by the addition of new beds, to be excluded from the acute care PPS if, in addition to meeting other requirements, it submitted a written certification that during its first cost reporting period it would be in compliance with the 75 percent rule. The August 30, 1991, rule specified that if these facilities were later found to have not complied with the 75 percent rule CMS would determine the amount of actual payment under the exclusion, compute what we would have paid for the facility's services to Medicare patients under the acute care hospital PPS, and recover any difference in accordance with the rules on the recoupment of overpayments.

On September 1, 1992, we published a final rule entitled "Medicare Program; Changes to Hospital Inpatient Prospective Payment Systems and Fiscal Year 1993 Rates" (57 FR 39746). In the rule we acknowledged that, for various reasons, a new rehabilitation hospital or a new rehabilitation unit might need to begin operations at some time other than at the start of its regular cost reporting period. Therefore, we specified such an IRF could submit a written certification that it would comply with the 75 percent rule for both a partial cost reporting period of up to 11 months, as well as the subsequent full 12-month cost reporting period.

On September 1, 1994, we published a final rule entitled "Medicare Program; Changes to the Hospital Inpatient Prospective Payment Systems and FY 1995 Rates" (59 FR 45330). In that rule, we stated that we had miscellaneous comments requesting that oncology cases, pulmonary disorders, cardiac disorders, and chronic pain be added to the 75 percent rule's list of medical conditions. (59 FR 45393) We responded that although the 75 percent rule had not been addressed in the associated May 27, 1994, proposed rule we would take these miscellaneous comments into consideration if we decided to make changes to the 75 percent rule.

When we published the August 7, 2001 final rule (66 FR 41316), we acknowledged we had received comments requesting that we update the 75 percent rule's list of medical conditions, or eliminate the 75 percent rule. (66 FR 41321) We responded that in our IRF PPS proposed rule we had not proposed changing the 75 percent rule, believed that the existing 75 percent rule was appropriate, and, therefore, would not be revising the 75 percent rule. However, we also stated that data obtained after we implemented the IRF PPS could lead us to reconsider revising the 75 percent rule.

C. CMS Evaluation of the 75 Percent Rule

In the spring of 2002 we surveyed the fiscal intermediaries (FIs) in order to ascertain what methods were being used to verify if IRFs were complying with the 75 percent rule. Analysis of the survey data made us aware that inconsistent methods were being used to determine if an IRF was in compliance with the 75 percent rule, and that some IRFs were not being reviewed to determine if they were in compliance with the 75 percent rule. These survey results led us to become concerned that some IRFs may be out of compliance with the regulations. In addition, we were concerned that some FIs might be using methods to verify compliance with the 75 percent rule, which may cause an IRF to incorrectly be found out of compliance with the rule; this would thus cause an IRF to inappropriately lose its classification as an IRF. Therefore, on June 7, 2002, we suspended enforcement of the 75 percent rule until we conducted a careful examination of this area and determined whether changes were needed to the regulation, and the operating procedures that govern how compliance with the regulation is verified.

In addition to our review of FI administrative procedures, we conducted an analysis of CMS administrative data to attempt to estimate overall compliance with the regulation. We examined both IRF–PAI data and claims from the years 1998, 1999, and 2002. Before discussing the results of this analysis, we note that the data does have some limitations. First, it is not possible to discern from the diagnosis data on the IRF–PAI or the claim whether or not there was a medical need to furnish the patient "intensive rehabilitation." The diagnosis is a determination of a

patient's clinical status, but that is different from determining that there is a medical necessity to furnish treatment to a patient in an IRF as opposed to another type of treatment setting. In addition, it was not possible in many cases to map the diagnosis code on the claim data to one of the ten medical conditions listed in § 412.23(b) because a large percentage of claims have an ICD–9–CM diagnosis code that is a general code indicating only care involving the use of rehabilitation procedures instead of a specific diagnosis.

Chart 1 "Estimates of Compliance with the 75 Percent Rule" below shows the estimated percent of facilities with 75 percent of cases falling into the 10 conditions (13.35 percent) using 2002 available patient assessment data. Appendix A provides the technical detail regarding the method used to determine the percent of IRFs in calendar year 2002 that complied with the 75 percent rule. We believe our findings may tend to undercount cases falling within the 10 conditions because the IRF–PAI assessment process was first implemented during 2002. We believe that learning the IRF–PAI assessment process probably resulted in IRFs erring when coding the impairment group on the IRF–PAI assessment form. Nevertheless, we believe the analysis is useful for providing an estimate of the overall compliance with this regulatory requirement. Our findings showed that overall about 50 percent of cases fall within the 10 conditions specified in the rule and the number of facilities meeting the requirement based upon Medicare discharges rather than all discharges is very low. In addition, it shows the estimated percent of facilities that meet lower thresholds. Finally, our analysis also found that a facility's Medicare case mix was a good predictor of case mix for non-Medicare IRF patients.

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Chart 1 Estimates on Compliance With the 75 Percent Rule (2002 Data)

Hospital Characteristic	Total Number	45% Rule Percent	55% Rule Percent	65% Rule Percent	75% Rule Percent
Total	**1170**	**71.87**	**44.19**	**25.17**	**13.35**
Census Division					
1. New England	38	76.3	28.9	7.9	2.6
2. Middle Atlantic	170	47.6	22.4	10	4.1
3. South Atlantic	143	74.8	36.4	15.4	7.0
4. East North Central	220	76.8	53.2	29.1	12.3
5. East South Central	66	77.3	36.4	15.2	1.5
6. West North Central	99	78.8	58.6	41.4	27.3
7. West South Central	235	66.4	30.2	11.1	3.4
8. Mountain	78	70.5	51.3	33.3	21.8
9. Pacific	121	95.9	86.8	71.1	48.8
Unit/Freestanding Facility					
Unit	95456	72.7	47.6	28.3	15.4
Freestanding	214	68.7	28.5	11.2	4.7
Teaching Status					
Teaching	145	71.7	46.2	32.4	18.6
Non-Teaching	845	73.5	43.6	24.6	13.1
Missing	180	65	45	22.2	10.6
Disproportionate Share Hospital (DSH)					
< 0.05	226	67.3	40.7	21.7	10.2
0.05 - 0.1	339	66.1	39.2	21.8	10.9
0.1 - 0.2	313	76	41.9	23.3	13.7
> = 0.2	145	88.3	64.1	43.4	24.1
Missing	147	68	45.6	24.5	12.9
Facility Control					
Voluntary	700	73.4	47.9	28.4	15.3
Proprietary	259	69.1	30.9	12.7	5
Government	135	77.8	48.9	30.4	18.5
Missing	76	57.9	46.1	28.9	15.8
Size					
Small	309	70.2	49.2	28.2	17.2
Medium	502	74.8	44.2	25.8	12.5
Large	201	70.9	35.2	19.6	9.5
Missing	158	67.7	44.9	24.7	13.9
Urban/Rural					
Large Urban	493	71.6	46.7	29.6	15
Other Urban	404	73.8	42.1	22	12.4
Rural	170	74.1	40.6	19.4	10
Missing	103	63.1	45.6	26.2	15.5

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While our estimate of compliance with the 75 percent rule is somewhat limited by the data available, we do believe it clearly demonstrates low compliance of the 75 percent rule by IRFs. Though IRFs are now paid under a PPS, the 75 percent rule still serves the relevant function of distinguishing IRFs from other types of inpatient facilities, thus facilitating compliance with sections 1886(d)(1)(B) and 1886(d)(1)(B)(ii) of the Act. Making this distinction is also critical to fulfilling the requirements of section

1886(j)(1)(A), which requires Medicare to make payments to IRFs under a PPS specifically designed for the services they furnish. Specifically, the 75 percent rule has the effect of limiting the type of patient that can be cared for in facilities identified as IRFs. This limitation serves to ensure that only patients requiring this type of specialized and more expensive care receive it. The medical conditions listed in the 75 percent rule are conditions in which patients require the services of rehabilitation professionals with specialized skills and experiences that may not be available in other settings.

The largest group of patients treated in rehabilitation hospitals but not considered in this analysis to meet the 75 percent rule is patients with major joint replacements, specifically knee and hip replacements. Joint replacement patients have been more commonly admitted to rehabilitation hospitals in some areas of the country, and nationally, less than one quarter of Medicare beneficiaries are admitted to IRFs after surgery. Although some joint replacement patients may have "polyarthritis," or another of the ten conditions specified in the 75 percent rule requiring intensive inpatient rehabilitation, these cases were generally not counted towards a facility's compliance with the 75 percent rule. Provider representatives also have requested that conditions classified into the cardiac and pulmonary RICs be added to the list of conditions in the 75 percent rule. These two RICs currently represent about 8 percent of beneficiaries serviced in IRFs using the 2002 patient assessment data. We note that many private insurers do not cover acute inpatient rehabilitation care (in IRFs) for many of these patients whose rehabilitation needs can be met in an alternative setting such as a skilled nursing facility. We request comments on any conditions that necessitate the intensive, multidisciplinary care that IRFs are required to provide.

As mentioned previously, we surveyed the FIs to determine the methods they were using to verify compliance with the 75 percent rule. Our analysis of that survey data led us to suspend enforcement of the 75 percent rule. The process for determining compliance with the 75 percent rule needs to be improved. However, we believe that currently there is no need to amend the regulation because it still appropriately functions to help distinguish an IRF from other types of inpatient treatment settings. We will instead be improving the method FIs use to verify compliance with the 75 percent rule, and ensuring that FIs are consistent in how they verify compliance with the 75 percent rule.

When we suspended enforcement of the 75 percent rule we specified that the suspension of enforcement was not applicable to a facility that was first seeking classification as an IRF in accordance with § 412.23(b)(8) or § 412.30(b)(2). A facility first seeking classification as an IRF in accordance with § 412.23(b)(8) or § 412.30(b)(2) only has to self-attest that during its next full 12-month cost reporting period it will meet the 75 percent rule. Accordingly, a facility first seeking classification as an IRF in accordance with § 412.23(b)(8) or § 412.30(b)(2) has never had an FI verify that its patient population actually met the 75 percent rule. Until the medical conditions of this facility's patient population have been evaluated this facility has not proven that for at least one full 12-month cost reporting period it complied with the 75 percent rule and was appropriately classified as an IRF. Therefore, until a facility had proven that it qualified to be classified as an IRF because its patient population actually met the 75 percent rule it could not be eligible for suspension of enforcement of the 75 percent rule.

We will be instructing FIs to re-institute appropriate enforcement action if a FI determines that an IRF has not met the 75 percent rule. We realize that an IRF may need time to come into compliance with the 75 percent rule. An IRF's cost reporting period is the time period used to ascertain compliance with the 75 percent rule. Therefore, we will be instructing the FIs that the FI must use cost reporting periods that begin on or after October 1, 2003, as the time period to ascertain an IRF's compliance with the 75 percent rule.

While this proposed rule does not propose changes to the regulations related to the 75 percent rule, we expect that improved enforcement and compliance with the existing rule will have varying impacts on providers and beneficiaries.

Our analysis, detailed earlier in this section, indicates that approximately 50 percent of cases being cared for in IRFs fall outside of the ten conditions listed in the regulations. In addition, it estimates that potentially 86 percent of IRFs may currently be out of compliance. We again note that this analysis is based on Medicare administrative data (claims and patient assessments) rather than detailed medical record data and, thus, is limited in its ability to accurately classify all patients into one or more of the ten conditions cited in the regulations. Thus, we would expect our estimates of compliance to be higher if more detailed information from the medical records were available to perform the analysis.

We also know from the data that cases observed in IRFs that do not fall in one of the ten conditions have, on the average, lower lengths of stay than those cases that fall into one of the ten conditions. Specifically, the cases that do not fall into one of the ten conditions (approximately 50 percent) account for approximately 40 percent of the Medicare covered days. Conversely, 60 percent of the Medicare covered days fall into one of the ten conditions.

While it is difficult to predict the aggregate impact of improved compliance on provider revenues, we expect that IRFs and/or their parent hospitals (80 percent of IRFs are units of acute care hospitals) will change their behavior in a variety of ways. IRFs may change admission practices to alter their case mix, either Medicare or total patient population, by admitting patients with more intensive rehabilitative needs that fall into the ten conditions. This could have the effect of elevating the facility's revenues because cases requiring more intensive rehabilitation care generally receive higher Medicare payments than less complex cases.

For example, in each of the three years of data examined, lower extremity joint replacements contained by far the largest number of cases not in the ten conditions (44 percent in 2002). Other conditions included cardiac (10.3 percent), pulmonary (4.8 percent) and pain (4.1 percent). IRFs specializing in or treating a significant number of such cases may have to alter their admissions practice to achieve compliance. Treating fewer joint replacement cases (that result in relatively low payments under the IRF PPS) with cases requiring more intensive treatment could actually increase a facility's revenues.

Conversely, some IRFs may not be able to find such cases and may be required to reduce capacity and serve fewer patients in order to achieve compliance, an action that may have the effect of lowering a facility's revenues. Since compliance with the 75 percent rule could be achieved with changes in admission practices for Medicare as well as non-Medicare patients, the impact on Medicare revenues may vary.

The current regulation reflects the fact that a significant number (up to 25 percent) of medically necessary admissions may fall outside of the ten conditions. These cases can continue to be admitted and treated under the regulation. Other cases may appropriately receive rehabilitative care in alternative settings. For certain medically complex cases, it may be appropriate to lengthen the patient's stay in an acute care setting in order to stabilize their condition to prepare the patient to participate in rehabilitation. Alternative settings for rehabilitative care could include the acute care hospital, skilled nursing facilities, long-term care hospitals, outpatient rehabilitation, and home health care. For this reason, we do not expect to see reduced access to care for Medicare beneficiaries as a result of improved compliance. In addition, because many hospitals having a Medicare certified IRF unit also have one or more other subunits that provide rehabilitation, revenues from these cases may be generated elsewhere within the same hospital.

We have developed a case study (below) to illustrate the differences in Medicare payment for cases that do not fall into one of the ten conditions included in the 75 percent rule. As discussed above, this type of case could be treated in an alternative setting. For this example, we detail Medicare payment amounts for rehabilitation care in four alternative settings (skilled nursing facility, home health, long term care hospital, and outpatient rehabilitation). As noted above, 80 percent of IRFs are units of hospitals. These hospitals may now choose to direct some patients to other settings. As explained above, it is difficult to predict the approach any individual or group of IRFs will follow in achieving compliance with this regulation, however, the case study illustrates some of the potential Medicare payment effects associated with providing similar levels of rehabilitation in different settings.

Case Example

The following case example has been developed to illustrate the payments under Medicare for levels of rehabilitative care received in the various settings that may be a part of a hospital complex for a patient that has a primary diagnosis of a lower extremity joint replacement. The following case example describes one of the most common patient conditions (not included in the 75 percent rule) but is not meant to describe all possible conditions and their related payment effects. The payments for each PPS described in the example are based on case weights and standardized payment rates for 2003.

The clinical description of the case example is as follows:

A 74-year-old woman status post a right total knee arthroplasty (TKA), with a wound infection, fever, and high white blood count are noted on her second postoperative day. A work-up indicates the existence of staphylococcus aureus septicemia. Patient lacks full extension and has only 65 degrees of flexion on her third post-operative day. The management options for this patient include: extension of acute care length of stay; transfer to a long term care hospital; admission to a skilled nursing facility; possibly home health services or outpatient services.

Under the IRF PPS, this patient would be classified into case-mix group 804 (lower extremity joint replacement with some functional capabilities) with an average length of stay of 14 days. Furthermore, the existence of staphylococcus aureus septicemia, a comorbid condition (ICD–9–CM code 038.11), would place this patient into the tier 2 payment category. The corresponding 2003 unadjusted payment amount for this patient would be $10,828.60.

Under the skilled nursing facility (SNF) PPS, this patient is classified into either the very high (RVB) or ultra high (RUB) rehabilitation group based on the hours of therapy she receives per week. We believe that this patient would have a length of stay in the SNF of either 14 days or 20 days. The corresponding 2003 unadjusted payment amount for this patient would be $4,446.82 for RVB and 14 days, $6,670.23 for RVB and 20 days, $6,352.60 for RUB and 14 days, or $7,672.40 for RUB and 20 days.

Under the long-term care hospital PPS, this patient would be classified into patient group 238 and would have a length of stay of either 14 days or 24 or more days. The corresponding 2003 unadjusted payment amount for this patient would be $17,671.22 for 14 days or $28,296.21 for 24 or more days.

Under the home health PPS, this patient would be placed into the High/High/Moderate group. The corresponding 2003 unadjusted payment amount for this patient would be $5,165.26 for home health services delivered for a 60-day period.

Under outpatient therapy, assuming 2 hours of physical therapy and 1 hour of occupational therapy given during 12 days, payment for this patient would be $4,108.16

If the patient remained in the original surgical acute care hospital stay, under the inpatient acute care hospital PPS this patient would be classified in to DRG 209 and payment at the 50th percentile would be $9,047.36. This illustrative example shows that this facility may have lower payments for the care of this patient relative to the IRF PPS payment if this patient is cared for in an SNF or receives home health or outpatient services. However, the facility may have higher payments relative to the IRF PPS payment if this patient is placed in a long-term care hospital unit. Overall, the example does show that this facility could continue to receive Medicare payments for this type of patient in a setting other than their IRF unit, and have the option of changing its IRF admitting practices without any potential negative effect on patient access to rehabilitative care. However, we invite public comment of this issue.

Section 412.29 Excluded Rehabilitation Units: Additional Requirements

Under § 412.29(a), an IRF unit must have met either the requirements for new units or converted units under § 412.30. Section 412.29(a)(2) contains an incorrect reference to the requirements for converted units as "§ 412.30(b)." The correct reference to the requirements for converted units is § 412.30(c). Accordingly, we are proposing to make a technical correction by changing the reference in paragraph (a)(2) to state "Converted units under § 412.30(c)."

Section 412.30 Exclusion of New Rehabilitation Units and Expansion of Units Already Excluded

Under § 412.30(b)(2), a hospital that seeks exclusion of a new IRF unit may provide written certification that the inpatient population the hospital intends the unit to serve meets the requirements of § 412.23(b)(2). Section 412.30(b)(3) contains an incorrect reference to the required written certification described in "(a)(2)" of this section. The correct reference to the written certification is described in paragraph (2) of § 412.30(b). Accordingly, we are proposing to make a technical correction by changing the current reference to § 412.23(a)(2) in § 412.23(b)(3) to state "The written certification described in paragraph (b)(2) * * *".

Section 412.30(d)(1) defines new bed capacity for the purposes of expanding an existing excluded IRF unit. Section 412.30(d)(2)(i) contains an incorrect reference to the definition of new bed capacity under paragraph "(c)(1)" of this section. The correct reference to the definition of new bed capacity is paragraph (d)(1). Accordingly, we are proposing a technical correction to change the current reference to paragraph (c)(1) in paragraph (d)(2)(i) to state "* * * under paragraph (d)(1) of this section."

III. Research To Support Case-Mix Refinements to the IRF PPS

A. Research on IRFs

As described in the August 7, 2001 final rule, we contracted with the RAND Corporation (RAND) to analyze IRF data to support our efforts in developing the CMG patient classification system and the IRF PPS. As discussed below, we are continuing our contract with RAND to support us in developing refinements to the classification and PPS, and in developing a system to monitor the effects of the IRF PPS. In addition, under a separate contract, we are developing and defining measures to monitor the quality of care and services provided to Medicare beneficiaries receiving care in an IRF.

B. RAND Research Background

In 1995, the RAND Corporation (RAND) began extensive CMS-sponsored research to assist us in developing a per-discharge based inpatient rehabilitation PPS model using patient classification system known as Functional Independence Measures-Functional Related Groups (FIM-FRGs) using 1994 data. Initial results of RAND's earliest research were revealed in September 1997 and are contained in two reports available through the National Technical Information Service (NTIS). The reports are entitled "Classification System for Inpatient Rehabilitation Patients—A Review and Proposed Revisions to the Functional Independence Measure-Function Related Groups," NTIS order number PB98–105992INZ; and "Prospective Payment System for Inpatient Rehabilitation," NTIS order number PB98–106024INZ.

In summarizing these reports, RAND found in the research based on 1994 data that, with limitations, the FIM-FRGs were effective predictors of resource use based on the proxy measurement: length of stay. FRGs based upon FIM motor score, cognitive scores, and age remained stable over time. Researchers at RAND developed, examined, and evaluated a model payment system based upon FIM-FRG classifications that explains approximately 50 percent of patient costs and approximately 60 percent to 65 percent of the costs at the facility level. Based on this earlier analysis, RAND concluded that an IRF PPS using this model is feasible.

In July 1999, we contracted with RAND to update the earlier study. The update used their earlier research and included an analysis of FIM data, the FRGs, and the model rehabilitation PPS using more recent data from a greater number of IRFs. The purpose of updating the earlier research was to develop the underlying data necessary to support the Medicare IRF PPS based on case-mix groups for the proposed rule. RAND expanded the scope of their earlier research to include the examination of several payment elements, such as comorbidities, facility-level adjustments, and implementation issues, including evaluation and monitoring. This research was used in our development of the IRF PPS. RAND issued a report on its research which can be found on our Web site at *http:cms.hhs.gov/providers/irfpps/research.asp*.

C. Continuing Research

RAND's data efforts over the past year were concentrated on archiving data from the first phase of the project, constructing the analytic files for monitoring special studies, and preparing for post-IRF data that will be used for monitoring and for refinement. RAND's monitoring effort seeks to measure changes in IRF, post-IRF, and post-acute care after implementation of the IRF PPS. The refinement effort necessitates that the methods used to create the initial set of CMGs weights, and facility adjustments be applied to more recent IRF data.

Section 125(b) of the BBRA provides that the Secretary shall conduct a study of the impact on utilization and beneficiary access to services of the implementation of the IRF prospective payment system. A report on the study must be submitted to the Congress not later than 3 years after the date the IRF prospective payment system is first implemented. Accordingly, to continue RAND's research, data from other health care settings are needed to assess the impact on utilization and beneficiary access to services because the IRF PPS can have an impact among other settings that deliver rehabilitative services. If we only analyzed data from IRFs, our assessment of utilization and access would not be complete. In addition to the data obtained from the IRF Medicare claims, functional measures from the IRF PAI, and cost reports, other data are required that shows the utilization and access of rehabilitative services delivered in other settings, such as skilled nursing facilities, long-term care facilities, home health agencies, and outpatient rehabilitation facilities. Analysis of these data may show changes in utilization of inpatient rehabilitation services and if the types or severity of patients treated in IRFs differs significantly from the data used to create the CMGs, case-mix refinements may be needed.

In the next phase of their research, RAND will be developing and testing possible improvements to the payment system using existing data. This analysis will focus on potential improvements to the methods used to establish the CMGs, facility adjustments (such as teaching, rural, and low-income adjustments), and comorbidities.

In constructing the CMGs for the IRF PPS, one of our primary goals was to create payments that would match payment to resource use as closely as possible. It is important to continue to examine the IRF PPS to ensure that the system remains a good predictor of resource use over time. Further, more complete data will be available in which we can assess the reliability and validity of the IRF PPS. We also expect improvements with certain data elements. For example, prior to implementation of the IRF PPS, IRFs were not required to code comorbidities. As a result of implementing the IRF PPS, we expect that IRFs will improve coding comorbidities because they may affect their payment amount. These improved data will allow us to determine the effects various conditions have on the cost of a case.

RAND will use post-IRF PPS data when it becomes available, as well as existing data to support their research. RAND research includes: analyses of methodological improvements in the creation of CMGs, methodological improvements to the statistical approaches used to derive payment adjustments and characterizing IRFs into groups based on their case mix. As mentioned in Section I of this proposed rule, currently, RAND does not have enough post-IRF PPS data to analyze potential modifications to the classification and payment systems. Further, we will need a sufficient amount of these data to be able to determine our future refinements, if any are needed. Because IRFs began to be paid under the IRF PPS based on their cost report start date that occurred on or after January 1, 2002, sufficient data will not be available for those facilities whose cost report start date occurs later in the calendar year. Therefore, in this proposed rule, we are not proposing to change the CMG classification system or the facility level and case level adjustments, other than the wage adjustment. The proposed changes for the wage adjustment are discussed in detail in Section VI of this proposed rule.

D. Staff Time Measurement Data

As described in the August 7, 2001 final rule, we contracted with Aspen Systems Corporation (ASPEN) to collect actual resource use or staff time measurement (STM) data in a sample of IRFs. Data were collected using the MDS–PAC patient assessment instrument. FIM data were collected at the same time. We believe that these data that measure actual nursing and therapy time spent on patient care may be used to enhance our ability to refine the CMGs.

RAND received ASPEN's analytical database in early spring 2002. After a brief period of working with the data, RAND discovered that their study required details that were not in this summary database. Specifically, about half of the cases within the analytic database had data for only the first part of the patient's stay. RAND needed to have data on how staff time use changed during the stay and the analytic database contained only the averages of the observed portions of the patient's stay. RAND needed data on patients during the second part of their stay.

In late July 2002, RAND received the backup data, but did not assess it until late August 2002. Further technical questions about the data still exist and must be answered before the modeling of the data can occur.

E. Monitoring

A greater part of the ongoing work to be performed by RAND is an analysis to develop a potential system of indicators to monitor the impact and performance of the IRF PPS. As part of their analysis, RAND will case-mix adjust these measures and distinguish between those that will track the direct impact of PPS on IRFs and IRF patients, and those that will track changes in the pool of potential IRF patients. We anticipate that RAND will develop a set of possible indicators needed to monitor the IRF PPS, develop potential access to care models and measures, and define a possible measure of outcomes.

F. Need To Develop Quality Indicators for IRFs

The IRF–PAI is the data collection instrument for IRFs. It contains a blend of FIM items and proposed quality and medical needs questions. These quality and medical needs questions (which are currently collected on a voluntary basis) may need to be modified to encapsulate those data necessary for calculation of a quality indicator. One of the primary tasks of the RAND contract is to identify quality indicators pertinent to the inpatient rehabilitation setting and determine what information is necessary to calculate those quality indicators. These tasks include reviewing literature and other sources for existing rehabilitation quality indicators. It also involves identifying organizations involved in measuring or monitoring quality of care in the inpatient rehabilitation setting. RAND will convene a technical expert panel to identify a series of quality indicators that can be measured using the IRF–PAI. In addition, quality indicators and data elements must be developed for calculation as well as the independent testing of the developed indicators.

IV. The IRF PPS Patient Assessment Process

A. Background

On August 7, 2001, we published the IRF PPS final rule (66 FR 41316), which described how the IRF would use the IRF Patient Assessment Instrument (PAI) to assess an IRF patient. During the fall of 2001, we conducted training on the IRF–PAI assessment process. The training was held in the cities of Baltimore, Maryland, Chicago, Illinois, San Francisco, California, and Atlanta, Georgia. The training was videotaped. During the training sessions we stated that any IRF could obtain the videotapes free of charge. In addition, we stated on the CMS IRF PPS website that any IRF could obtain copies of the videotapes. The IRS–PAI manual, which contains detailed instructions regarding the completion of the IRS–PAI, is also available on the CMS IRF PPS website.

B. Patient Rights

Section 412.608 specifies that prior to performing the IRS–PAI assessment, the IRF must inform the patient of the rights contained in this section. The rights specified in § 412.608 are as follows:

(1) The right to be informed of the purpose of the collection of the patient assessment data;

(2) The right to have the patient assessment information collected be kept confidential and secure;

(3) The right to be informed that the patient assessment information will not be disclosed to others, except for legitimate purposes allowed by the Federal Privacy Act and Federal and State regulations;

(4) The right to refuse to answer patient assessment questions; and

(5) The right to see, review, and request changes on his or her patient assessment.

In addition to the rights specified in § 412.608, a patient has privacy rights under the Privacy Act of 1974 (5 U.S.C. § 552a(e)(3)), and 45 CFR 5b.4(a)(3). The Privacy Act and 45 CFR 5b.4(a)(3) require that an individual be informed under what authority, and for what purpose, individually identifiable information is being collected by a Federal agency and maintained in a system of records. In order to ensure compliance with the Privacy Act of 1974, and 45 CFR 5b.4(a)(3), we are proposing that prior to performing the IRS–PAI assessment an IRF clinician must give to each Medicare inpatient two forms. We have published these forms in Appendix B of this proposed rule. In addition, we are proposing that the form entitled "Privacy Act Statement—Health Care Records" is a detailed description of the patient's privacy rights under the Privacy Act of 1974. Also, we are proposing that the form entitled "Data Collection Information Summary for Patients in Inpatient Rehabilitation Facilities" is the simplified plain language description of the Privacy Act Statement—Health Care Records. Additionally, we are proposing that by giving both of these forms to the patient before beginning the IRS–PAI assessment, the IRF would fulfill the requirement that the patient be informed of the five rights specified in § 412.608. Accordingly we are proposing to amend § 412.608 to read as follows:

Patient's rights regarding the collection of patient assessment data.

(a) Before performing an assessment using the inpatient rehabilitation facility patient assessment instrument, a clinician of the inpatient rehabilitation facility must give a Medicare inpatient each of these forms—

(1) The form entitled "Privacy Act Statement—Health Care Records;" and

(2) The simplified plain language description of the Privacy Act Statement—Health Care Records which is a form entitled "Data Collection Information Summary for Patients in Inpatient Rehabilitation Facilities."

(b) The inpatient rehabilitation facility must document in the Medicare inpatient's clinical record that the Medicare inpatient has been given the documents specified in paragraph (a) of this section.

(c) The Data Collection Information Summary for Patients in Inpatient Rehabilitation Facilities is the simplified plain language description of the Privacy Act Statement—Health Care Records.

(d) By giving the Medicare inpatient the forms specified in paragraph (a) of this section the inpatient rehabilitation facility will inform the Medicare patient of—

(1) Their privacy rights under the Privacy Act of 1974 and 45 CFR 5b.4(a)(3); and

(2) The following rights:

(i) The right to be informed of the purpose of the collection of the patient assessment data;

(ii) The right to have the patient assessment information collected be kept confidential and secure;

(iii) The right to be informed that the patient assessment information will not be disclosed to others, except for legitimate purposes allowed by the Federal Privacy Act and Federal and State regulations;

(iv) The right to refuse to answer patient assessment questions; and

(v) The right to see, review, and request changes on his or her patient assessment.

(e) The patient rights specified in this section are in addition to the patient rights specified in § 482.13 of this chapter.

It should be noted that when the IRF clinician gives the patient the forms entitled "Data Collection Information Summary for Patients in Inpatient Rehabilitation Facilities" and the "Privacy Act Statement—Health Care Records" prior to performing an assessment, these forms do not satisfy the privacy provisions contained in the HIPAA Privacy Rule (65 FR 82462 as modified by 67 FR 53182). For example, these forms do not meet the privacy notice requirements of the HIPAA Privacy Rule (see 45 CFR § 164.520). Health plans and health care providers must meet the notice requirements of the HIPAA Privacy Rule by giving a Notice of Privacy Practices to their patients. The Notice of Privacy Practices describes a health plan or health care provider's uses and disclosures of protected health information and the individual rights that patients have with respect to their protected health information.

C. When the IRF–PAI Must Be Completed

According to § 412.606(b), an IRF must use the IRF–PAI to assess Medicare Part A fee-for-service inpatients. According to § 412.610(c)(1)(i)(A), the admission assessment covers the first 3 calendar days of the inpatient's current IRF Medicare Part A fee-for-service hospitalization. According to § 412.610(c)(1)(i)(B), the admission assessment reference date is the third day of the 3-day admission assessment time period. Section 412.610(c)(1)(i)(C) specifies that the IRF–PAI for the admission assessment "Must be completed on the calendar day that follows the admission assessment reference day."

We are concerned IRFs believe § 412.610(c)(1)(i)(C) means that they may not start to record data on the IRF–PAI before the calendar day that follows the admission assessment reference day, which is not our intent. The "completion requirement" of the IRF–PAI means when the IRF's staff must have finished recording on the IRF–PAI the assessment data that the IRF's clinical staff obtained during an assessment of the inpatient that was performed during the admission assessment time period. In other words, the date when the IRF–PAI must be completed is a deadline date when the process of recording data on the IRF–PAI must be finished. The IRF's staff is permitted to enter assessment data on the IRF–PAI prior to the deadline date.

How data are recorded on the IRF–PAI is specified in the IRF–PAI item-by-item guide, which is entitled the "IRF–PAI Training Manual Revised 01/16/02." The instructions contained in the IRF–PAI item-by-item guide are, when possible, very similar to the rules for coding the patient assessment instrument that we used as the model for the IRF–PAI. The model for the IRF–PAI was the patient assessment instrument published by Uniform Data System for Medical Rehabilitation (UDSmr). The UDSmr rules for coding their assessment instrument specified that an item's score should reflect the inpatient's lowest level of functioning. Consequently, in order to be consistent with how an inpatient's functional performance was scored on the UDSmr patient assessment instrument, the IRF–PAI item-by-item guide likewise specifies that a patient's assessment must indicate the patient's lowest level of functioning.

During the admission assessment, an IRF clinician records different types of data on the IRF–PAI. We believe that the sources of the data recorded in the categories of the IRF–PAI entitled "Identification Information," "Admission Information," and "Payer Information" makes these data easy and quick to obtain and record. For these categories of data the source of the data may be the patient, the patient's medical record, other patient documents, the patient's family, or a person that has personal knowledge of the patient. In contrast, in order to complete the data for the IRF–PAI categories entitled "Function Modifiers" and "FIM™ Instrument," the clinician observes the patient's functional performance over the admission assessment time period, and makes clinical judgments regarding the patient's performance. Consequently, due to how the data for the Function Modifiers and FIM™ categories are obtained, we believe it is the time span that it takes to assess the patient's functional performance that will usually determine how long it takes to complete the admission assessment.

Page III–3 of the IRF–PAI manual states that when determining the level of the patient's functional performance the clinician is to "record the lowest (most dependent) score." We believe that in the time span between the patient's admission to and discharge from the IRF, the patient's functional performance improves. We believe that on the patient's admission day and the next few days a patient's functional performance is poor in comparison to functional performance on subsequent days of the patient's current IRF hospitalization. Therefore, during the part of the admission assessment that is the first or second day of the patient's current IRF hospitalization, we believe that a patient's functional performance will usually be scored as indicating the most dependence.

As stated previously, the IRF's clinical staff is permitted to record assessment data on the IRF–PAI at any time during the admission assessment process. Also, as stated previously, we believe it is the scoring of the patient's functional performance that will determine how long it takes to complete the admission assessment. The combination of: (1) Being able to record assessment data at any time during the admission assessment, (2) the requirement that the lowest level of functional performance be recorded, and (3) that the lowest level of functional performance will usually occur on the first or second day of the admission assessment, makes it possible to finish obtaining and recording all the assessment data before the day that follows the admission assessment reference date. However, in accordance with § 412.610(c)(1)(i)(C), an IRF has until the day following the admission assessment reference day to complete the IRF–PAI.

In order to clarify that § 412.610(c)(1)(i)(C) does not prohibit the IRF from recording any or all of the data on the IRF–PAI before the day that follows the admission assessment reference day, we are proposing to amend § 412.610(c)(1)(i)(C) to read as follows: Must be completed by the calendar day that follows the admission assessment reference day.

D. Transmission of IRF–PAI Data

As specified in § 412.606(b), "Patient assessment instrument," an IRF must use the IRF–PAI to assess Medicare Part A fee-for-service inpatients. There are nine categories of IRF–PAI assessment data. The nine categories are entitled "identification information, admission information, payer information, medical information, medical needs, function modifiers, the FIM™ instrument, discharge information, and quality indicators". The data from some of these categories are used to classify a patient into a CMG. It is the CMG classification code, not the IRF–PAI raw data itself, that is part of the claim data the IRF submits to its FI when the IRF submits data in order to be paid for the services it furnished to the inpatient. We believe that an IRF's clinical staff will initially use the paper version of the IRF–PAI to record its assessment data. Then, in accordance with § 412.610(d), the IRF would use the data that it recorded on the paper version of the IRF–PAI to enter the IRF–PAI data into an electronic version of the document. The electronic version of the IRF–PAI uses the patient assessment data to classify a patient into a CMG. Under the IRF PPS, it is the CMG payment code, along with other information that the IRF submits to the fiscal intermediary (FI), that will determine the payment the IRF receives for the services the IRF furnished to a Medicare Part A fee-for-service beneficiary.

Section 412.614, "Transmission of patient assessment data," specifies that an IRF must transmit to us the IRF–PAI assessment data for each Medicare Part A fee-for-service inpatient. It is the electronic version of the IRF–PAI that enables an IRF to transmit the IRF–PAI data to us. We require that IRFs transmit IRF–PAI data so that we have the IRF–PAI data that are associated with the CMG payment code that the IRF submitted to its FI.

In most cases an IRF will submit claims data, including the patient's CMG, to the FI in order to be paid for the services it furnished to a Medicare Part A fee-for-service inpatient. However, there are situations when the IRF would submit claim data to its FI, but the submission of the claim data is not for the purpose of being paid for any of the services the IRF furnished to a Medicare Part A fee-for-service inpatient.

In these situations, Medicare operational procedures that were in effect before implementation of the IRF PPS requires an IRF to send claim data to the FI. The purpose of the IRF sending claim data to the FI in these situations is to enable Medicare to monitor a beneficiary's period of entitlement. For instance, an IRF must still send the FI claim data even if the inpatient's non-Medicare primary payer paid for all of the IRF services the IRF furnished to the Medicare Part A fee-for-service inpatient. Another instance when the IRF must still send the FI claim data is when any of the services that an inpatient's non-Medicare primary payer did not pay for also do not qualify for payment under the IRF PPS.

We want to relieve the IRF of the burden of transmitting IRF–PAI data to us when the IRF is not requesting that Medicare pay for any of the services the IRF furnished to a Medicare Part A fee-for-service inpatient. Accordingly, we are proposing to amend § 412.614 by specifying that § 412.614(a) is a general rule that would read as follows:

(a) *Data format. General rule.* The inpatient rehabilitation facility must encode and transmit data for each Medicare Part A fee-for-service inpatient—

We are also proposing to further amend § 412.614 by adding a new § 412.614(a)(3), which would relieve the IRF of the burden of having to transmit the IRF–PAI data for a Medicare Part A fee-for-service inpatient when Medicare will not be paying the IRF for any of the services the IRF furnished to that inpatient. New § 412.614(a)(3) would read as follows:

Exception to the general rule. When the inpatient rehabilitation facility does not submit claim data to Medicare in order to be paid for any of the services it furnished to a Medicare Part A fee-for-service inpatient, the inpatient rehabilitation facility is not required to, but may, transmit to Medicare the inpatient rehabilitation facility patient assessment data associated with the services furnished to that same Medicare Part A fee-for-service inpatient.

E. Proposed Revision of the Definition of Discharge

According to § 412.602, a discharge has occurred when the patient has been formally released from the hospital, or has died in the hospital, or when the patient stops receiving Medicare-covered Part A inpatient rehabilitation services. Our intent in specifying this definition of when a discharge has occurred under the IRF PPS was to try to ensure that Medicare paid an IRF only for furnishing an IRF level of services to the Medicare Part A fee-for-service inpatient. However, in contrast to when a patient is formally released from the IRF or dies, the time when a patient stops receiving Medicare-covered Part A IRF services may be subject to different interpretations resulting in different determinations of when a discharge has occurred. The result of different determinations of when a discharge has occurred is inconsistency in determining the discharge date. This inconsistency could result in different IRFs furnishing the same services for the same period of time, but being paid differently, because the discharge date determines a patient's length-of-stay, and the patient's length-of-stay is one of the factors that determines the amount of the CMG payment. For example, according to § 412.624(f), a patient's length-of-stay as determined by the inpatient's discharge date may affect the amount of the IRF's CMG payment when a patient is transferred from an IRF to another site of care.

In addition, there may be cases when an IRF believes an inpatient no longer has a medical need for Medicare-covered Part A inpatient rehabilitation services, but the IRF believes that the inpatient has a medical need for a SNF level of services. However, due to circumstances beyond the IRF's control, the IRF is unable to formally release the patient, because the IRF cannot place the patient in a SNF setting. In that situation, according to section 1861(v)(1)(G)(i) of the Act and § 424.13(b), a physician may certify or recertify that the patient needs to continue to be hospitalized in the IRF. The effect of the physician's certification or recertification is that under Medicare the patient is not considered discharged until the patient is formally released from the IRF.

In consideration of what can occur when discharge is defined as being when the inpatient stops receiving Medicare-covered Part A inpatient rehabilitation services, we are proposing to amend § 412.602 by revising the definition of "discharge" by removing the phrase "(2) The patient stops receiving Medicare-covered Part A inpatient rehabilitation services, unless the patient qualifies for continued hospitalization under § 424.13(b) of this chapter; or". The proposed revised definition would read as follows:

Discharge. A Medicare patient in an inpatient rehabilitation facility is considered discharged when—

(1) The patient is formally released from the inpatient rehabilitation facility; or

(2) The patient dies in the inpatient rehabilitation facility.

F. Waiver of the Penalty for Transmitting the IRF–PAI Data Late

Section 412.614(c) "Transmission dates" states that the admission and discharge assessment data must be transmitted together. The discharge assessment is completed after the admission assessment has been completed. Therefore, the date when the IRF–PAI data must be transmitted is

determined by when the IRF–PAI discharge assessment is completed.

After the discharge assessment has been completed, § 412.610(d) "Encoding dates" specifies that the data must be entered into the electronic version of the IRF–PAI, a process which § 412.602 defines as encoding the data. As specified in § 412.610(d) the IRF has 7 calendar days to encode the discharge assessment. In order for the IRF–PAI data not to be considered as having been transmitted late, § 412.614(d)(2) specifies that the IRF–PAI data must be transmitted to us no later than 10 calendar days from the date specified in § 412.614(c). The date specified in § 412.614(c) is the 7th calendar day of the applicable encoding time period specified in § 412.610(d). The 7th calendar day of the applicable encoding date specified in § 412.610(d) is the end of the discharge assessment encoding time period because none of the data can be transmitted until the discharge assessment has been encoded. The following example, which is very similar to the Chart 3 on page 41332 of the August 7, 2001 final rule (66 FR 41316), is intended to clarify when CMS will determine that the IRF–PAI data was transmitted late.

CHART 2.— EXAMPLE OF APPLYING THE PATIENT ASSESSMENT INSTRUMENT DISCHARGE ASSESSMENT AND TRANSMISSION DATES

Assessment Type	Discharge date	Assessment reference date	IRF–PAI completed by	IRF–PAI encoded by	IRF–PAI data transmitted by	Date when IRF–PAI data transmission is late
Discharge Assessment	10/16/03	10/16/03	10/20/03	10/26/03	11/01/03	11/12/03 *

* Or any day after 11/12/03.

If IRF–PAI data are transmitted later than 10 calendar days from the transmission date specified in § 412.614(c), § 412.614(d)(2) specifies that we will assess a penalty by deducting 25 percent from the CMG payment that is associated with the IRF–PAI data that were transmitted late. However, we believe that an IRF may encounter an extraordinary situation, which is beyond its control, and that extraordinary situation could render the IRF unable to comply with § 412.614(c). The IRF must fully describe in the appropriate inpatient's clinical record, or by use of another documentation method as selected by the IRF, the extraordinary situation which the IRF encountered that resulted in the IRF being unable to comply with § 412.614(c). Although an IRF may believe that the facility has encountered an extraordinary situation, the IRF's belief does not mean that CMS is obligated to also automatically determine that the situation was of an extraordinary nature. CMS has the discretion to determine whether the situation described by the IRF is extraordinary.

The extraordinary situation may be, but does not have to be, due to the occurrence of an unusual event. Examples of unusual events include, but are not limited to, fire, flood, earthquake, or other similar incidents that inflict extensive damage to an IRF. Another example of an extraordinary situation is the inability of an IRF to transmit any IRF–PAI data for an extended time period, because during that entire time period there was a problem with the data transmission system that was beyond the control of the IRF. An example of a data transmission system problem that is beyond the control of the IRF is the inability of an IRF to transmit its IRF–PAI data because the computer used by CMS to receive and process the data is malfunctioning. A further example of a data transmission system problem that is beyond the control of the IRF is the existence of a flaw in the software that was distributed by CMS to IRFs, or a flaw in the software specifications made available by CMS to vendors that prevent the IRF from transmitting its IRF–PAI data. In addition, an extraordinary situation may include a situation in which a facility has correctly followed CMS policies and procedures in order to be classified as an IRF and obtain an IRF provider number, but has experienced a delay in attaining an IRF provider number. In light of these possibilities, we are proposing a new § 412.614(e) to read as follows: "Exemption to being assessed a penalty for transmitting the IRF–PAI data late." CMS may waive the penalty specified in paragraph (d) of this section when, due to an extraordinary situation that is beyond the control of an inpatient rehabilitation facility, the inpatient rehabilitation facility is unable to transmit the patient assessment data in accordance with paragraph (c) of this section. Only CMS can determine if a situation encountered by an inpatient rehabilitation facility is extraordinary and qualifies as a situation for waiver of the penalty specified in paragraph (d)(2) of this section. An extraordinary situation may be due to, but is not limited to, fires, floods, earthquakes, or similar unusual events that inflict extensive damage to an inpatient rehabilitation facility. An extraordinary situation may be one that produces a data transmission problem that is beyond the control of the inpatient rehabilitation facility, as well as other situations determined by CMS to be beyond the control of the inpatient rehabilitation facility. An extraordinary situation must be fully documented by the inpatient rehabilitation facility."

G. General Information Regarding the IRF–PAI Assessment Process

We have received many questions regarding the IRF–PAI assessment process policies. We have posted the answers to most of these questions on the IRF PPS website.

1. The IRF PPS Website Address

The current internet address for the IRF PPS website is *http://www.cms.hhs.gov/providers/irfpps/*. Due to changes in CMS internet policies during 2002, the current website address is different from the one we published in the August 7, 2001 final rule.

2. Exceptions to the IRF–PAI Admission and Discharge Assessment Time Period General Rules

Section 412.610(c)(1)(i) states the general rule that the time span covered during the admission assessment is calendar days 1 through 3 of the patient's current Medicare Part A fee-for-service IRF hospitalization. Section 412.610(c)(2)(i) states the general rule that the discharge assessment time period is a span of time that covers 3 calendar days, which includes the inpatient's discharge date, which is the same date as the discharge assessment reference date, and the 2 calendar days before the discharge date. We want to remind IRFs that, as specified in § 412.610(c)(1)(ii) and § 412.610(c)(2)(iii), we may use the IRF–PAI item-by-item guide and other instructions to identify items that have a different admission or discharge assessment time period. We may specify different admission and discharge assessment time periods in order to capture patient information for payment and quality of care monitoring objectives appropriately.

V. Patient Classification System for the IRF PPS

As previously stated, in this proposed rule we are proposing to use the same case-mix classification system that was set forth in the August 7, 2001 final rule. It is our intention to pursue the development of possible refinements to the case-mix classification system that will continue to improve the ability of the PPS to accurately pay IRFs. We have awarded a contract to the RAND Corporation (RAND) to conduct additional research that will, in the initial stages, provide us with the data necessary to address the feasibility of developing and proposing refinements. When the study has been completed, we plan to review various approaches so that we can propose an appropriate methodology to develop and apply refinements. Any specific refinement proposal resulting from this research will be published in the **Federal Register**.

Table 1, *Proposed Relative Weights for Case-Mix Groups (CMGs)*, presents the proposed CMGs, comorbidity tiers, and corresponding Federal relative weights. We also present the average length of stay for each CMG. As we discussed in the August 7, 2001 final rule (66 FR 41353), the average length of stay for each CMG, along with the discharge destination, is used to determine when an IRF discharge meets the definition of a transfer, which results in a per diem case level adjustment (66 FR 41354). Because these data elements are not changing as a result of this proposed rule, Table 1 is identical to Table 1 that was published in the August 7, 2001 final rule (66 FR 41394 through 41396). The proposed relative weights reflect the inclusion of cases with an interruption of stay (patient returns on day of discharge or either of the next 2 days). The methodology we used to construct the data elements in Table 1 is described in detail in the August 7, 2001 final rule (66 FR 41350 through 41353).

VI. Proposed Fiscal Year 2004 Federal Prospective Payment Rates

A. Expiration of the IRF PPS Transition Period

The transition period provision under section 1886(j)(1) of the Act and § 412.626 of the regulations expired for cost reporting periods beginning on or after October 1, 2002 (FY 2003 and beyond). Accordingly, the payment for discharges during FY 2004 will be based entirely on the proposed adjusted FY 2004 IRF Federal PPS rates.

B. Description of the IRF Standardized Payment Amount

In the August 7, 2001 final rule, we established a standard payment amount referred to as the budget neutral conversion factor under § 412.624(c). In accordance with the methodology described in § 412.624(c)(3)(i), the budget neutral conversion factor for FY 2002, as published in the August 7, 2001 final rule, was $11,838.00. Under § 412.624(c)(3)(i), this amount reflects, as appropriate, any adjustments for outlier payments, budget neutrality, and coding and classification changes as described in § 412.624(d).

The budget neutral conversion factor is a standardized payment amount and the amount reflects the budget neutrality adjustment for FY 2002, as described in § 412.624(d)(2). The statute requires a budget neutrality adjustment only for fiscal years 2001 and 2002. Accordingly, we believe it is more consistent with the statute to refer to the standardized payment as the standardized payment conversion factor, rather than refer to it as a budget neutral conversion factor. Thus, after careful consideration, we are proposing to change all references to the budget neutral conversion factor in §§ 412.624(c) and 412.624(d) to the "standard payment conversion factor." We believe that the standard payment conversion factor better describes the standardized payment amount especially in those fiscal years where a budget neutrality adjustment is not made.

Thus, under § 412.624(c)(3)(i), the standard payment conversion factor for FY 2002 of $11,838.00 reflected the budget neutrality adjustment described in § 412.624(d)(2). Under current revised § 412.624(c)(3)(ii), we updated the FY 2002 standard payment conversion factor ($11,838.00) to FY 2003 by applying an increase factor (the IRF market basket index) of 3.0 percent, as described in the August 1, 2002 update notice (67 FR 49931). This yielded the FY 2003 standard payment conversion factor of $12,193.00 that was published in the August 1, 2002 update notice (67 FR 49931). The FY 2003 standard payment conversion factor will be the basis of the updated FY 2004 standard payment conversion factor that will also reflect the adjustments described below.

C. Proposed Adjustments To Determine the Proposed FY 2004 Standard Payment Conversion Factor

1. IRF Market Basket Index

Section 1886(j)(3)(C) of the Act requires the Secretary to establish an increase factor that reflects changes over time in the prices of an appropriate mix of goods and services included in IRF services paid for under the IRF PPS, which is referred to as the IRF market basket index. Accordingly, in updating the FY 2004 payment rates set forth in this proposed rule, we propose to apply an appropriate increase factor, that is equal to the IRF market basket, to the FY 2003 IRF standardized payment amount.

Beginning with the implementation of the IRF PPS in FY 2002 and with the FY 2003 IRF PPS update, the 1992-based excluded hospital with capital market basket has been used to determine the IRF market basket factor for updating payments to rehabilitation facilities. The 1992-based market basket reflected the distribution of costs in 1992 for Medicare-participating freestanding rehabilitation, long-term care, psychiatric, cancer, and children's hospitals. This information was derived from the 1992 Medicare cost reports. A full discussion of the methodology and data sources used to construct the 1992-based excluded hospital with capital market basket is available in Appendix D of the IRF PPS August 7, 2001 final rule **Federal Register** (66 FR 41427).

In this proposed rule, we propose to revise and rebase the excluded hospital with capital market basket to a 1997 base year. We believe that proposing to use 1997 data, rather than 1992 data, to construct the IRF market basket will allow us to more appropriately estimate increases in the costs of IRF goods and services from year to year.

The operating portion of the 1997-based excluded hospital with capital market basket is derived from the 1997-based excluded hospital market basket. The methodology used to develop the excluded hospital market basket operating portion was described in the August 1, 2002 **Federal Register** (67 FR 50042–50044). In brief, the operating cost category weights in the 1997-based excluded market basket added to 100.0. These weights were determined from the Medicare cost reports, the 1997 Business Expenditure Survey from the

Bureau of the Census, and the 1997 Annual Input-Output data from the Bureau of Economic Analysis. In using the 1997 data, we made two methodological revisions to the 1997-based excluded hospital market basket: (1) Changing the wage and benefit price proxies to use the Employment Cost Index (ECI) wage and benefit data for hospital workers, and (2) adding a cost category for blood and blood products.

Previously we used a combination of several ECIs, a great part of which are listed in the 1992-based index such as the hospital, professional, and technical workers ECIs. However, the ECI for hospital workers better represents the movement of hospital wages, salaries, and benefits and it is more reflective of current labor market conditions. For the 1992-based market baskets we were unable to find an adequate data source for the blood cost category. For the 1997-based excluded hospital market basket, we were able to obtain this data from Medicare cost reports. As discussed in the IPPS August 1, 2002 final rule (67 FR 50035), BIPA required that we adequately reflect the price of blood and blood products in the hospital market basket when it was rebased and revised, which was done for the FY 2003 IPPS payment rates.

We believe this revision is also appropriate for the excluded hospital with capital market basket because it results in a more precise measure of the cost category for blood and blood products.

When we add the weight for capital costs to the excluded hospital market basket, the sum of the operating and capital weights must still equal 100.0. Because capital costs account for 8.968 percent of total costs for excluded hospitals in 1997, it holds that operating costs must account for 91.032 percent. Each operating cost category weight from the August 1, 2002 **Federal Register** (67 FR 50442–50444) was rebased to the 1997-based excluded hospital market basket by multiplying by 0.91032 to determine its weight in the 1997-based excluded hospital with capital market basket.

The aggregate capital component of the 1997-based excluded hospital market basket (8.968 percent) was determined from the same set of Medicare cost reports used to derive the operating component. The detailed capital cost categories of depreciation, interest, and other capital expenses were also determined using the Medicare cost reports. As explained below, two sets of weights for the capital portion of the revised and rebased market basket needed to be determined. The first set of weights identifies the proportion of capital expenditures attributable to each capital cost category, while the second set represents relative vintage weights for depreciation and interest. The vintage weights identify the proportion of capital expenditures that is attributable to each year over the useful life of capital assets within a cost category (*see* IPPS final rule published in the August 1, 2002 **Federal Register** (67 FR 50046–50047)) for a discussion of how vintage weights are determined).

The cost categories, price proxies, and base-year FY 1992 and proposed FY 1997 weights for the excluded hospital with capital market basket are presented in Chart 3 "Excluded Hospital With Capital Input Price Index (FY 1992 and Proposed FY 1997) Structure and Weights." Chart 4 "Proposed Excluded Hospital with Capital Input Price Index (FY 1997) Vintage Weights" presents the vintage weights for the proposed 1997-based excluded hospital with capital market basket.

CHART 3.—EXCLUDED HOSPITAL WITH CAPITAL INPUT PRICE INDEX [1] [2] (FY 1992 AND PROPOSED FY 1997) STRUCTURE AND WEIGHTS

Cost category	Price wage variable	Weights (%) base-year 1992	Proposed weights (%) base-year 1997
TOTAL		100.000	100.000
Compensation		57.935	57.579
Wages and Salaries	ECI—Wages and Salaries, Civilian Hospital Workers	47.417	47.335
Employee Benefits	ECI—Benefits, Civilian Hospital Workers to capture total costs (operating and capital), In order to capture total costs (operating and capital), HCFA Occupational Benefit Proxy.	10.519	10.244
Professional fees: Non-Medical	ECI—Compensation: Prof. & Technical Technical	1.908	4.423
Utilities		1.524	1.180
Electricity	WPI—Commercial Electric Power	0.916	0.726
Fuel Oil, Coal, etc.	WPI—Commercial Natural Gas	0.365	0.248
Water and Sewerage	CPI–U—Water & Sewage	0.243	0.206
Professional Liability	HCFA—Professional Liability Premiums	0.983	0.733
All Other Products and Services		28.571	27.117
All Other Products		22.027	17.914
Pharmaceuticals	WPI—Prescription Drugs	2.791	6.318
Food: Direct Purchase	WPI—Processed Foods	2.155	1.122
Food: Contract Service	CPI–U—Food Away from Home	0.998	1.043
Chemicals	WPI—Industrial Chemicals	3.413	2.133
Blood and Blood Products	WPI—Blood and Derivatives		0.748
Medical Instruments	WPI—Med. Inst. & Equipment	2.658	1.795
Photographic Supplies	WPI—Photo Supplies	0.364	0.167
Rubber and Plastics	WPI—Rubber & Plastic Products	4.423	1.366
Paper Products	WPI—Convert. Paper and Paperboard	1.984	1.110
Apparel	WPI—Apparel	0.809	0.478
Machinery and Equipment	WPI—Machinery & Equipment	0.193	0.852
Miscellaneous Products	WPI—Finished Goods excluding Food and Energy	2.029	0.783
All Other Services		6.544	9.203
Telephone	CPI–U—Telephone Services	0.574	0.348
Postage	CPI–U—Postage	0.268	0.702
All Other: Labor	ECI—Compensation: Service Workers	4.945	4.453
All Other: Non-Labor Intensive	CPI–U—All Items (Urban)	0.757	3.700

CHART 3.—EXCLUDED HOSPITAL WITH CAPITAL INPUT PRICE INDEX [1] [2] (FY 1992 AND PROPOSED FY 1997) STRUCTURE AND WEIGHTS—Continued

Cost category	Price wage variable	Weights (%) base-year 1992	Proposed weights (%) base-year 1997
Capital-Related Costs		8.080	8.968
Depreciation		5.611	5.586
Fixed Assets	Boeckh-Institutional Construction:	3.570	3.503
Movable Equipment	WPI—Machinery & Equipment: 11 Year Useful Life	2.041	2.083
Interest Costs		3.212	2.682
Non-profit	Avg. Yield Municipal Bonds: 23 Year Useful Life	2.730	2.280
For-profit	Avg. Yield AAA Bonds: 23 Year Useful Life	0.482	0.402
Other Capital-Related Costs	CPI-U—Residential Rent	0.257	0.699

[1] The operating cost category weights in the excluded hospital market basket described in the August 1, 2002 **Federal Register** (67 FR 50442 through 50444) add to 100.0.
[2] Due to rounding, weights sum to 1.000.

When we add an additional set of cost category weights (total capital weight = 8.968 percent) to this original group, the sum of the weights in the new index must still add to 100.0. Because capital costs account for 8.968 percent of the market basket, then operating costs account for 91.032 percent. Each weight in the 1997-based excluded hospital market basket from the IPPS final rule published in the August 1, 2002 **Federal Register** (67 FR 50442–50444) was multiplied by 0.91032 to determine its weight in the 1997-based excluded hospital with capital market basket.

CHART 4.—PROPOSED EXCLUDED HOSPITAL WITH CAPITAL INPUT PRICE INDEX (FY 1997) VINTAGE WEIGHTS

Year from farthest to most recent	Fixed assets (23-year weights)	Movable assets (11-year weights)	Interest: capital-related (23-year weights)
1	0.018	0.063	0.007
2	0.021	0.068	0.009
3	0.023	0.074	0.011
4	0.025	0.080	0.012
5	0.026	0.085	0.014
6	0.028	0.091	0.016
7	0.030	0.096	0.019
8	0.032	0.101	0.022
9	0.035	0.108	0.026
10	0.039	0.114	0.030
11	0.042	0.119	0.035
12	0.044		0.039
13	0.047		0.045
14	0.049		0.049
15	0.051		0.053
16	0.053		0.059
17	0.057		0.065
18	0.060		0.072
19	0.062		0.077
20	0.063		0.081
21	0.065		0.085
22	0.064		0.087
23	0.065		0.090
Total*	1.0000	1.0000	1.0000

* Due to rounding, weights sum to 1.000.

Chart 5 "Percent Changes in the 1992-based and proposed 1997-based Excluded Hospital with Capital Market Baskets, FY 1999–2004" compares the 1992-based excluded hospital with capital market basket to the proposed 1997-based excluded hospital with capital market basket. As is shown, the rebased and revised market basket grows slightly faster over the 1999–2001 period than the 1992-based market basket. The major reason for this was the switching of the wage and benefit proxy to the ECI for hospital workers from the previous occupational blend. We believe that the ECI is the most appropriate price proxy for measuring changes in wage data facing IRFs. This wage series reflects actual wage data reported by civilian hospitals to the Bureau of Labor Statistics. The ECIs are fixed-weight indexes and strictly measure the change in wage rates and employee benefits per hour. They are appropriately not affected by shifts in skill mix. This differs from the proxy used in the FY 1992-based index in which a blended occupational wage index was used. The blended occupational wage proxy used in the FY 1992-based index and the ECI for wages and salaries for hospitals both reflect a fixed distribution of occupations within

a hospital. The major difference between the two proxies is in the treatment of professional and technical wages (legal, accounting, management, and consulting services from outside the facility). In the blended occupational wage proxy, the professional and technical category was blended evenly between the ECI for wages and salaries for hospitals and the ECI for wages and salaries for professional and technical occupations in the overall economy. The ECI for hospitals reflects hospital-specific occupations. This revision had a similar impact on the hospital PPS and excluded market baskets, as described in the IPPS final rule published in the August 1, 2001 **Federal Register**. The proposed FY 2004 increase in the 1997-based excluded hospital with capital market basket is 3.3 percent.

CHART 5.—PERCENT CHANGES IN THE 1992-BASED AND PROPOSED 1997-BASED EXCLUDED HOSPITAL WITH CAPITAL MARKET BASKETS, FY 1999–2004

Fiscal Year	Percent Change, FY 1992-based Market Basket	Percent Change, Proposed FY 1997-based Market Basket
Actual Historical % Increase (FY 1999–2001)		
1999	2.3	2.7
2000	3.4	3.1
2001	3.9	4.0
Average historical	3.2	3.3
Forecasts (FY 2002–2004)		
2002	2.7	3.6
2003	3.0	3.5
2004	3.0	3.3
Average forecast	2.9	3.5

Section 1886(j)(3)(c) requires that the increase in the IRF PPS payment rate be based on an "appropriate percentage increase in a market basket of goods and services comprising services for which payment is made under this subsection, which may be the market basket percentage increase described in subsection (b)(3)(B)(iii)." To date, we have used a market basket based on the cost structure of all excluded hospitals to satisfy this requirement, and have discussed in prior rules why we feel this market basket provides a reasonable measure of the price changes facing exempt hospitals.

In its March 2002 Report, the Medicare Payment Advisory Commission (MedPAC) recommended the development of a market basket specific to IRF services. As we mentioned in last year's final rule, we have been researching the feasibility of developing such a market basket. This research included analyzing data sources for cost category weights, specifically the Medicare cost reports, and investigating other data sources on cost, expenditure, and price information specific to IRFs. As described in greater detail below, based on this research, we are not proposing at this time to develop a market basket specific to IRF services.

Our analysis of the Medicare cost reports indicates that the distribution of costs among major cost report categories (wages, pharmaceuticals, capital) for IRFs is not substantially different from the 1997-based excluded hospital with capital market basket we propose to use. In addition, the only data available to us was for these cost categories (wages, pharmaceuticals, and capital) presenting a potential problem since no other major cost category would be based on IRF data.

We conducted a sensitivity analysis of annual percent changes in the market basket when the IRF weights for wages, pharmaceuticals, and capital were substituted into the excluded hospital with capital market basket. Other cost categories were recalibrated using ratios available from the inpatient PPS hospital market basket. On average, between the years 1995 through 2002, the excluded hospital with capital market basket increased at essentially the same average annual rate (2.9 percent) as the market basket with IRF weights for wages, pharmaceuticals, and capital (2.8 percent). In addition, in almost any individual year the difference was 0.1 percentage point or less, which is less than the 0.25 percentage point criterion that is used under the IPPS update framework to determine whether a forecast error adjustment is warranted.

The 0.25 percentage point criterion that determines whether a forecast error adjustment is warranted has been used in the IPPS update framework since the implementation of the IPPS. It serves as a guideline for the level of forecast accuracy, since any forecast is likely to contain enough imprecision that differences of one tenth or two-tenths of a percentage point are not thought to be significant. Thus, in this case if the forecast error is not at least greater than two-tenths of a percentage point, it is thought to be similar enough to the actual data as not to warrant an adjustment.

Based on the above, we continue to believe that the excluded hospital with capital market basket is doing an adequate job of reflecting the price changes facing IRFs. We will continue to solicit comments about issues particular to IRFs that should be considered in our development of the proposed 1997-based excluded hospital with capital market basket, as well as encourage suggestions for additional data sources that may be available. Our hope is that the additional cost data being collected under the IRF PPS will eventually allow for the development of a market basket derived specifically from IRF data.

As shown in Chart 4, for the payment rates set forth in this proposed rule, the proposed FY 2004 IRF market basket increase factor using 1997 data is 3.3 percent. Thus, we propose to apply the 3.3 percent increase, in addition to the proposed budget neutral wage adjustment factor described below, to the FY 2003 standard payment conversion factor ($12,193.00) to determine the proposed 2004 standard payment conversion factor.

2. Proposed Area Wage Adjustment

Section 1886(j)(6) of the Act requires the Secretary to adjust the proportion (as estimated by the Secretary from time to time) of rehabilitation facilities' costs that are attributable to wages and wage-related costs for area differences in wage levels by a factor (established by the Secretary) reflecting the relative hospital wage level in a geographic area of a rehabilitation facility compared to the national average wage level for such facilities. The statute requires the Secretary to update this wage index adjustment at least every 36 months. The Secretary is required to update this adjustment on the basis of information available to the Secretary (and updated as appropriate) of the wages and wage-related costs incurred in furnishing rehabilitation services. Any adjustments or updates made under section 1886(j)(6) of the Act shall be made in a budget neutral manner.

3. Updated Wage Data

For the FY 2004 IRF PPS rates proposed in this proposed rule, we are updating the IRF wage index. In implementing the FY 2002 and FY 2003 IRF PPS, we used FY 1997 acute care hospital wage data to develop the IRF wage indices. We believe that the FY 1999 acute care hospital data are the best available because they are currently the most recent complete final data. Accordingly, we are proposing to update from the FY 1997 acute care hospital wage data to the FY 1999 acute care hospital wage data to develop the proposed wage indices contained in this proposed rule. Tables 3A and 3B contain the proposed FY 2004 wage indices for urban and rural areas respectively.

4. Proposed Updated Labor-Related Share

In implementing the FY 2002 and FY 2003 IRF PPS, we used the 1992 market basket data to determine the labor-related share (72.395 percent). As stated above, we are proposing to update the 1992 market basket data to 1997. Doing so allows us to propose to use the 1997-based excluded hospital market basket with capital costs to determine the FY 2004 labor-related share.

We propose to calculate the FY 2004 labor-related share as the sum of the weights for those cost categories contained in the proposed 1997-based excluded hospital with capital market basket that are influenced by local labor markets. These cost categories include wages and salaries, employee benefits, professional fees, labor-intensive services and a 46 percent share of capital-related expenses. The proposed labor-related share for FY 2004 is the sum of the FY 2004 relative importance of each labor-related cost category, and reflects the different rates of price change for these cost categories between the base year (FY 1997) and FY 2004. The proposed sum of the relative importance for FY 2004 for operating costs (wages and salaries, employee benefits, professional fees, and labor-intensive services) is 69.163 percent, as shown in Chart 6 "FY 2004 Labor-Related Share Relative Importance." The portion of capital that is influenced by local labor markets is estimated to be 46 percent. Because the relative importance of capital is 7.653 percent of the 1997-based excluded hospital with capital market basket in FY 2004, we take 46 percent of 7.653 percent to determine the labor-related share of capital for FY 2004. The result is 3.520 percent, which we then add to the 69.163 percent calculated for operating costs to determine the total labor-related relative importance for FY 2004. The resulting labor-related share that we propose to use for IRFs in FY 2004 is 72.683 percent.

CHART 6.—PROPOSED FY 2004 LABOR-RELATED SHARE RELATIVE IMPORTANCE

Cost category	Relative importance 1992-based market basket FY 2004	Relative importance proposed 1997-based market basket FY 2004
Wages and salaries	50.625	49.032
Employee benefits	11.903	11.050
Professional fees	2.055	4.523
Postage	0.252	
All other labor intensive services	5.242	4.558
Subtotal	70.077	69.163
Labor-related share of capital costs	3.394	3.520
Total	73.471	72.683

Chart 6 above shows that rebasing the excluded hospital with capital market basket lowers the increase in labor share that we are proposing to use in FY 2004 relative to what it would have been had we not rebased the excluded hospital with capital market basket. The proposed labor-related share for FY 2004 of 72.683 percent reflects an increase of 0.29 percent from the FY 2003 labor-related share of 72.395 percent. If we did not rebase the excluded hospital with capital market basket, the labor-related share would have increased from 72.395 percent for FY 2003 to 73.471 percent for FY 2004 by approximately 1.1 percent, rather than the proposed increase of 0.29 percent. As we previously stated, we are proposing a labor-related share of 72.683 percent for the FY 2004 IRF PPS payment rates set forth in the proposed rule.

5. Proposed Budget Neutral Wage Adjustment Update Methodology

As stated above, for FY 2004, we are proposing to update the FY 2003 IRF wage indices by using FY 1999 acute care hospital wage data and update the labor-related share by using the 1997 market basket data. Since any adjustment or updates to the IRF wage index made under section 1886(j)(6) of the Act shall be made in a budget neutral manner as required by statute, we are proposing to amend the regulation at § 412.624(e)(1) to reflect this requirement. We are also proposing to determine a budget neutral wage adjustment factor based on an adjustment or update to the wage data to apply to the standard payment conversion factor.

We propose to use the following steps to ensure that the FY 2004 IRF standard payment conversion factor reflects the update to the wage indices and to the labor-related share in a budget neutral manner:

Step 1. We determine the total amount of the FY 2003 IRF PPS rates using the FY 2003 standardized payment amount and the labor-related share and the wage indices from FY 2003 (as published in the August 1, 2002 notice).

Step 2. We then calculate the total amount of IRF PPS payments using the FY 2003 standardized payment amount and the proposed updated FY 2004 labor-related share and wage indices described above.

Step 3. We divide the amount calculated in step 1 by the amount calculated in step 2, which equals the proposed FY 2004 budget neutral wage adjustment factor of 0.9954.

Step 4. We then apply the FY 2004 budget neutral wage adjustment factor from step 3 to the FY 2003 IRF PPS standard payment conversion factor after the application of the market basket update, described above, to determine the proposed FY 2004 standardized payment amount.

D. Proposed Update of Payment Rates Under the IRF PPS for FY 2004

Once we calculate the proposed IRF market basket increase factor and determine the proposed budget neutral wage adjustment factor, we can determine the proposed updated Federal prospective payments for FY 2004. In accordance with proposed revised § 412.624(c)(3)(i), we apply the proposed IRF market basket increase factor of 3.3 percent to the proposed standard payment conversion factor for FY 2003 ($12,193) which equals $12,595. Then, we apply the proposed budget neutral wage adjustment of .9954 to $12,595, which results in an updated proposed standard payment conversion factor for FY 2004 of $12,537. The proposed FY 2004 standard payment conversion factor is applied to each proposed CMG weight shown in Table 1 to compute the proposed unadjusted IRF prospective payment rates for FY 2004 shown in Table 2.

Table 2, Proposed FY 2004 Federal Prospective Payments for Case-Mix Groups (CMGs) for FY 2004, displays the proposed CMGs, the proposed comorbidity tiers, and the corresponding proposed unadjusted IRF prospective payment rates for FY 2004.

E. Examples of Computing the Total Proposed Adjusted IRF Prospective Payments

In general, under § 412.624(e), we will adjust the Federal prospective payment amount associated with a CMG, shown in Table 2, to account an IRF's geographic wage variation, low-income patients and, if applicable, location in a rural area.

The adjustment for an IRF's geographic wage variation includes the proposed FY 2004 labor-related share adjustment of 72.683 percent and the proposed FY 2004 IRF urban or rural wage indices in Tables 3A and 3B, respectively.

The adjustment for low-income patients is based on the formula to account for the cost of furnishing care to low-income patients as discussed in the August 7, 2001 IRF PPS final rule (67 FR 41360). The formula to calculate the low-income patient or LIP adjustment is as follows:

(1 + DSH) raised to the power of (.4838)

Where:

$$DSH = \frac{\text{Medicare SSI Days}}{\text{Total Medicare Days}} + \frac{\text{Medicaid, Non-Medicare Days}}{\text{Total Days}}$$

The adjustment for IRFs located in rural areas is an increase to the Federal prospective payment amount of 19.14 percent. This percentage increase is the same as the one described in the August 7, 2002 IRF PPS final rule (67 FR 41359).

To illustrate the proposed methodology that we will use for adjusting the Federal prospective payments, we provide the following example in Chart 7 below. One beneficiary is in Facility A, an IRF located in rural Maryland, and another beneficiary is in Facility B, an IRF located in the New York City metropolitan statistical area (MSA).

Facility A's disproportionate share hospital (DSH) adjustment is 5 percent, with a low-income patient (LIP) adjustment of (1.0239) and a wage index of (0.8946), and the rural area adjustment (19.14 percent) applies. Facility B's DSH is 15 percent, with a LIP adjustment of (1.0700) and a wage index of (1.4414).

Both Medicare beneficiaries are classified to CMG 0112 (without comorbidities). To calculate each IRF's total proposed adjusted Federal prospective payment, we compute the wage-adjusted Federal prospective payment and multiply the result by the appropriate LIP adjustment and the rural adjustment (if applicable). The following chart illustrates the components of the proposed adjusted payment calculation.

CHART 7.—EXAMPLES OF COMPUTING AN IRF'S PROPOSED FEDERAL PROSPECTIVE PAYMENT

	Facility A	Facility B
Federal Prospective Payment	$25,092.93	$25,092.93
Labor Share	× 0.72683	× 0.72683
Labor Portion of Federal Payment	= 18,238.29	= 18,238.29
Wage Index—(shown in Tables 3A or 3B)	× 0.8946	× 1.4414
Wage-Adjusted Amount	= 16,315.98	= 26,288.67
Non-Labor Amount	+ 6,854.15	+ 6,854.15
Wage-Adjusted Federal Payment	23,170.13	33,142.82
Rural Adjustment	× 1.1914	× 1.0000
Subtotal	27,604.89	33,142.82
LIP Adjustment	× 1.0239	× 1.0700
Total FY'04 Adjusted Federal Prospective Payment	28,264.65	35,462.82

Thus, the proposed adjusted payment for facility A will be $28,264.65, and the proposed adjusted payment for facility B will be $35,462.82.

F. Computing Total Payments Under the IRF PPS for the Transition Period

Under section 1886(j)(1) of the Act and § 412.626, payment for all IRFs with cost reporting periods beginning on or after October 1, 2002 will consist of 100 percent of the proposed FY 2004 adjusted Federal prospective payment (plus any applicable outlier payments under § 412.624(e)(4)) and there will not be any blended payments. Accordingly, the proposed FY 2004 IRF PPS rates set forth in this proposed rule would apply to all discharges on or after October 1, 2003 and before October 1, 2004.

G. IRF-Specific Wage Data

On page 41358 of the August 7, 2001 IRF PPS final rule, we responded to comments regarding the development of a separate wage index for IRFs. Specifically, we responded to these comments as follows:

"At this time, we are unable to develop a separate wage index for rehabilitation facilities. There is a lack of specific IRF wage and staffing data necessary to develop a separate IRF wage index accurately. Further, in order to accumulate the data needed for such an effort, we would need to make modifications to the cost report. In the future, we will continue to research a wage index specific to IRF facilities. Because we do not have an IRF specific wage index that we can compare to the hospital wage index, we are unable to determine at this time the degree to which the acute care hospital data fully represent IRF wages. However, we believe that a wage index based on acute care hospital wage data is the best and most appropriate wage index to use in adjusting payments to IRFs, since both acute care hospitals and IRFs compete in the same labor markets."

We still do not have any IRF-specific wage data to determine the feasibility of developing an IRF-specific wage index or of developing an adjustment to refine the acute care hospital wage data to reflect inpatient rehabilitation services. We continue to look into alternative ways to collect, analyze, develop, and audit IRF-specific wage data that would reflect the wages and wage-related costs attributable to rehabilitation facilities. We believe that the best source to collect IRF-specific wage data is the Medicare cost report—the same source for the acute care hospital wage data. These data must be accurate and reliable, thus collecting these data would increase the recordkeeping and reporting burden on IRFs. Initially, this burden would be imposed to collect data just to determine the feasibility of developing an IRF-specific wage index or development of an adjustment to the current IRF wage index.

In addition, as stated earlier in this section of this proposed rule, any adjustment or update to the wage index must be made in a budget neutral manner in accordance with § 1886(j)(6) of the Act. Thus, the PPS rates for any one IRF could be affected in a positive or negative direction, due to the application of the proposed updates to the labor-related share and wage indices in a budget neutral manner. Accordingly, given the current trend of reducing the Medicare cost reporting burden of collecting data and given that any change to the wage index be budget neutral, we are soliciting comments on possible ways to adjust or refine the current IRF wage index, given those restraints.

Since IRFs and hospitals compete in the same labor markets, we propose to continue to use the acute care hospital wage data to develop the IRF wage index as described earlier in this section of this proposed rule.

H. Proposed Adjustment for High-Cost Outliers Under the IRF Prospective Payment System

In this proposed rule, we are proposing changes to the methodology for determining IRF payments for high-cost outliers. The intent of these proposed changes is to ensure outlier payments are paid only for truly high-cost cases. Further, these proposed changes will allow us to create policies that are consistent among the various Medicare prospective payment systems when appropriate.

We have become aware that under the existing acute care hospital inpatient prospective payment system (IPPS), that some hospitals have taken advantage of two system features in the IPPS outlier policy to maximize their outlier payments. The first is the time lag between the current charges on a submitted bill and the cost-to-charge ratio taken from the most recent settled cost report. Second, statewide average cost-to-charge ratios are used in those instances in which an acute care hospital's operating or capital cost-to-charge ratios fall outside reasonable parameters. We set forth these parameters and the statewide cost-to-charge ratios in the annual notices of prospective payment rates that are published by August 1 of each year in accordance with § 412.8(b). Currently, these parameters represent 3.0 standard deviations (plus or minus) from the geometric mean of cost-to-charge ratios for all hospitals. In some cases, hospitals may increase their charges so far above costs that their cost-to-charge ratios fall below 3 standard deviations from the geometric mean of the cost-to-charge ratio and a higher statewide average cost-to-charge ratio is applied to determine if the acute care hospital should receive an outlier payment. This disparity results in their cost-to-charge ratios being set too high, which in turn results in an overestimation of their current costs per case.

We believe the Congress intended that outlier payments under both the IPPS and the IRF PPS would be made only in situations where the cost of care is extraordinarily high in relation to the average cost of treating comparable conditions or illnesses. Under the existing IPPS outlier methodology, if hospitals' charges are not sufficiently comparable in magnitude to their costs, the legislative purpose underlying the outlier regulations is thwarted. Thus, on March 4, 2003, we published a proposed rule (68 FR 10420–10429) "Proposed Changes in Methodology for Determining Payment for Extraordinarily High-Cost Cases (Cost Outliers) Under the Acute Care Hospital Inpatient Prospective Payment System," with an extensive discussion proposing new regulations to ensure outlier payments are paid for truly high-cost cases under the IPPS.

We believe the use of parameters is appropriate for determining cost-to-charge ratios to ensure these values are reasonable and outlier payments can be made in the most equitable manner possible. Further, we believe the methodology of computing IRF outlier payments is susceptible to the same payment enhancement practices identified under the IPPS and, therefore, merit similar proposed revisions. Accordingly, as discussed below, we are proposing in this proposed rule to make revisions to the IRF outlier payment methodology.

1. Current Outlier Payment Provision Under the IRF PPS

Section 1886(j)(4) of the Act provides the Secretary with the authority to make payments in addition to the basic IRF prospective payments for cases incurring extraordinarily high costs. In the August 7, 2001 IRF PPS final rule, we codified at § 412.624(e)(4) of the regulations the provision to make an adjustment for additional payments for outlier cases that have extraordinarily high costs relative to the costs of most discharges. Providing additional payments for outliers strongly improves the accuracy of the IRF PPS in

determining resource costs at the patient and facility level. These additional payments reduce the financial losses that would otherwise be caused by treating patients who require more costly care and, therefore, reduce the incentives to underserve these patients.

Under § 412.624(e)(4), we make outlier payments for any discharges if the estimated cost of a case exceeds the adjusted IRF PPS payment for the CMG plus the adjusted threshold amount ($11,211 which is then adjusted for each IRF by the facilities wage adjustment, its LIP adjustment, and its rural adjustment, if applicable). We calculate the estimated cost of a case by multiplying the IRF's overall cost-to-charge ratio by the Medicare allowable covered charge. In accordance with § 412.624(e)(4), we pay outlier cases 80 percent of the difference between the estimated cost of the case and the outlier threshold (the sum of the adjusted IRF PPS payment for the CMG and the adjusted threshold amount).

On November 1, 2001, we published a Program Memorandum (Transmittal A–01–131) with detailed intermediary instructions for calculating the cost-to-charge ratios for the purposes of determining outlier payments under the IRF PPS. We stated the following:

"Intermediaries will use the latest available settled cost report and associated data in determining a facility's overall Medicare cost-to-charge ratio specific to freestanding IRFs and for IRFs that are distinct part units of acute care hospitals. Intermediaries will calculate updated ratios each time a subsequent cost report settlement is made. Further, retrospective adjustments to the data used in determining outlier payments will not be made. If the overall Medicare cost-to-charge ratio appears to be substantially out-of-line with similar facilities, the intermediary should ensure that the underlying costs and charges are properly reported. We are evaluating the use of upper and lower cost-to-charge ratio thresholds (similar with the outlier policy for acute care hospitals) in the future to ensure that the distribution of outlier payments remains equitable."

For this proposed rule, we are proposing to continue to use the $11,211 threshold amount. This threshold amount was used in the FY 2003 IRF PPS payment rates and we believe it remains appropriate because the data should not contain any of the inappropriate payment enhancement practices that would result with the implementation of an outlier policy. The data used to construct the existing IRF-PPS outlier threshold consists of cost and charge data that was not influenced by the incentives the current IRF PPS outlier policy may create. Specifically, we used the IRF cost and charge data from the previous cost-based reimbursement system to establish the outlier threshold. These data were not inappropriately influenced by incentives to inflate charges that are created with the existence of an outlier policy; there is not a need for an outlier policy cost-based reimbursement because IRFs, with some limits, would be paid their costs. This is unlike the outlier situation in IPPS, which used post-PPS data to update its annual threshold amount. The IPPS data reflected the practices that we believe erroneously created inappropriate outlier payments.

We propose to continue to make outlier payments for any discharges if the estimated cost of a case exceeds the adjusted IRF PPS payment for the CMG plus the adjusted threshold amount ($11,211 which is then adjusted for each IRF by the facility's wage adjustment, its LIP adjustment, and its rural adjustment, if applicable). We propose to continue to calculate the estimated cost of a case by multiplying an IRF's overall cost-to-charge ratio by the Medicare allowable covered charge. However, we are proposing to apply a ceiling to an IRF's cost-to-charge ratios which is discussed below. In accordance with § 412.624(e)(4), we will continue to pay outlier cases 80 percent of the difference between the estimated cost of the case and the outlier threshold (the sum of the adjusted IRF PPS payment for the CMG and the adjusted threshold amount). In addition, under the existing methodology described in the preamble to the August 7, 2001 IRF PPS final rule (66 FR 41363), we will continue to assign the applicable national average for new IRFs.

2. Proposed Changes to the IRF Outlier Payment Methodology

Statistical Accuracy of Cost-to-Charge ratios

We believe that there is a need to ensure that the cost-to-charge ratio used to compute an IRF's estimated costs should be subject to a statistical measure of accuracy. Removing aberrant data from the calculation of outlier payments will allow us to enhance the extent to which outlier payments are equitably distributed and continue to reduce incentives for IRFs to underserve patients who require more costly care. Further, using a statistical measure of accuracy to address aberrant cost-to-charge ratios will also allow us to be consistent with the proposed outlier policy changes for the acute care hospital IPPS discussed in the March 4, 2003 Cost Outlier proposed rule, (68 FR 10420). Therefore in this proposed rule, we are proposing the following:

(1) To apply a ceiling to IRF's cost-to-charge ratio if a facility's cost-to-charge ratio is above a ceiling. We will calculate two national ceilings, one for IRFs located in rural areas and one for facilities located in urban areas. We propose to compute this ceiling by first calculating the national average and the standard deviation of the cost-to-charge ratio for both urban and rural IRFs. (Because of the small number of IRF's compared to the number of acute care hospitals, we believe that statewide averages for IRFs, as proposed under the IPPS, would not be statistically valid. Thus, we propose to use national average cost-to-charge ratios in place of statewide averages.) To determine the rural and urban ceiling, we propose to multiply each of the standard deviations by 3 and add the result to the appropriate national cost-to-charge ratio average (rural and urban). We believe this method results in statistically valid ceilings. If an IRF's cost-to-charge ratio is above the applicable ceiling it is considered to be statistically inaccurate and we propose to assign the national (either rural or urban) average cost-to-charge ratio to the IRF. Cost-to-charge ratios above this ceiling are probably due to faulty data reporting or entry, and, therefore, should not be used to identify and make payments for outlier cases because such data are most likely erroneous and therefore should not be relied upon. We propose to update the ceiling and averages using this methodology every year and we will publish these amounts in future program memoranda;

(2) Not assign the applicable national average cost-to-charge ratio when an IRF's cost-to-charge ratio falls below a floor. We are proposing this policy because, as is the case for acute care hospitals, we believe IRFs could arbitrarily increase their charges in order to maximize outlier payments. Even though this arbitrary increase in charges should result in a lower cost-to-charge ratio in the future (due to the lag time in cost report settlement), if we propose the use of a floor, the IRF's cost-to-charge ratio would be raised to the applicable national average. This application of the national average could result in inappropriately higher outlier payments. Accordingly, we are proposing to apply the IRF's actual cost-to-charge ratio to determine the cost of the case rather than creating and applying a floor. Applying an IRF's actual cost-to-charge ratio to charges in the future to determine the cost of a case will result in more appropriate outlier payments because it does not overstate the actual cost-to-charge ratio. Therefore, consistent with the proposed policy change for acute care hospitals under the IPPS, we are proposing that to use an IRF's actual cost-to-charge ratio no matter how low their ratio fall.

3. Proposed Adjustment of IRF Outlier Payments

Under the existing methodology for computing IRF outlier payments as described in the preamble of the August 7, 2001 IRF PPS final rule (66 FR 41363) and in the November 1, 2001 Program Memorandum discussed above, we specify that the cost-to-charge ratio used to compute estimated costs are obtained from the most recent settled Medicare cost report. Further, we provided for no retroactive adjustment to the outlier payments to account for differences between the cost-to-charge ratio from the latest settled cost report and the actual cost-to-charge ratio for the cost reporting period in which the outlier payment is made. This policy is consistent with the existing outlier payment policy for acute care hospitals under the IPPS. However, as discussed in the IPPS March 4, 2003 Cost Outlier proposed rule (68 FR 10423), we proposed to revise the methodology for determining cost-to-charge ratios for acute care hospitals under the IPPS because we became aware that payment vulnerabilities exist in the current IPPS outlier policy. Because we believe the IRF outlier payment methodology is likewise susceptible to the same payment vulnerabilities, we are proposing the following:

(1) As proposed for acute care hospitals under the IPPS at proposed § 412.84(i) in the March 4, 2003 proposed rule (68 FR 10420), we are proposing under § 412.624(e)(4), by cross-referencing proposed § 412.84(i), that fiscal intermediaries would use more recent data when determining an IRF's cost-to-charge ratio. Specifically, under proposed § 412.84(i), we are proposing that fiscal intermediaries would use either the most recent settled IRF cost report or the most recent tentative settled IRF cost report, whichever is later to obtain the applicable IRF cost-to-charge ratio. In addition, as proposed under § 412.84(i), any reconciliation of outlier payments will be based on a ratio of costs to charges computed from the relevant cost report and charge data determined at the time the cost report coinciding with the discharge is settled. As is the case with the proposed changes to the outlier policy for acute care hospitals under the IPPS, we are still assessing the procedural changes that would be necessary to implement this change.

(2) As proposed for acute care hospitals under the IPPS at proposed § 412.84(m) in the March 4, 2003 proposed rule (68 FR 10420), we are proposing under § 412.624(e)(4), by cross-referencing proposed § 412.84(m), that IRF outlier payments may be adjusted to account for the time value of money which is the value of money during the time period it was inappropriately held by the IRF as an "overpayment." We also may adjust outlier payments for the time value of money for cases that are "underpaid" to the IRF. In these cases, the adjustment will result in additional payments to the IRF. We are proposing that any adjustment will be based upon a widely available index to be established in advance by the Secretary, and will be applied from the midpoint of the cost reporting period to the date of reconciliation.

4. Proposed Change to the Methodology for Calculating the Federal Prospective Payment Rates

Section 412.624(e)(4) Adjustment for high-cost outliers

We provide for an additional payment to a facility if its estimated costs for a patient exceeds a fixed dollar amount (adjusted for area wage levels and factors to account for treating low-income patients and for rural locations) as specified by CMS. The additional payment equals 80 percent of the difference between the estimated cost of the patient and the sum of the adjusted Federal prospective payment computed under this section and the adjusted fixed dollar amount. Additional payments made under this section will be subject to the adjustments at § 412.84(i) except that national averages will be used instead of statewide averages. Additional payments made under this section will also be subject to adjustments at § 412.84(m).

VII. Provisions of the Proposed Rule

Overall, in this proposed rule, we are proposing to update the IRF Federal prospective payment rates from FY 2003 to FY 2004 using the methodology described in § 412.624 of the regulations. Our proposed FY 2004 Federal prospective payment rates would be effective for discharges on or after October 1, 2003 and before October 1, 2004.

We are proposing to update the IRF wage indices for FY 2004 by using FY 1999 acute care hospital data. However, any adjustments or updates made under section 1886(j)(6) of the Act must be made in a budget neutral manner. Therefore, we are proposing a methodology to update the wage indices for FY 2004 using 1999 acute care hospital data in a budget neutral manner.

We are also proposing to modify certain criteria for a hospital or a hospital unit to be classified as an IRF.

Section 412.20 Hospital services subject to the prospective payment systems

We are proposing to redesignate current § 412.20(b) and add a new paragraph (b)(2) that states inpatient hospital services will not be paid for under the IRF PPS if the services are paid by a health maintenance organization (HMO) or competitive medical plan (CMP) that elects not to have CMS make payments to an IRF for services, which are inpatient hospital services, furnished to the HMO's or CMP's Medicare enrollees under part 417.

Section 412.22 Excluded hospitals and hospital units: General rules

We are proposing to eliminate application of the bed-number criteria in § 412.22(h)(2)(i) for freestanding satellite IRFs by revising § 412.22(h)(2) and by adding § 412.22(h)(7).

Section 412.25 Excluded hospital units: Common requirements

We are also proposing to eliminate application of the bed-number criteria for IRF satellite units of a hospital in § 412.25(e)(2)(i) by revising § 412.25(e)(2) and by adding § 412.25(e)(5) to conform with the proposed change in § 412.22(h)(2)(i).

Section 412.29 Excluded rehabilitation units: Additional requirements

Under § 412.29(a), an IRF unit must have met either the requirements for new units or converted units under § 412.30 in order to be excluded from the inpatient acute care PPS. Section 412.29(a)(2) contains an incorrect reference to the requirements for converted units under "§ 412.30(b)." The correct reference to the requirements for converted units is § 412.30(c). Accordingly, we are proposing to make a technical correction by changing the reference in § 412.29(a)(2) to state "Converted units under § 412.30(c)."

Section 412.30 Exclusion of new rehabilitation units and expansion of units already excluded

Section 412.30(b)(3) contains an incorrect reference to the required written certification described in

paragraph "(a)(2)" of this section. The correct reference to the written certification is described in paragraph (2) of § 412.30(b). Accordingly, we are proposing to make a technical correction by changing the current reference to paragraph (a)(2) in paragraph (b)(3) to state "The written certification described in paragraph (b)(2) * * *".

Section 412.30(d)(2)(i) contains an incorrect reference to the definition of new bed capacity under paragraph "(c)(1)" of this section. The correct reference to the definition of new bed capacity is paragraph (d)(1). Accordingly, we are proposing a technical correction to change the current reference to paragraph (c)(1) in paragraph (d)(2)(i) to state "* * * under paragraph (d)(1) of this section."

Revision of the Definition of Discharge in § 412.602

According to § 412.602, a discharge has occurred when the patient has been formally released from the hospital, or has died in the hospital, or when the patient stops receiving Medicare—covered Part A inpatient rehabilitation services. We are proposing to amend § 412.602 by revising the definition of "Discharge." Accordingly, the revised definition would read as follows:

Discharge. A Medicare patient in an inpatient rehabilitation facility is considered discharged when—

(1) The patient is formally released from the inpatient rehabilitation facility; or

(2) The patient dies in the inpatient rehabilitation facility.

General Requirements for Payment Under the Prospective Payment System for Inpatient Rehabilitation Facilities in § 412.604

In § 412.604, "General requirements," in paragraph (a)(2) introductory text, we are proposing to change the word "we" to "CMS or its Medicare fiscal intermediary" to read as follows:

"If an inpatient rehabilitation facility fails to comply fully with these conditions with respect to inpatient hospital services furnished to one or more Medicare Part A fee-for-service beneficiaries, CMS or its Medicare fiscal intermediary may, as appropriate—"

Addition of Requirement To Give Patient the Privacy Act Statement in § 412.608

Section 412.608 specifies that before performing the IRF–PAI assessment, the IRF must inform the patient of the rights contained in this section. The rights specified in § 412.608 are—

(1) The right to be informed of the purpose of the collection of the patient assessment data;

(2) The right to have the patient assessment information collected be kept confidential and secure;

(3) The right to be informed that the patient assessment information will not be disclosed to others, except for legitimate purposes allowed by the Federal Privacy Act and Federal and State regulations;

(4) The right to refuse to answer patient assessment questions; and

(5) The right to see, review, and request changes on his or her patient assessment.

In addition to the rights specified in § 412.608, a patient has privacy rights under the Privacy Act of 1974 (5 U.S.C. § 552a(e)(3)), and 45 CFR 5b.4(a)(3). The Privacy Act and 45 CFR 5b.4(a)(3) require that an individual be informed under what authority, and for what purpose, individually identifiable information is being collected by a Federal agency and maintained in a system of records. In order to ensure that an IRF complies with the Privacy Act of 1974, and 45 CFR 5b.4(a)(3), we are proposing that before performing the IRF–PAI assessment, an IRF clinician must give each Medicare inpatient two forms. We have published these forms in Appendix B "Inpatient Rehabilitation Facility Patient Privacy Forms" of this proposed rule. In addition, we are proposing that the form entitled "Privacy Act Statement—Health Care Records" is a detailed description of patient privacy rights under the Privacy Act of 1974. Also, we are proposing that the form entitled "Inpatient Rehabilitation Facility Patient Assessment Instrument (IRF–PAI) Data Collection Information Summary for Patients in Inpatient Rehabilitation Facilities" is the plain language equivalent of the Privacy Act Statement—Health Care Records. Additionally, we are proposing that by giving both of these forms to a patient before starting the IRF–PAI assessment, the IRF would fulfill the requirement that the patient be informed of the five rights specified in § 412.608. Accordingly, we are proposing to amend § 412.608 to read as follows:

Section 412.608 Patients Rights Regarding the Collection of Patient Assessment Data

(a) Before performing an assessment using the patient assessment instrument, a clinician of the inpatient rehabilitation facility must give a Medicare inpatient each of these forms—

(1) The Privacy Act Statement—Health Care Records; and

(2) The Inpatient Rehabilitation Facility Patient Assessment Instrument (IRF–PAI) Privacy Act Statement—Health Care Records.

(b) The Inpatient Rehabilitation Facility Patient Assessment Instrument (IRF–PAI) Data Collection Information Summary for Patients in Inpatient Rehabilitation Facilities is the plain language equivalent of the Privacy Act Statement—Health Care Records.

(c) By giving the Medicare inpatient the forms specified in paragraph (a) of this section the inpatient rehabilitation facility has informed the Medicare patient of—

(1) His or her privacy rights under the Privacy Act of 1974 and 45 CFR 5b.4(a)(3); and

(2) The following rights:

(i) The right to be informed of the purpose of the collection of the patient assessment data.

(ii) The right to have the patient assessment information collected be kept confidential and secure.

(iii) The right to be informed that the patient assessment information will not be disclosed to others, except for legitimate purposes allowed by the Federal Privacy Act and Federal and State regulations.

(iv) The right to refuse to answer patient assessment questions.

(v) The right to see, review, and request changes on his or her patient assessment.

(d) The patient rights specified in this section are in addition to the patient rights specified in § 482.13 of this chapter.

By complying with the requirements specified in revised § 412.608 the IRF has not met the separate requirement in 45 CFR 164.520 entitled "Notice of privacy practices for protected health information." Section 164.520 requires that a health plan or health care provider give patients a Notice of Privacy Practices that must describe the health plan's or health care provider's own uses and disclosures of protected health information, and the individual rights that patients have with respect to their protected health information.

When the IRF–PAI Must Be Completed (§ 412.610)

According to § 412.606(b), an IRF must use the IRF–PAI to assess Medicare Part A fee-for-service inpatients. Section 412.610(c)(1)(i)(C) specifies that the IRF–PAI for the admission assessment "Must be completed on the calendar day that follows the admission assessment reference day." In order to clarify that § 412.610(c)(1)(i)(C) does not prohibit the IRF from recording any or all of the data on the IRF–PAI before the day that follows the admission assessment reference day, we are proposing to amend § 412.610(c)(1)(i)(C) to read as follows: Must be completed by the calendar day that follows the admission assessment reference day.

Transmission of IRF–PAI Data (§ 412.614)

As specified in § 412.606(b), "Patient assessment instrument," an IRF must use the IRF–PAI to assess Medicare Part A fee-for-service inpatients.

Section 412.614, "Transmission of patient assessment data," specifies that an IRF must transmit to us the IRF–PAI assessment data for each Medicare Part A fee-for-service inpatient. It is the electronic version of the IRF–PAI that enables an IRF to transmit the IRF–PAI data to us. We require that IRFs transmit IRF–PAI data so that we have the IRF–PAI data that are associated with the CMG payment code that the IRF submitted to its FI. We are proposing to amend § 412.614 by specifying that § 412.614(a) is a general rule that would read as follows:

(a) Data format. *General rule.* The IRF must encode and transmit data for each Medicare Part A fee-for-service inpatient—

We are proposing to amend § 412.614 by adding a new § 412.614(a)(3), which would relieve the IRF of having to transmit the IRF–PAI data for a Medicare Part A fee-for-service inpatient when Medicare will not be paying the IRF for any of the services the IRF furnished to that inpatient. New § 412.614(a)(3) would read as follows:

Exception to the general rule. When the inpatient rehabilitation facility does not submit claims data to Medicare in order to be paid for any of the services it furnished to a Medicare Part A fee-for-service inpatient, the inpatient rehabilitation facility is not required, but may, transmit to Medicare the inpatient rehabilitation facility patient assessment data associated with the services furnished to that same Medicare Part A fee-for-service inpatient.

We are proposing a new § 412.614(e) to read as follows: "Exemption to being assessed a penalty for transmitting the IRF-PAI data late. CMS may waive the penalty specified in paragraph (d) of this section when, due to an extraordinary situation that is beyond the control of an inpatient rehabilitation facility, the inpatient rehabilitation facility is unable to transmit the patient assessment data in accordance with paragraph (c) of this section. Only CMS can determine if a situation encountered by an inpatient rehabilitation facility is extraordinary and qualifies as a situation for waiver of the penalty specified in paragraph (d)(2) of this section. An extraordinary situation may be, but is not limited to, fires, floods, earthquakes, or similar unusual events that inflict extensive damage to an inpatient rehabilitation facility. An extraordinary situation may be one that produces a data transmission problem that is beyond the control of the inpatient rehabilitation facility, as well as other situations determined by CMS to be beyond the control of the inpatient rehabilitation facility. An extraordinary situation must be fully documented by the inpatient rehabilitation facility."

Proposed Update of Area Wage Data

In § 412.624(e), "Calculation of the adjusted Federal prospective payment," in paragraph (1), "Adjustment for area wage levels," we are proposing that adjustments or updates to the wage data used to adjust a facility's Federal prospective payment rate under paragraph (e)(1) of this section will be made in a budget neutral manner. We are also proposing to determine a budget neutral wage adjustment factor, based on any adjustment or update to the wage data, to apply to the standard payment conversion factor.

Proposed Adjustment for High-Cost Outliers Under the IRF Prospective Payment System (§ 412.624)

As proposed for acute care hospitals under the IPPS at proposed § 412.84(i) in the March 4, 2003 proposed rule (68 FR 10420), we are proposing under § 412.624(e)(4), by cross-referencing proposed § 412.84(i), that fiscal intermediaries would use more recent data when determining an IRF's cost-to-charge ratio. Specifically, under proposed § 412.84(i), we are proposing that fiscal intermediaries would use either the most recent settled IRF cost report or the most recent tentative settled IRF cost report, whichever is later, to obtain the applicable IRF cost-to-charge ratio. In addition, as proposed under § 412.84(i), any reconciliation of outlier payments will be based on a ratio of costs to charges computed from the relevant cost report and charge data determined at the time the cost report coinciding with the discharge is settled. (Because of the small number of IRFs compared to the number of acute care hospitals, we believe that statewide averages for IRFs, as proposed under the IPPS, would not be statistically valid. Thus, we are proposing to use national average cost-to-charge ratios in place of statewide averages.) As is the case with the proposed changes to the outlier policy for acute care hospitals under the IPPS, we are still assessing the procedural changes that would be necessary to implement this change.

As proposed for acute care hospitals under the IPPS at proposed § 412.84(m) in the March 4, 2003 proposed rule (68 FR 10420), we are proposing under § 412.624(e)(4), by cross-referencing proposed § 412.84(m), that IRF outlier payments may be adjusted to account for the time value of money which is the value of money during the time period it was inappropriately held by the IRF as an "overpayment." We also may adjust outlier payments for the time value of money for cases that "underpaid" to the IRF. In these cases, the adjustment will result in additional payments to the IRF. We are proposing that any adjustment will be based upon a widely available index to be established in advance by the Secretary, and will be applied from the midpoint of the cost reporting period to the date of reconciliation.

VIII. Collection of Information Requirements

Under the Paperwork Reduction Act of 1995 (PRA), agencies are required to provide a 60-day notice in the **Federal Register** and solicit public comment when a collection of information requirement is submitted to the Office of Management and Budget (OMB) for review and approval. To fairly evaluate whether an information collection should be approved by OMB, section 3506(c)(2)(A) of the PRA requires that we solicit comments on the following issues:

- Whether the information collection is necessary and useful to carry out the proper functions of the agency;
- The accuracy of the agency's estimate of the information collection burden;
- The quality, utility, and clarity of the information to be collected; and
- Recommendations to minimize the information collection burden on the affected public, including automated collection techniques.

We are therefore soliciting public comment on each of these issues for the proposed information collection requirements discussed below.

Section 412.608 Patients' rights regarding the collection of patient assessment data.

Under this section, before performing an assessment using the inpatient rehabilitation facility patient assessment instrument, a clinician of the inpatient rehabilitation facility must give a Medicare inpatient the form entitled

"Privacy Act Statement—Health Care Records" and the simplified plain language description of the Privacy Act Statement—Health Care Records, which is a form entitled "Data Collection Information Summary for Patients in Inpatient Rehabilitation Facilities;" the inpatient rehabilitation facility must document in the Medicare inpatient's clinical record that the Medicare inpatient has been given the documents specified in the section.

The burden associated with this section is the time it will take to document that the patient has been given the requisite forms. We estimate that it will take no more than a minute per patient. There will be an estimated 390,000 admissions per year, for a total of 6,500 hours per year.

Section 412.614 Transmission of Patient Assessment Data

1. The inpatient rehabilitation facility must encode and transmit data for each Medicare Part A fee-for-service inpatient.

These information collection requirements associated with the IRF PPS are currently approved by OMB through July 31, 2005 under OMB number 0938–0842.

2. Under paragraph (e), *Exemption to being assessed a penalty for transmitting the IRF-PAI data late,* CMS may waive the penalty specified in paragraph (d) of this section. To assist CMS in determining if a waiver is appropriate the inpatient rehabilitation facility must fully document the circumstances surrounding the occurrence.

Given that it is estimated that fewer than 10 instances will occur on an annual basis to necessitate a waiver, this requirement is not subject to the PRA as stipulated under 5 CFR 1320.3(c).

We have submitted a copy of this proposed rule to OMB for its review of the information collection requirements in § 412.604, § 412.608 and § 412.614. These requirements are not effective until they have been approved by OMB.

If you have any comments on any of these information collection and record keeping requirements, please mail the original and 3 copies to CMS within 60 days of this publication date directly to the following: Centers for Medicare & Medicaid Services, Office of Strategic Operations and Regulatory Affairs, Office of Regulations Development and Issuances, Reports Clearance Officer, 7500 Security Boulevard, Baltimore, MD 21244–1850.

Attn: Julie Brown, CMS–1474–P; and Office of Information and Regulatory Affairs, Office of Management and Budget, Room 10235, New Executive Office Building, Washington, DC 20503, Attn: Brenda Aguilar, CMS Desk Officer.

Comments submitted to OMB may also be emailed to the following address: e-mail: *baguilar@omb.eop.gov;* or faxed to OMB at (202) 395–6974.

IX. Response to Comments

Because of the large number of items of correspondence we normally receive on **Federal Register** documents published for comment, we are not able to acknowledge or respond to them individually. We will consider all comments we receive by the date and time specified in the **DATES** section of this preamble, and, if we proceed with a subsequent document, we will respond to the major comments in the preamble to that document.

X. Regulatory Impact Analysis

A. Introduction

The August 7, 2001 IRS PPS final rule (66 FR 41316) established the IRF PPS for the payment of inpatient hospital services furnished by a rehabilitation hospital or rehabilitation unit of a hospital with cost reporting periods beginning on or after January 1, 2002. We incorporated a number of elements into the IRF PPS, such as case-level adjustments, a wage adjustment, an adjustment for the percentage of low-income patients, a rural adjustment, and outlier payments. The August 1, 2002 IRF PPS notice (67 FR 49928) set forth updates of the IRF PPS rates contained in the August 7, 2001 IRF PPS final rule. The purpose of the updates set forth in the August 1, 2002 IRF PPS notice was to provide an update to the IRF payment rates for discharges during FY 2003. This proposed rule proposes updated IRF PPS rates for discharges that occur during FY 2004.

In constructing these impacts, we do not attempt to predict behavioral responses, and we do not make adjustments for future changes in such variables as discharges or case-mix. We note that certain events may combine to limit the scope or accuracy of our impact analysis, because such an analysis is future-oriented and, thus, susceptible to forecasting errors due to other changes in the forecasted impact time period. Some examples of such possible events are newly legislated general Medicare program funding changes by the Congress, or changes specifically related to IRFs. In addition, changes to the Medicare program may continue to be made as a result of the BBA, the BBRA, the BIPA, or new statutory provisions. Although these changes may not be specific to the IRF PPS, the nature of the Medicare program is such that the changes may interact, and the complexity of the interaction of these changes could make it difficult to predict accurately the full scope of the impact upon IRFs.

We have examined the impacts of this rule as required by Executive Order 12866 (September 1993, Regulatory Planning and Review), the Regulatory Flexibility Act (RFA) (September 16, 1980, Pub. L. 96–354), section 1102(b) of the Social Security Act, the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4), and Executive Order 13132.

1. Executive Order 12866

Executive Order 12866 directs agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). A regulatory impact analysis (RIA) must be prepared for major rules with economically significant effects ($100 million or more).

In this proposed rule, we are proposing to use an updated FY 2004 IRF market basket index and an updated FY 2004 IRF labor-related share and wage indices to update the IRF PPS rates to FY 2004, as described in section VI of this proposed rule. By updating the IRF PPS rates to FY 2004, as proposed in this proposed rule, we estimate that the overall cost to the Medicare program for IRF services in FY 2004 will increase by $204.2 million over FY 2003 levels. The updates to the IRF labor-related share and wage indices are made in a budget neutral manner. Thus, updating the IRF labor-related share and the wage indices to FY 2004 have no overall effect on estimated costs to the Medicare program. Therefore, this estimated cost to the Medicare program is due to the application of the proposed updated IRF market basket of 3.3 percent. Because the cost to the Medicare program is greater than $100 million, this proposed rule is considered a major rule as defined above.

2. Regulatory Flexibility Act (RFA) and Impact on Small Hospitals

The RFA requires agencies to analyze the economic impact of our regulations on small entities. If we determine that the regulation will impose a significant burden on a substantial number of small entities, we must examine options for reducing the burden. For purposes of the RFA, small entities include small businesses, nonprofit organizations, and governmental agencies. Most hospitals are considered small entities, either by nonprofit status or by having receipts of $6 million to $29 million in any 1 year. (For details, see the Small Business Administration's regulation that set forth size standards for health care industries at 65 FR 69432.) Because we lack data on individual hospital receipts, we cannot determine the number of small proprietary IRFs. Therefore, we assume that all IRFs are considered small entities for the purpose of the analysis that follows. Medicare fiscal intermediaries and carriers are not considered to be small entities. Individuals and States are not included in the definition of a small entity.

This proposed rule proposes a 3.3 percent increase to the Federal PPS rates. We do not expect an incremental increase of 3.3 percent to the Medicare Federal rates to have a significant effect on the overall revenues of IRFs. Most IRFs are units of hospitals that provide many different types of services (for example, acute care, outpatient services) and the rehabilitation component of their business is relatively minor in comparison. In addition, IRFs provide services to (and generate revenues from) patients other than Medicare beneficiaries. Accordingly, we certify that this proposed rule will not have a significant impact on small entities.

Section 1102(b) of the Act requires us to prepare a regulatory impact analysis for any proposed rule that will have a significant impact on the operations of a substantial number of small rural hospitals. This analysis must conform to the provisions of section 603 of the RFA. For purposes of section 1102(b) of the Act, we define a small rural hospital as a hospital that is located outside of a Metropolitan Statistical Area (MSA) and has fewer than 100 beds.

This proposed rule will not have a significant impact on the operations of small rural hospitals. As indicated above, this proposed rule proposes a 3.3 percent increase to the Federal PPS rates. In addition, we do not expect an incremental increase of 3.3 percent to the Federal rates to have a significant effect on overall revenues or operations since most rural hospitals provide many different types of services (for example, acute care, outpatient services) and the rehabilitation component of their business is relatively minor in comparison. Accordingly, we certify that this proposed rule will not have a significant impact on the operations of small rural hospitals.

3. Unfunded Mandates Reform Act

Section 202 of the Unfunded Mandates Reform Act of 1995 also requires that agencies assess anticipated costs and benefits before issuing any rule that may result in an expenditure in any 1 year by State, local, or tribal governments, in the aggregate, or by the private sector, of at least $110 million. This proposed rule will not have a substantial effect on the governments mentioned nor will it affect private sector costs.

4. Executive Order 13132

We examined this proposed rule in accordance with Executive Order 13132 and determined that it will not have a substantial impact on the rights, roles, or responsibilities of State, local, or tribal governments.

5. Overall Impact

For the reasons stated above, we have not prepared an analysis under the RFA and section 1102(b) of the Act because we have determined that this proposed rule will not have a significant impact on small entities or the operations of small rural hospitals.

B. Anticipated Effects of the Proposed Rule

We discuss below the impacts of this proposed rule on the Federal budget and on IRFs.

1. Budgetary Impact

Section 1886(j)(3)(C) of the Act requires annual updates to the IRF PPS payment rates. Section 1886 (j)(6) of the Act requires the Secretary to adjust or update the labor-related share and the wage indices or the labor-related share and the wage indices the applicable to IRFs not later than October 1, 2001 and at least every 36 months thereafter. We project that updating the IRF PPS for discharges occurring on or after October 1, 2003 and before October 1, 2004 will cost the Medicare program $204.2 million. The proposed update to the IRF labor-related share and wage indices if finalized will be made in a budget neutral manner. Thus, updating the IRF labor-related share and the wage indices to FY 2004 would have no overall effect on estimated costs to the Medicare program. Therefore, this estimated cost to the Medicare program is due to the application of the proposed updated IRF market basket of 3.3 percent.

2. Impact on Providers

For the impact analyses shown in the August 7, 2001 IRF PPS final rule, we simulated payments for 1,024 facilities. To construct the impact analyses set forth in this proposed rule, we use the latest available data. These data include the same facilities that were used in constructing the impact analyses displayed in the August 7, 2001 IRF PPS final rule (66 FR 41364–41365, and 41372). We do not have enough post-IRF PPS data to develop the overall budgetary impact and the impact on providers. Further, we will need a sufficient amount of these data to be able to rely on them as the basis for the impact analysis. Because IRFs began to be paid under the IRF PPS based on their cost report start date that occurred on or after January 1, 2002, sufficient Medicare claims data will not be available for those facilities whose cost report start date occurs later in the calendar year. We do not have enough post-IRF PPS data to develop the overall budgetary impact and the impact on providers. Further, we will need a sufficient amount of these data to be able to rely on them as the basis for the impact analysis. Because IRFs began to be paid under the IRF PPS based on their cost report start date that occurred on or after January 1, 2002, sufficient Medicare claims data will not be available for those facilities whose cost report start date occurs later in the calendar year. The estimated monetary changes among the various classifications of IRFs for discharges occurring on or after October 1, 2003 and before October 1, 2004 is reflected in Chart 8 "Projected Impact of Proposed FY 2004 Update" of this proposed rule.

3. Calculation of the Estimated FY 2003 IRF Prospective Payments

To estimate payments under the IRF PPS for FY 2003, we multiplied each facility's case-mix index by the facility's number of Medicare discharges, the FY 2003 standardized payment amount, the applicable FY 2003 labor-related share and wage indices, a low-income patient adjustment, and a rural adjustment (if applicable). The adjustments include the following:

The wage adjustment, calculated as follows: (.27605 + (.72395 × FY 2003 Wage Index)).

The disproportionate share adjustment, calculated as follows: (1 + Disproportionate Share Percentage) raised to the power of .4838).

The rural adjustment, if applicable, calculated by multiplying payments by 1.1914.

4. Calculation of the Proposed Estimated FY 2004 IRF Prospective Payments

To calculate proposed FY 2004 payments, we use the payment rates described in this proposed rule that reflect the proposed 3.3 percent market basket increase factor using the proposed FY 2004 labor-related share

and wage indices, a low-income patient adjustment, and a rural adjustment (if applicable). The proposed adjustments include the following:

The proposed wage adjustment, calculated as follows: (.27605 + (.72683 × FY 2004 Wage Index)).

The proposed disproportionate share adjustment, calculated as follows: (1 + Disproportionate Share Percentage) raised to the power of .4838).

The proposed rural adjustment, if applicable, calculated by multiplying payments by 1.1914.

Chart 8 "Projected Impact of Proposed FY 2004 Update" illustrates the aggregate impact of the proposed estimated FY 2004 updated payments among the various classifications of facilities compared to the estimated IRF PPS payment rates applicable for FY 2003.

The first column, Facility Classification, identifies the type of facility. The second column identifies the number of facilities for each classification type, and the third column lists the number of cases. The fourth column indicates the impact of the proposed budget neutral wage adjustment. The last column reflects the combined changes including the proposed update to the FY 2003 payment rates by proposed 3.3 percent and the proposed budget neutral wage adjustment (including the proposed FY 2004 labor-related share and the proposed FY 2004 wage indices).

CHART 8.—PROJECTED IMPACT OF PROPOSED FY 2004 UPDATE

Facility classification	Number of facilities	Number of cases	Proposed budget neutral wage adjustment	Proposed total change
Total	1,024	347,809	0.0%	3.3%
Urban unit	725	206,926	−0.5	2.8
Rural unit	131	26,507	0.2	3.5
Urban hospital	156	109,691	0.9	4.3
Rural hospital	12	4,685	−1.3	1.9
Total urban	881	316,617	0.0	3.3
Total rural	143	31,192	0.0	3.2
Urban by Region				
New England	32	15,039	0.1	3.5
Middle Atlantic	133	64,042	−1.5	1.8
South Atlantic	112	52,980	0.5	3.8
East North Central	171	55,071	−0.5	2.7
East South Central	41	23,434	0.9	4.2
West North Central	70	18,087	0.6	3.9
West South Central	154	52,346	1.5	4.8
Mountain	56	14,655	1.1	4.4
Pacific	112	20,963	−0.7	2.6
Rural by Region				
New England	4	829	−0.2	3.1
Middle Atlantic	10	2,424	−1.3	1.9
South Atlantic	20	6,192	−0.8	2.5
East North Central	29	5,152	−0.5	2.8
East South Central	10	3,590	0.2	3.5
West North Central	22	3,820	1.7	4.9
West South Central	32	7,317	0.6	3.9
Mountain	9	1,042	−0.3	3.0
Pacific	7	826	−1.2	2.1

As Chart 8 illustrates, all IRFs are expected to benefit from the proposed 3.3 percent market basket increase that would be applied to FY 2003 IRF PPS payment rates to develop the proposed FY 2004 rates. However, there may be distributional impacts among various IRFs due to the application of the proposed updates to the labor-related share and proposed wage indices in a budget neutral manner.

To summarize, we have proposed that all facilities would receive a 3.3 percent increase in their unadjusted IRF PPS payments. The estimated positive impact among all IRFs reflected in Chart 8 are due to the effect of the proposed update to the IRF market basket index. We also note that, while no changes in the regulations are being proposed, we discuss the potential effects of improved compliance with the 75 percent rule in section II of this proposed rule.

In accordance with the provisions of Executive Order 12866, this proposed rule was reviewed by the Office of Management and Budget (OMB).

List of Subjects in 42 CFR Part 412

Administrative practice and procedure, Health facilities, Medicare, Puerto Rico, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, the Centers for Medicare & Medicaid Services proposes to amend 42 CFR chapter IV, part 412, as set forth below:

PART 412—PROSPECTIVE PAYMENT SYSTEMS FOR INPATIENT HOSPITAL SERVICES

1. The authority citation for part 412 continues to read as follows:

Authority: Secs. 1102 and 1871 of the Social Security Act (42 U.S.C. 1302 and 1395hh).

Subpart B—Hospital Services Subject to and Excluded From the Prospective Payment Systems for Inpatient Operating Costs and Inpatient Capital-Related Costs

2. In § 412.20, the following changes are made:

A. Redesignate paragraph (b) as paragraph (b)(1).

B. Add paragraph (b)(2) to read as follows:

§ 412.20 Hospital services subject to the prospective payment systems.

* * * * *

(b) * * *

(2) CMS will not pay for services under Subpart P of this part if the services are paid for by a health maintenance organization (HMO) or competitive medical plan (CMP) that elects not to have CMS make payments to an inpatient rehabilitation facility for services, which are inpatient hospital services, furnished to the HMO's or CMP's Medicare enrollees, as provided under part 417 of this chapter.

* * * * *

3. In § 412.22, the following changes are made:

A. Revise paragraph (h)(2) introductory text.

B. Add and reserve paragraph (h)(6).

C. Add paragraph (h)(7).

The revisions and addition read as follows:

§ 412.22 Excluded hospitals and hospital units: General rules.

* * * * *

(h) * * *

(2) Except as provided in paragraphs (h)(3) and (h)(7) of this section, effective for cost reporting periods beginning on or after October 1, 1999, a hospital that has a satellite facility must meet the following criteria in order to be excluded from the acute care hospital inpatient prospective payment systems for any period:

* * * * *

(6) [Reserved]

(7) The provisions of paragraph (h)(2)(i) of this section do not apply to any inpatient rehabilitation facility that is subject to the inpatient rehabilitation facility prospective payment system under subpart P of this part, effective for cost reporting periods beginning on or after October 1, 2003.

4. In § 412.25, the following changes are made:

A. Revise paragraph (e)(2) introductory text.

B. Add paragraph (e)(5).

The revision and addition read as follows:

§ 412.25 Excluded hospital units: Common requirements.

* * * * *

(e) * * *

(2) Except as provided in paragraphs (e)(3) and (e)(5) of this section, effective for cost reporting periods beginning on or after October 1, 1999, a hospital that has a satellite facility must meet the following criteria in order to be excluded from the acute care hospital inpatient prospective payment systems for any period:

* * * * *

(5) The provisions of paragraph (e)(2)(i) of this section do not apply to any inpatient rehabilitation facility that is subject to the inpatient rehabilitation facility prospective payment system under subpart P of this part, effective for cost reporting periods beginning on or after October 1, 2003.

* * * * *

5. In § 412.29, revise paragraph (a)(2) to read as follows:

§ 412.29 Excluded rehabilitation units: Additional requirements.

(a) * * *

(2) Converted units under § 412.30(c).

* * * * *

6. In § 412.30, the following changes are made:

A. Revise paragraph (b)(3).

B. Revise paragraph (d)(2)(i).

§ 412.30 Exclusion of new rehabilitation units and expansion of units already excluded.

(b) * * *

(3) The written certification described in paragraph (b)(2) of this section is effective for the first full cost reporting period during which the unit is used to provide hospital inpatient care.

* * * * *

(d) * * *

(2) *Conversion of existing bed capacity.* (i) Bed capacity is considered to be existing bed capacity if it does not meet the definition of new bed capacity under paragraph (d)(1) of this section.

* * * * *

Subpart P—Prospective Payment for Inpatient Rehabilitation Hospitals and Rehabilitation Units

7. In § 412.602, republish the introductory text and revise the definition of "Discharge" to read as follows:

§ 412.602 Definitions.

As used in this subpart—

* * * * *

Discharge. A Medicare patient in an inpatient rehabilitation facility is considered discharged when—

(1) The patient is formally released from the inpatient rehabilitation facility; or

(2) The patient dies in the inpatient rehabilitation facility.

* * * * *

8. In § 412.604, revise paragraph (a)(2) introductory text to read as follows:

§ 412.604 Conditions for payment under the prospective payment system for inpatient rehabilitation facilities.

(a) * * *

(2) If an inpatient rehabilitation facility fails to comply fully with these conditions with respect to inpatient hospital services furnished to one or more Medicare Part A fee-for-service beneficiaries, CMS or its Medicare fiscal intermediary may, as appropriate—

* * * * *

9. Section 412.608 is revised to read as follows:

§ 412.608 Patients' rights regarding the collection of patient assessment data

(a) Before performing an assessment using the inpatient rehabilitation facility patient assessment instrument, a clinician of the inpatient rehabilitation facility must give a Medicare inpatient each of these forms—

(1) The form entitled "Privacy Act Statement—Health Care Records;" and

(2) The simplified plain language description of the Privacy Act Statement—Health Care Records which is a form entitled "Data Collection Information Summary for Patients in Inpatient Rehabilitation Facilities."

(b) The inpatient rehabilitation facility must document in the Medicare inpatient's clinical record that the Medicare inpatient has been given the documents specified in paragraph (a) of this section.

(c) The Data Collection Information Summary for Patients in Inpatient Rehabilitation Facilities is the simplified plain language description of the Privacy Act Statement—Health Care Records.

(d) By giving the Medicare inpatient the forms specified in paragraph (a) of this section the inpatient rehabilitation facility will inform the Medicare patient of—

(1) Their privacy rights under the Privacy Act of 1974 and 45 CFR 5b.4(a)(3); and

(2) The following rights:

(i) The right to be informed of the purpose of the collection of the patient assessment data;

(ii) The right to have the patient assessment information collected be kept confidential and secure;

(iii) The right to be informed that the patient assessment information will not be disclosed to others, except for legitimate purposes allowed by the Federal Privacy Act and Federal and State regulations;

(iv) The right to refuse to answer patient assessment questions; and

(v) The right to see, review, and request changes on his or her patient assessment.

(e) The patient rights specified in this section are in addition to the patient rights specified in § 482.13 of this chapter.

10. In § 412.610, revise paragraph (c)(1)(i)(C) to read as follows:

§ 412.610 Assessment schedule.

* * * * *

(c) * * *

(1) * * *

(i) * * *

(C) Must be completed by the calendar day that follows the admission assessment reference day.

* * * * *

11. In § 412.614, the following changes are made:

A. Redesignate paragraphs (a)(1) and (a)(2) as (a)(1)(i) and (a)(1)(ii), respectively.

B. Redesignate the introductory text to paragraph (a) as (a)(1) and add a heading to newly designated paragraph (a)(1).

C. Add a new paragraph (a)(2).

D. Add a new paragraph (e).

The revision and additions read as follows:

§ 412.614 Transmission of patient assessment data.

(a) *Data format.* (1) *General rule.* The inpatient rehabilitation facility must encode and transmit data for each Medicare Part A fee-for-service inpatient—

* * * * *

(2) *Exception to the general rule.* When the inpatient rehabilitation facility does not submit claim data to Medicare in order to be paid for any of the services it furnished to a Medicare Part A fee-for-service inpatient, the inpatient rehabilitation facility is not required to, but may, transmit to Medicare the inpatient rehabilitation facility patient assessment data associated with the services furnished to that same Medicare Part A fee-for-service inpatient.

* * * * *

(e) *Exemption to being assessed a penalty for transmitting the IRF-PAI data late.* CMS may waive the penalty specified in paragraph (d) of this section when, due to an extraordinary situation that is beyond the control of an inpatient rehabilitation facility, the inpatient rehabilitation facility is unable to transmit the patient assessment data in accordance with paragraph (c) of this section. Only CMS can determine if a situation encountered by an inpatient rehabilitation facility is extraordinary and qualifies as a situation for waiver of the penalty specified in paragraph (d)(2) of this section. An extraordinary situation may be due to, but is not limited to, fires, floods, earthquakes, or similar unusual events that inflict extensive damage to an inpatient rehabilitation facility. An extraordinary situation may be one that produces a data transmission problem that is beyond the control of the inpatient rehabilitation facility, as well as other situations determined by CMS to be beyond the control of the inpatient rehabilitation facility. An extraordinary situation must be fully documented by the inpatient rehabilitation facility.

12. In § 412.624, the following changes are made:

A. Revise paragraph (c).

B. Revise paragraph (d).

C. Revise paragraph (e)(1).

D. Revise paragraph (e)(4).

The revisions read as follows:

§ 412.624 Methodology for calculating the Federal prospective payment rates.

* * * * *

(c) *Determining the Federal prospective payment rates.* (1) *General.* The Federal prospective payment rates will be established using a standard payment amount referred to as the standard payment conversion factor. The standard payment conversion factor is a standardized payment amount based on average costs from a base year that reflects the combined aggregate effects of the weighting factors, various facility and case level adjustments, and other adjustments.

(2) *Update the cost per discharge.* CMS applies the increase factor described in paragraph (a)(3) of this section to the facility's cost per discharge determined under paragraph (b) of this section to compute the cost per discharge for fiscal year 2002. Based on the updated cost per discharge, CMS estimates the payments that would have been made to the facility for fiscal year 2002 under part 413 of this chapter without regard to the prospective payment system implemented under this subpart.

(3) *Computation of the standard payment conversion factor.* The standard payment conversion factor is computed as follows:

(i) *For fiscal year 2002.* Based on the updated costs per discharge and estimated payments for fiscal year 2002 determined in paragraph (c)(2) of this section, CMS computes a standard payment conversion factor for fiscal year 2002, as specified by CMS, that reflects, as appropriate, the adjustments described in paragraph (d) of this section.

(ii) *For fiscal years after 2002.* The standard payment conversion factor for fiscal years after 2002 will be the standardized payments for the previous fiscal year updated by the increase factor described in paragraph (a)(3) of this section, including adjustments described in paragraph (d) of this section as appropriate.

(4) *Determining the Federal prospective payment rate for each case-mix group.* The Federal prospective payment rates for each case-mix group is the product of the weighting factors described in § 412.620(b) and the standard payment conversion factor described in paragraph (c)(3) of this section.

(d) *Adjustments to the standard payment conversion factor.* The standard payment conversion factor described in paragraph (c)(3) of this section will be adjusted for the following:

(1) *Outlier payments.* CMS determines a reduction factor equal to the estimated proportion of additional outlier payments described in paragraph (e)(4) of this section.

(2) *Budget neutrality.* CMS adjusts the Federal prospective payment rates for fiscal year 2002 so that aggregate payments under the prospective payment system, excluding any additional payments associated with elections not to be paid under the transition period methodology under § 412.626(b), are estimated to equal the amount that would have been made to inpatient rehabilitation facilities under part 413 of this chapter without regard to the prospective payment system implemented under this subpart.

(3) *Coding and classification changes.* CMS adjusts the standard payment conversion factor for a given year if CMS determines that revisions in case-mix classifications or weighting factors for a previous fiscal year (or estimates that those revisions for a future fiscal year) did result in (or would otherwise result in) a change in aggregate payments that are a result of changes in the coding or classification of patients that do not reflect real changes in case-mix.

(e) * * *

(1) *Adjustment for area wage levels.* The labor portion of a facility's Federal prospective payment is adjusted to account for geographical differences in the area wage levels using an appropriate wage index. The application of the wage index is made on the basis of the location of the facility in an urban or rural area as defined in § 412.602. Adjustments or updates to the wage data used to adjust a facility's Federal prospective payment rate under this paragraph will be made in a budget neutral manner. CMS determines a budget neutral wage adjustment factor, based on any adjustment or update to the wage data, to apply to the standard payment conversion factor.

* * * * *

(4) *Adjustment for high-cost outliers.* CMS provides for an additional payment to an inpatient rehabilitation facility if its estimated costs for a patient exceeds a fixed dollar amount (adjusted for area wage levels and factors to account for treating low-income patients and for rural locations) as specified by CMS. The additional payment equals 80 percent of the difference between the estimated cost of the patient and the sum of the adjusted Federal prospective payment computed under this section and the adjusted fixed dollar amount. Additional payments made under this section will be subject to the adjustments at § 412.84(i) and at § 412.84(m), except that national averages will be used instead of statewide averages. Additional payments made under this section will also be subject to adjustments at § 412.84(m).

* * * * *

Dated: March 18, 2003.

Thomas A Scully,

Administrator, Centers for Medicare & Medicaid Services.

Approved: May 6, 2003.

Tommy G. Thompson,

Secretary.

Note: The following appendices will not appear in the Code of Federal Regulations:

Appendix A—Methodology to Determine Compliance with the 75 Percent Rule

Section 412.23(b)(2) specifies that during the most recent cost reporting period 75 percent of an IRF's inpatient population must have had a medical condition that can be matched to one of ten medical conditions specified in this section. This requirement is commonly termed the "75 percent rule."

CMS used the IRF–PAI database to estimate the percentage of IRFs that submitted IRF–PAI data during the first eight months of calendar year 2002 that met the 75 percent rule. Under the existing IRF PPS regulations, an IRF must send CMS an IRF–PAI data record that contains data about each Medicare Part A fee-for-service inpatient admitted to the IRF. The IRF–PAI is submitted by the IRF after the inpatient has been discharged.

Section II of the preamble contains Chart 1 "Estimates of Compliance with the 75 Percent Rule.". Chart 1 illustrates the estimated percentage of IRFs whose Medicare inpatient populations had medical conditions considered to be consistent with one or more of the medical conditions in § 412.23(b)(2). In addition, Chart 1 also shows the estimated percentage of IRFs that met lower thresholds.

For example, in the "65% rule" column of Chart 1 shows the percentage of IRFs that submitted IRF–PAI data during the first eight months of calendar year 2002 that had 65 percent of their Medicare inpatient population included in at least one of the ten medical conditions specified in § 412.23(b)(2).

An IRF–PAI data record was counted as meeting one of the ten medical conditions specified in § 412.23(b)(2) if its impairment group code given in IRF–PAI item 21 is listed in one of the codes listed in Table 4 "Acceptable Impairment Group Codes" below, or if any of its diagnoses (IRF–PAI items 22 and 24a through 24j) are listed in Table 5 "Acceptable ICD–9–CM Codes" below. (This list may not be all inclusive, but represents a conservative list of diagnoses more likely to be consistent with the ten diagnoses.)

Table 4 illustrates that the pairing of some impairment group codes with specific etiologic diagnosis ICD–9–CM codes within the same IRF–PAI data record resulted in that data record not being counted as meeting one of the ten medical conditions specified in § 412.23(b)(2). For example, if an IRF–PAI data record specified both the impairment group code 02.1 (non-traumatic brain injury) and the etiologic diagnosis ICD–9–CM code 215.0 (other benign neoplasms of connective and other soft tissue of head and neck) then that admission was not counted as meeting one of the medical conditions specified in § 412.23(b)(2). However, regardless of the impairment group code specified in an IRF–PAI data record the data record for the admission was counted as meeting one of the ten medical conditions specified in § 412.23(b)(2) if IRF–PAI items 22 and 24a through 24j contained an ICD–9–CM code as specified in Table 5 "Acceptable ICD–9–CM Codes" below. The data analyzed represents 8 months of IRF–PAI data records.

Appendix B—Inpatient Rehabilitation Facility Patient Privacy Forms

BILLING CODE 4120–01–P

PRIVACY ACT STATEMENT - HEALTH CARE RECORDS

THIS STATEMENT GIVES YOU NOTICE REQUIRED BY LAW (the Privacy Act of 1974).

THIS STATEMENT IS NOT A CONSENT FORM. IT WILL NOT BE USED TO RELEASE OR TO USE YOUR HEALTH CARE INFORMATION.

I. AUTHORITY FOR COLLECTION OF YOUR INFORMATION, INCLUDING YOUR SOCIAL SECURITY NUMBER, AND WHETHER OR NOT YOU ARE REQUIRED TO PROVIDE INFORMATION FOR THIS ASSESSMENT. Sections 1102(a), 1154,), 1861(z), 1864, 1865, 1866, 1871, 1886(j) of the Social Security Act.

Medicare participating inpatient rehabilitation facilities must do a complete assessment that accurately reflects your current clinical status and includes information that can be used to show your progress toward your rehabilitation goals. The inpatient rehabilitation facility must use the Inpatient Rehabilitation Facility-Patient Assessment Instrument (IFR-PAI) as part of that assessment, when evaluating your clinical status. The IRF-PAI must be used to assess every Medicare Part A fee-for-service inpatient, and it may be used to assess other types of inpatients. This information will be used by the Centers for Medicare & Medicaid Services (CMS) to be sure that the inpatient rehabilitation facility is paid appropriately for the services that they furnish you, and to help evaluate that the inpatient rehabilitation facility meets quality standards and gives appropriate health care to its patients. You have the right to refuse to provide information to the inpatient rehabilitation facility for the assessment. Information provided to the federal government for this assessment is protected under the Federal Privacy Act of 1974 and the IRF-PAI System of Records. You have the right to see, copy, review, and request correction of inaccurate or missing personal health information in the IRF-PAI System of Records.

II. PRINCIPAL PURPOSES FOR WHICH YOUR INFORMATION IS INTENDED TO BE USED

The information collected will be entered into the IRF-PAI System No. 09-70-1518. Your health care information in the IRF-PAI System of Records will be used for the following purposes:

- support the IRF prospective payment system (PPS) for payment of the IRF Medicare Part A fee-for services furnished by the IRF to Medicare beneficiaries;
- help validate and refine the Medicare IRF-PPS
- study and help ensure the quality of care provided by IRFs;
- enable CMS and its agents to provide IRFs with data for their quality assurance and ultimately quality improvement activities;
- support agencies of the State government , deeming organizations or accrediting agencies to determine, evaluate and assess overall effectiveness and quality of IRF services provided in the State;
- provide information to consumers to allow them to make better informed selections of providers;
- support regulatory and policy functions performed within the IRF or by a contractor or consultant;
- support constituent requests made to a Congressional representative;
- support litigation involving the facility;
- support research on the utilization and quality of inpatient rehabilitation services; as well as, evaluation, or epidemiological projects related to the prevention of disease or disability, or the restoration or maintenance of health for understanding and improving payment systems.

III. ROUTINE USES

These "routine uses" specify the circumstances when the Centers for Medicare & Medicaid Services may release your information from the IRF-PAI System of Records without your consent. Each prospective recipient must agree in writing to ensure the continuing confidentiality and security of your information. Disclosures of protected health information authorized by these routine uses may be made only if, and as, permitted or required by the 'Standards for Privacy of Individually Identifiable Health Information.' Disclosures of the information may be to:

1. To agency contractors or consultants who have been contracted by the agency to assist in the performance of a service related to this system of records and who need to have access to the records in order to perform the activity;
2. To a Peer Review Organization (PRO) in order to assist the PRO to perform Title XI and Title XVIII functions relating to assessing and improving IRF quality of care. PROs will work with IRFs to implement quality improvement programs, provide consultation to CMS, its contractors, and to State agencies;
3. To another Federal or State agency:
   a. To contribute to the accuracy of CMS's proper payment of Medicare benefits,
   b. To enable such agency to administer a Federal health benefits program, or as necessary to enable such agency to fulfill a requirement of a Federal statute or regulation that implements a health benefits program funded in whole or in part with Federal funds, or
   c. To improve the state survey process for investigation of complains related to health and safety or quality of care and to implement a more outcome oriented survey and certification program.

4. To an individual or organization for a research, evaluation, or epidemiological projects related to the prevention of disease or disability, the restoration or maintenance of health epidemiological or for understanding and improving payment projects.
5. To a member of Congress or to a congressional staff member in response to a inquiry of the Congressional Office made at the written request of the constituent about whom the record is maintained.
6. To the Department of Justice (DOJ), court or adjudicatory body when:
   a. The agency or any component thereof; or
   b. Any employee of the agency in his or her official capacity; or
   c. Any employee of the agency in his or her individual capacity where the employee; or
   d. The United States Government; is a party to litigation or has an interest in such litigation, and by careful review, CMS determines that the records are both relevant and necessary to the litigation and the use of such records by the DOJ, court or adjudicatory body is compatible with the purpose for which the agency collected the records.
7. To a CMS contractor (including, but not necessarily limited to fiscal intermediaries and carriers) that assists in the administration of a CMS-administered health benefits program, or to a grantee of a CMS-administered grant program, when disclosure is deemed reasonably necessary by CMS to prevent, deter, discover, detect, investigate, examine, prosecute, sue with respect to, defend against, correct, remedy, or otherwise combat fraud or abuse in such program.
8. To another Federal agency or to an instrumentality of any governmental jurisdiction within or under the control of the United States (including any State or local governmental agency), that administers, or that has the authority to investigate potential fraud or abuse in whole or part by Federal funds, when disclosure is deemed reasonable necessary by CMS to prevent, deter, discover, detect, investigate, examine, prosecute, sue with respect to, defend against, correct, remedy, or otherwise combat frauds or abuse in such programs;
9. To a national accrediting organization that has been approved for deeming authority for Medicare requirements for inpatient rehabilitation services (i.e., the Joint Commission for the Accreditation of Healthcare Organizations, the American Osteopathic Association and the Commission of Accreditation of Rehabilitation Facilities). Data will be released to these organizations only for those facilities that participate in Medicare by virtue of their accreditation status.
10. To insurance companies, third party administrators (TPA), employers, self-insurers, manage care organizations, other supplemental insurers, non-coordinating insurers, multiple employer trusts, group health plans (i.e., health maintenance organizations (HMO) or a competitive medical plan (CMP)) with a Medicare contract, or a Medicare-approved health care prepayment plan (HCPP), directly or through a contractor, and other groups providing protection for their enrollees. Information to be disclosed shall be limited to Medicare entitlement data. In order to receive the information, they must agree to:
    a. Certify that the individual about whom the information is being provided is one of its insured or employees, or is insured and/or employed by another entity for whom they serve as a third party administrator;
    b. Utilize the information solely for the purpose of processing the individual's insurance claims; and
    c. Safeguard the confidentiality of the data and prevent unauthorized access.

IV. EFFECT ON YOU IF YOU DO NOT PROVIDE INFORMATION

The inpatient rehabilitation facility needs the information contained in the IRF-PAI in order to comply with the Medicare regulations. Your inpatient rehabilitation facility will also use the IRF-PAI to assist in providing you with quality care. It is important that the information be correct. Incorrect information could result in payment errors. Incorrect information also could make it difficult to evaluate if the facility is giving you quality services. If you choose not to provide information, there is no federal requirement for the inpatient rehabilitation facility to refuse you services.

CONTACT INFORMATION

If you want to ask the Centers for Medicare & Medicaid Services to see, review, copy or request correction of inaccurate or missing personal health information which that Federal agency maintains in its IRF-PAI System of Records:

Call 1-800-MEDICARE, toll free, for assistance in contacting the IRF-PAI System of Records Manager.

TTY for the hearing and speech impaired: 1-800-820-1202

Data Collection Information Summary for Patients in Inpatient Rehabilitation Facilities

This notice is a summary of the information contained in the attached "Privacy Act Statement-Health Care Records"

As a hospital rehabilitation inpatient, you have the privacy rights listed below.

- **You have the right to know why we need to ask you questions.**

  We are required by federal law to collect health information to make sure:
  1) you get quality health care, and
  2) payment for Medicare patients is correct.

- **You have the right to have your personal health care information kept confidential and secure.**

  - You will be asked to tell us information about yourself so that we can provide the most appropriate, comprehensive services for you.
  - We keep anything we learn about you confidential and secure. This means only those who are legally permitted to use or obtain the information collected during this assessment will see it.

- **You have the right to refuse to answer questions.**

  You do not have to answer any questions to get services.

- **You have the right to look at your personal health information.**

  - We know how important it is that the information we collect about you is correct.
  - You may ask to review the information you provided. If you think we made a mistake, you can ask us to correct it.

In addition, you may ask the Centers for Medicare & Medicaid Services to see, review, copy or request correction of inaccurate or missing personal identifying health information which this Federal agency maintains in its IRF-PAI System of Records. For CONTACT INFORMATION or a detailed description of your privacy rights, refer to the attached PRIVACY ACT STATEMENT – HEALTH CARE RECORDS.
Note: The rights listed above are in concert with the rights listed in the hospital conditions of participation and the rights established under the Federal Privacy Rule.

This is a Medicare & Medicaid Approved Notice.

[redacted]

Table 1. – Proposed Relative Weights for Case-Mix Groups (CMGs)

CMG	CMG Description (M = motor, C = cognitive, A = age)	Proposed Relative Weights				Average Length of Stay			
		Tier 1	Tier 2	Tier 3	None	Tier 1	Tier 2	Tier 3	None
0101	Stroke M=69-84 and C=23-35	0.4778	0.4279	0.4078	0.3859	10	9	6	8
0102	Stroke M=59-68 and C=23-35	0.6506	0.5827	0.5553	0.5255	11	12	10	10
0103	Stroke M=59-84 and C=5-22	0.8296	0.7430	0.7080	0.6700	14	12	12	12
0104	Stroke M=53-58	0.9007	0.8067	0.7687	0.7275	17	13	12	13
0105	Stroke M=47-52	1.1339	1.0155	0.9677	0.9158	16	17	15	15
0106	Stroke M=42-46	1.3951	1.2494	1.1905	1.1267	18	18	18	18
0107	Stroke M=39-41	1.6159	1.4472	1.3790	1.3050	17	20	21	21
0108	Stroke M=34-38 and A>=83	1.7477	1.5653	1.4915	1.4115	25	27	22	23
0109	Stroke M=34-38 and A<=82	1.8901	1.6928	1.6130	1.5265	24	24	22	24
0110	Stroke M=12-33 and A>=89	2.0275	1.8159	1.7303	1.6375	29	25	27	26
0111	Stroke M=27-33 and A=82-88	2.0889	1.8709	1.7827	1.6871	29	26	24	27
0112	Stroke M=12-26 and A=82-88	2.4782	2.2195	2.1149	2.0015	40	33	30	31
0113	Stroke M=27-33 and A<=81	2.2375	2.0040	1.9095	1.8071	30	27	27	28
0114	Stroke M=12-26 and A<=81	2.7302	2.4452	2.3300	2.2050	37	34	32	33
0201	Traumatic brain injury M=52-84 and C=24-35	0.7689	0.7276	0.6724	0.6170	13	14	14	11
0202	Traumatic brain injury M=40-51 and C=24-35	1.1181	1.0581	0.9778	0.8973	18	16	17	16
0203	Traumatic brain injury M=40-84 and C=5-23	1.3077	1.2375	1.1436	1.0495	19	20	19	18
0204	Traumatic brain injury M=30-39	1.6534	1.5646	1.4459	1.3269	24	23	22	22
0205	Traumatic brain injury M=12-29	2.5100	2.3752	2.1949	2.0143	44	36	35	31
0301	Non-traumatic brain injury M=51-84	0.9655	0.8239	0.7895	0.7195	14	14	12	13
0302	Non-traumatic brain injury M=41-50	1.3678	1.1672	1.1184	1.0194	19	17	17	16
0303	Non-traumatic brain injury M=25-40	1.8752	1.6002	1.5334	1.3976	23	23	22	22
0304	Non-traumatic brain injury M=12-24	2.7911	2.3817	2.2824	2.0801	44	32	34	31
0401	Traumatic spinal cord injury M=50-84	0.9282	0.8716	0.8222	0.6908	15	15	16	14
0402	Traumatic spinal cord injury M=36-49	1.4211	1.3344	1.2588	1.0576	21	18	22	19

CMG	CMG Description	Proposed Relative Weights				Average Length of Stay			
	M = motor, C = cognitive, A = age)	Tier 1	Tier 2	Tier 3	None	Tier 1	Tier 2	Tier 3	None
0403	Traumatic spinal cord injury M=19-35	2.3485	2.2052	2.0802	1.7478	32	32	31	30
0404	Traumatic spinal cord injury M=12-18	3.5227	3.3078	3.1203	2.6216	46	43	62	40
0501	Non-traumatic spinal cord injury M=51-84 and C=30-35	0.7590	0.6975	0.6230	0.5363	12	13	10	10
0502	Non-traumatic spinal cord injury M=51-84 and C=5-29	0.9458	0.8691	0.7763	0.6683	15	17	10	12
0503	Non-traumatic spinal cord injury M=41-50	1.1613	1.0672	0.9533	0.8206	17	17	15	14
0504	Non-traumatic spinal cord injury M=34-40	1.6759	1.5400	1.3757	1.1842	23	21	21	19
0505	Non-traumatic spinal cord injury M=12-33	2.5314	2.3261	2.0778	1.7887	31	31	29	28
0601	Neurological M=56-84	0.8794	0.6750	0.6609	0.5949	14	13	12	12
0602	Neurological M=47-55	1.1979	0.9195	0.9003	0.8105	15	15	14	15
0603	Neurological M=36-46	1.5368	1.1796	1.1550	1.0397	21	18	18	18
0604	Neurological M=12-35	2.0045	1.5386	1.5065	1.3561	31	24	25	23
0701	Fracture of lower extremity M=52-84	0.7015	0.7006	0.6710	0.5960	13	13	12	11
0702	Fracture of lower extremity M=46-51	0.9264	0.9251	0.8861	0.7870	15	15	16	14
0703	Fracture of lower extremity M=42-45	1.0977	1.0962	1.0500	0.9326	18	17	17	16
0704	Fracture of lower extremity M=38-41	1.2488	1.2471	1.1945	1.0609	14	20	19	18
0705	Fracture of lower extremity M=12-37	1.4760	1.4740	1.4119	1.2540	20	22	22	21
0801	Replacement of lower extremity joint M=58-84	0.4909	0.4696	0.4518	0.3890	9	9	8	8
0802	Replacement of lower extremity joint M=55-57	0.5667	0.5421	0.5216	0.4490	10	10	9	9
0803	Replacement of lower extremity joint M=47-54	0.6956	0.6654	0.6402	0.5511	9	11	11	10
0804	Replacement of lower extremity joint M=12-46 and C=32-35	0.9284	0.8881	0.8545	0.7356	15	14	14	12
0805	Replacement of lower extremity joint M=40-46 and C=5-31	1.0027	0.9593	0.9229	0.7945	16	16	14	14
0806	Replacement of lower extremity joint M=12-39 and C=5-31	1.3681	1.3088	1.2592	1.0840	21	20	19	18

CMG	CMG Description	Proposed Relative Weights				Average Length of Stay			
	M = motor, C = cognitive, A = age)	Tier 1	Tier 2	Tier 3	None	Tier 1	Tier 2	Tier 3	None
0901	Other orthopedic M=54-84	0.6988	0.6390	0.6025	0.5213	12	11	11	11
0902	Other orthopedic M=47-53	0.9496	0.8684	0.8187	0.7084	15	15	14	13
0903	Other orthopedic M=38-46	1.1987	1.0961	1.0334	0.8942	18	18	17	16
0904	Other orthopedic M=12-37	1.6272	1.4880	1.4029	1.2138	23	23	23	21
1001	Amputation, lower extremity M=61-84	0.7821	0.7821	0.7153	0.6523	13	13	12	13
1002	Amputation, lower extremity M=52-60	0.9998	0.9998	0.9144	0.8339	15	15	14	15
1003	Amputation, lower extremity M=46-51	1.2229	1.2229	1.1185	1.0200	18	17	17	18
1004	Amputation, lower extremity M=39-45	1.4264	1.4264	1.3046	1.1897	20	20	19	19
1005	Amputation, lower extremity M=12-38	1.7588	1.7588	1.6086	1.4670	21	25	23	23
1101	Amputation, non-lower extremity M=52-84	1.2621	0.7683	0.7149	0.6631	18	11	13	12
1102	Amputation, non-lower extremity M=38-51	1.9534	1.1892	1.1064	1.0263	25	18	17	18
1103	Amputation, non-lower extremity M=12-37	2.6543	1.6159	1.5034	1.3945	33	23	22	25
1201	Osteoarthritis M=55-84 and C=34-35	0.7219	0.5429	0.5103	0.4596	13	10	11	9
1202	Osteoarthritis M=55-84 and C=5-33	0.9284	0.6983	0.6563	0.5911	16	11	13	13
1203	Osteoarthritis M=48-54	1.0771	0.8101	0.7614	0.6858	18	15	14	13
1204	Osteoarthritis M=39-47	1.3950	1.0492	0.9861	0.8882	22	19	16	17
1205	Osteoarthritis M=12-38	1.7874	1.3443	1.2634	1.1380	27	21	21	20
1301	Rheumatoid, other arthritis M=54-84	0.7719	0.6522	0.6434	0.5566	13	14	13	11
1302	Rheumatoid, other arthritis M=47-53	0.9882	0.8349	0.8237	0.7126	16	14	14	14
1303	Rheumatoid, other arthritis M=36-46	1.3132	1.1095	1.0945	0.9469	20	18	16	17
1304	Rheumatoid, other arthritis M=12-35	1.8662	1.5768	1.5555	1.3457	25	25	29	22
1401	Cardiac M=56-84	0.7190	0.6433	0.5722	0.5156	15	12	11	11
1402	Cardiac M=48-55	0.9902	0.8858	0.7880	0.7101	13	15	13	13
1403	Cardiac M=38-47	1.2975	1.1608	1.0325	0.9305	21	19	16	16
1404	Cardiac M=12-37	1.8013	1.6115	1.4335	1.2918	30	24	21	20
1501	Pulmonary M=61-84	0.8032	0.7633	0.6926	0.6615	15	13	13	13

CMG	CMG Description (M = motor, C = cognitive, A = age)	Proposed Relative Weights				Average Length of Stay			
		Tier 1	Tier 2	Tier 3	None	Tier 1	Tier 2	Tier 3	None
1502	Pulmonary M=48-60	1.0268	0.9758	0.8855	0.8457	17	17	14	15
1503	Pulmonary M=36-47	1.3242	1.2584	1.1419	1.0906	21	20	18	18
1504	Pulmonary M=12-35	2.0598	1.9575	1.7763	1.6965	30	28	30	26
1601	Pain syndrome M=45-84	0.8707	0.8327	0.7886	0.6603	15	14	13	13
1602	Pain syndrome M=12-44	1.3320	1.2739	1.2066	1.0103	21	20	20	18
1701	Major multiple trauma without brain or spinal cord injury M=46-84	0.9996	0.9022	0.8138	0.7205	16	14	11	13
1702	Major multiple trauma without brain or spinal cord injury M=33-45	1.4755	1.3317	1.2011	1.0634	21	21	20	18
1703	Major multiple trauma without brain or spinal cord injury M=12-32	2.1370	1.9288	1.7396	1.5402	33	28	27	24
1801	Major multiple trauma with brain or spinal cord injury M=45-84 and C=33-35	0.7445	0.7445	0.6862	0.6282	12	12	12	10
1802	Major multiple trauma with brain or spinal cord injury M=45-84 and C=5-32	1.0674	1.0674	0.9838	0.9007	16	16	16	16
1803	Major multiple trauma with brain or spinal cord injury M=26-44	1.6350	1.6350	1.5069	1.3797	22	25	20	22
1804	Major multiple trauma with brain or spinal cord injury M=12-25	2.9140	2.9140	2.6858	2.4589	41	29	40	40
1901	Guillian Barre M=47-84	1.1585	1.0002	0.9781	0.8876	15	15	16	15
1902	Guillian Barre M=31-46	2.1542	1.8598	1.8188	1.6505	27	27	27	24
1903	Guillian Barre M=12-30	3.1339	2.7056	2.6459	2.4011	41	35	30	40
2001	Miscellaneous M=54-84	0.8371	0.7195	0.6705	0.6029	12	13	11	12
2002	Miscellaneous M=45-53	1.1056	0.9502	0.8855	0.7962	15	15	14	14
2003	Miscellaneous M=33-44	1.4639	1.2581	1.1725	1.0543	20	18	18	18
2004	Miscellaneous M=12-32 and A>=82	1.7472	1.5017	1.3994	1.2583	30	22	21	22
2005	Miscellaneous M=12-32 and A<=81	2.0799	1.7876	1.6659	1.4979	33	25	24	24
2101	Burns M=46-84	1.0357	0.9425	0.8387	0.8387	18	18	15	16
2102	Burns M=12-45	2.2508	2.0482	1.8226	1.8226	31	26	26	29
5001	Short-stay cases, length of stay is 3 days or fewer				0.1651				3
5101	Expired, orthopedic, length of stay is 13 days or fewer				0.4279				8

CMG	CMG Description (M = motor, C = cognitive, A = age)	Proposed Relative Weights				Average Length of Stay			
		Tier 1	Tier 2	Tier 3	None	Tier 1	Tier 2	Tier 3	None
5102	Expired, orthopedic, length of stay is 14 days or more				1.2390				23
5103	Expired, not orthopedic, length of stay is 15 days or fewer				0.5436				9
5104	Expired, not orthopedic, length of stay is 16 days or more				1.7100				28

TABLE 2.—PROPOSED FISCAL YEAR 2004 FEDERAL PROSPECTIVE PAYMENTS FOR CASE-MIX GROUPS (CMGS)

CMG	Payment rate tier 1	Payment rate tier 2	Payment rate tier 3	Payment rate no comorbidities
0101	$5,990.21	$5,364.61	$5,112.61	$4,838.05
0102	8,156.61	7,305.34	6,961.83	6,588.23
0103	10,400.74	9,315.04	8,876.24	8,399.83
0104	11,292.13	10,113.65	9,637.24	9,120.71
0105	14,215.77	12,731.38	12,132.11	11,481.44
0106	17,490.45	15,663.80	14,925.37	14,125.51
0107	20,258.64	18,143.63	17,288.61	16,360.86
0108	21,911.02	19,624.26	18,699.02	17,696.06
0109	23,696.30	21,222.74	20,222.28	19,137.82
0110	25,418.89	22,766.05	21,692.87	20,529.44
0111	26,188.66	23,455.59	22,349.82	21,151.27
0112	31,069.34	27,826.00	26,514.63	25,092.93
0113	28,051.67	25,124.27	23,939.52	22,655.72
0114	34,228.68	30,655.62	29,211.35	27,644.22
0201	9,639.75	9,121.96	8,429.92	7,735.37
0202	14,017.69	13,265.46	12,258.74	11,249.50
0203	16,394.71	15,514.61	14,337.38	13,157.64
0204	20,728.78	19,615.48	18,127.34	16,635.42
0205	31,468.02	29,778.02	27,517.59	25,253.40
0301	12,104.53	10,329.28	9,898.01	9,020.41
0302	17,148.19	14,633.26	14,021.45	12,780.28
0303	23,509.49	20,061.80	19,224.33	17,521.80
0304	34,992.19	29,859.52	28,614.59	26,078.34
0401	11,636.90	10,927.30	10,307.97	8,660.60
0402	17,816.42	16,729.45	15,781.65	13,259.19
0403	29,443.29	27,646.72	26,079.59	21,912.27
0404	44,164.30	41,470.09	39,119.39	32,867.16
0501	9,515.63	8,744.60	7,810.59	6,723.63
0502	11,857.55	10,895.96	9,732.52	8,378.52
0503	14,559.29	13,379.55	11,951.58	10,287.91
0504	21,010.86	19,307.07	17,247.23	14,846.39
0505	31,736.31	29,162.46	26,049.50	22,425.04
0601	11,025.09	8,462.52	8,285.74	7,458.30
0602	15,018.14	11,527.83	11,287.12	10,161.29
0603	19,266.95	14,788.72	14,480.30	13,034.78
0604	25,130.54	19,289.52	18,887.08	17,001.51
0701	8,794.75	8,783.46	8,412.37	7,472.09
0702	11,614.33	11,598.03	11,109.09	9,866.67
0703	13,761.93	13,743.13	13,163.91	11,692.06
0704	15,656.28	15,634.97	14,975.52	13,300.57
0705	18,504.70	18,479.63	17,701.08	15,721.47
0801	6,154.44	5,887.40	5,664.24	4,876.92
0802	7,104.75	6,796.34	6,539.33	5,629.14
0803	8,720.78	8,342.16	8,026.23	6,909.17
0804	11,639.41	11,134.16	10,712.92	9,222.26
0805	12,570.91	12,026.80	11,570.45	9,960.69
0806	17,151.95	16,408.50	15,786.67	13,590.17
0901	8,760.90	8,011.18	7,553.58	6,535.57
0902	11,905.19	10,887.18	10,264.09	8,881.25
0903	15,028.17	13,741.87	12,955.80	11,210.64
0904	20,400.30	18,655.15	17,588.24	15,217.48
1001	9,805.23	9,805.23	8,967.76	8,177.92
1002	12,534.55	12,534.55	11,463.89	10,454.65
1003	15,331.57	15,331.57	14,022.70	12,787.80
1004	17,882.86	17,882.86	16,355.85	14,915.34
1005	22,050.18	22,050.18	20,167.11	18,391.87
1101	15,823.02	9,632.22	8,962.74	8,313.32

TABLE 2.—PROPOSED FISCAL YEAR 2004 FEDERAL PROSPECTIVE PAYMENTS FOR CASE-MIX GROUPS (CMGS)—Continued

CMG	Payment rate tier 1	Payment rate tier 2	Payment rate tier 3	Payment rate no comorbidities
1102	24,489.89	14,909.07	13,871.00	12,866.78
1103	33,277.12	20,258.64	18,848.22	17,482.93
1201	9,050.50	6,806.37	6,397.66	5,762.03
1202	11,639.41	8,754.63	8,228.07	7,410.66
1203	13,503.67	10,156.27	9,545.72	8,597.92
1204	17,489.20	13,153.88	12,362.79	11,135.42
1205	22,408.74	16,853.57	15,839.32	14,267.17
1301	9,677.36	8,176.67	8,066.34	6,978.13
1302	12,389.12	10,467.19	10,326.78	8,933.91
1303	16,463.67	13,909.87	13,721.81	11,871.34
1304	23,396.66	19,768.44	19,501.40	16,871.12
1401	9,014.15	8,065.09	7,173.71	6,464.11
1402	12,414.20	11,105.33	9,879.20	8,902.57
1403	16,266.84	14,553.02	12,944.51	11,665.73
1404	22,583.01	20,203.47	17,971.88	16,195.37
1501	10,069.77	9,569.54	8,683.17	8,293.27
1502	12,873.05	12,233.66	11,101.57	10,602.59
1503	16,601.57	15,776.64	14,316.07	13,672.92
1504	25,823.84	24,541.29	22,269.58	21,269.12
1601	10,916.02	10,439.61	9,886.73	8,278.22
1602	16,699.36	15,970.96	15,127.22	12,666.19
1701	12,532.05	11,310.94	10,202.66	9,032.95
1702	18,498.43	16,695.60	15,058.26	13,331.91
1703	26,791.70	24,181.48	21,809.47	19,309.58
1801	9,333.84	9,333.84	8,602.93	7,875.78
1802	13,382.06	13,382.06	12,333.96	11,292.13
1803	20,498.09	20,498.09	18,892.10	17,297.38
1804	36,532.99	36,532.99	33,672.04	30,827.38
1901	14,524.18	12,539.57	12,262.50	11,127.89
1902	27,007.33	23,316.42	22,802.40	20,692.42
1903	39,289.89	33,920.27	33,171.81	30,102.73
2001	10,494.77	9,020.41	8,406.10	7,558.59
2002	13,860.97	11,912.71	11,101.57	9,982.01
2003	18,353.00	15,772.88	14,699.70	13,217.82
2004	21,904.75	18,826.90	17,544.36	15,775.38
2005	26,075.83	22,411.25	20,885.49	18,779.26
2101	12,984.63	11,816.18	10,514.83	10,514.83
2102	28,218.41	25,678.41	22,850.05	22,850.05
5001				2,069.87
5101				5,364.61
5102				15,533.42
5103				6,815.15
5104				21,438.37

TABLE 3A.—PROPOSED URBAN WAGE INDEX

MSA	Urban area (constituent counties or county equivalents)	Wage index
0040	Abilene, TX	0.7792
	Taylor, TX	
0060	Aguadilla, PR	0.4587
	Aguada, PR	
	Aguadilla, PR	
	Moca, PR	
0080	Akron, OH	0.9600
	Portage, OH	
	Summit, OH	
0120	Albany, GA	1.0594
	Dougherty, GA	
	Lee, GA	
0160	Albany-Schenectady-Troy, NY.	0.8384
	Albany, NY	
	Montgomery, NY	
	Rensselaer, NY	
	Saratoga, NY	
	Schenectady, NY	
	Schoharie, NY	
0200	Albuquerque, NM	0.9315
	Bernalillo, NM	
	Sandoval, NM	
	Valencia, NM	
0220	Alexandria, LA	0.7859
	Rapides, LA	
0240	Allentown-Bethlehem-Easton, PA.	0.9735
	Carbon, PA	
	Lehigh, PA	
	Northampton, PA	
0280	Altoona, PA	0.9225
	Blair, PA	
0320	Amarillo, TX	0.9034
	Potter, TX	
	Randall, TX	
0380	Anchorage, AK	1.2358
	Anchorage, AK	
0440	Ann Arbor, MI	1.1103
	Lenawee, MI	
	Livingston, MI	
	Washtenaw, MI	
0450	Anniston,AL	0.8044
	Calhoun, AL	
0460	Appleton-Oshkosh-Neenah, WI.	0.8997
	Calumet, WI	
	Outagamie, WI	
	Winnebago, WI	
0470	Arecibo, PR	0.4337
	Arecibo, PR	
	Camuy, PR	
	Hatillo, PR	
0480	Asheville, NC	0.9876
	Buncombe, NC	
	Madison, NC	
0500	Athens, GA	1.0211
	Clarke, GA	
	Madison, GA	
	Oconee, GA	
0520	Atlanta, GA	0.9991
	Barrow, GA	
	Bartow, GA	
	Carroll, GA	
	Cherokee, GA	
	Clayton, GA	
	Cobb, GA	
	Coweta, GA	
	De Kalb, GA	
	Douglas, GA	
	Fayette, GA	
	Forsyth, GA	
	Fulton, GA	
	Gwinnett, GA	
	Henry, GA	
	Newton, GA	
	Paulding, GA	
	Pickens, GA	
	Rockdale, GA	
	Spalding, GA	
	Walton, GA	
0560	Atlantic City-Cape May, NJ.	1.1017
	Atlantic City, NJ	
	Cape May, NJ	
0580	Auburn-Opelika, AL.	0.8325
	Lee, AL	
0600	Augusta-Aiken, GA–SC.	1.0264
	Columbia, GA	
	McDuffie, GA	
	Richmond, GA	
	Aiken, SC	
	Edgefield, SC	
0640	Austin-San Marcos, TX.	0.9637
	Bastrop, TX	
	Caldwell, TX	
	Hays, TX	
	Travis, TX	
	Williamson, TX	
0680	Bakersfield, CA	0.9899
	Kern, CA	
0720	Baltimore, MD	0.9929
	Anne Arundel, MD	
	Baltimore, MD	
	Baltimore City, MD	
	Carroll, MD	
	Harford, MD	
	Howard, MD	
	Queen Annes, MD	
0733	Bangor, ME	0.9664
	Penobscot, ME	
0743	Barnstable-Yarmouth, MA.	1.3202
	Barnstable, MA	
0760	Baton Rouge, LA	0.8294
	Ascension, LA	
	East Baton Rouge	
	Livingston, LA	
	West Baton Rouge, LA	
0840	Beaumont-Port Arthur, TX.	0.8324
	Hardin, TX	
	Jefferson, TX	
	Orange, TX	
0860	Bellingham, WA	1.2282
	Whatcom, WA	
0870	Benton Harbor, MI	0.9042
	Berrien, MI	
0875	Bergen-Passaic, NJ.	1.2150
	Bergen, NJ	
	Passaic, NJ	
0880	Billings, MT	0.9022
	Yellowstone, MT	
0920	Biloxi-Gulfport-Pascagoula, MS.	0.8757
	Hancock, MS	
	Harrison, MS	
	Jackson, MS	
0960	Binghamton, NY	0.8341
	Broome, NY	
	Tioga, NY	
1000	Birmingham, AL	0.9222
	Blount, AL	
	Jefferson, AL	
	St. Clair, AL	
	Shelby, AL	
1010	Bismarck, ND	0.7972
	Burleigh, ND	
	Morton, ND	
1020	Bloomington, IN	0.8907
	Monroe, IN	
1040	Bloomington-Normal, IL.	0.9109
	McLean, IL	
1080	Boise City, ID	0.9310
	Ada, ID	
	Canyon, ID	
1123	Boston-Worcester-Lawrence-Lowell-Brockton, MA–NH.	1.1235
	Bristol, MA	
	Essex, MA	
	Middlesex, MA	
	Norfolk, MA	
	Plymouth, MA	
	Suffolk, MA	
	Worcester, MA	
	Hillsborough, NH	
	Merrimack, NH	
	Rockingham, NH	
	Strafford, NH	
1125	Boulder-Longmont, CO.	0.9689
	Boulder, CO	
1145	Brazoria, TX	0.8535
	Brazoria, TX	
1150	Bremerton, WA	1.0944
	Kitsap, WA	
1240	Brownsville-Harlingen-San Benito, TX.	0.8880
	Cameron, TX	
1260	Bryan-College Station, TX.	0.8821
	Brazos, TX	
1280	Buffalo-Niagara Falls, NY.	0.9365
	Erie, NY	
	Niagara, NY	
1303	Burlington, VT	1.0052
	Chittenden, VT	
	Franklin, VT	
	Grand Isle, VT	
1310	Caguas, PR	0.4371
	Caguas, PR	
	Cayey, PR	
	Cidra, PR	
	Gurabo, PR	
	San Lorenzo, PR	
1320	Canton-Massillon, OH.	0.8932
	Carroll, OH	
	Stark, OH	
1350	Casper, WY	0.9690
	Natrona, WY	
1360	Cedar Rapids, IA	0.9056
	Linn, IA	
1400	Champaign-Urbana, IL.	1.0635
	Champaign, IL	
1440	Charleston-North Charleston, SC.	0.9235
	Berkeley, SC	
	Charleston, SC	
	Dorchester, SC	
1480	Charleston, WV	0.8898
	Kanawha, WV	
	Putnam, WV	
1520	Charlotte-Gastonia-Rock Hill, NC–SC.	0.9850
	Cabarrus, NC	
	Gaston, NC	
	Lincoln, NC	
	Mecklenburg, NC	
	Rowan, NC	
	Stanly, NC	
	Union, NC	
	York, SC	
1540	Charlottesville, VA	1.0438
	Albemarle, VA	
	Charlottesville City, VA	
	Fluvanna, VA	
	Greene, VA	
1560	Chattanooga, TN–GA.	0.8976
	Catoosa, GA	
	Dade, GA	
	Walker, GA	
	Hamilton, TN	
	Marion, TN	
1580	Cheyenne, WY	0.8628
	Laramie, WY	
1600	Chicago, IL	1.1044
	Cook, IL	

TABLE 3A.—PROPOSED URBAN WAGE INDEX—Continued

MSA	Urban area (constituent counties or county equivalents)	Wage index
	De Kalb, IL	
	Du Page, IL	
	Grundy, IL	
	Kane, IL	
	Kendall, IL	
	Lake, IL	
	McHenry, IL	
	Will, IL	
1620	Chico-Paradise, CA.	0.9745
	Butte, CA	
1640	Cincinnati, OH–KY–IN.	0.9381
	Dearborn, IN	
	Ohio, IN	
	Boone, KY	
	Campbell, KY	
	Gallatin, KY	
	Grant, KY	
	Kenton, KY	
	Pendleton, KY	
	Brown, OH	
	Clermont, OH	
	Hamilton, OH	
	Warren, OH	
1660	Clarksville-Hopkinsville, TN–KY.	0.8406
	Christian, KY	
	Montgomery, TN	
1680	Cleveland-Lorain-Elyria, OH.	0.9670
	Ashtabula, OH	
	Geauga, OH	
	Cuyahoga, OH	
	Lake, OH	
	Lorain, OH	
	Medina, OH	
1720	Colorado Springs, CO.	0.9916
	El Paso, CO	
1740	Columbia, MO	0.8496
	Boone, MO	
1760	Columbia, SC	0.9307
	Lexington, SC	
	Richland, SC	
1800	Columbus, GA–AL	0.8374
	Russell, AL	
	Chattanoochee, GA	
	Harris, GA	
	Muscogee, GA	
1840	Columbus, OH	0.9751
	Delaware, OH	
	Fairfield, OH	
	Franklin, OH	
	Licking, OH	
	Madison, OH	
	Pickaway, OH	
1880	Corpus Christi, TX	0.8729
	Nueces, TX	
	San Patricio, TX	
1890	Corvallis, OR	1.1453
	Benton, OR	
1900	Cumberland, MD–WV.	0.7847
	Allegany, MD	
	Mineral, WV	
1920	Dallas, TX	0.9998
	Collin, TX	
	Dallas, TX	
	Denton, TX	
	Ellis, TX	
	Henderson, TX	
	Hunt, TX	
	Kaufman, TX	
	Rockwall, TX	
1950	Danville, VA	0.8859
	Danville City, VA	
	Pittsylvania, VA	
1960	Davenport-Moline-Rock Island, IA–IL.	0.8835
	Scott, IA	
	Henry, IL	
	Rock Island, IL	
2000	Dayton-Springfield, OH.	0.9282
	Clark, OH	
	Greene, OH	
	Miami, OH	
	Montgomery, OH	
2020	Daytona Beach, FL.	0.9062
	Flagler, FL	
	Volusia, FL	
2030	Decatur, AL	0.8973
	Lawrence, AL	
	Morgan, AL	
2040	Decatur, IL	0.8055
	Macon, IL	
2080	Denver, CO	1.0601
	Adams, CO	
	Arapahoe, CO	
	Broomfield, CO	
	Denver, CO	
	Douglas, CO	
	Jefferson, CO	
2120	Des Moines, IA	0.8791
	Dallas, IA	
	Polk, IA	
	Warren, IA	
2160	Detroit, MI	1.0448
	Lapeer, MI	
	Macomb, MI	
	Monroe, MI	
	Oakland, MI	
	St. Clair, MI	
	Wayne, MI	
2180	Dothan, AL	0.8137
	Dale, AL	
	Houston, AL	
2190	Dover, DE	0.9356
	Kent, DE	
2200	Dubuque, IA	0.8795
	Dubuque, IA	
2240	Duluth-Superior, MN–WI.	1.0368
	St. Louis, MN	
	Douglas, WI	
2281	Dutchess County, NY.	1.0684
	Dutchess, NY	
2290	Eau Claire, WI	0.8952
	Chippewa, WI	
	Eau Claire, WI	
2320	El Paso, TX	0.9265
	El Paso, TX	
2330	Elkhart-Goshen, IN	0.9722
	Elkhart, IN	
2335	Elmira, NY	0.8416
	Chemung, NY	
2340	Enid, OK	0.8376
	Garfield, OK	
2360	Erie, PA	0.8925
	Erie, PA	
2400	Eugene-Springfield, OR.	1.0944
	Lane, OR	
2440	Evansville-Henderson, IN–KY.	0.8177
	Posey, IN	
	Vanderburgh, IN	
	Warrick, IN	
	Henderson, KY	
2520	Fargo-Moorhead, ND–MN.	0.9684
	Clay, MN	
	Cass, ND	
2550	Fayetteville, NC	0.8889
2580	Fayetteville-Springdale-Rogers, AR.	0.8100
	Benton, AR	
	Washington, AR	
2620	Flagstaff, AZ–UT	1.0682
	Coconino, AZ	
	Kane, UT	
2640	Flint, MI	1.1135
	Genesee, MI	
2650	Florence, AL	0.7792
	Colbert, AL	
	Lauderdale, AL	
2655	Florence, SC	0.8780
	Florence, SC	
2670	Fort Collins-Loveland, CO.	1.0066
	Larimer, CO	
2680	Ft. Lauderdale, FL	1.0297
	Broward, FL	
2700	Fort Myers-Cape Coral, FL.	0.9680
	Lee, FL	
2710	Fort Pierce-Port St. Lucie, FL.	0.9823
	Martin, FL	
	St. Lucie, FL	
2720	Fort Smith, AR–OK.	0.7895
	Crawford, AR	
	Sebastian, AR	
	Sequoyah, OK	
2750	Fort Walton Beach, FL.	0.9693
	Okaloosa, FL	
2760	Fort Wayne, IN	0.9457
	Adams, IN	
	Allen, IN	
	De Kalb, IN	
	Huntington, IN	
	Wells, IN	
	Whitley, IN	
2800	Forth Worth-Arlington, TX.	0.9446

TABLE 3A.—PROPOSED URBAN WAGE INDEX—Continued

MSA	Urban area (constituent counties or county equivalents)	Wage index
	Hood, TX	
	Johnson, TX	
	Parker, TX	
	Tarrant, TX	
2840	Fresno, CA	1.0216
	Fresno, CA	
	Madera, CA	
2880	Gadsden, AL	0.8505
	Etowah, AL	
2900	Gainesville, FL	0.9871
	Alachua, FL	
2920	Galveston-Texas City, TX.	0.9465
	Galveston, TX	
2960	Gary, IN	0.9584
	Lake, IN	
	Porter, IN	
2975	Glens Falls, NY	0.8281
	Warren, NY	
	Washington, NY	
2980	Goldsboro, NC	0.8892
	Wayne, NC	
2985	Grand Forks, ND–MN.	0.8897
	Polk, MN	
	Grand Forks, ND	
2995	Grand Junction, CO.	0.9456
	Mesa, CO	
3000	Grand Rapids-Muskegon-Holland, MI.	0.9525
	Allegan, MI	
	Kent, MI	
	Muskegon, MI	
	Ottawa, MI	
3040	Great Falls, MT	0.8950
	Cascade, MT	
3060	Greeley, CO	0.9237
	Weld, CO	
3080	Green Bay, WI	0.9502
	Brown, WI	
3120	Greensboro-Winston-Salem-High Point, NC.	0.9282
	Alamance, NC	
	Davidson, NC	
	Davie, NC	
	Forsyth, NC	
	Guilford, NC	
	Randolph, NC	
	Stokes, NC	
	Yadkin, NC	
3150	Greenville, NC	0.9100
	Pitt, NC	
3160	Greenville-Spartanburg-Anderson, SC.	0.9122
	Anderson, SC	
	Cherokee, SC	
	Greenville, SC	
	Pickens, SC	
	Spartanburg, SC	
3180	Hagerstown, MD	0.9268
	Washington, MD	
3200	Hamilton-Middletown, OH.	0.9418
	Butler, OH	
3240	Harrisburg-Lebanon-Carlisle, PA.	0.9223
	Cumberland, PA	
	Dauphin, PA	
	Lebanon, PA	
	Perry, PA	
3283	Hartford, CT	1.1549
	Hartford, CT	
	Litchfield, CT	
	Middlesex, CT	
	Tolland, CT	
3285	Hattiesburg, MS	0.7659
	Forrest, MS	
	Lamar, MS	
3290	Hickory-Morganton-Lenoir, NC.	0.9028
	Alexander, NC	
	Burke, NC	
	Caldwell, NC	
	Catawba, NC	
3320	Honolulu, HI	1.1457
	Honolulu, HI	
3350	Houma, LA	0.8385
	Lafourche, LA	
	Terrebonne, LA	
3360	Houston, TX	0.9892
	Chambers, TX	
	Fort Bend, TX	
	Harris, TX	
	Liberty, TX	
	Montgomery, TX	
	Waller, TX	
3400	Huntington-Ashland, WV–KY–OH.	0.9636
	Boyd, KY	
	Carter, KY	
	Greenup, KY	
	Lawrence, OH	
	Cabell, WV	
	Wayne, WV	
3440	Huntsville, AL	0.8903
	Limestone, AL	
	Madison, AL	
3480	Indianapolis, IN	0.9717
	Boone, IN	
	Hamilton, IN	
	Hancock, IN	
	Hendricks, IN	
	Johnson, IN	
	Madison, IN	
	Marion, IN	
	Morgan, IN	
	Shelby, IN	
3500	Iowa City, IA	0.9587
	Johnson, IA	
3520	Jackson, MI	0.9532
	Jackson, MI	
3560	Jackson, MS	0.8607
	Hinds, MS	
	Madison, MS	
	Rankin, MS	
3580	Jackson, TN	0.9275
	Chester, TN	
	Madison, TN	
3600	Jacksonville, FL	0.9381
	Clay, FL	
	Duval, FL	
	Nassau, FL	
	St. Johns, FL	
3605	Jacksonville, NC	0.8239
	Onslow, NC	
3610	Jamestown, NY	0.7976
	Cnautaqua, NY	
3620	Janesville-Beloit, WI.	0.9849
	Rock, WI	
3640	Jersey City, NJ	1.1190
	Hudson, NJ	
3660	Johnson City-Kingsport-Bristol, TN–VA.	0.8268
	Carter, TN	
	Hawkins, TN	
	Sullivan, TN	
	Unicoi, TN	
	Washington, TN	
	Bristol City, VA	
	Scott, VA	
	Washington, VA	
3680	Johnstown, PA	0.8329
	Cambria, PA	
	Somerset, PA	
3700	Jonesboro, AR	0.7749
	Craighead, AR	
3710	Joplin, MO	0.8613
	Jasper, MO	
	Newton, MO	
3720	Kalamazoo-Battlecreek, MI.	1.0595
	Calhoun, MI	
	Kalamazoo, MI	
	Van Buren, MI	
3740	Kankakee, IL	1.0790
	Kankakee, IL	
3760	Kansas City, KS–MO.	0.9736
	Johnson, KS	
	Leavenworth, KS	
	Miami, KS	
	Wyandotte, KS	
	Cass, MO	
	Clay, MO	
	Clinton, MO	
	Jackson, MO	
	Lafayette, MO	
	Platte, MO	
	Ray, MO	
3800	Kenosha, WI	0.9686
	Kenosha, WI	
3810	Killeen-Temple, TX	1.0399
	Bell, TX	
	Coryell, TX	
3840	Knoxville, TN	0.8970
	Anderson, TN	
	Blount, TN	
	Knox, TN	
	Loudon, TN	
	Sevier, TN	
	Union, TN	
3850	Kokomo, IN	0.8971
	Howard, IN	
	Tipton, IN	
3870	La Crosse, WI–MN	0.9400

TABLE 3A.—PROPOSED URBAN WAGE INDEX—Continued

MSA	Urban area (constituent counties or county equivalents)	Wage index
	Houston, MN	
	La Crosse, WI	
3880	Lafayette, LA	0.8475
	Acadia, LA	
	Lafayette, LA	
	St. Landry, LA	
	St. Martin, LA	
3920	Lafayette, IN	0.9278
	Clinton, IN	
	Tippecanoe, IN	
3960	Lake Charles, LA	0.7965
	Calcasieu, LA	
3980	Lakeland-Winter Haven, FL.	0.9357
	Polk, FL	
4000	Lancaster, PA	0.9078
	Lancaster, PA	
4040	Lansing-East Lansing, MI.	0.9726
	Clinton, MI	
	Eaton, MI	
	Ingham, MI	
4080	Laredo, TX	0.8472
	Webb, TX	
4100	Las Cruces, NM	0.8745
	Dona Ana, NM	
4120	Las Vegas, NV–AZ.	1.1521
	Mohave, AZ	
	Clark, NV	
	Nye, NV	
4150	Lawrence, KS	0.7923
	Douglas, KS	
4200	Lawton, OK	0.8315
	Comanche, OK	
4243	Lewiston-Auburn, ME.	0.9179
	Androscoggin, ME	
4280	Lexington, KY	0.8581
	Bourbon, KY	
	Clark, KY	
	Fayette, KY	
	Jessamine, KY	
	Madison, KY	
	Scott, KY	
	Woodford, KY	
4320	Lima, OH	0.9483
	Allen, OH	
	Auglaize, OH	
4360	Lincoln, NE	0.9892
	Lancaster, NE	
4400	Little Rock-North Little, AR.	0.9097
	Faulkner, AR	
	Lonoke, AR	
	Pulaski, AR	
	Saline, AR	
4420	Longview-Marshall, TX.	0.8629
	Gregg, TX	
	Harrison, TX	
	Upshur, TX	
4480	Los Angeles-Long Beach, CA.	1.2001
	Los Angeles, CA	
4520	Louisville, KY–IN	0.9276
	Clark, IN	
	Floyd, IN	
	Harrison, IN	
	Scott, IN	
	Bullitt, KY	
	Jefferson, KY	
	Oldham, KY	
4600	Lubbock, TX	0.9646
	Lubbock, TX	
4640	Lynchburg, VA	0.9219
	Amherst, VA	
	Bedford City, VA	
	Bedford, VA	
	Campbell, VA	
	Lynchburg City, VA	
4680	Macon, GA	0.9204
	Bibb, GA	
	Houston, GA	
	Jones, GA	
	Peach, GA	
	Twiggs, GA	
4720	Madison, WI	1.0467
	Dane, WI	
4800	Mansfield, OH	0.8900
	Crawford, OH	
	Richland, OH	
4840	Mayaguez, PR	0.4914
	Anasco, PR	
	Cabo Rojo, PR	
	Hormigueros, PR	
	Mayaguez, PR	
	Sabana Grande, PR	
	San German, PR	
4880	McAllen-Edinburg-Mission, TX.	0.8428
	Hidalgo, TX	
4890	Medford-Ashland, OR.	1.0498
	Jackson, OR	
4900	Melbourne-Titusville-Palm Bay, FL.	1.0253
	Brevard, FL	
4920	Memphis, TN–AR–MS.	0.8920
	Crittenden, AR	
	De Soto, MS	
	Fayette, TN	
	Shelby, TN	
	Tipton, TN	
4940	Merced, CA	0.9837
	Merced, CA	
5000	Miami, FL	0.9802
	Dade, FL	
5015	Middlesex-Somerset-Hunterdon, NJ.	1.1213
	Hunterdon, NJ	
	Middlesex, NJ	
	Somerset, NJ	
5080	Milwaukee-Waukesha, WI.	0.9893
	Milwaukee, WI	
	Ozaukee, WI	
	Washington, WI	
	Waukesha, WI	
5120	Minneapolis-St. Paul, MN–WI.	1.0903
	Anoka, MN	
	Carver, MN	
	Chisago, MN	
	Dakota, MN	
	Hennepin, MN	
	Isanti, MN	
	Ramsey, MN	
	Scott, MN	
	Sherburne, MN	
	Washington, MN	
	Wright, MN	
	Pierce, WI	
	St. Croix, WI	
5140	Missoula, MT	0.9157
	Missoula, MT	
5160	Mobile, AL	0.8108
	Baldwin, AL	
	Mobile, AL	
5170	Modesto, CA	1.0498
	Stanislaus, CA	
5190	Monmouth-Ocean, NJ.	1.0674
	Monmouth, NJ	
	Ocean, NJ	
5200	Monroe, LA	0.8137
	Ouachita, LA	
5240	Montgomery, AL	0.7734
	Autauga, AL	
	Elmore, AL	
	Montgomery, AL	
5280	Muncie, IN	0.9284
	Delaware, IN	
5330	Myrtle Beach, SC	0.8976
	Horry, SC	
5345	Naples, FL	0.9754
	Collier, FL	
5360	Nashville, TN	0.9578
	Cheatham, TN	
	Davidson, TN	
	Dickson, TN	
	Robertson, TN	
	Rutherford, TN	
	Sumner, TN	
	Williamson, TN	
	Wilson, TN	
5380	Nassau-Suffolk, NY.	1.3357
	Nassau, NY	
	Suffolk, NY	
5483	New Haven-Bridgeport-Stamford-Waterbury-Danbury, CT.	1.2408
	Fairfield, CT	
	New Haven, CT	
5523	New London-Norwich, CT.	1.1767
	New London, CT	
5560	New Orleans, LA	0.9046
	Jefferson, LA	
	Orleans, LA	
	Plaquemines, LA	
	St. Bernard, LA	
	St. Charles, LA	
	St. James, LA	
	St. John The Baptist, LA	

TABLE 3A.—PROPOSED URBAN WAGE INDEX—Continued

MSA	Urban area (constituent counties or county equivalents)	Wage index
	St. Tammany, LA	
5600	New York, NY	1.4414
	Bronx, NY	
	Kings, NY	
	New York, NY	
	Putnam, NY	
	Queens, NY	
	Richmond, NY	
	Rockland, NY	
	Westchester, NY	
5640	Newark, NJ	1.1381
	Essex, NJ	
	Morris, NJ	
	Sussex, NJ	
	Union, NJ	
	Warren, NJ	
5660	Newburgh, NY–PA	1.1387
	Orange, NY	
	Pike, PA	
5720	Norfolk-Virginia Beach-Newport News, VA–NC.	0.8574
	Currituck, NC	
	Chesapeake City, VA	
	Gloucester, VA	
	Hampton City, VA	
	Isle of Wight, VA	
	James City, VA	
	Mathews, VA	
	Newport News City, VA	
	Norfolk City, VA	
	Poquoson City,VA	
	Portsmouth City, VA	
	Suffolk City, VA	
	Virginia Beach City, VA	
	Williamsburg City, VA	
	York, VA	
5775	Oakland, CA	1.5072
	Alameda, CA	
	Contra Costa, CA	
5790	Ocala, FL	0.9402
	Marion, FL	
5800	Odessa-Midland, TX.	0.9397
	Ector, TX	
	Midland, TX	
5880	Oklahoma City, OK.	0.8900
	Canadian, OK	
	Cleveland, OK	
	Logan, OK	
	McClain, OK	
	Oklahoma, OK	
	Pottawatomie, OK	
5910	Olympia, WA	1.0960
	Thurston, WA	
5920	Omaha, NE–IA	0.9978
	Pottawattamie, IA	
	Cass, NE	
	Douglas, NE	
	Sarpy, NE	
	Washington, NE	
5945	Orange County, CA.	1.1474
	Orange, CA	
5960	Orlando, FL	0.9640
	Lake, FL	
	Orange, FL	
	Osceola, FL	
	Seminole, FL	
5990	Owensboro, KY	0.8344
	Daviess, KY	
6015	Panama City, FL	0.8865
	Bay, FL	
6020	Parkersburg-Marietta, WV–OH.	0.8127
	Washington, OH	
	Wood, WV	
6080	Pensacola, FL	0.8645
	Escambia, FL	
	Santa Rosa, FL	
6120	Peoria-Pekin, IL	0.8739
	Peoria, IL	
	Tazewell, IL	
	Woodford, IL	
6160	Philadelphia, PA–NJ.	1.0713
	Burlington, NJ	
	Camden, NJ	
	Gloucester, NJ	
	Salem, NJ	
	Bucks, PA	
	Chester, PA	
	Delaware, PA	
	Montgomery, PA	
	Philadelphia, PA	
6200	Phoenix-Mesa, AZ	0.9820
	Maricopa, AZ	
	Pinal, AZ	
6240	Pine Bluff, AR	0.7962
	Jefferson, AR	
6280	Pittsburgh, PA	0.9365
	Allegheny, PA	
	Beaver, PA	
	Butler, PA	
	Fayette, PA	
	Washington, PA	
	Westmoreland, PA	
6323	Pittsfield, MA	1.0235
	Berkshire, MA	
6340	Pocatello, ID	0.9372
	Bannock, ID	
6360	Ponce, PR	0.5169
	Guayanilla, PR	
	Juana Diaz, PR	
	Penuelas, PR	
	Ponce, PR	
	Villalba, PR	
	Yauco, PR	
6403	Portland, ME	0.9794
	Cumberland, ME	
	Sagadahoc, ME	
	York, ME	
6440	Portland-Vancouver, OR–WA.	1.0667
	Clackamas, OR	
	Columbia, OR	
	Multnomah, OR	
	Washington, OR	
	Yamhill, OR	
6483	Providence-Warwick-Pawtucket, RI.	1.0854
	Bristol, RI	
	Kent, RI	
	Newport, RI	
	Providence, RI	
	Washington, RI	
6520	Provo-Orem, UT	0.9984
	Utah, UT	
6560	Pueblo, CO	0.8820
	Pueblo, CO	
6580	Punta Gorda, FL	0.9218
	Charlotte, FL	
6600	Racine, WI	0.9334
	Racine, WI	
6640	Raleigh-Durham-Chapel Hill, NC.	0.9990
	Chatham, NC	
	Durham, NC	
	Franklin, NC	
	Johnston, NC	
	Orange, NC	
	Wake, NC	
6660	Rapid City, SD	0.8846
	Pennington, SD	
6680	Reading, PA	0.9295
	Berks, PA	
6690	Redding, CA	1.1135
	Shasta, CA	
6720	Reno, NV	1.0648
	Washoe, NV	
6740	Richland-Kennewick-Pasco, WA.	1.1491
	Benton, WA	
	Franklin, WA	
6760	Richmond-Petersburg, VA.	0.9477
	Charles City County, VA	
	Chesterfield, VA	
	Colonial Heights City, VA	
	Dinwiddie, VA	
	Goochland, VA	
	Hanover, VA	
	Henrico, VA	
	Hopewell City, VA	
	New Kent, VA	
	Petersburg City, VA	
	Powhatan, VA	
	Prince George, VA	
	Richmond City, VA	
6780	Riverside-San Bernardino, CA.	1.1365
	Riverside, CA	
	San Bernardino, CA	
6800	Roanoke, VA	0.8614
	Botetourt, VA	
	Roanoke, VA	
	Roanoke City, VA	
	Salem City, VA	
6820	Rochester, MN	1.2139
	Olmsted, MN	

TABLE 3A.—PROPOSED URBAN WAGE INDEX—Continued

MSA	Urban area (constituent counties or county equivalents)	Wage index
6840	Rochester, NY	0.9194
	Genesee, NY	
	Livingston, NY	
	Monroe, NY	
	Ontario, NY	
	Orleans, NY	
	Wayne, NY	
6880	Rockford, IL	0.9625
	Boone, IL	
	Ogle, IL	
	Winnebago, IL	
6895	Rocky Mount, NC	0.9228
	Edgecombe, NC	
	Nash, NC	
6920	Sacramento, CA	1.1500
	El Dorado, CA	
	Placer, CA	
	Sacramento, CA	
6960	Saginaw-Bay City-Midland, MI.	0.9650
	Bay, MI	
	Midland, MI	
	Saginaw, MI	
6980	St. Cloud, MN	0.9700
	Benton, MN	
	Stearns, MN	
7000	St. Joseph, MO	0.8021
	Andrews, MO	
	Buchanan, MO	
7040	St. Louis, MO–IL	0.8855
	Clinton, IL	
	Jersey, IL	
	Madison, IL	
	Monroe, IL	
	St. Clair, IL	
	Franklin, MO	
	Jefferson, MO	
	Lincoln, MO	
	St. Charles, MO	
	St. Louis, MO	
	St. Louis City, MO	
	Warren, MO	
	Sullivan City, MO	
7080	Salem, OR	1.0367
	Marion, OR	
	Polk, OR	
7120	Salinas, CA	1.4623
	Monterey, CA	
7160	Salt Lake City-Ogden, UT.	0.9945
	Davis, UT	
	Salt Lake, UT	
	Weber, UT	
7200	San Angelo, TX	0.8374
	Tom Green, TX	
7240	San Antonio, TX	0.8753
	Bexar, TX	
	Comal, TX	
	Guadalupe, TX	
	Wilson, TX	
7320	San Diego, CA	1.1131
	San Diego, CA	
7360	San Francisco, CA	1.4142
	Marin, CA	
	San Francisco, CA	
	San Mateo, CA	
7400	San Jose, CA	1.4145
	Santa Clara, CA	

TABLE 3A.—PROPOSED URBAN WAGE INDEX—Continued

MSA	Urban area (constituent counties or county equivalents)	Wage index
7440	San Juan-Bayamon, PR.	0.4741
	Aguas Buenas, PR	
	Barceloneta, PR	
	Bayamon, PR	
	Canovanas, PR	
	Carolina, PR	
	Catano, PR	
	Ceiba, PR	
	Comerio, PR	
	Corozal, PR	
	Dorado, PR	
	Fajardo, PR	
	Florida, PR	
	Guaynabo, PR	
	Humacao, PR	
	Juncos, PR	
	Los Piedras, PR	
	Loiza, PR	
	Luguillo, PR	
	Manati, PR	
	Morovis, PR	
	Naguabo, PR	
	Naranjito, PR	
	Rio Grande, PR	
	San Juan, PR	
	Toa Alta, PR	
	Toa Baja, PR	
	Trujillo Alto, PR	
	Vega Alta, PR	
	Vega Baja, PR	
	Yabucoa, PR	
7460	San Luis Obispo-Atascadero-Paso Robles, CA.	1.1271
	San Luis Obispo, CA	
7480	Santa Barbara-Santa Maria-Lompoc, CA.	1.0481
	Santa Barbara, CA	
7485	Santa Cruz-Watsonville, CA.	1.3646
	Santa Cruz, CA	
7490	Santa Fe, NM	1.0712
	Los Alamos, NM	
	Santa Fe, NM	
7500	Santa Rosa, CA	1.3046
	Sonoma, CA	
7510	Sarasota-Bradenton, FL.	0.9425
	Manatee, FL	
	Sarasota, FL	
7520	Savannah, GA	0.9376
	Bryan, GA	
	Chatham, GA	
	Effingham, GA	
7560	Scranton-Wilkes-Barre-Hazleton, PA.	0.8599
	Columbia, PA	
	Lackawanna, PA	
	Luzerne, PA	
	Wyoming, PA	
7600	Seattle-Bellevue-Everett, WA.	1.1474
	Island, WA	
	King, WA	
	Snohomish, WA	
7610	Sharon, PA	0.7869
	Mercer, PA	
7620	Sheboygan, WI	0.8697
	Sheboygan, WI	
7640	Sherman-Denison, TX.	0.9255
	Grayson, TX	
7680	Shreveport-Bossier City, LA.	0.8987
	Bossier, LA	
	Caddo, LA	
	Webster, LA	
7720	Sioux City, IA–NE	0.9046
	Woodbury, IA	
	Dakota, NE	
7760	Sioux Falls, SD	0.9257
	Lincoln, SD	
	Minnehaha, SD	
7800	South Bend, IN	0.9802
	St. Joseph, IN	
7840	Spokane, WA	1.0852
	Spokane, WA	
7880	Springfield, IL	0.8659
	Menard, IL	
	Sangamon, IL	
7920	Springfield, MO	0.8424
	Christian, MO	
	Greene, MO	
	Webster, MO	
8003	Springfield, MA	1.0927
	Hampden, MA	
	Hampshire, MA	
8050	State College, PA	0.8941
	Centre, PA	
8080	Steubenville-Weirton, OH–WV.	0.8804
	Jefferson, OH	
	Brooke, WV	
	Hancock, WV	
8120	Stockton-Lodi, CA	1.0506
	San Joaquin, CA	
8140	Sumter, SC	0.8273
	Sumter, SC	
8160	Syracuse, NY	0.9714
	Cayuga, NY	
	Madison, NY	
	Onondaga, NY	
	Oswego, NY	
8200	Tacoma, WA	1.0940
	Pierce, WA	
8240	Tallahassee, FL	0.8504
	Gadsden, FL	
	Leon, FL	
8280	Tampa-St. Petersburg-Clearwater, FL.	0.9065
	Hernando, FL	
	Hillsborough, FL	
	Pasco, FL	
	Pinellas, FL	
8320	Terre Haute, IN	0.8599
	Clay, IN	
	Vermillion, IN	
	Vigo, IN	

TABLE 3A.—PROPOSED URBAN WAGE INDEX—Continued

MSA	Urban area (constituent counties or county equivalents)	Wage index
8360	Texarkana, AR-Texarkana, TX.	0.8088
	Miller, AR	
	Bowie, TX	
8400	Toledo, OH	0.9810
	Fulton, OH	
	Lucas, OH	
	Wood, OH	
8440	Topeka, KS	0.9199
	Shawnee, KS	
8480	Trenton, NJ	1.0432
	Mercer, NJ	
8520	Tucson, AZ	0.8911
	Pima, AZ	
8560	Tulsa, OK	0.8332
	Creek, OK	
	Osage, OK	
	Rogers, OK	
	Tulsa, OK	
	Wagoner, OK	
8600	Tuscaloosa, AL	0.8130
	Tuscaloosa, AL	
8640	Tyler, TX	0.9521
	Smith, TX	
8680	Utica-Rome, NY	0.8465
	Herkimer, NY	
	Oneida, NY	
8720	Vallejo-Fairfield-Napa, CA.	1.3354
	Napa, CA	
	Solano, CA	
8735	Ventura, CA	1.1096
	Ventura, CA	
8750	Victoria, TX	0.8756
	Victoria, TX	
8760	Vineland-Millville-Bridgeton, NJ.	1.0031
	Cumberland, NJ	
8780	Visalia-Tulare-Porterville, CA.	0.9429
	Tulare, CA	
8800	Waco, TX	0.8073
	McLennan, TX	
8840	Washington, DC–MD–VA–WV.	1.0851
	District of Columbia, DC	
	Calvert, MD	
	Charles, MD	
	Frederick, MD	
	Montgomery, MD	
	Prince Georges, MD	
	Alexandria City, VA	
	Arlington, VA	
	Clarke, VA	
	Culpepper, VA	
	Fairfax, VA	
	Fairfax City, VA	

TABLE 3A.—PROPOSED URBAN WAGE INDEX—Continued

MSA	Urban area (constituent counties or county equivalents)	Wage index
	Falls Church City, VA	
	Fauquier, VA	
	Fredericksburg City, VA	
	King George, VA	
	Loudoun, VA	
	Manassas City, VA	
	Manassas Park City, VA	
	Prince William, VA	
	Spotsylvania, VA	
	Stafford, VA	
	Warren, VA	
	Berkeley, WV	
	Jefferson, WV	
8920	Waterloo-Cedar Falls, IA.	0.8069
	Black Hawk, IA	
8940	Wausau, WI	0.9782
	Marathon, WI	
8960	West Palm Beach-Boca Raton, FL.	0.9939
	Palm Beach, FL	
9000	Wheeling, OH–WV	0.7670
	Belmont, OH	
	Marshall, WV	
	Ohio, WV	
9040	Wichita, KS	0.9520
	Butler, KS	
	Harvey, KS	
	Sedgwick, KS	
9080	Wichita Falls, TX	0.8498
	Archer, TX	
	Wichita, TX	
9140	Williamsport, PA	0.8544
	Lycoming, PA	
9160	Wilmington-Newark, DE–MD.	1.1173
	New Castle, DE	
	Cecil, MD	
9200	Wilmington, NC	0.9640
	New Hanover, NC	
	Brunswick, NC	
9260	Yakima, WA	1.0569
	Yakima, WA	
9270	Yolo, CA	0.9434
	Yolo, CA	
9280	York, PA	0.9026
	York, PA	
9320	Youngstown-Warren, OH.	0.9358
	Columbiana, OH	
	Mahoning, OH	
	Trumbull, OH	
9340	Yuba City, CA	1.0276
	Sutter, CA	
	Yuba, CA	
9360	Yuma, AZ	0.8589
	Yuma, AZ	

TABLE 3B.—PROPOSED RURAL WAGE INDEX

Nonurban area	Wage index
Alabama	0.7660
Alaska	1.2293
Arizona	0.8493
Arkansas	0.7666
California	0.9840
Colorado	0.9015
Connecticut	1.2394
Delaware	0.9128
Florida	0.8814
Georgia	0.8230
Guam	0.9611
Hawaii	1.0255
Idaho	0.8747
Illinois	0.8204
Indiana	0.8755
Iowa	0.8315
Kansas	0.7923
Kentucky	0.8079
Louisiana	0.7567
Maine	0.8874
Maryland	0.8946
Massachusetts	1.1288
Michigan	0.9000
Minnesota	0.9151
Mississippi	0.7680
Missouri	0.8021
Montana	0.8481
Nebraska	0.8204
Nevada	0.9577
New Hampshire	0.9796
New Jersey [1]	
New Mexico	0.8872
New York	0.8542
North Carolina	0.8666
North Dakota	0.7788
Ohio	0.8613
Oklahoma	0.7590
Oregon	1.0303
Pennsylvania	0.8462
Puerto Rico	0.4356
Rhode Island [1]	
South Carolina	0.8607
South Dakota	0.7815
Tennessee	0.7877
Texas	0.7821
Utah	0.9312
Vermont	0.9345
Virginia	0.8504
Virgin Islands	0.7845
Washington	1.0179
West Virginia	0.7975
Wisconsin	0.9162
Wyoming	0.9007

[1] All counties within the State are classified urban.

TABLE 4.—ACCEPTABLE IMPAIRMENT GROUP CODES

Impairment group codes	Excluded etiological diagnoses	Associated rehabilitation impairment category
01.1 Left body involvement (right brain)	None.	01 Stroke.

TABLE 4.—ACCEPTABLE IMPAIRMENT GROUP CODES—Continued

Impairment group codes	Excluded etiological diagnoses	Associated rehabilitation impairment category
01.2 Right body involvement (left brain)	None	
01.3 Bilateral Involvement	None	
01.4 No Paresis	None	
01.9 Other Stroke	None	
02.21 Open Injury	None	02 Traumatic brain injury.
02.22 Closed Injury	None	
02.1 Non-traumatic	331.0	03 Nontraumatic brain injury.
	331.2	
	215.0	
02.9 Other Brain	None	
04.210 Paraplegia, Unspecified	None	04 Traumatic spinal cord injury.
04.211 Paraplegia, Incomplete	None	
04.212 Paraplegia, Complete	None	
04.220 Quadriplegia, Unspecified	None	
04.2211 Quadriplegia, Incomplete C1–4	None	
04.2212 Quadriplegia, Incomplete C5–8	None	
04.2221 Quadriplegia, Complete C1–4	None	
04.2222 Quadriplegia, Complete C5–8	None	
04.230 Other traumatic spinal cord dysfunction	None	
04.110 Paraplegia, unspecified	None	05 Nontraumatic spinal cord injury.
04.111 Paraplegia, incomplete	None	
04.112 Paraplegia, complete	None	
04.120 Quadriplegia, unspecified	None	
04.1211 Quadriplegia, Incomplete C1–4	None	
04.1212 Quadriplegia, Incomplete C5–8	None	
04.1221 Quadriplegia, Complete C1–4	None	
04.1222 Quadriplegia, Complete C5–8	None	
04.130 Other non-traumatic spinal cord dysfunction	None	
03.1 Multiple Sclerosis	None	06 Neurological.
03.2 Parkinsonism	None	
03.3 Polyneuropathy	None	
03.5 Cerebral Palsy	None	
03.8 Neuromuscular Disorders	None	
03.9 Other Neurologic	None	
08.11 Status post unilateral hip fracture	None	07 Fracture of lower extremity.
08.12 Status post bilateral hip fractures	None	
08.3 Status post pelvic fracture	None	
05.3 Unilateral lower extremity above the knee (AK)	None	10 Amputation, lower extremity.
05.4 Unilateral lower extremity below the knee (BK)	None	
05.5 Bilateral lower extremity above the knee (AK/AK)	None	
05.6 Bilateral lower extremity above/below the knee (AK/BK)	None	
05.7 Bilateral lower extremity below the knee (BK/BK)	None	
05.1 Unilateral upper extremity above the elbow (AE)	None	11 Amputation, other.
05.2 Unilateral upper extremity below the elbow (BE)	None	
05.9 Other amputation	None	
06.1 Rheumatoid Arthritis	701.1	13 Rheumatoid, other arthritis.
	710.1	
06.9 Other arthritis	701.1	
	710.1	
08.4 Status post major multiple fractures	None	17 Major multiple trauma, no brain injury or spinal cord injury.
14.9 Other multiple trauma	None	
14.1 Brain and spinal cord injury	None	18 Major multiple trauma, with brain or spinal cord injury.
14.2 Brain and multiple fractures/amputation	None	
14.3 Spinal cord and multiple fractures/amputation	None	
13.4 Guillian Barre	None	19 Guillian Barre.
12.1 Spina Bifida	None	20 Miscellaneous.
12.9 Other congenital	None	
11 Burns	None	21 Burns.

TABLE 5.—ACCEPTABLE ICD–9–CM CODES

Code	Label
036.0	MENINGOCOCCALMENINGITIS
047.8	VIRAL MENINGITIS NEC
047.9	VIRAL MENINGITIS NOS

TABLE 5.—ACCEPTABLE ICD–9–CM CODES—Continued

Code	Label
049.0	LYMPHOCYTICCHORIOMENINGG
049.9	VIRAL ENCEPHALITIS NOS

TABLE 5.—ACCEPTABLE ICD–9–CM CODES—Continued

Code	Label
052.0	POSTVARICELLAENCEPHALIT
053.0	HERPES ZOSTER MENINGITIS
054.3	HERPETICENCEPHALITIS

TABLE 5.—ACCEPTABLE ICD–9–CM CODES—Continued

Code	Label
054.5	HERPETICSEPTICEMIA
054.72	H SIMPLEX MENINGITIS
055.0	POSTMEASLESENCEPHALITIS
072.1	MUMPSMENINGITIS
072.2	MUMPSENCEPHALITIS
094.2	SYPHILITICMENINGITIS
112.83	CANDIDALMENINGITIS
114.2	COCCIDIOIDALMENINGITIS
115.01	HISTOPLASM CAPSUL MENING
115.11	HISTOPLASM DUBOIS MENING
115.91	HISTOPLASMOSISMENINGIT
130.0	TOXOPLASMMENINGOENCEPH
139.0	LATE EFF VIRAL ENCEPHAL
320.0	HEMOPHILUSMENINGITIS
320.1	PNEUMOCOCCALMENINGITIS
320.2	STREPTOCOCCALMENINGITIS
320.3	STAPHYLOCOCCMENINGITIS
320.7	MENING IN OTH BACT DIS
320.81	ANAEROBICMENINGITIS
320.82	MNINGTS GRAM–NEG BCT NEC
320.89	MENINGITIS OTH SPCF BACT
320.9	BACTERIAL MENINGITIS NOS
321.0	CRYPTOCOCCALMENINGITIS
321.1	MENING IN OTH FUNGAL DIS
321.2	MENING IN OTH VIRAL DIS
321.3	TRYPANOSOMIASISMENINGIT
321.4	MENINGIT D/T SARCOIDOSIS
321.8	MENING IN OTH NONBAC DIS
322.0	NONPYOGENICMENINGITIS
322.2	CHRONICMENINGITIS
322.9	MENINGITISNOS
323.0	ENCEPHALIT IN VIRAL DIS
323.6	POSTINFECTENCEPHALITIS
323.8	ENCEPHALITISNEC
323.9	ENCEPHALITISNOS
324.0	INTRACRANIALABSCESS
324.1	INTRASPINALABSCESS
324.9	CNS ABSCESS NOS
334.0	FRIEDREICHSATAXIA
334.1	HERED SPASTIC PARAPLEGIA
334.2	PRIMARY CEREBELLAR DEGEN
334.3	CEREBELLAR ATAXIA NEC
334.4	CEREBEL ATAX IN OTH DIS
334.8	SPINOCEREBELLAR DIS NEC
334.9	SPINOCEREBELLAR DIS NOS
335.0	WERDNIG–HOFFMANNDISEASE
335.10	SPINAL MUSCL ATROPHY NOS
335.11	KUGELBERG–WELANDERDIS
335.19	SPINAL MUSCL ATROPHY NEC
335.20	AMYOTROPHICSCLEROSIS
335.21	PROG MUSCULAR ATROPHY
335.22	PROGRESSIVE BULBAR PALSY
335.23	PSEUDOBULBARPALSY
335.24	PRIM LATERAL SCLEROSIS
335.29	MOTOR NEURON DISEASE NEC
335.8	ANT HORN CELL DIS NEC
335.9	ANT HORN CELL DIS NOS
336.0	SYRINGOMYELIA
336.1	VASCULARMYELOPATHIES
336.2	COMB DEG CORD IN OTH DIS
336.3	MYELOPATHY IN OTH DIS

TABLE 5.—ACCEPTABLE ICD–9–CM CODES—Continued

Code	Label
336.8	MYELOPATHYNEC
336.9	SPINAL CORD DISEASE NOS
342.01	FLCCD HMIPLGA DOMNT SIDE
342.02	FLCCD HMIPLG NONDMNT SDE
342.10	SPSTC HMIPLGA UNSPF SIDE
342.11	SPSTC HMIPLGA DOMNT SIDE
342.12	SPSTC HMIPLG NONDMNT SDE
342.80	OT SP HMIPLGA UNSPF SIDE
342.81	OT SP HMIPLGA DOMNT SIDE
342.82	OT SP HMIPLG NONDMNT SDE
342.90	UNSP HEMIPLGA UNSPF SIDE
342.91	UNSP HEMIPLGA DOMNT SIDE
342.92	UNSP HMIPLGA NONDMNT SDE
343.0	CONGENITALDIPLEGIA
343.1	CONGENITALHEMIPLEGIA
343.2	CONGENITALQUADRIPLEGIA
343.3	CONGENITALMONOPLEGIA
343.4	INFANTILEHEMIPLEGIA
343.8	CEREBRAL PALSY NEC
343.9	CEREBRAL PALSY NOS
344.00	QUADRIPLEGIA, UNSPECIFD
344.01	QUADRPLG C1–C4, COMPLETE
344.02	QUADRPLG C1–C4, INCOMPLT
344.03	QUADRPLG C5–C7, COMPLETE
344.04	QUADRPLG C5–C7, INCOMPLT
344.09	OTHERQUADRIPLEGIA
344.1	PARAPLEGIANOS
344.2	DIPLEGIA OF UPPER LIMBS
344.30	MONPLGA LWR LMB UNSP SDE
344.31	MONPLGA LWR LMB DMNT SDE
344.32	MNPLG LWR LMB NONDMNT SD
344.40	MONPLGA UPR LMB UNSP SDE
344.41	MONPLGA UPR LMB DMNT SDE
344.42	MNPLG UPR LMB NONDMNT SD
344.5	MONOPLEGIANOS
344.60	CAUDA EQUINA SYND NOS
344.61	NEUROGENICBLADDER
344.81	LOCKED–INSTATE
344.89	OTH SPCF PARALYTIC SYND
344.9	PARALYSISNOS
348.1	ANOXIC BRAIN DAMAGE
348.4	COMPRESSION OF BRAIN
356.1	PERONEAL MUSCLE ATROPHY
356.2	HERED SENSORY NEUROPATHY
356.4	IDIO PROG POLYNEUROPATHY
359.0	CONG HERED MUSC DYSTRPHY
359.1	HERED PROG MUSC DYSTRPHY
359.5	MYOPATHY IN ENDOCRIN DIS
359.6	INFL MYOPATHY IN OTH DIS

TABLE 5.—ACCEPTABLE ICD–9–CM CODES—Continued

Code	Label
359.8	MYOPATHY NEC
359.9	MYOPATHYNOS
430	SUBARACHNOIDHEMORRHAGE
431	INTRACEREBRALHEMORRHAGE
432.0	NONTRAUM EXTRADURAL HEM
432.1	SUBDURALHEMORRHAGE
432.9	INTRACRANIAL HEMORR NOS
433.01	OCL BSLR ART W INFRCT
433.11	OCL CRTD ART W INFRCT
433.21	OCL VRTB ART W INFRCT
433.31	OCL MLT BI ART W INFRCT
433.81	OCL SPCF ART W INFRCT
433.91	OCL ART NOS W INFRCT
434.01	CRBL THRMBS W INFRCT
434.11	CRBL EMBLSM W INFRCT
434.91	CRBL ART OCL NOS W INFRC
438.11	LATE EFF CV DIS–APHASIA
438.20	LATE EF–HEMPLGA SIDE NOS
438.21	LATE EF–HEMPLGA DOM SIDE
438.22	LATE EF–HEMIPLGA NON–DOM
438.30	LATE EF–MPLGA UP LMB NOS
438.31	LATE EF–MPLGA UP LMB DOM
438.32	LT EF–MPLGA UPLMB NONDOM
438.40	LTE EF–MPLGA LOW LMB NOS
438.41	LTE EF–MPLGA LOW LMB DOM
438.42	LT EF–MPLGA LOWLMB NONDM
438.50	LT EF OTH PARAL SIDE NOS
438.51	LT EF OTH PARAL DOM SIDE
438.52	LT EF OTH PARALS NON–DOM
438.53	LT EF OTH PARALS–BILAT
710.0	SYST LUPUS ERYTHEMATOSUS
710.4	POLYMYOSITIS
714.0	RHEUMATOIDARTHRITIS
714.1	FELTYSSYNDROME
714.2	SYST RHEUM ARTHRITIS NEC
714.30	JUV RHEUM ARTHRITIS NOS
714.31	POLYART JUV RHEUM ARTHR
714.4	CHR POSTRHEUM ARTHRITIS
716.29	ALLERGARTHRITIS–MULT
720.0	ANKYLOSINGSPONDYLITIS
806.00	C1–C4 FX–CL/CORD INJ NOS
806.01	C1–C4 FX–CL/COM CORD LES
806.02	C1–C4 FX–CL/ANT CORD SYN
806.03	C1–C4 FX–CL/CEN CORD SYN
806.04	C1–C4 FX–CL/CORD INJ NEC
806.05	C5–C7 FX–CL/CORD INJ NOS
806.06	C5–C7 FX–CL/COM CORD LES
806.07	C5–C7 FX–CL/ANT CORD SYN
806.08	C5–C7 FX–CL/CEN CORD SYN
806.09	C5–C7 FX–CL/CORD INJ NEC
806.10	C1–C4 FX–OP/CORD INJ NOS
806.11	C1–C4 FX–OP/COM CORD LES
806.12	C1–C4 FX–OP/ANT CORD SYN
806.13	C1–C4 FX–OP/CEN CORD SYN
806.14	C1–C4 FX–OP/CORD INJ NEC
806.15	C5–C7 FX–OP/CORD INJ NOS
806.16	C5–C7 FX–OP/COM CORD LES

TABLE 5.—ACCEPTABLE ICD–9–CM CODES—Continued

Code	Label
806.17	C5–C7 FX–OP/ANT CORD SYN
806.18	C5–C7 FX–OP/CEN CORD SYN
806.19	C5–C7 FX–OP/CORD INJ NEC
806.20	T1–T6 FX–CL/CORD INJ NOS
806.21	T1–T6 FX–CL/COM CORD LES
806.22	T1–T6 FX–CL/ANT CORD SYN
806.23	T1–T6 FX–CL/CEN CORD SYN
806.24	T1–T6 FX–CL/CORD INJ NEC
806.25	T7–T12 FX–CL/CRD INJ NOS
806.26	T7–T12 FX–CL/COM CRD LES
806.27	T7–T12 FX–CL/ANT CRD SYN
806.28	T7–T12 FX–CL/CEN CRD SYN
806.29	T7–T12 FX–CL/CRD INJ NEC
806.30	T1–T6 FX–OP/CORD INJ NOS
806.31	T1–T6 FX–OP/COM CORD LES
806.32	T1–T6 FX–OP/ANT CORD SYN
806.33	T1–T6 FX–OP/CEN CORD SYN
806.34	T1–T6 FX–OP/CORD INJ NEC
806.35	T7–T12 FX–OP/CRD INJ NOS
806.36	T7–T12 FX–OP/COM CRD LES
806.37	T7–T12 FX–OP/ANT CRD SYN
806.38	T7–T12 FX–OP/CEN CRD SYN
806.39	T7–T12 FX–OP/CRD INJ NEC
806.4	CL LUMBAR FX W CORD INJ
806.5	OPN LUMBAR FX W CORD INJ
806.60	FX SACRUM–CL/CRD INJ NOS
806.61	FX SACR–CL/CAUDA EQU LES
806.62	FX SACR–CL/CAUDA INJ NEC
806.69	FX SACRUM–CL/CRD INJ NEC
806.70	FX SACRUM–OP/CRD INJ NOS
806.71	FX SACR–OP/CAUDA EQU LES
806.72	FX SACR–OP/CAUDA INJ NEC
806.79	FX SACRUM–OP/CRD INJ NEC
806.8	VERT FX NOS–CL W CRD INJ
806.9	VERT FX NOS–OP W CRD INJ
850.2	CONCUSSION–MODERATECOMA
850.3	CONCUSSION–PROLONGCOMA
850.4	CONCUSSION–DEEPCOMA
851.02	CORTEX CONTUS–BRIEF COMA
851.03	CORTEX CONTUS–MOD COMA
851.04	CORTX CONTUS–PROLNG COMA
851.05	CORTEX CONTUS–DEEP COMA
851.12	OPN CORT CONTUS–BRF COMA
851.13	OPN CORT CONTUS–MOD COMA
851.14	OPN CORT CONTU–PROL COMA
851.15	OPN CORT CONTU–DEEP COMA
851.22	CORTEX LACERA–BRIEF COMA
851.23	CORTEX LACERAT–MOD COMA
851.24	CORTEX LACERAT–PROL COMA
851.25	CORTEX LACERAT–DEEP COMA
851.32	OPN CORTX LAC–BRIEF COMA
851.33	OPN CORTX LACER–MOD COMA
851.34	OPN CORTX LAC–PROLN COMA
851.35	OPN CORTEX LAC–DEEP COMA
851.42	CEREBELL CONTUS–BRF COMA
851.43	CEREBELL CONTUS–MOD COMA
851.44	CEREBEL CONTUS–PROL COMA
851.45	CEREBEL CONTUS–DEEP COMA
851.52	OPN CEREBE CONT–BRF COMA
851.53	OPN CEREBE CONT–MOD COMA
851.54	OPN CEREBE CONT–PROL COM
851.55	OPN CEREBE CONT–DEEP COM
851.62	CEREBEL LACER–BRIEF COMA
851.63	CEREBEL LACERAT–MOD COMA
851.64	CEREBEL LACER–PROLN COMA
851.65	CEREBELL LACER–DEEP COMA
851.72	OPN CEREBEL LAC–BRF COMA
851.73	OPN CEREBEL LAC–MOD COMA
851.74	OPN CEREBE LAC–PROL COMA
851.75	OPN CEREBE LAC–DEEP COMA
851.82	BRAIN LAC NEC–BRIEF COMA
851.83	BRAIN LACER NEC–MOD COMA
851.84	BRAIN LAC NEC–PROLN COMA
851.85	BRAIN LAC NEC–DEEP COMA
851.92	OPN BRAIN LAC–BRIEF COMA
851.93	OPN BRAIN LACER–MOD COMA
851.94	OPN BRAIN LAC–PROLN COMA
851.95	OPEN BRAIN LAC–DEEP COMA
852.03	SUBARACH HEM–MOD COMA
852.04	SUBARACH HEM–PROLNG COMA
852.05	SUBARACH HEM–DEEP COMA
852.06	SUBARACH HEM–COMA NOS
852.13	OP SUBARACH HEM–MOD COMA
852.14	OP SUBARACH HEM–PROL COM
852.15	OP SUBARACH HEM–DEEP COM
852.23	SUBDURAL HEMORR–MOD COMA
852.24	SUBDURAL HEM–PROLNG COMA
852.25	SUBDURAL HEM–DEEP COMA
852.26	SUBDURAL HEMORR–COMA NOS
852.33	OPN SUBDUR HEM–MOD COMA
852.34	OPN SUBDUR HEM–PROL COMA
852.35	OPN SUBDUR HEM–DEEP COMA
852.43	EXTRADURAL HEM–MOD COMA
852.44	EXTRADUR HEM–PROLN COMA
852.45	EXTRADURAL HEM–DEEP COMA
852.53	EXTRADURAL HEM–MOD COMA
852.54	EXTRADUR HEM–PROLN COMA
852.55	EXTRADUR HEM–DEEP COMA
853.03	BRAIN HEM NEC–MOD COMA
853.04	BRAIN HEM NEC–PROLN COMA
853.05	BRAIN HEM NEC–DEEP COMA
853.06	BRAIN HEM NEC–COMA NOS
853.13	BRAIN HEM OPEN–MOD COMA
853.14	BRAIN HEM OPN–PROLN COMA
853.15	BRAIN HEM OPEN–DEEP COMA
854.03	BRAIN INJ NEC–MOD COMA
854.04	BRAIN INJ NEC–PROLN COMA
854.05	BRAIN INJ NEC–DEEP COMA
854.06	BRAIN INJ NEC–COMA NOS
854.13	OPN BRAIN INJ–MOD COMA
854.14	OPN BRAIN INJ–PROLN COMA
854.15	OPN BRAIN INJ–DEEP COMA
887.0	AMPUT BELOW ELB, UNILAT
887.1	AMP BELOW ELB, UNIL–COMP
887.3	AMPUT ABV ELB, UNIL–COMP
887.4	AMPUTAT ARM, UNILAT NOS
887.5	AMPUT ARM, UNIL NOS–COMP
887.6	AMPUTATION ARM, BILAT
887.7	AMPUTAT ARM, BILAT–COMPL
897.0	AMPUT BELOW KNEE, UNILAT
897.1	AMPUTAT BK, UNILAT–COMPL
897.2	AMPUT ABOVE KNEE, UNILAT
897.3	AMPUT ABV KN, UNIL–COMPL
897.4	AMPUTAT LEG, UNILAT NOS
897.5	AMPUT LEG, UNIL NOS–COMP
897.6	AMPUTATION LEG, BILAT
897.7	AMPUTAT LEG, BILAT–COMPL
905.9	LATE EFF TRAUMAT AMPUTAT
907.0	LT EFF INTRACRANIAL INJ
907.2	LATE EFF SPINAL CORD INJ
952.00	C1–C4 SPIN CORD INJ NOS
952.01	COMPLETE LES CORD/C1–C4
952.02	ANTERIOR CORD SYND/C1–C4
952.03	CENTRAL CORD SYND/C1–C4
952.04	C1–C4 SPIN CORD INJ NEC
952.05	C5–C7 SPIN CORD INJ NOS
952.06	COMPLETE LES CORD/C5–C7
952.07	ANTERIOR CORD SYND/C5–C7
952.08	CENTRAL CORD SYND/C5–C7
952.09	C5–C7 SPIN CORD INJ NEC
952.10	T1–T6 SPIN CORD INJ NOS
952.11	COMPLETE LES CORD/T1–T6
952.12	ANTERIOR CORD SYND/T1–T6
952.13	CENTRAL CORD SYND/T1–T6
952.14	T1–T6 SPIN CORD INJ NEC
952.15	T7–T12 SPIN CORD INJ NOS
952.16	COMPLETE LES CORD/T7–T12
952.17	ANTERIOR CORD SYN/T7–T12
952.18	CENTRAL CORD SYN/T7–T12

TABLE 5.—ACCEPTABLE ICD–9–CM CODES—Continued

Code	Label
952.19	T7–T12 SPIN CORD INJ NEC
952.2	LUMBAR SPINAL CORD INJUR
952.3	SACRAL SPINAL CORD INJUR
952.4	CAUDA EQUINA INJURY
952.8	SPIN CORD INJ–MULT SITE
952.9	SPINAL CORD INJURY NOS
997.60	AMPUTAT STUMP COMPL NOS
997.61	NEUROMA AMPUTATION STUMP
997.62	INFECTION AMPUTAT STUMP
997.69	AMPUTAT STUMP COMPL NEC
V49.63	STATUS AMPUT HAND
V49.64	STATUS AMPUT WRIST
V49.65	STATUS AMPUT BELOW ELBOW
V49.66	STATUS AMPUT ABOVE ELBOW
V49.67	STATUS AMPUT SHOULDER
V49.75	STATUS AMPUT BELOW KNEE
V49.76	STATUS AMPUT ABOVE KNEE
V49.77	STATUS AMPUT HIP

*Note code 359.8 has been replaced by 359.81 and 359.89

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May 16, 2003

Part V

Securities and Exchange Commission

17 CFR Part 211

Staff Accounting Bulletin No. 103, "Update of Codification of Staff Accounting Bulletins"; Rules and Regulations

SECURITIES AND EXCHANGE COMMISSION

17 CFR Part 211

[Release No. SAB 103]

Staff Accounting Bulletin No. 103, "Update of Codification of Staff Accounting Bulletins"

AGENCY: Securities and Exchange Commission.

ACTION: Publication of staff accounting bulletin.

SUMMARY: This staff accounting bulletin revises or rescinds portions of the interpretive guidance included in the codification of staff accounting bulletins in order to make this interpretive guidance consistent with current authoritative accounting and auditing guidance and SEC rules and regulations. The principal revisions relate to the rescission of material no longer necessary because of private sector developments in U.S. generally accepted accounting principles, as well as Commission rulemaking.

DATES: Effective May 9, 2003.

FOR FURTHER INFORMATION CONTACT: Paul Munter or Jack Albert, Office of the Chief Accountant (202–942–4400), or Craig Olinger, Division of Corporation Finance (202–942–2960), Securities and Exhange Commission, 450 Fifth Street, NW., Washington, DC 20549.

SUPPLEMENTARY INFORMATION:

Background

The last comprehensive review of the staff accounting bulletins was completed by the staff in 1981, which culminated in issuance of Staff Accounting Bulletin No. 40. At that time, the staff completed a comprehensive review of the material included in staff accounting bulletin numbers 1 through 38 to revise and update such materials, and to codify those staff accounting bulletins in order to make the interpretive guidance contained therein more useful to registrants, accountants and others (Staff Accounting Bulletin No. 39 was separately considered by the staff).

Since that time, the staff has issued 62 additional staff accounting bulletins (through number 102) and occasional amendments (*e.g.*, SAB No. 71A), and has, on a sporadic basis, revised or rescinded the guidance in individual staff accounting bulletins based on subsequent Commission rulemaking activities or developments by private sector accounting and auditing standards-setters. However, a comprehensive review of the guidance contained in the staff accounting bulletin codification has not been undertaken since 1981.

Recent guidance issued by the Financial Accounting Standards Board (FASB), specifically Statements of Financial Accounting Standards (Statements) 141, *Business Combinations*, 142, *Goodwill and Other Intangible Assets*, 143, *Accounting for Asset Retirement Obligations*, 144, *Accounting for the Impairment or Disposal of Long-Lived Assets*, 146, *Accounting for Costs Associated with Exit or Disposal Activities*, 147, *Acquisitions of Certain Financial Institutions—an Amendment of FASB Statements No. 72 and 144 and FASB Interpretation No. 9*, and Interpretations 45, *Guarantor's Accounting and Disclosure Requirements for Guarantees, Including Indirect Guarantees of Indebtedness of Others—an Interpretation of FASB Statements No. 5, 57, and 107 and Rescission of FASB Interpretation No. 34* and 46, *Consolidation of Variable Interest Entities*, revise or supersede certain guidance contained in Accounting Principles Board (APB) Opinions 16, *Business Combinations*, 17, *Intangible Assets*, and 30, *Reporting the Results of Operations— Reporting the Effects of Disposal of a Segment of a Business, and Extraordinary, Unusual and Infrequently Occurring Events and Transactions*, Statements 5, *Accounting for Contingencies*, and 121, *Accounting for the Impairment of Long-Lived Assets and for Long-Lived Assets to Be Disposed Of*, as well as several issues addressed by the FASB's Emerging Issues Task Force (EITF) and other authoritative guidance. Provisions of the accounting standards identified above that haye been revised or superseded were the subject of several staff interpretations included in the staff accounting bulletins. Furthermore, certain guidance contained in many of the staff accounting bulletins either is no longer useful or relevant due to the passage of time, or has been made obsolete by subsequent Commission rulemaking activities.

Therefore, the purpose of this staff accounting bulletin is to comprehensively update the existing codification to enhance the integrity and usefulness of this guidance.

The statements in staff accounting bulletins are not rules or interpretations of the Commission, nor are they published as bearing the Commission's official approval. They represent interpretations and practices followed by the Division of Corporation Finance and the Office of the Chief Accountant in administering the disclosure requirements of the Federal securities laws.

Dated: May 9, 2003.

Margaret H. McFarland,

Deputy Secretary.

PART 211—[AMENDED]

Accordingly, Part 211 of Title 17 of the Code of Federal Regulations is amended by adding Staff Accounting Bulletin No. 103 to the table found in Subpart B.

Staff Accounting Bulletin No. 103

The staff hereby revises the Staff Accounting Bulletin Series as follows:

1. Topic 1: Financial Statements

a. Topic 1.A is modified to delete the reference to previously-deleted Rules 3–07 and 3–08 of Regulation S–X.

b. Topic 1.B.1 is modified to reflect the provisions of FASB Statement 109, *Accounting for Income Taxes*.

c. Topic 1.D.1 is modified to conform such guidance with the revised disclosure requirements for foreign private issuers required under Form 20–F as a result of the Commission's International Disclosure Standards rule (Exchange Act Release No. 34–41936) which became effective September 30, 2000. The modifications primarily relate to changes in the former reference in this guidance to Item 9 (Management's Discussion and Analysis) of Form 20–F to make the reference consistent with the new non-financial disclosure requirements of this Form.

d. Topic 1.E.1 is deleted. A definition of the term "audit (or examination)," which was the subject of this interpretive guidance, is now provided in Rule 1–02 of Regulation S–X, thus making the guidance contained in this staff accounting bulletin unnecessary.

e. Topic 1.F is modified to change the references in this guidance from Form S–14 to Form S–4, since Form S–4 subsequently replaced Form S–14. This topic is also modified to delete question 3 and the related interpretive response. The guidance contained in this interpretive response, related to the appropriate accounting treatment for costs incurred to register securities issued for the formation of one-bank holding companies, has been superseded by American Institute of Certified Public Accountants' (AICPA) Statement of Position (SOP) 98–5, *Reporting on the Costs of Start-Up Activities*.

f. Topic 1.I is modified to update the former reference in this guidance to the American Institute of Certified Public Accountants' February 1986 Notice to Practitioners, *ADC Arrangements*. *ADC Arrangements* was originally issued as a notice to practitioners, published in the April 1986 issue of *The Journal of Accountancy*. This notice was subsequently reprinted without modification as Exhibit I to the AICPA's Practice Bulletin 1 dated November 1987. Furthermore, question 8 of this topic is deleted because the guidance contained in this question and interpretive response, which related to transition to the guidance in Topic 1.I, is no longer relevant due to the passage of time. Furthermore, the reference in the interpretive response to question 1 to Rule 1–02(v) of Regulation S–X has been changed to Rule 1–02(w) of Regulation S–X, since this Rule was redesignated in Exchange Act Release No. 34–35094.

g. Topic 1.J, the first paragraph of the interpretative response is modified to remove the reference to specific percentages and refer to the significance tests in Rule 3–05.

h. Topic 1.L is deleted since it refers to the bankruptcy of a specific accounting firm (Laventhol & Horwath) which occurred in 1990.

i. Topic 1.M is modified to update references to authoritative literature such as SAS 99, *Consideration of Fraud in a Financial Statement Audit*, which superseded SAS 82, *Consideration of Fraud in a Financial Statement Audit*.

2. Topic 2: Business Combinations—

Note: In June 2001, the FASB issued Statement 141, which superseded APB Opinion 16, and Statement 142 which superseded APB Opinion 17. Paragraph 13 of Statement 141 requires all business combinations within the scope of that statement to be accounted for using the purchase method as described in that statement. The provisions of Statement 141 are applicable to all business combinations initiated after June 30, 2001. The pooling-of-interests method of accounting for business combinations, as provided for in APB Opinion 16, is no longer permitted for business combinations initiated after June 30, 2001. Several of the interpretive questions in this topic relate to the conditions that must be met in order for a business combination to be appropriately accounted for under the pooling-of-interests method. Accordingly, these interpretive questions are no longer needed.

a. Topic 2.A.1 is deleted. This topic addresses the impact of cash contingencies on classifying a combination as a pooling-of-interests. Since business combinations cannot be accounted for using the pooling-of-interests method, the guidance is no longer relevant.

b. Topic 2.A.2 is deleted. This topic contained two interpretive questions regarding how the acquiring corporation should be determined in a purchase business combination, following the guidance in APB Opinion 16. These interpretations were premised on the language contained in paragraph 70 of APB Opinion 16, which indicated that "* * * presumptive evidence of the acquiring corporation in combinations effected by an exchange of stock is obtained by identifying the former common stockholder interests of a combining company which either retain or receive the larger portion of the voting rights in the combined corporation. That corporation should be treated as the acquirer unless other evidence clearly indicates that another corporation is the acquirer." Guidance on identifying the acquiring entity is now provided in paragraphs 15 through 19 of Statement 141. This guidance provides several factors to be considered in determining the acquiring entity, one of which is the relative voting rights in the combined entity after the combination. The presumptive language contained in APB Opinion 16 was not retained in Statement 141. Therefore, the guidance in Topic 2.A.2 is no longer relevant.

c. Topic 2.A.3 is deleted. This topic provided interpretive guidance regarding the application of the purchase method of accounting for business combinations to acquisitions of financial institutions during a period of unusual economic conditions (*i.e.*, a period of abnormally high interest rates). This guidance focused on: (1) Unique considerations in the allocation of purchase price to acquired tangible and intangible assets in financial institution acquisitions (such as the determination of the fair values of assets acquired, and the identification and valuation of identifiable intangible assets), (2) the appropriate measure of the fair value of deposit liabilities assumed in acquisitions of financial institutions, and (3) the appropriate amortization periods and methods for intangible assets acquired and goodwill arising from financial institution acquisitions. Statements 141 and 147 provide new guidance as to the criteria for recognizing an intangible asset apart from goodwill in a purchase business combination. Statement 142 provides new guidance on the initial recognition and measurement of intangible assets, and the determination of the useful lives and amortization methods for intangible assets subject to amortization. Statement 142 also provides new guidance on accounting for goodwill. Consequently, the guidance contained in this topic is no longer relevant.

d. Topic 2.A.4 is deleted. This topic provided guidance on the determination of the appropriate amortization period for goodwill arising from financial institution acquisitions which occurred after December 23, 1981 at the time an entity participating in such an acquisition became an SEC registrant. Under the provisions of Statement 142, goodwill is not amortized, but instead must be tested for impairment at least annually following the methodology provided in that statement. Therefore, the guidance in this topic is no longer relevant.

e. Topic 2.A.5 is modified to update the former references to APB Opinion 16 contained therein to the relevant portions of Statement 141, and to otherwise make the language in this guidance consistent with the provisions of Statement 141.

f. Topic 2.A.6 is modified to update the former references to APB Opinion 16 contained therein to the relevant portions of Statement 141, and to otherwise make the language in this guidance consistent with the provisions of Statement 141.

g. Topic 2.A.7 is modified to update the former references to APB Opinion 16 contained therein to the relevant portions of Statement 141, and to otherwise make the language in this guidance consistent with the provisions of Statement 141.

h. Topic 2.A.8 is modified to update the former references to APB Opinion 16 contained therein to the relevant portions of Statement 141, and to otherwise make the language in this guidance consistent with the provisions of Statement 141. Furthermore, footnote 2 is deleted, since this footnote provided transition guidance which is no longer necessary due to the passage of time.

i. Topic 2.A.9 is modified to update the former references to APB Opinion 16 contained therein to the relevant portions of Statement 141, and to otherwise make the language in this guidance consistent with the provisions of Statement 141.

j. Topic 2.B is deleted. It addressed the treatment of merger expenses in a pooling-of-interests combination. Since, under Statement 141, all combinations are treated as purchases, this guidance is no longer necessary.

k. Topic 2.C is deleted. It addressed certain pro forma disclosures required for a pooling-of-interests combination. Since, under Statement 141, all combinations are treated as purchases, this guidance is no longer necessary.

l. Topic 2.D is modified to update the former references to APB Opinion 16 contained therein to the relevant portions of Statement 141, and to otherwise make the language in this guidance consistent with the provisions of Statement 141 and to delete portions of the guidance related to pooling-of-interests accounting.

m. Topic 2.E is deleted. The topic addressed the implications of risk sharing provisions on the classification of a combination as a pooling-of-interests. Since, under Statement 141, all combinations are treated as purchases, this guidance is no longer necessary.

n. Topic 2.F is deleted. This topic addressed the implications of treasury stock transactions following the consummation of a business combination on the classification of a combination as a pooling-of-interest. Since, under Statement 141, all combinations are treated as purchases, this guidance is no longer necessary.

3. Topic 3: Senior Securities

a. Topic 3.C is modified to include a reference to EIT Topic D–98 in the interpretive response to Question 1.

4. Topic 4: Equity Accounts

a. Topic 4.B is retitled. It previously referred to Subchapter S Corporations. Such entities are now referred to as S Corporations.

b. Topic 4.E is modified to revise the interpretive response to be consistent with revisions subsequently made in Rule 5–02.30 of Regulation S–X.

5. Topic 5: Miscellaneous Accounting

a. Topics 5.C.1 and 5.C.2 are deleted. These topics provided interpretive guidance related to the current recognition of tax loss carryforwards under APB Opinion 11, *Accounting for Income Taxes*. APB Opinion 11 has since been superseded by Statement 109 and the guidance contained in these topics is no longer relevant.

b. Topic 5.E, question 1 is modified to add an appropriate reference to FASB Interpretation 46.

c. Topic 5.E, question 2 is modified to remove, in the interpretive response, the reference to APB Opinion 30, since the relevant authoritative guidance that this response was referring to (accounting for the disposal of a segment of a business) has been superseded by Statement 144. Additionally, that interpretive response is modified to remove the reference to ASR 95, *Accounting for Real Estate Transactions Where Circumstances Indicate that Profits Were Not Earned at the Time the Transactions Were Recorded*, which previously was rescinded.

d. Topic 5.F is modified to delete the reference in the interpretive response to Statement 8, *Accounting for the Translation of Foreign Currency Transactions and Foreign Currency Financial Statements*, which has since been superseded.

e. Topic 5.J, footnote 1 has been modified to reflect the fact that the FASB has not determined when or whether it will address push down accounting. Additionally, the interpretive response to question 3 has been modified to include reference to the guidance provided in Interpretation 45.

f. Topic 5.M is modified in order to conform this guidance with the provisions of Statement 115, *Accounting for Certain Investments in Debt and Equity Securities*, which superseded Statement 12, *Accounting for Certain Marketable Securities*. The guidance contained in question 1 of this interpretation continues to be relevant, because Statement 115, like Statement 12, requires a determination of whether a decline in the fair value of debt or equity securities is other than temporary. References to the applicable authoritative literature in the interpretive response to this question are changed, and the language in the interpretive response to question 1 is modified, to be consistent with the new authoritative guidance. Question 2 and the related interpretive response are deleted since Statement 115, paragraph 16 now provides relevant guidance on determining the amount of the write down when a decline in fair value is judged to be other than temporary.

g. Topics 5.P.1 and 5.P.2 are deleted. These topics provided interpretive guidance related to APB Opinion 30 and EITF Issues 94–3, *Liability Recognition for Certain Employee Termination Benefits and Other Costs to Exit an Activity (Including Certain Costs Incurred in a Restructuring)*, and 95–3, *Recognition of Liabilities in Connection with a Purchase Business Combination*, as they applied to restructuring provisions. Statement 146 establishes standards for accruing liabilities related to exiting activities and requires that the liability be recorded when it has been incurred and that it be recorded at its fair value. Accordingly, the previous guidance provided in these topics is no longer needed.

h. Topic 5.P.3 is modified to delete the language that referred to the requirements of APB Opinion 30 regarding the reporting of discontinued operations, which has since been superseded by Statement 144. Footnote 13 of this guidance also has been modified and renumbered to make reference to Statement 131, *Disclosures about Segments of an Enterprise and Related Information*, which superseded Statement 14, *Financial Reporting for Segments of a Business Enterprise*. The guidance in this footnote continues to be relevant, considering the revisions hereby made, under Statement 131.

i. Topic 5.P.4 is modified to change the reference in former footnote 16 from Statement 38, *Accounting for Preacquisition Contingencies of Purchased Enterprises*, to Statement 141. Statement 141 superseded Statement 38, although the guidance in Statement 38 was carried forward into the new standard without reconsideration. Therefore, the guidance in this footnote remains relevant. Additionally, the topic is modified to reflect the disclosure requirements of Statement 146.

j. Topic 5.R is deleted. With the issuance of Statement 140, *Accounting for Transfers and Servicing of Financial Assets and Extinguishments of Liabilities*, and Interpretation 39, *Offsetting of Amounts Related to Certain Contracts*, this guidance is no longer needed.

k. Topic 5.S, question 4 is modified to change the references in the interpretive response from Statement 96, *Accounting for Income Taxes*, to the relevant provisions in Statement 109. Although Statement 109 superseded Statement 96, the guidance in this interpretive response remains relevant, considering the revisions hereby made, because Statement 109 carried forward the same guidance contained in Statement 96 with respect to quasi-reorganizations.

l. Topic 5.T, footnote 2 is modified to remove reference to APB Opinion 16, which was superseded, and Topic 2.B, which is being deleted.

m. Topic 5.U is modified to add new footnotes 4 and 5 to clarify the guidance applicable to gain deferral situations.

n. Topic 5.V is modified to note that the interpretive guidance therein does not apply to sales of the residual equity in an entity holding nonperforming loans to an unrelated party. Instead, the provisions of Statement 140 apply to such transactions. Also, it is modified to add an appropriate reference to FASB Interpretation 46 and to delete the reference to EITF Topic D–14, *Transactions involving Special-Purpose Entities*. In addition, footnote 5 has been modified to note that EITF Issue 87–17, *Spinoffs or Other Distributions of Loans Receivable to Shareholders*, was subsequently codified as issue 11 of EITF Issue 01–02, *Interpretations of APB Opinion No. 29*.

o. Topic 5.W is modified to incorporate the guidance of SOP 94–6, *Disclosure of Certain Significant Risks and Uncertainties*.

p. Topic 5.X is deleted. This interpretive guidance expressed the staff's views regarding the accounting for income tax benefits of thrift bad-debt losses. This guidance was intended to serve as interim guidance until a new standard on accounting for income taxes was adopted. The FASB subsequently issued Statement 109 which provides guidance on this issue.

q. Topic 5.Y is modified as follows:

i. The *Facts* section, questions 1, 2, and 3 are deleted. The remaining questions are renumbered. This information is no longer needed because the issues are addressed in SOP 96–1, *Environmental Remediation Liabilities*.

ii. Previously-numbered question 4 is modified to replace the reference to EITF Issue No. 93–5, *Accounting For Environmental Liabilities*, with SOP 96–1 (SOP 96–1 carried forward the guidance previously contained in EITF Issue 93–5). In addition, previously-numbered footnote 3, included in the interpretive response to question 4, is modified to provide the relevant language from Concepts Statement 7, *Using Cash Flow Information and Present Value in Accounting Measurements*.

iii. Previously-numbered question 5 is modified to incorporate guidance from and reference to SOP 96–1.

iv. The interpretive response to previously-numbered question 7 is modified to refer registrants to the disclosure requirements of Statement 143 for legal obligations associated with the retirement of tangible long-lived assets within the scope of that statement and to Interpretation 45 for guarantees.

v. Previously-numbered question 8 and the related interpretive response are deleted. This guidance, related to the appropriate accounting for site restoration costs, post-closure and monitoring costs, or other environmental costs incurred at the end of the useful life of an asset, is no longer relevant due to the issuance of Statement 143, which establishes accounting standards for recognition and measurement of liabilities for asset retirement obligations and associated asset retirement costs.

r. Topic 5.Z.1 is deleted. The guidance in this interpretive response provided the staff's views as to whether the criteria under APB Opinion 30 for presentation as discontinued operations had been met under certain facts and circumstances. Statement 144 provides new guidance on reporting discontinued operations that supersedes the portions of APB Opinion 30 that addressed this issue. Therefore, this interpretative guidance is no longer relevant.

s. Topic 5.Z.2 is deleted. The guidance in these interpretive responses provided the staff's views as to whether the criteria under APB Opinion 30 for presentation as discontinued operations had been met under certain facts and circumstances. Statement 144 provides new guidance on reporting discontinued operations that supersedes the portions of APB Opinion 30 that addressed this issue. Therefore, this interpretative guidance is no longer relevant.

t. Topic 5.Z.3 is deleted. The guidance in these interpretive responses provided the staff's views as to whether the criteria under APB Opinion 30 for presentation as discontinued operations had been met under certain facts and circumstances. Statement 144 provides new guidance on reporting discontinued operations that supersedes the portions of APB Opinion 30 that addressed this issue. Therefore, this interpretative guidance is no longer relevant.

u. Topic 5.Z.4 is modified to be consistent with the guidance of Statement 144, which superseded the previous guidance of APB Opinion 30.

v. Topic 5.Z.5 is modified to reflect the appropriate terminology from Statement 144 (separate component) rather than that previously provided by APB Opinion 30 (segment of a business), to make other changes related to the accounting provisions of Statement 144, and to remind registrants of the disclosure requirements of Interpretation 45.

w. Topic 5.Z.6 is deleted. This topic provided the staff's views as to whether subsidiaries that a company intends to sell, which cannot be reported as discontinued operations under APB Opinion 30, must be consolidated in the company's financial statements. This interpretive question arose as a result of the "temporary control" exception to consolidation in ARB 51, *Consolidated Financial Statements*, as amended by Statement 94, *Consolidation of all Majority-Owned Subsidiaries*. Statement 144 provides guidance which supersedes the guidance in APB Opinion 30 related to the reporting of discontinued operations. Statement 144 also amended ARB 51 to eliminate the exception to consolidation for a subsidiary for which control is likely to be temporary. Therefore, the interpretive guidance in this topic is no longer relevant.

x. Topic 5.Z.7 is modified to change the reference therein from APB Opinion 30 to Statement 144. Furthermore, the interpretive response is also amended to add language clarifying the staff's interpretation of the term "dissimilar" based on long-standing staff practice.

y. Topic 5.AA is deleted. Statement 140 superseded the previous guidance on extinguishments of debt. Accordingly, the guidance is no longer needed.

z. Topic 5.CC is modified. Topic 5.CC provides interpretive guidance on certain questions related to the recognition and measurement of impairment of the carrying amount of long-lived assets, certain identifiable intangible assets, and goodwill pursuant to the provisions of Statement 121 and APB Opinion 17. A portion of this guidance has since been superseded by Statements 142 and 144 and is now deleted. The remaining relevant guidance is rewritten so that it is consistent with the requirements of Statements 142 and 144.

6. Topic 6: Interpretations of Accounting Series Releases

a. Topic 6.A.1 is deleted. ASR 166, *Disclosure of Unusual Risks and Uncertainties in Financial Reporting*, has been rescinded. Therefore, the guidance contained in this topic is no longer relevant.

b. Topic 6.F.1 is deleted. This interpretation provided interpretive guidance on the requirements of Rule 12–03 of Regulation S–X. The schedule previously required under Rule 12–03 was eliminated by Exchange Act Release No. 34–35094. Therefore, the guidance contained in this topic is no longer necessary.

c. Topic 6.G.1 is modified as follows:

i. The interpretive response to Question 5 is modified to incorporate the terminology used in Statement 144.

ii. Question 7 and the related interpretive response under sub-section a. to this topic are modified to remove the reference to Form 8, which was rescinded by Exchange Act Release No. 34–31905.

iii. Sub-section c. and the related questions and interpretive responses thereunder are deleted. Item 302(a)(5) of Regulation S–K was amended by Exchange Act Release No. 34–42266 which made the requirements of Item 302(a) of Regulation S–K applicable to any registrant, except a foreign private issuer, that has securities registered pursuant to sections 12(b) or 12(g) of the Exchange Act. Therefore, the guidance contained in these questions and interpretive responses, which related to the former requirements of Item 302(a) of Regulation S–K, no longer applies.

d. Topic 6.G.2.a is modified as follows:

i. Question 4 is modified to refer to cash and cash equivalents rather than to

funds. APB Opinion 19, *Reporting Changes in Financial Position*, referred to flow of funds. Statement 95, *Statement of Cash Flows*, superseded APB Opinion 19 and refers to flow of cash and cash equivalents.

ii. Question 5 is deleted. Question 5 refers to an analysis of changes in each element of working capital, which is consistent with a "funds" model. However, with the provisions of Statement 95, which uses "cash and cash equivalents," this guidance is no longer relevant.

e. Topic 6.G.2.b.1 is modified to add a footnote reference to APB Opinion 20, *Accounting Changes*, which requires disclosure of the nature and justification of a change in accounting principle.

f. Topic 6.H is modified as follows:

i. The *Facts* section is modified to delete item (3), since the related supplemental schedule that this item was referring to (Rule 12–10 of Regulation S–X) was eliminated by Exchange Act Release No. 34–35094.

ii. Topic 6.H.1.b is modified to refer to Rule 17a–5 as currently numbered.

iii. Topic 6.H.2.a is modified to remove the reference to ASR 172, *Notice of Rescission of Guidelines Set Forth in Accounting Series Release No. 148 Pertaining to Classification of Short-Term Obligations Expected to be Refinanced*.

iv. Topic 6.H.4.c and the related question and interpretive response thereunder are deleted. The schedule formerly required pursuant to Rule 12–10 of Regulation S–X was eliminated by Exchange Act Release No. 34–35094. Therefore, this guidance, which related to the disclosures previously required under Rule 12–10, is no longer relevant.

g. Topic 6.I.3 is modified to refer to discontinued operations rather than discontinuance or disposals of business segments so that it is consistent with Statement 144.

h. Topic 6.I.7 is modified to refer to Rule 4–08(h) rather than Rule 4–08(g) to reflect current numbering.

i. Topic 6.K.1 is deleted. This topic provided interpretive guidance related to the early adoption of ASR 302, *Separate Financial Statements Required by Regulation S–X*. This guidance is no longer necessary due to the passage of time.

j. Topic 6.4.b is modified to refer to Rule 1–02(w). The rules for determining significant subsidiaries were previously renumbered and moved to subsection (w).

7. Topic 7: Real Estate Companies

a. Topic 7.A is deleted. This topic provided guidance on the presentation of funds data in quarterly reports on Form 10–Q for real estate companies. This guidance is no longer relevant due to the issuance Statement 95.

b. Topic 7.B is deleted. This topic provided guidance on the appropriate format for the statement of changes in financial position for registrants engaged in retail land development and sale activities. This guidance is no longer relevant due to the issuance of Statement 95.

8. Topic 8: Retail Companies

a. The *Facts* to Topic 8.A are rewritten to make them more generically applicable to retail companies.

9. Topic 9: Finance Companies

a. Topic 9.A is deleted. This topic provided interpretive guidance on the appropriate accounting for nonrefundable "points" charged by finance companies at the time a loan transaction is closed. Related guidance is now provided in Statement 91, *Accounting for Nonrefundable Fees and Costs Associated with Originating or Acquiring Loans and Initial Direct Costs of Leases*, making the continued need for the guidance in this topic unnecessary.

10. Topic 10: Utility Companies

a. In the interpretive response to Topic 10.A, reference to Rule 4–08(j) is deleted since that rule no longer exists.

b. Topic 10.B is deleted. This topic provided interpretive guidance on disclosures that should be made concerning the estimated future costs of storing spent nuclear fuel and decommissioning nuclear generating plants. Statement 143 establishes accounting standards for recognition and measurement of a liability for an asset retirement obligation and the associated asset retirement cost, including required disclosures. Therefore, the guidance in this topic is no longer relevant.

c. Topic 10.C is modified to add a footnote reminding registrants to consider the guidance provided in Interpretation 46.

d. In the interpretive response to Topic 10.D, the second, third and fourth sentences of the final paragraph are deleted. These sentences referred to ASR 122, *Coverage of Fixed Charges*, which has been rescinded. Additionally, a footnote is added to remind registrants of the need to consider the guidance provided in Interpretations 45 and 46 and Statement 133, *Accounting for Derivative Instruments and Hedging Activities* and related literature.

e. Topic 10.E, question 2 and related interpretive response dealing with transition to the requirements of Statement 90, *Regulated Enterprises—Accounting for Abandonments and Disallowances of Plant Costs* is deleted as no longer necessary due to the passage of time.

f. Topic 10.F is modified to incorporate a footnote to the interpretive response to relate the response to the requirements of SOP 96–1.

11. Topic 11: Miscellaneous Disclosure

a. Topic 11.D is deleted. This topic provided interpretive guidance on the offsetting of related assets and liabilities. This guidance is no longer necessary due to the issuance of Interpretation 39.

b. Question 1 of Topic 11.H.2 is deleted with Questions 2 and 3 being renumbered as Questions 1 and 2. Question 1 and the Interpretive Response are no longer needed in light of the provisions of Statements 15 and 114.

c. Topic 11.J is deleted. This topic provided interpretive guidance on reporting information related to financial guarantees. This guidance is no longer necessary due to the issuance of Interpretation 45.

d. Topic 11.K, footnote one is modified to remove reference to activities of the FASB's financial instruments project which subsequently have been completed.

e. Topic 11.N, footnote 2 is modified to remove reference to Statement 72, *Accounting for Certain Acquisitions of Banking or Thrift Institutions (an Amendment of APB Opinion No. 17, an Interpretation of APB Opinions 16 and 17, and an Amendment of FASB Interpretation No. 9)*. With the issuance of Statement 147, the provisions of Statement 72 are no longer relevant to the accounting for such transactions.

12. Topic 12: Oil and Gas Producing Activities

a. Topic 12.A.1 is revised to delete, in the interpretive response to question 3, the reference to Item 2(b)(3) of Regulation S–K, which has been redesignated within Industry Guide 2.

b. Topic 12.A.2 is revised to update the references to the required disclosures of the standardized measure of discounted future net cash flows to the provisions of Statement 69, *Disclosures about Oil and Gas Producing Activities*. Consistent with this change, reference to "standardized measure of discounted future net cash flows" is substituted for "estimated future net revenues" and "year end prices" substituted for "current prices" for consistency with the terminology used in Statement 69. Furthermore, questions 4–11, and the related interpretive responses to those questions which deal with the reporting implications of the Windfall Profits Tax and the 1985 natural gas price decontrol and disclosure of reserve information are deleted as no longer being relevant.

c. Topic 12 A.3.a is deleted. The required disclosures of the standardized measure of discounted future net cash flows is provided by Statement 69 and the guidance is no longer necessary.

d. Topic 12.A.3.c is revised to update the references to the required disclosures of the standardized measure of discounted future net cash flows to the provisions of Statement 69.

e. Topic 12.A.3.d is revised to update the references to the required disclosures of the standardized measure of discounted future net cash flows to the provisions of Statement 69.

f. Topic 12.A.4, regarding filings by Canadian registrants, is deleted as no longer being relevant.

g. Topic 12.B regarding supplemental disclosures on the basis of reserve recognition accounting is deleted as no longer being relevant.

h. Topic 12.C.2 is revised to update the references currently included in Regulation S–X.

i. Topic 12.D.1 is revised to update the references currently included in Regulation S–X.

j. Topic 12.D.2 is revised to update the references to the required disclosures of the standardized measure of discounted future net cash flows to the provisions of Statement 69.

k. Topic 12.D.3.a is revised to update the references currently included in Regulation S–X.

l. Topic 12.D.3.b is redesignated as Topic 12.D.3.c and revised to provide updated guidance consistent with Statement 133.

m. Topic 12.D.3.b is rewritten to reflect the changes in the computation as a result of changes in the authoritative literature related to derivatives accounted for in accordance with Statement 133.

n. Topic 12.F is revised to substitute the reference to Rule 4–10(c)(3)(iii) of Regulation S–X for outdated Rule 4–10(i)(3)(iii) of Regulation S–X.

o. Topic 12.G is revised to update the references to the required disclosures of the standardized measure of discounted future net cash flows to the provisions of Statement 69 and to substitute the reference to Rule 4–10(c)(4) of Regulation S–X for Rule 4–10(k)(4) of Regulation S–X.

13. Topic 13: Revenue Recognition

a. Topic 13.A.3, the following changes are made:

i. The interpretive response to question 3 is modified to incorporate the guidance on separate elements of an arrangement from EITF Issue 00–21. Additionally, footnote 24 is modified to remove the reference to Statement 53, *Financial Reporting by Producers and Distributors of Motion Picture Films*, which has been superseded and to add a reference to SOP 00–2, *Accounting by Producers or Distributors of Films*.

ii. The interpretive response to question 7 is modified to refer to Statement 140 which replaced Statement 125, *Accounting for Transfers and Servicing of Financial Assets and Extinguishments of Liabilities*.

b. Topic 13.B, footnote 6 is modified to refer to SAS 99 which superseded SAS 82.

Table of Contents

Topic 1: Financial Statements

A. Target Companies
B. Allocation of Expenses and Related Disclosure in Financial Statements of Subsidiaries, Divisions or Lesser Business Components of Another Entity
1. *Costs reflected in historical financial statements*
2. *Pro forma financial statements and earnings per share*
3. *Other matters*
C. Unaudited Financial Statements for a Full Fiscal Year
D. Foreign Companies
1. *Disclosures required of companies complying with Item 17 of Form 20-F*
2. *"Free distributions" by Japanese companies*
E. Requirements for Audited or Certified Financial Statements
1. Deleted by SAB 103
2. *Qualified auditors' opinions*
F. Financial Statement Requirements In Filings Involving The Formation of a One-Bank Holding Company
G. Deleted by FRR 55
H. Deleted by FRR 55
I. Financial Statements of Properties Securing Mortgage Loans
J. Application of Rule 3–05 in Initial Public Offerings
K. Financial Statements of Acquired Troubled Financial Institutions
L. Deleted by SAB 103
M. Materiality
1. *Assessing materiality*
2. *Immaterial misstatements that are intentional*

Topic 2: Business Combinations

A. Purchase Method
1. Deleted by SAB 103
2. Deleted by SAB 103
3. Deleted by SAB 103
4. Deleted by SAB 103
5. *Adjustments to allowances for loan losses in connection with business combinations*
6. *Debt issue costs*
7. *Loss contingencies assumed in a business combination*
8. *Business combinations prior to an initial public offering*
9. *Liabilities assumed in a business combination*
B. Deleted by SAB 103
C. Deleted by SAB 103
D. Financial Statements of Oil and Gas Exchange Offers
E. Deleted by SAB 103
F. Deleted by SAB 103

Topic 3: Senior Securities

A. Convertible Securities
B. Deleted by ASR 307
C. Redeemable Preferred Stock

Topic 4: Equity Accounts

A. Subordinated Debt
B. S Corporations
C. Change in Capital Structure
D. Earnings per Share Computations in an Initial Public Offering
E. Receivables From Sale of Stock
F. Limited Partnerships
G. Notes and Other Receivables From Affiliates

Topic 5: Miscellaneous Accounting

A. Expenses of Offering
B. Gain or Loss From Disposition of Equipment
C.1. Deleted by SAB 103
C.2. Deleted by SAB 103
D. Organization and Offering Expenses and Selling Commissions—Limited Partnerships Trading in Commodity Futures
E. Accounting for Divestiture of a Subsidiary Or Other Business Operation
F. Accounting Changes Not Retroactively Applied Due To Immateriality
G. Transfers Of Nonmonetary Assets By Promoters Or Shareholders
H. Accounting For Sales Of Stock By A Subsidiary
I. Deleted by SAB 70
J. Push Down Basis of Accounting Required in Certain Limited Circumstances
K. Deleted by SAB 95
L. LIFO Inventory Practices
M. Other Than Temporary Impairment of Certain Investments in Debt and Equity Securities
N. Discounting by Property-Casualty Insurance Companies
O. Research and Development Arrangements
P. Restructuring Charges
1. Deleted by SAB 103
2. Deleted by SAB 103
3. *Income statement presentation of restructuring charges*
4. *Disclosures*
Q. Increasing Rate Preferred Stock
R. Deleted by SAB 103
S. Quasi-Reorganization
T. Accounting for Expenses or Liabilities Paid by Principal Stockholder(s)
U. Gain Recognition on the Sale of a Business or Operating Assets to A Highly Leveraged Entity
V. Certain Transfers of Nonperforming Assets
W. Contingency Disclosures Regarding Property-Casualty Insurance Reserves for Unpaid Claim Costs
X. Deleted by SAB 103
Y. Accounting and Disclosures Relating to Loss Contingencies
Z. Accounting and Disclosure Regarding Discontinued Operations
1. Deleted by SAB 103
2. Deleted by SAB 103

3. Deleted by SAB 103
4. *Disposal of operation with significant interest retained*
5. *Classification and disclosure of contingencies relating to discontinued operations*
6. Deleted by SAB 103
7. *Accounting for the spin-off of a subsidiary*

AA. Deleted by SAB 103
BB. Inventory Valuation Allowances
CC. Impairments

Topic 6: Interpretations of Accounting Series Releases and Financial Reporting Releases

A.1. Deleted by SAB 103
B. Accounting Series Release 280—General Revision of Regulation S–X: Income or Loss Applicable to Common Stock
C. Accounting Series Release 180—Institution of Staff Accounting Bulletins (SABs)—Applicability of Guidance Contained in SABs
D. Redesignated as Topic 12.A by SAB 47
E. Redesignated as Topic 12.B by SAB 47
F. Deleted by SAB 103
G. Accounting Series Releases 177 and 286—Relating to Amendments to Form 10–Q, Regulation S–K, and Regulation S–X Regarding Interim Financial Reporting
1. *Selected quarterly financial data (Item 302(A) of Regulation S–K)*
a. Disclosure of selected quarterly financial data
b. Financial statements presented on other than a quarterly basis
c. Deleted by SAB 103
2. *Amendments to Form 10–Q*
a. Form of condensed financial statements
b. Reporting requirements for accounting changes
1. Preferability
2. Filing of a letter from the accountants

H. Accounting Series Release 148—Disclosure of Compensating Balances and Short-Term Borrowing Arrangements (Adopted November 13, 1973 as Modified by ASR 172 Adopted on June 13, 1975 and ASR 280 Adopted on September 2, 1980)
1. *Applicability*
a. Arrangements with other lending institutions
b. Bank holding companies and brokerage firms
c. Financial statements of parent company and unconsolidated subsidiaries
d. Foreign lenders
2. *Classification of short-term obligations—Debt related to long-term projects*
3. *Compensating balances*
a. Compensating balances for future credit availability
b. Changes in compensating balances
c. *Float*
4. *Miscellaneous*
a. Periods required
b. 10–Q Disclosures

I. Accounting Series Release 149—Improved Disclosure of Income Tax Expense (Adopted November 28, 1973 and Modified by ASR 280 Adopted on September 2, 1980)
1. *Tax rate*
2. *Taxes of investee company*
3. *Net of tax presentation*
4. *Loss years*
5. *Foreign registrants*
6. *Securities gains and losses*
7. *Tax expense components v. "overall" presentation*

J. Deleted by SAB 47
K. Accounting Series Release 302—Separate Financial Statements Required by Regulation S–X
1. Deleted by SAB 103
2. *Parent company financial information*
a. Computation of restricted net assets of subsidiaries
b. Application of tests for parent company disclosures
3. *Undistributed earnings of 50% or less owned persons*
4. *Application of significant subsidiary test to investees and unconsolidated subsidiaries*
a. Separate financial statement requirements
b. Summarized financial statement requirements

L. Financial Reporting Release 28—Accounting for Loan Losses by Registrants Engaged in Lending Activities
1. *Accounting for loan losses*
2. *Developing and documenting a systematic methodology*
a. Developing a systematic methodology
b. Documenting a systematic methodology
3. *Applying a systematic methodology—measuring and documenting loan losses under Statement 114*
a. Measuring and documenting loan losses under Statement 114—general
b. Measuring and documenting loan losses under Statement 114 for a collateral dependent loan
c. Measuring and documenting loan losses under Statement 114—fully collateralized loans
4. *Applying a systematic methodology—measuring and documenting loan losses under Statement 5*
a. Measuring and documenting loan losses under Statement 5—general
b. Measuring and documenting loan losses under Statement 5—adjusting loss rates
c. Measuring and documenting loan losses under Statement 5—estimating losses on loans individually reviewed for impairment but not considered individually impaired
5. *Documenting the results of a systematic methodology*
a. Documenting the results of a systematic methodology—general
b. Documenting the results of a systematic methodology—allowance adjustments
6. *Validating a systematic methodology*

Topic 7: Real Estate Companies

A. Deleted by SAB 103
B. Deleted by SAB 103
C. Schedules of Real Estate and Accumulated Depreciation, and of Mortgage Loans on Real Estate
D. Income Before Depreciation

Topic 8: Retail Companies

A. Sales of Leased or Licensed Departments
B. Finance Charges

Topic 9: Finance Companies

A. Deleted by SAB 103
B. Deleted by ASR 307

Topic 10: Utility Companies

A. Financing by Electric Utility Companies Through Use of Construction Intermediaries
B. Deleted by SAB 103
C. Jointly Owned Electric Utility Plants
D. Long-Term Contracts for Purchase of Electric Power
E. Classification of Charges for Abandonments and Disallowances
F. Presentation of Liabilities for Environmental Costs

Topic 11: Miscellaneous Disclosure

A. Operating-Differential Subsidies
B. Depreciation and Depletion Excluded From Cost of Sales
C. Tax Holidays
D. Deleted by SAB 103
E. Chronological Ordering of Data
F. LIFO Liquidations
G. Tax Equivalent Adjustment in Financial Statements of Bank Holding Companies
H. Disclosures by Bank Holding Companies Regarding Certain Foreign Loans
1. *Deposit/relending arrangements*
2. *Accounting and disclosures by bank holding companies for a "Mexican Debt Exchange" transaction*

I. Reporting of an Allocated Transfer Risk Reserve in Filings Under the Federal Securities Laws
J. Deleted by SAB 103
K. Application of Article 9 and Guide 3
L. Income Statement Presentation of Casino-Hotels
M. Disclosure of the Impact That Recently Issued Accounting Standards Will Have on the Financial Statements of the Registrant When Adopted in a Future Period
N. Disclosures of the Impact of Assistance From Federal Financial Institution Regulatory Agencies

Topic 12: Oil and Gas Producing Activities

A. Accounting Series Release 257—Requirements for Financial Accounting and Reporting Practices for Oil and Gas Producing Activities
1. *Estimates of quantities of proved reserves*
2. *Estimates of future net revenues*
3. *Disclosure of reserve information*
a. Deleted by SAB 103
b. Unproved properties
c. Limited partnership 10–K reports
d. Limited partnership registration statements
e. Rate regulated companies
4. Deleted by SAB 103

B. Deleted by SAB 103
C. Methods of Accounting by Oil and Gas Producers
1. *First-time registrants*
2. *Consistent use of accounting methods within a consolidated entity*

D. Application of Full Cost Method of Accounting
1. *Treatment of income tax effects in the computation of the limitation on capitalized costs*
2. *Exclusion of costs from amortization*
3. *Full cost ceiling limitation*
a. Exemptions for purchased properties
b. Use of cash flow hedges in the computation of the limitation on capitalized costs
c. Effect of subsequent events on the computation of the limitation on capitalized costs

E. Financial Statements of Royalty Trusts
F. Gross Revenue Method of Amortizing Capitalized Costs
G. Inclusion of Methane Gas in Proved Reserves

Topic 13: Revenue Recognition

A. Selected Revenue Recognition Issues
1. *Revenue recognition—general*
2. *Persuasive evidence of an arrangement*
3. *Delivery and performance*
4. *Fixed or determinable sales price*
5. *Income statement presentation*

B. Disclosures 2

Topic 1: Financial Statements

A. Target Companies

Facts: Company X proposes to file a registration statement covering an exchange offer to stockholders of Company Y, a publicly held company. Company X asks Company Y to furnish information about its business, including current audited financial statements, for inclusion in the prospectus. Company Y declines to furnish such information.

Question 1: In filing the registration statement without the required information about Company Y, may Company X rely on Rule 409 in that the information is "unknown or not reasonably available?"

Interpretive Response: Yes, but to determine whether such reliance is justified, the staff requests the registrant to submit as supplemental information copies of correspondence between the registrant and the target company evidencing the request for and the refusal to furnish the financial statements. In addition, the prospectus must include any financial statements which are relevant and available from the Commission's public files and must contain a statement adequately describing the situation and the sources of information about the target company. Other reliable sources of financial information should also be utilized.

Question 2: Would the response change if Company Y was a closely held company?

Interpretive Response: Yes. The staff does not believe that Rule 409 is applicable to negotiated transactions of this type.

B. Allocation of Expenses and Related Disclosure in Financial Statements of Subsidiaries, Divisions or Lesser Business Components of Another Entity

Facts: A company (the registrant) operates as a subsidiary of another company (parent). Certain expenses incurred by the parent on behalf of the subsidiary have not been charged to the subsidiary in the past. The subsidiary files a registration statement under the Securities Act of 1933 in connection with an initial public offering.

1. Costs Reflected in Historical Financial Statements

Question 1: Should the subsidiary's historical income statements reflect all of the expenses that the parent incurred on its behalf?

Interpretive Response: In general, the staff believes that the historical income statements of a registrant should reflect all of its costs of doing business. Therefore, in specific situations, the staff has required the subsidiary to revise its financial statements to include certain expenses incurred by the parent on its behalf. Examples of such expenses may include, but are not necessarily limited to, the following (income taxes and interest are discussed separately below):

1. Officer and employee salaries,
2. Rent or depreciation,
3. Advertising,
4. Accounting and legal services, and
5. Other selling, general and administrative expenses.

When the subsidiary's financial statements have been previously reported on by independent accountants and have been used other than for internal purposes, the staff has accepted a presentation that shows income before tax as previously reported, followed by adjustments for expenses not previously allocated, income taxes, and adjusted net income.

Question 2: How should the amount of expenses incurred on the subsidiary's behalf by its parent be determined, and what disclosure is required in the financial statements?

Interpretive Response: The staff expects any expenses clearly applicable to the subsidiary to be reflected in its income statements. However, the staff understands that in some situations a reasonable method of allocating common expenses to the subsidiary (*e.g.*, incremental or proportional cost allocation) must be chosen because specific identification of expenses is not practicable. In these situations, the staff has required an explanation of the allocation method used in the notes to the financial statements along with management's assertion that the method used is reasonable.

In addition, since agreements with related parties are by definition not at arms length and may be changed at any time, the staff has required footnote disclosure, when practicable, of management's estimate of what the expenses (other than income taxes and interest discussed separately below) would have been on a stand alone basis, that is, the cost that would have been incurred if the subsidiary had operated as an unaffiliated entity. The disclosure has been presented for each year for which an income statement was required when such basis produced materially different results.

Question 3: What are the staff's views with respect to the accounting for and disclosure of the subsidiary's income tax expense?

Interpretive Response: Recently, a number of parent companies have sold interests in subsidiaries, but have retained sufficient ownership interests to permit continued inclusion of the subsidiaries in their consolidated tax returns. The staff believes that it is material to investors to know what the effect on income would have been if the registrant had not been eligible to be included in a consolidated income tax return with its parent. Some of these subsidiaries have calculated their tax provision on the separate return basis, which the staff believes is the preferable method. Others, however, have used different allocation methods. When the historical income statements in the filing do not reflect the tax provision on the separate return basis, the staff has required a pro forma income statement for the most recent year and interim period reflecting a tax provision calculated on the separate return basis.[1]

Question 4: Should the historical income statements reflect a charge for interest on intercompany debt if no such charge had been previously provided?

Interpretive Response: The staff generally believes that financial statements are more useful to investors if they reflect all costs of doing business, including interest costs. Because of the inherent difficulty in distinguishing the elements of a subsidiary's capital structure, the staff has not insisted that

[1] Paragraph 40 of Statement 109 states: "The consolidated amount of current and deferred tax expense for a group that files a consolidated tax return shall be allocated among the members of the group when those members issue separate financial statements. * * * The method adopted * * * shall be systematic, rational, and consistent with the broad principles established by [Statement 109]. A method that allocates current and deferred taxes to members of the group by applying [Statement 109] to each member as if it were a separate taxpayer meets those criteria.

the historical income statements include an interest charge on intercompany debt if such a charge was not provided in the past, except when debt specifically related to the operations of the subsidiary and previously carried on the parent's books will henceforth be recorded in the subsidiary's books. In any case, financing arrangements with the parent must be discussed in a note to the financial statements. In this connection, the staff has taken the position that, where an interest charge on intercompany debt has not been provided, appropriate disclosure would include an analysis of the intercompany accounts as well as the average balance due to or from related parties for each period for which an income statement is required. The analysis of the intercompany accounts has taken the form of a listing of transactions (*e.g.*, the allocation of costs to the subsidiary, intercompany purchases, and cash transfers between entities) for each period for which an income statement was required, reconciled to the intercompany accounts reflected in the balance sheets.

2. Pro Forma Financial Statements and Earnings per Share

Question: What disclosure should be made if the registrant's historical financial statements are not indicative of the ongoing entity (*e.g.*, tax or other cost sharing agreements will be terminated or revised)?

Interpretive Response: The registration statement should include pro forma financial information that is in accordance with Article 11 of Regulation S–X and reflects the impact of terminated or revised cost sharing agreements and other significant changes.

3. Other Matters

Question: What is the staff's position with respect to dividends declared by the subsidiary subsequent to the balance sheet date?

Interpretive Response: The staff believes that such dividends either be given retroactive effect in the balance sheet with appropriate footnote disclosure, or reflected in a pro forma balance sheet. In addition, when the dividends are to be paid from the proceeds of the offering, the staff believes it is appropriate to include pro forma per share data (for the latest year and interim period only) giving effect to the number of shares whose proceeds were to be used to pay the dividend. A similar presentation is appropriate when dividends exceed earnings in the current year, even though the stated use of proceeds is other than for the payment of dividends. In these situations, pro forma per share data should give effect to the increase in the number of shares which, when multiplied by the offering price, would be sufficient to replace the capital in excess of earnings being withdrawn.

C. Unaudited Financial Statements for a Full Fiscal Year

Facts: Company A, which is a reporting company under the Securities Exchange Act of 1934, proposes to file a registration statement within 90 days of its fiscal year end but does not have audited year-end financial statements available. The company meets the criteria under Rule 3–01(c) of Regulation S–X and is therefore not required to include year-end audited financial statements in its registration statement. However, the Company does propose to include in the prospectus the unaudited results of operations for its entire fiscal year.

Question: Would the staff find this objectionable?

Interpretive Response: The staff recognizes that many registrants publish the results of their most recent year's operations prior to the availability of year-end audited financial statements. The staff will not object to the inclusion of unaudited results for a full fiscal year and indeed would expect such data in the registration statement if the registrant has published such information. When such data is included in a prospectus, it must be covered by a management's representation that all adjustments necessary for a fair statement of the results have been made.

D. Foreign Companies

1. Disclosures Required of Companies Complying With Item 17 of Form 20–F

Facts: A foreign private issuer may use Form 20–F as a registration statement under section 12 or as an annual report under section 13(a) or 15(d) of the Exchange Act. The registrant must furnish the financial statements specified in Item 17 of that form. However, in certain circumstances, Forms F–3 and F–2 require that the annual report include financial statements complying with Item 18 of the form. Also, financial statements complying with Item 18 are required for registration of securities under the Securities Act in most circumstances. Item 17 permits the registrant to use its financial statements that are prepared on a comprehensive basis other than U.S. GAAP, but requires quantification of the material differences in the principles, practices and methods of accounting. An issuer complying with Item 18 must satisfy the requirements of Item 17 and also must provide all other information required by U.S. GAAP and Regulation S–X.

Question: Assuming that the registrant's financial statements include a discussion of material variances from U.S. GAAP along with quantitative reconciliations of net income and material balance sheet items, does Item 17 of Form 20–F require other disclosures in addition to those prescribed by the standards and practices which comprise the comprehensive basis on which the registrant's primary financial statements are prepared?

Interpretive Response: No. The distinction between Items 17 and 18 is premised on a classification of the requirements of U.S. GAAP and Regulation S–X into those that specify the methods of measuring the amounts shown on the face of the financial statements and those prescribing disclosures that explain, modify or supplement the accounting measurements. Disclosures required by U.S. GAAP but not required under the foreign GAAP on which the financial statements are prepared need not be furnished pursuant to Item 17.

Notwithstanding the absence of a requirement for certain disclosures within the body of the financial statements, some matters routinely disclosed pursuant to U.S. GAAP may rise to a level of materiality such that their disclosure is required by Item 5 (Management's Discussion and Analysis) of Form 20–F. Among other things, this item calls for a discussion of any known trends, demands, commitments, events or uncertainties that are reasonably likely to affect liquidity, capital resources or the results of operations in a material way. Also, instruction 2 of this item requires "a discussion of any aspects of the differences between foreign and U.S. GAAP, not discussed in the reconciliation, that the registrant believes is necessary for an understanding of the financial statements as a whole." Matters that may warrant discussion in response to Item 5 include the following:

- Material undisclosed uncertainties (such as reasonably possible loss contingencies), commitments (such as those arising from leases), and credit risk exposures and concentrations;
- Material unrecognized obligations (such as pension obligations);
- Material changes in estimates and accounting methods, and other factors or events affecting comparability;

- Defaults on debt and material restrictions on dividends or other legal constraints on the registrant's use of its assets;
- Material changes in the relative amounts of constituent elements comprising line items presented on the face of the financial statements;
- Significant terms of financings which would reveal material cash requirements or constraints;
- Material subsequent events, such as events that affect the recoverability of recorded assets;
- Material related party transactions (as addressed by Statement 57) that may affect the terms under which material revenues or expenses are recorded; and
- Significant accounting policies and measurement assumptions not disclosed in the financial statements, including methods of costing inventory, recognizing revenues, and recording and amortizing assets, which may bear upon an understanding of operating trends or financial condition.

2. "Free Distributions" by Japanese Companies

Facts: It is the general practice in Japan for corporations to issue "free distributions" of common stock to existing shareholders in conjunction with offerings of common stock so that such offerings may be made at less than market. These free distributions usually are from 5 to 10 percent of outstanding stock and are accounted for in accordance with provisions of the Commercial Code of Japan by a transfer of the par value of the stock distributed from paid-in capital to the common stock account. Similar distributions are sometimes made at times other than when offering new stock and are also designated "free distributions." U.S. accounting practice would require that the fair value of such shares, if issued by U.S. companies, be transferred from retained earnings to the appropriate capital accounts.

Question: Should the financial statements of Japanese corporations included in Commission filings which are stated to be prepared in accordance with U.S. GAAP be adjusted to account for stock distributions of less than 25 percent of outstanding stock by transferring the fair value of such stock from retained earnings to appropriate capital accounts?

Interpretive Response: If registrants and their independent accountants believe that the institutional and economic environment in Japan with respect to the registrant is sufficiently different that U.S. accounting principles for stock dividends should not apply to free distributions, the staff will not object to such distributions being accounted for at par value in accordance with Japanese practice. If such financial statements are identified as being prepared in accordance with U.S. GAAP, then there should be footnote disclosure of the method being used which indicates that U.S. companies issuing shares in comparable amounts would be required to account for them as stock dividends, and including in such disclosure the fair value of any such shares issued during the year and the cumulative amount (either in an aggregate figure or a listing of the amounts by year) of the fair value of shares issued over time.

E. Requirements for Audited or Certified Financial Statements

1. Deleted by SAB 103

2. Qualified Auditors' Opinions

Facts: The accountants' report is qualified as to scope of audit, or the accounting principles used.

Question: Does the staff consider the requirements for audited or certified financial statements met when the auditors' opinion is so qualified?

Interpretive Response: No. The staff does not accept as consistent with the requirements of Rule 2–02(b) of Regulation S-X financial statements on which the auditors' opinions are qualified because of a limitation on the scope of the audit, since in these situations the auditor was unable to perform all the procedures required by professional standards to support the expression of an opinion. This position was discussed in ASR 90 in connection with representations concerning the verification of prior years' inventories in first audits.

Financial statements for which the auditors' opinions contain qualifications relating to the acceptability of accounting principles used or the completeness of disclosures made are also unacceptable. (See ASR 4, and with respect to a "going concern" qualification, ASR 115.)

F. Financial Statement Requirements in Filings Involving the Formation of a One-Bank Holding Company

Facts: Holding Company A is organized for the purpose of issuing common stock to acquire all of the common stock of Bank A. Under the plan of reorganization, each share of common stock of Bank A will be exchanged for one share of common stock of the holding company. The shares of the holding company to be issued in the transaction will be registered on Form S–4. The holding company will not engage in any operations prior to consummation of the reorganization, and its only significant asset after the transaction will be its investment in the bank. The bank has been furnishing its shareholders with an annual report that includes financial statements that comply with GAAP.

Item 14 of Schedule 14A of the proxy rules provides that financial statements generally are not necessary in proxy material relating only to changes in legal organization (such as reorganizations involving the issuer and one or more of its totally held subsidiaries).

Question 1: Must the financial statements and the information required by Securities Act Industry Guide ("Guide 3") [1] for Bank A be included in the initial registration statement on Form S–4?

Interpretive Response: No, provided that certain conditions are met. The staff will not take exception to the omission of financial statements and Guide 3 information in the initial registration statement on Form S–4 if all of the following conditions are met:

- There are no anticipated changes in the shareholders' relative equity ownership interest in the underlying bank assets, except for redemption of no more than a nominal number of shares of unaffiliated persons who dissent;
- In the aggregate, only nominal borrowings are to be incurred for such purposes as organizing the holding company, to pay nonaffiliated persons who dissent, or to meet minimum capital requirements;
- There are no new classes of stock authorized other than those corresponding to the stock of Bank A immediately prior to the reorganization;
- There are no plans or arrangements to issue any additional shares to acquire any business other than Bank A; and
- There has been no material adverse change in the financial condition of the bank since the latest fiscal year-end included in the annual report to shareholders.

If at the time of filing the S–4, a letter is furnished to the staff stating that all of these conditions are met, it will not be necessary to request the Division of Corporation Finance to waive the financial statement or Guide 3 requirements of Form S–4.

Although the financial statements may be omitted, the filing should include a section captioned, "Financial Statements," which states either that an annual report containing financial statements for at least the latest fiscal year prepared in conformity with GAAP was previously furnished to shareholders or is being delivered with

[1] Item 801 of Regulation S–K.

the prospectus. If financial statements have been previously furnished, it should be indicated that an additional copy of such report for the latest fiscal year will be furnished promptly upon request without charge to shareholders. The name and address of the person to whom the request should be made should be provided. One copy of such annual report should be furnished supplementally with the initial filing for purposes of staff review.

If any nominal amounts are to be borrowed in connection with the formation of the holding company, a statement of capitalization should be included in the filing which shows Bank A on an historical basis, the pro forma adjustments, and the holding company on a pro forma basis. A note should also explain the pro forma effect, in total and per share, which the borrowings would have had on net income for the latest fiscal year if the transaction had occurred at the beginning of the period.

Question 2: Are the financial statements of Bank A required to be audited for purposes of the initial Form S–4 or the subsequent Form 10–K report?

Interpretive Response: The staff will not insist that the financial statements in the annual report to shareholders used to satisfy the requirement of the initial Form S–4 be audited.

The consolidated financial statements of the holding company to be included in the registrant's initial report on Form 10–K should comply with the applicable financial statement requirements in Regulation S–X at the time such annual report is filed. However, the regulations also provide that the staff may allow one or more of the required statements to be unaudited where it is consistent with the protection of investors.[2] Accordingly, the policy of the Division of Corporation Finance is as follows:

- The registrant should file audited balance sheets as of the two most recent fiscal years and audited statements of income and cash flows for each of the three latest fiscal years, with appropriate footnotes and schedules as required by Regulation S–X unless the financial statements have not previously been audited for the periods required to be filed. In such cases, the Division will not object if the financial statements in the first annual report on Form 10–K (or the special report filed pursuant to Rule 15d–2)[3] are audited only for the two latest fiscal years.[4] This policy only applies to filings on Form 10–K, and not to any Securities Act filings made after the initial S–4 filing.

The above procedure may be followed without making a specific request of the Division of Corporation Finance for a waiver of the financial statement requirements of Form 10–K.

The information required by Guide 3 should also be provided in the Form 10–K for at least the periods for which audited financial statements are furnished. If some of the statistical information for the two most recent fiscal years for which audited financial statements are included (other than information on nonperforming loans and the summary of loan loss experience) is unavailable and cannot be obtained without unwarranted or undue burden or expense, such data may be omitted provided a brief explanation in support of such representation is included in the report on Form 10–K. In all cases, however, information with respect to nonperforming loans and loan loss experience, or reasonably comparable data, must be furnished for at least the two latest fiscal years in the initial 10–K. Thereafter, for subsequent years in reports on Form 10–K, all of the Guide 3 information is required; Guide 3 information which had been omitted in the initial 10–K in accordance with the above procedure can be excluded in any subsequent 10–Ks.

G. Deleted by FRR 55

H. Deleted by FRR 55

I. Financial Statements of Properties Securing Mortgage Loans

Facts: A registrant files a Securities Act registration statement covering a maximum of $100 million of securities. Proceeds of the offering will be used to make mortgage loans on operating residential or commercial property. Proceeds of the offering will be placed in escrow until $1 million of securities are sold at which point escrow may be broken, making the proceeds immediately available for lending, while the selling of securities would continue.

Question 1: Under what circumstances are the financial statements of a property on which the registrant makes or expects to make a loan required to be included in a filing?

Interpretive Response: Rule 3–14 of Regulation S–X specifies the requirements for financial statements when the registrant has acquired one or more properties which in the aggregate are significant, or since the date of the latest balance sheet required has acquired or proposes to acquire one or more properties which in the aggregate are significant.

Included in the category of properties acquired or to be acquired under Rule 3–14 are operating properties underlying certain mortgage loans, which in economic substance represent an investment in real estate or a joint venture rather than a loan. Certain characteristics of a lending arrangement indicate that the "lender" has the same risks and potential rewards as an owner or joint venturer. Those characteristics are set forth in Exhibit I to the Appendix of the American Institute of Certified Public Accountants' Practice Bulletin 1[1] "ADC[2] Arrangements" ("Exhibit I to PB1"). In September 1986 the EITF[3] reached a consensus on this issue[4] to the effect that, although Exhibit I to PB1 was issued to address the real estate ADC arrangements of financial institutions, preparers and auditors should consider the guidance contained in Exhibit I to PB1 in accounting for shared appreciation mortgages, loans on operating real estate and real estate ADC arrangements entered into by enterprises other than financial institutions.

Statement 133 as amended by Statements 137 and 138, generally requires that embedded instruments meeting the definition of a derivative and not clearly and closely related to the host contract be accounted for separately from the host instrument. If the embedded the expected residual profit component of an ADC arrangement need not be separately accounted for as a derivative under Statement 133, then the disclosure requirements discussed below for ADC loans and similar arrangements should be followed.[5]

[2] Rule 3–13 of Regulation S–X.

[3] Rule 15d–2 would be applicable if the annual report furnished with the Form S–4 was not for the registrant's most recent fiscal year. In such a situation, Rule 15d–2 would require the registrant to file a special report within 90 days after the effective date of the Form S–4 furnishing audited financial statements for the most recent fiscal year.

[4] Unaudited statements of income and cash flows should be furnished for the earliest period.

[1] "ADC Arrangements" was originally issued as a *notice to practitioners* (February 1986, as published in the April 1986 issue of the Journal of Accountancy). The notice to practitioners was reprinted without change as Exhibit I to the Appendix of the American Institute of Certified Public Accountants' *Practice Bulletin 1* (November 1987).

[2] Acquisition, development and construction.

[3] The Emerging Issues Task Force ("EITF") was formed in 1984 to assist the Financial Accounting standards Board in the early identification and resolution of emerging accounting issues. Topics to be discussed by the EITF are publicly announced prior to its meetings and minutes of all EITF meetings are available to the public.

[4] See Issue 86–21.

[5] The equity kicker (the expected residual profit) would typically not be separated from the host contract and accounted for as a derivative because paragraph 12(c) of Statement 133 exempts a hybrid contract from bifurcation if a separate instrument with the same terms as the embedded equity kicker is not a derivative instrument subject to the requirements of Statement 133.

In certain cases the "lender" has virtually the same potential rewards as those of an owner or a joint venturer by virtue of participating in expected residual profit.[6] In addition, Exhibit I to PB1 includes a number of other characteristics which, when considered individually or in combination, would suggest that the risks of an ADC arrangement are similar to those associated with an investment in real estate or a joint venture or, conversely, that they are similar to those associated with a loan. Among those other characteristics is whether the lender agrees to provide all or substantially all necessary funds to acquire the property, resulting in the borrower having title to, but little or no equity in, the underlying property. The staff believes that the borrower's equity in the property is adequate to support accounting for the transaction as a mortgage loan when the borrower's initial investment meets the criteria in paragraph 11 of Statement 66[7] and the borrower's payments of principal and interest on the loan are adequate to maintain a continuing investment in the property which meets the criteria in paragraph 12 of Statement 66.[8]

The financial statements of properties which will secure mortgage loans made or to be made from the proceeds of the offering which have the characteristics of real estate investments or joint ventures should be included as required by Rule 3–14 in the registration statement when such properties secure loans previously made, or have been identified as security for probable loans prior to effectiveness, and in filings made pursuant to the undertaking in Item 20D of Securities Act Industry Guide 5.

Rule 1–02(w) of Regulation S–X includes the conditions used in determining whether an acquisition is significant. The separate financial statements of an individual property should be provided when a property would meet the requirements for a significant subsidiary under this rule using the amount of the "loan" as a substitute for the "investment in the subsidiary" in computing the specified conditions. The combined financial statements of properties which are not individually significant should also be provided. However, the staff will not object if the combined financial statements of such properties are not included if none of the conditions specified in Rule 1–02(w), with respect to all such properties combined, exceeds 20% in the aggregate.

Under certain circumstances, information may also be required regarding operating properties underlying mortgage loans where the terms do not result in the lender having virtually the same risks and potential rewards as those of owners or joint venturers. Generally, the staff believes that, where investment risks exist due to substantial asset concentration, financial and other information should be included regarding operating properties underlying a mortgage loan that represents a significant amount of the registrant's assets. Such presentation is consistent with Rule 3–13 of Regulation S–X and Rule 408 under the Securities Act of 1933.

Where the amount of a loan exceeds 20% of the amount in good faith expected to be raised in the offering, disclosures would be expected to consist of financial statements for the underlying operating properties for the periods contemplated by Rule 3–14. Further, where loans on related properties are made to a single person or group of affiliated persons which in the aggregate amount to more than 20% of the amount expected to be raised, the staff believes that such lending arrangements result in a sufficient concentration of assets so as to warrant the inclusion of financial and other information regarding the underlying properties.

Question 2: Will the financial statements of the mortgaged properties be required in filings made under the 1934 Act?

Interpretive Response: Rule 3–09 of Regulation S–X specifies the requirement for significant, as defined, investments in operating entities, the operations of which are not included in the registrant's consolidated financial statements.[9] Accordingly, the staff believes that the financial statements of properties securing significant loans which have the characteristics of real estate investments or joint ventures should be included in subsequent filings as required by Rule 3–09. The materiality threshold for determining whether such an investment is significant is the same as set forth in paragraph (a) of that Rule.[10]

Likewise, the staff believes that filings made under the 1934 Act should include the same financial and other information relating to properties underlying any loans which are significant as discussed in the last paragraph of Question 1, except that in the determination of significance the 20% disclosure threshold should be measured using total assets. The staff believes that this presentation would be consistent with Rule 12b–20 under the Securities Exchange Act of 1934.

Question 3: The interpretive response to question 1 indicates that the staff believes that the borrower's equity in an operating property is adequate to support accounting for the transaction as a mortgage loan when the borrower's initial investment meets the criteria in paragraph 11 of Statement 66 and the borrower's payments of principal and interest on the loan are adequate to maintain a continuing investment in the property which meets the criteria in paragraph 12 of Statement 66. Is it the staff's view that meeting these criteria is the only way the borrower's equity in the property is considered adequate to support accounting for the transaction as a mortgage loan?

Interpretive Response: No. It is the staff's position that the determination of whether loan accounting is appropriate for these arrangements should be made by the registrant and its independent accountants based on the facts and circumstances of the individual arrangements, using the guidance

[6] Expected residual profit is defined in Exhibit I to PB1 as the amount of profit, whether called interest or another name, such as equity kicker, above a reasonable amount of interest and fees expected to be earned by the "lender."

[7] Statement 66 establishes standards for the recognition of profit on real estate sales transactions. Paragraph 11 states that the buyer's initial investment shall be adequate to demonstrate the buyer's commitment to pay for the property and shall indicate a reasonable likelihood that the seller will collect the receivable. Guidance on minimum initial investments in various types of real estate is provided in paragraphs 53 and 54 of Statement 66.

[8] Paragraph 12 of Statement 66 states that the buyer's continuing investment in a real estate transaction shall not qualify unless the buyer is contractually required to pay each year on its total debt for the purchase price of the property an amount at least equal to the level annual payment that would be needed to pay that debt and interest on the unpaid balance over not more than (a) 20 years for debt for land and (b) the customary amortization term of a first mortgage loan by an independent established lending institution for other real estate.

[9] Rule 3–14 states that the financial statements of an acquired property should be furnished if the acquisition took place during the period for which the registrant's income statements are required. Paragraph (b) of the Rule states that the information required by the Rule is not required to be included in a filing on Form 10–K. That exception is consistent with Item 8 of Form 10-K which excludes acquired company financial statements, which would otherwise be required by Rule 3–05 of Regulation S–X, from inclusion in filings on that Form. Those exceptions are based, in part, on the fact that acquired properties and acquired companies will generally be included in the registrant's consolidated financial statements from the acquisition date.

[10] Rule 3–09(a) states, in part, that "[i]f any of the conditions set forth in [Rule] 1–02(w), substituting 20 percent for 10 percent in the tests used therein to determine significant subsidiary, are met * * * separate financial statements * * * shall be filed."

provided in the Exhibit I to the Appendix of the American Institute of Certified Public Accountants Practice Bulletin 1 (November, 1987) ("Exhibit I to PB1"). As stated in Exhibit I to PB1, loan accounting may not be appropriate when the lender participates in expected residual profit and has virtually the same risks as those of an owner, or joint venturer. In assessing the question of whether the lender has virtually the same risks as an owner, or joint venturer, the essential test that needs to be addressed is whether the borrower has and is expected to continue to have a substantial amount at risk in the project.[11] The criteria described in Statement 66 provide a "safe harbor" for determining whether the borrower has a substantial amount at risk in the form of a substantial equity investment. The borrower may have a substantial amount at risk without meeting the criteria described in Statement 66.

Question 4: What financial statements should be included in filings made under the Securities Act regarding investment-type arrangements that individually amount to 10% or more of total assets?

Interpretive Response: In the staff's view, separate audited financial statements should be provided for any investment-type arrangement that constitutes 10% or more of the greater of (i) the amount of minimum proceeds or (ii) the total assets of the registrant, including the amount of proceeds raised, as of the date the filing is required to be made. Of course, the narrative information required by items 14 and 15 of Form S–11 should also be included with respect to these investment-type arrangements.

Question 5: What information must be provided under the Securities Act for investment-type arrangements that individually amount to less than 10%?

Interpretive Response: No specific financial information need be presented for investment-type arrangements that amount to less than 10%. However, where such arrangements aggregate more than 20%, a narrative description of the general character of the properties and arrangements should be included that gives an investor an understanding of the risks and rewards associated with these arrangements. Such information may, for example, include a description of the terms of the arrangements, participation by the registrant in expected residual profits, and property types and locations.

Question 6: What financial statements should be included in annual reports filed under the Exchange Act with respect to investment-type arrangements that constitute 10% or more of the registrant's total assets?

Interpretive Response: In annual reports filed with the Commission, the staff has advised registrants that separate audited financial statements should be provided for each nonconsolidated investment-type arrangement that is 20% or more of the registrant's total assets. While the distribution is on-going, however, the percentage may be calculated using the greater of (i) the amount of the minimum proceeds or (ii) the total assets of the registrant, including the amount of proceeds raised, as of the date the filing is required to be made. In annual reports to shareholders registrants may either include the separate audited financial statements for 20% or more nonconsolidated investment-type arrangements or, if those financial statements are not included, present summarized financial information for those arrangements in the notes to the registrant's financial statements.

The staff has also indicated that separate summarized financial information (as defined in Rule 1–02(bb) of Regulation S–X) should be provided in the footnotes to the registrant's financial statements for each nonconsolidated investment-type arrangement that is 10% or more but less than 20%. Of course, registrants should also make appropriate textural disclosure with respect to material investment-type arrangements in the "business" and "property" sections of their annual reports to the Commission.[12]

Question 7: What information should be provided in annual reports filed under the Exchange Act with respect to investment-type arrangements that do not meet the 10% threshold?

Interpretive Response: The staff believes it will not be necessary to provide any financial information (full or summarized) for investment-type arrangements that do not meet the 10% threshold. However, in the staff's view, where such arrangements aggregate more than 20%, a narrative description of the general character of the properties and arrangements would be necessary. The staff believes that information should be included that would give an investor an understanding of the risks and rewards associated with these arrangements. Such information may, for example, include a description of the terms of the arrangements, participation by the registrant in expected residual profits, and property types and locations. Of course, disclosure regarding the operations of such components should be included as part of the Management's Discussion and Analysis where there is a known trend or uncertainty in the operations of such properties, either individually or in the aggregate, which would be reasonably likely to result in a material impact on the registrant's future operations, liquidity or capital resources.

J. Application of Rule 3–05 in Initial Public Offerings

Facts: Rule 3–05 of Regulation S–X establishes the financial statement requirements for businesses acquired or to be acquired. If required, financial statements must be provided for one, two or three years depending upon the relative significance of the acquired entity as determined by the application of Rule 1–02(w) of Regulation S–X. The calculations required for these tests are applied by comparison of the financial data of the registrant and acquiree(s) for the fiscal years most recently completed prior to the acquisition. The staff has recognized that these tests literally applied in some initial public offerings may require financial statements for an acquired entity which may not be significant to investors because the registrant has had substantial growth in assets and earnings in recent years.[1]

Question: How should Rules 3–05 and 1–02(w) of Regulation S–X be applied in determining the periods for which financial statements of acquirees are required to be included in registration statements for initial public offerings?

Interpretive Response: It is the staff's view that initial public offerings involving businesses that have been built by the aggregation of discrete businesses that remain substantially intact after acquisition[2] were not

[11] Regarding the composition of the borrower's investment, paragraph 9b of Exhibit I to PB1 indicates that the borrower's investment may include the value of land or other assets contributed by the borrower, net of encumbrances. The staff emphasizes that such paragraph indicates, "* * * recently acquired property generally should be valued at no higher than cost * * *" Thus, for such recently acquired property, appraisals will not be sufficient to justify the use of a value in excess of cost.

[12] Registrants are reminded that in filings on Form 8–K that are triggered in connection with an acquisition of an investment-type arrangement, separate audited financial statements are required for any such arrangement that individually constitues 10% or more.

[1] An acquisition which was relatively significant in the earliest year for which a registrant is required to file financial statements may be insignificant to its latest fiscal year due to internal growth and/or subsequent acquisitions. Literally applied, Rules 3–05 and 1–02(w) might still require separate financial statements for the now insignificant acquisition.

[2] For example, nursing homes, hospitals or cable TV systems. This interpretation would not apply to

contemplated during the drafting of Rule 3–05 and that the significance of an acquired entity in such situations may be better measured in relation to the size of the registrant at the time the registration statement is filed, rather than its size at the time the acquisition was made. Therefore, for a first time registrant, the staff has indicated that in applying the significance tests in Rule 3–05, the three tests in Rule 1–02(w) generally can be measured against the combined entities, including those to be acquired, which comprise the registrant at the time the registration statement is filed. The staff's policy is intended to ensure that the registration statement will include not less than three, two and one year(s) of audited financial statements for not less than 60%, 80% and 90%, respectively, of the constituent businesses that will comprise the registrant on an ongoing basis. In all circumstances, the audited financial statements of the registrant are required for three years, or since its inception if less than three years. The requirement to provide the audited financial statements of a constituent business in the registration statement is satisfied for the post-acquisition period by including the entity's results in the audited consolidated financial statements of the registrant. If additional periods are required, the entity's separate audited financial statements for the immediate pre-acquisition period(s) should be presented.[3] In order for the pre-acquisition audited financial statements of an acquiree to be omitted from the registration statement, the following conditions must be met:

a. The combined significance of businesses acquired or to be acquired for which audited financial statements cover a period of less than 9 months[4] may not exceed 10%;

b. The combined significance of businesses acquired or to be acquired for which audited financial statements cover a period of less than 21 months may not exceed 20%; and

c. The combined significance of businesses acquired or to be acquired for which audited financial statements cover a period of less than 33 months may not exceed 40%.

Combined significance is the total, for all included companies, of each individual company's highest level of significance computed under the three tests of significance. The significance tests should be applied to pro forma financial statements of the registrant, prepared in a manner consistent with Article 11 of Regulation S–X. The pro forma balance sheet should be as of the date of the registrant's latest balance sheet included in the registration statement, and should give effect to businesses acquired subsequent to the end of the latest year or to be acquired as if they had been acquired on that date. The pro forma statement of operations should be for the registrant's most recent fiscal year included in the registration statement and should give effect to all acquisitions consummated during and subsequent to the end of the year and probable acquisitions as if they had been consummated at the beginning of that fiscal year.

The three tests specified in Rule 1–02(w) should be made in comparison to the registrant's pro forma consolidated assets and pretax income from continuing operations. The assets and pretax income of the acquired businesses which are being evaluated for significance should reflect any new cost basis arising from purchase accounting.

Example: On February 20, 20X9 Registrant files Form S–1 containing its audited consolidated financial statements as of and for the three years ended December 31, 20X8. Acquisitions since inception have been:

Acquiree	Fiscal year end	Date of acquisition	Highest significance at acquisition (percent)
A	3/31	1/1/x7	50
B	7/31	4/1/x7	45
C	9/30	9/1/x7	40
D	12/31	2/1/x8	21
E	3/31	11/1/x8	11
F	12/31	To be acquired	11

The following table reflects the application of the significance tests to the combined financial information at the time the registration statement is filed.

Component entity	Assets (percent)	Significance of earnings (percent)	Investment (percent)	Highest level of signficance (percent)
A	12	23	12	23
B	10	21	10	21
C	21	3	4	21
D	10	5	13	13
E	4	[1]9	3	9
F	2	11	[illegible]	11

[1] Loss

businesses for which the relative significance of one portion of the business to the total business may be altered by post-acquisition decisions as to the allocation of incoming orders between plants or locations. This bulletin does not address all possible cases in which similar relief may be appropriate but, rather, attempts to describe a general framework within which administrative policy has been established. In other distinguishable situations, registrants may request relief as appropriate to their individual facts and circumstances.

[3] If audited pre-acquisition financial statements of a business are necessary pursuant to the alternative tests described here, the interim period following that entity's latest pre-acquisition fiscal year end but prior to its acquisition by the registrant generally would be required to be audited.

[4] As a matter of policy the staff accepts financial statements for periods of not less than 9, 21 and 33 consecutive months (not more than 12 months may be included in any period reported on) as substantial compliance with requirements for financial statements for 1, 2 and 3 years, respectively.

Year 1 (most recent fiscal year)—Entity E is the only acquiree for which pre-acquisition financial statements may be omitted for the latest year since significance for each other entity exceeds 10% under one or more test.

Year 2 (preceding fiscal year)—Financial statements for E and F may be omitted since their combined significance is 20% and no other combination can be formed with E which would not exceed 20%.

Year 3 (second preceding fiscal year)—Financial statements for D, E and F may be omitted since the combined significance of these entities is 33% [5] and no other combination can be formed with E and F which would not exceed 40%.

The financial statement requirements must be satisfied by filing separate pre-acquisition audited financial statements for each entity that was not included in the consolidated financial statements for the periods set forth above. The following table illustrates the requirements for this example.

Component entity	Date of acquisition	Minimum financial statement requirement (months)	Period in consolidated financial statements (months)	Separate pre-acquisition audited financial statement (months)
Registrant	N/A	33	36	
A	1/1/x7	33	24	9
B	4/1/x7	33	21	[6]12
C	9/1/x7	33	16	17
D	2/1/x8	21	11	10
E	11/1/x8		2	
F	To be acquired	9		9

[6] The audited pre-acquisition period need not correspond to the acquiree's pre-acquisition fiscal year. However, audited periods must not be for periods in excess of 12 months.

K. Financial Statements of Acquired Troubled Financial Institutions

Facts: Federally insured depository institutions are subject to regulatory oversight by various federal agencies including the Federal Reserve, Office of the Comptroller of the Currency, Federal Deposit Insurance Corporation and Office of Thrift Supervision. During the 1980s, certain of these institutions experienced significant financial difficulties resulting in their inability to meet necessary capital and other regulatory requirements. The Financial Institutions Reform, Recovery and Enforcement Act of 1989 was adopted to address various issues affecting this industry.

Many troubled institutions have merged into stronger institutions or reduced the scale of their operations through the sale of branches and other assets pursuant to recommendation or directives of the regulatory agencies. In other situations, institutions that were taken over by or operated under the management of a federal regulator have been reorganized, sold or transferred by that federal agency to financial and nonfinancial companies.

A number of registrants have acquired, or are contemplating acquisition of, these troubled financial institutions. Complete audited financial statements of the institutions for the periods necessary to comply fully with Rule 3–05 of Regulation S–X may not be reasonably available in some cases. Some troubled institutions have never obtained an audit while others have been operated under receivership by regulators for a significant period without audit. Auditors' reports on the financial statements of some of these acquirees may not satisfy the requirements of Rule 2–02 of Regulation S–X because they contain qualifications due to audit scope limitations or disclaim an opinion.

A registrant that acquires a troubled financial institution for which complete audited financial statements are not reasonably available may be precluded from raising capital through a public offering of securities for up to three years following the acquisition because of the inability to comply with Rule 3–05.

Question 1: Are there circumstances under which the staff would conclude that financial statements of an acquired troubled financial institution are not required by Rule 3–05?

Interpretive Response: Yes. In some case, financial statements will not be required because there is not sufficient continuity of the acquired entity's operations prior to and after the acquisition, so that disclosure of prior financial information is material to an understanding of future operations, as discussed in Rule 11–01 of Regulation S–X. For example, such a circumstance may exist in the case of an acquisition solely of the physical facilities of a banking branch with assumption of the related deposits if neither income-producing assets (other than treasury bills and similar low-risk investment) nor the management responsible for its historical investment and lending activities transfer with the branch to the registrant. In this and other circumstances, where the registrant can persuasively demonstrate that continuity of operations is substantially lacking and a representation to this effect is included in the filing, the staff will not object to the omission of financial statements. However, applicable disclosures specified by Industry Guide 3, Article 11 of Regulation S–X (pro forma information), and other information which is descriptive of the transaction and of the assets acquired and liabilities assumed should be furnished to the extent reasonably available.

Question 2: If the acquired financial institution is found to constitute a business having material continuity of operations after the transaction, are there circumstances in which the staff will waive the requirements of Rule 3–05?

Interpretive Response: Yes. The staff believes the circumstances surrounding the present restructuring of U.S. depository institutions are unique. Accordingly, the staff has identified situations in which it will grant a waiver of the requirements of Rule 3–05 of Regulation S–X to the extent that audited financial statements are not reasonably available.

For purposes of this waiver a "troubled financial institution" is one which either:

a. Is in receivership, conservatorship or is otherwise operating under a similar supervisory agreement with a federal financial regulatory agency; or

b. Is controlled by a federal regulatory agency; or

c. Is acquired in a federally assisted transaction.

A registrant that acquires a troubled financial institution that is deemed significant pursuant to Rule 3–05 may omit audited financial statements of the acquired entity, if such statements are not reasonably available and the total acquired assets of the troubled institution do not exceed 20% of the registrant's assets before giving effect to the acquisition. The staff will consider requests for waivers in situations involving more significant acquisitions, where federal financial assistance or guarantees are an essential part of the transaction, or where the nature and magnitude of federal assistance is so pervasive as to substantially reduce the relevance of such information to an assessment of future operations. Where financial statements are waived, disclosure concerning the acquired business as outlined in response to Question 3 must be furnished.

Question 3: Where historical financial statements meeting the requirements of Rule 3–05 of Regulation S–X are waived, what financial statements and other disclosures would the staff expect to be provided in filings with the Commission?

Interpretive Response: Where complete audited historical financial statements of a significant acquiree that is a troubled financial institution are not provided, the staff would expect filings to include an audited statement of assets acquired and liabilities assumed if the acquisition is not already reflected in the registrant's most recent audited balance sheet at the time the filing is made. Where reasonably available, unaudited statement of operations and cash flows that are prepared in accordance with GAAP and otherwise comply with Regulation S–X should be filed in lieu of any audited financial statements which are not provided if historical information may be relevant.

In all cases where a registrant succeeds to assets and/or liabilities of a troubled financial institution which are significant to the registrant pursuant to the tests in Rule 1–02(w) of Regulation S–X, narrative description should be required, quantified to the extent practicable, of the anticipated effects of the acquisition on the registrant's financial condition, liquidity, capital resources and operating results. If federal financial assistance (including any commitments, agreements or understandings made with respect to capital, accounting or other forbearances) may be material, the limits, conditions and other variables affecting its availability should be disclosed, along with an analysis of its likely short term and long term effects on cash flows and reported results.

If the transaction will result in the recognition of any significant intangibles that cannot be separately sold, such as goodwill or a core deposit intangible, the discussion of the transaction should describe the amount of such intangibles, the necessarily subjective nature of the estimation of the life and value of such intangibles, and the effects upon future results of operations, liquidity and capital resources, including any consequences if a recognized intangible will be excluded from the calculation of capital for regulatory purposes. The discussion of the impact on future operations should specifically address the period over which intangibles will be amortized and the period over which any discounts on acquired assets will be taken into income. If amortization of intangibles will be over a period which differs from the period over which income from discounts on acquired assets will be recognized (whether from amortization of discounts or sale of discounted assets), disclosure should be provided concerning the disparate effects of the amortization and income recognition on operating results for all affected periods.

Information specified by Industry Guide 3 should be furnished to the extent applicable and reasonably available. For the categories identified in the Industry Guide, the registrant should disclose the carrying value of loans and investments acquired, as well as their principal amount and average contractual yield and term. Amounts of acquired investments, loans, or other assets that are nonaccrual, past due or restructured, or for which other collectibility problems are indicated should be disclosed. Where historical financial statements of the acquired entity are furnished, pro forma information presented pursuant to Rule 11–02 should be supplemented as necessary with a discussion of the likely effects of any federal assistance and changes in operations subsequent to the acquisition. To the extent historical financial statements meeting all the requirements of Rule 3–05 are not furnished, the filing should include an explanation of the basis for their omission.

Question 4: If an audited statement of assets acquired and liabilities assumed is required, but certain of the assets conveyed in the transaction are subject to rights allowing the registrant to put the assets back to the seller upon completion of a due diligence review, will the staff grant an extension of time for filing the required financial statement until the put period lapses?

Interpretive Response: If it is impracticable to provide an audited statement at the time the Form 8–K reporting the transaction is filed, an extension of time is available under certain circumstances. Specifically, if more than 25% of the acquired assets may be put and the put period does not exceed 120 days, the registrant should timely file a statement of assets acquired and liabilities assumed on an unaudited basis with full disclosure of the terms and amounts of the put arrangement. Within 21 days after the put period lapses, the registrant should furnish an audited statement of assets acquired and liabilities assumed unless the effects of the transaction are already reflected in an audited balance sheet which has been filed with the Commission. However, until the audited financial statement has been filed, certain offerings under the Securities Act of 1933 would be prevented, as described in Instruction 1 to Item 7 of Form 8–K.

L. Deleted by SAB 103

M. Materiality

1. Assessing Materiality

Facts: During the course of preparing or auditing year-end financial statements, financial management or the registrant's independent auditor becomes aware of misstatements in a registrant's financial statements. When combined, the misstatements result in a 4% overstatement of net income and a $.02 (4%) overstatement of earnings per share. Because no item in the registrant's consolidated financial statements is misstated by more than 5%, management and the independent auditor conclude that the deviation from GAAP is immaterial and that the accounting is permissible.[1]

[5] Combined significance is the sum of the significance of D's investment test (13%), E's earnings test (9%) and F's earnings test (11%).

[1] AU 312 states that the auditor should consider audit risk and materiality both in (a) planning and setting the scope for the audit and (b) evaluating whether the financial statements taken as a whole are fairly presented in all material respects in conformity with GAAP. The purpose of this SAB is to provide guidance to financial management and independent auditors with respect to the evaluation of the materiality of misstatements that are identified in the audit process or preparation of the financial statements (*i.e.*, (b) above). This SAB is not

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Question: Each Statement of Financial Accounting Standards adopted by the FASB states, "The provisions of this Statement need not be applied to immaterial items." In the staff's view, may a registrant or the auditor of its financial statements assume the immateriality of items that fall below a percentage threshold set by management or the auditor to determine whether amounts and items are material to the financial statements?

Interpretive Response: No. The staff is aware that certain registrants, over time, have developed quantitative thresholds as "rules of thumb" to assist in the preparation of their financial statements, and that auditors also have used these thresholds in their evaluation of whether items might be considered material to users of a registrant's financial statements. One rule of thumb in particular suggests that the misstatement or omission [2] of an item that falls under a 5% threshold is not material in the absence of particularly egregious circumstances, such as self-dealing or misappropriation by senior management. The staff reminds registrants and the auditors of their financial statements that exclusive reliance on this or any percentage or numerical threshold has no basis in the accounting literature or the law.

The use of a percentage as a numerical threshold, such as 5%, may provide the basis for a preliminary assumption that—without considering all relevant circumstances—a deviation of less than the specified percentage with respect to a particular item on the registrant's financial statements is unlikely to be material. The staff has no objection to such a "rule of thumb" as an initial step in assessing materiality. But quantifying, in percentage terms, the magnitude of a misstatement is only the beginning of an analysis of materiality; it cannot appropriately be used as a substitute for a full analysis of all relevant considerations. Materiality concerns the significance of an item to users of a registrant's financial statements. A matter is "material" if there is a substantial likelihood that a reasonable person would consider it important. In its Concepts Statement 2, the FASB stated the essence of the concept of materiality as follows:

> The omission or misstatement of an item in a financial report is material if, in the light of surrounding circumstances, the magnitude of the item is such that it is probable that the judgment of a reasonable person relying upon the report would have been changed or influenced by the inclusion or correction of the item.[3]

This formulation in the accounting literature is in substance identical to the formulation used by the courts in interpreting the federal securities laws. The Supreme Court has held that a fact is material if there is—

> a substantial likelihood that the * * * fact would have been viewed by the reasonable investor as having significantly altered the "total mix" of information made available.[4]

Under the governing principles, an assessment of materiality requires that one views the facts in the context of the "surrounding circumstances," as the accounting literature puts it, or the "total mix" of information, in the words of the Supreme Court. In the context of a misstatement of a financial statement item, while the "total mix" includes the size in numerical or percentage terms of the misstatement, it also includes the factual context in which the user of financial statements would view the financial statement item. The shorthand in the accounting and auditing literature for this analysis is that financial management and the auditor must consider both "quantitative" and "qualitative" factors in assessing an item's materiality.[5] Court decisions, Commission rules and enforcement actions, and accounting and auditing literature [6] have all considered "qualitative" factors in various contexts.

The FASB has long emphasized that materiality cannot be reduced to a numerical formula. In its Concepts Statement 2, the FASB noted that some had urged it to promulgate quantitative materiality guides for use in a variety of situations. The FASB rejected such an approach as representing only a "minority view, stating—

> The predominant view is that materiality judgments can properly be made only by those who have all the facts. The Board's present position is that no general standards of materiality could be formulated to take into account all the considerations that enter into an experienced human judgment.[7]

The FASB noted that, in certain limited circumstances, the Commission and other authoritative bodies had issued quantitative materiality guidance, citing as examples guidelines ranging from one to ten percent with respect to a variety of disclosures.[8] And it took account of contradictory studies, one showing a lack of uniformity among auditors on materiality judgments, and another suggesting widespread use of a "rule of thumb" of five to ten percent of net income.[9] The FASB also considered whether an evaluation of materiality could be based solely on anticipating the market's reaction to accounting information.[10]

The FASB rejected a formulaic approach to discharging "the onerous duty of making materiality decisions" [11] in favor of an approach that takes into account all the relevant considerations. In so doing, it made clear that—

> [M]agnitude by itself, without regard to the nature of the item and the circumstances in which the judgment has to be made, will not generally be a sufficient basis for a materiality judgment.[12]

Evaluation of materiality requires a registrant and its auditor to consider all the relevant circumstances, and the staff believes that there are numerous circumstances in which misstatements below 5% could well be material. Qualitative factors may cause misstatements of quantitatively small amounts to be material; as stated in the auditing literature:

> As a result of the interaction of quantitative and qualitative considerations in materiality judgments, misstatements of relatively small amounts that come to the auditor's attention could have a material effect on the financial statements.[13]

Among the considerations that may well render material a quantitatively small misstatement of a financial statement item are—

- Whether the misstatement arises from an item capable of precise measurement or whether it arises from an estimate and, if so, the degree of imprecision inherent in the estimate.[14]
- Whether the misstatement masks a change in earnings or other trends.
- Whether the misstatement hides a failure to meet analysts' consensus expectations for the enterprise.
- Whether the misstatement changes a loss into income or vice versa.
- Whether the misstatement concerns a segment or other portion of the registrant's business that has been identified as playing a significant role in the registrant's operations or profitability.
- Whether the misstatement affects the registrant's compliance with regulatory requirements.
- Whether the misstatement affects the registrant's compliance with loan covenants or other contractual requirements.
- Whether the misstatement has the effect of increasing management's compensation—for example, by satisfying requirements for the award of bonuses or other forms of incentive compensation.
- Whether the misstatement involves concealment of an unlawful transaction.

This is not an exhaustive list of the circumstances that may affect the materiality of a quantitatively small misstatement.[15] Among other factors, the demonstrated volatility of the price of a registrant's securities in response to certain types of disclosures may provide guidance as to whether investors regard quantitatively small misstatements as material. Consideration of potential market reaction to disclosure of a misstatement is by itself "too blunt an instrument to be depended on" in considering whether a fact is material.[16] When, however, management or the independent auditor expects (based, for example, on a pattern of market performance) that a known misstatement may result in a significant positive or negative market reaction, that expected reaction should be taken into account when considering whether a misstatement is material.[17]

For the reasons noted above, the staff believes that a registrant and the auditors of its financial statements should not assume that even small intentional misstatements in financial statements, for example those pursuant to actions to "manage" earnings, are immaterial.[18] While the intent of management does not render a misstatement material, it may provide significant evidence of materiality. The evidence may be particularly compelling where management has intentionally misstated items in the financial statements to "manage" reported earnings. In that instance, it presumably has done so believing that the resulting amounts and trends would be significant to users of the registrant's financial statements.[19] The staff believes that investors generally would regard as significant a management practice to over-or under-state earnings up to an amount just short of a percentage threshold in order to "manage" earnings. Investors presumably also would regard as significant an accounting practice that, in essence, rendered all earnings figures subject to a management-directed margin of misstatement.

The materiality of a misstatement may turn on where it appears in the financial statements. For example, a misstatement may involve a segment of the registrant's operations. In that instance, in assessing materiality of a misstatement to the financial statements taken as a whole, registrants and their auditors should consider not only the size of the misstatement but also the significance of the segment information to the financial statements taken as a whole.[20] "A misstatement of the revenue and operating profit of a relatively small segment that is represented by management to be important to the future profitability of the entity."[21] is more likely to be material to investors than a misstatement in a segment that management has not identified as especially important. In assessing the materiality of misstatements in segment information—as with materiality generally—

> Situations may arise in practice where the auditor will conclude that a matter relating to segment information is qualitatively material even though, in his or her judgment, it is quantitatively immaterial to the financial statements taken as a whole.[22]

Aggregating and Netting Misstatements

In determining whether multiple misstatements cause the financial statements to be materially misstated, registrants and the auditors of their financial statements should consider each misstatement separately and the aggregate effect of all misstatements.[23] A registrant and its auditor should evaluate misstatements in light of quantitative and qualitative factors and "consider whether, in relation to individual amounts, subtotals, or totals in the financial statements, they materially misstate the financial statements taken as a whole." [24] This requires consideration of—

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intended to provide definitive guidance for assessing "materiality" in other contexts, such as evaluations of auditor independence, as other factors may apply. There may be other rules that address financial presentation. See, *e.g.*, Rule 2a–4, 17 CFR 270.2a–4, under the Investment Company Act of 1940.

[2] See, e.g., Rule 2a–4, 17 CFR 270.2a–4, under the Investment Company Act of 1940. As used in this SAB, "misstatement" or "omission" refers to a financial statement assertion that would not be in conformity with GAAP.

[3] Concepts Statement 2, paragraph 132. *See* also Concepts Statement 2, Glossary of Terms—Materiality.

[4] *TSC Industries* v. *Northway, Inc.*, 426 U.S. 438, 449 (1976). See also *Basic, Inc.* v. *Levinson*, 485 U.S. 224 (1988). As the Supreme Court has noted, determinations of materiality require "delicate assessments of the inferences a 'reasonable shareholder' would draw from a given set of facts and the significance of those inferences to him. * * *" TSC Industries, 426 U.S. at 450.

[5] *See, e.g.*, Concepts Statement 2, paragraphs 123–124; AU 312A.10 (materiality judgments are made in light of surrounding circumstances and necessarily involve both quantitative and qualitative considerations); AU 312A.34 ("Qualitative considerations also influence the auditor in reaching a conclusion as to whether misstatements are material."). As used in the accounting literature and in this SAB, "qualitative" materiality refers to the surrounding circumstances that inform an investor's evaluation of financial statement entries. Whether events may be material to investors for non-financial reasons is a matter not addressed by this SAB.

[6] *See, e.g.*, Rule 1–02(o) of Regulation S–X, 17 CFR 210.1–02(o), Rule 405 of Regulation C, 17 CFR 230.405, and Rule 12b–2, 17 CFR 240.12b–2; AU 312A.10—.11, 317.13, 411.04 n. 1, and 508.36; In re Kidder Peabody Securities Litigation, 10 F. Supp. 2d 398 (S.D.N.Y. 1998); *Parnes* v. *Gateway 2000, Inc.*, 122 F.3d 539 (8th Cir. 1997); In re Westinghouse Securities Litigation, 90 F.3d 696 (3d Cir. 1996); In the Matter of W.R. Grace & Co., Accounting and Auditing Enforcement Release ("AAER") 1140 (June 30, 1999); In the Matter of Eugene Gaughan, AAER 1141 (June 30, 1999); In the Matter of Thomas Scanlon, AAER 1142 (June 30, 1999); and In re Sensormatic Electronics Corporation, Sec. Act Rel. No. 7518 (March 25, 1998).

[7] Concepts Statement 2, paragraph 131.

[8] Concepts Statement 2, paragraphs 131 and 166.

[9] Concepts Statement 2, paragraph 167.

[10] Concepts Statement 2, paragraphs 168–169.

[11] Concepts Statement 2, paragraph 170.

[12] Concepts Statement 2, paragraph 125.

[13] AU 312.11.

[14] As stated in Concepts Statement 2, paragraph 130:

> Another factor in materiality judgments is the degree of precision that is attainable in estimating the judgment item. The amount of deviation that is considered immaterial may increase as the attainable degree of precision decreases. For example, accounts payable usually can be estimated more accurately than can contingent liabilities arising from litigation or threats of it, and a deviation considered to be material in the first case may be quite trivial in the second.

This SAB is not intended to change current law or guidance in the accounting literature regarding accounting estimates. *See, e.g.*, Accounting Principles Board Opinion 20, Accounting Changes 10, 11, 31–33 (July 1971).

[15] The staff understands that the Big Five Audit Materiality Task Force ("Task Force") was convened in March of 1998 and has made recommendations to the Auditing Standards Board including suggestions regarding communications with audit committees about unadjusted misstatements. See generally Big Five Audit Materiality Task Force. "Materiality in a Financial Statement Audit—Considering Qualitative Factors When Evaluating Audit Findings" (August 1998).

[16] See Concepts Statement 2, paragraph 169.

[17] If management does not expect a significant market reaction, a misstatement still may be material and should be evaluated under the criteria discussed in this SAB.

[18] Intentional management of earnings and intentional misstatements, as used in this SAB, do not include insignificant errors and omissions that may occur in systems and recurring processes in the normal course of business. See notes 37 and 49 infra.

[19] Assessments of materiality should occur not only at year-end, but also during the preparation of each quarterly or interim financial statement. See, e.g., In the Matter of Venator Group, Inc., AAER 1049 (June 29, 1998).

[20] See, *e.g.*, In the Matter of W.R. Grace & Co., AAER 1140 (June 30, 1999).

[21] AU 9326.33.

[22] *Id.*

[23] The auditing literature notes that the "concept of materiality recognizes that some matters, either individually or in the aggregate, are important for fair presentation of financial statements in conformity with generally accepted accounting principles." AU 312.03. See also AU 312.04.

[24] AU 312.34. Quantitative materiality assessments often are made by comparing adjustments to revenues, gross profit, pretax and net income, total assets, stockholders' equity, or individual line items in the financial statements. The particular items in the financial statements to be considered as a basis for the materiality determination depend on the proposed adjustment to be made and other factors, such as those

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the significance of an item to a particular entity (for example, inventories to a manufacturing company), the pervasiveness of the misstatement (such as whether it affects the presentation of numerous financial statement items), and the effect of the misstatement on the financial statements taken as a whole. * * *[25]

Registrants and their auditors first should consider whether each misstatement is material, irrespective of its effect when combined with other misstatements. The literature notes that the analysis should consider whether the misstatement of "individual amounts" causes a material misstatement of the financial statements taken as a whole. As with materiality generally, this analysis requires consideration of both quantitative and qualitative factors.

If the misstatement of an individual amount causes the financial statements as a whole to be materially misstated, that effect cannot be eliminated by other misstatements whose effect may be to diminish the impact of the misstatement on other financial statement items. To take an obvious example, if a registrant's revenues are a material financial statement item and if they are materially overstated, the financial statements taken as a whole will be materially misleading even if the effect on earnings is completely offset by an equivalent overstatement of expenses.

Even though a misstatement of an individual amount may not cause the financial statements taken as a whole to be materially misstated, it may nonetheless, when aggregated with other misstatements, render the financial statements taken as a whole to be materially misleading. Registrants and the auditors of their financial statements accordingly should consider the effect of the misstatement on subtotals or totals. The auditor should aggregate all misstatements that affect each subtotal or total and consider whether the misstatements in the aggregate affect the subtotal or total in a way that causes the registrant's financial statements taken as a whole to be materially misleading.[26]

The staff believes that, in considering the aggregate effect of multiple misstatements on a subtotal or total, registrants and the auditors of their financial statements should exercise particular care when considering whether to offset (or the appropriateness of offsetting) a misstatement of an estimated amount with a misstatement of an item capable of precise measurement. As noted above, assessments of materiality should never be purely mechanical; given the imprecision inherent in estimates, there is by definition a corresponding imprecision in the aggregation of misstatements involving estimates with those that do not involve an estimate.

Registrants and auditors also should consider the effect of misstatements from prior periods on the current financial statements. For example, the auditing literature states,

> Matters underlying adjustments proposed by the auditor but not recorded by the entity could potentially cause future financial statements to be materially misstated, even though the auditor has concluded that the adjustments are not material to the current financial statements.[27]

This may be particularly the case where immaterial misstatements recur in several years and the cumulative effect becomes material in the current year.

2. Immaterial Misstatements That Are Intentional

Facts: A registrant's management intentionally has made adjustments to various financial statement items in a manner inconsistent with GAAP. In each accounting period in which such actions were taken, none of the individual adjustments is by itself material, nor is the aggregate effect on the financial statements taken as a whole material for the period. The registrant's earnings "management" has been effected at the direction or acquiescence of management in the belief that any deviations from GAAP have been immaterial and that accordingly the accounting is permissible.

Question: In the staff's view, may a registrant make intentional immaterial misstatements in its financial statements?

Interpretive Response: No. In certain circumstances, intentional immaterial misstatements are unlawful.

Considerations of the Books and Records Provisions under the Exchange Act

Even if misstatements are immaterial,[1] registrants must comply with Sections 13(b)(2)–(7) of the Securities Exchange Act of 1934 (the "Exchange Act").[2] Under these provisions, each registrant with securities registered pursuant to Section 12 of the Exchange Act,[3] or required to file reports pursuant to Section 15(d),[4] must make and keep books, records, and accounts, which, in reasonable detail, accurately and fairly reflect the transactions and dispositions of assets of the registrant and must maintain internal accounting controls that are sufficient to provide reasonable assurances that, among other things, transactions are recorded as necessary to permit the preparation of financial statements in conformity with GAAP.[5] In this context, determinations of what constitutes "reasonable assurance" and "reasonable detail" are based not on a "materiality" analysis but on the level of detail and degree of assurance that would satisfy prudent officials in the conduct of their own affairs.[6] Accordingly, failure to record accurately immaterial items, in some instances, may result in violations of the securities laws.

The staff recognizes that there is limited authoritative guidance[7] regarding the "reasonableness" standard in Section 13(b)(2) of the Exchange Act.

identified in this SAB. For example, an adjustment to inventory that is immaterial to pretax income or net income may be material to the financial statements because it may affect a working capital ratio or cause the registrant to be in default of loan covenants.

[25] AU 508.36.

[26] AU 312.34.

[27] AU 380.09.

[1] FASB Statements generally provide that "[t]he provisions of this Statement need not be applied to immaterial items." This SAB is consistent with that provision of the Statements. In theory, this language is subject to the interpretation that the registrant is free intentionally to set forth immaterial items in financial statements in a manner that plainly would be contrary to GAAP if the misstatement were material. The staff believes that the FASB did not intend this result.

[2] 15 U.S.C. 78m(b)(2)–(7).

[3] 15 U.S.C. 78l.

[4] 15 U.S.C. 78o(d).

[5] Criminal liability may be imposed if a person knowingly circumvents or knowingly fails to implement a system of internal accounting controls or knowingly falsifies books, records or accounts. 15 U.S.C. 78m(4) and (5). See also Rule 13b2–1 under the Exchange Act, 17 CFR 240.13b2–1, which states, "No person shall, directly or indirectly, falsify or cause to be falsified, any book, record or account subject to Section 13(b)(2)(A) of the Securities Exchange Act."

[6] 15 U.S.C. 78m(b)(7). The books and records provisions of section 13(b) of the Exchange Act originally were passed as part of the Foreign Corrupt Practices Act ("FCPA"). In the conference committee report regarding the 1988 amendments to the FCPA, the committee stated:

> The conference committee adopted the prudent man qualification in order to clarify that the current standard does not connote an unrealistic degree of exactitude or precision. The concept of reasonableness of necessity contemplates the weighing of a number of relevant factors, including the costs of compliance.

Cong. Rec. H2116 (daily ed. April 20, 1988).

[7] So far as the staff is aware, there is only one judicial decision that discusses Section 13(b)(2) of the Exchange Act in any detail, SEC v. World-Wide Coin Investments, Ltd., 567 F. Supp. 724 (N.D. Ga. 1983), and the courts generally have found that no private right of action exists under the accounting and books and records provisions of the Exchange Act. See *e.g.*, Lamb v. Phillip Morris Inc., 915 F.2d 1024 (6th Cir. 1990) and JS Service Center Corporation v. General Electric Technical Services Company, 937 F. Supp. 216 (S.D.N.Y. 1996).

A principal statement of the Commission's policy in this area is set forth in an address given in 1981 by then Chairman Harold M. Williams.[8] In his address, Chairman Williams noted that, like materiality, "reasonableness" is not an "absolute standard of exactitude for corporate records."[9] Unlike materiality, however, "reasonableness" is not solely a measure of the significance of a financial statement item to investors. "Reasonableness," in this context, reflects a judgment as to whether an issuer's failure to correct a known misstatement implicates the purposes underlying the accounting provisions of Sections 13(b)(2)–(7) of the Exchange Act.[10]

In assessing whether a misstatement results in a violation of a registrant's obligation to keep books and records that are accurate "in reasonable detail," registrants and their auditors should consider, in addition to the factors discussed above concerning an evaluation of a misstatement's potential materiality, the factors set forth below.

- The significance of the misstatement. Though the staff does not believe that registrants need to make finely calibrated determinations of significance with respect to immaterial items, plainly it is "reasonable" to treat misstatements whose effects are clearly inconsequential differently than more significant ones.
- How the misstatement arose. It is unlikely that it is ever "reasonable" for registrants to record misstatements or not to correct known misstatements—even immaterial ones—as part of an ongoing effort directed by or known to senior management for the purposes of "managing" earnings. On the other hand, insignificant misstatements that arise from the operation of systems or recurring processes in the normal course of business generally will not cause a registrant's books to be inaccurate "in reasonable detail."[11]
- The cost of correcting the misstatement. The books and records provisions of the Exchange Act do not require registrants to make major expenditures to correct small misstatements.[12] Conversely, where there is little cost or delay involved in correcting a misstatement, failing to do so is unlikely to be "reasonable."
- The clarity of authoritative accounting guidance with respect to the misstatement. Where reasonable minds may differ about the appropriate accounting treatment of a financial statement item, a failure to correct it may not render the registrant's financial statements inaccurate "in reasonable detail." Where, however, there is little ground for reasonable disagreement, the case for leaving a misstatement uncorrected is correspondingly weaker.

There may be other indicators of "reasonableness" that registrants and their auditors may ordinarily consider. Because the judgment is not mechanical, the staff will be inclined to continue to defer to judgments that "allow a business, acting in good faith, to comply with the Act's accounting provisions in an innovative and cost-effective way."[13]

The Auditor's Response to Intentional Misstatements

Section 10A(b) of the Exchange Act requires auditors to take certain actions upon discovery of an "illegal act."[14] The statute specifies that these obligations are triggered "whether or not [the illegal acts are] perceived to have a material effect on the financial statements of the issuer. * * *" Among other things, Section 10A(b)(1) requires the auditor to inform the appropriate level of management of an illegal act (unless clearly inconsequential) and assure that the registrant's audit committee is "adequately informed" with respect to the illegal act.

As noted, an intentional misstatement of immaterial items in a registrant's financial statements may violate Section 13(b)(2) of the Exchange Act and thus be an illegal act. When such a violation occurs, an auditor must take steps to see that the registrant's audit committee is "adequately informed" about the illegal act. Because Section 10A(b)(1) is triggered regardless of whether an illegal act has a material effect on the registrant's financial statements, where the illegal act consists of a misstatement in the registrant's financial statements, the auditor will be required to report that illegal act to the audit committee irrespective of any "netting" of the misstatements with other financial statement items.

The requirements of Section 10A echo the auditing literature. See, for example, SAS Nos. 54 and 99. Pursuant to paragraph 77 of SAS 99, if the auditor determines there is evidence that fraud may exist, the auditor must discuss the matter with the appropriate level of management that is at least one level above those involved, and with senior management and the audit committee. The auditor must report directly to the audit committee fraud involving senior management and fraud that causes a material misstatement of the financial statements. Paragraph 6 of SAS 99 states that "misstatements arising from fraudulent financial reporting are intentional misstatements or omissions of amounts or disclosures in financial statements designed to deceive financial statement users * * *."[15] SAS 99 further states that fraudulent financial reporting may involve falsification or alteration of accounting records; misrepresenting or omitting events, transactions or other information in the financial statements; and the intentional misapplication of accounting principles relating to amounts, classifications, the manner of presentation, or disclosures in the financial statements.[16] The clear

[8] The Commission adopted the address as a formal statement of policy in Securities Exchange Act Release No. 17500 (January 29, 1981), 46 FR 11544 (February 9, 1981), 21 SEC Docket 1466 (February 10, 1981).

[9] *Id.* at 46 FR 11546.

[10] *Id.*

[11] For example, the conference report regarding the 1988 amendments to the FCPA stated:

> The Conferees intend to codify current Securities and Exchange Commission (SEC) enforcement policy that penalties not be imposed for insignificant or technical infractions or inadvertent conduct. The amendment adopted by the Conferees [Section 13(b)(4)] accomplishes this by providing that criminal penalties shall not be imposed for failing to comply with the FCPA's books and records or accounting provisions. This provision [Section 13(b)(5)] is meant to ensure that criminal penalties would be imposed where acts of commission or omission in keeping books or records or administering accounting controls have the purpose of falsifying books, records or accounts, or of circumventing the accounting controls set forth in the Act. This would include the deliberate falsification of books and records and other conduct calculated to evade the internal accounting controls requirement.

Cong. Rec. H2115 (daily ed. April 20, 1988).

[12] As Chairman Williams noted with respect to the internal control provisions of the FCPA, "[t]housands of dollars ordinarily should not be spent conserving hundreds." 46 FR 11546.

[13] *Id.*, at 11547.

[14] Section 10A(f) defines, for purposes of Section 10A, an "illegal act" as "an act or omission that violates any law, or any rule or regulation having the force of law." This is broader than the definition of an "illegal act" in AU 317.02, which states, "Illegal acts by clients do not include personal misconduct by the entity's personnel unrelated to their business activities."

[15] An unintentional illegal act triggers the same procedures and considerations by the auditor as a fraudulent misstatement if the illegal act has a direct and material effect on the financial statements. See AU 110 n. 1, 317.05 and 317.07. Although distinguishing between intentional and unintentional misstatements is often difficult, the auditor must plan and perform the audit to obtain reasonable assurance that the financial statements are free of material misstatements in either case.

[16] Although the auditor is not required to plan or perform the audit to detect misstatements that are immaterial to the financial statements, SAS 99 requires the auditor to evaluate several fraud "risk factors" that may bring such misstatements to his or her attention. For example, an analysis of fraud risk factors under SAS 99 must include, among other things, consideration of management's interest in maintaining or increasing the registrant's stock price or earnings trend through the use of unusually aggressive accounting practices, whether

Continued

implication of SAS 99 is that immaterial misstatements may be fraudulent financial reporting.[17]

Auditors that learn of intentional misstatements may also be required to (1) re-evaluate the degree of audit risk involved in the audit engagement, (2) determine whether to revise the nature, timing, and extent of audit procedures accordingly, and (3) consider whether to resign.[18]

Intentional misstatements also may signal the existence of reportable conditions or material weaknesses in the registrant's system of internal accounting control designed to detect and deter improper accounting and financial reporting.[19] As stated by the National Commission on Fraudulent Financial Reporting, also known as the Treadway Commission, in its 1987 report,

> The tone set by top management—the corporate environment or culture within which financial reporting occurs—is the most important factor contributing to the integrity of the financial reporting process. Notwithstanding an impressive set of written rules and procedures, if the tone set by management is lax, fraudulent financial reporting is more likely to occur.[20]

An auditor is required to report to a registrant's audit committee any reportable conditions or material weaknesses in a registrant's system of internal accounting control that the auditor discovers in the course of the examination of the registrant's financial statements.[21]

GAAP Precedence Over Industry Practice

Some have argued to the staff that registrants should be permitted to follow an industry accounting practice even though that practice is inconsistent with authoritative accounting literature. This situation might occur if a practice is developed when there are few transactions and the accounting results are clearly inconsequential, and that practice never changes despite a subsequent growth in the number or materiality of such transactions. The staff disagrees with this argument. Authoritative literature takes precedence over industry practice that is contrary to GAAP.[22]

General Comments

This SAB is not intended to change current law or guidance in the accounting or auditing literature.[23] This SAB and the authoritative accounting literature cannot specifically address all of the novel and complex business transactions and events that may occur. Accordingly, registrants may account for, and make disclosures about, these transactions and events based on analogies to similar situations or other factors. The staff may not, however, always be persuaded that a registrant's determination is the most appropriate under the circumstances. When disagreements occur after a transaction or an event has been reported, the consequences may be severe for registrants, auditors, and, most importantly, the users of financial statements who have a right to expect consistent accounting and reporting for, and disclosure of, similar transactions and events. The staff, therefore, encourages registrants and auditors to discuss on a timely basis with the staff proposed accounting treatments for, or disclosures about, transactions or events that are not specifically covered by the existing accounting literature.

Topic 2: Business Combinations

A. Purchase Method

1. Deleted by SAB 103

2. Deleted by SAB 103

3. Deleted by SAB 103

4. Deleted by SAB 103

5. Adjustments to Allowances for Loan Losses in Connection With Business Combinations

Facts: Bank A acquires Bank B in a business combination.

Question: Are there circumstances in which it is appropriate for Bank A, in assigning acquisition cost to the loan receivables acquired from Bank B, to adjust Bank B's carrying value for those loans not only to reflect appropriate current interest rates, but also to reflect a different estimate of uncollectibility?[1]

Interpretive Response: Needed changes in allowances for loan losses are ordinarily to be made through provisions for loan losses rather than through purchase accounting adjustments. Except in the limited circumstances discussed below, where Bank A has plans for ultimate recovery of loans acquired from Bank B that are demonstrably different from plans that had served as the basis for Bank B's estimate of loan losses, purchase accounting adjustments reflecting different estimates of uncollectibility may raise questions from the staff as to: (a) The reasonableness of the preacquisition allowance for loan losses recorded by Bank B, or (b) whether the adjustments will have a distortive effect on current or future period financial statements of Bank A. Similar questions may be raised by the staff regarding significant changes in allowances for loan losses that are recorded by a bank shortly before it is acquired.

Estimation of probable loan losses involves judgment, and Banks A and B may differ in their systematic approaches to such estimation. Nevertheless, assuming that appropriate methodology (*i.e.*, giving due consideration to all relevant facts and circumstances affecting collectibility) is followed by each bank, the staff believes that each bank's estimate of the uncollectible portion of Bank B's loan portfolio should fall within a range of acceptability. That is, the staff believes that the uncollectible portion of Bank B's loans as estimated separately by the two banks ordinarily should not be different by an amount that is material to the financial statements of Bank B and, therefore, an adjustment to the net carrying value of Bank B's loan portfolio at the acquisition date to reflect a different estimate of uncollectibility ordinarily would be unnecessary and inappropriate.

However, a purchase accounting adjustment to reflect a different estimate of uncollectibility may be appropriate where Bank A has plans regarding ultimate recovery of certain acquired loans demonstrably different from the plans that had served as the basis for Bank B's estimation of losses on those loans.[2] In such circumstances, Bank B's estimate of uncollectibility for those certain loans may be largely or entirely irrelevant for purposes of determining the net carrying value at which those loans should be recorded by Bank A. For example, if Bank B had intended to hold certain loans to maturity but Bank A plans to sell them, the acquisition cost allocated to those loans should equal the value that currently could be obtained for them in a sale.[3] In that case, Bank A would report those loans as assets held for sale rather than as part of its loan portfolio, and would report them in postacquisition periods at the lower of cost or market value until sold.

The staff does not intend to suggest that an acquiring bank should record acquired loans at an amount that reflects an unreasonable estimate of uncollectibility. If Bank B's financial statements as of the acquisition date are not fairly stated in accordance with generally accepted accounting principles because of an unreasonable allowance for loan losses, that allowance for loan losses should not serve as a basis for recording the acquired loans. Rather, Bank B's preacquisition financial statements should be restated to reflect an appropriate allowance, with the resultant adjustment being applied to the restated preacquisition income statement of Bank B for the period(s) in which the events or changes in conditions that gave rise to the needed change in the allowance occurred.

6. Debt Issue Costs

Facts: Company A is to acquire the net assets of Company B in a transaction to be accounted for as a business combination. In connection with the transaction, Company A has retained an investment banker to provide advisory services in structuring the acquisition and to provide the necessary financing. It is expected that the acquisition will be financed on an interim basis using "bridge financing" provided by the investment banker. Permanent financing will be arranged at a later date through a debt offering, which will be underwritten by the investment banker. Fees will be paid to the investment banker for the advisory services, the bridge financing and the underwriting of the permanent financing. These services may be billed separately or as a single amount.

Question 1: Are all fees paid to the investment banker a direct cost of the acquisition and, as such, accounted for as an element of the purchase price of the business acquired?

Interpretive Response: No. Fees paid to an investment banker in connection with a business combination, when the investment banker is also providing interim financing or underwriting services, must be allocated between direct costs of the acquisition and debt issue costs.

Statement 141 provides that direct costs such as finder's fees and fees paid to outside consultants should be treated as components of the cost of the acquisition, while the costs of registering and issuing any equity securities are treated as a reduction of the otherwise determined fair value of the equity securities. However, debt issue costs are an element of the effective interest cost of the debt, and neither the source of the debt financing nor the use of the debt proceeds changes the nature of such costs. Accordingly, they should not be considered a direct cost of the acquisition.

The portions of the fees allocated to direct costs and to debt issue costs should be representative of the actual services provided. Thus, in making a reasonable allocation (or in determining that an allocation made by the investment banker is reasonable[1] factors such as (i) the fees charged by investment bankers in connection with other recent bridge financings and (ii) fees charged for advisory services when obtained separately, should normally be considered to determine the relative fair values of the two services. Whether these or other factors are considered, the allocation should normally result in an effective debt service cost (interest and amortization of debt issue costs[2] which is comparable to the effective cost of other recent debt issues of similar investment risk and maturity. The amount accounted for as debt issue costs should be separately disclosed, if material.[1]

Question 2: May the debt issue costs of the interim "bridge financing" be amortized over the anticipated combined life of the bridge and permanent financings?

Interpretive Response: No. Debt issue costs should be amortized by the interest method over the life of the debt to which they relate. Debt issue costs related to the bridge financing should be recognized as interest cost during the estimated interim period preceding the placement of the permanent financing with any unamortized amounts charged to expense if the bridge loan is repaid prior to the expiration of the estimated period. Where the bridged financing consists of increasing rate debt, the consensus reached in EITF Issue 86–15 should be followed.[4]

7. Loss Contingencies Assumed in a Business Combination

Facts: A registrant acquires a business enterprise in a business combination. In connection with the acquisition, the acquiring company assumes certain contingent liabilities of the acquired company.

Question: How should the acquiring company account for and disclose contingent liabilities that have been assumed in a business combination?

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management has a practice of committing to analysts or others that it will achieve unduly aggressive or clearly unrealistic forecasts, and the existence of assets, liabilities, revenues, or expenses based on significant estimates that involve unusually subjective judgments or uncertainties.

[17] In requiring the auditor to consider whether fraudulent misstatements are material, and in requiring differing responses depending on whether the misstatement is material, SAS 99 makes clear that fraud can involve immaterial misstatements. Indeed, a misstatement can be "inconsequential" and still involve fraud.

Under SAS 99, assessing whether misstatements due to fraud are material to the financial statements is a "cumulative process" that should occur both during and at the completion of the audit. SAS 99 further states that this accumulation is primarily a "qualitative matter" based on the auditor's judgment. The staff believes that in making these assessments, management and auditors should refer to the discussion in Part 1 of this SAB.

[18] Auditors should document their determinations in accordance with SAS 96, SAS 99, and other appropriate sections of the audit literature.

[19] *See, e.g.*, SAS 99.

[20] Report of the National Commission on Fraudulent Financial Reporting at 32 (October 1987). See also Report and Recommendations of the Blue Ribbon Committee on Improving the Effectiveness of Corporate Audit Committees (February 8, 1999).

[21] AU 325.02. See also AU 380.09, which, in discussing matters to be communicated by the auditor to the audit committee, states:

> The auditor should inform the audit committee about adjustments arising from the audit that could, in his judgment, either individually or in the aggregate, have a significant effect on the entity's financial reporting process. For purposes of this section, an audit adjustment, whether or not recorded by the entity, is a proposed correction of the financial statements. * * *

[22] *See* AU 411.05

[23] The FASB Discussion Memorandum, "Criteria for Determining Materiality;" states that the financial accounting and reporting process considers that "a great deal of the time might be spent during the accounting process considering insignificant matters. * * * If presentations of financial information are to be prepared economically on a timely basis and presented in a concise intelligible form, the concept of materiality is crucial." This SAB is not intended to require that misstatements arising from insignificant errors and omissions (individually and in the aggregate) arising from the normal recurring accounting close processes, such as a clerical error or an adjustment for a missed accounts payable invoice, always be corrected, even if the error is identified in the audit process and known to management. Management and the auditor would need to consider the various factors described elsewhere in this SAB in assessing whether such misstatements are material, need to be corrected to comply with the FCPA, or trigger procedures under Section 10A of the Exchange Act. Because this SAB does not change current law or guidance in the accounting or auditing literature, adherence to the principles described in this SAB should not raise the costs associated with recordkeeping or with audits of financial statements.

[1] Under Statement 141, the guidelines for allocating acquisition cost to receivable is "at present values of amounts to be received determined at appropriate current interest rates, less allowances for uncollectibility and collection cost, if necessary."

[2] A bank's plans for recovering the net carrying value of certain individual loans or groups of loans may differ from its plans regarding other loans. The plan for recovering the net carrying value of a loan might be, for example, (a) holding the loan to maturity, (b) selling it, or (c) foreclosing on the collateral underlying the loan. The assigned value of loans should be based on the plan for recovery.

[3] It is not acceptable to recognize losses on loans that are due to concerns as to ultimate collectibility through a purchase accounting adjustment, nor is it acceptable to report such losses as "loss on sale." An excess of carrying value of Bank B's loans over their market value at the acquisition date that is due to concerns as to ultimate collectibility should have been recognized by Bank B through its provision for loan losses.

[1] This would apply irrespective of whether the fees for the services were billed as a single amount or separately, since the separate billing of the services implicitly involves an allocation by the investment banker.

[2] See Question 2 regarding the period over which the debt issue costs related to bridge financings should be amortized.

[3] See Rule 5–02(17) of Regulations S–X.

[4] As noted in the "Status" section of the Abstract to Issue 86–15, the term-extending provisions of the debt instrument should be analyzed to determine whether they constitute an embedded derivative requiring separate accounting in accordance with Statement 133 (as amended).

Interpretive Response: In accordance with Statement 141, the acquiring company should allocate the cost of an acquired company to the assets acquired and liabilities assumed based on their fair values at the date of acquisition. With respect to contingencies for which a fair value is not determinable at the date of acquisition, the guidance of Statement 5 and Interpretation 14 should be applied. If the registrant is awaiting additional information that it has arranged to obtain for the measurement of a contingency during the allocation period specified by Statement 141, the staff believes that the registrant should disclose that the purchase price allocation is preliminary. In that circumstance, the registrant should describe the nature of the contingency and furnish other available information that will enable a reader to understand its potential effects on the final allocation and on post-acquisition operating results. Management's Discussion and Analysis should include appropriate disclosure regarding any unrecognized preacquisition contingency and its reasonably likely effects on operating results, liquidity, and financial condition.

The staff believes that the allocation period should not extend beyond the minimum reasonable period necessary to gather the information that the registrant has arranged to obtain for purposes of the estimate. Since an allocation period usually should not exceed one year, registrants believing that they will require a longer period are encouraged to discuss their circumstances with the staff. If it is unlikely that the liability can be estimated on the basis of information known to be obtainable at the time of the initial purchase price allocation, the allocation period should not be extended with respect to that liability. An adjustment to the contingent liability after the expiration of the allocation period would be recognized as an element of net income.

8. Business Combinations Prior to an Initial Public Offering

Facts: Two or more businesses combine in a single combination just prior to or contemporaneously with an initial public offering.

Question: Does the guidance in SAB Topic 5.G apply to business combinations entered into just prior to or contemporaneously with an initial public offering?

Interpretive Response: No. The guidance in SAB Topic 5.G is intended to address the transfer, just prior to or contemporaneously with an initial public offering, of nonmonetary assets in exchange for a company's stock. The guidance in SAB Topic 5.G is not intended to modify the requirements of Statement 141.[1] Accordingly, the staff believes that the combination of two or more businesses should be accounted for in accordance with Statement 141.

9. Liabilities Assumed in a Business Combination

Facts: Company A acquires Company Z in a business combination. Company Z has recorded liabilities for contingencies such as product warranties and environmental costs.

Question: Are there circumstances in which it is appropriate for Company A to adjust Company Z's carrying value for these liabilities in the purchase price allocation?

Interpretive Response: Yes. Statement 141 requires that receivables, liabilities, and accruals be recorded in the purchase price allocation at their fair value, typically the present value of amounts to be received or paid, determined using appropriate current market interest rates. In some cases, fair value is readily determinable from contemporaneous arms-length transactions involving substantially identical assets or liabilities, or from amounts quoted by a third party to purchase the assets or assume the liabilities. More frequently, fair values are based on estimations of the underlying cash flows to be received or paid, discounted to their present value using appropriate current market interest rates.

The historical accounting by Company Z for receivables or liabilities may often be premised on estimates of the amounts to be received or paid. Amounts recorded by Company A in its purchase price allocation may be expected to differ from Company Z's historical carrying values due, at least, to the effects of the acquirer's discounting, including differences in interest rates. Estimation of probable losses and future cash flows involves judgment, and companies A and Z may differ in their systematic approaches to such estimation. Nevertheless, assuming that both companies employ a methodology that appropriately considers all relevant facts and circumstances affecting cash flows, the staff believes that the two estimates of undiscounted cash inflows and outflows should not differ by an amount that is material to the financial statements of Company Z, unless Company A will settle the liability in a manner demonstrably different from the manner in which Company Z had planned to do so (for example, settlement of the warranty obligation through outsourcing versus an internal service department). But the source of other differences in the estimates of the undiscounted cash flows to be received or paid should be investigated and reconciled. If those estimates of undiscounted cash flows are materially different, an accounting error in Company Z's historical financial statements may be present, or Company A may be unaware of important information underlying Company Z's estimates that also is relevant to an estimate of fair value.

The staff is not suggesting that an acquiring company should record assumed liabilities at amounts that reflect an unreasonable estimate. If Company Z's financial statements as of the acquisition date are not fairly stated in accordance with GAAP because of an improperly recorded liability, that liability should not serve as a basis for recording assumed amounts. That is, the correction of a seller's erroneous application of GAAP should not occur through the purchase price allocation. Rather, Company Z's financial statements should be restated to reflect an appropriate amount, with the resultant adjustment being applied to the historical income statement of Company Z for the period(s) in which the trends, events, or changes in operations and conditions that gave rise to the needed change in the liability occurred. It would also be inappropriate for Company Z to report the amount of any necessary adjustment in the period just prior to the acquisition, unless that is the period in which the trends, events, or changes in operations and conditions occurred. The staff would expect that such trends, events, and changes would be disclosed in Management's Discussion and Analysis in the appropriate period(s) if their effect was material to a company's financial position, results of operations or cash flows.

In summary, the staff believes that purchase price adjustments necessary to record liabilities and loss accruals at fair value typically are required, while merely adding an additional "cushion" of 10 or 20 or 30 percent to such account balances is not appropriate. To arrive at those fair values, the undiscounted cash flows must be projected, period by period, based on historical experience and discounted at the appropriate current market discount rate.

[1] The provisions of Statement 141 apply to transactions involving the transfer of net assets as well as the acquisition of stock of a corporation. This guidance does not address the accounting for joint ventures or leverage buy-out transactions as discussed in EITF Issue 88–16.

B. Deleted by SAB 103

C. Deleted by SAB 103

D. Financial Statements of Oil and Gas Exchange Offers

Facts: The oil and gas industry has experienced periods of time where there have been a significant number of "exchange offers" (also referred to as "roll-ups" or "put-togethers") to form a publicly held company, take an existing private company public, or increase the size of an existing publicly held company. An exchange offer transaction involves a swap of shares in a corporation for interests in properties, typically limited partnership interests. Such interests could include direct interests such as working interests and royalties related to developed or undeveloped properties and indirect interests such as limited partnership interests or shares of existing oil and gas companies. Generally, such transactions are structured to be tax-free to the individual or entity trading the property interest for shares of the corporation. Under certain circumstances, however, part or all of the transaction may be taxable. For purposes of the discussion in this Topic, in each of these situations, the entity(ies) or property(ies) are deemed to constitute a business.

The fundamental accounting issues in exchange transactions involve determining the basis at which the properties exchanged should be recorded and deciding what prior financial results of the entities should be reported. In this regard, Statement 141 specifies that a business combination be accounted for using the purchase method. Statement 141 speaks specifically to business combinations between nonaffiliated enterprises. When affiliated enterprises (under common control) are involved, the guidance in paragraphs D11–D13 of Statement 141 should be followed. In particular, paragraph D12 states:

> When accounting for a transfer of assets or exchange of shares between entities under common control, the entity that receives the net assets or the equity interest shall initially recognize the assets and liabilities transferred at their carrying amounts in the accounts of the transferring entity at the date of transfer.

Paragraph D13 states:

> The purchase method of accounting shall be applied if the effect of the transfer or exchange * * * is the acquisition of all or a part of the noncontrolling equity interests in a subsidiary.

The staff has developed administrative policies which it has followed with respect only to the financial statements of oil and gas exchange offers included in filings with the Commission and the conclusions expressed in this Topic should not be analogized to other circumstances.

Question 1: What are the staff's general guidelines in determining the appropriate basis of accounting in an exchange transaction?

Interpretive Response: The staff believes the basis of accounting should be determined pursuant to the provisions of Statement 141, if it is applicable. Accordingly, where unrelated parties are involved, it is appropriate to apply purchase accounting based on the fair value of either the stock issued or the properties involved.

The following chart shows the method of accounting to be used under some relatively simple sets of circumstances.

ACCOUNTING—BASED ON STATUS OF ISSUING ENTITY

Condition	Public company [1]	Non-public company [2]
High degree of common ownership or common control between issuing corporation and offerees [3].	Purchase accounting based on fair value of stock [4].	Entities under common control—carry-over basis
All other, *i.e.*, without common ownership or control.	Purchase accounting based on fair value of stock.	Purchase accounting based on fair value of properties.

[1] Issuing corporation is an existing public company before the exchange offer with an established market for its stock (includes situations involving use of a shell company established by a public company).
[2] Issuing corporation is not public prior to the exchange offer and thus has no established market for its stock.
[3] Common control ordinarily exists where the issuing corporation acts as general partner for the offeree partnership(s). Where all the following conditions apply, common control will be considered to exist between the issuing corporation and the offerees even though the issuer does not exercise the same legal powers as a general partner:
a. The issuer or its survivor initially acquired the property for exploration and development *and*
b. Other investors were of a passive nature, solicited to provide financing with the hope of a return on their investment, and
c. The issuer or its survivor has continued to exercise day-to-day managerial control.
[4] In rare instances, such as when the property interest owners accepting the exchange offer acquire a majority of the voting shares of the company emerging from the exchange transaction, reorganization accounting may be considered appropriate. In such cases, the particular facts and circumstances should be reviewed with the Commission staff.

This chart reflects the staff's view that purchase accounting is generally appropriate except in situations where the principles for transactions involving common control apply. When a non-public entity acts as offeror to a group of related entities, the transaction is essentially a reorganization, and thus there is no basis for a change in the cost basis of the properties involved. If an existing public company (with an established market for its stock) has common ownership or control with the offerees, and the offerees acquire a majority interest in the emerging company, a question may arise as to whether the transaction is a reorganization.

Question 2: In some situations, a non-public issuer may be affiliated with some but not all of the offerees. Assuming the nonaffiliated offerees are not deemed "co-promoters" of the new entity, how should such a transaction be accounted for?

Interpretive Response: The property interests acquired from affiliated and nonaffiliated parties should each be accounted for as though acquired in separate exchange offer transactions. Thus in some circumstances, it may be necessary to record the interests owned by affiliated persons at predecessor cost while recording the interests of nonaffiliated persons as a purchase.

Example: Facts—D Company (a non-public company) forms a shell, E Company, to become its successor and to sponsor an exchange offer. E makes the exchange offer to four entities: A, B, C and D. A and B are unaffiliated; C is a limited partnership sponsored by D. The shareholders of D will become the principal or controlling shareholders of E.

Basis of Accounting—Since there is no market for E's stock, it should record the properties received from C and from D at their predecessor cost. The properties received from A and B

should be recorded at their fair market value.

Question 3: How should "common control accounting" be applied to the specific assets and liabilities of the new exchange company?

Interpretive Response: Under "common control accounting" the various accounting methods followed by the offeree entities should be conformed to the methods adopted by the new exchange company. It is not appropriate to combine assets and liabilities accounted for on different bases. Accordingly, as in the case of any merger between oil and gas companies, all of the oil and gas properties of the new entity must be accounted for on the same basis (either full cost or successful efforts) applied retroactively.

Question 4: In Form 10–K filings with the Commission, the staff has permitted limited partnerships to omit certain of the oil and gas reserve data disclosures required by Statement 69 in some circumstances. Is it permissible to omit these disclosures from the financial statements included in an exchange offering?

Interpretive Response: No. Normally full disclosures of reserve data and related information are required. The exemptions previously allowed relate only to partnerships where value-oriented data are otherwise available to the limited partners pursuant to the partnership agreement. The staff has previously stated that it will require all of the required disclosures for partnerships which are the subject of merger or exchange offers.[5] These disclosures may, however, be presented on a combined basis.

The staff believes that the financial statements in an exchange offer registration statement should provide sufficient historical reserve quantity and value-based disclosures to enable offerees and secondary market public investors to evaluate the effect of the exchange proposal. Accordingly, in all cases, it will be necessary to present information as of the latest year-end on reserve quantities and the future net revenues associated with such quantities. In certain circumstances, where the exchange is accounted for as a purchase, the staff will consider, on a case-by-case basis, granting exemptions from (i) the disclosure requirements for year-to-year reconciliations of reserve quantities, and (ii) the requirements for a summary of oil and gas producing activities and a summary of changes in the net present value of reserves. For instance, the staff may consider requests for exemptions in cases where the properties acquired in the exchange transaction are fully explored and developed, particularly if the management of the emerging company has not been involved in the exploration and development of such properties.

Question 5: Assume an exchange transaction is to be accounted for as a purchase and recorded at the fair value of the properties. If the exchange company will use the full cost method of accounting, does the full cost ceiling limitation apply as of the date of the financial statements reflecting the exchange?

Interpretive Response: Yes. The full cost ceiling limitation on costs capitalized does apply. However, as discussed under Topic 12.D.3, the Commission has stated that in unusual circumstances, registrants may request an exemption if as a result of a major purchase, a write-down would be required even though it can be demonstrated that the fair value of the properties clearly exceeds the unamortized costs.

Question 6: What pro forma financial information is required in an exchange offer filing?

Interpretive Response: The requirements for pro forma financial information in exchange offer filings are the same as in any other filings with the Commission and are detailed in Article 11 of Regulation S–X.[6] Rule 11–02(b) specifies the presentation requirements, including periods presented and types of adjustments to be made. The general criteria of Rule 11–02(b)(6) are that pro forma adjustments should give effect to events that are (i) directly attributable to the transaction, (ii) expected to have a continuing impact on the registrant and (iii) factually supportable. In the case of an exchange offer, such adjustments typically are made to:

(1) Show varying levels of acceptance of the offer.

(2) Conform the accounting methods used in the historical financial statements to those to be applied by the new entity.

(3) Recompute the depreciation, depletion and amortization charges, in cases where the new entity will use full-cost accounting, on a combined basis. If this computation is not practicable, and the exchange offer is accounted for as a reorganization, historical depreciation, depletion and amortization provisions may be aggregated, with appropriate disclosure.

(4) Reflect purchase cost in the pro forma statements (where the exchange offer is accounted for on the purchase basis), including depreciation, depletion and amortization based on the purchase cost.

(5) Provide pro forma reserve information.

(6) Reflect significant changes, if any, in levels of operations (revenues or costs), or in income tax status and to reflect debt incurred in connection with the transaction.

In addition, the depreciation, depletion and amortization rate which will apply for the initial period subsequent to consummation of the exchange offer should be disclosed.

Question 7: Are there conditions under which the presentation of other than full historical financial statements would be acceptable?

Interpretive Response: Generally, full historical financial statements as specified in Rules 3–01 and 3–02 of Regulations S–X are considered necessary to enable offerees and secondary market investors to evaluate the transaction. Where securities are being registered to offer to the security holders (including limited partners and other ownership interests) of the businesses to be acquired, such financial statements are normally required pursuant to Rule 3–05 of Regulation S–X, either individually for each entity or, where appropriate, separately for the offeror and on a combined basis for other entities, generally excluding corporations. However, certain exceptions may apply as explained in the outline below:

A. Purchase Accounting

1. If the registrant can demonstrate that full historical financial statements of the offeree partnerships are not reasonably available, the staff may permit presentation of audited Statements of Combined Gross Revenues and Direct Lease Operating Expenses for all years for which an income statement would otherwise be required. In these circumstances, the registrant should also disclose in an unaudited footnote the amounts of total exploration and development costs, and general and administrative expenses along with the reasons why presentation of full historical financial statements is not practicable.

2. The staff will consider requests to waive the requirement for prior year financial statements of the offeree partnerships and instead allow presentation of only the latest fiscal year and interim period, if the registrant can demonstrate that the prior years' data would not be meaningful because the offeree partnerships had no material quantity of production.

[5] *See* SAB 40, Topic 12.A.3.c.

[6] As announced in FRR 2 (July 9, 1982).

B. Common Control Accounting

The staff would expect the full historical financial statements as specified in Rules 3–01 and 3–02 of Regulation S–X would be included in the registration statement for exchange offers accounted for as reorganizations, including all required supplemental reserve information. The presentation of individual or combined financial statements would depend on the circumstances of the particular exchange offer.

Registrants are also reminded that wherever historical results are presented, it may be appropriate to explain the reasons why historical costs are not necessarily indicative of future expenditures.

E. Deleted by SAB 103

F. Deleted by SAB 103

Topic 3: Senior Securities

A. Convertible Securities

Facts: Company B proposes to file a registration statement covering convertible securities.

Question: In registration, what consideration should be given to the dilutive effects of convertible securities?

Interpretive Response: In a registration statement of convertible preferred stock or debentures, the staff believes that disclosure of pro forma earnings per share (EPS) is important to investors when the proceeds will be used to extinguish existing preferred stock or debt and such extinguishments will have a material effect on EPS. That disclosure is required by Article 11, Rule 11–01(a)(8) and Rule 11–02(a)(7) of Regulation S–X, if material.

B. Deleted by ASR 307

C. Redeemable Preferred Stock

Facts: Rule 5–02.28 of Regulation S–X states that redeemable preferred stocks are not to be included in amounts reported as stockholders' equity, and that their redemption amounts are to be shown on the face of the balance sheet. However, the Commission's rules and regulations do not address the carrying amount at which redeemable preferred stock should be reported, or how changes in its carrying amount should be treated in calculations of earnings per share and the ratio of earnings to combined fixed charges and preferred stock dividends.

Question 1: How should the carrying amount of redeemable preferred stock be determined?

Interpretive Response: The initial carrying amount of redeemable preferred stock should be its fair value at date of issue. Where fair value at date of issue is less than the mandatory redemption amount, the carrying amount shall be increased by periodic accretions, using the interest method, so that the carrying amount will equal the mandatory redemption amount at the mandatory redemption date. The carrying amount shall be further periodically increased by amounts representing dividends not currently declared or paid, but which will be payable under the mandatory redemption features, or for which ultimate payment is not solely within the control of the registrant (*e.g.*, dividends that will be payable out of future earnings). Each type of increase in carrying amount shall be effected by charges against retained earnings or, in the absence of retained earnings, by charges against paid-in capital.

The accounting described in the preceding paragraph would apply irrespective of whether the redeemable preferred stock may be voluntarily redeemed by the issuer prior to the mandatory redemption date, or whether it may be converted into another class of securities by the holder. Companies also should consider the guidance in EITF Topic D–98.

Question 2: How should periodic increases in the carrying amount of redeemable preferred stock be treated in calculations of earnings per share and ratios of earnings to combined fixed charges and preferred stock dividends?

Interpretive Response: Each type of increase in carrying amount described in the Interpretive Response to Question 1 should be treated in the same manner as dividends on nonredeemable preferred stock.

Topic 4: Equity Accounts

A. Subordinated Debt

Facts: Company E proposes to include in its registration statement a balance sheet showing its subordinate debt as a portion of stockholders' equity.

Question: Is this presentation appropriate?

Interpretive Response: Subordinated debt may not be included in the stockholders' equity section of the balance sheet. Any presentation describing such debt as a component of stockholders' equity must be eliminated. Furthermore, any caption representing the combination of stockholders' equity and only subordinated debts must be deleted.

B. S Corporations

Facts: An S corporation has undistributed earnings on the date its S election is terminated.

Question: How should such earnings be reflected in the financial statements?

Interpretive Response: Such earnings must be included in the financial statements as additional paid-in capital. This assumes a constructive distribution to the owners followed by a contribution to the capital of the corporation.

C. Change In Capital Structure

Facts: A capital structure change to a stock dividend, stock split or reverse split occurs after the date of the latest reported balance sheet but before the release of the financial statements or the effective date of the registration statement, whichever is later.

Question: What effect must be given to such a change?

Interpretive Response: Such changes in the capital structure must be given retroactive effect in the balance sheet. An appropriately cross-referenced note should disclose the retroactive treatment, explain the change made and state the date the change became effective.

D. Earnings Per Share Computations In An Initial Public Offering

Facts: A registration statement is filed in connection with an initial public offering (IPO) of common stock. During the periods covered by income statements that are included in the registration statement or in the subsequent period prior to the effective date of the IPO, the registrant issued for nominal consideration [1] common stock, options or warrants to purchase common stock or other potentially dilutive instruments (collectively, referred to hereafter as "nominal issuances").

Prior to the effective date of Statement 128, the staff believed that certain stock and warrants [2] should be treated as outstanding for all reporting periods in the same manner as shares issued in a stock split or a recapitalization effected contemporaneously with the IPO. The dilutive effect of such stock and warrants could be measured using the treasury stock method.

Question 1: Does the staff continue to believe that such treatment for stock and warrants would be appropriate upon adoption of Statement 128?

[1] Whether a security was issued for nominal consideration should be determined based on facts and circumstances. The consideration the entity receives for the issuance should be compared to the security's fair value to determine whether the consideration is nominal.

[2] The stock and warrants encompasses by the prior guidance were those issuances of common stock at prices below the IPO price and options or warrants with exercise prices below the IPO price that were issued within a one-year period prior to the initial filing of the registration statement relating to the IPO through the registration statement's effective date.

Interpretive Response: Generally, no. Historical EPS should be prepared and presented in conformity with Statement 128.

In applying the requirements of Statement 128, the staff believes that nominal issuances are recapitalizations in substance. In computing basic EPS for the periods covered by income statements included in the registration statement and in subsequent filings with the SEC, nominal issuances of common stock should be reflected in a manner similar to a stock split or stock dividend for which retroactive treatment is required by paragraph 54 of Statement 128. In computing diluted EPS for such periods, nominal issuances of common stock and potential common stock [3] should be reflected in a manner similar to a stock split or stock dividend.

Registrants are reminded that disclosure about materially dilutive issuances is required outside the financial statements. Item 506 of Regulation S–K requires tabular presentation of the dilutive effects of those issuances on net tangible book value. The effects of dilutive issuances on the registrant's liquidity, capital resources and results of operations should be addressed in Management's Discussion and Analysis.

Question 2: Does reflecting nominal issuances as outstanding for all historical periods in the computation of earnings per share alter the registrant's responsibility to determine whether compensation expense must be recognized for such issuances to employees?

Interpretive Response: No. Registrants must follow GAAP in determining whether the recognition of compensation expense for any issuances of equity instruments to employees is necessary.[4] Reflecting nominal issuances as outstanding for all historical periods in the computation of earnings per share does not alter that existing responsibility under GAAP.

E. Receivables From Sale of Stock

Facts: Compensation often arises when capital stock is issued or is to be issued to officers or other employees at prices below market.

Question: How should the deferred compensation be presented in the balance sheet?

Interpretive Response: The amounts recorded as deferred compensation should be presented in the balance sheet as a deduction from stockholders' equity. This is generally consistent with Rule 5–02.30 of Regulation S–X which states that accounts or notes receivable arising from transactions involving the registrant's capital stock should be presented as deductions from stockholders' equity and not as assets.

It should be noted generally that all amounts receivable from officers and directors resulting from sales of stock or from other transactions (other than expense advances or sales on normal trade terms) should be separately stated in the balance sheet irrespective of whether such amounts may be shown as assets or are required to be reported as deductions from stockholders' equity.

The staff will not suggest that a receivable from an officer or director be deducted from stockholders' equity if the receivable was paid in cash prior to the publication of the financial statements and the payment date is stated in a note to the financial statements. However, the staff would consider the subsequent return of such cash payment to the officer or director to be part of a scheme or plan to evade the registration or reporting requirements of the securities laws.

F. Limited Partnerships

Facts: There exist a number of publicly held partnerships having one or more corporate or individual general partners and a relatively larger number of limited partners. There are no specific requirements or guidelines relating to the presentation of the partnership equity accounts in the financial statements. In addition, there are many approaches to the parallel problem of relating the results of operations to the two classes of partnership equity interests.

Question: How should the financial statements of limited partnerships be presented so that the two ownership classes can readily determine their relative participations in both the net assets of the partnership and in the results of its operations?

Interpretive Response: The equity section of a partnership balance sheet should distinguish between amounts ascribed to each ownership class. The equity attributed to the general partners should be stated separately from the equity of the limited partners, and changes in the number of equity units authorized and outstanding should be shown for each ownership class. A statement of changes in partnership equity for each ownership class should be furnished for each period for which an income statement is included.

The income statements of partnerships should be presented in a manner which clearly shows the aggregate amount of net income (loss) allocated to the general partners and the aggregate amount allocated to the limited partners. The statement of income should also state the results of operations on a per unit basis.

G. Notes and Other Receivables From Affiliates

Facts: The balance sheet of a corporate general partner is often presented in a registration statement. Frequently, the balance sheet of the general partner discloses that it holds notes or other receivables from a parent or another affiliate. Often the notes or other receivables were created in order to meet the "substantial assets" test which the Internal Revenue Service utilizes in applying its "Safe Harbor" doctrine in the classification of organizations for income tax purposes.

Question: How should such notes and other receivables be reported in the balance sheet of the general partner?

Interpretive Response: While these notes and other receivables evidencing a promise to contribute capital are often legally enforceable, they seldom are actually paid. In substance, these receivables are equivalent to unpaid subscriptions receivable for capital shares which Rule 5–02.30 of Regulation S–X requires to be deducted from the dollar amount of capital shares subscribed.

The balance sheet display of these or similar items is not determined by the quality or actual value of the receivable or other asset "contributed" to the capital of the affiliated general partner, but rather by the relationship of the parties and the control inherent in that relationship. Accordingly, in these situations, the receivable must be treated as a deduction from stockholders' equity in the balance sheet of the corporate general partner.

Topic 5: Miscellaneous Accounting

A. Expenses of Offering

Facts: Prior to the effective date of an offering of equity securities, Company Y incurs certain expenses related to the offering.

Question: Should such costs be deferred?

Interpretive Response: Specific incremental costs directly attributable to a proposed or actual offering of securities may properly be deferred and charged against the gross proceeds of the offering. However, management salaries or other general and administrative expenses may not be allocated as costs of the offering and deferred costs of an aborted offering may not be deferred and charged against proceeds of a subsequent offering. A short postponement (up to 90 days) does not represent an aborted offering.

[3] Statement 128 defines potential common stock as "a security or other contract that may entitle its holder to obtain common stock during the reporting period or after the end of the reporting period."

[4] As prescribed by APB Opinion 25, Statement 123, and related interpretations.

B. Gain or Loss From Disposition of Equipment

Facts: Company A has adopted the policy of treating gains and losses from disposition of revenue producing equipment as adjustments to the current year's provision for depreciation. Company B reflects such gains and losses as a separate item in the statement of income.

Question: Does the staff have any views as to which method is preferable?

Interpretive Response: Gains and losses resulting from the disposition of revenue producing equipment should not be treated as adjustments to the provision for depreciation in the year of disposition, but should be shown as a separate item in the statement of income.

If such equipment is depreciated on the basis of group of composite accounts for fleets of like vehicles, gains (or losses) may be charged (or credited) to accumulated depreciation with the result that depreciation is adjusted over a period of years on an average basis. It should be noted that the latter treatment would not be appropriate for (1) an enterprise (such as an airline) which replaces its fleet on an episodic rather than a continuing basis or (2) an enterprise (such as a car leasing company) where equipment is sold after limited use so that the equipment on hand is both fairly new and carried at amounts closely related to current acquisition cost.

C.1. Deleted by SAB 103

C.2. Deleted by SAB 103

D. Organization and Offering Expenses and Selling Commissions—Limited Partnerships Trading in Commodity Futures

Facts: Partnerships formed for the purpose of engaging in speculative trading in commodity futures contracts sell limited partnership interests to the public and frequently have a general partner who is an affiliate of the partnership's commodity broker or the principal underwriter selling the limited partnership interests. The commodity broker or a subsidiary typically assumes the liability for all or part of the organization and offering expenses and selling commissions in connection with the sale of limited partnership interests. Funds raised from the sale of partnership interests are deposited in a margin account with the commodity broker and are invested in Treasury Bills or similar securities. The arrangement further provides that interest earned on the investments for an initial period is to be retained by the broker until it has been reimbursed for all or a specified portion of the aforementioned expenses and commissions and that thereafter interest earned accrues to the partnership.

In some instances, there may be no reference to reimbursement of the broker for expenses and commissions to be assumed. The arrangements may provide that all interest earned on investments accrues to the partnership but that commissions on commodity transactions paid to the broker are at higher rates for a specified initial period and at lower rates subsequently.

Question 1: Should the partnership recognize a commitment to reimburse the commodity broker for the organization and offering expenses and selling commissions?

Interpretive Response: Yes. A commitment should be recognized by reducing partnership capital and establishing a liability for the estimated amount of expenses and commissions for which the broker is to be reimbursed.

Question 2: Should the interest income retained by the broker for reimbursement of expenses be recognized as income by the partnership?

Interpretive Response: Yes. All the interest income on the margin account investments should be recognized as accruing to the partnership as earned. The portion of income retained by the broker and not actually realized by the partnership in cash should be applied to reduce the liability for the estimated amount of reimbursable expenses and commissions.

Question 3: If the broker retains all of the interest income for a specified period and thereafter it accrues to the partnership, should an equivalent amount of interest income be reflected on the partnership's financial statements during the specified period?

Interpretive Response: Yes. If it appears from the terms of the arrangement that it was the intent of the parties to provide for full or partial reimbursement for the expenses and commissions paid by the broker, then a commitment to reimbursement should be recognized by the partnership and an equivalent amount of interest income should be recognized on the partnership's financial statements as earned.

Question 4: Under the arrangements where commissions on commodity transactions are at a lower rate after a specified period and there is no reference to reimbursement of the broker for expenses and commissions, should recognition be given on the partnership's financial statements to a commitment to reimburse the broker for all or part of the expenses and commissions?

Interpretive Response: If it appears from the terms of the arrangement that the intent of the parties was to provide for full or partial reimbursement of the broker's expenses and commissions, then the estimated commitment should be recognized on the partnership's financial statements. During the specified initial period commissions on commodity transactions should be charged to operations at the lower commission rate with the difference applied to reduce the aforementioned commitment.

E. Accounting for Divestiture of a Subsidiary or Other Business Operation

Facts: Company X transferred certain operations (including several subsidiaries) to a group of former employees who had been responsible for managing those operations. Assets and liabilities with a net book value of approximately $8 million were transferred to a newly formed entity—Company Y—wholly owned by the former employees. The consideration received consisted of $1,000 in cash and interest bearing promissory notes for $10 million, payable in equal annual installments of $1 million each, plus interest, beginning two years from the date of the transaction. The former employees possessed insufficient assets to pay the notes and Company X expected the funds for payments to come exclusively from future operations of the transferred business.

Company X remained contingently liable for performance on existing contracts transferred and agreed to guarantee, at its discretion, performance on future contracts entered into by the newly formed entity. Company X also acted as guarantor under a line of credit established by Company Y.

The nature of Company Y's business was such that Company X's guarantees were considered a necessary predicate to obtaining future contracts until such time as Company Y achieved profitable operations and substantial financial independence from Company X.

Question 1: Company X proposes to account for the transaction as a divestiture, but to defer recognition of gain until the owners of Company Y begin making payments on the promissory notes. Does this proposed accounting treatment reflect the economic substance of the transaction?

Interpretive Response: No. The circumstances are such that the risks of the business have not, in substance, been transferred to Company Y or its owners. In assessing whether the legal transfer of ownership of one or more business operations has resulted in a divestiture for accounting purposes, the principal consideration must be an assessment of whether the risks and other incidents of ownership have been transferred to the buyer with sufficient certainty.

When the facts and circumstances are such that there is a continuing involvement by the seller in the business, recognition of the transaction as a divestiture for accounting purposes is questionable. Such continuing involvement may take the form of effective veto power over major contracts or customers, significant voting power on the board of directors, or other involvement in the continuing operations of the business entailing risks or managerial authority similar to that of ownership.

Other circumstances may also raise questions concerning whether the incidents of ownership have, in substance, been transferred to the buyer. These include:

- Absence of significant financial investment in the business by the buyer, as evidenced, for instance, by a token down payment;
- Repayment of debt which constitutes the principal consideration in the transaction is dependent on future successful operations of the business; or
- The continued necessity for debt or contract performance guarantees on behalf of the business by the seller.

In the above transaction, the seller's continuing involvement in the business and the presence of certain of the other factors cited evidence the fact that the seller has not been divorced from the risks of ownership. Accounting for this proposed transaction as a divestiture—even with deferral of the "gain"—does not reflect its economic substance and therefore is not appropriate.

Further, Company X may need to consider whether it should consolidate Company Y by way of its variable interests pursuant to the provisions of FASB Interpretation 46.

Question 2: If the transaction is not to be treated as a divestiture for accounting purposes, what is the proper accounting treatment?

Interpretive Response: If, in the circumstances surrounding a particular transaction, a determination is made that a legal transfer of business ownership should not be recognized as a divestiture for accounting purposes, an accounting treatment consistent with that determination is required. In this instance, if Company Y is not consolidated by Company X, the assets and liabilities of the business which were the subject of the transaction should be segregated in the balance sheet of the selling entity under captions such as: "Assets of business transferred under contractual arrangements (notes receivable)," and "Liabilities of business transferred" or similar captions which appropriately convey the distinction between the legal form of the transaction and its accounting treatment.

A note to the financial statements should describe the nature of the legal arrangements, relevant financing and other details and the accounting treatment.

Where, as in this instance, realization of the sale price is wholly or principally dependent on the operating results of the business operations which were the subject of the transaction, the uncertainty associated with such realization should be reflected in the financial statements of the seller. Thus, absent a deterioration in the business, any operating losses of the divested business should be considered the best evidence of a change in valuation of the business in a manner somewhat analogous to equity accounting for an investment in common stock.[1] If the business suffered a loss during its initial period of operations after the transaction, that loss should be reflected in the financial statements of the seller by recording a valuation allowance and a corresponding charge to income. The amount of the valuation allowance (absent unusual circumstances) would be at least the amount of the loss attributable to the business. Other evidence, however (such as a question as to the ability of the business to continue as a going concern), might require that a higher valuation allowance be established.

This accounting treatment should be continued for each period until either:

1. The net assets of the business have been written down to zero (or a net liability recognized in accordance with GAAP); or
2. Circumstances have changed sufficiently that it has become appropriate to recognize the transaction as a divestiture.

In the latter instance, it would normally also be appropriate to recaption any asset balance remaining on the balance sheet of the seller in keeping with the changed circumstances, *e.g.*, "Notes receivable."

In the case where the business reports net income, such net income should not be recorded by the former owner, because the rewards of ownership (but not the risks) have been passed to Company Y. Any payments received on obligations of the buyer arising out of the transaction should be treated as a reduction of the carrying value of the segregated assets of the business.

Question 3: Should Company X recognize interim (quarterly) losses of the business even if it is projected that it will have a profit for the full year?

Interpretive Response: Yes. However, for quarters for which the business has net income, such net income may be recognized by Company X to the extent of any cumulative quarterly losses within the same fiscal year. Similarly, quarterly losses of the business need not be recognized by Company X except to the extent that they exceed any cumulative quarterly net income within the same fiscal year. Disclosure of this accounting treatment should be made in the notes to Company X's interim financial statements.

Question 4: If the accounting treatment described above is applied to the transaction, when should a gain or loss on the transaction be recognized?

Interpretive Response: Whether or not the transaction is treated as a divestiture for accounting purposes, GAAP require that losses on such transactions be recognized. When it is determined that no divestiture should be recognized for accounting purposes, it follows that gain should not be recognized until:

1. The circumstances precluding treatment of the transaction as a divestiture have changed sufficiently to permit such recognition; and,
2. Any major uncertainties as to ultimate realization of profit have been removed, that is, the consideration received in the transaction can be reasonably evaluated.

The authoritative literature indicates that:

> Profit is deemed to be realized when a sale in the ordinary course of business is effected, unless the circumstances are such that the collection of the sale price is not reasonably assured.[2]

[1] The staff recognizes that APB Opinion 18 is specifically applicable only to the use of the equity method of accounting for investments in common stock. The principles enunicated in Opinion 18 are also relevant in these particular circumstances, however, notably paragraph 12, which states, in pertinent part: "The equity method tends to be most appropriate if an investment enables the investor to influence the operating of financial decisions of the investee. The investor then has a degree of responsibility for the return on its investment, and it is appropriate to include in the results of operations of the investor its share of the earnings or losses of the investee."

[2] ARB 43, Chapter 1, Section A. This passage is also quoted in paragraph 12 of APB Opinion 10,

The considerations discussed above regarding recognition of a divestiture for accounting purposes are also of importance in reaching a determination as to whether or not collection of the sale price is reasonably assured and profit recognition is therefore appropriate. In addition, circumstances such as the following tend to raise questions as to the propriety of profit recognition at any given time subsequent to the transaction:

1. Evidence of financial weakness of the buyer.
2. Substantial uncertainty as to the amount of future costs and expenses to be incurred by the seller.
3. Substantial uncertainty as to the amount of proceeds to be realized because of the form of consideration received; *e.g.*, nonrecourse debt, notes with optional settlement provisions, purchaser's stock, or other nonmonetary consideration which may be of indeterminable value.

(Where satisfaction of the buyer's obligations to the seller remains dependent on earnings of the business divested, it will frequently be appropriate for the seller to continue to measure the uncertainty of ultimate collection by the operating losses of the business.)

The degree of uncertainty surrounding ultimate realization of the consideration is a matter which must be evaluated in the light of the attendant circumstances each time realization is evaluated. The degree of uncertainty is enhanced, however, by the presence of any of the factors referred to above, and such factors must be considered in reaching a determination with respect to recognition of gain.

F. Accounting Changes Not Retroactively Applied Due to Immateriality

Facts: A registrant is required to adopt an accounting principle by means of restatement of prior periods' financial statements. However, the registrant determines that the accounting change does not have a material effect on prior periods' financial statements and, accordingly, decides not to restate such financial statements.

Question: In these circumstances, is it acceptable to adjust the beginning balance of retained earnings of the period in which the change is made for the cumulative effect of the change on the financial statements of prior periods?

Interpretive Response: No. If prior periods are not restated, the cumulative effect of the change should be included in the statement of income for the period in which the change is made (not to be reported as a cumulative effect adjustment in the manner of APB Opinion 20). Even in cases where the total cumulative effect is not significant, the staff believes that the amount should be reflected in the results of operations for the period in which the change is made. However, if the cumulative effect is material to current operations or to the trend of the reported results of operations, then the individual income statements of the earlier years should be retroactively adjusted.

This position is consistent with the requirements of Statement 5 and Statement 13, which indicate that "the cumulative effect [of the change] on retained earnings at the beginning of the earliest period restated shall be included in determining net income of that period."

G. Transfers of Nonmonetary Assets by Promoters or Shareholders

Facts: Nonmonetary assets are exchanged by promoters or shareholders for all or part of a company's common stock just prior to or contemporaneously with a first-time public offering.

Question: Since paragraph 4 of APB Opinion 29 states that Opinion 29 is not applicable to transactions involving the acquisition of nonmonetary assets or services on issuance of the capital stock of an enterprise, what value should be ascribed to the acquired assets by the company?

Interpretive Response: The staff believes that transfers of nonmonetary assets to a company by its promoters or shareholders in exchange for stock prior to or at the time of the company's initial public offering normally should be recorded at the transferors' historical cost basis determined under GAAP.

The staff will not always require that predecessor cost be used to value nonmonetary assets received from an enterprise's promoters or shareholders. However, deviations from this policy have been rare applying generally to situations where the fair value of either the stock issued [1] or assets acquired is objectively measurable and the transferor's stock ownership following the transaction was not so significant that the transferor had retained a substantial indirect interest in the assets as a result of stock ownership in the company.

H. Accounting for Sales of Stock by a Subsidiary

Facts: The registrant owns 95% of its subsidiary's stock. The subsidiary sells its unissued shares in a public offering, which decreases the registrant's ownership of the subsidiary from 95% to 90%. The offering price per share exceeds the registrant's carrying amount per share of subsidiary stock.

Question 1: When an offering takes the form of a subsidiary's direct sale of its unissued shares, will the staff permit the amount in excess of the parent's carrying value to be reflected as a gain in the consolidated income statement of the parent?

Interpretive Response: Yes, in some circumstances. Although the staff at one time insisted that such transactions be accounted for as capital transactions in the consolidated financial statements, it has reconsidered its views on this matter with respect to certain of these transactions where the sale of such shares by a subsidiary is not a part of a broader corporate reorganization contemplated or planned by the registrant. In situations where no other such capital transactions are contemplated, the staff has determined that it will accept accounting treatment for such transactions that is in accordance with the Advisory Conclusions in paragraph 30 of the June 3, 1980 Issues Paper, "Accounting in Consolidation for Issuances of a Subsidiary's Stock." The staff believes that this issues paper should provide appropriate guidance on this matter until the FASB addresses this issue as a part of its project on Accounting for the Reporting Entity, including Consolidations, the Equity Method, and Related Matters.

Question 2: What is meant by the phrase "broader corporate reorganization contemplated or planned by the registrant" and are there other situations where the staff has objected to gain recognition?

Interpretive Response: The staff believes that gain recognition is not appropriate in situations where subsequent capital transactions are contemplated that raise concerns about the likelihood of the registrant realizing that gain, such as where the registrant intends to spin-off its subsidiary to shareholders or where reacquisition of shares is contemplated at the time of issuance. The staff will presume that repurchases were contemplated at the date of issuance in those situations

footnote 8, which states, in pertinent part: "The Board recognizes that there are exceptional cases where receivables are collectible over an extended period of time and, because of the terms of the transactions or other conditions, there is no reasonable basis for estimating the degree of collectibility. When such circumstances exist, and as long as they exist, either the installment method or the cost recovery method of accounting may be used."

[1] Estimating the fair value of the common stock issued, however, is not appropriate when the stock is closely held and/or seldom or ever traded.

where shares are repurchased within one year of issuance or where a specific plan existed to repurchase shares at the time shares were issued. In addition, the staff believes that realization is not assured where the subsidiary is a newly-formed, non-operating entity; a research and development, start-up or development stage company; an entity whose ability to continue in existence is in question; or other similar circumstances. In those situations, the staff believes that the change in the parent company's proportionate share of subsidiary equity resulting from the additional equity raised by the subsidiary should be accounted for as an equity transaction in consolidation. Gain deferral is not appropriate.

Question 3: In the staff's opinion, may gain be recognized for issuances of subsidiary stock in situations other than sales of unissued shares in a public offering?

Interpretive Response: Yes. The staff believes that gain recognition is acceptable in situations other than sales of unissued shares in a public offering as long as the value of the proceeds can be objectively determined. With respect to issuances of stock options, warrants, and convertible and other similar securities, gain should not be recognized before exercise or conversion into common stock, and then only provided that realization of the gain is reasonably assured (see Question 2 above) at the time of such exercise or conversion.

Question 4: Will repurchasing shares of a subsidiary's stock affect the potential for gain recognition by the registrant in consolidation for subsequent issuances of that subsidiary's stock? [1]

Interpretive Response: Yes. Where previous gains have been recognized in consolidation on issuances of a subsidiary's stock and shares of the subsidiary are subsequently repurchased by the subsidiary, its parent or any member of the consolidated group, gain recognition should not occur on issuances subsequent to the date of a repurchase until such time as shares have been issued in an amount equivalent to the number of repurchased shares. The staff views such transactions as analogous to treasury stock transactions from the standpoint of the consolidated entity that should not result in recognition of gains or losses.

Question 5: May registrants selectively apply the guidance in the SAB by recognizing the impact of certain issuances by a subsidiary in the income statement and other issuances as equity transactions?

Interpretive Response: No. The staff believes that income statement treatment in consolidation for issuances of stock by a subsidiary represents a choice among alternative accounting methods and, therefore, must be applied consistently to all stock transactions that meet the conditions for income statement treatment set forth herein for any subsidiary. If a registrant recognizes gains on issuances of stock by a subsidiary, thus adopting income statement recognition as its accounting policy, then it must also recognize losses for stock issuances by that or any other subsidiary that result in decreases in its proportionate share of the dollar amount of the subsidiary's equity. Regardless of the method of accounting selected, when a subsidiary issues securities at prices less than the parent's carrying value per share, the registrant must assess whether the investment has been impaired, in which case a provision should be reflected in the income statement.

Question 6: How should the registrant disclose the accounting for issuances of a subsidiary's stock in the consolidated financial statements?

Interpretive Response: The staff believes that gains (or losses) arising from issuances by a subsidiary of its own stock, if recorded in income by the parent, should be presented as a separate line item in the consolidated income statement without regard to materiality and clearly be designated as non-operating income. An appropriate description of the transaction should be included in the notes to the financial statements, as further described below.

The accounting method adopted by the registrant for issuances of a subsidiary's stock should be disclosed in its accounting policy footnote and consistently applied (See Question 5). The staff believes that the registrant also should include a separate footnote that describes issuances of subsidiary stock that have occurred during all periods presented. This footnote should clearly describe the transaction, the identification of the subsidiary and nature of its operations, the number of shares issued, the price per share and the total dollar amount and nature of consideration received, and the percentage ownership of the parent both before and after the transaction. Additionally, the registrant should clearly state whether deferred income taxes have been provided on gains recognized and, if no provision has been recorded, a clear explanation of the reasons. Finally, the staff expects registrants to include disclosure in their Management Discussion and Analysis of the impact of specific transactions that have occurred and the likelihood of similar transactions occurring in future years.

I. Deleted by SAB 70

J. Push Down Basis of Accounting Required in Certain Limited Circumstances

Facts: Company A (or Company A and related persons) acquired substantially all of the common stock of Company B in one or a series of purchase transactions.

Question 1: Must Company B's financial statements presented in either its own or Company A's subsequent filings with the Commission reflect the new basis of accounting arising from Company A's acquisition of Company B when Company B's separate corporate entity is retained?

Interpretive Response: Yes. The staff believes that purchase transactions that result in an entity becoming substantially wholly owned (as defined in Rule 1–02(aa) of Regulation S–X) establish a new basis of accounting for the purchased assets and liabilities.

When the form of ownership is within the control of the parent the basis of accounting for purchased assets and liabilities should be the same regardless of whether the entity continues to exist or is merged into the parent's operations. Therefore, Company A's cost of acquiring Company B should be "pushed down," *i.e.*, used to establish a new accounting basis in Company B's separate financial statements.[1]

Question 2: What is the staff's position if Company A acquired less than substantially all of the common stock of Company B or Company B had publicly held debt or preferred stock at the time Company B became wholly owned?

Interpretative Response: The staff recognizes that the existence of outstanding public debt, preferred stock or a significant minority interest in a subsidiary might impact the parent's ability to control the form of ownership. Although encouraging its use, the staff generally does not insist on the application of push down accounting in these circumstances.

Question 3: Company A borrows funds to acquire substantially all of the common stock of Company B. Company B subsequently files a registration statement in connection with a public offering of its stock or debt.[2] Should Company B's new basis ("push down") financial statements include Company A's debt related to its purchase of Company B?

Interpretive Response: The staff believes that Company A's debt,[3] related interest expense, and allocable debt issue costs should be reflected in Company B's financial statements included in the public offering (or an initial registration under the Exchange Act) if: (1) Company B is to assume the debt of Company A, either presently or in a planned transaction in the future; (2) the proceeds of a debt or equity offering of Company B will be used to retire all or a part of Company A's debt; or (3) Company B guarantees or pledges its assets as collateral for Company A's debt.

Other relationships may exist between Company A and Company B, such as the pledge of Company B's stock as collateral for Company A's debt.[4] While in this latter situation, it may be clear that Company B's cash flows will service all or part of Company A's debt, the staff does not insist that the debt be reflected in Company B's financial statements providing there is full and prominent disclosure of the relationship between Companies A and B and the actual or potential cash flow commitment. In this regard, the staff believes that Statements 5 and 57 as well as Interpretation 45 require sufficient disclosure to allow users of Company B's financial statements to fully understand the impact of the relationship on Company B's present and future cash flows. Rule 4–08(e) of Regulation S–X also requires disclosure of restrictions which limit the payment of dividends. Therefore, the staff believes that the equity section of Company B's balance sheet and any pro forma financial information and capitalization tables should clearly disclose that this arrangement exists.[5]

Regardless of whether the debt is reflected in Company B's financial statements, the notes to Company B's financial statements should generally disclose, at a minimum: (1) The relationship between Company A and Company B; (2) a description of any arrangements that result in Company B's guarantee, pledge of assets[6] or stock, etc. that provides security for Company A's debt; (3) the extent (in the aggregate and for each of the five years subsequent to the date of the latest balance sheet presented) to which Company A is dependent on Company B's cash flows to service its debt and the method by which this will occur; and (4) the impact of such cash flows on Company B's ability to pay dividends or other amounts to holders of its securities.

Additionally, the staff believes Company B's Management's Discussion and Analysis of Financial Condition and Results of Operations should discuss any material impact of its servicing of Company A's debt on its own liquidity pursuant to Item 303(a)(1) of Regulation S–K.

K. Deleted by SAB 95

L. LIFO Inventory Practices

Facts: On November 30, 1984, AcSEC and its Task Force on LIFO Inventory Problems (task force) issued a paper, "Identification and Discussion of Certain Financial Accounting and Reporting Issues Concerning LIFO Inventories." This paper identifies and discusses certain financial accounting and reporting issues related to the last-in, first-out (LIFO) inventory method for which authoritative accounting literature presently provides no definitive guidance. For some issues, the task force's advisory conclusions recommend changes in current practice to narrow the diversity which the task force believes exists. For other issues, the task force's advisory conclusions recommend that current practice should be continued for financial reporting purposes and that additional accounting guidance is unnecessary. Except as otherwise noted in the paper, AcSEC generally supports the task force's advisory conclusions. As stated in the issues paper, "Issues papers of the AICPA's accounting standards division are developed primarily to identify financial accounting and reporting issues the division believes need to be addressed or clarified by the Financial Accounting Standards Board." On February 6, 1985, the FASB decided not to add to its agenda a narrow project on the subject of LIFO inventory practices.

Question 1: What is the SEC staff's position on the issues paper?

Interpretive Response: In the absence of existing authoritative literature on LIFO accounting, the staff believes that registrants and their independent accountants should look to the paper for guidance in determining what constitutes acceptable LIFO accounting practice.[1] In this connection, the staff considers the paper to be an accumulation of existing acceptable LIFO accounting practices which does not establish any new standards and does not diverge from GAAP.

The staff also believes that the advisory conclusions recommended in the issues paper are generally consistent with conclusions previously expressed by the Commission, such as:

1. Pooling—paragraph 4–6 of the paper discusses LIFO inventory pooling and concludes "establishing separate pools with the principal objective of facilitating inventory liquidations is unacceptable." In Accounting and Auditing Enforcement Release 35, August 13, 1984, the Commission stated that it believes that the Company improperly realigned its LIFO pools in such a way as to maximize the likelihood and magnitude of LIFO liquidations and thus, overstated net income.

2. New Items—paragraph 4–27 of the paper discusses determination of the cost of new items and concludes "if the double extension or an index technique is used, the objective of LIFO is

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[1] This question and interpretive response assume that the repurchases were not contemplated at the time of earlier gain recognition. See Question 2.

[1] The Task Force on Consolidation Problems, Accounting Standards Division of the American Institute of Certified Public Accountants issued a paper entitled "Push Down" Accounting, October 30, 1979. This paper addresses the issues relating to "push down" accounting, cities authoritative literature and indicates that a substantial change in ownership justifies a new basis of accounting.

[2] The guidance in this SAB should also be considered for Company B's separate financial statements included in its public offering following Company B's spin-off or carve-out from Company A.

[3] The guidance in this SAB should also be considered where Company A has financed the acquisition of Company B through the issuance of mandatory redeemable preferred stock.

[4] The staff does not believe Company B's financial statements must reflect the debt in this situation because in the event of default on the debt by Company A, the debt holder(s) would only be entitled to B's stock held by Company A. Other equity or debt holders of Company B would retain their priority with respect to the net assets of Company B.

[5] For example, the staff has noted that certain registrants have indicated on the face of such financial statements (as part of the stockholder's equity section) the actual or potential financing arrangement and the registrant's intent to pay dividends to satisfy its parent's debt service requirements. The staff believes such disclosures are useful to highlight the existence of arrangements that could result in the use of Company B's cash to service Company A's debt.

[6] A material asset pledge should be clearly indicated on the face of the balance sheet. For example, if all or substantially all of the assets are pledged, the "assets" and "total assets" captions should include parenthetically: "pledged for parent company debt—See Note X."

[1] In ASR 293 (July 2, 1981) see Financial Reporting Codification § 205, the Commission expressed its concerns about the inappropriate use of Internal Revenue Service (IRS) LIFO practices for financial statement preparation. Because the IRS amended its regulations concerning the LIFO conformity rule on January 13, 1981, allowing companies to apply LIFO differently for financial reporting purposes than for tax purposes, the Commission strongly encouraged registrants and their independent accountants to examine their financial reporting LIFO practices. In that release, the Commission acknowledged the "task force which has been established by AcSEC to accumulate information about [LIFO] application problems" and noted that "This type of effort, in addition to self-examination [of LIFO practices] by individual registrants, is appropriate * * * "

achieved by reconstructing the base year cost of new items added to existing pools." In ASR 293, the Commission stated that when the effects of inflation on the cost of new products are measured by making a comparison with current cost as the base-year cost, rather than a reconstructed base-year cost, income is improperly increased.

Question 2: If a registrant utilizes a LIFO practice other than one recommended by an advisory conclusion in the issues paper, must the registrant change its practice to one specified in the paper?

Interpretive Response: Now that the issues paper is available, the staff believes that a registrant and its independent accountants should re-examine previously adopted LIFO practices and compare them to the recommendations in the paper. In the event that the registrant and its independent accountants conclude that the registrant's LIFO practices are preferable in the circumstances, they should be prepared to justify their position in the event that a question is raised by the staff.

Question 3: If a registrant elects to change its LIFO practices to be consistent with the guidance in the issues paper and discloses such changes in accordance with APB Opinion 20 will the registrant be requested by the staff to explain its past practices and its justification for those practices?

Interpretive Response: The staff does not expect to routinely raise questions about changes in LIFO practices which are made to make a company's accounting consistent with the recommendations in the issues paper.

M. Other Than Temporary Impairment of Certain Investments in Debt and Equity Securities

Facts: Paragraph 16 of Statement 115 specifies that "[f]or individual securities classified as either available-for-sale or held-to-maturity, an enterprise shall determine whether a decline in fair value below the amortized cost basis is other than temporary * * * If the decline in fair value is judged to be other than temporary, the cost basis of the individual security shall be written down to fair value as a new cost basis and the amount of the write-down shall be included in earnings (that is, accounted for as a realized loss)."

Statement 115 does not define the phrase "other than temporary." In applying this guidance to its own situation, Company A has interpreted "other than temporary" to mean permanent impairment. Therefore, because Company A's management has not been able to determine that its investment in Company B is permanently impaired, no realized loss has been recognized even though the market price of B's shares is currently less than one-third of A's average acquisition price.

Question: Does the staff believe that the phrase "other than temporary" should be interpreted to mean "permanent"?

Interpretive Response: No. The staff believes that the FASB consciously chose the phrase "other than temporary" because it did not intend that the test be "permanent impairment," as has been used elsewhere in accounting practice.[1]

The value of investments in marketable securities classified as either available-for-sale or held-to-maturity may decline for various reasons. The market price may be affected by general market conditions which reflect prospects for the economy as a whole or by specific information pertaining to an industry or an individual company. Such declines require further investigation by management. Acting upon the premise that a write-down may be required, management should consider all available evidence to evaluate the realizable value of its investment.

There are numerous factors to be considered in such an evaluation and their relative significance will vary from case to case. The staff believes that the following are only a few examples of the factors which, individually or in combination, indicate that a decline is other than temporary and that a write-down of the carrying value is required:

a. The length of the time and the extent to which the market value has been less than cost;

b. The financial condition and near-term prospects of the issuer, including any specific events which may influence the operations of the issuer such as changes in technology that may impair the earnings potential of the investment or the discontinuance of a segment of the business that may affect the future earnings potential; or

c. The intent and ability of the holder to retain its investment in the issuer for a period of time sufficient to allow for any anticipated recovery in market value.

Unless evidence exits to support a realizable value equal to or greater than the carrying value of the investment, a write-down to fair value accounted for as a realized loss should be recorded. In accordance with the guidance of paragraph 16 of Statement 115, such loss should be recognized in the determination of net income of the period in which it occurs and the written down value of the investment in the company becomes the new cost basis of the investment.

N. Discounting by Property-Casualty Insurance Companies

Facts: A registrant which is an insurance company discounts certain unpaid claims liabilities related to short-duration [1] insurance contracts for purposes of reporting to state regulatory authorities, using discount rates permitted or prescribed by those authorities ("statutory rates") which approximate 3½ percent. The registrant follows the same practice in preparing its financial statements in accordance with GAAP. It proposes to change for GAAP purposes, to using a discount rate related to the historical yield on its investment portfolio ("investment related rate") which is represented to approximate 7 percent, and to account for the change as a change in accounting estimate, applying the investment related rate to claims settled in the current and subsequent years while the statutory rate would continue to be applied to claims settled in all prior years.

Question 1: What is the staff's position with respect to discounting claims liabilities related to short-duration insurance contracts?

Interpretive Response: The staff is aware of efforts by the accounting profession to assess the circumstances under which discounting may be appropriate in financial statements. Pending authoritative guidance resulting from those efforts however, the staff will raise no objection if a registrant follows a policy for GAAP reporting purposes of:

- Discounting liabilities for unpaid claims and claim adjustment expenses at the same rates that it uses for reporting to state regulatory authorities with respect to the same claims liabilities, or

[1] Footnote 4 to Statement 115 refers to this SAB for a discussion of considerations applicable to a determination as to whether a decline in market value below cost, at a particular point in time, is other than temporary. FASB's implementation guide "A Guide to Implementation of Statement 115 on Accounting for Certain Investments in Debt and Equity Securities," SAS 92, "Auditing Derivative Instruments, Hedging Activities, and Investments in Securities," AICPA Audit Guide, "Auditing Derivative Instruments, Hedging Activities, and Investments in Securities," and EITF Topic D–44 also address issues related to the determination of whether a decline in fair value of an investment security is other than temporary.

[1] The term "short-duration" refers to the period of coverage (*see* statement 60, paragraph 7), not the period that the liabilities are expected to be outstanding.

- Discounting liabilities with respect to settled claims under the following circumstances:

- The payment pattern and ultimate cost are fixed and determinable on an individual claim basis, and

- The discount rate used is reasonable on the facts and circumstances applicable to the registrant at the time the claims are settled.

Question 2: Does the staff agree with the registrant's proposal that the change from a statutory rate to an investment related rate be accounted for as a change in accounting estimate?

Interpretive Response: No. The staff believes that such a change involves a change in the method of applying an accounting principle, *i.e.*, the method of selecting the discount rate was changed. The staff therefore believes that the registrant should reflect the cumulative effect of the change in accounting by applying the new selection method retroactively to liabilities for claims settled in all prior years, in accordance with the requirements of APB Opinion 20. Initial adoption of discounting for GAAP purposes would be treated similarly. In either case, in addition to the disclosures required by APB Opinion 20 concerning the change in accounting principle, a preferability letter from the registrant's independent accountant is required.

O. Research and Development Arrangements

Facts: Statement 68 paragraph 7 states that conditions other than a written agreement may exist which create a presumption that the enterprise will repay the funds provided by other parties under a research and development arrangement. Paragraph 8(c) lists as one of those conditions the existence of a "significant related party relationship" between the enterprise and the parties funding the research and development.

Question 1: What does the staff consider a "significant related party relationship" as that term is used in paragraph 8(c) of Statement 68?

Interpretive Response: The staff believes that a significant related party relationship exists when 10 percent or more of the entity providing the funds is owned by related parties.[1] In unusual circumstances, the staff may also question the appropriateness of treating a research and development arrangement as a contract to perform service for others at the less than 10 percent level. In reviewing these matters the staff will consider, among other factors, the percentage of the funding entity owned by the related parties in relationship to their ownership in and degree of influence or control over the enterprise receiving the funds.

Question 2: Paragraph 7 of Statement 68 states that the presumption of repayment "can be overcome only by substantial evidence to the contrary." Can the presumption be overcome by evidence that the funding parties were assuming the risk of the research and development activities since they could not reasonably expect the enterprise to have resources to repay the funds based on its current and projected future financial condition?

Interpretive Response: No. Paragraph 5 of Statement 68 specifically indicates that the enterprise "may settle the liability by paying cash, by issuing securities, or by some other means." While the enterprise may not be in a position to pay cash or issue debt, repayment could be accomplished through the issuance of stock or various other means. Therefore, an apparent or projected inability to repay the funds with cash (or debt which would later be paid with cash) does not necessarily demonstrate that the funding parties were accepting the entire risks of the activities.

P. Restructuring Charges

1. Deleted by SAB 103

2. Deleted by SAB 103

3. Income Statement Presentation of Restructuring Charges

Facts: Restructuring charges often do not relate to a separate component of the entity, and, as such, they would not qualify for presentation as losses on the disposal of a discontinued operation. Additionally, since the charges are not both unusual and infrequent [1] they are not presented in the income statement as extraordinary items.

Question 1: May such restructuring charges be presented in the income statement as a separate caption after income from continuing operations before income taxes (*i.e.*, preceding income taxes and/or discontinued operations)?

Interpretive Response: No. Paragraph 26 of APB Opinion 30 states that items that do not meet the criteria for classification as an extraordinary item should be reported as a component of income from continuing operations.[2] Neither Opinion 30 nor Rule 5–03 of Regulation S–X contemplate a category in between continuing and discontinued operations. Accordingly, the staff believes that restructuring charges should be presented as a component of income from continuing operations, separately disclosed if material. Furthermore, the staff believes that a separately presented restructuring charge should not be preceded by a sub-total representing "income from continuing operations before restructuring charge" (whether or not it is so captioned). Such a presentation would be inconsistent with the intent of Opinion 30.

Question 2: Some registrants utilize a classified or "two-step" income statement format (i.e., one which presents operating revenues, expenses and income followed by other income and expense items). May a charge which relates to assets or activities for which the associated revenues and expenses have historically been included in operating income be presented as an item of "other expense" in such an income statement?

Interpretive Response: No. The staff believes that the proper classification of a restructuring charge depends on the nature of the charge and the assets and operations to which it relates. Therefore, charges which relate to activities for which the revenues and expenses have historically been included in operating income should generally be classified as an operating expense, separately disclosed if material. Furthermore, when a restructuring charge is classified as an operating expense, the staff believes that it is generally inappropriate to present a preceding subtotal captioned or representing operating income before restructuring charges. Such an amount does not represent a measurement of operating results under GAAP.

Conversely, charges relating to activities previously included under "other income and expenses" should be similarly classified, also separately disclosed if material.

Question 3: Is it permissible to disclose the effect on net income and earnings per share of such a restructuring charge?

Interpretive Response: Discussions in MD&A and elsewhere which quantify the effects of unusual or infrequent items on net income and earnings per share are beneficial to a reader's understanding of the financial statements and are therefore acceptable.

MD&A also should discuss the events and decisions which gave rise to the restructuring, the nature of the charge and the expected impact of the

[1] Related parties as used herein are as defined in paragraph 24 of Statement 57.

[1] See APB Opinion 30, paragraph 20.

[2] Paragraph 26 of APB Opinion 30 further provides that such items should not be reported on the income statement net of income taxes or in any manner that implies that they are similar to extraordinary items.

restructuring on future results of operations, liquidity and sources and uses of capital resources.

4. Disclosures

Beginning with the period in which the exit plan is initiated, Statement 146 requires disclosure, in *all* periods, *including interim* periods, until the exit plan is completed, of the following:

a. A description of the exit or disposal activity, including the facts and circumstances leading to the expected activity and the expected completion date

b. For each major type of cost associated with the activity (for example, one-time termination benefits, contract termination costs, and other associated costs):

(1) The total amount expected to be incurred in connection with the activity, the amount incurred in the period, and the cumulative amount incurred to date

(2) A reconciliation of the beginning and ending liability balances showing separately the changes during the period attributable to costs incurred and charged to expense, costs paid or otherwise settled, and any adjustments to the liability with an explanation of the reason(s) therefor

c. The line item(s) in the income statement or the statement of activities in which the costs in (b) above are aggregated

d. For each reportable segment, the total amount of costs expected to be incurred in connection with the activity, the amount incurred in the period, and the cumulative amount incurred to date, net of any adjustments to the liability with an explanation of the reason(s) therefor

e. If a liability for a cost associated with the activity is not recognized because fair value cannot be reasonably estimated, that fact and the reasons therefor.

Question: What specific disclosures about restructuring charges has the staff requested to fulfill the disclosure requirements of Statement 146 and MD&A?

Interpretive Response: The staff often has requested greater disaggregation and more precise labeling when exit and involuntary termination costs are grouped in a note or income statement line item with items unrelated to the exit plan. For the reader's understanding, the staff has requested that discretionary, or decision-dependent, costs of a period, such as exit costs, be disclosed and explained in MD&A separately. Also to improve transparency, the staff has requested disclosure of the nature and amounts of additional types of exit costs and other types of restructuring charges [1] that appear quantitatively or qualitatively material, and requested that losses relating to asset impairments be identified separately from charges based on estimates of future cash expenditures.

The staff frequently reminds registrants that in periods subsequent to the initiation date that material changes and activity in the liability balances of each significant type of exit cost and involuntary employee termination benefits [2] (either as a result of expenditures or changes in/reversals of estimates or the fair value of the liability) should be disclosed in the footnotes to the interim and annual financial statements and discussed in MD&A. In the event a company recognized liabilities for exit costs and involuntary employee termination benefits relating to multiple exit plans, the staff believes presentation of separate information for each individual exit plan that has a material effect on the balance sheet, results of operations or cash flows generally is appropriate.

For material exit or involuntary employee termination costs related to an acquired business, the staff has requested disclosure in either MD&A or the financial statements of:

a. When the registrant began formulating exit plans for which accrual may be necessary,

b. The types and amounts of liabilities recognized for exit costs and involuntary employee termination benefits and included in the acquisition cost allocation, and

c. Any unresolved contingencies or purchase price allocation issues and the types of additional liabilities that may result in an adjustment of the acquisition cost allocation.

The staff has noted that the economic or other events that cause a registrant to consider and/or adopt an exit plan or that impair the carrying amount of assets, generally occur over time. Accordingly, the staff believes that as those events and the resulting trends and uncertainties evolve, they often will meet the requirement for disclosure pursuant to the Commission's MD&A rules prior to the period in which the exit costs and liabilities are recorded pursuant to GAAP. Whether or not currently recognizable in the financial statements, material exit or involuntary termination costs that affect a known trend, demand, commitment, event, or uncertainty to management, should be disclosed in MD&A. The staff believes that MD&A should include discussion of the events and decisions which gave rise to the exit costs and exit plan, and the likely effects of management's plans on financial position, future operating results and liquidity unless it is determined that a material effect is not reasonably likely to occur. Registrants should identify the periods in which material cash outlays are anticipated and the expected source of their funding. Registrants should also discuss material revisions to exit plans, exit costs, or the timing of the plan's execution, including the nature and reasons for the revisions.

The staff believes that the expected effects on future earnings and cash flows resulting from the exit plan (for example, reduced depreciation, reduced employee expense, etc.) should be quantified and disclosed, along with the initial period in which those effects are expected to be realized. This includes whether the cost savings are expected to be offset by anticipated increases in other expenses or reduced revenues. This discussion should clearly identify the income statement line items to be impacted (for example, cost of sales; marketing; selling, general and administrative expenses; etc.). In later periods if actual savings anticipated by the exit plan are not achieved as expected or are achieved in periods other than as expected, MD&A should discuss that outcome, its reasons, and its likely effects on future operating results and liquidity.

The staff often finds that, because of the discretionary nature of exit plans and the components thereof, presenting and analyzing material exit and involuntary termination charges in tabular form, with the related liability balances and activity (*e.g.*, beginning balance, new charges, cash payments, other adjustments with explanations, and ending balances) from balance sheet date to balance sheet date, is necessary to explain fully the components and effects of significant restructuring charges. The staff believes that such a tabular analysis aids a financial statement user's ability to disaggregate the restructuring charge by income statement line item in which the costs would have otherwise been recognized, absent the restructuring plan, (for

[1] Examples of common components of exit costs and other types of restructuring charges which should be considered for separate disclosure include, but are not limited to, involuntary employee terminations and related costs, changes in valuation of current assets such as inventory writedowns, long term asset disposals, adjustments for warranties and product returns, leasehold termination payments, and other facility exit costs, among others.

[2] The staff would expect similar disclosures for employee termination benefits whether those costs have been recognized pursuant to Statement 88, 112, or 146.

example, cost of sales; selling, general, and administrative; etc.).

Q. Increasing Rate Preferred Stock

Facts: A registrant issues Class A and Class B nonredeemable preferred stock [1] on 1/1/X1. Class A, by its terms, will pay no dividends during the years 20X1 through 20X3. Class B, by its terms, will pay dividends at annual rates of $2, $4 and $6 per share in the years 20X1, 20X2 and 20X3, respectively. Beginning in the year 20X4 and thereafter as long as they remain outstanding, each instrument will pay dividends at an annual rate of $8 per share. In all periods, the scheduled dividends are cumulative.

At the time of issuance, eight percent per annum was considered to be a market rate for dividend yield on Class A, given its characteristics other than scheduled cash dividend entitlements (voting rights, liquidation preference, etc.), as well as the registrant's financial condition and future economic prospects. Thus, the registrant could have expected to receive proceeds of approximately $100 per share for Class A if the dividend rate of $8 per share (the "perpetual dividend") had been in effect at date of issuance. In consideration of the dividend payment terms, however, Class A was issued for proceeds of $79 3/8 per share. The difference, $20 5/8, approximated the value of the absence of $8 per share dividends annually for three years, discounted at 8%.

The issuance price of Class B shares was determined by a similar approach, based on the terms and characteristics of the Class B shares.

Question 1: How should preferred stocks of this general type (referred to as "increasing rate preferred stocks") be reported in the balance sheet?

Interpretive Response: As is normally the case with other types of securities, increasing rate preferred stock should be recorded initially at its fair value on date of issuance. Thereafter, the carrying amount should be increased periodically as discussed in the Interpretive Response to Question 2.

Question 2: Is it acceptable to recognize the dividend costs of increasing rate preferred stocks according to their stated dividend schedules?

Interpretive Response: No. The staff believes that when consideration received for preferred stocks reflects expectations of future dividend streams, as is normally the case with cumulative preferred stocks, any discount due to an absence of dividends (as with Class A) or gradually increasing dividends (as with Class B) for an initial period represents prepaid, unstated dividend cost.[2] Recognizing the dividend cost of these instruments according to their stated dividend schedules would report Class A as being cost-free, and would report the cost of Class B at less than its effective cost, from the standpoint of common stock interests (*i.e.*, for purposes of computing income applicable to common stock and earnings per common share) during the years 20X1 through 20X3.

Accordingly, the staff believes that discounts on increasing rate preferred stock should be amortized over the period(s) preceding commencement of the perpetual dividend, by charging imputed dividend cost against retained earnings and increasing the carrying amount of the preferred stock by a corresponding amount. The discount at time of issuance should be computed as the present value of the difference between (a) dividends that will be payable, if any, in the period(s) preceding commencement of the perpetual dividend; and (b) the perpetual dividend amount for a corresponding number of periods; discounted at a market rate for dividend yield on preferred stocks that are comparable (other than with respect to dividend payment schedules) from an investment standpoint. The amortization in each period should be the amount which, together with any stated dividend for the period (ignoring fluctuations in stated dividend amounts that might result from variable rates,[3] results in a constant rate of effective cost vis-a-vis the carrying amount of the preferred stock (the market rate that was used to compute the discount).

Simplified (ignoring quarterly calculations) application of this accounting to the Class A preferred stock described in the "Facts" section of this bulletin would produce the following results on a per share basis:

CARRYING AMOUNT OF PREFERRED STOCK

	Beginning of Year (BOY)	Imputed Dividend (8% of Carrying Amount at BOY)	End of year
Year 20X1	$79.38	6.35	85.73
Year 20X2	85.73	6.86	92.59
Year 20X3	92.59	7.41	100.00

During 20X4 and thereafter, the stated dividend of $8 measured against the carrying amount of $100 [4] would reflect dividend cost of 8%, the market rate at time of issuance.

The staff believes that existing authoritative literature, while not explicitly addressing increasing rate preferred stocks, implicitly calls for the accounting described in this bulletin.

The pervasive, fundamental principle of accrual accounting would, in the staff's view, preclude registrants from recognizing the dividend cost on the basis of whatever cash payment schedule might be arranged.

Furthermore, recognition of the effective cost of unstated rights and privileges is well-established in accounting, and is specifically called for by APB Opinion 21 and Topic 3.C of this codification for unstated interest costs of debt capital and unstated dividend costs of redeemable preferred stock capital,

[1] "Nonredeemable" preferred stock, as used in this SAB, refers to preferred stocks which are not redeemable or are redeemable only at the option of the issuer.

[2] As described in the "Facts" section of the issue, a registrant would receive less in proceeds for a preferred stock, if the stock were to pay less than its perpetual dividend for some initial period(s), than if it were to pay perpetual dividend from date of issuance. The staff views the discount on increasing rate preferred stock as equivalent to a prepayment of dividends by the issuer, as though the issuer had concurrently (a) issued the stock with the perpetual dividend being payable from date of issuance, and (b) returned to the investor a portion of the proceeds representing the present value of certain future dividend entitlements which the investor agreed to forgo.

[3] See Question 3 regarding variable increasing rate preferred stocks.

[4] It should be noted that the $100 per share amount used in this issue is for illustrative purposes, and is not intended to imply that application of this issue will necessarily result in the carrying amount of nonredeemable preferred stock being accreted to its par value, stated value, voluntary redemption value or involuntary liquidation value.

respectively. The staff believes that the requirement to recognize the effective periodic cost of capital applies also to nonredeemable preferred stocks because, for that purpose, the distinction between debt capital and preferred equity capital (whether redeemable[5] or nonredeemable) is irrelevant from the standpoint of common stock interests.

Question 3: Would the accounting for discounts on increasing rate preferred stock be affected by variable stated dividend rates?

Interpretive Response: No. If stated dividends on an increasing rate preferred stock are variable, computations of initial discount and subsequent amortization should be based on the value of the applicable index at date of issuance and should not be affected by subsequent changes in the index.

For example, assume that a preferred stock issued 1/1/X1 is scheduled to pay dividends at annual rates, applied to the stock's par value, equal to 20% of the actual (fluctuating) market yield on a particular Treasury security in 20X1 and 20X2, and 90% of the fluctuating market yield in 20X3 and thereafter. The discount would be computed as the present value of a two-year dividend stream equal to 70% (90% less 20%) of the 1/1/X1 Treasury security yield, annually, on the stock's par value. The discount would be amortized in years 20X1 and 20X2 so that, together with 20% of the 1/1/X1 Treasury yield on the stock's par value, a constant rate of cost vis-a-vis the stock's carrying amount would result. Changes in the Treasury security yield during 20X1 and 20X2 would, of course, cause the rate of total reported preferred dividend cost (amortization of discount plus cash dividends) in those years to be more or less than the rate indicated by discount amortization plus 20% of the 1/1/X1 Treasury security yield. However, the fluctuations would be due solely to the impact of changes in the index on the stated dividends for those periods.

Question 4: Will the staff expect retroactive changes by registrants to comply with the accounting described in this bulletin?

Interpretive Response: All registrants will be expected to follow the accounting described in this bulletin for increasing rate preferred stocks issued after December 4, 1986.[6] Registrants that have not followed this accounting for increasing rate preferred stocks issued before that date were encouraged to retroactively change their accounting for those preferred stocks in the financial statements next filed with the Commission. The staff did not object if registrants did not make retroactive changes for those preferred stocks, provided that all presentations of and discussions regarding income applicable to common stock and earnings per share in future filings and shareholders' reports are accompanied by equally prominent supplemental disclosures (on the face of the income statement, in presentations of selected financial data, in MD&A, etc.) of the impact of not changing their accounting and an explanation of such impact (*e.g.*, that dividend cost has been recognized on a cash basis).

R. Deleted by SAB 103

S. Quasi-Reorganization

Facts: As a consequence of significant operating losses and/or recent write-downs of property, plant and equipment, a company's financial statements reflect an accumulated deficit. The company desires to eliminate the deficit by reclassifying amounts from paid-in-capital. In addition, the company anticipates adopting a discretionary change in accounting principles[1] that will be recorded as a cumulative-effect type of accounting change. The recording of the cumulative effect will have the result of increasing the company's retained earnings.

Question 1: May the company reclassify its capital accounts to eliminate the accumulated deficit without satisfying all of the conditions enumerated in Section 210[2] of the Codification of Financial Reporting Policies for a quasi-reorganization?

Interpretive Response: No. The staff believes a deficit reclassification of any nature is considered to be a quasi-reorganization. As such, a company may not reclassify or eliminate a deficit in retained earnings unless all requisite conditions set forth in Section 210[3] for a quasi-reorganization are satisfied.[4]

Question 2: Must the company implement the discretionary change in accounting principle simultaneously with the quasi-reorganization or may it adopt the change after the quasi-reorganization has been effected?

Interpretive Response: The staff has taken the position that the company should adopt the anticipated accounting change prior to or as an integral part of the quasi-reorganization. Any such accounting change should be effected by following GAAP with respect to the change.[5]

Chapter 7A of ARB 43 indicates that, following a quasi-reorganization, a "company's accounting should be substantially similar to that appropriate for a new company." The staff believes that implicit in this "fresh-start" concept is the need for the company's accounting principles in place at the time of the quasi-reorganization to be those planned to be used following the reorganization to avoid a misstatement of earnings and retained earnings after the reorganization.[6] Chapter 7A of ARB 43 states, in part, "* * * in general, assets should be carried forward as of the date of the readjustment at fair and

[5] Application of the interest method with respect to redeemable preferred stocks pursuant to Topic 3.C results in accounting consistent with the provisions of this bulletin irrespective of whether the redeemable preferred stocks have constant or increasing stated dividend rates. The interest method, as described in APB Opinion 21, producers a constant effective periodic rate of cost that is comprised of amortization of discount as well as the stated cost of each period.

[6] The staff first publicly expressed its view as to the appropriate accounting at the December 3–4, 1986 meeting of the EITF.

[1] Discretionary accounting changes require the filing of a preferability letter by the registrant's independent accountant pursuant to Item 601 of Regulation S–K and Rule 10–01(b)(6) of Regulation S–X, respectively.

[2] ASR 25.

[3] Section 210 (ASR 25) indicates the following conditions under which a quasi-reorganization can be effected without the creation of a new corporate entity and without the intervention of formal court proceedings:

1. Earned surplus, as of the date selected, is exhausted;

2. Upon consummation of the quasi-reorganization, no deficit exists in any surplus account;

3. The entire procedure is made known to all persons entitled to vote on matters of general corporate policy and the appropriate consents to the particular transactions are obtained in advance in accordance with the applicable laws and charter provisions;

4. The procedure accomplishes, with respect to the accounts, substantially what might be accomplished in a reorganization by legal proceedings—namely, the restatement of assets in terms of present considerations as well as appropriate modifications of capital and capital surplus, in order to obviate, so far as possible, the necessity of future reorganization of like nature.

[4] In addition, ARB 43, Chapter 7A, outlines procedures that must be followed in connection with and after a quasi-reorganization.

[5] Opinion 20 provides accounting principles to be followed when adopting accounting changes. In addition, many newly-issued accounting pronouncements provide specific guidance to be followed when adopting the accounting specified in such pronouncements.

[6] Certain newly-issued accounting standards do not require adoption until some future date. The staff believes, however, that if the registrant intends or is required to adopt those standards within 12 months following the quasi-reorganization, the registrant should adopt those standards prior to or as an integral part of the quasi-reorganization. Further, registrants should consider early adoption of standards with effective dates more than 12 months subsequent to a quasi-reorganization.

not unduly conservative amounts, **determined with due regard for the accounting to be employed by the Company thereafter.**" (emphasis added)

In addition, the staff believes that adopting a discretionary change in accounting principle that will be reflected in the financial statements within 12 months following the consummation of a quasi-reorganization leads to a presumption that the accounting change was contemplated at the time of the quasi-reorganization.[7]

Question 3: In connection with a quasi-reorganization, may there be a write-up of net assets?

Interpretive Response: No. The staff believes that increases in the recorded values of specific assets (or reductions in liabilities) to fair value are appropriate providing such adjustments are factually supportable, however, the amount of such increases are limited to offsetting adjustments to reflect decreases in other assets (or increases in liabilities) to reflect their new fair value. In other words, a quasi-reorganization should not result in a write-up of net assets of the registrant.

Question 4: The interpretive response to question 1 indicates that the staff believes that a deficit reclassification of any nature is considered to be a quasi-reorganization, and accordingly, must satisfy all the conditions of Section 210.[8] Assume a company has satisfied all the requisite conditions of Section 210, and has eliminated a deficit in retained earnings by a concurrent reduction in paid-in capital, but did not need to restate assets and liabilities by a charge to capital because assets and liabilities were already stated at fair values. How should the company reflect the tax benefits of operating loss or tax credit carryforwards for financial reporting purposes that existed as of the date of the quasi-reorganization when such tax benefits are subsequently recognized for financial reporting purposes?

Interpretive Response: The staff believes Statement 109 requires that any subsequently recognized tax benefits of operating loss or tax credit carryforwards that existed as of the date of a quasi-reorganization be reported as a direct addition to paid-in capital. The staff believes that this position is consistent with the "new company" or "fresh-start" concept embodied in Section 210,[9] and in existing accounting literature regarding quasi-reorganizations, and with the FASB staff's justification for such a position when they stated that a "new enterprise would not have tax benefits attributable to operating losses or tax credits that arose prior to its organization date.[10]

The FASB recognized that a practice existed of recording deficit elimination type quasi-reorganizations without evaluating the concurrent need to restate assets and liabilities to fair values, and provided guidance on accounting for the tax benefits of carryforward items subsequent to such an event.[11] This practice and accounting is not permitted by Section 210, and accordingly, is not appropriate for registrants. The staff believes that all registrants that comply with the requirements of Section 210 in effecting a quasi-reorganization should apply the accounting required by the first sentence of paragraph 39 of Statement 109 for the tax benefits of tax carryforward items.[12] Therefore, even though the only effect of a quasi-reorganization is the elimination of a deficit in retained earnings because assets and liabilities are already stated at fair values and the revaluation of assets and liabilities is unnecessary (or a write-up of net assets is prohibited as indicated in the interpretive response to question 3 above), subsequently recognized tax benefits of operating loss or tax credit carryforward items should be recorded as a direct addition to paid-in capital.

Question 5: If a company had previously recorded a quasi-reorganization that only resulted in the elimination of a deficit in retained earnings, may the company reverse such entry and "undo" its quasi-reorganization?

Interpretive Response: No. The staff believes Opinion 20 would preclude such a change in accounting. It states: "a method of accounting that was previously adopted for a type of transaction or event which is being terminated **or which was a single, nonrecurring event in the past should not be changed.**" (emphasis added)[13]

T. Accounting for Expenses or Liabilities Paid by Principal Stockholder(s)

Facts: Company X was a defendant in litigation for which the company had not recorded a liability in accordance with Statement 5. A principal stockholder of the company transfers a portion of his shares to the plaintiff to settle such litigation. If the company had settled the litigation directly, the company would have recorded the settlement as an expense.

Question: Must the settlement be reflected as an expense in the company's financial statements, and if so, how?

Interpretive Response: Yes. The value of the shares transferred should be reflected as an expense in the company's financial statements with a corresponding credit to contributed (paid-in) capital.

The staff believes that such a transaction is similar to those described in AICPA Interpretation 1 to Opinion 25 in which a principal stockholder[1]

[7] Certain accounting changes require restatement of prior financial statements. The staff believes that if a quasi-reorganization had been recorded in a restated period, the effects of the accounting change on quasi-reorganization adjustments should also be restated to properly reflect the quasi-reorganization in the restated financial statements.

[8] See footnote 3.

[9] Section 210 (ASR 25) discusses the "conditions under which a quasi-reorganization has come to be applied in accounting to the corporate procedures in the course of which a company, without creation of new corporate entity and without intervention of formal court proceedings, is enabled to eliminate a deficit whether resulting from operations or recognition of other losses or both and to establish a new earned surplus account for the accumulation of earnings subsequent to the date selected as the effective date of the quasi-reorganization." It further indicates that "it is implicit in a procedure of this kind that it is not to be employed recurrently, **but only under circumstances which would justify an actual reorganization or formation of a new corporation**, particularly if the sole purpose of the quasi-reorganization is the elimination of a deficit in earned surplus resulting from operating losses." (emphasis added)

[10] FASB Special Report: A Guide to Implementation of Statement 109 on Accounting for Income Taxes: Questions and Answers answer 9 states in part: "ARB 43, Chapter 7, 'Capital Accounts,' states that after a quasi-reorganization, the enterprise's accounting should be substantially similar to that appropriate for a new enterprise. As such, any subsequently recognized tax benefit of an operating loss or tax credit carryforward that existed at the date of a quasi-reorganization should not be included in the determination of income of the "new" enterprise, regardless of whether losses that gave rise to an operating loss carryforward were charged to income prior to the quasi-reorganization or directly to contributed capital as part of the quasi-reorganization. A new enterprise would not have tax benefits attributable to operating losses or tax credits that arose prior to its organization date."

[11] Statement 109, paragraph 39, states, in part: "The only exception is for enterprises that have previously both adopted Statement 96 and effected a quasi reorganization that involves only the elimination of a deficit in retained earnings by a concurrent reduction in contributed capital prior to adopting this Statement. For those enterprises, subsequent recognition of the tax benefit of prior deductible temporary differences and carryforwards is included in income and reported as required by paragraph 37 * * * and then reclassified from retained earnings to contributed capital." Also, see Footnote 10.

[12] The first sentence of paragraph 39 of Statement 109 states: "[t]he tax benefit of deductible temporary differences and carryforwards as of the date of a quasi reorganization as defined and contemplated in ARB 43, Chapter 7, ordinarily are reported as a direct addition to contributed capital if the tax benefits are recognized in subsequent years."

[13] Opinion 20, paragraph 16.

[1] Statement 57, paragraph 246, defines principal owners as "owners of record or known beneficial owners of more than 10 percent of the voting interests of the enterprise."

establishes or finances a stock option, purchase or award plan for one or more employees of the company. Interpretation 1 states that "if a principal stockholder's intention is to enhance or maintain the value of his investment by entering into such an arrangement, the corporation is implicitly benefiting from the plan by retention of, and possibly improved performance by, the employee. In this case, the benefits to a principal stockholder and to the corporation are generally impossible to separate. Similarly, it is virtually impossible to separate a principal stockholder's personal satisfaction from the benefit to the corporation." As a result, Interpretation 1 requires the company to account for such a transaction as if it were a compensatory plan adopted by the company, with an offsetting contribution to capital, unless: (1) The stockholder's relationship to the employee would normally result in generosity, (2) the stockholder has an obligation to the employee which is unrelated to employment, or (3) the company clearly does not benefit from the transaction.

The staff believes that the problem of separating the benefit to the principal stockholder from the benefit to the company cited in Interpretation 1 is not limited to transactions involving stock compensation. Therefore, similar accounting is required in this and other[2] transactions where a principal stockholder pays an expense for the company, unless the stockholder's action is caused by a relationship or obligation completely unrelated to his position as a stockholder or such action clearly does not benefit the company.

Some registrants and their accountants have taken the position that since Statement 57 applies to these transactions and requires only the disclosure of material related party transactions, the staff should not require the accounting called for by Interpretation 1 for transactions other than those specifically covered by it. The staff notes, however, that Statement 57 does not address the measurement of related party transactions and that, as a result, such transactions are generally recorded at the amounts indicated by their terms.[3] However, the staff believes that transactions of the type described above differ from the typical related party transactions.

The transactions for which Statement 57 requires disclosure generally are those in which a company receives goods or services directly from, or provides goods or services directly to, a related party, and the form and terms of such transactions may be structured to produce either a direct or indirect benefit to the related party. The participation of a related party in such a transaction negates the presumption that transactions reflected in the financial statements have been consummated at arm's length. Disclosure is therefore required to compensate for the fact that, due to the related party's involvement, the terms of the transaction may produce an accounting measurement for which a more faithful measurement may not be determinable.

However, transactions of the type discussed in the facts given do not have such problems of measurement and appear to be transacted to provide a benefit to the stockholder through the enhancement or maintenance of the value of the stockholder's investment. The staff believes that the substance of such transactions is the payment of an expense of the company through contributions by the stockholder. Therefore, the staff determined that it was inappropriate to permit accounting according to the form of the transaction.

U. Gain Recognition on the Sale of A Business or Operating Assets to A Highly Leveraged Entity

Facts: A registrant has sold a subsidiary, division or operating assets to a newly formed, thinly capitalized, highly leveraged entity (NEWCO) for cash or a combination of cash and securities, which may include subordinated debt, preferred stock, warrants, options or other instruments issued by NEWCO. In some of these transactions, registrants may guarantee debt or enter into other agreements (sometimes referred to as make-well agreements) that may require the registrant to infuse cash into NEWCO under certain circumstances. Securities received in the transaction are not actively traded and are subordinate to substantially all of NEWCO's other debt. The value of the consideration received appears to exceed the cost basis of the net assets sold.

Question 1: Assuming the transaction may be properly accounted for as a divestiture,[1] does the staff believe it is appropriate for the registrant to recognize a gain?

Interpretive Response: The staff believes there often exist significant uncertainties about the seller's ability to realize non-cash proceeds received in transactions in which the purchaser is a thinly capitalized, highly leveraged entity, particularly when its assets consist principally of those purchased from the seller. The staff believes that such uncertainties raise doubt as to whether immediate gain recognition is appropriate. Factors that may lead the staff to question gain recognition in such transactions include:

1. Situations in which the assets or operations sold have historically not produced cash flows from operations[2] that will be sufficient to fund future debt service and full dividend requirements on a current basis.[3] Often the servicing of debt and preferred dividend requirements is dependent upon future events that cannot be assured, such as sales of assets or improvements in earnings.

2. The lack of any substantial amount of equity capital in NEWCO other than that provided by the registrant; and/or

3. The existence of contingent liabilities of the registrant, such as debt guarantees or agreements that require the registrant to infuse cash into NEWCO under certain circumstances.

The staff also believes that even where the registrant receives solely cash proceeds, the recognition of any gain would be impacted by the existence of any guarantees or other agreements that may require the registrant to infuse cash into NEWCO, particularly when the first two factors listed above exist.

Question 2: If immediate recognition of all or a portion of the apparent gain is not appropriate due to the existence of facts and circumstances similar to the above, at what future date should the gain be recognized and how should the deferred gain be disclosed in the financial statements?

Interpretive Response: Generally, the staff believes that the deferred gain[4] should not be recognized until such time as cash flows from operating activities are sufficient to fund debt service and dividend requirements (on a full accrual basis)[5] or the registrant's investment in NEWCO has been or could be readily converted to cash (*e.g.*, active trading market develops in NEWCO securities and the registrant is not restricted from selling such securities, the registrant sells the securities received on a nonrecourse basis, etc.) and the registrant has no further obligations under any debt guarantees or other agreements that would require it to make additional investments in NEWCO.

The staff believes that the amount of any deferred gain (including deferral of interest or dividend income on securities received) should be disclosed on the face of the balance sheet as a deduction from the related asset account (*i.e.*, investment in NEWCO). The footnotes to the financial statements should include a complete description of the transaction, including the existence of any commitments and contingencies, the terms of the securities received, and the accounting treatment of amounts due thereon.

V. Certain Transfers of Nonperforming Assets

Facts: A financial institution desires to reduce its nonaccrual or reduced rate loans and other nonearning assets, including foreclosed real estate (collectively, "nonperforming assets"). Some or all of such nonperforming assets are transferred to a newly-formed entity (the "new entity"). The financial institution, as consideration for transferring the nonperforming assets, may receive (a) the cash proceeds of debt issued by the new entity to third parties, (b) a note or other redeemable instrument issued by the new entity, or (c) a combination of (a) and (b). The residual equity interests in the new entity, which carry voting rights, initially owned by the financial institution, are transferred to outsiders (for example, via distribution to the financial institution's shareholders or sale or contribution to an unrelated third party).

The financial institution typically will manage the assets for a fee, providing necessary services to liquidate the assets, but otherwise does not have the right to appoint directors or legally control the operations of the new entity.

Statement 140 provides guidance for determining when a transfer of financial assets can be recognized as a sale. The interpretive guidance provided in response to Questions 1 and 2 of this SAB does not apply to transfers of financial assets falling within the scope of Statement 140. Because Statement 140 does not apply to distributions of financial assets to shareholders or a contribution of such assets to unrelated third parties, the interpretive guidance provided in response to Questions 1 and 2 of this SAB would apply to such conveyances.

Further, registrants should consider the guidance contained in FASB Interpretation 46 in determining whether it should consolidate the newly-formed entity.

Question 1: What factors should be considered in determining whether such transfer of nonperforming assets can be accounted for as a disposition by the financial institution?

Interpretive Response: The staff believes that determining whether nonperforming assets have been disposed of in substance requires an assessment as to whether the risks and rewards of ownership have been transferred. SAB Topic 5.E[1] discusses some factors that the staff believes should be considered in determining whether the risks of a business have been transferred. Consistent with the factors discussed in SAB Topic 5.E, the staff believes that the transfer described should not be accounted for as a sale or disposition if (a) the transfer of nonperforming assets to the new entity provides for recourse by the new entity to the transferor financial institution, (b) the financial institution directly or indirectly guarantees debt of the new entity in whole or in part, (c) the financial institution retains a participation in the rewards of ownership of the transferred assets, for example through a higher than normal incentive or other management fee arrangement,[2] or (d) the fair value of any material non-cash consideration received by the financial institution (for example, a note or other redeemable instrument) cannot be reasonably estimated. Additionally, the staff believes that the accounting for the transfer as a sale or disposition generally is not appropriate where the financial institution retains rewards of ownership through the holding of significant residual equity interests or where third party holders of such interests do not have a significant amount of capital at risk.

Where accounting for the transfer as a sale or disposition is not appropriate, the nonperforming assets should remain on the financial institution's balance sheet and should continue to be disclosed as nonaccrual, past due, restructured or foreclosed, as appropriate, and the debt of the new entity should be recorded by the financial institution.

Question 2: If the transaction is accounted for as a sale to an unconsolidated party, at what value should the transfer be recorded by the financial institution?

Interpretive Response: The staff believes that the transfer should be recorded by the financial institution at the fair value of assets transferred (or, if more clearly evident, the fair value of assets received) and a loss recognized by the financial institution for any excess of the net carrying value[3] over the fair value.[4] Fair value is the amount that

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[1] Transactions such as these require careful evaluation to determine whether, in substance, a divestiture has occurred. SAB Topic 5.E provides the staff's views on circumstances that may exist that would lead the staff to conclude that the risks of the business have not been transferred to the new owners and that a divestiture has not occurred. Topic 5.E indicates that factors to consider in determining whether a transaction should be accounted for as a divestiture include:

- Continuing involvement by the seller in the business;
- Absence of a significant financial investment in the business by the buyer;
- Repayment of debt, which constitutes the principal consideration in the transaction, is dependent on future successful operations; or
- The continued necessity for debt or contract performance guarantees on behalf of the business by the seller.

Further, the seller should consider whether it is required to consolidate the entity by way of its variable interests held in the NEWCO pursuant to the provisions of FASB Interpretation 46.

[2] As defined in paragraphs 21–24 of Statement 95.

[3] The ability of NEWCO to fund the debt service and the dividend requirement(s) should be evaluated on a full accrual basis—*i.e.*, irrespective of the purchaser's ability to satisfy those requirements through deferral (contractually or otherwise) of any required cash payments or the issuance of additional securities to satisfy such requirements.

[4] In situations in which the gain is deferred following the guidance in this SAB, the staff believes that the seller generally should not recognize any income from the securities received in such transactions (including accretion of securities to their face or redemption value) until realization is more fully assured.

[5] *See* note 4.

[2] For example, SAB Topic 1.B indicates that the separate financial statements of a subsidiary should reflect any costs of its operations which are incurred by the parent on its behalf. Additionally, the staff notes that AICPA Technical Practice Aids § 4160 also indicates that the payment by principal stockholders of a company's debt should be accounted for as a capital contribution.

[3] However, in some circumstances it is necessary to reflect, either in the historical financial statements or a pro forma presentation (depending on the circumstances), related party transactions at amounts other than those indicated by their terms. Two such circumstances are addressed in Staff Accounting Bulletin Topic 1.B.1, Questions 3 and 4. Another example is where the terms of a material contract with a related party are expected to change upon the completion of an offering (*i.e.*, the principal shareholder requires payment for services which had previously been contributed by the shareholder to the company)

[1] SAB Topic 5.E addresses the accounting for the transfer of certain operations whereby there is a continuing involvement by the seller or other evidence that incidents of ownership remain with the seller.

[2] The staff recognizes that the determination of whether the financial institution retains a participation in the rewards of ownership will require an analysis of the facts and circumstances of each individual transaction. Generally, the staff believes that, in order to conclude that the financial institution has disposed of the assets in substance, the management fee arrangement should not enable the financial institution to participate to any significant extent in the potential increases in cash flows or value of the assets, and the terms of the arrangement, including provisions for discontinuance of services, must be substantially similar to management arrangements with third parties.

[3] The carrying value should be reduced by any allocable allowance for credit losses or other valuation allowances. The staff believes that the loss recognized for the excess of the net carrying value over the fair value should be considered a credit loss and this should not be included by the financial institution as loss on disposition.

[4] The staff notes that the EITF reached a consensus at its November 17, 1988 meeting on

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would be realizable in an outright sale to an unrelated third party for cash.[5] The same concepts should be applied in determining fair value of the transferred assets, *i.e.*, if an active market exists for the assets transferred, then fair value is equal to the market value. If no active market exists, but one exists for similar assets, the selling prices in that market may be helpful in estimating the fair value. If no such market price is available, a forecast of expected cash flows, discounted at a rate commensurate with the risks involved, may be used to aid in estimating the fair value. In situations where discounted cash flows are used to estimate fair value of nonperforming assets, the staff would expect that the interest rate used in such computations will be substantially higher than the cost of funds of the financial institution and appropriately reflect the risk of holding these nonperforming assets. Therefore, the fair value determined in such a way will be lower than the amount at which the assets would have been carried by the financial institution had the transfer not occurred, unless the financial institution had been required under GAAP to carry such assets at market value or the lower of cost or market value.

Question 3: Where the transaction may appropriately be accounted for as a sale to an unconsolidated party and the financial institution receives a note receivable or other redeemable instrument from the new entity, how should such asset be disclosed pursuant to Item III C, "Risk Elements," of Industry Guide 3? What factors should be considered related to the subsequent accounting for such instruments received?

Interpretive Response: The staff believes that the financial institution may exclude the note receivable or other asset from its Risk Elements disclosures under Guide 3 provided that: (a) the receivable itself does not constitute a nonaccrual, past due, restructured, or potential problem loan that would require disclosure under Guide 3, and (b) the underlying collateral is described in sufficient detail to enable investors to understand the nature of the note receivable or other asset, if material, including the extent of any over-collateralization. The description of the collateral normally would include material information similar to that which would be provided if such assets were owned by the financial institution, including pertinent Risk Element disclosures.

The staff notes that, in situations in which the transaction is accounted for as a sale to an unconsolidated party and a portion of the consideration received by the registrant is debt or another redeemable instrument, careful consideration must be given to the appropriateness of recording profits on the management fee arrangements or interest or dividends on the instrument received, including consideration of whether it is necessary to defer such amounts or to treat such payments on a cost recovery basis. Further, if the new entity incurs losses to the point that its permanent equity based on GAAP is eliminated, it would ordinarily be necessary for the financial institution, at a minimum, to record further operating losses as its best estimate of the loss in realizable value of its investment.[6]

W. Contingency Disclosures Regarding Property-Casualty Insurance Reserves for Unpaid Claim Costs

Facts: A property-casualty insurance company (the "Company") has established reserves in accordance with Statement 60 for unpaid claim costs, including estimates of costs relating to claims incurred but not reported ("IBNR").[1] The reserve estimate for IBNR claims was based on past loss experience and current trends except that the estimate has been adjusted for recent significant unfavorable claims experience that the Company considers to be nonrecurring and abnormal. The Company attributes the abnormal claims experience to a recent acquisition and accelerated claims processing; however, actuarial studies have been inconclusive and subject to varying interpretations. Although the reserve is deemed adequate to cover all probable claims, there is a reasonable possibility that the abnormal claims experience could continue, resulting in a material understatement of claim reserves.

Statement 5 requires, among other things, disclosure of loss contingencies.[2] However, paragraph 2 of that Statement notes that "[n]ot all uncertainties inherent in the accounting process give rise to contingencies as that term is used in [Statement 5]."

SOP–94–6[3] also provides disclosure guidance regarding certain significant estimates.

Question 1: In the staff's view, do Statement 5 and SOP 94–6 disclosure requirements apply to property-casualty insurance reserves for unpaid claim costs? If so, how?

Interpretive Response: Yes. The staff believes that specific uncertainties (conditions, situations and/or sets of circumstances) not considered to be normal and recurring because of their significance and/or nature can result in loss contingencies[4] for purposes of applying Statement 5 and SOP 94–6 disclosure requirements. General uncertainties, such as the amount and timing of claims, that are normal, recurring, and inherent to estimations of property-casualty insurance reserves are not considered subject to the disclosure requirements of Statements 5. Some specific uncertainties that may result in loss contingencies pursuant to Statement 5, depending on significance and/or nature, include insufficiently understood trends in claims activity; judgmental adjustments to historical experience for purposes of estimating future claim costs (other than for normal recurring general uncertainties); significant risks to an individual claim or group of related claims; or catastrophe losses. The requirements of SOP 94–6 apply when "[i]t is at least reasonably possible that the estimate of

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Issue 88–25 that the newly created "liquidating bank" should continue to report its assets and liabilities at fair values at the date of the financial statements.

[5] The EITF reached a consensus on issue 11 of Issue 01–02 that an enterprise that distributes loans to its owners should report such distribution at fair value.

[6] Typically, the financial institution's claim on the new entity is subordinate to other debt instruments and thus the financial institution will incur any losses beyond those incurred by the permanent equity holders.

[1] Paragraph 18 of Statement 60 prescribes that "[t]he liability for unpaid claims shall be based on the estimated ultimate cost of settling the claims (including the effects of inflation and other societal and economic factors), using past experience adjusted for current trends, and any other factors that would modify past experience." [Footnote reference omitted]

[2] Paragraph 10 of Statement 5 specified that "[i]f no accrual is made for a loss contingency because one or both of the conditions in paragraph 8 are not met, or if an exposure to loss exists in excess of the amount accrued pursuant to the provisions of paragraph 8, disclosure of the contingency shall be made when there is at least a reasonable possibility that a loss or an additional loss may have been incurred. The disclosure shall indicate the nature of the contingency and shall give an estimate of the possible loss or range of loss or state that such an estimate cannot be made." [Footnote reference omitted and emphasis added.]

[3] SOP 94–6 provides that disclosures regarding certain significant estimates should be made when the following criteria are met. The SOP provides that:

> The disclosure should indicate the nature of the uncertainty and include an indication that it is at least reasonably possible that a change in the estimate will occur in the near term. If the estimate involves a loss contingency covered by [Statement]. 5, the disclosure also should include an estimate of the possible loss or range of loss, or state that such an estimate cannot be made. Disclosure of the factors that cause the estimate to be sensitive to change is encouraged but not required. (footnote references omitted)

SOP 94–6 requires disclosures regarding current vulnerability due to certain concentrations which my be applicable as well.

[4] The loss contingency referred to in this document is the potential for a material understatement of reserves for unpaid claims.

the effect on the financial statements of a condition, situation, or set of circumstances that existed at the date of the financial statements will change in the near term due to one or more future confirming events * * * [and] the effect of the change would be material to the financial statements."

Question 2: Do the facts presented above describe an uncertainty that requires disclosures under Statement 5 and SOP 94–6?

Interpretive Response: Yes. The staff believes the judgmental adjustments to historical experience for insufficiently understood claims activity noted above results in a loss contingency within the scope of Statement 5 and SOP 94–6. Based on the facts presented above, at a minimum the Company's financial statements should disclose that for purposes of estimating IBNR claim reserves, past experience was adjusted for what management believes to be abnormal claims experience related to the recent acquisition of Company A and accelerated claims processing. It should also be disclosed that there is a reasonable possibility that the claims experience could be the indication of an unfavorable trend which would require additional IBNR claim reserves in the approximate range of $XX–$XX million (alternatively, if Company management is unable to estimate the possible loss or range of loss, a statement to that effect should be disclosed).

Additionally, the staff also expects companies to disclose the nature of the loss contingency and the potential impact on trends in their loss reserve development discussions provided pursuant to Property-Casualty Industry Guides 4 and 6. Consideration should also be given to the need to provide disclosure in MD&A.

Question 3: Does the staff have an example in which specific uncertainties involving an individual claim or group of related claims result in a loss contingency the staff believes requires disclosure?

Interpretive Response: Yes. A property-casualty insurance company (the "Company") underwrites product liability insurance for an insured manufacturer which has produced and sold millions of units of a particular product which has been used effectively and without problems for many years. Users of the product have recently begun to report serious health problems that they attribute to long term use of the product and have asserted claims under the insurance policy underwritten and retained by the Company. To date, the number of users reporting such problems is relatively small, and there is presently no conclusive evidence that demonstrates a causal link between long term use of the product and the health problems experienced by the claimants. However, the evidence generated to date indicates that there is at least a reasonable possibility that the product is responsible for the problems and the assertion of additional claims is considered probable, and therefore the potential exposure of the Company is material. While an accrual may not be warranted since the loss exposure may not be both probable and estimable, in view of the reasonable possibility of material future claim payments, the staff believes that disclosures made in accordance with Statement 5 and SOP 94–6 would be required under these circumstances.

The disclosure concepts expressed in this example would also apply to an individual claim or group of claims that are related to a single catastrophic event or multiple events having a similar effect.

X. Deleted by SAB 103

Y. Accounting and Disclosures Relating to Loss Contingencies

Facts: A registrant believes it may be obligated to pay material amounts as a result of product or environmental remediation liability. These amounts may relate to, for example, damages attributed to the registrant's products or processes, clean-up of hazardous wastes, reclamation costs, fines, and litigation costs. The registrant may seek to recover a portion or all of these amounts by filing a claim against an insurance carrier or other third parties.

Question 1: Assuming that the registrant's estimate of an environmental remediation or product liability meets the conditions set forth in paragraph 132 of SOP 96–1 for recognition on a discounted basis, what discount rate should be applied and what, if any, special disclosures are required in the notes to the financial statements?

Interpretive Response: The rate used to discount the cash payments should be the rate that will produce an amount at which the environmental or product liability could be settled in an arm's-length transaction with a third party. SOP 96–1 further states that the discount rate used to discount the cash payments should not exceed the interest rate on monetary assets that are essentially risk free[1] and have maturities comparable to that of the environmental or product liability.

If the liability is recognized on a discounted basis to reflect the time value of money, the notes to the financial statements should, at a minimum, include disclosures of the discount rate used, the expected aggregate undiscounted amount, expected payments for each of the five succeeding years and the aggregate amount thereafter, and a reconciliation of the expected aggregate undiscounted amount to amounts recognized in the statements of financial position. Material changes in the expected aggregate amount since the prior balance sheet date, other than those resulting from pay-down of the obligation, should be explained.

Question 2: What financial statement disclosures should be furnished with respect to recorded and unrecorded product or environmental remediation liabilities?

Interpretive Response: Paragraphs 9 and 10 of Statement 5 identify disclosures regarding loss contingencies that generally are furnished in notes to financial statements. SOP 96–1 identifies disclosures that are required and recommended regarding both recorded and unrecorded environmental remediation liabilities. The staff believes that product and environmental remediation liabilities typically are of such significance that detailed disclosures regarding the judgments and assumptions underlying the recognition and measurement of the liabilities are necessary to prevent the financial statements from being misleading and to inform readers fully regarding the range of reasonably possible outcomes that could have a material effect on the registrant's financial condition, results of operations, or liquidity. In addition to the disclosures required by Statement 5 and SOP 96–1, examples of disclosures that may be necessary include:

- Circumstances affecting the reliability and precision of loss estimates.
- The extent to which unasserted claims are reflected in any accrual or may affect the magnitude of the contingency.
- Uncertainties with respect to joint and several liability that may affect the magnitude of the contingency, including disclosure of the aggregate expected cost to remediate particular sites that are individually material if the likelihood of contribution by the other significant parties has not been established.
- Disclosure of the nature and terms of cost-sharing arrangements with other potentially responsible parties.
- The extent to which disclosed but unrecognized contingent losses are expected to be recoverable through insurance, indemnification arrangements, or other sources, with

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[1] As described in Concepts Statement 7.

disclosure of any material limitations of that recovery.

- Uncertainties regarding the legal sufficiency of insurance claims or solvency of insurance carriers.[2]
- The time frame over which the accrued or presently unrecognized amounts may be paid out.
- Material components of the accruals and significant assumptions underlying estimates.

Registrants are cautioned that a statement that the contingency is not expected to be material does not satisfy the requirements of Statement 5 if there is at least a reasonable possibility that a loss exceeding amounts already recognized may have been incurred and the amount of that additional loss would be material to a decision to buy or sell the registrant's securities. In that case, the registrant must either (a) disclose the estimated additional loss, or range of loss, that is reasonably possible, or (b) state that such an estimate cannot be made.

Question 3: What disclosures regarding loss contingencies may be necessary outside the financial statements?

Interpretive Response: Registrants should consider the requirements of Items 101 (Description of Business), 103 (Legal Proceedings), and 303 (MD&A) of Regulations S–K and S–B. The Commission has issued interpretive releases that provide additional guidance with respect to these items.[3] In a 1989 interpretive release, the Commission noted that the availability of insurance, indemnification, or contribution may be relevant in determining whether the criteria for disclosure have been met with respect to a contingency.[4] The registrant's assessment in this regard should include consideration of facts such as the periods in which claims for recovery may be realized, the likelihood that the claims may be contested, and the financial condition of third parties from which recovery is expected.

Disclosures made pursuant to the guidance identified in the preceding paragraph should be sufficiently specific to enable a reader to understand the scope of the contingencies affecting the registrant. For example, a registrant's discussion of historical and anticipated environmental expenditures should, to the extent material, describe separately (a) recurring costs associated with managing hazardous substances and pollution in on-going operations, (b) capital expenditures to limit or monitor hazardous substances or pollutants, (c) mandated expenditures to remediate previously contaminated sites, and (d) other infrequent or non-recurring clean-up expenditures that can be anticipated but which are not required in the present circumstances. Disaggregated disclosure that describes accrued and reasonably likely losses with respect to particular environmental sites that are individually material may be necessary for a full understanding of these contingencies. Also, if management's investigation of potential liability and remediation cost is at different stages with respect to individual sites, the consequences of this with respect to amounts accrued and disclosed should be discussed.

Examples of specific disclosures typically relevant to an understanding of historical and anticipated product liability costs include the nature of personal injury or property damages alleged by claimants, aggregate settlement costs by type of claim, and related costs of administering and litigating claims. Disaggregated disclosure that describes accrued and reasonably likely losses with respect to particular claims may be necessary if they are individually material. If the contingency involves a large number of relatively small individual claims of a similar type, such as personal injury from exposure to asbestos, disclosure of the number of claims pending at each balance sheet date, the number of claims filed for each period presented, the number of claims dismissed, settled, or otherwise resolved for each period, and the average settlement amount per claim may be necessary. Disclosures should address historical and expected trends in these amounts and their reasonably likely effects on operating results and liquidity.

Question 4: What disclosures should be furnished with respect to site restoration costs or other environmental remediation costs?[5]

Interpretive Response: The staff believes that material liabilities for site restoration, post-closure, and monitoring commitments, or other exit costs that may occur on the sale, disposal, or abandonment of a property as a result of unanticipated contamination of the asset should be disclosed in the notes to the financial statements. Appropriate disclosures generally would include the nature of the costs involved, the total anticipated cost, the total costs accrued to date, the balance sheet classification of accrued amounts, and the range or amount of reasonably possible additional losses. If an asset held for sale or development will require remediation to be performed by the registrant prior to development, sale, or as a condition of sale, a note to the financial statements should describe how the necessary expenditures are considered in the assessment of the asset's value and the possible need to reflect an impairment loss. Additionally, if the registrant may be liable for remediation of environmental damage relating to assets or businesses previously disposed, disclosure should be made in the financial statements unless the likelihood of a material unfavorable outcome of that contingency is remote.[6] The registrant's accounting policy with respect to such costs should be disclosed in accordance with Opinion 22.

Z. Accounting and Disclosure Regarding Discontinued Operations

1. Deleted by SAB 103

2. Deleted by SAB 103

3. Deleted by SAB 103

4. Disposal of Operation With Significant Interest Retained

Facts: A Company disposes of its controlling interest in a component of an entity as defined by Statement 144. The Company retains a minority voting interest directly in the component or it holds a minority voting interest in the buyer of the component. Controlling interest includes those controlling interests established through other means, such as variable interests. Because the Company's voting interest enables it to exert significant influence over the operating and financial policies of the investee, the Company is required by Opinion 18 to account for its residual investment using the equity method.[1]

Question: May the historical operating results of the component and the gain or loss on the sale of the majority interest in the component be classified in the Company's statement of operations as "discontinued operations" pursuant to Statement 144?

Interpretive Response: No. A condition necessary for discontinued operations reporting, as indicated in paragraph 42 of Statement 144 is that an entity "not have any significant continuing involvement in the operations of the component after the disposal transaction." In these circumstances, the transaction should be accounted for as the disposal of a group of assets that is not a component of an entity and classified within continuing operations pursuant to Statement 144.[2]

5. Classification and Disclosure of Contingencies Relating to Discontinued Operations

Facts: A company disposed of a component of an entity in a previous accounting period. The Company received debt and/or equity securities of the buyer of the component or of the disposed component as consideration in the sale, but this financial interest is not sufficient to enable the Company to apply the equity method with respect to its investment in the buyer. The Company made certain warranties to the buyer with respect to the discontinued business, or remains liable under environmental or other laws with respect to certain facilities or operations transferred to the buyer. The disposition satisfied the criteria of Statement 144 for presentation as "discontinued operations." The Company estimated the fair value of the securities received in the transaction for purposes of calculating the gain or loss on disposal that was recognized in its financial statements. The results of discontinued operations prior to the date of disposal or classification as held for sale included provisions for the Company's existing obligations under environmental laws, product warranties, or other contingencies. The calculation of gain or loss on disposal included estimates of the Company's obligations arising as a direct result of its decision to dispose of the component, under its warranties to the buyer, and under environmental or other laws. In a period subsequent to the disposal date, the Company records a charge to income with respect to the securities because their fair value declined materially and the Company determined that the decline was other than temporary. The Company also records adjustments of its previously estimated liabilities arising under the warranties and under environmental or other laws.

Question 1: Should the writedown of the carrying value of the securities and the adjustments of the contingent liabilities be classified in the current period's statement of operations within continuing operations or as an element of discontinued operations?

Interpretive Response: Adjustments of estimates of contingent liabilities or contingent assets that remain after disposal of a component of an entity or that arose pursuant to the terms of the disposal generally should be classified within discontinued operations.[1] However, the staff believes that changes in the carrying value of assets received as consideration in the disposal or of residual interests in the business should be classified within continuing operations.

Paragraph 44 of Statement 144 requires that "adjustments to amounts previously reported in discontinued operations that are directly related to the disposal of a component of an entity in a prior period shall be classified separately in the current period in discontinued operations." The staff believes that the provisions of paragraph 44 apply only to adjustments that are necessary to reflect new information about events that have occurred that becomes available prior to disposal of the component of the entity, to reflect the actual timing and terms of the disposal when it is consummated, and to reflect the resolution of contingencies associated with that component, such as warranties and environmental liabilities retained by the seller.

Developments subsequent to the disposal date that are not directly related to the disposal of the component or the operations of the component prior to disposal are not "directly related to the disposal" as contemplated by paragraph 44 of Statement 144. Subsequent changes in the carrying value of assets received upon disposition of a component do not affect the determination of gain or loss at the disposal date, but represent the consequences of management's subsequent decisions to hold or sell those assets. Gains and losses, dividend and interest income, and portfolio management expenses associated with assets received as consideration for discontinued operations should be reported within continuing operations.

Question 2: What disclosures would the staff expect regarding discontinued operations prior to the disposal date and with respect to risks retained subsequent to the disposal date?

Interpretive Response: MD&A[12] should include disclosure of known trends, events, and uncertainties involving discontinued operations that may materially affect the Company's liquidity, financial condition, and results of operations (including net income) between the date when a component of an entity is classified as discontinued and the date when the risks of those operations will be transferred or otherwise terminated. Disclosure should include discussion of the impact on the Company's liquidity, financial condition, and results of operations of changes in the plan of disposal or changes in circumstances related to the plan. Material contingent liabilities,[3] such as product or environmental liabilities or litigation, that may remain with the Company notwithstanding disposal of the underlying business should be identified in notes to the financial statements and any reasonably likely range of possible loss should be disclosed pursuant to Statement 5. MD&A should include discussion of the reasonably likely effects of these contingencies on reported results and liquidity. If the Company retains a financial interest in the discontinued component or in the buyer of that component that is material to the Company, MD&A should include discussion of known trends, events, and uncertainties, such as the financial condition and operating results of the issuer of the security, that may be reasonably expected to affect the amounts ultimately realized on the investments.

6. Deleted by SAB 103

7. Accounting for the Spin-off of a Subsidiary

Facts: A Company disposes of a business through the distribution of a subsidiary's stock to the Company's shareholders on a pro rata basis in a transaction that is referred to as a spin-off.

Question: May the Company elect to characterize the spin-off transaction as resulting in a change in the reporting entity and restate its historical financial statements as if the Company never had

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[2] The staff believes there is a rebuttable presumpiton that no asset should be recognized for a claim for recovery from a party that is asserting that it is not liable to indemnify the registrant. Registrants that overcome that presumpiton should disclose the amount of recorded recoveries that are being contested and discuss the reasons for concluding that the amounts are probable of recovery.

[3] See Securities Act Release No. 6130, FR 36, Securities Act Release No. 33–8040, Securities Act Release No. 33–8039, and Securities Act Release 33–8176.

[4] See, for example, footnote 30 of FR 36 (footnote 17 of Section 501.02 of the Codification of Financial Reporting Policies).

[5] Registrants are reminded that Statement 143 provides guidance for accounting and reporting for costs associated with asset retirement obligations.

[6] If the company has a guarantee as defined by Interpretation 45, the entity is required to provide the disclosures and recognize the fair value of the guarantee in the company's financial statements even if the "contingent" aspect of the guarantee is deemed to be remote.

[1] In some circumstances, the seller's continuing interest may be so great that divestiture accounting is inappropriate. See SAB Topic 5.E.

[2] However, a plan of disposal that contemplates the transfer of assets to a limited-life entity created for the single purpose of liquidating the assets of a component of an entity would not necessitate classification within continuing operations solely because the registrant retains control or significant influence over the liquidating entity.

[1] Registrants are reminded that Interpretation 45 requires recognition and disclosure of certain guarantees which may impose accounting and disclosure requirements in addition to those discussed in this SAB Topic.

[12] Item 303 of Regulation S–K.

[3] Registrants also should consider the disclosure requirements of Interpretation 45.

an investment in the subsidiary, in the manner specified by paragraph 34 of APB Opinion 20?

Interpretive Response: Not ordinarily. If the Company was required to file periodic reports under the Exchange Act within one year prior to the spin-off, the staff believes the Company should reflect the disposition in conformity with Statement 144. This presentation most fairly and completely depicts for investors the effects of the previous and current organization of the Company. However, in limited circumstances involving the initial registration of a company under the Exchange Act or Securities Act, the staff has not objected to financial statements that retroactively reflect the reorganization of the business as a change in the reporting entity if the spin-off transaction occurs prior to effectiveness of the registration statement. This presentation may be acceptable in an initial registration if the Company and the subsidiary are in dissimilar businesses, have been managed and financed historically as if they were autonomous, have no more than incidental common facilities and costs, will be operated and financed autonomously after the spin-off, and will not have material financial commitments, guarantees, or contingent liabilities to each other after the spin-off. This exception to the prohibition against retroactive omission of the subsidiary is intended for companies that have not distributed widely financial statements that include the spun-off subsidiary. Also, dissimilarity contemplates substantially greater differences in the nature of the businesses than those that would ordinarily distinguish reportable segments as defined by Statement 131.

AA. Deleted by SAB 103

BB. Inventory Valuation Allowances

Facts: ARB 43, Chapter 4, Statement 5, specifies that: "[a] departure from the cost basis of pricing the inventory is required when the utility of the goods is no longer as great as its cost. Where there is evidence that the utility of goods, in their disposal in the ordinary course of business, will be less than cost, whether due to physical obsolescence, changes in price levels, or other causes, the difference should be recognized as a loss of the current period. This is generally accomplished by stating such goods at a lower level commonly designated as market."

Footnote 2 to that same chapter indicates that "[i]n the case of goods which have been written down below cost at the close of a fiscal period, such reduced amount is to be considered the cost for subsequent accounting purposes."

Lastly, Opinion 20 provides "inventory obsolescence" as one of the items subject to estimation and changes in estimates under the guidance in paragraphs 10–11 and 31–33 of that Opinion.

Question: Does the write-down of inventory to the lower of cost or market, as required by ARB 43, create a new cost basis for the inventory or may a subsequent change in facts and circumstances allow for restoration of inventory value, not to exceed original historical cost?

Interpretive Response: Based on ARB 43, footnote 2, the staff believes that a write-down of inventory to the lower of cost or market at the close of a fiscal period creates a new cost basis that subsequently cannot be marked up based on changes in underlying facts and circumstances.[1]

CC. Impairments

Standards for recognizing and measuring impairment of the carrying amount of long-lived assets including certain identifiable intangibles to be held and used in operations are found in Statement 144. Standards for recognizing and measuring impairment of the carrying amount of goodwill and identifiable intangible assets that are not currently being amortized are found in Statement 142.

Facts: Company X has mainframe computers that are to be abandoned in six to nine months as replacement computers are put in place. The mainframe computers were placed in service in January 20X0 and were being depreciated on a straight-line basis over seven years. No salvage value had been projected at the end of seven years and the original cost of the computers was $8,400. The board of directors, with the appropriate authority, approved the abandonment of the computers in March 20X3 when the computers had a remaining carrying value of $4,600. No proceeds are expected upon abandonment. Abandonment cannot occur prior to the receipt and installation of replacement computers, which is expected prior to the end of 20X3. Management had begun reevaluating its mainframe computer capabilities in January 20X2 and had included in its 20X3 capital expenditures budget an estimated amount for new mainframe computers. The 20X3 capital expenditures budget had been prepared by management in August 20X2, had been discussed with the company's board of directors in September 20X2 and was formally approved by the board of directors in March 20X3. Management had also begun soliciting bids for new mainframe computers beginning in the fall of 20X2. The mainframe computers, when grouped with assets at the lowest level of identifiable cash flows, were not impaired on a "held and used" basis throughout this time period. Management had not adjusted the original estimated useful life of the computers (seven years) since 20X0.

Question 1: Company X proposes to recognize an impairment charge under Statement 144 for the carrying value of the mainframe computers of $4,600 in March 20X3. Does Company X meet the requirements in Statement 144 to classify the mainframe computer assets as "to be abandoned?"

Interpretive Response: No. Statement 144, paragraph 28, provides that "a long-lived asset to be abandoned is disposed of when it ceases to be used. If an entity commits to a plan to abandon a long-lived asset before the end of its previously estimated useful life, depreciation estimates shall be revised in accordance with Opinion 20 to reflect the use of the asset over its shortened useful life."

Question 2: Would the staff accept an adjustment to write down the carrying value of the computers to reflect a "normalized depreciation" rate for the period from March 20X3 through actual abandonment (*e.g.*, December 20X3)? Normalized depreciation would represent the amount of depreciation otherwise expected to be recognized during that period without adjustment of the asset's useful life, or $1,000 ($100/month for ten months) in the example fact pattern.

Interpretive Response: No. The mainframe computers would be viewed as "held and used" at March 20X3 under the fact pattern described. There is no basis under Statement 144 to write down an asset to an amount that would subsequently result in a "normalized depreciation" charge through the disposal date, whether disposal is to be by sale, abandonment, or other means. For an asset that meets the requirements to be classified as "held for sale" under Statement 144, paragraph 34 of that standard requires the asset to be valued at the lower of carrying amount or fair value less cost to sell. For assets that are classified as "held and used" under Statement 144, an assessment must first be made as to whether the asset (asset group) is impaired. Paragraph 7 of Statement 144 indicates that an impairment loss shall be recognized only if the carrying amount of a long-lived asset (asset group) is not recoverable and exceeds its fair value. The carrying amount of a long-lived asset (asset group) is not recoverable if it exceeds the sum of the undiscounted cash flows expected to result from the use and eventual disposition of the asset (asset group). The staff would object to a write down of long-lived assets to a "normalized depreciation" value as representing an acceptable alternative to the approaches required in Statement 144.

[1] See also disclosure requirement for inventory balances in Rule 5–02(6) of Regulation S–X.

The staff also believes that registrants must continually evaluate the appropriateness of useful lives assigned to long-lived assets, including identifiable intangible assets and goodwill. In the above fact pattern, management had contemplated removal of the mainframe computers beginning in January 20X2 and, more formally, in August 20X2 as part of compiling the 20X3 capital expenditures budget. At those times, at a minimum, management should have reevaluated the original useful life assigned to the computers to determine whether a seven year amortization period remained appropriate given the company's current facts and circumstances, including ongoing technological changes in the market place. This reevaluation process should have continued at the time of the September 20X2 board of directors' meeting to discuss capital expenditure plans and, further, as the company pursued mainframe computer bids. Given the contemporaneous evidence that management's best estimate during much of 20X2 was that the current mainframe computers would be removed from service in 20X3, the depreciable life of the computers should have been adjusted prior to 20X3 to reflect this new estimate. The staff does not view the recognition of an impairment charge to be an acceptable substitute for choosing the appropriate initial amortization or depreciation period or subsequently adjusting this period as company or industry conditions change. The staff's view applies also to selection of, and changes to, estimated residual values. Consequently, the staff may challenge impairment charges for which the timely evaluation of useful life and residual value cannot be demonstrated.

Question 3: Has the staff expressed any views with respect to company-determined estimates of cash flows used for assessing and measuring impairment of assets under Statement 144?

Interpretive Response: In providing guidance on the development of cash flows for purposes of applying the provisions of Statement 144, paragraph 17 of that Statement indicates that "estimates of future cash flows used to test the recoverability of a long-lived asset (asset group) shall incorporate the entity's own assumptions about its use of the asset (asset group) and shall consider all available evidence. The assumptions used in developing those estimates shall be reasonable in relation to the assumptions used in developing other information used by the entity for comparable periods, such as internal budgets and projections, accruals related to incentive compensation plans, or information communicated to others."

The staff recognizes that various factors, including management's judgments and assumptions about the business plans and strategies, affect the development of future cash flow projections for purposes of applying Statement 144. The staff, however, cautions registrants that the judgments and assumptions made for purposes of applying Statement 144 must be consistent with other financial statement calculations and disclosures and disclosures in MD&A. The staff also expects that forecasts made for purposes of applying Statement 144 be consistent with other forward-looking information prepared by the company, such as that used for internal budgets, incentive compensation plans, discussions with lenders or third parties, and/or reporting to management or the board of directors.

For example, the staff has reviewed a fact pattern where a registrant developed cash flow projections for purposes of applying the provisions of Statement 144 using one set of assumptions and utilized a second, more conservative set of assumptions for purposes of determining whether deferred tax valuation allowances were necessary when applying the provisions of Statement 109. In this case, the staff objected to the use of inconsistent assumptions.

In addition to disclosure of key assumptions used in the development of cash flow projections, the staff also has required discussion in MD&A of the implications of assumptions. For example, do the projections indicate that a company is likely to violate debt covenants in the future? What are the ramifications to the cash flow projections used in the impairment analysis? If growth rates used in the impairment analysis are lower than those used by outside analysts, has the company had discussions with the analysts regarding their overly optimistic projections? Has the company appropriately informed the market and its shareholders of its reduced expectations for the future that are sufficient to cause an impairment charge? The staff believes that cash flow projections used in the impairment analysis must be both internally consistent with the company's other projections and externally consistent with financial statement and other public disclosures.

Topic 6: Interpretations of Accounting Series Releases and Financial Reporting Releases

A.1. Deleted by SAB 103

B. Accounting Series Release 280—General Revision of Regulation S–X: Income or Loss Applicable to Common Stock

Facts: A registrant has various classes of preferred stock. Dividends on those preferred stocks and accretions of their carrying amounts cause income applicable to common stock to be less than reported net income.

Question: In ASR 280, the Commission stated that although it had determined not to mandate presentation of income or loss applicable to common stock in all cases, it believes that disclosure of that amount is of value in certain situations. In what situations should the amount be reported, where should it be reported, and how should it be computed?

Interpretive Response: Income or loss applicable to common stock should be reported on the face of the income statement [1] when it is materially different in quantitative terms from reported net income or loss [2] or when it is indicative of significant trends or other qualitative considerations. The amount to be reported should be computed for each period as net income or loss less: (a) Dividends on preferred stock, including undeclared or unpaid dividends if cumulative; and (b) periodic increases in the carrying amounts of instruments reported as redeemable preferred stock (as discussed in Topic 3.C) or increasing rate preferred stock (as discussed in Topic 5.Q).

[1] If a registrant elects to follow the encouraged disclosure discussed in paragraph 23 of Statement 130, and displays the components of other comprehensive income and the total for comprehensive income using a one-statement approach, the registrant must continue to follow the guidance set forth in the SAB Topic. One approach may be to provide a separate reconciliation of net income to income available to common stock below comprehensive income reported on a statement of income and comprehensive income.

[2] The assessment of materiality is the responsibility of each registrant. However, absent concerns about trends or other qualitative considerations, the staff generally will not insist on the reporting of income or loss applicable to common stock if the amount differs from net income or loss by less than ten percent.

C. Accounting Series Release 180—Institution of Staff Accounting Bulletins (SABs)—Applicability of Guidance Contained in SABs

Facts: The series of SABs was instituted to achieve wide dissemination of administrative interpretations and practices of the Commission's staff. In illustration of certain interpretations and practices, SABs may be written narrowly to describe the circumstances of particular matters which resulted in expression of the staff's views on those particular matters.

Question: How does the staff intend SABs to be applied in circumstances analogous to those addressed in SABs?

Interpretive Response: The staff's purpose in issuing SABs is to disseminate guidance for application not only in the narrowly described circumstances, but also, unless authoritative accounting literature calls for different treatment, in other circumstances where events and transactions have similar accounting and/or disclosure implications.

Registrants and independent accountants are encouraged to consult with the staff if they believe that particular circumstances call for accounting and/or disclosure different from that which would result from application of a SAB addressing those same or analogous circumstances.

D. Redesignated as Topic 12.A by SAB 47

E. Redesignated as Topic 12.B by SAB 47

F. Deleted by SAB 103

G. Accounting Series Releases 177 and 286—Relating to Amendments To Form 10–Q, Regulation S–K, and Regulation S–X Regarding Interim Financial Reporting

General Facts: Disclosure requirements for quarterly data on Form 10–Q were amended in ASR 177 and 286 to include condensed interim financial statements, a narrative analysis of financial condition and results of operations, a letter from the registrant's independent public accountant commenting on any accounting change, and a signature by the registrant's chief financial officer or chief accounting officer.[1] In addition, certain selected quarterly data is required to be disclosed by virtually all registrants (see Item 302(a)(5) of Regulation S–K).

[1] These requirements have been further revised to require the company's CEO and CFO to certify to the information contained in the company's periodic filing.

1. Selected Quarterly Financial Data (Item 302(A) of Regulation S–K)

a. Disclosure of Selected Quarterly Financial Data

Facts: Item 302(a)(1) of Regulation S–K requires disclosure of net sales, gross profit, income before extraordinary items and cumulative effect of a change in accounting, per share data based upon such income, and net income for each full quarter within the two most recent fiscal years and any subsequent interim period for which financial statements are included. Item 302(a)(3) requires the registrant to describe the effect of any disposals of components of an entity [1] and extraordinary, unusual or infrequently occurring items recognized in each quarter, as well as the aggregate effect and the nature of year-end or other adjustments which are material to the results of that quarter. Furthermore, Item 302(a)(2) requires a reconciliation of amounts previously reported on Form 10–Q to the quarterly data presented if the amounts differ.

Question 1: Are these disclosure requirements applicable to supplemental financial statements included in a filing with the SEC for unconsolidated subsidiaries and 50% or less owned persons?

Interpretive Response: The summarized quarterly financial data required by Item 302(a)(1) need not be included in supplemental financial statements for unconsolidated subsidiaries and 50% or less owned persons unless the financial statements are for a subsidiary or affiliate that is itself a registrant which meets the criteria set forth in Item 302(a)(5).

Question 2: If a company is in a specialized industry where "gross profit" generally is not computed (*e.g.*, banks, insurance companies and finance companies), what disclosure should be made to comply with the requirements of Item 302(a)(1)?

Interpretive Response: Companies in specialized industries should present summarized quarterly financial data which are most meaningful in their particular circumstances. For example, a bank might present interest income, interest expense, provision for loan losses, security gains or losses and net income. Similarly, an insurance company might present net premiums earned, underwriting costs and expenses, investment income, security gains or losses and net income.

Question 3: If a company wishes to make its quarterly and annual disclosures on the same basis, would disclosure of costs and expenses associated directly with or allocated to products sold or services rendered, or other appropriate data to enable users to compute "gross profit," satisfy the requirements of Item 302(a)(1)?

Interpretive Response: Yes.

Question 4: What is meant by "per-share data based upon such income" as used in Item 302(a)(1)?

Interpretive Response: Item 302(a)(1) only requires disclosure of per share amounts for income before extraordinary items and cumulative effect of a change in accounting. It is expected that when per share data is calculated for each full quarter based upon such income, the per share amounts would be both basic and diluted. Although it is not required by the rule, there are many instances where it would be desirable to disclose other per share figures such as net earnings per share and the per share effect of extraordinary items also. Where such disclosure is made, per share data should be both basic and diluted.

Question 5: What is intended by the requirement set forth in Item 302(a)(3) that registrants "describe the effect of" disposals of segments of a business, etc.?

Interpretive Response: The rule uses the language of segments of a business that was previously found in the authoritative literature. Consistent with the terminology used in Statement 144, as used here, segments of a business is intended to mean components of an entity. The rule is intended to require registrants to "disclose the amount" of such unusual transactions and events included in the results reported for each quarter. Such disclosure would be made in narrative form. However, it would not require that matters covered by MD&A be repeated. In this situation, registrants should disclose the nature and amount of the unusual transaction or event and refer to MD&A for further discussion of the matter.

Question 6: What is intended by the requirement of Item 302(a)(3) to disclose "the aggregate effect and the nature of year-end or other adjustments which are material to the results of that quarter"?

Interpretive Response: This language is taken directly from paragraph 31 of APB Opinion 28 which relates to disclosures required for the fourth quarter of the year. The Opinion indicates that earlier quarters should not be restated to reflect a change in accounting estimate recorded at year end. However, changes in an accounting estimate made in an interim period that materially affect the quarter in which the change occurred are required to be

[1] See question 5 for a discussion of the meaning of components of an entity as used in Item 302(a)(2).

disclosed in order to avoid misleading comparisons. In making such disclosure, registrants may wish to identify (but not restate) the prior periods in which transactions were recorded which relate to the change in the quarter.

Question 7: If company has filed a Form 10–Q/A amending a previously filed Form 10–Q, is a reconciliation of quarterly data in annual financial statements with the amounts originally reported on Form 10–Q required?

Interpretive Response: Yes. However, if the company publishes quarterly reports to shareholders and has previously made detailed disclosure to shareholders in such reports of the change reported on the Form 10–Q/A, no reconciliation would be required.

b. Financial Statements Presented on Other Than a Quarterly Basis

Facts: Item 302(a)(1) requires disclosure of quarterly financial data for each full quarter of the last two fiscal years and in any subsequent interim period for which an income statement is presented.

Question: If a company reports at interim dates on other than a calendar-quarter basis (*e.g.*, 12–12–16–12 week basis), will it be precluded from reporting on such basis in the future?

Interpretive Response: No, as long as it discloses the basis of interim fiscal period reporting and the interim fiscal periods on which it reports are consistently determined from year to year (or, if not, the lack of comparability is disclosed).

c. Deleted by SAB 103

2. Amendments to Form 10–Q

a. Form of Condensed Financial Statements

Facts: Rules 10–01(a)(2) and (3) of Regulation S–X provide that interim balance sheets and statements of income shall include only major captions (*i.e.*, numbered captions) set forth in Regulation S–X, with the exception of inventories where data as to raw materials, work in process and finished goods shall be included, if applicable, either on the face of the balance sheet or in notes thereto. Where any major balance sheet caption is less than 10% of total assets and the amount in the caption has not increased or decreased by more than 25% since the end of the preceding fiscal year, the caption may be combined with others. When any major income statement caption is less than 15% of average net income for the most recent three fiscal years and the amount in the caption has not increased or decreased by more than 20% as compared to the corresponding interim period of the preceding fiscal year, the caption may be combined with others. Similarly, the statement of cash flows may be abbreviated, starting with a single figure of cash flows provided by operations and showing other changes individually only when they exceed 10% of the average of cash flows provided by operations for the most recent three years.

Question 1: If a company previously combined captions in a Form 10–Q but is required to present such captions separately in the Form 10–Q for the current quarter, must it retroactively reclassify amounts included in the prior-year financial statements presented for comparative purposes to conform with the captions presented for the current-year quarter?

Interpretive Response: Yes.

Question 2: In determining whether or not major income statement captions may be combined, does average "net income" for the last three years (using the company's last year end as the starting point) mean "net income" or income before extraordinary items and changes in accounting principles?

Interpretive Response: It means "net income."

Question 3: If a company uses the gross profit method or some other method to determine cost of goods sold for interim periods, will it be acceptable to state only that it is not practicable to determine components of inventory at interim periods?

Interpretive Response: The staff believes disclosure of inventory components is important to investors. In reaching this decision the staff recognizes that registrants may not take inventories during interim periods and that managements, therefore, will have to estimate the inventory components. However, the staff believes that management will be able to make reasonable estimates of inventory components based upon their knowledge of the company's production cycle, the costs (labor and overhead) associated with this cycle as well as the relative sales and purchasing volume of the company.

Question 4: If a company has years during which operations resulted in a net outflow of cash and cash equivalents, should it exclude such years from the computation of cash and cash equivalents provided by operations for the three most recent years in determining what sources and applications must be shown separately?

Interpretive Response: Yes. Similar to the determination of average net income, if operations resulted in a net outflow of cash and cash equivalents during any year, such amount should be excluded in making the computation of cash flow provided by operations for the three most recent years unless operations resulted in a net outflow of cash and cash equivalents in all three years, in which case the average of the net outflow of cash and cash equivalents should be used for the test.

A. Reporting Requirements for accounting Changes

1. Preferability

Facts: Rule 10–01(b)(6) of Regulation S–X requires that a registrant who makes a material change in its method of accounting shall indicate the date of and the reason for the change. The registrant also must include as an exhibit in the first Form 10–Q filed subsequent to the date of an accounting change, a letter from the registrant's independent accountants indicating whether or not the change is to an alternative principle which in his judgment is preferable under the circumstances. A letter from the independent accountant is not required when the change is made in response to a standard adopted by the Financial Accounting Standards Board which requires such a change.

Question 1: For some alternative accounting principles, authoritative bodies have specified when one alternative is preferable to another. However, for other alternative accounting principles, no authoritative body has specified criteria for determining the preferability of one alternative over another. In such situations, how should preferability be determined?

Interpretive Response: In such cases, where objective criteria for determining the preferability among alternative accounting principles have not been established by authoritative bodies, the determination of preferability should be based on the particular circumstances described by and discussed with the registrant. In addition, the independent accountant should consider other significant information of which he is aware.[1]

Question 2: Management may offer, as justification for a change in accounting principle, circumstances such as: Their expectation as to the effect of general economic trends on their business (*e.g.*, the impact of inflation), their

[1] Registrants also are reminded that paragraph 17 of APB Opinion 20 requires that companies disclose the nature of and justification for the change as well as the effects of the change on net income for the period in which the change is made. Furthermore, the justification for the change should explain clearly why the newly adopted principle is preferable to the previously-applied principle.

expectation regarding expanding consumer demand for the company's products, or plans for change in marketing methods. Are these circumstances which enter into the determination of preferability?

Interpretive Response: Yes. Those circumstances are examples of business judgment and planning and should be evaluated in determining preferability. In the case of changes for which objective criteria for determining preferability have not been established by authoritative bodies, business judgment and business planning often are major considerations in determining that the change is to a preferable method because the change results in improved financial reporting.

Question 3: What responsibility does the independent accountant have for evaluating the business judgment and business planning of the registrant?

Interpretive Response: Business judgment and business planning are within the province of the registrant. Thus, the independent accountant may accept the registrant's business judgment and business planning and express reliance thereon in his letter. However, if either the plans or judgment appear to be unreasonable to the independent accountant, he should not accept them as justification. For example, an independent accountant should not accept a registrant's plans for a major expansion if he believes the registrant does not have the means of obtaining the funds necessary for the expansion program.

Question 4: If a registrant, who has changed to an accounting method which was preferable under the circumstances, later finds that it must abandon its business plans or change its business judgment because of economic or other factors, is the registrant's justification nullified?

Interpretive Response: No. A registrant must in good faith justify a change in its method of accounting under the circumstances which exist at the time of the change. The existence of different circumstances at a later time does not nullify the previous justification for the change.

Question 5: If a registrant justified a change in accounting method as preferable under the circumstances, and the circumstances change, may the registrant revert to the method of accounting used before the change?

Interpretive Response: Any time a registrant makes a change in accounting method, the change must be justified as preferable under the circumstances. Thus, a registrant may not change back to a principle previously used unless it can justify that the previously used principle is preferable in the circumstances as they currently exist.

Question 6: If one client of an independent accounting firm changes its method of accounting and the accountant submits the required letter stating his view of the preferability of the principle in the circumstances, does this mean that all clients of that firm are constrained from making the converse change in accounting (*e.g.*, if one client changes from FIFO to LIFO, can no other client change from LIFO to FIFO)?

Interpretive Response: No. Each registrant must justify a change in accounting method on the basis that the method is preferable under the circumstances of that registrant. In addition, a registrant must furnish a letter from its independent accountant stating that in the judgment of the independent accountant the change in method is preferable under the circumstances of that registrant. If registrants in apparently similar circumstances make changes in opposite directions, the staff has a responsibility to inquire as to the factors which were considered in arriving at the determination by each registrant and its independent accountant that the change was preferable under the circumstances because it resulted in improved financial reporting. The staff recognizes the importance, in many circumstances, of the judgments and plans of management and recognizes that such management judgments may, in good faith, differ. As indicated above, the concern relates to registrants in apparently similar circumstances, no matter who their independent accountants may be.

Question 7: If a registrant changes its accounting to one of two methods specifically approved by the FASB in a Statement of Financial Accounting Standards, need the independent accountant express his view as to the preferability of the method selected?

Interpretive Response: If a registrant was formerly using a method of accounting no longer deemed acceptable, a change to either method approved by the FASB may be presumed to be a change to a preferable method and no letter will be required from the independent accountant. If, however, the registrant was formerly using one of the methods approved by the FASB for current use and wishes to change to an alternative approved method, then the registrant must justify its change as being one to a preferable method in the circumstances and the independent accountant must submit a letter stating that in his view the change is to a principle that is preferable in the circumstances.

2. Filing of a Letter From the Accountants

Facts: The registrant makes an accounting change in the fourth quarter of its fiscal year. Rule 10–01(b)(6) of Regulation S–X requires that the registrant file a letter from its independent accountants stating whether or not the change is preferable in the circumstances in the next Form 10–Q. Item 601(b)(18) of Regulation S–K provides that the independent accountant's preferability letter be filed as an exhibit to reports on Forms 10–K or 10–Q.

Question: When the independent accountant's letter is filed with the Form 10–K, must another letter also be filed with the first quarter's Form 10–Q in the following year?

Interpretive Response: No. A letter is not required to be filed with Form 10–Q if it has been previously filed as an exhibit to the Form 10–K.

H. Accounting Series Release 148—Disclosure Of Compensating Balances And Short-Term Borrowing Arrangements (Adopted November 13, 1973 As Modified By ASR 172 Adopted On June 13, 1975 And ASR 280 Adopted On September 2, 1980)

Facts: ASR 148 (as modified) amends Regulation S–X to include:

1. Disclosure of compensating balance arrangements.

2. Segregation of cash for compensating balance arrangements that are legal restrictions on the availability of cash.

1. Applicability

a. Arrangements With Other Lending Institutions

Question: In addition to banks, is ASR 148 applicable to arrangements with factors, commercial finance companies or other lending entities?

Interpretive Response: Yes.

b. Bank Holding Companies and Brokerage Firms

Question: Do the provisions of ASR 148 apply to bank holding companies and to brokerage firms filing under Rule 17a–5?

Interpretive Response: Yes; however, brokerage firms are not expected to meet these requirements when filing Form X–17a–5.

c. Financial Statements of Parent Company and Unconsolidated Subsidiaries

Question: Are the provisions of ASR 148 applicable to parent company financial statements in addition to consolidated financial statements? To

financial statements of unconsolidated subsidiaries?

Interpretive Response: ASR 148 data for consolidated financial statements only will generally be sufficient when a filing includes consolidated and parent company financial statements. Such data are required for each unconsolidated subsidiary or other entity when a filing is required to include complete financial statements of those entities. When the filing includes summarized financial data in a footnote about such entities, the disclosures under ASR 148 relating to the consolidated financial statements will be sufficient.

d. Foreign Lenders

Question: Are ASR 148 disclosure requirements applicable to arrangements with foreign lenders?

Interpretive Response: Yes.

2. Classification of Short-Term Obligations—Debt Related to Long-Term Projects

Facts: Companies engaging in significant long-term construction programs frequently arrange for revolving cover loans which extend until the completion of long-term construction projects. Such revolving cover loans are typically arranged with substantial financial institutions and typically have the following characteristics:

1. A firm long-term mortgage commitment is obtained for each project.

2. Interest rates and terms are in line with the company's normal borrowing arrangements.

3. Amounts are equal to the expected full mortgage amount of all projects.

4. The company may draw down funds at its option up to the maximum amount of the agreement.

5. The company uses short-term interim construction financing (commercial paper, bank loans, etc.) against the revolving cover loan. Such indebtedness is rolled over or drawn down on the revolving cover loan at the company's option. The company typically has regular bank lines of credit, but these generally are not legally enforceable.

Question: Under Statement 6, will the classification of loans such as described above as long-term be acceptable?

Interpretive Response: Where such conditions exist providing for a firm commitment throughout the construction program as well as a firm commitment for permanent mortgage financing, and where there are no contingencies other than the completion of construction, the guideline criteria are met and the borrowing under such a program should be classified as long-term with appropriate disclosure.

3. Compensating Balances

a. Compensating Balances for Future Credit Availability

Facts: Rule 5–02.1 of Regulation S–X requires disclosure of compensating balances in order to avoid undisclosed commingling of such balances with other funds having different liquidity characteristics and bearing no determinable relationship to borrowing arrangements. It also requires footnote disclosure distinguishing the amounts of such balances maintained under a formal agreement to assure future credit availability.

Question: In disclosing compensating balances maintained to assure future credit availability, is it necessary to segregate compensating balances for an unused portion of a regular line of credit when a total compensating balance amount covering both used and unused amounts of a line of credit is disclosed?

Interpretive Response: No.

b. Changes in Compensating Balances

Facts: ASR 148 guidelines indicate the need for additional disclosures where compensating balances were materially greater during the period than at the end of the period.

Question: Does this disclosure relate to changes in the arrangement (*e.g.*, the required compensating balance percentage) or changes in borrowing levels?

Interpretive Response: Both.

c. Float

Facts: ASR 148 states that "compensating balance arrangements * * * are normally expressed in terms of collected bank ledger balances but the financial statements are presented on the basis of the company's books. In order to make the disclosure of compensating balance amounts * * * consistent with the cash amounts reflected in the financial statements, the balance figure agreed upon by the bank and the company should be adjusted if possible by the estimated float."

Question: In determining the amount of "float" as suggested by ASR 148 guidelines, frequently an adjustment to the bank balance is required for "uncollected funds." On what basis should this adjustment be estimated?

Interpretive Response: The adjustment should be estimated based upon the method used by the bank or a reasonable approximation of that method. The following is a sample computation of the amount of compensating balances to be disclosed where uncollected funds are involved.

Assumptions: The company has agreed to maintain compensating balances equal to 20% of short-term borrowings.

Short-term borrowings	$10,000,000
Compensating balances per bank balances	2,000,000
Estimated float (approximates the excess of outstanding checks over deposits in transit)	480,000
Estimated uncollected funds	320,000
Computation:	
Compensating balances per bank balances	2,000,000
Estimated uncollected funds	320,000
Estimated float	(480,000)
Compensating balances stated in terms of a book cash balance and to be disclosed	1,840,000

4. Miscellaneous

a. Periods Required

Question: For what periods are ASR 148 disclosures required?

Interpretive Response: Disclosure of compensating balance arrangements and other disclosures called for in ASR 148 are required for the latest fiscal year but are generally not required for any later interim period unless a material change has occurred since year end.

b. 10–Q Disclosures

Question: Are ASR 148 disclosures required in 10–Q's?

Interpretive Response: In general, ASR 148 disclosures are not required in Form 10–Q. However, in some instances material changes in borrowing arrangements or borrowing levels may give rise to the need for disclosure either in Form 10–Q or Form 8–K.

I. Accounting Series Release 149—Improved Disclosure of Income Tax Expense (Adopted November 28, 1973 And Modified by ASR 280 Adopted on September 2, 1980)

Facts: ASR 149 and 280 amend Regulation S–X to include:

1. Disclosure of tax effect of timing differences comprising deferred income tax expense.

2. Disclosure of the components of income tax expense, including currently payable and the net tax effects of timing differences.

3. Disclosure of the components of income [loss] before income tax expense [benefit] as either domestic or foreign.

4. Reconciliation between the statutory Federal income tax rate and the effective tax rate.

1. Tax Rate

Question 1: In reconciling to the effective tax rate should the rate used be a combination of state and Federal income tax rates?

Interpretive Response: No, the reconciliation should be made to the Federal income tax rate only.

Question 2: What is the "applicable statutory Federal income tax rate'?

Interpretive Response: The applicable statutory Federal income tax rate is the normal rate applicable to the reporting entity. Hence, the statutory rate for a U.S. partnership is zero. If, for example, the statutory rate for U.S. corporations is 22% on the first $25,000 of taxable income and 46% on the excess over $25,000, the "normalized rate" for corporations would fluctuate in the range between 22% and 46% depending on the amount of pretax accounting income a corporation has.

2. Taxes of Investee Company

Question: If a registrant records its share of earnings or losses of a 50% or less owned person on the equity basis and such person has an effective tax rate which differs by more than 5% from the applicable statutory Federal income tax rate, is a reconciliation as required by Rule 4–08(g) necessary?

Interpretive Response: Whenever the tax components are known and material to the investor's (registrant's) financial position or results of operations, appropriate disclosure should be made. In some instances where 50% or less owned persons are accounted for by the equity method of accounting in the financial statements of the registrant, the registrant may not know the rate at which the various components of income are taxed and it may not be practicable to provide disclosure concerning such components.

It should also be noted that it is generally necessary to disclose the aggregate dollar and per-share effect of situations where temporary tax exemptions or "tax holidays" exist, and that such disclosures are also applicable to 50% or less owned persons. Such disclosures should include a brief description of the factual circumstances and give the date on which the special tax status will terminate. See Topic 11.C.

3. Net of Tax Presentation

Question: What disclosure is required when an item is reported on a net of tax basis (*e.g.*, extraordinary items, discontinued operations, or cumulative adjustment related to accounting change)?

Interpretive Response: When an item is reported on a net of tax basis, additional disclosure of the nature of the tax component should be provided by reconciling the tax component associated with the item to the applicable statutory Federal income tax rate or rates.

4. Loss Years

Question: Is a reconciliation of a tax recovery in a loss year required?

Interpretive Response: Yes, in loss years the actual book tax benefit of the loss should be reconciled to expected normal book tax benefit based on the applicable statutory Federal income tax rate.

5. Foreign Registrants

Question 1: Occasionally, reporting foreign persons may not operate under a normal income tax base rate such as the current U.S. Federal corporate income tax rate. What form of disclosure is acceptable in these circumstances?

Interpretive Response: In such instances, reconciliations between year-to-year effective rates or between a weighted average effective rate and the current effective rate of total tax expense may be appropriate in meeting the requirements of Rule 4–08(h)(2). A brief description of how such a rate was determined would be required in addition to other required disclosures. Such an approach would not be acceptable for a U.S. registrant with foreign operations. Foreign registrants with unusual tax situations may find that these guidelines are not fully responsive to their needs. In such instances, registrants should discuss the matter with the staff.

Question 2: Where there are significant reconciling items that relate in significant part to foreign operations as well as domestic operations, is it necessary to disclose the separate amounts of the tax component by geographical area, *e.g.*, statutory depletion allowances provided for by U.S. and by other foreign jurisdictions?

Interpretive Response: It is not practicable to give an all-encompassing answer to this question. However, in many cases such disclosure would seem appropriate.

6. Securities Gains and Losses

Question: If the tax on the securities gains and losses of banks and insurance companies varies by more than 5% from the applicable statutory Federal income tax rate, should a reconciliation to the statutory rate be provided?

Interpretive Response: Yes.

7. Tax Expense Components v. "Overall" Presentation

Facts: Rule 4–08(h) requires that the various components of income tax expense be disclosed, *e.g.*, currently payable domestic taxes, deferred foreign taxes, etc. Frequently income tax expense will be included in more than one caption in the financial statements. For example, income taxes may be allocated to continuing operations, discontinued operations, extraordinary items, cumulative effects of an accounting change and direct charges and credits to shareholders' equity.

Question: In instances where income tax expense is allocated to more than one caption in the financial statements, must the components of income tax expense included in each caption be disclosed or will an "overall" presentation such as the following be acceptable?

The components of income tax expense are:

Currently payable (per tax return):	
Federal	$350,000
Foreign	150,000
State	50,000
Deferred:	
Federal	125,000
Foreign	75,000
State	50,000
	800,000

Income tax expense is included in the financial statements as follows:

Continuing operations	$600,000
Discontinued operations	(200,000)
Extraordinary income	300,000
Cumulative effect of change in accounting principle	100,000
	800,000

Interpretive Response: An overall presentation of the nature described will be acceptable.

J. Deleted by SAB 47

K. Accounting Series Release 302—Separate Financial Statements Required By Regulation S–X

1. Deleted by SAB 103

2. Parent Company Financial Information

a. Computation of Restricted Net Assets of Subsidiaries

Facts: The revised rules for parent company disclosures adopted in ASR 302 require, in certain circumstances, (1) footnote disclosure in the consolidated financial statements about the nature and amount of significant restrictions on the ability of subsidiaries to transfer funds to the parent through intercompany loans, advances or cash dividends [Rule 4–08(e)(3)], and (2) the presentation of condensed parent company financial information and other data in a schedule (Rule 12–04). To determine which disclosures, if any, are required, a registrant must compute its proportionate share of the net assets of its consolidated and unconsolidated subsidiary companies as of the end of the most recent fiscal year which are restricted as to transfer to the parent company because the consent of a third party (a lender, regulatory agency, foreign government, etc.) is required. If the registrant's proportionate share of the restricted net assets of consolidated subsidiaries exceeds 25% of the registrant's consolidated net assets, both the footnote and schedule information are required. If the amount of such restrictions is less than 25%, but the sum of these restrictions plus the amount of the registrant's proportionate share of restricted net assets of unconsolidated subsidiaries plus the registrant's equity in the undistributed earnings of 50% or less owned persons (investees) accounted for by the equity method exceed 25% of consolidated net assets, the footnote disclosure is required.

Question 1: How are restricted net assets of subsidiaries computed?

Interpretative Response: The calculation of restricted net assets requires an evaluation of each subsidiary to identify any circumstances where third parties may limit the subsidiary's ability to loan, advance or dividend funds to the parent. This evaluation normally comprises a review of loan agreements, statutory and regulatory requirements, etc., to determine the dollar amount of each subsidiary's restrictions. The related amount of the subsidiary's net assets designated as restricted, however, should not exceed the amount of the subsidiary's net assets included in consolidated net assets, since parent company disclosures are triggered when a significant amount of consolidated net assets are restricted. The amount of each subsidiary's net assets included in consolidated net assets is determined by allocating (pushing down) to each subsidiary any related consolidation adjustments such as intercompany balances, intercompany profits, and differences between fair value and historical cost arising from a business combination accounted for as a purchase. This amount is referred to as the subsidiary's adjusted net assets. If the subsidiary's adjusted net assets are less than the amount of its restrictions because the push down of consolidating adjustments reduced its net assets, the subsidiary's adjusted net assets is the amount of the subsidiary's restricted net assets used in the tests.

Registrants with numerous subsidiaries and investees may wish to develop approaches to facilitate the determination of its parent company disclosure requirements. For example, if the parent company's adjusted net assets (excluding any interest in its subsidiaries) exceed 75% of consolidated net assets, or if the total of all of the registrant's consolidated and unconsolidated subsidiaries' restrictions and its equity in investees' earnings is less than 25% of consolidated net assets, then the allocation of consolidating adjustments to the subsidiaries to determine the amount of their adjusted net assets would not be necessary since no parent company disclosures would be required.

Question 2: If a registrant makes a decision that it will permanently reinvest the undistributed earnings of a subsidiary, and thus does not provide for income taxes thereon because it meets the criteria set forth in APB Opinion 23, is there considered to be a restriction for purposes of the test?

Interpretive Response: No. The rules require that only third party restrictions be considered. Restrictions on subsidiary net assets imposed by management are not included.

b. Application of Tests for Parent Company Disclosures

Facts: The balance sheet of the registrant's 100%-owned subsidiary at the most recent fiscal year-end is summarized as follows:

Current assets	$120	Current liabilities	$30
Noncurrent assets	45	Long-term debt	60
			90
		Common stock	25
		Retained earnings	50
			75
	$165		$165

Net assets of the subsidiary are $75. Assume there are no consolidating adjustments to be allocated to the subsidiary. Restrictive covenants of the subsidiary's debt agreements provide that:

- Net assets, excluding intercompany loans, cannot be less than $35
- 60% of accumulated earnings must be maintained

Question 1: What is the amount of the subsidiary's restricted net assets?

Interpretive Response:

Restriction	Computed restrictions
Net assets: currently $75, cannot be less than $35; therefore	$35
Dividends: 60% of accumulated earnings ($50) cannot be paid out; therefore	30

Restricted net assets for purposes of the test are $35. The maximum amount that can be loaned or advanced to the parent without violating the net asset covenant is $40 ($75–35). Alternatively, the subsidiary could pay a dividend of up to $20 ($50–30) without violating the dividend covenant, and loan or advance up to $20, without violating the net asset provision.

Facts: The registrant has one 100%-owned subsidiary. The balance sheet of the subsidiary at the latest fiscal year-end is summarized as follows:

Current assets	$ 75	Current liabilities	$ 23
Noncurrent assets	90	Long-term debt	57
		Redeemable preferred stock	10
		Common stock	30
		Retained earnings	45
			75
	$165		$165

Assume that the registrant's consolidated net assets are $130 and there are no consolidating adjustments to be allocated to the subsidiary. The subsidiary's net assets are $75. The subsidiary's noncurrent assets are comprised of $40 in operating plant and equipment used in the subsidiary's business and a $50 investment in a 30% investee. The subsidiary's equity in this investee's undistributed earnings is $18. Restrictive covenants of the subsidiary's debt agreements are as follows:

1. Net assets, excluding intercompany balances, cannot be less than $20.

2. 80% of accumulated earnings must be reinvested in the subsidiary.

3. Current ratio of 2:1 must be maintained.

Question 2: Are parent company footnote or schedule disclosures required?

Interpretive Response: Only the parent company footnote disclosures are required. The subsidiary's restricted net assets are computed as follows:

Restriction	Computed restriction
Net assets: currently $75, cannot be less than $20; therefore	$20
Dividends: 80% of accumulated earnings ($45) cannot be paid; therefore	36
Current ratio: must be at least 2:1 ($46 current assets must be maintained since current liabilities are $23 at fiscal year-end); therefore	46

Restricted net assets for purposes of the test are $20. The amount computed from the dividend restriction ($36) and the current ratio requirement ($46) are not used because net assets may be transferred by the subsidiary up to the limitation imposed by the requirement to maintain net assets of at least $20, without violating the other restrictions. For example, a transfer to the parent of up to $55 of net assets could be accomplished by a combination of dividends of current assets of $9 ($45–36), and loans or advances of current assets of up to $20 and noncurrent assets of up to $26.

Parent company footnote disclosures are required in this example since the restricted net assets of the subsidiary and the registrant's equity in the earnings of its 100%-owned subsidiary's investee exceed 25% of consolidated net assets [($20 + 18)/$130 = 29%]. The parent company schedule information is not required since the restricted net assets of the subsidiary are only 15% of consolidated net assets ($20/$130 = 15%).

Although the subsidiary's noncurrent assets are not in a form which is readily transferable to the parent company, the illiquid nature of the assets is not relevant for purposes of the parent company tests. The objective of the tests is to require parent company disclosures when the parent company does not have control of its subsidiaries' funds because it does not have unrestricted access to their net assets. The tests trigger parent company disclosures only when there are significant third party restrictions on transfers by subsidiaries of net assets and the subsidiaries' net assets comprise a significant portion of consolidated net assets. Practical limitations, other than third party restrictions on transferability at the measurement date (most recent fiscal year-end), such as subsidiary illiquidity, are not considered in computing restricted net assets. However, the potential effect of any limitations other than those imposed by third parties should be considered for inclusion in Management's Discussion and Analysis of liquidity.

Facts:

	Net assets
Subsidiary A	$(500)
Subsidiary B	2,000
Consolidated	3,700

Subsidiaries A and B are 100% owned by the registrant. Assume there are no consolidating adjustments to be allocated to the subsidiaries. Subsidiary A has restrictions amounting to $200. Subsidiary B's restrictions are $1,000.

Question 3: What parent company disclosures are required for the registrant?

Interpretive Response: Since subsidiary A has an excess of liabilities over assets, it has no restricted net assets for purposes of the test. However, both parent company footnote and schedule disclosures are required, since the restricted net assets of subsidiary B exceed 25% of consolidated net assets ($1,000/3,700 = 27%).

Facts:

	Net assets
Subsidiary A	$850
Subsidiary B	300
Consolidated	3,700

The registrant owns 80% of subsidiary A. Subsidiary A owns 100% of subsidiary B. Assume there are no consolidating adjustments to be allocated to the subsidiaries. A may not pay any dividends or make any affiliate loans or advances. B has no restrictions. A's net assets of $850 do not include its investment in B.

Question 4: Are parent company footnote or schedule disclosures required for this registrant?

Interpretive Response: No. All of the registrant's share of subsidiary A's net assets ($680) are restricted. Although B may pay dividends and loan or advance funds to A, the parent's access to B's funds through A is restricted. However, since there are no limitations on B's ability to loan or advance funds to the parent, none of the parent's share of B's net assets are restricted. Since A's restricted net assets are less than 25% of consolidated net assets ($680/3700 = 18%), no parent company disclosures are required.

Facts: The consolidating balance sheet of the registrant at the latest fiscal year-end is summarized as follows:

	Registrant	Subsidiary	Consolidating adjustments	Consolidated
Current assets	$ 800	$ 700	$ 0	$1,500
30% investment in affiliate	175	0	0	175
Investment in subsidiary	350	0	(350)	0
Other noncurrent assets	625	300	(100)	825
	$1,950	$1,000	$ (450)	$2,500
Current liabilities	$ 600	$ 400	$ 0	$1,000
Concurrent liabilities	375	150	0	525
Redeemable preferred stock	275	0	0	275
Common stock	110	1	(1)	110
Paid-in capital	290	49	(49)	290
Retained earnings	300	400	(400)	300
	700	450	(450)	700
	$1,950	$1,000	$ (450)	$2,500

The acquisition of the 100%-owned subsidiary was consummated on the last day of the most recent fiscal year. Immediately preceding the acquisition, the registrant had net assets of $700, which included its equity in the undisputed earnings of its 30% investee of $75. Immediately after acquiring the subsidiary's net assets, which had an historical cost of $450 and a fair value of $350, the registrant's net assets were still $700 since debt and preferred stock totaling $350 were issued in the purchase. The subsidiary has debt covenants which permit dividends, loans or advances, to the extent, if any, that net assets exceed an amount which is determined by the sum of $100 plus 75% of the subsidiary's accumulated earnings.

Question 5: What is the amount of the subsidiary's restricted net assets? Are parent company footnote or schedule disclosures required?

Interpretive Response: Restricted net assets for purposes of the test are $350, and both the parent company footnote and schedule disclosures are required.

The amount of the subsidiary's restrictions at year-end is $400 [$100 + (75% × $400)]. The subsidiary's adjusted net assets after the push down of the consolidation entry to the subsidiary to record the noncurrent assets acquired at their fair value is $350 ($450 − $100). Since the subsidiary's adjusted net assets ($350) are less than the amount of its restrictions ($400), restricted net assets are $350. The computed percentages applicable to each of the disclosure tests is in excess of 25%. Therefore, both parent company footnote and schedule information are required. The percentage applicable to the footnote disclosure test is 61% [($75 + $350)/$700]. The computed percentage for the schedule disclosure is 50% ($350/$700).

3. Undistributed Earnings of 50% or Less Owned Persons

Facts: Rule 4–08(e)(2) of Regulation SX requires footnote disclosures of the amount of consolidated retained earnings which represents undistributed earnings of 50% or less owned persons (investee) accounted for by the equity method. The test adopted in ASR 302 to trigger disclosures about the registrant's restricted net assets (Rule 4–08(e)(3)) includes the parent's equity in the undistributed earnings of investees.

Question: Is the amount required for footnote disclosure the same as the amount included in the test to determine disclosures about restrictions?

Interpretive Response: Yes. The amount used in the test in Rule 4–08(e)(3) should be the same as the amount required to be disclosed by Rule 4–08(e)(2). This is the portion of the registrant's consolidated retained earnings which represents the undistributed earnings of an investee since the date(s) of acquisition. It is computed by determining the registrant's cumulative equity in the investee's earnings, adjusted by any dividends received, related goodwill amortized, and any related income taxes provided.

4. Application of Significant Subsidiary Test to Investees and Unconsolidated Subsidiaries

a. Separate Financial Statement Requirements

Facts: Rule 3–09 of Regulation SX requires the presentation of separate financial statements of unconsolidated subsidiaries and of 50% or less owned persons (investee) accounted for by the equity method either by the registrant or by a subsidiary of the registrant in filings with the Commission if any of the tests of a significant subsidiary are met at a 20% level.

Question 1: Are the requirements for separate financial statements also applicable to an investee accounted for by the equity method by an investee of the registrant?

Interpretive Response: Yes. Rule 3–09 is intended to apply to all investees which are material to the financial position or results of operations of the registrant, regardless of whether the investee is held by the registrant, a subsidiary or another investee. Separate financial statements should be provided for any lower tier investee where such an entity is significant to the registrant's consolidated financial statements.

Question 2: How is the significant subsidiary test applied to the lower tier investee in the situation described in Question 1?

Interpretive Response: Since the disclosures provided by separate financial statements of an investee are considered necessary to evaluate the overall financial condition of the registrant, the significant subsidiary test is computed based on the materiality of the lower tier investee to the registrant consolidated. An example of the application of the assets test of the significant subsidiary rules to such an investee situation will illustrate the materiality measurement. A registrant with total consolidated assets of $5,000 owns 50% of Investee A, whose total assets are $3,800. Investee A has a 45% investment in Investee B, whose total assets are $4,800. There are no intercompany eliminations. Separate financial statements are required for Investee A, and they are required for Investee B because the registrant's share of B's total assets exceeds 20% of consolidated assets [(50% × 45% × $4800)/$5000 = 22%].

b. Summarized Financial Statement Requirements

Facts: Rule 4–08(g) of Regulation S–X requires summarized financial information about unconsolidated subsidiaries and 50% or less owned persons (investee) to be included in the footnotes to the financial statements if,

in the aggregate, they meet the tests of a significant subsidiary set forth in Rule 1–02(w).

Question 1: Must a registrant which includes separate financial statements or condensed financial statements for unconsolidated subsidiaries or investees in its annual report to shareholders also include in such report the summarized financial information for these entities pursuant to Rule 4–08(g)?

Interpretive Response: No. The purpose of the summarized information is to provide minimum standards of disclosure when the impact of such entities on the consolidated financial statements is significant. If the registrant furnishes more information in the annual report than is required by these minimum disclosure standards, such as condensed financial information or separate audited financial statements, the summarized data can be excluded. The Commission's rules are not intended to conflict with the provisions of APB Opinion 18, par 20(c) and (d), which provide that either separate financial statements of investees be presented with the financial statements of the reporting entity or that summarized information be included in the reporting entity's financial statement footnotes.

Question 2: Can summarized information be omitted for individual entities as long as the aggregate information for the omitted entity(s) does not exceed 10% under any of the significance tests of Rule 1–02(w)?

Interpretive Response: The 10% measurement level of the significant subsidiary rule was not intended to establish a materiality criteria for omission, and the arbitrary exclusion of summarized information for selected entities up to a 10% level is not appropriate. Rule 4–08(g) requires that the summarized information be included for all unconsolidated subsidiaries and investees. However, the staff recognizes that exclusion of the summarized information for certain entities is appropriate in some circumstances where it is impracticable to accumulate such information and the summarized information to be excluded is *de minimis*.

L. Financial Reporting Release 28—Accounting For Loan Losses By Registrants Engaged in Lending Activities

1. Accounting for Loan Losses

General: GAAP for recognition of loan losses is provided by Statements 5 and 114.[1] An estimated loss from a loss contingency, such as the collectibility of receivables, should be accrued when, based on information available prior to the issuance of the financial statements, it is probable that an asset has been impaired or a liability has been incurred at the date of the financial statements and the amount of the loss can be reasonably estimated.[2] Statement 114 provides more specific guidance on measurement of loan impairment and related disclosures but does not change the fundamental recognition criteria for loan losses provided by Statement 5. Additional guidance on the recognition, measurement, and disclosure of loan losses is provided by EITF Topic D–80, Interpretation 14, and the AICPA Audit and Accounting Guide, Banks and Savings Institutions.

Further guidance for SEC registrants is provided by FRR 28, which added subsection (b), Procedural Discipline in Determining the Allowance and Provision for Loan Losses to be Reported, of Section 401.09, Accounting for Loan Losses by Registrants Engaged in Lending Activities, to the Codification of Financial Reporting Policies (hereafter referred to as FRR 28). Additionally, public companies are required to comply with the books and records provisions of the Securities Exchange Act of 1934 (Exchange Act). Under Sections 13(b)(2)–(7) of the Exchange Act, registrants must make and keep books, records, and accounts, which, in reasonable detail, accurately and fairly reflect the transactions and dispositions of assets of the registrant. Registrants also must maintain internal accounting controls that are sufficient to provide reasonable assurances that, among other things, transactions are recorded as necessary to permit the preparation of financial statements in conformity with GAAP.

This staff interpretation applies to all registrants that are creditors in loan transactions that, individually or in the aggregate, have a material effect on the registrant's financial statements.[3]

2. Developing and Documenting a Systematic Methodology

a. Developing a Systematic Methodology

Facts: Registrant A, or one of its consolidated subsidiaries, engages in lending activities and is developing or performing a review of its loan loss allowance methodology.

Question: What are some of the factors or elements that the staff normally would expect Registrant A to consider when developing (or subsequently performing an assessment of) its methodology for determining its loan loss allowance under GAAP?

Interpretive Response: The staff normally would expect a registrant that engages in lending activities to develop and document a systematic methodology[1] to determine its provision for loan losses and allowance for loan losses as of each financial reporting date. It is critical that loan loss allowance methodologies incorporate management's current judgments about the credit quality of the loan portfolio through a disciplined and consistently applied process. A registrant's loan loss allowance methodology is influenced by entity-specific factors, such as an entity's size, organizational structure, business environment and strategy, management style, loan portfolio characteristics, loan administration procedures, and management information systems.

However, as indicated in the AICPA Audit and Accounting Guide, Banks and Savings Institutions (Audit Guide), "[w]hile different institutions may use different methods, there are certain common elements that should be included in any [loan loss allowance] methodology for it to be effective."[2] A registrant's loan loss allowance methodology generally should:[3]

- Include a detailed analysis of the loan portfolio, performed on a regular basis;
- Consider all loans (whether on an individual or group basis);
- Identify loans to be evaluated for impairment on an individual basis under Statement 114 and segment the remainder of the portfolio into groups of loans with similar risk characteristics for evaluation and analysis under Statement 5;
- Consider all known relevant internal and external factors that may affect loan collectibility;
- Be applied consistently but, when appropriate, be modified for new factors affecting collectibility;
- Consider the particular risks inherent in different kinds of lending;
- Consider current collateral values (less costs to sell), where applicable;
- Require that analyses, estimates, reviews and other loan loss allowance methodology functions be performed by competent and well-trained personnel;
- Be based on current and reliable data;
- Be well documented, in writing, with clear explanations of the supporting analyses and rationale (see Question 2 below for staff views on documenting a loan loss allowance methodology); and
- Include a systematic and logical method to consolidate the loss estimates and ensure the loan loss allowance balance is recorded in accordance with GAAP.

For many entities engaged in lending activities, the allowance and provision for loan losses are significant elements of the financial statements.

Therefore, the staff believes it is appropriate for an entity's management to review, on a periodic basis, its methodology for determining its allowance for loan losses.[4] Additionally, for registrants that have audit committees, the staff believes that oversight of the financial reporting and auditing of the loan loss allowance by the audit committee can strengthen the registrant's control system and process for determining its allowance for loan losses.[5]

A systematic methodology that is properly designed and implemented should result in a registrant's best estimate of its allowance for loan losses.[6] Accordingly, the staff normally would expect registrants to adjust their loan loss allowance balance, either upward or downward, in each period for differences between the results of the systematic determination process and the unadjusted loan loss allowance balance in the general ledger.[7]

b. Documenting a Systematic Methodology

Question 1: Assume the same facts as in Question 1. What would the staff normally expect Registrant A to include in its documentation of its loan loss allowance methodology?

Interpretive Response: In FRR 28, the Commission provided guidance for documentation of loan loss provisions and allowances for registrants engaged in lending activities. The staff believes that appropriate written supporting documentation for the loan loss provision and allowance facilitates review of the loan loss allowance process and reported amounts, builds discipline and consistency into the loan loss allowance determination process, and improves the process for estimating loan losses by helping to ensure that all relevant factors are appropriately considered in the allowance analysis.

The staff, therefore, normally would expect a registrant to document the relationship between the findings of its detailed review of the loan portfolio and the amount of the loan loss allowance and the provision for loan losses reported in each period.[8]

The staff normally would expect to find that registrants maintain written supporting documentation for the following decisions, strategies, and processes:[9]

- Policies and procedures:
- Over the systems and controls that maintain an appropriate loan loss allowance, and
- Over the loan loss allowance methodology;
- Loan grading system or process;
- Summary or consolidation of the loan loss allowance balance;
- Validation of the loan loss allowance methodology; and
- Periodic adjustments to the loan loss allowance process.

Question 2: The Interpretive Response to Question 2 indicates that the staff normally would expect to find that registrants maintain written supporting documentation for their loan loss allowance policies and procedures. In the staff's view, what aspects of a registrant's loan loss allowance internal accounting control systems and processes would appropriately be addressed in its written policies and procedures?

Interpretive Response: The staff is aware that registrants utilize a wide range of policies, procedures, and control systems in their loan loss allowance processes, and these policies, procedures, and systems are tailored to the size and complexity of the registrant and its loan portfolio. However, the staff believes that, in order for a registrant's loan loss allowance methodology to be effective, the registrant's written policies and procedures for the systems and controls that maintain an appropriate loan loss allowance would likely address the following:

- The roles and responsibilities of the registrant's departments and personnel (including the lending function, credit review, financial reporting, internal audit, senior management, audit committee, board of directors, and others, as applicable) who determine or review, as applicable, the loan loss

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[1] As amended by Statement 118.

[2] Paragraph 8 of Statement 5.

[3] For purposes of this interpretation, a loan is defined (consistent with paragraph 4 of Statement 114) as a contractual right to receive money on demand or on fixed or determinable dates that is recognized as an asset in the creditor's statement of financial position. For purposes of this interpretation, loans do not include trade accounts receivable or notes receivable with terms less than on year or debt securities subject to the provisions of Statement 115

[1] FRR 28 states that "the Commission's staff normally would expect to find that the books and records of registrants engaged in lending activities include documentation of [the]: (a) systematic methodology to be employed each period in determining the amount of the loan losses to be reported, and (b) rationale supporting each period's determination that the amounts reported were adequate."

[2] See paragraph 7.05 of the Audit Guide.

[3] *Ibid.*

[4] For federally insured depository institutions, the December 21, 1993 "Interagency Policy Statement on the Allowance for Loan and Lease Losses (ALLL)" (the 1993 Interagency Policy Statement) indicates that boards of directors and management have certain responsibilities for the ALLL process and amounts reported. For example, as indicated on page 4 of that statement, "the board of directors and management are expected to: Ensure that the institution has an effective loan review system and controls[;] Ensure the prompt charge-off of loans, or portions of loans, that available information confirms to be uncollectible[; and] Ensure that the institution's process for determining an adequate level for the ALLL is based on a comprehensive, adequately documented, and consistently applied analysis of the institution's loan and lease portfolio."

[5] SAS 61 (as amended by SAS 90) states, in part: "In connection with each SEC engagement the auditor should discuss with the audit committee the auditor's judgments about the quality, not just the acceptability, of the entity's accounting principles as applied in its financial reporting. The discussion should include items that have a significant impact on the representational faithfulness, verifiability, and neutrality of the accounting information included in the financial statements. [Footnote omitted.] Examples of items that may have such an impact are the following:

- Selection of new or changes to accounting policies
- Estimates, judgments, and uncertainties
- Unusual transactions
- Accounting policies relating to significant financial statement items, including the timing or transactions and the period in which they are recorded."

[6] Registrants should also refer to Interpretation 14, which provides accounting and disclosure guidance for situations in which a range of loss can be reasonably estimated but no single amount within the range appears to be a better estimate than any other amount within the range.

[7] Registrants should refer to the guidance on materiality in SAB 99 (SAB Topic 1.M).

[8] FRR 28 states: "The specific rationale upon which the [loan loss allowance and provision] amount actually reported is based—*i.e.*, the bridge between the findings of the detailed review [of the loan portfolio] and the amount actually reported in each period—would be documented to help ensure the adequacy of the reported amount, to improve auditability, and to serve as a benchmark for exercise of prudent judgment in future periods."

[9] Paragraph 7.39 in the Audit Guide outlines specific aspects of effective internal control related to the allowance for loan losses. These specific aspects include the control environment ("management communication of the need for proper reporting of the allowance"); management reports that summarize loan activity and the institution's procedures and controls ("accumulation of relevant, sufficient, and reliable data on which to base management's estimate of the allowance"); "independent loan review;" review of information and assumptions ("adequate review and approval of the allowance estimates by the individuals specified in management's written policy"); assessment of the process ("comparison of prior estimates related to the allowance with subsequent results to assess the reliability of the process used to develop the allowance"); and "consideration by management of whether the allowance is consistent with the operational plans of the institution."

allowance to be reported in the financial statements;[10]

- The registrant's accounting policies for loans and loan losses, including the policies for charge-offs and recoveries and for estimating the fair value of collateral, where applicable;[11]
- The description of the registrant's systematic methodology, which should be consistent with the registrant's accounting policies for determining its loan loss allowance (see Question 4 below for further discussion);[12] and
- The system of internal controls used to ensure that the loan loss allowance process is maintained in accordance with GAAP.[13]

The staff normally would expect an internal control system[14] for the loan loss allowance estimation process to:

- Include measures to provide assurance regarding the reliability[15] and integrity of information and compliance with laws, regulations, and internal policies and procedures;[16]
- Reasonably assure that the registrant's financial statements are prepared in accordance with GAAP; and
- Include a well-defined loan review process.[17]

A well-defined loan review process[18] typically contains:

- An effective loan grading system that is consistently applied, identifies differing risk characteristics and loan quality problems accurately and in a timely manner, and prompts appropriate administrative actions;[19]
- Sufficient internal controls to ensure that all relevant loan review information is appropriately considered in estimating losses. This includes maintaining appropriate reports, details of reviews performed, and identification of personnel involved;[20] and
- Clear formal communication and coordination between a registrant's credit administration function, financial reporting group, management, board of directors, and others who are involved in the loan loss allowance determination or review process, as applicable (*e.g.*, written policies and procedures, management reports, audit programs, and committee minutes).[21]

Question 3: The Interpretive Response to Question 3 indicates that the staff normally would expect a registrant's written loan loss allowance policies and procedures to include a description of the registrant's systematic allowance methodology, which should be consistent with its accounting policies for determining its loan loss allowance. What elements of a registrant's loan loss allowance methodology would the staff normally expect to be described in the registrant's written policies and procedures?

Interpretive Response: The staff normally would expect a registrant's written policies and procedures to describe the primary elements of its loan loss allowance methodology, including portfolio segmentation and impairment measurement. The staff normally would expect that, in order for a registrant's loan loss allowance methodology to be effective, the registrant's written policies and procedures would describe the methodology:

- For segmenting the portfolio:
  - How the segmentation process is performed (*i.e.*, by loan type, industry, risk rates, etc.);[22]
  - When a loan grading system is used to segment the portfolio:
    - The definitions of each loan grade;
    - A reconciliation of the internal loan grades to supervisory loan grades, if applicable; and
    - The delineation of responsibilities for the loan grading system.
  - For determining and measuring impairment under Statement 114:[23]
    - The methods used to identify loans to be analyzed individually;
    - For individually reviewed loans that are impaired, how the amount of any impairment is determined and measured, including:
      - Procedures describing the impairment measurement techniques available; and
      - Steps performed to determine which technique is most appropriate in a given situation.
    - The methods used to determine whether and how loans individually evaluated under Statement 114, but not considered to be individually impaired, should be grouped with other loans that share common characteristics for impairment evaluation under Statement 5.[24]
  - For determining and measuring impairment under Statement 5:[25]
    - How loans with similar characteristics are grouped to be evaluated for loan collectibility (such as loan type, past-due status, and risk);
    - How loss rates are determined (*e.g.*, historical loss rates adjusted for environmental factors or migration analysis) and what factors are considered when establishing appropriate time frames over which to evaluate loss experience; and
    - Descriptions of qualitative factors (*e.g.*, industry, geographical, economic,

[10] Paragraph 7.39 of the Audit Guide discusses "management communication of the need for proper reporting of the allowance." As indicated in that paragraph, the "control environment strongly influences the effectiveness of the system of controls and reflects the overall attitude, awareness, and action of the board of directors and management concerning the importance of control."

[11] Paragraph 7.33 of the Audit Guide refers to the documentation, for disclosure purposes, that an entity should include in the notes to the financial statements describing the accounting policies the entity used to estimate its allowance and related provision for loan losses.

[12] *Ibid.* As indicated in paragraph 7.33, "[s]uch a description should identify the factors that influenced management's judgment (for example, historical losses and existing economic conditions) and may also include discussion of risk elements relevant to particular categories of financial instruments."

[13] *See* also paragraph 7.39 in the Audit Guide which provides information about specific aspects of effective internal control related to the allowance for loan losses.

[14] *Ibid.* Public companies are required to comply with the books and records provisions of the Exchange act. Under Sections 13(b)(2)–(7) of the Exchange Act, registrants must make and keep books, records, and accounts, which, in reasonable detail, accurately and fairly reflect the transactions and dispositions of assets of the registrant. Registrants also must maintain internal accounting controls that are sufficient to provide reasonable assurances that, among other things, transactions are recorded as necessary to permit the preparation of financial statements in conformity with GAAP.

[15] Concepts Statement 2 provides guidance on "reliability" as a primary quality of accounting information.

[16] Section 13(b)(2)–(7) of the Exchange Act.

[17] As indicated in paragraph 7.05, item a, in the Audit Guide, a loan loss allowance methodology should "include a detailed and regular analysis of the loan portfolio." Paragraphs 7.06 to 7.13 provide additional information on how creditors traditionally identify and review loans on an individual basis and review or analyze loans on a group or pool basis.

[18] *Ibid.* Additionally, paragraph 7.39 in the Audit Guide provides guidance on the loan review process. As stated in that paragraph, "[m]anagement reports summarizing loan activity, renewals, and delinquencies are vital to the timely identification of problem loans." The paragraph further states: "Loan reviews should be conducted by institution personnel who are independent of the underwriting, supervision, and collections functions. The specific lines of reporting depend on the complexity of the institution's organizational structure, but the loan reviewers should report to a high level of management that is independent from the lending process in the institution."

[19] *Ibid.*

[20] *Ibid.*

[21] *Ibid.*

[22] Paragraph 7.07 in the Audit Guide states that "creditors have traditionally identified loans that are to be evaluated for collectibility by dividing the loan portfolio into different segments. Each segment should contain loans with similar characteristics, such as risk classification, past-due status, and type of loan." Paragraph 7.08 provides additional guidance on classifying individual loans and paragraph 7.13 indicates considerations for groups or pools of loans.

[23] *See* Statement 114, paragraphs 8 through 10 on recognition of impairment and paragraphs 11 through 16 on measurement of impairment. *See* also the guidance in EITF Topic D–80.

[24] *See* EITF Topic D–80, Exhibit D–80A, Question #10.

[25] *See* Statement 5, paragraphs 8(a) and 8(b) on accrual of loss contingencies and paragraphs 22 and 23 on collectibility of receivables. See also the guidance in EITF Topic D–80.

and political factors) that may affect loss rates or other loss measurements.

3. Applying a Systematic Methodology—Measuring and Documenting Loan Losses Under Statement 114

a. Measuring and Documenting Loan Losses Under Statement 114—General

Facts: Approximately one-third of Registrant B's commercial loan portfolio consists of large balance, non-homogeneous loans. Due to their large individual balances, these loans meet the criteria under Registrant B's policies and procedures for individual review for impairment under Statement 114.

Upon review of the large balance loans, Registrant B determines that certain of the loans are impaired as defined by Statement 114.[1]

Question: of the commercial loans reviewed under Statement 114 that are individually impaired, how would the staff normally expect Registrant B to measure and document the impairment on those loans? Can it use an impairment measurement method other than the methods allowed by Statement 114?

Interpretive Response: For those loans that are reviewed individually under Statement 114 and considered individually impaired, Registrant B must use one of the methods for measuring impairment that is specified by Statement 114 (that is, the present value of expected future cash flows, the loan's observable market price, or the fair value of collateral).[2] Accordingly, in the circumstances described above, for the loans considered individually impaired under Statement 114, it would not be appropriate for Registrant B to choose a measurement method not prescribed by Statement 114. For example, it would not be appropriate to measure loan impairment by applying a loss rate to each loan based on the average historical loss percentage for all of its commercial loans for the past five years.

The staff normally would expect Registrant B to maintain as sufficient, objective evidence[3] written documentation to support its measurement of loan impairment under Statement 114.[4] If Registrant B uses the present value of expected future cash flows to measure impairment of a loan, it should document the amount and timing of cash flows, the effective interest rate used to discount the cash flows, and the basis for the determination of cash flows, including consideration of current environmental factors[5] and other information reflecting past events and current conditions. If Registrant B uses the fair value of collateral to measure impairment, the staff normally would expect to find that Registrant B had documented how it determined the fair value, including the use of appraisals, valuation assumptions and calculations, the supporting rationale for adjustments to appraised values, if any, and the determination of costs to sell, if applicable, appraisal quality, and the expertise and independence of the appraiser.[6] Similarly, the staff normally would expect to find that Registrant B had documented the amount, source, and date of the observable market price of a loan, if that method of measuring loan impairment is used.

b. Measuring and Documenting Loan Losses Under Statement 114 for a Collateral Dependent Loan

Facts: Registrant C has a $10 million loan outstanding to Company X that is secured by real estate, which Registrant C individually evaluates under Statement 114 due to the loan's size. Company X is delinquent in its loan payments under the terms of the loan agreement. Accordingly, Registrant C determines that its loan to Company X is impaired, as defined by Statement 114. Because the loan is collateral dependent, Registrant C measures impairment of the loan based on the fair value of the collateral. Registrant C determines that the most recent valuation of the collateral was performed by an appraiser eighteen months ago and, at that time, the estimated value of the collateral (fair value less costs to sell) was $12 million.

Registrant C believes that certain of the assumptions that were used to value the collateral eighteen months ago do not reflect current market conditions and, therefore, the appraiser's valuation does not approximate current fair value of the collateral.

Several buildings, which are comparable to the real estate collateral, were recently completed in the area, increasing vacancy rates, decreasing lease rates, and attracting several tenants away from the borrower. Accordingly, credit review personnel at Registrant C adjust certain of the valuation assumptions to better reflect the current market conditions as they relate to the loan's collateral.[7] After adjusting the collateral valuation assumptions, the credit review department determines that the current estimated fair value of the collateral, less costs to sell, is $8 million.[8] Given that the recorded investment in the loan is $10 million, Registrant C concludes that the loan is impaired by $2 million and records an allowance for loan losses of $2 million.

Question: What documentation would the staff normally expect Registrant C to maintain to support its determination of the allowance for loan losses of $2 million for the loan to Company X?

Interpretive Response: The staff normally would expect Registrant C to document that it measured impairment of the loan to Company X by using the fair value of the loan's collateral, less costs to sell, which it estimated to be $8 million.[9] This documentation[10] should include the registrant's rationale and basis for the $8 million valuation, including the revised valuation assumptions it used, the valuation calculation, and the determination of costs to sell, if applicable.

Because Registrant C arrived at the valuation of $8 million by modifying an earlier appraisal, it should document its

[1] Paragraph 8 of Statement 114 provides that a loan is impaired when, based on current information and events, it is probable that all amounts due will not be collected pursuant to the terms of the loan agreement.

[2] *See* paragraph 13 of Statement 114.

[3] Under GAAS, auditors should obtain "sufficient competent evidential matter" to support its audit opinion. See AU Section 326. The staff normally would expect registrants to maintain such evidential matter for its allowances for loan losses for use by the auditors in conducting their annual audit.

[4] Paragraph 7.45 in the Audit Guide outlines sources of information, available from management, that the independent accountant should consider in identifying loans that contain high credit risk or other significant exposures and concentrations. These sources of information would also likely include documentation of loan impairment under Statement 114 or Statement 5. Additionally, as indicated in paragraphs 7.56 to 7.68 of the Audit Guide, the independent accountant, in conducting an audit, may perform a detailed loan file review for selected loans. A registrant's loan files may contain documentation about borrowers' financial resources and cash flows (see paragraph 7.63) or about the collateral securing the loans, if applicable (see paragraph 7.65 and 7.66).

[5] Question #16 in Exhibit D–80A of EITF Topic D–80 indicates that environmental factors include existing industry, geographical, economic, and political factors.

[6] See paragraphs 7.65 and 7.66 in the Audit Guide for additional information about documentation of loan collateral.

[7] When reviewing collateral dependent loans, Registrant C may often find it more appropriate to obtain an updated appraisal to estimate the effect of current market conditions on the appraised value instead of internally estimating an adjustment.

[8] An auditor who uses the work of a specialist, such as an appraiser, in performing an audit in accordance with GAAS should refer to the guidance in SAS 73 (AU Section 336).

[9] See paragraphs 7.65 to 7.66 in the Audit Guide for further information about documentation of loan collateral and associated audit procedures that may be performed by the independent accountant.

[10] As stated in paragraph 7.14 of the Audit Guide, "[t]he institution's conclusions about the appropriate amount [of loan impairment and the allowance for loan losses] should be well documented."

rationale and basis for the changes it made to the valuation assumptions that resulted in the collateral value declining from $12 million eighteen months ago to $8 million in the current period.

c. Measuring and Documenting Loan Losses Under Statement 114—Fully Collateralized Loans

Question: In the staff's view, what is an example of an acceptable documentation practice for a registrant to adequately support its determination that no allowance for loan losses should be recorded for a group of loans because the loans are fully collateralized?

Interpretive Response: Consider the following fact pattern: Registrant D has $10 million in loans that are fully collateralized by highly rated debt securities with readily determinable market values. The loan agreement for each of these loans requires the borrower to provide qualifying collateral sufficient to maintain a loan-to-value ratio with sufficient margin to absorb volatility in the securities' market prices. Registrant D's collateral department has physical control of the debt securities through safekeeping arrangements. In addition, Registrant D perfected its security interest in the collateral when the funds were originally distributed. On a quarterly basis, Registrant D's credit administration function determines the market value of the collateral for each loan using two independent market quotes and compares the collateral value to the loan carrying value. If there are any collateral deficiencies, Registrant D notifies the borrower and requests that the borrower immediately remedy the deficiency. Due in part to its efficient operation, Registrant D has historically not incurred any material losses on these loans. Registrant D believes these loans are fully-collateralized and therefore does not maintain any loan loss allowance balance for these loans.

Registrant D's management summary of the loan loss allowance includes documentation indicating that, in accordance with its loan loss allowance policy, the collateral protection on these loans has been verified by the registrant, no probable loss has been incurred, and no loan loss allowance is necessary.

Documentation in Registrant D's loan files includes the two independent market quotes obtained each quarter for each loan's collateral amount, the documents evidencing the perfection of the security interest in the collateral, and other relevant supporting documents. Additionally, Registrant D's loan loss allowance policy includes a discussion of how to determine when a loan is considered "fully collateralized" and does not require a loan loss allowance. Registrant D's policy requires the following factors to be considered and its findings concerning these factors to be fully documented:

- Volatility of the market value of the collateral;
- Recency and reliability of the appraisal or other valuation;
- Recency of the registrant's or third party's inspection of the collateral;
- Historical losses on similar loans;
- Confidence in the registrant's lien or security position including appropriate:
  - Type of security perfection (*e.g.*, physical possession of collateral or secured filing);
  - Filing of security perfection (*i.e.*, correct documents and with the appropriate officials); and
  - Relationship to other liens; and
- Other factors as appropriate for the loan type.

In the staff's view, Registrant D's documentation supporting its determination that certain of its loans are fully collateralized, and no loan loss allowance should be recorded for those loans, is acceptable under FRR 28.

4. Applying a Systematic Methodology—Measuring and Documenting Loan Losses Under Statement 5

a. Measuring and Documenting Loan Losses Under Statement 5—General

Question 1: In the staff's view, what are some general considerations for a registrant in applying its systematic methodology to measure and document loan losses under Statement 5?

Interpretive Response: For loans evaluated on a group basis under Statement 5, the staff believes that a registrant should segment the loan portfolio by identifying risk characteristics that are common to groups of loans.[1] Registrants typically decide how to segment their loan portfolios based on many factors, which vary with their business strategies as well as their information system capabilities. Regardless of the segmentation method used, the staff normally would expect a registrant to maintain documentation to support its conclusion that the loans in each segment have similar attributes or characteristics. As economic and other business conditions change, registrants often modify their business strategies, which may result in adjustments to the way in which they segment their loan portfolio for purposes of estimating loan losses. The staff normally would expect registrants to maintain documentation to support these segmentation adjustments.[2]

Based on the segmentation of the loan portfolio, a registrant should estimate the Statement 5 portion of its loan loss allowance. For those segments that require an allowance for loan losses,[3] the registrant should estimate the loan losses, on at least a quarterly basis, based upon its ongoing loan review process and analysis of loan performance.[4] The registrant should follow a systematic and consistently applied approach to select the most appropriate loss measurement methods and support its conclusions and rationale with written documentation.[5]

Facts: After identifying certain loans for evaluation under Statement 114, Registrant E segments its remaining loan portfolio into five pools of loans. For three of the pools, it measures loan impairment under Statement 5 by applying historical loss rates, adjusted for relevant environmental factors, to the pools' aggregate loan balances. For the remaining two pools of loans, Registrant E uses a loss estimation model that is consistent with GAAP to measure loan impairment under Statement 5.

Question 2: What documentation would the staff normally expect Registrant E to prepare to support its loan loss allowance for its pools of loans under Statement 5?

Interpretive Response: Regardless of the method used to determine loan loss measurements under Statement 5, Registrant E should demonstrate and document that the loss measurement

[1] Paragraph 7.07 of the Audit Guide indicates that "[e]ach segment [of the loan portfolio] should contain loans with similar characteristics, such as risk classification, past-due status, and type of loan."

[2] Segmentation of the loan portfolio is a standard element in a loan loss allowance methodology. As indicated in paragraph 7.05 of the Audit Guide, the loan loss allowance methodology "should be well documented, with clear explanations of the supporting analyses and rationale."

[3] An example of a loan segment that does not generally require an allowance for loan losses is a group of loans that are fully secured by deposits maintained at the lending institution.

[4] FRR 28 refers to a "systematic methodology to be employed each period" in determining provisions and allowances for loan losses. As indicated in FRR 28, the staff normally would expect that the systematic methodology would be documented "to help ensure that all matters affecting loan collectibility will consistently be identified in the detailed [loan] review process."

[5] *Ibid.* Also, as indicated in paragraph 7.05 of the Audit Guide, the loan loss allowance methodology "should be well documented, with clear explanations of the supporting analyses and rationale." Further, as indicated in paragraph 7.14 of the Audit Guide, "[t]he institution's conclusions about the appropriate amount [of the allowance] should be well documented."

methods used to estimate the loan loss allowance for each segment of its loan portfolio are determined in accordance with GAAP as of the financial statement date.[6]

As indicated for Registrant E, one method of estimating loan losses for groups of loans is through the application of loss rates to the groups' aggregate loan balances. Such loss rates typically reflect the registrant's historical loan loss experience for each group of loans, adjusted for relevant environmental factors (*e.g.*, industry, geographical, economic, and political factors) over a defined period of time. If a registrant does not have loss experience of its own, it may be appropriate to reference the loss experience of other companies in the same business, provided that the registrant demonstrates that the attributes of the loans in its portfolio segment are similar to those of the loans included in the portfolio of the registrant providing the loss experience.[7] Registrants should maintain supporting documentation for the technique used to develop their loss rates, including the period of time over which the losses were incurred. If a range of loss is determined, registrants should maintain documentation to support the identified range and the rationale used for determining which estimate is the best estimate within the range of loan losses.[8]

The staff normally would expect that, before employing a loss estimation model, a registrant would evaluate and modify, as needed, the model's assumptions to ensure that the resulting loss estimate is consistent with GAAP. In order to demonstrate consistency with GAAP, registrants that use loss estimation models should typically document the evaluation, the conclusions regarding the appropriateness of estimating loan losses with a model or other loss estimation tool, and the objective support for adjustments to the model or its results.[9]

In developing loss measurements, registrants should consider the impact of current environmental factors and then document which factors were used in the analysis and how those factors affected the loss measurements. Factors that should be considered in developing loss measurements include the following:[10]

- Levels of and trends in delinquencies and impaired loans;
- Levels of and trends in charge-offs and recoveries;
- Trends in volume and terms of loans;
- Effects of any changes in risk selection and underwriting standards, and other changes in lending policies, procedures, and practices;
- Experience, ability, and depth of lending management and other relevant staff;
- National and local economic trends and conditions;
- Industry conditions; and
- Effects of changes in credit concentrations.

For any adjustment of loss measurements for environmental factors, a registrant should maintain sufficient, objective evidence[11] (a) to support the amount of the adjustment and (b) to explain why the adjustment is necessary to reflect current information, events, circumstances, and conditions in the loss measurements.

b. Measuring and Documenting Loan Losses Under Statement 5—Adjusting Loss Rates

Facts: Registrant F's lending area includes a metropolitan area that is financially dependent upon the profitability of a number of manufacturing businesses. These businesses use highly specialized equipment and significant quantities of rare metals in the manufacturing process. Due to increased low-cost foreign competition, several of the parts suppliers servicing these manufacturing firms declared bankruptcy. The foreign suppliers have subsequently increased prices and the manufacturing firms have suffered from increased equipment maintenance costs and smaller profit margins.

Additionally, the cost of the rare metals used in the manufacturing process increased and has now stabilized at double last year's price. Due to these events, the manufacturing businesses are experiencing financial difficulties and have recently announced downsizing plans.

Although Registrant F has yet to confirm an increase in its loss experience as a result of these events, management knows that it lends to a significant number of businesses and individuals whose repayment ability depends upon the long-term viability of the manufacturing businesses. Registrant F's management has identified particular segments of its commercial and consumer customer bases that include borrowers highly dependent upon sales or salary from the manufacturing businesses. Registrant F's management performs an analysis of the affected portfolio segments to adjust its historical loss rates used to determine the loan loss allowance. In this particular case, Registrant F has experienced similar business and lending conditions in the past that it can compare to current conditions.

Question: How would the staff normally expect Registrant F to document its support for the loss rate adjustments that result from considering these manufacturing firms' financial downturns?[12]

Interpretive Response: The staff normally would expect Registrant F to document its identification of the particular segments of its commercial and consumer loan portfolio for which it is probable that the manufacturing business' financial downturn has resulted in loan losses. In addition, the staff normally would expect Registrant F to document its analysis that resulted in the adjustments to the loss rates for the affected portfolio segments.[13] The staff normally would expect that, as part of its documentation, Registrant F would maintain copies of the documents supporting the analysis, which may include relevant economic reports,

[6] Refer to paragraph 8(b) of Statement 5. Also, as indicated in Exhibit D–80A of EITF Topic D–80, "[t]he approach for determination of the allowance should be well documented and applied consistently from period to period." (See the overview section of Exhibit D–80A and Question #18.)

[7] Refer to paragraph 23 of Statement 5.

[8] Registrants should also refer to Interpretation 14, which provides guidance for situations in which a range of loss can be reasonably estimated but no single amount within the range appears to be a better estimate than any other amount within the range. Also, paragraph 7.14 of the Audit Guide notes that the use of "a method that results in a range of estimates for the allowance," except for impairment measurement under Statement 114, which is based on "a single best estimate and not a range of estimates." Paragraph 7.14 also states that "[t]he institution's conclusions about the appropriate amount should be well documented."

[9] The systematic methodology (including, if applicable, loss estimation models) used to determine loan loss provisions and allowances should be documented in accordance with FRR 28, paragraph 7.05 of the Audit Guide, and EITF Topic D–80.

[10] Refer to paragraph 7.13 in the Audit Guide.

[11] AU 326 describes the "sufficient competent evidential matter" that auditors must consider in accordance with GAAS.

[12] This question and response would also apply to other registrant fact patterns in which the registrant adjusts loss rates for environmental factors.

[13] Paragraph 7.33 of the Audit Guide refers to the documentation, for disclosure purposes, that an entity should include in the notes to the financial statements describing the accounting policies and methodology the entity used to estimate its allowance and related provision for loan losses. As indicated in paragraph 7.33, "[s]uch a description should identify the factors that influenced management's judgment (for example, historical losses and existing economic conditions) and may also include discussion of risk elements relevant to particular categories of financial instruments."

economic data, and information from individual borrowers.

Because in this case Registrant F has experienced similar business and lending conditions in the past, it should consider including in its supporting documentation an analysis of how the current conditions compare to its previous loss experiences in similar circumstances. The staff normally would expect that, as part of Registrant F's effective loan loss allowance methodology, it would create a summary of the amount and rationale for the adjustment factor for review by management prior to the issuance of the financial statements.[14]

c. Measuring and Documenting Loan Losses Under Statement 5—Estimating Losses on Loans Individually Reviewed for Impairment but not Considered Individually Impaired

Facts: Registrant G has outstanding loans of $2 million to Company Y and $1 million to Company Z, both of which are paying as agreed upon in the loan documents. The registrant's loan loss allowance policy specifies that all loans greater than $750,000 must be individually reviewed for impairment under Statement 114. Company Y's financial statements reflect a strong net worth, good profits, and ongoing ability to meet debt service requirements. In contrast, recent information indicates Company Z's profitability is declining and its cash flow is tight. Accordingly, this loan is rated substandard under the registrant's loan grading system. Despite its concern, management believes Company Z will resolve its problems and determines that neither loan is individually impaired as defined by Statement 114.

Registrant G segments its loan portfolio to estimate loan losses under Statement 5. Two of its loan portfolio segments are Segment 1 and Segment 2. The loan to Company Y has risk characteristics similar to the loans included in Segment 1 and the loan to Company Z has risk characteristics similar to the loans included in Segment 2.[15]

In its determination of its loan loss allowance under Statement 5, Registrant G includes its loans to Company Y and Company Z in the groups of loans with similar characteristics (*i.e.*, Segment 1 for Company Y's loan and Segment 2 for Company Z's loan).[16] Management's analyses of Segment 1 and Segment 2 indicate that it is probable that each segment includes some losses, even though the losses cannot be identified to one or more specific loans. Management estimates that the use of its historical loss rates for these two segments, with adjustments for changes in environmental factors, provides a reasonable estimate of the registrant's probable loan losses in these segments.

Question: How would the staff normally expect Registrant G to adequately document a loan loss allowance under Statement 5 for these loans that were individually reviewed for impairment but are not considered individually impaired?

Interpretive Response: The staff normally would expect that, as part of Registrant G's effective loan loss allowance methodology, it would document its decision to include its loans to Company Y and Company Z in its determination of its loan loss allowance under Statement 5.[17] The staff also normally would expect that Registrant G would document the specific characteristics of the loans that were the basis for grouping these loans with other loans in Segment 1 and Segment 2, respectively.[18] Additionally, the staff normally would expect Registrant G to maintain documentation to support its method of estimating loan losses for Segment 1 and Segment 2, which typically would include the average loss rate used, the analysis of historical losses by loan type and by internal risk rating, and support for any adjustments to its historical loss rates.[19] The registrant would typically maintain copies of the economic and other reports that provided source data.

When measuring and documenting loan losses, Registrant G should take steps to prevent layering loan loss allowances. Layering is the inappropriate practice of recording in the allowance more than one amount for the same probable loan loss. Layering can happen when a registrant includes a loan in one segment, determines its best estimate of loss for that loan either individually or on a group basis (after taking into account all appropriate environmental factors, conditions, and events), and then includes the loan in another group, which receives an additional loan loss allowance amount.

5. Documenting the Results of a Systematic Methodology

a. Documenting the Results of a Systematic Methodology—General

Facts: Registrant H has completed its estimation of its loan loss allowance for the current reporting period, in accordance with GAAP, using its established systematic methodology.

Question: What summary documentation would the staff normally expect Registrant H to prepare to support the amount of its loan loss allowance to be reported in its financial statements?

Interpretive Response: The staff normally would expect that, to verify that loan loss allowance balances are presented fairly in accordance with GAAP and are auditable, management would prepare a document that summarizes the amount to be reported in the financial statements for the loan loss allowance.[1] Common elements that the staff normally would expect to find documented in loan loss allowance summaries include:[2]

- The estimate of the probable loss or range of loss incurred for each category evaluated (*e.g.*, individually evaluated impaired loans, homogeneous pools, and other groups of loans that are collectively evaluated for impairment);
- The aggregate probable loss estimated using the registrant's methodology;
- A summary of the current loan loss allowance balance;
- The amount, if any, by which the loan loss allowance balance is to be adjusted;[3] and
- Depending on the level of detail that supports the loan loss allowance analysis, detailed subschedules of loss estimates that reconcile to the summary schedule.

Generally, a registrant's review and approval process for the loan loss allowance relies upon the data provided in these consolidated summaries. There may be instances in which individuals or committees that review the loan loss allowance methodology and resulting allowance balance identify adjustments that need to be made to the loss estimates to provide a better estimate of loan losses. These changes may be due to information not known at the time of the initial loss estimate (*e.g.*, information that surfaces after determining and adjusting, as necessary, historical loss rates, or a recent decline in the marketability of property after conducting a Statement 114 valuation based upon the fair value of collateral). It is important that these adjustments are consistent with GAAP and are reviewed and approved by appropriate personnel.[4] Additionally, it would typically be appropriate for the summary to provide each subsequent reviewer with an understanding of the support behind these adjustments. Therefore, the staff normally would expect management to document the nature of any adjustments and the underlying rationale for making the changes.[5]

The staff also normally would expect this documentation to be provided to those among management making the final determination of the loan loss allowance amount.[6]

b. Documenting the Results of a Systematic Methodology—Allowance Adjustments

Facts: Registrant I determines its loan loss allowance using an established systematic process. At the end of each reporting period, the accounting department prepares a summary schedule that includes the amount of each of the components of the loan loss allowance, as well as the total loan loss allowance amount, for review by senior management, including the Credit Committee. Members of senior management meet to discuss the loan loss allowance. During these discussions, they identify changes that are required by GAAP to be made to certain of the loan loss allowance estimates. As a result of the adjustments made by senior management, the total amount of the loan loss allowance changes. However, senior management (or its designee) does not update the loan loss allowance summary schedule to reflect the adjustments or reasons for the adjustments. When performing their audit of the financial statements, the independent accountants are provided with the original loan loss allowance summary schedule reviewed by senior management, as well as a verbal explanation of the changes made by senior management when they met to discuss the loan loss allowance.

Question: In the staff's view, are Registrant I's documentation practices related to the balance of its loan loss allowance in compliance with existing documentation guidance in this area?

Interpretive Response: No. A registrant should maintain supporting documentation for the loan loss allowance amount reported in its financial statements.[7] As illustrated above, there may be instances in which loan loss allowance reviewers identify adjustments that need to be made to the loan loss estimates. The staff normally would expect the nature of the adjustments, how they were measured or determined, and the underlying rationale for making the changes to the loan loss allowance balance to be documented.[8] The staff also normally would expect appropriate documentation of the adjustments to be provided to management for review of the final loan loss allowance amount to be reported in the financial statements. This documentation should also be made available to the independent accountants. If changes frequently occur during management or credit committee reviews of the loan loss allowance, management may find it appropriate to analyze the reasons for the frequent changes and to reassess the methodology the registrant uses.[9]

6. Validating a Systematic Methodology

Question: What is the staff's guidance to a registrant on validating, and documenting the validation of, its systematic methodology used to estimate loan loss allowances?

Interpretive Response: The staff believes that a registrant's loan loss allowance methodology is considered valid when it accurately estimates the amount of loss contained in the portfolio. Thus, the staff normally would expect the registrant's methodology to include procedures that adjust loan loss estimation methods to reduce differences between estimated losses and actual subsequent charge-offs, as necessary. To verify that the loan loss allowance methodology is valid and conforms to GAAP, the staff believes it is appropriate for management to establish internal control policies,[1] appropriate for the size of the registrant and the type and complexity of its loan products.

These policies may include procedures for a review, by a party who is independent of the allowance for loan losses estimation process, of the allowance for loan losses methodology and its application in order to confirm its effectiveness.

In practice, registrants employ numerous procedures when validating the reasonableness of their loan loss allowance methodology and determining whether there may be deficiencies in their overall methodology or loan grading process. Examples are:

- A review of trends in loan volume, delinquencies, restructurings, and concentrations.
- A review of previous charge-off and recovery history, including an evaluation of the timeliness of the entries to record both the charge-offs and the recoveries.
- A review by a party that is independent of the loan loss allowance estimation process. This often involves the independent party reviewing, on a test basis, source documents and underlying assumptions to determine that the established methodology develops reasonable loss estimates.
- An evaluation of the appraisal process of the underlying collateral. This may be accomplished by periodically comparing the appraised value to the actual sales price on selected properties sold.

It is the staff's understanding that, in practice, management usually supports the validation process with the

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[14] Paragraph 7.39 in the Audit Guide indicates that effective internal control related to the allowance for loan losses should include "accumulation of relevant, sufficient, and reliable data on which to base management's estimate of the allowance."

[15] These groups of loans do not include any loans that have been individually reviewed for impairment under Statement 114 and determined to be impaired as defined by Statement 114.

[16] Question #10 in Exhibit D–80A of EITF Topic D–80 states that if a creditor concludes that an individual loan specifically identified for evaluation is not impaired under Statement 114, that loan may be included in the assessment of the allowance for loan losses under Statement 5, but only if specific characteristics of the loan indicate that it is probable that there would be an incurred loss in a group of loans with those characteristics.

[17] Paragraph 7.05 in the Audit Guide indicates that an entity's method of estimating credit losses should "include a detailed and regular analysis of the loan portfolio," "consider all loans (whether on an individual or pool-of-loans basis)," "be based on current and reliable data," and "be well documented, with clear explanations of the supporting analyses and rationale." Question #10 in Exhibit D–80A of EITF Topic D–80 provides guidance as to the analysis to be performed when determining whether a loan that is not individually impaired under Statement 114 should be included in the assessment of the loan loss allowance under Statement 5.

[18] *Ibid.*

[19] *Ibid.*

[1] FRR 28 states: "[t]he specific rationale upon which the [loan loss allowance and provision] amount actually reported is based—i.e., the bridge between the bridge between the findings of the detailed review [of the loan portfolio] and the amount actually reported in each period—would be documented to help ensure the adequacy of the reported amount, to improve auditability, and to serve as a benchmark for exercise of prudent judgment in future periods."

[2] *See* also paragraph 7.14 of the Audit guide.

[3] Subsequent to adjustments, the staff normally would expect that there would be no material differences between the consolidated loss estimate, as determined by the methodology, and the final loan loss allowance balance reported in the financial statements. Registrants should refeer to SAB 99 and SAS 89 and its amendments to AU Section 310.

[4] Paragraph 7.39 in the Audit guide indicates that effective internal control related to the allowance for loan losses should include "adequate review and approval of the allowance estimates by the individuals specified in management's written policy."

[5] *See* the guidance in paragraph 7.14 of the Audit Guide ("the institution's conclusions about the appropriate amount shoudl be well documented") and in FRR 28 ("the specific rationale upon which the amount actually reported in each individual period is based would be documented").

[6] *Ibid.*

[7] *Ibid.*

[8] *Ibid.*

[9] As outlined in paragraph 7.39 of the Audit Guide, effective internal controls related to the allowance for loan losses should include adequate review and approval of allowance estimates, including review of soruces of relevant information, review of development of assumptions, review of reasonableness of assumptions and resulting estimates, and consideration of changes in previously established methods to arrive at the allowance.

[1] *Ibid.*

workpapers from the loan loss allowance review function. Additional documentation often includes the summary findings of the independent reviewer. The staff normally would expect that, if the methodology is changed based upon the findings of the validation process, documentation that describes and supports the changes would be maintained.[2]

Topic 7: Real Estate Companies

A. Deleted by SAB 103

B. Deleted by SAB 103

C. Schedules of Real Estate and Accumulated Depreciation, and of Mortgage Loans on Real Estate

Facts: Whenever investments in real estate or mortgage loans on real estate are significant, the schedules of such items (see Rules 12–28 and 12–29 of Regulation S–X) are required in a prospectus.

Question: Is such information also required in annual reports to shareholders?

Interpretive Response: Although Rules 14a–3 and 14c–3 permit the omission of financial statement schedules from annual reports to shareholders, the staff is of the view that the information required by these schedules is of such significance within the real estate industry that the information should be included in the financial statements in the annual report to shareholders.

D. Income Before Depreciation

Facts: Occasionally an income statement format will contain a subtitle or caption titled "Income before depreciation and depletion."

Question: Is this caption appropriate?

Interpretive Response: The staff objects to this presentation because in the staff's view the presentation may suggest to the reader that the amount so captioned represents cash flow for the period, which is rarely the case (see ASR 142).

Topic 8: Retail Companies

A. Sales of Leased or Licensed Departments

Facts: At times, department stores and other retailers have included the sales of leased or licensed departments in the amount reported as "total revenues."

Question: Does the staff have any objection to this practice?

Interpretive Response: In November 1975 the staff issued SAB 1 that addressed this issue. In that SAB the staff did not object to retailers presenting sales of leased or licensed departments in the amount reported as "total revenues" because of industry practice. Subsequently, in November 1976 the FASB issued Statement 13. In June 1995, the AICPA staff amended its Technical Practice Aid (TPA) section 5100.16 based upon an interpretation of Statement 13 that leases of departments within a retail establishment are leases of tangible assets within the scope of Statement 13.[1] Consistent with the interpretation in TPA section 5100.16, the staff believes that Statement 13 requires department stores and other retailers that lease or license store space to account for rental income from leased departments in accordance with Statement 13. Accordingly, it would be inappropriate for a department store or other retailer to include in its revenue the sales of the leased or licensed departments. Rather, the department store or other retailer should include the rental income as part of its gross revenue. The staff would not object to disclosure in the footnotes to the financial statements of the amount of the lessee's sales from leased departments. If the arrangement is not a lease but rather a service arrangement that provides for payment of a fee or commission, the retailer should recognize the fee or commission as revenue when earned. If the retailer assumes the risk of bad debts associated with the lessee's merchandise sales, the retailer generally should present bad debt expense in accordance with Rule 5–03(b)(5) of Regulation S–X.

B. Finance Charges

Facts: Department stores and other retailers impose finance charges on credit sales.

Question: How should such charges be disclosed?

Interpretive Response: As a minimum, the staff requests that the amount of gross revenue from such charges be stated in a footnote and that the income statement classification which includes such revenue be identified. The following are examples of acceptable disclosure:

Example 1

Consumer Credit Operations:

The results of the Consumer Credit Operations which are included in the Statement of Earnings as a separate line item are as follows for the fiscal year ended January 31, 20x0:

Service charges	$167,000,000
Operating expenses	
Interest	60,000,000
Payroll	35,000,000
Provision for uncollected accounts	29,000,000
All other credit and collection expenses	32,000,000
Provision for Federal income taxes	5,000,000
Total operating expenses	161,000,000
Consumer credit operations earnings	6,000,000

Example 2

Service charges on retail credit accounts are netted against selling, general and administrative expense. The cost of administering retail credit program continued to exceed service charges on customer receivables as follows:

(in millions)	20x2	20x1	Percent increase (decrease)
Costs:			
Regional office operations	$45	$42	9
Interest	51	44	13
Provision for doubtful accounts	21	15	34
Total	$117	$102	15
Less service charge income	96	79	22
Net cost of credit	$21	$23	(10)

[2] *See* paragraph 7.39 of the Audit Guide.

[1] Statement 13, paragraph 1 defines a lease as "the right to use property, plant, or equipment (land or depreciable assets or both) usually for a stated period of time."

(in millions)	20x2	20x1	Percent increase (decrease)
Net cost as percent of credit sales	1.4%	1.6%	

The above results do not reflect either "in store" costs related to credit operations or any allocation of corporate overhead expenses.

This SAB is not intended to change current guidance in the accounting literature. For this reason, adherence to the principles described in this SAB should not raise the costs associated with record-keeping or with audits of financial statements.

Topic 9: Finance Companies

A. Deleted by SAB 103

B. Deleted by ASR 307

Topic 10: Utility Companies

A. Financing by Electric Utility Companies Through Use of Construction Intermediaries

Facts: Some electric utility companies finance construction of a generating plant or their share of a jointly owned plant through the use of a "construction intermediary" which may be organized as a trust or a corporation. Typically the utility assigns its interest in property and other contract rights to the construction intermediary with the latter authorized to obtain funds to finance construction with term loans, bank loans, commercial paper and other sources of funds and that may be available. The intermediary's borrowings are guaranteed in part of the work in progress but more significantly, although indirectly, by the obligation of the utility to purchase the project upon completion and assume or otherwise settle the borrowings. The utility may be committed to provide any deficiency of funds which the intermediary cannot obtain and excess funds may be loaned to the utility by the intermediary. (In one case involving construction of an entire generating plant, the intermediary appointed the utility as its agent to complete construction.) On the occurrence of an event such as commencement of the testing period for the plant or placing the plant in commercial service (but not later than a specified date) the interest in the plant reverts to the utility and concurrently the utility must either assume the obligations issued by the intermediary or purchase them from the holders. The intermediary also may be authorized to borrow amounts for accrued interest when due and those amounts are added to the balance of the outstanding indebtedness. Interest is thus capitalized during the construction period at rates being charged by the lenders; however, it is deductible by the utility for tax purposes in the year of accrual.

Question: How should construction work in progress and related liabilities and interest expense being financed through a construction intermediary be reflected in an electric utility's financial statements?

Interpretive Response: The balance sheet of an electric utility company using a construction intermediary to finance construction should include the intermediary's work in progress in the appropriate caption under utility plant. The related debt should be included in long-term liabilities and disclosed either on the balance sheet or in a note.

The amount of interest cost incurred and the respective amounts expensed or capitalized shall be disclosed for each period for which an income statement is presented. Consequently, capitalized interest included as part of an intermediary's construction work in progress on the balance sheet should be recognized on the current income statement as interest expense with a corresponding offset to allowance for borrowed funds used during construction. Income statements for prior periods should also be restated. The amounts may be shown separately on the statement or included with interest expense and allowance for borrowed funds used during construction.

A note to the financial statements should describe briefly the organization and purpose of the intermediary and the nature of its authorization to incur debt to finance construction. The note should disclose the rate at which interest on this debt has been capitalized and the dollar amount for each period for which an income statement is presented.

B. Deleted by SAB 103

C. Jointly Owned Electric Utility Plants

Facts: Groups of electric utility companies have been building and operating utility plants under joint ownership agreements or arrangements which do not create legal entities for which separate financial statements are presented.[1] Under these arrangements, a participating utility has an undivided interest in a utility plant and is responsible for its proportionate share of the costs of construction and operation and its entitled to its proportionate share of the energy produced.

During the construction period a participating utility finances its own share of a utility plant using its own financial resources and not the combined resources of the group. Allowance for funds used during construction is provided in the same manner and at the same rates as for plants constructed to be used entirely by the participant utility.

When a joint-owned plant becomes operational, one of the participant utilities acts as operator and bills the other participants for their proportionate share of the direct expenses incurred. Each individual participant incurs other expenses related to transmission, distribution, supervision and control which cannot be related to the energy generated or received from any particular source. Many companies maintain depreciation records on a composite basis for each class of property so that neither the accumulated allowance for depreciation nor the periodic expense can be allocated to specific generating units whether jointly or wholly owned.

Question: What disclosure should be made on the financial statements or in the notes concerning interests in jointly owned utility plants?

Interpretive Response: A participating utility should include information concerning the extent of its interests in jointly owned plants in a note to its financial statements. The note should include a table showing separately for each interest in a jointly owned plant the amount of utility plant in service, the accumulated provision for depreciation (if available), the amount of plant under construction, and the proportionate share. The amounts presented for plant in service or plant under construction may be further subdivided to show amounts applicable to plant subcategories such as production, transmission, and distribution. The note should include statements that the dollar amounts represent the participating utility's share in each joint plant and that each

[1] Before considering the guidance in this SAB Topic, registrants are reminded that the arrangement should be evaluated in accordance with the provisions of Interpretation 46.

participant must provide its own financing. Information concerning two or more generating plants on the same site may be combined if appropriate.

The note should state that the participating utility's share of direct expenses of the joint plants is included in the corresponding operating expenses on its income statement (*e.g.*, fuel, maintenance of plant, other operating expense). If the share of direct expenses is charged to purchased power then the note should disclose the amount so charged and the proportionate amounts charged to specific operating expenses on the records maintained for the joint plants.

D. Long-Term Contracts for Purchase of Electric Power

Facts: Under long-term contracts with public utility districts, cooperatives or other organizations, a utility company receives a portion of the output of a production plant constructed and financed by the district or cooperative. The utility has only a nominal or no investment at all in the plant but pays a proportionate part of the plant's costs, including debt service. The contract may be in the form of a sale of a generating plant and its immediate lease back. The utility is obligated to pay certain minimum amounts which cover debt service requirements whether or not the plant is operating. At the option of other parties to the contract and in accordance with a predetermined schedule, the utility's proportionate share of the output may be reduced. Separate agreements may exist for the transmission of power to the utility's system.[1]

Question: How should the cost of power obtained under long-term purchase contracts be reflected on the financial statements and what supplemental disclosures should be made in notes to the statements?

Interpretive Response: The cost of power obtained under long-term purchase contracts, including payments required to be made when a production plant is not operating, should be included in the operating expenses section of the income statement. A note to the financial statements should present information concerning the terms and significance of such contracts to the utility company including date of contract expiration, share of plant output being purchased, estimated annual cost, annual minimum debt service payment required and amount of related long-term debt or lease obligations outstanding.

Additional disclosure should be given if the contract provides, or is expected to provide, in excess of five percent of current or estimated future system capability. This additional disclosure may be in the form of separate financial statements of the vendor entity or inclusion of the amount of the obligation under the contract as a liability on the balance sheet with a corresponding amount as an asset representing the right to purchase power under the contract.

The note to the financial statements should disclose the allocable portion of interest included in charges under such contracts.

E. Classification of Charges for Abandonments and Disallowances

Facts: A public utility company abandons the construction of a plant and, under the provisions of Statement 90, must charge a portion of the costs of the abandoned plant to expense.[1] Also, the utility determines that it is probable that certain costs of a recently completed plant will be disallowed, and charges those costs to expense as required by Statement 90.

Question: May such charges for abandonments and disallowances be reported as extraordinary items in the statement of income?

Interpretive Response: No. The staff does not believe that such charges meet the requirements of APB Opinion 30 that an item be both unusual and infrequent to be classified as an extraordinary item. Accordingly, the public utility was advised by the staff that such charges should be reported as a component of income from continuing operations, separately presented, if material.[2]

Paragraph 20 of APB Opinion 30 indicates that to be unusual, an item must "possess a high degree of abnormality and be of a type clearly unrelated to, or only incidentally related to, the ordinary and typical activities of the entity, taking into account the environment in which the entity operates." Similarly, that paragraph indicates that, to be infrequent, an event should "not reasonably be expected to recur in the foreseeable future."

Electric utilities operate under a franchise that requires them to furnish adequate supplies of electricity for their service area. That undertaking requires utilities to continually forecast the future demand for electricity, and the costs to be incurred in constructing the plants necessary to meet that demand. Abandonments and disallowances result from the failure of demand to reach projected levels and/or plant construction costs that exceed anticipated amounts. Neither event qualifies as being both unusual and infrequent in the environment in which electric utilities operate.

Accordingly, the staff believes that charges for abandonments and disallowances under Statement 90 should not be presented as extraordinary items.[3]

F. Presentation of Liabilities for Environmental Costs

Facts: A public utility company determines that it is obligated to pay material amounts as a result of an environmental liability. These amounts may relate to, for example, damages attributed to clean-up of hazardous wastes, reclamation costs, fines, and litigation costs.

Question 1: May a rate-regulated enterprise present on its balance sheet the amount of its estimated liability for environmental costs net of probable future revenue resulting from the inclusion of such costs in allowable costs for rate-making purposes?

Interpretive Response: No. Statement 71 specifies the conditions under which rate actions of a regulator can provide reasonable assurance of the existence of an asset. The staff believes that environmental costs meeting the criteria of paragraph 9[1] of Statement 71 should be presented on the balance sheet as an asset and should not be offset against the liability. Contingent recoveries through rates that do not meet the criteria of paragraph 9 should not be recognized either as an asset or as a reduction of the probable liability.

Question 2: May a rate-regulated enterprise delay recognition of a probable and estimable liability for environmental costs which it has incurred at the date of the latest balance sheet until the regulator's deliberations have proceeded to a point enabling management to determine whether this cost is likely to be included in allowable costs for rate-making purposes?

Interpretive Response: No. Statement 5 states that an estimated loss from a loss contingency shall be accrued by a charge to income if it is probable that a liability has been incurred and the amount of the loss can be reasonably estimated.[2] The staff believes that actions of a regulator can affect whether an incurred cost is capitalized or expensed pursuant to Statement 71, but the regulator's actions cannot affect the timing of the recognition of the liability.

Topic 11: Miscellaneous Disclosure

A. Operating-Differential Subsidies

Facts: Company A has received an operating-differential subsidy pursuant to the Merchant Marine Act of 1936, as amended.

Question: How should such subsidies be displayed in the income statement?

Interpretive Response: Revenue representing an operating-differential subsidy under the Merchant Marine Act of 1936, as amended, must be set forth as a separate line item in the income statement either under a revenue caption or as credit in the costs and expenses section.

B. Depreciation and Depletion Excluded From Cost of Sales

Facts: Company B excludes depreciation and depletion from cost of sales in its income statement.

Question: How should this exclusion be disclosed?

Interpretive Response: If cost of sales or operating expenses exclude charges for depreciation, depletion and amortization of property, plant and equipment, the description of the line item should read somewhat as follows: "Cost of goods sold (exclusive of items shown separately below)" or "Cost of goods sold (exclusive of depreciation shown separately below)." To avoid placing undue emphasis on "cash flow," depreciation, depletion and amortization should not be positioned in the income statement in a manner which results in reporting a figure for income before depreciation.

C. Tax Holidays

Facts: Company C conducts business in a foreign jurisdiction which attracts industry by granting a "holiday" from income taxes for a specified period.

Question: Does the staff generally request disclosure of this fact?

Interpretive Response: Yes. In such event, a note must (1) disclose the aggregate dollar and per share effects of the tax holiday and (2) briefly describe the factual circumstances including the date on which the special tax status will terminate.

D. Deleted by SAB 103

E. Chronological Ordering of Data

Question: Does the staff have any preference in what order data are presented (*e.g.*, the most current data displayed first, etc.)?

Interpretive Response: The staff has no preference as to order; however, financial statements and other data presented in tabular form should read consistently from left to right in the same chronological order throughout the filing. Similarly, numerical data included in narrative sections should be consistently ordered.

F. LIFO Liquidations

Facts: Registrant on LIFO basis of accounting liquidates a substantial portion of its LIFO inventory and as a result includes a material amount of income in its income statement which would not have been recorded had the inventory liquidation not taken place.

Question: Is disclosure required of the amount of income realized as a result of the inventory liquidation?

Interpretive Response: Yes. Such disclosure would be required in order to make the financial statements not misleading. Disclosure may be made either in a footnote or parenthetically on the face of the income statement.

G. Tax Equivalent Adjustment in Financial Statements of Bank Holding Companies

Facts: Bank subsidiaries of bank holding companies frequently hold substantial amounts of state and municipal bonds, interest income from which is exempt from Federal income taxes. Because of the tax exemption the stated yield on these securities is lower than the yield on securities with similar risk and maturity characteristics whose interest is subject to Federal tax. In order to make the interest income and resultant yields on tax exempt obligations comparable to those on taxable investments and loans, a "tax equivalent adjustment" is often added to interest income when presented in analytical tables or charts. When the data presented also includes income taxes, a corresponding amount is added to income tax expense so that there is no effect on net income. Adjustment may also be made for the tax equivalent effect of exemption from state and local taxes.

Question 1: Is the concept of the tax equivalent adjustment appropriate for inclusion in financial statements and related notes?

Interpretive Response: No. The tax equivalent adjustment represents a credit to interest income which is not actually earned and realized and a corresponding charge to taxes (or other expense) which will never be paid. Consequently, it should not be reflected on the income statement or in notes to financial statements included in reports to shareholders or in a report or registration statement filed with the Commission.

Question 2: May amounts representing tax equivalent adjustments be included in the body of a statement of income provided they are designated as not being included in the totals and balances on the statement?

Interpretive Response: No. The tabular format of a statement develops information in an orderly manner which becomes confusing when additional numbers not an integral part of the statement are inserted into it.

Question 3: May revenues on a tax equivalent adjusted basis be included in selected financial data?

Interpretive Response: Revenues may be included in selected financial data on a tax equivalent basis if the respective captions state which amounts are tax equivalent adjusted and if the corresponding unadjusted amounts are also reported in the selected financial data.

Because of differences among registrants in making the tax equivalency computation, a brief note should describe the extent of recognition of exemption from Federal, state and local taxes and the combined marginal or incremental rate used. Where net operating losses exist, the note should indicate the nature of the tax equivalency adjustment made.

Question 4: May information adjusted to a tax equivalent basis be included in management's discussion and analysis of financial condition and results of operations?

Interpretive Response: One of the purposes of MD&A is to enable investors to appraise the extent that earnings have been affected by changes in business activity and accounting principles or

[1] Registrants are reminded that the arrangement may contain a guarantee that is within the scope of Interpretation 45. Further, registrants should consider the guidance of Interpretation 46. Also, registrants would need to consider whether the arrangement contains a derivative that should be accounted for according to Statement 133.

[1] Paragraph 3 of Statement 90 requires that costs of abandoned plants in excess of the present value of the future revenues expected to be provided to recover any allowable costs be charged to expense in the period that the abandonment becomes probable. Also, paragraph 7 of Statement 90 requires that disallowed costs for recently completed plants be charged to expense when the disallowance becomes probable and can be reasonably estimated.

[2] Additionally, the registrant was reminded that paragraph 26 of APB Opinion 30 provides that items which are not reported as extraordinary should not be reported on the income statement net of income taxes or in any manner that implies that they are similar to extraordinary items.

[3] The staff also notes that paragraphs 3 and 7 of Statement 90, in requiring that such costs be "recognized as a loss," do not specify extraordinary item treatment. The staff believes that it generally has been the FASB's practice to affirmatively require extraordinary item treatment when it believes that it is appropriate for charges or credits to income specifically required by a provision of a statement.

[1] Paragraph 9 of Statement 71 requires a rate-regulated enterprise to capitalize all or part of an incurred cost that would otherwise be charged to expense if it is probable that future revenue will be provided to recover the previously incurred cost from inclusion of the costs in allowable costs for rate-making purposes.

[2] Registrants also should apply the guidance of SOP 96–1 in determining the appropriate recognition of environmental remediation costs.

methods. Material changes in items of revenue or expense should be analyzed and explained in textual discussion and statistical tables. It may be appropriate to use amounts or to present yields on a tax equivalent basis. If appropriate, the discussion should include a comment on material changes in investment securities positions that affect tax exempt interest income. For example, there might be a comment on a change from investments in tax exempt securities because of the availability of net operating losses to offset taxable income of current and future periods, or a comment on a change in the quality level of the tax exempt investments resulting in increased interest income and risk and a corresponding increase in the tax equivalent adjustment.

Tax equivalent adjusted amounts should be clearly identified and related to the corresponding unadjusted amounts in the financial statements. A descriptive note similar to that suggested to accompany adjusted amounts included in selected financial data should be provided.

H. Disclosures by Bank Holding Companies Regarding Certain Foreign Loans

1. Deposit/Relending Arrangements

Facts: Certain foreign countries experiencing liquidity problems, by agreement with U.S. banks, have instituted arrangements whereby borrowers in the foreign country may remit local currency to the foreign country's central bank, in return for the central bank's assumption of the borrowers' non-local currency obligations to the U.S. banks. The local currency is held on deposit at the central bank, for the account of the U.S. banks, and may be subject to relending to other borrowers in the country. Ultimate repayment of the obligations to the U.S. banks, in the requisite non-local currency, may not be due until a number of years hence.

Question: What disclosures are appropriate regarding deposit/relending arrangements of this general type?

Interpretive Response: The staff emphasizes that it is the responsibility of each registrant to determine the appropriate financial statement treatment and classification of foreign outstandings. The facts and circumstances surrounding deposit/relending arrangements should be carefully analyzed to determine whether the local currency payments to the foreign central bank represent collections of outstandings for financial reporting purposes, and whether such outstandings should be classified as nonaccrual, past due or restructured loans pursuant to Item III.C.1. of Industry Guide 3, Statistical Disclosure by Bank Holding Companies ("Guide 3").

The staff believes, however, that the impact of deposit/relending arrangements covering significant amounts of outstandings to a foreign country should be disclosed pursuant to Guide 3, Item III.C.3., Instruction (6)(a).[1] The disclosures should include a general description of the arrangements and, if significant, the amounts of interest income recognized for financial reporting purposes which has not been remitted in the requisite non-local currency to the U.S. bank.

2. Accounting and Disclosures by Bank Holding Companies for a "Mexican Debt Exchange" Transaction

Facts: Inquiries have been made of the staff regarding certain accounting and disclosure issues raised by a proposed "Mexican Debt Exchange" transaction which could involve numerous bank holding companies with existing obligations of the United Mexican States ("Mexico") or other Mexican public sector entities (collectively, "Existing Obligations"). The key elements of the Mexican Debt Exchange are as follows:

Mexico will offer for sale bonds ("Bonds"), denominated in U.S. dollars, which will pay interest at a LIBOR-based floating rate and mature in twenty years. Mexico will undertake to list the Bonds on the Luxembourg Stock Exchange. The Bonds will be secured, as to their ultimate principal value only, by non-interest bearing securities of the U.S. Treasury ("Zero Coupon Treasury Securities") which will be purchased by Mexico. The Zero Coupon Treasury Securities will be pledged to holders of the Bonds and held in custody at the Federal Reserve Bank of New York and will have a maturity date and ultimate principal value which match the maturity date and principal value of the Bonds. While the Bonds will have default and acceleration provisions, the holder of a Bond will not be permitted to have access to the collateral prior to the final scheduled maturity date, at which time the proceeds of the collateral will be available to pay the full principal amount of the Bonds. As such, the holder of a Bond ultimately will be secured as to principal at maturity; however, the interest payments will not be secured. The Bonds will not be subject to future restructurings of Mexico's Existing Obligations, and Mexico has indicated that neither the Bonds nor the Existing Obligations exchanged therefor will be considered part of a base amount with respect to any future requests by Mexico for new money.

The Mexican Debt Exchange will be structured in such a way that potential purchasers of the Bonds will submit bids on a voluntary basis to the auction agent. These bids will specify the face dollar amount of existing restructured commercial bank obligations of Mexico or of other Mexican public sector entities that the potential purchaser is willing to tender and the face dollar amount of Bonds that the purchaser is willing to accept in exchange for the Existing Obligations. Following the auction date, Mexico will determine the face dollar amount of Bonds to be issued and will exchange the Bonds for Existing Obligations taking first the offer of the largest face dollar amount of Existing Obligations per face dollar amount of Bonds, and so on, until all Bonds which Mexico is willing to issue have been subscribed. It is therefore possible that a greater amount of Existing Obligations could be tendered than Mexico is willing to accept.

The lender has appropriately accounted for the transaction as a troubled debt restructuring in accordance with the provisions of Statement 15 as amended by Statement 114.

Question 1: What financial statement and other disclosure issues regarding the Mexican Debt Exchange and the Bonds received should be considered by registrants?

Interpretive Response: The staff believes that disclosure of the nature of the transaction would be necessary, including:

- Carrying value and terms of Existing Obligations exchanged;
- Face value, carrying value, market value and terms of Bonds received;
- The effect of the transaction on the allowance for loan losses and the provision for losses in the current period; and
- Annual interest income on Existing Obligations exchanged and annual interest income on Bonds received.

On an ongoing basis, the staff believes that the terms, carrying value and market value of the Bonds should be disclosed, if material, due to their unique features.[1]

Question 2: What disclosure with respect to the Bonds received would be acceptable under Industry Guide 3?

Interpretive Response: Instruction (4) to Item III.C.3. of Industry Guide 3 states: "The value of any tangible, liquid collateral may also be netted against cross-border outstandings of a country if it is held and realizable by the lender outside of the borrower's country." Given the unique features of the Bonds in that the ultimate repayment of the principal amount (but not interest) at maturity is assured, the staff will not object to either of two presentations. Under the first presentation, the carrying value of the Bonds, including any accrued but unpaid interest, would be included as a "cross-border outstanding" to the extent it exceeds the current fair value of the Zero Coupon Treasury Securities which collateralize the bonds. Alternatively, under the second presentation, the carrying value of the Bond principal would be excluded from Mexican cross-border outstandings provided (a) disclosure is made of the exclusion, (b) for purposes of determining the 1% and .75% of total assets disclosure thresholds of Item III.C.3. of Industry Guide 3, such carrying values are not excluded, and (c) all the Guide 3 disclosures relating to cross-border outstandings continue to be made, as discussed further below.

For registrants that adopt the alternative disclosure approach and whose Mexican cross-border outstandings (excluding the carrying value of the Bond principal) exceed 1% of total assets, appropriate footnote disclosure of the exclusions should be made. Such footnote should indicate the face amount and carrying value of the Bonds excluded, the market value of such Bonds, and the face amount and current fair value of the Zero Coupon Treasury Securities which secure the Bonds.

If the Mexican cross-border outstandings (excluding the carrying value of the Bond principal) are less than 1% of total assets but with the addition of the carrying value of the Bond principal would exceed 1%, the carrying value of the Mexican cross-border outstandings may be excluded from the list of countries whose cross-border outstandings exceed 1% of total assets provided that a footnote discloses the amount of Mexican cross-border outstandings (excluding the carrying value of the Bond principal) along with the footnote-type disclosure concerning the Bonds discussed in the previous paragraph. This disclosure and any other material disclosure specified by Item III.C.3. of Industry Guide 3 would continue to be made as long as Mexican exposure, including the carrying value of the Bond principal, exceeded 1%.

If the Mexican cross-border outstandings (excluding the carrying value of the Bond principal) are less than .75% of total assets but with the addition of the carrying value of the Mexican Bond principal would exceed .75% but be less than 1%, cross-border outstandings disclosed pursuant to Instruction (7) to Item III.C.3. of Industry Guide 3 may exclude Mexico provided a footnote is added to the aggregate disclosure which discloses the amount of Mexican cross-border outstandings and the fact that they have not been included. The carrying value of the Bond principal may be excluded from the amount of Mexican cross-border outstandings disclosed in the footnote provided the footnote-type disclosure discussed in the second preceding paragraph is also made.

In essence, the alternative discussed herein results in a change only in the method of presenting information, not in the total information required.[2]

The appropriate disclosure would depend on the level of Mexican cross-border outstandings as follows:

A. Assuming that the remaining Mexican cross-border outstandings are in excess of 1% of total assets:

- Mexican cross-border outstandings (which excludes the total amount of the carrying value of Bond principal) would be disclosed in the table presenting all such outstandings in excess of 1%.
- Proposed footnote disclosure—

Not included in this amount is $____ million of Mexican Government Bonds maturing in 2008, with a carrying value of $____ million [if different from face value]. These Mexican Government Bonds had a market value of $____ million on [reporting date]. The principal amount of these bonds is fully secured, at maturity, by $____ million face value of U.S. zero coupon treasury securities that mature on the same date. The current fair value of these U.S. Government securities is $____ million at [reporting date]. This collateral is pledged to holders of the bonds and held in custody at the Federal Reserve Bank of New York. The details of the transaction in which these bonds were acquired was reported in the Corporation's Form (8–K, 10–Q or 10–K) for (date). Accrued interest on the bonds, which is not secured, is included in the outstandings reported [amount to be disclosed if material]. Future interest on the bonds remains a cross-border risk.

B. Assuming that remaining Mexican cross-border outstandings are less than 1% of total assets but with the addition of the carrying value of the Mexican Bond principal would exceed 1%:

- There would not be any disclosure included in any cross-border table.
- The total amount of remaining cross-border Mexican outstandings would be disclosed in a footnote to the table. Such footnote would also explain that the Mexican outstandings are excluded from the table.
- Additional footnote disclosure—(same disclosure in A above).
- The disclosure required under this paragraph (plus any other disclosure required by Item III.C.3. of Guide 3) would continue so long as Mexican exposure, including the carrying value of the Mexican Bond principal, exceeded 1%.

C. Assuming that the remaining Mexican cross-border outstandings is less than .75% of total assets but with the addition of the carrying value of the Mexican Bond principal is greater than .75% but less than 1%:

- Mexico would not be included in the list of names of countries required by Instruction 7 to Item III.C.3. of Industry Guide 3 and the amount of Mexican cross-border outstandings would not be included in the aggregate amount of outstandings attributable to all such countries.
- A footnote would be added to this disclosure of aggregate outstandings which discusses the Mexican outstandings and the Mexican Bonds. An example follows:

Not included in the above aggregate outstandings are the Corporation's cross-border outstandings to Mexico which totaled $____ million at (reporting date). This amount is less than .75% of total assets. (The remaining portion of this footnote is the same disclosure in A above.)

D. Assuming that the total of the Mexican cross-border outstanding plus the carrying value of the Bond principal is less than the .75% of total assets:

- No disclosure would be required.
- However, same disclosure as in A above would be provided if any other aspects of the financial statements are

[1] Instruction (6)(a) calls for description of the nature and impact of developments in countries experiencing liquidity problems which are expected to have a material impact on timely repayment of principal or interest. Additionally, Instruction (6)(d)(ii) to Item III.C.3. calls for disclosure of commitments to relend, or to maintain on deposit, arising in connection with certain restructurings of foreign outstanding.

[1] Registrants also are reminded that if the security received in the exchange constitutes a debt security within the scope of Statement 115, the disclosures required by Statement 115 also would need to be provided.

[2] The following represents proposed disclosure using the alternative method discussed above. Of course, it would be necessary to supplement this disclosure with the additional disclosures regarding foreign outstandings that are called for by Guide 3 (e.g., an analysis of the changes in aggregate outstandings), and the disclosures called for by the Interpretive Responses to Question 1.

materially affected by this transaction (such as the allowance for loan losses).

Changes in aggregate outstandings to certain countries experiencing liquidity problems are required to be presented in tabular form in compliance with Instruction (6)(b) to Item III.C.3. In this table, Existing Obligations exchanged for the Bonds would generally be included in the aggregate cross-border outstandings at the beginning of the period during which the exchange occurred. For registrants using the alternative method, the amount of Existing Obligations which were exchanged would be included as a deduction in the "other changes" caption in the table. In addition, a footnote will be provided to the table as follows:

• Relates primarily to the exchange of unsecured Mexican outstandings for Mexican bonds. The principal amount of these bonds is secured at maturity by $____ face U.S. Zero Coupon Treasury Securities which mature on the same date and have a current fair value of $____. Future interest on the bonds remains a cross-border risk.]

I. Reporting of an Allocated Transfer Risk Reserve in Filings Under the Federal Securities Laws

Facts: The Comptroller of the Currency, Board of Governors of the Federal Reserve System and Federal Deposit Insurance Corporation jointly issued final rules, pursuant to the International Lending Supervision Act of 1983, requiring banking institutions to establish special reserves (Allocated Transfer Risk Reserve "ATRR") against the risks presented in certain international assets when the Federal banking agencies determine that such reserves are necessary. The rules provide that the ATRR is to be accounted for separately from the General Allowances for Possible Loan Losses, and shall not be included in the banking institution's capital or surplus. The rules also provide that no ATRR provisions are required if the banking institution writes down the assets in the requisite amount.

Question: How should the ATRR be reported in filings under the Federal Securities Laws?

Interpretive Response: It is the staff's understanding that the three banking agencies believe that those bank holding companies that have not written down the designated assets by the requisite amount and, therefore, are required to establish an ATRR should disclose the amount of the ATRR. The staff believes that such disclosure should be part of the discussion of Loan Loss Experience, Item IV of Guide 3. Part A under Item IV calls for an analysis of loss experience in the form of a reconciliation of the allowance for loan losses, and the staff believes that it would be appropriate to show and discuss separately the ATRR in the context of that reconciliation.

Registrants should recognize that the amount provided as an ATRR, or the write off of the requisite amount, represents the identification of an amount which those regulatory agencies have determined should not be included as a part of the institution's capital or surplus for purposes of administration of the regulatory and supervisory functions of those agencies. In this context, the staff believes that disclosure of the ATRR, as part of the footnote required to be presented in a registrant's financial statements by Item 7(d) of Rule 9–03 of Regulation S–X, may provide a more complete explanation of charge offs and provisions for loan losses. It should be noted, however, that the ATRR amount to be excluded from the institution's capital and surplus does not address the more general issue of the adequacy of allowances for any particular bank holding company's loans. It is still the responsibility of each registrant to determine whether GAAP require an additional provision for losses in excess of the amount required to be included in an ATRR (or the requisite amount written off).

J. Deleted by SAB 103

K. Application of Article 9 and Guide 3

Facts: Article 9 of Regulation S–X specifies the form and content of and requirements for financial statements for bank holding companies filing with the Commission. Similarly, bank holding companies disclose supplemental statistical disclosures in filings, pursuant to Industry Guide 3. No specific guidance as to the form and content of financial statements or supplemental disclosures has been promulgated for registrants which are not bank holding companies but which are engaged in similar lending and deposit activities.[1]

Question: Should non-bank holding company registrants with material amounts of lending and deposit activities file financial statements and make disclosures called for by Article 9 of Regulation S–X and Industry Guide 3?

Interpretive Response: In the staff's view, Article 9 and Guide 3, while applying literally only to bank holding companies, provide useful guidance to certain other registrants, including savings and loan holding companies, on certain disclosures relevant to an understanding of the registrant's operations. Thus, to the extent particular guidance is relevant and material to the operations of an entity, the staff believes the specified information, or comparable data, should be provided.

For example, in accordance with Guide 3, bank holding companies disclose information about yields and costs of various assets and liabilities. Further, bank holding companies provide certain information about maturities and repricing characteristics of various assets and liabilities. Such companies also disclose risk elements, such as nonaccrual and past due items in the lending portfolio. The staff believes that this information and other relevant data would be material to a description of business of other registrants with material lending and deposit activities and accordingly, the specified information and/or comparable data (such as scheduled item disclosure for risk elements) should be provided.

In contrast, other requirements of Article 9 and Guide 3 may not be material or relevant to an understanding of the financial statements of some financial institutions. For example, bank holding companies present average balance sheet information, because period-end statements might not be representative of bank activity throughout the year. Some financial institutions other than bank holding companies may determine that average balance sheet disclosure does not provide significant additional information. Others may determine that assets and liabilities are subject to sufficient volatility that average balance information should be presented.

Pursuant to Article 9, the income statements of bank holding companies use a "net interest income" presentation. Similarly, bank holding companies present the aggregate market value, at the balance sheet date, of investment securities, on the face of the balance sheet. The staff believes that such disclosures and other relevant information should also be provided by other registrants with material lending and deposit activities.

L. Income Statement Presentation of Casino-Hotels

Facts: Registrants having casino-hotel operations present separately within the income statement amounts of revenue attributable to casino, hotel and restaurant operations, respectively.

Question: What is the appropriate income statement presentation of expenses attributable to casino-hotel activities?

Interpretive Response: The staff believes that the expenses attributable to each of the separate revenue producing activities of casino, hotel and restaurant operations should be separately presented on the face of the income statement. Such a presentation is consistent with the general reporting format for income statement presentation under Regulation S–X (Rules 5–03.1 and 5–03.2) which requires presentation of amounts of revenues and related costs and expenses applicable to major revenue providing activities. This detailed presentation affords an analysis of the relative contribution to operating profits of each of the revenue producing activities of a typical casino-hotel operation.

M. Disclosure of the Impact That Recently Issued Accounting Standards Will Have on the Financial Statements of the Registrant When Adopted in a Future Period

Facts: An accounting standard has been issued [1] that does not require adoption until some future date. A registrant is required to include financial statements in filings with the Commission after the issuance of the standard but before it is adopted by the registrant.

Question 1: Does the staff believe that these filings should include disclosure of the impact that the recently issued accounting standard will have on the financial position and results of operations of the registrant when such standard is adopted in a future period?

Interpretive Response: Yes. The Commission addressed a similar issue with respect to Statement 52 and concluded that "The Commission also believes that registrants that have not yet adopted Statement 52 should discuss the potential effects of adoption in registration statements and reports filed with the Commission." [2] The staff believes that this disclosure guidance applies to all accounting standards which have been issued but not yet adopted by the registrant unless the impact on its financial position and results of operations is not expected to be material.[3] MD&A [4] requires registrants to provide information with respect to liquidity, capital resources and results of operations and such other information that the registrant believes to be necessary to understand its financial condition and results of operations. In addition, MD&A requires disclosure of presently known material changes, trends and uncertainties that have had or that the registrant reasonably expects will have a material impact on future sales, revenues or income from continuing operations. The staff believes that disclosure of impending accounting changes is necessary to inform the reader about expected impacts on financial information to be reported in the future and, therefore, should be disclosed in accordance with the existing MD&A requirements. With respect to financial statement disclosure, GAAS [5] specifically address the need for the auditor to consider the adequacy of the disclosure of impending changes in accounting principles if (a) the financial statements have been prepared on the basis of accounting principles that were acceptable at the financial statement date but that will not be acceptable in the future and (b) the financial statements will be restated in the future as a result of the change. The staff believes that recently issued accounting standards may constitute material matters and, therefore, disclosure in the financial statements should also be considered in situations where the change to the new accounting standard will be accounted for in financial statements of future periods, prospectively or with a cumulative catch-up adjustment.

Question 2: Does the staff have a view on the types of disclosure that would be meaningful and appropriate when a new accounting standard has been issued but not yet adopted by the registrant?

Interpretive Response: The staff believes that the registrant should evaluate each new accounting standard to determine the appropriate disclosure and recognizes that the level of information available to the registrant will differ with respect to various standards and from one registrant to another. The objectives of the disclosure should be to (1) notify the reader of the disclosure documents that a standard has been issued which the registrant will be required to adopt in the future and (2) assist the reader in assessing the significance of the impact that the standard will have on the financial statements of the registrant when adopted. The staff understands that the registrant will only be able to disclose information that is known.

The following disclosures should generally be considered by the registrant:

• A brief description of the new standard, the date that adoption is required and the date that the registrant plans to adopt, if earlier.

• A discussion of the methods of adoption allowed by the standard and the method expected to be utilized by the registrant, if determined.

• A discussion of the impact that adoption of the standard is expected to have on the financial statements of the registrant, unless not known or reasonably estimable. In that case, a statement to that effect may be made.

• Disclosure of the potential impact of other significant matters that the registrant believes might result from the adoption of the standard (such as technical violations of debt covenant agreements, planned or intended changes in business practices, etc.) is encouraged.

N. Disclosures of the Impact of Assistance From Federal Financial Institution Regulatory Agencies

Facts: An entity receives financial assistance from a federal regulatory agency in conjunction with either an acquisition of a troubled financial institution, transfer of nonperforming assets to a newly-formed entity, or other reorganization.

Question: What are the disclosure implications of the existence of regulatory assistance?

Interpretive Response: The staff believes that users of financial statements must be able to assess the impact of credit and other risks on a company following a regulatory assisted acquisition, transfer or other reorganization on a basis comparable to that disclosed by other institutions, *i.e.*, as if the assistance did not exist. In this regard, the staff believes that the amount of regulatory assistance should be disclosed separately and should be separately identified in the statistical information furnished pursuant to Industry Guide 3, to the extent it impacts such information.[1,2] Further,

[1] The Commission staff has been considering the need for more specific guidance in the area but believes that the FASB project on financial instruments may make Commission action in this area unnecessary. In the interim, this bulletin provides the staff's views with respect to filings by similar entities such as saving and loan holding companies.

[1] Some registrants may want to disclose the potential effects of proposed accounting standards not yet issued, (*e.g.*, exposure drafts). Such disclosures, which generally are not required because the final standard may differ from the exposure draft, are not addressed by this SAB. See also FRR 26.

[2] FRR 6, Section 2.

[3] In those instances where a recently issued standard will impact the preparation of, but not materially affect, the financial statements, the registrant is encouraged to disclose that a standard has been issued and that its adoption will not have a material effect on its financial position or results of operations.

[4] Item 303 of Regulation S–K.

[5] See AU 9410.13–18.

[1] The staff has previously expressed its views regarding acceptable methods of compliance with

Continued

the nature, extent and impact of such assistance needs to be fully discussed in Management's Discussion and Analysis.[3]

Topic 12: Oil and Gas Producing Activities

A. Accounting Series Release 257—Requirements for Financial Accounting and Reporting Practices for Oil and Gas Producing Activities

1. Estimates of Quantities of Proved Reserves

Facts: Rule 4–10 contains definitions of proved reserves, proved developed reserves, and proved undeveloped reserves to be used in determining quantities of oil and gas reserves to be reported in filings with the Commission.

Question 1: The definition of proved reserves states that reservoirs are considered proved if "economic producibility is supported by either actual production or conclusive formation test." May oil and gas reserves be considered proved if economic producibility is supported only by core analyses and/or electric or other log interpretations?

Interpretive Response: Economic producibility of estimated proved reserves can be supported to the satisfaction of the Office of Engineering if geological and engineering data demonstrate with reasonable certainty that those reserves can be recovered in future years under existing economic and operating conditions. The relative importance of the many pieces of geological and engineering data which should be evaluated when classifying reserves cannot be identified in advance. In certain instances, proved reserves may be assigned to reservoirs on the basis of a combination of electrical and other type logs and core analyses which indicate the reservoirs are analogous to similar reservoirs in the same field which are producing or have demonstrated the ability to produce on a formation test.

Question 2: In determining whether "proved undeveloped reserves" encompass acreage on which fluid injection (or other improved recovery technique) is contemplated, is it appropriate to distinguish between (i) fluid injection used for pressure maintenance during the early life of a field and (ii) fluid injection used to effect secondary recovery when a field is in the late stages of depletion? The definition in Rule 4–10(a)(4) does not make this distinction between pressure maintenance activity and fluid injection undertaken for purposes of secondary recovery.

Interpretive Response: The Office of Engineering believes that the distinction identified in the above question may be appropriate in a few limited circumstances, such as in the case of certain fields in the North Sea. The staff will review estimates of proved reserves attributable to fluid injection in the light of the strength of the evidence presented by the registrant in support of a contention that enhanced recovery will be achieved.

Question 3: What volumes of natural gas liquids should be reported as net reserves, that portion recovered in a gas processing plant and allocated to the leasehold interest or the total recovered by a plant from net interest gas?

Interpretive Response: Companies should report reserves of natural gas liquids which are net to their leasehold interests, *i.e.*, that portion recovered in a processing plant and allocated to the leasehold interest. It may be appropriate in the case of natural gas liquids not clearly attributable to leasehold interests ownership to follow instructions to Item 3 of Securities Act Industry Guide 2 and report such reserves separately and describe the nature of the ownership.

Question 4: What pressure base should be used for reporting gas and production, 14.73 psia or the pressure base specified by the state?

Interpretive Response: The reporting instructions to the Department of Energy's Form EIA–28 specify that natural gas reserves are to be reported at 14.73 psia and 60 degrees F. There is no pressure base specified in Regulation S–X or S–K. At the present time the staff will not object to natural gas reserves and production data calculated at other pressure bases, if such other pressure bases are identified in the filing.

2. Estimates of Future Net Revenues

Facts: Paragraphs 30–34 of Statement 69 require the disclosure of the standardized measure of discounted future net cash flows from production of proved oil and gas reserves, computed by applying year-end prices of oil and gas (with consideration of price changes only to the extent provided by contractual arrangements) to estimated future production as of the latest balance sheet date, less estimated future expenditures (based on current costs) of developing and producing the proved reserves, and assuming continuation of existing economic conditions.

Question 1: For purposes of determining reserves and estimated future net revenues, what price should be used for gas which will be produced after an existing contract expires or after the redetermination date in a contract?

Interpretive Response: The price to be used for gas which will be produced after a contract expires or has a redetermination is the current market price at the end of the fiscal year for that category of gas. This price may be increased thereafter only for additional fixed and determinable escalations, as appropriate, for that category of gas. A fixed and determinable escalation is one which is specified in amount and is not based on future events such as rates of inflation.

Question 2: What price should be applied to gas which at the end of a fiscal year is not yet subject to a gas sales contract?

Interpretive Response: The price to be used is the current market price for similarly situated gas at the end of the fiscal year provided the company can reasonably expect to sell the gas at the prevailing market price.

Question 3: To what extent should price increases announced by OPEC or by certain government agencies not yet effective at the date of the reserve report be considered in determining current prices?

Interpretive Response: Current prices should not reflect price increases announced but not yet effective at the date of the reserve valuation, *i.e.*, the end of the fiscal year.

3. Disclosure of Reserve Information

a. Deleted by SAB 103

b. Unproved properties

Facts: Disclosures of reserve information are based on estimated quantities of proved reserves of oil and gas. Regulation S–K prohibits disclosure of estimated quantities of probable or possible reserves of oil and gas and any estimated value thereof in any document publicly filed with the Commission.

Question: What types of disclosures will be permitted by registrants who wish to indicate that some of their properties have value other than that attributable to proved reserves?

Interpretive Response: The Office of Engineering has, for the past several years, suggested to registrants the following form of disclosure for undeveloped lease acreage:

> In addition to proved reserves, the estimated (or appraised) value of leases or parts of leases to which proved reserves cannot be attributable is $xxx.

this principle in the minutes of EITF Issue 88–19, and an announcement by the SEC Observer to the EITF at the February 23, 1989 meeting.

[2] See EITF Issue 88–19 for guidance on the appropriate period in which to record certain types of regulatory assistance.

[3] See Section 501.06.c. of the Financial Reporting Codification for further discussion of the MD&A disclosures of the effects of regulatory assistance.

The registrant should describe the basis on which the estimate was made. For example, such estimated values are often based on the market demand for leasehold acreage which, in turn, is based on a number of qualitative factors such as proximity to production. If the disclosed amount is based on an appraisal, the person making the appraisal should be named.

c. Limited partnership 10–K reports

Facts: Securities Act Industry Guide 2 contains an exemption from the requirements of the Guide to disclose certain information relating to oil and gas operations for "limited partnerships or joint ventures that conduct, operate, manage, or report upon oil and gas drilling income programs which acquire properties either for drilling and production, or for production of oil, gas, or geothermal steam." Regulation S–X does not contain a similar exemption from the supplemental disclosure requirements of Statement 69.

Limited partnership agreements often contain buy-out provisions under which the general partner agrees to purchase limited partnership interests that are offered for sale, based upon a specified valuation formula. Because of these arrangements, the requirements for disclosure of reserve value information may be of little significance to the limited partners.

Question: Must the financial statements of limited partnerships included in reports on Form 10–K contain the disclosures of estimated future net revenues, present values and changes therein, and supplemental summary of oil and gas activities specified by paragraphs 24–34 of Statement 69?

Interpretive Response: The staff will not take exception to the omission of these disclosures in a limited partnership Form 10–K if reserve value information is available to the limited partners pursuant to the partnership agreement (even though the valuations may be computed differently and may be as of a date other than year end). However, the staff will require all of the information specified by these paragraphs of Statement 69 for partnerships which are the subject of a merger or exchange offer under which various limited partnerships are to be combined into a single entity.

d. Limited partnership registration statements

Facts: The staff requires that a registration statement relating to an offering of limited partnership interests include the most recent year-end balance sheet of the general partner. This is considered necessary for purposes of assessing the financial responsibility of the general partner.

Question: What disclosures of oil and gas reserve information must accompany the balance sheet of the general partner?

Interpretive Response: Disclosures should include oil and gas reserve information that pertains to the balance sheet, *i.e.*, the estimated year-end quantities of proved oil and gas reserves and the estimated future net revenues and present values thereof specified by paragraphs 10–17 and 30–34, respectively, of Statement 69.

e. Rate regulated companies

Question: If a company has cost-of-service oil and gas producing properties, how should they be treated in the supplemental disclosures of reserve quantities and related future net revenues provided pursuant to paragraphs 30–34 of Statement 69?

Interpretive Response: Rule 4–10 provides that registrants may give effect to differences arising from the ratemaking process for cost-of-service oil and gas properties. Accordingly, in these circumstances, the staff believes that the company's supplemental reserve quantity disclosures should indicate separately the quantities associated with properties subject to cost-of-service ratemaking, and that it is appropriate to exclude those quantities from the future net revenue disclosures. The company should also disclose the nature and impact of its cost-of-service ratemaking, including the unamortized cost included in the balance sheet.

4. Deleted by SAB 103

B. Deleted by SAB 103

C. Methods of Accounting by Oil and Gas Producers

1. First-Time Registrants

Facts: In ASR 300, the Commission announced that it would allow registrants to change methods of accounting for oil and gas producing activities so long as such changes were in accordance with GAAP. Accordingly, the Commission stated that changes from the full cost method to the successful efforts method would not require a preferability letter because of the position expressed in Statement 25 that successful efforts is considered preferable by the FASB for accounting changes. Changes to full cost, however, would require justification by the company making the change and filing of a preferability letter from the company's independent accountants.

Question: How does this policy apply to a nonpublic company which changes its accounting method in connection with a forthcoming public offering or initial registration under either the 1933 Act or 1934 Act?

Interpretive Response: The Commission's policy that first time registrants may change their previous accounting methods without filing a preferability letter is applicable. Therefore, such a company may change to the full cost method without filing a preferability letter.

2. Consistent Use of Accounting Methods Within a Consolidated Entity

Facts: Rule 4–10(c) of Regulation S–X states that "a reporting entity that follows the full cost method shall apply that method to all of its operations and to the operations of its subsidiaries."

Question 1: If a parent company uses the successful efforts method of accounting for oil and gas producing activities, may a subsidiary of the parent use the full cost method?

Interpretive Response: No. The use of different methods of accounting in the consolidated financial statements by a parent company and its subsidiary would be inconsistent with the full cost requirement that a parent and its subsidiaries all use the same method of accounting.

The staff's general policy is that an enterprise should account for all its like operations in the same manner. However, Rule 4–10 of Regulation S–X provides that oil and gas companies with cost-of-service oil and gas properties may give effect to any differences resulting from the ratemaking process, including regulatory requirements that a certain accounting method be used for the cost-of-service properties.

Question 2: Must the method of accounting (full cost or successful efforts) followed by a registrant for its oil and gas producing activities also be followed by any fifty percent or less owned companies in which the registrant carries its investment on the equity method (equity investees)?

Interpretive Response: No. Conformity of accounting methods between a registrant and its equity investees, although desirable, may not be practicable and thus is not required. However, if a registrant proportionately consolidates its equity investees, it will be necessary to present them all on the same basis of accounting.

D. Application of Full Cost Method of Accounting

1. Treatment of Income Tax Effects in the Computation of the Limitation on Capitalized Costs

Facts: Item (D) of Rule 4–10(c)(4)(i) of Regulation S–X states that the income

tax effects related to the properties involved should be deducted in computing the full cost ceiling.

Question 1: What specific types of income tax effects should be considered in computing the income tax effects to be deducted from estimated future net revenues?

Interpretive Response: The rule refers to income tax effects generally. Thus, the computation should take into account (i) the tax basis of oil and gas properties, (ii) net operating loss carryforwards, (iii) foreign tax credit carryforwards, (iv) investment tax credits, (v) minimum taxes on tax preference items, and (vi) the impact of statutory (percentage) depletion.

It may often be difficult to allocate net operating loss carryforwards (NOLs) between oil and gas assets and other assets. However, to the extent that the NOLs are clearly attributable to oil and gas operations and are expected to be realized within the carryforward period, they should be added to tax basis.

Similarly, to the extent that investment tax credit (ITC) carryforwards and foreign tax credit carryforwards are attributable to oil and gas operations and are expected to be realized within the carryforward period, they should be considered as a deduction from the tax effect otherwise computed. Consideration of NOLs and ITC or foreign tax credit carryforwards should not, of course, reduce the total tax effect below zero.

Question 2: How should the tax effect be computed considering the various factors discussed above?

Interpretive Response: Theoretically, taxable income and tax could be determined on a year-by-year basis and the present value of the related tax computed. However, the "shortcut" method illustrated below is also acceptable.

Assumptions:			
Capitalized Costs of Oil and Gas Assets			$500,000
Accumulated DD&A			(100,000)
Book basis of oil and gas assets			400,000
Related deferred income taxes			35,000
Net book basis to be recovered			$365,000
NOL carryforward *			$ 20,000
Foreign tax credit carryforward *			$ 1,000
ITC—Carryforward *		$2,000	
Present value of ITC relating to future development costs		1,500	$ 3,500
Estimated preference (minimum) tax on percentage depletion in excess of cost depletion			$ 500
Tax basis of oil and gas assets			$270,000
Present value of statutory depletion attributable to future deductions			$ 10,000
Statutory tax rate (percent)			46%
Present value of future net revenues from proved oil and gas reserves			$272,000
Cost of properties not being amortized			$ 55,000
Lower of cost or estimated fair value of unproved properties included in costs being amortized			$ 49,000
CALCULATION			
Present value of future net revenue			$272,000
Cost of properties not being amortized			55,000
Lower of cost or estimated fair value of unproved properties included in costs being amortized			49,000
Tax Effects:			
Total of above items			$376,000
Less: Tax basis of properties	(270,000)		
Statutory depletion	(10,000)		
NOL carryforward	(20,000)	(300,000)	
Future taxable income		76,000	
Tax rate (percent)		× 46%	
Tax payable at statutory rate		(34,960)	
ITC		3,500	
Foreign tax credit carryforward		1,000	
Estimated preference tax		(500)	
Total tax effects			(30,960)
Cost Center Ceiling			$345,040
Less: Net book basis			365,000
REQUIRED WRITE-OFF, net of tax **			($ 19,960)

* All carryforward amounts in this example represent amounts which are available for tax purposes and which related to oil and gas operations.
** For accounting purposes, the gross write-off should be recorded to adjust both the oil and gas properties account and the related deferred income taxes.

2. Exclusion of Costs From Amortization

Facts: Rule 4–10(c)(3)(ii) indicates that the costs of acquiring and evaluating unproved properties may be excluded from capitalized costs to be amortized if the costs are unusually significant in relation to aggregate costs to be amortized. Costs of major development projects may also be incurred prior to ascertaining the quantities of proved reserves attributable to such properties.

Question: At what point should amortization of previously excluded costs commence when proved reserves have been established or when those reserves become marketable? For instance, a determination of proved reserves may be made before completion of an extraction plant necessary to process sour crude or a pipeline necessary to market the reserves. May the costs continue to be excluded from amortization until the plant or pipeline is in service?

Interpretive Response: No. The proved reserves and the costs allocable to such reserves should be transferred into the amortization base on an ongoing (well-by-well or property-by-property) basis as the project is evaluated and proved reserves are established. Once the determination of proved reserves has been made, there is no justification for continued exclusion from the full cost pool, regardless of whether other factors prevent immediate marketing. Moreover, at the same time that the costs are transferred into the amortization base, it is also necessary in accordance with Interpretation 33 and Statement 34 to terminate capitalization of interest on such properties.

In this regard, registrants are reminded of their responsibilities not to delay recognizing reserves as proved once they have met the engineering standards.

3. Full Cost Ceiling Limitation

a. Exemptions for purchased properties

Facts: During 20x1, a registrant purchases proved oil and gas reserves in place ("the purchased reserves") in an arm's length transaction for the sum of $9.8 million. Primarily because the registrant expects oil and gas prices to escalate, it paid $1.2 million more for the purchased reserves than the "Present Value of Estimated Future Net Revenues" computed as defined in Rule 4–10(c)(4)(i)(A) of Regulation S–X. An analysis of the registrant's full cost center in which the purchased reserves are located at December 31, 20x1 is as follows:

[Amounts in 1,000]

	Total	Purchased reserves	Other proved properties	Unproved properties
Present value of estimated future net revenues	$14,100	8,600	5,500	
Cost, net of amortization	$16,300	9,800	5,500	1,000
Related deferred taxes	$2,300		2,000	300
Income tax effects related to properties	$2,500		2,500	

	Including purchased reserves	Excluding purchased reserves
Comparison of capitalized costs with limitation on capitalized costs at December 31, 20x1.		
Capitalized costs, net of amortization	$16,300	$6,500
Related deferred taxes	(2,300)	(2,300)
Net book cost	14,000	4,200
Present value of estimated future net revenues	14,100	5,500
Lower of cost or market of unproved properties	1,000	1,000
Income tax effects related to properties	(2,500)	(2,500)
Limitation on capitalized costs	12,600	4,000
Excess of capitalized costs over limitation on Capitalized costs, net of tax	$1,400	$200

* For accounting purposes, the gross write-off should be recorded to adjust both the oil and gas properties account and the related deferred income taxes

Question: Is it necessary for the registrant to write down the carrying value of its full cost center at December 31, 20x1 by $1,400,000?

Interpretive Response: Although the net carrying value of the full cost center exceeds the cost center's limitation on capitalized costs, the text of ASR 258 provides that a registrant may request an exemption from the rule if as a result of a major purchase of proved properties, a write down would be required even though the registrant believes the fair value of the properties in a cost center clearly exceeds the unamortized costs.

Therefore, to the extent that the excess carrying value relates to the purchased reserves, the registrant may seek a temporary waiver of the full-cost ceiling limitation from the staff of the Commission. Registrants requesting a waiver should be prepared to demonstrate that the additional value exists beyond reasonable doubt.

To the extent that the excess costs relate to properties other than the purchased reserves, however, a write-off should be recorded in the current period. In order to determine the portion of the total excess carrying value which is attributable to properties other than the purchased reserves, it is necessary to perform the ceiling computation on a "with and without" basis as shown in the example above. Thus in this case, the registrant must record a write-down of $200,000 applicable to other reserves. An additional $1,200,000 write-down would be necessary unless a waiver were obtained.

b. Use of cash flow hedges in the computation of the limitation on capitalized costs

Facts: Rule 4–10(c)(4) of Regulation S–X provides, *in pertinent part,* that

capitalized costs, net of accumulated depreciation and amortization, and deferred income taxes, should not exceed an amount equal to the sum of [components that include] the present value of estimated future net revenues computed by applying current prices of oil and gas reserves (with consideration of price changes only to the extent provided by contractual arrangements) to estimated future production of proved oil and gas reserves as of the date of the latest balance sheet presented.

As of the reported balance sheet date, capitalized costs of an oil and gas producing company exceed the full cost limitation calculated under the above described rule based on current spot market prices for oil and natural gas. However, prior to the balance sheet date, the company enters into certain hedging arrangements for a portion of its future natural gas and oil production, thereby enabling the company to receive future cash flows that are higher than the estimated future cash flows indicated by use of the spot market price as of the reported balance sheet date. These arrangements qualify as cash flow hedges under the provisions of Statement 133 as amended and interpreted, and are documented, designated, and accounted for as such under the criteria of that standard.

Question: Under these circumstances, must the company use the higher prices to be received after taking into account the hedging arrangements ("hedge-adjusted prices") in calculating the current price of the quantities of its future production of oil and gas reserves covered by the hedges as of the reported balance sheet date?

Interpretive Response: Yes. Derivative contracts that qualify as hedging instruments in a cash flow hedge and are accounted for as such pursuant to Statement 133 represent the type of contractual arrangements for which consideration of price changes should be given under the existing rule. While the SEC staff has objected to previous proposals to consider various hedging techniques as being equivalent to the contractual arrangements permitted under the existing rules, the staff's objection was based on concerns that the lack of clear, consistent guidance in the accounting literature would lead to inconsistent application in practice. For example, prior to the adoption of Statement 133, hedging activities related to foreign exchange rates were addressed in Statement 52. The use of futures contracts as hedging arrangements was previously addressed in Statement 80. The guidance provided in these Statements differed from Statement 133 in the criteria used to qualify for hedge accounting. However, the staff believes that Statement 133 and related guidance (including a more systematic approach to documentation) provides sufficient guidance so that comparable financial reporting in comparable factual circumstances should result.

This interpretive response reflects the SEC staff's view that, assuming compliance with the prerequisite accounting requirements, hedge-adjusted prices represent the best measure of estimated cash flows from future production of the affected oil and gas reserves to use in calculating the ceiling limitation. Nonetheless, the staff expects that oil and gas producing companies subject to the full cost rules will clearly indicate the effects of using cash flow hedges in calculating ceiling limitations within their financial statement footnotes. The staff further expects that disclosures will indicate the portion of future oil and gas production being hedged. The dollar amount that would have been charged to income had the effects of the cash flow hedges not been considered in calculating the ceiling limitation also should be disclosed.

The use of hedge-adjusted prices should be consistently applied in all reporting periods, including periods in which the hedge-adjusted price is less than the current spot market price. Oil and gas producers whose computation of the ceiling limitation includes hedge-adjusted prices because of the use of cash flow hedges also should consider the disclosure requirements under the SOP 94–6. Paragraph 14 of SOP 94–6 calls for disclosure when it is at least reasonably possible that the effects of cash flow hedges on capitalized costs on the reported balance sheet date will change in the near term due to one or more confirming events, such as potential future changes in commodity prices.

In addition, the use of cash flow hedges in calculating the ceiling limitation may represent a type of critical accounting policy that oil and gas producers should consider disclosing consistent with the cautionary advice provided in FR 60. Through this release, the Commission has encouraged companies to include, within their MD&A disclosures, full explanations, in plain English, of the judgments and uncertainties affecting the application of critical accounting policies, and the likelihood that materially different amounts would be reported under different conditions or using different assumptions.

The staff's guidance on this issue would apply to calculations of ceiling limitations both in interim and annual periods.

c. Effect of subsequent events on the computation of the limitation on capitalized costs

Facts: Rule 4–10(c)(4)(ii) of Regulation S–X provides that an excess of unamortized capitalized costs within a cost center over the related cost ceiling shall be charged to expense in the period the excess occurs.

Question: Assume that at the date of company's fiscal year-end, its capitalized costs of oil and gas producing properties exceed the limitation prescribed by Rule 4–10(c)(4) of Regulation S–X. Thus, a write down is indicated. Subsequent to year-end but before the date of the auditors' report on the company's financial statements, assume that one of two events occurs: (1) additional reserves are proved up on properties owned at year-end, or (2) price increases become known which were not fixed and determinable at year-end. The present value of future net revenues from the additional reserves or from the increased prices is sufficiently large that if the full cost ceiling limitation were recomputed giving effect to those factors as of year-end, the ceiling would more than cover the costs. It is necessary to record a write down?

Interpretive Response: No. In these cases, the proving up of additional reserves on properties owned at year-end or the increase in prices indicates that the capitalized costs were not in fact impaired at year-end. However, for purposes of the revised computation of the "ceiling," the net book costs capitalized as of year-end should be increased by the amount of any additional costs incurred subsequent to year-end to prove the additional reserves or by any related costs previously excluded from amortization.

While the fact pattern described herein relates to annual periods, the guidance on the effects of subsequent events applies equally to interim period calculations of the ceiling limitation. However, the staff cautions registrants that the process of considering subsequent price changes in the determination of whether a ceiling write-down is called for should be similar to the consideration given to other subsequent events under the auditing literature. The staff expects that the date selected for the ceiling recomputation will be consistent from period to period, and bear a logical relationship to the filing date of the affected financial statements. For example, it would seem logical that an oil and gas producing company would consistently make whatever recalculations are necessary at the date the auditors are completing their interim reviews.

The registrant's financial statements should disclose that capitalized costs exceeded the limitation thereon at year-end and should explain why the excess was not charged against earnings. In addition, the registrant's supplemental disclosures of estimated proved reserve quantities and related future net revenues and costs should not give effect to the reserves proved up or the cost incurred after year-end or to the price increases occurring after year-end. However, such quantities and amounts may be disclosed separately, with appropriate explanations.

Registrants should be aware that oil and gas reserves related to properties acquired after year-end would not justify avoiding a write-off indicated as of year-end. Similarly, the effects of cash flow hedging arrangements entered into after year-end cannot be factored into the calculation of the ceiling limitation at year-end. Such acquisitions and financial arrangements do not confirm situations existing at year-end.

E. Financial Statements of Royalty Trusts

Facts: Several oil and gas exploration and production companies have created "royalty trusts." Typically, the creating company conveys a net profits interest in certain of its oil and gas properties to the newly created trust and then distributes units in the trust to its shareholders. The trust is a passive entity which is prohibited from entering into or engaging in any business or commercial activity of any kind and from acquiring any oil and gas lease, royalty or other mineral interest. The function of the trust is to serve as an agent to distribute the income from the net profits interest. The amount to be periodically distributed to the unitholders is defined in the trust agreement and is typically determined based on the cash received from the net profits interest less expenses of the trustee. Royalty trusts have typically reported their earnings on the basis of cash distributions to unitholders. The net profits interest paid to the trust for any month is based on production from a preceding month; therefore, the method of accounting followed by the trust for the net profits interest income is different from the creating company's method of accounting for the related revenue.

Question: Will the staff accept a statement of distributable income which reflects the amounts to be distributed for the period in question under the terms of the trust agreement in lieu of a statement of income prepared under GAAP?

Interpretive Response: Yes. Although financial statements filed with the Commission are normally required to be prepared in accordance with GAAP, the Commission's rules provide that other presentations may be acceptable in unusual situations. Since the operations of a royalty trust are limited to the distribution of income from the net profits interests contributed to it, the staff believes that the item of primary importance to the reader of the financial statements of the royalty trust is the amount of the cash distributions to the unitholders for the period reported. Should there be any change in the nature of the trust's operations due to revisions in the tax laws or other factors, the staff's interpretation would be reexamined.

A note to the financial statements should disclose the method used in determining distributable income and should also describe how distributable income as reported differs from income determined on the basis of GAAP.

F. Gross Revenue Method of Amortizing Capitalized Costs

Facts: Rule 4–10(c)(3)(iii) of Regulation S–X states in part:

> Amortization shall be computed on the basis of physical units, with oil and gas converted to a common unit of measure on the basis of their approximate relative energy content, unless economic circumstances (related to the effects of regulated prices) indicate that use of units of revenue is a more appropriate basis of computing amortization. In the latter case, amortization shall be computed on the basis of current gross revenues (excluding royalty payments and net profits disbursements) from production in relation to future gross revenues based on current prices (including consideration of changes in existing prices provided only by contractual arrangements), from estimated production of proved oil and gas reserves.

Question: May entities using the full cost method of accounting for oil and gas producing activities compute amortization based on the gross revenue method described in the above rule when substantial production is not subject to pricing regulation?

Interpretive Response: Yes. Under the existing rules for cost amortization adopted in ASR 258, the use of the gross revenue method of amortization was permitted in those circumstances where, because of the effect of existing pricing regulations, the use of the units of production method would result in an amortization provision that would be inconsistent with the current prices being received. While the effect of regulation on gas prices has lessened, factors other than price regulation (such as changes in typical contract lengths and methods of marketing natural gas) have caused oil and gas prices to be disproportionate to their relative energy content. The staff therefore believes that it may be more appropriate for registrants to compute amortization based on the gross revenue method whenever oil and gas sales prices are disproportionate to their relative energy content to the extent that the use of the units of production method would result in an improper matching of the costs of oil and gas production against the related revenue received. The method should be consistently applied and appropriately disclosed within the financial statements.

G. Inclusion of Methane Gas in Proved Reserves

Facts: Because of a concern over worldwide oil and gas supplies, Congress, in 1980, provided for tax incentives (credits) for the production of oil and gas from other than conventional sources. As a consequence, significant amounts of gas are now recovered from seams of coal beds. This gas is referred to as coalbed methane. It is produced using conventional drilling methods, but for various reasons, it may be more costly to produce than oil and gas recovered from customary sources and some reserves may not be economical without the tax credits.

Rule 4–10(a)(1)(i)(A) of Regulation S–X indicates that oil and gas producing activities include the search for crude oil, including condensate and natural gas liquids, or natural gas in their natural states and original locations. Rule 4–10(a)(2)(iii)(D) of Regulation S–X states that estimates of proved reserves do not include (among other things) natural gas that can be recovered from coal.[1] In addition, the definition of proved oil and gas reserves includes a provision that the quantities of natural gas be recovered from existing reservoirs. Under these definitions, "coalbed methane" gas has generally not been included in the disclosures in Commission filings required by Statement 69. Further, coalbed methane has generally not been counted in proved oil and gas reserves for purposes of the full cost ceiling test in Rule 4–10(c)(4) since that test is based on the same definition of proved oil and gas reserves.

Question: Is it appropriate to consider coalbed methane gas within the definition of proved reserves for purposes of the disclosures relating to

[1] Similar language appears in Statements 19 and 25.

oil and gas producing activities and the full cost ceiling test?

Interpretive Response: Yes. The prohibition against the inclusion of gas derived from coal was meant to apply to the recovery of hydrocarbons from the processing of coal. The extraction of methane gas from coalbed seams using conventional methods was not contemplated at the time Rule 4–10(a) was developed. The staff believes that, since coalbed methane gas can be recovered from coal in its natural state and original location, it should be included in proved reserves, provided that it complies in all other respects with the definition of proved oil and gas reserves as specified in Rule 4–10(a)(2) including the requirement that methane production be economical at current prices, costs (net of the tax credit) and existing operating conditions.[2] Methane gas from coalbeds (like any other hydrocarbon obtained from conventional reservoirs) that cannot be produced at a profit under current economic and operating conditions, or for which there is no market or any existing method of delivery to the market, cannot be included in the category of proved reserves.

In instances where methane gas is deemed to be economically producible only as a consequence of existing Federal tax incentives, the staff believes that additional disclosure should be provided as to the specific quantities and values of reported proved reserves that are dependent on existing U.S. tax policy together with any other information necessary to inform readers of the risks attendant with any future change to existing Federal tax policy.

Topic 13: Revenue Recognition

A. Selected Revenue Recognition Issues

1. Revenue Recognition—General

The accounting literature on revenue recognition includes both broad conceptual discussions as well as certain industry-specific guidance. Examples of existing literature on revenue recognition include Statements 13, 45, 48, 49, 50, 51, and 66; Opinion 10; ARBs 43 (Chapter 1a) and 45; SOPs 81–1 and 97–2; EITF Issues 88–18, 91–9, 95–1, and 95–4; and Concepts Statement 5.[1] If a transaction is within the scope of specific authoritative literature that provides revenue recognition guidance, that literature should be applied. However, in the absence of authoritative literature addressing a specific arrangement or a specific industry, the staff will consider the existing authoritative accounting standards as well as the broad revenue recognition criteria specified in the FASB's conceptual framework that contain basic guidelines for revenue recognition.

Based on these guidelines, revenue should not be recognized until it is realized or realizable and earned.[2] Concepts Statement 5, paragraph 83(b) states that "an entity's revenue-earning activities involve delivering or producing goods, rendering services, or other activities that constitute its ongoing major or central operations, and revenues are considered to have been earned when the entity has substantially accomplished what it must do to be entitled to the benefits represented by the revenues' [footnote reference omitted]. Paragraph 84(a) continues "the two conditions (being realized or realizable and being earned) are usually met by the time product or merchandise is delivered or services are rendered to customers, and revenues from manufacturing and selling activities and gains and losses from sales of other assets are commonly recognized at time of sale (usually meaning delivery)" [footnote reference omitted]. In addition, paragraph 84(d) states that "If services are rendered or rights to use assets extend continuously over time (for example, interest or rent), reliable measures based on contractual prices established in advance are commonly available, and revenues may be recognized as earned as time passes."

The staff believes that revenue generally is realized or realizable and earned when all of the following criteria are met:

- Persuasive evidence of an arrangement exists,[3]
- Delivery has occurred or services have been rendered,[4]
- The seller's price to the buyer is fixed or determinable,[5] and
- Collectibility is reasonably assured.[6]

2. Persuasive Evidence of an Arrangement

Question 1

Facts: Company A has product available to ship to customers prior to the end of its current fiscal quarter. Customer Beta places an order for the product, and Company A delivers the product prior to the end of its current fiscal quarter. Company A's normal and customary business practice for this class of customer is to enter into a written sales agreement that requires the signatures of the authorized representatives of the Company and its customer to be binding. Company A prepares a written sales agreement, and its authorized representative signs the agreement before the end of the quarter. However, Customer Beta does not sign the agreement because Customer Beta is awaiting the requisite approval by its legal department. Customer Beta's purchasing department has orally agreed to the sale and stated that it is highly likely that the contract will be approved the first week of Company A's next fiscal quarter.

Question: May Company A recognize the revenue in the current fiscal quarter for the sale of the product to Customer Beta when (1) the product is delivered by the end of its current fiscal quarter and (2) the final written sales agreement is executed by Customer Beta's authorized representative within a few days after the end of the current fiscal quarter?

Interpretive Response: No. Generally the staff believes that, in view of Company A's business practice of requiring a written sales agreement for this class of customer, persuasive evidence of an arrangement would require a final agreement that has been executed by the properly authorized personnel of the customer. In the staff's view, Customer Beta's execution of the sales agreement after the end of the quarter causes the transaction to be considered a transaction of the subsequent period.[1] Further, if an arrangement is subject to subsequent approval (*e.g.*, by the management committee or board of directors) or execution of another agreement, revenue recognition would be inappropriate until that subsequent approval or agreement is complete.

Customary business practices and processes for documenting sales transactions vary among companies and industries. Business practices and processes may also vary within individual companies (*e.g.*, based on the class of customer, nature of product or service, or other distinguishable factors). If a company does not have a standard or customary business practice of relying on written contracts to document a sales arrangement, it usually would be expected to have other forms of written or electronic evidence to document the transaction. For example, a company may not use written contracts but instead may rely on binding purchase orders from third parties or on-line authorizations that include the terms of the sale and that are binding on the customer. In that situation, that documentation could represent persuasive evidence of an arrangement.

The staff is aware that sometimes a customer and seller enter into "side" agreements to a master contract that effectively amend the master contract. Registrants should ensure that appropriate policies, procedures, and internal controls exist and are properly documented so as to provide reasonable assurances that sales transactions, including those affected by side agreements, are properly accounted for in accordance with GAAP and to ensure compliance with Section 13 of the Securities Exchange Act of 1934 (*i.e.*, the Foreign Corrupt Practices Act). Side agreements could include cancellation, termination, or other provisions that affect revenue recognition. The existence of a subsequently executed side agreement may be an indicator that the original agreement was not final and revenue recognition was not appropriate.

Question 2

Facts: Company Z enters into an arrangement with Customer A to deliver Company Z's products to Customer A on a consignment basis. Pursuant to the terms of the arrangement, Customer A is a consignee, and title to the products does not pass from Company Z to Customer A until Customer A consumes the products in its operations. Company Z delivers product to Customer A under the terms of their arrangement.

Question: May Company Z recognize revenue upon delivery of its product to Customer A?

Interpretive Response: No. Products delivered to a consignee pursuant to a consignment arrangement are not sales and do not qualify for revenue recognition until a sale occurs. The staff believes that revenue recognition is not appropriate because the seller retains the risks and rewards of ownership of the product and title usually does not pass to the consignee.

Other situations may exist where title to delivered products passes to a buyer, but the substance of the transaction is that of a consignment or a financing. Such arrangements require a careful analysis of the facts and circumstances of the transaction, as well as an understanding of the rights and obligations of the parties, and the seller's customary business practices in such arrangements. The staff believes that the presence of one or more of the following characteristics in a transaction precludes revenue recognition even if title to the product has passed to the buyer:

1. The buyer has the right to return the product and:

(a) The buyer does not pay the seller at the time of sale, and the buyer is not obligated to pay the seller at a specified date or dates,[2]

(b) the buyer does not pay the seller at the time of sale but rather is obligated to pay at a specified date or dates, and the buyer's obligation to pay is contractually or implicitly excused until the buyer resells the product or subsequently consumes or uses the product, [3]

(c) the buyer's obligation to the seller would be changed (*e.g.*, the seller would forgive the obligation or grant a refund) in the event of theft or physical destruction or damage of the product,[4]

(d) the buyer acquiring the product for resale does not have economic substance apart from that provided by the seller,[5] or

(e) the seller has significant obligations for future performance to directly bring about resale of the product by the buyer.[6]

2. The seller is required to repurchase the product (or a substantially identical product or processed goods of which the product is a component) at specified prices that are not subject to change except for fluctuations due to finance and holding costs,[7] and the amounts to be paid by the seller will be adjusted, as necessary, to cover substantially all fluctuations in costs incurred by the buyer in purchasing and holding the product (including interest).[8] The staff believes that indicators of the latter condition include:

(a) The seller provides interest-free or significantly below market financing to the buyer beyond the seller's customary sales terms and until the products are resold,

(b) the seller pays interest costs on behalf of the buyer under a third-party financing arrangement, or

(c) the seller has a practice of refunding (or intends to refund) a portion of the original sales price representative of interest expense for the period from when the buyer paid the seller until the buyer resells the product.

3. The transaction possesses the characteristics set forth in EITF Issue 95–1 and does not qualify for sales-type lease accounting.

4. The product is delivered for demonstration purposes.[9]

This list is not meant to be a checklist of all characteristics of a consignment or a financing arrangement, and other characteristics may exist. Accordingly, the staff believes that judgment is necessary in assessing whether the substance of a transaction is a consignment, a financing, or other arrangement for which revenue recognition is not appropriate. If title to

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[2] Proved oil and gas reserves are the estimated quantities of crude oil, natural gas, and natural gas liquids which geological and engineering data demonstrate with reasonable certainty to be recoverable in future years from known reservoirs under existing *economic* and *operating* conditions. (Emphasis added.)

[1] In February 1999, the AICPA published a booklet entitled "Audit Issues in Revenue Recognition." This booklet provides an overview of the current authoritative accounting literature and auditing procedures for revenue recognition and identifies indicators of improper revenue recognition.

[2] Concepts Statement 5, paragraphs 83–84; ARB 43, Chapter 1A, paragraph 1; Opinion 10, paragraph 12. The citations provided herein are not intended to present the complete population of citations where a particular criterion is relevant. Rather, the citations are intended to provide the reader with additional reference material.

[3] Concepts Statement 3, Qualitative Characteristics of Accounting Information, paragraph 63 states "Representational faithfulness is correspondence or agreement between a measure or description and the phenomenon it purports to represent." The staff believes that evidence of an exchange arrangement must exist to determine if the accounting treatment represents faithfully the transaction. See also SOP 97–2, paragraph 8. The use of the term "arrangement" in this SAB is meant to identify the final understanding between the parties as to the specific nature and terms of the agreed-upon transaction.

[4] Concepts Statement 5, paragraph 84(a), (b), and (d). Revenue should not be recognized until the seller has substantially accomplished what it must do pursuant to the terms of the arrangement, which usually occurs upon delivery or performance of the services.

[5] Concepts Statement 5, paragraph 83(a); Statement 48, paragraph 6(a); SOP 97–2, paragraph 8. SOP 97–2 defines a "fixed fee" as a "fee required to be paid at a set amount that is not subject to refund or adjustment. A fixed fee includes amounts designated as minimum royalties." Paragraphs 26–33 of SOP 97–2 discuss how to apply the fixed or determinable fee criterion in software transactions. The staff believes that the guidance in paragraphs 26 and 30–33 is appropriate for other sales transactions where authoritative guidance does not otherwise exist. The staff notes that paragraphs 27 through 29 specifically consider software transactions, however, the staff believes that guidance should be considered in other sales transactions in which the risk of technological obsolescence is high.

[6] ARB 43, Chapter 1A, paragraph 1 and Opinion 10, paragraph 12. See also Concepts Statement 5, paragraph 84(g) and SOP 97–2, paragraph 8.

[1] AU Section 560.05.

[2] Statement 48, paragraphs 6(b)) and 22.

[3] Statement 48, paragraphs 6(b) and 22. The arrangement may not specify that payment is contingent upon subsequent resale or consumption. However, if the seller has an established business practice permitting customers to defer payment beyond the specified due date(s) until the products are resold or consumed, then the staff believes that the seller's right to receive cash representing the sales price is contingent.

[4] Statement 48, paragraph 6(c).

[5] Statement 48, paragraph 6(d).

[6] Statement 48, paragraph 6(e).

[7] Statement 49, paragraph 5(a). Paragraph 5(a) provides examples of circumstances that meet this requirement. As discussed further therein, this condition is present if (a) a resale price guarantee exists, (b) the seller has an option to purchase the product, the economic effect of which compels the seller to purchase the product, or (c) the buyer has an option whereby it can require the seller to purchase the product.

[8] Statement 49, paragraph 5(b).

[9] See SOP 97–2, paragraph 25.

the goods has passed but the substance of the arrangement is not a sale, the consigned inventory should be reported separately from other inventory in the consignor's financial statements as "inventory consigned to others" or another appropriate caption.

3. Delivery and Performance

Question 3

Facts: Company A receives purchase orders for products it manufactures. At the end of its fiscal quarters, customers may not yet be ready to take delivery of the products for various reasons. These reasons may include, but are not limited to, a lack of available space for inventory, having more than sufficient inventory in their distribution channel, or delays in customers' production schedules.

Question: May Company A recognize revenue for the sale of its products once it has completed manufacturing if it segregates the inventory of the products in its own warehouse from its own products?

May Company A recognize revenue for the sale if it ships the products to a third-party warehouse but (1) Company A retains title to the product and (2) payment by the customer is dependent upon ultimate delivery to a customer-specified site?

Interpretative Response: Generally, no. The staff believes that delivery generally is not considered to have occurred unless the customer has taken title and assumed the risks and rewards of ownership of the products specified in the customer's purchase order or sales agreement. Typically this occurs when a product is delivered to the customer's delivery site (if the terms of the sale are "FOB destination") or when a product is shipped to the customer (if the terms are "FOB shipping point").

The Commission has set forth criteria to be met in order to recognize revenue when delivery has not occurred.[1] These include:

1. The risks of ownership must have passed to the buyer;

2. The customer must have made a fixed commitment to purchase the goods, preferably in written documentation;

3. The buyer, not the seller, must request that the transaction be on a bill and hold basis.[2] The buyer must have a substantial business purpose for ordering the goods on a bill and hold basis;

4. There must be a fixed schedule for delivery of the goods. The date for delivery must be reasonable and must be consistent with the buyer's business purpose (*e.g.*, storage periods are customary in the industry);

5. The seller must not have retained any specific performance obligations such that the earning process is not complete;

6. The ordered goods must have been segregated from the seller's inventory and not be subject to being used to fill other orders; and

7. The equipment [product] must be complete and ready for shipment.

The above listed conditions are the important conceptual criteria which should be used in evaluating any purported bill and hold sale. This listing is not intended as a checklist. In some circumstances, a transaction may meet all factors listed above but not meet the requirements for revenue recognition. The Commission also has noted that in applying the above criteria to a purported bill and hold sale, the individuals responsible for the preparation and filing of financial statements also should consider the following factors:[3]

1. The date by which the seller expects payment, and whether the seller has modified its normal billing and credit terms for this buyer;[4]

2. The seller's past experiences with and pattern of bill and hold transactions;

3. Whether the buyer has the expected risk of loss in the event of a decline in the market value of goods;

4. Whether the seller's custodial risks are insurable and insured;

5. Whether extended procedures are necessary in order to assure that there are no exceptions to the buyer's commitment to accept and pay for the goods sold (*i.e.*, that the business reasons for the bill and hold have not introduced a contingency to the buyer's commitment).

Delivery generally is not considered to have occurred unless the product has been delivered to the customer's place of business or another site specified by the customer. If the customer specifies an intermediate site but a substantial portion of the sales price is not payable until delivery is made to a final site, then revenue should not be recognized until final delivery has occurred.[5]

After delivery of a product or performance of a service, if uncertainty exists about customer acceptance, revenue should not be recognized until acceptance occurs.[6] Customer acceptance provisions may be included in a contract, among other reasons, to enforce a customer's rights to (1) test the delivered product, (2) require the seller to perform additional services subsequent to delivery of an initial product or performance of an initial service (*e.g.*, a seller is required to install or activate delivered equipment), or (3) identify other work necessary to be done before accepting the product. The staff presumes that such contractual customer acceptance provisions are substantive, bargained-for terms of an arrangement. Accordingly, when such contractual customer acceptance provisions exist, the staff generally believes that the seller should not recognize revenue until customer acceptance occurs or the acceptance provisions lapse.

A seller should substantially complete or fulfill the terms specified in the arrangement in order for delivery or performance to have occurred.[7] When applying the substantially complete notion, the staff believes that only inconsequential or perfunctory actions may remain incomplete such that the failure to complete the actions would not result in the customer receiving a refund or rejecting the delivered products or services performed to date. In addition, the seller should have a demonstrated history of completing the remaining tasks in a timely manner and reliably estimating the remaining costs. If revenue is recognized upon substantial completion of the arrangement, all remaining costs of performance or delivery should be accrued.

[1] *See* In the Matter of Stewart Parness, AAER Release 108 (August 5, 1986); *SEC* v. *Bollinger Industries, Inc., et al*, Lit. Rel 15093 (September 30, 1996); In the Matter of Laser Photonics, Inc., AAER 971 (September 30, 1997); In the Matter of Cypress Bioscience, Inc., AAER 817 (September 19, 1996). Also see Concepts Statement 5, paragraph 84(a) and SOP 97–2, paragraph 22.

[2] Such requests typically should be set forth in writing by the buyer.

[3] *See* Note 1, *supra.*

[4] Such individuals should consider whether Opinoin 21 pertaining to the need for discounting the related receivable, is applicable. Opinion 21, paragraph 3(a), indicates that the requirements of that Opinion to record receivables at a discounted value are not intended to apply to "receivables and payables arising from transactions with customers or suppliers in the normal course of business which are due in customary trade terms not exceeding approximately one year" (emphasis added).

[5] SOP 97–2, paragraph 22.

[6] SOP 97–2 paragraph 20. Also, Concepts Statement 5, paragraph 83(b) states "revenues are considered to have been earned when the entity has substantially accomplished what it must do to be entitled to the benefits represented by the revenues." If an arrangement expressly requires customer acceptance, the staff generally believes that customer acceptance should occur before the entity has substantially accomplished what it must do to be entitled to the benefits represented by the revenues, especially when the seller is obligated to perform additional steps.

[7] Concepts Statement 5, paragraph 83(b) states that "revenues are considered to have been earned when the entity has substantially accomplished what it must do to be entitled the benefits represented by the revenues."

If an arrangement (*i.e.*, outside the scope of SOP 81–1) requires the delivery or performance of multiple deliverables, or "elements," the existence of undelivered elements may affect the conclusion as to whether revenue for a delivered element may be recognized as discussed in EITF Issue 00–21.[8]

In licensing and similar arrangements (*e.g.*, licenses of motion pictures, software, technology, and other intangibles), the staff believes that delivery does not occur for revenue recognition purposes until the license term begins.[9] Accordingly, if a licensed product or technology is physically delivered to the customer, but the license term has not yet begun, revenue should not be recognized prior to inception of the license term. Upon inception of the license term, revenue should be recognized in a manner consistent with the nature of the transaction and the earnings process.

Question 4

Facts: Company R is a retailer that offers "layaway" sales to its customers. Company R retains the merchandise, sets it aside in its inventory, and collects a cash deposit from the customer. Although Company R may set a time period within which the customer must finalize the purchase, Company R does not require the customer to enter into an installment note or other fixed payment commitment or agreement when the initial deposit is received. The merchandise generally is not released to the customer until the customer pays the full purchase price. In the event that the customer fails to pay the remaining purchase price, the customer forfeits its cash deposit. In the event the merchandise is lost, damaged, or destroyed, Company R either must refund the cash deposit to the customer or provide replacement merchandise.

Question: In the staff's view, when may Company R recognize revenue for merchandise sold under its layaway program?

Interpretive Response: Provided that the other criteria for revenue recognition are met, the staff believes that Company R should recognize revenue from sales made under its layaway program upon delivery of the merchandise to the customer. Until then, the amount of cash received should be recognized as a liability entitled such as "deposits received from customers for layaway sales" or a similarly descriptive caption. Because Company R retains the risks of ownership of the merchandise, receives only a deposit from the customer, and does not have an enforceable right to the remainder of the purchase price, the staff would object to Company R recognizing any revenue upon receipt of the cash deposit. This is consistent with item two (2) in the Commission's criteria for bill-and-hold transactions which states that "the customer must have made a fixed commitment to purchase the goods."

Question 5

Facts: Registrants may negotiate arrangements pursuant to which they may receive nonrefundable fees upon entering into arrangements or on certain specified dates. The fees may ostensibly be received for conveyance of a license or other intangible right or for delivery of particular products or services. Various business factors may influence how the registrant and customer structure the payment terms. For example, in exchange for a greater up-front fee for an intangible right, the registrant may be willing to receive lower unit prices for related products to be delivered in the future. In some circumstances, the right, product, or service conveyed in conjunction with the nonrefundable fee has no utility to the purchaser separate and independent of the registrant's performance of the other elements of the arrangement. Therefore, in the absence of the registrant's continuing involvement under the arrangement, the customer would not have paid the fee. Examples of this type of arrangement include the following:

- A registrant sells a lifetime membership in a health club. After paying a nonrefundable "initiation fee," the customer is permitted to use the health club indefinitely, so long as the customer also pays an additional usage fee each month. The monthly usage fees collected from all customers are adequate to cover the operating costs of the health club.
- A registrant in the biotechnology industry agrees to provide research and development activities for a customer for a specified term. The customer needs to use certain technology owned by the registrant for use in the research and development activities. The technology is not sold or licensed separately without the research and development activities. Under the terms of the arrangement, the customer is required to pay a nonrefundable "technology access fee" in addition to periodic payments for research and development activities over the term of the contract.
- A registrant requires a customer to pay a nonrefundable "activation fee" when entering into an arrangement to provide telecommunications services. The terms of the arrangement require the customer to pay a monthly usage fee that is adequate to recover the registrant's operating costs. The costs incurred to activate the telecommunications service are nominal.

Question: When should the revenue relating to nonrefundable, up-front fees in these types of arrangements be recognized?

Interpretive Response: The staff believes that registrants should consider the specific facts and circumstances to determine the appropriate accounting for nonrefundable, up-front fees. Unless the up-front fee is in exchange for products delivered or services performed that represent the culmination of a separate earnings process,[10] the deferral of revenue is appropriate.

[8] Paragraph 4 of EITF Issue 00–21 describes the scope of that consensus. As of the January 23, 2003 of the EITF (the EITF subsequently established a working group to revisit the scope of the consensus; accordingly, registrants should consult the current EITF Abstract for the final resolution of the scope of the consensus), paragraph 4 states that "This Issue applies to all deliverables (that is, products, services, or rights to use assets) within contractually binding arrangements (whether written, oral, or implied, and hereinafter referred to as "arrangements;") in all industries under which a vendor will perform multiple revenue-generating activities, except as follows:

a. To the extent that a deliverables(s) in an arrangement is within the scope of other existing higher-level authoritative literature that provides guidance on whether and/or how to separate multiple-deliverable arrangements and how to allocate value among those separate units of accounting (including, but not limited to, Statements 13, 45, and 66; Technical Bulletin 90–1; and SOPs 81–1, 997–2, and 00–2), that deliverables(s) should be accounted for in accordance with that literature. However, if that arrangement also includes a deliverable(s) that is *not* within the scope of such higher-level literature, this Issue should be applied to determine (1) whether that deliverable(s) represents a separate unit of accounting from the deliverable(s) that is within the scope of other higher-level literature and, if so, (2) how to allocate the arrangement consideration to the separate units of accounting, unless the higher-level literature provides guidance with respect to (1) or (2), above, for the deliverable(s) that is not otherwise in the scope of the higher-level literature. The literature to be applied first is that which is applicable to the first delivered item(s).

b. Arrangements that include vendor offers to a customer for either (1) free or discounted products or services that will be delivered (either by the vendor or by another unrelated entity) at a future date if the customer completes a specified cumulative level of revenue transactions with the vendor or remains a customer of the vendor for a specified time period or (2) a rebate or refund of a determinable cash amount if the customer completes a specified cumulative level of revenue transactions with the vendor or remains a customer of the vendor for a specified time period, are excluded from the scope of this Issue. Additionally, arrangements involving the sale of award credits by broad-based loyalty program operators are excluded from the scope of this Issue."

[9] SOP 00–2, paragraph 7.

[10] See Concepts Statement 5, footnote 51, for a description of the "earning process."

In the situations described above, the staff does not view the activities completed by the registrants (*i.e.*, selling the membership, signing the contract, or enrolling the customer or activating telecommunications services) as discrete earnings events.[11] The terms, conditions, and amounts of these fees typically are negotiated in conjunction with the pricing of all the elements of the arrangement, and the customer would ascribe a significantly lower, and perhaps no, value to elements ostensibly associated with the up-front fee in the absence of the registrant's performance of other contract elements. The fact that the registrants do not sell the initial rights, products, or services separately (*i.e.*, without the registrants' continuing involvement) supports the staff's view. The staff believes that the customers are purchasing the on-going rights, products, or services being provided through the registrants' continuing involvement. Further, the staff believes that the earnings process is completed by performing under the terms of the arrangements, not simply by originating a revenue-generating arrangement.

Supply or service transactions may involve the charge of a nonrefundable initial fee with subsequent periodic payments for future products or services. The initial fees may, in substance, be wholly or partly an advance payment for future products or services. In the examples above, the on-going rights or services being provided or products being delivered are essential to the customers receiving the expected benefit of the up-front payment. Therefore, the up-front fee and the continuing performance obligation related to the services to be provided or products to be delivered are assessed as an integrated package. In such circumstances, the staff believes that up-front fees, even if nonrefundable, are earned as the products and/or services are delivered and/or performed over the term of the arrangement or the expected period of performance[12] and generally should be deferred and recognized systematically over the periods that the fees are earned.[13]

Question 6

Facts: Company A provides its customers with activity tracking or similar services (*e.g.*, tracking of property tax payment activity, sending delinquency letters on overdue accounts, etc.) for a ten-year period. Company A requires customers to prepay for all the services for the term specified in the arrangement. The on-going services to be provided are generally automated after the initial customer set-up. At the outset of the arrangement, Company A performs set-up procedures to facilitate delivery of its on-going services to the customers.[14] Such procedures consist primarily of establishing the necessary records and files in Company A's pre-existing computer systems in order to provide the services. Once the initial customer set-up activities are complete, Company A provides its services in accordance with the arrangement. Company A is not required to refund any portion of the fee if the customer terminates the services or does not utilize all of the services to which it is entitled. However, Company A is required to provide a refund if Company A terminates the arrangement early. Assume Company A's activities are not within the scope of Statement 91.

Question: When should Company A recognize the service revenue?

Interpretive Response: The staff believes that, provided all other revenue recognition criteria are met, service revenue should be recognized on a straight-line basis, unless evidence suggests that the revenue is earned or obligations are fulfilled in a different pattern, over the contractual term of the arrangement or the expected period during which those specified services will be performed,[15] whichever is longer. In this case, the customer contracted for the on-going activity tracking service, not for the set-up activities. The staff notes that the customer could not, and would not, separately purchase the set-up services without the on-going services. The services specified in the arrangement are performed continuously over the contractual term of the arrangement (and any subsequent renewals). Therefore, the staff believes that Company A should recognize revenue on a straight-line basis, unless evidence suggests that the revenue is earned or obligations are fulfilled in a different pattern, over the contractual term of the arrangement or the expected period during which those specified services will be performed, whichever is longer.

In this situation, the staff would object to Company A recognizing revenue in proportion to the costs incurred because the set-up costs incurred bear no direct relationship to the performance of services specified in the arrangement. The staff also believes that it is inappropriate to recognize the entire amount of the prepayment as revenue at the outset of the arrangement by accruing the remaining costs because the services required by the contract have not been performed.

4. Fixed or Determinable Sales Price

A company's contracts may include customer cancellation or termination clauses. Cancellation or termination provisions may be indicative of a demonstration period or an otherwise incomplete transaction. Examples of transactions that financial management and auditors should be aware of and where such provisions may exist include "side" agreements and significant transactions with unusual terms and conditions. These contractual provisions raise questions as to whether the sales price is fixed or determinable. The sales price in arrangements that are cancelable by the customer are neither fixed nor determinable until the cancellation privileges lapse.[1] If the cancellation privileges expire ratably over a stated contractual term, the sales price is considered to become determinable ratably over the stated term.[2] Short-term rights of return, such as thirty-day money-back guarantees, and other customary rights to return products are not considered to be cancellation privileges, but should be accounted for in accordance with Statement 48.[3]

Question 7

Facts: Company M is a discount retailer. It generates revenue from annual membership fees it charges customers to shop at its stores and from the sale of products at a discount price to those customers. The membership arrangements with retail customers require the customer to pay the entire membership fee (*e.g.*, $35) at the outset of the arrangement. However, the customer has the unilateral right to cancel the arrangement at any time during its term and receive a full refund of the initial fee. Based on historical data collected over time for a large number of homogeneous transactions, Company M estimates that approximately 40% of the customers will request a refund before the end of the membership contract term. Company M's data for the past five years indicates that significant variations between actual and estimated cancellations have not occurred, and Company M does not expect significant variations to occur in the foreseeable future.

Question: May Company M recognize in earnings the revenue for the membership fees and accrue the costs to provide membership services at the outset of the arrangement?

Interpretive Response: No. In the staff's view, it would be inappropriate for Company M to recognize the membership fees as earned revenue upon billing or receipt of the initial fee with a corresponding accrual for estimated costs to provide the membership services. This conclusion is based on Company M's remaining and unfulfilled contractual obligation to perform services (*i.e.*, make available and offer products for sale at a discounted price) throughout the membership period. Therefore, the earnings process, irrespective of whether a cancellation clause exists, is not complete.

In addition, the ability of the member to receive a full refund of the membership fee up to the last day of the membership term raises an uncertainty as to whether the fee is fixed or determinable at any point before the end of the term. Generally, the staff believes that a sales price is not fixed or determinable when a customer has the unilateral right to terminate or cancel the contract and receive a cash refund. A sales price or fee that is variable until the occurrence of future events (other than product returns that are within the scope of Statement 48) generally is not fixed or determinable until the future event occurs. The revenue from such transactions should not be recognized in earnings until the sales price or fee becomes fixed or determinable. Moreover, revenue should not be recognized in earnings by assessing the probability that significant, but unfulfilled, terms of a contract will be fulfilled at some point in the future. Accordingly, the revenue from such transactions should not be recognized in earnings prior to the refund privileges expiring. The amounts received from customers or subscribers (*i.e.*, the $35 fee mentioned above) should be credited to a monetary liability account such as "customers" refundable fees."

The staff believes that if a customer has the unilateral right to receive both (1) the seller's substantial performance under an arrangement (*e.g.*, providing services or delivering product) and (2) a cash refund of prepaid fees, then the prepaid fees should be accounted for as a monetary liability. In consideration of whether the monetary liability can be derecognized, Statement 140 provides that liabilities may be derecognized only if (1) the debtor pays the creditor and is relieved of its obligation for the liability (paying the creditor includes delivery of cash, other financial assets, goods, or services or reacquisition by the debtor of its outstanding debt securities) or (2) the debtor is legally released from being the primary obligor under the liability.[4] If a customer has the unilateral right to receive both (1) the seller's substantial performance under the arrangement and (2) a cash refund of prepaid fees, then the refund obligation is not relieved upon performance of the service or delivery of the products. Rather, the seller's refund obligation is relieved only upon refunding the cash or expiration of the refund privilege.

Some have argued that there may be a limited exception to the general rule that revenue from membership or other service transaction fees should not be recognized in earnings prior to the refund privileges expiring. Despite the fact that Statement 48 expressly does not apply to the accounting for service revenue if part or all of the service fee is refundable under cancellation privileges granted to the buyer,[5] they believe that in certain circumstances a potential refund of a membership fee may be seen as being similar to a right of return of products under Statement 48. They argue that revenue from membership fees, net of estimated refunds, may be recognized ratably over the period the services are performed whenever pertinent conditions of Statement 48 are met, namely, there is a large population of transactions that grant customers the same unilateral termination or cancellation rights and reasonable estimates can be made of how many customers likely will exercise those rights.

The staff believes that, because service arrangements are specifically excluded from the scope of Statement 48, the most direct authoritative literature to be applied to the extinguishment of obligations under such contracts is Statement 140. As noted above, because the refund privilege extends to the end of the contract term irrespective of the amount of the service performed, Statement 140 indicates that the liability would not be extinguished (and therefore no revenue would be recognized in earnings) until the cancellation or termination and related refund privileges expire. Nonetheless, the staff recognizes that over the years the accounting for membership refunds evolved based on analogy to Statement 48 and that practice did not change when Statement 140 became effective. Reasonable people held, and continue to hold, different views about the application of the accounting literature. For the staff to prohibit such accounting in this SAB may result in significant change in practice that, in these particular circumstances, may be more appropriately addressed in a formal rulemaking or standards-setting project.

Pending further action in this area by the FASB, the staff will not object to the recognition of refundable membership fees, net of estimated refunds, as earned revenue over the membership term in the limited circumstances where all of the following criteria have been met:[6]

- The estimates of terminations or cancellations and refunded revenues are being made for a large pool of homogeneous items (*e.g.*, membership or other service transactions with the same characteristics such as terms, periods, class of customers, nature of service, etc.).
- Reliable estimates of the expected refunds can be made on a timely basis.[7] Either of the following two items would be considered indicative of an inability to make reliable estimates: (1) recurring,

[11] In a similar situation, lenders may collect nonrefundable loan origination fees in connection with lending activities. The FASB concluded in Statement 91 that loan origination is not a separate revenue-producing activity of a lender, and therefore, those nonrefundable fees collected at the outset of the loan arrangement are not recognized as revenue upon receipt but are deferred and recognized over the life of the loan (paragraphs 5 and 37).

[12] The revenue recognition period should extend beyond the initial contractual period if the relationship with the customer is expected to extend beyond the initial term and the customer continues to benefit from the payment of the up-front fee (*e.g.*, if subsequent renewals are priced at a bargain to the initial up-front fee).

[13] A systematic method would be on a straight-line basis, unless evidence suggests that revenue is earned or obligations are fulfilled in a different pattern, in which case that pattern should be followed.

[14] Footnote 1 of SOP 98–5 states that "this SOP does not address the financial reporting of costs incurred related to ongoing customer acquisition, such as policy acquisition costs in Statement 60 * * * and loan origination costs in Statement 91 * * *. The SOP addresses the more substantive one-time efforts to establish business with an entirely new class of customers (for example, a manufacturer who does all of its business with retailers attempts to sell merchandise directly to the public)." As such, the set-up costs incurred in this example are not within the scope of SOP 98–5. The staff believes that the incremental direct costs (Statement 91 provides an analogous definition) incurred related to the acquisition or origination of a customer contract, unless specifically provided for in the authoritative literature, should be accounted for in accordance with paragraph 4 of Technical Bulletin 90–1 or paragraph 5 of Statement 91.

[15] *See* Note 12, *supra*.

[1] SOP 97–2, paragraph 31.

[2] *Ibid.*

[3] *Ibid.*

[4] Statement 140, paragraph 16.

[5] Statement 48, paragraph 4.

[6] The staff will question further analogies to the guidance in Statement 48 for transactions expressly excluded from its scope.

[7] Reliability is defined in Concepts Statement 2 as "the quality of information that assures that information is reasonably free from error and bias and faithfully represents what it purports to represent." Paragraph 63 of Concepts Statement 5 reiterates the definition of reliability, requiring that "the information is representationally faithful, verifiable, and neutral."

significant differences between actual experience and estimated cancellation or termination rates (*e.g.*, an actual cancellation rate of 40% versus an estimated rate of 25%) even if the impact of the difference on the amount of estimated refunds is not material to the consolidated financial statements[8] or (2) recurring variances between the actual and estimated amount of refunds that are material to either revenue or net income in quarterly or annual financial statements. In addition, the staff believes that an estimate, for purposes of meeting this criterion, would not be reliable unless it is remote[9] that material adjustments (both individually and in the aggregate) to previously recognized revenue would be required. The staff presumes that reliable estimates cannot be made if the customer's termination or cancellation and refund privileges exceed one year.

- There is a sufficient company-specific historical basis upon which to estimate the refunds,[10] and the company believes that such historical experience is predictive of future events. In assessing these items, the staff believes that estimates of future refunds should take into consideration, among other things, such factors as historical experience by service type and class of customer, changing trends in historical experience and the basis thereof (*e.g.*, economic conditions), the impact or introduction of competing services or products, and changes in the customer's "accessibility" to the refund (*i.e.*, how easy it is for customers to obtain the refund).
- The amount of the membership fee specified in the agreement at the outset of the arrangement is fixed, other than the customer's right to request a refund.

If Company M does not meet all of the foregoing criteria, the staff believes that Company M should not recognize in earnings any revenue for the membership fee until the cancellation privileges and refund rights expire.

If revenue is recognized in earnings over the membership period pursuant to the above criteria, the initial amounts received from customer or subscribers (*i.e.*, the $35 fee mentioned above) should be allocated to two liability accounts. The amount of the fee representing estimated refunds should be credited to a monetary liability account, such as "customers' refundable fees," and the remaining amount of the fee representing unearned revenue should be credited to a nonmonetary liability account, such as "unearned revenues." For each income statement presented, registrants should disclose in the footnotes to the financial statements the amounts of (1) the unearned revenue and (2) refund obligations as of the beginning of each period, the amount of cash received from customers, the amount of revenue recognized in earnings, the amount of refunds paid, other adjustments (with an explanation thereof), and the ending balance of (1) unearned revenue and (2) refund obligations.

If revenue is recognized in earnings over the membership period pursuant to the above criteria, the staff believes that adjustments for changes in estimated refunds should be recorded using a retrospective approach whereby the unearned revenue and refund obligations are remeasured and adjusted at each balance sheet date with the offset being recorded as earned revenue.

Companies offering memberships often distribute membership packets describing and discussing the terms, conditions, and benefits of membership. Packets may include vouchers, for example, that provide new members with discounts or other benefits. The costs associated with the vouchers should be expensed when distributed. Advertising costs to solicit members should be accounted for in accordance with SOP 93–7. Incremental direct costs incurred in connection with enrolling customers (*e.g.*, commissions paid to agents) should be accounted for as follows: (1) If revenue is deferred until the cancellation or termination privileges expire, incremental direct costs should be either (a) charged to expense when incurred if the costs are not refundable to the company in the event the customer obtains a refund of the membership fee, or (b) if the costs are refundable to the company in the event the customer obtains a refund of the membership fee, recorded as an asset until the earlier of termination or cancellation or refund; or (2) if revenue, net of estimated refunds, is recognized in earnings over the membership period, a like percentage of incremental direct costs should be deferred and recognized in earnings in the same pattern as revenue is recognized, and the remaining portion should be either (a) charged to expense when incurred if the costs are not refundable to the company in the event the customer obtains a refund of the membership fee, or (b) if the costs are refundable to the company in the event the customer obtains a refund of the membership fee, recorded as an asset until the refund occurs.[11] All costs other than incremental direct costs (*e.g.*, indirect costs) should be expensed as incurred.

Question 8

Facts: Company A owns and leases retail space to retailers. Company A (lessor) renews a lease with a customer (lessee) that is classified as an operating lease. The lease term is one year and provides that the lease payments are $1.2 million, payable in equal monthly installments on the first day of each month, plus one percent of the lessee's net sales in excess of $25 million if the net sales exceed $25 million during the lease term (*i.e.*, contingent rental). The lessee has historically experienced annual net sales in excess of $25 million in the particular space being leased, and it is probable that the lessee will generate in excess of $25 million net sales during the term of the lease.

Question: In the staff's view, should the lessor recognize any rental income attributable to the one percent of the lessee's net sales exceeding $25 million before the lessee actually achieves the $25 million net sales threshold?

Interpretive Response: No. The staff believes that contingent rental income "accrues" (*i.e.*, it should be recognized as revenue) when the changes in the factor(s) on which the contingent lease payments is (are) based actually occur.[12]

Statement 13 paragraph 19(b) states that lessors should account for operating leases as follows: "Rent shall be reported in income over the lease term as it becomes receivable according to the provisions of the lease. However, if the rentals vary from a straight-line basis, the income shall be recognized on a straight-line basis unless another systematic and rational basis is more

[8] For example, if an estimate of the expected cancellation rate varies from the actual cancellation rate by 100% but the dollar amount of the error is immaterial to the consolidated financial statements, some would argue that the estimate could still be viewed as reliable. The staff disagrees with that argument.

[9] The term "remote" is used here with the same definition as used in Statement 5.

[10] Paragraph 8 of Statement 48 notes various factors that may impair the ability to make a reasonable estimate of returns, including the lack of sufficient historical experience. The staff typically expects that the historical experience be based on the particular registrant's historical experience for a service and/or class of customer. In general, the staff typically expects a start-up company, a company introducing new services, or a company introducing services to a new class of customer to have at least two years of experience to be able to make reasonable and reliable estimates.

[11] Statement 91, paragraph 5 and Technical Bulletin 90–1, paragraph 4 both provide for the deferral of incremental direct costs associated with acquiring a revenue-producing contract. Even though the revenue discussed in this example is refundable, if a registrant meets the aforementioned criteria for revenue recognition over the membership period, the staff would analogize to this guidance. However, if neither a nonrefundable contract nor a reliable basis for estimating net cash inflows under refundable contracts exists to provide a basis for recovery of incremental direct costs, the staff believes that such costs should be expensed as incurred. *See* Note 14 of SAB Topic 13.A.3.

[12] Lessees should follow the guidance established in EITF Issue 98–9.

representative of the time pattern in which use benefit from the leased property is diminished, in which case that basis shall be used."

Statement 29 amended Statement 13 and clarifies that "lease payments that depend on a factor that does not exist or is not measurable at the inception of the lease, such as future sales volume, would be contingent rentals in their entirety and, accordingly, would be excluded from minimum lease payments and included in the determination of income as they accrue." [Summary] Paragraph 17 of Statement 29 provides the following example of determining contingent rentals:

> A lease agreement for retail store space could stipulate a monthly base rental of $200 and a monthly supplemental rental of one-fourth of one percent of monthly sales volume during the lease term. Even if the lease agreement is a renewal for store space that had averaged monthly sales of $25,000 for the past 2 years, minimum lease payments would include only the $200 monthly base rental; the supplemental rental is a contingent rental that is excluded from minimum lease payments. The future sales for the lease term do not exist at the inception of the lease, and future rentals would be limited to $200 per month if the store were subsequently closed and no sales were made thereafter.

Technical Bulletin 85–3 addresses whether it is appropriate for lessors in operating leases to recognize scheduled rent increases on a basis other than as required in Statement 13, paragraph 19(b). Paragraph 2 of Technical Bulletin 85–3 states "using factors such as the time value of money, anticipated inflation, or *expected future revenues* [emphasis added] to allocate scheduled rent increases is inappropriate because these factors do not relate to the *time pattern* of the physical usage of the leased property. However, such factors may affect the periodic reported rental income or expense if the lease agreement involves contingent rentals, which are excluded from minimum lease payments and accounted for separately under Statement 13, as amended by Statement 29." In developing the basis for why scheduled rent increases should be recognized on a straight-line basis, the FASB distinguishes the accounting for scheduled rent increases from contingent rentals. Paragraph 13 states "There is an important substantive difference between lease rentals that are contingent upon some specified future event and scheduled rent increases that are unaffected by future events; the accounting under Statement 13 reflects that difference. If the lessor and lessee eliminate the risk of variable payments by agreeing to scheduled rent increases, the accounting should reflect those different circumstances."

The example provided in Statement 29 implies that contingent rental income in leases classified as sales-type or direct-financing leases becomes "accruable" when the changes in the factors on which the contingent lease payments are based actually occur. Technical Bulletin 85–3 indicates that contingent rental income in operating leases should not be recognized in a manner consistent with scheduled rent increases (*i.e.*, on a straight-line basis over the lease term or another systematic and rational allocation basis if it is more representative of the time pattern in which the leased property is physically employed) because the risk of variable payments inherent in contingent rentals is substantively different than scheduled rent increases. The staff believes that the reasoning in Technical Bulletin 85–3 supports the conclusion that the risks inherent in variable payments associated with contingent rentals should be reflected in financial statements on a basis different than rental payments that adjust on a scheduled basis and, therefore, operating lease income associated with contingent rents would not be recognized as time passes or as the leased property is physically employed. Furthermore, prior to the lessee's achievement of the target upon which contingent rentals are based, the lessor has no legal claims on the contingent amounts. Consequently, the staff believes that it is inappropriate to anticipate changes in the factors on which contingent rental income in operating leases is based and recognize rental income prior to the resolution of the lease contingencies.

Because Company A's contingent rental income is based upon whether the customer achieves net sales of $25 million, the contingent rentals, which may not materialize, should not be recognized until the customer's net sales actually exceed $25 million. Once the $25 million threshold is met, Company A would recognize the contingent rental income as it becomes accruable, in this case, as the customer recognizes net sales. The staff does not believe that it is appropriate to recognize revenue based upon the probability of a factor being achieved. The contingent revenue should be recorded in the period in which the contingency is resolved.

Question 9

Facts: Paragraph 8 of Statement 48 lists a number of factors that may impair the ability to make a reasonable estimate of product returns in sales transactions when a right of return exists.[13] The paragraph concludes by stating "other factors may preclude a reasonable estimate."

Question: What "other factors," in addition to those listed in paragraph 8 of Statement 48, has the staff identified that may preclude a registrant from making a reasonable and reliable estimate of product returns?

Interpretive Response: The staff believes that the following additional factors, among others, may affect or preclude the ability to make reasonable and reliable estimates of product returns: (1) Significant increases in or excess levels of inventory in a distribution channel (sometimes referred to as "channel stuffing"); (2) lack of "visibility" into or the inability to determine or observe the levels of inventory in a distribution channel and the current level of sales to end users, (3) expected introductions of new products that may result in the technological obsolescence of and larger than expected returns of current products, (4) the significance of a particular distributor to the registrant's (or a reporting segment's) business, sales and marketing, (5) the newness of a product, (6) the introduction of competitors' products with superior technology or greater expected market acceptance, and other factors that affect market demand and changing trends in that demand for the registrant's products. Registrants and their auditors should carefully analyze all factors, including trends in historical data, that may affect registrants' ability to make reasonable and reliable estimates of product returns.

The staff reminds registrants that if a transaction fails to meet all of the conditions of paragraphs 6 and 8 in Statement 48, no revenue may be recognized until those conditions are subsequently met or the return privilege has substantially expired, whichever occurs first.[14] Simply deferring recognition of the gross margin on the transaction is not appropriate.

5. Income Statement Presentation

Question 10

[13] These factors include "(a) the susceptibility of the product to significant external factors, such as technological obsolescence or changes in demand, (b) relative long periods in which a particular product may be returned, (c) absence of historical experience with similar types of sales of similar products, or inability to apply such experience because of changing circumstances, for example, changes in the selling enterprise's marketing policies and relationships with its customers, and (d) absence of a large volume of relatively homogeneous transactions."

[14] Statement 48, paragraph 6.

Facts: Company A operates an internet site from which it will sell Company T's products. Customers place their orders for the product by making a product selection directly from the internet site and providing a credit card number for the payment. Company A receives the order and authorization from the credit card company, and passes the order on to Company T. Company T ships the product directly to the customer. Company A does not take title to the product and has no risk of loss or other responsibility for the product. Company T is responsible for all product returns, defects, and disputed credit card charges. The product is typically sold for $175 of which Company A receives $25. In the event a credit card transaction is rejected, Company A loses its margin on the sale (*i.e.*, the $25).

Question: In the staff's view, should Company A report revenue on a gross basis as $175 along with costs of sales of $150 or on a net basis as $25, similar to a commission?

Interpretive Response: Company A should report the revenue from the product on a net basis. In assessing whether revenue should be reported gross with separate display of cost of sales to arrive at gross profit or on a net basis, the staff considers whether the registrant: [1]

1. Acts as principal in the transaction,
2. takes title to the products,
3. has risks and rewards of ownership, such as the risk of loss for collection, delivery, or returns, and
4. acts as an agent or broker (including performing services, in substance, as an agent or broker) with compensation on a commission or fee basis.[2]

If the company performs as an agent or broker without assuming the risks and rewards of ownership of the goods, sales should be reported on a net basis.

B. Disclosures

Question 1

Question: What disclosures are required with respect to the recognition of revenue?

Interpretive Response: A registrant should disclose its accounting policy for the recognition of revenue pursuant to Opinion 22. Paragraph 12 thereof states that "the disclosure should encompass important judgments as to appropriateness of principles relating to recognition of revenue * * *" Because revenue recognition generally involves some level of judgment, the staff believes that a registrant should always disclose its revenue recognition policy. If a company has different policies for different types of revenue transactions, including barter sales, the policy for each material type of transaction should be disclosed. If sales transactions have multiple elements, such as a product and service, the accounting policy should clearly state the accounting policy for each element as well as how multiple elements are determined and valued. In addition, the staff believes that changes in estimated returns recognized in accordance with Statement 48 should be disclosed, if material (*e.g.*, a change in estimate from two percent of sales to one percent of sales).

Regulation S–X requires that revenue from the sales of products, services, and other products each be separately disclosed on the face of the income statement.[1] The staff believes that costs relating to each type of revenue similarly should be reported separately on the face of the income statement.

MD&A requires a discussion of liquidity, capital resources, results of operations and other information necessary to an understanding of a registrant's financial condition, changes in financial condition and results of operations.[2] This includes unusual or infrequent transactions, known trends or uncertainties that have had, or might reasonably be expected to have, a favorable or unfavorable material effect on revenue, operating income or net income and the relationship between revenue and the costs of the revenue. Changes in revenue should not be evaluated solely in terms of volume and price changes, but should also include an analysis of the reasons and factors contributing to the increase or decrease. The Commission stated in FRR 36 that MD&A should "give investors an opportunity to look at the registrant through the eyes of management by providing a historical and prospective analysis of the registrant's financial condition and results of operations, with a particular emphasis on the registrant's prospects for the future." [3] Examples of such revenue transactions or events that the staff has asked to be disclosed and discussed in accordance with FRR 36 are:

- Shipments of product at the end of a reporting period that significantly reduce customer backlog and that reasonably might be expected to result in lower shipments and revenue in the next period.
- Granting of extended payment terms that will result in a longer collection period for accounts receivable (regardless of whether revenue has been recognized) and slower cash inflows from operations, and the effect on liquidity and capital resources. (The fair value of trade receivables should be disclosed in the footnotes to the financial statements when the fair value does not approximate the carrying amount.) [4]
- Changing trends in shipments into, and sales from, a sales channel or separate class of customer that could be expected to have a significant effect on future sales or sales returns.
- An increasing trend toward sales to a different class of customer, such as a reseller distribution channel that has a lower gross profit margin than existing sales that are principally made to end users. Also, increasing service revenue that has a higher profit margin than product sales.
- Seasonal trends or variations in sales.
- A gain or loss from the sale of an asset(s).[5]

Question 2

Question: Will the staff expect retroactive changes by registrants to comply with the accounting described in this bulletin?

Interpretive Response: All registrants are expected to apply the accounting and disclosures described in this bulletin. The staff, however, will not object if registrants that have not applied this accounting do not restate prior financial statements provided they report a change in accounting principle in accordance with Opinion 20 and Statement 3 no later than the fourth fiscal quarter of the fiscal year beginning after December 15, 1999. In periods subsequent to transition, registrants should disclose the amount of revenue (if material to income before income taxes) recognized in those periods that was included in the cumulative effect adjustment. If a registrant files financial statements with the Commission before applying the guidance in this bulletin, disclosures similar to those described in SAB Topic 11.M should be provided. With regard to question 10 of Topic 13.A and Topic 8.A regarding income statement presentation, the staff would normally expect retroactive application to all periods presented unless the effect of applying the guidance herein is immaterial.

However, if registrants have not previously complied with GAAP, for example, by recording revenue for products prior to delivery that did not comply with the applicable bill-and-hold guidance, those registrants should apply the guidance in Opinion 20 for the correction of an error.[6] In addition, registrants should be aware that the Commission may take enforcement action where a registrant in prior financial statements has violated the antifraud or disclosure provisions of the securities laws with respect to revenue recognition.

[1] Subsequent to the issuance of this SAB, the EITF provided additional guidance on gross vs. net presentation in Issue 99–19.

[2] *See*, for example, ARB 43, Chapter 11A, paragraph 20; SOP 81–1, paragraphs 58–60; and Statement 45, paragraph 16.

[1] See Regulation S–X, Article 5–03(b)(1) and (2).

[2] See Regulation S–K, Article 303 and FRR 36.

[3] FRR 36, also see In the Matter of Caterpillar Inc., AAER 363 (March 31, 1992).

[4] Statement 107.

[5] Gains or losses from the sale of assets should be reported as "other general expenses" pursuant to Regulation S–X, Article 5–03(b)(6). Any material item should be stated separately.

[6] Opinion 20, paragraph 13 and paragraphs 36–37 describe and provide the accounting and disclosure requirements applicable to the correction of an error in previously issued financial statements. Because the term "error" as used in Opinion 20 includes "oversight or misuse of facts that existed at the time that the financial statements were prepared," that term includes both unintentional errors as well as intentional fraudulent financial reporting and misappropriation of assets as described in SAS 99.

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Federal Register

Friday,
May 16, 2003

Part VI

Department of Agriculture

Rural Housing Service

Notice of Availability of Funds; Notices

DEPARTMENT OF AGRICULTURE

Rural Housing Service

Notice of Availability of Funds; Multi-Family Housing, Single Family Housing

AGENCY: Rural Housing Service, USDA.

ACTION: Notice.

SUMMARY: The Rural Housing Service (RHS) announces the availability of housing funds for fiscal year 2003 (FY 2003). This action is taken to comply with 42 U.S.C. 1490p, which requires that RHS publish in the **Federal Register** notice of the availability of any housing assistance.

EFFECTIVE DATE: May 16, 2003.

FOR FURTHER INFORMATION CONTACT: For information regarding this notice contact Teresa Sumpter, Loan Specialist, Single Family Housing Direct Loan Division, telephone (202) 720–1485, for single family housing (SFH) issues and Tammy S. Daniels, Loan Specialist, Multi-Family Housing Processing Division, telephone (202) 720–0021, for multi-family housing (MFH) issues, U.S. Department of Agriculture, 1400 Independence Ave., SW., Washington, DC 20250. (The telephone numbers listed are not toll free numbers). For information on applying for assistance, visit our Internet Web site at *http://offices.usda.gov* and select your State or check the blue pages in your local telephone directory under "Rural Development" for the office serving your area. Near the end of this Notice is a listing of Rural Development State Directors, State Office addresses, and phone numbers.

SUPPLEMENTARY INFORMATION:

Programs Affected

The following programs are subject to the provisions of Executive Order 12372 that requires intergovernmental consultation with State and local officials. These programs or activities are listed in the Catalog of Federal Domestic Assistance under Nos.

10.405 Farm Labor Housing (LH) Loans and Grants;
10.410 Very Low to Moderate Income Housing Loans;
10.411 Rural Housing Site Loans and Self-Help Housing Land Development Loans;
10.415 Rural Rental Housing Loans;
10.417 Very Low Income Housing Repair Loans and Grants;
10.420 Rural Self-Help Housing Technical Assistance;
10.427 Rural Rental Assistance Payments;
10.433 Rural Housing Preservation Grants;
10.442 Housing Application Packaging Grants.

Discussion of Notice

Part 1940, subpart L of 7 CFR contains the "Methodology and Formulas for Allocation of Loan and Grant Program Funds." To apply for assistance under these programs or for more information, contact the Rural Development Office for your area.

Multi-Family Housing (MFH)

I. General

A. This provides guidance on MFH funding for the Rural Rental Housing program (RRH) for FY 2003 (it does not include carryover funds). Allocation computations have been performed in accordance with 7 CFR 1940.575 and 1940.578. For FY 2003, State Directors, under the Rural Housing Assistance Grants (RHAG), will have the flexibility to transfer their initial allocations of budget authority between the Single Family Housing (SFH) Section 504 Rural Housing Grants and Section 533 Housing Preservation Grant (HPG) programs.

B. MFH loan and grant levels for FY 2003 are as follows:

MFH Loan Programs Credit Sales—*$1,987,851
Section 514 Farm Labor Housing (LH) loans—*$37,480,202
Section 515 Rural Rental Housing (RRH) loans—*$115,052,541
Section 521 Rental Assistance (RA) and 502(c)(5)(C) Advance—*$721,281,000
Section 516 LH grants——*$17,698,209
Sections 525 Technical and Supervisory Assistance grants
(TSA) and 509 Housing Application Packaging grants—$1,093,978
(HAPG) (Shared between single and multi-family housing—(includes carryover)
Section 533 Housing Preservation grants (HPG)—*$9,935,000
Section 538 Guaranteed Rural Rental Housing program—*$99,350,000

*Does not include disaster or regular program carryover

II. Funds not Allocated to States

A. *Credit Sales Authority.* For FY 2003, $1,987,851 will be set aside for credit sales to program and nonprogram buyers. Credit sale funding will not be allocated by State.

B. *Section 538 Guaranteed Rural Rental Housing Program.* Guaranteed loan funds will be made available under a Notice of Funding Availability (NOFA) being published in this **Federal Register**. Additional guidance is provided in the NOFA.

III. Farm Labor Housing (LH) Loans and Grants

The Administrator has the authority to transfer the allocation of budget authority between the two programs. Upon NOFA closing, the Administrator will evaluate the responses and determine proper distribution of funds between loans and grants.

A. *Section 514 Farm LH Loans.*

1. These loans are funded in accordance with 7 CFR 1940.579(a).

—FY 2003 Appropriation—$37,480,202
—Available for Off-Farm Loans—$30,480,202
—Available for On-Farm Loans—$3,000,000
—National Office Reserve—$4,000,000

2. Off-farm loan funds will be made available under a NOFA being published in this **Federal Register**. Additional guidance is provided in the NOFA.

B. *Section 516 Farm LH Grants.*

1. Grants are funded in accordance with 7 CFR 1940.579(b). Unobligated prior year balances and cancellations will be added to the amount shown. FY 2003 Appropriation—$17,698,209
Available for LH Grants for Off-Farm—$13,198,209
Available for Technical Assistance Grants—$1,500,000
National Office Reserve—$3,000,000

2. Labor Housing grant funds for Off-Farm will be made available under a NOFA being published in this **Federal Register**. Additional guidance is provided in the NOFA.

C. Labor Housing Rental Assistance (RA) will be held in the National Office for use with LH loan and grant applications. RA is only available with a LH loan of at least 5 percent of the total development cost. Projects without a LH loan cannot receive RA.

IV. Section 515 RRH Loan Funds.

FY 2003 Section 515 Rural Rental Housing allocation (Total)—$115,052,541
New Construction funds and set-asides—$29,252,541
New construction loans—$7,145,186
Set-aside for nonprofits—$10,354,728
Set-aside for underserved counties and colonias—$5,752,627
Earmark for EZ, EC, or REAP Zones—$5,000,000
State RA designated reserve—$1,000,000
Rehab and repair funds and equity—$60,800,000
Rehab and repair loans—$55,800,000
Designated equity loan reserve—$5,000,000
General Reserve—$25,000,000

A. *New construction loan funds.* New construction loan funds will be made available using a national NOFA being published in this **Federal Register**. Additional guidance is provided in the NOFA.

B. *National Office New Construction Set-asides.* The following legislatively mandated set-asides of funds are part of the National office set-aside:

1. *Nonprofit Set-aside.* An amount of $10,354,728 has been set aside for nonprofit applicants. All Nonprofit loan proposals must be located in designated places as defined in 7 CFR 1944–E.

2. *Underserved Counties and Colonias Set-Aside.* An amount of $5,752,627 has been set aside for loan requests to develop units in the underserved 100 most needy counties or colonias as defined in section 509(f) of the Housing Act of 1949 as amended. Priority will be given to proposals to develop units in colonias or tribal lands.

3. *EZ, EC-or REAP Zone Earmark.* An amount of $5,000,000 has been earmarked for loan requests to develop units in EZ or EC communities or REAP Zones until June 30, 2003.

C. *Rental Assistance (RA).* Limited new construction RA will be held in the National office for use with Section 515 Rural Rental Housing loans.

D. *Designated Reserves for State RA.* An amount of $1 million of Section 515 loan funds has been set aside for matching with projects in which an active State sponsored RA program is available. The State RA program must be comparable to the RHS RA program.

E. *Repair and Rehabilitation Loans.* Tenant health and safety continues to be the top priority. Repair and rehabilitation funds must be first targeted to RRH facilities that have physical conditions that affect the health and safety of tenants and subsequently made available to facilities that have deferred maintenance. All funds will be held in the National office and will be distributed based upon indicated rehabilitation needs in the MFH survey conducted in October 2002.

F. *Designated Reserve for Equity Loans.* An amount of $5 million has been designated for the equity loan preservation incentive described in 7 CFR 1965–E. The $5 million will be further divided into $4 million for equity loan requests currently on the pending funding list and $1 million to facilitate the transfer of properties from for-profit owners to nonprofit corporations and public bodies. Funds for such transfers would be authorized only for for-profit owners who are currently on the pending funding list who agree to transfer to nonprofit corporations or public bodies rather than to remain on the pending list. If insufficient transfer requests are generated to utilize the full $1 million set aside for nonprofit and public body transfers, the balance will revert to the existing pending equity loan funding list.

G. *General Reserve.* There is one general reserve fund of $25,000,000. Some examples of immediate allowable uses include, but are not limited to, hardships and emergencies, RH cooperatives or group homes, or RRH preservation.

V. Section 533 Housing Preservation Grants (HPG).

Total Available—$9,935,000
Less General Reserve—$997,400
Less Earmark for EZ, EC or REAP Zones—$596,100
Total Available for Distribution—$8,341,500

Amount available for allocation. *See* end of this Notice for HPG State allocations. Fund availability will be announced in a NOFA being published in the **Federal Register.**

The amount of $596,100 is earmarked for EZ, EC or REAP Zones until June 30, 2003.

Single Family Housing (SFH)

I. General

All SFH programs are administer through field offices. For more information or to make application, please contact the Rural Development office servicing your area. To locate these offices, contact the appropriate State Office from the attached State Office listing, visit our Web site at *http://offices.usda.gov* or check the blue pages in your local telephone directory under "Rural Development" for the office serving your area.

A. This notice provides SFH allocations for FY 2003. Allocation computations have been made in accordance with 7 CFR 1940.563 through 1940.568. Information on basic formula criteria, data source and weight, administrative allocation, pooling of funds, and availability of the allocation are located on a chart at the end of this notice.

B. The SFH levels authorized for FY 2003 are as follows:

Section 502 Guaranteed Rural Housing (RH) loans
Nonsubsidized Guarantees—Purchase—$2,621,781,311
Nonsubsidized Guarantees—Refinance—$223,537,222
Section 502 Direct RH loans
Very low-income subsidized loans—$456,661,223
Low-income subsidized loans—$581,205,194
Credit sales (Nonprogram)—$10,000,000
Section 504 housing repair loans—$34,772,498
Section 504 housing repair grants—*/**$31,324,797
Section 509 compensation for construction defects—**$478,837
Section 523 mutual and self-help housing grants—**/***$51,319,662
Section 523 Self-Help Site Loans—$4,978,752
Section 524 RH site loans—$5,013,027
Section 306C Water and waste disposal grants—**$1,255,875
Section 525 Supervisory and technical Assistance and Section 509 Housing Application
Packaging Grants Total Available for single and multi-family—**$1,093,978
Section 504 housing repair grants (additional)—**$1,176,953
(Formerly North Carolina Elderly Modular Housing Demo Program)
Natural disaster funds (Section 502 loans)—**$1,443,493
Natural disaster funds (Section 504 loans) —**$13,777,141
Natural disaster funds (Section 504 grants) —**$4,563,493

*Includes $596,100 for EZ/EC and REAP communities until June 30, 2003.
**Carryover funds are included in the balance.
***Includes $993,500 for EZ/EC and REAP communities until June 30, 2003.

C. *SFH Funding Not Allocated to States.* The following funding is not allocated to States by formula. Funds are made available to each state on a case-by-case basis.

1. *Credit sale authority.* Credit sale funds in the amount of $10,000,000 are available only for nonprogram sales of Real Estate Owned (REO) property.

2. *Section 509 Compensation for Construction Defects.* $478,837 is available for compensation for construction defects.

3. *Section 523 Mutual and Self-Help Technical Assistance Grants.* $51,319,662 is available for Section 523 Mutual and Self-Help Technical Assistance Grants. Of these funds, $993,500 is earmarked for EZ, EC or REAP Zones until June 30, 2003. A technical review and analysis must be completed by the Technical and Management Assistance (T&MA) contractor on all predevelopment, new, and existing (refunding) grant applications.

4. *Section 523 Mutual and Self-Help Site Loans and Section 524 RH Site Loans.* $4,978,752 and $5,013,027 are available for Section 523 Mutual Self-Help and Section 524 RH Site loans, respectively.

5. *Section 306C WWD Grants to Individuals in Colonias.* The objective of

the Section 306C WWD individual grant program is to facilitate the use of community water or waste disposal systems for the residents of the colonias along the U.S.-Mexico border.

The total amount available to Arizona, California, New Mexico, and Texas will be $1,255,875 for FY 2003. This amount includes the carryover unobligated balance of $255,875 and the transferred amount of $1 million from the Rural Utilities Service (RUS) to RHS for processing individual grant applications.

6. *Section 525 Technical and Supervisory Assistance (TSA) and Section 509 Housing Application Packaging Grants (HAPG).* $1,093,978 is available for the TSA and HAPG programs. Funds are available on a limited basis for TSA grants. In accordance with the provisions of 7 CFR 1944.525, funding will be targeted nationally and then on an individual basis to States/areas with the highest degree of substandard housing and persons in poverty eligible to receive Agency housing assistance. The five States with the highest degrees of substandard housing and poverty are: Texas, California, Puerto Rico, North Carolina and Georgia. Funds not to exceed $150,000 or one project per state will be targeted nationally to these States. From any remaining funds, priority will be given to requests for projects that serve any of the 100 counties with the highest degrees of poverty and substandard housing. States should submit proposals from potential applicants to the National Office for review and concurrence prior to authorizing an application. Applications on-hand as of April 15, 2003, will be funded in the preceding order regardless of date of application.

Requests should be submitted to the National Office for HAPG based on projected usage of these funds for the quarter or as needed. HAPG requests should be submitted using the NORF system. Reserve funds will be held at the National Office and requests from eligible States will be considered on a first-come, first-served basis.

7. *Section 504 housing repair grants (additional)(formerly North Carolina Elderly Modular Housing Demonstration Program).* Budget authority was earmarked in FY 2001 for the North Carolina Elderly Modular Housing Demonstration Program. These funds were used to provide Section 502 loans and grants for modular housing in North Carolina for very-low and low-income elderly families who lost their housing as a result of a major disaster declared by the President. Section 766, Title III of the 2003 Appropriations Act provides that "after September 30, 2002, any funds remaining for the demonstration program may be used, within the State in which the demonstration program is carried out, for fiscal year 2003 and subsequent fiscal years to make grants, and to cover the costs * * * of loans authorized, under Section 504 of the Housing Act of 1949* * *" $1,176,953 of unobligated funds have been transferred to the Section 504 grant program in FY 2003 for use by the State of North Carolina only.

8. *Natural Disaster Funds.* Funds are available until exhausted to those States with active Presidential Declarations.

9. *Deferred Mortgage Payment Demonstration.* There is no FY 2003 funding provided for deferred mortgage authority or loans for deferred mortgage assumptions.

II. State Allocations

A. *Section 502 Nonsubsidized Guaranteed RH (GRH) Loans.*

1. *Purchase—Amount Available for Allocation.*

Total Available—Purchase $2,621,781,311
Less National Office General Reserve—$722,420,311
Less Special Outreach Area Reserve—$309,609,000
Basic Formula—Administrative Allocation—$1,589,752,000

a. *National office General Reserve.* The Administrator may restrict access to this reserve for States not meeting their goals in special outreach areas.

b. *Special Outreach Areas.* FY 2003 GRH funding is allocated to States in two funding streams. Seventy percent of GRH funds may be used in any eligible area. Thirty percent of GRH funds are to be used in special outreach areas. Special outreach areas for the GRH program are defined as those areas within a State that are *not* located within a metropolitan statistical area (MSA).

c. *National Office Special Area Outreach Reserve.* A special outreach area reserve fund has been established at the National office. Funds from this reserve may only be used in special outreach areas.

2. *Refinance—Amount available for allocation.*

Total Available—Refinance—$223,537,222
Less National office general reserve—$144,037,222
Basic formula—Administrative Allocation—$79,500,000

a. *Refinance Funds.* Refinance loan funds will be distributed to each State at $1.5 million per State. Additional funds will be distributed based on prior usage of refinance funds.

b. *National office general reserve.* The Administrator may restrict access to this reserve for States not meeting their goals in special outreach areas.

B. *Section 502 Direct RH loans.*

1. *Amount Available for Allocation.*

Total Available—$1,037,866,417
Less Required Set Aside for Underserved Counties and Colonias—$51,893,320
EZ, EC and REAP Earmark—$45,505,725
Less General Reserve—$127,000,000
Administrator's Reserve—$10,000,000
Hardships & Homelessness—$1,000,000
Rural Housing Demonstration Program—$1,000,000
Homeownership Partnership—$95,000,000
Program funds for the sale of REO properties—$20,000,000
Less Designated Reserve for Self-Help—$100,000,000
Basic Formula Administrative Allocation—$713,467,372

2. *Reserves.*

a. *State Office Reserve.* State Directors must maintain an adequate reserve to fund the following applications:

(i) Hardship and homeless applicants including the direct Section 502 loan and Section 504 loan and grant programs.

(ii) Mutual Self-Help loans.

(iii) Subsequent loans for essential improvements or repairs and transfers with assumptions.

(iv) States will leverage with funding from other sources.

(v) Areas targeted by the State according to its strategic plan.

b. *National Office Reserves.*

(i) *General Reserve.* The National office has a general reserve of $127 million. Of this amount, the Administrator's reserve is $10 million. One of the purposes of the Administrator's reserve will be for loans in Indian Country. Indian Country is defined as land inside the boundaries of Indian reservations, communities made up mainly of Native Americans, Indian trust and restricted land, and tribal allotted lands.

(ii) *Hardship and Homelessness Reserve.* $1 million has been set aside for hardships and homeless.

(iii) *Rural Housing Demonstration Program.* $1 million dollars has been set aside for innovative demonstration initiatives.

(iv) *Program Credit Sales.* $20 million dollars has been set aside for program sales of REO property.

c. *Homeownership Partnership.* $95 million dollars has been set aside for Homeownership Partnerships. These funds will be used to expand existing partnerships and create new partnerships, such as the following:

(i) Department of Treasury, Community Development Financial Institutions (CDFI)—Funds will be available to fund leveraged loans made in partnership with the Department of Treasury CDFI participants.

(ii) Partnership initiatives established to carry out the objectives of the rural home loan partnership (RHLP).

d. *Designated Reserve for Self-Help.* $100 million dollars has been set aside for matching funds to assist participating Self-Help applicants. The matching funds were established on the basis of the National office contributing 75 percent from the National office reserve and States contributing 25 percent of their allocated Section 502 RH funds.

e. *Underserved Counties and Colonias.* An amount of $51,893,320 has been set aside for the 100 underserved counties and colonias.

f. *Empowerment Zone (EZ) and Enterprise Community (EC) or Rural Economic Area Partnership (REAP) earmark.* An amount of $45,505,725 has been earmarked until June 30, 2003, for loans in EZ, EC or REAP Zones.

g. *State Office Pooling.* If pooling is conducted within a State, it must not take place within the first 30 calendar days of the first, second, or third quarter. (There are no restrictions on pooling in the fourth quarter.)

h. *Suballocation by the State Director.* The State Director may suballocate to each area office using the methodology and formulas required by 7 CFR part 1940, subpart L. If suballocated to the area level, the Rural Development Manager will make funds available on a first-come, first-served basis to all offices at the field or area level. No field office will have its access to funds restricted without the prior written approval of the Administrator.

B. *Section 504 Housing Loans and Grants.* Section 504 grant funds are included in the Rural Housing Assistance Grant program (RHAG) in the FY 2003 appropriation.

1. *Amount available for allocation.*

Section 504 Loans

Total Available—$34,772,498
Less 5% for 100 Underserved Counties and Colonias—$1,738,624
EZ, EC or REAP Zone Earmark—$1,400,000
Less General Reserve—$1,500,000
Basic Formula—Administrative Allocation—$30,133,874

Section 504 Grants

Total Available—$31,324,797
Less 5% for 100 Underserved Counties and Colonias—$1,566,239
Less EZ, EC or REAP Earmark—$596,100
Less General Reserve—$1,629,458
Basic Formula-Administrative Allocation—$27,533,000

2. *Reserves and Set-asides.*

a. *State Office Reserve.* State Directors must maintain an adequate reserve to handle all anticipated hardship applicants based upon historical data and projected demand.

b. *Underserved Counties and Colonias.* Approximately $1,738,624 and $1,536,434 have been set aside for the 100 underserved counties and colonias until June 30, 2003, for the Section 504 loan and grant programs, respectively.

c. *Empowerment Zone (EZ) and Enterprise Community (EC) or Rural Economic Area Partnership (REAP) Earmark (Loan Funds Only).* $1,400,000 and $596,100 have been earmarked through June 30, 2003, for EZ, EC or REAPs for the Section 504 loan and grant programs, respectively.

d. *General Reserve.* $1.5 million for Section 504 loan hardships and $1.629 million for Section 504 grant extreme hardships have been set-aside in the general reserve. For Section 504 grants, an extreme hardship case is one requiring a significant priority in funding, ahead of other requests, due to severe health or safety hazards, or physical needs of the applicant.

INFORMATION ON BASIC FORMULA CRITERIA, DATA SOURCE AND WEIGHT, ADMINISTRATIVE ALLOCATION, POOLING OF FUNDS, AND AVAILABILITY OF THE ALLOCATION

#	Description	Section 502 nonsubsidized guaranteed RH loans	Section 502 direct RH loans	Section 504 loans and grants
1	Basic formula criteria, data source, and weight.	*See* 7 CFR 1940.563(b)	*See* 7 CFR 1940.565(b)	*See* 7 CFR 1940.566(b) and 1940.567(b)
2	Administrative Allocation:			
	Western Pacific Area	$1,000,000	$1,000,000	$1,000,000 loan $500,000 grant.
3	Pooling of funds:			
	a. Mid-year pooling	If necessary	If necessary	If necessary.
	b. Year-end pooling	August 15, 2003	August 15, 2003	August 15, 2003.
	c. Underserved counties & colonias.	N/A	June 30, 2003	June 30, 2003.
	d. EZ, EC or REAP	N/A	June 30, 2003	June 30, 2003.
	e. Credit sales	N/A	June 30, 2003	N/A.
4	Availability of the allocation:			
	a. first quarter	40 percent	50 percent	50 percent
	b. second quarter	70 percent	70 percent	70 percent
	c. third quarter	90 percent	90 percent	90 percent
	d. fourth quarter	100 percent	100 percent	100 percent

1. Data derived from the 1990 U.S. Census was provided to each State by the National office on August 12, 1993.
2. Due to the absence of Census data.
3. All dates are tentative and are for the close of business (COB). Pooled funds will be placed in the National office reserve and made available administratively. The Administrator reserves the right to redistribute funds based upon program performance.
4. Funds will be distributed cumulatively through each quarter listed until the National office year-end pooling date.

Dated: May 12, 2003.

Arthur A. Garcia,

Administrator, Rural Housing Service.

BILLING CODE 3410-XV-P

USDA Rural Development State Directors and State Office Locations

Steve Pelham Sterling Centre 4121 Carmichael Road, Suite 601 Montgomery, AL 36106-3683 (334) 279-3400	F. Stone Workman Stephens Federal Building 355 E Hancock Avenue Athens, GA 30601-2768 (706) 546-2162	Michael B. Taylor 3727 Government Street Alexandria, LA 71302 (318) 473-7920
Bill Allen Suite 201 800 W Evergreen Palmer, AK 99645-6539 (907) 761-7705	Lorraine Shin Room 311, Federal Building 154 Waianuenue Avenue Hilo, HI 96720 (808) 933-8309	Michael W. Aube PO Box 405 967 Illinois Avenue, Suite 4 Bangor, ME 04402-0405 (207) 990-9106
Eddie Browning Phoenix Corporate Center 3003 N Central Avenue, Suite 900 Phoenix, AZ 85012-2906 (602) 280-8755	Michael A. Field Suite A1 9173 W Barnes Dr Boise, ID 83709 (208) 378-5600	David H. Tuttle 451 West Street Amherst, MA 01002 (413) 253-4300
John M. Allen Room 3416 700 W Capitol Little Rock, AR 72201-3225 (501) 301-3200	Douglas Wilson 2118 W. Park Court Suite A Champaign, IL 61821 (217) 403-6222	Harry Brumer (Acting) Suite 200 3001 Coolidge Road East Lansing, MI 48823 (517) 324-5100
D. Paul Venosdel Agency 4169 430 G Street Davis, CA 95616-4169 (530) 792-5800	Robert White 5975 Lakeside Boulevard Indianapolis, IN 46278 (317) 290-3100	Stephen G. Wenzel 410 AgriBank Bldg 375 Jackson Street St. Paul, MN 55101-1853 (651) 602-7835
Ginette "GiGi" Dennis Room E100 655 Parfet Street Lakewood, CO 80215 (720) 544-2903	Daniel W. Brown, PhD 873 Federal Bldg 210 Walnut Street Des Moines, IA 50309 (515) 284-4663	Nick Walters Federal Bldg, Suite 831 100 W Capitol Street Jackson, MS 39269 (601) 965-4316
Marlene B. Elliott PO Box 400 5201 S DuPont Highway Camden, DE 19934-9998 (302) 697-4300	Charles (Chuck) R. Banks 1303 SW First American Place Suite 100 Topeka, KS 66604-4040 (785) 271-2700	Gregory Branum Parkade Center, Suite 235 601 Business Loop 70 West Columbia, MO 65203 (573) 876-0976
Charles W. Clemons, Sr. PO Box 147010 4440 NW 25th Place Gainesville, FL 32614-7010 (352) 338-3435	Kenneth Slone Suite 200 771 Corporate Drive Lexington, KY 40503 (859) 224-7300	W. T. (Tim) Ryan Suite B 900 Technology Boulevard Bozeman, MT 59715 (406) 585-2580

USDA Rural Development State Directors and State Office Locations

M. James Barr Federal Bldg, Room 152 100 Centennial Mall N Lincoln, NE 68508 (402) 437-5551	Brent J. Kisling Suite 108 100 USDA Stillwater, OK 74074-2654 (405) 742-1000	John R. Cox Wallace F Bennett Federal Bldg 125 S State Street, Room 4311 Salt Lake City, UT 84147 (801) 524-4320
Larry J. Smith 1390 South Curry Street Carson City, NV 89703 (775) 887-1795	Lynn Schoessler Suite 1410 101 SW Main Portland, OR 97204-3222 (503) 414-3300	Jolinda H. LaClair City Center, 3rd Floor 89 Main Street Montpelier, VT 05602 (802) 828-6000
Andrew M. G. Law 5th Floor N, Suite 500 8000 Midlantic Drive Mt. Laurel, NJ 08054 (856) 787-7700	Byron E. Ross Suite 330 One Credit Union Place Harrisburg, PA 17110-2996 (717) 237-2299	Joseph W. Newbill Culpeper Bldg, Suite 238 1606 Santa Rosa Road Richmond, VA 23229 (804) 287-1598
Jeff Condrey Room 255 6200 Jefferson Street, NE Albuquerque, NM 87109 (505) 761-4950	Jose A. Otero IBM Building Suite 601 Hato Rey, PR 00918-5481 (787) 766-5095	Jackie J. Gleason Suite B 1835 Black Lake Blvd, SW Olympia, WA 98512-5715 (360) 704-7740
Patrick H. Brennan The Galleries of Syracuse 441 S Salina Street, Suite 357 Syracuse, NY 13202-2541 (315) 477-6416	Charles Sparks Strom Thurmond Federal Bldg 1835 Assembly Street, Room 1007 Columbia, SC 29201 (803) 765-5163	Jenny N. Phillips Federal Bldg, Room 320 75 High Street Morgantown, WV 26505-7500 (304) 284-4860
John Cooper Suite 260 4405 Bland Road Raleigh, NC 27609 (919) 873-2000	Lynn Jensen Federal Bldg, Room 210 200 Fourth Street, SW Huron, SD 57360 (605) 352-1100	Frank Frassetto 4949 Kirschling Court Stevens Point, WI 54481 (715) 345-7600
Clare Carlson Federal Bldg, Room 208 220 East Rooser, PO Box 1737 Bismarck, ND 58502-1737 (701) 530-2061	Mary (Ruth) Tackett Suite 300 3322 W End Avenue Nashville, TN 37203-1084 (615) 783-1300	John E. Cochran Federal Building, Room 1005 100 East B, PO Box 820 Casper, WY 82602 (307) 261-6300
Randall Hunt Federal Bldg, Room 507 200 N High Street Columbus, OH 43215-2477 (614) 255-2500	R. Bryan Daniel Federal Bldg, Suite 102 101 S Main Temple, TX 76501 (254) 742-9700	

USDA Rural Development State Directors and State Office Locations

ALABAMA	**GEORGIA**	**LOUISIANA**
Steve Pelham Sterling Centre 4121 Carmichael Road, Suite 601 Montgomery, AL 36106-3683 (334) 279-3400	F. Stone Workman Stephens Federal Building 355 E Hancock Avenue Athens, GA 30601-2768 (706) 546-2162	Michael B. Taylor 3727 Government Street Alexandria, LA 71302 (318) 473-7920
ALASKA	**HAWAII**	**MAINE**
Bill Allen Suite 201 800 W Evergreen Palmer, AK 99645-6539 (907) 761-7705	Lorraine Shin Room 311, Federal Building 154 Waianuenue Avenue Hilo, HI 96720 (808) 933-8309	Michael W. Aube PO Box 405 967 Illinois Avenue, Suite 4 Bangor, ME 04402-0405 (207) 990-9106
ARIZONA	**IDAHO**	**MASSACHUSETTS, CONNECTICUT, RHODE ISLAND**
Eddie Browning Phoenix Corporate Center 3003 N Central Avenue, Suite 900 Phoenix, AZ 85012-2906 (602) 280-8755	Michael A. Field Suite A1 9173 W Barnes Dr Boise, ID 83709 (208) 378-5600	David H. Tuttle 451 West Street Amherst, MA 01002 (413) 253-4300
ARKANSAS	**ILLINOIS**	**MICHIGAN**
John M. Allen Room 3416 700 W Capitol Little Rock, AR 72201-3225 (501) 301-3200	Douglas Wilson 2118 W. Park Court Suite A Champaign, IL 61821 (217) 403-6222	Harry Brumer (Acting) Suite 200 3001 Coolidge Road East Lansing, MI 48823 (517) 324-5100
CALIFORNIA	**INDIANA**	**MINNESOTA**
D. Paul Venosdel Agency 4169 430 G Street Davis, CA 95616-4169 (530) 792-5800	Robert White 5975 Lakeside Boulevard Indianapolis, IN 46278 (317) 290-3100	Stephen G. Wenzel 410 AgriBank Bldg 375 Jackson Street St. Paul, MN 55101-1853 (651) 602-7835
COLORADO	**IOWA**	**MISSISSIPPI**
Ginette "GiGi" Dennis Room E100 655 Parfet Street Lakewood, CO 80215 (720) 544-2903	Daniel W. Brown, PhD 873 Federal Bldg 210 Walnut Street Des Moines, IA 50309 (515) 284-4663	Nick Walters Federal Bldg, Suite 831 100 W Capitol Street Jackson, MS 39269 (601) 965-4316
DELAWARE & MARYLAND	**KANSAS**	**MISSOURI**
Marlene B. Elliott PO Box 400 5201 S DuPont Highway Camden, DE 19934-9998 (302) 697-4300	Charles (Chuck) R. Banks 1303 SW First American Place Suite 100 Topeka, KS 66604-4040 (785) 271-2700	Gregory Branum Parkade Center, Suite 235 601 Business Loop 70 West Columbia, MO 65203 (573) 876-0976
FLORIDA & VIRGIN ISLANDS	**KENTUCKY**	**MONTANA**
Charles W. Clemons, Sr. PO Box 147010 4440 NW 25th Place Gainesville, FL 32614-7010 (352) 338-3435	Kenneth Slone Suite 200 771 Corporate Drive Lexington, KY 40503 (859) 224-7300	W. T. (Tim) Ryan Suite B 900 Technology Boulevard Bozeman, MT 59715 (406) 585-2580

USDA Rural Development State Directors and State Office Locations

NEBRASKA	**OKLAHOMA**	**UTAH**
M. James Barr Federal Bldg, Room 152 100 Centennial Mall N Lincoln, NE 68508 (402) 437-5551	Brent J. Kisling Suite 108 100 USDA Stillwater, OK 74074-2654 (405) 742-1000	John R. Cox Wallace F Bennett Federal Bldg 125 S State Street, Room 4311 Salt Lake City, UT 84147 (801) 524-4320
NEVADA	**OREGON**	**VERMONT, NEW HAMPSHIRE**
Larry J. Smith 1390 South Curry Street Carson City, NV 89703 (775) 887-1795	Lynn Schoessler Suite 1410 101 SW Main Portland, OR 97204-3222 (503) 414-3300	Jolinda H. LaClair City Center, 3rd Floor 89 Main Street Montpelier, VT 05602 (802) 828-6000
NEW JERSEY	**PENNSYLVANIA**	**VIRGINIA**
Andrew M. G. Law 5th Floor N, Suite 500 8000 Midlantic Drive Mt. Laurel, NJ 08054 (856) 787-7700	Byron E. Ross Suite 330 One Credit Union Place Harrisburg, PA 17110-2996 (717) 237-2299	Joseph W. Newbill Culpeper Bldg, Suite 238 1606 Santa Rosa Road Richmond, VA 23229 (804) 287-1598
NEW MEXICO	**PUERTO RICO**	**WASHINGTON**
Jeff Condrey Room 255 6200 Jefferson Street, NE Albuquerque, NM 87109 (505) 761-4950	Jose A. Otero IBM Building Suite 601 Hato Rey, PR 00918-5481 (787) 766-5095	Jackie J. Gleason Suite B 1835 Black Lake Blvd, SW Olympia, WA 98512-5715 (360) 704-7740
NEW YORK	**SOUTH CAROLINA**	**WEST VIRGINIA**
Patrick H. Brennan The Galleries of Syracuse 441 S Salina Street, Suite 357 Syracuse, NY 13202-2541 (315) 477-6416	Charles Sparks Strom Thurmond Federal Bldg 1835 Assembly Street, Room 1007 Columbia, SC 29201 (803) 765-5163	Jenny N. Phillips Federal Bldg, Room 320 75 High Street Morgantown, WV 26505-7500 (304) 284-4860
NORTH CAROLINA	**SOUTH DAKOTA**	**WISCONSIN**
John Cooper Suite 260 4405 Bland Road Raleigh, NC 27609 (919) 873-2000	Lynn Jensen Federal Bldg, Room 210 200 Fourth Street, SW Huron, SD 57360 (605) 352-1100	Frank Frassetto 4949 Kirschling Court Stevens Point, WI 54481 (715) 345-7600
NORTH DAKOTA	**TENNESSEE**	**WYOMING**
Clare Carlson Federal Bldg, Room 208 220 East Rooser, PO Box 1737 Bismarck, ND 58502-1737 (701) 530-2061	Mary (Ruth) Tackett Suite 300 3322 W End Avenue Nashville, TN 37203-1084 (615) 783-1300	John E. Cochran Federal Building, Room 1005 100 East B, PO Box 820 Casper, WY 82602 (307) 261-6300
OHIO	**TEXAS**	
Randall Hunt Federal Bldg, Room 507 200 N High Street Columbus, OH 43215-2477 (614) 255-2500	R. Bryan Daniel Federal Bldg, Suite 102 101 S Main Temple, TX 76501 (254) 742-9700	

RURAL HOUSING SERVICE FY 2003
SECTION 533
HOUSING PRESERVATION GRANT
ALLOCATION IN THOUSANDS

STATE	FORMULA FACTOR	TOTAL ALLOCATION
ALABAMA	0.02957	$246,658
ALASKA	0.00587	$48,965
ARIZONA	0.01780	$148,479
ARKANSAS	0.02310	$192,689
CALIFORNIA	0.04653	$388,130
COLORADO	0.00840	$70,069
DELAWARE	0.00190	$15,849
MARYLAND	0.00880	$73,405
FLORIDA	0.02890	$241,069
VIRGIN ISLANDS	0.00273	$22,772
GEORGIA	0.03867	$322,566
HAWAII	0.00790	$65,898
WPA	0.00647	$53,970
IDAHO	0.00743	$61,977
ILLINOIS	0.02250	$187,684
INDIANA	0.02157	$179,926
IOWA	0.01340	$111,776
KANSAS	0.01130	$94,259
KENTUCKY	0.03483	$290,534
LOUISIANA	0.03170	$264,426
MAINE	0.00913	$76,158
MASSACHUSETTS	0.00793	$66,148
CONNECTICUT	0.00453	$37,787
RHODE ISLAND	0.00100	$8,342
MICHIGAN	0.02977	$248,326
MINNESOTA	0.01673	$139,553
MISSISSIPPI	0.03180	$265,260
MISSOURI	0.02460	$205,201
MONTANA	0.00620	$51,717
NEBRASKA	0.00713	$59,475
NEVADA	0.00263	$21,938
NEW JERSEY	0.00657	$54,804
NEW MEXICO	0.01437	$119,867
NEW YORK	0.02753	$229,641
NORTH CAROLINA	0.04497	$375,117
NORTH DAKOTA	0.00413	$34,450
OHIO	0.03450	$287,782
OKLAHOMA	0.01917	$159,907
OREGON	0.01423	$118,700
PENNSYLVANIA	0.03687	$307,551
PUERTO RICO	0.04923	$410,652
SOUTH CAROLINA	0.02690	$224,386
SOUTH DAKOTA	0.00597	$49,799
TENNESSEE	0.02973	$247,993
TEXAS	0.07645	$637,708
UTAH	0.00430	$35,868
VERMONT	0.00403	$33,616
NEW HAMPSHIRE	0.00503	$41,958
VIRGINIA	0.02660	$221,884
WASHINGTON	0.01743	$145,392
WEST VIRGINIA	0.01937	$161,575
WISCONSIN	0.01873	$156,236
WYOMING	0.00307	$25,608
DISTR.	1.00000	$8,341,500
N/O RES.		$997,400
EZ/EC/REAP		$596,100
TTL AVAIL.		$9,935,000

RURAL HOUSING SERVICE
FISCAL YEAR 2003
ALLOCATION IN THOUSANDS
SECTION 502 DIRECT RURAL HOUSING LOANS

	STATES	STATE BASIC FORMULA FACTOR	TOTAL FY 2003 ALLOCATION
1	ALABAMA	0.0267275	$19,042
2	ARIZONA	0.0145422	$10,361
3	ARKANSAS	0.0208104	$14,827
4	CALIFORNIA	0.0454819	$32,404
5	COLORADO	0.0091766	$6,538
6	CONNECTICUT	0.0066693	$4,752
7	DELAWARE	0.0024571	$1,751
9	FLORIDA	0.0312406	$22,258
10	GEORGIA	0.0374586	$26,688
12	IDAHO	0.0076722	$5,466
13	ILLINOIS	0.0266774	$19,007
15	INDIANA	0.0270785	$19,293
16	IOWA	0.0163474	$11,647
18	KANSAS	0.0127369	$9,075
20	KENTUCKY	0.0288838	$20,579
22	LOUISIANA	0.0246715	$17,578
23	MAINE	0.0108314	$7,717
24	MARYLAND	0.0115334	$8,217
25	MASSACHUSETTS	0.0109818	$7,824
26	MICHIGAN	0.0353525	$25,188
27	MINNESOTA	0.0199077	$14,184
28	MISSISSIPPI	0.0250226	$17,828
29	MISSOURI	0.0252733	$18,006
31	MONTANA	0.0063685	$4,537
32	NEBRASKA	0.0086752	$6,181
33	NEVADA	0.0028583	$2,036
34	NEW HAMPSHIRE	0.0072711	$5,180
35	NEW JERSEY	0.0097784	$6,967
36	NEW MEXICO	0.0110320	$7,860
37	NEW YORK	0.0359041	$25,581
38	NORTH CAROLINA	0.0484405	$34,512
40	NORTH DAKOTA	0.0045131	$3,215
41	OHIO	0.0390131	$27,796
42	OKLAHOMA	0.0174005	$12,397
43	OREGON	0.0154949	$11,040
44	PENNSYLVANIA	0.0467857	$33,333
45	RHODE ISLAND	0.0015545	$1,108
46	SOUTH CAROLINA	0.0258249	$18,399
47	SOUTH DAKOTA	0.0062682	$4,466
48	TENNESSEE	0.0291846	$20,793
49	TEXAS	0.0660415	$47,052
52	UTAH	0.0040618	$2,894
53	VERMONT	0.0052653	$3,751
54	VIRGINIA	0.0289841	$20,650
56	WASHINGTON	0.0187042	$13,326
57	WEST VIRGINIA	0.0175008	$12,469
58	WISCONSIN	0.0237188	$16,899
59	WYOMING	0.0036105	$2,572
60	ALASKA	0.0055160	$3,930
61	HAWAII	0.0067195	$4,787
62	W PAC ISLANDS	N/A	$1,000
63	PUERTO RICO	0.0239695	$17,077
64	VIRGIN ISLANDS	0.0020058	$1,429
	STATE TOTALS	1.0000000	$713,467
	100 UNDERSERVED COUNTIES/COLONIAS		$51,893
	EMPOWERMENT ZONES AND ENTERPRISE COMMUNITY EARMARK		$45,506
	GENERAL RESERVE		$127,000
	SELF HELP		$100,000
	TOTAL		$1,037,866

RURAL HOUSING SERVICE
FISCAL YEAR 2003
ALLOCATION IN THOUSANDS
SECTION 502 DIRECT RURAL HOUSING LOANS

	STATES	TOTAL FY 2003 ALLOCATION	VERY LOW-INCOME ALLOCATION 44 PERCENT	LOW-INCOME ALLOCATION 56 PERCENT
1	ALABAMA	$19,042	$8,379	$10,664
2	ARIZONA	$10,361	$4,559	$5,802
3	ARKANSAS	$14,827	$6,524	$8,303
4	CALIFORNIA	$32,404	$14,258	$18,146
5	COLORADO	$6,538	$2,877	$3,661
6	CONNECTICUT	$4,752	$2,091	$2,661
7	DELAWARE	$1,751	$770	$980
9	FLORIDA	$22,258	$9,793	$12,464
10	GEORGIA	$26,688	$11,743	$14,945
12	IDAHO	$5,466	$2,405	$3,061
13	ILLINOIS	$19,007	$8,363	$10,644
15	INDIANA	$19,293	$8,489	$10,804
16	IOWA	$11,647	$5,125	$6,522
18	KANSAS	$9,075	$3,993	$5,082
20	KENTUCKY	$20,579	$9,055	$11,524
22	LOUISIANA	$17,578	$7,734	$9,843
23	MAINE	$7,717	$3,395	$4,322
24	MARYLAND	$8,217	$3,616	$4,602
25	MASSACHUSETTS	$7,824	$3,443	$4,382
26	MICHIGAN	$25,188	$11,083	$14,105
27	MINNESOTA	$14,184	$6,241	$7,943
28	MISSISSIPPI	$17,828	$7,844	$9,984
29	MISSOURI	$18,006	$7,923	$10,084
31	MONTANA	$4,537	$1,996	$2,541
32	NEBRASKA	$6,181	$2,720	$3,461
33	NEVADA	$2,036	$896	$1,140
34	NEW HAMPSHIRE	$5,180	$2,279	$2,901
35	NEW JERSEY	$6,967	$3,065	$3,901
36	NEW MEXICO	$7,860	$3,458	$4,402
37	NEW YORK	$25,581	$11,255	$14,325
38	NORTH CAROLINA	$34,512	$15,185	$19,327
40	NORTH DAKOTA	$3,215	$1,415	$1,801
41	OHIO	$27,796	$12,230	$15,566
42	OKLAHOMA	$12,397	$5,455	$6,942
43	OREGON	$11,040	$4,857	$6,182
44	PENNSYLVANIA	$33,333	$14,667	$18,667
45	RHODE ISLAND	$1,108	$487	$620
46	SOUTH CAROLINA	$18,399	$8,096	$10,304
47	SOUTH DAKOTA	$4,466	$1,965	$2,501
48	TENNESSEE	$20,793	$9,149	$11,644
49	TEXAS	$47,052	$20,703	$26,349
52	UTAH	$2,894	$1,273	$1,621
53	VERMONT	$3,751	$1,651	$2,101
54	VIRGINIA	$20,650	$9,086	$11,564
56	WASHINGTON	$13,326	$5,864	$7,463
57	WEST VIRGINIA	$12,469	$5,486	$6,982
58	WISCONSIN	$16,899	$7,435	$9,463
59	WYOMING	$2,572	$1,132	$1,441
60	ALASKA	$3,930	$1,729	$2,201
61	HAWAII	$4,787	$2,106	$2,681
62	W PAC ISLANDS	$1,000	$440	$560
63	PUERTO RICO	$17,077	$7,514	$9,563
64	VIRGIN ISLANDS	$1,429	$629	$800
	STATE TOTALS	$713,467	$313,925	$399,542
	100 Underserved Counties and Colonias	$51,893	$22,833	$29,060
	EZ/EC/REAP Reserve	$45,506	$20,023	$25,483
	General Reserve	$127,000	$43,880	$83,120
	Self-Help	$100,000	$56,000	$44,000
	TOTAL	$1,037,866	$456,661	$581,205

RURAL HOUSING SERVICE
FISCAL YEAR 2003
ALLOCATION IN THOUSANDS
SECTION 502 GUARANTEED PURCHASE LOANS (NONSUBSIDIZED)

STATES	STATE BASIC FORMULA FACTOR	TOTAL FY 2003 ALLOCATION
ALABAMA	0.0253847	$40,330
ALASKA	0.0061561	$9,781
ARIZONA	0.0155290	$24,672
ARKANSAS	0.0213661	$33,946
CALIFORNIA	0.0524861	$83,387
COLORADO	0.0100701	$15,999
DELAWARE	0.0024043	$3,820
MARYLAND	0.0104750	$16,642
FLORIDA	0.0308357	$48,990
VIRGIN ISLANDS	0.0027236	$4,327
GEORGIA	0.0385293	$61,214
HAWAII	0.0083323	$13,238
W PAC ISLANDS	N/A	$1,000
IDAHO	0.0077774	$12,356
ILLINOIS	0.0256395	$40,735
INDIANA	0.0236023	$37,497
IOWA	0.0151422	$24,057
KANSAS	0.0123032	$19,547
KENTUCKY	0.0286790	$45,564
LOUISIANA	0.0256223	$40,708
MAINE	0.0113916	$18,099
MASSACHUSETTS	0.0117468	$18,663
CONNECTICUT	0.0065708	$10,439
RHODE ISLAND	0.0017216	$2,735
MICHIGAN	0.0337181	$53,570
MINNESOTA	0.0184738	$29,350
MISSISSIPPI	0.0259670	$41,255
MISSOURI	0.0253687	$40,305
MONTANA	0.0067138	$10,667
NEBRASKA	0.0083216	$13,221
NEVADA	0.0029735	$4,724
NEW JERSEY	0.0091825	$14,589
NEW MEXICO	0.0117200	$18,620
NEW YORK	0.0369739	$58,742
NORTH CAROLINA	0.0471742	$74,947
NORTH DAKOTA	0.0040847	$6,490
OHIO	0.0378081	$60,068
OKLAHOMA	0.0175713	$27,916
OREGON	0.0166212	$26,407
PENNSYLVANIA	0.0438367	$69,645
PUERTO RICO	0.0250931	$39,867
SOUTH CAROLINA	0.0249510	$39,641
SOUTH DAKOTA	0.0065435	$10,396
TENNESSEE	0.0276859	$43,986
TEXAS	0.0665018	$105,654
UTAH	0.0039861	$6,333
VERMONT	0.0057475	$9,131
NEW HAMPSHIRE	0.0075234	$11,953
VIRGINIA	0.0278404	$44,231
WASHINGTON	0.0200905	$31,919
WEST VIRGINIA	0.0172518	$27,409
WISCONSIN	0.0222867	$35,408
WYOMING	0.0035006	$5,562
STATE TOTALS	1.0000000	$1,589,752
GENERAL RESERVE		$722,420
SPECIAL OUTREACH AREAS RESERVE		$309,609
TOTAL		$2,621,781

RURAL HOUSING SERVICE
FISCAL YEAR 2003
ALLOCATION IN THOUSANDS
SECTION 502 GUARANTEED REFINANCE LOANS (NONSUBSIDIZED)

STATES	STATE BASIC FORMULA FACTOR	TOTAL FY 2003 ALLOCATION
ALABAMA	N/A	$1,500
ALASKA	N/A	$1,500
ARIZONA	N/A	$1,500
ARKANSAS	N/A	$1,500
CALIFORNIA	N/A	$1,500
COLORADO	N/A	$1,500
DELAWARE	N/A	$1,500
MARYLAND	N/A	$1,500
FLORIDA	N/A	$1,500
VIRGIN ISLANDS	N/A	$1,500
GEORGIA	N/A	$1,500
HAWAII	N/A	$1,500
W PAC ISLANDS	N/A	$1,500
IDAHO	N/A	$1,500
ILLINOIS	N/A	$1,500
INDIANA	N/A	$1,500
IOWA	N/A	$1,500
KANSAS	N/A	$1,500
KENTUCKY	N/A	$1,500
LOUISIANA	N/A	$1,500
MAINE	N/A	$1,500
MASSACHUSETTS	N/A	$1,500
CONNECTICUT	N/A	$1,500
RHODE ISLAND	N/A	$1,500
MICHIGAN	N/A	$1,500
MINNESOTA	N/A	$1,500
MISSISSIPPI	N/A	$1,500
MISSOURI	N/A	$1,500
MONTANA	N/A	$1,500
NEBRASKA	N/A	$1,500
NEVADA	N/A	$1,500
NEW JERSEY	N/A	$1,500
NEW MEXICO	N/A	$1,500
NEW YORK	N/A	$1,500
NORTH CAROLINA	N/A	$1,500
NORTH DAKOTA	N/A	$1,500
OHIO	N/A	$1,500
OKLAHOMA	N/A	$1,500
OREGON	N/A	$1,500
PENNSYLVANIA	N/A	$1,500
PUERTO RICO	N/A	$1,500
SOUTH CAROLINA	N/A	$1,500
SOUTH DAKOTA	N/A	$1,500
TENNESSEE	N/A	$1,500
TEXAS	N/A	$1,500
UTAH	N/A	$1,500
VERMONT	N/A	$1,500
NEW HAMPSHIRE	N/A	$1,500
VIRGINIA	N/A	$1,500
WASHINGTON	N/A	$1,500
WEST VIRGINIA	N/A	$1,500
WISCONSIN	N/A	$1,500
WYOMING	N/A	$1,500
STATE TOTALS	0.0000000	$79,500
GENERAL RESERVE		$144,037
TOTAL		$223,537

RURAL HOUSING SERVICE
FISCAL YEAR 2003
ALLOCATION IN THOUSANDS
SECTION 504 RURAL HOUSING LOANS

	STATES	STATE BASIC FORMULA FACTOR	TOTAL FY 2003 ALLOCATION
1	ALABAMA	0.0290630	$845
2	ARIZONA	0.0200434	$583
3	ARKANSAS	0.0225489	$656
4	CALIFORNIA	0.0531151	$1,544
5	COLORADO	0.0085185	$248
6	CONNECTICUT	0.0040087	$117
7	DELAWARE	0.0020043	$100
9	FLORIDA	0.0295641	$860
10	GEORGIA	0.0395858	$1,151
12	IDAHO	0.0075163	$219
13	ILLINOIS	0.0225489	$656
15	INDIANA	0.0220478	$641
16	IOWA	0.0130282	$379
18	KANSAS	0.0115250	$335
20	KENTUCKY	0.0320695	$933
22	LOUISIANA	0.0295641	$860
23	MAINE	0.0100217	$291
24	MARYLAND	0.0095206	$277
25	MASSACHUSETTS	0.0080174	$233
26	MICHIGAN	0.0290630	$845
27	MINNESOTA	0.0175380	$510
28	MISSISSIPPI	0.0300651	$874
29	MISSOURI	0.0240521	$699
31	MONTANA	0.0060130	$175
32	NEBRASKA	0.0070152	$204
33	NEVADA	0.0030065	$100
34	NEW HAMPSHIRE	0.0055119	$160
35	NEW JERSEY	0.0070152	$204
36	NEW MEXICO	0.0150326	$437
37	NEW YORK	0.0285619	$831
38	NORTH CAROLINA	0.0476031	$1,384
40	NORTH DAKOTA	0.0040087	$117
41	OHIO	0.0330717	$962
42	OKLAHOMA	0.0175380	$510
43	OREGON	0.0150326	$437
44	PENNSYLVANIA	0.0370803	$1,078
45	RHODE ISLAND	0.0010022	$100
46	SOUTH CAROLINA	0.0280608	$816
47	SOUTH DAKOTA	0.0060130	$175
48	TENNESSEE	0.0295641	$860
49	TEXAS	0.0781694	$2,271
52	UTAH	0.0040087	$117
53	VERMONT	0.0045098	$131
54	VIRGINIA	0.0295641	$860
56	WASHINGTON	0.0185402	$539
57	WEST VIRGINIA	0.0180391	$525
58	WISCONSIN	0.0195423	$568
59	WYOMING	0.0035076	$102
60	ALASKA	0.0080174	$233
61	HAWAII	0.0100217	$291
62	W PAC ISLANDS	N/A	$1,000
63	PUERTO RICO	0.0340738	$991
64	VIRGIN ISLANDS	0.0030065	$100
	STATE TOTALS	0.9971607	$30,134
	GENERAL RESERVE		$1,500
	EMPOWERMENT ZONES AND ENTERPRISE COMMUNITIES E		$1,400
	100 UNDERSERVED COUNTIES/COLONIAS		$1,738
	TOTAL		$34,772

RURAL HOUSING SERVICE
FISCAL YEAR 2003
ALLOCATION IN THOUSANDS
SECTION 504 RURAL HOUSING GRANTS

STATES	STATE BASIC FORMULA FACTOR	TOTAL FY 2003 ALLOCATION
01 ALABAMA	0.0280565	$741
02 ARIZONA	0.0170343	$450
03 ARKANSAS	0.0223784	$591
04 CALIFORNIA	0.0480968	$1,269
05 COLORADO	0.0083501	$220
06 CONNECTICUT	0.0053441	$141
07 DELAWARE	N/A	$100
09 FLORIDA	0.0340685	$899
10 GEORGIA	0.0367406	$970
12 IDAHO	0.0073481	$194
13 ILLINOIS	0.0263864	$696
15 INDIANA	0.0243824	$644
16 IOWA	0.0163662	$432
18 KANSAS	0.0133602	$353
20 KENTUCKY	0.0297265	$785
22 LOUISIANA	0.0260524	$688
23 MAINE	0.0103542	$273
24 MARYLAND	0.0100202	$264
25 MASSACHUSETTS	0.0096861	$256
26 MICHIGAN	0.0317305	$837
27 MINNESOTA	0.0197063	$520
28 MISSISSIPPI	0.0270545	$714
29 MISSOURI	0.0257184	$679
31 MONTANA	0.0060121	$159
32 NEBRASKA	0.0086841	$229
33 NEVADA	N/A	$100
34 NEW HAMPSHIRE	0.0060121	$159
35 NEW JERSEY	0.0083501	$220
36 NEW MEXICO	0.0123582	$326
37 NEW YORK	0.0323985	$855
38 NORTH CAROLINA	0.0470948	$1,243
40 NORTH DAKOTA	0.0046761	$123
41 OHIO	0.0360726	$952
42 OKLAHOMA	0.0183703	$485
43 OREGON	0.0156983	$414
44 PENNSYLVANIA	0.0437547	$1,155
45 RHODE ISLAND	N/A	$100
46 SOUTH CAROLINA	0.0260524	$688
47 SOUTH DAKOTA	0.0063461	$167
48 TENNESSEE	0.0293925	$776
49 TEXAS	0.0714772	$1,887
52 UTAH	0.0040087	$106
53 VERMONT	0.0046761	$123
54 VIRGINIA	0.0283905	$749
56 WASHINGTON	0.0183703	$485
57 WEST VIRGINIA	0.0180363	$476
58 WISCONSIN	0.0223783	$591
59 WYOMING	N/A	$100
60 ALASKA	0.0056781	$150
61 HAWAII	0.0076821	$203
62 W PAC ISLANDS	N/A	$1,000
63 PUERTO RICO	0.0263865	$696
64 VIRGIN ISLANDS	N/A	$100
STATE TOTALS	0.9863187	$27,533
GENERAL RESERVE		$1,629
EMPOWERMENT ZONES AND ENTERPRISE COMMUNITIES EARM		$596
100 UNDERSERVED COUNTIES/COLONIAS		$1,566
TOTAL		$31,324

[FR Doc. 03–12243 Filed 5–15–03; 8:45 am]
BILLING CODE 3410–XV–C

DEPARTMENT OF AGRICULTURE

Rural Housing Service

Notice of Funding Availability (NOFA) for the Section 515 Rural Rental Housing Program for Fiscal Year 2003

AGENCY: Rural Housing Service (RHS), USDA.

ACTION: Notice.

SUMMARY: This NOFA announces the availability of new construction loan funds for the section 515 Rural Rental Housing (RRH) program for Fiscal Year (FY) 2003. By prior notice in the **Federal Register**, the Agency announced a deadline of February 25, 2003, 5 p.m. local time for each Rural Development State Office for submitting applications for section 515 new construction loan funds and section 521 Rental Assistance (RA). The "Notice of Timeframe to Submit Applications for the Section 515 Rural Rental Housing Program for Fiscal Year 2003" was published in the **Federal Register** on December 27, 2002 (67 FR 79033). This was done prior to passage of a final appropriations act to allow sufficient time for applicants to complete an application and for the Agency to select and process selected applications within the current fiscal year. Detailed information regarding the application and selection process, as well as a listing of the Rural Development State Offices, may be found in the December 27, 2002, notice.

FOR FURTHER INFORMATION CONTACT: For general information, applicants may contact Linda Armour, Senior Loan Officer, Multi-Family Housing Processing Division, Rural Housing Service, United States Department of Agriculture, Stop 0781, 1400 Independence Avenue, SW., Washington, DC 20250, telephone (202) 720–1753 (voice) (this is not a toll free number) or (800) 877–8339 (TDD-Federal Information Relay Service).

SUPPLEMENTARY INFORMATION:

Programs Affected

The Rural Rental Housing program is listed in the Catalog of Federal Domestic Assistance under Number 10.415, Rural Rental Housing Loans. Rental Assistance is listed in the Catalog under Number 10.427, Rural Rental Assistance Payments.

Discussion of Notice

I. Authority and Distribution Methodology

A. Authority

Section 515 of the Housing Act of 1949 (42 U.S.C. 1485) provides RHS with the authority to make loans to any individual, corporation, association, trust, Indian tribe, public or private nonprofit organization, consumer cooperative, or partnership to provide rental or cooperative housing and related facilities in rural areas for very-low, low, or moderate income persons or families, including elderly persons and persons with disabilities. Rental Assistance (RA) is a tenant subsidy for very-low and low-income families residing in rural rental housing facilities with RHS financing and may be requested with applications for such facilities.

B. Distribution Methodology

The total amount available for FY 2003 for section 515 is $115,052,541, of which $29,252,541 is available for new construction as follows:

Section 515 new construction funds—$7,145,186
Set-aside for nonprofits—10,354,728
Set-aside for Underserved Counties and Colonias—5,752,627
Set-aside for EZ, EC, and REAP Zones—5,000,000
State Rental Assistance (RA) Designated reserve—1,000,000

C. Set-asides and State RA Reserve

1. *Nonprofit set-aside.* An amount of $10,354,728 has been set aside for nonprofit applicants. Details on this set-aside are provided in the notice published in the **Federal Register** on December 27, 2002.

2. *Underserved counties and colonias set-aside.* An amount of $5,752,627 has been set aside for loan requests to develop units in the 100 most needy underserved counties or colonias as defined in section 509(f) of the Housing Act of 1949.

3. *EZ, EC, and REAP set-aside.* An amount of $5,000,000 has been set aside to develop units in EZ, EC, or REAP communities. If requests for this set-aside exceed available funds, selection will be made by point score.

4. *State RA Reserve.* $1,000,000 is available nationwide in a reserve for States with viable State Rental Assistance (RA) programs. In order to participate, States are to submit specific written information about the State RA program, *i.e.*, a memorandum of understanding, documentation from the provider, etc., to the National Office.

Dated: May 12, 2003.
Arthur A. Garcia,
Administrator, Rural Housing Service.
[FR Doc. 03–12244 Filed 5–15–03; 8:45 am]
BILLING CODE 3410–XY–P

DEPARTMENT OF AGRICULTURE

Rural Housing Service

Notice of Funds Availability (NOFA) for Section 514 Farm Labor Housing Loans and Section 516 Farm Labor Housing Grants for Off-Farm Housing for Fiscal Year 2003

AGENCY: Rural Housing Service (RHS), USDA.

ACTION: Notice.

SUMMARY: This NOFA announces the availability of funds for section 514 Farm Labor Housing loan funds and section 516 Farm Labor Housing grant funds for new construction and acquisition and rehabilitation of off-farm units for farmworker households. Applications may also include requests for section 521 rental assistance (RA) and operating assistance for migrant units. By prior notice in the **Federal Register**, the Agency announced a deadline of March 27, 2003, 5 p.m., local time for each Rural Development State Office, for submitting applications for sections 514/516 Farm Labor Housing Loans and Grants and Section 521 Rental Assistance (RA). The "Notice of Timeframe for Section 514 Farm Labor Housing Loans and Section 516 Farm Labor Housing Grants for Off-Farm Housing for Fiscal Year 2003" was published in the **Federal Register** on December 27, 2002 (67 FR 79030). This was done prior to passage of a final appropriations act to allow sufficient time for applicants to complete an application, and for the Agency to select and process selected applications within the current fiscal year. This Notice changes the timeframe to submit applications for the Section 514 Farm Labor Housing Loans and Section 516 Farm Labor Housing Grants for Off-Farm Housing for Fiscal Year 2003 to be August 14, 2003. Detailed information regarding the application and selection process, as well as a listing of the Rural Development State Offices, may be found in the December 27, 2002, notice.

FOR FURTHER INFORMATION CONTACT: For general information, applicants may contact Mary Fox, Senior Loan Specialist or David Layfield, Senior Loan Specialist, of the Multi-Family Housing Processing Division, Rural Housing Service, United States Department of Agriculture, Stop 0781,

1400 Independence Avenue, SW., Washington, DC 20250, telephone (202) 720–1624 or (202) 690–0759 (voice) (this is not a toll free number) or (800) 877–8339 (TDD-Federal Information Relay Service).

SUPPLEMENTARY INFORMATION:

Programs Affected

The Farm Labor Housing Program is listed in the Catalog of Federal Domestic Assistance under Number 10.405, Farm Labor Housing Loans and Grants. Rental Assistance is listed in the Catalog under Number 10.427, Rural Rental Assistance Payments.

Definitions

Farm Labor. Farm labor includes services in connection with cultivating the soil, raising or harvesting any agriculture or aquaculture commodity; or in catching, netting, handling, planting, drying, packing, grading, storing, or preserving in its unmanufactured state any agriculture or aquaculture commodity; or delivering to storage, market, or a carrier for transportation to market or to process any agricultural or aquacultural commodity.

Migrant Agricultural Laborers. Agricultural laborers and family dependents who establish a temporary residence while performing agriculture work at one or more locations away from the place they call home or home base. (This does not include day-haul agricultural workers whose travels are limited to work areas within one day of their work locations.)

Off-Farm Labor Housing. Housing for farm laborers regardless of the farm where they work.

Discussion of Notice

I. Authority and Distribution Methodology

A. Authority

The Farm Labor Housing program is authorized by the Housing Act of 1949: Section 514 (42 U.S.C. 1484) for loans and section 516 (42 U.S.C. 1486) for grants. Tenant subsidies (rental assistance (RA)) are available through section 521 (42 U.S.C. 1490a). Sections 514 and 516 provide RHS the authority to make loans and grants for financing off-farm housing to broad-based nonprofit organizations, nonprofit organizations of farmworkers, federally recognized Indian tribes, agencies or political subdivisions of State or local government, public agencies (such as local housing authorities) and with section 514 loans to nonprofit limited partnerships in which the general partner is a nonprofit entity.

B. Distribution Methodology

Because RHS has the ability to adjust loan and grant levels, final loan and grant levels will fluctuate. The estimated funds available for fiscal year (FY) 2003 for off-farm housing are:
Section 514 loans—$30,480,202
Section 516 grants—13,198,209

c. Section 514 and Section 516 Funds

Section 514 loan funds and section 516 grant funds will be distributed to States based on a national competition, as follows:

1. States will accept, review, and score requests in accordance with 7 CFR part 1944, subpart D. The scoring factors are:

(a) The presence and extent of leveraged assistance, including donated land, for the units that will serve program-eligible tenants, calculated as a percentage of the RHS total development cost (TDC). RHS TDC excludes non-RHS eligible costs such as a developer's fee. Leveraged assistance includes, but is not limited to, funds for hard construction costs, section 8 or other non-RHS tenant subsidies, and state or federal funds. A minimum of ten percent leveraged assistance is required to earn points; however, if the total percentage of leveraged assistance is less than ten percent and the proposal includes donated land, two points will be awarded for the donated land. Points will be awarded in accordance with the following table. (0 to 20 points)

Percentage	Points
75 or more	20
60–74	18
50–59	16
40–49	12
30–39	10
20–29	8
10–19	5
0–9	0
Donated land in proposals with less than ten percent total leveraged assistance	2

(b) Seasonal, temporary, migrant housing. (5 points for up to and including 50 percent of the units; 10 points for 51 percent or more.)

(c) The selection criteria contained in 7 CFR part 1944, subpart D includes one optional criteria set by the National Office. The National office initiative will be used in the selection criteria as follows:

Up to 10 Points will be awarded based on the presence of and extent to which a tenant services plan exists that clearly outlines services that will be provided to the residents of the proposed project. These services may include but are not limited to: Transportation related services, on-site English as a Second Language (ESL) classes, move-in funds, emergency assistance funds, homeownership counseling, food pantries, after school tutoring, and computer learning centers. Two points will be awarded for each resident service included in the tenant services plan up to a maximum of 10 points. Plans must detail how the services are to be administered, who will administer them, and where they will be administered. All tenant service plans must include letters of intent that clearly state the service that will be provided at the project for the benefit of the residents from any party administering each service, including the applicant. (0 to 10 points)

2. States will conduct preliminary eligibility review, score applications, and forward to the National Office.

3. The National office will rank all requests nationwide and distribute funds to States in rank order, within funding and RA limits. In case of point-score ties in the National ranking, first preference will be given to a preapplication to develop units in a state that does not have existing RHS-financed off-farm LH units; second preference to a preapplication will be from a State that has not yet been selected in the current funding cycle. In the event there are multiple preapplications in either category, one preapplication from each State (the highest State-ranked) will compete by computer-based random lottery. If necessary, the process will be completed until all same-pointed preapplications are selected or funds are exhausted.

II. Funding Limits

A. Individual requests may not exceed $3 million (total loan and grant).

B. No State may receive more than 30 percent of the total available funds unless an exception is granted from the Administrator.

C. Rental Assistance and Operating Assistance will be held in the National office for use with section 514 loans and section 516 grants and will be awarded based on each project's financial structure and need.

III. Application Process

All applications for sections 514 and 516 funds must be filed with the appropriate Rural Development State office and must meet the requirements of 7 CFR part 1944, subpart D, and section IV of this NOFA. Incomplete applications will not be reviewed and will be returned to the applicant. No application will be accepted after 5 p.m., local time, on August 14, 2003 unless date and time is extended by another Notice published in the **Federal Register**.

IV. Application Submission Requirements

A. Each application shall include all of the information, materials, forms and exhibits required by 7 CFR part 1944, subpart D, as well as comply with the provisions of this NOFA. Applicants are encouraged, but not required, to include a check list and to have their applications indexed and tabbed to facilitate the review process. The Rural Development State office will base its determination of completeness of the application and the eligibility of each applicant on the information provided in the application.

B. Applicants are advised to contact the Rural Development State office serving the place in which they desire to submit an application for application information.

Dated: May 12, 2003.

Arthur A. Garcia,

Administrator, Rural Housing Service.

[FR Doc. 03–12245 Filed 5–15–03; 8:45 am]

BILLING CODE 3410–XV–P

DEPARTMENT OF AGRICULTURE

Rural Housing Service

Notice of Funding Availability (NOFA) for the Section 538 Guaranteed Rural Rental Housing Program (GRRHP) for Fiscal Year (FY) 2003

AGENCY: Rural Housing Service (RHS), USDA.

ACTION: Notice.

SUMMARY: This NOFA announces the availability of funds for the section 538 Guaranteed Rural Rental Housing Program for FY 2003. Congress appropriated $99.350 million to the section 538 GRRHP for FY 2003. All applicants that submitted responses to a prior section 538 GRRHP notice published in the **Federal Register** on December 27, 2002 (67 FR 79038) and the correction to the notice published in the **Federal Register** on January 28, 2003 (68 FR 4166) will be considered for FY 2003 funding. The commitment of program dollars will be made to applicants of selected responses that have fulfilled the necessary requirements for obligation as described in the notice published in the **Federal Register** on December 27, 2002 (67 FR 79038).

The Agency will continue to review eligible responses from eligible applicants as described in the notice published in the **Federal Register** on December 27, 2002 (67 FR 79038) and the correction to the notice published in the **Federal Register** on January 28, 2003 (68 FR 4166) until all funds are expended. The Agency will issue a notice to inform the public when funds have been exhausted for FY 2003.

Dated: May 12, 2003.

Arthur A. Garcia,

Administrator, Rural Housing Service.

[FR Doc. 03–12246 Filed 5–15–03; 8:45 am]

BILLING CODE 3410–XV–P

DEPARTMENT OF AGRICULTURE

Rural Housing Service

Notice of Funds Availability (NOFA) for Section 533 Housing Preservation Grants for Fiscal Year (FY) 2003

AGENCY: Rural Housing Service (RHS), USDA.

ACTION: Notice.

SUMMARY: This NOFA announces the availability of funds for section 533 Housing Preservation Grant (HPG) Program. By prior notice in the **Federal Register**, the Agency announced a deadline of March 27, 2003, 5 p.m., local time for each Rural Development State Office, for submitting applications for Section 533 Housing Preservation Grant Program. The "Notice of Timeframe for the section 533 Housing Preservation Grants for Fiscal Year 2003" was published in the **Federal Register** on December 27, 2002 (67 FR 79036). This was done prior to passage of a final appropriations act to allow sufficient time for applicants to complete an application and for the Agency to select and process selected applications within the current fiscal year. Detailed information regarding the application and selection process, as well as a listing of the Rural Development State Offices, may be found in the December 27, 2002, Notice.

FOR FURTHER INFORMATION CONTACT: For general information, applicants may contact Mary Fox, Senior Loan Officer, Multi-Family Housing Processing Division, Rural Housing Service, United States Department of Agriculture, Stop 0781, 1400 Independence Avenue, SW., Washington, DC 20250, telephone (202) 720–1624 (voice) (this is not a toll free number) or (800) 877–8339 (TDD—Federal Information Relay Service).

SUPPLEMENTARY INFORMATION:

Programs Affected

This program is listed in the Catalog of Federal Domestic Assistance under Number 10.433, Rural Housing Preservation Grants. This program is subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with State and local officials (7 CFR part 3015, subpart V). Applicants are referred to 7 CFR 1944.674 and 1944.676(f), (g), and (h) for specific guidance on these requirements relative to the HPG program.

Discussion of Notice

I. Authority and Distribution Methodology

A. Authority

The HPG program is a grant program which provides qualified public agencies, private nonprofit organizations, and other eligible entities grant funds to assist very low- and low-income homeowners to repair and rehabilitate their homes in rural areas, and to assist rental property owners and cooperative housing complexes to repair and rehabilitate their units if they agree to make such units available to low- and very low-income persons. This action is taken to comply with Agency regulations found in 7 CFR part 1944, subpart N, which requires the Agency to announce the opening and closing dates for receipt of preapplications for HPG funds from eligible applicants. The intended effect of this Notice is to provide eligible organizations notice of these dates.

B. Distribution Methodology

The funding instrument for the HPG program will be a grant agreement. The term of the grant can vary from 1 to 2 years, depending on available funds and demand. No maximum or minimum grant levels have been established at the National level. You should contact the State office to determine the allocation and the State maximum grant level, if any. For FY 2003, $9,935,000 is available for the Housing Preservation Grant Program. A set aside of $596,100 has been established for grants located in Empowerment Zones, Enterprise Communities, and REAP Zones, $997,400 has been set aside for the Administrator's reserve and $8,341,500 has been distributed under a formula allocation to States pursuant to 7 CFR part 1940, subpart L, "Methodology and Formulas for Allocation of Loan and Grant Program Funds." Decisions on funding will be based on preapplications.

Dated: May 12, 2003.

Arthur A. Garcia,

Administrator, Rural Housing Service.

[FR Doc. 03–12247 Filed 5–15–03; 8:45 am]

BILLING CODE 3410–XV–P

Federal Register

Friday,
May 16, 2003

Part VII

Department of Housing and Urban Development

24 CFR Part 200

Appraiser Qualifications for Placement on FHA Single Family Appraiser Roster; Final Rule

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

24 CFR Part 200

[Docket No. FR–4620–F–02]

RIN 2502–AH59

Appraiser Qualifications for Placement on FHA Single Family Appraiser Roster

AGENCY: Office of the Assistant Secretary for Housing—Federal Housing Commissioner, HUD.

ACTION: Final rule.

SUMMARY: This final rule makes several changes designed to strengthen the licensing and certification requirements for placement on the Federal Housing Administration (FHA) Appraiser Roster (Appraiser Roster or FHA Appraiser Roster). First, the final rule requires that appraisers on the Appraiser Roster must have credentials that are based on the minimum licensing/certification standards issued by the Appraiser Qualifications Board of the Appraisal Foundation. The final rule also clarifies that an appraiser may be removed from the Appraiser Roster if the appraiser loses his or her license or certification in any state due to disciplinary action, even if the appraiser continues to be licensed or certified in another state. Further, the final rule provides that an appraiser whose license or certification in any state has been revoked, suspended, or surrendered as a result of a state disciplinary action will be automatically suspended from the Appraiser Roster until HUD receives evidence demonstrating that the state imposed sanction has been lifted. An appraiser whose licensing or certification in a state has expired is automatically suspended from the Appraiser Roster in that state and may not conduct FHA appraisals in that state until HUD receives evidence that demonstrates renewal, but may continue to perform FHA appraisals in other states in which the appraiser is licensed or certified. This final rule follows publication of a November 30, 2001, proposed rule and takes into consideration the public comments received on the proposed rule.

DATES: *Effective Date:* With the exception of § 200.202(b)(1) and (c), this final rule is effective on June 16, 2003. HUD will publish a notice in the **Federal Register** announcing the effective date of § 200.202(b)(1) and (c).

FOR FURTHER INFORMATION CONTACT: Vance T. Morris, Director, Office of Single Family Program Development, Room 9266, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410–8000; telephone (202) 708–2121 (this is not a toll-free number). Hearing- or speech-impaired individuals may access this number via TTY by calling the toll-free Federal Information Relay Service at 1–800–877–8339.

SUPPLEMENTARY INFORMATION:

I. Background

On November 30, 2001 (66 FR 60128), HUD published a proposed rule designed to strengthen the licensing and certification requirements for placement on the Appraiser Roster. The Appraiser Roster lists those appraisers who are eligible to perform FHA single family appraisals. HUD maintains the Appraiser Roster to provide a means by which HUD can ensure the competency of appraisers performing FHA appraisals. The Appraiser Roster regulations are located in 24 CFR part 200, subpart G (consisting of §§ 200.200–200.206).

Under the November 30, 2001, proposed rule, appraisers on the Appraiser Roster would be required to have credentials based on the minimum licensing/certification standards issued by the Appraiser Qualifications Board (AQB) of the Appraisal Foundation. Further, an appraiser would be subject to removal from the Appraiser Roster if the appraiser loses his or her license or certification in any state due to disciplinary action, even if the appraiser continues to be licensed or certified in another state. The proposed rule also provides that an appraiser who is licensed or certified in a single state and whose state license or certification has expired, or has been revoked, suspended, or surrendered as a result of a state disciplinary action would be automatically suspended from the Appraiser Roster and prohibited from conducting FHA appraisals until HUD receives evidence demonstrating license or certification renewal or that the state-imposed sanction has been lifted.

The preamble to the November 30, 2001, proposed rule provides additional details regarding the proposed amendments to the FHA Appraiser Roster licensing and certification requirements.

II. This Final Rule

This final rule follows publication of the November 30, 2001, proposed rule and takes into consideration the public comments received on the proposed rule. The most significant differences between this final rule and the November 30, 2001, proposed rule are as follows:

1. *Twelve-month phase-in of AQB requirements for appraisers listed on the Appraiser Roster.* The final rule provides that an appraiser who is included on the Appraiser Roster on the effective date of this rule, but who does not meet the minimum AQB licensing/certification criteria in effect on that date, has until 12 months following the effective date of the final rule to fully comply with the AQB criteria and submit evidence of such compliance to HUD. Failure to submit such evidence to HUD by the deadline date constitutes cause for removal from the Appraiser Roster. The phase-in period does not restrict HUD's ability to remove an unsatisfactory appraiser from the Appraiser Roster for any other cause identified in § 200.204.

2. *Automatic suspension of appraisers licensed or certified in multiple states.* The final rule provides that an appraiser whose license or certification in any state has been revoked, suspended, or surrendered as a result of a state disciplinary action will be automatically suspended from the Appraiser Roster until HUD receives evidence demonstrating that the state-imposed sanction has been lifted. The proposed rule would have limited automatic suspension to appraisers licensed or certified in a single state.

3. *Clarification of scope of automatic suspensions not due to state disciplinary action.* The final rule clarifies that an appraiser whose licensing or certification in a state has expired is automatically suspended from the Appraiser Roster in that state and may not conduct FHA appraisals in that state until HUD receives evidence that demonstrates renewal. The appraiser may continue to perform FHA appraisals in other states in which the appraiser is licensed or certified.

III. Discussion of the Public Comments Received on the November 30, 2001, Proposed Rule

The public comment period on the proposed rule closed on January 29, 2002. HUD received fourteen public comments on the proposed rule. Comments were received from the Appraisal Foundation; realtors; appraisers; state real estate appraiser boards; and national organizations representing banking institutions, appraisers, realtors, and state appraiser regulatory agencies. This section of the preamble presents a summary of the significant issues raised by the public commenters, and HUD's responses to the comments.

A. Comments Regarding AQB Criteria

Comment: How will HUD determine whether state requirements conform to AQB criteria? Several commenters asked how HUD would determine whether state licensing/certification requirements comply with AQB criteria, since both the state requirements and the AQB standards are subject to periodic change. Accordingly, states that comply with the current AQB criteria may later fall out of compliance due to changes adopted by the AQB or the state legislature. To address these concerns, one of the commenters suggested that an appraiser be eligible for inclusion on the Appraiser Roster if the state requirements conformed to the AQB criteria in effect at the time the appraiser obtained the license or certification. Two other commenters recommended that the final rule focus on whether individual appraisers comply with the AQB criteria, rather than on whether state requirements are in compliance with these standards.

HUD response. HUD will periodically monitor the compliance of the states with the minimum AQB requirements to ensure that all appraisers included on the Appraiser Roster meet these standards.

Comment: How will HUD treat appraisers who received their AQB license or certification through "grandfathering?" Several commenters questioned the impact of the proposed rule on "grandfathered" appraisers who received their licensing or certification prior to the state's adoption of AQB criteria. Two of the commenters recommended that HUD immediately remove such appraisers from the Appraiser Roster and require them to re-apply and demonstrate compliance with the AQB requirements. However, other commenters cautioned against such removals. One of these commenters suggested that "grandfathered" appraisers should instead be allowed to remain on the Appraiser Roster if they can provide a letter from the state appraiser licensing agency attesting that the appraiser satisfies the AQB criteria.

HUD Response. The final rule provides that appraisers, including the "grandfathered" appraisers mentioned by the commenters, who are included on the Appraiser Roster on the effective date of this rule, but who do not meet the minimum AQB licensing/certification criteria in effect on that date, have 12 months following the effective date of the final rule to fully comply with the AQB criteria and submit evidence of such compliance to HUD. Failure to submit such evidence to HUD by the deadline date constitutes cause for removal from the Appraiser Roster. The phase-in period does not restrict HUD's ability to remove unsatisfactory appraisers from the Appraiser Roster for any other cause identified in § 200.204.

Comment: Will HUD remove appraisers licensed or certified in states that do not currently meet the AQB criteria? One commenter posed this question.

HUD Response. As noted in the response to the preceding comment, HUD will allow such an appraiser to remain on the Appraiser Roster for 12 months following the effective date of the final rule, at which time the appraiser must be in full compliance with the AQB criteria.

Comments: AQB requirements should be "phased-in." One commenter wrote that the proposed AQB requirements should be "phased-in" to provide appraisers with sufficient time to satisfy these criteria.

HUD Response. HUD agrees with the commenter. As noted, an appraiser currently included on the Appraiser Roster, but who does not meet the minimum AQB licensing/certification criteria in effect on that date, has 12 months following the effective date of the final rule to fully comply with the AQB criteria and submit evidence of such compliance to HUD. Failure of the appraiser to submit such evidence to HUD by the deadline date constitutes cause for removal from the Appraiser Roster. The phase-in period does not restrict HUD's ability to remove an unsatisfactory appraiser from the Appraiser Roster for any other cause identified in § 200.204.

Comment: HUD should identify those states whose licensing and certification requirements do not meet AQB criteria. One commenter made this suggestion.

HUD Response. The Appraisal Subcommittee is the official authority for determining and identifying each state's compliance with the AQB criteria.

Comment: HUD's use of the phrase "professional credentials" may be inappropriate. One commenter wrote that the proposed rule's use of the phrase "professional credentials" when referring to the AQB criteria is inappropriate. According to the commenter, the term "professional credentials" is commonly understood by appraisers to refer to designations earned within professional membership organizations. The commenter wrote that reference in the proposed rule to this phrase is misapplied if used to apply to the gap between a state's licensing and certification criteria and the minimum AQB criteria. The commenter recommended that HUD create a more appropriate phrase to identify this concept.

HUD Response. HUD has revised the proposed rule to be more sensitive to the issues raised by the commenter. The final rule refers to "credentials," rather than "professional credentials."

B. Other Comments Regarding Qualifications for Placement on the Appraiser Roster

Comment: Appraisers should be required to have at least two years experience as licensed or certified appraisers for placement on the Appraiser Roster. One commenter made this suggestion. According to the commenter, FHA appraisals are often more complicated than those for conventional mortgage loans, and thus require additional experience. The commenter wrote that in comparison to conventional appraisals, FHA appraisals require a higher degree of skill and more knowledge of construction, depreciation, cost estimating for repairs, and estimating the useful and remaining life of residential improvements and equipment.

HUD Response. At this time, HUD does not plan additional changes to the experience requirements for placement on the Appraiser Roster. Rather, HUD will rely on the AQB experience criteria. HUD believes that the AQB standard is sufficient to ensure that appraisers included on the Appraiser Roster have the necessary experience to perform FHA appraisals.

Comment: HUD should determine whether an appraiser has been subject to state disciplinary action before approving the appraiser for placement on the Appraiser Roster. Two commenters made this recommendation. The commenters wrote that HUD might consider using the National Registry of Appraisers maintained by the Appraisal Subcommittee for this purpose. However, one of the commenters cautioned that the National Registry may be inadequate and suggested that HUD should consider establishing its own independent verification methods.

HUD Response. The change requested by the commenters is outside the scope of the November 30, 2001, proposed rule and would require additional notice and comment prior to implementation. At this time, HUD does not plan additional changes to the requirements for placement on the Appraiser Roster. HUD believes the current placement procedures are adequate to ensure that appraisers included on the Appraiser Roster are competent to perform FHA appraisals.

C. Comment Regarding Automatic Suspension From the Appraiser Roster

Comment: Appraisers who are licensed or certified in multiple states should also be subject to automatic suspension. Under the November 30, 2001, proposed rule, only those appraisers licensed or certified in a single state would be subject to automatic suspension from the Appraiser Roster due to state disciplinary action. Three commenters recommended that the scope of automatic suspensions be expanded to include appraisers licensed or certified in multiple states. The commenters suggested that such appraisers should be automatically suspended from the Appraiser Roster if they lose their license or certification due to disciplinary action in any state.

HUD Response. HUD agrees with the commenters and has revised the proposed rule accordingly.

Comment: HUD should clarify that voluntarily electing not to renew a state license or certification does not constitute "disciplinary action" for purposes of automatic suspension from the Appraiser Roster. One commenter made this suggestion. The commenter wrote that depending on state law, if an appraiser willingly allows his or her license to expire, it might appear that the license expired due to disciplinary action. The commenter suggested that the final rule clarify that the voluntary expiration of a state appraisal license or certification does not constitute a disciplinary action.

HUD Response. HUD has revised the regulatory text to be more sensitive to the issue raised by the commenter. Specifically, the final rule clarifies that an appraiser whose licensing or certification in a state has expired is automatically suspended from the Appraiser Roster in that state and may not conduct FHA appraisals in that state until HUD receives evidence that demonstrates renewal. The appraiser may continue to perform FHA appraisals in other states in which the appraiser is licensed or certified.

Comment: HUD should report appraisers who have been removed from the Appraiser Roster to the appropriate state appraisal licensing authorities. Three commenters made this suggestion.

HUD Response. HUD will provide this information to states as appropriate.

Comment: Appraisers should not be removed from Appraiser Roster prior to state review of case. One commenter wrote that anytime HUD's review process determines that an appraiser is performing unethical or substandard work, the appraiser should be suspended from the Appraiser Roster and referred by HUD to the appropriate state agency for disciplinary action. The commenter wrote that an appraiser should not be removed from the Appraiser Roster until the state agency has had the opportunity to review the case and determine whether disciplinary action is appropriate. According to the commenter, this method will protect appraisers from the administrative burden of reapplying for placement on the Appraiser Roster.

HUD Response. The suggestion made by the commenter is outside the scope of the November 30, 2001, proposed rule. At this time, HUD does not anticipate making any changes to the Appraiser Roster removal procedures. HUD believes that the existing removal procedures are sufficient to safeguard the interests of FHA homebuyers, HUD, and appraisers included on the Appraiser Roster.

IV. Findings and Certifications

Regulatory Planning and Review

The Office of Management and Budget (OMB) reviewed this rule under Executive Order 12866, *Regulatory Planning and Review*. OMB determined that this proposed rule is a "significant regulatory action" as defined in section 3(f) of the Order (although not an economically significant regulatory action under the Order). Any changes made to this rule as a result of that review are identified in the docket file, which is available for public inspection in the office of the Department's Rules Docket Clerk, Room 10276, 451 Seventh Street, SW, Washington, DC 20410–0500.

Paperwork Reduction Act

The information collection requirements contained in this final rule have been submitted to the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520) and are pending OMB approval. In accordance with the Paperwork Reduction Act, HUD may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection displays a currently valid OMB control number.

The burden of the information collections in this rule is estimated as follows:

REPORTING AND RECORDKEEPING BURDEN

Section reference	Number of parties	Number of responses per respondent	Estimated average time for requirement (in hours)	Estimated annual burden (in hours)
§ 200.202(b)(1) and (c) (submission of evidence of compliance with AQB standards).	1,800	1 × .33	.50	900

In accordance with 5 CFR 1320.8(d)(1), HUD is soliciting comments from members of the public and affected agencies concerning this collection of information to:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

Interested persons are invited to submit comments regarding the information collection requirements in this proposal. Comments must be received within sixty (60) days from the date of this proposal. Comments must refer to the final rule by name and docket number (FR–4620) and must be sent to:

Lauren Wittenberg, HUD Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, DC 20503–0001, *Lauren_Wittenberg@omb.eop.gov*
and
Gloria Diggs, Reports Liaison Officer, Office of the Assistant Secretary for Housing-Federal Housing Commissioner, Department of Housing and Urban Development, 451 7th Street, SW, Room 9116, Washington, DC 20410–0001.

Environmental Impact

This final rule does not direct, provide for assistance or loan and mortgage insurance for, or otherwise govern or regulate, real property acquisition, disposition, leasing, rehabilitation, alteration, demolition, or new construction or establish, revise, or provide for standards for construction or construction materials, manufactured housing, or occupancy. Accordingly, under 24 CFR 50.19(c)(1), this final rule is categorically excluded from environmental review under the National Environmental Policy Act of 1969 (42 U.S.C. 4332 *et seq.*).

Regulatory Flexibility Act

The Secretary has reviewed this final rule before publication, and by approving it certifies, in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)), that this final rule will not have a significant economic impact on a substantial number of small entities. The reasons for HUD's determination are as follows.

The final rule requires that appraisers on the Appraiser Roster have credentials that are based on the minimum licensing/certification standards issued by the AQB of the Appraisal Foundation. An analysis of the FHA Appraiser Roster indicates that of the approximately 22,163 appraisers currently on the Appraiser Roster, only approximately 330 do not have licensing in conformance with the standards issued by the AQB. In most instances, these appraisers already have some of the hours of education or experience required to meet the AQB criteria, thus further minimizing the impacts of the final rule. For example, most appraisers on the Appraiser Roster have been listed for some time, and thus few of these appraisers will have difficulty providing evidence to their state board demonstrating acceptable experience levels. With regard to the education requirements, the AQB standards only require 90 hours of education for Licensed Real Property Appraiser and 120 hours of education for Certified Residential Real Property Appraiser certification. Given the few number of appraisers currently on the Appraiser Roster who do not have a state designation based on AQB criteria and the relatively little time and expense that would be required for most of these appraisers to meet AQB criteria, HUD has determined that the final rule will not have a significant economic impact on small entities.

In addition to the new AQB standards, the final rule also clarifies that an appraiser may be removed from the Appraiser Roster if the appraiser loses his or her license or certification in any state due to disciplinary action, even if the appraiser continues to be licensed or certified in another state. The final rule also provides that an appraiser whose state license or certification in any state has been revoked, suspended, or surrendered as a result of a state disciplinary action, will be automatically suspended from the Appraiser Roster and prohibited from conducting FHA appraisals until HUD receives evidence demonstrating that the state imposed sanction has been lifted. An appraiser whose licensing or certification in a state has expired is automatically suspended from the Appraiser Roster in that state and may not conduct FHA appraisals in that state until HUD receives evidence that demonstrates renewal. An appraiser whose licensing or certification in a state has expired is automatically suspended from the Appraiser Roster in that state and may not conduct FHA appraisals in that state until HUD receives evidence that demonstrates renewal, but may continue to perform FHA appraisals in other states in which the appraiser is licensed or certified. To the extent that these changes have an impact on small entities it will be as a result of actions taken by the appraisers themselves (*i.e.*, violation of applicable standards resulting in disciplinary action or otherwise failing to maintain their professional state licensing or certification).

Executive Order 13132, Federalism

Executive Order 13132 (entitled "Federalism") prohibits an agency from publishing any rule that has federalism implications if the rule either imposes substantial direct compliance costs on state and local governments and is not required by statute, or the rule preempts state law, unless the agency meets the consultation and funding requirements of section 6 of the Executive Order. This final rule will not have federalism implications and will not impose substantial direct compliance costs on state and local governments or preempt state law within the meaning of the Executive Order.

Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) establishes requirements for federal agencies to assess the effects of their regulatory actions on state, local, and tribal governments, and on the private sector. This final rule will not impose any federal mandates on any state, local, or tribal governments, or on the private sector, within the meaning of the Unfunded Mandates Reform Act of 1995.

List of Subjects in 24 CFR Part 200

Administrative practice and procedure, Claims, Equal employment opportunity, Fair housing, Home improvement, Housing standards, Incorporation by reference, Lead poisoning, Loan programs—housing and community development, Minimum property standards, Mortgage insurance, Organization and functions (Government agencies), Penalties, Reporting and recordkeeping requirements, Social security, Unemployment compensation, Wages.

■ Accordingly, for the reasons discussed in the preamble, HUD amends 24 CFR part 200 as follows:

PART 200—INTRODUCTION TO FHA PROGRAMS

■ 1. The authority citation for 24 CFR part 200 continues to read as follows:

Authority: 12 U.S.C. 1701–1715z-18; 42 U.S.C. 3535(d).

Subpart G—Appraiser Roster

■ 2. In § 200.202 revise paragraph (b)(1) and add paragraph (c) to read as follows:

§ 200.202 How do I apply for placement on the Appraiser Roster?

* * * * *

(b) * * *

(1) You must be a state-licensed or state-certified appraiser with credentials based on the minimum licensing/certification criteria issued by the Appraiser Qualifications Board (AQB) of the Appraisal Foundation. For purposes of this section, an appraiser is not deemed to have credentials based on AQB standards if the state licensing/certification requirements did not conform to AQB criteria at the time the appraiser obtained the license or certification. This is true even if the state has subsequently adopted AQB criteria and has "grandfathered" previously licensed or certified appraisers.

* * * * *

(c) *Delayed effective date of AQB requirements for appraisers currently*

listed on the Appraiser Roster. An appraiser who is included on the Appraiser Roster on June 16, 2003, but does not meet the minimum AQB licensing/certification criteria in effect on this date, has until 12 months following this date to comply with the AQB criteria and submit evidence of compliance to HUD. Failure to submit such evidence to HUD by the deadline date constitutes cause for removal under § 200.204.

■ 3. Amend § 200.204 as follows:

■ a. Revise paragraph (a)(1);

■ b. Redesignate paragraphs (c) and (d) as paragraphs (d) and (e) respectively; and,

■ c. Add new paragraph (c):

The addition and revision read as follows:

§ 200.204 What actions may HUD take against unsatisfactory appraisers on the Appraiser Roster?

* * * * *

(a) * * *

(1) *Cause for removal.* Cause for removal includes, but is not limited to:

(i) Significant deficiencies in appraisals, including non-compliance with Civil Rights requirements regarding appraisals;

(ii) Losing standing as a state-certified or state-licensed appraiser due to disciplinary action in any state in which the appraiser is certified or licensed;

(iii) Prosecution for committing, attempting to commit, or conspiring to commit fraud, misrepresentation, or any other offense that may reflect on the appraiser's character or integrity;

(iv) Failure to perform appraisal functions in accordance with instructions and standards issued by HUD;

(v) Failure to comply with any agreement made between the appraiser and HUD or with any certification made by the appraiser;

(vi) Being issued a final debarment, suspension, or limited denial of participation;

(vii) Failure to maintain eligibility requirements for placement on the Appraiser Roster as set forth under this subpart or any other instructions or standards issued by HUD; or,

(viii) Failure to comply with HUD-imposed education requirements under paragraph (d) of this section within the specified period for complying with such education requirements.

* * * * *

(c) *Automatic suspension from Appraiser Roster.*—(1) *Appraisers subject to state disciplinary action.* An appraiser whose state licensing or certification in any state has been revoked, suspended, or surrendered as a result of a state disciplinary action is automatically suspended from the Appraiser Roster and prohibited from conducting FHA appraisals in any state until HUD receives evidence demonstrating that the state imposed sanction has been lifted.

(2) *Expirations not due to state disciplinary action.* An appraiser whose licensing or certification in a state has expired is automatically suspended from the Appraiser Roster in that state and may not conduct FHA appraisals in that state until HUD receives evidence that demonstrates renewal, but may continue to perform FHA appraisals in other states in which the appraiser is licensed or certified.

* * * * *

Dated: May 9, 2003.

John C. Weicher,

Assistant Secretary for Housing-Federal Housing Commissioner.

[FR Doc. 03–12205 Filed 5–15–03; 8:45 am]

BILLING CODE 4210–27–P

Federal Register

Friday,
May 16, 2003

Part VIII

Department of Education

Office of Innovation and Improvement—Professional Development for Arts Educators; Notice Inviting Applications for New Awards for Fiscal Year (FY) 2003; Notice

DEPARTMENT OF EDUCATION

[CFDA No.: 84.351C]

Office of Innovation and Improvement—Professional Development for Arts Educators; Notice Inviting Applications for New Awards for Fiscal Year (FY) 2003

Purpose of Program: This program is authorized under Subpart 15 of Part D of Title V of the Elementary and Secondary Education Act (ESEA), as amended by Public Law 107–110, the No Child Left Behind Act of 2001. Through this competition, the Secretary will make grants to eligible entities for the implementation of high-quality professional development programs in elementary and secondary education. This program will fund model professional development programs for music, dance, drama, and visual arts educators that use innovative instructional methods, especially those linked to scientifically-based research.

The Professional Development for Arts Educators Program provides resources that LEAs can use in pursuit of the objectives of the No Child Left Behind Act which aims for all elementary and secondary students to achieve high standards. In particular, this program provides an opportunity for eligible entities to create new programs in schools identified for improvement, corrective action, or restructuring under Title I, Part A of the ESEA.

Eligible Applicants: A local educational agency (LEA), including charter schools that are considered LEAs under State law and regulations, acting on behalf of an individual school or schools where 75 percent or more of the children are from low-income families, based on the poverty criteria described in Title I, Section 1113(a)(5) of the ESEA, in collaboration with at least one of the following: (1) An institution of higher education; (2) a State educational agency; or (3) a public or private non-profit agency with a history of providing high-quality professional development services to public schools. Only schools where 75 percent or more of the children served are from low-income families may receive services under this program. Each school served through this program must submit evidence that it meets the poverty criteria. Applicants may submit records kept for the purpose of Title I of the ESEA that demonstrate proof of eligibility for each school to be served.

Note: The LEA must serve as the fiscal agent for the program.

Applications Available: 5–16–03.

Notification of Intent to Apply for Funding: The Department will be able to develop a more efficient process for reviewing grant applications if it has a better understanding of the number of entities that intend to apply for funding under this competition. Therefore, the Secretary strongly encourages each potential applicant to notify the Department by e-mail that it intends to submit an application for funding. The Secretary requests that this e-mail notification be sent no later than June 16, 2003 to the following Internet address: *lynyetta.johnson@ed.gov.*

Applicants that fail to provide this e-mail notification may still apply for funding.

Deadline for Transmittal of Applications: 7–10–03.

Deadline for Intergovernmental Review: 9–8–03.

Available Funds: Approximately $4.4 million.

Estimated Range of Awards: $250,000—$325,000.

Estimated Average Size of Awards: $290,000.

Estimated Number of Awards: 14–17.

Project Period: Up to 36 months.

Note: The Department is not bound by any estimates in this notice. Funding for the second and third years is subject to the availability of funds and the approval of continuation awards (34 CFR 75.253).

Page Limit: The program narrative is limited to no more than 40 pages. The page limit applies to the narrative section only. All of the application narrative must be included in the narrative section. If the narrative section of an application exceeds the page limitation, the application will not be reviewed. In addition, the following standards are required: (1) Each "page" is 8.5″ x 11″ (on one side only) with one inch margins (top, bottom, and sides); (2) double space (no more than three lines per vertical inch) all text in the application narrative including titles, headings, footnotes, quotations, and captions as well as all text in charts, tables, figures, and graphs; and (3) use a font that is either 12-point or larger or no smaller than 10 pitch (characters per inch).

Project Directors Meeting: Applicants are encouraged to budget for a two-day project directors meeting in Washington, DC.

Applicable Regulations and Statute: (a) *Regulations.* The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 74, 75, 77, 79, 80, 81, 82, 85, 86, 97, 98, and 99. (b) *Statute.* Title V, Part D, Subpart 15, of the Elementary and Secondary Education Act as reauthorized by the No Child Left Behind Act of 2001.

Absolute Priority: Under 34 CFR 75.105(c)(3), the Secretary considers only applications that meet the following absolute priority:

Professional development programs designed for K–12 arts teachers that focus on—

(1) The development, enhancement, or expansion of standards-based arts education programs; or

(2) The integration of arts instruction into other subject area content.

Funded projects must address all aspects of high-quality professional development programs as described under the PROGRAM GOALS section of this notice.

Invitational Priority. The Secretary is particularly interested in applications that meet the following priority.

Invitational Priority. A project that provides for alternative routes to teacher certification or licensure through comprehensive, high-quality training programs in order to place music, drama, dance, and visual arts teachers in the classroom as soon as possible.

Under 34 CFR 75.105(c)(1), the Secretary does not give an application that meets this invitational priority a competitive or absolute preference over other applications.

Selection Criteria: The Secretary will use the following selection criteria to evaluate applications under this competition. The maximum score for all selection criteria is 100 points. The maximum score for each criterion is indicated in parenthesis with the criterion. The criteria are as follows:

(a) *Significance* (15 points). The Secretary considers the significance of the proposed project. In determining the significance of the proposed project, the Secretary considers the following factors:

(i) The extent to which the proposed project involves the development of promising new strategies that build on, or are alternatives to, existing strategies.

(ii) The importance or magnitude of the results or outcomes likely to be attained by the proposed project, especially improvements in teaching and student achievement.

(b) *Quality of the Project Design* (15 points). The Secretary considers the quality of the project design of the proposed project. In determining the quality of the project design, the Secretary considers the following factors:

(i) The extent to which the proposed project represents an exceptional approach for meeting the priority established for the competition.

(ii) The quality of the methodology to be employed in the proposed project.

(c) *Quality of Project Services* (10 points). The Secretary considers the quality of project services to be provided by the proposed project. In determining the quality of the services to be provided by the proposed project, the Secretary considers the quality and sufficiency of strategies for ensuring equal access and treatment for eligible project participants without regard to race, color, national origin, gender, age, or disability. In addition, the Secretary considers the following factors:

(i) The extent to which the services to be provided by the proposed project reflect up-to-date knowledge from research and effective practices.

(ii) The extent to which the professional development services to be provided by the proposed project are of sufficient quality, intensity, and duration to lead to improvements in practice among the recipients of those services.

(d) *Quality of Project Personnel* (15 points). The Secretary considers the quality of the personnel who will carry out the proposed project. In determining the quality of project personnel, the Secretary considers the extent to which the applicant encourages applications for employment without regard to race, color, national origin, gender, age, or disability. In addition, the Secretary considers the following factors:

(i) The qualifications, including relevant training and experience, of key project personnel.

(ii) The qualifications, including relevant training and experience, of subcontractors.

(e) *Adequacy of Resources* (15 points). The Secretary considers the adequacy of resources for the proposed project. In determining the adequacy of resources for the proposed project, the Secretary considers the following factors:

(i) The adequacy of support, including facilities, equipment, supplies, and other resources, from the lead applicant organization.

(ii) The extent to which the costs are reasonable in relation to the number of persons to be served and to the anticipated results and benefits.

(f) *Quality of the Management Plan* (15 points). The Secretary considers the quality of the management plan for the proposed project. In determining the quality of the management plan for the proposed project, the Secretary considers the following factors:

(i) The adequacy of the management plan to achieve the objectives of the proposed project on time and within budget, including clearly defined responsibilities, timelines, and milestones for accomplishing project tasks.

(ii) The adequacy of procedures for ensuring continuous feedback and continuous improvement in the operation of the proposed project.

(iii) The extent to which the time commitments of the project director and other key project personnel are appropriate and adequate to meet the objectives of the proposed project.

(g) *Quality of the Project Evaluation* (15 points). The Secretary considers the quality of the project evaluation. In determining the quality of the project evaluation, the Secretary considers the following factors:

(i) The extent to which the methods of evaluation include the use of objective performance measures that are clearly related to the intended outcomes of the project and will produce quantitative and qualitative data to the extent possible.

(ii) The extent to which the evaluation will provide guidance about effective strategies suitable for replication or testing in other settings.

Program Goals: This program supports the strengthening of standards-based arts education programs, which are an integral part of elementary and secondary school curricula. It also helps ensure that all students meet challenging State academic content standards and challenging State student academic achievement standards in the arts. Professional development activities that are developed, enhanced, or expanded through this program will assist music, dance, drama, and visual arts teachers in the implementation of arts education standards and will promote the integration of arts instruction into other subject areas.

Arts content and achievement standards have been voluntarily adopted in many States throughout the country. These standards help school districts to establish student performance standards based upon the unique needs of, and desired outcomes for, the students in their communities. The development and implementation of standards-based arts programs enable arts educators to assess and document the effectiveness of teaching strategies and materials in addition to student achievement. However, teachers often need professional development on how to implement art education standards for both arts programs and for programs designed to integrate arts into other subject areas.

High-quality professional development programs supported under this program must be linked to the implementation of arts standards and/or the integration of arts into other content areas and must include—

(1) Strategies for addressing student achievement;

(2) Strategies for meeting the needs of students who come from diverse cultural, linguistic, and socioeconomic backgrounds;

(3) The development of the intellectual and leadership potential of teachers;

(4) Rigorous and sustained activities that result in increased content area knowledge and classroom effectiveness of music, dance, drama, and visual arts teachers;

(5) Use of technological innovations relevant to arts instruction; and

(6) Increased opportunities for teachers to share and discuss new methods or teaching strategies with their peers.

The Department plans to disseminate information regarding promising teaching methods or practices that are developed or enhanced through this program to the arts education community and to the public in general.

Coordination Requirement: Under section 5551(f)(1) of the ESEA, the Secretary requires that each entity funded under this program coordinate, to the extent practicable, each project or program carried out with such assistance with appropriate activities of public or private cultural agencies, institutions, and organizations, including museums, arts education associations, libraries, and theaters.

Supplement, Not Supplant, Requirement: Under section 5551(f)(2) of the ESEA, the Secretary requires that assistance provided under this program be used only to supplement, and not to supplant, other assistance or funds made available from non-Federal sources for the activities assisted under this subpart.

Waiver of Proposed Rulemaking: In accordance with the Administrative Procedure Act (5 U.S.C. 553), it is the practice of the Secretary to offer interested parties the opportunity to comment on proposed rules. Section 437(d)(2) of the General Education Provisions Act (GEPA), however, exempts from rulemaking requirements rules where the Secretary determines that such requirements will cause extreme hardship to the intended beneficiaries of the program affected by the regulations. The requirements of rulemaking would cause extreme hardship in this case because there is insufficient time to publish rules for notice and comment and to conduct a timely competition for grant awards. The Secretary, in accordance with section 437(d)(2) of GEPA, to ensure

timely and high-quality awards, has decided to forgo public comment on the rules in this notice. These rules will apply only to the FY 2003 grant competition.

For Applications Contact: Education Publication Center (ED Pubs), P.O. Box 1398, Jessup, MD 20794–1398. Telephone (toll free): 1–877–433–7827. FAX: (301) 470–1244. If you use a telecommunications device for the deaf (TDD), you may call (toll free): 1–877–576–7734. You may also contact ED Pubs at its Web site: *http://www.ed.gov/pbs/edpubs.html*. Or you may contact ED Pubs at its e-mail address: *edpubs@inet.ed.gov*.

If you request an application from ED Pubs, be sure to identify this competition as follows: CFDA number 84.351C.

FOR FURTHER INFORMATION CONTACT: Lynyetta Johnson, U.S. Department of Education, 400 Maryland Avenue, SW., room 3E206 FB–6, Washington, DC 20202–6140. Telephone: (202) 269–1990 or via Internet: *lynyetta.johnson@ed.gov*.

If you use a telecommunications device for the deaf (TDD), you may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

Individuals with disabilities may obtain this document in an alternative format (*e.g.*, Braille, large print, audiotape, or computer diskette) on request to the contact person listed under **FOR APPLICATIONS AND FURTHER INFORMATION CONTACT.**

Individuals with disabilities may obtain a copy of the application package in an alternative format by contacting that person. However, the Department is not able to reproduce in an alternative format the standard forms included in the application package.

Electronic Access to This Document

You may view this document, as well as all other Department of Education documents published in the **Federal Register**, in text or Adobe Portable Document Format (PDF) on the Internet at the following site: *www.ed.gov/legislation/FedRegister*.

To use PDF you must have Adobe Acrobat Reader, which is available free at this site. If you have questions about using PDF, call the U.S. Government Printing Office (GPO), toll free, at 1–888–293–6498, or in the Washington, DC, area at (202) 512–1530.

Note: The official version of this document is the document published in the **Federal Register**. Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available on GPO Access at: *http://www.access.gpo.gov/nara/index.html*.

Program Authority: 20 U.S.C. 7271.

Dated: May 12, 2003.

Nina Rees,

Deputy Under Secretary for Innovation and Improvement.

[FR Doc. 03–12284 Filed 5–15–03; 8:45 am]

BILLING CODE 4000–01–P



Federal Register

Friday,
May 16, 2003

Part IX

Department of Education

Office of Innovation and Improvement—Advance Placement (AP) Test Fee Program; Notice Inviting Applications for New Awards for Fiscal Year (FY) 2003; Notice

DEPARTMENT OF EDUCATION

[CFDA No.: 84.330B]

RIN 1855–ZA01

Office of Innovation and Improvement—Advanced Placement (AP) Test Fee Program; Notice Inviting Applications for New Awards for Fiscal Year (FY) 2003

Purpose of Program: The AP Test Fee program provides grants to States to enable them to pay advanced placement test fees on behalf of eligible low-income students who (1) are enrolled in an advanced placement course; and (2) plan to take an advanced placement exam. The program is designed to increase the number of low-income students who take advanced placement tests and receive scores for which college academic credit is awarded. Through participation in this program, low-income students will achieve to higher standards in English, mathematics, science, and other core subjects. The program also seeks to increase the number of low-income students who achieve a baccalaureate or advanced degree.

The AP Test Fee program provides resources that State Educational agencies (SEAs) and other eligible applicants can use in pursuit of the objectives of the No Child Left Behind Act of 2001 which aims for all elementary and secondary students to achieve to high standards. In particular, this program provides an opportunity for eligible entities to support advanced placement programs in schools identified for improvement, corrective action, or restructuring under Title I, Part A of the Elementary and Secondary Education Act of 1965, as amended.

Eligible Applicants: SEAs in any State, including the District of Columbia, the Commonwealth of Puerto Rico, the United States Virgin Islands, Guam, American Samoa, the Commonwealth of the Northern Mariana Islands, and the freely associated states of the Republic of the Marshall Islands, the Federated States of Micronesia, and the Republic of Palau.

Note: For purposes of this program, the Bureau of Indian Affairs is treated as an SEA.

Applications Available: 5–16–03.

Notification of Intent to Apply for Funding: The Department will be able to develop a more efficient process for reviewing grant applications if it has a better understanding of the number of entities that intend to apply for funding under this competition. Therefore, the Secretary strongly encourages each potential applicant for the AP Test Fee program to notify the Department by e-mail that it intends to submit an application for funding. The notification of intent to apply for funding should be sent no later than June 16, 2003 to the following Internet address: *madeline.baggett@ed.gov.*

Applicants who fail to provide this e-mail notification may still apply for funding.

Deadline for Transmittal of Applications: 6–30–03.

Deadline for Intergovernmental Review: 8–30–03.

Estimated Available Funds: Approximately $3 million.

Note: The Department expects to award a total of approximately $3 million in grants to States under the AP Test Fee program but, in accordance with statutory requirements, will make more funds available from the Advanced Placement Incentive program (CFDA No. 84.330C) if necessary.

Estimated Range of Awards: $50,000 to $500,000 per year.

Estimated Average Size of Awards: $275,000 per year.

Estimated Number of Awards: 4–50.

Note: These estimates are projections for the guidance of potential applicants. The Department is not bound by any estimates in this notice.

Project Period: Up to 36 months.

Applicable Regulations and Statute: (a) *Regulations.* Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 75, 77, 79, 80, 81, 82, 85, 86, 97, 98, and 99. (b) *Statute.* Title I, Part G of the Elementary and Secondary Education Act of 1965 (ESEA), as amended by the No Child Left Behind Act of 2001 (NCLB), 20 U.S.C. 6531–6537.

Test Fee Funding Rule

In accordance with statutory requirements, the Department gives priority to funding proposals to use grant funds to pay advanced placement test fees on behalf of eligible low-income individuals. The Department intends to fund, at some level, all applications that meet the minimum Requirements for Approval of Applications as described in the application package.

Allowable Activities

States receiving grants under this program may use the grant funds to pay part or all of the cost of advanced placement test fees for low-income individuals who (1) are enrolled in an advanced placement class; and (2) plan to take an advanced placement test.

Award Basis

In determining grant award amounts, the Department will consider, among other things, the number of children in the State eligible to be counted under section 1124(c) of Title I of the ESEA in relation to the number of such children counted in all the States that apply for funding. Complete budget data must be submitted for each year of funding requested.

Definitions

The following definitions and other provisions are taken from the Advanced Placement Programs authorizing statute, in Title I, Part G of the ESEA. They are repeated in this application notice for the convenience of the applicant.

As used in this section:

(a) The term *advanced placement test* means an advanced placement test administered by the College Board or approved by the Secretary of Education.

Note: In addition to advanced placement tests administered by the College Board, the Department has approved advanced placement tests administered by the International Baccalaureate Organization. As part of the grant application process, applicants may request approval of tests from other educational entities that provide comparable programs of rigorous academic courses and testing through which students may earn college credit.

(b) The term *low-income individual* means an individual who is determined by an SEA or local educational agency to be a child from a low-income family on the basis of data used by the Secretary to determine allocations under section 1124 of Title I of the ESEA, data on children in families receiving assistance under part A of title IV of the Social Security Act, or data on children eligible to receive medical assistance under the Medicaid program under title XIX of the Social Security Act, or through an alternate method that combines or extrapolates from those data.

Information Dissemination

An SEA awarded a grant under the AP Test Fee program must disseminate information regarding the availability of advanced placement test fee payments under this program to eligible individuals through secondary school teachers and guidance counselors.

Supplement, Not Supplant, Rule

Funds provided under this program may be used only to supplement, and not supplant, other non-Federal funds that are available to assist low-income individuals in paying advanced placement test fees.

Waiver of Proposed Rulemaking

In accordance with the Administrative Procedure Act (5 U.S.C. 553), it is the practice of the Secretary to offer interested parties the opportunity to comment on proposed rules that are not taken directly from the statute. Ordinarily, this practice would have applied to the rules in this notice. Section 437(d)(2) of the General Education Provisions Act (GEPA), however, exempts from this rulemaking requirement those rules where the Secretary determines it would cause extreme hardship to the intended beneficiaries of the program affected by the regulations. The Secretary, in accordance with section 437(d)(2) of GEPA, has decided to forego public comment with respect to the rules in this grant competition in order to ensure timely and high-quality awards. These rules will apply only to the FY 2003 grant competition.

For Applications Contact: Education Publications Center (ED Pubs), P.O. Box 1398, Jessup, MD 20794–1398. Telephone (toll free): 1–877–433–7827. FAX: (301) 470–1244. If you use a telecommunications device for the deaf (TDD) you may call (toll free): 1–877–576–7734.

You may also contact ED Pubs at its Web site: *http://www.ed.gov/pbs/edpubs.html.*

Or you may contact ED Pubs at its e-mail address: *edpubs@inet.ed.gov.*

If you request an application from ED Pubs, be sure to identify this competition as follows: CFDA number 84.330B.

FOR FURTHER INFORMATION CONTACT: Madeline E. Baggett, U.S. Department of Education, 400 Maryland Avenue, SW., Washington, DC 20202–6140. Telephone: (202) 260–2502 or via Internet: *madeline.baggett@ed.gov.*

If you use a telecommunications device for the deaf (TDD), you may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

Individuals with disabilities may obtain this document in an alternative format (*e.g.*, Braille, large print, audiotape, or computer diskette) on request to the program contact person listed under **FOR FURTHER INFORMATION CONTACT.**

Individuals with disabilities may obtain a copy of the application package in an alternative format by contacting that person. However, the Department is not able to reproduce in an alternative format the standard forms included in the application package.

Electronic Access to This Document

You may view this document, as well as all other Department of Education documents published in the **Federal Register**, in text or Adobe Portable Document Format (PDF) on the Internet at the following site: *http://www.ed.gov/legislation/FedRegister.*

To use PDF, you must have Adobe Acrobat Reader, which is available free at this site. If you have questions about using PDF, call the U.S. Government Printing Office (GPO), toll free, at 1–888–293–6498; or in the Washington, DC area at (202) 512–1530.

Note: The official version of this document is the document published in the **Federal Register.** Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available on GPO Access at: *http://www.access.gpo.gov/nara/index.html.*

Program Authority: 20 U.S.C. 6531–6537.

Dated: May 12, 2003.

Nina Rees,

Deputy Under Secretary for Innovation and Improvement.

[FR Doc. 03–12285 Filed 5–15–03; 8:45 am]

BILLING CODE 4000–01–P

Federal Register

Friday,
May 16, 2003

Part X

United States Sentencing Commission

Sentencing Guidelines for United States Courts; Notice

UNITED STATES SENTENCING COMMISSION

Sentencing Guidelines for United States Courts

AGENCY: United States Sentencing Commission.

ACTION: Notice of (1)(A)(i) congressional amendments to the sentencing guidelines made directly by the PROTECT Act, Pub. L. 108–21, and effective April 30, 2003; and (ii) conforming amendments to the amendments described in subdivision (i), promulgated pursuant to 401(m)(2)(C) of the PROTECT Act and 28 U.S.C. 994, and effective April 30, 2003; and (B) amendment to § 2A4.1 (Kidnapping, Abduction, Unlawful Restraint) promulgated pursuant to section 104 of the PROTECT Act, and effective May 30, 2003; and (2) submission to Congress of amendments to the sentencing guidelines effective November 1, 2003.

SUMMARY: (1) PROTECT Act Amendments.—In the PROTECT Act, Congress directly amended §§ 2G2.2 (Trafficking in Materials Involving Sexual Exploitation of a Minor; Receiving, Transporting, Shipping, or Advertising Material Involving the Sexual Exploitation of a Minor; Possessing Material Involving the Sexual Exploitation of a Minor with Intent to Traffic), 2G2.4 (Possession of Materials Depicting a Minor Engaged in Sexually Explicit Conduct), 3E1.1 (Acceptance of Responsibility), 4B1.5 (Repeat and Dangerous Sex Offender Against Minors), 5H1.6 (Family Ties and Responsibilities, and Community Ties), 5K2.0 (Grounds for Departure), 5K2.13 (Diminished Capacity), and 5K2.20 (Aberrant Behavior), and enacted a new policy statement at § 5K2.22 (Specific Offender Characteristics as Grounds for Downward Departure in Child Crimes and Sexual Offenses). These amendments became effective on April 30, 2003. The PROTECT Act requires the Commission to distribute these amendments forthwith to federal courts and probation offices.

Pursuant to 401(m)(2)(C) of the PROTECT Act and section 994 of title 28, United States Code, the Commission promulgated conforming amendments to the congressional amendments to the guidelines made directly by the PROTECT Act. Section 994(x) of title 28, United States Code, requires the Commission to comply with the notice and comment procedures set forth in 5 U.S.C. 553. Section 553 provides, however, a "good cause" exception to the general notice and comment requirements if the "agency for good cause finds (and incorporates the finding and a brief statement of reasons therefor in the rules issued) that notice and public procedure thereon are impracticable, unnecessary, or contrary to the public interest." 5 U.S.C. 553(b); *see also* 5 U.S.C. 553(d)(3) (providing an exception to the otherwise applicable 30 day notice period "as otherwise provided by the agency for good cause found and published with the rule"). The effective date of the congressional amendments noted in the previous paragraph and the Act's directive to distribute such amendments forthwith made it impracticable to publish the conforming amendments in the **Federal Register** to provide an opportunity for public comment before the congressional amendments became effective. The Commission therefore had good cause not to publish those amendments before they became effective.

This notice also sets forth an amendment to § 2A4.1 (Kidnapping, Abduction, Unlawful Restraint), which Congress in the Act specifically directed the Commission to make "[n]otwithstanding any other provision of law regarding the amendment of Sentencing Guidelines". Pub. L. 108–21, section 104(a). The Act provides that this amendment shall "take effect on the date that is 30 days after the date of the enactment of this Act.". *Id.*

(2) Section 994(p) Amendments.—Pursuant to its authority under 28 U.S.C. 994(p), the Commission has promulgated amendments to the sentencing guidelines, policy statements, commentary, and statutory index.

This notice sets forth the amendments and the reason for each amendment.

DATES: (1) PROTECT Act Amendments.—The effective date for the amendments to §§ 2G2.2, 2G2.4, 3E1.1, 4B1.5, 5H1.6, 5K2.0, 5K2.13, and 5K2.20, and the enactment of § 5K2.22, is April 30, 2003. The effective date for the amendment to § 2A4.1 is May 30, 2003.

(2) Section 994(p) Amendments.—The Commission has specified an effective date of November 1, 2003, for the amendments made pursuant to 28 U.S.C. 994(p) set forth in Part Two of this notice.

FOR FURTHER INFORMATION CONTACT: Michael Courlander, Public Affairs Officer, 202–502–4590. The amendments set forth in this notice also may be accessed through the Commission's website at *http://www.ussc.gov*. The April 30, 2003 Supplement to the 2002 *Guidelines Manual* sets forth the PROTECT Act amendments and the emergency amendments promulgated by the Commission effective January 25, 2003. This Supplement, when used in conjunction with the 2002 Guidelines Manual, constitutes the operative *Guidelines Manual* effective April 30, 2003. It may be accessed through the Commission's Web site as well.

SUPPLEMENTARY INFORMATION: The United States Sentencing Commission is an independent agency in the judicial branch of the United States Government. The Commission promulgates sentencing guidelines and policy statements for federal sentencing courts pursuant to 28 U.S.C. 994(a). The Commission also periodically reviews and revises previously promulgated guidelines pursuant to 28 U.S.C. 994(o) and generally submits guideline amendments to Congress pursuant to 28 U.S.C. 994(p) not later than the first day of May each year. Absent action of Congress to the contrary, submitted amendments become effective by operation of law on the date specified by the Commission (generally November 1 of the year in which the amendments are submitted to Congress).

(1) PROTECT Act Amendments.—The congressional amendments made by and pursuant to the PROTECT Act are set forth in Part One of this notice.

(2) Section 994(p) Amendments.—Notice of proposed amendments made pursuant to 28 U.S.C. 994(p) was published in the **Federal Register** on December 18, 2002 (*see* 67 FR 77532–77547), and January 17, 2003 (*see* 68 FR 2615–2628). The Commission held a public hearing on the proposed amendments in Washington, D.C., on March 25, 2003. After a review of hearing testimony and additional public comment, the Commission promulgated the amendments set forth in Part Two of this notice. On May 1, 2003, the Commission submitted these amendments to Congress and specified an effective date of November 1, 2003.

Authority: 28 U.S.C. 994(a), (o), and (p); USSC Rule of Practice and Procedure 4.1.

Diana E. Murphy,
Chair.

Part One: PROTECT Act Amendments

1. Amendment: Section 2G2.2(b) is amended by adding at the end the following:

"(6) If the offense involved—

(A) At least 10 images, but fewer than 150, increase by 2 levels;

(B) At least 150 images, but fewer than 300, increase by 3 levels;

(C) At least 300 images, but fewer than 600, increase by 4 levels; and

(D) 600 or more images, increase by 5 levels.".

The Commentary to § 2G2.2 is amended by adding at the end the following:

"Background: Section 401(i)(1)(C) of Public Law 108–21 directly amended subsection (b) to add subdivision (6), effective April 30, 2003.".

Section 2G2.4(b) is amended by adding at the end the following:

"(4) If the offense involved material that portrays sadistic or masochistic conduct or other depictions of violence, increase by 4 levels.

(5) If the offense involved—

(A) At least 10 images, but fewer than 150, increase by 2 levels;

(B) At least 150 images, but fewer than 300, increase by 3 levels;

(C) At least 300 images, but fewer than 600, increase by 4 levels; and

(D) 600 or more images, increase by 5 levels.".

The Commentary to § 2G2.4 is amended by adding at the end the following:

"Background: Section 401(i)(B) of Public Law 108–21 directly amended subsection (b) to add subdivisions (4) and (5), effective April 30, 2003.".

Section 3E1.1(b) is amended by inserting "upon motion of the government stating that" before "the defendant has assisted authorities"; and by striking "taking one or more" and all that follows through "1 additional level" and inserting "timely notifying authorities of his intention to enter a plea of guilty, thereby permitting the government to avoid preparing for trial and permitting the government and the court to allocate their resources efficiently, decrease the offense level by 1 additional level".

The Commentary to § 3E1.1 captioned "Application Notes" is amended in Note 6 by striking "one or both of"; by striking "(1) or (2)"; by striking "(b)(2)" and inserting "(b)"; and by adding at the end the following new paragraph:

"Because the Government is in the best position to determine whether the defendant has assisted authorities in a manner that avoids preparing for trial, an adjustment under subsection (b) may be granted upon a formal motion by the Government at the time of sentencing. *See* section 401(g)(2)(B) of Pub. L. 108–21.".

The Commentary to § 3E1.1 captioned "Background" is amended by striking "one or more of" both places it appears; and by adding at the end the following:

"Section 401(g) of Public Law 108–21 directly amended subsection (b), Application Note 6 (including adding the last paragraph of that application note), and the Background Commentary, effective April 30, 2003.".

The Commentary to § 4B1.5 captioned "Application Notes" is amended in Note 4(B) by striking subdivision (i) as follows:

"(i) In General—For purposes of subsection (b), the defendant engaged in a pattern of activity involving prohibited sexual conduct if—

(I) On at least two separate occasions, the defendant engaged in prohibited sexual conduct with a minor; and

(II) There were at least two minor victims of the prohibited sexual conduct.

For example, the defendant engaged in a pattern of activity involving prohibited sexual conduct if there were two separate occasions of prohibited sexual conduct and each such occasion involved a different minor, of if there were two separate occasions of prohibited sexual conduct involving the same two minors.".

and inserting:

"(i) In General—For purposes of subsection (b), the defendant engaged in a pattern of activity involving prohibited sexual conduct if on at least two separate occasions, the defendant engaged in prohibited sexual conduct with a minor.".

The Commentary to § 4B1.5 captioned "Background" is amended by striking "section 632 of Pub. L. 102–141 and section 505 of Pub. L. 105–314" and inserting "section 632 of Public Law 102–141 and section 505 of Public Law 105–314"; and by adding at the end the following:

"Section 401(i)(1)(A) of Public Law 108–21 directly amended Application Note 4(b)(i), effective April 30, 2003.".

Section 5H1.6 is amended by striking "Family ties" and inserting "In sentencing a defendant convicted of an offense other than an offense described in the following paragraph, family ties"; and by inserting after the first sentence the following new paragraph:

"In sentencing a defendant convicted of an offense involving a minor victim under section 1201, an offense under section 1591, or an offense under chapter 71, 109A, 110, or 117, of title 18, United States Code, family ties and responsibilities and community ties are not relevant in determining whether a sentence should be below the applicable guideline range.".

Section 5H1.6 is amended by adding at the end the following:

"Commentary

Background: Section 401(b)(4) of Public Law 108–21 directly amended this policy statement to add the second paragraph, effective April 30, 2003.".

Section 5K2.0 is amended by striking "Under" and inserting the following:

"(a) DOWNWARD DEPARTURES IN CRIMINAL CASES OTHER THAN CHILD CRIMES AND SEXUAL OFFENSES.—Under";

and by adding at the end the following:

(b) DOWNWARD DEPARTURES IN CHILD CRIMES AND SEXUAL OFFENSES.—Under 18 U.S.C. § 3553(b)(2), the sentencing court may impose a sentence below the range established by the applicable guidelines only if the court finds that there exists a mitigating circumstance of a kind, or to a degree, that—

(1) Has been affirmatively and specifically identified as a permissible ground of downward departure in the sentencing guidelines or policy statements issued under section 994(a) of title 28, United States Code, taking account of any amendments to such sentencing guidelines or policy statements by act of Congress;

(2) Has not adequately been taken into consideration by the Sentencing Commission in formulating the guidelines; and

(3) should result in a sentence different from that described.

The grounds enumerated in this Part K of chapter 5 are the sole grounds that have been affirmatively and specifically identified as a permissible ground of downward departure in these sentencing guidelines and policy statements. Thus, notwithstanding any other reference to authority to depart downward elsewhere in this Sentencing Manual, a ground of downward departure has not been affirmatively and specifically identified as a permissible ground of downward departure within the meaning of section 3553(b)(2) unless it is expressly enumerated in this Part K as a ground upon which a downward departure may be granted.".

The Commentary to § 5K2.0 is amended by inserting an asterisk after "Commentary" and by inserting the following new paragraph before "The United":

"[*Section 401(m)(2)(C) of Public Law 108–21 directs the Commission to revise § 5K2.0, within 180 days after the date of the enactment of that Public Law, or October 27, 2003, to conform § 5K2.0 to changes made by that Public Law, including changes to the appellate standard of review for decisions to depart from the guidelines. That directive has not been implemented yet in the following commentary.]".

The Commentary to § 5K2.0 is amended by striking "of this policy

statement" and inserting "of subsection (a)".

The Commentary to § 5K2.0 is amended by adding at the end the following:

"Section 401(b)(1) of Public Law 108–21 directly amended this policy statement to add subsection (b), effective April 30, 2003.".

Section 5K2.13 is amended by striking "or" before "(3)"; and by striking "public." and inserting "public; or (4) the defendant has been convicted of an offense under chapter 71, 109A, 110, or 117, of title 18, United States Code.".

The Commentary to § 5K2.13 is amended by adding at the end the following:

"Background: Section 401(b)(5) of Public Law 108–21 directly amended this policy statement to add subdivision (4), effective April 30, 2003.".

Section 5K2.20 is amended by striking "A sentence" and inserting "Except where a defendant is convicted of an offense involving a minor victim under section 1201, an offense under section 1591, or an offense under chapter 71, 109A, 110, or 117, of title 18, United States Code, a sentence".

The Commentary to § 5K2.20 is amended by adding at the end the following:

"Background: Section 401(b)(3) of Public Law 108–21 directly amended this policy statement, effective April 30, 2003.".

Chapter Five, Part K, is amended by adding at the end the following:

"§ 5K2.22. Specific Offender Characteristics as Grounds for Downward Departure in Child Crimes and Sexual Offenses (Policy Statement)

In sentencing a defendant convicted of an offense involving a minor victim under section 1201, an offense under section 1591, or an offense under chapter 71, 109A, 110, or 117, of title 18, United States Code:

(1) Age may be a reason to impose a sentence below the applicable guideline range only if and to the extent permitted by § 5H1.1.

(2) An extraordinary physical impairment may be a reason to impose a sentence below the applicable guideline range only if and to the extent permitted by § 5H1.4.

(3) Drug, alcohol, or gambling dependence or abuse is not a reason for imposing a sentence below the guidelines.

Commentary

Background: Section 401(b)(2) of Public Law 108–21 directly amended Chapter Five, Part K, to add this policy statement, effective April 30, 2003.".

Reason for Amendment: This amendment implements amendments to the guidelines made directly by the PROTECT Act, Pub. L. 108–21. In addition to amendments made directly by the PROTECT Act, this amendment makes technical and conforming amendments to those direct congressional amendments, pursuant to the Commission's authority to promulgate such technical and conforming amendments under section 401(m) of the PROTECT Act and 28 U.S.C. 994.

2. Amendment: Section 2A4.1 is amended in subsection (a) by striking "24" and inserting the following:

"(1) 24 (effective before, but not on or after, May 30, 2003).

(1) 32 (effective on and after May 30, 2003).";

in subsection (b)(4)(C), by inserting "(effective before, but not on or after, May 30, 2003)" after "level";

and by striking subsection (b)(5) as follows:

"(5) If the victim was sexually exploited, increase by 3 levels."

and inserting the following:

"(5) If the victim was sexually exploited:

(A) Increase by 3 levels (effective before, but not on or after, May 30, 2003).

(A) Increase by 6 levels (effective on and after May 30, 2003).".

The Commentary to § 2A4.1 captioned "Application Notes" is amended in Note 3 by inserting "(effective before, but not on or after, May 30, 2003)" after "resistance".

The Commentary to § 2A4.1 captioned "Background" is amended by adding at the end the following:

"Subsections (a) and (b)(5), and the deletion of subsection (b)(4)(C), effective May 30, 2003, implement the directive to the Commission in section 104 of Public Law 108–21.".

Reason for Amendment: This amendment implements the directive to the Commission in section 104 of the PROTECT Act, Pub. L. 108–21.

Part Two: Section 994(p) Amendments

1. Amendment: Section 2A1.4(a)(1) is amended by striking "10" and inserting "12".

Section 2A1.4(a)(2) is amended by striking "14" and inserting "18".

Reason for Amendment: This amendment responds to a concern that the federal sentencing guidelines do not adequately reflect the seriousness of involuntary manslaughter offenses. Specifically, the Department of Justice, some members of Congress, and an ad hoc advisory group formed by the Commission to address Native American sentencing guideline issues expressed concern that most federal involuntary manslaughter cases involve vehicular homicides, which analysis of Commission data confirmed. These commentators also indicated that these offenses appear to be underpunished, particularly when compared to comparable cases arising under state law. This disparity with state punishments has been confirmed by studies undertaken by the Commission. In addition, Congress increased the maximum statutory penalty for involuntary manslaughter from three to six years' imprisonment in 1994.

In response to these concerns and the Commission's analysis, this amendment increases the base offense level in § 2A1.4(a)(2) for reckless involuntary manslaughter offenses from level 14 to level 18. This four level increase corresponds to an approximate 50 percent increase in sentence length for these offenses. This amendment also increases the base offense level in § 2A4.1(a)(1) for criminally negligent involuntary manslaughter offenses from level 10 to level 12. The two level increase represents an approximate 25 percent increase in the sentence length for these offenses.

2. Amendment: Sections 2B1.1, 2E5.3, 2J1.2, and 2T4.1, effective January 25, 2003 (see USSC Guidelines Manual Supplement to the 2002 Supplement to Appendix C, Amendment 647), are repromulgated with the following changes:

Section 2B1.1(a) is amended to read as follows:

"(a) Base Offense Level:

(1) 7, if (A) the defendant was convicted of an offense referenced to this guideline; and (B) that offense of conviction has a statutory maximum term of imprisonment of 20 years or more; or

(2) 6, otherwise.".

Section 2B1.1(b)(12) is amended by striking "If the resulting" and all that follows through "to level 24."; and by inserting after subdivision (B) the following:

"(C) The cumulative adjustments from application of both subsections (b)(2) and (b)(12)(B) shall not exceed 8 levels, except as provided in subdivision (D).

(D) If the resulting offense level determined under subdivision (A) or (B) is less than level 24, increase to level 24.".

Section 2B1.1(b) is amended by striking the following:

"(13) If the offense involved a violation of securities law and, at the time of the offense, the defendant was an officer or a director of a publicly traded company, increase by 4 levels."; and inserting the following:

"(14) If the offense involved—

(A) A violation of securities law and, at the time of the offense, the defendant was (i) an officer or a director of a publicly traded company; (ii) a registered broker or dealer, or a person associated with a broker or dealer; or (iii) an investment adviser, or a person associated with an investment adviser; or

(B) A violation of commodities law and, at the time of the offense, the defendant was (i) an officer or a director of a futures commission merchant or an introducing broker; (ii) a commodities trading advisor; or (iii) a commodity pool operator,

increase by 4 levels.".

The Commentary to § 2B1.1 captioned "Application Notes" is amended by redesignating Notes 2 through 9 as Notes 3 through 10, respectively; by redesignating Notes 11 through 16 as Notes 13 through 18, respectively; by inserting after Note 1 the following:

"2. Application of Subsection (a)(1).—

(A) 'Referenced to This Guideline'.—For purposes of subsection (a)(1), an offense is 'referenced to this guideline' if (i) this guideline is the applicable Chapter Two guideline determined under the provisions of § 1B1.2 (Applicable Guidelines) for the offense of conviction; or (ii) in the case of a conviction for conspiracy, solicitation, or attempt to which § 2X1.1 (Attempt, Solicitation, or Conspiracy) applies, this guideline is the appropriate guideline for the offense the defendant was convicted of conspiring, soliciting, or attempting to commit.

(B) Definition of 'Statutory Maximum Term of Imprisonment'—For purposes of this guideline, 'statutory maximum term of imprisonment' means the maximum term of imprisonment authorized for the offense of conviction, including any increase in that maximum term under a statutory enhancement provision.

(C) Base Offense Level Determination for Cases Involving Multiple Counts.—In a case involving multiple counts sentenced under this guideline, the applicable base offense level is determined by the count of conviction that provides the highest statutory maximum term of imprisonment.";

and by striking "10. Application of Subsection (b)(12)(B).—" and inserting "11. Application of Subsection (b)(12)(B).—".

The Commentary to § 2B1.1 captioned "Application Notes" is amended in Note 4, as redesignated by this amendment, in subdivision (B)(ii)(IV) by striking "or more".

The Commentary to § 2B1.1 captioned "Application Notes" is amended in Note 13, as redesignated by this amendment, by striking "(b)(13)" each place it appears and inserting "(b)(14)"; by striking subdivision (A) and inserting the following:

"(A) Definitions.—For purposes of this subsection:

'Commodities law' means (i) the Commodities Exchange Act (7 U.S.C. 1 *et seq.*); and (ii) includes the rules, regulations, and orders issued by the Commodities Futures Trading Commission.

'Commodity pool operator' has the meaning given that term in section 1a(4) of the Commodities Exchange Act (7 U.S.C. 1a(4)).

'Commodity trading advisor' has the meaning given that term in section 1a(5) of the Commodities Exchange Act (7 U.S.C. 1a(5)).

'Futures commission merchant' has the meaning given that term in section 1a(20) of the Commodities Exchange Act (7 U.S.C. 1a(20)).

'Introducing broker' has the meaning given that term in section 1a(23) of the Commodities Exchange Act (7 U.S.C. 1a(23)).

'Investment adviser' has the meaning given that term in section 202 of the Investment Advisers Act of 1940 (15 U.S.C. 80b–2(a)(11)).

'Person associated with a broker or dealer' has the meaning given that term in section 3(a)(48) of the Securities Exchange Act of 1934 (15 U.S.C. 78c(a)(18)).

'Person associated with an investment adviser' has the meaning given that term in section 202 of the Investment Advisers Act of 1940 (15 U.S.C. 80b–2(a)(17)).

'Registered broker or dealer' has the meaning given that term in section 3(a)(48) of the Securities Exchange Act of 1934 (15 U.S.C. 78c(a)(48)).

'Securities law' (i) means 18 U.S.C. 1348, 1350, and the provisions of law referred to in section 3(a)(47) of the Securities Exchange Act of 1934 (15 U.S.C. 78c(a)(47)); and (ii) includes the rules, regulations, and orders issued by the Securities and Exchange Commission pursuant to the provisions of law referred to in such section.";

and in subdivision (B) by inserting "or commodities law" after "securities law" each place it appears.

The Commentary to § 2B1.1 captioned "Background" is amended in the first paragraph by striking the last sentence.

The Commentary to § 2C1.1 captioned "Application Notes" is amended in Note 2 by striking "Note 2" and inserting "Note 3".

The Commentary to § 2C1.7 captioned "Application Notes" is amended in Note 3 by striking "Note 2" and inserting "Note 3".

The Commentary to § 2J1.1 captioned "Application Notes" is amended in Note 1 by inserting "In General.—" before "Because".

The Commentary to § 2J1.1 captioned "Application Notes" is amended in Note 2 by inserting "Willful Failure to Pay Court-Ordered Child Support.—" before "For offenses".

The Commentary to § 2J1.1 captioned "Application Notes" is amended by adding at the end the following:

"3. Violation of Judicial Order Enjoining Fraudulent Behavior.—In a case involving a violation of a judicial order enjoining fraudulent behavior, the most analogous guideline is § 2B1.1. In such a case, § 2B1.1(b)(7)(C) (pertaining to a violation of a prior, specific judicial order) ordinarily would apply.".

The Commentary to § 2J1.2 captioned "Application Notes" is amended in Note 1 by inserting before the paragraph that begins "Substantial interference" the following:

"Definitions.—For purposes of this guideline:

'Records, documents, or tangible objects' includes (A) records, documents, or tangible objects that are stored on, or that are, magnetic, optical, digital, other electronic, or other storage mediums or devices; and (B) wire or electronic communications.".

The Commentary to § 2J1.2 captioned "Application Notes" is amended in Note 4 by inserting "Upward Departure Considerations.—" before "If a weapon"; by striking "a departure" and inserting "an upward departure"; and by inserting at the end the following:

"In a case involving an act of extreme violence (for example, retaliating against a government witness by throwing acid in the witness's face), an upward departure would be warranted.".

Section 2J1.3(a) is amended by striking "12" and inserting "14".

Appendix A, effective January 25, 2003 (*see* USSC Guidelines Manual Supplement to the 2002 Supplement to Appendix C, Amendments 647 and 648; *see also* this document, Amendment 5), is repromulgated without change.

Reason for Amendment: With this amendment the Commission continues its work to deter and punish economic and white collar crimes, building on its Economic Crime Package of 2001 and subsequent formation in early 2002 of an Ad Hoc Advisory Group on the Organizational Guidelines for sentencing corporations and other organizations. This 2003 amendment also implements directives in sections 805, 905, and 1104 of the Sarbanes-Oxley Act of 2002, Pub. L. 107–204 (the

"Act"), by making several modifications to §§ 2B1.1 (Larceny, Embezzlement, and Other Forms of Theft; Offenses Involving Stolen Property; Property Damage or Destruction; Fraud and Deceit; Forgery; Offenses Involving Altered or Counterfeit Instruments Other than Counterfeit Bearer Obligations of the United States), 2J1.2 (Obstruction of Justice), and 2E5.3 (False Statements and Concealment of Facts in Relation to Documents Required by the Employee Retirement Income Security Act; Failure to Maintain and Falsification of Records Required by the Labor Management Reporting and Disclosure Act; Destruction and Failure to Maintain Corporate Audit Records), as well as conforming changes to §§ 2J1.1 (Contempt), 2J1.3 (Perjury or Subornation of Perjury; Bribery of Witness), and 2T4.1 (Tax Table). The amendment also responds to increased statutory penalties for existing crimes and several severely punished new crimes created by the Act.

The directives in the Act generally pertain to serious fraud and related offenses and obstruction of justice offenses. Congress gave the Commission emergency amendment authority to promulgate amendments addressing, among other things, officers and directors of publicly traded companies who commit fraud and related offenses, fraud offenses that endanger the solvency or financial security of a substantial number of victims, fraud offenses that involve significantly greater than 50 victims, and obstruction of justice offenses that involve the destruction of evidence. This amendment expands upon the temporary emergency amendment effective January 25, 2003, and repromulgates it as a permanent amendment.

First, the amendment modifies the base offense level in § 2B1.1 to implement more fully the directive contained in section 905(b)(2) of the Act to consider whether the guidelines "for violations of the sections amended by this Act are sufficient to deter and punish such offenses, and specifically, are adequate in view of the statutory increases in penalties contained in this Act." Section 903 of the Act, for example, quadrupled the statutory maximum penalties for wire fraud and mail fraud from five to 20 years' imprisonment, while section 902 made attempts and conspiracies subject to these same heightened penalties. Specifically, the amendment provides a new higher alternative base offense level of level 7 if the defendant was convicted of an offense referenced to § 2B1.1 and the offense carries a statutory maximum term of imprisonment of 20 years or more. The alternative base offense levels are intended to calibrate better the base guideline penalty to the seriousness of the wide variety of offenses referenced to that guideline, as reflected by statutory maximum penalties established by Congress.

For those offenses to which the higher alternative base offense will apply (including wire fraud and mail fraud), the effect of the amendment is to limit the availability of a probation only sentence in Zone A of the sentencing table to offenses involving loss amounts of $10,000 or less, assuming a two level reduction for acceptance of responsibility. Prior to the amendment, a Zone A sentence was available for all offenses sentenced under § 2B1.1 involving loss amounts of $30,000 or less. Similarly, for those offenses for which the higher alternative base offense level will apply, the effect of the amendment is to require an imprisonment sentence in Zone D for offenses involving loss amounts of more than $70,000. Prior to the amendment, a Zone D sentence was required for all offenses sentenced under § 2B1.1 involving loss amounts of more than $120,000.

Second, the amendment expands the loss table at § 2B1.1(b)(1) to punish adequately offenses that cause catastrophic losses of magnitudes previously unforeseen, such as the serious corporate scandals that gave rise to several portions of the Act. Prior to the emergency amendment, the loss table at § 2B1.1(b)(1) provided sentencing enhancements in two level increments up to a maximum of 26 levels for offenses in which the loss exceeded $100,000,000. The amendment adds two additional loss amount categories to the table; an increase of 28 levels for offenses in which the loss exceeded $200,000,000, and an increase of 30 levels for offenses in which the loss exceeded $400,000,000. These additions to the loss table address congressional concern regarding particularly extensive and serious fraud offenses and also more fully effectuate increases in statutory maximum penalties provided by the Act. The amendment also modifies the tax table in § 2T4.1 in a similar manner to maintain the longstanding proportional relationship between the loss table in § 2B1.1 and the tax table.

The amendment also adds a new factor to the general, enumerated factors that the court may consider in determining the amount of loss under § 2B1.1(b)(1). Specifically, the amendment adds the reduction in the value of equity securities or other corporate assets that resulted from the offense to the list of general factors set forth in Application Note 3(C) of § 2B1.1. This factor was added to provide courts additional guidance in determining loss in certain cases, particularly in complex white collar cases.

Third, the amendment addresses the directive contained in section 1104(b)(5) of the Act to "ensure that the guideline offense levels and enhancements under United States Sentencing Guideline 2B1.1 (as in effect on the date of enactment of this Act) are sufficient for a fraud offense when the number of victims adversely involved is significantly greater than 50." The amendment implements this directive by expanding the existing enhancement at § 2B1.1(b)(2) based on the number of victims involved in the offense. Prior to the emergency amendment, subsection (b)(2) provided a two level enhancement if the offense involved more than 10, but less than 50, victims (or was committed through mass-marketing), and a four level enhancement if the offense involved 50 or more victims. The amendment provides an additional two level increase, for a total of six levels, if the offense involved 250 or more victims. The Commission determined that an enhancement of this magnitude appropriately responds to the pertinent directive and accounts for the extensive nature of, and the large scale victimization caused by, such offenses.

Fourth, the amendment addresses directives contained in sections 805 and 1104 of the Act pertaining to securities and accounting fraud offenses and fraud offenses that endanger the solvency or financial security of a substantial number of victims. Specifically, section 805(a)(4) directs the Commission to ensure that "a specific offense characteristic enhancing sentencing is provided under United States Sentencing Guideline 2B1.1 (as in effect on the date of enactment of this Act) for a fraud offense that endangers the solvency or financial security of a substantial number of victims." In addition, section 1104(b)(1) directs the Commission to "ensure that the sentencing guidelines and policy statements reflect the serious nature of securities, pension, and accounting fraud and the need for aggressive and appropriate law enforcement action to prevent such offenses." The amendment implements these directives by expanding the scope of the existing enhancement at § 2B1.1(b)(12)(B).

Prior to the emergency amendment, § 2B1.1(b)(12)(B) provided a four level enhancement and a minimum offense level of level 24 if the offense substantially jeopardized the safety and soundness of a financial institution. The amendment expands the scope of this enhancement by providing two additional parts. The first part applies to offenses that substantially endanger the solvency or financial security of an organization that, at any time during the offense, was a publicly traded company or had 1,000 or more employees. The addition of this part reflects the Commission's determination that such an offense undermines the public's confidence in the securities and investment market much in the same manner as an offense that jeopardizes the safety and soundness of a financial institution undermines the public's confidence in the banking system. This part also reflects the likelihood that an offense that endangers the solvency or financial security of an employer of this size will similarly affect a substantial number of individual victims, without requiring the court to determine whether the solvency or financial security of each individual victim was substantially endangered.

A corresponding application note for § 2B1.1(b)(12)(B) sets forth a non-exhaustive list of factors that the court shall consider in determining whether the offense endangered the solvency or financial security of a publicly traded company or an organization with 1,000 or more employees. The list of factors that the court shall consider when applying the new enhancement includes references to insolvency, filing for bankruptcy, substantially reducing the value of the company's stock, and substantially reducing the company's workforce. As appropriate, the court may consider other factors not enumerated in the application note.

The amendment also modifies the application note to previously existing § 2B1.1(b)(12)(B), the financial institutions enhancement, to be consistent structurally with the new part of the enhancement. Prior to the emergency amendment, the presence of any one of the factors enumerated in the application note would trigger the financial institutions enhancement under § 2B1.1(b)(12)(B). Under the amendment, the application note to the financial institutions enhancement sets forth a non-exhaustive list of factors that the court shall consider in determining whether the offense substantially jeopardized the safety and soundness of a financial institution. The list of factors that the court shall consider when applying this enhancement includes references to insolvency, substantially reducing benefits to pensioners and insureds, and an inability to refund fully any deposit, payment, or investment on demand.

The second part added to § 2B1.1(b)(12)(B) by the amendment applies to offenses that substantially endangered the solvency or financial security of 100 or more victims, regardless of whether a publicly traded company or other organization was affected by the offense. The Commission concluded that the specificity of the directive in section 805(a)(4) required an enhancement focused specifically on conduct that endangers the financial security of individual victims. Thus, use of this part of the enhancement will be appropriate in cases in which there is sufficient evidence for the court to determine that the amount of loss suffered by individual victims of the offense substantially endangered the solvency or financial security of those victims. The Commission also determined that the enhancement provided in § 2B1.1(b)(12)(B) shall apply cumulatively with the enhancement at § 2B1.1(b)(2), which is based solely on the number of victims involved in the offense, to reflect the particularly acute harm suffered by victims of offenses to which the new parts of subsection (b)(12)(B) apply. To account for the overlapping nature of such conduct in some cases, however, the Commission added a provision at subsection (b)(12)(C) that limits the cumulative impact of subsections (b)(2) and (b)(12)(B) to eight levels, except for application of the minimum offense level of level 24.

Fifth, the amendment addresses the directive contained at section 1104(a)(2) of the Act to "consider the promulgation of new sentencing guidelines or amendments to existing sentencing guidelines to provide an enhancement for officers or directors of publicly traded corporations who commit fraud and related offenses." The emergency amendment implemented this directive by providing a new, four level enhancement that applies if the offense involved a violation of securities law and, at the time of the offense, the defendant was an officer or director of a publicly traded company.

The amendment expands the scope of this enhancement to cover registered brokers and dealers, associated persons of a broker or dealer, investment advisers, and associated persons of an investment adviser. The amendment also expands the scope of this enhancement to apply if the offense involves a violation of commodities law and, at the time of the offense, the defendant was an officer or director of a futures commission merchant or introducing broker, a commodities trading advisor, or a commodity pool operator. The Commission concluded that a four level enhancement appropriately reflects the culpability of offenders who occupy such positions and who are subject to heightened fiduciary duties imposed by securities law or commodities law similar to duties imposed on officers and directors of publicly traded corporations. Accordingly, the court is not required to determine specifically whether the defendant abused a position of trust in order for the enhancement to apply, and a corresponding application note provides that, in cases in which the new, four level enhancement applies, the existing two level enhancement for abuse of position of trust at § 3B1.3 (Abuse of Position of Trust or Use of Special Skill) shall not apply.

The corresponding application note also expressly provides that the enhancement would apply regardless of whether the defendant was convicted under a specific securities fraud or commodities fraud statute (*e.g.*, 18 U.S.C. 1348, a new offense created by the Act specifically prohibiting securities fraud) or under a general fraud statute (*e.g.*, 18 U.S.C. 1341, prohibiting mail fraud), provided that the offense involved a violation of "securities law" or "commodities law" as defined in the application note.

Sixth, the amendment modifies § 2J1.2 to address the directives pertaining to obstruction of justice offenses contained in sections 805 and 1104 of the Act. Specifically, section 805(a) of the Act directs the Commission to ensure that the base offense level and existing enhancements in § 2J1.2 are sufficient to deter and punish obstruction of justice offenses generally, and specifically are adequate in cases involving the destruction, alteration, or fabrication of a large amount of evidence, a large number of participants, the selection of evidence that is particularly probative or essential to the investigation, more than minimal planning, or abuse of a special skill or a position of trust. Section 1104(b) of the Act further directs the Commission to ensure that the "guideline offense levels and enhancements for an obstruction of justice offense are adequate in cases where documents or other physical evidence are actually destroyed or fabricated."

The amendment implements these directives by making two modifications to § 2J1.2. First, the amendment increases the base offense level in § 2J1.2 from level 12 to level 14. Second, the amendment adds a new two level enhancement to § 2J1.2. This enhancement applies if the offense (1)

involved the destruction, alteration, or fabrication of a substantial number of records, documents or tangible objects; (2) involved the selection of any essential or especially probative record, document, or tangible object to destroy or alter; or (3) was otherwise extensive in scope, planning, or preparation. The amendment also adds an upward departure provision for offenses sentenced under § 2J1.2 that involve extreme acts of violence, for example, retaliating against a government witness by throwing acid in the witness's face. The Commission determined that existing adjustments in Chapter Three for aggravating role, § 3B1.1, and abuse of position of trust or use of special skill, § 3B1.3, adequately account for those particular factors described in section 805(a) of the Act.

Seventh, the amendment also increases the base offense level in the perjury guideline, § 2J1.3, from level 12 to level 14 in order to maintain the longstanding proportional relationship between the offense levels provided in the guidelines for perjury and obstruction of justice.

Eighth, the amendment addresses new offenses created by the Act. Section 1520 of title 18, United States Code, relating to destruction of corporate audit records, is referenced to § 2E5.3. Section 1520 provides a statutory maximum penalty of ten years' imprisonment for knowing and willful violations of document maintenance requirements as set forth in that section or in rules or regulations to be promulgated by the Securities and Exchange Commission pursuant to that section. The amendment also expands the existing cross reference in § 2E5.3(a)(2) specifically to cover fraud and obstruction of justice offenses. Accordingly, if a defendant violated 18 U.S.C. 1520 in order to obstruct justice, the cross reference provision in § 2E5.3 requires the court to apply § 2J1.2 instead of § 2E5.3. Other new offenses are listed in Appendix A (Statutory Index), as well as in the statutory provisions of the relevant guidelines.

Finally, the amendment amends the contempt guideline, § 2J1.1, by adding an application note clarifying that (1) § 2B1.1 is the most analogous guideline in a case involving a violation of a judicial order enjoining fraudulent behavior; and (2) the enhancement at § 2B1.1(b)(7)(C) (pertaining to a violation of a prior, specific judicial order) ordinarily would apply in such a case.

3. Amendment: Section 2B1.1(b) is amended by inserting after subsection (b)(12) the following:

"(13)(A) (Apply the greatest) If the defendant was convicted of an offense under:

(i) 18 U.S.C. 1030, and the offense involved (I) a computer system used to maintain or operate a critical infrastructure, or used by or for a government entity in furtherance of the administration of justice, national defense, or national security; or (II) an intent to obtain personal information, increase by 2 levels.

(ii) 18 U.S.C. 1030(a)(5)(A)(i), increase by 4 levels.

(iii) 18 U.S.C. 1030, and the offense caused a substantial disruption of a critical infrastructure, increase by 6 levels.

(B) If subdivision (A)(iii) applies, and the offense level is less than level 24, increase to level 24.".

The Commentary to § 2B1.1 captioned "Statutory Provisions" is amended by inserting ", 2701" after "2332b(a)(1)".

The Commentary to § 2B1.1 captioned "Application Notes" is amended in Note 3(A)(v), as redesignated by Amendment 2, by striking subdivision (III) and inserting the following:

"(III) Offenses Under 18 U.S.C. 1030.—In the case of an offense under 18 U.S.C. 1030, actual loss includes the following pecuniary harm, regardless of whether such pecuniary harm was reasonably foreseeable: Any reasonable cost to any victim, including the cost of responding to an offense, conducting a damage assessment, and restoring the data, program, system, or information to its condition prior to the offense, and any revenue lost, cost incurred, or other damages incurred because of interruption of service.".

The Commentary to § 2B1.1 captioned "Application Notes" is amended by inserting before Note 13, as redesignated by Amendment 2, the following:

"12. Application of Subsection (b)(13).—

(A) Definitions.—For purposes of subsection (b)(13):

'Critical infrastructure' means systems and assets vital to national defense, national security, economic security, public health or safety, or any combination of those matters. A critical infrastructure may be publicly or privately owned. Examples of critical infrastructures include gas and oil production, storage, and delivery systems, water supply systems, telecommunications networks, electrical power delivery systems, financing and banking systems, emergency services (including medical, police, fire, and rescue services), transportation systems and services (including highways, mass transit, airlines, and airports), and government operations that provide essential services to the public.

'Government entity' has the meaning given that term in 18 U.S.C. 1030(e)(9).

'Personal information' means sensitive or private information (including such information in the possession of a third party), including (i) medical records; (ii) wills; (iii) diaries; (iv) private correspondence, including e-mail; (v) financial records; (vi) photographs of a sensitive or private nature; or (vii) similar information.

(B) Subsection (b)(13)(iii).—If the same conduct that forms the basis for an enhancement under subsection (b)(13)(iii) is the only conduct that forms the basis for an enhancement under subsection (b)(12)(B), do not apply the enhancement under subsection (b)(12)(B).".

The Commentary to § 2B1.1 captioned "Application Notes" is amended in Note 18, as redesignated by Amendment 2, by adding at the end of subdivision (A)(ii) the following:

"An upward departure would be warranted, for example, in an 18 U.S.C. 1030 offense involving damage to a protected computer, if, as a result of that offense, death resulted.";

by redesignating subdivision (B) as subdivision (C); and by inserting after subdivision (A) the following:

"(B) Upward Departure for Debilitating Impact on a Critical Infrastructure.—An upward departure would be warranted in a case in which subsection (b)(13)(iii) applies and the disruption to the critical infrastructure(s) is so substantial as to have a debilitating impact on national security, national economic security, national public health or safety, or any combination of those matters.".

The Commentary to § 2B1.1 captioned "Background" is amended by adding at the end the following paragraph:

"Subsection (b)(13) implements the directive in section 225(b) of Public Law 107–296. The minimum offense level of level 24 provided in subsection (b)(13)(B) for an offense that resulted in a substantial disruption of a critical infrastructure reflects the serious impact such an offense could have on national security, national economic security, national public health or safety, or a combination of any of these matters.".

Section 2B2.3(b)(1) is amended by striking "or " after "airport;" and by inserting after "residence" the following:

"; or (F) on a computer system used (i) to maintain or operate a critical infrastructure; or (ii) by or for a government entity in furtherance of the administration of justice, national defense, or national security".

The Commentary to § 2B2.3 captioned "Application Notes" is amended in Note 1 by inserting after "United States Code." the following paragraph:

" 'Critical infrastructure' means systems and assets vital to national defense, national security, economic security, public health or safety, or any combination of those matters. A critical infrastructure may be publicly or privately owned. Examples of critical infrastructures include gas and oil production, storage, and delivery systems, water supply systems, telecommunications networks, electrical power delivery systems, financing and banking systems, emergency services (including medical, police, fire, and rescue services), transportation systems and services (including highways, mass transit, airlines, and airports), and government operations that provide essential services to the public.";

and by inserting after "Instructions)." the following paragraph:

'Government entity' has the meaning given that term in 18 U.S.C. 1030(e)(9).".

Section 2B3.2(b)(3)(B) is amended to read as follows:

"(B) If (i) the offense involved preparation to carry out a threat of (I) death; (II) serious bodily injury; (III) kidnapping; (IV) product tampering; or (V) damage to a computer system used to maintain or operate a critical infrastructure, or by or for a government entity in furtherance of the administration of justice, national defense, or national security; or (ii) the participant(s) otherwise demonstrated the ability to carry out a threat described in any of subdivisions (i)(I) through (i)(V), increase by 3 levels.".

The Commentary to § 2B3.2 captioned "Application Notes" is amended by striking Note 1 and inserting the following:

"1. Definitions.—For purposes of this guideline:

'Abducted,' 'bodily injury,' 'brandished,' 'dangerous weapon,' 'firearm,' 'otherwise used,' 'permanent or life-threatening bodily injury,' 'physically restrained,' and 'serious bodily injury' have the meaning given those terms in Application Note 1 of the Commentary to § 1B1.1 (Application Instructions).

'Critical infrastructure' means systems and assets vital to national defense, national security, economic security, public health or safety, or any combination of those matters. A critical infrastructure may be publicly or privately owned. Examples of critical infrastructures include gas and oil production, storage, and delivery systems, water supply systems, telecommunications networks, electrical power delivery systems, financing and banking systems, emergency services (including medical, police, fire, and rescue services), transportation systems and services (including highways, mass transit, airlines, and airports), and government operations that provide essential services to the public.

'Government entity' has the meaning given that term in 18 U.S.C. 1030(e)(9).".

The Commentary to § 2M3.2 captioned "Statutory Provisions" is amended by inserting "§" before "793(a)"; and by inserting ", 1030(a)(1)" after "(g)".

Appendix A (Statutory Index) is amended by inserting after the line referenced to 18 U.S.C. 2512 the following:

"18 U.S.C. 2701 2B1.1".

Reason for Amendment: This amendment addresses the serious harm and invasion of privacy that can result from offenses involving the misuse of, or damage to, computers. It implements the directive in section 225(b) of the Homeland Security Act of 2002, Pub. L. 107–296, which required the Commission to review, and if appropriate amend, the guidelines and policy statements applicable to persons convicted of offenses under 18 U.S.C. 1030 (fraud and related activity in connection with computers) to ensure that the guidelines and policy statements reflect the serious nature and growing incidence of such offenses and the need for an effective deterrent and appropriate punishment. The directive further requires the Commission to consider the extent to which eight specific factors were or were not accounted for by the guidelines. The amendment responds to the directive by making several changes to §§ 2B1.1 (Larceny, Embezzlement, and Other Forms of Theft; Offenses Involving Stolen Property; Property Damage or Destruction; Fraud and Deceit; Forgery; Offenses Involving Altered or Counterfeit Instruments Other than Counterfeit Bearer Obligations of the United States), 2B2.3 (Trespass), and 2B3.2 (Extortion by Force or Threat of Injury or Serious Damage). These changes are designed to supplement existing guidelines and policy statements and thereby ensure that offenses under 18 U.S.C. 1030 are adequately addressed and punished.

First, the amendment adds a new specific offense characteristic at § 2B1.1(b)(13) with three alternative enhancements of two, four, and six levels. The first enhancement provides a two level increase for convictions under 18 U.S.C. 1030 that involve either (1) a computer system used to maintain or operate a critical infrastructure or used in furtherance of the administration of justice, national defense, or national security; or (2) an intent to obtain private personal information. The second enhancement provides a four level increase for a conviction under 18 U.S.C. 1030(a)(5)(A)(i), which requires a heightened showing of intent to cause damage. The third enhancement provides a six level increase, with a minimum offense level of level 24, for a conviction under 18 U.S.C. 1030 that resulted in a substantial disruption of a critical infrastructure. The graduated levels ensure incremental punishment for increasingly serious conduct, and were chosen in recognition of the fact that conduct supporting application of a more serious enhancement frequently will encompass behavior relevant to a lesser enhancement as well. Accordingly, the most serious applicable enhancement will apply in any particular case.

The minimum offense level of level 24 applicable to the third such enhancement was chosen to maintain parity with the minimum offense level that applies to an offense that substantially jeopardized the safety and soundness of a financial institution, substantially endangered the solvency or financial security of a publicly traded company or an organization of at least 1,000 employees, or substantially endangered the solvency or financial security of 100 or more victims. *See* § 2B1.1(b)(12)(B). Because of the potential overlap in certain cases, the commentary provides that the enhancement at § 2B1.1(b)(12)(B) will not apply in a case in which the conduct supporting the six level critical infrastructure enhancement is the only conduct that forms the basis for the § 2B1.1(b)(12)(B) enhancement.

The minimum offense level of level 24 applicable to the third enhancement also reflects the fact that some offenders to whom the enhancement may apply will be subject to a statutory maximum penalty of five years' imprisonment, *i.e.*, those convicted of an offense under 18 U.S.C. 1030(a)(5)(A)(ii). To ensure that the most egregious cases involving critical infrastructure are adequately addressed, the amendment also provides an encouraged upward departure for cases in which the disruption of the critical infrastructure has a debilitating impact on national security, national economic security, national public health or safety, or any combination of these matters.

A definition of critical infrastructure is provided in the commentary. This definition is derived in part from the definition of critical infrastructure in the USA PATRIOT Act (*see* Pub. L. 107–56, section 1016; 42 U.S.C. 5195c(e)) but was modified to ensure that the enhancement will apply to substantial disruptions of critical infrastructure that are regional, rather than national, in scope. Examples of critical infrastructures are provided.

Second, the proposed amendment modifies the rule of construction relating to the calculation of loss in protected computer cases. This change was made to incorporate more fully the statutory definition of loss at 18 U.S.C. 1030(e)(11), added as part of the USA PATRIOT Act, and to clarify its application to all 18 U.S.C. 1030 offenses sentenced under § 2B1.1.

Third, the proposed amendment expands the upward departure note in § 2B1.1. That note provides that an upward departure may be warranted if an offense caused or risked substantial non-monetary harm, including physical harm. The amendment adds a provision that expressly states that an upward departure would be warranted for an offense under 18 U.S.C. 1030 involving damage to a protected computer that results in death.

Fourth, the amendment modifies § 2B2.3, to which 18 U.S.C. 1030(a)(3) (misdemeanor trespass on a government computer) offenses are referenced, and § 2B3.2, to which 18 U.S.C. 1030(a)(7) (extortionate demand to damage protected computer) offenses are referenced, to provide enhancements relating to computer systems used to maintain or operate a critical infrastructure, or by or for a government entity in furtherance of the administration of justice, national defense, or national security. The amendment expands the scope of existing enhancements to ensure that trespasses and extortions involving these types of important computer systems are addressed.

Finally, the amendment references offenses under 18 U.S.C. 2701 (unlawful access to stored communications) to § 2B1.1. Prior to the Act, a first offense under section 2701 was classified as a misdemeanor offense, and the guidelines did not reference the statute in Appendix A (Statutory Index). Given that the Act increased the penalties available for 18 U.S.C. 2701 offenses, the amendment references the statute in Appendix A. Section 2701 offenses are referenced to § 2B1.1 because such offenses involve the obtaining, altering, or denial of authorized access to stored wire or electronic communications, conduct that is related to fraud, theft, and property damage, which are covered by § 2B1.1.

4. Amendment: The Commentary to § 2B1.1 captioned "Application Notes", as amended by Amendment 3, is further amended in subdivision (A)(ii) of Note 18, as redesignated by Amendment 2, by adding at the end the following:

"An upward departure also would be warranted, for example, in a case involving animal enterprise terrorism under 18 U.S.C. 43, if, in the course of the offense, serious bodily injury or death resulted, or substantial scientific research or information were destroyed.".

Section 2K1.3(a) is amended by redesignating subdivisions (3) and (4) as subdivisions (4) and (5), respectively; and by inserting after subdivision (2) the following:

"(3) 18, if the defendant was convicted under 18 U.S.C. 842(p)(2);".

Section 2K1.3(b)(3) is amended by inserting "(A) was convicted under 18 U.S.C. 842(p)(2); or (B)" after "defendant".

Section 2K1.3(c)(1) is amended by inserting "(A) was convicted under 18 U.S.C. 842(p)(2); or (B)" after "defendant".

The Commentary to § 2K1.3 captioned "Application Notes" is amended in Note 3 by striking "(3)" and inserting "(4)".

The Commentary to § 2K1.3 captioned "Application Notes" is amended in the second paragraph of Note 9 by striking "(3)" and inserting "(4)".

The Commentary to § 2K1.3 captioned "Application Notes" is amended in Note 11 by adding at the end the following new paragraph:

"In addition, for purposes of subsection (c)(1)(A), "that other offense" means, with respect to an offense under 18 U.S.C. 842(p)(2), the underlying Federal crime of violence.".

Section 2K1.4(a)(1)(B) is amended by striking "or a ferry" and inserting "a ferry, a public transportation system, a state or government facility, an infrastructure facility, or a place of public use".

Section 2K1.4(a)(2) is amended to read as follows:

"(2) 20, if the offense (A) created a substantial risk of death or serious bodily injury to any person other than a participant in the offense; (B) involved the destruction or attempted destruction of a structure other than (i) a dwelling, or (ii) an airport, an aircraft, a mass transportation facility, a mass transportation vehicle, a ferry, a public transportation system, a state or government facility, an infrastructure facility, or a place of public use; or (C) endangered (i) a dwelling, (ii) a structure other than a dwelling, or (iii) an airport, an aircraft, a mass transportation facility, a mass transportation vehicle, a ferry, a public transportation system, a state or government facility, an infrastructure facility, or a place of public use; or".

The Commentary to § 2K1.4 captioned "Statutory Provisions" is amended by inserting ", 2332f" after "2332a".

The Commentary to § 2K1.4 captioned "Application Notes" is amended in Note 1 by adding at the end the following new paragraph:

"'State or government facility', 'infrastructure facility', 'place of public use', and 'public transportation system' have the meaning given those terms in 18 U.S.C. 2332f(e)(3), (5), (6), and (7), respectively.".

Section 2M5.3 is amended in the heading by adding "or For a Terrorist Purpose" after "Organizations".

Section 2M5.3(b)(1) is amended in subdivision (C) by striking "or" after "explosives;"; in subdivision (D) by inserting "the intent," after "with" and by inserting a comma after "knowledge"; and by inserting "; or (E) funds or other material support or resources with the intent, knowledge, or reason to believe they are to be used to commit or assist in the commission of a violent act" after "(A) through (C)".

The Commentary to § 2M5.3 captioned "Statutory Provision" is amended by striking "Provision" and inserting "Provisions"; by inserting "§ " before "2339B"; and by inserting ", 2339C(a)(1)(B), (c)(2)(B) (but only with respect to funds known or intended to have been provided or collected in violation of 18 U.S.C. 2339C(a)(1)(B))" after "2339B".

The Commentary to § 2M5.3 captioned "Application Notes" is amended in Note 2(A) by inserting "funds or other" after "volume of the".

Section 2M6.1(a)(2) is amended by inserting "and" after "(a)(3),"; and by striking ", and (a)(5)".

Section 2M6.1(a)(3) is amended by inserting "or" after the semicolon.

Section 2M6.1(a)(4) is amended by inserting "(A)" after "if"; and by inserting "(B) the offense (i) involved a threat to use a nuclear weapon, nuclear material, or nuclear byproduct material, a chemical weapon, a biological agent, toxin, or delivery system, or a weapon of mass destruction; but (ii) did not involve any conduct evidencing an intent or ability to carry out the threat." after "or".

Section 2M6.1(a) is amended by striking subdivision (5).

Section 2M6.1(b)(1) is amended by striking the comma after "(a)(2)" and inserting "or"; and by striking ", or (a)(5)".

Section 2M6.1(b)(2) is amended by inserting "(A)" after "(a)(4)".

Section 2M6.1(b)(3) is amended by inserting "or" after "(a)(3),"; and by striking ", or (a)(5)".

The Commentary to § 2M6.1 captioned "Statutory Provisions" is amended by inserting "(only with respect to weapons of mass destruction as defined in 18 U.S.C. 2332a(c)(2)(B), (C), and (D))," after "842(p)(2)"; and by striking ", but including any biological agent, toxin, or vector".

The Commentary to § 2M6.1 captioned "Application Notes" is amended in Note 1 in the paragraph that begins "Select biological agent'" by inserting "(A)" after "identified"; by inserting "and maintained" after "established"; and by striking "511(d) of the Antiterrorism and Effective Death Penalty Act, Pub. L. 104–132. *See* 42 CFR part 72." and inserting "351A of the Public Health Service Act (42 U.S.C. 262a); or (B) by the Secretary of Agriculture on the list established and maintained pursuant to section 212 of the Agricultural Bioterrorism Protection Act of 2002 (7 U.S.C. 8401).".

The Commentary to § 2M6.1 captioned "Application Notes" is amended in Note 2 by striking "(a)(3)" each place it appears and inserting "(a)(4)(B)".

Chapter Two, Part Q, is amended by striking § 2Q1.4 in its entirety and inserting the following new guideline:

"§ 2Q1.4. Tampering or Attempted Tampering with a Public Water System; Threatening to Tamper with a Public Water System

(a) Base Offense Level (Apply the greatest):

(1) 26;

(2) 22, if the offense involved (A) a threat to tamper with a public water system; and (B) any conduct evidencing an intent to carry out the threat; or

(3) 16, if the offense involved a threat to tamper with a public water system but did not involve any conduct evidencing an intent to carry out the threat.

(b) Specific Offense Characteristics

(1) If (A) any victim sustained permanent or life-threatening bodily injury, increase by 4 levels; (B) any victim sustained serious bodily injury, increase by 2 levels; or (C) the degree of injury is between that specified in subdivisions (A) and (B), increase by 3 levels.

(2) If the offense resulted in (A) a substantial disruption of public, governmental, or business functions or services; or (B) a substantial expenditure of funds to clean up, decontaminate, or otherwise respond to the offense, increase by 4 levels.

(3) If the offense resulted in an ongoing, continuous, or repetitive release of a contaminant into a public water system or lasted for a substantial period of time, increase by 2 levels.

(c) Cross References

(1) If the offense resulted in death, apply § 2A1.1 (First Degree Murder) if the death was caused intentionally or knowingly, or § 2A1.2 (Second Degree Murder) in any other case, if the resulting offense level is greater than that determined above.

(2) If the offense was tantamount to attempted murder, apply § 2A2.1 (Assault with Intent to Commit Murder; Attempted Murder) if the resulting offense level is greater than that determined above.

(3) If the offense involved extortion, apply § 2B3.2 (Extortion by Force or Threat of Injury or Serious Damage) if the resulting offense level is greater than that determined above.

(d) Special Instruction

(1) If the defendant is convicted of a single count involving (A) the death or permanent, life-threatening, or serious bodily injury of more than one victim; or (B) conduct tantamount to the attempted murder of more than one victim, Chapter Three, Part D (Multiple Counts) shall be applied as if the defendant had been convicted of a separate count for each such victim.

Commentary

Statutory Provision: 42 U.S.C. 300i–1.

Application Notes:

1. Definitions.—For purposes of this guideline, 'permanent or life-threatening bodily injury' and 'serious bodily injury' have the meaning given those terms in Note 1 of the Commentary to § 1B1.1 (Application Instructions).

2. Application of Special Instruction.—Subsection (d) applies in any case in which the defendant is convicted of a single count involving (A) the death or permanent, life-threatening, or serious bodily injury of more than one victim; or (B) conduct tantamount to the attempted murder of more than one victim, regardless of whether the offense level is determined under this guideline or under another guideline in Chapter Two (Offense Conduct) by use of a cross reference under subsection (c).

3. Departure Provisions.—

(A) Downward Departure Provision.—The base offense level in subsection (a)(1) reflects that offenses covered by that subsection typically pose a risk of death or serious bodily injury to one or more victims, or cause, or are intended to cause, bodily injury. In the unusual case in which such an offense did not cause a risk of death or serious bodily injury, and neither caused nor was intended to cause bodily injury, a downward departure may be warranted.

(B) Upward Departure Provisions.—If the offense caused extreme psychological injury, or caused substantial property damage or monetary loss, an upward departure may be warranted.

If the offense was calculated to influence or affect the conduct of government by intimidation or coercion, or to retaliate against government conduct, an upward departure would be warranted. See Application Note 4 of § 3A1.4 (Terrorism).".

Chapter Two, Part Q, is amended by striking § 2Q1.5 in its entirety.

Section § 2S1.1(b)(1)(B)(iii) is amended by striking "terrorism,".

The Commentary to § 2S1.1 captioned "Statutory Provisions" is amended by inserting", 1960 (but only with respect to unlicensed money transmitting businesses as defined in 18 U.S.C. 1960(b)(1)(C))" after "1957".

The Commentary to § 2S1.3 captioned "Statutory Provisions" is amended by inserting "(but only with respect to unlicensed money transmitting businesses as defined in 18 U.S.C. 1960(b)(1)(A) and (B))" after "1960".

The Commentary to § 2X2.1 captioned "Statutory Provisions" is amended by inserting ", 2339C(a)(1)(A)" after "2339A".

The Commentary to § 2X2.1 captioned "Application Notes" is amended in Note 1 by inserting "or § 2339C(a)(1)(A)" after "2339A"; and by inserting ", or provided or collected funds for," after "supported".

Section 2X3.1(a) is amended to read as follows:

"(a) Base Offense Level:

(1) 6 levels lower than the offense level for the underlying offense, except as provided in subdivisions (2) and (3).

(2) The base offense level under this guideline shall be not less than level 4.

(3)(A) The base offense level under this guideline shall be not more than level 30, except as provided in subdivision (B).

(B) In any case in which the conduct is limited to harboring a fugitive, other than a case described in subdivision (C), the base offense level under this guideline shall be not more than level 20.

(C) The limitation in subdivision (B) shall not apply in any case in which (i) the defendant is convicted under 18 U.S.C. 2339 or 2339A; or (ii) the conduct involved harboring a person who committed any offense listed in 18

U.S.C. 2339 or 2339A or who committed any offense involving or intending to promote a federal crime of terrorism, as defined in 18 U.S.C. 2332b(g)(5). In such a case, the base offense level under this guideline shall be not more than level 30, as provided in subdivision (A).".

The Commentary to § 2X3.1 captioned "Statutory Provisions" is amended by inserting ", 2339C(c)(2)(A), (c)(2)(B) (but only with respect to funds known or intended to have been provided or collected in violation of 18 U.S.C. 2339C (a)(1)(A))" after "2339A".

The Commentary to § 2X3.1 captioned "Application Notes" is amended in Note 1 by inserting ", or in the case of a violation of 18 U.S.C. 2339C(c)(2)(A), 'underlying offense' means the violation of 18 U.S.C. 2339B with respect to which the material support or resources were concealed or disguised" after "that offense)".

Appendix A (Statutory Index) is amended in the line referenced to 18 U.S.C. 1960 by inserting "2S1.1," before "2S1.3";

by inserting after the line referenced to 18 U.S.C. 2332d the following new line:

"18 U.S.C. 2332f 2K1.4, 2M6.1";

by inserting after the line referenced to 18 U.S.C. 2339B the following new lines:

"18 U.S.C. 2339C(a)(1)(A)	2X2.1
18 U.S.C. 2339C(a)(1)(B)	2M5.3
18 U.S.C. 2339C(c)(2)(A)	2X3.1
18 U.S.C. 2339C(c)(2)(B)	2M5.3, 2X3.1";

and in the line referenced to 42 U.S.C. 300i–1 by striking ", 2Q1.5".

Reason for Amendment: This amendment is a three part amendment that (1) further responds to the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism (USA PATRIOT Act) Act of 2001, Pub. L. 107–56; (2) responds to the Public Health Security and Bioterrorism Preparedness and Response Act of 2002, Pub. L. 107–188; and (3) responds to the Terrorist Bombings Preparedness and Response Act of 2002, Pub. L. 107–197.

First, this amendment makes changes to the money laundering and transactions structuring guidelines to complete work begun in 2002 to address the provisions of the USA PATRIOT Act. The amendment eliminates the six level enhancement for terrorism in § 2S1.1 (Laundering of Monetary Instruments; Engaging in Monetary Transactions in Property Derived from Unlawful Activity) because such conduct is adequately accounted for by the terrorism adjustment at § 3A1.4 (Terrorism). The terrorism adjustment at § 3A1.4 applies if the offense is a felony that involved, or was intended to promote, a federal crime of terrorism as defined in 18 U.S.C. 2332b(g)(5). Therefore, if the defendant knew or believed that any of the laundered funds were the proceeds of, or were intended to promote, an offense involving terrorism, as defined in § 3A1.4, that adjustment will apply. This amendment also provides for the treatment of certain offenses under 18 U.S.C. 1960. The amendment changes Appendix A (Statutory Index) to refer violations of 18 U.S.C. 1960 to both §§ 2S1.1 and 2S1.3 (Structuring Transactions to Evade Reporting Requirements; Failure to Report Case or Monetary Transactions; Failure to File Currency and Monetary Instrument Report; Knowingly Filing False Reports; Bulk Cash Smuggling; Establishing or Maintaining Prohibited Accounts). Referring violations of 18 U.S.C. 1960(b)(1)(C) to § 2S1.1 is appropriate because the essence of this offense is money laundering, rather than structuring transactions to evade reporting requirements.

The amendment also raises the maximum offense level in § 2X3.1 (Accessory After the Fact) from level 20 to level 30 for offenses in which the conduct involves harboring or concealing a fugitive involved in a terrorism offense. The Commission determined that the heightened maximum offense level of level 30 is appropriate for offenses involving the harboring of terrorists because of the relative seriousness of those offenses. Specifically, the heightened maximum offense level applies in any case in which the defendant is convicted under 18 U.S.C. 2339 or 2339A or in which the conduct involved harboring a person who committed any offense listed under those statutes, or who committed any offense involving or intending to promote a federal crime of terrorism as defined in 18 U.S.C. 2332b(g)(5).

Second, the amendment responds to the Public Health Security and Bioterrorism Preparedness and Response Act of 2002. The amendment refers certain new offenses involving biological agents and toxins to the guideline covering nuclear, biological, and chemical weapons and materials, § 2M6.1 (Unlawful Production, Development, Acquisition, Stockpiling, Alteration, Use, Transfer, or Possession of Nuclear Material, Weapons, or Facilities, Biological Agents, Toxins, or Delivery Systems, Chemical Weapons, or Other Weapons of Mass Destruction; Attempt or Conspiracy).

The amendment also responds to amendments made to the Safe Drinking Water Act (42 U.S.C. 300i–1(a)) made by section 403 of the Public Health Security and Bioterrorism Preparedness and Response Act of 2002. Section 1432(a) of the Safe Drinking Water Act prohibits any person from tampering with a public water system. The statutory maximum penalty was increased from five years' imprisonment to 20 years' imprisonment. Section 1432(b) of the Act prohibits anyone from attempting or threatening to tamper with a public water system. The statutory maximum penalty was increased from three years' imprisonment to ten years' imprisonment.

The amendment consolidates §§ 2Q1.5 (Threatened Tampering with Public Water System) and 2Q1.4 (Tampering or Attempted Tampering with Public Water System). This consolidation reflects the similar manner in which threats to carry out a nuclear, biological, or chemical weapons offense are treated under § 2M6.1. Three alternative base offense levels are provided for the substantive offense and for a threat to carry out the substantive offense, either accompanied or unaccompanied by other conduct evidencing an intent to carry out the threat.

The amendment also increases the base offense level for offenses involving tampering and threatened tampering with a public water system. The amendment increases the base offense level for tampering with a public water system from level 18 to level 26. The six level enhancement for the risk of death or serious bodily injury (in the predecessor guideline) is incorporated into the base offense level, as are two levels for bodily injury (similar to the treatment of this aggravated conduct in the consumer product tampering guideline). A graduated enhancement for serious or life-threatening bodily injury, modeled after the nuclear, biological, and chemical guideline and the consumer product tampering guideline, is added. Likewise, the base offense level for threatening to tamper with a public water system, without conduct evidencing an intent to carry out the threat, is increased from level 10 to level 16. A base offense level of level 22 is provided if there is conduct evidencing an intent to carry out the threat. For point of comparison, the existing base offense levels for threatening communications under § 2A6.1 (Threatening or Harassing Communications) is level 12, and for threatened use of nuclear, biological, and chemical weapons under § 2M6.1 is level 20. These substantial increases in the base offense levels for threatened tampering of a public water system are provided to ensure proportionality with similar offenses and to respond to the increased statutory maximum penalties made by section 403 of the Public Health Security and Bioterrorism Preparedness and Response Act of 2002. Additionally, the enhancement in subsection (b)(2) regarding the disruption of the public water system has been expanded slightly to make it consistent with similar enhancements in other related guidelines, such as the nuclear, biological, and chemical guideline, § 2M6.1.

This amendment adds an invited upward departure provision in § 2B1.1 (Larceny, Embezzlement, and Other Forms of Theft; Offenses Involving Stolen Property; Property Damage or Destruction; Fraud and Deceit; Forgery; Offenses Involving Altered or Counterfeit Instruments Other than Counterfeit Bearer Obligations of the United States), to account for aggravating conduct that may occur in connection with an animal enterprise offense under 18 U.S.C. 43. While reference only to that guideline generally continues to be appropriate for violations under 18 U.S.C. 43, that guideline fails to account for aggravated situations in which serious bodily injury or death results. Although the property damage guideline contains an enhancement for the risk of serious bodily injury or death, there is no enhancement or cross reference in that guideline that would provide a higher offense level if actual serious bodily injury or death resulted. Given the highly unusual occurrence of death or serious bodily injury in property damage cases generally and the infrequency of these specific offenses, the amendment adds an invited upward departure provision in the commentary of § 2B1.1 if death or serious bodily injury occurs in an offense under 18 U.S.C. 43, or if substantial or significant scientific information or research is lost as part of such an offense.

Third, the amendment amends Appendix A (and the Statutory Provisions of the pertinent Chapter Two guidelines) to add three new offenses created by the Terrorist Bombings Convention Implementation Act of 2002, and provides conforming amendments within a number of Chapter Two guidelines to incorporate more fully the new offenses into the offense guidelines. Section 102 of the Act created a new offense at 18 U.S.C. 2332f, which provides in subsection (a) that "whoever unlawfully delivers, places, discharges, or detonates an explosive or other lethal device in, into, or against a place of public use, a state or government facility, a public transportation system, or an infrastructure facility (1) with the intent to cause death or serious bodily injury, or (2) with the intent to cause extensive destruction of such a place, facility, or system, where such destruction results in or is likely to result in major economic loss" and in subsection (b) that "whoever attempts or conspires to commit [such] an offense" shall be punished as provided under 18 U.S.C. 2332a(a). Section 2332a offenses currently are referenced to §§ 2K1.4 (Arson; Property Damage by Use of Explosives) and 2M6.1. The amendment refers this new offense to those guidelines as well. In addition, the amendment amends the alternative base offense levels in § 2K1.4(a)(1) so that the base offense level of level 24 applies to targets of 18 U.S.C. 2332f offenses, namely, state or government facilities, infrastructure facilities, public transportation systems and "places of public use".

Section 202 of the Act created a new offense at 18 U.S.C. 2339C. The amendment refers the new offense at 18 U.S.C. 2339C(1)(A) to § 2X2.1 (Aiding and Abetting). The new offense involves providing or collecting funds knowing or intending that the funds would be used to carry out any of a number of specified offenses. Accordingly, the amendment treats these offenses in the same manner as 18 U.S.C. 2339A offenses, which aid and abet a predicate offense listed in the statute. An amendment is also made in § 2X2.1 to provide a definition for the "underlying offense" that is aided and abetted.

The amendment also refers the new offense at 18 U.S.C. 2339C(a)(1)(B) to § 2M5.3 (Providing Material Support or Resources to Designated Foreign Terrorist Organizations). Reference to § 2M5.3 is appropriate because this offense involves generally providing or collecting funds knowing or intending that the funds would be used to carry out an act which by its nature is a terrorist act (because it is meant to intimidate a civilian population or to compel a government or international organization to do something or to refrain from doing something). Therefore, the essence of the offense is the provision of material support to terrorists, which appropriately is referenced to § 2M5.3. The amendment expands § 2M5.3 to include not only designated foreign terrorist organizations but other terrorists as well.

Additionally, 18 U.S.C. 2339C(c)(2) makes it unlawful in the United States, or outside the United States by a national of the United States or an entity organized under the laws of the United States, to knowingly conceal or disguise the nature, location, source, ownership, or control of any material support, resources, or funds knowing or intending that they were (1) provided in violation of 18 U.S.C. 2339B, or (2) provided or collected in violation of 18 U.S.C. 2339C(a)(1) or (2). The maximum term of imprisonment for a violation of subsection 18 U.S.C. 2339C(c) is 10 years. The amendment references offenses under 18 U.S.C. 2339C(c)(2)(A) to § 2X3.1 (Accessory After the Fact), because the essence of such an offense is the concealment of resources that were known or intended to have been provided in violation of another substantive offense, namely, 18 U.S.C. 2339B. An amendment is made in § 2X3.1 to provide a definition of the "underlying offense" to which the defendant is an accessory.

The amendment references offenses under 18 U.S.C. 2339C(c)(2)(B) to §§ 2M5.3 and 2X3.1. To the extent the offense involved knowingly concealing or disguising the nature, location, source, ownership, or control of any funds knowing or intending that they were provided or collected in violation of 18 U.S.C. 2339C(a)(1)(A), the offense should be sentenced under § 2X3.1. This is because the concealment occurs with respect to funds the defendant knows are to be used, in full or in part, in order to carry out an act which constitutes any number of specified offenses. To the extent the offense involved knowingly concealing or disguising the nature, location, source, ownership, or control of any funds knowing or intending that they were provided or collected in violation of 18 U.S.C. 2339C(a)(1)(B), the offense should be sentenced under § 2M5.3. This is because the concealment occurs with respect to material support the defendant knows is to be used, in full or in part, in order to carry out an act which by its nature is a terrorist act (because it is meant to intimidate a civilian population or to compel a government or international organization to do something or to refrain from doing something). A conforming amendment is added to the Statutory Provisions of §§ 2M5.3 and 2X3.1.

Finally, an amendment is made to § 2K1.3 (Unlawful Receipt, Possession, or Transportation of Explosive Materials; Prohibited Transaction Involving Explosive Materials) to add an additional base offense level of level 18 for certain offenses committed under 18 U.S.C. 842(p)(2) involving explosives, destructive devices, or weapons of mass destruction. The statute is referenced in Appendix A to §§ 2K1.3 and 2M6.1. The applicable offense levels at § 2M6.1 are

levels 42 and 28. The applicable base offense level at § 2K1.3 is level 12. The base offense level of level 12 appears to be disproportionately low compared with other 20 year offenses and compared with the treatment of 18 U.S.C. 842(p)(2) offenses under § 2M6.1. This is especially true in light of the definition of destructive device, defined at 18 U.S.C. 921(a)(4) to include any explosive, incendiary, or poison gas (1) bomb; (2) grenade; (3) rocket having a propellant charge of more than four ounces; (4) missile having an explosive or incendiary charge of more than one-quarter ounce; (5) mine; or (6) device similar to any of the devices described in the preceding clauses.

The amendment makes the enhancement at § 2K1.3(b)(3) and the cross reference at § 2K1.3(c)(1) applicable to 18 U.S.C. 842(p)(2) offenses. In cases in which the defendant used or possessed any explosive material in connection with another felony offense or possessed or transferred any explosive material with knowledge, intent, or reason to believe that it would be used or possessed in connection with another felony offense, subsection (b)(3) provides a four level enhancement and a minimum offense level of level 18. Alternatively, the cross reference at subsection (c)(1) references such cases either to § 2X1.1 (Attempt, Solicitation, or Conspiracy (Not Covered by a Specific Guideline)), or to the most analogous homicide guideline if death resulted, if the resulting offense level is greater. Application of both subsection (b)(3) and subsection (c)(1) to 18 U.S.C. 842(p)(2) offenses is appropriate because of the defendant's knowledge and/or intent that the defendant's teaching would be used to carry out another felony.

5. Amendment: Part C of Chapter Two and §§ 3D1.2 and 5E1.2, effective January 25, 2003 (*see* USSC Guidelines Manual Supplement to the 2002 Supplement to Appendix C, Amendment 648), are repromulgated without change. Appendix A, effective January 25, 2003 (*see* USSC Guidelines Manual Supplement to the 2002 Supplement to Appendix C, Amendments 647 and 648; see also this document, Amendment 2), is repromulgated without change.

Reason for Amendment: The Commission promulgated an emergency amendment addressing the directive from Congress contained in the Bipartisan Campaign Reform Act of 2002, Pub. L. 107–155, (the "BCRA"), with an effective date of January 25, 2003. (*See* Amendment 648.) This amendment repromulgates without change the emergency amendment as a permanent amendment.

This amendment implements the directive from Congress contained in the BCRA to the effect that the Commission "promulgate a guideline, or amend an existing guideline * * *, for penalties for violations of the Federal Election Campaign Act of 1971 [the "FECA"] and related election laws * * *." The BCRA significantly increased statutory penalties for campaign finance crimes, formerly misdemeanors under the FECA. The new statutory maximum term of imprisonment for even the least serious of these offenses is now two years, and for more serious offenses, the maximum term of imprisonment is five years.

To punish these offenses effectively, the Commission chose to create a new guideline at § 2C1.8 (Making, Receiving, or Failing to Report a Contribution, Donation, or Expenditure in Violation of the Federal Election Campaign Act; Fraudulently Misrepresenting Campaign Authority; Soliciting or Receiving a Donation in Connection with an Election While on Certain Federal Property). The Commission opted against simply amending an existing guideline because it determined after review that the characteristics of election violation cases did not bear sufficient similarity to cases sentenced under any existing guideline. The offenses that will be sentenced under § 2C1.8 include: violations of the statutory prohibitions against "soft money" (2 U.S.C. 441i); restrictions on "hard money" contributions (2 U.S.C. 441a); contributions by foreign nationals (2 U.S.C. 441e); restrictions on "electioneering communications" (as defined in 2 U.S.C. 434(f)(3)(C)); certain fraudulent misrepresentations (2 U.S.C. 441h); and "conduit contributions" (2 U.S.C. 441f).

The new guideline has a base offense level of level 8, which reflects the fact that these offenses, while they are somewhat similar to fraud offenses (sentenced under § 2B1.1 (Larceny, Embezzlement, and Other Forms of Theft; Offenses Involving Stolen Property; Property Damage or Destruction; Fraud and Deceit; Forgery; Offenses Involving Altered or Counterfeit Instruments Other than Counterfeit Bearer Obligations of the United States) at a base offense level of level 6), nevertheless are more serious due to the additional harm, or the potential harm, of corrupting the elective process.

The new guideline provides five specific offense characteristics to ensure appropriate penalty enhancements for aggravating conduct that may occur during the commission of certain campaign finance offenses. First, the new guideline provides a specific offense characteristic, at § 2C1.8(b)(1), that uses the fraud loss table in § 2B1.1 incrementally to increase the offense level in proportion to the monetary amounts involved in the illegal transactions. This both assures proportionality with penalties for fraud offenses and responds to Congress' directive to provide an enhancement for "a large aggregate amount of illegal contributions."

Second, the new guideline provides alternative enhancements, at § 2C1.8(b)(2), if the offense involved a foreign national (two levels) or a foreign government (four levels). These enhancements respond to another specific directive in the BCRA and reflect the seriousness of attempts by foreign entities to tamper with the United States' election processes.

Third, the new guideline provides alternative enhancements of two levels each, at § 2C1.8(b)(3), when the offense involves either "governmental funds," defined broadly to include federal, state, or local funds, or an intent to derive "a specific, identifiable non-monetary Federal benefit" (*e.g.*, a presidential pardon). Each of these enhancements responds to specific directives of the BCRA.

Fourth, the new guideline provides a two level enhancement, at subsection (b)(4), when the offender engages in "30 or more illegal transactions." After a review of all campaign finance cases in the Commission's datafile, the Commission chose 30 transactions as the number best illustrative of a "large number" in that context. This enhancement also responds to a specific directive in the BCRA to the effect that the Commission provide enhanced sentencing for cases involving "a large number of illegal transactions."

Fifth, the new guideline provides a four level enhancement, at § 2C1.8(b)(5), if the offense involves the use of "intimidation, threat of pecuniary or other harm, or coercion." This enhancement responds to information, received from the Federal Election Commission and the Public Integrity Section of the Department of Justice, which characterizes offenses of this type as some of the most aggravated offenses committed under the FECA.

The new guideline also provides a cross reference, at subsection (c), which directs the sentencing court to apply either § 2C1.1 (Offering, Giving, Soliciting, or Receiving a Bribe; Extortion Under Color of Official Right) or § 2C1.2 (Offering, Giving, Soliciting, or Receiving a Gratuity), as appropriate, if the offense involved a bribe or a gratuity and the resulting offense level would be greater than that determined under § 2C1.8.

Section 3D1.2 (Groups of Closely Related Counts) has been amended, consistent with the principles underlying the rules for grouping multiple counts of conviction, to include § 2C1.8 offenses among those in which the offense level is determined largely on the basis of the total amount of harm or loss or some other measure of aggregate harm. (*See* § 3D1.2(d)).

Finally, § 5E1.2 (Fines for Individual Defendants) has been amended specifically to reflect fine provisions unique to the FECA. This part of the amendment also provides that the defendant's participation in a conciliation agreement with the Federal Election Commission may be an appropriate factor for use in determining the specific fine within the applicable fine guideline range unless the defendant began negotiations with the Federal Election Commission only after the defendant became aware that the defendant was the subject of a criminal investigation.

6. Amendment: Section 2D1.1(c) is amended in Note (B) of the "*Notes to Drug Quantity Table" by adding at the end the following new paragraph:

"The term 'Oxycodone (actual)' refers to the weight of the controlled substance, itself, contained in the pill, capsule, or mixture.".

The Commentary to § 2D1.1 captioned "Application Notes" is amended in Note 9 by striking "or" after "amphetamine,"; and by inserting ", or oxycodone" after "methamphetamine".

The Commentary to § 2D1.1 captioned "Application Notes" is amended in Note 10, in the Drug Equivalency Tables, in the subdivision captioned "Schedule I or II Opiates*" by striking "1 gm of Oxycodone = 500 gm of marihuana" and inserting "1 gm of Oxycodone (actual) = 6700 gm of marihuana".

Reason for Amendment: This amendment responds to proportionality issues in the sentencing of oxycodone trafficking offenses. Oxycodone is an opium alkaloid found in certain prescription pain relievers such as Percocet and OxyContin. This prescription drug generally is sold in pill form and, prior to this amendment, the sentencing guidelines established penalties for oxycodone trafficking based on the entire weight of the pill. The proportionality issues arise (1) because of the formulations of the different medicines; and (2) because different amounts of oxycodone are found in pills of identical weight.

As an example of the first issue, the drug Percocet contains, in addition to oxycodone, the non-prescription pain reliever acetaminophen. The weight of the oxycodone component accounts for a very small proportion of the total weight of the pill. In contrast, the weight of the oxycodone accounts for a substantially greater proportion of the weight of an OxyContin pill. To illustrate this difference, a Percocet pill containing five milligrams (mg) of oxycodone weighs approximately 550 mg with oxycodone accounting for 0.9 percent of the total weight of the pill. By comparison, the weight of an OxyContin pill containing 10 mg of oxycodone is approximately 135 mg with oxycodone accounting for 7.4 percent of the total weight. Consequently, prior to this amendment, trafficking 364 Percocet pills or 1,481 OxyContin pills resulted in the same five year sentence of imprisonment. Additionally, the total amount of the narcotic oxycodone involved in this example is vastly different depending on the drug. The 364 Percocets produce 1.8 grams of actual oxycodone while the 1,481 OxyContin pills produce 14.8 grams of oxycodone.

The second issue results from differences in the formulation of OxyContin. Three different amounts of oxycodone (10, 20, and 40 mg) are contained in pills of identical weight (135 mg). As a result, prior to this amendment, an individual trafficking in a particular number of OxyContin pills would receive the same sentence regardless of the amount of oxycodone contained in the pills.

To remedy these proportionality issues, the amendment changes the Drug Equivalency Tables in § 2D1.1 (Unlawful Manufacturing, Importing, Exporting, or Trafficking (Including Possession with Intent to Commit These Offenses); Attempt or Conspiracy) to provide sentences for oxycodone offenses using the weight of the actual oxycodone instead of calculating the weight of the entire pill. The amendment equates 1 gram of actual oxycodone to 6,700 grams of marihuana. This equivalency keeps penalties for offenses involving 10 mg OxyContin pills identical to levels that existed prior to the amendment, substantially increases penalties for all other doses of OxyContin, and decreases somewhat the penalties for offenses involving Percocet.

7. Amendment: Section 2L1.2(b)(1)(A)(vii) is amended by striking "committed for profit".

The Commentary to § 2L1.2 captioned "Application Notes" is amended in Note 1 by striking subdivision (A)(iv) and inserting the following:

"(iv) Subsection (b)(1) does not apply to a conviction for an offense committed before the defendant was eighteen years of age unless such conviction is classified as an adult conviction under the laws of the jurisdiction in which the defendant was convicted.".

The Commentary to § 2L1.2 captioned "Application Notes" is amended in Note 1 by striking subdivision (B) and inserting the following:

"(B) Definitions.—For purposes of subsection (b)(1):

(i) 'Alien smuggling offense' has the meaning given that term in section 101(a)(43)(N) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(43)(N)).

(ii) 'Child pornography offense' means (I) an offense described in 18 U.S.C. 2251, 2251A, 2252, 2252A, or 2260; or (II) an offense under state or local law consisting of conduct that would have been an offense under any such section if the offense had occurred within the special maritime and territorial jurisdiction of the United States.

(iii) 'Crime of violence' means any of the following: murder, manslaughter, kidnapping, aggravated assault, forcible sex offenses, statutory rape, sexual abuse of a minor, robbery, arson, extortion, extortionate extension of credit, burglary of a dwelling, or any offense under federal, state, or local law that has as an element the use, attempted use, or threatened use of physical force against the person of another.

(iv) 'Drug trafficking offense' means an offense under federal, state, or local law that prohibits the manufacture, import, export, distribution, or dispensing of a controlled substance (or a counterfeit substance) or the possession of a controlled substance (or a counterfeit substance) with intent to manufacture, import, export, distribute, or dispense.

(v) 'Firearms offense' means any of the following:

(I) An offense under federal, state, or local law that prohibits the importation, distribution, transportation, or trafficking of a firearm described in 18 U.S.C. 921, or of an explosive material as defined in 18 U.S.C. 841(c).

(II) An offense under Federal, state, or local law that prohibits the possession of a firearm described in 26 U.S.C. 5845(a), or of an explosive material as defined in 18 U.S.C. 841(c).

(III) A violation of 18 U.S.C. 844(h).

(IV) A violation of 18 U.S.C. 924(c).

(V) A violation of 18 U.S.C. 929(a).

(VI) An offense under state or local law consisting of conduct that would

have been an offense under subdivision (III), (IV), or (V) if the offense had occurred within the special maritime and territorial jurisdiction of the United States.

(vi) 'Human trafficking offense' means (I) any offense described in 18 U.S.C. 1581, 1582, 1583, 1584, 1585, 1588, 1589, 1590, or 1591; or (II) an offense under state or local law consisting of conduct that would have been an offense under any such section if the offense had occurred within the special maritime and territorial jurisdiction of the United States.

(vii) 'Sentence of imprisonment' has the meaning given that term in Application Note 2 and subsection (b) of § 4A1.2 (Definitions and Instructions for Computing Criminal History), without regard to the date of the conviction. The length of the sentence of imprisonment includes any term of imprisonment given upon revocation of probation, parole, or supervised release.

(viii) 'Terrorism offense' means any offense involving, or intending to promote, a 'Federal crime of terrorism', as that term is defined in 18 U.S.C. 2332b(g)(5).".

Section 2L1.2 captioned "Application Notes" is amended by striking Note 2 and inserting the following:

"2. Definition of 'Felony'.—For purposes of subsection (b)(1)(A), (B), and (D), 'felony' means any federal, state, or local offense punishable by imprisonment for a term exceeding one year.".

Section 2L1.2 captioned "Application Notes" is amended by striking Notes 4 and 5; by redesignating Note 3 as Note 4; and by inserting after Note 2 the following:

"3. Application of Subsection (b)(1)(C).—

(A) Definitions.—For purposes of subsection (b)(1)(C), 'aggravated felony' has the meaning given that term in 8 U.S.C. 1101(a)(43), without regard to the date of conviction for the aggravated felony.

(B) In General.—The offense level shall be increased under subsection (b)(1)(C) for any aggravated felony (as defined in subdivision (A)), with respect to which the offense level is not increased under subsections (b)(1)(A) or (B).".

Section 2L1.2 captioned "Application Notes" is amended in Note 4, as redesignated by this amendment, by striking subdivision (B) and inserting the following:

"(B) 'Three or more convictions' means at least three convictions for offenses that are not considered 'related cases', as that term is defined in Application Note 3 of § 4A1.2 (Definitions and Instructions for Computing Criminal History).".

Reason for Amendment: In 2001 the Commission comprehensively revised § 2L1.2 (Unlawfully Entering or Remaining in the United States) to provide more graduated enhancements at subsection (b)(1) for illegal re-entrants previously deported after criminal convictions. In response to application issues raised by a number of judges, probation officers, defense attorneys, and prosecutors, particularly along the southwest border between the United States and Mexico, this amendment builds upon the 2001 amendment by clarifying the meaning of some of the terms used in § 2L1.2(b)(1).

First, the amendment adds commentary to define the following offenses: "alien smuggling", "child pornography", and "human trafficking." Prior to the amendment, these offenses received a 16 level increase but were not defined. The lack of definitions led to litigation regarding the meaning and scope of some of these terms. The Commission has determined that these offenses warrant application of the 16 level enhancement even though some of these offenses, as defined by the amendment, may not meet the statutory definition of an aggravated felony in 8 U.S.C. 1101(a)(43).

The amendment provides a definition of "alien smuggling offense" in a manner consistent with the "aggravated felony" definition in 8 U.S.C. 1101(a)(43)(N). This statutory definition excludes "a first offense for which the alien has affirmatively shown that the alien committed the offense for the purpose of assisting, abetting, or aiding only the alien's spouse, child, or parent (and no other person)". This definition generally is consistent with the guideline's previous terminology of "alien smuggling offense committed for profit," and results in a 16 level increase only for the most serious of such offenses. The new definition also responds to concerns about whether an alien smuggling offense includes the offenses of harboring or transporting aliens. By explicitly incorporating the statutory definition of alien smuggling within the guideline definition, the amendment, in effect, adopts the Fifth Circuit's interpretation of "alien smuggling". *See United States* v. *Solis-Campozano*, 312 F.3d 164 (5th Cir. 2002) (holding that "alien smuggling offense" was not limited to the "offense of alien smuggling" but includes transporting aliens brought into the country as well).

Second, the amendment adds commentary that clarifies the meaning of the term "crime of violence" by providing that the term "means any of the following: Murder, manslaughter, kidnapping, aggravated assault, forcible sex offenses, statutory rape, sexual abuse of a minor, robbery, arson, extortion, extortionate extension of credit, burglary of a dwelling, or any offense under federal, state, or local law that has as an element the use, attempted use, or threatened use of physical force against the person of another." The previous definition often led to confusion over whether the specified offenses listed in that definition, particularly sexual abuse of a minor and residential burglary, also had to include as an element of the offense "the use, attempted use, or threatened use of physical force against the person of another." The amended definition makes clear that the enumerated offenses are always classified as "crimes of violence," regardless of whether the prior offense expressly has as an element the use, attempted use, or threatened use of physical force against the person of another.

Third, the amendment adds commentary at Application Note 1(B)(vii) explaining that the term "sentence of imprisonment" has the meaning given that term in Application Note 2 and subsection (b) of § 4A1.2 (Definitions and Instructions for Computing Criminal History), without regard to the date of the conviction. The length of the sentence of imprisonment includes any term of imprisonment given upon revocation of probation, parole, or supervised release. The Commission's approach in clarifying this definition is consistent with the case law interpreting the term and the use of the term in Chapter Four of the guidelines. *See, e.g., United States* v. *Moreno-Cisneros*, 319 F.3d 456 (9th Cir. 2003) (holding that the length of the sentence of imprisonment includes any term of imprisonment given upon revocation of probation, parole, or supervised release); *United States* v. *Compian-Torres*, 320 F.3d 514 (5th Cir. 2003) (same). Compare *United States* v. *Hidalgo-Macias*, 300 F.3d 281 (2d Cir. 2002) (holding that the imposition of a sentence of imprisonment following revocation of probation is a modification of the original sentence and must be considered part of the sentence imposed for the original offense), *with United States* v. *Rodriguez-Arreola*, 313 F.3d 1064 (8th Cir. 2002) (holding that the term "sentence imposed" when applied to an indeterminate sentence is the maximum term that a defendant may serve).

Fourth, the amendment adds commentary providing that the enhancements in subsection (b)(1) do not apply to a conviction for an offense committed before the defendant was eighteen years of age, unless such conviction is classified as an adult conviction under the laws of the jurisdiction in which the defendant was convicted. This provision is consistent with the approach in Chapter Four of the guidelines.

The amendment also makes other minor technical and clarifying changes.

8. Amendment: Chapter Three, Part B, is amended by adding at the end the following new guideline:

"§ 3B1.5. Use of Body Armor in Drug Trafficking Crimes and Crimes of Violence

If—

(1) The defendant was convicted of a drug trafficking crime or a crime of violence; and

(2) (Apply the greater)—

(A) The offense involved the use of body armor, increase by 2 levels; or

(B) The defendant used body armor during the commission of the offense, in preparation for the offense, or in an attempt to avoid apprehension for the offense, increase by 4 levels.

Commentary

Application Notes:

1. Definitions.—For purposes of this guideline:

'Body armor' means any product sold or offered for sale, in interstate or foreign commerce, as personal protective body covering intended to protect against gunfire, regardless of whether the product is to be worn alone or is sold as a complement to another product or garment. *See* 18 U.S.C. 921(a)(35).

'Crime of violence' has the meaning given that term in 18 U.S.C. 16.

'Drug trafficking crime' has the meaning given that term in 18 U.S.C. 924(c)(2).

'Offense' has the meaning given that term in Application Note 1 of the Commentary to § 1B1.1 (Application Instructions).

'Use' means (A) active employment in a manner to protect the person from gunfire; or (B) use as a means of bartering. 'Use' does not mean mere possession (*e.g.*, 'use' does not mean that the body armor was found in the trunk of the car but not used actively as protection). 'Used' means put into 'use' as defined in this paragraph.

2. Application of Subdivision (2)(B).—Consistent with § 1B1.3 (Relevant Conduct), the term 'defendant', for purposes of subdivision (2)(B), limits the accountability of the defendant to the defendant's own conduct and conduct that the defendant aided or abetted, counseled, commanded, induced, procured, or willfully caused.

Background: This guideline implements the directive in the James Guelff and Chris McCurley Body Armor Act of 2002 (section 11009(d) of the 21st Century Department of Justice Appropriations Authorization Act, Pub. L. 107–273).".

Reason for Amendment: This amendment responds to the directive in section 11009 of the 21st Century Department of Justice Appropriations Authorization Act (the "Act"), Pub. L. 107–273. The directive requires the Sentencing Commission to review and amend the guidelines, as appropriate, to provide an appropriate sentencing enhancement for any crime of violence (as defined in 18 U.S.C. 16) or drug trafficking crime (as defined in 18 U.S.C. 924(c)) (including a crime of violence or drug trafficking crime that provides for an enhanced punishment if committed by the use of a deadly or dangerous weapon or device) in which the defendant used body armor. The Act included a sense of Congress that any such enhancement should be at least two levels.

In response to the directive, the amendment creates a new Chapter Three adjustment at § 3B1.5 (Use of Body Armor in Drug Trafficking Crimes and Crimes of Violence). The new adjustment provides for the greater of a two level adjustment if the defendant was convicted of a crime of violence or a drug trafficking crime and the offense involved the use of body armor, or a four level adjustment if the defendant used body armor in preparation for, during the commission of, or in an attempt to avoid apprehension for, the offense.

An application note defines "drug trafficking crime" (as defined in 18 U.S.C. 924(e)(2)). This definition includes any felony punishable under the Controlled Substances Act. The application note also defines "crime of violence" (as defined in 18 U.S.C. 16). This definition includes offenses that involve the use or attempted use of physical force against property as well as persons. Both of these definitions are somewhat broader than the definitions of "crime of violence" and "drug trafficking offense" used in a number of other guidelines. The definition of "body armor" is the same as the statutory definition provided in 18 U.S.C. 921(a)(35).

An application note makes clear that in order for § 3B1.5 to apply, the body armor must be used, *i.e.*, actively employed either in a manner to protect the person from gunfire or as a means of bartering. Mere possession is insufficient to trigger the adjustment.

Another application note explains that in order for the heightened, four level adjustment to apply, the defendant must have used the body armor or aided, abetted, counseled, commanded, induced, procured, or willfully caused someone else to use the body armor.

9. Amendment: Section 5G1.3(b) is amended to read as follows:

"(b) If subsection (a) does not apply, and a term of imprisonment resulted from another offense that is relevant conduct to the instant offense of conviction under the provisions of subsections (a)(1), (a)(2), or (a)(3) of § 1B1.3 (Relevant Conduct) and that was the basis for an increase in the offense level for the instant offense under Chapter Two (Offense Conduct) or Chapter Three (Adjustments), the sentence for the instant offense shall be imposed as follows:

(1) The court shall adjust the sentence for any period of imprisonment already served on the undischarged term of imprisonment if the court determines that such period of imprisonment will not be credited to the federal sentence by the Bureau of Prisons; and

(2) The sentence for the instant offense shall be imposed to run concurrently to the remainder of the undischarged term of imprisonment.".

Section 5G1.3(c) is amended by inserting "involving an undischarged term of imprisonment" after "case".

The Commentary to § 5G1.3 captioned "Application Notes" is amended by striking Notes 2 through 7 and inserting the following:

"2. Application of Subsection (b).—

(A) In General.—Subsection (b) applies in cases in which all of the prior offense (i) is relevant conduct to the instant offense under the provisions of subsection (a)(1), (a)(2), or (a)(3) of § 1B1.3 (Relevant Conduct); and (ii) has resulted in an increase in the Chapter Two or Three offense level for the instant offense. Cases in which only part of the prior offense is relevant conduct to the instant offense are covered under subsection (c).

(B) Inapplicability of Subsection (b).—Subsection (b) does not apply in cases in which the prior offense increased the Chapter Two or Three offense level for the instant offense but was not relevant conduct to the instant offense under § 1B1.3(a)(1), (a)(2), or (a)(3) (*e.g.*, the prior offense is an aggravated felony for which the defendant received an increase under § 2L1.2 (Unlawfully Entering or Remaining in the United States), or the prior offense was a crime of violence for which the defendant received an increased base offense level

under § 2K2.1 (Unlawful Receipt, Possession, or Transportation of Firearms or Ammunition; Prohibited Transactions Involving Firearms or Ammunition)).

(C) Imposition of Sentence.—If subsection (b) applies, and the court adjusts the sentence for a period of time already served, the court should note on the Judgement in a Criminal Case Order (i) the applicable subsection (*e.g.*, § 5G1.3(b)); (ii) the amount of time by which the sentence is being adjusted; (iii) the undischarged term of imprisonment for which the adjustment is being given; and (iv) that the sentence imposed is a sentence reduction pursuant to § 5G1.3(b) for a period of imprisonment that will not be credited by the Bureau of Prisons.

(D) Example.—The following is an example in which subsection (b) applies and an adjustment to the sentence is appropriate:

The defendant is convicted of a federal offense charging the sale of 40 grams of cocaine. Under § 1B1.3, the defendant is held accountable for the sale of an additional 15 grams of cocaine, an offense for which the defendant has been convicted and sentenced in state court. The defendant received a nine-month sentence of imprisonment for the state offense and has served six months on that sentence at the time of sentencing on the instant federal offense. The guideline range applicable to the defendant is 12–18 months (Chapter Two offense level of level 16 for sale of 55 grams of cocaine; 3 level reduction for acceptance of responsibility; final offense level of level 13; Criminal History Category I). The court determines that a sentence of 13 months provides the appropriate total punishment. Because the defendant has already served six months on the related state charge as of the date of sentencing on the instant federal offense, a sentence of seven months, imposed to run concurrently with the three months remaining on the defendant's state sentence, achieves this result.

3. Application of Subsection (c).—

(A) In General.—Under subsection (c), the court may impose a sentence concurrently, partially concurrently, or consecutively to the undischarged term of imprisonment. In order to achieve a reasonable incremental punishment for the instant offense and avoid unwarranted disparity, the court should consider the following:

(i) The factors set forth in 18 U.S.C. 3584 (referencing 18 U.S.C. 3553(a));

(ii) The type (*e.g.*, determinate, indeterminate/parolable) and length of the prior undischarged sentence;

(iii) The time served on the undischarged sentence and the time likely to be served before release;

(iv) The fact that the prior undischarged sentence may have been imposed in state court rather than federal court, or at a different time before the same or different federal court; and

(v) Any other circumstance relevant to the determination of an appropriate sentence for the instant offense.

(B) Partially Concurrent Sentence.—In some cases under subsection (c), a partially concurrent sentence may achieve most appropriately the desired result. To impose a partially concurrent sentence, the court may provide in the Judgment in a Criminal Case Order that the sentence for the instant offense shall commence on the earlier of (i) when the defendant is released from the prior undischarged sentence; or (ii) on a specified date. This order provides for a fully consecutive sentence if the defendant is released on the undischarged term of imprisonment on or before the date specified in the order, and a partially concurrent sentence if the defendant is not released on the undischarged term of imprisonment by that date.

(C) Undischarged Terms of Imprisonment Resulting from Revocations of Probation, Parole or Supervised Release.—Subsection (c) applies in cases in which the defendant was on federal or state probation, parole, or supervised release at the time of the instant offense and has had such probation, parole, or supervised release revoked. Consistent with the policy set forth in Application Note 4 and subsection (f) of § 7B1.3 (Revocation of Probation or Supervised Release), the Commission recommends that the sentence for the instant offense be imposed consecutively to the sentence imposed for the revocation.

(D) Complex Situations.—Occasionally, the court may be faced with a complex case in which a defendant may be subject to multiple undischarged terms of imprisonment that seemingly call for the application of different rules. In such a case, the court may exercise its discretion in accordance with subsection (c) to fashion a sentence of appropriate length and structure it to run in any appropriate manner to achieve a reasonable punishment for the instant offense.

(E) Downward Departure.—Unlike subsection (b), subsection (c) does not authorize an adjustment of the sentence for the instant offense for a period of imprisonment already served on the undischarged term of imprisonment. However, in an extraordinary case involving an undischarged term of imprisonment under subsection (c), it may be appropriate for the court to downwardly depart. This may occur, for example, in a case in which the defendant has served a very substantial period of imprisonment on an undischarged term of imprisonment that resulted from conduct only partially within the relevant conduct for the instant offense. In such a case, a downward departure may be warranted to ensure that the combined punishment is not increased unduly by the fortuity and timing of separate prosecutions and sentencings. Nevertheless, it is intended that a departure pursuant to this application note result in a sentence that ensures a reasonable incremental punishment for the instant offense of conviction.

To avoid confusion with the Bureau of Prisons' exclusive authority provided under 18 U.S.C. 3585(b) to grant credit for time served under certain circumstances, the Commission recommends that any downward departure under this application note be clearly stated on the Judgment in a Criminal Case Order as a downward departure pursuant to § 5G1.3(c), rather than as a credit for time served.

4. Downward Departure Provision.—In the case of a discharged term of imprisonment, a downward departure is not prohibited if the defendant (A) has completed serving a term of imprisonment; and (B) subsection (b) would have provided an adjustment had that completed term of imprisonment been undischarged at the time of sentencing for the instant offense. *See* § 5K2.23 (Discharged Terms of Imprisonment).".

Chapter Five, Part K, is amended by adding at the end the following new policy statement:

"§ 5K2.23. Discharged Terms of Imprisonment (Policy Statement)

A sentence below the applicable guideline range may be appropriate if the defendant (1) has completed serving a term of imprisonment; and (2) subsection (b) of § 5G1.3 (Imposition of a Sentence on a Defendant Subject to Undischarged Term of Imprisonment) would have provided an adjustment had that completed term of imprisonment been undischarged at the time of sentencing for the instant offense. Any such departure should be fashioned to achieve a reasonable punishment for the instant offense.".

Reason for Amendment: This amendment addresses a number of issues in § 5G1.3 (Imposition of a Sentence on a Defendant Subject to an Undischarged Term of Imprisonment).

First, this amendment clarifies the rule for application of subsection (b) (mandating a concurrent term of imprisonment) with respect to a prior term of imprisonment by stating that subsection (b) shall apply only to prior offenses that are relevant conduct to the instant offense of conviction and that resulted in an increase in the offense level for the instant offense. By clarifying the application of subsection (b), this amendment addresses conflicting litigation regarding the meaning of "fully taken into account." Compare, *e.g.*, *United States* v. *Garcia-Hernandez*, 237 F.3d 105, 109 (2d Cir. 2000) (determining that a prior offense is "fully taken into account" if and only if the guidelines provide for sentencing as if both the offense of conviction and the separate offense had been prosecuted in a single proceeding), *with United States* v. *Fuentes*, 107 F.3d 1515, 1524 (11th Cir. 1997) (finding that a prior offense has been "fully taken into account" when the prior offense is part of the same course of conduct, common scheme, or plan).

Second, this amendment addresses how this guideline applies in cases in which an instant offense is committed while the defendant is on federal or state probation, parole, or supervised release, and has had such probation, parole, or supervised release revoked. Under this amendment, the sentence for the instant offense may be imposed concurrently, partially concurrently, or consecutively to the undischarged term of imprisonment; however, the Commission recommends a consecutive sentence in this situation. This amendment also resolves a circuit conflict concerning whether the imposition of such sentence is required to be consecutive. The amendment follows holdings of the Second, Third, and Tenth Circuits stating that imposition of sentence for the instant offense is not required to be consecutive to the sentence imposed upon revocation of probation, parole, or supervised release. *See United States* v. *Maria*, 186 F.3d 65, 70–73 (2d Cir. 1999); *United States* v. *Swan*, 275 F.3d 272, 279–83 (3d Cir. 2002); *United States* v. *Tisdale*, 248 F.3d 964, 977–79 (10th Cir. 2001).

Third, this amendment provides a new downward departure provision in § 5K2.23 (Discharged Terms of Imprisonment) regarding the effect of discharged terms of imprisonment. This provision replaces the departure provision previously set forth in Application Note 7 of § 5G1.3. By placing the departure provision in Chapter Five, Part K, this amendment brings structural clarity to § 5G1.3 because the guideline applies to undischarged, rather than discharged, terms of imprisonment. For ease of application, the new commentary in § 5G1.3 provides a reference to § 5K2.23.

Finally, this proposed amendment addresses a circuit conflict regarding whether the sentencing court may grant "credit" or adjust the instant sentence for time served on a prior undischarged term covered under subsection (c). *Compare Ruggiano* v. *Reish*, 307 F.3d 121 (3d Cir. 2002) (federal sentencing court may grant such credit), with *United States* v. *Fermin*, 252 F.3d 102 (2d Cir. 2001) (court may not grant such credit). The amendment makes clear that the court may not adjust or give "credit" for time served on an undischarged term of imprisonment covered under subsection (c). However, the amendment adds commentary to § 5G1.3 to provide that courts may consider a downward departure in an extraordinary case, in order to achieve a reasonable punishment for the instant offense.

10. Amendment: Section 1B1.1 is amended by inserting before subsection (a) the following new paragraph:

"Except as specifically directed, the provisions of this manual are to be applied in the following order:".

The Commentary to § 1B1.1 captioned "Application Notes" is amended by striking Note 4 and inserting the following:

"4. (A) Cumulative Application of Multiple Adjustments within One Guideline.—The offense level adjustments from more than one specific offense characteristic within an offense guideline are applied cumulatively (added together) unless the guideline specifies that only the greater (or greatest) is to be used. Within each specific offense characteristic subsection, however, the offense level adjustments are alternative; only the one that best describes the conduct is to be used. For example, in § 2A2.2(b)(3), pertaining to degree of bodily injury, the subdivision that best describes the level of bodily injury is used; the adjustments for different degrees of bodily injury (subdivisions (A)-(E)) are not added together.

(B) Cumulative Application of Multiple Adjustments from Multiple Guidelines.—Absent an instruction to the contrary, enhancements under Chapter Two, adjustments under Chapter Three, and determinations under Chapter Four are to be applied cumulatively. In some cases, such enhancements, adjustments, and determinations may be triggered by the same conduct. For example, shooting a police officer during the commission of a robbery may warrant an injury enhancement under § 2B3.1(b)(3) and an official victim adjustment under § 3A1.2, even though the enhancement and the adjustment both are triggered by the shooting of the officer.".

The Commentary to § 1B1.1 captioned "Application Notes" is amended by adding at the end the following:

"7. Use of Abbreviated Guideline Titles.—Whenever a guideline makes reference to another guideline, a parenthetical restatement of that other guideline's heading accompanies the initial reference to that other guideline. This parenthetical is provided only for the convenience of the reader and is not intended to have substantive effect. In the case of lengthy guideline headings, such a parenthetical restatement of the guideline heading may be abbreviated for ease of reference. For example, references to § 2B1.1 (Larceny, Embezzlement, and Other Forms of Theft; Offenses Involving Stolen Property; Property Damage or Destruction; Fraud and Deceit; Forgery; Offenses Involving Altered or Counterfeit Instruments Other than Counterfeit Bearer Obligations of the United States) may be abbreviated as follows: § 2B1.1 (Theft, Property Destruction, and Fraud).".

The Commentary to § 2A3.1 captioned "Application Notes" is amended in Note 1 by striking "'Prohibited sexual conduct'" and all that follows through "child pornography." and inserting the following:

"'Prohibited sexual conduct' means any sexual activity for which a person can be charged with a criminal offense. 'Prohibited sexual conduct' includes the production of child pornography, but does not include trafficking in, or possession of, child pornography.".

The Commentary to § 2B1.1 captioned "Statutory Provisions" is amended by inserting "19 U.S.C. 2401f;" before "29 U.S.C.".

The Commentary to § 2C1.3 captioned "Statutory Provisions" is amended by inserting "; 40 U.S.C. 14309(a), (b)" after "1909".

Section § 2D1.11(e)(1) is amended in the subdivision captioned "List I Chemicals" by striking the period after "Gamma-butyrolactone" and inserting a semi-colon; and by adding at the end the following:

"714 G or more of Red Phosphorus.".

Section 2D1.11(e)(2) is amended in the subdivision captioned "List I Chemicals" by adding at the end the following:

"At least 214 G but less than 714 G of Red Phosphorus;".

Section 2D1.11(e)(3) is amended in the subdivision captioned "List I Chemicals" by adding at the end the following:

"At least 71 G but less than 214 G of Red Phosphorus;".

Section 2D1.11(e)(4) is amended in the subdivision captioned "List I Chemicals" by adding at the end the following:

"At least 50 G but less than 71 G of Red Phosphorus;".

Section 2D1.11(e)(5) is amended in the subdivision captioned "List I Chemicals" by adding at the end the following:

"At least 29 G but less than 50 G of Red Phosphorus;".

Section 2D1.11(e)(6) is amended in the subdivision captioned "List I Chemicals" by adding at the end the following:

"At least 7 G but less than 29 G of Red Phosphorus;".

Section 2D1.11(e)(7) is amended in the subdivision captioned "List I Chemicals" by adding at the end the following:

"At least 6 G but less than 7 G of Red Phosphorus;".

Section 2D1.11(e)(8) is amended in the subdivision captioned "List I Chemicals" by adding at the end the following:

"At least 4 G but less than 6 G of Red Phosphorus;".

Section 2D1.11(e)(9) is amended in the subdivision captioned "List I Chemicals" by adding at the end the following:

"At least 3 G but less than 4 G of Red Phosphorus;".

Section 2D1.11(e)(10) is amended in the subdivision captioned "List I Chemicals" by adding at the end the following:

"Less than 3 G of Red Phosphorus;".

The Commentary to 2G2.1 captioned "Application Notes" is amended by striking Note 6 and inserting the following:

"6. Upward Departure Provision.—An upward departure may be warranted if the offense involved more than 10 victims.".

Section 2G2.2(b)(5) is amended by inserting ", receipt, or distribution" after "transmission".

The Commentary to § 2H2.1 captioned "Statutory Provisions" is amended by inserting ", 1015(f)" after "597".

The Commentary to § 2K2.5 captioned "Statutory Provisions" is amended by inserting "; 40 U.S.C. 5104(e)(1)" after "930".

The Commentary to § 2N2.1 captioned "Statutory Provisions" is amended by inserting ", 8313" after "7734".

The Commentary to § 2R1.1 captioned "Statutory Provision" is amended by striking "Provision" and inserting "Provisions"; and by striking "§ 1" and inserting "§§ 1, 3(b)".

The Commentary to § 4B1.5 captioned "Application Notes" is amended Note 4(A) by striking "(i) means" and inserting "means any of the following: (i)"; by striking "includes" each place it appears; by inserting "or" before "(iii)"; and by striking "; and (iv)" and inserting ". It".

Appendix A (Statutory Index) is amended by inserting after the line referenced to 7 U.S.C. 7734 the following new line:

"7 U.S.C. 8313 2N2.1";

by inserting after the line referenced to 15 U.S.C. 1 the following new line:

"15 U.S.C. 3(b) 2R1.1";

in the line referenced to 18 U.S.C. 1015 by inserting "(a)–(e)" after "1015";

by inserting after the line referenced to 18 U.S.C. 1015(a)–(e), as amended by this amendment, the following new line:

"18 U.S.C. 1015(f) 2H2.1";

by inserting after the line referenced to 19 U.S.C. 2316 the following new line:

"19 U.S.C. 2401f 2B1.1"; and

by inserting after the line referenced to 38 U.S.C. 3502 the following new lines:

"40 U.S.C. 5104(e)(1) 2K2.5

40 U.S.C. 14309(a), (b) 2C1.3".

Reason for Amendment: This six-part amendment makes several technical and conforming changes to various guideline provisions.

First, this amendment makes changes to § 1B1.1 (Application Instructions) to (1) provide an instruction making clear that the application instructions are to be applied in the order presented in the guideline; (2) provide an application note making clear that, absent an instruction to the contrary, Chapter Two enhancements, Chapter Three adjustments, and determinations under Chapter Four triggered by the same conduct are to be applied cumulatively; and (3) provide an application note concerning the use of abbreviated guideline titles to ease reference to guidelines that have exceptionally long titles.

Second, this amendment adds red phosphorus to the Chemical Quantity Table in § 2D1.11 (Unlawfully Distributing, Importing, Exporting or Possessing a Listed Chemical) in response to a recent classification of red phosphorus as a List I chemical.

Third, this amendment conforms the departure provision in Application Note 6 of § 2G2.1 (Sexually Exploiting a Minor by Production of Sexually Explicit Visual or Printed Material; Custodian Permitting Minor to Engage in Sexually Explicit Conduct; Advertisement for Minors to Engage in Production) to Application Note 12 of § 2G1.1 (Promoting A Commercial Sex Act or Prohibited Sexual Conduct).

Fourth, this amendment amends subsection (b)(5) of § 2G2.2 (Trafficking in Material Involving the Sexual Exploitation of a Minor; Receiving, Transporting, Shipping, or Advertising Material Involving the Sexual Exploitation of a Minor; Possessing Material Involving the Sexual Exploitation of a Minor with Intent to Traffic) to include receipt and distribution in the enhancement for use of a computer.

Fifth, this amendment restructures the definitions of "prohibited sexual conduct" in §§ 2A3.1 (Criminal Sexual Abuse; Attempt to Commit Criminal Sexual Abuse) and 4B1.5 (Repeat and Dangerous Sex Offender Against Minors) to eliminate possible ambiguity regarding the interaction of "means" and "includes".

Finally, this amendment responds to new legislation and makes other technical amendments as follows:

(1) Amends Appendix A (Statutory Index) and § 2N2.1 (Violations of Statutes and Regulations Dealing with any Food, Drug, Biological Product, Device, Cosmetic, or Agricultural Product) in response to new offenses created by the Farm Security and Rural Investment Act of 2002 (the "Act"), Pub. L. 107–171. The first new offense provides a statutory maximum of one year of imprisonment for violating the Animal Health Protection Act (Subtitle E of the Act), or for counterfeiting or destroying certain documents specified in the Animal Health Protection Act. The second new offense provides a statutory maximum term of imprisonment of five years for importing, entering, exporting, or moving any animal or article for distribution or sale. The Act also provides a statutory maximum of ten years' imprisonment for a subsequent violation of either offense.

(2) Amends Appendix A and § 2B1.1 (Larceny, Embezzlement, and Other Forms of Theft; Offenses Involving Stolen Property; Property Damage or Destruction; Fraud and Deceit; Forgery; Offenses Involving Altered or Counterfeit Instruments Other than Counterfeit Bearer Obligations of the United States) in response to a new offense (19 U.S.C. 2401f) created by the Trade Act of 2002, Pub. L. 107–210. The new offense provides a statutory maximum term of imprisonment of one year for knowingly making a false statement of material fact for the purpose of obtaining or increasing a payment of federal adjustment assistance to qualifying agricultural commodity producers.

(3) Amends Appendix A, §§ 2C1.3 (Conflict of Interest; Payment or Receipt of Unauthorized Compensation) and 2K2.5 (Possession of Firearm or Dangerous Weapon in Federal Facility; Possession or Discharge of Firearm in School Zone) in response to the codification of title 40, United States Code, by Pub. L. 107–217. Section 5104(e)(1) of title 40, United States Code, prohibits anyone (except as authorized by the Capitol Police Board) from carrying or having readily accessible a firearm, dangerous weapon, explosive, or incendiary device on the Capitol Grounds or in any of the Capitol Buildings. The statutory maximum term of imprisonment is five years. The proposed amendment references 40 U.S.C. 5104(e)(1) to § 2K2.5. Section 14309(a) of title 40, United States Code, prohibits certain conflicts of interests of members of the Appalachian Regional Commission and provides a statutory maximum term of imprisonment of two years. Section 14309(b) prohibits certain additional sources of salary and

provides a statutory maximum term of imprisonment of one year. The amendment references 40 U.S.C. 14309(a) and (b) to § 2C1.3.

(4) Amends Appendix A and § 2H2.1 (Obstructing an Election or Registration) to provide a guideline reference for offenses under 18 U.S.C. 1015(f). Prior to this amendment, 18 U.S.C. 1015 was referenced to §§ 2B1.1, 2J1.3 (Perjury or Subornation of Perjury; Bribery of Witness), 2L2.1 (Trafficking in a Document Relating to Naturalization, Citizenship, or Legal Resident Status, or a United States Passport; False Statement in Respect to the Citizenship or Immigration Status of Another; Fraudulent Marriage to Assist Alien to Evade Immigration Law), and 2L2.2 (Fraudulently Acquiring Documents Relating to Naturalization, Citizenship, or Legal Resident Status for Own Use; False Personation or Fraudulent Marriage by Alien to Evade Immigration Law; Fraudulently Acquiring or Improperly Using a United States Passport). However, 18 U.S.C. 1015(f) specifically relates to knowingly making false statements in order to register to vote, or to vote, in a Federal, State, or local election. Accordingly, the amendment references 18 U.S.C. 1015(f) to § 2H2.1 (Obstructing an Election or Registration).

(5) Amends Appendix A and § 2R1.1 (Bid-Rigging, Price-Fixing or Market-Allocation Agreements Among Competitors) in response to a new offense (15 U.S.C. 3) created by section 14102 (the Antitrust Technical Corrections Act of 2002) of the 21st Century Department of Justice Appropriations Authorization Act, Pub. L. 107–273. The new offense provides a statutory maximum term of imprisonment of three years, and a maximum fine of $10,000,000 for a corporation, or $350,000 for an individual, for monopolizing, or attempting or conspiring to monopolize, any part of the trade or commerce in or between any states, or territories of the United States, or between any such states, or territories of the United States and any foreign nations.

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Vol. 68, No. 95

Friday May 16,. 2003

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FEDERAL REGISTER PAGES AND DATE, MAY

23183–23376	1
23377–23568	2
23569–23884	5
23885–24332	6
24333–24604	7
24605–24858	8
24859–25278	9
25279–25478	12
25479–25808	13
25809–26200	14
26201–26456	15
26457–26980	16

CFR PARTS AFFECTED DURING MAY

At the end of each month, the Office of the Federal Register publishes separately a List of CFR Sections Affected (LSA), which lists parts and sections affected by documents published since the revision date of each title.

3 CFR

Proclamations:
7668 23821
7669 23823
7670 23825
7671 23827
7672 23829
7673 24333
7674 25277
7675 26195
7676 26197
7677 26199

Executive Orders:
12865 (Revoked by 13298) 24857
13069 (Revoked by 13298) 24857
13098 (Revoked by 13298) 24857
13298 24857
13299 25477
13300 25807

Administrative Orders:
Memorandums:
Memorandum of May 6, 2003 25275
Memorandum of May 7, 2003 26457
Presidential Determinations:
No. 2003-22 of May 6, 2003 25809
No. 2003-23 of May 7, 2003 26459

5 CFR

213 24605
Ch. XIV 23885
2424 23885
2429 23885
2471 23885
2472 23885

Proposed Rules:
2601 23876

7 CFR

6 25479
29 25484
46 23377
56 25484
301 ..... 24605, 24613
868 24589
932 23378
985 ..... 23569, 25486
989 25279
1410 24830
1424 24596
1491 26461
1710 24335

Proposed Rules:
274 23927
276 23927
278 23927
279 23927
280 23927
360 23425
1530 23230

9 CFR

Proposed Rules:
2 24052
130 25308

10 CFR

40 25281
70 23574
71 23574
72 23183
73 23574
150 25281

Proposed Rules:
20 23618
50 26511
490 23620

11 CFR

Proposed Rules:
104 26237
107 26237
110 26237
9003 26237
9004 26237
9008 26237
9032 26237
9033 26237
9034 26237
9035 26237
9036 26237
9038 26237

12 CFR

21 25090
208 25090
211 25090
326 25090
563 25090
740 23381
748 25090

Proposed Rules:
Ch. 6 26551
613 ..... 23425, 23426

14 CFR

1 25486
11 25486
25 ..... 24336, 24338
39 ..... 23183, 23186, 23190, 23384, 23387, 23575, 23886, 24614, 24861, 25488, 25811, 26201, 26478, 26481, 26482
71 ..... 23577, 23579, 23580, 23581, 23682, 24340, 24341, 24342, 24864, 24866, 24868, 24869, 24870, 24871, 24872, 24874, 25489, 25491, 25492,

25493, 25494, 25495, 25684, 26202, 26687
73 25495
77 23583
97 ..... 23888, 23889, 26484, 26486
382 24874

Proposed Rules:
3 23808
25 26237
39 ..... 23231, 23235, 23427, 23620, 24383, 25543, 26239, 26242, 26244, 26552, 26553
71 ..... 23622, 23624, 23625, 23626
119 24810
121 24810
135 24810
145 24810
255 ..... 24896, 25844
330 23627
399 ..... 24896, 25844

15 CFR
0 24878
270 24343
902 24615

16 CFR
305 23584

Proposed Rules:
309 24669

17 CFR
42 25149
211 26840
230 25788
232 ..... 24345, 25788
239 25788
240 25788
241 25281
249 25788
250 25788
259 25788
260 25788
269 25788
270 25131
274 25788

18 CFR
375 25814
376 25814

Proposed Rules:
35 24679

19 CFR
178 24052

20 CFR

Proposed Rules:
404 ..... 23192, 24896
416 ..... 23192, 24896

21 CFR
Ch. 1 24879
10 25283
14 25283
20 25283
310 24347
314 25283
358 24347
520 26204
522 26205
720 25283
1300 23195
1310 23195

Proposed Rules:
1 ..... 23630, 25242, 25188
11 25188
16 25242
101 23930
1308 26247
1310 24689

22 CFR
32 26488
42 24638
121 25088
228 23891

23 CFR
140 24639
646 24639
661 24642

Proposed Rules:
630 ..... 23239, 24384

24 CFR
200 26946
203 23370

Proposed Rules:
1000 26555

25 CFR

Proposed Rules:
170 23631

26 CFR
1 ..... 23586, 24349, 24351, 24644, 24880
301 24644
602 24644

Proposed Rules:
1 ..... 23632, 23931, 24404, 24405, 24406, 24898, 24903, 25310, 25845
54 24406
602 24406

27 CFR

Proposed Rules:
4 24903
5 24903
7 24903
9 25851
13 24903

28 CFR

Proposed Rules:
513 25545

29 CFR

Proposed Rules:
1480 23634
1910 23528
4022 26206
4044 26206

30 CFR
36 23892
917 24644
948 24355
950 24647

31 CFR
103 ..... 25090, 25149, 25113, 25163, 26489
315 24794
351 24794
353 24794
359 24794
360 24794
363 24794

Proposed Rules:
103 ..... 23640, 23646, 23653, 25163

32 CFR
311 24880
505 25816
806B 24881

Proposed Rules:
701 24904

33 CFR
100 ..... 25817, 25818
110 25496
117 ..... 23390, 23590, 24882, 24883, 25818, 26208
165 ..... 23390, 23393, 23399, 23591, 23594, 23595, 23893, 23894, 23896, 24359, 24361, 24883, 25288, 25498, 25500, 25818, 26208, 26490

Proposed Rules:
62 25855
66 25855
67 25855
72 25855
165 ..... 23935, 24406, 24408, 26247
401 25546

34 CFR
674 25821
682 25821
685 25821

36 CFR

Proposed Rules:
251 ..... 25748, 25751
1280 23430

37 CFR

Proposed Rules:
262 23241

38 CFR
2 25503
4 25822

Proposed Rules:
39 23249

39 CFR

Proposed Rules:
111 23937

40 CFR
51 25684
52 ..... 23206, 23207, 23404, 23597, 23604, 24363, 24365, 24368, 24885, 25414, 25418, 25442, 25504, 26210, 26212, 26492, 26495
62 ..... 23209, 25291
63 ..... 23898, 24562, 24653, 26690
71 25507
80 24300
81 ..... 24368, 25418, 25442, 26212
89 25823
180 ..... 24370, 25824, 25831
271 ..... 23407, 23607
300 23211
312 24888
438 25686

Proposed Rules:
Ch. 1 ..... 24410, 25312
52 ..... 23270, 23430, 23661, 23662, 24416, 24417, 25547, 26248, 26556
60 24692
62 ..... 23272, 25313
63 26249
71 25548
80 24311
81 26248
146 ..... 23666, 23673
258 25550
300 23939

42 CFR

Proposed Rules:
409 26758
412 26786
413 26758
440 26758
483 26758

44 CFR
64 23408
67 23898

Proposed Rules:
67 23941

45 CFR
2 25838
32 24052
148 23410
301 25293
302 25293
303 25293
304 25293
307 25293
1309 23212

46 CFR

Proposed Rules:
540 23947

47 CFR
Ch. 1 25840
1 ..... 23417, 25841
2 25512
52 25843
73 ..... 23613, 23900, 23901, 25512, 25542, 26220, 26497
74 ..... 25512, 26220
80 25512
90 25512
97 25512

Proposed Rules:
1 23431
15 23677
64 25313
73 ..... 24417, 26556, 26557

48 CFR
511 24372
516 24372
532 24372
538 24372
546 24372
552 24372
1802 23423
1806 23423
1815 23423
1816 23423
1843 23423

1845 23424

Proposed Rules:
208 26265
219 26265
252 26265
245 25313

49 CFR
107 ..... 23832, 24653
171 ..... 23832, 24653
173 24653
176 23832
177 ..... 23832, 24653
180 24653
209 24891
383 23844
384 23844
571 ..... 23614, 24664
1570 23852
1572 23852

Proposed Rules:
193 23272
571 ..... 26269, 26384
572 24417
1137 ..... 23947, 25859

50 CFR
17 ..... 25934, 26498
216 24905
300 ..... 23224, 23901
600 ..... 23901, 26230
622 26230
648 ..... 24914, 25305, 26510
660 ..... 23901, 23913, 23924
679 ..... 23925, 24615, 24667, 24666

Proposed Rules:
18 24700
20 24324
216 24905
622 23686
648 ..... 23275, 23948, 23949, 24914
660 26557

REMINDERS

The items in this list were editorially compiled as an aid to Federal Register users. Inclusion or exclusion from this list has no legal significance.

RULES GOING INTO EFFECT MAY 16, 2003

AGRICULTURE DEPARTMENT
Commodity Credit Corporation
Loan and purchase programs:
Farm and Ranch Lands Protection Program; published 5-16-03

ENVIRONMENTAL PROTECTION AGENCY
Air pollutants, hazardous; national emission standards:
Brick and structural clay products manufacturing and clay ceramics manufacturing facilities; published 5-16-03
Air quality implementation plans; approval and promulgation; various States:
Arizona and California; published 4-16-03

INTERIOR DEPARTMENT
Fish and Wildlife Service
Endangered and threatened species:
Black-footed ferrets; nonessential experimental population reintroduction in south-central South Dakota; published 5-16-03

TRANSPORTATION DEPARTMENT
Federal Aviation Administration
Airworthiness directives:
Dornier; published 3-27-03
Schweizer Aircraft Corp.; published 5-1-03
SOCATA-Groupe AEROSPATIALE; published 3-27-03
Twin Commander Aircraft Corp.; published 4-3-03
Standard instrument approach procedures; published 5-16-03

TREASURY DEPARTMENT
Currency and foreign transactions; financial reporting and recordkeeping requirements:
Bank Secrecy Act; implementation—
Financial crimes enforcement network; foreign bank account report requirements, authority delegation; published 5-16-03

COMMENTS DUE NEXT WEEK

AGRICULTURE DEPARTMENT
Agricultural Marketing Service
Hass avocado promotion, research, and information order; comments due by 5-19-03; published 3-18-03 [FR 03-06510]

AGRICULTURE DEPARTMENT
Animal and Plant Health Inspection Service
Plant related quarantine; domestic:
Fire ant, imported; methoprene, authorized treatment; comments due by 5-20-03; published 3-21-03 [FR 03-06799]
User fees:
Export certificates for ruminants; comments due by 5-20-03; published 3-21-03 [FR 03-06797]

AGRICULTURE DEPARTMENT
Foreign Agricultural Service
Farmers; trade adjustment assistance; comments due by 5-23-03; published 4-23-03 [FR 03-10050]

COMMERCE DEPARTMENT
National Oceanic and Atmospheric Administration
Fishery conservation and management:
West Coast States and Western Pacific fisheries—
Pacfic Coast groundfish; correction; comments due by 5-22-03; published 5-6-03 [FR 03-11084]
West Coast salmon; comments due by 5-21-03; published 5-6-03 [FR 03-11083]

EDUCATION DEPARTMENT
Elementary and secondary education:
Disadvantaged children; academic achievement improvement; comments due by 5-19-03; published 3-20-03 [FR 03-06653]

ENVIRONMENTAL PROTECTION AGENCY
Air pollution control:
Interstate ozone transport reduction—
Nitrogen oxides budget trading program; Section 126 petitions; findings of significant contribution and rulemaking; withdrawal provision; comments due by 5-24-03; published 4-4-03 [FR 03-08152]

ENVIRONMENTAL PROTECTION AGENCY
Air quality implementation plans; approval and promulgation; various States; air quality planning purposes; designation of areas:
Wisconsin; comments due by 5-19-03; published 4-17-03 [FR 03-09347]

ENVIRONMENTAL PROTECTION AGENCY
Air quality implementation plans; approval and promulgation; various States; air quality planning purposes; designation of areas:
Wisconsin; comments due by 5-19-03; published 4-17-03 [FR 03-09348]

ENVIRONMENTAL PROTECTION AGENCY
Air quality implementation plans; approval and promulgation; various States:
Louisiana; comments due by 5-21-03; published 4-21-03 [FR 03-09619]

ENVIRONMENTAL PROTECTION AGENCY
Air quality implementation plans; approval and promulgation; various States:
Louisiana; comments due by 5-21-03; published 4-21-03 [FR 03-09620]
Superfund program:
Toxic chemical release reporting; community right-to-know—
North American Industry Classification System; comments due by 5-20-03; published 3-21-03 [FR 03-06582]

FEDERAL ELECTION COMMISSION
Bipartisan Campaign Reform Act; implementation:
Presidential candidates and nominating conventions; public financing; comments due by 5-23-03; published 5-15-03 [FR 03-11978]

GOVERNMENT ETHICS OFFICE
Government ethics:
Post-employment conflict of interest restrictions; comments due by 5-19-03; published 2-18-03 [FR 03-03043]
Correction; comments due by 5-19-03; published 3-31-03 [FR 03-07539]

HEALTH AND HUMAN SERVICES DEPARTMENT
Food and Drug Administration
Human drugs:
Ophthalmic products for emergency first aid use (OTC); final monograph; amendment; comments due by 5-20-03; published 2-19-03 [FR 03-03927]

HOMELAND SECURITY DEPARTMENT
Coast Guard
Drawbridge operations:
Florida; comments due by 5-19-03; published 3-19-03 [FR 03-06637]
New Jersey; comments due by 5-19-03; published 3-20-03 [FR 03-06638]
Ports and waterways safety:
Long Island Sound Marine Inspection and Captain of Port Zone, CT; regulated navigation area and safety and security zones; comments due by 5-19-03; published 3-20-03 [FR 03-06642]

HOMELAND SECURITY DEPARTMENT
Customs Service
Articles conditionally free, subject to reduced rates, etc.:
African Growth and Opportunity Act; sub-Saharan Africa trade benefits; textile and apparel provisions; comments due by 5-20-03; published 3-21-03 [FR 03-06760]
Caribbean Basin Economic Recovery Act; textile and apparel provisions; comments due by 5-20-03; published 3-21-03 [FR 03-06755]

HOMELAND SECURITY DEPARTMENT
Customs Service
Merchandise, special classes, and financial and accounting procedures:
Patent Survey Program; discontinuation; comments due by 5-19-03; published 3-20-03 [FR 03-06756]

INTERIOR DEPARTMENT
Surface coal mining hearings and appeals; special rules; comments due by 5-19-03; published 3-20-03 [FR 03-06555]

LABOR DEPARTMENT
Mine Safety and Health Administration
Coal mine safety and health:
Underground mines—
Sanitary toilets; standards; comments due by 5-21-03; published 4-21-03 [FR 03-09656]

LABOR DEPARTMENT
Mine Safety and Health Administration
Coal mine safety and health:
Underground mines—
Sanitary toilets; standards; comments due by 5-21-03; published 4-21-03 [FR 03-09655]

LABOR DEPARTMENT
Mine Safety and Health Administration
Metal and nonmetal mine safety and health:
Seat belts for off-road work machines and wheeled agricultural tractors; comments due by 5-21-03; published 4-21-03 [FR 03-09658]

LABOR DEPARTMENT
Mine Safety and Health Administration
Metal and nonmetal mine safety and health:
Seat belts for off-road work machines and wheeled agricultural tractors; comments due by 5-21-03; published 4-21-03 [FR 03-09657]

LIBRARY OF CONGRESS
Copyright Office, Library of Congress
Copyright Arbitration Royalty Panel rules and procedures:
Digital performance of sound recordings; reasonable rates and terms determinations; comments due by 5-21-03; published 4-21-03 [FR 03-09783]

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION
Space flight:
Astronaut candidates; recruitment and selection; comments due by 5-23-03; published 4-23-03 [FR 03-10002]

NUCLEAR REGULATORY COMMISSION
Byproduct material; medical use:
Clarifications and amendments; comments due by 5-21-03; published 4-21-03 [FR 03-09601]

NUCLEAR REGULATORY COMMISSION
Byproduct material; medical use:
Clarifications and amendments; comments due by 5-21-03; published 4-21-03 [FR 03-09602]

PERSONNEL MANAGEMENT OFFICE
Health and counseling programs, Federal employees:
Child care costs for lower income employees; agency use of appropriated funds; comments due by 5-23-03; published 3-24-03 [FR 03-06887]

TRANSPORTATION DEPARTMENT
Procedural regulations:
Air carriers; compensation procedures; adjustment; comments due by 5-19-03; published 5-5-03 [FR 03-11185]

TRANSPORTATION DEPARTMENT
Federal Aviation Administration
Airworthiness directives:
Bell; comments due by 5-19-03; published 3-18-03 [FR 03-06136]

TRANSPORTATION DEPARTMENT
Federal Aviation Administration
Airworthiness directives:
Bombardier; comments due by 5-23-03; published 4-23-03 [FR 03-09690]

TRANSPORTATION DEPARTMENT
Federal Aviation Administration
Airworthiness directives:
General Electric Co.; comments due by 5-19-03; published 3-18-03 [FR 03-06044]

TRANSPORTATION DEPARTMENT
Federal Aviation Administration
Airworthiness directives:
Short Brothers and Harland Ltd.; comments due by 5-19-03; published 4-10-03 [FR 03-08750]
Airworthiness standards:
Special conditions—
Embraer Model ERJ-170 series airplanes; comments due by 5-23-03; published 4-23-03 [FR 03-10045]
Class E airspace; comments due by 5-19-03; published 4-3-03 [FR 03-08143]

TRANSPORTATION DEPARTMENT
Federal Aviation Administration
Class E airspace; comments due by 5-19-03; published 4-17-03 [FR 03-09506]

TRANSPORTATION DEPARTMENT
National Highway Traffic Safety Administration
Insurer reporting requirements:
Insurers required to file reports; list; comments due by 5-20-03; published 3-21-03 [FR 03-05629]

TREASURY DEPARTMENT
Foreign Assets Control Office
Cuban assets control regulations:
Family and educational travel transactions, remittances, support for Cuban people and humanitarian projects; technical amendments; comments due by 5-23-03; published 3-24-03 [FR 03-06808]

TREASURY DEPARTMENT
Internal Revenue Service
Excise taxes:
Structured settlement factoring transactions; cross-reference; comments due by 5-20-03; published 2-19-03 [FR 03-03865]

TREASURY DEPARTMENT
Currency and foreign transactions; financial reporting and recordkeeping requirements:
USA PATRIOT Act; implementation—
Nauru; special measures imposition due to designation as primary money laundering concern; comments due by 5-19-03; published 4-17-03 [FR 03-09410]
Terrorism Risk Insurance Program
State residual market insurance entities and State workers' compensation funds; comments due by 5-19-03; published 4-18-03 [FR 03-09613]

TREASURY DEPARTMENT
Terrorism Risk Insurance Program
Statutory conditions for Federal payment; comments due by 5-19-03; published 4-18-03 [FR 03-09611]

TREASURY DEPARTMENT
Terrorism Risk Insurance Program
Statutory conditions for Federal payment; cross-reference; comments due by 5-19-03; published 4-18-03 [FR 03-09612]

VETERANS AFFAIRS DEPARTMENT
Grants and cooperative agreements; availability, etc.:
Homeless Providers Grant and Per Diem Program; comments due by 5-19-03; published 3-19-03 [FR 03-06329]

LIST OF PUBLIC LAWS

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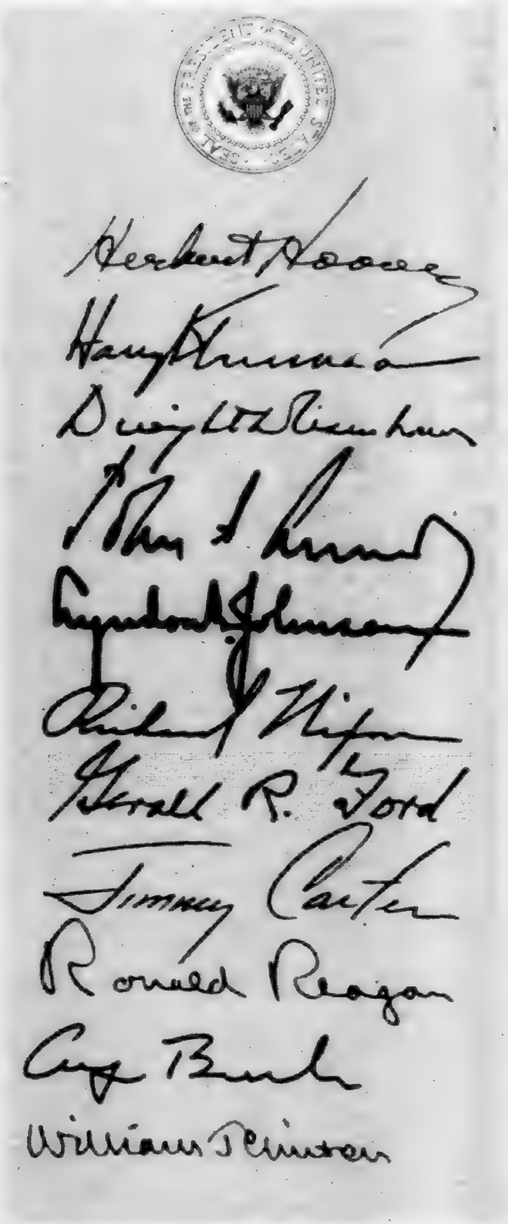
S. 162/P.L. 108–22
Gila River Indian Community Judgment Fund Distribution Act of 2003 (May 14, 2003; 117 Stat. 696)

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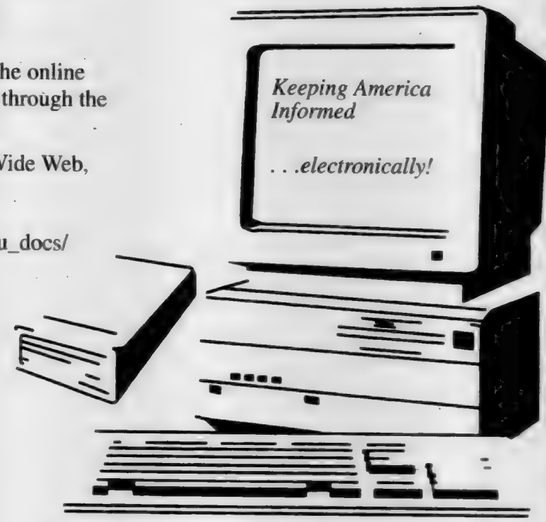
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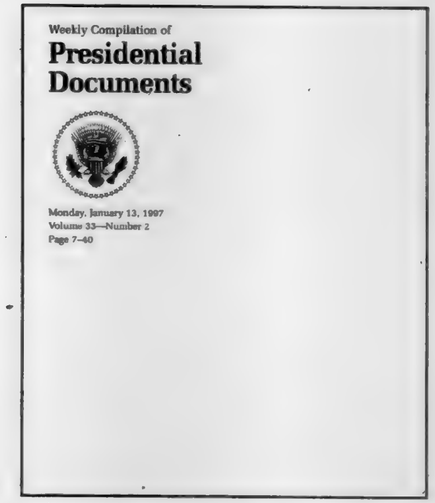
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Contents

Federal Register
Vol. 68, No. 96
Monday, May 19, 2003

Agency for Healthcare Research and Quality
NOTICES
Meetings:
Health Services Research Initial Review Group Committee, 27073

Agricultural Marketing Service
NOTICES
Onions, frozen; grade standards, 27010

Agriculture Department
See Agricultural Marketing Service
See Animal and Plant Health Inspection Service
See Farm Service Agency
See Forest Service
See National Agricultural Statistics Service
See Rural Business-Cooperative Service

Animal and Plant Health Inspection Service
RULES
Exportation and importation of animals and animal products:
Portland International Airport, OR; livestock exportation port designation, 26990–26991
Interstate transportation of animals and animal products (quarantine):
Exotic Newcastle disease; quarantine area designations—Arizona and Nevada, 26986–26988
California, 26988–26990
Plant-related quarantine, domestic:
Asian longhorned beetle, 26983–26985
NOTICES
Meetings:
Foreign Animal and Poultry Diseases, Secretary's Advisory Committee, 27010

Centers for Disease Control and Prevention
NOTICES
Grants and cooperative agreements; availability, etc.:
Autism Spectrum Disorders and Other Developmental Disabilities; Population-Based Surveillance, 27073–27078
Community-Based Interventions to Reduce Motor Vehicle-Related Injuries, 27078–27082
Global Guinea worm eradication effort, 27082–27084
Oral Health Programs; National Organizations' Support, 27085–27088
Smoke alarm maintenance and function; improvement research, 27088–27093

Centers for Medicare & Medicaid Services
PROPOSED RULES
Medicare:
Hospital inpatient prospective payment systems and 2004 FY rates, 27153–27422

Children and Families Administration
NOTICES
Meetings:
Head Start Research and Evaluation Advisory Committee, 27093

Commerce Department
See Industry and Security Bureau
See International Trade Administration
See National Oceanic and Atmospheric Administration

Defense Department
NOTICES
Agency information collection activities; proposals, submissions, and approvals, 27018
Arms sales notification; transmittal letter, etc., 27018–27027
Environmental statements; notice of intent:
White Sands Missile Range, NM; Defense Threat Reduction Agency activities, 27027–27028
Meetings:
Defense Intelligence Agency Advisory Board, 27028
National Security Education Board, 27028
Science Board, 27028–27029
Organization, functions, and authority delegations:
National Security Agency/Central Security Service mandatory declassification review requests; address notification, 27029

Disability Employment Policy Office
NOTICES
Inaugural New Freedom Initiative Award; nominations solicitation, 27105–27106

Education Department
NOTICES
Grants and cooperative agreements; availability, etc.:
Partnerships in Character Education Program, 27029
Postsecondary education—
Preparing Tomorrow's Teachers To Use Technology Program, 27029–27030
Meetings:
Historically Black Colleges and Universities, President's Board of Advisors, 27030–27031

Employment and Training Administration
NOTICES
Adjustment assistance:
Americal Corp., 27108
Barry of Goldsboro, 27108
Ericsson, Inc., 27108–27109
General Electric Transportation Systems, 27109–27110
Gilster Mary Lee Corp., 27110
Jamestown Precision Tooling, Inc., 27110
Republic Technologies International, 27110–27111
Swank, Inc., 27111
Waukesha Engine Division, 27111
Adjustment assistance and NAFTA transitional adjustment assistance:
Precise Courtesy Corp. et al., 27106–27108

Energy Department
See Energy Information Administration
See Federal Energy Regulatory Commission
See Western Area Power Administration

Energy Information Administration
NOTICES
Reports and guidance documents; availability, etc.:
Uranium mines and properties in United States; notice of intent to release information to other Federal agencies for official uses, 27031–27033

Environmental Protection Agency
NOTICES
Agency information collection activities; proposals, submissions, and approvals, 27057–27071
Meetings:
State and Tribal Toxics Action Forum, 27071–27073

Executive Office of the President
See Presidential Documents

Farm Service Agency
NOTICES
Agency information collection activities; proposals, submissions, and approvals, 27011

Federal Aviation Administration
RULES
Airworthiness standards:
Special conditions—
Raytheon Aircraft Co. Model HS 125 Series 700A and 700B airplanes, 26991–26993
Class D and Class E airspace, 26993–26994
Class E airspace, 26994–26995
PROPOSED RULES
Aircraft products, parts, and materials; false and misleading statements
Correction, 27006
Airworthiness directives:
MD Helicopters Inc., 27006–27007
Class E airspace, 27007–27008
NOTICES
Meetings:
RTCA, Inc., 27139–27140
Passenger facility charges; applications, etc.:
Fort Lauderdale International Airport, FL, 27140

Federal Communications Commission
RULES
Television broadcasting:
Cable television systems—
Cable Operations and Licensing System; electronic filing by Multichannel Video Programming Distributors, 26997–27004

Federal Energy Regulatory Commission
NOTICES
Electric rate and corporate regulation filings:
Granite II Holding, LLC, et al., 27035–27037
Environmental statements; availability, etc.:
PacifiCorp et al., 27037–27052
Environmental statements; notice of intent:
Freeport LNG Development, L.P., 27052–27055
Meetings:
MISO Open Access Transmission and Energy Markets Tariff Conference; FERC staff participation, 27055
Reports and guidance documents; availability, etc.:
Delmarva Peninsula; transmission congestion; fact-finding proceeding, 27055–27056
Applications, hearings, determinations, etc.:
Black Marlin Pipeline Co., 27033
Clear Creek Storage Company, L.L.C., 27034
Enbridge Pipelines (KPC), 27034
Questar Pipeline Co., 27034–27035
Transcontinental Gas Pipe Line Corp., 27035

Federal Highway Administration
NOTICES
Environmental statements; notice of intent:
Cooper Landing, Kenai Peninsula Borough, AK, 27140–27141

Federal Reserve System
NOTICES
Banks and bank holding companies:
Formations, acquisitions, and mergers, 27073
Federal Open Market Committee:
Domestic policy directives, 27073

Financial Management Service
See Fiscal Service

Fiscal Service
NOTICES
Surety companies acceptable on Federal bonds:
First Sealord Surety, Inc., 27149
Mountbatten Surety Co., Inc.; termination, 27149

Fish and Wildlife Service
NOTICES
Endangered and threatened species:
Incidental take permits—
Plum Creek land, MT; grizzly bears, 27099

Food and Drug Administration
RULES
Animal drugs, feeds, and related products:
Zinc gluconate, 26995–26996
PROPOSED RULES
Food for human consumption:
Current good manufacturing practice——
Dietary supplements and dietary supplement ingredients, 27008
Reports and guidance documents; availability, etc.:
Developing Medical Imaging Drug and Biological Products, 27008–27009
NOTICES
Meetings:
Biological Response Modifiers Advisory Committee, 27093–27094
Reports and guidance documents; availability, etc.:
Dispute Resolution Procedures for Science-Based Decisions on Products Regulated by Center for Veterinary Medicine, 27094–27096

Foreign Assets Control Office
NOTICES
Sanctions; blocked persons, specially designated nationals, terrorists, and narcotics traffickers, and foreign terrorist organizations:
Sudanese Government; specially-designated nationals; additional designations, 27149–27150

Forest Service
NOTICES
Meetings:
California Coast Provincial Advisory Committee, 27011
Resource Advisory Committees—
Tehama County, 27011–27012

Health and Human Services Department
See Agency for Healthcare Research and Quality
See Centers for Disease Control and Prevention
See Centers for Medicare & Medicaid Services
See Children and Families Administration
See Food and Drug Administration

Housing and Urban Development Department
NOTICES
Agency information collection activities; proposals, submissions, and approvals, 27096–27097
Grant and cooperative agreement awards:
Community Development Technical Assistance Programs, 27097–27099

Indian Affairs Bureau
NOTICES
Liquor and tobacco sale or distribution ordinance:
Rumsey Indian Rancheria of Wintun Indians of California, 27100–27101
San Pasqual Band of Mission Indians, CA, 27101–27102
United Auburn Indian Community, CA, 27102–27103

Industry and Security Bureau
NOTICES
Agency information collection activities; proposals, submissions, and approvals, 27014
Meetings:
Regulations and Procedures Technical Advisory Committee, 27014

Interior Department
See Fish and Wildlife Service
See Indian Affairs Bureau
See Land Management Bureau
NOTICES
Committees; establishment, renewal, termination, etc.:
Water Information Advisory Committee, 27099

International Trade Administration
NOTICES
Antidumping:
Freshwater crawfish tail meat from—
China, 27014–27015
Industrial nitrocellulose from—
United Kingdom, 27015–27016

International Trade Commission
NOTICES
Import investigations:
Panel fasteners, products containing same, and components, 27104–27105
Meetings; Sunshine Act, 27105

Labor Department
See Disability Employment Policy Office
See Employment and Training Administration
NOTICES
Agency information collection activities; proposals, submissions, and approvals, 27105

Land Management Bureau
NOTICES
Withdrawal and reservation of lands:
Nevada, 27103–27104

National Agricultural Statistics Service
NOTICES
Agency information collection activities; proposals, submissions, and approvals, 27012–27013

National Credit Union Administration
NOTICES
Meetings; Sunshine Act, 27111

National Oceanic and Atmospheric Administration
RULES
Fishery conservation and management:
West Coast States and Western Pacific fisheries—
West Coast salmon; correction, 27004–27005
NOTICES
Meetings:
Gulf of Mexico Fishery Management Council, 27016–27017
National Estuarine Research Reserve System; Texas candidate site nomination, 27017
New England Fishery Management Council, 27017–27018

National Science Foundation
NOTICES
Meetings:
Equal Opportunities in Science and Engineering Committee, 27111–27112
National Medal of Science Committee, 27112
Meetings; Sunshine Act, 27112–27113

Overseas Private Investment Corporation
NOTICES
Meetings; Sunshine Act, 27113

Presidential Documents
EXECUTIVE ORDERS
Committees; establishment, renewal, termination, etc.:
Intelligence Oversight Board; increasing membership (EO 13301), 26981
ADMINISTRATIVE ORDERS
Burma:
Continuation of national emergency (Notice of May 16, 2003), 03–12722

Public Debt Bureau
See Fiscal Service

Rural Business-Cooperative Service
NOTICES
Grants and cooperative agreements; availability, etc.:
Renewable Energy Systems and Energy Efficiency Improvements Program, 27013–27014

Securities and Exchange Commission
NOTICES
Agency information collection activities; proposals, submissions, and approvals, 27113–27114
Meetings; Sunshine Act, 27114
Self-regulatory organizations; proposed rule changes:
American Stock Exchange LLC, 27114–27116
National Association of Securities Dealers, Inc.; correction, 27151
National Association of Securities Dealers, Inc., 27116–27128
National Futures Association, 27128–27129
Pacific Exchange, Inc., 27129–27138

Small Business Administration
NOTICES
Disaster loan areas:
Alabama, 27138
Missouri, 27138
New York, 27138–27139

Statistical Reporting Service
See National Agricultural Statistics Service

Surface Transportation Board
NOTICES
Railroad operation, acquisition, construction, etc.:
Southwest Gulf Railroad Co., 27141–27142
Railroad services abandonment:
CSX Transportation, Inc., 27142
Union Pacific Railroad Co. et al., 27142–27143

Tennessee Valley Authority
NOTICES
Meetings; Sunshine Act, 27139

Transportation Department
See Federal Aviation Administration
See Federal Highway Administration
See Surface Transportation Board
See Transportation Statistics Bureau

Transportation Statistics Bureau
NOTICES
Agency information collection activities; proposals, submissions, and approvals, 27143

Treasury Department
See Fiscal Service
See Foreign Assets Control Office

RULES
Currency and foreign transactions; financial reporting and recordkeeping requirements:
Bank Secrecy Act; implementation—
Funds transmittal by financial institutions; conditional exception extended, 26996–26997
NOTICES
Agency information collection activities; proposals, submissions, and approvals, 27143–27149

Western Area Power Administration
NOTICES
Environmental statements; notice of intent:
Wellton-Mohawk Generating Facility, Yuma, AZ; construction and operation, 27056–27057

Separate Parts In This Issue

Part II
Health and Human Services Department, Centers for Medicare & Medicaid Services, 27153–27422

Part III
The President, 26981

Reader Aids
Consult the Reader Aids section at the end of this issue for phone numbers, online resources, finding aids, reminders, and notice of recently enacted public laws.

To subscribe to the Federal Register Table of Contents LISTSERV electronic mailing list, go to http://listserv.access.gpo.gov and select Online mailing list archives, FEDREGTOC-L, Join or leave the list (or change settings); then follow the instructions.

CFR PARTS AFFECTED IN THIS ISSUE

A cumulative list of the parts affected this month can be found in the Reader Aids section at the end of this issue.

3 CFR
Executive Orders:
12863 (Amended by 13301)....26981
13070 (Amended by 13301)....26981
13047 (Continued by Notice of May 16, 2003)....27425
13301....26981
Administrative Orders:
Notices:
Notice of May 16, 2003....27425

7 CFR
301....26983

9 CFR
82 (2 documents)....26986, 26988
91....26990

14 CFR
25....26991
71 (2 documents)....26993, 26994
Proposed Rules:
3....27006
39....27006
71....27007

21 CFR
510....26995
522....26995
Proposed Rules:
111....27008
112....27008
315....27008
601....27008

31 CFR
103....26996

42 CFR
Proposed Rules:
412....27154
413....27154

47 CFR
0....26997
1....26997
76....26997
78....26997

50 CFR
660....27004

Federal Register
Vol. 68, No. 96
Monday, May 19, 2003

Presidential Documents

Title 3—

The President

Executive Order 13301 of May 14, 2003

Increasing the Number of Members on the Intelligence Oversight Board

By the authority vested in me as President by the Constitution and the laws of the United States of America, it is hereby ordered that Executive Order 12863 of September 13, 1993, as amended by Executive Order 13070 of December 16, 1997, is further amended by deleting the word "four" from the first sentence of section 2.1 and inserting in its place the word "five".

THE WHITE HOUSE,
May 14, 2003.

[FR Doc. 03–12661
Filed 5–16–03; 8:45 am]
Billing code 3195–01–P

Rules and Regulations

Federal Register
Vol. 68, No. 96
Monday, May 19, 2003

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

7 CFR Part 301

[Docket No. 03–018–1]

Asian Longhorned Beetle; Quarantined Areas and Regulated Articles

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Interim rule and request for comments.

SUMMARY: We are amending the Asian longhorned beetle regulations by adding portions of New York City, NY, and Hudson County, NJ, to the list of quarantined areas and restricting the interstate movement of regulated articles from these areas. We are also updating the list of regulated articles in order to reflect new information concerning host plants. These actions are necessary to prevent the artificial spread of the Asian longhorned beetle to noninfested areas of the United States.

DATES: This interim rule was effective May 13, 2003. We will consider all comments that we receive on or before July 18, 2003.

ADDRESSES: You may submit comments by postal mail/commercial delivery or by e-mail. If you use postal mail/commercial delivery, please send four copies of your comment (an original and three copies) to: Docket No. 03–018–1, Regulatory Analysis and Development, PPD, APHIS, Station 3C71, 4700 River Road Unit 118, Riverdale, MD 20737–1238. Please state that your comment refers to Docket No. 03–018–1. If you use e-mail, address your comment to *regulations@aphis.usda.gov*. Your comment must be contained in the body of your message; do not send attached files. Please include your name and address in your message and "Docket No. 03–018–1" on the subject line.

You may read any comments that we receive on this docket in our reading room. The reading room is located in room 1141 of the USDA South Building, 14th Street and Independence Avenue SW., Washington, DC. Normal reading room hours are 8 a.m. to 4:30 p.m., Monday through Friday, except holidays. To be sure someone is there to help you, please call (202) 690–2817 before coming.

APHIS documents published in the **Federal Register**, and related information, including the names of organizations and individuals who have commented on APHIS dockets, are available on the Internet at *http://www.aphis.usda.gov/ppd/rad/webrepor.html*.

FOR FURTHER INFORMATION CONTACT: Mr. Michael B. Stefan, Director of Emergency Programs, Pest Detection and Management Programs, PPQ, APHIS, 4700 River Road Unit 134, Riverdale, MD 20737–1236; (301) 734–4387.

SUPPLEMENTARY INFORMATION:

Background

The Asian longhorned beetle (ALB) (*Anoplophora glabripennis*), an insect native to China, Japan, Korea, and the Isle of Hainan, is a destructive pest of hardwood trees. It attacks many healthy hardwood trees, including maple, horse chestnut, birch, poplar, willow, and elm. In addition, nursery stock, logs, green lumber, firewood, stumps, roots, branches, and wood debris of half an inch or more in diameter are subject to infestation. The beetle bores into the heartwood of a host tree, eventually killing the tree. Immature beetles bore into tree trunks and branches, causing heavy sap flow from wounds and sawdust accumulation at tree bases. They feed on, and over-winter in, the interiors of trees. Adult beetles emerge in the spring and summer months from round holes approximately three-eighths of an inch in diameter (about the size of a dime) that they bore through branches and trunks of trees. After emerging, adult beetles feed for 2 to 3 days and then mate. Adult females then lay eggs in oviposition sites that they make on the branches of trees. A new generation of ALB is produced each year. If this pest moves into the hardwood forests of the United States, the nursery, maple syrup, and forest product industries could experience severe economic losses. In addition, urban and forest ALB infestations will result in environmental damage, aesthetic deterioration, and a reduction in public enjoyment of recreational spaces.

Quarantined Areas

The ALB regulations in 7 CFR 301.51–1 through 301.51–9 (referred to below as the regulations) restrict the interstate movement of regulated articles from quarantined areas to prevent the artificial spread of ALB to noninfested areas of the United States. Portions of the State of Illinois and portions of New York City and Nassau and Suffolk Counties in the State of New York are already designated as quarantined areas.

Recent surveys conducted by inspectors of State, county, and city agencies and by inspectors of the Animal and Plant Health Inspection Service (APHIS) have revealed infestations of ALB in Hudson County, NJ. Additionally, surveys conducted in New York City, NY, have revealed that infestations of ALB have occurred outside the existing quarantined area. Officials of the U.S. Department of Agriculture and officials of State, county, and city agencies in New Jersey and New York are conducting intensive survey and eradication programs in the infested areas. Both New Jersey and New York have quarantined the infested areas and are restricting the intrastate movement of regulated articles from the quarantined areas to prevent the further spread of ALB within those States. However, Federal regulations are necessary to restrict the interstate movement of regulated articles from the quarantined areas to prevent the spread of ALB to other States and other countries.

The regulations in § 301.51–3(a) provide that the Administrator of APHIS will list as a quarantined area each State, or each portion of a State, where ALB has been found by an inspector, where the Administrator has reason to believe that ALB is present, or where the Administrator considers regulation necessary because of its inseparability for quarantine enforcement purposes from localities where ALB has been found.

Less than an entire State will be quarantined only if (1) the Administrator determines that the State has adopted and is enforcing restrictions on the intrastate movement of regulated

articles that are equivalent to those imposed by the regulations on the interstate movement of regulated articles; and (2) the designation of less than an entire State as a quarantined area will be adequate to prevent the artificial spread of ALB.

In accordance with these criteria and the recent ALB findings described above, we are amending the list of quarantined areas in § 301.51–3(c) to include a portion of Hudson County, NJ, and additional areas in New York City, NY. These quarantined areas are described in the rule portion of this document.

Regulated Articles

Section 301.51–2 of the regulations designates certain items as regulated articles. Regulated articles may not be moved interstate from quarantined areas except in accordance with the conditions specified in §§ 301.51–4 through 301.51–9 of the regulations. Regulated articles listed in § 301.51–2(a) have included green lumber and other material living, dead, cut, or fallen, inclusive of nursery stock, logs, stumps, roots, branches, and debris of half an inch or more in diameter of the following genera: *Acer* (maple), *Aesculus* (horse chestnut), *Betula* (birch), *Hibiscus syriacus L.* (Rose of Sharon), *Malus* (apple), *Melia* (chinaberry), *Morus* (mulberry), *Populus* (poplar), *Prunus* (cherry), *Pyrus* (pear), *Robinia* (locust), *Salix* (willow), *Ulmus* (elm), and *Citrus*. This list of genera was based on scientific literature provided by government officials, scientists, and government and individual researchers from China as well as limited survey information collected in the United States at the time of discovery of the pest.

Based on additional survey experience and research, we are amending the list of regulated articles by removing *Hibiscus syriacus L.* (Rose of Sharon), *Malus* (apple), *Melia* (chinaberry), *Morus* (mulberry), *Prunus* (cherry), *Pyrus* (pear), *Robinia* (locust), and *Citrus*, and by adding *Albizia* (mimosa), *Celtis* (hackberry), *Fraxinus* (ash), *Platanus* (sycamore), and *Sorbus* (mountain ash). With respect to each of the eight genera that we are removing from the list of regulated articles, surveys conducted over the course of several years in New York and Illinois have shown that either (1) the genus is not present in the quarantined areas or (2) there is no evidence that ALB can complete its development in the genus. Conversely, with respect to the five genera we are adding, inspectors have found ALB completing its development in those genera within the quarantined areas.

Emergency Action

This rulemaking is necessary on an emergency basis to prevent the artificial spread of ALB to noninfested areas of the United States. Under these circumstances, the Administrator has determined that prior notice and opportunity for public comment are contrary to the public interest and that there is good cause under 5 U.S.C. 553 for making this rule effective less than 30 days after publication in the **Federal Register**.

We will consider comments we receive during the comment period for this interim rule (*see* **DATES** above). After the comment period closes, we will publish another document in the **Federal Register**. The document will include a discussion of any comments we receive and any amendments we are making to the rule.

Executive Order 12866 and Regulatory Flexibility Act

This rule has been reviewed under Executive Order 12866. For this action, the Office of Management and Budget has waived its review under Executive Order 12866.

This interim rule amends the ALB regulations by expanding the quarantined area in New York City, NY, and adding portions of Hudson County, NJ, to the list of quarantined areas. As a result of this action, the interstate movement of regulated articles from those areas is restricted.

The following analysis addresses the economic effects of the interim rule on small entities. The businesses potentially affected by this interim rule are nurseries, arborists, tree removal services, firewood dealers, garden centers, landscapers, recyclers of waste material, and lumber and building material outlets. The quarantined areas expanded or established by this interim rule encompass approximately 10 square miles (6 square miles in New York and 4 square miles in New Jersey). Within those areas, there is one potentially affected entity (a nursery). While the size of the entity is unknown, it is reasonable to assume that it would be classified as a small entity, based on the Small Business Administration's size standards.[1]

Businesses could be affected by the regulations in two ways. First, if a business wishes to move regulated articles interstate from a quarantined area, that business must either: (1) Enter into a compliance agreement with APHIS for the inspection and certification of regulated articles to be moved interstate from the quarantined area; or (2) present its regulated articles for inspection by an inspector and obtain a certificate or a limited permit, issued by the inspector, for the interstate movement of regulated articles. The inspections may be inconvenient, but they should not be costly in most cases, even for businesses operating under a compliance agreement who would perform the inspections themselves. For those businesses that elect not to enter into a compliance agreement, APHIS would provide the services of the inspector without cost. There is also no cost for the compliance agreement, certificate, or limited permit for the interstate movement of regulated articles.

Second, there is a possibility that, upon inspection, a regulated article could be determined by the inspector to be potentially infested with ALB, and, as a result, the inspector would not be able to issue a certificate. In this case, the entity's ability to move regulated articles interstate would be restricted. However, the affected entity could conceivably obtain a limited permit under the conditions of § 301.51–5(b). Whether or not the affected entity would be denied certificates as a result of inspections of regulated articles is unknown. However, because it is located in a densely populated urban area, the nursery is more likely to be receiving regulated articles from outside the quarantined area than it is to be shipping regulated articles interstate to non-quarantined areas. It is unlikely, therefore, that the nursery would be moving regulated articles that would require inspection in the first place.

Under these circumstances, the Administrator of the Animal and Plant Health Inspection Service has determined that this action will not have a significant economic impact on a substantial number of small entities.

Executive Order 12372

This program/activity is listed in the Catalog of Federal Domestic Assistance under No. 10.025 and is subject to Executive Order 12372, which requires intergovernmental consultation with State and local officials. (*See* 7 CFR part 3015, subpart V.) Executive Order 12988.

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. This rule: (1) Preempts all State and local laws and regulations that are inconsistent with this rule; (2) has no retroactive effect; and (3) does not require administrative proceedings before parties may file suit in court challenging this rule.

[1] The overwhelming majority of entities are considered small by SBA standards.

National Environmental Policy Act

An environmental assessment and finding of no significant impact have been prepared for this interim rule. The assessment provides a basis for the conclusion that the integrated eradication program will not have a significant impact on the quality of the human environment. Based on the finding of no significant impact, the Administrator of the Animal and Plant Health Inspection Service has determined that an environmental impact statement need not be prepared.

The environmental assessment and finding of no significant impact were prepared in accordance with: (1) The National Environmental Policy Act of 1969 (NEPA), as amended (42 U.S.C. 4321 *et seq.*), (2) regulations of the Council on Environmental Quality for implementing the procedural provisions of NEPA (40 CFR parts 1500–1508), (3) USDA regulations implementing NEPA (7 CFR part 1b), and (4) APHIS' NEPA Implementing Procedures (7 CFR part 372).

Copies of the environmental assessment and finding of no significant impact are available for public inspection in our reading room (information on the location and hours of the reading room is provided under the heading **ADDRESSES** at the beginning of this interim rule). In addition, copies may be obtained by calling or writing to the individual listed under **FOR FURTHER INFORMATION CONTACT** or on the Internet at *http://www.aphis.usda.gov/ppd/es/alb.html*.

Paperwork Reduction Act

This rule contains no new information collection or recordkeeping requirements under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

List of Subjects in 7 CFR Part 301

Agricultural commodities, Plant diseases and pests, Quarantine, Reporting and recordkeeping requirements, Transportation.

■ Accordingly, we are amending 7 CFR part 301 as follows:

PART 301—DOMESTIC QUARANTINE NOTICES

■ 1. The authority citation for part 301 continues to read as follows:

Authority: 7 U.S.C. 7711, 7712, 7714, 7731, 7735, 7751, 7752, 7753, 7754, and 7760; 7 CFR 2.22, 2.80, and 371.3.

Section 301.75–15 also issued under Sec. 204, Title II, Pub L. 106–113, 113 Stat. 1501A–293; sections 301.75–15 and 301.75–16 also issued under Sec. 203, Title II, Pub. L. 106–224, 114 Stat. 400 (7 U.S.C. 1421 note).

■ 2. In § 301.51–2, paragraph (a) is revised to read as follows:

§ 301.51–2 Regulated articles.

* * * * *

(a) Firewood (all hardwood species), and green lumber and other material living, dead, cut, or fallen, inclusive of nursery stock, logs, stumps, roots, branches, and debris of half an inch or more in diameter of the following genera: *Acer* (maple), *Aesculus* (horse chestnut), *Albizia* (mimosa), *Betula* (birch), *Celtis* (hackberry), *Fraxinus* (ash), *Platanus* (sycamore), *Populus* (poplar), *Salix* (willow), *Sorbus* (mountain ash), and *Ulmus* (elm).

* * * * *

■ 3. In § 301.51–3, paragraph (c) is amended as follows:

■ a. By adding, in alphabetical order, an entry for New Jersey to read as set forth below.

■ b. Under the heading New York, by revising the entry for New York City to read as set forth below.

§ 301.51–3 Quarantined areas.

* * * * *

(c) * * *

New Jersey

Hudson County. That area in the city of Jersey City that is bounded as follows: Beginning at the intersection of Paterson Plank Road and South Wing Viaduct; then south on Paterson Plank Road to Congress Street; then west on Congress Street to Webster Avenue; then south on Webster Avenue to Bowers Street; then west on Bowers Street to Summit Avenue; then south on Summit Avenue to Fairmount Avenue; then east on Fairmount Avenue to Grand Street; then east on Grand Street to the shoreline of the Hudson River; then north along the shoreline of the Hudson River to the Hoboken/Jersey City border.

That area in the city of Hoboken that is bounded as follows: Beginning at the shoreline of the Hudson River east of the intersection of Hudson Street and 11th Street; then west on 11th Street to the railroad tracks; then south along the railroad tracks to the Hoboken/Jersey City border; then east along the Hoboken/Jersey City border to the shoreline of the Hudson River; then north along the shoreline of the Hudson river to the point of beginning.

New York

New York City. That area in the boroughs of Manhattan, Brooklyn, and Queens in the City of New York that is bounded by a line beginning at the point where the Brooklyn Battery Tunnel intersects the Manhattan shoreline of the East River; then west and north along the shoreline of the Hudson River to Martin Luther King Jr. Boulevard; then east on Martin Luther King Jr. Boulevard and across the Triborough Bridge to its intersection with the west shoreline of Randall's and Wards Island; then east and south along the shoreline of Randall's and Wards Island to its intersection with the Triborough Bridge; then east along the Triborough Bridge to its intersection with the Queens shoreline; then north and east along the Queens shoreline to its intersection with the City of New York/Nassau County line; then southeast along the City of New York/Nassau County line to its intersection with the Grand Central Parkway; then west on the Grand Central Parkway to the Jackie Robinson Parkway; then west on the Jackie Robinson Parkway to Park Lane; then south on Park Lane to Park Lane South; then south and west on Park Lane South to 112th Street; then south on 112th Street to Atlantic Avenue; then west on Atlantic Avenue to 106th Street; then south on 106th Street to Liberty Avenue; then west on Liberty Avenue to Euclid Avenue; then south on Euclid Avenue to Linden Boulevard; then west on Linden Boulevard to Canton Avenue; then west on Canton Avenue to the Prospect Expressway; then north and west on the Prospect Expressway to the Gowanus Expressway; then north and west on the Gowanus Expressway to Hamilton Avenue and the Brooklyn Battery Tunnel; then north on Hamilton Avenue and the Brooklyn Battery Tunnel across the East River to the point of beginning.

* * * * *

Done in Washington, DC, this 13th day of May 2003.

Peter Fernandez,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 03–12390 Filed 5–16–03; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

9 CFR Part 82

[Docket No. 02–117–6]

Exotic Newcastle Disease; Removal of Areas From Quarantine

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Interim rule and request for comments.

SUMMARY: We are amending the exotic Newcastle disease regulations by removing Mohave and Yuma Counties, AZ, Nye County, NV, and portions of La Paz County, AZ, and Clark County, NV, from the list of quarantined areas. This action removes restrictions on the movement of birds, poultry, and certain other articles from those areas.

DATES: This interim rule was effective May 14, 2003. We will consider all comments that we receive on or before July 18, 2003.

ADDRESSES: You may submit comments by postal mail/commercial delivery or by e-mail. If you use postal mail/commercial delivery, please send four copies of your comment (an original and three copies) to: Docket No. 02–117–6, Regulatory Analysis and Development, PPD, APHIS, Station 3C71, 4700 River Road Unit 118, Riverdale, MD 20737–1238. Please state that your comment refers to Docket No. 02–117–6. If you use e-mail, address your comment to *regulations@aphis.usda.gov*. Your comment must be contained in the body of your message; do not send attached files. Please include your name and address in your message and "Docket No. 02–117–6" on the subject line.

You may read any comments that we receive on this docket in our reading room. The reading room is located in room 1141 of the USDA South Building, 14th Street and Independence Avenue, SW., Washington, DC. Normal reading room hours are 8 a.m. to 4:30 p.m., Monday through Friday, except holidays. To be sure someone is there to help you, please call (202) 690–2817 before coming.

APHIS documents published in the **Federal Register**, and related information, including the names of organizations and individuals who have commented on APHIS dockets, are available on the Internet at *http://www.aphis.usda.gov/ppd/rad/webrepor.html*.

FOR FURTHER INFORMATION CONTACT: Dr. Lisa Ferguson, Senior Staff Veterinarian, Emergency Programs Staff, VS, APHIS, 4700 River Road Unit 41, Riverdale, MD 20737–1231; (301) 734–8073.

SUPPLEMENTARY INFORMATION:

Background

Exotic Newcastle disease (END) is a contagious and fatal viral disease affecting the respiratory, nervous, and digestive systems of birds and poultry. END is so virulent that many birds and poultry die without showing any clinical signs. A death rate of almost 100 percent can occur in unvaccinated poultry flocks. END can infect and cause death even in vaccinated poultry.

The regulations in "Subpart A-Exotic Newcastle Disease (END)" (9 CFR 82.1 through 82.15, referred to below as the regulations) were established to prevent the spread of END in the United States in the event of an outbreak. In § 82.3, paragraph (a) provides that any area where birds or poultry infected with END are located will be designated as a quarantined area, and that a quarantined area is any geographical area, which may be a premises or all or part of a State, deemed by epidemiological evaluation to be sufficient to contain all birds or poultry known to be infected with or exposed to END. Currently, portions of Arizona, California, Nevada, New Mexico, and Texas are designated as quarantined areas in § 82.3(c) of the regulations. As a result, the interstate movement from the quarantined areas of birds, poultry, products, and materials that could spread END is prohibited or restricted. Further, because the Secretary has declared an extraordinary emergency because of END in those States, the regulations in § 82.16 provide that the intrastate movement from those quarantined areas of birds, poultry, products, and materials that could spread END is prohibited or restricted.

In this interim rule, we are reducing the size of the quarantined areas in Nevada and Arizona based on the results of extensive surveillance and investigations conducted in those States. These activities are described below.

Nevada

On January 16, 2003, END was confirmed in backyard poultry on a premises in Las Vegas, NV. Therefore, in an interim rule effective January 17, 2003, and published in the **Federal Register** on January 24, 2003 (68 FR 3375–3376, Docket No. 02–117–3), we amended § 82.3(c) by quarantining Clark County, NV, and a portion of Nye County, NV. As provided for by the regulations in § 82.3(a), this quarantined area encompassed the area where poultry infected with END were located and a surrounding geographical area deemed by epidemiological evaluation to be sufficient to contain all birds or poultry known to be infected with or exposed to END.

Following the detection of END in Nevada, surveys were conducted in the immediate area around the infected premises. A total of 10 infected premises and 128 "dangerous contact" premises (*i.e.*, premises with an epidemiological link to an infected premises) and premises within a 1 kilometer radius of each infected premises were identified, all in Clark County. Across Nevada, additional surveys were conducted in targeted high-risk areas. Populated areas, reports from animal control units, and leads derived from reports of sick birds or poultry or other epidemiological information were used to define the high-risk areas. No additional cases were identified in any of these areas. Passive surveillance, including education and outreach efforts, continue to be conducted throughout the State. A total of 2,007 investigations were conducted in Nevada. The majority of these investigations were conducted in Clark County, with a total of 1,998 investigations and 216 premises sampled. No evidence of additional disease spread was identified through this surveillance. There are no commercial premises in the quarantined area.

Arizona

On February 4, 2003, END was confirmed in backyard poultry on a single premises in the Colorado River Indian Nation in Arizona. Therefore, in an interim rule effective February 10, 2003, and published in the **Federal Register** on February 14, 2003 (68 FR 7412–7413, Docket No. 02–117–4), we amended § 82.3(c) by quarantining La Paz and Yuma Counties, AZ, and a portion of Mohave County, AZ. As provided for by the regulations in § 82.3(a), this quarantined area encompassed the area where poultry infected with END were located and a surrounding geographical area deemed by epidemiological evaluation to be sufficient to contain all birds or poultry known to be infected with or exposed to END.

Following the detection of END in Arizona, surveys were conducted in the immediate area around the infected premises, both in Arizona and across the border in California. No additional cases were identified in any of these areas. Across Arizona, targeted high-risk areas were surveyed. Populated areas along major highways, reports from animal control units, and leads derived from reports of sick birds or poultry or other epidemiological information were used to define the high-risk areas. In many of these areas, there are few residents, and other areas may only be seasonally populated. Passive surveillance, including education and outreach efforts, continue to be conducted throughout the State.

A total of 1,451 investigations were conducted throughout the State of Arizona. In addition, 21 investigations were conducted in California in the area adjacent to the infected area. In the quarantined counties in Arizona, which contain no commercial premises, the following surveillance was completed with no evidence of disease spread:

- In Yuma County, 60 investigations were conducted, with 39 premises sampled;
- In Mohave County, 38 investigations were conducted with 10 premises sampled; and
- In La Paz County, 56 investigations were conducted with 52 premises sampled (these include the infected premises and 3 "dangerous contact" premises located within 1 kilometer of the infected premises).

Reduction of Quarantined Areas

As noted previously, the regulations in § 82.3(a) provide that any area where birds or poultry infected with END are located will be designated as a quarantined area, and that a quarantined area is any geographical area, which may be a premises or all or part of a State, deemed by epidemiological evaluation to be sufficient to contain all birds or poultry known to be infected with or exposed to END.

Animal and Plant Health Inspection Service epidemiologists have evaluated the results of the investigations conducted in Nevada and Arizona and have determined that we may now reduce the size of the quarantined areas in those States. This determination is based on, among other things, the demonstrated absence of birds or poultry infected with or exposed to END in specific areas. The regulations in § 82.14 provide requirements that must be met before an area may be removed from quarantine, but those requirements relate to measures taken with respect to END-infected or -exposed birds and poultry, their eggs and manure, and articles and premises with which such birds or their manure or litter have come in contact. As there were no END-infected or -exposed birds or poultry in the areas that we are removing from quarantine, there are no requirements under § 82.14 that need to be met before those areas can be removed from quarantine.

Therefore, in this interim rule, we are amending § 82.3(c) by removing Mohave and Yuma Counties, AZ, Nye County, NV, and portions of La Paz County, AZ, and Clark County, NV, from the list of quarantined areas because the continued quarantine of these areas is no longer necessary to contain all birds and poultry infected with or exposed to END. Those portions of La Paz County, AZ, and Clark County, NV, that will remain as quarantined areas, which are described in the amendments to § 82.3(c) at the end of this document, have been deemed by epidemiological evaluation to be sufficient to contain all birds or poultry known to be infected with or exposed to END.

Immediate Action

Immediate action is warranted to relieve restrictions that are no longer necessary. We have determined that Mohave and Yuma Counties, AZ, Nye County, NV, and portions of La Paz County, AZ, and Clark County, NV, may now be removed from the list of areas quarantined because of END. Therefore, immediate action is warranted to relieve the prohibitions or restrictions that have applied to the movement of birds, poultry, products, and other materials from those areas. Under these circumstances, the Administrator has determined that prior notice and opportunity for public comment are contrary to the public interest and that there is good cause under 5 U.S.C. 553 for making this action effective less than 30 days after publication in the **Federal Register**.

We will consider comments that we receive during the comment period for this interim rule (*see* **DATES** above). After the comment period closes, we will publish another document in the **Federal Register**. The document will include a discussion of any comments we receive and any amendments we are making to the rule.

Executive Order 12866 and Regulatory Flexibility Act

This rule has been reviewed under Executive Order 12866. For this action, the Office of Management and Budget has waived its review under Executive Order 12866.

This rule amends the regulations by removing Mohave and Yuma Counties, AZ, Nye County, NV, and portions of La Paz County, AZ, and Clark County, NV, from the list of quarantined areas. This action needs to be made effective immediately in order to remove restrictions on the movement of birds, poultry, and certain other articles from those areas that are no longer necessary. This situation makes timely compliance with section 604 of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) impracticable. We are currently assessing the potential economic effects of this action on small entities. Based on that assessment, we will either certify that the rule will not have a significant economic impact on a substantial number of small entities or publish a final regulatory flexibility analysis.

Executive Order 12372

This program/activity is listed in the Catalog of Federal Domestic Assistance under No. 10.025 and is subject to Executive Order 12372, which requires intergovernmental consultation with State and local officials. (*See* 7 CFR part 3015, subpart V.)

Executive Order 12988

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. This rule: (1) Preempts all State and local laws and regulations that are in conflict with this rule; (2) has no retroactive effect; and (3) does not require administrative proceedings before parties may file suit in court challenging this rule.

Paperwork Reduction Act

This interim rule contains no information collection or recordkeeping requirements under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

List of Subjects in 9 CFR Part 82

Animal diseases, Poultry and poultry products, Quarantine, Reporting and recordkeeping requirements, Transportation.

■ Accordingly, 9 CFR part 82 is amended as follows:

PART 82—EXOTIC NEWCASTLE DISEASE (END) AND CHLAMYDIOSIS; POULTRY DISEASE CAUSED BY SALMONELLA ENTERITIDIS SEROTYPE ENTERITIDIS

■ 1. The authority citation for part 82 continues to read as follows:

Authority: 7 U.S.C. 8301–8317; 7 CFR 2.22, 2.80, and 371.4.

■ 2. In § 82.3, paragraph (c), the entries for Arizona and Nevada are revised to read as follows:

§ 82.3 Quarantined areas.

* * * * *

(c) * * *

Arizona

La Paz County. That portion of the county that lies within the boundaries

of the Colorado River Indian Reservation.

* * * * *

Nevada

Clark County. That portion of the county that is bounded as follows: Beginning at the point where North Hollywood Boulevard enters Nellis Air Force Base; then south on North Hollywood Boulevard to East Bonanza Road; then west on East Bonanza Road to North Bruce Street; then north on North Bruce Street to State Route 604; then northeast on State Route 604 to Civic Center Drive; then north and northeast on Civic Center Drive until it becomes East Alexander Road; then east on East Alexander Road to North Pecos Road; then north on North Pecos Road to East Craig Road; then east on East Craig Road to State Route 604; then southeast along an imaginary line to the point of beginning.

* * * * *

Done in Washington, DC, this 14th day of May, 2003.

Bobby R. Acord,

Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 03–12431 Filed 5–16–03; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

9 CFR Part 82

[Docket No. 02–117–7]

Exotic Newcastle Disease; Additions to Quarantined Area

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Interim rule and request for comments.

SUMMARY: We are amending the exotic Newcastle disease regulations by quarantining a portion of Kern County, CA, and prohibiting or restricting the movement of birds, poultry, products, and materials that could spread exotic Newcastle disease from the quarantined area. This action is necessary on an emergency basis to prevent the spread of exotic Newcastle disease from the quarantined area.

DATES: This interim rule was effective May 13, 2003. We will consider all comments that we receive on or before July 18, 2003.

ADDRESSES: You may submit comments by postal mail/commercial delivery or by e-mail. If you use postal mail/commercial delivery, please send four copies of your comment (an original and three copies) to: Docket No. 02–117–7, Regulatory Analysis and Development, PPD, APHIS, Station 3C71, 4700 River Road Unit 118, Riverdale, MD 20737–1238. Please state that your comment refers to Docket No. 02–117–7. If you use e-mail, address your comment to *regulations@aphis.usda.gov*. Your comment must be contained in the body of your message; do not send attached files. Please include your name and address in your message and "Docket No. 02–117–7" on the subject line.

You may read any comments that we receive on this docket in our reading room. The reading room is located in room 1141 of the USDA South Building, 14th Street and Independence Avenue, SW., Washington, DC. Normal reading room hours are 8 a.m. to 4:30 p.m., Monday through Friday, except holidays. To be sure someone is there to help you, please call (202) 690–2817 before coming.

APHIS documents published in the **Federal Register**, and related information, including the names of organizations and individuals who have commented on APHIS dockets, are available on the Internet at *http://www.aphis.usda.gov/ppd/rad/webrepor.html*.

FOR FURTHER INFORMATION CONTACT: Dr. Aida Boghossian, Senior Staff Veterinarian, Emergency Programs Staff, VS, APHIS, 4700 River Road Unit 41, Riverdale, MD 20737–1231; (301) 734–8073.

SUPPLEMENTARY INFORMATION:

Background

Exotic Newcastle disease (END) is a contagious and fatal viral disease affecting the respiratory, nervous, and digestive systems of birds and poultry. END is so virulent that many birds and poultry die without showing any clinical signs. A death rate of almost 100 percent can occur in unvaccinated poultry flocks. END can infect and cause death even in vaccinated poultry.

The regulations in "Subpart A—Exotic Newcastle Disease (END)" (9 CFR 82.1 through 82.15, referred to below as the regulations) were established to prevent the spread of END in the United States in the event of an outbreak. In § 82.3, paragraph (a) provides that any area where birds or poultry infected with END are located will be designated as a quarantined area, and that a quarantined area is any geographical area, which may be a premises or all or part of a State, deemed by epidemiological evaluation to be sufficient to contain all birds or poultry known to be infected with or exposed to END. Less than an entire State will be designated as a quarantined area only if the State enforces restrictions on intrastate movements from the quarantined area that are at least as stringent as the regulations. The regulations prohibit or restrict the movement of birds, poultry, products, and materials that could spread END from quarantined areas. Areas quarantined because of END are listed in § 82.3, paragraph (c).

On October 1, 2002, END was confirmed in the State of California. The disease was confirmed in backyard poultry, which are raised on private premises for hobby, exhibition, and personal consumption, and in commercial poultry.

In an interim rule effective on November 21, 2002, and published in the **Federal Register** on November 26, 2002 (67 FR 70674–70675, Docket No. 02–117–1), we amended the regulations in § 82.3(c) by quarantining Los Angeles County, CA, and portions of Riverside and San Bernardino Counties, CA, and restricting the interstate movement of birds, poultry, products, and materials that could spread END from the quarantined area.

In a second interim rule effective on January 7, 2003, and published in the **Federal Register** on January 13, 2003 (68 FR 1515–1517, Docket No. 02–117–2), we further amended § 82.3(c) by adding Imperial, Orange, San Diego, Santa Barbara, and Ventura Counties, CA, and the previously non-quarantined portions of Riverside and San Bernardino Counties, CA, to the list of quarantined areas. Because the Secretary of Agriculture signed a declaration of extraordinary emergency with respect to the END situation in California on January 6, 2003 (*see* 68 FR 1432, Docket No. 03–001–1, published January 10, 2003), that second interim rule also amended the regulations to provide that the prohibitions and restrictions that apply to the interstate movement of birds, poultry, products, and materials that could spread END will also apply to the intrastate movement of those articles in situations where the Secretary of Agriculture has issued a declaration of extraordinary emergency (new § 82.16).

On January 16, 2003, END was confirmed in backyard poultry on a premises in Las Vegas, NV. Therefore, in a third interim rule effective January 17, 2003, and published in the **Federal Register** on January 24, 2003 (68 FR 3375–3376, Docket No. 02–117–3), we amended § 82.3(c) by quarantining Clark County, NV, and a portion of Nye County, NV, and prohibiting or restricting the movement of birds, poultry, products, and materials that could spread END from the quarantined area. On January 17, 2003, the Secretary of Agriculture signed a declaration of extraordinary emergency because of END in Nevada (*see* 68 FR 3507, Docket No. 03–001–2, published January 24, 2003).

On February 4, 2003, END was confirmed in backyard poultry on a premises in the Colorado River Indian Nation in Arizona. Therefore, in a fourth interim rule effective February 10, 2003, and published in the **Federal Register** on February 14, 2003 (68 FR 7412–7413, Docket No. 02–117–4), we amended § 82.3(c) by quarantining La Paz and Yuma Counties, AZ, and a portion of Mohave County, AZ, and prohibiting or restricting the movement of birds, poultry, products, and materials that could spread END from the quarantined area. On February 7, 2003, the Secretary of Agriculture signed a declaration of extraordinary emergency because of END in Arizona (*see* 68 FR 7338, Docket No. 03–001–3, published February 13, 2003).

On April 9, 2003, END was confirmed in backyard poultry on a premises in El Paso County, TX. Therefore, in a fifth interim rule effective April 10, 2003, and published in the **Federal Register** on April 16, 2003 (68 FR 18531–18532, Docket No. 02–117–5), we amended § 82.3(c) by quarantining El Paso and Hudspeth Counties, TX, and Dona Ana, Luna, and Otero Counties, NM, and prohibiting or restricting the movement of birds, poultry, products, and materials that could spread END from the quarantined area. On April 10, 2003, the Secretary of Agriculture signed a declaration of extraordinary emergency because of END in New Mexico and Texas (*see* 68 FR 18593, Docket No. 03–001–4, published April 16, 2003).

On May 5, 2003, END was confirmed in backyard poultry on a premises in Kern County, CA. Therefore, in this interim rule, we are amending § 82.3(c) by designating a portion of Kern County, CA, as a quarantined area and prohibiting or restricting the movement of birds, poultry, products, and materials that could spread END from the quarantined area. As provided for by the regulations in § 82.3(a), this quarantined area encompasses the area where poultry infected with END were located and a surrounding geographical area deemed by epidemiological evaluation to be sufficient to contain all birds or poultry known to be infected with or exposed to END.

Emergency Action

This rulemaking is necessary on an emergency basis to prevent the spread of END. Under these circumstances, the Administrator has determined that prior notice and opportunity for public comment are contrary to the public interest and that there is good cause under 5 U.S.C. 553 for making this rule effective less than 30 days after publication in the **Federal Register**.

We will consider comments that we receive during the comment period for this interim rule (see **DATES** above). After the comment period closes, we will publish another document in the **Federal Register**. The document will include a discussion of any comments we receive and any amendments we are making to the rule.

Executive Order 12866 and Regulatory Flexibility Act

This rule has been reviewed under Executive Order 12866. For this action, the Office of Management and Budget has waived its review under Executive Order 12866.

This rule amends the regulations by quarantining a portion of Kern County, CA, and prohibiting or restricting the movement of birds, poultry, products, and materials that could spread END from the quarantined area. This action is necessary on an emergency basis to prevent the spread of END from the quarantined area.

This emergency situation makes timely compliance with section 604 of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) impracticable. We are currently assessing the potential economic effects of this action on small entities. Based on that assessment, we will either certify that the rule will not have a significant economic impact on a substantial number of small entities or publish a final regulatory flexibility analysis.

Executive Order 12372

This program/activity is listed in the Catalog of Federal Domestic Assistance under No. 10.025 and is subject to Executive Order 12372, which requires intergovernmental consultation with State and local officials. (*See* 7 CFR part 3015, subpart V.)

Executive Order 12988

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. This rule: (1) Preempts all State and local laws and regulations that are in conflict with this rule; (2) has no retroactive effect; and (3) does not require administrative proceedings before parties may file suit in court challenging this rule.

Paperwork Reduction Act

This rule contains no new information collection or recordkeeping requirements under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

List of Subjects in 9 CFR Part 82

Animal diseases, Poultry and poultry products, Quarantine, Reporting and recordkeeping requirements, Transportation.

■ Accordingly, 9 CFR part 82 is amended as follows:

PART 82—EXOTIC NEWCASTLE DISEASE (END) AND CHLAMYDIOSIS; POULTRY DISEASE CAUSED BY SALMONELLA ENTERITIDIS SEROTYPE ENTERITIDIS

■ 1. The authority citation for part 82 continues to read as follows:

Authority: 7 U.S.C. 8301–8317; 7 CFR 2.22, 2.80, and 371.4.

■ 2. In § 82.3, paragraph (c) is amended by adding, in alphabetical order, under the heading "California", an entry for Kern County to read as follows:

§ 82.3 Quarantined areas.

* * * * *

(c) * * *

* * * * *

California

* * * * *

Kern County: That portion of the county that lies south of a line drawn as follows: Beginning on the Kern/Los Angeles County line at latitude 34.8200, longitude −118.7600 (a point approximately 8 miles east of the point where Interstate Highway 5 intersects the Kern/Los Angeles County line); then northeast from that point along an imaginary line to the intersection of Oak Creek Road and Tehachapi Willow Springs Road; then northeast from the intersection of Oak Creek Road and Tehachapi Willow Springs Road along an imaginary line to the intersection of Phillips Road and State Highway 14; then northeast on State Highway 14 to Red Rock Randsburg Road; then northeast on Red Rock Randsburg Road to Garlock Road; then north and east on Garlock Road to U.S. Highway 395; then north on U.S. Highway 395 to Searles Station Cutoff Road; then northeast on Searles Station Cutoff Road to the Kern/San Bernardino County line.

* * * * *

Done in Washington, DC, this 13th day of May 2003.

Bobby R. Acord,

Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 03–12432 Filed 5–16–03; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

9 CFR Part 91

[Docket No. 02–127–1]

Ports Designated for Exportation of Livestock; Portland, OR

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Direct final rule.

SUMMARY: We are amending the regulations regarding the exportation of livestock by designating Portland International Airport in Portland, OR, as a port of embarkation and B Bar C Ranch, in Gervais, OR, and Pony World Farm in Portland, OR, as export inspection facilities for that port. This rule will add a port of embarkation and export inspection facilities through which livestock may be processed for export.

DATES: This rule will be effective on July 18, 2003, unless we receive written adverse comments or written notice of intent to submit adverse comments by June 18, 2003.

ADDRESSES: You may submit comments or notice of intent to submit adverse comments by postal mail/commercial delivery or by e-mail. If you use postal mail/commercial delivery, please send four copies (an original and three copies) to: Docket No. 02–127–1, Regulatory Analysis and Development, PPD, APHIS, Station 3C71, 4700 River Road, Unit 118, Riverdale, MD 20737–1238. Please state that your comment refers to Docket No. 02–127–1. If you use e-mail, address your comment to *regulations@aphis.usda.gov*. Your comment must be contained in the body of your message; do not send attached files. Please include your name and address in your message and "Docket No. 02–127–1" on the subject line.

You may read any comments that we receive on this docket in our reading room. The reading room is located in room 1141 of the USDA South Building, 14th Street and Independence Avenue, SW., Washington, DC. Normal reading room hours are 8 a.m. to 4:30 p.m., Monday through Friday, except holidays. To be sure someone is there to help you, please call (202) 690–2817 before coming.

APHIS documents published in the **Federal Register**, and related information, including the names of organizations and individuals who have commented on APHIS dockets, are available on the Internet at *http://www.aphis.usda.gov/ppd/rad/webrepor.html*.

FOR FURTHER INFORMATION CONTACT: Dr. Roger Perkins, Senior Staff Veterinarian, Technical Trade Services, National Center for Import and Export, VS, APHIS, 4700 River Road, Unit 39, Riverdale, MD 20737–1231; (301) 734–8364.

SUPPLEMENTARY INFORMATION:

Background

The regulations in 9 CFR part 91, "Inspection and Handling of Livestock for Exportation" (referred to below as the regulations), prescribe conditions for exporting animals from the United States. The regulations state, among other things, that all animals, except animals exported by land to Canada or Mexico, must be exported through designated ports of embarkation, unless the exporter can show that the animals would suffer undue hardship if they were required to be moved to a designated port of embarkation.

Paragraph (a) of § 91.14 contains a list of designated ports of embarkation and export inspection facilities. To receive designation as a port of embarkation, a port must have an export inspection facility available for the inspection, holding, feeding, and watering of animals prior to exportation. The facility must meet the standards in § 91.14(c) concerning physical construction and size, inspection implements, cleaning and disinfection, feed and water, access by inspectors, animal handling arrangements, testing and treatment of animals, location, disposal of animal wastes, lighting, office and restroom facilities, and walkways.

B Bar C Ranch and Pony World Farm operate facilities near Portland International Airport, Portland, OR, that have served as export inspection facilities for equines on a case-by-case basis since September 2001 and March 2000, respectively. The companies have requested that we approve each facility as a permanent export inspection facility, which would enable them to contract for shipments of equines without first having to ask for permission from the Animal and Plant Health Inspection Service (APHIS). Both B Bar C Ranch and Pony World Farm have constructed facilities specifically for the inspection, holding, feeding, and watering of horses intended for export. Both facilities have passed a number of APHIS inspections and meet all of the requirements for use as an export facility. There are five APHIS veterinary medical officers assigned to offices located within 1 to 2 hours' drive who will be available to support the facilities. The number of equines moving through each facility is such that each facility could function effectively and efficiently on a permanent basis. Therefore, we are amending the regulations by adding Portland International Airport to the list of ports of embarkation in § 91.14(a) and by adding B Bar C Ranch and Pony World Farm as export inspection facilities for equines for that port.

Dates

We are publishing this rule without a prior proposal because we view this action as noncontroversial and anticipate no adverse public comment. This rule will be effective, as published in this document, on July 18, 2003, unless we receive written adverse comments or written notice of intent to submit adverse comments on or before June 18, 2003.

Adverse comments are comments that suggest the rule should not be adopted or that suggest the rule should be changed.

If we receive written adverse comments or written notice of intent to submit adverse comments, we will publish a document in the **Federal Register** withdrawing this rule before the effective date. We will then publish a proposed rule for public comment.

As discussed previously, if we receive no written adverse comments or written notice of intent to submit adverse comments within 30 days of publication of this direct final rule, this direct final rule will become effective 60 days following its publication. We will publish a document in the **Federal Register**, before the effective date of this direct final rule, confirming that it is effective on the date indicated in this document.

Executive Order 12866 and Regulatory Flexibility Act

This rule has been reviewed under Executive Order 12866. For this action, the Office of Management and Budget has waived its review under Executive Order 12866.

Background

In the year 2002, receipts from trade in live animals (cattle, horses, sheep, swine and goats) totaled approximately $495 million dollars.[1] Trade in this market is directly linked to ports of embarkation, along with the associated export inspection facilities. This rule will designate Portland International Airport as a port of embarkation from which animals can be exported from the United States and B Bar C Ranch and Pony World Farm as export inspection facilities. These inspection facilities meet the standards described in the regulations, which range from the use of prescribed building materials to procedures for cleaning and disinfecting the facility.

In 2000–2001, there were approximately 21,000 livestock operations in Oregon[2] and production of all livestock products in the State for that year was valued at $786.1 million.[3] Of the 21,000 livestock operations, more than 90 percent are classified as small businesses.[4] Consequently, this analysis of the economic effects of adding a port of embarkation, along with the associated inspection facilities, is also sufficient for analyzing the small entity impact.

Impact on Small Entities

In 2000–2001, the total earnings in Oregon from exports of live animals and meat were more than $8.9 million.[5] Currently, the State of Oregon does not have a designated port of embarkation or approved export inspection facilities. As such, livestock owners wishing to export their animals have to first transport the cargo to one of the nearest port and inspection facilities, located in California and Washington. The cost savings resulting from decreased transportation cost will result in a monetary benefit for exporters of livestock, primarily through reduced fuel charges. Of course, the more a particular livestock owner is involved in the export of live animals, the greater the cost savings will be. However, it is clear that in terms of per animal value, the reduced cost of fuel to transport animals to ports of embarkation would not likely result in significant savings.

Under these circumstances, the Administrator of the Animal and Plant Health Inspection Service has determined that this action will not have a significant economic impact on a substantial number of small entities.

[1] World Trade Atlas, based on Bureau of Census data.

[2] *USDA, Agricultural Statistics 2002*. Washington, DC: National Agricultural Statistics Service, 2002.

[3] OASS, *Oregon Livestock, Dairy, and Poultry 2000*. Portland, OR: Oregon Agricultural Statistics Service 2000–2001.

[4] A small livestock operation is one having $750,000 or less in annual receipts. Table of Size Standards based on NAICS 2002. Washington, DC: U.S. Small Business Administration, 2002.

[5] USDA, *U.S. Agricultural Exports*. Washington, DC: Foreign Agricultural Service, 2002.

Executive Order 12372

This program/activity is listed in the Catalog of Federal Domestic Assistance under No. 10.025 and is subject to Executive Order 12372, which requires intergovernmental consultation with State and local officials. (*See* 7 CFR part 3015, subpart V.)

Executive Order 12988

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. This rule: (1) Preempts all State and local laws and regulations that are inconsistent with this rule;

(2) has no retroactive effect; and (3) does not require administrative proceedings before parties may file suit in court challenging this rule.

Paperwork Reduction Act

This rule contains no new information collection or recordkeeping requirements under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

List of Subjects in 9 CFR Part 91

Animal diseases, Animal welfare, Exports, Livestock, Reporting and recordkeeping requirements, Transportation.

Accordingly, 9 CFR part 91 is amended as follows:

PART 91—INSPECTION AND HANDLING OF LIVESTOCK FOR EXPORTATION

■ 1. The authority citation for part 91 continues to read as follows:

Authority: 7 U.S.C. 8301–8317; 19 U.S.C. 1644a(c); 21 U.S.C. 136, 136a, and 618; 46 U.S.C. 3901 and 3902; 7 CFR 2.22, 2.80, and 371.4.

■ 2. In § 91.14, paragraphs (a)(14) through (a)(18) are redesignated as paragraphs (a)(15) through (a)(19), respectively, and a new paragraph (a)(14) is added to read as follows:

§ 91.14 Ports of embarkation and export inspection facilities.

(a) * * *

(14) *Oregon.*

(i) Portland International Airport.

(A) B Bar C Ranch, 6460 Highway 219, Gervais, OR 97026, (503) 981–1600.

(B) Pony World Farm, 13630 NW., Springville Lane, Portland, OR 97229, (503) 330–8300.

(ii) [*Reserved*]

* * * * *

Done in Washington, DC, this 13th day of May 2003 .

Peter Fernandez,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 03–12389 Filed 5–16–03; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 25

[Docket No. NM253, Special Conditions No. 25–235–SC]

Special Conditions: Raytheon Aircraft Company Model HS 125 Series 700A and 700B Airplanes; High Intensity Radiated Fields (HIRF)

AGENCY: Federal Aviation Administration (FAA) DOT.

ACTION: Final special conditions; request for comments.

SUMMARY: These special conditions are issued for the Raytheon Aircraft Company Model HS 125 Series 700A and 700B airplanes modified by Raytheon Aircraft Services, Inc. These modified airplanes will have novel and unusual design features when compared to the state of technology envisioned in the airworthiness standards for transport category airplanes. The applicable airworthiness regulations do not contain adequate or appropriate safety standards for the protection of these systems from the effects of high-intensity radiated fields (HIRF). These special conditions contain the additional safety standards that the Administrator considers necessary to establish a level of safety equivalent to that provided by the existing airworthiness standards.

DATES: The effective date of these special conditions is April 18, 2002. Comments must be received on or before July 3, 2003.

ADDRESSES: Comments on these special conditions may be mailed in duplicate to: Federal Aviation Administration, Transport Airplane Directorate, Attn: Rules Docket (ANM–113), Docket No. NM253, 1601 Lind Avenue SW., Renton, Washington, 98055–4056; or delivered in duplicate to the Transport Airplane Directorate at the above address. All comments must be marked: Docket No. NM253.

FOR FURTHER INFORMATION CONTACT: Connie Beane, FAA, Standardization Branch, ANM–113, Transport Airplane Directorate, Aircraft Certification Service, 1601 Lind Avenue SW.,

Renton, Washington, 98055–4056; telephone (425) 227–2796; facsimile (425) 227–1149.

SUPPLEMENTARY INFORMATION:

Comments Invited

The FAA has determined that notice and opportunity for prior public comment is impracticable because these procedures would significantly delay certification of the airplane and thus delivery of the affected aircraft. In addition, the substance of these special conditions has been subject to the public comment process in several prior instances with no substantive comments received. The FAA therefore finds that good cause exists for making these special conditions effective upon issuance; however, the FAA invites interested persons to participate in this rulemaking by submitting written comments, data, or views. The most helpful comments reference a specific portion of the special conditions, explain the reason for any recommended change, and include supporting data. We ask that you send us two copies of written comments.

We will file in the docket all comments we receive, as well as a report summarizing each substantive public contact with FAA personnel concerning these special conditions. The docket is available for public inspection before and after the comment closing date. If you wish to review the docket in person, go to the address in the **ADDRESSES** section of this preamble between 7:30 a.m., and 4 p.m., Monday through Friday, except Federal holidays.

We will consider all comments we receive on or before the closing date for comments. We will consider comments filed late if it is possible to do so without incurring expense or delay. We may change these special conditions based on the comments received.

If you want the FAA to acknowledge receipt of your comments on these special conditions, include with your comments a pre-addressed, stamped postcard on which the docket number appears. We will stamp the date on the postcard and mail it back to you.

Background

On December 31, 2002, Raytheon Aircraft Services Inc., applied to the FAA, Fort Worth Special Certification Office, for a supplemental type certificate (STC) to modify certain Raytheon Aircraft Company Model HS 125 Series 700A and 700B airplanes. These airplanes are two flightcrew, two-engine airplanes, each with a maximum takeoff weight of up to 25,500 lbs. The proposed modification incorporates the installation of an Electronic Flight Instrument System (EFIS). The equipment originally installed in these airplanes presented the required information in the form of analog displays. The information presented is flight critical. The EFIS as a digital system is vulnerable to HIRF external to the airplane. The avionics/electronics and electrical systems installed in this airplane have the potential to be vulnerable to HIRF external to the airplane.

Type Certification Basis

Under the provisions of 14 CFR 21.101, Amendment 21–69, effective September 16, 1991, Raytheon Aircraft Services, Inc. must show that the modified Raytheon Aircraft Company Model HS 125 Series 700A and 700B airplanes, as changed, continue to meet the applicable provisions of the regulations incorporated by reference in Type Certificate No. A3EU, or the applicable regulations in effect on the date of application for the change. Subsequent changes have been made to 14 CFR 21.101 as part of Amendment 21–77, but those changes do not become effective until June 10, 2003. The regulations incorporated by reference in the type certificate are commonly referred to as the "original type certification basis."

The regulations incorporated by reference in Type Certificate No. A3EU include Part 10 of the Civil Air Regulations (CAR). This certification is equivalent to CAR 4b dated December 1953, as amended by Amendment 4b–1 through Amendment 4b–11, exclusive of CAR 4b 350(e), and includes Special Regulation SR 422B. In addition, the certification basis includes certain later amendments to 14 CFR part 25 that are not relevant to these special conditions.

If the Administrator finds that the applicable airworthiness regulations (*i.e.*, part 25, as amended) do not contain adequate or appropriate safety standards for the modified Raytheon Aircraft Company Model HS 125 Series 700A and 700B airplanes modified by Raytheon Aircraft Services Inc. because of a novel or unusual design feature, special conditions are prescribed under the provisions of § 21.16.

In addition to the applicable airworthiness regulations and special conditions, the Model HS 125 Series 700A and 700B airplanes must comply with the fuel vent and exhaust emission requirements of 14 CFR part 34 and the noise certification requirements of 14 CFR part 36.

Special conditions, as defined in 14 CFR 11.19, are issued in accordance with § 11.38 and become part of the type certification basis in accordance with § 21.101(b)(2), Amendment 21–69, effective September 16, 1991.

Special conditions are initially applicable to the model for which they are issued. Should Raytheon Aircraft Services Inc. apply at a later date for a supplemental type certificate to modify any other model included on the same type certificate to incorporate the same novel or unusual design feature, these special conditions would also apply to the other model under the provisions of § 21.101(a)(1), Amendment 21–69, effective September 16, 1991.

Novel or Unusual Design Features

The modified Raytheon Aircraft Company Model HS 125 Series 700A and 700B airplanes will incorporate brand new avionics/electronics and electrical systems that will perform critical functions. These systems may be vulnerable to HIRF external to the airplane.

Discussion

There is no specific regulation that addresses protection requirements for electrical and electronic systems from HIRF. Increased power levels from ground-based radio transmitters and the growing use of sensitive avionics/electronics and electrical systems to command and control airplanes have made it necessary to provide adequate protection.

To ensure that a level of safety is achieved equivalent to that intended by the regulations incorporated by reference, special conditions are needed for the Raytheon Aircraft Company Model HS 125 Series 700A and 700B airplanes. These special conditions require that new avionics/electronics and electrical systems that perform critical functions be designed and installed to preclude component damage and interruption of function due to both the direct and indirect effects of HIRF.

High-Intensity Radiated Fields (HIRF)

With the trend toward increased power levels from ground-based transmitters, and the advent of space and satellite communications coupled with electronic command and control of the airplane, the immunity of critical digital avionics/electronics and electrical systems to HIRF must be established.

It is not possible to precisely define the HIRF to which the airplane will be exposed in service. There is also uncertainty concerning the effectiveness of airframe shielding for HIRF. Furthermore, coupling of electromagnetic energy to cockpit-installed equipment through the cockpit window apertures is undefined. Based on surveys and analysis of existing HIRF emitters, an adequate level of protection exists when compliance with the HIRF protection special condition is shown with either paragraph 1 or 2 below:

1. A minimum threat of 100 volts rms (root-mean-square) per meter electric field strength from 10 KHz to 18 GHz.

a. The threat must be applied to the system elements and their associated wiring harnesses without the benefit of airframe shielding.

b. Demonstration of this level of protection is established through system tests and analysis.

2. A threat external to the airframe of the field strengths identified in the following table for the frequency ranges indicated. Both peak and average field strength components from the table are to be demonstrated.

Frequency	Field strength (volts per meter)	
	Peak	Average
10 kHz–100 kHz	50	50
100 kHz–500 kHz	50	50
500 kHz–2 MHz	50	50
2 MHz–30 MHz	100	100
30 MHz–70 MHz	50	50
70 MHz–100 MHz	50	50
100 MHz–200 MHz	100	100
200 MHz–400 MHz	100	100
400 MHz–700 MHz	700	50
700 MHz–1 GHz	700	100
1 GHz–2GHz	2000	200
2 GHz–4 GHz	3000	200
4 GHz–6 GHz	3000	200
6 GHz–8 GHz	1000	200
8 GHz–12 GHz	3000	300
12 GHz–18 GHz	2000	200
18 GHz–40 GHz	600	200

The field strengths are expressed in terms of peak of the root-mean-square (rms) over the complete modulation period.

The threat levels identified above are the result of an FAA review of existing studies on the subject of HIRF, in light of the ongoing work of the Electromagnetic Effects Harmonization Working Group of the Aviation Rulemaking Advisory Committee.

Applicability

As discussed above, these special conditions are applicable to Raytheon Aircraft Company Model HS 125 Series 700A and 700B airplanes. Should Raytheon Aircraft Services Inc. apply at a later date for a change to the type certificate to include another model incorporating the same novel or unusual design feature, these special conditions would apply to that model as well as under the provisions of 14 CFR 21.101(a)(1), Amendment 21–60, effective September 16, 1991.

Conclusion

This action affects only certain novel and unusual design features on the Raytheon Aircraft Company Model HS 125 Series 700A and 700B airplanes. It is not a rule of general applicability and affects only the applicant who applied to the FAA for approval of these features on the airplane.

The substance of the special conditions has been subjected to the notice and comment procedure in several prior instances and has been derived without substantive change from those previously issued. Because a delay would significantly affect the certification of the airplane, which is imminent, the FAA has determined that prior public notice and comment are unnecessary and impracticable, and good cause exists for adopting these special conditions upon issuance. The FAA is requesting comments to allow interested persons to submit views that may not have been submitted in response to the prior opportunities for comment described above.

List of Subjects in 14 CFR Part 25

Aircraft, Aviation safety, Reporting and record keeping requirements.

The authority citation for these special conditions is as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701, 44702, 44704.

The Special Conditions

Accordingly, pursuant to the authority delegated to me by the Administrator, the following special conditions are issued as part of the supplemental type certification basis for the modified Raytheon Aircraft Company Model HS 125 Series 700A and 700B airplanes:

1. *Protection from Unwanted Effects of High-Intensity Radiated Fields (HIRF).* Each electrical and electronic system that performs critical functions must be designed and installed to ensure that the operation and operational capability of these systems to perform critical functions are not adversely affected when the airplane is exposed to high intensity radiated fields.

2. For the purpose of these special conditions, the following definition applies: *Critical Functions:* Functions whose failure would contribute to or cause a failure condition that would prevent the continued safe flight and landing of the airplane.

Issued in Renton, Washington, on April 18, 2003.

Ali Bahrami,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 03–12376 Filed 5–16–03; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2003–14931; Airspace Docket No. 03–ACE–34]

Modification of Class D Airspace; and Modification of Class E Airspace; Kansas City Downtown Airport, MO

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Direct final rule; request for comments; correction.

SUMMARY: This action corrects a direct final rule; request for comments that was published in the **Federal Register** on Monday, May 5, 2003, (68 FR 23577) [FR Doc. 03–11030]. It corrects an error in the identified paragraph of the legal description of Class E airspace to be amended at Kansas City Downtown Airport, MO.

DATES: This direct final rule is effective on 0901 UTC, September 4, 2003. Comments for inclusion in the Rules Docket must be received on or before June 10, 2003.

FOR FURTHER INFORMATION CONTACT: Brenda Mumper, Air Traffic Division, Airspace Branch, ACE–520A, DOT Regional Headquarters Building, Federal Aviation Administration, 901 Locust, Kansas City, MO 64106; telephone: (816) 329–2524.

SUPPLEMENTARY INFORMATION:

History

Federal Register Document 03–11030, published on Monday, May 5, 2003, (68 FR 23577), modified Class D and Class E airspace areas at Kansas City Downtown Airport, MO. The paragraph of Federal Aviation Administration Order 7400.9K pertaining to Class E airspace was misidentified.

■ Accordingly, pursuant to the authority delegated to me, the Class E airspace at Kansas City Downtown Airport, MO, as published in the **Federal Register** on May 5, 2003, (68 FR 23577) [FR Doc. 03–11030], is corrected as follows:

§ 71.1 [Corrected]

■ On page 23578, Column 3, third paragraph from the bottom, change "Paragraph 6002 Class E Airspace

Designated as Surface Areas" to read "Paragraph 6004 Class E Airspace Areas Designated as an Extension to a Class D or Class E Surface Area."

Issued in Kansas City, MO, on May 8, 2003.

David W. Hope,

Acting Manager, Air Traffic Division, Central Region.

[FR Doc. 03–12377 Filed 5–16–03; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2003–15075; Airspace Docket No. 03–ACE–43]

Modification of Class E Airspace; Valentine, NE

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Direct final rule; request for comments.

SUMMARY: An Area Navigation (RNAV) Global Positioning System (GPS) Runway (RWY) 14 ORIGINAL Standard Instrument Approach Procedure (SIAP) has been developed to serve Miller Field, Valentine, NE. This action expands Class E airspace extending upward from 700 feet above ground level (AGL) at Valentine, NE to contain aircraft executing the approach. The Miller Field airport reference point has been redefined and is incorporated into the legal description of Valentine, NE Class E airspace.

DATES: This direct final rule is effective on 0901 UTC, September 4, 2003. Comments for inclusion in the Rules Docket must be received on or before June 25, 2003.

ADDRESSES: Send comments on this regulation to the Docket Management System, U.S. Department of Transportation, Room Plaza 401, 400 Seventh Street, SW., Washington, DC 20590–0001. You must identify the docket number FAA–2003–15075/ Airspace Docket No. 03–ACE–43, at the beginning of your comments. You may also submit comments on the Internet at *http://dms.dot.gov*. You may review the public docket containing the proposal, any comments received, and any final disposition in person in the Dockets Office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Docket Office (telephone 1–800–647–5527) is on the plaza level of the Department of Transportation NASSIF Building at the above address.

FOR FURTHER INFORMATION CONTACT: Brenda Mumper, Air Traffic Division, Airspace Branch, ACE–520A, DOT Regional Headquarters Building, Federal Aviation Administration, 901 Locust, Kansas City, MO 64106; telephone (816) 329–2524.

SUPPLEMENTARY INFORMATION: The amendment to 14 CFR part 71 modifies the Class E airspace area at Valentine, NE. An RNAV (GPS) RWY 14 ORIGINAL SIAP has been developed to serve Miller Field, Valentine, NE. The SIAP requires additional controlled airspace to contain aircraft executing the approach procedure. This action expands Class E airspace extending upward from 700 fee AGL at Valentine, NE. The National Aeronautical Charting Office redefined the Valentine, Miller Field, NE airport reference point effective April 9, 2003. Class E controlled airspace at Valentine, NE is defined, in part, by the Miller Field airport reference point. This action corrects discrepancies between the previous and revised airport reference points by modifying the Valentine, NE Class E airspace area. It incorporates the revised Miller Field airport reference point in the Class E airspace legal description and brings the airspace area into compliance with FAA Order 7400.2E, Procedures for Handling Airspace Matters. The area will be depicted on appropriate aeronautical charts. Class E airspace areas extending upward from 700 fee or more above the surface of the earth are published in paragraph 6005 of FAA Order 7400.9K, dated August 30, 2002, and effective September 16, 2002, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document will be published subsequently in the Order.

The Direct Final Rule Procedure

The FAA anticipates that this regulation will not result in adverse or negative comment and, therefore, is issuing it as a direct final rule. Previous actions of this nature have not been controversial and have not resulted in adverse comments or objections. Unless a written adverse or negative comment, or a written notice of intent to submit an adverse or negative comment is received within the comment period, the regulation will become effective on the date specified above. After the close of the comment period, the FAA will publish a document in the **Federal Register** indicating that no adverse or negative comments were received and confirming the date on which the final rule will become effective. If the FAA does receive, within the comment period, an adverse or negative comment, or written notice of intent to submit such a comment, a document withdrawing the direct final rule will be published in the **Federal Register**, and a notice of proposed rulemaking may be published with a new comment period.

Comments Invited

Interested parties are invited to participate in this rulemaking by submitting such written data, views, or arguments, as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify both docket numbers and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. FAA–2003–15075/Airspace Docket No. 03–ACE–43." The postcard will be date/time stamped and returned to the commenter.

Agency Findings

The regulations adopted herein will not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this final rule does not have federalism implications under Executive Order 13132.

The FAA has determined that this regulation is noncontroversial and unlikely to result in adverse or negative comments. For the reasons discussed in the preamble, I certify that this regulation (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under Department of Transportation (DOT) Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

■ Accordingly, the Federal Aviation Administration amends 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A, CLASS B, CLASS C, CLASS D, AND CLASS E AIRSPACE AREAS; AIRWAYS; ROUTES; AND REPORTING POINTS

■ 1. The authority citation for part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§ 71.1 [Amended]

■ 2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9K, dated August 30, 2002, and effective September 16, 2002, is amended as follows:

Paragraph 6005 Class E airspace areas extending upward from 700 feet or more above the surface of the earth.

* * * * *

ACE NE E5 Valentine, NE

Valentine, Miller Field, NE
(Lat. 42°51′28″ N., long. 100°32′51″ W.)
Valentine NDB
(Lat. 42°51′42″ N., long. 100°32′59″ W.)

That airspace extending upward from 700 feet above the surface within a 6.5-mile radius of Miller Field; and within 2.6 miles each side of the 149° bearing from the Valentine NDB extending from the 6.5-mile radius to 7.9 miles southeast of the airport; and within 1.8 miles each side of the 325° bearing from the airport extending from the 6.5-mile radius to 9.2 miles northwest of the airport.

* * * * *

Issued in Kansas City, MO, on May 8, 2003.

David W. Hope,

Acting Manager, Air Traffic Division, Central Region.

[FR Doc. 03–12379 Filed 5–16–03; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Parts 510 and 522

Injectable or Implantable Dosage Form New Animal Drugs; Zinc Gluconate

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect approval of a new animal drug application (NADA) filed by Technology Transfer, Inc. The NADA provides for use of zinc gluconate solution for chemical sterilization of dogs by intratesticular injection.

DATES: This rule is effective May 19, 2003.

FOR FURTHER INFORMATION CONTACT: Melanie R. Berson, Center for Veterinary Medicine (HFV–110), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301–827–7543, e-mail: *mberson@cvm.fda.gov*.

SUPPLEMENTARY INFORMATION: Technology Transfer, Inc., 33 East Broadway, suite 190, Columbia, MO 65203, filed NADA 141–217 that provides for use of NEUTERSOL (zinc gluconate neutralized by arginine) Injectable Solution for chemical sterilization of 3- to 10-month-old male dogs by intratesticular injection. The NADA is approved as of March 17, 2003, and the regulations are amended in 21 CFR part 522 by adding new § 522.2690 to reflect the approval. The basis of approval is discussed in the freedom of information summary.

In addition, Technology Transfer, Inc., has not been previously listed in the animal drug regulations as a sponsor of an approved application. At this time, 21 CFR 510.600(c) is being amended to add entries for the firm.

In accordance with the freedom of information provisions of 21 CFR part 20 and 21 CFR 514.11(e)(2)(ii), a summary of safety and effectiveness data and information submitted to support approval of this application may be seen in the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852, between 9 a.m. and 4 p.m., Monday through Friday.

Under section 512(c)(2)(F)(i) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 360b(c)(2)(F)(i)), this approval qualifies for 5 years of marketing exclusivity beginning March 17, 2003.

The agency has determined under 21 CFR 25.33(d)(1) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

This rule does not meet the definition of "rule" in 5 U.S.C. 804(3)(A) because it is a rule of "particular applicability." Therefore, it is not subject to the congressional review requirements in 5 U.S.C. 801–808.

List of Subjects

21 CFR Part 510

Administrative practice and procedure, Animal drugs, Labeling, Reporting and recordkeeping requirements.

21 CFR Part 522

Animal drugs.

■ Therefore, under the Federal Food, Drug, and Cosmetic Act and under the authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Veterinary Medicine, 21 CFR parts 510 and 522 are amended as follows:

PART 510—NEW ANIMAL DRUGS

■ 1. The authority citation for 21 CFR part 510 continues to read as follows:

Authority: 21 U.S.C. 321, 331, 351, 352, 353, 360b, 371, 379e.

■ 2. Section 510.600 is amended in the table in paragraph (c)(1) by alphabetically adding an entry for "Technology Transfer, Inc." and in the table in paragraph (c)(2) by numerically adding an entry for "067647" to read as follows:

§ 510.600 Names, addresses, and drug labeler codes of sponsors of approved applications.

* * * * *

(c) * * *

(1) * * *

Firm name and address	Drug labeler code
* * * * *	
Technology Transfer, Inc., 33 East Broadway, suite 190, Columbia, MO 65203.	067647
* * * * *	

(2) * * *

Drug labeler code	Firm name and address
* *	* * * *
067647	Technology Transfer, Inc., 33 East Broadway, suite 190, Columbia, MO 65203.
* *	* * * *

PART 522—IMPLANTATION OR INJECTABLE DOSAGE FORM NEW ANIMAL DRUGS

■ 3. The authority citation for 21 CFR part 522 continues to read as follows:

Authority: 21 U.S.C. 360b.

■ 4. Section 522.2690 is added to read as follows:

§ 522.2690 Zinc gluconate.

(a) *Specifications.* Each milliliter of solution contains 13.1 milligrams zinc as zinc gluconate neutralized to pH 7.0 with L-arginine.

(b) *Sponsor.* See No. 067647 in § 510.600(c) of this chapter.

(c) *Conditions of use in dogs*—(1) *Amount.* The volume injected into each testicle is based on testicular width as determined by measuring each testicle at its widest point using a metric scale (millimeter) caliper.

(2) *Indications for use.* Intratesticular injection for chemical sterilization of 3- to 10-month-old male dogs.

(3) *Limitations.* Federal law restricts this drug to use by or on the order of a licensed veterinarian.

Dated: May 12, 2003.

Stephen F. Sundlof,

Director, Center for Veterinary Medicine.

[FR Doc. 03–12368 Filed 5–16–03; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF THE TREASURY

31 CFR Part 103

Notice of Temporary Extension of Conditional Exception to Bank Secrecy Act Regulations Relating to Orders for Transmittal of Funds by Financial Institutions

AGENCY: Financial Crimes Enforcement Network ("FinCEN"), Treasury.

ACTION: Extension of conditional exception.

SUMMARY: FinCEN is giving notice that it is extending, until December 1, 2003, a conditional exception to a Bank Secrecy Act requirement that is due to expire on May 31, 2003. The exception permits financial institutions to substitute coded information for the true name and address of a customer in a funds transmittal order. The purpose of the extension is to permit FinCEN to perform a study of the alternatives to continuing the conditional exception.

DATES: Effective June 1, 2003.

FOR FURTHER INFORMATION CONTACT: David Vogt, Executive Associate Director, Office of Regulatory Programs, FinCEN, (202) 354–6400, or Judith R. Starr, Chief Counsel, FinCEN, (703) 905–3590.

SUPPLEMENTARY INFORMATION:

I. Background

In 1998, FinCEN granted a conditional exception ("the CIF Exception") to the strict operation of 31 CFR 103.33(g) (the "Travel Rule"). *See* FinCEN Issuance 98–1, 63 FR 3640 (January 26, 1998). The Travel Rule requires a financial institution to include certain information in transmittal orders relating to transmittals of funds of $3,000 or more. The CIF Exception addressed computer programming problems in the banking and securities industries by relaxing the Travel Rule's requirement that a customer's true name and address be included in a funds transmittal order, so long as alternate steps, described in FinCEN Issuance 98–1 and designed to prevent avoidance of the Travel Rule, were satisfied. By its terms, the CIF Exception to the Travel Rule was to expire on May 31, 1999; however, in light of programming burdens associated with year 2000 compliance issues, FinCEN extended the CIF Exception so that it would expire on May 31, 2001. *See* FinCEN Issuance 99–1, 64 FR 41041 (July 29, 1999). On May 30, 2001, after first soliciting input from the law enforcement community for its views on any law enforcement burdens caused by the CIF Exception, FinCEN again extended the CIF Exception. The CIF Exception is scheduled to expire on May 31, 2003. *See* FinCEN Issuance 2001–1, 66 FR 32746 (June 18, 2001). On March 7, 2003, FinCEN published a Notice of intent to permit the CIF exception to expire on May 31, 2003. The Notice solicited comment on four issues:

(1) Whether there are technological barriers to full compliance with the Travel Rule;

(2) Whether financial institutions will require additional time to comply;

(3) Whether the exception has had an adverse effect on law enforcement investigations; and

(4) Whether there is a potential for abuse of the exception.

II. The CIF Exception

FinCEN promulgated the Travel Rule in 1995. The Travel Rule requires financial institutions to include certain information in transmittal orders relating to transmittals of funds of $3,000 or more, which must "travel" with the order throughout the funds transmittal sequence. Among these requirements is that each transmittor's financial institution and intermediary financial institution include in a transmittal order the transmittor's true name and street address. *See* 31 CFR 103.33(g)(1)(i)-(ii) and (g)(2)(i)-(ii). Subsequently, financial institutions represented to FinCEN that their ability to comply with the Travel Rule at all depended on their ability to use their automated customer information files, known as CIFs. Although an originating institution always knew the originating customer's true name and address, the CIFs were often programmed with coded or nominee names and addresses (or post office boxes). The reprogramming tasks involved in changing the CIFs were represented to be a significant barrier to compliance with the Travel Rule. In light of these burdens, and in the interest of obtaining prompt compliance, FinCEN promulgated the conditional exception.

The conditional exception provides that a financial institution may satisfy the requirements of 31 CFR 103.33(g) that a customer's true name and address be included in a transmittal order, only upon satisfaction of the following conditions:

(1) The CIFs are not specifically altered for the particular transmittal of funds in question;

(2) The CIFs are generally programmed and used by the institution for customer communications, not simply for transmittal of funds transactions, and as so programmed generate other than true name and street address information;

(3) The institution itself knows and can associate the CIF information used in the funds transmittal order with the true name and street address of the transmittor of the order;

(4) The transmittal order includes a question mark symbol immediately following any designation of the transmittor other than by a true name on the order;

(5) Any currency transaction report or suspicious activity report by the institution with respect to the funds transmittal contains the true name and address information for the transmittor and plainly associates the report with the particular funds transmittal in question.

The conditional exception further provides that it has no application to any funds transmittals for whose processing an institution does not automatically rely on preprogrammed and prespecified CIF name and address information. FinCEN's release promulgating the CIF Exception further warned financial institutions that any customer request for a nominee name in a CIF should be carefully evaluated as a potentially suspicious transaction. *See* 63 FR 3642.

III. Comments Received on the Expiration of the CIF Exception

The comment period closed on April 21, 2003. FinCEN received 16 comments from banks, trade groups, financial consultants, the Federal Reserve's Wholesale Products Branch, and the Department of Justice, reflecting a diversity of views. Eight commenters agreed that the exception should expire; seven commenters (three of them in one joint comment), opposed letting the exception expire; one commenter split the difference in favor of requiring the true name but keeping the exception for the true address; and the Federal Reserve's Wholesale Products Branch urged that FinCEN perform a study of the current and future uses of customer identification before determining whether it is necessary to let the exception lapse.

Industry Comments. The financial community commenters were divided on all the issues raised in the Notice.

Industry comments in favor of expiration. Comments received from community banks, independent banks, and credit unions supported letting the exception expire. They stated they are generally in compliance already, or can do so readily with the change of a form. They saw no technological barriers to compliance. For instance, one trade organization stated that its members using Fedwire are already in compliance, and that Fedwire has fields for entering true name and address information. According to this commenter, the Federal Home Loan Bank wire service also accommodates this information in its funds transmittal orders. Another organization, which counts 1,000 credit unions as its members, stated there will be no problem complying by June 1, 2003. It also stated that it believes having the true name and address fields in the transmittal orders will simplify compliance with Sec. 314 and OFAC searches.

Industry comments opposed to expiration. The contrary viewpoint was represented by several large banks and three major trade associations. They stated that compliance with the true name and address requirement would impose significant reprogramming costs upon them. According to one bank, customer names and addresses are stored in their CIFs. They may contain a variety of different addresses and name variations, especially for corporate customers. The wire transfer systems are separate from the CIFs and do not interface directly with them. Apparently, the banks would have to reprogram their CIFs to track and send true name and address information with individual payment orders. Although none of the commenters estimated the costs associated with such reprogramming, they contend it would be expensive. Given their other Patriot Act tasks, they believed it would be impossible to complete such reprogramming before the deadline.[1] None of these commenters believed there is any harm to law enforcement from the exception, citing the paucity of requests for true name and address information they have received from law enforcement over the years. Finally, they did not see much potential for abuse. A joint comment by the trade associations stated that the use of pseudonym in private banking accounts (cited in the Notice) occurs only in exceptional cases such as for public figures, or to hide a name in an accumulation account that might tip off the market to a trading strategy.[2]

Government comments. Government comments were likewise divided. The Department of Justice strongly supported expiration of the exception, arguing that it has already outlived the reasons it was originally granted. Justice stated that it would be easier to obtain timely compliance with subpoenas if banks did not have to check additional records to find true name and address information.[3] The Federal Reserve's Wholesale Products Office ("WPO"), however, stated that discussions with its customer advisory group lead it to believe that many banks are ill equipped to comply if the exception expires. The WPO also expressed concern about the effect expiration of the exception could have on straight-through processing initiatives, which aim at eliminating manual intervention in the flow of payment information from originator to beneficiary. Therefore, it proposes that FinCEN study the use of CIFs to determine the effect of the elimination of the exception would have, not only on current systems, but on the achievement of processing goals.

IV. Need for Further Study

FinCEN believes that the WPO is correct that further study is needed, albeit a study more precisely targeted at the benefits and burdens associated with the available alternatives. The technological issues involved in complying with the Travel Rule appear to vary among financial institutions, and it is not clear what the global costs would be of removing the exception entirely. Having gaps in the funds transfer process where the inability to recognize the identity of a funds transmittor could harm law enforcement investigations should be avoided where possible, as should imposing unnecessary costs at a time when financial institutions are working diligently to comply with numerous Patriot Act requirements. FinCEN therefore intends to perform a study to determine the best way to reconcile the competing interests by obtaining data on the costs and benefits of each available alternative (for example, it may be feasible to require true name information but not true address information). For the expected duration of the study (approximately 180 days), the CIF Exception will be temporarily extended.

V. FinCEN Issuance 2003–1

By virtue of the authority contained in 31 CFR 103.55(a) and (b), which has been delegated to the Director of FinCEN, the effective period of the CIF Exception, as such Exception is set forth (as part of FinCEN Issuance 98–1, 63 FR 3640 (January 6, 1998)) under the heading "Grant of Exceptions" (63 FR 3641) is extended so that the CIF Exception will expire on December 1, 2003 (if not revoked or modified with respect to such expiration date prior to that time), for transmittals of funds initiated after that date.

Dated: May 13, 2003.

James F. Sloan,

Director, Financial Crimes Enforcement Network.

[FR Doc. 03–12371 Filed 5–16–03; 8:45 am]

BILLING CODE 4810–02–P

[1] In contrast, one bank stated it does not use coded customer names, and its comment was solely concerned with the issue of using true addresses because of the existence of alternate addresses for customers, which it believed would cost it $20,000 in programming development costs to address.

[2] FinCEN notes, however, that these examples appear to violate the condition of the exception that the code be in use generally and that there be no alteration for a specific case.

[3] In addition, the exception can prevent law enforcement and intelligence analysts from being able to track fully the flow of funds. Suspicious Activity Reports filed by intermediary institutions that do not have true name and address information are much less useful. Intercepts or undercover operations that obtain intermediary transmittals and cannot approach banks because of the sensitivity of their operations will lack information that may be critical to them. The use of coded information may prevent an intermediary bank from recognizing that it has records related to a government target, and, if the government has not also approached the transmitting bank, critical information may be missed.

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 0, 1, 76, and 78

[CS Docket No. 00–78, FCC 03–55]

Implementation of Electronic Filing for the Multichannel Video and Cable Television Service and the Cable Television Relay Service

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document revises rules to allow for electronic filing of forms by Multichannel Video Programming Distributors ("MVPDs") via the Cable Operations And Licensing System ("COALS"). When COALS, currently being completed, is fully implemented MVPDs will be able to file over the Internet cable community registrations, aeronautical frequency notifications, operational change information, cable television system reports, annual signal leakage reports, and Cable Television Relay Service (CARS) applications. Electronic filing of each type of data will become mandatory 6 months after the Commission has determined that the form for collecting it has been reliably automated. This action includes providing forms for information previously submitted by letter and simplifying the CARS license application.

DATES: These rules contain information collection requirements that have not been approved by OMB. The Federal Communications Commission will publish a document in the **Federal Register** announcing the effective date of these rules. Public and agency comments are due July 18, 2003.

FOR FURTHER INFORMATION CONTACT: Wayne T. McKee, 202–418–2355, or Michael Lance, 202–418–7014. For additional information concerning the information collection(s) contained in this document, contact Judith B. Herman at 202–418–0214, or via the Internet at *jboley@fcc.gov*.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order (R&O) in CS Docket No. 00–78; FCC 03–55, adopted March 13, 2003, and released March 19, 2003. The complete text of this R&O is available for inspection and copying during normal business hours in the FCC Reference Information Center, Courtyard Level, 445 12th Street, SW., Washington, DC, and also may be purchased from the Commission's copy contractor, Qualex International, Portals II, 445 12th Street, SW., Room CY–B402, Washington, DC 20554, telephone 202–863–2893, facsimile 202–863–2898, or via e-mail at *qualexint@aol.com*. Alternative formats (computer diskette, large print, audio cassettes, and Braille) are available to persons with disabilities by contacting Brian Millin at 202–418–7426, TTY 202–418–7365, or at *bmillin@fcc.gov*. In addition to filing comments with the Office of the Secretary, a copy of any comments on the information collection(s) contained herein should be submitted to Judith B. Herman, Federal Communications Commission, Room 1–C804, 445 12th Street, SW., Washington, DC 20554, or via the Internet to *jboley@fcc.gov*.

The Notice of Proposed Rule Making (NPRM) in this proceeding may be found at 65 FR 48211, August 7, 2000.

Synopsis of the Report and Order

This Report and Order revises our rules governing the filing of the majority of forms filed by the public for the Multichannel Video and Cable Television Service ("MVCTS") and applications in the Cable Television Relay Service ("CARS"). In addition to the CARS microwave applications, these forms include cable television operator registrations, change of operational information, cable television system reports, aeronautical frequency usage filings, and annual signal leakage reports. These rule changes facilitate our implementation of the Cable Operations and Licensing System ("COALS") and will allow for a new electronic filing system. This action will reduce the effort for Multichannel Video Programming Distributors ("MVPDs") to file applications, reports, and other documents. It will also enhance the availability to the industry and the public of cable system and multichannel video programming systems information. This action is also another step for the Commission in complying with Government Paperwork Elimination Act.

Use of COALS will become mandatory in phases as the Commission verifies its reliability for filing each form. Thus, electronic filing of each form will be made mandatory six months after the Commission announces that the software for filing that form is available. The Commission will publish by Public Notice the date on which mandatory filing will begin. In cases where filers can show that electronic filing will work a hardship on them, the Commission will consider waivers of the mandatory filing requirement.

This Report and Order also makes modifications to procedural rules for filings by MVPDs. It redefines major and minor modifications of CARS stations and license applications. It also requires that geographic coordinates be given using the 1983 North American Datum (NAD83).

This Report and Order contains new or modified information collection(s) subject to the Paperwork Reduction Act of 1995 (PRA), Pub. L. 104–13. It will be submitted to the Office of Management and Budget (OMB) for review under section 3507(d) of the PRA. OMB, the general public, and other Federal agencies are invited to comment on the new or modified information collection(s) contained in this proceeding.

Paperwork Reduction Act

This Report and Order contains a modified information collection. The Commission, as part of its continuing effort to reduce paperwork burdens, invites the general public to comment on the information collection(s) contained in this Report and Order as required by the Paperwork Reduction Act of 1995, Pub. L. 104–13.

Final Regulatory Flexibility Analysis

As required by the Regulatory Flexibility Act of 1980, as amended ("RFA"), an Initial Regulatory Flexibility Analysis ("IRFA") was incorporated in the Notice of Proposed Rulemaking ("NPRM") in CS Docket No. 00–78, FCC 00–165. The Commission sought written public comment on the proposals in the Notice, including comment on the IRFA. This present Final Regulatory Flexibility Analysis ("FRFA") conforms to the RFA.

A. Need for, and Objectives of, This Report and Order

We revise our rules governing the filing of forms and applications for the Multichannel Video and Cable Television Services. These include applications in the Cable Television Relay Service (CARS microwave applications), cable television operator registrations, and aeronautical frequency usage filings. These rule changes are designed to facilitate our implementation of electronic filing via the new Cable Operations And Licensing System ("COALS"). We undertake implementation of the COALS electronic filing system so that cable services applicants and associated parties may file documents with greater speed and efficiency. Because it is available over the Internet and is fully searchable, the system will also make license and cable operational information more accessible to the Commission's staff, the MVPD industry, and the general public. Furthermore, it is expected that the cost of filing applications or obtaining information will be reduced.

B. Summary of Significant Issues Raised by Public Comments in Response to IRFA

No one commented in direct response to the IRFA. We received only one comment in the proceeding—from the National Cable Telecommunications Association ("NCTA"). That comment did address the issue of the burden on small entities that would result if we decide to make electronic filing

mandatory. We responded to their concern by creating an indefinite transition period during which electronic filing will be optional. A waiver of the requirement may also be granted.

C. Description and Estimate of the Number of Small Entities to Which the Rules Will Apply

The RFA directs the Commission to provide a description of and, where feasible, an estimate of the number of, small entities that will be affected by the rules adopted herein. The RFA generally defines the term "small entity" as having the same meaning as the terms "small business," "small organization," and "small governmental jurisdiction." In addition, the term "small business" has the same meaning as the term "small business concern" under the Small Business Act. A "small business concern" is one which: (1) Is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the Small Business Administration ("SBA").

A small organization is generally "any not-for-profit enterprise which is independently owned and operated and is not dominant in its field." Nationwide, as of 1992, there were approximately 275,801 small organizations. "Small government jurisdiction" generally means "governments of cities, counties, towns, townships, villages, school districts, or special districts, with a population of less than 50,000." As of 1992, there were approximately 85,006 governmental entities in the United States. This number includes 38,978 counties, cities, and towns: of these, 37,566, or 96%, have populations of fewer than 50,000. The Census Bureau estimates that this ratio is approximately accurate for all governmental entities. Thus, of the 85,006 governmental entities, we estimate that 81,600 (96%) are small entities. Below, we further describe and estimate the number of small entity licensees and regulatees that may be affected by these rules. It is possible that various types of small organizations are cable operators or other types of Multichannel Video Programming Distributor.

The rules we adopt will apply to all Multichannel Video Programming Distributors. This includes cable systems, the Multipoint Distribution Service ("MDS"), the Multichannel, Multipoint Distribution Service ("MMDS"), and Private Cable Operators ("PCOs").

Small MVPDs. SBA has developed a definition of small entities for cable and other pay television services, which includes such companies generating $12.5 million or less in annual receipts. This definition includes cable system operators, closed circuit television services, direct broadcast satellite services, multipoint distribution systems, satellite master antenna systems, open video systems, and subscription television services. According to the Census Bureau, there were 1,423 such cable and other pay television services generating less than $12.5 million in revenue. We address below services individually to provide a more precise estimate of small entities.

The Commission has developed, with SBA's approval, its own definition of a small cable system operator for the purposes of rate regulation. Under the Commission's rules, a "small cable company" is one serving fewer than 400,000 subscribers nationwide. Based on our most recent information, we estimate that there were 1439 cable operators that qualified as small cable companies at the end of 1995. Since then, some of those companies may have grown to serve over 400,000 subscribers, and others may have been involved in transactions that caused them to be combined with other cable operators. The Commission's rules define a "small system," for the purposes of rate regulation, as a cable system with 15,000 or fewer subscribers. The Commission does not request nor does the Commission collect information concerning cable systems serving 15,000 or fewer subscribers and thus is unable to estimate, at this time, the number of small cable systems nationwide.

The Communications Act also contains a definition of a small cable system operator, which is "a cable operator that, directly of through an affiliate, serves in the aggregate fewer than 1% of all subscribers in the United States and is not affiliated with any entity or entities whose gross annual revenues in the aggregate exceed $250,000,000." The Commission has determined that there are 61,700,000 subscribers in the United States. Therefore, a cable operator serving fewer than 617,000 subscribers shall be deemed a small operator, if its annual revenues, when combined with the total annual revenues of all of its affiliates, do not exceed $250 million in the aggregate. Based on available data, we find that the number of cable operators serving 617,000 subscribers or less totals approximately 1450. Although it seems certain that some of these cable system operators are affiliated with entities whose gross annual revenues exceed $250,000,000, we are unable at this time to estimate with greater precision the number of cable system operators that would qualify as small cable operators under definition in the Communications Act. It should be further noted that recent industry estimates project that there will be a total of 64,000,000 subscribers and we have based our fee revenue estimates on that figure.

Private Cable Operators/Satellite Master Antenna Systems. Based on our most recent information, we estimate that there are 3400 private cable operators ("PCOs"). Most of these qualify as small cable companies under the SBA and Commission rate regulation definitions. These operators primarily serve multiple dwelling units ("MDU") and commercial multiple tenant units ("MTU"). The MDU market is comprised of 20 to 25 million units. Commercial multiple tenant units (and there SBA size standards) include hotels ($6.0 million), hospitals ($29.0 million), nursing care facilities ($11.5 million), homes for the elderly ($6.0 million), and similar facilities. PCOs serve 3,000 to 4,000 customers each, but some serve 15,000 to 55,000 subscribers each. Consequently, most PCOs are small entities, and we estimate that there are more than 3,400 small entity private cable system operators that may be affected by the decisions and rules we are adopting.

Open Video System ("OVS"). The Commission has certified 26 OVS operators. As an OVS is comparable in most ways to a cable system, the cable system size standards are appropriate. Of these, one, Affiliates of Residential Communications Network, Inc. ("RCN"), is clearly not a small system. RCN received approval to operate OVS systems in New York City, Boston, Washington, DC, and other areas. RCN has approximately 506,700 video subscribers; is the largest broadband service provider in the country, 1.5 million homes passed; and is the thirteenth largest MVPD. The Commission has not set a separate size standard for an OVS. Under that standard RCN is not a small system operator. Little financial information is available for the other entities authorized to provide OVS service that are not yet operational. Given that other entities have been authorized to provide OVS service but have not yet begun to generate revenues, we conclude that at least some of the OVS operators qualify as small entities under FCC standards.

Multichannel, Multipoint Distribution Service ("MMDS"). The Commission refined the definition of "small entity" for the auction of MMDS as an entity

that, together with its affiliates, has annual average gross revenues that are not more than $40 million for the proceeding three calendar years. This definition of a small entity, in the context of the Commission's decision concerning MMDS auctions, has been approved by the SBA.

The Commission completed its MMDS auction in March 1996 for authorization in 493 basic trading areas ("BTAs"). Of the 67 winning bidders, 61 qualified as small entities under the Commission definition. Five winners indicated that they were minority-owned and four winners indicated that they were women-owned businesses. In 1998, the Commission released the *Two-Way Order* permitting MDS/ITFS licensees to construct digital two-way systems that could provide high-speed, high-capacity broadband service, including two-way Internet service via cellularized communication systems. As a result, although over 2,650 MDS and MMDS licenses have been issued in the U.S., four companies—Sprint, WorldCom, Nucentrix and BellSouth—hold more than half of the licenses. Collectively, these four companies can potentially reach 75% of the U.S. population. The number of MMDS subscribers, however, has declined to approximately 490,000 from 700,000 last year. Presumably, the remaining licenses are held by small businesses under the Commission auction standard for small entities.

D. Description of Projected Reporting, Record Keeping and other Compliance Requirements

This Report and Order creates no additional reporting, record keeping, or other requirements. Rather, makes reporting easier and more efficient by permitting filing by electronic means via the Internet. It also simplifies reporting by standardizing forms and deleting duplicate and unnecessary data collections.

E. Steps Taken To Minimize the Impact on Small Entities, and Significant Alternatives Considered

The RFA requires an agency to describe any significant alternatives that it has considered in developing its approach, which may include the following four alternatives (among others): "(1) the establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (2) the clarification, consolidation, or simplification of compliance and reporting requirements under the rule for such small entities; (3) the use of performance rather than design standards; and (4) an exemption from coverage of the rule, or any part thereof, for such small entities."

The impact of this action on small entities will not only be identical to the impact on large entities, it will be entirely beneficial. It gives them the option of eliminating the cost and expense of filing paper copies of required documents. We did not adopt a requirement for mandatory electronic filing specifically because of concerns for the burden that mandatory filing might impose upon small entities.

Report to Congress. We will send a copy of this Report and Order, including this FRFA, in a report to Congress pursuant to the Congressional Review Act of 1996. A copy of this report and Order and FRFA (or summary thereof) will also be published in the **Federal Register**, pursuant to 5 U.S.C. 604(b), and will be sent to the Chief Counsel for Advocacy of the Small Business Administration.

Ordering Clauses

■ Accordingly, pursuant to authority found in sections 4(i)–(j) of the Communications Act of 1934, as amended, 47 U.S.C. 154(i)–(j), 303(c), (f), and (r), and 309(j), the Commission's rules *are amended* as set forth in this Order.

■ The action contained herein has been analyzed with respect to the Paperwork Reduction Act of 1995, Public Law 104–13, and found to impose new or modified information collection requirements on the public. Implementation of these new or modified information collection requirements will be subject to approval by the Office of Management and Budget (OMB) as prescribed by the Paperwork Reduction Act. Consequently, the amendments to the Commission's rules set forth in this Order *will become effective* upon announcement in the **Federal Register** of OMB approval of the new or modified information collecting requirements and the implementation of the electronic filing system specified therein.

The Commission's Consumer and Governmental Affairs Bureau, Reference Information Center, *shall send* a copy of this Report and Order, including the Final Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration.

List of Subjects

47 CFR Part 0

Organization and functions (Government agencies), Reporting and recordkeeping requirements.

47 CFR Part 1

Reporting and recordkeeping requirements.

47 CFR Part 76

Cable television, Reporting and recordkeeping requirements.

47 CFR Part 78

Cable television, Communications equipment, Radio, Reporting and recordkeeping requirements.

Federal Communications Commission.

William F. Caton,

Deputy Secretary.

Rule Changes

■ For the reasons discussed in the preamble, the Federal Communications Commission amends 47 CFR parts 0, 1, 76, and 78 as follows:

PART 0—COMMISSION ORGANIZATION

■ 1. The authority citation for part 0 continues to read as follows:

Authority: Secs. 5, 48 Stat. 1068, as amended; 47 U.S.C. 155, 225, unless otherwise noted.

■ 2. Revise § 0.401(b)(3) to read as follows:

§ 0.401 Location of Commission offices.

* * * * *

(b) * * *

(3) Alternatively, applications and other filings may be sent electronically via the Universal Licensing System (ULS) or the Cable Operations and Licensing System (COALS) as appropriate for use of those systems.

PART 1—PRACTICE AND PROCEDURE

■ 3. The authority citation for part 1 continues to read as follows:

Authority: 47 U.S.C. 151, 154(i), 154(j), 155, 225, 303(r), 309 and 325(e).

■ 4. In the table in § 1.1104, entry 8 is amended by revising the introductory text and by revising entries h. and i. to read as follows:

§ 1.1104 Schedule of charges for applications and other filings for media services.

* * * * *

Action	FCC form No.	Fee amount	Payment type code	Address
8. Multichannel Video and Cable Television Services				
h. Registration of a Cable Community.	322 & 159	50.00	TAC	Federal Communications Commission, Media Services, P.O. Box 358205, Pittsburgh, PA 15251–5205.
i. Aeronautical Frequency Notification.	321 & 159	50.00	TAC	Federal Communications Commission, Media Services, P.O. Box 358205, Pittsburgh, PA 15215–5205.

■ 5. Section 1.1111 is amended by adding paragraph (d) to read as follows:

§ 1.1111 Filing locations.

* * * * *

(d) Fees for applications and other filings pertaining to the Multichannel Video and Cable Television Service (MVCTS) and the Cable Television Relay Service (CARS) that are submitted electronically via the Cable Operations and Licensing System (COALS) may be paid electronically or sent to the Commission's lock box bank manually. When paying manually, applicants must include the FCC Form 159 generated by COALS (pre-filled with the transaction confirmation number) and completed with the necessary additional payment information to allow the Commission to verify that payment was made. Manual payments must be received no later than ten (10) days after receipt of the application or filing in COALS or the application or filing will be dismissed.

■ 6. Add subpart M to read as follows:

Subpart M—Cable Operations and Licensing System (COALS)

Sec.
1.1701 Purpose.
1.1702 Scope.
1.1703 Definitions.
1.1704 Station files.
1.1705 Forms; electronic and manual filing.
1.1706 Content of filings.
1.1707 Acceptance of filings.

§ 1.1701 Purpose.

To provide electronic filing of applications, notifications, registration statements, reports, and related documents in the Multichannel Video and Cable Television Services and the Cable Television Relay Services.

§ 1.1702 Scope.

This subpart applies to filings required by §§ 76.403, 76.1610, 76.1801, 76.1803, & 76.1804, and 78.11 through 78.36 of this chapter.

§ 1.1703 Definitions.

For purposes of this subpart, the following definitions apply:

(a) *Application.* A request on Form 327 for a station license as defined in Section 3(b) of the Communications Act, completed in accordance with § 78.15 and signed in accordance with § 78.16 of this chapter, or a similar request to amend a pending application or to modify or renew an authorization. The term also encompasses requests to assign rights granted by the authorization or to transfer control of entities holding authorizations.

(b) *Authorization.* A written instrument issued by the FCC conveying authority to operate, for a specified period, a station in the Cable Television Relay Service. In addition, this term includes authority conveyed by operation of rule upon filing notification of aeronautical frequency usage by MVPDs or registration statements by cable operators.

(c) *Cable Operations And Licensing System (COALS).* The consolidated database, application filing system, and processing system for Multichannel Video and Cable Television Services (MVCTS) and the Cable Television Relay Service (CARS). COALS supports electronic filing of all applications, notifications, registrations, reports, and related documents by applicants and licensees in the MVCTS and CARS, and provides public access to licensing information.

(d) *Cable Television Relay Service (CARS).* All services authorized under part 78 of this title.

(e) *Filings.* Any application, notification, registration statement, or report in plain text or, when as prescribed, on FCC Forms 320, 321, 322, 324, 325, or 327, whether filed in paper form or electronically.

(f) *Multichannel Video and Cable Television Services (MVCTS).* All services authorized or operated in accordance with part 76 of this title.

(g) *Receipt date.* The date an electronic or paper application is received at the appropriate location at the Commission or the lock box bank. Major amendments to pending applications as defined in § 78.109 of this chapter, will result in the assignment of a new receipt date.

(h) *Signed.* For manually filed applications only, an original hand-written signature. For electronically filed applications only, an electronic signature. An electronic signature shall consist of the name of the applicant transmitted electronically via COALS and entered on the filing as a signature.

§ 1.1704 Station files.

Applications, notifications, correspondence, electronic filings and other material, and copies of authorizations, comprising technical, legal, and administrative data relating to each system in the Multichannel Video and Cable Television Services (MVCTS) and the Cable Television Relay Service (CARS) are maintained by the Commission in COALS and the Public Reference Room. These files constitute the official records for these stations and supersede any other records, database or lists from the Commission or other sources.

§ 1.1705 Forms; electronic and manual filing.

(a) *Application forms.* Operators in the Multichannel Video and Cable Television Services (MVCTS) and applicants and licensees the Cable Television Relay Service (CARS) shall use the following forms and associated schedules:

(1) *FCC Form 320, Basic Signal Leakage Performance Report.* FCC Form 320 is used by MVPDs to report compliance with the basic signal leakage performance criteria.

(2) *FCC Form 321, Aeronautical Frequency Notification.* FCC Form 321 is used by MVPDs to notify the Commission prior to operating channels in the aeronautical frequency bands.

(3) *FCC Form 322, Cable Community Registration.* FCC Form 322 is used by cable system operators to commence operation for each community unit.

(4) *FCC Form 324, Operator, Address, and Operational Information Changes.*

FCC Form 324 is used by cable operators to notify the Commission of changes in administrative data about the operator and operational status changes.

(5) *FCC Form 325, Cable Television System Report.* FCC Form 325 is used by cable operators to report general information and signal and frequency distribution data.

(6) *FCC Form 327, Application for Cable Television Relay Service Station License.* FCC Form 327 and associated schedules is used to apply for initial authorizations, modifications to existing authorizations, amendments to pending applications, and renewals of station authorizations. FCC Form 327 is also used to apply for Commission consent to assignments of existing CARS authorizations and to apply for Commission consent to the transfer of control of entities holding CARS authorizations.

(b) *Electronic filing.* Six months after the Commission announces their availability for electronic filing, all applications and other filings using FCC Forms 320, 321, 322, 324, 325, and 327 and their respective associated schedules must be filed electronically in accordance with the electronic filing instructions provided by COALS.

(1) There will be two ways for parties to electronically file applications with the Commission: batch and interactive.

(i) *Batch filing.* Batch filing involves data transmission in a single action. Batch filers will follow a set Commission format for entering data. Batch filers will then send, via file transfer protocol, batches of data to the Commission for compiling. COALS will compile such filings overnight and respond the next business day with a return or dismissal of any defective filings. Thus, batch filers will not receive immediate correction from the system as they enter the information.

(ii) *Interactive filing.* Interactive filing involves data transmission with screen-by-screen prompting from the Commission's COALS system. Interactive filers will receive prompts from the system identifying data entries outside the acceptable ranges of data for the individual fields at the time the data entry is made.

(2) Attachments to applications must be uploaded along with the electronically filed application whenever possible.

(3) Any associated documents submitted with an application must be uploaded as attachments to the application whenever possible. The attachment should be uploaded via COALS in Adobe Acrobat Portable Document Format (PDF) whenever possible.

(c) *Manual filing.* (1) Forms 320, 321, 322, 324, 325, and 327 may be filed manually.

(2) Manual filings must be submitted to the Commission at the appropriate address with the appropriate filing fee. The addresses for filing and the fee amounts for particular applications are listed in subpart G of this part, and in the appropriate fee filing guide for each service available from the Commission's Forms Distribution Center by calling 1–800–418–FORM (3676). The form may be downloaded from the Commission's Web site: *http://www.fcc.gov.*

(3) Manual filings requiring fees as set forth at subpart G, of this part must be filed in accordance with § 0.401(b) of this chapter.

(4) Manual filings that do not require fees must be addressed and sent to the Media Bureau, Federal Communications Commission, 445 12th Street, SW., Washington, DC 20554.

(5) FCC forms may be reproduced and the copies used in accordance with the provisions of § 0.409 of this chapter.

(d) *Applications requiring prior coordination.* Parties filing applications that require frequency coordination shall, prior to filing, complete all applicable frequency coordination requirements in § 78.36 of this chapter.

§ 1.1706 Content of filings.

(a) *General.* Filings must contain all information requested on the applicable form and any additional information required by the rules in this title and any rules pertaining to the specific service for which the filing is made.

(b) *Antenna locations.* Applications for CARS stations and aeronautical frequency usage notifications must describe each transmitting antenna site or center of the cable system, respectively, by its geographical coordinates. Geographical coordinates must be specified in degrees, minutes, and seconds to the nearest tenth of a second of latitude and longitude. Submissions must provide such data using the NAD83 datum.

(c) *Antenna structure registration.* Owners of certain antenna structures must notify the Federal Aviation Administration and register with the Commission as required by Part 17 of this chapter. Applications proposing the use of one or more new or existing antenna structures must contain the FCC Antenna Registration Number(s) of each structure for which registration is required. If registration is not required, the applicant must provide information in its application sufficient for the Commission to verify this fact.

(d) *Environmental concerns.* Each applicant is required to indicate at the time its application is filed whether a Commission grant of the application may have a significant environmental effect, as defined by § 1.1307. If yes, an Environmental Assessment, required by § 1.1311, must be filed with the application and environmental review by the Commission must be completed prior to construction.

(e) *International coordination.* Channel assignments and usage under part 78 are subject to the applicable provisions and requirements of treaties and other international agreements between the United States government and the governments of Canada and Mexico.

(f) *Taxpayer Identification Number (TINs).* All filers are required to provide their Taxpayer Identification Numbers (TINS) (as defined in 26 U.S.C. 6109) to the Commission, pursuant to the Debt Collection Improvement Act of 1996 (DCIA). Under the DCIA, the FCC may use an applicant or licensee's TIN for purposes of collecting and reporting to the Department of the Treasury any delinquent amounts arising out of such person's relationship with the Government.

§ 1.1707 Acceptance of filings.

Regardless of filing method, all submissions with an insufficient fee, grossly deficient or inaccurate information, or those without a valid signature will be dismissed immediately. For any submission that is found subsequently to have minimally deficient or inaccurate information, we will notify the filer of the defect. We will allow 15 days from the date of this notification for correction or amendment of the submission if the amendment is minor. If the applicant files a timely corrected application, it will ordinarily be processed as a minor amendment in accordance with the Commission's rules. Thus it will have no effect on the initial filing date of the application or the applicant's filing priority. If, however, the amendment made by the applicant is not a simple correction, but constitutes a major amendment to the application, it will be governed by the rules and procedures applicable to major amendments, that is, it will be treated as a new application with a new filing date and new fees must be paid by the applicant. Finally, if the applicant fails to submit an amended application within the period specified in the notification, the application will be subject to dismissal for failure to prosecute.

PART 76—MULTICHANNEL VIDEO AND CABLE TELEVISION SERVICE

■ 7. The authority citation for part 76 continues to read as follows:

Authority: 47 U.S.C. 151, 152, 153, 154, 301, 302, 303, 303a, 307, 308, 309, 312, 315, 317, 325, 503, 521, 522, 531, 532, 533, 534, 535, 536, 537, 543, 544, 544a, 545, 548, 549, 552, 554, 556, 558, 560, 561, 571, 572, 573.

■ 8. Amend § 76.403 by revising the second sentence to read as follows:

§ 76.403 Cable television system reports.

* * * These forms shall be completed and filed with (returned to) the Commission within 60 days after the Commission notifies the operator that the form is due. * * *.

■ 9. Revise § 76.620 to read as follows:

§ 76.620 Non-cable multichannel video programming distributors (MVPDs).

Sections 76.605(a)(12), 76.610, 76.611, 76.612, 76.614, 76.1803, 76.1804, 76.616, and 76.617 shall apply to all non-cable MVPDs. Exception: Non-cable MVPDs serving less than 1000 subscribers and less than 1000 units do not have to comply with § 76.1804(g).

■ 10. Amend § 76.1610 by revising the introductory text and paragraphs (a), (c), and (d) and adding paragraph (g) to read as follows:

§ 76.1610 Change of operational information.

The Operator shall inform the Commission on FCC Form 324 whenever there is a change of cable television system operator; change of legal name, change of the operator's mailing address or FCC Registration Number (FRN); or change in the operational status of a cable television system. Notification must be done within 30 days from the date the change occurs and must include the following information, as appropriate:

(a) The legal name of the operator and whether the operator is an individual, private association, partnership, corporation, or government entity. See § 76.5(cc). If the operator is a partnership, the legal name of the partner responsible for communications with the Commission shall be supplied;

* * * * * *

(c) The physical address, including zip code, and e-mail address, if applicable, to which all communications are to be directed;

(d) The nature of the operational status change (*e.g.*, operation terminated, merged with another system, inactive, deleted, etc.);

* * * * * *

(g) The FCC Registration Number (FRN).

■ 11. Revise § 76.1801 to read as follows:

§ 76.1801 Registration statement.

(a) A system community unit shall be authorized to commence operation only after filing with the Commission the following information on FCC Form 322.

(1) The legal name of the operator, entity identification or social security number, and whether the operator is an individual, private association, partnership, or corporation. If the operator is a partnership, the legal name of the partner responsible for communications with the Commission shall be supplied;

(2) The assumed name (if any) used for doing business in the community;

(3) The mailing address, including zip code; e-mail address, if applicable; and telephone number to which communications are to be directed;

(4) The month and year the system began service to subscribers;

(5) The name of the community or area served and the county in which it is located;

(6) The television broadcast signals to be carried which previously have not been certified or registered; and

(7) The FCC Registration Number (FRN).

(b) Registration statements, FCC Form 322, shall be signed by the operator; by one of the partners, if the operator is a partnership; by an officer, if the operator is a corporation; by a member who is an officer, if the operator is an unincorporated association; or by any duly authorized employee of the operator.

(c) Registration statements, FCC Form 322, may be signed by the operator's attorney in case of the operator's physical disability or of his absence from the United States. The attorney shall in that event separately set forth the reasons why the registration statement was not signed by the operator. In addition, if any matter is stated on the basis of the attorney's belief only (rather than the attorney's knowledge), the attorney shall separately set forth the reasons for believing that such statements are true.

■ 12. Section § 76.1803 is revised to read as follows:

§ 76.1803 Signal Leakage Monitoring.

MVPDs subject to § 76.611 must submit the results of ground based measurements derived in accordance with § 76.611(a)(1) or airspace measurements derived in accordance with § 76.611(a)(2), including a description of the method by which compliance with basic signal leakage criteria is achieved and the method of calibrating the measurement equipment. This information shall be provided to the Commission each calendar year via FCC Form 320.

■ 13. Section 76.1804 is revised to read as follows:

§ 76.1804 Aeronautical frequencies: leakage monitoring (CLI).

An MVPD shall notify the Commission before transmitting any carrier or other signal component with an average power level across a 25 kHz bandwidth in any 160 microsecond time period equal to or greater than 10^{-4} watts at any point in the cable distribution system on any new frequency or frequencies in the aeronautical radio frequency bands (108–137 and 225–400 MHz). The notification shall be made on FCC Form 321. Such notification shall include:

(a) Legal name and local address of the MVPD;

(b) The names and FCC identifiers (*e.g.*, CA0001) of the system communities affected, for a cable system, and the name and FCC identifier (*e.g.*, CAB901), for other MVPDs;

(c) The names and telephone numbers of local system officials who are responsible for compliance with §§ 76.610 through 76.616 and § 76.1803;

(d) Carrier frequency, tolerance, and type of modulation of all carriers in the aeronautical bands at any location in the cable distribution system and the maximum of those average powers measured over a 2.5 kHz bandwidth as described in the introductory paragraph to this rule section;

(e) The geographical coordinates (in NAD83) of a point near the center of the system, together with the distance (in kilometers) from the designated point to the most remote point of the plant, existing or planned, that defines a circle enclosing the entire plant;

(f) Certification that the monitoring procedure used is in compliance with § 76.614 or description of the routine monitoring procedure to be used; and

(g) For MVPDs subject to § 76.611, the cumulative signal leakage index derived under § 76.611(a)(1) or the results of airspace measurements derived under § 76.611(a)(2), including a description of the method by which compliance with the basic signal leakage criteria is achieved and the method of calibrating the measurement equipment.

(h) Aeronautical Frequency Notifications, FCC Form 321, shall be personally signed either electronically or manually by the operator; by one of the partners, if the operator is a partnership; by an officer, if the operator is a corporation; by a member who is an

officer, if the operator is an unincorporated association; or by any duly authorized employee of the operator.

(i) Aeronautical Frequency Notifications, FCC Form 321, may be signed by the operator's attorney in case of the operator's physical disability or of his absence from the United States. The attorney shall in that event separately set forth the reasons why the FCC Form 321 was not signed by the operator. In addition, if any matter is stated on the basis of the attorney's belief only (rather than the attorney's knowledge), the attorney shall separately set forth the reasons for believing that such statements are true.

(j) The FCC Registration Number (FRN).

PART 78—CABLE TELEVISION RELAY SERVICE

■ 14. The authority citation for Part 78 continues to read as follows:

Authority: Secs. 2, 3, 4, 301, 303, 307, 308, 309, 48 Stat., as amended 1064, 1065, 1066, 1081, 1082, 1083, 1084, 1085; 47 U.S.C. 152, 153, 154, 301, 303, 307, 308, 309.

■ 15. Revise § 78.17 to read as follows:

§ 78.17 Amendment of applications.

Any application may be amended as a matter of right prior to the adoption date of any final action taken by the Commission with respect to the application. If a petition to deny has been filed, the amendment shall be served on the petitioner.

■ 16. Amend § 78.20 by revising the first sentence of paragraph (a) to read as follows:

§ 78.20 Acceptance of applications; public notice.

(a) Applications which are tendered for filing are dated upon receipt and then forwarded to the Media Bureau where an examination is made to ascertain whether the applications are complete. * * *

* * * * *

■ 17. In § 78.35 add paragraphs (d) and (e) to read as follows:

§ 78.35 Assignment or transfer of control.

* * * * *

(d) If an assignment or transfer of control involves a substantial change of interest, and requires prior FCC approval, the CARS licensee is required to file FCC Form 327 with the Commission.

(e) Licensees are required to notify the Commission of consummation of an approved transfer or assignment. The assignee or transferee is responsible for providing this notification, including the date the transaction was consummated. The transaction must be consummated and notification provided to the Commission within 60 days of public notice of approval, and notification of consummation must occur no later than 30 days after actual consummation, unless a request for an extension of time to consummate is filed.

■ 18. Revise § 78.109 to read as follows:

§ 78.109 Major and minor modifications to stations.

(a) Amendments to applications and modifications to stations are classified as major or minor. A major modification requires a formal application. A major amendment to an application is treated as a new application.

(b) Major modifications to a station or amendments to an application include, but are not limited to:

(1) Any increase in bandwidth;

(2) Any change in the transmitting antenna system of a station, other than a CARS pickup station, including the direction of the main radiation lobe, directive pattern, antenna gain or transmission line, antenna height or location;

(3) Any change in the type of modulation;

(4) Any change in the location of a station transmitter, other than a CARS pickup station transmitter, except a move within the same building or upon the tower or mast or a change in the area of operation of a CARS pickup station;

(5) Any change in frequency assignment, including polarization;

(6) Any increase in authorized operating power;

(7) Any substantial change in ownership or control;

(8) Any addition or change in frequency, excluding removing a frequency;

(9) Any modification or amendment requiring an environmental assessment (as governed by §§ 1.1301 through 1319 of this chapter, including changes affecting historic preservation under § 1.1307(a)(4) of this chapter and 16 U.S.C. 470 (National Historic Preservation Act));

(10) Any request requiring frequency coordination; or

(11) Any modification or amendment requiring notification to the Federal Aviation Administration as defined in 47 CFR 17, subpart B.

(c) Minor changes may be made at the discretion of the licensee, provided proper notice is given to the Commission within 30 days of implementing the change and provided further, that the changes are appropriately reflected in the next application for renewal of the license for the station.

(d) For applications and modifications, the following changes are considered minor:

(1) Any name change not involving change in ownership or control of the license;

(2) Any change to administrative information, *e.g.*, address, telephone number, or contact person;

(3) Any change in ownership that does not affect the identity or controlling interest of the licensee;

(4) Lowering power;

(5) Removing one or more channels; or

(6) Deleting a path.

[FR Doc. 03–12132 Filed 5–16–03; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 660

[Docket No. 030430108–3108–01; I.D. 042503A]

Fisheries Off West Coast States and in the Western Pacific; West Coast Salmon Fisheries; 2003 Management Measures; Correction

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Final rule; request for comments; correction.

SUMMARY: NMFS announces a correction to the 2003 management measures for the West Coast salmon fisheries, which were published on May 6, 2003. An error in the northern boundary for the Commercial Season from "Pigeon Point, CA to the U.S.-Mexico Border" is corrected to the northern boundary of Point Arena, CA.

DATES: Effective from 0001 hours Pacific Daylight Time, May 1, 2003, until the effective date of the 2004 management measures, as published in the **Federal Register**. Comments must be received by May 21, 2003.

FOR FURTHER INFORMATION CONTACT: William L. Robinson at 206–526–6140, or Svein Fougner at 562–980–4040.

SUPPLEMENTARY INFORMATION: The 2003 management measures for ocean salmon fisheries at 68 FR 23913, May 6, 2003 [FR Doc. 03–11084 Filed 5–1–03; 10:53 am] announced the northern boundary for the commercial season from "Pigeon Point, CA to the U.S.-Mexico Border" incorrectly. The northern boundary of the area should be Point Arena, CA, as indicated in the Pacific Fishery Management Council's document "Preseason Report III Analysis of Council-Adopted Management Measures for 2003 Ocean Salmon Fisheries."

Correction

Accordingly, the final rule, on May 6, 2003, at 68 FR 23913 is corrected as follows:

On page 23917, column 3, the heading of the third paragraph (starting with the first full paragraph), is corrected from, "Pigeon Point, CA to U.S.-Mexico Border" to read "Point Arena, CA to U.S.-Mexico Border."

Authority: 16 U.S.C. *et seq.*

Dated: May 13, 2002.

John Oliver,

Deputy Assistant Administrator for Operations, National Marine Fisheries Service.

[FR Doc. 03–12467 Filed 5–16–03; 8:45 am]

BILLING CODE 3510–22–S

Proposed Rules

Federal Register
Vol. 68, No. 96
Monday, May 19, 2003

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 3

[Docket No. FAA–2003–15062; Notice No. 03–07]

RIN 2120–AG08

False and Misleading Statements Regarding Aircraft Products, Parts, and Materials; Correction

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Proposed rule; correction.

SUMMARY: This document makes a correction to the notice of proposed rulemaking (NPRM) published in the **Federal Register** on May 5, 2003 (68 FR 23808). The NPRM proposed additional rules that would prohibit certain false or misleading statements regarding type certificated products, parts, and materials that may be used on type certificated products. The proposal would also allow increased inspection by the FAA of records and parts regarding the quality of aircraft parts.

FOR FURTHER INFORMATION CONTACT: Beverly Sharkey, (703) 668–3720; e-mail: *beverly.j.sharkey@faa.gov.*

Correction

In FR Doc. 03–10946 published on May 5, 2003, on page 23808, in the second column, correct the **FOR FURTHER INFORMATION CONTACT** paragraph to read as follows:

FOR FURTHER INFORMATION CONTACT: Beverly Sharkey, Suspected Unapproved Parts Program Office (AVR–20), Federal Aviation Administration, 13873 Park Center Rd., Suite 165, Herndon, VA 20171; telephone (703) 668–3720, facsimile (703) 481–3002, e-mail *beverly.j.sharkey@faa.gov.*

Issued in Washington, DC, on May 12, 2003.

Donald P. Byrne,

Assistant Chief Counsel for Regulations.

[FR Doc. 03–12383 Filed 5–16–03; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2003–SW–04–AD]

RIN 2120–AA64

Airworthiness Directives; MD Helicopters Inc., Model 600N Helicopters

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes adopting a new airworthiness directive (AD) for MD Helicopters Inc. Model 600N helicopters. The AD would require reducing the life limit of the main rotor drive shaft (drive shaft) and changing the life limit shown on the component history card or equivalent record. This proposal is prompted by the review of final fatigue test data, which indicates that the life limit of the drive shaft should be reduced by 2000 hours time-in-service (TIS). The actions specified by the proposed AD are intended to prevent failure of the drive shaft, loss of drive to the main rotor system, and subsequent loss of control of the helicopter.

DATES: Comments must be received on or before July 18, 2003.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Office of the Regional Counsel, Southwest Region, Attention: Rules Docket No. 2003–SW–04–AD, 2601 Meacham Blvd., Room 663, Fort Worth, Texas 76137. You may also send comments electronically to the Rules Docket at the following address: *9-asw-adcomments@faa.gov.* Comments may be inspected at the Office of the Regional Counsel between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Guy Dalla Riva, Aviation Safety Engineer, FAA, Los Angeles Aircraft Certification Office, Propulsion Branch, 3960 Paramount Blvd., Lakewood, California 90712, telephone (562) 627–5248, fax (562) 627–5210.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments will be considered before taking action on the proposed rule. The proposals contained in this document may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their mailed comments submitted in response to this proposal must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. 2003–SW–04–AD." The postcard will be date stamped and returned to the commenter.

Discussion

This document proposes adopting a new AD for MD Helicopters Inc. Model 600N helicopters. The AD would require reducing the life limit of the drive shaft from 16,000 hours TIS to 14,000 hours TIS and revising the component history card or an equivalent record to reflect the reduced life limit. This proposal is prompted by the review of final fatigue test data, which indicates that the life limit of the drive shaft should be reduced to prevent parts from remaining in service beyond their fatigue life. This condition, if not corrected, could result in failure of the drive shaft, loss of drive to the main rotor system, and subsequent loss of control of the helicopter.

The FAA has reviewed MD Helicopters Inc. Service Bulletin SB600N–033, dated December 13, 2001 (ASB), which specifies reducing the life limit of the drive shaft at the next scheduled maintenance or within 1 year, whichever occurs first.

This unsafe condition created by this reduced fatigue life limit to a critical component is likely to exist or develop on other helicopters of the same type design. Therefore, the proposed AD would require within 100 hours TIS reducing the life limit for the drive shaft from 16,000 hours TIS to 14,000 hours TIS and reflecting the reduced life limit on the component history card or an equivalent record.

The FAA estimates that this proposed AD would affect 46 helicopters of U.S. registry, that it would take approximately ,5 work hour per helicopter to update the records, and that the average labor rate is $60 per work hour. Based on these figures, the total cost impact of the proposed AD on U.S. operators is estimated to be $1,380.

The regulations proposed herein would not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this proposal would not have federalism implications under Executive Order 13132.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding a new airworthiness directive to read as follows:

MD Helicopters Inc.: Docket No. 2003–SW–04–AD.

Applicability: Model 600N, with main rotor drive shaft assembly (drive shaft), part number (P/N) 600N5510–1, installed, certificated in any category.

Note 1: This AD applies to each helicopter identified in the preceding applicability provision, regardless of whether it has been otherwise modified, altered, or repaired in the area subject to the requirements of this AD. For helicopters that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (c) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required within 100 hours time-in-service (TIS), unless accomplished previously.

To prevent failure of the drive shaft, loss of drive to the main rotor hub, and subsequent loss of control of the helicopter, accomplish the following:

(a) Revise the component history card or equivalent record for drive shaft, P/N 600N5510–1, by changing the life limit from 16,000 to 14,000 hours TIS. Before further flight, replace any drive shaft that has 14,000 or more hours TIS with an airworthy drive shaft.

(b) This AD revises the Limitations section of the maintenance manual by reducing the life limit of the drive shaft, P/N 600N5510–1, to 14,000 hours TIS.

(c) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Los Angeles Aircraft Certification Office (LAACO), FAA. Operators shall submit their requests through an FAA Principal Maintenance Inspector, who may concur or comment and then send it to the Manager, LAACO.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the LAACO.

(d) Special flight permits may be issued in accordance with 14 CFR 21.197 and 21.199 to operate the helicopter to a location where the requirements of this AD can be accomplished.

Issued in Fort Worth, Texas, on May 12, 2003.

David A. Downey,

Manager, Rotorcraft Directorate, Aircraft Certification Service.

[FR Doc. 03–12401 Filed 5–16–03; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2003–14656; Airspace Docket No. 03–ACE–25]

Proposed Establishment of Class E Airspace; Brookfield, MO

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking; correction.

SUMMARY: This action corrects a notice of proposed rulemaking that was published in the **Federal Register** on Monday, May 5, 2003, (68 FR 23622) (FR Doc. 03–11031). It corrects an error in the legal description of the proposed Brookfield, MO Class E airspace.

DATES: Comments for inclusion in the Rules Docket must be received on or before June 10, 2003.

FOR FURTHER INFORMATION CONTACT: Brenda Mumper, Air Traffic Division, Airspace Branch, ACE–520A, DOT Regional Headquarters Building, Federal Aviation Administration, 901 Locust, Kansas City, MO 64106; telephone: (816) 329–2524.

SUPPLEMENTARY INFORMATION:

History

Federal Register Document 03–11031 published on Monday, May 5, 2003, (68 FR 23622) proposed to establish Class E airspace at Brookfield, MO. The proposed airspace was to protect aircraft executing newly established instrument approach procedures at North Central Missouri Regional Airport, Brookfield, MO. The format of the legal description of the Brookfield, MO Class E airspace area was not in accordance with FAA Order 74000.2E, PROCEDURES FOR HANDLING AIRSPACE MATTERS and was published incorrently.

Accordingly, pursuant to the authority delegated to me, the Brookfield, MO Class E airspace, as published in the **Federal Register** on Monday, May 5, 2003, (68 FR 23622), [FR Doc. 03–11031], is corrected as follows:

§71.1 [Corrected]

On page 23623, Column 3, second paragraph from the bottom, change "North Central Missouri Regional Airport, MO" to read "Brookfield, North Central Missouri Regional Airport, MO."

Issued in Kansas City, MO, on May 8, 2003.

David W. Hope,

Acting Manager, Air Traffic Division, Central Region.

[FR Doc. 03–12378 Filed 5–16–03; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Parts 111 and 112

[Docket No. 96N–0417]

RIN 0910–AB88

Current Good Manufacturing Practice in Manufacturing, Packing, or Holding Dietary Ingredients and Dietary Supplements

AGENCY: Food and Drug Administration, HHS.

ACTION: Proposed rule; extension of comment period.

SUMMARY: The Food and Drug Administration (FDA) is extending to August 11, 2003, the comment period for a proposed rule published in the **Federal Register** of March 13, 2003. The proposed rule would establish the minimum current good manufacturing practices (CGMPs) necessary to ensure that, if you engage in activities related to manufacturing, packaging, or holding dietary ingredients or dietary supplements, you do so in a manner that will not adulterate and misbrand such dietary ingredients or dietary supplements. This action is being taken in response to requests for more time to submit comments to FDA.

DATES: Submit written or electronic comments on the proposed rule by August 11, 2003.

ADDRESSES: Submit written comments to the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. Submit electronic comments to *http://www.fda.gov/dockets/ecomments.*

FOR FURTHER INFORMATION CONTACT: Karen Strauss, Center for Food Safety and Applied Nutrition (HFS–821), Food and Drug Administration, 5100 Paint Branch Pkwy., College Park, MD 02740–3835, 301–436–2375..

SUPPLEMENTARY INFORMATION:

I. Background

In the **Federal Register** of March 13, 2003 (68 FR 12158), FDA published a proposed rule that, if finalized, would establish the minimum CGMPs necessary to ensure that, if you engage in activities related to manufacturing, packaging, or holding dietary ingredients or dietary supplements, you do so in a manner that will not adulterate and misbrand such dietary ingredients or dietary supplements. The proposed provisions would require manufacturers to evaluate the identity, purity, quality, strength, and composition of the dietary ingredients and dietary supplements.

In the March 13, 2003, proposed rule, FDA announced that the time period for public comment would be 90 days from the date of the publication in the **Federal Register**. On April 21, 2003, FDA received a request to allow an additional 60 days for interested persons to comment. In addition, on April 25, 2003, FDA received a request to allow an additional 90 days for interested persons to comment. The requesters assert that the time period of 90 days is insufficient to respond fully to FDA's multiple requests for comments and analyses and to enable all potential respondents adequate time to conduct the research necessary to provide complete scientific responses to questions posed in the proposed rule.

FDA believes that an extension of the comment period is appropriate, given the variety of issues raised by the proposed rule. However, because the agency wants to move forward on finalizing the rule as quickly as possible, FDA is extending the comment period only for an additional 60 days, until August 11, 2003. This extension will provide the public with a total of 150 days to submit comments. FDA does not intend to grant any additional time for extensions of the comment period.

II. Comments

Interested persons may submit to the Dockets Management Branch (see **ADDRESSES**) written or electronic comments regarding the proposal. Submit a single copy of electronic comments or two paper copies of any mailed comments, except that individuals may submit one paper copy. Comments are to be identified with the docket numbers found in brackets in the heading of this document. Received comments may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

Dated: May 10, 2003.

Jeffrey Shuren,

Assistant Commissioner for Policy.

[FR Doc. 03–12366 Filed 5–16–03; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Parts 315 and 601

[Docket No. 98D–0785]

Draft Guidances for Industry on Medical Imaging Drug and Biological Products; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of three draft guidances for industry on "Developing Medical Imaging Drug and Biological Products." These draft guidances are intended to assist developers of medical imaging drug and biological products (medical imaging agents) in planning and coordinating their clinical investigations and preparing and submitting investigational new drug applications (INDs), new drug applications (NDAs), biologics license applications (BLAs), abbreviated new drug applications (ANDAs), and supplements to NDAs or BLAs. The draft guidances provide information on how FDA will interpret and apply certain provisions in the agency's regulations on in vivo radiopharmaceuticals used for diagnosis and monitoring of diseases and conditions.

DATES: Submit written or electronic comments on the draft guidances by June 18, 2003. General comments on agency guidance documents are welcome at any time.

ADDRESSES: Submit written requests for single copies of the draft guidances to the Division of Drug Information (HFD–240), Center for Drug Evaluation and Research, Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, or the Office of Communications, Training, and Manufacturers Assistance (HFM–40), Center for Biologics Evaluation and Research, 1401 Rockville Pike, Rockville, MD 20852–1448. Send one self-addressed adhesive label to assist either office in processing your request. Submit written comments on the draft guidances to the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. Submit electronic comments to *http://www.fda.gov/dockets/ecomments.* See the **SUPPLEMENTARY INFORMATION** section for electronic access to the guidances.

FOR FURTHER INFORMATION CONTACT: Kyong Kang, Center for Drug Evaluation and Research (HFD–160), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–7510, or George Q. Mills, Center for Biologics Evaluation and Research (HFM–573), Food and Drug Administration, 1401 Rockville Pike, Rockville, MD 20852–1448, 301–827–5097.

SUPPLEMENTARY INFORMATION:

I. Background

In the **Federal Register** of October 14, 1998 (63 FR 55067), FDA published a notice announcing the availability of a draft guidance for industry entitled "Developing Medical Imaging Drugs and Biologics" (the medical imaging draft guidance). In a document published in the **Federal Register** of January 5, 1999 (64 FR 457), FDA reopened the comment period on the medical imaging draft guidance until February 12, 1999. In a document published in the **Federal Register** of February 16, 1999 (64 FR 7561), FDA extended the comment period until April 14, 1999.

FDA received numerous written comments on the medical imaging draft guidance. In addition, the agency held public meetings on January 25 and March 26, 1999, to discuss various issues concerning the medical imaging draft guidance. In the **Federal Register** of July 31, 2000 (65 FR 46674), the agency published a notice announcing the availability of a revised draft guidance.

After considering the comments that FDA received on the revised draft guidance, the agency has decided to issue the guidance again as a draft for comment. The agency has divided the draft guidance into three parts to make it more user-friendly. These three draft guidances are intended to assist developers of medical imaging agents in planning and coordinating their clinical investigations and preparing and submitting INDs, NDAs, BLAs, ANDAs, and supplements to NDAs or BLAs.

Part 1 of "Medical Imaging Drug and Biological Products," entitled "Conducting Safety Assessments," discusses how to conduct safety assessments of medical imaging agents. Part 2, entitled "Clinical Indications," discusses how clinical development programs for medical imaging agents can be tailored to reflect the use of these agents for diagnosis and monitoring of diseases and conditions. Part 3, entitled "Design, Analysis, and Interpretation of Clinical Studies," discusses how to design a clinical development program for a medical imaging agent, including selecting subjects, and how to acquire, analyze, and interpret medical imaging data. Collectively, once finalized these draft guidances will provide information on how FDA will interpret and apply certain provisions in the final rule, published in the **Federal Register** of May 17, 1999 (64 FR 26657), on the evaluation and approval of in vivo radiopharmaceuticals used in diagnosis and monitoring.

These draft guidances are being issued consistent with FDA's good guidance practices regulation (21 CFR 10.115). The guidances represent the agency's current thinking on different aspects of the development of medical imaging agents. They do not create or confer any rights for or on any person and do not operate to bind FDA or the public. An alternative approach may be used if such approach satisfies the requirements of the applicable statutes and regulations.

II. Comments

Interested persons may submit to the Dockets Management Branch (see **ADDRESSES**) written or electronic comments on the draft guidances. Submit a single copy of electronic comments or two paper copies of any mailed comments, except that individuals may submit one paper copy. Comments are to be identified with the docket number found in brackets in the heading of this document. The guidances and received comments may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

III. Electronic Access

Persons with access to the Internet may obtain the documents at *http://www.fda.gov/cder/guidance/index.htm, http://www.fda.gov/cber/guidelines.htm,* or *http://www.fda.gov/ohrms/dockets/default.htm.*

IV. The Paperwork Reduction Act of 1995

These guidances contain information collection provisions that are subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520). The guidances would not impose any additional reporting burden because information on the safety and effectiveness of medical imaging agents in applications for marketing approval and INDs is already required by existing regulations. In fact, clarification by the guidances of FDA's standards for evaluation of medical imaging agents is expected to reduce the overall burden of information collection. FDA received no comments on the analysis of information collection burdens stated in the notice of availability of the original draft guidance published in the **Federal Register** on October 14, 1998 (63 FR 55067). In the **Federal Register** of July 31, 2000 (65 FR 46674), the agency requested comments on the revised proposed collections of information. No comments were received.

Dated: May 10, 2003.

Jeffrey Shuren,

Assistant Commissioner for Policy.

[FR Doc. 03–12370 Filed 5–16–03; 8:45 am]

BILLING CODE 4160–01–S

Notices

Federal Register
Vol. 68, No. 96
Monday, May 19, 2003

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

[Docket # FV–03–335]

United States Standards for Grades of Frozen Onions

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Reopening and extension of the comment period.

SUMMARY: Notice is hereby given that the comment period on the proposed new United States Standard for Grades of Frozen Onions is reopened and extended.

DATES: Comments may be submitted on or before June 12, 2003.

ADDRESSES: Written comments may be submitted to: Chere L. Shorter, Processed Products Branch, Fruit and Vegetable Programs, Agricultural Marketing Service, U.S. Department of Agriculture, STOP 0247, 1400 Independence Avenue, SW., Washington, D.C. 20250–0247; fax (202) 690–1087; or e-mail *chere.shorter@usda.gov*. Comments should reference the date and page of this issue of the **Federal Register**. All comments received will be made available for public inspection at the address listed above during regular business hours and on the Internet. The draft of the United States Standards for Grades of Frozen Onions is available either through the address cited above or by accessing the AMS website on the Internet at: *www.ams.usda.gov/fv/ppb.html*. Any comments received, regarding this proposed standard will also be posted on that site.

FOR FURTHER INFORMATION CONTACT: Chere L. Shorter at (202) 720–5021 or e-mail at *chere.shorter@usda.gov*.

SUPPLEMENTARY INFORMATION: A notice was published in the **Federal Register** (on March 12, 2003, Page 11801–11802) requesting comments on a proposed United States Standard for Grades of Frozen Onions. The action would create grade standards for frozen onions that will include a description of the product, style, grades, ascertaining the grade by sample, and ascertaining the grade by lot. The proposed standard would provide a common language for trade, a means of measuring value in the marketing of frozen onions.

A major trade association, American Frozen Food Institute (AFFI) representing frozen food processors, requested that additional time be provided for interested persons to comment on the proposed standard. AFFI believes that extending the comment period will enable enough time to assemble all the comments from their members and to reach a consensus among the many processors in their membership. After reviewing the request, the Department is reopening and extending the common period in order to allow sufficient time for all interested persons to file comments. This notice provides for an additional 30 day comment period for interested parties to comment on the standards.

Dated: May 13, 2003.

Kenneth C. Clayton,

Acting Administrator, Agricultural Marketing Services.

[FR Doc. 03–12430 Filed 5–16–03; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

[Docket No. 03–056–1]

Secretary's Advisory Committee on Foreign Animal and Poultry Diseases; Meeting

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Notice of meeting.

SUMMARY: Pursuant to the Federal Advisory Committee Act (5 U.S.C. App. II), we are giving notice of a meeting of the Secretary's Advisory Committee on Foreign Animal and Poultry Diseases.

DATES: Sessions will be held from 1 p.m. to 5 p.m. on June 3, 2003, and from 8 a.m. to 5 p.m. on June 4 and 5, 2003.

ADDRESSES: The meeting will be held in the Conference Center at the USDA Center at Riverside, 4700 River Road, Riverdale, MD.

FOR FURTHER INFORMATION CONTACT: Dr. Joseph Annelli, Chief Staff Veterinarian, Emergency Programs Staff, VS, APHIS, 4700 River Road Unit 41, Riverdale, MD 20737–1231; (301) 734–8073.

SUPPLEMENTARY INFORMATION: The Secretary's Advisory Committee on Foreign Animal and Poultry Diseases (the Committee) advises the Secretary of Agriculture on actions necessary to prevent the introduction of foreign diseases of livestock and poultry into the United States. In addition, the Committee advises the Secretary on contingency planning and on maintaining a state of preparedness to deal with these diseases, if introduced.

The meeting will focus on the U.S. animal health emergency management system and the foreign animal disease situation worldwide and its relevance to the United States. The meeting will be open to the public. However, due to the time constraints, the public will not be allowed to participate in the Committee's discussions.

You may obtain an agenda for the meeting by contacting Dr. Joseph Annelli at the address listed under **FOR FURTHER INFORMATION CONTACT.**

You may file written statements on meeting topics with the Committee before or after the meeting by sending them to Dr. Joseph Annelli at the address listed under **FOR FURTHER INFORMATION CONTACT.** You may also file written comments at the time of the meeting. Please refer to Docket No. 03–056–1 when submitting your comments.

Parking and Security Procedures

Please note that a fee of $2.25 is required to enter the parking lot at the USDA Center. The machine accepts $1 bills and quarters.

Upon entering the building, visitors should inform security personnel that they are attending the Advisory Committee Meeting on Foreign Animal and Poultry Diseases. Identification is required. Visitor badges must be worn at all times while inside the building.

Done in Washington, DC, this 13th day of May 2003.

Bobby R. Acord,

Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 03–12433 Filed 5–16–03; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF AGRICULTURE

Farm Service Agency

Request for Reinstatement and Revision of a Previously Approved Information Collection

AGENCY: Farm Service Agency, USDA.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces the Farm Service Agency's (FSA) intention to request a reinstatement and revision of a previously approved collection. This information is used to support FSA in conducting business and accepting signatures on certain documents from individuals acting on behalf of others.

DATES: Comments on this notice must be received on or before July 18, 2003 to be assured of consideration.

FOR FURTHER INFORMATION CONTACT: Virgil Ireland, Agricultural Program Specialist, Emergency Preparedness and Program Branch, Production, Emergencies, and Compliance Division, FSA, at (202) 720–5103.

SUPPLEMENTARY INFORMATION:

Title: Power of Attorney (7 CFR part 718).

OMB Control Number: 0560–0190.

Type of Request: Reinstatement and revision of a previously approved information collection.

Abstract: Individuals or authorized representatives of entities wanting to appoint another to act as their attorney-in-fact in connection with certain FSA, Commodity Credit Corporation (CCC), and Risk Management Agency (RMA) programs and related actions must complete a Power of Attorney form (FSA–211). The FSA–211 serves as evidence that the grantor has appointed another to act on their behalf for certain FSA, CCC, and RMA programs and related actions, giving the appointee legal authority to enter into binding agreements on the grantor's behalf.

The FSA–211 also provides FSA, CCC, and RMA a source to verify an individual's authority to sign and act for another in the event of errors or fraud that require legal remedies. The information collected on the FSA–211 is limited to the grantor's name, signature and identification number, the grantee's name and address, and the applicable FSA, CCC, and RMA programs.

Estimate of Respondent Burden: Public reporting burden for this collection of information is estimated to average .25 hours per response.

Respondents: Individuals or authorized representatives of entities, such as corporations, wanting to appoint an attorney-in-fact to act on their behalf.

Estimated Number of Respondents: 519,653.

Estimated Number of Annual Responses per Respondent: 1.

Estimated Total Annual Burden on Respondents: 129,913.

Proposed topics for comment include: (a) Whether the collection of information is necessary for the proper performance of the functions of the USDA service center; (b) the agency's estimate of burden; (c) methods to enhance the usefulness of the information collected; or (d) ways to minimize the burden of the collection of the information on those who respond. Comments must be sent to the Desk Officer for Agriculture, Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503, and to Virgil Ireland, Agricultural Program Specialist, USDA–FSA–PECD, STOP 0517, 1400 Independence Avenue, SW., Washington, DC 20250; telephone (202) 720–5103; or fax (202) 690–3632. Copies of the information collection may be obtained from Mr. Ireland at the above address.

All responses to this notice will be summarized and included in the request for OMB approval. All comments will also become a matter of public record.

Signed at Washington, DC on May 12, 2003.

James R. Little,

Administrator, Farm Service Agency.

[FR Doc. 03–12388 Filed 5–16–03; 8:45 am]

BILLING CODE 3410–05–P

DEPARTMENT OF AGRICULTURE

Forest Service

California Coast Provincial Advisory Committee

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The California Coast Provincial Advisory Committee (PAC) will meet on June 11 and 12, 2003, in Arcata, California. The purpose of the meeting is to discus issues relating to implementing the Northwest Forest Plan (NWFP).

DATES: The meeting will be held from 1 p.m. to 5 p.m. on June 11, 2003, and from 8:30 a.m. to noon on June 12, 2003.

ADDRESSES: The meeting will be held at the Mad River Rapids Conference Room (Quality Inn), 3501 Janes Road, Arcata, CA.

FOR FURTHER INFORMATION CONTACT: Phebe Brown, Committee Coordinator, USDA, Mendocino National Forest, 825 N. Humboldt Avenue, Willows, CA 95988, (530) 934–1137; E-mail *pybrown@fs.fed.us*.

SUPPLEMENTARY INFORMATION: Agenda items to be covered include: (1) Regional Ecosystem Office (REO) update; (2) Presentation on current Forest Service issues; (3) Update on planning for a Province fire ecology/fuels treatment workshop; (4) Presentation on Survey and Manage Draft Supplemental Environmental Impact Statement and Aquatic Conservation Subcommittee comment recommendations; (5) Work on the Ground Subcommittee discussion of proposed timber harvest issue; (6) Forest Service Region 5 review of NWFP; (7) NWFP Implementation Monitoring; and (8) Public comment. The meeting is open to the public. Public input opportunity will be provided and individuals will have the opportunity to address the Committee at that time.

Dated: May 13, 2003.

James D. Fenwood,

Forest Supervisor.

[FR Doc. 03–12402 Filed 5–16–03; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Forest Service

Tehama County Resource Advisory Committee

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The Tehama County Resource Advisory Committee (RAC) will meet in Red Bluff, California. Agenda items to be covered include: (1) Introductions, (2) Approval of Minutes, (3) Public Comment, (4) Chairman Report, (5) Project Proposals/Possible Action, (6) Update on Approved Projects, (7) General Discussion, (8) Update on Financial Possibilities.

DATES: The meeting will be held on June 12, 2003 from 9 a.m. and end at approximately 12 p.m.

ADDRESSES: The meeting will be held at the Lincoln Street School, Conference Room A, 1135 Lincoln Street, Red Bluff, CA. Individuals wishing to speak or propose agenda items must send their names and proposals to Jim Giachino, DFO, 825 N. Humboldt Ave., Willows, CA 95988.

FOR FURTHER INFORMATION CONTACT: Bobbin Gaddini, Committee Coordinator, USDA, Mendocino

National Forest, Grindstone Ranger District, PO Box 164, Elk Creek, CA 95939. (530) 968–5329; E–Mail *ggaddini@fs.fed.us.*

SUPPLEMENTARY INFORMATION: The meeting is open to the public. Committee discussion is limited to Forest Service staff and Committee members. However, persons who wish to bring matters to the attention of the Committee may file written statements with the Committee staff before or after the meeting. Public input sessions will be provided and individuals who made written requests by June 8, 2003 will have the opportunity to address the committee at those sessions.

May 13, 2003.

James F. Giachino,

Designated Federal Official.

[FR Doc. 03–12403 Filed 5–16–03; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

National Agricultural Statistics Service

Notice of Intent To Revise and Extend a Currently Approved Information Collection

AGENCY: National Agricultural Statistics Service, USDA.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–13) and Office of Management and Budget regulations at 5 CFR part 1320 (60 FR 44978, August 29, 1995), this notice announces the intention of the National Agricultural Statistics Service (NASS) to seek approval to revise and extend a currently approved information collection, the Agricultural Surveys Program.

DATES: Comments on this notice must be received by July 23, 2003, to be assured of consideration.

ADDRESSES: Comments may be mailed to Ginny McBride, NASS OMB Clearance Officer, U.S. Department of Agriculture, Room 5336 South Building, 1400 Independence Avenue SW., Washington, DC 20250 or sent electronically to *gmcbride@nass.usda.gov.*

FOR FURTHER INFORMATION CONTACT: Carol House, Acting Associate Administrator, National Agricultural Statistics Service, U.S. Department of Agriculture, (202) 720–4333.

SUPPLEMENTARY INFORMATION:

Title: Agricultural Surveys Program.

OMB Control Number: 0535–0213.

Expiration Date of Approval: January 31, 2004.

Type of Request: Intent to extend and revise a currently approved information collection.

Abstract: The National Agricultural Statistics Service is responsible for preparing and issuing State and national estimates of crop and livestock production, grain stocks, farm numbers, land values, on-farm pesticide usage, and pest crop management practices. The Agricultural Surveys Program contains a series of surveys that obtains basic agricultural data from farmers and ranchers throughout the Nation for preparing agricultural estimates and forecasts of crop acreage, yield, and production; stocks of grains and soybeans; hog and pig numbers; sheep inventory and lamb crop; cattle inventory; and cattle on feed. Grazing fees, land values, pesticide usage, and pest management practices data are also collected.

Uses of the statistical information are extensive and varied. Producers, farm organizations, agribusinesses, State and national farm policy makers, and government agencies are important users of these statistics. Agricultural statistics are used to plan and administer other, related Federal and State programs in such areas as consumer protection, conservation, foreign trade, education, and recreation.

The cattle survey portion of the programs will be changed for January 2004 only to add two questions regarding non-ambulatory cattle. Aggregated totals will be provided to the U. S. Department of Agriculture's Animal and Plant Health Inspection Service for the National Animal Health Monitoring System, which will assess the number of farm operations experiencing down animals. That information will be used in the design of a major study to be conducted in 2005.

The Agricultural Surveys Program had approval from OMB for a 3-year period. NASS intends to request that the program be approved for another 3 years. These data will be collected under the authority of 7 U.S.C. 2204(a). Individually identifiable data collected under this authority are governed by Section 1770 of the Food Security Act of 1985, 7 U.S.C. 2276, which requires USDA to afford strict confidentiality to non-aggregated data provided by respondents.

Estimate of Burden: Public reporting burden for this collection of information is estimated to average 15 minutes per response.

Respondents: Farms.

Estimated Number of Respondents: 547,000.

Estimated Total Annual Burden on Respondents: 139,000 hours.

Copies of this information collection and related instructions can be obtained without charge from Ginny McBride, NASS OMB Clearance Officer, at (202) 720–5778.

Comments: Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

All responses to this notice will become a matter of public record and be summarized in the request for OMB approval.

Signed at Washington, DC, April 24, 2003.

Carol House,

Associate Administrator.

[FR Doc. 03–12391 Filed 5–16–03; 8:45 am]

BILLING CODE 3410–20–P

DEPARTMENT OF AGRICULTURE

National Agricultural Statistics Service

Notice of Intent To Request an Extension of a Currently Approved Information Collection

AGENCY: National Agricultural Statistics Service, USDA.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–13) and Office of Management and Budget regulations at 5 CFR part 1320 (60 FR 44978, August 29, 1995), this notice announces the intention of the National Agricultural Statistics Service (NASS) to request extension of a currently approved information collection, the List Sampling Frame.

DATES: Comments on this notice must be received by July 23, 2003, to be assured of consideration.

ADDRESSES: Comments may be mailed to Ginny McBride, NASS OMB Clearance Officer, U.S. Department of Agriculture, Room 5336 South Building, 1400 Independence Avenue SW, Washington, D.C. 20250 or sent electronically to *gmcbride@nass.usda.gov.*

FOR FURTHER INFORMATION CONTACT: Carol House, Associate Administrator, National Agricultural Statistics Service, U.S. Department of Agriculture, (202) 720–4333.

SUPPLEMENTARY INFORMATION:

Title: List Sampling Frame.

OMB Control Number: 0535–0140.

Expiration Date of Approval: October 31, 2003.

Type of Request: Intent to extend a currently approved information collection.

Abstract: The primary objectives of the National Agricultural Statistics Service are to prepare and issue state and national estimates of crop production, livestock production, economic statistics, and environmental statistics related to agriculture and also to conduct the Census of Agriculture.

The List Sampling Frame is used to maintain as complete a list as possible of farm operations. The goal is to produce for each state a relatively complete, current, and unduplicated list of names to sample for agricultural operation surveys. Information from these surveys is used by government agencies and educational institutions in planning, farm policy analysis, and program administration.

These data will be collected under the authority of 7 U.S.C. 2204(a). Individually identifiable data collected under this authority are governed by Section 1770 of the Food Security Act of 1985, 7 U.S.C. 2276, which requires USDA to afford strict confidentiality to non-aggregated data provided by respondents.

Estimate of Burden: Public reporting burden for this collection of information is estimated to average 4 minutes per response.

Respondents: Farms.

Estimated Number of Respondents: 250,000.

Estimated Total Annual Burden on Respondents: 16,670 hours.

Copies of this information collection and related instructions can be obtained without charge from Ginny McBride, NASS OMB Clearance Officer, at (202) 720–5778.

Comments: Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

All responses to this notice will become a matter of public record and be summarized in the request for OMB approval.

Signed at Washington, DC, April 24, 2003.

Carol House,

Associate Administrator.

[FR Doc. 03–12392 Filed 5–16–03; 8:45 am]

BILLING CODE 3410–20–P

DEPARTMENT OF AGRICULTURE

Rural Business-Cooperative Service

Notice of Funds Availability (NOFA) Inviting Applications for the Renewable Energy Systems and Energy Efficiency Improvements Grant Program

AGENCY: Rural Business-Cooperative Service, USDA.

ACTION: Notice of extension of application deadline and clarification of previous notice.

SUMMARY: The Rural Business-Cooperative Service (RBS) extends the deadline of June 6, 2003, for submitting applications for grant funds to purchase renewable energy systems and make energy efficiency improvements for agricultural producers and rural small businesses under Title IX, Section 9006, pursuant to enactment of the Farm Security and Rural Investment Act of 2002 announced in a notice of funds availability (NOFA) published April 8, 2003 (67 FR 17009). This action is also taken to provide additional information that clarifies the financial requirements for agricultural producers and requirements for utility interconnection agreements and power purchase arrangements. This extension will allow eligible applicants additional time to submit applications.

DATES: Accordingly, the deadline for submitting applications under the notice published April 8, 2003, (67 FR 17009) is extended to June 27, 2003. Applications postmarked after June 27, 2003, will be returned to the applicant with no action. Postage due applications will not be accepted.

FOR FURTHER INFORMATION CONTACT: USDA Rural Development State Offices published in the notice on April 8, 2003 (67 FR 17009).

SUPPLEMENTARY INFORMATION:

Background and Discussion of Extension of Application Deadline

RBS published a Notice of Funds Availability (NOFA) on April 8, 2003 (67 FR 17009) with an application deadline of June 6, 2003. Due to the application requirements outlined in the NOFA and the clarifications of two areas of the NOFA that are being provided as part of this notice, RBS is extending the application period until June 26, 2003.

The NOFA requires that agricultural producers submit a current balance sheet and income statement in a format that is generally required by commercial agricultural lenders. In addition, agricultural producers are required to provide financial statements for the past 3 years, including income statements and balance sheets, in the format that is generally required by commercial agricultural lenders. For agricultural producers, the requirement of the use of a format that is generally required by commercial agricultural lenders is satisfied by the use of "income tax returns, bank statements, balance sheet/income statements, or financial statements." If the applicant chooses to submit last year's income tax return in lieu of a current income statement, a balance sheet and/or bank statement will be required. This requirement is necessary in order to determine the demonstrated financial need for the grant. Agricultural producers may submit only income tax returns to satisfy the requirement to provide financial statements for the past 3 years. For assistance in finding technical and feasibility resources useful in preparing an application under the NOFA, please access the Rural Development Web site, *http://www.rurdev.usda.gov,* in the Rural Development News section.

RBS recognizes that the interconnection agreement and power purchase arrangements may take several months to arrange and execute. While the Agency always recognized this reality, language used in the NOFA to describe the requirement could have been more clear. Applicants are advised that a letter of intent between the utility and the applicant to enter into an interconnection agreement satisfies the requirement in the NOFA. Applicants are also advised that a letter of intent between the power purchaser and the applicant to enter into a power purchase arrangement satisfies the requirement in the NOFA. RBS recognizes that the utility and the power purchaser may be different entities.

Dated: May 12, 2003.

Thomas C. Dorr,

Under Secretary, Rural Development.

[FR Doc. 03–12459 Filed 5–16–03; 8:45 am]

BILLING CODE 3410–XY–P

DEPARTMENT OF COMMERCE

Bureau of Industry and Security

Import Certificates, End-User Certificates, and Delivery Verification Procedures

ACTION: Proposed collection; comment request.

SUMMARY: The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)).

DATES: Written comments must be submitted on or before July 18, 2003.

ADDRESSES: Direct all written comments to Diana Hynek, DOC Paperwork Clearance Officer, (202) 482–0266, Department of Commerce, Room 6625, 14th and Constitution Avenue, NW., Washington, DC 20230.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument(s) and instructions should be directed to Ms. Marna Dove, BIS ICB Liaison, (202) 482–5211, Department of Commerce, Room 6622, 14th & Constitution Avenue, NW., Washington, DC, 20230.

SUPPLEMENTARY INFORMATION

I. Abstract

Activities include: (1) A reporting requirement that allows exporters to request an exception to the import certificate (or its equivalent) procedure. (2) Reporting requirement associated with requests for exceptions to the delivery verification procedure. (3) A certification by overseas importers to the U.S. government that he/she will import specific commodities from the U.S. and will not reexport such commodities except in accordance with U.S. export regulations.

II. Method of Collection

Written submission, requests for information, copies of documents or requirements to send notifications submitted to BIS.

III. Data

OMB Number: None.
Form Number: None.
Type of Review: New collection that consolidates two currently approved collection authorities.
Affected Public: Individuals, businesses or other for-profit and not-for-profit institutions.
Estimated Number of Respondents: 5,796.
Estimated Time Per Response: 15 to 30 minutes per response.
Estimated Total Annual Burden Hours: 1,155 hours.
Estimated Total Annual Cost: No start-up capital expenditures.

IV. Request for Comments

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they will also become a matter of public record.

Dated: May 13, 2003.

Madeleine Clayton,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. 03–12385 Filed 5–16–03; 8:45 am]

BILLING CODE 3510–33–P

DEPARTMENT OF COMMERCE

Bureau of Industry and Security

Regulations and Procedures Technical Advisory Committee; Notice of Open Meeting

The Regulations and Procedures Technical Advisory Committee will meet on June 3, 2003, 9 a.m., Room 3884, in the Herbert C. Hoover Building, 14th Street between Constitution and Pennsylvania Avenues, NW., Washington, DC. The Committee advises the Office of the Assistant Secretary for Export Administration on implementation of the Export Administration Regulations (EAR) and provides for continuing review to update the EAR as needed.

Agenda

1. Opening remarks by the Chairman.
2. Presentation of papers or comments by the public.
3. Update on pending regulations.
4. Update on Bureau of Industry and Security initiatives.

The meeting will be open to the public and a limited number of seats will be available. Reservations are not accepted. To the extent time permits, members of the public may present oral statements to the Committee. Written statements may be submitted at any time before or after the meeting. However, to facilitate distribution of public presentation materials to Committee members, the Committee suggests that presenters forward the public presentation materials, two weeks prior to the meeting date, to the following address: Ms. Lee Ann Carpenter, OSIES/EA/BIS MS: 3876, U.S. Department of Commerce, 14th St. & Constitution Ave., NW., Washington, DC 20230.

For more information contact Lee Ann Carpenter on (202) 482–2583.

Dated: May 14, 2003.

Lee Ann Carpenter,

Committee Liaison Officer.

[FR Doc. 03–12404 Filed 5–16–03; 8:45 am]

BILLING CODE 3510–JT–M

DEPARTMENT OF COMMERCE

International Trade Administration

[A-570–848]

Notice of Extension of Time Limit of Final Results of New Shipper Review: Freshwater Crawfish Tail Meat From the People's Republic of China

AGENCY: Import Administration, International Trade Administration, U.S. Department of Commerce.

SUMMARY: The Department of Commerce is extending the time limit of the final results of the new shipper review of the antidumping duty order on freshwater crawfish tail meat from the People's Republic of China until no later than July 13, 2003. The period of review is September 1, 2001, through February 28, 2002. This extension is made pursuant to section 751(a)(2)(B)(iv) of the Tariff Act of 1930, as amended.

EFFECTIVE DATE: May 19, 2003.

FOR FURTHER INFORMATION CONTACT: Douglas Kirby or Thomas Gilgunn, AD/CVD Enforcement, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington D.C. 20230; telephone: (202) 482–3782 or (202) 482–4236, respectively.

SUPPLEMENTARY INFORMATION:

Statutory Time Limits

Section 751(a)(2)(B)(iv) of the Act requires the Department to issue the final results of a new shipper review within 90 days after the date on which the preliminary results were issued. However, if the Department determines the issues are extraordinarily complicated, section 751(a)(2)(B)(iv) of the Act allows the Department to extend the deadline for the final results to up to 150 days after the date on which the preliminary results were issued.

Background

On March 29, 2002, the Department received a timely request from Weishan Zhenyu Foodstuff Co., Ltd. (Weishan Zhenyu), in accordance with section 751(a)(2)(B) of the Act and section 351.214(c) of the regulations, for a new shipper review of the antidumping duty order on freshwater crawfish tail meat from the People's Republic of China ("PRC"), which has a September anniversary date, and a March semiannual anniversary date. On April 23, 2002, the Department initiated this new shipper review covering the period September 1, 2001, through February 28, 2002. *See Freshwater Crawfish Tail Meat From the People's Republic of China: Initiation of New Shipper Antidumping Review* (67 FR 21218). On September 26, 2002, the Department extended the preliminary results of this review by 33 days until November 22, 2002. *See Freshwater Crawfish Tail Meat From the People's Republic of China: Notice of Extension of Time Limit of Preliminary Results of New Shipper Review* (67 FR 60640). On November 1, 2002, the Department extended the preliminary results of this review for an additional 83 days until February 13, 2003. *See Notice of Extension of Time Limit of Preliminary Results of New Shipper Review: Freshwater Crawfish Tail Meat From the People's Republic of China* (67 FR 66613). On February 13, 2003, the Department issued the preliminary results of this review. *See Notice of Preliminary Results of Antidumping Duty New Shipper Review: Freshwater Crawfish Tail Meat from the People's Republic of China* 68 FR 7976 (February 19, 2003). In the preliminary results of this review, we indicated that we had requested, but not yet received, information from the U.S. importer of Weishan Zhenyu's new shipper shipment. We also indicated in the preliminary results that we intended to analyze any information provided by the importer for the final results of the new shipper review. We received a response to this request on February 14, 2003, after the signature date of the preliminary results.

Extension of Time Limits for Preliminary Results

Pursuant to section 751(a)(2)(B)(iv) of the Act, the Department may extend the deadline for completion of the final results of a new shipper review if it determines that the case is extraordinarily complicated. The Department has determined that this case is extraordinarily complicated because of the issues that must be addressed, and the final results of this new shipper review cannot be completed within the statutory time limit of 90 days. As stated above, the Department received the questionnaire response from the importer after the preliminary results of this new shipper review were signed. Based on our review of the importer questionnaire response, we find that we need additional information to analyze the *bona fides* of the sale under review. Consequently, the Department has issued a supplemental questionnaire to the importer to gather additional information. Additionally, the Department may find it necessary to request further information from the respondent in this new shipper review. Therefore, in accordance with section 751(a)(2)(B)(iv) of the Act and section 351.214(i)(2) of the regulations, the Department is extending the time limit for the completion of final results for an additional 60 days. The final results will now be due no later than July 13, 2003.

This notice is published pursuant to sections 751(a)(2)(B) and 777(i)(1) of the Act.

Dated: May 13, 2003.

Barbara E. Tillman,

Acting Deputy Assistant Secretary for Import Administration, Group III.

[FR Doc. 03–12464 Filed 5–16–03; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

[A-412–803]

Notice of Initiation of Antidumping Duty Changed Circumstances Review: Industrial Nitrocellulose from the United Kingdom

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: In accordance with 19 CFR 351.216 (2002), Troon Investments Limited (Troon) requested that the Department of Commerce (the Department) conduct a changed circumstances review of the antidumping duty order on industrial nitrocellulose (INC) from the United Kingdom. In response to this request, the Department is initiating a changed circumstances review of the above-referenced order.

EFFECTIVE DATE: May 19, 2003.

FOR FURTHER INFORMATION CONTACT: Howard Smith or Michele Mire, Office of AD/CVD Enforcement, Office 4, Group II, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone (202) 482–5193 or (202) 482–4711, respectively.

SUPPLEMENTARY INFORMATION:

Background

On March 26, 2003, Troon requested that the Department conduct an expedited changed circumstances review of the antidumping duty order on INC from the United Kingdom pursuant to section 751(b)(1) of the Tariff Act of 1930, as amended (the Act), and 19 CFR 351.221(c)(3)(ii). Troon claims to be the successor-in-interest to Imperial Chemical Industries PLC (ICI) based on its December 31, 2002, purchase of the nitrocellulose business division of Nobel's Explosives Company, Ltd. (NEC), a subsidiary of ICI. The signatories of the agreement for the sale of this division are Troon's parent company, Inabata & Co., Ltd. (Inabata) of Japan, and NEC's parent company, ICI. *See* Troon's March 28, 2003, request at Exhibit 1.

On April 11, 2003, Green Tree Chemical Technologies, Inc. (Green Tree), the sole U.S. producer of INC and the petitioner to this proceeding, notified the Department that it opposes Troon's request to be considered the successor-in-interest to ICI. In particular, Green Tree argues that differences between the management, cost of capital, distribution channels, and corporate interests and strategy of ICI/NEC and Inabata/Troon preclude Troon from being considered the successor-in-interest to ICI.

Scope of Review

Imports covered by this review are shipments of INC from the United Kingdom. INC is a dry, white amorphous synthetic chemical with a nitrogen content between 10.8 and 12.2 percent, and is produced from the

reaction of cellulose with nitric acid. INC is used as a film-former in coatings, lacquers, furniture finishes, and printing inks. The scope of this order does not include explosive grade nitrocellulose, which has a nitrogen content of greater than 12.2percent.

INC is currently classified under Harmonized Tariff Schedule of the United States (HTS) item number 3912.20.0000. While the HTS classification number is provided for convenience and Customs purposes, the written description remains dispositive as to the scope of the product coverage.

Initiation of Antidumping Duty Changed Circumstances Review

Pursuant to section 751(b)(1) of the Act, the Department will conduct a changed circumstances review upon receipt of information concerning, or a request from an interested party for a review of, an antidumping duty order which shows changed circumstances sufficient to warrant a review of the order. The information submitted by Inabata/Troon regarding a change in ownership of the nitrocellulose business division of NEC shows changed circumstances sufficient to warrant a review. *See* 19 CFR 351.216(c).

In antidumping duty changed circumstances reviews involving a successor-in-interest determination, the Department typically examines several factors including, but not limited to, changes in: (1) management; (2) production facilities; (3) supplier relationships; and (4) customer base. *See Brass Sheet and Strip from Canada: Notice of Final Results of Antidumping Administrative Review*, 57 FR 20460, 20462 (May 13, 1992) (*Canadian Brass*). While no single factor or combination of factors will necessarily be dispositive, the Department generally will consider the new company to be the successor to the predecessor company if the resulting operations are essentially the same as those of the predecessor company. *See, e.g., Industrial Phosphoric Acid from Israel: Final Results of Changed Circumstances Review*, 59 FR 6944, 6945 (February 14, 1994), and *Canadian Brass*, 57 FR 20460. Thus, if the record evidence demonstrates that, with respect to the production and sale of the subject merchandise, the new company operates as the same business entity as the predecessor company, the Department may assign the new company the cash deposit rate of its predecessor. *See, e.g., Fresh and Chilled Atlantic Salmon from Norway: Final Results of Changes Circumstances Antidumping Duty Administrative Review*, 64 FR 9979, 9980 (March 1, 1999). Although Inabata/Troon submitted information indicating that, with respect to subject merchandise, it operates in the same manner as its predecessor, Green Tree argues that the operations of Inabata/Troon and its predecessor differ in a number of respects, and the differences affect the production cost and sales price of subject merchandise.

Concerning Inabata/Troon's request that the Department conduct an expedited antidumping duty changed circumstances review, the Department has determined that it would be inappropriate to expedite this action by combining the preliminary results of review with this notice of initiation, as permitted under 19 CFR 351.221(c)(3)(ii). Because of the parties' differing views and the Department's need for additional information, which we will address in a questionnaire to be issued in the near future to Inabata/Troon, the Department finds that expedited action is impracticable. Therefore, the Department is not issuing the preliminary results of its antidumping duty changed circumstances review at this time.

The Department will publish in the **Federal Register** a notice of preliminary results of antidumping duty changed circumstances review, in accordance with 19 CFR 351.221(b)(4) and 19 CFR 351.221(c)(3)(i). This notice will set forth the factual and legal conclusions upon which our preliminary results are based and a description of any action proposed based on those results. Pursuant to 19 CFR 351.221(b)(4)(ii), interested parties will have an opportunity to comment on the preliminary results of review. In accordance with 19 CFR 351.216(e), the Department will issue the final results of its antidumping duty changed circumstances review not later than 270 days after the date on which the review is initiated.

During the course of this antidumping duty changed circumstances review, we will not change the cash deposit requirements for the merchandise subject to review, unless a change is determined to be warranted pursuant to the final results of this review.

This notice of initiation is in accordance with sections 751(b)(1) of the Act and 19 CFR 351.221(b)(1) of the Department's regulations.

Dated: May 8, 2003.

Joseph A. Spetrini,

Acting Assistant Secretary for Import Administration.

[FR Doc. 03–12463 Filed 5–16–03; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 051303C]

Gulf of Mexico Fishery Management Council; Public Meetings

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of public meeting.

SUMMARY: The Gulf of Mexico Fishery Management Council will convene a public meeting.

DATES: The meeting will be held on June 5–6, 2003.

ADDRESSES: These meetings will be held at the New Orleans Airport Plaza Hotel and Conference Center, 2150 Veterans Boulevard, Kenner, LA; telephone: 504–467–3111.

Council address: Gulf of Mexico Fishery Management Council, 3018 U.S. Highway 301 North, Suite 1000, Tampa, FL 33619.

FOR FURTHER INFORMATION CONTACT: Wayne E. Swingle, Executive Director, Gulf of Mexico Fishery Management Council; telephone: (813) 228–2815.

SUPPLEMENTARY INFORMATION:

Council

June 5

8:30 a.m.—Convene.

8:40 a.m.–12 noon—Receive public testimony on the draft environmental impact statement (DEIS) for the Essential Fish Habitat (EFH) Generic Amendment. The amendment contains alternatives for specifying EFH, habitat areas of particular concern (HAPCs), and impacts of fishing on EFH.

1:30 p.m.–4:30 p.m.—Receive comments on the DEIS for the EFH Generic Amendment.

4:00 p.m.–5:30 p.m.—Section by section review and revision of DEIS.

June 6

8:30 a.m.–12 noon—Continue section by section review and revision of DEIS.

1:30 a.m.–2:30 p.m.—Continue section by section review and revision of DEIS.

2:30 p.m.–3 p.m.—Other Business.

Although non-emergency issues not contained in the agenda may come before the Council for discussion, in accordance with the Magnuson-Stevens Fishery Conservation and Management Act (MSFCMA), those issues may not be the subject of formal Council action during this meeting. Council action will be restricted to those issues specifically identified in this notice and any issues arising after publication of this notice that require emergency action under section 305 (c) of the MSFCMA, provided the public has been notified of the Council's intent to take final action to address the emergency. A copy of the agenda can be obtained by calling (813) 228–2815.

Special Accommodations

These meetings are physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Anne Alford at the Council (see **ADDRESSES**) by May 30, 2003.

Dated: May 13, 2003.

Richard W. Surdi,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 03–12469 Filed 5–16–03; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

National Estuarine Research Reserve System

AGENCY: Office of Ocean and Coastal Resource Management (OCRM), National Ocean Service (NOS), National Oceanic and Atmospheric Administration, Department of Commerce.

ACTION: Notice of public meeting in Rockport, Texas on the site selection process for the nomination of a candidate site for the National Estuarine Research Reserve System.

DATES: Wednesday, June 11, 2003 at 2 p.m.

ADDRESSES: Saltwater Pavilion, 810 Seabreeze Drive, Rockport Beach Park, Rockport, Texas 78383.

SUMMARY: In accordance with section 315 of the Coastal Zone Management Act of 1972, as amended, the State of Texas and the National Oceanic and Atmospheric Administration (NOAA) intend to conduct a public meeting on June 11, 2003 in Rockport, Texas as part of NOAA's site selection process for the nomination of a candidate site for the National Estuarine Research Reserve System (Reserve System).

SUPPLEMENTARY INFORMATION: The mission of the Reserve System is to promote stewardship of the nation's estuaries through science and education using a system of protected areas. NOAA has developed a classification scheme and typology of national estuarine areas that places the coastlines of the United States into biogeographic regions and subregions. Reserves are selected to represent these biogeographic regions and subregions and the wide range of coastal and estuarine habitats found in the United States.

Site selection criteria for a new reserve are based on environmental representativeness; value for research, monitoring, education, interpretation, and stewardship; acquisition and accessibility considerations; and coastal management considerations. The site ultimately designated will be used by researchers, educators, and the general public to study estuarine ecology and resource management issues that can aid in coastal policymaking and management decisions.

During the past year, the State of Texas in consultation with NOAA has undertaken a process to identify a site that adequately represents the major estuarine characteristics of a coastal ecosystem in the western Gulf of Mexico. An estuary located in Texas would be the first site to represent the Western Gulf Subregion of the Louisianian Biogeographic Region (Galveston to Mexico).

After consideration of several possible sites along the Texas coast, the Texas National Estuarine Research Reserve Site Selection Committee and Site Evaluation Subcommittee have selected Mission/Aransas Estuary located on the central Texas coast as a candidate site for nomination as a potential reserve. The public meeting is being held to provide details and solicit comments on this proposed site.

At the public meeting, the University of Texas at Austin Marine Science Institute will provide an overview of the Reserve System Program, the Texas site selection process, a physical description of the proposed site, and an open question and answer period.

Following the public meeting, a site nomination document will be finalized based on existing research documents and literature, and comments received from NOAA, the Texas Site Selection Committee and Site Evaluation Subcommittee, and the general public. The final site selection document will then be sent to the Governor of Texas for approval. If approved, the Governor will forward the site selection package and a nomination letter to NOAA for final clearance. A draft and final Environmental Impact Statement and Management Plan must be prepared prior to final site designation.

The public meeting will be held on Wednesday, June 11, 2003 at 2 p.m. at the Saltwater Pavilion, 810 Seabreeze Drive within the Rockport Beach Park, Rockport, Texas 78383. Interested parties who wish to comment on the site selection are invited to attend.

FOR FURTHER INFORMATION CONTACT: Paul Montagna, University of Texas at Austin Marine Science Institute at (361) 749–6779 or *paul@utmsi.utexas.edu;* or Nathalie Peter, Project Manager, Estuarine Reserves Division, Office of Ocean and Coastal Resource Management, NOAA, at (301) 713–3155, extension 119, or *nathalie.peter@noaa.gov.*

Federal Domestic Assistance Catalog Number 11.420 (Coastal Zone Management) Research Reserves.

Dated: May 9, 2003.

Jamison S. Hawkins,

Acting Assistant Administrator, Ocean Services and Coastal Zone Management, National Oceanic and Atmospheric Administration.

[FR Doc. 03–12362 Filed 5–16–03; 8:45 am]

BILLING CODE 3510–08–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 051303B]

New England Fishery Management Council; Public Meetings

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce

ACTION: Notice of public meetings.

SUMMARY: The New England Fishery Management Council (Council) is scheduling a public meeting of its Enforcement Oversight Committee and Advisory Panel and a Joint Meeting of its Herring Oversight and Advisory Panel in June, 2003 to consider actions affecting New England fisheries in the exclusive economic zone (EEZ). Recommendations from these groups will be brought to the full Council for formal consideration and action, if appropriate.

DATES: The meetings will be held on June 2 and June 3, 2003. See **SUPPLEMENTARY INFORMATION** for specific dates and times.

ADDRESSES: The meetings will be held in Portsmouth, NH and Portland, ME. See **SUPPLEMENTARY INFORMATION** for specific locations.

Council address: New England Fishery Management Council, 50 Water Street, Mill 2, Newburyport, MA 01950.

FOR FURTHER INFORMATION CONTACT: Paul J. Howard, Executive Director, New England Fishery Management Council; (978) 465–0492.

SUPPLEMENTARY INFORMATION:

Meeting Dates and Agendas

Monday, June 2, 2003 at 9:30 a.m.– Enforcement Oversight and Advisory Panel Meeting.

Location: Urban Forestry Center, 45 Elwyn Road, Portsmouth, NH 03801; telephone: (603) 431–6774.

The committee will review habitat enforcement analyses for groundfish, scallops, and monkfish. The committee will also discuss the enforcement aspects of allowing fishing vessels to land fish, harvested on the same trip, at multiple ports. Finally, the committee will discuss any other business that comes before it.

Tuesday, June 3, 2003 at 9:30 a.m.– Joint Herring Oversight Committee and Advisory Panel Meeting.

Location: Holiday Inn by the Bay, 88 Spring Street, Portland, ME 04101; telephone: (207) 775–2311.

The panels will review the May 29, 2003 Plan Development Team (PDT) Report. They will develop goals and objectives for Amendment 2 to the Herring Fishery Management Plan. They will also begin development of alternatives for Amendment 2 and provide guidance to the Herring PDT.

Although non-emergency issues not contained in this agenda may come before this group for discussion, those issues may not be the subject of formal action during this meeting. Action will be restricted to those issues specifically listed in this notice and any issues arising after publication of this notice that require emergency action under section 305(c) of the Magnuson-Stevens Act, provided the public has been notified of the Council's intent to take final action to address the emergency.

Special Accommodations

These meetings are physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Paul J. Howard (see **ADDRESSES**) at least 5 days prior to the meeting dates.

Dated: May 13, 2003.

Richard W. Surdi,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 03–12468 Filed 5–16–03; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF DEFENSE

Office of the Secretary

Proposed Collection; Comment Request

AGENCY: Department of Defense, Office of the Deputy Under Secretary of Defense (Installations and Environment).

ACTION: Notice.

SUMMARY: In compliance with section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Office of the Assistant Deputy Under Secretary of Defense (Environmental) announces the proposed extension of a public information collection and seeks public comment on the provisions thereof. Comments are invited on (a) whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed information collection; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the information collection on respondents, including through the use of automated collection techniques or other forms of information technology.

DATES: Consideration will be given to all comments received by July 18, 2003.

ADDRESSES: Written comments and recommendations on the proposed information collection should be sent to the Office of the Deputy Under Secretary of Defense (Installations & Environment), Attention: Ms. Patricia Ferrebee, 3400 Defense Pentagon, Washington, 20301–3400.

FOR FURTHER INFORMATION CONTACT: To request further information on this proposed information collection or to obtain a copy of the proposed and associated collection instruments, please write to the above address, or call Ms. Patricia Ferrebee, Office of the Deputy Under Secretary of Defense (Installations & Environment), (703) 695–6107.

Title, Associated Form, and OMB Number: Technical Assistance for Public Participation (TAPP) Application, DD Form 2749, OMB Control Number 0704–0392.

Needs and Uses: The collection of information is necessary to identify products or services requested by community members of restoration advisory boards or technical review committees to aid in their participation in the Department of Defense's environmental restoration program, and to meet Congressional reporting requirements.

Affected Public: Not-for profit institutions.

Annual Burden Hours: 100.

Number of Respondents: 25.

Responses to Respondent: 1.

Average Burden per Response: 4 hours.

Frequency: On occasion.

SUPPLEMENTARY INFORMATION:

Summary of Information Collection

Respondents are community members of restoration advisory boards or technical review committees requesting technical assistance to interpret scientific and engineering issues regarding the nature of environmental hazards at an installation. This assistance will assist communities in participating in the cleanup process. The information, directed by 10 U.S.C. 2705, will be used to determine the eligibility of the proposed project, begin the procurement process to obtain the requested products or services, and determine the satisfaction of community members of restoration advisory boards and technical review communities receiving the products and services.

Dated: May 12, 2003.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 03–12410 Filed 5–16–03; 8:45 am]

BILLING CODE 5001–08–M

DEPARTMENT OF DEFENSE

Office of the Secretary

[Transmittal No. 03–12]

36(b)(1) Arms Sales Notification

AGENCY: Department of Defense, Defense Security Cooperation Agency.

ACTION: Notice.

SUMMARY: The Department of Defense is publishing the unclassified text of a section 36(b)(1) arms sales notification. This is published to fulfill the requirements of section 155 of Public Law 104–164 dated 21 July 1996.

FOR FURTHER INFORMATION CONTACT: Ms. J. Hurd, DSCA/COMPT/RM, (703) 604–6575.

The following is a copy of a letter to the Speaker of the House of Representatives, Transmittal 03–12 with attached transmittal, policy justification, and Sensitivity of Technology.

Dated: May 9, 2003.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

BILLING CODE 5001–08–M

DEFENSE SECURITY COOPERATION AGENCY

WASHINGTON, DC 20301-2800

1 MAY 2003
In reply refer to:
I-03/003125

The Honorable J. Dennis Hastert
Speaker of the House of
Representatives
Washington, D.C. 20515-6501

Dear Mr. Speaker:

Pursuant to the reporting requirements of Section 36(b)(1) of the Arms Export Control Act (AECA), as amended, we are forwarding herewith Transmittal No. 03-12, concerning the Department of the Air Force's proposed Letter(s) of Offer and Acceptance (LOA) to Singapore for defense articles and services estimated to cost $148 million. Soon after this letter is delivered to your office, we plan to notify the news media.

Sincerely,

TOME H. WALTERS, JR.
LIEUTENANT GENERAL, USAF
DIRECTOR

Attachments

Same ltr to: House Committee on International Relations
Senate Committee on Foreign Relations
House Committee on Armed Services
Senate Committee on Armed Services
House Committee on Appropriations
Senate Committee on Appropriations

Transmittal No. 03-12

**Notice of Proposed Issuance of Letter of Offer
Pursuant to Section 36(b)(1)
of the Arms Export Control Act, as amended**

(i) Prospective Purchaser: Singapore

(ii) Total Estimated Value:

Major Defense Equipment*	$ 29 million
Other	$119 million
TOTAL	$148 million

(iii) Description and Quantity or Quantities of Articles or Services under Consideration for Purchase: continuation of CONUS pilot proficiency training program for PEACE CARVIN II and munitions, services and support for F-16C/D aircraft which includes: 9 AIM-9 Sidewinder coolant bottles, 105,000 20mm cartridges, 57 AGM-65G Maverick missiles, 228 GBU-10 and 114 GBU-12J/B guided bomb units, aircraft modifications kits, maintenance, participation in joint training exercises, fuel and fueling services, supply support, flight training, spare/repair parts, support equipment, program management, publications, documentation, personnel training, training equipment, contractor technical and logistics personnel services and other related elements of program support.

(iv) Military Department: Air Force (NCV)

(v) Prior Related Cases, if any: FMS case NCO - $87 million – 20Mar99

(vi) Sales Commission, Fee, etc., Paid, Offered, or Agreed to be Paid: none

(vii) Sensitivity of Technology Contained in the Defense Article or Defense Services Proposed to be Sold: See Annex attached

(viii) Date Report Delivered to Congress: 1 MAY 2003

* as defined in Section 47(6) of the Arms Export Control Act.

POLICY JUSTIFICATION

Singapore – Pilot Training Program with Munitions, Services, and Support

The Government of Singapore has requested a possible sale for continuation of CONUS pilot proficiency training program for PEACE CARVIN II and munitions, services and support for F-16C/D aircraft which includes: 9 AIM-9 Sidewinder coolant bottles, 105,000 20mm cartridges, 57 AGM-65G Maverick missiles, 228 GBU-10 and 114 GBU-12J/B guided bomb units, aircraft modifications kits, maintenance, participation in joint training exercises, fuel and fueling services, supply support, flight training, spare/repair parts, support equipment, program management, publications, documentation, personnel training, training equipment, contractor technical and logistics personnel services and other related elements of program support. The estimated cost is $148 million.

This proposed sale will contribute to the foreign policy and national security of the United States by helping to improve the security of a friendly country which has been and continues to be an important force for economic progress in Southeast Asia.

Singapore needs these munitions, services and equipment to continue a long-term pilot proficiency training program at Luke Air Force Base, Arizona. This program will enable Singapore to develop mission ready and experienced pilots through its CONUS training program to support Singapore's current and future F-16 aircraft inventory. The long-term pilot training program in CONUS continues a professional interaction and enhances operational interoperability with U.S. forces. These short-range precision munitions will provide Singapore with a credible defense capability while avoiding the collateral damage associated with conventional gravity munitions.

The proposed sale of this equipment and support will not affect the basic military balance in the region.

There is no prime contractor involved in this program. There are no offset agreements proposed in connection with this potential sale.

Implementation of this proposed sale will not require the assignment of any additional U.S. Government or contractor representatives to Singapore.

There will be no adverse impact on U.S. defense readiness as a result of this proposed sale.

Transmittal No. 03-12

Notice of Proposed Issuance of Letter of Offer Pursuant to Section 36(b)(1) of the Arms Export Control Act

Annex Item No. vii

(vii) Sensitivity of Technology:

1. The AGM-65G Maverick air-to-ground missile has an overall classification of Secret. The Secret aspects of the Maverick system are tactics, information revealing its vulnerability to countermeasures, and counter-countermeasures.

2. Manuals and technical documents which are necessary for operational use and organizational maintenance have portions that are classified Confidential. Performance and operating logic of the countermeasures circuits are Secret.

3. If a technologically advanced adversary were to obtain knowledge of the specific hardware and software elements, the information could be used to develop countermeasures which might reduce weapon system effectiveness or be used in the development of a system with similar or advanced capabilities.

4. A determination has been made that Singapore can provide substantially the same degree of protection for the sensitive technology being released as the U.S. Government. This sale is necessary in furtherance of the U.S. foreign policy and national security objectives outlined in the Policy Justification.

[FR Doc. 03–12416 Filed 5–16–03; 8:45 am]
BILLING CODE 5001–08–C

DEPARTMENT OF DEFENSE

Office of the Secretary

[Transmittal No. 03–16]

36(b)(1) Arms Sales Notification

AGENCY: Department of Defense, Defense Security Cooperation Agency.

ACTION: Notice.

SUMMARY: The Department of Defense is publishing the unclassified text of a section 36(b)(1) arms sales notification. This is published to fulfill the requirements of section 155 of Public Law 104–164 dated 21 July 1996.

FOR FURTHER INFORMATION CONTACT: Ms. J. Hurd, DSCA/COMPT/RM, & (703) 604–6575.

The following is a copy of a letter to the Speaker of the House of Representatives, Transmittal 03–16 with attached transmittal, policy justification, and Sensitivity of Technology.

Dated: May 12, 2003.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

BILLING CODE 5001–08–C

DEFENSE SECURITY COOPERATION AGENCY

WASHINGTON, DC 20301-2800

12 MAY 2003
In reply refer to:
I-03/003305

The Honorable J. Dennis Hastert
Speaker of the House of
Representatives
Washington, D.C. 20515-6501

Dear Mr. Speaker:

Pursuant to the reporting requirements of Section 36(b)(1) of the Arms Export Control Act (AECA), as amended, we are forwarding herewith Transmittal No. 03-16, concerning the Department of the Air Force's proposed Letter(s) of Offer and Acceptance (LOA) to Canada for defense articles and services estimated to cost $80 million. Soon after this letter is delivered to your office, we plan to notify the news media.

Sincerely,

Richard J. Millies
Deputy Director

Attachments

Same ltr to: House Committee on International Relations
Senate Committee on Foreign Relations
House Committee on Armed Services
Senate Committee on Armed Services
House Committee on Appropriations
Senate Committee on Appropriations

Transmittal No. 03-16

**Notice of Proposed Issuance of Letter of Offer
Pursuant to Section 36(b)(1)
of the Arms Export Control Act, as amended**

(i) Prospective Purchaser: Canada

(ii) Total Estimated Value:

Major Defense Equipment*	$55 million
Other	$25 million
TOTAL	$80 million

(iii) Description and Quantity or Quantities of Articles or Services under Consideration for Purchase: 97 AIM-120C Advanced Medium Range Air-to-Air Missiles (AMRAAM), 9 AIM-120C AMRAAM Air Vehicle Instrumented, 66 AMRAAM Captive Air Training Missiles, flight test instrumentation, software updates to support AMRAAM operational and training devices, missile containers, aircraft modification and integration, spare and repair parts, support/test equipment, publications, technical documentation, maintenance and pilot training, contractor support, other related elements of logistical and program support.

(iv) Military Department: Air Force (YAE)

(v) Prior Related Cases, if any: none

(vi) Sales Commission, Fee, etc., Paid, Offered, or Agreed to be Paid: none

(vii) Sensitivity of Technology Contained in the Defense Article or Defense Services Proposed to be Sold: See Annex attached

(viii) Date Report Delivered to Congress: 12 MAY 2003

* as defined in Section 47(6) of the Arms Export Control Act.

POLICY JUSTIFICATION

Canada - AIM-120C Advanced Medium Range Air-to-Air Missiles

The Government of Canada has requested a possible sale of 97 AIM-120C Advanced Medium Range Air-to-Air Missiles (AMRAAM), 9 AIM-120C AMRAAM Air Vehicle Instrumented, 66 AMRAAM Captive Air Training Missiles, flight test instrumentation, software updates to support AMRAAM operational and training devices, missile containers, aircraft modification and integration, spare and repair parts, support/test equipment, publications, technical documentation, maintenance and pilot training, contractor support, other related elements of logistical and program support. The estimated cost is $80 million.

This proposed sale will contribute to the foreign policy and national security objectives of the United States by improving the military capabilities of Canada and further weapon system standardization and interoperability with U.S. forces.

Canada needs these missiles to enhance the air-to-air self-defense capability of its F-18 aircraft and provide for increased interoperability with U.S. forces. Canada will have no difficulty absorbing these missiles into its armed forces.

The proposed sale of this equipment and support will not affect the basic military balance in the region.

The prime contractor will be Raytheon Missile Systems of Tucson, Arizona. There are no offset agreements proposed in connection with this potential sale.

Implementation of this proposed sale will not require the assignment of any additional U.S. Government or contractor representatives to Canada.

There will be no adverse impact on U.S. defense readiness as a result of this proposed sale.

Transmittal No. 03-16

Notice of Proposed Issuance of Letter of Offer
Pursuant to Section 36(b)(1)
of the Arms Export Control Act

Annex
Item No. vii

(vii) Sensitivity of Technology:

1. The AIM-120C Advanced Medium Range Air-to-Air Missile (AMRAAM) is a supersonic, air launched, aerial intercept, guided missile featuring digital technology and micro-miniature solid-state electronics. The missile employs active radar target tracking, proportional navigation guidance, and active Radio Frequency target detection. It can be launched day or night, in any weather and increases pilot survivability by allowing the pilot to disengage after missile launch and engage other targets. AMRAAM capabilities include lookdown/shootdown, multiple launches against multiple targets, resistance to Electronic Countermeasures, and interception of high- and low-flying and maneuvering targets. Information on the AIM-120 missile ranges from Unclassified to Secret.

2. If a technologically advanced adversary were to obtain knowledge of the specific hardware and software elements, the information could be used to develop countermeasures which might reduce weapon system effectiveness or be used in the development of a system with similar or advanced capabilities.

3. A determination has been made that Canada can provide substantially the same degree of protection for the sensitive technology being released as the U.S. Government. This proposed sale is necessary in furtherance of the U.S. foreign policy and national security objectives outlined in the Policy Justification.

[FR Doc. 03–12417 Filed 5–16–03; 8:45 am]
BILLING CODE 5001–08–C

DEPARTMENT OF DEFENSE

Office of the Secretary

Notice of Intent to Prepare a Programmatic Environmental Impact Statement for Defense Threat Reduction Agency Activities at White Sands Missile Range, NM

AGENCY: Office of the Under Secretary of Defense for Acquisition, Technology, and Logistics, Defense Threat Reduction Agency, DoD.

ACTION: Notice of intent.

SUMMARY: Pursuant to section 102(2)(c) of the National Environmental Act (NEPA), 42 U.S.C. 4321–4370, as implemented by the Council of Environmental Quality Regulations (40 CFR parts 1500–1508), the Defense Threat Reduction Agency (DTRA) announces intent to prepare a Draft Programmatic Environmental Impact Statement (PEIS) in support of activities at White Sands Missile Range (WSMR), New Mexico. As a major cooperating agency, WSMR will participate in the preparation of the PEIS. Future development of DTRA's testing facilities and program, and its scope require an PEIS to adequately address potential environmental impacts.

ADDRESSES: Written comments may be forwarded to the Defense Threat Reduction Agency, ATTN: DTRA/TDTS, 1680 Texas St., SE., Kirtland AFB, NM 87117–5669. Emails may be forwarded to *Thomas.Vanalstyne@ao.dtra.mil.*

FOR FURTHER INFORMATION CONTACT: LTC Thomas Van Alstyne, EN, Environmental Engineer, DTRA at (505) 846–6612 or email *Thomas.Vanalstyne@Qao.dtra.mil.*

SUPPLEMENTARY INFORMATION: White Sands Missile Range covers approximately 8,288 km^2 (3,200 mi^2) of south-central New Mexico. Proposed DTRA activities at WSMR have the potential to significantly impact certain natural, social, cultural, and economic resources in the region. The study area for environmental analyses will include the Hard Target Defeat Test bed (HTDT), Permanent High Explosive Test Site (PHETS), Seismic Hardrock In Situ Test site (SHIST), Alternate SHIST, and Large Blast/Thermal Simulator (LBTS). The objective will be to provide a thorough, comprehensive and PEIS that will serve as a planning and decision-making tool, a public information source, and a reference for mitigation tracking concerning DTRA future activities.

Alternatives may consist of alternative locations or modifications of specific activities. These alternatives will be developed during preparation of the Draft PEIS as a result of environmental analyses of the activities and public input.

Significant Issues: Certain biologically diverse areas on White Sands Missile Range utilized by the Defense Threat Reduction Agency serve as habitat or potential habitat for protected floral and faunal (plan and animal) species. To date, several locations in the areas to be studied have been identified as important cultural resources. The most significant are Ground Zero and McDonald Ranch House, part of Trinity Site National Historic Landmark,

located within the Permanent High Explosive Test Site boundaries.

Significant issues that will be addressed in the Draft PEIS include:

1. The continued operation and maintenance of various test structures used as targets for weapon system evaluations.

2. Construction of new test structures, enlargement of existing test beads, and possible development of new test beds.

3. Testing, operations and maintenance activities at tunnel targets in the Capitol Canyon area (HTDT).

4. The use of chemical and biological simulants in collateral damage tests.

5. Planned improvements to the DTRA Administrative Park within the PHETS boundaries. Public scoping meeting will be held in the vicinity of WSMR, New Mexico, to facilitate input to the PEIS. The schedule and location for these meetings will be announced in the news media and the **Federal Register**.

For those that cannot attend the public scoping meetings, written comments via mail or email are encouraged. Comments should clearly identify and describe the specific issue(s) or topics that the PEIS should address.

To be considered in the Draft PEIS, comments and suggestions should be received no later than 30 days following the public scoping meeting.

Dated: May 12, 2003.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 03–12409 Filed 5–16–03; 8:45 am]

BILLING CODE 5001–08–M

DEPARTMENT OF DEFENSE

Office of the Secretary

National Security Education Board Meeting

AGENCY: National Defense University.

ACTION: Notice of meeting.

SUMMARY: Pursuant to Public Law 92–463, notice is hereby given of a forthcoming meeting of the National Security Education Board. The purpose of the meeting is to review and make recommendations to the Secretary concerning requirements established by the David L. Boren National Security Education Act, Title VIII of Public Law 102–183, as amended.

DATES: May 20, 2003.

ADDRESSES: The Crystal City Marriott Hotel, 1999 Jefferson Davis Highway, Arlington, Virginia 22202.

FOR FURTHER INFORMATION CONTACT: Edmond J. Collier, Deputy Director, National Security Education Program, 1101 Wilson Boulevard, Suite 1210, Rosslyn, Virginia 22209–2248; (703) 696–1991. Electronic mail address: *colliere@ndu.edu*.

SUPPLEMENTARY INFORMATION: The Board meeting is open to the public.

Dated: May 9, 2003.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 03–12414 Filed 5–16–03; 8:45 am]

BILLING CODE 5001–08–P

DEPARTMENT OF DEFENSE

Office of the Secretary

Defense Science Board

AGENCY: Department of Defense.

ACTION: Notice of advisory committee meeting.

SUMMARY: The Defense Science Board Task Force on Enduring Freedom Lessons Learned will meet in closed session June 15–28, 2003, at the US Central Command Area of Responsibility (Theater). This Task Force will review current activities of Operation Enduring Freedom to determine both near and longer-term technical and operational considerations that could be used to improve this operation and future campaigns initiated in the War Against Terrorism.

The mission of the Defense Science Board is to advise the Secretary of Defense and the Under Secretary of Defense for Acquisition, Technology & Logistics on scientific and technical matters as they affect the perceived needs of the Department of Defense. At these meetings, the Defense Science Board Task Force will review and evaluate operational policy and procedures, command and control, intelligence, combat support activities, weapon system performance, and science and technology requirements.

In accordance with section 10(d) of the Federal Advisory Committee Act, Pub. L. 92–463, as amended (5 U.S.C. App. II), it has been determined that these Defense Science Board Task Force meetings concern matters listed in 5 U.S.C. 552b(c)(1), and that, accordingly, the meetings will be closed to the public.

Dated: May 9, 2003.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 03–12411 Filed 5–16–03; 8:45 am]

BILLING CODE 5001–08–M

DEPARTMENT OF DEFENSE

Office of the Secretary

Defense Intelligence Agency Advisory Board Closed Meeting

AGENCY: Department of Defense, Defense Intelligence Agency.

ACTION: Notice.

SUMMARY: Pursuant to the provisions of Subsection (d) of section 10 of Public Law 92–463, as amended by section 5 of Public Law 94–409, notice is hereby given that a closed meeting of the DIA Advisory Board has been scheduled as follows:

DATES: May 21–22, 2003 (8:30 a.m. to 5 p.m.).

ADDRESSES: The Defense Intellignece Agency, 200 MacDill Blvd., Washington, DC 20340.

FOR FURTHER INFORMATION CONTACT: Mr. Lawrence R. Carnegie, Program Manager/Executive Secretary, DIA Advisory Board, Washington, DC, 20340–1328 (703) 697–7898.

SUPPLEMENTARY INFORMATION: The entire meeting is devoted to the discussion of classified information as defined in section 552b(c)(1), title 5 of the U.S. Code, and therefore will be closed to the public. The Board will receive briefings and discuss several current critical intelligence issued in order to advise the Director, DIA.

Dated: May 9, 2003.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 03–12415 Filed 5–16–03; 8:45 am]

BILLING CODE 5001–08–M

DEPARTMENT OF DEFENSE

Office of the Secretary

Defense Science Board

AGENCY: Department of Defense.

ACTION: Notice of advisory committee meeting date changes.

SUMMARY: On Wednesday, March 26, 2003 (68 FR 14598), the Department of Defense announced closed meetings of the Defense Science Board (DSB) Task Force on Enduring Freedom Lessons Learned. The meetings originally planned for May 14–27, 2003, have been rescheduled for May 14–16, 2003. The meetings will take place at the U.S. Strategic Command, Colorado Springs, CO, and the Pentagon, Washington, DC.

Dated: May 9, 2003.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 03–12412 Filed 5–16–03; 8:45 am]

BILLING CODE 5001–08–P

DEPARTMENT OF DEFENSE

Office of the Secretary

Mandatory Declassification Review Requests

AGENCY: National Security Agency/Central Security Service, DoD.

ACTION: Notice.

SUMMARY: This notice identifies the office in the National Security Agency/Central Security Service to which mandatory declassification review requests shall be addressed in accordance with 32 CFR 2001.54(a).

ADDRESSES: Requests shall be addressed to: National Security Agency/Central Security Service, 9800 Savage Road, Ft. Meade, Maryland 20755–6884, ATTN: DC324 (CPC), Suite 6884.

FOR FURTHER INFORMATION CONTACT: Ms. Linda Huffman at 301–688–7785.

Dated: May 9, 2003.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 03–12413 Filed 5–16–03; 8:45 am]

BILLING CODE 5001–08–M

DEPARTMENT OF EDUCATION

[CFDA No. 84.215S and 215V]

Office of Safe and Drug-Free Schools—Partnerships in Character Education Program

ACTION: Notice of intent to fund down the grant slate for the Partnerships in Character Education Program.

SUMMARY: The Secretary intends to use the grant slate developed for the Partnerships in Character Education Grant program in Fiscal Year (FY) 2002 to make new grant awards in FY 2003. The Secretary takes this action because a significant number of high-quality applications remain on the last year's grant slate and limited funding is available for new grant awards in FY 2003.

Background: On May 21, 2002, we published a notice inviting applications for new awards under the Partnerships in Character Education Grant Program. This notice indicated that the selection criteria, competitive preference priority and applications requirements contained in the notice would apply to the FY 2002 grant competition only.

We received a significant number of applications for grants under the Partnerships in Character Education Grant Program in FY 2002, and made 39 new grants. Because such a large number of high-quality applications were received, many applications that were awarded very high scores by peer reviewers did not receive funding last year.

Limited funding is available for new awards under this program in FY 2003. In order to conserve funding that would have been required for a peer review of new applications submitted under the program, we intend to select grantees in FY 2003 from the existing slate of applicants. This slate was developed during the FY 2002 competition using the selection criteria, competitive preference priority, and application requirements included in the May 21, 2002 notice. No changes to selection criteria, competitive preference priority, or application requirements will be required by this action.

FOR FURTHER INFORMATION CONTACT: Office of Safe and Drug-Free Schools, U.S. Department of Education, 400 Maryland Avenue, SW., Washington, DC 20202–6123. Telephone: (202) 260–3954.

Individuals who use a telecommunication device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at (800) 877–8339.

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Authority: 20 U.S.C. 7247.

Dated: May 14, 2003.

Eric Andell,

Deputy Under Secretary for Safe and Drug-Free Schools.

[FR Doc. 03–12436 Filed 5–14–03; 1:30 pm]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

[CFDA No. 84.342A]

Office of Postsecondary Education; Preparing Tomorrow's Teachers To Use Technology Program; Notice Inviting Applications for New Awards for Fiscal Year (FY) 2003

Purpose of Program: To provide grants to consortia that will increase preservice teachers' proficiency in the use of modern learning technologies. The program is designed to prepare prospective teachers to use advanced technology to ensure all students meet challenging State and local academic content and student academic achievement standards and to improve the ability of institutions of higher education to provide this preparation.

Eligible Applicants: Only consortia are eligible to apply for a grant under this program. The consortia must include at least one institution of higher education that awards baccalaureate degrees and prepares teachers for their initial entry into teaching and at least one State educational agency or local educational agency. In addition, the consortia must include at least one of the following entities: an additional institution of higher education; a school or department of education at an institution of higher education; a school or college of arts and sciences (as defined in section 201(b) of the Higher Education Act of 1965, as amended (HEA)) at an institution of higher education; or a professional association, foundation, museum, library, for-profit business, public or private nonprofit organization, community-based organization, or other entity, with the capacity to contribute to the technology-related reform of teacher preparation programs.

Applications Available: May 19, 2003.

Deadline for transmittal of Applications: June 23, 2003.

Note: In accordance with 34 CFR 614.8, an application for a grant under this program must be received by the deadline date.

Deadline for Intergovernmental Review: August 22, 2003.

Estimated Available Funds: $30,000,000.

Estimated Range of Awards: $200,000–$600,000.

Estimated Average Size of Awards: $400,000.

Estimated Number of Awards: 75 grants.

Note: The Department is not bound by any estimates in this notice.

Project Period: Up to 36 months.

Page Limit: The application narrative is where you, the applicant, address the selection criteria reviewers use to evaluate your application. You must limit the application narrative to the equivalent of no more than 40 pages. In addition, you must limit your budget narrative (which is not counted toward the 40-page limit) to the equivalent of no more than 6 pages. You must use the following standards:

- A "page" is 8.5" x 11", on one side only, with 1" margins at the top, bottom, and both sides.
- Double space (no more than three lines per vertical inch) all text, including titles, headings, footnotes, quotations, references, and captions, as well as all text in charts, tables, figures, and graphs.
- Use a font that is either 12-point or larger or no smaller than 10 point.

The page limit does not apply to the title page, the table of contents, the assurances and justifications; or the one-page abstract, the budget narrative and budget forms, the resumes, the bibliography, or the letters of support and commitment, and the required appendices.

We will reject your application if—

- You apply these standards and exceed the page limit; or
- You apply other standards and exceed the equivalent of the page limit.

Applicable Regulations and Statute: (a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 74, 75 (except for 75.102), 77, 79, 80, 81, 82, 85, 86, 97, 98, and 99; (b) the regulations for this program in 34 CFR 614.6 and 614.8; and (c) the program statute, Title II, Part B of the HEA (20 U.S.C. 1041–1044).

SUPPLEMENTARY INFORMATION: In evaluating an application for a new grant under this competition, the Secretary uses the selection criteria in EDGAR, sections 75.209 and 75.210. The application booklet includes the specific selection criteria used for this competition.

Priority

Invitational Priority: We are particularly interested in applications that meet the following priority.

Invitational Priority. Applications for projects that employ technology in building teachers' capacities to interpret, analyze and incorporate student achievement and testing data into the instructional process.

Under 34 CFR 75.105(c)(1) we do not give an application that meets the invitational priority a competitive or absolute preference over other applications.

For Applications Contact: Education Publications Center (ED Pubs), P.O. Box 1398, Jessup, MD 20794–1398. Telephone (toll free): 1–877–433–7827. FAX: (301) 470–1244. If you use a telecommunications device for the deaf (TDD), you may call (toll free): 1–877–576–7734.

You may also contact ED Pubs at its Web site: *http://www.ed.gov/pubs/edpubs.html.*

Or you may contact ED Pubs at its e-mail address: *edpubs@inet.ed.gov.*

If you request an application from ED Pubs, be sure to identify this competition as follows: CFDA number 84.342A.

FOR FURTHER INFORMATION CONTACT: Brenda Shade, Preparing Tomorrow's Teachers to Use Technology Program, U.S. Department of Education, 1990 K Street, NW., Suite 7090, Washington, DC 20006–8526. Telephone: (202) 502–7773 or via Internet: *brenda.shade@ed.gov.*

If you use a telecommunications device for the deaf (TDD), you may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

Individuals with disabilities may obtain this document in an alternative format (*e.g.*, Braille, large print, audiotape, or computer diskette) on request to the program contact person listed under **FOR FURTHER INFORMATION CONTACT.**

Individuals with disabilities may obtain a copy of the application package in an alternative format by contacting that person. However, the Department is not able to reproduce in an alternative format the standard forms included in the application package.

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Program Authority: 20 U.S.C. 1041–1044.

Dated: May 14, 2003.

Sally L. Stroup,

Assistant Secretary, Office of Postsecondary Education.

[FR Doc. 03–12447 Filed 5–16–03; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

President's Board of Advisory on Historically Black Colleges and Universities

AGENCY: President's Board of Advisors on Historically Black Colleges and Universities, Education.

ACTION: Notice of meeting.

SUMMARY: This notice sets forth the schedule and proposed agenda of an upcoming meeting of the President's board of Advisors on Historically Black Colleges and Universities (Board). The notice also describes the functions of the Board. Notice of this meeting is required by section 10(a)(2) of the Federal Advisory Committee Act and is intended to notify the pubic of their opportunity to attend.

DATES: Wednesday, May 28, 2003.

TIME: 8 a.m.–4 p.m.

ADDRESSES: The Board will meet in Washington, DC the Wyndham Hotel on 1400 M Street.

FOR FURTHER INFORMATION CONTACT: Ambassador Leonard H.O. Spearman, Executive Director, or Beverly Ward, Special Assistant, White House Initiative on Historically Black Colleges and Universities, 400 Maryland Ave., SW., Washington, DC 20202; telephone: (202) 502–9700.

SUPPLEMENTARY INFORMATION: The President's Board of Advisors on Historically Black Colleges and Universities is established under Executive Order 13256 dated February 12, 2002. The Board is established (a) to report to the President annually on the results of the participation of historically black colleges and universities (HBCUs) is Federal programs, including recommendations on how to increase the private sector role, including the role of private foundations, in strengthening these institutions, with particular emphasis on enhancing institutional planning and development, strengthening fiscal stability and financial management, and improving institutional infrastructure, including the use of technology, to ensure the long-term viability and enhancement of these institutions; (b) to advise the President and the Secretary of Education (Secretary) on the needs of HBCUs in the areas of infrastructure, academic programs, and faculty and institutional development; (c) to advise the Secretary in the preparation of an annual Federal plan for assistance to HBCUs in increasing their capacity of participate in Federal programs; (d) to provide the President with an annual progress report on enhancing the capacity of HBCUs to serve their students; and (e) to develop, in consultation with the Department of Education and other Federal agencies, a private sector strategy to assist HBCUs.

The purpose of the meeting is to address administrative issues, such as annual ethics training.

Individuals who will need accommodations for a disability in order to attend the meeting (*e.g.*, interpreting services, assistive listening devices, or materials in alternative format) should notify Barbara Lindler at (202) 502–7904 by no later than May 16, 2003. We will attempt to meet requests for accommodations after this date but cannot guarantee their availability. The meeting site is accessible to individuals with disabilities.

An opportunity for public comment is available on May 28, 2003 between 3 p.m. and 4 p.m. Those members of the public interested in submitting written comments may do so at the address indicated above by Friday, May 25, 2003.

Records are kept of all Board proceedings and are available for public inspection at the office of the White House Initiative on Historically Black Colleges and Universities from the hours of 9 a.m. to 5 p.m.

William Hansen,

Deputy Secretary, U.S. Department of Education.

[FR Doc. 03–12530 Filed 5–16–03; 8:45 am]

BILLING CODE 4000–01–M

DEPARTMENT OF ENERGY

Energy Information Administration

Notice of Intent To Release Information About Uranium Mines and Properties in the United States to Other Federal Agencies for Official Uses

AGENCY: Energy Information Administration (EIA), Department of Energy (DOE).

ACTION: Notice of intent to release information about uranium mines and properties in the United States to other Federal government agencies for official uses.

SUMMARY: The Energy Information Administration (EIA) is notifying the public of its intent to release, upon request from Federal government agencies for official uses, information about uranium mines and properties in the United States. The information is considered confidential. Information that may be released includes: (1) The U.S. Uranium Mines and Properties Database containing information about former uranium mines and properties that were active in the period 1940–1983; and (2) Uranium Mining and Processing Survey Information collected during the period 1971–2001. Currently, EIA has requests from the Environmental Protection Agency (EPA) and the Department of Interior's Bureau of Land Management (BLM) for uranium mines and properties information. The EPA request is for information from both the Uranium Mines and Properties Database and from Uranium Mining and Processing Survey Information about decommissioned, abandoned, closed or inactive uranium mines, transfer stations, tailings, and leases located in Northeastern Arizona, Northwestern New Mexico, and Southeastern Utah on Navajo Nation tribal lands, Navajo fee lands, and Navajo allotted lands. The BLM request is for information in the Uranium Mines and Properties Database. Laws, including the Comprehensive Environmental Response, Compensation, and Liability Act, require that the Department provide the requested information to the EPA and BLM.

DATES: EIA plans to release uranium mines and properties information to other Federal agencies for their official uses on or after June 20, 2003. Comments must be filed by June 13, 2003. If you anticipate difficulty in submitting comments within that period, contact the person listed below as soon as possible.

ADDRESSES: Comments should be directed to Luther Smith. To ensure receipt of the comments by the due date, submission is recommended by FAX (202–287–1934) or e-mail at (*Luther.Smith@eia.doe.gov*). Alternatively, you may use the following mailing address: Luther Smith, EI–52/L'Enfant Plaza Building, U.S. Department of Energy, 1000 Independence Ave. SW, Washington, DC 20585–1615. Mr. Smith may also be contacted by telephone at (202) 287–1728.

FOR FURTHER INFORMATION CONTACT: Requests for additional information should be directed to Mr. Smith at the address listed above.

SUPPLEMENTARY INFORMATION:

I. Background
II. Current Actions

I. Background

The Federal Energy Administration Act of 1974 (Pub. L. 93–275, 15 U.S.C. 761 *et seq.*) and the DOE Organization Act (Pub. L. 95–91, 42 U.S.C. 7101 *et seq.*) require the EIA to carry out a centralized, comprehensive, and unified energy information program. These laws also require EIA to disclose trade secrets and confidential statistical information to other Federal government departments, agencies, and officials for official use upon request.

In carrying out its mission, the EIA collects, compiles, and analyzes information on energy resources, production, demand, technology, and related economic and statistical information. The information is used to assess and report on the energy situation of the United States.

The EIA provides the public and Federal agencies with opportunity to comment on the energy-information projects conducted by EIA. EIA also, as appropriate, requests comments on important issues relevant to dissemination of its energy information. Comments received assist EIA in responding to requests for the energy information it has compiled from various sources.

The Uranium Mines and Properties Database information is based on the Federal government's Uranium Concentrate Procurement Program (1947–1970) and the related Uranium Ore Reserve Program (1947–1983). Throughout these programs, the Atomic Energy Commission (AEC) and successive Federal agencies obtained private-industry information that was needed to assure the success of the concentrate procurement and ore reserve programs. The AEC, Energy Research and Development Administration (ERDA), and DOE staff engineers and geologists also regularly monitored private-industry activities to assure the capability to prepare timely internal reports on uranium exploration, mining, reserves, concentrate production, and important industry activities. It is EIA's view that information requested in conjunction with these programs was provided to the Federal government with the understanding that it would be treated

as confidential and not publicly released.

Management of the Uranium Concentrate Procurement Program, formerly under the Manhattan Engineer District of the Army Corps of Engineers, was transferred by early 1947 to the AEC as a key responsibility. The AEC's critical mission included the acquisition of uranium concentrates to meet defense needs and the development of a domestic uranium ore reserves base adequate to meet the future demand as then foreseen. The AEC began in 1947 a major program for uranium exploration and development of a domestic uranium mining industry. The program was designed to utilize the full-scale participation of mining-industry firms, small miners, and private prospectors, and its success required that exploration activities were maintained at a high level. Through financial incentives issued by the AEC, private industry was encouraged to explore for uranium deposits. The AEC also conducted exploration projects for uranium in selected areas and made the results from those projects available to the private sector. These actions succeeded in stimulating a rapid rate of private industry participation by providing supporting services and information to the private sector. During the Uranium Concentrate Procurement Program, the AEC and successive agencies issued announcements that redirected the program or established new incentives as required to achieve the long term goals of the concentrate procurement effort. These announcements, in varying degree, altered the Federal government's informational requirements for the on-going uranium procurement and ore reserve programs.

The Uranium Ore Reserve Program was complementary to the Uranium Concentrate Procurement Program. The Uranium Ore Reserve Program dealt initially with the quantity and quality of uranium reserves on mining properties tributary to uranium mills, from which the AEC had contracted to buy uranium concentrates. The mills were to be amortized by the Government, generally in a short time period. AEC's responsibility was to assure that sufficient uranium ore to feed the mills existed on the tributary properties so the Government reasonably could expect to receive the amounts of uranium concentrate specified in the milling contracts and to assure that identified reserves were adequate for amortization of the milling projects proposed by industry firms.

The Uranium Ore Reserve Program's prime objective was collection of current and accurate information at that time on the supply of uranium ores in the Western United States. Assessment of the ore reserves for uranium deposits on individual properties required independent calculation of reserves by Federal government agency mining engineers. For this purpose, drill-hole and other engineering data for a large number of properties were made available to the government agencies by the mining companies.

In addition to quantitative data regarding ore reserves, data were also obtained about the deposits' physical locations, ownership, geological and geochemical characteristics, mining problems, and mining costs. Data were also routinely obtained about industry activities, including acquisition of land for uranium exploration, exploration and development activities, mine production of uranium ore, milling of ore, the costs associated with these activities, and the processing of uranium ore and production of concentrate. Data and costs for other activities were also obtained. The data for each uranium mine and property were compiled into an individual file (record). The files for all U.S. mines and properties (1940–1983) make up the database. The files may also contain official letters and documents, notes, and other specific information prepared by the government agency staff.

The government's uranium ore reserve effort, which began early in the Uranium Concentrate Procurement Program, was continued after 1970 when the procurement program was ended. Estimates of domestic uranium ore reserves and potential (undiscovered) resources made by the ERDA and DOE under the Uranium Ore Reserve Program were published annually by those agencies into early 1983.

Across all records in the mines and properties database, the quantity and quality of data, subject-matter, type of information, its relative completeness, and similarity of the information are variable. Some records contain a large amount of detailed, company and property-specific information, whereas other records contain more limited information. For the Uranium Mines and Properties Database, the list of identification codes for mine/property names contains about 8,700 ID-code/name combinations that were assigned for recording and tracking the mines and properties data. That number is believed to represent an approximate upper limit for the total number of records (files) created for uranium mine and property data during the Federal government programs.

The Uranium Mines and Properties Database contains historical, confidential information about the domestic uranium industry (1940–1983) that relates to, but is not limited to, the ownership of uranium mines and properties, ore reserves, mine development, mining operations, and ore and uranium concentrate production. The historical information is potentially helpful to other Federal agencies in reclamation projects at former uranium mine sites, processing sites, and related sites. Such uses may include, but are not limited to, documenting the history and nature of former site use and activities, determining the outlines of former mine (open pit and underground) areas and workings, and to potentially relocate sites of surface exploration boreholes.

The information obtained by the EIA in its Uranium Mining and Processing Surveys is submitted by domestic uranium mining and milling firms. The information is analyzed and disseminated by the EIA as non-company-specific information in a variety of printed and electronic-media products that are used by analysts and policymakers in the government and the private sector. (EIA's uranium information is available on its web site at http://www.eia.doe.gov/cneaf/nuclear/page/newuran.html.) The uranium industry information obtained in EIA's uranium surveys is not integrated with the U.S. Uranium Mines and Properties Database (1947–1983).

In addition to information obtained on its Uranium Mining and Processing Surveys, the EIA uses information contained in the Uranium Mines and Properties Database to annually prepare estimates of the domestic uranium ore reserve situation. The estimates of U.S. ore reserves made by the EIA are published annually in the "Uranium Industry Annual" report series (1985–2001); submitted to the Congress, the U.S. Department of Energy, and other Federal agencies as required; and periodically submitted to the Nuclear Energy Agency of the Organization for Economic Cooperation and Development and to the International Atomic Energy Agency.

II. Current Actions

The EIA is notifying the public of its intent to release, upon request from Federal government agencies for official use, information about uranium mines and properties in United States. The information is considered confidential. Information that may be released includes: (1) The U.S. Uranium Mines and Properties Database containing information about uranium mines and properties that were active in the period 1940–1983; and (2) Uranium Mining and Processing Survey Information collected during the period 1971–2001. Currently, EIA has requests from the Environmental Protection Agency (EPA) and the Department of Interior's Bureau of Land Management (BLM) for uranium mines and properties information. The EPA request is for information from both the Uranium Mines and Properties Database and from Uranium Mining and Processing Survey Information on decommissioned, abandoned, closed or inactive uranium mines, transfer stations, tailings, and leases located in Northeastern Arizona, Northwestern New Mexico, and Southeastern Utah on Navajo Nation tribal lands, Navajo fee lands, and Navajo allotted lands. The BLM request is for information in the Uranium Mines and Properties Database.

Release of the information to other Federal agencies is consistent with the Federal Energy Administration Act of 1974 (Pub. L. 93–275, 15 U.S.C. 761 *et seq.*) and the DOE Organization Act (Pub. L. 95–91, 42 U.S.C. 7101 *et seq.*) requirements for EIA to make trade secrets and confidential statistical information available to other Federal government departments, agencies, and officials for official use upon request. The information was provided to the Department of Energy, predecessor Federal agencies, and the EIA, with an understanding that the information would be treated as confidential and would not be publicly released in identifiable form. EIA would release the information to other Federal agencies in individually-identifiable format for official uses and with a stipulation that those agencies preserve the information's confidentiality.

For the Uranium Mines and Properties Database, the particular types of information that would be released to other Federal agencies upon request may include, but are not limited to, the following: name for the mine operator/owner; beginning date and ending date for mining operations; total production from the mine; mining methods; nature and extent of the surface plant; number of employees who worked at the mine and period; mills to which the mined ore was shipped; historical photographs of the mine during the time it was in operation; maps that show mine workings in plan view, the pit walls and bottoms for open pit mines, and the location and extent of any underground mine workings; and drill-site locations for surface boreholes.

For the Uranium Mining and Processing Survey Information, the particular types of information that would be released to other Federal agencies upon request may include, but are not limited to, exploration, development, reserves, production, milling, processing, and employment information collected in the years 1971–1981 by the DOE and predecessor agencies and in the period 1982–2001 by the EIA from domestic uranium industry companies on the "Annual Uranium Exploration Survey," (Form EIA–717 and predecessor forms for 1971–1984), and Schedule A (Uranium Raw Materials Activities) of the "Uranium Industry Annual Survey," (Form EIA–858 for 1984–2001.)

The release of uranium mines and properties information to other Federal agencies for their official uses will not expand uranium industry data that will be provided in EIA's information products. The EIA will continue to maintain the confidentiality of information collected on its survey forms and will continue to use its disclosure rules, which are designed to protect confidential data, and withhold sensitive data from publication in individually-identifiable form. EIA will also require that any Federal agencies receiving confidential information from EIA will treat the information appropriately.

Statutory Authority: Federal Energy Administration Act of 1974 (Pub. L. 93–275, 15 U.S.C. 761 *et seq.*) and the DOE Organization Act (Pub. L. 95–91, 42 U.S.C. 7101 *et seq.*).

Issued in Washington, DC, on May 13, 2003.

Jay H. Casselberry,

Agency Clearance Officer, Statistics and Methods Group, Energy Information Administration.

[FR Doc. 03–12434 Filed 5–16–03; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP03–472–000]

Black Marlin Pipeline Company; Notice of Tariff Filing

May 13, 2003.

Take notice that on May 7, 2003, Black Marlin Pipeline Company (Black Marlin) tendered for filing as part of its FERC Gas Tariff, Original Volume No. 1, the following revised tariff sheets to be effective July 1, 2003:

Third Revised Sheet No. 108A
Sixth Revised Sheet No. 200
First Revised Sheet No. 211C
Third Revised Sheet No. 213.01
Fifth Revised Sheet No. 213B
Fourth Revised Sheet No. 213D
Fifth Revised Sheet No. 217
Third Revised Sheet No. 219
Fourth Revised Sheet No. 220
Sheet No. 314
Sheet Nos. 315–318
Sheet No. 319
Sheet Nos. 320–328
Sheet No. 329
Sheet No. 330

Black Marlin states that this filing is made in part for administrative purposes and in part as a housekeeping matter to clarify, update and clean up several items in Black Marlin's tariff.

Black Marlin further states that copies of the filing have been mailed to each of its customers, interested State Commissions and other interested persons.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link.

Comment Date: May 19, 2003.

Magalie R. Salas,

Secretary.

[FR Doc. 03–12442 Filed 5–16–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP03–474–000]

Clear Creek Storage Company, L.L.C.; Notice of Tariff Filing

May 13, 2003.

Take notice that on May 8, 2003, Clear Creek Storage Company, L.L.C. (Clear Creek) tendered for filing, as part of its FERC Gas Tariff, Original Volume No. 1, the following tariff sheets, with an effective date of July 1, 2003:

Original Sheet Nos. 44B and 44C
First Revised Sheet Nos. 39, 44A, 45
Second Revised Sheet Nos. 40A and 77A
Third Revised Sheet No. 38A
Fourth Revised Sheet Nos. 40 and 77

Clear Creek states that the filing is in compliance with the Commission's Order No. 587–R in Docket No. RM96–1–024.

Clear Creek explains that Order No. 587–R amended, 18 CFR 284.12, standards for interstate pipeline business operations and communications, to adopt (1) Version 1.6 of the consensus industry standards promulgated by the Wholesale Gas Quadrant (WGQ) of the North American Energy Standards Board (NAESB) and (2) WGQ standards governing partial day recalls. Clear Creek states that through this filing it will revise its tariff to reflect the changed standards so as to be consistent with Order No. 587–R.

Clear Creek states further that a copy of this filing has been served upon its customers and the Public Service Commission of Wyoming.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link.

Comment Date: May 20, 2003.

Magalie R. Salas,

Secretary.

[FR Doc. 03–12444 Filed 5–16–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP03–473–000]

Enbridge Pipelines (KPC); Notice of Negotiated Rates

May 13, 2003.

Take notice that on May 7, 2003, Enbridge Pipelines (KPC), hereinafter Enbridge KPC, tendered for filing as part its FERC Gas Tariff, First Revised Volume No. 1, the revised tariff sheets listed on the filing, proposed to be effective November 1, 2002.

Enbridge KPC states that the purpose of this filing is to establish negotiated rate authority for Enbridge KPC and to file negotiated rates applicable to services for Kansas Gas Service, a division of Oneok, Inc.

Enbridge KPC states that copies of this tariff filing are being served on all jurisdictional customers and applicable state regulatory agencies.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link.

Comment Date: May 19, 2003.

Magalie R. Salas,

Secretary.

[FR Doc. 03–12443 Filed 5–16–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP03–59–001]

Questar Pipeline Company; Notice of Compliance Filing

May 13, 2003.

Take notice that on May 8, 2003, Questar Pipeline Company (Questar) tendered for filing as part of its FERC Gas Tariff, Original Volume No. 3, the following tariff sheets, to be effective March 1, 2003:

Eighth Revised Sheet No. 10
First Revised Sheet No. 520

Questar states that it filed an application under 7(b) of the Natural Gas Act in Docket No. CP03–59–000, on March 5, 2003, to abandon service under a certificated agreement between Questar and Mid-Power Resource Corporation (Mid-Power).

Questar further states that on March 1, 2003, Mid-Power signed a letter indicating its agreement to the abandonment of this service, and, on April 24, 2003, the Commission issued an order granting approval of the abandonment, effective March 1, 2003. Therefore, Questar filed to revise tariff sheets reflecting the cancellation of Rate Schedule X–34.

Questar states that a copy of this filing has been served upon Questar's customers, the Public Service Commission of Utah and the Public Service Commission of Wyoming.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link.

Protest Date: May 20, 2003.

Magalie R. Salas,

Secretary.

[FR Doc. 03–12437 Filed 5–16–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP96–359–015]

Transcontinental Gas Pipe Line Corporation; Notice of Negotiated Rates

May 13, 2003.

Take notice that on May 6, 2003, Transcontinental Gas Pipe Line Corporation (Transco) tendered for filing a copy of the executed service agreement amendment that contains a negotiated daily facilities reservation rate surcharge (facilities surcharge) under Transco's Rate Schedule FT for the costs of the expansion of the U.S. Steel Meter Station, a delivery point to PECO Energy Company (PECO). The effective date of this facilities surcharge is May 7, 2003, which is the anticipated in-service date of the U.S. Steel Meter Station expansion.

Transco states that Transco and PECO are parties to a service agreement, dated June 1, 2001, under Transco's Rate Schedule FT for firm transportation service under Transco's Leidy East Expansion Project. Transco further states that it has agreed to construct an expansion of the U.S. Steel Meter Station, a delivery point to PECO located on Transco's main line in Bucks County, Pennsylvania. Transco asserts that pursuant to Section 20.7 of the General Terms and Conditions of Transco's FERC Gas Tariff, Transco and PECO have executed an amendment to the service agreement to revise Exhibit C thereto to include a facilities surcharge for the expansion of the U.S. Steel Meter Station in addition to the negotiated daily reservation rate for PECO's firm transportation service under Transco's Leidy East Expansion Project. Transco states that the effective date of this facilities surcharge is May 7, 2003, which is the anticipated in-service date of the U.S. Steel Meter Station expansion.

Transco states that copies of the filing are being mailed to its affected customers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link.

Comment Date: May 19, 2003.

Magalie R. Salas,

Secretary.

[FR Doc. 03–12445 Filed 5–16–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. EC03–85–000, et al.]

Granite II Holding, LLC, et al.; Electric Rate and Corporate Filings

May 12, 2003.

The following filings have been made with the Commission. The filings are listed in ascending order within each docket classification.

1. Granite II Holding LLC, Quixx Corporation, Quixx Resources, Inc., Energy Investors Funds Group, EIF Mustang Holding I, LLC

[Docket No. EC03–85–000]

Take notice that on May 2, 2003, Granite II Holding, LLC (Granite), Quixx Corporation (Quixx), Quixx Resources, Inc. (Quixx Resources), Energy Investors Funds Group, and EIF Mustang Holdings I, LLC (Mustang Holdings) (all collectively, Applicants) filed with the Federal Energy Regulatory Commission (the Commission) an application for authorization pursuant to Section 203 of the Federal Power Act and part 33 of the Commission's regulations (the Application). The Applicants state that the application seeks authorization for Granite, Quixx, and Quixx Resources to sell their ownership interests in Denver City Energy Associates, L.P. (DCE) to Mustang Holdings for cash. The Applicants state the DCE holds an undivided 50 percent interest in an approximately 489–MW generating facility near Denver City, Texas. The Applicants assert that jurisdictional assets included in the transaction are rate schedules, a long-term power purchase agreement, books and records, and certain facilities associated with the generation assets that are necessary to effectuate wholesale sales of electricity.

Applicants seek expedited review of the Application and request confidential treatment of certain documents submitted therewith.

Comment Date: May 23, 2003.

2. Mountain View Power Company, L.L.C.

[Docket No. EG03–67–000]

Take notice that on May 6, 2003, Mountain View Power Company, L.L.C. (Applicant), filed with the Federal Energy Regulatory Commission an application for determination of exempt wholesale generator status pursuant to part 365 of the Commission's regulations.

Applicant states that it proposes to own or operate, or both own and operate, a natural gas-fired, combined cycle electric generation station, together with ancillary facilities, with an aggregate capacity of approximately 1,052, to be located in San Bernardino County, California. Applicant further states that all output from the generating facilities will be sold exclusively at wholesale.

Comment Date: June 2, 2003.

3. Jersey Central Power & Light Company

[Docket No. ER03–650–002]

Take notice that on May 6, 2003, Jersey Central Power & Light Company (Jersey Central) tendered for filing an amendment to its March 25, 2003 filing, as amended March 27, 2003, in Docket Nos. ER03–650–000 and ER03–650–001. Jersey Central states that the amendment redesignates a proposed interconnection agreement as PJM Interconnection, L.L.C., FERC Electric Tariff, Fifth Revised Volume No. 1, Original Service Agreement No. C890. In addition, Jersey Central states that in addition, the amendment deletes material that is no longer pertinent to the agreement.

Jersey Central states that a copy of this filing has been served upon parties to the agreement and each of the parties designated on the official service list for this proceeding.

Comment Date: May 27, 2003.

4. LMP Capital, LLC, and CAM Energy Products, LP

[Docket Nos. ER03–653–001 and ER03–736–001]

Take notice that on May 7, 2003, LMP Capital, LLC (LMP Capital) filed an amendment to its application for market-based rates. LMP Capital states that the amendment supplies additional information requested in an April 29, 2003 deficiency letter by the Federal Energy Regulatory Commission including disclosure of direct ownership in LMP Capital and CAM Energy Products, LP and a request for a revision to the LMP Capital market-based rate tariff.

Comment Date: May 21, 2003.

5. Marina Energy, LLC

[Docket No. ER03–715–001]

Take notice that on May 6, 2003, Marina Energy, LLC (Marina) tendered for filing with the Federal Energy Regulatory Commission (Commission) an amendment to its application for market-based rates as a power marketer. Marina states that the amendment to the initial filing insures that the Rate Schedule complies with the pagination and designation requirements of FERC Order No. 614 (2000).

Comment Date: May 27, 2003.

6. Southern Company Services, Inc.

[Docket No. ER03–818–000]

Take notice that on May 6, 2003, Southern Company Services, Inc. (SCS), acting on behalf of Alabama Power Company, Georgia Power Company, Gulf Power Company, Mississippi Power Company, and Savannah Electric and Power Company (collectively Southern Companies), filed an Interim Agreement for Network Integration Transmission Service and Complementary Services between the Southeastern Power Administration (SEPA), and SCS, as agent for Southern Companies. SCS states that under the Interim Agreement, SEPA is allocating additional resources to certain of its customers and Southern Companies are providing additional transmission and complementary services to those customers. SCS states that the Interim Agreement is designated Rate Schedule FERC No. 400.

Comment Date: May 27, 2003

7. Virginia Electric and Power Company

[Docket No. ER03–819–000]

Take notice that on May 6, 2003, Virginia Electric and Power Company, doing business as Dominion Virginia Power (Dominion Virginia Power) tendered for filing an executed Generator Interconnection and Operating Agreement (Interconnection Agreement) between Dominion Virginia Power and Industrial Power Generating Corporation (Ingenco). Dominion Virginia Power states that the Interconnection Agreement sets forth the terms and conditions governing the interconnection between Ingenco's Shoosmith generating facility, located in Chester, Virginia, and Dominion Virginia Power's transmission system. Dominion Virginia Power requests an effective date of July 5, 2003.

Dominion Virginia Power states that copies of the filing were served upon Ingenco and the Virginia State Corporation Commission.

Comment Date: May 27, 2003.

8. The Dayton Power and Light Company

[Docket No. ER03–820–000]

Take notice that on May 5, 2003, The Dayton Power and Light Company (DP&L) submitted for filing a Network Service Agreement and a Network Operating Agreement for Network Integration Transmission Service between DP&L and Buckeye Power, Inc. (Buckeye). DP&L states that these Agreements will provide for Network Integration Transmission Service under DP&L's Open Access Transmission Tariff. In addition DP&L states that the Attachment to the Network Service Agreement establishes monthly direct assignment charges for wholesale distribution service and metering provided to Buckeye over facilities owned by DP&L. DP&L also submitted for filing a Notice of Cancellation of DP&L's FERC Electric Rate Schedule No. 33, Rate Schedules FPC Nos. 3 through 29, Supplement No. 1 to Rate Schedule No. 70 and Supplement No. 1 to Rate Schedule FPC No. 2, consisting of a Power Delivery Agreement among Buckeye, the Cincinnati Gas & Electric Company, Columbus Southern Power Company, Monongahela Power Company, Ohio Power Company, Toledo Edison Company, and DP&L.

DP&L requests an effective date of June 30, 2003 for the cancellation and an effective date of July 1, 2003 for the Agreements and Attachment for Network Integration Transmission Service.

DP&L further states that it served copies of these filings on Buckeye, the Cincinnati Gas and Electric Company, Columbus Southern Power Company, Monongahela Power Company, Ohio Power Company, the Toledo Edison Company, and the Public Utilities Commission of Ohio.

Comment Date: May 27, 2003.

9. One Nation Energy Solutions, LLC

[Docket No. ER03–821–000]

Take notice that on May 6, 2003, One Nation Energy Solutions, LLC (ONES) petitioned the Federal Energy Regulatory Commission (Commission) for acceptance of ONES Rate Schedule FERC No. 1; the granting of certain blanket approvals, including the authority to sell electricity at market-based rates; and the waiver of certain Commission regulations.

ONES states that it intends to engage in wholesale electric power and energy purchases and sales as a marketer; that it is not in the business of generating or transmitting electric power; and is not affiliated with any other company, nor do its officers/members serve as officers, significant stockholders, or members of any other company.

Comment Date: May 27, 2003.

10. PacifiCorp

[Docket No. ER03–822–000]

Take notice that on May 6, 2003, PacifiCorp tendered for filing with the Federal Energy Regulatory Commission (Commission) a Notice of Cancellation of PacifiCorp's Rate Schedule No. 544 with San Diego Gas & Electric Company (San Diego) effective December 31, 2001.

PacifiCorp states that it has served copies of this filing to San Diego and the Public Utility Commission of Oregon.

Comment Date: May 27, 2003.

11. Ameren Services Company

[Docket No. ER03–823–000]

Take notice that on May 6, 2003, Ameren Services Company (ASC) tendered for filing an executed Service Agreement for Firm Point-to-Point Transmission Services between ASC and Ameren Energy Marketing Company. ASC asserts that the purpose of the Agreement is to permit ASC to provide transmission service to Ameren Energy Marketing Company pursuant to Ameren's Open Access Transmission Tariff.

Comment Date: May 27, 2003.

12. Commonwealth Edison Company

[Docket No. ER03–824–000]

Take notice that on May 6, 2003, Commonwealth Edison Company (ComEd) tendered for filing with the Federal Energy Regulatory Commission (Commission) a Notice of Cancellation of FERC Rate Schedule No. 16, Amendment No. 7 to an Interconnection Agreement between ComEd and Wisconsin Power and Light Company (Wisconsin Power) dated February 21, 1992. ComEd requests a cancellation effective date of May 31, 2003.

Comment Date: May 27, 2003.

13. Maxim Energy Partners, LLC

[Docket No. ER03–827–000]

Take notice that on May 6, 2003, Maxim Energy Partners, LLC (Maxim Energy Partners) tendered for filing with the Federal Energy Regulatory Commission (Commission) a petition for acceptance of Maxim Energy Partners' Rate Schedule FERC No. 1; the granting of certain blanket approvals, including the authority to sell electricity at market-based rates; and the waiver of certain Commission regulations.

Maxim Energy Partners states that it intends to engage in wholesale electric power and energy purchases and sales as a marketer; that it is not in the business of generating or transmitting electric power; and that it is a Kansas limited liability company and is not affiliated with any other organization.

Comment Date: May 27, 2003.

14. California Power Exchange Corporation

[Docket No. ER03–830–000]

Take notice that on May 6, 2003, the California Power Exchange Corporation (CalPX) tendered for filing with the Federal Energy Regulatory Commission (Commission) its proposed Amendment No. 23 to the CalPX FERC Electric Service Tariff No. 2. CalPX states that it files this Tariff Amendment No. 23 to align CalPX's Tariff procedures with those proposed by the California Independent System Operator (ISO) in its April 15, 2003 filing of Amendment No. 51 to the ISO Tariff, which concerns preparatory market adjustments and reruns. CalPX states that by its Tariff Amendment No. 23, CalPX also requests that the time period for filing disputes on the ISO Settlement Statements for the preparatory adjustments/reruns be extended to 15 business days, which period shall begin on the date that CalPX provides the statements to its Participants.

CalPX states that it has served copies of the filing on its participants, on the ISO, and on the California Public Utilities Commission. CalPX requests that the amendment be made effective concurrently with the effective date of the ISO's Amendment No. 51.

Comment Date: May 27, 2003.

15. Global Common Greenport, LLC

[Docket No. ER03–833–000]

Take notice that on May 8, 2003, Global Common Greenport, LLC (GCG) petitioned the Commission for acceptance of GCG's Rate Schedule FERC No. 1; the granting of certain blanket approvals, including the authority to sell electricity at market-based rates; and the waiver of certain Commission regulations.

GCG, states that it is an exempt wholesale generator, and will sell the entire output of its 54 MW generating facility located in Greenport, New York under long-term contract to the Long Island Power Authority (LIPA). GCG also states that it is is a limited liability company formed under the laws of New York principal place of business is New York, New York. GCG asserts that in transactions where GCG sells electric power it proposes to make such sales on rates, terms, and conditions to be mutually agreed to with the purchasing party.

Comment Date: May 21, 2003.

Standard Paragraph

Any person desiring to intervene or to protest this filing should file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. All such motions or protests should be filed on or before the comment date, and, to the extent applicable, must be served on the applicant and on any other person designated on the official service list. This filing is available for review at the Commission or may be viewed on the Commission's Web site at *http://www.ferc.gov* , using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or for TTY, contact (202) 502–8659. Protests and interventions may be filed electronically via the Internet in lieu of paper; *see* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link. The Commission strongly encourages electronic filings.

Magalie R. Salas,

Secretary.

[FR Doc. 03–12439 Filed 5–16–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project Nos. 935–037, 2071–015, 2111–011, and 2213–002]

PacifiCorp, Cowlitz PUD, Washington; Notice of Availability

May 13, 2003.

In accordance with the National Environmental Policy Act of 1969 and the Federal Energy Regulatory Commission's (Commission) regulations, 18 CFR part 380 (Order No. 486, 52 FR 47897), the Office of Energy Projects has reviewed the application for amendment to licenses for the Lewis River Hydroelectric Projects (Merwin P–935, Yale P–2071, Swift No. 1 P–2111, and Swift No. 2 P–2213), located on the North Fork Lewis River in Cowlitz, Clark, and Skamania counties, Washington and has prepared a Final Environmental Assessment (FEA) for the projects. No Federal lands are involved.

The FEA contains the staff's analysis of the potential environmental impacts of the projects and concludes that approving the amendments to the licenses, with appropriate environmental protective measures, would not constitute a major federal action that would significantly affect the quality of the human environment.

A copy of the FEA is available for public inspection in the Public Reference Room of the Commission's offices at 888 First Street, NE., Washington, DC 20426. The FEA may also be viewed on the Internet at *http://www.ferc.gov* using the "FERRIS" link—select "Docket #" and follow the instructions. For assistance, please

contact FERC online support at *FERCOnlineSupport@ferc.gov* or call toll-free 866–208–3676 or (202) 502–8659 (for TTY). Attachments A and C of the FEA are currently available on FERRIS.

Register online at *http://www.ferc.gov/esubscribenow.htm* to be notified via email of new filings and issuances related to this or other pending projects. For assistance, contact FERC Online Support.

For further information, contact Allison Arnold at (202) 502–6346 or *allison.arnold@ferc.gov*.

Magalie R. Salas,

Secretary.

Environmental Assessment

Project Name: Lewis River Hydroelectric Projects.

FERC Project Numbers: P–935, P–2071, P–2111, P–2213.

May 12, 2003

1.0 Application

1.1 *Application type:* Amendment of License.

1.2 *Date filed:* July 6, 2000.

1.3 *Applicant:* PacifiCorp (Portland, Oregon), Cowlitz PUD (Cowlitz County, Washington).

1.4 *Water body:* North Fork Lewis River.

1.5 *Nearest city or town:* Woodland, Washington.

1.6 *County and State:* Cowlitz, Clark and Skamania Counties, Washington.

2.0 Purpose and Need for Action

On July 6, 2000, PacifiCorp filed an application to amend its licenses for the North Fork Lewis River Hydroelectric Projects (Lewis River Projects) (Merwin P–935, Yale P–2071, and Swift No. 1 P–2111) and supplemented that filing on August 17, 2000. On August 17, 2000, Cowlitz PUD No. 1 (PUD) filed an application to amend its license for the Swift No. 2 Project (P–2213) also located on the Lewis River. The Swift No. 2 Project is operated by PacifiCorp. PacifiCorp and PUD request approval from the Federal Energy Regulatory Commission (Commission) to include within its licenses measures for protecting, enhancing, or mitigating impacts to endangered and threatened and proposed and candidate fish species under the Endangered Species Act of 1973, as amended (ESA). These measures are intended to provide PacifiCorp and PUD with ESA compliance for the Merwin, Yale, and Swift No. 1 and Swift No. 2 hydroelectric projects until collaborative relicensing is completed. By amending its licenses, PacifiCorp and PUD hope to incidental take of listed and proposed species occurring as a result of current facility operations.

3.0 Summary

In this Environmental Assessment (EA), Commission staff review the proposed amendments to the Merwin, Yale, Swift No. 1 and Swift No. 2 licenses to determine if the measures for protecting, enhancing, and mitigating impacts to fish species listed under the ESA will likely reduce incidental take of those species resulting from the operation of the four projects.

The recommended alternative is approving the amendment of PacifiCorp's and PUD's licenses to adopt and implement the proposed conservation strategy. Incorporating the terms of the conservation strategy into PacifiCorp's and PUD's licenses will significantly reduce incidental take of listed species resulting from operation of the Lewis River Projects. Such conservation measures likewise represent important near-term conservation opportunities that may be lost if not secured while the parties collaboratively devise long-term conservation strategies.

4.0 Background

PacifiCorp and PUD (Licensees) have initiated a collaborative ALP for four hydroelectric projects on the North Fork Lewis River in Cowlitz, Clark, and Skamania counties in southwest Washington. PacifiCorp owns and operates the Merwin, Yale, and Swift No. 1 projects. PacifiCorp operates Swift No. 2 under a 1957 contract with Cowlitz PUD. Under that contract, PacifiCorp has sole charge and responsibility for generation and delivery of the power and energy from Swift No. 2.[1] Each of these projects has a different FERC license number, original license expiration date, and production capacity. *See* (Table 4.0–1).

TABLE 4.0–1.—FERC LICENSE NUMBER, ORIGINAL LICENSE EXPIRATION DATE, AND PRODUCTION CAPACITY

Project name	Project owner	FERC license No.	License expiration	Capacity (MW)
Yale	PacifiCorp	2071	May 1, 2001	134
Swift No. 1	PacifiCorp	2111	May 1, 2006	240
Swift No. 2	Cowlitz PUD	2213	May 1, 2006	70
Merwin	PacifiCorp	935	May 1, 2006[1]	136

[1] Original license expiration date was 2009.

The current license for the Yale Project expired on May 1, 2001, five years prior to the expiration of the licenses for Swift Nos. 1 and 2 projects (May 1, 2006) and about eight years before the original expiration date of the current license for the Merwin Project (December 11, 2009). On April 1, 1999, the Commission approved PacifiCorp

[1] The operating agreement provides, in relevant parts: Whereas, the District and Pacific entered into a contract on June 4, 1957, which provides for the delivery to Pacific of all the power and energy to which the District may be entitled under the terms of said contract and for the withdrawal of all or any part of such power and energy by the District in accordance with the conditions stated in said contract and also provides for the coordinated operation of the said Swift Plants Nos. 1 and 2 so as to produce the optimum project output and such coordinated operation will be facilitated by the operation of both plants under one direction and control and to accomplish such purpose and to achieve economy of operation Pacific should be authorized to operate Swift Plant No. 2 under the terms and conditions hereinafter set forth.

* * * * *

"Section 3. Manner of Operation of Swift Plant No. 2

(a) Pacific will operate and maintain Swift Plant No. 2 in an efficient manner, consistent with established electric utility practices for the operation and maintenance of hydroelectric projects of similar type and size and in accordance with any applicable provisions of the Federal Power Commission License for Swift Plant No. 2, as the same may be amended from time to time.

(b) Pacific shall perform the work hereunder as an independent contractor and shall not be subject to the control or supervision of the District except as to the results of the work."

Cowlitz PUD, as licensee, has the right to notice of PacifiCorp's actions and such notice has been given. Cowlitz PUD also may wish to be involved in PacifiCorp's discussions with the Commission staff, USFWS and NMFS (and has been to date). However, as contract operator, PacifiCorp has full discretion to take necessary steps to obtain ESA compliance for its operation of Swift No. 2.

and PUD's request to use the Commission's ALP and for the simultaneous and coordinated processing of the applications for all four projects.

Section 7(a)(2) of the ESA requires that federal agencies ensure that their actions do not jeopardize federally-listed species. The Commission has recognized PacifiCorp as a non-federal designee under Section 7 in a letter dated October 20, 1999. PacifiCorp has developed a multi-species Biological Assessment (BA) (Attachment A) that includes a number of measures to protect, enhance and mitigate project impacts to proposed and listed species under the ESA for the Commission's review and adoption. In the BA, PacifiCorp requests the Commission to amend its licenses, which constitutes a federal action triggering a Section 7 consultation. Specifically, PacifiCorp's application for amendment of its licenses to provide ESA compliance for its ownership of three of the facilities (Merwin, Yale and Swift No. 1) and operation of all four projects (Merwin, Yale and Swift Nos. 1 and 2).

5.0 Proposed Action and Alternatives

The Proposed Action is Commission approval of the Application for Amendment of PacifiCorp's (Merwin, Yale, and Swift No. 1) and PUD's (Swift No. 2) Licenses.

5.1 Proposed Measures

The following section describes proposed measures to reduce the effects of the Lewis River Projects on certain fish species that are listed, proposed for listing, or candidates for listing under the ESA. PacifiCorp proposes to implement pertinent measures upon issuance of license article amendments by the Commission after consultation with the National Marine Fisheries Service (NMFS) and (USFWS) under section 7(a)(2) of the ESA, and subsequent issuance of a Biological Opinion (BO)(Attachment C), and its associated incidental take statement, as it pertains to the proposed operation of the Lewis River Projects. Table 5.1–1 summarizes PacifiCorp's proposed measures. The BO, filed June 28, 2002 by NMFS and USFWS, is consistent with and supports the proposed amendments to the license.

TABLE 5.1–1.—SUMMARY OF PACIFICORP'S PROPOSED MEASURES

Species	Project	Effects	ESA alternatives
Steelhead, Chinook, Chum, Coho and Cutthroat.	Merwin	Instream Flows altered hydrograph ramping.	Change existing ramping rates downstream of Merwin.
Steelhead, Chinook, Chum, Coho and Cutthroat.	Merwin	Upstream Migration Block/reduced habitat.	Provide funds for Clark County to purchase Eagle Island for the protection of anadromous fish rearing habitat.
Steelhead, Chinook, Chum, Coho and Cutthroat.	Merwin	Dewatering/stranding incidents	Implement Merwin redundancy equipment to prevent potential dewatering of riverbed, fish trap and hatcheries. Work with Washington Department of Fish and Wildlife (WDFW) to provide for habitat enhancement measures in the Lewis River and tributaries to benefit salmon populations.
Steelhead, Chinook, Chum, Coho and Cutthroat.	Merwin	Hatchery Program	Continue to fund WDFW Section 10 annual evaluation.
Bull Trout	Yale	Upstream Passage block	Continue net and haul process Enhance/protect habitat upstream at Yale and Swift.
Bull Trout	Yale	Entrainment —turbines —spill	Addressed in the ALP discussions Study strobe effectiveness. Develop a preliminary engineering design study to modify the Yale spillway. Purchase Cougar Cr. Area C to protect and enhance spawning/rearing habitat and create a conservation easement.
Bull Trout	Swift	Limited spawning/rearing	Purchase Swift Cr. Area A (Devil's Backbone) to protect bull trout sub-adult.
Bull Trout	Swift	Population Status	Continue PacifiCorp, WDFW and USFWS monitoring program on Swift.

5.1.1 Steelhead, Chinook, Chum and Coho (Downstream From Merwin Dam)

The Lewis River anadromous salmonids, with the exception of the fall chinook, are currently of hatchery origin from other basins and have been supplemented or introduced since the early 1930's. In addition, current management is aimed at maintaining hatchery stocks in the North Fork Lewis River for the purposes of sport harvest (essentially a terminal fishery) (WDFW and Western Washington Treaty Tribes 1997).

Given this background, PacifiCorp proposes to assist with acquisition of lands to protect and enhance fall chinook habitat downstream of Merwin dam. Chum will benefit from this action as well. The primary purpose is to provide juvenile wild fall chinook rearing to protect the remaining indigenous stock. Coho and steelhead are also known to utilize extensive rearing areas downstream of Merwin dam. PacifiCorp proposes to modify its existing ramping rates and also review the existing license flows downstream of Merwin dam to determine if the current flow regime is suitable for all anadromous species and life stages. In addition, PacifiCorp currently funds WDFW to evaluate hatchery affects on listed salmon and steelhead under a Section 10 permit held by the state and proposes to continue that funding.

Related to the unplanned outage and interruption of flow that occurred on June 6, 1999, PacifiCorp has been working with WDFW to identify measures that would provide for the potential adult salmon and steelhead production that was lost. Elements of the discussion include possible gravel enhancements downstream of Merwin, rehabilitation of a chum spawning site that was inundated by a landslide, habitat improvements on Cedar, Johnson, and Colvin creeks, or purchase of riparian habitat on Cedar Creek. WDFW and PacifiCorp are currently evaluating which of these options to pursue but any one of these will result in benefits to the listed species.

Habitat Enhancement and Protection

Anadromous salmonids utilize several areas downstream of Merwin dam for spawning and rearing. The majority of the spawning occurs upstream of the Lewis River Salmon Hatchery. Juvenile rearing occurs in many areas between the uppermost spawning sites and the lower river adjacent to the city of Woodland. The primary rearing site downstream of Merwin dam is Eagle Island, which is approximately seven miles downstream of Merwin dam and is considered to be prime fall chinook juvenile rearing habitat.

Eagle Island is a 259-acre parcel with an associated 20-acre mainland piece. Over 75 percent of the present day wild fall chinook rearing habitat is associated with the island. The island also provides critical habitat for adult and juvenile steelhead, coho, chum and cutthroat (WDFW 1998). Until this year, a developer owned the island with plans for residential development. The WDFW has made many attempts to purchase the island for protection of the habitat. In June 1999, Clark County obtained monies to match State funding for purchase of the island. PacifiCorp, through agreement with Clark County, has paid the county's portion of the funding to purchase the island and deed the property to the State. The funding obtained by Clark County will be used to protect and restore salmon and steelhead rearing areas through their Conservation Futures program to improve the habitat on the island for wildlife and set up a fund for continued preservation of Eagle Island.

Ramping Rates—Evaluation/Review/Modify

PacifiCorp proposes to modify the current Merwin down-ramping rates to meet a new standard of 0.5 feet per three-hour period (with the intent to meet 2 inch/hour as best as possible). This down-ramping rate protects juveniles and fry using shallow stream margin habitat. Up-ramping will be increased from 1 ft/hr to 1.5 ft/hr. The up-ramping limitations focus on safety for those using the river below the project. A Standard Operating Procedure (SOP) will be developed that describes how ramping requirements will be accomplished. The SOP will be subject to NMFS and USFWS approval.

Hatchery Evaluation

PacifiCorp currently funds WDFW to evaluate effects of hatchery outplanting from Merwin and North Fork Lewis River hatcheries on Columbia and Snake river listed species. With the addition of listed species within the basin, PacifiCorp proposes to expand efforts to evaluate hatchery effects on in-basin species.

5.1.2 Bull Trout and Cutthroat Trout (Upstream From Merwin Dam)

Continue Yale Net and Haul

The USFWS commented on the Yale application for a new license and suggested that PacifiCorp begin engineering studies concerning fish passage facilities at the projects. However, since the ALP will address basin-wide fish passage issues, PacifiCorp believes it is premature to propose specific passage measures at this time. PacifiCorp proposes to continue net and haul activities in cooperation with WDFW as directed by USFWS (letter from N. Gloman—USFWS, dated Nov. 12, 1998) and to expand efforts to the Swift No. 2 tailrace if needed. PacifiCorp initiated a pilot net and haul program at Swift No. 2 tailrace in 1999. According to the bull trout monitoring report (Lesko 2000 page 4), two bull trout were captured at the Swift 2 tailrace on October 2, 1999. However, PacifiCorp will continue its involvement in monitoring the presence of bull trout at the Swift No. 2 tailrace if USFWS and WDFW determine it to be necessary.

Entrainment Reduction

PacifiCorp proposes to evaluate a strobe light system to prevent bull trout entrainment at the Yale and Swift No. 1 spill and turbine intakes (*see* 6.2 Biological Justification). However, effectiveness for bull trout is unknown and the system would need to be adequately evaluated. PacifiCorp believes that available scientific information suggests that strobes may prove successful in substantially reducing salmonid entrainment at the projects. Such evaluation will also provide the Aquatics Workgroup with a scientific basis for determining whether PacifiCorp should explore other measures to address entrainment concerns. In terms of the Yale spillway, PacifiCorp proposes to conduct preliminary engineering design studies to address modifications of the spillway configuration in order to reduce any potential for fish injury or mortality.

Habitat Protection

Habitat does not appear to be a limiting factor for cutthroat trout in the upper basin. In contrast, the primary limiting factor for Yale and Swift bull trout production is the availability of adequate spawning and rearing habitat. The fact that only 1¾ miles of spawning and rearing habitat (Cougar Creek) exists for the Yale population may explain the chronically low numbers of spawning adults observed each fall since records have been kept. With the exception of possible rearing habitat in Ole and Rain creeks, there are limited opportunities for expanding or improving habitat for the Yale bull trout population. While Graves (1982) observed bull trout spawning in the Swift bypass reach in 1981 and 1982, the potential for permanent spawning areas in this reach is limited. The bypass reach serves as a spill channel and has passed flows as high as 44,700 cfs in the 1996 flood. Flows of this magnitude completely scour the channel of any potential spawning gravels and, since flows of this magnitude usually occur in winter, would potentially eliminate bull trout redds.

For spawning and rearing habitat protection, action could be taken to protect the existing habitat around Cougar Creek. Therefore, PacifiCorp has purchased land from Weyerhaeuser Corporation in the Cougar Creek riparian corridor to protect the bull trout spawning and rearing habitat and proposes a conservation easement that will be approximately a 500-foot buffer on Cougar Creek and a 200-foot buffer on Panamaker Creek. No other known spawning habitat for bull trout residing in Yale reservoir is known. Therefore, the protection of this habitat is very desirable. PacifiCorp shall maintain the property consistent with the conservation easement and BO and incidental take statement. Such maintenance may include, but is not limited to, planting of vegetation, removal of non-native or invasive plant species, other vegetation management and installation of boundary markers or fences. PacifiCorp will coordinate with USFWS and NMFS on maintenance and management of lands subject to the conservation easement. Management of the lands outside the easement will include road and culvert maintenance in the short term and may eventually be included in the Lewis River wildlife management plan at the completion of ALP settlement discussions. PacifiCorp and PUD recognize and intend that the conservation easement along Cougar and Panamaker creek riparian corridors are measures under the ESA for the benefit of the species in the entire range of all four projects.

Water Quality in Tailraces

PacifiCorp has implemented modifications to the Yale turbine intakes to resolve total dissolved gases (TDG) levels in the Yale tailrace. Temperature fluctuation in the Yale tailrace is currently being addressed through the Lewis River ALP. Through the ALP, PacifiCorp is studying temperatures and TDG in the Swift Nos. 1 and 2 tailraces. This may lead to potential equipment modification, subject to USFWS approval, that will reduce TDG and temperature effects while providing for continued operational flexibility.

Protect Swift Bull Trout and Cutthroat Trout Habitat

Information is lacking on bull trout in the Swift Creek arm and the location and status of known sub-adult rearing habitat in Swift reservoir. Therefore, PacifiCorp has entered into a contract with Weyerhaeuser Corporation to purchase lands on the east side of the Swift Creek arm (Devil's Backbone) for protection of shoreline rearing habitat and with the intent of placing a conservation easement along that adjacent riparian zone for the protection of that habitat in perpetuity. Such an easement will be created to protect and conserve the habitat for bull trout, cutthroat trout and other aquatic species and will provide a high level of certainty that long-term benefits will accrue to these species. PacifiCorp shall maintain the property consistent with the conservation easement and BO (Attachment C), and its associated incidental take statement. Such maintenance may include, but is not limited to, planting of vegetation, removal of nonnative or invasive plant species, other vegetation management and installation of boundary markers or fences. PacifiCorp will coordinate with USFWS and NMFS on maintenance and management of lands subject to the conservation easement.

This proposed conservation easement will result in increased protections for the adjacent riparian zone beyond that currently required by the Washington Forest Practice Act and associated regulations. For example, NMFS believes these regulations do not provide properly functioning riparian and instream habitats. Specifically, NMFS believes the base regulations do not adequately address LWD recruitment, tree retention to maintain stream bank integrity and channel networks within floodplains, and chronic and episodic inputs of coarse and fine sediment that maintain habitats that are properly functioning for all salmonid life stages. Therefore, the proposed placement of a conservation easement on these areas will benefit salmonids by enhancing and protecting the productivity of aquatic habitat in this area, providing such benefits in perpetuity.

Continue Population Monitoring

PacifiCorp has been funding and participating in a WDFW/USFWS cooperative Swift bull trout population monitoring project since 1988. Currently, WDFW is utilizing a visual mark-recapture protocol to estimate reservoir population size. PacifiCorp proposes to continue providing partial funding and in-kind services to maintain the Swift population monitoring database.

5.1.3 Alternatives

Commission staff considered the Proposed Action and No Action alternatives until collaborative project relicensing is completed. Commission staff believe the Proposed Action is preferable because the proposed conservation measures will likely provide beneficial effects for listed, proposed and candidate fish species in the North Fork Lewis River project area. Securing essential habitat for listed species is important because these lands could be sold and developed in the future.

5.2 Reasonable Alternatives

No alternatives to PacifiCorp's proposed measures were identified. Commission staff considered the Proposed Action and No Action until a new project license is issued by the Commission. No other alternatives were identified that met the purpose of providing near term ESA compliance. As discussed earlier, the Commission approved the use of the ALP for the Lewis River projects. A Collaborative Team consisting of PacifiCorp, PUD, federal, state, county and city agencies, the Yakama Nation, the Cowlitz Indian Tribe and non-governmental organizations and private citizens are working together to complete the relicensing process. Through this process, PacifiCorp proposed to negotiate a comprehensive settlement agreement covering natural and social resource management measures for the new license terms of its projects, including long term conservation strategies for ESA compliance. Thus, the measures in the PacifiCorp's BA (Appendix A) represent important near-term conservation opportunities that can provide immediate benefits to aquatic species in the Lewis River Basin while recognizing that the Collaborative Team would devise a long-term conservation strategies in the ALP settlement for ESA compliance.

Commission staff believe the Proposed Action is preferable because the proposed conservation measures will likely provide immediate benefits for listed, proposed and candidate fish species in the North Fork Lewis River project area. Securing essential habitat for listed species is important because these lands could be sold and developed in the future, subsequently becoming lost opportunities.

5.3 No Action Alternative

The No Action alternative would require denying the inclusion of ESA compliance measures within the Lewis River Projects' licenses. A denial would maintain the status quo and result in a lost opportunity to purchase and protect essential habitat for the species in the near term prior to settlement or new licenses.

6.0 Consultation

6.1 Motions To Intervene and Comments on the DEA

The Commission publicly noticed the licensee's application on July 6, 2000. Table 6.1–1 lists those who filed motions to intervene.

TABLE 6.1–1.—LIST OF INTERVENORS

Agency	Action	FERC project No.	Date filed
USDOI	Motion to Intervene	P–935–037, P–2071–015, P–2111–011, P–2213–002.	Oct. 11, 2000.
NMFS	Motion to Intervene	P–935–037, P–2071–015, P–2111–011, P–2213–002.	Oct. 16, 2000.
State of Washington	Motion to Intervene	P–2213–002	Oct. 13, 2000.
PacifiCorp	Motion to Intervene	P–2213–002	Oct. 4, 2000.
Cowlitz PUD	Motion to Intervene	P–935–037, P–2071–015, P–2111–011	Oct. 4, 2000.
American Rivers	Motion to Intervene	P–935–037, P–2071–015, P–2111–011, P–2213–002.	Oct. 16, 2000.

Commission staff included a draft environmental assessment (DEA) in the **Federal Register** with a comment closing date of October 15, 2000. All comments are addressed in Attachment B. Table 6.1–2 lists all of those who filed comments on the DEA.

TABLE 6.1–2.—LIST OF COMMENTORS ON DEA

Agency	Action	FERC project No.	Date filed
NMFS	Comments on DEA	P–935–037, P–2071–015, P–2111–011, P–2213–002.	Oct. 16, 2000.
USFS	Comments on DEA	P–935–037, P–2071–015, P–2111–011, P–2213–002.	Dec. 27, 2000.*
American Rivers	Comments on DEA	P–935–037, P–2071–015, P–2111–011, P–2213–002.	Oct. 16, 2000.

*Late Submission.

6.2 Consultation History

1995—PacifiCorp began working with the USFWS regarding the Yale Hydroelectric Project.

1998—PacifiCorp and Cowlitz PUD continued to work with the USFWS and began working with NMFS when the scope of analysis was expanded to include the remaining three hydroelectric projects on the North Fork Lewis River Watershed.

July 1999—PacifiCorp and Cowlitz PUD met with the USFWS, NMFS, and Commission staff to discuss habitat protection measures designed to protect and conserve salmon, steelhead and bull trout with the objective of obtaining authorization of incidental take under Section 7 of the ESA for the operations of the Lewis River Projects.

July 2000—On July 6th, PacifiCorp filed a draft single-party BA and application to amend the licenses for Merwin, Yale and Swift No. 1 Hydroelectric Projects.

August 2000—On August 16th, PacifiCorp and Cowlitz PUD jointly draft a BA for all four hydroelectric projects. PacifiCorp filed an amended application for amendment of PacifiCorp licenses and included a revised Exhibit E, a revised BA, and a revised EA. Cowlitz PUD filed an application to amend its license for the Swift No. 2 Hydroelectric Project.

October 2000—On October 4th, the Commission requested formal Section 7 consultation by letter to the NMFS and USFWS. The NMFS initiated consultation.

December 2000—On December 15th, the Commission sent additional information in a letter to the USFWS, per USFWS request. Commission staff noted that no other additional information was available. The USFWS initiated formal consultation on 27 December.

June 2002—On June 28th, NMFS and USFWS file their BO and its associated Incidental take statement. Formal consultation concluded.

Commission staff reviewed all comments received on the DEA (Attachment B). Below is a summary of and responses to the comments received.

The NMFS, USFS, and American Rivers submitted comments on the DEA. The NMFS and American Rivers also filed motions to intervene. All comments received are generally supportive of the proposed amendments in this Order. The USFS made numerous comments that extended beyond the scope of the proposed amendments.

The NMFS and American Rivers expressed concern that the DEA did not address, comprehensively, the impacts of ongoing operation of the Lewis River Projects on listed species but limited the scope to the specific measures contained in the amendment. The BA, which was included in the FEA, did address the impacts of ongoing operation on listed species to the extent it was known. However, as indicated earlier, the projects are undergoing the preparation of relicense applications. This effort will ultimately result in a comprehensive examination of project effects on listed species.

In addition, both NMFS and American Rivers expressed concern regarding the lack of details as to how the lands that are to be protected will be managed. As stated in the FEA and required in this order management activities will be consistent with the terms and conditions of the BO for each target species.

Finally, these entities expressed concern that, in the event that unforeseen circumstances cause the relicensing effort to become a protracted affair, the actions approved herein should have some time limits. Specifically their concern is that the protection measures may not afford the necessary protection for ongoing operation beyond the expiration of the existing licenses. Their does exist the possibility, albeit remote, that information will become available that indicates additional measures are required to address, as yet, unidentified effects to listed species associated with the ongoing operation of the subject projects. The ALP collaborative is in the process of undertaking studies or reviewing study results pursuant to the relicensing effort and it is possible that such efforts could reveal unidentified impacts. If this were to happen, then it is expected that Commission staff, in concert with the Licensee, NMFS, and USFWS, would undertake an effort to discuss the situation as appropriate.

7.0 Environmental Analysis

7.1 General Project Location

The North Fork Lewis River Basin (Lewis River Basin) lies on the flanks of the southern Cascade Mountains of Washington State. The river flows in a general southwesterly direction from its source on the slopes of Mount Adams to the Columbia River 19 miles downstream of Vancouver, Washington. The river is 93 miles long and has a total fall of 7,900 feet, the greater part of which is in the upper reaches. At its mouth and up to the Lewis River Hatchery, the river stage is influenced by tides and subsequent backflow from the Columbia River. The area of the drainage basin is 1,050 square miles; its mean elevation is 2,550 ft.-mean sea level (msl). Slopes in the upper portions of the basin are generally steep, resulting from the incision of numerous streams and rivers into the geologically young landscape. Most of the tributaries have natural barrier falls or are too precipitous for spawning (Chambers 1957; Kray 1957). Areas to the south of the Merwin Project and downstream along the river are less steep, represented by rolling hills and flat woodland bottomlands.

The basin has a complex geologic history, having undergone Tertiary volcanism, several glaciations, and interglacial erosion and deposition. Bedrock surrounding the project

reservoirs is predominantly comprised of younger Eocene to older Oligocene volcanic lava flows, Oligocene volcaniclastic rocks, and Quaternary volcaniclastic deposits. Alpine glacial deposits overlay older bedrock but underlay the younger Quaternary volcaniclastic deposits. The volcanic rocks have undergone regional compressional deformation; rock strata are folded by a major southeast plunging anticline and a southeast plunging syncline.

Soils in the basin are predominantly well drained and medium-textured, and were derived from volcanic ash or were formed in sediments derived from mixed volcanic rocks and ash. Slopes, which are variable from gentle to steep, range from flat to more than 70 percent. Soil erosion hazard is dependent on slope and vegetation cover; the erosion hazard increases with increasing slope and extent of bare soil.

The climate in the North Fork Lewis River basin is influenced by the Pacific Ocean to the west and the Cascade Range to the east. The Pacific Ocean provides a moderating influence on temperatures in the basin. Storms from the Pacific encounter the Cascade Range, forcing the air masses to rise, cool, and drop large volumes of precipitation. Levels of precipitation increase with elevation in this area. Average annual precipitation varies from 45 inches near Woodland, to over 140 inches on Mount Adams. The majority of the precipitation occurs during the rainy fall and winter months, with snow falling at higher elevations of the basin. Summers (July through mid-October) are generally drier.

The majority of the North Fork Lewis River basin is forested; a condition typical of the Southern Washington Cascades Province. However, an area of approximately 30 square miles within the upper basin was denuded by the May 18, 1980 eruption of Mount St. Helens. Most of the basin is within the western hemlock vegetation zone (Franklin and Dyrness 1988).

Basin lands provide winter range for deer and elk; mink and beaver are common in wetlands. Large numbers of amphibians have been observed in the basin, primarily in wetland and riparian/riverine habitats. Over 100 species of birds have also been observed, including waterfowl, raptors, and numerous species of passerines.

A large portion of the North Fork Lewis River basin is managed as commercial forest, and as such is undeveloped except for logging roads. In recent years, these lands have experienced increased recreation use and demand for residential development. Other land uses include farming in the lower elevation areas, hydropower, parks, and the Mount St. Helens National Volcanic Monument (Monument). Population densities are low. The small communities of Cougar, Chelatchie, and Amboy lie in the upper basin, along with scattered private homes and recreational properties. The largest town near the project is Woodland.

The Lewis River Hydroelectric Facilities

The following description covers all four hydroelectric projects in the North Fork Lewis River basin. The projects begin approximately 10 miles east of the small town of Woodland, Washington. The upstream sequence of the projects from the confluence of the Lewis and Columbia rivers is as follows: Merwin, Yale, Swift No. 2, and Swift No.1. The Merwin, Yale, and Swift No.1 projects represent a linked reservoir/powerhouse system covering over 30 miles of the Lewis River. The Swift No. 2 project does not include a dam and reservoir. It utilizes water directly from the tailrace of Swift No.1, which flows into a 3.2 mile-long canal that discharges through the Swift No. 2 powerhouse into Yale Reservoir.

The three-reservoir system is operated in a coordinated fashion to achieve optimum benefits for power production, flood control, and to provide for natural resources in the basin such as fish, wildlife and recreation. The four projects utilize the water resources within the North Fork Lewis River basin from elevation 50 ft msl (Merwin Project tailwater) to 1,000 ft msl (Swift No. 1 normal pool). The total usable storage in the reservoirs is 814,000 acre-ft. The total installed capacity for the four projects is 580 MW.

Merwin Dam and Reservoir

The Merwin Hydroelectric Project is a 136 MW plant owned and operated by PacifiCorp. The project is the furthermost downstream project of the four projects on the North Fork Lewis River, and is located approximately 35 miles northeast of Portland. Construction of the Merwin Project began in 1929 and was completed with a single unit in 1931. Two additional units were added to the project in 1949 and 1958.

Merwin Dam is located on the North Fork Lewis River 21 miles upstream from the confluence with the Columbia River. Merwin Dam is a concrete arch structure with a total crest length of 1,300 feet and a maximum height above its lowest foundation of 314 feet. The dam consists of an arch section 752 feet in crest length, a 75-foot-long gravity thrust block, a 206-foot-long spillway section, a non-overflow gravity section 242 feet long, followed by a concrete core wall section 20 feet high and extending 25 feet into the bank. The spillway is equipped with four taintor gates 39 feet wide and 30 feet high, and one taintor gate 10 feet wide and 30 feet high. The taintor gates have been extended to an elevation of 240 ft above msl by the addition of 5-foot flashboards.

The reservoir formed by Merwin Dam is about 14.5 miles long with a surface area of approximately 4,000 acres at elevation 239.6 feet above msl (full pool). At full pool, the reservoir has a gross storage capacity of approximately 422,800 acre-ft. Of this amount, 182,600 acre-ft are available between elevation 190 and 239.6 ft msl, and an additional 81,100 acre-ft are available if the reservoir is lowered to its allowable minimum level of 165 ft msl.

Yale Dam and Reservoir

The Yale Hydroelectric Project is a 134 MW plant owned and operated by PacifiCorp. The project lies directly upstream of the Merwin Project on the North Fork Lewis River, approximately 40 miles northeast of Portland. Construction of the Yale Project began in 1951 and was complete by 1953. The project consists of a main embankment dam, saddle dam, reservoir, penstocks, powerhouse, and transmission line. The project is operated in coordination with the other three hydroelectric facilities on the North Fork Lewis River.

Yale Dam is located on the North Fork Lewis River approximately 30 miles upstream from the confluence with the Columbia River. Yale Dam is a rolled earthen fill embankment type dam with a crest length of 1,305 feet and a height of 323 feet above its lowest foundation point. Its crest elevation is 503-ft msl. The saddle dam is located ¼ mile west of the main dam and it is approximately 1,600 feet long and 40 feet high with a crest elevation of 503 feet msl The main dam has a chute type spillway, located in the right abutment, with a capacity of 120,000 cfs by utilizing five 30 foot by 39 foot taintor gates with the reservoir at elevation 490 ft msl.

The reservoir formed by Yale Dam is approximately 10.5 miles long with a surface area of approximately 3,800 acres at elevation 490-ft msl (full pool). At full pool, the reservoir has a gross storage capacity of approximately 401,000 acre-ft. At the minimum pool elevation of 430-ft msl, the reservoir has a capacity of approximately 190,000 acre-ft.

Swift No. 1 Dam and Reservoir

The Swift No. 1 Hydroelectric Project is a 240 MW plant owned and operated by PacifiCorp. The project is the furthermost upstream hydroelectric facility on the North Fork Lewis River, lying directly upstream of the Swift No 2 Hydroelectric Project, or approximately 45 miles northeast of Portland. Construction of the Swift No. 1 Project began in 1956 and was completed in 1958. The project consists of a main embankment dam, saddle dam, reservoir, penstocks, powerhouse, and transmission line. It is operated in coordination with the other three hydroelectric facilities on the North Fork Lewis River.

Swift Dam is located on the North Fork Lewis River approximately 40 miles upstream from the confluence with the Columbia River and 10.5 miles upstream of Yale Dam. Swift Dam is a an earthen fill embankment type dam with a crest length of 2,100 feet and a height of 512 feet above its lowest foundation point. At the time of its construction, Swift dam was the tallest earthen fill dam in the world. Its overflow spillway, located in the left abutment, has a capacity of 120,000 cfs by utilizing two 50 foot by 51 foot taintor gates with the reservoir at elevation 1,000 ft msl. The elevation at the top of the taintor gates is 1,001.6-ft msl.

The reservoir formed by Swift Dam is approximately 11.5 miles long with a surface area of approximately 4,680 acres at elevation 1,000-ft msl (full pool). At maximum pool, the reservoir has a gross storage capacity of approximately 755,000 acre-ft. At the minimum pool elevation of 878-ft msl, the reservoir has a capacity of approximately 447,000 acre-ft.

Swift No. 2 Hydroelectric Project

The Swift No. 2 Hydroelectric Project is a 70 MW plant owned by Cowlitz PUD and, under contract, is operated and maintained by PacifiCorp. The project lies between the Swift No. 1 and Yale hydroelectric projects. The Swift No. 2 Powerhouse is located 3.2 miles downstream of the Swift No. 1 Powerhouse. Construction of the Swift No. 2 Project began in 1956 and was completed in 1958. The project consists of a power canal, penstocks, powerhouse, and transmission line. It is operated in coordination with the other three hydroelectric facilities on the North Fork Lewis River.

7.2 Terrestrial Resources

Basin lands provide winter range for deer and elk; mink and beaver are common in wetlands. Large numbers of amphibians have been observed in the basin, primarily in wetland and riparian/riverine habitats. Over 100 species of birds have also been observed, including waterfowl, raptors, and numerous species of passerines. More information regarding terrestrial resources may be found in the supporting BA (Attachment A) and BO (Attachment C).

Affected Environment

Terrestrial resources associated with the four Lewis River Projects include wildlife comprised of plant communities, unique land forms, and a compliment of mammals, birds, amphibians, and reptiles.

Vegetation

Vegetation cover in the Lewis River basin is predominantly managed second-growth Douglas-fir forests and mixed conifer-hardwood forests typical of the Cascade region of Washington (Franklin and Dyrness 1988). Forest resource inventories conducted on PacifiCorp-owned lands for the Yale and Merwin projects identified 7,340 acres of upland forest and provided information on associated species, volume, site class, and overstory crown closure (Hildreth 1995). The upland forests consist of conifer, mixed conifer/hardwood forest, and hardwood forest. A unique lodgepole pine community occurs in the old lava flow in the Mount St. Helens area. Non-forest cover types include meadows, wetlands, transmission line right-of-way (ROW) and other project facilities, shrub-dominated communities, and a small portion of the lava flow area. Detailed maps of vegetation cover types were produced for relicensing the Yale Project; these are included in the license application and Terrestrial Resource FTR (PacifiCorp 1999). Wetlands in the project area occur in the vicinity of the Yale Project, Frazier Creek, the upper end of Lake Merwin and Yale Dam and along the transmission line ROW (PacifiCorp 1996b). Wetlands have been identified around Swift Dam (EDAW 2000).

Other sensitive habitats include caves, oak woodlands, old-growth forest stands, riparian areas, snag-rich forest stands, cliff/talus, meadows, and deer/elk winter range are present in the project vicinity (WDFW 1998). Functional riparian habitat in the project vicinity is present only at the upper end of Swift Reservoir, along the Swift bypass reach, and Lake Merwin. Other riparian habitat is primarily associated with the Lewis River downstream of Merwin Dam and with tributary streams, including Drift, Siouxon, Speelyai, Cougar, Canyon, Cresap, Rock, and Buncomb Hollow creeks.

A number of threatened, endangered, and sensitive (TES) plant species potentially occur in the vicinity of the projects. Only one TES plant, the green-fruited sedge, was identified in surveys conducted for the Yale Project (PacifiCorp 1999).

Wildlife

Wildlife species in the Lewis River basin are representative of southwest Washington and include a number of TES and state priority species (WDFW 1991) including nesting osprey and wintering and nesting bald eagles along the Lewis River and project reservoirs and northern spotted owls on Washington Department of Natural Resources (DNR) lands within 0.5 mile of the Lewis River Projects. No spotted owl nests have been documented in the old-growth conifer habitat on PacifiCorp lands.

Environmental Impacts

Improving watershed conditions by purchasing conservation easements will provide direct and substantial benefits for wildlife and terrestrial species. Riparian areas are very productive biological areas for such species, providing important areas of food production, as well as cover areas for resting, watering, and feeding wildlife (Knutson and Naef 1997). Conservation easements also provide undisturbed areas where sensitive plant species may colonize and proliferate. Improving aquatic habitat conditions as proposed will also provide indirect benefits for various bird species including bald eagles, osprey, and other birds of prey that rely on aquatic species for food sources. Further, the Proposed Action will require compliance with the BO (Attachment C), and its associated incidental take statement, issued by NMFS and USFWS designed to protect and enhance TES and their associated habitats resulting in improvements in terrestrial resources relative to the No Action alternative.

7.3 Aquatic Resources

More information regarding aquatic resources may be found in the supporting BA (Attachment A) and BO (Attachment C).

Affected Environment

The Lewis River supports a variety of aquatic organisms. Merwin Dam, located approximately 21 miles upriver from the mouth of the Lewis River, is a barrier to upstream migration. The river

downstream of Merwin Dam includes a self-sustaining population of wild fall Chinook. Hatchery stocks of spring Chinook, early and late coho, winter and summer steelhead, and sea-run cutthroat trout also inhabit the Lewis River. Sturgeon, lamprey, eulachon smelt, northern pikeminnow (Ptychocheilus oregonensis, formerly known as northern squawfish), whitefish, and chum, pink, and sockeye salmon are occasionally observed downstream of Merwin Dam. More information for the selected species discussed below can be found in the supporting BA.

Existing Fish Species

Numerous fish species are known to occur in Lake Merwin, Yale Lake, and Swift Reservoir (*see* supporting BA and BO).

A list of analysis species was developed during planning sessions conducted for the Lewis River Watershed Studies scoping process. Contributors to this list include but are not limited to: WDFW, NMFS, USFWS, and USFS). Analysis species to be included in aquatic studies are listed in Table 7.3–1 (note this list also includes taxonomic groups or guilds).

TABLE 7.3–1—AQUATIC ANALYSIS SPECIES TO BE ASSESSED DURING AQUATIC RESOURCE STUDIES OF THE LEWIS RIVER BASIN.

Analysis species	Selection criteria
Chinook salmon	Potential sensitivity to changes in aquatic and riparian habitat quality and connectivity. Strong ecological interactor.
Coho salmon	Potential sensitivity to changes in aquatic and riparian habitat quality and connectivity. Strong ecological interactor.
Chum salmon	Potential sensitivity to changes in aquatic and riparian habitat quality and connectivity. Strong ecological interactor.
Steelhead trout	Potential sensitivity to changes in aquatic and riparian habitat quality and connectivity. Strong ecological interactor.
Sea-run cutthroat trout	Potential sensitivity to changes in aquatic and riparian habitat quality and connectivity. Strong ecological interactor.
Pacific lamprey	Special habitat requirements during spawning and rearing stages. Important ecological species.
White sturgeon	Long-lived species which may have been affected by construction of dams. May be vulnerable to overharvest.
Northern pikeminnow	Top level predator. May have increased in numbers due to construction of dams.
Mountain whitefish	Native species with some habitat requirements that differ from other salmonids.
Bull trout	Federally listed threatened species. Unique habitat requirements. Top level predator.
Kokanee	Important introduced sport fish. Planktivore. Interspecific interactions with native fishes may be important.
Sculpins	Require cool water temperatures. Many species associated with high stream gradients. Benthic species.
Threespine stickleback	Present in Yale and Merwin. Interspecific interactions with kokanee fry may be important.
Largescale sucker	Juveniles may constitute important prey item for bull trout.
Aquatic macroinvertebrates and zooplankton guilds.	Changes in these communities may indicate changes in ecological conditions.

The following sections present information on the status of several key aquatic species in the Lewis River basin.

Chinook Salmon

In the Lewis River, spring Chinook have been supplemented with Cowlitz and Carson hatchery stocks since 1956 (pers. comm., R. Nicolay, WDFW, 1999). The bright fall Chinook run is considered a wild run although the run has experienced intermittent supplementation from 1930 through 1986 (pers. comm., R. Nicolay, WDFW, 1999). This stock is one of only two self-sustaining, wild fall Chinook salmon populations in the Columbia River basin. The Lewis River bright fall Chinook salmon is a designated index stock used for monitoring purposes under the Pacific Salmon Treaty. The Tule fall Chinook run has also been supplemented with Kalama stock since 1930.

Chum Salmon

Very little is known about the life history of chum in the Lewis River. Smoker *et al.* (1951) confirmed the presence of chum in the Lewis River downstream of Merwin Dam. Chambers (1957) reported 96 chum spawning just downstream of Merwin Dam in mid-November of 1955. Chum were sighted occasionally during 1998 fall Chinook spawning surveys, and four adult carcasses were observed in Cedar Creek. In addition, about 45 juvenile chum were captured during seining operations related to a smolt residual study in 1998 (pers. comm., S. Hawkins, WDFW, 1999). Annually, about three or four adult chum have also been captured at the Merwin fish trap (pers. comm., R. Nicolay, WDFW, 1999).

Steelhead

The Lewis River supports populations of winter and summer steelhead. The number of adults returning to the river and run-timing for each of these species are determined by trapping adult migrants in the fish ladder at the Lewis River hatchery and the fish trap at Merwin Dam. In addition, WDFW conducts spawning surveys on the East Fork Lewis River and Cedar Creek. The primary steelhead spawning and rearing areas in the Lewis River are located downstream of Merwin Dam in the mainstem, Cedar and Johnson creeks, and the East Fork Lewis River. WDFW continues spawning surveys on Cedar Creek and has installed a trap at the Grist Mill fish ladder to monitor upstream migration and to segregate hatchery and wild stocks. There are no existing data on the average annual size of the natural outmigration.

Bull Trout

Currently, bull trout are listed as threatened under the ESA and are present in all three reservoirs. Self-sustaining bull trout populations exist in Yale and Swift reservoirs. Bull trout found in Lake Merwin are thought to be introduced from upstream, either through spill or turbine operations. There is no known spawning habitat available to bull trout in the reservoir.

The Columbia River population of bull trout is comprised of 141 subpopulations. The Lewis River basin contains two of the 20 subpopulations in watersheds of nine major tributaries of the lower Columbia River (63fr111, June 10, 1998). The number of bull trout inhabiting the Lewis River basin is believed to be low. Spawning and

juvenile-rearing occur in Cougar, Rush, and Pine creeks. Additionally, sub-adults have been observed in the Swift bypass reach and Swift Creek arm of Swift Reservoir (PacifiCorp 1999).

Bull trout populations in the Lewis River basin are found in Merwin, Yale, and Swift reservoirs. Spawning populations are found only in Yale and Swift reservoirs. The bull trout populations in the Lewis River basin are considered as having a "moderate" risk of extinction (WDFW 1998).

Coho Salmon

Both early and late run coho salmon are endemic to the Lewis River (WDFW and USFWS 1951). Supplementation of the runs has occurred since the days of the Johnson Creek facility dating back to 1909. Historically, native stocks were used for supplementation; however, in 1965 early coho were supplemented with eggs taken from Big Creek, Oregon (pers. comm., Robin Nicolay, WDFW, Lewis River Hatchery Complex Manager). Late-run coho were supplemented in 1981 with Cowlitz River stock. Today, the Lewis River hatchery continues to produce 3.3 million coho for PacifiCorp's obligation under the Merwin license. PacifiCorp funds about 70 percent of the hatchery operations and maintenance.(O&M) for that facility.

Sea-Run Cutthroat Trout

Contrary to increasing trends in the Toutle River, WDFW states that its population numbers for sea-run cutthroat trout are still critically low in the Lewis River (approximately 100 total adults in run). For example, 1998 sea-run cutthroat creel returns on the Lewis River numbered only 20 (Hillson and Tipping 1999). Based on this information, WDFW has elected to discontinue cutthroat trout production at Merwin Hatchery.

Environmental Impacts

Section 7(a) of the ESA requires federal agencies to ensure that their actions are not likely to jeopardize the continued existence of federally listed threatened and endangered species, or result in the destruction or adverse modification of designated critical habitat. NMFS has identified that the following factors have significantly contributed to the decline of steelhead and other salmonids (NMFS 1996): (1) The present or threatened destruction, modification, or curtailment of its habitat or range; (2) over-utilization for commercial, recreational, scientific, or education purposes; (3) disease or predation; (4) inadequacy of existing regulatory mechanisms; or (5) other natural or human-made factors affecting its continued existence.

Adoption of the No Action alternative will likely continue to contribute to the decline of these species per the factors listed above given that no ESA measures will be in place to protect listed or candidate species. Under the Proposed Action, measures will be adopted to benefit listed and proposed species occurring in the project area. These measures, including acquisition of conservation easements, modification of project ramping rates, and implementation of technological measures to reduce entrainment, will help conserve listed and proposed species during the period of project relicensing.

Maintenance and improvement of water quality, temperature, and ecological productivity in the project area.

The Proposed Action will adopt measures to modify turbine intakes to resolve TDG levels in the Yale tailrace, evaluate temperature fluctuation in the Yale tailrace, and study of temperatures and total dissolved gases (TDG) in the Swift No. 1 and Swift No. 2 tailraces. Improvement of water quality conditions will improve conditions for listed fish species that exist in the Yale and Swift tailraces.

Protection of listed species and their progeny from stranding as a result of rapid flow fluctuations

The Proposed Action will adopt measures to implement Merwin redundancy equipment to prevent potential dewatering of riverbed, fish trap and hatcheries in efforts to protect listed species including steelhead, chinook, chum, coho, and cutthroat. Collaboration with WDFW will continue to provide habitat enhancement measures in the Lewis River and tributaries to benefit salmon populations.

Protection of Listed Species From Entrainment

Entrainment through spill or turbine intakes represents a potential threat to the Yale and Swift bull trout populations. The Proposed Action will address entrainment issues, however, measures are not likely to be in place until after additional studies are complete and settlement for Lewis River relicensing is achieved. Measures adopted by the Proposed Action will include a study using the Flash Technology strobe light system to determine the effectiveness of strobe lighting as a deterrent for entrainment. This study would take place during the relicensing process. If strobe lighting proves effective for bull trout and other resident species, bull trout and cutthroat trout entrainment should be curtailed resulting in substantial population level benefits in terms of reduced turbine and spill mortality.

Protection of Juvenile and Adult Habitat

Land has been acquired to protect and enhance fall chinook habitat downstream of Merwin Dam. Eagle Island is a 259-acre parcel with an associated 20-acre mainland piece. Over 75% of the present day wild fall chinook rearing habitat is associated with the island. The island also provides important habitat for adult and juvenile steelhead, coho, chum and cutthroat (WDFW 1998). The primary purpose of the acquisition is to provide juvenile wild fall chinook rearing to protect the remaining indigenous stock. Further, the Proposed Action will result in the modification of existing ramping rates and a review of the existing license flows downstream of Merwin Dam to determine if the current flow regime is suitable for all anadromous species' life stages.

With the exception of possible rearing habitat in Ole and Rain creeks, there are limited opportunities for expanding or improving habitat for the Yale bull trout population. However, the Proposed Action will adopt measures regarding the acquisition of lands to protect bull trout and cutthroat trout spawning and rearing habitat in the Cougar/Panamaker Creek, Swift Creek, and Devil's Backbone areas. Conservation easements will be established with the express purpose of conserving and protecting in perpetuity bull trout and cutthroat trout spawning and rearing habitat. These proposed conservation easements will result in increased protections for the adjacent riparian zones beyond that currently required by the Washington Forest Practices Act and associated regulations.

Failing to adopt measures identified in the Proposed Action would result, at best, in maintaining the status quo. The No Action alternative could result in current potential adverse project effects on anadromous fish resulting from a lack of fish passage, inadequate instream flows and ramping rates, and spill. Further, opportunities to purchase and protect important aquatic and riparian habitats would be lost resulting in increased impacts to listed species. Therefore, the Proposed Action will likely result in improvements in aquatic resources relative to the No Action alternative.

7.4 Recreation Resources

Affected Environment

Recreation Resources and Use in the Project Vicinity

The Lewis River Projects provide many recreation opportunities, one component of the large number of recreation facilities and opportunities in the Lewis River basin. Recreation development intensity and visitation at the three reservoirs range from more developed active recreation activities at Merwin and Yale, located closest to the Interstate 3 (I–5) corridor and Portland/Vancouver population base, to more primitive recreation activities at Swift, located farthest from the I–5 corridor.

Popular recreation activities at these projects include camping (RV and tent), picnicking, boat and bank fishing, hunting, hiking, power boating (including personal watercraft), sailing, wind surfing, swimming, water skiing, horseback riding, cycling (road and mountain), relaxing, and sightseeing.

Yale Lake recreation facility occupancy and use were examined during previous relicensing studies. The occupancy level at the three campgrounds is at 95 percent on weekends during the peak recreation period (July and August). From Memorial Day to Labor Day weekend, the weekly occupancy level ranges from 47–73 percent (PacifiCorp 1999). Day use site occupancy averages only 8–14 percent season long; however, overflow conditions do occur approximately five times annually, particularly on hot days.

Swift Reservoir has two developed recreation facilities at the east end of the reservoir, Swift Campground and Eagle Cliff Park. Swift Campground has 93 campsites, a 2-lane boat ramp with parking spaces, and a day use beach swim area. Eagle Cliff Park is located at the far eastern tip of the reservoir and has ten picnic sites, a restroom, and a parking area.

While the Swift No. 2 Project has no developed recreation facilities, the Swift No. 2 power canal does receive consistent use by bank anglers. In addition, an annual fishing derby for disabled recreationists is held at the Swift No. 2 power canal, which is stocked with fish for the event.

All PacifiCorp recreation sites are open to the public during the primary recreation season, while Merwin Park and Speelyai Bay Park at Lake Merwin and Yale Park at Yale Lake are open year-round. Cresap Bay Campground at Lake Merwin is generally open from Memorial Day weekend to late September. Saddle Dam, Cougar Park, and Cougar Camp on Yale Lake are open from Memorial Day weekend to Labor Day weekend. Beaver Bay on Yale Lake is open from late April until mid-late September to accommodate spring fishing and fall hunting seasons. The use season at Swift Campground is also extended to accommodate fall hunter use and fishing, generally from late April until mid-November. Elk and deer hunting seasons for all types of hunts extend from September 1 through December 15 for management units in the immediate area. Peak hunting occurs during times when modern firearms are allowed; for elk this is November 6 through 14, and for deer this is October 16 through 31 (WDFW 1999b). Recreation use at Swift Reservoir is limited by low pool levels, fishing season closure, and road access during winter months.

The projects also provide non-shoreline dispersed recreation opportunities, such as trail use by hikers, equestrians, and mountain bikers. Most of this use occurs along a trail running from Saddle Dam along the southwest shoreline of Yale Lake to the Speelyai Canal and along the International Paper (IP) Road at Yale Lake. Other smaller trails also exist.

Numerous examples of dispersed shoreline recreation use exist around the three reservoirs and along the Swift bypass reach above Yale Lake. Boat-in dispersed use occurs on all three reservoirs. Shoreline impacts have occurred because of this activity. As a result, PacifiCorp is increasing Marine Patrol activities and no longer permits overnight parking at its day use facility parking areas except at Swift. There is no fee for dispersed shoreline use; however, there is a fee charged for day use parking and for each watercraft trailered or hauled into PacifiCorp recreation sites, except for car-top watercraft.

Other dispersed recreation uses adjacent to the reservoirs include a number of sites relating to river recreation in the Lewis River corridor. Canyon Creek, which joins Lake Merwin just below Yale Dam, receives whitewater boating use primarily in the form of kayaking. This advanced-level run has been the site of a "kayak rodeo" in recent years. Many paddlers running the creek either take out well above Lake Merwin or descend to the reservoir and paddle to the nearest takeouts at the SR 503 bridge or Cresap Bay Park. Upstream of Swift Reservoir, the upper Lewis River is used for dispersed recreation, hiking, mountain biking, and non-motorized boating.

Over the last 15 to 20 years, recreation resource managers in the Lewis River corridor have witnessed increased use levels at Merwin, Yale, and Swift reservoirs based on day use vehicle counts, campground occupancy levels, signs of environmental degradation along the shoreline caused by boat-in dispersed camping and day use activities, and other indicators. While these higher use levels are usually contingent upon weather conditions, increased use is generally attributable to: (1) Increased population growth in the Portland/Vancouver metropolitan area and proximity to Interstate 5 and Lewis River Road; (2) increased publicity about Merwin, Yale, and Swift reservoirs; (3) creation of and increased popularity of the Monument, including increasing use of the southern scenic loop road (Forest Road 90, SR 503, and Lewis River Road) coupled with few overnight camping facilities within the Monument and GPNF; (4) increasing urban development in the Lewis River valley including new custom home development; and (5) increasing demand for lower cost recreation activities available at Merwin, Yale, and Swift reservoirs, and within western Washington State.

Environmental Impacts

Recreation opportunities should be enhanced by measures that improve watershed conditions in the project area. Areas of the Lewis River are recognized as providing excellent sportfishing opportunities, as well as opportunities for boating, swimming, and wildlife observation. Improving watershed conditions and aquatic productivity should translate into enhanced recreational fishing opportunities, which should in turn provide greater recreational opportunities in an area near several large urban centers. However, greater recreational fishing opportunities also heighten the potential for anglers to catch and possibly harvest bull trout from reservoirs and streams. There is some evidence to suggest that bull trout are targeted and occasionally harvested by anglers even though fishing for bull trout is prohibited. Opening day creel surveys conducted by the WDFW on Swift reservoir and power canal have indicated that some bull trout are harvested in the Swift power canal (WDFW 2000). Large spoons and plugs are also sometimes found in the mouths of bull trout during annual bull trout surveys in the Swift reservoir (WDFW. 1999).

7.5 Aesthetic Resources

Affected Environment

The natural setting of the study area is mountain rural with sweeping vistas

of forested hillsides, mountain lakes (project reservoirs), and distant volcanic peaks. Large numbers of visitors pass through the study area on Lewis River Road (State Route 503) on their way to the Mount St. Helens National Volcanic Monument (Monument). Visual resources in the vicinity include the landscapes visible from State Route 503 and the reservoir surfaces. The combination of extensive timber management activities, forested slopes, open meadows, and low-density residential development in this area creates a rural setting with ever-present signs of human modification of landscape characteristics. Primary features of the viewshed include the rolling, forested hills that encompass the Lewis River valley; Merwin, Yale, and Swift reservoirs; and Mount St. Helens.

The Clark, Cowlitz, and Skamania county planning departments have primary jurisdiction over lands in the project vicinity. The USFS and the Washington State Department of Natural Resources (DNR) manage extensive holdings around Yale and Swift reservoirs. Their management practices affect the reservoir's viewsheds.

Visual resource issues related to the project include:

- Visual character of project features, including hydroelectric generation, transmission, and recreation facilities;
- Visibility of project features from locations of high public use such as Lewis River Road, and recreation areas;
- Visual effect of reservoir water level fluctuations, particularly during periods of high recreation use;
- Visual effect of instream flows in sections of the Lewis River controlled by the project;
- Consistency of the project with existing and proposed federal, state, and local plans and policies regarding the visual resource; and
- Opportunities to enhance the scenic landscape characteristics of the Lewis River Valley viewshed.

Environmental Impacts

As described above, improving watershed conditions will provide direct and substantial benefits for aquatic species and terrestrial species associated with protected riparian communities. These improvements in the natural setting should result in improved aesthetic qualities in and around project features, and should result in a more natural setting in such areas. At this point, no construction or project alterations are proposed at this time that could result in construction-related impacts to aesthetic qualities. Therefore, the Proposed Action should result in enhanced aesthetic qualities relative to the No Action alternative.

7.6 Land Use

Affected Environment

Existing land uses in the project vicinity include timber production, agriculture, hydroelectric generation, recreation, small commercial businesses, and residential housing. Land ownership in the project vicinity is a combination of large and small holdings by public and private entities including the USFS, DNR, Weyerhaeuser, Longview Fibre, Clark County, Cowlitz County, PacifiCorp, and private residents.

The projects are located east (10–40 miles) of the community of Woodland; in recent years, there has been a considerable increase in residential development in the Woodland area and in areas adjacent to the projects along Lewis River Road.

Land use regulations in the project vicinity are under federal, state, and local jurisdiction. Agencies with land management responsibilities in the project vicinity include the USFS, U.S. Army Corps of Engineers, DNR, WDFW, WDOE, Cowlitz County Planning Department, Clark County Planning Department, Skamania County Planning Department, and the City of Woodland.

Environmental Impacts

Proposed watershed improvement measures are consistent with existing land use regulations. Conservation efforts with regard to the acquisition of Eagle Island reduces potential for land use conflicts as Eagle Island will be unavailable for development due to the conservation easement. Likewise, conservation easements for riparian habitat will provide long-term benefits for existing landowners, particularly with regard to aesthetic values as land within an easement is not likely to be developed. The Proposed Action provides opportunities to enhance the land use practices and benefit efforts to protect listed species.

7.7 Socioeconomic

Affected Environment

The Lewis River Projects occupy lands located in three counties: Clark, Cowlitz, and Skamania. Information presented in this EA is based on information from the Economic Development Network Web site titled County Profiles for Washington. (*http://www.wa.gov/esd/lmea/pubs/profiles/profiles.htm*). County demographic data are summarized in Table 7.7–1.

TABLE 7.7–1.—COUNTY AND DEMOGRAPHIC DATA

County	Area (square miles)	Population	Population density per square mile
Clark	628	332,000	537
Cowlitz	1,139	94,100	83
Skamania	1,657	9,900	6

Clark County

For the past decade, Clark County has had one of the most dynamic economies in the state of Washington. Clark County's demographics and economy have been shaped by its status as a suburb, by its diverse industrial base, by a steady flow of high tech investment, and by the differing tax structures between Washington and Oregon.

Clark County is a suburban county within the Portland-Vancouver metropolitan area. It shares many of the characteristics of not-yet-fully-mature suburban counties, such as rapid population growth and an imbalance in commuting patterns. Close to one-third of the county's work force commutes across the Columbia River to Portland every day. The county's role as a bedroom community means that many of the jobs there cater to consumers, in the form of retail trade, social and health services, and personal services. Conversely, most of the (high wage) corporate services such as finance, advertising, law, engineering, *etc.*, are located in Portland. While the county has strong economic and cultural ties to Portland, it also has a unique identity due to the barrier of the state border and the Columbia River. Transportation access between the county and Portland is limited to two interstate bridges. Communication access is hampered by a different area code and long distance charges. Politically, Clark County is connected to Olympia and the rest of the state of Washington.

Historically, Clark County has been a blue-collar community, with a diverse manufacturing base. The timber industry has always been present in the county but has not played a dominant role since the turn of the century. Besides paper and lumber, the county has been the site of food processing, textiles, apparel, aluminum, and machinery. The Port of Vancouver has also played a key role, both as a transportation hub and an industrial landlord. Employment in some of these "traditional" manufacturing industries has declined somewhat in the past few years due to employment reductions and closures, and future closures should not be ruled out. In general, however, new investment has far outpaced shutdowns, and manufacturing employment has grown substantially.

Over the past 20 years, there has been a tremendous surge in high technology investment in the county. It began in the late 1970s when Tektronix sited a branch plant. Tek's employment peaked at about 2,000 before the company spun off some operations and then closed down its Vancouver operation in 1990. Other large branch plants were established during the 1980s, many of them Japanese. High tech employers were lured by low land and energy costs, plenty of available water, a skilled and growing work force, excellent K–12 and community college education and training installations, proximity to the Portland International Airport (Vancouver and Camas are closer than Hillsboro), a Pacific Rim locale, and access to recreational opportunities.

The future should bring continued maturation of the county economy and increased integration with Portland. Among the more prominent developments, Washington State University moved into a new campus just north of Vancouver in June. Reclamation of the Columbia River waterfront for recreational use is well under way. The city of Vancouver recently bought the former Lucky Brewery and surrounding blocks downtown; the old brewery will be razed, with mixed-use development in the offing. Finally, high tech investment and expansion continue to make the headline. A case in point is the large facility planned by Taiwan Semiconductor (doing business as WaferTech) in Camas, which is expected to add 800 manufacturing jobs to the county's employment base.

Along with Portland, Clark County faces a major challenge in determining how to handle growth. At this point growth is occurring faster than local governments can plan and build infrastructure. The bridges crossing the Columbia are nearing capacity, and Clark County voters recently soundly rejected funding a light rail connection with Portland.

Cowlitz County

Cowlitz County historically has had large resource-based economies that relied on timber. Although the big shakeout of the industry that occurred in the early-to-mid 1980s had a significant effect, timber still remains the biggest industry. Its employment fell dramatically but has since stabilized at new levels, and there has been some diversification of industry within manufacturing, as well as significant growth in the trade and services sectors.

Because the economy has stabilized in recent years, the population is again increasing. During much of the 1980s, out-migration exceeded in-migration, and the overall population in the county declined. Since about 1990, that situation has reversed and the population is growing again. In 1999, the population of Cowlitz was estimated at 94,100.

The labor force has been growing much like the population, and unemployment is at its lowest level in years. In 1997, the rate was 7.1 percent in Cowlitz, the lowest since 1990. Even so, there are proportionally more unemployed people in the area than there are statewide, where the rate is down to 4.8 percent.

There has been good growth in non-farm employment following the 1990–91 national recession. Since 1992, Cowlitz County has added over 3,000 jobs. Looking at the area as a whole, most of the growth has come in trade, services, and government. This growth in non-manufacturing activities and the earlier, quite sharp declines in the timber industry have not sufficed to dislodge manufacturing from its position as the largest industry sector in the county. Cowlitz County has over one-fourth of its employment in manufacturing. Statewide, the share is 15 percent.

Cowlitz County has withstood the turbulence of the restructuring and decline in employment and wages of the timber industry in the 1980s. The area is regaining population—in-migration is up—and timber remains a large, solid foundation of the economy. Relatively low unemployment and gains in the number of non-farm jobs make the labor market picture quite a bit more attractive than it has been for quite some time. Wages have been stagnant, in real terms, but are no longer declining. At the moment, the area is doing well. Projections to 2001 indicate that Cowlitz County will have moderate growth overall with strong growth in non-timber related manufacturing, construction, services, and the finance, insurance, and real estate sector.

Skamania County

Geography and politics have greatly influenced the Skamania County economy. Ninety percent of the county is forest land, and 80 percent of the county is part of the GPNF. For decades, the county economy rested on timber, directly through logging and milling and indirectly through USFS employment. Timber-related employment began to decline in the 1980s, dropping from 820 in 1979 to 620 in 1988. At that time, harvest restrictions were placed on federal lands, limiting local timber supply and raising log prices. Timber harvest from federal lands dropped from an average of 250 million board feet to less than five million in 1996. Scarce timber and competition from chipboard substitutes led to the closure of Stevenson Co-Ply, the largest mill remaining in the county, in early 1992. The job loss was accompanied by loss of savings because the mill was a co-op. By 1993, only 180 timber jobs remained in Skamania County, and federal employment has fallen from a peak of 420 to only 240 in 1996.

While most of Skamania County is in forested, mountainous terrain, the bottom strip of the county borders the Columbia River Gorge. The gorge has influenced the county economy in two major ways. In the 1978–1982 period, construction of a second powerhouse at Bonneville Dam boosted county construction employment, chiefly through construction workers commuting into the county. This had the unfortunate side effect of skewing county labor force estimates in the 1983–1989 period; through use of a faulty commuting ratio, the labor force size was under-estimated and the unemployment rate overestimated.

Second, in 1986, about 15 percent of the county was made part of the Columbia River Gorge National Scenic Area (CRGNSA). Creation of the CRGNSA, while placing some restrictions on development in the gorge area, has helped augment the county's growing tourism industry. Federal subsidies helped build the Skamania Lodge, a conference center/destination resort, now the largest private sector

employer in the county. An interpretive museum is now in operation, and other retail and service spin-offs have come on line. In addition, manufacturing jobs related to windsurfing have been created.

The transition from timber to tourism has had a number of effects. Population growth began picking up in 1990, as did labor force growth. Because of fewer job opportunities, almost half of the county labor force commutes to work outside the county. Unemployment rose sharply in 1992 with the mill closure, reaching 18 percent before declining to the current 10–11 percent.

Only a few years ago, one-third of the jobs in the county were in manufacturing; by 1996, the number had fallen below 15 percent. With the advent of the Skamania Lodge, trade and service employment rose from 19 percent to a 36 percent share, while the public sector accounted for 43 percent.

Coming years should bring further expansion of tourist-related business as well as modest growth in population and employment. Commuting to jobs outside the county by a significant share of the labor force should be the norm.

Environmental Impacts

The Proposed Action enhances the natural setting of the area and encourages tourist-related use and development that are consistent with current and anticipated socioeconomic development. This should more than offset any effects of habitat protection and conservation easements on timber-related employment or revenues associated with the No Action alternative.

7.8 Cultural Resources

Affected Environment

Regulatory Overview

Cultural resource management in the Lewis River basin is under the auspices of the Washington State Office of Archaeology and Historic Preservation (OAHP), the GPNF, and the Advisory Council on Historic Preservation (ACHP). Indian Tribes that have an interest in the project include the Cowlitz Indian Tribe (CIT) and the Yakama Nation (YN). Under Section 106 of the National Historic Preservation Act (NHPA) and regulations promulgated by the Federal Power Act (FPA), the Commission is required to inventory archaeological, historical, and traditional cultural resources; evaluate their eligibility for listing in the National Register of Historic Places (National Register); determine project impacts on them; and consider measures to avoid or mitigate adverse effects. This work is conducted in consultation with the cultural resource oversight agencies, responsible federal land management agencies, and Indian tribes.

Cultural Resources in the Merwin Project Area

Two archaeological sites, one historic-period cemetery, and 6 isolated scatters of flaked stone artifacts have been recorded for the Merwin Project area. The National Register eligibility of the two archaeological sites and the cemetery has not been formally considered. The Federal Power Commission granted the license for the Merwin Project in late 1929, and the project began commercial operation on January 1, 1932. The current Merwin license, issued in 1983, does not identify any specific cultural resource enhancement measures. Article 38 of the Merwin license states:

> Prior to commencement of any construction or development of any project works or other facilities at the project, the licensee shall consult and cooperate with the State Historic Preservation Officer to determine the need for * * * any archaeological or historic resource surveys and any mitigation measures that may be necessary.

In mid-September 1990, a GPNF archaeologist reported to PacifiCorp the occurrence of unauthorized excavation of archaeological deposits along the exposed shoreline of Lake Merwin. Subsequently, PacifiCorp contracted the Oregon State Museum of Anthropology (OSMA) to survey high probability areas, evaluate the known deposits, and assess the damage to cultural resources at Lake Merwin (O'Neill 1991). A brief reconnaissance was conducted by OSMA staff, resulting in the discovery of 6 isolated scatters of flakes and tools along with excavations in 2 locations. Excavations in one of the sites at Merwin revealed some flaked stone artifacts but not enough to make a detailed analysis. This site was found to have some significance but was not evaluated for National Register eligibility. The location of the historic-period cemetery near Woodland Park was recorded, but according to O'Neill (1991), all of the burials were removed prior to inundation. Protection of the sites through ongoing monitoring was recommended.

Additional surveys in October 1999 examined the Lake Merwin drawdown zone and all developed and dispersed use areas associated with the lake. These investigations revealed the following:

- 15 new prehistoric sites were recorded, all of which were lithic scatters without ground stone.
- 5 historic-period sites were recorded, including a washed-out bridge, a campsite with a cleared tent platform, a dense scatter of historic-period refuse, and an abandoned railroad grade.
- 54 isolates were identified, the majority of which were groupings of flaked cobble tools, occasionally associated with a few flakes or other prehistoric artifacts.

An evaluation of the Merwin powerhouse conducted by Historical Research Associates, Inc (HRA). Based on a survey of the powerhouse and associated facilities and archival research, HRA recommended that the powerhouse be considered eligible for inclusion on the National Register (pers. comm., G. Thompson, HRA, Seattle, WA, May 1, 1999).

Additional archaeological sites may exist in the Merwin Project area, and historical buildings and structures need to be inventoried and evaluated for National Register eligibility.

Cultural Resources in the Yale Project Area

Construction of the Yale Project began soon after the license was issued in April 1951, and the project began operation in 1953. A survey for archaeological resources in the area to be inundated by Yale Lake was conducted in 1952 and 1953 by the University of Washington (Bryan 1953, 1955). This study resulted in the recording and testing of 6 sites. Three other recent cultural resource investigations have been conducted at Yale Lake including: a 1993–94 GPNF-sponsored archaeological survey conducted by Oregon State University at a site along the margin of Yale Lake; PacifiCorp-sponsored archaeological testing in 1995 at a heavily vandalized site on company lands near Yale Dam; and a comprehensive cultural resources inventory and National Register evaluation of historic, prehistoric, and traditional cultural resources conducted in 1996–97 as part of the Yale license application process (PacifiCorp 1999).

The results of this analysis found 8 prehistoric archaeological sites, 5 historic sites, and 9 prehistoric isolated finds. Of these, 5 of the prehistoric sites were determined to be eligible for listing in the National Register (letter from Greg Griffith, OAHP to Russ Howison, PacifiCorp April 3, 1998). The OAHP and affected Indian tribes have expressed ongoing concern over the illegal collecting of artifacts and possible damage from project-related ground-disturbing activities.

The Yale hydroelectric facilities were evaluated for National Register eligibility and were found to be not eligible for listing. However, the Yale Project may be eligible for listing in the National Register as a contributing element to a mufti-property nomination for the entire Lewis River hydroelectric system.

A Cultural Resource Management Plan (CRMP) for resources potentially affected by the Yale Project is included as a proposed enhancement measure in the Yale license application submitted to the Commission in April 1999. A subsequent agreement was developed in consultation with Commission staff, the Advisory Council on Historic Preservation (ACHP), and the Lewis River Cultural Resource Work Group on January 20, 2000. Terms of this agreement include delaying development of the formal CRMP until the conclusion of relicensing studies for all four projects. Protection measures, as described in the Yale application, will be implemented. These include management guidelines for National Register-eligible sites (5 known currently) within the 2,500-acre Yale Area of Potential Effects (APE), which will include: Monitoring of known sites, options for site avoidance, site protection measures, or mitigation through data recovery. The final CRMP also will include a protocol for the discovery of previously unknown sites and a training program for project personnel.

Cultural Resources in the Swift No. 1 and No. 2 Project Areas

The Swift No. 1 and Swift No. 2 projects operate under separate licenses issued in 1956, with project completion in December 1958. The current licenses for the Swift projects do not contain any specific cultural resource enhancement measures, nor are there any sites officially determined eligible for the National Register. A May 1957 archaeological survey of the areas to be inundated by the Swift No. 1 dam and Swift No. 2 power canal did not find any cultural resources present (undated letter from Clayton Denman to Dr. Douglas Osborne, Washington State Museum). However, the study was conducted under the standards of the day, and it remains a possibility that undiscovered cultural resources may be present. A 1998 archaeological survey of the Swift Reservoir drawdown area recorded two archaeological sites and nine isolated finds; one of the sites was considered not to be National Register eligible, and testing is needed to determine the eligibility of the other site (Goetz 1998). Additional surveys performed in October 1999 revealed a single prehistoric isolate. In addition, the project buildings and structures need to be inventoried and evaluated for National Register eligibility because they will meet the 50-year age criterion when the existing license expires.

Environmental Impacts

None of the proposed measures contained in the Proposed Action involve ground disturbing activities with potential to affect cultural resources. The Proposed Action should result in reduced adverse impacts to cultural resources with a conservation easement for riparian habitat on Cougar Creek and the habitat protection on Eagle Island versus the No Action alternative.

8.0 Issues and Recommendations

Fish and Wildlife Coordination Act

Measures contained in the Proposed Action were arrived at through extensive pre-filing discussions with the USFWS and NMFS. Both agencies support the proposed measures and have issued a BO (Attachment C), and its associated incidental take statement, which is consistent with and supports the proposed amendments to the license. Comments and recommendations have likewise been incorporated from both agencies in this document and the associated BA (Attachment A).

Environmental Justice—Executive Order 12898

On February 11, 1994, President Clinton issued Executive Order 12898 ("E.O. 12898"), Federal Actions to Address Environmental Justice in Minority and Low-Income Populations. E.O. 12898 requires federal executive agencies to identify and address, as appropriate, disproportionately high and adverse human health or environmental effects of its programs, policies, and activities on minority and low-income populations which may be affected by agency actions. Environmental justice issues encompass a broad range of issues already covered by the NEPA, including impacts on the natural or physical environment and interrelated social, and economic effects. Environmental justice analysis focused NEPA review on whether the environmental effects of a proposed federal action has disproportionately high and adverse effects on minority and low-income populations, including Indian tribes. Although independent agencies such as the Commission are not subject to E.O. 12898, President Clinton requested independent agencies to comply with the provisions of E.O. Order 12898. In the exercise of the Commission's discretion, and recognizing the E.O. Order 12898 is not by its terms applicable to the Commission, but that potential environmental justice issues are already within the scope of NEPA issues that the Commission must evaluate in connection with proposals for Commission action, this EA analyzes the effects of the Proposed Action with respect to potential environmental justice issues.

The Proposed Action is expected to have a positive effect on fish populations in the project vicinity, compared to existing conditions. Therefore, the Proposed Action is reasonably expected to have a beneficial effect on any population which relies on fishery resources for food or other purposes. Commission staff have not identified any disproportionate, adverse effect of the Proposed Action on any minority or low-income population or Indian tribe. Commission staff conclude therefore that the Proposed Action does not have adverse environmental justice effects.

Magnuson-Stevens Act

Section 305(b) of the Magnuson-Stevens Act and associated implementing regulations provide that Federal agencies must consult with NMFS concerning all actions that may adversely affect designated essential fish habitat (EFH). NMFS EFH guidance documents provide that EFH consultations should be combined with ESA consultations to accommodate the substantive requirements of both Acts. As discussed in the above referenced biological assessment, the Proposed Action will result in habitat improvements, and will not result in any adverse effects to EFH. Therefore, EFH consultation is not required at this time.

9.0 Finding of No Significant Impact

The recommended alternative is approving the amendment of PacifiCorp's and PUD's licenses to adopt and implement the proposed conservation measures pursuant to the terms and conditions of the BO, as appropriate. Incorporating the conservation measures into PacifiCorp's and PUD's licenses will reduce incidental take of listed species resulting from operation of the Lewis River Projects. Such conservation measures likewise represent important near-term conservation opportunities that may be lost if not secured while the

parties collaboratively devise long-term conservation strategies.

On the basis of our independent analysis, the proposed amendments for the Lewis River Projects, with the recommended mitigation measures, would not constitute a major federal action significantly affecting the quality of the human environment.

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DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP03–75–000]

Freeport LNG Development, L.P.; Notice of Intent To Prepare an Environmental Impact Statement for the Proposed Freeport LNG Project and Request for Comments on Environmental Issues and Notice of Public Scoping Meeting and Site Visit

May 13, 2003.

The staff of the Federal Energy Regulatory Commission (FERC or Commission) will prepare an environmental impact statement (EIS) that will discuss the environmental impacts of the Freeport LNG Project involving construction and operation of facilities by Freeport LNG Development, L.P. (Freeport) in Texas.[1] These facilities would consist of a liquefied natural gas (LNG) import terminal and storage facilities and 9.38 miles of 36-inch-diameter pipeline in Brazoria County. This EIS will be used by the Commission in its decision-making process to determine whether the project is in the public convenience and necessity.

This notice is being sent to residences within 0.5 mile of Freeport's proposed LNG facilities and to landowners along the proposed pipeline route. If you are a landowner receiving this notice, you may be contacted by a pipeline company representative about the acquisition of an easement to construct, operate, and maintain the proposed facilities. The pipeline company would seek to negotiate a mutually acceptable agreement. However, if the project is approved by the Commission, that approval conveys with it the right of eminent domain. Therefore, if easement negotiations fail to produce an agreement, the pipeline company could initiate condemnation proceedings in accordance with state law.

A fact sheet prepared by the FERC entitled "An Interstate Natural Gas Facility On My Land? What Do I Need To Know?" was attached to the project notice Freeport provided to landowners. This fact sheet addresses a number of typically asked questions, including the use of eminent domain and how to participate in the Commission's proceedings. It is available for viewing on the FERC Internet Web site (www.ferc.gov).

Summary of the Proposed Project

Freeport proposes to build a new LNG import, storage, and vaporization terminal on Quintana Island, southeast of Freeport, Texas; and a natural gas pipeline to transfer up to 1.5 billion cubic feet per day of imported natural gas to the Texas market. This would help satisfy the demand for natural gas in the state of Texas. Freeport seeks authority to construct and operate the following new facilities at its proposed site:

- LNG ship docking and unloading facilities with a protected single berth equipped with mooring and breasting dolphins, three liquid unloading arms, and one vapor return arm;
- Reconfiguration of a storm protection levee and a permanent access road;
- Two 26-inch-diameter (32-inch outside diameter) LNG transfer lines and one 16-inch-diameter vapor return line;
- Service lines (instrument air, nitrogen, potable water, and firewater);
- Two double-walled LNG storage tanks each with a usable volume of 1,006,000 barrels (3.5 billion cubic feet of gas equivalent);
- Six 3,240 gallon-per-minute (gpm) in-tank pumps;
- Seven 2,315 gpm high pressure LNG booster pumps;
- Three boil-off gas compressors and a condensing system;
- Six high-pressure LNG vaporizers using a primary closed circuit water/glycol solution heated with twelve water/glycol boilers during cold weather and a set of intermediate heat exchangers using a secondary circulating water system heated by an air tower during warm weather, and circulation pumps for both systems;
- Two natural gas superheaters and two fuel gas heaters;
- Fire response system, flare, construction dock, utilities, buildings, and service facilities; and
- 9.38 miles of 36-inch-diameter natural gas pipeline extending from the LNG import terminal to a proposed Stratton Ridge Meter Station. The general location of the project facilities is shown in appendix 1.[2] More detailed maps of the pipeline route are also shown appendix 1.

Freeport is requesting approval such that the terminal and pipeline are completed and placed into service in time to meet natural gas demand during the 2006–2007 winter heating season. Construction of the facilities would take about 3 years.

Land Requirements for Construction

Construction of the proposed LNG facility would require about 45.7 acres of land for the marine terminal, 140.4 acres for the storage and vaporization area, and 18.6 acres for the LNG transfer line. Construction of the proposed pipeline would disturb about 61.5 acres of land including the construction right-of-way, temporary extra workspaces, and the meter station. The construction right-of-way width for the pipeline would vary from 35 feet in wetland areas to 200 feet at horizontal directional drill sites.

Freeport would maintain a 30-to 50-foot-wide permanent right-of-way for operation of the pipeline. Total land requirements would be approximately 23.6 acres for new permanent right-of-way, 3.8 acres for the new meter station, and 146.4 acres for the LNG facilities.

The EIS Process

The National Environmental Policy Act (NEPA) requires the Commission to take into account the environmental impacts that could result from an action whenever it considers the issuance of a Certificate of Public Convenience and Necessity. NEPA also requires us[3] to discover and address concerns the public may have about proposals. This process is referred to as "scoping". The main goal of the scoping process is to focus the analysis in the EIS on the important environmental issues. By this Notice of Intent, the Commission requests public comments on the scope of the issues it will address in the EIS. All comments received are considered during the preparation of the EIS. State and local government representatives are encouraged to notify their constituents of this proposed action and encourage them to comment on their areas of concern.

The EIS will discuss impacts that could occur as a result of the construction and operation of the proposed project under these general headings:

- Geology and soils
- Land use
- Water resources, fisheries, and wetlands
- Cultural resources
- Vegetation and wildlife
- Air quality and noise
- Endangered and threatened species
- Hazardous waste
- Public safety

We will also evaluate possible alternatives to the proposed project or portions of the project, and make recommendations on how to lessen or avoid impacts on the various resource areas.

Our independent analysis of the issues will be in the EIS. Depending on the comments received during the scoping process, the EIS may be published and mailed to Federal, state, and local agencies, public interest groups, interested individuals, affected landowners, newspapers, libraries, and the Commission's official service list for this proceeding. A comment period will be allotted for review if the EIS is published. We will consider all comments on the EIS before we make our recommendations to the Commission.

To ensure your comments are considered, please carefully follow the instructions in the public participation section beginning on page 6.

Currently Identified Environmental Issues

We have already identified several issues that we think deserve attention based on a preliminary review of the proposed facilities and the environmental information provided by Freeport. This preliminary list of issues may be changed based on your comments and our analysis.

- Geology and Soils:
  - —Assessment of potential site subsidence.
  - —Assessment of potentially contaminated dredged material.
  - —Impact of an additional 200 ship transits per year on the ongoing erosion of Quintana Island.
- Water Resources:
  - —Impact on groundwater and water supply wells.
  - —Assessment of dredge and fill of coastal wetlands by the construction.
  - —Assessment of the use and release of hydrostatic test water.
- Fish, Wildlife, and Vegetation:
  - —Effect on essential fish habitat.
  - —Effect on the Quintana Neotropical Bird Sanctuary.
  - —Control of noxious weeds within the pipeline right-of-way.
- Endangered and Threatened Species:
  - —Potential effect on federally listed species.
- Cultural Resources:
  - —Assessment of cultural resources.
  - —Impact on Quintana Cemetary.
  - —Native American and tribal concerns.
- Land Use, Recreation and Special Interest Areas, and Visual Resources:
  - —Permanent land use alteration associated with site development.
  - —Impact of the proposed relocation of the Xeriscape Park.
  - —Impact on residences, including the potential relocation of a residence.
  - —Impact on recreational use of Quintana Beach County Park.
  - —Impact on recreational use of Surfside Beach.
  - —Evaluation of project's consistency with coastal zone management area guidelines.
  - —Visual impacts associated with new LNG storage tanks.
- Socioeconomics:
  - —Impact of traffic from 300 construction workers and 17,800 round trips of truck traffic delivering fill material on project site area.
  - —Effects of 200 LNG ship transits per year on existing ship traffic in the Port of Freeport.
  - —Effects of construction workforce demands on public services and housing.
- Air Quality and Noise:
  - —Effects on local air quality and noise environment from construction and operation of the proposed facilities.

[1] Freeport's application was filed with the Commission under Section 3(a) of the Natural Gas Act and Parts 153 and 380 of the Commission's regulations.

[2] The appendices referenced in this notice are not being printed in the **Federal Register**. Copies are available from the Commission's Public Reference and Files Maintenance Branch, 888 First Street, NE., Washington, DC 20426, or call (202) 502–8371. For instructions on connecting to FERRIS refer to the last page of this notice. Copies of the appendices were sent to all those receiving this notice in the mail.

[3] "We", "us", and "our" refer to the environmental staff of the Office of Energy Projects (OEP).

—Effects of emissions from 200 additional LNG ships on air quality.
- Reliability and Safety:
  —Assessment of hazards associated with the transport, unloading, storage, and vaporization of LNG.
  —Assessment of potential allision of LNG ships with ships.
  —Assessment of potential collisions of LNG ships with other ship traffic and structures in the port.
  —Assessment of security associated with LNG ship traffic and an LNG import terminal.
  —Assessment of hazards associated with a natural gas pipeline.
- Alternatives:
  —Assessment of the use of existing LNG import terminals and natural gas pipeline systems to reduce or avoid environmental impacts.
  —Evaluation of alternative sites for the LNG import and storage facilities, including offshore sites.
  —Evaluation of pipeline route alternatives.
  —Identification of measures to lessen or avoid impacts on the various resource and special interest areas.
- Cumulative Impacts:
  —Assessment of the effect of the proposed project when combined with other past, present or reasonably foreseeable future actions in the Port of Freeport.

Public Participation

You can make a difference by providing us with your specific comments or concerns about the project. By becoming a commentor, your concerns will be addressed in the EIS and considered by the Commission. You should focus on the potential environmental effects of the proposal, alternatives to the proposal (including alternative locations/routes), and measures to avoid or lessen environmental impact. The more specific your comments, the more useful they will be. Please carefully follow these instructions to ensure that your comments are received in time and properly recorded:

- Send an original and two copies of your letter to: Magalie R. Salas, Secretary, Federal Energy Regulatory Commission, 888 First St., NE., Room 1A, Washington, DC 20426
- Label one copy of the comments for the attention of Gas Branch 2.
- Reference Docket No. CP03–75–000.
- Mail your comments so that they will be received in Washington, DC on or before June 16, 2003 .

Please note that we are continuing to experience delays in mail deliveries from the U.S. Postal Service. As a result, we will include all comments that we receive within a reasonable time frame in our environmental analysis of this project. However, the Commission strongly encourages electronic filing of any comments or interventions or protests to this proceeding. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site at *http://www.ferc.gov* under the "e-Filing" link and the link to the User's Guide. Before you can file comments you will need to create a free account which can be created by clicking on "Login to File" and then "New User Account."

If you do not want to send comments at this time but still want to remain on our mailing list, please return the Information Request (appendix 4). If you do not return this form or send in written comments, you will be taken off the mailing list.

Public Scoping Meeting and Site Visit

In addition to or in lieu of sending written comments, we invite you to attend the public scoping meeting we will conduct in the area. The location and time for this meeting is listed below:

June 3, 2003
7 p.m.
Lake Jackson Civic Center, 333 Highway 332 East, Lake Jackson, Texas 77566, Telephone: 979–415–2600

The public scoping meeting is designed to provide state and local agencies, interested groups, affected landowners, and the general public with more detailed information and another opportunity to offer your comments on the proposed project. Interested groups and individuals are encouraged to attend the meeting and to present comments on the environmental issues they believe should be addressed in the EIS. A transcript of the meeting will be made so that your comments will be accurately recorded.

On the day after the meeting, we will also be conducting a limited site visit to the LNG terminal site and pipeline route. Anyone interested in participating in the site visit should meet at the Quintana Town Hall on Quintana Island, near the proposed LNG terminal site at 8:30 a.m. on June 4, 2003. The meeting place is near the intersection of Lamar and 8th Streets on Quintana Island. Participants must provide their own transportation. For additional information, please contact the Commission's Office of External Affairs at (202) 502–8004.

Becoming an Intervenor

In addition to involvement in the EIS scoping process, you may want to become an official party to the proceeding known as an "intervenor". Intervenors play a more formal role in the process. Among other things, intervenors have the right to receive copies of case-related Commission documents and filings by other intervenors. Likewise, each intervenor must provide 14 copies of its filings to the Secretary of the Commission and must send a copy of its filings to all other parties on the Commission's service list for this proceeding. If you want to become an intervenor you must file a motion to intervene according to Rule 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.214) (*see* appendix 2).[4] Only intervenors have the right to seek rehearing of the Commission's decision.

Affected landowners and parties with environmental concerns may be granted intervenor status upon showing good cause by stating that they have a clear and direct interest in this proceeding which would not be adequately represented by any other parties. You do not need intervenor status to have your environmental comments considered.

Environmental Mailing List

This notice is being sent to individuals, organizations, and government entities interested in and/or potentially affected by the proposed project. It is also being sent to all identified potential right-of-way grantors. By this notice we are also asking governmental agencies, especially those in appendix 3, to express their interest in becoming cooperating agencies for the preparation of the EIS.

Additional Information

Additional information about the project is available from the Commission's Office of External Affairs, at 1–866–208–FERC or on the FERC Internet Web site (*http://www.ferc.gov*)using the FERRIS link. Click on the FERRIS link, enter the docket number excluding the last three digits in the Docket Number field. Be sure you have selected an appropriate date range. For assistance with FERRIS, the FERRIS helpline can be reached at 1–866–208–3676, TTY (202) 502–8659, or at *FERCOnlineSupport@ferc.gov*. The FERRIS link on the FERC Internet Web site also provides access to the texts of formal documents issued by the Commission, such as orders, notices, and rulemakings.

[4] Interventions may also be filed electronically via the Internet in lieu of paper. *See* the previous discussion on filing comments electronically.

In addition, the Commission now offers a free service called eSubscription which allows you too keep track of all formal issuances and submittals in specific dockets. This can reduce the amount of time you spend researching proceedings by automatically providing you with notification of these filings, document summaries, and direct links to the documents. Go to *http://www.ferc.gov/esubscribenow.htm*.

Magalie R. Salas,
Secretary.
[FR Doc. 03–12438 Filed 5–16–03; 8:45 am]
BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of FERC Staff Participation at MISO Conference on MISO Open Access Transmission and Energy Markets Tariff

May 13, 2003.

The Federal Energy Regulatory Commission hereby gives notice that members of its staff will attend a Midwest Independent Transmission System Operator, Inc. (MISO) conference on its Open Access Transmission and Energy Markets Tariff. The staff's attendance is part of the Commission's ongoing outreach efforts. The conference is sponsored by MISO, and will be held on May 19 and 20, 2003, at 10 a.m. at MISO's headquarters, 701 City Center Drive, Carmel, IN 46032. This meeting is open to the public. The meeting may discuss matters at issue in Docket No. RM01–12–000, Remedying Undue Discrimination Through Open Access Transmission Service and Standard Electricity Market Design; in Docket No. EL02–65–000, *et al.*, Alliance Companies, *et al.*; and in Docket No. RT01–87–000, *et al.*, Midwest Independent Transmission System Operator, Inc.

For more information, contact Patrick Clarey, Office of Markets, Tariffs and Rates, Federal Energy Regulatory Commission at (317) 249–5937 or *patrick.clarey@ferc.gov* or Christopher Miller, Office of Markets, Tariffs and Rates, Federal Energy Regulatory Commission at (317) 249–5936 or *christopher.miller@ferc.gov*.

Magalie R. Salas,
Secretary.
[FR Doc. 03–12440 Filed 5–16–03; 8:45 am]
BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. PA03–12–000]

Transmission Congestion on the Delmarva Peninsula; Facilitation of a Fact-Finding Proceeding

Issued May 12, 2003.
Before Commissioners: Pat Wood, III, Chairman; William L. Massey, and Nora Mead Brownell.

1. The Commission is establishing a fact-finding proceeding facilitated by an administrative law judge (ALJ), concerning transmission congestion on the portion of the power grid on the Delmarva Peninsula operated by PJM Interconnection, L.L.C. (PJM). This exercise will benefit customers because it will help us evaluate the extent and costs of transmission congestion on the Delmarva Peninsula, help identify potential solutions to the problem, and also assist us in identifying lessons we can learn from this experience that may apply to other situations.

2. The Commission has encouraged the development of methods to effectively and efficiently manage congestion on transmission systems. PJM uses a system of locational marginal pricing (LMP) and financial transmission rights (FTRs) to manage congestion on the PJM system. Some areas of PJM, in particular the Delmarva Peninsula, have experienced significant congestion over the last several years.[1] Transmission congestion can increase the cost of delivered energy to wholesale customers. Customers who hold FTRs for the congested paths should be protected from paying these congestion costs. However, customers who do not hold FTRs will be exposed to these congestion costs. In a number of recent proceedings parties, including Old Dominion Electric Cooperative (ODEC), have argued that transmission congestion has been a persistent problem on the Delmarva Peninsula that needs Commission action to be resolved.[2] Since our goal is to assure that the institutional and analytical frameworks for transmission system management are producing cost-effective and efficient solutions that meet the current and future needs of PJM's stakeholders, this fact-finding exercise will be valuable.

3. Accordingly, we direct the ALJ to conduct a fact-finding inquiry concerning congestion on the Delmarva Peninsula. In particular the ALJ should identify: (1) The historical and expected extent of the congestion and its cost, rate and reliability effects for wholesale and retail customers on the Delmarva Peninsula and elsewhere in PJM; (2) the causes of the congestion; (3) how FTRs have been and can be used to protect customers on the Delmarva Peninsula from congestion costs; (4) whether transmission upgrades currently planned for the Delmarva Peninsula will effectively moderate this congestion; (5) the costs, benefits and timing of transmission expansion to relieve congestion and who will benefit from such transmission expansion; (6) whether demand-side, distributed generation or other generation solutions can complement new transmission to solve these problems over the near or long term; and (7) other opportunities for solutions to better manage congestion costs, and the obstacles and timeliness of possible solutions. The above list is not exclusive; the ALJ and participants to the proceeding may raise other issues that are directly related to the problem of congestion on the Delmarva Peninsula and possible solutions, in addition to those identified above.

4. Our goal is for the ALJ to convene a group of interested parties from the affected area, drawing not only from the Delmarva Peninsula but also from across the PJM area as appropriate. We invite the Public Service Commissions of Delaware and Maryland and the Virginia State Corporation Commission to send expert staff members to participate, and even to send an ALJ to work with the Commission's ALJ if they wish. Any State Commission that is interested in having its ALJ participate in the case study should contact the Commission ALJ to make the appropriate arrangements. We expect the full participation of all wholesale transmission customers on the Delmarva Peninsula, as well as the PJM RTO. Interested entities should file notice of their intent to participate within ten days from the date of this order.

5. We direct the Chief Administrative Law Judge or his designee to appoint a presiding judge to convene a conference no later than fifteen days from the date of this order. We direct the presiding judge to provide a report on the foregoing within sixty days from the

[1] We note that PJM has performed studies to analyze the causes of this congestion. *See, e.g.*, November 7, 2002, "Delmarva Congestion Study" by PJM's Manager—Transmission and Interconnection Planning; December 17, 2002 "Delmarva Congestion Study," by PowerGEM (retained by PJM). These documents are available on the PJM Web site, *www.pjm.com*.

[2] These issues are also presently raised in PJM's compliance filing in Docket No. RT01–2 that sets forth PJM's proposal to plan for economic expansions to relieve persistent congestion.

date of this order.[3] State Commission ALJs or expert staff that participate in the fact-finding may offer written comments or conclusions that will be appended to the Commission ALJ's report.

The Commission Orders

(A) The Secretary is hereby directed to publish this order in the **Federal Register**.

(B) Entities seeking to participate in this proceeding should file notices of their intent to participate within ten days of the date of this order. However, since this proceeding will not be a formal case, we direct the ALJ to welcome late participants to the proceeding rather than holding strictly to the formal rules of participation and intervention.

(C) Pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by Section 402(a) of the Department of Energy Organization Act and by the Federal Power Act, and pursuant to the Commission's Rules of Practice and Procedure and the regulations under the Federal Power Act (18 CFR, Chapter I), and the appropriate guidelines for Alternate Dispute Resolutions, the ALJ shall conduct whatever proceedings and hearings may be appropriate to determine the facts and solutions concerning congestion on the Delmarva Peninsula, as discussed in the body of this order.

(D) A presiding administrative law judge, to be designated by the chief administrative law judge, shall convene a conference in the proceeding to be held within fifteen days of the date of this order, in a hearing room of the Federal Energy Regulatory Commission, 888 First Street, NW., Washington, DC 20426. The presiding judge is authorized to establish procedural dates and to rule on all motions (except motions to dismiss) as provided for in the Commission's Rules of Practice and Procedure.

(E) The presiding judge shall file a report within sixty days after the date of this order, as discussed in the body of this order.

(F) Any State Commission that is interested in having its ALJ participate in the case study should contact the Commission ALJ to make the appropriate arrangements.

[3] The ALJ report will not be an initial decision, so we will not entertain the filing of briefs on or opposing exceptions. Further, we do not anticipate the need for cross-examination of witnesses. The Judge need not create an exhaustive record, but may work with the parties to create the record that provides a thorough picture of the facts, problems, and opportunities, and lessons to be learned.

(G) The Commission's Office of Administrative Litigation shall provide technical support to the ALJ and the parties in this proceeding.

By the Commission.

Magalie R. Salas,

Secretary.

[FR Doc. 03–12429 Filed 5–16–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Western Area Power Administration

Construction and Operation of the Proposed Wellton-Mohawk Generating Facility, Yuma County, AZ

AGENCY: Western Area Power Administration, DOE.

ACTION: Notice of Intent to Prepare an Environmental Impact Statement.

SUMMARY: The Western Area Power Administration (Western) intends to prepare an environmental impact statement (EIS) regarding the proposal by Dome Valley Energy Partners, LLC (Dome Valley) to construct and operate the Wellton-Mohawk Generating Facility (Facility) east of Yuma, Arizona. The EIS will also address the construction of a new natural gas pipeline and high-voltage transmission line upgrades and additions needed to support the Facility, a no-action alternative, and any action alternatives defined as a result of the EIS scoping process.

Because implementing this proposal would incorporate a major new generation resource into Western's system, Western has determined that an EIS is required. Western will hold a 30-day scoping period to ensure that interested members of the public and Federal, State, local, and tribal agencies have an opportunity to provide input on the scope and alternatives that will be addressed in the EIS. Western also will hold public open-house scoping meetings in the project area during the scoping period.

DATES: The public scoping meetings will be held on June 3, 2003, in Wellton, and June 4, 2003, in Yuma. Each meeting will be held between 6 p.m. and 9 p.m. Written comments on the scope of the EIS for the proposed Project should be received no later than 11:59 p.m. (Arizona Time) on June 30, 2003, which will be the end of the EIS scoping period. Comments on the project will be accepted throughout the National Environmental Policy Act (NEPA) process.

ADDRESSES: The Wellton scoping meeting will be held at the Wellton Elementary School, 29126 San Jose Avenue in Wellton. The Yuma scoping meeting will be held at the Yuma Civic and Convention Center, 1440 West Desert Hills Drive in Yuma. Each facility is handicapped accessible. Comments should be addressed to Mr. John Holt, Environment Manager, Desert Southwest Customer Service Region, Western Area Power Administration, P.O. Box 6457, Phoenix, AZ 85005, fax (602) 352–2630, e-mail holt@wapa.gov.

FOR FURTHER INFORMATION CONTACT: Mr. Mark Wieringa, NEPA Document Manager, Western Area Power Administration, P.O. Box 281213, Lakewood, CO 80228–8213, telephone (720) 962–7448, fax (720) 962–7263, e-mail *wieringa@wapa.gov*. For general information on the Department of Energy's NEPA review procedures or status of a NEPA review, contact Carol M. Borgstrom, Director of NEPA Policy and Compliance, EH–42, U.S. Department of Energy, 1000 Independence Avenue SW., Washington, DC 20585, telephone (202) 586–4600 or (800) 472–2756.

SUPPLEMENTARY INFORMATION: The Facility would be located adjacent to Western's existing Ligurta Substation, approximately 25 miles east of Yuma, Arizona, and nine miles west of Wellton, Arizona, just north of Interstate Highway 8. Dome Valley proposes to construct and operate a natural gas-fired combined-cycle electricity generating facility, an associated solar collection field, and ancillary facilities in unincorporated Yuma County, Arizona. The proposed Facility would be developed in two phases. The full output of the first phase would be nominally rated at 260 megawatts (MW) with about 310-MW peaking capacity. With the second phase, the Facility would be nominally rated at 520 MW with peaking capacity of about 620 MW via duct burners. Each phase would consist of one combustion turbine, one heat recovery steam generator, a steam turbine, condenser, transformer, cooling towers, tanks, sedimentation/evaporation ponds, auxiliary boilers, an emergency generator, an emergency fire pump, and associated buildings. Water for the Facility's use, including cooling, would be provided by the Wellton-Mohawk Irrigation and Drainage District (Wellton-Mohawk) via the Wellton-Mohawk Canal. Associated with the Facility would be a solar component that would convert solar energy to thermal energy for inlet air-cooling. Natural gas for the Facility would be delivered via a new natural gas pipeline that would interconnect to a proposed or existing natural gas transmission line near U.S. Highway 95, northwest of the Facility. The proposed natural gas transmission pipeline would be subject to an independent NEPA review as part of the Federal Energy Regulatory Commission licensing process. The Facility's new natural gas pipeline would parallel the existing Wellton-Mohawk Canal right-of-way for its full length of 12 miles.

The first phase of the Facility would interconnect at Western's Ligurta Substation. In response to Dome Valley's proposal, Western conducted a transmission system impact study and determined that upgrades and additions to the existing transmission system were needed to accommodate the Facility. Western's proposed actions would include upgrading the existing Ligurta Substation, upgrading Western's existing 12.7-mile Ligurta to Gila transmission line, adding 75 megavolt-ampere transformer capacity between the 161-kilovolt (kV) side and the 69-kV side in Western's Gila Substation near Yuma, constructing a new 18-mile transmission line between the Ligurta Substation and Arizona Public Service's North Gila Substation north of Yuma, and interconnecting this line at the North Gila Substation. The new Ligurta to North Gila transmission line would parallel the existing Wellton-Mohawk Canal for most of its length. In addition, Western would require that primary and secondary communication systems be installed to ensure reliable operation of the transmission system. Because the facility would be a major new source of generation and electricity generated by the Facility would be integrated into Western's transmission system, Western has determined that an EIS is required in accordance with DOE's NEPA Implementing Procedures, 10 CFR part 1021, Subpart D, Appendix D, class of action D6. The EIS will address the proposed action, a no-action alternative, and any action alternatives defined as a result of the EIS scoping process. Western will be the lead Federal Agency, as defined at 40 CFR 1501.5.

Portions of the transmission line upgrades and additions and a proposed natural gas pipeline for the Facility would cross lands managed by the U.S. Department of the Interior, Bureau of Land Management, Yuma Field Office (BLM). Since BLM would require rights-of-way grants for portions of the transmission line additions and new natural gas pipeline, BLM will participate as a cooperating agency in the preparation of the EIS.

The proposed Facility would be located on land currently owned by the U.S. Department of the Interior, Bureau of Reclamation (BOR). Title to this property would be transferred by BOR to Wellton-Mohawk. The EIS will address the proposed property transfer, and the BOR will participate in the EIS review of the project as a cooperating agency.

Western, in consultation with the cooperating agencies, will carefully examine public health and safety, environmental impacts, and engineering aspects of the proposed Facility, the proposed transmission system upgrades and facilities, and the proposed natural gas pipeline. Even though only portions of the proposed Facility and its components would be addressed by Western, the BLM, or the BOR decisions, the EIS will address all components of the proposed Facility.

The EIS will be prepared in accordance with the requirements of the Council on Environmental Quality's NEPA Implementing Regulations (40 CFR parts 1500–1508) and DOE's NEPA Implementing Procedures (10 CFR part 1021). Western will invite tribal, local, and State agencies with special expertise or jurisdiction over the Project to be cooperating agencies on the EIS. Full public participation, including information prepared in both English and Spanish, and disclosure are planned for the entire EIS process. It is anticipated that the EIS process will take about 1 year and will include public information and scoping meetings; consultation and involvement with appropriate Federal, State, local, and tribal government agencies; public review and hearings on the published draft EIS; a published final EIS; a review period; and publication of a record of decision (ROD). Publication of the ROD is anticipated in 2004.

The scoping meetings will be structured as open houses, and provide interested parties an opportunity to view Facility and EIS process exhibits, and provide comments to Western and cooperating agency representatives. The meetings will be held June 3 and 4, 2003, between 6 p.m. and 9 p.m. at the Wellton Elementary School Gymnasium and the Yuma Civic and Convention Center, respectively. The meeting locations are handicapped accessible, and an interpreter for the hearing-impaired will be available to provide information for the hearing impaired. The scoping period expires on June 30, 2003.

Dated: May 8, 2003.

Michael S. Hacskaylo,

Administrator.

[FR Doc. 03–12435 Filed 5–16–03; 8:45 am]

BILLING CODE 6450–01–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7500–3]

Agency Information Collection Activities: Continuing Collection; Comment Request; Land Disposal Restrictions No-Migration Variances

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this notice announces that EPA is planning to submit the following continuing Information Collection Request (ICR) to the Office of Management and Budget (OMB): Land Disposal Restrictions No-Migration Variances, EPA ICR No.1353.07, OMB No. 2050–0062, expires on September 30, 2003. Before submitting the ICR to OMB for review and approval, EPA is soliciting comments on specific aspects of the proposed information collection as described below.

DATES: Comments must be submitted on or before July 18, 2003.

ADDRESSES: Comments may be submitted by mail, through hand delivery/courier, or electronically. Follow the detailed instructions as provided in the **SUPPLEMENTARY INFORMATION** section.

The mailing address, referencing Docket ID No. RCRA–2003–0010, is: OSWER Docket (5305T) EPA Docket Center, U.S. Environmental Protection Agency Headquarters, 1200 Pennsylvania Avenue, NW., Washington, DC 20460. Hand deliveries of comments should be made to the EPA Docket Center, (EPA/DC) EPA West, Room B102, 1301 Constitution Ave., NW., Washington. DC. Comments may also be submitted electronically through the Internet to: *rcra-docket@epa.gov*. Comments in electronic format should also be identified by the Docket ID No. RCRA–2003–0010.

Commenters should not submit any confidential business information (CBI) electronically. An original and two copies of CBI must be submitted under separate cover to: RCRA CBI Document Control Officer, Office of Solid Waste (5303W), U.S. EPA, 1200 Pennsylvania Avenue, NW., Washington, DC 20460.

Hand deliveries must be brought to the OSWER Docket in the EPA Docket Center, (EPA/DC) EPA West, Room B102, 1301 Constitution Ave., NW., Washington, DC. The Docket is open from 8:30 a.m. to 4:30 p.m. Monday through Friday, excluding Federal holidays.

FOR FURTHER INFORMATION CONTACT: David Eberly by phone at (703) 308–8645, by mail at the Office of Solid Waste (5303W), U.S. Environmental Protection Agency, 1200 Pennsylvania Avenue, NW., Washington, DC 20460, or by e-mail at *eberly.david@epa.gov.*

SUPPLEMENTARY INFORMATION:

A. How Can I Get Copies of the ICR Supporting Statement and Other Related Information?

1. *Docket.* EPA has established an official public docket for this ICR under Docket ID No. RCRA–2003–0010. The official public docket consists of the documents specifically referenced in the ICR, any public comments received, and other information related to this ICR. Although a part of the official docket, the public docket does not include Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. The official public docket is the collection of materials that is available for public viewing at the EPA Docket Center (*see* **ADDRESSES** above). The EPA Docket Center Public Reading Room is open from 8:30 a.m. to 4:30 p.m. Monday through Friday, excluding Federal holidays. The telephone number for the Reading Room is (202) 566–1744, and the telephone number for the OSWER Docket is (202) 566–0740. Copies are $0.15/page.

2. *Electronic Access.* You may access this **Federal Register** document electronically through the EPA Internet under the "**Federal Register**" listings at *http://www.epa.gov/fedrgstr/.*

You may use EPA Dockets at *http://www.epa.gov/edocket/* to submit or view public comments, access the index listing of the contents of the official public docket, and to access those documents in the public docket that are available electronically. Once in the system, select "search," then key in the docket identification number.

Certain types of information will not be placed in the EPA Dockets. Information claimed as CBI, and other information whose disclosure is restricted by statute, which is not included in the official public docket, will not be available for public viewing in EPA's electronic public docket. EPA's policy is that copyrighted material will not be placed in EPA's electronic public docket but will be available only in printed, paper form in the official public docket. To the extent feasible, publicly available docket materials will be made available in EPA's electronic public docket. When a document is selected from the index list in EPA Dockets, the system will identify whether the document is available for viewing in EPA's electronic public docket. Although not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the docket facility identified in A.1 above.

For public commenters, it is important to note that EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing in EPA's electronic public docket as EPA receives them and without change, unless the comment contains copyrighted material, CBI, or other information whose disclosure is restricted by statute. When EPA identifies a comment containing copyrighted material, EPA will provide a reference to that material in the version of the comment that is placed in EPA's electronic public docket. The entire printed comment, including the copyrighted material, will be available in the public docket.

Public comments submitted on computer disks that are mailed or delivered to the docket will be transferred to EPA's electronic public docket. Public comments that are mailed or delivered to the Docket will be scanned and placed in EPA's electronic public docket. Where practical, physical objects will be photographed, and the photograph will be placed in EPA's electronic public docket along with a brief description written by the docket staff.

B. How and To Whom Do I Submit Comments?

You may submit comments electronically, by mail, or through hand delivery/courier. To ensure proper receipt by EPA, identify the appropriate docket identification number in the subject line on the first page of your comment. Please ensure that your comments are submitted within the specified comment period. Comments received after the close of the comment period will be marked "late." EPA is not required to consider these late comments in formulating a final decision.

1. *Electronically.* If you submit an electronic comment as prescribed below, EPA recommends that you include your name, mailing address, and an e-mail address or other contact information in the body of your comment. Also include this contact information on the outside of any disk or CD ROM you submit, and in any cover letter accompanying the disk or CD ROM. This ensures that you can be identified as the submitter of the comment and allows EPA to contact you in case EPA cannot read your comment due to technical difficulties or needs further information on the substance of your comment. EPA's policy is that EPA will not edit your comment, and any identifying or contact information provided in the body of a comment will be included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment.

i. *EPA Dockets.* Your use of EPA's electronic public docket to submit comments to EPA electronically is EPA's preferred method for receiving comments. Go directly to EPA Dockets at *http://www.epa.gov/edocket,* and follow the online instructions for submitting comments. To access EPA's electronic public docket from the EPA Internet Home Page, select "Information Sources," "Dockets," and "EPA Dockets." Once in the system, select "search," and then key in Docket ID No. RCRA–2003–0010. The system is an "anonymous access" system, which means EPA will not know your identity, e-mail address, or other contact information unless you provide it in the body of your comment.

ii. *E-mail.* Comments may be sent by electronic mail (e-mail) to *rcra-docket@epa.gov,* Attention Docket ID No. RCRA–2003–0010. In contrast to EPA's electronic public docket, EPA's e-mail system is not an "anonymous access" system. If you send an e-mail comment directly to the Docket without going through EPA's electronic public docket, EPA's e-mail system automatically captures your e-mail address. E-mail addresses that are automatically captured by EPA's e-mail system are included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket.

iii. *Disk or CD ROM.* You may submit comments on a disk or CD ROM that you mail to the mailing address identified in **ADDRESSES.** These electronic submissions will be accepted in WordPerfect or ASCII file format. Avoid the use of special characters and any form of encryption.

2. *By Mail.* Send an original of your comments, referencing Docket ID No. RCRA–2003–0010, to: OSWER Docket (Mailcode 5305T), EPA Docket Center, U.S. Environmental Protection Agency Headquarters, 1200 Pennsylvania Avenue, NW., Washington, DC 20460.

3. *By Hand Delivery or Courier.* Deliver your comments to: EPA Docket Center, (EPA/DC) EPA West, Room B102, 1301 Constitution Ave., NW., Washington, DC, Attention Docket ID No. RCRA–2003–0010. Such deliveries are only accepted during the Docket's normal hours of operation, from 8:30 a.m. to 4:30 p.m. Monday through Friday, excluding Federal holidays.

C. How Should I Submit CBI to the Agency?

Do not submit information that you consider to be CBI electronically through EPA's electronic public docket or by e-mail. Send or deliver information identified as CBI only to: RCRA CBI Document Control Officer, Office of Solid Waste (5303W), U.S. EPA, 1200 Pennsylvania Avenue, NW., Washington DC 20460, Attention Docket ID No. RCRA–2003–0010. You may claim information that you submit to EPA as CBI by marking any part or all of that information as CBI (if you submit CBI on disk or CD ROM, mark the outside of the disk or CD ROM as CBI and then identify electronically within the disk or CD ROM the specific information that is CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

In addition to one complete version of the comment that includes any information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket and EPA's electronic public docket. If you submit the copy that does not contain CBI on disk or CD ROM, mark the outside of the disk or CD ROM clearly that it does not contain CBI. Information not marked as CBI will be included in the public docket and EPA's electronic public docket without prior notice. If you have any questions about CBI or the procedures for claiming CBI, please consult the person identified in the **FOR FURTHER INFORMATION CONTACT** section.

D. What Information Is EPA Particularly Interested In?

Pursuant to section 3506(c)(2)(A) of the PRA, EPA specifically solicits comments and information to enable it to:

1. Evaluate whether the proposed collections of information are necessary for the proper performance of the functions of the Agency, including whether the information will have practical utility.

2. Evaluate the accuracy of the Agency's estimates of the burdens of the proposed collections of information. In particular, for this ICR, EPA is soliciting information on the estimates for performing waste analyses as required in 40 CFR 264.13(a)(1) and 40 CFR 265.13(a)(1).

3. Enhance the quality, utility, and clarity of the information to be collected.

4. Minimize the burden of the collections of information on those who are to respond, including through the use of appropriate automated or electronic collection technologies or other forms of information technology, *e.g.,* permitting electronic submission of responses.

Affected Entities: Entities potentially affected by this action are owners and operators of hazardous waste management facilities.

Title: Land Disposal Restrictions No-Migration Variances, EPA ICR #1573.07, OMB No. 2050–0062, expires on September 30, 2003.

Abstract: To receive a variance from the hazardous waste land disposal prohibitions, owner/operators of hazardous waste storage or disposal facilities may petition the Environmental Protection Agency to allow land disposal of a specific restricted waste at a specific site. The EPA Regional Offices will review the petitions and determine if they successfully demonstrate "no migration." The applicant must demonstrate that hazardous wastes can be managed safely in a particular land disposal unit, so that "no migration" of any hazardous constituents occurs from the unit for as long as the waste remains hazardous. If EPA grants the variance, the waste is no longer prohibited from land disposal in that particular unit. If the owner/operator fails to make this demonstration, or chooses not to petition for the variance, best demonstrated available technology (BDAT) requirements of 40 CFR 268.40 must be met before the hazardous wastes are placed in a land disposal unit.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR part 9 and 48 CFR chapter 15.

Burden Statement: The Agency is estimating that no more than one respondent will prepare and submit a No-Migration variance petition during the three year period of this ICR. EPA estimates that the total annual respondent burden for all information collection activities will be approximately 3,137 hours, at an annual cost of $187,105.

Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

Dated: May 8, 2003.

Robert Springer,

Director, Office of Solid Waste.

[FR Doc. 03–12477 Filed 5–16–03; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7499–7; Docket ID Numbers: OECA–2003–0019 to OECA–2003–0038]

Agency Information Collection Activities: Request for Comments on Twenty Proposed Information Collection Requests (ICRs)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this document announces that EPA is planning to submit the following twenty continuing Information Collection Requests (ICRs) to the Office of Management and Budget (OMB). Before submitting the ICRs to OMB for review and approval, EPA is soliciting comments on specific aspects of the information collections as described at the beginning of **SUPPLEMENTARY INFORMATION.**

DATES: Comments must be submitted on or before July 18, 2003.

ADDRESSES: Comments may be submitted electronically, by mail, or through hand delivery/courier service. Follow the detailed instructions as provided under **SUPPLEMENTARY INFORMATION,** section I.B.

FOR FURTHER INFORMATION CONTACT: The contact individuals for each ICR are listed under **SUPPLEMENTARY INFORMATION,** section II. C.

SUPPLEMENTARY INFORMATION:

I. General Information

A. How Can I Get Copies of the ICR Supporting Statement and Other Related Information?

1. *Docket.* EPA has established official public dockets for the following ICRs:

(1) NESHAP for Secondary Lead Smelting (40 CFR part 63, subpart X), Docket ID Number OECA–2003–0036.

(2) NESHAP for Halogenated Solvent Cleaning (40 CFR part 63, subpart T), Docket ID Number OECA–2003–0024.

(3) NSPS for Storage Vessels for Petroleum Liquids for Which Construction, Reconstruction or Modification Commenced After June 11, 1973, and prior to May 19, 1978 (40 CFR part 60, subpart K), Docket ID Number OECA–2003–0019.

(4) NSPS for New Commercial and Industrial Solid Waste Incineration Units (40 CFR part 60, subpart CCCC), Docket ID Number OECA–2003–0025.

(5) NSPS for Ammonium Sulfate Manufacture (40 CFR part 60, subpart PP), Docket ID Number OECA–2003–0026.

(6) NESHAP for Phosphoric Acid Manufacturing Plants and Phosphate Fertilizers Production Plants (40 CFR part 63, subparts AA and BB), Docket ID Number OECA–2003–0027.

(7) Emission Guidelines for Commercial and Industrial Solid Waste Incineration Units (40 CFR part 60, subpart DDDD), Docket ID Number OECA–2003–0028.

(8) NESHAP for Magnetic Tape Manufacturing Operations (40 CFR part 63, subpart EE), Docket ID Number OECA–2003–0022.

(9) NESHAP for Flexible Polyurethane Foam Production (40 CFR part 63, subpart III), Docket ID Number OECA–2003–0037.

(10) NESHAP for Mineral Wool Production (40 CFR part 63, Subpart DDD), Docket ID Number OECA–2003–0029.

(11) NSPS for Nitric Acid Plants (40 CFR part 60, subpart G), Docket ID Number OECA–2003–0030.

(12) NESHAP for Off-Site Waste and Recovery Operations (40 CFR part 63, subpart DD), Docket ID Number OECA–2003–0031.

(13) NSPS for New Residential Wood Heaters (40 CFR part 60, subpart AAA), Docket ID Number OECA–2003–0021.

(14) NESHAP for Wood Furniture Manufacturing Operations (40 CFR part 63, subpart JJ), Docket ID Number OECA–2003–0032.

(15) NESHAP for Ethylene Oxide Emissions from Sterilization Facilities (40 CFR part 63, subpart O), Docket ID Number OECA–2003–0033.

(16) NSPS for Chromium Emissions From Hard and Decorative Chromium Electroplating and Chromium Anodizing Tanks (40 CFR part 63, subpart N), Docket ID Number OECA–2003–0034.

(17) NSPS for Secondary Brass and Bronze Production (40 CFR part 60, subpart M); Primary Copper Smelters (40 CFR part 60, subpart P); Primary Zinc Smelters (40 CFR part 60, subpart Q); Primary Lead Smelters (40 CFR part 60, subpart R); Primary Aluminum Reduction Plants (40 CFR part 60, subpart S); and Ferroalloy Production Facilities (40 CFR part 60, subpart Z), Docket ID Number OECA–2003–0038.

(18) NESHAP for Gasoline Distribution Facilities (40 CFR part 63, subpart R), Docket ID Number OECA–2003–0020.

(19) NESHAP for Pharmaceutical Production (40 CFR part 63, subpart GGG), Docket ID Number OECA–2003–0035.

(20) NSPS for Magnetic Tape Facilities (40 CFR part 60, subpart SSS), Docket ID Number OECA–2003–0023.

The official public docket for each ICR consists of the documents specifically referenced in the ICR, any public comments received, and other information related to each ICR. Although a part of the official docket, the public docket does not include Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. The official public docket for each ICR is the collection of materials that is available for public viewing at the Enforcement and Compliance Docket and Information Center in the EPA Docket Center (EPA/DC), EPA West, Room B102, 1301 Constitution Avenue, NW., Washington, DC. The EPA Docket Center Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Reading Room is (202) 566–1744, and the telephone number for the Enforcement and Compliance Docket and Information Center Docket is (202) 566–1514.

2. *Electronic Access.* You may access this document electronically through the EPA Internet under the "**Federal Register**" listings at *http://www.epa.gov/fedrgstr/*. You may use EPA Dockets at *http://www.epa.gov/edocket/*. to submit or view public comments, access the index listing of the contents of the official public docket, and to access those documents in the public docket that are available electronically. After entering the system, select "search," then key in the docket identification number.

Certain types of information will not be placed in the EPA Dockets. Information claimed as CBI, and other information whose disclosure is restricted by statute, which is not included in the official public docket, will not be available for public viewing in EPA's electronic public docket. EPA's policy is that copyrighted material will not be placed in EPA's electronic public docket but will be available only in printed, paper form in the official public docket. To the extent feasible, publicly available docket materials will be made available in EPA's electronic public docket. When a document is selected from the index list in EPA Dockets, the system will identify whether the document is available for viewing in EPA's electronic public docket. Although not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the docket facility identified in section I.A.1. EPA intends to work toward providing electronic access to all of the publicly available docket materials through EPA's electronic public docket.

For public commenters, it is important to note that EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing in EPA's electronic public docket as EPA receives them and without change, unless the comment contains copyrighted material, CBI, or other information whose disclosure is restricted by statute. When EPA identifies a comment containing copyrighted material, EPA will provide a reference to that material in the version of the comment that is placed in EPA's electronic public docket. The entire printed comment, including the copyrighted material, will be available in the public docket.

Public comments submitted on computer disks that are mailed or delivered to the docket will be transferred to EPA's electronic public docket. Public comments that are mailed or delivered to the Docket will be scanned and placed in EPA's electronic public docket. Where practical, physical objects will be photographed, and the photograph will be placed in EPA's electronic public docket along with a brief description written by the docket staff.

For additional information about EPA's electronic public docket, visit EPA Dockets online or *see* 67 FR 38102, May 31, 2002.

B. How and To Whom Do I Submit Comments?

You may submit comments electronically, by mail, or through hand delivery/courier service. To ensure proper receipt by EPA, identify the

appropriate docket identification number in the subject line on the first page of your comment. Please ensure that your comments are submitted within the specified comment period. Comments received after the close of the comment period will be marked "late." EPA is not required to consider late comments in formulating a final decision. If you wish to submit CBI or information that is otherwise protected by statute, please follow the instructions in section I.C. Do not use EPA Dockets or e-mail to submit CBI or information protected by statute.

1. Electronically. If you submit an electronic comment as prescribed below, EPA recommends that you include your name, mailing address, and an e-mail address or other contact information in the body of your comment. Also include this contact information on the outside of any disk or CD ROM you submit, and in any cover letter accompanying the disk or CD ROM. This ensures that you can be identified as the submitter of the comment and allows EPA to contact you in case EPA cannot read your comment due to technical difficulties or needs further information on the substance of your comment. EPA's policy is that EPA will not edit your comment, and any identifying or contact information provided in the body of a comment will be included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment.

i. *EPA Dockets.* Your use of EPA's electronic public docket to submit comments to EPA electronically is EPA's preferred method for receiving comments. Go directly to EPA Dockets at *http://www.epa.gov/edocket*, and follow the online instructions for submitting comments. To access EPA's electronic public docket from the EPA Internet Home Page, select "Information Sources," "Dockets," and "EPA Dockets." After entering the system, select "search," and then key in Docket ID Number. The system is an "anonymous access" system, which means EPA will not know your identity, e-mail address, or other contact information unless you provide it in the body of your comment.

ii. *E-mail.* Comments may be sent by electronic mail (e-mail) to *docket.oeca@epa.gov*. Provide the Docket ID Number when submitting your comments. In contrast to EPA's electronic public docket, EPA's e-mail system is not an "anonymous access" system. If you send an e-mail comment directly to the Docket without going through EPA's electronic public docket, EPA's e-mail system automatically captures your e-mail address. E-mail addresses that are automatically captured by EPA's e-mail system are included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket.

iii. *Disk or CD ROM.* You may submit comments on a disk or CD ROM that you mail to the mailing address identified in section I.A.1. These electronic submissions will be accepted in WordPerfect or ASCII file format. Avoid the use of special characters and any form of encryption.

2. *By Mail.* Send your comments to the EPA Docket Center using the address provided in section I.A.1.; Attention: Docket ID Number (provide number).

3. *By Hand Delivery or Courier Service.* Deliver your comments to address provided in section I.A.1; Attention: Docket ID Number (provide number). Such deliveries are only accepted during the Docket's normal hours of operation as identified in section I.A.1.

C. How Should I Submit CBI to the Agency?

Do not submit information that you consider to be CBI electronically through EPA's electronic public docket or by e-mail. Send or deliver information identified as CBI only to the contact individuals listed in section II.C.; Attention: Docket ID Number (provide number). You may claim information that you submit to EPA as CBI by marking any part or all of that information as CBI. If you submit CBI on disk or CD ROM, mark the outside of the disk or CD ROM as CBI, and then identify within the disk or CD ROM the specific information that is CBI. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

In addition to one complete version of the comment that includes any information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket and EPA's electronic public docket. If you submit the copy that does not contain CBI on disk or CD ROM, mark the outside of the disk or CD ROM clearly that it does not contain CBI. Information not marked as CBI will be included in the public docket and EPA's electronic public docket without prior notice. If you have any questions about CBI or the procedures for claiming CBI, please consult the person identified under the section titled **FOR FURTHER INFORMATION CONTACT.**

D. What Should I Consider as I Prepare My Comments for EPA?

You may find the following suggestions helpful for preparing your comments:

(1) Explain your views as clearly as possible.

(2) Describe any assumptions that you used.

(3) Provide any technical information and/or data you used that support your views.

(4) If you estimate potential burden or costs, explain how you arrived at your estimate.

(5) Provide specific examples to illustrate your concerns.

(6) Offer alternatives.

(7) Make sure to submit your comments by the comment period deadline identified.

(8) To ensure proper receipt by EPA, identify the appropriate docket identification number in the subject line on the first page of your response. It would also be helpful if you provided the name, date, and **Federal Register** citation related to your comments.

E. In What Information Is EPA Particularly Interested?

Pursuant to section 3506(c)(2)(A) of the PRA, EPA specifically solicits comments and information to enable it to:

(1) Evaluate whether the proposed collections of information are necessary for the proper performance of the functions of the Agency, including whether the information will have practical utility.

(2) Evaluate the accuracy of the Agency's estimates of the burdens of the proposed collections of information.

(3) Enhance the quality, utility, and clarity of the information to be collected.

(4) Minimize the burden of the collections of information on those who are to respond, including through the use of appropriate automated or electronic collection technologies or other forms of information technology, *e.g.*, permitting electronic submission of responses.

Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and

maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

II. ICRs To Be Renewed

A. For All ICRs

An Agency may not conduct or sponsor, and a person is not required to respond to, a collection information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are displayed in 40 CFR part 9.

These information collection requirements are mandatory. Furthermore, the records required by New Source Performance Standards (NSPS) must be retained by the owner or operator for at least two years and records required by the National Emission Standards for Hazardous Air Pollutants (NESHAP) must be retained by the owner or operator for at least five years. In general, the required information consists of emissions data and other information deemed not to be private.

In the absence of such information collection requirements, enforcement personnel would be unable to determine whether the standards are being met on a continuous basis, as required by the Clean Air Act.

The EPA computed the burden for each of the recordkeeping and reporting requirements applicable to the industry for the currently approved Information Collection Requests (ICRs) listed in this notice. Where applicable, the EPA identified specific tasks and made assumptions, while being consistent with the concept of the Paperwork Reduction Act.

B. List of ICRs Planned To Be Submitted

In compliance with the Paperwork Reduction Act (44 U,S.C. 3501 *et seq.*), this notice announces that EPA is planning to submit the following twenty continuing Information Collection Requests (ICRs) to the Office of Management and Budget (OMB):

(1) NESHAP for Secondary Lead Smelting (40 CFR part 63, subpart X); Docket ID Number OECA–2003–0036; EPA ICR Number 1686.05; OMB Control Number 2060–0296; expiration date October 31, 2003.

(2) NESHAP for Halogenated Solvent Cleaning (40 CFR part 63, subpart T); Docket ID Number OECA–2003–0024; EPA ICR Number 1652.05; OMB Control Number 2060–0273; expiration date October 31, 2003.

(3) NSPS for Storage Vessels for Petroleum Liquids for Which Construction, Reconstruction or Modification Commenced After June 11, 1973, and prior to May 19, 1978 (40 CFR part 60, subpart K); Docket ID Number OECA–2003–0019; EPA ICR Number 1797.03; OMB Control Number 2060–0442; expiration date January 31, 2004.

(4) NSPS for Commercial and Industrial Solid Waste Incineration Units (40 CFR part 60, subpart CCCC); Docket ID Number OECA–2003–0025; EPA ICR Number 1926.03; OMB Control Number 2060–0450; expiration date January 31, 2004.

(5) NSPS for Ammonium Sulfate Manufacture (40 CFR part 60, subpart PP); Docket ID Number OECA–2003–0026; EPA ICR Number 1066.04; OMB Control Number 2060–0032; expiration date January 31, 2004.

(6) NESHAP for Phosphoric Acid Manufacturing Plants and Phosphate Fertilizers Production Plants (40 CFR part 63, subparts AA and BB); Docket ID Number OECA–2003–0027; EPA ICR Number 1790.03; OMB Control Number 2060–0361; expiration date January 31, 2004.

(7) Emission Guidelines for Commercial and Industrial Solid Waste Incineration Units (40 CFR part 60, subpart DDDD); Docket ID Number OECA–2003–0028; EPA ICR Number 1927.03; OMB Control Number 2060–0451; expiration date January 31, 2004.

(8) NESHAP for Magnetic Tape Manufacturing Operations (40 CFR part 63, subpart EE); Docket ID Number OECA–2003–0022; EPA ICR Number 1678.05; OMB Control Number 2060–0326; expiration date January 31, 2004.

(9) NESHAP for Flexible Polyurethane Foam Production (40 CFR part 63, subpart III); Docket ID Number OECA–2003–0037; EPA ICR Number 1783.03; OMB Control Number 2060–0357; expiration date January 31, 2004.

(10) NESHAP for Mineral Wool Production (40 CFR part 63, subpart DDD); Docket ID Number OECA–2003–0029; EPA ICR Number 1799.03; OMB Control Number 2060–0362; expiration date January 31, 2004.

(11) NSPS for Nitric Acid Plants (40 CFR part 60, subpart G); Docket ID Number OECA–2003–0030; EPA ICR Number 1056.08; OMB Control Number 2060–0019; expiration date January 31, 2004.

(12) NESHAP for Off-Site Waste and Recovery Operations (40 CFR part 63, subpart DD); Docket ID Number OECA–2003–0031; EPA ICR Number 1717.04; OMB Control Number 2060–0313; expiration date January 31, 2004.

(13) NSPS for New Residential Wood Heaters (40 CFR part 60, subpart AAA); Docket ID Number OECA–2003–0021; EPA ICR Number 1706.07; OMB Control Number 2060–0161; expiration date February 29, 2004.

(14) NESHAP for Wood Furniture Manufacturing Operations (40 CFR part 63, subpart JJ); Docket ID Number OECA–2003–0032; EPA ICR Number 1716.04; OMB Control Number 2060–0324; expiration date February 29, 2004.

(15) NESHAP for Ethylene Oxide Emissions from Sterilization Facilities (40 CFR part 63, subpart O); Docket ID Number OECA–2003–0033; EPA ICR Number 1666.06; OMB Control Number 2060–0283; expiration date February 29, 2004.

(16) NESHAP for Chromium Emissions From Hard and Decorative Chromium Electroplating and Chromium Anodizing Tanks (40 CFR part 63, subpart N); Docket ID Number OECA–2003–0034; EPA ICR Number 1611.05; OMB Control Number 2060–0327; expiration date February 29, 2004.

(17) NSPS for Secondary Brass and Bronze Production Plants (40 CFR part 60, subpart M); Primary Copper Smelters (40 CFR part 60, subpart P); Primary Zinc Smelters (40 CFR part 60, subpart Q); Primary Lead Smelters (40 CFR part 60, subpart R); Primary Aluminum Reduction Plants (40 CFR part 60, subpart S); and Ferroalloy Production Facilities (40 CFR part 60, subpart Z); Docket ID Number OECA–2003–0038; EPA ICR Number 1604.07; OMB Control Number 2060–0110; expiration date February 29, 2004.

(18) NESHAP for Gasoline Distribution Facilities (40 CFR part 63, subpart R); Docket ID Number OECA–2003–0020; EPA ICR Number 1659.05; OMB Control Number 2060–0325; expiration date February 29, 2004.

(19) NESHAP for Pharmaceutical Production (40 CFR part 63, subpart GGG); Docket ID Number OECA–2003–0035; EPA ICR Number 1781.03; OMB Control Number 2060–0358; expiration date February 29, 2004.

(20) NSPS for Magnetic Tape Coating Facilities (40 CFR part 60, subpart SSS); Docket ID Number OECA–2003–0023; EPA ICR Number 1135.08; OMB Control Number 2060–0171; expiration date February 29, 2004.

C. Contact Individuals for ICRs

(1) NESHAP for Secondary Lead Smelting (40 CFR part 63, subpart X); contact María Malavé of the Office of Compliance at (202) 564–7027 or via E-mail at *malave.maria@epa.gov;* EPA ICR Number 1686.05; OMB Control Number 2060–0296; expiration date October 31, 2003.

(2) NESHAP for Halogenated Solvent Cleaning (40 CFR part 63, subpart T); Learia Williams of the Office of Compliance at (202) 564–4113 or via E-mail at *williams.learia@epa.gov;* EPA ICR Number 1652.05; OMB Control Number 2060–0273; expiration date October 31, 2003.

(3) NSPS for Storage Vessels for Petroleum Liquids for Which Construction, Reconstruction or Modification Commenced After June 11, 1973, and prior to May 19, 1978 (40 CFR part 60, subpart K); Rafael Sanchez of the Office of Compliance at (202) 564–7028 or via E-mail at *Sanchez.Rafael@epa.gov;* EPA ICR Number 1797.03; OMB Control Number 2060–0442; expiration date January 31, 2004.

(4) NSPS for Commercial and Industrial Solid Waste Incineration Units (40 CFR part 60, subpart CCCC); Learia Williams of the Office of Compliance at (202)564–4113 or via E-mail at *williams.learia@epa.gov;* EPA ICR Number 1926.03; OMB Control Number 2060–0450; expiration date January 31, 2004.

(5) NSPS for Ammonium Sulfate Manufacture (40 CFR part 60, subpart PP); Learia Williams of the Office of Compliance at (202) 564–4113 or via E-mail at *williams.learia@epa.gov;* EPA ICR Number 1066.04; OMB Control Number 2060–0032; expiration date January 31, 2004.

(6) NESHAP for Phosphoric Acid Manufacturing Plants and Phosphate Fertilizers Production Plants (40 CFR part 63, subparts AA and BB); Learia Williams of the Office of Compliance at (202) 564–4113 or via E-mail at *williams.learia@epa.gov;* EPA ICR Number 1790.03; OMB Control Number 2060–0361; expiration date January 31, 2004.

(7) Emission Guidelines for Commercial and Industrial Solid Waste Incineration Units (40 CFR part 60, subpart DDDD); Learia Williams of the Office of Compliance at (202) 564–4113 or via E-mail at *williams.learia@epa.gov;* EPA ICR Number 1927.03; OMB Control Number 2060–0451; expiration date January 31, 2004.

(8) NESHAP for Magnetic Tape Manufacturing Operations (40 CFR part 63, subpart EE); Leonard Lazarus of the Office of Compliance at (202) 564–6369 or via E-mail at *lazarus.leonard@epa.gov;* EPA ICR Number 1678.05; OMB Control Number 2060–0326; expiration date January 31, 2004.

(9) NESHAP for Flexible Polyurethane Foam Production (40 CFR part 63, subpart III); contact María Malavé of the Office of Compliance at (202) 564–7027 or via E-mail at *malave.maria@epa.gov;* EPA ICR Number 1783.03; OMB Control Number 2060–0357; expiration date January 31, 2004.

(10) NESHAP for Mineral Wool Production (40 CFR part 63, subpart DDD); Learia Williams of the Office of Compliance at (202) 564–4113 or via E-mail at *williams.learia@epa.gov;* EPA ICR Number 1799.03; OMB Control Number 2060–0362; expiration date January 31, 2004.

(11) NSPS for Nitric Acid Plants (40 CFR part 60, subpart G); Learia Williams of the Office of Compliance at (202) 564–4113 or via E-mail at *williams.learia@epa.gov;* EPA ICR Number 1056.08; OMB Control Number 2060–0019; expiration date January 31, 2004.

(12) NESHAP for Off-Site Waste and Recovery Operations (40 CFR part 63, subpart DD); Learia Williams of the Office of Compliance at (202) 564–4113 or via E-mail at *williams.learia@epa.gov;* EPA ICR Number 1717.04; OMB Control Number 2060–0313; expiration date January 31, 2004.

(13) NSPS for New Residential Wood Heaters (40 CFR part 60, subpart AAA); John DuPree of the Office of Compliance at (202) 564–5950 or via E-mail at *dupree.john@epa.gov;* EPA ICR Number 1706.07; OMB Control Number 2060–0161; expiration date February 29, 2004.

(14) NESHAP for Wood Furniture Manufacturing Operations (40 CFR part 63, subpart JJ); Learia Williams of the Office of Compliance at (202) 564–4113 or via E-mail at *williams.learia@epa.gov;* EPA ICR Number 1716.04; OMB Control Number 2060–0324; expiration date February 29, 2004.

(15) NESHAP for Ethylene Oxide Emissions from Sterilization Facilities (40 CFR part 63, subpart O); Learia Williams of the Office of Compliance at (202) 564–4113 or via E-mail at *williams.learia@epa.gov;* EPA ICR Number 1666.06; OMB Control Number 2060–0283; expiration date February 29, 2004.

(16) NESHAP for Chromium Emissions From Hard and Decorative Chromium Electroplating and Chromium Anodizing Tanks (40 CFR part 63, subpart N); Learia Williams of the Office of Compliance at (202) 564–4113 or via E-mail at *williams.learia@epa.gov;* EPA ICR Number 1611.05; OMB Control Number 2060–0327; expiration date February 29, 2004.

(17) NSPS for Secondary Brass and Bronze Production Plants (40 CFR part 60, subpart M); Primary Copper Smelters(40 CFR part 60, subpart P); Primary Zinc Smelters (40 CFR part 60, subpart Q); Primary Lead Smelters (40 CFR part 60, subpart R); Primary Aluminum Reduction Plants (40 CFR part 60, subpart S); and Ferroalloy Production Facilities (40 CFR part 60, subpart Z); contact María Malavé of the Office of Compliance at (202) 564–7027 or via E-mail at *malave.maria@epa.gov;* EPA ICR Number 1604.07; OMB Control Number 2060–0110; expiration date February 29, 2004.

(18) NESHAP for Gasoline Distribution Facilities (40 CFR part 63, subpart R); Rafael Sanchez of the Office of Compliance at (202) 564–7028 or via E-mail at *Sanchez.Rafael@epa.gov;* EPA ICR Number 1659.05; OMB Control Number 2060–0325; expiration date February 29, 2004.

(19) NESHAP for Pharmaceutical Production (40 CFR part 63, subpart GGG); Learia Williams of the Office of Compliance at (202) 564–4113 or via E-mail at *williams.learia@epa.gov;* EPA ICR Number 1781.03; OMB Control Number 2060–0358; expiration date February 29, 2004.

(20) NSPS for Magnetic Tape Coating Facilities (40 CFR part 60, subpart SSS); Leonard Lazarus of the Office of Compliance at (202) 564–6369 or via E-mail at *lazarus.leonard@epa.gov;* EPA ICR Number 1135.08; OMB Control Number 2060–0171; expiration date February 29, 2004.

D. Information for Individual ICRs

(1) NESHAP for Secondary Lead Smelting (40 CFR part 63, subpart X); EPA ICR Number 1686.05; OMB Control Number 2060–0296; expiration date October 31, 2003.

Affected Entities: Entities potentially affected by this action are owners or operators of secondary lead smelters that operate blast, reverberatory, rotary, or electric smelting furnaces to recover lead metal from scrap lead, primarily from used lead-acid automotive-type batteries.

Abstract: The standards at 40 CFR part 63, subpart X, were promulgated on June 23, 1995. In response to industry petitions to reconsider, final standards were amended on June 13, 1997. These standards require sources to submit initial notifications, conduct performance tests, and submit periodic reports. In addition, sources are required to maintain records of the occurrence and duration of any startup, shutdown, or malfunction in the operation of an affected facility; any period during which the monitoring system is inoperative; bag leak detection system alarms, including corrective actions; and of parametric monitoring data, system maintenance and

calibration. Records are to be retained two years on-site of the required total five years. These notifications, reports, and records are essential in determining compliance with the standards.

Burden Statement: In the previously approved ICR, the estimated number of respondents for this information collection was 23 with no new sources expected over the three-year period. However, it was expected that one furnace would be rebuilt per year and that each facility will make a major adjustment one time per year which will require revising its operational plan. The annual industry reporting and recordkeeping burden was estimated to be 16,033 hours with a total of 48 responses per year. Therefore, each respondent reported an average of two times per year and spent about 334 hours preparing each response (includes time for recordkeeping activities). There were no capital/startup costs associated with continuous emission monitoring (CEM) in the previously approved ICR. The operation and maintenance costs associated with CEM were estimated at $150,000.

(2) NESHAP for Halogenated Solvent Cleaning (40 CFR part 63, subpart T); EPA ICR Number 1652.05; OMB Control Number 2060–0273; expiration date October 31, 2003.

Affected Entities: Entities potentially affected by this action are batch vapor, in-line vapor, in-line cold, and batch cold solvent cleaning machines, batch vapor or in-line cleaning machines.

Abstract: The NESHAP for Halogenated Solvent Cleaning (40 CFR part 63, subpart T) was promulgated on December 2, 1994, and a correction to the final standards published June 5, 1995.

The monitoring, recordkeeping, and reporting requirements outlined in the standards are similar to those required for other NESHAP regulations. Plants must demonstrate compliance with the emission standards by monitoring their control devices and performing annual emissions testing. This information notifies EPA when a source becomes subject to the regulations, informs the EPA if a source is in compliance when it begins operation, and informs EPA if the source remained in compliance during any period of operation.

These standards rely on the proper design and operation of halogenated solvent cleaners such as working-mode covers, freeboard ratio of 1.0, and reduced room draft to reduce solvent emissions from halogenated solvent cleaners. Certain records and reports are necessary to enable the EPA to identify sources subject to the standards and to ensure that the standards are being achieved. Sources subject to these standards must provide EPA with an initial notification of existing or new solvent cleaning machines, initial statements of compliance, an annual control device monitoring report for batch vapor and in-line cleaning machines, an annual solvent emission report for batch vapor and in-line cleaning machines complying with the alternative standard, and exceedance of monitoring parameters or emissions. These records that the facilities maintain indicate to EPA whether they are operating and maintaining the halogenated solvent cleaners properly to control emissions. In order to ensure compliance with the standards, adequate reporting and recordkeeping is necessary. All sources subject to these standards are required to submit quarterly, semiannual, and annual reports.

Burden Statement: In the previously approved ICR, the estimated number of respondents for this information collection was 1,431 with 3,943 responses per year. The annual industry reporting and recordkeeping burden for this collection of information was 45,207 hours. The annual public reporting and recordkeeping burden for this collection of information is estimated to average 11 hours per response.

The total annualized reporting and recordkeeping cost burden is approximately $4,091,000 of which the capital startup costs are $3,079,000 and the operation and maintenance costs are $1,012,000.

(3) NSPS for Storage Vessels for Petroleum Liquids for Which Construction, Reconstruction or Modification Commenced After June 11, 1973, and prior to May 19, 1978 (40 CFR part 60, subpart K); EPA ICR Number 1797.03; OMB Control Number 2060–0442; expiration date January 31, 2004.

Affected Entities: Entities potentially affected by this action are: (1) Those facilities that operate a storage vessel with petroleum liquids which has a storage capacity greater than 151,416 liters (40,000 gallons) and for which construction commenced after June 11, 1973, and prior to May 19, 1978; (2) those facilities that operate a storage vessel greater than 151,416 liters (40,000 gallons), but not exceeding 246,052 liters (65,000 gallons) that commenced construction or modification after March 8, 1974, and prior to May 19, 1978; and (3) those facilities that operate a storage vessel that has a capacity greater than 246,052 liters (65,000 gallons) that commenced construction or modification after June 11, 1973, and prior to May 19, 1978.

Abstract: The applicable standards, 40 CFR part 60, subpart K, were promulgated on March 8, 1974. These are new source performance standards that require initial notification, performance tests, and periodic reports. In addition, owners or operators are also required to maintain records of the occurrence and duration of any startup, shutdown, or malfunction in the operation of an affected facility, or any period during which the monitoring system is inoperative. Monitoring requirements specific to these standards include collecting and maintaining a record of the petroleum liquid stored, the period of storage and the maximum true vapor pressure of that liquid during the respective storage period. This information is collected when the petroleum liquid within the storage vessel changes. Performance test reports, and excess emissions reports serve as a record of the conditions under which compliance was achieved. The semiannual reports are used for problem identification, as a check on source operation and maintenance, and for compliance determinations.

Burden Statement: In the previously approved ICR, the estimated number of respondents for this information collection was 220 with 4 responses per year. The annual industry reporting and recordkeeping burden for this collection of information was 678 hours. On the average, each respondent reported 0.02 times per year and 170 hours were spent preparing each response. The response was prepared on occasion. There were no capital/startup costs or operation and maintenance costs associated with continuous emission monitoring in the previous ICR. It is assumed that 2 percent of the approximately 220 respondents per year that are subject to these standards will modify or reconstruct their tanks to such a degree that they must submit a report.

(4) NSPS for Commercial and Industrial Solid Waste Incineration Units (40 CFR part 60, subpart CCCC); EPA ICR Number 1926.03; OMB Control Number 2060–0450; expiration date January 31, 2004.

Affected Entities: Entities potentially affected by this action are commercial and industrial solid waste incineration (CISWI) units.

Abstract: The NSPS for Commercial and Industrial Solid Waste Incineration Units (40 CFR part 60, subpart CCCC) was promulgated on March 27, 2001.

The standards require initial performance tests for 10 pollutants, annual performance testing for particulate matter (PM), hydrogen chloride (HCl), opacity continuous operating parameter monitoring, annual operator training and annual reporting. (Deviation reports are required if any of the emission limitations or operating limits are exceeded).

To minimize the burden of the annual performance testing, the standards only require that the owner or operator test for PM, HCl, and opacity. Annual performance testing is not required for dioxins/furans, cadmium, carbon monoxide, lead, mercury, nitrogen oxides, and sulfur dioxide. This significantly reduces the testing costs while still providing the EPA with sufficient data to adequately assess compliance. In addition, the standards allow the owner or operator to skip two annual tests for a pollutant if all performance tests over the previous three years show compliance with the emission limit. Reports must be submitted semiannually and annually.

Burden Statement: In the previously approved ICR, the estimated number of respondents for this information collection was 1 with 18 responses per year. The annual industry reporting and recordkeeping burden for this collection of information was 11,209 hours. The annual public reporting and recordkeeping burden for this collection of information is estimated to average 623 hours per response.

The annual capital/startup costs per year were approximately $14,000 and there were no annualized operation and maintenance costs.

(5) NSPS for Ammonium Sulfate Manufacture (40 CFR part 60, subpart PP); EPA ICR Number 1066.04; OMB Control Number 2060–0032; expiration date January 31, 2004.

Affected Entities: Entities potentially affected by this action applies to ammonium sulfate dryer within an ammonium sulfate manufacturing plant in the caprolactam, synthetic and coke oven by-products sectors of the ammonium sulfate manufacturing industry.

Abstract: NSPS for Ammonium Sulfate Manufacture (40 CFR part 60, subpart PP), was promulgated on November 12, 1980. All affected facilities in this subpart must make the following one-time-only reports: Notification of the date of construction or reconstruction; notification of the anticipated and actual dates of startup; notification of any physical or operational change to an existing facility which may increase the regulated pollutant emission rate; and the notification of the date of the initial performance test.

The recordkeeping requirements for ammonium sulfate plants consist of the occurrence and duration of all startups and malfunctions, the initial performance tests results, amount of ammonium sulfate feed material, and the pressure drop across the emission control system. Records of startups, shutdowns and malfunctions shall be noted as they occur. Records of the performance test should include information necessary to determine the conditions of the performance test, and performance test measurements (including pressure drop across the emission control system) and results. The continuous emission monitors (CEMS) shall record pressure drop across the scrubbers continuously and automatically. The reporting requirements for this industry include initial notifications, and initial performance tests.

Burden Statement: In the previously approved ICR, the estimated number of respondents for this information collection was 2 with 2 responses per year. The annual industry reporting and recordkeeping burden for this collection of information was 182 hours. On the average, each respondent reported one time per year and 91 hours were spent preparing each response. There were no capital/startup costs or operation and maintenance costs associated with the previous ICR.

(6) NESHAP for Phosphoric Acid Manufacturing Plants and Phosphate Fertilizers Production Plants (40 CFR part 63, subparts AA and BB); EPA ICR Number 1790.03; OMB Control Number 2060–0361; expiration date January 31, 2004.

Affected Entities: Entities potentially affected by this action are phosphoric acid manufacturing and phosphate fertilizer production plants.

Abstract: The NESHAP for Phosphoric Acid Manufacturing Plants and Phosphate Fertilizers Production Plants (40 CFR part 63, subparts AA and BB) was promulgated on December 29, 1992, and amended on December 17, 2001.

All affected facilities must submit one-time notifications (where applicable) and a one-time report on performance test results. Plants must develop and implement a startup, shutdown, and malfunction plan and submit semiannual reports of any event where the plan was not followed.

Semiannual reports for periods of operation during which the monitoring parameter boundaries established during the initial compliance test are exceeded (or reports certifying that no exceedances have occurred) also are required. General requirements applicable to all NESHAP require records of applicability determinations; test results; exceedances; periods of startups; shutdowns; or malfunctions; monitoring records; and all other information needed to determine compliance with the applicable standards. Records and reports must be retained for a total of 5 years (2 years at the site; the remaining 3 years of records may be retained off-site).

Subparts AA and BB require respondents to install monitoring devices to measure the pressure drop and liquid flow rate for wet scrubbers. These operating parameters are permitted to vary within ranges determined concurrently with performance tests. Exceedances of the operating ranges are considered violations of the emission limits. The requirements include an option which allows sources to retest and demonstrate that the operating parameter exceedances are not exceedances of the emissions limit.

The standards require sources to determine and record the amount of phosphatic feed material processed or stored on a daily basis. This requirement allows verification of plant operating rate which is one of the factors considered in establishing the operating ranges of control devices. This requirement poses no additional burden upon the industry. This is so because proper plant operation and industry practice include daily recording of phosphate-bearing feed processed. Because the daily recordkeeping requirement places no additional burden upon sources, no cost estimate has been made for this requirement. Respondents also maintain records of specific information needed to determine that the standards are being achieved and maintained.

Since many of the facilities potentially affected by the standards are currently subject to a similar new source performance standard (NSPS), these standards include an exemption from the NSPS for those sources. That exemption eliminates duplication of information collection requirements.

Burden Statement: In the previously approved ICR, the estimated number of respondents was 15 with 193 responses per year. The annual industry reporting and recordkeeping burden for this collection of information was 4,143 hours. The annual public reporting and recordkeeping burden for this collection of information is estimated to average 21 hours per response.

The annual reporting and recordkeeping cost burden was $66,000 of which the capital/startup costs were $53,000 and the operation and maintenance costs were $13,000.

(7) Emission Guidelines for Commercial and Industrial Solid Waste Incineration Units (40 CFR part 60,

subpart DDDD); EPA ICR Number 1927.03; OMB Control Number 2060–0451; expiration date January 31, 2004.

Affected Entities: Entities potentially affected by this action applies to commercial and industrial solid waste incineration units that commenced construction on or before November 30, 1999.

Abstract: Emission Guidelines for Commercial and Industrial Solid Waste Incineration Units (40 CFR part 60, subpart DDDD) were promulgated on December 1, 2000.

The emission guidelines require a one-time waste management plan, initial performance tests for 10 pollutants, annual performance testing for particulate matter, hydrogen chloride and opacity, continuous operating parameter monitoring, annual operator training, and annual reporting. Only the control plan and the waste management plan are submitted in the first 3 years after promulgation of the emission guidelines. The one-time control plan will allow the Designated Administrator to determine whether the respondent has an adequate strategy for achieving compliance with the emission guidelines by the final compliance date. The one-time waste management plan will allow the Designated Administrator to determine whether the respondent has an adequate plan for reducing and separating waste. The final compliance report notifies the Designated Administrator that the owner or operator has achieved compliance with the emission guidelines. Annual reporting allows the submitting of required information and data parameters so that any potential problems can be identified in a timely fashion.

Burden Statement: In the previously approved ICR, the estimated number of respondents for this information collection was 116 with 116 responses per year. The annual industry reporting and recordkeeping burden for this collection of information was 9,145 hours. Therefore, each respondent must report one time per year and the average number of hours preparing each report is 79. There were no capital/startup or operation and maintenance costs associated with the continuous emission monitoring required by the previous ICR.

(8) NESHAP for Magnetic Tape Manufacturing Operations (40 CFR part 63, subpart EE); Docket ID Number OECA–2003–0022; EPA ICR Number 1678.05; OMB Control Number 2060–0326; expiration date January 31, 2004.

Affected Entities: Entities potentially affected by this action are magnetic tape manufacturing operations.

Abstract: The NESHAP standard for Magnetic Tape Manufacturing Operations was promulgated on December 15, 1994.

Owners or operators of magnetic tape manufacturing operations must make the following one-time-only reports: Notification of the date of construction or reconstruction; notification of the anticipated and actual dates of startup; notification of any physical or operational change to an existing facility which may increase the regulated pollutant emission rate; notification of the date of the initial performance test; and the results of the initial performance test. Owners or operators also are required to maintain records of the occurrence and duration of any startup, shutdown, or malfunction in the operation of an affected facility.

Each owner or operator of an affected magnetic tape coating operation shall install, calibrate, maintain, and operate a monitoring device that continuously measures control device efficiency. Recordkeeping requirements include records of the freeboard ratio, compliance monitoring system (CMS) maintenance and calibration, performance tests, material balance calculation, and hazardous air pollutant (HAP) usage.

Burden Statement: In the previously approved ICR, the estimated number of respondents for this information collection was 13 with 26 responses per year. The annual industry reporting and recordkeeping burden for this collection of information was 7,042 hours. On the average, each respondent reported two times per year and 271 hours were spent preparing each response. Reports are submitted semiannually, quarterly and on occasion. The annual reporting and recordkeeping cost burden associated with continuous emission monitoring in the previous ICR was $89,000 of which the capital/startup costs were $10,000 and the operation and maintenance costs were $79,000.

(9) NESHAP for Flexible Polyurethane Foam Production (40 CFR part 63, subpart III); EPA ICR Number 1783.03; OMB Control Number 2060–0357; expiration date January 31, 2004.

Affected Entities: Entities potentially affected by this action are owners or operators of facilities that engage in the manufacture of flexible polyurethane foam products. This includes facilities making flexible polyurethane foam, rebind flexible polyurethane foam, and/or molded flexible polyurethane foam.

Abstract: The standards at 40 CFR part 63, subpart III, were promulgated on October 7, 1998. These standards require sources to choose one of several compliance options or reduce hazardous air pollutant (HAP) emissions to below the compliance level. Sources are required to submit initial notifications, including a pre-compliance report, conduct performance tests, and submit semiannual compliance reports and annual compliance certifications. In addition, sources are required to maintain records of the occurrence and duration of any startup, shutdown, or malfunction in the operation of an affected facility; any period during which the monitoring system is inoperative; bag leak detection system alarms, including corrective actions; and of parametric monitoring data, system maintenance and calibration. Records are to be retained two years on-site of the required total five years. These notifications, reports, and records are essential in determining compliance with the standards.

Burden Statement: In the previously approved ICR, the estimated number of respondents for this information collection was 132. However, it was estimated that approximately six existing facilities will undergo reconstruction or modification over the period of the ICR. The annual industry reporting and recordkeeping burden for the previous information collection was estimated to be 6,400 hours with a total of 143 responses per year. Therefore, each respondent reported an average of one time per year and spent about 45 hours preparing each response (includes time for recordkeeping activities).

There were no capital/startup costs and no operation and maintenance costs associated with CEM in the previous ICR. This estimate was based on the assumption that all foam production sources will elect the source-wide emission limitation, which requires no startup, capital, or operation and maintenance costs paid outside of the company.

(10) NESHAP for Mineral Wool Production (40 CFR part 63, subpart DDD); EPA ICR Number 1799.03; OMB Control Number 2060–0362; expiration date January 31, 2004.

Affected Entities: Entities potentially affected by this action are existing, new, or reconstructed mineral wool production facilities.

Abstract: The NESHAP for Mineral Wool Production (40 CFR part 63, subpart DDD) was promulgated on June 1, 1999.

The monitoring, recordkeeping, and reporting requirements outlined in the standards are similar to those required for other NESHAP standards. Plants must demonstrate compliance with the standards by monitoring their control devices and performing annual emissions testing. Respondents must provide notification to the EPA of construction, modification, startups, shutdowns, date and results of initial performance tests and provide semiannual reports of excess emissions. They are also required to install fabric filter bag leak detection systems and then initiate corrective action procedures in the event of an operating problem. Continuous monitoring and recording of: (1) The operating temperature of each thermal incinerator; (2) cupola production rate; and (3) for each curing over, the formaldehyde content of each binder formulation used to manufacture bonded products is required.

Records and reports must be retained for a total of 5 years (2 years at the site, and the remaining 3 years may be retained off-site). All sources subject to these standards are required to submit initial and semiannual reports.

Burden Statement: In the previously approved ICR, the estimated number of respondents for this information collection was 13 with 26 responses per year. The annual industry reporting and recordkeeping burden for this collection of information was 5,779 hours. The respondent must report two times per year spending approximately 222 hours preparing each response.

The annual reporting and recordkeeping cost burden in the previous ICR was approximately $100,000 of which the capital/startup costs were $96,000 and the operation and maintenance costs were $4,000.

(11) NSPS for Nitric Acid Plants (40 CFR part 60, subpart G); EPA ICR Number 1056.08; OMB Control Number 2060–0019; expiration date January 31, 2004.

Affected Entities: Entities potentially affected by this action applies to nitric acid production facility producing weak nitric acid by either the pressure or atmospheric pressure process.

Abstract: The NSPS for Nitric Acid Plants (40 CFR part 60, subpart G) was promulgated on June 14, 1974. All affected facilities in this subpart must make the following one-time-only reports: Notification of the date of construction or reconstruction; notification of the anticipated and actual dates of startup; notification of any physical or operational change to an existing facility which may increase the regulated pollutant emission rate; and the notification of the date of the initial performance test.

The recordkeeping requirements for nitric acid plants consist of the occurrence and duration of all startups, shutdowns, or malfunctions of an affected facility, or any period during which the monitoring system is inoperative. These notifications, reports, records and semiannual reports, in general, apply to all NSPS subject sources.

Burden Statement: In the previously approved ICR, the estimated number of respondents for this information collection was 35 with 71 responses per year. The annual industry reporting and recordkeeping burden for this collection of information was 1,796 hours. The annual public reporting and recordkeeping burden for this collection of information is estimated to average 25 hours per response.

The annual reporting and recordkeeping cost burden was approximately $3,568,000 of which the capital/startup costs were $68,000 and the operation and maintenance costs were $3,500,000.

(12) NESHAP for Off-Site Waste and Recovery Operations (40 CFR part 63, subpart DD); EPA ICR Number 1717.04; OMB Control Number 2060–0313; expiration date January 31, 2004.

Affected Entities: Entities potentially affected by this action applies to waste management facilities that receive off-site materials and have operations that are regulated as hazardous waste treatment, storage, and disposal facilities.

Abstract: The NESHAP for Off-Site Waste and Recovery Operations (40 CFR part 63, subpart DD) was promulgated on July 1, 1996. The monitoring, recordkeeping, and reporting requirements outlined in the standards are similar to those required for other NESHAP regulations. Plants must demonstrate compliance with the standards by monitoring their control devices and performing annual emissions testing. The affected facilities must make a one-time-only notification. Respondents are required to maintain records of the occurrence and duration of any startup, shutdown, or malfunction in the operation of an affected facility, or any period during which the monitoring system is inoperative. Semiannual reports of excess emission are required. Records and reports must be retained for a total of 5 years (2 years at the site, and the remaining 3 years may be retained off-site).

Burden Statement: In the previously approved ICR, the estimated number of respondents for this information collection was 250 with 1,000 responses per year. The annual industry reporting and recordkeeping burden for this collection of information was 162,050 hours. Therefore, each respondent reported approximately four times per year and spent 162 preparing each response. There were no capital and startup costs or operation and maintenance costs associated with continuous emission monitoring in the previous ICR.

(13) NSPS for New Residential Wood Heaters (40 CFR part 60, subpart AAA); EPA ICR Number 1176.07; OMB Control Number 2060–0161; expiration date February 29, 2004.

Affected Entities: Approximately 54 wood stove manufacturers and five USEPA certified testing laboratories are potentially affected by this action.

Abstract: The standard at 40 CFR part 60, subpart AAA, promulgated February 28, 1988, requires information to be supplied to the EPA by manufacturers and emission testing laboratories. The information supplied by manufacturers to the EPA is used: (1) To ensure that the best demonstrated technology is being used to reduce emissions from wood heaters; (2) to ensure that the wood heater tested for certification purposes is in compliance with the applicable emission standards; (3) to provide evidence that production-line wood heaters have emission performance characteristics similar to tested models; and (4) to provide assurance of continued compliance.

Manufacturers submit a notification to the EPA stating the dates of certification testing, perform the certification testing at an accredited laboratory, supply detailed component drawings including manufacturing tolerances to the EPA, reapply for certification every five years, seal/store each tested model and maintain all necessary certification test records.

Burden Statement: In the previously approved ICR, the estimated number of respondents for this information collection was 54 with 3,093 responses per year. The annual industry reporting and recordkeeping burden for this collection of information was 7,653 hours. On the average, each respondent reported 57 times per year and 3 hours were spent preparing each response. The response was provided on occasion. There were no capital/startup costs or operation and maintenance costs associated with continuous emission monitoring in the previous ICR.

(14) NESHAP for Wood Furniture Manufacturing Operations (40 CFR part 63, subpart JJ); EPA ICR Number 1716.04; OMB Control Number 2060–0324; expiration date February 29, 2004.

Affected Entities: Entities potentially affected by this action are facilities that are engaged, either in part or in whole, in the manufacture of wood furniture or wood furniture components.

Abstract: The NESHAP for Wood Furniture Manufacturing Operations (40

CFR part 63, subpart JJ) was promulgated on December 7, 1996.

Respondents must make one-time-only notifications which include: Notification of any physical or operational change to an existing facility which may increase the regulated pollutant emission rate; notification of the initial performance test, including information necessary to determine the conditions of the performance test, performance test measurements and results; and notification of demonstration of the continuous monitoring system.

Respondents are also required to submit both initial and regular semiannual compliance reports and to perform recordkeeping activities. Any respondent subject to the provisions of this part shall maintain and retain reports for at least five years.

Burden Statement: In the previously approved ICR, the estimated number of respondents for this information collection was 750 with 47,800 responses per year. The annual industry reporting and recordkeeping burden for this collection of information was 92,071 hours. Therefore, each respondent provides 65 responses per year and spends two hours preparing each response.

The annual reporting and recordkeeping cost burden in the previous ICR was approximately $41,000. The total annualized capital/startup costs were zero and the annualized operation and maintenance costs were approximately $41,000.

(15) NESHAP for Ethylene Oxide Emissions from Sterilization Facilities (40 CFR part 63, subpart O); EPA ICR Number 1666.06; OMB Control Number 2060–0283; expiration date February 29, 2004.

Affected Entities: Entities potentially affected by this action are new and existing commercial ethylene oxide (EO) sterilization and fumigation facilities, using 1 ton of EO after promulgation of the standards.

Abstract: The NESHAP for Ethylene Oxide Emissions from Sterilization Facilities (40 CFR part 63, subpart O) was promulgated on December 6, 1994, and amended June 3, 1996, December 4, 1998, December 3, 1999, and December 14, 1999. The monitoring, recordkeeping, and reporting requirements outlined in the standards are similar to those required for other NESHAP standards. Plants must demonstrate compliance with the standards by monitoring their control devices and performing annual emissions testing. Respondents of affected facilities must submit one-time reports of startup and physical or operation changes to existing facilities. Respondents of ethylene oxide sterilization and fumigation operations will submit one-time reports of actual or estimated annual ethylene oxide use. Respondents are required to provide a semiannual report of excess emissions based on daily and monthly inspections of control devices.

Burden Statement: In the previously approved ICR, the estimated number of respondents for this information collection was 100 with 98 responses per year. The annual industry reporting and recordkeeping burden for this collection of information was 7,328 hours. Therefore, each respondent reported one time per year and spent an average of 75 hours preparing each response.

The annual reporting and recordkeeping cost burden in the previous ICR was approximately $228,000 of which the capital/startup costs were $195,000 and the operation and maintenance costs were $33,000.

(16) NESHAP for Chromium Emissions From Hard and Decorative Chromium Electroplating and Chromium Anodizing Tanks (40 CFR part 63, subpart N); EPA ICR Number 1611.05; OMB Control Number 2060–0327; expiration date February 29, 2004.

Affected Entities: Entities potentially affected by this action are chromium electroplating or chromium anodizing tanks at facilities performing hard chromium electroplating, decorative chromium electroplating, or chromium anodizing.

Abstract: The NESHAP for Chromium Emissions From Hard and Decorative Chromium Electroplating and Chromium Anodizing Tanks (40 CFR part 63, subpart N) was promulgated on January 25, 1995.

The monitoring, recordkeeping, and reporting requirements outlined in the standards are similar to those required for other NESHAP regulations. These standards require initial notifications, performance tests, and periodic reports. Respondents are also required to maintain records of the occurrence and duration of any startup, shutdown, or malfunction in the operation of an affected facility, or any period during which the monitoring system is inoperative. Respondents that are not required to conduct an initial performance test (*i.e.*, decorative chromium electroplating or chromium anodizing operations that use a wetting agent and meet the surface tension limit in the NESHAP, and decorative chromium electroplating operations that use a trivalent chromium bath) are required to notify the Administrator of the initial compliance status of the source. On an ongoing basis, all respondents that are major sources are required to submit, at a minimum, semiannual compliance status reports.

Respondents are required to maintain several records for a minimum of 5 years.

Burden Statement: In the previously approved ICR, the estimated number of respondents was 948 with 1,896 responses per year. The annual industry reporting and recordkeeping burden for this collection of information was 516,186 hours. Therefore, each respondent provided two reports per year and spent an average of 272 hours preparing each response.

The annual reporting and recordkeeping cost burden in the previous ICR was $75,300,000 for operation and maintenance of the required continuous emission monitoring equipment.

(17) NSPS for Secondary Brass and Bronze Production Plants (40 CFR part 60, subpart M); Primary Copper Smelters(40 CFR part 60, subpart P); Primary Zinc Smelters (40 CFR part 60, subpart Q); Primary Lead Smelters (40 CFR part 60, subpart R); Primary Aluminum Reduction Plants (40 CFR part 60, subpart S); and Ferroalloy Production Facilities (40 CFR part 60, subpart Z); EPA ICR Number 1604.07; OMB Control Number 2060–0110; expiration date February 29, 2004.

Affected Entities: Entities potentially affected by this action include affected facilities at: Secondary brass or bronze production plants including reverberatory and electric furnaces of 1,000 kg or greater production capacity and blast (cupola) furnaces of 250 kg/hr or greater production capacity; primary copper smelters including dryers, roasters, smelting furnaces, and copper converters; primary zinc smelters including roaster and sintering machines; primary lead smelters including sintering machine, sintering machine discharge end, blast furnace, dross reverberatory furnace, electric smelting furnace, and converter; and primary aluminum reduction plants including potroom groups and anode bake plants; and ferroalloy production plants including electric submerged arc furnaces which produce silicon metal, ferrosilicon, calcium silicon, silicomanganese zirconium, ferrochrome silicon, silvery iron, high-carbon ferrochrome, charge chrome, standard ferromanganese, silicomanganese, ferromanganese silicon, or calcium carbide, and dust-handling equipment.

Abstract: This information collection addresses 40 CFR part 60, subparts M, P, Q, R, S and Z. 40 CFR part 60, subpart M, was promulgated on March 8, 1974, and amended recently on February 14, 1989. 40 CFR part 60, subpart P, was promulgated on January 15, 1976. 40 CFR part 60, subpart Q, was promulgated on January 15, 1976. 40 CFR part 60, subpart R, was promulgated on January 15, 1976. 40 CFR part 60, subpart S, was promulgated on July 25, 1977, and amended most recently on February 14, 1989. 40 CFR part 60, subpart Z, was promulgated on July 25, 1977, and amended most recently on February 14, 1990. These NSPS standards require sources to submit initial notifications, conduct performance tests, and submit periodic reports. The types of reports may include semiannual reports of excess emissions by primary copper, lead, and zinc smelters and ferroalloy plants; reports of excess emissions in each monthly or annual performance test by aluminum reduction plants; and reports of product change by ferroalloy plants. Owners or operators are also required to maintain records of the occurrence and duration of any startup, shutdown, or malfunction in the operation of an affected facility; any period during which the monitoring system is inoperative; parametric monitoring data, system maintenance and calibration. Records are required to be retained for two years. These notifications, reports, and records are essential in determining compliance with the standards.

Burden Statement: In the previously approved ICR, the estimated number of respondents was 27 (*i.e.*, 5 secondary brass or bronze production plants, 13 primary copper smelters, 1 primary zinc smelter, 1 primary lead smelter, 6 primary aluminum reduction plants, and 1 ferroalloy production facility). The annual industry reporting and recordkeeping burden for the previous information collection was estimated to be 5,351 hours for a total of 82 responses per year. Therefore, each respondent reported an average of three times per year and spent about 65 hours preparing each response.

There were no capital/startup costs associated with continuous emission monitors (CEMs) in the previous ICR. The operation and maintenance costs associated with CEMs for the previous ICR are $231,900.

(18) NESHAP for Gasoline Distribution Facilities (40 CFR part 63, subpart R); EPA ICR Number 1659.05; OMB Control Number 2060–0325; expiration date February 29, 2004.

Affected Entities: Entities potentially affected by this action are new and existing bulk gasoline terminals and pipeline breakout stations that are major sources of hazardous air pollutants (HAP) emissions or are located at sites that are major sources of HAP emissions.

Abstract: The standards at 40 CFR part 63, subpart R, were promulgated on December 14, 1994. The standards were revised on June 26, 1995, to correct errors in the printing of the emission screening equation in the final standards, and amended on February 29, 1996, to extend the initial compliance date for the equipment leak standard. The standards were amended again June 12, 1996, to clarify the coverage of gasoline loading racks at refineries with through-puts greater than 75,700 liters/day. Updated direct final standards were promulgated on February 28, 1997, to implement a proposed settlement with the American Petroleum Institute.

The monitoring, recordkeeping, and reporting requirements outlined in the standards are similar to those required for other NESHAP regulations. Respondents must submit one-time notifications of applicability and reports on initial performance test results. Respondents must develop and implement a startup, shutdown, and malfunction plan and submit semiannual reports describing any occurrence when the plan was not followed. Respondents must also develop and implement an operation, maintenance, and monitoring plan covering each affected facility and each emission control device. In addition to the general requirements, this NESHAP requires respondents to submit one-time reports of start of construction, anticipated and actual startup dates, and physical or operational changes to existing facilities. Reports of initial performance tests at bulk terminal loading racks are also required and are necessary to show that the installed control devices are meeting the emission limitations required by the NESHAP. Annual reports of storage vessel inspections at all affected facilities are required. Respondents must also submit semiannual startup, shutdown, and malfunction reports, semiannual excess emissions and continuous monitoring system performance reports, and semiannual reports of equipment leaks not repaired within five days or loadings of gasoline cargo tanks for which vapor tightness documentation is not on file. Quarterly excess emissions reports are required for control device monitoring parameter exceedances, equipment leaks for which timely repair is not made, and reloadings of nonvapor tightness certified cargo tanks. All affected bulk terminals must maintain records of the cargo tank vapor tightness test data on the facility premises.

Burden Statement: In the previously approved ICR, the estimated number of respondents for this information collection was 263 with 526 responses per year. On the average, each respondent reported 2 times per year and 62 hours were spent preparing each response. The respondents provided reports semiannually, quarterly and on occasion.

In the previous ICR, the total annual reporting and recordkeeping cost burden was approximately $851,000 which covered the operation and maintenance costs associated with the continuous monitoring requirements.

(19) NESHAP for Pharmaceutical Production (40 CFR part 63, subpart GGG); EPA ICR Number 1781.03; OMB Control Number 2060–0358; expiration date February 29, 2004.

Affected Entities: Entities potentially affected by this action are pharmaceuticals production facilities that are major sources of hazardous air pollutants (HAP). The affected facility covers pharmaceutical manufacturing operations which include process vents, storage tanks, equipment components, and wastewater systems.

Abstract: The NESHAP for Pharmaceutical Production (40 CFR part 63, subpart GGG) was promulgated on September 21, 1998.

The monitoring, recordkeeping, and reporting requirements outlined in the standards are similar to those required for other NESHAP regulations. These standards require initial notifications, performance tests, and periodic reports. Respondents are also required to maintain records of the occurrence and duration of any startup, shutdown, or malfunction in the operation of an affected facility, or any period during which the monitoring system is inoperative. Respondents subject to these standards will provide a one-time report of initial performance tests and semiannual reports of noncompliance.

Respondents subject to the provisions of this part shall maintain a file of these measurements, and retain the file for at least five years following the date of such measurements, maintenance reports, and records.

Burden Statement: In the previously approved ICR, the estimated number of respondents for this information collection was 103 with 209 responses per year. The annual industry reporting and recordkeeping burden for this collection of information was 161,326 hours. Therefore, each respondent reported approximately two times per year and spent an average of 409 hours preparing each response.

The annual reporting and recordkeeping cost burden in the previous ICR was $8,000 of which the capital/startup costs were $4,000 and the operation and maintenance costs were $4,000.

(20) NSPS for Magnetic Tape Coating Facilities (40 CFR part 60, subpart SSS); Docket ID Number OECA–2003–0023; EPA ICR Number 1135.08; OMB Control Number 2060–0171; expiration date February 29, 2004.

Affected Entities: Magnetic tape coating facilities.

Abstract: The NSPS for Magnetic Tape Coating Facilities was promulgated on October 3, 1988. These standards apply to each coating operation and each piece of coating mix preparation equipment for which construction, modification or reconstruction commenced after January 22, 1986. Volatile organic compounds (VOC) are the pollutants regulated under the standards.

Owners or operators of the affected facilities described must make the following one-time-only reports: Notification of the date of construction or reconstruction; notification of the anticipated and actual dates of startup; notification of any physical or operational change to an existing facility which may increase the regulated pollutant emission rate; notification of the date of the initial performance test; and the results of the initial performance test. Owners or operators also are required to maintain records of the occurrence and duration of any startup, shutdown, or malfunction in the operation of an affected facility.

Monitoring requirements specific to the magnetic tape coating facilities consist mainly of VOC measurements, including monthly records of VOC content of all coatings applied, total amount and percent VOC recovered, and the total amount of coating applied. In addition, facilities utilizing less solvent annually than the applicable cutoff shall make semiannual estimates of projected annual amount of solvent use and maintain records of actual solvent use.

Each owner or operator of affected magnetic tape coating facilities shall install, calibrate, maintain, and operate a monitoring device that continuously indicates and records the concentration level of organic compounds in the outlet gas stream. Certain facilities will also be required to continuously measure and record either the combustion temperature of the incinerator (for those facilities controlled by a thermal incinerator) or the condenser exhaust temperature.

Burden Statement: In the previously approved ICR, the estimated number of respondents for this information collection was 13 with 56 responses per year. The annual industry reporting and recordkeeping burden for this collection of information was 3,891 hours. On the average, each respondent reported 4.3 times per year and 70 hours were spent preparing each response. The annual reporting and recordkeeping cost burden associated with continuous emission monitoring in the previous ICR and annualized over its expected useful life was $93,000 of which the capital/startup costs were $27,000 and the operation and maintenance costs were $66,000.

Dated: May 9, 2003.

Michael M. Stahl,

Director, Office of Compliance.

[FR Doc. 03–12478 Filed 5–16–03; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[OW–2002–0059; FRL–7500–4]

Agency Information Collection Activities; Submission of EPA ICR No. 1803.04 (OMB No. 2040–0185) to OMB for Review and Approval; Comment Request

AGENCY: Environmental Protection Agency.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this document announces that the following Information Collection Request (ICR) has been forwarded to the Office of Management and Budget (OMB) for review and approval: Drinking Water State Revolving Fund Program. This ICR describes the nature of the information collection and its estimated burden and cost.

DATES: Additional comments may be submitted on or before June 18, 2003.

ADDRESSES: Follow the detailed instructions in **SUPPLEMENTARY INFORMATION.**

FOR FURTHER INFORMATION CONTACT: Vinh Nguyen, DWPD, OGWDW, OW, Mail Code 4606M, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: 202–564–4631; fax number: 202–564–3757; e-mail address: *nguyen.vinh@epa.gov*.

SUPPLEMENTARY INFORMATION: EPA has submitted the following ICR to OMB for review and approval according to the procedures prescribed in 5 CFR 1320.12. On December 30, 2002 (67 *FR* 79604), EPA sought comments on this ICR pursuant to 5 CFR 1320.8(d). EPA received no comment.

EPA has established a public docket for this ICR under Docket ID No. OW–2002–0059, which is available for public viewing at the Water Docket in the EPA Docket Center (EPA/DC), EPA West, Room B102, 1301 Constitution Ave., NW., Washington, DC. The EPA Docket Center Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Reading Room is (202) 566–1744, and the telephone number for the Water Docket is (202) 566–2426. An electronic version of the public docket is available through EPA Dockets (EDOCKET) at *http://www.epa.gov/edocket*. Use EDOCKET to submit or view public comments, access the index listing of the contents of the public docket, and to access those documents in the public docket that are available electronically. Once in the system, select "search," then key in the docket ID number identified above.

Any comments related to this ICR should be submitted to OMB and EPA within 30 days of this notice, and according to the following detailed instructions: (1) Mail your comments to OMB at: Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Attention: Desk Officer for EPA, 725 17th Street, NW., Washington, DC 20503, and (2) Submit your comments to EPA online using EDOCKET (our preferred method), by e-mail to *OW-Docket@epa.gov*, or by mail to: EPA Docket Center, Environmental Protection Agency, Water Docket (Mail Code 4101T), 1200 Pennsylvania Ave., NW., Washington, DC 20460.

EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing in EDOCKET as EPA receives them and without change, unless the comment contains copyrighted material, CBI, or other information whose public disclosure is restricted by statute. When EPA identifies a comment containing copyrighted material, EPA will provide a reference to that material in the version of the comment that is placed in EDOCKET. The entire printed comment, including the copyrighted material, will be available in the public docket. Although identified as an item in the official docket, information claimed as CBI, or whose disclosure is otherwise restricted by statute, is not included in the official public docket, and will not be available for public viewing in EDOCKET. For further information about the electronic docket, *see* EPA's **Federal Register** notice describing the electronic docket at 67 FR 38102 (May 31, 2002), or go to *www.epa.gov/edocket*.

Title: Drinking Water State Revolving Fund Program (OMB Control Number 2040–0185, EPA ICR Number 1803.04). This is a request to renew an existing approved collection that is scheduled to expire on June 30, 2003. Under OMB regulations, the Agency may continue to conduct or sponsor the collection of information while this submission is pending at OMB.

Abstract: The Safe Drinking Water Act (SDWA) Amendments of 1996 (Pub. L. 104–182) authorize the creation of Drinking Water State Revolving Fund (DWSRF) programs in each State and Puerto Rico to assist public water systems to finance the costs of infrastructure needed to achieve or maintain compliance with SDWA requirements and to protect public health. Section 1452 authorizes the Administrator of EPA to award capitalization grants to the States and Puerto Rico which, in turn, provide low-cost loans and other types of assistance to eligible drinking water systems (*i.e.*, local respondents).

The information collection activities will occur primarily at the program level through the Capitalization Grant Application and Agreement/State Intended Use Plan, Biennial Report, Annual Audit, and Assistance Application Review. Information from these sources may be used for input into the DWSRF National Information Management System.

In order to receive a grant, the State must prepare a Capitalization Grant Application that includes an Intended Use Plan (IUP) outlining in detail how it will use funds in the program. The Capitalization Grant Agreement is the principal instrument by which the State commits to manage its revolving fund program in conformity with the requirements of the SDWA.

The State must agree to complete and submit a Biennial Report on the uses of the capitalization grant. The Biennial Report indicates how the State has met its goals and objectives of the previous two fiscal years as stated in the grant agreement, and more specifically in the IUP. The report provides information on loan recipients, loan amounts, loan terms, project categories of eligible costs, and similar data on other forms of assistance.

A State must comply with the provisions of the Single Audit Act Amendments of 1996. Best management practices suggest and EPA recommends that a State conduct an annual independent audit of its DWSRF program (including set-asides), which contains an opinion on the financial condition of the DWSRF program, a report on its internal controls, and a report on compliance with applicable laws and the SDWA.

Because States provide assistance to local applicants, States assist local applicants in preparing DWSRF loan applications and verify that proposed projects will comply with applicable Federal and State requirements.

EPA will use the Capitalization Grant Application/State Intended Use Plan, Biennial Report, Annual Audit, and DWSRF National Information Management System to help conduct its oversight responsibilities as mandated by the SDWA.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR part 9 and 48 CFR chapter 15, and are identified on the form and/or instrument, if applicable.

Burden Statement: The annual public reporting and recordkeeping burden for this collection of information is estimated to average 1,652 hours per State and 80 hours per local respondent (including Indian Tribes and Alaska Native Tribes) annually. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

Respondents/Affected Entities: State and local governments and local respondents.

Estimated Number of Respondents: 1,428.

Frequency of Response: Annually and biennially.

Estimated Total Annual Hour Burden: 194,395.

Estimated Total Annual Cost: $6,898,416, includes $0 annualized capital or O&M costs.

Changes in the Estimates: There is an increase of 1,445 hours in the total estimated burden currently identified in the OMB Inventory of Approved ICR Burdens: This increase is attributed to the increase in the estimated number of respondents participating in the DWSRF program. The increase in the number of respondents reflects the stabilizing of activities in the DWSRF program. The previous ICR included lower estimates for the earlier years to compensate for the program's early start-up phase.

Dated: May 6, 2003.

Doreen Sterling,

Acting Director, Collection Strategies Division.

[FR Doc. 03–12479 Filed 5–16–03; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[OPPT–2003–0022; FRL–7309–3]

Forum on State and Tribal Toxics Action; Notice of Public Meeting

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA is announcing the meeting of the Forum on State and Tribal Toxics Action (FOSTTA) to collaborate on environmental protection and pollution prevention issues. The Tribal Affairs Project and representatives and invited guests of the Pollution Prevention Project, components of FOSTTA, will be meeting on June 4–5, 2003. The meeting is being held to provide the members of the two projects an opportunity to interact fully and to have in depth discussions on the state-of-the-art pollution prevention approaches used to develop and operate the Mohegan Sun Facility and on other pollution prevention issues. This notice announces the location and times for the meeting and sets forth some tentative agenda topics. EPA invites all interested parties to attend the public meeting.

DATES: The two projects will meet jointly June 4–5, 2003, from 8:30 a.m. to 5 p.m. Requests to participate in the spring FOSTTA meeting, identified by docket ID number OPPT–2003–0022, must be received by EPA on or before May 29, 2003.

ADDRESSES: The meeting will be held at the Mohegan Sun, 1 Mohegan Sun Boulevard, Uncasville, CT. Requests to participate in the meeting may be submitted to Christine Eppstein, listed under **FOR FURTHER INFORMATION**

CONTACT. Follow the detailed instructions as provided in Unit III. of the **SUPPLEMENTARY INFORMATION.**

FOR FURTHER INFORMATION CONTACT: *For general information contact:* Barbara Cunningham, Director, Environmental Assistance Division (7408M), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (202) 554–1404; e-mail address: TSCA-Hotline@epa.gov.

For technical information contact: Darlene Harrod, Environmental Assistance Division (7408M), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (202) 564–8814; fax number: (202) 564–8813; e-mail address: harrod.darlene@epa.gov.

Christine Eppstein, Environmental Council of the States, 444 North Capitol Street, NW., Suite 445, Washington, DC 20001; telephone number: (202) 624–3661; fax number: (202) 624–3666; e-mail address: ceppstein@sso.org.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

You may be potentially affected by this action if you are interested in FOSTTA and hearing more about the perspectives of the states and tribes on EPA programs and information exchange regarding important issues related to human health and environmental exposure to toxics. Potentially affected entities may include, but are not limited to:

- States and federally recognized tribes.
- State, federal, local environmental, and public health organizations.

The listing is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. If you have any questions regarding the applicability of this action to a particular entity, consult the technical persons listed under **FOR FURTHER INFORMATION CONTACT.**

B. How Can I Get Copies of this Document and Other Related Documents?

1. *Docket.* EPA has established an official public docket for this action under docket ID number OPPT–2003–0022. The official public docket consists of the documents specifically referenced in this action, any public comments received, and other information related to this action. Although a part of the official docket, the public docket does not include Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. The official public docket is the collection of materials that is available for public viewing at EPA's Docket Center, Rm. B102-Reading Room, EPA West, 1301 Constitution Ave., NW., Washington, DC. EPA's Docket Center is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. EPA's Docket Center Reading Room telephone number is (202) 566–1744, and the telephone number for the OPPT Docket, which is located in EPA Docket Center, is (202) 566–0280.

2. *Electronic access.* You may access this **Federal Register** document electronically through EPA's Internet under the "**Federal Register**" listings at http://www.epa.gov/fedrgstr/.

An electronic version of the public docket is available through EPA's electronic public docket and comment system, EPA Dockets. You may use EPA's Dockets at http://www.epa.gov/edocket/ to submit or view public comments, access the index listing of the contents of the official public docket, and to access those documents in the public docket that are available electronically. Although not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the docket facility identified in Unit II.1. Once in the system, select "search," then key in the appropriate docket ID number.

C. How Can I Request to Participate in this Meeting?

You may submit a request to participate in this meeting to Christine Eppstein, the technical person listed under **FOR FURTHER INFORMATION CONTACT.** Do not submit any information in your request that is considered Confidential Business Information (CBI). Requests to participate in the meeting, identified by docket ID number OPPT–2003–0022, must be received on or before May 29, 2003.

II. Background

The Toxic Substances Control Act, 15 U.S.C. 2609 section 10(g), authorizes EPA and other federal agencies to establish and coordinate a system for exchange among federal, state, and local authorities of research and development results respecting toxic chemical substances and mixtures, including a system to facilitate and promote the development of standard data format and analysis and consistent testing procedures. Through FOSTTA, the Chemical Information and Management Project (CIMP) focuses on EPA's chemical program and works to develop a more coordinated effort involving federal, state, and tribal agencies. The Pollution Prevention Project (P2) promotes the prevention ethic across society, helping companies incorporate P2 approaches and techniques and integrating P2 into mainstream environmental activities at both the federal level and among the states. The Tribal Affairs Project (TAP) concentrates on chemical and prevention issues that are most relevant to the tribes, including lead control and abatement, Tribal traditional/subsistence lifeways, hazard communications, and outreach. FOSTTA's vision is to reinvigorate the projects, focus on major policy-level issues, recruit more senior state and tribal leaders, increase outreach to all 50 states, some 560 federally recognized tribes, and vigorously seek ways to engage the states and tribes in ongoing substantive discussions on complex and often times controversial environmental issues that states and tribes resolve at their respective levels of government. In January 2002, the Environmental Council of the States (ECOS), in cooperation with the National Tribal Environmental Council (NTEC), was awarded the new FOSTTA cooperative agreement. ECOS, NTEC, and EPA's Office of Pollution Prevention and Toxics (OPPT) are co-sponsoring the meetings. As part of a cooperative agreement, ECOS facilitates on going efforts of the state and tribal leaders and OPPT to increase understanding and improve collaboration on toxics and pollution prevention issues and to continue a dialogue on how federal environmental programs can best be implemented among the states, tribes, and EPA.

III. The Meeting

In the interest of time and efficiency, the meetings are structured to provide maximum opportunity for state, tribal, and EPA participants to discuss items on the predetermined agenda. At the discretion of the chair, an effort will be made to accommodate participation by observers attending the proceedings. The FOSTTA representatives and EPA will collaborate on environmental protection and prevention issues. The tentative agenda items identified by the states and the tribes follow:

- Overview of the Mohegan Sun Facility and the P2 approaches used in its development and operation.
- Technology transfer discussion.
- P2Rx Pollution Prevention information currently available.
- Discussion of tribal needs and P2Rx resources or potential products.
- OPPTS tribal strategy.

List of Subjects

Environmental protection, Pollution prevention.

Dated: May 9, 2003.

Clarence O. Lewis, III,

Acting Director, Environmental Assistance Division, Office of Pollution Prevention and Toxics.

[FR Doc. 03–12482 Filed 5–16–03; 8:45 am]

BILLING CODE 6560–50–S

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR Part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The application also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States. Additional information on all bank holding companies may be obtained from the National Information Center website at www.ffiec.gov/nic/.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than June 12, 2003.

A. Federal Reserve Bank of Minneapolis (Richard M. Todd, Vice President and Community Affairs Officer) 90 Hennepin Avenue, Minneapolis, Minnesota 55480-0291:

1. *JDOB, Inc.*, Sandstone, Minnesota; to acquire at least 80 percent of the voting shares of First National Bank of Hinkley, Hinkley, Minnesota, a *de novo* bank.

Board of Governors of the Federal Reserve System, May 13, 2003.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. 03–12365 Filed 5–16–03; 8:45 am]

BILLING CODE 6210–01–S

FEDERAL RESERVE SYSTEM

Federal Open Market Committee; Domestic Policy Directive of March 18, 2003

In accordance with § 271.25 of its rules regarding availability of information (12 CFR part 271), there is set forth below the domestic policy directive issued by the Federal Open Market Committee at its meeting held on March 18, 2003.[1]

The Federal Open Market Committee seeks monetary and financial conditions that will foster price stability and promote sustainable growth in output. To further its long–run objectives, the Committee in the immediate future seeks conditions in reserve markets consistent with maintaining the federal funds rate at an average of around 1¼ percent.

By order of the Federal Open Market Committee, May 13, 2003.

Vincent R. Reinhart,

Secretary, Federal Open Market Committee.

[FR Doc. 03–12393 Filed 5–16–03; 8:45 am]

BILLING CODE 6210–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Agency for Healthcare Research and Quality

Study Section Meetings—Change of Dates and Time

With this notice, the Agency for Healthcare Research and Quality informs the public of the change of date and time for two meetings. The original notice of these meetings was published in the **Federal Register** on April 15, 2003, Volume 68, Number 72, Page 18210.

Below are the changes for the two meetings highlighted in bold.

- *Name of Subcommittee:* Health Care Technology and Decision Sciences
  Date: June **4–5**, 2003 (Open from **6:30 p.m. to 6:45 p.m.** on June **4** and closed for remainder of the meeting)
  Place: Doubletree Hotel, 1750 Rockville Pike, Conference Room TBD, Rockville, Maryland 20852
- *Name of Subcommittee:* Health Care Quality and Effectiveness Research
  Date: June **18–19**, 2003 (Open from **6:30 p.m. to 6:45 p.m.** on June **18** and closed for remainder of the meeting)
  Place: Doubletree Hotel, 1750 Rockville Pike, Conference Room TBD, Rockville, Maryland 20852

Agenda items for these meetings are subject to change as priorities dictate.

Dated: May 8, 2003.

Carolyn M. Clancy,

Director

[FR Doc. 03–12461 Filed 5–16–03; 8:45 am]

BILLING CODE 4160–90–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[Program Announcement 03065]

Building Capacity for Population-Based Surveillance of Autism Spectrum Disorders and Other Developmental Disabilities; Notice of Availability of Funds

Application Deadline: July 18, 2003.

A. Authority and Catalog of Federal Domestic Assistance Number

This program is authorized under sections 301, 311 and 317(C) of the Public Health Service Act, (42 U.S.C. 241, 243 and 247b–4 as amended). The Catalog of Federal Domestic Assistance number is 93.283.

B. Purpose

The Centers for Disease Control and Prevention (CDC) announces the availability of fiscal year (FY) 2003 funds for a cooperative agreement program for Building Capacity for Population-Based Surveillance of Autism Spectrum Disorders (ASDs) and other Developmental Disabilities (DDs).

CDC is committed to achieving the health promotion and disease prevention objectives of "Healthy People 2010." This announcement is related to the focus area of Maternal, Infant and Child Health.

The purpose of this program is to enhance the capacity to design and implement population-based, multiple-source surveillance for ASDs and other DDs to include children who are eight years of age.

[1] Copies of the Minutes of the Federal Open Market Committee meeting on March 18, 2003, which includes the domestic policy directive issued at the meeting, are available upon request to the Board of Governors of the Federal Reserve System, Washington, D.C. 20551. The minutes are published in the Federal Reserve Bulletin and in the Board's annual report.

This program will support funding for applicants to develop a new surveillance system for ASDs and other DDs, beginning with the ASDs and Mental Retardation (MR) in eight year-old children, in collaboration with a network of CDC-funded ASD/DD surveillance projects known as the Autism and Developmental Disabilities Monitoring (ADDM) Network.

Measurable outcomes of the program will be in alignment with the following performance goals for the National Center for Birth Defects and Developmental Disabilities (NCBDDD): To improve the data on the prevalence of birth defects and developmental disabilities and find causes and risk factors of birth defects and developmental disabilities in order to develop prevention strategies.

For additional information applicable to this announcement, *see* Attachment I. All attachments referenced in this announcement are posted with the announcement on the CDC Web site.

C. Eligible Applicants

Applications may be submitted by Health departments of States, or their bona fide agents, including the Commonwealth of Puerto Rico, the Virgin Islands, the Commonwealth of the Northern Mariana Islands, American Samoa, Guam, the Federated States of Micronesia, the Republic of the Marshall Islands, the Republic of Palau, and federally recognized Indian tribal governments.

Competition is limited to State Health Departments, or their bona fide agents, because they maintain public health responsibility for these health conditions, and their record systems and expertise are essential to continued program operation. If the applicant is not the State Health Agency, the applicant must provide a letter from the appropriate State Health Agency designating the applicant as a bona fide agent to conduct ASD and DD surveillance. If an applicant is acting as an agent for their Health Department, the Health Department will be expected to assign a liaison with no less than ten percent time dedicated to participate in major activities of the program. Applicants are expected to provide some in-kind support for these activities.

Only one application per state will be accepted. If multiple states, territories or regions are represented, a lead applicant must be specified. Information indicating the lead applicant and the letter granting authority from the Health Department for this application should be placed directly behind the cover letter of the application. Applicants that fail to submit the evidence requested above will be considered non-responsive and returned without review.

Applicants from States that currently have ASD and other DD surveillance programs funded by CDC are ineligible. These States include: Arizona, Arkansas, California, Colorado, Georgia, Florida, Maryland, Delaware, New Jersey, North Carolina, Pennsylvania, South Carolina, Utah, and West Virginia.

To be eligible, applicants must document a study population of at least 30,000 live births per year within a State, a contiguous area (geographically linked) of a State, or a contiguous area comprised of a combination of States. Applicants who are unable to document the minimum study population size based on live birth data from their State Health Department or proxy data from the United States Census Bureau (based on 2000 census data or other appropriate data source) will be determined ineligible.

Note: Title 2 of the United States Code, section 1611 states that an organization described in section 501c(4) of the Internal Revenue Code that engages in lobbying activities is not eligible to receive Federal funds constituting an award, grant, or loan.

D. Funding

Availability of Funds

Approximately $800,000 may be available in FY 2003 to fund approximately four awards. It is expected that the average award will be $200,000, ranging from $150,000 to $250,000. The award is expected to begin on September 1, 2003, and will be made for a 12-month budget period within a project period of up to three years. Funding estimates may change.

Continuation awards within an approved project period will be dependent upon demonstration of reasonable progress towards establishing ongoing, population-based surveillance for ASDs and other DDs as evidenced by required reports and the availability of funds.

Use of Funds

Funds awarded should be used solely for the implementation of the approved project for ASD and DD surveillance.

Recipient Financial Participation

Although matching funds are not a requirement under this announcement, applicants are encouraged to seek additional funds to support project activities. Applicants should document the source and amount of financial support, including in-kind contributions. Such letters of financial commitment as well as additional correspondence citing specific areas of project collaborations should be included in the application Appendix.

Funding Preferences

During the selection process CDC will make every effort to ensure a balanced geographic distribution with currently funded grantees.

E. Program Requirements

In conducting activities to achieve the purpose of this program, the recipient will be responsible for the activities listed in 1. Recipient Activities, and CDC will be responsible for the activities listed in 2. CDC Activities. Please see Attachment I for additional guidance information.

1. Recipient Activities:

a. Develop a collaborative, population-based epidemiologic surveillance system for ASDs including Autistic Disorder, Pervasive Developmental Disorder—Not Otherwise Specified (PDD-NOS) and Asperger's Disorder and other developmental disabilities (*e.g.*, MR, cerebral palsy, hearing loss, vision impairment, and/or epilepsy) with a minimum inclusion of MR, in eight year old children.

b. Develop collaborative relationships with appropriate professionals and organizations and existing funded surveillance partners to establish a multiple-source methodology for case ascertainment that is compatible with current collaborative CDC methodology.

c. Determine data linkages that may be needed to supplement the ASD/DD surveillance system.

d. Develop a plan to identify and access potential sources for ASD/DD surveillance.

e. Identify a surveillance project team capable of conducting ASD and DD surveillance. If acting as a bona fide agent of a health department, a department employee with no less than 10 percent of his/her time dedicated to participate in major activities of the program must be assigned to the project.

f. Develop a plan for quality assurance procedures for abstraction and case review and to ensure that study protocols are followed.

g. Develop an evaluation plan for estimating the validity and completeness of the surveillance system.

h. Develop a plan to increase community and public health awareness of ASDs/DDs to facilitate early and accurate identification of children and to improve the consistent identification of children with an ASD/DD in order to improve case ascertainment.

i. Outline a plan to disseminate findings of the surveillance activities for the professional community and the public to increase public health awareness.

j. Collaborate with funded CDC ASD surveillance partners and participate in surveillance development workshop(s) and meetings with CDC staff and ADDM Network members concerning population-based surveillance of ASDs/DDs.

2. CDC Activities:

a. Assist recipient in the development and implementation of surveillance activities including the development of a standardized surveillance case definition.

b. Provide current scientific information on surveillance methods, including the identification of potential sources for surveillance.

c. Assist recipient in the development of quality assurance procedures.

d. Provide assistance in the development of an evaluation plan for the completeness of the surveillance system.

e. Facilitate communication/coordination among the ADDM and other CDC-funded surveillance programs, to improve efficiency of activities and quality of surveillance data.

f. Provide technical consultation regarding data analyses.

F. Content

Letter of Intent (LOI)

A LOI is requested for this program. The LOI will be used to determine level of interest in the announcement and should include the following information: The program announcement title and number; name of applicant; project director's name and contact information.

Application

The Program Announcement title and number must appear in the application. The applicant should use the information in the Purpose, Program Requirements, Evaluation Criteria, and Other Program Requirements sections of this announcement, as well as the additional information in Attachment I to develop the application content. The application will be evaluated on the criteria listed, so it is important to follow them in laying out the program plan.

The applicant should provide a detailed description of first-year goals, objectives, and activities and provide general goals, objectives, and activities for year two. Plans to sustain the program in the event of limited CDC future funding should also be addressed. The application must contain the following:

1. *Cover Letter:* A one-page cover letter indicating the program announcement name and number.

2. *Health Department Letter:* A one-page letter indicating that the applicant is either the State Health Department or the bona fide agent assigned to conduct ASD and DD surveillance.

3. *Abstract:* A one-paged, single-spaced typed abstract in 12-point font. The heading should include the title of the program announcement, the project title, organization, name and address, project director, and contact information. The abstract should clearly state the health department represented, the study area, and the number of live births in the area (based on 2000 Census data). The abstract should briefly summarize the program scope, activities, objectives, methods, and anticipated results.

4. *Table of Contents:* A table of contents that provides page numbers for the sections listed below. Pages must be numbered.

5. *Narrative:* The narrative should be no more than 25 double-spaced pages, printed on one side, with one inch margins, unreduced font, unbound, and unstapled. The narrative should specifically address the below items, the "Program Requirements" and should contain the following sections:

a. Understanding of the Public Health Impact of the ASDs and other DDs.

b. Understanding of the need for population-based, multiple source prevalence data on the ASDs and DDs and the particular needs in the applicant's area.

c. Plans for collaboration with CDC and other partners and sources in the development of the surveillance system.

d. Description of the surveillance system planned including disabilities covered, age of children, study area, case definitions, multiple source case ascertainment methods, data collection instruments, data linkages and analyses, and reporting of results.

e. A plan to identify and access potential sources with written assurances from major sources. The plan should address issues pertaining to Federal privacy laws, and applicable state laws dealing with confidentiality issues, as well as any other assurances considered necessary to ensure the privacy and confidentiality of individuals. Sources should include a range of facilities that provide evaluation and treatment services for children with developmental disabilities, particularly ASDs and MR. Sources should include: Schools (public and private, including evaluations to determine eligibility for special education services), Clinical (including diagnostic and developmental assessment information), and other programs (for example, state DD programs).

f. Plan to address quality assurance procedures for abstraction and case review to ensure that study protocols are followed.

g. An evaluation plan for estimating the validity and completeness of the surveillance system.

h. A plan for data storage and maintaining confidentiality.

i. A plan for data analysis.

j. A plan to increase community and public health awareness of ASDs/DDs to facilitate early and accurate identification of children and to develop linkages between identification and assessment and intervention resources.

k. A plan for training local community service providers to improve the consistent identification of children with an ASD/DD in order to improve case ascertainment.

l. Intent to collaborate with the ADDM Network and participate in surveillance development workshop(s) and weekly conference call meetings with CDC staff and ADDM Network members concerning population-based surveillance of ASDs/DDs.

6. *Organizational and Program Personnel Structure, Duties, and Capabilities:* Provide an organizational chart of project personnel, as well as a description of percent effort and specific duties as they relate to the project. In addition, submit appropriate documentation of related professional experience of primary project personnel. Project personnel should include, at a minimum depending on the time line, a Principal Investigator, full-time Project Coordinator, at least two part-time records abstractors, at least 30 percent effort from an epidemiologist, at least two consultant or part-time clinician reviewers, and provision of data management/programmer support.

7. *Project Timeline:* Include a timeline with goals, objectives, and personnel responsible for the two-year project. Provide a summary of plans for future continuation of the project in the event that CDC funding is not available after the project period ends.

8. *Human Subjects Review:* Include requirements and considerations related to Human Subjects Review. Include time and activities related to submissions to Institutional and Human Subjects Review Boards at the home

institution and other potential sources in the project timeline.

9. *Letters of Support:* In addition to letter of representation from the Health Department placed before the abstract, include appropriate letters of support from partners, consultants, references, potential sources, etc., as appropriate.

10. *Budget and Budget Justification:* Provide a detailed budget which indicates the anticipated costs for personnel, fringe benefits, travel, supplies, contracts, consultants, equipment, indirect, and other items. The amount and source of in-kind support provided by the applicant should be included.

G. Submission and Deadline

LOI Submission

On or before June 18, 2003, submit the LOI to the Project Officer, at the address designated for programmatic technical assistance identified in the "Where to Obtain Additional Information" section of this announcement.

Application Forms

Submit the signed original and two copies of PHS 5161–1 (OMB Number 0937–0189). Forms are available at the following Internet address: *http://www.cdc.gov/od/pgo/forminfo.htm*. If you do not have access to the Internet, or if you have difficulty accessing the forms on-line, you may contact the CDC Procurement and Grants Office Technical Information Management Section at telephone number (770) 488–2700. Application forms can be mailed to you.

Submission Date, Time, and Address

The application must be received by 4 p.m. Eastern Time on July 18, 2003. Submit the application to: Technical Information Management—PA #03065, CDC Procurement and Grants Office, 2920 Brandywine Rd., Atlanta, GA 30341–4146.

Applications may not be submitted electronically.

CDC Acknowledgement of Application Receipt

A postcard will be mailed by PGO–TIM, notifying you that CDC has received your application.

Deadline

Letters of intent and applications will be considered as meeting the deadline if they are received before 4 p.m. Eastern Time on the deadline date. Any applicant who sends their application by the United States Postal Service or commercial delivery services must ensure that the carrier will be able to guarantee delivery of the application by the closing date and time. If an application is received after closing due to (1) carrier error when the carrier accepted the package with a guarantee for delivery by the closing date and time, or (2) significant weather delays or natural disasters, CDC will upon receipt of proper documentation, consider the application as having been received by the deadline.

Any application that does not meet the above criteria will not be eligible for competition and will be discarded. Applicants will be notified of their failure to meet the submission requirements.

H. Evaluation Criteria

Application

Applicants are required to provide measures of effectiveness that will demonstrate the accomplishment of the various identified objectives of the cooperative agreement. Measures of effectiveness must relate to the performance goals as stated in the "B. Purpose" section of this announcement. Measures must be objective and quantitative and must measure the intended outcome. The measures of effectiveness must be submitted with the application and shall be an element of evaluation.

An independent review group appointed by CDC will evaluate each application against the following criteria:

1. Technical Approach (25 points)

a. The extent to which the applicant describes the specific planning objectives, strategies for achieving these objectives, and describes an approach to surveillance of ASDs and other DDs.

b. Extent to which applicant describes the methods they will use to:

(1) Identify all relevant sources for surveillance case ascertainment for ASD and other DDs within the study area.

(2) Obtain permission to access records from relevant sources.

(3) Address relevant records access issues as related to federal privacy laws, and applicable state laws dealing with confidentiality issues, as well as any other assurances considered necessary to ensure the privacy and confidentiality of individuals.

(4) Collaborate with ADDM Network to develop standard case definitions for ASD and other DDs and implement a strategy to conduct multiple-source case ascertainment.

(5) Train community service providers to improve case ascertainment.

(6) Develop and implement quality assurance procedures and an evaluation plan for the surveillance system.

(7) Develop and implement a plan to use surveillance data to improve public awareness of ASD and other developmental disabilities and/or access to care of affected children.

(8) Develop an analytic and dissemination plan, and prepare manuscripts.

c. The extent to which the applicant demonstrates its collaboration with health and education services that would be appropriate sources of cases for the surveillance system (by letters of support which address the level of support, activities, and involvement).

2. Understanding the Problem (20 points)

a. Extent to which applicant has a clear, concise understanding of the requirements and purpose of the cooperative agreement.

b. Extent to which applicant understands the issues, challenges, and barriers associated with developing and implementing population-based surveillance for the range of ASDs and other DDs, particularly MR, and

c. Extent to which applicant describes the need for funds to develop/enhance ASD and other DD surveillance in their State or territory.

3. Goals and Objectives (20 points)

a. Extent to which applicant clearly describes the short-term and long-term goals and measurable objectives of the project.

b. A statement as to whether the design of the activities is adequate to enable the applicant to implement an ongoing population-based surveillance system for ASDs/DDs.

c. Extent to which applicant's goals and objectives are realistic and are consistent with the stated goals and purpose of this announcement.

d. The degree to which applicant has met the CDC policy requirements regarding the inclusion of women, ethnic and racial groups in the proposed research. This includes:

(1) The proposed plan for the inclusion of both sexes and racial and ethnic minority populations for appropriate representation.

(2) The proposed justification when representation is limited or absent.

(3) A statement as to why and in what ways the design of the surveillance system is adequate to establish the rates and descriptive data to evaluate differences when warranted.

(4) A statement as to whether the plans for recruitment and outreach for study participants include the process of establishing partnerships with community(ies) and recognition of mutual benefits.

4. Staffing and Management System (15 points)

a. Extent to which the applicant demonstrates that the proposed Project Director or Principal Investigator is knowledgeable regarding ASDs, DDs, and surveillance issues, as evidenced by publications, presentations, or other materials that document prior work.

b. Extent to which key personnel have qualifications, skills and experience in epidemiologic methods, public health surveillance, data management and analysis to develop and implement surveillance in ASD and other DDs, as evidenced by publications, presentations, or other materials that document prior work.

c. Extent to which applicant has the ability and experience to manage and coordinate surveillance related activities for this project.

d. Extent to which applicant involves adequate personnel with expertise the abstraction of records. In addition, adequate personnel with clinical expertise to review records to determine case status are also needed.

e. Extent to which there is appropriate dedicated staff and staff time to develop and implement the project.

f. Extent to which applicant provides an appropriate time line, which includes activities, percent of time staff will work on this project, and responsibilities/duties for assigned personnel.

g. Extent to which applicant demonstrates an organizational structure (include an organizational chart) and facilities/space/equipment that are adequate to carry out the activities of the program. The level of in-kind support and commitment to sustaining an ongoing surveillance system will also be considered.

5. Collaborative Efforts (10 points)

a. Extent to which applicant identifies an appropriate team with expertise in both epidemiology and disabilities and disorders of childhood, particularly the ASDs.

b. Extent to which applicant demonstrates the ability to collaborate with multiple sources such as school systems, diagnostic centers, health/mental health service providers and other intervention service providers for the purpose of case ascertainment (include written assurances).

c. Extent to which applicant demonstrates their willingness to collaborate with the ADDM Network and other CDC-funded ASD/DD surveillance programs to develop and implement joint project efforts.

d. Extent to which collaborative efforts with other relevant programs are documented (such as education sources, Part C, state developmental disabilities programs, specialty clinics, etc.).

6. Evaluation Plan (10 points)

a. Extent to which applicant describes an evaluation plan that will monitor reliability, progress, timeliness, and completeness of the objectives and activities of the project.

b. Extent to which applicant describes a study to evaluate the completeness of ascertainment of children throughout this on-going surveillance program.

7. Budget (not scored)

The extent to which the budget is reasonable, clearly justified, and consistent with the intended use of funds. Applicants should include in their first year budget two trips to CDC (Atlanta), for up to four persons at two days per trip.

8. Human Subjects Review (not scored)

Does the applicant adequately address the requirements of 45 CFR part 46 for the protection of human subjects? Not scored; however, an application can be disapproved if the research risks are sufficiently serious and protection against such risks is so inadequate as to make the entire application unacceptable.

I. Other Requirements

Technical Reporting Requirements

Provide CDC with original plus two copies of:

1. Interim progress reports, which are due annually on April 22nd and annual progress reports, which are due annually no more than 30 days after the end of the budget period (September 29th). The interim progress report will serve as your non-competing continuation application. Progress reports must include the following elements:

a. Current Budget Period Activities Objectives.

b. Current Budget Period Financial Progress.

c. New Budget Period Program Proposed Activity Objectives.

d. Detailed Line-Item Budget and Justification (for interim progress reports only).

e. Additional Requested Information.

2. Financial Status Report (FSR), no more than 90 days after the end of the budget period; and

3. Final financial Status Report (FSR) and performance reports, no more than 90 days after the end of the project period.

Send all reports to the Grants Management Specialist and a copy to the Project Officer identified in the "Where to Obtain Additional Information" section of this announcement.

Additional Requirements

The following additional requirements are applicable to this program. For a complete description of each, *see* Attachment II of the program announcement as posted on the CDC Web page.

AR–1 Human Subjects Requirements

AR–2 Requirements for Inclusion of Women and Racial and Ethnic Minorities in Research

AR–7 Executive Order 12372 Review

AR–9 Paperwork Reduction Act Requirements

AR–10 Smoke-Free Workplace Requirements

AR–11 Healthy People 2010

R–12 Lobbying Restrictions

J. Where To Obtain Additional Information

This and other CDC announcements, the necessary applications, and associated forms can be found on the CDC Web site, Internet address: *http://www.cdc.gov*. Click on "Funding" then "Grants and Cooperative Agreements".

For general questions about this announcement, contact: Technical Information Management, CDC Procurement and Grants Office, 2920 Brandywine Rd, Atlanta, GA 30341–4146, Telephone: (770) 488–2700.

For business/grant management and budget assistance, please contact: Sheryl L. Heard, Grants Management Specialist, Assistance and Acquisition Branch B, CDC Procurement and Grants Office, 2920 Brandywine Road, Atlanta, GA 30341–4146, Telephone number: (770) 488–2723, Email address: *sheard@cdc.gov*.

For business/grant management and budget assistance in the territories, contact: Vincent Falzone, Grants Management Specialist, CDC Procurement and Grants Office, 2920 Brandywine Road, Atlanta, GA 30341–4146, Telephone number: (770) 488–2763, Email address: *vcf6@cdc.gov*.

For program technical assistance, contact: Joanne Wojcik, Public Health Analyst, Developmental Disabilities Team, CDC National Center on Birth Defects and Developmental Disabilities, 4770 Buford Hwy, NE (F–15), Atlanta, GA 30341, Telephone: (770) 488–7288, Email address: *jwojcik@cdc.gov*.

Dated: May 13, 2003.

Sandra R. Manning,

Director, Procurement and Grants Office, Centers for Disease Control and Prevention.

[FR Doc. 03–12396 Filed 5–16–03; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[Program Announcement 03077]

Community-Based Interventions To Reduce Motor Vehicle-Related Injuries; Notice of Availability of Funds

Application Deadline: July 3, 2003.

A. Authority and Catalog of Federal Domestic Assistance Number

This program is authorized under sections 317, and 301 of the Public Health Service Act (42 U.S.C. 247b and 241). The Catalog of Federal Domestic Assistance number is 93.136.

B. Purpose

The Centers for Disease Control and Prevention (CDC) announces the availability of fiscal year (FY) 2003 funds for a cooperative agreement study to tailor, implement, and evaluate community-based interventions with demonstrated effectiveness to reduce motor vehicle-related injuries.

This study addresses the "Healthy People 2010" focus area of Injury and Violence Prevention.

"Healthy People 2010: Health Objectives for the Nation" has set an objective of reducing motor vehicle-related fatalities to no more than 9.2 per 100,000 persons from a baseline of 15.6 per 100,000 persons in 1998. To meet this objective, the nation must improve the safety of motor vehicle travel, community-by-community, state-by-state. Deterrence of alcohol-impaired driving and increasing the proper use of occupant restraints are among the most important measures to further reduce motor vehicle-related injuries and deaths.

The purpose of the study is to tailor, implement, and evaluate community-based interventions with demonstrated effectiveness for preventing motor vehicle-related injuries within the following areas: (1) Reduce alcohol-impaired driving among high risk groups; (2) increase safety belt use among low-use groups; and (3) increase the use of child safety seats, with an emphasis on booster seats.

In addition, the study should gather information on the process of tailoring and implementing evidence-based community interventions such as defining how the interventions were tailored, barriers to implementation, and how the various evaluation activities were undertaken.

This study will require the formation of coalitions of public health departments, transportation and traffic safety agencies, Governors' highway safety representatives, law enforcement, and academic evaluation experts. These coalitions will work with community leaders, groups, and organizations (*e.g.*, policy makers, safety advocates, schools, youth organizations, local media, health care providers, and social service agencies) to tailor, implement, and evaluate at least two selected community-based interventions.

Measurable outcomes of the study will be in alignment with the following research priorities in transportation safety from the National Center for Injury Prevention and Control (NCIPC) Research Agenda: (1) Evaluate strategies to implement and disseminate known, effective interventions to reduce alcohol-impaired driving and test the effectiveness of new, innovative strategies; (2) develop and evaluate interventions that address the proper and consistent use of measures to protect child occupants in motor vehicles; (3) develop methodologies for and evaluate the effectiveness of various means to translate transportation safety research findings into public policy. The study is expected to widely disseminate the outcomes through traditional mechanisms, such as professional and peer-reviewed journal publications.

C. Eligible Applicants

Applications may be submitted by state or local health departments or their bona fide agents, including the District of Columbia, Commonwealth of Puerto Rico, Virgin Islands, Commonwealth of the Northern Marianna Islands, American Samoa, Guam, Federated States of Micronesia, Republic of the Marshall Islands, and Republic of Palau.

Other required eligibility criteria include the following:

1. The applicant should provide evidence that there is an unmet need in their community for these interventions. The intent of the study is not to support existing activities. This can be done by describing the target groups for the selected interventions and documenting the size of the problem in these groups.

2. The applicant should provide evidence of effective and well-defined collaborative relationships within the performing organization and among the coalition members that will ensure implementation of the proposed activities. At a minimum, the coalition must include the recipient state or local health department, a state or local highway safety department representative, the state Governor's highway safety representative or designee, local law enforcement, and a university-based evaluation expert. Documentation, such as letters of collaboration, describing the specific commitments and responsibilities that will be undertaken by the coalition members and community organizations must be included.

3. The applicant and its collaborative team should provide evidence of prior experience in tailoring, implementing, and evaluating community-based interventions. This experience must be documented by including publications such as those from peer-reviewed journal articles or technical reports in the appendix of the application.

4. The recipient should provide evidence of access to target populations and experience with accessing community leaders and community-level groups.

Note: Title 2 of the United States Code section 1611 states that an organization described in section 501(c)(4) of the Internal Revenue Code that engages in lobbying activities is not eligible to receive Federal funds constituting an award, grant or loan.

D. Funding

Availability of Funds

Approximately $450,000 is available in FY 2003 to fund approximately 2 awards. It is expected that the average award will be $225,000, ranging from $200,000 to $250,000. It is expected that the awards will begin on or about September 15, 2003, and will be made for a 12-month budget period within a project period of up to four years. Funding estimates may change.

Continuation awards within an approved project period will be made on the basis of satisfactory progress as evidenced by required reports and the availability of funds.

Funding Preferences

Applicants will be expected to implement and evaluate at least two community-based interventions with demonstrated effectiveness during the four-year project period. Preference will be given to applicants who propose implementing at least one community-based intervention from the following list of interventions that have strong evidence of effectiveness according to the "The Guide to Community Preventive Services". (*See www.thecommunityguide.org* or

Attachment 1. All Attachments referenced in this announcement are posted with the announcement on the CDC Web site.):

a. Sobriety checkpoints to reduce alcohol-impaired driving. Key components of the intervention: officer training in appropriate practices; implement or increase the frequency of sobriety checkpoints (or roving patrols if checkpoints are not feasible); develop a strategy for publicizing checkpoints through earned media (*e.g.*, news stories) and/or paid media.

b. Enhanced enforcement campaigns to increase safety belt and child safety seat use. Key components of the intervention: Implement or increase the frequency of citations for violations of the law, safety belt and/or child safety seat checkpoints (or roving patrols if checkpoints are not feasible); develop a strategy for publicizing the enhanced enforcement efforts through earned media (*e.g.*, news stories) and/or paid media.

c. Efforts to increase possession and use of child safety seats and booster seats. Key components of the intervention: Distribution of child safety seats and/or booster seats among low use groups; education on appropriate use.

Key components of the chosen interventions must be included in implementation.

Applicants may choose to implement one or more interventions with demonstrated effectiveness to reduce motor vehicle-related injuries that are not on the above list. Applicants who select interventions that are not included in the list above, but have been systematically reviewed in the peer-reviewed literature, must cite the review and summarize its findings in the application.

E. Program Requirements

In conducting activities to achieve the purpose of this program, the recipient will be responsible for the activities listed in 1. Recipient Activities, and CDC will be responsible for the activities listed in 2. CDC Activities.

1. Recipient Activities

a. Establish the coalition that will help tailor, implement, and evaluate the selected interventions. At a minimum, the coalition must include the recipient state or local health department, a state or local highway safety department representative, the state Governor's highway safety representative or designee, local law enforcement, and an evaluation expert or academic researcher who has published in the peer-review literature.

b. Collect or obtain and analyze baseline measures that will guide the planning process and serve as the pre-intervention measures of effectiveness (*e.g.*, alcohol-related crashes, safety belt use, booster seat use).

c. If the recipient proposes to implement enhanced enforcement campaigns to increase safety belt use or to strengthen child safety seat laws or booster seat laws, the recipient must first determine baseline use rates for safety belts, child safety seats, and booster seats using, at a minimum, a comparison of observed use rates determined from observational surveys in the intervention and control communities before and after implementation of the intervention activities.

d. If the recipient proposes to implement sobriety checkpoints to reduce alcohol-impaired driving, the recipient must first determine rates of alcohol-impaired driving using appropriate survey methods before and after implementation of the intervention. Direct assessment of driver blood alcohol content levels in roadside surveys is the preferred method. However, an acceptable method for baseline measurement would be the number of pre- and post-intervention nighttime single vehicle crashes.

e. Develop a detailed plan for the tailoring of the intervention for their community, for implementation, and for evaluation of the selected evidence-based interventions to reduce motor vehicle-related injuries. Obtain approval for the plan from each coalition member and the CDC.

f. Implement and evaluate the selected interventions. Sufficient resources should be allocated for a rigorous evaluation.

g. Attend and participate in technical assistance, planning, and project briefing meetings coordinated by the CDC. (Travel to CDC for one meeting per year.)

h. Submit required reports on time.

Activities should be specifically tailored to stimulate community ownership and investment in sustaining the intervention, if effective, beyond the funding period. Collaboration with ongoing activities such as "Safe Communities" and existing coalitions such as "SAFE KIDS" is encouraged.

The first year of the study will include several activities: Establishing the coalition; evaluating the perceptions of stakeholders regarding barriers to implementation and perceived benefits of the intervention; collecting and analyzing baseline information (*e.g.*, alcohol-related crashes, DUI arrests, safety belt use), and developing a detailed plan for implementing and evaluating two or more interventions.

At the end of Year I, noncompetitive continuation funding will be available for Year II, contingent upon successful progress in Year I and a detailed budget for implementing and evaluating the selected interventions. Years two through four will be dedicated to implementing, sustaining, and evaluating the selected interventions. The evaluation should include systematic and detailed process data regarding any unanticipated barriers that were encountered in implementing the interventions.

2. CDC Activities

a. Provide technical assistance and guidance in the tailoring, implementation, and evaluation of the selected interventions.

b. Review plans for the tailoring, implementation, and evaluation of the selected interventions.

c. Assist in ensuring human subjects assurances are in place as needed.

d. Assist in analysis and dissemination of results including the preparation of manuscripts.

e. Facilitate technical assistance and planning meetings and briefings to CDC.

F. Content

Letter of Intent (LOI)

A LOI is required for this program. The narrative should be no more than two single-spaced pages, printed on one side, with one-inch margins, and unreduced 12-point font. The letter should identify the announcement number, the name of the principal investigator, and briefly describe the scope and intent of the proposed study. The letter of intent does not influence review or funding decisions, but the number of letters received will enable CDC to plan the review more effectively and efficiently.

Application

The Program Announcement title and number must appear in the application. Use the information in the Program Requirements and Evaluation Criteria sections to develop the application content. Your application will be evaluated on the criteria listed, so it is important to follow them in laying out your program plan. The narrative portion of the application must not exceed 25 pages.

Applications should follow the PHS–5161 application and should include the following information:

1. The project's focus justifying the intervention needs and describing the scientific basis for the program, the

expected outcome, and the relevance of the findings to reduce injury morbidity, mortality, disability, and economic losses.

2. Specific, measurable, and time-framed objectives.

3. A detailed plan describing the methods that will achieve the objectives, including their sequence.

4. A description of the roles and responsibilities of the principal investigator.

5. A description of all project staff regardless of their funding source. It should include their title, qualifications, experience, percentage of time each will devote to the project, as well as that portion of their salary to be paid by the cooperative agreement.

6. A description of those activities related to, but not supported by the cooperative agreement.

6. A description of those activities related to, but not supported by the cooperative agreement.

7. A description of the involvement of other entities that will relate to the proposed project, if applicable. It should include letters of organizational commitments of support and a clear statement of their roles.

8. A detailed budget for the cooperative agreement.

9. An explanation of how the research findings will contribute to the national effort to reduce the morbidity, mortality and disability caused by injuries.

A. Submission and Deadline

Letter of Intent (LOI) Submission

The LOI must be received by 4 p.m. eastern time on or before June 9, 2003. Submit the LOI to: Stephen Lester, Grants Management Specialist, Procurement and Grants Office, Centers for Disease Control and Prevention, 2920 Brandywine Road, Atlanta, GA 30341–4146. Telephone: 770–488–1998.

Application Forms

Submit the signed original and two copies of PHS–5161 application. Forms are available at the following Internet address: *www.cdc.gov/od/pgo/forminfo.htm.*

If you do not have access to the Internet, or if you have difficulty accessing the forms on-line, you may contact the CDC Procurement and Grants Office Technical Information Management Section (PGO–TIM) at: 770–488–2700.

Submission Date, Time, and Address

The application must be received by 4 p.m. eastern time July 3, 2003. Submit the application to: Technical Information Management—PA#03077, CDC Procurement and Grants Office, 2920 Brandywine Road, Atlanta, GA 30341–4146.

Applications may not be submitted electronically.

CDC Acknowledgement of Application Receipt

A postcard will be mailed by PGO–TIM, notifying you that CDC has received your application.

Deadline

Applications shall be considered as meeting the deadline if they are received before 4 p.m. eastern time on the deadline date. Any applicant who sends their application by the United States Postal Service or commercial delivery services must ensure that the carrier will be able to guarantee delivery of the application by the closing date and time. If an application is received after closing due to (1) carrier error, when the carrier accepted the package with a guarantee for delivery by the closing date and time, or (2) significant weather delays or natural disasters, CDC will upon receipt of proper documentation, consider the application as having been received by the deadline.

Any application that does not meet the above criteria will not be eligible for competition, and will be discarded. The applicant will be notified of their failure to meet the submission requirements.

H. Evaluation Criteria

Application

Applicants are required to provide measures of effectiveness that will demonstrate the accomplishment of the various identified objectives of the cooperative agreement. Measures of effectiveness must relate to the performance goals stated in the purpose section of this announcement. Measures must be objective and quantitative and must measure the intended outcome. These measures of effectiveness must be submitted with the application and will be an element of evaluation.

Eligible applications will be evaluated individually against the following criteria by an independent peer review special emphasis panel (SEP) appointed by CDC that will review the scientific merit of the applications. This will be the primary review of applications. These SEP reviewers will review all applications for scientific merit using current National Institutes of Health (NIH) criteria (a scoring system of 100–500 points) to evaluate the methods and scientific quality of the application. All categories are of equal importance, however, the application does not need to be strong in all categories to be judged likely to have a major scientific impact.

Factors to be considered will include:

1. Significance

Applicant has described how this study will advance scientific knowledge of how to tailor, implement, and evaluate community-based interventions for preventing motor vehicle-related injuries.

2. Approach (for Tailoring, Implementing, and Evaluating the Selected Interventions)

The extent to which the applicant's work plan and timetable includes:

a. The identification of representatives to be named as members of the coalition, including a description of the areas of expertise covered by each; the specific roles and responsibilities of each in implementing this cooperative agreement; methods for making decisions; etc.

b. Memorandum of agreement and understanding or letters of support from these collaborating organizations as an appendix, and the extent to which these letters indicate that the applicant and the other collaborating organizations have established a "working partnership" which specifies the active roles each will have in the study.

c. Plans for collecting or obtaining and analyzing baseline (pre-intervention) and follow-up data for the measures of effectiveness.

d. A description of the process used in selecting the interventions to be implemented.

e. A description of the process to be used in preparing the detailed plan for tailoring, implementing and evaluating the selected interventions.

f. Initial plans to rigorously evaluate the interventions including appropriate measures of effectiveness that will demonstrate the accomplishment of the identified objectives of the cooperative agreement. Measures should be objective and quantifiable and measure the intended outcome.

g. Plans to train and support staff regarding the responsibilities of this cooperative agreement, and the availability of staff and facilities to carry out this cooperative agreement.

h. Acknowledgement of potential problem areas and plans to consider alternative tactics.

3. Investigator

The extent to which the applicant has documented that the principal investigator is appropriately trained and well-suited to carry out the study.

4. Environment

The extent to which the applicant and proposed collaborators have documented:

a. Their history and current capacity to provide a leadership function in convening and facilitating the work of the coalition.

b. Their history and current capacity to provide a leadership function in the tailoring, implementation, and evaluation of the selected community-based interventions to reduce motor vehicle-related injuries.

c. Their history and current capacity to present findings at national conferences and prepare peer-reviewed manuscripts.

d. A willingness to attend and participate in technical assistance and planning meetings and related travel to Atlanta coordinated by the CDC for all cooperative agreement recipients.

e. Their organizational capacity to realize the objectives of the cooperative agreement.

f. Their management operation, structure and/or organization. An organizational chart of the applicant's organization should be included as an appendix. Additionally, the applicant should include within their management plan the specific role and mechanisms to be established to ensure effective coordination, communication and shared decision making among the involved agencies/organizations.

g. A staffing plan for the project, noting existing staff as well as additional staffing needs. The responsibilities of individual staff members including the level of effort and allocation of time for each project activity by staff position should be included. The specific staff positions within the other involved state level agencies, both in-kind and funded, should be described.

h. Resumes, biosketches, and/or position descriptions (*i.e.* for current staff, in-kind, and proposed positions to be funded under this cooperative agreement) should be included as an appendix. This should include the use of consultants, as appropriate.

i. A continuation plan in the event that key staff leave the project, how new staff will be smoothly integrated into the project, and assurances that resources will be available when needed for this project.

j. Previous experience of project staff to submit required reports on time.

5. Ethical Issues

What provisions have been made for the protection of human subjects and the safety of the research environments? How does the applicant plan to handle issues of confidentiality and compliance with mandated reporting requirements, (*e.g.*, suspected child abuse)? Does the application adequately address the requirements of 45 CFR part 46 for the protection of human subjects? (An application can be disapproved if the research risks are sufficiently serious and protection against risks is so inadequate as to make the entire application unacceptable.) The degree to which the applicant has met the CDC Policy requirements regarding the inclusion of women, ethnic, and racial groups in the proposed research. This includes:

a. The proposed plan for the inclusion of both sexes and racial and ethnic minority populations for appropriate representation.

b. The proposed justification when representation is limited or absent.

c. A statement as to whether the design of the study is adequate to measure differences when warranted.

d. A statement as to whether the plans for recruitment and outreach for study participants include the process of establishing partnerships with communities and recognition of mutual benefits. Is there evidence of effective working relationships between the applicant and community organizations? Does the applicant describe experience in developing community partnerships and the community's current and anticipated capacity to carry out the proposed activities?

6. Study Samples

Are the samples rigorously defined to permit complete independent replication at another site? Have the referral sources been described, including the definitions and criteria? What plans have been made to include women and minorities and their subgroups as appropriate for the scientific goals of the research? How will the applicant deal with recruitment and retention of subjects?

7. Dissemination

a. Plans to present findings to local, state, regional, and national audiences.

b. Plans to prepare peer-reviewed manuscripts based on the study.

8. Measures of Effectiveness

Are the measures set forth in the application in accordance with CDC's performance plans? How adequately has the applicant addressed these measures?

The SEP will also examine the appropriateness of the proposed study budget and duration in relation to the proposed research and the availability of data required for the study.

The secondary review will be conducted by the Science and Program Review Subcommittee (SPRS) of the Advisory Committee for Injury Prevention and Control (ACIPC). ACIPC Federal agency experts will be invited to attend the secondary review and will receive modified briefing books (*i.e.*, abstracts, strengths and weaknesses from summary statements, and project officer's briefing materials). ACIPC Federal agency experts will be encouraged to participate in deliberations when applications address overlapping areas of research interest so that unwarranted duplication in federally funded research can be avoided and special subject area expertise can be shared. The NCIPC Division Associate Directors for Science (ADS) or their designees will attend the secondary review in a similar capacity as the ACIPC Federal agency experts to assure that research priorities of the announcement are understood and to provide background regarding current research activities. Only SPRS members will vote on funding recommendations, and their recommendations will be carried to the entire ACIPC for voting by the ACIPC members in closed session. If any further review is needed by the ACIPC, regarding the recommendations of the SPRS, the factors considered will be the same as those considered by the SPRS.

The subcommittee's responsibility is to develop funding recommendations for the NCIPC Director based on the results of the primary review, the relevance and balance of proposed research relative to the NCIPC programs and priorities, and to assure that unwarranted duplication of federally funded research does not occur. The secondary review committee has the latitude to recommend to the NCIPC Director, to reach over better ranked proposals in order to assure maximal impact and balance of proposed research. The factors to be considered will include:

1. The results of the primary review including the application's priority score as the primary factor in the selection process.

2. The relevance and balance of proposed research relative to the NCIPC programs and priorities.

3. The significance of the proposed activities in relation to the priorities and objectives stated in Healthy People 2010, the Institute of Medicine report, Reducing the Burden of Injury, and the NCIPC Injury Research Agenda.

4. Budgetary considerations including the extent to which the budget is

reasonable, clearly justified, and consistent with the intended use of funds.

I. Other Requirements

Technical Reporting Requirements

Provide CDC with original plus two copies of:

1. Interim progress report, no less than 90 days before the end of the budget period. The progress report will serve as your non-competing continuation application, and must contain the following elements:

a. Current Budget Period Activities Objectives.

b. Current Budget Period Financial Progress.

c. New Budget Period Program Proposed Activity Objectives.

d. Detailed Line-Item Budget and Justification.

e. Additional Requested Information.

2. Financial status report, no more than 90 days after the end of the budget period.

3. Final financial and performance reports, no more than 90 days after the end of the project period.

Send all reports to the Grants Management Specialist identified in the "Where to Obtain Additional Information" section of this announcement.

Additional Requirements

The following additional requirements are applicable to this program. For a complete description of each, see Attachment II of the program announcement, as posted on the CDC Web site.

AR–1 Human Subjects Requirements
AR–2 Requirements for Inclusion of Women and Racial and Ethnic Minorities in Research
AR–7 Executive Order 12372 Review
AR–8 Public Health System Reporting Requirements
AR–9 Paperwork Reduction Act Requirements
AR–10 Smoke-Free Workplace Requirements
AR–11 Healthy People 2010
AR–13 Prohibition on Use of CDC Funds for Certain Gun Control Activities
AR–20 Conference Support

J. Where To Obtain Additional Information

This and other CDC announcements, the necessary applications, and associated forms can be found on the CDC Web site, Internet address: *http://www.cdc.gov*.

Click on "Funding" then "Grants and Cooperative Agreements".

For general questions about this announcement, contact: Technical Information Management, CDC Procurement and Grants Office, 2920 Brandywine Road, Atlanta, GA 30341–4146. Telephone: 770–488–2700.

For business management and budget assistance, contact: Stephen Lester, Grants Management Specialist, CDC Procurement and Grants Office, Centers for Disease Control and Prevention, 2920 Brandywine Road, Atlanta, GA 30341–4146. Telephone: 770–488–1998. E-mail address: *SVL3@cdc.gov*.

For program technical assistance, contact: Tim Groza, MPA, Project Officer, National Center for Injury Prevention and Control, Centers for Disease Control and Prevention, 4770 Buford Highway NE, MS K–63, Atlanta, GA 30341–3724. Telephone: 770–4676. E-mail address: *tgroza@cdc.gov*.

Dated: May 13, 2003.

Sandra R. Manning,

Director, Procurement and Grants Office, Centers for Disease Control and Prevention.

[FR Doc. 03–12398 Filed 5–16–03; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[Program Announcement Number 03109]

Cooperative Agreement for Surveillance and Eradication in the Global Guinea Worm Eradication Effort; Notice of Availability of Funds

Application Deadline: July 3, 2003.

A. Authority and Catalog of Federal Domestic Assistance Number

This program is authorized under the Public Health Service Act, sections 301(a) (42 U.S.C. 241(a)), 311(42 U.S.C. 243), and 317(k)(2) (42 U.S.C. 247b(k)(2)), as amended. The Catalog of Federal Domestic Assistance number is 93.283.

B. Purpose

The Centers for Disease Control and Prevention (CDC) announces the availability of fiscal year (FY) 2003 funds for a cooperative agreement program for surveillance and eradication in the global Guinea worm eradication effort. This program addresses the "Healthy People 2010" focus areas of Immunization and Infectious Diseases.

The purpose of the program is to provide assistance for the eradication of *dracunculiasis* (Guinea worm disease) in all endemic countries.

Measurable outcomes of the program will be in alignment with the following performance goal for the National Center for Infectious Diseases: Protect Americans from infectious diseases.

C. Eligible Applicants

Applications may be submitted by public and private nonprofit organizationsand by governments and their agencies; that is:

- Universities
- Colleges
- Technical schools
- Research Institutions
- Hospitals
- Community-based organizations
- Faith-based organizations
- Federally recognized Indian tribal governments
- Indian Tribes
- Indian tribal organizations
- State and local governments or their bona fide agents (this includes the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, the Commonwealth of the Northern Marianna Islands, American Samoa, Guam, the Federated States of Micronesia, the Republic of the Marshall Islands, and the Republic of Palau)
- Political subdivisions of States (in consultation with States)

Note: Title 2 of the United States Code section 1611 states that an organization described in section 501(c)(4) of the Internal Revenue Code that engages in lobbying activities is not eligible to receive Federal funds constituting an award, grant or loan.

D. Funding

Availability of Funds

Approximately $95,000 is available in FY 2003 to fund one award. It is expected that the award will begin on or about September 15, 2003, and will be made for a 12-month budget period within a project period of up to five years. The funding estimate will not change so any application exceeding $95,000 will not be considered.

A continuation award within an approved project period will be made on the basis of satisfactory progress as evidenced by required reports and the availability of funds.

Recipient Financial Participation

No matching funds are required for this program.

Funding Preferences

Preference will be extended to applicants demonstrating leadership among the recognized partners of the global Guinea worm eradication campaign, with a record of success supporting and coordinating international disease eradication campaigns, specifically in generating political will, financial support and providing technical expertise; to those organizations documenting existing infrastructure (*i.e.*, materiel resources, staffing sufficiency, epidemiologic surveillance capacity and experience, international field experience, experience in successful eradication campaigns, and consistent experience successfully dealing with regional cross-border issues); and to those applicants demonstrating established collaboration with ministries of health in targeted countries.

E. Program Requirements

In conducting activities to achieve the purpose of this program, the recipient will be responsible for the activities listed in 1. Recipient Activities, and CDC will be responsible for the activities listed in 2. CDC Activities.

1. Recipient Activities

a. Develop and implement surveillance plans to identify, contain and report cases of *dracunculiasis* in the highest, secondary and tertiary priority areas endemic for Guinea worm in Africa.

b. Develop and implement interventions in targeted and priority areas.

c. Provide sufficient and adequately trained personnel.

d. Develop an evaluation plan to assess development and implementation of interventions and surveillance activities.

2. CDC Activities

a. Collaborate with the recipient on the design, development and implementation of epidemiologic studies regarding Guinea worm interventions.

b. Collaborate with the recipient on site selection in the highest priority areas of Nigeria, Ghana, and Togo, in the secondary priority areas of the tri-border region of Mali, Niger, and Burkina Faso, and in the tertiary priority areas of the remaining West African countries (*i.e.*, Mauritania, Benin, and Cote d'Ivoire).

c. Collaborate with the recipient on assessing the use of intervention supplies and materials to specific country Guinea worm eradication programs.

d. Provide medical consultation, programmatic review, and epidemiologic assistance when and where possible in project areas during Guinea worm drives.

e. Provide technical expertise in the form of one-on-one or group consultations by phone, in person, or via formal or informal meetings.

f. Assist in the development of a research protocol for Institutional Review Board (IRB) review by all cooperating institutions participating in the research project. The CDC IRB will review and approve the protocol initially and on at least an annual basis until the research project is completed.

F. Content

Letter of Intent (LOI)

An LOI is optional for this program. The Program Announcement title and number must appear in the LOI. The narrative should be no more than one page, single-spaced, printed on one side, with one-inch margins, and unreduced 12-point font. Your letter of intent will be used to enable CDC to determine the level of interest in the announcement and should include the following information, a brief description of the proposed study, the business address of the organization, and the name and phone number of the Principal Investigator.

Applications

The Program Announcement title and number must appear in the application. Use the information in the Program Requirements, Other Requirements, and Evaluation Criteria sections to develop the application content. Your application will be evaluated on the criteria listed, so it is important to follow them in laying out your program plan. The narrative should be no more than 25 pages, double-spaced, printed on one side, with one-inch margins, and unreduced 12-point font.

The narrative should consist of Experience and Background, Implementation Plan, Capacity, Methods, Evaluation, Objectives, Measures of Effectiveness, Budget, and Human Subjects. The Implementation Plan should address activities to be conducted over the entire five year project period.

G. Submission and Deadline

Letter of Intent (LOI) Submission

On or before June 3, 2003, submit the LOI to the Grants Management Specialist identified in the "Where to Obtain Additional Information" section of this announcement.

Application Forms

Submit the signed original and two copies of PHS 398 (OMB Number 0925–0001)(Adhere to the instructions on the Errata Instruction Sheet for PHS 398). Forms are available at the following Internet address: *www.cdc.gov/od/pgo/forminfo.htm*.

If you do not have access to the Internet, or if you have difficulty accessing the forms on-line, you may contact the CDC Procurement and Grants Office Technical Information Management Section (PGO–TIM) at: 770–488–2700. Application forms can be mailed to you.

Submission Date, Time, and Address

The application must be received by 4 p.m. eastern time July 3, 2003. Submit the application to: Technical Information Management-PA03109, CDC Procurement and Grants Office, 2920 Brandywine Road, Atlanta, GA 30341–4146. Applications may not be submitted electronically.

CDC Acknowledgment of Application Receipt

A postcard will be mailed by PGO–TIM, notifying you that CDC has received your application.

Deadline

Letters of intent and applications shall be considered as meeting the deadline if they are received before 4 p.m. eastern time on the deadline date. Any applicant who sends their application by the United States Postal Service or commercial delivery services must ensure that the carrier will be able to guarantee delivery of the application by the closing date and time. If an application is received after closing due to (1) carrier error, when the carrier accepted the package with a guarantee for delivery by the closing date and time, or (2) significant weather delays or natural disasters, CDC will upon receipt of proper documentation, consider the application as having been received by the deadline.

Any application that does not meet the above criteria will not be eligible for competition, and will be discarded. The applicant will be notified of their failure to meet the submission requirements.

H. Evaluation Criteria

Application

Applicants are required to provide measures of effectiveness that will demonstrate the accomplishment of the various identified objectives of the cooperative agreement. Measures of effectiveness must relate to the performance goals stated in the purpose section of this announcement. Measures must be objective and quantitative and must measure the intended outcome. These measures of effectiveness must be submitted with the application and will be an element of evaluation.

An independent review group appointed by CDC will evaluate each application against the following criteria:

1. Experience and Background (30 Points)

The extent to which the applicant documents previous participation and leadership in the ongoing Guinea worm eradication effort, including provision of political support through ministries and heads of state that reflect regional coordination of resources and efforts, the applicant's grasp of the elements and magnitude of effort necessary to strategize the eradication of Guinea worm, ability to respond to unanticipated needs, and overall commitment.

2. Project Implementation Plan (20 Total Points)

a. The extent to which the applicant demonstrates knowledge of the effort needed to eradicate Guinea worm, time frames, performance standards, and management of financial and materiel resources. A demonstration of overall high quality in an implementation plan, including: (1) Compatibility with the global Guinea worm eradication effort; (2) acceptability of the plan by key partners in the Guinea worm effort; and (3) a description that indicates the applicant's understanding of relevant issues, obstacles and goals. (15 points)

b. If research involving human subjects is proposed, the degree to which the applicant has met the CDC Policy requirements regarding the inclusion of women, ethnic, and racial groups in the proposed research. This includes: (1) The proposed plan for the inclusion of both sexes and racial and ethnic minority populations for appropriate representation; (2) the proposed justification when representation is limited or absent; (3) a statement as to whether the design of proposed studies is adequate to measure differences when warranted; and (4) a statement as to whether the plans for recruitment and outreach for study participants include the process of establishing partnerships with community/ies and recognition of mutual benefits. (5 points)

3. Capacity (15 Points)

The extent to which the applicant demonstrates sufficient, existing capacity to carry out the proposed plan, including staffing proposals (with curriculum vitae, titles and roles).

4. Methods (15 Points)

The extent to which applicant describes clear, practiced and accepted methods to implement elements of a Guinea worm eradication program.

5. Evaluation (10 Points)

The feasibility of the evaluation methods or procedures to monitor proposed activities, and the evaluation criteria to measure program accomplishments.

6. Objectives (5 Points)

The extent to which (1) the stated goals are specific, measurable, realistic, and time-phased; (2) the objectives are related to the purpose(s) stated in the Program Announcement; and (3) measures are objective and quantitative.

7. Measures of Effectiveness (5 Points)

The extent to which the applicant provides Measures of Effectiveness that will demonstrate the accomplishment of the various identified objectives of the award; that such measures are objective/quantitative and adequately measure the intended outcome.

8. Budget (Not Scored)

The extent to which the budget provides detail and justification, and that they are consistent with the stated objectives and adequate to support proposed activities.

9. Protection of Human Subjects (Not Scored)

The extent to which the application adequately addresses the requirements of title 45 CFR part 46 for the protection of human subjects. (Not scored; however, an application can be disapproved if the research risks are sufficiently serious and protection against risks is so inadequate as to make the entire application unacceptable.)

I. Other Requirements

Technical Reporting Requirements

Provide CDC with original plus two copies of:

1. Interim progress report, no less than 90 days before the end of the budget period. The progress report will serve as your non-competing continuation application, and must contain the following elements:

a. Current Budget Period Activity Objectives.

b. Current Budget Period Financial Progress.

c. New Budget Period Program Proposed Activity Objectives.

d. Detailed Line-Item Budget and Justification.

e. Additional Requested Information.

2. Financial status report, no more than 90 days after the end of the budget period.

3. Final financial and performance reports, no more than 90 days after the end of the project period.

Send all reports to the Grants Management Specialist identified in the "Where to Obtain Additional Information" section of this announcement.

Additional Requirements

The following additional requirements are applicable to this program. For a complete description of each, see Attachment I of the program announcement, as posted on the CDC website.

AR–1 Human Subjects Requirements

AR–2 Requirements for Inclusion of Women and Racial and Ethnic Minorities in Research

AR–7 Executive Order 12372

AR–10 Smoke Free Work Place Requirements

AR–11 Healthy People 2010

AR–12 Lobbying Restrictions

AR–15 Proof of Non-Profit Status

AR–22 Research Integrity

J. Where To Obtain Additional Information

This and other CDC announcements, the necessary applications, and associated forms can be found on the CDC Web site, Internet address: *http://www.cdc.gov*. Click on "Funding" then "Grants and Cooperative Agreements."

For general questions about this announcement, contact: Technical Information Management, CDC Procurement and Grants Office, 2920 Brandywine Road, Atlanta, GA 30341–4146. Telephone: 770–488–2700.

For business management and budget assistance, contact: Yolanda Sledge, Grants Management Specialist, Procurement and Grants Office, Centers for Disease Control and Prevention, 2920 Brandywine Road, Atlanta, GA 30341–4146. Telephone: 770–488–2787. E-mail Address: *yis0@cdc.gov*.

For program technical assistance, contact: Linda A. Webb, Public Health Advisor (MS/F22), Centers for Disease Control and Prevention, 4770 Bufford Highway, NE., Atlanta, GA 30341–4146. Telephone: 770/488–7784. E-mail address: *law6@cdc.gov*.

Dated: May 13, 2003.

Sandra R. Manning,

Director, Procurement and Grants Office, Centers for Disease Control and Prevention.

[FR Doc. 03–12399 Filed 5–16–03; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[Program Announcement 03062]

National Organizations' Support for Oral Health Programs; Notice of Availability of Funds

Application Deadline: July 3, 2003.

A. Authority and Catalog of Federal Domestic Assistance Number

This program is authorized under section 317(k)(2) of the Public Health Service Act, (42 U.S.C. 247b(k)(2)), as amended. The Catalog of Federal Domestic Assistance number is 93.283.

B. Purpose

The Centers for Disease Control and Prevention (CDC) announces the availability of fiscal year (FY) 2003 funds for a cooperative agreement program for the National Organizations' Support for Oral Health Programs. This program addresses the "Healthy People 2010" focus area of Oral Health.

The purpose of the program is to provide support for coordination of effort to identify state oral health program needs; facilitate development of systems and procedures that ensure the inclusion of essential and scientifically sound oral health program components; and enhance the effectiveness of state and local health department programs to prevent and control oral diseases in accordance with "Oral Health in America: A Report of the Surgeon General" and the National Oral Health "Call to Action" and accomplish the oral health-related objectives of Healthy People 2010.

Measures to address performance consistent with this program announcement should be included with the application.

C. Eligible Applicants

Applications may be submitted by national, public and private nonprofit organizations that have developed and implemented nationwide programs and activities designed to promote state and local health department capacity to carry out essential public health functions as they relate to oral disease prevention and control. National organizations that serve as an umbrella organization for their constituents (state and local oral health programs) provide a unique opportunity to address barriers to prevention and control, enhance population based programs, and improve the nation's oral health. The program effort will be national in scope with outcomes useful to all state health agencies.

Note: Title 2 of the United States Code section 1611 states that an organization described in section 501(c)(4) of the Internal Revenue Code that engages in lobbying activities is not eligible to receive Federal funds constituting an award, grant or loan.

D. Funding

Availability of Funds: Approximately $350,000 is available in FY 2003 to fund one award. It is expected that the award will begin on or about June 30, 2003, and will be made for a 12-month budget period within a project period of up to five years. Funding estimates may change.

Continuation awards within an approved project period will be made on the basis of satisfactory progress as evidenced by required reports and the availability of funds.

Use of Funds: Funds may be used to support personnel, and to purchase supplies and services directly related to program activities and consistent with the scope of the cooperative agreement. While the purchase of equipment is discouraged, it will be considered for approval if justified on the basis of being essential to the program and not available from any other source. Funds provided under this cooperative agreement are not to be used to conduct research. Funds may not be used for the purchase or lease of land or buildings, construction of facilities, renovation of existing space, or the delivery of clinical and therapeutic services, personal health services, medications, rehabilitation or other costs associated with screening or treatment for oral diseases.

Recipient Financial Participation: Matching funds are not required for this program.

Funding Preferences: Funding priority will be given to applicants that demonstrate: The ability to analyze, advise, and fulfill liaisons responsibilities for oral health and other related activities within public health agencies; experience in collaboration with other national dental and public health organizations to disseminate information on the needs and services provided by oral disease prevention and control programs and to recommend and advocate for improved policies and programs; and capacity to provide consultation and guidance to state and local health department programs focused on the establishment and improvement of statewide systems of coordinated, population-based oral disease prevention and control.

E. Program Requirements

In conducting activities to achieve the purpose of this program, the recipient will be responsible for the activities listed in 1. Recipient Activities, and CDC will be responsible for the activities listed in 2. CDC Activities.

1. Recipient Activities

a. Develop and implement a plan to design and disseminate new and/or update existing surveillance tools for use by state programs to assess oral health status and needs on the state and community levels.

b. Provide technical assistance, upon request from state oral health programs, to strengthen capacity to conduct oral health surveillance. Technical assistance may be provided through one-on-one consultation, workshops, conferences, or other forums.

c. Develop and implement a plan to revise and disseminate nationally accepted guidelines for state and territorial oral health programs to incorporate lessons learned and new or alternative practices identified as promising.

d. Develop, write, implement, and evaluate a process for assessments of state oral health programs. The process shall address, but is not limited to:

(1) Procedures for submission and processing of state requests for assessments; (2) criteria for and selection of assessment team leader and additional team members; (3) state, team leader, and team member responsibilities; (4) state and assessment team preparations; (5) guidelines for logistical arrangements; (6) the assessment process; (7) report preparation and delivery; (8) post-assessment follow-up. Recipient should also include evaluation activities to measure outcomes of state assessments and determine effectiveness of state program assessment as a strategy that impacts enhancement of oral health program capacity to perform core public health functions pertaining to oral disease prevention and control.

e. Develop, implement, and evaluate a written plan for initiating and maintaining liaison and collaborative associations with other key organizations. At a minimum, the plan should address (1) determination of relevance; (2) development of clear and specific objectives to be achieved through each association; (3) activities to be undertaken; (4) responsibilities, including reporting, of recipient organization representative(s) conducting liaison or collaborative activities; and (5) evaluation.

f. Co-sponsor, with CDC and other agencies and national organizations, an

annual public health conference to present information on state-of-the-art oral disease prevention and control research and practices and to facilitate networking across oral health-related disciplines. Recipient responsibilities will include, but may not be limited to, oversight of conference management and collaboration with CDC and other co-sponsors to coordinate, plan, and evaluate the conference each year.

g. Identify, describe, and disseminate promising public health approaches to improving oral health with demonstrated and/or potential success based on criteria that may include effectiveness, efficiency, collaboration, and sustainability. Descriptions and dissemination of identified practices should be designed to support the ability of users to select promising practices and make modifications as needed for application within the context of their own programs, resources, and sociopolitical environments. Recipient will meet annually with CDC to discuss progress and coordination.

h. Enhance dissemination of information among state oral health programs and between state programs and their public/private partner by developing, maintaining, and evaluating information technology (IT) resources. Disseminated information may include, but not be limited to, summaries of features and characteristics of state oral health programs, results of state and community data analysis, effective practices, new initiatives, calendar of events, and questions and answer exchange. Data stored and presented on the web site will be aggregate data from state oral health programs. No sensitive or person-level data will be stored or displayed. It is expected that the recipient will need to provide IT skills in areas such as (1) data base administration (designs, builds and maintains relational databases) with experience in Web-enabled databases; (2) development of static Web pages such as hyper text mark up language (html), dynamic Web pages such as active server pages (asp), and text-based search engines at a minimum; other types of pages or programming languages depending on the goals of the five-year plan; and improvement of usability and accessibility, such as section 508 of the Rehabilitation Act (29 U.S.C. 794d) compliance, of Web sites; and (3) local area network (LAN) and internet server maintenance, including securing or hardening the Web site against attacks.

2. CDC Activities

a. Provide assistance to develop and evaluate an internet-based oral health information system, including technical assistance in epidemiology and surveillance, Web development (including assessment of usability and accessibility), and editorial support.

b. Collaborate with recipient to assess state oral health programs using nationally accepted guidelines.

c. Provide assistance to plan an annual public health conference that includes, but is not limited to, representation at conference development meetings and identification and provision of CDC speakers.

d. Collaborate with recipient to develop and evaluate a process for identifying and disseminating population based oral health practices with demonstrated and/or promising success.

e. Meet annually with recipient to address progress and coordination of activities to identify, describe, and disseminate oral health practices that have demonstrated and/or promised success.

f. Determine information technology needs and disseminate information gathered through the recipient activities under this cooperative agreement.

F. Content

Letter of Intent (LOI): A LOI is requested from each applicant applying for this program announcement. The narrative should be no more than one single-spaced page, printed on one side, with one-inch margins, and unreduced 12-point font. Your LOI will not be evaluated, but will be used to assist CDC in planning for the objective review for this program, and should include the announcement number, a statement of the intent to apply, and the amount of funds to be requested.

Applications: The Program Announcement title and number must appear in the application. Use the information in the Program Requirements, Other Requirements, and Evaluation Criteria sections to develop the application content. Your application will be evaluated on the criteria listed, so it is important to follow them in laying out your program plan. The narrative should be no more than 35 pages, double-spaced, printed on one side, with one-inch margins, and unreduced 12-point font.

The narrative should consist of:

1. Executive Summary

Provide a clear and concise summary of the need for a national oral health program, proposed goals, major objectives and activities required for achievement of program goals and amount of Federal funding requested for budget year one of this cooperative agreement. Include proof of non-profit status.

2. Needs Assessment and Capacity

Describe the documented need for the proposed activities, current activities that provide relevant experience and expertise to perform the proposed activities, and collaborative relationships with other agencies and organizations that will be involved in the proposed activities.

3. Five-Year Plan

Describe realistic five-year goals and measurable, time-phased objectives for each proposed project; the major activities to achieve each objective; plans for collaboration with partners, including the CDC; and the evaluation process that will be used to determine effectiveness and initiate modifications as needed.

4. Year One Operational and Evaluation Plan

Provide specific, measurable, and time-phased year one objectives for each proposed project, the specific activities proposed to achieve the year one objectives, and a projected timetable for completion that displays dates for the accomplishment of tasks and identifies responsible parties. For each year one objective, specify how achievement will be measured and documented.

5. Management and Staffing Plan

Describe how the program will be effectively managed. Include the following:

a. Management structure including the lines of authority and plans for fiscal control.

b. The staff positions responsible for implementation of the program.

c. Qualifications and experience of the designated staff.

6. Budget and Justification

Provide a detailed budget request and line item justification that is consistent with the purpose of the program and the proposed objectives and activities.

G. Submission and Deadline

Letter of Intent (LOI): The letter of intent must be received by 4 p.m. eastern time June 9, 2003. Submit the LOI to the Grants Management Specialist listed in the "Where to Find Additional Information" section of this announcement.

Application Forms: Submit the signed original and two copies of PHS 5161–1 (OMB Number 0920–0428). Forms are available at the following Internet address: *www.cdc.gov/od/pgo/farminfo.htm*. If you do not have access to the Internet, or if you have difficulty accessing the forms on-line, you may contact the CDC Procurement and Grants Office Technical Information Management Section (PGO–TIM) at: 770–488–2700. Application forms can be mailed to you.

The application must be received by 4 p.m. eastern time July 3, 2003. Submit the application to: Technical Information Management—PA03062, CDC Procurement and Grants Office, 2920 Brandywine Road, Atlanta, GA 30341–4146.

Applications may not be submitted electronically.

CDC Acknowledgement of Application Receipt: A postcard will be mailed by PGO–TIM, notifying you that CDC has received your application.

Deadline: Applications shall be considered as meeting the deadline if they are received before 4 p.m. eastern time on the deadline date. Any applicant who sends their application by the United States Postal Service or commercial delivery services must ensure that the carrier will be able to guarantee delivery of the application by the closing date and time. If an application is received after closing due to (1) carrier error, when the carrier accepted the package with a guarantee for delivery by the closing date and time, or (2) significant weather delays or natural disasters, CDC will upon receipt of proper documentation, consider the application as having been received by the deadline.

Any application that does not meet the above criteria will not be eligible for competition, and will be discarded. The applicant will be notified of their failure to meet the submission requirements.

H. Evaluation Criteria

An independent review group appointed by CDC will evaluate each application against the following criteria (the criteria are listed in descending order by weight of score):

1. Five-Year Plan (35 points)

The extent to which the applicant clearly identifies realistic five-year goals, measurable, time-phased objectives for each proposed project, and the major activities to achieve the objectives; provides a realistic plan for collaboration with partners including CDC in the projects; and describes an evaluation process that is likely to provide meaningful information about the achievement of objectives.

2. Year One Plan (30 points)

The extent to which the year one objectives are specific, measurable and time-phased; tasks and activities are logical; the projected timetable is reasonable and realistic; and measures of progress and achievement are described.

3. Needs Assessment and Capacity (20 points)

The extent to which the applicant demonstrates experience and expertise to perform the proposed activities and provides evidence of collaborative relationships with other agencies and organizations relevant to the achievement of proposed goals and objectives.

4. Management and Staffing Plan (15 points)

The extent to which the applicant demonstrates management structure and staff positions with clear lines of authority and plans for fiscal control, and that designated staff have appropriate qualification and experience.

5. Budget and Justification (Not Scored)

The extent to which the applicant provides a detailed budget and justification consistent with the proposed program objectives and activities.

I. Other Requirements

Technical Reporting Requirements

Provide CDC with original plus two copies of:

1. An interim progress report is due no later than March 30, 2004. Subsequent interim reports will be due on the 30th of March each budget year through March 30, 2009. The interim progress report will serve as your non-competing continuation application, and must contain the following elements:

a. A succinct description of the program accomplishments/narrative and progress made in meeting each Current Budget Period Program Objective during the first six months of the budget period (June 30th through December 31st). *See* Measures of Performance below.

b. The reason(s) for not meeting established program objectives and strategies to be implemented to achieve unmet objectives.

c. Current Budget Period Financial Progress.

d. A description of New Budget Period Proposed Activities and Objectives.

e. Detailed Line-Item Budget and Justification.

f. For all proposed contracts, provide the name of contractor, method of selection, period of performance, scope of work, and itemized budget and budget justification. If the information is not available, please indicate To Be Determined until the information becomes available, it should be submitted to CDC Procurement and Grants Management Office contact identified in this program announcement.

2. Annual progress and financial status reports, no more than 90 days after the end of the budget period and consist of the same information outlined for the interim progress report in (a) through (c).

3. Final financial and performance reports, no more than 90 days after the end of the project period.

Measures of Performance

Applicants are required to provide measures of performance that will demonstrate the accomplishment of the various identified objectives of the cooperative agreement. Measures of performance must relate to the Recipient Activities (*see* section E.1.a–h of this announcement) as described below. Measures must be objective and quantitative and must measure the intended outcome. These measures of performance shall be submitted with the interim progress reports and shall be an element of evaluation for continuation.

1. Design and dissemination of new, and/or update of existing surveillance tools for state programs: Documentation should include the need for new and/or updated surveillance tools, description of the development or revision process, identification of those participating in the development and review of the tool(s), and dissemination methods and measurable outputs that demonstrate that the intended audience has been reached.

2. Provision of technical assistance to enhance oral health surveillance capacity in states: Documentation should include an annual summary of requests for technical assistance and responses to such requests; provision of technical assistance for at least five states or all states requesting assistance if fewer than five requests are received during a project year; for each request receiving assistance, document the nature of assistance provided, including method of delivery, amount of time expended, scope of assistance and immediate one-year results (products, skills, etc).

3. Revision and dissemination of national guidelines for state and territorial oral health programs: Documentation should include

adherence to the proposed timeline; identification of those participating in the development and review of revisions; the revisions finalized; methods of dissemination and measurable outputs that demonstrate that the intended audience has been reached.

4. Develop, implement and evaluate a written process for state oral health program assessment: Documentation should include adherence to the proposed timeline for process development; inclusion of all components described in the Program Requirements for this announcement; identification of those participating in the development and review of the process; at least 90 percent adherence to the process; rationale for and descriptions of deviations from process; and evaluation of outcomes attributable to site assessments.

5. Develop, implement, and evaluate a written plan for liaison and collaborative associations with other organizations: Documentation should include adherence to the proposed timeline for protocol development; inclusion of all components described in the Program Requirements for this announcement; identification of participants in the plan development and review process; at least 90 percent adherence to the plan; rationale for and descriptions of deviations from plan; and measurable outputs of liaison and collaborative associations.

6. Co-sponsor an annual public health conference: Documentation should include the scope of participation beyond the responsibilities described in the Program Requirements; promotional efforts; number of attendees; the number and percentage of conference sessions that include presentation of state or local population based oral health programs and practices; and demonstration of use of evaluation results in planning and implementation of subsequent conferences.

7. Identify, describe, and disseminate field-tested population based oral health practices with demonstrated and/or promising success: Documentation should include adherence to the proposed timeline for development and dissemination; evidence of a standardized form for submitting practice information; identification and role of participants in development and review process; annual meeting with CDC to discuss progress and coordination; methods of dissemination and measurable outputs that demonstrate that the intended audience has been reached.

8. Develop, maintain and evaluate IT resources: Documentation should include the extent of adherence to the proposed timeline; evidence of compliance with Section 508; evidence of procurement of IT services from a contractor with experience as required to fulfill the goals of the application.

Send all reports to the Grants Management Specialist identified in the "Where to Obtain Additional Information" section of this announcement.

Additional Requirements

The following additional requirements are applicable to this program. For a complete description of each, *see* Attachment I of the program announcement, as posted on the CDC Web site.

AR–10 Smoke-Free Workplace Requirements.

AR–12 Lobbying Restrictions.

AR–14 Accounting System Requirements.

AR–15 Proof of Non-profit Status.

Executive Order 12372 does not apply to this program.

J. Where To Obtain Additional Information

This and other CDC announcements, the necessary applications, and associated forms can be found on the CDC Web site, Internet address: *http://www.cdc.gov*. Click on "Funding" then "Grants and Cooperative Agreements".

For general questions about this announcement, contact: Technical Information Management, CDC Procurement and Grants Office, 2920 Brandywine Road, Atlanta, GA 30341–4146. Telephone: 770–488–2700.

For business management and budget assistance, contact: Nealean Austin, Grants Management Specialist, Procurement and Grants Office, Centers for Disease Control and Prevention, 2920 Brandywine Road, Atlanta, GA 30341–4146. Telephone: 770–488–2754. E-mail address: *nea1@cdc.gov*.

For program technical assistance, contact: Claudia Vousden, MPH, Division of Oral Health, National Center for Chronic Disease Prevention and Health Promotion, Centers for Disease Control and Prevention, 4770 Buford Highway, MS F–10, Atlanta, GA 30341. Telephone: (770) 488–5509. E-mail address: *cbv5@cdc.gov*.

Dated: May 12, 2003.

Sandra R. Manning,

Director, Procurement and Grants Office, Centers for Disease Control and Prevention.

[FR Doc. 03–12397 Filed 5–16–03; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[Program Announcement 03100]

Research To Improve Smoke Alarm Maintenance and Function; Notice of Availability of Funds

Application Deadline: July 3, 2003.

A. Authority and Catalog of Federal Domestic Assistance Number

This program is authorized under sections 391 and 301(a) of the Public Health Service Act, (42 U.S.C. 280b and 241(a)). The Catalog of Federal Domestic Assistance number is 93.136.

B. Purpose

The Centers for Disease Control and Prevention (CDC) announces the availability of fiscal year (FY) 2003 funds for a cooperative agreement for a randomized control study that will extend the current knowledge about what is the most effective approach to improve smoke alarm maintenance and function to reduce fire-related injuries. This study addresses the "Healthy People 2010" focus area, Injury and Violence Prevention.

The purpose of this funding is to determine the most effective approach to encourage behaviors that will improve smoke alarm maintenance and function over time. The applicant will develop a research model and implement a rigorous study to be conducted in a community setting that will:

1. Employ a variety of scientifically based strategies that are grounded in behavioral theory to improve household smoke alarm maintenance and function.

2. Evaluate the relative effectiveness of the proposed strategies over a minimum 18 months follow-up period when compared to control households. This study is intended to stimulate collaborative research by creating a community-based infrastructure in which State Health Departments will partner with university researchers and fire prevention organizations to develop, implement, and evaluate strategies to improve smoke alarm maintenance and long-term function.

Measurable outcomes of this research study will be in alignment with the following performance goal for the National Center for Injury Prevention and Control (NCIPC), described as a priority in the NCIPC Research Agenda: To conduct a targeted program of research to reduce injury-related death and disability.

C. Eligible Applicants

Applications may be submitted by: Public nonprofit organizations, private nonprofit organizations, universities, colleges, technical schools, research institutions, hospitals, managed care organizations, community-based organizations, faith-based organizations, federally recognized Indian tribal governments, Indian tribes, Indian tribal organizations, State and local governments or their *bona fide* agents (this includes the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, the Commonwealth of Northern Mariana Islands, American Samoa, Guam, the Federated States of Micronesia, the Republic of the Marshall Islands, and the Republic of Palau).

Other required eligibility criteria include the following:

(1) The applicant must provide evidence of effective and well-defined collaborative relationships needed to ensure the implementation of the proposed activities. (2) The collaboration must include at least a State Health Department (to provide leadership regarding local public health priorities), academic or research institution (to provide scientific and methodological expertise), and a fire prevention agency (to provide guidance in community implementation activities). (3) The applicant must include letters of support that describe the specific commitments and responsibilities that will be undertaken by the collaborating organizations.

Note: Title 2 of the United States Code section 1611 states that an organization described in section 501(c)(4) of the Internal Revenue Code that engages in lobbying activities is not eligible to receive Federal funds constituting an award, grant or loan.

D. Funding

Availability of Funds

Approximately $500,000 is available in FY 2003 to fund one award. It is expected that the award will begin on or about September 1, 2003, and will be made for a 12-month budget period within a project period of up to four years. The funding estimate may change.

Continuation awards within an approved project period will be made on the basis of satisfactory progress as evidenced by required reports and the availability of funds.

Recipient Financial Participation

Matching funds are not required for this program.

E. Program Requirements

Overall Study Objectives

The objective of this study is to develop and implement an effective behavioral approach that will improve household smoke alarm maintenance and long-term function. Research shows that functioning smoke alarms are more likely to be present in a home if a fire safety program provides and installs them instead of simply providing vouchers or discounts to individuals to obtain alarms. CDC programs currently being conducted in 16 states include home installation of smoke alarms plus general fire safety education in households at high risk for fire, fire-related injury, and death. Programs of this type seem reasonable but have not been evaluated scientifically to assess their impact on smoke alarm maintenance and function. Such studies would target vulnerable populations (*e.g.*, children under the age of five, adults age 65 and older, persons with low socioeconomic status) and incorporate training in smoke alarm testing behaviors, skill building, monitoring, educational boosters, reinforcement, modeling and/or practice behaviors, and self-efficacy to improve smoke alarm maintenance and to sustain alarm function over time.

In conducting activities to achieve the purpose of this study, the recipient will be responsible for the activities listed in 1. Recipient Activities, and CDC will be responsible for the activities listed in 2. CDC Activities.

1. Recipient Activities

a. Develop mutually beneficial collaborations among at least a State Health Department, academic or research institution, and a fire prevention agency. Identify agencies and organizations with the capacity to implement behavioral theory-based interventions.

b. Develop and implement a plan to obtain community input and develop partnerships to work together to reduce fire-related injuries by increasing smoke alarm maintenance and function among vulnerable populations in the community.

c. Develop a research model and implement a randomized study with at least two intervention groups plus a comparison group. All groups will receive home visits. One intervention will include smoke alarm installation and behavioral strategies (*e.g.*, that employ training in smoke alarm testing behaviors, skill building, monitoring, educational boosters, reinforcement, modeling and/or practice behaviors, and self-efficacy) to improve smoke alarm maintenance and function. A second intervention will include smoke alarm installation with general fire safety education. This intervention will use a theory-based educational program incorporating behavioral guidance (*e.g.*, fire escape planning, safe use of heaters, the need to maintain and test smoke alarms). The comparison households will receive home visits and a non-fire related, other public health educational program incorporating behavioral guidance (*e.g.*, nutritional counseling and diet planning).

d. Develop an evaluation plan that includes both process and outcome measures. Assess effectiveness by comparing smoke alarm function among all three groups of households after a follow-up period of at least 18 months. Additional interim follow-up intervals could also be incorporated into the evaluation design.

e. Develop data collection instruments and methods, and a coordinated system for data management and data quality assurance.

f. Travel to Atlanta annually to present a briefing to NCIPC staff describing progress to date.

2. CDC Activities

a. Provide up-to-date scientific information and technical assistance to awardee to assist in their final study design, intervention strategies and implementation.

b. Assist in developing a research protocol for annual Institutional Review Board (IRB) review by all cooperating institutions participating in the research study. The CDC IRB will review and approve the protocol initially and on at least an annual basis until the research study is completed.

c. Assist in ensuring human subjects assurances are in place.

d. Assist in data analysis, preparation of manuscripts and dissemination of study results.

e. Monitor and evaluate the scientific and operational accomplishments of the project. This will be accomplished through periodic site visits, telephone calls, electronic communication, technical reports and interim data analyses.

F. Content

Letter of Intent (LOI)

A LOI is strongly encouraged for this program. The LOI will be used to determine level of interest in the announcement. The LOI should include the following information: Program Announcement Number 03100; name and address of institution; name and telephone number of contact person;

specific objectives to be addressed by proposed study; and a brief description of project plans. The narrative should be no more than three pages, double-spaced, printed on one side, with one-inch margins, and unreduced 12-point Times Roman font.

Applications

The Program Announcement title and number must appear in the application. Use the information in the Program Requirements, Other Requirements, and Evaluation Criteria sections to develop the application content. Your application will be evaluated on the criteria listed so it is important to address each, preferably in order, with sufficient detail. Applicants may submit only one proposal.

The narrative should be no more than 25 (eight and a half by eleven) double-spaced pages, printed on one side, with one inch margins on four sides, unreduced 12-point Times New Roman font, and a page number at the bottom of each page. Applications with more than 25 pages will be returned and not reviewed. Please provide only attachments or appendices that are directly relevant to this request for funding. Include sample forms and data collection instruments. The budget, budget justification and attachments/appendices, including letters of support, are not included in the count for the 25-page limit. All pages, including appendices, must be numbered sequentially.

Applications should follow the PHS–398 (Rev. 5/2001) application and Errata sheet.

To document eligibility, the narrative should contain the following sections in the order presented:

1. Abstract (one page recommended):

Provide a brief abstract of the project. The abstract must reflect the study's focus and the length of the project period (maximum of four years) for which assistance is being requested (*see* "Availability of Funds" for additional information).

2. Background (three to five pages recommended):

Describe the applicant's background and knowledge of the field as it relates to this study. Document their capacity to accomplish the proposed study as demonstrated by relevant past or current injury prevention studies and smoke alarm program activities. Justify the proposed study using existing scientific knowledge. Describe relevant behavioral theories and how these will be applied to improve smoke alarm maintenance and function.

3. Goals and Objectives (three to five pages recommended):

Describe the specific questions this research is intended to address, the hypotheses to be tested, the specific study goals, and measurable objectives for each goal. Include a plan that addresses activities to be conducted over the entire four-year project period as well as a detailed time-line for the first year of the study.

4. Study Design and Methods (10–15 pages recommended):

a. Describe the study design and the procedures that will be used to accomplish the specific aims of the study. Describe and justify where and how the study will be implemented in order to achieve the stated goals and test the proposed hypotheses.

b. Describe the target population. Provide evidence that the applicant has the ability to access this population.

c. Describe how intervention and control households will be selected; the process by which households will be randomized; and how households will be accessed, recruited and retained.

d. Describe one proposed intervention that will use behavioral strategies to improve smoke alarm maintenance and function over time (which will include training in testing behaviors, skill building, monitoring, educational boosters, reinforcement, modeling and/or practice behaviors, and self-efficacy) and one intervention that will use a theory-based educational program incorporating behavioral guidance to improve general fire safety behaviors.

e. Describe the proposed non-fire related, other public health educational program incorporating behavioral guidance that will be provided to the comparison households.

f. Describe the process measures that will be used to document the implementation of the intervention.

g. Describe the plans for data collection and data management including security of data, assurance of participant confidentially, data entry, editing, and quality assurance procedures.

g. For all study groups, describe the measurable outcomes that will be used to evaluate the proposed interventions. Describe the time frame for collecting these data.

h. Describe a statistical analysis plan appropriate for the study design, which will be used to evaluate the impact of the proposed behavioral and educational interventions.

i. Describe the nature and extent of collaboration with CDC and/or others during various phases of the project.

5. Personnel and Collaborations (three to five pages):

Describe the personnel and collaborative activities needed to accomplish the proposed study. Study personnel should represent, at a minimum, a State Health Department to provide leadership regarding local public health priorities and vulnerable populations, an academic or research institution to provide scientific and methodological expertise, and a fire prevention agency or similar community-based organization to provide guidance in community implementation activities. Provide evidence that the study personnel have the expertise and capacity to accomplish the proposed activities and to provide the appropriate scientific oversight necessary to fulfill the study goals and objectives. This will include design of a rigorous scientific study; development, implementation, evaluation of the proposed intervention strategies; data collection and management; experience in delivering educational and behavioral interventions; and preparation of scientific papers. Evidence of the experience and capacity for all key staff members should include an attachment containing CVs and position descriptions.

6. Community Capacity (three to five pages):

Provide evidence of effective working relationships between the applicant and community organizations. The applicant should describe their experience in developing community partnerships and the community's current and anticipated capacity to carry out the proposed activities. An advisory committee representing diverse organizations including (but not limited to) fire prevention organizations, professional organizations, and community service organizations is recommended. For such a committee, describe the qualifications and appropriateness of the proposed members.

7. Human Subject Involvement:

Describe procedures that will provide for the protection of human subjects. Address how these procedures adequately address the requirements of 45 CFR 46 for the protection of human subjects.

8. Inclusion of Women and Racial and Ethnic Populations:

Describe (1) the proposed plan for the inclusion of both sexes and racial and ethnic minority populations for appropriate representation; (2) the proposed justification when representation is limited or absent; (3) a statement as to whether the design of the study is adequate to measure differences when warranted.

G. Submission and Deadline

Letter of Intent (LOI) Submission

On or before June 3, 2003, submit the LOI to appropriate recipient. The LOI should be on the applicant's letterhead and sent to the Grants Management Specialist identified in the "Where to Obtain Additional Information" section of this announcement.

Application Forms

Submit the signed original and two copies of PHS 398 (OMB Number 0925–0001). Adhere to the instructions on the Errata Instruction Sheet (as posted on the CDC website for PHS 398) to the CDC Procurement and Grants Office. Forms are available at the following Internet address: *http://www.cdc.gov/od/pgo/forminfo.htm.*

If you do not have access to the Internet, or if you have difficulty accessing the forms on-line, you may contact the CDC Procurement and Grants Office Technical Information Management Section (PGO–TIM) at: 770–488–2700. Application forms can be mailed to you

Submission Date, Time, and Address

The application must be received by 4 p.m. eastern time July 3, 2003. Submit the application to: Technical Information Management—PA 03100, CDC Procurement and Grants Office, 2920 Brandywine Road, Atlanta, GA 30341–4146.

Applications may not be submitted electronically.

CDC Acknowledgment of Application Receipt

A postcard will be mailed by PGO–TIM, notifying you that CDC has received your application.

Deadline

Letters of intent and applications shall be considered as meeting the deadline if they are received before 4 eastern time on the deadline date. Any applicant who sends their application by the United States Postal Service or commercial delivery services must ensure that the carrier will be able to guarantee delivery of the application by the closing date and time. If an application is received after closing due to (1) carrier error, when the carrier accepted the package with a guarantee for delivery by the closing date and time, or (2) significant weather delays, natural or manmade disasters, CDC will upon receipt of proper documentation, consider the application as having been received by the deadline.

Any application that does not meet the above requirements will not be eligible for competition, and will be discarded. The applicant will be notified of their failure to meet the submission requirements.

H. Evaluation Process and Criteria

Application

Applications which are complete and responsive may be subjected to a preliminary evaluation (streamline review) by a peer review committee, the Special Emphasis Panel (SEP), to determine if the application is of sufficient and scientific merit to warrant further review by the SEP. CDC will withdraw from further consideration applications judged to be noncompetitive and promptly notify the principal investigator/program director and the official signing for the applicant organization. A dual review process will evaluate applications that are complete and responsive.

All awards will be determined by the Director of the NCIPC based on priority scores assigned to applications by the primary review committee SEP, recommendations by the secondary review committee of the Science and Program Review Subcommittee of the Advisory Committee for Injury Prevention and Control (ACIPC), consultation with NCIPC senior staff, and the availability of funds.

1. The primary review will be a peer review conducted by the SEP. A committee of reviewers with appropriate expertise will review all applications for scientific merit using current National Institutes of Health (NIH) criteria (a scoring system of 100–500 points) to evaluate the methods and scientific quality of the application. All categories are of equal importance, however, the application does not need to be strong in all categories to be judged likely to have a major scientific impact.

Factors to be considered will include:

a. *Significance.* Does this study address an important problem? Does the applicant justify the present proposal using existing scientific knowledge? If the aims of the application are achieved, how will scientific knowledge be advanced? What will be the effect of these studies on the concepts or methods that drive this field?

b. *Approach.* Are the conceptual framework, design, methods, and analyses adequately developed, well integrated, and appropriate to the aims of the project? Does the applicant describe the specific questions this research is intended to address? Does the applicant describe how relevant behavioral theories will be applied to encourage the proposed activities? Does the applicant describe the hypotheses to be tested, the specific study goals, measurable objectives, and outcomes? Does the applicant acknowledge potential problem areas and consider alternative tactics?

Does the project include plans to measure progress toward achieving the stated objectives? Is there an appropriate work plan included? Does the applicant provide a detailed time-line for the first year of the study as well as a projected time-line for the subsequent four years?

Has the applicant clearly described how intervention and comparison households will be selected; the process by which households will be randomized; and how households will be accessed, recruited and retained? Does the applicant describe a proposed intervention strategy that will use behavioral strategies to improve smoke alarm maintenance and function over time?

Is there a statement as to whether the plans for recruitment and outreach for study participants include the process of establishing partnerships with community or communities and recognition of mutual benefits. Is there evidence of effective working relationships between the applicant and community organizations? Does the applicant describe experience in developing community partnerships and the community's current and anticipated capacity to carry out the proposed activities?

Are there adequate plans for data collection and data management including security of data, assurance of participant confidentially, data entry, editing, and quality assurance procedures? Is there a statistical analysis plan appropriate for the study design?

c. *Innovation.* Does the project employ novel concepts, approaches or methods? Are the aims original and innovative? Does the project challenge or advance existing paradigms, or develop new methodologies or technologies?

d. *Investigator.* Is the principal investigator appropriately trained and well suited to carry out this work? Is the proposed work appropriate to the experience level of the principal investigator and other significant investigator participants? Is there a prior history of conducting injury-related research? Does the applicant document capacity to accomplish the proposed study as demonstrated by relevant past or current injury prevention studies and smoke alarm program activities?

e. *Environment.* Does the scientific environment in which the work will be done contribute to the probability of success? Does the proposed research

take advantage of unique features of the scientific environment or employ useful collaborative arrangements?

Is there evidence of institutional support? Does the applicant describe the personnel and study collaborators needed to accomplish the proposed activities? Does the applicant provide evidence that the study personnel have the expertise and capacity to accomplish the proposed activities and to provide appropriate scientific oversight necessary to fulfill study goals and objectives?

Is there an appropriate degree of commitment and cooperation of other interested parties as evidenced by letters detailing the nature and extent of the involvement? Is there evidence of the experience and capacity for all key staff members including CVs and position descriptions?

f. *Study Samples.* Are the samples rigorously defined to permit complete independent replication at another site? Have the referral sources been described, including the definitions and criteria? What plans have been made to include women and minorities and their subgroups as appropriate for the scientific goals of the research? How will the applicant deal with recruitment and retention of subjects?

g. *Ethical Issues.* What provisions have been made for the protection of human subjects and the safety of the research environments? How does the applicant plan to handle issues of confidentiality and compliance with mandated reporting requirements, (*e.g.*, suspected child abuse)?

Does the application adequately address the requirements of 45 CFR part 46 for the protection of human subjects? Not scored; however, an application can be disapproved if the research risks are sufficiently serious and protection against risks is so inadequate as to make the entire application unacceptable.

Does the application adequately address the CDC Policy requirements regarding the inclusion of women, ethnic, and racial groups in the proposed research? This includes:

(1) The proposed plan for the inclusion of both sexes and racial and ethnic minority populations for appropriate representation.

(2) The proposed justification when representation is limited or absent.

(3) A statement as to whether the design of the study is adequate to measure differences when warranted.

(4) A statement as to whether the plans for recruitment and outreach for study participants include the process of establishing partnerships with community(ies) and recognition of mutual benefits.

h. *Dissemination.* What plans have been articulated for disseminating findings?

i. *Measures of Effectiveness.* The Peer Review Panel shall assure that measures set forth in the application are in accordance with CDC's performance plans. How adequately has the applicant addressed these measures?

j. *Budget.* The SEP will also examine the appropriateness of the proposed project budget and duration in relation to the proposed research and the availability of data required for the project.

2. The secondary review will be conducted by the Science and Program Review Subcommittee (SPRS) of the Advisory Committee for Injury Prevention and Control (ACIPC). ACIPC Federal agency experts will be invited to attend the secondary review and will receive modified briefing books (*i.e.*, abstracts, strengths and weaknesses from summary statements, and project officer's briefing materials). ACIPC Federal agency experts will be encouraged to participate in deliberations when applications address overlapping areas of research interest so that unwarranted duplication in federally funded research can be avoided and special subject area expertise can be shared. The NCIPC Division Associate Directors for Science (ADS) or their designees will attend the secondary review in a similar capacity as the ACIPC Federal agency experts to assure that research priorities of the announcement are understood and to provide background regarding current research activities. Only SPRS members will vote on funding recommendations, and their recommendations will be carried to the entire ACIPC for voting by the ACIPC members in closed session. If any further review is needed by the ACIPC, regarding the recommendations of the SPRS, the factors considered would be the same as those considered by the SPRS.

The Subcommittee's responsibility is to develop funding recommendations for the NCIPC Director based on the results of the primary review, the relevance and balance of proposed research relative to the NCIPC programs and priorities, and to assure that unwarranted duplication of federally funded research does not occur. The secondary review Subcommittee has the latitude to recommend to the NCIPC Director, to reach over better-ranked proposals in order to assure maximal impact and balance of proposed research. The factors to be considered will include:

a. The results of the primary review including the application's priority score as the primary factor in the selection process.

b. The relevance and balance of proposed research relative to the NCIPC programs and priorities.

c. The significance of the proposed activities in relation to the priorities and objectives stated in "Healthy People 2010", the Institute of Medicine report, "Reducing the Burden of Injury", and the NCIPC Injury "Research Agenda."

d. Budgetary considerations including the extent to which the budget is reasonable, clearly justified, and consistent with the intended use of funds.

I. Other Requirements

Technical Reporting Requirements

Provide CDC with original plus two copies of:

1. Interim progress reports, no less than 90 days before the end of the budget period. The progress report will serve as your non-competing continuation application, and must contain the following elements:

a. Current Budget Period Activities Objectives.

b. Current Budget Period Financial Progress.

c. New Budget Period Program Proposed Activity Objectives.

d. Detailed Line-Item Budget and Justification.

e. Additional Requested Information.

2. Financial status reports, no more than 90 days after the end of the budget period.

3. Final financial and performance reports, no more than 90 days after the end of the project period.

Send all reports to the Grants Management Specialist identified in the "Where to Obtain Additional Information" section of this announcement.

Additional Requirements

The following additional requirements are applicable to this program. For a complete description of each, see Attachment I of the program announcement, as posted on the CDC Web site.

AR–1 Human Subjects Requirements
AR–2 Requirements for Inclusion of Women and Racial and Ethnic Minorities in Research
AR–10 Smoke-Free Workplace Requirements
AR–11 Healthy People 2010
AR–12 Lobbying Restrictions
AR–14 Accounting System Requirements
AR–15 Proof of Non-Profit Status
AR–21 Small, Minority, and Women-Owned Business
AR–22 Research Integrity

Executive Order 12372 does not apply to this program.

J. Where To Obtain Additional Information

This and other CDC announcements, the necessary applications, and associated forms can be found on the CDC Web site, Internet address: *http://www.cdc.gov.* Click on "Funding" then "Grants and Cooperative Agreements".

For general questions about this announcement, contact: Technical Information Management, CDC Procurement and Grants Office, 2920 Brandywine Road, Atlanta, GA 30341–4146. Telephone: 770–488–2700.

For business management and budget assistance, contact: Wanda Allison, Grants Management Specialist, Procurement and Grants Office, Centers for Disease Control and Prevention, 2920 Brandywine Road, Atlanta, GA 30341–4146, Telephone: 770–488–2645, E-mail address: *wba3@cdc.gov.*

For business management and budget assistance in the territories, contact: Angelia Hill, Grants Management Specialist, Procurement and Grants Office, Centers for Disease Control and Prevention, 2920 Brandywine Road, Atlanta, GA 30341–4146, Telephone: 770–488–2785, E-mail address: *aph8@cdc.gov.*

For program technical assistance, contact: Judy Stevens, Ph.D., Technical Adviser, National Center for Injury Prevention and Control, Centers for Disease Control and Prevention, 4770 Buford Highway NE, MS K–63, Atlanta, GA 30341–3724, Telephone: 770–488–4649, E-mail address: *JAS2@cdc.gov.*

Dated: May 1, 2003.

Sandra R. Manning,

Director, Procurement and Grants Office, Centers for Disease Control and Prevention.

[FR Doc. 03–12395 Filed 5–16–03; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Notice for June 2003 Advisory Committee Meeting

AGENCY: Administration on Children, Youth and Families, ACF, DHHS.

ACTION: Notice of meeting; Advisory Committee on Head Start Research and Evaluation.

SUMMARY: The 1998 Head Start Reauthorization (42 U.S.C. 9844(g); section 649(g)(1) of the Head Start Act, as amended) called on the Secretary of Health and Human Services to form an independent panel of experts (*i.e.*, an Advisory Committee) to offer advice concerning research designs that would provide a national analysis of the impact of Head Start Programs. The June 16 and 17 meeting provides an opportunity for the Advisory Committee to receive an update on the design and implementation plans for the study.

DATES: June 16, 2003, 9 a.m.–5 p.m. June 17, 2003, 9 a.m.–4 p.m.

Place: Loews L'Enfant Plaza Hotel, 480 L'Enfant Plaza, Washington, DC 20024. Telephone 202–484–1000. Fax: 202–646–4456.

SUPPLEMENTARY INFORMATION: This meeting is open to the public and is barrier free. Meeting records will also be open to the public and will be kept at the Switzer Building located at 330 C Street, SW., Washington, DC 20447. The Head Start Bureau also intends to make material related to this meeting available on the Head Start Web site (*http://www.acf.hhs.gov/programs/hsb/research/hsreac/index.htm*). An interpreter for the deaf and hearing impaired will be available upon advance request by calling Xtria at 703–821–3090 (ext. 265).

FOR FURTHER INFORMATION CONTACT: Michael L. Lopez, Ph.D. at 202–205–8212 for substantive information. ACF Office of Public Affairs at 202–401–9215 for press inquiries. Xtria at 703–821–3090 (ext. 265) for logistical information.

Dated: May 13, 2003.

Frank Fuentes,

Deputy Commissioner, Administration on Children, Youth and Families.

[FR Doc. 03–12462 Filed 5–16–03; 8:45 am]

BILLING CODE 4184–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

Biological Response Modifiers Advisory Committee; Notice of Meeting

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

This notice announces a forthcoming meeting of a public advisory committee of the Food and Drug Administration (FDA). At least one portion of the meeting will be closed to the public.

Name of Committee: Biological Response Modifiers Advisory Committee.

General Function of the Committee: To provide advice and recommendations to the agency on FDA's regulatory issues.

Date and Time: The meeting will be held on June 9, 2003, from 1 p.m. to approximately 3:30 p.m.

Location: National Institutes of Health, Bldg. 29A, rm. 1A09, 29 Lincoln Dr., Bethesda, MD. This meeting will be held by a telephone conference call. Members of the public attending the meeting may participate during the open session of the meeting at the specified location.

Contact Person: Gail Dapolito or Rosanna L. Harvey, Center for Biologics Evaluation and Research (HFM–71), Food and Drug Administration, 1401 Rockville Pike, Rockville, MD 20852, 301–827–0314, or FDA Advisory Committee Information Line, 1–800–741–8138 (301–443–0572 in the Washington, DC area), code 12389. Please call the Information Line for up-to-date information on this meeting.

Agenda: On June 9, 2003, the committee will receive an update on individual research programs in the Division of Cellular and Gene Therapies.

Procedure: On June 9, 2003, from 1 p.m. to approximately 3 p.m., the meeting is open to the public. Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Written submissions may be made to the contact person by June 2, 2003. Oral presentations from the public will be scheduled between approximately 2 p.m. and 3 p.m. Time allotted for each presentation may be limited. Those desiring to make formal oral presentations should notify the contact person before June 2, 2003, and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time requested to make their presentation.

Closed Committee Deliberations: On June 9, 2003, from approximately 3 p.m. to 3:30 p.m., the meeting will be closed to permit discussion where disclosure would constitute a clearly unwarranted invasion of personal privacy (5 U.S.C. 552b(c)(6)). The committee will discuss a review of individual research programs in the Center for Biologics Evaluation and Research.

Persons attending FDA's advisory committee meetings are advised that the agency is not responsible for providing access to electrical outlets.

FDA welcomes the attendance of the public at its advisory committee meetings and will make every effort to accommodate persons with physical disabilities or special needs. If you

require special accommodations due to a disability, please contact Gail Dapolito at least 7 days in advance of the meeting.

Notice of this meeting is given under the Federal Advisory Committee Act (5 U.S.C. app. 2).

Dated: May 8, 2003.

Peter J. Pitts,

Associate Commissioner for External Relations.

[FR Doc. 03–12367 Filed 5–16–03; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 03D–0167]

Draft Guidance for Industry on Dispute Resolution Procedures for Science-based Decisions on Products Regulated by the Center for Veterinary Medicine; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of the draft guidance for industry (#79) entitled "Dispute Resolution Procedures for Science-Based Decisions on Products Regulated by the Center for Veterinary Medicine (CVM)." This draft guidance document describes dispute resolution procedures by which sponsors, applicants, or manufacturers of FDA regulated products for animals may request review of science-based decisions. This draft guidance does not address procedures for handling issues associated with FDA's new initiative to enhance pharmaceutical good manufacturing practices (GMP's).

DATES: Submit written or electronic comments on this draft guidance by August 4, 2003 to ensure their adequate consideration in preparation of the final document. General comments on agency guidance documents are welcome at any time.

Written comments on the information collection requirements must be received by July 18, 2003.

ADDRESSES: Submit written requests for single copies of the draft guidance document to the Communications Staff (HFV–12), Center for Veterinary Medicine, Food and Drug Administration, 7519 Standish Place, Rockville, MD 20855. Send one self-addressed adhesive label to assist that office in processing your requests.

Submit written comments on the draft guidance document to the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. Submit electronic comments to *http://www.fda.gov/dockets/ecomments*. Comments should be identified with the full title of the draft guidance document and the docket number found in the heading of this document. See the **SUPPLEMENTARY INFORMATION** section of this document for electronic access to the draft guidance document.

Submit written comments on the collection of information requirements to the Dockets Management Branch (address above). Comments should be identified with the docket number found in brackets in the heading of this document.

FOR FURTHER INFORMATION CONTACT: Marcia Larkins, Center for Veterinary Medicine (HFV–7), Food and Drug Administration, 7519 Standish Place, Rockville, MD 20855, 301–827–4535, e-mail: mlarkins@cvm.fda.gov.

SUPPLEMENTARY INFORMATION: FDA regulations, § 10.75 (21 CFR 10.75), provide a mechanism for any interested person to obtain internal review of any agency decision by raising the matter through the established agency channels of supervision or review for that matter.

On November 21, 1997, the President signed into law the Food and Drug Administration Modernization Act of 1997 (FDAMA) (Public Law 105–115). Section 404 of FDAMA creates new section 562 of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 360bbb–1). Section 562 of the act provides that, if a procedure under which an applicant, sponsor, or manufacturer (applicant) could request a review of a scientific controversy related to human drugs, animal drugs, human biologics, or devices did not already exist, either as a provision in the act or a regulation issued under the act, FDA must, by regulation, establish a procedure under which such an applicant may request a review of the controversy, including review by an appropriate scientific advisory panel or advisory committee.

In the **Federal Register** of November 18, 1998 (63 FR 63978), FDA amended § 10.75 to state explicitly that an applicant of a drug (including human drugs, animal drugs, and human biologics) or device may request review of a scientific controversy by an appropriate scientific advisory panel or an advisory committee. In the preamble to the final rule, FDA stated that implementation of this provision would be undertaken by the individual FDA centers and would be described in guidance documents. This draft guidance describes CVM's dispute resolution procedures under section 562 of the act.

CVM Appeals Procedure Guide 1240.3130 (Guide 1240.3130) of the CVM Program Policy and Procedures Manual (P & P Manual) describes CVM's current appeals procedure. Because this guidance predates FDAMA, CVM is revising its procedures. Draft Guidance #79, when finalized, will supercede Guide 1240.3130, and, at that time, CVM will eliminate the guide from the P & P Manual.

This draft guidance document describes CVM's procedures for handling requests for internal review of scientific controversies relating to agency decisions affecting animal drugs or other products regulated by CVM. Incorporated in this document is the dispute resolution procedure set forth in section 404 of FDAMA. While CVM seeks comments on all aspects of this draft guidance, CVM is particularly interested in the definition of a scientific controversy, standards for granting and denying a request for the review of a scientific controversy by an advisory committee, and the time frames for conducting the review.

II. Significance of Guidance

This Level 1 draft guidance is being issued consistent with FDA's Good Guidance Practices regulation (21 CFR 10.115). The draft guidance, when finalized, will represent the agency's current thinking on dispute resolution and the procedures regarding requests for review of scientific controversies relating to decisions affecting animal drugs or other products regulated by CVM. The document does not create or confer any rights for or on any person and will not operate to bind FDA or the public. Alternative methods may be used as long as they satisfy the requirements of the applicable statutes and regulations. If an applicant wants to discuss an alternative approach, they should contact the FDA staff responsible for implementing the guidance. If the applicant cannot identify the appropriate FDA staff, call 301–827–4535.

III. Paperwork Reduction Act of 1995

Under the Paperwork Reduction Act of 1995 (the PRA) (44 U.S.C. 3501–3520), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. "Collection of information" is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3 and includes agency requests or

requirements that members of the public submit reports, keep records, or provide information to a third party. Section 3506(c)(2)(A) of the PRA (44 U.S.C. 3506(c)(2)(A)) requires Federal agencies to provide a 60-day notice in the **Federal Register** concerning each proposed collection of information before submitting the collection to OMB for approval. To comply with this requirement, FDA is publishing a notice of the proposed collection of information set forth below.

With respect to the following collection of information, FDA invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of FDA's functions, including whether the information will have practical utility; (2) the accuracy of FDA's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques, when appropriate, and other forms of information technology.

Title: Appeals of Science-Based Decisions Above the Division Level

Description: FDA is issuing a draft guidance on the CVM process for formally resolving disputes relating to scientific controversies. The draft guidance describes procedures for formally appealing such disputes. The draft guidance provides information on how the agency intends to interpret and apply provisions of the existing regulations regarding internal agency review of decisions (21 CFR 10.75). In a final rule issued in the **Federal Register** on November 18, 1998 (63 FR 63978), FDA amended § 10.75 to reflect the provisions of FDAMA. This draft guidance document outlines the recommended procedure for persons who are applicants for approval of animal drugs or other products regulated by CVM who wish to submit a request for review of a scientific dispute.

The guidance recommends a procedure whereby applicants first seek review through the supervisory chain of command. If the issue is not resolved at the supervisor's level, the interested person may request in writing that the matter be reviewed at the next higher supervisory level. This process may continue through the agency's entire supervisory chain of command through CVM and to the Commissioner of Food and Drugs (Commissioner). At each level of review (Division, Office Director, Deputy Center Director, and Center Director levels) CVM recommends that the applicant identify the information in the administrative file upon which the request is based. If the appeal contains new information not previously contained in the administrative file, the matter will, in accordance with 21 CFR 10.75(d), be returned to the appropriate lower level in CVM for reevaluation based on the new information. After the applicant has appealed the decision through the supervisory chain of command, they may request review through an ad hoc appeals committee or review by the Veterinary Medicine Advisory Committee (VMAC) in writing to the CVM Ombudsman. If the applicant seeks review by the Ad Hoc Committee, the Chair should provide them the opportunity to submit written arguments to the Committee. The applicant may submit a letter appealing the Ad Hoc Committee's decision to the CVM director and then to the Commissioner. CVM recommends that persons filing a request for review by VMAC provide the CVM Ombudsman with a concise summary of the scientific issue in dispute, including a summary of the particular FDA action or decision to which the requesting party objects, the results of all efforts that have been made to resolve the dispute to date, and a clear articulated summary of the arguments and relevant data and information.

The information collected will form the basis for resolving the dispute between the requester and FDA. The likely respondents to this collection are applicants for approval of animal drugs or other products regulated by CVM who have a scientific dispute with FDA and who request a review of the matter.

Based on FDA's experience with dispute resolution, the agency expects that most persons seeking formal dispute resolution will have gathered the materials during any previous efforts to resolve the dispute with the agency. CVM considered the number and substance of similar appeals made to FDA in recent years under Guide 1240.3130 to arrive at the numbers reflected in table 1. Guidance #79, when finalized, will supercede Guide 1240.3130, and at that time, CVM will eliminate the guide from the P & P Manual.

FDA estimates the burden for this collection of information as follows:

TABLE 1.—ESTIMATED ANNUAL REPORTING BURDEN [1]

	No. of Respondents	Annual Frequency of Responses	Total Annual Responses	Hours per Response	Total Hours
Guidance	1	2	2	30	60

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

The use of VMAC for resolving scientific disputes represents a new process for CVM. Although the procedures for requesting dispute resolution by a scientific advisory committee as set forth in the draft guidance document are new, CVM estimates that the number of respondents who would submit requests would not increase. The number of hours per response (30) encompasses a wide range depending on the dispute involved. This estimate was based on discussions with industry and is an average of hours per response.

IV. Comments

This draft guidance document is being distributed for comment purposes only and is not intended for implementation at this time. Interested persons may submit to the Dockets Management Branch (address above) written or electronic comments regarding this draft guidance document. Submit written or electronic comments by August 4, 2003 to ensure adequate consideration in preparation of the final document. Written comments concerning the information collection requirements must be received by the Dockets Management Branch by July 18, 2003. Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. A copy of the draft guidance and received comments are available for public examination in the Dockets

Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

V. Electronic Access

Electronic comments may be submitted on the Internet at *http://www.fda.gov/dockets/ecomments*. Once on this site, select Docket No. 03D–0167 draft guidance for industry on "Dispute Resolution Procedures for Science-Based Decisions on Products Regulated by the Center for Veterinary Medicine" and follow the directions. Copies of this draft guidance may be obtained on the Internet from the CVM home page at *http://www.fda.gov/cvm*.

Dated: May 9, 2003.

Jeffrey Shuren,

Assistant Commissioner for Policy.

[FR Doc. 03–12369 Filed 5–16–03; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4920–N–25]

Notice of Proposed Information Collection: Comment Request Real Estate Settlement Procedures Act (RESPA) Disclosures

AGENCY: Office of the Assistant Secretary for Housing-Federal Housing Commissioner, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below will be submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

DATES: Comments Due Date: July 18, 2003.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB Control Number and should be sent to: Wayne Eddins, Reports Management Officer, Department of Housing and Urban Development, 451 7th Street, SW., L'Enfant Plaza Building, Room 8003, Washington, DC 20410 or *Wayne_Eddins@hud.gov*.

FOR FURTHER INFORMATION CONTACT: Ivy Jackson, Acting Director, Office of Interstate Land Sales and Real Estate Settlement Procedures Act, Department of Housing and Urban Development, 451 7th Street SW., Washington, DC 20410, telephone (202) 708–0502 (this is not a toll free number) for copies of the proposed forms and other available information.

SUPPLEMENTARY INFORMATION: The Department is submitting the proposed information collection to OMB for review, as required by the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35, as amended).

This Notice is soliciting comments from members of the public and affected agencies concerning the proposed collection of information to: (1) Evaluate whether the proposed collection is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (3) Enhance the quality, utility, and clarity of the information to be collected; and (4) Minimize the burden of the collection of information on those who are to respond; including the use of appropriate automated collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

This Notice also lists the following information:

Title of Proposal: Real Estate Settlement Procedures Act (RESPA) Disclosures.

OMB Control Number, if applicable: 2502–0265.

Description of the need for the information and proposed use: The Real Estate Settlement Procedures Act requires settlement service providers to give homebuyers certain disclosure information at or before settlement and pursuant to the servicing of the loan and escrow account. This includes a Special Information Booklet, a Good Faith Estimate, an Initial Servicing Disclosure, the Form HUD–1 or HUD–1A, and when applicable, an Initial Escrow Account Statement, an Annual Escrow Account Statement, an Escrow Account Disbursement Disclosure, an Affiliated Business Arrangement Disclosure, and a Servicing/Transfer Disclosure.

Agency form numbers, if applicable: HUD–1 and HUD–1A.

Estimation of the total numbers of hours needed to prepare the information collection including number of respondents, frequency of response, and hours of response: The total number of annual burden hours needed to prepare the information is 9,672,400; the number of respondents is estimated to be 20,000 generating approximately 129,980,000 responses annually; these are third party disclosures, the frequency of response is annually for one disclosure and as required for others; and the estimated time per response varies from 2 minutes to 15 minutes.

Status of the proposed information collection: Revision of a currently approved collection.

Authority: The Paperwork Reduction Act of 1995, 44 U.S.C. chapter 35, as amended.

Dated: May 9, 2003.

Sean G. Cassidy,

General Deputy Assistant Secretary for Housing—Deputy Federal Housing Commissioner.

[FR Doc. 03–12374 Filed 5–16–03; 8:45 am]

BILLING CODE 4210–27–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4829–N–26]

Notice of Proposed Information Collection: Comment Request; Federally Assisted Low-Income Housing Drug Elimination Grant Program

AGENCY: Office of the Assistant Secretary for Housing-Federal Housing Commissioner, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below will be submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

DATES: *Comments Due Date:* July 18, 2003.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB Control Number and should be sent to: Wayne Eddins, Reports Management Officer, Department of Housing and Urban Development, 451 7th Street, SW., L'Enfant Plaza Building, Room 8003, Washington, DC 20410, or *Wayne_Eddins@hud. gov*.

FOR FURTHER INFORMATION CONTACT: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, U.S. Department of Housing and Urban Development, 451 Seventh Street, SW., Room 6152, Washington, DC 20410; (202) 708–3000 (this is not a toll free number) for copies of the proposed forms and other available information.

SUPPLEMENTARY INFORMATION: The Department is submitting the proposed information collection to OMB for review, as required by the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35, as amended).

The Notice is soliciting comments from members of the public and affected agencies concerning the proposed collection of information to: (1) Evaluate whether the proposed collection is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (3) Enhance the quality, utility, and clarity of the information to be collected; and (4) Minimize the burden of the collection of information on those who are to respond; including the use of appropriate automated collection techniques or other form of information technology, e.g., permitting electronic submission of responses.

This Notice also lists the following information:

Title of Proposal: Federally Assisted Low-Income Housing Drug Elimination Grant Program.

OMB Control Number: 2502–0476.

Description of the need for the information and proposed use: Federally Assisted Low-Income Housing Drug Elimination Grants were authorized through yearly appropriations. Owners were eligible to apply for grants to fund security, and crime elimination activity in Federally assisted low-income housing projects. Funding for this program has not been appropriated since Fiscal Year 2001, but quarterly progress reports are still required. However, the Department will use program-end Performance Reports to determine how well grant funds were used in meeting stated program goals and in fighting drug-related crime and drug abuse. Grantees will also be able to evaluate their efforts through the completion of this report and will have data and evidence of program effectiveness available for both their future use and that of the public. HUD will use the Payment Voucher to monitor use of grant funds for eligible activities over the term of the grant. The grantee may similarly use this voucher to track and record their requests for payment reimbursement for grant-funded activities.

Agency Form Numbers, if applicable: HUD–50080–DF2B and SF–269.

Estimation of the total numbers of hours needed to prepare the information collection including number of respondents, frequency of response, and hours of response: The estimated number of respondents is 450 generating approximately 1,050 annual responses; the frequency of response is on occasion, quarterly, semi-annually, and annually; the estimated time needed to prepare the response varies from 15 minutes to 8 hours; and the total annual burden hours is estimated to be 1,950.

States of the proposed information collection: Extension of a currently approved collection.

Authority: The Paperwork Reduction Act of 1995, 44 U.S.C. chapter 35, as amended.

Dated: May 9, 2003.

Sean G. Cassidy,

General Deputy Assistant Secretary for Housing-Deputy Federal Housing Commissioner.

[FR Doc. 03–12375 Filed 5–16–03; 8:45 am]

BILLING CODE 4210–27–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4723–FA–23]

Announcement of Funding Awards for the Community Development Technical Assistance Programs; Fiscal Year 2002

AGENCY: Office of the Assistant Secretary for Community Planning and Development, HUD.

ACTION: Notice of funding awards.

SUMMARY: In accordance with section 102 (a)(4)(C) of the Department of Housing and Urban Development Reform Act of 1989, this announcement notifies the public of funding decisions made by the Department in a competition for funding under the Super Notice of Funding Availability (SuperNOFA) for the Community Development Technical Assistance Programs. This announcement contains the names of the awardees and the amounts of the awards made available by HUD.

FOR FURTHER INFORMATION CONTACT: Jean Whaley, Department of Housing and Urban Development, 451 7th Street, SW., Washington, DC 20410; telephone (202) 708–3176 extension 2774 (this is not a toll-free number). Hearing- and speech-impaired persons may access this number via TTY by calling the Federal Relay Service toll-free at 1–800–877–8339. For general information on this and other HUD programs, call Community Connections at 1–800–998–9999 or visit the HUD Web site at *http://www.hud.gov*.

SUPPLEMENTARY INFORMATION: The Fiscal Year 2002 Community Development Technical Assistance program is designed to increase the effectiveness of HUD's HOME Investment Partnerships Program (HOME), McKinney-Vento Homeless Assistance programs (Homeless), and Housing Opportunities for Persons with AIDS (HOPWA) through the selection of technical assistance (TA) providers for these three programs. The purposes of technical assistance under these three programs are as follows:

HOME Technical Assistance. To help HOME participating jurisdictions design and implement HOME programs, including improving their ability to design and implement housing strategies and incorporate energy efficiency into affordable housing; facilitating the exchange of information to help participating jurisdictions carry out their programs; facilitating the establishment and efficient operation of employer-assisted housing programs and land bank programs; and encouraging private lenders and for-profit developers of low-income housing to participate in public-private partnerships.

McKinney-Vento Act Homeless Assistance Programs Technical Assistance. To provide applicants, potential applicants, grantees, and project sponsors for McKinney-Vento Act funded Emergency Shelter Grants, Supportive Housing Program, Section 8 Moderate Rehabilitation Single Room Occupancy and Shelter Plus Care projects with technical assistance that promotes the development of housing and supportive services, as part of the Continuum of Care approach, to assist homeless persons in the transition from homelessness and to enable them to live as independently as possible.

HOPWA Technical Assistance. To train HOPWA grantees, project sponsors, and potential recipients of program funds in comprehensive housing strategies and responsive area programs that assist residents who are living with HIV/AIDS, and in the sound management of efficient and effective HOPWA programs. The grants also build the capacity of nonprofit organizations to carry out activities as HOPWA project sponsors.

The assistance made available in this announcement is authorized by the following:

The HOME Technical Assistance Program is authorized by the HOME Investment Partnerships Act (42 U.S.C. 12781–12783); 24 CFR part 92.

For the McKinney-Vento Act Homeless Assistance Programs Technical Assistance, the Supportive Housing Program is authorized under 42 U.S.C. 11381 *et seq.*; 24 CFR 583.140. The Emergency Shelter Grant, Section 8 Moderate Rehabilitation Single Room Occupancy Program, and Shelter Plus Care Technical Assistance Program are authorized under Pub. L. 107–73, Departments of Veterans Affairs and Housing and Urban Development and

Independent Agencies Appropriations Act, 2002.

The HOPWA program is authorized under the AIDS Housing Opportunities Act (42 U.S.C. 12901) and the HOPWA regulations are found at 24 CFR part 574. The HOPWA Technical Assistance program is authorized under Pub. L. 107–73, Departments of Veterans Affairs and Housing and Urban Development and Independent Agencies Appropriations Act, 2002.

The competition was announced in the SuperNOFA published March 26, 2002 (67 FR 13893). Applications were rated and selected for funding on the basis of selection criteria contained in that Notice.

For the Fiscal Year 2002 competition, a total of $9,830,481 was awarded to 41 technical assistance providers nationwide. In accordance with section 102(a)(4)(C) of the Department of Housing and Urban Development Reform Act of 1989 (103 Stat. 1987, 42 U.S.C. 3545), the Department is publishing the grantees and amounts of the awards in Appendix A to this document.

Dated: May 12, 2003.

Roy A. Bernardi,

Assistant Secretary for Community, Planning and Development.

APPENDIX A.—FISCAL YEAR 2002 FUNDING AWARDS FOR COMMUNITY DEVELOPMENT TECHNICAL ASSISTANCE PROGRAMS

TA Provider	City	State	TA Award
HOME TA Awards			
State of Alaska, Alaska Housing Finance Corporation	Anchorage	AK	$50,000.00
Rural Community Assistance Corporation	West Sacramento	CA	142,100.00
Dennison Associates, Inc	Washington	DC	329,670.00
National Affordable Housing Training Institute	Washington	DC	500,000.00
Tonya, Inc	Washington	DC	1,111,607.00
Florida Planning Group, Inc	Jacksonville	FL	29,800.00
Chicago Rehab Network	Chicago	IL	78,500.00
Abt Associates, Inc	Cambridge	MA	45,000.00
The Enterprise Foundation	Columbia	MD	105,966.00
Coastal Enterprises, Inc	Wiscasset	ME	25,000.00
State of Michigan Dept. of Consumer & Industry Services	Lansing	MI	119,800.00
Minnesota Housing Partnership	St. Paul	MN	50,000.00
Training and Development Associates, Inc	Laurinburg	NC	232,800.00
Supportive Housing Network of New York	New York	NY	20,312.00
Ohio CDC Association	Columbus	OH	67,130.00
Neighborhood Partnership Fund	Portland	OR	30,300.00
Capital Access, Inc	Philadelphia	PA	50,000.00
Puerto Rico Community Foundation	San Juan	PR	61,400.00
Community Development Services	Maryville	TN	20,000.00
ICF, Inc	Fairfax	VA	1,759,677.00
Common Ground	Seattle	WA	58,300.00
Northwest Regional Facilitators	Spokane	WA	25,000.00
Urban Economic Development Association of Wisconsin, Inc	Milwaukee	WI	40,932.00
Wisconsin Partnership for Housing Development, Inc	Madison	WI	20,468.00
Homeless TA Awards			
State of Alaska, Alaska Housing Finance Corporation	Anchorage	AL	40,000.00
HomeBase/The Center for Common Concerns	San Francisco	CA	142,000.00
Colorado Coalition for the Homeless	Denver	CO	40,000.00
National Puerto Rican Coalition, Inc	Washington	DC	12,000.00
Tonya, Inc	Washington	DC	1,019,193.00
Florida Planning Group, Inc	Jacksonville	FL	20,000.00
Iowa Coalition for Housing and the Homeless	Des Moines	IA	20,676.00
Chicago Health Outreach	Chicago	IL	46,922.00
Illinois Community Action Association	Springfield	IL	30,000.00
Technical Assistance Collaborative, Inc	Boston	MA	222,000.00
The Enterprise Foundation	Columbia	MD	128,000.00
Minnesota Housing Partnership	St. Paul	MN	52,000.00
Training and Development Associates, Inc	Laurinburg	NC	119,928.00
New Mexico Coalition to End Homelessness	Santa Fe	NM	40,000.00
Corporation for Supportive Housing	New York	NY	218,000.00
Nassau Suffolk Coalition for the Homeless	Garden City	NY	99,949.00
New York State Rural Housing Coalition, Inc	Albany	NY	57,000.00
Supportive Housing Network of New York	New York	NY	139,051.00
Coalition on Homelessness and Housing in Ohio	Columbus	OH	104,000.00
Diana T. Myers and Associates, Inc	Glenside	PA	57,000.00
Homeless Network of Texas dba Texas Homeless Network	Austin	TX	128,000.00
AIDS Housing of Washington	Seattle	WA	50,000.00
John Epler and Associates	Seattle	WA	40,000.00
Low Income Housing Institute	Seattle	WA	67,000.00
Urban Economic Development Association of Wisconsin, Inc	Milwaukee	WI	54,000.00

APPENDIX A.—FISCAL YEAR 2002 FUNDING AWARDS FOR COMMUNITY DEVELOPMENT TECHNICAL ASSISTANCE PROGRAMS—Continued

TA Provider	City	State	TA Award
HOPWA TA Awards			
The Enterprise Foundation	Columbia	MD	$200,000.00
AIDS Housing of Washington	Seattle	WA	1,750,000.00

[FR Doc. 03–12373 Filed 5–16–03; 8:45 am]

BILLING CODE 4210–29–P

DEPARTMENT OF THE INTERIOR

Office of the Secretary

Advisory Committee on Water Information; Notice of Renewal

This notice is published in accordance with section 9 (a) (2) of the Federal Advisory Committee Act (Pub. L. 92–463), 5 U.S.C. App. (1988). Following consultation with the General Services Administration, notice is hereby given that the Secretary of the Interior is renewing the Advisory Committee on Water Information (ACWI). OMB Memorandum M–92–01 dated December 10, 1991, designated the U.S. Geological Survey (USGS) as the lead agency for the Water Information Coordination Program (WICP) and also designated all other Federal organizations using water resources information to assist the USGS in ensuring the implementation of an effective WICP.

The purpose of the Committee is to represent the interests of water-information users and professionals in advising the Federal Government on Federal water-information programs and their effectiveness in meeting the Nation's water-information needs. Member organizations help to foster communications between the Federal and non-Federal sectors on sharing water information.

Membership represents a wide range of water resources interests and functions. Representation of the ACWI includes all levels of government, Tribes, public interest groups, academia, private industry, nonprofit and professional organizations. Member organizations designate their representatives and alternates. Membership is limited to a maximum of 35 organizations.

The Committee will function solely as an advisory body and in compliance with the provisions of the Federal Advisory Committee Act. The Charter will be filed under the Act, 15 days from the date of publication of this notice.

Further information regarding the ACWI may be obtained from the Associate Director for Water, USGS, Department of the Interior, 12201 Sunrise Valley Drive, Reston, Virginia 20192. Certification of renewal is published below.

Certification

I hereby certify that the renewal of the Advisory Committee on Water Information is necessary and in the public interest in connection with the performance of duties by the Department of the Interior mandated pursuant to the OMB Memorandum M–92–01.

Dated: May 9, 2003.

Gale A. Norton,

Secretary of the Interior.

[FR Doc. 03–12364 Filed 5–16–03; 8:45 am]

BILLING CODE 4310–Y7–M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Issuance of Permit for Incidental Take of Threatened Species Associated With a Habitat Conservation Plan for the Stimson Lumber Company, Montana

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of issuance of permit.

SUMMARY: On October 24, 2000, the U.S. Fish and Wildlife Service (Service), issued an incidental take permit associated with a habitat conservation plan to Plum Creek Timber Company (Permit Number TE–034609–0) for the incidental take of threatened and endangered species pursuant to section 10(a)(1)(B) of the Endangered Species Act of 1973, as amended (Act). Stimson Lumber Company is in the process of purchasing approximately 11,487 hectares (28,385 acres) of Plum Creek land in Montana covered by the above Incidental Take Permit for the Plum Creek Native Fish Habitat Conservation Plan (NFHCP). Stimson Lumber Company expressed the desire to continue implementing pertinent provisions of the NFHCP on these lands and to continue to be covered by an Incidental Take Permit. Partial transfer of an Incidental Take Permit is expressly authorized at 50 CFR 13.25

On March 17, 2003, along with the Service and Plum Creek, Stimson Lumber Company entered into an Assignment and Assumption Agreement (partial assignment only, in connection with the sale of the above-mentioned lands) to facilitate the transfer of all relevant obligations of the NFHCP, Implementing Agreement and the permit from Plum Creek to Stimson pursuant to 50 CFR 13.25. On March 21, 2003, Stimson Lumber Company submitted to the Service an application for an Incidental Take Permit, along with the Assignment and Assumption Agreement and a Letter of Agreement to fulfill the requirements of processing the partial transfer of the NFHCP to Stimson Lumber Company and to initiate discussions with the Service concerning an amendment of the NFHCP to include the grizzly bears and implement interim grizzly bear best management practices.

Notice is hereby given that on April 24, 2003, as authorized by the provisions of the Act, the Service issued an Incidental Take Permit (TE–070004) to Stimson Lumber Company subject to certain conditions set forth therein. The permit was granted only after the Service determined that it was applied for in good faith, that granting the permit would not be to the disadvantage of the threatened species, and that it will be consistent with the purposes and policies set forth in the Act, as amended.

Additional information on this partial transfer and permit issuance may be requested by contacting the Regional Habitat Conservation Planning Coordinator, 134 Union Boulevard, Suite 645, Lakewood, Colorado 80228, telephone (303) 236–7400, extension 280.

Dated: April 24, 2003.

Ralph O. Morgenweck,

Regional Director, Denver, Colorado.

[FR Doc. 03–12400 Filed 5–16–03; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Rumsey Indian Rancheria of Wintun Indians of California Ordinance for the Sale and Consumption of Alcoholic Beverages

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice.

SUMMARY: This notice publishes the Tribal Council Ordinance No. 02–04 regulating the Sale and Consumption of Alcoholic Beverages for the Rumsey Indian Rancheria of Wintun Indians of California. The Ordinance regulates and controls the possession, sale and consumption at a gaming facility located on the Rancheria known as the Cache Creek Indian Bingo & Casino and related hotel (hereinafter, "Facility"). The sale of alcohol within the Facility, for on-Facility consumption only, is hereby authorized. No alcoholic beverages may be sold at any location pursuant to this Ordinance other than within the Facility. The Rumsey Indian Rancheria Tribal Council enacted Tribal Council Resolution No. 09–24–02–02, on September 24, 2002, to authorize the enactment of the Ordinance. Ordinance No. 02–04, was adopted on September 24, 2002, but does not become effective until published in the **Federal Register** because the failure to comply with the Ordinance may result in criminal charges.

EFFECTIVE DATE: This Ordinance is effective on May 19, 2003.

FOR FURTHER INFORMATION CONTACT: Iris Drew, Southwest Regional Office, Branch of Tribal Government, PO Box 26567, Albuquerque, New Mexico 87125–6567; Telephone (505) 346–7592 or Ralph Gonzales, Office of Tribal Services, 1951 Constitution Ave., NW., MS–320–SIB, Washington, DC 20240; Telephone (202) 513–7629.

SUPPLEMENTARY INFORMATION: Pursuant to the Act of August 15, 1953, Public Law 83–277, 67 Stat. 586, 18 U.S.C. 1161, as interpreted by the Supreme Court in *Rice* v. *Rehner*, 463 U.S.713 (1983), the Secretary of the Interior shall certify and publish in the **Federal Register** notice of adopted liquor ordinances for the purpose of regulating liquor transactions in Indian country. The Rumsey Indian Rancheria of Wintun Indians of California enacted Tribal Council Ordinance No. 02–04, on September 24, 2002, for the purpose of governing the sale and consumption of alcoholic beverages only at its Indian gaming facility on tribal trust lands, known as the Cache Creek Indian Bingo & Casino and related hotel ("Facility"). The Rumsey Indian Rancheria has an existing liquor code to provide that the tribe, as owner and operator of a convenience store on the rancheria, will sell wine and beer for off-premises consumption only, published in the **Federal Register** on February 4, 1992 (57 FR 4314).

This notice is published in accordance with the authority delegated by the Secretary of the Interior to the Assistant Secretary—Indian Affairs by 209 Departmental Manual 8.1.

I certify that Tribal Council Ordinance No. 02–04, Sale and Consumption of Alcoholic Beverages at the gaming facility, located on tribal trust lands, known as the Cache Creek Indian Bingo & Casino and related hotel, was duly adopted by the Rumsey Indian Rancheria of Wintun Indians of California on September 24, 2002. The Ordinance was further authorized for enactment by Tribal Council Resolution No. 09–23–02–02, on September 24, 2002.

Dated: May 9, 2003.

Aurene M. Martin,

Acting Assistant Secretary—Indian Affairs.

Rumsey Indian Rancheria, Yolo County, California, Tribal Council Ordinance No. 02–04

Sale and Consumption of Alcoholic Beverages

The Tribal Council, governing body of the Rumsey Indian Rancheria of Wintun Indians of California (hereinafter "Tribe"), hereby enacts this Ordinance to govern the sale and consumption of alcoholic beverages at its Indian gaming facility and related hotel on Rancheria lands.

Preamble

1. Title 18, United States Code, Section 1161, provides Indian tribes with authority to enact ordinances governing the consumption and sale of alcoholic beverages on their Reservations, provided such ordinance is certified by the Secretary of the Interior, published in the **Federal Register** and such activities are in conformity with state law.

2. Pursuant to the Tribe's Constitution at Article 4 and Article 8 Section 1(i) and (j), the Tribal Council is the governing body of the Tribe with the power to enact ordinances to promote the general welfare of the Tribe and to plan and manage economic affairs of the Tribe.

3. The Tribe is and shall be the owner and operator of a gaming facility located on the Rancheria known as the Cache Creek Indian Bingo & Casino and related hotel (hereinafter "Facility"), at which Class III Gaming is conducted pursuant to the Tribe's Gaming Ordinance and a Compact executed with the State of California on September 10, 1999, ratified by the California Legislature, approved by the Secretary of the Interior on May 5, 2000, and published in the **Federal Register** on May 16, 2000.

4. The Facility, located on trust land, is an integral and indispensable part of the Tribe's economy, providing income to the Tribe and training and employment to its members.

5. The Facility includes restaurant and lounge areas in which food and beverages are served to patrons who may also desire to consume alcoholic beverages.

6. The Tribal Council has determined that it is now in its best interest to offer alcoholic beverages for sale and consumption at the Facility.

7. It is the purpose of this Ordinance to set out the terms and conditions under which the sale of said alcoholic beverages may take place.

General Terms

1. The sale of alcohol within the Facility, for on-Facility consumption only, is hereby authorized.

2. No alcoholic beverages may be sold at any location pursuant to this Ordinance other than within the Facility.

3. The sale of said alcoholic beverages authorized by this Ordinance shall be in conformity with all applicable laws of the State of California, and the sale of said beverages shall be subject to state sales tax, federal excise tax and any fees required by the Federal Bureau of Alcohol, Tobacco & Firearms. This includes but is not limited to the following examples:

a. No person under the age of 21 years shall consume, acquire or have in his or her possession at the Facility any alcoholic beverage.

b. No person shall sell alcohol to any person under the age of 21 at the Facility.

c. No person shall sell alcohol to a person apparently under the influence of liquor at the Facility.

4. Where there may be a question of a person's right to purchase liquor by reason of his or her age, such person shall be required to present any one of the following types of identification which shows his or her correct age and bears his or her signature and photograph: (1) Driver's license or identification card issued by any state Department of Motor Vehicles; (2) United States Active Duty Military card; (3) passport.

5. All liquor sales within the Facility shall be on a cash only basis and no credit shall be extended to any person, organization or entity, except that this provision does not prevent the use of major credit cards.

Posting

This Ordinance shall be conspicuously posted within the Facility at all times it is open to the public.

Enforcement

1. This Ordinance may be enforced by the Rumsey Tribal Gaming Agency by implementation of monetary fines not to exceed $500 and/or withdrawal of authorization to sell alcohol at the Facility. Prior to any enforcement action, the Rumsey Tribal Gaming Agency shall provide the alleged offender of this ordinance with at least three (3) days notice of an opportunity to be heard during a specially-called meeting. The decision of the Rumsey Tribal Gaming Agency shall be final.

2. This Ordinance also may be enforced by the Yolo County Sheriff's Office at the request of the Rumsey Tribal Gaming Agency.

Severability

If any provision or application of this ordinance is determined by review to be invalid, such adjudication shall not be held to render ineffectual the remaining portions of this title or to render such provisions inapplicable to other persons or circumstances.

Amendment

This ordinance may only be amended by a majority vote of the Tribal Council.

Sovereign Immunity

Nothing in this ordinance in any way limits, alters, restricts or waives the Tribe's sovereign immunity from unconsented suit or action.

Effective Date

This Ordinance shall become effective following its certification by the Secretary of the Interior and its publication in the **Federal Register**.

Certification

The foregoing ordinance was adopted by a vote of *5* for, and *0* against and *0* abstentions, at a duly called meeting of the Rumsey Indian Rancheria Tribal Council at which a quorum was present, on this 24th day of September 2002.

[FR Doc. 03–12406 Filed 5–16–03; 8:45 am]

BILLING CODE 4310–4J–P

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

San Pasqual Band of Mission Indians Ordinance for the Sale and Consumption of Alcoholic Beverages

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice.

SUMMARY: This notice publishes the San Pasqual Band of Mission Indians Tribal Liquor Control Ordinance. The Ordinance regulates and controls the possession, sale and consumption of liquor at a facility known as the Valley View Casino. The land is located on trust land and this ordinance allows for the sale and consumption of alcoholic beverages within the Casino, for on-premises consumption only. The sale of said alcoholic beverages is in conformity with all applicable laws of the State of California and applicable federal laws. The Ordinance was adopted by Tribal Ordinance No. SP113002–03 and Tribal Resolution No. SCA–SP–04–03, on November 30, 2002 and does not become effective until published in the **Federal Register** because the failure to comply with the Code may result in criminal charges.

EFFECTIVE DATE: This Code is effective on May 19, 2003.

FOR FURTHER INFORMATION CONTACT: Iris Drew, Southwest Regional Office, Branch of Tribal Government, P.O. Box 26567, Albuquerque, New Mexico 87125–6567; Telephone (505) 346–7592 or Ralph Gonzales, Office of Tribal Services, 1951 Constitution Ave., NW, MS–320–SIB, Washington, DC 20240; Telephone (202) 513–7629.

SUPPLEMENTARY INFORMATION: Pursuant to the Act of August 15, 1953, Public Law 83–277, 67 Stat. 586, 18 U.S.C. 1161, as interpreted by the Supreme Court in *Rice* v. *Rehner*, 463 U.S. 713 (1983), the Secretary of the Interior shall certify and publish in the **Federal Register** notice of adopted liquor ordinances for the purpose of regulating liquor transactions in Indian country. The San Pasqual Band of Mission Indians adopted Tribal Ordinance No. SP113002–03 and Tribal Council Resolution No. SCA–SP–04–03, on November 30, 2002. The purpose of this ordinance is to govern the consumption and sale of alcoholic beverages at the gaming facility located on the Reservation, known as the Valley View Casino for on-premises consumption only.

This notice is published in accordance with the authority delegated by the Secretary of the Interior to the Assistant Secretary—Indian Affairs by 209 Departmental Manual 8.1.

I certify that Resolution No. SCA–SP–04–03 authorizing the submittal of Tribal Ordinance No. SP113002–03, was duly adopted by the San Pasqual Band of Mission Indians on November 30, 2002.

Dated: May 9, 2003.

Aurene M. Martin,

Assistant Secretary—Indian Affairs.

The San Pasqual Band of Mission Indians Tribal Liquor Control Ordinance reads as follows:

San Pasqual Band of Mission Indians, Ordinance No. SP113002–03, Tribal Liquor Control Ordinance

I. Sale and Consumption of Alcoholic Beverages

The General Council of the San Pasqual Band of Mission Indians (hereinafter General Council), governing body of the San Pasqual Band (hereinafter Tribe), hereby enacts this Ordinance to govern the sale and consumption of alcoholic beverages within casino facilities on Reservation lands.

II. Preamble

1. Title 18, United States Code, Section 1161, provides Indian tribes with authority to enact ordinances governing the consumption and sale of alcoholic beverages on their Reservations, provided such ordinance is certified by the Secretary of the Interior, published in the **Federal Register** and such activities are in conformity with state law.

2. Pursuant to Article IV, Section 1 of the Constitution and By-Laws of the San Pasqual Band, the General Council is the governing body of the Tribe, with the power to enact ordinances to promote the general welfare and economic advancement of the Tribe and its members.

3. The Tribe is the owner and operator of a gaming facility located on the Reservation known as the Valley View Casino (hereinafter Casino), at which Class II and Class III Gaming is conducted pursuant to the Tribe's Gaming Ordinance and a Compact executed with the State of California on September 10, 1999, ratified by the California Legislature, approved by the Secretary of the Interior on May 5, 2000, and published in the **Federal Register** on May 16, 2000.

4. The Casino, located on trust land, is an integral and indispensable part of the Tribe's economy, and is intended to provide income to the Tribe and training and employment to its members.

5. The General Council has determined that it is now in the best interest of the Tribe to offer alcoholic beverages for sale and consumption in the Casino.

6. It is the purpose of this Ordinance to set out the terms and conditions under which the sale and consumption of said alcoholic beverages may take place.

III. General Terms

1. The sale and consumption of alcoholic beverages within the Casino, for on-premises consumption only, is hereby authorized.

2. For the purpose of this Ordinance, the term Casino shall mean the Valley View Casino, as currently existing or as expanded in the future, or any other casino facility owned by the Tribe and located on the San Pasqual Indian Reservation.

3. The sale of said alcoholic beverages authorized by this Ordinance shall be in conformity with all applicable laws of the State of California and applicable federal laws, and the sale of said beverages shall be subject to federal excise tax and any fees required by the Federal Bureau of Alcohol, Tobacco & Firearms. This includes but is not limited to the following:

a. No person under the age of 21 years shall consume, acquire or have in his or her possession any alcoholic beverage.

b. No person shall sell any alcoholic beverages to any person under the age of 21.

c. No person shall sell alcoholic beverages to a person apparently under the influence of alcohol.

4. Where there may be a question of a person's right to purchase liquor by reason of his or her age, such person shall be required to present anyone of the following types of identification which shows his or her correct age and bears his or her signature and photograph: (1) Driver's license or identification card issued by any state Department of Motor Vehicles; (2) United States Active Duty Military card; or (3) passport.

5. All liquor sales within the Casino shall be on a cash only basis and no credit shall be extended to any person, organization or entity, except that this provision does not prevent the use of major credit or debit cards.

IV. Posting

This Ordinance shall be conspicuously posted within the Casino at all times it is open to the public.

V. Enforcement

The San Pasqual Gaming Commission may enforce this Ordinance by implementation of monetary fines not to exceed $500 per violation. Prior to any enforcement action, the Gaming Commission shall provide the alleged offender of this Ordinance with at least three (3) days notice of an opportunity to be heard during a specially called meeting. The decision of the Gaming Commission shall be final.

VI. Severability

If any provision or application of this Ordinance is determined by review to be invalid, such adjudication shall not be held to render ineffectual the remaining portions of this title or to render such provisions inapplicable to other persons or circumstances.

VII. Amendment

This Ordinance may only be amended by a majority vote of the General Council.

VIII. Sovereign Immunity

Nothing in this Ordinance in any way limits, alters, restricts or waives the Tribe's sovereign immunity from unconsented suit or action.

IX. Effective Date

This Ordinance shall become effective following its adoption by the General Council, certification by the Secretary of the Interior and publication in the **Federal Register.**

[FR Doc. 03–12405 Filed 5–16–03; 8:45 am]
BILLING CODE 4310–4J–P

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

United Auburn Indian Community Ordinance for the Sale and Consumption of Alcoholic Beverages

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice.

SUMMARY: This notice publishes the Tribal Council No. 09–16–02–01 regulating the Sale and Consumption of Alcoholic Beverages for the United Auburn Indian Community. The Ordinance regulates and controls the possession, sale and consumption of liquor within the boundaries of the United Auburn Indian Community at a gaming facility located on tribal trust lands in Placer County, California. No alcoholic beverages may be sold at any location pursuant to this Ordinance other than within the facility. The Ordinance is in conformity with the laws of the State of California, where applicable and necessary. Although the Ordinance was adopted on September 16, 2002, it does not become effective until published in the **Federal Register** because the failure to comply with the Ordinance may result in criminal charges.

EFFECTIVE DATE: This Ordinance is effective on May 19, 2003.

FOR FURTHER INFORMATION CONTACT: Iris Drew, Southwest Regional Office, Branch of Tribal Government, PO Box 26567, Albuquerque, New Mexico 87125–6567; Telephone (505) 346–7592 or Ralph Gonzales, Office of Tribal Services, 1951 Constitution Ave., NW., MS–320-SIB, Washington, DC 20240; Telephone (202) 513–7629.

SUPPLEMENTARY INFORMATION: Pursuant to the Act of August 15, 1953, Public Law 83–277, 67 Stat. 586, 18 U.S.C. 1161, as interpreted by the Supreme Court in *Rice* v. *Rehner*, 463 U.S. 713 (1983), the Secretary of the Interior shall certify and publish in the **Federal Register** notice of adopted liquor ordinances for the purpose of regulating liquor transactions in Indian country. The United Auburn Indian Community enacted Tribal Council Ordinance No. 09–16–02–01, on September 16, 2002, for the purpose of governing the sale and consumption of alcoholic beverages only at its Indian gaming facility on tribal trust lands in Placer County, California. The facility is expected to open on or about June 1, 2003.

This notice is published in accordance with the authority delegated by the Secretary of the Interior to the Assistant Secretary—Indian Affairs by 209 Departmental Manual 8.1. I certify that Tribal Council Ordinance No. 09–16–02–01, Sale and Consumption of Alcoholic Beverages at the gaming facility, located on tribal trust lands in Placer County, California, was duly adopted by the United Auburn Indian Community on September 16, 2002.

Dated: May 9, 2003.

Aurene M. Martin,

Assistant Secretary—Indian Affairs.

The United Auburn Indian Community Ordinance for the Sale and Consumption of Alcoholic Beverages, Tribal Council Ordinance No. 09–16–02–01, reads as follows:

United Auburn Indian Community, Placer County, California, Tribal Council Ordinance No. 09–16–02–01

Sale and Consumption of Alcoholic Beverages

The Tribal Council, governing body of the United Auburn Indian Community (hereinafter "Tribe"), hereby enacts this Ordinance to govern the sale and consumption of alcoholic beverages at its Indian gaming facility on tribal trust lands.

Preamble

1. Title 18, United States Code, Section 1161, provides Indian tribes with authority to enact ordinances governing the consumption and sale of alcoholic beverages on their Reservations, provided such ordinance is certified by the Secretary of the Interior, published in the **Federal Register** and such activities are in conformity with state law.

2. Pursuant to Article IV Section 1 and Article VIII Section 1 subsections (i) and (j) of the Tribe's Constitution, the Tribal Council is the governing body of the Tribe with the power to enact ordinances to promote the economic well-being of the Tribe and the general welfare of its members.

3. The Tribe plans to own and operate a gaming facility located on tribal trust lands in Placer County, California, APN–021–280–088 (hereinafter "Facility"), at which Class III Gaming will be conducted pursuant to the Tribe's Gaming Ordinance and a Compact executed with the State of California on September 10, 1999, ratified by the California Legislature, approved by the Secretary of the Interior on May 5, 2000, and published in the **Federal Register** on May 16, 2000.

4. The Facility, located on this trust land, will be an integral and indispensable part of the Tribe's economy, providing income to the Tribe and training and employment to its members.

5. The Facility will include restaurant and lounge areas in which food and beverages will be served to patrons who may also desire to consume alcoholic beverages.

6. The Tribal Council has determined that it is in the Tribe's best interest to offer alcoholic beverages for sale and consumption at the Facility.

7. It is the purpose of this Ordinance to set out the terms and conditions under which the sale of said alcoholic beverages may take place.

General Terms

1. The sale of alcohol within the Facility, for on-Facility consumption only, is hereby authorized.

2. No alcoholic beverages may be sold at any location pursuant to this Ordinance other than within the Facility.

3. The sale of said alcoholic beverages authorized by this Ordinance shall be in conformity with all applicable laws of the State of California, and the sale of said beverages shall be subject to state sales tax, federal excise tax and any fees required by the Federal Bureau of Alcohol, Tobacco & Firearms. This includes but is not limited to the following examples:

a. No person under the age of 21 years shall consume, acquire or have in his or her possession at the Facility any alcoholic beverage.

b. No person shall sell alcohol to any person under the age of 21 at the Facility.

c. No person shall sell alcohol to a person apparently under the influence of liquor at the Facility.

4. Where there may be a question of a person's right to purchase liquor by reason of his or her age, such person shall be required to present any one of the following types of identification which shows his or her correct age and bears his or her signature and photograph: (1) Driver's license or identification card issued by any state Department of Motor Vehicles; (2) United States Active Duty Military card; (3) passport.

5. All liquor sales within the Facility shall be on a cash only basis and no credit shall be extended to any person, organization or entity, except that this provision does not prevent the use of major credit cards.

Posting

This Ordinance shall be conspicuously posted within the Facility at all times it is open to the public.

Enforcement

1. This Ordinance may be enforced by the Tribal Gaming Commission by implementation of monetary fines not to exceed $500 and/or withdrawal of authorization to sell alcohol at the Facility. Prior to any enforcement action, Tribal Gaming Commission shall provide the alleged offender of this ordinance with at least three (3) days notice of an opportunity to be heard during a specially-called meeting. The decision of the Tribal Gaming Commission shall be final.

2. This Ordinance also may be enforced by the Placer County Sheriff's Office at the request of the Tribal Gaming Commission.

Severability

If any provision or application of this ordinance is determined by review to be invalid, such adjudication shall not be held to render ineffectual the remaining portions of this title or to render such provisions inapplicable to other persons or circumstances.

Amendment

This ordinance may only be amended by a majority vote of the Tribal Council.

Sovereign Immunity

Nothing in this ordinance in any way limits, alters, restricts or waives the Tribe's sovereign immunity from unconsented suit or action.

Effective Date

This Ordinance shall become effective following its certification by the Secretary of the Interior and its publication in the **Federal Register**.

Certification

The foregoing ordinance was adopted by a vote of *5* for, and *0* against and *0* abstentions, at a duly called meeting of the United Auburn Indian Community Tribal Council at which a quorum was present, on this 16th day of September, 2002.

[FR Doc. 03–12407 Filed 5–16–03; 8:45 am]
BILLING CODE 4310–4J–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[NV–930–1430–ET; NVN–58357]

Notice of Proposed Withdrawal and Public Meeting; Nevada

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The Bureau of Land Management proposes to withdraw 6,168.61 acres of public lands from surface entry and mining for a period of 20 years to protect cultural, historic, and recreational resources in and around the Grimes Point Archaeological Area, the Sand Mountain Recreation Area, and the Cold Springs Historical Area in Churchill County. This notice proposes closure of the land from surface entry and mining for up to 2 years while various studies and analyses are made to make a final decision on the withdrawal application.

DATES: Comments should be received on or before August 18, 2003.

ADDRESSES: Comments should be sent to the Nevada State Director, BLM, 1340 Financial Blvd., P.O. Box 12000, Reno, Nevada 89520–0006.

FOR FURTHER INFORMATION CONTACT: Dennis J. Samuelson, BLM Nevada State Office, 775–861–6532.

SUPPLEMENTARY INFORMATION: On January 29, 2003, a petition was approved allowing the Bureau of Land Management to file an application to

withdraw the following described public lands from settlement, sale, location, or entry under the general land laws, including the mining laws, but not the mineral leasing laws, subject to valid existing rights:

Mount Diablo Meridian

T.18 N., R.30 E.,
Sec. 15, W½NE¼ and E½NW¼;
Sec. 20, S½SW¼ and SE¼;
Sec. 21, SW¼NE¼, S½NW¼, and S½;
Sec. 29, N½.
T.17 N., R.32 E.,
Sec. 15, S½S½ (unsurveyed);
Sec. 16, SE¼SE¼ (unsurveyed);
Sec. 20, SE¼;
Sec. 21;
Sec. 22, W½ and NE¼;
Secs. 28, 29, 32, and 33;
T.16 N., R.32 E.,
Sec. 4, lots 1 to 4, inclusive, SW¼NE¼, S½NW¼, N½SW¼, and SW¼SW¼;
Sec. 5, lots 1 to 4, inclusive, and S½N½.
T.18 N., R.37 E.,
Sec. 30, NE¼SE¼, SW¼SE¼, and W½SE¼SE¼;
Sec. 33, SW¼NE¼NW¼, SE¼NW¼NW¼, and S½NW¼.

The areas describe aggregate 6,168.61 acres in Churchill County.

The purpose of the withdrawal is to protect cultural, historic, and recreational resources in and around the Grimes Point Archaeological Area, the Sand Mountain Recreation Area, and the Cold Springs Historical Area. The Grimes Point Archaeological Area is recognized as one of the most significant archaeological sites in the Great Basin and is on the National Register of Historic Places. The Sand Mountain Recreation Area contains Sand Mountain, which is over 500 feet tall and is the largest single sand dune in the Great Basin. The Cold Springs Historical Area contains the ruins of an Overland Stage station and a station constructed to support the first transcontinental telegraph.

For a period of 90 days from the date of publication of this notice, all persons who wish to submit comments, suggestions, or objections in connection with the proposed withdrawal may present their views in writing to the Nevada State Director of the Bureau of Land Management at the address above.

Notice is hereby given that there will be an open house/public meeting in connection with the proposed withdrawal from 6 p.m. to 8 p.m., on June 17, 2003, at the Fallon Convention Center, 100 Campus Way, Fallon, Nevada 89406.

Comments, including names and street addresses of commenters, will be available for public review at the Carson City Field Office, 5665 Morgan Mill Road, Carson City, Nevada during regular business hours, 7:30 a.m. to 4:30 p.m., Monday through Friday, except holidays. Individual respondents may request confidentiality. If you wish to hold your name or address from public review or from disclosure under the Freedom of Information Act, you must state this prominently at the beginning of your comments. Such requests will be honored to the extent allowed by law. All submissions from organizations or businesses will be made available for public inspection in their entirety.

The application will be processed in accordance with the regulations set forth in 43 CFR part 2300.

For a period of 2 years from the date of publication of this notice in the **Federal Register**, the lands will be segregated as specified above unless the application is denied or canceled or the withdrawal is approved prior to that date. Other uses which will be permitted during this segregative period are rights-of-way, leases, and permits at the discretion of the authorized officer.

Dated: March 3, 2003.

Jim Stobaugh,

Lands Team Lead.

[FR Doc. 03–12509 Filed 5–14–03; 3:52 pm]

BILLING CODE 4310–HC–P

INTERNATIONAL TRADE COMMISSION

[Inv. No. 337–TA–480]

Certain Panel Fasteners, Products Containing Same, and Components Thereof; Notice of Commission Decision Not To Review an Initial Determination Terminating the Investigation on the Basis of a Consent Order; Issuance of Consent Order

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has determined not to review the presiding administrative law judge's ("ALJ's") initial determination ("ID") terminating the above-captioned investigation on the basis of a consent order.

FOR FURTHER INFORMATION CONTACT: Clara Kuehn, Esq., Office of the General Counsel, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436, telephone (202) 205–3012. Copies of the ALJ's ID and all other nonconfidential documents filed in connection with this investigation are or will be available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436, telephone 202–205–2000. General information concerning the Commission may also be obtained by accessing its Internet server (*http://www.usitc.gov*). The public record for this investigation may be viewed on the Commission's electronic docket (EDIS–ON–LINE) at *http://dockets.usitc.gov/eol/public*. Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202–205–1810.

SUPPLEMENTARY INFORMATION: The Commission instituted this investigation on October 4, 2002, based on a complaint filed on behalf of Kason Industries, Inc. of Shenandoah, Georgia ("Kason"). 67 FR 62,264 (2002). The complaint, as supplemented, alleged violations of section 337 in the importation into the United States, sale for importation, and sale within the United States after importation of certain panel fasteners, products containing same, and components thereof by reason of infringement of claim 1 of U.S. Patent No. 6,299,224, and claims 1–4 of U.S. Patent No. 6,409,235. Id. The Commission named as respondents Cheng Tai Company of Kwun Tong Kowloon, Hong Kong ("Cheng Tai"); Ningbo Foreign Trading Company, Ltd. of Ningbo, China ("Ningbo"); and Component Hardware Group of Lakewood, New Jersey ("CHG"). Id.

On March 24, 2003, respondent CHG filed an unopposed motion to terminate the investigation as to CHG on the basis of a proposed consent order. On April 2, 2003, the Commission investigative attorney ("IA") filed a response supporting CHG's motion. In a paper filed April 7, 2003, respondent CHG noted that in light of the agreement by Cheng Tai and Ningbo to be bound by the proposed consent order, CHG was submitting a proposed joint consent order that applied to CHG, Cheng Tai, and Ningbo. On April 7, 2003, Cheng Tai also filed a consent order stipulation and a copy of the proposed joint consent order. On April 8, 2003, Ningbo filed a consent order stipulation and a copy of the proposed joint consent order. On April 14, 2003, the IA filed a supplemental response supporting termination of the investigation as to respondents CHG, Cheng Tai, and Ningbo on the basis of the proposed joint consent order. On April 18, 2003, Kason responded that it did not oppose the consent order stipulations filed by Cheng Tai and Ningbo.

On April 21, 2003, the ALJ issued an ID (Order No. 7) terminating the investigation on the basis of the proposed joint consent order. No petitions for review of the ID were filed.

The authority for the Commission's determination is contained in section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337), and in section 210.42 of the Commission's Rules of Practice and Procedure (19 CFR 210.42).

Issued: May 13, 2003.

By order of the Commission.

Marilyn R. Abbott,

Secretary to the Commission.

[FR Doc. 03–12460 Filed 5–16–03; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[USITC SE–03–012]

Sunshine Act Meeting

AGENCY HOLDING THE MEETING: International Trade Commission.

TIME AND DATE: May 20, 2003, at 11 a.m.

PLACE: Room 101, 500 E Street, SW., Washington, DC 20436. Telephone: (202) 205–2000.

STATUS: Open to the public.

MATTERS TO BE CONSIDERED:

1. Agenda for future meetings: none.
2. Minutes.
3. Ratification list.
4. Inv. No. 731–TA–1010 (Final) (Lawn and Garden Steel Fence Posts from China)—briefing and vote. (The Commission is currently scheduled to transmit its determination and Commissioners' opinions to the Secretary of Commerce on or before June 2, 2003.)
5. Outstanding action jackets: none.

In accordance with Commission policy, subject matter listed above, not disposed of at the scheduled meeting, may be carried over to the agenda of the following meeting.

By order of the Commission.

Issued: May 13, 2003

Marilyn R. Abbott,

Secretary to the Commission.

[FR Doc. 03–12547 Filed 5–15–03; 10:40 am]

BILLING CODE 7020–02–P

DEPARTMENT OF LABOR

Office of the Secretary

Submission for OMB Emergency Review; Comment Request

May 13, 2003.

The Department of Labor has submitted the following (see below) information collection request (ICR), utilizing emergency review procedures, to the Office of Management and Budget (OMB) for review and clearance in accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. Chapter 35). OMB approval has been requested by May 19, 2003. A copy of this ICR, with applicable supporting documentation, may be obtained by calling the Department of Labor. To obtain documentation, contact Darrin King on 202–693–4129 (this is not a toll-free number) or e-mail: *king.darrin@dol.gov*.

Comments and questions about the ICR listed below should be forwarded to the Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for the Occupational Safety and Health Administration, Office of Management and Budget, Room 10235, Washington, DC 20503.

The Office of Management and Budget is particularly interested in comment which:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumption use;
- Enhance the quality, utility, and clarify of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submissions of responses.

Agency: Occupational Safety and Health Administration (OSHA).

Title: Respirator Procurement and Supply Survey.

OMB Number: 1218–0NEW.

Frequency: One-time.

Affected Public: Business or other for-profit (*i.e.*, Manufacturers of personal protective equipment).

Number of Respondents: 31.

Annual Responses: 31.

Estimated Time Per Respondent: 30 minutes.

Total Burden Hours: 16.

Total Burden Cost (capital/startup): $0.

Total Burden Cost (operating/maintaining): $0.

Description: This emergency clearance is needed in order to obtain information from the manufacturers of personal protective equipment. In order to determine the number of respirators that manufacturers or distributors can provide to emergency responders, who would respond to terrorist events where weapons of mass destruction were used, OSHA will survey the members of the International Safety Equipment Manufacturers Association. The Agency needs to determine the amount of reserve capacity and the time needed to manufacture and deliver the respirators to various regions in the United States. This information will be utilized to strategically plan with the Federal Emergency Management Agency where and to what extent caches of respirators will be needed nationwide. This information is vital to Homeland Security and the need to have a coordinated response in order to prevent further injuries and sickness to responders and recovery workers. The Department and OSHA have been attending regular meetings at the Domestic Interagency Terrorism Management Concept of Operations Group. This group is responsible for implementation of Homeland Security Presidential Directive/HSPD–5 (Management of Domestic Incidents). Through the Department and OSHA's collaborative efforts with this group and the National Response Team, OSHA's role to provide technical assistance and consultation in the event of a terrorist attack has recently been significantly elevated.

Ira L. Mills,

Departmental Clearance Officer.

[FR Doc. 03–12418 Filed 5–16–03; 8:45 am]

BILLING CODE 4510–26–M

DEPARTMENT OF LABOR

Office of Disability Employment Policy

Solicitation of Nominations for the Secretary of Labor's New Freedom Initiative Award; Reopening and Extension of Period for Submission of Nominations

AGENCY: Office of Disability Employment Policy, Labor.

ACTION: Reopening and extension of period for submission of nominations.

SUMMARY: This document re-opens and extends the period for submission of nominations for the Secretary of Labor's New Freedom Initiative Award. This action is taken to permit increased participation by interested stakeholders.

DATES: Nomination packages must be submitted to the Office of Disability Employment Policy by June 6, 2003. Any application received after 4:45 p.m. EDST on June 6, 2003 will not be considered unless it was received before the award is made and:

1. It was sent by registered or certified mail no later than the 3rd calendar day before June 6, 2003;

2. It is determined by the Government that the late receipt was due solely to mishandling by the Government after receipt at the U.S. Department of Labor at the address indicated; or

3. It was sent by U.S. Postal Service Express Mail Next Day Service—Post Office to Addressee, not later than 5 p.m. at the place of mailing two (2) working days, excluding weekends and Federal holidays, prior to June 6, 2003.

The only acceptable evidence to establish the date of mailing of a late application sent by registered or certified mail is the U.S. Postal Service postmark on the envelope or wrapper and on the original receipt from the U.S. Postal Service. If the postmark is not legible, an application received after the above closing time and date will be processed as if mailed late. "Postmark" means a printed, stamped, or otherwise placed impression (not a postage meter machine impression) that is readily identifiable without further action as having been applied and affixed by an employee of the U.S. Postal Service on the date of mailing. Therefore, applicants should request that the postal clerk place a legible hand cancellation bull's-eye" postmark on both the receipt and the envelope or wrapper.

The only acceptable evidence to establish the time of receipt at the U.S. Department of Labor is the date/time stamp of the Office of Disability Employment Policy on the application wrapper or other documentary evidence or receipt maintained by that office.

Applications sent by other delivery services, such as Federal Express, UPS, etc., will also be accepted; however, the applicant bears the responsibility of timely submission.

ADDRESSES: Nomination packages must be submitted to the Office of Disability Employment Policy, 200 Constitution Avenue, NW., Room S–1303 Washington DC 20210; Telephone (202) 693–7880; TTY (202) 693–7881.

FOR FURTHER INFORMATION CONTACT: Dina Dorich of the Office of Disability Employment Policy, telephone (202) 693–7859; TTY (202) 693–4920 (these are not toll-free numbers), prior to the closing deadline.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of February 18, 2003 (68 FR 7893), the Office of Disability Employment Policy published a Solicitation of Nominations for the Secretary of Labor's New Freedom Initiative Award. Nomination packages were to be submitted to the Office of Disability Employment Policy by May 15, 2003.

Because of the continuing interest in this solicitation, the agency believes that is desirable to re-open and extend the period for submission of nominations. Therefore, the period for submission of nominations is extended until June 6, 2003.

Signed at Washington, DC this 14th day of May, 2003.

W. Roy Grizzard, Jr.,

Assistant Secretary, Office of Disability, Employment Policy.

[FR Doc. 03–12446 Filed 5–16–03; 8:45 am]

BILLING CODE 4510–CX–P

DEPARTMENT OF LABOR

Employment and Training Administration

Notice of Determinations Regarding Eligibility To Apply for Worker Adjustment Assistance and NAFTA Transitional Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974, as amended, the Department of Labor herein presents summaries of determinations regarding eligibility to apply for trade adjustment assistance for workers (TA–W) issued during the period of May 2003.

In order for an affirmative determination to be made and a certification of eligibility to apply for worker adjustment assistance to be issued, each of the group eligibility requirements of section 222 of the Act must be met.

(1) That a significant number or proportion of the workers in the workers' firm, or an appropriate subdivision thereof, have become totally or partially separated, or are threatened to become totally or partially separated; and

(2) That sales or production, or both, of the firm or sub-division have decreased absolutely, and

(3) That increases of imports of articles like or directly competitive with articles produced by the firm or appropriate subdivision have contributed importantly to the separations, or threat thereof, and to the absolute decline in sales or production of such firm or subdivision.

Negative Determinations for Worker Adjustment Assistance

In each of the following cases the investigation revealed that criterion (3) has not been met. A survey of customers indicated that increased imports did not contribute importantly to worker separations at the firm.

None

In the following case, the investigation revealed that the criteria for eligibility have not been met for the reasons specified.

The investigation revealed that criterion (a)(2)(A)(I.C.) (Increased imports) and (a) (2)(B) (II.B) (No shift in production to a foreign country) have not been met.

TA–W–50,783; Precise Courtesy Corp., Buffalo Grove, IL
TA–W–51,523; Stimson Lumber Co., Arden, WA
TA–W–51,595; Paradise Fisheries, Kodiak, AK
TA–W–51,242; Polyone Corp., O'Sullivan Plastic Div., Yerlington, NE
TA–W–50,867; Eaton Corp., Oshtemo Aftermarket Operation, Ostemo, MI

The workers firm does not produce an article as required for certification under Section 222 of the Trade Act of 1974.

TA–W–51,149; Applied Industrial Technologies, Cloquet, MN
TA–W–51,628; Boeing Aerospace Operations, Long Beach, CA
TA–W–51,456; Symbol Technologies, Chicago Service Center, Arlington Heights, ILA
TA–W–51,434; Power Quest Corp., Orem, UT
TA–W–51,426; 360Networks (USA), Inc., Broomfield, CO

The investigation revealed that criterion (a)(2)(A) (I.A) (no employment declines) have not been met.

TA–W–51,620; Fishing Vessel (F/V) Misty Dawn, King Cove, AK
TA–W–51,632; Fishing Vessel (F/V), Capt'n Jay, Chignik, AK
TA–W–51,208; The Stanley Works, Stanley Access Technologies Div., Farmington, CT
TA–W–51,197; The Boeing Co., Integrated Defense Systems Div., Pueblo, CO
TA–W–51,024 & A, B; Wheeling Pittsburgh Steel Corp., Wheeling, WV, Follansbee, WV and Beech Bottom, WV

The investigation revealed that criterion (a)(2)(A) (I.B.) (Sales or production, or both, did not decline) and (II.B) (has shifted production to a country not under the free trade agreement with the U.S.) have not been met.

TA–W–51,539; Divine Brothers Co., Utica, NY
TA–W–51,633; Fishing Vessel (F/V) Jackie, Metlakatla, AK

The investigation revealed that criteria (a)(2) (A) (I.C) (Increased imports) and (a)(2)(B) (II.C) (Has shifted production to a county not under the free trade agreement with U.S.) have not been met.

TA–W–51,388; Solid State-Filtronic, Inc., Compound Semiconductor, Santa Clara, CA
TA–W–51,038; Tubeuronics, Wichita, KS

The following certification has been issued. The requirement of (a)(2)(A) (increased imports) of Section 222 and (II.B) (has shifted production to a country not under the free trade agreement with the U.S.) have not been met.

TA–W–51,488; Essex Electrical, Inc., Sikeston, MO

Affirmative Determinations for Worker Adjustment Assistance

The following certifications have been issued; the date following the company name and location of each determination references the impact date for all workers of such determination.

The following certifications have been issued. The requirements of (a)(2)(A) (increased imports) of Section 222 have been met.

TA–W–51,118; Electrolux Home Products, Inc., Edison, NJ: March 3, 2002.
TA–W–50,450; A.M. Promotions, Inc., a Div. of Carnicella Enterprises, Inc., Ebensburg, PA: December 18, 2001.
TA–W–51,029; Winonics, Inc., Fort Worth, TX: February 27, 2002.
TA–W–51,042; Micron Technology, Inc., Boise and Nampa, ID: February 21, 2002.
TA–W–51,231; Micron Technology, Inc., Manassas, VA: March 10, 2002.
TA–W–51,267; Gemco, Inc., a Div. of Falcon Industries, Estill, SC: March 17, 2002.
TA–W–51,298; Faultless Caster, Evansville, IN: March 17, 2002.
TA–W–51,377; Weyerhaeuser, Plywood Div., Millport, AL: March 21, 2002.
TA–W–51,522; J.E. Morgan Knitting Mills (Sara Lee), Tamaqua, PA: May 4, 2003.
TA–W–51,575; CP Shades, Inc., Sausalito, CA: April 15, 2002.
TA–W–50,487; Nexpak, El Dorado Hills, CA: December 9, 2001.
TA–W–50,522; Louisiana Pacific Corp., Saratoga, WY: December 27, 2001.
TA–W–51,141; Werner Co., Greenville, PA: March 12, 2002.
TA–W–51,380; Colorado Med-Tech, Inc., including workers of Staffing Solutions, Boulder, CO: March 27, 2002.
TA–W–51,448; ITW, Div. of Hobart Corp., Troy, OH: March 28, 2002.
TA–W–51,478; VPI Mirrex, LLC, Delaware City Div., Delaware City, DE: March 28, 2002.

The following certifications have been issued. The requirements of (a)(2)(B) (shift in production) of Section 222 have been met.

TA–W–50,831; EIMCO, LLC, Bluefield, WV: February 3, 2002.
TA–W–50,674; Ametek, U.S. Gauge Div., Bartow, FL: January 21, 2002.
TA–W–51,247 & A; Agilent Technologies, Electronic Products and Solutions Group, Rohnert Park, CA and Santa Rosa, CA: March 13, 2002.
TA–W–51,354; Connor Manufacturing Services, Inc., Southern California Div., including leased workers of Amvigor Engineering Services, Weststaff, Inc., Harte Enterprises, Placement Pros, Helpmates Staffing Services, Corestaff Services and Abacus Staffing for Accounting, Corona, CA: March 25, 2002.
TA–W–51,556; Sylvan America, Inc., Kittanning, PA: April 15, 2002.
TA–W–51,557; Agilent Technologies, Design Validation Div., Colorado Springs, CO: May 26, 2003.
TA–W–51,561; Motorola, Broadband Communications Sector, Tewksbury, MA: April 18, 2002.
TA–W–51,627; Reliant Manufacturing LLC, Longmont, CO: April 25, 2002.
TA–W–51,273; Sonoco Products Co., Consumer Products Div., Denison, TX: March 7, 2002.

The following certification has been issued. The requirement of upstream supplier to a trade certified primary firm has been met.

TA–W–51,004; Fiber-Line, Inc., Hickory, NC: February 17, 2002.
TA–W–51,635; Rustler Fish Co., Haines, AK: April 29, 2002.

Also, pursuant to Title V of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182) concerning transitional adjustment assistance hereinafter called (NAFTA–TAA) and in accordance with section 250(a), Subchaper D, Chapter 2, Title II, of the Trade Act as amended, the Department of Labor presents summaries of determinations regarding eligibility to apply for NAFTA–TAA issued during the month of May 2003.

In order for an affirmative determination to be made and a certification of eligibility to apply for NAFTA–TAA the following group eligibility requirements of section 250 of the Trade Act must be met:

(1) That a significant number or proportion of the workers in the workers' firm, or an appropriate subdivision thereof, (including workers in any agricultural firm or appropriate subdivision thereof) have become totally or partially separated from employment and either—

(2) That sales or production, or both, of such firm or subdivision have decreased absolutely,

(3) That imports from Mexico or Canada of articles like or directly competitive with articles produced by such firm or subdivision have increased, and that the increases imports contributed importantly to such workers' separations or threat of separation and to the decline in sales or production of such firm or subdivision; or

(4) That there has been a shift in production by such workers' firm or subdivision to Mexico or Canada of articles like or directly competitive with articles which are produced by the firm or subdivision.

Negative Determinations NAFTA–TAA

In each of the following cases the investigation revealed that criteria (3) and (4) were not met. Imports from Canada or Mexico did not contribute importantly to workers' separations. There was no shift in production from the subject firm to Canada or Mexico during the relevant period.

None

The investigation revealed that the criteria for eligibility have not been met for the reasons specified.

The investigation revealed that the workers of the subject firm did not produce an article within the meaning of section 250(a) of the Trade Act, as amended.

None

Affirmative Determinations NAFTA–TAA

None

I hereby certify that the aforementioned determinations were issued during the month of May 2003. Copies of these determinations are available for inspection in Room C–5311, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210 during normal business hours or will be mailed to persons who write to the above address.

Dated: May 9, 2003.

Terrence Clark,

Acting Director, Division of Trade Adjustment Assistance.

[FR Doc. 03–12426 Filed 5–16–03; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–50,895 and TA–W–50,895A]

Americal Corporation, Goldsboro, NC, Americal Corporation Henderson, NC; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974 (19 U.S.C. 2273) the Department Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance on March 12, 2003, applicable to workers of Americal Corporation, Goldsboro, North Carolina. The notice was published in the **Federal Register** on March 26, 2003 (68 FR 14707).

At the request of the company, the Department reviewed the certification for workers of the subject firm. The workers were engaged in the production of hosiery.

New findings show that worker separations occurred at the Henderson, North Carolina facility of the subject firm. Workers at Henderson, North Carolina produce leg wear (hosiery—full length, knee-length and thigh-lengths and socks) as well as occupy administrative offices for the subject firm.

Accordingly, the Department is amending the certification to cover workers at Americal Corporation, Henderson, North Carolina.

The intent of the Department's certification is to include all workers of Americal Corporation who were adversely affected by increased imports.

The amended notice applicable to TA–W–50,895 is hereby issued as follows:

All workers of Americal Corporation, Goldsboro, North Carolina (TA–W–50,895) and Americal Corporation, Henderson, North Carolina (TA–W–50,895A), who became totally or partially separated from employment on or after February 12, 2002, through March 12, 2005, are eligible to apply for adjustment assistance under section 223 of the Trade Act of 1974.

Signed at Washington DC this 7th day of May 2003.

Richard Church,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 03–12427 Filed 5–16–03; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–50,633]

Barry of Goldsboro, Goldsboro, NC; Notice of Revised Determination on Reconsideration

By letter dated March 25, 2003, the company requested administrative reconsideration regarding the Department's Negative Determination Regarding Eligibility to Apply for Worker Adjustment Assistance, applicable to the workers of the subject firm.

The initial investigation resulted in a negative determination issued on February 11, 2003, was based on the finding that the workers did not produce a product under the meaning of section 222 of the Act. The denial notice was published in the **Federal Register** on March 26, 2003 (68 FR 14708).

To support the request for reconsideration, the company supplied additional information to supplement that which was gathered during the initial investigation. The company indicated that the plant workers were also engaged in value-added production that was necessary to complete the product (slippers).

An analysis of the functions supplied by the company on reconsideration show that the workers were engaged not only engaged in packaging and warehousing, but the actual finishing of the product (slippers).

An examination of information provided by the company during the initial investigation shows that the company shifted all plant production and related functions to Mexico during the relevant period.

Conclusion

After careful review of the additional facts obtained on reconsideration, I conclude that there were layoffs and a shift in production from the workers firm or subdivision to Mexico of articles like or directly competitive with those produced at Barry of Goldsboro, Goldsboro, North Carolina. In accordance with the provisions of the Act, I make the following certification:

All workers of Barry of Goldsboro, Goldsboro, North Carolina, who became totally or partially separated from employment on or after January 20, 2002 through twe years from the date of this certification, are eligible to apply for adjustment assistance under section 223 of the Trade Act of 1974.

Signed in Washington, DC this 1st day of May 2003.

Elliott S. Kushner,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 03–12424 Filed 5–16–03; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–50,105]

Ericsson, Inc., Base Station and Systems Development Division, Research Triangle Park, NC; Notice of Negative Determination Regarding Application for Reconsideration

By application received on March 14, 2003, a company official requested administrative reconsideration of the Department's negative determination regarding eligibility for workers and former workers of the subject firm to apply for Trade Adjustment Assistance (TAA). The denial notice applicable to workers of Ericsson, Inc., Base Station and Systems Development Division, Research Triangle Park, North Carolina was signed on February 21, 2003, and published in the **Federal Register** on March 10, 2003 (68 FR 11409).

Pursuant to 29 CFR 90.18(c) reconsideration may be granted under the following circumstances:

(1) If it appears on the basis of facts not previously considered that the determination complained of was erroneous;

(2) if it appears that the determination complained of was based on a mistake in the determination of facts not previously considered; or

(3) if in the opinion of the Certifying Officer, a mis-interpretation of facts or of the law justified reconsideration of the decision.

The TAA petition was filed on behalf of workers at Ericsson, Inc., Base Station and Systems Development Division, Research Triangle Park, North Carolina engaged in activities related to the design and testing of software and hardware for radio base stations. The petition was denied because the petitioning workers did not produce an article within the meaning of section 222(3) of the Act.

The company official alleges that the initial negative determination was based on a "misunderstanding of activities at the subject firm." She continues that workers at Ericsson, Inc., Base Station and Systems Development Division, Research Triangle Park, North Carolina were "engaged in the design and development of base station transceivers". The official also states that what was delivered to the internal customer involved "precise drawings and assembly instructions which enabled the product to be manufactured, shipped and to fulfill orders for customers." The official concludes that layoffs at the subject firm are attributed to design and development functions being transferred abroad.

In fact, there was no misunderstanding of the nature of the functions performed at the subject facility. Design and development services do not constitute production within the meaning of section 222 of the Trade Act. As a result of this, the transfer of job functions is irrelevant.

Only in very limited instances are service workers certified for TAA, namely the worker separations must be caused by a reduced demand for their services from a parent or controlling firm or subdivision whose workers produce an article and who are currently under certification for TAA.

In conclusion, the workers at the subject firm did not produce an article within the meaning of section 222(3) of the Trade Act 1974.

Conclusion

After review of the application and investigative findings, I conclude that there has been no error or misinterpretation of the law or of the facts which would justify reconsideration of the Department of Labor's prior decision. Accordingly, the application is denied.

Signed at Washington, DC, this 6th day of May, 2003.

Elliott S. Kushner,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 03–12422 Filed 5–16–03; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–41,543]

General Electric Transportation Systems, A Subsidiary of General Electric Company, Erie, PA; Notice of Determinations on Reconsideration

By application dated October 11, 2002, the United Electrical, Radio & Machine Workers of America, Local 506, requested administrative reconsideration regarding the Department's Negative Determination Regarding Eligibility to Apply for Worker Adjustment Assistance, applicable to the workers of the subject firm.

The initial investigation resulted in a negative determination issued on September 10, 2002, based on the finding that imports of diesel electric locomotive components including U-tubes and gear cases, diesel electric locomotives and off-highway drive systems did not contribute importantly to worker separations at the Erie plant. The denial notice was published in the **Federal Register** on September 27, 2002 (67 FR 61160).

To support the request for reconsideration, the union supplied additional information to supplement that which was gathered during the initial investigation. The union supplied a list of products (brush holder assemblies, 761,752 traction motors, alternators, traction motor field coils) that were allegedly shifted to foreign sources and potentially imported back to the United States.

The company was contacted in regard to all imported products that were like or directly competitive with those produced at the subject facility, as well as those shifted from the subject facility, in 2000 through 2002. In addition, a copy of the union's reconsideration request was forwarded to the company for their response. The company's response revealed that the only products shifted and subsequently imported during the relevant period which impacted subject firm layoffs were u-tubes and gear cases. Workers producing u-tubes and gear cases are separately identifiable from other functions conducted at the subject facility. Therefore, workers at the subject facility producing u-tubes and gear cases meet the eligibility requirements of the Trade Act of 1974.

Further, the company reported shifting "Design III" functions (drafting) to a foreign country during the relevant period. These workers were engaged in a service, and did not supply a significant amount of support to workers producing u-tubes and gear cases, and thus do not meet the eligibility requirements of the Trade Act. Only in very limited instances are service workers certified for TAA, namely the worker separations must be caused by a reduced demand for their services from a parent or controlling firm or subdivision whose workers produce an article and who are currently under certification for TAA.

The company indicated that the products listed by the union were shifted to foreign sources and imported back to the United States. However, the shift of these products did not affect the petitioning worker groups, thus it has no bearing on this investigation.

The company also supplied a list of foreign competitors that produce locomotives, traction motors, alternators, OHV wheels, blowers and drill motors, apparently implying that potential imports from these competitors contributed importantly to purchasing trends of subject firm customers in the relevant period.

The "contributed importantly" test is generally demonstrated through a survey of the subject firm's customers. The Department conducted a survey of the subject firm's major declining customers regarding their purchases of diesel electric locomotives and off-highway drive systems in 2000, 2001, and January through April of 2002 during the initial investigation. Results of this survey revealed no imports. Further, the Department shared the union's list of competitors and their products with the company. The company indicated that these competitors and associated products did not impact the petitioning worker groups, as no layoffs ensued from competitive product lines at the subject facility. As a result, the above-mentioned data provided by the union is irrelevant to the investigation.

Conclusion

After careful review of the additional facts obtained on reconsideration, I conclude that increased imports of u-tubes and gear cases like or directly competitive with those produced at General Electric Transportation Systems, a subsidiary of General Electric Company, Erie, Pennsylvania, contributed importantly to the declines in sales or production and to the total or partial separation of workers at the subject firm. In accordance with the provisions of the Act, I make the following certification:

"All workers of General Electric Transportation Systems, a subsidiary of

General Electric Company, Erie, Pennsylvania, engaged in activities related to the production of u-tubes and gear cases who became totally or partially separated from employment on or after April 29, 2001 through two years from the date of this certification, are eligible to apply for adjustment assistance under section 223 of the Trade Act of 1974"; and

"I further determine that all other workers at General Electric Transportation Systems, a subsidiary of General Electric Company, Erie, Pennsylvania excluding workers engaged in the production of u-tubes and gear cases are denied eligibility to apply for adjustment assistance under section 223 of the Trade Act of 1974."

Signed in Washington, DC, this 30th day of April 2003.

Elliott S. Kushner,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 03–12420 Filed 5–16–03; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–50,548]

Gilster Mary Lee Corporation Including Leased Workers of Aid Temporary Services, Wilson, AR; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974 (19 U.S.C. 2273) the Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance on January 29, 2003, applicable to workers of Gilster Mary Lee Corporation, Wilson, Arkansas. The notice was published in the **Federal Register** on February 24, 2003 (68 FR 8620).

At the request of the petitioners, the Department reviewed the certification for workers of the subject firm. Information provided by the company shows that leased workers of AID Temporary Services were employed at Gilster Mary Lee Corporation to produce tea at the Wilson, Arkansas location of the subject firm.

Based on these findings, the Department is amending this certification to include leased workers of AID Temporary Services, Osceola, Arkansas employed at Gilster Mary Lee Corporation, Wilson, Arkansas.

The intent of the Department's certification is to include all workers of Gilster Mary Lee Corporation who were adversely affected by increased imports.

The amended notice applicable to TA-W–50,548 is hereby issued as follows:

All workers of Gilster Mary Lee Corporation, Wilson, Arkansas, who were engaged in activities related to the packaging of tea, including leased workers of AID Temporary Services, Osceola, Arkansas, who were engaged in activities related to the packaging of tea at Gilster Mary Lee Corporation, Wilson, Arkansas, who became totally or partially separated from employment on or after January 10, 2002, through January 29, 2005, are eligible to apply for adjustment assistance under section 223 of the Trade Act of 1974.

Signed at Washington, DC this 6th day of May 2003.

Elliott S. Kushner,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 03–12423 Filed 5–16–03; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–51,175]

Jamestown Precision Tooling, Inc., Jamestown Division, Jamestown, NY; Notice of Revised Determination On Reopening

On May 5, 2003, the Department, on its own motion, reopened its investigation for the former workers of the subject firm.

The initial investigation resulted in a negative determination issued on April 25, 2003, based on the finding that the workers' firm did not shift production of tool and die components to a foreign country, nor did the company or its customers import tool and die components from 2001 through February 2003. The denial notice will soon be published in the **Federal Register**.

A late response to the customer survey conducted by the Department revealed that this customer of the subject firm increased import purchases of tool and die components while reducing purchases from Jamestown Precision Tooling Inc.

Conclusion

After careful consideration of the new facts obtained on reopening, it is concluded that increased imports of articles like or directly competitive with tool and die components produced by Jamestown Precision Tooling, Inc., Jamestown Division, Jamestown, New York, contributed importantly to the decline in sales and to the total or partial separation of workers of the subject firm.

In accordance with the provisions of the Trade Act of 1974, I make the following revised determination:

All workers of Jamestown Precision Tooling, Inc., Jamestown Division, Jamestown, New York, who became totally or partially separated from employment on or after February 5, 2002 through two years from the date of certification, are eligible to apply for adjustment assistance under section 223 of the Trade Act of 1974.

Signed in Washington, DC this 6th day of May, 2003.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 03–12428 Filed 5–16–03; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–40,521D]

Republic Technologies International Currently Known as Republic Engineered Products, Lorain, OH; Amended Certification Regarding Eligibility to Apply for Worker Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974 (19 U.S.C. 2273) the Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance on February 19, 2002, applicable to workers of Republic Technologies International located in Lorain, Ohio. The notice was published in the **Federal Register** on February 28, 2002 (67 FR 9325).

At the request of the State agency, the Department reviewed the certification for workers of the subject firm. The workers produce hot rolled steel bars. The State reports that the plant was purchased by Republic Engineered Products and the worker group continued to produce hot rolled steel bars. Furthermore, worker separations have occurred under the new employer, and the workers wages are reported under the Unemployment Insurance tax account for the new owner.

It is the Department's intent to provide coverage to all workers of the firm adversely impacted by increases in imports of steel bars. Consequently, the Department is amending the certification to reflect the change in ownership and include workers of Republic Engineered Products, Lorain, Ohio.

The amended notice applicable to TA–W–40,521D is hereby issued as follows:

All workers of Republic Technologies International, currently known as Republic Engineered Products, Lorain, Ohio, who became totally or partially separated from employment on or after November 19, 2000 through February 19, 2004, are eligible to apply for adjustment assistance under section 223 of the Trade Act of 1974.

Signed at Washington, DC this 6th day of May, 2003.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 03–12419 Filed 5–16–03; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–50,661]

Swank, Inc., Formerly Known as Crestline, South Norwalk, CT; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974 (19 U.S.C. 2273) the Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance on January 31, 2003, applicable to workers of Swank, Inc., Norwalk, Connecticut. The notice was published in the **Federal Register** on February 24, 2003 (68 FR 8620).

At the request of a company official, the Department reviewed the certification for workers of the subject firm. The workers are engaged in the production of men's belts and suspenders. The company reports that the subject firm was formerly known as Crestline. Furthermore, the plant is actually located in South Norwalk, not Norwalk as was indicated in the certification.

The Department is amending the certification to make the necessary corrections.

The amended notice applicable to TA–W–50, 661 is hereby issued as follows:

All workers of Swank, Inc., formerly known as Crestline, South Norwalk, Connecticut, who became totally or partially separated from employment on or after January 17, 2002 through January 31, 2005, are eligible to apply for adjustment assistance under section 223 of the Trade Act of 1974.

Signed at Washington, DC, this 5th day of May 2003.

Richard Church,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 03–12425 Filed 5–16–03; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–41,597]

Waukesha Engine Division, Waukesha, WI; Notice of Revised Determination on Reconsideration

By application of August 27, 2002, the International Association of Machinists and Aerospace Workers, Local Lodge 1377, requested administrative reconsideration regarding the Department's Negative Determination Regarding Eligibility to Apply for Worker Adjustment Assistance, applicable to the workers of the subject firm.

The initial investigation resulted in a negative determination issued on July 19, 2002, based on the finding that imports of internal combustion gaseous fueled engines and parts did not contribute importantly to worker separations at the Lewisburg plant. The denial notice was published in the **Federal Register** on August 7, 2002 (67 FR 51295).

To support the request for reconsideration, the union supplied additional information to supplement that which was gathered during the initial investigation. Upon further review and contact with the company, it was revealed that, in contrast to the initial finding that the subject facility exclusively serviced the export market, it became apparent that there was a substantial domestic customer base.

Further, the company provided import data not previously disclosed regarding imports. An examination of this data revealed that the company increased its reliance on imports of internal combustion gaseous fueled engines and parts, contributing to layoffs at the subject facility.

Conclusion

After careful review of the additional facts obtained on reconsideration, I conclude that increased imports of articles like or directly competitive with those produced at Waukesha Engine Division, Waukesha, Wisconsin, contributed importantly to the declines in sales or production and to the total or partial separation of workers at the subject firm. In accordance with the provisions of the Act, I make the following certification:

All workers of Waukesha Engine Division, Waukesha, Wisconsin, who became totally or partially separated from employment on or after May 15, 2001 through two years from the date of this certification, are eligible to apply for adjustment assistance under section 223 of the Trade Act of 1974.

Signed in Washington, DC, this 6th day of May 2003.

Elliott S. Kushner,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 03–12421 Filed 5–16–03; 8:45 am]

BILLING CODE 4510–30–P

NATIONAL CREDIT UNION ADMINISTRATION

Sunshine Act Meeting

TIME AND DATE: 10 a.m., Thursday, May 22, 2003.

PLACE: Board Room, 7th Floor, Room 7047, 1775 Duke Street, Alexandria, VA 22314–3428.

STATUS: Open.

MATTERS TO BE CONSIDERED:

1. Issuance of the Final Version of Corporate Federal Credit Union Bylaws.
2. Final Rule: Section 709.13 of NCUA's Rules and Regulations, Treatment of Swap Agreements in Liquidation or Conservatorship.
3. Final Rule: Part 703 of NCUA's Rules and Regulations, Investment and Deposit Activities.
4. Final Rule: Interpretive Ruling and Policy Statement (IRPS) 03–2 Amending IRPS 87–2, Definition of Small Credit Union.

FOR FURTHER INFORMATION CONTACT: Becky Baker, Secretary of the Board, Telephone 703–518–6304.

Becky Baker,

Secretary of the Board.

[FR Doc. 03–12688 Filed 5–15–03; 3:50 pm]

BILLING CODE 7535–01–M

NATIONAL SCIENCE FOUNDATION

Committee on Equal Opportunities in Science and Engineering; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting:

Name: Committee on Equal Opportunities in Science and Engineering (1173).

Dates/Time: June 12, 2003, 8:30 a.m.–5 p.m. and June 13, 2003, 8:30 a.m.–1:30 p.m.

Place: National Science Foundation, 4201 Wilson Boulevard, Arlington, VA, Room 1235S).

Type of Meeting: Open.

Contact Person: Dr. Margaret E.M. Tolbert, Executive Liaison, CEOSE, Office of Intergrative Activities, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230, Telephone: (703) 292–8040.

Minutes: May be obtained from the Executive Liaison at the above address.

Purpose of Meeting: To provide advice and recommendations concerning broadening participation in science and engineering.

Agenda

Thursday, June 12, 2003

Presentation and Discussion of the Office of Science and Technology's Focus on Science and Mathematics and the Status of Underrepresented Groups
Discussion of Workforce 21 and the National Science Board Views on This Topic
Discussion of NSF's Programs in Relationship to the CEOSE Mandate
Reports on NSF Advisory Committees
Reports by CEOSE Ad Hoc Subcommittees Chairs

Friday, June 13, 2003

Discussion of CEOSE and its impact on NSF
Special Reports
Refinement of Recommendations Resulting from Ad Hoc Subcommittee Reports

Dated: May 13, 2003.

Susanne Bolton,

Committee Management Officer.

[FR Doc. 03–12386 Filed 5–16–03; 8:45 am]

BILLING CODE 755–01–M

NATIONAL SCIENCE FOUNDATION

President's Committee on the National Medal of Science; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub.L. 92–463, as amended), the National Science Foundation announces the following meetings:

Date and Time: Monday, August 11, 2003, 9 a.m.–2 p.m.

Place: Room 1295, National Science Foundation, 4201 Wilson Blvd, Arlington, VA.

Type of Meeting: Closed.

Contact Person: Mrs. Susan E. Fannoney, Program Manager, Room 1220, National Science Foundation, 4201 Wilson Blvd, Arlington, VA 22230. Telephone: (703) 292–8096.

Purpose of Meeting: To provide advice and recommendations to the President in the selection of the 2003 National Medal of Science recipient.

Agenda: To review and evaluate nominations as part of the selection process for awards.

Reason for Closing: The nominations being reviewed include information of a personal nature where disclosure would constitute unwarranted invasions of personal privacy. These matters are exempt under 5 U.S.C. 552b(c)(6) of the Government in the Sunshine Act.

Dated: May 13, 2003.

Susanne Bolton,

Committee Management Officer.

[FR Doc. 03–12387 Filed 5–16–03; 8:45 am]

BILLING CODE 7555–01–M

NATIONAL SCIENCE FOUNDATION

Sunshine Act Meeting

AGENCY HOLDING MEETING: National Science Foundation, National Science Board and its Subdivisions.

DATE AND TIME: May 21, 2003: 8:30 a.m.–4 p.m.—Open Session

Concurrent Sessions:
11:30 a.m.–1 p.m.—Closed Session
1:15 p.m.–1:45 p.m.—Closed Session
3:30 p.m.–4 p.m.—Closed Session
3:15 p.m.–3:30 p.m.—Closed Session

May 22, 2003: 8 a.m.–3:30 p.m.—Open Session

Concurrent Sessions:
8 a.m.–10:05 a.m.—Closed Session
8:30 a.m.–9 a.m.—Closed Session
12 Noon–1 p.m.—Closed Session

PLACE: The National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230, *www.nsf.gov/nsb.*

CONTACT FOR INFORMATION: NSF Information Center (703) 292–5111.

STATUS: Part of this meeting will be closed to the public. Part of this meeting will be open to the public.

MATTERS TO BE CONSIDERED:

Wednesday, May 21, 2003

Open

Task Force on S&E Infrastructure (8:30 a.m.–9:30 a.m.), Room 1235
- Discussion of the Final Report (NSB–02–190)
- Discussion of Report Dissemination Plan

Task Force on National Workforce Policy for S&E (8:30 a.m.–9:30 a.m.), Room 1295
- Comments received from NSB members on the draft of May 9 (NSB–03–69)
- Outreach plan for public comment
- Schedule to August

Committee on Education and Human Resources (9:30 a.m.–11:30 a.m.), Room 1235
- Report from the Task Force on NWP
- Reports from working groups on NSF K–12, undergraduate and graduate programs
- Report from the Subcommittee on S&E Indicators
- Focus on the Future—Nurturing Discovery: Biological Education for the 21st Century
- Report from the AD for SBE
- Report from the AD for EHR
- Update on the 'Broadening Participation' Workshop

Subcommittee on S&E Indicators (Part I, 9:30 a.m.–11:30 a.m.), Room 1295
- Discussion of Reviews, S&E Indicators 2004:
  —Chapter 7, Public Attitudes & Public Understanding
  —Chapter 3, S&E Workforce
  —Chapter 4, U.S. & International R&D
  —Chapter 6, Industry, Technology & the Global Marketplace

Executive Committee (1 p.m.–1:15 p.m.), Room 1295
- Welcome new members

Subcommittee on S&E Indicators (Part II, 1:45 p.m.–2:45 p.m.), Room 1295
- Discussion of Reviews, S&E Indicators 2004, continued—Chapter 2, Higher Education in S&E
- Report on the May 12 and May 14 teleconferences
- Preliminary comments, Chapter 5, Academic R&D

Committee on Strategy and Budget (2 p.m.–4 p.m.), Room 1235
- Discussion of the Draft NSF Strategic Plan
- NSF Long-Range Planning

Subcommittee on Polar Issues (2:45 p.m.–4:15 p.m.), Room 1295
- OPP Director's Update
- USAP Safety and Health Audit

[Closed session 3:15–3:35, see below]
- USAP IT Security
- Arctic Social Science and Education
- Polar Class Ice Breakers

Closed

Plenary Session of the Board (11:30 a.m.–1 p.m.), Room 1235
- Executive Committee Elections
- FY 2004 NSB Budget

Executive Committee (1:15 p.m.–1:45 p.m.), Room 1295
- Specific Personnel Matters
- Future NSF Budgets

Committee on Strategy and Budget (3:30 p.m.–4 p.m.), Room 1235
- Preliminary Discussion of the FY 2005 Budget

Subcommittee on Polar Issues (3:15 p.m.–3:30 p.m.), Room 1295
- Award Action: Office of Polar Programs

Thursday, March 13, 2003

Closed

Committee on Programs and Plans (8 a.m.–10 a.m.), Room 1235
- Award Action: Directorate for Computer and Information Sciences Engineering
- Award Actions: Division of Atmospheric Sciences
- Award Action: Division of Earth Sciences
- Award Action: Office of Polar Programs

Committee on Audit and Oversight (8:30 a.m.–9 a.m.), Room 1295
- OIG Briefing on the status of an ongoing investigation

Plenary Session of the Board (12 Noon–1 p.m.), Room 1235
- NSF FY 05 Budget
- Awards & Agreements

Open

Committee on Programs and Plans (10:05 a.m.–11:15 a.m.), Room 1235
- Information Item: Recompetition of the Management of the National Astronomy and Ionosphere Center (NAIC)
- Report on the Spring Meeting of the MREFC Panel
- Infrastructure Task Force/Final Report

Committee on Audit & Oversight (9 a.m.–11:30 a.m.), Room 1295
- OIG Semiannual Report
- GAO's coverage of NSF and scientific research
- Update on settlement of court case involving NSF awardee
- FY 2002 Merit Review Report
- CIO update
- CFO update
- NAPA Review update

Plenary Session of the Board (1 p.m.–3:30 p.m.), Room 1235
- 2004 Meeting Calendar
- Guidelines on NSB Task Forces
- NSF Strategic Plan, 2003–2008
- NSF Long-Range Planning
- Director's Merit Review Report
- OIG Semiannual Report
- Minutes, March 2003
- Closed Items, August 2003
- Chairman's Report
- Director's Report
- Committee Reports
- Presentation: NSDL: Web-Enabled Education Strategies

Gerard Glaser,

Executive Officer, NSB.

[FR Doc. 03–12575 Filed 5–15–03; 11:35 am]

BILLING CODE 7555–01–M

OVERSEAS PRIVATE INVESTMENT CORPORATION

Africa Investment Council Meeting; Sunshine Act

TIME AND DATE: Thursday, May 22, 2003, 9:30 a.m. (open portion), 10 a.m. (closed portion).

PLACE: Offices of the Corporation, Twelfth Floor Europe Room, 1100 New York Avenue, NW., Washington, DC.

STATUS: Meeting open to the public from 9:30 a.m. to 10 a.m. Closed portion will commence at 10 a.m. (approx.).

MATTERS TO BE CONSIDERED:
1. Welcome & introductory remarks.
2. Administrative issues.

FURTHER MATTERS TO BE CONSIDERED: (Closed to the public 10 a.m.)
1. Reports.

Due to unforeseen circumstances this notice is published less than 15 days prior to the meeting. (41 CFR 102–3.150(b)).

CONTACT PERSON FOR INFORMATION: Information on the meeting may be obtained from Marysue K. Shore at (202) 336–8630.

Dated: May 14, 2002.

Marysue K. Shore,

Senior Advisor to the President and Director, African Affairs; Overseas Private Investment Corporation.

[FR Doc. 03–12529 Filed 5–14–03; 4:49 pm]

BILLING CODE 3210–01–M

SECURITIES AND EXCHANGE COMMISSION

Proposed Collection; Comment Request

Upon Written Request, Copies Available From: Securities and Exchange Commission, Office of Filings and Information Services, Washington, DC 20549.

Extension:
Rule 206(4)–3; SEC File No. 270–218.
OMB Control No. 3235–0242.
Rule 206(4)–4 SEC File No. 270–304.
OMB Control No. 3235–0345.

Notice is hereby given that, pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission ("Commission") is soliciting comments on the collections of information summarized below. The Commission plans to submit these existing collections of information to the Office of Management and Budget for extension and approval.

Rule 206(4)–3, which is entitled "Cash Payments for Client Solicitations," provides restrictions on cash payments for client solicitations. The rule requires that an adviser pay all solicitors' fees pursuant to a written agreement. When an adviser will provide only impersonal advisory services to the prospective client, the rule imposes no disclosure requirements. When the solicitor is affiliated with the adviser and the adviser will provide individualized services, the solicitor must, at the time of the solicitation, indicate to prospective clients that he is affiliated with the adviser. When the solicitor is not affiliated with the adviser and the adviser will provide individualized services, the solicitor must, at the time of the solicitation, provide the prospective client with a copy of the adviser's brochure and a disclosure document containing information specified in rule 206(4)–3. The information rule 206(4)–3 requires is necessary to inform advisory clients about the nature of the solicitor's financial interest in the recommendation so they may consider the solicitor's potential bias, and to protect investors against solicitation activities being carried out in a manner inconsistent with the adviser's fiduciary duty to clients. Rule 206(4)–3 is applicable to all Commission registered investment advisers. The Commission believes that approximately 1,560 of these advisers have cash referral fee arrangements. The rule requires approximately 7.04 burden hours per year per adviser and results in a total of approximately 10,982 total burden hours (7.04 × 1,560) for all advisers.

Rule 206(4)–4, which is entitled "Financial and Disciplinary Information that Investment Advisers Must Disclose to Clients," requires advisers to disclose certain financial and disciplinary information to clients. The disclosure requirements in rule 206(4)–4 are designed so that clients will have information about an adviser's financial condition and disciplinary events that may be material to an evaluation of the adviser's integrity or ability to meet contractual commitments to clients. We estimate that approximately 1,349 advisers are subject to this rule. The rule requires approximately 7.5 burden hours per year per adviser and amounts to approximately 10,118 total burden hours (7.5 × 1,349) for all advisers.

Written comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted in writing within 60 days of this publication.

Please direct your written comments to Kenneth A. Fogash, Acting Associate Executive Director/CIO, Office of Information Technology, Securities and Exchange Commission, 450 5th Street, NW., Washington, DC 20549.

Dated: May 12, 2003.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 03–12452 Filed 5–16–03; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

Sunshine Act; Meetings

Notice is hereby given, pursuant to the provisions of the Government in the Sunshine Act, Public Law 94–409, that the Securities and Exchange Commission will hold the following meetings during the week of May 19, 2003:

Closed Meetings will be held on Tuesday, May 20, 2003 at 1 p.m., and Wednesday, May 21, 2003 at 2 p.m.

Commissioners, Counsel to the Commissioners, the Secretary to the Commission, and recording secretaries will attend the Closed Meetings. Certain staff members who have an interest in the matters may also be present.

Commissioner Glassman, as duty officer, determined that no earlier notice thereof was possible.

The General Counsel of the Commission, or his designee, has certified that, in his opinion, one or more of the exemptions set forth in 5 U.S.C. 552b(c) (5), (7), (8), (9)(B) and (10) and 17 CFR 200.402(a) (5), (7), (8), (9)(ii) and (10), permit consideration of the scheduled matters at the Closed Meetings.

The subject matter of the Closed Meeting scheduled for Tuesday, May 20, 2003 will be:

Institution and settlement of administrative proceedings of an enforcement nature;

Institution and settlement of injunctive actions; and

Formal order of investigation.

The subject matter of the Closed Meeting scheduled for Wednesday, May 21, 2003 will be:

Institution and settlement of administrative proceedings of an enforcement nature;

Institution and settlement of injunctive actions; and

Formal order of investigation.

At times, changes in Commission priorities require alterations in the scheduling of meeting items. For further information and to ascertain what, if any, matters have been added, deleted, or postponed, please contact:

The Office of the Secretary at (202) 942–7070.

Dated: May 14, 2003.

Jonathan G. Katz,

Secretary.

[FR Doc. 03–12590 Filed 5–15–03; 11:47 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–47842; File No. SR–Amex–2003–35]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the American Stock Exchange LLC, Relating to Legal Fees Incurred by the Exchange

May 13, 2003.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on April 28, 2003, the American Stock Exchange LLC ("Amex" or "Exchange") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by Amex. Amex filed the proposed rule change pursuant to section 19(b)(3)(A) of the Act[3] and Rule 19b–4(f)(6) thereunder,[4] which renders the proposal effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Amex proposes to adopt Exchange Rule 61 to require members, member organizations, limited trading permit holders, approved persons or persons associated with any of the foregoing who bring legal proceedings against the Exchange to reimburse the Exchange for all costs associated with defending such proceedings only when such persons do not prevail and the Exchange's costs exceed fifty thousand dollars ($50,000.00). Below is the text of the proposed rule change. New text is in *italics*.

* * * * *

Exchange's Costs of Defending Legal Proceedings

Rule 61. Any member, member organization, limited trading permit holder, approved person, or person associated with any of the foregoing who fails to prevail in a lawsuit or other legal proceeding instituted by such person against the Exchange or any of its directors, officers, committee members, employees, or agents, and related to the business of the Exchange, shall pay to the Exchange all reasonable expenses, including attorneys' fees, incurred by the Exchange in the defense of such proceeding, but only in the event that such expenses exceed fifty thousand dollars ($50,000.00). This provision shall not apply to disciplinary actions by the Exchange, to administrative appeals of Exchange actions or in any specific instance where the Board has granted a waiver of this provision.

* * * * *

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, Amex included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Amex has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

Legal proceedings can significantly divert staff resources away from the Exchange's regulatory and business purposes. In addition, these proceedings often require the Exchange to secure outside counsel—a costly undertaking. The Exchange believes that seeking to ensure that only merit-based legal proceedings are pursued against the Exchange by members, member organizations, limited trading permit holders, approved persons or persons associated with any of the foregoing will help protect against Exchange resources being unnecessarily diverted from the Exchange's regulatory and business objectives, thus strengthening the overall organization. To this end, the Exchange is proposing to adopt a rule similar to one already in effect at the Chicago Board Options Exchange ("CBOE")[5] requiring specified persons who bring legal proceedings against the Exchange and/or persons acting on the Exchange's behalf but who do not prevail to reimburse the Exchange for all costs associated with defending such proceedings when these costs exceed fifty thousand dollars. The proposed rule would not apply to disciplinary actions by the Exchange, administrative appeals of Exchange actions or in any specific instance where the Board has granted a waiver of this provision.

2. Statutory Basis

The proposed rule change is consistent with section 6(b)[6] of the Act, in general, and furthers the objectives of section 6(b)(5),[7] in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, and to remove impediments to and perfect the mechanisms of a free and open market and a national market system.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

No written comments were solicited or received in response to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The Amex has stated that because the proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days (or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest), it has become effective pursuant to section 19(b)(3)(A) of the Act[8] and Rule 19b–4(f)(6) thereunder.[9] At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate the rule change if it appears to the Commission that the action is necessary or appropriate in the public interest, for the protection of investors, or would otherwise further the purposes of the Act.

Pursuant to Rule 19b–4(f)(6)(iii) under the Act,[10] the proposal may not become operative for 30 days after the date of its filing, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest, and the self-regulatory organization must file notice of its intent to file the proposed rule change at least five business days beforehand. Amex has requested that the Commission waive the five-day pre-filing requirement and the 30-day operative delay so that the proposed rule change will become immediately effective upon filing.

The Commission believes that waiving the five-day pre-filing provision and the 30-day operative delay is consistent with the protection of investors and the public interest.[11] The Commission believes that waiving the pre-filing requirement and accelerating the operative date will not affect investors because the proposed rule change only applies to Exchange members, member organizations, limited trading permit holders, approved persons or persons associated with any of the foregoing. Furthermore, as Amex has noted, the proposed new rule is similar to one already in effect at the CBOE.[12] For these reasons, the Commission designates the proposed rule change as effective and operative immediately.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the Amex. All submissions should refer to File No. Amex–2003–35 and should be submitted by June 9, 2003.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[13]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 03–12450 Filed 5–16–03; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–47822; File No. SR–Amex–2003–14]

Self-Regulatory Organizations; Order Approving Proposed Rule Change as Amended by Amendments No. 1, 2, and 3 Thereto, and Notice of Filing and Accelerated Approval of Amendment No. 4 Thereto, by the American Stock Exchange LLC, Relating to a One-Year Pilot for Options Intermarket Linkage Fees

May 9, 2003.

On February 28, 2003, the American Stock Exchange LLC ("Amex" or "Exchange") filed with the Securities and Exchange Commission ("Commission"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b–4 thereunder,[2] a proposed rule change to amend its fee structure to clarify which fees apply to trades pertaining to the options intermarket linkage ("Linkage") and to specify that such fees are for a one-year pilot. On March 7, 2003, Amex submitted Amendment No. 1 to the proposed rule change.[3] On March 19, 2003, Amex submitted Amendment No. 2 to the proposed rule change.[4] On March 21, 2003, Amex submitted Amendment No. 3 to the proposed rule

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[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A).

[4] 17 CFR 240.19b–4(f)(6).

[5] See CBOE Rule 2.24.

[6] 15 U.S.C. 78f(b).

[7] 15 U.S.C. 78f(b)(5).

[8] 15 U.S.C. 78s(b)(3)(A).

[9] 17 CFR 240.19b–4(f)(6).

[10] 17 CFR 240.19b–4(f)(6)(iii).

[11] For purposes only of accelerating the operative date of this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[12] See n. 5, supra.

[13] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] See letter from Jeffrey P. Burns, Assistant General Counsel, Amex, to Jennifer Lewis, Attorney, Division of Market Regulation ("Division"), Commission, dated March 6, 2003 ("Amendment No. 1").

[4] See letter from Jeffrey P. Burns, Assistant General Counsel, Amex, to Jennifer Lewis, Attorney, Division, Commission, dated March 18, 2003 ("Amendment No. 2").

change.[5] The Commission published the amended proposal for comment in the **Federal Register** on March 28, 2003.[6] The Commission received no comments on the proposal. On May 8, 2003, Amex submitted Amendment No. 4 to the proposal.[7] This order approves the proposal rule change, as amended by Amendments No. 1, 2, 3, and 4. The Commission also solicits comment from interested persons on Amendment No. 4.

Three Amex fees would apply to Linkage trades other than satisfaction orders: a per transaction per contract side fee of $.26; a $.05 options floor brokerage fee; and a $.05 options comparison fee. Each of these Linkage-related fees would be implemented as a one-year pilot, expiring on January 31, 2004.

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange[8] and, in particular, the requirements of Section 6 of the Act.[9] The Commission finds that the proposed rule change is consistent with Section 6(b)(4) of the Act,[10] which requires that the rules of an exchange provide equitable allocation of reasonable dues, fees and other charges among its members and other persons using its facilities. The Commission believes the one-year pilot will give the Exchange and the Commission the opportunity to evaluate whether these fees are appropriate.

The Commission finds good cause, consistent with Section 19(b)(2) of the Act,[11] to approve Amendment No. 4 to the proposed rule change prior to the thirtieth day after the date of publication of notice of filing thereof in the **Federal Register**. The Commission notes that the notice that was published in the **Federal Register**[12] indicated that the Linkage fees were subject to a one-year pilot and Amendment No. 4 merely specifies the expiration date. Therefore, Amex's proposal for the one-year pilot program to expire on January 31, 2004 was subject to notice and comment. Accordingly, the Commission believes good cause exists, pursuant to Sections 6(b)(5) and 19(b) of the Act[13] to accelerate approval of Amendment No. 4 to the proposed rule change.

Interested persons are invited to submit written data, views and arguments concerning Amendment No. 4, including whether it is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the Amex. All submissions should refer to File No. SR–Amex–2003–14 and should be submitted by June 9, 2003.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[14] that the proposed rule change (SR–Amex–2003–14), as amended, is approved on a pilot basis until January 31, 2004.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[15]

Jill M. Peterson,

Assistant Secretary.

[FR Doc. 03–12455 Filed 5–16–03; 8:45 am]

BILLING CODE 8010–01–P

[5] *See* letter from Jeffrey P. Burns, Assistant General Counsel, Amex, to Jennifer Lewis, Attorney, Division, Commission, dated March 20, 2003 ("Amendment No. 3").

[6] *See* Securities Exchange Act Release No. 47562 (March 21, 2003), 68 FR 15250.

[7] *See* letter from Jeffrey P. Burns, Assistant General Counsel, Amex, to Jennifer Lewis, Attorney, Division, Commission, dated May 8, 2003 ("Amendment No. 4"). In Amendment No. 4, Amex proposes to amend its fee schedule to clarify that the one-year pilot program for Linkage fees expires on January 31, 2004.

[8] In approving this proposed rule change, the Commission notes that it has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[9] 15 U.S.C. 78f.

[10] 15 U.S.C. 78f(b)(4).

[11] 15 U.S.C. 78s(b)(2).

[12] *See supra* note 6.

[13] 13 15 U.S.C. 78f(b)(5) and 15 U.S.C. 78s(b).

[14] 15 U.S.C. 78s(b)(2).

[15] CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–47820; File No. SR–NASD–00–12]

Self-Regulatory Organization; Order Approving Proposed Rule Change and Notice of Filing and Order Granting Accelerated Approval to Amendment Nos. 3 and 4 to the Proposed Rule Change by the National Association of Securities Dealers, Inc. Concerning Amendments to Rules Governing Member Communications With the Public

May 9, 2003.

I. Introduction

On June 9, 2000, the National Association of Securities Dealers, Inc. ("NASD") and through its subsidiary, NASD Regulation, Inc. ("NASD Regulation"), pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b–4 thereunder,[2] filed a proposed rule change to amend NASD Rule 2210 and the Interpretive Materials thereunder, promulgate new NASD Rule 2211, and renumber existing NASD Rule 2211.[3] On August 8, 2001, NASD Regulation filed Amendment No. 1 to the proposed rule change. On December 12, 2001, NASD Regulation filed Amendment No. 2 to the proposed rule change. The proposed rule change, as amended, was published for comment in the **Federal Register** on December 31, 2001.[4] The Commission received ten comment letters on the proposed rule change.[5] On November 6, 2002, NASD Regulation filed Amendment No. 3 to the proposed rule change.[6] On March 6, 2003, NASD Regulation filed Amendment No. 4 to the proposed rule change.[7] This notice and order approves the proposed rule change, as amended, and solicits comments from interested persons on Amendment Nos. 3 and 4.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] The NASD originally submitted the proposed rule change to the Commission on March 21, 2000, however, because the submission did not comply with the requirements of Exchange Act Rule 19b–4, the Commission does not consider the proposed rule change filed on the date. Rather, the Commission considers the proposed rule change to be filed on June 9, 2000, the date on which the deficiencies were corrected.

[4] *See* Securities Exchange Act Release No. 45181 (December 20, 2001), 66 FR 67586.

[5] *See* letters from Amy B.R. Lancellota, Senior Counsel, Investment Company Institute, to Jonathan G. Katz, Secretary, Commission, dated February 13, 2002 ("ICI Letter"); Christopher R. Franke, Chairman, Self-Regulatory and Supervisory Practices Committee, Securities Industry Association, to Jonathan G. Katz, Secretary, Commission, dated February 14, 2002 ("SIA Letter"); James R. Anderson, Vice President and Chief Compliance Officer, AIM Distributors, Inc. to Jonathan G. Katz, Secretary, Commission, dated February 13, 2002 ("AIM Letter"); James Anderson, Vice President and Chief Compliance Officer, Fund Management Company, to Jonathan G. Katz, Secretary, Commission, dated February 13, 2002 ("FMC Letter"); Michel de Konkoly Thege, Vice President and Associate General Counsel, The Bond Market Association, to Jonathan G. Katz, Secretary, Commission, dated February 15, 2002 ("BMA Letter"); Brandon Becker, Wilmer, Cutler & Pickering, to Jonathan G. Katz, Secretary, Commission, dated February 25, 2002 ("Wilmer-Becker Letter"); Forrest Fost, Associate Legal Counsel and Danielle Nicholson Smith, Senior Legal Analyst, T. Rowe Price Associates, Inc., to Jonathan G. Katz, Secretary, Commission, dated February 14, 2002 ("T. Rowe Letter"); Yoon-Young Lee, Wilmer, Cutler & Pickering, to Jonathan G. Katz, Secretary, Commission, dated February 13, 2002 ("Wilmer-Lee Letter"); Alexander C. Gavis, Associate General Counsel, Fidelity Investments, to Jonathan G. Katz, Secretary, Commission, dated February 15, 2002 ("Fidelity Letter"); Sullivan & Cromwell, to Jonathan G. Katz, Secretary, Commission, dated February 22, 2002 ("Sullivan Letter").

[6] *See* letter from Barbara Z. Sweeney, Senior Vice President and Corporate Secretary, NASD, to Katherine A. England, Assistant Director, Division, Commission, dated November 4, 2002 ("Amendment No. 3").

[7] *See* letter from Philip Shaikun, Assistant General Counsel, NASD, to Katherine A. England, Assistant Director, Division, Commission, dated March 6, 2003 ("Amendment No. 4").

II. Description of Proposed Rule Change

A. Summary

The NASD submitted the proposed rule change to modernize and clarify the rules governing member communications with the public. Among other things, the proposed rule change would exclude all communications to institutional investors from member pre-use approval and NASD filing requirements and from many of the content standards. Form letters and group e-mail to existing retail customers and fewer than 25 prospective retail customers also would be eligible for these exclusions, provided that a member developed appropriate policies and procedures to supervise and review such communications. In addition, the proposed rule change would exclude independently prepared reprints, and excerpts there from, from the filing and many of the content standards, and would exclude certain press releases from the filing requirements. The proposed rule change generally would simplify the content standards applicable to member communications.[8]

B. Description of Proposed Rule Change

1. Reorganization of Rule 2210

The proposed rule change would create new NASD Rule 2211, which would apply to institutional sales material and correspondence. The proposed rule change also would provide cross-references between NASD Rule 2210 and NASD Rule 2211 in appropriate places. Existing NASD Rule 2211, concerning telemarketing, would be renumbered as NASD Rule 2212.

2. Definition of "Public Appearance"

Existing NASD Rule 2210(d)(1)(C) provides that NASD members who engage in public appearances or speaking activities must follow the content standards of NASD Rules 2210(d) and (f). Consequently, public appearances already are subject to strict content requirements. The proposed rule change would clarify the application of NASD Rule 2210 to public appearances by defining "public appearance" as a type of communication with the public. Public appearances would include participation in a seminar, forum (including an interactive electronic forum), radio or television interview, or other public appearance or public speaking activity.

3. Institutional Sales Material

The proposed rule change would eliminate the pre-use approval and filing requirements applicable to communications that are distributed or made available only to institutional investors contained in NASD Rule 2210. Institutional sales material would be subject to new supervision and review requirements that are modeled on those in NASD Rule 3010, which apply to correspondence. Moreover, institutional sales material would continue to be subject to the record-keeping requirements and some, but not all, of the content standards in NASD Rule 2210.[9]

Under the proposed rule change, no member could treat a communication as having been distributed to an institutional investor if the member had reason to believe that the communication or any excerpt thereof would be forwarded or made available to any person other than an institutional investor. For example, if a member had reason to believe that such a communication would be forwarded or made available to 401(k) plan participants or other beneficiaries of institutional accounts, it would be treated as retail sales material. NASD Regulation believes that plan participants and other beneficiaries of institutional accounts should receive the same protections under the advertising rules as other retail investors. Similarly, an advertisement in a publication designed for broker/dealers or other institutional investors may not be treated as institutional sales material if the member has reason to believe that the publication will be made available to any person other than an institutional investor.

The proposed rule change amended the definition of "institutional investor," first, to include governmental entities and their subdivisions. Second, the definition was amended to include employee benefit plans that meet the requirements of section 403(b) or section 457 of the Internal Revenue Code and have at least 100 participants.[10] Third, the definition was amended to apply to qualified plans with at least 100 participants.[11] Fourth, the proposed rule change would define "institutional investor" to include any person acting solely on behalf of any institutional investor. Fifth, NASD Regulation clarified that the term "institutional investor" includes only associated persons who are registered with an NASD member.[12] Sixth, the definition would clarify that no member may treat a communication as having been distributed to an institutional investor if the member has reason to believe that the communication or any excerpt thereof will be forwarded *or made available to* any person other than an institutional investor. Thus, for example, if a member has reason to believe the employer sponsor of a retirement plan will make sales material available for inspection by the plan participants, then the member may not treat the sales material as having been distributed only to an institutional investor.

[8] NASD member broker/dealers that are dually registered as investment advisers will remain subject to the advertising standards of the Investment Advisers Act of 1940 and Commission rules thereunder, to the extent that their sales material promotes advisory products or services.

[9] The proposed rule change would revise the content standards to specifically indicate which type of communication is subject to each standard. Therefore, standards that apply only to "advertisements" or "sales literature" would not apply to institutional sales material. For example, the ranking guidelines in proposed IM–2210–3 would apply only to advertisements and sales literature and therefore would not apply to institutional sales material.

[10] This category of institutional investor does not include participants of such plans.

[11] Again, this category of institutional investor does not include participants of such plans.

[12] The "broker/dealer-only" exception, which would become a part of the institutional investor definition, recognizes the special expertise that NASD members have with respect to brokerage products and services. While registered persons should have this expertise, as demonstrated by their completion of the qualifications process, there can be no assurance that other associated persons would.

The definition of "institutional investor" would include persons described in NASD Rule 3110(c)(4), which defines "institutional account" to include any entity with total assets of at least $50 million.

4. Form Letters and Group Electronic Mail

NASD Rule 2210 currently treats any letter or e-mail sent to more than one person as "sales literature" subject to the content standards applicable to all other sales literature, and to the member pre-use approval and NASD filing requirements. The proposed rule change would define "correspondence" to include form letters and group e-mail sent to existing retail customers and to fewer than 25 prospective retail customers within any 30 calendar-day period ("Group Correspondence"), as well as written and electronic communications prepared for delivery to a single retail customer. The proposed rule change would subject Group Correspondence to the strict supervisory procedures in NASD Rule 3010(d), which governs the approval and review of correspondence, and to those content standards that apply to correspondence.[13] Form letters and group e-mail sent to 25 or more prospective retail customers within any 30 calendar-day period would be subject to the pre-use approval, filing, and record-keeping requirements of NASD Rule 2210, and to all of the content standards applicable to sales literature.[14]

In order to ensure that its review of Group Correspondence meets these standards, a member would be expected to review its procedures to ensure that they adequately address potential concerns with the distribution of Group Correspondence. The NASD encourages members to consider whether to adopt stricter procedures that require registered principal pre-use approval of Group Correspondence that presents a higher risk to investors, based on factors such as its content, purposes or targeted audience.

"Existing retail customer" would be defined as any person, other than an institutional investor, for whom the member or a clearing broker or dealer on behalf of the member carries an account, or who has an account with any registered investment company for which a member serves as principal underwriter. The new language would make clear that a person who has opened an account with an investment company or with a transfer agent for such an investment company could qualify as an existing retail customer. NASD also has amended the language to make it more consistent with existing NASD Rule 2211(d).

5. Article Reprints

NASD Rule 2210 currently defines "sales literature" to include "reprints or excerpts of any * * * published article." Article reprints may have to be filed with the Department, depending upon their content, such as whether they pertain to registered investment companies. The proposed rule change would define a new type of communication with the public, an "independently prepared reprint," and exclude independently prepared reprints from the filing and most of the content standards. An independently prepared reprint would consist of any article reprint that meets certain standards that are designed to ensure that the reprint was issued by an independent publisher and was not materially altered by the member. The proposed rule change would provide that a member may alter the contents of an independently prepared reprint in a manner necessary to make it consistent with applicable regulatory standards or to correct factual errors.

An article reprint would qualify as an "independently prepared reprint" under Rule 2210(a)(6)(A) only if, among other things, its publisher is not an affiliate of the member using the reprint or any underwriter or issuer of the security mentioned in the reprint or excerpt that the member is promoting. For purposes of this provision, "affiliate" has the same meaning as that term is defined in NASD Rule 2720(b)(1)(A) and (B). The term "affiliate" as used in NASD Rule 2210(a)(6)(B) (regarding investment company research reports) also has this meaning.

Some, but not all, content standards would apply to independently prepared reprints. For example, NASD Rule 2210(d)(1) would impose various content standards on all communications with the public, including independently prepared reprints. However, paragraph (d)(1)(D) (concerning predictions and projections of performance) would not apply to a statement in an independently prepared reprint that represents the author's opinion about the prospects for a member's business, products or services.[15]

The proposed rule change also would include certain investment company research reports within the definition of independently prepared reprints. NASD Rule 2210 was amended to exclude these research reports from the filing requirements.[16] Because these research reports present essentially the same issues as independently prepared reprints, the proposed rule change would subject these research reports to the same content and other requirements that apply to independently prepared reprints.

Independently prepared reprints would continue to be subject to the pre-use approval and record-keeping requirements of NASD Rule 2210. Moreover, article reprints and research reports that do not meet the definition of "independently prepared reprint" would continue to constitute sales literature that would have to meet all of the requirements applicable to sales literature.

6. Press Releases

NASD Rule 2210 defines "sales literature" to include "any written or electronic communication distributed or made generally available to customers or the public," which the Department has interpreted to include press releases. The proposed rule change would codify this interpretation by amending the definition of "sales literature" to include press releases concerning a member's product or service. The proposed rule change would exclude from the filing requirements press releases that are made available only to members of the media.[17]

[13] Notice to Members 98–11 provides guidance to members concerning NASD Rule 3010(d). The Notice makes clear that, at a minimum, a member must develop procedures for the review of some of each registered representative's correspondence with the public relating to the member's investment banking or securities business, tailored to its structure and the nature and size of its business and customers.

The Notice provides that members must:

- Specify in writing the firm's policies and procedures for reviewing different types of correspondence;
- Identify what types of correspondence will be pre-or post-reviewed by a registered principal; and
- Periodically re-evaluate the effectiveness of the firm's procedures for reviewing public correspondence and consider any necessary revisions.

[14] The proposed rule change would permit members to treat form letters or group e-mail sent to a *combination* of existing customers and fewer than 25 prospective retail customers within any 30 calendar-day period as correspondence.

Of course, members could not "sanitize" sales literature by enclosing it with Group Correspondence. For example, an item that a member has distributed as sales literature would remain sales literature for purposes of Rule 2210 when the member encloses it in Group Correspondence.

[15] Nevertheless, a projection made in the reprint by a person other than the author, such as a mutual fund's portfolio manager or an associated person of a member, would be subject to paragraph (d)(1)(D).

[16] *See* Securities Exchange Act Release No. 42340 (January 13, 2000), 65 FR 3510 (January 21, 2000).

[17] The proposed rule change would exclude all press releases made available only to members of the media, without limiting the exclusion to press releases concerning investment companies.

7. Television and Video Advertisements

The proposed rule change would require members that have filed a draft version or "story board" of a television or video advertisement pursuant to a filing requirement also to file the final filmed version within ten business days of first use or broadcast. This rule change would codify an existing Department policy regarding television and video sales material. NASD Rule 2210 would impose a filing fee only when the draft version or story board is filed. No additional fee would be assessed when the final filmed version is filed.

8. Approval and Record-keeping

The proposed rule change would make three additional modifications to the pre-use approval and record-keeping requirements. First, it would clarify that the pre-use approval requirement could be met with respect to a research report concerning any debt or equity security, including non-corporate securities, by signature or initial of a supervisory analyst under New York Stock Exchange Rule 344. Second, the proposed rule change would clarify that members must maintain a file with the name of the registered principal who approved any advertisement or sales literature. Members would not be required to maintain a file with the name of the person who prepared those items, however.[18] Third, the proposed rule change would clarify that members must maintain a file with information concerning the source, but not necessarily the data, of any statistical table, chart, graph or other illustration.

9. Filing Requirements

The proposed rule change would retain the existing provision concerning the obligation of a member that has not filed an advertisement with the Department, to pre-file its advertisements for a one-year period.

The proposed rule change also would clarify that advertisements and sales literature for continuously offered closed-end funds must be filed with the Department. This clarification codifies a long-standing position of the Department.[19]

The proposed rule change would clarify that members need not file advertisements and sales literature that previously have been filed and that are to be used without material change. This provision would codify existing practice, which excludes from the filing requirement material that has been filed previously, but in which performance data is updated or there are other changes that are not material for purpose of the filing requirement.

The proposed rule change would specifically list institutional sales material as one type of communication that need not be filed. The proposed rule change also would list correspondence, independently prepared reprints, and certain press releases as other types of communications that need not be filed. In addition, the proposed rule change would state that when these items concern investment companies, then they will be deemed filed with the NASD for purposes of section 24(b) of the Investment Companies Act of 1940 and Rule 24b–3 thereunder. This provision would eliminate the need to file this material with the SEC.

The proposed rule change also would exclude from the filing requirement announcements as a matter of record that a member has participated in a private placement.

Members are not required to file shareholder reports that only consist of statistical reporting information such as financial statements and portfolio holdings. However, members must file the management's discussion of fund performance ("MDFP") portion of a report (as well as any supplemental sales material attached to or distributed with the report) with the Department.

10. Standards Applicable to Member Communications

The proposed rule change would substantially shorten and simplify the standards applicable to communications with the public that are contained in NASD Rule 2210(d). The proposed rule change would relocate certain standards from NASD Rule 2210(d) to a new Interpretive Material 2210–1, Guidelines to Ensure that Communications Are Not Misleading.[20] New proposed IM–2210–1 would make clear that members have the primary responsibility to ensure that their communications with the public are not misleading, and would rewrite many standards to make them more clear and consistent with the principles of plain English.

Proposed IM–2210–1 would not contain certain of the specific standards currently in NASD Rule 2210. The proposed rule change would eliminate the specific standards regarding non-existent or self-conferred degrees or designations, offers of free service, claims for research facilities, hedge clauses, recruiting advertising, and periodic investment plans. To the extent that these provisions prohibit statements that are misleading, unbalanced, or inaccurate regarding particular types of communications, the rule already prohibits the use of such statements. Moreover, certain required disclosures, such as those currently applicable to statements concerning periodic investment plans, may not be necessary depending upon the context in which they are made.

The proposed rule change also would clarify which guidelines concerning references to tax free or tax exempt income apply to all communications with the public, and which guidelines apply only to advertisements or sales literature.

11. Legends and Footnotes

NASD Rule 2210 cautions members concerning the placement of footnotes, and in the filing review process the Department has insisted that members adopt an appropriate use of footnotes. The proposed rule change would provide that information may be placed in a legend or footnote only in the event that such placement would not inhibit an investor's understanding of the communication. Thus, for example, footnotes in especially small type in an advertisement might be deemed to inhibit an investor's understanding of the advertisement. Similarly, an advertisement that presents bold claims that are supposedly "balanced" only with footnote disclosure might not comply with this content standard.

12. Hypothetical Illustrations

In proposed NASD Rule 2210(d)(1)(D), NASD Regulation would insert language similar to the existing language. Under the proposed rule change, a member could present a hypothetical illustration of mathematical principles, provided that the illustration does not predict or project the performance of an investment or investment strategy and is not used in such a manner. The proposed rule change thus would permit the use of mutual fund cost calculators and other hypothetical illustrations that are permitted by existing NASD Rule 2210.

13. Testimonials

The proposed rule change would apply testimonial standards to advertisements or sales literature concerning the investment advice or

[18] Proposed NASD Rule 2211 would require members to maintain all institutional sales material in a file that includes the name of the person who prepared each item.

[19] See, *e.g.*, NASD Regulatory and Compliance Alert (April 1995) at p. 9.

[20] The current IM–2210–1 concerning collateralized mortgage obligations would be redesignated as IM–2210–7.

investment performance of a member or its products.

14. Recommendations

The proposed rule change would clarify certain aspects of the existing standards governing recommendations in order to provide investors with adequate disclosure about the financial interests that research analysts, other associated persons, or their firms may have in securities that they recommend.

15. Use and Disclosure of a Member's Name

The proposed rule change would simplify the provisions concerning disclosure of member names. In addition, the proposed rule change would make clear that the requirement to disclose the member's name applies to advertisements, sales literature, and correspondence, which for purposes of this provision would include business cards and letterhead.[21] The provision would clarify that the advertisement, sales literature or correspondence must "reflect" (rather than disclose) any relationship between the member and the other named person and the products and services offered by the member.

16. Ranking Guidelines

The proposed rule change would modify the ranking guidelines in several respects. First, the proposed rule change would make clear that no advertisement, item of sales literature or correspondence may present a ranking other than rankings: (1) Created and published by a Ranking Entity, which the ranking guidelines define to include certain independent entities; or (2) created by an investment company or an investment company affiliate but based on the performance measurements of a Ranking Entity.[22] Second, the proposed rule change would make clear that the ranking guidelines in IM–2210–3 apply only to advertisements and sales literature.

Third, the proposed rule change would permit the use of investment company family rankings even in sales material that advertises only one investment company in the family. The proposed rule change would permit the presentation of investment company family rankings, provided that when a particular investment company is being advertised, the individual rankings for that investment company also must be presented. The definition of "investment company family" is substantially similar to the definition of "group of investment companies" in section 12(d)(1)(G) of the Investment Company Act of 1940. Use of an investment company family ranking would have to comply with the other applicable requirements of NASD Rule 2210. The proposed rule change would retain existing language concerning the required ranking periods.

The proposed rule change also would eliminate the requirement that certain disclosures appear in "close proximity" to any headline or other prominent statement that refers to a ranking. The NASD has represented that the subjective nature of this requirement has complicated the Department's administration of the ranking guidelines without providing meaningful additional protection to investors. The proposed rule change would eliminate certain disclosure requirements applicable to investment company rankings that are based on subcategories of funds or categories created by an investment company or its affiliate.

17. Limitations on Use of the Association's Name

The proposed rule change would simplify and shorten the requirements in IM–2210–4 concerning the use of the NASD's name. The proposed rule change also would delete current NASD Rule 2210(d)(2)(J) concerning references to regulatory organizations.

18. Communications About Collateralized Mortgage Obligations

The proposed rule change would rewrite existing IM–2210–1 (the CMO Guidelines), which governs communications about collateralized mortgage obligations ("CMOs") and renumber it as IM–2210–7. The current CMO Guidelines may give the impression that different standards apply to educational material, advertisements and "communications." The proposed rule change would simplify, shorten and reorganize the CMO Guidelines to provide a more straightforward and uniform list of disclosure requirements.

The content standards of NASD Rule 2210, in their current form and as they would be amended, prohibit a member from making these statements in any communication with the public. The proposed rule change would make clear that paragraphs (b)(1) and (c) apply only to advertisements, sales literature and correspondence. Also, the proposed rule change would clarify that paragraph (b)(2) does not apply to the sale of a CMO to an institutional investor.

[21] The requirement thus would not apply to institutional sales material.

[22] The application of this limitation to correspondence would appear in new NASD Rule 2211(d)(3) rather than in IM–2210–3.

III. Summary of Comments

The Commission received ten comment letters in response to the proposed rule change as modified by Amendment Nos. 1 and 2 addressing a broad range of issues.[23]

A. Proposed Definition of "Institutional Investor"

AIM, FMC, BMA, Fidelity, ICI, T. Rowe and Wilmer-Lee all commented that NASD should broaden the scope of its proposed definition of "institutional investor." These commenters recommended that NASD lower the asset dollar threshold of the "catch-all" category of institutional investors under NASD Rule 3110(c)(4)(C) from $50 million to either $10 million or $5 million. Commenters cited the definition of "accredited investor" in SEC Regulation D under the Securities Act of 1933 in support of a $5 million threshold. Two commenters also cited NASD IM–2310–3 in support of lowering the threshold to $10 million, which indicates that an investor that has at least $10 million invested in securities may be considered an institutional investor for purposes of NASD's suitability rule.[24]

In responding to these comments, the NASD noted that it received similar comments when it first published its Advertising Modernization proposal for comment in September 1999.[25] At that time, the NASD concluded that the $50 million threshold is appropriate, particularly in light of the importance of the principal approval and filing requirements. In addition, it had previously accommodated concerns that the definition was too narrow by expanding it to include governmental entities and qualified plans with at least 100 participants. Accordingly, the NASD believes that the $50 million threshold is appropriate.

AIM, Fidelity, and the ICI commented that the definition should include employee benefit plans that meet the requirements of sections 403(b) or 457 of the Internal Revenue Code, in addition to "qualified plans," as defined in section 3(a)(12)(C) of the Exchange Act,[26] that have at least 100 participants.[27] Fidelity also noted that the definition should refer to "participants" rather than "beneficiaries." The NASD agreed and amended the proposed rule change accordingly.

BMA and Wilmer-Lee objected to the limitation that a member may not treat sales material as institutional sales material if the member has "reason to believe" that the material will be forwarded to retail investors. BMA argued that as long as institutional sales material includes a disclosure that it is limited to institutional investors, that should be sufficient. Wilmer-Lee argued that the standard should be changed to whether a member "knowingly permits" the forwarding of institutional sales material to retail investors. Wilmer-Lee also argued that as long as material includes appropriate disclosure, members should be able to rely on the institutional sales material exceptions. The NASD disagreed with these comments because the proposed changes would not ensure that institutional sales material is kept out of the hands of retail investors, and declined to make the changes recommended.

BMA and Wilmer-Lee also requested that NASD include a "reasonable belief" safe harbor for members relying on the institutional sales material exceptions. In other words, members could treat sales material as institutional sales material as long as they reasonably believed the material is only being distributed to institutional investors. The NASD also disagreed with this comment. The NASD stated that while it recognizes that members may occasionally distribute institutional sales material to retail investors by accident, it expects members to make every effort ensure that institutional sales material does not go to retail investors.

Wilmer-Lee also commented that the definition of "institutional investor" should not include NASD members and their associated persons since broker/dealer-only communications are not covered by NASD Rule 2210. Fidelity had a similar comment. The NASD disagreed with this contention noting that while NASD Rule 2210 excepts internal-use only materials from its filing requirements,[28] the NASD has long taken the position that broker/dealer-only materials must meet the rule's content requirements.[29]

[23] *See supra* note 5.

[24] *See* Wilmer-Lee Letter and BMA Letter.

[25] *See* Notice to Members 99–79 (September 1999).

[26] 15 U.S.C. 78c(a)(12)(C).

[27] Fidelity also commented that the requirement for a qualified plan to have 100 participants should be eliminated. The NASD disagreed with this comment, stating that it believes that small employee benefit plans may lack the sophistication to qualify as institutional investors.

[28] *See* NASD Rule 2210(c)(7)(D).

[29] *See, e.g.*, NASD Regulatory and Compliance Alert, "Ask the Analyst" (September 1998); NASD Regulatory and Compliance Alert, "Ask the Analyst" (July 1996).

B. Proposed Definition of "Existing Retail Customer"

The proposed rule change would define "correspondence" to include any written letter or electronic mail message distributed by the member to one or more existing retail customers. As correspondence, these communications would not be subject to NASD Rule 2210's filing and principal approval requirements. The ICI requested that the NASD "clarify" that the definition of "existing retail customer" includes existing customers of affiliates of NASD members and participants of employee retirement plans. The NASD disagreed with these comments explaining that often there is no nexus between a customer of an affiliate (such as a bank or credit card company) and a member broker/dealer that merits exempting communications with these customers from the filing and principal approval requirements. This exemption is intended to cover routine administrative communications with current brokerage customers.

Further, the NASD noted that retirement plan participants often change regularly as individuals take new jobs with or leave the employment of the employer plan sponsor. Thus, these new employees are new to the products and services of a broker/dealer that services the plan. The NASD believes that these participants should receive the same level of investor protection as any other prospective retail customer.

C. Definitions of "Advertisement," "Sales Literature," and "Correspondence"

Sullivan, T. Rowe and Wilmer-Lee had a number of comments on the definitions of "advertisement," "sales literature" and "correspondence." Sullivan recommended that the NASD clarify that the term "advertisement" does not include sales literature and that "public appearances" are excluded from the definitions of "advertisement" and "sales literature." The NASD responded to this comment by stating that while it believes that these concepts should be self-evident, it will provide this clarification in the Notice to Members announcing Commission approval of the proposal to the extent necessary.

Sullivan and Wilmer-Lee also recommended that the NASD clarify that password-protected Web sites of members are sales literature rather than advertisements. Sullivan also commented that the current definition of "advertisement" does not reflect the latest technologies, such as CDs or DVDs, and recommended that the NASD broaden the definition to include these media. The NASD responded that it recognized that the definitions of "advertisement" and "sales literature" do not list all technologies through which sales material may be delivered, and it does not believe that it is useful to attempt to do so through rule language, especially given how quickly these technologies change. The NASD explained that it has already announced its position with regard to password-protected Web sites,[30] and it believes it is best to address these issues going forward through interpretations rather than rule language.

Sullivan also recommended that the NASD exclude various communications from the definitions of "advertisement" and "sales literature" based upon the content of the communication, such as material not related to the member's products or services, customer-generated material, and governmental material. In response to this comment, the NASD explained that it defined these terms based on the communication medium rather than content. The NASD believes that any attempt to define these terms based on content would raise numerous interpretive issues as to the purpose of a communication, which is secondary to whether a communication is fair and balanced. Accordingly, the NASD stated that it believed that it would not be appropriate or productive to attempt to draft such content-based definitions.

T. Rowe commented that the definition of "advertisement" should be revised from "material published, or *designed for use* in, any electronic or other public media * * *" to "*used* in any electronic or other public media * * *" (emphasis added). T. Rowe pointed out that sales material could be "designed for use" but the member never actually uses it with the public. The NASD amended the proposed rule change in response to this comment.

Proposed NASD Rule 2211(a)(1) would define "correspondence" as any written letter or electronic mail message distributed to one or more existing retail customers and fewer than 25 prospective retail customers within any 30-day period. Wilmer-Lee requested that "correspondence" be defined as "communications with prospective retail customers for marketing purposes." The NASD declined to adopt this definition for several reasons. First, the NASD noted that correspondence also includes communications with

[30] See "Internet Guide for Registered Representatives," which can be found on the NASD Web site (*http://www.nasdr.4040b.htm*).

existing retail customers. Second, the NASD explained that it does not intend this term to be limited to marketing related communications. Third, the NASD explained that the definition would encompass virtually all sales material.

Sullivan inquired whether the fact that a member sent a mail message to 25 or more prospective retail customers during the course of a 30-day period causes the first 24 messages to become sales literature retroactively. The NASD acknowledged that this situation may arise; however, it stated that it would expect members to know in advance whether they intend to send a mail message to more than 25 prospective retail customers within 30 days, and if this possibility is likely, the member would be expected to obtain principal approval of the message before it is distributed, and file it as required. The NASD stated that it intends to deal with these situations on a case-by-case basis.

D. Article Reprints

The proposed rule change would exempt "independently prepared reprints" from NASD Rule 2210's filing requirements. The proposed rule change defines "independently prepared reprint" in part as a reprint or excerpt of any article, provided that "the publisher is not an affiliate of the member using the reprint or any underwriter or issuer of a security mentioned in the reprint." ICI and T. Rowe argued that this requirement is too broad, since a publisher could be affiliated with a security mentioned in an article without compromising its independence. They suggest only that the publisher should not be affiliated with the member. ICI also requested clarification that the requirements apply to any article *or excerpt*. T. Rowe requested that the requirement that the member using the reprint not materially alter its contents except as necessary to make it consistent with regulatory requirements be modified to allow removing information about investment companies not offered by the member.

The NASD acknowledged the concern regarding affiliates, but believes that the deletion proposed by the commenters is too narrow. The NASD noted, for example, an article published by an affiliate of a third-party mutual fund being sold by the member would qualify as "independent" under the proposed test. Therefore, the NASD revised the rule language to indicate that the publisher may not be affiliated with either the member or any underwriter or issuer of a security mentioned in the reprint that the member is promoting. The NASD clarified that the requirements apply to article excerpts as well as full articles. As for the request to allow removal of information from articles about non-offered investment companies, the NASD stated that it believes that these issues are best addressed on a case-by-case basis.

Wilmer-Lee requested clarification that article reprints that would otherwise constitute correspondence (such as reprints sent to existing retail customers) or institutional sales literature do not require principal approval or filing, even if they do not meet the definition of an "independently prepared reprint." The NASD explained that an article reprint that is sent to existing retail customers may not qualify as correspondence, since this category includes only written letters and group emails sent to existing retail customers. Nevertheless, to the extent clarification is needed, the NASD indicated that it would do so through interpretations in the future.

Wilmer-Lee also requested that the definition not be limited to articles about investment companies, and that the term "reprint" include any type of document. The NASD disagreed with this comment for two reasons. First, the NASD stated that the definition is not limited to articles about investment companies. Second, the NASD explained that it is intentionally limited to independent press articles, noting that if the term were expanded to include "any document," the exception would encompass all sales material regardless of source and lose all meaning.

E. Filing Issues

AIM, Fidelity and ICI all urged NASD to permit electronic filing of sales material as soon as possible. In response, the NASD explained that recently it began implementing an electronic filing system. Currently, members may receive email notifications when the Advertising Regulation Department ("Department") has reviewed filed material, and may view the NASD comments on the filed material online. The NASD explained that it is working on expanding this system to permit electronic filing of sales material in the future. In this regard, it plans to fully implement the electronic filing program in 2003.

ICI and T. Rowe commented that NASD should eliminate the current requirement in NASD Rule 2210(c)(3)(A) to file a copy of any ranking or comparison used in advertisements or sales literature. In response to this comment, the NASD noted that it received this comment in response to Notice to Members 99–79, and continues to believe that this back-up filing requirement is necessary to properly review sales material that includes rankings. The NASD stated that the Department has found through experience that sales material that includes rankings often does not meet the NASD ranking guidelines contained in IM–2210–3, which necessitates review of the backup ranking materials. The NASD explained that the filing requirement expedites the Department's review of this backup material.

Under the proposed rule change, the NASD may require a member to submit pre-filings if it determines that the member has departed from the standards contained in NASD Rule 2210. The NASD also eliminated the restriction of one-year during which it could require a member to submit pre-filings upon such a finding. ICI objected to the deletion of language in current NASD Rule 2210(c)(4)(A) that requires the Department to find that there is a reasonable likelihood that a member will depart again from NASD Rule 2210's standards before the Department may require a member to pre-file all or a portion of the member's sales material. ICI also objected to deletion of language in current NASD Rule 2210(c)(4)(B) that limits the imposition of a pre-use filing requirement to one year. While the NASD stated that it recognizes these concerns, it explained that the pre-use filing requirement is an important tool to ensure compliance with its advertising standards. The NASD stated that it would use this requirement judiciously.

ICI and Wilmer-Lee also commented that NASD should exempt investment company shareholder reports from NASD Rule 2210's filing requirements, and ICI commented that generic investment company advertisements also should be exempt. The NASD stated that it addressed these comments previously in response to Notice to Members 99–79. As the NASD explained at that time, the management's discussion in shareholder reports sometimes contains misleading sales material that triggers comments from the NASD staff. In addition, the NASD stated, members sometimes miscategorize investment company advertisements as "generic" ads. When this error occurs, the sales material will omit the disclosures required by these rules. For these reasons, the NASD continues to believe that shareholder reports and investment company generic advertisements should be filed with NASD.

NASD Rule 2210 requires new members to file advertisements (including Web sites) at least 10 days prior to use for a period of one year.[31] Sullivan commented that NASD should amend the rule to allow the Department to "pre-clear" certain elements of a new member's Web site so that the member can update the Web site daily or more frequently without a 10-day pre-filing review. The NASD stated that it has found that new members are the most likely to commit violations of Rule 2210's content standards, which is the basis for the new member pre-use filing requirement. Consequently, it will not relax this standard.

F. Predictions and Projections

Current NASD Rule 2210(d)(2)(N) prohibits member communications from predicting or projecting investment results, but allows the presentation of hypothetical illustrations of mathematical principles such as dollar-cost averaging, tax-free compounding, or the mechanics of variable insurance products. The proposed rule change retains this provision, but the NASD has moved it to proposed NASD Rule 2210(d)(1)(D). ICI expressed concern that the new proposed provision provides that a hypothetical illustration may not "predict or project the performance of an investment or investment strategy." Similarly, Wilmer-Becker requested that the NASD interpret current Rule 2210(d)(2)(N) to allow members to use certain portfolio analysis tools.

The NASD filed a proposed rule with the Commission on February 3, 2003 that would allow members to provide customers with access to certain investment analysis tools that otherwise would be prohibited by Rule 2210(d)(2)(N).[32] The Commission published this proposed rule change for public comment on April 3, 2003.[33] The NASD stated that the outcome of this rulemaking process will address the concerns raised by ICI and Wilmer-Becker.

G. Other Comments

ICI commented that its members have complained about receiving inconsistent comments on filed materials based upon the subjective views of the Department analyst reviewing the material. The NASD responded to this comment by stating that the Department continues to work toward providing uniform guidance through the filing and comment process. It explained that NASD procedures include frequent meetings among managers and analyst teams to ensure that everyone is interpreting the advertising rules consistently, particularly with respect to new products and advertising campaigns. The NASD represented that as a result of this effort, it receives relatively few complaints concerning inconsistent interpretations, and when it does receive such a complaint, it reviews it to determine whether an inconsistent interpretation has occurred and what if any action should be taken.

Sullivan advocated relaxing the requirement for a principal to pre-approve advertisements and sales literature that are posted on a member's Web site. Sullivan has argued because this material changes frequently, the pre-approval requirement should be waived in certain circumstances, or members should be allowed to delegate this function to affiliates or others. The NASD disagreed with this comment stating that the principal approval requirement is vital to ensuring that advertising is fair and balanced.

Sullivan also requested that the NASD permit special record retention procedures for Web sites and other new technologies. The NASD addressed certain of these issues in an interpretive letter to T. Rowe Price.[34] The NASD plans to address any additional issues as they arise on a case-by-case basis rather than through the rulemaking process.

Proposed NASD Rule 2210(d)(2)(C)(i) would require member sales material to "prominently" disclose the member's name. T. Rowe commented that this requirement should be changed to require members to "clearly" disclose their names. T. Rowe argued that most members that distribute mutual funds feature the fund's name rather than the name of the member so that there is little room for confusion as to whom to contact for more information. The NASD acknowledged this concern, but noted that member advertisements that do not prominently indicate the member's name sometimes suggest that securities products are offered by a non-member entity rather than the member, which can be misleading and confusing to investors. The NASD stated that its staff often cites the current prominence requirement in Rule 2210(f)(2)(A) to comment upon these deficiencies. For this reason, it is retaining the prominence requirement.

Wilmer-Lee commented that the proposed rule change should provide NASD with broader authority to grant exemptions from the filing requirements. The NASD disagreed, and accordingly declined to amend the proposed rule change to expand this authority.

Wilmer-Lee also opposed a requirement in both current NASD Rule 2210(d)(2)(M) and proposed NASD Rule 2210(d)(2)(B) that any comparison in advertisements or sales literature between investments or services must disclose all material differences between them, including investment objectives, costs and expenses, liquidity, safety, guarantees or insurance, fluctuation of principal or return, and tax features. Wilmer-Lee argued that having to disclose these differences is burdensome on members and that the standard is vague. The NASD disagreed explaining that the standard is quite specific as to the types of differences it is looking for. In addition, any burden on members is justified. Without this standard, the NASD stated, members would be permitted to include misleading comparisons of products or services in sales material that do not disclose material differences.

Wilmer-Lee also objected to proposed NASD Rule 2210(e), which provides that violations of any rule of the SEC, SIPC or MSRB applicable to member communications is deemed a violation of NASD Rule 2210. Wilmer-Lee argued that this provision has no incremental benefit and is "anathema to efficient regulation." Again, the NASD disagreed with this comment. The NASD explained that its examinations and enforcement actions regularly apply non-NASD rules to member communications, and that proposed NASD Rule 2210(e) will assist regulatory efforts in ensuring compliance with all applicable advertising rules.

Sullivan also had several comments on NASD Rule 2220, which governs member communications about options; however, because the NASD is not proposing at this time to revise Rule 2220, these comments are beyond the scope of this rule proposal.

IV. Discussion

After careful review, the Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities association.[35] In particular, the Commission believes the proposal is consistent with the requirements of

[31] *See* NASD Rule 2210(c)(4)(A).

[32] *See* NASD Notice to Members 02–51 (August 2002).

[33] *See* Securities Exchange Act Release No. 47590 (March 28, 2003), 68 FR 16325.

[34] *See* Letter from Thomas M. Selman, Senior Vice President, NASD, to Forrest Foss, Vice President, T. Rowe Price Associates (January 28, 2002).

[35] In approving this rule proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

section 15A(b)(6) of the Act,[36] which requires, among other things, that the Association's rules are designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest.

The primary purpose of this proposed rule change is to modernize and clarify the rules governing member communications with the public. To this end, the NASD has proposed to reorganize NASD Rule 2210 and create new NASD Rule 2211. As discussed in detail below, the proposal also makes changes to several definitions, which affect the filing and pre-use requirements.

A. Definition of "Public Appearance"

The Commission believes that categorizing "Public Appearances" as a type of communication with the public and thus subjecting these appearances to the same content standards as other forms of communications with the public is appropriate. The Commission believes that the proposed rule change will simplify the standards which members must comply with when making public appearances, and will likely enhance compliance with the rules. Further, the Commission believes that codifying the NASD staff's position that Internet chat rooms constitute public appearances rather than advertisements or sales literature for purposes of NASD Rule 2210 by defining "Public Appearance" to include interactive electronic forums will also help to ensure compliance with the Rule.

B. Institutional Sales Material

The Commission believes that the proposed treatment of "Institutional Sales Material," as amended in response to concerns expressed by commenters and Commission staff, adequately balances the needs of members to contact sophisticated institutional investors without being subjected to pre-use approval and filing requirements, while still providing protection to ensure that inappropriate materials do not reach retail customers without first being reviewed for content by the NASD. For example, the proposed definition of "institutional investor" includes any "employee benefit plan that meets the requirements of section 403(b) or section 457 of the Internal Revenue Code and has at least 100 participants, but does not include any participant of such a plan." This provision allows members to use sales material with the sponsors, administrators or consultants of such plans without having to file the material with the NASD while also preventing such material from reaching individual plan participants who are clearly not instittutional investors.

C. Form Letters and Group Electronic Mail

The Commission agrees with the NASD's proposal to treat form letters and group electronic mail sent to existing retail customers and to fewer than 25 prospective customers as a separate category of communication ("Group Correspondence"), and to subject these communications to procedures governing the approval and review of correspondence, and applicable content standards. The Commission notes that the NASD has stated that it expects that each member will review its procedures to ensure that they adequately address potential concerns with the distribution of Group Correspondence and consider whether to adopt stricter procedures that require registered principal pre-use approval and filing with NASD of Group Correspondence that presents a higher risk to investors. The Commission similarly encourages members to be proactive in this regard.

D. Article Reprints

The Commission believes that the NASD's proposal to create a new category of article reprint, "independently prepared reprint" is appropriate. An independently prepared reprint would consist of any article reprint that meets certain standards that are designed to ensure that the reprint was issued by an independent publisher and was not materially altered by a member.[37] The proposed rule would exempt such reprints, and any excerpt therefrom, from filing requirements and most content standards. The new rule recognizes that reprints are often available to the public through large-circulation periodicals that are published by firms that are not NASD members, and that it would not be productive to require members to file such reprints.

E. Press Releases

The Commission believes that it is appropriate to exempt press releases that are made available only to members of the media from the filing requirements of NASD Rule 2210. The Commission recognizes that often these releases are time-sensitive and that the filing requirements may represent an unnecessary regulatory burden. However, the Commission notes that although these releases do not need to be filed, they are still subject to applicable content, pre-use approval and record-keeping requirements.

F. Television and Video Advertisements

The Commission believes that it is appropriate for the NASD to codify in the proposed rules an existing policy that requires members to file the final filmed version of any television or video advertisement within ten business days of its first use or broadcast.

G. Filing and Record-keeping Requirements

The Commission believes that the NASD's proposed changes to the Filing and Record-keeping Requirements are appropriate. The proposed rules clarify members' responsibilities for retaining documents as well as simplify members' obligations for filing documents with the NASD for approval. Further, the proposed rules appropriately codify current NASD practices regarding the types of materials that must be filed with the NASD. The Commission believes that the proposed change will assist members in complying with filing and record-keeping requirements.

H. Standards Applicable to Member Communications

The NASD proposed to shorten and simplify the standards applicable to communications with the public that are contained in NASD Rule 2210(d). The rules clarify that members will be required to examine their communications with the public to ensure that statements are not misleading, unbalanced or inaccurate. The Commission supports the proposed changes to the rule, as they will make clear to members that they have the primary responsibility for ensuring that their communications with the public are not inappropriate.

I. Legends and Footnotes

The Commission believes that the NASD's proposal to limit information that can be placed in a footnote or legend is appropriate and will aid in the protection of investors from misleading information contained in sales material. Specifically, the NASD proposed rule change provides that information may be placed in a legend or footnote only in the event that such placement would not inhibit an investor's understanding of the communication. The Commission believes that this is an appropriate limitation.

J. Hypothetical Illustrations

The proposed NASD rules would permit a member to present a hypothetical illustration of mathematical principles, but would not permit the illustration to predict or project the performance of an investment or investment strategy. The Commission believes that this rule strikes an appropriate balance in that members may still use, for example, mutual fund cost calculators and other hypothetical illustrations, but they may not make predictions based on those calculations, which could be misleading to investors.

K. Testimonials

The NASD proposed rules regarding establishing standards for testimonials would apply only to advertisements or sales literature concerning the investment advice or investment performance of a member or its products. The Commission believes that the application of these standards is appropriately tailored to ensure that the standards imposed on testimonials on investment performance do not inadvertently encompass testimonials regarding matters other than investment performance, such as the member's general services.

L. Use and Disclosure of Member's Name

The Commission believes that the NASD's proposal to simplify the provisions concerning disclosure of member names is appropriate. The proposed rule requires that all advertisements and sales literature must prominently disclose the name of the member sponsoring the advertisement or sales literature, as well as reflect any relationship between the member and any non-member who is also named. The Commission believes that requiring that such information be provided will help assure that members do not mislead investors about their relationships with non-members involved with an advertisement or sales literature.

M. Ranking Guidelines

The Commission believes that the changes proposed to the NASD's rules regarding ranking guidelines are appropriate. The proposed guidelines are designed to ensure that investors do not receive misleading or inaccurate information in advertisements or sales literature about potential investments, but are also narrowly tailored so that members are not subject to unduly restrictive requirements in this regard.

N. Communications About Collateralized Mortgage Obligations

The Commission believes that the NASD's proposed changes to the rule governing Communications about Collateralized Mortgage Obligations ("CMOs") will aid retail investors in making informed decisions about these investments products by ensuring that they are provided with appropriate information and disclosure in all advertisements and sales literature regarding these products. Further, the Commission believes that the NASD appropriately simplified the rule, which will likely enhance compliance with provisions thereof.

O. Operational Date

The Commission notes that the NASD will publish a Notice to Members announcing the Commission's approval of the proposed rule change within 60 calendar days of the Commission's order, and that the proposed rule changes will take effect on Monday, November 3, 2003.[38]

V. Amendment Nos. 3 and 4

The Commission finds good cause for accelerating approval of Amendments Nos. 3 and 4 to the proposed rule change prior to the thirtieth day after publication of notice of the filings thereof in the Federal Register. The Commission is accelerating approval of Amendment Nos. 3 and 4 because these amendments are consistent with section 15A(b)(6) of the Act,[39] and address issues raised by commenters and Commission staff on the original proposal. The changes made in these amendments are described below.

First, in Amendment No. 3, the NASD amended the proposed definition of "institutional investor" to include employee benefit plans that meet the requirements of sections 403(b) or 457 of the Internal Revenue Code and also to change the term "beneficiary" to "participant" with respect to qualified plans as defined in section 3(a)(12)(C) of the Act. In Amendment No. 4, the NASD clarified that for purposes of the definition of "institutional investor," employee benefit plans and qualified plans do not include any participant of such a plan. The NASD explained that the purpose of including certain large employee benefit plans within the definition of "institutional investor" was so that members could use sales material with the sponsors, administrators or consultants of those plans without having to file the material with the NASD or have a registered principal approve the material. The NASD stated that it did not intend to include sales material that is distributed to the participants of those plans in the definition of institutional sales material. The Commission concurs with this analysis, and believes that the proposed changes to the definition of institutional investor are appropriate.

Second, in Amendment No. 3, the NASD revised the definition of "advertisement." In the original proposal, the NASD described an advertisement as "material published, or designed for use in any electronic or other public media * * *" In response to a commenter that pointed out that sales material could be "designed for use" but never actually used, the NASD amended the definition to describe advertisements as "material published, or used in any electronic or other public media * * *" The Commission believes that this change appropriately narrows the scope of the definition.

Third, with respect to the proposal to exempt "independently prepared reprints" from filing requirements, the NASD made two changes to the proposed rule change in Amendment No. 3. The NASD amended NASD Rule 2210 to indicate that to qualify for the exemption, a publisher may not be affiliated with either the member or any underwriter or issuer of a security mentioned in a reprint that the member is promoting in an effort to narrow the exclusion from the exemption. Further, the NASD clarified that the requirements apply to article excerpts as well as full articles. The Commission believes that these changes will appropriately exempt members from filing requirements in situations where there is no regulatory need for review of an advertisement or sales literature.

Fourth, the NASD made changes NASD 2210 and IM–2210–7 to incorporate new requirements relating to securities futures. Specifically, the Commission notes that on October 15, 2002, it approved rule changes that, among other things, amended Rule 2210 and created a new Interpretive Material 2210–7 to regulate communications with the public regarding security futures.[40] The original Proposal did not include the newly approved provisions concerning security futures. Therefore, in Amendment No. 3, the NASD incorporated the approved changes to

[36] 15 U.S.C. 78o–3(b)(6).

[37] The Commission notes that under the proposed rule change, members would be permitted to alter the content of an independently prepared reprint in a manner necessary to make it consistent with applicable regulatory standards or to correct factual errors.

[38] *See* letter from Patrice Gliniecki, Vice President and Deputy General Counsel, NASD, to Katherine A. England, Assistant Director, Division, Commission, dated May 8, 2003.

[39] 15 U.S.C. 78o–3(b)(6).

[40] See Securities Exchange Act Release No. 46663, 67 FR 64944 (October 22, 2002).

Rule 2210 and the creation of IM–2210–7 into the proposed rule text. The Commission believes that these are technical changes, as the proposed changes have already been addressed by the Commission in a separate filing, and therefore do not need to be readdressed here.

Fifth, in Amendment No. 3, the NASD made changes to NASD Rule 2210's disclosure requirements for recommendations. These changes were made to conform the rule to the requirements contained in NASD Rule 2711,[41] which governs research analysts and research reports. Previously, only NASD Rule 2210 imposed disclosure requirements on research reports.

The new disclosure requirements imposed by NASD Rule 2711 differ from those contained in current NASD Rule 2210, therefore, for consistency, the NASD amended NASD Rule 2210 to be more similar to the new requirements imposed by NASD Rule 2711 and to incorporate references to security futures. The Commission believes that coordinating the disclosure requirements contained in NASD Rules 2210 and 2711 is appropriate and will aid members in complying the rules.

VI. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning Amendment Nos. 3 and 4, including whether the Amendments are consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room.

Copies of such filing will also be available for inspection and copying at the principal office of the NASD. All submissions should refer to File No. SR–NASD–00–12 and should be submitted by June 9, 2003.

[41] See Securities Exchange Act Release No. 45908 (May 10, 2002), 67 FR 34968 (May 16, 2002).

VII. Conclusion

It is therefore ordered pursuant to section 19(b)(2) of the Act,[42] that the proposed rule change (SR–NASD–00–12), as amended, is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[43]

Margaret H. McFarland

Deputy Secretary

[FR Doc. 03–12451 Filed 5–16–03; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–47830; File No. SR–NASD–2003–37]

Self-Regulatory Organizations; Order Granting Approval to Proposed Rule Change and Amendment No. 1 Thereto by the National Association of Securities Dealers, Inc. to Permanently Expand Order Entry Firm Access to SIZE in Nasdaq's SuperMontage System

May 12, 2003.

I. Introduction

On March 12, 2003, the National Association of Securities Dealers, Inc. ("NASD"), through its subsidiary, the Nasdaq Stock Market, Inc. ("Nasdaq"), filed with the Securities and Exchange Commission ("SEC" or "Commission"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b–4 thereunder,[2] a proposed rule change for the permanent approval of a pilot program which permits NNMS Order Entry Firms ("OE Firms") to enter non-marketable limit orders into SuperMontage using the SIZE Marker Maker Identifier ("SIZE MMID" or "SIZE").[3] On March 26, 2003, Nasdaq filed Amendment No. 1 to the proposed rule change.[4] The proposed rule change, as amended, was published for comment in the **Federal Register** on April 3, 2003.[5] The Commission received three comment letters regarding the pilot as originally approved,[6] and the instant proposal, as amended.[7] On May, 2, 2003, Nasdaq submitted a comment response letter.[8] This order approves the proposed rule change, as amended.

II. Description of the Proposed Rule Change

As noted above, this filing seeks the permanent approval of the 90-day pilot program that allows OE Firms[9] to enter non-marketable limit orders into SuperMontage using SIZE. Under the proposal, OE Firms may voluntarily enter non-marketable limit orders into SuperMontage with a Good-till-Cancelled ("GTC") or "Day" designation for display or execution through SIZE.[10] OE Firms may enter multiple orders (with or without reserve size) at single or multiple price levels, use any available execution algorithm (price/time, price/time-with-fee-consideration, or price/size). Non-marketable limit orders entered by OE Firms would be subject to the automatic execution functionality of the system. If elected by the OE Firm, its orders on opposite sides of the market could match off against each other only if such interaction would result based on the execution algorithm selected, [11] but such orders would not be permitted to automatically interact, if at the best price level, like those of Nasdaq Quoting Market Participants.[12] Alternatively, OE Firms may elect to completely avoid interaction with its orders on the opposite side of the market.[13] Quotes/Orders entered by OE Firms that create a locked/crossed market, would be processed like other locking/crossing quotes/orders as set forth in NASD Rule 4710(b)(3).

III. Summary of Comments and Nasdaq's Response

As noted above, the Commission received three comment letters regarding the proposal, as amended.[14] Two of the commenters strongly supported the proposed rule change, as amended.[15] These commenters believed that allowing OE Firms to participate in SIZE enhances the liquidity of SuperMontage by promoting the entry and display of market interest by a greater number of market participants.[16] In addition, both of these commenters believe that OE Firms' participation in SIZE reduces the fragmentation in the Nasdaq market attributable to the absence of linkages between the NASD Alternative Display Facility, the regional exchanges trading Nasdaq securities pursuant to unlisted trading privileges, and SuperMontage. As a result, one of the commenters believed that the ability of OE Firms to use SIZE could reduce the existence of locked/crossed markets.[17] Further, the commenters stated that providing OE Firms with direct participation in SIZE decreases the execution times for customer orders by eliminating the need to interpose an electronic communications network ("ECN") or market maker between the OE Firm and SuperMontage,[18] as well as credits firms for providing liquidity through SIZE.[19] Finally, the two commenters generally believed that the proposed rule change provides all market participants with a more equal opportunity to interact with other market participants including market makers and other agency orders via SIZE.

Another commenter, however, described the proposed rule change as a significant market structure change, and suggested that Nasdaq's proposal be subject to additional review.[20] Specifically, the commenter opined that because of the complexity of the proposal and the resources required to implement it, the 90 days for a pilot program of this nature was too short a period for full evaluation and implementation by market participants. The commenter recommended that the pilot program be extended an additional 90 days to give OE Firms sufficient time and resources to adapt their systems and procedures to take advantage of the enhanced access provided by the proposed rule change. The commenter opined that the extension of time would allow the NASD and the Commission to thoroughly analyze the effect of the proposed rule change on the marketplace prior to enacting it as a permanent change to SuperMontage.

Nasdaq disagreed with the STA's characterization that the proposal was a significant market structure change that warranted additional consideration by the Commission.[21] According to Nasdaq, since the pilot's inception, the use of SIZE for non-marketable limit orders submitted by pure OE Firms, and by market makers registered in other stocks, has modestly but steadily increased.[22] Nasdaq also stated the expansion has had no apparent negative impact on public investors and has served to bring increased liquidity to the public Nasdaq market. Nasdaq believes that these measurable improvements should take precedence, in the form of a swift and permanent approval of the proposed rule change, over any potential problems with the pilot that have yet to become manifest. Nasdaq also noted that the concept of the proposal is similar to the access granted to registered brokers in other market centers, whose experience gives no indication that such access has had an adverse impact on market quality.

IV. Discussion

After careful review of the proposed rule change, the comment letters, and Nasdaq's response to comments, the Commission finds that the proposed rule change, as amended, is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities association.[23] Specifically, the Commission finds that the proposed rule change, as amended, is consistent with the requirements of Section 15A of the Act in general,[24] and Section 15A(b)(6) of the Act in particular,[25] which provides that the rules of the association be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principals of trade, to foster cooperation and coordination with person engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest.

The Commission believes that it is appropriate to permanently approve the pilot. As noted by two of the commenters and Nasdaq, the implementation of the pilot has provided OE Firms with greater access to the system thereby increasing the liquidity of SuperMontage and potentially reducing fragmentation. Further, the Commission is not aware of any problems concerning the pilot since its inception on February 10, 2003.[26]

Also, as previously discussed in the pilot approval order, the Commission believes that the proposal is consistent with the goals of Section 11A(a)(1)(C), particularly Congress' finding that it is

[42] 15 U.S.C. 78s(b)(2).

[43] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] On January 31, 2003, the Commission approved File No. SR–NASD–2002–173 on a 90-day pilot basis, which allowed OE Firms to enter non-marketable limit orders into Nasdaq's SuperMontage system using SIZE. *See* Securities Exchange Act Release No. 47301 (January 31, 2003), 68 FR 6236 (February 6, 2003). The 90-day pilot commenced on February 10, 2003. This filing seeks to make permanent the ability of OE Firms to enter orders into SuperMontage under essentially the same terms and conditions approved in the pilot program.

[4] *See* letter from Thomas Moran, Office of General Counsel, Nasdaq, to Katherine A. England, Assistant Director, Division of Market Regulation ("Division"), Commission, dated March 25, 2003.

[5] *See* Securities Exchange Act Release No. 47588 (March 28, 2003), 68 FR 16323.

[6] *See* Securities Exchange Act Release No. 47301 (January 31, 2003), 68 FR 6236 (February 6, 2003).

[7] *See* letters to Jonathan G. Katz, Secretary, Commission, from S. Jeffrey Martin, President, Automated Trading Desk Financial Services, LLC, and Steve Swanson, President, Automated Trading Brokerage Services, LLC, dated February 27, 2003 and March 6, 2003 ("ATD Letter"); from Duncan L. Niederauer, Managing Director and Co-Chief Executive Officer, Spear, Leeds & Kellogg, L.P., dated May 1, 2003 ("SLK Letter"); and from John Hughes, Chairman, and John C. Giesea, President and Chief Executive Officer, Security Traders Association, dated April 9, 2003 ("STA Letter"). The two comment letters from ATD appear to be identical and, therefore, are being treated as one comment letter.

[8] *See* letter from Thomas P. Moran, Office of General Counsel, Nasdaq, to Katherine A. England, Assistant Director, Division, Commission, dated May 1, 2003 ("Response Letter").

[9] Nasdaq submitted a letter to clarify that it interprets the term "NNMS Order Entry Firm" in a manner that may encompass NNMS Market Makers that are registered market makers in other stocks. In the SuperMontage system, such firms are treated the same as other OE Firms when placing orders into the system for stocks in which they do not make a market. Nasdaq notes that the provision of order-entry system access to firms that elect to register as market makers in less than the total universe of Nasdaq stocks also took place in the systems preceding SuperMontage—SelectNet and SuperSoes. *See* letter from Thomas P. Moran, Office of General Counsel, Nasdaq, to Marc McKayle, Special Counsel, Division, Commission, dated May 8, 2003.

[10] Prior to the pilot, OE Firms were limited to the entry of market orders or limited orders designated as Immediate or Cancel ("IOC"). OE Firms may continue to submit IOC orders under the proposal.

[11] *See* Securities Exchange Release Act No. 47554 (March 21, 2003), 68 FR 15024 (March 27, 2003) (Notice of Filing and Immediate Effectiveness of SR-NASD–2003–39).

[12] Similarly, OE Firms would not be able to use SuperMontage's self-preferencing feature and have buy and sell interest interact on a basis other than a natural interaction based solely on the selected order execution algorithm.

[13] *See supra* note 11.

[14] *See* supra note 7.

[15] *See* ATD Letter and SLK Letter.

[16] *See* ATD Letter and SLK Letter.

[17] *See* ATD Letter.

[18] *See* SLK Letter.

[19] *See* ATD Letter.

[20] *See* STA Letter. The STA also asserted that the pilot should not have been approved on an accelerated basis.

[21] *See* Response Letter, *supra* note .

[22] Nasdaq represents that a recent internal analysis conducted by Nasdaq's Economic Research Department on the use of SIZE during the pilot indicates an increase of approximately 1.5% of total Nasdaq volume is now being executed through SIZE. OE Firms currently represent about ⅓ of the total trading interest being executed through SIZE. Since the launch of the pilot, the number of OE Firms participating in SuperMontage via non-marketable limit orders in SIZE has increased from 0 to roughly 35 firms during the week of April 7, 2003.

[23] In approving this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[24] 15 U.S.C. 78*o*–3.

[25] 15 U.S.C. 78*o*–3(b)(6).

[26] The STA commented that the NASD was not obligated to modify SuperMontage to allow expanded OE Firm access until April 28, 2003. The Commission notes that by April 28, 2003, or an earlier date determined by Nasdaq with appropriate notice for the Commission and market participants, Nasdaq was required to have a programming solution in place to inhibit the automatic matching of an OE Firm order against its own order on the opposite side of the market. The pilot allowing OE Firms access to SIZE began on February 10, 2003. The programming solution to inhibit the automatic matching of OE Firm orders was implemented on March 17, 2003. *See* letter from Jeffrey Davis, Office of General Counsel, Nasdaq, to Katherine A. England, Assistant Director, Division, Commission, dated February 25, 2003.

in the public interest and appropriate for the protection of investors and the maintenance of fair and orderly market to assure the economically efficient execution of securities transactions. The Commission believes that permanent approval of the proposal would continue to provide OE Firms with greater flexibility to reflect buying and selling interest at various price levels by entering Non-Attributable Orders directly into SuperMontage, instead of relying on ECNs and NNMS Market Makers to post their trading interest.

The Commission notes that STA suggested that the pilot be extended for an additional 90 days to provide the Commission as well as other market participants greater opportunity to study the potential impact of the pilot. However, Nasdaq represented that there has been no apparent negative market impact on public investors during the pilot, and in fact, the pilot has proven to be a catalyst for additional liquidity in SuperMontage. Further, the Commission notes that the pilot has been in place since February 10, 2003, that 35 OE Firms are currently participating in the pilot, and that the Commission is not aware of any problems with the pilot. Accordingly, the Commission does not believe that an extension of the pilot program is warranted in lieu of granting permanent approval.

V. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[27] that the proposed rule change and Amendment No. 1 (SR–NASD–2003–37) be, and it hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[28]

Margaret H. McFarland,

Deputy Secretary.

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[27] 15 U.S.C. 78s(b)(2).

[28] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–47825; File No. SR–NFA–2003–03]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the National Futures Association Regarding the Interpretive Notice to NFA Compliance Rules 2–7 and 2–24 and Registration Rule 401: Proficiency Requirements for Security Futures Products

May 9, 2003.

Pursuant to Section 19(b)(7) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b–7 under the Act,[2] notice is hereby given that on April 22, 2003, the National Futures Association ("NFA") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule changes described in Items I, II, and III below, which Items have been prepared by the NFA. The Commission is publishing this notice to solicit comments on the proposed rule changes from interested persons. NFA also has filed the proposed rule change with the Commodity Futures Trading Commission ("CFTC").

On April 22, 2003, NFA requested that the CFTC make a determination that review of the proposed rule change is not necessary. The CFTC made such a determination on May 2, 2003.

I. Self-Regulatory Organization's Description of the Proposed Rule Change

Currently, the Interpretive Notice to NFA Compliance Rules 2–7 and 2–24 and Registration Rule 401: Proficiency Requirements for Security Futures Products provides that new registrants can satisfy their proficiency requirements for security futures through training if they are registered no later than six months after the first retail, exchange-traded contract begins trading. The proposed rule change eliminates the six-month distinction and extends the training option to all new registrants who take the Series 3 examination and apply for registration before the revised examination becomes available. The proposed rule change also makes similar changes regarding the proficiency requirements for designated security futures principals.

Section 15A(k) of the Exchange Act[3] makes NFA a national securities association for the limited purpose of regulating the activities of Members who are registered as brokers or dealers in security futures products under Section 15(b)(11) of the Act.[4] The interpretive notice regarding proficiency requirements for security futures products applies to these Members.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

NFA has prepared statements concerning the purpose of, and basis for, the proposed rule change, burdens on competition, and comments received from members, participants, and others. The text of these statements may be examined at the places specified in Item IV below. These statements are set forth in Sections A, B, and C below.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

While the Interpretive Notice to NFA Compliance Rules 2–7 and 2–24 and Registration Rule 401: Proficiency Requirements for Security Futures Products applies to all current registrants, it presently states that new registrants can qualify by training only if they are registered within six months after the first retail, exchange-traded security futures contract begins trading. At the time the interpretive notice was adopted, NFA staff assumed that six months; or until May 8, 2003, would provide adequate time to update both the futures and the securities examinations. NASD, however, has recently informed NFA that its examinations will not be available until January 2004.

Although NFA is prepared to meet the May 8 deadline, a regulatory disparity may occur if NFA incorporates security futures questions into its proficiency examinations before the securities industry does. For that reason, NFA proposes to postpone the use of the revised exams until NASD's examinations are ready.

The current version of the interpretive notice incorporates the May 8 deadline through its references to a date six months after security futures begin trading. The revised interpretive notice extends the training option to all new registrants who take the Series 3 and apply for registration before the revised examination becomes available. The revised interpretive notice was similarly changed for designated security futures principals.

[1] 15 U.S.C. 78s(b)(7).

[2] 17 CFR 240.19b-7.

[3] 15 U.S.C. 78o–3(k).

[4] 15 U.S.C. 78o(b)(11).

2. Statutory Basis

The rule change is authorized by, and consistent with, Section 15A(k) of the Act.[5]

B. Self-Regulatory Organization's Statement on Burden on Competition

The rule change will not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act and the Commodity Exchange Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

NFA did not publish the rule changes to the membership for comment. NFA did not receive comment letters concerning the rule changes.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Pursuant to Section 19(b)(7)(B) of the Act,[6] the proposed rule change became effective on May 2, 2003.

Within 60 days of the date of effectiveness of the proposed rule change, the Commission, after consultation with the CFTC, may summarily abrogate the proposed rule change and require that the proposed rule change be refiled in accordance with the provisions of Section 19(b)(1) of the Act.[7]

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change conflicts with the Act. Persons making written submissions should file nine copies of the submission with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Comments also may be submitted electronically to the following e-mail address: *rule-comments@sec.gov*. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of these filings also will be available for inspection and copying at the principal office of NFA. Electronically submitted comments will be posted on the Commission's Web site (*http://www.sec.gov*). All submissions should refer to File No. SR–NFA–2003–03 and should be submitted by June 9, 2003.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[8]

Jill M. Peterson,

Assistant Secretary.

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[5] 15 U.S.C. 78o–3(k).

[6] 15 U.S.C. 78s(b)(7)(B).

[7] 15 U.S.C. 78s(b)(1).

[8] 17 CFR 200.30–3(a)(75).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–47838; File No. SR–PCX–2002–36]

Self-Regulatory Organizations; Order Approving Proposed Rule Change and Amendment No. 1 Thereto and Notice of Filing and Order Granting Accelerated Approval to Amendments No. 2 and 3 to the Proposed Rule Change by the Pacific Exchange, Inc. Relating to the Exchange's New Trading Platform for Options, PCX Plus

May 13, 2003.

I. Introduction

On June 27, 2002, the Pacific Exchange, Inc. ("PCX" or "Exchange") filed with the Securities and Exchange Commission ("Commission" or "SEC"), pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b–4 thereunder,[2] a proposed rule change to adopt new rules for the implementation of its new trading platform for options, PCX Plus. The PCX's proposal also includes new rules on priority and allocations of orders, rule changes to permit options Market Makers [3] to conduct their trading activities from locations away from the trading floor, and proposed system changes to accommodate new order handling procedures and automated trade processing. On November 6, 2002, the PCX filed Amendment No. 1 to the proposed rule change.[4] The proposed rule change and Amendment No. 1 were published for comment in the **Federal Register** on November 18, 2002.[5] The Commission received four comment letters with respect to the proposal and Amendment No. 1.[6] On April 9, 2003, the PCX filed Amendment No. 2 to the proposed rule change.[7] On April 16, 2003, the PCX filed Amendment No. 3 to the proposed rule change, withdrew Amendment No. 3 on April 22, 2003, and refiled Amendment No. 3 on April 22, 2003.[8] This order approves the proposed rule change and Amendment No. 1; grants accelerated approval to Amendments No. 2 and 3 to the proposed rule change; and solicits comments from interested persons on Amendments No. 2 and 3.

II. Description of the Proposal

The Exchange has designed a new trading platform for options, PCX Plus. This new hybrid model combines the features of traditional floor-based markets and new electronic trading systems, while preserving a single marketplace with a single book. It allows PCX members to trade as Market Makers from locations away from the trading floor. For those options designated for trading on PCX Plus, the proposal replaces the PCX's current priority rules with new ones and expands upon the Exchange's current trading rules by permitting the entry of

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Proposed PCX Rule 6.32(a) (defines "Market Maker" as an individual who is registered with the Exchange for the purpose of making transactions as a dealer-specialist on the floor of the Exchange or, in the case of a Remote Market Maker, through the facilities of the Exchange).

[4] Amendment No. 1 replaced the PCX's original Rule 19b–4 filing in its entirety.

[5] Securities Exchange Act Release No. 46803 (November 8, 2002), 67 FR 69580 ("Notice of the Proposal").

[6] See letters to Jonathan G. Katz, Secretary, Commission, from Thomas Peterffy, Chairman, and David M. Battan, Vice President and General Counsel, Interactive Brokers Group LLC ("IB Group"), dated December 9, 2002 ("IB Group Letter"); Meyer S. Frucher, Chairman and Chief Executive Officer, Philadelphia Stock Exchange, Inc. ("Phlx"), dated December 9, 2002 ("Phlx Letter"); Thomas N. McManus, Executive Director and Counsel, Morgan Stanley & Co., Incorporated ("Morgan Stanley"), dated January 6, 2003 ("Morgan Stanley Letter"); and Gerald D. O'Connell, Associate Director, Susquehanna International Group, LLP ("Susquehanna"), dated January 8, 2003 ("Susquehanna Letter") (collectively, "Comment Letters").

[7] See letter from Kathryn L. Beck, Senior Vice President, General Counsel, and Corporate Secretary, PCX, to Nancy J. Sanow, Assistant Director, Division of Market Regulation ("Division"), Commission, dated April 7, 2003 ("Amendment No. 2"). See Section III. of this order for a detailed description of Amendment No. 2.

[8] See letter from Peter D. Bloom, Acting Managing Director, Regulatory Policy, PCX, to Deborah L. Flynn, Assistant Director, Division, Commission, dated April 14, 2003 ("Amendment No. 3"). The PCX withdrew Amendment No. 3 and refiled it on April 22, 2003, after making minor technical changes to the proposed rule text. See letter from Peter D. Bloom, Acting Managing Director, Regulatory Policy, PCX, to Deborah L. Flynn, Assistant Director, Division, Commission, dated April 21, 2003. In Amendment No. 3, PCX made clarifications to proposed Commentary .02 to PCX Rule 6.64 regarding the procedures for determining a single price opening for options issues designated for trading on PCX Plus.

eligible orders of all account types into the Exchange's Consolidated Book,[9] including public customer, Market Maker, and broker-dealer orders. The new trading platform will also accommodate independent quotations from numerous market participants. In addition, the Exchange represents that PCX Plus provides intermarket price protection and would operate in a manner consistent with the Options Intermarket Linkage Plan ("Linkage Plan").[10]

Under the PCX's proposal, orders would be allocated to Market Makers on a "size pro rata" basis. This formula would reward larger-sized bids and offers with greater participation in trades. In addition, the proposal would grant significant trade participation rights to market participants who are first to improve the PCX quote. Under this proposed rule change, a member who improves the quote and stands alone at that price for three seconds would receive First Improved Quote ("FIQ") status. Those with FIQ status would be guaranteed, at least, the greater of: (1) 40% of the next order(s) to buy or sell the same series (for a minimum of 20 contracts), or (2) the total size that it would receive pursuant to a size pro rata allocation. Market Makers must establish the best bid or offer ("BBO") or quote at the BBO to participate in automated trades.

The proposed new PCX Plus structure would involve four types of Market Makers on the Exchange.[11] Lead Market Makers ("LMMs") would continue to provide two-sided markets throughout the trading day, while conducting their trading activities on the trading floor of the Exchange.[12] Remote Market Makers ("RMMs") would be permitted to enter quotes and effect trades from off-site locations and to select their appointed issues. RMMs would be required to provide two-sided quotations in each issue in which they are appointed during 60% of the time the Exchange is open for trading. Floor Market Makers ("FMMs"), who are registered Market Makers with basic obligations on the Options Floor, would continue to trade as they do today and would supply independently generated Quotes with Size.[13] Members would also be permitted to act as Supplemental Market Makers ("SMMs"), who would be provided with tools that allow them to add liquidity at the same price that is then being disseminated by the LMM.

Under the proposal, LMMs would be eligible to receive up to 40% in guaranteed participation on trades occurring at their disseminated markets. Members would also be entitled to receive up to 40% trade participation if they maintain FIQ status. Although members may receive more than 40% participation by virtue of a pro rata allocation, no member would be eligible to receive more than 40% participation as a guarantee by rule. LLMs would be entitled only to the greater of their 40% guaranteed participation or their size pro rata allocation, subject to the size of the LMM's disseminated size.[14] The proposal is also designed to limit firms interacting with their customers' orders to receiving no more than a 40% share of such orders before the orders are exposed to further competition. Finally, no member would be allocated option contracts in excess of their expressed trading interest.

The proposal would allow available trading interest on the Exchange to be aggregated by price and size. Currently, only orders for the accounts of public customers are eligible to be represented in the PCX order book. Under the proposal, orders for all account types—including public customer, Firm, Market Maker and Non-Member Market Maker—may be represented in the Consolidated Book, along with Quotes with Size of PCX Market Makers (which would be entered for handling as if they were orders). Public customer orders displayed at the best price would continue to receive first priority on the Exchange.[15] In addition, all classes of market makers will have the same ability to access information about the depth and size of quotes and orders on PCX Plus.[16]

Market and marketable limit orders routed electronically to PCX Plus would receive immediate executions against bids and offers in the Consolidated Book, unless a specified condition applies, in which case the order (or a portion of it) would be routed to a Floor Broker Hand Held Terminal for execution. The proposal also establishes new procedures for Market Makers' trading interest that interact electronically with orders in the Consolidated Book. In such situations, a Market Maker who initiates a transaction would be limited to 40% of the available customer contracts at the execution price or the Market Maker's size pro rata share, whichever amount is greater. The Market Maker would then be eligible to trade the remaining option contracts at the execution price once other Crowd Participants[17] have had an opportunity to participate.

While the proposal is intended to further automate options trading on the Exchange, the Exchange represents that the proposed new system would continue to facilitate open outcry trading as currently practiced today, particularly for large transactions and executions of complex orders and contingency orders. When an order is entered by phone or re-routed to a Hand Held Terminal for execution, a Floor Broker would represent it at the appropriate trading post and would be afforded priority first to public customer interest in the Consolidated Book, then to bids or offers in the trading crowd, and finally to any Firm or Market Maker interest in the Consolidated Book.[18]

The Exchange proposes to phase in the use of PCX Plus in particular issues, while simultaneously phasing out the current Auto-Ex "wheel" functionality. During the phase-in period, the Exchange represents that it would have two sets of trading rules in operation, each applying to a different set of option issues traded on the Exchange. PCX represents that PCX Plus will be implemented gradually on an issue-by-issue basis beginning on December 15, 2003, and will become completely operative and applicable to all options issues by June 30, 2004.[19]

For a more detailed description of the specific proposed amendments to PCX's rules, see the Section II.A.1.b. ("Summary of Proposed Changes to PCX's Rules") in the Notice of the Proposal.[20]

[9] *See* proposed PCX Rule 6.1(b)(37) (defining "Consolidated Book" as the Exchange's electronic book of limit orders for the accounts of public customers and broker-dealers, and Quotes with Size. All orders and Quotes with Size that are entered into the Consolidated Book will be ranked and maintained in accordance with the rules of priority as provided in proposed PCX Rule 6.76).

[10] *See* Securities Exchange Act Release Nos. 43086 (July 28, 2000), 65 FR 48023 (August 4, 2000) (order approving the Linkage Plan submitted by American Stock Exchange LLC, Chicago Board Options Exchange, Inc. and International Securities Exchange, Inc.); 43574 (November 16, 2000), 65 FR 70850 (November 28, 2000) (order approving the PCX as participant in Options Intermarket Linkage Plan); and 43573 (November 16, 2000), 65 FR 70851 (November 28, 2000) (order approving Philadelphia Stock Exchange, Inc. as participant in the Linkage Plan).

[11] *See* proposed PCX Rule 6.32(a).

[12] LMMs will also be responsible for performing certain functions under the Linkage Plan. *See supra* note 10.

[13] *See* proposed PCX Rule 6.1(b)(33) (which defines "Quote with Size" as a quotation to buy or sell a specific number of option contracts at a specific price that a Market Maker has entered into PCX Plus through an electronic interface).

[14] *See* proposed PCX Rule 6.76(a)(2)(C)(iii).

[15] Under the PCX's proposal, inbound orders are allocated based on the following priority sequence: public customer orders have first priority to trade against such orders; quotes with FIQ status have second priority (subject to a 40% cap); the portion of the order subject to LMM guaranteed participation will be allocated next; followed by any trading interest for the accounts of non-public customers. *See* proposed PCX Rule 6.76(a).

[16] *See* proposed subsection (c) to PCX Rule 6.57.

[17] *See* proposed PCX Rule 6.1(b)(38) (which defines "Crowd Participants" as the Market Makers appointed to an option issue under Rule 6.35, and any Floor Brokers actively representing orders at the best bid or offer on the Exchange for a particular option series.)

[18] *See* proposed PCX Rule 6.76(d).

[19] *See* Amendment No. 2, *supra* note 7.

[20] *See* Notice of the Proposal, *supra* note 5. *See also* Amendment No. 2, *supra* note 7, which proposes additional amendments to some of those PCX rules.

III. Description of Amendments No. 2 and 3 to the Proposal

In Amendments No. 2 and 3, the PCX proposed changes to the proposed PCX Plus rules to address specific questions and concerns raised by the Comment Letters and by Commission staff.

A. Automated Opening Rotation Process

The Exchange proposes to modify PCX Rule 6.64(d) to clarify how the automated opening rotation would work in PCX Plus and to add PCX Rule 6.64, Commentary .02 to codify the procedure for determining a single price opening for option issues designated for trading on PCX Plus. The proposed automated opening rotations used by PCX Plus would differ from those currently used on the Trading Floor in the following respects: (1) There would be no "manual" openings as provided in current PCX Rule 6.64(b); (2) all account types (including orders for the accounts of broker-dealers and Market Maker Quotes with Size) would be eligible to participate in the opening; (3) the concept of an "imbalance threshold" (as described in current Rule PCX 6.64(c)(2)(D)) would no longer apply; and (4) there would be an electronic Requests for Quotes ("RFQ") process when the opening price cannot be determined within certain parameters. The manner in which the opening rotation would operate is described below.

1. Establishing a Market for the Opening Rotation

Opening rotations for options designated for trading on PCX Plus would be conducted at the commencement of each trading day using the process described in proposed PCX Rule 6.64(d). In Amendment No. 2, PCX proposes to modify the proposal to specify that the PCX Plus system would accept market and limit orders and Quotes with Size for inclusion in the opening rotation process ("Rotation Process") up until the Rotation Process is initiated in that option series. PCX further clarifies in Amendment No. 2 that market orders would have priority over limit orders during the Rotation Process and any open orders residing in the Consolidated Book from the previous trading session would be included in the Rotation Process. As set forth in the Notice of Proposal, contingency orders (except for "opening only" orders) will not participate in the Rotation Process.[21] Amendment No. 2 also clarifies that after the primary market for the underlying security disseminates the opening trade or the opening quote, the related option series would be opened automatically based on the following principles and procedures set forth in the Notice of Proposal.

First, PCX Plus would verify that a Quote with Size has been received from the LMM before a series is eligible for the Rotation Process. Second, PCX Plus would determine a single price at which a particular option series would be opened, as provided in proposed Commentary .02 and as described below. Third, orders in the PCX Plus system would maintain priority over Market Maker bids and offers that are not being represented in the Consolidated Book as Quotes with Size. Orders in the PCX Plus system would be matched up with one another, based on the priority rules as set forth in proposed Rule 6.76(a); provided, however, that (1) Market Maker Quotes with Size would have priority over orders for Firms, Market Makers, and Non-Member Market Makers during the Rotation Process and (2) orders for the accounts of Firms, Market Makers, and Non-Member Market Makers would be executed based on price/time priority during the Rotation Process. Finally, following the opening, any unexecuted contracts would be represented as bids and offers on the Exchange.

2. Determining the Opening Price for Option Issues Designated for Trading on PCX Plus

In Amendments No. 2 and 3, PCX proposes to add Commentary .02 to PCX Rule 6.64 to establish the process by which PCX Plus would automatically determine a single price at which a particular option series would be opened. The opening price is that price at which the maximum number of contracts may be executed within the established market. The opening price would always be on or between the bid and offer established by the Rotation Process. If there were two or more prices at which the maximum number of contracts are executable within the established market, then the opening price would be the midpoint of the available prices. If, however, the midpoint of the available prices is not consistent with the minimum price variation ("MPV"),[22] the opening price would be determined as follows: (1) At the next higher (lower) price that is consistent with the MPV if that price is closer to the midpoint than the next lower (higher) price that is consistent with the MPV; (2) if the next higher and lower prices that are consistent with the MPV are equidistant from the midpoint, at the next higher or lower price consistent with the MPV that leaves the least residual customer limit order volume;[23] or (3) if the next higher and lower prices consistent with the MPV are equidistant from the midpoint price and leave the same residual customer limit order volume, at the price that the next MPV greater than the midpoint price.[24]

To illustrate how the PCX proposes to establish the opening price, assume that the established market is 6.00–6.50 and that the maximum number of options contracts that could be matched is 250 contracts at prices on or between 6.10 and 6.40. Since the resulting midpoint price of 6.25 represents a price increment other than an eligible MPV permitted under the Exchange's rules, the PCX Plus system will select the eligible MPV that is closest to the 6.25 midpoint which, in this case, is either 6.20 or 6.30. Since the midpoint at the MPV is equidistant (*i.e.*, 0.05) from both the higher and lower prices, the opening price will be set at the price that will result in the least trading on the customer limit orders residing in the Consolidated Book. If the customer limit order volume is the same amount for both the higher and lower prices, then the opening price will be set at the nearest MPV that is greater than the midpoint which, in this example, would be 6.30.

In the event that the opening price cannot be determined within the range of 75% of the lowest Quote with Size bid and 125% of the highest Quote with Size offer, the PCX proposes that the PCX Plus system would initiate an RFQ

[21] PCX believes that the exclusion of these order types will simplify and facilitate the process for completing the opening. Market participants that desire to have such orders represented in the opening can choose not to impose the contingency until after the opening if they want to attempt to participate in the opening.

[22] The Exchange's current MPV for option contracts quoted under $3 is $0.05 and for option contracts quoted at or above $3 is $0.10. *See* PCX Rule 6.72.

[23] PCX believes that this opening match criterion is reasonable and is structured fairly by selecting an opening price that would leave the fewest resting customer orders in the Consolidated Book.

[24] *See* Amendment No. 2, *supra* note 7 and Amendment No. 3, *supra* note 8.

process as follows: First, an RFQ would be sent to all Crowd Participants. The RFQ would indicate the series and the total sell (buy) interest at the lowest Quote with Size bid (highest Quote with Size offer), if insufficient bids (offers) have been submitted. Second, all opening eligible bids and offers would continue to be accepted during the RFQ period for inclusion in the opening transaction calculation. At the conclusion of the RFQ period, the Rotation Process would determine an opening price pursuant to proposed subsection (b) of Commentary .02 to proposed PCX Rule 6.64(d). Third, if the Rotation Process cannot be completed after the first RFQ, a second RFQ would be disseminated. Fourth, if the Rotation Process cannot be completed following the second RFQ period, a third, expanded, RFQ would be disseminated to all Crowd Participants and any other Market Makers logged on to the system. PCX proposes that the expanded RFQ would include: (1) The series; (2) the volume representing the total sell (buy) interest at the lowest Quote with Size bid (highest Quote with Size offer), if insufficient bids (offers) have been submitted; and (3) the side of the market with the imbalance. Finally, if the Rotation Process cannot be completed following the third RFQ period, an alert would be generated to Exchange staff. No additional RFQs would be disseminated. The Rotation Process would attempt to open the series every 30 seconds until it can be successfully completed.

B. Appointment of RMMs

In Amendment No. 2, the Exchange proposes to add a new proposed subsection (h) [25] to PCX Rule 6.35 to allow Member Firms [26] who own or lease multiple seats to have an equal number of primary appointments available to them as would an individual that owns or leases the same number of seats. Under proposed PCX Rule 6.35(h), if a Member Firm has two or more Nominees [27] that are registered as RMMs, then the number of seats held in the name of such RMMs may be aggregated for the purpose of determining the number of options issues eligible for primary appointment pursuant to proposed PCX Rule 6.35(g)(2). The distribution of the option issues as primary appointments for each RMM would be at the discretion of the Member Firm; however, an RMM would be prohibited from concurrently trading or quoting the same option issue as an RMM who is a Nominee for the same Member Firm. Additionally, for purposes of PCX Rule 6.35, the primary appointment would apply collectively to the Member Firm (subject to the approval of the Options Allocation Committee), rather than to each Nominee registered as a RMM.

The PCX believes that the proposed new subsection (h) to PCX Rule 6.35 is consistent with current membership rules as each RMM that performs market-making activities on behalf of the Member Firm would have to be assigned a membership in order to trade on PCX Plus. In addition, each RMM would have to be registered and properly qualified pursuant to current PCX Rule 6.33.

C. Restriction on the Entry of Two-Sided Quotations

Under proposed PCX Rule 6.37(h)(5), as published in the Notice of the Proposal, RMMs would be required to trade at least 75% of their average daily trading volume per quarter in issues included in their primary appointments. RMMs would be permitted to trade up to 25% of their quarterly contract volume in option issues that are not included within their primary appointments. In Amendment No. 2, the Exchange proposes to amend its proposal to include a provision that would restrict RMMs from entering two-sided quotations in option issues that are not included within their primary appointments. However, RMMs would be permitted to enter single-sided quotes [28] and multiple orders to buy and sell the same option series. PCX believes that such restriction is necessary to ensure the proper performance of the PCX Plus system and to prevent RMMs from circumventing the spirit and intent of limiting the number of option issues per seat as set forth in proposed PCX Rule 6.35(g)(2).

D. LMM Trade Allocation Methodology

The Exchange proposes to amend proposed PCX Rule 6.76(a)(2)(C) concerning the methodology used to allocate trades to LMMs. As discussed in the Notice of the Proposal, LMMs in options trading in PCX Plus would be guaranteed an allocation up to 40% of the incoming trading interest on trades occurring at their disseminated markets. The LMM's 40% participation would apply to the quantity remaining after all public customer orders and quotes with FIQ status, if any, have first been executed.[29] In addition, if there were contracts remaining to be executed, the remaining portion of the LMM's bid or offer would have participated in the "size pro rata" allocation, as provided in proposed PCX Rule 6.76(a)(4). Thus, LMMs would have received both a 40% guaranteed participation and a size pro rata allocation.

In response to the Phlx Letter, which argued that the proposed trade allocation methodology would provide LMMs with a disproportionate share of the incoming order flow, PCX proposes in Amendment No. 2 to eliminate proposed PCX Rule 6.76(a)(2)(C)(iv) and proposes to amend proposed PCX Rule 6.76(a)(2)(C)(iii) so that LMMs would receive an allocation representing the greater of their 40% guaranteed participation or their size pro rata allocation, but no greater than the size of the LMM's disseminated size.[30]

E. Obvious Error and Trade Nullification/Price Adjustment Rules

In a separate rule filing, the Exchange proposes to adopt new rules that would allow it to either adjust or nullify a transaction in circumstances where a member or its customer has made an error and the price of the execution is "obviously" not correct.[31] The proposed rules will contain objective standards regarding when a transaction was clearly the result of an "obvious error," under what circumstances a trade would be adjusted or nullified, and to what price a trade would be adjusted if adjustment were appropriate under the circumstances. The Exchange represents that its obvious error and trade nullification/price adjustment rules applicable to PCX Plus will be based upon the rules that the Commission ultimately approves in File No. SR–PCX–2002–01, and not the existing Price Adjustment rules.[32] The Exchange further represents that it will not implement PCX Plus before File No. SR–PCX–2002–10 has been approved by the Commission.

F. System Phase-In and Applicability of Rules

In response to the request of Commission staff, PCX proposes to amend proposed PCX Rule 6.90(b) to clarify the application of trading rules in option issues traded on PCX Plus during the phase-in period. During the phase-in period, PCX would have two sets of trading rules in operation, each applying to a different set of option issues traded on the Exchange. Accordingly, PCX estimates that the rules applicable to PCX Plus would be implemented gradually on an issue-by-issue basis beginning on December 15, 2003, and would become completely operative and applicable to all options issues by June 30, 2004. At that time, the rules relating to PCX Plus would supercede existing rules that are inapplicable to the new trading environment.[33] The PCX represents that the purpose of the gradual rollout schedule is to give PCX and its members the opportunity to observe and gain experience with the new system and to give PCX the opportunity to make any adjustments and changes to the system (in consultation with and approval by the Commission), if and when necessary.

G. Prevention of the Misuse of Material, Non-Public Information

In Amendment No. 2, PCX represents that PCX Rule 2.6(e) (Prevention of the Misuse of Material, Non-Public Information) would apply to members trading on PCX Plus. PCX believes that PCX Rule 2.6(e) would require a PCX Market Maker to maintain information barriers (that are reasonably designed to prevent the misuse of material, non-public information by such member) with any affiliates that may act as a specialist or market maker in any security underlying the options for which the PCX member acts as a Market Maker.

H. Maximum Order Size Eligibility

As discussed in the Notice of the Proposal, proposed PCX Rule 6.76 provides that the maximum size of an inbound order (the "Maximum Order Size") that may be eligible for execution on PCX Plus will be established by the LMM in the issue, subject to the approval of two Floor Officials, whose approval must be further ratified by the Options Floor Trading Committee. In Amendment No. 2, the Exchange proposes to modify this provision to require approval of the LMM's initial determination of the Maximum Order Size by the Options Floor Trading Committee. In addition, the Exchange proposed to add the following text: "Any request by the LMM for changes to the Maximum Order Size must be accompanied by a verified statement indicating the business reason for the change and the estimated duration of such change. Such requests must be approved by two Floor Officials, whose approval must be further ratified by the Options Floor Trading Committee." Furthermore, in Amendment No. 2, PCX proposes to add language to proposed PCX Rule 6.76 to prohibit a LMM from requesting changes to the Maximum Order Size in order to manipulate the operation of PCX Plus or for any anti-competitive purposes.

The Exchange believes that the proposed amendment to proposed PCX Rule 6.76 addresses the competitive concerns raised by the Commission staff and is consistent with the terms and spirit of the Commission's Order.[34]

I. Linkage Plan

The Commission staff requested the Exchange to clarify the application of the definition of "Eligible Market Maker," as that term is used in the Linkage Plan [35] and in PCX Rule 6.92. In this regard, for purposes of the Linkage Plan, PCX represents in Amendment No. 2 that a PCX Market Maker would be considered an Eligible Market Maker if the PCX Market Maker is logged on to the PCX Plus system and provides continuous two-sided quotations (or, in the case of a SMM, the size of its quotation) through an electronic interface to the PCX Plus System.

J. Quoting Obligations of SMMs and FMMs

The quoting obligations of SMMs and FMMs are set forth in proposed PCX Rule 6.37(g)(3) and (4), respectively. In Amendment No. 2, the Exchange proposes to modify these proposed rules to clarify that when the aforementioned Market Makers are present in the trading crowd, they would be required to provide quotations on PCX Plus through an electronic interface with the Exchange, but would be permitted to also provide quotations by public outcry. In addition, whenever a Floor Broker represents an order in the trading crowd and calls for a market in a particular options series, each SMM and FMM present at the trading post would be obligated to vocalize a two-sided, legal-width market (pursuant to PCX Rule 6.37(b)(1)).

The Exchange believes that this proposed amendment to proposed PCX Rule 6.37 will ensure that SMMs and FMMs meet their affirmative obligations and be entitled to receive special margin treatment by assisting the LMM in maintaining a fair and orderly market.

K. Suspension of the PCX Plus System

In the Notice of the Proposal, proposed PCX Rule 6.90(g) included provisions regarding the suspension of the PCX Plus system in the event of any disruption or malfunction in the use or operation of system, as well as any other unusual market conditions not involving a system malfunction. In Amendment No. 2, the Exchange proposes to amend proposed PCX Rule 6.90(g) as follows:

First, the Exchange proposes to eliminate that portion of the text in proposed Rule 6.90(g)(1) that refers to the declaration of a "fast market" by two Floor Officials. The Exchange believes that the deleted phrase "declare a fast market" is inapplicable given its market structure and trading system. The PCX Plus system enables Market Makers to set parameters establishing the amount of their quotation size that would be available for execution against inbound interest, with the system automatically executing such orders according to these parameters. Consequently, when a system disruption or malfunction occurs but the Exchange is able to process and disseminate quotes accurately, any orders received by the Exchange would be routed to Floor Broker Hand Held Terminals for representation in the trading crowd. In such circumstances, Market Maker bids and offers would continue to be firm pursuant to PCX Rule 6.86 and SEC Rule 11Ac1–1 under the Act. Regular trading procedures would be resumed by the Exchange when two Floor Officials determine that the disruption or malfunction is corrected.

Second, the Exchange proposes to add language to proposed PCX Rule 6.90(g)(1) to clarify that those orders

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[25] Proposed Rule 6.35(h) is being renumbered as proposed PCX Rule 6.35(i).

[26] A "Member Firm" means "a partnership, corporation, limited liability company or other organization in good standing who owns or leases a membership or upon whom a member has conferred privileges of membership pursuant to and in compliance with Article VIII of the PCX Constitution." *See* PCX Rule 1.1(j).

[27] A "Nominee" means "a Member Firm which owns more than one membership may register such additional membership or memberships in the name of a nominee or nominees subject to such conditions and requirements as the Board of Governors may prescribe." *See* Article VIII, Section 2(a) of the PCX Constitution.

[28] RMMs enter single-sided quotes directly into an interface with PCX Plus. RMMs would not be permitted, however, to stream quotes in such issues. RMMs also could enter orders through a proprietary brokerage terminal, which would be routed to a floor broker for representation. An RMM may choose to enter an order, rather than a single-sided quote, when the order is complex, is being entered on a contingency basis, or involves other discretion. Telephone call between Sonia Trocchio, Special Counsel, Division, Commission, and Pete Armstrong, Senior Vice President, Options Floor Operations, PCX on April 16, 2003.

[29] Proposed PCX Rule 6.76(a)(2)(C)(ii).

[30] The LMM's disseminated size would not include the size of any SMMs quoting at the LMM's disseminated price. Telephone call between Sonia Trocchio, Special Counsel, Division, Commission, and Pete Armstrong, Senior Vice President, Options Floor Operations, PCX on April 17, 2003.

[31] *See* File No. SR–PCX–2002–01.

[32] Telephone call between Deborah Flynn, Assistant Director, Division, Commission, and Kathryn Beck, Senior Vice President, General Counsel, and Corporate Secretary, PCX on April 14, 2003.

[33] *See* proposed PCX Rule 6.90(b).

[34] *See* Order Instituting Public Administrative Proceedings Pursuant to section 19(h)(1) of the Act, Making Findings and Imposing Remedial Sanctions ("Settlement Order"). Securities Exchange Act Release No. 43268 (September 11, 2000) (File No. 3–10282).

[35] *See* Linkage Plan, *supra* note 10, section 2(7) (definition of "Eligible Market Maker").

that are routed to Floor Broker Hand Held Terminals for manual representation during a system disruption or malfunction would be executed pursuant to the order execution and priority principles set forth in proposed PCX Rule 6.76(d).

Finally, the Exchange proposes to eliminate proposed PCX Rule 6.90(g)(2), which relates to other unusual market conditions not involving a system malfunction, because it is superfluous. The Exchange believes that under any circumstance where a fair and orderly market cannot be maintained, the trading halt guidelines set forth in current PCX Rule 6.65 will be followed. Trading may be resumed whenever two Floor Officials determine that a fair and orderly market may be maintained. The Exchange also proposes to make a conforming change to PCX Rule 6.28(c)(6) by eliminating that portion of the text that refers to the suspension of the PCX Plus system during fast markets and unusual market conditions, as this provision is no longer applicable.

L. Applicability of Automated System Access Privileges ("ASAP") Memberships

ASAP Memberships are governed by current PCX Rule 1.14, which allows certain qualified broker-dealers ("ASAP Members") electronic access to the Exchange's automated options trading system, Pacific Options Exchange Trading System ("POETS"), as well as any other systems approved by the PCX's Board of Governors. In Amendment No. 2, PCX represents that an ASAP Membership cannot be utilized: (1) To effect trades via PCX Plus, or (2) by a member to act as a RMM.

M. Miscellaneous Changes

Finally, in Amendment No. 2, the PCX proposes the following technical and miscellaneous changes:

1. *PCX Rule 6.52*—The Exchange proposes to change the text of proposed PCX Rule 6.52(a) to clarify that, for those option issues designated for trading on PCX Plus, limit orders for the accounts of public customers, broker-dealers, and Market Makers, and Quotes with Size of Market Makers will be eligible for placement in the Consolidated Book. In option issues not designated for trading on PCX Plus, the Exchange proposes to retain the provisions contained in current PCX Rule 6.52(a) and (c),[36] which would be renumbered as subsections (b) and (d), respectively (current PCX Rule 6.52(b) would be renumbered as subsection (c)).

2. *Proposed PCX Rule 6.76(b)(2)(B)*—The Exchange also proposes to change the text in proposed PCX Rule 6.76(b)(2)(B) to clarify that the provisions in paragraph (B) would apply to a Firm or Non-Member Market Maker order that was entered one minute or more before the inbound order.

3. *Proposed PCX Rule 6.90(e)*—Proposed PCX Rule 6.90(e) sets forth the practices that would be prohibited on PCX Plus. The Exchange represents that the requirements of this rule would apply only to members and member organizations that have direct electronic access to PCX Plus and are responsible for the execution and settlement of any resulting trades.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning Amendments No. 2 and 3 to the proposed rule change, including whether Amendments No. 2 and 3 are consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the PCX. All submissions should refer to File No. SR–PCX–2002–36 and should be submitted by June 9, 2003.

V. Discussion

After careful review, the Commission finds that the proposed rule change, as amended, is consistent with the Act and the rules and regulations promulgated thereunder applicable to a national securities exchange and, in particular, with the requirements of section 6(b) of the Act.[37] Specifically, the Commission finds that approval of the proposed rule change, as amended, is consistent with section 6(b)(5) of the Act[38] in that it is designed to facilitate transactions in securities; to prevent fraudulent and manipulative acts and practices; to promote just and equitable principles of trade; to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities; to remove impediments to and perfect the mechanism of a free and open market and a national market system; and in general, to protect investors and the public interest.

A. Obligations of Market Makers

The PCX Plus proposal contemplates four types of Maker Makers: LMMs, RMMs, FMMs, and SMMs. LMMs are required to provide continuous two-sided quotes that meet certain spread parameters throughout the trading day in each of their appointed issues. LMMs must enter their quotations through an automated quotation system, but may also provide quotations by public outcry.

RMMs enter quotations from off-floor locations through an electronic interface with the Exchange.[39] Further, because PCX Rule 6.37(h)(1) states that all rules applicable to market makers apply to RMMs unless otherwise provided, PCX Rule 6.37(a)–(c) would apply to RMMs.[40] In addition, RMMs are required to provide continuous two-sided quotations that meet certain quote spread parameters in each of their appointed issues 60% of the time that the Exchange is open for options trading, and may not enter two-sided quotes in options issues that are not included in the RMMs primary appointment. RMMs could, however, enter single-sided quotes and multiple orders to buy and sell the same option series in issues outside their primary appointment.

FMMs would be physically located in the trading crowd, and like RMMs, would be required to provide two-sided quotations that meet certain quote spread parameters through an auto-quoting device when present in the trading crowd. FMMs would also be obligated to vocalize a two-sided legal-width market whenever a floor broker enters the trading crowd.

Finally, when present in the trading crowd, SMMs would be required to provide the size of their quotations at the LMM's bid or offer through an electronic interface device. Also, like FMMs, SMMs would be obligated to vocalize a two-sided, legal-width market whenever a floor broker enters the trading crowd.

In addition, all Market Makers must trade at least 75% of their average daily trading volume per quarter in issues included in their primary appointment.[41] All Market Makers, except RMMs, must also execute at least 60% of their transactions in-person.

Market Makers receive certain benefits for carrying out their duties. For example, a lender may extend credit to a broker-dealer without regard to the restrictions in Regulation T of the Board of Governors of the Federal Reserve system if the credit is to be used to finance the broker-dealer's activities as a specialist or market maker on a national securities exchange.[42] The Commission believes that a Market Maker must have an affirmative obligation to hold itself out as willing to buy and sell options for its own account on a regular or continuous basis to justify this favorable treatment. In this regard, the Commission believes that PCX's rules impose such affirmative obligations on PCX Plus Market Makers.

B. Priority and Allocation

Under the proposal, the best priced bids and offers have priority over worse priced bids and offers. The Commission believes that the capability that PCX Plus provides to market makers to independently submit their quotes and then reward market makers with better quotes through this priority rule should substantially enhance incentives to quote competitively by providing market participants that improve the quote with an allocation of the resulting trade.[43]

In addition, bids and offers for public customers would get first priority over other bids or offers at the same price. If there is more than one highest bid or lowest offer for a public customer, the bids/offers would be ranked based on time priority. Non-customer orders and Quotes with Size would be allocated (after any LMM or FIQ guarantees, discussed below) on a size pro rata basis.

1. LMM Guarantee

PCX Rule 6.82 currently provides LMMs with a 40% participation right in transactions occurring at their disseminated bids and/or offers in their allocated issues. PCX Plus rules would also guarantee to the LMM 40% of the portion of an order traded at the LMM's quote that remains after the execution of all public customer orders and quotes with FIQ status. The LMM, however, would be entitled to its size pro rata allocation, if it were greater than the allocation it would receive under the LMM guarantee. In no event would the LMM be allocated contracts greater than its disseminated size.[44]

The Commission recognizes that a large guaranteed participation right will erode the incentive of other market makers to make competitive markets. Thus, the Commission must weigh whether a proposed participation right adequately balances the aim of rewarding the specialist or lead market maker with the aim of leaving a sizeable enough portion of the incoming order for the other market makers quoting at the same price.[45] The Commission has previously taken the position that a trade participation right that does not exceed 40%, including any guaranteed percentage of the trade to be accorded to any other trade participant, is not inconsistent with the Act.[46]

2. FIQ Status

A non-customer order or Quote with Size that improves the best bid or offer on the Exchange will have FIQ status with respect to other bids or offers at the same price, unless it is matched or further improved within three seconds. An order or Quote with Size with FIQ status is entitled to trade against the greater of: (1) 40% of the next inbound electronic order or orders (after public customer orders have been executed), and (2) the total size that the order or Quote with Size with FIQ status would be entitled to receive pursuant to a size pro rata allocation. An order or Quote with Size with FIQ status would not be awarded a greater number of contracts than the size of the bid or offer with FIQ status. LLMs would be entitled only to the greater of their 40% guaranteed participation or the number of contracts the LMM would be entitled to receive for having FIQ status.[47]

The Phlx commented that because the "LMM need only match the price improving quote (as opposed to further improving it), LMMs likely would automate the matching process to ensure that no Market Maker that improves the quote would ever be able to maintain FIQ status."[48] The Commission, however, does not believe that giving any preference to a Market Maker that first improves the quote is required by the Act. The Commission also believes that because all PCX Plus Market Makers will be able to independently and automatically generate quotes in all series and will participate in the trade pursuant to the size pro rata allocation when they are at the best price, that even if the Market Maker loses its FIQ status because its quote is matched by another Market Maker or the LMM, the proposal substantially enhances incentives to quote competitively.[49] Finally, although it is not unlawful for a market maker to take the prices offered by its competitors into account when setting its own prices, or to follow or copy prices of its

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[36] Current PCX Rule 6.52(c) describes the circumstances and procedures to be followed by Floor Brokers for the entry, cancellation and changes of orders held by the Order Book Official.

[37] 15 U.S.C. 78f(b). In approving this proposal, the Commission has considered the proposed rule's impact on efficiency, competition and capital formation. 15 U.S.C. 78c(f).

[38] 15 U.S.C. 78f(b)(5).

[39] The Commission notes that, in Amendment No. 2, PCX represented that an ASAP Membership, governed by PCX Rule 1.14, cannot be used to effect trades via PCX Plus, or to act as a RMM. *See* Amendment No. 2, *supra* note 7.

[40] PCX Rule 6.37(a) states that transactions of a market maker should constitute a course of dealings reasonably calculated to contribute to the maintenance of a fair and orderly market. PCX Rule 6.37(b) states, among other things, that a market maker is expected to engage, to a reasonable degree under the existing circumstances, in dealings for his own account when there is a lack of price continuity, a temporary disparity between the supply of and demand for a particular option contract, or a temporary distortion of the price relationships between option contracts of the same class. PCX Rule 6.37(c) sets forth the requirements for trading by a market maker in options classes to which the market maker is not appointed.

[41] PCX represents that this 75% average daily trading volume requirement will apply to all PCX Market Makers pursuant to PCX Rule 6.35, Commentary .03. Telephone conversation between Kathryn Beck, Senior Vice President, General Counsel, and Corporate Secretary, PCX, and Sapna C. Patel, Attorney, Division, Commission, on April 10, 2003.

[42] See 12 CFR 221.5(c)(6).

[43] The Exchange has submitted the proposed rule change pursuant to subparagraph IV.B.h.(i)(aa) of the Commission's September 11, 2000 Order Instituting Public Administrative Proceedings Pursuant to section 19(h)(1) of the Securities Exchange Act of 1934, Making Findings and Imposing Remedial Sanctions, which required the PCX (as well as other floor-based option market exchanges) to adopt new, or amend existing rules to substantially enhance incentives to quote competitively and substantially reduce disincentives to act competitively. *See* Settlement Order, *supra* note 34.

[44] Proposed PCX Rule 6.76(a)(2)(C)(iii).

[45] *See* Securities Exchange Act Release No. 43100 (July 31, 2000), 65 FR 48778, 48787–90 (August 9, 2000) ("Phlx 80/20 Proposal") (Commission requested comment on whether the proposal by the Phlx to establish an 80% specialist guarantee would be consistent with the Act).

[46] *See, e.g.*, Securities Exchange Act Release No. 45936 (May 15, 2002), 67 FR 36279, 26280 (May 23, 2002) (SR-CBOE–2002–10) (approving participation entitlements that range from 34 percent to 40 percent for the DPM providing the primary quote feed, depending on the total number of appointed market makers in the option); Securities Exchange Act Release No. 42835 (May 26, 2000), 65 FR 35683, 35685–66 (June 5, 2000) (SR–CBOE–99–10) (approving DPM guarantee for crossed orders that, when combined with the percentage crossed by the floor broker, cannot exceed 40% of the original order (after relevant public customer orders have been satisfied)); and Securities Exchange Act Release No. 42455 (February 24, 2000), 65 FR 11388, 11398 (March 2, 2000) (approving International Securities Exchange's application for registration as a national securities exchange, which contains a 40% participation right for facilitating EAMs); *see also* Phlx 80/20 Proposal, *supra* note 45.

[47] *See* proposed PCX Rule 6.76(a)(3)(C).

[48] *See* Phlx Letter, *supra* note 6.

[49] Currently, a Market Maker that improves the quote would be able to participate in the resulting trade only if that Market Maker happens to be next on the Auto-Ex "wheel."

competitors, such a decision must be a unilateral business judgment not intended to harass or punish a competitor for improving prices or otherwise acting competitively and not the result of collusive agreement. Accordingly, the Commission expects that the PCX will surveil its market to ensure that market makers are not coordinating quotes in PCX Plus or engaging in other anticompetitive conduct.

C. Linkage Obligations

Under PCX Rule 6.92(a), an "Eligible Market Maker" for purposes of the Linkage Plan is defined as "a market maker that: (i) Is assigned to, and is providing two-sided quotations in, the Eligible Option Class; (ii) is logged on to participate in Auto-Ex in such Eligible Option Class; [50] and (iii) is in compliance with the requirements of PCX Rule 6.95 (relating to limitation on principal order access)." [51] PCX Market Makers would be considered to be Eligible Market Makers participating in the automated execution system for PCX Plus issues if they are logged on to the PCX Plus system and provide continuous two-sided quotes (or, with respect to SMMs, the size of their quote) through an electronic interface to the PCX Plus System. The Commission notes that to enable PCX to comply with its obligations under the Linkage Plan, PCX Rules 6.92 through 6.96 will apply to the PCX Plus system.[52] The Commission also notes that PCX clarified in Amendment No. 2 that LLMs have responsibility for handling incoming Linkage orders. The Commission believes that these provisions should assure other Linkage Plan participants that the introduction of PCX Plus should not jeopardize the PCX's ability to satisfy its obligations under the Linkage Plan.

D. PCX Plus Executions

PCX Plus provides for automated executions and manual executions, as well as split-price executions and electronic book executions. The PCX represents that once PCX Plus is completely phased in, it will replace the PCX's current Auto-Ex "wheel" in its entirety.

Under PCX's current rules, an incoming eligible market or marketable limit order is automatically executed against an order in the PCX order book if there is an order representing the best price on the Exchange. Otherwise, the inbound order, or a portion of it, is executed by Market Makers in the trading crowd who are logged onto PCX's Auto-Ex "wheel."

Under PCX Plus, inbound marketable orders would be immediately executed against bids and offers in the Consolidated Book unless: (1) The size of the inbound order exceeds the PCX's established Maximum Order Size; [53] or (2) the inbound order is for the account of a Firm or Non-Market Maker and more than 50% of the aggregate trading interest in the Consolidated Book at the execution price is for the account(s) of public customers. If either of these two conditions exist, the inbound order would be routed to a Floor Broker Hand Held Terminal for manual execution by the trading crowd based on priority rules in proposed PCX Rule 6.76(d).

If the inbound marketable order does not meet the two conditions above, the way it would be executed under the proposed rules would differ depending on whether a single firm or Non-Member Market Maker order at the best price on the Consolidated Book was entered less than one minute, or one minute or more, before the inbound order.[54]

The Commission notes that inbound electronic orders entered through PCX Plus will receive split-price execution at multiple price levels if there is insufficient trading interest at the best price in the Consolidated Book and the remainder of the order can be filled at one or more other price levels in the Consolidated Book. The Commission notes that, consistent with the Linkage Plan, under the PCX's proposed rules for PCX Plus, the order cannot be executed at a price that trades through another market, and so the balance of the order, if any, will either be placed on the Consolidated Book, or, if it locks or crosses the NBBO, routed to a Floor Broker Hand Held Terminal for manual execution.[55]

Under the PCX Plus system, Market Makers can receive electronic book executions when they enter a Quote with Size that initiates a trade with the Consolidated Book. The initiating Quote with Size will immediately execute against the Consolidated Book if the percentage of the transaction including public customer interest comprises no more than 40% of the transaction. If the public customer interest is more than 40% of the transaction, the initiating Quotes with Size will receive the greater of the 40% of the public customer interest in the Consolidated Book at that price, or the total size that the initiating Quote with Size would receive on a size pro rata allocation. The Crowd Participants will then have an opportunity to obtain the balance of the Consolidated Book on a size pro rata basis. The Commission notes that split-price executions will not occur with electronic book executions.

The Commission believes that the various types of PCX Plus executions, including automated and manual executions, as well as split-price and electronic book executions, should allow Market Makers and floor brokers to provide more efficient and immediate executions for inbound orders and Quotes with Size, subject to priority and allocation principles.

E. Section 11(a) of the Act

Under the proposed rules, public customer orders would always receive first priority. Therefore, the Commission believes that the PCX Plus system should comply with section 11(a) of the Act.[56]

F. NBBO Step-Up Feature

The PCX proposes to incorporate an NBBO Step-Up feature for PCX Plus that is similar to its current PCX Rule 6.87(i), which allows PCX members logged on to Auto-Ex to step up to the NBBO in executing incoming orders. Under PCX Plus, an LMM in an issue would have the discretion, subject to the approval of two Floor Officials, to use the NBBO Step-Up feature to step up and execute orders at the NBBO price when the NBBO is better than the PCX's disseminated price. The LMM also would have the discretion to use the NBBO Step-Up feature to disseminate Quotes with Size at the NBBO, which would then be disseminated via Options Price Reporting Authority.

The Commission notes that the LMM in an issue may not use the NBBO Step-Up feature to match quotations of other PCX participants who are quoting at the NBBO.[57] The Commission further notes that SMMs may choose, but are not required, to participate in the NBBO Step-Up feature.[58] Thus, SMMs cannot be required to trade at a price that is not their own quote, unless they so choose. As a result, the Commission believes that the NBBO step-up feature will not undermine SMMs' incentives to add size to the LMM's quotes.

G. Crossing Rules

The PCX Plus proposal incorporates a new crossing mechanism that would permit the cross and execution of two orders with instructions to match the identified buy-side with the identified sell-side at a specified cross price.[59] Under the crossing mechanism, a PCX Broker (defined as a member, member organization, or associated person who enters orders as agent for accounts other than for Market Makers) would enter certain terms of each cross order into PCX Plus for electronic execution. If the cross price entered is outside of the BBO, PCX Plus would reject the cross orders. If the cross price is between the BBO, the order designated by the PCX Broker as the side to be exposed to the market would be displayed to the other members for 30 seconds. The exposed order would also be sent to OPRA for public dissemination.[60]

The PCX proposal establishes certain prohibitions regarding cross orders to prevent internalization and to promote competition. Under the proposal, it would be a violation of PCX rules for a PCX Broker to be a party to any arrangement designed to circumvent proposed PCX Rule 6.76(c) by providing an opportunity for a public customer or a broker-dealer to execute against agency orders handled by the PCX Broker immediately upon their entry into PCX Plus. PCX Brokers also would not be permitted to execute as principal any orders they represent as agent unless: (1) Agency orders are first exposed on the Exchange for at least 30 seconds; (2) the PCX Broker utilizes the crossing mechanism pursuant to proposed PCX Rule 6.76(c)(2); or (3) the PCX Broker executes the orders pursuant to PCX Rule 6.47 ("Crossing" Orders and Stock/Option Orders). The Commission believes that these rules should promote intramarket price competition by providing market makers with a reasonable opportunity to compete for a significant percentage of the incoming order and, therefore, should protect investors and the public interest.

H. Integrated Market Making and Side-by-Side Trading

The PCX has indicated that PCX Rule 2.6(e), which governs the use of material, non-public information, would apply to members trading on PCX Plus. The PCX has represented that this rule would require a PCX Market Maker to maintain information barriers—that are reasonably designed to prevent the misuse of material, non-public information by such member—with any affiliates that may act as specialist or market maker in any security underlying the options for which the PCX member acts as a Market Maker. The Commission believes that the requirement that there be an information barrier between the PCX Market Maker and its affiliates with respect to transactions in the option and the underlying security serve to reduce the opportunity for unfair trading advantages or misuse of material, non-public information.

I. Prohibited Practices

The PCX proposal includes certain prohibited practices for PCX members entering orders through PCX Plus.[61] The proposed prohibitions are similar to those under current PCX Rule 6.87(d).

PCX members would be prohibited from dividing up orders considered to be part of a single investment decision into small lots in order to stay within the Maximum Order Size established pursuant to PCX Rule 6.76. Multiple orders to trade the same option issue that are on the same side of the market, whether long or short, and multiple orders to trade the same options series entered within any 15-second period for the account of the same beneficial owner will be presumed to be based on a single investment decision. The Commission finds that the 15-second requirement as applicable to multiple orders for the same beneficial owner is consistent with the provisions of the Act and the rules and regulations thereunder. The Commission believes that fifteen seconds is a sufficient time period to allow Market Makers to change their quotations following an execution, while at the same time not unduly long as to place a burden on investors seeking to execute transactions on the Exchange. The Commission believes that this prohibition should prevent the splitting of orders on behalf of the same beneficial owner to meet PCX Plus eligibility, while providing a safe-harbor rule for multiple orders entered after the 15-second time period. The Exchange has represented and the Commission notes that the prohibition against splitting orders applies only to PCX members and member organizations that have direct electronic access to PCX Plus, and does not apply in any way to customers.

J. Suspension of PCX Plus

The PCX Plus proposal includes rules regarding the suspension of PCX Plus.[62] Under the proposed PCX Plus rules, PCX Plus could be suspended in the event of any disruption or malfunction in the use or operation of the system by two Floor Officials. The Commission notes that if the PCX Plus system is suspended for any reason, the priority and allocation rules of PCX Plus set forth in PCX Rule 6.76(d) would apply.

K. Obvious Error

The Exchange represents that its obvious error and trade nullification/price adjustment rules applicable to PCX Plus will be based upon the rules that the Commission ultimately approves in File No. SR–PCX–2002–01, and not the existing Price Adjustment rules. Further, PCX represents that it will not implement PCX Plus until File No. SR–PCX–2002–01 has been approved by the Commission. Thus, the implementation of PCX Plus is contingent upon the Commission's approval of SR–PCX–2002–01.

VI. Accelerated Approval of Amendments No. 2 and 3

The Commission finds good cause for approving Amendments No. 2 and 3 to the proposed rule change prior to the thirtieth day after the amendments are published for comment in the **Federal Register** pursuant to section 19(b)(2) of the Act.[63] Amendment No. 2 addresses concerns raised in some of the Comment Letters,[64] as well as issues and concerns raised by Commission staff. Amendment No. 3 clarifies proposed Commentary .02 of PCX Rule 6.64 regarding procedures for determining a single price opening for options issues designated for trading on PCX Plus. The

[50] PCX represents that it will amend this rule to clarify that a market maker logged on to participate in PCX Plus would also satisfy the requirements of this provision. Telephone call between Kathryn L. Beck, Senior Vice President, PCX and Sonia Trocchio, Special Counsel, Division, Commission on April 8, 2003.

[51] The Commission approved the Linkage Plan in July 2000. *See supra* note .

[52] PCX represents that it will amend these rules, as necessary, to clarify their applicability to PCX Plus. Telephone call between Kathryn L. Beck, Senior Vice President, PCX and Sonia Trocchio, Special Counsel, Division, Commission on April 8, 2003.

[53] Proposed PCX Rule 6.76(b)(1). The Maximum Order Size eligible for execution on PCX Plus will be established by the LLM in the issue, subject to approval of the Options Floor Committee.

[54] Proposed PCX Rule 6.76(b)(2).

[55] PCX Rule 6.76(b)(3).

[56] 15 U.S.C. 78k(a).

[57] Proposed PCX Rule 6.76(b)(5)(B).

[58] Proposed PCX Rule 6.76(b)(5).

[59] Proposed PCX Rule 6.76(c). In addition, PCX Rule 6.94 prohibits crosses from occurring outside of the NBBO.

[60] Telephone call between Sonia Trocchio, Special Counsel, Division, Commission, and Pete Armstrong, Senior Vice President, Options Floor Operations, PCX on April 16, 2003.

[61] Proposed PCX Rule 6.90(e).

[62] PCX Rule 6.90(g).

[63] 15 U.S.C. 78s(b)(2).

[64] The Commission notes that two of the commenters, IB Group and Morgan Stanley, supported the PCX's proposal and urged the Commission to approve the proposal. The other two commenters, the Phlx and Susquehanna, raised concerns regarding the PCX's proposal. The Phlx's comments focused mainly on preferential treatment afforded to LMMs. As discussed above, the PCX addressed the concerns raised by the Phlx Letter and the Commission staff in Amendment No. 2. The Susquehanna Letter raised general concerns about the practice of internalization in the options markets, not limited to PCX's proposal, and asked the Commission to consider its policy against internalization in reviewing the PCX's proposed rules. See Comment Letters, supra note 6.

Commission believes that the proposed changes in Amendments No. 2 and 3 are necessary to the proper functioning and implementation of PCX Plus, and therefore, believes that accelerated approval of Amendments No. 2 and 3 is appropriate.

VII. Conclusion

For the foregoing reasons, the Commission finds that the proposed rule change, as amended, is consistent with the Act and the rules and regulations thereunder applicable to a national securities exchange, and, in particular, with section 6(b)(5) of the Act.[65]

It is therefore ordered, pursuant to section 19(b)(2) of the Act,[66] that the proposed rule change (SR–PCX–2002–36) and Amendment No. 1 are approved, and that Amendments No. 2 and 3 thereto are approved on an accelerated basis.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[67]

Jill M. Peterson,

Assistant Secretary.

[FR Doc. 03–12456 Filed 5–16–03; 8:45 am]

BILLING CODE 8010–01–P

SMALL BUSINESS ADMINISTRATION

[Declaration of Disaster #3500]

State of Alabama

As a result of the President's major disaster declaration on May 12, 2003, I find that Bibb, Blount, Calhoun, Cullman, DeKalb, Etowah, Jackson, Jefferson, Madison, Marshall, Morgan, Shelby, St. Clair, Talladega, Tuscaloosa and Walker Counties in the State of Alabama constitute a disaster area due to damages caused by severe storms, tornadoes, and flooding occurring on May 5, 2003 and continuing. Applications for loans for physical damage as a result of this disaster may be filed until the close of business on July 11, 2003 and for economic injury until the close of business on February 12, 2004 at the address listed below or other locally announced locations: U.S. Small Business Administration, Disaster Area 2 Office, One Baltimore Place, Suite 300, Atlanta, GA 30308.

In addition, applications for economic injury loans from small businesses located in the following contiguous counties may be filed until the specified date at the above location: Cherokee, Chilton, Clay, Cleburne, Coosa, Fayette, Greene, Hale, Lawrence, Limestone, Marion, Perry, Pickens and Winston in the State of Alabama; Chattooga, Dade and Walker counties in the State of Georgia; and Franklin, Lincoln and Marion counties in the State of Tennessee.

The interest rates are:

	Percent
For Physical Damage:	
Homeowners with Credit Available Elsewhere	5.625
Homeowners without Credit Available Elsewhere	2.812
Businesses with Credit Available Elsewhere	5.906
Businesses and Non-Profit Organizations without Credit Available Elsewhere	2.953
Others (Including Non-Profit Organizations) with Credit Available Elsewhere	5.500
For Economic Injury:	
Businesses and Small Agricultural Cooperatives without Credit Available Elsewhere	2.953

The number assigned to this disaster for physical damage is 350012. For economic injury the number is 9V2900 for Alabama; 9V3000 for Georgia; and 9V3100 for Tennessee.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008).

Dated: May 13. 2003.

Herbert L. Mitchell,

Associate Administrator for Disaster Assistance.

[FR Doc. 03–12471 Filed 5–16–03; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[Declaration of Disaster #3497]

State of Missouri; (Amendment #1)

In accordance with a notice received from the Department of Homeland Security—Federal Emergency Management Agency, effective May 9, 2003, the above numbered declaration is hereby amended to include Bollinger, Cape Girardeau, Franklin, Jefferson, Perry, Saint Francois, Sainte Genevieve, Saint Louis, Scott, Stoddard and Washington Counties in the State of Missouri as disaster areas due to damages caused by severe storms, tornadoes and flooding occurring on May 4, 2003 and continuing.

In addition, applications for economic injury loans from small businesses located in the contiguous counties of Butler, Crawford, Dunklin, Gasconade, Independent City of St. Louis, Iron, Madison, Mississippi, New Madrid, St. Charles, Warren and Wayne in the State of Missouri; and Alexander, Jackson, Madison, Monroe, Randolph, St. Clair and Union Counties in the State of Illinois may be filed until the specified date at the previously designated location. All other counties contiguous to the above named primary county have been previously declared.

The economic injury number assigned to Illinois is 9V2800.

All other information remains the same, *i.e.*, the deadline for filing applications for physical damage is July 7, 2003, and for economic injury the deadline is February 6, 2004.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008).

Dated: May 13, 2003.

Herbert L. Mitchell,

Associate Administrator for Disaster Assistance.

[FR Doc. 03–12470 Filed 5–16–03; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[Declaration of Disaster #3501]

State of New York

As a result of the President's major disaster declaration on May 12, 2003, I find that Cayuga, Monroe, Oneida, Onondaga, Ontario, Oswego, Seneca and Wayne Counties in the State of New York constitute a disaster area due to damages caused by an ice storm occurring on April 3 through April 5, 2003. Applications for loans for physical damage as a result of this disaster may be filed until the close of business on July 11, 2003 and for economic injury until the close of business on February 12, 2004 at the address listed below or other locally announced locations: U.S. Small Business Administration, Disaster Area 1 Office, 360 Rainbow Blvd., South 3rd Fl., Niagara Falls, NY 14303–1192.

In addition, applications for economic injury loans from small businesses located in the following contiguous counties may be filed until the specified date at the above location: Cortland, Genesee, Herkimer, Jefferson, Lewis, Livingston, Madison, Orleans, Otsego, Schuyler, Steuben, Tompkins and Yates in the State of New York.

The interest rates are:

	Percent
For Physical Damage:	
Homeowners with Credit Available Elsewhere	5.875
Homeowners without Credit Available Elsewhere	2.937
Businesses with Credit Available Elsewhere	6.378
Businesses and Non-Profit Organizations without Credit Available Elsewhere	3.189
Others (Including Non-Profit Organizations) With Credit Available Elsewhere	5.500
For Economic Injury:	
Businesses and Small Agricultural Cooperatives Without Credit Available Elsewhere	3.189

The number assigned to this disaster for physical damage is 350111 and for economic injury the number is 9V3200.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008).

Dated: May 13, 2003.

Herbert L. Mitchell,

Associate Administrator for Disaster Assistance.

[FR Doc. 03–12472 Filed 5–16–03; 8:45 am]

BILLING CODE 8025–01–P

[65] 15 U.S.C. 78f(b)(5).

[66] 15 U.S.C. 78s(b)(2).

[67] 17 CFR 200.30–3(a)(12).

TENNESSEE VALLEY AUTHORITY

Meeting Number 1545

AGENCY: Tennessee Valley Authority (Meeting No. 1545).

TIME AND DATE: 9 a.m. (CDT), May 21, 2003, Athens State University, Sandridge Student Center Ballroom, 300 North Beaty Street, Athens, Alabama.

STATUS: Open.

Agenda

Approval of minutes of meeting held on March 19, 2003.

New Business

C—Energy

C1. Three spot coal contracts—two with Appalachian Fuels LLC and one with ALPHA Natural Resources—to supply low-sulfur coal for 18 months to Bull Run and Kingston Fossil Plants.

C2. Contract with Shaw Environmental & Infrastructure, Inc., to provide services for containment and recovery of oil and hazardous material spills.

C3. Supplement to blanket contract 4296 with Valley Mechanical Alliance for heating, ventilation, and air-conditioning equipment and services.

C4. Contract with Allied Welding and Safety Supply Company, LLC, for welding supplies and equipment.

C5. Contract with Westinghouse Electric Company, LLC, for outage services and parts at Sequoyah Nuclear Plant Units 1 and 2 and Watts Bar Nuclear Plant Unit 1.

C6. Supplement to contract with Schweitzer Engineering Laboratories for distance relays.

C7. Contract with Morpac Industries and Alstom for 500kV vertical reach switches.

E—Real Property Transactions

E1. Modification of certain deed restrictions affecting approximately 0.07 acre of former TVA land on Chickamauga Reservoir in Hamilton County, Tennessee, Tract No. XCR–39, S.4X.

E2. Abandonment of a portion of the retired Centerville-McEwen 44kV transmission line right-of-way easement affecting approximately 0.43 acre of land in Humphreys County, Tennessee, Tract No. CMC–62.

E3. Nineteen-year commercial recreation lease to Hollis B. DeWitt affecting approximately 23 acres of land on Fort Loudoun Reservoir in Loudon County, Tennessee (formerly operated as Yarberry Recreation Area), Tract No. XFL–134L.

E4. Grant of a permanent easement to the State of Tennessee for a highway improvement project affecting approximately 0.75 acre of land on Watts Bar Reservoir in Roane County, Tennessee, Tract No. XTWBR–145H.

E5. Transfer of approximately 8.25 acres of Beech River Project property in Henderson County, Tennessee, Tract No. XTBRPIC–2RE, to the Beech River Watershed Development Authority.

E6. Sale of a permanent easement to Dr. James E. Lee for a road and utilities access affecting approximately 0.53 acre of land on Kentucky Reservoir in Decatur County, Tennessee, Tract No. XGIR–940H.

F—Other

F1. Approval to file condemnation cases to acquire transmission line easements and rights of way affecting Tract Nos. RSCP–149, Rock Springs-Center Point Transmission Line, Whitfield County, Georgia; TRYC–25, TRYC–36, TRYC–50, TRYC–54, TRYC–63, TRYC–65, TRYC–66. TRYC–71, TRYC–74, TRYC–89, TRYC–99, Youngcane-Toccoa Transmission Line, Fannin County, Georgia; tree-removal rights affecting Tract Nos. TRYC–43–CR and TRYC–49B–CR, Youngcane-Toccoa Transmission Line, Fannin County, Georgia; transmission line switching structure and access road affecting Tract Nos. 2PMNS–1 and –1AR, Hickory Valley-Selmer Tap to North Selmer Transmission Line, McNairy County, Tennessee; and communication circuit easement and right-of-way affecting Tract No. ASFOS–1, Alcoa, Tennessee, Switching Station, Blount County, Tennessee.

Information Items

1. Approval of a revision to the cooperative agreement with Memphis, Light, Gas and Water to support a low-income energy conservation demonstration in the MLGW service area.

2. Approval of the filing of a condemnation case to acquire the right to erect a transmission line switching structure on an existing right-of-way affecting Tract No. CHAN–34.AS.1 for the Cullman-Hanceville Transmission Line in Cullman County, Alabama.

3. Amendment to the Provisions of the TVA Savings and Deferral Retirement Plan (401(k) Plan) to provide for a lump-sum distribution to a participant, no longer employed by TVA, of a small 401(k) Plan account balance (less than $5,000).

4. Delegation of authority to the Chief Financial Officer, or a designee, to enter into agreements with financial institutions for the sale of accounts receivable that result from electric system projects for TVA's customers.

5. Approval of INVESCO Institutional (N.A.), Inc. as a new investment manager for the TVA Retirement System and approval of the investment management agreement between the Retirement System and the new investment manager.

FOR FURTHER INFORMATION CONTACT: Please call TVA Media Relations at (865) 632–6000, Knoxville, Tennessee. Information is also available at TVA's Washington Office (202) 898–2999. People who plan to attend the meeting and have special needs should call (865) 632–6000. Anyone who wishes to comment on any of the agenda in writing may send their comments to: TVA Board of Directors, Board Agenda Comments, 400 West Summit Hill Drive, Knoxville, Tennessee 37902.

Dated: May 14, 2003.

Maureen H. Dunn,

General Counsel and Secretary.

[FR Doc. 03–12532 Filed 5–15–03; 10:08 am]

BILLING CODE 8120–08–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

RTCA Special Committee 194: Air Traffic Management (ATM) Data Link Implementation

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of RTCA Special Committee 194 meeting.

SUMMARY: The FAA is issuing this notice to advise the public of a meeting of RTCA Special Committee 194: Air Traffic and Management (ATM) Data Link Implementation.

DATES: The meeting will be held June 10, 2003, starting from 9–5 p.m.

ADDRESSES: The meeting will be held at RTCA, Inc., 1828 L Street, NW., Suite 805, Washington, DC 20036.

FOR FURTHER INFORMATION CONTACT: RTCA Secretariat, 1828 L Street, NW, Washington, DC 20036; telephone (202) 833–9339; fax (202) 833–9434; Web site *http://www.rtca.org.*

SUPPLEMENTARY INFORMATION: Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463, 5 U.S.C. appendix 2), notice is hereby given for a Special Committee 194 meeting. The agenda will include:

- June 10:
- Opening Plenary Session (Welcome and Introductory Remarks, Review Agenda, Review/Approve Minutes of Previous Meeting, Working Group Reports)
- Status of Controller-Pilot Data Link Communication (CPDLC) Program
- Working Group (WG) Reports and Discussion
- WG–1, Plans and Principles document final status
- WG–3, Issues and status of proposed Human Factors document and Build II
- WG–4, Issues and status of draft DO-Connect
- SC– 194 Terms of Reference Discussion
- Other Business
- Closing Plenary Session (Review Agenda, Working Group Reports, Other Business, Date and Place of Next Meeting)
- Attendance is open to the interested public but limited to space availability. With the approval of the chairmen, members of the public may present oral statements at the meeting. Persons wishing to present statements or obtain information should contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section. Members of the public may present a written statement to the committee at any time.

Issued in Washington, DC, on May 6, 2003.

Normal T. Fujisaki,

Deputy Director, System Architecture and Investment Analysis.

[FR Doc. 03–12380 Filed 5–16–03; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

RTCA Special Committee 172: Future Air-Ground Communications In the Very High Frequency (VHF) Aeronautical Data Band (118–137 MHz)

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of RTCA Special Committee 172 meeting.

SUMMARY: The FAA is issuing this notice to advise the public of a meeting of RTCA Special Committee 172: Future Air-Ground Communications in the VHF Aeronautical Data Band (118–137 MHz).

DATES: The meeting will be held June 10–11, 2003 from 9 a.m. to 5 p.m.

ADDRESSES: The meeting will be held at RTCA, Inc., 1828 L Street, NW., Suite 805, Washington, DC 20036.

FOR FURTHER INFORMATION CONTACT: RTCA Secretariat, 1828 L Street, SW., Washington, DC 20036; telephone (202) 833–9339; fax (202) 833–9434; Web site *http://www.rtca.org.*

SUPPLEMENTARY INFORMATION: Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463, 5 U.S.C., appendix 2), notice is hereby given for a Special Committee 172 meeting. The agenda will include:

- June 10:
- Opening Plenary Session (Welcome and Introductory Remarks, Review of Agenda, Review Summary of Previous Meeting)
- Convene Working Group-3 (WG), prepare for FRAC Change 1 to DO–271A, VHF Digital Link Mode 3 Minimum Operational Performance Standard (MOPS).
- June 11:
- Convene WG–2 to entertain white papers and actions regarding the development of Version B of the DO–224A, Signal-in-Space Minimum Aviation System Performance Standards (MASPS) for advance VHF Digital Data Communications Including Compatibility with Digital Voice.
- Reconvene WG–3 (if necessary)
- Reconvene Plenary
- Review relevant activities
- International Civil Aviation Organization Aeronautical Mobile Communications Panel work
- NEXCOM activities
- EUROCAE WG–47 status and issues
- Others as appropriate
- Closing Plenary Session (Other Business, Date and Place of Next Meeting, Adjourn)

Attendance is open to the interested public but limited to space availability. With the approval of the chairmen, members of the public may present oral statements at the meeting. Persons wishing to present statements or obtain information should contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section. Members of the public may present a written statement at any time.

Issued in Washington, DC, on May 5, 2003.

Norman T. Fujisaki,

Deputy Director, System Architecture and Investment Analysis.

[FR Doc. 03–12381 Filed 5–16–03; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Intent To Rule on Application #03–05–C–00–FLL To Impose and Use the Revenue From a Passenger Facility Charge (PFC) at Fort Lauderdale International Airport, Fort Lauderdale, FL

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of intent to rule on application.

SUMMARY: This correction revises information from the previously published notice.

In notice document 03–10577 appearing on page 23173, in the issue of Wednesday, April 30, 2003, under Notice of Intent to Rule on Application, in the third column, in the 29th line, the Date of Letter of Completeness, should read, April 22, 2003.

In addition, on page 23174, in the first column, in the 3rd line, the Current Date, should read, April 22, 2003.

FOR FURTHER INFORMATION CONTACT: Matthew J. Thys, Assistant Manager, Orlando Airports District office, 5950 Hazeltine National Drive, Suite 400, Orlando, FL 32822, (407) 812–6331, extension 21.

Issued in Orlando, Florida on May 8, 2003.

W. Dean Stringer,

Manager, Orlando Airports District Office, Southern Region.

[FR Doc. 03–12382 Filed 5–16–03; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Environmental Impact Statement: Cooper Landing, Kenai Peninsula Borough, AK

AGENCY: Federal Highway Administration (FHWA), Alaska Department of Transportation and Public Facilities (ADOT&PF).

ACTION: Notice of intent.

SUMMARY: ADOT&PF, on behalf of FHWA, will be preparing a supplemental draft environmental impact statement (SDEIS) and section 4(f) Evaluation, in accordance with Title 23 CFR part 771, for the Sterling Highway MP 45 to MP 60 project and invites public comment. The supplement updates a draft EIS approved and circulated for public review in 1994.

The Sterling Highway is the only highway connecting the western Kenai Peninsula with the remainder of the nation's highway system. The highway parallels the Kenai River and passes through State and federal public lands and the community of Cooper Landing.

The proposed project provides a highway meeting current design standards. Alternatives under consideration include: (1) The No-Build Alternative, (2) constructing a new location facility north of the existing Sterling Highway, (3) constructing a new location facility south of the existing Sterling Highway, (4) constructing an improved facility along the same corridor as the existing facility.

FOR FURTHER INFORMATION CONTACT: Mr. Tim Haugh, Environmental and Right-of-Way Programs Manager, Alaska Division FHWA, P.O. Box 21648, Juneau, Alaska 99802–1648, Telephone (907) 586–7430; Ms. Miriam Tanaka, P.E., Project Manager, Preliminary Design and Environmental, ADOT&PF, P.O. Box 196900, Anchorage, Alaska 99519–6900, Telephone (907) 269–0546. ADOT&PF has established a Web site for the project: *http://www.sterlinghighway.net.*

SUPPLEMENTARY INFORMATION: ADOT&PF and FHWA published a Draft EIS for the Sterling Highway MP 37 to 60 Project in 1994. The following year, FHWA agreed to advance a portion of the proposed improvements under a separate environmental document. The current supplement reexamines the MP 45 to 60 portion of the improvement studied in the Draft EIS.

Public lands in the project area include the Mystery Creek Wilderness Unit of the Kenai National Wildlife Refuge, Chugach National Forest (including campgrounds, recreation areas, and trails), the Resurrection Pass National Recreation Trail, and the State of Alaska Kenai River Special Management Area. The project area also includes the Sqilantnu Archaeological District and the Cooper Landing Historic District.

The existing highway is narrow without shoulders or clear zones and has many curves and driveways. The proposed improved highway includes wider shoulders, passing and turning lanes, clear zones or barricades, new bridge construction, improved drainage systems, and slope stabilization. Title XI of the Alaska National Interest Lands Conservation Act (ANILCA), which addresses transportation corridors that cross certain conservation lands contains additional procedural review requirements and specific timeframes should a preferred alternative be chosen that impacts an ANILCA Title XI resource. The Resurrection Pass National Recreation Trail and Mystery Creek Wilderness Unit warrant ANILCA Title XI procedures in addition to FHWA regulations governing implementation of the National Environmental Policy Act (NEPA), 23 CFR part 771.

The U.S. Department of the Interior, Fish and Wildlife Service Regional Administrator, and the USDA Forest Service, Chugach Forest Supervisor, have agreed to combine the environmental requirements imposed by ANILCA with the requirements of 23 CFR part 771 by designating the FHWA as the lead agency for compliance with NEPA.

The U.S. Fish and Wildlife Service, the USDA Forest Service, and the U.S. Army Corps of Engineers are cooperating agencies in the development of the SDEIS.

ADOT&PF is undertaking an on-going, large-scale public involvement program including public events in Cooper Landing, the Soldotna area, and Anchorage. Public notices will continue to be published in local newspapers and on the project Web site (*http://www.sterlinghighway.net*) regarding the times and places of all events. These events, with on-going public comment, are intended to provide a public forum that affords a full opportunity for presenting views on the social, economic, natural, and other effects of the alternative locations and design features. Comments and suggestions are invited from all interested parties and should be directed to the FHWA and/or ADOT&PF at the addresses provided above.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Research, Planning and Construction)

Issued on: April 28,2003.

David C. Miller,

Division Administrator, Federal Highway Administration.

[FR Doc. 03–12448 Filed 5–16–03; 8:45 am]

BILLING CODE 4910–22–M

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Finance Docket No. 34284]

Southwest Gulf Railroad Company—Construction and Operation Exemption—Medina County, TX

AGENCY: Surface Transportation Board, DOT.

ACTION: Notice of exemption.

SUMMARY: Under 49 U.S.C. 10502, the Board conditionally exempts from the prior approval requirements of 49 U.S.C. 10901 the construction and operation by Southwest Gulf Railroad Company (SGR) of an approximately 7-mile line of railroad in Medina County, TX. The planned line will extend from Vulcan Construction Materials, LP's [1] proposed quarry in the north central part of the county to a connection at approximately milepost 250 near Dunlay of the Del Rio Subdivision of the Union Pacific Railroad Company.

DATES: The exemption will not become effective until the environmental review process is completed. Once that process is completed, the Board will issue a further decision addressing the environmental matters and establishing an exemption effective date at that time, if appropriate. Petitions to reopen must be filed by June 9, 2003.

ADDRESSES: An original and 10 copies of all pleadings, referring to STB Finance Docket No. 34284, must be filed with the Surface Transportation Board, 1925 K Street, NW., Washington, DC 20423–0001. In addition, one copy of all pleadings must be served on petitioner's representative: David H. Coburn, Steptoe & Johnson LLP, 1330 Connecticut Avenue, NW., Washington, DC 20036.

FOR FURTHER INFORMATION CONTACT: Beryl Gordon (202) 565–1600. [Assistance for the hearing impaired is available through the Federal Information Relay Service (FIRS) at 1–800–877–8339.]

SUPPLEMENTARY INFORMATION: Additional information is contained in the Board's decision. Copies of the decision may be purchased from Dā 2 Dā Legal Copy Service by calling (202) 293–7776 (assistance for the hearing impaired is available through FIRS at 1–800–877–8339) or by visiting Suite 405, 1925 K Street, NW., Washington, DC 20006.

[1] Vulcan Construction Materials, LP is a subsidiary of Vulcan Materials Company, and SGR is affiliated with Vulcan Materials Company through common ownership.

Board decisions and notices are available on our Web site at *WWW.STB.DOT.GOV*.

Decided: May 9, 2003.

By the Board, Chairman Nober and Commissioner Morgan.

Vernon A. Williams,

Secretary.

[FR Doc. 03–12263 Filed 5–16–03; 8:45 am]

BILLING CODE 4915–00–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Docket No. AB–55 (Sub–No. 632X)]

CSX Transportation, Inc.—Abandonment Exemption—in Lee County, NC

CSX Transportation, Inc. (CSXT), has filed a notice of exemption under 49 CFR Part 1152 Subpart F—*Exempt Abandonments* to abandon an approximately 0.64-mile line of railroad between milepost AE 245.06 and milepost AE 245.70 in Sanford, Lee County, NC. The line traverses United States Postal Service Zip Code 27331.

CSXT has certified that: (1) No local traffic has moved over the line for at least 2 years; (2) there is no overhead traffic on the line; (3) no formal complaint filed by a user of rail service on the line (or by a State or local government entity acting on behalf of such user) regarding cessation of service over the line either is pending with the Surface Transportation Board (Board) or with any U.S. District Court or has been decided in favor of complainant within the 2-year period; and (4) the requirements at 49 CFR 1105.7 (environmental reports), 49 CFR 1105.8 (historic reports), 49 CFR 1105.11 (transmittal letter), 49 CFR 1105.12 (newspaper publication), and 49 CFR 1105.50(d)(1) (notice to governmental agencies) have been met.

As a condition to this exemption, any employee adversely affected by the abandonment shall be protected under *Oregon Short Line R. Co.—Abandonment—Goshen*, 360 I.C.C. 91 (1979). To address whether this condition adequately protects affected employees, a petition for partial revocation under 49 U.S.C. 10502(d) must be filed. Provided no formal expression of intent to file an offer of financial assistance (OFA) has been received, these exemptions will be effective on June 18, 2003, unless stayed pending reconsideration. Petitions to stay that do not involve environmental issues,[1] formal expressions of intent to file an OFA under 49 CFR 1152.27(c)(2),[2] and trail use/rail banking requests under 49 CFR 1152.29 must be filed by May 29, 2003. Petitions to reopen or requests for public use conditions under 49 CFR 1152.28 must be filed by June 9, 2003, with: Surface Transportation Board, 1925 K Street, NW., Washington DC 20423–0001.

A copy of any petition filed with the Board should be sent to the applicant's representative: Natalie S. Rosenberg, Counsel, CSX Transportation, Inc., 500 Water Street, J150, Jacksonville, FL 32202.

If the verified notice contains false or misleading information, the exemption is void *ab initio*.

CSXT has filed an environmental report which addresses the abandonment's effects, if any, on the environment and historic resources. SEA will issue an environmental assessment (EA) by May 23, 2003. Interested persons may obtain a copy of the EA by writing to SEA (Room 500, Surface Transportation Board, Washington, DC 20423–0001) or by calling SEA, at (202) 565–1552. [Assistance for the hearing impaired is available through the Federal Information Relay Service (FIRS) at 1–800–877–8339.] Comments on environmental and historic preservation matters must be filed within 15 days after the EA becomes available to the public.

Environmental, historic preservation, public use, or trail use/rail banking conditions will be imposed, where appropriate, in a subsequent decision.

Pursuant to the provisions of 49 CFR 1152.29(e)(2), CSXT shall file a notice of consummation with the Board to signify that it has exercised the authority granted and fully abandoned the line. If consummation has not been effected by CSXT's filing of a notice of consummation by May 19, 2004, and there are no legal or regulatory barriers to consummation, the authority to abandon will automatically expire.

Board decisions and notices are available on our Web site at *WWW.STB.DOT.GOV*.

Decided: May 12, 2003.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 03–12262 Filed 5–16–03; 8:45 am]

BILLING CODE 4915–00–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Docket No. AB–33 (Sub–No. 163X)] and [STB Docket No. AB–364 (Sub-No. 8X)]

Union Pacific Railroad Company—Abandonment Exemption—in Lamar and Fannin Counties, TX and Texas Northeastern Division, Mid-Michigan Railroad, Inc.—Discontinuance of Service Exemption—in Lamar and Fannin Counties, TX

Union Pacific Railroad Company (UP) and Texas Northeastern Division, Mid-Michigan Railroad, Inc. (TNER), have filed a notice of exemption under 49 CFR Part 1152 Subpart F—*Exempt Abandonments and Discontinuances of Service* for UP to abandon and TNER to discontinue service over a 33.5-mile portion of the Bonham Subdivision between milepost 94.0, near Paris, and milepost 127.5, east of Bonham, in Lamar and Fannin Counties, TX.[1] The line traverses United States Postal Service Zip Codes 75418, 75421, 75446, 75460 and 75492.

UP and TNER have certified that: (1) No local traffic has moved over the line for at least 2 years; (2) any overhead traffic on the line can be rerouted over other lines; (3) no formal complaint filed by a user of rail service on the line (or by a state or local government entity acting on behalf of such user) regarding cessation of service over the line either is pending with the Surface Transportation Board (Board) or with any U.S. District Court or has been decided in favor of complainant within the 2-year period; and (4) the requirements at 49 CFR 1105.7 (environmental reports), 49 CFR 1105.8 (historic reports), 49 CFR 1105.11 (transmittal letter), 49 CFR 1105.12 (newspaper publication), and 49 CFR 1152.50(d)(1) (notice to governmental agencies) have been met.

As a condition to these exemptions, any employee adversely affected by the abandonment or discontinuance shall be protected under *Oregon Short Line R. Co.—Abandonment—Goshen*, 360 I.C.C. 91 (1979). To address whether this condition adequately protects affected employees, a petition for partial revocation under 49 U.S.C. 10502(d) must be filed. Provided no formal expression of intent to file an offer of financial assistance (OFA) has been received, these exemptions will be effective on June 18, 2003, unless stayed pending reconsideration. Petitions to stay that do not involve environmental issues,[2] formal expressions of intent to file an OFA under 49 CFR 1152.27(c)(2),[3] and trail use/rail banking requests under 49 CFR 1152.29 must be filed by May 29, 2003. Petitions to reopen or requests for public use conditions under 49 CFR 1152.28 must be filed by June 9, 2003, with: Surface Transportation Board, 1925 K Street, NW., Washington, DC 20423–0001.

A copy of any petition filed with the Board should be sent to applicants' representatives: Mack H. Shumate, Jr., Senior General Attorney, 101 North Wacker Drive, Room 1920, Chicago, IL 60606; and Louis E. Gitomer, Of Counsel, Ball Janik LLP, 1455 F St., NW., Suite 225, Washington, DC 20005.

If the verified notice contains false or misleading information, the exemptions are void *ab initio*.

Applicants have filed an environmental report which addresses the effects, if any, of the abandonment and discontinuance on the environment and historic resources. SEA will issue an environmental assessment (EA) by May 23, 2003. Interested persons may obtain a copy of the EA by writing to SEA (Room 500, Surface Transportation Board, Washington, DC 20423–0001) or by calling SEA, at (202) 565–1552. [Assistance for the hearing impaired is available through the Federal Information Relay Service (FIRS) at 1–800–877–8339.] Comments on environmental and historic preservation matters must be filed within 15 days after the EA becomes available to the public.

Environmental, historic preservation, public use, or trail use/rail banking conditions will be imposed, where appropriate, in a subsequent decision.

Pursuant to the provisions of 49 CFR 1152.29(e)(2), UP shall file a notice of consummation with the Board to signify that it has exercised the authority granted and fully abandoned the line. If consummation has not been effected by UP's filing of a notice of consummation by May 19, 2004, and there are no legal or regulatory barriers to consummation, the authority to abandon will automatically expire.

Board decisions and notices are available on our Website at *WWW.STB.DOT.GOV*.

Decided: May 12, 2003.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 03–12344 Filed 5–15–03; 8:45 am]

BILLING CODE 4915–00–P

[1] The Board will grant a stay if an informed decision on environmental issues (whether raised by a party or by the Board's Section on Environmental Analysis (SEA) in its independent investigation) cannot be made before the exemption's effective date. *See Exemption of Out-of-Service Rail Lines*, 5 I.C.C.2d 377 (1989). Any request for a stay should be filed as soon as possible so that the Board may take appropriate action before the exemption's effective date.

[2] Each OFA must be accompanied by the filing fee, which currently is set at $1,100. *See* 49 CFR 1002.2(f)(25).

[1] TNER leases the line from UP.

[2] The Board will grant a stay if an informed decision on environmental issues (whether raised by a party or by the Board's Section of Environmental Analysis (SEA) in its independent investigation) cannot be made before the exemptions' effective date. *See Exemption of Out-of-Service Rail Lines*, 5 I.C.C.2d 377 (1989). Any request for a stay should be filed as soon as possible so that the Board may take appropriate action before the exemptions' effective date.

[3] Each OFA must be accompanied by the filing fee, which currently is set at $1,100. *See* 49 CFR 1002.2(f)(25).

DEPARTMENT OF TRANSPORTATION

Bureau of Transportation Statistics

Agency Information Collection; Activity Under OMB Review; Passenger Origin-Destination Survey Report

AGENCY: Bureau of Transportation Statistics (BTS), DOT.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995, Public Law 104–13, the Bureau of Transportation Statistics invites the general public, industry and other governmental parties to comment on the continuing need for and usefulness of BTS collecting a sample of airline passenger itineraries with the dollar value of the passenger ticket. Certificated air carriers that operated scheduled passenger service with at least one aircraft having a seating capacity of over 60 seats report these data. Comments are requested concerning whether (a) the collection is still needed by the Department of Transportation; (b) BTS accurately estimated the reporting burden; (c) there are other ways to enhance the quality, utility and clarity of the information collected; and (d) there are ways to minimize reporting burden, including the use of automated collection techniques or other forms of information technology.

DATES: Written comments should be submitted by July 18, 2003.

ADDRESSES: Comments should be directed to: Office of Airline Information, K–14, Room 4125, Bureau of Transportation Statistics, 400 Seventh Street, SW., Washington, DC 20590–0001, FAX NO. 366–3383 or e-mail *bernard.stankus@bts.gov*.

Comments: Comments should identify the OMB # 2139–0001. Persons wishing the Department to acknowledge receipt of their comments must submit with those comments a self-addressed stamped postcard on which the following statement is made: Comments on OMB # 2139–0001. The postcard will be date/time stamped and returned.

FOR FURTHER INFORMATION CONTACT: Bernie Stankus Office of Airline Information, K–14, Room 4125, Bureau of Transportation Statistics, 400 Seventh Street, SW., Washington, DC 20590–0001, (202) 366–4387

SUPPLEMENTARY INFORMATION:

OMB Approval No. 2139–0001.

Title: Passenger Origin-Destination Survey Report.

Form No.: None.

Type of Review: Extension of a currently approved collection.

Respondents: Large U.S. air carriers.

Number of Respondents: 32.

Number of Responses: 128.

Total Annual Burden: 30,720 hours.

Needs and Uses: Survey data are used in monitoring the airline industry, negotiating international agreements, selecting new international routes, and selecting U.S. carriers to operate limited entry international routes.

The Confidential Information Protection and Statistical Efficiency Act of 2002 (44 U.S.C. 3501 *note*), requires a statistical agency to clearly identify information it collects for non-statistical purposes. BTS hereby notifies the respondents and the public that BTS uses the information it collects under this OMB approval for non-statistical purposes including, but not limited to, publication of both Respondent's identity and its data, submission of the information to agencies outside BTS for review, analysis and possible use in regulatory and other administrative matters.

Issued on May 9, 2003.

Donald W. Bright,

Assistant Director, Airline Information, Bureau of Transportation Statistics.

[FR Doc. 03–12384 Filed 5–16–03; 8:45 am]

BILLING CODE 4910–FE–P

DEPARTMENT OF THE TREASURY

Financial Crimes Enforcement Network; Proposed Collection; Comment Request; Currency Transaction Report

AGENCY: Financial Crimes Enforcement Network ("FinCEN"), Treasury.

ACTION: Notice and request for comments.

SUMMARY: As part of its continuing effort to reduce paperwork and respondent burden, FinCEN invites comment on a proposed revision to the Currency

Transaction Report ("CTR") and editorial changes to the instructions. This request for comments is being made pursuant to the Paperwork Reduction Act of 1995, Public Law 104–13, 44 U.S.C. 3506(c)(2)(A).

DATES: Written comments are welcome and must be received on or before July 18, 2003.

ADDRESSES: Written comments should be submitted to: Office of Chief Counsel, Financial Crimes Enforcement Network, Department of the Treasury, P.O. Box 39, Vienna, Virginia 22183, Attention: PRA Comments—CTR Form. Comments also may be submitted by electronic mail to the following Internet address: *regcomments@fincen.treas.gov*, again with a caption, in the body of the text, "Attention: PRA Comments—CTR Form."

Inspection of comments. Comments may be inspected, between 10 a.m. and 4 p.m., in the FinCEN reading room in Washington, DC. Persons wishing to inspect the comments submitted must request an appointment by telephoning (202) 354–6400.

FOR FURTHER INFORMATION CONTACT: Russell Stephenson, Senior Compliance Administration Specialist, Office of Compliance and Regulatory Enforcement, FinCEN, at (202) 354–6015; and Judith R. Starr, Chief Counsel and Christine L. Schuetz, Attorney-Advisor, Office of Chief Counsel, FinCEN, at (703) 905–3590.

SUPPLEMENTARY INFORMATION:

Title: Currency Transaction Report (CTR).

OMB Number: 1506–0004.

Form Number: FinCEN Form 104 (Formerly 4789).

Abstract: The statute generally referred to as the "Bank Secrecy Act," Titles I and II of Public Law 91–508, as amended, codified at 12 U.S.C. 1829b, 12 U.S.C. 1951–1959, and 31 U.S.C. 5311–5332, authorizes the Secretary of the Treasury, *inter alia*, to require financial institutions to keep records and file reports that are determined to have a high degree of usefulness in criminal, tax, and regulatory matters, or in the conduct of intelligence or counter-intelligence activities, to protect against international terrorism, and to implement counter-money laundering programs and compliance procedures.[1] Regulations implementing Title II of the Bank Secrecy Act appear at 31 CFR Part 103. The authority of the Secretary to administer the Bank Secrecy Act has been delegated to the Director of FinCEN.

Section 5313(a) authorizes the Secretary to issue regulations that require a report when "a domestic financial institution is involved in a transaction for the payment, receipt, or transfer of United States coins or currency (or other monetary instruments the Secretary of the Treasury prescribes), in an amount, denomination, or amount and denomination, or under circumstances the Secretary prescribes." Regulations implementing section 5313(a) are found at 31 CFR 103.22. In general, the regulations require the reporting of transactions in currency in excess of $10,000 a day. Financial institutions as defined in 31 U.S.C. 5312(a)(2) and 31 CFR 103.11 are subject to the currency transaction reporting requirement. The Currency Transaction Report, FinCEN 104 (Formally Form 4789), is the form financial institutions use to comply with the currency transaction reporting requirements.

Action: This revision adds two data collection blocks to Part II—item "26a" for Foreign cash in" and item "27a" for "Foreign cash out—" and adds item "37a" to Part III for listing a foreign country code. The CTR instructions have been revised to address new items 26a, 27a and 37a.

Several editorial changes are also being made in this revision. As part of an effort to standardize BSA forms, FinCEN is renumbering the form, consistent with its new numbering system, as FinCEN Form 104. In other editorial changes, the Commodity Futures Trading Commission ("CFTC") has been added to the list of Federal Regulators for Part III,[2] and item 43 is clarified by noting that a Magnetic Ink Character Recognition (MICR) number is the financial institutions routing number. Finally, the Paperwork Reduction Act notice has been moved to page four.

Type of Review: Regular with changes to a currently approved information collection.

Affected public: Business or other for-profit and non-profit institutions.

Frequency: As required.

Estimated Burden: Reporting average of 19 minutes per response. Form record keeping average of 5 minutes per response, for a total of 24 minutes.

Estimated number of respondents = 19,000.

Estimated Total Annual Responses = 12,400,000.

Estimated Total Annual Burden Hours: 4,960,000

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Records required to be retained under the Bank Secrecy Act must be retained for five years.

Request for Comments

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected: (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance and purchase of services to provide information.

Dated: May 8, 2003.

James F. Sloan,

Director, Financial Crimes Enforcement Network.

[Attachment: Currency Transaction Report, FinCEN Form 104 (Formally Form 4789.]

BILLING CODE 4810–02–P

[1] Language expanding the scope of the Bank Secrecy Act to intelligence or counter-intelligence activities to protect against international terrorism was added by Section 358 of the Uniting and strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism (USA PATRIOT ACT) Act of 2001 (the "USA Patriot Act"), Pub. L. 107–56.

[2] On May 5, 2003, FinCEN published a notice of proposed rulemaking that would amend the definition of financial institution to include futures commission merchants and introducing brokers in commodities. *See*, 68 FR 23653. Once the proposal is finalized, these businesses, which are regulated by the CFTC, will become subject to the general BSA reporting requirements, including reporting under 31 CFR 103.22.

FINCEN Form **104**
(Formerly Form 4789)
(Rev. August 2003)
Department of the Treasury
FinCEN

Currency Transaction Report

▶ Previous editions will not be accepted after August 2004.
▶ Please type or print.
(Complete all parts that apply—See instructions)

OMB No. 1506-0004

1 Check all box(es) that apply: a ☐ Amends prior report b ☐ Multiple persons c ☐ Multiple transactions

Part I Person(s) Involved in Transaction(s)

Section A—Person(s) on Whose Behalf Transaction(s) Is Conducted

2 Individual's last name or entity's name | 3 First name | 4 Middle initial

5 Doing business as (DBA) | 6 SSN or EIN

7 Address (number, street, and apt. or suite no.) | 8 Date of birth MM / DD / YYYY

9 City | 10 State | 11 ZIP code | 12 Country code (if not U.S.) | 13 Occupation, profession, or business

14 If an individual, describe method used to verify identity: a ☐ Driver's license/State I.D. b ☐ Passport c ☐ Alien registration
d ☐ Other e Issued by: f Number:

Section B—Individual(s) Conducting Transaction(s) (if other than above).
If Section B is left blank or incomplete, check the box(es) below to indicate the reason(s).
a ☐ Armored Car Service b ☐ Mail Deposit or Shipment c ☐ Night Deposit or Automated Teller Machine (ATM) d ☐ Multiple Transactions e ☐ Conducted On Own Behalf

15 Individual's last name | 16 First name | 17 Middle initial

18 Address (number, street, and apt. or suite no.) | 19 SSN

20 City | 21 State | 22 ZIP code | 23 Country code (if not U.S.) | 24 Date of birth MM / DD / YYYY

25 If an individual, describe method used to verify identity: a ☐ Driver's license/State I.D. b ☐ Passport c ☐ Alien registration
d ☐ Other Issued by: f Number:

Part II Amount and Type of Transaction(s). Check all boxes that apply.

26 Total cash in $ .00 | 27 Total cash out $ .00 | 28 Date of transaction MM / DD / YYYY

26a Foreign cash in .00 | 27a Foreign cash out .00

29 ☐ Foreign Country | 30 ☐ Wire Transfer(s) | 31 ☐ Negotiable Instrument(s) Purchased

32 ☐ Negotiable Instrument(s) Cashed | 33 ☐ Currency Exchange(s) | 34 ☐ Deposit(s)/Withdrawal(s)

35 ☐ Account Number(s) Affected (if any): | 36 ☐ Other (specify)

Part III Financial Institution Where Transaction(s) Takes Place

37 Name of financial institution | Enter Federal Regulator or BSA Examiner code number ▶ (see instructions)

38 Address (number, street, and apt. or suite no.) | 39 EIN or SSN

40 City | 41 State | 42 ZIP code | 43 Routing (MICR) number

Sign Here ▶ | 44 Title of approving official | 45 Signature of approving official | 46 Date of signature MM / DD / YYYY

47 Type or print preparer's name | 48 Type or print name of person to contact | 49 Telephone number ( ) –

▶ For Paperwork Reduction Act Notice, see page 4. | Cat. No. 46004W | FinCEN Form 104 (Formerly Form 4789) (Rev. 8-03)

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FinCEN Form 104 (formerly Form 4789) (Rev. 8-03) Page 2

Multiple Persons

Complete applicable parts below if box 1b on page 1 is checked

Part I Person(s) Involved in Transaction(s)

Section A--Person(s) on Whose Behalf Transaction(s) Is Conducted

2 Individual's last name or entity's name			3 First name		4 Middle initial
5 Doing business as (DBA)				6 SSN or EIN	
7 Address (number, street, and apt. or suite no.)				8 Date of birth MM DD YYYY	
9 City	10 State	11 ZIP code	12 Country code (if not U.S.)		13 Occupation, profession, or business

14 If an individual, describe method used to verify identity: a ☐ Driver's license/State I.D. b ☐ Passport c ☐ Alien registration
d ☐ Other e Issued by: f Number:

Section B--Individual(s) Conducting Transaction(s) (if other than above).

15 Individual's last name			16 First name		17 Middle initial
18 Address (number, street, and apt. or suite no.)				19 SSN	
20 City	21 State	22 ZIP code	23 Country code (if not U.S.)	24 Date of birth MM DD YYYY	

25 If an individual, describe method used to verify identity: a ☐ Driver's license/State I.D. b ☐ Passport c ☐ Alien registration
d ☐ Other e Issued by: f Number:

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Part I Person(s) Involved in Transaction(s)

Section A--Person(s) on Whose Behalf Transaction(s) Is Conducted

2 Individual's last name or entity's name			3 First name		4 Middle initial
5 Doing business as (DBA)				6 SSN or EIN	
7 Address (number, street, and apt. or suite no.)				8 Date of birth MM DD YYYY	
9 City	10 State	11 ZIP code	12 Country code (if not U.S.)		13 Occupation, profession, or business

14 If an individual, describe method used to verify identity: a ☐ Driver's license/State I.D. b ☐ Passport c ☐ Alien registration
d ☐ Other e Issued by: f Number:

Section B--Individual(s) Conducting Transaction(s) (if other than above).

15 Individual's last name			16 First name		17 Middle initial
18 Address (number, street, and apt. or suite no.)				19 SSN	
20 City	21 State	22 ZIP code	23 Country code (if not U.S.)	24 Date of birth MM DD YYYY	

25 If an individual, describe method used to verify identity: a ☐ Driver's license/State I.D. b ☐ Passport c ☐ Alien registration
d ☐ Other e Issued by: f Number:

FinCEN Form 104 (Formerly Form 4789 (Rev. 8-03) Page 3

Suspicious Transactions

This Currency Transaction Report (CTR) should NOT be filed for suspicious transactions involving $10,000 or less in currency OR to note that a transaction of more than $10,000 is suspicious. Any suspicious or unusual activity should be reported by a financial institution in the manner prescribed by its appropriate federal regulator or BSA examiner. (See the instructions for Item 37.) If a transaction is suspicious and in excess of $10,000 in currency, then both a CTR and the appropriate Suspicious Activity Report form must be filed.

Should the suspicious activity require immediate attention, financial institutions should telephone 1-800-800-CTRS. An Internal Revenue Service (IRS) employee will direct the call to the local office of the IRS Criminal Investigation Division (CI). This toll-free number is operational Monday through Friday, from approximately 9:00 am to 6:00 pm Eastern Standard Time. If an emergency, consult directory assistance for the local IRS CID Office.

General Instructions

Who Must File. Each financial institution (other than a casino, which instead must file FinCEN Form 103, and the U.S. Postal Service for which there are separate rules) must file FinCEN Form 104 (formerly 4789) (CTR) for each deposit, withdrawal, exchange of currency, or other payment or transfer, by, through, or to the financial institution which involves a transaction in currency of more than $10,000. Multiple transactions must be treated as a single transaction if the financial institution has knowledge that (1) they are by or on behalf of the same person, and (2) they result in either currency received (Cash In) or currency disbursed (Cash Out) by the financial institution totaling more than $10,000 during any one business day. For a bank, a business day is the day on which transactions are routinely posted to customers' accounts, as normally communicated to depository customers. For all other financial institutions, a business day is a calendar day.

Generally, financial institutions are defined as banks, other types of depository institutions, brokers or dealers in securities, money transmitters, currency exchangers, check cashers, and issuers and sellers of money orders and traveler's checks. Should you have questions, see the definitions in 31 CFR Part 103.

When and Where To File. File this CTR by the 15th calendar day after the day of the transaction with the:

IRS Detroit Computing Center
ATTN: CTR
P.O. Box 33604
Detroit, MI 48232-5604

Keep a copy of each CTR for five years from the date filed.

A financial institution may apply to file the CTRs magnetically. To obtain an application to file magnetically, write to the:

IRS Detroit Computing Center
ATTN: CTR Magnetic Media Coordinator
P.O. Box 33604
Detroit, MI 48232-5604

Identification Requirements. All individuals (except employees of armored car services) conducting a reportable transaction(s) for themselves or for another person, must be identified by means of an official document(s). Acceptable forms of identification include a driver's license, military and military/dependent identification cards, passport, state issued identification card, cedular card (foreign), non-resident alien identification cards, or any other identification document or documents, which contain name and preferably address and a photograph and are normally acceptable by financial institutions as a means of identification when cashing checks for persons other than established customers.

Acceptable identification information obtained previously and maintained in the financial institution's records may be used. For example, if documents verifying an individual's identity were examined and recorded on a signature card when an account was opened, the financial institution may rely on that information. In completing the CTR, the financial institution must indicate on the form the method, type, and number of the identification. Statements such as "known customer" or "signature card on file" are not sufficient for form completion.

Penalties. Civil and criminal penalties are provided for failure to file a CTR or to supply information or for filing a false or fraudulent CTR. See 31 U.S.C. 5321, 5322 and 5324.

For purposes of this CTR, the terms below have the following meanings:

Currency. The coin and paper money of the United States or any other country, which is circulated and customarily used and accepted as money.

Person. An individual, corporation, partnership, trust or estate, joint stock company, association, syndicate, joint venture or other unincorporated organization or group.

Organization. Entity other than an individual.

Transaction in Currency. The physical transfer of currency from one person to another. This does not include a transfer of funds by means of bank check, bank draft, wire transfer or other written order that does not involve the physical transfer of currency.

Negotiable Instruments. All checks and drafts (including business, personal, bank, cashier's and third-party), money orders, and promissory notes. For purposes of this CTR, all traveler's checks shall also be considered negotiable instruments whether or not they are in bearer form.

Specific Instructions

Because of the limited space on the front and back of the CTR, it may be necessary to submit additional information on attached sheets. Submit this additional information on plain paper attached to the CTR. Be sure to put the individual's or entity's name and identifying number (items 2, 3, 4, and 6 of the CTR) on any additional sheets so that if it becomes separated, it may be associated with the CTR.

Item 1a. Amends Prior Report. If this CTR is being filed because it amends a report filed previously, check Item 1a. Staple a copy of the original CTR to the amended one, complete Part III fully and only those other entries which are being amended.

Item 1b. Multiple Persons. If this transaction is being conducted by more than one person or on behalf of more than one person, check Item 1b. Enter information in Part I for one of the persons and provide information on any other persons on the back of the CTR.

Item 1c. Multiple Transactions. If the financial institution has knowledge that there are multiple transactions, check Item 1c.

PART I - Person(s) Involved in Transaction(s)

Section A **must** be completed. If an individual conducts a transaction on his own behalf, complete Section A and leave Section "B" BLANK. If an individual conducts a transaction on his own behalf and on behalf of another person(s), complete Section "A" for each person and leave Section "B" BLANK. If an individual conducts a transaction on behalf of another person(s), complete Section "B" for the individual conducting the transaction, and complete Section "A" for each person on whose behalf the transaction is conducted of whom the financial institution has knowledge.

Section A. Person(s) on Whose Behalf Transaction(s) is Conducted. See instructions above.

Items 2, 3, and 4. Individual/Organization Name. If the person on whose behalf the transaction(s) is conducted is an individual, put his/her last name in Item 2, first name in Item 3, and middle initial in Item 4. If there is no middle initial, leave item 4 BLANK. If the transaction is conducted on behalf of an entity, put its name in Item 2 and leave Items 3 and 4 BLANK.

Item 5. Doing Business As (DBA). If the financial institution has knowledge of a separate "doing business as" name, enter it in Item 5. For example, Smith Enterprise DBA MJ's Pizza.

Item 6. SSN/ITIN or EIN. Enter the Social Security Number (SSN) or Individual Taxpayer Indentification Number (ITIN) or Employer Identification Number (EIN) of the person or entity identified in Item 2. If none, write NONE.

Items 7, 9, 10, 11, and 12. Address. Enter the permanent address including ZIP Code of the person identified in Item 2. Use the U.S. Postal Service's two letter state abbreviation code. A P. O. Box should not be used by itself, and may only be used if there is no street address. If a P. O. Box is used, the name of the apartment or suite number, road or route number where the person resides must also be provided. If the address is outside the U.S., provide the street address, city, province or state, postal code (if known), and the two letter country code. For country code list go to www.fincen.gov/reg_bsaforms.html or telephone 1-800-949-2732 and select option number 5. If U.S., leave item 12 blank.

Item 8. Date of Birth. Enter the date of birth. Eight numerals must be inserted for each date. The first two will reflect the month, the second two the day, and the last four the year. A zero (0) should precede any single digit number. For example, if an individual's birth date is April 3 1948, Item 8 should read 04 03 1948.

Item 13. Occupation, Profession, or Business. Identify the occupation, profession, or business of the person on whose behalf the transaction was conducted. For example: secretary, shoe salesman, carpenter, attorney, housewife, restaurant, liquor store,etc. Do not use non-specific terms such as merchant, self-employed, businessman, etc.

Item 14. If an Individual, Describe Method Used To Verify Identify. If an individual conducts the transaction(s) on his/her own behalf, his/her identity must be verified by examination of an acceptable document (see **General Instructions**). For example, check box **a** if a driver's license is used to verify an individual's identity, and enter the state that issued the license and the number in items **e** and **f**. If the transaction is conducted by an individual on behalf of another individual not present or on behalf of an entity, enter N/A in Item 14.

Section B. Individual(s) Conducting Transaction(s) (If other than above). Financial institutions should enter as much information as is available.

FinCEN Form 104 (Formerly 4789 (Rev. 8-03)) Page 4

However, there may be instances in which Items 15-25 may be left BLANK or incomplete. If Items 15-25 are left BLANK or incomplete, check one or more of the boxes provided to indicate the reasons.

Example: If there are multiple transactions that, if only when aggregated, the financial institution has knowledge the transactions exceed the reporting threshold, and therefore, did not identify the transactor(s), check box d for Multiple Transactions.

Items 15, 16, and 17. Individual's Name. Complete these items if an individual conducts a transaction(s) on behalf of another person. For example, if John Doe, an employee of XYZ Grocery Store, makes a deposit to the store's account, XYZ Grocery Store should be identified in Section A and John Doe should be identified in section B.

Items 18, 20, 21, 22, and 23. Address. Enter the permanent street address including ZIP Code of the individual. (See the instructions for Items 7 and 9 through 12.) Enter country code if not U.S. (Reference item 12).

Item 19. SSN/ITIN. If the individual has a Social Security Number, or Individual Taxpayer Indentifcation Number, enter it in Item 19. If the individual does not have an SSN/ITIN, enter NONE.

Item 24. Date of Birth. Enter the individual's date of birth. (See the instructions for Item 8.)

Item 25. If an Individual, Describe Method Used To Verify Identity. Enter the method used to identify the individual's identy. (See **General Instructions** and the instructions for Item 14.)

PART II - Amount and Type of Transaction(s)

Complete Part II to identify the type of transaction(s) and the amount(s) involved.

Items 26 and 27. Total Cash In/Total Cash Out. In the spaces provided, enter the total amount of currency received (Total Cash In) or total currency disbursed (Total Cash Out) by the financial institution. If foreign currency is exchanged, use the U.S. dollar equivalent on the day of the transaction, and complete item 26a or 27a, whichever is appropriate.

If less than a full dollar amount is involved, increase that figure to the next highest dollar. For example, if the currency totals $20,000.05, show the total as $20,001.00.

Items 26a and 27a. Foreign cash in/Foreign cash out. If foreign currency is exchanged, enter the amount of foreign currency in items 26a and 27a. Report country of origin in item 29.

Item 28. Date of Transaction. Insert eight numerals for each date. (See instructions for Item 8.)

Item 29. Foreign Currency. If items 26a and/or 27a are completed indicating that foreign currency is involved, check Item 29 and identify the country. If multiple foreign currencies are involved, check box 36 and identify the additional currency(s) involved.

Determining Whether Transactions Meet the Reporting Threshold.

Only cash transactions that, if alone or when aggregated, exceed $10,000 should be reported on the CTR. Transactions shall not be offset against one another.

If there are both Cash In and Cash Out transactions that are reportable, the amounts should be considered separately and not aggregated. However, they may be reported on a single CTR.

If there is a currency exchange, it should be aggregated separately with each of the Cash In and Cash Out totals.

Example 1: A person deposits $11,000 in currency to his savings account and withdraws $3,000 in currency from his checking account. The CTR should be completed as follows:

Cash In $11,000 and no entry for Cash Out. This is because the $3,000 transaction does not meet the reporting threshold.

Example 2: A person deposits $11,000 in currency to his savings account and withdraws $12,000 in currency from his checking account. The CTR should be completed as follows:

Cash In $11,000, Cash Out $12,000. This is because there are two reportable transactions. However, one CTR may be filed to reflect both.

Example 3: A person deposits $6,000 in currency to his savings account and withdraws $4,000 in currency from his checking account. Further, he presents $5,000 in currency to be exchanged for the equivalent in French Francs. The CTR should be completed as follows:

Cash In $11,000 and no entry for Cash Out. This is because in determining whether the transactions are reportable, the currency exchange is aggregated with each of the Cash In and Cash Out amounts. The result is a reportable $11,000 Cash In transaction. The total Cash Out amount is $9,000, which does not meet the reporting threshold. Therefore, it is not entered on the CTR.

Example 4: A person deposits $6,000 in currency to his savings account and withdraws $7,000 in currency from his checking account. Further, he presents $5,000 in currency to be exchanged for the equivalent in French Francs. The CTR should be completed as follows:

Cash In $11,000, Cash Out $12,000. This is because in determining whether the transactions are reportable, the currency exchange is aggregated with each of the Cash In and Cash Out amounts. In this example, each of the Cash In and Cash Out totals exceed $10,000 and must be reflected on the CTR.

Items 30-33. Check the appropriate item(s) to identify the following type of transaction(s):

30. Wire Transfer(s)
31. Negotiable Instrument(s) Purchased
32. Negotiable Instrument(s) Cashed
33. Currency Exchange(s)

Item 34. Deposits/Withdrawals. Check this item to identify deposits to or withdrawals from accounts, e.g. demand deposit accounts, savings accounts, time deposits, mutual fund accounts, or any other account held at the financial institution. Enter the account number(s) in Item 35.

Item 35. Account Numbers Affected (if any). Enter the account numbers of any accounts affected by the transactions that are maintained at the financial institution conducting the transaction(s). If necessary, use additional sheets of paper to indicate all of the affected accounts.

Example 1: If a person cashes a check drawn on an account held at the financial institution, the CTR should be completed as follows:

Indicate negotiable instrument(s) cashed and provide the account number of the check.

If the transaction does not affect an account, make no entry.

Example 2: A person cashes a check drawn on another financial institution. In this instance, negotiable instrument(s) cashed would be indicated, but no account at the financial institution has been affected. Therefore, Item 35 should be left BLANK.

Item 36. Other (specify). If a transaction is not identified in Items 30-34, check Item 36 and provide an additional description. For example, a person presents a check to purchase "foreign currency." Also list multiple foreign currencies from item 29.

PART III - Financial Institution Where Transaction(s) Take Place

Item 37. Name of Financial Institution and Identity of Federal Regulator or BSA Examiner. Enter the financial institution's full legal name and identify the federal regulator or BSA examiner, using the following codes:

Federal Regulator Or BSA Examiner	CODE
Comptroller of the Currency (OCC)	1
Federal Deposit Insurance Corporation (FDIC)	2
Federal Reserve System (FRS)	3
Office of Thrift Supervision (OTS)	4
National Credit Union Administration (NCUA)	5
Securities and Exchange Commission (SEC)	6
Internal Revenue Service (IRS)	7
U.S. Postal Service (USPS)	8
Commodity Futures Trading Commission (CFTC)	9

Items 38, 40, 41, and 42. Address. Enter the street address, city, state, and ZIP Code of the financial institution where the transaction occurred. If there are multiple transactions, provide information of the office or branch where any one of the transactions has occurred.

Item 39. EIN or SSN. Enter the financial institution's EIN. If the financial institution does not have an EIN, enter the SSN of the financial institution's principal owner.

Item 43. Routing (MICR) Number. If a depository institution, enter the routing (Magnetic Ink Character Recognition (MICR)) number.

SIGNATURE

Items 44 and 45. Title and signature of Approving Official. The official who reviews and approves the CTR must indicate his/her title and sign the CTR.

Item 46. Date of Signature. The approving official must enter the date the CTR is signed. (See the instructions for Item 8.)

Item 47. Preparer's Name. Type or print the full name of the individual preparing the CTR. The preparer and the approving official may not necessarily be the same individual.

Items 48 and 49. Contact Person/Telephone Number. Type or print the name and telephone number of an individual to contact concerning questions about the CTR.

Paperwork Reduction Act Notice. The requested information is useful in criminal, tax, and regulatory investigations and proceedings. Financial institutions are required to provide the information under 31 U.S.C. 5313 and 31 CFR Part 103, commonly referred to as the Bank Secrecy Act (BSA). The BSA is administered by the U.S. Department of the Treasury's Financial Crimes Enforcement Network (FinCEN). You are not required to provide the requested information unless a form displays a valid OMB control number.

The time needed to complete this form will vary depending on individual circumstances. The estimated average time is 19 minutes. If you have comments concerning the accuracy of this time estimate or suggestions for making this form simpler, you may write to the **Financial Crimes Enforcement Network, P. O. Box 39, Vienna, VA 22183. Do not** send this form to this office. Instead, see **When and Where to File** in the instructions.

DRAFT

[FR Doc. 03–12372 Filed 5–16–03; 8:45 am]
BILLING CODE 4810–02–C

DEPARTMENT OF THE TREASURY

Fiscal Service

Surety Companies Acceptable on Federal Bond: First Sealord Surety, Inc.

AGENCY: Financial Management Services, Fiscal Service, Department of the Treasury.

ACTION: Notice.

SUMMARY: This is Supplement No. 13 to the Treasury Department Circular 570; 2002 Revision, published July 1, 2002, at 67 FR 44294.

FOR FURTHER INFORMATION CONTACT: Surety Bond Branch at (202) 874–1033.

SUPPLEMENTARY INFORMATION: A Certificate of Authority as an acceptable surety on Federal bonds is hereby issued to the following Company under 31 U.S.C. 9304 to 9308. Federal bond-approving officers should annotate their reference copies of the Treasury Circular 570, 2002 Revision, on page 44310 to reflect this addition:

Company Name: First Sealord Surety, Inc.

Business Address: 33 Rock Hill Road Bala Cynwyd, PA 19004.

Phone: (610) 664–2259.

Underwriting Limitation b/: $1,000,000.

Surety Licenses c/: AL, AR, CT, DE, DC, FL, GA, IL, IN, IA, KY, MD, MI, MS, NJ, NY, NC, OH, PA, SC, TN, TX, VA, WV, WI. Incorporated in: Pennsylvania.

Certificates of Authority expire on June 30 each year, unless revoked prior to that date. The Certificates are subject to subsequent annual renewal as long as the companies remain qualified (31 CFR part 223). A list of qualified companies is published annually as of July 1 in Treasury Department Circular 570, with details as to underwriting limitations, areas in which licensed to transact surety business and other information.

The Circular may be viewed and downloaded through the internet at *http://www.fms.treas.gov/c570*. A hard copy may be purchased from the Government Printing Office (GPO) Subscription Service, Washington, DC, Telephone (202) 512–1800. When ordering from GPO, use the following stock number: 769–004–04067–1.

Questions concerning this Notice may be directed to the U.S. Department of the Treasury, Financial Management Service, Financial Accounting and Service Division, Surety Bond Branch, 3700 East-West Highway, Room 6F07, Hyattsville, MD 20782.

Dated: April 25, 2003.

Judith R. Tillman,

Assistant Commissioner, Financial Operations, Financial Management Service.

[FR Doc. 03–12465 Filed 5–16–03; 8:45 am]
BILLING CODE 4810–35–M

DEPARTMENT OF THE TREASURY

Fiscal Service

Surety Companies Acceptable on Federal Bonds: Termination—Mountbatten Surety Company, Inc. (The)

AGENCY: Financial Management Service, Fiscal Service, Department of the Treasury.

ACTION: Notice.

SUMMARY: This is Supplement No. 12 to the Treasury Department Circular 570; 2002 Revision, published July 1, 2002 at 67 FR 44294.

FOR FURTHER INFORMATION CONTACT: Surety Bond Branch at (202) 874–1033.

SUPPLEMENTARY INFORMATION: Notice is hereby given that the Certificate of Authority issued by the Treasury to the above named Company, under the United States Code, Title 31, Sections 9304–9308, to qualify as an acceptable surety on Federal bonds is terminated effective today.

The Company was last listed as an acceptable surety on Federal bonds at 67 FR 44319, July 1, 2002.

With respect to any bonds, including continuous bonds, currently in force with above listed Company, bond-approving officers should secure new bonds with acceptable sureties in those instances where a significant amount of liability remains outstanding. In addition, in no event, should bonds that are continuous in nature by renewed.

The Circular may be viewed and downloaded through the Internet at *http://www.fms.treas.gov/c570/index.html*. A hard copy may be purchased from the Government Printing Office (GPO), Subscription Service, Washington, DC, telephone (202) 512–1800. When ordering the Circular from GPO, use the following stock number: 769–004–04067–1.

Questions concerning this notice may be directed to the U.S. Department of the Treasury, Financial Management Service, Financial Accounting and Services Division, Surety Bond Branch, 3700 East-West Highway, Room 6F07, Hyattsville, MD 20782.

Dated: April 25, 2003.

Judith R. Tillman,

Assistant Commissioner, Financial Operations, Financial Management Service.

[FR Doc. 03–12466 Filed 5–16–03; 8:45 am]
BILLING CODE 4810–35–M

DEPARTMENT OF THE TREASURY

Office of Foreign Assets Control

Additional Designations of Specially-Designated Nationals ("SDNs") of the Government of Sudan

AGENCIES: Office of Foreign Assets Control, Treasury.

ACTION: Notice.

SUMMARY: The Treasury Department's Office of Foreign Assets Control ("OFAC") is publishing the names of seven additional persons whose property and interests in property have been blocked pursuant to the Sudanese Sanctions Regulations, 31 CFR part 538.305(d). OFAC also is publishing updated identifying information for two previously-designated Sudanese persons.

DATES: Effective October 17, 2002.

FOR FURTHER INFORMATION CONTACT: Office of Foreign Assets Control, Department of the Treasury, Washington, DC 20220, tel.: (202) 622–2420.

SUPPLEMENTARY INFORMATION:

Electronic and Facsimile Availability

This document and additional information concerning OFAC are available from OFAC's Web site <*http://www.treas.gov/ofac*> or via facsimile through a 24-hour fax-on-demand service, tel: (202) 622–0077.

Background

Executive Order 13067 (the "Order") imposes economic sanctions on the Government of Sudan. The Sudanese Sanctions Regulations, 31 CFR part 538.305(d), provide for designations by the Director of the Office of Foreign Assets Control ("OFAC") of particular persons subject to the Order. On October 17, 2002, the Director of OFAC designated seven additional persons whose property and interests in property are blocked pursuant to the Order. The names of these additional persons are set forth in the list below. These persons will be added to appendix A to 31 CFR chapter V through a separate **Federal Register** final rule. Appendix A lists the names of persons with respect to whom transactions are subject to the various

economic sanctions programs administered by OFAC.

The designations of these additional persons listed below were effective on October 17, 2002. All property and interests in property of any designated person, including but not limited to all accounts, that are or come within the United States or that are or come within the possession or control of United States persons, including their overseas branches, are blocked and may not be transferred, paid, exported, withdrawn, or otherwise dealt in, and all transactions or dealings by U.S. persons or within the United States in property or interests in property of any designated person are prohibited, unless authorized by OFAC or exempted by statute.

With respect to two persons previously designated, OFAC is publishing updated identifying information.

The list of seven additional designations follows:

National Cigarettes Co. LTD., PO Box 2083, Khartoum, Sudan, and all other branches in Sudan.

National Electricity Corporation, PO Box 1380, Khartoum, Sudan.

Posts and Telegraphs Public Corporation, Khartoum, Sudan.

Sudan National Broadcasting Corporation (a.k.a. Sudan Radio & TV Corp.; a.k.a. Sudan T.V. Corporation), PO Box 1094, Omdurman, Sudan.

Sudan Tea Company, Ltd., PO Box 1219, Khartoum, Sudan.

Sudanese Free Zones and Markets Company (a.k.a. SFZ), PO Box 1789, Khartoum, Sudan; Chad; Saudi Arabia; Turkey; UAE.

Sudanese Petroleum Corporation, 7th Floor, Al Kuwaitiah Building, El Nile Street, Khartoum, Sudan.

Updated identifying information for two previously-designated persons follows:

Kordofan Automobile Company, PO Box 97, Khartoum, Sudan-to-Kordofan Automobile Company (a.k.a. Coptrade Eng and Automobile Services CO LTD.), PO Box 97, Khartoum, Sudan.

Sugar and Distilling Corporation, New Mustafa el Amin Building, Barlaman Avenue, PO Box 511, Khartoum, Sudan-to-Sugar and Distilling Corporation (a.k.a. Sugar and Distilling Industry Corporation), New Mustafa el Amin Building, Barlaman Avenue, PO Box 511, Khartoum, Sudan.

Dated: April 23, 2003.

R. Richard Newcomb,

Director, Office of Foreign Assets Control.

Approved: April 24, 2003.

Juan C. Zarate,

Deputy Assistant Secreteary (Terrorist Financing and Financial Crimes), Department of the Treasury.

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Corrections

Federal Register

Vol. 68, No. 96

Monday, May 19, 2003

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–47704; File No. SR–NASD–2003–70]

Self-Regulatory Organizations; Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Change by the National Association of Securities Dealers, Inc. Relating to the Listing and Trading of Market Recovery Notes Linked to the PHLX Semiconductor Sector

April 18, 2003.

Correction

In notice document 03–10217 beginning on page 20413 in the issue of Friday, April 25, 2003, make the following corrections:

1. On page 20413, in the second column, at the bottom of the page, in the footnotes, footnote "4" should read footnote "1".

2. On the same page, in the same column, at the bottom of the page, in the footnotes, footnote "5" should read footnote "2".

[FR Doc. C3–10217 Filed 5–16–03; 8:45 am]

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Federal Register

Monday,
May 19, 2003

Part II

Department of Health and Human Services

Centers for Medicare & Medicaid Services

42 CFR Parts 412 and 413
Medicare Program; Proposed Changes to the Hospital Inpatient Prospective Payment Systems and Fiscal Year 2004 Rates; Proposed Rule

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

42 CFR Parts 412 and 413

[CMS–1470–P]

RIN 0938–AL89

Medicare Program; Proposed Changes to the Hospital Inpatient Prospective Payment Systems and Fiscal Year 2004 Rates

AGENCY: Centers for Medicare and Medicaid Services (CMS), HHS.

ACTION: Proposed rule.

SUMMARY: We are proposing to revise the Medicare hospital inpatient prospective payment systems (IPPS) for operating and capital costs to implement changes arising from our continuing experience with these systems. In addition, in the Addendum to this proposed rule, we are describing proposed changes to the amounts and factors used to determine the rates for Medicare hospital inpatient services for operating costs and capital-related costs. These changes would be applicable to discharges occurring on or after October 1, 2003. We also are setting forth proposed rate-of-increase limits as well as proposed policy changes for hospitals and hospital units excluded from the IPPS.

Among other changes that we are proposing are changes to the policies governing postacute care transfers, payments to hospitals for the direct and indirect costs of graduate medical education, determination of hospital beds and patient days for payment adjustment purposes, and payments to critical access hospitals (CAHs).

DATES: Comments will be considered if received at the appropriate address, as provided below, no later than 5 p.m. on July 18, 2003.

ADDRESSES: Mail written comments (an original and three copies) to the following address only: Centers for Medicare & Medicaid Services, Department of Health and Human Services, Attention: CMS–1470–P, P.O. Box 8010, Baltimore, MD 21244–1850.

If you prefer, you may deliver, by hand or courier, your written comments (an original and three copies) to one of the following addresses:

Room 443–G, Hubert H. Humphrey Building, 200 Independence Avenue, SW., Washington, DC 20201, or

Room C5–14–03, Central Building, 7500 Security Boulevard, Baltimore, MD 21244–1850.

(Because access to the interior of the Humphrey Building is not readily available to persons without Federal Government identification, commenters are encouraged to leave their comments in the CMS drop slots located in the main lobby of the building. A stamp-in clock is available for commenters who wish to retain proof of filing by stamping in and keeping an extra copy of the comments being filed.)

Comments mailed to those addresses specified as appropriate for courier delivery may be delayed and could be considered late.

Because of staffing and resource limitations, we cannot accept comments by facsimile (FAX) transmission. In commenting, please refer to file code CMS–1470–P.

For information on viewing public comments see the beginning of the **SUPPLEMENTARY INFORMATION** section.

For comments that relate to information collection requirements, mail a copy of comments to the following addresses:

Centers for Medicare & Medicaid Services, Office of Strategic Operations and Regulatory Affairs, Security and Standards Group, Office of Regulations Development and Issuances, Room N2–14–26, 7500 Security Boulevard, Baltimore, Maryland 21244–1850. Attn: Julie Brown, CMS–1470–P; and

Office of Information and Regulatory Affairs, Office of Management and Budget, Room 3001, New Executive Office Building, Washington, DC 20503, Attn: Brenda Aguilar, CMS Desk Officer.

FOR FURTHER INFORMATION CONTACT:

Stephen Phillips, (410) 786–4548, Operating Prospective Payment, Diagnosis-Related Groups (DRGs), Wage Index, New Medical Services and Technology, Patient Transfers, Counting Beds and Patient Days, and Hospital Geographic Reclassifications Issues;

Tzvi Hefter, (410) 786–4487, Capital Prospective Payment, Excluded Hospitals, Nursing and Allied Health Education, Graduate Medical Education, and Critical Access Hospital Issues.

SUPPLEMENTARY INFORMATION:

Inspection of Public Comments

Comments received timely will be available for public inspection as they are received, generally beginning approximately 3 weeks after publication of a document, in Room C5–12–08 of the Centers for Medicare & Medicaid Services, 7500 Security Blvd., Baltimore, MD, on Monday through Friday of each week from 8:30 a.m. to 5 p.m. Please call (410) 786–7197 to schedule an appointment to view public comments.

Availability of Copies and Electronic Access

Copies: To order copies of the **Federal Register** containing this document, send your request to: New Orders, Superintendent of Documents, P.O. Box 371954, Pittsburgh, PA 15250–7954. Specify the date of the issue requested and enclose a check or money order payable to the Superintendent of Documents, or enclose your Visa or Master Card number and expiration date. Credit card orders can also be placed by calling the order desk at (202) 512–1800 or by faxing to (202) 512–2250. The cost for each copy is $10.00. As an alternative, you can view and photocopy the **Federal Register** document at most libraries designated as Federal Depository Libraries and at many other public and academic libraries throughout the country that receive the **Federal Register**.

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Table of Contents

I. Background
A. Summary
B. Major Contents of This Proposed Rule

II. Proposed Changes to DRG Classifications and Relative Weights

A. Background
B. DRG Reclassification
1. General
2. Review of DRGs for CC Split
3. MDC 1 (Diseases and Disorders of the Nervous System)
a. Revisions of DRGs 1 and 2
b. DRG 23 (Nontraumatic Stupor and Coma)
4. MDC 5 (Diseases and Disorders of the Circulatory System)
a. DRG 478 (Other Vascular Procedures With CC) and DRG 479 (Other Vascular Procedures Without CC)
b. DRGs 514 (Cardiac Defibrillator Implant With Cardiac Catheterization) and 515 (Cardiac Defibrillator Implant Without Cardiac Catheterization)
5. MDC 8 (Diseases and Disorders of the Musculoskeletal System and Connective Tissue)
6. MDC 15 (Newborns and Other Neonates with Conditions Originating in the Perinatal Period)
a. Nonneonate Diagnoses
b. Heart Failure Codes for Newborns and Neonates
7. MDC 17 (Myeloproliferative Diseases and Disorders and Poorly Differentiated Neoplasms)
8. MDC 23 (Factors Influencing Health Status and Other Contracts with Health Services)
a. Implantable Devices
b. Malignancy Codes
9. Medicare Code Editor (MCE) Change
10. Surgical Hierarchies
11. Refinement of Complications and Comorbidities (CC)
12. Review of Procedure Codes in DRGs 468, 476, and 477
a. Moving Procedure Codes from DRG 468 or DRG 477 to MDCs
b. Reassignment of Procedures among DRGs 468, 476, and 477
c. Adding Diagnosis Codes to MDCs
13. Changes to the ICD–9–CM Coding System
14. Other Issues
a. Cochlear Implants
b. Burn Patients on Mechanical Ventilation
c. Multiple Level Spinal Fusion
d. Heart Assist System Implant
e. Drug-Eluting Stents
f. Artificial Anal Spincter
C. Recalibration of DRG Weights
D. Proposed LTC–DRG Reclassifications and Relative Weights for LTCHs for FY 2004
1. Background
2. Proposed Changes in the LTC–DRG Classifications
a. Background
b. Patient Classifications into DRGs
3. Development of the Proposed FY 2004 LTC–DRG Relative Weights
a. General Overview of Development of the LTC–DRG Relative Weights
b. Data
c. Hospital-Specific Relative Value Methodology
d. Low Volume LTC–DRGs
4. Steps for Determining the Proposed FY 2004 LTC–DRG Relative Weights
E. Add-On Payments for New Services and Technologies
1. Background
2. FY 2004 Status of Technology Approved for FY 2003 Add-On Payments: Drotrecogin Alfa (Activated)—Xigris®
3. FY 2004 Applicants for New Technology Add-On Payments
a. Bone Morphogenetic Proteins (BMPs) for Spinal Fusions
b. GLIADEL® Wafer
4. Review of the High-Cost Threshold
5. Technical Changes

III. Proposed Changes to the Hospital Wage Index
A. Background
B. Proposed FY 2004 Wage Index Update
C. FY 2004 Wage Index Proposals
1. Elimination of Wage Costs Associated with Rural Health Clinics and Federally Qualified Health Centers
2. Paid Hours
D. Verification of Wage Data from the Medicare Cost Reports
E. Computation of the Proposed FY 2004 Wage Index
F. Proposed Revisions to the Wage Index Based on Hospital Redesignation
1. General
2. Effects of Reclassification
G. Requests for Wage Data Corrections
H. Modification of the Process and Timetable for Updating the Wage Index

IV. Other Decisions and Proposed Changes to the IPPS for Operating Costs and GME Costs
A. Transfer Payment Policy
1. Transfers to Another Acute Care Hospital
2. Technical Correction
3. Expanding the Postacute Care Transfer Policy to Additional DRGs
B. Rural Referral Centers
1. Case-Mix Index
2. Discharges
C. Indirect Medical Education (IME) Adjustment and Disproportionate Share Hospital (DSH) Adjustment
1. Available Beds and Patient Days: Background
2. Unoccupied Beds
3. Nonacute Care Beds and Days
4. Observation Beds and Swing-Beds
5. Labor, Delivery, Recovery, and Postpartum Beds and Days
6. Days Associated with Demonstration Projects under Section 1115 of the Act
7. Dual-Eligible Patient Days
8. Medicare+Choice (M+C) Days
D. Medicare Geographic Classification Review Board (MGCRB) Reclassification Process
E. Costs of Approved Nursing and Allied Health Education Activities
1. Background
2. Continuing Education Issue for Nursing and Allied Health Education Activities
3. Programs Operated by Wholly Owned Subsidiary Educational Institutions of Hospitals
F. Payment for Direct Costs of Graduate Medical Education
1. Background
2. Prohibition Against Counting Residents Where Other Entities First Incur the Training Costs
3. Rural Track FTE Limitation for Purposes of Direct GME and IME for Urban Hospitals that Establish Separately Accredited Approved Medical Programs in a Rural Area
a. Change in the Amount of Rural Training Time Required for an Urban Hospital to Qualify for an Increase in the Rural Track FTE Limitation
b. Inclusion of Rural Track FTE Residents in the Rolling Average Calculation
4. Technical Changes Related to Affiliated Groups and Affiliated Agreements
G. Notification of Updates to the Reasonable Compensation Equivalent (RCE) Limits
1. Background
2. Publication of the Updated RCE Limits

V. PPS for Capital-Related Costs

VI. Proposed Changes for Hospitals and Hospital Units Excluded from the IPPS
A. Payments to Excluded Hospitals and Hospital Units
1. Payments to Existing Excluded Hospitals and Hospital Units
2. Updated Caps for New Excluded Hospitals and Units
3. Implementation of a PPS for IRFs
4. Implementation of a PPS for LTCHs
B. Payment for Services Furnished at Hospitals-Within-Hospitals and Satellite Facilities
C. Clarification of Classification Requirements for LTCHs
D. Criteria for Payment on a Reasonable Cost Basis for Clinical Diagnostic Laboratory Services Performed by CAHs
E. Technical Changes

VII. MedPAC Recommendations

VIII. Other Required Information
A. Requests for Data from the Public
B. Collection of Information Requirements

Regulation Text

Addendum—Proposed Schedule of Standardized Amounts Effective with Discharges Occurring On or After October 1, 2003 and Update Factors and Rate-of-Increase Percentages Effective With Cost Reporting Periods Beginning On or After October 1, 2003

Tables

Table 1A—National Adjusted Operating Standardized Amounts, Labor/Nonlabor
Table 1C—Adjusted Operating Standardized Amounts for Puerto Rico, Labor/Nonlabor
Table 1D—Capital Standard Federal Payment Rate
Table 2—Hospital Average Hourly Wage for Federal Fiscal Years 2002 (1998 Wage Data), 2003 (1999 Wage Data), and 2004 (2000 Wage Data) Wage Indexes and 3-Year Average of Hospital Average Hourly Wages
Table 3A—3-Year Average Hourly Wage for Urban Areas
Table 3B—3-Year Average Hourly Wage for Rural Areas
Table 4A—Wage Index and Capital Geographic Adjustment Factor (GAF) for Urban Areas
Table 4B—Wage Index and Capital Geographic Adjustment Factor (GAF) for Rural Areas
Table 4C—Wage Index and Capital Geographic Adjustment Factor (GAF) for Hospitals That Are Reclassified
Table 4F—Puerto Rico Wage Index and Capital Geographic Adjustment Factor (GAF)
Table 4G—Pre-Reclassified Wage Index for Urban Areas
Table 4H—Pre-Reclassified Wage Index for Rural Areas
Table 5—List of Diagnosis-Related Groups (DRGs), Relative Weighting Factors, and Geometric and Arithmetic Mean Length of Stay (LOS)
Table 6A—New Diagnosis Codes
Table 6B—New Procedure Codes
Table 6C—Invalid Diagnosis Codes
Table 6D—Invalid Procedure Codes

Table 6E—Revised Diagnosis Code Titles
Table 6F—Revised Procedure Code Titles
Table 6G—Additions to the CC Exclusions List
Table 6H—Deletions from the CC Exclusions List
Table 7A—Medicare Prospective Payment System Selected Percentile Lengths of Stay FY 2002 MedPAR Update December 2002 GROUPER V20.0
Table 7B—Medicare Prospective Payment System Selected Percentile Lengths of Stay FY 2002 MedPAR Update December 2002 GROUPER V21.0
Table 8A—Statewide Average Operating Cost-to-Charge Ratios for Urban and Rural Hospitals (Case Weighted) March 2003
Table 8B—Statewide Average Capital Cost-to-Charge Ratios (Case Weighted) March 2003
Table 9—Hospital Reclassifications and Redesignations by Individual Hospital—FY 2004
Table 10—Mean and Standard Deviations by Diagnosis-Related Groups (DRGs)—FY 2004
Table 11—Proposed LTC–DRGs Relative Weights and Geometric and Five-Sixths of the Average Length of Stay—FY 2004
Appendix A—Regulatory Impact Analysis
Appendix B—Recommendation of Update Factors for Operating Cost Rates of Payment for Inpatient Hospital Services

Acronyms

AHIMA American Health Information Management Association
AHA American Hospital Association
CAH Critical access hospital
CBSAs Core Based Statistical Areas
CC Complication or comorbidity
CMS Centers for Medicare & Medicaid Services
CMSA Consolidated Metropolitan Statistical Areas
COBRA Consolidated Omnibus Reconciliation Act of 1985, Pub. L. 99–272
CPI Consumer Price Index
CRNA Certified registered nurse anesthetist
DRG Diagnosis-related group
DSH Disproportionate share hospital
FDA Food and Drug Administration
FQHC Federally qualified health center
FTE Full-time equivalent
FY Federal fiscal year
GME Graduate medical education
HIPC Health Information Policy Council
HIPAA Health Insurance Portability and Accountability Act, Pub. L. 104–191
HHA Home health agency
ICD–9–CM International Classification of Diseases, Ninth Revision, and Clinical Modification
ICD–10–PCS International Classification of Diseases Tenth Edition, and Procedure Coding System
IME Indirect medical education
IPPS Acute care hospital inpatient prospective payment system
IRF Inpatient Rehabilitation Facility
LDRP Labor, delivery room, and postpartum
LTC–DRG Long-term care diagnosis-related group
LTCH Long-term care hospital
MCE Medicare Code Editor
MDC Major diagnostic category
MDH Medicare-dependent small rural hospital
MedPAC Medicare Payment Advisory Commission
MedPAR Medicare Provider Analysis and Review File
MEI Medicare Economic Index
MGCRB Medicare Geographic Classification Review Board
MPFS Medicare Physician Fee Schedule
MSA Metropolitan Statistical Area
NECMA New England County Metropolitan Areas
NCHS National Center for Health Statistics
NCHVS National Committee on Health and Vital Statistics
O.R. Operating room
PPS Prospective payment system
PRA Per resident amount
ProPAC Prospective Payment Assessment Commission
PRRB Provider Reimbursement Review Board
RCE Reasonable compensation equivalent
RHC Rural health center
RRC Rural referral center
SCH Sole community hospital
SNF Skilled nursing facility
TEFRA Tax Equity and Fiscal Responsibility Act of 1982, Pub. L. 97–248
UHDDS Uniform Hospital Discharge Data Set

I. Background

A. Summary

1. Acute Care Hospital Inpatient Prospective Payment System (IPPS)

Section 1886(d) of the Social Security Act (the Act) sets forth a system of payment for the operating costs of acute care hospital inpatient stays under Medicare Part A (Hospital Insurance) based on prospectively set rates. Section 1886(g) of the Act requires the Secretary to pay for the capital-related costs of hospital inpatient stays under a prospective payment system (PPS). Under these PPSs, Medicare payment for hospital inpatient operating and capital-related costs is made at predetermined, specific rates for each hospital discharge. Discharges are classified according to a list of diagnosis-related groups (DRGs).

The base payment rate is comprised of a standardized amount that is divided into a labor-related share and a nonlabor-related share. The labor-related share is adjusted by the wage index applicable to the area where the hospital is located; and if the hospital is located in Alaska or Hawaii, the nonlabor-related share is adjusted by a cost-of-living adjustment factor. This base payment rate is multiplied by the DRG relative weight.

If the hospital treats a high percentage of low-income patients, it receives a percentage add-on payment applied to the DRG-adjusted base payment rate. This add-on payment, known as the disproportionate share hospital (DSH) adjustment, provides for a percentage increase in Medicare payments to hospitals that qualify under either of two statutory formulas designed to identify hospitals that serve a disproportionate share of low-income patients. For qualifying hospitals, the amount of this adjustment may vary based on the outcome of the statutory calculations.

If the hospital is an approved teaching hospital, it receives a percentage add-on payment for each case paid under the IPPS (known as the indirect medical education (IME) adjustment). This percentage varies; depending on the ratio of residents to beds.

Additional payments may be made for cases that involve new technologies that have been approved for special add-on payments. To qualify, a new technology must demonstrate that it is a substantial clinical improvement over technologies otherwise available, and that, absent an add-on payment, it would be inadequately paid under the regular DRG payment.

The costs incurred by the hospital for a case are evaluated to determine whether the hospital is eligible for an additional payment as an outlier case. This additional payment is designed to protect the hospital from large financial losses due to unusually expensive cases. Any outlier payment due is added to the DRG-adjusted base payment rate, plus any DSH, IME, and new technology add-on adjustments.

Although payments to most hospitals under the IPPS are made on the basis of the standardized amounts, some categories of hospitals are paid the higher of a hospital-specific rate based on their costs in a base year (the higher of FY 1982, FY 1987, or FY 1996) or the IPPS rate based on the standardized amount. For example, sole community hospitals (SCHs) are the sole source of care in their areas, and Medicare-dependent, small rural hospitals (MDHs) are a major source of care for Medicare beneficiaries in their areas. Both of these categories of hospitals are afforded this special payment protection in order to maintain access to services for beneficiaries (although MDHs receive only 50 percent of the difference between the IPPS rate and their hospital-specific rates if the hospital-specific rate is higher than the IPPS rate).

Section 1886(g) of the Act requires the Secretary to pay for the capital-related costs of inpatient hospital services "in accordance with a prospective payment system established by the Secretary." The basic methodology for determining capital prospective payments is set forth in our regulations at 42 CFR 412.308 and 412.312. Under the capital PPS, payments are adjusted by the same DRG for the case as they are under the operating IPPS. Similar adjustments are also made for IME and DSH as under the operating IPPS. In addition, hospitals may receive an outlier payment for those cases that have unusually high costs.

The existing regulations governing payments to hospitals under the IPPS are located in 42 CFR part 412, subparts A through M.

2. Hospitals and Hospital Units Excluded From the IPPS

Under section 1886(d)(1)(B) of the Act, as amended, certain specialty hospitals and hospital units are excluded from the IPPS. These hospitals and units are: Psychiatric hospitals and units, rehabilitation hospitals and units; long-term care hospitals (LTCHs); children's hospitals; and cancer hospitals. Various sections of the Balanced Budget Act of 1997 (Pub. L. 105–33), the Medicare, Medicaid and SCHIP [State Children's Health Insurance Program] Balanced Budget Refinement Act of 1999 (Pub. L. 106–113), and the Medicare, Medicaid, and SCHIP Benefits Improvement and Protection Act of 2000 (Pub. L. 106–554) provide for the implementation of PPSs for rehabilitation hospitals and units (referred to as inpatient rehabilitation facilities (IRFs)), psychiatric hospitals and units, and LTCHs, as discussed below. Children's hospitals and cancer hospitals continue to be paid under reasonable cost-based reimbursement.

The existing regulations governing payments to excluded hospitals and hospital units are located in 42 CFR parts 412 and 413.

a. Inpatient Rehabilitation Facilities. Under section 1886(j) of the Act, as amended, rehabilitation hospitals and units (IRFs) have been transitioned from payment based on a blend of reasonable cost reimbursement subject to a hospital-specific annual limit under section 1886(b) of the Act and prospective payments for cost reporting periods beginning January 1, 2002 through September 30, 2002, to payment on a full prospective payment system basis effective for cost reporting periods beginning on or after October 1, 2002 (66 FR 41316, August 7, 2001 and 67 FR 49982, August 1, 2002). The existing regulations governing payments under the IRF PPS are located in 42 CFR part 412, subpart P.

b. LTCHs. Under the authority of sections 123(a) and (c) of Pub. L. 106–113 and section 307(b)(1) of Pub. L. 106–554, LTCHs are being transitioned from being paid for inpatient hospital services based on a blend of reasonable cost-based reimbursement under section 1886(b) of the Act to fully Federal prospective rates during a 5-year period, beginning with cost reporting periods that start on or after October 1, 2002. For cost reporting periods beginning on or after October 1, 2006, LTCHs will be paid under the fully Federal prospective payment rate (the August 30, 2002 LTCH PPS final rule (67 FR 55954)). LTCHs may elect to be paid based on full PPS payments instead of a blended payment in any year during the 5-year transition period. The existing regulations governing payment under the LTCH PPS are located in 42 CFR part 412, subpart O.

c. Psychiatric Hospitals and Units. Sections 124(a) and (c) of Pub. L. 106–113 provide for the development of a per diem PPS for payment for inpatient hospital services furnished in psychiatric hospitals and units under the Medicare program, effective for cost reporting periods beginning on or after October 1, 2002. This system must include an adequate patient classification system that reflects the differences in patient resource use and costs among these hospitals and maintain budget neutrality. We are in the process of developing a proposed rule, to be followed by a final rule, to implement the PPS for psychiatric hospitals and units.

3. Critical Access Hospitals

Under sections 1814, 1820, and 1834(g) of the Act, payments are made to critical access hospitals (CAHs) (that is, rural hospitals or facilities that meet certain statutory requirements) for inpatient and outpatient services on a reasonable cost basis. Reasonable cost is determined under the provisions of section 1861(v)(1)(A) of the Act and existing regulations under 42 CFR parts 413 and 415.

4. Payments for Graduate Medical Education

Under section 1886(a)(4) of the Act, costs of approved educational activities are excluded from the operating costs of inpatient hospital services. Hospitals with approved graduate medical education (GME) programs are paid for the direct costs of GME in accordance with section 1886(h) of the Act; the amount of payment for direct GME costs for a cost reporting period is based on the hospital's number of residents in that period and the hospital's costs per resident in a base year. The existing regulations governing payments to the various types of hospitals are located in 42 CFR part 413.

B. Major Contents of This Proposed Rule

In this proposed rule, we are setting forth proposed changes to the Medicare IPPS for operating costs and for capital-related costs in FY 2004. We also are proposing changes relating to payments for GME costs, payments to CAHs, and payments to providers classified as psychiatric hospitals and units that continue to be excluded from the IPPS and paid on a reasonable cost basis. The proposed changes would be effective for discharges occurring on or after October 1, 2003.

The following is a summary of the major changes that we are proposing to make:

1. Proposed Changes to the DRG Reclassifications and Recalibrations of Relative Weights

As required by section 1886(d)(4)(C) of the Act, we adjust the DRG classifications and relative weights annually. Based on analyses of Medicare claims data, we are proposing to establish a number of new DRGs and make changes to the designation of diagnosis and procedure codes under other existing DRGs. Our proposed changes for FY 2004 are set forth in section II. of this preamble.

Among the proposed changes discussed are:

- Expanding the number of DRGs that are split on the basis of the presence or absence of complications or comorbidities (CCs). The DRGs we are proposing to split are: DRG 4 (Spinal Procedures), DRG 5 (Extracranial Vascular Procedures), DRG 231 (Local Excision and Removal of Internal Fixation Devices Except Hip and Femur) and DRG 400 (Lymphoma and Leukemia With Major O.R. Procedure).
- Creating two new DRGs to differentiate current DRG 514 (Cardiac Defibrillator Implant With Cardiac Catheterization) on the basis of whether the patient does or does not experience any of the following symptoms: acute myocardial infarction, heart failure, or shock.
- Changing the DRG assignments of certain congenital anomalies that currently result in patients being assigned to newborn DRGs even when the patient is actually an adult. We also are adding to the list of major problems in newborns that affect DRG assignment.
- Modifying DRG 492 (Chemotherapy With Acute Leukemia as Secondary Diagnosis) to include in this DRG cases receiving high-dose Interleukin-2 (IL–2)

chemotherapy for patients with advanced renal cell cancer and advanced melanoma.

We also are presenting our analysis of applicants for add-on payments for high-cost new medical technologies.

2. Proposed Changes to the Hospital Wage Index

In section III. of this preamble, we discuss proposed revisions to the wage index and the annual update of the wage data. Specific issues addressed in this section include the following:

- The proposed FY 2004 wage index update, using wage data from cost reporting periods that began during FY 2000.
- Proposed exclusion of the wage data for rural health centers (RHCs) and Federally qualified health centers (FQHCs) from the calculation of the FY 2004 wage index.
- Proposed exclusion of paid hours associated with military and jury duty leave from the wage index calculation, and request for comments on possible exclusion of paid lunch or meal break hours.
- Proposed revisions to the wage index based on hospital redesignations and reclassifications.
- Proposed amendments to the timetable for reviewing and verifying the wage data that will be in effect for the FY 2005 wage index.

3. Other Decisions and Proposed Changes to the PPS for Inpatient Operating and GME Costs

In section IV. of this preamble, we discuss several provisions of the regulations in 42 CFR parts 412 and 413 and set forth certain proposed changes concerning the following:

- Proposed expansion of the current postacute transfer policy to 19 additional DRGs.
- Proposed clarification of our policies that would be applied to counting hospital beds and patient days, in particular with regard to the treatment of swing-beds and observation beds, for purposes of the IME and DSH adjustments.
- Proposed changes in our policy relating to nursing and allied health education payments to wholly owned subsidiary educational institutions of hospitals.
- Proposed clarification of policy relating to application of redistribution of costs and community support funds in determining a hospital's resident training costs.
- Proposed change in the amount of rural training time required for an urban hospital to qualify for an increase in the rural track FTE limitation.
- Proposed inclusion of FTE residents training in rural tracks in a hospital's rolling average calculation.

4. PPS for Capital-Related Costs

In section V., of this preamble, we discuss the payment requirements for capital-related costs. We are not proposing any changes to the policies on payments to hospitals for capital-related costs.

5. Proposed Changes for Hospitals and Hospital Units Excluded from the IPPS

In section VI., of this preamble, we discuss the following proposals concerning excluded hospitals and hospital units and CAHs:

- Revisions relating to the operation of excluded "grandfathered" hospitals-within-hospitals in effect on September 30, 1999.
- Clarification of the classification criteria for LTCHs.
- Clarification of the policy on payments for laboratory services provided by a CAH to patients outside a CAH.

6. Determining Prospective Payment Operating and Capital Rates and Rate-of-Increase Limits

In the Addendum to this proposed rule, we set forth proposed changes to the amounts and factors for determining the FY 2004 prospective payment rates for operating costs and capital-related costs. We also establish the proposed threshold amounts for outlier cases. In addition, we address update factors for determining the rate-of-increase limits for cost reporting periods beginning in FY 2004 for hospitals and hospital units excluded from the PPS.

7. Impact Analysis

In Appendix A, we set forth an analysis of the impact that the proposed changes described in this proposed rule would have on affected hospitals.

8. Proposed Recommendation of Update Factor for Hospital Inpatient Operating Costs

As required by sections 1886(e)(4) and (e)(5) of the Act, Appendix B provides our recommendation of the appropriate percentage change for FY 2004 for the following:

- Large urban area and other area average standardized amounts (and hospital-specific rates applicable to SCHs and MDHs) for hospital inpatient services paid under the IPPS for operating costs.
- Target rate-of-increase limits to the allowable operating costs of hospital inpatient services furnished by hospitals and hospital units excluded from the IPPS.

9. Discussion of Medicare Payment Advisory Commission Recommendations

Under section 1805(b) of the Act, the Medicare Payment Advisory Commission (MedPAC) is required to submit a report to Congress, no later than March 1 of each year, that reviews and makes recommendations on Medicare payment policies. This annual report makes recommendations concerning hospital inpatient payment policies. In section VII., of this preamble, we discuss the MedPAC recommendations and any actions we are proposing to take with regard to them (when an action is recommended). For further information relating specifically to the MedPAC March 1 report or to obtain a copy of the report, contact MedPAC at (202) 653–7220 or visit MedPAC's Web site at: *http://www.medpac.gov.*

II. Proposed Changes to DRG Classifications and Relative Weights

A. Background

Section 1886(d) of the Act specifies that the Secretary shall establish a classification system (referred to as DRGs) for inpatient discharges and adjust payments under the IPPS based on appropriate weighting factors assigned to each DRG. Therefore, under the IPPS, we pay for inpatient hospital services on a rate per discharge basis that varies according to the DRG to which a beneficiary's stay is assigned. The formula used to calculate payment for a specific case multiplies an individual hospital's payment rate per case by the weight of the DRG to which the case is assigned. Each DRG weight represents the average resources required to care for cases in that particular DRG relative to the average resources used to treat cases in all DRGS.

Congress recognized that it would be necessary to recalculate the DRG relative weights periodically to account for changes in resource consumption. Accordingly, section 1886(d)(4)(C) of the Act requires that the Secretary adjust the DRG classifications and relative weights at least annually. These adjustments are made to reflect changes in treatment patterns, technology, and any other factors that may change the relative use of hospital resources. The proposed changes to the DRG classification system and the proposed recalibration of the DRG weights for discharges occurring on or after October 1, 2003 are discussed below.

B. DRG Reclassification

1. General

Cases are classified into DRGs for payment under the IPPS based on the principal diagnosis, up to eight additional diagnoses, and up to six procedures performed during the stay. In a small number of DRGs, classification is also based on the age, sex, and discharge status of the patient. The diagnosis and procedure information is reported by the hospital using codes from the International Classification of Diseases, Ninth Revision, Clinical Modification (ICD–9–CM).

For FY 2003, cases are assigned to one of 510 DRGs in 25 major diagnostic categories (MDCs). Most MDCs are based on a particular organ system of the body. For example, MDC 6 is Diseases and Disorders of the Digestive System. This approach is used because the clinical care is generally organized in accordance with the organ system affected. However, some MDCs are not constructed on this basis because they involve multiple organ systems (for example, MDC 22 (Burns)). The table below lists the 25 MDCs.

	Major Diagnostic Categories
1	Diseases and Disorders of the Nervous System.
2	Diseases and Disorders of the Eye.
3	Diseases and Disorders of the Ear, Nose, Mouth, and Throat.
4	Diseases and Disorders of the Respiratory System.
5	Diseases and Disorders of the Circulatory System.
6	Diseases and Disorders of the Digestive System.
7	Diseases and Disorders of the Hepatobiliary System and Pancreas.
8	Diseases and Disorders of the Musculoskeletal System and Connective Tissue.
9	Diseases and Disorders of the Skin, Subcutaneous Tissue and Breast.
10	Endocrine, Nutritional and Metabolic Diseases and Disorders.
11	Diseases and Disorders of the Kidney and Urinary Tract.
12	Diseases and Disorders of the Male Reproductive System.
13	Diseases and Disorders of the Female Reproductive System.
14	Pregnancy, Childbirth, and the Puerperium.
15	Newborns and Other Neonates with Conditions Originating in the Perinatal Period.
16	Diseases and Disorders of the Blood and Blood Forming Organs and Immunological Disorders.
17	Myeloproliferative Diseases and Disorders and Poorly Differentiated Neoplasms.
18	Infectious and Parasitic Diseases (Systemic or Unspecified Sites).
19	Mental Diseases and Disorders.
20	Alcohol/Drug Use and Alcohol/Drug Induced Organic Mental Disorders.
21	Injuries, Poisonings, and Toxic Effects of Drugs.
22	Burns.
23	Factors Influencing Health Status and Other Contacts with Health Services.
24	Multiple Significant Trauma.
25	Human Immunodeficiency Virus Infections.

In general, cases are assigned to an MDC based on the patient's principal diagnosis before assignment to a DRG. However, for FY 2003, there are eight DRGs to which cases are directly assigned on the basis of ICD–9-CM procedure codes. These are the DRGs for heart, liver, bone marrow, lung transplants, simultaneous pancreas/kidney, and pancreas transplants (DRGs 103, 480, 481, 495, 512, and 513, respectively) and the two DRGs for tracheostomies (DRGs 482 and 483). Cases are assigned to these DRGs before classification to an MDC.

Within most MDCs, cases are then divided into surgical DRGs and medical DRGs. Surgical DRGs are based on a hierarchy that orders operating room (O.R.) procedures or groups of O.R. procedures by resource intensity. Medical DRGs generally are differentiated on the basis of diagnosis and age (less than or greater than 17 years of age). Some surgical and medical DRGs are further differentiated based on the presence or absence of a complication or a comorbidity (CC).

Generally, nonsurgical procedures and minor surgical procedures not usually performed in an operating room are not treated as O.R. procedures. However, there are a few non-O.R. procedures that do affect DRG assignment for certain principal diagnoses, such as extracorporeal shock wave lithotripsy for patients with a principal diagnosis of urinary stones.

Patients' diagnosis, procedure, discharge status, and demographic information is fed into the Medicare claims processing systems and subjected to a series of automated screens called the Medicare Code Editor (MCE). These screens are designed to identify cases that require further review before classification into a DRG.

After screening through the MCE and any further development of the claims, cases are classified into the appropriate DRG by the Medicare GROUPER software program. The GROUPER program was developed as a means of classifying each case into a DRG on the basis of the diagnosis and procedure codes and, for a limited number of DRGs, demographic information (that is, sex, age, and discharge status).

After cases are screened through the MCE and assigned to a DRG by the GROUPER, a payment is calculated by the PRICER software. The PRICER calculates the payments for each case covered by the IPPS based on the DRG relative weight and factors associated with each hospital, such as IME and DSH adjustments.

The records for all Medicare hospital inpatient discharges are maintained in the Medicare Provider Analysis and Review (MedPAR) file. The data in this file are used to evaluate possible DRG classification changes and to recalibrate the DRG weights. However, in the July 30, 1999 IPPS final rule (64 FR 41500), we discussed a process for considering non-MedPAR data in the recalibration process. In order for the use of particular data to be feasible, we must have sufficient time to evaluate and test the data. The time necessary to do so depends upon the nature and quality of the data submitted. Generally, however, a significant sample of the data should be submitted by mid-October for consideration in conjunction with the next year's proposed rule, so that we can test the data and make a preliminary assessment as to the feasibility of using the data. Subsequently, a complete database should be submitted by early December for consideration in conjunction with the next year's proposed rule.

Many of the changes to the DRG classifications are the result of specific issues brought to our attention by interested parties. We encourage individuals with concerns about the DRG classifications to bring those concerns to our attention in a timely manner so they can be carefully considered for possible inclusion in the next proposed rule and so any proposed changes may be subjected to public review and comment. Therefore, similar to the timetable for interested parties to submit non-MedPAR data for consideration in the DRG recalibration process, concerns about DRG classification issues should be brought to our attention no later than early December in order to be considered and possibly included in the next annual proposed rule updating the IPPS.

The changes we are proposing to the DRG classification system for FY 2004 GROUPER version 21.0 and to the methodology to recalibrate the DRG weights are set forth below. Unless otherwise noted, our DRG analysis is based on data from the December 2002 update of the FY 2002 MedPAR file, which contains hospital bills received

through December 31, 2002, for discharges in FY 2002.

2. Review of DRGs for CC Split

In an effort to improve the clinical and cost cohesiveness of the DRG classification system, we have evaluated whether additional DRGs should be split based on the presence or absence of a CC. There are currently 116 paired CC split DRGs. We last performed a systematic evaluation and considered changes to the DRGs to recognize the within-DRG cost differences based on the presence or absence of CCs in 1994 (May 27, 1994 IPPS proposed rule, 59 FR 27715). In 1994, we described a refined DRG system based on a list of secondary diagnoses that have a major effect on the resources used by hospitals in treating patients across DRGs. We analyzed how the presence of the secondary diagnosis affected resource use compared to other secondary diagnoses, and classified these secondary diagnoses as non-CC, CC, or major CC. After finalizing the classification of secondary diagnoses, we evaluated which collapsed DRGs should be split on the basis of the presence 6 of a major CC, other CC, or both.[1] However, this refined system was not implemented because we did not believe it would be prudent policy to make changes for which we could not predict the effect on the case-mix (the average DRG relative weight for all cases) and, thus, payments (60 FR 29209). We were concerned that we would be unable to fulfill the requirement of section 1886(d)(4)(C)(iii) of the Act that aggregate payments may not be affected by DRG reclassification and recalibration of weighting factors. That is, our experience has been that hospitals respond to major changes to the DRGs by changing their coding practices in ways that increase total payments (for example, by beginning to include ICM–9–CM codes that previously did not affect payment for a case). Because changes in coding behavior do not represent a real increase in the severity of the overall mix of cases, total payments should not increase. The only way to ensure this behavioral response does not lead to higher total payments is to make an offsetting adjustment to the system in advance of the fiscal year when the changes are effective.

Section 301(e) of the Medicare, Medicaid, and SCHIP Benefits Improvement and Protection Act of 2000 Public Law 106–554 authorized the Secretary to make such a prospective adjustment to the average standardized amounts for discharges occurring on or after October 1, 2001, to ensure the total payment impacts of changes to the DRGs do not result in any more or less total spending than would otherwise occur without the changes (budget neutrality).

Pending a decision whether to replace ICD–9–CM with another classification system, we are not proposing to proceed with implementing a refined DRG system at this time. The refined DRG system discussed in the 1994 **Federal Register** involved a complete and thorough assessment of all of the ICD–9–CM diagnosis codes in order to establish an illness severity level associated with each code. Rather than undertaking the time-consuming process of establishing illness severity levels for all ICD–9–CM codes at this time, we believe the more prudent course would be to delay this evaluation pending the potential replacement of ICD–9–CM. For example, the National Committee on Health and Vital Statistics (NCHVS) is considering making a recommendation to the Secretary on whether to recommend the adoption of ICD–10–CM and the ICD–10–Procedure Coding System (PCS) as the national uniform standard coding system for inpatient reporting.

In the meantime, we have undertaken an effort to identify groups of DRGs where a CC-split appears most justified. Our analysis identified existing DRGs that meet the following criteria: a reduction in variance in charges within the DRG of at least 4 percent; fewer than 75 percent of all patients in the current DRG would be assigned to the with-CC DRG; and the overall payment impact (higher payments for cases in the with-CC DRG offset by lower payments for cases in the without-CC DRG) is at least $40 million.

The following four DRGs meet these criteria: DRG 4 (Spinal Procedures) and DRG 5 (Extracranial Vascular Procedures) in MDC 1 (Diseases and Disorders of the Nervous System); DRG 231 (Local Excision and Removal of Internal Fixation Devices Except Hip and Femur) in MDC 8 (Diseases and Disorders of the Musculoskeletal and Connective Tissue); and DRG 400 (Lymphoma and Leukemia with Major O.R. Procedure) in MDC 17 (Myeloproliferative Diseases and Disorders and Poorly Differentiated Neoplasms).

The following data indicate that the presence or absence of a CC was found to have a significant impact on patient charges and average length of stays in these four DRGs.

DRG	Number of cases	Average charges	Average length of stay
DRG 4 (Current)	4,488	$35,074	7.3
With CC	2,514	46,071	10.0
Without CC	1,974	21,070	3.9
DRG 5 (Current)	64,942	18,613	2.9
With CC	29,296	23,213	4.1
Without CC	35,646	14,833	2.0
DRG 231 (Current)	8,971	20,147	4.9
With CC	4,565	25,948	6.9
Without CC	4,406	14,136	2.9
DRg 400 (Current)	4,275	39,953	9.0
With CC	2,990	49,044	11.2
Without CC	1,285	18,799	4.0

Therefore, we are proposing to establish the following new DRGs: proposed DRG 531 (Spinal Procedures With CC) and proposed DRG 532 (Spinal Procedures Without CC) in MDC 1; proposed DRG 533 (Extracranial Vascular Procedures With CC) and proposed DRG 534 (Extracranial Vascular Procedures Without CC) in MDC 1; proposed DRG 537 (Local Excision and Removal of Internal Fixation Devices Except Hip and Femur With CC) and proposed DRG 538 (Local Excision and Removal of Internal Fixation Devices Except Hip and Femur Without CC) in MDC 8; and proposed DRG 539 (Lymphoma and Leukemia With Major O.R. Procedure With CC) and DRG 540 (Lymphoma and Leukemia With Major O.R. Procedure Without CC) in MDC 17. We are proposing that DRGs 4, 5, 231, and 400 would become invalid.

3. MDC 1 (Diseases and Disorders of the Nervous System)

a. Revisions of DRGs 1 and 2. In the FY 2003 IPPS final rule, we split DRGs 1 and 2 (Craniotomy Age >17 With and Without CC, respectively) based on the presence or absence of a CC (67 FR 49986). We have received several proposals related to devices or procedures that are used in a small subset of cases from these DRGs. These proposals argue that the current payment for these devices or procedures under DRGs 1 and 2 is inadequate.[2]

Therefore, we undertook an analysis of the charges of various procedures and diagnoses within DRGs 1 and 2 to assess whether further changes to these DRGs may be warranted. Currently, the average charges for cases assigned to DRGs 1 and 2 are approximately $55,000 and $30,000, respectively. We are proposing to create two separate new DRGs for: Cases with an intracranial vascular procedure and a principal diagnosis of an intracranial hemorrhage; and craniotomy cases with a ventricular shunt procedure (absent another procedure). The former set of cases are much more expensive than those presently in DRGs 1 and 2; the latter set of cases are much less expensive.

(1) Intracranial Vascular Procedures

Our analysis indicated that patients with an intracranial vascular procedure and a principal diagnosis of an intracranial hemorrhage were significantly more costly than other cases in DRGs 1 and 2. These patients have an acute condition with a high severity of illness and risk of mortality. There were 917 cases in DRGs 1 and 2 with an intracranial vascular procedure and a principal diagnosis of hemorrhage with average charges of approximately $113,884, which are much higher than the average charges of DRGs 1 and 2 noted above.

We also found 890 cases that had an intracranial vascular procedure without a principal diagnosis of hemorrhage (for example, nonruptured aneurysms). These cases are generally less acutely ill than those involving ruptured aneurysms, and have a lower risk of mortality. Among these 890 cases, the average charges were approximately $52,756, which are much more similar to the average charges for all cases in DRGs 1 and 2.

Based on this analysis, we are proposing to create new DRG 528 (Intracranial Vascular Procedure With a Principal Diagnosis of Hemorrhage) for patients with an intracranial vascular procedure and an intracranial hemorrhage. We are proposing that cases involving intracranial vascular procedures without a principal diagnosis of hemorrhage would remain in DRGs 1 and 2.

Proposed new DRG 528 would have the following principal diagnoses:

- 094.87, Syphilitic ruptured cerebral aneurysm
- 430, Subarachnoid hemorrhage
- 431, Intracerebral hemorrhage
- 432.0, Nontraumatic extradural hemorrhage
- 432.1, Subdural hemorrhage
- 432.9, Unspecified intracranial hemorrhage

And operating room procedures:

- 02.13, Ligation of meningeal vessel
- 38.01, Incision of vessel, intracranial vessels
- 38.11, Endarterectomy, intracranial vessels
- 38.31, Resection of vessel with anastomosis, intracranial vessels
- 38.41, Resection of vessel with replacement, intracranial vessels
- 38.51, Ligation and stripping of varicose veins, intracranial vessels
- 38.61, Other excision of vessels, intracranial vessels
- 38.81, Other surgical occlusion of vessels, intracranial vessels
- 39.28, Extracranial-intracranial (EC–IC) vascular bypass
- 39.51, Clipping of aneurysm
- 39.52, Other repair of aneursym
- 39.53, Repair of arteriovenous fistula
- 39.72, Endovascular repair or occlusion of head and neck vessels
- 39.79, Other endovascular repair of aneurysm of other vessels

(2) Ventricular Shunt Procedures

We also found that craniotomy patients who had a ventricular shunt procedure (absent another procedure) were significantly less costly than other craniotomy patients in DRGs 1 and 2. Ventricular shunts are normally performed for draining intracranial fluid. A ventricular shunt is a less extensive procedure than the other intracranial procedures in DRGs 1 and 2. As a result, if a ventricular shunt is the only intracranial procedure performed, these cases will typically be less costly.

There were 4,373 cases in which only ventricular shunt procedures were performed. These cases had average charges of approximately $27,188. However, the presence or absence of a CC had a significant impact on patient charges and lengths of stay. There were 2,533 cases with CC, with average charges of approximately $33,907 and an average length of stay of 8.2 days. In contrast, there were 1,840 cases without CC, with average charges of approximately $17,939 and an average length of stay of 3.7 days.

Therefore, we are proposing to create two new DRGs, splitting on CC, for patients with only a vascular shunt procedure: proposed new DRG 529 (Ventricular Shunt Procedures With CC) and proposed new DRG 530 (Ventricular Shunt Procedures Without CC).

Proposed new DRG 529 would consist of any principal diagnosis in MDC 5, with the presence of a CC and one of the following operating room procedures:

- 02.31, Ventricular shunt to structure in head and neck
- 02.32, Ventricular shunt to circulatory system
- 02.33, Ventricular shunt to thoracic cavity
- 02.34, Ventricular shunt to abdominal cavity and organs
- 02.35, Ventricular shunt to urinary system
- 02.39, Other operations to establish drainage of ventricle
- 02.42, Replacement of ventricular shunt
- 02.43, Removal of ventricular shunt

Proposed new DRG 530 would consist of any principal diagnosis in MDC 5 with one of the operating room procedures listed above for the proposed new DRG 529, but without the presence of a CC.

b. DRG 23 (Nontraumatic Stupor and Coma). In DRG 23 (Nontraumatic Stupor and Coma), there are currently six principal diagnoses identified by the following ICD–9-CM diagnosis codes: 348.4, Compression of the brain; 348.5, Cerebral edema; 780.01, Coma; 780.02, Transient alteration of awareness; 780.03, Persistent vegetative state; and 780.09, Other alteration of consciousness. Code 780.02 is often used to describe the diagnosis of psychiatric patients rather than the diagnosis of patients with severe

[1] The complete description of the analysis was published in the *Health Care Financing Review* (Edwards, N., Honemann, D., Burley, D., Navarro, M., "Refinement of the Medicare Diagnosis-Related Groups to Incorporate a Measure of Severity," *Health Care Financing Review*, Winter 1994, Vol. 16, No. 2, p. 45).

[2] We also examined the issue of treating brain tumors through the implantation of chemotherapy wafers. This analysis is discussed later in this preamble under section II.E.2.b. relative to the application for new technology add-on payments for the GLIADEL® Wafer.

neurological disorders. The treatment plan for a patient with "transient alteration of awareness" is clinically very different from the treatment plan for a coma patient. Furthermore, many patients with this diagnosis are treated in psychiatric facilities rather than in acute care hospitals.

Although there are neurological patients who present with the complaint of "transient alteration of awareness," the cause of this alteration of consciousness is commonly identified, and the principal diagnosis for the hospital admission is the etiology of the alteration of consciousness rather than the symptom itself. For the few remaining neurological patients for whom the cause is not identified and for whom code 780.02 is assigned as the principal diagnosis, we still believe that the care of these patients is different than the care of patients with coma or cerebral edema.

Because we believe the patients with a principal diagnosis of "transient alteration of consciousness" are more clinically related to the patients in DRG 429 (Organic Disturbances and Mental Retardation) in MDC 19 (Mental Diseases and Disorders), we are proposing that patients who are assigned a principal diagnosis of code 780.02 will be assigned to DRG 429 instead of DRG 23. DRG 429 also contains similar diagnoses, such as code 293.81, Organic delusional syndrome and code 293.82, Organic hallucinosis syndrome. We note that the charges for the patient cases in DRGs 23 and 429 are very similar ($11,559 and $11,713, respectively), so the proposed movement of code 780.02 from DRG 23 to DRG 429 would have minimal payment impact. Moving this diagnosis code would also consolidate diagnoses treated frequently in psychiatric hospitals in those DRGs that are likely to be a part of the upcoming proposed Medicare psychiatric facility PPS.

4. MDC 5 (Diseases and Disorders of the Circulatory System)

a. DRG 478 (Other Vascular Procedures With CC) and DRG 479 (Other Vascular Procedures Without CC)

Code 37.64 (Removal of heart assist system) in DRGs 478 and 479 describes the operative, as opposed to bedside, removal of a heart assist system. Based on comments we received suggesting that code 37.64 was inappropriately assigned to DRGs 478 and 479, we reviewed the MedPAR data for both DRGs 478 and 479 and DRG 110 (Major Cardiovascular Procedures With CC) and DRG 111 (Major Cardiovascular Procedures Without CC) to assess the appropriate assignment of code 37.64.

We found that there were only 17 cases of code 37.64 in DRGs 478 and 479, with an average length of stay of 14.1 days and average charges of $105,153. There were a total of 90,591 cases in DRGs 478 and 479 that did not contain code 37.64. These cases had an average length of stay of 6.6 days and average charges of $31,879. In DRGs 110 and 111, we found an average length of stay of 8.1 days, with average charges of $54,653.

We are proposing to remove code 37.64 from DRGs 478 and 479 and reassign it to DRGs 110 and 111. The surgical removal of a heart assist system is a major cardiovascular procedure and, therefore, more appropriately assigned to DRGs 110 and 111. Accordingly, we believe this DRG assignment for this procedure is more clinically and financially appropriate.

b. DRGs 514 (Cardiac Defibrillator Implant With Cardiac Catheterization) and 515 (Cardiac Defibrillator Implant Without Cardiac Catheterization)

(1) Cardiac Defibrillator Implant With Cardiac Catheterization With Acute Myocardial Infarction

We received a recommendation that we modify DRG 514 (Cardiac Defibrillator Implant With Cardiac Catheterization) and DRG 515 (Cardiac Defibrillator Implant Without Cardiac Catheterization) so that these DRGs are split based on the presence or absence of acute myocardial infarction, heart failure, or shock. We note that the increased cost of treating cardiac patients with acute myocardial infarction, heart failure, or shock is recognized in the payment logic for pacemaker implants (DRG 115 (Permanent Cardiac Pacemaker Implant With Acute Myocardial Infarction, Heart Failure or Shock, or AICD Lead or Generator) and DRG 116 (Other Permanent Cardiac Pacemaker Implant)).

We examined FY 2002 MedPAR data regarding the number of cases and the average charges for DRGs 514 and 515. The results of our examination are summarized in the following table.

DRG	Number of cases	Average charges	With AMI, heart failure, or shock count	Average charges
514	16,743	$97,133	3,623	$120,852
515	4,674	76,537	935	84,140

A cardiac catheterization is generally performed to establish the nature of the patient's cardiac problem and determine if implantation of a cardiac defibrillator is appropriate. Generally, the cardiac catheterization can be done on an outpatient basis. Patients who are admitted with acute myocardial infarction, heart failure, or shock and have a cardiac catheterization are generally acute patients who require emergency implantation of the defibrillator. Thus, there are very high costs associated with these patients.

We found that the average charges for patients with cardiac catheterizations who also had acute myocardial infarction, heart failure, or shock were $120,852, compared to the average charges for all DRG 514 cases of $97,133. Therefore, we are proposing to split DRG 514 and create a new DRG for patients receiving a cardiac defibrillator implant with cardiac catheterization and with acute myocardial infarction, heart failure, or shock.

Patients without cardiac catheterization generally have had the need for the defibrillator established on an outpatient basis prior to admission. We found 935 cases with acute myocardial infarction, heart failure, or shock, with average charges of $84,140. The average charges for all cases in DRG 515 were $76,537. Because of the relatively small number of patients and the less-than-10-percent charge difference for patients in DRG 515 who have acute myocardial infarction, heart failure, or shock, we are not proposing to create a separate DRG for patients with a cardiac defibrillator implant without cardiac catheterization with acute myocardial infarction, heart failure, or shock.

Specifically, we are proposing to create two new DRGs that would replace the current DRG 514. The two new DRGs would have the same procedures currently listed for DRG 514, but would be split based on the presence or absence of acute myocardial infarction, heart failure, or shock. The proposed new DRGs would be DRG 535 (Cardiac Defibrillator Implant With Cardiac Catheterization and With Acute Myocardial Infarction, Heart Failure, or Shock) and DRG 536 (Cardiac Defibrillator Implant With Cardiac Catheterization and Without Acute Myocardial Infarction, Heart Failure, or Shock). Proposed new DRG 536 would exclude the following principal diagnosis codes from MDC 5 associated with acute myocardial infarction, heart failure, or shock.

- 398.91, Rheumatic heart failure
- 402.01, Malignant hypertensive heart disease with heart failure
- 402.11, Benign hypertensive heart disease with heart failure
- 402.91, Hypertensive heart disease not otherwise specified with heart failure
- 404.01, Malignant hypertensive heart and renal disease with heart failure
- 404.03, Malignant hypertensive heart and renal disease with heart failure and renal failure
- 404.11, Benign hypertensive heart and renal disease with heart failure
- 404.13, Benign hypertensive heart and renal disease with heart failure and renal failure
- 404.91, Hypertensive heart and renal disease not otherwise specified with heart failure
- 404.93, Hypertensive heart and renal disease not otherwise specified with heart failure and renal failure
- 410.01, AMI anterolateral, initial
- 410.11, AMI anterior wall, initial
- 410.21, AMI inferolateral, initial
- 410.31, AMI inferopost, initial
- 410.41, AMI inferior wall, initial
- 410.51, AMI lateral not elsewhere classified, initial
- 410.61, True posterior infarction, initial
- 410.71, Subendocardial infarction, initial
- 410.81, AMI not elsewhere classified, initial
- 410.91, AMI not otherwise specified, initial
- 428.0, Congestive heart failure, not otherwise specified
- 428.1, Left heart failure
- 428.20, Systolic heart failure, not otherwise specified
- 428.21, Acute systolic heart failure
- 428.22, Chronic systolic heart failure
- 428.23, Acute on chronic systolic heart failure
- 428.30, Diastolic heart failure, not otherwise specified
- 428.31, Acute diastolic heart failure
- 428.32, Chronic diastolic heart failure
- 428.33, Acute on chronic diastolic heart failure
- 428.40, Combined systolic and diastolic heart failure not otherwise specified
- 428.41, Acquired combined systolic and diastolic heart failure
- 428.42, Chronic combined systolic and diastolic heart failure
- 428.43, Acute on chronic combined systolic and diastolic heart failure
- 428.9, Heart failure, not otherwise specified
- 785.50, Shock, not otherwise specified
- 785.51, Cardiogenic shock

(2) Cardiac Resynchronization Therapy (CRT)

We received a comment from a provider who pointed out that we did not include the following combination of codes under the list of procedure combinations that would lead to an assignment of DRG 514 or DRG 515:

- 39.75, Implantation of automatic cardioverter/defibrillator lead(s) only
- 00.54, Implantation or replacement of cardiac resynchronization defibrillator, pulse generator device only [CRT–D]

The commenter pointed out that cases are assigned to DRGS 514 and 515 when a total cardiodefibrillator or CRT–D system is implanted. In addition, cases are assigned to DRGs 514 and 515 when implantation of a variety of combinations of defibrillator leads and device combinations are reported. The commenter indicated that total defibrillator and CRT–D system may be replaced with completely new systems or all new devices and leads, and added that it is also possible to replace a generator, a lead, or a combination of generators and up to three leads.

When the CRT–D generator (code 00.54) and one of the cardioverter/defibrillator leads are replaced, the case currently is assigned to DRG 115 (Permanent Cardiac Pacemaker Implant with AMI, Heart Failure, or Shock or AICD Lead or Generator Procedure). The commenter recommended that we include the combination of codes 39.75 and 00.54 as a combination that would result in assignment to DRG 514 or DRG 515, as do other combinations of generators and leads. Our medical advisors agree with this recommendation. As discussed previously, we are proposing to delete DRG 514 and replace it with proposed new DRGs 535 and 536. Therefore, we are proposing to add codes 39.75 and 00.54 to the list of procedure combinations that would result in assignment to DRG 515 or new proposed DRGs 535 and 536.

5. MDC 8 (Diseases and Disorders of the Musculoskeletal System and Connective Tissue)

We received a comment that two codes for cervical fusion of the spine are not included within DRG 519 (Cervical Spinal Fusion With CC) and DRG 520 (Cervical Spinal Fusion Without CC). The two cervical fusion codes are:

- 81.01, Atlas-axis spinal fusion
- 81.31, Refusion of atlas-axis

The atlas-axis includes the first two vertebrae of the cervical spine (C1 and C2). These two cervical fusion codes are currently assigned to DRG 497 (Spinal Fusion Except Cervical With CC) and DRG 498 (Spinal Fusion Except Cervical Without CC). Because codes 81.01 and 81.31 involve the cervical spine, we are proposing to remove these codes from DRGs 497 and 498 and reassign them to DRGs 519 and 520.

6. MDC 15 (Newborns and Other Neonates With Conditions Originating in the Perinatal Period)

a. Nonneonate Diagnoses. As indicated earlier, ICD–9–CM diagnosis codes are assigned to MDCs based on 25 groupings corresponding to a single organ system or etiology and, in general, are associated with a particular medical specialty. MDC 15 is comprised of diagnoses that relate to newborns and other neonates with conditions originating in the perinatal period. Some of the codes included in MDC 15 consist of conditions that originate in the neonatal period but can persist throughout life. These conditions are referred to as congenital anomalies. When an older (not neonate) population is treated for a congenital anomaly, DRG assignment problems can arise. For instance, if a patient is over 65 years old and is admitted with a congenital anomaly, it is not appropriate to assign the patient to a newborn DRG. This situation occurs when a congenital anomaly code is classified within MDC 15.

We have received a recommendation to move the following congenital anomaly codes from MDC 15 and reassign them to other appropriate MDCs based on the body system being treated:

- 758.9, Chromosome anomaly, not otherwise specified
- 759.4, Conjoined twins
- 759.7, Multiple congenital anomalies, not elsewhere classified
- 759.81, Prader-Willi syndrome
- 759.83, Fragile X syndrome
- 759.89, Specified congenital anomalies, not elsewhere classified
- 759.9, Congenital anomaly, not otherwise specified

• 779.7, Periventricular leukomalacia
• 795.2, Abnormal chromosomal analysis

Each of the congenital anomaly diagnosis codes recommended for reassignment represents a condition that is frequently addressed beyond the neonatal period. In addition, the assignment of these congenital anomaly codes as principal diagnosis currently results in assignment to MDC 15.

We have evaluated the recommendation and agree that each of the identified codes represents a condition that is frequently addressed beyond the neonate period and should therefore be removed from the list of principal diagnoses that result in assignment to MDC 15. Therefore, we are proposing to change the MDC and DRG assignments of the congenital anomaly codes as specified in the following table. The table shows the principal diagnosis code for the congenital anomaly and the proposed MDC and DRG to which the code would be assigned.

Principal diagnosis code in MDC 15	Code title	Proposed MDC assignment	Proposed DRG assignment
758.9	Chromosome anomaly, not otherwise specified.	23	467 (Other Factors Influencing Health Status).
759.4	Conjoined twins	5	188, 189, and 190 (Other Digestive System Diagnoses, Age >17 with CC, Age >17 without CC, and Age 0–17, respectively).
759.7	Multiple congenital anomalies, not elsewhere classified.	8	256 (Other Musculoskeletal System and Connective Tissue Diagnoses).
759.81	Prader-Willi syndrome	8	256 (Other Musculoskeletal System and Connective Tissue Diagnoses).
759.83	Fragile X syndrome	19	429 (Organic Disturbances and Mental Retardation).
759.89	Specified congenital anomalies, not elsewhere classified.	8	256 (Other Musculoskeletal System and Connective Tissue Diagnoses).
759.9	Congenital anomaly, not otherwise specified.	23	467 (Other Factors Influencing Health Status).
779.7	Periventricular leukomalacia	1	34 and 35 (Other Disorders of Nervous System with CC, and without CC, respectively).
795.2	Abnormal chromosomal analysis	23	467 (Other Factors Influencing Health Status).

b. Heart Failure Codes for Newborns and Neonates. Under MDC 15, cases of newborns and neonates with major problems may be assigned to DRG 387 (Prematurity With Major Problems) or DRG 389 (Full-Term Neonate With Major Problems). Existing DRG 387 has three components: (1) Principal or secondary diagnosis of prematurity; (2) principal or secondary diagnosis of major problem (these are the diagnoses that define MDC 15); or (3) secondary diagnosis of major problem (these are diagnoses that do not define MDC 15, so they will only be secondary diagnosis codes for patients assigned to MDC 15). To be assigned to DRG 389, the neonate must have one of the principal or secondary diagnoses listed under the DRG.

We have received correspondence suggesting that the following diagnosis codes for heart failure, which are currently in MDC 5, be added to the list of major problems for neonates under MDC 15.

Diagnosis code	Title
428.20	Systolic heart failure, not otherwise specified.
428.21	Acute systolic heart failure.
428.22	Chronic systolic heart failure.
428.23	Acute on chronic systolic heart failure.
428.30	Diastolic heart failure, not otherwise specified.
428.31	Acute diastolic heart failure.
428.32	Chronic diastolic heart failure.
428.33	Acute on chronic diastolic heart failure.
428.40	Systolic/diastolic heart failure, not otherwise specified.
428.41	Acute systolic/diastolic heart failure.
428.42	Chronic systolic/diastolic heart failure.
428.43	Acute on chronic systolic/diastolic heart failure.

These heart failure-related diagnosis codes were new codes as of October 1, 2002. They were an expansion of the previous 4-digit codes for heart failure and provided additional detail about the specific type of heart failure. The other codes for heart failure that existed prior to October 1, 2002, are classified as major problems within MDC 15 and are currently assigned to DRGs 387 and DRG 389.

We agree that diagnosis codes 428.20 through 428.43 listed in the chart above should be included as principal diagnosis of major problem codes within MDC 15 and, therefore, are proposing to add them to DRG 387 and 389.

7. MDC 17 (Myeloproliferative Diseases and Disorders and Poorly Differentiated Neoplasms)

High-dose Interleukin-2 (IL–2) Chemotherapy is a hospital inpatient-based regimen requiring administration by experienced oncology professionals. It is used for the treatment of patients with advanced renal cell cancer and advanced melanoma. Unlike traditional cytotoxic chemotherapies that attack cancer cells themselves, Interleukin-2 is designed to enhance the body's defenses by mimicking the way natural IL–2 activates the immune system and stimulates the growth and activity of cancer-killing cells. The IL–2 product on the market was approved for use by the Food and Drug Administration (FDA) in 1992.

High-dose IL–2 therapy is performed only in very specialized treatment settings, such as an intensive care unit or a bone marrow transplant unit. This therapy requires oversight by oncology health care professionals experienced in the administration and management of patients undergoing this intensive treatment because of the severity of the side effects. Unlike most cancer therapies, high-dose IL–2 therapy is associated with predictable toxicities that require extensive monitoring. Often patients require one-on-one nursing or physician care for extended portions of their stay.

High-dose IL–2 therapy is significantly different from conventional chemotherapy in terms of the resources required to administer it. Conventional chemotherapy may be given to patients either on an outpatient basis or through a series of short (that is, 1 to 3 day) inpatient stays.

High-dose IL–2 therapy is given during two separate hospital admissions. For the first cycle, the IL–2 is administered every 8 hours over 5 days. Patients are then discharged to rest at home for several days and then are admitted for the second cycle of therapy, in which the same regimen and dosing is repeated. The two cycles complete the first course of high-dose IL–2 therapy. This regimen may be repeated at 8 to 12 weeks if the patient is responding. The maximum number of courses for any one patient is predicted to be five courses.

Not all patients with end-stage renal cell carcinoma or end-stage melanoma are appropriate candidates for high-dose IL–2 chemotherapy. It is estimated that there are between 15,000 and 20,000 patients in the United States who have one of these two types of cancer. However, only 20 percent of those patients will be appropriate candidates for the rigors of the treatment regimen. It is further estimated that, annually, approximately 1,300 of these patients will be Medicare beneficiaries. However, allegedly due to the level of payment for the DRGs to which these cases are currently assigned, we have been informed by industry sources that only between 100 and 200 Medicare patients receive the treatment each year. According to these industry sources, several treatment centers have had to discontinue their high-dose IL–2 therapy programs for end-stage renal cell carcinoma or end-stage melanoma because of the low Medicare payment.

According to industry sources, the wholesale cost of IL–2 is approximately $700 per vial. Dosages range between 15 and 20 vials per treatment, or between $10,500 and $14,000 per patient, per cycle, for the cost of the IL–2 drug alone. There is no ICD–9–CM procedure code that currently identifies patients receiving this therapy. Therefore, it is not possible to identify directly these cases in the MedPAR data. Currently, this therapy is coded using the more general ICD–9–CM code 99.28 (Injection or infusion of biologic response modifier). When we addressed this issue previously in the August 1, 2000 IPPS final rule (65 FR 47067) by examining cases for which procedure code 99.28 was present, our analysis was inconclusive due to the wide range of cases identified (1,179 cases across in 136 DRGs). However, recent data collected by the industry on 30 Medicare beneficiaries who received high-dose IL–2 therapy during FY 2002 show average charges for these cases of approximately $54,000.

Depending on the principal diagnosis reported, patients receiving high-dose IL–2 therapy may be assigned to one of the following five DRGs: DRG 272 (Major Skin Disorder With CC) and DRG 273 (Major Skin Disorder Without CC) in MDC 9; DRG 318 (Kidney and Urinary Tract Neoplasms With CC) and DRG 319 (Kidney and Urinary Tract Neoplasms Without CC) in MDC 11; and DRG 410 (Chemotherapy Without Leukemia as Secondary Diagnosis) in MDC 17. The following table illustrates the average charges for patients in these DRGs.

DRG	Average charges
272	$14,997
273	9,128
318	16,892
319	9,583
410	16,103

Because of the need to identify the subset of patients receiving this type of treatment, the ICD–9–CM Coordination and Maintenance Committee determined, based on its consideration at the December 6, 2002 public meeting, that a new code for high-dose IL–2 therapy was warranted. Therefore, a new code has been created in the 00 Chapter of ICD–9–CM (Procedures and Interventions, Not Elsewhere Classified), in category 00.1 (Pharmaceuticals) at 00.15 (High-dose infusion Interleukin-2 (IL–2)), effective October 1, 2003.

We believe patients receiving high-dose IL–2 therapy are clinically similar to other cases currently assigned to DRG 492 (Chemotherapy With Acute Leukemia as Secondary Diagnosis) in MDC 17. The average charge for patients currently assigned to DRG 492 is $55,581. Currently, DRG 492 requires one of the following two principal diagnoses:

• V58.1, Encounter for chemotherapy
• V67.2, Followup examination following chemotherapy

• And one of the following secondary diagnoses:

• 204.00, Acute lymphoid leukemia without mention of remission
• 204.01, Acute lymphoid leukemia with remission
• 205.00, Acute myeloid leukemia without mention of remission
• 205.01, Acute myeloid leukemia with remission
• 206.00, Acute monocytic leukemia without mention of remission
• 206.01, Acute monocytic leukemia with remission
• 207.00, Acute erythremia and erythroleukemia without mention of remission
• 207.01, Acute erythremia and erythroleukemia with remission
• 208.00, Acute leukemia of unspecified cell type without mention of remission
• 208.01, Acute leukemia of unspecified cell type without mention of remission

We are proposing to modify DRG 492 by adding new procedure code 00.15 to the logic. Assignment to this DRG would require the same two V-code principal diagnosis codes as listed above (V58.1 and V67.2), but would require either one of the leukemia codes listed as a secondary diagnosis, or would require the procedure code 00.15. In addition, we are proposing to change the title of DRG 492 to "Chemotherapy With Acute Leukemia or With Use of High Dose Chemotherapy Agent".

We will monitor cases with procedure code 00.15 as these data become available, and consider potential further refinements to DRG 492 as necessary.

8. MDC 23 (Factors Influencing Health Status and Other Contacts With Health Services)

a. Implantable Devices. We received a comment regarding three ICD–9–CM diagnosis codes that are currently assigned to MDC 23: V53.01 (Fitting and adjustment of cerebral ventricular (communicating) shunt); V53.02 (Neuropacemaker (brain) (peripheral nerve) (spinal cord)); and V53.09 (Fitting and adjustment of other devices related to nervous system and special senses). The commenter suggested that we move these three codes from MDC 23 to MDC 1 (Diseases and Disorders of the Nervous System) because these codes are used as the principal diagnosis for admissions involving removal, replacement, and reprogramming of devices such as cerebral ventricular shunts, neurostimulators, intrathecal infusion pumps and thalamic stimulators.

Currently, if these diagnosis codes are reported alone without an O.R. procedure, the case would be assigned to DRG 467 (Other Factors Influencing Health Status). However, if an O.R. procedure is reported with the principal

diagnosis of V53.01, V53.02, or V53.09, the case would be assigned to DRG 461 (O.R. Procedure with Diagnoses of Other Contact with Health Services).

In our analysis of the MedPAR data, we found 30 cases assigned to DRG 467 and 179 cases assigned to DRG 461 with one of these codes as principal diagnosis. We found that the procedures reported with one of these diagnosis codes were procedures in MDC 1. The most frequent procedure was 86.06 (Insertion of totally implantable infusion pump).

Because the procedures that are routinely used with these codes are in MDC 1, it would be appropriate to assign these diagnosis codes to MDC 1. As the commenter also stated, this assignment would be consistent with how fitting and adjustments of devices are handled within other MDCs, such as in MDC 5 (Disease and Disorders of the Circulatory System) and MDC 11 (Diseases and Disorders of the Kidney and Urinary Tract). Diagnosis codes V53.31 (Cardiac pacemaker), V53.32 (Automatic implantable cardiac defibrillator), and V53.39 (Other cardiac device) are used for fitting and adjustment of cardiac devices and are assigned to MDC 5. Diagnosis code V53.6 (Urinary devices) is used for fitting and adjustment of urinary devices and is assigned to MDC 11.

Therefore, we are proposing to move V53.01, V53.02, and V53.09 from MDC 23 to MDC 1 when an O.R. procedure is performed. If no O.R. procedure is performed, these diagnosis codes would be assigned to DRG 34 (Other Disorders of Nervous System With CC) or DRG 35 (Other Disorders of Nervous System Without CC). If an O.R. procedure is performed on a patient assigned with one of these codes as the principal diagnosis, the case would be assigned to the DRG in MDC 1 to which the O.R. procedure is assigned.

b. Malignancy Codes. We received correspondence that indicated that when we recognized code V10.48 (History of malignancy, epididymis) as a new code for FY 2002, we did not include the code as a history of malignancy code in DRG 465 (Aftercare with History of Malignancy as Secondary Diagnosis). All other history of malignancy codes were included in DRG 465.

We agree that code V10.48 should have been included in the list of history of malignancy codes within DRG 465 and, therefore, are proposing to add it to the list of secondary diagnoses in DRG 465.

9. Medicare Code Editor (MCE) Change

As explained under section II.B.1. of this preamble, the MCE is a software program that detects and reports errors in the coding of Medicare claims data.

We received a request to examine the MCE edit "Adult Diagnosis—Age Greater than 14" because currently the edit rejects claims for patients under age 15 who are being treated for gall bladder disease. We reviewed this issue with our pediatric consultants and determined that, although incidence is rare, gallbladder disease does occur in patients under age 15. Therefore, we are proposing to modify the MCE by removing the following codes from the edit "Adult Diagnosis—Age Greater Than 14":

- 574.00, Calculus of gallbladder with acute cholecystitis without mention of obstruction
- 574.01, Calculus of gallbladder with acute cholecystitis with obstruction
- 574.10, Calculus of gallbladder with other cholecystitis without mention of obstruction
- 574.11, Calculus of gallbladder with other cholecystitis with obstruction
- 574.20, Calculus of gallbladder without mention of cholecystitis without mention of obstruction
- 574.21, Calculus of gallbladder without mention of cholecystitis with obstruction
- 574.30, Calculus of bile duct with acute cholecystitis without mention of obstruction
- 574.31, Calculus of bile duct with acute cholecystitis with obstruction
- 574.40, Calculus of bile duct with other cholecystitis without mention of obstruction
- 574.41, Calculus of bile duct with other cholecystitis with obstruction
- 574.50, Calculus of bile duct without mention of cholecystitis without mention of obstruction
- 574.51, Calculus of bile duct without mention of cholecystitis with obstruction
- 574.60, Calculus of gallbladder and bile duct with acute cholecystitis without mention of obstruction
- 574.61, Calculus of gallbladder and bile duct with acute cholecystitis with obstruction)
- 574.70, Calculus of gallbladder and bile duct with other cholecystitis without mention of obstruction
- 574.71, Calculus of gallbladder and bile duct with other cholecystitis with obstruction
- 574.80, Calculus of gallbladder and bile duct with acute and chronic cholecystitis without mention of obstruction
- 574.81, Calculus of gallbladder and bile duct with acute and chronic cholecystitis with obstruction
- 574.90, Calculus of gallbladder and bile duct without cholecystitis without mention of obstruction
- 574.90, Calculus of gallbladder and bile duct without cholecystitis with obstruction
- 575.0, Acute cholecystitis
- 575.10, Cholecystitis, not otherwise specified
- 575.11, Chronic cholecystitis
- 575.12, Acute and chronic cholecystitis
- 575.2, Obstruction of gallbladder
- 575.3, Hydrops of gallbladder
- 576.0, Postcholecystectomy syndrome
- 577.1, Chronic pancreatitis

10. Surgical Hierarchies

Some inpatient stays entail multiple surgical procedures, each one of which, occurring by itself, could result in assignment of the case to a different DRG within the MDC to which the principal diagnosis is assigned. Therefore, it is necessary to have a decision rule within the GROUPER by which these cases are assigned to a single DRG. The surgical hierarchy, an ordering of surgical classes from most resource-intensive to least resource-intensive, performs that function. Application of this hierarchy ensures that cases involving multiple surgical procedures are assigned to the DRG associated with the most resource-intensive surgical class.

Because the relative resource intensity of surgical classes can shift as a function of DRG reclassification and recalibrations, we reviewed the surgical hierarchy of each MDC, as we have for previous reclassifications and recalibrations, to determine if the ordering of classes coincides with the intensity of resource utilization.

A surgical class can be composed of one or more DRGs. For example, in MDC 11, the surgical class "kidney transplant" consists of a single DRG (DRG 302) and the class "kidney, ureter and major bladder procedures" consists of three DRGs (DRGs 303, 304, and 305). Consequently, in many cases, the surgical hierarchy has an impact on more than one DRG. The methodology for determining the most resource-intensive surgical class involves weighting the average resources for each DRG by frequency to determine the weighted average resources for each surgical class. For example, assume surgical class A includes DRGs 1 and 2 and surgical class B includes DRGs 3, 4, and 5. Assume also that the average charge of DRG 1 is higher than that of DRG 3, but the average charges of DRGs 4 and 5 are higher than the average charge of DRG 2. To determine whether surgical class A should be higher or lower than surgical class B in the surgical hierarchy, we would weight the average charge of each DRG in the class by frequency (that is, by the number of cases in the DRG) to determine average resource consumption for the surgical class. The surgical classes would then be ordered from the class with the highest average resource utilization to that with the lowest, with the exception of "other O.R. procedures" as discussed below.

This methodology may occasionally result in assignment of a case involving multiple procedures to the lower-weighted DRG (in the highest, most resource-intensive surgical class) of the available alternatives. However, given that the logic underlying the surgical hierarchy provides that the GROUPER search for the procedure in the most resource-intensive surgical class, this result is unavoidable.

We note that, notwithstanding the foregoing discussion, there are a few instances when a surgical class with a lower average charge is ordered above a surgical class with a higher average charge. For example, the "other O.R. procedures" surgical class is uniformly ordered last in the surgical hierarchy of each MDC in which it occurs, regardless of the fact that the average charge for the DRG or DRGs in that surgical class may be higher than that for other surgical classes in the MDC. The "other O.R. procedures" class is a group of procedures that are only infrequently related to the diagnoses in the MDC but are still occasionally performed on patients in the MDC with these diagnoses. Therefore, assignment to these surgical classes should only occur if no other surgical class more closely related to the diagnoses in the MDC is appropriate.

A second example occurs when the difference between the average charges for two surgical classes is very small. We have found that small differences generally do not warrant reordering of the hierarchy because, as a result of reassigning cases on the basis of the hierarchy change, the average charges are likely to shift such that the higher-ordered surgical class has a lower average charge than the class ordered below it.

Based on the preliminary recalibration of the DRGs, we are proposing modifications of the surgical hierarchy as set forth below.

At this time, we are proposing to revise the surgical hierarchy for the pre-MDC DRGs, MDC 1 (Diseases and Disorders of the Nervous System), MDC 5 (Diseases and Disorders of the Circulatory System), MDC 8 (Diseases and Disorders of the Musculoskeletal System and Connective Tissue), and MDC 17 (Myeloproliferative Disease and Disorders, Poorly Differentiated Neoplasms for Lymphoma and Leukemia) as follows:

- In the pre-MDC DRGs, we are proposing to reorder DRG 513 (Pancreas Transplant) above DRG 512 (Simultaneous Pancreas/Kidney Transplant).
- In MDC 1, we are proposing to reorder DRG 3 (Craniotomy Age 0–17) above DRG 528 (Intracranial Vascular Procedures with Principal Diagnosis Hemorrhage); DRG 528 above DRGs 1 and 2 (Craniotomy Age >17 With and Without CC, respectively); DRGs 1 and 2 above DRGs 529 and 530 (Ventricular Shunt Procedures With and Without CC, respectively); DRGs 529 and 530 above DRGs 531 and 532 (Spinal Procedures With and Without CC, respectively); DRGs 531 and 532 above DRGs 533 and 534 (Extracranial Procedures With and Without CC, respectively); and DRGs 533 and 534 above DRG 6 (Carpal Tunnel Release).
- In MDC 5, we are proposing to reorder DRG 535 (Cardiac Defibrillator Implant With Cardiac Catheterization With AMI, Heart Failure, or Shock) above DRG 536 (Cardiac Defibrillator Implant With Cardiac Catheterization Without AMI, Heart Failure, or Shock), and DRG 536 above DRG 515 (Cardiac Defibrillator Implant Without Cardiac Catheterization).
- In MDC 8, we are proposing to reorder DRGs 537 and 538 (Local Excision and Removal of Internal Fixation Devices Except Hip and Femur With and Without CC, respectively) above DRG 230 (Local Excision and Removal of Internal Fixation Devices of Hip and Femur).
- In MDC 17, we are proposing to reorder DRGs 539 and 540 (Lymphoma and Leukemia With Major O.R. Procedure With and Without CC, respectively) above DRGs 401 and 402 (Lymphoma and Non-Acute Leukemia With Other O.R. Procedures With and Without CC, respectively).

11. Refinement of Complications and Comorbidities (CC) List

In the September 1, 1987 final notice (52 FR 33143) concerning changes to the DRG classification system, we modified the GROUPER logic so that certain diagnoses included on the standard list of CCs would not be considered valid CCs in combination with a particular principal diagnosis. Thus, we created the CC Exclusions List. We made these changes for the following reasons: (1) To preclude coding of CCs for closely related conditions; (2) to preclude duplicative coding or inconsistent coding from being treated as CCs; and (3) to ensure that cases are appropriately classified between the complicated and uncomplicated DRGs in a pair. We developed this standard list of diagnoses, using physician panels, to include those diagnoses that, when present as a secondary condition, would be considered a substantial complication or comorbidity. In previous years, we have made changes to the standard list of CCs, either by adding new CCs or deleting CCs already on the list. At this time, we are not proposing to delete any of the diagnosis codes on the CC list.

In the May 19, 1987 proposed notice (52 FR 18877) concerning changes to the DRG classification system, we explained that the excluded secondary diagnoses were established using the following five principles:

- Chronic and acute manifestations of the same condition should not be considered CCs for one another (as subsequently corrected in the September 1, 1987 final notice (52 FR 33154)).
- Specific and nonspecific (that is, not otherwise specified (NOS)) diagnosis codes for the same condition should not be considered CCs for one another.
- Codes for the same condition that cannot coexist, such as partial/total, unilateral/bilateral, obstructed/unobstructed, and benign/malignant, should not be considered CCs for one another.
- Codes for the same condition in anatomically proximal sites should not be considered CCs for one another.
- Closely related conditions should not be considered CCs for one another.

The creation of the CC Exclusions List was a major project involving hundreds of codes. The FY 1988 revisions were intended only as a first step toward refinement of the CC list in that the criteria used for eliminating certain diagnoses from consideration as CCs were intended to identify only the most obvious diagnoses that should not be considered CCs of another diagnosis. For that reason, and in light of comments and questions on the CC list, we have continued to review the remaining CCs to identify additional exclusions and to remove diagnoses from the master list that have been shown not to meet the definition of a CC. (See the September 30, 1988 final rule (53 FR 38485) for the revision made for the discharges occurring in FY 1989; the September 1, 1989 final rule (54 FR

36552) for the FY 1990 revision; the September 4, 1990 final rule (55 FR 36126) for the FY 1991 revision; the August 30, 1991 final rule (56 FR 43209) for the FY 1992 revision; the September 1, 1992 final rule (57 FR 39753) for the FY 1993 revision; the September 1, 1993 final rule (58 FR 46278) for the FY 1994 revisions; the September 1, 1994 final rule (59 FR 45334) for the FY 1995 revisions; the September 1, 1995 final rule (60 FR 45782) for the FY 1996 revisions; the August 30, 1996 final rule (61 FR 46171) for the FY 1997 revisions; the August 29, 1997 final rule (62 FR 45966) for the FY 1998 revisions; the July 31, 1998 final rule (63 FR 40954) for the FY 1999 revisions, the August 1, 2000 final rule (65 FR 47064) for the FY 2001 revisions; the August 1, 2001 final rule (66 FR 39851) for the FY 2002 revisions; and the August 1, 2002 final rule (67 FR 49998) for the FY 2003 revisions.) In the July 30, 1999 final rule (64 FR 41490), we did not modify the CC Exclusions List for FY 2000 because we did not make any changes to the ICD–9–CM codes for FY 2000.

We are proposing a limited revision of the CC Exclusions List to take into account the proposed changes that will be made in the ICD–9–CM diagnosis coding system effective October 1, 2003. (See section II.B.13. of this preamble for a discussion of ICD–9–CM changes.) These proposed changes are being made in accordance with the principles established when we created the CC Exclusions List in 1987.

Tables 6G and 6H in the Addendum to this proposed rule contain the revisions to the CC Exclusions List that would be effective for discharges occurring on or after October 1, 2003. Each table shows the principal diagnoses with changes to the excluded CCs. Each of these principal diagnoses is shown with an asterisk, and the additions or deletions to the CC Exclusions List are provided in an indented column immediately following the affected principal diagnosis.

CCs that are added to the list are in Table 6G—Additions to the CC Exclusions List. Beginning with discharges on or after October 1, 2003, the indented diagnoses would not be recognized by the GROUPER as valid CCs for the asterisked principal diagnosis.

CCs that are deleted from the list are in Table 6H—Deletions from the CC Exclusions List. Beginning with discharges on or after October 1, 2003, the indented diagnoses would be recognized by the GROUPER as valid CCs for the asterisked principal diagnosis.

Copies of the original CC Exclusions List applicable to FY 1988 can be obtained from the National Technical Information Service (NTIS) of the Department of Commerce. It is available in hard copy for $133.00 plus shipping and handling. A request for the FY 1988 CC Exclusions List (which should include the identification accession number (PB) 88–133970) should be made to the following address: National Technical Information Service, United States Department of Commerce, 5285 Port Royal Road, Springfield, VA 22161; or by calling (800) 553–6847.

Users should be aware of the fact that all revisions to the CC Exclusions List (FYs 1989, 1990, 1991, 1992, 1993, 1994, 1995, 1996, 1997, 1998, 1999, 2000, 2002, and 2003) and those in Tables 6G and 6H of the final rule for FY 2004 must be incorporated into the list purchased from NTIS in order to obtain the CC Exclusions List applicable for discharges occurring on or after October 1, 2003. (Note: There was no CC Exclusions List in FY 2001 because we did not make changes to the ICD–9-CM codes for FY 2001.)

Alternatively, the complete documentation of the GROUPER logic, including the current CC Exclusions List, is available from 3M/Health Information Systems (HIS), which, under contract with CMS, is responsible for updating and maintaining the GROUPER program. The current DRG Definitions Manual, Version 20.0, is available for $225.00, which includes $15.00 for shipping and handling. Version 21.0 of this manual, which includes the final FY 2003 DRG changes, is available for $225.00. These manuals may be obtained by writing 3M/HIS at the following address: 100 Barnes Road, Wallingford, CT 06492; or by calling (203) 949–0303. Please specify the revision or revisions requested.

12. Review of Procedure Codes in DRGs 468, 476, and 477

Each year, we review cases assigned to DRG 468 (Extensive O.R. Procedure Unrelated to Principal Diagnosis), DRG 476 (Prostatic O.R. Procedure Unrelated to Principal Diagnosis), and DRG 477 (Nonextensive O.R. Procedure Unrelated to Principal Diagnosis) to determine whether it would be appropriate to change the procedures assigned among these DRGs.

DRGs 468, 476, and 477 are reserved for those cases in which none of the O.R. procedures performed are related to the principal diagnosis. These DRGs are intended to capture atypical cases, that is, those cases not occurring with sufficient frequency to represent a distinct, recognizable clinical group. DRG 476 is assigned to those discharges in which one or more of the following prostatic procedures are performed and are unrelated to the principal diagnosis:

- 60.0, Incision of prostate
- 60.12, Open biopsy of prostate
- 60.15, Biopsy of periprostatic tissue
- 60.18, Other diagnostic procedures on prostate and periprostatic tissue
- 60.21, Transurethral prostatectomy
- 60.29, Other transurethral prostatectomy
- 60.61, Local excision of lesion of prostate
- 60.69, Prostatectomy, not elsewhere classified
- 60.81, Incision of periprostatic tissue
- 60.82, Excision of periprostatic tissue
- 60.93, Repair of prostate
- 60.94, Control of (postoperative) hemorrhage of prostate
- 60.95, Transurethral balloon dilation of the prostatic urethra
- 60.99, Other operations on prostate

All remaining O.R. procedures are assigned to DRGs 468 and 477, with DRG 477 assigned to those discharges in which the only procedures performed are nonextensive procedures that are unrelated to the principal diagnosis. The original list of the ICD–9–CM procedure codes for the procedures we consider nonextensive procedures, if performed with an unrelated principal diagnosis, was published in Table 6C in section IV. of the Addendum to the September 30, 1988 final rule (53 FR 38591). As part of the final rules published on September 4, 1990 (55 FR 36135), August 30, 1991 (56 FR 43212), September 1, 1992 (57 FR 23625), September 1, 1993 (58 FR 46279), September 1, 1994 (59 FR 45336), September 1, 1995 (60 FR 45783), August 30, 1996 (61 FR 46173), and August 29, 1997 (62 FR 45981), we moved several other procedures from DRG 468 to 477, and some procedures from DRG 477 to 468. No procedures were moved in FY 1999, as noted in the July 31, 1998 final rule (63 FR 40962); in FY 2000, as noted in the July 30, 1999 final rule (64 FR 41496); in FY 2001, as noted in the August 1, 2000 final rule (65 FR 47064); or in FY 2002, as noted in the August 1, 2001 final rule (66 FR 39852).

In the August 1, 2002 final rule (67 FR 49999), we did not move any procedures from DRG 477. However, we did move procedures codes from DRG 468 and placed them in more clinically coherent DRGs.

a. Moving Procedure Codes from DRG 468 or DRG 477 to MDCs. We annually conduct a review of procedures

producing assignment to DRG 468 or DRG 477 on the basis of volume, by procedure, to see if it would be appropriate to move procedure codes out of these DRGs into one of the surgical DRGs for the MDC into which the principal diagnosis falls. The data are arrayed two ways for comparison purposes. We look at a frequency count of each major operative procedure code. We also compare procedures across MDCs by volume of procedure codes within each MDC.

We identify those procedures occurring in conjunction with certain principal diagnoses with sufficient frequency to justify adding them to one of the surgical DRGs for the MDC in which the diagnosis falls. Based on this year's review, we did not identify any necessary changes in procedures under DRG 477. Therefore, we are not proposing to move any procedures from DRG 477 to one of the surgical DRGs.

However, we have identified a necessary proposed change under DRG 468 relating to code 50.29 (Other destruction of lesion of liver). We were contacted by a hospital about the fact that code 50.29 is not currently included in MDC 6 (Diseases and Disorders of the Digestive System). The hospital pointed out that it is not uncommon for patients to have procedures performed on the liver when they are admitted for a condition that is classified in MDC 6. For example, DRGs 170 and 171 (Other Digestive System O.R. Procedures With and Without CC, respectively) in MDC 6 currently include liver procedures such as biopsy of the liver. The hospital disagreed with the assignment of code 50.29 to DRG 468 when performed on a patient with a principal diagnosis in MDC 6. We believe that the commenter is correct and are proposing to assign code 50.29 to DRGs 170 and 171 in MDC 6.

b. Reassignment of Procedures among DRGs 468, 476, and 477. We also annually review the list of ICD–9–CM procedures that, when in combination with their principal diagnosis code, result in assignment to DRGs 468, 476, and 477, to ascertain if any of those procedures should be reassigned from one of these DRGs to another of these DRGs based on average charges and length of stay. We look at the data for trends such as shifts in treatment practice or reporting practice that would make the resulting DRG assignment illogical. If we find these shifts, we would propose moving cases to keep the DRGs clinically similar or to provide payment for the cases in a similar manner. Generally, we move only those procedures for which we have an adequate number of discharges to analyze the data. Based on our review this year, we are not proposing to move any procedures from DRG 468 to DRGs 476 or 477, from DRG 476 to DRGs 468 or 477, or from DRG 477 to DRGs 468 or 476.

c. Adding Diagnosis or Procedure Codes to MDCs. Based on our review this year, we are not proposing to add any diagnosis codes to MDCs.

However, we have identified several procedures that we propose to move from DRG 468 and add to DRGs 476 and 477 because the procedures are nonextensive:

- 38.21, Biopsy of blood vessel
- 77.42, Biopsy of scapula, clavicle and thorax [ribs and sternum]
- 77.43, Biopsy of radius and ulna
- 77.44, Biopsy of carpals and metacarpals
- 77.45, Biopsy of femur
- 77.46, Biopsy of patella
- 77.47, Biopsy of tibia and fibula
- 77.48, Biopsy of tarsals and metatarsals
- 77.49, Biopsy of other bones
- 92.27, Implantation or insertion of radioactive elements

13. Changes to the ICD–9–CM Coding System

As described in section II.B.1. of this preamble, the ICD–9–CM is a coding system that is used for the reporting of diagnoses and procedures performed on a patient. In September 1985, the ICD–9–CM Coordination and Maintenance Committee was formed. This is a Federal interdepartmental committee, co-chaired by the National Center for Health Statistics (NCHS) and CMS, charged with maintaining and updating the ICD–9–CM system. The Committee is jointly responsible for approving coding changes, and developing errata, addenda, and other modifications to the ICD–9–CM to reflect newly developed procedures and technologies and newly identified diseases. The Committee is also responsible for promoting the use of Federal and non-Federal educational programs and other communication techniques with a view toward standardizing coding applications and upgrading the quality of the classification system.

The ICD–9–CM Manual contains the list of valid diagnosis and procedure codes. (The ICD–9–CM Manual is available from the Government Printing Office on CD–ROM for $23.00 by calling (202) 512–1800.) The NCHS has lead responsibility for the ICD–9–CM diagnosis codes included in the *Tabular List* and *Alphabetic Index for Diseases*, while CMS has lead responsibility for the ICD–9–CM procedure codes included in the *Tabular List* and *Alphabetic Index for Procedures*.

The Committee encourages participation in the above process by health-related organizations. In this regard, the Committee holds public meetings for discussion of educational issues and proposed coding changes. These meetings provide an opportunity for representatives of recognized organizations in the coding field, such as the American Health Information Management Association (AHIMA), the American Hospital Association (AHA), and various physician specialty groups as well as physicians, medical record administrators, health information management professionals, and other members of the public, to contribute ideas on coding matters. After considering the opinions expressed at the public meetings and in writing, the Committee formulates recommendations, which then must be approved by the agencies.

The Committee presented proposals for coding changes for implementation in FY 2004 at a public meeting held on December 6, 2002, and finalized the coding changes after consideration of comments received at the meetings and in writing by January 10, 2003. Those coding changes are announced later in this section of the preamble. Copies of the Committee procedure minutes of the 2002 meetings can be obtained from the CMS home page at: *http://www.cms.gov/paymentsystems/icd9/*. The diagnosis minutes are found at: *http://www.cdc.gov/nchs/icd9.htm*. Paper copies of these minutes are no longer available and the mailing list has been discontinued.

The first of the 2003 public meetings was held on April 3, 2003. In the September 7, 2001 final rule implementing the IPPS new technology add-on payments (66 FR 46906), we indicated we would attempt to include all proposals discussed and approved at the April meeting as part of the code revisions effective the following October. Because this proposed rule is being published after the April meeting, we are able to include all new codes that were approved subsequent to that meeting in Table 6F of the Addendum to this proposed rule, including the DRG assignments.

For a report of procedure topics discussed at the April 2003 meeting, see the Summary Report at: *http://www.cms.hhs.gov/paymentsystems/icd9/*. For a report of the diagnosis topics discussed at the April 2003 meeting, see the Summary Report at: *http:/www.cdc.gov/nchs/icd9.htm*.

We encourage commenters to address suggestions on coding issues involving diagnosis codes to: Donna Pickett, Co-Chairperson; ICD–9–CM Coordination and Maintenance Committee; NCHS; Room 2404, 3311 Toledo Road, Hyattsville, MD 20782. Comments may be sent by E-mail to: *dfp4@cdc.gov*.

Questions and comments concerning the procedure codes should be addressed to: Patricia E. Brooks, Co-Chairperson; ICD–9–CM Coordination and Maintenance Committee; CMS, Center for Medicare Mangement, Hospital and Ambulatory Policy Group, Division of Acute Care; C4–08–06; 7500 Security Boulevard; Baltimore, MD 21244–1850. Comments may be sent by E-mail to: *pbrooks@cms.hhs.gov*.

The ICD–9–CM code changes that have been approved will become effective October 1, 2003. The new ICD–9–CM codes are listed, along with their DRG classifications, in Tables 6A and 6B (New Diagnosis Codes and New Procedure Codes, respectively) in the Addendum to this proposed rule. As we stated above, the code numbers and their titles were presented for public comment at the ICD–9–CM Coordination and Maintenance Committee meetings. Both oral and written comments were considered before the codes were approved. In this proposed rule, we are only soliciting comments on the proposed DRG classification of these new codes.

For codes that have been replaced by new or expanded codes, the corresponding new or expanded diagnosis codes are included in Table 6A. New procedure codes are shown in Table 6B. Diagnosis codes that have been replaced by expanded codes or other codes or have been deleted are in Table 6C (Invalid Diagnosis Codes). These invalid diagnosis codes will not be recognized by the GROUPER beginning with discharges occurring on or after October 1, 2003. Table 6D contains invalid procedure codes. Revisions to diagnosis code titles are in Table 6E (Revised Diagnosis Code Titles), which also includes the DRG assignments for these revised codes. Table 6F includes a revised procedure code title for FY 2003.

The Department of Health and Human Services has been actively working on the development of new coding systems to replace the ICD–9–CM. For example, the ICD–10–CM (for diagnoses) and the ICD–10–PCS (for procedures) were developed to replace ICD–9–CM. These efforts have become increasingly important because of the many problems with the ICD–9–CM, which was implemented 24 years ago.

Implementing ICD–10–PCS as a national standard was discussed at the December 6, 2002, ICD–9–CM Coordination and Maintenance Committee meeting. A complete report of the meeting, including examples of letters supporting and opposing ICD–10–PCS, can be found at the CMS web site: *www.cms.hhs.gov/paymentsystems/icd9/*. Also, the Secretary has asked the NCVHS to recommend whether or not the country should replace ICD–9–CM as a national coding standard with ICD–10–CM and ICD–10–PCS. A complete report on the activities of this committee can be found at: *http://www.ncvhs.hhs.gov*.

14. Other Issues

In addition to the specific topics discussed in section II.B.1. through 13. of this proposed rule, we considered a number of other DRG-related issues. Below is a summary of the issues that were addressed.

a. Cochlear Implants. Cochlear implants were first covered by Medicare in 1986 and were assigned to DRG 49 (Major Head and Neck Procedures) in MDC 3 (Diseases and Disorders of the Ear, Nose, Mouth, and Throat). This is the highest weighted surgical DRG in MDC 3. However, commenters have contended that this DRG is clinically and economically inappropriate and have requested a specific DRG for cochlear implants. The commenters contend that, like heart assist systems (we created a new DRG last year, DRG 525 (Heart Assist System Implant) in MDC 5), cochlear implants are low incidence procedures with disproportionately high costs compared to other procedures within DRG 49.

As we stated in the FY 2003 final rule in our discussion regarding the creation of DRG 525 (67 FR 49989), we found 185 heart assist system cases in DRG 104 (Cardiac Valve and Other Major Cardiothoracic Procedures with Cardiac Catheterization) and 90 cases in DRG 105 (Cardiac Valve and Other Major Cardiothoracic Procedures without Cardiac Catheterization). The average charges for these cases were approximately $36,000 and $85,000, higher than the average charges for cases in DRGS 104 and 105, respectively, but they represented only a small fraction of all cases in these DRGs (1.3 percent and 0.5 percent, respectively). Therefore, despite the drastically higher average charges for heart assist systems, the relative volume was insufficient to affect the DRG weight to any great degree.

In our analysis of the FY 2002 MedPAR file, we found 134 cochlear implant cases out of 1,637 cases assigned to DRG 49, which represent more than 8 percent of the total cases in DRG 49. Compared to the situation with the heart assist system implant cases in DRGs 104 and 105, cochlear implants do have a greater effect on the relative weight for DRG 49. Also, while average charges for cochlear implant cases are significantly more than other cases in DRG 49 (average charges for cochlear implant cases were $51,549 compared to $25,052 for noncochlear implant cases), this difference is much less than the $36,000 and $85,000 differences for heart assist systems cited above.

Although we are concerned about the disparity between the average costs and payments for cochlear implant patients, we also have concerns about establishing a separate DRG for these cases. Doing so could create an incentive for some of these procedures to be shifted from outpatient settings, where most are currently performed. Even among current cochlear implant cases, our analysis found the average length of stay for Medicare patients receiving this procedure in the inpatient setting was just over 1 day, indicating minimal inpatient care is necessary for these cases. It is unclear whether a shift toward more inpatient stays would be appropriate.

We also are concerned whether the volume of cochlear implant cases across all hospitals performing this procedure warrants establishing a new DRG. The DRG relative weights reflect an average cost per case, with the costs of some procedures above the DRG mean costs and some below the mean. It is expected that hospitals will offset losses for certain procedures with payment gains for other procedures, while responding to incentives to maintain efficient operations. An excessive proliferation of new DRGs for specific technologies would fundamentally alter this averaging concept.

Accordingly, for the reasons cited above, we are not proposing to change the DRG assignment of cochlear implants at this time. However, we encourage public comments as to whether a new DRG for cochlear implants (or some other solution) is warranted.

b. Burn Patients on Mechanical Ventilation. Concerns have been raised by hospitals treating burn patients that the current DRG payment for burn patients on mechanical ventilation is not adequate. The DRG assignment for these cases depends on whether the hospital performed the tracheostomy, or the tracheostomy was performed prior to transfer to the hospital. If the hospital does not actually perform the tracheostomy, the case is assigned to one of the burn DRGs in MDC 22 (Burns). If the hospital performs a tracheostomy, the case is assigned to DRG 482 (Tracheostomy for Face, Mouth, and Neck Diagnoses) or DRG 483 (Tracheostomy with Mechanical Ventilation 96 + Hours, Except Face, Mouth and Neck Diagnoses).

In the August 1, 2002 final rule, we modified DRGs 482 and 483 to recognize code 96.72 (Continuous mechanical ventilation for 96 consecutive hours or more) for the first time in the DRG assignment (67 FR 49996). We noted that many patients assigned to DRG 483 did not have code 96.72 recorded. We believed this was due, in part, to the limited number of procedure codes (six) that can be submitted on the current billing form, and the fact that code 96.72 did not affect the DRG assignment (prior to FY 2003). We stated that we would give future consideration to further modifying DRGs 482 and 483 based on the presence of code 96.72. We anticipate that cases of patients receiving 96 or more hours of continuous mechanical ventilation are more expensive than other tracheostomy patients. Once code 96.72 is reported more frequently, we will be better able to assess the need for future revisions to DRGs 482 and 483.

To assess the payment for burn patients on mechanical ventilation when the hospital did not perform the tracheostomy, we analyzed data on cases reporting both code 96.72 and diagnosis code V44.0 (Tracheostomy status). We had hoped that these cases would show patients on long-term ventilation who were admitted to the hospital with a tracheostomy in place. Our data did not include any cases reported in any of the burn DRGs with codes 96.72 and V44.0. We then analyzed data on the frequency of cases reporting code 96.72 along with diagnosis code V46.1 (Respirator dependence). We found only 5 of these cases in the burn DRGs. With so few cases reporting code 96.72, it is difficult for us to determine the effect of long-term ventilation on reimbursement for burn cases.

All hospitals, including those that treat burn patients, are encouraged to increase the reporting of code 96.72 for patients who are on continuous mechanical ventilation for 96 or more hours. With better data, we would be able to determine how best to make any future DRG modification for all patients on long-term mechanical ventilation.

c. Multiple Level Spinal Fusion. We received a comment recommending the establishment of new DRGs that would differentiate between the number of levels of vertebrae involved in a spinal fusion procedure. The commenter noted that the ICD–9–CM Coordination and Maintenance Committee discussed adding a new series of codes to identify multiple levels of spinal fusions at its December 6, 2002 meeting.

The following codes were approved by the Committee, effective for October 1, 2003, and are listed in Table 6B in the Addendum to this proposed rule:

- 81.62, Fusion or refusion of 2–3 vertebrae
- 81.63, Fusion or refusion of 4–8 vertebrae
- 81.64, Fusion or refusion of 9 or more vertebrae

The commenter conducted an analysis to support redefining the spinal fusion DRGs using these new ICD–9–CM codes. Using the CMS FY 2001 Standard Analytical File data for physicians and hospitals as the basis for its analysis, the commenter linked a 5-percent sample of hospital spinal fusion cases with the corresponding physician claims. Because there were no ICD–9–CM codes to identify multiple level fusions in 2001, multiple level fusions were identified using Current Procedural Terminology (CPT) codes on the physician claims.

The analysis found that increasing the levels fused from 1 to 2 levels to 3 or more levels increased the mean standardized charges by 38 percent for lumbar/thoracic fusions, and by 47 percent for cervical fusions. The commenter then recommended redefining the spinal fusion DRGs to differentiate between 1 to 2 level spinal fusions and multilevel spinal fusions.

The following current spinal fusion DRGs separate cases based on whether or not a CC is present: DRG 497 (Spinal Fusion Except Cervical With CC) and DRG 498 (Spinal Fusion Except Cervical Without CC); and DRG 519 (Cervical Spinal Fusion With CC) and DRG 520 (Cervical Spinal Fusion Without CC). The difference in charges associated with the current CC-split is only slightly greater than the difference attributable to the number of levels fused as found by the commenter's analysis. Therefore, at this time, we are not proposing to redefine these DRGs to differentiate on the basis of the number of levels fused.

We note that adopting the commenter's recommendation would necessitate adjusting the DRG relative weights using non-MedPAR data, because Medicare claims data with the new ICD–9–CM codes will not be available until the FY 2003 MedPAR file. Although we considered this possibility, we believe the more prudent course, given that the current DRG structure actually appears to differentiate appropriately among these cases, is to wait until sufficient data with the new multilevel spinal fusion codes are available before making a final determination on whether mulfilevel spinal fusions should be incorporated into the DRG structure.

d. Heart Assist System Implant. During the comment period for the FY 2003 IPPS proposed rule on which the FY 2003 IPPS final rule was based, we received a suggestion that we develop a new heart transplant DRG entitled "Heart Transplant with Left Ventricular Assist Device (LVAD)." The commenter stated that, because a great number of LVAD cases remain inpatients until heart transplant occurs, there is a disparity in costs between heart transplant patients who receive LVADs during the stay and those who do not. Cases in which heart transplantation occurs during the hospitalization are assigned to DRG 103 (Heart Transplant). Therefore, the costs of LVAD cases are included in the DRG relative weight for DRG 103. However, we noted that we would continue to monitor these types of cases.

When we reviewed the FY 2002 MedPAR data, we identified only 21 cases in DRG 103 that listed a procedure code that would indicate the use of an LVAD. We do not believe this is a sufficient number of cases to support creation of an additional DRG. Therefore, we are not proposing a change to the structure of either DRG 103 or DRG 525 at this time.

e. *Drug-Eluting Stents.* In the August 1, 2002 final rule, we created two new temporary DRGs to reflect cases involving the insertion of a drug-eluting coronary artery stent as signified by the presence of code 36.07 (Insertion of drug-eluting coronary artery stent): DRG 526 (Percutaneous Cardiovascular Procedure With Drug-Eluting Stent With AMI); and DRG 527 (Percutaneous Cardiovascular Procedure With Drug-Eluting Stent Without AMI). We expect that when claims data are available that reflect the use of these stents, we will combine drug-eluting stent cases with other cases in DRGs 516 and 517.

In the absence of MedPAR data reflecting the use of drug-eluting stents, it was necessary to undertake several calculations to establish the FY 2003 DRG relative weights for these two new DRGs. First, based on prices where drug-eluting stents are currently being used and the average price of currently available stents, we calculated a price differential of approximately $1,200. Assuming average hospital charge markups for this technology (based on weighted average cost-to-charge ratios), the anticipated charge differential

between nondrug-eluting and drug-eluting stents would be approximately $2,664 per stent. However, we recognize that some cases involve more than one stent. Using an average of 1.5 stents per procedure, we estimate that the net incremental charge for cases that would receive drug-eluting stents is $3,996.

In order to determine accurately the DRG relative weights for these two new DRGs relative to all other DRGs, we also must estimate the volume of cases likely to occur. We used the manufacturer's estimate that as many as 43 percent of current stent patients will receive drug-eluting stents during FY 2003 to calculate the FY 2003 DRG relative weights, although we prorated this percentage since the new DRGs did not become active until April 1, 2003. Even though the DRG will become active on April 1, 2003, we expect that hospitals did not use this technology before FDA approval. (We intend to identify and review any cases with the code 36.07 that occurred prior to FDA approval.) Therefore, no payments are expected to have been made under these DRGs for cases occurring before FDA approval.

In determining the FY 2004 proposed DRG relative weights for DRGs 526 and 527, we assumed that 43 percent of coronary stent cases (those with code 36.06 (Insertion of nondrug-eluting coronary artery stent)) from DRGs 516 and 517 would be reassigned to new DRGs 526 and 527 (with code 36.07), and the charges of these cases would be increased $3,996 per case, to approximate the higher charges associated with the drug-eluting stents in DRGs 526 and 527. The relative weights for DRGs 516 and 517 are calculated based on the charges of the cases estimated to remain in these two DRGs.

We are proposing to maintain DRGs 526 and 527 for FY 2004, and to adopt the same methodology to establish the relative weights as we used for FY 2003. The FDA issued a decision on April 24, 2003 approving drug-eluting stents. For the final rule, we will use the best available data at that time to establish the FY 2004 relative weights for DRGs 526 and 527.

f. *Artificial Anal Sphincter.* The ICD–9–CM Coordination and Maintenance Committee created two new codes to describe procedures involving an artificial anal sphincter for use for discharges occurring on or after October 1, 2002. One code (49.75, Implantation or revision of artificial anal sphincter) is used to identify cases involving implantation or revision of an artificial anal sphincter. The second code (49.76, Removal of artificial anal sphincter) is used to identify cases involving the removal of the device. In Table 6B of the August 1, 2002 IPPS final rule (67 FR 50242), we assigned both codes to one of four MDCs based on principal diagnosis, and to one of six DRGs within those MDCs as follows: MDC 6, DRG 157 (Anal and Stomal Procedures With CC) and DRG 158 (Anal and Stomal Procedures Without CC); MDC 9 (Diseases and Disorders of the Skin, Subcutaneous Tissue and Breast), DRG 267 (Perianal and Pilonidal Procedures); MDC 21 (Injuries, Poisonings, and Toxic Effect of Drugs), DRG 442 (Other O.R. Procedures for Injuries With CC) and DRG 443 (Other O.R. Procedures for Injuries Without CC); and MDC 24 (Multiple Significant Trauma), DRG 486 (Other O.R. Procedures for Multiple Significant Trauma).

We have received a request that we review these DRG assignments. According to the requester, the artificial anal sphincter procedures are expensive and the payment does not adequately cover a hospital's costs in the most likely occurring DRGs 157 and 158. The requester submitted data showing cases involving artificial anal sphincters with average charges of $44,000, and suggested that we assign codes 49.75 and 49.76 in MDC 6 to DRG 170 (Other Digestive System O.R. Procedures With CC) and DRG 171) (Other Digestive System O.R. Procedures Without CC) because DRG 170 and DRG 171 are higher weighted than DRGs 157 and 158.

At this time, we are not proposing to assign these cases to DRGs 170 and 171. Although we recognize the data submitted by the commenter appear to show this procedure is associated with above average costs in the DRGs to which these cases are assigned, we believe the current assignment is the most clinically appropriate at this time. As noted above, the procedure codes to identify the implantation, revision, or removal of these devices were effective beginning on October 1, 2002. Therefore, we propose to monitor the costs of these cases using actual Medicare cases with these codes included from the FY 2003 MedPAR that will be used for the FY 2004 DRG relative weights.

C. Recalibration of DRG Weights

We are proposing to use the same basic methodology for the FY 2004 recalibration as we did for FY 2003 (August 1, 2002 IPPS final rule (67 FR 50008). That is, we are proposing to recalibrate the DRG weights based on charge data for Medicare discharges using the most current charge information available (the FY 2002 MedPAR file).

The MedPAR file is based on fully coded diagnostic and procedure data for all Medicare inpatient hospital bills. FY 2002 MedPAR data include discharges occurring between October 1, 2001 and September 30, 2002, based on bills received by CMS through December 31, 2002, from all hospitals subject to the IPPS and short-term acute care hospitals in Maryland (which is under a waiver from the IPPS under section 1814(b)(3) of the Act). The FY 2002 MedPAR file includes data for approximately 11,404,829 Medicare discharges. Discharges for Medicare beneficiaries enrolled in a Medicare+Choice managed care plan are excluded from this analysis. The data include hospitals that subsequently became CAHs, although no data are included for hospitals after the point they are certified as CAHs.

The proposed methodology used to calculate the DRG relative weights from the FY 2002 MedPAR file is as follows:

- To the extent possible, all the claims were regrouped using the DRG classification revisions discussed in section II.B. of this preamble.
- Charges were standardized to remove the effects of differences in area wage levels, indirect medical education and disproportionate share payments, and, for hospitals in Alaska and Hawaii, the applicable cost-of-living adjustment.
- The average standardized charge per DRG was calculated by summing the standardized charges for all cases in the DRG and dividing that amount by the number of cases classified in the DRG. A transfer case is counted as a fraction of a case based on the ratio of its transfer payment under the per diem payment methodology to the full DRG payment for nontransfer cases. That is, transfer cases paid under the transfer methodology equal to half of what the case would receive as a nontransfer would be counted as 0.5 of a total case.
- Statistical outliers were eliminated by removing all cases that are beyond 3.0 standard deviations from the mean of the log distribution of both the charges per case and the charges per day for each DRG.
- The average charge for each DRG was then recomputed (excluding the statistical outliers) and divided by the national average standardized charge per case to determine the relative weight.
- The transplant cases that were used to establish the relative weight for heart and heart-lung, liver, and lung transplants (DRGs 103, 480, and 495) were limited to those Medicare-approved transplant centers that have cases in the FY 2000 MedPAR file. (Medicare coverage for heart, heart-lung, liver, and lung transplants is limited to those facilities that have received approval from CMS as transplant centers.)
- Organ acquisition costs for kidney, heart, heart-lung, liver, lung, pancreas, and intestinal (or multivisceral organs) transplants continue to be paid on a reasonable cost basis. Because these acquisition costs are paid separately from the prospective payment rate, it is necessary to subtract the acquisition charges from the total charges on each transplant bill that showed acquisition charges before computing the average charge for the DRG and before eliminating statistical outliers.

When we recalibrated the DRG weights for previous years, we set a threshold of 10 cases as the minimum number of cases required to compute a reasonable weight. We used that same case threshold in recalibrating the proposed DRG weights for FY 2004. Using the FY 2002 MedPAR data set, there are 42 DRGs that contain fewer than 10 cases. We computed the weights for these low-volume DRGs by adjusting the proposed FY 2003 weights of these DRGs by the percentage change in the average weight of the cases in the other DRGs.

The proposed new weights are normalized by an adjustment factor (1.45510) so that the average case weight after recalibration is equal to the average case weight before recalibration. This adjustment is intended to ensure that recalibration by itself neither increases nor decreases total payments under the IPPS.

As noted below in section IV.A.2., we are proposing to expand the transfer policy applicable to postacute care transfers from 10 DRGs currently to an additional 19 DRGs, beginning in FY 2004. Because we count a transfer case as a fraction of a case as described above in the recalibration process, any expansion of the postacute care transfer policy to 19 additional DRGs would affect the proposed relative weights for those DRGs. Therefore, we calculated the proposed FY 2004 normalization factor comparing the case-mix using the proposed FY 2004 DRG relative weights in which we treated postacute care transfer cases in the 19 DRGs proposed to be added to the postacute transfer policy for FY 2004 as a fraction of a case with the case-mix using the FY 2003 DRG relative weights without treating cases in these 19 additional DRGs as transfer cases.

Section 1886(d)(4)(C)(iii) of the Act requires that, beginning with FY 1991, reclassification and recalibration changes be made in a manner that assures that the aggregate payments are neither greater than nor less than the aggregate payments that would have been made without the changes. Although normalization is intended to achieve this effect, equating the average case weight after recalibration to the average case weight before recalibration does not necessarily achieve budget neutrality with respect to aggregate payments to hospitals because payments to hospitals are affected by factors other than average case weight. Therefore, as we have done in past years and as discussed in section II.A.4.a. of the Addendum to this proposed rule, we are proposing to make a budget neutrality adjustment to ensure that the requirement of section 1886(d)(4)(C)(iii) of the Act is met.

D. Proposed LTC–DRG Reclassifications and Relative Weights for LTCHs for FY 2004

1. Background

In the March 7, 2003 LTCH PPS proposed rule (68 FR 11234), we proposed to change the LTCH PPS annual payment rate update cycle to be effective July 1 through June 30 instead of October 1 through September 30. In addition, since the patient classification system utilized under the LTCH PPS is based directly on the DRGs used under the IPPS for acute care hospitals, in that same proposed rule, we proposed that the annual update of the long-term care diagnosis-related group (LTC–DRG) classifications and relative weights would continue to remain linked to the annual reclassification and recalibration of the CMS–DRGs under the IPPS.

The annual update to the IPPS DRGs is based on the annual revisions to the ICD–9–CM codes and is effective each October 1. In the health care industry, annual changes to the ICD–9–CM codes are effective for discharges occurring on or after October 1 each year. The use of the ICD–9–CM coding system is also compliant with the requirements of the Health Insurance Portability and Accountability Act (HIPAA), Pub. L. 104–191, under 45 CFR Parts 160 and 162. Therefore, the manual and electronic versions of the GROUPER software, which are based on the ICD–9–CM codes, are also revised annually and effective for discharges occurring on or after October 1 each year. Because the LTC–DRGs are based on the patient classification system used under the IPPS (CMS–DRGs), which is updated annually and effective for discharges occurring on or after October 1 through September 30 each year, in the March 7, 2003 LTCH PPS proposed rule (68 FR 11234), we proposed to continue to update the LTC–DRG classifications and relative weights to be effective for discharges occurring on or after October 1 through September 30 each year.

As we explained in the March 7, 2003 LTCH PPS proposed rule (68 FR 11234), the FY 2004 DRGs and relative weights used under the IPPS had not yet been proposed, and we were unable to propose updated LTC–DRGs and relative weights at that time. Therefore, since the LTC–DRG classifications and relative weights would continue to be based on the annual updates to the IPPS DRGs, we proposed that proposed revisions to the LTC–DRG classifications and relative weights would be presented for public comment in the IPPS proposed rule and finalized in the IPPS final rule, to be effective October 1, 2003 through September 30, 2004.

For FY 2003, version 20.0 of the DRG GROUPER is being utilized under both the IPPS and the LTCH PPS. The LTC–DRG classifications and relative weights are shown in Table 3 of the Addendum to the August 30, 2002 for FY 2003 final rule (67 FR 56076–56084) and in Table 3 of the Addendum to the March 7, 2003 LTCH PPS proposed rule (68 FR 11285 through 11292). Below we discuss the proposed LTC–DRGs and relative weights for FY 2004 based on the proposed changes to the hospital IPPS DRGs (GROUPER version 21.0) discussed in section II. of this preamble.

2. Proposed Changes in the LTC–DRG Classifications

a. Background. Section 123 of Pub. L. 106–113 specifically requires that the PPS for LTCHs be a per discharge system with a DRG-based patient classification system reflecting the differences in patient resources and costs in LTCHs while maintaining budget neutrality. Section 307(b)(1) of Pub. Law 106–554 modified the requirements of section 123 of Pub. L. 106–113 by specifically requiring that the Secretary examine "the feasibility and the impact of basing payment under such a system [the LTCH PPS] on the use of existing (or refined) hospital diagnosis-related groups (DRGs) that have been modified to account for different resource use of long-term care hospital patients as well as the use of the most recently available hospital discharge data."

In accordance with section 307(b)(1) of Pub. L. 106–554 and § 412.515 of our existing regulations, the LTCH PPS uses information from LTCH patient records to classify patient cases into distinct LTC–DRGs based on clinical characteristics and expected resource needs. The LTC–DRGs used as the patient classification component of the LTCH PPS correspond to the DRGs

under the IPPS for acute care hospitals. Thus, in this proposed rule, we are proposing to use the proposed IPPS version 21.0 GROUPER for FY 2004 to process LTCH PPS claims. The proposed changes to the IPPS DRG classification system for FY 2004 (Grouper 21.0) are discussed in section II.B. of this preamble.

Under the LTCH PPS, we determine relative weights for each of the IPPS DRGs to account for the difference in resource use by patients exhibiting the case complexity and multiple medical problems characteristic of LTCHs. In a departure from the IPPS, as we discussed in the August 30, 2002 final rule (67 FR 55985), we use low volume LTC–DRGs (less than 25 LTCH cases) in determining the LTC–DRG weights, since LTCHs do not typically treat the full range of diagnoses as do acute care hospitals. In order to deal with the large number of low volume LTC–DRGs (DRGs with fewer than 25 cases), we group those low volume LTC–DRGs into 5 quintiles based on average charge per discharge. (A listing of the composition of low volume quintiles for the FY 2003 LTC–DRGs (based on FY 2001 MedPAR data) appears in the August 30, 2002 final rule at 67 FR 55986–55988). We also adjusted for cases in which the stay at the LTCH is five-sixths of the geometric average length of stay; that is, short-stay outlier cases (§ 412.529). (A detailed discussion of the application of the Lewin Group model that was used to develop the LTC–DRGs appears in the August 30, 2002 final rule at 67 FR 55978).

b. Patient Classifications into DRGs. Generally, under the LTCH PPS, Medicare payment is made at a predetermined specific rate for each discharge; that is, payment varies by the LTC–DRG to which a beneficiary's stay is assigned. Similar to case classification for acute care hospitals under the IPPS (*see* section II.B. of this preamble), cases are classified into LTC–DRGs for payment under the LTCH PPS based on the principal diagnosis, up to eight additional diagnoses, and up to six procedures performed during the stay, as well as age, sex, and discharge status of the patient. The diagnosis and procedure information is reported by the hospital using codes from the ICD–9–CM.

As discussed above in section II.B. of this preamble, the DRGs are organized into 25 Major Diagnostic Categories (MDCs), most of which are based on a particular organ system of the body; the remainder involve multiple organ systems (such as MDC 22, Burns). Accordingly, the principal diagnosis determines MDC assignment. Within most MDCs, cases are then divided into surgical DRGs and medical DRGs. Some surgical and medical DRGs are further differentiated based on the presence or absence of CCs. (*See* section II.B. of this preamble for further discussion of surgical DRGs and medical DRGs.)

Because the assignment of a case to a particular LTC–DRG will help determine the amount that will be paid for the case, it is important that the coding is accurate. As is the case under the IPPS, classifications and terminology used in the LTCH PPS are consistent with the ICD–9–CM and the Uniform Hospital Discharge Data Set (UHDDS), as recommended to the Secretary by the National Committee on Vital and Health Statistics (''Uniform Hospital Discharge Data: Minimum Data Set, National Center for Health Statistics, April 1980'') and as revised in 1984 by the Health Information Policy Council (HIPC) of the U.S. Department of Health and Human Services. We wish to point out again that the ICD–9–CM coding terminology and the definitions of principal and other diagnoses of the UHDDS are consistent with the requirements of the Administrative Simplification Act of 1996 of the HIPAA (45 CFR Parts 160 and 162).

As we stated in the August 30, 2002 LTCH PPS final rule (67 FR 55981), the emphasis on the need for proper coding cannot be overstated. Inappropriate coding of cases can adversely affect the uniformity of cases in each LTC–DRG and produce inappropriate weighting factors at recalibration and result in inappropriate payments under the LTCH PPS. LTCHs are to follow the same coding guidelines used by the acute care hospitals to ensure accuracy and consistency in coding practices. There will be only one LTC–DRG assigned per long-term care hospitalization; it will be assigned at the discharge. Therefore, it is mandatory that the coders continue to report the same principal diagnosis on all claims and include all diagnostic codes that coexist at the time of admission, that are subsequently developed, or that affect the treatment received. Similarly, all procedures performed during that stay are to be reported on each claim. (For further information on the use of ICD–9–CM codes under the LTCH PPS, see the August 30, 2002 LTCH PPS final rule (67 FR 55979–55983).)

Upon the discharge of the patient from a LTCH, the LTCH must assign appropriate diagnosis and procedure codes from the ICD–9–CM. As of October 16, 2002, a LTCH that was required to comply with the HIPAA Administrative Simplification Standards and that had not obtained an extension in compliance with the Administrative Compliance Act (Pub. L. 107–105) is obligated to comply with the standards at 45 CFR 162.1002 and 45 CFR 162.1102. Completed claim forms are to be submitted to the LTCH's Medicare fiscal intermediary.

Medicare fiscal intermediaries enter the clinical and demographic information into their claims processing systems and subject this information to a series of automated screening processes called the Medicare Code Editor (MCE). These screens are designed to identify cases that require further review before assignment into a DRG can be made. (For more information on types of cases selected for further development, see the August 30, 2002 LTCH PPS final rule (67 FR 55979).)

After screening through the MCE, each LTCH claim will be classified into the appropriate LTC–DRG by the Medicare LTCH GROUPER. The LTCH GROUPER is specialized computer software based on the same GROUPER used under the IPPS. After the LTC–DRG is assigned, the Medicare fiscal intermediary determines the prospective payment by using the Medicare PRICER program, which accounts for LTCH hospital-specific adjustments. As provided for under the IPPS, we provide an opportunity for the LTCH to review the LTC–DRG assignments made by the fiscal intermediary and to submit additional information within a specified timeframe (§ 412.513(c)).

The GROUPER is used both to classify past cases in order to measure relative hospital resource consumption to establish the DRG weights and to classify current cases for purposes of determining payment. The records for all Medicare hospital inpatient discharges are maintained in the MedPAR file. The data in this file are used to evaluate possible DRG classification changes and to recalibrate the DRG weights during our annual update (as discussed in section II. of this preamble). The LTC–DRG weights are based on data for the population of LTCH discharges, reflecting the fact that LTCH patients represent a different patient mix than patients in short-term acute care hospitals.

3. Development of the Proposed FY 2004 LTC–DRG Relative Weights

a. General Overview of Development of the LTC–DRG Relative Weights. As we stated in the August 30, 2002 LTCH PPS final rule (67 FR 55984), one of the primary goals for the implementation of the LTCH IPPS is to pay each LTCH an appropriate amount for the efficient delivery of care to Medicare patients.

The system must be able to account adequately for each LTCH's case-mix in order to ensure both fair distribution of Medicare payments and access to adequate care for those Medicare patients whose care is more costly. To accomplish these goals, we adjust the LTCH PPS standard Federal prospective payment system rate by the LTC–DRG relative weights in determining payment to LTCHs for each case.

Under the LTCH PPS, relative weights for each LTC–DRG are a primary element used to account for the variations in cost per discharge and resource utilization among the payment groups (§ 412.515). To ensure that Medicare patients classified to each LTC–DRG have access to an appropriate level of services and to encourage efficiency, we calculate a relative weight for each LTC–DRG that represents the resources needed by an average inpatient LTCH case in that LTC–DRG. For example, cases in a LTC–DRG with a relative weight of 2 will, on average, cost twice as much as cases in a LTC–DRG with a weight of 1.

b. Data. To calculate the proposed LTC–DRG relative weights for FY 2004 in this proposed rule, we obtained total Medicare allowable charges from FY 2002 Medicare hospital bill data from the December 2002 update of the MedPAR file, and we used the proposed Version 21.0 of the CMS GROUPER used under the acute care hospital inpatient IPPS as discussed above in section II.B. of this preamble. Consistent with the methodology under the hospital IPPS, we are proposing to recalculate the FY 2004 LTC–DRG relative weights based on the best available data for the final rule.

As we discussed in further detail in the August 30, 2002 LTCH PPS final rule (67 FR 55984), based on comments regarding the data used in the development of the LTCH prospective payment system, we have excluded the data from LTCHs that are all-inclusive rate providers and LTCHs that are reimbursed in accordance with demonstration projects authorized under section 402(a) of Public Law 90–248 (42 U.S.C. 1395b–1) or section 222(a) of Public Law 92–603 (42 U.S.C. 1395b–1). Therefore, in the development of the proposed FY 2004 LTC–DRG relative weights we have excluded the data of the 22 all-inclusive rate providers and the 3 LTCHs that are paid in accordance with demonstration projects.

In addition, as we discussed in the August 30, 2002 LTCH PPS final rule (67 FR 55989), a data problem regarding the proposed FY 2003 LTC–DRG relative weight values that were determined using MedPAR (claims) data for FYs 2000 and 2001 was brought to our attention. Following notification of this problem, we researched the commenter's claims and determined that, given the long stays at LTCHs, some providers had submitted multiple bills for payment under the TEFRA reimbursement system for the same stay. Based upon our research, we became aware of the following situation: In certain LTCHs, hospital personnel apparently reported a different principal diagnosis on each bill since, under the TEFRA system, payment was not dependent upon principal diagnosis as it is under a DRG-based system. These claims from the MedPAR file were run through the LTCH GROUPER and used in determining the proposed FY 2003 relative weights for each LTC–DRG.

Since this issue was brought to our attention and we discovered that only data from the final bills were being extracted for the MedPAR file, it was possible that the original MedPAR file was not receiving the correct principal diagnosis. Therefore, in the August 30, 2002 final rule (67 FR 55989), we addressed the problem by identifying all LTCH cases in the FY 2001 MedPAR file for which multiple bills were submitted. For each of these cases, beginning with the first bill and moving forward consecutively through subsequent bills for that stay, we recorded the first unique diagnosis codes up to 10 and the first unique procedure codes up to 10. We then used these codes to appropriately group each LTCH case to a LTC–DRG for FY 2003.

As we noted above, we are proposing to use LTCH claims data from the FY 2002 MedPAR file for the determination of the proposed FY 2004 LTC–DRG relative weights. Since at the time (FY 2002) LTCHs were still reimbursed under the TEFRA reasonable cost-based system, some LTCHs also had submitted multiple bills for Medicare payment for the same stay. Thus, in certain LTCHs, hospital personnel were apparently still reporting a different principal diagnosis on each bill since, under the TEFRA system in FY 2002, payment was not dependent upon principal diagnosis as it is under a DRG-based system. Therefore, we are proposing to follow the same methodology outlined above to determine the appropriate diagnosis and procedure codes for those multiple bill LTCH cases in the FY 2002 MedPAR files, and we are proposing to use these codes to group each LTCH case to a proposed LTC–DRG for FY 2004. Since the LTCH PPS was implemented for cost reporting periods beginning on or after October 1, 2002 (FY 2003), we believe that this problem will be self-correcting as LTCHs submit more completely coded data in the future.

c. Hospital-Specific Relative Value Methodology. As we discussed in the August 30, 2002 LTCH PPS final rule (67 FR 55985), by nature LTCHs often specialize in certain areas, such as ventilator-dependent patients and rehabilitation and wound care. Some case types (DRGs) may be treated, to a large extent, in hospitals that have, from a perspective of charges, relatively high (or low) charges. Such nonarbitrary distribution of cases with relatively high (or low) charges in specific LTC–DRGs has the potential to inappropriately distort the measure of average charges. To account for the fact that cases may not be randomly distributed across LTCHs, as explained in that same final rule (67 FR 55985), we use a hospital-specific relative value method to calculate the proposed LTC–DRG relative weights instead of the methodology used to determine the proposed DRG relative weights under the hospital IPPS described above in section II.C. of this preamble. We believe this method will remove this hospital-specific source of bias in measuring LTCH average charges. Specifically, we reduce the impact of the variation in charges across providers on any particular LTC–DRG relative weight by converting each LTCH's charge for a case to a relative value based on that LTCH's average charge.

Under the hospital-specific relative value method, as we explained in the August 30, 2002 LTCH PPS final rule (67 FR 55985), we standardize charges for each LTCH by converting its charges for each case to hospital-specific relative charge values and then adjusting those values for the LTCH's case-mix. The adjustment for case-mix is needed to rescale the hospital-specific relative charge values (which, by definition, averages 1.0 for each LTCH). The average relative weight for a LTCH is its case-mix, so it is reasonable to scale each LTCH's average relative charge value by its case-mix. In this way, each LTCH's relative charge value is adjusted by its case-mix to an average that reflects the complexity of the cases it treats relative to the complexity of the cases treated by all other LTCHs (the average case-mix of all LTCHs).

In accordance with the methodology established in the August 30, 2002 LTCH PPS final rule (67 FR 55985), we standardize charges for each case by first dividing the adjusted charge for the case (adjusted for short-stay outliers under § 412.529 as described in section II.D.4. (step 3) of this preamble) by the average adjusted charge for all cases at the LTCH in which the case was treated.

Short-stay outliers under § 412.529 are cases with a length of stay that is less than or equal to five-sixths the average length of stay of the LTC–DRG. The average adjusted charge reflects the average intensity of the health care services delivered by a particular LTCH and the average cost level of that LTCH. The resulting ratio is multiplied by that LTCH's case-mix index to determine the standardized charge for the case.

Multiplying by the LTCH's case-mix index accounts for the fact that the same relative charges are given greater weight in a LTCH with higher average costs than they would at a LTCH with low average costs which is needed to adjust each LTCH's relative charge value to reflect its case-mix relative to the average case-mix for all LTCHs. Because we standardize charges in this manner, we count charges for a Medicare patient at a LTCH with high average charges as less resource intensive than they would be at a LTCH with low average charges. For example, a $10,000 charge for a case in a LTCH with an average adjusted charge of $17,500 reflects a higher level of relative resource use than a $10,000 charge for a case in a LTCH with the same case-mix, but an average adjusted charge of $35,000. We believe that the adjusted charge of an individual case more accurately reflects actual resource use for an individual LTCH because the variation in charges due to systematic differences in the markup of charges among LTCHs is taken into account.

d. Low Volume LTC–DRGs. In order to account for LTC–DRGs with low volume (that is, with fewer than 25 LTCH cases), in accordance with the methodology we established in the August 30, 2002 LTCH PPS final rule (67 FR 55985), we group those low volume LTC–DRGs into one of five categories (quintiles) based on average charges, for the purposes of determining relative weights. For this proposed rule, using LTCH cases from the December 2002 update of the FY 2002 MedPAR file, we identified 163 proposed LTC–DRGs that contained between 1 and 24 cases. This list of proposed LTC–DRGs was then divided into one of the five proposed low volume quintiles, each containing a minimum of 32 proposed LTC–DRGs (163/5 = 32 with 3 proposed LTC–DRGs as the remainder). For FY 2004, we are proposing to make an assignment to a specific low volume quintile by sorting the 163 low volume proposed LTC–DRGs in ascending order by average charge. Since the number of proposed LTC–DRGs with less than 25 LTCH cases is not evenly divisible by five, the average charge of the low volume proposed LTC–DRG was used to determine which proposed low volume quintile received the additional proposed LTC–DRG. After sorting the 163 low volume proposed LTC–DRGs in ascending order, we are proposing that the first fifth (32) of low volume proposed LTC–DRGs with the lowest average charge would be grouped into Quintile 1. Since the average charge of the 33rd proposed LTC–DRG in the sorted list is closer to the previous proposed LTC–DRG's average charge (assigned to proposed Quintile 1) than to the average charge of the 34th proposed LTC–DRG on the sorted list (to be assigned to proposed Quintile 2), we are proposing to place it into proposed Quintile 1. The highest average charge cases would then be grouped into proposed Quintile 5. This process would be repeated through the remaining low volume proposed LTC–DRGs so that 3 proposed low volume quintiles would contain 33 proposed LTC–DRGs and 2 proposed low volume quintiles would contain 32 proposed LTC–DRGs.

In order to determine the proposed relative weights for the proposed LTC–DRGs with low volume for FY 2004, in accordance with the methodology established in the August 30, 2002 LTCH PPS final rule (67 FR 55985), we would use the five proposed low volume quintiles described above. The proposed composition of each of the five low volume quintiles shown below in Table 1 would be used in determining the proposed LTC–DRG relative weights for FY 2004. We would determine a proposed relative weight and (geometric) average length of stay for each of the five proposed low volume quintiles using the formula that we are proposing to apply to the regular proposed LTC–DRGs (25 or more cases), as described below in section II.D.4. of this preamble. We are proposing to assign the same proposed relative weight and average length of stay to each of the proposed LTC–DRGs that make up that proposed low volume quintile. We note that as this system is dynamic, it is possible that the number and specific type of LTC–DRGs with a low volume of LTCH cases will vary in the future. We use the best available claims data in the MedPAR file to identify low volume LTC–DRGs and to calculate the relative weights based on our methodology.

TABLE 1.—PROPOSED COMPOSITION OF LOW VOLUME QUINTILES

Proposed LTC–DRG	Description
Proposed Quintile 1	
044	ACUTE MAJOR EYE INFECTIONS
047	OTHER DISORDERS OF THE EYE AGE >17 W/O CC
065	DYSEQUILIBRIUM
066	EPISTAXIS
069	OTITIS MEDIA & URI AGE >17 W/O CC
072	NASAL TRAUMA & DEFORMITY
128	DEEP VEIN THROMBOPHLEBITIS
149	MAJOR SMALL & LARGE BOWEL PROCEDURES W/O CC
178	UNCOMPLICATED PEPTIC ULCER W/O CC
192	PANCREAS, LIVER & SHUNT PROCEDURES W/O CC
262	BREAST BIOPSY & LOCAL EXCISION FOR NON-MALIGNANCY
273	MAJOR SKIN DISORDERS W/O CC
276	NON-MALIGNANT BREAST DISORDERS
305	KIDNEY,URETER & MAJOR BLADDER PROC FOR NON-NEOPL W/O CC
311	TRANSURETHRAL PROCEDURES W/O CC
319	KIDNEY & URINARY TRACT NEOPLASMS W/O CC
328	URETHRAL STRICTURE AGE >17 W CC
339	TESTES PROCEDURES, NON-MALIGNANCY AGE >17
342	CIRCUMCISION AGE >17
348	BENIGN PROSTATIC HYPERTROPHY W CC
349	BENIGN PROSTATIC HYPERTROPHY W/O CC

TABLE 1.—PROPOSED COMPOSITION OF LOW VOLUME QUINTILES—Continued

Proposed LTC–DRG	Description
376	POSTPARTUM & POST ABORTION DIAGNOSES W/O O.R. PROCEDURE
385	NEONATES, DIED OR TRANSFERRED TO ANOTHER ACUTE CARE FACILITY
399	RETICULOENDOTHELIAL & IMMUNITY DISORDERS W/O CC
420	FEVER OF UNKNOWN ORIGIN AGE >17 W/O CC
428	DISORDERS OF PERSONALITY & IMPULSE CONTROL
431	CHILDHOOD MENTAL DISORDERS
432	OTHER MENTAL DISORDER DIAGNOSES
455	OTHER INJURY, POISONING & TOXIC EFFECT DIAG W/O CC
465	AFTERCARE W HISTORY OF MALIGNANCY AS SECONDARY DIAGNOSIS
508	FULL THICKNESS BURN W/O SKIN GRFT OR INH INJ W/O CC OR SIG TRAUMA
511	NON-EXTENSIVE BURNS W/O CC OR SIGNIFICANT TRAUMA
540	LYMPHOMA AND LEUKEMIA WITH MAJOR O.R. PROCEDURE WITHOUT CC
Proposed Quintile 2	
021	VIRAL MENINGITIS
022	HYPERTENSIVE ENCEPHALOPATHY
031**	CONCUSSION AGE >17 W CC
046	OTHER DISORDERS OF THE EYE AGE >17 W CC
053	SINUS & MASTOID PROCEDURES AGE >17
084	MAJOR CHEST TRAUMA W/O CC
177	UNCOMPLICATED PEPTIC ULCER W CC
193	BILIARY TRACT PROC EXCEPT ONLY CHOLECYST W OR W/O C.D.E. W CC
194*	BILIARY TRACT PROC EXCEPT ONLY CHOLECYST W OR W/O C.D.E. W/O CC
200	HEPATOBILIARY DIAGNOSTIC PROCEDURE FOR NON-MALIGNANCY
206	DISORDERS OF LIVER EXCEPT MALIG, CIRR, ALC HEPA W/O CC
208	DISORDERS OF THE BILIARY TRACT W/O CC
211	HIP & FEMUR PROCEDURES EXCEPT MAJOR JOINT AGE >17 W/O CC
232	ARTHROSCOPY
234	OTHER MUSCULOSKELET SYS & CONN TISS O.R. PROC W/O CC
237	SPRAINS, STRAINS, & DISLOCATIONS OF HIP, PELVIS & THIGH
275	MALIGNANT BREAST DISORDERS W/O CC
299	INBORN ERRORS OF METABOLISM
309	MINOR BLADDER PROCEDURES W/O CC
323	URINARY STONES W CC, &/OR ESW LITHOTRIPSY
324	URINARY STONES W/O CC
341	PENIS PROCEDURES
344	OTHER MALE REPRODUCTIVE SYSTEM O.R. PROCEDURES FOR MALIGNANCY
367	MALIGNANCY, FEMALE REPRODUCTIVE SYSTEM W/O CC
414	OTHER MYELOPROLIF DIS OR POORLY DIFF NEOPL DIAG W/O CC
421	VIRAL ILLNESS AGE >17
454	OTHER INJURY, POISONING & TOXIC EFFECT DIAG W CC
473	ACUTE LEUKEMIA W/O MAJOR O.R. PROCEDURE AGE >17
497**	SPINAL FUSION W CC
502	KNEE PROCEDURES W PDX OF INFECTION W/O CC
506	FULL THICKNESS BURN W SKIN GRAFT OR INHAL INJ W CC OR SIG TRAUMA
507*	FULL THICKNESS BURN W SKIN GRFT OR INHAL INJ W/O CC OR SIG TRAUMA
508	FULL THICKNESS BURN W/O SKIN GRFT OR INHAL INJ W CC OR SIG TRAUMA
510	NON-EXTENSIVE BURNS W CC OR SIGNIFICANT TRAUMA
529	VENTRICULAR SHUNT PROCEDURES WITH CC
Proposed Quintile 3	
031*	CONCUSSION AGE >17 W CC
032	CONCUSSION AGE >17 W/O CC
063	OTHER EAR, NOSE, MOUTH & THROAT O.R. PROCEDURES
083	MAJOR CHEST TRAUMA W CC
117	CARDIAC PACEMAKER REVISION EXCEPT DEVICE REPLACEMENT
119	VEIN LIGATION & STRIPPING
158	ANAL & STOMAL PROCEDURES W/O CC
194**	BILIARY TRACT PROC EXCEPT ONLY CHOLECYST W OR W/O C.D.E. W/O CC
197	CHOLECYSTECTOMY EXCEPT BY LAPAROSCOPE W/O C.D.E. W CC
218	LOWER EXTREM & HUMER PROC EXCEPT HIP, FOOT, FEMUR AGE >17 W CC
223	MAJOR SHOULDER/ELBOW PROC, OR OTHER UPPER EXTREMITY PROC W CC
228	MAJOR THUMB OR JOINT PROC, OR OTH HAND OR WRIST PROC W CC
257	TOTAL MASTECTOMY FOR MALIGNANCY W CC
293	OTHER ENDOCRINE, NUTRIT & METAB O.R. PROC W/O CC
295	DIABETES AGE 0–35
317	ADMIT FOR RENAL DIALYSIS
345	OTHER MALE REPRODUCTIVE SYSTEM O.R. PROC EXCEPT FOR MALIGNANCY
347***	MALIGNANCY, MALE REPRODUCTIVE SYSTEM, W/O CC
352	OTHER MALE REPRODUCTIVE SYSTEM DIAGNOSES

TABLE 1.—PROPOSED COMPOSITION OF LOW VOLUME QUINTILES—Continued

Proposed LTC–DRG	Description
369	MENSTRUAL & OTHER FEMALE REPRODUCTIVE SYSTEM DISORDERS
402	LYMPHOMA & NON- ACUTE LEUKEMIA W OTHER O.R. PROC W/O CC
408	MYELOPROLIF DISORD OR POORLY DIFF NEOPL W OTHER O.R.PROC
410	CHEMOTHERAPY W/O ACUTE LEUKEMIA AS SECONDARY DIAGNOSIS
411	HISTORY OF MALIGNANCY W/O ENDOSCOPY
419	FEVER OF UNKNOWN ORIGIN AGE >17 W CC
443	OTHER O.R. PROCEDURES FOR INJURIES W/O CC
447	ALLERGIC REACTIONS AGE >17
449	POISONING & TOXIC EFFECTS OF DRUGS AGE >17 W CC
450	POISONING & TOXIC EFFECTS OF DRUGS AGE >17 W/O CC
497*	SPINAL FUSION W CC
498*	SPINAL FUSION W/O CC
503	KNEE PROCEDURES W/O PDX OF INFECTION
505	EXTENSIVE 3RD DEGREE BURNS W/O SKIN GRAFT
507**	FULL THICKNESS BURN W SKIN GRFT OR INHAL INJ W/O CC OR SIG TRAUMA
518	PERCUTANEOUS CARDIVASCULAR PROC W/O CORONARY ARTERY STENT OR AMI
	Proposed Quintile 4
008	PERIPH & CRANIAL NERVE & OTHER NERV SYST PROC W/O CC
061	MYRINGOTOMY W TUBE INSERTION AGE >17
095***	PNEUMOTHORAX W/O CC
124	CIRCULATORY DISORDERS EXCEPT AMI, W CARD CATH & COMPLEX DIAG
125	CIRCULATORY DISORDERS EXCEPT AMI, W CARD CATH W/O COMPLEX DIAG
150	PERITONEAL ADHESIOLYSIS W CC
152	MINOR SMALL & LARGE BOWEL PROCEDURES W CC
157	ANAL & STOMAL PROCEDURES W CC
161	INGUINAL & FEMORAL HERNIA PROCEDURES AGE >17 W CC
191	PANCREAS, LIVER & SHUNT PROCEDURES W CC
195	CHOLECYSTECTOMY W C.D.E. W CC
210	HIP & FEMUR PROCEDURES EXCEPT MAJOR JOINT AGE >17 W CC
226	SOFT TISSUE PROCEDURES W CC
227	SOFT TISSUE PROCEDURES W/O CC
230	LOCAL EXCISION & REMOVAL OF INT FIX DEVICES OF HIP & FEMUR
258	SKIN, SUBCUTANEOUS TISSUE & BREAST PLASTIC PROCEDURES
306	PROSTATECTOMY W CC
308	MINOR BLADDER PROCEDURES W CC
310	TRANSURETHRAL PROCEDURES W CC
312	URETHRAL PROCEDURES, AGE >17 W CC
360	VAGINA, CERVIX & VULVA PROCEDURES
394	OTHER O.R. PROCEDURES OF THE BLOOD AND BLOOD FORMING ORGANS
427	NEUROSES EXCEPT DEPRESSIVE
479***	OTHER VASCULAR PROCEDURES W/O CC
488	OTHER O.R. PROCEDURES FOR MULTIPLE SIGNIFICANT TRAUMA
493	LAPAROSCOPIC CHOLECYSTECTOMY W/O C.D.E. W CC
494*	LAPAROSCOPIC CHOLECYSTECTOMY W/O C.D.E. W/O CC
498**	SPINAL FUSION W/O CC
500	BACK & NECK PROCEDURES EXCEPT SPINAL FUSION W/O CC
517	PERCUTANEOUS CARDIVASCULAR PROC W NON-DRUG ELUTING STENT W/O AMI
519	CERVICAL SPINAL FUSION W CC
532	SPINAL PROCEDURES WITHOUT CC
538	LOCAL EXCISION AND REMOVAL OF INTERNAL FIXATION DEVICES EXCEPT HIP AND FEMUR WITHOUT CC
	Proposed Quintile 5
001	CRANIOTOMY AGE >17 W CC
055	MISCELLANEOUS EAR, NOSE, MOUTH & THROAT PROCEDURES
075	MAJOR CHEST PROCEDURES
077	OTHER RESP SYSTEM O.R. PROCEDURES W/O CC
108	OTHER CARDIOTHORACIC PROCEDURES
110	MAJOR CARDIOVASCULAR PROCEDURES W CC
115	PRM CARD PACEM IMPL W AMI,HRT FAIL OR SHK,OR AICD LEAD OR GNRTR P
116	OTH PERM CARD PACEMAK IMPL OR PTCA W CORONARY ARTERY STENT IMPLNT
118	CARDIAC PACEMAKER DEVICE REPLACEMENT
154	STOMACH, ESOPHAGEAL & DUODENAL PROCEDURES AGE >17 W CC
168	MOUTH PROCEDURES W CC
171***	OTHER DIGESTIVE SYSTEM O.R. PROCEDURES W/O CC
201	OTHER HEPATOBILIARY OR PANCREAS O.R. PROCEDURES
209	MAJOR JOINT & LIMB REATTACHMENT PROCEDURES OF LOWER EXTREMITY
216	BIOPSIES OF MUSCULOSKELETAL SYSTEM & CONNECTIVE TISSUE
261	BREAST PROC FOR NON-MALIGNANCY EXCEPT BIOPSY & LOCAL EXCISION

TABLE 1.—PROPOSED COMPOSITION OF LOW VOLUME QUINTILES—Continued

Proposed LTC–DRG	Description
266***	SKIN GRAFT &/OR DEBRID EXCEPT FOR SKIN ULCER OR CELLULITIS W/O CC
288	O.R. PROCEDURES FOR OBESITY
304	KIDNEY,URETER & MAJOR BLADDER PROC FOR NON-NEOPL W CC
365	OTHER FEMALE REPRODUCTIVE SYSTEM O.R. PROCEDURES
401	LYMPHOMA & NON-ACUTE LEUKEMIA W OTHER O.R. PROC W CC
406	MYELOPROLIF DISORD OR POORLY DIFF NEOPL W MAJ O.R.PROC W CC
412	HISTORY OF MALIGNANCY W ENDOSCOPY
441	HAND PROCEDURES FOR INJURIES
471	BILATERAL OR MULTIPLE MAJOR JOINT PROCS OF LOWER EXTREMITY
482	TRACHEOSTOMY FOR FACE,MOUTH & NECK DIAGNOSES
488	HIV W EXTENSIVE O.R. PROCEDURE
494**	LAPAROSCOPIC CHOLECYSTECTOMY W/O C.D.E. W/O CC
499	BACK & NECK PROCEDURES EXCEPT SPINAL FUSION W CC
501	KNEE PROCEDURES W PDX OF INFECTION W CC
515	CARDIAC DEFIBRILATOR IMPLANT W/O CARDIAC CATH
534	EXTRACRANIAL VASCULAR PROCEDURES WITHOUT CC
536	CARDIAC DEFIB IMPLANT WITH CARDIAC CATH WITHOUT AMI/HF/SHOCK

*One of the original 163 low volume proposed LTC–DRGs initially assigned to a different proposed low volume quintile; reassigned to this proposed low volume quintile in addressing nonmonotonicity (see step 5 below).

**One of the original 163 low volume proposed LTC–DRGs initially assigned to this proposed low volume quintile; reassigned to a different proposed low volume quintile in addressing nonmonotonicity (see step 5 below).

***One of the original 163 low volume proposed LTC–DRGs initially assigned to this proposed low volume quintile; removed from the proposed low volume quintiles in addressing nonmonotonicity (see step 5 below).

4. Steps for Determining the Proposed FY 2004 LTC–DRG Relative Weights

As we noted previously, the proposed FY 2004 LTC–DRG relative weights are determined in accordance with the methodology established in the August 30, 2002 LTCH PPS final rule (67 FR 55989–55991). In summary, LTCH cases must be grouped in the appropriate proposed LTC–DRG, while taking into account the low volume proposed LTC–DRGs as described above, before the proposed FY 2004 LTC–DRG relative weights can be determined. After grouping the cases in the appropriate proposed LTC–DRG, we are proposing to calculate the proposed relative weights for FY 2004 in this proposed rule by first removing statistical outliers and cases with a length of stay of 7 days or less. Next, we are proposing to adjust the number of cases in each proposed LTC–DRG for the effect of short-stay outlier cases under § 412.529. The short-stay adjusted discharges and corresponding charges would be used to calculate "relative adjusted weights" in each proposed LTC–DRG using the hospital-specific relative value method described above.

Below we discuss in detail the steps for calculating the proposed FY 2004 LTC–DRG relative weights, in accordance with the methodology established in the August 30, 2002 LTCH PPS final rule (67 FR 55989–55991).

Step 1—Remove statistical outliers. The first step in the calculation of the proposed FY 2004 LTC–DRG relative weights is to remove statistical outlier cases. We define statistical outliers as cases that are outside of 3.0 standard deviations from the mean of the log distribution of both charges per case and the charges per day for each proposed LTC–DRG. These statistical outliers would be removed prior to calculating the proposed relative weights. We believe that they may represent aberrations in the data that distort the measure of average resource use. Including those LTCH cases in the calculation of the proposed relative weights could result in an inaccurate proposed relative weight that does not truly reflect relative resource use among the proposed LTC–DRGs.

Step 2—Remove cases with a length of stay of 7 days or less. The proposed FY 2004 LTC–DRG relative weights should reflect the average of resources used on representative cases of a specific type. Generally, cases with a length of stay 7 days or less do not belong in a LTCH, since such stays do not fully receive or benefit from treatment that is typical in a LTCH stay and full resources are often not used in the earlier stages of admission to a LTCH. If we were to include stays of 7 days or less in the computation of the proposed FY 2004 LTC–DRG relative weights, the value of many proposed relative weights would decrease and, therefore, payments would decrease to a level that may no longer be appropriate.

We do not believe that it would be appropriate to compromise the integrity of the payment determination for those LTCH cases that actually benefit from and receive a full course of treatment at a LTCH, in order to include data from these very short-stays. Thus, in determining the proposed FY 2004 LTC–DRG relative weights, we remove LTCH cases with a length of stay of 7 days or less.

Step 3—Adjust charges for the effects of short-stay outliers. The third step in the calculation of the proposed FY 2004 LTC–DRG relative weights is to adjust each LTCH's charges per discharge for short-stay outlier cases (that is, a patient with a length of stay that is less than or equal to five-sixths the average length of stay of the LTC–DRG as described in the August 30, 2002 LTCH PPS final rule (67 FR 55977).

We make this adjustment by counting a short-stay outlier as a fraction of a discharge based on the ratio of the length of stay of the case to the average length of stay for the proposed LTC–DRG for nonshort-stay outlier cases. This has the effect of proportionately reducing the impact of the lower charges for the short-stay outlier cases in calculating the average charge for the proposed LTC–DRG. This process produces the same result as if the actual charges per discharge of a short-stay outlier case were adjusted to what they would have been had the patient's length of stay been equal to the average length of stay of the proposed LTC–DRG.

As we explained in the August 30, 2002 LTCH PPS final rule (67 FR 55990), counting short-stay outlier cases as full discharges with no adjustment in determining the proposed LTC–DRG relative weights would lower the proposed LTC–DRG relative weight for affected proposed LTC–DRGs because the relatively lower charges of the short-

stay outlier cases would bring down the average charge for all cases within a proposed LTC–DRG. This would result in an "underpayment" to nonshort-stay outlier cases and an "overpayment" to short-stay outlier cases. Therefore, in this proposed rule, in accordance with the methodology established in the August 30, 2002 LTCH PPS final rule (67 FR 55990), we adjust for short-stay outlier cases under § 412.529 in this manner since it would result in more appropriate payments for all LTCH cases.

Step 4—Calculate the proposed FY 2004 LTC–DRG relative weights on an iterative basis. The process of calculating the LTC–DRG relative weights using the hospital specific relative value methodology is iterative. First, for each LTCH case, we calculate a hospital-specific relative charge value by dividing the short-stay outlier adjusted charge per discharge (see step 3) of the LTCH case (after removing the statistical outliers (see step 1)) and LTCH cases with a length of stay of 7 days or less (see step 2) by the average charge per discharge for the LTCH in which the case occurred. The resulting ratio is then multiplied by the LTCH's case-mix index to produce an adjusted hospital-specific relative charge value for the case. An initial case-mix index value of 1.0 is used for each LTCH.

For each proposed LTC–DRG, the proposed FY 2004 LTC–DRG relative weight is calculated by dividing the average of the adjusted hospital-specific relative charge values (from above) for the proposed LTC–DRG by the overall average hospital-specific relative charge value across all cases for all LTCHs. Using these recalculated proposed LTC–DRG relative weights, each LTCH's average proposed relative weight for all of its cases (case-mix) is calculated by dividing the sum of all the LTCH's proposed LTC–DRG relative weights by its total number of cases. The LTCHs' hospital-specific relative charge values above are multiplied by these hospital specific case-mix indexes. These hospital-specific case-mix adjusted relative charge values are then used to calculate a new set of proposed LTC–DRG relative weights across all LTCHs. In this proposed rule, this iterative process is continued until there is convergence between the weights produced at adjacent steps, for example, when the maximum difference is less than 0.0001.

Step 5—Adjust the proposed FY 2004 LTC–DRG relative weights to account for nonmonotonically increasing relative weights. As explained in section II.B. of this preamble, the proposed FY 2004 CMS DRGs, upon which the proposed FY 2004 LTC–DRGs are based, contain "pairs" that are differentiated based on the presence or absence of CCs. The proposed LTC–DRGs with CCs are defined by certain secondary diagnoses not related to or inherently a part of the disease process identified by the principal diagnosis, but the presence of additional diagnoses does not automatically generate a CC. As we discussed in the August 30, 2002 LTCH PPS final rule (67 FR 55990), the value of monotonically increasing relative weights rises as the resource use increases (for example, from uncomplicated to more complicated). The presence of CCs in a proposed LTC–DRG means that cases classified into a "without CC" proposed LTC–DRG are expected to have lower resource use (and lower costs). In other words, resource use (and costs) are expected to decrease across "with CC"/"without CC" pairs of proposed LTC–DRGs.

For a case to be assigned to a proposed LTC–DRG with CCs, as we explained in the August 30, 2002 LTCH PPS final rule (67 FR 55990), more coded information is called for (that is, at least one relevant secondary diagnosis), than for a case to be assigned to a proposed LTC–DRG "without CCs" (which is based on only one principal diagnosis and no relevant secondary diagnoses). Currently, the LTCH claims data include both accurately coded cases without complications and cases that have complications (and cost more) but were not coded completely. Both types of cases are grouped to a proposed LTC–DRG "without CCs" since only one principal diagnosis was coded. Since LTCHs were previously paid under cost-based reimbursement, which is not based on patient diagnoses, LTCHs' coding for these cases may not have been as detailed as possible.

Thus, in developing the FY 2003 LTC–DRG relative weights for the LTCH PPS based on FY 2001 claims data, as we explained in the August 30, 2002 LTCH PPS final rule (67 FR 55990), we found on occasion that the data suggested that cases classified to the LTC–DRG "with CCs" of a "with CC"/"without CC" pair had a lower average charge than the corresponding LTC–DRG "without CCs." Similarly, based on FY 2002 claims data, we also found on occasion that the data suggested that cases classified to the proposed LTC–DRG "with CCs" of a "with CC"/"without CC" pair would have a lower average charge than the corresponding proposed LTC–DRG "without CCs" for FY 2004.

We believe this anomaly may be due to coding that may not have fully reflected all comorbidities that were present. Specifically, LTCHs may have failed to code relevant secondary diagnoses, which resulted in cases that actually had CCs being classified into a "without CC" LTC–DRG. It would not be appropriate to pay a lower amount for the "with CC" LTC–DRG. Therefore, in this proposed rule, in accordance with the methodology established in that same final rule (67 FR 55990–55991), we grouped both the cases "with CCs" and "without CCs" together for the purpose of calculating the proposed FY 2004 LTC–DRG relative weights. We continue to employ this methodology to account for nonmonotonically increasing relative weights until we have adequate data to calculate appropriate separate weights for these anomalous LTC–DRG pairs. We expect that, as was the case when we first implemented the IPPS, this problem will be self-correcting, as LTCHs submit more completely coded data in the future.

As we discussed in the August 30, 2002 LTCH PPS final rule (67 FR 55990), there are three types of "with CC" and "without CC" pairs that were nonmonotonic, that is, where the "without CC" proposed LTC–DRG would have a higher average charge than the "with CC" proposed LTC–DRG. For this proposed rule, using the LTCH cases in the December 2002 update of the FY 2002 MedPAR file, we identified two of the types of nonmonotonic LTC–DRG pairs.

The first category of nonmonotonically increasing relative weights for proposed FY 2004 LTC–DRG pairs "with and without CCs" contains no pairs of proposed LTC–DRGs in which both the proposed LTC–DRG "with CCs" and the proposed LTC–DRG "without CCs" had 25 or more LTCH cases and, therefore, would not fall into one of the 5 proposed low volume quintiles. For that type of nonmonotonic LTC–DRG pair, in accordance with the methodology established in the August 30, 2002 LTCH PPS final rule (67 FR 55990–55991), we would combine the LTCH cases and compute a new proposed relative weight based on the case-weighted average of the combined LTCH cases of the proposed LTC–DRGs. The case-weighted average charge is determined by dividing the total charges for all LTCH cases by the total number of LTCH cases for the combined proposed LTC–DRG. This new proposed relative weight would then be assigned to both of the proposed LTC–DRGs in the pair. However, as there are no pairs that fall into this category, in this proposed rule, we are proposing that, for FY 2004, there would be zero proposed LTC–DRGs in this category.

The second category of nonmonotonically increasing relative weights for proposed LTC–DRG pairs with and without CCs consists of 5 pairs of proposed LTC–DRGs that has fewer than 25 cases, and each proposed LTC–DRG would be grouped to different proposed low volume quintiles in which the "without CC" proposed LTC–DRG would be in a higher-weighted proposed low volume quintile than the "with CC" proposed LTC–DRG. For those pairs, in accordance with the methodology established in the August 30, 2002 LTCH PPS final rule (67 FR 55990–55991), we combine the LTCH cases and determine the case-weighted average charge for all LTCH cases. The case-weighted average charge is determined by dividing the total charges for all LTCH cases by the total number of LTCH cases for the combined proposed LTC–DRG. Based on the case-weighted average LTCH charge, we determine which proposed low volume quintile the "combined proposed LTC–DRG" would be grouped. Both proposed LTC–DRGs in the pair are then grouped into the same proposed low volume quintile, and thus would have the same proposed relative weight. For the FY 2004, in this proposed rule, we are proposing that the following proposed LTC–DRGs would be in this category: Proposed LTC–DRGs 31 and 32 (proposed low volume quintile 3); proposed LTC–DRGs 193 and 194 (proposed low volume quintile 2); proposed LTC–DRGs 493 and 494 (proposed low volume quintile 4); proposed LTC–DRGs 497 and 498 (proposed low volume quintile 3); and proposed LTC–DRGs 506 and 507 (proposed low volume quintile 2).

The third category of nonmonotonically increasing relative weights for proposed LTC–DRG pairs with and without CCs consists of 5 pairs of proposed LTC–DRGs where one of the proposed LTC–DRGs has fewer than 25 LTCH cases and is grouped to a proposed low volume quintile and the other proposed LTC–DRG has 25 or more LTCH cases and has its own proposed LTC–DRG relative weight, and the proposed LTC–DRG "without CCs" has the higher proposed relative weight. In accordance with the methodology established in the August 30, 2002 LTCH PPS final rule (67 FR 55990 and 55991), we remove the proposed low volume LTC–DRG from the proposed low volume quintile and combine it with the other proposed LTC–DRG for the computation of a new proposed relative weight for each of these proposed LTC–DRGs. This new proposed relative weight is assigned to both proposed LTC–DRGs, so they each have the same proposed relative weight. For FY 2004, in this proposed rule, we are proposing the following proposed LTC–DRGs would be in this category: Proposed LTC–DRGs 94 and 95; proposed LTC–DRGs 170 and 171; proposed LTC–DRGs 265 and 266; proposed LTC–DRGs 346 and 347; and proposed LTC–DRGs 478 and 479.

Step 6—Determine a proposed FY 2004 LTC–DRG relative weight for LTC–DRGs with no LTCH cases. As we stated above, we determine the proposed relative weight for each proposed LTC–DRG using charges reported in the December 2002 update of the FY 2002 MedPAR file. Of the 518 proposed LTC–DRGs for FY 2004, we identified 164 proposed LTC–DRGs for which there were no LTCH cases in the database. That is, based on data from the FY 2002 MedPAR file used in this proposed rule, no patients who would have been classified to those proposed LTC–DRGs were treated in LTCHs during FY 2002 and, therefore, no charge data were reported for those proposed LTC–DRGs. Thus, in the process of determining the proposed LTC–DRG relative weights, we are unable to determine proposed weights for these 164 proposed LTC–DRGs using the methodology described in steps 1 through 5 above. However, since patients with a number of the diagnoses under these proposed LTC–DRGs may be treated at LTCHs beginning in FY 2004, in accordance with the methodology established in the August 30, 2002 LTCH PPS final rule (67 FR 55991), we assign proposed relative weights to each of the 164 "no volume" proposed LTC–DRGs based on clinical similarity and relative costliness to one of the remaining 354 (518 − 164 = 354) proposed LTC–DRGs for which we are able to determine proposed relative weights, based on FY 2002 claims data.

As there are currently no LTCH cases in these "no volume" proposed LTC–DRGs, in accordance with the methodology established in the August 30, 2002 LTCH PPS final rule (67 FR 55991), we determine proposed relative weights for the 164 proposed LTC–DRGs with no LTCH cases in the FY 2002 MedPAR file used in this proposed rule by grouping them to the appropriate proposed low volume quintile. This methodology is consistent with our methodology used in determining proposed relative weights to account for the proposed low volume LTC–DRGs described above.

As we described in the August 30, 2002 LTCH PPS final rule (67 FR 55991), our methodology for determining proposed relative weights for the "no volume" proposed LTC–DRGs is as follows: First, we crosswalk the no volume proposed LTC–DRGs by matching them to other similar proposed LTC–DRGs for which there were LTCH cases in the FY 2002 MedPAR file based on clinical similarity and intensity of use of resources as determined by care provided during the period of time surrounding surgery, surgical approach (if applicable), length of time of surgical procedure, post-operative care, and length of stay. We assign the proposed relative weight for the applicable proposed low volume quintile to the no volume proposed LTC–DRG if the proposed LTC–DRG to which it is crosswalked is grouped to one of the proposed low volume quintiles. If the proposed LTC–DRG to which the no volume proposed LTC–DRG is crosswalked is not one of the proposed LTC–DRGs to be grouped to one of the proposed low volume quintiles, we compare the proposed relative weight of the proposed LTC–DRG to which the no volume proposed LTC–DRG is crosswalked to the proposed relative weights of each of the five proposed quintiles and we assign the no volume proposed LTC–DRG the proposed relative weight of the proposed low volume quintile with the closest weight. For this proposed rule, a list of the no volume proposed FY 2004 LTC–DRGs and the proposed FY 2004 LTC–DRG to which it is crosswalked in order to determine the appropriate proposed low volume quintile for the assignment of a proposed relative weight for FY 2004 is shown below in Table 2.

TABLE 2.—PROPOSED NO VOLUME LTC–DRG CROSSWALK AND PROPOSED QUINTILE ASSIGNMENT FOR FY 2004

LTC–DRG	Description	Cross walked LTC–DRG	Low volume quintile assigned
2	CRANIOTOMY AGE > 17 W/O CC	1	Quintile 5.
3	CRANIOTOMY AGE 0–17	1	Quintile 5.

TABLE 2.—PROPOSED NO VOLUME LTC–DRG CROSSWALK AND PROPOSED QUINTILE ASSIGNMENT FOR FY 2004—Continued

LTC–DRG	Description	Cross walked LTC–DRG	Low volume quintile assigned
6	CARPAL TUNNEL RELEASE	251	Quintile 1.
26	SEIZURE & HEADACHE AGE 0–17	25	Quintile 2.
30	TRAUMATIC STUPOR & COMA, COMA <1 HR AGE 0–17	29	Quintile 3.
33	CONCUSSION AGE 0–17	25	Quintile 2.
36	RETINAL PROCEDURES	47	Quintile 1.
37	ORBITAL PROCEDURES	47	Quintile 1.
38	PRIMARY IRIS PROCEDURES	47	Quintile 1.
39	LENS PROCEDURES WITH OR WITHOUT VITRECTOMY	47	Quintile 1.
40	EXTRAOCULAR PROCEDURES EXCEPT ORBIT AGE >17	47	Quintile 1.
41	EXTRAOCULAR PROCEDURES EXCEPT ORBIT AGE 0–17	47	Quintile 1.
42	INTRAOCULAR PROCEDURES EXCEPT RETINA, IRIS & LENS	47	Quintile 1.
43	HYPHEMA	47	Quintile 1.
45	NEUROLOGICAL EYE DISORDERS	46	Quintile 2.
48	OTHER DISORDERS OF THE EYE AGE 0–17	47	Quintile 1.
49	MAJOR HEAD & NECK PROCEDURES	64	Quintile 4.
50	SIALOADENECTOMY	63	Quintile 3.
51	SALIVARY GLAND PROCEDURES EXCEPT SIALOADENECTOMY	63	Quintile 3.
52	CLEFT LIP & PALATE REPAIR	63	Quintile 3.
54	SINUS & MASTOID PROCEDURES AGE 0–17	63	Quintile 3.
56	RHINOPLASTY	72	Quintile 1.
57	T&A PROC, EXCEPT TONSILLECTOMY &/OR ADENOIDECTOMY ONLY, AGE >17	63	Quintile 3.
58	T&A PROC, EXCEPT TONSILLECTOMY &/OR ADENOIDECTOMY ONLY, AGE 0–17	63	Quintile 3.
59	TONSILLECTOMY &/OR ADENOIDECTOMY ONLY, AGE >17	63	Quintile 3.
60	TONSILLECTOMY &/OR ADENOIDECTOMY ONLY, AGE 0–17	63	Quintile 3.
62	MYRINGOTOMY W TUBE INSERTION AGE 0–17	63	Quintile 3.
67	EPIGLOTTITIS	63	Quintile 3.
70	OTITIS MEDIA & URI AGE 0–17	69	Quintile 1.
71	LARYNGOTRACHEITIS	97	Quintile 2.
74	OTHER EAR, NOSE, MOUTH & THROAT DIAGNOSES AGE 0–17	69	Quintile 1.
81	RESPIRATORY INFECTIONS & INFLAMMATIONS AGE 0–17	69	Quintile 1.
91	SIMPLE PNEUMONIA & PLEURISY AGE 0–17	90	Quintile 2.
98	BRONCHITIS & ASTHMA AGE 0–17	97	Quintile 2.
104	CARDIAC VALVE & OTHER MAJOR CARDIOTHORACIC PROC W CARDIAC CATH	110	Quintile 5.
105	CARDIAC VALVE & OTHER MAJOR CARDIOTHORACIC PROC W/O CARDIAC CATH	110	Quintile 5.
106	CORONARY BYPASS W PTCA	110	Quintile 5.
107	CORONARY BYPASS W CARDIAC CATH	110	Quintile 5.
109	CORONARY BYPASS W/O PTCA OR CARDIAC CATH	110	Quintile 5.
111	MAJOR CARDIOVASCULAR PROCEDURES W/O CC	110	Quintile 5.
137	CARDIAC CONGENITAL & VALVULAR DISORDERS AGE 0–17	136	Quintile 2.
146	RECTAL RESECTION W CC	148	Quintile 5.
147	RECTAL RESECTION W/O CC	148	Quintile 5.
151	PERITONEAL ADHESIOLYSIS W/O CC	150	Quintile 4.
153	MINOR SMALL & LARGE BOWEL PROCEDURES W/O CC	152	Quintile 4.
155	STOMACH, ESOPHAGEAL & DUODENAL PROCEDURES AGE >17 W/O CC	171	Quintile 5.
156	STOMACH, ESOPHAGEAL & DUODENAL PROCEDURES AGE 0–17	171	Quintile 5.
159	HERNIA PROCEDURES EXCEPT INGUINAL & FEMORAL AGE >17 W CC	161	Quintile 4.
160	HERNIA PROCEDURES EXCEPT INGUINAL & FEMORAL AGE >17 W/O CC	161	Quintile 4.
162	INGUINAL & FEMORAL HERNIA PROCEDURES AGE >17 W/O CC	178	Quintile 1.
163	HERNIA PROCEDURES AGE 0–17	178	Quintile 1.
164	APPENDECTOMY W COMPLICATED PRINCIPAL DIAG W CC	148	Quintile 5.
165	APPENDECTOMY W COMPLICATED PRINCIPAL DIAG W/O CC	149	Quintile 1.
166	APPENDECTOMY W/O COMPLICATED PRINCIPAL DIAG W CC	148	Quintile 5.
167	APPENDECTOMY W/O COMPLICATED PRINCIPAL DIAG W/O CC	149	Quintile 1.
169	MOUTH PROCEDURES W/O CC	72	Quintile 1.
184	ESOPHAGITIS, GASTROENT & MISC DIGEST DISORDERS AGE 0–17	183	Quintile 2.
186	DENTAL ORAL DIS EXCEPT EXTRACTIONS & RESTORATIONS, AGE 0–17	185	Quintile 2.
187	DENTAL EXTRACTIONS & RESTORATIONS	185	Quintile 2.
190	OTHER DIGESTIVE SYSTEM DIAGNOSES AGE 0–17	189	Quintile 2.
196	CHOLECYSTECTOMY W C.D.E. W/O CC	197	Quintile 3.
198	CHOLECYSTECTOMY EXCEPT BY LAPAROSCOPE W/O C.D.E. W/O CC	197	Quintile 3.
199	HEPATOBILIARY DIAGNOSTIC PROCEDURE FOR MALIGNANCY	200	Quintile 2.
212	HIP & FEMUR PROCEDURES EXCEPT MAJOR JOINT AGE 0–17	211	Quintile 2.
219	LOWER EXTREM & HUMER PROC EXCEPT HIP, FOOT, FEMUR AGE >17 W/O CC	218	Quintile 3.
220	LOWER EXTREM & HUMER PROC EXCEPT HIP, FOOT, FEMUR AGE 0–17	218	Quintile 3.
224	SHOULDER, ELBOW OR FOREARM PROC, EXC MAJOR JOINT PROC, W/O CC	234	Quintile 2.
229	HAND OR WRIST PROC, EXCEPT MAJOR JOINT PROC, W/O CC	234	Quintile 2.
252	FX, SPRN, STRN & DISL OF FOREARM, HAND, FOOT AGE 0–17	234	Quintile 2.
255	FX, SPRN, STRN & DISL OF UPARM, LOWLEG EX FOOT AGE 0–17	234	Quintile 2.
258	TOTAL MASTECTOMY FOR MALIGNANCY W/O CC	257	Quintile 3.

TABLE 2.—PROPOSED NO VOLUME LTC–DRG CROSSWALK AND PROPOSED QUINTILE ASSIGNMENT FOR FY 2004—Continued

LTC–DRG	Description	Cross walked LTC–DRG	Low volume quintile assigned
259	SUBTOTAL MASTECTOMY FOR MALIGNANCY W CC	257	Quintile 3.
260	SUBTOTAL MASTECTOMY FOR MALIGNANCY W/O CC	257	Quintile 3.
267	PERIANAL & PILONIDAL PROCEDURES	158	Quintile 1.
279	CELLULITIS AGE 0–17	78	Quintile 1.
282	TRAUMA TO THE SKIN, SUBCUT TISS & BREAST AGE 0–17	281	Quintile 2.
286	ADRENAL & PITUITARY PROCEDURES	292	Quintile 4.
289	PARATHYROID PROCEDURES	293	Quintile 3.
290	THYROID PROCEDURES	293	Quintile 3.
291	THYROGLOSSAL PROCEDURES	293	Quintile 3.
298	NUTRITIONAL & MISC METABOLIC DISORDERS AGE 0–17	297	Quintile 2.
303	KIDNEY,URETER & MAJOR BLADDER PROCEDURES FOR NEOPLASM	304	Quintile 5.
307	PROSTATECTOMY W/O CC	305	Quintile 4.
313	URETHRAL PROCEDURES, AGE >17 W/O CC	311	Quintile 1.
314	URETHRAL PROCEDURES, AGE 0–17	311	Quintile 1.
322	KIDNEY & URINARY TRACT INFECTIONS AGE 0–17	326	Quintile 2.
327	KIDNEY & URINARY TRACT SIGNS & SYMPTOMS AGE 0–17	326	Quintile 2.
329	URETHRAL STRICTURE AGE >17 W/O CC	328	Quintile 1.
330	URETHRAL STRICTURE AGE 0–17	328	Quintile 1.
333	OTHER KIDNEY & URINARY TRACT DIAGNOSES AGE 0–17	332	Quintile 1.
334	MAJOR MALE PELVIC PROCEDURES W CC	345	Quintile 3.
335	MAJOR MALE PELVIC PROCEDURES W/O CC	345	Quintile 3.
336	TRANSURETHRAL PROSTATECTOMY W CC	341	Quintile 2.
337	TRANSURETHRAL PROSTATECTOMY W/O CC	341	Quintile 2.
338	TESTES PROCEDURES, FOR MALIGNANCY	339	Quintile 1.
340	TESTES PROCEDURES, NON-MALIGNANCY AGE 0–17	339	Quintile 1.
343	CIRCUMCISION AGE 0–17	339	Quintile 1.
351	STERILIZATION, MALE	339	Quintile 1.
353	PELVIC EVISCERATION, RADICAL HYSTERECTOMY & RADICAL VULVECTOMY	365	Quintile 5.
354	UTERINE,ADNEXA PROC FOR NON-OVARIAN/ADNEXAL MALIG W CC	365	Quintile 5.
355	UTERINE,ADNEXA PROC FOR NON-OVARIAN/ADNEXAL MALIG W/O CC	365	Quintile 5.
356	FEMALE REPRODUCTIVE SYSTEM RECONSTRUCTIVE PROCEDURES	360	Quintile 4.
357	UTERINE & ADNEXA PROC FOR OVARIAN OR ADNEXAL MALIGNANCY	360	Quintile 4.
358	UTERINE & ADNEXA PROC FOR NON-MALIGNANCY W CC	360	Quintile 4.
359	UTERINE & ADNEXA PROC FOR NON-MALIGNANCY W/O CC	360	Quintile 4.
361	LAPAROSCOPY & INCISIONAL TUBAL INTERRUPTION	149	Quintile 1.
362	ENDOSCOPIC TUBAL INTERRUPTION	149	Quintile 1.
363	D&C, CONIZATION & RADIO-IMPLANT, FOR MALIGNANCY	367	Quintile 2.
364	D&C, CONIZATION EXCEPT FOR MALIGNANCY	367	Quintile 2.
370	CESAREAN SECTION W CC	369	Quintile 3.
371	CESAREAN SECTION W/O CC	367	Quintile 2.
372	VAGINAL DELIVERY W COMPLICATING DIAGNOSES	367	Quintile 2.
373	VAGINAL DELIVERY W/O COMPLICATING DIAGNOSES	367	Quintile 2.
374	VAGINAL DELIVERY W STERILIZATION &/OR D&C	367	Quintile 2.
375	VAGINAL DELIVERY W O.R. PROC EXCEPT STERIL &/OR D&C	367	Quintile 2.
377	POSTPARTUM & POST ABORTION DIAGNOSES W O.R. PROCEDURE	367	Quintile 2.
378	ECTOPIC PREGNANCY	369	Quintile 3.
379	THREATENED ABORTION	376	Quintile 1.
380	ABORTION W/O D&C	376	Quintile 1.
381	ABORTION W D&C, ASPIRATION CURETTAGE OR HYSTEROTOMY	376	Quintile 1.
382	FALSE LABOR	376	Quintile 1.
383	OTHER ANTEPARTUM DIAGNOSES W MEDICAL COMPLICATIONS	376	Quintile 1.
384	OTHER ANTEPARTUM DIAGNOSES W/O MEDICAL COMPLICATIONS	376	Quintile 1.
386	EXTREME IMMATURITY	367	Quintile 2.
387	PREMATURITY W MAJOR PROBLEMS	367	Quintile 2.
388	PREMATURITY W/O MAJOR PROBLEMS	367	Quintile 2.
389	FULL TERM NEONATE W MAJOR PROBLEMS	367	Quintile 2.
390	NEONATE W OTHER SIGNIFICANT PROBLEMS	367	Quintile 2.
391	NORMAL NEWBORN	376	Quintile 1.
392	SPLENECTOMY AGE >17	194	Quintile 2.
393	SPLENECTOMY AGE 0–17	194	Quintile 2.
396	RED BLOOD CELL DISORDERS AGE 0–17	599	Quintile 1.
405	ACUTE LEUKEMIA W/O MAJOR O.R. PROCEDURE AGE 0–17	404	Quintile 2.
407	MYELOPROLIF DISORD OR POORLY DIFF NEOPL W MAJ O.R. PROC W/O CC	408	Quintile 3.
417	SEPTICEMIA AGE 0–17	416	Quintile 3.
422	VIRAL ILLNESS & FEVER OF UNKNOWN ORIGIN AGE 0–17	420	Quintile 1.
446	TRAUMATIC INJURY AGE 0–17	445	Quintile 2.
448	ALLERGIC REACTIONS AGE 0–17	455	Quintile 1.
451	POISONING & TOXIC EFFECTS OF DRUGS AGE 0–17	455	Quintile 1.
481	BONE MARROW TRANSPLANT	394	Quintile 1.

TABLE 2.—PROPOSED NO VOLUME LTC–DRG CROSSWALK AND PROPOSED QUINTILE ASSIGNMENT FOR FY 2004—Continued

LTC–DRG	Description	Cross walked LTC–DRG	Low volume quintile assigned
484	CRANIOTOMY FOR MULTIPLE SIGNIFICANT TRAUMA	1	Quintile 5.
485	LIMB REATTACHMENT, HIP AND FEMUR PROC FOR MULTIPLE SIGNIFICANT TR	209	Quintile 5.
491	MAJOR JOINT & LIMB REATTACHMENT PROCEDURES OF UPPER EXTREMITY	209	Quintile 5.
492	CHEMOTHERAPY W ACUTE LEUKEMIA AS SECONDARY DIAGNOSIS	410	Quintile 3.
496	COMBINED ANTERIOR/POSTERIOR SPINAL FUSION	210	Quintile 4.
504	EXTENSIVE 3RD DEGREE BURNS W SKIN GRAFT	468	Quintile 5.
516	PERCUTANEOUS CARDIVASCULAR PROCEDURE W AMI	578	Quintile 3.
520	CERVICAL SPINAL FUSION W/O CC	498	Quintile 3.
525	HEART ASSIST SYSTEM IMPLANT	468	Quintile 5.
526	PERCUTANEOUS CARVIOVASCULAR PROC W DRUG-ELUTING STENT W AMI	517	Quintile 4.
527	PERCUTANEOUS CARVIOVASCULAR PROC W DRUG-ELUTING STENT W/O AMI	517	Quintile 4.
528	INTRACRANIAL VASCLUAR PROCEDURES WITH PDX HEMORRHAGE	1	Quintile 5.
530	VENTRICULAR SHUNT PROCEDURES WITHOUT CC	529	Quintile 2.
531	SPINAL PROCEDURES WITH CC	519	Quintile 4.
533	EXTRACRANIAL VASCULAR PROCEDURES WITH CC	534	Quintile 5.
535	CARDIAC DEFIB IMPLANT WITH CARDIAC CATH WITH AMI/HF/SHOCK	515	Quintile 5.
537	LOCAL EXCISION AND REMOVAL OF INTERNAL FIXATION DEVICES EXCEPT HIP AND FEMUR WITH CC.	253	Quintile 2.
539	LYMPHOMA AND LEUKEMIA WITH MAJOR O.R. PROCEDURE WITH CC	401	Quintile 5.

To illustrate this methodology, which was established in the August 30, 2002 LTCH PPS final rule (67 FR 55991), for determining the proposed relative weights for the 164 proposed LTC–DRGs with no LTCH cases, we are providing the following examples, which refer to the no volume proposed LTC–DRGs crosswalk information for FY 2004 provided above in Table 2:

Example 1: There were no cases in the FY 2002 MedPAR file used for this proposed rule for proposed LTC–DRG 163 (Hernia Procedures Age 0–17). Since the procedure is similar in resource use and the length and complexity of the procedures and the length of stay are similar, we determined that proposed LTC–DRG 178 (Uncomplicated Peptic Ulcer Without CC), which is assigned to proposed low volume quintile 1 for the purpose of determining the proposed FY 2004 relative weights, would display similar clinical and resource use. Therefore, we are proposing to assign the same proposed relative weight of LTC–DRG 178 of 0.5711 (proposed Quintile 1) for FY 2004 (Table 11 in the Addendum to this proposed rule) to proposed LTC–DRG 163.

Example 2: There were no LTCH cases in the FY 2002 MedPAR file used in this proposed rule for proposed LTC–DRG 91 (Simple Pneumonia and Pleurisy Age 0–17). Since the severity of illness in patients with bronchitis and asthma is similar in patients regardless of age, we determined that proposed LTC–DRG 90 (Simple Pneumonia and Pleurisy Age >17 Without CC) would display similar clinical and resource use characteristics and have a similar length of stay to proposed LTC–DRG 91. There were over 25 cases in proposed LTC–DRG 90. Therefore, it would not be assigned to a proposed low volume quintile for the purpose of determining the proposed LTC–DRG relative weights. However, under our established methodology, proposed LTC–DRG 91, with no LTCH cases, would need to be grouped to a proposed low volume quintile. We identified that the proposed low volume quintile with the closest weight to proposed LTC–DRG 90 (0.7429; see Table 11 in the Addendum to this proposed rule) would be proposed low volume quintile 2 (0.7347; see Table 11 in the Addendum to this proposed rule). Therefore, we are proposing to assign proposed LTC–DRG 91 a proposed relative weight of 0.7347 for FY 2004.

Furthermore, in accordance with the methodology established in the August 30, 2002 final rule (67 FR 55991), we are proposing LTC–DRG relative weights of 0.0000 for heart, kidney, liver, lung, pancreas, and simultaneous pancreas/kidney transplants (proposed LTC–DRGs 103, 302, 480, 495, 512, and 513, respectively) for FY 2004 because Medicare will only cover these procedures if they are performed at a hospital that has been certified for the specific procedures by Medicare and presently no LTCH has been so certified.

Based on our research, as we discussed in that same final rule (67 FR 55995), we found that most LTCHs only perform minor surgeries, such as minor small and large bowel procedures, to the extent any surgeries are performed at all. Given the extensive criteria that must be met to become certified as a transplant center for Medicare, we believe it is unlikely that any LTCHs would become certified as a transplant center. In fact, in the nearly 20 years since the implementation of the IPPS, there has never been a LTCH that even expressed an interest in becoming a transplant center.

However, if in the future a LTCH applies for certification as a Medicare-approved transplant center, we believe that the application and approval procedure would allow sufficient time for us to propose appropriate weights for the LTC–DRGs affected. At the present time, we would only include these six transplant proposed LTC–DRGs in the GROUPER program for administrative purposes. Since we use the same GROUPER program for LTCHs as is used under the acute care hospital IPPS, removing these LTC–DRGs would be administratively burdensome.

Again, we note that as this system is dynamic, it is entirely possible that the number of proposed LTC–DRGs with a zero volume of LTCH cases based on the system will vary in the future. We used the best most recent available claims data in the MedPAR file to identify zero volume proposed LTC–DRGs and to determine the relative weights in this final rule.

Table 11 in the Addendum to this proposed rule lists the proposed LTC–DRGs and their respective proposed relative weights, geometric mean length of stay, and five-sixths of the geometric mean length of stay (to assist in the determination of short-stay outlier payments under § 412.529) for FY 2004.

E. Add-On Payments for New Services and Technologies

1. Background

Sections 1886(d)(5)(K) and (L) of the Act establish a process of identifying and ensuring adequate payment for new medical services and technologies under the IPPS. Section 1886(d)(5)(K)(ii)(I) of the Act specifies that the process must apply to a new medical service or technology if, "based on the estimated costs incurred with respect to discharges involving such service or technology, the DRG prospective payment rate otherwise applicable to such discharges under this subsection is inadequate." Section 1886(d)(5)(K)(vi) of the Act specifies that a medical service or technology will be considered "new" if it meets criteria established by the Secretary after notice and opportunity for public comment.

Section 412.87(b)(1) of our existing regulations provides that a new technology will be an appropriate candidate for an additional payment when it represents an advance in medical technology that substantially improves, relative to technologies previously available, the diagnosis or treatment of Medicare beneficiaries (see the September 7, 2001 final rule (66 FR 46902)). Section 412.87(b)(3) provides that, to receive special payment treatment, new technologies meeting this clinical definition must be demonstrated to be inadequately paid otherwise under the DRG system. To assess whether technologies would be inadequately paid under the DRGs, we established this threshold at one standard deviation beyond the geometric mean standardized charge for all cases in the DRGs to which the new technology is assigned (or the case-weighted average of all relevant DRGs, if the new technology occurs in many different DRGs). Table 10 in the Addendum to this proposed rule lists the proposed qualifying criteria by DRG, based on the discharge data that we are using to calculate the proposed FY 2004 DRG weights. The thresholds that will be published in the final rule for FY 2004 will be used to evaluate applicants for new technology add-on payments during FY 2005.

In addition to the clinical and cost criteria, we established that, in order to qualify for the new technology add-on payments, a specific technology must be "new" under the requirements of § 412.87(b)(2) of our regulations. The statutory provision contemplated the special payment treatment for new technologies until such time as data are available to reflect the cost of the technology in the DRG weights through recalibration (no less than 2 years and no more than 3 years). There is a lag of 2 to 3 years from the point a new technology is first introduced on the market and when data reflecting the use of the technology are used to calculate the DRG weights. For example, data from discharges occurring during FY 2002 are used to calculate the proposed FY 2004 DRG weights in this proposed rule.

Technology may be considered "new" for purposes of this provision within 2 or 3 years after the point at which data begin to become available reflecting the costs of the technology. After we have recalibrated the DRGs to reflect the costs of an otherwise new technology, the special add-on payment for new technology will cease (§ 412.87(b)(2)). For example, an approved new technology that received FDA approval in October 2002 would be eligible to receive add-on payments as a new technology at least until FY 2005 (discharges occurring before October 1, 2004), when data reflecting the costs of the technology would be used to recalibrate the DRG weights. Because the FY 2005 DRG weights will be calculated using FY 2003 MedPAR data, the costs of such a new technology would likely be reflected in the FY 2005 DRG weights.

Similar to the timetable for applying for new technology add-on payments during FY 2004, we are proposing that applicants for FY 2005 must submit a formal request, including a full description of the clinical applications of the technology and the results of any clinical evaluations demonstrating that the new technology represents a substantial clinical improvement, along with a significant sample of data to demonstrate the technology meets the high-cost threshold, no later than early October 2003. We are proposing that a complete database must be submitted no later than mid-December 2003. Complete application information is available at our Web site at: *http://www.cms.hhs.gov/providers /hipps/default.asp*. To allow interested parties to identify the technologies under review before the publication of the annual proposed rule, the Web site also lists the tracking forms completed by each applicant.

The new technology add-on payment policy provides additional payments for cases with high costs involving eligible new technologies while preserving some of the incentives under the average-based payment system. The payment mechanism is based on the cost to hospitals for the new technology. Under § 412.88, Medicare pays a marginal cost factor of 50 percent for the costs of the new technology in excess of the full DRG payment. If the actual costs of a new technology case exceed the DRG payment by more than the estimated costs of the new technology, Medicare payment is limited to the DRG payment plus 50 percent of the estimated costs of the new technology.

The report language accompanying section 533 of Public Law 106–554 indicated Congressional intent that the Secretary implement the new mechanism on a budget neutral basis (H.R. Conf. Rep. No. 106–1033, 106th Cong., 2nd Sess. at 897 (2000)). Section 1886(d)(4)(C)(iii) of the Act requires that the adjustments to annual DRG classifications and relative weights must be made in a manner that ensures that aggregate payments to hospitals are not affected. Therefore, we account for projected payments under the new technology provision during the upcoming fiscal year at the same time we estimate the payment effect of changes to the DRG classifications and recalibration: The impact of additional payments under this provision would then be included in the budget neutrality factor, which is applied to the standardized amounts and the hospital-specific amounts.

Because any additional payments directed toward new technology under this provision must be offset to ensure budget neutrality, it is important to consider carefully the extent of this provision and ensure that only technologies representing substantial advances are recognized for additional payments. In that regard, we indicated that we would discuss in the annual proposed and final rules those technologies that were considered under this provision; our determination as to whether a particular technology meets our criteria to be considered new; whether it is determined further that cases involving the new technology would be inadequately paid under the existing DRG payment; and any assumptions that went into the budget neutrality calculations related to additional payments for that new technology, including the expected number, distribution, and costs of these cases.

To balance appropriately the Congress' intent to increase Medicare's payments for eligible new technologies with concern that the total size of those payments not result in significantly reduced payments for other cases, we set a target limit for estimated add-on payments for new technology under the provisions of sections 1886(d)(5)(K) and (L) of the Act at 1.0 percent of estimated total operating prospective payments.

If the target limit is exceeded, we would reduce the level of payments for approved technologies across the board, to ensure estimated payments do not exceed the limit. Using this approach, all cases involving approved new technologies that would otherwise receive additional payments would still receive special payments, albeit at a

reduced amount. Although the marginal payment rate for individual technologies would be reduced, this reduction would be offset by large overall payments to hospitals for new technologies under this provision.

2. FY 2004 Status of Technology Approved for FY 2003 Add-On Payments: Drotrecogin Alfa (Activated)—Xigris®

In the August 1, 2002 IPPS final rule, we stated that cases involving the administration of Xigris® (a biotechnology product that is a recombinant version of naturally occurring Activated Protein C (APC)) as identified by the presence of code 00.11 (Infusion of drotrecogin alfa (activated)) are eligible for additional payments of up to $3,400 (50 percent of the average cost of the drug)" (67 FR 50013). (The August 1, 2002 final rule contains a detailed discussion of this technology.) Although Xigris® was approved by the FDA in November 2001, it did not qualify for add-on payments until discharges on or after October 1, 2002. Consequently, FY 2002 discharges (between October 1, 2001 and September 30, 2002) may not reflect full utilization of the technology due to the absence of the add-on payment.

Therefore, for FY 2004, we are proposing to continue to make add-on payments for cases involving the administration of Xigris® as identified by the presence of code 00.11. Based on preliminary analysis of the incidence of Xigris® in the first quarter FY 2003 MedPAR file, we are proposing to revise downward our estimate of total add-on payments for Xigris®. For FY 2003, we estimated that total add-on payments would be approximately $74.8 million (22,000 Medicare patients who would be eligible for a $3,400 add-on payment). For FY 2004, we are estimating the total add-on payments would be approximately $50 million (based on 14,000 Medicare patients who would be eligible for a $3,400 add-on payment). We are proposing that this additional payment would be included in the DRG reclassification and recalibration budget neutrality factor, which is applied to the standardized amounts and the hospital-specific amounts. However, we will reevaluate our assumptions regarding this estimate based on preliminary claims data from the FY 2003 MedPAR file before the publication of the FY 2004 IPPS final rule.

3. FY 2004 Applicants for New Technology Add-On Payments

We received two applications for new technologies to be designated eligible for inpatient add-on payments for new technology for FY 2004. A discussion of these applications and our determinations on these applications appears below.

a. Bone Morphogenetic Proteins (BMPs) for Spinal Fusions. An application was submitted by Medtronic Sofamor Danek for the InFUSE™ Bone Graft/LT-CAGE®" Lumbar Tapered Fusion Device for approval as a new technology eligible for add-on payments. A similar application was submitted last year but was denied because, based on the available data, the technology did not exceed the one standard deviation threshold above the average charges for the DRGs to which the technology is assigned.

The product is applied through use of an absorbable collagen sponge and an interbody fusion device, which is then implanted at the fusion site. The patient undergoes a spinal fusion, and the product is placed at the fusion site to promote bone growth. This procedure is done in place of the more traditional use of autogenous iliac crest bone graft. For a more detailed discussion about InFUSE™ Bone Graft/LT-CAGE® Lumbar Tapered Fusion, see the August 1, 2002 IPPS final rule (67 FR 50016).

On July 2, 2002, the FDA approved InFUSE™ Bone Graft/LT-CAGE® for spinal fusion procedures in skeletally mature patients at one level. Therefore, based on the FDA's approval, multilevel use of this technology would be off-label. In the August 1, 2002 IPPS final rule (67 FR 50017), we stated this technology would meet the cost threshold only if the added costs of multilevel fusions were taken into account. Because the FDA had not approved this technology for multilevel fusions, and the applicant had not submitted data to demonstrate this technology is a substantial clinical improvement for multilevel fusions (the clinical trial upon which the application was based was a single-level fusion trial), we could not issue a substantial clinical improvement determination for multilevel fusions and, consequently, did not consider the costs associated with multilevel fusions in our analysis of whether this technology met the cost threshold. Therefore, because the average charges for this new technology, when used for single-level spinal fusions, did not exceed the threshold to qualify for new technology add-on payment of $37,815, we denied this application for add-on payments for FY 2003. For similar reasons, we did not consider data on the charges for multilevel fusions in our analysis of whether this technology meets the cost threshold for FY 2004.

In its application for add-on payments for FY 2004, Medtronic used data from CMS' FY 2001 Standard Analytical File for physicians and hospitals. The analysis linked a 5-percent sample of hospital spinal fusions cases with the corresponding physician claims. Because there were no ICD–9–M codes to identify multilevel fusions in 2001, multilevel fusions were identified using CPT codes on the physician claims. Average charges were taken from actual cases used in clinical trials.

After grouping these cases into one, two, and three or more levels fused in DRGs 497 and 498 (Spinal Fusion Except Cervical With and Without CC, respectively), the applicant then calculated average charges assuming the use of the InFUSE™ Bone Graft/LT–CAGE® for these cases. For DRG 497, the estimated single-level fusion average charge was $41,321; for DRG 498, the estimated single-level fusion average charge was $37,200. Because these DRGs are not currently split for different numbers of fusion levels involved, Medtronic has calculated its own standard deviation of average charges to determine the threshold for these DRGs using the 5-percent sample data. For DRG 497, the threshold (calculated by Medtronic) was $45,646, which is greater than the estimated average charge of $41,321 for single-level fusions noted above. For DRG 498, the threshold (calculated by Medtronic) was $36,935, which is less than the average charges for single-level fusions in this DRG as noted above.

However, we note the thresholds to qualify for the new technology add-on payments for FY 2003 published in Table 10 of the August 1, 2002 IPPS final rule for DRGs 497 and 498 were $58,040 and $41,923, respectively. These thresholds were computed based on all cases assigned to these DRGs, and do not differentiate between the number of spinal levels fused. Because we are not proposing to redefine these DRGs to differentiate cases on the basis of the number of levels of the spine fused in the manner suggested by the applicant's analysis, the thresholds published in last year's final rule are applicable for a new technology to qualify for add-on payments in these DRGs for FY 2004. Therefore, because the averages calculated by the applicant for single-level fusions do not exceed the published thresholds, we are proposing not to approve this technology on the basis of this analysis.

The applicant also submitted data from actual cases involving the InFUSE™ Bone Graft/LT–CAGE® with single level fusions only. The data submitted included 31 claims from 4 hospitals (only one Medicare patient was included in the sample). All 31 cases were from DRG 498. The average standardized charge for these cases was $47,172. Based on these data, the average standardized charge exceeds the threshold for DRG 498. However, we note that this limited sample excludes any cases from DRG 497.

We note that, effective for discharges occurring on or after October 1, 2002, ICD–9–CM codes 84.51 (Insertion of interbody spinal fusion device) and 84.52 (Insertion of recombinant bone morphogenetic protein) are effective to identify cases involving this technology. Therefore, in an effort to resolve the difficulties in obtaining sufficient data upon which to determine whether this technology exceeds the applicable threshold, we intend to review available MedPAR data for the first several months of FY 2003 to identify these cases and calculate their average standardized charges to compare with the thresholds. We anticipate some of these cases will involve multilevel spinal fusions, and it will be necessary to identify those cases in order to remove them from the calculation of the average charges.

If the technology meets the cost threshold based on the MedPAR data, we will evaluate whether it qualifies as a substantial clinical improvement. According to the applicant:

"InFUSE™ Bone Graft is more appropriate to use and has been proven more effective in its use than autogenous iliac crest bone graft, when either is placed in the LT-Cage™ Lumbar Tapered Fusion Device for anterior lumbar interbody fusion. Use of InFUSE™ Bone Graft instead of autogenous iliac crest bone graft:

- Obviates iliac crest bone graft donor site morbidity.
- Reduces operative time, blood loss and hospitalization.
- Results in greater fusion success.
- We found that the Oswestry Low Back Pain Disability score and SF–36 Physical Component and Pain Index score were consistently 10 percent better in the InFUSE™ Bone Graft group than the autogenous iliac bone graft group.
- Enables earlier return to work."

Among the issues we will consider are: Does avoiding the complications associated with the iliac crest bone harvesting procedure constitute a substantial clinical improvement; and, with the increased rate of osteoarthritis and osteoporosis in the Medicare population, is there evidence that the technology represents a substantial clinical improvement in spinal fusions among this population? We are particularly interested in data on the results of aged Medicare patients who have been treated with BMP, and any basic biology bench data on the results of using BMP in osteoporotic bones.

b. GLIADEL® Wafer. Glioblastoma Multiforme (GBM) is the most common and most aggressive of the primary brain tumors. Standard care for patients diagnosed with GBM is surgical resection and radiation. According to the manufacturer (Guilford Pharmaceuticals), the GLIADEL® Wafer is indicated for use as an adjunct to surgery to prolong survival in patients with recurrent GBM. Implanted directly into the cavity that is created when a brain tumor is surgically removed, GLIADEL® delivers chemotherapy directly to the site where tumors are most likely to recur.

The FDA approved GLIADEL® Wafer on September 23, 1996, for use as an adjunct to surgery to prolong survival in patients with recurrent GBM for whom surgical resection is indicated. In announcing its approval, the FDA indicated that GLIADEL® was approved:

"* * * based on the results of a multi-center placebo controlled study in 222 patients who had recurrent malignant glioma after initial treatment with surgery and radiation therapy. Following surgery to remove the tumor, half of the patients were treated with GLIADEL® implants and half with placebo. In patients with glioblastoma multiforme, the 6-month survival rate increased from 36 percent with placebo to 56 percent with GLIADEL®. Median survival increased from 20 weeks with placebo to 28 weeks with GLIADEL®. In patients with pathologic diagnoses other than glioblastoma multiforme, GLIADEL® had no effect on survival."

Guilford Pharmaceuticals has requested that GLIADEL® still be considered new because, until a new ICD–9–CM code (00.10 Implementation of Chemotherapeutic Agent) was established on October 1, 2002, it was not possible to identify specifically these cases in the MedPAR data. However, as noted previously, technology will no longer be considered new after the costs of the technology are reflected in the DRG weights. Because the costs of GLIADEL® are currently reflected in the DRG weights (despite the absence of a specific code), GLIADEL® does not meet our criterion that a medical service or technology be "new". That is, FY 2002 MedPAR data used to calculate the proposed DRG weights for FY 2004 include cases where GLIADEL® was administered (and the corresponding charges of these cases, include charges associated with GLIADEL®). On February 26, 2003, the FDA approved GLIADEL® for use in newly diagnosed patients with high-grade malignant glioma as an adjunct to surgery and radiation. However, our understanding is that many newly diagnosed patients were already receiving this therapy. To the extent this is true, the charges associated with this use of GLIADEL® are also reflected in the DRG relative weights.

According to Guilford's application, the current average wholesale price of GLIADEL® is $10,985. Guilford submitted charge data for 23 Medicare patients at 7 hospitals from FY 2000. The charges were then standardized and adjusted for inflation using the hospital market basket inflation factor (from 2000 to 2003) in order to determine an inflated average standardized charge of $33,002. Guilford points out that this charge narrowly misses the DRG 2 threshold published in Table 10 of the August 1, 2002 IPPS final rule of $34,673. However, we note that, according to the manufacturer, as many as 60 percent of current GLIADEL® cases may be assigned to DRG 1 based on the presence of CCs. Based on this assumption, the qualifying threshold for GLIADEL® would be $54,312 (60 percent of the DRG 1 threshold of $67,404, and 40 percent of the DRG 2 threshold of $34,673).

As mentioned above in section II.B.3.a. of this proposed rule, we examined the definitions of DRGs 1 and 2 to determine whether they could be improved, and we are proposing to create a new DRG for patients with an intracranial vascular procedure and an intracranial hemorrhage and two new DRGs for patients with only a vascular shunt procedure (splitting on the presence or absence of a CC). We also compared the data submitted in the application on the charges for GLIADEL® cases with the charges of other procedures in DRGs 1 and 2. We found that, although the $33,002 average standardized charge reported is just below the qualifying threshold in DRG 2, it is actually well below the mean average standardized charge for DRG 1 ($42,092). As noted previously, as many as 60 percent of current GLIADEL® cases may be assigned to DRG 1 based on the presence of CCs. Therefore, we do not believe that any change to the DRG assignment of cases receiving GLIADEL® is warranted at this time. However, we will continue to monitor our data to determine whether a change is warranted in the future.

4. Review of the High-Cost Threshold

The current cost threshold for a new technology to qualify for add-on

payments is that the average standardized charges of cases involving the new technology must be demonstrated to exceed one standard deviation beyond the mean standardized charges of the DRG to which the new technology will be assigned. When we established this threshold in the September 7, 2001 final rule, we expressed our belief that it is important to establish a threshold that recognizes the variability in costs per case within DRGs and maintains the fundamental financial incentives of the IPPS (66 FR 46917).

In its comments on this approach, MedPAC supported the one standard deviation threshold. However, others, particularly representatives of the manufacturers of new technology, have argued this threshold is too high, and that virtually no new technology would qualify for the special payment provision.

We are concerned that establishing higher payments for a great number of new technologies may be inflationary because the add-on payments reduce the efficiency incentives hospitals face when new technologies must otherwise be financed out of current payments for similar cases. Traditionally, new technologies were required to compete with existing treatment methods on clinical and cost criteria. Add-on payments are intended to give new technologies a competitive boost relative to existing treatment methods with the goal of encouraging faster and more widespread adoption of new technologies.

Much of the current variation around the mean within any particular DRG is due to the range of procedures contained within each DRG. Generally, some of these procedures will be more expensive than the mean and some will be less expensive. The threshold should be set high enough to ensure that it identifies truly high-cost technologies. If the threshold were set too low (for example, at $2,500, as some have suggested), additional technologies may qualify merely by association with a procedure only slightly more costly than the mean for the DRG.

For example, consider a DRG with five different procedures and mean charges of $15,000. The mean charges for each procedure are distributed around $15,000, as illustrated in the following table. A qualifying threshold of $2,500 would result in any new technology that is only used for the fifth procedure automatically qualifying for new technology add-on payments (unless the new technology had the unlikely effect of lowering the mean cost for cases with this procedure by at least $2,500). This is because the average charge of $20,000 for cases in this procedure already exceeds the mean charges for the DRG plus $2,500.

Procedure	Mean charge
1	$10,000
2	12,000
3	15,000
4	17,000
5	20,000

At the same time, we recognize that the very limited number of applications that have been submitted the past 2 years (five for FY 2003; two for FY 2004) may indicate that only a very small number of the new technologies that come onto the market every year are costly enough even to apply for new technology add-on payments. Therefore, for FY 2005 and subsequent Fiscal Years, we are proposing to reduce the threshold to 75 percent of one standard deviation beyond the geometric mean standardized charge for all cases in the DRG to which the new medical service or technology is assigned (proposed § 412.87(b)(3)).

Based on our analysis of the thresholds for FY 2004, this proposed change would reduce the average threshold across all DRGs to qualify for the add-on payments from approximately $9,900 above the mean standardized charges for each DRG to approximately $7,400. This reduction would maintain the averaging principles of the IPPS while easing the requirement somewhat to allow more technologies to qualify. Furthermore, the situation illustrated above, where a technology qualifies on the basis of its association with a high cost procedure, is much less likely to occur as a result of this reduction than if the threshold were reduced dramatically.

5. Technical Changes

Subpart H of part 412 describes payments to hospitals under IPPS. We have become aware of references to the calculation of IPPS payments in this subpart that inadvertently omit references to new technology add-on payments. For example, § 412.112(c) describes the basis for per case payments. This section refers to outlier payments under subpart F, but was not revised to reflect the implementation of the new technology add-on payments. Therefore, we are proposing to amend § 412.112(c) to add a new paragraph (d) to include a reference to additional payments for new medical services or technologies under subpart F.

Section 412.116(e) currently states that payments for outlier cases are not made on an interim basis. That is, for hospitals receiving payments under a biweekly, lump-sum payment methodology, outlier payments are not included in the calculation of the lump-sum payment amounts. Rather, outlier payments are calculated on a case-by-case basis. Similarly, due to the unique nature of the new technology add-on payments, we are proposing that they would also be calculated on a case-by-case basis rather than included in the calculation of interim payment amounts. Therefore, we are proposing to revise § 412.116(e) to include this policy.

III. Proposed Changes to the Hospital Wage Index

A. Background

Section 1886(d)(3)(E) of the Act requires that, as part of the methodology for determining prospective payments to hospitals, the Secretary must adjust the standardized amounts "for area differences in hospital wage levels by a factor (established by the Secretary) reflecting the relative hospital wage level in the geographic area of the hospital compared to the national average hospital wage level." In accordance with the broad discretion conferred under the Act, we currently define hospital labor market areas based on the definitions of Metropolitan Statistical Areas (MSAs), Primary MSAs (PMSAs), and New England County Metropolitan Areas (NECMAs) issued by the Office of Management and Budget (OMB). OMB also designates Consolidated MSAs (CMSAs). A CMSA is a metropolitan area with a population of one million or more, comprising two or more PMSAs (identified by their separate economic and social character). For purposes of the hospital wage index, we use the PMSAs rather than CMSAs since they allow a more precise breakdown of labor costs. If a metropolitan area is not designated as part of a PMSA, we use the applicable MSA. Rural areas are areas outside a designated MSA, PMSA, or NECMA. For purposes of the wage index, we combine all of the rural counties in a State to calculate a rural wage index for that State.

We note that, effective April 1, 1990, the term Metropolitan Area (MA) replaced the term MSA (which had been used since June 30, 1983) to describe the set of metropolitan areas consisting of MSAs, PMSAs, and CMSAs. The terminology was changed by OMB in the March 30, 1990 **Federal Register** to distinguish between the individual metropolitan areas known as MSAs and the set of all metropolitan areas (MSAs, PMSAs, and CMSAs) (55 FR 12154). For purposes of the IPPS, we will continue to refer to these areas as MSAs.

Under section 1886(d)(8)(B) of the Act, hospitals in certain rural counties adjacent to one or more MSAs are considered to be located in one of the adjacent MSAs if certain standards are met. Under section 1886(d)(10) of the Act, the Medicare Geographic Classification Review Board (MGCRB) considers applications by hospitals for geographic reclassification from a rural area to a MSA, one rural area to another rural area, or from one MSA to another MSA, for purposes of payment under the IPPS.

In a December 27, 2000 notice published in the **Federal Register** (65 FR 82228), the Office of Management and Budget (OMB) issued its revised standards for defining MSAs. In that notice, OMB indicated that it plans to announce in calendar year 2003 new definitions of "Core Based Statistical Areas" (CBSAs) based on the new standards and the Census 2000 data. The new standards establish two categories of CBSAs: (1) Metropolitan Statistical Areas (50,000 or more), and (2) Micropolitan Statistical Areas (10,000 to 49,999). After these new CBSAs are announced, we will evaluate the new area designations and their possible effects on the Medicare hospital wage index. Therefore, the earliest these new CBSA definitions would be used is the FY 2005 wage index.

Beginning October 1, 1993, section 1886(d)(3)(E) of the Act requires that we update the wage index annually. Furthermore, this section provides that the Secretary base the update on a survey of wages and wage-related costs of short-term, acute care hospitals. The survey should measure, to the extent feasible, the earnings and paid hours of employment by occupational category, and must exclude the wages and wage-related costs incurred in furnishing skilled nursing services. As discussed below in section III.F. of this preamble, we also take into account the geographic reclassification of hospitals in accordance with sections 1886(d)(8)(B) and 1886(d)(10) of the Act when calculating the wage index.

Section 1886(d)(3)(E) of the Act also provides for the collection of data every 3 years on the occupational mix of employees for each short-term, acute care hospital participating in the Medicare program, in order to construct an occupational mix adjustment to the wage index. The initial collection of these data must be completed by September 30, 2003, for application beginning October 1, 2004 (the FY 2005 wage index). In the April 4, 2003 **Federal Register** (68 FR 16516), we published a notice of intent to collect calendar year 2002 data from hospitals. There is a 60-day public comment period on that notice. After considering and responding to the comments we receive, we plan to send the surveys to all IPPS hospitals (and hospitals in Maryland that are under a waiver from the IPPS) through the fiscal intermediaries. We intend to collect these data to be incorporated in the FY 2005 wage index after notice and opportunity for public comment.

B. Proposed FY 2004 Wage Index Update

The proposed FY 2004 wage index values (effective for hospital discharges occurring on or after October 1, 2003 and before October 1, 2004) in section V. of the Addendum to this proposed rule are based on the data collected from the Medicare cost reports submitted by hospitals for cost reporting periods beginning in FY 2000 (the FY 2003 wage index was based on FY 1999 wage data).

The proposed FY 2004 wage index includes the following categories of data associated with costs paid under the IPPS (as well as outpatient costs), which were also included in the FY 2003 wage index:

- Salaries and hours from short-term, acute care hospitals.
- Home office costs and hours.
- Certain contract labor costs and hours.
- Wage-related costs.

Consistent with the wage index methodology for FY 2003, the proposed wage index for FY 2004 also excludes the direct and overhead salaries and hours for services not subject to IPPS payment, such as SNF services, home health services, costs related to GME (teaching physicians and residents) and certified registered nurse anesthetists (CRNAs), and other subprovider components that are not paid under the IPPS.

C. FY 2004 Wage Index Proposals

1. Elimination of Wage Costs Associated With Rural Health Clinics and Federally Qualified Health Centers

In the FY 2001 IPPS final rule, we discussed removing from the wage index the salaries, hours, and wage-related costs of hospital-based rural health clinics (RHCs) and Federally qualified health centers (FQHCs) because Medicare pays for these costs outside of the IPPS (65 FR 47074). We noted that because RHC and FQHC costs were not separately reported on Worksheet S–3 of the Medicare cost report, we could not exclude these costs from the prior wage indexes. We further noted that we would evaluate the exclusion of RHC and FQHC wage data in developing the FY 2004 wage index. We now have revised Worksheet S–3 so that it allows for the separate reporting of RHC and FQHC wage costs and hours beginning with FY 2000. Therefore, as we now have the ability to exclude these costs from the wage index, beginning with the FY 2004 wage index, we are proposing to exclude the wage costs and hours data for RHCs and FQHCs from the hospital wage index calculation. An analysis of the effects of this change is included in the Appendix A of this proposed rule.

2. Paid Hours

It has been the longstanding policy of CMS to calculate the wage index using paid hours rather than hours worked (58 FR 46299). This policy reflects our belief that paid hours more appropriately reflect a hospital's total wage costs, which include amounts paid for actual time worked and for covered leave periods (for example, annual, sick, and holiday leave). Therefore, the inclusion of paid lunch hours in the wage index is consistent with our inclusion of other paid nonworking hours.

Several hospitals have requested that we exclude paid lunch or meal break hours from the wage index calculation. At these hospitals, the typical workday is 7½ working hours, plus a ½ hour paid meal break, for a total of 8 paid hours. These hospitals, some of which are municipal-owned and required by their overarching union contracts to provide paid lunch hours, believe they are disadvantaged by wage index policy that requires paid lunch hours to be included in calculating the wage index.

The hospitals argue that their practice of paying employees for meal breaks is not substantially different, in practice, from other hospitals whose employees do not receive paid lunch hours but who are on call during their lunch periods. These hospitals further argue that this policy causes them, in some cases due to union contracts beyond the hospital's control, to be the only hospitals with this category of nonproductive hours included in the wage index.

We are soliciting comments on our policy that paid lunch hours should be excluded from the wage index. Specifically, we would like a broader understanding of the issue of whether some hospitals may, in fact, be truly disadvantaged by this policy through no fault of their own. Any change in our policy would not be implemented until, at the earliest, the FY 2005 wage index.

Some hospitals and associations have also recommended that we exclude the paid hours associated with military and jury duty leave from the wage index calculation. They state that, unlike other paid leave categories for which workers are usually paid at their full hourly rates (for example, annual, sick, and holiday), hospitals typically pay employees on military or jury duty only a fraction of their normal pay. The amount that the hospital pays is intended to only supplement the earnings that the employee receives from the government, so that, while performing military or civic duties, the employee can continue to be paid the same salary level as if he or she were still working at the hospital.

The hospitals and associations believe that including the lower pay rates associated with employees' military and jury duty leave unfairly decreases a hospital's average hourly wage and, therefore, its wage index value. Therefore, we are proposing to exclude from the wage index the paid hours associated with military and jury duty leave, beginning with the FY 2005 wage index. The associated salaries would continue to be reported on Worksheet S–3, Part II, Line 1 of the Medicare cost report.

D. Verification of Wage Data From the Medicare Cost Reports

The data for the proposed FY 2004 wage index were obtained from Worksheet S–3, Parts II and III of the FY 2000 Medicare cost reports. The data file used to construct the proposed wage index includes FY 2000 data submitted to us as of February 18, 2003. As in past years, we performed an intensive review of the wage data, mostly through the use of edits designed to identify aberrant data.

We asked our fiscal intermediaries to revise or verify data elements that resulted in specific edit failures. Some unresolved data elements are included in the calculation of the proposed FY 2004 wage index, pending their resolution before calculation of the final FY 2004 wage index. We instructed the intermediaries to complete their verification of questionable data elements and to transmit any changes to the wage data no later than April 4, 2003. We believe all unresolved data elements will be resolved by the date the final rule is issued. The revised data will be reflected in the final rule.

Also, as part of our editing process, we removed data for 110 hospitals that failed edits. We identified 72 hospitals with incomplete or inaccurate data resulting in zero or negative, or otherwise aberrant, average hourly wages. Therefore, wage data from these hospitals were removed from the calculation. We have notified the fiscal intermediaries of these hospitals and will continue to work with the fiscal intermediaries to correct these data whenever possible. As a result, the proposed FY 2004 wage index is calculated based on FY 2000 wage data for 4,593 hospitals.

In constructing the proposed FY 2004 wage index, we include the wage data for facilities that were IPPS hospitals in FY 2000, even for those facilities that have terminated their participation in the program as hospitals or have since been designated as a critical access hospital (CAH), as long as those data do not fail any of our edits for reasonableness. We believe that including the wage data for these hospitals is, in general, appropriate to reflect the economic conditions in the various labor market areas during the relevant past period.

However, we received correspondence suggesting that the wage data for hospitals that have subsequently been redesignated as CAHs should be removed from the wage index calculation because CAHs are unique compared to other short-term, acute care hospitals. CAHs are limited to only 15 acute care beds. An additional 10 beds may be designated as swing-beds, but only 15 beds can be used at one time to serve acute care patients. CAHs tend to be located in isolated, rural areas. We solicit comment on whether we should exclude wage data from such hospitals from the wage index calculation. However, we have included the data for CAHs in the proposed FY 2004 wage index if the CAH was paid under the IPPS during FY 2000.

E. Computation of the Proposed FY 2004 Wage Index

The method used to compute the proposed FY 2004 wage index follows:

Step 1—As noted above, we based the proposed FY 2004 wage index on wage data reported on the FY 2000 Medicare cost reports. We gathered data from each of the non-Federal, short-term, acute care hospitals for which data were reported on the Worksheet S–3, Parts II and III of the Medicare cost report for the hospital's cost reporting period beginning on or after October 1, 1999 and before October 1, 2000. In addition, we included data from some hospitals that had cost reporting periods beginning before October 1999 and reported a cost reporting period covering all of FY 2000. These data were included because no other data from these hospitals would be available for the cost reporting period described above, and because particular labor market areas might be affected due to the omission of these hospitals. However, we generally describe these wage data as FY 2000 data. We note that, if a hospital had more than one cost reporting period beginning during FY 2000 (for example, a hospital had two short cost reporting periods beginning on or after October 1, 1999 and before October 1, 2000), we included wage data from only one of the cost reporting periods, the longer, in the wage index calculation. If there was more than one cost reporting period and the periods were equal in length, we included the wage data from the later period in the wage index calculation. We have removed the wage data of CAHs, after the effective date of the CAH designation, from the calculation of the proposed wage index.

Step 2—Salaries—Beginning with the FY 2003 wage index, the method used to compute a hospital's average hourly wage excludes all GME and CRNA costs.

In calculating a hospital's average salaries plus wage-related costs, we subtracted from Line 1 (total salaries) the GME and CRNA costs reported on lines 2, 4.01, and 6, the Part B salaries reported on Lines 3, 5 and 5.01, home office salaries reported on Line 7, and excluded salaries reported on Lines 8 and 8.01 (that is, direct salaries attributable to SNF services, home health services, and other subprovider components not subject to the IPPS). We also subtracted from Line 1 the salaries for which no hours were reported on Line 4. To determine total salaries plus wage-related costs, we added to the net hospital salaries the costs of contract labor for direct patient care, certain top management, pharmacy, laboratory, and nonteaching physician Part A services (Lines 9, 9.01, 9.02, and 10), home office salaries and wage-related costs reported by the hospital on Lines 11 and 12, and nonexcluded area wage-related costs (Lines 13, 14, and 18).

We note that contract labor and home office salaries for which no corresponding hours are reported were not included. In addition, wage-related costs for nonteaching physician Part A employees (Line 18) are excluded if no corresponding salaries are reported for those employees on Line 4.

Step 3—Hours—With the exception of wage-related costs, for which there are no associated hours, we computed total hours using the same methods as described for salaries in Step 2.

Step 4—For each hospital reporting both total overhead salaries and total overhead hours greater than zero, we then allocated overhead costs to areas of the hospital excluded from the wage index calculation. First, we determined the ratio of excluded area hours (sum of Lines 8 and 8.01 of Worksheet S–3, Part II) to revised total hours (Line 1 minus the sum of Part II, Lines 2, 3, 4.01, 5, 6, 7, and Part III, Line 13 of Worksheet S–3). We then computed the amounts of overhead salaries and hours to be allocated to excluded areas by multiplying the above ratio by the total overhead salaries and hours reported on Line 13 of Worksheet S–3, Part III. Next, we computed the amounts of overhead wage-related costs to be allocated to excluded areas using three steps: (1) We determined the ratio of overhead hours (Part III, Line 13) to revised hours (Line 1 minus the sum of Lines 2, 3, 4.01, 5, 6, and 7); (2) we computed overhead wage-related costs by multiplying the overhead hours ratio by wage-related costs reported on Part II, Lines 13, 14, and 18; and (3) we multiplied the computed overhead wage-related costs by the above excluded area hours ratio. Finally, we subtracted the computed overhead salaries, wage-related costs, and hours associated with excluded areas from the total salaries (plus wage-related costs) and hours derived in Steps 2 and 3.

Step 5—For each hospital, we adjusted the total salaries plus wage-related costs to a common period to determine total adjusted salaries plus wage-related costs. To make the wage adjustment, we estimated the percentage change in the employment cost index (ECI) for compensation for each 30-day increment from October 14, 1999 through April 15, 2001 for private industry hospital workers from the Bureau of Labor Statistics' *Compensation and Working Conditions*. We use the ECI because it reflects the price increase associated with total compensation (salaries plus fringes) rather than just the increase in salaries. In addition, the ECI includes managers as well as other hospital workers. This methodology to compute the monthly update factors uses actual quarterly ECI data and assures that the update factors match the actual quarterly and annual percent changes. The factors used to adjust the hospital's data were based on the midpoint of the cost reporting period, as indicated below.

MIDPOINT OF COST REPORTING PERIOD

After	Before	Adjustment factor
10/14/1999	11/15/1999	1.06794
11/14/1999	12/15/1999	1.06447
12/14/1999	01/15/2000	1.06083
01/14/2000	02/15/2000	1.05713
02/14/2000	03/15/2000	1.05335
03/14/2000	04/15/2000	1.04954
04/14/2000	05/15/2000	1.04571
05/14/2000	06/15/2000	1.04186
06/14/2000	07/15/2000	1.03786
07/14/2000	08/15/2000	1.03356
08/14/2000	09/15/2000	1.02898
09/14/2000	10/15/2000	1.02425
10/14/2000	11/15/2000	1.01953
11/14/2000	12/15/2000	1.01482
12/14/2000	01/15/2001	1.01004
01/14/2001	02/15/2001	1.00509
02/14/2001	03/15/2001	1.00000
03/14/2001	04/15/2001	0.99491

For example, the midpoint of a cost reporting period beginning January 1, 2000 and ending December 31, 2000 is June 30, 2000. An adjustment factor of 1.03786 would be applied to the wages of a hospital with such a cost reporting period. In addition, for the data for any cost reporting period that began in FY 2000 and covered a period of less than 360 days or more than 370 days, we annualized the data to reflect a 1-year cost report. Annualization is accomplished by dividing the data by the number of days in the cost report and then multiplying the results by 365.

Step 6—Each hospital was assigned to its appropriate urban or rural labor market area before any reclassifications under section 1886(d)(8)(B) or section 1886(d)(10) of the Act. Within each urban or rural labor market area, we added the total adjusted salaries plus wage-related costs obtained in Step 5 for all hospitals in that area to determine the total adjusted salaries plus wage-related costs for the labor market area.

Step 7—We divided the total adjusted salaries plus wage-related costs obtained under both methods in Step 6 by the sum of the corresponding total hours (from Step 4) for all hospitals in each labor market area to determine an average hourly wage for the area.

Step 8—We added the total adjusted salaries plus wage-related costs obtained in Step 5 for all hospitals in the nation and then divided the sum by the national sum of total hours from Step 4 to arrive at a national average hourly wage. Using the data as described above, the national average hourly wage is $24.5439.

Step 9—For each urban or rural labor market area, we calculated the hospital wage index value by dividing the area average hourly wage obtained in Step 7 by the national average hourly wage computed in Step 8.

Step 10—Following the process set forth above, we developed a separate Puerto Rico-specific wage index for purposes of adjusting the Puerto Rico standardized amounts. (The national Puerto Rico standardized amount is adjusted by a wage index calculated for all Puerto Rico labor market areas based on the national average hourly wage as described above.) We added the total adjusted salaries plus wage-related costs (as calculated in Step 5) for all hospitals in Puerto Rico and divided the sum by the total hours for Puerto Rico (as calculated in Step 4) to arrive at an overall average hourly wage of $11.5431 for Puerto Rico. For each labor market area in Puerto Rico, we calculated the Puerto Rico-specific wage index value by dividing the area average hourly wage (as calculated in Step 7) by the overall Puerto Rico average hourly wage.

Step 11—Section 4410 of Pub. L. 105–33 provides that, for discharges on or after October 1, 1997, the area wage index applicable to any hospital that is located in an urban area of a State may not be less than the area wage index applicable to hospitals located in rural areas in that State. Furthermore, this wage index floor is to be implemented in such a manner as to ensure that aggregate prospective payment system payments are not greater or less than those that would have been made in the year if this section did not apply. For FY 2004, this change affects 141 hospitals in 44 MSAs. The MSAs affected by this provision are identified by a footnote in Table 4A in the Addendum of this proposed rule.

F. Proposed Revisions to the Wage Index Based on Hospital Redesignation

1. General

Under section 1886(d)(10) of the Act, the Medicare Geographic Classification Review Board (MGCRB) considers applications by hospitals for geographic reclassification for purposes of payment under the IPPS. Hospitals can elect to reclassify for the wage index or the standardized amount, or both, and as individual hospitals or as rural groups. Generally, hospitals must be proximate to the labor market area to which they are seeking reclassification and must demonstrate characteristics similar to hospitals located in that area. Hospitals must apply for reclassification to the MGCRB, which issues its decisions by the end of February for reclassification to become effective for the following fiscal year (beginning October 1). The regulations applicable to reclassifications by the MGCRB are in §§ 412.230 through 412.280.

Section 1886(d)(10)(D)(v) of the Act provides that, beginning with FY 2001, a MGCRB decision on a hospital reclassification for purposes of the wage index is effective for 3 fiscal years, unless the hospital elects to terminate the reclassification. Section 1886(d)(10)(D)(vi) of the Act provides that the MGCRB must use the 3 most recent years' average hourly wage data in evaluating a hospital's reclassification application for FY 2003 and any succeeding fiscal year.

Section 304(b) of Pub. L. 106–554 provides that the Secretary must establish a mechanism under which a statewide entity may apply to have all of the geographic areas in the State treated as a single geographic area for purposes of computing and applying a single wage index, for reclassifications beginning in FY 2003. The implementing regulations for this provision are at § 412.235.

Section 1886(d)(8)(B) of the Act permits a hospital located in a rural county adjacent to one or more urban areas to be designated as being located in the MSA to which the greatest number of workers in the county commute (1) If the rural county would otherwise be considered part of an urban area under the standards published in the **Federal Register** for designating MSAs (and for designating NECMAs), and (2) if the commuting rates used in determining outlying counties (or, for New England, similar recognized area) were determined on the basis of the aggregate number of resident workers who commute to (and, if applicable under the standards, from) the central county or counties of all contiguous MSAs (or NECMAs). Hospitals that meet these criteria are deemed urban for purposes of the standardized amounts and for purposes of assigning the wage index.

Revised MSA standards were published in the December 27, 2000 **Federal Register** (65 FR 82228). We are working with the Census Bureau to compile a list of hospitals that meet the new standards based on the 2000 census data; however, that work is not yet complete. Therefore, for purposes of calculating the proposed wage indexes in this proposed rule, we used the list of qualifying hospitals based on the 1990 MSA standards.

However, if the updated list of hospitals meeting the new standards based on the 2000 census data is available in time, we will incorporate it in the final rule to be published by August 1, 2003. To the extent hospitals otherwise reclassified by the MGCRB for FY 2004 are adversely affected by their inclusion on or exclusion from the new list, we will address this in the final rule. Among the options we may consider in the final rule to address situations where hospitals may be adversely affected are: Assigning adversely affected hospitals the highest applicable wage index; or extending the opportunity for adversely affected hospitals to withdraw from a reclassification by the MGCRB for FY 2004.

2. Effects of Reclassification

The methodology for determining the wage index values for redesignated hospitals is applied jointly to the hospitals located in those rural counties that were deemed urban under section 1886(d)(8)(B) of the Act and those hospitals that were reclassified as a result of the MGCRB decisions under section 1886(d)(10) of the Act. Section 1886(d)(8)(C) of the Act provides that the application of the wage index to redesignated hospitals is dependent on the hypothetical impact that the wage data from these hospitals would have on the wage index value for the area to which they have been redesignated. Therefore, as provided in section 1886(d)(8)(C) of the Act,[3] the wage index values were determined by considering the following:

- If including the wage data for the redesignated hospitals would reduce the wage index value for the area to which the hospitals are redesignated by 1 percentage point or less, the area wage index value determined exclusive of the wage data for the redesignated hospitals applies to the redesignated hospitals.
- If including the wage data for the redesignated hospitals reduces the wage index value for the area to which the hospitals are redesignated by more than 1 percentage point, the area wage index determined inclusive of the wage data for the redesignated hospitals (the combined wage index value) applies to the redesignated hospitals.
- Rural areas whose wage index values would be reduced by excluding the wage data for hospitals that have been redesignated to another area continue to have their wage index values calculated as if no redesignation had occurred (otherwise, redesignated rural hospitals are excluded from the calculation of the rural wage index).
- The wage index value for a redesignated rural hospital cannot be reduced below the wage index value for the rural areas of the State in which the hospital is located.

If including the wage data for the redesignated hospitals increases the wage index value for the urban area to which the hospitals are redesignated, both the area and the redesignated hospitals receive the combined wage index value. Otherwise, the hospitals located in the urban area receive a wage index excluding the wage data of hospitals redesignated into the area.

The wage data for a reclassified urban hospital is included in both the wage index calculation of the area to which the hospital is reclassified (subject to the rules described above) and the wage index calculation of the urban area where the hospital is physically located.

[3] Although section 1886(d)(8)(C)(iv)(I) of the Act also provides that the wage index for an urban area may not decrease as a result of redesignated hospitals if the urban area wage index is below the wage index for rural areas in the State in which the urban area is located, this was effectively made moot by section 4410 of Public Law 105–33, which provides that the area wage index applicable to any hospital that is located in an urban area of a State may not be less than the area wage index applicable to hospitals located in rural areas in that State.

Also, section 1886(d)(8)(C)(iv)(II) of the Act provides that an urban area's wage index may not decrease as a result of redesignated hospitals if the urban area is located in a State that is composed of a single urban area.

The proposed wage index values for FY 2004 are shown in Tables 4A, 4B, 4C, and 4F in the Addendum to this proposed rule. Hospitals that are redesignated should use the wage index values shown in Table 4C. Areas in Table 4C may have more than one wage index value because the wage index value for a redesignated urban or rural hospital cannot be reduced below the wage index value for the rural areas of the State in which the hospital is located, and those areas have hospitals from more than one State reclassified into them.

Tables 3A and 3B in the Addendum of this proposed rule list the 3-year average hourly wage for each labor market area before the redesignation of hospitals, based on FYs 1998, 1999, and 2000 cost reporting periods. Table 3A lists these data for urban areas and Table 3B lists these data for rural areas. In addition, Table 2 in the Addendum to this proposed rule includes the adjusted average hourly wage for each hospital from the FY 1998 and FY 1999 cost reporting periods, as well as the FY 2000 period used to calculate the proposed FY 2004 wage index. The 3-year averages are calculated by dividing the sum of the dollars (adjusted to a common reporting period using the method described previously) across all 3 years, by the sum of the hours. If a hospital is missing data for any of the previous years, its average hourly wage for the 3-year period is calculated based on the data available during that period.

At the time this proposed wage index was constructed, the MGCRB had completed its review of FY 2004 reclassification requests. We have included in this proposed rule Table 9, which shows hospitals that have been reclassified under either section 1886(d)(8) or section 1886(d)(10)(D) of the Act. This table includes hospitals reclassified for FY 2004 by the MGCRB (73 for wage index, 66 for the standardized amount, and 33 for both the wage index and the standardized amount), as well as hospitals that were reclassified for the wage index in either FY 2002 (476) or FY 2003 (56) and are, therefore, in either the second or third year of their 3-year reclassification. This table also includes hospitals located in urban areas that have been designated rural in accordance with section 1886(d)(8)(E) of the Act (14). In addition, it includes rural hospitals redesignated to an urban area under section 1886(d)(8)(B) of the Act for purposes of the standardized amount and the wage index (42).

Under § 412.273, hospitals that have been reclassified by the MGCRB are permitted to withdraw their applications within 45 days of the publication of this proposed rule in the **Federal Register**. Similarly, hospitals may terminate an existing 3-year reclassification within 45 days of the publication of this proposed rule. The request for withdrawal of an application for reclassification or termination of an existing 3-year reclassification that would be effective in FY 2003 must be received by the MGCRB within 45 days of the publication of this proposed rule. If a hospital elects to withdraw its wage index application after the MGCRB has issued its decision but prior to the above date, it may later cancel its withdrawal in a subsequent year and request the MGCRB to reinstate its wage index reclassification for the remaining fiscal year(s) of the 3-year period (§ 412.273(b)(2)(i)). The request to cancel a prior withdrawal must be made in writing to the MGCRB no later than the deadline for submitting reclassification applications for the following fiscal year (§ 412.273(d)). For further information about withdrawing, terminating, or canceling a previous withdrawal or termination of a 3-year reclassification for wage index purposes, we refer the reader to § 412.273, as well as the August 1, 2002 IPPS final rule (67 FR 50065) and the August 1, 2001 IPPS final rule (66 FR 39887).

Any changes to the wage index that result from withdrawals of requests for reclassification, wage index corrections, appeals, and the Administrator's review process will be incorporated into the wage index values published in the final rule following this proposed rule. Therefore, the final wage indexes will likely be different from those published in this proposed rule, and, in some cases, they may be quite different. Although, as described above, the statute provides that a reclassified rural hospital may not have a lower wage index after reclassification than before, there is no similar protection for urban hospitals. Therefore, hospitals should carefully evaluate the impacts of their reclassifications prior to the deadline for withdrawing from an approved reclassification.

Applications and other information about MGCRB reclassifications may be obtained via the CMS internet Web site at *http://cms.hhs.gov/providers/prrb/mgcinfo.asp*, or by calling the MGCRB at (410) 786–1174. The mailing address of the MGCRB is: 2520 Lord Baltimore Drive, Suite L, Baltimore, MD 21244–2670.

As noted previously, OMB plans to announce new definitions of CBSAs by the middle of this year, and the earliest these new CBSA definitions would be used for the wage index is FY 2005. Applications for reclassification by the MGCRB for FY 2005 will be due by September 2, 2003. However, by that time, we will not have completed our analysis of the new CBSAs. Therefore, hospitals submitting applications for reclassification by the MGCRB for FY 2005 should base those applications on the current MSAs. We will assess the implications of the new CBSAs on hospitals' reclassification requests in the FY 2005 proposed rule.

G. Requests for Wage Data Corrections

The preliminary wage data file was made available on January 10, 2003 (and subsequently on February 4, 2003), through the Internet on CMS's Web site at *http://www.cms.hhs.gov/providers/hipps/default.asp*. In a memorandum dated December 31, 2002, we instructed all Medicare fiscal intermediaries to inform the IPPS hospitals they service of the availability of the wage data file and the process and timeframe for requesting revisions (including the specific deadlines listed below). We also instructed the fiscal intermediaries to advise hospitals that these data are made available directly through their representative hospital organizations.

If a hospital wished to request a change to its data as shown in that wage data file, the hospital was to submit corrections along with complete, detailed supporting documentation to its intermediary by February 17, 2003 (this deadline was initially announced as February 10, 2003, but was changed due to the need to repost some of the data). Hospitals were notified of this deadline and of all other possible deadlines and requirements, including the requirement to review and verify their data as posted on the preliminary wage data file on the Internet, through the December 31, 2002 memorandum referenced above.

After reviewing requested changes submitted by hospitals, fiscal intermediaries transmitted any revised cost reports to CMS and forwarded a copy of the revised Worksheet S–3, Parts II and III to the hospitals by April 4, 2003. In addition, fiscal intermediaries were to notify hospitals of the changes or the reasons that changes were not accepted. These deadlines are necessary to allow sufficient time to review and process the data so that the final wage index

calculation can be completed for the development of the final FY 2004 prospective payment rates to be published by August 1, 2003.

If a hospital disagreed with the fiscal intermediary's resolution of a policy issue (for example, whether a general category of cost is allowable in the wage data), the hospital could have contacted CMS in an effort to resolve the issue. We note that the April 4, 2003 deadline also applied to these requests. Requests were required to be sent to CMS at the address below (with a copy to the hospital's fiscal intermediary). The request must have fully documented all attempts by the hospital to resolve the dispute through the process described above, including copies of relevant correspondence between the hospital and the fiscal intermediary. During review, we do not consider issues such as the adequacy of a hospital's supporting documentation, as we believe that fiscal intermediaries are generally in the best position to make evaluations regarding the appropriateness of these types of issues (which should have been resolved earlier in the process).

Hospitals should also examine Table 2 in the Addendum to this proposed rule to verify their data. Table 2 contains each hospital's adjusted average hourly wage used to construct the wage index values for the past 3 years, including the FY 2000 data used to construct the proposed FY 2004 wage index. We note that the hospital average hourly wages shown in Table 2 only reflect changes made to a hospital's data and transmitted to CMS prior to February 18, 2003.

We will release a final wage data file in May 2003 to hospital associations and the public on the Internet at *http://www.cms.hhs.gov/providers/hipps/default.asp*. The May 2003 public use file will be made available solely for the limited purpose of identifying any potential errors made by CMS or the fiscal intermediary in the entry of the final wage data that result from the correction process described above (revisions submitted to CMS by the fiscal intermediaries by April 4, 2003). If, after reviewing the May 2003 final file, a hospital believes that its wage data are incorrect due to a fiscal intermediary or CMS error in the entry or tabulation of the final wage data, it should send a letter to both its fiscal intermediary and CMS that outlines why the hospital believes an error exists and provide all supporting information, including relevant dates (for example, when it first became aware of the error).

CMS and the fiscal intermediaries must receive these requests no later than June 6, 2003. Requests mailed to CMS should be sent to: Centers for Medicare & Medicaid Services, Center for Medicare Management, Attention: Wage Index Team, Division of Acute Care, C4–07–05, 7500 Security Boulevard, Baltimore, MD 21244–1850.

Each request also must be sent to the hospital's fiscal intermediary. The intermediary will review requests upon receipt and contact CMS immediately to discuss its findings.

At this point in the process, that is, after the release of the May 2003 wage index file, changes to the hospital wage data will only be made in those very limited situations involving an error by the intermediary or CMS that the hospital could not have known about before its review of the final wage data file. Specifically, neither the intermediary nor CMS will approve the following types of requests:

- Requests for wage data corrections that were submitted too late to be included in the data transmitted to CMS by fiscal intermediaries on or before April 4, 2003.
- Requests for correction of errors that were not, but could have been, identified during the hospital's review of the January 2003 wage data file.
- Requests to revisit factual determinations or policy interpretations made by the intermediary or CMS during the wage data correction process.

Verified corrections to the wage index received timely (that is, by June 6, 2003) will be incorporated into the final wage index in the final rule to be published by August 1, 2003, and to be effective October 1, 2003.

We have created the process described above to resolve all substantive wage data correction disputes before we finalize the wage data for the FY 2004 payment rates. Accordingly, hospitals that did not meet the procedural deadlines set forth above will not be afforded a later opportunity to submit wage data corrections or to dispute the intermediary's decision with respect to requested changes. Specifically, our policy is that hospitals that do not meet the procedural deadlines set forth above will not be permitted to challenge later, before the Provider Reimbursement Review Board, the failure of CMS to make a requested data revision (*See W. A. Foote Memorial Hospital* v. *Shalala*, No. 99–CV–75202–DT (E.D. Mich. 2001)).

Again, we believe the wage data correction process described above provides hospitals with sufficient opportunity to bring errors in their wage data to the fiscal intermediaries' attention. Moreover, because hospitals will have access to the final wage data by early May 2003, they will have the opportunity to detect any data entry or tabulation errors made by the fiscal intermediary or CMS before the development and publication of the FY 2004 wage index by August 1, 2003, and the implementation of the FY 2004 wage index on October 1, 2003. If hospitals avail themselves of this opportunity, the wage index implemented on October 1 should be accurate. Nevertheless, in the event that errors are identified after that date, we retain the right to make midyear changes to the wage index under very limited circumstances.

Specifically, in accordance with § 412.63(x)(2) of our existing regulations, we make midyear corrections to the wage index for an area only if a hospital can show that the intermediary or CMS made an error in tabulating its data. This provision is not available to a hospital seeking to revise another hospital's data that may be affecting the requesting hospital's wage index. As described earlier, the requesting hospital must show that it could not have known about the error, or that it did not have the opportunity to correct the error, before the publication of the FY 2004 wage index. As indicated earlier, since a hospital will have the opportunity to verify its data, and the fiscal intermediary will notify the hospital of any changes, we do not expect that midyear corrections will be necessary. However, if the correction of a data error changes the wage index value for an area, the revised wage index value will be effective prospectively from the date the correction is approved.

H. Modification of the Process and Timetable for Updating the Wage Index

Although the wage data correction process described in section III.G. of this preamble has proven successful in the past for ensuring that the wage data used each year to calculate the wage indexes are generally reliable and accurate, we continue to be concerned about the growing volume of wage data revisions initiated by hospitals after the release of the first public use file in February. This issue has been discussed previously in the FY 1998 IPPS proposed rule (62 FR 29918) and in the FY 2002 IPPS proposed rule (66 FR 22682). In each discussion, we describe the increasing number of revisions to wage data between the proposed rule and the final rule.

Currently, the fiscal intermediaries are required to conduct initial desk reviews on or before November 15 in advance of the preparation of the preliminary wage data public use file in early January (see Program

Memorandum A–02–94, October 4, 2002). Furthermore, they are required to address items that fall outside the established thresholds. This may involve further review of the supplementary documentation or contacting the hospital for additional documentation. In addition, fiscal intermediaries are required to notify State hospital associations regarding hospitals that fail to respond to issues raised during the desk review. These actions are to be completed in advance of sending the data to CMS to prepare the preliminary wage data public use file in early January. However, as we have indicated in prior **Federal Register**s, as much as 30 percent of hospitals subsequently request revisions to their data after the preliminary wage data file is made available.

This high volume of revisions results in an additional workload for the fiscal intermediaries. In particular, much of a fiscal intermediary's efforts prior to submitting the data to prepare the preliminary public use file may be in vain if the hospital subsequently revises all of its data prior to the early February deadline (which is the hospital's right at that point). Therefore, we are proposing to modify the process to release the preliminary wage data file prior to requiring the fiscal intermediaries to conduct their initial desk reviews on the data. This unaudited data would be available on the Internet by early October rather than early January. Hospitals would review this file to ensure it contains their correct data as submitted on their cost reports and request any changes by early November. At that time, the fiscal intermediaries would review the revision requests and conduct desk reviews of the data including all approved changes.

Under this proposed revised timetable, the fiscal intermediaries would notify the hospitals in early February of any changes to the wage data as a result of the desk reviews and the resolution of the hospitals' early November change requests. The fiscal intermediaries would also submit the revisions to CMS in early February. Hospitals would then have until early March to submit requests to the fiscal intermediaries for reconsideration of adjustments made by the fiscal intermediaries as a result of the desk review. Other than requesting reconsideration of desk review adjustments, hospitals would not be able to submit new requests for additional changes that were not submitted by early November. By early April, the fiscal intermediaries would notify all hospitals of their decisions regarding the hospitals' requests to reconsider desk review adjustments and submit all of the revised wage data to CMS. From this point (early April) until the publication of the final rule, the process would be identical to the current timetable. Similar to the current timetable, hospitals would also have the opportunity in early April to request CMS consideration of policy disputes.

We believe that the proposed revision of the schedule would improve the quality of the wage index by initiating hospitals' review of their data sooner and allowing the fiscal intermediaries to focus their reviews on the final data submitted by hospitals to be included in the wage index. In addition, we would receive the revised data in time to incorporate them into the wage indexes published in the proposed rule, resulting in fewer changes from the proposed rule to the final rule. This will improve the ability of hospitals to assess whether they should request a withdrawal from a MGCRB reclassification. Because the decision of whether to withdraw a wage index reclassification must be made prior to publication of the final rule, this proposed schedule should decrease the likelihood that the final wage index will be dramatically different from the proposed wage index.

The following table illustrates the proposed timetable that would be applicable for the development of the FY 2005 wage index:

Timeframe	Steps in wage index development process
Early October	Preliminary and unaudited wage data file published as a public use file (PUF) on CMS Web site.
Early November	Deadline for hospitals to send requests for revisions to the fiscal intermediaries.
Early February	Fiscal intermediaries review revisions and desk review wage data; notify hospitals of changes and resolution of revision requests; and submit preliminary revised data to CMS.
Early March	Deadline for hospitals to request wage data reconsideration of desk review adjustments and provide adequate documentation to support the request.
Early April	Deadline for the fiscal intermediaries to submit additional revisions resulting from the hospitals' reconsideration requests. This is also the deadline for hospitals to request CMS intervention in cases where the hospital disagrees with the fiscal intermediary's policy interpretations.
Early May *	Release of final wage data PUF on CMS Web site.
Early June *	Deadline for hospitals to submit correction requests, to both CMS and their fiscal intermediary, for errors due to the mishandling of the final wage data by CMS or the fiscal intermediary.
August 1 *	Publication of the final rule.
October 1 *	Effective date of updated wage index.

* Indicates no change from prior years.

IV. Other Decisions and Proposed Changes to the IPPS for Operating Costs and GME Costs

A. Transfer Payment Policy (§ 412.4)

Existing regulations at § 412.4(a) define discharges under the IPPS as situations in which a patient is formally released from an acute care hospital or dies in the hospital. Section 412.4(b) defines transfers from one acute care hospital to another, and § 412.4(c) defines transfers to certain postacute care providers. Our policy provides that, in transfer situations, full payment is made to the final discharging hospital and each transferring hospital is paid a per diem rate for each day of the stay, not to exceed the full DRG payment that would have been made if the patient had been discharged without being transferred.

The per diem rate paid to a transferring hospital is calculated by dividing the full DRG payment by the geometric mean length of stay for the DRG. Based on an analysis that showed that the first day of hospitalization is the most expensive (60 FR 45804), our policy provides for payment that is double the per diem amount for the first day (§ 412.4(f)(1)). Transfer cases are also eligible for outlier payments. The outlier threshold for transfer cases is equal to the fixed-loss outlier threshold for nontransfer cases, divided by the geometric mean length of stay for the DRG, multiplied by the length of stay for the case, plus one day.

1. Transfers to Another Acute Care Hospital (§ 412.4(b))

Medicare adopted its IPPS transfer policy because, if we were to pay the full DRG payment regardless of whether a patient is transferred or discharged, there would be a strong incentive for hospitals to transfer patients to another IPPS hospital early in their stay in order to minimize costs while still receiving the full DRG payment. The transfer policy adjusts the payments to approximate the reduced costs of transfer cases.

Currently, when a patient chooses to depart from a hospital against the medical opinion of treating physicians, the case is treated as a left against medical advice (LAMA) discharge and coded as discharge status "07–Left Against Medical Advice (LAMA)" on the inpatient billing claim form. Because, by definition, LAMA discharges are assumed not to involve the active participation of the hospital administration, our policy has been to treat LAMA cases as discharges. This policy applies even if the patient is admitted to another hospital on the date of the LAMA discharge. Consequently, we currently make a full DRG payment for any discharge coded as a LAMA case.

However, we are concerned that some hospitals may be incorrectly coding transfers as LAMA cases. The Office of Inspector General (OIG) issued a report in March 2002 (A–06–99–00045), asserting that of the approximately 60,000 LAMA discharges annually, 1,500 patients were subsequently admitted to another IPPS hospital the same day. The OIG performed a detailed review of the medical records at selected hospitals and found evidence that the hospitals actively participated in transferring the patients to a different IPPS hospital, yet the hospital coded the claim as a LAMA. OIG cited several examples of these cases:

"In the first example, the transferring hospital did not have an inpatient room available for the patient, who had been in the emergency room for 24 hours. The medical record showed that the treating physician contacted another PPS hospital to determine whether the hospital could accept the patient. Specifically, the medical record stated: 'Upon request of the patient, [hospital name] was contacted since there is a good possibility of transferring patient to [name of hospital]. At present, he has been in emergency room for 24 hours waiting for a bed.'"

In this example, despite the overt participation of the physician in securing the admission to the other IPPS hospital and the fact that the transferring hospital did not have an inpatient room available for the patient, the claim was submitted as a LAMA discharge, rather than as a transfer to another IPPS hospital.

"In the second example, the patient was brought to the first hospital by ambulance. Subsequently, the patient's family indicated that they wanted a neurologist at another hospital to render the treatment needed by the patient. The attending physician contacted the neurologist in order to determine if the neurologist would accept, admit, and treat the patient. The medical record contained ample evidence of knowledge and participation of the transferring hospital, and the discharge should have been reported as a PPS transfer. Specifically, the medical record stated: 'Patient's family wanted to sign the patient out against medical advice and take her to [name of hospital]. The physician spoke with the neurologist at [name of hospital], who agreed to accept the patient. The patient's family signed the patient discharged against medical advice. All the risks of self-discharge were explained.'"

In this case, although the medical record indicated the patient wanted to leave against medical advice, there is also evidence that the patient's attending physician at the hospital participated in the transfer to another IPPS hospital. While we do not wish to discourage such participation and cooperation in cases where a transfer occurs, this situation would seem almost indistinguishable from other transfer situations. For instance, we have long recognized situations where patients are transferred from a rural hospital to an urban hospital for a surgical procedure, then back to the rural hospital to complete the recuperative care, as appropriate transfer situations as long as the transfers are medically appropriate. In such a case, the rural hospital would receive a payment under the transfer policy for the first portion of the stay, the urban hospital would also receive payment under the transfer policy for the care it provided, and the rural hospital would receive a full DRG payment as the discharging hospital for the recuperative care it provided upon the patient's return from the urban hospital. In such situations, each portion of the stay may be assigned a different DRG.

Therefore, we are proposing to expand our definition of a transfer under § 412.4(b) to include all patients who are admitted to another IPPS hospital on the same day that the patient is discharged from an IPPS hospital, unless the first (transferring) hospital can demonstrate that the patient's treatment was completed at the time of discharge from that hospital. In other words, unless the same-day readmission is to treat a condition that is unrelated to the condition treated during the original admission (for example, the beneficiary is in a car accident later that day), any situation where the beneficiary is admitted to another IPPS hospital on the same date that he or she is discharged from an IPPS hospital would be considered a transfer, even if the patient left against medical advice from the first hospital.

Although we considered proposing a policy that would be based on whether the hospital actively participated in the transfer, and exempting from the transfer definition cases where the hospital had absolutely no knowledge that the patient intended to go to another hospital, we are not proposing such a policy for two reasons. First, it would be difficult to administer equitably a policy that required a determination as to whether the hospital or the physician had knowledge of the patient's intentions. Such a policy would require fiscal intermediaries to make a difficult judgment call in many cases. Second, if we were to base the determination of whether a case is a transfer on the level of involvement of the hospital and the physician caring for the patient, we would be creating a financial disincentive to hospitals for ensuring an efficient and cooperative transfer once a decision has been made by the patient or the patient's family to leave the hospital.

We recognize that, in some cases, a hospital cannot know the patient will go to another hospital. However, we note the claims processing system can identify cases coded as discharges where the date of discharge matches the admission date at another hospital. In these cases, the fiscal intermediary will notify the hospital of the need to submit an adjustment claim. However, if the hospital can present documentation showing that the patient's care associated with the admission to the hospital was completed before discharge, consistent with our current policy, the transfer policy will not be applied.

2. Technical Correction

Section 412.4(b)(2) defines a discharge from one inpatient area of the hospital to another area of the hospital as a transfer. Although this situation may be viewed as an intrahospital transfer, it does not implicate the transfer policy under the IPPS. Therefore, to avoid confusion and to be consistent with the proposed changes to § 412.4(b) described at section IV.A.3. of this preamble, we are proposing to delete existing § 412.4(b)(2) from the definition of a transfer.

3. Expanding the Postacute Care Transfer Policy to Additional DRGs (§§ 412.4(c) and (d))

Under section 1886(d)(5)(J) of the Act, a "qualified discharge" from one of 10 DRGs selected by the Secretary, to a postacute care provider is treated as a transfer case beginning with discharges on or after October 1, 1998. This section requires the Secretary to define and pay as transfers all cases assigned to one of 10 DRGs selected by the Secretary, if the individuals are discharged to one of the following postacute care settings:

- A hospital or hospital unit that is not a subsection 1886(d) hospital. (Section 1886(d)(1)(B) of the Act identifies the hospitals and hospital units that are excluded from the term "subsection (d) hospital" as psychiatric hospitals and units, rehabilitation hospitals and units, children's hospitals, long-term care hospitals, and cancer hospitals.)
- A SNF (as defined at section 1819(a) of the Act).
- Home health services provided by a home health agency, if the services relate to the condition or diagnosis for which the individual received inpatient hospital services, and if the home health services are provided within an appropriate period (as determined by the Secretary).

In the July 31, 1998 IPPS final rule (63 FR 40975 through 40976), we specified the appropriate time period during which we would consider a discharge to postacute home health services to constitute a transfer as within 3 days after the date of discharge. Also, in the July 31, 1998 final rule, we did not include in the definition of postacute care transfer cases patients transferred to a swing-bed for skilled nursing care (63 FR 40977).

Section 1886(d)(5)(J) of the Act directed the Secretary to select 10 DRGs based upon a high volume of discharges to postacute care and a disproportionate use of postacute care services. As discussed in the July 31, 1998 final rule, these 10 DRGs were selected in 1998 based on the MedPAR data from FY 1996. Using that information, we identified and selected the first 20 DRGs that had the largest proportion of discharges to postacute care (and at least 14,000 such transfer cases). In order to select 10 DRGs from the 20 DRGs on our list, we considered the volume and percentage of discharges to postacute care that occurred before the mean length of stay and whether the discharges occurring early in the stay were more likely to receive postacute care. We identified the following DRGs to be subject to the special 10 DRG transfer rule:

- DRG 14 (Intracranial Hemorrhage and Stroke with Infarction (formerly "Specific Cerebrovascular Disorders Except Transient Ischemic Attack"));
- DRG 113 (Amputation for Circulatory System Disorders Except Upper Limb and Toe);
- DRG 209 (Major Joint Limb Reattachment Procedures of Lower Extremity);
- DRG 210 (Hip and Femur Procedures Except Major Joint Procedures Age >17 With CC);
- DRG 211 (Hip and Femur Procedures Except Major Joint Procedures Age >17 Without CC);
- DRG 236 (Fractures of Hip and Pelvis);
- DRG 263 (Skin Graft and/or Debridement for Skin Ulcer or Cellulitis With CC);
- DRG 264 (Skin Graft and/or Debridement for Skin Ulcer or Cellulitis Without CC);
- DRG 429 (Organic Disturbances and Mental Retardation); and
- DRG 483 (Tracheostomy With Mechanical Ventiliation 96+ Hours or Principal Diagnosis Except Face, Mouth, and Neck Diagnoses (formerly "Tracheostomy Except for Face, Mouth, and Neck Diagnoses")).

Similar to the policy for transfers between two acute care hospitals, the transferring hospital in a postacute care transfer for 7 of the 10 DRGs receives twice the per diem rate the first day and the per diem rate for each following day of the stay before the transfer, up to the full DRG payment. However, 3 of the 10 DRGs exhibit a disproportionate share of costs very early in the hospital stay in postacute care transfer situations. For these 3 DRGs, hospitals receive 50 percent of the full DRG payment plus the single per diem (rather than double the per diem) for the first day of the stay and 50 percent of the per diem for the remaining days of the stay, up to the full DRG payment. This is consistent with section 1886(d)(5)(J)(i) of the Act, which recognizes that in some cases "a substantial portion of the costs of care are incurred in the early days of the inpatient stay."

Section 1886(d)(5)(J)(iv) of the Act authorizes the Secretary to expand the postacute transfer policy beyond 10 DRGs. In the May 9, 2002 IPPS proposed rule, we discussed the possibility of expanding this policy to either all DRGs or a subset of additional DRGs (we identified 13 additional DRGs in that proposed rule) (67 FR 31455). However, as discussed further in the August 1, 2002 final rule (65 FR 50048), we did not expand the postacute transfer provision to additional DRGs for FY 2003. The commenters on the options in the May 9, 2002 proposed rule raised many issues regarding the impact of expanding this policy that we needed to consider further before proceeding. In particular, due to the limited time between the close of the comment period and the required publication date of August 1, we were unable to completely analyze and respond to all of the points that were raised. We indicated that we would continue to conduct research to assess whether further expansion of this policy may be warranted and, if so, how to design any such refinements.

Many commenters on the May 9, 2002 proposed rule argued that, in a system based on averages, expansion of the postacute care transfer policy negatively influences, and in fact penalizes, hospitals for efficient care. They claimed that this policy indiscriminately penalizes hospitals for efficient treatment and for ensuring that patients receive the right care at the right time in the right place. They believed that the postacute care transfer provision creates an inappropriate incentive for hospitals to keep patients longer.

Commenters also expressed concern that the expansion of the transfer provision violates the fundamental principle of the IPPS. The DRG system is based on payments that will, on average, be adequate. These commenters argued that expansion of the postacute care transfer policy would give the IPPS a per-diem focus and would mean that hospitals would be paid less for shorter than average lengths of stay, although they would not be paid more for the cases that are longer than average (except for outlier cases).

We agree that the transfer policy should not hamper the provision of effective patient care, and any future expansion must consider both the need to reduce payments to reflect cost-shifting due to reductions in length of stay attributable to early transfers to postacute care and the need to ensure that payments, on average, remain adequate to ensure effective patient care. Therefore, we have assessed the extent to which the current postacute transfer policy balances these objectives.

The table below displays the results of our analysis. We first examined whether the 10 DRGs included in the policy continue to exhibit a relatively high percentage of cases transferred to postacute care settings, particularly

among cases with lengths of stay shorter than the geometric mean for the DRG (these cases would be affected by the reduced payments for transfers). The table shows that these DRGs continue to contain high percentages of cases transferred to postacute care settings similar to those we reported in the FY 1999 final rule (63 FR 40975). These results would appear to demonstrate that the postacute transfer policy has not greatly altered hospitals' treatment patterns for these cases.

This similarity in treatment patterns is further evidenced by the fact that, for 6 of the 10 DRGs, the geometric mean length of stay has continued to decline in the 5 years since the policy was implemented. Accordingly, hospitals have continued to transfer many patients in these DRGs before the mean length of stay, despite the transfer policy. As we stated in the July 31, 1998 final rule, the transfer provision adjusts payments to hospitals to reflect the reduced lengths of stay arising from the shift of patient care from the acute care setting to the postacute setting (63 FR 40977). This policy does not require a change in physician clinical decisionmaking nor in the manner in which physicians and hospitals practice medicine: it simply addresses the appropriate level of payments once those decisions have been made.

With respect to whether this policy alters the fundamental averaging principles of the IPPS, we believe the current policy, which targets specific DRGs where evidence shows hospitals have aggressively moved care to postacute care settings, does not alter the averaging principles of the system. In fact, it could be said to enhance those principles because a transfer case is counted as only a fraction of a case toward DRG recalibration based on the ratio of its transfer payment to the full DRG payment for nontransfer cases. This methodology ensures the DRG weight calculation is consistent with the payment policy for transfer cases. The last column of the table below indicates that all but three of these DRGs have experienced increases in DRG weights since the policy was implemented. By reducing the contribution of transfer cases to the calculation of the DRG average charge, the relative weights (the result of dividing the DRG average charge by the national average charge per case) are higher than they would otherwise be. This is because transfers, particularly short-stay transfers, have lower total charges, on average.

DRG	DRG title	All transfer cases	Percent of all cases transferred to postacute care setting	Percent of all cases transferred prior to mean length of stay	Percent change in mean length of stay FYs 92–98	Percent change in mean length of stay FYs 98–03	Percent change in DRG relative weight FYs 98–03
14	Intracranial Hemorrhage and Stroke with Infarction.	143,649	48.88	11.74	−29.17	−5.88	8.53
113	Amputation for Circulatory System Disorders Except Upper Limb and Toe.	24,470	66.57	30.12	−32.17	7.22	9.21
209	Major Joint and Limb Reattachment Procedures of Lower Extremity.	244,969	66.66	19.76	−47.52	−15.09	−8.09
210	Hip and Femur Procedures Except Major Joint Age >17 With CC.	87,253	76.26	35.67	−42.98	−6.15	0.1
211	Hip and Femur Procedures Except Major Joint Age >17 Without CC.	20,239	72.38	15.89	−44.44	−8.00	1.39
236	Fractures of Hip and Pelvis	26,583	69.86	11.20	−34.85	−6.98	−1.43
263	Skin Graft and/or Debridement for Skin Ulcer or Cellulitis with CC.	13,158	62.00	31.35	−41.45	4.49	9.36
264	Skin Graft and/or Debridement for Skin Ulcer or Cellulitis Without CC.	1,759	49.97	18.81	−37.21	1.85	5.36
429	Organic Disturbances and Mental Retardation.	30,349	53.25	15.22	−28.95	−12.96	−5.27
483	Tracheostomy With Mechanical Ventilation 96 + Hours or Principal Diagnosis Except Face, Mouth, and Neck Diagnoses.	21,818	52.93	27.34	−15.29	2.37	1.38

After determining the current 10 DRG postacute care transfer policy appears to be appropriately balancing the objectives to reduce payments to reflect cost-shifting due to reductions in length of stay attributable to early postacute care transfers and to ensure that payments, on average, remain adequate to ensure effective patient care, we once again undertook the analysis to identify additional DRGs to which the policy may be expanded. However, it should be noted that, at this time, we have decided not to expand the policy to all DRGs. Although we still believe expanding the postacute care transfer policy to all DRGs might be the most equitable approach because a policy that is limited to certain DRGs may result in disparate payment treatment across hospitals, at this time, we believe an incremental expansion is appropriate. That is, we believe further analysis is necessary to assess whether it would be appropriate to apply a reduced payment for postacute care transfers across all DRGs. In particular, it is important to attempt to distinguish between DRGs where the care is increasingly being shifted to postacute care sites versus DRGs where some patients have always been discharged to postacute care early in the stay. For the latter DRGs, it may not be appropriate to reduce payment for these DRGs if the base payment already reflects a similar postacute care utilization rate (for example, in these cases there would be no cost shifting).

As described below, we have identified an additional 19 DRGs, based on declining mean lengths of stay and high percentages of postacute transfers, for which an expansion of the current policy appears warranted.

MedPAC has also conducted analysis on the current postacute care transfer policy. Most recently, in its March 2003 Report to Congress, MedPAC recommended adding 13 additional DRGs to the 10 DRGs covered under the current policy (page 46). The 13 DRGs were the same DRGs included in one of our proposals to expand the postacute care transfer policy in last year's IPPS proposed rule. MedPAC did not recommend expanding the policy to include all DRGs at this time, noting

that this expansion might reduce payments to some hospitals by as much as 4 percent. Rather, it suggested evaluating the impact of a limited expansion before extending the policy to more DRGs.

MedPAC's report cites several reasons for expanding the postacute care transfer policy beyond the current 10 DRGs. First, it notes the continuing shifts in services from the acute care setting to the postacute care setting. Second, the report points to different postacute care utilization for different hospitals, particularly based on geographic location. Third, the report states: "the expanded transfer policy provides a better set of incentives to protect beneficiaries from potential premature discharge to postacute care." Fourth, MedPAC notes that the policy improves payment equity across hospitals by: Reducing payments to hospitals that transfer patients to postacute care while making full payments to hospitals that provide all of the acute inpatient services in an acute care setting; and maintaining more accurate DRG weights that reflect the true resource utilization required to provide the full course of acute inpatient care, as distinguished from the partial services provided to patients who are transferred to postacute care.

Since the publication of last year's rule, we have conducted an extensive analysis to identify the best method by which to expand the postacute care transfer policy. Similar to the analysis used to identify the current 10 DRGs, we are proposing to identify DRGs with high postacute care transfer rates and at least 14,000 transfer cases. However, rather than ranking DRGs on the basis of the percentage of all postacute care transfers, we are proposing to rank DRGs on the basis of the percentage of postacute care transfers occurring before the DRG geometric mean length of stay. This is because only transfers that occur before the geometric mean length of stay, minus one day due to the policy that hospitals receive double the per diem for the first day, are impacted by the transfer policy. In order to focus on those DRGs where this policy would have the most impact, we are proposing to include only DRGs where at least 10 percent of all cases that were transferred to postacute care before the geometric mean length of stay. The next proposed criterion is to identify DRGs with at least a 7-percent decline in length of stay over the past 5 years (from FY 1998 to FY 2003). This criterion would focus on those DRGs for which hospitals have been most aggressively discharging patients sooner into postacute care settings. Finally, we are proposing to include only DRGs with a geometric mean length of stay of at least 3 days because the full payment is reached on the second day for a DRG with a 3-day length of stay.

Using these criteria, we have identified 19 additional DRGs to include in the postacute care transfer policy. However, some of the 13 DRGs proposed last year (and included in MedPAC's proposed expansion) are not included in this proposed rule. For example, DRGs 79 and 80 (Respiratory Infections and Inflammations Age >17 With and Without CC, respectively) were included in last year's proposed expansion but are not included in this proposed rule for FY 2004. DRGs 79 and 80 are excluded from this proposed rule because they did not exhibit a decline in length of stay of at least 7 percent over the past 5 years.

We note that 7 of these 19 DRGs are paired DRGs (that is, they contain a CC and no-CC split). Because these DRGs are paired DRGs (that is, the only difference in the cases assigned to DRG 130, for example, as opposed to DRG 131 is that the patient has a complicating or comorbid condition), we are proposing to include both DRGs under this expanded policy. If we were to include only DRG 130 in the transfer policy, there would be an incentive for hospitals not to include any code that would identify a complicating or comorbid condition, so that a transfer case would be assigned to DRG 131 instead of DRG 130.

Using the selection criteria described above, we identified the following 19 DRGs that we are proposing to include under the postacute care transfer policy (in addition to the 10 DRGs already subject to the policy).

DRG	DRG title	All transfer cases	Percent of all cases transferred to postacute care setting	Percent of cases transferred prior to mean length of stay	Percent change in mean length of stay FYs 1992–1998	Percent change in mean length of stay FYs 1998–2003
12	Degenerative Nervous System Disorders	39,034	54.13	13.10	−21.74	−12.00
24	Seizure and Headache Age >17 With CC	19,239	35.67	11.63	−20.75	−7.69
25	Seizure and Headache Age >17 Without CC	4,738	19.15	2.15	−14.29	−10.71
89	Simple Pneumonia and Pleurisy Age > 17 With CC	175,441	34.86	11.37	−18.31	−11.11
90	Simple Pneumonia and Pleurisy Age >17 Without CC	9,544	20.86	2.82	−20.37	−15.00
121	Circulatory Disorders With AMI and Major Complication, Discharged Alive.	79,242	52.52	20.46	−21.95	−11.67
122	Circulatory Disorders With AMI Without Major Complications Discharged Alive.	33,028	48.91	24.09	−26.67	−23.08
130	Peripheral Vascular Disorders With CC	31,106	37.78	14.27	−13.11	−11.76
131	Peripheral Vascular Disorders Without CC	5,723	23.08	5.42	−4.44	−19.51
239	Pathological Fractures and Musculoskeletal and Connective Tissue Malignancy.	23,188	53.54	21.96	−22.67	−7.55
243	Medical Back Problems	36,772	41.49	13.61	−14.00	−7.50
277	Cellulitis Age >17 With CC	35,015	37.77	14.03	−21.43	−7.84
278	Cellulitis Age >17 Without CC	6,526	22.05	3.11	−18.87	−10.00
296	Nutritional and Miscellaneous Metabolic Disorders Age >17 With CC.	104,216	40.05	11.88	−21.67	−9.30
297	Nutritional and Miscellaneous Metabolic Disorders Age >17 Without CC.	12,649	28.03	2.17	−17.50	−10.00
320	Kidney and Urinary Tract Infectious Age >17 With CC	77,669	44.64	12.40	−23.88	−8.51
321	Kidney and Urinary Tract Infections Age >17 Without CC	8,610	29.90	5.67	−20.41	−13.89
462	Rehabilitation	147,211	56.59	22.69	−22.54	−11.43
468	Extensive O.R. Procedure Unrelated to Principal Diagnosis	24,783	44.51	18.53	−20.30	−7.07

We are proposing to revise § 412.4(d) to incorporate these additional 19 DRGs as qualifying DRGs for transfer payments and to make a conforming change to § 412.4(c).

We also examined whether any of these DRGs would qualify for the alternative payment methodology of 50 percent of the full DRG payment plus the per diem for the first day of the stay, and 50 percent of the per diem for the remaining days of the stay, up to the full DRG payment specified in existing regulations under § 412.4(f). To identify the DRGs that might qualify, the average charges for all cases with a length of stay of 1 day were compared to the average charges of all cases in a particular DRG. To qualify for the alternative methodology, the average charges of 1-day discharge cases must be at least 50 percent of the average charges for all cases in the DRG.

Based on this analysis, we determined that 5 out of the 19 DRGs would qualify for this payment method (DRGs 25, 122, 131, 297, and 321). However, the fact that the average charges of 1-day stays equal at least 50 percent of the average charges for all cases in these DRGs is due to the very short lengths of stay for these DRGs. Therefore, we do not believe that it is necessary to include them in the alternative payment methodology. For example, for a DRG with a 3-day geometric mean length of stay, full DRG payment will be met on the second day of the stay, regardless of which payment methodology is used. Therefore, we are proposing that none of the 19 additional DRGs that we are proposing to add to the postacute care transfer policy would be paid under the alternative payment methodology.

We also have analyzed the 10 DRGs that are currently subject to the postacute care transfer policy. Of the three DRGs that are receiving payments under the special payment (transfers after 1 day incur charges equal to at least 50 percent of the average charges for all cases). Unlike the five DRGs that would otherwise meet this criterion, the geometric mean lengths of stay of both DRG 209 and 211 are over 4 days. In addition, DRG 210 is currently paid under the special payment methodology, but our current analysis indicates average charges for one day stays are less than 50 percent of the average charges for all cases in the DRG. Nonetheless, DRG 210 is a paired with DRG 211, which meets the criteria. Therefore, we are proposing DRG 210 will continue to be paid under the special payment methodology. Similar to our rationale for including both paired DRGs when one qualifies for inclusion in the postacute care transfer policy, we are including both DRGs in this pair under the special payment methodology. Accordingly, we are proposing that only DRGs 209, 210, and 211 that are currently paid under the alternative transfer payment methodology would continue to be paid under this methodology.

Finally, we note that the OIG has prepared several reports that examined hospitals' compliance with proper coding of patients' discharge status as transferred under our guidelines, and has found substantial noncompliance leading to excessive payments.[4] Specifically, the OIG found hospitals submitting claims indicating the patient had been discharged when, in fact, the patient was transferred to a postacute care setting. As we indicated in the May 8, 1998 **Federal Register** (63 FR 25593), hospitals found to be intentionally engaging in such practices may be investigated for fraudulent or abusive billing practices. We intend to work with the OIG to develop the most appropriate response to ensure all hospitals become compliant with our guidelines.

B. Rural Referral Centers (§ 412.96)

Under the authority of section 1886(d)(5)(C)(i) of the Act, the regulations at § 412.96 set forth the criteria that a hospital must meet in order to qualify under the IPPS as a rural referral center. For discharges occurring before October 1, 1994, rural referral centers received the benefit of payment based on the other urban amount rather than the rural standardized amount. Although the other urban and rural standardized amounts are the same for discharges beginning with that date, rural referral centers continue to receive special treatment under both the DSH payment adjustment and the criteria for geographic reclassification.

Rural referral centers with a disproportionate share percentage of at least 30 percent are not subject to the 5.25 percent cap on DSH payments that is applicable to other rural hospitals (with the exception of rural hospitals with 500 or more beds). Rural referral centers are not subject to the proximity criteria when applying for geographic reclassification, and they do not have to meet the requirement that a hospital's average hourly wage must exceed 106 percent of the average hourly wage of the labor market area where the hospital is located.

[4] The OIG report identification numbers are: A–04–00–02162, A–04–00–01220 and A–04–01210. A fourth report is expected out soon.

As discussed in **Federal Register** documents at 62 FR 45999 and 63 FR 26325, under section 4202 of Public Law 105–33, a hospital that was classified as a rural referral center for FY 1991 is to be considered as a rural referral center for FY 1998 and later years so long as that hospital continues to be located in a rural area and does not voluntarily terminate its rural referral center status. Effective October 1, 2000, if a hospital located in what is now an urban area was ever a rural referral center, it is reinstated to rural referral center status (65 FR 47089). Otherwise, a hospital seeking rural referral center status must satisfy the applicable criteria.

One of the criteria under which a hospital may qualify as a rural referral center is to have 275 or more beds available for use (§ 412.96(b)(1)(ii)). A rural hospital that does not meet the bed size requirement can qualify as a rural referral center if the hospital meets two mandatory prerequisites (a minimum case-mix index and a minimum number of discharges) and at least one of three optional criteria (relating to specialty composition of medical staff, source of inpatients, or referral volume) (§ 412.96(c)(1) through (c)(5)). (See also the September 30, 1988 **Federal Register** (53 FR 38513).) With respect to the two mandatory prerequisites, a hospital may be classified as a rural referral center if—

- The hospital's case-mix index is at least equal to the lower of the median case-mix index for urban hospitals in its census region, excluding hospitals with approved teaching programs, or the median case-mix index for all urban hospitals nationally; and
- The hospital's number of discharges is at least 5,000 per year, or, if fewer, the median number of discharges for urban hospitals in the census region in which the hospital is located. (The number of discharges criterion for an osteopathic hospital is at least 3,000 discharges per year, as specified in section 1886(d)(5)(C)(i) of the Act.)

1. Case-Mix Index

Section 412.96(c)(1) provides that CMS will establish updated national and regional case-mix index values in each year's annual notice of prospective payment rates for purposes of determining rural referral center status. The methodology we use to determine the proposed national and regional case-mix index values is set forth in regulations at § 412.96(c)(1)(ii). The proposed national mean case-mix index value for FY 2004 includes all urban hospitals nationwide, and the proposed regional values for FY 2004 are the median values of urban hospitals within each census region, excluding those hospitals with approved teaching programs (that is, those hospitals receiving indirect medical education payments as provided in § 412.105). These proposed values are based on discharges occurring during FY 2002 (October 1, 2001 through September 30, 2002) and include bills posted to CMS' records through December 2002.

We are proposing that, in addition to meeting other criteria, if they are to qualify for initial rural referral center status for cost reporting periods beginning on or after October 1, 2003, rural hospitals with fewer than 275 beds must have a case-mix index value for FY 2002 that is at least—

- 1.3374; or
- The median case-mix index value (not transfer-adjusted) for urban hospitals (excluding hospitals with approved teaching programs as identified in § 412.105) calculated by CMS for the census region in which the hospital is located.

The proposed median case-mix index values by region are set forth in the following table:

Region	Case-mix index value
1. New England (CT, ME, MA, NH, RI, VT)	1.2252
2. Middle Atlantic (PA, NJ, NY)	1.2270
3. South Atlantic (DE, DC, FL, GA, MD, NC, SC, VA, WV)	1.3157
4. East North Central (IL, IN, MI, OH, WI)	1.2485
5. East South Central (AL, KY, MS, TN)	1.2511
6. West North Central (IA, KS, MN, MO, NE, ND, SD)	1.1841
7. West South Central (AR, LA, OK, TX)	1.2733
8. Mountain (AZ, CO, ID, MT, NV, NM, UT, WY)	1.3511
9. Pacific (AK, CA, HI, OR, WA)	1.2834

The preceding numbers will be revised in the final rule to the extent required to reflect the updated FY 2002 MedPAR file, which will contain data from additional bills received through March 31, 2002.

Hospitals seeking to qualify as rural referral centers or those wishing to know how their case-mix index value compares to the criteria should obtain hospital-specific case-mix index values (not transfer-adjusted) from their fiscal intermediaries. Data are available on the Provider Statistical and Reimbursement (PS&R) System. In keeping with our policy on discharges, these case-mix index values are computed based on all Medicare patient discharges subject to DRG-based payment.

2. Discharges

Section 412.96(c)(2)(i) provides that CMS will set forth the national and regional numbers of discharges in each year's annual notice of prospective payment rates for purposes of determining rural referral center status. As specified in section 1886(d)(5)(C)(ii) of the Act, the national standard is set at 5,000 discharges. We are proposing to update the regional standards based on discharges for urban hospitals' cost reporting periods that began during FY 2002 (that is, October 1, 2001 through September 30, 2002).

Therefore, we are proposing that, in addition to meeting other criteria, a hospital, if it is to qualify for initial rural referral center status for cost reporting periods beginning on or after October 1, 2003, must have as the number of discharges for its cost reporting period that began during FY 2002 a figure that is at least—

- 5,000 (3,000 for an osteopathic hospital); or
- The median number of discharges for urban hospitals in the census region in which the hospital is located, as indicated in the following table:

Region	Number of discharges
1. New England (CT, ME, MA, NH, RI, VT)	7,476
2. Middle Atlantic (PA, NJ, NY)	8,906
3. South Atlantic (DE, DC, FL, GA, MD, NC, SC, VA, WV)	9,497
4. East North Central (IL, IN, MI, OH, WI)	8,439
5. East South Central (AL, KY, MS, TN)	6,894
6. West North Central (IA, KS, MN, MO, NE, ND, SD)	3,991
7. West South Central (AR, LA, OK, TX)	7,629
8. Mountain (AZ, CO, ID, MT, NV, NM, UT, WY)	8,908
9. Pacific (AK, CA, HI, OR, WA)	7,021

These numbers will be revised in the final rule based on the latest available cost report data.

C. Indirect Medical Education (IME) Adjustment (§ 412.105) and Disproportionate Share Hospital (DSH) Adjustment (§ 412.105)

1. Available Beds and Patient Days: Background (§ 412.105(b) and § 412.106(a)(1)(ii))

Section 1886(d)(5)(B) of the Act provides that subsection (d) hospitals that have residents in approved graduate medical education (GME) programs receive an additional payment for each discharge of Medicare beneficiaries to reflect the higher indirect patient care costs of teaching hospitals relative to nonteaching hospitals. The existing regulations regarding the calculation of this additional payment, known as the indirect medical education (IME) adjustment, are located at § 412.105. The additional payment is based on the IME adjustment factor, calculated using

hospitals' ratios of residents to beds. The determination of the number of beds, based on available bed days, is specified at § 412.105(b). This determination of the number of available beds is also applicable for other purposes, including the level of the disproportionate share hospital (DSH) adjustment payments under § 412.106(a)(l)(i).

Section 1886(d)(5)(F) of the Act specifies two methods for a hospital to qualify for the Medicare DSH adjustment. The primary method, which is the subject of a provision in this proposed rule, is for a hospital to qualify based on a complex statutory formula under which payment adjustments are based on the level of the DSH patient percentage. The first computation includes the number of patient days that are furnished to patients who were entitled to both Medicare Part A and Supplemental Security Income (SSI) benefits. This number is divided by the total number of patient days that are associated with patients entitled to benefits under Medicare Part A. The second computation includes hospital patient days that are furnished to patients who, for those days, were eligible for Medicaid but were not entitled to benefits under Medicare Part A. This number is divided by the number of total hospital inpatient days in the same period.

Hospitals whose DSH patient percentage exceeds 15 percent are eligible for a DSH payment adjustment (prior to April 1, 2001, the qualifying DSH patient percentage varied, in part, by the number of beds (66 FR 39882)). The DSH payment adjustment may vary based on the DSH patient percentage and the type of hospital: the statute provides for different adjustments for urban hospitals with 100 or more beds and rural hospitals with 500 or more beds, hospitals that qualify as rural referral centers or SCHs, and other hospitals.

We are combining our discussion of proposed changes to the policies for counting beds and patient days, in relation to the calculations at §§ 412.105(b) and 412.106(a)(1)(ii) because the underlying concepts are similar, and we believe they should generally be interpreted in a consistent manner for both purposes. Specifically, we are proposing to clarify that beds and patient days that are counted for these purposes should be limited to beds or patient days in hospital units or wards that would be directly included in determining the allowable costs of inpatient hospital care payable under the IPPS on the Medicare cost reports. As a preliminary matter, beds and patient days associated with these beds that are located in units or wards that are excluded from the IPPS (for example, psychiatric or rehabilitation units), and thus from the determination of allowable costs of inpatient hospital care under the IPPS on the Medicare cost report, are not to be counted for purposes of §§ 412.105(b) and 412.106(a)(1)(ii). The remainder of this discussion pertains to beds and patient days associated with these beds that are located in units or wards that are not excluded from the IPPS and for which costs are included in determining the allowable costs of inpatient hospital care under the IPPS on the Medicare cost report. For example, neonatal intensive care unit beds are included in the determination of available beds because the costs and patient days associated with these beds are directly included in the determination of the allowable costs of inpatient hospital care under the IPPS. In contrast, beds and patient days associated with these beds that are located in excluded distinct-part psychiatric or rehabilitation units would not be counted for purposes of §§ 412.105(b) and 412.106(a)(1)(ii) under any circumstances, because the costs associated with those units or wards are excluded from the determination of the costs of allowable inpatient care under IPPS.

This policy has been upheld in the past by various courts. (See, for example, *Little Co. of Mary Hospital and Health Care Centers* v. *Shalala*, 165 F.3d 1162 (7th Cir. 1999; *Grant Medical Center* v. *Shalala*, 905 F. Supp. 460 (S.D. Ohio 1995); *Sioux Valley Hospital* v. *Shalala*, No. 93–3741SD, 1994 U.S. App. LEXIS 17759 (8th Cir. July 20, 1996) (unpublished table decision); *Amisub* v. *Shalala*, No. 94–1883 (TFH) (D.D.C. December 4, 1995) (mem.).) In these cases, the courts agreed with the Secretary's position distinguishing between the treatment of neonatal intensive care unit beds and well-baby nursery beds based on the longstanding policy of CMS that neonatal intensive care unit days are considered intensive care days (part of inpatient routine care) rather than nursery days.

Our policies on counting beds are applied consistently for both IME and DSH although the incentives for hospitals can be different for IME and DSH. For purposes of IME, teaching hospitals have an incentive to minimize their number of available beds in order to increase the resident-to-bed ratio and maximize the IME adjustment. On the other hand, for DSH purposes, urban hospitals with under 100 beds and rural hospitals with under 500 beds may have an incentive to increase their bed count in order to qualify for the higher DSH payments for urban hospitals with over 100 beds (or rural hospitals with over 500 beds).

However, some courts have applied our current rules in a manner that is inconsistent with our current policy and that would result in inconsistent treatment of beds, patient days, and costs. For example, in *Clark Regional Medical Center* v. *United States Department of Health & Human Services*, 314 F.3d 241 (6th Cir. 2002), the court upheld the district court's ruling that all bed types not specifically excluded from the definition of available bed days in the regulations must be included in the count of available bed days. Similarly, in a recent decision in the Ninth Circuit Court of Appeals *Alhambra* v. *Thompson*, 259 F.3d 1071 (Ninth Cir. 2001), the court ruled that days attributable to groups of beds that are not separately certified as distinct part beds (that is, nonacute care beds in which care provided is at a level below the level of routine inpatient acute care) but are adjacent to or in an acute care "area" are included in the "areas of the hospital that are subject to the prospective payment system" and should be counted in calculating the Medicare DSH patient percentage.

These courts considered subregulatory guidance (program instructions) in formulating their decisions. Although this proposed rule would clarify the underlying principles for our bed and patient days counting policies and would amend the relevant regulations to be consistent with these clarifications, we recognize the need to revise some of our program instructions to make them fully consistent with these clarifications and will act to do so as soon as possible.

While some of the topics discussed below pertain only to counting available beds (unoccupied beds) and some only to counting patient days (section 1115 waiver days, dual-eligible days, and Medicare+Choice days), several important topics are applicable to both bed-counting and day-counting policies (nonacute care beds and days, observation beds and days, and swing-beds and days). Therefore, for ease of discussion, we have combined all topics pertaining to counting available beds and patient days together in the following discussion.

2. Unoccupied Beds

The current policy for counting hospital beds for IME and DSH is specified at § 412.105(b). That count is based on total available bed days during the hospital's cost reporting period, divided by the number of days in the cost reporting period. The regulations specify certain types of beds to be excluded from this count (for example, beds or bassinets in the healthy newborn nursery, custodial care beds, and beds in excluded distinct part hospital units).

Further instructions for counting beds are detailed in section 2405.3, Part I, of the Medicare Provider Reimbursement Manual (PRM). That section states that a bed must be permanently maintained for lodging inpatients and it must be available for use and housed in patient rooms or wards. Thus, beds in a completely or partially closed wing of the facility are considered available only if the hospital can put the beds into use when they are needed.

Currently, if a bed can be staffed for inpatient care either by nurses on staff or from a nurse registry within 24 to 48 hours, the unoccupied bed is determined available.[5] In most cases, it is a straightforward matter to determine whether unoccupied beds can be staffed within this timeframe because they are located in a unit that is otherwise staffed and occupied (an unoccupied bed is available for patient care but it is not occupied by a patient on a particular day). The determination is not as simple in situations where a room in an otherwise occupied unit has been altered for other purposes, such as for a staff lounge or for storage.

Section 2405.3 of the PRM states that beds in unoccupied rooms or wards are to be excluded from the bed count if the associated costs are excluded from depreciable plant assets because the area is not available for patient use. However, issues continue to arise with regard to how to treat entire units or even entire floors that are unoccupied over a period of time. For example, in one recent Provider Reimbursement Review Board (PRRB) decision, the hospital acknowledged that an entire floor was temporarily unoccupied for approximately 2 years. Rooms on the floor were used for office space, storage and outpatient services. The PRRB ruled that current rules allowed these beds to be counted. Specifically, the PRRB found the beds could reasonably be made ready for inpatient use within 24 to 48 hours, the rooms were counted on the hospital's cost report as depreciable plant assets available for patient care, and the hospital could adequately provide patient care in the beds using staff nurses or nurses from a nurse registry. Upon review, the Administrator also ultimately upheld this decision based on existing policies and instructions.

We do not believe that an accurate bed count should include beds that are essentially hypothetical in nature; for example, when the beds are on a floor that is not used for inpatient care throughout the entire cost reporting period (and, indeed, may have been used for other purposes). Followed to the extreme, a hospital could count every bed in its facility, even if it had no intention of ever using a bed for inpatient care, as long as it would be theoretically possible to place an inpatient in the bed. We do not believe such a result would accurately reflect a hospital's inpatient bed capacity. Even though some teaching hospitals have an incentive to minimize the bed count for payment purposes, some DSH hospitals have an incentive to maximize the bed count for the same reason. Our current policy is intended to reflect a hospital's bed count as accurately as possible, achieving a balance between capturing short-term shifts in occupancy and long-term changes in capacity. Therefore, we believe further clarification and refinement of our policies relating to counting available beds is necessary.

In the FY 2003 IPPS proposed rule published on May 9, 2002 (67 FR 31462), we proposed that, if a hospital's reported bed count results in an occupancy rate (average daily census of patients divided by the number of beds) below 35 percent, the applicable bed count, for purposes of establishing the number of available beds for that hospital would exclude beds that would result in an average annual occupancy rate below 35 percent. However, at the time the FY 2003 IPPS final rule was published on August 1, 2002 (67 FR 50060), we decided not to proceed with the proposed changes as final and to reconsider the issue as part of a future comprehensive analysis of our bed and patient day counting policies.

In this proposed rule, rather than establish a minimum standard occupancy rate, we are proposing to determine whether beds in a unit are available based upon whether the unit was used to provide patient care of a level generally payable under the IPPS ("IPPS level of care") *at any time* during the 3 preceding months. If any of the beds in the unit were used to provide an IPPS level of care at any time during the preceding 3 months, all of the beds in the unit are counted for purposes of determining available bed days during the current month. If no patient care of a type generally payable under the IPPS was provided in that unit during the 3 preceding months, the beds in the unit are to be excluded from the determination of available bed days during the current month (proposed §§ 412.105(b)(2) and 412.106(a)(1)(ii)(C)).

For example, our policy as to how to count beds during minor renovations of units, wards, or individual rooms has been that unless the space costs are treated as nonallowable, the beds would be counted. Under the policy we are proposing, beds in an otherwise unoccupied unit that are occupied (for purposes of providing IPPS-level care) at any time during the 3 preceding months would be counted as available for the current month. This would apply even if the rooms were undergoing renovation during a portion of that 3-month period.

We believe a unit or ward can be defined as a group of rooms staffed by nurses assigned to a single nursing station. In most cases, the patients treated within a single unit or ward will receive a similar level of care (that is, acute, intensive, rehabilitation, psychiatric, or skilled nursing). However, we encourage comments on the most useful definition of a unit or ward.

We believe this proposed policy would provide a clear standard for both hospitals and fiscal intermediaries to use to determine whether otherwise unoccupied beds should be counted. We note that if the required time period for excluding the unoccupied beds were to be set too low, hospitals could potentially manipulate their available bed count by not admitting any patients to a unit during low occupancy periods, thereby distorting the measure of hospital size. We believe 3 months, one quarter of a hospital's fiscal year, represents a reasonable standard for determining that a unit is not being used to provide patient care and may be excluded from the hospital's available bed count.

It is also necessary to consider our policy with respect to individual beds within rooms located in an otherwise occupied unit when those beds are used for alternative purposes. For example, section 2405.3 of the PRM states that beds used for the following are excluded from the definition (of a bed): Postanesthesia or postoperative recovery rooms, outpatient areas, emergency rooms, ancillary departments nurses' and other staff residences, and other such areas as are regularly maintained and utilized for only a portion of the stay of patients or for purposes other than inpatient lodging. In some situations, beds used for these excluded

[5] This policy was first articulated in correspondence to the Blue Cross and Blue Shield Association (BCBSA) on November 2, 1988, and published in BCBSA's Administrative Bulletin #1841, 88.01, on November 18, 1988.

purposes may be intermingled with acute care inpatient beds.

Beds being used to provide specific categories of nonacute services, such as outpatient services in an observation bed or skilled nursing services in a swing-bed, are excluded from the count. As discussed later, this flows from our policy that the bed days are treated consistently with the assignment of the costs on the Medicare cost report of the services provided in the bed.

In the case of individual rooms in an otherwise occupied unit that are altered to be used for other uses besides inpatient care, we are proposing the bed(s) should be counted if a patient could be admitted to the room within 24 hours (proposed § 412.105(b)(3)). This would apply even if the bed(s) were not currently located in the room, as long as a bed could be physically placed in the room and made available within 24 hours. We are proposing that it would no longer be necessary for the hospital to determine whether a bed could be staffed within 24 to 48 hours. For example, in the case of a room that has been altered for use as a staff lounge, if the room could be made available to house a patient merely by replacing the lounge furniture with a patient bed, the bed should be counted as available.

Under this proposal, other than when an inpatient room is used to provide observation services, labor/delivery room services, or skilled nursing services in a swing-bed (all discussed later in this proposed rule), the alternative purpose of the room is only relevant if it impacts whether the room could be made available for patient occupancy within 24 hours. If the hospital was fully occupied (no other room was available), and the room still was not put into service when needed, that would provide evidence that the room could not be made available and beds in the room should be excluded from the bed count.

Therefore, we are proposing to amend § 412.105(b) to indicate that the bed days in a unit that is unoccupied by patients receiving IPPS-level care for the 3 preceding months are to be excluded from the available bed day count for the current month. We are further proposing the beds in a unit that was occupied for IPPS-level care during the 3 preceding months should be counted unless they could not be made available for patient occupancy within 24 hours, or they are used to provide outpatient observation services or swing-bed skilled nursing care.

3. Nonacute Care Beds and Days

As noted above, these policies are consistent with the reporting of the days, costs, and beds that are used to calculate the costs of hospital inpatient care in individual cost centers on the Medicare cost report. Furthermore, since the IME and DSH adjustments are part of the IPPS, we read the statute to apply only to inpatient beds and days.

Under the existing provisions of § 412.105(b), the regulations specifically exclude beds or bassinets in the healthy newborn nursery, custodial care beds, or beds in excluded distinct part hospital units as types of beds excluded from the count of available beds.

Existing regulations at § 412.106(a)(1)(ii) state that the number of patient days used in the DSH percentage calculation includes only those days attributable to areas of the hospital that are subject to the IPPS and excludes all others. This regulation was added after being proposed in the March 22, 1988 **Federal Register** (53 FR 9339), and made final in the September 30, 1988 **Federal Register** (53 FR 38479). At that time, we indicated that, "based on a reading of the language in section 1886(d)(5)(F) of the Act, which implements the disproportionate share provision, we are in fact required to consider only those inpatient days to which the prospective payment system applies in determining a prospective payment hospital's eligibility for a disproportionate share adjustment." Using this reasoning, we stated that the DSH patient percentage calculation should only include patient days associated with the types of services paid under the IPPS.

As noted previously, a recent decision in the Ninth Circuit Court of Appeals (*Alhambra* v. *Thompson*) ruled that days attributable to groups of beds that are not separately certified as distinct part beds (that is, nonacute care beds in which care provided is at a level below the level of routine inpatient acute care), but are adjacent to or in an acute care "area," are included in the "areas of the hospital that are subject to the prospective payment system" and should be counted in calculating the Medicare DSH patient percentage.

In light of the Ninth Circuit decision that our rules were not sufficiently clear to permit exclusion of bed days based on the area where the care is provided, we are proposing to revise our regulations to be more specific. Therefore, in this proposed rule, we are proposing to clarify that beds and patient days are excluded from the calculations at § 412.105(b) and § 412.106(a)(1)(ii) if the nature of the care provided in the unit or ward is inconsistent with what is typically furnished to acute care patients, regardless of whether these units or wards are separately certified or are located in the same general area of the hospital as a unit or ward used to provide an acute level of care. Although the intensity of care may vary within a particular unit, such that some patients may be acute patients while others are nonacute, we understand that a patient-by-patient review of whether the care received would be paid under the IPPS would be unduly burdensome. Therefore, we believe it is more practical to permit the application of this principle based upon the location at which the services were furnished.

In particular, we are proposing to revise our regulations to clarify that the beds and patient days attributable to a nonacute care unit or ward should not be included in the calculations at § 412.105(b) and § 412.106(a)(1)(ii), even if the unit is not separately certified by Medicare as a distinct-part unit and even if the unit or ward is within the same general location of the hospital as areas that are subject to the IPPS.

Exceptions to this policy are outpatient observation and swing-bed days, which are excluded from the count of available bed days even if the care is provided in an acute care unit. Our policies pertaining to these beds are discussed further below. Another exception is healthy newborn nursery days. The costs, days, and beds of a healthy newborn nursery are excluded from inpatient calculations for Medicare purposes. Meanwhile, for the purpose of computing the Medicaid patient share computation of the DSH patient percentages, these days are included both as Medicaid patient days and as total patient days. Nursery costs are not directly included in calculating Medicare hospital inpatient care costs because Medicare does not generally cover services for infants. However, Medicaid does offer extensive coverage to infants, and nursery costs would be directly included in calculating Medicaid hospital inpatient care costs. Therefore, these costs, days, and beds are excluded for Medicare purposes, but included for determining the Medicaid DSH percentage. (This policy was previously communicated through a memorandum to CMS Regional Offices on February 27, 1997.)

Generally, as discussed previously, if the nature of the care provided in the unit or ward is consistent with what is typically furnished to acute care patients, and, therefore, would be characteristic of services paid under the IPPS, the patient days, beds, and costs of that unit or ward would be classified as inpatient acute care (except for observation bed days and swing bed days, as discussed later in this preamble). Conversely, if the intensity and type of care provided in the unit or ward are not typical of a service that would be paid under the IPPS (for example, nonacute care), we are proposing that the beds and patient days attributable to a nonacute care unit or ward should not be included in the calculations of beds and patient days at § 412.105(b) and § 412.106(a)(1)(ii).

This proposed policy is not intended to focus on the level or type of care provided to individual patients in a unit, but rather on the level and type of care provided in the unit as a whole. For example, the bed days for a patient participating in an experimental procedure that is not covered under the IPPS should be counted as long as the patient is treated in a unit of the hospital that generally provides acute inpatient care normally payable under the IPPS. The expectation is that a patient located in an acute care unit or ward of the hospital is receiving a level of care that is consistent with what would be payable under the IPPS.

There are instances where services that are provided in units excluded from the IPPS (such as rehabilitation and psychiatric distinct-part units) are consistent with the level of care that would qualify for payment under the IPPS. However, §§ 412.105(b) and 412.106(a)(1)(ii) specifically exclude the beds and patient days associated with these excluded units. That exclusion is because the costs of care provided in these units are paid outside the IPPS, even though some of the care provided is of a type that would be payable under the IPPS if the care was provided in an IPPS unit.

We are proposing to revise § 412.105(b) to clarify that beds in units or wards established or used to provide a level of care that is not consistent with what would be payable under the IPPS cannot be counted (proposed paragraph (b)(1)). We also are proposing to revise the DSH regulations at § 412.106(a)(1)(ii) to clarify that the number of patient days includes only those attributable to patients that receive care in units or wards that furnish a level of care that would generally be payable under the IPPS (proposed paragraph (a)(1)(ii)(C)).

We note these proposed revisions are clarifications of our regulations to reflect our longstanding interpretation of the statutory intent, especially relating to the calculation of the Medicare DSH patient percentage.

4. Observation Beds and Swing-Beds

Observation services are those services furnished by a hospital on the hospital's premises that include use of a bed and periodic monitoring by a hospital's nursing or other staff in order to evaluate an outpatient's condition or to determine the need for a possible admission to the hospital as an inpatient. When a hospital places a patient under observation but has not formally admitted him or her as an inpatient, the patient initially is treated as an outpatient. Consequently, the observation bed days are not recognized under the IPPS as part of the inpatient operating costs of the hospital.

Observation services may be provided in a distinct observation bed area, but they may also be provided in a routine inpatient care area. In either case, our policy is the bed days attributable to beds used for observation services are excluded from the counts of available bed days and patient days at §§ 412.105(b) and 412.106(a)(1)(ii). This policy was clarified in a memorandum that was sent to all CMS Regional Offices (for distribution to fiscal intermediaries) dated February 27, 1997, which stated that if a hospital provides observation services in beds that are generally used to provide hospital inpatient services, the equivalent days that those beds are used for observation services should be excluded from the count of available bed day count (even if the patient is ultimately admitted as an acute inpatient).

A swing-bed is a bed otherwise available for use to provide acute inpatient care that is also occasionally used to provide SNF care. The criteria to qualify as a swing-bed hospital are located under § 482.66, and for a swing-bed CAH under § 485.645. Under § 413.114(a)(1), payment for posthospital SNF care furnished in swing-beds is in accordance with the provisions of the prospective payment system for SNF care (effective for services furnished in cost reporting periods beginning on and after July 1, 2002). Similar to observation beds and patient days, swing-beds and patient days are excluded from the counts of available bed days and patient days at §§ 412.105(b) and 412.106(a)(1)(ii) when the swing-bed is used to furnish SNF care.[6]

Observation beds and swing-beds are both special, frequently temporary, alternative uses of acute inpatient care beds. That is, only the days an acute inpatient care unit bed is used to provide outpatient observation services are to be deducted from the available bed count under § 412.105(b). Otherwise, the bed is considered available for acute care services (as long as it otherwise meets the criteria to be considered available). This same policy applies for swing-beds. The policies to exclude observation bed days and swing-bed days stem from the fact that these bed days are not payable under the IPPS (unless the patient is ultimately admitted, in the case of observation bed days).

Some hospitals have contested our policy excluding swing-beds and patient days and observation beds and patient days under existing §§ 412.105(b) and 412.106(a)(1)(ii). For example, in *Clark Regional Medical Center* v. *United States Department of Health & Human Services*, 314 F.3d 241 (6th Cir. 2002), the court upheld the district court's ruling that all bed types not specifically excluded from the definition of available bed days in the regulations must be included in the count of available bed days. The hospitals involved in this decision wanted to include observation and swing-bed days in their bed count calculation in order to qualify for higher DSH payments as 100 bed hospitals. The Court found that "the listing of beds to be excluded from the count restricts the class of excluded beds only to those specifically listed." Because observation beds and swing-beds are not currently specifically mentioned in § 412.105(b) as being excluded from the bed count, the Court ruled that these beds must be included in the count.

The list of the types of beds excluded from the count under existing § 412.105(b) was never intended to be an exhaustive list of all of the types of beds to be excluded from the bed count under this provision. In fact, over the years, specific bed types have been added to the list as clarifications of the types of beds to be excluded, not as new exclusions (see the September 1, 1994 **Federal Register** (59 FR 45373) and September 1, 1995 **Federal Register** (60 FR 45810), where we clarified exclusions under our policy that were not previously separately identified in the regulation text).

Courts also have recently found that observation and swing-bed days are included under the 'plain meaning' of § 412.106(a)(1)(ii), which reads: "The number of patient days includes only those days attributable to areas of the hospital that are subject to the prospective payment system and excludes all others." However, the preamble language when this provision was promulgated clarified its meaning (53 FR 38480):

• "Although previously the Medicare regulations did not specifically define the inpatient days for use in the computation of a hospital's disproportionate share patient percentage, we believe that, based on a

[6] *Ibid.*

reading of the language in section 1886(d)(5)(F) of the Act, which implements the disproportionate share provision, we are in fact required to consider only those inpatient days to which the prospective payment system applies in determining a prospective payment hospital's eligibility for a disproportionate share adjustment."

Our policy excluding outpatient observation and swing-bed days is consistent with this regulatory interpretation of days to be counted under § 412.106(a)(1)(ii). That is, the services provided in these beds are not payable under the IPPS (unless the patient is admitted, in the case of observation bed days).

As outlined previously, our consistent and longstanding policy, which has been reviewed and upheld previously by several courts, including the United States District Court for the District of Columbia, is based on the principle of counting beds in the same manner as the patient days and costs are treated. Our policy to exclude observation and swing-bed days under the regulations at § 412.105(b) and § 412.106(a)(1)(ii) stems from this policy.

However, we are proposing to amend our policy with respect to observation bed days of patients who ultimately are admitted. As noted previously, our current policy is that these bed days are excluded from the available bed day and the patient day counts. This policy was communicated in a memorandum to all CMS Regional Offices on February 27, 1997. Specifically, we are proposing that, if a patient is admitted as an acute inpatient subsequent to receiving outpatient observation services, because the charges of the observation ancillary services the patient receives are currently treated as inpatient charges on the cost report, in order to be consistent with our policy to treat the costs and patient days consistently, we will begin to include the patient bed days associated with the observation services in the inpatient bed day count.

In order to avoid any potential future misunderstandings about our policies regarding the exclusion of observation and swing-bed days under the regulations at § 412.105(b) and § 412.106(a)(1)(ii), we are proposing to revise our regulations to specify our policy that observation and swing-bed bed days are to be excluded from the counts of both available beds and patient days, unless a patient treated in an observation bed is ultimately admitted, in which case the beds and days would be included in those counts.

5. Labor, Delivery, Recovery, and Postpartum Beds and Days

Prior to December 1991, Medicare's policy on counting days for maternity patients required an inpatient day to be counted for an admitted maternity patient in the labor/delivery room at the census taking hour. This is consistent with Medicare policy for counting days for admitted patients in any other ancillary department at the census-taking hour. However, based on decisions adverse to the government regarding this policy in a number of Federal courts of appeal, including the United States Court of Appeals for the District of Columbia Circuit, the policy regarding the counting of inpatient days for maternity patients was revised.

Therefore, our current policy regarding the treatment of labor and delivery bed days was initially described in Section 2205.2 of the PRM. Section 2205.2. of the PRM states that a maternity inpatient in the labor/delivery room at midnight is not included in the census of inpatient routine care if the patient has not occupied an inpatient routine bed at some time since admission. For example, if a Medicaid patient is in the labor room at the census and has not yet occupied a routine bed, the bed day is not counted as a routine bed day of care in Medicaid or total days and, therefore, is not included in the counts under existing §§ 412.105(b) and 412.106(a)(1)(ii). If the patient is in the labor room at the census but had first occupied a routine bed, a routine bed day is counted, in Medicaid and total days, for DSH purposes and for apportioning the cost of routine care on the cost report (consistent with our longstanding policy to treat days, costs, and beds similarly).

Increasingly, hospitals are redesigning their maternity areas from separate labor and delivery rooms apart from the postpartum rooms, to single labor, delivery room, and postpartum (LDRP) rooms. In order to appropriately track the days and costs of LDRP rooms, it is necessary to apportion them between the labor and delivery ancillary cost center and the routine adults and pediatrics cost center. This is done by determining the proportion of the patient's stay in the LDRP room that the patient was receiving ancillary services (labor and delivery) as opposed to routine adult and pediatric services (recovery and postpartum).

An example of this would be if 25 percent of the patient's time in the LDRP room was for labor/delivery services and 75 percent for routine care, over the course of a 4-day stay in the LDRP room. In that case, 75 percent of the time the patient spent in the LDRP room is applied to the total bed days and costs (resulting in 3 routine adults and pediatrics bed days for this patient, 75 percent of 4 total days). The resulting days (or portion of days) are included in total days and in Medicaid days for all purposes. For purposes of determining hospital bed count, the time when the beds are unoccupied should be counted as available bed days using an average percentage (for example, 75 percent adults and pediatrics and 25 percent ancillary) based on all patients. In other words, 75 percent of the days the bed is unoccupied would be counted in the available bed count.

We realize that it may be burdensome for a hospital to determine for each patient in this type of room the amount of time spent in labor/delivery and the amount of time spent receiving routine care. Alternatively, the hospital could calculate an average percentage of time patients receive ancillary services, as opposed to routine inpatient care during a typical month, to apply the rest of the year.

6. Days Associated with Demonstration Projects Under Section 1115 of the Act

Some States extend medical benefits to a given population that could not have been made eligible for Medicaid under a State plan amendment under section 1902(r)(2) or section 1931(b) of the Act, under a demonstration under a section 1115(a)(2) demonstration project (also referred to as a section 1115 waiver). These populations are specific, finite populations identifiable in the award letters and special terms and conditions for the demonstrations.

On January 20, 2000, we issued an interim final rule with comment period (65 FR 3136), followed by a final rule issued on August 1, 2000 (65 FR 47086 through 47087), to allow hospitals to include the patient days of all populations that receive benefits under a section 1115 demonstration project in calculating the Medicare DSH adjustment. Previously, hospitals were to include only those days for populations under the section 1115 demonstration project who were, or could have been made, eligible under a State plan. Patient days of those expansion waiver groups who could not be made eligible for medical assistance under the State plan were not to be included for determining Medicaid patient days in calculating the Medicare DSH patient percentage. Under the January 20, 2000 interim final rule with comment period (65 FR 3137), hospitals could include in the numerator of the Medicaid fraction those patient days for individuals who receive benefits under a section 1115 expansion waiver demonstration project (effective with discharges occurring on or after January 20, 2000).

In the January 20, 2000 interim final rule with comment period, we explained that including the section 1115 expansion populations "in the Medicare DSH calculation is fully consistent with the Congressional goals of the Medicare DSH adjustment to recognize the higher costs to hospitals of treating low-income individuals covered under Medicaid."

Since that revision, we have become aware that there are certain section 1115 demonstration projects that serve expansion populations with benefit packages so limited that the benefits are not similar to the medical assistance available under a Medicaid State plan. These section 1115 demonstration projects extend coverage only for specific services and do not include inpatient care in the hospital. Because of the limited nature of the coverage offered, the population involved may have a significantly higher income than traditional Medicaid beneficiaries.

In allowing hospitals to include patient days related to section 1115 expansion waiver populations, our intention was to include patient days of section 1115 expansion waiver populations who receive benefits under the demonstration project that are similar to those available to traditional Medicaid beneficiaries, including inpatient benefits. Because of the differences between expansion populations in these limited benefit demonstrations and traditional Medicaid beneficiaries, we are proposing that the Medicare DSH calculation should exclude from treatment as Medicaid patient days those patient days attributable to limited benefit section 1115 expansion waiver populations (proposed § 412.106(b)(4)(i)).

For example, a State may extend a family planning benefit to an individual for 2 years after she has received the 60-day postpartum benefit under Medicaid, or a State may choose to provide a family planning benefit to all individuals below a certain income level, regardless of having previously received the Medicaid postpartum benefit. This is a limited, temporary benefit that is generally administered in a clinic setting (see section 1905(a)(4)(C) of the Act). Also, a number of States are developing demonstrations that are limited to providing beneficiaries an outpatient prescription drug benefit. Generally, these limited benefits under a demonstration project do not include inpatient benefits. If a hospital were to include the days attributable to patients receiving benefits under such a limited benefit, the hospital would be able to receive higher DSH payments, perhaps substantially, for patients who may otherwise be insured for inpatient care. For example, these limited demonstrations provide benefits that may be needed to supplement private insurance coverage for individuals who do not have incomes low enough to qualify for Medicaid under the State plan. We do not believe such patients should be counted in the DSH patient percentage as eligible for title XIX.

As we have noted previously, at the time the Congress enacted the Medicare DSH adjustment provision, there were no approved section 1115 demonstration projects involving expansion populations and the statute does not address the treatment of these days. Although we did not initially include patient days for individuals who receive extended benefits only under a section 1115 demonstration project, we nevertheless expanded our policy in the January 20, 2000 revision to these rules to include such patient days. We now believe that this reading is warranted only to the extent that those individuals receive inpatient benefits under the section 1115 demonstration project.

Therefore, we are proposing to revise § 412.106(b)(4)(i) to clarify that patients must be eligible for medical assistance inpatient hospital benefits under an approved State Medicaid plan (or similar benefits, including inpatient hospital benefits, under a section 1115 demonstration project) in order for their hospital inpatient days to be counted as Medicaid days in the calculation of a hospital's DSH patient percentage. Under this proposed clarification, hospital inpatient days attributed to patients who do not receive coverage for inpatient hospital benefits either under the approved State plan or through a section 1115 demonstration would not be counted in the calculation of Medicaid days for purposes of determining a hospital's DSH patient percentage.

Under this reading, in the examples given above, the days associated with a hospital inpatient who receives coverage of prescription drugs or family planning services on an outpatient basis, but no inpatient hospital coverage, through either a Medicaid State plan or a section 1115 demonstration, would not be counted as Medicaid days for purposes of determining the DSH patient percentage.

This proposed revision would address an unintended potential consequence of our interpretation that hospitals may include in the DSH calculation patient days associated with section 1115 demonstration populations (65 FR 3136). As discussed above, that interpretation was based on our finding that individuals receiving a comprehensive benefit package under a section 1115 demonstration project could appropriately be included in the numerator of the Medicaid fraction even though the statute does not require such an inclusion, but did not address individuals who were receiving limited benefit packages under a section 1115 demonstration project.

7. Dual-Eligible Patient Days

As described above, the DSH patient percentage is equal to the sum of the percentage of Medicare inpatient days attributable to patients entitled to both Medicare Part A and SSI benefits, and the percentage of total inpatient days attributable to patients eligible for Medicaid but not entitled to Medicare Part A benefits. If a patient is a Medicare beneficiary who is also eligible for Medicaid, the patient is considered dual-eligible and the patient days are included in the Medicare fraction of the DSH patient percentage but not the Medicaid fraction. This is consistent with the language of section 1886(d)(5)(F)(vi)(II) of the Act, which specifies that patients entitled to benefits under Part A are excluded from the Medicaid fraction.

This policy currently applies even after the patient's Medicare coverage is exhausted. In other words, if a dual-eligible patient is admitted without any Medicare Part A coverage remaining, or the patient exhausts Medicare Part A coverage while an inpatient, his or her patient days are counted in the Medicare fraction before and after Medicare coverage is exhausted. This is consistent with our inclusion of Medicaid patient days even after the patient's Medicaid coverage is exhausted.

We are proposing to change our policy, to begin to count in the Medicaid fraction of the DSH patient percentage the patient days of dual-eligible Medicare beneficiaries whose Medicare coverage has expired. We note the statute referenced above stipulates that patient days attributable to patients entitled to benefits under Medicare Part A are to be excluded from the Medicaid fraction, while the statute specifies the Medicaid fraction is to include patients who are eligible for Medicaid.

As noted above, our current policy regarding dual-eligible patient days is that they are counted in the Medicare fraction and excluded from the

Medicaid fraction, even if the patient's Medicare Part A coverage has been exhausted. We believe this interpretation is consistent with the statutory intent of section 1886(d)(5)(F)(vi)(II) of the Act. However, we recognize there are other plausible interpretations. In addition, on a more practical level, we recognize it is often difficult for fiscal intermediaries to differentiate the days for dual-eligible patients whose Part A coverage has been exhausted. The degree of difficulty depends on the data provided by the States, which may vary from one State to the next. Some States identify all dual-eligible beneficiaries in their lists of Medicaid patient days provided to the hospitals, while in other States the fiscal intermediary must identify patient days attributable to dual-eligible beneficiaries by matching Medicare Part A bills with the list of Medicaid patients provided by the State. The latter case is problematic when Medicare Part A coverage is exhausted because no Medicare Part A bill may be submitted for these patients. Thus, the fiscal intermediary has no data by which to readily verify any adjustment for these cases in the Medicaid data provided by the hospital. Currently, the fiscal intermediaries are reliant on the hospitals to identify the days attributable to dual-eligible beneficiaries so these days can be excluded from the Medicaid patient days count.

Therefore, in order to facilitate consistent handling of these days across all hospitals, we are proposing that the days of patients who have exhausted their Medicare Part A coverage will no longer be included in the Medicare fraction. Instead, we are proposing these days should be included in the Medicaid fraction of the DSH calculation. (We note that not all SSI recipients are Medicaid eligible. Therefore, it will not be automatic that the patient days of SSI recipients will be counted in the Medicaid fraction when their Part a coverage expires.)

Under this proposed change, before a hospital could count patient days attributable to dual-eligible beneficiaries in the Medicaid fraction, the hospital must submit documentation to the fiscal intermediary that justifies including the days in the Medicaid fraction after the Medicare Part A benefits have been exhausted. That is, if the State provides data on all the days associated with all dual-eligible patients treated at a hospital, regardless of whether the beneficiary had Medicare Part A coverage, the hospital is responsible for providing documentation showing which days should be included in the Medicaid fraction because Medicare Part A coverage was exhausted.

8. Medicare+Choice (M+C) Days

Under § 422.1, an M+C plan "means health benefits coverage offered under a policy or contract by an M+C organization that includes a specific set of health benefits offered at a uniform premium and uniform level of cost-sharing to all Medicare beneficiaries residing in the service area of the M+C plan." Generally, each M+C plan must provide coverage of all services that are covered by Medicare Part A and Part B (or just Part B if the M+C plan enrollee is only entitled to Part B).

We have received questions whether patients enrolled in an M+C Plan should be counted in the Medicare fraction or the Medicaid fraction of the DSH patient percentage calculation. The question stems from whether M+C plan enrollees are entitled to benefits under Medicare Part A since M+C plans are administered through Medicare Part C.

We note that, under § 422.50, an individual is eligible to elect an M+C plan if he or she is entitled to Medicare Part A and enrolled in Part B. However, once a beneficiary has elected to join an M+C plan, that beneficiary's benefits are no longer administered under Part A.

Therefore, we are proposing to clarify that once a beneficiary elects Medicare Part C, those patient days attributable to the beneficiary should not be included in the Medicare fraction of the DSH patient percentage. These patient days should be included in the count of total patient days in the Medicaid fraction (the denominator), and the patient's days for the M+C beneficiary who is also eligible for Medicaid would be included in the numerator of the Medicaid fraction.

D. Medicare Geographic Classification Review Board (MGCRB) Reclassification Process (§ 412.230)

With the creation of the MGCRB, beginning in FY 1991, under section 1886(d)(10) of the Act, hospitals could request reclassification from one geographic location to another for the purpose of using the other area's standardized amount for inpatient operating costs or the wage index value, or both (September 6, 1990 interim final rule with comment period (55 FR 36754), June 4, 1991 final rule with comment period (56 FR 25458), and June 4, 1992 proposed rule (57 FR 23631)). Implementing regulations in subpart L of part 412 (§§ 412.230 *et seq.*) set forth criteria and conditions for redesignations for purposes of the wage index or the average standardized amount, or both, from rural to urban, rural to rural, or from an urban area to another urban area, with special rules for SCHs and rural referral centers.

Effective with reclassifications for FY 2003, section 1886(d)(10)(D)(vi)(II) of the Act provides that the MGCRB must use the average of the 3 years of hourly wage data from the most recently published data for the hospital when evaluating a hospital's request for reclassification. The regulations at § 412.230(e)(2)(ii) stipulate that the wage data are taken from the CMS hospital wage survey used to construct the wage index in effect for prospective payment purposes. To evaluate applications for wage index reclassifications for FY 2004, the MGCRB used the 3-year average hourly wages published in Table 2 of the August 1, 2002 IPPS final rule (67 FR 50135). These average hourly wages are taken from data used to calculate the wage indexes for FY 2001, FY 2002, and FY 2003, based on cost reporting periods beginning during FY 1997, FY 1998, and FY 1999, respectively.

Last year, we received a comment suggesting that we allow for the correction of inaccurate data from prior years as part of a hospital's bid for geographic reclassification (67 FR 50027). The commenter suggested that not to allow corrections to the data results in inequities in the calculation in the average hourly wage for purposes of reclassification. In the August 1, 2002 IPPS final rule, we responded:

"Hospitals have ample opportunity to verify the accuracy of the wage data used to calculate their wage index and to request revisions, but must do so within the prescribed timelines. We consistently instruct hospitals that they are responsible for reviewing their data and availing themselves to the opportunity to correct their wage data within the prescribed timeframes. Once the data are finalized and the wage indexes published in the final rule, they may not be revised, except through the mid-year correction process set forth in the regulations at § 412.63(x)(2). Accordingly, it has been our consistent policy that if a hospital does not request corrections within the prescribed timeframes for the development of the wage index, the hospital may not later seek to revise its data in an attempt to qualify for MGCRB reclassification.

"Allowing hospitals the opportunity to revise their data beyond the timelines required to finalize the data used to calculate the wage index each year would lessen the importance of complying with those deadlines. The likely result would be that the data used to compute the wage index would not be as carefully scrutinized because hospitals would know they may change it later, leading to inaccuracy in the data and less stability in the wage indexes from year to year."

Since responding to this comment in the FY 2003 IPPS final rule, we have become aware of a situation in which a hospital does not meet the criteria to reclassify because its wage data were erroneous in prior years, and these data are now being used to evaluate its reclassification application. In addition, in this situation, the hospital's wage index was subject to the rural floor because the hospital was located in an urban area with an actual wage index below the statewide rural wage index for the State, and it was for a time period preceding the requirement for using 3 years of data. Therefore, the hospital contends, it had no incentive to ensure its wage data were completely accurate. (However, we would point out that hospitals are required to certify that their cost reports submitted to CMS are complete and accurate. Furthermore, inaccurate or incomplete reporting may have other payment implications beyond the wage index.)

While we continue to have all of the concerns we expressed in last year's final rule, we now more fully understand this particular hospital's situation. Although we do have administrative authority to establish a policy allowing corrections for this particular set of circumstances, we are concerned about establishing a precedent that could reduce the importance of ensuring that the final wage data published in the annual IPPS final rule are complete and accurate. As we indicated in our response last year, we are concerned this could lead to less accuracy and stability in the wage indexes from year to year.

However, we are soliciting comments on whether it may be appropriate to establish a policy whereby, for the limited purpose of qualifying for reclassification based on data from years preceding the establishment of the 3-year requirement (that is, cost reporting years beginning before FY 2000), a hospital in an urban area that was subject to the rural floor for the period during which the wage data the hospital wishes to revise were used to calculate the wage index, a hospital may request that its wage data be revised.

E. Costs of Approved Nursing and Allied Health Education Activities (§ 413.85)

1. Background

Medicare has historically paid providers for the share of the costs that providers incur in connection with approved educational activities. The activities may be divided into the following three general categories to which different payment policies apply:

- Approved graduate medical education (GME) programs in medicine, osteopathy, dentistry, and podiatry. Medicare makes direct and indirect medical education payments to hospitals for residents training in these programs. Existing policy on direct GME payment is found at 42 CFR 413.86, and for indirect GME payment at 42 CFR 412.105.
- Approved nursing and allied health education programs operated by the provider. The costs of these programs are excluded from the definition of inpatient hospital operating costs and are not included in the calculation of payment rates for hospitals paid under the IPPS or in the calculation of payments to hospitals and hospital units excluded from the IPPS that are subject to the rate-of-increase ceiling. These costs are separately identified and "passed through" (that is, paid separately on a reasonable cost basis). Existing regulations on nursing and allied health education program costs are located at 42 CFR 413.85.
- All other costs that can be categorized as educational programs and activities are considered to be part of normal operating costs and are included in the per discharge amount for hospitals subject to the IPPS, or are included as reasonable costs that are subject to the rate-of-increase limits for hospitals and hospital units excluded from the IPPS.

In this section, we are proposing to clarify our policy governing payments to hospitals for provider-operated nursing and allied health education programs. Under the regulations at § 413.85 ("Cost of approved nursing and allied health educational activities"), Medicare makes reasonable cost payment to hospitals for provider-operated nursing and allied health education programs. A program is considered to be provider-operated if the hospital meets the criteria specified in § 413.85(f), which means the hospital directly incurs the training costs, controls the curriculum and the administration of the program, employs the teaching staff, and provides and controls both clinical training and classroom instruction (where applicable) of a nursing or allied health education program.

In the January 12, 2001 **Federal Register** (66 FR 3358), we published a final rule that clarified the policy for payments for approved nursing and allied health education activities in response to section 6205(b)(2) of the Omnibus Budget Reconciliation Act of 1989 (Pub. L. 101–239) and sections 4004(b)(1) and (2) of the Omnibus Budget Reconciliation Act of 1990 (Pub. L. 101–508).

Section 6205(b)(2) of Public Law 101–239 directed the Secretary to publish regulations clarifying the rules governing allowable costs of approved educational activities. The Secretary was directed to publish regulations to specify the conditions under which those costs are eligible for pass-through, including the requirement that there be a relationship between the approved nursing or allied health education program and the hospital. Section 4004(b)(1) of Public Law 101–508 provides an exception to the requirement that programs be provider-operated to receive pass-through payments. The section provides that, effective for cost reporting periods beginning on or after October 1, 1990, if certain conditions are met, the costs incurred by a hospital (or by an educational institution related to the hospital by common ownership or control) for clinical training (as defined by the Secretary) conducted on the premises of the hospital under an approved nursing or allied health education program that is *not* operated by the hospital are treated as pass-through costs and paid on the basis of reasonable cost. Section 4004(b)(2) of Public Law 101–508 sets forth the conditions that a hospital must meet to receive payment on a reasonable cost basis under section 4004(b)(1).

2. Continuing Education Issue for Nursing and Allied Health Education

Since publication of the January 12, 2001 final rule on nursing and allied health education, we have encountered questions concerning the substantive difference between provider-operated continuing education programs for nursing and allied health education (which would *not* be reimbursable under Medicare on a reasonable cost basis) and provider-operated approved programs that are eligible to receive Medicare reasonable cost payment. In that final rule, we stated that Medicare would generally provide reasonable cost payment for "programs of long duration designed to develop trained practitioners in a nursing or allied health discipline, such as professional nursing or occupational therapy. This is contrasted with a continuing education program of a month to a year in duration in which a practitioner, such as a registered nurse, receives training in a specialized skill such as enterostomal therapy. While such training is undoubtedly valuable in enabling the nurse to treat patients with special needs and in improving the level of

patient care in a provider, the nurse, upon completion of the program, continues to function as a registered nurse, albeit one with special skills. Further distinction can be drawn between this situation and one in which a registered nurse undergoes years of training to become a CRNA. For these reasons, the costs of continuing education training programs are not classified as costs of approved educational activities that are passed-through and paid on a reasonable cost basis. Rather, they are classified as normal operating costs covered by the prospective payment rate or, for providers excluded from the IPPS, as costs subject to the target rate-of-increase limits" (66 FR 3370).

Accordingly, upon publication of the final rule, we revised § 413.85(h)(3) to include continuing education programs in the same category as "educational seminars and workshops that increase the quality of medical care or operating efficiency of the provider." Costs associated with continuing education programs, as stated above, are recognized as normal operating costs and are paid in accordance with applicable principles.

We received an inquiry requesting further clarification on what is meant by continuing education. It is our belief that provider-operated programs that do not lead to any specific certification in a specialty would be classified as continuing education. By certification, we do not mean certification in a specific skill, such as when an individual is certified to use a specific piece of machinery or perform a specific procedure. Rather, we believe certification would mean the ability to perform in the specialty as a whole.

Although, in the past, we believe we have allowed hospitals to be paid for operating a pharmacy "residency" program, it has come to our attention that those programs do not meet the criteria for approval as a certified program. Once individuals have finished their undergraduate degree in pharmacy, there are *some* individuals who go on to participate in 1-year hospital-operated postundergraduate programs. It is our understanding that many individuals complete the 1-year postundergraduate program practice pharmacy inside the hospital setting. However, we also understand that there are pharmacists who *do not* complete the 1-year postundergraduate program, but have received the undergraduate degree in pharmacy, who also practice pharmacy inside the hospital setting. Because pharmacy students need not complete the 1-year residency program to be eligible to practice pharmacy in the hospital setting, the 1-year programs that presently are operated by hospitals would be considered continuing education, and therefore, would be ineligible for pass-through reasonable cost payment.

We understand that *all* individuals who wish to be nurses practicing in a hospital must either complete a 4-year degree program in a university setting, a 2-year associate degree in a community or junior college setting, or a diploma program traditionally offered in a hospital setting. Since participants that complete a provider-operated diploma nursing program could not practice as nurses without that training, the diploma nursing programs are *not* continuing education programs and, therefore, may be eligible for pass-through treatment.

Because of the apparent confusion concerning continuing education programs in the nursing and allied health reasonable cost context, we are proposing to revise § 413.85(h)(3) to state that educational seminars, workshops, and continuing education programs in which the employees participate that enhance the quality of medical care or operating efficiency of the provider and, effective October 1, 2003, do not lead to certification required to practice or begin employment in a nursing or allied health specialty, would be treated as educational activities that are part of normal operating costs. We also are proposing to add a conforming definition of "certification" for purposes of nursing and allied health education under § 413.85(c) to mean "the ability to practice or begin employment in a specialty as a whole."

3. Programs Operated by Wholly Owned Subsidiary Educational Institutions of Hospitals

Another matter that has come to CMS' attention since publication of the January 12, 2001 final rule (66 FR 3363) on nursing and allied health education concerns the preamble language of the rule, which states:

"Concerning those hospitals that have established their own educational institution to meet accrediting standards, we believe that, in some cases, these providers can be eligible to receive payment for the classroom and clinical training of students in approved programs. If the provider demonstrates that the educational institution it has established is wholly within the provider's control and ownership and that the provider continues to incur the costs of both the classroom and clinical training portions of the program, the costs would continue to be paid on a reasonable cost basis. An independent college would not meet these criteria.

"An example of a program that could be considered provider-operated would be one in which the hospital is the sole corporate member of the college, elects the board of trustees, has board members in common, employs the faculty and pays the salaries, controls the administration of the program and the curriculum, and provides the site for the clinical and classroom training on the premises of the hospital. We believe that, in these situations, the community has not undertaken to finance the training of health professionals; the provider has merely restructured its provider-operated program to meet certain State or accrediting requirements. In most cases, providers have aligned themselves with already established educational institutions. We note that a program operated by an educational institution that is related to the provider through common ownership or control would not be considered to meet the criteria for provider operated." (66 FR 3363)

We have received a question from a hospital that pertains to the cited preamble language in the narrow circumstance where the hospital previously received Medicare reasonable cost payment for direct operation of nursing or allied health education programs and then established its own wholly owned subsidiary college to operate the programs, in order to meet accreditation standards. The hospital has continued to receive Medicare payments after the hospital moved operation of the programs to the wholly owned subsidiary college. The hospital believes that, based on the cited preamble language regarding wholly owned subsidiary colleges and the lack of prior specific guidance on this particular organizational structure (as well as its continued receipt of pass-through payments) and because the hospital continues to pay all of the costs of the nursing and allied health education programs, the hospital is still the direct operator of the programs and should continue to receive pass-through treatment. However, we believe that once the hospital moved the direct operation of its nursing and allied health education programs to the college, the programs no longer met our provider-operated criteria at § 413.85(f). At the very least, it appears that the hospital did not hire the faculty for the program(s) and did not have direct control of the curriculum of the program(s) after operation was transferred to the wholly owned subsidiary college. As we stated in the preamble language quoted above: "a program operated by an educational institution that is related to the provider through common ownership or control would not be considered to meet the criteria for provider operated" (66 FR 3363).

However, we understand that some hospitals, including this hospital, may have interpreted the preamble language that stated, "if the provider demonstrates that the educational institution it has established is wholly within the provider's control and ownership and that the provider continues to incur the costs of both the classroom and clinical training portions of the program, the costs would continue to be paid on a reasonable cost basis" (Ibid.), to mean that hospitals that establish wholly owned subsidiary colleges or educational institutions would continue to receive Medicare reasonable cost payment if the hospitals incur the costs of the classroom instruction and clinical training. We are proposing to clarify that transferring operation of previously provider-operated programs to educational institutions, even if the institutions are wholly owned by the hospital, does *not* necessarily mean that the programs continue to meet our provider-operated criteria under § 413.85(f). In order to remain provider operated, the hospital must have *direct control* of the program; the hospital itself must employ the teaching staff, have direct control of the program curriculum, and meet other requirements, as stated at § 413.85(f).

While we are proposing to clarify that merely operating programs through a wholly owned subsidiary college does not constitute direct operation of nursing or allied health education programs unless the hospital itself meets the requirements of the regulations at § 413.85(f), we believe it would be unfair to recoup Medicare payments that have already been made to hospitals that meet this very narrow fact pattern. Therefore, we are proposing that Medicare would not recoup reasonable cost payment from hospitals that have received pass-through payments for portions of cost reporting periods occurring on or before October 1, 2003 (the effective date of finalizing this proposed rule) for the nursing or allied health education program(s) where the program(s) had originally been operated by the hospital, and then operation of the program(s) had been transferred by the hospital to a wholly owned subsidiary educational institution in order to meet accreditation standards prior to October 1, 2003, and where the hospital had continuously incurred the costs of both the classroom and clinical training portions of the programs at the educational institution.

In addition, we are proposing that, for portions of cost reporting periods occurring on or after October 1, 2003, such a hospital would continue to receive reasonable cost payments for the clinical training costs incurred by the hospital for the program(s) described above that were previously provider operated. However, we are further proposing that, with respect to classroom costs, only those classroom costs incurred by the hospital for the courses that were paid by Medicare on a reasonable cost basis and included in the hospital's provider-operated program(s) could continue to be reimbursed on a reasonable cost basis. That is, Medicare would pay on a reasonable cost basis for the classroom costs associated with the courses provided as part of the nursing and allied health education programs (for example, the courses relating to the theory and practice of the particular nursing and allied health discipline(s)) that were offered by the hospital when the hospital was the direct operator of the program(s).

We believe this proposed policy is appropriate since continued pass-through payment will allow these hospitals to maintain equal footing with other hospitals that receive pass-through payments and have maintained their provider-operated programs. In addition, it would not be equitable to discontinue longstanding Medicare pass-through payment to these hospitals (in fact, reasonable cost payment to at least one of these hospitals for nonprovider-operated programs preceded the publication of the January 12, 2001 final rule on nursing and allied health education payments by many years) that restructured operation of their nursing and allied health education program(s) as wholly owned subsidiaries in order to meet accreditation standards while relying on their understanding of CMS' prior expressions of provider-operated requirements and the recent preamble language. If these providers were now forced to restructure in order to meet the requirements of § 413.85(f), they would not be able to maintain their accreditation.

We note that Congress has specifically expressed its intent that providers that have restructured their programs to be operated by a wholly owned subsidiary educational institution in order to meet accreditation standards should continue to receive Medicare reasonable cost payment. In the conference report accompanying the Consolidated Appropriations Resolution for FY 2003, Congress stated:

"The conferees are particularly concerned about nursing and allied health educational programs that cannot meet the regulations set forth at 42 CFR 413.85(f) solely as a result of regional educational accrediting criteria. Given the shortage of nursing and allied health professionals, the conferees support the payment of costs on a reasonable cost basis for a hospital that has historically been the operator of nursing and allied health education programs(s) that qualified for Medicare payments under 42 CFR 413.85, but, solely in order to meet educational standards, subsequently relinquishes some control over the program(s) to an educational institution, which meets regional accrediting standards; is wholly owned by the provider; and is supported by the hospital, that is, the hospital is incurring the costs of both the classroom and clinical training of the program." (H.R. Rep. No. 108–10, 108th Cong., 1st Sess., 1115 (2003).)

However, the proposed policy does not allow these hospitals to be paid for additional classroom costs for courses that were not paid on a reasonable cost basis to the hospitals in conjunction with their provider-operated programs (for example, additional classes needed to meet degree requirements). We believe that to allow pass-through payment for those additional costs would provide these hospitals with an unfair advantage over other hospitals with provider-operated programs.

We note that any hospital that chooses to restructure its programs to be operated by a wholly owned subsidiary educational institution on or after the effective date of this proposal when finalized (October 1, 2003) would not be eligible for pass-through payments under this proposed provision unless the hospital continues to meet the requirements of § 413.85(f). We believe it is appropriate to limit the proposed payments to hospitals that restructured before this proposed rule is made final because our policy with respect to programs by a wholly owned subsidiary of a hospital will have been clarified in that final rule.

We are proposing to revise § 413.85 by adding new paragraphs (d)(1)(iii) and (g)(3) to reflect this proposed payment policy.

F. Payment for Direct Costs of Graduate Medical Education (§ 413.86)

1. Background

Under section 1886(h) of the Act, Medicare pays hospitals for the direct costs of graduate medical education

(GME). The payments are based in part on the number of residents trained by the hospital. Section 1886(h)(4)(F) of the Act caps the number of allopathic and osteopathic residents that hospitals may count for direct GME.

Section 1886(h) of the Act, as added by section 9202 of the Consolidated Omnibus Budget Reconciliation Act (COBRA) of 1985 (Pub. L. 99–272) and implemented in regulations at § 413.86(e), establishes a methodology for determining payments to hospitals for the costs of approved GME programs. Section 1886(h)(2) of the Act, as added by COBRA, sets forth a payment methodology for the determination of a hospital-specific, base-period per resident amount (PRA) that is calculated by dividing a hospital's allowable costs of GME for a base period by its number of residents in the base period. The base period is, for most hospitals, the hospital's cost reporting period beginning in FY 1984 (that is, the period of October 1, 1983 through September 30, 1984). The PRA is multiplied by the weighted number of full-time equivalent (FTE) residents working in all areas of the hospital complex (or nonhospital sites, when applicable), and the hospital's Medicare share of total inpatient days to determine Medicare's direct GME payments.

Existing regulations at § 413.86(e)(4) specify the methodology for calculating each hospital's weighted average PRA and the steps for determining whether a hospital's PRA will be revised.

2. Prohibition Against Counting Residents Where Other Entities First Incur the Training Costs

a. General Background on Methodology for Determining FTE Resident Count. As we explain earlier in this preamble, Medicare makes both direct and indirect GME payments to hospitals for the training of residents. Direct GME payments are reimbursed in accordance with section 1886(h) of the Act, based generally on hospital-specific PRAs, the number of FTE residents a hospital trains, and the hospital's Medicare patient share. The indirect costs of GME are reimbursed in accordance with section 1886(d)(5)(B) of the Act, based generally on the ratio of the hospital's FTE residents to the number of hospital beds. It is well-established that the calculation of both direct GME and IME payments is affected by the number of FTE residents that a hospital is allowed to count; generally, the greater the number of FTE residents a hospital counts, the greater the amount of Medicare direct GME and IME payments the hospital will receive. In an attempt to end the implicit incentive for hospitals to increase the number of FTE residents, Congress instituted a cap on the number of allopathic and osteopathic residents a hospital is allowed to count for direct GME and IME purposes under the provisions of section 1886(h)(4)(F) (direct GME) and section 1886(d)(5)(B)(v) (IME) of the Act. Dental and podiatric residents were not included in this statutorily mandated cap.

With respect to reimbursement of direct GME costs, since July 1, 1987, hospitals have been allowed to count the time residents spend training in sites that are not part of the hospital (referred to as "nonprovider" or "nonhospital sites") under certain conditions. Section 1886(h)(4)(E) of the Act requires that the Secretary's rules concerning computation of FTE residents for purposes of separate reimbursement of direct GME costs "provide that only time spent in activities relating to patient care shall be counted and that all the time so spent by a resident under an approved medical residency training program shall be counted towards the determination of full-time equivalency, without regard to the setting in which the activities are performed, if the hospital incurs all, or substantially all, of the costs for the training program in that setting." (Section 1886(h)(4)(E) of the Act, as added by section of 9314 of the Omnibus Budget Reconciliation Act of 1986, Pub. L. 99–509.)

Regulations on time spent by residents training in nonhospital sites for purposes of direct GME payment were first implemented in the September 29, 1989 final rule (54 FR 40286). We stated in that rule (under § 413.86(f)(3)) that a hospital may count the time residents spend in nonprovider settings for purposes of direct GME payment if the residents spend their time in patient care activities and there is a written agreement between the hospital and the nonprovider entity stating that the hospital will incur all or substantially all of the costs of the program. The regulations at that time defined "all or substantially all" of the costs to include the residents' compensation for the time spent at the nonprovider setting.

Prior to October 1, 1997, for IME payment purposes, hospitals could only count the time residents spend training in areas subject to the IPPS and outpatient areas of the hospital. Section 4621(b)(2) of the Balanced Budget Act of 1997 (Pub. L. 105–33) revised section 1886(d)(5)(B) of the Act to allow providers to count time residents spend training in nonprovider sites for IME purposes, effective for discharges occurring on or after October 1, 1997. Specifically, section 1886(d)(5)(B)(iv) of the Act was amended to provide that "all the time spent by an intern or resident in patient care activities under an approved medical residency program at an entity in a non-hospital setting shall be counted towards the determination of full-time equivalency if the hospital incurs all, or substantially all, of the costs for the training program in that setting."

In the regulations at §§ 412.105(f)(1)(ii)(C) and 413.86(f)(4) (as issued in the July 31, 1998 **Federal Register**), we specify the requirements a hospital must meet in order to include a resident training in a nonhospital site in its FTE count for Medicare reimbursement for portions of cost reporting periods occurring on or after January 1, 1999 for both direct GME and for IME payments. The regulations at § 413.86(b) redefine "all or substantially all of the costs for the training program in the nonhospital setting" as the residents' salaries and fringe benefits (including travel and lodging where applicable), and the portion of the cost of teaching physicians' salaries and fringe benefits attributable to direct GME. A written agreement between the hospital and the nonhospital site is required before the hospital may begin to count residents training at the nonhospital site; the agreement must provide that the hospital will incur the costs of the resident's salary and fringe benefits while the resident is training in the nonhospital site. The hospital must also provide reasonable compensation to the nonhospital site for supervisory teaching activities, and the written agreement must specify that compensation amount.

b. Inappropriate Counting of FTE Residents. As we stated above, dental residents, along with podiatric residents, are excepted from the statutory cap on the count of FTE residents for both direct GME and IME payment purposes. We have become aware of a practice pertaining to the counting of FTE residents at a nonhospital site, particularly dental residents, that we see as inappropriate under Medicare policy. Most often, the situation involves dental schools that, for a number of years, have been training dental residents in programs at the dental schools of universities affiliated with teaching hospitals, and the schools have been directly incurring the costs of the dental residents training at the dental schools (for example, the teaching faculty costs, the resident salary costs, the office space costs, and any overhead expenses of the programs). We also understand that there are dental clinics at these dental schools that treat patients (that is, are involved in "patient care activities").

As a result of the provisions that Congress added to allow hospitals to count FTE residents and receive IME payment, as well as direct GME payment, if the hospital incurs "all or substantially all" the costs of training residents in nonhospital settings, a significant number of dental schools are shifting the resident training costs of the dental programs from the schools to the hospital, and thus to the Medicare program, when the hospitals count the FTE dental residents training in these dental schools (that is, "nonhospital sites") under the regulations at § 413.86(f)(4). Furthermore, in the case of training dentists at dental school clinics, as a result of this cost-shifting and because dental residents are excepted from the cap, hospitals are receiving significant amounts of Medicare direct GME and IME payments when they have incurred relatively small costs of the residents training in a dental school.

The following actual situations are illustrative of the inappropriate application of Medicare direct GME and IME policy that we have found:

• An academic medical center hospital associated with a university has been training allopathic residents for at least 20 years. Prior to 1999, the university s affiliated dental school had always incurred the costs of dental residency programs at the dental school. Beginning with the hospital's cost report for its fiscal year ending in 1999, for the first time ever, the hospital has requested direct GME and IME payment for an additional 67 FTE residents because the hospital claims it has begun to incur "all or substantially all" of the costs of the dental residents training in the university's affiliated dental school, in accordance with the regulations at § 413.86(f)(4).

• A university dental school in one State has been incurring the costs of dental residency programs at its dental school for several years. Beginning in FY 1999, a teaching hospital in a neighboring State decided to begin incurring "all or substantially all" of the costs of the dental residents training in the dental clinics in the program (which is located in a different State from the hospital) in order to receive Medicare direct GME and IME payment for an additional 60 FTE residents.

• In another situation, a teaching hospital on the East Coast of the United States has requested direct GME and IME payment for an additional 60 FTE dental residents, some of whom are training in dental programs at nonhospital sites located in Hawaii, New Mexico, and the Netherlands, because it has begun to incur "all or substantially all" of the costs of dental residents training in those remote "nonhospital sites". Prior to 1999, the costs for these dental programs were funded by nonhospital sources.

We note that such inappropriate cost-shifting practices are by no means limited to the dental school context. Indeed, we understand that there are some hospitals with resident counts below their direct GME and IME FTE resident caps that have recently (as of October 1, 1997, when it became possible to receive significant IME payments under the amendment made by Pub. L. 105–33) started to incur "all or substantially all" of the costs of residents who had been training at sites outside of the hospital without any financial assistance from the hospital, in order for the hospital to count those FTE residents and receive Medicare direct GME and IME payments for the additional residents. The actual costs of the programs that are being shifted from nonhospital entities to hospitals are relatively small, compared to the direct GME and IME payments that hospitals receive as a result of incurring "all or substantially all" of the training costs.

• In another example, an academic medical center hospital in one State asked Medicare to allow it to count an additional 10 FTEs for both direct GME and IME payment, beginning with its fiscal year ending 1999 cost report, because the hospital claims it is incurring all or substantially all of the costs of training osteopathic family practice residents in a walk-in clinic. The osteopathic family practice residency program had previously been sponsored by this clinic for several years and the residents do not participate in any training at the hospital.

c. Congressional Intent. Congress has delegated broad authority to the Secretary to implement a policy on the count of FTE residents for purposes of calculating direct GME and IME payments. For IME payment, section 1886(d)(5)(B) of the Act simply states that "the Secretary shall provide for an additional payment amount" which includes "the ratio of the hospital's full-time equivalent interns and residents to beds." The methodology to compute the count of FTE residents for IME is not established in the statute. Similarly, for direct GME, section 1886(h)(4)(A) of the Act states that "the Secretary shall establish rules consistent with this paragraph for the computation of the number of full-time equivalent residents in an approved medical residency training program."

Although not in the context of the general rules for counting FTE residents, Congress similarly acknowledged its intent to defer to the Secretary with respect to the rules for implementing "limits" or caps on the number of FTE residents hospitals may count for purposes of direct GME and IME payment. The conference agreement that accompanied Pub. L. 105–33, which established a cap on the number of allopathic and osteopathic residents a hospital may count, states—

"[T]he Conferees recognize that such limits raise complex issues, and provide for specific authority for the Secretary to promulgate regulations to address the implementation of this provision. The Conferees believe that rulemaking by the Secretary would allow careful but timely consideration of this matter, and that the record of the Secretary's rulemaking would be valuable when Congress revisits this provision." (H.R. Conf. Rep. No. 105–217, 105th Cong., 1st Sess., 821 (1997).

The absence of statutory specificity on determining FTE counts in these situations and the declared Congressional delegations of authority to the Secretary on the subject are clear indications that Congress has given the Secretary broad discretion to promulgate reasonable regulations in order to implement the policy on the counting of residents for direct GME and IME payments.

When Congress enacted the nonhospital site provisions for both direct GME and IME, Congress intended to address application of the FTE count policy to situations where the training site had been the hospital. The intent was to create incentives for hospitals to move resident training from the hospital to nonhospital settings. We believe that Congress did *not* intend for hospitals to be able to add to their FTE counts residents that had historically trained outside the hospital in other settings. Training in those nonhospital settings had historically occurred without Congress offering any financial incentive to hospitals to move the training out of the hospital.

This Congressional intent is evident in the legislative history of both the direct GME and the IME provisions on nonhospital settings. First, legislative history associated with passage of the direct GME provision (as part of Pub. L. 99–509) indicates that Congress intended to broaden the scope of settings in which a hospital could train its residents and still receive separate direct GME cost reimbursement, and to

provide incentives to hospitals for training residents in primary care programs. The Conference committee report indicates that "[s]ince it is difficult to find sufficient other sources of funding [than hospitals and Medicare] for the costs of such training, [that is, training in freestanding primary care settings such as family practice clinics or ambulatory surgery centers] *assignments to these settings* are discouraged. It is the Committee's view that training in these settings is desirable, because of the growing trend to treat more patients *out of the inpatient hospital setting* and because of the encouragement it gives to primary care." (Emphasis added.) (H.R. Rep. No. 99–727, 99th Cong., 1st Sess., 70 (1986).)

Thus, from the start of the policy allowing payment for training in nonprovider sites, we believe Congress intended to create a monetary incentive for hospitals to rotate residents from the hospital to the nonhospital settings. We believe Congress did not intend for hospitals to be paid for residents who had previously been training at nonhospital sites without hospital funding.

Further, in the Conference committee report accompanying the provision of Pub. L. 105–33 on IME payment for training in nonhospital settings, Congress stated that "[t]he conference agreement includes new permission for *hospitals to rotate residents through nonhospital settings*, without reduction in indirect medical education funds." (Emphasis added.) (H.R. Conf. Rep. No. 105–217, 105th Cong., 1st Sess., 817 (1997).)

We note that, prior to enactment of Pub. L. 105–33, if a hospital rotated a resident to train at a nonhospital site, the hospital could not count the time the resident spent at the nonhospital site for purposes of Medicare IME payments. As a result, the lack of IME payments acted as a disincentive and discouraged hospitals from rotating residents out of the hospital. Therefore, Congress authorized hospitals to count residents in nonhospital sites for IME purposes as a specific incentive to encourage hospitals to rotate their residents to nonhospital sites (and not to encourage hospitals to incur the costs of a program at a nonhospital site that had already been funded by other sources). This legislative intent becomes more apparent when the nature of the Medicare IME payment is considered. The Medicare IME payment is inherently a payment that reflects the increased operating costs of treating inpatients as a result of the hospital having a residency program. For example, as explained in the September 29, 1989 final rule (54 FR 40286), the indirect costs of medical education might include added costs resulting from an increased number of tests ordered by residents as compared to the number of tests normally ordered by more experienced physicians.

The IME payment is an adjustment that is made for each Medicare discharge from the areas subject to the IPPS in a teaching hospital. The authorization by Congress for IME payments relating to nonhospital services while residents are training at nonhospital sites would be absurd if not viewed as an incentive to transfer existing residency training from the hospital to the nonhospital setting. We do not believe Congress intended to permit such IME payments to be allowable to the hospital that is incurring "all or substantially all the costs" of residents training in nonhospital sites except in the situation where the hospital rotated residents from the hospital to the nonhospital settings. The illustrative situations described above in which nonhospital sites, such as dental schools, are shifting the costs of existing programs to the hospitals are not consistent with the intent of Congress to encourage hospitals to rotate residents from the hospital setting to nonhospital sites.

Thus, we believe Congress intended both cited provisions of the Act on counting residents in nonhospital sites for purposes of direct GME and IME payments to be limited to situations in which hospitals rotate residents from the hospital to the nonhospital settings, and *not* situations in which nonhospital sites transfer the costs of an existing program at a nonhospital site to the hospital.

d. Medicare Principles on Redistribution of Costs and Community Support. It is longstanding Medicare policy that if the community has undertaken to bear the costs of medical education, these costs are not to be assumed by the Medicare program. In addition, medical education costs that have been incurred by an educational institution may not be redistributed to the Medicare program. Indeed, these concepts, community support and redistribution of costs, have been a part of Medicare GME payment policy since the inception of the Medicare program. Both the House and Senate Committee reports accompanying Pub. L. 89–97 (the authorizing Medicare statute) indicate that Congress intended Medicare to share in the costs of medical education *only* in situations in which the community has not stepped in to incur them:

"Many hospitals engage in substantial education activities, including the training of medical students, internship and residency programs, the training of nurses and the training of various paramedical personnel. Educational activities enhance the quality of care in an institution and it is intended, *until the community undertakes to bear such education costs in some other way*, that a part of the net cost of such activities * * * should be considered as an element in the cost of patient care, to be borne to an appropriate extent by the hospital insurance program. (Emphasis added.) (S. Rep. No. 404, 89th Cong., 1st Sess., 36 (1965); H.R. Rep. No. 213, 89th Cong., 1st Sess., 32 (1965).)

The principle behind the congressional committee report language for Pub. L. 89–97 that Medicare would share in the costs of educational activities until communities bore them in some other way has guided Medicare policy on educational activities from the inception of the Medicare program. The principles of community support and redistribution of costs associated with payment for GME have been continually reiterated in various regulations, manual provisions, and implementing instructions to fiscal intermediaries. As recently as the final rule published in the **Federal Register** on January 12, 2001, we stated:

"We note that the proposed revisions in the proposed rule inadvertently did not include community support as the basis for an offset from the allowed cost of a GME or nursing and allied health program. In this final rule, we restate our longstanding policy that Medicare will share in the costs of educational activities of providers where communities have not assumed responsibility for financing these programs. Medicare's policy is to offset from otherwise allowable education costs, community funding for these activities." (66 FR 3368)

We note the instructions that CMS (then HCFA) gave to its Regional Offices in the 1990 audit instructions for purposes of calculating the direct GME base period PRA specifically addressed redistribution of costs and community support in the GME context:

"Where costs for services related to medical education activities have historically been borne by the university, it is assumed the community has undertaken to support these activities, and subsequent allocation of these costs to a hospital constitutes a redistribution of costs from an educational institution to a patient care institution. In such a situation, these costs are not allowable under the Medicare program. (*See* 42 CFR 413.85(c) and HCFA Pub. L. 15–1, § 406). For example, if in the past the hospital did not identify and claim costs attributable to the time teaching physicians spent supervising I&Rs [interns and residents] working at the hospital, it is assumed that these costs were borne by the university. Therefore, the hospital may not claim these costs in subsequent cost reports."
(Instructions for Implementing Program Payments for Graduate Medical Education to ARAs for Medicare, Director of Office of Financial Operations of the Health Care Financing Administration, BPO–F12, February 12, 1990.)

Furthermore, the regulation at § 413.85(c) that was originally issued in the **Federal Register** on September 30, 1986 (51 FR 34793) (which was further refined, but conceptually left unchanged, as of March 12, 2001) addressed the Congressional intent not to increase program costs, as well. That paragraph (c) stated:

"*Educational Activities.* Many providers engage in education activities including training programs for nurses, medical students, interns and residents, and various paramedical specialties * * *. Although the intent of the program is to share in the support of educational activities customarily or traditionally carried on by providers in conjunction with operations, it is not intended that this program should participate in increased costs resulting from redistribution of costs from educational institutions or units to patient care institutions or units."

The Secretary of Health and Human Services interpreted this provision to deny reimbursement of educational costs that were borne in prior years by a hospital's affiliated medical school. The U.S. Supreme Court affirmed the Secretary's interpretation of the redistribution of costs regulation in *Thomas Jefferson University* v. *Shalala* ("*Thomas Jefferson*"), 512 U.S. 504 (1994). The Court found of § 413.85(c) that:

"The regulation provides, *in unambiguous terms*, that the 'costs' of these educational activities will not be reimbursed when they are the result of a 'redistribution,' or shift, of costs of an 'educational' facility to a 'patient care' facility." (Emphasis added.) (*Thomas Jefferson*, 512 U.S. at 514). Thus, the Supreme Court in *Thomas Jefferson* held that it is well within the Secretary's discretion to interpret the language at § 413.85(c), which was specifically derived from the legislative history of the original enacting Medicare legislation quoted above, to impose a substantive limitation on medical education payment.

The Supreme Court's opinion in *Thomas Jefferson* lends substantial support and credibility to CMS' longstanding policy on community support and redistribution of costs in the GME context.

e. Application of Redistribution of Costs and Community Support Principles. As we have described above, we have discovered an inappropriate application of Medicare direct GME and IME payment policies relating to the counting of FTE residents in nonhospital settings. As stated previously, we believe that: (1) Congress has given the Secretary broad discretion to implement policy on FTE resident counts; (2) Congress intended that the nonhospital site policy for both direct GME and IME would encourage hospitals to move resident training from the hospital to nonhospital settings, not to enable nonhospital sites to shift the costs of already established residency programs in the nonhospital site to the hospital; and (3) since the inception of the Medicare program, CMS' policy has been consistent with the intent of Congress that Medicare would only share in the costs of medical education until the community assumes the costs. The Supreme Court has specifically found that CMS' implementation of the redistribution of costs and community support principles is "reasonable." (*Thomas Jefferson*, 512 U.S. at 514.)

Accordingly, we are proposing that residents training at nonhospital sites may be counted in a hospital's FTE resident count only where the principles of redistribution of costs and community support are not violated. We are proposing this policy at this time to address the inappropriate practice of nonhospital sites shifting costs to hospitals solely to allow the hospitals to count residents training in the nonhospital sites. However, we believe the concepts of redistribution of costs and community support are equally relevant to the counting of FTEs residents by a hospital in general.

We note again that the Medicare program has a long tradition of applying redistribution of costs and community support principles to medical education payments. As we have stated above, both the House and Senate Committee reports accompanying Pub. L. 89–97 (the 1965 authorizing Medicare statute) indicate that Congress intended Medicare to share in the costs of medical education only where the community has not stepped in to incur them.

We believe it is appropriate to employ the principles of redistribution of costs and community support to specifically address the inappropriate scenarios described above whereby hospitals attempt to inflate their FTE resident counts by assuming payment of training costs for residents in nonhospital sites that were previously funded by a nonhospital entity. Therefore, we are proposing to specify the application of the redistribution of costs and community support principles by adopting the definitions (with some modification to reflect the methodology for counting FTE residents applicable to GME) of "community support" and "redistribution of costs" at § 413.85(c), which relate to nursing and health education program costs, for use at § 413.86(b), which relates to GME. In addition, we are proposing a general rule at proposed § 413.86(i) on the application of community support and redistribution of costs principles to the counting of FTE residents for GME. We are proposing to (1) make the provisions under § 413.86(f) relating to determining the number of FTE residents subject to the provisions of the proposed § 413.86(i); (2) add a proposed § 413.86(f)(4) in order to clarify that the principles of redistribution of costs and community support are applicable to the counting of FTE residents, including when the residents are training in nonhospital settings; and (3) making the provisions of the proposed § 413.86(i) specifically applicable to determining the number of FTE residents under § 413.86(g)(4) through (6) and (g)(12).

The general rule at proposed § 413.86(i) contains two provisions. Proposed § 413.86(i)(1) states the principles of community support and redistribution of costs: In relation to community support, we are proposing that if the community has undertaken to bear the costs of medical education through community support, the training costs of residents that are paid through community support are not considered GME costs to the hospital for purposes of Medicare payment. In relation to redistribution of costs, we are proposing that the costs of training residents that constitute a redistribution of costs from an educational institution to the hospital are not considered GME costs to the hospital for purposes of Medicare payment.

In applying the redistribution of costs and community support principles, we are proposing under § 413.86(i)(2) to state that a hospital must continuously incur direct GME costs of residents training in a particular program at a training site since the date the residents first began training in that site in order for the hospital to count the FTE residents in accordance with the

provisions of paragraphs (f) and (g)(4) through (g)(6), and (g)(12) of § 413.86.

We note that our reasons for specifically referencing the applicability of the principles of community support and redistribution of costs at § 413.86(f)(4), the paragraph concerning counting residents training in nonhospital settings for direct GME purposes, are twofold. First, although we are already making the proposed § 413.86(i) applicable to § 413.86(f), which would make the principles applicable to each paragraph under § 413.86(f), in consideration of the inappropriate applications we have identified of the GME FTE-counting policy with respect to counting residents in nonhospital sites, we believe it is appropriate to also specifically address the applicability of the redistribution of costs and community support principles to § 413.86(f)(4). In addition, we note that the proposed reference at § 413.86(f)(4) has implications for IME payment as well, as explained below.

Under existing § 412.105(f)(1)(ii)(C), the rule for the counting of FTE residents training in nonhospital settings for IME payment, there is a specific reference indicating that the criteria set forth in § 413.86(f)(4) must be met in order for a hospital to count the FTE residents training in nonhospital settings for purposes of IME payments. Thus, if under proposed § 413.86(f)(4)(iv) (the paragraph making redistribution of costs and community support principles applicable) a hospital is not permitted to count the FTE residents training in a nonhospital site because of redistribution of costs or community support, the hospital would not be permitted to count the FTE residents for purposes of IME payment as well, because the IME regulation at § 412.105(f)(1)(ii)(C) requires the criteria under § 413.86(f)(4) to be met.

As we have stated above, payment for IME is based on the concept that, as a direct result of the hospital's resident training program, the costs the hospital incurs for patient care are increased. When Congress included section 1886(d)(5)(B)(iv) of the Act as part of Public Law 105–33, the statute expanded the circumstances under which IME payments to a hospital could be made by allowing the hospital to count the number of residents training outside the hospital setting under certain conditions. Even though it is clear that those residents training outside the hospital cannot have any impact on patient care costs to the hospital, Congress nevertheless allowed the hospital to receive IME payments when the hospital counts FTE residents training in a nonhospital setting in accordance with section 1886(d)(5)(B)(iv) of the Act, where those residents would otherwise have trained in the hospital setting. As we have stated, Congress created an incentive (or removed a disincentive) with the provisions of Public Law 105–33 for hospitals to rotate residents to nonhospital settings by allowing hospitals to continue to receive IME payment as if the residents continued to train in the hospital setting. If there is a redistribution of costs or community support, we believe IME payment to the hospital would be contrary to Congressional intent to encourage the hospital to rotate residents from the hospital to the nonhospital site.

In addition, when Congress included section 1886(d)(5)(B)(iv) of the Act as part of Public Law 105–33, the statutory authority for IME payment was premised on the hospital incurring the direct GME costs of the residents: "all the time spent by an intern or resident in patient care activities under an approved medical residency program at an entity in a nonhospital setting shall be counted towards the determination of full-time equivalency *if the hospital incurs all, or substantially all, of the costs for the training program* in that setting." (Emphasis added.) (Section 4621(b)(2) of Public Law 105–33; section 1886(d)(5)(B)(iv) of the Act.) We believe Congress intended the hospital to incur direct GME costs of the program in the nonhospital site in order to count the FTE residents training in nonhospital settings for purposes of IME payment. Thus, in the situation where a hospital incurred direct GME costs but there was redistribution of costs or community support, a disallowance of direct GME payments as well as a disallowance of IME payments is appropriate.

Although we are stating generally that the principles of community support and redistribution of cost have applied since the inception of Medicare to graduate medical education payment, as we have stated above, we have identified relatively recent inappropriate application of the nonhospital site policy for counting FTE residents. Therefore, we believe it is appropriate to propose to identify January 1, 1999, as the date our fiscal intermediaries should use to determine whether a hospital or another entity has been incurring the costs of training in a particular program at a training setting for purposes of determining whether there has been a redistribution of costs or community support. We are proposing that January 1, 1999 be used as the date the fiscal intermediaries should use for determinations, since it may be difficult for our fiscal intermediaries to obtain from hospitals contemporaneous documentation that the hospitals have appropriately been incurring the direct GME costs in earlier fiscal years. We believe the January 1, 1999 date should simplify confirmation by our fiscal intermediaries and hospitals of whether the hospital or another entity had been incurring the costs of the program in particular training settings and whether redistribution of costs or community support had occurred. We have chosen the January 1, 1999 date because of administrative convenience and feasibility, so that necessary data are both valid and available, and in recognition of the fact that our fiscal intermediaries must prioritize their limited audit resources. While we are not requiring our fiscal intermediaries to determine whether a hospital had been incurring the training costs of a program prior to the January 1, 1999 date, if the fiscal intermediaries determine that there is a redistribution of costs or community support exists with respect to certain residents prior to January 1, 1999, a disallowance of direct GME and IME payments with respect to those FTE residents would certainly be required.

Since calculation of a hospital's FTE resident count is dependent upon whether the hospital incurred the training costs, we are proposing to require each teaching hospital and its fiscal intermediary to determine which entity had been incurring the training costs at least since January 1, 1999. For example, if a nonhospital entity, such as a school of medicine or dentistry, had incurred the costs of training the residents anytime on or after January 1, 1999, and a hospital subsequently begins to incur direct GME costs of training those FTE residents, the hospital would not qualify to count those FTE residents for purposes of direct GME and IME payments.

We note that the proposal states that a hospital must have been *continuously* incurring the costs of the training since the date the residents first began training in that program. Accordingly, if a hospital had at one time incurred the costs of training residents in a particular program, whether at the hospital or in a nonhospital setting, but a nonhospital institution later assumed the costs of training in that setting, even if the hospital assumed payment for the training costs again, the hospital could not then count those residents for purposes of direct GME and IME payments.

We note that if a hospital incurs the direct GME costs, whether training takes

place inside the hospital or in a nonhospital setting, in a new residency program, the hospital may be eligible to count the FTE residents as specified by the regulations under § 413.86(g)(6).

Consistent with the policy on redistribution of costs and community support discussed above, if a hospital incurs the direct GME costs of *additional* FTE residents training in an existing program in a hospital setting where the costs of the existing program had been incurred by a nonhospital entity and the hospital has continuously funded the *additional* residents in the existing program in the hospital setting since the date the residents first began training there, the redistribution of costs or community support principles would not prohibit the hospital from counting the additional FTE residents for purposes of direct GME and IME payments.

We note that, under existing policy, to count residents in a nonhospital setting, a hospital is required to incur for "all or substantially all of the costs of the *program*" in that setting. In other words, a hospital is required to assume financial responsibility for the *full* complement of residents training in a nonhospital site in a particular program in order to count any FTE residents training there for purposes of IME payment. A hospital cannot count any FTE residents if it incurs "all or substantially all of the costs" for only a portion of the FTE residents in that program training setting. This policy is derived from the language of the IME and direct GME provisions of the statute on counting residents in nonhospital settings; both sections 1886(d)(5)(B)(iv) and 1886(h)(4)(E) of the Act state that the hospital must incur "all, or substantially all, of the costs for the training *program* in that setting." (Emphasis added.) In contrast, as explained earlier, it is permissible under the proposed policy on the application of the redistribution of costs and community support principles for the hospital to count FTE residents where the hospital incurs direct GME costs of FTE residents that are *added* to an existing program, even though the hospital may not count the existing FTE residents due to the application of the redistribution of costs or community support rules. In the nonhospital setting, as a result of the interaction of these two separate FTE counting requirements—(1) that the hospital must not violate the redistribution of costs and the community support principles in order to count the resident FTEs in the nonhospital settings, and (2) that the hospital must incur "all or substantially all" of the costs for the training program in that setting—a hospital would be prohibited from counting FTE residents added to an existing program at a nonhospital site unless the hospital incurs all or substantially all of the costs of training *all* of the residents in that program at that setting. That is, even if the hospital incurs all or substantially of the costs for all of the training program at the nonhospital site, the hospital would only be able to count the additional FTE residents who were not excluded by application of the redistribution of costs or community support principles.

For example, training in a general dentistry program with 10 FTE residents has taken place at a school of dentistry for 20 years. The school of dentistry has been incurring the training costs of the general dentistry residents since the inception of the program. Beginning in 2003, the school of dentistry has decided to add an additional 5 FTE residents to the program, and Hospital A decides to incur "all or substantially all" the costs of those 5 additional FTE residents only. Applying the policy concerning redistribution of costs and community support in combination with the policy on incurring all or substantially all of the costs, the hospital could not count the additional 5 FTE residents in the dental school since it is not paying for all or substantially all of the costs of the program. Even if the hospital were to incur all or substantially all of the costs for the training program for all 15 FTE residents, the hospital could not count the 10 FTEs that were part of the existing general dentistry program because of the redistribution of costs and community support principles; it would be a redistribution of costs for the hospital to begin to incur direct GME costs of the 10 FTE residents when the dental school had previously been incurring those costs.

We note that such a result does not occur when a *new program* is established in the nonhospital site. If, from the outset of the program, the hospital incurs direct GME costs and also incurs "all or substantially all" of the costs for the training program for all the new residents training at the site, there would be no redistribution of costs or community support, and the hospital could count all of those residents in the new program in its FTE count (subject, of course, to the hospital's 1996 FTE resident cap).

We also note that the interaction of the two provisions discussed above—redistribution of costs and community support, and "all or substantially all"—does not occur when counting FTE residents training inside the hospital, since a hospital is not required to incur "all or substantially all" of the costs for the training program inside the hospital.

Furthermore, if one hospital had incurred the direct GME costs of training residents in a particular program in a nonhospital site from one point in time, for example, 1995 through 1999, and then another hospital consecutively incurs the costs from 2000 and thereafter, the second hospital may be eligible to receive direct GME and IME payments for training the FTE residents from the point in time where the second hospital incurred the direct GME costs, and the redistribution and community support exclusions would not apply. The second hospital may be eligible to receive Medicare direct GME and IME payments because the costs were incurred previously by a hospital, and not either the community or the university. Therefore, there was neither community support nor redistribution of costs.

The following are some examples to clarify how these proposed policies would be implemented:

Example 1

Since 1995, 10 FTE residents in an internal medicine program have been training in the Community Clinic. In accordance with the current provisions of § 413.86(f), Hospital A has incurred all or substantially all of the costs of training the 10 FTE residents since 1995. Assuming the current provisions of the regulations at §§ 412.105(f)(1)(ii)(C) and 413.86(f)(3) and (f)(4) are met, Hospital A may continue to receive IME and direct GME payments for 10 FTE residents because Hospital A had incurred direct GME costs continuously (as evidenced by contemporaneous documentation since January 1, 1999), as specified in our proposed regulation.

Beginning July 1, 2004, in addition to continuing to incur all or substantially all of the costs of the first 10 FTE internal medicine residents training in the nonhospital site, Hospital A also incurs all or substantially all of the costs of training an additional 3 FTE internal medicine residents at that site. Accordingly, beginning July 1, 2004, Hospital A may count all 13 FTE residents training in the Community Clinic for purposes of direct GME and IME payments, assuming Hospital A does not exceed its FTE cap for IME and direct GME.

Example 2

Since 1995, 2.25 dental FTE residents in a dental school program were training in a dental clinic at the dental school. While the 2.25 FTEs were training at the

clinic, the dental school paid for all of the costs of the dental program. Prior to July 1, 2000, Hospital A signed a written agreement with the clinic to incur all or substantially all of the costs of training the 2.25 FTE residents, from July 1, 2000 and onward. Thus, beginning with July 1, 2000, the dental school no longer incurred the costs of the program at this nonhospital site. In this scenario (even if Hospital A inappropriately received direct GME and IME payments for the 2.25 FTEs since July 1, 2000), Hospital A may not receive direct GME or IME payment for the 2.25 FTE residents training in the clinic because there would have been a redistribution of costs associated with training these 2.25 FTE residents from the dental school to the hospital.

Example 3

Since 1995, 2.25 FTE residents in a family practice program were training in a physicians' group practice. While the 2.25 FTEs were training at the physicians' practice, a school of medicine paid for the costs of the family practice residency program. Prior to July 1, 2000, Hospital A signed a written agreement with the physicians' practice to send 1 additional family practice FTE resident to the physicians' practice and to incur all or substantially all of the costs of training the original 2.25 FTE residents *and* the 1 additional FTE, from July 1, 2000 and onward. Thus, beginning with July 1, 2000, the school of medicine no longer incurred the costs of the program at this nonhospital site. Hospital A may not count the 2.25 FTE residents that had been training since 1995 in that physicians' practice for purposes of direct GME and IME payments because the training costs were shifted from the school of medicine to the hospital. However, Hospital A may count the 1 FTE resident the hospital began to rotate for training in the physicians' practice because there was no cost-shifting for that resident and Hospital A incurred "all or substantially all" of the costs of the entire family practice program in the physicians' office setting.

Example 4

Residents in a surgery program have been rotating from a hospital to two nonhospital clinics, Clinic A and Clinic B, since 1996. The training of the surgery residents in Clinic A has been supported by a nonhospital institution since 1996, while the hospital has incurred all or substantially all of the costs of the surgery residents in Clinic B since 1996. The hospital cannot count the surgery FTE residents training in Clinic A, even if it begins to pay for all of the costs of the program at that site, since a nonhospital institution had supported the training in Clinic A since 1996 (in other words, the redistribution of costs and community support principles would prohibit the hospital from counting these FTE residents). However, if the hospital continues to incur all or substantially all of the costs of the surgery residents in Clinic B, the hospital may count the FTE residents training in Clinic B for purposes of direct GME and IME payments because there would be no cost-shifting to the hospital for these residents and the hospital would incur all or substantially all of the costs for the training program in that setting.

3. Rural Track FTE Limitation for Purposes of Direct GME and IME for Urban Hospitals that Establish Separately Accredited Approved Medical Programs in a Rural Area (§§ 412.105(f)(1)(x) and 413.86(g)(12)) a. Change in the Amount of Rural Training Time Required for an Urban Hospital to Qualify for an Increase in the Rural Track FTE Limitation. To encourage the training of physicians in rural areas, section 407(c) of Pub. L. 106–113 amended sections 1886(d)(5)(B) and 1886(h)(4)(H) of the Act to add a provision that, in the case of an urban hospital that establishes separately accredited approved medical residency training programs (or rural tracks) in a rural area or has an accredited training program with an integrated rural track, an adjustment shall be made to the urban hospital's cap on the number of residents. For direct GME, the amendment applies to payments to hospitals for cost reporting periods beginning on or after April 1, 2000; for IME, the amendment applies to discharges occurring on or after April 1, 2000.

Section 407(c) of Pub. L. 106–113 did not define a "rural track" or an "integrated rural track," nor are these terms defined elsewhere in the Act or in any applicable regulations.

Currently, there are a number of accredited 3-year primary care residency programs in which residents train for 1 year of the program at an urban hospital and are then rotated for training for the other 2 years of the 3-year program to a rural facility(ies). These separately accredited "rural track" programs are recognized by the Accreditation Council of Graduate Medical Education (ACGME) as "1–2" rural track programs. As far as CMS is able to determine, ACGME is the only accrediting body to "separately accredit" rural track residency programs, a requirement specified in Pub. L. 106–113.

We implemented the rural track program provisions of section 1886(d)(5)(B) and 1886(h)(4)(H) of the Act to address these "1–2" programs and to account for other programs that are not specifically "1–2" programs but that include rural training components. As stated above, since there is no existing definition of "rural track" or "integrated rural track," we define at § 413.86(b) a "rural track" and an "integrated rural track" as an approved medical residency training program established by an urban hospital in which residents train for a portion of the program at the urban hospital and then rotate for a portion of the program to a rural hospital(s) or to a rural nonhospital site(s). We have previously noted that the terms "rural track" and "integrated rural track," for purposes of this definition, are synonymous.

To implement these provisions, we revised § 413.86 to add paragraph (g)(11) (since redesignated as (g)(12)), and § 412.105 to add paragraph (f)(1)(x) to specify that, for direct GME, for cost reporting periods beginning on or after April 1, 2000, or, for IME, for discharges occurring on or after April 1, 2000, an urban hospital that establishes a new residency program, or has an existing residency program, with a rural track (or an integrated rural track) may, under certain circumstances, include in its FTE count residents in those rural tracks, in addition to the residents subject to the FTE cap at § 413.86(g)(4). (See the August 1, 2000 interim final rule with comment period (65 FR 47033) and the August 1, 2001 IPPS final rule (66 FR 39902)). These regulations specify that an urban hospital may count the residents in the rural track in excess of the hospital's FTE cap up to a "rural track FTE limitation" for that hospital. We defined this rural track FTE limitation at § 413.86(b) as the maximum number of residents (as specified in § 413.86(g)(12)) training in a rural track residency program that an urban hospital may include in its FTE count, in addition to the number of FTE residents already included in the hospital's FTE cap.

Generally, the rural track policy is divided into two categories: rural track programs in which residents are rotated to a rural area for at least two-thirds of the duration of the program; and rural track programs in which residents are rotated to a rural area for less than two-thirds of the duration of the program. Currently, family practice is the only specialty that has separately accredited rural track programs. As previously noted, to account for other specialties that have program lengths greater than

or less than 3 years, or that are not "1–2" programs, but may establish separately accredited rural track residency programs that are longer than 3 years, our regulations specify that residents must train in the rural area for "two-thirds of the duration of the program," rather than "2 out of 3 program years," in order for the urban hospital to count FTEs in the rural track (up to the rural track FTE limitation) in addition to the residents included in the hospital's FTE limitation. Thus, for example, under current policy, if a surgery program, which is a 5-year program, were to establish a separately accredited rural track, the urban hospital must rotate the surgery residents to the rural area for at least two-thirds of the duration of the 5-year program in order to qualify to count those FTEs in excess of the hospital's FTE cap, as provided in § 413.86(g)(12) and § 412.105(f)(1)(x).

Accordingly, our policy for determining whether an urban hospital qualifies for an adjustment to the FTE cap for training residents in rural areas is dependent upon the proportion of time the residents spend training in the rural areas. If the time spent training in rural areas (either at a rural hospital or a rural nonhospital site) constitutes *at least two-thirds* of the duration of the program, then the urban hospital may include the time the residents train *at that urban hospital* in determining GME payments. However, if the urban hospital rotates residents to rural areas for a period of time that is *less than two-thirds* of the duration of the program, although the rural hospital may count the time the residents train at the rural hospital if the program is new, the urban hospital may *not* include the time the residents train at the urban hospital for GME payment purposes (unless it can do so within the hospital's FTE cap).

When we first implemented this policy on rural tracks, it was consistent with our understanding of how the ACGME accredits rural track "1–2" programs, in which residents train for 1 year of the program at an urban hospital and are then rotated for training years 2 and 3 to a rural facility. We believed that the ACGME did not separately accredit an approved program as a rural track program unless it met this "1–2" condition; that is, the residents were spending one-third of program training in the urban area and two-thirds of the program training in the rural area. However, we have recently learned that there are a few rural track programs that are separately accredited by the ACGME as "1–2" rural track programs, but the residents in these programs are not training in rural areas for at least two-thirds of the duration of the program. We understand that in certain instances in which the case-mix of the rural facilities might not be sufficiently broad to provide the residents with an acceptable range of training opportunities, the ACGME allows the residents in program years 2 and 3 to return to the urban hospital for some training in both years. However, because the training in years 2 and 3 is predominantly occurring at the rural locations, the ACGME still separately accredits the urban and rural portions as a "1–2" program.

The existing regulations at §§ 412.105(f)(1)(x) and 413.86(g)(12) specify two main criteria for an urban hospital to count the time spent by residents training in a rural track while at the urban hospital in excess of the hospital's FTE limitation: (1) The program must be separately accredited by the ACGME; *and* (2) the time spent training in rural areas (either at a rural hospital or a rural nonhospital site) must constitute *at least two-thirds* of the duration of the program.

We believe that an urban hospital that operates a program that is separately accredited by the ACGME as a "1–2" program, but in which residents train in rural areas for more than half but less than two-thirds of the duration of the program, should still be allowed to count those FTE residents for GME payment purposes. Therefore, to be consistent with the ACGME accreditation practices, we are proposing to revise our regulations. Proposed § 413.86(g)(12) would still address our policy that an urban hospital qualifies for an adjustment to the FTE cap for training in rural areas based upon the proportion of time the residents spend training in the rural areas. However, instead of using a "two-thirds" model to specify the amount of time residents are training in the rural areas, as the framework exists under current policy, the proposal would use, at §§ 413.86(g)(12)(i) through (iv), a "one-half of the time" model to specify the amount of time residents are training in rural areas. This proposal would address the limited cases where ACGME separately accredits programs as "1–2" rural tracks but residents in those programs train in the rural areas less than two-thirds of the time, although greater than one-half of the time. Specifically, we are proposing at § 413.86(g)(12) to state:

- If an urban hospital rotates residents to a separately accredited rural track program at a rural hospital(s) for two-thirds of the duration of the program for cost reporting periods beginning on or after April 1, 2000 and before October 1, 2003, or for more than one-half of the duration of the program for cost reporting periods beginning on or after October 1, 2003, the urban hospital may include those residents in its FTE count for the time the rural track residents spend at the urban hospital.
- If an urban hospital rotates residents to a separately accredited rural track program at a rural nonhospital site(s) for two-thirds of the duration of the program for cost reporting periods beginning on or after April 1, 2000, and before October 1, 2003, or for more than one-half of the duration of the program for cost reporting periods beginning on or after October 1, 2003, the urban hospital may include those residents in its FTE count, subject to the requirements under § 413.86(f)(4).
- If an urban hospital rotates residents in the rural track program to a rural hospital(s) for less than two-thirds of the duration of the program for cost reporting periods beginning on or after April 1, 2002, and before October 1, 2003, or for one-half or less than one-half of the duration of the program for cost reporting periods beginning on or after October 1, 2003, the rural hospital may not include those residents it its FTE count (if the rural track is not a new program under § 413.86(g)(6)(iii), or if the rural hospital's FTE count exceeds that hospital's FTE cap), nor may the urban hospital include those residents when calculating its rural track FTE limitation.
- If an urban hospital rotates residents in the rural track program to a rural nonhospital site(s) for a period of time that is less than two-thirds of the duration of the program for cost reporting periods beginning on or after April 1, 2002, and before October 1, 2003, or for one-half or less than one-half of the duration of the program for cost reporting periods beginning on or after October 1, 2003, the urban hospital may include those residents in its FTE count, subject to the requirements under § 413.86(f)(4).

We also are proposing to make a conforming change to § 412.105(f)(1)(x) to make these proposed provisions applicable to IME payments for discharges occurring on or after October 1, 2003.

We believe this proposal produces a more equitable result than the existing policy; the proposal encompasses what we believe to be all situations in which the ACGME separately accredits rural track programs and in which residents in the programs spend a majority of the time training in rural settings, fulfilling the intent of Congress for Medicare to

provide GME payments for significant rural residency training.

b. Inclusion of Rural Track FTE Residents in the Rolling Average Calculation. Section 1886(h)(4)(G) of the Act, as added by section 4623 of Public Law 105–33, provides that, for a hospital's first cost reporting period beginning on or after October 1, 1997, the hospital's FTE resident count for direct GME payment purposes equals the average of the actual FTE resident count for that cost reporting period and the preceding cost reporting period. Section 1886(h)(4)(G) of the Act requires that, for cost reporting periods beginning on or after October 1, 1998, a hospital's FTE resident count for direct GME payment purposes equals the average of the actual FTE resident count for the cost reporting period and the preceding two cost reporting periods (that is, a 3-year rolling average). This provision phases in over a 3-year period any reduction in direct GME payments to hospitals that results from a reduction in the number of FTE residents below the number allowed by the FTE cap. We first implemented this provision in the August 29, 1997 final rule with comment period (62 FR 46004) and revised § 413.86(g)(5) accordingly. Because hospitals may have two PRAs, one for residents in primary care and obstetrics and gynecology (the "primary care PRA"), and a lower PRA for nonprimary care residents, we revised our policy for computing the rolling average for direct GME payment purposes (*not* for IME) in the August 1, 2001 final rule (66 FR 39893) to create two separate rolling averages, one for primary care and obstetrics and gynecology residents (the "primary care rolling average"), and one for nonprimary care residents. Effective for cost reporting periods beginning on or after October 1, 2001, direct GME payments are calculated based on the sum of: (1) The product of the primary care PRA and the primary care rolling average; and (2) the product of the nonprimary care PRA and the nonprimary care FTE rolling average. (This sum is then multiplied by the Medicare patient load to determine Medicare direct GME payments).

Section 407(c) of Public Law 106–113, which amended sections 1886(d)(5)(B) and 1886(h)(4)(H) of the Act to create the rural track provision, provided that, in the case of an urban hospital that establishes a separately accredited rural track, "* * * the Secretary shall *adjust the limitation under subparagraph (F)* in an appropriate manner insofar as it applies to such programs in such rural areas in order to encourage the training of physicians in rural areas" (emphasis added). Subparagraph (F) of the Act is the provision that establishes a cap on the number of allopathic and osteopathic FTE residents that may be counted at each hospital for Medicare direct GME payment purposes. Thus, the provision authorizes the Secretary to allow for an increase to an urban hospital's FTE cap on allopathic and osteopathic residents in certain instances when an urban hospital establishes a rural track program. Although the rural track provision effectively allows an increase to the urban hospital's FTE cap by adjusting the FTE limitation under subparagraph (F), the statute makes no reference to subparagraph (G), the provision concerning the rolling average count of residents. That is, the statute does not provide for an exclusion from the rolling average for the urban hospital for those FTE residents training in a rural track.

Since we implemented this rural track provision in the August 1, 2000 interim final rule with comment period (65 FR 47033), we have interpreted this provision to mean that, except for new rural track programs begun by urban teaching hospitals that are establishing an FTE cap for the first time under § 413.86(g)(6)(i), when an urban hospital establishes a new rural track program or expands an existing rural track program, FTE residents in the rural track that are counted by the urban hospital are included in the hospital's rolling average calculation immediately. Although we have not specified in the regulations that rural track FTE residents counted by an urban hospital are included in the hospital's rolling average FTE resident count, this has been our policy. The Medicare cost report, Form CMS–2552–96 (line 3.05 on Worksheet E, Part A, for IME payments, and on line 3.02 on Worksheet E–3, Part IV, for direct GME payments), reflects this policy. Accordingly, FTE residents in a rural track program are to be included in the urban hospital's rolling average count for IME and direct GME for cost reporting periods beginning on or after April 1, 2000.

We are proposing to revise the regulations at § 413.86(g)(5) to add a new paragraph (vii) to clarify that, subject to regulations at § 413.86(g)(12), except for new rural track programs begun by urban hospitals that are first establishing an FTE cap under § 413.86(g)(6)(i), when an urban hospital with an existing FTE cap establishes a new program with a rural track (or an integrated rural track), or expands an existing rural track (or an integrated rural track) program, the FTE residents in that program that are counted by the urban hospital are included in the urban hospital's rolling average FTE resident count immediately. We also are proposing to revise §§ 413.86(g)(12)(i)(A), (g)(12)(ii)(B), and (g)(12)(iv)(A) to indicate that for the first 3 years of the rural track's existence, the rural track FTE limitation for each urban hospital will be the actual number of FTE residents, subject to the rolling average, training in the rural track at the urban hospital.

4. Technical Change Relating to Affiliated Groups and Affiliation Agreements

Section 1886(h)(4)(H)(ii) of the Act permits, but does not require, the Secretary to prescribe rules that allow institutions that are members of the same affiliated group (as defined by the Secretary) to elect to apply the FTE resident limit on an aggregate basis. This provision allows the Secretary to give hospitals flexibility in structuring rotations within a combined cap when they share a resident's time. Consistent with the broad authority conferred by the statute, we established criteria for defining an "affiliated group" and an "affiliation agreement" in both the August 29, 1997 final rule (62 FR 45965) and the May 12, 1998 final rule (63 FR 26317). We further clarified our policy concerning affiliation agreements in the August 1, 2002 final rule (67 FR 50069).

We are aware that there has been some confusion at times among members of the provider community when using the term "affiliation agreement," since the term is used in contexts other than for Medicare GME payment purposes. For example, an "affiliation agreement" is a term historically used in the academic community that generally relates to agreements made between hospitals and medical schools or among sponsors of medical residency education programs. To help prevent further confusion, we are proposing to change the term in the regulations to "Medicare GME affiliation agreement." We believe this will help to distinguish these agreements used for purposes of GME payments from agreements used for other purposes in the provider community. We are proposing to revise the regulations at § 413.86(b) to state "Medicare GME affiliated group," and "Medicare GME affiliation agreement," and we are making similar revisions to § 413.86(g)(4)(iv), (g)(7)(i) through (v), and § 412.105(f)(1)(vi) for IME payment purposes.

G. Notification of Updates to the Reasonable Compensation Equivalent (RCE) Limits (§ 415.70)

1. Background

Under the Medicare program, payment for services furnished by a physician is made under either the Hospital Insurance Program (Part A) or the Supplementary Medical Insurance Program (Part B), depending on the type of services furnished. In accordance with section 1848 of the Act, physicians' charges for medical or surgical services to individual Medicare patients generally are covered under Part B on a fee-for-service basis under the Medicare physician fee schedule. The compensation that physicians receive from or through a provider for services that benefit patients generally (for example, administrative services, committee work, teaching, and supervision) can be covered under Part A or Part B, depending on the provider's setting.

As required by section 1887(a)(2)(B) of the Act, allowable compensation for services furnished by physicians to providers that are paid by Medicare on a reasonable cost basis is subject to reasonable compensation equivalent (RCE) limits. Under these limits, payment is determined based on the lower of the actual cost of the services to the provider (that is, any form of compensation to the physician) or a reasonable compensation equivalent. For purposes of applying the RCE limits, physician compensation costs means monetary payments, fringe benefits, deferred compensation and any other items of value (excluding office space or billing and collection services) that a provider or other organization furnishes a physician in return for the physician's services.

The RCE limits do not apply to the costs of physician compensation that are attributable to furnishing inpatient hospital services paid for under the IPPS or GME costs. In addition, RCE limits do not apply to the costs CAHs incur in compensating physicians for services. Furthermore, compensation that a physician receives for activities that may not be paid for under either Part A or Part B are not considered in applying the RCE limits.

The limits apply equally to all physician services to providers that are payable on a reasonable cost basis under Medicare. If a physician receives any compensation from a provider for his or her physician services to the provider (that is, those services that benefit patients generally), payment to those affected providers for the costs of such compensation is subject to the RCE limits. The RCE limits are not applied to payment for services that are identifiable medical or surgical services to individual patients and paid for under the physician fee schedule, even if the physician agrees to accept compensation (for example, from a hospital) for those services. (However, payments to teaching hospitals that have elected to be paid for these services on a reasonable cost basis in accordance with section 1861(b)(7) of the Act are subject to the limits.)

Section 415.70(b) of the regulations specifies the methodology for determining annual RCE limits, considering average physician incomes by specialty and type of location, to the extent possible using the best available data. On October 31, 1997, the revised RCE limits update methodology was published in the **Federal Register** (62 FR 59075). For cost reporting periods beginning on or after January 1, 1998, updates to the RCE limits are calculated using the Medicare Economic Index (MEI). The inflation factor used to develop the initial RCE limits and, subsequently, to update those limits to reflect increases in net physician compensation was the Consumer Price Index for All Urban Consumers (CPI–U). In 1998, we revised the RCE limits update methodology by replacing the CPI–U with the physician fee schedule's inflation factor (the MEI), to achieve a measure of consistency in the methodologies employed to determine reasonable payments to physicians for direct medical and surgical services furnished to individual patients and reasonable compensation levels for physicians' services that benefit provider patients generally.

2. Publication of the Updated RCE Limits

We intend to publish updated payment limits on the amount of allowable compensation for services furnished by physicians to providers in the FY 2004 IPPS final rule. These revised limits will be mere updates that will be calculated by applying the most recent economic index data. We are not proposing any change in the methodology. Therefore, in accordance with § 415.70(f), we are allowed to publish the revised RCE limits in a final rule without prior publication of a proposed rule for public comment. Furthermore, we believe that publication of the revised RCE limits in a proposed rule with opportunity for public comment is unnecessary, and we find good cause to waive the procedure.

V. PPS for Capital-Related Costs

In this proposed rule, we are not proposing any changes in the policies governing the determination of the payment rates for capital-related costs for short-term acute care hospitals under the IPPS. However, for the readers' benefit, in this section of this proposed rule, we are providing a summary of the statutory basis for the PPS for hospital capital-related costs, the methodology used to determine capital-related payments to hospitals, and a brief description of the payment policies under the PPS for capital-related costs for new hospitals, extraordinary circumstances, and exception (regular and special) payments. (Refer to the August 1, 2001 IPPS final rule (66 FR 39910) for a more detailed discussion of the statutory basis for the system, the development and evolution of the system, the methodology used to determine capital-related payments to hospitals both during and after the transition period, and the policy for providing regular and special exceptions payments.)

Section 1886(g) of the Act requires the Secretary to pay for the capital-related costs of inpatient hospital services "in accordance with a PPS established by the Secretary." Under the statute, the Secretary has broad authority in establishing and implementing the PPS for capital related costs. We initially implemented the capital PPS in the August 30, 1991 IPPS final rule (56 FR 43358), in which we established a 10-year transition period to change the payment methodology for Medicare hospital inpatient capital-related costs from a reasonable cost-based methodology to a prospective methodology (based fully on the Federal rate).

Federal fiscal year (FY) 2001 was the last year of the 10-year transition period established to phase in the PPS for hospital inpatient capital-related costs. Beginning in FY 2002, capital PPS payments are based solely on the Federal rate for the vast majority of hospitals. The basic methodology for determining capital prospective payments based on the Federal rate is set forth in § 412.312. For the purpose of calculating payments for each discharge, the standard Federal rate is adjusted as follows:

(Standard Federal Rate) × (DRG Weight) × (Geographic Adjustment Factor (GAF)) × (Large Urban Add-on, if applicable) × (COLA Adjustment for hospitals located in Alaska and Hawaii) × (1 + DSH Adjustment Factor + IME Adjustment Factor, if applicable)

Hospitals also may receive outlier payments for those cases that qualify under the thresholds established for each fiscal year that are specified in § 412.312(c) of existing regulations.

During the 10-year transition period, a new hospital (as defined at 412.300(b)) was exempt from the capital PPS for its first 2 years of operation and was paid 85 percent of its reasonable costs during that period. Originally, this provision was effective only through the transition period and, therefore, ended with cost reporting periods beginning in FY 2002. As we discussed in the August 1, 2002 final rule (67 FR 50101), this payment provision was implemented to provide special protection to new hospitals during the transition period in response to concerns that prospective payments under a DRG system may not be adequate initially to cover the capital costs of newly built hospitals. Therefore, we believe that the rationale for this policy applies to new hospitals after the transition period as well, and in that same final rule, we established regulations under § 412.304(c)(2) that provide the same special payment to new hospitals for cost reporting periods beginning on or after October 1, 2002. Therefore, a new hospital, defined under § 412.300(b), is paid 85 percent of its allowable Medicare inpatient hospital capital-related costs through its first 2 years of operation unless the new hospital elects to receive fully prospective payment based on 100 percent of the Federal rate. (For more detailed information regarding this policy, see the August 1, 2002 IPPS final rule (67 FR 50101).)

Regulations at § 412.348(f) provide that a hospital may request an additional payment if the hospital incurs unanticipated capital expenditures in excess of $5 million due to extraordinary circumstances beyond the hospital's control. This policy was established for hospitals during the 10-year transition period, but we established regulations at § 412.312(e) to specify that payment for extraordinary circumstances is also made for cost reporting periods after the transition period (that is, cost reporting periods beginning on or after October 1, 2001). (For more detailed information regarding this policy, refer to the August 1, 2002 **Federal Register** (67 FR 50102).)

During the transition period, under §§ 412.348(b) through (e), eligible hospitals could receive regular exception payments. These exception payments guaranteed a hospital a minimum payment of a percentage of its Medicare allowable capital-related costs depending on the class of hospital (§ 412.348(c)). However, after the end of the transition period, eligible hospitals can receive additional payments under the special exceptions provisions at § 412.348(g), which guarantees an eligible hospital a minimum payment of 70 percent of its Medicare allowable capital-related costs. Special exceptions payments may be made only for the 10 years after the cost reporting year in which the hospital completes its qualifying project, which can be no later than the hospital's cost reporting period beginning before October 1, 2001. Thus, an eligible hospital may receive special exceptions payments for up to 10 years beyond the end of the capital PPS transition period. Hospitals eligible for special exceptions payments were required to submit documentation to the intermediary indicating the completion date of their project. (For more detailed information regarding the special exceptions policy under § 412.348(g), refer to the August 1, 2001 IPPS final rule (66 FR 39911 through 39914) and the August 1, 2002 IPPS final rule (67 FR 50102).)

VI. Proposed Changes for Hospitals and Hospital Units Excluded from the IPPS

A. Payments to Excluded Hospitals and Hospital Units (§§ 413.40(c), (d), and (f))

1. Payments to Existing Excluded Hospitals and Hospital Units

Section 1886(b)(3)(H) of the Act (as amended by section 4414 of Pub. L. 105–33) established caps on the target amounts for certain existing hospitals and hospital units excluded from the IPPS for cost reporting periods beginning on or after October 1, 1997 through September 30, 2002. For this period, the caps on the target amounts apply to the following three classes of excluded hospitals or units: psychiatric hospitals and units, rehabilitation hospitals and units, and LTCHs.

In accordance with section 1886(b)(3)(H)(i) of the Act and effective for cost reporting periods beginning on or after October 1, 2002, payments to these classes of existing excluded hospitals or hospital units are no longer subject to caps on the target amounts. In accordance with existing §§ 413.40(c)(4)(ii) and (d)(1)(i) and (ii), where applicable, these excluded hospitals and hospital units continue to be paid on a reasonable cost basis, and payments are based on their Medicare inpatient operating costs, not to exceed the ceiling. The ceiling would be computed using the hospital's or unit's target amount from the previous cost reporting period updated by the rate-of-increase specified in § 413.40(c)(3)(viii) of the regulations and then multiplying this figure by the number of Medicare discharges. Effective for cost reporting periods beginning on or after October 1, 2002, rehabilitation hospitals and units are paid 100 percent of the Federal rate. Effective for cost reporting periods beginning on or after October 1, 2002, LTCHs also are no longer paid on a reasonable cost basis but are paid under a DRG-based PPS. As part of this process for LTCHs, we established a 5-year transition period from reasonable cost-based reimbursement to a fully Federal PPS. However, a LTCH, subject to the blend methodology, may elect to be paid based on a 100 percent of the Federal prospective rate. (Sections VII.A.3. and 4. of this preamble contain for a more detailed discussion of the IRF PPS and the LTCH PPS.)

2. Updated Caps for New Excluded Hospitals and Units

Section 1886(b)(7) of the Act establishes a payment limitation for new psychiatric hospitals and units, new rehabilitation hospitals and units, and new LTCHs. A discussion of how the payment limitation was calculated can be found in the August 29, 1997 final rule with comment period (62 FR 46019); the May 12, 1998 final rule (63 FR 26344); the July 31, 1998 final rule (63 FR 41000); and the July 30, 1999 final rule (64 FR 41529). Under the statute, a "new" hospital or unit is a hospital or unit that falls within one of the three classes of hospitals or units (psychiatric, rehabilitation or long-term care) that first receives payment as a hospital or unit excluded from the IPPS on or after October 1, 1997.

The amount of payment for a "new" psychiatric hospital or unit would be determined as follows:

- Under existing § 413.40(f)(2)(ii), for the first two 12-month cost reporting periods, the amount of payment is the lesser of: (1) The operating costs per case; or (2) 110 percent of the national median (as estimated by the Secretary) of the target amounts for the same class of hospital or unit for cost reporting periods ending during FY 1996, updated by the hospital market basket increase percentage to the fiscal year in which the hospital or unit first receives payments under section 1886 of the Act, as adjusted for differences in area wage levels.
- Under existing § 413.40(c)(4)(v), for cost reporting periods following the hospital's or unit's first two 12-month cost reporting periods, the target amount is equal to the amount determined under section 1886(b)(7)(A)(i) of the Act for the third period, updated by the applicable hospital market basket increase percentage.

The proposed amounts included in the following table reflect the updated 110 percent of the national median target amounts of new excluded psychiatric hospitals and units for cost reporting periods beginning during FY 2004. These figures are updated with the most recent data available to reflect the projected market basket increase percentage of 3.5 percent. This projected percentage change in the market basket reflects the average change in the price of goods and services purchased by hospitals to furnish inpatient hospital services (as projected by the Office of the Actuary of CMS based on its historical experience with the IPPS). For a new provider, the labor-related share of the target amount is multiplied by the appropriate geographic area wage index, without regard to IPPS reclassifications, and added to the nonlabor-related share in order to determine the per case limit on payment under the statutory payment methodology for new providers.

Class of excluded hospital or unit	FY 2004 proposed labor-related share	FY 2004 proposed nonlabor-related share
Psychiatric	$7,301	$2,902

Effective for cost reporting periods beginning on or after October 1, 2002, this payment limitation is no longer applicable to new LTCHs because they are paid 100 percent of the Federal rate. Under the LTCH PPS, a new LTCH is defined as a provider of inpatient hospital services that meets the qualifying criteria for LTCHs specified under § 412.23(e)(1) and (e)(2) and whose first cost reporting period as a LTCH begins on or after October 1, 2002 (§ 412.23(e)(4)). (We note that this definition of new LTCHs should not be confused with those LTCHs first paid under the TEFRA payment system for discharges occurring on or after October 1, 1997, and before October 1, 2002.) New LTCHs are paid based on 100 percent of the fully Federal prospective rate (they may not participate in the 5-year transition from cost-based reimbursement to prospective payment). In contrast, those "new" LTCHs that meet the definition of "new" under § 413.40(f)(2)(ii) and that have their first cost reporting periods beginning on or after October 1, 1997, and before October 1, 2002, may be paid under the LTCH PPS transition methodology. Since those hospitals by definition would have been considered new before October 1, 2002, they would have been subject to the updated payment limitation on new hospitals that was published in the FY 2003 IPPS final rule (67 FR 50103). Under existing regulations at § 413.40(f)(2)(ii), the "new" hospital would be subject to the same cap in its second cost reporting period; this cap would not be updated for the new hospital's second cost reporting year. Thus, because the same cap is to be used for the new LTCH's first two cost reporting periods, it is no longer necessary to publish an updated cap for new LTCHs.

Effective for cost reporting periods beginning on or after October 1, 2002, this payment limitation is no longer applicable to new rehabilitation hospitals and units because they are paid 100 percent of the Federal prospective rate under the IRF PPS. Therefore, it is also no longer necessary to update the payment limitation for new rehabilitation hospitals or units.

3. Implementation of a PPS for IRFs

Section 1886(j) of the Act, as added by section 4421(a) of Public Law 105–33, provided the phase-in of a case-mix adjusted PPS for inpatient hospital services furnished by a rehabilitation hospital or a rehabilitation hospital unit (referred to in the statute as rehabilitation facilities) for cost reporting periods beginning on or after October 1, 2000 and before October 1, 2002, with a fully implemented PPS for cost reporting periods beginning on or after October 1, 2002. Section 1886(j) of the Act was amended by section 125 of Public Law 106–113 to require the Secretary to use a discharge as the payment unit under the PPS for inpatient hospital services furnished by rehabilitation facilities and to establish classes of patient discharges by functional-related groups. Section 305 of Public Law 106–554 further amended section 1886(j) of the Act to allow rehabilitation facilities, subject to the blend methodology, to elect to be paid the full Federal prospective payment rather than the transitional period payments specified in the Act.

On August 7, 2001, we issued a final rule in the **Federal Register** (66 FR 41316) establishing the PPS for inpatient rehabilitation facilities, effective for cost reporting periods beginning on or after January 1, 2002. Under the IRF PPS, for cost reporting periods beginning on or after January 1, 2002, and before October 1, 2002, payment consisted of 33⅓ percent of the facility-specific payment amount (based on the reasonable cost-based reimbursement methodology) and 66⅔ percent of the adjusted Federal prospective payment. For cost reporting periods beginning on or after October 1, 2002, payments are based entirely on the Federal prospective payment rate determined under the IRF PPS.

4. Implementation of a PPS for LTCHs

In accordance with the requirements of section 123 of Public Law 106–113, as modified by section 307(b) of Public Law 106–554, we established a per discharge, DRG-based PPS for LTCHs as described in section 1886(d)(1)(B)(iv) of the Act for cost reporting periods beginning on or after October 1, 2002, in a final rule issued on August 30, 2002 (67 FR 55954). The LTCH PPS uses information from LTCH hospital patient records to classify patients into distinct LTC–DRGs based on clinical characteristics and expected resource needs. Separate payments are calculated for each LTC–DRG with additional adjustments applied.

As part of the implementation of the system, we established a 5-year transition period from reasonable cost-based reimbursement to the fully Federal prospective rate. A blend of the reasonable cost-based reimbursement percentage and the prospective payment Federal rate percentage would be used to determine a LTCH's total payment under the LTCH PPS during the transition period. Certain LTCHs may elect to be paid based on 100 percent of the Federal prospective rate. All LTCHs will be paid under the fully Federal prospective rate for cost reporting periods beginning on or after October 1, 2006.

B. Payment for Services Furnished at Hospitals-Within-Hospitals and Satellite Facilities

Existing regulations at § 412.22(e) define a hospital-within-a-hospital as a hospital that occupies space in the same building as another hospital, or in one or more entire buildings located on the same campus as buildings used by another hospital. Moreover, existing § 412.22(f) provides for the grandfathering of hospitals-within-hospitals that were in existence on or before September 30, 1995.

Sections 412.22(h) and 412.25(e), relating to satellites of hospitals and hospital units, respectively, excluded from the IPPS, define a satellite facility as a part of a hospital or unit that provides inpatient services in a building also used by another hospital, or in one or more entire buildings located on the same campus as buildings used by another hospital. Sections 412.22(h)(3) and 412.25(e)(3) provide for the grandfathering of excluded hospitals and units that were structured as satellite facilities on September 30, 1999, to the extent they operate under

the same terms and conditions in effect on that date.

In providing for the grandfathering of satellite facilities of hospitals and hospital units, we believed it was appropriate to require that the satellite facilities operate under the same terms and conditions that were in effect on September 30, 1999. There are similarities between the definition of the two types of satellite facilities and the definition of hospitals-within-hospitals (that is, hospitals-within-hospitals and satellite facilities are both physically located in acute care hospitals that are paid for their inpatient services on a prospective payment basis). Also, satellite facilities of both excluded hospitals and hospital units and hospitals-within-hospitals provide inpatient hospital services that are paid at a higher rate than would apply if the facilities were treated by Medicare as part of an acute care hospital.

We are proposing to revise § 412.22(f) to specify that, effective with cost reporting periods beginning on or after October 1, 2003, a hospital operating as a hospital-within-a-hospital on or before September 30, 1995, is exempt from the criteria in § 412.22(e)(1) through (e)(5) only if the hospital-within-a-hospital continues to operate under the same terms and conditions in effect as of September 30, 1995. The intent of the "grandfathering" provision was to ensure that hospitals that had been in existence prior to the effective date of our hospital-within-hospital requirements should not be adversely affected by those requirements. To the extent hospitals were already operating as hospitals-within-hospitals without meeting those requirements, we believe it is appropriate to limit the "grandfathering" provision to those hospitals that continue to operate in the same manner as they had operated prior to the effective date of those rules. However, if a hospital changes the way it operates (for example, adds more beds) subsequent to the effective date of the new rules, it should no longer receive the benefit of the "grandfathering" provision.

Under § 412.22(e), we specify the criteria that a hospital-within-a-hospital is required to meet in order to be excluded from the IPPS. One of these criteria, under § 412.22(e)(5)(i), requires that a hospital-within-a-hospital is able to perform basic hospital functions (for example, medical record services and nursing services) that are presently included in the Medicare hospital conditions of participation under Part 482 of the Medicare regulations. These requirements were first included in Part 412 in response to hospitals organizing themselves as what is referred to as the hospital-within-a-hospital model. Thus, to avoid recognizing nominal hospitals, while allowing hospitals adequate flexibility and opportunity for legitimate networking and sharing of services, we included, by reference, certain hospital conditions of participation as additional criteria in part 412 for hospitals-within-hospitals that request exclusion from the IPPS. (Further discussion can be found in a final rule published in the **Federal Register** on September 1, 1994 (59 FR 45389).) Modifications to the conditions of participation have been made since the publication of that September 1, 1994 final rule. Thus, we need to update the references to the conditions of participation in § 412.22(e)(5)(i) to make them consistent with existing provisions under the basic hospital conditions of participation. Therefore, we are proposing to amend § 412.22(e)(5)(i) to add references to § 482.43 (discharge planning) and § 482.45 (organ, tissue, and eye procurement) as basic hospital functions that a hospital-within-a-hospital would also be required to meet.

C. Clarification of Classification Requirements for LTCHs

Under § 412.23(e)(2), to qualify to be excluded from the IPPS as a LTCH and to be paid under the LTCH PPS, a hospital must have an average Medicare length of stay of greater than 25 days (which includes all covered and noncovered days of stay for Medicare patients) as calculated under the criteria of § 412.23(e)(3). In calculating this average Medicare inpatient length of stay, data from the hospital's most recently filed cost report are used to make this determination. However, if the hospital has not yet filed a cost report or if there is an indication that the most recently filed cost report does not accurately reflect the hospital's current Medicare average length of stay, data from the most recent 6-month period are used.

Our interpretation of § 412.23(e)(3)(ii) and (e)(3)(iii) was to allow hospitals that submit data for purposes of exclusion from the IPPS to use a period of at least 5 months of the most recent data from the preceding 6-month period. This longstanding policy interpretation was necessary in order to comply with the time requirement in § 412.22(d) that specifies that, for purposes of the IPPS, status is determined at the beginning of each cost reporting period and is effective for the entire cost reporting period. Therefore, we are proposing to revise §§ 412.23(e)(3)(ii) and (iii) to reflect our longstanding interpretation of the regulations.

D. Criteria for Payment on a Reasonable Cost Basis for Clinical Diagnostic Laboratory Services Performed by CAHs

Section 1820 of the Act provides for the establishment of Medicare Rural Hospital Flexibility Programs, under which individual States may designate certain facilities as critical access hospitals (CAHs). Facilities that are so designated and meet the CAH conditions of participation in 42 CFR part 485, subpart F, will be certified as CAHs by CMS. Section 1834(g) of the Act states that the amount of payment for outpatient services furnished by a CAH will be the reasonable costs of the CAH in providing these services.

Regulations implementing section 1834(g) of the Act are set forth at § 413.70. These regulations state, in paragraph (b)(2)(iii), that payment to a CAH for outpatient clinical diagnostic laboratory tests will be made on a reasonable cost basis only if the individuals for whom the tests are performed are outpatients of the CAH, as defined in 42 CFR 410.2, at the time the specimens are collected. The regulations also state that clinical diagnostic laboratory tests for persons who are not patients of the CAH at the time the specimens are collected will be paid for in accordance with the provisions of sections 1833(a)(1)(D) and 1833(a)(2)(D) of the Act. These provisions, which also are the basis for payment for clinical diagnostic laboratory tests performed by independent laboratories and by hospitals on specimens drawn at other locations, set payment at the least of: (1) Charges determined under the fee schedule as set forth in section 1833(h)(1) or section 1834(d)(1) of the Act; (2) the limitation amount for that test determined under section 1833(h)(4)(B) of the Act; or (3) a negotiated rate established under section 1833(h)(6) of the Act. Payments determined under this methodology are typically referred to as "fee schedule payments," and are so described here both for ease of reference and to differentiate them from payments determined on a reasonable cost basis.

The definition of an "outpatient" in 42 CFR 410.2 states that an outpatient means a person who has not been admitted as an inpatient but who is registered on hospital or CAH records as an outpatient and receives services (rather than supplies alone) directly from the hospital or CAH.

Recently, we have received numerous questions about how Medicare pays for laboratory services that a CAH may furnish to Medicare beneficiaries in various settings other than the CAH. Specifically, the questioners have asked whether a CAH may obtain reasonable cost payment for such services to individuals in other locations by sending a CAH employee into the setting and registering the individual as a CAH patient while the blood is drawn or other specimen collection is accomplished. The settings that have been referred to most frequently are: (1) A rural health clinic (RHC), especially one that is provider-based with respect to the CAH; (2) the individual's home; and (3) a SNF.

We have considered these suggestions and understand the position taken by those who believe that nominal compliance with the requirements for outpatient status should be enough to warrant reasonable cost payment for clinical diagnostic laboratory tests for individuals at locations outside the CAH. However, we do not agree that providing reasonable cost payment under these circumstances would be appropriate. On the contrary, we believe that extending reasonable cost payment for services furnished to individuals who are not at the CAH when the specimen is drawn would duplicate existing coverage, create confusion for beneficiaries and others by blurring the distinction between CAHs and other providers, such as SNFs and HHAs, and increase the costs of care to Medicare patients without enhancing either the quality or the availability of that care.

To clarify our policies in this area and avoid possible misunderstandings about the scope of the CAH benefit, we are proposing to revise § 413.70(b)(2)(iii) to state that payment to a CAH for outpatient clinical diagnostic laboratory tests will be made on a reasonable cost basis only if the individuals for whom the tests are performed are outpatients of the CAH, as defined in 42 CFR 410.2, "and are physically present in the CAH" at the time the specimens are collected. (We note that, in some cases, the CAH outpatients from whom specimens are collected at the CAH may include individuals referred to the CAH from RHCs or other facilities to receive the tests.) We are proposing to further revise this paragraph to state that clinical diagnostic laboratory tests for individuals who do not meet these criteria but meet other applicable requirements will be paid for only in accordance with the provisions of sections 1833(a)(1)(D) and 1833(a)(2)(D) of the Act, that is, payment will be made only on a fee schedule basis. By making the second proposed change, we wish to emphasize that this proposal does not mean that no payment would be made for clinical diagnostic laboratory tests performed by CAHs that do not meet the revised criteria. On the contrary, such tests would be paid, but on a fee schedule basis. We believe these clarifications are appropriate, as the CAH is not providing CAH services but is acting as an independent laboratory in providing these clinical diagnostic laboratory tests.

E. Technical Change

On July 30, 1999, we published in the **Federal Register** a final rule (64 FR 41532) that set forth criteria for a satellite facility of a hospital or hospital unit to be excluded from the IPPS under § 412.25. Section 412.25(e)(3) of the regulations specifies that any unit structured as a satellite facility on September 30, 1999, and excluded from the IPPS on that date, is grandfathered as an excluded hospital to the extent that the unit continues operating under the same terms and conditions, including the number of beds and square footage considered to be part of the unit, in effect on September 30, 1999, except as we specified in § 412.25(e)(4). When we specified the exception for the number of beds and square footage requirement under § 412.25(e)(4), we inadvertently referred to paragraph (e)(4) as being an exception to paragraph (h)(3). We should have specified that it was an exception to paragraph (e)(3). We are proposing to correct this reference.

VII. MedPAC Recommendations

We are required by section 1886(e)(4)(B) of the Act to respond to MedPAC's IPPS recommendations in our annual proposed rule. We have reviewed MedPAC's March 1, 2003 "Report to the Congress: Medicare Payment Policy" and have given it careful consideration in conjunction with the proposals set forth in this document. For further information relating specifically to the MedPAC report or to obtain a copy of the report, contact MedPAC at (202) 653–7220, or visit MedPAC's Web site at: *http://www.medpac.gov*.

MedPAC's Recommendation 2A–6 concerning the update factor for inpatient hospital operating costs and for hospitals and distinct-part hospital units excluded from the IPPS is discussed in Appendix C to this proposed rule. MedPAC's other recommendations relating to payments for Medicare inpatient hospital services focused mainly on the expansion of DRGs subject to the postacute care transfer policy, a reevaluation of the labor-related share of the market basket used in determining the hospital wage index, an increase in the DSH adjustment, and payments to rural hospitals. These recommendations and our responses are set forth below:

Recommendation 2A–1: The Secretary should add 13 DRGs to the postacute transfer policy in FY 2004 and then evaluate the effects on hospitals and beneficiaries before proposing further expansions.

Response: We are proposing to expand the postacute care transfer policy to 19 additional DRGs for FY 2004. A thorough discussion of this proposal, including a summary of MedPAC's analysis, can be found at section IV.A.3. of this preamble.

Recommendation 2A–2: The Congress should enact a low-volume adjustment to the rates used in the inpatient PPS. This adjustment should apply only to hospitals that are more than 15 miles from another facility offering acute inpatient care.

Response: MedPAC's analysis "revealed that hospitals with a small volume of total discharges have higher costs per discharge than larger facilities, after controlling for the other cost-related factors recognized in the payment system." Although there are special payment protections for some rural hospitals such as CAHs, SCHs, and MDHs, MedPAC believes these provisions do not sufficiently target hospitals with low discharge volume.

This recommendation, which MedPAC estimates would increase Medicare payments to hospitals by less than $50 million in FY 2004, and others requiring Congressional action, should be considered in the context of larger discussions within Congress and between Congress and the Administration regarding Medicare reform and payment refinements. Therefore, we are not responding specifically to MedPAC's recommendation regarding a low-volume adjustment to the IPPS payments at this time.

Recommendation 2A–3: The Secretary should reevaluate the labor share used in the wage index system that geographically adjusts rates in the inpatient PPS, with any resulting change phased in over 2 years.

Response: CMS defines the labor-related share to include costs that are likely related to, influenced by, or vary with local labor markets, even if they could be purchased in a national market. Since the implementation of the IPPS, the labor-related share has been determined by adding together the cost weights from categories in the hospital market basket that are influenced by local labor markets. When the hospital market basket weights are updated or rebased, the labor-related share is updated. The estimate of the labor-

related share using the most recently revised and rebased hospital market basket (1997-based) is 72.495 percent. This was the labor-related share proposed in the FY 2003 proposed rule.

In the August 1, 2002 IPPS final rule, we elected to continue to use 71.066 percent as the labor-related share applicable to the standardized amounts (67 FR 50041). At that time, we indicated that we would conduct further analysis to determine the most appropriate methodology for the labor-related share.

We are not proposing to use the updated labor-related share at this time because we have not yet completed our research into the appropriateness of this measure. Specifically, we are currently reviewing the labor-related share in two ways. First, we are updating the regression analysis that was done when the IPPS was originally developed, with the expectation that it would help give an alternative indication of the labor-related share. Second, we are reevaluating the methodology we currently use for determining the labor-related share using the hospital market basket.

Our regression analysis attempts to explain the variation in operating cost per case for a given year using many different explanatory variables, such as case-mix, DSH status, and ownership type. We described this methodology and some of our initial results in the May 9, 2002 **Federal Register** (67 FR 31447–31479). When included in the regression, the area wage index produces a coefficient that can be interpreted as the proportion of operating costs that vary with the geographic location of the hospital. The latest results on 1997 data produced a coefficient for the area wage index of 0.621, which can be interpreted as a labor share of 62.1 percent and is very close to the results reached by other groups. However, using the same specification produced coefficients of 76.7 percent for rural hospitals and 47.6 percent for urban hospitals, a disparity that cannot be supported either by theory or existing cost data. For example, the proportion of costs accounted for by wages, benefits, and contract labor is 60.8 percent for urban hospitals and 62.3 percent for rural hospitals, a spread much smaller than the regressions indicate. In addition, when the regressions were run separately by case-mix quartile and with hospital-specific wage variation (as opposed to using the area wage index), the findings were both difficult to explain and inconsistent with the underlying cost data. Thus, we believe at this point that the regression results are not robust enough to support changing the current labor-related share measurement.

A second approach was to reevaluate our methodology for determining the labor-related share using the hospital market basket. We have researched various alternative data sources for further breaking down the cost categories in the market basket and have begun to evaluate alternative methodologies. While each of these alternatives has strengths and weaknesses, it is not clear at this point that any one alternative is superior to the current methodology. We want to continue researching these alternatives, in part, because changing from the current methodology would impact the labor-related shares for SNFs, HHAs, and all of the excluded hospital payment systems, since they use a similar methodology. Our research plan includes consulting with experts on these issues, including MedPAC, to evaluate the various alternative approaches to determining the labor-related share. We plan to invite public comments on any proposed change to the labor-related share.

In conclusion, we are proposing to continue using the 71.066 percent labor-related share that was calculated from the 1992-based market basket until we have completed our research.

Recommendation 2A–4: The Congress should raise the inpatient base rate for hospitals in rural and other urban areas to the level of the rate for those in large urban areas, phased in over 2 years.

Response: This recommendation, which MedPAC estimates would increase Medicare payments to hospitals by between $200 and $600 million in FY 2004, and others requiring Congressional action, should be considered in the context of larger discussions within Congress and between Congress and the Administration regarding Medicare reform and payment refinements. Therefore, we are not responding specifically to MedPAC's recommendation regarding raising the base rate for hospitals in rural and other urban areas at this time.

Recommendation 2A–5: The Congress should raise the cap on the disproportionate share add-on a hospital can receive in the inpatient PPS from 5.25 percent to 10 percent, phased in over 2 years.

Response: This recommendation, which MedPAC estimates would increase Medicare payments to hospitals by between $50 and $200 million in FY 2004, and others requiring Congressional action, should be considered in the context of larger discussions within Congress and between Congress and the Administration regarding Medicare reform and payment refinements. Therefore, we are not responding specifically to MedPAC's recommendation regarding raising the maximum DSH adjustments at this time.

VIII. Other Required Information

A. Requests for Data From the Public

In order to respond promptly to public requests for data related to the prospective payment system, we have established a process under which commenters can gain access to raw data on an expedited basis. Generally, the data are available in computer tape or cartridge format; however, some files are available on diskette as well as on the Internet at *http://www.hcfa.gov/stats/pufiles.htm*. Data files and the cost for each file, if applicable, are listed below. Anyone wishing to purchase data tapes, cartridges, or diskettes should submit a written request along with a company check or money order (payable to CMS–PUF) to cover the cost to the following address: Centers for Medicare & Medicaid Services, Public Use Files, Accounting Division, PO Box 7520, Baltimore, MD 21207–0520, (410) 786–3691. Files on the Internet may be downloaded without charge.

1. CMS Wage Data

This file contains the hospital hours and salaries for FY 2000 used to create the proposed FY 2004 prospective payment system wage index. The file will be available by the beginning of February for the NPRM and the beginning of May for the final rule.

Processing year	Wage data year	PPS fiscal year
2003	2000	2004
2002	1999	2003
2001	1998	2002
2000	1997	2001
1999	1996	2000
1998	1995	1999
1997	1994	1998
1996	1993	1997
1995	1992	1996
1994	1991	1995
1993	1990	1994
1992	1989	1993
1991	1988	1992

These files support the following:

- NPRM published in the **Federal Register**.
- Final Rule published in the **Federal Register**.

Media: Diskette/most recent year on the Internet.
File Cost: $165.00 per year.
Periods Available: FY 2004 PPS Update.

2. CMS Hospital Wages Indices (Formerly: Urban and Rural Wage Index Values Only)

This file contains a history of all wage indices since October 1, 1983.
Media: Diskette/most recent year on the Internet.
File Cost: $165.00 per year.
Periods Available: FY 2004 PPS Update.

3. PPS SSA/FIPS MSA State and County Crosswalk

This file contains a crosswalk of State and county codes used by the Social Security Administration (SSA) and the Federal Information Processing Standards (FIPS), county name, and a historical list of Metropolitan Statistical Area (MSA).
Media: Diskette/Internet.
File Cost: $165.00 per year.
Periods Available: FY 2004 PPS Update.

4. Reclassified Hospitals New Wage Index (Formerly: Reclassified Hospitals by Provider Only)

This file contains a list of hospitals that were reclassified for the purpose of assigning a new wage index. Two versions of these files are created each year. They support the following:

- NPRM published in the **Federal Register**.
- Final Rule published in the **Federal Register**.

Media: Diskette/Internet.
File Cost: $165.00 per year.
Periods Available: FY 2004 PPS Update.

5. PPS–IV to PPS–XII Minimum Data Set

The Minimum Data Set contains cost, statistical, financial, and other information from Medicare hospital cost reports. The data set includes only the most current cost report (as submitted, final settled, or reopened) submitted for a Medicare participating hospital by the Medicare fiscal intermediary to CMS. This data set is updated at the end of each calendar quarter and is available on the last day of the following month.
Media: Tape/Cartridge.
File Cost: $770.00 per year.

	Periods beginning on or after	and before
PPS–IV	10/01/86	10/01/87
PPS–V	1010/01/87	10/01/88
PPS–VI	1010/01/88	10/01/89
PPS–VII	1010/01/89	10/01/90
PPS–VIII	1010/01/90	10/01/91
PPS–IX	1010/01/91	10/01/92
PPS–X	1010/01/92	10/01/93
PPS–XI	1010/01/93	10/01/94
PPS–XII	1010/01/94	10/01/95

(**Note:** The PPS–XIII, PPS–XIV, PPS–XV, PPS–XVI, PPS–XVII, and PPS–XVIII Minimum Data Sets are part of the PPS–XIII, PPS–XIV, PPS–XV, PPS–XVI, PPS–XVII, and PPS–XVIII Hospital Data Set Files (refer to item 9 below).)

6. PPS–IX to PPS–XII Capital Data Set

The Capital Data Set contains selected data for capital-related costs, interest expense and related information and complete balance sheet data from the Medicare hospital cost report. The data set includes only the most current cost report (as submitted, final settled or reopened) submitted for a Medicare certified hospital by the Medicare fiscal intermediary to CMS. This data set is updated at the end of each calendar quarter and is available on the last day of the following month.
Media: Tape/Cartridge.
File Cost: $770.00 per year.

	Periods beginning on or after	and before
PPS–IX	10/01/91	10/01/92
PPS–X	10/01/92	10/01/93
PPS–XI	10/01/93	10/01/94
PPS–XII	10/01/94	10/01/95

(**Note:** The PPS–XIII, PPS–XIV, PPS–XV, PPS–XVI, PPS–XVII, and PPS–XVIII Capital Data Sets are part of the PPS–XIII, PPS–XIV, PPS–XV, PPS–XVI, PPS–XVII, and PPS–XVIII Hospital Data Set Files (refer to item 9 below).)

7. PPS–XIII to PPS–XVIII Hospital Data Set

The file contains cost, statistical, financial, and other data from the Medicare Hospital Cost Report. The data set includes only the most current cost report (as submitted, final settled, or reopened) submitted for a Medicare-certified hospital by the Medicare fiscal intermediary to CMS. The data set is updated at the end of each calendar quarter and is available on the last day of the following month.
Media: Diskette/Internet.
File Cost: $2,500.00.

	Periods beginning on or after	and before
PPS–XIII	10/01/95	10/01/96
PPS–XIV	10/01/96	10/01/97
PPS–XV	10/01/97	10/01/98
PPS–XVI	10/01/98	10/01/99
PPS–XVII	10/01/99	10/01/00
PPS–XVIII	10/01/00	10/01/01

8. Provider-Specific File

This file is a component of the PRICER program used in the fiscal intermediary's system to compute DRG payments for individual bills. The file contains records for all prospective payment system eligible hospitals, including hospitals in waiver States, and data elements used in the prospective payment system recalibration processes and related activities. Beginning with December 1988, the individual records were enlarged to include pass-through per diems and other elements.
Media: Diskette/Internet.
File Cost: $265.00.
Periods Available: FY 2004 PPS Update.

9. CMS Medicare Case-Mix Index File

This file contains the Medicare case-mix index by provider number as published in each year's update of the Medicare hospital inpatient prospective payment system. The case-mix index is a measure of the costliness of cases treated by a hospital relative to the cost of the national average of all Medicare hospital cases, using DRG weights as a measure of relative costliness of cases. Two versions of this file are created each year. They support the following:

- NPRM published in the **Federal Register**.
- Final rule published in the **Federal Register**.

Media: Diskette/most recent year on Internet.
Price: $165.00 per year/per file.
Periods Available: FY 1985 through FY 2004.

10. DRG Relative Weights (Formerly Table 5 DRG)

This file contains a listing of DRGs, DRG narrative description, relative weights, and geometric and arithmetic mean lengths of stay as published in the **Federal Register**. The hard copy image has been copied to diskette. There are two versions of this file as published in the **Federal Register:**

- NPRM.
- Final rule.

Media: Diskette/Internet.
File Cost: $165.00.
Periods Available: FY 2004 PPS Update.

11. PPS Payment Impact File

This file contains data used to estimate payments under Medicare's hospital inpatient prospective payment systems for operating and capital-related costs. The data are taken from various sources, including the Provider-Specific File, Minimum Data Sets, and prior impact files. The data set is abstracted

from an internal file used for the impact analysis of the changes to the prospective payment systems published in the **Federal Register**. This file is available for release 1 month after the proposed and final rules are published in the **Federal Register**.

Media: Diskette/Internet.
File Cost: $165.00.
Periods Available: FY 2004 PPS Update.

12. AOR/BOR Tables

This file contains data used to develop the DRG relative weights. It contains mean, maximum, minimum, standard deviation, and coefficient of variation statistics by DRG for length of stay and standardized charges. The BOR tables are "Before Outliers Removed" and the AOR is "After Outliers Removed." (Outliers refers to statistical outliers, not payment outliers.)

Two versions of this file are created each year. They support the following:

- NPRM published in the **Federal Register**.
- Final rule published in the **Federal Register**.

Media: Diskette/Internet.
File Cost: $165.00.
Periods Available: FY 2004 PPS Update.

13. Prospective Payment System (PPS) Standardizing File

This file contains information that standardizes the charges used to calculate relative weights to determine payments under the prospective payment system. Variables include wage index, cost-of-living adjustment (COLA), case-mix index, disproportionate share, and the Metropolitan Statistical Area (MSA). The file supports the following:

- NPRM published in the **Federal Register**.
- Final rule published in the **Federal Register**.

Media: Internet.
File Cost: No charge.
Periods Available: FY 2004 PPS Update.

For further information concerning these data tapes, contact the CMS Public Use Files Hotline at (410) 786–3691.

Commenters interested in obtaining or discussing any other data used in constructing this rule should contact Stephen Phillips at (410) 786–4548.

B. Collection of Information Requirements

This document does not impose information collection and recordkeeping requirements. Consequently, it need not be reviewed by the Office of Management and Budget under the authority of the Paperwork Reduction Act of 1995.

List of Subjects

42 CFR Part 412

Administrative practice and procedure, Health facilities, Medicare, Puerto Rico, Reporting and recordkeeping requirements.

42 CFR Part 413

Health facilities, Kidney diseases, Medicare, Puerto Rico, Reporting and recordkeeping requirements.

For the reasons stated in the preamble of this proposed rule, the Centers for Medicare & Medicaid Services proposes to amend 42 CFR chapter IV as follows:

PART 412—PROSPECTIVE PAYMENT SYSTEMS FOR INPATIENT HOSPITAL SERVICES

1. The authority citation for part 412 continues to read as follows:

Authority: Secs. 1102 and 1871 of the Social Security Act (42 U.S.C. 1302 and 1395hh).

2. Section 412.4 is amended by—

A. Revising paragraphs (b), (c), and (d).

B. In paragraph (f)(1), revising the reference "paragraph (b)(1) or (c)" to read "paragraph (b) or (c)".

The revisions read as follows:

§ 412.4 Discharges and transfers.

* * * * *

(b) *Acute care transfers.* A discharge of a hospital inpatient is considered to be a transfer for purposes of payment under this part if the patient is readmitted the same day (unless the readmission is unrelated to the initial discharge) to another hospital that is—

(1) Paid under the prospective payment system described in subparts A through M of this part; or

(2) Excluded from being paid under the prospective payment system described in subparts A through M of this part because of participation in an approved statewide cost control program as described in subpart C of part 403 of this chapter.

(c) *Postacute care transfers.* A discharge of a hospital inpatient is considered to be a transfer for purposes of this part when the patient's discharge is assigned, as described in § 412.60(c), to one of the qualifying diagnosis-related groups (DRGs) listed in paragraph (d) of this section and the discharge is made under any of the following circumstances:

(1) To a hospital or distinct part hospital unit excluded from the prospective payment system described in subparts A through M of this part under subpart B of this part.

(2) To a skilled nursing facility.

(3) To home under a written plan of care for the provision of home health services from a home health agency and those services begin within 3 days after the date of discharge.

(d) *Qualifying DRGs.* For purposes of paragraph (c) of this section, the qualifying DRGs are:

(1) For discharges occurring on or after October 1, 1998, DRGs 14, 113, 209, 210, 211, 236, 263, 264, 429, and 483.

(2) For discharges occurring on or after October 1, 2003, the DRGs listed in paragraph (d)(1) of this section and DRGs 12, 24, 25, 89, 90, 121, 122, 130, 131, 239, 243, 277, 278, 296, 297, 320, 321, 462, and 468.

* * * * *

3. Section 412.22 is amended by:

A. Republishing the introductory text of paragraph (e)(5) and revising the first sentence of paragraph (e)(5)(i).

B. Revising paragraph (f).

The revisions read as follows:

§ 412.22 Excluded hospitals and hospital units: General rules.

* * * * *

(e) * * *

(5) *Performance of basic hospital functions.* The hospital meets one of the following criteria:

(i) The hospital performs the basic functions specified in §§ 482.21 through 482.27, 482.30, 482.42, 482.43, and 482.45 of this chapter through the use of employees or under contracts or other agreements with entities other than the hospital occupying space in the same building or on the same campus, or a third entity that controls both hospitals.

* * *

(f) *Application for certain hospitals.* If a hospital was excluded from the prospective payment systems under the provisions of this section on or before September 30, 1995, and at that time occupied space in a building also used by another hospital, or in one or more buildings located on the same campus as buildings used by another hospital, the criteria in paragraph (e) of this section do not apply to the hospital. However, effective for cost reporting periods beginning on or after October 1, 2003, those hospitals-within-hospitals must continue to operate under the same terms and conditions, including the number of beds and square footage considered, for purposes of Medicare participation and payment, in effect on September 30, 1995.

* * * * *

4. Section 412.23 is amended by revising paragraphs (e)(3)(ii) and (e)(3)(iii) to read as follows:

§ 412.23 Excluded hospitals: Classifications.

* * * * *

(e) *Long-term care hospitals.* * * *

(3) *Calculation of average length of stay.* * * *

(ii) If a change in the hospital's Medicare average length of stay is indicated, the calculation is made by the same method for the period of at least 5 months of the immediately preceding 6-month period.

(iii) If a hospital has undergone a change of ownership (as described in § 489.18 of this chapter) at the start of a cost reporting period or at any time within the period of at least 5 months of the preceding 6-month period, the hospital may be excluded from the prospective payment system as a long-term care hospital for a cost reporting period if, for the period of at least 5 months of the 6 months immediately preceding the start of the period (including time before the change of ownership), the hospital has the required Medicare average length of stay, continuously operated as a hospital, and continuously participated as a hospital in Medicare.

* * * * *

§ 412.25 [Amended]

5. In § 412.25(e)(4), introductory text, the reference "paragraph (h)(3) of this section" is revised to read "paragraph (e)(3) of this section".

6. Section 412.87 is amended by revising paragraph (b)(3) to read as follows:

§ 412.87 Additional payment for new medical services and technologies: General provisions.

* * * * *

(b) *Eligibility criteria.* * * *

(3) The DRG prospective payment rate otherwise applicable to discharges involving the medical service or technology is determined to be inadequate, based on application of a threshold amount to estimated charges incurred with respect to such discharges. To determine whether the payment would be adequate, CMS will determine whether the charges of the cases involving a new medical service or technology will exceed a threshold amount set at 75 percent of one standard deviation beyond the geometric mean standardized charge for all cases in the DRG to which the new medical service or technology is assigned (or the case-weighted average of all relevant DRGs if the new medical service or technology occurs in many different DRGs). Standardized charges reflect the actual charges of a case adjusted by the prospective payment system payment factors applicable to an individual hospital, such as the wage index, the indirect medical education adjustment factor, and the disproportionate share adjustment factor.

7. Section 412.105 is amended by—

A. In paragraph (a)(1), introductory text, revising the phrase "paragraph (f) of this section" to read "paragraphs (f) and (h) of this section".

B. In paragraph (a)(1)(i), revising the phrase "affiliated groups" to read "Medicare GME affiliated groups".

C. Revising paragraph (b).

D. Adding a sentence at the end of paragraph (f)(1)(v).

E. In paragraph (f)(1)(vi), revising the phrase "affiliated group" to read "Medicare GME affiliated group".

F. Revising paragraph (f)(1)(x).

The revisions and additions read as follows:

§ 412.105 Special treatment: Hospitals that incur indirect costs for graduate medical education programs.

* * * * *

(b) *Determination of number of beds.* For purposes of this section, the number of beds in a hospital is determined by counting the number of available bed days during the cost reporting period and dividing that number by the number of days in the cost reporting period. This count excludes bed days associated with—

(1) Beds in any other units or wards where the level of care provided would not be payable under the acute care hospital inpatient prospective payment system;

(2) Beds in units unoccupied for the previous 3 months;

(3) Beds that could not be made available for inpatient occupancy within 24 hours.

(4) Beds in excluded distinct part hospital units;

(5) Beds otherwise countable under this section used for outpatient observation services (unless the patient is subsequently admitted for acute inpatient care), skilled nursing swing-bed services, or ancillary labor/delivery services;

(6) Beds or bassinets in the healthy newborn nursery; and

(7) Custodial care beds;

* * * * *

(f) *Determining the total number of full-time equivalent residents for cost reporting periods beginning on or after July 1, 1991.* (1) * * *

(v) * * * Subject to the provisions of paragraph (f)(1)(x) of this section, effective for cost reporting periods beginning on or after April 1, 2000, FTE residents in a rural track program are included in the urban hospital's rolling average calculation described in this paragraph (f)(1)(v).

* * * * *

(x) An urban hospital that establishes a new residency program (as defined in § 413.86(g)(13) of this subchapter), or has an existing residency program, with a rural track (or an integrated rural track) may include in its FTE count residents in those rural tracks in accordance with the applicable provisions of § 413.86(g)(12) of this subchapter effective for discharges occurring on or after April 1, 2002 and before October 1, 2003, and the applicable provisions of § 413.86(g)(12) of this subchapter effective for discharges occurring on or after October 1, 2003.

* * * * *

7. Section 412.106 is amended by revising paragraphs (a)(1)(ii) and (b)(4)(i) to read as follows:

§ 412.106 Special treatment: Hospitals that serve a disproportionate share of low-income patients.

(a) General considerations. (1) * * *

(ii) For purposes of this section, the number of patient days in a hospital includes only those days attributable to units or wards of the hospital providing acute care services generally payable under the prospective payment system and excludes patient days associated with—

(A) Beds in excluded distinct part hospital units;

(B) Beds otherwise countable under this section used for outpatient observation services (unless the patient is subsequently admitted for acute inpatient care), skilled nursing swing-bed services, or ancillary labor/delivery services; and

(C) Beds in any other units or wards where the level of care provided would not be payable under the acute care hospital inpatient prospective payment system.

* * * * *

(b) *Determination of a hospital's disproportionate payment percentage.* * * *

(4) *Second computation.* * * *

(i) For purposes of this computation, a patient is deemed eligible for Medicaid on a given day only if the patient is eligible for inpatient hospital services under an approved State Medicaid plan or under a waiver authorized under section 1115(a)(2) of the Act on that day, regardless of whether particular items or services were covered or paid under the State plan or the authorized waiver.

* * * * *

8. In § 412.112, the introductory text is republished and a new paragraph (d) is added to read as follows:

§ 412.112 Payments determined on a per case basis.

A hospital is paid the following amounts on a per case basis.

* * * * *

(d) Additional payments for new medical services and technologies determined under subpart F of this part.

9. Section 412.116 is amended by revising paragraph (e) to read as follows:

§ 412.116 Method of payment.

* * * * *

(e) *Outlier payment and additional payments for new medical services and technologies.* Payments for outlier cases and additional payments for new medical services and technologies (described in subpart F of this part) are not made on an interim basis. These payments are made based on submitted bills and represent final payment.

* * * * *

PART 413—PRINCIPLES OF REASONABLE COST REIMBURSEMENT; PAYMENT FOR END-STAGE RENAL DISEASE SERVICES; OPTIONAL PROSPECTIVELY DETERMINED PAYMENT RATES FOR SKILLED NURSING FACILITIES

1. The authority citation for part 413 is revised to read as follows:

Authority: Secs. 1102, 1812(d), 1814(b), 1815, 1833(a), (i), and (n), 1871, 1881, 1883, and 1886 of the Social Security Act (42 U.S.C. 1302, 1395d(d), 1395f(b), 1395g, 1395l(a), (i), and (n), 1395hh, 1395rr, 1395tt, and 1395ww).

2. Section 413.70 is amended by revising paragraph (b)(2)(iii), introductory text, to read as follows:

§ 413.70 Payment for services of a CAH.

* * * * *

(b) *Payment for outpatient services furnished by CAH.* * * *

(2) *Reasonable costs for facility services.* * * *

(iii) Payment for outpatient clinical diagnostic laboratory tests is not subject to the Medicare Part B deductible and coinsurance amounts. Payment to a CAH for clinical diagnostic laboratory tests will be made on a reasonable cost basis under this section only if the individuals are outpatients of the CAH, as defined in § 410.2 of this chapter, and are physically present in the CAH, at the time the specimens are collected. Clinical diagnostic laboratory tests performed for persons who are not physically present in the CAH when the specimens are collected will be made in accordance with the provisions of sections 1833(a)(1)(D) and 1833(a)(2)(D) of the Social Security Act.

* * * * *

3. Section 413.85 is amended by—

A. Adding under paragraph (c) a definition of "Certification" in alphabetical order.

B. Republishing the introductory text of paragraph (d)(1) and adding a new paragraph (d)(1)(iii).

C. Adding a new paragraph (g)(3).

D. Republishing the introductory text of paragraph (h) and revising paragraph (h)(3).

The addition and revision read as follows.

§ 413.85 Cost of approved nursing and allied health education activities.

* * * * *

(c) *Definitions.* * * *

Certification means the ability to practice or begin employment in a specialty as a whole.

* * * * *

(d) *General payment rules.* (1) Payment for a provider's net cost of nursing and allied health education activities is determined on a reasonable cost basis, subject to the following conditions and limitations:

* * * * *

(iii) The costs of certain nonprovider-operated programs at wholly owned subsidiary educational institutions are reimbursable on a reasonable cost basis if the provisions of paragraph (g)(3) of this section are met.

* * * * *

(g) *Payments for certain nonprovider-operated programs.* * * *

(3) *Special rule: Payment for certain nonprovider-operated programs at wholly owned subsidiary educational institutions.*

(i) Effective for portions of cost reporting periods occurring on or after October 1, 2003, a provider that incurs costs for a nursing or allied health education program(s) where those program(s) had originally been provider-operated according to the criteria at paragraph (f) of this section, and then operation of the program(s) was transferred to a wholly owned subsidiary educational institution in order to meet accreditation standards prior to October 1, 2003, and where the provider has continuously incurred the costs of both the classroom and clinical training portions of the program(s) at the educational institution, may receive reasonable cost payment for such a program(s) according to the specifications under paragraphs (g)(3)(ii) and (g)(3)(iii) of this section.

(ii) Payment for the incurred costs of educational activities identified in paragraph (g)(3)(i) of this section will be made on a reasonable cost basis if a provider, as described in paragraph (g)(3)(i) of this section, received Medicare reasonable cost payment for those nursing and allied health education program(s) both prior and subsequent to the date the provider transferred operation of the program(s) to its wholly owned subsidiary educational institution (and ceased to be a provider-operated program(s) according to the criteria under paragraph (f) of this section).

(iii) The provider that meets the requirements in paragraphs (g)(3)(i) and (g)(3)(ii) of this section will be eligible to receive payment under this paragraph for: (A) the clinical training costs incurred for the program(s) as described in paragraph (g)(3)(i) of this section; and (B) classroom costs, but only those costs incurred by the provider for the courses that were included in the programs described in paragraph (g)(3)(i) of this section.

(h) *Activities treated as normal operating costs.* The costs of the following educational activities incurred by a provider but not operated by that provider are recognized only as normal operating costs and paid in accordance with the reimbursement principles specified in part 412 of this subchapter. They include:

* * * * *

(3) Educational seminars, workshops, and continuing education programs in which the employees participate that enhance the quality of medical care or operating efficiency of the provider and, effective October 1, 2003, do not lead to certification required to practice or begin employment in a nursing or allied health specialty.

* * * * *

4. Section 413.86 is amended by—

A. Under paragraph (b)—

(1) Removing the definitions of "Affiliated group" and "Affiliation agreement".

(2) Adding definitions of "Community support", "Medicare GME affiliated agreement", "Medicare GME affiliated group", and "Redistribution of costs" in alphabetical order.

(3) Under the definition of "Rural track FTE limitation", revising the phrase "paragraph (g)(11)" to read "paragraph (g)(12)".

B. Revising the introductory text of paragraph (f).

C. Adding a new paragraph (f)(4)(iv).

D. In paragraph (g)(1)(i), revising the reference "paragraphs (g)(1)(ii) and (g)(1)(iii)" to read "paragraphs (g)(1)(ii) through (g)(1)(iv)".

E. Revising the introductory text of paragraph (g)(4).

F. Revising paragraph (g)(4)(iv).

G. Revising the introductory text of paragraph (g)(5).

H. Adding a new paragraph (g)(5)(vii).

I. Revising paragraphs (g)(6)(i)(D) and (g)(6)(i)(E).

J. Revising paragraph (g)(7).

K. Revising the introductory text of paragraph(g)(12).

L. Revising paragraph (g)(12)(i).

M. Revising paragraph (g)(12)(ii), introductory text.

N. Revising paragraph (g)(12)(ii)(A).

O. Revising paragraph (g)(12)(ii)(B)(*1*)(*i*).

P. Revising paragraph (g)(12)(iii).

Q. Revising paragraph (g)(12)(iv), introductory text.

R. Revising paragraph (g)(12)(iv)(A).

S. Revising paragraph (g)(12)(iv)(B)(*1*).

T. Redesignating paragraphs (i) and (j) as paragraphs (j) and (k), respectively, and adding a new paragraph (i).

The additions and revisions read as follows:

§ 413.86 Direct graduate medical education payments.

* * * * *

(b) *Definitions.* * * *

Community support means funding that is provided by the community and generally includes all non-Medicare sources of funding (other than payments made for furnishing services to individual patients), including State and local government appropriations. Community support does not include grants, gifts, and endowments of the kind that are not to be offset in accordance with section 1134 of the Act.

* * * * *

Medicare GME affiliated group means—

(1) Two or more hospitals that are located in the same urban or rural area (as those terms are defined in § 412.62(f) of this subchapter) or in a contiguous area and meet the rotation requirements in paragraph (g)(7)(ii) of this section.

(2) Two or more hospitals that are not located in the same or in a contiguous urban or rural area, but meet the rotation requirement in paragraph (g)(7)(ii) of this section, and are jointly listed—

(i) As the sponsor, primary clinical site or major participating institution for one or more programs as these terms are used in the most current publication of the *Graduate Medical Education Directory;* or

(ii) As the sponsor or is listed under "affiliations and outside rotations" for one or more programs in operation in *Opportunities, Directory of Osteopathic Postdoctoral Education Programs.*

(3) Two or more hospitals that are under common ownership and, effective for all Medicare GME affiliation agreements beginning July 1, 2003, meet the rotation requirement in paragraph (g)(7)(ii) of this section.

Medicare GME affiliation agreement means a written, signed, and dated agreement by responsible representatives of each respective hospital in a Medicare GME affiliated group, as defined in this section, that specifies—

(1) The term of the Medicare GME affiliation agreement (which, at a minimum is one year), beginning on July 1 of a year;

(2) Each participating hospital's direct and indirect GME FTE caps in effect prior to the Medicare GME affiliation;

(3) The total adjustment to each hospital's FTE caps in each year that the Medicare GME affiliation agreement is in effect, for both direct GME and IME, that reflects a positive adjustment to one hospital's direct and indirect FTE caps that is offset by a negative adjustment to the other hospital's (or hospitals') direct and indirect FTE caps of at least the same amount;

(4) The adjustment to each participating hospital's FTE counts resulting from the FTE resident's (or residents') participation in a shared rotational arrangement at each hospital participating in the Medicare GME affiliated group for each year the Medicare GME affiliation agreement is in effect. This adjustment to each participating hospital's FTE count is also reflected in the total adjustment to each hospital's FTE caps (in accordance with paragraph (3) of this definition); and

(5) The names of the participating hospitals and their Medicare provider members.

* * * * *

Redistribution of costs means an attempt by a hospital to increase the amount it is allowed to receive from Medicare under this section by counting FTE residents that were in medical residency programs where the costs of the programs had previously been incurred by the educational institution.

* * * * *

(f) *Determining the total number of FTE residents.* Subject to the weighting factors in paragraphs (g) and (h) of this section, and subject to the provisions of paragraph (i) of this section, the count of FTE residents is determined as follows:

* * * * *

(4) * * *

(iv) The hospital is subject to the principles of community support and redistribution of costs as specified in the provisions of paragraph (i) of this section.

(g) *Determining the weighted number of FTE residents.*

* * * * *

(4) Subject to the provisions of paragraph (i) of this section, for purposes of determining direct graduate medical education payment—

* * * * *

(iv) Hospitals that are part of the same Medicare GME affiliated group (as described under paragraph (b) of this section) may elect to apply the limit on an aggregate basis as described under paragraph (g)(7) of this section.

* * * * *

(5) Subject to the provisions of paragraph (i) of this section, for purposes of determining direct graduate medical education payment—

* * * * *

(vii) Subject to the provisions under paragraph (g)(12) of this section, effective for cost reporting periods beginning on or after April 1, 2000, FTE residents in a rural track program at an urban hospital are included in the urban hospital's rolling average calculation described in paragraph (g)(5) of this section.

* * * * *

(6) * * *

(i) * * *

(D) An urban hospital that qualifies for an adjustment to its FTE cap under paragraph (g)(6)(i) of this section is not permitted to be part of a Medicare GME affiliated group for purposes of establishing an aggregate FTE cap.

(E) A rural hospital that qualifies for an adjustment to its FTE cap under paragraph (g)(6)(i) of this section is permitted to be part of a Medicare GME affiliated group for purposes of establishing an aggregate FTE cap.

* * * * *

(7) A hospital may receive a temporary adjustment to its FTE cap, which is subject to the averaging rules under paragraph (g)(5)(iii) of this section, to reflect residents added or subtracted because the hospital is participating in a Medicare GME affiliated group (as defined under paragraph (b) of this section). Under this provision—

(i) Each hospital in the Medicare GME affiliated group must submit the Medicare GME affiliation agreement, as defined under paragraph (b) of this section, to the CMS fiscal intermediary servicing the hospital and send a copy to CMS's Central Office no later than July 1 of the residency program year during which the Medicare GME affiliation agreement will be in effect.

(ii) Each hospital in the Medicare GME affiliated group must have a shared rotational arrangement, as defined in paragraph (b) of this section, with at least one other hospital within the Medicare GME affiliated group, and all of the hospitals within the Medicare GME affiliated group must be connected by a series of such shared rotational arrangements.

(iii) During the shared rotational arrangements under an Medicare GME affiliation agreement, as defined in paragraph (b) of this section, more than one of the hospitals in the Medicare GME affiliated group must count the proportionate amount of the time spent by the resident(s) in its FTE resident counts. No resident may be counted in the aggregate as more than one FTE.

(iv) The net effect of the adjustments (positive or negative) on the Medicare GME affiliated hospitals' aggregate FTE cap for each Medicare GME affiliation agreement must not exceed zero.

(v) If the Medicare GME affiliation agreement terminates for any reason, the FTE cap of each hospital in the Medicare GME affiliated group will revert to the individual hospital's pre-affiliation FTE cap that is determined under the provisions of paragraph (g)(4) of this section.

* * * * *

(12) Subject to the provisions of (i) of this section, an urban hospital that establishes a new residency program, or has an existing residency program, with a rural track (or an integrated rural track) may include in its FTE count residents in those rural tracks, in addition to the residents subject to its FTE cap specified under paragraph (g)(4) of this section. An urban hospital with a rural track residency program may count residents in those rural tracks up to a rural track FTE limitation if the hospital complies with the conditions specified in paragraphs (g)(12)(i) through (g)(12)(vi) of this section.

(i) If an urban hospital rotates residents to a separately accredited rural track program at a rural hospital(s) for two-thirds of the duration of the program for cost reporting periods beginning on or after April 1, 2000 and before October 1, 2003, or for more than one-half of the duration of the program for cost reporting periods beginning on or after October 1, 2003, the urban hospital may include those residents in its FTE count for the time the rural track residents spend at the urban hospital. The urban hospital may include in its FTE count those residents in the rural track training at the urban hospital, not to exceed its rural track FTE limitation, determined as follows:

(A) For the first 3 years of the rural track's existence, the rural track FTE limitation for each urban hospital will be the actual number of FTE residents, subject to the rolling average at paragraph (g)(5)(vii) of this section, training in the rural track at the urban hospital.

(B) Beginning with the fourth year of the rural track's existence, the rural track FTE limitation is equal to the product of the highest number of residents, in any program year, who during the third year of the rural track's existence are training in the rural track at the urban hospital or the rural hospital(s) and are designated at the beginning of their training to be rotated to the rural hospital(s) for at least two-thirds of the duration of the program for cost reporting periods beginning on or after April 1, 2000 and before October 1, 2002, or for more than one-half of the duration of the program effective for cost reporting periods beginning on or after October 1, 2003, and the number of years those residents are training at the urban hospital.

(ii) If an urban hospital rotates residents to a separately accredited rural track program at a rural nonhospital site(s) for two-thirds of the duration of the program for cost reporting periods beginning on or after April 1, 2000 and before October 1, 2003, or for more than one-half of the duration of the program for cost reporting periods beginning on or after October 1, 2003, the urban hospital may include those residents in its FTE count, subject to the requirements under paragraph (f)(4) of this section. The urban hospital may include in its FTE count those residents in the rural track, not to exceed its rural track FTE limitation, determined as follows:

- (A) For the first 3 years of the rural track's existence, the rural track FTE limitation for each urban hospital will be the actual number of FTE residents, subject to the rolling average specified in paragraph (g)(5)(vii) of this section, training in the rural track at the urban hospital and the rural nonhospital site(s).

(B) * * *

(*1*) * * *

(*i*) The urban hospital and are designated at the beginning of their training to be rotated to a rural nonhospital site(s) for at least two-thirds of the duration of the program for cost reporting periods beginning on or after April 1, 2000 and before October 1, 2003, or for more than one-half of the duration of the program for cost reporting periods beginning on or after October 1, 2003; and

* * * * *

(iii) If an urban hospital rotates residents in the rural track program to a rural hospital(s) for less than two-thirds of the duration of the program for cost reporting periods beginning on or after April 1, 2000 and before October 1, 2003, or for one-half or less than one-half of the duration of the program for cost reporting periods beginning on or after October 1, 2003, the rural hospital may not include those residents in its FTE count (if the rural track is not a new program under paragraph (g)(6)(iii) of this section, or if the rural hospital's FTE count exceeds that hospital's FTE cap), nor may the urban hospital include those residents when calculating its rural track FTE limitation.

(iv) If an urban hospital rotates residents in the rural track program to a rural nonhospital site(s) for period of time is less than two-thirds of the duration of the program for cost reporting periods beginning on or after April 1, 2000 and before October 1, 2003, or for one-half or less than one-half of the duration of the program for cost reporting periods beginning on or after October 1, 2003, the urban hospital may include those residents in its FTE count, subject to the requirements under paragraph (f)(4) of this section. The urban hospital may include in its FTE count those residents in the rural track, not to exceed its rural track limitation, determined as follows:

(A) For the first 3 years of the rural track's existence, the rural track FTE limitation for the urban hospital will be the actual number of FTE residents, subject to the rolling average specified in paragraph (g)(5)(vii) of this section, training in the rural track at the rural nonhospital site(s).

(B) * * *

(*1*) The highest number of residents in any program year who, during the third year of the rural track's existence, are training in the rural track at the rural nonhospital site(s) or are designated at the beginning of their training to be rotated to the rural nonhospital site(s) for a period that is less than two-thirds of the duration of the program for cost reporting periods beginning on or after April 1, 2002, and before October 1, 2003, or for one-half or less than one-half of the duration of the program for cost reporting periods beginning on or after October 1, 2003; and

* * * * *

(i) *Application of community support and redistribution of costs in determining FTE resident counts.*

(1) For purposes of determining direct graduate medical education payments, the following principles apply:

(i) *Community support.* If the community has undertaken to bear the costs of medical education through community support, the costs are not considered graduate medical education costs to the hospital for purposes of Medicare payment.

(ii) *Redistribution of costs.* The costs of training residents that constitute a redistribution of costs from an educational institution to the hospital are not considered graduate medical education costs to the hospital for purposes of Medicare payment.

(2) *Application.* A hospital must continuously incur the costs of direct graduate medical education of residents training in a particular program at a training site since the date the residents first began training in that program in order for the hospital to count the FTE residents in accordance with the provisions of paragraphs (f) and (g)(4) through (g)(6) and (g)(12) of this section.

* * * * *

(Catalog of Federal Domestic Assistance Program No. 93.773, Medicare—Hospital Insurance)

Dated: April 22, 2003.

Thomas A. Scully,

Administrator, Centers for Medicare & Medicaid Services

Dated: May 8, 2003.

Tommy G. Thompson,

Secretary.

[Editorial Note: The following Addendum and appendixes will not appear in the Code of Federal Regulations.]

Addendum—Proposed Schedule of Standardized Amounts Effective with Discharges Occurring On or After October 1, 2003 and Update Factors and Rate-of-Increase Percentages Effective With Cost Reporting Periods Beginning On or After October 1, 2003

I. Summary and Background

In this Addendum, we are setting forth the proposed amounts and factors for determining prospective payment rates for Medicare hospital inpatient operating costs and Medicare hospital inpatient capital-related costs. We are also setting forth proposed rate-of-increase percentages for updating the target amounts for hospitals and hospital units excluded from the IPPS.

For discharges occurring on or after October 1, 2003, except for SCHs, MDHs, and hospitals located in Puerto Rico, each hospital's payment per discharge under the IPPS will be based on 100 percent of the Federal national rate, which will be based on the national adjusted standardized amount. This amount reflects the national average hospital costs per case from a base year, updated for inflation.

SCHs are paid based on whichever of the following rates yields the greatest aggregate payment: The Federal national rate; the updated hospital-specific rate based on FY 1982 costs per discharge; the updated hospital-specific rate based on FY 1987 costs per discharge; or the updated hospital-specific rate based on FY 1996 costs per discharge.

Under section 1886(d)(5)(G) of the Act, MDHs are paid based on the Federal national rate or, if higher, the Federal national rate plus 50 percent of the difference between the Federal national rate and the updated hospital-specific rate based on FY 1982 or FY 1987 costs per discharge, whichever is higher. MDHs do not have the option to use their FY 1996 hospital-specific rate.

For hospitals in Puerto Rico, the payment per discharge is based on the sum of 50 percent of a Puerto Rico rate reflecting base year average costs per case of Puerto Rico hospitals and 50 percent of a blended Federal national rate (a discharge-weighted average of the national large urban and other areas standardized amounts). (*See* section II.D.3. of this Addendum for a complete description.)

As discussed below in section II. of this Addendum, we are proposing to make changes in the determination of the prospective payment rates for Medicare inpatient operating costs for FY 2004. The changes, to be applied prospectively effective with discharges occurring on or after October 1, 2003, affect the calculation of the Federal rates. In section III. of this Addendum, we discuss our proposed changes for determining the prospective payment rates for Medicare inpatient capital-related costs for FY 2004. Section IV. of this Addendum sets forth our proposed changes for determining the rate-of-increase limits for hospitals excluded from the IPPS for FY 2004. Section V. of this Addendum sets forth policies on payment for blood clotting factor administered to hemophilia patients. The tables to which we refer in the preamble to this proposed rule are presented in section VI. of this Addendum.

II. Proposed Changes to Prospective Payment Rates for Hospital Inpatient Operating Costs for FY 2004

The basic methodology for determining prospective payment rates for hospital inpatient operating costs is set forth at § 412.63. The basic methodology for determining the prospective payment rates for hospital inpatient operating costs for hospitals located in Puerto Rico is set forth at §§ 412.210 and 412.212. Below, we discuss the factors used for determining the prospective payment rates.

In summary, the proposed standardized amounts set forth in Tables 1A and 1C of section VI. of this Addendum reflect—

- Updates of 3.5 percent for all areas (that is, the full market basket percentage increase of 3.5 percent);
- An adjustment to ensure the proposed DRG recalibration and wage index update and changes, as well as the add-on payments for new technology, are budget neutral, as provided for under sections 1886(d)(4)(C)(iii) and (d)(3)(E) of the Act, by applying new budget neutrality adjustment factors to the large urban and other standardized amounts;
- An adjustment to ensure the effects of geographic reclassification are budget neutral, as provided for in section 1886(d)(8)(D) of the Act, by removing the FY 2003 budget neutrality factor and applying a revised factor;
- An adjustment to apply the new outlier offset by removing the FY 2003 outlier offsets and applying a new offset.

A. Calculation of Adjusted Standardized Amounts

1. Standardization of Base-Year Costs or Target Amounts

The national standardized amounts are based on per discharge averages of adjusted hospital costs from a base period (section 1886(d)(2)(A) of the Act) or, for Puerto Rico, adjusted target amounts from a base period (section 1886(d)(9)(B)(i) of the Act), updated and otherwise adjusted in accordance with the provisions of section 1886(d) of the Act. The preamble to the September 1, 1983 interim final rule (48 FR 39763) contained a detailed explanation of how base-year cost data (from cost reporting periods ending during FY 1981) were established in the initial development of standardized amounts for the IPPS. The September 1, 1987 final rule (52 FR 33043, 33066) contains a detailed explanation of how the target amounts were determined and how they are used in computing the Puerto Rico rates.

Sections 1886(d)(2)(B) and (d)(2)(C) of the Act require us to update base-year per discharge costs for FY 1984 and then standardize the cost data in order to remove the effects of certain sources of cost variations among hospitals. These effects include case-mix, differences in area wage levels, cost-of-living adjustments for Alaska and Hawaii, indirect medical education costs, and costs to hospitals serving a disproportionate share of low-income patients.

Under sections 1886(d)(2)(H) and (d)(3)(E) of the Act, in making payments under the IPPS, the Secretary estimates from time to time the proportion of costs that are wages and wage-related costs. Based on the estimated labor-related share, the standardized amounts are divided into labor-related and nonlabor-related amounts. As discussed in section IV. of the preamble to the August 1, 2002 IPPS final rule, when we revised the market basket in FY 2003, we did not revise the labor share of the standardized amount (the proportion adjusted by the wage index). We consider 71.1 percent of costs to be labor-related for purposes of the IPPS. The average labor share in Puerto Rico is 71.3 percent.

2. Computing Large Urban and Other Area Average Standardized Amounts

Sections 1886(d)(2)(D) and (d)(3) of the Act require the Secretary to compute two average standardized amounts for discharges occurring in a fiscal year: one for hospitals located in large urban areas and one for hospitals located in other areas. In addition, under sections 1886(d)(9)(B)(iii) and (d)(9)(C)(i) of the Act, the average standardized amount per discharge must be determined for hospitals located in large urban and other areas in Puerto Rico. In accordance with section 1886(b)(3)(B)(i) of the Act, the large urban average standardized amount is 1.6 percent higher than the other area average standardized amount.

Section 402(b) of Pub. L. 108–7 required that, effective for discharges occurring on or after April 1, 2003, and before October 1, 2003, the Federal rate for all IPPS hospitals would be based on the large urban standardized amount. However, for discharges occurring on or after October 1, 2003, the Federal rate will again be calculated based on separate average standardized amounts for hospitals in large urban areas and for hospitals in other areas.

Section 1886(d)(2)(D) of the Act defines "urban area" as those areas within a Metropolitan Statistical Area (MSA). A "large urban area" is defined as an urban area with a population of more than 1 million. In addition, section 4009(i) of Pub. L. 100–203 provides that a New England County Metropolitan Area (NECMA) with a population of more than 970,000 is classified as a large urban area. As required by section 1886(d)(2)(D) of the Act, population size is determined by the Secretary based on the latest population data published by the Bureau of the Census. Urban areas that do not meet the definition of a "large urban area" are referred to as "other urban areas." Areas that are not included in MSAs are considered "rural areas" under section 1886(d)(2)(D) of the Act. Payment for discharges from hospitals located in large urban areas will be based on the large urban standardized amount. Payment for discharges from hospitals located in other urban and rural areas will be based on the other standardized amount.

Based on the latest available population estimates published by the Bureau of the Census, 63 areas meet the criteria to be defined as large urban areas for FY 2004. These areas are identified in Table 4A of section VI. of this Addendum.

3. Updating the Average Standardized Amounts

In accordance with section 1886(d)(3)(A)(iv) of the Act, we are proposing to update the large urban areas' and the other areas' average standardized amounts for FY 2004 by the full estimated market basket percentage increase for hospitals in all areas, as specified in section 1886(b)(3)(B)(i)(XIX) of the Act. The percentage change in the market basket reflects the average change in the price of goods and services purchased by hospitals to furnish inpatient care. The most recent forecast of the hospital market basket increase for FY 2004 is 3.5 percent. Thus, for FY 2004, the update to the average standardized amounts equals 3.5 percent for hospitals in all areas.

Although the update factors for FY 2004 are set by law, we are required by section 1886(e)(3) of the Act to report to the Congress our initial recommendation of update factors for FY 2004 for both IPPS hospitals and hospitals excluded from the IPPS. Our proposed recommendation on the update factors (which is required by sections 1886(e)(4)(A) and (e)(5)(A) of the Act) is set forth as Appendix B of this proposed rule.

4. Other Adjustments to the Average Standardized Amounts

As in the past, we are proposing to adjust the FY 2004 standardized amounts to remove the effects of the FY 2003 geographic reclassifications and outlier payments before applying the FY 2004 updates. We then apply the new offsets to the standardized amounts for outliers and geographic reclassifications for FY 2004.

We do not remove the prior years' budget neutrality adjustment because, in accordance with section 1886(d)(4)(C)(iii) of the Act, estimated aggregate payments after the changes in the DRG relative weights and wage index should equal estimated aggregate payments prior to the changes. If we removed the prior year adjustment, we would not satisfy this condition.

Budget neutrality is determined by comparing aggregate IPPS payments before and after making the changes that are required to be budget neutral (for example, reclassifying and recalibrating the DRGs, updating the wage data, and geographic reclassifications). We include outlier payments in the payment simulations because outliers may be affected by changes in these payment parameters. Because the proposed changes to the postacute care transfer policy discussed in section IV.A. of this preamble are not budget neutral, we included the effects of expanding this policy to additional DRGs prior to estimating the payment effects of the DRG and wage data changes.

a. Recalibration of DRG Weights and Updated Wage Index—Budget Neutrality Adjustment. Section 1886(d)(4)(C)(iii) of the Act specifies that, beginning in FY 1991, the annual DRG reclassification and recalibration of the relative weights must be made in a manner that ensures that aggregate payments to hospitals are not affected. As discussed in section II. of the preamble, we normalized the recalibrated DRG weights by an adjustment factor, so that the average case weight after recalibration is equal to the average case weight prior to recalibration. However, equating the average case weight after recalibration to the average case weight before recalibration does not necessarily achieve budget neutrality with respect to aggregate payments to hospitals because payments to hospitals are affected by factors other than average case weight. Therefore, as we have done in past years, we are proposing to make a budget neutrality adjustment to ensure that the requirement of section 1886(d)(4)(C)(iii) of the Act is met.

Section 1886(d)(3)(E) of the Act requires us to update the hospital wage index on an annual basis beginning October 1, 1993. This provision also requires us to make any updates or adjustments to the wage index in a manner that ensures that aggregate payments to hospitals are not affected by the change in the wage index.

Section 4410 of Pub. L. 105–33 provides that, for discharges on or after October 1, 1997, the area wage index applicable to any hospital that is not located in a rural area may not be less than the area wage index applicable to hospitals located in rural areas in that State. This provision is required by section 4410(b) of Pub. L. 105–33 to be budget neutral. Therefore, we include the effects of this provision in our calculation of the wage update budget neutrality factor.

In addition, we are required to ensure that any add-on payments for new technology under section 1886(d)(5)(K) of the Act are budget neutral. As discussed in section II.E. of this proposed rule, we are proposing to approve one new technology for add-on payments in FY 2004. We estimate that the proposed total add-on payments for this new technology would be $50 million for FY 2004.

To comply with the requirement that DRG reclassification and recalibration of the relative weights be budget neutral, and the requirement that the updated wage index be budget neutral, we used FY 2002 discharge data to simulate payments and compared aggregate payments using the FY 2003 relative weights, wage index, and new technology add-on payments to aggregate payments using the proposed FY 2004 relative weights and wage index, plus the proposed additional add-on payments for new technology. The same methodology was used for the FY 2003 budget neutrality adjustment.

Based on this comparison, we computed a proposed budget neutrality adjustment factor equal to 1.003133. We also adjust the Puerto Rico-specific standardized amounts for the effect of DRG reclassification and recalibration. We computed a proposed budget neutrality adjustment factor for Puerto Rico-specific standardized amounts equal to 1.000627. These budget neutrality adjustment factors are applied to the standardized amounts without removing the effects of the FY 2003 budget neutrality adjustments.

In addition, we are proposing to apply these same adjustment factors to the hospital-specific rates that are effective for cost reporting periods beginning on or after October 1, 2003. (See the discussion in the September 4, 1990 final rule (55 FR 36073).)

b. Reclassified Hospitals—Budget Neutrality Adjustment. Section 1886(d)(8)(B) of the Act provides that, effective with discharges occurring on or after October 1, 1988, certain rural hospitals are deemed urban. In addition, section 1886(d)(10) of the Act provides for the reclassification of hospitals based on determinations by the MGCRB. Under section 1886(d)(10) of the Act, a hospital may be reclassified for purposes of the standardized amount or the wage index, or both.

Under section 1886(d)(8)(D) of the Act, the Secretary is required to adjust the standardized amounts so as to ensure that aggregate payments under the IPPS after implementation of the provisions of sections 1886(d)(8)(B) and (C) and 1886(d)(10) of the Act are equal to the aggregate prospective payments that would have been made absent these provisions. To calculate this budget neutrality factor, we used FY 2002 discharge data to simulate payments, and compared total IPPS payments prior to any reclassifications to total IPPS payments after reclassifications. Based on these simulations, we are proposing to apply an adjustment factor of 0.991848 to ensure that the effects of reclassification are budget neutral.

The proposed adjustment factor is applied to the standardized amounts after removing the effects of the FY 2003 budget neutrality adjustment factor. We note that the proposed FY 2004 adjustment reflects proposed FY 2004 wage index and standardized amount reclassifications approved by the MGCRB or the Administrator as of February 28, 2003, and the effects of section 1886(d)(10)(D)(v) of the Act to extend wage index reclassifications for 3 years. The effects of any additional reclassification changes that occur as a result of appeals and reviews of the MGCRB decisions for FY 2004 or from a hospital's request for the withdrawal of a reclassification for FY 2004 will be reflected in the final budget neutrality adjustment required under section 1886(d)(8)(D) of the Act and published in the IPPS final rule for FY 2004.

c. Outliers. Section 1886(d)(5)(A) of the Act provides for payments in addition to the basic prospective payments, for "outlier" cases, that is, cases involving extraordinarily high costs. To qualify for outlier payments, a case must have costs above a fixed-loss cost threshold amount (a dollar amount by which the costs of a case must exceed payments in order to qualify for outlier payment). To determine whether the costs of a case exceed the fixed-loss threshold, a hospital's cost-to-charge ratio is applied to the total covered charges for the case to convert the charges to costs. Payments for eligible cases are then made based on a marginal cost factor, which is a percentage of the costs above the threshold.

Under section 1886(d)(5)(A)(iv) of the Act, outlier payments for any year must be projected to be not less than 5 percent nor more than 6 percent of total operating DRG payments plus outlier payments. Section 1886(d)(3)(B) of the Act requires the Secretary to reduce the average standardized amounts by a factor to account for the estimated proportion of total DRG payments made to outlier cases. Similarly, section 1886(d)(9)(B)(iv) of the Act requires the Secretary to reduce the average standardized amounts applicable to hospitals in Puerto Rico to account for the estimated proportion of total DRG payments made to outlier cases.

i. FY 2004 outlier fixed-loss cost threshold. In the August 1, 2002 IPPS final rule (67 FR 50124), we established a threshold for FY 2003 that was equal to the prospective payment rate for the DRG, plus any IME and DSH payments and any additional payments for new technology, plus $33,560. The marginal cost factor (the percent of costs paid after costs for the case exceed the threshold) was 80 percent.

In the March 5, 2003 **Federal Register** (67 FR 10420), we published proposed changes to our outlier policy. We noted recent analyses indicate that some hospitals have taken advantage of our existing outlier payment methodology to maximize their outlier payments. Therefore, we proposed three central changes to our outlier policy in the March 5, 2003 proposed rule.

The first of the proposed changes was that fiscal intermediaries would use more up-to-date data when determining the cost-to-charge ratio for each hospital. Currently, fiscal intermediaries use the hospital's most recent settled cost report. We proposed to revise our regulations to specify that fiscal intermediaries would use either the most recent settled or the most recent tentative settled cost report, whichever is from the latest reporting period.

The second proposed change was to remove the current requirement in our regulations specifying that a fiscal intermediary will assign a hospital the statewide average cost-to-charge ratio when the hospital has a cost-to-charge ratio that falls below established thresholds (3 standard deviations below the national geometric mean cost-to-charge ratio). We proposed that hospitals would receive their actual cost-to-charge ratios no matter how low their ratios actually fall.

The third proposal was to add a provision to our regulations to provide that the outlier payments for some hospitals may become subject to reconciliation when the hospitals' cost reports are settled. In addition, outlier payments would be subject to an adjustment to account for the time value of any outlier overpayments or underpayments that are ultimately reconciled.

However, as of the time this FY 2004 proposed rule was prepared, these proposed changes to the outlier policy had not been finalized. Therefore, the proposed changes have not been factored into the calculation of the proposed FY 2004 fixed-loss threshold. If these changes are made final prior to (or as part of) the publication of the final FY 2004 fixed-loss threshold, they will be reflected in the analysis used to establish the final FY 2004 threshold.

To calculate the proposed FY 2004 outlier thresholds, we simulated payments by applying proposed FY 2004 rates and policies using cases from the FY 2002 MedPAR file. Therefore, in order to determine the appropriate proposed FY 2003 threshold, it was necessary to inflate the charges on the MedPAR claims by 2 years, from FY 2002 to FY 2004.

As discussed in the August 1, 2002 IPPS final rule (67 FR 50124), rather than use the rate-of-cost increase from hospitals' FY 1998 and FY 1999 cost reports to project the rate of increase from FY 2001 to FY 2003, as had been done in prior years, we used a 2-year average annual rate of change in charges per case to calculate the FY 2003 outlier threshold.

We are proposing to continue to use a 2-year average annual rate of change in charges per case to establish the proposed FY 2004 threshold. The 2-year average annual rate of change in charges per case from FY 2000 to FY 2001, and from FY 2001 to FY 2002, was 12.8083 percent annually, or 27.3 percent over 2 years.

Using the methodology above for setting the charge inflation factors for FY 2004, we are proposing to establish a fixed-loss cost outlier threshold equal to the prospective payment rate for the DRG, plus any IME and DSH payments, and any add-on payments for new technology, plus $50,645.

This single threshold would be applicable to qualify for both operating and capital outlier payments. We also are proposing to maintain the marginal cost factor for cost outliers at 80 percent.

Again, any final rule subsequent to the March 5, 2003 proposed rule that implements changes to the outlier payment methodology is likely to affect how we will calculate the final FY 2004 outlier threshold. Therefore, the final FY 2004 threshold is likely to be different from this proposed threshold, as a result of any changes subsequent to the March 5, 2003 proposed rule. For example, if we were to implement the proposal to no longer apply the statewide average cost-to-charge ratio when hospitals' actual ratios fall below the established threshold (see below), this change would impact our calculation of the threshold.

ii. Other changes concerning outliers. As stated in the September 1, 1993 final rule (58 FR 46348), we establish outlier thresholds that are applicable to both hospital inpatient operating costs and hospital inpatient capital-related costs. When we modeled the combined operating and capital outlier payments, we found that using a common set of thresholds resulted in a higher percentage of outlier payments for capital-related costs than for operating costs. We project that the proposed thresholds for FY 2004 would result in outlier payments equal to 5.1 percent of operating DRG payments and 5.5 percent of capital payments based on the Federal rate.

In accordance with section 1886(d)(3)(B), we reduced the proposed FY 2004 standardized amounts by the same percentage to account for the projected proportion of payments paid to outliers. The proposed outlier adjustment factors to be applied to the standardized amounts for FY 2004 are as follows:

	Operating standardized amounts	Capital federal rate
National	0.948981	0.945484
Puerto Rico	0.981549	0.984490

We apply the outlier adjustment factors after removing the effects of the FY 2003 outlier adjustment factors on the standardized amounts.

To determine whether a case qualifies for outlier payments, we apply hospital-specific cost-to-charge ratios to the total covered charges for the case. Operating and capital costs for the case are calculated separately by applying separate operating and capital cost-to-charge ratios. These costs are then combined and compared with the fixed-loss outlier threshold.

Once again, although a final rule subsequent to the March 5, 2003 proposed rule on outliers may be published before (or as part of) the FY 2004 IPPS final rule, we are proposing changes for FY 2004 without taking the proposals contained in the March 5, 2003 proposed rule into account at this time.

For those hospitals for which the fiscal intermediary computes operating cost-to-charge ratios lower than 0.194 or greater than 1.223, or capital cost-to-charge ratios lower than 0.012 or greater than 0.163, we are proposing statewide average ratios would be used to calculate costs to determine whether a hospital qualifies for outlier payments.[7] Table 8A in section VI. of this Addendum contains the proposed statewide average operating cost-to-charge ratios for urban hospitals and for rural hospitals for which the fiscal intermediary is unable to compute a hospital-specific cost-to-charge ratio within the above range. These proposed statewide average ratios would replace the ratios published in the August 1, 2002 IPPS final rule (67 FR 50263). Table 8B in section VI. of this Addendum contains the proposed comparable statewide average capital cost-to-charge ratios. Again, the cost-to-charge ratios in Tables 8A and 8B would be used during FY 2004 when hospital-specific cost-to-charge ratios based on the latest settled cost report are either not available or are outside the range noted above.

iii. FY 2002 and FY 2003 outlier payments. In the August 1, 2002 IPPS final rule (67 FR 50125), we stated that, based on available data, we estimated that actual FY 2002 outlier payments would be approximately 6.9 percent of actual total DRG payments. This estimate was computed based on simulations using the FY 2001 MedPAR file (discharge data for FY 2001 bills). That is, the estimate of actual outlier payments did not reflect actual FY 2002 bills but instead reflected the application of FY 2002 rates and policies to available FY 2001 bills.

Our current estimate, using available FY 2002 bills, is that actual outlier payments for FY 2002 were approximately 7.9 percent of actual total DRG payments. Thus, the data indicate that, for FY 2002, the percentage of actual outlier payments relative to actual total payments is higher than we projected before FY 2002 (and thus exceeds the percentage by which we reduced the standardized amounts for FY 2002). Nevertheless, consistent with the policy and statutory interpretation we have maintained since the inception of the IPPS, we do not plan to make retroactive adjustments to outlier payments to ensure that total outlier payments for FY 2002 are equal to 5.1 percent of total DRG payments.

We currently estimate that actual outlier payments for FY 2003 will be approximately 5.5 percent of actual total DRG payments, 0.4 percentage points higher than the 5.1 percent we projected in setting outlier policies for FY 2003. This estimate is based on simulations using the FY 2002 MedPAR file (discharge data for FY 2002 bills). We used these data to calculate an estimate of the actual outlier percentage for FY 2003 by applying FY 2003 rates and policies including an outlier threshold of $33,560 to available FY 2002 bills. If changes to the outlier payment methodology are made effective during FY 2003, these may affect the actual percentage of FY 2003 outlier payments.

5. FY 2004 Standardized Amounts

The adjusted standardized amounts are divided into labor and nonlabor portions. Table 1A in section VI. of this Addendum contains the two national standardized amounts that we are proposing will be applicable to all hospitals, except hospitals in Puerto Rico. As described in section II.A.1. of this Addendum, we are not proposing to revise the labor share of the national standardized amount from 71.1 percent.

The following table illustrates the proposed changes from the FY 2003 national average standardized amounts. The first row in the table shows the updated (through FY 2003) average standardized amounts after restoring the FY 2003 offsets for outlier payments and geographic reclassification budget neutrality. The DRG reclassification and recalibration and wage index budget neutrality factor is cumulative. Therefore, the FY 2003 factor is not removed from the amounts in the table.

	Large urban	Other Areas
FY 2003 Base Rate (after removing reclassification budget neutrality and outlier offset)	Labor $3,212.32 Nonlabor 1,276.01	Labor $3,161.41) Nonlabor 1,285.01
Proposed FY 2004 Update Factor	1.035	1.035
Proposed FY 2004 DRG Recalibrations and Wage Index Budget Neutrality Factor	1.003133	1.003133
Proposed FY 2004 Reclassification Budget Neutrality Factor	0.991848	0.991848
Proposed FY 2004 Outlier Factor	0.948997	0.948997
Proposed Rate for FY 2004 (after multiplying FY 2003 base rate by above factors)	Labor $3,139.26 Nonlabor 1,276.01	Labor $3,089.56 Nonlabor 1,255.81

Under section 1886(d)(9)(A)(ii) of the Act, the Federal portion of the Puerto Rico payment rate is based on the discharge-weighted average of the national large urban standardized amount and the national other standardized amount (as set forth in Table 1A). The labor and nonlabor portions of the national average standardized amounts for Puerto Rico hospitals are set forth in Table 1C of section VI. of this Addendum. This table also includes the Puerto Rico standardized amounts. The labor share applied to the Puerto Rico standardized amount is 71.3 percent.

B. Adjustments for Area Wage Levels and Cost-of-Living

Tables 1A and 1C, as set forth in section VI. of this Addendum, contain the labor-related and nonlabor-related shares that we are proposing to use to calculate the prospective payment rates for hospitals located in the 50 States, the District of Columbia, and Puerto Rico. This section addresses two types of adjustments to the standardized amounts that are made in determining the proposed prospective payment rates as described in this Addendum.

1. Adjustment for Area Wage Levels

Sections 1886(d)(3)(E) and 1886(d)(9)(C)(iv) of the Act require that we make an adjustment to the labor-related portion of the national and Puerto Rico prospective payment rates, respectively, to account for area differences in hospital wage levels. This adjustment is made by multiplying the labor-related portion of the adjusted standardized amounts by the appropriate wage index for the area in which the hospital is located. In section III. of this preamble, we discuss the data and methodology for the proposed FY 2004 wage index. The proposed FY 2004 wage index is set forth in Tables 4A, 4B, 4C, and 4F of section VI. of this Addendum.

2. Adjustment for Cost-of-Living in Alaska and Hawaii

Section 1886(d)(5)(H) of the Act authorizes an adjustment to take into account the unique circumstances of hospitals in Alaska and Hawaii. Higher labor-related costs for these two States are taken into account in the adjustment for area wages described above. For FY 2004, we are proposing to adjust the payments for hospitals in Alaska and Hawaii by multiplying the nonlabor portion of the standardized amounts by the appropriate adjustment factor contained in the table below. If the Office of Personnel Management releases revised cost-of-living adjustment factors before July 1, 2003, we will publish them in the final rule and use them in determining FY 2004 payments.

[7] This range represents 3.0 standard deviations (plus or minus) from the mean of the log distribution of cost-to-charge ratios for all hospitals.

TABLE OF COST-OF-LIVING ADJUSTMENT FACTORS, ALASKA AND HAWAII HOSPITALS

Alaska—All areas	1.25
Hawaii:	
County of Honolulu	1.25
County of Hawaii	1.165
County of Kauai	1.2325
County of Maui	1.2375
County of Kalawao	1.2375

(The above factors are based on data obtained from the U.S. Office of Personnel Management.)

C. DRG Relative Weights

As discussed in section II. of the preamble, we have developed a classification system for all hospital discharges, assigning them into DRGs, and have developed relative weights for each DRG that reflect the resource utilization of cases in each DRG relative to Medicare cases in other DRGs. Table 5 of section VI. of this Addendum contains the relative weights that we are proposing to use for discharges occurring in FY 2004. These factors have been recalibrated as explained in section II. of the preamble.

D. Calculation of Proposed Prospective Payment Rates for FY 2004

General Formula for Calculation of Proposed Prospective Payment Rates for FY 2004

The proposed operating prospective payment rate for all hospitals paid under the IPPS located outside of Puerto Rico, except SCHs and MDHs, equals the Federal rate based on the proposed amounts in Table 1A in section VI. of this Addendum.

The proposed prospective payment rate for SCHs equals the higher of the proposed applicable Federal rate from Table 1A or the hospital-specific rate as described below. The proposed prospective payment rate for MDHs equals the higher of the Federal rate, or the Federal rate plus 50 percent of the difference between the Federal rate and the hospital-specific rate as described below. The proposed prospective payment rate for Puerto Rico equals 50 percent of the Puerto Rico rate plus 50 percent of the proposed national rate from Table 1C in section VI. of this Addendum.

1. Federal Rate

For discharges occurring on or after October 1, 2003 and before October 1, 2004, except for SCHs, MDHs, and hospitals in Puerto Rico, payment under the IPPS is based exclusively on the Federal rate.

The Federal rate is determined as follows:

Step 1—Select the appropriate average standardized amount considering the location of the hospital (large urban or other) (see Table 1A in section VI. of this Addendum).

Step 2—Multiply the labor-related portion of the standardized amount by the applicable wage index for the geographic area in which the hospital is located or the area to which the hospital is reclassified (see Tables 4A, 4B, and 4C of section VI. of this Addendum).

Step 3—For hospitals in Alaska and Hawaii, multiply the nonlabor-related portion of the standardized amount by the appropriate cost-of-living adjustment factor.

Step 4—Add the amount from Step 2 and the nonlabor-related portion of the standardized amount (adjusted, if appropriate, under Step 3).

Step 5—Multiply the final amount from Step 4 by the relative weight corresponding to the appropriate DRG (see Table 5 of section VI. of this Addendum).

The Federal rate as determined in Step 5 may then be further adjusted if the hospital qualifies for either the IME or DSH adjustment.

2. Hospital-Specific Rate (Applicable Only to SCHs and MDHs)

a. Calculation of Hospital-Specific Rate. Section 1886(b)(3)(C) of the Act provides that SCHs are paid based on whichever of the following rates yields the greatest aggregate payment: the Federal rate; the updated hospital-specific rate based on FY 1982 costs per discharge; the updated hospital-specific rate based on FY 1987 costs per discharge; or the updated hospital-specific rate based on FY 1996 costs per discharge.

Section 1886(d)(5)(G) of the Act provides that MDHs are paid based on whichever of the following rates yields the greatest aggregate payment: the Federal rate or the Federal rate plus 50 percent of the difference between the Federal rate and the greater of the updated hospital-specific rates based on either FY 1982 or FY 1987 costs per discharge. MDHs do not have the option to use their FY 1996 hospital-specific rate.

Hospital-specific rates have been determined for each of these hospitals based on either the FY 1982 costs per discharge, the FY 1987 costs per discharge or, for SCHs, the FY 1996 costs per discharge. For a more detailed discussion of the calculation of the hospital-specific rates, we refer the reader to the September 1, 1983 interim final rule (48 FR 39772); the April 20, 1990 final rule with comment (55 FR 15150); the September 4, 1990 final rule (55 FR 35994); and the August 1, 2000 final rule (65 FR 47082). In addition, for both SCHs and MDHs, the hospital-specific rate is adjusted by the proposed budget neutrality adjustment factor (that is, by 1.003133) as discussed in section II.A.4.a. of this Addendum. The resulting rate would be used in determining the payment rate an SCH or MDH would receive for its discharges beginning on or after October 1, 2003.

b. Updating the FY 1982, FY 1987, and FY 1996 Hospital-Specific Rates for FY 2004. We are proposing to increase the hospital-specific rates by 3.5 percent (the hospital market basket percentage) for SCHs and MDHs for FY 2004. Section 1886(b)(3)(C)(iv) of the Act provides that the update factor applicable to the hospital-specific rates for SCHs is equal to the update factor provided under section 1886(b)(3)(B)(iv) of the Act, which, for SCHs in FY 2004, is the market basket rate of increase. Section 1886(b)(3)(D) of the Act provides that the update factor applicable to the hospital-specific rates for MDHs also equals the update factor provided under section 1886(b)(3)(B)(iv) of the Act, which, for FY 2004, is the market basket rate.

3. General Formula for Calculation of Prospective Payment Rates for Hospitals Located in Puerto Rico Beginning On or After October 1, 2003 and Before October 1, 2004

a. Puerto Rico Rate. The Puerto Rico prospective payment rate is determined as follows:

Step 1—Select the appropriate adjusted average standardized amount considering the large urban or other designation of the hospital (see Table 1C of section VI. of the Addendum).

Step 2—Multiply the labor-related portion of the standardized amount by the appropriate Puerto Rico-specific wage index (see Table 4F of section VI. of the Addendum).

Step 3—Add the amount from Step 2 and the nonlabor-related portion of the standardized amount.

Step 4—Multiply the result in Step 3 by 50 percent.

Step 5—Multiply the amount from Step 4 by the appropriate DRG relative weight (see Table 5 of section VI. of the Addendum).

b. National Rate. The national prospective payment rate is determined as follows:

Step 1—Multiply the labor-related portion of the national average standardized amount (see Table 1C of section VI. of the Addendum) by the appropriate national wage index (see Tables 4A and 4B of section VI. of the Addendum).

Step 2—Add the amount from Step 1 and the nonlabor-related portion of the national average standardized amount.

Step 3—Multiply the result in Step 2 by 50 percent.

Step 4—Multiply the amount from Step 3 by the appropriate DRG relative weight (see Table 5 of section VI. of the Addendum).

The sum of the Puerto Rico rate and the national rate computed above equals the prospective payment for a given discharge for a hospital located in Puerto Rico. This rate may then be further adjusted if the hospital qualifies for either the IME or DSH adjustment.

III. Proposed Changes to Payment Rates for Acute Care Hospital Inpatient Capital-Related Costs for FY 2004

The PPS for acute care hospital inpatient capital-related costs was implemented for cost reporting periods beginning on or after October 1, 1991. Effective with that cost reporting period and during a 10-year transition period extending through FY 2001, acute care hospital inpatient capital-related costs were paid on the basis of an increasing proportion of the capital PPS Federal rate and a decreasing proportion of a hospital's historical costs for capital.

The basic methodology for determining Federal capital prospective rates is set forth in regulations at §§ 412.308 through 412.352. Below we discuss the factors that we are proposing to use to determine the capital Federal rate for FY 2004, which would be effective for discharges occurring on or after October 1, 2003. The 10-year transition period ended with hospital cost reporting periods beginning on or after October 1, 2001 (FY 2002). Therefore, for cost reporting periods beginning in FY 2002, all hospitals (except "new" hospitals under

§§ 412.304(c)(2) and 412.324(b)) are paid based on 100 percent of the capital Federal rate.

For FY 1992, we computed the standard Federal payment rate for capital-related costs under the IPPS by updating the FY 1989 Medicare inpatient capital cost per case by an actuarial estimate of the increase in Medicare inpatient capital costs per case. Each year after FY 1992, we update the standard Federal rate, as provided in § 412.308(c)(1), to account for capital input price increases and other factors. Section 412.308(c)(2) provides that the Federal rate is adjusted annually by a factor equal to the estimated proportion of outlier payments under the Federal rate to total capital payments under the Federal rate. In addition, § 412.308(c)(3) requires that the Federal rate be reduced by an adjustment factor equal to the estimated proportion of payments for (regular and special) exception under § 412.348. Section 412.308(c)(4)(ii) requires that the standard Federal rate be adjusted so that the annual DRG reclassification and the recalibration of DRG weights and changes in the geographic adjustment factor are budget neutral.

For FYs 1992 through 1995, § 412.352 required that the Federal rate also be adjusted by a budget neutrality factor so that aggregate payments for inpatient hospital capital costs were projected to equal 90 percent of the payments that would have been made for capital-related costs on a reasonable cost basis during the fiscal year. That provision expired in FY 1996. Section 412.308(b)(2) describes the 7.4 percent reduction to the rate that was made in FY 1994, and § 412.308(b)(3) describes the 0.28 percent reduction to the rate made in FY 1996 as a result of the revised policy of paying for transfers. In FY 1998, we implemented section 4402 of Public Law 105–33, which requires that, for discharges occurring on or after October 1, 1997, and before October 1, 2002, the unadjusted standard Federal rate is reduced by 17.78 percent. As we discussed in the August 1, 2002 IPPS final rule (67 FR 50102) and implemented in § 412.308(b)(6)), a small part of that reduction was restored effective October 1, 2002.

To determine the appropriate budget neutrality adjustment factor and the regular exceptions payment adjustment during the 10-year transition period, we developed a dynamic model of Medicare inpatient capital-related costs, that is, a model that projected changes in Medicare inpatient capital-related costs over time. With the expiration of the budget neutrality provision, the capital cost model was only used to estimate the regular exceptions payment adjustment and other factors during the transition period. As we explained in the August 1, 2001 IPPS final rule (66 FR 39911), beginning in FY 2003, an adjustment for regular exception payments is no longer necessary because regular exception payments were only made for cost reporting periods beginning on or after October 1, 1991, and before October 1, 2001 (see § 412.348(b)). Since payments are no longer being made under the regular exception policy in FY 2003 and after, we no longer use the capital-cost model. The capital cost model and its application during the transition period are described in Appendix B of the August 1, 2001 IPPS final rule (66 FR 40099).

In accordance with section 1886(d)(9)(A) of the Act, under the IPPS for acute care hospital operating costs, hospitals located in Puerto Rico are paid for operating costs under a special payment formula. Prior to FY 1998, hospitals in Puerto Rico were paid a blended rate that consisted of 75 percent of the applicable standardized amount specific to Puerto Rico hospitals and 25 percent of the applicable national average standardized amount. However, effective October 1, 1997, as a result of section 4406 of Public Law 105–33, operating payments to hospitals in Puerto Rico are based on a blend of 50 percent of the applicable standardized amount specific to Puerto Rico hospitals and 50 percent of the applicable national average standardized amount. In conjunction with this change to the operating blend percentage, effective with discharges on or after October 1, 1997, we compute capital payments to hospitals in Puerto Rico based on a blend of 50 percent of the Puerto Rico rate and 50 percent of the Federal rate.

Section 412.374 provides for the use of this blended payment system for payments to Puerto Rico hospitals under the PPS for acute care hospital inpatient capital-related costs. Accordingly, for capital-related costs, we compute a separate payment rate specific to Puerto Rico hospitals using the same methodology used to compute the national Federal rate for capital.

A. Determination of Proposed Federal Hospital Inpatient Capital-Related Prospective Payment Rate Update

In the final IPPS rule published in the **Federal Register** on August 1, 2002 (67 FR 50127), we established a Federal rate of $407.01 for FY 2003. Section 402(b) of Public Law 108–7 requires that, effective for discharges occurring on or after April 1, 2003, and before October 1, 2003, the Federal rate for operating costs for all IPPS hospitals would be based on the large urban standardized amount. However, for discharges occurring on or after October 1, 2003, the Federal rate will again be calculated based on separate average standardized amounts for hospitals in large urban areas and for hospitals in other areas. In addition, a correction notice to the FY 2003 final IPPS rule issued in the **Federal Register** on April 25, 2003 (68 FR 22272) contains corrections and revisions to the wage index and geographic adjustment factor (GAF). In conjunction with the change to the operating PPS standardized amounts made by Public Law 108–7 and the wage index and GAF corrections, we have established a capital PPS standard Federal rate of $406.93 effective for discharges occurring on or after April 1, 2003 through September 30, 2003. The rates effective for discharges occurring on or after April 1, 2003 through September 30, 2003, were used in determining the proposed FY 2004 rates. As a result of the changes that we are proposing to the factors used to establish the Federal rate that are explained in this Addendum, the proposed FY 2004 capital standard Federal rate is $411.72.

In the discussion that follows, we explain the factors that were used to determine the proposed FY 2004 capital Federal rate. In particular, we explain why the proposed FY 2004 Federal rate has increased 1.18 percent compared to the FY 2003 Federal rate (effective for discharges occurring on or after April 1, 2003 through September 30, 2003). We also estimate aggregate capital payments will increase by 2.5 percent during this same period. This increase is primarily due to the increase in the number of hospital admissions and the increase in case-mix. This increase in capital payments is slightly less than last year (5.81 percent), mostly due to the restoration of the 2.1 percent reduction to the capital Federal rate in FY 2003 (§ 412.308(b)(6)).

Total payments to hospitals under the IPPS are relatively unaffected by changes in the capital prospective payments. Since capital payments constitute about 10 percent of hospital payments, a 1-percent change in the capital Federal rate yields only about 0.1 percent change in actual payments to hospitals. Aggregate payments under the capital PPS are estimated to increase in FY 2004 compared to FY 2003.

1. Proposed Standard Federal Rate Update

a. Description of the Update Framework. Under § 412.308(c)(1), the standard Federal rate is updated on the basis of an analytical framework that takes into account changes in a capital input price index (CIPI) and several other policy adjustment factors. Specifically, we have adjusted the projected CIPI rate of increase as appropriate each year for case-mix index-related changes, for intensity, and for errors in previous CIPI forecasts. The proposed update factor for FY 2004 under that framework is 0.7 percent, based on data available at this time. This proposed update factor is based on a projected 0.7 percent increase in the CIPI, a 0.0 percent adjustment for intensity, a 0.0 percent adjustment for case-mix, a 0.0 percent adjustment for the FY 2002 DRG reclassification and recalibration, and a forecast error correction of 0.0 percent. We explain the basis for the FY 2004 CIPI projection in section III.C. of this Addendum. Below we describe the policy adjustments that have been applied.

The case-mix index is the measure of the average DRG weight for cases paid under the IPPS. Because the DRG weight determines the prospective payment for each case, any percentage increase in the case-mix index corresponds to an equal percentage increase in hospital payments.

The case-mix index can change for any of several reasons:

- The average resource use of Medicare patients changes ("real" case-mix change);
- Changes in hospital coding of patient records result in higher weight DRG assignments (coding effects); and
- The annual DRG reclassification and recalibration changes may not be budget neutral ("reclassification effect").

We define real case-mix change as actual changes in the mix (and resource requirements) of Medicare patients as opposed to changes in coding behavior that result in assignment of cases to higher weighted DRGs but do not reflect higher resource requirements. In the update framework for the PPS for operating costs, we adjust the update upwards to allow for real case-mix change, but remove the effects of coding changes on the case-mix index. We also remove the effect on total payments of prior year changes to the DRG classifications and relative weights, in order to retain budget neutrality for all case-mix index-related changes other than patient severity. (For example, we adjusted for the effects of the FY 2002 DRG reclassification and recalibration as part of our update for FY 2004.) We have adopted this case-mix index adjustment in the capital update framework as well.

For FY 2004, we are projecting a 1.0 percent total increase in the case-mix index. We estimate that real case-mix increase will equal 1.0 percent in FY 2004. Therefore, the net adjustment for case-mix change in FY 2004 is 0.0 percentage points.

We estimate that FY 2002 DRG reclassification and recalibration will result in a 0.0 percent change in the case-mix when compared with the case-mix index that would have resulted if we had not made the reclassification and recalibration changes to the DRGs. Therefore, we are making a 0.0 percent adjustment for DRG reclassification and recalibration in the update for FY 2004 to maintain budget neutrality.

The capital update framework contains an adjustment for forecast error. The input price index forecast is based on historical trends and relationships ascertainable at the time the update factor is established for the upcoming year. In any given year, there may be unanticipated price fluctuations that may result in differences between the actual increase in prices and the forecast used in calculating the update factors. In setting a prospective payment rate under the framework, we make an adjustment for forecast error only if our estimate of the change in the capital input price index for any year is off by 0.25 percentage points or more. There is a 2-year lag between the forecast and the measurement of the forecast error. A forecast error of 0.2 percentage points was calculated for the FY 2002 update. That is, current historical data indicate that the forecasted FY 2002 CIPI used in calculating the FY 2002 update factor (0.7 percent) overstated the actual realized price increases (0.5 percent) by 0.2 percentage points. This slight overprediction was mostly due to an underestimation of the interest rate cuts by the Federal Reserve Board in 2002, which impacted the interest component of the CIPI. However, since this estimation of the change in the CIPI is less than 0.25 percentage points, it is not reflected in the update recommended under this framework. Therefore, we are making a 0.0 percent adjustment for forecast error in the update for FY 2004.

Under the capital PPS system framework, we also make an adjustment for changes in intensity. We calculate this adjustment using the same methodology and data that are used in the framework for the operating PPS. The intensity factor for the operating update framework reflects how hospital services are utilized to produce the final product, that is, the discharge. This component accounts for changes in the use of quality-enhancing services, for changes in within-DRG severity, and for expected modification of practice patterns to remove noncost-effective services.

We calculate case-mix constant intensity as the change in total charges per admission, adjusted for price level changes (the CPI for hospital and related services) and changes in real case-mix. The use of total charges in the calculation of the intensity factor makes it a total intensity factor, that is, charges for capital services are already built into the calculation of the factor. Therefore, we have incorporated the intensity adjustment from the operating update framework into the capital update framework. Without reliable estimates of the proportions of the overall annual intensity increases that are due, respectively, to ineffective practice patterns and to the combination of quality-enhancing new technologies and within-DRG complexity, we assume, as in the operating update framework, that one-half of the annual increase is due to each of these factors. The capital update framework thus provides an add-on to the input price index rate of increase of one-half of the estimated annual increase in intensity, to allow for within-DRG severity increases and the adoption of quality-enhancing technology.

As we discussed in the May 9, 2002 proposed rule (67 FR 51514), we have developed a Medicare-specific intensity measure based on a 5-year average. Past studies of case-mix change by the RAND Corporation ("Has DRG Creep Crept Up? Decomposing the Case Mix Index Change Between 1987 and 1988" by G. M. Carter, J. P. Newhouse, and D. A. Relles, R–4098–HCFA/ProPAC (1991)) suggest that real case-mix change was not dependent on total change, but was usually a fairly steady 1.0 to 1.4 percent per year. We use 1.4 percent as the upper bound because the RAND study did not take into account that hospitals may have induced doctors to document medical records more completely in order to improve payment.

We calculate case-mix constant intensity as the change in total charges per admission, adjusted for price level changes (the CPI for hospital and related services), and changes in real case-mix. As we noted above, in accordance with § 412.308(c)(1)(ii), we began updating the standard Federal capital rate in FY 1996 using an update framework that takes into account, among other things, allowable changes in the intensity of hospital services. For FYs 1996 through 2001, we found that case-mix constant intensity was declining and we established a 0.0 percent adjustment for intensity in each of those years. For FYs 2001 and 2002, we found that case-mix constant intensity was increasing and we established a 0.3 percent adjustment and 1.0 percent adjustment for intensity, respectively.

Using the methodology described above, for FY 2004 we examined the change in total charges per admission, adjusted for price level changes (the CPI for hospital and related services), and changes in real case-mix for FYs 1998 though 2002. We found that, over this period and in particular the last 3 years of this period (FYs 2000 through 2002), the charge data appear to be skewed. More specifically, we found a dramatic increase in hospital charges for FYs 2000 through 2002 without a corresponding increase in hospital case-mix index. If hospitals were treating new or different types of cases, which would result in an appropriate increase in charges per discharge, then we would expect hospitals' case-mix to increase proportionally.

The timing of this increase in charge growth is consistent with the dramatic increase in charges that we discussed in the March 5, 2003 high-cost outlier proposed rule (68 FR 10420 through 14029). As we discussed in that proposed rule, because hospitals have the ability to increase their outlier payments through dramatic charge increases, we proposed several changes in our high-cost outlier policy at §§ 412.84(i) and (m) in order to prevent hospitals from taking advantage of our current outlier policy.

As discussed above, because our intensity calculation relies heavily upon charge data and we believe that this charge data may be inappropriately skewed, we are proposing a 0.0 percent adjustment for intensity in FY 2004. In past FYs (1996 through 2000) when we found intensity to be declining, we believed a zero (rather then negative) intensity adjustment was appropriate. Similarly, we believe that it is appropriate to propose a zero intensity adjustment for FY 2004 until we believe that any increase in charges can be tied to intensity rather then to attempts to maximize outlier payments.

Above we described the basis of the components used to develop the proposed 0.7 percent capital update factor for FY 2004 as shown in the table below.

CMS'S PROPOSED FY 2004 UPDATE FACTOR TO THE CAPITAL FEDERAL RATE

Capital Input Price Index	0.7
Intensity	0.0
Case-Mix Adjustment Factors:	
Projected Case-Mix Change	−1.0
Real Across DRG Change	1.0
Subtotal	0.0
Effect of FY 2002 Reclassification and Recalibration	0.0
Forecast Error Correction	0.0

CMS'S PROPOSED FY 2004 UPDATE FACTOR TO THE CAPITAL FEDERAL RATE—Continued

Total Proposed Update	0.7

b. Comparison of CMS and MedPAC Update Recommendation. In the past, MedPAC has included update recommendations for capital PPS in a Report to Congress. In its March 2003 Report to Congress, MedPAC did not make an update recommendation for capital PPS payments. However, in that same report, MedPAC made an update recommendation for hospital inpatient and outpatient services (page 4). MedPAC stated that hospital inpatient and outpatient services should be considered together because they are so closely interrelated. Their recommendation is based on an assessment of whether payments are adequate to cover the costs of efficient providers, an estimate of input price inflation (measured by the market basket index), and an adjustment for technological changes, which is offset by reasonable expectations in productivity gains.

2. Outlier Payment Adjustment Factor

Section 412.312(c) establishes a unified outlier methodology for inpatient operating and inpatient capital-related costs. A single set of thresholds is used to identify outlier cases for both inpatient operating and inpatient capital-related payments. Section 412.308(c)(2) provides that the standard Federal rate for inpatient capital-related costs be reduced by an adjustment factor equal to the estimated proportion of capital-related outlier payments to total inpatient capital-related PPS payments. The outlier thresholds are set so that operating outlier payments are projected to be 5.1 percent of total operating DRG payments.

In the August 1, 2002 IPPS final rule (67 FR 50129), we estimated that outlier payments for capital in FY 2003 would equal 5.31 percent of inpatient capital-related payments based on the FY 2003 Federal rate. Accordingly, we applied an outlier adjustment factor of 0.9469 to the FY 2003 Federal rate. Based on the thresholds as set forth in section II.A.4.c. of this Addendum, we estimate that outlier payments for capital would equal 5.45 percent of inpatient capital-related payments based on the Federal rate in FY 2004. Therefore, we are proposing an outlier adjustment factor of 0.9455 to the Federal rate. Thus, the projected percentage of capital outlier payments to total capital standard payments for FY 2004 is higher than the percentage for FY 2003.

The outlier reduction factors are not built permanently into the rates; that is, they are not applied cumulatively in determining the Federal rate. Therefore, the net proposed change in the outlier adjustment to the Federal rate for FY 2004 is 0.9985 (0.9455/0.9469). The outlier adjustment decreases the proposed FY 2004 Federal rate by 0.15 percent compared with the FY 2003 outlier adjustment.

3. Budget Neutrality Adjustment Factor for Changes in DRG Classifications and Weights and the Geographic Adjustment Factor

Section 412.308(c)(4)(ii) requires that the Federal rate be adjusted so that aggregate payments for the fiscal year based on the Federal rate after any changes resulting from the annual DRG reclassification and recalibration and changes in the geographic adjustment factor (GAF) are projected to equal aggregate payments that would have been made on the basis of the Federal rate without such changes.

Since we implemented a separate geographic adjustment factor for Puerto Rico, we apply separate budget neutrality adjustments for the national geographic adjustment factor and the Puerto Rico geographic adjustment factor. We apply the same budget neutrality factor for DRG reclassifications and recalibration nationally and for Puerto Rico. Separate adjustments were unnecessary for FY 1998 and earlier since the geographic adjustment factor for Puerto Rico was implemented in FY 1998.

In the past, we used the actuarial capital cost model (described in Appendix B of the August 1, 2001 IPPS final rule (66 FR 40099)) to estimate the aggregate payments that would have been made on the basis of the Federal rate with and without changes in the DRG classifications and weights and in the GAF to compute the adjustment required to maintain budget neutrality for changes in DRG weights and in the GAF. During the transition period, the capital cost model was also used to estimate the regular exception payment adjustment factor. As we explain in section III.A.4. of this Addendum, beginning in FY 2003 an adjustment for regular exception payments is no longer necessary. Therefore, we are no longer using the capital cost model. Instead, we are using historical data based on hospitals' actual cost experiences to determine the exceptions payment adjustment factor for special exceptions payments.

To determine the proposed factors for FY 2004, we compared (separately for the national rate and the Puerto Rico rate) estimated aggregate Federal rate payments based on the FY 2003 DRG relative weights and the FY 2003 GAF to estimated aggregate Federal rate payments based on the proposed FY 2004 relative weights and the proposed FY 2004 GAF. In the August 1, 2002 IPPS final rule (67 FR 50129) for FY 2003, the budget neutrality adjustment factors were 0.9885 for the national rate and 0.9963 for the Puerto Rico rate. As a result of the revisions to the GAF effective for discharges occurring on or after April 1, 2003 through September 30, 2003, the budget neutrality adjustment factor is 0.9983 for the national rate for discharges occurring on or before April 1, 2003 through September 30, 2003. The budget neutrality adjustment factor for the Puerto Rico rate remained unchanged (0.9963). As we noted above, the rates effective for discharges occurring on or after April 1, 2003 through September 30, 2003 were used in determining the proposed FY 2004 rates. In making the comparison, we set the regular and special exceptions reduction factors to 1.00.

To achieve budget neutrality for the changes in the national GAF, based on calculations using updated data, we are proposing to apply an incremental budget neutrality adjustment of 1.0034 for FY 2004 to the previous cumulative FY 2003 adjustment (0.9883), yielding a proposed cumulative adjustment of 0.9929 through FY 2004. For the Puerto Rico GAF, we are proposing to apply an incremental budget neutrality adjustment of 1.0002 for FY 2004 to the previous cumulative FY 2003 adjustment (0.9963), yielding a proposed cumulative adjustment of 0.9964 through FY 2004. (This is the rounded result of a calculation performed on unrounded numbers.)

We then compared estimated aggregate Federal rate payments based on the FY 2003 DRG relative weights and the FY 2003 GAF to estimated aggregate Federal rate payments based on the proposed FY 2004 DRG relative weights and the proposed FY 2004 GAF. The proposed incremental adjustment for DRG classifications and changes in relative weights is 1.0004 both nationally and for Puerto Rico. The proposed cumulative adjustments for DRG classifications and changes in relative weights and for changes in the GAF through FY 2004 are 0.9920 nationally and 0.9968 for Puerto Rico (this is the rounded result of a calculation performed with unrounded numbers). The following table summarizes the adjustment factors for each fiscal year:

BUDGET NEUTRALITY ADJUSTMENT FOR DRG RECLASSIFICATIONS AND RECALIBRATION AND THE GEOGRAPHIC ADJUSTMENT FACTORS

Fiscal year	National				Puerto Rico			
	Incremental adjustment			Cumulative	Incremental adjustment			Cumulative
	Geographic adjustment factor	DRG reclassifications and recalibration	Combined		Geographic adjustment factor	DRG reclassifications and recalibration	Combined	
1992				1.00000				
1993			0.99800	0.99800				
1994			1.00531	1.00330				
1995			0.99980	1.00310				
1996			0.99940	1.00250				
1997			0.99873	1.00123				
1998			0.99892	1.00015				1.00000
1999	0.99944	1.00335	1.00279	1.00294	0.99898	1.00335	1.00233	1.00233
2000	0.99857	0.99991	0.99848	1.00142	0.99910	0.99991	0.99901	1.00134
2001 [1]	0.99782	1.00009	0.99791	0.99933	1.00365	1.00009	1.00374	1.00508
2001 [2]	[3] 0.99771	[3] 1.00009	[3] 0.99780	0.99922	[3] 1.00365	[3] 1.00009	[3] 1.00374	1.00508
2002	[4] 0.99666	[4] 0.99668	[4] 0.99335	0.99268	[4] 0.98991	[4] 0.99668	[4] 0.99662	0.99164
2003 [5]	0.99915	0.99662	0.99577	0.98848	1.00809	0.99662	1.00468	0.99628
2003 [6]	[7] 0.99896	[7] 0.99662	[7] 0.99558	0.98830	[7] 1.00809	[7] 0.99662	[7] 1.00468	0.99628
2004	[8] 1.00341	[8] 1.00036	[8] 1.00376	0.99202	[8] 1.00015	[8] 1.00036	[8] 1.00051	0.99679

[1] Factors effective for the first half of FY 2001 (October 2000 through March 2001).
[2] Factors effective for the second half of FY 2001 (April 2001 through September 2001).
[3] Incremental factors are applied to FY 2000 cumulative factors.
[4] Incremental factors are applied to the cumulative factors for the first half of FY 2001.
[5] Factors effective for the first half of FY 2003 (October 2002 through March 2003).
[6] Factors effective for the second half of FY 2003 (April 2003 through September 2003).
[7] Incremental factors are applied to FY 2002 cumulative factors.
[8] Incremental factors are applied to the cumulative factors for the second half of FY 2003.

The methodology used to determine the proposed recalibration and geographic (DRG/GAF) budget neutrality adjustment factor for FY 2004 is similar to that used in establishing budget neutrality adjustments under the PPS for operating costs. One difference is that, under the operating PPS, the budget neutrality adjustments for the effect of geographic reclassifications are determined separately from the effects of other changes in the hospital wage index and the DRG relative weights. Under the capital PPS, there is a single DRG/GAF budget neutrality adjustment factor (the national rate and the Puerto Rico rate are determined separately) for changes in the GAF (including geographic reclassification) and the DRG relative weights. In addition, there is no adjustment for the effects that geographic reclassification has on the other payment parameters, such as the payments for serving low-income patients, indirect medical education payments, or the large urban add-on payments.

In the August 1, 2002 IPPS final rule (67 FR 50129), we calculated a GAF/DRG budget neutrality factor of 0.9957 for FY 2003. As we noted above, as a result of the revisions to the GAF effective for discharges occurring on or after April 1, 2003 through September 30, 2003, we calculated a GAF/DRG budget neutrality factor of 0.9956 for discharges occurring on or after April 1, 2003 through September 30, 2003. Furthermore, the rates effective for discharges occurring on or after April 1, 2003 through September 30, 2003 were used in determining the proposed FY 2004 rates. For FY 2004, we are proposing a GAF/DRG budget neutrality factor of 1.00038. The GAF/DRG budget neutrality factors are built permanently into the rates; that is, they are applied cumulatively in determining the Federal rate. This follows from the requirement that estimated aggregate payments each year be no more or less than they would have been in the absence of the annual DRG reclassification and recalibration and changes in the GAF. The proposed incremental change in the adjustment from FY 2003 to FY 2004 is 1.00038. The proposed cumulative change in the rate due to this adjustment is 0.9920 (the product of the incremental factors for FY 1993, FY 1994, FY 1995, FY 1996, FY 1997, FY 1998, FY 1999, FY 2000, FY 2001, FY 2002, FY 2003, and the proposed incremental factor for FY 2004: $0.9980 \times 1.0053\ 0.9998 \times 0.9994 \times 0.9987 \times 0.9989 \times 1.0028 \times 0.9985 \times 0.9979 \times 0.9934 \times 0.9956 \times 1.00038 = 0.9920$).

This proposed factor accounts for DRG reclassifications and recalibration and for changes in the GAF. It also incorporates the effects on the GAF of FY 2004 geographic reclassification decisions made by the MGCRB compared to FY 2003 decisions. However, it does not account for changes in payments due to changes in the DSH and IME adjustment factors or in the large urban add-on.

4. Exceptions Payment Adjustment Factor

Section 412.308(c)(3) requires that the standard capital Federal rate be reduced by an adjustment factor equal to the estimated proportion of additional payments for both regular exceptions and special exceptions under § 412.348 relative to total capital PPS payments. In estimating the proportion of regular exception payments to total capital PPS payments during the transition period, we used the actuarial capital cost model originally developed for determining budget neutrality (described in Appendix B of the August 1, 2001 IPPS final rule (66 FR 40099)) to determine the exceptions payment adjustment factor, which was applied to both the Federal and hospital-specific rates.

An adjustment for regular exception payments is no longer necessary in determining the FY 2004 capital Federal rate because, in accordance with § 412.348(b), regular exception payments were only made for cost reporting periods beginning on or after October 1, 1991 and before October 1, 2001. Accordingly, as we explained in the August 1, 2001 IPPS final rule (66 FR 39949), in FY 2003 and subsequent fiscal years, no payments will be made under the regular exceptions provision. However, in accordance with § 412.308(c), we still need to compute a budget neutrality adjustment for special exception payments under § 412.348(g). We describe our methodology for determining the special exceptions adjustment used in calculating the proposed FY 2004 capital Federal rate below.

Under the special exceptions provision specified at § 412.348(g)(1), eligible hospitals include SCHs, urban hospitals with at least 100 beds that have a disproportionate share percentage of at least 20.2 percent or qualify for DSH payments under § 412.106(c)(2), and hospitals with a combined Medicare and Medicaid inpatient utilization of at least 70 percent. An eligible hospital may receive special exceptions payments if it meets (1) a project need requirement as described at § 412.348(g)(2), which, in the case of certain urban hospitals, includes an excess capacity test as described at § 412.348(g)(4); (2) an age

of assets test as described at § 412.348(g)(3); and (3) a project size requirement as described at § 412.348(g)(5).

As we explained in the August 1, 2001 IPPS final rule (66 FR 39912 through 39914), in order to determine the estimated proportion of special exceptions payments to total capital payments, we attempted to identify the universe of eligible hospitals that may potentially qualify for special exceptions payments. First, we identified hospitals that met the eligibility requirements at § 412.348(g)(1). Then we determined each hospital's average fixed asset age in the earliest available cost report starting in FY 1992 and subsequent fiscal years. For each of those hospitals, we calculated the average fixed asset age by dividing the accumulated depreciation by the current year's depreciation. In accordance with § 412.348(g)(3), a hospital must have an average age of buildings and fixed assets above the 75th percentile of all hospitals in the first year of the capital PPS. In the September 1, 1994 final rule (59 FR 45385), we stated that, based on the June 1994 update of the cost report files in HCRIS, the 75th percentile for buildings and fixed assets for FY 1992 was 16.4 years. However, we noted that we would make a final determination of that value on the basis of more complete cost report information at a later date. In the August 29, 1997 final rule (62 FR 46012), based on the December 1996 update of HCRIS and the removal of outliers, we finalized the 75th percentile for buildings and fixed assets for FY 1992 as 15.4 years. Thus, we eliminated any hospitals from the potential universe of hospitals that may qualify for special exception payments if its average age of fixed assets did not exceed 15.4 years.

For the hospitals remaining in the potential universe, we estimated project-size by using the fixed capital acquisitions shown on Worksheet A7 from the following HCRIS cost reports updated through December 2002.

PPS year	Cost reporting periods beginning in . . .
IX	FY 1992.
X	FY 1993.
XI	FY 1994.
XII	FY 1995.
XIII	FY 1996.
XIV	FY 1997.
XV	FY 1998.
XVI	FY 1999.
XVII	FY 2000.
XVIII	FY 2001.

Because the project phase-in may overlap 2 cost reporting years, we added together the fixed acquisitions from sequential pairs of cost reports to determine project size. Under § 412.348(g)(5), the hospital's project cost must be at least $200 million or 100 percent of its operating cost during the first 12-month cost reporting period beginning on or after October 1, 1991. We calculated the operating costs from the earliest available cost report starting in FY 1992 and later by subtracting inpatient capital costs from inpatient costs (for all payers). We did not subtract the direct medical education costs as those costs are not available on every update of the HCRIS minimum data set. If the hospital met the project size requirement, we assumed that it also met the project need requirements at § 412.348(g)(2) and the excess capacity test for urban hospitals at § 412.348(g)(4).

Because we estimate that so few hospitals will qualify for special exceptions, projecting costs, payments, and margins would result in high statistical variance. Consequently, we decided to model the effects of special exceptions using historical data based on hospitals' actual cost experiences. If we determined that a hospital may qualify for special exceptions, we modeled special exceptions payments from the project start date through the last available cost report (FY 2000). (Although some FY 2001 cost reports are available in HCRIS, only a few hospitals have submitted FY 2001 costs. Consequently, too few cost reports are available to reliably model FY 2001 special exceptions payments.) For purposes of modeling, we used the cost and payment data on the cost reports from HCRIS assuming that special exceptions would begin at the start of the qualifying project. In other words, when modeling costs and payment data, we ignored any regular exception payments that these hospitals may otherwise have received as if there had not been regular exception provision during the transition period. In projecting an eligible hospital's special exception payment, we applied the 70-percent minimum payment level, the cumulative comparison of current year capital PPS payments and costs, and the cumulative operating margin offset (excluding 75 percent of operating DSH payments).

Our modeling of special exception payments for FY 2004 produced the following results:

Cost report	Number of hospitals eligible for special exceptions	Special exceptions as a fraction of capital payments to all hospitals
PPS IX	.....	.....
PPS X	.....	.....
PPS XI	1	.....
PPS XII	4	.....
PPS XIII	5	.....
PPS XIV	11	.....
PPS XV	15	.....
PPS XVI	24	0.0002
PPS XVII	27	0.0005
PPS XVIII	N/A	N/A

We note that hospitals still have one more cost reporting period (PPS XVIII) to complete their projects in order to be eligible for special exceptions payments, and, therefore, we estimate that about 30 hospitals could qualify for special exceptions payments. Thus, we project that special exception payments as a fraction of capital payments to all hospitals to be approximately 0.0005.

Because special exceptions are budget neutral, we are proposing to offset the Federal capital rate by 0.05 percent for special exceptions payments for FY 2004. Therefore, the proposed exceptions adjustment factor would equal 0.9995 (1 − 0.0005) to account for special exceptions payments in FY 2004. Furthermore, we are proposing to estimate the exceptions payment adjustment factor for special exceptions payments in FY 2004 in the final rule based on updated data.

In the August 1, 2002 IPPS final rule (67 FR 50131) for FY 2003, we estimated that total (special) exceptions payments would equal 0.30 percent of aggregate payments based on the Federal rate. Therefore, we applied an exceptions reduction factor of 0.9970 (1 − 0.0030) in determining the FY 2003 Federal rate. As we stated, we estimate that exceptions payments in FY 2004 would equal 0.05 percent of aggregate payments based on the proposed FY 2004 Federal rate. Therefore, we are proposing to apply an exceptions payment adjustment factor of 0.9995 (1 − 0.0005) to the proposed Federal rate for FY 2004. The proposed exceptions adjustment factor for FY 2004 is 0.25 percent higher than the factor for FY 2003 published in the August 1, 2002 IPPS final rule (67 FR 50131). This increase is primarily due to a refined analysis of more recent data.

The exceptions reduction factors are not built permanently into the rates; that is, the factors are not applied cumulatively in determining the Federal rate. Therefore, the proposed net change in the exceptions adjustment factor used in determining the proposed FY 2004 Federal rate is 0.9995/0.9970, or 1.0025.

5. Proposed Standard Capital Federal Rate for FY 2004

In the August 1, 2002 IPPS final rule (67 FR 50131) we established a capital Federal rate of $407.01 for FY 2003. As we noted above, as a result of the revisions to the GAF effective for discharges occurring on or after April 1, 2003 through September 30, 2003, we have established a capital Federal rate of $406.93 for discharges occurring on or after April 1, 2003 through September 30, 2003. The rates effective for discharges occurring on or after April 1, 2003 through September 30, 2003, were used in determining the proposed FY 2004 rates. In this proposed rule, we are proposing a capital Federal rate of $411.72 for FY 2004. The proposed Federal rate for FY 2004 was calculated as follows:

- The proposed FY 2004 update factor is 1.0070; that is, the update is 0.70 percent..
- The proposed FY 2004 budget neutrality adjustment factor that is applied to the standard Federal payment rate for changes in the DRG relative weights and in the GAF is 1.0038.
- The proposed FY 2004 outlier adjustment factor is 0.9455.
- The proposed FY 2004 (special) exceptions payment adjustment factor is 0.9995.

Since the proposed Federal rate has already been adjusted for differences in case-mix, wages, cost-of-living, indirect medical education costs, and payments to hospitals serving a disproportionate share of low-income patients, we are proposing to make no additional adjustments in the standard Federal rate for these factors, other than the budget neutrality factor for changes in the DRG relative weights and the GAF.

We are providing a chart that shows how each of the proposed factors and adjustments for FY 2004 affected the computation of the proposed FY 2004 Federal rate in comparison to the FY 2003 Federal rate. The proposed FY 2004 update factor has the effect of increasing the Federal rate by 0.70 percent compared to the FY 2003 Federal rate, while the proposed GAF/DRG budget neutrality factor has the effect of increasing the Federal rate by 0.38 percent. The proposed FY 2004 outlier adjustment factor has the effect of decreasing the Federal rate by 0.15 percent compared to the FY 2003 Federal rate. The proposed FY 2004 exceptions payment adjustment factor has the effect of increasing the Federal rate by 0.25 percent compared to the exceptions payment adjustment factor for FY 2003. The combined effect of all the proposed changes is to increase the Federal rate by 1.18 percent compared to the FY 2003 Federal rate.

COMPARISON OF FACTORS AND ADJUSTMENTS: FY 2003 FEDERAL RATE AND PROPOSED FY 2004 FEDERAL RATE

	FY 2003	Proposed FY 2004	Change	Percent change
Update factor [1]	1.0110	1.0070	1.0070	0.70
GAF/DRG Adjustment Factor [1]	0.9957	1.0038	1.0038	0.38
Outlier Adjustment Factor [2]	0.9469	0.9455	0.9985	−0.15
Exceptions Adjustment Factor [2]	0.9970	0.9995	1.0025	0.25
Federal Rate	$406.93	$411.72	1.0118	1.18

[1] The update factor and the GAF/DRG budget neutrality factors are built permanently into the rates. Thus, for example, the incremental change from FY 2003 to FY 2004 resulting from the application of the proposed 1.0038 GAF/DRG budget neutrality factor for FY 2004 is 1.0038.

[2] The outlier reduction factor and the exceptions adjustment factor are not built permanently into the rates; that is, these factors are not applied cumulatively in determining the rates. Thus, for example, the net change resulting from the application of the proposed FY 2004 outlier adjustment factor is 0.9455/0.9469, or 0.9985.

6. Special Rate for Puerto Rico Hospitals

As explained at the beginning of section II.D. of this Addendum, hospitals in Puerto Rico are paid based on 50 percent of the Puerto Rico rate and 50 percent of the Federal rate. The Puerto Rico rate is derived from the costs of Puerto Rico hospitals only, while the Federal rate is derived from the costs of all acute care hospitals participating in the PPS (including Puerto Rico). To adjust hospitals' capital payments for geographic variations in capital costs, we apply a GAF to both portions of the blended rate. The GAF is calculated using the operating PPS wage index and varies, depending on the MSA or rural area in which the hospital is located. We use the Puerto Rico wage index to determine the GAF for the Puerto Rico part of the capital-blended rate and the national wage index to determine the GAF for the national part of the blended rate.

Because we implemented a separate GAF for Puerto Rico in FY 1998, we also apply separate budget neutrality adjustments for the national GAF and for the Puerto Rico GAF. However, we apply the same budget neutrality factor for DRG reclassifications and recalibration nationally and for Puerto Rico. As we stated in section III.A.4. of this Addendum, for Puerto Rico the proposed GAF budget neutrality factor is 1.0002, while the proposed DRG adjustment is 1.0004, for a proposed combined cumulative adjustment of 0.9968.

In computing the payment for a particular Puerto Rico hospital, the Puerto Rico portion of the rate (50 percent) is multiplied by the Puerto Rico-specific GAF for the MSA in which the hospital is located, and the national portion of the rate (50 percent) is multiplied by the national GAF for the MSA in which the hospital is located (which is computed from national data for all hospitals in the United States and Puerto Rico). In FY 1998, we implemented a 17.78 percent reduction to the Puerto Rico rate as a result of Public Law 105–33. In FY 2003, a small part of that reduction was restored.

For FY 2003, before application of the GAF, the special rate for Puerto Rico hospitals was $198.29. With the changes we are proposing to the factors used to determine the rate, the proposed FY 2004 special rate for Puerto Rico is $201.26.

B. Calculation of Inpatient Capital-Related Prospective Payments for FY 2004

With the end of the capital PPS transition period in FY 2001, all hospitals (except "new" hospitals under § 412.324(b) and under § 412.304(c)(2)) are paid based on 100 percent of the Federal rate in FY 2004. The applicable Federal rate was determined by making adjustments as follows:

- For outliers, by dividing the standard Federal rate by the outlier reduction factor for that fiscal year; and
- For the payment adjustments applicable to the hospital, by multiplying the hospital's GAF, disproportionate share adjustment factor, and IME adjustment factor, when appropriate.

For purposes of calculating payments for each discharge during FY 2004, the standard Federal rate is adjusted as follows: (Standard Federal Rate) × (DRG weight) × (GAF) × (Large Urban Add-on, if applicable) × (COLA adjustment for hospitals located in Alaska and Hawaii) × (1 + Disproportionate Share Adjustment Factor + IME Adjustment Factor, if applicable). The result is the adjusted Federal rate.

Hospitals also may receive outlier payments for those cases that qualify under the thresholds established for each fiscal year. Section 412.312(c) provides for a single set of thresholds to identify outlier cases for both inpatient operating and inpatient capital-related payments. The proposed outlier thresholds for FY 2004 are in section II.A.4.c. of this Addendum. For FY 2004, a case qualifies as a cost outlier if the cost for the case plus the IME and DSH payments is greater than the prospective payment rate for the DRG plus $50,645.

An eligible hospital may also qualify for a special exceptions payment under § 412.348(g) for up through the 10th year beyond the end of the capital transition period if it meets: (1) A project need requirement described at § 412.348(g)(2), which in the case of certain urban hospitals includes an excess capacity test as described at § 412.348(g)(4); and (2) a project size requirement as described at § 412.348(g)(5). Eligible hospitals include sole community hospitals, urban hospitals with at least 100 beds that have a DSH patient percentage of at least 20.2 percent or qualify for DSH payments under § 412.106(c)(2), and hospitals that have a combined Medicare and Medicaid inpatient utilization of at least 70 percent. Under § 412.348(g)(8), the amount of a special exceptions payment is determined by comparing the cumulative payments made to the hospital under the capital PPS to the cumulative minimum payment level. This amount is offset by: (1) Any amount by which a hospital's cumulative capital payments exceed its cumulative minimum payment levels applicable under the regular exceptions process for cost reporting periods beginning during which the hospital has been subject to the capital PPS; and (2) any amount by which a hospital's current year operating and capital payments (excluding 75 percent of operating DSH payments) exceed its operating and capital costs. Under § 412.348(g)(6), the minimum payment level is 70 percent for all eligible hospitals.

During the transition period, new hospitals (as defined under § 412.300) were exempt from the capital PPS for their first 2 years of operation and are paid 85 percent of their reasonable costs during that period. Effective with the third year of operation through the remainder of the transition period, under § 412.324(b) we paid the hospital under the appropriate transition methodology. If the hold-harmless methodology was applicable, the hold-harmless payment for assets in use during the base period would extend for 8 years, even if the hold-harmless payments extend beyond the normal transition period. As discussed in section VI.B. of the preamble of this proposed rule, under § 412.304(c)(2), for cost reporting periods beginning on or after October 1, 2002, we pay a new hospital 85 percent of their reasonable costs during the first 2 years of operation unless it elects

to receive payment based on 100 percent of the Federal rate. Effective with the third year of operation, we pay the hospital based on 100 percent of the capital Federal rate (that is, the same methodology used to pay all other hospitals subject to the capital PPS).

C. Capital Input Price Index

1. Background

Like the operating input price index, the capital input price index (CIPI) is a fixed-weight price index that measures the price changes associated with costs during a given year. The CIPI differs from the operating input price index in one important aspect—the CIPI reflects the vintage nature of capital, which is the acquisition and use of capital over time. Capital expenses in any given year are determined by the stock of capital in that year (that is, capital that remains on hand from all current and prior capital acquisitions). An index measuring capital price changes needs to reflect this vintage nature of capital. Therefore, the CIPI was developed to capture the vintage nature of capital by using a weighted-average of past capital purchase prices up to and including the current year.

We periodically update the base year for the operating and capital input prices to reflect the changing composition of inputs for operating and capital expenses. The CIPI was last rebased to FY 1997 in the August 1, 2002 final rule (67 FR 50044).

2. Forecast of the CIPI for Federal Fiscal Year 2004

We are forecasting the proposed CIPI to increase 0.7 percent for FY 2004. This reflects a projected 1.2 percent increase in vintage-weighted depreciation prices (building and fixed equipment, and movable equipment) and a 3.4 percent increase in other capital expense prices in FY 2004, partially offset by a 2.0 percent decline in vintage-weighted interest rates in FY 2004. The weighted average of these three factors produces the 0.7 percent increase for the CIPI as a whole.

IV. Proposed Changes to Payment Rates for Excluded Hospitals and Hospital Units: Rate-of-Increase Percentages

As discussed in section VI. of the preamble of this proposed rule, in accordance with section 1886(b)(3)(H)(i) of the Act and effective for cost reporting periods beginning on or after October 1, 2002, payments to existing psychiatric hospitals and units, rehabilitation hospitals and units, and long-term care hospitals excluded from the IPPS are no longer subject to limits on a hospital-specific target amount (expressed in terms of the inpatient operating cost per discharge) that are set for each hospital, based on the hospital's own historical cost experience trended forward by the applicable rate-of-increase percentages (update factors).

Effective for cost reporting periods beginning on or after October 1, 2002, rehabilitation hospitals and units are no longer paid on a reasonable cost basis but are paid under the IRF PPS. Effective for cost reporting periods beginning on or after October 1, 2002, LTCHs also are no longer paid on a reasonable cost basis but are paid under a DRG-based PPS. As part of the payment process for LTCHs, we established a 5-year transition period from reasonable cost-based reimbursement to a fully Federal PPS. However, a LTCH, subject to the blend methodology, may elect to be paid based on a 100 percent of the Federal prospective rate.

In accordance with existing § 413.40(c)(4)(ii) and (d)(1)(i) and (ii), where applicable, excluded hospitals and units that continue to be paid on a reasonable cost basis will have payments based on their Medicare inpatient operating costs, not to exceed the ceiling (as defined in § 413.40(a)(3)).

Section 1886(b)(7) of the Act had established a payment limitation for new hospitals and units excluded from the IPPS. While both rehabilitation hospitals and units and LTCHs are now paid under a PPS, psychiatric hospitals and units continue to be subject to the payment limitation. A discussion of how the payment limitation was calculated can be found in the August 29, 1997 final rule with comment period (62 FR 46019); the May 12, 1998 final rule (63 FR 26344); the July 31, 1998 final rule (63 FR 41000); and the July 30, 1999 final rule (64 FR 41529).

The amount of payment for a "new" psychiatric hospital or unit would be determined as follows:

- Under existing § 413.40(f)(2)(ii), for cost reporting periods beginning on or after October 1, 1997, the amount of payment for a new hospital or unit that was not paid as an excluded hospital or unit before October 1, 1997, is the lower of: (1) The hospital's net inpatient operating costs per case; or (2) 110 percent of the national median of the target amounts for the same class of excluded hospitals and units, adjusted for differences in wage levels and updated to the first cost reporting period in which the hospital receives payment. The second cost reporting period is subject to the same target amount applied to the first cost reporting period.
- In the case of a hospital that received payments under § 413.40(f)(2)(ii) as a newly created hospital or unit, to determine the hospital's or unit's target amount for the hospital's or unit's third 12-month cost reporting period, the payment amount determined under § 413.40(f)(2)(ii)(A) for the preceding cost reporting period is updated to the third cost reporting period.

The proposed amounts included in the following table reflect the updated 110 percent of the national median target amounts of new excluded psychiatric hospitals and units for cost reporting periods beginning during FY 2004. These figures are updated with the most recent data available to reflect the projected market basket increase percentage of 3.5 percent. This projected percentage change in the market basket reflects the average change in the price of goods and services purchased by hospitals to furnish inpatient hospital services (as projected by CMS's Office of the Actuary based on its historical experience with the IPPS). For a new provider, the labor-related share of the target amount is multiplied by the appropriate geographic area wage index, without regard to IPPS reclassifications, and added to the nonlabor-related share in order to determine the per case limit on payment under the statutory payment methodology for new providers.

Class of excluded hospital or unit	FY 2004 proposed labor-related share	FY 2004 proposed nonlabor-related share
Psychiatric	$7,301	$2,902

Effective for cost reporting periods beginning on or after October 1, 2002, this payment limitation is no longer applicable to new LTCHs since they will be paid 100 percent of the Federal rate. A new LTCH is a provider of inpatient hospital services that meets the qualifying criteria for LTCHs specified under § 412.23(e)(1) and (e)(2) and whose first cost reporting period as a LTCH begins on or after October 1, 2002 (§ 412.23(e)(4)). Under the LTCH PPS, new LTCHs are paid based on 100 percent of the fully Federal prospective rate (they may not participate in the 5-year transition from cost-based reimbursement to prospective payment). In contrast, those "new" LTCHs that meet the definition of "new" under § 413.40(f)(2)(ii) and that have their first cost reporting periods beginning on or after October 1, 1997, and before October 1, 2002, may be paid under the LTCH PPS transition methodology. Since those hospitals by definition would have been considered new before October 1, 2002, they would have been subject to the updated payment limitation on new hospitals that was published in the FY 2003 IPPS final rule (67 FR 50103). Under existing regulations at § 413.40(f)(2)(ii), the "new" hospital would be subject to the same cap in its second cost reporting period; this cap would not be updated for the new hospital's second cost reporting year. Thus, since the same cap is to be used for the "new" LTCH's first two cost reporting periods, it is no longer necessary to publish an updated cap.

V. Payment for Blood Clotting Factor Administered to Hemophilia Inpatients

In December 2002, the Department implemented a policy that established the Single Drug Pricer (SDP) to correct identified discrepancies, further the legislative goal of establishing a uniform payment allowance as a reflection of the average wholesale price (AWP), and otherwise apply the existing stature and regulation more accurately and efficiently (CMS Program Memorandum AB–02–174, December 3, 2002, which can be accessed at: *http://www.cms.hhs.gov/manuals*). Under the SDP, CMS will establish prices centrally, thereby resulting in greater consistency in drug pricing nationally. The SDP instruction applies to blood clotting factors furnished to hospital inpatients. The payment allowance for the single national drug price for each Medicare covered drug is based on 95 percent of the AWP, except for drugs billed to durable medical equipment regional carriers (DMERCs) and hospital outpatient drugs billed to fiscal intermediaries. We are publishing this notice here because we previously have addressed the add-on payment for the costs of administering blood clotting factor in the IPPS annual rule (see the August 1, 2000 IPPS final rule (65 FR 47116).

On a quarterly basis, CMS will furnish three SDP files to all fiscal intermediaries. Each fiscal intermediary must accept the SDP files and process claims for any drug identified on the files on the basis of the price shown on the applicable file. Previously, the fiscal intermediary performed annual update calculations based on the most recent AWP data available to the carrier. The fiscal intermediary should use the SDP to price the blood clotting factors.

VI. Tables

This section contains the tables referred to throughout the preamble to this proposed rule and in this Addendum. For purposes of this proposed rule, and to avoid confusion, we have retained the designations of Tables 1 through 5 that were first used in the September 1, 1983 initial prospective payment final rule (48 FR 39844). Tables 1A, 1C, 1D, 2, 3A, 3B, 4A, 4B, 4C, 4F, 4G, 4H, 5, 6A, 6B, 6C, 6D, 6E, 6F, 6G, 6H, 7A, 7B, 8A, 8B, 9, 10, and 11 are presented below. The tables presented below are as follows:

Table 1A—National Adjusted Operating Standardized Amounts, Labor/Nonlabor
Table 1C—Adjusted Operating Standardized Amounts for Puerto Rico, Labor/Nonlabor
Table 1D—Capital Standard Federal Payment Rate
Table 2—Hospital Average Hourly Wage for Federal Fiscal Years 2002 (1998 Wage Data), 2003 (1999 Wage Data), and 2004 (2000 Wage Data) Wage Indexes and 3–Year Average of Hospital Average Hourly Wages
Table 3A—3–Year Average Hourly Wage for Urban Areas
Table 3B—3–Year Average Hourly Wage for Rural Areas
Table 4A—Wage Index and Capital Geographic Adjustment Factor (GAF) for Urban Areas
Table 4B—Wage Index and Capital Geographic Adjustment Factor (GAF) for Rural Areas
Table 4C—Wage Index and Capital Geographic Adjustment Factor (GAF) for Hospitals That Are Reclassified
Table 4F—Puerto Rico Wage Index and Capital Geographic Adjustment Factor (GAF)
Table 4G—Pre-Reclassified Wage Index for Urban Areas
Table 4H—Pre-Reclassified Wage Index for Rural Areas
Table 5—List of Diagnosis Related Groups (DRGs), Relative Weighting Factors, Geometric and Arithmetic Mean Length of Stay
Table 6A—New Diagnosis Codes
Table 6B—New Procedure Codes
Table 6C—Invalid Diagnosis Codes
Table 6D—Invalid Procedure Codes
Table 6E—Revised Diagnosis Code Titles
Table 6F—Revised Procedure Code Titles
Table 6G—Additions to the CC Exclusions List
Table 6H—Deletions from the CC Exclusions List
Table 7A—Medicare Prospective Payment System Selected Percentile Lengths of Stay FY 2002 MedPAR Update December 2002 GROUPER V20.0
Table 7B—Medicare Prospective Payment System Selected Percentile Lengths of Stay FY 2002 MedPAR Update December 2002 GROUPER V21.0
Table 8A—Statewide Average Operating Cost-to-Charge Ratios for Urban and Rural Hospitals (Case Weighted) March 2003
Table 8B—Statewide Average Capital Cost-to-Charge Ratios (Case Weighted) March 2003
Table 9—Hospital Reclassifications and Redesignations by Individual Hospital—FY 2004
Table 10—Mean and Standard Deviations by Diagnosis-Related Groups (DRGs)—FY 2004
Table 11—Proposed LTC–DRGs Relative Weights and Geometric and Five-Sixths of the Average Length of Stay-FY 2004

TABLE 1A.—NATIONAL ADJUSTED OPERATING STANDARDIZED AMOUNTS, LABOR/NONLABOR

Large urban areas		Other areas	
Labor-related	Nonlabor-related	Labor-related	Nonlabor-related
$3,139.26	$1,276.01	$3,089.56	$1,255.81

TABLE 1C.—ADJUSTED OPERATING STANDARDIZED AMOUNTS FOR PUERTO RICO, LABOR/NONLABOR

	Large urban areas		Other areas	
	Labor	Nonlabor	Labor	Nonlabor
National	$3,112.84	$1,265.27	$3,112.84	$1,267.03
Puerto Rico	1,516.86	610.57	1,492.84	600.90

TABLE 1D.—CAPITAL STANDARD FEDERAL PAYMENT RATE

	Rate
National	$411.72
Puerto Rico	$201.26

TABLE 2.—HOSPITAL AVERAGE HOURLY WAGE FOR FEDERAL FISCAL YEARS 2002 (1998 WAGE DATA), 2003 (WAGE DATA), AND 2004 (2000 WAGE DATA) WAGE INDEXES AND 3-YEAR AVERAGE OF HOSPITAL AVERAGE HOURLY WAGES

Provider No.	Average hourly wage FY 2002	Average hourly wage FY 2003	Average hourly wage FY 2004	Average hourly** wage (3 yrs)
010001	17.4467	17.9841	19.3989	18.2929
010004	19.0010	20.1613	19.9457	19.7003
010005	18.6554	19.9733	18.3970	19.0198
010006	17.6115	18.3931	19.0976	18.4162
010007	15.6788	16.0781	17.5462	16.4299
010008	17.4728	19.0182	19.6573	18.7416
010009	18.4979	19.7272	20.3130	19.5087
010010	16.4664	17.7348	18.5730	17.5867
010011	22.4292	24.8922	25.6737	24.2683
010012	15.8686	20.3376	20.0896	18.5710
010015	19.1178	19.8205	18.8890	19.2826
010016	20.2198	20.3175	21.7918	20.8284
010018	18.9388	19.5519	19.2071	19.2353
010019	17.0856	17.6414	18.6539	17.7694
010021	15.1241	25.3335	17.7595	18.4456
010022	17.6435	22.1250	22.2266	20.3667
010023	16.3209	18.4567	20.0397	18.1965
010024	15.9034	17.3746	18.5108	17.2202
010025	15.1548	17.4702	18.9839	17.1956
010027	16.8595	16.5157	14.0974	15.7259
010029	18.3605	19.3393	20.9608	19.6182
010031	18.6402	19.2612	21.0176	19.6504
010032	15.3590	16.3967	16.4712	16.0937
010033	21.2986	21.9828	24.5088	22.5487
010034	15.3639	14.9379	14.5106	14.9494
010035	15.9439	20.7808	21.6182	19.2869
010036	17.7166	18.7158	17.7766	18.0775
010038	19.6098	19.6887	18.5873	19.2586
010039	20.3406	21.3550	22.9241	21.5758
010040	20.0983	20.4486	20.7536	20.4392
010043	18.6640	17.3567	19.9012	18.6528
010044	24.0265	23.4575	25.8561	24.4502
010045	17.0417	18.7569	21.1167	18.8731
010046	18.9737	18.8741	19.7870	19.2388
010047	15.4190	13.4130	16.1695	14.9341
010049	15.5246	16.3349	16.2841	16.0555
010050	17.9830	20.3028	20.7398	19.6262
010051	11.8108	12.3280	14.2767	12.7951
010052	18.0653	19.8289	11.9019	15.6329
010053	15.5649	15.4156	17.3238	16.1023
010054	19.4955	20.9656	20.6203	20.3735
010055	18.8590	19.5667	19.8170	19.4298
010056	19.6577	20.5645	21.1104	20.4208
010058	16.9715	16.1265	17.7800	16.9302
010059	18.8020	19.1270	20.5534	19.4928
010061	14.5003	18.5320	16.9028	16.6415
010062	12.3259	16.9721	17.1786	15.3820
010064	19.5256	20.5650	21.7162	20.5136
010065	16.8752	17.0557	17.2698	17.0733
010066	13.1559	14.8904	14.8696	14.3351
010068	18.6925	23.4322	18.2092	20.2305
010069	14.7211	15.4497	16.9839	15.7052
010072	16.2339	16.5652	18.8807	17.1920
010073	14.1273	13.5594	14.9826	14.2068
010078	18.1363	18.5127	20.1447	18.9315
010079	17.0648	17.1612	20.7401	18.2252
010081	17.2996	*	*	17.2996
010083	18.0312	18.4282	19.8525	18.7454
010084	18.7769	19.8773	21.6522	20.1274
010085	19.9023	21.5860	22.5282	21.3942
010086	16.5711	16.8886	18.0122	17.1417
010087	18.0567	18.7915	18.7253	18.4944
010089	17.7800	19.5241	19.5783	18.9652
010090	18.9445	19.5635	20.0287	19.5086
010091	17.0799	17.1775	17.4672	17.2432

* Denotes wage data not available for the provider for that year.
** Based on the sum of the salaries and hours computed for Federal FYs 2002, 2003, and 2004.

TABLE 2.—HOSPITAL AVERAGE HOURLY WAGE FOR FEDERAL FISCAL YEARS 2002 (1998 WAGE DATA), 2003 (WAGE DATA), AND 2004 (2000 WAGE DATA) WAGE INDEXES AND 3-YEAR AVERAGE OF HOSPITAL AVERAGE HOURLY WAGES—Continued

Provider No.	Average hourly wage FY 2002	Average hourly wage FY 2003	Average hourly wage FY 2004	Average hourly** wage (3 yrs)
010092	17.8144	18.5478	19.9289	18.7707
010095	12.2597	12.3064	12.5243	12.3676
010097	12.7286	14.2675	15.1593	14.0568
010098	14.0300	15.5763	15.1629	14.9158
010099	15.5619	15.9232	16.3307	15.9423
010100	17.9430	18.3755	19.8146	18.7658
010101	14.4625	18.9525	19.0718	17.2612
010102	13.8136	15.7777	16.4636	15.3148
010103	17.7242	22.0802	22.5709	20.6405
010104	16.8457	21.9457	20.9391	19.7211
010108	19.4617	19.1596	20.6337	19.7473
010109	14.6752	15.9627	18.2235	16.2157
010110	15.8283	15.5817	16.0015	15.8256
010112	16.8271	15.6041	17.9243	16.7545
010113	16.8936	18.2774	19.1978	18.1229
010114	17.0760	19.3772	20.1763	18.8237
010115	14.2261	15.3510	15.7873	15.0923
010118	17.0834	17.4620	19.4280	17.9013
010119	19.3942	19.5163	20.1990	19.7084
010120	18.2567	18.9975	19.4369	18.8719
010121	14.5262	15.2345	17.1640	15.7079
010123	19.2140	*	*	19.2141
010124	16.7465	*	*	16.7465
010125	16.0136	16.5117	16.8622	16.4618
010126	19.1065	19.5933	19.9845	19.5804
010127	18.2786	*	*	18.2786
010128	14.4322	16.6899	14.7646	15.2637
010129	16.1733	16.7609	16.4904	16.4644
010130	19.5573	17.4614	18.7190	18.5367
010131	20.1883	19.0492	22.3132	20.5855
010134	19.9856	18.5179	16.8181	18.4871
010137	20.5828	21.3573	28.7410	23.1563
010138	14.5254	14.1369	14.2024	14.2898
010139	20.4331	20.5708	22.8390	21.2553
010143	17.6212	18.9084	20.6578	19.0594
010144	18.2040	18.8272	19.1497	18.7345
010145	20.5895	20.8157	21.7700	21.0799
010146	19.1415	18.3666	21.3384	19.6056
010148	15.8349	18.4591	17.6830	17.3825
010149	18.0156	19.0199	20.8645	19.3169
010150	18.9359	19.4819	21.1878	19.8964
010152	18.7677	19.8990	21.1438	19.9058
010155	15.0689	13.6136	*	14.4394
010157	*	17.7372	19.6977	18.7304
010158	18.3957	18.6052	18.5464	18.5206
010159	*	19.3950	*	19.3950
020001	28.0394	28.6530	30.1452	28.9867
020002	25.1987	28.2759	30.4165	27.8092
020004	25.4679	29.2351	27.3516	27.2833
020005	29.2378	35.0860	32.7936	32.3665
020006	28.1417	33.0843	31.2673	30.7745
020007	32.3852	27.7269	27.5708	28.8959
020008	30.8691	31.8878	33.4543	32.1364
020009	18.4660	18.5594	24.9415	20.3403
020010	22.7559	23.7275	20.7928	22.3051
020011	28.0658	27.5062	29.6249	28.3773
020012	25.5320	26.7586	27.9955	26.7886
020013	28.1557	29.5646	30.6424	29.4993
020014	24.5875	27.7870	29.6806	27.4656
020017	28.0572	28.8752	30.3017	29.1234
020024	25.3205	25.5933	28.0930	26.3977
020025	20.2583	29.4375	32.8655	26.7102
030001	21.7869	22.8996	25.7513	23.3305

* Denotes wage data not available for the provider for that year.
** Based on the sum of the salaries and hours computed for Federal FYs 2002, 2003, and 2004.

TABLE 2.—HOSPITAL AVERAGE HOURLY WAGE FOR FEDERAL FISCAL YEARS 2002 (1998 WAGE DATA), 2003 (WAGE DATA), AND 2004 (2000 WAGE DATA) WAGE INDEXES AND 3-YEAR AVERAGE OF HOSPITAL AVERAGE HOURLY WAGES—Continued

Provider No.	Average hourly wage FY 2002	Average hourly wage FY 2003	Average hourly wage FY 2004	Average hourly** wage (3 yrs)
030002	21.8375	23.1450	25.6038	23.5516
030003	22.6804	21.9849	22.1436	22.9249
030004	15.5478	13.8452	15.7742	15.0275
030006	20.0273	20.5019	23.0216	21.0706
030007	21.5169	22.2473	26.1551	23.4298
030008	22.2190	*	*	22.2190
030009	18.7557	19.1258	19.9131	19.2261
030010	19.5123	19.8496	20.7204	20.0003
030011	19.4310	19.8141	21.0028	20.0690
030012	20.6585	21.1099	24.2366	22.1509
030013	20.0535	19.9517	21.9766	20.7166
030014	19.7966	20.3017	21.5382	20.5679
030016	19.4785	22.2526	24.3380	22.1886
030017	21.7938	23.1702	21.8792	22.2509
030018	20.8980	21.8067	24.9216	22.5811
030019	21.2540	22.0341	23.2973	22.2278
030022	19.5794	22.3351	24.9941	22.3479
030023	24.1678	25.4626	28.6628	26.2700
030024	23.6009	23.7663	26.7641	24.7020
030025	11.9894	20.2690	18.7967	16.8149
030027	17.6555	18.5500	19.4583	18.5927
030030	21.6932	23.1280	25.2425	23.1970
030033	20.2820	20.3034	26.4812	22.3008
030034	20.8689	19.5578	17.7772	19.3850
030035	20.0226	20.5339	*	20.2741
030036	21.6371	22.2690	24.9432	23.0233
030037	23.7615	23.7325	23.0542	23.5162
030038	22.9822	23.4477	25.2632	23.9087
030040	19.7636	19.3706	21.2717	20.1331
030041	18.8717	18.4750	18.6985	18.6886
030043	20.5598	20.5653	20.8619	20.6748
030044	17.6575	18.6781	21.9503	19.2464
030047	21.4412	22.7385	23.8939	22.7605
030049	19.3580	19.7315	*	19.5288
030054	15.0657	15.7973	16.8863	15.9671
030055	20.2991	20.8373	22.8612	21.3919
030059	22.6279	27.3929	*	24.8227
030060	18.6313	19.5021	21.7685	19.9508
030061	19.9047	21.1013	22.9706	21.3676
030062	18.7172	19.2670	21.1639	19.7478
030064	20.3837	21.6435	22.8009	21.6120
030065	20.7838	22.2846	24.6064	22.6068
030067	17.2778	17.6414	18.4004	17.7581
030068	17.7208	18.9718	19.7097	18.8803
030069	21.0936	23.4902	24.5432	23.0752
030080	20.8581	21.2299	22.7867	21.6244
030083	23.5229	23.5049	24.3273	23.8162
030085	20.8690	21.6542	21.8196	21.4875
030087	21.9465	23.1339	25.6344	23.5331
030088	20.5340	21.4491	23.5761	21.9185
030089	20.9516	22.0850	24.5055	22.5911
030092	21.8308	19.6625	20.6577	20.5622
030093	20.4314	21.7195	23.2485	21.9062
030094	22.8123	21.8049	24.5992	23.0301
030095	13.7664	20.5222	*	16.1313
030099	18.2263	19.8092	20.3310	19.5882
030100	23.7609	23.5868	*	23.6543
030101	19.2547	21.1029	23.8414	21.3423
030102	18.2413	21.5405	*	19.8425
030103	*	28.9308	40.8755	33.8153
030104	*	32.8668	34.6026	33.8315
040001	16.9178	16.3882	16.2652	16.4883
040002	15.1107	16.1353	18.0776	16.4361

* Denotes wage data not available for the provider for that year.
** Based on the sum of the salaries and hours computed for Federal FYs 2002, 2003, and 2004.

TABLE 2.—HOSPITAL AVERAGE HOURLY WAGE FOR FEDERAL FISCAL YEARS 2002 (1998 WAGE DATA), 2003 (WAGE DATA), AND 2004 (2000 WAGE DATA) WAGE INDEXES AND 3-YEAR AVERAGE OF HOSPITAL AVERAGE HOURLY WAGES—Continued

Provider No.	Average hourly wage FY 2002	Average hourly wage FY 2003	Average hourly wage FY 2004	Average hourly** wage (3 yrs)
040003	15.5740	15.5186	16.3918	15.8349
040004	17.9034	19.0105	19.8567	18.9476
040005	11.1318	16.5465	*	13.6054
040007	18.6998	22.5319	23.3992	21.2518
040008	14.7985	20.2121	*	17.4031
040010	19.4913	19.8251	20.4612	19.9398
040011	16.0995	17.1337	18.8346	17.5256
040014	18.1434	19.3996	22.4970	19.9652
040015	15.5207	17.9602	18.8513	17.4824
040016	20.2321	19.8087	21.2198	20.4114
040017	15.4736	16.5648	17.7545	16.6023
040018	18.7463	18.8203	22.2459	19.8242
040019	23.4163	21.0465	21.1711	21.7572
040020	18.9844	17.6056	18.0130	18.1484
040021	19.6835	21.3321	23.3840	21.5035
040022	20.8281	19.2393	20.5951	20.1448
040024	17.6607	17.1507	17.5750	17.4623
040025	13.4705	14.8071	17.6791	15.1660
040026	19.7924	21.0143	22.6617	21.1612
040027	17.4431	17.7161	19.3388	18.1973
040028	13.9946	15.2850	13.9975	14.4367
040029	21.1370	22.5094	22.1882	21.9489
040030	11.2402	16.5488	*	13.2353
040032	13.2872	13.8013	16.2781	14.3506
040035	10.9569	11.0611	11.8237	11.2698
040036	20.2012	21.1066	21.6742	21.0202
040037	14.0941	15.4984	*	14.7246
040039	14.7177	15.2811	15.9673	15.3471
040040	19.1984	19.6704	*	19.4380
040041	16.4624	17.7783	20.4646	18.2091
040042	15.2057	16.6875	16.2285	16.0552
040044	13.3501	17.1869	18.4270	16.2509
040045	16.2469	16.6648	19.5573	17.3603
040047	17.5336	18.6295	20.4173	18.8431
040050	14.0036	14.2087	15.1428	14.4627
040051	16.6039	18.2152	17.6964	17.5006
040053	15.0219	14.1508	19.2586	15.8377
040054	14.2577	16.5217	16.5573	15.7676
040055	18.0414	17.4236	17.1669	17.5528
040058	16.4278	19.3124	*	17.6419
040060	17.9805	15.4220	19.0007	17.4501
040062	17.8902	19.4255	20.6917	19.3314
040064	11.5029	13.3479	18.6107	14.1151
040066	19.7144	19.5619	21.7766	20.3116
040067	14.4741	15.0081	16.0516	15.1736
040069	17.0026	18.9754	20.5968	18.8667
040070	16.9700	18.6066	20.5214	18.8036
040071	17.6144	18.4956	18.7641	18.2815
040072	17.4960	21.3320	18.4032	18.9950
040074	18.7542	20.8465	22.0800	20.5126
040075	14.0975	14.6681	15.7875	14.8313
040076	20.5840	21.8010	23.5948	21.9901
040077	13.9114	14.7230	16.7832	15.1038
040078	18.5821	19.6363	21.4854	19.9519
040080	19.3707	22.8153	18.3431	19.9751
040081	11.1332	12.4796	13.2797	12.2892
040082	15.1331	16.4840	18.1636	16.5196
040084	17.7295	18.3410	20.1163	18.7753
040085	16.5216	14.1782	15.5811	15.3778
040088	17.1624	18.3159	19.8286	18.3979
040090	19.0824	16.6619	*	17.8591
040091	20.1378	20.2904	20.6588	20.3813
040093	13.9741	14.7132	*	14.3380

* Denotes wage data not available for the provider for that year.
** Based on the sum of the salaries and hours computed for Federal FYs 2002, 2003, and 2004.

TABLE 2.—HOSPITAL AVERAGE HOURLY WAGE FOR FEDERAL FISCAL YEARS 2002 (1998 WAGE DATA), 2003 (WAGE DATA), AND 2004 (2000 WAGE DATA) WAGE INDEXES AND 3-YEAR AVERAGE OF HOSPITAL AVERAGE HOURLY WAGES—Continued

Provider No.	Average hourly wage FY 2002	Average hourly wage FY 2003	Average hourly wage FY 2004	Average hourly** wage (3 yrs)
040100	15.6833	17.0271	17.8889	16.9700
040105	14.3896	14.8936	15.4697	14.9508
040106	18.1341	19.0936	19.1726	18.8593
040107	17.8628	20.6852	17.6695	18.7676
040109	16.6278	16.2496	17.1706	16.6926
040114	21.1231	21.3826	21.3532	21.2885
040118	18.2123	19.6248	21.8065	19.9138
040119	16.9407	18.6028	19.9013	18.5380
040124	19.2889	*	*	19.2889
040126	11.6517	16.3391	13.3832	13.6732
040132	10.3875	24.6941	29.2337	17.5163
040134	19.0185	22.1291	*	20.6229
040135	23.0084	*	*	23.0082
040136	*	21.4139	*	21.4138
040137	*	*	24.7813	24.7813
040138	*	*	21.0859	21.0859
050002	36.9630	30.2629	30.9729	32.2632
050006	18.2061	22.4890	25.4618	22.0352
050007	30.8676	31.6270	34.1406	32.1656
050008	26.3682	28.2021	32.4067	28.7024
050009	28.4734	28.3021	30.2740	29.0378
050013	28.0569	27.2552	30.1682	28.4525
050014	23.6745	25.1664	27.7646	25.5586
050015	27.7731	28.2204	27.5652	27.8552
050016	21.2045	22.7014	25.1232	23.0550
050017	25.6178	25.7403	28.4165	26.5820
050018	15.2903	16.5909	17.9621	16.7254
050022	24.5254	26.2574	28.1312	26.3930
050024	22.4274	21.5230	25.1016	22.9531
050025	24.8245	26.0161	29.8262	26.8932
050026	23.1904	23.4651	23.8785	23.5278
050028	17.6138	17.9421	18.7866	18.1131
050029	24.6839	26.6783	30.2538	27.1782
050030	21.5621	21.8639	21.9251	21.7896
050032	24.3598	24.4176	24.6284	24.4685
050033	32.0179	31.1768	*	31.6954
050036	21.8239	24.8017	25.3885	24.0459
050038	29.9698	32.1757	36.1619	32.5954
050039	22.8288	23.8478	25.8993	24.5711
050040	30.2607	30.1153	30.7426	30.3810
050042	24.5260	25.4903	27.6765	25.9508
050043	33.8255	38.8988	37.3217	36.6008
050045	21.1474	21.0356	22.1691	21.4359
050046	25.2005	25.3067	25.5490	25.3505
050047	29.9580	31.6959	34.4427	32.0849
050051	18.7809	17.9266	*	18.3161
050054	22.0982	19.2395	21.3495	20.8463
050055	29.2730	32.0923	36.1182	32.3322
050056	23.8396	24.7994	27.1458	25.3250
050057	20.7420	22.2584	24.2758	22.4840
050058	23.3009	24.8366	23.2205	23.7636
050060	20.5450	21.9971	22.9491	22.0213
050061	24.5488	23.9906	25.3042	24.6040
050063	25.7593	25.5798	28.6093	26.6450
050065	24.6290	27.6677	28.8369	27.0472
050066	16.1649	26.3920	*	19.8363
050067	25.8857	22.1250	27.8867	24.8006
050068	19.3615	19.2325	21.9031	19.5920
050069	24.6153	25.8560	27.2744	25.8994
050070	34.0721	36.4136	39.5178	36.7625
050071	34.4367	36.4834	40.1344	37.0182
050072	39.7321	36.1146	39.2188	38.3181
050073	32.8555	36.1054	38.6763	35.9238

* Denotes wage data not available for the provider for that year.
** Based on the sum of the salaries and hours computed for Federal FYs 2002, 2003, and 2004.

TABLE 2.—HOSPITAL AVERAGE HOURLY WAGE FOR FEDERAL FISCAL YEARS 2002 (1998 WAGE DATA), 2003 (WAGE DATA), AND 2004 (2000 WAGE DATA) WAGE INDEXES AND 3-YEAR AVERAGE OF HOSPITAL AVERAGE HOURLY WAGES—Continued

Provider No.	Average hourly wage FY 2002	Average hourly wage FY 2003	Average hourly wage FY 2004	Average hourly** wage (3 yrs)
050075	33.7160	37.8104	40.2265	37.4233
050076	33.9752	37.0415	40.8075	37.1398
050077	24.1404	25.3481	27.1234	25.5664
050078	24.3150	23.0613	23.2913	23.5117
050079	30.0167	36.5455	39.6651	35.3854
050082	23.7617	23.7718	23.9154	23.8161
050084	25.4517	25.1155	25.9728	25.5331
050088	24.9641	25.2282	27.1103	25.7384
050089	22.8450	23.4120	24.7857	23.6599
050090	24.6070	25.4545	27.4193	25.8348
050091	23.7713	26.6463	29.2522	26.4442
050092	17.1211	17.1883	18.1132	17.4867
050093	25.6647	27.2048	29.2642	27.4393
050095	30.4847	29.2226	*	29.7245
050096	22.7394	22.5034	23.0526	22.7555
050097	22.5991	24.2548	24.4129	23.7724
050099	25.3722	26.2363	27.1308	26.2772
050100	25.2031	23.9877	25.3258	24.8411
050101	31.8957	33.1232	32.3802	32.4675
050102	24.0014	22.6741	25.5763	24.0204
050103	25.4133	23.5946	25.0854	24.5669
050104	26.9726	27.3260	26.1592	26.8000
050107	22.2019	22.2746	22.6900	22.4227
050108	25.1758	25.6983	28.5244	26.4357
050110	19.9589	21.3399	21.9296	21.1132
050111	20.7897	21.0813	23.7715	21.9292
050112	26.8182	29.1268	31.9797	29.3043
050113	28.5224	32.4493	32.6932	31.3678
050114	26.6757	27.6486	28.1909	27.5327
050115	23.0182	24.3748	24.1481	23.8529
050116	24.9196	27.0331	28.2924	26.6320
050117	22.2123	23.0697	24.7555	23.3917
050118	23.7129	24.9094	28.9358	25.8815
050121	18.7272	18.8430	24.6584	20.3903
050122	26.9546	26.9048	29.1534	27.6723
050124	24.5069	23.9379	23.0843	23.8087
050125	32.0230	33.3290	35.6572	33.6339
050126	24.6752	26.9718	27.7126	26.4996
050127	20.9027	20.5928	21.8559	21.1158
050128	26.6132	26.2519	28.7668	27.1805
050129	24.0108	23.7432	25.2780	24.3452
050131	32.5462	33.0980	37.7844	34.4656
050132	24.0173	24.1583	28.0265	25.4346
050133	23.2093	23.9479	25.1948	24.1576
050135	24.7157	23.2750	12.5413	18.0625
050136	24.7280	28.0754	31.1484	27.7833
050137	32.9192	33.7489	35.0503	33.8818
050138	38.1584	40.8912	43.0858	40.6538
050139	31.4984	35.1492	33.8749	33.3407
050140	32.7609	36.7096	36.1708	35.1295
050144	27.4069	29.8983	30.3678	29.2851
050145	34.5185	37.5003	37.5722	36.5610
050148	20.0971	21.1622	17.3908	19.5271
050149	26.8674	25.8880	28.0501	26.8823
050150	24.6596	25.9494	26.7728	25.8255
050152	33.3305	34.5096	34.5694	34.1486
050153	32.3389	33.3333	34.5870	33.4428
050155	25.3354	23.2118	21.2069	23.1002
050158	28.6071	28.9764	30.0598	29.4328
050159	22.5313	26.6139	21.3422	23.0637
050167	21.8796	21.9596	23.1879	22.3467
050168	25.1937	27.1971	26.4047	26.2183
050169	24.8407	24.7737	25.6896	25.1108

* Denotes wage data not available for the provider for that year.
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TABLE 2.—HOSPITAL AVERAGE HOURLY WAGE FOR FEDERAL FISCAL YEARS 2002 (1998 WAGE DATA), 2003 (WAGE DATA), AND 2004 (2000 WAGE DATA) WAGE INDEXES AND 3-YEAR AVERAGE OF HOSPITAL AVERAGE HOURLY WAGES—Continued

Provider No.	Average hourly wage FY 2002	Average hourly wage FY 2003	Average hourly wage FY 2004	Average hourly** wage (3 yrs)
050170	24.3654	27.7693	29.4075	26.9505
050172	19.6120	22.0400	24.5849	22.0737
050173	24.8694	*	27.7070	26.3141
050174	30.2775	31.6888	33.5204	31.9008
050175	24.7548	26.0146	26.9627	25.9076
050177	21.1396	22.5039	23.1575	22.2317
050179	23.5858	22.8941	23.0583	23.2574
050180	33.3257	34.0900	36.9905	34.8613
050186	23.6288	25.0791	27.6638	25.5202
050188	28.2364	30.6007	34.1503	31.0517
050189	27.4071	28.3295	32.3514	29.2097
050191	25.3516	29.4162	28.1689	27.6587
050192	14.1996	19.0400	19.5157	17.3616
050193	24.9444	25.5294	24.6307	25.0325
050194	29.5678	28.5389	28.0291	28.6722
050195	36.9068	39.1617	42.1735	39.4471
050196	18.2411	19.4304	19.8203	19.1752
050197	32.4030	34.6878	25.9224	30.7008
050204	22.7099	23.0192	24.9458	23.5600
050205	24.1691	24.1275	25.2841	24.5169
050207	22.9941	23.7774	25.1863	23.9991
050211	31.7280	33.2481	34.3396	33.0898
050213	21.4951	*	*	21.4951
050214	24.0276	21.1480	22.2431	22.4178
050215	35.0459	31.6895	34.4745	33.7035
050217	20.2042	21.3026	22.2055	21.2565
050219	21.2458	21.7637	21.8649	21.6598
050222	23.3563	23.0670	24.6959	23.7463
050224	23.5101	24.8431	25.1943	24.5595
050225	21.6820	22.0981	24.5601	22.7516
050226	24.4443	26.1959	26.0826	25.7144
050228	34.2596	36.0632	38.6751	36.2629
050230	26.6291	26.7963	30.0380	27.8217
050231	26.7321	27.4697	27.0320	27.0798
050232	24.5245	25.8640	25.3439	25.2423
050234	24.6126	25.0104	23.2830	24.1727
050235	27.0922	26.0323	27.2838	26.7962
050236	25.9458	27.7406	26.9290	26.8640
050238	24.5823	25.1796	26.0312	25.2541
050239	23.2711	24.9469	27.0911	26.1055
050240	26.7620	28.8910	32.8542	29.7204
050241	29.8345	*	*	29.8345
050242	32.0829	33.5646	34.4412	33.3749
050243	26.4627	26.0256	28.5626	27.0708
050245	23.2716	24.6092	25.7585	24.5579
050248	27.6457	28.4413	29.1192	28.4523
050251	23.6360	27.9531	24.4552	25.2214
050253	16.7540	21.0399	23.9247	20.2377
050254	20.1176	22.3414	23.3358	21.9420
050256	23.4835	25.1104	26.8618	25.3035
050257	17.2596	15.6379	17.4909	16.8191
050260	27.4234	30.1623	24.9073	27.2549
050261	20.1040	19.4649	21.4693	20.3613
050262	29.5550	30.8866	33.0425	31.0973
050264	36.0331	33.2270	37.5425	35.5478
050267	26.0401	27.8393	26.6558	26.7955
050270	25.3757	26.4092	27.9871	26.6878
050272	23.0587	23.3443	24.0921	23.5076
050276	33.3302	34.0633	34.4832	33.9454
050277	26.0822	23.6065	35.6323	28.8604
050278	23.9289	24.9699	26.0331	24.9976
050279	21.8949	22.2776	23.5145	22.5756
050280	25.6651	26.3392	28.4969	26.8343

* Denotes wage data not available for the provider for that year.
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Provider No.	Average hourly wage FY 2002	Average hourly wage FY 2003	Average hourly wage FY 2004	Average hourly** wage (3 yrs)
050281	24.2251	25.2699	25.7832	25.1246
050282	25.4428	26.4698	*	25.9126
050283	31.7669	32.3270	35.1831	33.1816
050286	19.4241	20.6191	19.7351	19.9268
050289	30.4750	32.2125	34.9651	32.5458
050290	29.6796	31.5000	31.9510	31.0288
050291	29.4029	30.9334	28.3451	29.5051
050292	20.8410	21.4357	27.6114	23.1188
050293	24.1875	17.1935	*	20.0134
050295	21.7883	25.4405	25.4332	24.2106
050296	28.3906	30.0984	33.5948	30.6658
050298	23.2006	22.4000	26.1833	23.8635
050299	25.5035	24.6751	26.9870	25.7710
050300	25.9228	26.0298	26.6700	26.2233
050301	21.1403	24.7987	22.7711	22.8646
050305	36.7908	36.6981	38.7597	37.4248
050308	28.9284	30.3887	31.6790	30.3648
050309	25.3515	25.5221	25.5367	25.4704
050312	26.0015	26.0172	28.2557	26.8194
050313	25.6827	28.9126	25.0948	26.4529
050315	22.7359	22.5906	23.6638	23.0139
050320	32.4809	31.6571	31.9686	32.0209
050324	25.3694	26.8313	28.4931	27.0063
050325	23.6327	22.6353	26.6326	24.1679
050327	25.6450	31.1527	33.0549	29.6283
050329	21.6984	24.2134	26.6341	24.1720
050331	25.0230	25.2110	21.5193	23.7909
050333	19.1449	14.1808	15.6929	16.0637
050334	34.2557	34.3956	37.2336	35.3386
050335	22.9926	22.9335	23.9713	23.3018
050336	21.3402	22.0203	*	21.6868
050342	20.8255	22.4510	23.0282	22.0864
050348	25.1085	29.3364	28.9864	27.7954
050349	15.0667	15.4536	15.6042	15.3828
050350	26.4161	27.2368	27.2573	26.9829
050351	24.8121	25.2436	27.4042	25.8956
050352	26.4262	27.7489	32.6772	28.8562
050353	23.2699	24.1009	24.8223	24.0722
050355	21.0969	41.4710	*	27.5904
050357	24.5345	24.3540	25.2126	24.7119
050359	21.7548	19.7653	22.9175	21.4664
050360	31.7583	33.3592	35.9032	33.7039
050366	19.6823	22.0442	23.4696	21.8093
050367	30.7328	31.7487	32.6760	31.7233
050369	26.2234	26.6627	28.0909	27.0127
050373	27.8275	29.9749	30.4697	29.3692
050376	28.0990	28.4026	30.3530	28.9347
050377	17.0012	11.6463	14.3889	14.7469
050378	26.9101	27.8389	30.4937	28.3969
050379	18.4278	24.2408	27.5150	22.7721
050380	31.9578	31.5962	35.1536	32.9076
050382	25.9244	26.3968	26.8949	26.4027
050385	*	27.1692	*	27.1692
050388	22.0122	17.6762	15.6834	18.4348
050390	24.2700	25.8556	25.7881	25.2656
050391	20.0615	19.0832	20.2887	19.7798
050392	22.9430	24.9003	21.8139	23.1475
050393	24.1981	25.4028	26.4918	25.4171
050394	23.1526	23.1641	25.1869	23.8865
050396	25.3729	25.7580	28.4161	26.5200
050397	20.6397	23.3212	24.7280	22.8187
050401	18.4593	*	*	18.4593
050404	15.9839	16.4845	20.0233	17.3758

* Denotes wage data not available for the provider for that year.
** Based on the sum of the salaries and hours computed for Federal FYs 2002, 2003, and 2004.

TABLE 2.—HOSPITAL AVERAGE HOURLY WAGE FOR FEDERAL FISCAL YEARS 2002 (1998 WAGE DATA), 2003 (WAGE DATA), AND 2004 (2000 WAGE DATA) WAGE INDEXES AND 3-YEAR AVERAGE OF HOSPITAL AVERAGE HOURLY WAGES—Continued

Provider No.	Average hourly wage FY 2002	Average hourly wage FY 2003	Average hourly wage FY 2004	Average hourly** wage (3 yrs)
050406	17.8596	21.5282	23.0438	20.5476
050407	30.8346	32.0753	33.2894	32.0587
050410	19.8508	17.1718	19.8436	18.9151
050411	33.1943	33.1718	*	33.1828
050414	25.9723	24.5471	26.8815	25.7060
050417	23.3005	23.3862	24.4608	23.7300
050419	23.4936	25.1449	26.4357	25.0021
050420	23.5438	26.4201	26.7537	25.5652
050423	21.3552	24.8113	26.5188	24.3189
050424	24.0727	25.9378	27.5273	25.9000
050425	35.3712	33.7276	37.7347	35.6925
050426	29.0120	26.7941	30.9610	28.8880
050427	16.4330	31.4154	25.8360	23.8810
050430	21.2275	25.2322	31.5171	24.6961
050432	24.5630	26.0686	28.2074	26.3472
050433	18.9021	17.7980	14.3846	17.2267
050434	*	24.0017	*	24.0017
050435	23.3426	22.5428	22.6561	22.8168
050438	23.2583	25.3763	26.5535	25.0490
050440	22.5400	25.4767	28.2209	25.3120
050441	31.8774	33.4696	36.6580	33.8900
050443	17.2875	16.8897	18.0063	17.3814
050444	22.4530	22.6469	23.5299	22.8500
050446	22.3422	20.3611	20.0104	20.8645
050447	18.9851	24.4339	25.7274	23.3050
050448	21.7718	22.6612	26.6967	23.5469
050449	23.4614	*	*	23.4614
050454	30.0792	30.3063	34.4813	31.6390
050455	19.8577	20.5575	23.8527	21.3319
050456	18.1585	17.5846	23.7594	19.3948
050457	32.1910	34.2116	37.4570	34.4455
050464	25.7710	25.8092	31.4768	27.7900
050468	22.2926	22.9771	17.8128	20.5312
050469	24.5205	*	25.7995	25.2381
050470	16.0805	15.7765	21.2996	17.4624
050471	27.1597	29.4705	32.3570	29.6121
050476	24.0253	25.9458	25.9711	25.3460
050477	27.5819	30.8781	32.1676	30.2255
050478	26.3306	28.1829	28.3893	27.6685
050481	27.7973	28.5320	29.4912	28.6205
050482	16.0114	21.6091	23.0016	19.2164
050485	24.6906	25.2723	23.8237	24.5767
050488	31.7481	33.8291	37.2438	34.4285
050491	27.4600	27.7412	29.2987	28.1988
050492	20.5030	23.4977	23.7383	22.6518
050494	29.1296	30.2875	30.7725	30.1010
050496	34.9704	32.7474	35.7115	34.4409
050497	15.4115	*	14.4481	14.9306
050498	26.1716	27.6099	28.2196	27.3481
050502	25.3701	27.2724	27.9506	26.8641
050503	23.3745	25.7668	26.7924	25.3905
050506	25.0333	27.1555	30.4731	27.5747
050510	33.7481	36.2548	39.6005	36.5514
050512	34.4368	36.0785	39.0767	36.6044
050515	33.7321	37.3440	36.3131	35.7452
050516	26.1969	25.3450	30.0359	27.0104
050517	22.0985	23.6067	23.4131	22.9981
050522	36.2127	37.0295	38.9158	36.9675
050523	31.2522	32.1272	33.8053	32.4311
050526	26.4014	26.8814	29.0004	27.4593
050528	18.9155	21.1741	23.9177	21.3604
050531	21.3948	*	22.7311	22.0660
050534	24.0001	24.4038	26.7941	25.0949

* Denotes wage data not available for the provider for that year.
** Based on the sum of the salaries and hours computed for Federal FYs 2002, 2003, and 2004.

TABLE 2.—HOSPITAL AVERAGE HOURLY WAGE FOR FEDERAL FISCAL YEARS 2002 (1998 WAGE DATA), 2003 (WAGE DATA), AND 2004 (2000 WAGE DATA) WAGE INDEXES AND 3-YEAR AVERAGE OF HOSPITAL AVERAGE HOURLY WAGES—Continued

Provider No.	Average hourly wage FY 2002	Average hourly wage FY 2003	Average hourly wage FY 2004	Average hourly** wage (3 yrs)
050535	26.8511	27.7626	29.7904	28.1965
050537	24.0354	26.2342	25.1292	25.1574
050539	23.3846	23.7778	24.1196	23.7754
050541	36.6149	37.0551	41.1980	38.3379
050542	17.7737	21.8129	21.2846	19.9901
050543	21.6795	22.4134	24.0333	22.7542
050545	31.7280	33.6302	33.4322	32.9305
050546	38.8087	39.4266	42.8053	40.3552
050547	37.7681	37.7633	40.6483	38.6518
050548	29.8516	30.3336	32.3944	30.8465
050549	28.9615	30.0948	31.6709	30.2918
050550	25.6588	26.5515	29.0938	27.1362
050551	24.8084	26.1042	28.6834	26.5676
050552	20.3239	20.6068	24.9755	21.7907
050557	22.2562	23.8340	25.8401	24.0476
050559	24.7866	26.3799	25.3299	25.4887
050561	33.4423	34.2065	*	33.8236
050564	24.2091	*	*	24.2090
050565	20.8349	*	*	20.8349
050566	22.3448	21.7712	24.0648	22.6946
050567	25.0787	26.2588	27.8475	26.4308
050568	20.5376	21.9313	20.8324	21.0880
050569	27.3429	27.3294	27.7955	27.4880
050570	25.8619	26.8965	29.9470	27.6972
050571	24.0154	26.2226	29.1716	26.5115
050573	25.6589	25.9380	27.2328	26.2959
050575	20.7090	27.8579	23.1358	23.6994
050577	23.5487	25.2861	26.4806	25.0050
050578	28.9009	32.0554	31.1695	30.6550
050579	29.9348	32.0245	34.9794	32.4397
050580	24.6962	22.7522	27.2431	24.7685
050581	24.9807	26.0580	28.9696	26.6705
050583	25.8800	26.2664	30.0427	27.5806
050584	19.5805	24.5294	24.5544	22.7601
050585	24.2824	26.4446	26.0595	25.5822
050586	23.1850	*	*	23.1850
050588	24.5472	27.0506	30.5453	27.6351
050589	23.8880	23.7918	27.9845	25.1893
050590	24.4797	25.1100	27.0535	25.5262
050591	25.0209	26.7662	28.6151	26.8393
050592	22.1174	23.8267	25.9545	23.8223
050594	27.7002	28.7415	30.8029	29.1185
050597	23.3280	23.1209	24.5542	23.6763
050598	23.9202	25.1622	31.1703	26.7495
050599	26.0892	26.3782	27.7684	26.7559
050601	29.7417	29.7734	32.3033	30.6813
050603	21.7031	24.9032	25.0996	23.8892
050604	35.4034	36.4669	42.0018	37.9795
050608	18.1664	20.9171	20.7954	19.9529
050609	33.5028	34.8949	*	34.1686
050613	30.2413	34.9768	*	32.5464
050615	27.5682	25.8698	29.4322	27.6985
050616	24.9843	25.0016	*	24.9928
050618	21.4895	22.3548	*	21.9734
050623	27.5832	28.6475	29.9553	28.6716
050624	26.4659	22.4030	23.4665	23.9161
050625	27.5816	29.3665	29.6612	28.9346
050630	24.2120	25.2915	27.7052	25.7731
050633	25.4283	27.8165	30.2883	27.9289
050636	23.5257	25.0214	23.2573	23.9123
050638	18.2159	15.6375	21.0088	18.1465
050641	17.1258	17.9379	21.5030	19.2373
050644	22.1489	*	28.4054	25.2877

* Denotes wage data not available for the provider for that year.
** Based on the sum of the salaries and hours computed for Federal FYs 2002, 2003, and 2004.

TABLE 2.—HOSPITAL AVERAGE HOURLY WAGE FOR FEDERAL FISCAL YEARS 2002 (1998 WAGE DATA), 2003 (WAGE DATA), AND 2004 (2000 WAGE DATA) WAGE INDEXES AND 3-YEAR AVERAGE OF HOSPITAL AVERAGE HOURLY WAGES—Continued

Provider No.	Average hourly wage FY 2002	Average hourly wage FY 2003	Average hourly wage FY 2004	Average hourly** wage (3 yrs)
050662	35.0989	38.9592	40.9243	38.2885
050663	24.9110	22.7770	22.9161	23.2174
050667	27.5045	26.9236	31.4906	28.5908
050668	61.7751	57.8627	*	59.6272
050670	24.6101	24.1626	*	24.3757
050674	32.4807	33.7845	36.8871	34.4747
050676	20.2087	16.3948	24.3105	19.1193
050677	33.6070	34.0936	*	33.8463
050678	22.7756	25.2143	27.1337	25.0885
050680	31.4839	31.9166	32.2371	31.8875
050682	17.3566	19.8107	23.0983	19.8665
050684	23.3697	24.2792	23.7443	23.7986
050685	35.1307	30.4194	*	32.6498
050686	33.4420	34.8278	*	34.1349
050688	31.0648	34.9936	36.5555	34.8315
050689	30.9399	34.0571	37.5449	34.4378
050690	34.8112	36.7516	41.1385	37.6299
050693	25.5662	29.1213	32.6638	29.3244
050694	23.5572	25.1964	25.8299	24.8850
050695	24.4301	26.2838	27.8742	26.2576
050696	28.3291	29.6685	29.9410	29.3284
050697	18.2338	24.1116	18.5357	19.9903
050698	*	24.9559	*	24.9559
050699	17.5296	23.4611	26.3932	21.9529
050701	24.3055	26.4901	28.4650	26.3518
050704	22.7618	25.6565	24.6072	24.3668
050707	27.8958	28.2637	27.7366	27.9699
050708	24.8647	24.5606	22.1605	23.8703
050709	19.4977	21.8770	22.7897	21.4220
050710	27.5828	30.5918	33.7204	30.7878
050713	16.8538	18.2822	19.0071	18.0075
050714	30.1925	30.3290	30.3262	30.2901
050717	28.7973	31.5021	33.0719	31.0905
050718	18.0940	22.5989	21.7835	21.3483
050719	23.0833	*	22.0997	22.4754
050720	25.8677	*	26.1941	26.0295
050723	*	32.0291	33.0797	32.5951
050725	*	*	20.6592	20.6592
050726	*	*	25.8742	25.8742
060001	21.1819	21.4562	23.1548	21.9595
060003	20.4582	21.9043	23.0807	21.8505
060004	21.4496	22.9265	25.0037	23.2681
060006	20.0213	21.0003	21.8609	21.0085
060007	18.2977	19.3071	22.2747	19.9022
060008	18.4590	18.7097	19.8803	19.0217
060009	22.7164	23.9272	24.1285	23.6009
060010	23.6827	24.2735	25.9341	24.6424
060011	22.3458	22.2058	25.4458	23.3434
060012	19.4932	21.2980	22.6374	21.1159
060013	19.1256	23.5248	23.3954	21.9829
060014	24.3210	25.7701	25.9159	25.3595
060015	23.2469	23.6015	27.6338	24.8106
060016	20.2408	20.2361	22.9300	21.1421
060018	21.5083	21.8478	21.0581	21.4599
060020	18.8985	19.7348	20.9025	19.8893
060022	21.0830	22.8059	19.8819	21.2558
060023	21.5475	22.4731	24.3749	22.8346
060024	22.9185	24.3658	25.2409	24.2358
060027	22.0713	22.1717	25.1480	23.2185
060028	23.1792	24.2985	27.3340	24.9108
060029	18.2938	19.8498	*	19.0675
060030	20.3452	21.2612	22.8309	21.5553
060031	22.5067	23.3995	23.8781	23.2637

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TABLE 2.—HOSPITAL AVERAGE HOURLY WAGE FOR FEDERAL FISCAL YEARS 2002 (1998 WAGE DATA), 2003 (WAGE DATA), AND 2004 (2000 WAGE DATA) WAGE INDEXES AND 3-YEAR AVERAGE OF HOSPITAL AVERAGE HOURLY WAGES—Continued

Provider No.	Average hourly wage FY 2002	Average hourly wage FY 2003	Average hourly wage FY 2004	Average hourly** wage (3 yrs)
060032	22.8123	24.7678	25.5628	24.4445
060033	16.0760	17.8514	16.7266	16.8791
060034	23.2816	24.3652	26.2141	24.6650
060036	18.5988	18.6521	18.1954	18.4720
060037	15.4513	15.7495	17.1258	16.1605
060038	14.3249	16.6525	15.3718	15.5616
060041	19.1263	19.5872	20.8745	19.8909
060042	20.8597	19.3967	22.5613	20.7473
060043	13.4443	15.4073	19.1085	15.9780
060044	20.8673	21.3102	25.6112	22.7216
060046	22.2699	22.6819	24.0645	23.0457
060047	17.1534	17.9173	18.1662	17.7570
060049	23.0613	25.9592	25.3425	24.9252
060050	19.0832	*	20.4386	19.8467
060052	14.8729	16.0543	18.2354	16.3844
060053	18.0232	19.4746	22.2894	19.8382
060054	20.4160	19.7753	20.9346	20.3624
060056	18.1263	21.9586	21.9389	20.8180
060057	25.4185	24.6599	24.4012	24.8132
060058	13.8539	16.4504	20.3154	16.7670
060060	15.6018	19.4418	21.0586	18.5977
060062	16.8640	17.1032	19.0995	17.6743
060064	22.7797	28.8746	29.1806	26.8320
060065	24.5572	24.4554	29.2179	26.0872
060066	17.2537	17.5556	14.6820	16.5806
060070	18.8960	19.2220	22.6894	20.3042
060071	17.4068	17.6452	20.1385	18.3916
060073	17.0846	18.4971	16.5027	17.3443
060075	23.8724	25.0552	27.2654	25.3696
060076	20.3265	22.9426	23.6266	22.3373
060085	14.3409	10.9724	15.6918	13.4494
060088	13.7174	20.7211	22.9170	18.6644
060090	16.3760	16.5321	*	16.4540
060096	20.8937	21.9951	20.0869	21.0065
060100	23.9305	24.8116	27.4972	25.4548
060103	23.5083	24.4962	26.7150	24.9461
060104	21.1820	24.4248	26.8237	23.9979
060107	21.9221	*	*	21.9222
060108	*	19.1327	19.0011	19.0448
060109	*	27.3180	*	27.3180
060110	*	*	31.3494	31.3494
070001	26.3596	27.7441	29.9592	27.9941
070002	26.1768	26.6881	28.1101	26.9593
070003	27.5200	28.1721	29.7864	28.5044
070004	24.2567	25.4310	25.7207	25.1218
070005	26.9151	27.6733	29.8173	28.0976
070006	28.6413	33.6291	32.6824	31.8244
070007	26.3313	28.0875	29.0734	27.8655
070008	24.2971	25.1362	24.3907	24.6106
070009	24.1871	24.9408	25.4576	24.8664
070010	29.2194	28.3168	30.4192	29.3329
070011	23.0883	24.8206	24.9457	24.2870
070012	28.8067	37.5917	34.9099	33.4527
070015	28.1204	29.2693	30.0614	29.1548
070016	24.4633	28.4833	31.2173	27.8518
070017	26.0424	27.5515	29.2978	27.4590
070018	30.6864	32.6301	33.8654	32.4296
070019	24.9249	26.2348	27.9838	26.4038
070020	25.9964	26.6203	28.4084	27.0418
070021	26.3043	29.4596	30.0915	28.7001
070022	26.9111	27.2423	29.2864	27.8032
070024	24.8948	26.3544	28.3460	26.5801
070025	25.4345	27.3592	28.3017	27.0096

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TABLE 2.—HOSPITAL AVERAGE HOURLY WAGE FOR FEDERAL FISCAL YEARS 2002 (1998 WAGE DATA), 2003 (WAGE DATA), AND 2004 (2000 WAGE DATA) WAGE INDEXES AND 3-YEAR AVERAGE OF HOSPITAL AVERAGE HOURLY WAGES—Continued

Provider No.	Average hourly wage FY 2002	Average hourly wage FY 2003	Average hourly wage FY 2004	Average hourly** wage (3 yrs)
070027	26.8450	25.9279	26.8236	26.5341
070028	25.7492	26.7286	28.2078	26.9036
070029	23.9682	23.8427	25.8107	24.5347
070030	22.1578	*	*	22.1578
070031	24.1198	25.6347	25.5880	25.0854
070033	31.4736	34.1591	35.8504	33.8348
070034	29.4916	30.0744	32.4220	30.6177
070035	24.1423	24.5996	25.9776	24.8552
070036	29.9470	31.2961	32.4920	31.2720
070038	*	26.3126	*	26.3126
070039	22.3356	*	32.6059	29.3416
080001	24.8833	26.8887	28.0858	26.6310
080002	20.1965	20.9385	23.7309	21.6786
080003	23.1275	24.8200	24.8199	24.2173
080004	22.9706	21.7344	24.2251	22.9785
080006	22.6671	20.9399	20.9757	21.4333
080007	21.3746	21.5415	23.4933	22.1686
090001	21.5751	23.0365	7.5651	17.9081
090002	21.5726	20.6550	23.5159	21.8418
090003	23.1268	27.1087	22.7014	24.0752
090004	25.5054	25.9717	28.7417	26.8011
090005	26.3074	26.8690	28.6142	27.2997
090006	22.0957	22.9658	23.7111	22.9438
090007	29.2840	24.6668	25.8430	26.6042
090008	25.2708	*	19.3212	22.1162
090010	23.6616	25.9373	*	24.7397
090011	26.6349	27.6038	31.7710	28.7553
100001	20.2157	22.0101	21.7561	21.3158
100002	21.0222	21.5772	21.6362	21.4258
100004	15.4149	16.1638	15.6306	15.7493
100006	21.2293	21.6922	23.3307	22.1620
100007	22.1590	22.5317	23.9004	22.9055
100008	20.8381	21.6416	22.7706	21.7804
100009	22.1741	22.6370	23.7460	22.8738
100010	23.0637	23.9582	25.5614	24.1330
100012	20.4659	22.0244	24.2602	22.3053
100014	19.5770	21.9875	21.7566	21.0988
100015	18.0654	18.9383	22.1272	19.7135
100017	19.8655	20.1417	21.1905	20.4341
100018	21.6388	22.6587	24.2154	22.8672
100019	23.5462	25.8297	24.2201	24.5270
100020	20.7816	21.7421	23.1885	21.9438
100022	26.5695	27.4235	27.9072	27.2953
100023	19.1787	20.2034	21.8111	20.3897
100024	22.1332	22.9872	24.4070	23.2018
100025	19.4529	20.1360	21.2568	20.2991
100026	20.9461	21.3742	21.7970	21.3789
100027	14.7916	20.5889	21.9900	18.2354
100028	19.3371	20.3751	21.5305	20.4329
100029	20.8950	22.2553	24.6814	22.4835
100030	20.5952	19.5604	21.5303	20.5938
100032	19.7451	20.6543	21.6415	20.6364
100034	19.5282	20.0099	22.2146	20.5533
100035	23.8117	21.3519	22.6349	22.5792
100038	24.5864	24.9548	25.6018	25.0869
100039	21.7861	23.3111	23.8060	22.9806
100040	18.6321	19.5154	21.3865	19.8692
100043	18.8206	20.7688	21.7738	20.4584
100044	22.7236	22.9474	23.9952	23.2248
100045	21.0228	22.8096	30.3359	24.4856
100046	21.3028	23.2027	24.2746	22.8753
100047	20.6068	21.4971	24.3522	22.2329
100048	15.7790	17.3663	17.5533	16.9309

* Denotes wage data not available for the provider for that year.
** Based on the sum of the salanes and hours computed for Federal FYs 2002, 2003, and 2004.

TABLE 2.—HOSPITAL AVERAGE HOURLY WAGE FOR FEDERAL FISCAL YEARS 2002 (1998 WAGE DATA), 2003 (WAGE DATA), AND 2004 (2000 WAGE DATA) WAGE INDEXES AND 3-YEAR AVERAGE OF HOSPITAL AVERAGE HOURLY WAGES—Continued

Provider No.	Average hourly wage FY 2002	Average hourly wage FY 2003	Average hourly wage FY 2004	Average hourly** wage (3 yrs)
100049	19.1025	20.9490	21.8676	20.6412
100050	17.9039	17.8960	20.0405	18.6106
100051	17.9453	19.3258	19.9713	19.1475
100052	18.1780	19.6620	18.6363	18.8133
100053	19.6800	21.6634	23.7837	21.6611
100054	21.1518	20.9612	21.8613	21.3455
100055	18.8760	19.1324	19.6350	19.2002
100056	21.8506	23.1737	25.9245	23.6383
100057	19.5319	22.3406	24.4271	21.9677
100060	23.5997	*	*	23.5997
100061	22.9176	24.5277	25.7559	24.3953
100062	21.4424	21.9054	24.9807	22.7317
100063	18.4642	19.2510	21.5620	19.9030
100067	18.4851	19.2168	23.6270	20.3382
100068	19.8308	19.9648	23.7197	21.3073
100069	17.3666	18.5789	19.6037	18.6041
100070	20.0381	20.9592	20.4770	20.4616
100071	17.7234	20.7461	21.7675	20.3419
100072	20.5968	22.0317	21.9184	21.5398
100073	22.2812	22.2425	23.5843	22.7262
100075	19.4480	20.4604	21.8589	20.5692
100076	17.8612	18.4815	19.6444	18.6617
100077	19.0640	20.9482	22.2470	20.8144
100078	19.2891	16.6003	17.4683	17.7417
100080	22.7153	22.9720	22.7056	22.7946
100081	15.4253	16.5149	16.4804	16.1357
100084	22.7009	24.5682	23.5435	23.6450
100086	23.3718	24.3067	25.2375	24.3294
100087	23.6562	22.1764	26.2514	24.0027
100088	20.5566	20.6667	23.6270	21.6062
100090	19.7695	21.0431	22.5894	21.1520
100092	20.1760	21.4601	25.4630	22.1148
100093	16.8422	18.7153	20.2949	18.6499
100098	20.8315	21.1723	20.0639	20.7185
100099	15.7591	16.5271	16.1165	16.1278
100102	19.7673	19.0193	21.6772	20.1082
100103	18.7844	19.1222	20.3633	19.4145
100105	21.8268	22.7793	24.5464	23.0784
100106	17.4958	21.4342	18.5389	19.1251
100107	20.0719	21.7553	23.3789	21.7356
100108	20.1125	18.4127	15.1791	17.6124
100109	20.8370	20.6007	22.3671	21.2613
100110	20.1853	22.8127	24.2271	22.5089
100112	15.2128	16.2109	16.9325	16.1723
100113	21.3489	23.3380	20.6110	21.7279
100114	22.8178	22.5326	25.3699	23.4863
100117	20.6962	21.3085	23.2994	21.7923
100118	20.7323	21.7067	24.1105	22.1068
100121	18.5842	19.9033	23.1100	20.5301
100122	19.2643	24.9765	23.6638	22.5106
100124	20.4022	20.0867	14.8231	17.8809
100125	19.6097	20.3232	22.4185	20.8356
100126	19.3103	21.4349	21.7977	20.8062
100127	19.2122	20.5153	21.0153	20.2670
100128	22.6826	23.5835	24.4104	23.6230
100130	20.0947	21.0023	20.2478	20.4482
100131	23.1622	24.6184	25.4186	24.4498
100132	18.7863	19.5259	21.1446	19.8043
100134	15.9733	16.9302	18.3392	17.1001
100135	19.1865	19.7675	20.3831	19.7887
100137	19.5562	20.9015	*	20.2591
100138	14.9539	14.9760	16.4384	15.4793
100139	15.2532	15.7378	18.2187	16.3579

* Denotes wage data not available for the provider for that year.
** Based on the sum of the salanes and hours computed for Federal FYs 2002, 2003, and 2004.

TABLE 2.—HOSPITAL AVERAGE HOURLY WAGE FOR FEDERAL FISCAL YEARS 2002 (1998 WAGE DATA), 2003 (WAGE DATA), AND 2004 (2000 WAGE DATA) WAGE INDEXES AND 3-YEAR AVERAGE OF HOSPITAL AVERAGE HOURLY WAGES—Continued

Provider No.	Average hourly wage FY 2002	Average hourly wage FY 2003	Average hourly wage FY 2004	Average hourly** wage (3 yrs)
100140	19.0584	20.2288	22.6326	20.6848
100142	18.4113	17.7250	20.0689	18.7079
100146	21.3359	20.8381	*	21.0641
100147	15.2348	17.1566	17.2835	16.5550
100150	21.5057	25.4269	22.9193	23.1341
100151	28.8489	26.6143	26.8564	25.9003
100154	20.4068	21.6715	23.0820	21.7335
100156	18.4779	20.0348	20.7649	19.8064
100157	22.6195	24.2188	23.1045	23.3126
100159	10.7818	15.0633	19.3145	15.1520
100160	23.3121	22.6942	23.4877	23.1680
100161	22.3053	23.3612	24.4326	23.3822
100162	20.3110	24.2950	23.8001	22.8069
100165	22.6622	*	*	22.6623
100166	21.2309	22.2419	23.7327	22.3765
100167	23.2969	25.7676	26.8139	25.3034
100168	20.3167	23.0121	24.6276	22.6616
100169	20.3017	21.6397	22.5755	21.5513
100170	19.3005	21.2469	*	20.1922
100172	14.8826	15.7827	17.6051	16.0261
100173	17.1337	18.3828	19.7190	18.4365
100174	21.9807	*	*	21.9807
100175	20.5442	21.2532	21.0474	20.9357
100176	24.3089	24.6595	26.8740	25.2920
100177	24.4284	25.1037	24.4295	24.6550
100179	23.0849	23.9633	22.8536	23.2786
100180	21.5388	22.7781	24.7990	23.1132
100181	18.9510	17.9048	18.1320	18.3165
100183	23.0654	22.2063	24.4575	23.2115
100187	20.8535	21.4988	23.4760	21.9203
100189	26.5962	27.1295	26.6653	26.7935
100191	21.0647	22.0526	24.2299	22.5063
100200	23.8729	24.8878	24.8120	24.5400
100204	20.2193	21.1922	22.2613	21.2482
100206	20.1171	20.3436	*	20.2327
100208	20.7029	20.4678	24.1482	21.8277
100209	23.3903	22.8236	23.5479	23.2587
100210	21.8545	23.0431	26.0933	23.6634
100211	20.7516	21.6367	*	21.1977
100212	21.1263	21.7239	22.6259	21.8401
100213	21.1818	22.0176	24.4995	22.6205
100217	22.7335	22.7116	24.0291	23.1695
100220	21.8246	24.6233	24.9733	23.7248
100221	21.2321	23.2263	*	22.1854
100223	20.2233	21.8962	21.1051	21.1071
100224	21.8628	22.3567	22.7403	22.3391
100225	21.5059	22.4619	23.9971	22.6579
100226	21.8808	22.7301	23.8070	22.8491
100228	20.8810	24.9691	*	22.9269
100229	18.2350	19.7259	21.0039	19.5689
100230	22.5650	23.4169	25.0408	23.8884
100231	18.7526	21.5712	22.8325	20.8200
100232	19.8002	20.1459	21.8906	20.6484
100234	21.6360	24.3355	24.0421	23.3485
100236	20.6942	21.7886	23.7286	22.0173
100237	23.2408	23.2712	26.7664	24.3476
100238	20.8252	23.3747	24.6513	22.9237
100239	19.4481	23.2242	24.9409	22.4134
100240	21.0606	21.3495	23.0650	21.8213
100241	17.1063	14.1059	14.6992	15.3546
100242	18.6938	19.1097	20.4142	19.4632
100243	20.8041	22.4495	23.2812	22.2413
100244	20.5352	21.4386	23.4876	21.8968

* Denotes wage data not available for the provider for that year.
** Based on the sum of the salaries and hours computed for Federal FYs 2002, 2003, and 2004.

TABLE 2.—HOSPITAL AVERAGE HOURLY WAGE FOR FEDERAL FISCAL YEARS 2002 (1998 WAGE DATA), 2003 (WAGE DATA), AND 2004 (2000 WAGE DATA) WAGE INDEXES AND 3-YEAR AVERAGE OF HOSPITAL AVERAGE HOURLY WAGES—Continued

Provider No.	Average hourly wage FY 2002	Average hourly wage FY 2003	Average hourly wage FY 2004	Average hourly** wage (3 yrs)
100246	21.9247	23.5614	26.6552	23.9760
100248	21.2988	22.1553	23.7614	22.4427
100249	18.1397	18.4932	21.3942	19.2694
100252	19.8079	22.0976	22.6481	21.5857
100253	22.4778	22.6517	23.4448	22.8823
100254	19.5523	20.4410	23.2068	21.2034
100255	21.0284	20.7228	22.9793	21.5458
100256	21.2786	22.4844	23.7315	22.4906
100258	20.0300	22.0790	24.5699	22.2126
100259	21.1160	21.4991	24.0960	22.2834
100260	24.9183	21.2413	23.4255	23.0969
100262	21.0927	22.7137	23.8006	22.3809
100264	19.9491	21.7410	22.4616	21.4161
100265	18.2291	20.2664	21.0688	19.9095
100266	19.3623	20.2821	21.5258	20.4415
100267	21.7430	22.8054	23.3558	22.6691
100268	24.0538	23.5414	26.0297	24.5763
100269	22.5114	26.0271	25.0014	24.5239
100270	16.7148	20.8217	16.6468	18.0052
100271	20.8695	21.9823	*	21.4488
100275	21.4904	23.2920	23.1316	22.6853
100276	24.1022	24.8251	25.4557	24.8136
100277	19.7241	14.9157	25.2985	18.4223
100279	22.5879	23.1776	24.6625	23.4267
100280	18.1972	19.0157	*	18.6075
100281	23.0142	23.4729	25.3382	24.0569
100282	18.4884	20.9256	21.8279	20.4704
100284	18.9448	18.5716	22.3046	19.9187
110001	20.1150	22.4535	24.0561	22.2069
110002	19.5158	20.2149	20.0125	19.9219
110003	17.1450	18.2792	19.7061	18.4215
110004	19.7733	20.6096	21.8791	20.7777
110005	22.4568	21.8105	23.6147	22.7129
110006	21.0601	22.0325	23.8762	22.3201
110007	25.2523	25.9135	27.8969	26.3641
110008	18.5265	20.4972	22.6308	20.7088
110009	17.4306	16.6452	16.2944	16.8215
110010	23.9104	25.1930	26.5265	25.2350
110011	18.9823	20.4028	23.2149	20.8820
110013	18.9160	16.7833	19.7781	18.4998
110014	18.1787	18.4463	18.7642	18.4629
110015	20.9926	21.2600	23.2279	21.9187
110016	14.2398	14.7571	18.8371	15.7745
110017	22.2537	21.2970	21.8808	21.8184
110018	22.1480	23.0577	24.7007	23.3525
110020	19.4617	20.9587	22.5988	20.9702
110023	22.0546	21.6512	23.6182	22.4827
110024	20.7345	21.3945	22.1471	21.4330
110025	20.4232	20.2493	29.0965	22.6398
110026	16.2484	16.9161	19.3200	17.4907
110027	14.7081	19.8976	19.8351	18.0251
110028	29.1670	28.1695	25.9474	27.6479
110029	21.2150	21.3694	23.0779	21.9337
110030	19.6412	20.4656	21.6618	20.6037
110031	20.0553	20.9219	22.8695	21.3219
110032	18.2014	19.2685	18.0744	18.4929
110033	25.6335	23.1939	24.1447	24.2752
110034	19.5554	23.0724	22.8541	21.6751
110035	22.7950	21.8646	23.4610	22.7096
110036	24.9234	22.5481	24.5675	23.9890
110038	17.7396	18.4508	20.1710	18.7818
110039	20.4998	18.9817	17.0608	18.7776
110040	16.8083	17.7798	17.3095	17.2984

* Denotes wage data not available for the provider for that year.
** Based on the sum of the salaries and hours computed for Federal FYs 2002, 2003, and 2004.

TABLE 2.—HOSPITAL AVERAGE HOURLY WAGE FOR FEDERAL FISCAL YEARS 2002 (1998 WAGE DATA), 2003 (WAGE DATA), AND 2004 (2000 WAGE DATA) WAGE INDEXES AND 3-YEAR AVERAGE OF HOSPITAL AVERAGE HOURLY WAGES—Continued

Provider No.	Average hourly wage FY 2002	Average hourly wage FY 2003	Average hourly wage FY 2004	*Average hourly** wage (3 yrs)
110041	20.2755	20.1398	20.8050	20.4113
110042	25.2331	25.0535	25.5588	25.2869
110043	20.6150	21.2714	22.7589	21.5611
110044	17.2087	17.5905	19.2562	17.9982
110045	21.3049	22.2424	19.7747	21.0415
110046	21.4905	22.8820	21.6201	22.0167
110048	15.6113	18.8751	21.9621	18.7056
110049	16.8639	17.1396	18.9096	17.6498
110050	19.2291	18.9048	22.1089	20.1584
110051	17.2292	17.2050	17.6816	17.3795
110054	20.0549	20.7825	20.5387	20.4734
110056	17.7959	17.9037	21.7607	19.3353
110059	16.7990	17.8076	19.9802	18.2059
110061	16.3557	17.4601	18.6696	17.5523
110062	17.0053	17.9421	18.2038	17.7308
110063	18.5071	18.0256	19.4401	18.6913
110064	19.1203	18.8742	21.7636	19.8777
110065	16.3546	16.9829	19.9032	17.6656
110066	22.4189	23.4554	*	22.9140
110069	20.9575	21.1513	21.0518	21.0559
110070	17.3438	19.6361	20.8793	19.1178
110071	18.8321	21.5042	15.2336	18.3234
110072	12.7625	13.6626	*	13.1941
110073	16.4658	17.9372	15.2711	16.4347
110074	22.3769	24.4924	23.6564	23.5407
110075	20.1757	20.1604	19.6937	20.0081
110076	21.9798	23.6127	24.9264	23.5306
110078	24.0893	25.7416	27.7261	25.8462
110079	22.1070	22.3641	22.2908	22.2542
110080	19.1839	19.4635	*	19.3217
110082	24.3140	22.7015	24.0664	23.6678
110083	23.1463	22.2609	24.5253	23.3268
110086	16.6374	19.0164	18.8751	18.1588
110087	22.7069	24.0994	25.7908	24.2653
110089	19.3855	19.0453	20.6840	19.7079
110091	21.5328	23.7110	25.1996	23.4730
110092	16.9725	15.9178	16.9116	16.5923
110093	16.9827	*	*	16.9827
110094	16.9503	16.8890	*	16.9211
110095	17.1195	18.9904	20.1024	18.8017
110096	17.4157	18.0418	18.5513	18.0235
110097	17.4558	17.8454	18.9464	18.0488
110098	16.0597	16.7800	17.5567	16.8549
110100	19.0764	18.6822	15.1316	17.6555
110101	18.8491	13.8787	13.3943	14.8763
110103	21.1837	21.5683	*	21.4221
110104	15.9431	16.6322	17.9805	16.8523
110105	16.7775	18.1306	19.2156	18.0663
110107	19.3897	21.2267	21.9213	20.8424
110108	25.2161	20.1140	18.4912	20.6647
110109	16.4031	16.5977	18.7397	17.2348
110111	18.3951	18.4274	22.5840	19.8648
110112	19.8986	18.9574	20.5171	19.8164
110113	15.9532	16.0942	18.0770	16.7135
110114	16.4812	16.8297	17.7019	17.0138
110115	22.5049	26.5759	26.3274	24.9969
110118	19.7509	17.5714	17.7344	18.2780
110120	17.7452	18.4738	20.3099	18.8660
110121	19.3643	18.8744	19.5230	19.2555
110122	21.1469	20.6070	21.1510	20.9707
110124	18.3366	19.4093	19.7005	19.1562
110125	18.0090	19.5666	19.8695	19.1558
110127	20.3765	16.1107	*	18.2840

* Denotes wage data not available for the provider for that year.
** Based on the sum of the salaries and hours computed for Federal FYs 2002, 2003, and 2004.

TABLE 2.—HOSPITAL AVERAGE HOURLY WAGE FOR FEDERAL FISCAL YEARS 2002 (1998 WAGE DATA), 2003 (WAGE DATA), AND 2004 (2000 WAGE DATA) WAGE INDEXES AND 3-YEAR AVERAGE OF HOSPITAL AVERAGE HOURLY WAGES—Continued

Provider No.	Average hourly wage FY 2002	Average hourly wage FY 2003	Average hourly wage FY 2004	Average hourly** wage (3 yrs)
110128	18.0835	20.3046	28.4942	21.9309
110129	19.0001	20.9442	21.5571	20.5238
110130	14.6011	16.6915	17.5272	16.2937
110132	16.3943	17.1820	17.2924	16.9658
110134	19.8639	19.0305	19.1891	19.3419
110135	17.3504	15.6668	18.5125	17.0191
110136	16.9629	20.7827	21.1235	19.3927
110140	17.7915	*	*	17.7915
110141	14.4935	13.2710	14.3027	14.0327
110142	13.9525	14.1203	16.3359	14.8326
110143	22.5926	22.4254	23.5876	22.8713
110144	17.5112	17.5678	18.9425	17.9918
110146	17.1835	17.8499	17.2250	17.4052
110149	32.1975	25.2525	25.3618	27.1829
110150	21.2909	22.8322	22.7366	22.3193
110152	15.1324	16.3837	16.3352	15.9536
110153	20.5068	20.6972	21.5300	20.9068
110154	17.3761	16.5286	*	16.9482
110155	16.5146	16.4756	16.1785	16.4073
110156	16.3876	16.0759	*	16.2355
110161	22.2861	24.5776	26.1275	24.4282
110163	18.6637	20.1183	21.9411	20.2136
110164	21.2160	22.5605	23.7801	22.5540
110165	20.8030	22.5604	23.1047	22.2007
110166	20.5049	22.3822	23.6665	22.0307
110168	21.8058	22.3181	23.3426	22.5338
110169	22.6548	23.3750	24.7083	23.5314
110171	25.5296	24.5313	32.6386	27.7697
110172	23.6803	24.7005	25.2396	24.5635
110174	14.6199	*	*	14.6199
110177	21.2796	22.7831	24.4715	22.8933
110179	22.0767	24.3673	26.1423	24.1256
110181	12.9798	13.9591	34.9026	19.4061
110183	22.5148	24.2899	26.4248	24.4133
110184	22.1920	22.2761	24.3379	22.9563
110185	17.7925	17.3330	19.1991	18.0592
110186	18.3178	19.7172	21.1176	19.7561
110187	19.8419	22.8248	23.2571	21.8964
110188	23.7032	22.0258	*	22.7714
110189	20.8786	19.8454	21.4255	20.7155
110190	18.3649	20.7292	20.5708	19.8383
110191	21.4033	21.3404	23.8471	22.2253
110192	21.0486	22.9584	24.3823	22.8864
110193	20.7867	22.1477	25.1779	22.7067
110194	14.8115	15.8129	16.8075	15.8165
110195	12.7261	10.9444	13.7718	12.4602
110198	24.8646	24.8275	26.0634	25.9885
110200	17.7744	17.9631	19.4363	18.4074
110201	20.9497	21.9313	23.7261	22.1742
110203	22.7453	24.2062	23.3838	23.4874
110204	30.7342	35.3699	*	32.7584
110205	21.3617	20.1405	23.1969	21.5575
110207	14.7154	14.6045	14.7077	14.6752
110208	15.6161	15.0350	*	15.3251
110209	18.6404	20.0629	14.4751	17.7558
110211	26.9151	20.1024	*	22.9486
110212	14.3790	15.8420	18.7651	16.2466
110215	18.1539	21.0263	.5679	20.7523
110216	27.1878	*	*	27.1877
120001	29.0427	29.4126	30.0871	29.5170
120002	25.2021	23.5667	24.2715	24.3269
120003	23.9115	24.6238	24.4013	24.3140
120004	24.8632	26.1398	26.8010	25.9297

* Denotes wage data not available for the provider for that year.
** Based on the sum of the salaries and hours computed for Federal FYs 2002, 2003, and 2004.

TABLE 2.—HOSPITAL AVERAGE HOURLY WAGE FOR FEDERAL FISCAL YEARS 2002 (1998 WAGE DATA), 2003 (WAGE DATA), AND 2004 (2000 WAGE DATA) WAGE INDEXES AND 3-YEAR AVERAGE OF HOSPITAL AVERAGE HOURLY WAGES—Continued

Provider No.	Average hourly wage FY 2002	Average hourly wage FY 2003	Average hourly wage FY 2004	Average hourly** wage (3 yrs)
120005	24.1662	22.3213	23.0113	23.1311
120006	25.8943	26.6302	28.1562	26.8635
120007	22.8772	22.7179	27.8497	24.2388
120009	16.4485	16.7630	13.9812	15.7613
120010	24.1923	24.9089	25.4050	24.8421
120011	37.2759	35.2051	30.9308	34.0921
120012	21.8507	22.0371	21.8997	21.9292
120014	24.1208	25.3557	25.3682	24.9359
120015	42.6465	*	24.6284	30.4099
120016	45.1899	43.5083	39.1160	42.7373
120018	31.1879	*	*	31.1877
120019	25.5659	23.8535	24.4036	24.5914
120021	23.1839	36.8286	23.2759	26.4621
120022	19.2614	22.2781	22.4951	21.2033
120024	32.2514	21.9657	*	26.7529
120025	50.6376	40.1332	40.2485	43.1574
120026	25.1314	25.7023	26.3653	25.7684
120027	24.4535	23.1434	24.9464	24.1547
120028	27.0897	27.5365	29.5070	28.0817
130001	17.6306	19.6328	18.4733	18.5954
130002	16.9867	18.5746	20.1143	18.6076
130003	22.3430	23.0994	23.9403	23.1432
130005	21.2386	22.6364	24.4844	22.7104
130006	20.4614	21.4640	22.8567	21.6494
130007	21.8107	22.0854	22.8475	22.2657
130008	13.6018	19.3392	25.7798	18.7207
130009	15.9701	20.8748	18.3511	18.2768
130010	17.5119	17.7826	*	17.6552
130011	20.1147	22.1125	23.1120	21.7785
130012	24.9976	24.2451	22.5761	23.9471
130013	15.1129	22.6624	23.5316	20.2820
130014	19.2107	19.8240	21.6770	20.2852
130015	18.5913	16.4136	*	17.4135
130016	19.0516	20.1220	20.5728	19.9684
130017	19.6875	19.9511	20.3656	20.0262
130018	19.8425	20.0563	22.1899	20.7223
130019	19.1711	19.5147	20.3983	19.7057
130021	15.6155	14.4430	16.8582	15.5456
130022	18.9127	19.7814	21.5602	20.1253
130024	19.0703	19.9934	22.1611	20.4440
130025	16.4627	17.5989	18.7814	17.6827
130026	21.8106	23.2093	24.4976	23.1615
130027	20.5344	20.6641	22.0107	21.0236
130028	20.9674	21.2217	21.1492	21.1146
130029	18.7694	22.9243	*	20.4335
130030	17.5759	18.5827	*	18.0583
130031	16.7766	20.4146	23.5135	19.8631
130034	18.9483	20.5802	20.2401	19.9098
130035	20.7770	17.2864	*	19.1660
130036	13.6362	15.1590	18.5921	15.7605
130037	18.6856	19.2108	19.3979	19.1230
130043	16.7904	17.6920	18.4636	17.6040
130044	13.4513	18.7067	20.5584	17.5508
130045	19.0208	17.5152	19.0271	18.5109
130048	16.7900	*	*	16.7900
130049	22.4440	22.0520	23.7212	22.7595
130054	17.7085	16.4675	16.8484	16.9601
130056	20.9476	26.8008	17.3947	21.1836
130060	22.7399	23.2512	24.6773	23.5532
130061	14.7394	*	*	14.7393
130062	19.8157	19.8264	24.0494	21.3157
130063	18.8024	18.4797	18.8782	18.7287
140001	17.7990	18.1511	20.0247	18.6600

* Denotes wage data not available for the provider for that year.
** Based on the sum of the salaries and hours computed for Federal FYs 2002, 2003, and 2004.

TABLE 2.—HOSPITAL AVERAGE HOURLY WAGE FOR FEDERAL FISCAL YEARS 2002 (1998 WAGE DATA), 2003 (WAGE DATA), AND 2004 (2000 WAGE DATA) WAGE INDEXES AND 3-YEAR AVERAGE OF HOSPITAL AVERAGE HOURLY WAGES—Continued

Provider No.	Average hourly wage FY 2002	Average hourly wage FY 2003	Average hourly wage FY 2004	Average hourly** wage (3 yrs)
140002	19.9284	20.9959	22.5567	21.1478
140003	17.8595	18.0163	*	17.9385
140004	17.4574	18.9713	19.3237	18.5860
140005	12.3002	12.4144	13.2365	12.6493
140007	23.8585	24.9847	25.1836	24.6934
140008	22.1111	24.2634	26.3152	24.1972
140010	28.5635	28.0863	39.3621	32.1479
140011	18.6164	18.4052	19.0903	18.7086
140012	21.4374	22.5885	24.4070	22.8406
140013	19.6722	20.3147	19.9800	19.9935
140014	21.4042	22.2944	25.0616	22.9171
140015	17.6805	20.3540	21.4328	19.8233
140016	14.4938	15.4454	16.3417	15.3940
140018	22.4132	23.4062	24.3285	23.3864
140019	16.4254	16.1180	17.4206	16.6387
140024	15.3782	16.1032	*	15.7337
140025	18.5135	21.7775	18.0748	19.4744
140026	18.3220	19.7839	20.4084	19.5156
140027	19.2149	20.5980	20.9855	20.2413
140029	26.0833	28.5670	25.5253	26.6612
140030	23.1760	25.3715	26.5229	25.0851
140031	17.6067	16.9650	17.7449	17.4509
140032	19.0383	19.8033	20.6273	19.8411
140033	25.1639	22.8705	23.4279	23.7474
140034	19.8792	19.7711	20.9635	20.1903
140035	15.5040	17.4514	17.9641	16.9828
140036	19.1076	21.2366	18.5788	19.7025
140037	14.1083	14.3082	15.5578	14.6732
140038	18.4948	19.8197	*	19.1560
140040	16.7450	18.0342	19.2160	18.0347
140041	18.5952	18.8042	19.2893	18.8908
140042	15.8892	16.1157	17.1757	16.3886
140043	20.1176	21.7356	23.3751	21.8035
140045	17.7799	17.4261	18.9587	18.0683
140046	18.6371	20.0859	21.7969	20.2134
140047	13.3610	16.6672	17.7090	15.6942
140048	23.9545	23.8652	25.9122	24.5813
140049	26.9483	26.7160	20.7688	24.9027
140051	24.0796	24.7180	24.2472	24.3525
140052	17.9571	21.0450	21.6607	20.0955
140053	19.9620	20.9768	22.6099	21.1760
140054	23.1576	23.9459	35.5659	27.3968
140055	14.3603	15.8756	16.4409	15.4892
140058	18.6861	19.1199	20.5089	19.4559
140059	*	18.2593	21.9969	19.9435
140061	18.2039	18.4264	22.7791	19.6252
140062	28.5304	28.6390	30.7005	29.3149
140063	29.1453	29.6998	30.5430	29.8595
140064	18.9379	19.6954	20.6505	19.7669
140065	25.3336	25.5939	25.8676	25.6079
140066	13.6491	15.4818	18.0915	15.5544
140067	19.5292	20.7511	21.9579	20.7435
140068	21.6188	22.3622	24.1316	22.6861
140069	17.3879	17.7785	19.0441	18.0826
140070	22.7153	25.2646	25.2960	24.2944
140074	21.6052	22.2563	22.8249	22.2227
140075	21.6434	21.8472	26.5350	22.9476
140077	17.3647	17.3236	18.0487	17.5877
140079	23.6928	22.7046	25.7058	24.0319
140080	22.1968	22.0682	24.4056	22.8890
140081	16.9808	18.1746	*	17.5725
140082	29.7262	26.5960	25.0474	26.9608
140083	21.0330	20.7704	23.2822	21.6156

* Denotes wage data not available for the provider for that year.
** Based on the sum of the salaries and hours computed for Federal FYs 2002, 2003, and 2004.

TABLE 2.—HOSPITAL AVERAGE HOURLY WAGE FOR FEDERAL FISCAL YEARS 2002 (1998 WAGE DATA), 2003 (WAGE DATA), AND 2004 (2000 WAGE DATA) WAGE INDEXES AND 3-YEAR AVERAGE OF HOSPITAL AVERAGE HOURLY WAGES—Continued

Provider No.	Average hourly wage FY 2002	Average hourly wage FY 2003	Average hourly wage FY 2004	Average hourly** wage (3 yrs)
140084	22.3467	23.0263	25.4818	23.6135
140086	19.1613	19.1815	*	19.1714
140087	17.1147	21.4593	*	19.1145
140088	25.4176	26.5258	27.7274	26.5193
140089	18.3157	19.3230	20.7632	19.4616
140090	26.9364	28.0530	35.0300	29.4280
140091	21.9322	23.5559	23.7560	23.1453
140093	20.1528	20.7564	21.5376	20.7969
140094	21.9383	22.8892	23.7841	22.8588
140095	24.2859	25.5716	25.4815	25.1248
140097	21.1719	21.8418	23.8291	22.4038
140100	23.1399	23.8226	27.1868	24.8138
140101	21.4211	23.1418	24.6106	23.0966
140102	17.5729	18.6328	19.8678	18.6663
140103	18.1303	19.1834	21.3727	19.5392
140105	22.8944	23.8258	27.3323	24.5505
140107	11.8383	11.5827	*	11.7127
140108	26.9971	27.9140	*	27.4761
140109	14.5498	15.9178	16.4262	15.6166
140110	19.2888	20.9631	21.9129	20.7530
140112	17.6974	18.1119	19.8563	18.5020
140113	19.5584	26.2393	25.2205	23.4083
140114	21.0976	23.0383	24.1926	22.8235
140115	21.0433	20.4587	25.3410	22.2094
140116	23.8993	25.5980	26.8366	25.5062
140117	21.4876	22.0889	23.3536	22.3483
140118	24.3260	25.3249	26.1627	25.2644
140119	27.9145	30.6468	31.3486	29.9292
140120	17.9716	17.7667	20.3237	18.6579
140121	16.6993	16.2607	17.6019	16.8238
140122	26.1270	26.7882	26.7457	26.5545
140124	27.9813	30.6820	30.7744	29.7761
140125	16.9516	17.8190	19.5359	18.0996
140127	20.0489	20.8397	21.3102	20.7463
140128	23.1327	23.5481	*	23.3351
140129	20.2868	21.6252	21.6495	21.1744
140130	23.4298	26.0464	25.7324	25.1138
140132	23.3054	23.7046	23.0595	23.3426
140133	21.4166	20.1740	21.0993	20.9011
140135	17.3985	18.2479	19.3222	18.3661
140137	18.6330	20.4807	21.6017	20.2583
140138	17.1968	14.5771	14.2313	15.2378
140139	11.0397	*	20.2063	14.6320
140140	17.6845	18.8185	19.1636	18.5459
140141	19.1097	20.2606	20.3707	19.9234
140143	19.0810	19.9885	22.0009	20.2373
140144	22.2864	24.8854	26.9259	24.6726
140145	18.1788	19.4509	20.6142	19.4469
140146	19.9704	19.4272	*	19.6862
140147	18.8049	17.1013	18.2691	18.0420
140148	18.7730	19.7630	21.5777	20.0626
140150	24.7976	28.9853	33.5463	28.8474
140151	20.0310	20.8820	21.5167	20.8051
140152	25.6011	28.3946	28.6284	27.5483
140155	20.2778	24.2907	24.4956	22.9401
140158	22.7988	23.7428	23.6949	23.4182
140160	17.7921	19.8825	20.9016	19.5649
140161	20.3799	21.2045	22.2191	21.3060
140162	20.3452	21.6901	22.6426	21.5722
140164	18.6589	19.8246	19.7774	19.4344
140165	14.7223	16.3700	17.0665	16.0112
140166	18.3833	19.3672	20.4085	19.3581
140167	17.6525	18.8532	19.5959	18.7351

* Denotes wage data not available for the provider for that year.
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TABLE 2.—HOSPITAL AVERAGE HOURLY WAGE FOR FEDERAL FISCAL YEARS 2002 (1998 WAGE DATA), 2003 (WAGE DATA), AND 2004 (2000 WAGE DATA) WAGE INDEXES AND 3-YEAR AVERAGE OF HOSPITAL AVERAGE HOURLY WAGES—Continued

Provider No.	Average hourly wage FY 2002	Average hourly wage FY 2003	Average hourly wage FY 2004	Average hourly** wage (3 yrs)
140168	17.7453	18.2896	19.6114	18.5329
140170	16.4107	17.6901	17.0666	17.0536
140171	15.0237	15.2617	17.3214	15.8617
140172	23.6262	24.8587	24.2924	24.2266
140173	16.3924	16.0030	32.8692	19.8554
140174	35.9320	22.0418	21.7356	24.5213
140176	24.5338	26.3468	25.6824	25.5437
140177	15.0827	20.3142	20.8526	18.2773
140179	21.9859	22.7345	23.9872	22.8894
140180	22.7996	22.7508	25.4497	23.6328
140181	21.9864	22.6643	23.2767	22.6706
140182	28.9515	25.1302	32.1969	28.8546
140184	17.2401	17.9169	20.6843	18.6331
140185	18.2867	18.8573	20.0931	19.0822
140186	23.5034	25.6807	29.0998	26.0890
140187	18.3331	19.4049	20.7319	19.4734
140188	16.1907	*	*	16.1907
140189	20.6627	21.1515	22.5875	21.4411
140190	17.5263	16.6673	17.9194	17.3611
140191	25.2628	27.4166	24.5446	25.6579
140193	17.4057	18.5651	20.5958	18.8417
140197	19.3774	19.9406	19.2979	19.5430
140199	18.0450	18.5409	19.7888	18.7992
140200	21.7680	22.4626	24.1358	22.8115
140202	23.7955	25.2777	26.2460	25.1620
140203	21.0848	24.8870	26.6624	24.2960
140205	20.0784	*	25.1010	22.9703
140206	22.5109	22.8223	24.8824	23.3988
140207	22.3905	25.4539	23.3197	23.6919
140208	26.2527	28.3112	27.2009	27.2556
140209	20.1557	20.2433	22.0813	20.8567
140210	14.8248	15.5345	*	15.2105
140211	22.6265	22.8852	25.8603	23.8157
140213	24.9892	25.6839	27.4607	26.0827
140215	15.2893	18.5502	18.6962	17.4895
140217	25.7329	25.9030	24.7146	25.4260
140218	14.9851	17.4171	*	16.1590
140220	17.8450	19.3915	20.2803	19.2049
140223	24.9017	26.2168	27.4355	26.1911
140224	32.8292	25.6766	31.4716	29.8171
140228	20.1688	21.8627	22.9699	21.6593
140230	18.2983	12.3494	*	14.8541
140231	24.5019	26.0208	25.5536	25.3988
140233	21.2333	24.4419	24.7103	23.5150
140234	*	19.7266	20.8676	20.3084
140236	12.9253	*	*	12.9252
140239	20.3745	21.6074	23.9213	21.9721
140240	24.6949	25.1418	25.0325	24.9609
140242	25.2317	26.1850	26.7947	26.1303
140245	14.2481	15.1320	15.2537	14.8687
140246	11.6267	15.0650	16.1305	14.1116
140250	23.6449	25.3410	24.7737	24.5985
140251	21.9435	23.5128	24.8256	23.4339
140252	25.0220	26.4715	27.4640	26.3370
140253	19.5858	18.4567	*	19.0172
140258	25.3622	25.0743	27.8202	26.1250
140271	12.0079	16.0350	17.5175	14.8913
140275	23.8171	22.9656	20.1784	22.2596
140276	25.3134	26.1713	25.1140	25.5042
140280	18.8300	20.0763	21.7004	20.2210
140281	25.2719	26.5197	27.9115	26.5261
140285	18.5916	15.7435	*	17.0403
140286	26.1290	24.0368	25.9931	25.3447

* Denotes wage data not available for the provider for that year.
** Based on the sum of the salaries and hours computed for Federal FYs 2002, 2003, and 2004.

TABLE 2.—HOSPITAL AVERAGE HOURLY WAGE FOR FEDERAL FISCAL YEARS 2002 (1998 WAGE DATA), 2003 (WAGE DATA), AND 2004 (2000 WAGE DATA) WAGE INDEXES AND 3-YEAR AVERAGE OF HOSPITAL AVERAGE HOURLY WAGES—Continued

Provider No.	Average hourly wage FY 2002	Average hourly wage FY 2003	Average hourly wage FY 2004	Average hourly** wage (3 yrs)
140288	24.4331	25.8717	26.2186	25.5431
140289	18.1747	17.7886	21.3632	19.1491
140290	22.8590	26.5055	30.7221	26.7335
140291	24.9537	26.8628	26.7900	26.2319
140292	21.9950	26.8610	26.0858	25.0061
140294	17.7301	19.4218	20.5969	19.2265
140300	27.8436	28.9830	30.2598	29.0524
150001	24.0620	22.6875	25.4897	24.1367
150002	20.7651	20.7353	22.3327	21.2734
150003	20.8636	21.4649	21.0944	21.1408
150004	21.2449	22.8060	23.5250	22.4800
150005	21.6806	22.8149	23.8818	22.8498
150006	20.6523	21.8435	23.1779	21.9153
150007	20.6635	21.2811	22.1098	21.3541
150008	21.8457	23.0208	23.8916	22.9022
150009	19.0030	19.5869	19.1857	19.2602
150010	20.5570	21.2466	22.5445	21.4807
150011	18.3275	19.9096	22.1760	20.1162
150012	22.1402	21.7903	23.1644	22.3790
150013	16.9327	17.5531	19.8564	18.1751
150014	21.5168	22.8402	24.3754	22.8817
150015	21.9037	24.2370	21.1839	22.3970
150017	19.5339	20.6758	22.7670	21.0275
150018	21.0496	22.8922	24.6138	22.9251
150019	17.8585	19.8341	17.7411	18.4067
150020	16.6600	15.9405	18.4688	17.0524
150021	21.5944	23.3800	24.3658	23.1607
150022	17.9222	18.7751	22.2973	19.8109
150023	19.3412	20.3015	20.7199	20.0985
150024	19.2295	19.8368	21.5661	20.1308
150025	20.2750	*	*	20.2750
150026	22.4978	21.9448	23.2169	22.5611
150027	18.0335	19.4238	21.5325	19.7090
150029	23.2454	24.8939	25.2067	24.4325
150030	19.2406	20.7256	22.2537	20.7871
150031	18.3463	21.3494	18.3291	19.2245
150033	22.6741	23.0756	24.1718	23.2965
150034	23.1533	23.3718	22.8812	23.1378
150035	21.2374	22.3779	23.5468	22.3841
150036	21.4567	22.1464	22.4098	21.9941
150037	24.4611	22.3699	26.4359	24.3457
150038	22.0572	20.3454	21.6608	21.3217
150039	19.6215	16.0227	19.2708	18.1689
150042	20.2221	18.0185	23.6783	20.4220
150043	20.1741	20.6301	20.8562	20.5460
150044	19.1309	19.8951	20.7412	19.9259
150045	18.1670	20.6406	22.9339	20.5458
150046	18.2543	19.4146	20.3453	19.3721
150047	22.0145	21.9824	24.8712	22.8866
150048	19.1648	21.1441	22.5181	20.9965
150049	18.6451	21.6309	18.4989	19.5784
150050	17.7354	18.0411	18.0624	17.9423
150051	19.7257	20.6895	22.0106	20.8739
150052	17.3750	18.8345	19.1070	18.4211
150053	18.8632	18.3493	19.4966	18.9082
150054	18.3916	19.3424	*	18.8632
150056	21.5774	23.0603	24.5540	23.0525
150057	16.9736	17.4044	26.0884	20.1891
150058	22.1409	23.0273	24.9479	23.3727
150059	22.7360	23.1398	24.5716	23.4998
150060	18.6159	19.5011	19.8990	19.3356
150061	19.7968	19.4014	17.5585	18.7895
150062	20.8274	21.2608	22.9214	21.6432

* Denotes wage data not available for the provider for that year.
** Based on the sum of the salaries and hours computed for Federal FYs 2002, 2003, and 2004.

TABLE 2.—HOSPITAL AVERAGE HOURLY WAGE FOR FEDERAL FISCAL YEARS 2002 (1998 WAGE DATA), 2003 (WAGE DATA), AND 2004 (2000 WAGE DATA) WAGE INDEXES AND 3-YEAR AVERAGE OF HOSPITAL AVERAGE HOURLY WAGES—Continued

Provider No.	Average hourly wage FY 2002	Average hourly wage FY 2003	Average hourly wage FY 2004	Average hourly** wage (3 yrs)
150063	22.6525	24.8587	28.5326	25.3429
150064	20.3865	20.6232	21.2512	20.7527
150065	21.2153	21.4572	23.0636	21.9337
150066	19.5313	19.6845	20.7240	20.0045
150067	18.8862	20.5000	21.4374	20.3431
150069	23.3969	23.5510	23.8868	23.5811
150070	18.0827	18.9332	20.7413	19.2893
150071	13.5111	16.4179	19.4530	16.5251
150072	15.0765	18.5813	18.5447	17.3134
150073	*	19.8034	14.8287	16.6860
150074	20.2305	21.3500	22.9598	21.5274
150075	16.7532	17.2267	20.0897	17.8847
150076	22.6424	23.3724	25.4519	23.8726
150078	19.9668	20.2058	20.1260	20.1068
150079	18.2051	18.3668	19.3860	18.6860
150082	17.8381	19.6881	20.7334	19.4332
150084	24.3107	24.9529	27.8354	25.7663
150086	18.3838	19.7763	21.5815	19.9584
150088	20.3366	22.3055	22.2627	21.6628
150089	22.1725	21.5664	21.4993	21.7481
150090	21.0945	21.9803	24.7940	22.5227
150091	22.4640	26.5235	26.4248	25.0867
150092	16.9179	18.2592	16.7372	17.2915
150094	17.5244	16.8351	19.5004	18.0298
150095	19.2749	22.3214	23.5231	21.7410
150096	20.8204	*	19.7975	20.2623
150097	19.7751	21.1462	22.3593	21.2002
150098	15.2829	16.4763	17.8106	16.4972
150100	19.8066	18.7289	21.2980	19.8754
150101	20.6209	21.2025	26.1272	22.4675
150102	23.7180	20.8818	21.3313	21.8627
150103	18.7036	19.3653	17.9684	18.6804
150104	20.0765	21.3141	21.0799	20.8409
150105	22.4412	21.6975	23.9540	22.7002
150106	16.8714	18.7088	19.1976	18.3084
150109	19.9066	21.7870	23.4642	21.7343
150110	21.9336	*	*	21.9336
150111	19.2355	24.1559	*	21.5147
150112	20.5253	22.1939	23.5151	22.0747
150113	19.6603	20.5871	21.2412	20.5276
150114	17.9877	18.3097	*	18.1462
150115	18.4844	18.1308	21.5042	19.3163
150122	17.7867	20.7540	22.2752	20.2587
150123	14.0508	16.2898	15.5997	15.3438
150124	15.9487	16.2104	17.9062	16.6729
150125	21.3311	22.0299	23.1015	22.1704
150126	20.6857	24.0000	24.1917	22.8979
150127	17.0052	18.0532	*	17.5279
150128	19.5576	20.4742	20.9869	20.3528
150129	28.6211	29.9888	34.3166	30.8814
150130	18.4846	18.3852	18.5578	18.4750
150132	20.9443	21.2747	22.2707	21.4967
150133	18.4250	20.0320	21.8167	20.0930
150134	19.3632	20.2764	20.7680	20.1127
150136	21.8097	22.9091	25.8467	23.5584
150146	19.0204	*	25.1827	22.2199
150148	*	*	26.2190	26.2188
160001	19.0085	20.1699	22.8425	20.6574
160002	16.6003	17.6600	19.9607	18.0502
160003	16.2208	17.5429	17.5050	17.1062
160005	17.9405	19.3348	20.3313	19.1990
160007	15.1738	14.9137	*	15.0384
160008	16.6193	16.7863	17.9463	17.1044

* Denotes wage data not available for the provider for that year.
** Based on the sum of the salaries and hours computed for Federal FYs 2002, 2003, and 2004.

TABLE 2.—HOSPITAL AVERAGE HOURLY WAGE FOR FEDERAL FISCAL YEARS 2002 (1998 WAGE DATA), 2003 (WAGE DATA), AND 2004 (2000 WAGE DATA) WAGE INDEXES AND 3-YEAR AVERAGE OF HOSPITAL AVERAGE HOURLY WAGES—Continued

Provider No.	Average hourly wage FY 2002	Average hourly wage FY 2003	Average hourly wage FY 2004	Average hourly** wage (3 yrs)
160009	17.9886	19.0664	20.5800	19.2128
160012	16.7112	17.9236	17.2718	17.2909
160013	18.6304	20.3023	21.0541	20.0165
160014	16.7146	18.7253	18.3097	17.9036
160016	19.9747	21.6050	21.8400	21.1711
160018	15.6141	16.0793	16.8377	16.1872
160020	15.5384	15.7960	16.6092	15.9961
160021	16.7617	16.7920	17.2152	16.9236
160023	15.0099	15.3854	16.9777	15.7718
160024	19.4764	20.5622	22.1034	20.6927
160026	19.5260	20.4567	22.8967	20.9474
160027	16.9417	18.2081	18.9985	18.0413
160028	21.0000	22.9000	25.4337	23.0923
160029	21.3457	22.2106	23.6148	22.4178
160030	19.6182	21.6899	23.3687	21.5386
160031	16.1267	16.8957	17.8994	16.9687
160032	18.3168	19.2464	20.5024	19.3173
160033	18.8859	20.1916	21.8778	20.2846
160034	16.5957	17.3644	19.0684	17.6441
160035	16.3991	17.0165	*	16.6797
160036	17.4558	20.2598	*	18.9565
160037	19.5045	19.5067	20.6425	19.8844
160039	17.8647	19.1998	19.8851	19.0101
160040	18.0667	19.6339	20.0567	19.2064
160041	17.4435	18.7943	*	18.1971
160043	14.8564	16.7841	15.5765	15.7233
160044	17.8323	19.5552	19.0956	18.8738
160045	20.0611	21.4757	22.1285	21.2575
160046	16.2737	16.8665	*	16.5694
160047	19.0787	20.4259	22.0610	20.5906
160048	15.6856	17.2709	17.7273	16.8247
160049	15.5673	15.3233	20.5531	16.9039
160050	17.7878	21.1184	21.6247	20.1164
160051	16.4261	15.8213	14.0556	15.4076
160052	21.7647	22.1933	22.2409	22.0595
160054	16.1981	16.5258	15.9074	16.2107
160055	15.1674	17.6177	14.5971	15.6313
160056	17.0172	17.9534	19.6493	18.1612
160057	19.1378	19.6802	20.8345	19.9113
160058	22.1061	22.2812	23.5663	22.6513
160060	17.2825	17.7489	18.1102	17.6991
160061	17.0938	17.2064	18.0413	17.4625
160062	17.4388	18.8163	22.6687	19.5483
160063	16.3583	17.3771	17.9229	17.2470
160064	22.2131	25.2962	23.8367	23.7172
160065	17.1043	17.0609	*	17.0808
160066	17.9971	19.3202	20.4609	19.2300
160067	16.7833	17.6602	19.9422	17.9572
160068	19.0572	20.5995	23.4967	21.0271
160069	19.1640	20.5989	21.7197	20.4818
160070	18.4588	17.7855	20.3683	18.7886
160072	14.4141	15.3384	15.6894	15.1633
160073	11.4997	15.5946	16.2186	14.2046
160074	17.9513	18.4624	22.2989	19.4707
160075	18.4613	20.7842	21.9161	20.2495
160076	17.8824	19.1590	20.1603	19.0456
160077	13.6658	15.0468	16.8030	15.1869
160079	18.6333	20.5010	21.6562	20.2670
160080	19.4925	19.6680	21.1713	20.1081
160081	17.4466	19.1442	20.4415	18.9934
160082	19.5322	20.7306	21.3139	20.5262
160083	19.7542	21.3221	23.1417	21.3360
160085	21.2557	19.1929	*	20.1491

* Denotes wage data not available for the provider for that year.
** Based on the sum of the salaries and hours computed for Federal FYs 2002, 2003, and 2004.

TABLE 2.—HOSPITAL AVERAGE HOURLY WAGE FOR FEDERAL FISCAL YEARS 2002 (1998 WAGE DATA), 2003 (WAGE DATA), AND 2004 (2000 WAGE DATA) WAGE INDEXES AND 3-YEAR AVERAGE OF HOSPITAL AVERAGE HOURLY WAGES—Continued

Provider No.	Average hourly wage FY 2002	Average hourly wage FY 2003	Average hourly wage FY 2004	Average hourly** wage (3 yrs)
160086	17.5308	19.0477	19.8991	18.7925
160088	22.3655	23.8098	25.3429	23.8526
160089	17.3449	18.3526	19.9688	18.5900
160090	17.9614	18.4210	19.6767	18.6779
160091	14.2573	14.8904	16.1660	15.1176
160092	17.0633	17.9251	20.4731	18.4608
160093	18.5675	19.5732	22.8552	20.0542
160094	17.6094	18.7835	20.3433	18.9270
160095	15.2722	16.4927	*	15.8700
160097	16.6790	17.7860	17.7992	17.4211
160098	16.8670	16.8997	17.9906	17.2476
160099	15.0880	16.0710	17.5828	16.2056
160101	18.9788	19.6314	22.1741	20.2613
160102	20.1161	14.4837	*	17.0012
160103	18.2741	19.6168	22.4647	20.1210
160104	17.4829	21.0060	23.2738	20.6777
160106	17.3474	19.4385	19.8906	18.9668
160107	18.0097	18.8936	19.5110	18.7905
160108	16.7779	17.7577	19.6390	18.0443
160109	17.9873	18.2938	18.5126	18.2742
160110	20.6215	20.9959	21.9299	21.2145
160111	14.9965	15.1104	16.7625	15.6341
160112	17.2450	19.6950	20.4038	19.1223
160113	15.4834	14.9449	16.7574	15.7259
160114	16.5006	18.0532	19.1743	17.9155
160115	16.5654	16.9991	17.6815	17.0701
160116	16.6993	18.4261	19.6923	18.2708
160117	18.7615	20.1682	22.3228	20.3906
160118	19.4472	17.1480	16.9466	17.7185
160120	15.6789	15.0577	15.9432	15.5897
160122	18.1469	18.5469	21.2843	19.4799
160124	19.1600	19.9144	21.2279	20.1448
160126	19.4903	17.8643	20.0149	19.0751
160129	17.2112	18.0113	18.1304	17.7899
160130	15.6666	16.2628	17.4584	16.4856
160131	16.0424	16.5397	18.0499	16.8700
160134	15.3012	14.6396	17.0092	15.5453
160135	18.7711	18.3973	18.7512	18.6539
160138	17.1491	18.3957	17.8475	17.7631
160140	18.5630	19.6155	22.1666	20.1522
160142	18.1467	17.2792	*	17.6980
160143	17.4497	18.1287	19.0623	18.2106
160145	16.9092	17.8887	18.4032	17.7185
160146	17.7010	19.0576	20.6638	19.0955
160147	19.4041	21.6062	22.7993	21.2446
160151	17.2177	18.3398	*	17.7679
160152	15.9500	17.0750	17.9285	16.9659
160153	21.2085	22.7004	23.5212	22.4610
170001	17.9218	18.5120	19.8150	18.7852
170004	16.1442	17.2262	18.6048	17.3314
170006	17.5982	19.1982	19.4488	18.7531
170008	16.8412	17.7061	18.2351	17.6303
170009	23.1349	25.0508	25.8246	24.6993
170010	19.4584	19.5990	20.6294	19.9051
170012	18.4432	20.2412	21.6824	20.1902
170013	19.4667	20.1852	21.4954	20.4080
170014	18.4931	19.6044	21.3084	19.7344
170015	17.1302	17.2443	18.0485	17.4844
170016	20.0675	22.1023	22.5856	21.5884
170017	19.5994	19.7908	21.8586	20.4248
170018	15.3237	14.8794	16.9170	15.7229
170019	16.9362	17.4699	18.7916	17.7083
170020	18.1325	19.1418	20.6658	19.3514

* Denotes wage data not available for the provider for that year.
** Based on the sum of the salaries and hours computed for Federal FYs 2002, 2003, and 2004.

TABLE 2.—HOSPITAL AVERAGE HOURLY WAGE FOR FEDERAL FISCAL YEARS 2002 (1998 WAGE DATA), 2003 (WAGE DATA), AND 2004 (2000 WAGE DATA) WAGE INDEXES AND 3-YEAR AVERAGE OF HOSPITAL AVERAGE HOURLY WAGES—Continued

Provider No.	Average hourly wage FY 2002	Average hourly wage FY 2003	Average hourly wage FY 2004	Average hourly** wage (3 yrs)
170022	19.1888	20.3269	21.1947	20.2097
170023	19.2441	19.6533	21.6273	20.2090
170024	14.3604	15.0081	16.1196	15.1666
170025	18.7182	19.1720	19.2124	19.0231
170026	14.8974	16.9094	17.0837	16.3226
170027	17.8690	18.4466	20.7776	19.0432
170030	15.9282	12.9413	14.4544	14.3349
170031	14.2151	16.4660	16.5916	15.7181
170032	16.3449	15.2207	16.1164	15.8915
170033	19.1952	20.4533	20.0065	19.9072
170034	16.9586	17.8239	18.1073	17.6353
170035	17.0945	19.8334	*	18.4676
170038	13.8582	15.2505	17.0172	15.4188
170039	17.0774	18.5780	18.4473	18.0348
170040	21.0617	23.1014	24.5234	22.7728
170041	12.4488	9.9263	13.9710	11.9108
170044	17.3254	*	*	17.3256
170045	25.8331	20.5454	18.4142	21.3297
170049	20.7921	21.2917	22.9404	21.7361
170051	16.4851	16.9003	16.8455	16.7442
170052	15.2283	16.0948	15.8809	15.7508
170053	14.6133	14.3628	14.5886	14.5203
170054	14.6354	15.2814	18.5239	16.1318
170055	18.2607	18.1783	*	18.2208
170056	18.3550	19.7369	17.1872	18.5237
170058	19.5415	20.1090	23.0649	20.9522
170060	18.9853	17.5290	17.9830	18.1586
170061	15.0258	15.6412	16.6852	15.7398
170063	14.1185	13.7611	17.2821	14.6657
170066	16.2891	16.8009	18.3113	17.1768
170067	14.9921	20.7945	*	17.6559
170068	17.0022	19.2629	20.5512	18.8725
170070	14.0627	14.8348	15.0540	14.6220
170072	12.7709	*	*	12.7710
170073	17.7056	17.7586	17.4493	17.6284
170074	17.3699	17.6543	18.5169	17.8689
170075	13.6816	14.4939	15.6809	14.6514
170076	14.6109	14.9392	16.0998	15.2083
170077	13.9104	14.1376	14.6378	14.2439
170079	11.5902	16.7227	*	13.7740
170080	14.8293	13.6794	15.0079	14.4977
170081	14.6823	15.0840	15.7141	15.0936
170082	13.7462	14.8154	15.9973	14.8264
170084	13.0519	13.6517	14.5770	13.7521
170085	17.5422	21.8907	17.2585	18.9901
170086	19.7182	20.7298	21.7451	20.7316
170088	13.4860	*	*	13.4860
170089	15.4860	20.2263	16.2599	17.5460
170090	10.9444	23.6837	16.3550	15.3916
170093	14.0276	14.7803	14.9660	14.5908
170094	21.2035	21.2484	20.1253	20.9151
170095	15.3532	16.1078	16.8686	16.1165
170097	17.7540	18.6023	18.9865	18.4524
170098	16.6210	17.3480	18.5181	17.4543
170099	14.3370	16.5247	15.8118	15.5495
170101	18.0143	17.3381	17.9291	17.7556
170102	14.2447	14.4499	14.6874	14.4627
170103	17.9530	18.6172	20.1264	18.9371
170104	21.0049	22.0671	22.6619	21.9115
170105	16.7403	18.2788	18.3824	17.8166
170106	17.7467	*	*	17.7468
170109	16.9782	18.3483	20.4661	18.7139
170110	18.5731	21.0637	16.5883	18.8196

* Denotes wage data not available for the provider for that year.
** Based on the sum of the salaries and hours computed for Federal FYs 2002, 2003, and 2004.

TABLE 2.—HOSPITAL AVERAGE HOURLY WAGE FOR FEDERAL FISCAL YEARS 2002 (1998 WAGE DATA), 2003 (WAGE DATA), AND 2004 (2000 WAGE DATA) WAGE INDEXES AND 3-YEAR AVERAGE OF HOSPITAL AVERAGE HOURLY WAGES—Continued

Provider No.	Average hourly wage FY 2002	Average hourly wage FY 2003	Average hourly wage FY 2004	Average hourly** wage (3 yrs)
170112	15.4049	15.8097	17.8740	16.3357
170113	14.6486	16.4938	19.9957	16.7158
170114	16.2645	13.9726	17.4687	15.7793
170115	12.9216	13.0253	13.6173	13.1746
170116	18.1830	19.4278	20.8800	19.4962
170117	16.8237	16.8301	17.5794	17.0795
170119	15.2708	15.1982	13.9828	14.8083
170120	17.4917	18.2832	18.7576	18.1504
170122	21.1769	21.4588	22.2681	21.6171
170123	23.6534	25.2122	25.0073	24.6043
170124	15.0596	16.3925	14.2191	15.2518
170126	13.5736	14.5527	15.4213	14.4901
170128	14.1676	17.6259	13.9704	14.9984
170133	18.8119	19.9778	20.0593	19.6138
170134	14.6799	15.1932	15.4176	15.0931
170137	19.3118	19.3344	21.4394	20.0379
170139	14.3001	14.8157	16.9180	15.1918
170142	17.7134	19.0547	19.6251	18.8022
170143	16.0415	16.3258	18.0308	16.8248
170144	20.4392	20.8488	23.9179	21.2803
170145	19.0142	20.1494	20.5099	19.8990
170146	21.7919	25.2520	27.0312	24.7198
170147	17.6717	18.4634	18.2480	18.1292
170148	19.1942	24.4828	26.3491	22.6386
170150	15.9072	14.9718	16.3723	15.7462
170151	14.3668	14.5002	15.7242	14.8570
170152	15.6423	16.0930	17.6328	16.4532
170160	14.4732	17.0629	*	15.6980
170164	17.4072	17.0791	18.4142	17.6451
170166	12.7507	16.5113	17.8131	15.5313
170171	13.1792	14.7051	14.7251	14.2074
170175	20.1907	20.8671	22.2203	21.0292
170176	23.5043	23.5743	25.5404	24.2059
170180	8.6352	*	25.0933	14.1579
170182	21.3454	21.9797	23.2115	22.1999
170183	19.5182	16.6577	19.6919	18.5350
170185	*	26.8136	26.5542	26.6930
170186	*	33.2457	28.4462	30.5174
170187	*	*	20.8289	20.8289
170188	*	*	25.2504	25.2504
170189	*	*	28.1999	28.1996
180001	20.4885	20.8169	22.2674	21.1866
180002	17.5798	19.8195	20.0075	19.1094
180004	17.7149	18.0494	19.8552	18.5287
180005	22.4634	23.4941	22.6704	22.8061
180006	10.3400	11.2872	14.4066	11.8905
180007	17.9491	18.6823	21.3545	19.3281
180009	21.0608	21.7746	22.4450	21.7873
180010	19.6311	19.4210	21.8916	20.3621
180011	19.0526	22.6798	19.2490	20.3535
180012	19.0646	19.6614	19.9227	19.5547
180013	19.7418	20.0950	21.0512	20.3043
180014	21.3361	23.0067	*	22.1047
180016	21.1458	19.7242	20.5203	20.4674
180017	15.6583	16.7649	18.0329	16.8060
180018	15.4892	18.1529	17.5670	17.0578
180019	17.8285	19.5953	20.8416	19.3979
180020	18.0111	19.4391	20.5659	19.3119
180021	17.0618	16.5376	17.6330	17.0802
180023	17.4717	19.0574	20.8869	19.1283
180024	16.5040	19.6313	22.3922	19.4653
180025	15.4180	17.1875	18.3306	16.9977
180026	15.0118	13.9959	15.5354	14.8403

* Denotes wage data not available for the provider for that year.
** Based on the sum of the salaries and hours computed for Federal FYs 2002, 2003, and 2004.

TABLE 2.—HOSPITAL AVERAGE HOURLY WAGE FOR FEDERAL FISCAL YEARS 2002 (1998 WAGE DATA), 2003 (WAGE DATA), AND 2004 (2000 WAGE DATA) WAGE INDEXES AND 3-YEAR AVERAGE OF HOSPITAL AVERAGE HOURLY WAGES—Continued

Provider No.	Average hourly wage FY 2002	Average hourly wage FY 2003	Average hourly wage FY 2004	Average hourly** wage (3 yrs)
180027	17.5286	19.6928	20.5017	19.2757
180028	15.7005	26.2220	19.7853	19.6547
180029	17.7248	20.0841	19.9084	19.2475
180030	17.9543	17.5043	19.5826	18.3704
180031	13.1848	17.1003	11.7847	13.7078
180032	17.2784	17.2362	17.6939	17.3857
180033	15.4131	17.0498	14.8047	15.7339
180034	16.3991	17.0349	16.4944	16.6481
180035	21.3666	22.4651	23.3685	22.4188
180036	20.1860	20.6951	22.2389	21.0630
180037	21.2184	21.0177	22.7893	21.7251
180038	18.5923	19.3837	20.6888	19.5760
180040	21.2229	22.2270	23.1648	22.2239
180041	16.3699	17.5950	19.1325	17.6429
180042	17.1519	15.5660	17.5774	16.7135
180043	14.6526	17.2414	20.7367	17.3094
180044	19.4984	21.1057	21.8163	20.8254
180045	20.8455	20.7498	22.1027	21.2441
180046	21.2080	21.6955	23.1139	22.0204
180047	18.6938	17.8625	17.8574	18.1198
180048	17.7816	18.3151	18.8537	18.3242
180049	16.5459	17.8418	18.5188	17.6210
180050	17.1493	19.4992	18.9891	18.5564
180051	17.5441	18.3028	18.6730	18.1921
180053	15.8994	17.3167	17.6239	16.9255
180054	20.0946	17.4354	19.1340	18.8876
180055	15.8422	16.6072	17.8704	16.7352
180056	17.5881	18.7038	19.4072	18.5962
180058	14.5355	14.8840	17.6126	15.5719
180059	14.7032	17.2542	17.7683	16.4865
180063	12.4448	14.7338	15.5077	14.2770
180064	15.5066	16.3894	21.1067	17.5598
180065	11.1934	11.0966	9.9166	10.8002
180066	19.8956	20.7907	21.1883	20.6121
180067	20.1712	20.2762	21.5671	20.6602
180069	16.2916	19.0836	19.5693	18.2811
180070	15.9362	15.4643	16.9892	16.1274
180072	17.2347	17.0576	17.5411	17.2563
180078	21.7116	23.7765	23.4616	23.0019
180079	15.9048	18.1683	18.0472	17.3416
180080	16.6428	17.6735	18.8793	17.7518
180087	15.6089	16.2378	16.4726	16.1124
180088	22.1774	22.8908	22.9130	22.7063
180092	18.3597	18.8964	19.6790	18.9885
180093	17.8492	17.7592	18.8469	18.1473
180094	13.6233	14.3306	15.7641	14.5357
180095	13.9050	15.4478	15.9881	15.0485
180099	13.2991	14.0464	14.0115	13.7738
180101	*	21.0704	21.7454	21.4083
180102	18.5240	18.8169	20.1259	19.1237
180103	20.3490	20.9598	21.3867	20.8948
180104	19.3922	20.2731	21.3866	20.3724
180105	16.6997	18.2976	18.3521	17.7554
180106	15.2895	15.5278	15.4937	15.4371
180108	14.4740	14.8720	16.7327	15.3846
180115	16.9096	18.0951	19.2396	18.0795
180116	18.6077	19.2389	20.5453	19.4231
180117	23.0192	20.7961	17.8273	20.4194
180118	16.9250	17.9017	18.3618	17.7402
180120	15.3115	16.4226	20.4507	17.0636
180121	20.0494	16.9570	16.9881	17.9386
180122	18.1930	18.7549	26.1085	21.0314
180123	21.1067	21.5962	*	21.3452

* Denotes wage data not available for the provider for that year.
** Based on the sum of the salaries and hours computed for Federal FYs 2002, 2003, and 2004.

TABLE 2.—HOSPITAL AVERAGE HOURLY WAGE FOR FEDERAL FISCAL YEARS 2002 (1998 WAGE DATA), 2003 (WAGE DATA), AND 2004 (2000 WAGE DATA) WAGE INDEXES AND 3-YEAR AVERAGE OF HOSPITAL AVERAGE HOURLY WAGES—Continued

Provider No.	Average hourly wage FY 2002	Average hourly wage FY 2003	Average hourly wage FY 2004	Average hourly** wage (3 yrs)
180124	18.8487	19.7138	20.5265	19.6910
180125	14.9314	22.6609	18.2048	17.7710
180126	14.3551	14.8501	14.5644	14.5905
180127	17.6365	18.0498	19.9846	18.6169
180128	18.2817	18.7194	19.8756	18.9809
180129	22.3536	15.6637	14.1861	16.9914
180130	20.6450	21.9413	23.4841	22.0517
180132	19.5884	19.8393	19.9358	19.7903
180133	21.7800	23.2679	*	22.4729
180134	14.5387	16.5901	*	15.5000
180138	20.2102	19.8524	22.8363	20.9918
180139	20.5350	20.3816	20.6987	20.5422
180140	15.2719	14.6466	16.9631	15.5822
180141	23.8930	20.3404	22.5552	22.1339
180142	20.7510	*	*	20.7510
180143	*	21.3197	19.7662	20.5610
190001	18.1514	18.8583	20.4946	19.2128
190002	19.8834	20.6057	21.0138	20.5155
190003	19.9121	19.5115	20.7504	20.0615
190004	18.3620	19.6755	20.5272	19.5326
190005	17.5161	19.0994	19.8177	18.7716
190006	17.5911	17.7333	18.7928	18.0215
190007	14.4720	16.3633	17.9392	16.3508
190008	19.2456	22.4797	20.3099	20.5400
190009	15.9731	16.0395	17.5144	16.4753
190010	16.5020	17.7616	18.1797	17.4941
190011	15.6351	15.7319	15.4699	15.6120
190013	15.5019	16.7770	*	16.1202
190014	17.8015	18.6929	*	18.2302
190015	18.9896	19.7673	20.5905	19.7878
190017	17.5381	19.8449	18.3528	18.5693
190018	11.1898	13.1355	18.6199	13.8655
190019	18.3788	18.7344	20.8052	19.3372
190020	17.6840	18.7252	18.5659	18.3279
190025	16.8686	18.1892	19.9177	18.2844
190026	18.5015	19.0130	19.9178	19.1653
190027	17.4761	18.4070	19.5358	18.4507
190029	19.1967	18.7344	18.1118	18.6759
190034	18.0754	19.2007	*	18.6247
190036	20.0300	21.2960	23.3903	21.5497
190037	19.9878	14.1323	15.6062	16.9453
190039	19.0376	18.7625	20.4160	19.3991
190040	21.7376	23.1819	22.9262	22.6065
190041	17.9535	19.5511	21.9983	19.8665
190043	15.5618	15.5645	15.7333	15.6215
190044	17.4471	17.6788	17.7460	17.6341
190045	21.2853	22.0065	22.8709	22.1191
190046	20.4458	20.2414	21.1659	20.6024
190048	16.8136	16.6848	18.1698	17.2383
190049	17.7417	18.5902	19.3768	18.5593
190050	16.2854	16.9053	18.6663	17.3158
190053	13.0080	13.4768	13.8037	13.4554
190054	18.9059	17.7269	19.9370	18.8703
190059	15.8373	17.8651	18.3334	17.3742
190060	17.8443	19.9121	20.2207	19.3688
190064	18.2466	19.7215	21.0488	19.7211
190065	18.3091	18.3280	20.3583	19.0184
190071	16.4138	16.3822	17.8444	16.8680
190077	16.5536	16.8829	17.0480	16.8252
190078	16.9383	19.5879	19.8607	18.8295
190079	17.9403	18.8187	*	18.3869
190081	14.9707	14.7919	11.4756	13.7796
190083	18.4951	16.2970	18.4954	17.7997

* Denotes wage data not available for the provider for that year.
** Based on the sum of the salaries and hours computed for Federal FYs 2002, 2003, and 2004.

TABLE 2.—HOSPITAL AVERAGE HOURLY WAGE FOR FEDERAL FISCAL YEARS 2002 (1998 WAGE DATA), 2003 (WAGE DATA), AND 2004 (2000 WAGE DATA) WAGE INDEXES AND 3-YEAR AVERAGE OF HOSPITAL AVERAGE HOURLY WAGES—Continued

Provider No.	Average hourly wage FY 2002	Average hourly wage FY 2003	Average hourly wage FY 2004	Average hourly** wage (3 yrs)
190086	16.5074	17.6237	18.2005	17.4309
190088	19.9362	20.4725	18.6738	19.7186
190089	15.0395	15.2055	15.5151	15.2626
190090	16.2351	19.8201	19.0519	18.4143
190095	17.3258	17.3637	16.9519	17.2138
190098	21.0847	21.4328	20.7537	21.0874
190099	19.0635	19.0545	23.1606	20.4338
190102	20.7870	21.1614	22.0190	21.3440
190103	14.4158	15.6415	*	15.0851
190106	18.5908	19.9117	20.3114	19.6058
190109	15.8187	16.3641	16.6515	16.2945
190110	15.7313	15.2652	16.5007	15.8208
190111	20.6508	21.3622	24.4380	22.2154
190112	22.0741	24.2806	*	23.0835
190113	*	19.0411	*	19.0411
190114	13.9209	13.5044	13.6101	13.6758
190115	22.7583	24.0098	25.4983	24.0285
190116	17.3757	18.3223	*	17.8596
190118	16.3776	17.8543	17.5060	17.2223
190120	17.2309	17.6708	18.5094	17.7933
190122	15.3742	16.7189	17.7811	16.6133
190124	20.1206	22.8245	21.9308	21.6225
190125	19.8298	20.1401	21.5692	20.4994
190128	20.8770	21.5869	23.8786	22.1716
190130	14.0379	14.5586	15.2678	14.6311
190131	18.8958	19.7483	21.3154	20.0242
190133	15.1393	15.7834	13.4062	14.7514
190134	12.4507	*	*	12.4507
190135	21.3454	23.0213	24.5472	22.9404
190136	15.1662	15.6286	16.7852	15.8135
190140	14.6829	14.8738	15.4029	14.9883
190142	16.2280	19.0464	22.5765	19.3164
190144	18.4405	18.3513	21.3838	19.3822
190145	16.2505	16.4402	17.4407	16.7345
190146	21.9607	20.9312	22.1502	21.6747
190147	14.7202	15.2732	16.3596	15.4387
190148	15.5338	19.4518	19.3245	17.9652
190149	16.4722	16.5153	18.4197	17.1004
190151	15.5210	16.2783	17.3402	16.3739
190152	22.0319	22.7142	25.1136	23.3179
190156	16.0442	17.6573	18.0528	17.2654
190158	20.4078	21.6307	23.2361	21.7367
190160	18.4662	19.3139	19.8734	19.2722
190161	15.9280	15.7807	27.3615	18.5292
190162	20.1962	20.9645	20.7350	20.6423
190164	18.2379	19.0473	*	18.6694
190167	17.7611	15.5795	*	16.5290
190170	14.5222	16.2045	*	15.4153
190173	23.0934	*	*	23.0934
190175	20.4580	23.0144	22.7574	22.0818
190176	22.2316	21.7051	24.3432	22.8033
190177	19.7794	20.3679	22.3318	20.8422
190178	12.0372	*	*	12.0373
190182	20.7102	23.1997	23.6016	22.4491
190183	16.0752	16.7402	17.1805	16.6637
190184	19.8436	18.6583	20.6096	19.6762
190185	20.5852	20.7351	29.7870	23.2575
190186	17.4078	16.7272	18.4556	17.5015
190190	15.8985	13.7951	16.2819	15.2413
190191	19.6911	19.7218	21.9141	20.4097
190196	18.6138	19.1961	20.7601	19.5709
190197	20.2082	20.9871	21.6908	21.0235
190199	15.3522	17.8288	11.3015	14.1164

* Denotes wage data not available for the provider for that year.
** Based on the sum of the salaries and hours computed for Federal FYs 2002, 2003, and 2004.

TABLE 2.—HOSPITAL AVERAGE HOURLY WAGE FOR FEDERAL FISCAL YEARS 2002 (1998 WAGE DATA), 2003 (WAGE DATA), AND 2004 (2000 WAGE DATA) WAGE INDEXES AND 3-YEAR AVERAGE OF HOSPITAL AVERAGE HOURLY WAGES—Continued

Provider No.	Average hourly wage FY 2002	Average hourly wage FY 2003	Average hourly wage FY 2004	Average hourly** wage (3 yrs)
190200	21.6852	22.3510	24.2525	22.7566
190201	19.7421	21.7185	21.1903	20.9110
190202	*	22.4701	22.4062	22.4391
190203	21.7931	23.0636	24.9518	23.3496
190204	20.5784	22.9134	26.1231	23.1780
190205	19.3737	18.8750	20.2374	19.4986
190206	21.3307	21.7867	24.2892	22.5212
190207	19.0216	20.7024	19.7316	19.8058
190208	16.9641	17.6834	23.0838	18.5667
190218	19.2992	20.7290	21.6207	20.5593
190231	17.7247	*	*	17.7247
190236	21.1982	22.5796	24.4661	22.8193
190238	20.6799	*	*	20.6799
190239	19.7601	*	*	19.7601
190240	14.3579	16.0658	15.4026	15.3226
190242	*	*	12.2209	12.2209
200001	18.2513	19.7903	21.3664	19.8121
200002	22.3035	22.3145	24.7102	23.1322
200003	18.4141	18.5779	20.1431	19.0655
200006	21.0922	18.9818	*	20.0361
200007	18.1681	19.0387	21.3451	19.4241
200008	21.5556	23.2883	25.6369	23.5650
200009	21.4763	23.3090	24.6974	23.1816
200012	19.1047	20.5141	21.7931	20.4820
200013	17.9378	20.3793	22.9359	20.4733
200016	17.1187	16.2939	20.9892	18.0074
200018	17.8675	19.8848	21.2548	19.6846
200019	19.9245	21.1893	22.7794	21.2976
200020	22.3355	24.7433	27.0790	24.8621
200021	20.7361	22.0144	24.9384	22.6378
200023	20.2063	*	*	20.2063
200024	20.8336	21.0633	22.7515	21.5341
200025	20.4165	21.4247	22.5869	21.5952
200026	17.9021	18.1459	19.7172	18.5708
200027	19.4220	20.2100	20.8262	20.1773
200028	18.8763	19.8886	22.2117	20.3329
200031	16.1641	17.7875	18.5637	17.4852
200032	19.4613	20.9148	22.1885	20.9008
200033	22.4685	23.6298	25.1723	23.7287
200034	20.4941	21.8266	23.5414	22.0096
200037	20.3015	19.5004	22.5582	20.7085
200038	21.2632	22.9220	23.7816	22.6253
200039	20.1508	21.5695	22.1873	21.3042
200040	18.9580	20.7744	21.8525	20.5333
200041	18.8131	20.2986	21.3816	20.1961
200043	19.4295	20.0280	*	19.7244
200050	20.2014	23.0314	23.6076	22.2752
200051	22.0712	*	*	22.0712
200052	17.6271	18.9290	19.5066	18.7096
200055	18.5983	19.4998	19.8009	19.2948
200062	18.4279	18.0949	18.3225	18.2799
200063	21.2121	22.5265	26.3887	23.2533
200066	17.0570	18.4281	19.4759	18.3382
210001	18.6617	21.5280	22.6614	20.9120
210002	23.5132	26.5907	25.6975	24.9889
210003	26.0447	22.3090	23.0790	23.7255
210004	24.9760	27.2278	28.8679	27.0643
210005	21.3829	22.5304	24.7185	22.9229
210006	19.3682	20.8607	24.1987	21.4594
210007	23.8840	23.4582	27.5104	24.9372
210008	21.2895	21.0767	24.6569	22.4641
210009	20.7479	20.8476	23.4889	21.7419
210010	19.5908	20.4097	23.0440	21.0277

* Denotes wage data not available for the provider for that year.
** Based on the sum of the salaries and hours computed for Federal FYs 2002, 2003, and 2004.

TABLE 2.—HOSPITAL AVERAGE HOURLY WAGE FOR FEDERAL FISCAL YEARS 2002 (1998 WAGE DATA), 2003 (WAGE DATA), AND 2004 (2000 WAGE DATA) WAGE INDEXES AND 3-YEAR AVERAGE OF HOSPITAL AVERAGE HOURLY WAGES—Continued

Provider No.	Average hourly wage FY 2002	Average hourly wage FY 2003	Average hourly wage FY 2004	Average hourly** wage (3 yrs)
210011	21.4043	20.4017	22.1443	21.2906
210012	21.3977	24.8430	25.2892	23.7249
210013	19.4505	23.1649	23.0151	21.9197
210015	18.7448	23.9651	23.8419	22.0261
210016	26.5193	24.7441	27.2302	26.1373
210017	18.5079	18.2963	19.5294	18.7753
210018	22.8553	23.6442	25.3112	23.9214
210019	20.6025	21.5429	23.5259	21.9407
210022	24.5744	25.6728	27.6680	25.9838
210023	22.9989	24.4815	26.7837	24.7914
210024	24.4280	24.7858	24.8939	24.7076
210025	21.2769	21.4910	22.8882	21.8653
210026	13.8668	20.7986	*	16.5220
210027	17.1060	16.2219	19.1886	17.4744
210028	19.4157	20.4027	22.4054	20.7783
210029	25.4939	24.7605	26.2082	25.5405
210030	20.9574	21.9547	20.7801	21.2193
210032	20.1955	20.0825	20.3407	20.2132
210033	23.7588	22.8303	25.0300	23.8986
210034	19.4144	22.6812	22.8827	21.5075
210035	20.8317	21.6662	21.6973	21.4040
210037	20.5528	21.1659	23.5536	21.8146
210038	24.9762	25.9701	26.5696	25.8902
210039	21.3559	23.3583	23.5618	22.7399
210040	23.4252	23.7067	25.4729	24.1964
210043	22.4000	22.9504	20.9824	22.0358
210044	23.0917	22.9540	23.8101	23.2851
210045	12.1467	13.5654	11.8350	12.5334
210048	24.6921	24.9381	24.4328	24.6715
210049	19.3022	21.1056	23.4786	21.4119
210051	23.6476	24.8949	25.7103	24.7772
210054	23.2730	25.1694	27.3551	25.2404
210055	26.5272	23.8025	27.4218	25.8633
210056	22.9593	22.6958	23.5291	23.0845
210057	26.0076	25.6142	27.4175	26.3518
210058	16.3191	17.4250	22.0351	18.6822
210059	25.6052	*	*	25.6053
210060	26.5846	26.4566	25.8377	26.3021
210061	16.1931	20.8975	22.5454	20.0819
220001	22.9064	23.4091	25.8030	24.0472
220002	24.5840	25.4158	26.3348	25.4205
220003	17.9319	17.6069	18.8150	18.0852
220006	22.6337	23.8920	25.9967	24.1779
220008	22.0796	24.2393	25.6647	24.0447
220010	22.0067	23.4009	24.5021	23.3133
220011	29.5290	20.6390	29.7597	26.1454
220012	31.2303	31.1041	31.8043	31.3960
220015	23.1893	24.1348	25.0272	24.1474
220016	23.0951	24.6149	25.5598	24.3980
220017	25.1568	25.9000	26.0635	25.6650
220019	19.8551	19.9268	21.6620	20.5000
220020	22.4295	22.5375	23.2840	22.7668
220024	21.9316	23.8620	24.1071	23.3004
220025	22.8593	22.0003	23.2374	22.6954
220028	21.0630	24.1251	31.4858	25.0402
220029	25.6560	25.7660	27.4792	26.3128
220030	18.7429	18.9012	20.0816	19.2486
220031	29.3091	28.3832	30.8324	29.5603
220033	20.3609	21.8156	25.2942	22.4280
220035	23.1892	25.7456	26.7656	25.1903
220036	24.4091	25.5771	26.1128	25.3339
220038	22.3162	22.9821	24.2072	23.1581
220041	27.5034	28.6790	29.4322	28.5477

* Denotes wage data not available for the provider for that year.
** Based on the sum of the salaries and hours computed for Federal FYs 2002, 2003, and 2004.

TABLE 2.—HOSPITAL AVERAGE HOURLY WAGE FOR FEDERAL FISCAL YEARS 2002 (1998 WAGE DATA), 2003 (WAGE DATA), AND 2004 (2000 WAGE DATA) WAGE INDEXES AND 3-YEAR AVERAGE OF HOSPITAL AVERAGE HOURLY WAGES—Continued

Provider No.	Average hourly wage FY 2002	Average hourly wage FY 2003	Average hourly wage FY 2004	Average hourly** wage (3 yrs)
220042	26.0473	28.4675	*	27.2387
220045	23.3149	24.1931	26.1955	24.5514
220049	27.2689	25.4358	26.7406	26.4572
220050	22.5265	23.3330	23.8005	23.2263
220051	21.7357	22.4826	22.2965	22.1608
220052	23.5225	25.4091	26.3043	25.1274
220057	25.8064	26.2945	*	26.0375
220058	26.8345	21.6814	22.4816	23.6744
220060	28.0794	28.3950	29.6290	28.7209
220062	20.2254	22.5567	22.6598	21.8448
220063	20.8079	21.8365	23.3704	22.0573
220064	22.7497	24.0982	*	23.3816
220065	20.1424	21.5657	22.4143	21.3853
220066	23.4477	24.5463	23.4622	23.8055
220067	27.5405	28.2685	26.9915	27.5793
220070	20.9128	23.9850	26.2697	24.8446
220071	27.4151	27.7679	27.7773	27.6608
220073	26.1328	27.4778	29.7863	27.7808
220074	24.3057	25.3331	26.4210	25.3967
220075	22.5329	24.6982	25.7813	24.3463
220076	23.2795	24.1224	24.8040	24.0785
220077	26.1545	27.1503	26.7165	26.6753
220079	22.0769	25.7305	*	23.1834
220080	22.1971	22.9911	24.6008	23.2916
220081	29.6682	31.1326	33.3649	31.4663
220082	22.1453	23.2818	23.9542	23.1292
220083	22.5815	27.2605	28.3533	25.8389
220084	25.3761	26.0395	26.8596	26.1410
220086	26.7778	28.7324	31.9999	29.0552
220088	23.4258	25.0671	25.0645	24.5354
220089	25.4106	25.3521	28.9252	26.5987
220090	23.3049	26.0265	26.0654	25.2015
220092	24.7905	29.4173	*	26.0747
220095	21.7851	22.6828	23.7629	22.7845
220098	23.1547	24.7180	26.2287	24.7066
220100	27.5841	26.8001	25.8127	26.6900
220101	27.0711	28.0856	26.9992	27.3742
220104	28.7258	*	*	28.7258
220105	21.9185	25.5692	24.4095	24.0741
220106	25.9277	27.6812	*	26.8476
220108	23.4975	24.5939	26.0166	24.7052
220110	29.1648	30.6173	33.9228	31.2432
220111	24.7510	26.7573	26.9565	26.1374
220116	32.0049	28.5716	30.9871	30.4812
220119	23.8785	24.6344	25.5111	24.6718
220123	32.4678	29.6084	32.1805	31.3951
220126	23.6045	23.8123	36.1591	27.2823
220133	29.3911	29.8366	27.4183	28.8616
220135	28.3648	29.6837	31.2687	29.8642
220154	21.1563	23.3590	25.5654	23.5365
220163	29.2299	29.3552	27.8718	28.5798
220171	24.9261	27.3487	25.9496	26.1526
230001	20.0438	23.3051	22.0875	21.7854
230002	23.0439	24.3115	23.7972	23.6903
230003	21.2215	21.6493	22.6120	21.8276
230004	20.5005	22.4538	22.3271	21.7397
230005	17.0943	20.5596	20.2186	19.1829
230006	20.4978	20.6985	21.9442	21.0676
230013	22.2211	20.0954	20.4633	20.9362
230015	20.6464	21.9499	21.6344	21.3826
230017	22.9755	25.7900	26.1609	24.9780
230019	23.6674	23.8779	24.7356	24.1224
230020	21.8526	28.8869	25.8265	25.0793

* Denotes wage data not available for the provider for that year.
** Based on the sum of the salaries and hours computed for Federal FYs 2002, 2003, and 2004.

TABLE 2.—HOSPITAL AVERAGE HOURLY WAGE FOR FEDERAL FISCAL YEARS 2002 (1998 WAGE DATA), 2003 (WAGE DATA), AND 2004 (2000 WAGE DATA) WAGE INDEXES AND 3-YEAR AVERAGE OF HOSPITAL AVERAGE HOURLY WAGES—Continued

Provider No.	Average hourly wage FY 2002	Average hourly wage FY 2003	Average hourly wage FY 2004	Average hourly** wage (3 yrs)
230021	19.8256	20.9145	21.9537	20.8777
230022	21.9129	21.8808	22.2179	22.0038
230024	24.9664	26.2155	24.1272	25.0227
230027	19.6393	22.5114	22.1018	21.3775
230029	22.1782	24.9754	24.9385	23.9465
230030	18.6406	19.2441	19.2145	19.0453
230031	19.9465	19.4676	22.1874	20.5558
230032	24.8930	22.8436	23.5011	23.7370
230034	19.4366	17.9276	19.0026	18.7604
230035	17.7490	20.5906	18.0735	18.7098
230036	23.8398	25.1507	25.9801	25.0254
230037	23.2751	22.7382	24.7183	23.5739
230038	21.9692	20.9389	23.2065	22.0318
230040	20.7841	20.2451	21.8062	20.9418
230041	21.7364	23.2870	24.2297	23.0470
230042	21.3870	20.7745	22.5003	21.5609
230046	25.3206	26.1787	27.7076	26.3640
230047	22.3595	23.7178	24.3622	23.4689
230053	26.8917	23.5702	25.3705	25.3321
230054	20.8014	22.2105	18.9493	20.6840
230055	20.8492	20.8930	20.9350	20.8938
230056	17.8091	17.3516	19.4126	18.2031
230058	21.0303	21.6619	22.4579	21.7287
230059	20.7092	20.6540	20.6854	20.6835
230060	19.8987	20.5120	22.7605	21.0950
230062	18.8039	18.2283	*	18.4950
230065	22.7416	23.3414	26.3217	24.0577
230066	23.0475	23.2790	23.4679	23.2643
230069	24.2470	25.0212	26.4859	25.2413
230070	21.5666	21.2476	22.8588	21.8801
230071	23.1337	23.6398	23.6674	23.4732
230072	20.4456	22.6533	22.8090	21.9640
230075	22.5866	22.3632	22.4692	22.4739
230076	24.7010	26.9662	*	25.7305
230077	20.2823	22.6781	23.6116	22.2277
230078	17.9868	19.1638	20.5427	19.2537
230080	20.2104	19.1810	20.4095	19.9313
230081	19.0199	20.0464	20.4289	19.7958
230082	19.0419	18.2165	21.0552	19.3344
230085	23.4996	24.5765	24.2802	24.1339
230086	20.1730	20.1461	25.1139	21.7587
230087	19.9700	20.6619	22.2688	20.9389
230089	22.6994	23.1023	23.3847	23.0660
230092	20.7738	22.3437	22.3122	21.8236
230093	20.6314	21.0274	25.0356	22.3197
230095	17.6444	18.0582	19.1810	18.3175
230096	22.7785	24.3004	26.5685	24.5818
230097	21.1254	22.5006	22.9902	22.2246
230099	21.7513	22.3422	23.5490	22.5510
230100	17.3842	18.2477	19.8016	18.4668
230101	20.5315	22.5159	22.3310	21.7559
230103	11.3429	18.5254	19.4434	16.3738
230104	24.1238	25.5606	27.7635	25.8605
230105	22.6098	23.0086	23.9851	23.2114
230106	21.6825	22.9909	23.1961	22.6494
230107	17.1386	18.9985	*	18.1307
230108	20.3437	21.4592	19.9763	20.6173
230110	19.7262	21.0925	21.8501	20.8760
230115	19.6281	21.0361	*	20.3009
230116	14.5692	15.6064	20.1283	16.4365
230117	25.6797	25.5154	28.1220	26.4781
230118	20.6797	20.2770	23.2432	21.3687
230119	22.6555	23.9898	24.7999	23.8287

* Denotes wage data not available for the provider for that year.
** Based on the sum of the salaries and hours computed for Federal FYs 2002, 2003, and 2004.

TABLE 2.—HOSPITAL AVERAGE HOURLY WAGE FOR FEDERAL FISCAL YEARS 2002 (1998 WAGE DATA), 2003 (WAGE DATA), AND 2004 (2000 WAGE DATA) WAGE INDEXES AND 3-YEAR AVERAGE OF HOSPITAL AVERAGE HOURLY WAGES—Continued

Provider No.	Average hourly wage FY 2002	Average hourly wage FY 2003	Average hourly wage FY 2004	Average hourly** wage (3 yrs)
230120	20.3306	20.6105	22.7243	21.0521
230121	21.3342	21.4615	24.6973	22.4295
230124	18.9981	20.9641	22.0096	20.6756
230128	24.0724	24.4952	*	24.2953
230130	22.1775	23.5123	23.7854	23.1764
230132	26.1946	27.3637	29.0292	27.5003
230133	17.1058	19.0770	20.2461	18.8268
230135	20.5637	18.4193	19.8290	19.6840
230141	22.4570	24.4560	23.9885	23.6151
230142	23.5621	25.0282	22.9036	23.7956
230143	16.7948	18.2700	19.5446	18.1583
230144	23.4237	23.3295	23.6959	23.4486
230145	19.2638	17.9811	15.8192	17.6120
230146	21.2260	22.3838	21.3539	21.6475
230147	23.2755	26.5260	*	24.7445
230149	18.8005	19.9577	20.8933	19.8319
230151	23.3967	24.3705	25.6421	24.4652
230153	18.7403	20.0098	22.8443	20.5744
230154	15.4362	16.7152	15.9001	16.0188
230155	20.5409	20.7546	18.0743	19.8594
230156	25.6228	27.2254	28.0692	26.9451
230157	17.3571	*	*	17.3571
230162	21.7148	22.7984	*	22.2573
230165	23.8881	24.7959	25.9534	24.8621
230167	22.9745	24.1344	24.7967	23.9623
230169	24.3874	28.1039	24.9264	25.7012
230171	17.1282	16.1129	19.9097	17.6776
230172	21.4675	22.1709	23.0023	22.2346
230174	22.7304	23.5025	24.5090	23.5983
230175	*	14.4932	22.5965	17.8784
230176	23.8204	24.9032	24.7466	24.4760
230178	17.3030	17.3428	18.1397	17.5917
230180	18.5744	19.6062	20.9131	19.7352
230184	19.7717	20.6406	21.3426	20.5906
230186	15.7837	19.1289	21.2156	18.3800
230188	16.2975	16.8687	18.3241	17.0936
230189	17.9218	19.1990	22.7783	19.9127
230190	26.4687	24.4643	26.8284	25.9306
230191	18.4861	20.6633	*	19.5216
230193	19.8287	21.5358	22.8917	21.3669
230195	22.9228	23.4647	25.3285	23.9218
230197	24.0854	25.5312	26.9776	25.4753
230199	20.6580	22.4592	23.5942	22.1770
230201	16.0787	18.2486	*	18.1632
230204	23.4966	24.5127	24.4095	24.1113
230205	15.9314	18.1551	*	17.0325
230207	21.2483	20.9059	22.2848	21.4738
230208	16.7454	17.8118	19.0898	17.9011
230211	21.8581	21.1245	*	21.4701
230212	24.2611	24.6420	26.4825	25.1164
230213	15.5469	17.1062	18.7123	17.1022
230216	21.0710	22.2137	23.4216	22.2323
230217	22.2698	24.1455	24.3649	23.6068
230219	20.0442	18.1277	20.5935	19.6048
230222	21.9711	23.2545	24.2148	23.1524
230223	22.6887	25.2666	28.5549	25.4631
230227	22.3155	25.8826	27.7510	25.3402
230230	22.3097	22.1703	22.0423	22.1610
230235	17.7197	17.5940	19.2540	18.1724
230236	25.9676	25.3251	25.4791	25.5829
230239	17.8168	18.9790	19.8370	18.8918
230241	20.7297	21.8472	22.8539	21.9059
230244	22.2697	23.1175	23.1234	22.8331

* Denotes wage data not available for the provider for that year.
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TABLE 2.—HOSPITAL AVERAGE HOURLY WAGE FOR FEDERAL FISCAL YEARS 2002 (1998 WAGE DATA), 2003 (WAGE DATA), AND 2004 (2000 WAGE DATA) WAGE INDEXES AND 3-YEAR AVERAGE OF HOSPITAL AVERAGE HOURLY WAGES—Continued

Provider No.	Average hourly wage FY 2002	Average hourly wage FY 2003	Average hourly wage FY 2004	Average hourly** wage (3 yrs)
230253	21.0433	22.7706	24.9784	22.9234
230254	22.6335	23.3714	24.2594	23.4070
230257	21.3880	23.1794	24.8070	22.9716
230259	22.3969	23.1768	24.5001	23.3910
230264	17.4864	18.6598	18.2571	18.1056
230269	24.0992	24.3772	24.9596	24.4951
230270	22.5985	25.2665	22.9002	23.5673
230273	22.8715	24.1278	25.8466	24.2438
230275	20.8985	32.0037	29.4179	26.3638
230276	25.8709	22.3313	25.4127	24.3279
230277	23.9771	24.3351	25.3381	24.5552
230279	17.8074	18.3256	21.2467	19.1913
230280	18.3497	*	*	18.3498
230283	22.5082	*	25.0038	23.8515
230286	*	47.5925	*	47.5929
230287	*	22.5420	*	22.5420
230288	*	*	30.5931	30.5929
240001	25.6936	26.6372	28.2239	26.9164
240002	23.2307	24.2214	24.3916	23.9674
240004	24.4030	25.6238	26.8197	25.6037
240005	20.3193	20.2389	22.7873	21.0896
240006	23.0715	25.7288	29.5789	26.1049
240007	19.0850	20.7189	21.4367	20.4240
240008	23.3783	22.7437	26.3213	24.1118
240009	17.1187	17.4518	*	17.2880
240010	25.4752	28.3796	29.0956	27.7014
240011	21.5875	22.5188	24.0365	22.7468
240013	21.7544	25.1560	27.2049	24.6443
240014	24.2610	25.2306	26.5144	25.3969
240016	22.2011	23.3772	25.2629	23.6323
240017	18.9272	19.3431	21.6243	19.9559
240018	18.4268	23.6092	27.3634	22.7452
240019	23.1477	24.0613	25.1331	24.1004
240020	20.8849	20.6819	24.7719	22.0019
240021	20.1457	19.0469	23.9570	20.9424
240022	21.3234	23.0394	23.4702	22.5966
240023	22.8224	22.3002	24.4609	23.2632
240025	20.0308	20.7672	21.2597	20.6915
240027	16.7758	18.3837	18.3340	17.8317
240028	25.1934	*	*	25.1933
240029	20.0164	23.0440	21.2343	21.3892
240030	20.1653	20.9799	22.0200	21.0838
240031	19.3983	21.7620	23.4390	21.5566
240036	22.1721	22.5436	23.3926	22.7261
240037	20.1195	21.4275	21.8392	21.1496
240038	24.3957	26.4513	29.0330	26.6099
240040	23.1352	22.8191	21.3870	22.2562
240041	21.8655	21.9054	22.8511	22.2064
240043	16.9859	18.0186	19.5532	18.2400
240044	20.3339	22.5750	22.7043	21.8646
240045	24.1557	24.2936	25.9223	24.7977
240047	23.8098	25.3233	29.6184	26.0294
240050	21.6499	23.1109	24.7589	23.1788
240051	22.5855	23.2612	25.5603	23.8542
240052	*	22.3485	23.5899	22.9828
240053	23.8693	24.4191	26.6015	24.9787
240056	23.7139	24.8549	28.5169	25.8728
240057	24.8686	25.3984	27.7600	26.0180
240058	18.4009	19.0506	19.6784	19.0102
240059	23.7808	25.3847	27.0517	25.4242
240061	25.9951	27.9151	28.6098	27.5450
240063	24.4031	25.8594	26.7645	25.6926
240064	22.8578	24.6785	24.9928	24.2158

* Denotes wage data not available for the provider for that year.
** Based on the sum of the salaries and hours computed for Federal FYs 2002, 2003, and 2004.

TABLE 2.—HOSPITAL AVERAGE HOURLY WAGE FOR FEDERAL FISCAL YEARS 2002 (1998 WAGE DATA), 2003 (WAGE DATA), AND 2004 (2000 WAGE DATA) WAGE INDEXES AND 3-YEAR AVERAGE OF HOSPITAL AVERAGE HOURLY WAGES—Continued

Provider No.	Average hourly wage FY 2002	Average hourly wage FY 2003	Average hourly wage FY 2004	Average hourly** wage (3 yrs)
240065	14.8734	14.4623	15.3825	14.9036
240066	24.1143	25.5163	27.4066	25.7241
240069	21.7991	23.3373	25.7439	23.6631
240071	21.2463	22.6332	24.8036	22.9056
240072	20.9529	21.5455	22.9244	21.8214
240073	17.3559	17.9013	20.1334	18.4502
240075	21.3357	21.9160	24.4084	22.5903
240076	22.3280	23.6159	26.8682	24.3772
240077	20.3445	22.1509	18.9735	20.4406
240078	25.1082	26.2576	27.5066	26.3275
240079	18.8345	18.2929	20.6644	19.2023
240080	25.5619	26.3071	27.8058	26.5849
240082	18.7995	20.2018	21.4727	20.1735
240083	21.0317	22.3484	24.4855	22.6030
240084	21.7421	23.1951	23.9942	22.9738
240085	20.9778	20.7535	17.4712	19.7663
240086	18.1401	18.1497	17.7594	18.0222
240087	21.3323	21.2116	20.1003	20.8883
240088	23.1056	24.6260	25.5587	24.4549
240089	21.1989	21.3949	23.4029	21.9959
240090	19.2166	21.0856	22.6601	21.1189
240093	20.2400	20.7138	22.3958	21.1802
240094	22.0247	22.5923	24.4166	23.1169
240096	21.0417	20.2992	23.8171	21.7632
240097	27.9496	29.7597	31.8726	29.9039
240098	24.2296	23.9626	*	24.0891
240099	15.4964	18.8139	43.7548	21.0887
240100	20.8325	24.1875	24.7500	23.2514
240101	19.9837	22.1329	24.3455	22.2487
240102	16.3659	15.5114	14.5842	15.5365
240103	18.7510	21.0182	20.2325	19.9774
240104	23.5351	25.1139	27.5745	25.4425
240106	23.5005	23.9677	25.5890	24.4099
240107	20.9004	21.2163	24.5581	22.1688
240108	18.2427	17.6500	19.2516	18.3839
240109	16.3216	15.1369	14.5891	15.2649
240110	21.0277	21.7340	22.9718	21.9757
240111	17.8617	19.9712	20.0499	19.2908
240112	16.6244	17.2437	*	16.9303
240114	17.3682	18.3415	21.7910	19.3128
240115	23.8675	24.6529	26.8906	25.1535
240116	18.3520	17.3460	19.2400	18.3173
240117	17.9941	18.6677	19.7047	18.8229
240119	21.8289	23.0230	23.4148	22.7820
240121	22.2266	22.4858	24.5455	23.1566
240122	21.2876	20.7795	23.5331	21.8695
240123	18.3941	18.9494	20.0721	19.1239
240124	20.4728	21.2023	23.5138	21.7551
240125	14.9708	17.3846	*	16.1716
240127	17.9724	16.4294	19.3859	17.7982
240128	16.3608	17.5611	20.1960	17.9593
240129	16.5209	17.7242	20.2001	18.1562
240130	16.4271	17.7634	17.8752	17.3622
240132	23.1452	24.5633	26.7031	24.8511
240133	19.5293	20.8958	23.6068	21.3584
240135	15.7015	15.6298	17.8575	16.3349
240137	21.5073	21.6644	23.1752	22.1872
240138	16.7332	19.1676	17.4235	17.7313
240139	20.5496	21.0163	22.4472	21.2707
240141	23.1009	23.6498	25.1597	24.0447
240142	29.2238	24.0719	25.5197	26.0657
240143	20.4266	20.7307	18.9442	20.0050
240144	21.4469	23.1661	23.3501	22.6969

* Denotes wage data not available for the provider for that year.
** Based on the sum of the salaries and hours computed for Federal FYs 2002, 2003, and 2004.

TABLE 2.—HOSPITAL AVERAGE HOURLY WAGE FOR FEDERAL FISCAL YEARS 2002 (1998 WAGE DATA), 2003 (WAGE DATA), AND 2004 (2000 WAGE DATA) WAGE INDEXES AND 3-YEAR AVERAGE OF HOSPITAL AVERAGE HOURLY WAGES—Continued

Provider No.	Average hourly wage FY 2002	Average hourly wage FY 2003	Average hourly wage FY 2004	Average hourly** wage (3 yrs)
240145	19.0689	17.6747	22.6062	19.4589
240146	16.5412	17.3275	18.1744	17.4437
240148	19.5204	19.5372	*	19.5281
240150	20.8331	23.3857	*	21.8697
240152	22.4744	24.1818	25.4031	24.1733
240153	19.3336	18.6556	20.3880	19.4726
240154	21.5052	21.5859	21.3809	21.4857
240155	20.9385	23.6944	24.4892	23.0432
240157	13.7309	20.0571	16.7563	16.8353
240160	15.9014	16.4990	17.3072	16.5799
240161	16.8809	18.0542	19.1144	18.0796
240162	19.1542	19.3296	20.4807	19.6719
240163	20.4760	22.2009	23.0778	21.9095
240166	19.4131	19.4496	21.5002	20.1541
240169	16.3958	*	*	16.3959
240170	20.3779	21.5994	22.4313	21.4955
240171	18.5172	19.6732	20.5124	19.5729
240172	20.8606	20.3699	20.9068	20.7077
240173	18.5187	18.3183	20.6286	19.1672
240179	20.4004	17.7557	19.8250	19.2836
240184	16.8917	17.6979	19.7471	18.1054
240187	21.2736	23.2471	24.9027	23.1511
240193	18.4664	26.6381	23.6164	23.0709
240196	25.3479	26.2793	27.3313	26.3610
240200	14.9076	18.7517	18.8396	17.3476
240207	25.2814	26.0927	27.4330	26.3128
240210	24.5664	25.6060	26.6231	25.6397
240211	30.6260	34.7849	32.8505	32.7909
240213	*	*	27.4812	27.4811
250001	19.2756	20.2019	20.9338	20.1232
250002	18.6938	19.6081	21.6643	20.0536
250003	16.7570	18.7331	19.3864	18.3353
250004	18.3860	19.2913	20.9295	19.5583
250005	12.5834	13.7341	11.3971	12.5195
250006	17.5192	19.4531	20.3061	19.0833
250007	19.7562	20.9757	21.2226	20.6508
250008	15.8506	15.8096	16.4863	16.0657
250009	17.7283	18.0463	19.7610	18.4932
250010	14.6101	16.0233	17.6204	16.0381
250012	16.7579	17.4032	15.6117	16.4987
250015	11.7249	16.6522	19.3794	15.3452
250017	20.5976	18.8850	19.0435	19.5747
250018	13.1687	14.7291	16.8783	14.8458
250019	18.0956	19.9070	22.9085	20.3396
250020	16.2698	19.6575	19.1877	18.3910
250021	10.5844	12.7242	15.8485	12.9174
250023	12.3434	13.8210	14.7354	13.5480
250024	12.9899	14.8394	12.1862	13.2855
250025	20.3625	21.9075	21.2651	21.1983
250027	14.5445	15.1790	17.5936	15.6987
250029	16.0682	14.8216	14.8043	15.2287
250030	26.6173	25.5089	27.2140	26.4270
250031	18.3825	19.8779	21.7605	20.4551
250032	17.5957	*	*	17.5957
250033	15.0941	16.9132	*	15.9970
250034	17.0399	18.8231	20.3681	18.7749
250035	16.8349	18.3861	17.1071	17.4370
250036	16.1913	17.6247	17.0469	16.9644
250037	12.7156	14.3994	16.6348	14.4707
250038	17.7019	18.8434	16.8610	17.7868
250039	15.1409	16.4502	16.8729	16.1389
250040	18.3364	19.6513	20.8178	19.5733
250042	17.6531	18.3858	19.4367	18.4780

* Denotes wage data not available for the provider for that year.
** Based on the sum of the salaries and hours computed for Federal FYs 2002, 2003, and 2004.

TABLE 2.—HOSPITAL AVERAGE HOURLY WAGE FOR FEDERAL FISCAL YEARS 2002 (1998 WAGE DATA), 2003 (WAGE DATA), AND 2004 (2000 WAGE DATA) WAGE INDEXES AND 3-YEAR AVERAGE OF HOSPITAL AVERAGE HOURLY WAGES—Continued

Provider No.	Average hourly wage FY 2002	Average hourly wage FY 2003	Average hourly wage FY 2004	Average hourly** wage (3 yrs)
250043	16.6500	18.4025	17.7554	17.5544
250044	16.7321	19.0321	20.3711	18.6909
250045	21.8988	22.7225	25.3236	23.3569
250047	14.7461	16.0109	*	15.2694
250048	17.6649	19.4976	19.3636	18.8723
250049	12.1635	12.8275	13.4396	12.7838
250050	15.1159	16.0234	16.6723	15.9407
250051	10.4900	10.1212	10.5027	10.3736
250057	16.1838	16.6316	19.0571	17.2494
250058	15.7197	16.2623	16.3813	16.1275
250059	16.6494	17.9507	19.0813	17.8285
250060	16.1804	12.6893	14.0155	14.2269
250061	11.5108	12.0186	11.4573	11.6591
250063	13.3092	15.0894	15.9383	14.6934
250065	13.6904	15.0507	16.2010	14.9097
250066	16.1742	17.2711	16.1044	16.5014
250067	16.8522	18.3773	20.0430	18.4322
250068	13.4127	13.2644	16.3759	14.2410
250069	16.8980	18.5782	21.2111	18.7309
250071	12.3488	13.1934	13.7055	13.0670
250072	18.9487	21.0602	20.7704	20.1290
250077	13.7404	13.9479	14.0318	13.8984
250078	15.9739	17.4118	17.4212	16.9775
250079	16.5835	16.1483	21.3505	18.0112
250081	19.0358	18.1848	20.1214	19.0803
250082	17.1427	17.3096	19.5962	18.0482
250083	16.6065	16.3054	19.5217	17.6288
250084	20.6429	21.0870	22.4632	21.3407
250085	15.4477	16.7377	18.0100	16.7072
250088	18.2736	19.3976	20.3019	19.3083
250089	14.3027	15.0238	16.0202	15.0666
250093	16.1506	16.8647	17.6906	16.8800
250094	18.5063	18.9681	19.9288	19.0932
250095	17.4217	18.4944	18.6616	18.1868
250096	19.0584	19.3630	20.5923	19.6554
250097	15.5741	16.3328	18.8398	16.9174
250098	18.3874	18.8163	17.9562	18.4324
250099	15.1265	15.9867	18.2504	16.5120
250100	17.8688	19.7559	18.8877	18.8640
250101	17.7194	17.6704	41.5335	17.7745
250102	18.9348	19.8487	21.3213	20.0396
250104	18.7651	19.0165	20.5035	19.4465
250105	15.5133	16.1480	17.0135	16.2367
250107	15.0737	16.5635	16.7104	16.0939
250109	21.3867	24.5760	16.4965	20.5154
250112	16.3640	16.6447	16.8696	16.6208
250117	16.9787	15.9335	18.8863	17.1858
250119	16.1218	16.5700	17.1373	16.5802
250120	16.7182	18.1428	22.3897	18.8266
250122	19.2990	19.8033	19.7966	19.6361
250123	18.7863	22.1376	22.2184	21.1030
250124	13.2490	14.4008	15.3772	14.3481
250125	21.2660	21.9366	25.3415	22.8644
250126	21.9101	19.0168	20.1117	20.3133
250128	16.1418	15.9958	15.8352	15.9898
250131	12.4557	11.2470	11.5396	11.7049
250134	18.5142	21.4489	22.0310	20.5243
250136	21.3497	20.0333	21.9977	21.1329
250138	20.4550	19.3446	21.2489	20.3584
250141	19.6692	21.6835	19.8982	20.4335
250145	11.2120	11.2021	*	11.2080
250146	14.7781	15.4061	16.9341	15.6577
250148	19.4233	23.1459	*	21.1903

* Denotes wage data not available for the provider for that year.
** Based on the sum of the salaries and hours computed for Federal FYs 2002, 2003, and 2004.

TABLE 2.—HOSPITAL AVERAGE HOURLY WAGE FOR FEDERAL FISCAL YEARS 2002 (1998 WAGE DATA), 2003 (WAGE DATA), AND 2004 (2000 WAGE DATA) WAGE INDEXES AND 3-YEAR AVERAGE OF HOSPITAL AVERAGE HOURLY WAGES—Continued

Provider No.	Average hourly wage FY 2002	Average hourly wage FY 2003	Average hourly wage FY 2004	Average hourly** wage (3 yrs)
250149	15.2318	15.7537	16.4228	15.8106
250150	21.8599	*	*	21.8600
250151	*	*	20.4581	20.4581
260001	20.1560	20.9620	22.5646	21.2406
260002	21.6597	23.4259	24.6812	23.4142
260003	15.4482	16.2023	16.5931	16.0798
260004	13.7035	15.2735	16.4424	15.0947
260005	23.9681	22.5860	24.3624	23.6476
260006	20.0994	22.1692	24.1078	22.0536
260008	16.8893	18.2114	15.9656	17.1196
260009	18.2863	19.0654	20.1679	19.1754
260011	19.5059	20.3279	21.1624	20.3470
260012	17.1662	17.3810	17.7853	17.4521
260013	16.1825	17.3772	18.4857	17.3402
260015	17.8817	18.3849	21.7581	19.2237
260017	16.9914	17.9796	20.8258	18.6436
260018	12.5301	13.6120	14.3278	13.5417
260019	*	18.3629	*	18.3629
260020	20.2241	21.0314	22.4643	21.2460
260021	21.6237	23.3527	27.2478	23.9117
260022	17.7772	18.7707	20.5417	18.9739
260023	17.8649	18.5665	19.2256	18.5565
260024	15.7815	15.6095	16.9515	16.1624
260025	17.0965	18.2804	19.3535	18.2493
260027	22.0362	23.1505	22.9973	22.7247
260029	21.1858	20.1832	22.0390	21.1257
260030	11.9215	12.8349	12.7803	12.5162
260031	19.7249	22.5379	24.3626	22.0014
260032	19.6728	20.3847	*	20.0208
260034	20.4902	20.5439	21.6108	20.9281
260035	13.0071	15.1611	15.0710	14.4258
260036	18.8104	20.1242	19.4559	19.4803
260039	14.6644	15.9689	13.9705	14.9145
260040	18.0140	18.5132	19.7196	18.7876
260042	18.7514	20.8821	*	19.9434
260044	15.9206	16.7879	18.2413	17.0028
260047	19.2247	20.2724	22.4013	20.5664
260048	21.0602	22.4800	20.1127	21.0958
260050	16.8520	17.8142	20.8510	18.4171
260052	18.0914	19.1044	21.1297	19.4548
260053	16.5166	17.4110	18.9606	17.6806
260054	20.6242	23.0188	*	21.7799
260055	15.4214	17.9547	18.8793	17.4012
260057	19.7144	16.5704	15.8404	17.4526
260059	17.0546	16.2074	17.2807	16.8654
260061	15.7112	17.1343	18.7280	17.2320
260062	21.3138	22.0091	25.1582	22.8328
260063	18.8973	19.7231	21.1284	19.8962
260064	17.8033	18.3749	17.5188	17.8922
260065	20.0975	20.6671	22.0073	20.9514
260066	15.3460	15.3139	*	15.3302
260067	15.1837	14.5499	15.0354	14.9154
260068	19.4240	20.7947	22.0951	20.7923
260070	13.9510	18.7384	11.2251	14.4396
260073	15.9182	16.9496	17.9000	16.9733
260074	19.8915	20.4033	18.7639	19.6422
260077	19.4482	20.5830	21.6257	20.5610
260078	14.9463	16.0586	16.9217	15.9818
260079	16.1453	16.4816	17.3871	16.6399
260080	14.6832	13.1617	13.6815	13.7659
260081	20.3053	20.2471	22.4329	21.0085
260082	15.9858	18.2853	18.7527	17.6725
260085	20.7051	21.5137	22.7394	21.6591

* Denotes wage data not available for the provider for that year.
** Based on the sum of the salaries and hours computed for Federal FYs 2002, 2003, and 2004.

TABLE 2.—HOSPITAL AVERAGE HOURLY WAGE FOR FEDERAL FISCAL YEARS 2002 (1998 WAGE DATA), 2003 (WAGE DATA), AND 2004 (2000 WAGE DATA) WAGE INDEXES AND 3-YEAR AVERAGE OF HOSPITAL AVERAGE HOURLY WAGES—Continued

Provider No.	Average hourly wage FY 2002	Average hourly wage FY 2003	Average hourly wage FY 2004	Average hourly** wage (3 yrs)
260086	15.2927	16.7579	17.2049	16.4038
260091	21.5464	22.0772	23.8702	22.5033
260094	18.5395	19.7308	20.0014	19.4593
260095	20.7292	21.6999	22.8156	21.7294
260096	22.5972	22.8259	23.5009	22.9961
260097	19.0632	18.6965	19.6203	19.1454
260100	16.6523	16.5439	16.6168	16.6045
260102	20.6361	21.2133	24.1041	22.0613
260103	19.7146	19.9144	*	19.8156
260104	20.3176	21.6624	22.1805	21.4297
260105	24.8181	22.8005	24.6572	24.0540
260107	20.4269	22.5214	23.1564	21.9109
260108	20.0034	20.9029	22.4665	21.1879
260109	14.8181	15.9724	16.7734	15.8460
260110	18.3227	19.5633	*	18.9410
260113	16.2223	16.1346	16.3440	16.2356
260115	17.4698	19.3873	20.1706	18.9712
260116	14.9812	16.0187	16.9807	15.9921
260119	17.2942	18.0725	18.7958	18.0259
260120	16.4904	17.6811	18.7651	17.6553
260122	16.0931	16.3700	16.1637	16.2077
260123	14.6822	15.2926	17.7996	15.9122
260127	18.4026	18.1342	19.7946	18.7879
260128	12.6414	13.2942	*	12.9660
260131	18.4154	18.0395	*	18.2242
260134	17.5127	17.1341	18.4511	17.6303
260137	19.4697	19.5976	20.7638	19.9765
260138	23.2364	23.6502	25.4515	24.0813
260141	19.1893	19.0444	21.1469	19.7400
260142	17.3084	18.2023	18.6412	18.0732
260143	13.9040	15.4688	16.0479	15.1578
260147	14.7769	15.8522	16.1172	15.5706
260148	11.3524	12.6651	15.1916	13.0421
260158	12.7699	13.9790	15.0140	13.9277
260159	19.7951	20.9636	22.5169	20.9886
260160	16.5792	18.4007	18.8723	17.9546
260162	21.4099	20.7331	22.3038	21.5147
260163	15.8593	16.8300	18.1311	16.9540
260164	15.1211	16.3874	16.9403	16.1072
260166	21.1224	22.4071	22.8409	22.1650
260172	16.0772	16.4854	17.1504	16.5822
260173	14.2090	15.5733	17.0117	15.5933
260175	17.5625	18.3632	19.7939	18.5994
260176	21.6044	23.2414	25.7802	23.6435
260177	21.9014	22.9112	24.0679	23.0194
260178	20.2796	20.8189	21.2846	20.7937
260179	22.7185	21.4470	23.1610	22.4301
260180	18.9881	19.5983	21.4226	19.9994
260183	21.3175	23.7057	24.2330	23.0675
260186	19.6026	21.0675	21.6620	20.8448
260188	22.5060	23.7475	*	23.0915
260189	16.4233	*	*	16.4232
260190	19.3419	21.6994	24.5014	21.8167
260191	18.1604	19.6784	20.8030	19.6078
260193	20.2577	22.2030	22.9556	21.8741
260195	19.7068	*	20.0889	19.9145
260197	20.5453	*	*	20.5453
260198	19.7552	21.7926	25.3390	22.1557
260200	20.6888	21.7031	21.9868	21.5369
260207	*	*	18.5247	18.5247
260208	*	*	30.6259	30.6261
270002	19.2387	19.0221	19.7588	19.3381
270003	22.5019	20.7277	23.0396	22.0300

* Denotes wage data not available for the provider for that year.
** Based on the sum of the salaries and hours computed for Federal FYs 2002, 2003, and 2004.

TABLE 2.—HOSPITAL AVERAGE HOURLY WAGE FOR FEDERAL FISCAL YEARS 2002 (1998 WAGE DATA), 2003 (WAGE DATA), AND 2004 (2000 WAGE DATA) WAGE INDEXES AND 3-YEAR AVERAGE OF HOSPITAL AVERAGE HOURLY WAGES—Continued

Provider No.	Average hourly wage FY 2002	Average hourly wage FY 2003	Average hourly wage FY 2004	Average hourly** wage (3 yrs)
270004	19.4834	20.1821	21.0202	20.3215
270006	17.0715	15.1006	18.2057	16.6954
270007	13.8824	15.5780	12.8055	13.9488
270009	20.8238	20.7031	21.5655	21.0425
270011	21.1653	21.8086	21.4031	21.4583
270012	19.7878	20.7913	21.7634	20.7748
270014	19.9859	20.4321	20.3456	20.2664
270016	18.6149	17.9984	21.0198	19.0996
270017	20.0152	22.1046	23.2320	21.7798
270019	15.4128	18.5111	19.6625	17.8208
270021	16.9457	18.0515	21.1624	18.5631
270023	22.7181	22.7162	23.7486	23.1141
270026	18.0568	20.1673	19.9669	19.4168
270027	17.2091	17.2005	17.4500	17.3066
270028	19.1177	19.6212	20.4877	19.7233
270029	17.3710	18.2097	17.9731	17.8617
270032	18.7811	19.3937	20.1801	19.4478
270033	18.4876	20.7060	25.0179	21.1320
270035	16.4302	17.9822	19.1036	17.8465
270036	16.8552	16.1031	18.8787	17.3089
270039	19.6796	20.3800	19.6505	19.8960
270040	20.1242	20.1887	20.7239	20.3415
270041	25.8153	*	*	25.8151
270044	17.5137	19.2939	18.6533	18.4293
270048	18.0666	17.4506	18.1269	17.8742
270049	22.2540	22.0263	22.9524	22.4171
270050	19.9356	19.6317	21.0901	20.2259
270051	20.1950	20.0386	22.2580	20.8285
270052	14.7009	17.1932	13.3673	15.1086
270057	20.6714	20.1507	21.9997	20.9799
270058	16.1412	18.4780	17.7905	17.3778
270059	19.1808	16.9303	17.4365	17.7389
270060	20.4148	21.3776	18.3386	20.1127
270063	15.1049	16.4553	19.7307	16.9992
270073	16.1937	16.6083	15.6319	16.1437
270079	16.7048	19.5493	*	18.0578
270080	15.0705	16.6010	20.6145	17.2851
270081	16.7389	18.0543	15.6834	16.8629
270082	23.1245	23.3209	21.0150	22.5579
270083	17.8554	16.8420	19.1381	17.8988
270084	16.2958	15.7062	19.6105	17.1115
280001	18.1831	18.7137	18.9480	18.6168
280003	23.0213	23.6058	26.0937	24.2580
280005	23.6949	22.8981	23.9753	23.5311
280009	20.9643	23.2300	23.8046	22.6996
280010	20.0462	22.0137	23.8324	22.0012
280011	15.9614	16.2281	*	16.0965
280013	22.5163	24.0852	23.4920	23.3630
280014	16.8368	16.7109	*	16.7707
280015	16.6939	18.0207	19.1420	17.9018
280017	13.9939	16.9884	15.8099	15.6454
280018	15.4496	16.6439	17.0625	16.3884
280020	21.2467	21.9587	23.4658	22.2728
280021	17.6345	19.1263	21.5215	19.4605
280022	16.8184	15.3785	*	16.0620
280023	22.3433	21.5761	19.6265	21.1633
280024	15.0380	15.8747	18.1544	16.1976
280025	21.4764	22.2214	*	21.8488
280026	16.5851	18.7258	*	17.6496
280028	18.0793	19.1080	*	18.5723
280029	24.4359	17.1351	*	20.5379
280030	24.7723	26.3542	26.2605	25.7410
280031	9.6321	9.6951	14.3030	11.3451

* Denotes wage data not available for the provider for that year.
** Based on the sum of the salaries and hours computed for Federal FYs 2002, 2003, and 2004.

TABLE 2.—HOSPITAL AVERAGE HOURLY WAGE FOR FEDERAL FISCAL YEARS 2002 (1998 WAGE DATA), 2003 (WAGE DATA), AND 2004 (2000 WAGE DATA) WAGE INDEXES AND 3-YEAR AVERAGE OF HOSPITAL AVERAGE HOURLY WAGES—Continued

Provider No.	Average hourly wage FY 2002	Average hourly wage FY 2003	Average hourly wage FY 2004	Average hourly** wage (3 yrs)
280032	19.1191	20.5246	21.5150	20.4101
280033	17.4745	17.9841	*	17.7291
280035	16.6872	18.6089	*	17.5717
280037	17.1064	14.8049	*	15.9325
280038	18.2503	18.9305	*	18.5950
280039	16.1587	17.0153	18.3375	17.1382
280040	20.9896	21.5426	23.7407	22.1421
280041	16.5503	16.5889	14.4252	15.9446
280042	16.6239	16.4684	*	16.5457
280043	17.5937	16.8186	*	17.2004
280045	15.7630	17.7408	15.2407	16.1990
280046	17.3214	17.9752	17.5600	17.6110
280047	17.4735	21.3143	19.5815	19.4044
280048	15.8100	17.9319	18.6882	17.5211
280049	18.4365	19.4589	20.1665	19.3973
280050	20.0379	*	*	20.0378
280051	17.1942	19.6206	*	18.3037
280052	14.1201	14.9903	15.4041	14.8495
280054	18.7575	19.4049	23.1191	20.4732
280055	13.8129	14.2046	15.2426	14.4185
280056	15.6135	15.6442	*	15.6285
280057	20.0686	21.4754	22.5480	21.4261
280058	21.4868	22.8105	17.7506	20.7067
280060	20.7022	22.4677	22.7755	21.9926
280061	18.6370	20.2066	21.2901	20.0793
280062	15.6018	16.1708	17.2218	16.3363
280064	16.8330	18.2196	*	17.5260
280065	20.7370	21.6999	23.8128	22.1199
280066	11.7207	12.2225	10.6969	11.4854
280068	10.5987	10.5103	11.6283	10.9064
280070	22.6201	18.7211	*	20.3601
280073	17.7698	18.3496	*	18.0596
280074	17.3143	13.6025	18.6064	16.1704
280075	13.2230	13.3154	18.0464	14.6143
280076	16.7488	16.1939	18.2504	17.1042
280077	20.0148	21.1883	22.7244	21.3192
280079	16.6117	17.1519	17.7968	17.1767
280080	16.9487	16.1902	*	16.5447
280081	20.9606	23.3805	25.2237	23.2090
280082	14.6173	15.4420	15.2322	15.0937
280083	21.5336	20.8995	*	21.2308
280084	13.6536	13.2158	14.3005	13.7432
280085	20.4825	20.8532	*	20.6808
280089	18.9567	19.9003	20.7438	19.8619
280090	15.1274	*	*	15.1274
280091	16.1866	16.3456	*	16.2669
280092	14.7912	13.3032	16.5893	14.8029
280094	16.3474	16.9180	18.5068	17.3100
280097	13.8223	14.1870	*	14.0071
280098	12.5875	12.4995	*	12.5457
280101	16.9973	10.5153	*	12.9714
280104	16.2167	15.5949	14.8257	15.4728
280105	21.0735	23.7103	26.1112	23.6557
280106	16.0679	16.3564	*	16.2080
280107	14.4679	*	*	14.4678
280108	17.1961	18.5134	20.9016	18.8959
280109	12.4408	*	*	12.4408
280110	14.2136	13.0278	*	13.5867
280111	19.6283	19.7688	20.7398	20.0680
280114	17.3076	17.1154	*	17.2096
280115	18.1480	18.3464	19.7797	18.7967
280117	18.8279	20.3819	20.5464	19.9214
280118	18.6524	17.8891	19.3465	18.6584

* Denotes wage data not available for the provider for that year.
** Based on the sum of the salaries and hours computed for Federal FYs 2002, 2003, and 2004.

TABLE 2.—HOSPITAL AVERAGE HOURLY WAGE FOR FEDERAL FISCAL YEARS 2002 (1998 WAGE DATA), 2003 (WAGE DATA), AND 2004 (2000 WAGE DATA) WAGE INDEXES AND 3-YEAR AVERAGE OF HOSPITAL AVERAGE HOURLY WAGES—Continued

Provider No.	Average hourly wage FY 2002	Average hourly wage FY 2003	Average hourly wage FY 2004	Average hourly** wage (3 yrs)
280123	11.8582	23.6682	24.3539	18.1396
280125	16.3944	17.2718	19.7871	17.7870
280126	*	*	35.5895	35.5900
290001	22.7450	24.3681	25.9590	24.4242
290002	16.5419	16.7948	16.8363	16.7281
290003	24.2175	25.4303	27.2718	25.6701
290005	21.9814	22.7804	24.6877	23.2224
290006	22.4063	22.4832	24.2211	23.1190
290007	30.9075	34.9911	33.7208	33.2446
290008	24.1255	26.9216	27.0115	25.8955
290009	23.9373	24.8816	26.9020	25.2711
290010	16.4476	20.8387	25.4598	20.8166
290011	21.1234	19.7410	21.7835	20.8924
290012	25.0430	25.5647	25.4791	25.3714
290013	15.7932	20.2914	21.1487	18.7341
290014	18.7829	20.2762	25.6155	21.5373
290015	19.4504	20.2336	22.3653	20.5695
290016	23.8656	21.8030	17.9615	20.7686
290019	22.2045	22.5584	25.1684	23.3359
290020	21.2380	19.5039	24.2374	21.4763
290021	22.9488	24.1397	26.0430	24.3771
290022	25.5011	25.3914	27.5364	26.1224
290027	13.3769	13.1463	*	13.2560
290032	23.9504	26.9846	27.1791	26.2060
290036	12.9074	*	*	12.9073
290038	27.7030	26.0836	30.0397	27.9572
290039	25.5024	26.6283	28.5925	26.9886
290041	25.9905	27.7740	28.6294	27.7224
290042	18.7527	18.7669	*	18.7611
290043	27.9053	*	*	27.9053
290045	*	*	26.4843	26.4843
300001	23.8567	25.7142	26.8650	25.5285
300003	24.1297	25.3252	26.7859	25.4284
300005	22.2858	22.3258	22.8163	22.4895
300006	18.9745	22.2642	22.0188	21.0625
300007	20.6325	21.3633	23.6919	21.9920
300008	19.6149	20.9207	23.1085	21.2699
300009	20.0938	20.1486	22.7539	20.9686
300010	20.2130	21.0316	24.5296	21.8421
300011	23.0279	23.8390	25.0979	24.0124
300012	24.5619	25.8581	26.1792	25.6027
300013	20.1669	20.0269	21.3396	20.4889
300014	20.1774	21.6705	23.7144	21.9343
300015	19.6627	22.8966	24.4870	22.4848
300016	17.8148	15.1311	19.6529	17.5958
300017	22.7191	23.9651	26.0504	24.3780
300018	21.6385	22.8379	25.7851	23.5726
300019	19.6728	20.5801	23.8076	21.3279
300020	22.6627	23.0806	24.8189	23.5472
300021	19.3101	20.2585	19.0918	19.5659
300022	19.1875	20.1209	22.3918	20.6206
300023	22.7649	22.1896	24.9992	23.3536
300024	21.5842	22.2235	22.4882	22.1265
300028	20.0778	21.4207	21.7975	21.0588
300029	22.6013	23.8415	24.5772	23.7645
300033	17.1632	17.4836	20.4502	18.3308
300034	24.4975	25.2355	26.9093	25.5558
310001	27.4730	31.1568	29.6344	29.4408
310002	27.9728	28.7786	33.9058	30.2896
310003	27.5624	29.3522	31.1739	29.3684
310005	22.9712	23.9477	25.6120	24.1650
310006	22.0894	24.1538	25.9000	24.0238
310008	24.7618	26.4989	28.0970	26.4414

* Denotes wage data not available for the provider for that year.
** Based on the sum of the salaries and hours computed for Federal FYs 2002, 2003, and 2004.

TABLE 2.—HOSPITAL AVERAGE HOURLY WAGE FOR FEDERAL FISCAL YEARS 2002 (1998 WAGE DATA), 2003 (WAGE DATA), AND 2004 (2000 WAGE DATA) WAGE INDEXES AND 3-YEAR AVERAGE OF HOSPITAL AVERAGE HOURLY WAGES—Continued

Provider No.	Average hourly wage FY 2002	Average hourly wage FY 2003	Average hourly wage FY 2004	Average hourly** wage (3 yrs)
310009	21.7094	23.2420	24.6353	23.1866
310010	23.1060	24.5471	26.5921	24.8321
310011	24.2885	25.4900	26.1586	25.3131
310012	26.6772	28.1367	31.1705	28.7006
310013	22.5603	23.2424	25.0951	23.6575
310014	23.1956	31.0834	29.1931	27.3029
310015	27.9684	29.1340	29.3681	28.8346
310016	24.5206	26.0738	25.7368	25.3648
310017	24.5976	25.1634	25.2577	25.0191
310018	22.4779	24.1428	25.9108	24.1664
310019	24.9914	28.5952	26.4492	26.6564
310020	24.4152	25.0803	25.0147	24.8332
310021	25.4393	27.8958	29.2267	27.4313
310022	20.8258	23.3412	26.7487	23.5627
310024	24.9521	27.0459	26.9499	26.3252
310025	24.1812	25.5227	26.8719	25.4915
310026	22.1997	23.2895	24.6697	23.2693
310027	22.5696	24.4437	22.1935	23.0737
310028	23.9428	26.1931	25.7246	25.2908
310029	23.6610	24.4290	25.9606	24.6455
310031	26.8831	26.7174	29.5581	27.5915
310032	24.7404	24.9133	25.7088	25.2148
310034	24.1150	24.8567	26.4468	25.1211
310036	21.7187	23.0320	*	22.3716
310037	28.1289	28.7738	29.9732	28.9645
310038	28.4893	28.1756	32.3865	29.6794
310039	22.7317	23.6605	24.6045	23.6772
310040	26.3573	26.5769	27.2418	26.7140
310041	23.5559	23.8857	26.8145	24.8018
310042	24.7678	24.9702	26.9695	25.5501
310043	21.6128	24.0238	*	22.6515
310044	23.1549	23.1489	25.1618	23.8298
310045	28.9274	29.4877	31.7376	30.0182
310047	26.1921	25.9777	26.0860	26.0841
310048	25.2870	23.4189	28.4136	25.6301
310049	27.0842	25.6732	26.3656	26.3559
310050	24.7988	23.7735	25.3772	24.6345
310051	27.5378	28.6248	28.3783	28.1725
310052	23.3973	24.9773	26.8158	24.9554
310054	27.7376	27.6290	27.2303	27.5237
310057	22.2572	22.2630	26.3903	23.6641
310058	26.3765	25.3983	25.6526	25.8266
310060	20.0997	21.4455	22.1914	21.1757
310061	33.9582	23.4283	24.9678	26.7631
310063	22.1080	21.2619	22.9871	22.1071
310064	25.4822	25.9350	27.8388	26.4138
310067	23.9278	24.1943	26.3624	24.7328
310069	24.2329	25.3464	25.7690	25.1083
310070	28.2220	29.5101	30.1917	29.3042
310072	22.5611	24.4480	25.3145	24.0586
310073	26.2937	26.7954	28.7528	27.2829
310074	22.3588	24.2009	27.6789	24.7835
310075	24.4788	23.9771	24.9752	24.4724
310076	27.9918	29.6667	32.5424	30.0825
310077	26.1251	26.7092	28.7352	27.1831
310078	24.0587	24.5862	24.7606	24.4553
310081	22.4086	23.3310	24.6557	23.4816
310083	24.8204	25.0191	25.2465	25.0205
310084	24.6049	25.4946	27.3680	25.8446
310086	23.1719	23.4966	25.2725	23.9596
310087	21.1215	20.6847	*	20.9048
310088	23.1722	23.0610	23.7846	23.3408
310090	24.8986	23.6661	25.3640	24.6461

* Denotes wage data not available for the provider for that year.
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TABLE 2.—HOSPITAL AVERAGE HOURLY WAGE FOR FEDERAL FISCAL YEARS 2002 (1998 WAGE DATA), 2003 (WAGE DATA), AND 2004 (2000 WAGE DATA) WAGE INDEXES AND 3-YEAR AVERAGE OF HOSPITAL AVERAGE HOURLY WAGES—Continued

Provider No.	Average hourly wage FY 2002	Average hourly wage FY 2003	Average hourly wage FY 2004	Average hourly** wage (3 yrs)
310091	23.2969	24.5357	25.6405	24.4610
310092	21.6964	22.9721	23.2226	22.6239
310093	23.7251	23.9404	24.6942	24.1032
310096	24.5759	26.6588	28.4705	26.4515
310105	26.2537	28.1317	28.7333	27.6283
310108	23.8308	25.1368	24.4096	24.4558
310110	23.2146	23.3461	26.4175	24.4668
310111	22.1151	23.3646	26.2496	23.9377
310112	24.7914	24.2999	27.8796	25.6804
310113	23.1961	24.2708	25.9143	24.5219
310115	21.1645	23.5148	24.5413	23.0976
310116	23.6366	24.2696	25.1189	24.3065
310118	26.1315	26.8760	28.0517	26.9540
310119	32.7858	29.1045	33.2731	31.6276
310120	23.3200	22.6526	24.7079	23.4981
320001	20.6225	21.5564	23.0290	21.8122
320002	23.0983	25.5144	26.4847	25.1115
320003	16.4642	16.4961	20.7939	17.8265
320004	19.6642	21.3681	19.4799	20.2196
320005	21.0411	22.4178	22.1677	21.9174
320006	20.3863	19.8672	21.1222	20.4529
320009	19.3500	20.3783	21.5870	20.3252
320011	18.5222	19.1476	20.7713	19.4939
320012	17.1764	17.1317	*	17.1558
320013	24.5543	25.5403	19.4487	22.2842
320014	16.8412	22.9026	19.5032	19.7029
320016	18.8519	18.8763	19.9200	19.2582
320017	19.4498	20.4390	22.5460	20.8081
320018	19.2336	20.3141	20.9400	20.1778
320019	26.9637	25.1210	26.6900	26.3394
320021	19.1265	20.0089	21.0913	20.0920
320022	18.0606	20.9797	20.7919	20.0415
320023	17.8419	*	*	17.8418
320030	18.6859	18.1556	16.8696	17.8853
320031	25.1715	18.2244	19.0519	20.5648
320032	20.6871	21.4815	21.2528	21.1396
320033	21.0621	21.9804	24.2703	22.4984
320035	15.0612	17.8058	*	16.5303
320037	17.8280	17.6724	19.6466	18.4044
320038	22.2664	23.1987	19.2962	21.6253
320046	18.9607	19.4732	21.5914	20.0169
320048	16.8769	*	31.6800	24.0471
320063	17.9089	18.5600	20.4936	18.8302
320065	18.6525	22.5428	19.9012	20.1608
320067	15.3228	16.8015	17.7799	16.4113
320068	18.5103	15.6864	15.7757	16.5793
320069	14.4212	15.7350	18.5375	16.2248
320074	20.2290	22.3403	28.3085	22.7142
320079	19.8555	20.2473	21.9090	20.6661
320083	*	*	25.7539	25.7539
330001	27.3996	28.6214	30.7042	28.9537
330002	26.9341	27.1811	28.2184	27.4257
330003	18.9211	19.3972	20.6509	20.4183
330004	20.9501	22.5082	24.3703	22.6203
330005	22.1957	22.6137	24.3474	23.0406
330006	25.8006	26.2970	28.3904	26.7950
330008	19.2341	19.6770	20.6816	19.8702
330009	31.3435	30.9087	33.3605	31.8514
330010	16.6508	17.8935	19.8211	18.0647
330011	18.6748	18.7995	19.8035	19.0860
330013	19.6269	19.0995	20.9282	19.8689
330014	36.8669	32.4496	31.9524	33.5779
330016	16.8016	18.7194	18.1603	17.8636

* Denotes wage data not available for the provider for that year.
** Based on the sum of the salaries and hours computed for Federal FYs 2002, 2003, and 2004.

TABLE 2.—HOSPITAL AVERAGE HOURLY WAGE FOR FEDERAL FISCAL YEARS 2002 (1998 WAGE DATA), 2003 (WAGE DATA), AND 2004 (2000 WAGE DATA) WAGE INDEXES AND 3-YEAR AVERAGE OF HOSPITAL AVERAGE HOURLY WAGES—Continued

Provider No.	Average hourly wage FY 2002	Average hourly wage FY 2003	Average hourly wage FY 2004	Average hourly** wage (3 yrs)
330019	33.5369	31.5927	31.9042	32.2626
330020	1142	16.6952	16.8234	16.1733
330023	25.6512	26.6997	29.4353	27.3255
330024	37.3316	35.7485	35.3598	36.0893
330025	16.8687	17.6169	18.7663	17.7638
330027	35.5255	35.1046	34.1273	34.9301
330028	29.5294	31.7699	31.2424	30.9471
330029	17.0016	19.4377	18.4354	18.2976
330030	19.1085	18.0866	28.7083	22.0491
330033	17.4444	19.5836	18.4160	18.4656
330034	27.7738	38.2451	*	31.2246
330036	25.2820	25.5888	27.0970	25.9905
330037	16.4866	18.3260	18.3557	17.7256
330038	17.3429	16.2997	*	16.8497
330041	31.4871	29.5305	34.5461	31.7315
330043	27.4661	28.9622	31.7873	29.4079
330044	19.5219	19.9808	22.0465	20.8006
330045	27.9919	28.5267	30.9046	29.1458
330046	35.2703	38.1184	41.6759	38.2919
330047	18.5536	19.5561	20.1646	19.4202
330048	19.1093	19.6129	*	19.3678
330049	20.5731	22.1523	24.0154	22.2469
330053	17.8082	17.9161	18.1728	17.9636
330055	32.8910	34.2159	34.9709	34.0397
330056	30.0945	29.8377	32.0982	30.6226
330057	19.3643	20.0995	20.5575	20.0172
330058	17.7672	18.1007	19.1379	18.3260
330059	34.2426	35.0121	36.4176	35.2563
330061	25.4082	26.8580	28.6136	26.9092
330062	18.1318	18.4662	20.0222	18.7978
330064	33.6447	35.1422	36.0976	34.9476
330065	19.9305	20.1615	20.5958	20.2322
330066	18.8707	19.3644	20.9990	19.7359
330067	22.1065	23.6836	24.8927	23.5465
330072	30.4171	30.3737	32.9665	31.2232
330073	16.4518	16.5166	18.4162	17.3766
330074	17.7308	18.9326	21.5724	19.3819
330075	17.6385	19.2938	19.9781	18.9556
330078	18.7884	18.0362	20.7304	19.1607
330079	18.7622	18.9398	21.1153	19.6188
330080	31.4424	34.6890	29.5529	31.9593
330084	19.3216	19.0261	19.2135	19.1805
330085	20.6203	20.9332	21.8271	21.1349
330086	23.6496	26.2979	27.1585	25.5888
330088	25.7940	26.7583	29.5181	27.3384
330090	19.2112	20.1344	20.9327	20.1124
330091	19.7776	21.6004	22.9396	21.4093
330092	13.3723	17.2083	17.7246	16.0609
330094	18.1582	18.8941	20.7039	19.2157
330095	21.1096	21.1809	28.8428	22.1947
330096	18.5149	20.0370	21.1648	19.9256
330097	16.4433	16.1945	18.5608	17.0345
330100	29.0916	28.9956	31.5775	29.8728
330101	31.5914	35.3618	37.9069	34.7542
330102	19.0058	21.0057	23.5253	21.0029
330103	16.8110	17.3511	17.9017	17.3639
330104	31.2074	31.9746	*	31.5864
330106	35.3775	36.2526	38.4384	36.6836
330107	27.7797	28.9225	29.7378	29.5391
330108	18.0786	18.5849	20.2536	18.9350
330111	15.9321	13.3352	17.7020	15.4904
330114	17.0581	19.1162	19.2566	18.4674
330115	17.4684	18.5911	18.5544	18.2257

* Denotes wage data not available for the provider for that year.
** Based on the sum of the salaries and hours computed for Federal FYs 2002, 2003, and 2004.

TABLE 2.—HOSPITAL AVERAGE HOURLY WAGE FOR FEDERAL FISCAL YEARS 2002 (1998 WAGE DATA), 2003 (WAGE DATA), AND 2004 (2000 WAGE DATA) WAGE INDEXES AND 3-YEAR AVERAGE OF HOSPITAL AVERAGE HOURLY WAGES—Continued

Provider No.	Average hourly wage FY 2002	Average hourly wage FY 2003	Average hourly wage FY 2004	Average hourly** wage (3 yrs)
330116	14.9610	16.8567	17.0561	16.2974
330119	33.1179	33.5653	34.6591	33.7652
330121	16.3385	17.1869	17.9757	17.1336
330122	20.2417	23.0384	25.6500	22.9753
330125	19.7638	20.5922	21.5769	20.6209
330126	23.8957	25.1175	27.5394	25.5273
330127	30.7356	40.0112	30.6030	33.9644
330128	30.8242	34.3468	33.5504	32.9063
330132	14.3673	14.8704	16.0311	15.1074
330133	35.3576	37.5192	35.9692	35.9945
330135	22.2670	23.5662	25.1802	23.5883
330136	20.1043	20.4124	21.2943	20.6129
330140	19.3615	21.1841	21.1787	20.5922
330141	26.7096	27.5960	29.3037	27.9129
330144	16.2517	17.1513	17.3920	16.9610
330148	16.2782	16.7251	17.6560	16.8727
330151	15.7594	15.2233	16.1354	15.7000
330152	30.8314	33.5587	32.9336	32.8160
330153	18.1776	19.4417	22.0179	21.5648
330157	22.3804	23.1743	23.5522	23.0369
330158	27.1228	29.3163	32.3534	29.4900
330159	19.4998	20.2753	22.7512	20.8227
330160	29.5885	30.7893	32.1266	30.7976
330162	27.6010	27.9705	29.4475	28.3208
330163	20.7456	21.4143	21.1517	21.0818
330164	20.9003	22.0699	23.9635	23.6195
330166	15.4420	17.0637	18.4262	17.0093
330167	30.2346	32.0541	30.7301	30.9496
330169	35.4794	36.3690	36.2725	36.0426
330171	24.8035	25.1567	25.9946	25.3030
330175	18.3116	18.8701	20.4056	19.1653
330177	16.3704	16.6059	19.0005	17.2818
330179	13.8953	16.0113	15.0665	14.9370
330180	17.9877	19.2670	19.8951	19.0453
330181	33.0908	34.6065	36.8062	34.8035
330182	33.6531	33.3363	35.0496	34.0319
330183	20.6164	20.3520	*	20.4865
330184	31.3706	28.4726	31.1286	30.9549
330185	26.8612	27.8894	28.8893	27.8982
330188	18.8000	20.2849	21.0098	20.0662
330189	18.4498	23.5589	19.0726	20.2279
330191	19.0348	19.5623	20.8876	19.8341
330193	30.2260	32.5496	36.2427	32.8255
330194	35.2036	35.6486	38.3174	36.4467
330195	34.8966	34.4689	36.4249	35.2744
330196	30.5799	28.9488	28.1590	29.2904
330197	18.3527	19.2237	20.8386	19.4333
330198	24.8590	25.6669	25.3622	25.3000
330199	30.5409	28.0374	30.2655	29.6011
330201	28.7861	30.0524	29.3745	29.3679
330202	31.2575	35.4943	41.7560	36.1208
330203	25.0345	25.9211	24.7422	25.2170
330204	32.2005	31.1366	32.4850	31.9448
330205	22.3490	24.9040	28.7587	25.2768
330208	26.5682	27.3170	30.6158	28.1551
330209	25.1281	27.0257	27.7071	26.6630
330211	19.5405	20.0006	20.8224	20.1312
330212	24.7681	24.8554	24.9434	24.8488
330213	19.6796	20.1166	20.7889	20.1990
330214	32.4292	32.3130	31.1205	31.9124
330215	17.9863	19.0726	19.9226	18.9889
330218	21.1890	21.4747	20.6012	21.0785
330219	23.4310	25.1792	28.6712	25.6595

* Denotes wage data not available for the provider for that year.
** Based on the sum of the salaries and hours computed for Federal FYs 2002, 2003, and 2004.

TABLE 2.—HOSPITAL AVERAGE HOURLY WAGE FOR FEDERAL FISCAL YEARS 2002 (1998 WAGE DATA), 2003 (WAGE DATA), AND 2004 (2000 WAGE DATA) WAGE INDEXES AND 3-YEAR AVERAGE OF HOSPITAL AVERAGE HOURLY WAGES—Continued

Provider No.	Average hourly wage FY 2002	Average hourly wage FY 2003	Average hourly wage FY 2004	Average hourly** wage (3 yrs)
330221	33.3796	32.5044	34.9345	33.6092
330222	18.5571	19.3148	23.5491	20.4196
330223	17.8306	19.1604	18.8253	18.6087
330224	20.4309	20.5881	22.5695	21.2048
330225	27.0379	28.0523	29.1744	28.0410
330226	23.1859	21.6368	20.6413	21.6149
330229	17.5326	18.2554	18.5590	18.1157
330230	29.6283	30.6937	32.5997	30.9389
330231	32.7200	32.4163	31.0944	32.0731
330232	19.1787	20.0924	21.1277	20.1536
330233	44.1265	43.1186	39.5133	42.2764
330234	35.0720	35.8327	37.7135	36.1847
330235	19.5880	20.1255	21.4643	20.3704
330236	31.3463	32.1246	31.8491	31.7633
330238	17.3976	17.8867	18.3846	17.8977
330239	18.5079	18.9953	19.7561	19.0658
330240	30.7321	35.6576	35.8530	33.9196
330241	23.8638	24.7545	26.7598	25.1593
330242	27.6384	28.3561	30.5172	28.8163
330245	18.5161	20.7605	20.3764	19.9316
330246	28.1205	29.8777	31.4120	29.6840
330247	27.3937	32.5858	25.6063	28.6111
330249	17.1320	17.6846	19.1469	18.0226
330250	19.9619	20.8742	22.5523	21.1636
330254	15.9123	15.7864	*	15.8547
330258	31.8910	32.6745	*	32.2903
330259	25.9994	26.3620	27.1632	26.5007
330261	27.9766	30.0489	30.2305	29.4148
330263	18.7378	19.5057	20.0831	19.4473
330264	22.8099	24.9714	22.9348	23.5396
330265	17.6301	21.1215	18.2547	19.0141
330267	24.5939	27.8255	28.9459	27.1596
330268	15.9060	16.8358	18.7991	17.2148
330270	36.0824	33.0375	35.7375	34.9492
330273	26.0565	27.0454	28.8548	27.3093
330275	18.7268	*	*	18.7268
330276	19.0228	19.6572	20.7973	19.8310
330277	19.1761	20.7851	21.8865	20.6281
330279	20.7107	21.7827	22.2342	21.5603
330285	24.0491	24.5388	26.1367	24.9296
330286	27.7762	28.0994	31.1802	29.0328
330290	30.4706	34.3439	35.5617	33.3907
330293	16.9238	17.3180	17.6507	17.2993
330304	27.3562	29.2207	30.7428	29.1068
330306	29.5937	29.6641	30.4426	29.9146
330307	21.7257	23.2838	23.8583	22.9902
330314	25.9937	25.5405	26.2954	25.9412
330316	27.9543	27.9277	33.7857	29.8270
330327	20.3874	20.1705	19.3465	20.0015
330331	33.1276	32.3249	34.3554	33.2559
330332	25.3689	27.6955	30.5104	28.0245
330333	*	28.8819	29.7725	29.3003
330336	29.8294	27.9163	32.9548	30.2195
330338	21.2670	23.6142	25.4319	23.4256
330339	20.1028	20.2382	20.8423	20.3907
330340	28.4129	28.2732	27.6209	28.0963
330350	30.9763	33.5493	35.5656	33.4000
330353	34.2431	34.2260	35.6821	34.7146
330357	34.1846	36.8598	36.5461	35.8671
330372	33.3771	23.5381	28.2490	27.9598
330381	31.8602	*	*	31.8602
330385	33.2246	37.5523	29.0854	33.5264
330386	20.4231	21.4363	25.2063	22.3343

* Denotes wage data not available for the provider for that year.
** Based on the sum of the salaries and hours computed for Federal FYs 2002, 2003, and 2004.

TABLE 2.—HOSPITAL AVERAGE HOURLY WAGE FOR FEDERAL FISCAL YEARS 2002 (1998 WAGE DATA), 2003 (WAGE DATA), AND 2004 (2000 WAGE DATA) WAGE INDEXES AND 3-YEAR AVERAGE OF HOSPITAL AVERAGE HOURLY WAGES—Continued

Provider No.	Average hourly wage FY 2002	Average hourly wage FY 2003	Average hourly wage FY 2004	Average hourly** wage (3 yrs)
330389	37.3749	33.1192	32.2112	34.0979
330390	30.8744	31.7344	32.5948	31.7185
330393	27.8352	31.9272	32.9411	30.8719
330394	18.9343	19.6892	21.1737	19.9249
330395	32.7494	33.2318	32.1089	32.8033
330396	30.7961	32.8517	30.2150	31.2942
330397	32.6066	34.6435	40.0884	35.3787
330398	29.2872	*	*	29.2871
330399	33.3012	32.7149	32.1248	32.6847
330400	16.2707	16.8168	16.7483	16.6259
330401	*	*	33.9685	33.9685
340001	19.7093	22.0257	21.4870	21.0947
340002	20.5253	22.9425	23.8010	22.5969
340003	19.5145	19.6545	20.4109	19.8596
340004	20.9863	23.0890	23.1514	22.4225
340005	16.7176	16.6909	19.9094	17.7865
340006	16.5709	16.1379	18.3980	17.0420
340007	18.3399	18.3760	19.5204	18.7397
340008	20.4157	22.6570	23.7394	22.3196
340009	20.9178	20.6155	*	20.8194
340010	19.4302	20.6547	21.3024	20.4707
340011	14.4798	17.4534	18.1926	16.7010
340012	17.5112	19.3651	19.6350	18.7911
340013	19.4613	21.5130	21.0066	20.6934
340014	27.7888	21.9804	14.6001	20.4859
340015	19.4676	20.3493	24.3410	21.2831
340016	18.8958	19.4160	20.2859	19.5502
340017	20.2775	20.6263	21.5523	20.8419
340018	18.1751	16.4611	17.3480	17.2851
340019	15.2887	15.9037	16.7102	15.9597
340020	18.0897	19.2392	21.3385	19.6156
340021	20.5813	22.0220	22.9499	21.8152
340022	18.7714	20.6484	19.9078	19.7763
340023	19.3146	19.9023	*	19.6217
340024	17.9130	19.1430	20.4906	19.1924
340025	18.4628	19.1770	20.2864	19.3249
340027	19.4548	19.4907	20.8946	19.9262
340028	19.9403	20.6496	21.9837	20.9344
340030	22.4709	23.9505	27.9759	24.5972
340031	14.6370	15.4935	*	15.0325
340032	20.7444	22.0245	22.7382	21.8244
340035	18.9930	18.5883	16.4821	17.7616
340036	17.7619	18.4203	20.8313	18.9871
340037	17.5829	18.3655	17.1949	17.6512
340038	18.1493	20.3091	13.9936	16.9604
340039	21.3711	22.4020	24.8246	22.8823
340040	20.7237	21.1397	23.6131	21.8157
340041	15.5873	16.3200	15.2995	15.7337
340042	17.0034	19.1386	21.0806	19.0573
340044	18.0863	18.9562	18.2154	18.4256
340045	13.6182	20.2641	17.4067	16.7851
340047	20.0744	21.5178	23.3831	21.6665
340049	19.5127	17.2986	21.2734	19.3901
340050	19.6726	20.6831	20.3262	20.2425
340051	19.3627	19.0282	20.3057	19.5812
340052	23.2134	26.2243	31.1678	25.9648
340053	19.9915	23.2410	25.2543	22.6238
340054	15.5090	16.6208	*	15.9979
340055	19.4035	20.8253	23.1390	21.1444
340060	19.3410	20.8570	19.4707	19.8979
340061	22.1175	23.7173	25.1081	23.6221
340063	16.7377	26.4132	*	21.1044
340064	18.5069	17.6106	19.4523	18.4891

* Denotes wage data not available for the provider for that year.
** Based on the sum of the salaries and hours computed for Federal FYs 2002, 2003, and 2004.

TABLE 2.—HOSPITAL AVERAGE HOURLY WAGE FOR FEDERAL FISCAL YEARS 2002 (1998 WAGE DATA), 2003 (WAGE DATA), AND 2004 (2000 WAGE DATA) WAGE INDEXES AND 3-YEAR AVERAGE OF HOSPITAL AVERAGE HOURLY WAGES—Continued

Provider No.	Average hourly wage FY 2002	Average hourly wage FY 2003	Average hourly wage FY 2004	Average hourly** wage (3 yrs)
340065	17.3530	23.2606	20.2174	19.9588
340067	19.7187	22.4054	22.2565	21.2710
340068	17.8065	18.8758	18.9555	18.5436
340069	21.6728	22.5995	24.4650	22.9542
340070	20.6829	21.3511	22.4458	21.5104
340071	18.0767	19.3679	19.8571	19.1466
340072	17.7129	18.7920	19.2773	18.5813
340073	23.5832	24.0794	26.6829	24.9327
340075	20.0081	19.7450	22.9365	20.9263
340080	18.2061	*	*	18.2061
340084	19.0103	19.6087	20.8175	19.7922
340085	18.3179	20.3584	21.7019	20.1735
340087	18.2255	20.2445	19.7815	19.4322
340088	22.2322	22.6462	22.9486	22.6109
340089	15.4760	16.1321	16.5968	16.0500
340090	18.5287	18.7701	20.3261	19.2336
340091	20.3861	21.2665	22.4370	21.4299
340093	16.8903	16.5452	17.2910	16.9100
340094	*	21.0091	*	21.0091
340096	19.4696	20.9686	22.1174	20.8605
340097	18.2399	20.0302	20.9190	19.7534
340098	21.9578	23.4949	24.1099	23.2572
340099	15.3752	16.9979	17.3123	16.5041
340101	15.6509	20.7841	*	17.9177
340104	11.5169	12.1845	12.9949	12.2095
340106	18.1211	19.1147	20.1076	19.1527
340107	19.3197	20.7601	21.0070	20.3722
340109	19.0532	19.3357	19.0067	19.1328
340111	16.5976	17.2127	19.4520	17.8152
340112	15.5142	16.9592	17.0230	16.4908
340113	21.9883	24.4222	24.9180	23.7927
340114	20.7261	21.7750	19.5543	20.5793
340115	21.7586	24.7924	21.2336	22.4360
340116	20.6800	21.6744	23.9643	22.1286
340119	19.5827	20.5394	21.2239	20.4881
340120	15.8240	16.9847	19.3990	17.3770
340121	17.8771	19.0420	19.9862	18.9987
340123	18.9078	21.5041	22.2199	20.9298
340124	17.4185	17.5411	17.5691	17.5084
340125	20.2748	*	*	20.2748
340126	19.3734	21.2045	21.3106	20.5788
340127	19.3842	21.4797	22.0597	21.0110
340129	20.6521	21.0773	22.3260	21.4712
340130	19.8707	20.5851	22.7449	21.1193
340131	21.3849	23.2478	24.1370	22.9644
340132	17.5711	17.7110	17.8771	17.7237
340133	17.2138	17.5170	22.9471	18.7909
340137	31.7702	39.9826	33.5581	34.6438
340138	*	*	27.2610	27.2610
340141	21.4986	23.2961	24.1329	23.0207
340142	18.0766	18.1824	20.2062	18.8388
340143	24.4098	21.9304	22.5250	22.9058
340144	22.9183	22.8634	25.4597	23.8048
340145	19.9233	21.5958	21.8120	21.1598
340146	17.3051	19.1306	20.7252	19.1365
340147	20.5520	21.5912	22.3744	21.5004
340148	18.9912	20.6790	20.8025	20.1744
340151	18.4733	19.0779	19.6254	19.0740
340153	20.7533	21.7375	23.7537	22.0653
340155	23.1021	25.0965	25.7472	24.6273
340158	19.0843	20.0921	21.7830	20.4524
340159	19.0338	19.4992	21.2983	19.9832
340160	16.7170	17.1963	18.7802	17.6409

* Denotes wage data not available for the provider for that year.
** Based on the sum of the salaries and hours computed for Federal FYs 2002, 2003, and 2004.

TABLE 2.—HOSPITAL AVERAGE HOURLY WAGE FOR FEDERAL FISCAL YEARS 2002 (1998 WAGE DATA), 2003 (WAGE DATA), AND 2004 (2000 WAGE DATA) WAGE INDEXES AND 3-YEAR AVERAGE OF HOSPITAL AVERAGE HOURLY WAGES—Continued

Provider No.	Average hourly wage FY 2002	Average hourly wage FY 2003	Average hourly wage FY 2004	Average hourly** wage (3 yrs)
340164	21.5769	*	*	21.5769
340166	20.8270	22.0519	22.7235	21.9492
340168	15.6071	15.4250	16.8277	15.9431
340171	22.4779	22.7304	25.9865	23.8198
340173	21.0898	23.3690	23.7037	22.7805
340176	*	*	26.5277	26.5277
350001	16.6551	15.6193	*	16.1279
350002	18.3459	19.1931	20.4398	19.3340
350003	19.2840	20.0663	21.0585	20.1107
350004	23.7016	25.1976	28.3773	25.5370
350005	19.9156	20.7467	22.5590	21.0499
350006	19.0343	19.1257	19.7577	19.2916
350007	13.8824	13.9966	13.0050	13.5839
350008	22.3783	23.4052	20.7952	22.2417
350009	18.3688	19.3668	20.2558	19.3312
350010	16.6272	16.7774	17.2489	16.8799
350011	19.1944	20.6809	21.1006	20.1738
350012	18.2524	16.0990	17.2775	17.4137
350013	17.2596	17.8145	19.3705	18.1038
350014	18.0999	18.6786	16.1719	17.7037
350015	17.1071	17.5658	18.5437	17.7151
350017	17.5124	18.0840	19.1952	18.2584
350018	16.4939	16.3210	17.1545	16.6530
350019	20.1608	20.6743	21.3589	20.7389
350021	17.7123	16.3394	17.6652	17.2178
350023	17.4983	18.3253	16.7124	17.5523
350024	15.4788	15.7510	17.0685	16.1028
350025	15.0469	14.6099	*	14.8289
350027	15.5178	17.5882	17.6730	16.8430
350029	14.6173	*	*	14.6173
350030	18.1131	18.7993	18.8822	18.5954
350033	16.0870	16.0903	16.4715	16.2067
350034	19.6445	*	*	19.6446
350035	11.7675	12.6496	*	12.2147
350038	19.6854	19.5497	18.4963	19.2761
350039	16.6278	14.8599	13.8504	15.1678
350041	19.1341	23.1150	19.7477	20.6986
350042	19.3309	19.3370	20.6599	19.7491
350043	16.7433	17.6722	18.8378	17.7606
350044	11.0601	10.9690	13.3406	11.6826
350047	18.0094	19.9749	14.4742	17.4738
350049	18.1993	16.8322	15.3488	16.7860
350050	12.2183	25.2747	*	15.7885
350051	17.0653	16.9201	13.8030	16.0076
350053	15.9160	16.7456	*	16.3628
350055	15.7916	16.1691	19.2523	16.9922
350056	15.0995	15.7752	16.2553	15.6926
350058	16.7034	16.1013	15.0197	15.9830
350060	10.3076	10.5325	10.5055	10.4468
350061	18.8790	19.6460	18.8494	19.1278
360001	19.6655	20.3515	22.2387	20.7565
360002	18.2613	19.6145	20.7436	19.4695
360003	22.7521	23.2905	24.4144	23.4719
360006	22.4436	22.6333	23.8087	22.9695
360007	14.8213	15.3656	19.1316	16.2099
360008	18.7961	19.8034	21.3795	20.0267
360009	18.9935	19.6277	21.6966	20.1251
360010	19.1852	20.5934	20.6291	20.1715
360011	21.3659	19.5383	21.4293	20.6951
360012	20.0525	23.0125	24.3521	22.5181
360013	21.3690	22.3407	24.4232	22.7482
360014	20.7419	22.9930	22.9372	22.2320
360016	21.2505	21.3967	22.8430	21.8319

* Denotes wage data not available for the provider for that year.
** Based on the sum of the salaries and hours computed for Federal FYs 2002, 2003, and 2004.

TABLE 2.—HOSPITAL AVERAGE HOURLY WAGE FOR FEDERAL FISCAL YEARS 2002 (1998 WAGE DATA), 2003 (WAGE DATA), AND 2004 (2000 WAGE DATA) WAGE INDEXES AND 3-YEAR AVERAGE OF HOSPITAL AVERAGE HOURLY WAGES—Continued

Provider No.	Average hourly wage FY 2002	Average hourly wage FY 2003	Average hourly wage FY 2004	Average hourly** wage (3 yrs)
360017	22.2740	22.7446	23.4603	22.8364
360018	24.6686	24.6694	29.9085	26.0220
360019	20.6480	21.4708	24.1469	22.0806
360020	22.1751	21.6607	21.5085	21.7901
360024	20.1352	20.9408	22.5356	21.2300
360025	20.2531	20.9266	21.6676	20.9599
360026	17.9523	18.6739	20.6765	19.1093
360027	21.7650	22.8098	22.6956	22.4249
360028	18.7174	*	*	18.7174
360029	19.2928	19.7466	20.5687	19.8806
360030	17.6058	19.0551	20.1051	18.9454
360031	21.0687	21.0481	24.3482	22.0734
360032	19.8020	19.8367	20.6535	20.1098
360034	17.9594	19.4982	21.5621	19.7369
360035	21.0674	22.6982	24.0810	22.6341
360036	20.9916	21.4486	22.3567	21.6200
360037	23.1674	23.7504	32.6245	25.9190
360038	19.9415	21.4804	23.4855	21.6060
360039	19.0013	19.3703	23.3439	20.4210
360040	18.7425	19.9750	21.3307	20.0479
360041	19.7968	21.9093	22.1352	21.3781
360042	17.1952	19.3774	19.5402	18.6350
360044	17.6882	17.8417	19.7212	18.4151
360045	22.4018	22.8112	*	22.5916
360046	20.4607	21.4292	22.8425	21.5814
360047	15.2922	15.8279	17.5885	16.2546
360048	22.4890	25.6259	24.5867	24.1178
360049	20.8393	*	22.4938	21.5834
360050	15.0568	15.6847	16.6112	15.6772
360051	20.8757	21.2225	22.7466	21.6280
360052	18.7931	19.8037	22.2916	20.3236
360054	17.4911	17.5714	19.2884	18.1334
360055	21.4112	22.8755	23.5586	22.6117
360056	20.6958	23.4405	22.1723	22.1096
360057	15.8569	16.0395	16.2876	16.0788
360058	19.3306	19.0440	21.0717	19.7901
360059	19.9304	23.2129	23.0476	22.0393
360062	21.9195	24.4898	24.5746	23.8212
360063	17.5108	20.2671	23.7440	20.3480
360064	20.0615	20.7659	21.3424	20.7273
360065	19.6199	22.3443	22.9727	21.6463
360066	22.8175	24.1295	24.6806	23.9204
360067	14.2745	17.3734	17.0751	16.1999
360068	22.6227	22.6027	23.2680	22.8322
360069	14.6597	18.5382	19.3142	17.4363
360070	18.8406	19.4700	21.8228	20.0184
360071	19.0302	19.6873	21.4478	20.0864
360072	19.0166	20.8819	21.3735	20.4642
360074	18.5889	19.9947	22.9962	20.5125
360075	26.0663	27.6992	23.8492	26.5296
360076	20.3317	21.0402	22.5863	21.3489
360077	21.5517	22.2964	23.3686	22.4049
360078	22.6490	22.7743	22.9324	22.7880
360079	21.6644	23.9491	25.3134	23.6069
360080	17.6369	18.0392	18.7213	18.1448
360081	20.4614	20.7477	22.0134	21.0714
360082	20.7610	22.9390	25.2254	23.0000
360084	22.0492	22.1699	23.3257	22.5390
360085	21.5151	24.8010	24.6618	23.5397
360086	19.3701	20.5858	21.6902	20.5374
360087	20.7969	21.1621	23.9638	22.0097
360088	24.0822	20.5703	21.4608	21.9345
360089	18.1941	19.5260	21.0229	19.5818

* Denotes wage data not available for the provider for that year.
** Based on the sum of the salaries and hours computed for Federal FYs 2002, 2003, and 2004

TABLE 2.—HOSPITAL AVERAGE HOURLY WAGE FOR FEDERAL FISCAL YEARS 2002 (1998 WAGE DATA), 2003 (WAGE DATA), AND 2004 (2000 WAGE DATA) WAGE INDEXES AND 3-YEAR AVERAGE OF HOSPITAL AVERAGE HOURLY WAGES—Continued

Provider No.	Average hourly wage FY 2002	Average hourly wage FY 2003	Average hourly wage FY 2004	Average hourly** wage (3 yrs)
360090	20.8971	21.2072	22.6236	21.6097
360091	21.8447	22.6510	23.5759	22.6962
360092	21.5073	20.9588	21.9732	21.4976
360093	19.0261	21.0134	21.4911	20.5156
360094	20.1227	21.1952	22.7772	21.2684
360095	19.8521	21.3505	22.6758	21.2848
360096	19.6726	20.9838	22.0673	20.9264
360098	19.8178	20.8049	22.2481	20.9247
360099	19.6241	20.8801	20.8524	20.4553
360100	18.0442	19.9768	21.5911	19.8051
360101	20.2635	24.1551	26.2875	23.5545
360102	18.5367	*	*	18.5367
360106	19.1778	18.9779	19.8658	19.3346
360107	22.1359	21.9939	23.6880	22.6413
360108	20.0681	19.0649	18.1522	19.0815
360109	19.9237	17.3564	22.4427	19.7960
360112	24.6335	25.7920	25.6581	25.3316
360113	20.8154	22.8088	22.3348	21.9843
360114	18.7509	19.4212	20.8341	19.6739
360115	20.7652	21.0104	22.0789	21.2875
360116	18.8319	20.1408	21.3809	20.0857
360118	19.9141	21.0235	22.7268	21.2720
360121	22.2175	21.9111	22.1403	22.0892
360123	20.9792	21.9985	23.1310	22.1195
360125	20.5508	21.6675	21.1408	21.0968
360126	24.5387	*	22.2409	23.5396
360127	16.5559	18.2150	18.7369	17.8642
360128	17.0515	17.5557	18.0355	17.5624
360129	16.6114	17.2309	17.9151	17.2650
360130	18.4539	19.8906	20.1257	19.4067
360131	18.4688	20.4123	21.7838	20.2068
360132	21.3493	21.0162	23.4179	21.9298
360133	20.2857	22.1957	22.0416	21.4704
360134	20.9564	21.6081	24.3117	22.2074
360136	18.2194	18.5687	19.6063	18.7820
360137	22.3648	23.1867	23.7795	23.0881
360140	21.2881	18.3463	21.0006	20.1760
360141	23.5343	23.5980	25.1442	24.0943
360142	18.3188	19.6189	21.2072	19.7570
360143	21.0336	20.9158	22.2275	21.3979
360144	20.9033	20.9386	24.7973	22.2165
360145	20.0513	21.2931	22.4813	21.2645
360147	17.6779	18.7258	20.0409	18.8813
360148	19.1393	20.3120	21.3211	20.2546
360150	22.3620	23.1858	24.8485	23.4439
360151	19.2788	20.5594	21.6234	20.4589
360152	21.6005	20.9704	22.4839	21.6726
360153	16.7399	16.1021	16.5065	16.4436
360154	14.3593	14.9606	16.1719	15.1150
360155	22.2112	22.3347	23.0020	22.5355
360156	18.9095	19.9382	21.2853	20.0637
360159	21.5695	22.7992	23.3359	22.5729
360161	20.6160	19.6266	21.5045	20.5807
360163	21.2689	22.1012	23.1500	22.1757
360165	18.2417	19.6205	21.7785	19.8643
360170	20.4407	19.7980	21.5572	20.5841
360172	19.8909	22.3294	22.6475	21.5601
360174	20.5399	20.5874	20.7719	20.6325
360175	21.5450	22.0274	22.7887	22.1417
360176	16.6228	17.6743	18.3421	17.5257
360177	18.9576	19.6992	20.8194	19.8306
360178	16.7962	18.0773	18.2393	17.6939
360179	20.7069	21.3520	23.2092	21.6660

* Denotes wage data not available for the provider for that year.
** Based on the sum of the salaries and hours computed for Federal FYs 2002, 2003, and 2004.

TABLE 2.—HOSPITAL AVERAGE HOURLY WAGE FOR FEDERAL FISCAL YEARS 2002 (1998 WAGE DATA), 2003 (WAGE DATA), AND 2004 (2000 WAGE DATA) WAGE INDEXES AND 3-YEAR AVERAGE OF HOSPITAL AVERAGE HOURLY WAGES—Continued

Provider No.	Average hourly wage FY 2002	Average hourly wage FY 2003	Average hourly wage FY 2004	Average hourly** wage (3 yrs)
360180	21.0146	22.9260	25.1489	22.9738
360185	19.4858	20.0848	21.0618	20.2316
360186	20.7572	18.1254	22.4647	20.3502
360187	19.6535	20.8423	21.5915	20.6778
360188	18.3057	16.4329	20.9591	18.4288
360189	18.5940	19.0481	20.0275	19.2171
360192	22.7846	23.9969	24.9995	23.9111
360194	17.6140	19.3901	20.3677	19.1372
360195	20.5828	21.2801	23.1897	21.7230
360197	20.5062	21.6110	23.1378	21.7597
360200	17.9623	19.5866	27.5373	19.3013
360203	15.9609	17.9698	19.3642	17.7421
360210	21.8629	21.5961	25.0811	22.8213
360211	20.6081	22.0011	22.4529	21.6965
360212	20.6987	21.0632	22.8041	21.5064
360213	19.0584	20.5448	20.9996	20.1721
360218	18.8204	20.7709	22.8059	20.8145
360230	20.8042	21.2417	24.7681	22.2381
360231	14.4168	12.7388	13.5004	13.4939
360234	20.6131	21.0473	22.1787	21.3387
360236	21.4628	20.5683	21.9560	21.3210
360239	19.2375	20.9440	21.9631	20.7405
360241	25.3741	23.7679	23.4061	24.1565
360245	15.9782	16.7956	18.1015	16.9965
360247	17.0776	*	*	17.0775
360249	25.4331	*	*	25.4330
360250	*	50.5106	*	50.5105
360253	*	*	26.8610	26.8610
360254	*	*	30.0791	30.0792
360255	*	*	15.0964	15.0963
370001	24.1929	22.0566	25.3182	23.8002
370002	15.4333	16.1853	18.9544	16.8753
370004	18.5233	22.5027	21.5041	20.8266
370005	15.3881	*	*	15.3881
370006	16.4995	15.7367	15.6334	15.9348
370007	15.8312	14.4961	16.7597	15.6795
370008	17.5553	18.5253	21.4862	19.1897
370011	15.6178	16.1757	17.1458	16.3495
370012	12.4942	13.3824	*	12.9251
370013	16.9584	19.3237	21.1513	19.8462
370014	20.2858	22.7976	21.8473	21.6639
370015	20.8765	18.9169	20.3965	20.0611
370016	19.1613	20.0886	20.4407	19.8819
370017	13.6531	*	*	13.6531
370018	17.7054	18.7928	20.8357	19.1122
370019	14.6216	16.1367	18.1260	16.2132
370020	15.1035	15.6057	16.8214	15.8194
370021	12.9030	*	*	12.9030
370022	17.3724	18.2109	20.2432	18.6171
370023	17.5148	18.1255	19.3386	18.3281
370025	18.4815	19.1013	20.2845	19.2928
370026	18.0412	18.6982	21.9141	19.5712
370028	21.1292	22.1765	24.3775	22.5815
370029	18.2580	19.3285	19.6977	19.1304
370030	16.5803	18.4568	18.6541	17.9169
370032	18.1538	18.9050	20.0827	19.0803
370033	11.3210	15.3857	15.7468	13.9159
370034	15.6288	16.2204	16.1541	15.9959
370036	12.4070	11.7667	16.5843	13.2363
370037	18.9556	20.6493	20.9598	20.1863
370038	13.0210	15.4551	16.7597	14.9832
370039	19.4498	22.7015	20.3137	20.7707
370040	15.5109	16.8127	18.9981	17.0372

* Denotes wage data not available for the provider for that year.
** Based on the sum of the salaries and hours computed for Federal FYs 2002, 2003, and 2004.

TABLE 2.—HOSPITAL AVERAGE HOURLY WAGE FOR FEDERAL FISCAL YEARS 2002 (1998 WAGE DATA), 2003 (WAGE DATA), AND 2004 (2000 WAGE DATA) WAGE INDEXES AND 3-YEAR AVERAGE OF HOSPITAL AVERAGE HOURLY WAGES—Continued

Provider No.	Average hourly wage FY 2002	Average hourly wage FY 2003	Average hourly wage FY 2004	Average hourly** wage (3 yrs)
370041	16.2316	14.7346	19.0064	16.6382
370042	15.2764	15.9005	14.0899	15.1360
370043	17.0892	20.0991	20.2929	18.9889
370045	11.3560	11.6163	12.6613	11.8767
370047	17.8769	18.4743	19.4856	18.6175
370048	15.6803	17.0785	15.4768	16.0450
370049	19.4868	20.3405	20.4826	20.0887
370051	12.5171	11.4943	12.0397	11.9839
370054	18.0787	19.2294	20.3788	19.2048
370056	18.1432	19.2867	20.4872	19.2536
370057	15.1228	16.0301	17.3020	16.1401
370059	18.3314	21.3103	20.7160	20.0337
370060	19.3051	17.9469	23.1897	20.1750
370063	16.7342	*	12.7634	16.0398
370064	11.9954	11.6347	11.9044	11.8446
370065	18.1349	18.2406	18.3966	18.2581
370071	16.4567	*	*	16.4568
370072	13.6519	12.5765	12.5766	12.8934
370076	14.3555	15.4067	19.0231	16.2477
370078	19.2412	15.2513	22.0344	18.4513
370079	16.9201	17.5915	17.9942	17.4569
370080	14.7323	14.3546	16.1445	15.0543
370082	15.0669	16.9715	12.6060	14.8254
370083	13.1810	15.6824	18.5669	15.6441
370084	13.1197	15.6184	16.1277	15.0212
370085	48.1271	13.7216	15.8930	17.6461
370086	11.1900	*	*	11.1900
370089	17.2638	17.9243	18.0505	17.7472
370091	20.1822	20.8536	23.8502	21.5141
370092	15.7678	16.8432	*	16.3152
370093	19.7008	22.1966	23.5685	21.8046
370094	19.5462	19.5565	20.7290	19.9736
370095	13.4202	14.5909	14.3563	14.1246
370097	23.2056	19.3793	20.3218	20.7266
370099	19.4646	18.1467	20.2001	19.2453
370100	18.8274	12.9784	13.0682	14.6358
370103	18.2685	23.1347	15.6109	19.0349
370105	20.7890	25.1252	22.4493	22.5846
370106	20.3651	21.8937	24.0117	22.1004
370108	12.7470	14.0190	13.8170	13.5126
370112	15.3039	14.3384	16.5964	15.3556
370113	17.6107	20.3439	21.4267	19.8197
370114	17.8941	17.9757	19.3383	18.4232
370121	21.3099	20.5488	20.1393	20.6498
370122	15.4375	*	*	15.4374
370123	19.0313	19.7958	20.5180	19.7729
370125	13.9436	14.4664	17.9240	15.3291
370126	15.8020	*	*	15.8021
370131	15.7261	*	*	15.7262
370133	12.9545	16.1855	17.4258	15.5834
370138	17.5551	17.4574	19.0403	18.0470
370139	14.9964	16.0898	16.3223	15.8016
370140	17.1393	17.4950	20.2255	18.2466
370141	20.7798	19.8606	24.0523	21.4638
370146	13.0399	13.9900	*	13.5128
370148	20.6612	22.6237	22.8526	22.0700
370149	17.0929	18.0699	18.2260	17.8047
370153	16.4669	16.5267	17.9692	16.9732
370154	15.6093	16.6687	17.4760	16.6039
370156	14.5696	15.4303	15.9647	15.3521
370158	15.6994	16.3637	17.3412	16.4535
370159	21.1267	25.5592	*	22.6485
370163	20.4217	*	*	20.4216

* Denotes wage data not available for the provider for that year.
** Based on the sum of the salaries and hours computed for Federal FYs 2002, 2003, and 2004.

TABLE 2.—HOSPITAL AVERAGE HOURLY WAGE FOR FEDERAL FISCAL YEARS 2002 (1998 WAGE DATA), 2003 (WAGE DATA), AND 2004 (2000 WAGE DATA) WAGE INDEXES AND 3-YEAR AVERAGE OF HOSPITAL AVERAGE HOURLY WAGES—Continued

Provider No.	Average hourly wage FY 2002	Average hourly wage FY 2003	Average hourly wage FY 2004	Average hourly** wage (3 yrs)
370165	13.0375	12.9569	16.1893	13.8212
370166	21.0797	19.4219	21.3003	20.6013
370169	12.7138	14.8384	16.5607	14.5408
370176	18.9951	19.6537	21.7871	20.1373
370177	14.6481	14.1304	14.0279	14.2494
370178	11.6200	9.8655	12.9636	11.3085
370179	21.3002	23.8404	21.9673	22.2749
370183	16.9318	16.6061	*	16.7678
370186	15.4533	16.3671	16.3879	16.0737
370190	19.3570	20.6398	22.3326	20.7903
370192	19.6967	21.8343	24.3832	21.9053
370200	22.5299	18.3941	16.7164	18.9908
370201	*	18.2548	18.9905	18.6571
370202	*	16.5384	24.0239	20.2030
370203	*	23.5454	19.8772	21.4569
370204	*	*	17.5518	17.5517
370205	*	*	20.7828	20.7830
370206	*	*	22.3471	22.3471
370207	*	*	26.3745	26.3746
380001	26.4822	25.1542	20.9585	23.8121
380002	21.9185	23.2479	25.2629	23.4657
380003	20.9007	23.8074	24.6377	23.1951
380004	23.3609	24.5418	26.7995	24.9682
380005	25.0750	24.7476	26.3472	25.4394
380006	21.3520	20.5914	24.7492	22.3626
380007	32.2678	25.9239	30.0497	29.1804
380008	22.3004	21.6133	24.6149	22.8464
380009	24.3851	25.1040	25.9993	25.1907
380010	22.7276	24.1931	*	23.4887
380011	20.3357	20.6759	21.9382	20.9633
380013	19.8180	19.9606	24.1491	21.3157
380014	25.9828	26.6038	28.4536	27.0598
380017	25.3954	21.9236	29.2543	25.5247
380018	22.9822	24.8661	27.5171	25.1199
380019	20.8176	21.1743	23.9736	22.0144
380020	22.9568	23.9978	23.7066	23.5720
380021	23.8499	24.4365	28.0334	25.5509
380022	24.5974	25.6255	26.4793	25.6210
380023	21.3831	23.4328	23.0079	22.7334
380025	26.9346	26.9398	28.8525	27.6239
380026	20.6972	22.7561	23.8666	22.4738
380027	21.5490	22.2573	21.5822	21.7906
380029	20.1471	22.0371	24.2939	22.3500
380031	20.3396	23.7634	25.2963	23.2221
380033	27.1343	26.6899	30.4783	28.1499
380035	23.9719	25.6016	26.2434	25.3543
380036	27.2157	*	*	27.2157
380037	22.1774	23.4798	25.0199	23.6781
380038	26.7759	28.1436	29.1804	28.0609
380039	22.8048	25.7614	26.3917	24.8782
380040	22.5477	22.6412	21.5958	22.2243
380042	24.4172	21.6793	15.2050	19.3932
380047	24.2524	25.2591	26.5017	25.3695
380048	18.3005	18.2773	22.0609	19.6514
380050	20.3205	22.1089	23.1332	21.8624
380051	22.3207	24.4081	26.2384	24.3019
380052	18.6299	20.7431	21.2567	20.2520
380056	18.4961	20.7895	22.3571	20.6518
380060	24.2059	23.0106	27.5270	24.9545
380061	22.8781	24.1121	26.4940	24.6176
380062	18.2148	26.1370	22.8599	22.5474
380064	22.9160	27.0627	*	25.0195
380065	22.9608	23.3146	24.8933	23.7620

* Denotes wage data not available for the provider for that year.
** Based on the sum of the salaries and hours computed for Federal FYs 2002, 2003, and 2004.

TABLE 2.—HOSPITAL AVERAGE HOURLY WAGE FOR FEDERAL FISCAL YEARS 2002 (1998 WAGE DATA), 2003 (WAGE DATA), AND 2004 (2000 WAGE DATA) WAGE INDEXES AND 3-YEAR AVERAGE OF HOSPITAL AVERAGE HOURLY WAGES—Continued

Provider No.	Average hourly wage FY 2002	Average hourly wage FY 2003	Average hourly wage FY 2004	Average hourly** wage (3 yrs)
380066	23.2794	23.1175	23.3581	23.2487
380069	20.4882	21.2057	21.8362	21.1860
380070	27.7790	29.9706	34.1038	30.4794
380071	25.1808	25.9113	27.9055	26.3468
380072	19.4346	20.6568	21.9516	20.7086
380075	22.4139	23.1910	25.1930	23.7443
380078	21.0903	22.6996	25.0805	22.9534
380081	20.4082	22.9805	22.1822	21.8754
380082	22.9606	23.7927	28.0668	25.0482
380083	21.7431	22.4058	26.4379	23.4740
380084	27.1689	31.0111	27.9068	28.5032
380087	17.0380	21.3119	21.1488	19.9159
380088	19.5346	24.8158	21.6317	21.8938
380089	25.2908	26.1967	29.6989	27.0928
380090	24.9351	30.4223	31.8702	28.9771
380091	25.3062	28.7846	31.2807	28.6166
380099	*	*	16.7656	16.7656
390001	19.6732	20.3350	21.5154	20.5284
390002	19.7833	20.8831	21.8704	20.8537
390003	18.1025	18.0436	19.1857	18.4384
390004	20.3204	20.0557	21.3475	20.5889
390005	16.9472	19.0218	19.0727	18.2821
390006	21.1786	21.7867	22.9809	21.9897
390007	21.3839	*	*	21.3839
390008	18.2743	19.5439	19.9417	19.2572
390009	20.6241	22.5580	21.8195	21.6732
390010	17.3335	18.1275	19.4377	18.3086
390011	18.3257	18.2751	18.6548	18.4184
390012	21.0610	22.2060	28.5114	23.7778
390013	19.6562	20.2186	22.1679	20.7339
390015	13.7352	14.3138	15.2697	14.4324
390016	17.1133	17.4931	18.1536	17.5840
390017	18.6113	18.5869	19.1962	18.7750
390018	19.0279	20.0672	19.9117	19.6570
390019	17.7258	18.7609	21.2807	19.2350
390022	24.8468	25.2980	27.5365	25.9219
390023	22.1044	23.9246	25.6750	23.9254
390024	25.4606	27.7643	25.9806	26.4580
390025	15.5523	14.0077	14.8690	14.8024
390026	22.9718	23.6317	23.9225	23.5085
390027	29.5940	29.4334	33.2139	30.7948
390028	23.6571	22.7820	22.9071	23.1380
390029	21.2661	24.4753	*	22.6697
390030	18.6887	18.9121	20.0598	19.2297
390031	18.8162	19.2040	20.6513	19.5475
390032	21.5105	18.5545	20.7764	20.3109
390035	22.3591	21.9325	23.2173	22.4923
390036	19.7671	20.2103	20.5751	20.1842
390037	20.4263	19.9175	20.1665	20.1659
390039	17.5300	17.6181	18.4580	17.8792
390040	16.6876	17.4451	20.5371	18.2001
390041	20.4397	19.6159	21.0074	20.3838
390042	22.5775	22.0658	21.8863	22.1699
390043	17.4764	17.6739	19.8094	18.3425
390044	20.9831	21.3382	22.0362	21.4586
390045	19.4677	20.2107	19.8137	19.8315
390046	21.7445	21.3960	23.0279	22.0786
390047	26.9709	*	*	26.9709
390048	19.7992	18.9776	20.3523	19.7014
390049	22.1586	22.8196	23.9058	22.9608
390050	22.2639	24.9156	22.5851	23.1577
390051	28.1385	*	*	28.1385
390052	20.1195	21.2729	22.1380	21.1379

* Denotes wage data not available for the provider for that year.
** Based on the sum of the salaries and hours computed for Federal FYs 2002, 2003, and 2004.

TABLE 2.—HOSPITAL AVERAGE HOURLY WAGE FOR FEDERAL FISCAL YEARS 2002 (1998 WAGE DATA), 2003 (WAGE DATA), AND 2004 (2000 WAGE DATA) WAGE INDEXES AND 3-YEAR AVERAGE OF HOSPITAL AVERAGE HOURLY WAGES—Continued

Provider No.	Average hourly wage FY 2002	Average hourly wage FY 2003	Average hourly wage FY 2004	Average hourly** wage (3 yrs)
390054	18.4975	19.4686	19.8602	19.2479
390055	23.4017	25.7327	22.2112	23.7101
390056	19.3901	21.4121	21.4239	20.7360
390057	20.2395	21.6693	24.5245	22.1897
390058	20.3520	20.7930	22.0113	21.0507
390061	23.8722	22.8728	24.3816	23.6939
390062	17.3750	17.4710	17.6303	17.4968
390063	19.4965	20.1696	21.7120	20.4817
390065	20.0473	20.2930	23.1698	21.2264
390066	18.9296	19.0132	21.7717	19.8676
390067	20.8162	21.9885	23.2161	21.9824
390068	19.1109	21.6408	21.8596	20.7014
390070	21.8549	22.7909	24.4403	23.0308
390071	16.0100	18.9416	17.8117	17.5040
390072	16.9232	16.9445	20.6881	18.0993
390073	21.2623	22.2703	22.7073	22.0769
390074	18.3093	19.7446	21.8456	19.9484
390075	18.7695	19.5840	19.8576	19.3638
390076	21.3290	19.7719	*	20.5305
390078	19.0156	20.6483	21.1894	20.2451
390079	18.9269	19.5982	20.0240	19.5384
390080	21.4707	22.2449	23.0615	22.2544
390081	24.7461	25.6575	27.3952	25.9933
390083	*	26.1660	*	26.1660
390084	20.2529	17.0197	18.3551	18.4310
390086	18.3563	19.7645	19.5253	19.2361
390088	23.9506	*	*	23.9506
390090	21.3759	20.5433	21.8543	21.2676
390091	18.3770	19.0355	19.7361	19.0422
390093	18.4442	20.0135	19.9209	19.4590
390095	16.6930	17.9697	18.3939	17.6811
390096	22.4382	22.2974	22.6176	22.4533
390097	25.2845	24.7853	24.6090	24.8791
390100	20.9263	21.1186	22.9484	21.6940
390101	18.5039	19.0180	19.7332	19.0999
390102	21.5496	19.3111	19.9809	20.2918
390103	18.8667	20.4422	26.5769	21.5409
390104	16.3255	16.2440	16.5081	16.3661
390106	16.8439	17.4747	18.2013	17.4917
390107	20.9841	20.6024	21.1104	20.9018
390108	21.3142	22.0444	23.6644	22.2895
390109	16.5299	17.4540	17.2667	17.0836
390110	21.6464	21.6005	23.2166	22.1164
390111	33.3971	27.1429	30.5237	30.4448
390112	15.0065	14.8634	15.6710	15.1640
390113	19.3634	19.9496	20.1160	19.8009
390114	20.9533	19.8004	23.0501	21.2575
390115	21.4287	22.3545	24.1951	22.7320
390116	21.3671	22.6783	24.0492	22.6706
390117	18.0769	18.9764	18.3341	18.4618
390118	18.9507	17.2668	17.8460	18.0300
390119	18.8815	19.3946	20.3034	19.5629
390121	19.1315	20.6253	20.8017	20.2031
390122	17.7734	15.5438	18.5130	17.2135
390123	21.3974	21.8897	23.2750	22.1809
390125	17.5446	17.0975	18.2411	17.6363
390127	22.4555	22.8787	25.0836	23.5152
390128	19.3165	19.9764	21.3668	20.1918
390130	18.3695	18.5519	19.4835	18.7830
390131	19.2096	19.1931	19.2964	19.2343
390132	22.8414	24.1878	24.5889	23.9106
390133	24.7561	24.1590	25.1423	24.6873
390135	22.1905	22.2501	24.0445	22.8305

* Denotes wage data not available for the provider for that year.
** Based on the sum of the salaries and hours computed for Federal FYs 2002, 2003, and 2004.

TABLE 2.—HOSPITAL AVERAGE HOURLY WAGE FOR FEDERAL FISCAL YEARS 2002 (1998 WAGE DATA), 2003 (WAGE DATA), AND 2004 (2000 WAGE DATA) WAGE INDEXES AND 3-YEAR AVERAGE OF HOSPITAL AVERAGE HOURLY WAGES—Continued

Provider No.	Average hourly wage FY 2002	Average hourly wage FY 2003	Average hourly wage FY 2004	Average hourly** wage (3 yrs)
390136	20.6286	16.8505	*	18.7490
390137	18.5397	19.4769	18.4551	18.8068
390138	20.6936	20.7726	21.4705	20.9891
390139	23.9757	24.8347	26.3622	25.0742
390142	28.8877	26.4680	29.9432	29.1087
390145	20.4228	20.4964	20.6603	20.5268
390146	18.6505	20.1788	21.3295	20.0284
390147	21.2492	21.7600	22.3135	21.7727
390150	20.3155	20.8970	20.0261	20.3992
390151	22.5206	23.6072	24.8175	23.6886
390152	19.4017	20.2581	21.5474	20.4133
390153	22.9707	23.9039	25.3415	24.1064
390154	16.7052	17.8774	19.1300	17.9859
390156	22.6398	24.0034	25.0732	23.9019
390157	19.1783	20.2647	20.6933	20.0398
390160	19.4463	19.4793	19.3598	19.4262
390162	21.9188	21.3379	21.3398	21.5478
390163	17.7564	18.1831	18.8585	18.2862
390164	24.9750	26.1698	23.0298	24.6107
390166	19.7978	19.8899	19.8531	19.8460
390168	18.8863	19.6875	20.6777	19.7568
390169	22.0547	22.7920	22.7695	22.5431
390170	24.7973	*	*	24.7973
390173	18.6613	18.8265	20.6958	19.3949
390174	25.3307	26.3891	28.2662	26.6572
390176	20.8368	21.7650	18.0752	20.3817
390178	17.0534	17.1142	17.2384	17.1362
390179	21.8593	21.5792	24.0501	22.5243
390180	26.5541	26.7743	28.3812	27.2876
390181	19.3832	18.8681	24.1288	20.6497
390183	17.9848	17.4535	21.7091	18.9719
390184	20.9349	21.1941	21.1962	21.1056
390185	20.3877	20.3301	20.4476	20.3875
390189	20.3338	19.6186	20.0387	19.9844
390191	17.2270	17.1919	18.5972	17.6639
390192	17.6597	16.6469	19.1883	17.8533
390193	18.1209	17.3804	18.9764	18.1140
390194	21.2689	21.0549	21.5850	21.3104
390195	24.1793	24.2891	26.2024	24.9040
390197	20.7998	22.1974	22.3472	21.7925
390198	15.8833	16.6803	17.3937	16.6375
390199	17.3865	17.7782	18.9787	18.0590
390200	15.4012	18.2456	19.1728	17.6332
390201	20.3533	21.3291	22.6548	21.4708
390203	21.4989	22.4685	26.9436	23.7942
390204	22.9616	22.7282	23.9673	23.2268
390209	18.7059	16.8200	18.4248	17.9405
390211	18.4213	19.4552	21.0450	19.6873
390213	19.1553	20.1152	19.9614	19.7218
390215	21.2032	23.5953	25.2617	23.2887
390217	19.9837	19.7578	21.4058	20.3609
390219	19.6226	20.1311	20.0594	19.9347
390220	17.7916	22.7617	23.3890	21.1672
390222	22.1548	22.7491	24.9365	23.2941
390223	22.1775	18.9493	20.4623	20.4831
390224	13.7518	17.2173	15.4657	15.2280
390225	18.7290	19.0364	22.5083	20.0077
390226	21.8481	22.8588	26.4195	23.5449
390228	19.8180	19.6212	20.1219	19.8582
390231	19.4798	21.0757	24.6868	21.6606
390233	20.2309	20.5800	21.6259	20.8313
390235	21.4200	19.9925	23.7068	21.4467
390236	17.8735	19.1427	19.8687	18.9492

* Denotes wage data not available for the provider for that year.
** Based on the sum of the salaries and hours computed for Federal FYs 2002, 2003, and 2004.

TABLE 2.—HOSPITAL AVERAGE HOURLY WAGE FOR FEDERAL FISCAL YEARS 2002 (1998 WAGE DATA), 2003 (WAGE DATA), AND 2004 (2000 WAGE DATA) WAGE INDEXES AND 3-YEAR AVERAGE OF HOSPITAL AVERAGE HOURLY WAGES—Continued

Provider No.	Average hourly wage FY 2002	Average hourly wage FY 2003	Average hourly wage FY 2004	Average hourly** wage (3 yrs)
390237	22.3011	21.7847	23.2054	22.4279
390238	17.1055	18.1956	19.2170	18.1264
390244	15.6402	14.2136	*	14.8974
390245	24.5076	*	*	24.5076
390246	25.0556	22.3892	22.0687	23.0374
390247	21.2151	*	*	21.2151
390249	13.1657	14.1062	14.7215	14.0139
390256	22.2773	22.3540	22.5794	22.4081
390258	22.6852	23.8318	25.0634	23.8724
390260	21.5982	*	*	21.5982
390262	*	18.8942	21.3264	20.1664
390263	20.3796	20.6348	21.9811	21.0229
390265	20.4950	20.4760	20.5948	20.5230
390266	17.1966	17.6223	18.2424	17.6964
390267	19.2665	20.2424	21.4980	20.3945
390268	22.0909	22.2046	23.1124	22.4784
390270	19.2074	20.7957	22.3861	20.7770
390278	17.7176	18.5776	21.1387	19.0743
390279	14.8655	15.8080	16.0509	15.5561
390283	22.5490	*	*	22.5489
390284	34.3904	*	*	34.3902
390285	*	29.1270	30.6458	29.8575
390286	*	22.9746	25.4619	24.2087
390287	*	30.3252	32.9709	31.6159
390288	*	26.9662	28.0958	27.3905
390289	*	22.8963	25.1658	23.9733
390290	*	30.5037	31.0967	30.8194
390291	*	20.0272	21.0057	20.4818
390293	*	23.5285	*	23.5284
390294	*	*	33.3535	33.3537
390295	*	*	26.8863	26.8862
390296	*	*	25.6979	25.6981
390297	*	*	27.2166	27.2167
400001	10.5757	10.7531	11.7572	11.0430
400002	13.0494	13.3684	11.6804	12.6379
400003	12.4078	11.2726	10.5963	11.4141
400004	8.5648	9.0781	11.4479	9.6254
400005	7.7432	9.7802	10.5356	9.1053
400006	10.1048	10.4988	9.2852	9.9205
400007	8.0174	8.1974	8.6022	8.2631
400009	8.8650	8.7341	9.4413	9.0139
400010	10.8011	9.1359	8.9964	9.6421
400011	8.5426	8.6252	8.9111	8.6956
400012	8.4728	8.6538	9.0740	8.7216
400013	9.2624	9.8197	9.9905	9.7250
400014	9.4798	10.2712	11.4580	10.3309
400015	14.4076	15.5827	*	14.8535
400016	13.3922	13.7001	14.5398	13.8932
400017	9.2577	9.9167	10.3892	9.8593
400018	10.6208	10.5583	10.8254	10.6669
400019	10.8940	12.1251	13.2143	12.0755
400021	12.1434	12.7462	13.2358	12.7262
400022	12.2199	13.0915	15.2904	13.4548
400024	9.2409	9.0826	9.8650	9.4011
400026	5.8335	7.4280	5.9207	6.3366
400028	9.1794	8.9567	9.5266	9.2275
400032	10.0448	10.1898	10.7100	10.3326
400044	11.9486	12.8671	9.0275	11.6261
400048	15.1405	11.5104	10.8618	12.2444
400061	13.0988	10.3664	17.0566	13.1015
400079	9.7203	8.7218	8.7218	8.9772
400087	9.8534	8.6480	10.5762	9.7829
400094	7.9187	9.4600	9.1442	8.8371

* Denotes wage data not available for the provider for that year
** Based on the sum of the salaries and hours computed for Federal FYs 2002, 2003, and 2004.

TABLE 2.—HOSPITAL AVERAGE HOURLY WAGE FOR FEDERAL FISCAL YEARS 2002 (1998 WAGE DATA), 2003 (WAGE DATA), AND 2004 (2000 WAGE DATA) WAGE INDEXES AND 3-YEAR AVERAGE OF HOSPITAL AVERAGE HOURLY WAGES—Continued

Provider No.	Average hourly wage FY 2002	Average hourly wage FY 2003	Average hourly wage FY 2004	Average hourly** wage (3 yrs)
400098	9.7791	10.4312	13.5901	11.0612
400102	9.9903	8.5290	10.9973	9.8471
400103	11.5359	11.8454	11.5797	11.6448
400104	10.7292	7.9552	7.1781	8.8476
400105	9.0556	10.6028	11.5608	10.1248
400106	9.2187	9.8694	10.1240	9.7589
400109	11.8760	12.2080	12.8750	12.3225
400110	10.5277	10.7228	12.0159	11.1009
400111	10.9665	12.3311	12.7701	12.0404
400112	10.8694	11.0634	11.8808	11.2717
400113	8.3168	9.3000	10.1440	9.3104
400114	7.0510	9.9477	9.7444	8.8440
400115	8.5487	7.2203	7.0336	7.5134
400117	10.8756	11.3351	9.6471	10.6080
400118	11.4051	11.4317	12.0855	11.6542
400120	10.6584	10.9315	11.8837	11.1482
400121	9.8322	8.7584	8.3575	8.9176
400122	7.6413	9.1638	9.6644	8.8133
400123	10.2367	10.9047	10.4081	10.5188
400124	12.2452	12.7323	14.1198	13.0556
400125	10.2056	10.5997	10.0698	10.2676
410001	23.1738	22.4972	24.0033	23.2235
410004	21.0638	23.5408	24.7607	23.1523
410005	22.7170	24.0086	24.6202	23.7588
410006	23.8700	22.8959	26.1234	24.3211
410007	23.1325	24.9846	27.7171	25.1159
410008	24.9726	24.4792	25.4183	24.9582
410009	24.3895	24.3760	26.1891	24.9832
410010	28.4589	29.7315	30.4061	29.5287
410011	26.1183	27.4880	29.2039	27.5568
410012	24.1695	26.4570	28.1791	26.2184
410013	24.8800	25.3688	28.4954	26.2187
420002	20.7804	22.6182	25.1067	22.8141
420004	20.9588	22.4680	23.4275	22.2200
420005	17.9694	17.8202	19.5521	18.4820
420006	19.1760	18.7153	22.7896	19.8079
420007	18.6456	19.0199	22.0134	19.8792
420009	19.9586	21.2566	18.6866	19.8536
420010	18.0252	19.3267	19.1545	18.8686
420011	18.0970	16.7523	17.3200	17.3563
420014	18.0519	19.0455	20.4975	19.1969
420015	20.1164	20.8736	22.7776	21.3355
420016	15.5485	16.6448	17.0051	16.4309
420018	21.8775	20.7779	20.4649	20.9903
420019	17.1726	19.0199	19.7118	18.6106
420020	20.3193	20.5801	22.1616	21.0728
420023	20.4053	20.8600	22.9004	21.4470
420026	21.8749	23.3072	23.6914	22.9839
420027	19.2594	19.7322	20.7327	19.9443
420030	20.6448	22.5159	22.5925	21.9394
420031	8.2516	15.3605	16.8518	12.3011
420033	23.1303	23.7974	26.0792	24.3733
420036	21.3222	19.8285	20.6780	20.5493
420037	22.7099	23.5244	25.3863	23.9574
420038	18.6568	19.9829	21.6132	20.0798
420039	18.3017	18.0055	21.1830	18.9968
420043	19.7570	19.6834	21.8816	20.4303
420048	18.8070	20.5531	21.9517	20.4950
420049	19.4049	20.1765	20.2320	19.9533
420051	19.1555	19.8549	20.6629	19.9007
420053	18.1657	19.0780	19.9013	19.0557
420054	20.2574	20.2275	20.7802	20.4197
420055	16.8717	18.6782	19.3056	18.2587

* Denotes wage data not available for the provider for that year.
** Based on the sum of the salaries and hours computed for Federal FYs 2002, 2003, and 2004.

TABLE 2.—HOSPITAL AVERAGE HOURLY WAGE FOR FEDERAL FISCAL YEARS 2002 (1998 WAGE DATA), 2003 (WAGE DATA), AND 2004 (2000 WAGE DATA) WAGE INDEXES AND 3-YEAR AVERAGE OF HOSPITAL AVERAGE HOURLY WAGES—Continued

Provider No.	Average hourly wage FY 2002	Average hourly wage FY 2003	Average hourly wage FY 2004	Average hourly** wage (3 yrs)
420056	15.1835	16.5491	19.8467	17.1664
420057	20.5266	22.1312	17.6727	20.1808
420059	17.1483	18.2093	20.2630	18.4420
420061	17.3543	17.7047	19.9789	18.3969
420062	21.7469	20.9032	17.4888	19.8336
420064	16.0794	19.7067	20.9057	19.0582
420065	19.9435	19.2150	21.9297	20.4427
420066	18.0042	19.5366	20.7713	19.3973
420067	19.7824	20.8524	22.8104	21.1856
420068	18.5481	20.2580	21.7257	20.1957
420069	18.1298	18.9017	17.6788	18.2297
420070	17.3876	19.2186	20.1378	18.9286
420071	20.3902	20.1897	21.2610	20.6237
420072	15.0158	18.2531	16.2578	16.5142
420073	19.9986	20.2697	21.4718	20.6373
420074	18.0967	18.1839	18.7011	18.3051
420075	12.8158	15.0132	15.9890	14.6306
420078	21.9082	22.7156	23.9730	22.8548
420079	21.0874	21.3177	23.0729	21.8705
420080	21.9968	23.2871	26.7489	24.1988
420082	21.7210	22.8516	28.0149	24.1640
420083	22.6376	24.4499	24.8294	24.0095
420085	21.6791	22.0071	23.8540	22.5902
420086	20.2878	23.5303	24.5760	22.8222
420087	19.8388	20.8217	21.9354	20.8793
420088	19.9919	21.8979	23.5174	21.7712
420089	20.5360	21.3954	23.3240	21.8074
420091	20.3092	21.8367	23.7544	21.8937
420093	18.3902	19.1299	21.4678	19.5913
420095	*	33.4632	*	33.4634
420096	*	26.4863	*	26.4864
430004	19.6344	19.2737	22.2198	20.3430
430005	16.4560	17.3400	18.2647	17.3726
430007	14.6331	15.1494	17.8017	15.8287
430008	18.1323	18.5234	20.0124	18.8898
430010	19.8191	16.5750	21.3978	18.9840
430011	17.4750	18.3648	19.9835	18.5721
430012	17.6997	19.2921	21.2588	19.3790
430013	18.4817	18.8978	21.3388	19.5495
430014	20.2387	20.9118	22.0285	21.0694
430015	18.2875	18.8998	20.5848	19.2456
430016	20.8850	22.7585	24.2450	22.6451
430018	16.2244	15.9424	17.9850	16.6387
430022	14.5118	14.0661	*	14.2905
430023	16.2164	16.7850	18.8816	17.1465
430024	16.1801	17.4816	18.8359	17.4068
430027	20.2591	20.8655	22.1807	21.1128
430028	17.1577	18.2829	30.0004	20.4957
430029	17.6986	17.4932	18.9463	18.0331
430031	12.4660	13.2105	15.2322	13.5804
430033	17.3652	18.3978	21.6255	19.2950
430034	14.2491	13.8535	13.6064	13.9089
430036	15.6258	16.7827	16.5848	16.2916
430037	18.1293	18.7009	19.3794	18.7558
430038	18.4078	*	*	18.4078
430040	14.4509	14.7860	15.3612	14.8505
430041	14.8816	*	*	14.8815
430043	14.9949	17.0193	17.9673	16.5225
430044	21.0823	*	*	21.0824
430047	17.9823	17.5377	18.2773	17.9221
430048	18.7602	19.0261	20.0608	19.3158
430049	15.2237	14.9025	17.0885	15.6759
430051	18.8070	18.8697	21.2838	19.6636

* Denotes wage data not available for the provider for that year.
** Based on the sum of the salaries and hours computed for Federal FYs 2002, 2003, and 2004.

TABLE 2.—HOSPITAL AVERAGE HOURLY WAGE FOR FEDERAL FISCAL YEARS 2002 (1998 WAGE DATA), 2003 (WAGE DATA), AND 2004 (2000 WAGE DATA) WAGE INDEXES AND 3-YEAR AVERAGE OF HOSPITAL AVERAGE HOURLY WAGES—Continued

Provider No.	Average hourly wage FY 2002	Average hourly wage FY 2003	Average hourly wage FY 2004	Average hourly** wage (3 yrs)
430054	14.8003	15.0101	17.8870	15.8667
430056	10.3697	14.1914	15.9149	13.1642
430057	17.2805	18.8777	18.2939	18.1566
430060	10.0176	9.7678	10.6493	10.1353
430064	14.2184	13.8666	14.3407	14.1427
430065	15.6660	14.5957	18.0501	16.1260
430073	15.3776	16.5112	16.4387	16.0995
430076	13.9883	15.2453	12.6996	13.8839
430077	19.8558	20.4361	21.6786	20.6834
430079	14.1815	14.4154	15.4268	14.6345
430089	17.9790	17.5100	19.8572	18.4672
430090	21.5974	23.5180	25.6873	23.7486
430091	18.1567	21.6239	22.2824	21.1724
430092	21.3807	19.7644	19.7354	20.2342
430093	19.5013	23.3009	23.8820	22.1340
430094	*	*	20.8742	20.8743
440001	15.5897	17.2282	18.9833	17.1918
440002	20.3740	21.4299	20.7715	20.8573
440003	19.3042	20.3756	21.6336	20.4509
440006	21.4055	23.1483	24.3132	22.9905
440007	14.8959	14.0612	14.1008	14.3331
440008	18.8994	20.3303	20.9238	20.0515
440009	17.4831	18.4068	19.6564	18.5235
440010	16.3283	13.3692	16.7270	15.2992
440011	18.3375	19.3165	20.5036	19.4558
440012	19.5739	19.8949	21.3573	20.2411
440014	16.1143	15.0656	*	15.5948
440015	22.0659	21.6106	23.3677	22.3025
440016	16.2964	14.6142	20.1504	16.8295
440017	20.4563	20.4705	22.3573	21.0640
440018	17.4995	18.1620	21.2242	19.0126
440019	21.5402	22.8463	24.0149	22.8001
440020	17.8879	20.2189	21.1075	19.7440
440023	16.7837	15.6603	15.5410	15.9556
440024	18.4046	18.4276	19.9751	18.8456
440025	16.3140	17.0997	18.9008	17.4832
440026	23.2566	25.6490	25.1655	24.7161
440029	20.7050	22.2889	24.1379	22.4401
440030	16.9925	17.6297	19.9056	18.2332
440031	17.0211	17.2555	17.0289	17.1002
440032	13.8140	13.9784	14.7683	14.1838
440033	13.7328	16.4679	17.2637	15.8189
440034	20.0309	21.1672	22.2382	21.1482
440035	19.3034	20.4168	21.6338	20.4652
440039	21.6536	22.4158	24.8698	22.9682
440040	16.9275	17.6781	16.9886	17.1928
440041	14.9545	14.6684	15.5784	15.0621
440046	19.3229	20.5562	22.1743	20.5985
440047	17.8092	18.7469	18.7262	18.4184
440048	21.4993	21.6132	22.5431	21.9061
440049	18.7967	19.6920	22.1252	20.0483
440050	18.2511	19.7915	21.3428	19.8422
440051	16.0421	17.7067	19.0165	17.5455
440052	19.8075	18.6589	18.1897	18.8402
440053	19.6494	21.5253	22.0063	21.0648
440054	13.3967	15.2154	15.4208	14.7050
440056	16.2742	20.4903	19.1329	18.5350
440057	13.7257	14.4363	14.1477	14.1083
440058	19.1878	20.7722	21.7512	20.5453
440059	19.6018	20.8882	22.4248	21.0016
440060	19.7916	20.7628	20.0972	20.2143
440061	22.5525	16.9234	19.5458	19.4254
440063	19.8371	18.8072	19.7468	19.4529

* Denotes wage data not available for the provider for that year.
** Based on the sum of the salaries and hours computed for Federal FYs 2002, 2003, and 2004.

TABLE 2.—HOSPITAL AVERAGE HOURLY WAGE FOR FEDERAL FISCAL YEARS 2002 (1998 WAGE DATA), 2003 (WAGE DATA), AND 2004 (2000 WAGE DATA) WAGE INDEXES AND 3-YEAR AVERAGE OF HOSPITAL AVERAGE HOURLY WAGES—Continued

Provider No.	Average hourly wage FY 2002	Average hourly wage FY 2003	Average hourly wage FY 2004	Average hourly** wage (3 yrs)
440064	18.9809	18.2678	19.4020	18.8736
440065	18.8296	19.2282	19.9099	19.3487
440067	17.2397	18.2973	19.6120	18.4263
440068	19.3668	19.5428	20.9188	19.9728
440070	14.0437	18.0064	18.3717	16.8031
440071	19.7836	*	*	19.7836
440072	19.1522	20.0691	20.9286	20.0759
440073	19.5554	19.6290	20.7181	19.9917
440078	16.0188	17.1645	20.0509	17.7858
440081	19.3454	17.2905	18.2664	18.2167
440082	22.6855	22.5590	26.0944	23.6946
440083	13.7423	13.7630	15.7015	14.3937
440084	13.7731	13.8085	15.0510	14.2295
440091	20.1065	20.1359	22.2894	20.8482
440100	14.7113	15.9969	20.1545	16.9936
440102	14.5500	16.0783	16.6548	15.7421
440103	18.6990	*	*	18.6990
440104	22.6754	21.7135	21.5501	21.9246
440105	17.1172	18.1375	19.2902	18.1888
440109	17.7443	17.6399	16.5366	17.2746
440110	17.4816	18.4998	19.9718	18.7249
440111	23.2254	23.2111	24.9666	23.7976
440114	15.0036	18.5327	20.1152	17.9248
440115	18.5457	18.7054	18.4721	18.5719
440120	16.3115	19.8997	22.4031	19.5197
440125	19.4115	20.0599	21.2173	20.2484
440130	17.4857	19.0905	20.5364	19.0816
440131	16.1214	19.9883	21.0641	18.9957
440132	16.8871	17.9186	18.9580	17.9377
440133	23.0891	22.2257	22.4872	22.5969
440135	22.2005	22.5452	23.8313	22.9296
440137	15.0070	15.3530	16.5529	15.6758
440141	15.9429	17.6819	19.2607	17.4468
440142	16.8855	17.1483	17.7587	17.2159
440143	18.2061	18.6844	19.2978	18.7274
440144	18.3859	18.8127	19.7938	19.0189
440145	18.3948	18.3850	18.1226	18.2932
440147	26.1464	25.3766	25.0779	25.5115
440148	19.4598	19.3769	20.7693	19.8862
440149	18.4281	19.6304	18.1316	18.8060
440150	20.3006	21.2942	22.8656	21.5228
440151	18.3928	19.8977	20.7681	19.6191
440152	22.7664	21.7382	27.2915	23.9903
440153	16.5716	18.1781	19.9486	18.2431
440156	21.7577	21.9374	23.7799	22.5299
440157	18.4249	15.5316	17.6241	17.2522
440159	20.9371	21.4914	20.5719	20.9737
440161	22.8816	23.6805	26.1354	24.2908
440162	15.5534	19.8075	20.3909	18.5104
440166	19.2159	19.6632	23.1692	20.6397
440168	19.1509	21.1947	21.2114	20.4537
440173	19.1812	21.0284	20.8442	20.3754
440174	18.0865	19.3966	19.2201	18.8962
440175	18.5186	19.9022	22.3331	20.2599
440176	19.2208	19.8448	20.4861	19.8829
440180	20.2184	20.2057	21.1947	20.5447
440181	17.7709	19.0915	19.5055	18.7704
440182	19.7094	18.1953	19.3828	19.0713
440183	21.3465	22.2401	24.9282	22.9040
440184	16.8880	18.6890	21.4484	18.5678
440185	21.2188	21.1226	22.2855	21.5992
440186	19.7983	20.8600	23.0193	21.1673
440187	17.5872	18.3729	19.9478	18.6211

* Denotes wage data not available for the provider for that year.
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Provider No.	Average hourly wage FY 2002	Average hourly wage FY 2003	Average hourly wage FY 2004	Average hourly** wage (3 yrs)
440189	18.5252	22.2555	23.2866	21.3831
440192	19.1705	19.1976	21.3228	19.9395
440193	18.6999	19.9078	22.0345	20.2055
440194	22.4562	21.9609	24.4629	23.0062
440197	21.8503	22.5282	24.2661	22.9060
440200	19.8078	18.7302	16.7752	18.4446
440203	16.2861	16.9819	21.3888	18.3754
440210	11.9815	12.7622	*	12.3704
440214	28.0285	*	*	28.0287
440215	22.2928	*	*	22.2928
440217	*	19.2834	23.3544	21.1703
440218	*	*	20.1377	20.1377
440219	*	*	18.2762	18.2762
440220	*	*	22.1222	22.1221
450002	21.4836	21.5141	24.0413	22.4014
450004	16.7850	15.9452	*	16.4042
450005	16.6396	16.6354	21.7110	18.0529
450007	19.1910	18.0269	18.3073	18.4788
450008	17.6582	19.3745	20.1817	19.0466
450010	17.6677	19.8998	20.2928	19.2457
450011	20.8102	20.2963	21.6599	20.9101
450014	17.5815	19.8846	19.4805	18.9747
450015	21.6773	22.9820	23.9140	22.8577
450016	18.3456	19.1522	19.9783	19.1667
450018	23.2293	21.9921	22.9508	22.6215
450020	19.1153	18.4642	18.8688	18.8186
450021	23.3630	23.7663	24.3718	23.8437
450023	17.6360	19.2808	19.1645	18.7230
450024	18.5985	19.5584	20.8938	19.7493
450028	19.1658	19.5905	22.7775	20.4223
450029	17.7425	19.9505	19.9198	19.2371
450031	29.6945	29.6772	21.2734	25.9517
450032	14.6530	20.8525	20.6076	18.3640
450033	21.0222	21.3766	26.0361	22.7005
450034	18.8823	19.5233	21.6149	19.9977
450035	20.3599	20.3146	24.1791	21.4800
450037	19.9140	19.6532	22.9781	20.8451
450039	19.7176	20.4660	21.8243	20.6801
450040	19.6370	24.8621	21.3097	22.1542
450042	18.8357	20.6041	21.8886	20.4547
450044	21.0909	23.4476	23.2984	22.5215
450046	17.3631	20.2917	20.9220	20.0845
450047	16.9028	15.9525	21.8840	18.0090
450050	17.7209	19.1390	19.5171	18.7476
450051	21.1008	23.0010	23.1281	22.3573
450052	15.5890	20.3702	15.9400	17.2648
450053	17.2781	19.3347	15.0735	17.2659
450054	19.2431	25.3285	23.2915	22.8358
450055	15.8526	16.4789	18.2235	16.8274
450056	21.8605	22.5341	24.4197	22.9813
450058	18.6172	20.0424	21.9588	20.1476
450059	19.8240	21.4873	22.8792	21.4779
450063	12.7211	15.1779	*	13.6764
450064	19.7682	21.3929	18.6112	19.8410
450065	23.3797	23.8471	25.0043	24.0958
450068	23.3495	22.5626	23.4435	23.1149
450072	18.0307	20.0134	20.3683	19.5324
450073	16.5942	23.7700	19.2398	20.0099
450078	13.2820	13.9324	15.0471	14.0206
450079	20.6483	22.0609	23.9209	22.1935
450080	18.6212	19.8414	21.0442	19.7978
450081	17.5737	19.0276	19.0461	18.5365
450082	16.8677	18.0588	16.6397	17.1813

* Denotes wage data not available for the provider for that year.
** Based on the sum of the salaries and hours computed for Federal FYs 2002, 2003, and 2004.

TABLE 2.—HOSPITAL AVERAGE HOURLY WAGE FOR FEDERAL FISCAL YEARS 2002 (1998 WAGE DATA), 2003 (WAGE DATA), AND 2004 (2000 WAGE DATA) WAGE INDEXES AND 3-YEAR AVERAGE OF HOSPITAL AVERAGE HOURLY WAGES—Continued

Provider No.	Average hourly wage FY 2002	Average hourly wage FY 2003	Average hourly wage FY 2004	Average hourly** wage (3 yrs)
450083	23.3754	20.7446	22.4764	22.1790
450085	20.0085	17.5001	18.0245	18.4510
450087	21.9320	23.4141	24.6661	23.4257
450090	15.5796	15.6090	15.5556	15.5807
450092	17.9520	17.2058	16.0808	17.0569
450094	23.2863	25.2158	31.6176	26.5357
450096	18.6802	19.4430	20.1138	19.4265
450097	19.7187	20.7653	22.2467	21.0001
450098	19.0454	19.8469	20.1606	19.7427
450099	20.4181	19.3493	21.4482	20.3831
450101	17.7928	17.6368	20.1473	18.5186
450102	19.8793	21.4361	18.0166	19.5784
450104	17.0821	17.8219	19.7126	18.2038
450107	24.1094	24.5034	23.1605	23.8913
450108	15.2797	17.9596	18.4801	17.3161
450109	10.5973	18.1085	16.0510	14.2577
450111	21.4908	*	*	21.4908
450112	18.1026	17.9624	19.7041	18.5605
450113	20.8306	20.7782	37.8953	21.1550
450119	20.2030	20.1436	20.8840	20.4169
450121	21.9198	22.0485	24.6090	22.7993
450123	14.1755	17.5051	17.8629	16.2415
450124	22.5208	22.9853	24.0333	23.2184
450126	21.4789	22.9423	23.9298	22.7661
450128	18.1446	18.7067	28.0211	21.3216
450130	18.9211	20.2613	19.0153	19.4183
450131	17.4168	18.1401	19.7316	18.4406
450132	21.8089	20.8908	22.4680	21.7157
450133	26.0763	24.5319	25.3928	25.3029
450135	20.4068	21.7038	22.3664	21.5213
450137	23.4346	22.8653	21.9645	22.7576
450140	17.3370	19.6205	18.4142	18.4792
450143	15.0871	17.8206	18.4456	17.0500
450144	17.4309	21.9135	20.8054	20.0145
450145	16.1895	18.0437	16.5468	16.9581
450146	15.5030	17.4391	16.6809	16.5128
450147	19.0477	20.3019	21.4266	20.2587
450148	20.4923	21.4982	19.4973	20.4877
450149	21.7219	22.6138	*	22.1667
450150	17.8612	17.8804	*	17.8714
450151	16.4209	16.3279	18.6100	17.0520
450152	17.7265	19.6105	20.0480	19.2518
450153	18.6514	20.9651	*	19.6822
450154	13.9119	16.8748	16.3479	15.7387
450155	13.3456	20.2582	18.4020	17.1145
450157	15.3083	16.8569	17.8764	16.7446
450160	10.6852	18.7780	20.7517	15.2676
450162	21.9218	20.5032	26.0570	22.6007
450163	17.8028	19.7675	19.8290	19.0650
450164	17.7180	18.7103	22.6906	19.5847
450165	17.3283	16.1010	16.4098	16.5904
450166	11.0541	12.6627	13.5795	12.4215
450170	14.3234	15.8525	13.1142	14.3736
450176	17.2576	19.2397	19.1706	18.5577
450177	15.2419	16.4503	17.2347	16.3235
450178	16.0280	15.8597	19.1186	16.9564
450181	16.6936	18.3600	17.8882	18.3181
450184	20.0821	22.7744	24.3452	22.4382
450185	11.5228	13.2015	14.2950	12.8871
450187	18.5053	20.8105	22.3174	20.4825
450188	15.1954	16.9800	17.5351	16.6019
450191	20.9512	20.5883	23.2261	21.6512
450192	21.2497	20.8315	20.1718	20.7147

* Denotes wage data not available for the provider for that year.
** Based on the sum of the salaries and hours computed for Federal FYs 2002, 2003, and 2004.

TABLE 2.—HOSPITAL AVERAGE HOURLY WAGE FOR FEDERAL FISCAL YEARS 2002 (1998 WAGE DATA), 2003 (WAGE DATA), AND 2004 (2000 WAGE DATA) WAGE INDEXES AND 3-YEAR AVERAGE OF HOSPITAL AVERAGE HOURLY WAGES—Continued

Provider No.	Average hourly wage FY 2002	Average hourly wage FY 2003	Average hourly wage FY 2004	Average hourly** wage (3 yrs)
450193	23.1639	25.1215	25.6437	24.6806
450194	20.7745	20.7152	22.1151	21.2200
450196	17.8993	21.1226	20.3102	19.7302
450200	19.2228	19.6496	20.4656	19.7649
450201	17.1463	18.0646	19.2517	18.1592
450203	19.3978	19.7978	23.1036	20.7628
450209	20.0140	21.3218	23.3963	21.5758
450210	16.3470	16.8532	16.7851	16.6843
450211	18.8114	18.7305	20.0677	19.2205
450213	19.0651	19.3440	21.1280	19.7979
450214	20.5070	21.3448	22.4544	21.4482
450217	12.7647	13.1840	11.3313	12.4053
450219	17.6884	18.5534	21.3693	18.8542
450221	15.2120	16.2308	19.6778	16.9127
450222	19.8967	23.2779	23.4805	22.2795
450224	20.1579	20.1723	19.7665	20.0338
450229	16.7853	17.0346	17.9811	17.2535
450231	19.1746	20.7709	21.0986	20.3555
450234	16.3003	17.9478	21.8295	18.7188
450235	16.3115	17.0143	18.4234	17.2758
450236	16.4957	18.4551	17.1250	17.3256
450237	19.0325	21.6497	21.6752	20.8141
450239	17.8401	18.8416	19.3655	18.6917
450241	16.4240	16.6046	17.4151	16.8266
450243	13.6416	11.2035	17.7821	13.8172
450246	16.7959	22.7940	20.7893	19.8488
450249	11.7658	10.6467	13.1223	11.8062
450250	13.6787	18.3361	12.8229	14.7303
450253	13.2177	14.5492	16.6365	14.6878
450258	16.7337	17.0724	18.3136	17.3431
450264	14.5956	17.2825	13.5346	14.9127
450269	12.7717	12.2970	13.4838	12.8458
450270	14.4792	13.8881	12.3962	13.5856
450271	16.7831	17.9570	18.3659	17.7341
450272	18.4344	20.5888	21.3492	20.1697
450276	14.0745	14.0779	12.8895	13.6150
450278	15.2950	14.3931	15.2944	14.9802
450280	22.2936	22.2648	22.3781	22.3117
450283	15.1950	15.8224	16.9843	16.1315
450288	18.8935	17.4817	17.4214	17.9418
450289	20.3460	22.4656	19.9906	20.9466
450292	20.5335	21.1511	22.8905	21.4277
450293	16.2721	16.4077	17.7673	16.8504
450296	22.3430	21.5998	20.4483	21.4253
450299	*	21.2754	22.9849	22.1397
450303	12.8996	14.3353	16.1330	14.3646
450306	14.2047	13.6333	15.5980	14.3658
450307	17.0691	17.6757	19.6952	18.1345
450309	13.3771	16.0363	16.5770	15.2473
450315	21.4684	23.8151	26.4677	23.7712
450320	20.6596	24.8602	24.7457	23.2764
450321	14.7344	17.2289	17.4628	16.2569
450322	29.1884	28.9834	17.9071	25.3849
450324	19.1692	20.9081	24.0112	21.3590
450327	13.3639	11.0983	14.3848	12.7752
450330	19.8066	21.0921	22.9948	21.3142
450334	13.8392	13.9812	14.2209	14.0138
450337	25.5708	*	*	25.5709
450340	*	19.2611	18.7179	18.9746
450341	*	20.8814	*	20.8814
450346	18.9475	19.2769	20.1921	19.5923
450347	19.3475	20.1899	21.7603	20.4764
450348	13.3585	15.0069	15.3299	14.5667

* Denotes wage data not available for the provider for that year.
** Based on the sum of the salaries and hours computed for Federal FYs 2002, 2003, and 2004.

TABLE 2.—HOSPITAL AVERAGE HOURLY WAGE FOR FEDERAL FISCAL YEARS 2002 (1998 WAGE DATA), 2003 (WAGE DATA), AND 2004 (2000 WAGE DATA) WAGE INDEXES AND 3-YEAR AVERAGE OF HOSPITAL AVERAGE HOURLY WAGES—Continued

Provider No.	Average hourly wage FY 2002	Average hourly wage FY 2003	Average hourly wage FY 2004	Average hourly** wage (3 yrs)
450351	19.3159	21.2842	21.6640	20.7344
450352	20.1871	21.2035	21.8138	21.1211
450353	16.0003	17.3274	19.5263	17.5681
450355	11.8933	12.8876	13.9234	12.8974
450358	23.0206	25.5767	25.9233	24.7613
450362	18.1983	18.7687	20.6340	19.2155
450369	15.3122	16.0667	16.5636	15.9500
450370	16.1369	18.7539	17.0463	17.3593
450371	16.0236	17.7591	17.3415	16.8971
450372	22.0746	21.4050	23.1343	22.1317
450373	17.9554	18.5716	17.7025	18.0874
450374	15.1750	15.0146	15.2532	15.1489
450378	23.4599	24.4143	25.8048	24.6304
450379	22.8756	25.1931	29.0865	25.7747
450381	16.7112	16.7237	18.7899	17.5371
450388	19.7408	20.7989	22.4439	21.1046
450389	18.8448	19.3156	20.7205	19.6586
450393	22.4992	21.4405	23.5336	22.4798
450395	18.0024	17.5236	18.6664	18.0895
450399	15.3491	16.3333	19.1571	16.9654
450400	18.6668	19.1345	20.1376	19.3717
450403	22.8430	24.7657	24.6273	24.1287
450411	15.1121	15.9165	16.9559	15.9781
450447	15.3591	15.2713	16.1956	15.6177
450418	21.9690	22.2511	25.1306	23.1136
450419	23.2551	22.9522	26.4121	24.0600
450422	28.0257	28.0395	28.5834	28.2238
450424	18.7895	20.7634	22.0682	20.6438
450431	22.0361	22.6766	22.7459	22.4890
450438	15.4553	21.0474	18.4891	18.0730
450446	20.7592	13.8011	14.1684	15.5340
450447	18.0377	19.7532	21.0247	19.5725
450451	18.2988	18.9519	20.1738	19.1894
450457	19.6569	*	*	19.6569
450460	14.6523	15.9446	17.9487	16.1581
450462	22.1144	22.5413	20.6169	21.6907
450464	15.5908	15.8121	16.1987	15.8774
450465	15.4731	19.3928	19.6579	17.7347
450467	17.0004	18.9388	18.0994	17.9285
450469	22.1930	22.0389	22.7741	22.3634
450473	19.7148	18.3813	18.6003	18.8420
450475	16.9269	19.0010	19.7305	18.5518
450484	18.9825	19.5505	23.2881	20.6738
450488	19.2173	22.0927	22.5650	21.2542
450489	16.3584	17.8779	18.5941	17.5105
450497	16.2997	15.9654	17.1327	16.4523
450498	14.4713	15.9479	19.2985	16.4927
450508	19.0991	19.3274	20.5183	19.8005
450514	20.0144	20.7064	21.0116	20.6064
450517	14.3191	17.6011	14.4247	15.4999
450518	21.4873	20.7355	21.1015	21.1171
450523	21.0393	23.8270	*	22.4523
450530	21.1634	21.8968	23.3005	22.1616
450534	20.1520	19.7410	22.7437	20.8137
450535	21.0513	21.5449	24.0628	22.1998
450537	20.1161	20.8849	22.5972	21.2300
450539	18.7559	19.3681	18.9497	19.0285
450544	23.6652	22.7282	11.0917	17.7372
450545	20.2823	21.0792	23.9646	21.6831
450547	18.1524	20.5049	23.1348	20.3331
450551	16.6237	16.1437	17.7082	16.8161
450558	20.7404	21.3116	21.4201	21.1518
450563	22.0708	21.9935	27.5446	23.9001

* Denotes wage data not available for the provider for that year.
** Based on the sum of the salaries and hours computed for Federal FYs 2002, 2003, and 2004.

TABLE 2.—HOSPITAL AVERAGE HOURLY WAGE FOR FEDERAL FISCAL YEARS 2002 (1998 WAGE DATA), 2003 (WAGE DATA), AND 2004 (2000 WAGE DATA) WAGE INDEXES AND 3-YEAR AVERAGE OF HOSPITAL AVERAGE HOURLY WAGES—Continued

Provider No.	Average hourly wage FY 2002	Average hourly wage FY 2003	Average hourly wage FY 2004	Average hourly** wage (3 yrs)
450565	17.3803	17.8058	17.5372	17.5748
450570	19.0336	*	*	19.0336
450571	18.2784	19.5325	21.1391	19.6109
450573	17.3518	17.6157	18.6233	17.8792
450574	14.6128	14.8549	16.4851	15.3348
450575	22.5621	24.0386	23.4900	23.3951
450578	18.0925	17.2863	17.3010	17.5480
450580	16.7374	17.8224	18.5657	17.7062
450583	14.4411	15.9430	16.2818	15.5666
450584	14.6735	14.9237	16.9020	15.4896
450586	13.8248	14.7433	14.0478	14.1931
450587	18.0219	18.0014	17.6532	17.8908
450591	17.7795	18.6714	19.6229	18.7114
450596	21.6729	21.9445	24.3714	22.6695
450597	17.6179	19.0641	19.5574	18.7397
450603	23.5572	23.4924	20.6138	22.5917
450604	17.6582	18.7465	19.6304	18.7047
450605	19.4580	19.7400	22.0210	20.3694
450609	17.0986	14.1776	16.6870	15.9595
450610	21.5191	23.5626	24.0548	23.1995
450614	16.5754	*	18.5895	17.6527
450615	15.2956	15.0621	17.3288	15.9012
450617	20.8919	21.5004	22.7025	21.7511
450620	16.0987	16.4330	17.1624	16.5652
450623	23.1270	25.1122	25.4030	24.5910
450626	18.4349	20.5225	17.7454	18.8435
450628	18.6093	20.0411	17.8201	18.7790
450630	20.9605	23.1840	24.7324	23.0079
450631	21.6736	21.8940	22.6786	22.1007
450632	13.9147	15.1416	14.8913	14.6301
450633	19.4949	*	*	19.4949
450634	22.9877	23.0470	24.8258	23.7101
450638	22.1704	23.8335	26.3653	24.1319
450639	21.6421	23.0496	23.3156	22.6779
450641	15.7578	15.3652	16.5960	15.8967
450643	16.8152	18.9088	20.2000	18.7134
450644	22.7721	24.5834	25.8182	24.5287
450646	19.1433	23.1240	21.8489	21.2674
450647	24.2763	25.0549	26.7193	25.3639
450648	15.0305	14.4884	16.9698	15.5262
450649	16.6577	16.8505	17.5760	17.0475
450651	22.7112	25.4679	26.9228	25.1265
450652	17.2445	*	*	17.2446
450653	19.2349	20.2436	22.7236	20.7352
450654	14.5423	15.5858	16.3616	15.4967
450656	18.2506	18.5874	20.7824	19.2080
450658	17.2630	19.4139	19.2521	18.6539
450659	23.0108	22.9344	26.0224	24.0406
450661	18.9071	19.5504	20.0716	19.5103
450662	19.3152	20.7973	26.1213	22.0200
450665	16.1319	14.5158	15.8149	15.5054
450666	20.2549	*	*	20.2549
450668	21.0972	21.2002	24.0081	22.0964
450669	21.6746	22.5150	25.0200	23.1112
450670	20.2632	19.7696	19.7416	19.8975
450672	21.4927	23.2623	25.3111	23.3562
450673	13.7005	14.9115	16.8250	15.1732
450674	22.2426	21.9624	24.7431	23.0384
450675	21.4479	23.3954	24.8661	23.3355
450677	20.6556	21.7366	23.2841	21.9181
450678	24.1301	25.1841	28.1917	25.8918
450683	22.8699	22.1965	24.3566	23.1268
450684	21.9962	22.2380	23.8945	22.7570

* Denotes wage data not available for the provider for that year.
** Based on the sum of the salaries and hours computed for Federal FYs 2002, 2003, and 2004.

TABLE 2.—HOSPITAL AVERAGE HOURLY WAGE FOR FEDERAL FISCAL YEARS 2002 (1998 WAGE DATA), 2003 (WAGE DATA), AND 2004 (2000 WAGE DATA) WAGE INDEXES AND 3-YEAR AVERAGE OF HOSPITAL AVERAGE HOURLY WAGES—Continued

Provider No.	Average hourly wage FY 2002	Average hourly wage FY 2003	Average hourly wage FY 2004	Average hourly** wage (3 yrs)
450686	16.4632	17.4746	17.9181	17.2988
450688	20.1831	21.7691	21.7922	21.3124
450690	22.4707	27.2399	33.1576	27.0095
450694	18.1872	18.5520	21.4785	19.2847
450697	19.4949	19.4424	20.8952	19.9540
450698	15.4750	16.5111	18.1764	16.7102
450700	15.9050	14.2055	17.3457	15.8451
450702	21.3739	19.8094	22.2953	21.1028
450704	20.7987	18.1835	*	19.2723
450705	22.1809	18.7138	19.4435	19.9245
450706	22.0884	22.4329	*	22.2641
450709	22.1490	22.0123	23.4246	22.5690
450711	19.8581	20.8047	23.6594	21.4663
450712	15.9298	11.1086	18.4546	14.6487
450713	22.6986	23.6189	24.4002	23.6310
450715	22.5988	24.8068	14.9630	19.6234
450716	20.9074	20.8913	24.8614	22.2838
450717	20.6551	22.0243	*	21.3435
450718	22.1765	23.0051	23.6180	22.9900
450723	20.8213	22.0633	22.8048	21.9009
450724	20.3706	23.3799	19.6335	21.4203
450727	17.9172	24.6125	16.0843	19.3135
450728	19.8879	14.9265	10.3991	14.3301
450730	23.0054	24.5952	27.8476	25.3002
450733	20.2199	21.9921	23.8143	22.0738
450742	21.8392	22.8135	25.1295	23.3180
450743	19.6015	20.5017	23.6131	21.3065
450746	30.2657	14.6683	11.1672	15.8134
450747	20.3914	20.3870	21.5883	20.8604
450749	19.1678	18.7138	17.6324	18.4286
450750	13.8098	*	*	13.8098
450751	19.9995	19.8170	25.5869	21.1754
450754	16.7145	17.8497	17.9189	17.5560
450755	19.8743	20.0667	18.6084	19.5138
450757	14.9434	15.6425	17.2683	15.9355
450758	19.0221	22.6196	22.8713	21.5676
450760	19.2225	20.4209	23.2959	20.7991
450761	15.7681	14.6511	15.3222	15.2265
450763	18.6092	18.9713	19.8939	19.1937
450766	23.3879	25.4057	27.1863	25.3095
450769	18.4163	17.9879	18.3030	18.2402
450770	19.0183	20.0632	18.7369	19.2440
450771	21.8268	21.6946	22.9736	22.1610
450774	16.2948	*	21.7906	18.6936
450775	21.3504	22.6526	23.5785	22.5291
450776	14.1720	13.4263	14.6695	14.0866
450777	19.0380	18.3119	21.4240	19.6554
450779	21.6642	22.6216	27.8925	23.9052
450780	19.0914	20.0824	21.6549	20.3201
450788	19.6469	19.9817	21.4368	20.3148
450795	22.5753	27.0250	19.1371	22.4874
450796	19.2059	26.8539	19.9522	22.5780
450797	16.4923	20.2356	18.6839	18.3681
450801	17.9548	18.0598	19.7124	18.5711
450802	17.1435	18.2460	*	17.6977
450803	21.6653	37.0925	23.8343	26.2012
450804	19.0893	20.5225	22.7169	20.8248
450806	*	20.7906	*	20.7906
450807	13.4306	18.4410	16.8928	15.8881
450808	17.4917	18.1728	18.6555	18.1215
450809	19.7899	21.9845	23.1978	21.6113
450811	19.9168	21.6115	22.7583	21.5237
450813	14.5392	15.3780	21.7208	16.6296

* Denotes wage data not available for the provider for that year.
** Based on the sum of the salaries and hours computed for Federal FYs 2002, 2003, and 2004.

TABLE 2.—HOSPITAL AVERAGE HOURLY WAGE FOR FEDERAL FISCAL YEARS 2002 (1998 WAGE DATA), 2003 (WAGE DATA), AND 2004 (2000 WAGE DATA) WAGE INDEXES AND 3-YEAR AVERAGE OF HOSPITAL AVERAGE HOURLY WAGES—Continued

Provider No.	Average hourly wage FY 2002	Average hourly wage FY 2003	Average hourly wage FY 2004	Average hourly** wage (3 yrs)
450815	21.2741	*	*	21.2742
450819	16.5521	*	*	16.5521
450820	26.8348	24.6542	26.9120	26.1797
450822	22.8556	24.8702	26.7821	24.9818
450823	*	17.9756	13.0130	14.5379
450824	*	25.7488	*	25.7488
450825	*	16.0793	18.2159	17.2695
450827	*	20.1310	29.5838	24.8201
450828	*	19.2902	20.8735	20.1257
450829	*	14.7121	14.4463	14.5541
450830	*	*	23.0204	23.0205
450832	*	*	24.8572	24.8572
450833	*	*	18.3195	18.3196
450834	*	*	21.7217	21.7217
450835	*	*	24.2285	24.2285
450837	*	*	31.8430	31.8432
460001	22.2735	23.5485	24.8844	23.5856
460003	22.6289	22.9549	26.5141	23.9755
460004	21.7234	23.1289	24.3409	23.0686
460005	22.5252	23.0189	25.0063	23.5075
460006	21.0700	22.1648	23.4200	22.2290
460007	21.1922	22.0409	23.3603	22.2561
460008	19.1153	22.6808	24.8233	22.3133
460009	22.5295	23.1933	24.5865	23.4290
460010	22.4948	24.0907	25.1240	23.9360
460011	19.7674	25.3818	21.2634	21.8917
460013	20.1936	21.2360	23.1467	21.5125
460014	18.5370	*	22.5784	20.9623
460015	21.0470	22.4872	23.1068	22.2481
460016	21.9105	19.0910	18.7453	19.8107
460017	18.9929	19.0724	20.7789	19.6010
460018	17.0063	17.0385	16.7143	16.9128
460019	17.8690	19.3442	18.1995	18.4514
460020	17.2663	18.1542	15.2162	16.7463
460021	21.5174	23.1368	23.8565	22.9024
460022	21.3614	20.7539	21.8443	21.3226
460023	22.9265	24.1825	25.0874	24.0957
460025	17.3494	17.4070	22.3100	18.8099
460026	20.2576	21.1759	21.9316	21.1444
460027	22.2955	21.4833	22.7488	22.1620
460029	20.8366	23.7148	24.4379	23.0146
460030	17.1383	18.7655	21.2546	18.9564
460032	21.4832	21.0286	21.2715	21.2538
460033	19.2664	20.2389	21.7215	20.4433
460035	16.1685	15.6979	16.9657	16.2272
460036	23.4573	24.2651	23.9909	23.9286
460037	17.7399	19.0115	20.0323	18.9515
460039	24.4808	24.5134	26.3795	25.1512
460041	20.2035	21.6676	23.5132	21.8727
460042	19.5662	19.7531	22.0844	20.5371
460043	23.2819	25.1366	26.0277	24.8166
460044	21.8485	23.6604	24.7139	23.4328
460047	22.7524	23.5447	22.8135	23.0271
460049	20.8283	21.5241	21.9358	21.5104
460051	22.1758	21.8950	22.7540	22.2835
460052	19.8961	20.1989	23.1718	21.0691
460053	*	*	23.2273	23.2274
470001	21.3817	21.7774	23.5882	22.3065
470003	22.0563	23.3612	24.1739	23.1995
470004	18.1879	17.3576	18.4943	18.0068
470005	23.1808	22.6589	24.9625	23.6347
470006	20.2829	21.0835	21.6036	21.0098
470008	20.1969	20.3833	20.7659	20.4458

*Denotes wage data not available for the provider for that year.
**Based on the sum of the salaries and hours computed for Federal FYs 2002, 2003, and 2004.

TABLE 2.—HOSPITAL AVERAGE HOURLY WAGE FOR FEDERAL FISCAL YEARS 2002 (1998 WAGE DATA), 2003 (WAGE DATA), AND 2004 (2000 WAGE DATA) WAGE INDEXES AND 3-YEAR AVERAGE OF HOSPITAL AVERAGE HOURLY WAGES—Continued

Provider No.	Average hourly wage FY 2002	Average hourly wage FY 2003	Average hourly wage FY 2004	Average hourly** wage (3 yrs)
470010	21.0616	22.3913	23.2072	22.2567
470011	22.2415	24.1306	24.6034	23.6561
470012	18.9444	19.8831	20.5072	19.7941
470015	20.2125	21.8204	25.6286	22.6045
470018	21.2406	24.8493	21.2904	22.3634
470020	21.5688	21.9911	22.0333	21.8520
470023	21.7139	22.5334	24.1395	22.7760
470024	21.9807	23.2738	22.4659	22.5822
490001	20.0570	21.4952	22.1209	21.2627
490002	15.7365	16.5198	17.5098	16.5736
490003	20.3237	20.7688	20.9782	20.6753
490004	19.7074	20.7616	22.7571	21.0703
490005	21.3318	23.1708	25.2213	23.2687
490006	12.3253	19.8977	13.4277	15.2731
490007	19.8938	20.7896	22.2638	20.9786
490009	23.7659	24.7602	25.2181	24.6030
490011	19.8042	19.8179	19.9733	19.8664
490012	15.2965	16.0994	15.8346	15.7118
490013	18.2396	18.3901	19.5094	18.7096
490014	23.5266	27.8907	*	25.5759
490015	20.0667	21.4500	21.2557	20.9648
490017	19.3854	19.6594	20.7691	19.9104
490018	18.5508	19.8955	22.0810	20.2089
490019	21.0124	21.6790	23.3077	22.0282
490020	19.3424	20.9212	21.2094	20.4866
490021	20.0496	21.2263	22.2537	21.2008
490022	22.3380	24.3008	24.5122	23.7681
490023	21.5683	22.8400	24.9733	23.1948
490024	18.4314	19.7491	21.2619	19.8335
490027	16.7556	17.5178	20.3644	18.2452
490030	8.6446	*	*	8.6446
490031	16.0003	17.4262	18.4826	17.3314
490032	21.4037	22.2041	23.5691	22.3503
490033	19.2908	23.2088	24.4370	22.3633
490037	17.0113	17.2117	17.5103	17.2485
490038	17.6324	18.6012	18.1405	18.1142
490040	24.1266	25.5461	27.0513	25.6394
490041	18.7987	17.9942	19.9314	18.8986
490042	17.0972	18.1864	19.5127	18.3230
490043	22.1068	23.5367	25.4354	23.6479
490044	19.7842	18.4845	20.8739	19.7388
490045	20.5558	22.5238	24.7131	22.7244
490046	19.9102	19.8518	21.9164	20.5668
490047	18.7614	20.1660	19.8220	19.5730
490048	19.5417	20.9110	22.3255	20.9493
490050	23.3668	23.8519	26.1521	24.5290
490052	16.4787	18.5693	19.2480	18.1097
490053	16.8410	17.7363	18.6541	17.7531
490054	19.5780	22.5136	18.7738	20.4647
490057	20.3160	21.1871	22.1945	21.2773
490059	21.4801	24.1516	23.3895	22.9645
490060	18.5917	19.3525	20.6028	19.5408
490063	26.1930	28.0906	30.4267	28.2207
490066	19.8352	21.5920	22.1034	21.2122
490067	17.8487	18.6469	20.4058	18.9938
490069	20.7582	18.8335	20.6957	20.1008
490071	23.3511	24.1882	25.4677	24.4329
490073	26.0957	*	27.6711	26.9865
490075	19.2156	20.5801	22.3229	20.7337
490077	22.6504	21.9175	22.2643	22.2859
490079	17.7016	17.5839	19.2196	18.1709
490084	18.0555	18.9679	19.8599	18.9592
490085	17.6158	19.4261	20.6383	19.2465

*Denotes wage data not available for the provider for that year.
**Based on the sum of the salaries and hours computed for Federal FYs 2002, 2003, and 2004.

TABLE 2.—HOSPITAL AVERAGE HOURLY WAGE FOR FEDERAL FISCAL YEARS 2002 (1998 WAGE DATA), 2003 (WAGE DATA), AND 2004 (2000 WAGE DATA) WAGE INDEXES AND 3-YEAR AVERAGE OF HOSPITAL AVERAGE HOURLY WAGES—Continued

Provider No.	Average hourly wage FY 2002	Average hourly wage FY 2003	Average hourly wage FY 2004	Average hourly** wage (3 yrs)
490088	17.9141	19.1924	19.7646	18.9625
490089	18.2290	19.7936	21.1522	19.7626
490090	17.5799	19.2094	20.3015	19.0319
490091	25.0272	23.7493	*	24.4545
490092	16.4360	27.1805	23.8364	21.5391
490093	17.8275	19.1131	20.7412	19.2089
490094	22.3033	20.2020	21.9886	21.4787
490097	16.9518	16.6563	17.9929	17.2212
490098	16.0488	18.5133	19.7116	18.0649
490099	18.3985	19.2604	20.7724	19.4805
490101	23.5553	25.7804	28.5200	26.0299
490104	40.2529	17.1683	28.0286	24.6486
490105	21.4428	28.7831	40.6822	26.6520
490106	26.3821	31.8566	31.6541	29.5471
490107	22.9283	23.9962	26.5312	24.6073
490108	24.1232	24.8596	28.7277	25.7440
490109	25.9475	23.0609	28.0978	25.5419
490110	18.1561	18.8042	23.6080	20.0833
490111	17.8510	19.9552	19.4041	19.0697
490112	22.1162	23.2843	23.6028	23.0255
490113	23.9043	26.1840	28.0893	26.0992
490114	18.0359	18.8920	19.9725	18.9850
490115	16.8537	18.4499	19.9150	18.4166
490116	17.2040	18.2935	19.7007	18.4196
490117	14.7944	17.1723	15.6078	15.8681
490118	23.2022	24.2668	25.2230	24.2345
490119	18.6046	18.9535	20.0944	19.1567
490120	20.5777	20.6828	22.2389	21.1886
490122	23.8198	26.6681	27.3509	25.9831
490123	19.3056	20.0920	20.9506	20.1282
490124	21.3818	23.6526	21.3713	22.1870
490126	20.4294	19.0782	20.3266	19.9000
490127	16.5993	17.6437	17.8070	17.3281
490129	28.6868	*	*	28.6863
490130	17.6943	18.6406	18.6038	18.3141
490132	18.4671	19.1742	19.5850	19.0428
500001	24.4829	25.3478	25.8406	25.2431
500002	19.8476	22.9942	*	21.4076
500003	24.4333	25.1200	27.6238	25.7781
500005	24.3870	26.2066	29.9352	26.8369
500007	21.9911	24.7889	*	23.2199
500008	26.1737	27.2852	28.9380	27.5261
500011	24.6554	25.7263	27.6762	26.0196
500012	24.2799	24.5450	25.4367	24.7615
500014	24.0990	25.0490	27.4189	25.5343
500015	24.9923	25.9465	27.4387	26.1498
500016	24.9439	25.1227	27.7863	25.9574
500019	23.2054	23.5730	25.7691	24.2429
500021	27.6490	25.9403	26.4648	26.6119
500023	27.1025	32.3079	23.9513	27.3082
500024	26.6452	26.2113	27.2884	26.7211
500025	24.4825	27.3697	27.6755	26.4578
500026	26.9884	26.6108	28.7532	27.4597
500027	25.1125	27.7429	28.7063	27.2499
500028	18.9556	19.0261	19.9288	19.3024
500029	18.5042	19.3130	19.7750	19.2311
500030	26.3828	28.5297	29.0458	28.0229
500031	23.6099	25.8542	26.0740	25.1801
500033	22.5462	23.8994	25.4345	23.9873
500036	23.6333	25.1255	25.4753	24.7809
500037	21.4059	22.1774	23.3808	22.3148
500039	24.0007	25.4225	26.0196	25.1368
500041	25.4376	24.7070	24.9005	25.0014

* Denotes wage data not available for the provider for that year.
** Based on the sum of the salaries and hours computed for Federal FYs 2002, 2003, and 2004.

TABLE 2.—HOSPITAL AVERAGE HOURLY WAGE FOR FEDERAL FISCAL YEARS 2002 (1998 WAGE DATA), 2003 (WAGE DATA), AND 2004 (2000 WAGE DATA) WAGE INDEXES AND 3-YEAR AVERAGE OF HOSPITAL AVERAGE HOURLY WAGES—Continued

Provider No.	Average hourly wage FY 2002	Average hourly wage FY 2003	Average hourly wage FY 2004	Average hourly** wage (3 yrs)
500043	22.0466	24.1745	26.6451	24.4187
500044	24.2212	24.7816	27.0880	25.3901
500045	24.0526	24.6265	8.0818	14.8642
500048	20.3207	20.6333	22.9938	21.3649
500049	24.5997	26.5857	25.9142	25.6732
500050	22.6563	23.0804	25.0907	23.6590
500051	25.9447	26.7628	26.9538	26.5713
500053	22.8399	24.2492	25.7217	24.2895
500054	23.8089	25.7815	27.1634	25.6068
500055	23.8622	23.7988	25.3095	24.3502
500057	19.0479	20.5812	21.0357	20.2825
500058	24.1106	26.5679	27.2582	26.0406
500059	26.6270	25.3528	26.1943	26.0221
500060	28.3655	29.6030	32.2049	30.0629
500061	20.8624	24.5908	27.5845	24.2316
500062	19.0557	19.1685	20.9284	19.6775
500064	26.7000	27.5791	29.5696	27.9754
500065	23.5671	24.0966	26.5881	24.7506
500068	19.2638	20.9278	20.2336	20.1549
500069	21.4542	22.4158	24.2983	22.7883
500071	19.1428	22.3253	23.2071	21.4408
500072	25.2001	25.7734	27.5706	26.3080
500073	21.7698	22.5222	21.0414	21.7592
500074	19.5981	20.6120	21.9018	20.7646
500077	23.9410	24.5695	26.6614	25.0769
500079	23.1041	24.7946	27.1775	25.0691
500080	18.3883	18.8188	21.1121	19.4633
500084	24.4044	25.0556	26.3627	25.3208
500085	20.4517	20.7422	21.0707	20.7661
500086	22.8829	24.2556	25.9705	24.3779
500088	25.2478	26.4212	30.1689	27.0767
500089	19.7166	20.3478	21.0601	20.3618
500090	20.4429	21.7716	*	21.0547
500092	19.2028	20.3058	20.8601	20.1437
500094	15.7866	17.6625	*	16.7064
500096	23.3564	25.1135	25.9490	24.7500
500097	20.8774	21.4423	21.8841	21.3903
500098	15.2040	17.8453	17.1392	16.7726
500101	15.8000	19.8614	*	17.6277
500102	21.8963	23.1307	*	22.5307
500104	24.9389	24.7875	26.8007	25.5111
500106	19.1465	17.1066	21.5532	19.1127
500107	17.9489	17.4641	20.4959	18.5615
500108	28.6229	26.1609	27.6367	27.4719
500110	22.9775	23.5941	24.8448	23.8174
500118	24.8034	24.7875	26.1971	25.2739
500119	22.1192	23.9939	25.1576	23.7715
500122	23.5264	24.4462	22.2238	23.3778
500123	19.6646	21.7133	24.4350	21.6023
500124	23.7742	24.6591	26.2994	25.0718
500125	14.7910	15.6304	18.4512	16.1340
500129	25.4685	25.2082	27.1253	25.9641
500132	23.1822	21.9915	22.5293	22.5899
500134	17.2430	15.9791	25.9538	18.4162
500139	22.3053	23.7993	27.7067	24.5705
500141	29.9695	28.1014	28.1441	28.6426
500143	18.2570	18.7523	19.0982	18.7216
510001	20.0429	20.2514	21.4247	20.5803
510002	17.6392	19.1517	21.0299	19.3055
510005	13.8621	13.8641	14.7332	14.1611
510006	19.9609	19.9760	21.0214	20.3316
510007	21.6761	22.9326	23.1306	22.5933
510008	19.0513	19.9176	22.7595	20.6320

* Denotes wage data not available for the provider for that year.
** Based on the sum of the salaries and hours computed for Federal FYs 2002, 2003, and 2004.

TABLE 2.—HOSPITAL AVERAGE HOURLY WAGE FOR FEDERAL FISCAL YEARS 2002 (1998 WAGE DATA), 2003 (WAGE DATA), AND 2004 (2000 WAGE DATA) WAGE INDEXES AND 3-YEAR AVERAGE OF HOSPITAL AVERAGE HOURLY WAGES—Continued

Provider No.	Average hourly wage FY 2002	Average hourly wage FY 2003	Average hourly wage FY 2004	Average hourly** wage (3 yrs)
510012	15.6089	15.8596	16.7710	16.1127
510013	19.5798	18.3486	19.7937	19.2416
510015	16.7311	17.1595	17.9040	17.2636
510018	18.5358	18.3023	19.9490	18.9487
510020	14.1211	15.7512	*	14.9242
510022	21.5770	21.4336	22.0584	21.7005
510023	16.7777	17.6516	17.9267	17.4783
510024	18.7461	19.6521	20.7521	19.7179
510026	13.7952	14.8785	16.5389	14.9496
510027	18.5945	20.5222	19.8205	19.6589
510028	19.9208	22.4826	24.6543	22.2359
510029	18.4668	18.9000	19.8048	19.0629
510030	17.7603	19.2558	19.8220	18.9626
510031	18.6341	19.3049	20.5742	19.5716
510033	18.4718	19.6900	19.6921	19.3132
510035	18.3164	21.8290	*	20.0924
510036	13.8786	15.0266	14.0926	14.3186
510038	15.5576	15.9821	16.1016	15.8882
510039	17.1461	17.4002	17.6190	17.3855
510043	13.1308	14.4202	15.5857	14.3831
510046	18.5896	18.7424	19.2806	18.8709
510047	20.8101	21.2885	22.1953	21.4251
510048	17.1647	15.2886	16.3761	16.2789
510050	18.4036	18.3964	18.9990	18.5986
510053	17.5798	18.1046	18.1054	17.9357
510055	24.2133	25.6333	27.7422	25.8167
510058	18.4501	18.6025	20.1104	19.0814
510059	16.1044	17.3844	18.1544	17.1696
510061	14.1968	14.6774	14.8848	14.5883
510062	18.1588	19.7202	21.0482	19.6174
510067	17.3067	17.8816	18.0113	17.7501
510068	23.0452	19.4299	19.9056	20.6790
510070	18.7091	18.6226	20.0974	19.1353
510071	18.0278	18.8766	19.4029	18.7564
510072	15.9257	16.5279	18.4566	16.9820
510077	18.2947	20.4521	20.9153	19.8338
510080	16.3453	19.7131	21.5661	18.8545
510081	11.9701	10.4972	*	11.2092
510082	13.5946	16.0014	17.2891	15.5840
510084	13.5339	14.9683	16.1904	14.8887
510085	18.6227	19.0175	20.6364	19.4471
510086	14.2241	16.3413	16.3051	15.6167
510088	14.8854	16.2850	16.4373	15.8902
520002	19.6755	20.2691	21.9073	20.6570
520003	18.7956	18.7507	20.4234	19.3853
520004	20.4591	21.1549	22.6309	21.4055
520006	21.4884	22.4099	22.0238	21.9690
520007	18.4629	18.3959	19.4507	18.7649
520008	24.9395	24.4927	26.0931	25.2072
520009	21.4638	19.8142	20.5615	20.5741
520010	22.3311	25.5623	26.4047	24.7952
520011	21.5223	21.6945	22.7880	22.0154
520013	20.5944	22.1009	23.1173	21.9777
520014	18.0841	19.2760	20.4282	19.2712
520015	19.7672	21.0428	22.8094	21.2438
520016	18.4320	19.5656	*	18.9788
520017	19.4780	21.1409	21.7542	20.8166
520018	21.5279	22.1929	22.3315	22.0344
520019	20.9164	21.8870	22.6895	21.8682
520021	21.9531	22.8484	24.1284	23.0293
520024	14.4750	16.4879	17.5368	16.1948
520025	20.3838	21.9529	23.3835	21.9488
520026	20.8546	22.4779	25.0504	22.8714

* Denotes wage data not available for the provider for that year.
** Based on the sum of the salaries and hours computed for Federal FYs 2002, 2003, and 2004.

TABLE 2.—HOSPITAL AVERAGE HOURLY WAGE FOR FEDERAL FISCAL YEARS 2002 (1998 WAGE DATA), 2003 (WAGE DATA), AND 2004 (2000 WAGE DATA) WAGE INDEXES AND 3-YEAR AVERAGE OF HOSPITAL AVERAGE HOURLY WAGES—Continued

Provider No.	Average hourly wage FY 2002	Average hourly wage FY 2003	Average hourly wage FY 2004	Average hourly** wage (3 yrs)
520027	21.5568	22.1450	23.6595	22.5109
520028	22.5941	22.0333	24.3592	23.0143
520029	21.4197	21.5561	22.8724	21.9345
520030	21.6311	22.7239	23.9474	22.8336
520031	20.9875	21.2809	22.9721	21.7580
520032	21.1069	24.1092	22.7220	22.6429
520033	20.2520	21.0088	22.2650	21.1839
520034	20.4307	21.5275	18.8561	20.0847
520035	18.7135	19.8917	20.8563	19.8607
520037	21.6017	23.0801	25.0587	23.2977
520038	20.6130	21.4208	23.1036	21.7099
520039	23.3687	21.1719	22.9348	22.4321
520040	21.2023	23.0710	21.5671	21.9307
520041	18.4117	18.2997	22.6216	19.7373
520042	19.5466	20.6354	21.9935	20.7535
520044	19.1877	21.4913	22.7626	21.1506
520045	21.2427	21.9812	24.1624	22.4304
520047	20.3487	21.0370	22.5686	21.3314
520048	19.8926	20.3488	19.3461	19.8547
520049	20.1667	21.8271	22.7424	21.6003
520051	24.0460	23.4366	25.0827	24.1747
520053	18.0851	18.9512	20.8040	19.2839
520054	16.8363	16.6278	18.1045	17.2001
520057	19.8492	20.6959	20.4601	20.3548
520058	21.2500	23.6794	23.2907	22.7126
520059	21.5796	22.1618	24.1863	22.6609
520060	18.8232	20.3357	21.1271	20.1183
520062	19.7038	21.2865	23.7166	21.6639
520063	20.5262	21.2774	23.3037	21.7486
520064	22.0917	23.8181	21.6302	22.5247
520066	24.0087	25.4528	23.9212	24.4126
520068	19.6855	20.6112	21.4413	20.5790
520069	20.1770	21.7233	32.6484	21.3815
520070	19.4261	20.0096	22.0590	20.5199
520071	19.9866	22.0066	23.4832	21.8338
520074	20.9007	21.6536	21.9124	21.4827
520075	20.7301	22.1894	23.7322	22.2613
520076	19.5878	20.6155	22.2993	20.8518
520077	18.7119	18.1077	*	18.3984
520078	21.7545	21.7414	23.0727	22.1680
520083	23.5787	24.2401	25.3591	24.3664
520084	23.5446	21.8102	24.7909	23.3951
520087	20.7821	22.2579	22.8173	21.9819
520088	21.8931	22.3921	23.8936	22.6992
520089	22.1055	23.2335	24.4411	23.2699
520090	20.3645	20.9069	21.9482	21.0730
520091	20.9440	22.2218	19.2575	20.7952
520092	18.6248	19.7181	21.8662	20.1341
520094	20.6179	21.3082	22.3925	21.4517
520095	18.6425	21.9177	25.1402	21.7601
520096	20.6668	21.6803	21.2295	21.2059
520097	20.8016	22.2375	23.6512	22.2609
520098	23.4707	25.0055	25.5111	24.6770
520100	19.4788	20.5366	21.7072	20.6024
520101	19.9875	20.0164	19.5272	19.8623
520102	21.0138	22.3640	23.7739	22.4092
520103	20.1092	22.2765	23.5984	22.0082
520107	21.7907	23.8421	25.0837	23.5365
520109	19.7609	20.3208	20.0009	20.0293
520110	21.0055	22.3923	23.4435	22.3140
520111	17.7673	18.2744	26.9567	20.3598
520112	18.9577	17.6226	17.8738	18.0211
520113	21.8852	23.1852	24.2506	23.1332

* Denotes wage data not available for the provider for that year.
** Based on the sum of the salaries and hours computed for Federal FYs 2002, 2003, and 2004.

TABLE 2.—HOSPITAL AVERAGE HOURLY WAGE FOR FEDERAL FISCAL YEARS 2002 (1998 WAGE DATA), 2003 (WAGE DATA), AND 2004 (2000 WAGE DATA) WAGE INDEXES AND 3-YEAR AVERAGE OF HOSPITAL AVERAGE HOURLY WAGES—Continued

Provider No.	Average hourly wage FY 2002	Average hourly wage FY 2003	Average hourly wage FY 2004	Average hourly** wage (3 yrs)
520114	17.8476	18.5767	21.9848	19.3865
520115	19.2248	21.4279	23.4674	21.4477
520116	20.6922	22.2741	23.9066	22.2707
520117	18.3963	19.3653	21.9443	19.9279
520118	14.8626	13.9920	*	14.4086
520121	20.8492	20.9422	23.1869	21.6934
520122	16.9335	16.9905	18.8016	17.5509
520123	17.7986	19.8134	21.0426	19.6355
520124	17.9205	19.2621	21.1327	19.4570
520130	16.6873	18.8845	20.0277	18.5254
520131	20.2591	21.0400	22.4994	21.3057
520132	18.1630	18.2634	19.5140	18.6382
520134	18.8150	19.6881	20.8502	19.7907
520135	17.3476	18.1026	18.8254	18.0936
520136	20.9050	21.3966	22.9085	21.7252
520138	22.5599	23.1498	25.1434	23.6620
520139	21.4042	22.8070	23.7727	22.6778
520140	22.3671	22.5459	23.5622	22.8201
520142	21.9432	21.4120	24.1969	22.4917
520144	19.9120	20.5864	22.3985	20.9729
520145	18.7958	20.3461	25.0771	20.8014
520146	18.2370	18.6337	19.4025	18.7800
520148	19.1502	20.5075	22.4299	20.7682
520149	12.8928	13.8614	*	13.3481
520151	18.7070	19.3362	20.1995	19.4436
520152	22.5980	26.2402	21.1817	22.9787
520153	17.0863	18.5986	18.7375	18.1335
520154	19.5994	21.0486	23.2635	21.3043
520156	20.9638	20.7808	23.7157	21.8343
520157	19.6008	21.6821	23.1495	21.4552
520159	17.7649	21.8783	*	19.8043
520160	20.5154	21.5871	22.9475	21.7239
520161	20.1102	21.4038	22.1857	21.2456
520170	21.9857	23.0867	25.0744	23.3943
520171	18.0785	18.1844	11.2340	15.1101
520173	20.9209	23.2955	24.4722	22.8643
520177	24.0139	25.0908	27.5560	25.5340
520178	20.9010	23.1509	22.3193	22.0890
520189	*	22.0889	23.1658	22.6212
530002	21.0560	23.0582	23.8852	22.6216
530003	15.9523	17.1646	*	16.5866
530004	13.3788	17.4672	*	15.3173
530005	15.3255	18.4391	19.2049	17.7470
530006	19.1305	20.7661	21.3429	20.4783
530007	17.7897	18.5286	22.3309	19.6133
530008	19.0113	19.5386	21.8714	20.1106
530009	21.7795	23.5839	22.0451	22.4288
530010	13.9536	17.8687	21.7124	17.2974
530011	19.4606	19.9212	22.5720	20.6678
530012	21.1854	22.5084	22.4716	22.0976
530014	18.4900	20.0422	21.7314	20.1695
530015	23.4040	24.6527	25.3915	24.5334
530016	19.3205	20.3647	21.0666	20.2058
530017	17.7736	20.9408	19.5631	19.3707
530018	19.5986	20.1226	*	19.8663
530019	20.1097	18.1492	*	19.0248
530022	19.6136	19.7902	21.0631	20.1718
530023	20.0677	21.6352	*	20.8681
530025	22.0300	22.4816	25.4693	23.3672
530026	19.8969	20.9919	21.0733	20.6804
530027	25.5067	*	*	25.5069
530029	19.3361	20.3046	19.9692	19.8988
530031	20.1734	23.2766	16.8825	20.2555

*Denotes wage data not available for the provider for that year.
**Based on the sum of the salaries and hours computed for Federal FYs 2002, 2003, and 2004.

TABLE 2.—HOSPITAL AVERAGE HOURLY WAGE FOR FEDERAL FISCAL YEARS 2002 (1998 WAGE DATA), 2003 (WAGE DATA), AND 2004 (2000 WAGE DATA) WAGE INDEXES AND 3-YEAR AVERAGE OF HOSPITAL AVERAGE HOURLY WAGES—Continued

Provider No.	Average hourly wage FY 2002	Average hourly wage FY 2003	Average hourly wage FY 2004	Average hourly** wage (3 yrs)
530032	20.0132	20.9856	19.4450	20.0811

*Denotes wage data not available for the provider for that year.
**Based on the sum of the salaries and hours computed for Federal FYs 2002, 2003, and 2004.

TABLE 3A.—FY 2004 AND 3-YEAR* AVERAGE HOURLY WAGE FOR URBAN AREAS

[*Based on the sum of the Salaries and Hours Computed for Federal Fiscal Years 2002, 2003, and 2004]

Urban area	FY 2004 average hourly wage	3-Year average hourly wage
Abilene, TX	18.8450	18.2266
Aguadilla, PR	10.6399	10.5889
Akron, OH	22.5797	22.3022
Albany, GA	26.6004	24.9847
Albany-Schenectady-Troy, NY	21.3352	20.4496
Albuquerque, NM	23.1465	22.1931
Alexandria, LA	19.8057	18.6706
Allentown-Bethlehem-Easton, PA	23.5026	22.8687
Altoona, PA	21.7576	21.1859
Amarillo, TX	22.0107	20.8001
Anchorage, AK	30.1827	29.0196
Ann Arbor, MI	27.1674	25.8704
Anniston, AL	19.9785	19.0507
Appleton-Oshkosh-Neenah, WI	21.7216	21.0819
Arecibo, PR	10.1377	10.1850
Asheville, NC	23.8010	22.5969
Athens, GA	23.7190	23.1681
Atlanta, GA	24.6106	23.4279
Atlantic-Cape May, NJ	26.6595	25.8131
Auburn-Opelika, AL	20.9608	19.6182
Augusta-Aiken, GA-SC	23.8679	23.3090
Austin-San Marcos, TX	23.4418	22.4440
Bakersfield, CA	24.2171	22.8241
Baltimore, MD	24.4226	23.1526
Bangor, ME	24.4261	22.5849
Barnstable-Yarmouth, MA	31.6457	30.9398
Baton Rouge, LA	20.3139	19.2932
Beaumont-Port Arthur, TX	20.8687	19.6759
Bellingham, WA	29.0458	28.0229
Benton Harbor, MI	21.8083	20.8961
Bergen-Passaic, NJ	28.6051	27.6355
Billings, MT	21.8179	21.2445
Biloxi-Gulfport-Pascagoula, MS	22.3087	20.4967
Binghamton, NY	20.6972	19.6313
Birmingham, AL	22.7049	21.2110
Bismarck, ND	19.6799	18.6613
Bloomington,IN	22.0106	20.8739
Bloomington-Normal, IL	21.8206	21.0629
Boise City, ID	22.7551	21.5706
Boston-Worcester-Lawrence-Lowell-Brockton, MA-NH	27.6581	26.3949
Boulder-Longmont, CO	24.8370	23.1361
Brazoria, TX	20.1054	19.4362
Bremerton, WA	26.0196	25.1368
Brownsville-Harlingen-San Benito, TX	25.1120	21.8429
Bryan-College Station, TX	22.1966	21.2204
Buffalo-Niagara Falls, NY	23.5611	22.1052
Burlington, VT	23.9756	23.1273
Caguas, PR	10.2735	10.3098
Canton-Massillon, OH	22.4034	21.0476
Casper, WY	22.4716	22.0976
Cedar Rapids, IA	21.9242	20.8155
Champaign-Urbana, IL	24.3163	23.2596
Charleston-North Charleston, SC	22.8428	21.6027
Charleston, WV	21.4843	20.9535
Charlotte-Gastonia-Rock Hill, NC-SC	23.9685	22.5646
Charlottesville, VA	24.7694	24.2141
Chattanooga, TN-GA	22.0529	21.2905
Cheyenne, WY	21.7314	20.1695
Chicago, IL	27.0271	25.7822
Chico-Paradise, CA	25.1160	23.2448
Cincinnati, OH-KY-IN	23.1946	22.0301
Clarksville-Hopkinsville, TN-KY	20.4075	19.5286
Cleveland-Lorain-Elyria, OH	23.8495	22.4215
Colorado Springs, CO	21.6129	22.1293
Columbia, MO	21.4630	20.1694
Columbia, SC	21.9871	21.6143
Columbus, GA-AL	21.3541	19.8797
Columbus, OH	23.6823	22.5560
Corpus Christi, TX	21.0218	19.9937
Corvallis, OR	28.4536	27.0598
Cumberland, MD-WV	20.1850	18.9617
Dallas, TX	23.8893	23.1075
Danville, VA	22.3229	20.7337
Davenport-Moline-Rock Island, IA-IL	21.4787	20.4142
Dayton-Springfield, OH	23.1119	21.7481

TABLE 3A.—FY 2004 AND 3-YEAR* AVERAGE HOURLY WAGE FOR URBAN AREAS—Continued

[*Based on the sum of the Salaries and Hours Computed for Federal Fiscal Years 2002, 2003, and 2004]

Urban area	FY 2004 average hourly wage	3-Year average hourly wage
Daytona Beach, FL	22.5989	21.2728
Decatur, AL	21.8004	20.7771
Decatur, IL	19.7294	18.7678
Denver, CO	26.4474	24.7190
Des Moines, IA	22.2079	20.6796
Detroit, MI	24.7828	24.1254
Dothan, AL	19.4261	18.7019
Dover, DE	24.2251	22.9785
Dubuque, IA	21.9559	20.4460
Duluth-Superior, MN-WI	24.9669	24.0017
Dutchess County, NY	26.9158	25.0907
Eau Claire, WI	22.3936	21.0371
El Paso, TX	22.7448	21.6387
Elkhart-Goshen, IN	24.1721	22.8091
Elmira, NY	20.6973	19.6769
Enid, OK	21.1469	19.7375
Erie, PA	21.1970	20.4552
Eugene-Springfield, OR	28.3045	26.4658
Evansville, Henderson, IN-KY	20.7198	19.5383
Fargo-Moorhead, ND-MN	23.6839	22.0993
Fayetteville, NC	21.9637	20.9595
Fayetteville-Springdale-Rogers, AR	19.7281	19.1438
Flagstaff, AZ-UT	26.0003	25.5509
Flint, MI	26.8245	25.6472
Florence, AL	19.0755	18.2277
Florence, SC	21.5072	20.4490
Fort Collins-Loveland, CO	25.0356	23.6228
Fort Lauderdale, FL	25.0241	23.9929
Fort Myers-Cape Coral, FL	24.2424	22.5718
Fort Pierce-Port St. Lucie, FL	24.6789	23.4336
Fort Smith, AR-OK	18.9977	18.4272
Fort Walton Beach, FL	21.9145	21.5304
Fort Wayne, IN	23.7450	22.1024
Fort Worth-Arlington, TX	22.7469	21.8925
Fresno, CA	24.9304	23.6658
Gadsden, AL	20.3125	19.9081
Gainesville, FL	20.9218	21.6396
Galveston-Texas City, TX	22.9723	22.5896
Gary, IN	23.2237	22.2411
Glens Falls, NY	20.8876	19.5296

TABLE 3A.—FY 2004 AND 3-YEAR* AVERAGE HOURLY WAGE FOR URBAN AREAS—Continued

[*Based on the sum of the Salaries and Hours Computed for Federal Fiscal Years 2002, 2003, and 2004]

Urban area	FY 2004 average hourly wage	3-Year average hourly wage
Goldsboro, NC	21.3024	20.4707
Grand Forks, ND-MN	21.3373	20.7295
Grand Junction, CO	23.7749	22.3911
Grand Rapids-Muskegon-Holland, MI	23.0656	22.5364
Great Falls, MT [1]	21.7634	20.7748
Greeley, CO	23.1548	21.9595
Green Bay, WI	23.3746	22.0316
Greensboro-Winston-Salem-High Point, NC [1]	20.9324	21.2497
Greenville, NC	23.6131	21.8157
Greenville-Spartanburg-Anderson, SC	22.7994	21.5334
Hagerstown, MD	22.6614	20.9120
Hamilton-Middletown, OH	22.6679	21.7796
Harrisburg-Lebanon-Carlisle, PA	22.5260	21.6636
Hartford, CT [1]	27.9285	26.8084
Hattiesburg, MS	17.9684	17.4987
Hickory-Morganton-Lenoir, NC	22.3095	21.3983
Honolulu, HI	27.4202	26.5871
Houma, LA	19.0543	18.7854
Houston, TX	23.5421	22.6783
Huntington-Ashland, WV-KY-OH	23.6117	22.4903
Huntsville, AL	22.6733	21.0476
Indianapolis, IN	24.4154	22.8765
Iowa City, IA	23.5738	22.6166
Jackson, MI	22.1953	21.6761
Jackson, MS	20.6436	19.8499
Jackson, TN	21.1120	20.9308
Jacksonville, FL	22.9896	21.8027
Jacksonville, NC	21.0806	19.0573
Jamestown, NY	19.1768	18.5426
Janesville-Beloit, WI	22.9321	22.5285
Jersey City, NJ	27.4955	26.1092
Johnson City-Kingsport-Bristol, TN-VA	20.5450	19.6615
Johnstown, PA	20.5535	19.7661
Jonesboro, AR	18.8016	18.5268
Joplin, MO	21.4481	20.3222
Kalamazoo-Battlecreek, MI	25.9045	24.7622
Kankakee, IL	27.1800	24.7161
Kansas City, KS-MO	23.4414	22.4424
Kenosha, WI	24.1159	22.6827
Killeen-Temple, TX	22.6330	22.0648
Knoxville, TN	22.0574	20.9173
Kokomo, IN	22.3466	21.1444
La Crosse, WI-MN	22.7241	21.7520
Lafayette, LA	20.3031	19.7004
Lafayette, IN	22.2163	21.3798
Lake Charles, LA	20.8032	18.7394
Lakeland-Winter Haven, FL	20.8790	20.9460
Lancaster, PA	22.8876	21.5784
Lansing-East Lansing, MI	22.7517	22.3059
Laredo, TX	19.9917	19.1033
Las Cruces, NM	20.9400	20.1778
Las Vegas, NV-AZ	28.1201	26.6705
[1]Lawrence, KS	[2]	[2]
Lawton, OK	20.4263	19.7110
Lewiston-Auburn, ME	23.0437	21.7003
Lexington, KY	21.1620	20.2378
Lima, OH	23.2114	22.1607
Lincoln, NE	24.7917	23.5197
Little Rock-North Little Rock, AR	21.8575	20.9698
Longview-Marshall, TX	22.4348	20.5074
Los Angeles-Long Beach, CA	28.5648	27.6989
Louisville, KY-IN	22.5165	21.7940
Lubbock, TX	20.4449	20.4788
Lynchburg, VA	22.5852	21.4509
Macon, GA	22.1616	21.1692
Madison, WI	25.1207	24.1736
Mansfield, OH	22.2335	20.8233
Mayaguez, PR	11.7315	11.3138
McAllen-Edinburg-Mission, TX	22.2965	20.2067
Medford-Ashland, OR	26.6156	24.7374
Melbourne-Titusville-Palm Bay, FL	24.0574	23.3611
Memphis, TN-AR-MS	22.8875	21.1855
Merced, CA	23.9422	23.0370
Miami, FL	24.2692	23.0684
Middlesex-Somerset-Hunterdon, NJ	28.0716	26.5525
Milwaukee-Waukesha, WI	24.2703	23.1731
Minneapolis-St. Paul, MN-WI	27.1544	25.6571
Missoula, MT	21.5392	21.2648
Mobile, AL	19.5085	18.7864
Modesto, CA	27.8424	25.5333
Monmouth-Ocean, NJ	26.9085	25.3164
Monroe, LA	19.5806	18.9433
Montgomery, AL	19.2813	17.8049
Muncie, IN	21.4993	21.7481
Myrtle Beach, SC	21.9670	20.8646
Naples, FL	24.2154	22.8672
Nashville, TN	24.1409	22.7215
Nassau-Suffolk, NY	31.9339	31.1765
New Haven-Bridgeport-Stamford-Waterbury-Danbury, CT	30.6450	28.9030
New London-Norwich, CT	28.7588	27.3098
New Orleans, LA	22.5126	21.2103
New York, NY	34.0359	33.2980
Newark, NJ	28.0215	26.7812
Newburgh, NY-PA	27.7682	26.3667
Norfolk-Virginia Beach-Newport News, VA-NC	21.2530	20.1058
Oakland, CA	36.9259	35.4131
Ocala, FL	24.0225	22.3877
Odessa-Midland, TX	23.1872	22.5143
Oklahoma City, OK	22.1744	20.7685
Olympia, WA	27.0728	25.9774
Omaha, NE-IA	23.9161	22.9252
Orange County, CA	27.5748	26.3219
Orlando, FL	23.5921	22.5423
Owensboro, KY	20.6888	19.5760
Panama City, FL	21.2992	20.7203
Parkersburg-Marietta, WV-OH	19.8623	19.0009
Pensacola, FL	20.6255	19.7879
Peoria-Pekin, IL	21.5796	20.4881
Philadelphia, PA-NJ	26.8676	25.3554
Phoenix-Mesa, AZ	25.0656	23.1490
Pine Bluff, AR	18.7641	18.2815
Pittsburgh, PA	21.5682	21.5505
Pittsfield, MA	25.2831	23.9826
Pocatello, ID	22.3412	21.7279
Ponce, PR	11.6867	11.7774
Portland, ME	24.5068	22.7835
Portland-Vancouver, OR-WA	27.4708	25.7362
Providence-Warwick, RI	27.0592	25.4242
Provo-Orem, UT	24.6487	23.2777
Pueblo, CO	21.6891	20.4756
Punta Gorda, FL	23.3618	21.6509
Racine, WI	21.8176	21.4880
Raleigh-Durham-Chapel Hill, NC	24.7888	23.2945
Rapid City, SD	21.7579	20.7364
Reading, PA	22.1933	21.7267
Redding, CA	28.0292	26.2652
Reno, NV	26.3682	24.8415
Richland-Kennewick-Pasco, WA	26.0849	25.7185
Richmond-Petersburg, VA	23.0767	22.2287
Riverside-San Bernardino, CA	27.7914	26.2909
Roanoke, VA	21.4970	20.0809
Rochester, MN	28.9664	27.6257
Rochester, NY	23.4531	22.1985
Rockford, IL	23.8815	22.2381
Rocky Mount, NC	22.2321	21.3362
Sacramento, CA	29.2332	27.4459
Saginaw-Bay City-Midland, MI	23.6103	22.4738
St. Cloud, MN	23.3992	22.6517
[1]St. Joseph, MO	24.1078	24.1078
St. Louis, MO-IL	22.2105	20.8148
Salem, OR	25.8986	24.0695
Salinas, CA	35.4282	34.0968
Salt Lake City-Ogden, UT	24.2956	23.1582
San Angelo, TX	20.3421	19.4654
San Antonio, TX	21.7859	20.4173
San Diego, CA	27.5034	26.1832
San Francisco, CA	35.2175	33.1623
San Jose, CA	35.9382	33.4495
San Juan-Bayamon, PR	12.0353	11.2034
San Luis Obispo-Atascadero-Paso Robles, CA	28.1871	26.3232
Santa Barbara-Santa Maria-Lompoc, CA	25.7977	24.7645
Santa Cruz-Watsonville, CA	31.9363	31.6115
Santa Fe, NM	26.1125	24.6586
Santa Rosa, CA	31.5034	30.3104
Sarasota-Bradenton, FL	24.1015	22.8397
Savannah, GA	23.4542	22.5461
Scranton-Wilkes Barre-Hazleton, PA	20.5178	19.9473
Seattle-Bellevue-Everett, WA	28.3651	26.8159
Sharon, PA	19.1498	18.3866
Sheboygan, WI	21.3074	20.1274
Sherman-Denison, TX	23.3354	21.9733
Shreveport-Bossier City, LA	22.4424	21.1518
Sioux City, IA-NE	22.2184	20.9019
Sioux Falls, SD	22.9990	21.6460
South Bend, IN	24.2656	23.1221
Spokane, WA	26.9242	25.3258
Springfield, IL	22.0988	20.5053
Springfield, MO	20.7882	19.8503
Springfield, MA	25.1820	24.9487
State College, PA	21.5944	20.9171
Steubenville-Weirton, OH-WV	20.7491	20.1726
Stockton-Lodi, CA	25.9615	24.8099
Sumter, SC	20.1378	18.9286
Syracuse, NY	23.2731	22.4502
Tacoma, WA	25.0655	25.4358
Tallahassee, FL	20.9393	19.9194
Tampa-St. Petersburg-Clearwater, FL	22.3623	21.0795
Terre Haute, IN	20.5894	19.8434
Texarkana, AR-Texarkana, TX	20.1201	19.1440
Toledo, OH	23.4422	22.6911
Topeka, KS	22.1410	21.1325
Trenton, NJ	25.9088	24.4803
Tucson, AZ	21.9871	20.8658
Tulsa, OK	22.4262	20.4923
Tuscaloosa, AL	20.2222	19.1231
Tyler, TX	21.5724	21.7219
Utica-Rome, NY	20.8155	19.7105
Vallejo-Fairfield-Napa, CA	33.0023	31.4386
Ventura, CA	25.7022	25.3153
Victoria, TX	19.8941	19.6059
Vineland-Millville-Bridgeton, NJ	25.7088	24.0750
Visalia-Tulare-Portersville, CA	24.2540	22.5528
Waco, TX	20.7383	19.2135
Washington, DC-MD-VA-WV	26.2793	25.3284
Waterloo-Cedar Falls, IA	20.6706	19.0431
Wausau, WI	23.9474	22.8336
West Palm Beach-Boca Raton, FL	24.0146	22.9860
Wheeling, OH-WV	18.4694	18.0317
Wichita, KS	22.8265	22.1175
Wichita Falls, TX	20.6347	19.2942
Williamsport, PA	19.8237	19.6395
Wilmington-Newark, DE-MD	26.8874	25.7166
Wilmington, NC	23.5730	22.3755
Yakima, WA	25.3298	24.5057
Yolo, CA	22.7290	22.1106
York, PA	22.3891	21.4937
Youngstown-Warren, OH	22.7587	21.9477
Yuba City, CA	25.1911	24.0664
Yuma, AZ	21.9766	20.7166

[1] The MSA is empty for FY 2004. The hospital(s) in the MSA received rural status under section 401 of the Balanced Budget Refinement Act of 1999 (Pub. L. 106–113). The MSA is assigned the statewide rural wage index (*see* Table 4B).

TABLE 3B.—FY 2004 AND 3-YEAR* AVERAGE HOURLY WAGE FOR RURAL AREAS

[*Based on the sum of the Salaries and Hours Computed for Federal Fiscal Years 2002, 2003, and 2004]

Nonurban area	FY 2004 average hourly wage	3-Year average hourly wage
Alabama	18.3348	17.4929
Alaska	29.3667	28.1193
Arizona	22.1917	20.4444
Arkansas	19.0502	17.8283
California	24.5014	22.9050
Colorado	22.3036	20.8977
Connecticut	29.9411	28.5998
Delaware	22.7759	21.8259
Florida	21.7703	20.5939
Georgia	20.6405	19.3893
Hawaii	24.6034	24.3938
Idaho	22.1883	20.5704
Illinois	20.4777	19.1094
Indiana	21.6124	20.4406
Iowa	20.7491	19.3057
Kansas	19.7860	18.4560
Kentucky	19.5747	18.6825
Louisiana	18.3330	17.5766
Maine	22.1139	20.6732
Maryland	22.5202	21.0708
Massachusetts	26.6580	26.1016
Michigan	21.6556	20.8571
Minnesota	22.9622	21.3937
Mississippi	19.2263	17.9212
Missouri	19.2927	18.4558
Montana	21.6718	20.0795
Nebraska	21.7533	19.3579
Nevada	24.0509	22.6017
New Hampshire	24.8141	23.0661
[1]New Jersey	[2]	[2]
New Mexico	20.3060	20.0956
New York	21.0328	19.9757
North Carolina	20.5716	19.9126
North Dakota	19.2168	18.1538
Ohio	21.6481	20.3023
Oklahoma	18.6273	17.6874
Oregon	24.6521	23.6537
Pennsylvania	20.7089	19.8599
Puerto Rico	10.2273	9.9080
[1]Rhode Island	[2]	[2]
South Carolina	20.8545	19.9708
South Dakota	20.2488	18.5076
Tennessee	19.5008	18.5022
Texas	18.9842	18.1045
Utah	22.1698	21.3594
Vermont	22.9948	21.9226
Virginia	20.9873	19.7038
Washington	25.9055	23.9310
West Virginia	19.7553	18.7353
Wisconsin	22.6496	21.3482
Wyoming	22.6090	20.9331

[1] All counties within the State are classified as urban.

TABLE 4A.—WAGE INDEX AND CAPITAL GEOGRAPHIC ADJUSTMENT FACTOR (GAF) FOR URBAN AREAS

Urban area (Constituent counties)	Wage index	GAF
0040 [1]Abilene, TX	0.7678	0.8345
Taylor, TX		
0060 Aguadilla, PR	0.4335	0.5642
Aguada, PR		
Aguadilla, PR		
Moca, PR		
0080 Akron, OH	0.9445	0.9617
Portage, OH		
Summit, OH		
0120 Albany, GA	1.0838	1.0567
Dougherty, GA		
Lee, GA		
0160 Albany-Schenectady-Troy, NY	0.8693	0.9085
Albany, NY		
Montgomery, NY		
Rensselaer, NY		
Saratoga, NY		
Schenectady, NY		
Schoharie, NY		
0200 Albuquerque, NM	0.9431	0.9607
Bernalillo, NM		
Sandoval, NM		
Valencia, NM		
0220 Alexandria, LA	0.8087	0.8647
Rapides, LA		
0240 Allentown-Bethlehem-Easton, PA	0.9576	0.9708
Carbon, PA		
Lehigh, PA		
Northampton, PA		
0280 Altoona, PA	0.8886	0.9223
Blair, PA		

TABLE 4A.—WAGE INDEX AND CAPITAL GEOGRAPHIC ADJUSTMENT FACTOR (GAF) FOR URBAN AREAS—Continued

Urban area (Constituent counties)	Wage index	GAF
0320 Amarillo, TX	0.8968	0.9281
Potter, TX		
Randall, TX		
0380 Anchorage, AK	1.2433	1.1608
Anchorage, AK		
0440 Ann Arbor, MI	1.1069	1.0720
Lenawee, MI		
Livingston, MI		
Washtenaw, MI		
0450 Anniston, AL	0.8140	0.8686
Calhoun, AL		
0460 [2] Appleton-Oshkosh-Neenah, WI	0.9130	0.9396
Calumet, WI		
Outagamie, WI		
Winnebago, WI		
0470 Arecibo, PR	0.4130	0.5458
Arecibo, PR		
Camuy, PR		
Hatillo, PR		
0480 Asheville, NC	0.9697	0.9792
Buncombe, NC		
Madison, NC		
0500 Athens, GA	0.9664	0.9769
Clarke, GA		
Madison, GA		
Oconee, GA		
0520 [1] Atlanta, GA	1.0027	1.0018
Barrow, GA		
Bartow, GA		
Carroll, GA		
Cherokee, GA		
Clayton, GA		
Cobb, GA		
Coweta, GA		
DeKalb, GA		
Douglas, GA		
Fayette, GA		
Forsyth, GA		
Fulton, GA		
Gwinnett, GA		
Henry, GA		
Newton, GA		
Paulding, GA		
Pickens, GA		
Rockdale, GA		
Spalding, GA		
Walton, GA		
0560 Atlantic-Cape May, NJ	1.0862	1.0583
Atlantic, NJ		
Cape May, NJ		
0580 Auburn-Opelika, AL	0.8540	0.8976
Lee, AL		
0600 Augusta-Aiken, GA-SC	0.9725	0.9811
Columbia, GA		
McDuffie, GA		
Richmond, GA		
Aiken, SC		
Edgefield, SC		
0640 [1] Austin-San Marcos, TX	0.9551	0.9690
Bastrop, TX		
Caldwell, TX		
Hays, TX		
Travis, TX		
Williamson, TX		
0680 [2] Bakersfield, CA	0.9907	0.9936
Kern, CA		
0720 [1] Baltimore, MD	0.9951	0.9966
Anne Arundel, MD		
Baltimore, MD		
Baltimore City, MD		
Carroll, MD		
Harford, MD		
Howard, MD		
Queen Anne's, MD		
0733 Bangor, ME	0.9750	0.9828
Penobscot, ME		
0743 Barnstable-Yarmouth, MA	1.2893	1.1901
Barnstable, MA		
0760 Baton Rouge, LA	0.8271	0.8781
Ascension, LA		
East Baton Rouge, LA		
Livingston, LA		
West Baton Rouge, LA		
0840 Beaumont-Port Arthur, TX	0.8503	0.8949
Hardin, TX		
Jefferson, TX		
Orange, TX		
0860 Bellingham, WA	1.1834	1.1222
Whatcom, WA		
0870 Benton Harbor, MI	0.8949	0.9268
Berrien, MI		
0875 [1] Bergen-Passaic, NJ	1.1655	1.1106
Bergen, NJ		
Passaic, NJ		
0880 Billings, MT	0.8889	0.9225
Yellowstone, MT		
0920 Biloxi-Gulfport-Pascagoula, MS	0.9089	0.9367
Hancock, MS		
Harrison, MS		
Jackson, MS		
0960 [2] Binghamton, NY	0.8530	0.8968
Broome, NY		
Tioga, NY		
1000 Birmingham, AL	0.9251	0.9481
Blount, AL		
Jefferson, AL		
St. Clair, AL		
Shelby, AL		
1010 Bismarck, ND	0.8101	0.8657
Burleigh, ND		
Morton, ND		
1020 Bloomington, IN	0.8968	0.9281
Monroe, IN		
1040 Bloomington-Normal, IL	0.8954	0.9271
McLean, IL		
1080 Boise City, ID	0.9295	0.9512
Ada, ID		
Canyon, ID		
1123 [1] Boston-Worcester-Lawrence-Lowell-Brockton, MA-NH	1.1269	1.0853
Bristol, MA		
Essex, MA		
Middlesex, MA		
Norfolk, MA		
Plymouth, MA		
Suffolk, MA		
Worcester, MA		
Hillsborough, NH		
Merrimack, NH		
Rockingham, NH		
Strafford, NH		
1125 Boulder-Longmont, CO	1.0119	1.0081
Boulder, CO		
1145 Brazoria, TX	0.8324	0.8819
Brazoria, TX		
1150 Bremerton, WA	1.0601	1.0408
Kitsap, WA		
1240 Brownsville-Harlingen-San Benito, TX	1.0231	1.0158
Cameron, TX		
1260 Bryan-College Station, TX	0.9044	0.9335
Brazos, TX		
1280 [1] Buffalo-Niagara Falls, NY	0.9600	0.9724
Erie, NY		
Niagara, NY		
1303 Burlington, VT	0.9768	0.9841
Chittenden, VT		
Franklin, VT		
Grand Isle, VT		
1310 Caguas, PR	0.4229	0.5547
Caguas, PR		
Cayey, PR		
Cidra, PR		
Gurabo, PR		
San Lorenzo, PR		
1320 Canton-Massillon, OH	0.9128	0.9394
Carroll, OH		
Stark, OH		
1350 Casper, WY	0.9239	0.9472
Natrona, WY		
1360 Cedar Rapids, IA	0.8933	0.9256
Linn, IA		
1400 Champaign-Urbana, IL	0.9907	0.9936
Champaign, IL		
1440 Charleston-North Charleston, SC	0.9307	0.9520
Berkeley, SC		
Charleston, SC		
Dorchester, SC		
1480 Charleston, WV	0.8753	0.9128
Kanawha, WV		
Putnam, WV		
1520 [1] Charlotte-Gastonia-Rock Hill, NC-SC	0.9766	0.9839
Cabarrus, NC		
Gaston, NC		
Lincoln, NC		

TABLE 4A.—WAGE INDEX AND CAPITAL GEOGRAPHIC ADJUSTMENT FACTOR (GAF) FOR URBAN AREAS—Continued

Urban area (Constituent counties)	Wage index	GAF
Mecklenburg, NC		
Rowan, NC		
Stanly, NC		
Union, NC		
York, SC		
1540 Charlottesville, VA	1.0092	1.0063
Albemarle, VA		
Charlottesville City, VA		
Fluvanna, VA		
Greene, VA		
1560 Chattanooga, TN-GA	0.8985	0.9293
Catoosa, GA		
Dade, GA		
Walker, GA		
Hamilton, TN		
Marion, TN		
1580 [2] Cheyenne, WY	0.9137	0.9401
Laramie, WY		
1600 [1] Chicago, IL	1.1012	1.0682
Cook, IL		
DeKalb, IL		
DuPage, IL		
Grundy, IL		
Kane, IL		
Kendall, IL		
Lake, IL		
McHenry, IL		
Will, IL		
1620 Chico-Paradise, CA	1.0147	1.0100
Butte, CA		
1640 [1] Cincinnati, OH-KY-IN	0.9452	0.9621
Dearborn, IN		
Ohio, IN		
Boone, KY		
Campbell, KY		
Gallatin, KY		
Grant, KY		
Kenton, KY		
Pendleton, KY		
Brown, OH		
Clermont, OH		
Hamilton, OH		
Warren, OH		
1660 Clarksville-Hopkinsville, TN-KY	0.8410	0.8882
Christian, KY		
Montgomery, TN		
1680 [1] Cleveland-Lorain-Elyria, OH	0.9686	0.9784
Ashtabula, OH		
Cuyahoga, OH		
Geauga, OH		
Lake, OH		
Lorain, OH		
Medina, OH		
1720 [2] Colorado Springs, CO	0.8897	0.9231
El Paso, CO		
1740 Columbia, MO	0.8745	0.9123
Boone, MO		
1760 Columbia, SC	0.8958	0.9274
Lexington, SC		
Richland, SC		
1800 Columbus, GA-AL	0.8700	0.9090
Russell, AL		
Chattahoochee, GA		
Harris, GA		
Muscogee, GA		
1840 [1] Columbus, OH	0.9649	0.9758
Delaware, OH		
Fairfield, OH		
Franklin, OH		
Licking, OH		
Madison, OH		
Pickaway, OH		
1880 Corpus Christi, TX	0.8565	0.8994
Nueces, TX		
San Patricio, TX		
1890 Corvallis, OR	1.1593	1.1065
Benton, OR		
1900 [2] Cumberland, MD-WV (MD Hospitals)	0.9175	0.9427
Allegany, MD		
Mineral, WV		
1900 Cumberland, MD-WV (WV Hospitals)	0.8224	0.8747
Allegany, MD		
Mineral, WV		
1920 [1] Dallas, TX	0.9733	0.9816
Collin, TX		
Dallas, TX		
Denton, TX		
Ellis, TX		
Henderson, TX		
Hunt, TX		
Kaufman, TX		
Rockwall, TX		
1950 Danville, VA	0.9095	0.9371
Danville City, VA		
Pittsylvania, VA		
1960 Davenport-Moline-Rock Island, IA-IL	0.8727	0.9110
Scott, IA		
Henry, IL		
Rock Island, IL		
2000 Dayton-Springfield, OH	0.9432	0.9607
Clark, OH		
Greene, OH		
Miami, OH		
Montgomery, OH		
2020 Daytona Beach, FL	0.9208	0.9451
Flagler, FL		
Volusia, FL		
2030 Decatur, AL	0.8882	0.9220
Lawrence, AL		
Morgan, AL		
2040 [2] Decatur, IL	0.8282	0.8789
Macon, IL		
2080 [1] Denver, CO	1.0776	1.0525
Adams, CO		
Arapahoe, CO		
Broomfield, CO		
Denver, CO		
Douglas, CO		
Jefferson, CO		
2120 Des Moines, IA	0.9053	0.9341
Dallas, IA		
Polk, IA		
Warren, IA		
2160 [1] Detroit, MI	1.0097	1.0066
Lapeer, MI		
Macomb, MI		
Monroe, MI		
Oakland, MI		
St. Clair, MI		
Wayne, MI		
2180 Dothan, AL	0.7931	0.8532
Dale, AL		
Houston, AL		
2190 Dover, DE	0.9870	0.9911
Kent, DE		
2200 Dubuque, IA	0.8946	0.9266
Dubuque, IA		
2240 Duluth-Superior, MN-WI	1.0133	1.0091
St. Louis, MN		
Douglas, WI		
2281 Dutchess County, NY	1.0966	1.0652
Dutchess, NY		
2290 Eau Claire, WI	0.9141	0.9403
Chippewa, WI		
Eau Claire, WI		
2320 El Paso, TX	0.9267	0.9492
El Paso, TX		
2330 Elkhart-Goshen, IN	0.9848	0.9898
Elkhart, IN		
2335 [2] Elmira, NY	0.8530	0.8968
Chemung, NY		
2340 Enid, OK	0.8616	0.9030
Garfield, OK		
2360 Erie, PA	0.8636	0.9045
Erie, PA		
2400 Eugene-Springfield, OR	1.1212	1.0815
Lane, OR		
2440 [2] Evansville-Henderson, IN-KY (IN Hospitals)	0.8770	0.9140
Posey, IN		
Vanderburgh, IN		
Warrick, IN		
Henderson, KY		
2440 Evansville-Henderson, IN-KY (KY Hospitals)	0.8442	0.8905
Posey, IN		
Vanderburgh, IN		
Warrick, IN		
Henderson, KY		
2520 Fargo-Moorhead, ND-MN	0.9650	0.9759
Clay, MN		
Cass, ND		
2560 Fayetteville, NC	0.8957	0.9273
Cumberland, NC		
2580 Fayetteville-Springdale-Rogers, AR	0.8038	0.8611

TABLE 4A.—WAGE INDEX AND CAPITAL GEOGRAPHIC ADJUSTMENT FACTOR (GAF) FOR URBAN AREAS—Continued

Urban area (Constituent counties)	Wage index	GAF
Benton, AR Washington, AR		
2620 Flagstaff, AZ-UT Coconino, AZ Kane, UT	1.1283	1.0862
2640 Flint, MI Genesee, MI	1.0929	1.0627
2650 Florence, AL Colbert, AL Lauderdale, AL	0.7824	0.8453
2655 Florence, SC Florence, SC	0.8763	0.9135
2670 Fort Collins-Loveland, CO Larimer, CO	1.0201	1.0137
2680 [1]Ft. Lauderdale, FL Broward, FL	1.0534	1.0363
2700 Fort Myers-Cape Coral, FL Lee, FL	0.9877	0.9916
2710 Fort Pierce-Port St. Lucie, FL Martin, FL St. Lucie, FL	1.0227	1.0155
2720 [2]Fort Smith, AR-OK (AR Hospitals) Crawford, AR Sebastian, AR Sequoyah, OK	0.7746	0.8395
2720 Fort Smith, AR-OK (OK Hospitals) Crawford, AR Sebastian, AR Sequoyah, OK	0.7740	0.8391
2750 Fort Walton Beach, FL Okaloosa, FL	0.8929	0.9254
2760 Fort Wayne, IN Adams, IN Allen, IN De Kalb, IN Huntington, IN Wells, IN Whitley, IN	0.9674	0.9776
2800 [1]Forth Worth-Arlington, TX Hood, TX Johnson, TX Parker, TX Tarrant, TX	0.9268	0.9493
2840 Fresno, CA Fresno, CA Madera, CA	1.0157	1.0107
2880 Gadsden, AL Etowah, AL	0.8295	0.8798
2900 [2]Gainesville, FL Alachua, FL	0.8782	0.9149
2920 Galveston-Texas City, TX Galveston, TX	0.9360	0.9557
2960 Gary, IN Lake, IN Porter, IN	0.9462	0.9628
2975 [2]Glens Falls, NY Warren, NY Washington, NY	0.8530	0.8968
2980 Goldsboro, NC Wayne, NC	0.8679	0.9075
2985 Grand Forks, ND-MN (ND Hospitals) Polk, MN Grand Forks, ND	0.9031	0.9326
2985 [2]Grand Forks, ND-MN (MN Hospitals) Polk, MN Grand Forks, ND	0.9243	0.9475
2995 Grand Junction, CO Mesa, CO	0.9940	0.9959
3000 [1]Grand Rapids-Muskegon-Holland, MI Allegan, MI Kent, MI Muskegon, MI Ottawa, MI	0.9406	0.9589
3040 Great Falls, MT Cascade, MT	0.8977	0.9288
3060 Greeley, CO Weld, CO	0.9516	0.9666
3080 Green Bay, WI Brown, WI	0.9524	0.9672
3120 [1]Greensboro-Winston-Salem-High Point, NC Alamance, NC Davidson, NC Davie, NC Forsyth, NC Guilford, NC Randolph, NC Stokes, NC Yadkin, NC	0.8533	0.8971
3150 Greenville, NC Pitt, NC	0.9621	0.9739
3160 Greenville-Spartanburg-Anderson, SC Anderson, SC Cherokee, SC Greenville, SC Pickens, SC Spartanburg, SC	0.9289	0.9507
3180 Hagerstown, MD Washington, MD	0.9233	0.9468
3200 Hamilton-Middletown, OH Butler, OH	0.9236	0.9470
3240 Harrisburg-Lebanon-Carlisle, PA Cumberland, PA Dauphin, PA Lebanon, PA Perry, PA	0.9178	0.9430
3283 \1,2\Hartford, CT Hartford, CT Litchfield, CT Middlesex, CT Tolland, CT	1.2199	1.1458
3285 [2]Hattiesburg, MS	0.7810	0.8443
Forrest, MS Lamar, MS		
3290 Hickory-Morganton-Lenoir, NC Alexander, NC Burke, NC Caldwell, NC Catawba, NC	0.9090	0.9368
3320 Honolulu, HI Honolulu, HI	1.1176	1.0791
3350 Houma, LA Lafourche, LA Terrebonne, LA	0.7763	0.8408
3360 [1]Houston, TX Chambers, TX Fort Bend, TX Harris, TX Liberty, TX Montgomery, TX Waller, TX	0.9591	0.9718
3400 Huntington-Ashland, WV-KY-OH Boyd, KY Carter, KY Greenup, KY Lawrence, OH Cabell, WV Wayne, WV	0.9620	0.9738
3440 Huntsville, AL Limestone, AL Madison, AL	0.9238	0.9472
3480 [1]Indianapolis, IN Boone, IN Hamilton, IN Hancock, IN Hendricks, IN Johnson, IN Madison, IN Marion, IN Morgan, IN Shelby, IN	0.9934	0.9955
3500 Iowa City, IA Johnson, IA	0.9605	0.9728
3520 Jackson, MI Jackson, MI	0.9043	0.9334
3560 Jackson, MS Hinds, MS Madison, MS Rankin, MS	0.8459	0.8917
3580 Jackson, TN Madison, TN Chester, TN	0.8602	0.9020
3600 [1]Jacksonville, FL Clay, FL Duval, FL Nassau, FL St. Johns, FL	0.9426	0.9603
3605 Jacksonville, NC Onslow, NC	0.8589	0.9011
3610 [2]Jamestown, NY Chautauqua, NY	0.8530	0.8968
3620 Janesville-Beloit, WI Rock, WI	0.9344	0.9546
3640 Jersey City, NJ Hudson, NJ	1.1203	1.0809

TABLE 4A.—WAGE INDEX AND CAPITAL GEOGRAPHIC ADJUSTMENT FACTOR (GAF) FOR URBAN AREAS—Continued

Urban area (Constituent counties)	Wage index	GAF
3660 Johnson City-Kingsport-Bristol, TN-VA (TN Hospitals) Carter, TN Hawkins, TN Sullivan, TN Unicoi, TN Washington, TN	0.8371	0.8854
Bristol City, VA Scott, VA Washington, VA		
3660 [2]Johnson City-Kingsport-Bristol, TN-VA (VA Hospitals) Carter, TN Hawkins, TN Sullivan, TN Unicoi, TN Washington, TN	0.8542	0.8977
Bristol City, VA Scott, VA Washington, VA		
3680 [2]Johnstown, PA Cambria, PA Somerset, PA	0.8429	0.8896
3700 [2]Jonesboro, AR Craighead, AR	0.7755	0.8402
3710 Joplin, MO Jasper, MO Newton, MO	0.8739	0.9118
3720 Kalamazoo-Battlecreek, MI Calhoun, MI Kalamazoo, MI Van Buren, MI	1.0554	1.0376
3740 Kankakee, IL Kankakee, IL	1.1074	1.0724
3760 [1]Kansas City, KS-MO Johnson, KS Leavenworth, KS Miami, KS Wyandotte, KS Cass, MO Clay, MO Clinton, MO Jackson, MO Lafayette, MO Platte, MO Ray, MO	0.9551	0.9690
3800 Kenosha, WI Kenosha, WI	0.9826	0.9881
3810 Killeen-Temple, TX Bell, TX Coryell, TX	0.9221	0.9460
3840 Knoxville, TN Anderson, TN Blount, TN Knox, TN Loudon, TN Sevier, TN Union, TN	0.8987	0.9295
3850 Kokomo, IN Howard, IN Tipton, IN	0.8963	0.9278
3870 La Crosse, WI-MN Houston, MN La Crosse, WI	0.9259	0.9486
3880 Lafayette, LA Acadia, LA Lafayette, LA St. Landry, LA St. Martin, LA	0.8271	0.8781
3920 Lafayette, IN Clinton, IN Tippecanoe, IN	0.9052	0.9341
3960 Lake Charles, LA Calcasieu, LA	0.8460	0.8918
3980 [2]Lakeland-Winter Haven, FL Polk, FL	0.8782	0.9149
4000 Lancaster, PA Lancaster, PA	0.9325	0.9533
4040 Lansing-East Lansing, MI Clinton, MI Eaton, MI Ingham, MI	0.9270	0.9494
4080 Laredo, TX Webb, TX	0.8145	0.8689
4100 Las Cruces, NM Dona Ana, NM	0.8532	0.8970
4120 [1]Las Vegas, NV-AZ Mohave, AZ Clark, NV Nye, NV	1.1457	1.0976
4150 2Lawrence, KS Douglas, KS	0.7860	0.8480
4200 Lawton, OK Comanche, OK	0.8322	0.8818
4243 Lewiston-Auburn, ME Androscoggin, ME	0.9389	0.9577
4280 Lexington, KY Bourbon, KY Clark, KY Fayette, KY Jessamine, KY Madison, KY Scott, KY Woodford, KY	0.8622	0.9035
4320 Lima, OH Allen, OH Auglaize, OH	0.9457	0.9625
4360 Lincoln, NE Lancaster, NE	1.0101	1.0069
4400 Little Rock-North Little Rock, AR Faulkner, AR Lonoke, AR Pulaski, AR Saline, AR	0.8905	0.9237
4420 Longview-Marshall, TX Gregg, TX Harrison, TX Upshur, TX	0.9141	0.9403
4480 [1]Los Angeles-Long Beach, CA Los Angeles, CA	1.1656	1.1106
4520 [1]Louisville, KY-IN Clark, IN Floyd, IN Harrison, IN Scott, IN Bullitt, KY Jefferson, KY Oldham, KY	0.9174	0.9427
4600 Lubbock, TX Lubbock, TX	0.8330	0.8824
4640 Lynchburg, VA Amherst, VA Bedford, VA Bedford City, VA Campbell, VA Lynchburg City, VA	0.9202	0.9446
4680 Macon, GA Bibb, GA Houston, GA Jones, GA Peach, GA Twiggs, GA	0.9011	0.9312
4720 Madison, WI Dane, WI	1.0235	1.0160
4800 Mansfield, OH Crawford, OH Richland, OH	0.9059	0.9346
4840 Mayaguez, PR Anasco, PR Cabo Rojo, PR Hormigueros, PR Mayaguez, PR	0.4780	0.6032
Sabana Grande, PR San German, PR		
4880 McAllen-Edinburg-Mission, TX Hidalgo, TX	0.9084	0.9363
4890 Medford-Ashland, OR Jackson, OR	1.0844	1.0571
4900 Melbourne-Titusville-Palm Bay, FL Brevard, Fl	0.9837	0.9886
4920 [1]Memphis, TN-AR-MS Crittenden, AR DeSoto, MS Fayette, TN Shelby, TN Tipton, TN	0.9325	0.9533
4940 [2]Merced, CA Merced, CA	0.9907	0.9936
5000 [1]Miami, FL Dade, FL	0.9858	0.9923
5015 [1]Middlesex-Somerset-Hunterdon, NJ Hunterdon, NJ Middlesex, NJ Somerset, NJ	1.1437	1.0963
5080 [1]Milwaukee-Waukesha, WI Milwaukee, WI Ozaukee, WI Washington, WI	0.9888	0.9923

TABLE 4A.—WAGE INDEX AND CAPITAL GEOGRAPHIC ADJUSTMENT FACTOR (GAF) FOR URBAN AREAS—Continued

Urban area (Constituent counties)	Wage index	GAF
Waukesha, WI		
5120 [1] Minneapolis-St. Paul, MN-WI	1.1064	1.0717
Anoka, MN		
Carver, MN		
Chisago, MN		
Dakota, MN		
Hennepin, MN		
Isanti, MN		
Ramsey, MN		
Scott, MN		
Sherburne, MN		
Washington, MN		
Wright, MN		
Pierce, WI		
St. Croix, WI		
5140 Missoula, MT	0.8943	0.9264
Missoula, MT		
5160 Mobile, AL	0.7948	0.8545
Baldwin, AL		
Mobile, AL		
5170 Modesto, CA	1.1344	1.0902
Stanislaus, CA		
5190 [1] Monmouth-Ocean, NJ	1.1094	1.0737
Monmouth, NJ		
Ocean, NJ		
5200 Monroe, LA	0.7978	0.8567
Ouachita, LA		
5240 Montgomery, AL	0.7856	0.8477
Autauga, AL		
Elmore, AL		
Montgomery, AL		
5280 [2] Muncie, IN	0.8770	0.9140
Delaware, IN		
5330 Myrtle Beach, SC	0.8950	0.9268
Horry, SC		
5345 Naples, FL	0.9866	0.9908
Collier, FL		
5360 [1] Nashville, TN	0.9836	0.9887
Cheatham, TN		
Davidson, TN		
Dickson, TN		
Robertson, TN		
Rutherford TN		
Sumner, TN		
Williamson, TN		
Wilson, TN		
5380 [1] Nassau-Suffolk, NY	1.3011	1.1975
Nassau, NY		
Suffolk, NY		
5483 [1] New Haven-Bridgeport-Stamford-Waterbury-	1.2525	1.1667
Danbury, CT		
Fairfield, CT		
New Haven, CT		
5523 [2] New London-Norwich, CT	1.2199	1.1458
New London, CT		
5560 [1] New Orleans, LA	0.9167	0.9422
Jefferson, LA		
Orleans, LA		
Plaquemines, LA		
St. Bernard, LA		
St. Charles, LA		
St. James, LA		
St. John The Baptist, LA		
St. Tammany, LA		
5600 [1] New York, NY	1.3867	1.2509
Bronx, NY		
Kings, NY		
New York, NY		
Putnam, NY		
Queens, NY		
Richmond, NY		
Rockland, NY		
Westchester, NY		
5640 [1] Newark, NJ	1.1417	1.0950
Essex, NJ		
Morris, NJ		
Sussex, NJ		
Union, NJ		
Warren, NJ		
5660 Newburgh, NY-PA	1.1377	1.0924
Orange, NY		
Pike, PA		
5720 [1] Norfolk-Virginia Beach-Newport News, VA-NC	0.8659	0.9061
Currituck, NC		
Chesapeake City, VA		
Gloucester, VA		
Hampton City, VA		
Isle of Wight, VA		
James City, VA		
Mathews, VA		
Newport News City, VA		
Norfolk City, VA		
Poquoson City, VA		
Portsmouth City, VA		
Suffolk City, VA		
Virginia Beach City VA		
Williamsburg City, VA		
York, VA		
5775 [1] Oakland, CA	1.5204	1.3323
Alameda, CA		
Contra Costa, CA		
5790 Ocala, FL	0.9788	0.9854
Marion, FL		
5800 Odessa-Midland, TX	0.9447	0.9618
Ector, TX		
Midland, TX		
5880 [1] Oklahoma City, OK	0.9027	0.9323
Canadian, OK		
Cleveland, OK		
Logan, OK		
McClain, OK		
Oklahoma, OK		
Pottawatomie, OK		
5910 Olympia, WA	1.1030	1.0694
Thurston, WA		
5920 Omaha, NE-IA	0.9744	0.9824
Pottawattamie, IA		
Cass, NE		
Douglas, NE		
Sarpy, NE		
Washington, NE		
5945 [1] Orange County, CA	1.1235	1.0830
Orange, CA		
5960 [1] Orlando, FL	0.9612	0.9733
Lake, FL		
Orange, FL		
Osceola, FL		
Seminole, FL		
5990 Owensboro, KY	0.8429	0.8896
Daviess, KY		
6015 [2] Panama City, FL	0.8782	0.9149
Bay, FL		
6020 Parkersburg-Marietta, WV-OH (WV Hospitals)	0.8093	0.8651
Washington, OH		
Wood, WV		
6020 [2] Parkersburg-Marietta, WV-OH (OH Hospitals)	0.8756	0.9130
Washington, OH		
Wood, WV		
6080 [2] Pensacola, FL	0.8782	0.9149
Escambia, FL		
Santa Rosa, FL		
6120 Peoria-Pekin, IL	0.8811	0.9170
Peoria, IL		
Tazewell, IL		
Woodford, IL		
6160 [1] Philadelphia, PA-NJ	1.0947	1.0639
Burlington, NJ		
Camden, NJ		
Gloucester, NJ		
Salem, NJ		
Bucks, PA		
Chester, PA		
Delaware, PA		
Montgomery, PA		
Philadelphia, PA		
6200 [1] Phoenix-Mesa, AZ	1.0213	1.0145
Maricopa, AZ		
Pinal, AZ		
6240 Pine Bluff, AR	0.7753	0.8401
Jefferson, AR		
6280 [1] Pittsburgh, PA	0.8788	0.9153
Allegheny, PA		
Beaver, PA		
Butler, PA		
Fayette, PA		
Washington, PA		
Westmoreland, PA		
6323 [2] Pittsfield, MA	1.1234	1.0829
Berkshire, MA		
6340 Pocatello, ID	0.9103	0.9377
Bannock, ID		
6360 Ponce, PR	0.4762	0.6017
Guayanilla, PR		
Juana Diaz, PR		
Penuelas, PR		

TABLE 4A.—WAGE INDEX AND CAPITAL GEOGRAPHIC ADJUSTMENT FACTOR (GAF) FOR URBAN AREAS—Continued

Urban area (Constituent counties)	Wage index	GAF
Ponce, PR		
Villalba, PR		
Yauco, PR		
6403 Portland, ME	0.9985	0.9990
Cumberland, ME		
Sagadahoc, ME		
York, ME		
6440 [1] Portland-Vancouver, OR-WA	1.1193	1.0802
Clackamas, OR		
Columbia, OR		
Multnomah, OR		
Washington, OR		
Yamhill, OR		
Clark, WA		
6483 [1] Providence-Warwick-Pawtucket, RI	1.1025	1.0691
Bristol, RI		
Kent, RI		
Newport, RI		
Providence, RI		
Washington, RI		
6520 Provo-Orem, UT	1.0043	1.0029
Utah, UT		
6560 [2] Pueblo, CO	0.8897	0.9231
Pueblo, CO		
6580 Punta Gorda, FL	0.9518	0.9667
Charlotte, FL		
6600 [2] Racine, WI	0.9130	0.9396
Racine, WI		
6640 [1] Raleigh-Durham-Chapel Hill, NC	1.0084	1.0057
Chatham, NC		
Durham, NC		
Franklin, NC		
Johnston, NC		
Orange, NC		
Wake, NC		
6660 Rapid City, SD	0.8865	0.9206
Pennington, SD		
6680 Reading, PA	0.9042	0.9334
Berks, PA		
6690 Redding, CA	1.1357	1.0910
Shasta, CA		
6720 Reno, NV	1.0758	1.0513
Washoe, NV		
6740 Richland-Kennewick-Pasco, WA	1.0639	1.0433
Benton, WA		
Franklin, WA		
6760 Richmond-Petersburg, VA	0.9402	0.9587
Charles City County, VA		
Chesterfield, VA		
Colonial Heights City, VA		
Dinwiddie, VA		
Goochland, VA		
Hanover, VA		
Henrico, VA		
Hopewell City, VA		
New Kent, VA		
Petersburg City, VA		
Powhatan, VA		
Prince George, VA		
Richmond City, VA		
6780 [1] Riverside-San Bernardino, CA	1.1318	1.0885
Riverside, CA		
San Bernardino, CA		
6800 Roanoke, VA	0.8759	0.9133
Botetourt, VA		
Roanoke, VA		
Roanoke City, VA		
Salem City, VA		
6820 Rochester, MN	1.1802	1.1201
Olmsted, MN		
6840 [1] Rochester, NY	0.9556	0.9694
Genesee, NY		
Livingston, NY		
Monroe, NY		
Ontario, NY		
Orleans, NY		
Wayne, NY		
6880 Rockford, IL	0.9730	0.9814
Boone, IL		
Ogle, IL		
Winnebago, IL		
6895 Rocky Mount, NC	0.9058	0.9345
Edgecombe, NC		
Nash, NC		
6920 [1] Sacramento, CA	1.1911	1.1272
El Dorado, CA		
Placer, CA		
Sacramento, CA		
6960 Saginaw-Bay City-Midland, MI	0.9620	0.9738
Bay, MI		
Midland, MI		
Saginaw, MI		
6980 St. Cloud, MN	0.9723	0.9809
Benton, MN		
Stearns, MN		
7000 [2] St. Joseph, MO	0.7793	0.8430
Andrew, MO		
Buchanan, MO		
7040 [1] St. Louis, MO-IL	0.9049	0.9339
Clinton, IL		
Jersey, IL		
Madison, IL		
Monroe, IL		
St. Clair, IL		
Franklin, MO		
Jefferson, MO		
Lincoln, MO		
St. Charles, MO		
St. Louis, MO		
St. Louis City, MO		
Warren, MO		
7080 Salem, OR	1.0594	1.0403
Marion, OR		
Polk, OR		
7120 Salinas, CA	1.4435	1.2858
Monterey, CA		
7160 [1] Salt Lake City-Ogden, UT	0.9899	0.9931
Davis, UT		
Salt Lake, UT		
Weber, UT		
7200 San Angelo, TX	0.8268	0.8793
Tom Green, TX		
7240 [1] San Antonio, TX	0.8876	0.9216
Bexar, TX		
Comal, TX		
Guadalupe, TX		
Wilson, TX		
7320 [1] San Diego, CA	1.1206	1.0811
San Diego, CA		
7360 [1] San Francisco, CA	1.4349	1.2805
Marin, CA		
San Francisco, CA		
San Mateo, CA		
7400 [1] San Jose, CA	1.4642	1.2984
Santa Clara, CA		
7440 [1] San Juan-Bayamon, PR	0.4904	0.6139
Aguas Buenas, PR		
Barceloneta, PR		
Bayamon, PR		
Canovanas, PR		
Carolina, PR		
Catano, PR		
Ceiba, PR		
Comerio, PR		
Corozal, PR		
Dorado, PR		
Fajardo, PR		
Florida, PR		
Guaynabo, PR		
Humacao, PR		
Juncos, PR		
Los Piedras, PR		
Loiza, PR		
Luguillo, PR		
Manati, PR		
Morovis, PR		
Naguabo, PR		
Naranjito, PR		
Rio Grande, PR		
San Juan, PR		
Toa Alta, PR		
Toa Baja, PR		
Trujillo Alto, PR		
Vega Alta, PR		
Vega Baja, PR		
Yabucoa, PR		
7460 San Luis Obispo-Atascadero-Paso Robles, CA	1.1484	1.0994
San Luis Obispo, CA		
7480 Santa Barbara-Santa Maria-Lompoc, CA	1.0511	1.0347
Santa Barbara, CA		
7485 Santa Cruz-Watsonville, CA	1.3012	1.1976
Santa Cruz, CA		
7490 Santa Fe, NM	1.0639	1.0433
Los Alamos, NM		
Santa Fe, NM		
7500 Santa Rosa, CA	1.2836	1.1865
Sonoma, CA		
7510 Sarasota-Bradenton, FL	0.9834	0.9886

TABLE 4A.—WAGE INDEX AND CAPITAL GEOGRAPHIC ADJUSTMENT FACTOR (GAF) FOR URBAN AREAS—Continued

Urban area (Constituent counties)	Wage index	GAF
Manatee, FL		
Sarasota, FL		
7520 Savannah, GA	0.9556	0.9694
Bryan, GA		
Chatham, GA		
Effingham, GA		
7560 [2]Scranton--Wilkes-Barre--Hazleton, PA	0.8429	0.8896
Columbia, PA		
Lackawanna, PA		
Luzerne, PA		
Wyoming, PA		
7600 [1]Seattle-Bellevue-Everett, WA	1.1557	1.1042
Island, WA		
King, WA		
Snohomish, WA		
7610 [2]Sharon, PA	0.8429	0.8896
Mercer, PA		
7620 [2]Sheboygan, WI	0.9130	0.9396
Sheboygan, WI		
7640 Sherman-Denison, TX	0.9508	0.9660
Grayson, TX		
7680 Shreveport-Bossier City, LA	0.9127	0.9394
Bossier, LA		
Caddo, LA		
Webster, LA		
7720 Sioux City, IA-NE	0.9052	0.9341
Woodbury, IA		
Dakota, NE		
7760 Sioux Falls, SD	0.9371	0.9565
Lincoln, SD		
Minnehaha, SD		
7800 South Bend, IN	0.9887	0.9922
St. Joseph, IN		
7840 Spokane, WA	1.0954	1.0644
Spokane, WA		
7880 Springfield, IL	0.9004	0.9307
Menard, IL		
Sangamon, IL		
7920 Springfield, MO	0.8470	0.8925
Christian, MO		
Greene, MO		
Webster, MO		
8003 [2]Springfield, MA	1.1234	1.0829
Hampden, MA		
Hampshire, MA		
8050 State College, PA	0.8798	0.9160
Centre, PA		
8080 Steubenville-Weirton, OH-WV	0.8454	0.8914
Jefferson, OH		
Brooke, WV		
Hancock, WV		
8120 Stockton-Lodi, CA	1.1168	1.0786
San Joaquin, CA		
8140 [2]Sumter, SC	0.8489	0.8939
Sumter, SC		
8160 Syracuse, NY	0.9482	0.9642
Cayuga, NY		
Madison, NY		
Onondaga, NY		
Oswego, NY		
8200 [2]Tacoma, WA	1.0242	1.0165
Pierce, WA		
8240 [2]Tallahassee, FL	0.8782	0.9149
Gadsden, FL		
Leon, FL		
8280 [1]Tampa-St. Petersburg-Clearwater, FL	0.9111	0.9382
Hernando, FL		
Hillsborough, FL		
Pasco, FL		
Pinellas, FL		
8320 [2]Terre Haute, IN	0.8770	0.9140
Clay, IN		
Vermillion, IN		
Vigo, IN		
8360 Texarkana,AR-Texarkana, TX	0.8198	0.8728
Miller, AR		
Bowie, TX		
8400 Toledo, OH	0.9551	0.9690
Fulton, OH		
Lucas, OH		
Wood, OH		
8440 Topeka, KS	0.9021	0.9319
Shawnee, KS		
8480 Trenton, NJ	1.0556	1.0377
Mercer, NJ		
8520 Tucson, AZ	0.8958	0.9274
Pima, AZ		
8560 Tulsa, OK	0.9093	0.9370
Creek, OK		
Osage, OK		
Rogers, OK		
Tulsa, OK		
Wagoner, OK		
8600 Tuscaloosa, AL	0.8239	0.8758
Tuscaloosa, AL		
8640 Tyler, TX	0.8789	0.9154
Smith, TX		
8680 [2]Utica-Rome, NY	0.8530	0.8966
Herkimer, NY		
Oneida, NY		
8720 Vallejo-Fairfield-Napa, CA	1.3500	1.2282
Napa, CA		
Solano, CA		
8735 Ventura, CA	1.0472	1.0321
Ventura, CA		
8750 Victoria, TX	0.8105	0.8660
Victoria, TX		
8760 Vineland-Millville-Bridgeton, NJ	1.0475	1.0323
Cumberland, NJ		
8780 [2]Visalia-Tulare-Porterville, CA	0.9907	0.9936
Tulare, CA		
8800 Waco, TX	0.8449	0.8910
McLennan, TX		
8840 [1]Washington, DC-MD-VA-WV	1.0707	1.0479
District of Columbia, DC		
Calvert, MD		
Charles, MD		
Frederick, MD		
Montgomery, MD		
Prince Georges, MD		
Alexandria City, VA		
Arlington, VA		
Clarke, VA		
Culpeper, VA		
Fairfax, VA		
Fairfax City, VA		
Falls Church City, VA		
Fauquier, VA		
Fredericksburg City, VA		
King George, VA		
Loudoun, VA		
Manassas City, VA		
Manassas Park City, VA		
Prince William, VA		
Spotsylvania, VA		
Stafford, VA		
Warren, VA		
Berkeley, WV		
Jefferson, WV		
8920 Waterloo-Cedar Falls, IA	0.8422	0.8890
Black Hawk, IA		
8940 Wausau, WI	0.9806	0.9867
Marathon, WI		
8960 [1]West Palm Beach-Boca Raton, FL	0.9784	0.9852
Palm Beach, FL		
9000 [2]Wheeling, WV-OH (WV Hospitals)	0.8008	0.8589
Belmont, OH		
Marshall, WV		
Ohio, WV		
9000 [2]Wheeling, WV-OH (OH Hospitals)	0.8756	0.9130
Belmont, OH		
Marshall, WV		
Ohio, WV		
9040 Wichita, KS	0.9300	0.9515
Butler, KS		
Harvey, KS		
Sedgwick, KS		
9080 Wichita Falls, TX	0.8407	0.8880
Archer, TX		
Wichita, TX		
9140 [2]Williamsport, PA	0.8429	0.8896
Lycoming, PA		
9160 Wilmington-Newark, DE-MD	1.0955	1.0645
New Castle, DE		
Cecil, MD		
9200 Wilmington, NC	0.9604	0.9727
New Hanover, NC		
Brunswick, NC		
9260 Yakima, WA	1.0320	1.0218
Yakima, WA		
9270 [2]Yolo, CA	0.9907	0.9936
Yolo, CA		
9280 York, PA	0.9154	0.9413
York, PA		

TABLE 4A.—WAGE INDEX AND CAPITAL GEOGRAPHIC ADJUSTMENT FACTOR (GAF) FOR URBAN AREAS—Continued

Urban area (Constituent counties)	Wage index	GAF
9320 Youngstown-Warren, OH	0.9273	0.9496
Columbiana, OH		
Mahoning, OH		
Trumbull, OH		
9340 Yuba City, CA	1.0264	1.0180
Sutter, CA		
Yuba, CA		
9360 Yuma, AZ	0.8954	0.9271
Yuma, AZ		

[1] Large urban area.
[2] Hospitals geographically located in the area are assigned the statewide rural wage index for FY 2004.

TABLE 4B.—WAGE INDEX AND CAPITAL GEOGRAPHIC ADJUSTMENT FACTOR (GAF) FOR RURAL AREAS

Nonurban area	Wage index	GAF
Alabama	0.7517	0.8225
Alaska	1.1958	1.1303
Arizona	0.8906	0.9237
Arkansas	0.7746	0.8395
California	0.9907	0.9936
Colorado	0.8897	0.9231
Connecticut	1.2199	1.1458
Delaware	0.9669	0.9772
Florida	0.8782	0.9149
Georgia	0.8365	0.8849
Hawaii	0.9896	0.9929
Idaho	0.8907	0.9238
Illinois	0.8282	0.8789
Indiana	0.8770	0.9140
Iowa	0.8278	0.8786
Kansas	0.7860	0.8480
Kentucky	0.7924	0.8527
Louisiana	0.7565	0.8261
Maine	0.8995	0.9300
Maryland	0.9175	0.9427
Massachusetts	1.1234	1.0829
Michigan	0.8807	0.9167
Minnesota	0.9243	0.9475
Mississippi	0.7810	0.8443
Missouri	0.7793	0.8430
Montana	0.8530	0.8968
Nebraska	0.8326	0.8821
Nevada	0.9758	0.9834
New Hampshire	0.9944	0.9962
[1] New Jersey		
New Mexico	0.8314	0.8812
New York	0.8530	0.8968
North Carolina	0.8355	0.8842
North Dakota	0.7536	0.8239
Ohio	0.8756	0.9130
Oklahoma	0.7577	0.8270
Oregon	0.9939	0.9958
Pennsylvania	0.8429	0.8896
Puerto Rico	0.4037	0.5373
[1] Rhode Island		
South Carolina	0.8489	0.8939
South Dakota	0.8093	0.8651
Tennessee	0.7945	0.8542
Texas	0.7673	0.8341

TABLE 4B.—WAGE INDEX AND CAPITAL GEOGRAPHIC ADJUSTMENT FACTOR (GAF) FOR RURAL AREAS—Continued

Nonurban area	Wage index	GAF
Utah	0.9034	0.9328
Vermont	0.9401	0.9586
Virginia	0.8542	0.8977
Washington	1.0242	1.0165
West Virginia	0.8008	0.8589
Wisconsin	0.9130	0.9396
Wyoming	0.9137	0.9401

[1] All counties within the State are classified as urban.

TABLE 4C.—WAGE INDEX AND CAPITAL GEOGRAPHIC ADJUSTMENT FACTOR (GAF) FOR HOSPITALS THAT ARE RECLASSIFIED

Area	Wage index	GAF
Akron, OH	0.9445	0.9617
Albany, GA	1.0643	1.0436
Albuquerque, NM	0.9431	0.9607
Alexandria, LA	0.8087	0.8647
Altoona, PA	0.8888	0.9223
Amarillo, TX	0.8814	0.9172
Anchorage, AK	1.2433	1.1608
Ann Arbor, MI	1.0859	1.0581
Anniston, AL	0.8025	0.8601
Asheville, NC	0.9503	0.9657
Athens, GA	0.9437	0.9611
Atlanta, GA	0.9912	0.9940
Atlantic-Cape May, NJ	1.0597	1.0405
Augusta-Aiken, GA-SC	0.9491	0.9649
Austin-San Marcos, TX	0.9551	0.9690
Bangor, ME	0.9750	0.9828
Barnstable-Yarmouth, MA	1.2703	1.1780
Baton Rouge, LA	0.8271	0.8781
Bellingham, WA	1.1834	1.1222
Benton Harbor, MI	0.8949	0.9268
Bergen-Passaic, NJ	1.1655	1.1106
Billings, MT	0.8889	0.9225
Biloxi-Gulfport-Pascagoula, MS	0.8449	0.8910
Binghamton, NY	0.8433	0.8898
Birmingham, AL	0.9251	0.9481
Bismarck, ND	0.8101	0.8657
Bloomington-Normal, IL	0.8954	0.9271
Boise City, ID	0.9295	0.9512
Boston-Worcester-Lawrence-Lowell-Brockton, MA-NH	1.1269	1.0853
Burlington, VT	0.9442	0.9614
Caguas, PR	0.4229	0.5547
Casper, WY	0.9239	0.9472
Champaign-Urbana, IL	0.9385	0.9575
Charleston-North Charleston, SC	0.9307	0.9520
Charleston, WV (WV Hospitals)	0.8510	0.8954
Charleston, WV (OH Hospitals)	0.8756	0.9130
Charlotte-Gastonia-Rock Hill, NC-SC	0.9636	0.9749
Charlottesville, VA	0.9946	0.9963
Chattanooga, TN-GA	0.8985	0.9293
Chicago, IL	1.0863	1.0583

TABLE 4C.—WAGE INDEX AND CAPITAL GEOGRAPHIC ADJUSTMENT FACTOR (GAF) FOR HOSPITALS THAT ARE RECLASSIFIED—Continued

Area	Wage index	GAF
Cincinnati, OH-KY-IN	0.9452	0.9621
Clarksville-Hopkinsville, TN-KY	0.8410	0.8882
Cleveland-Lorain-Elyria, OH	0.9686	0.9784
Columbia, MO	0.8607	0.9024
Columbia, SC	0.8958	0.9274
Columbus, GA-AL	0.8505	0.8950
Columbus, OH	0.9649	0.9758
Corpus Christi, TX	0.8565	0.8994
Corvallis, OR	1.1316	1.0884
Dallas, TX	0.9733	0.9816
Davenport-Moline-Rock Island, IA-IL	0.8727	0.9110
Dayton-Springfield, OH	0.9432	0.9607
Decatur, AL	0.8633	0.9042
Denver, CO	1.0581	1.0394
Des Moines, IA	0.9053	0.9341
Detroit, MI	1.0097	1.0066
Dothan, AL	0.7931	0.8532
Dover, DE	0.9669	0.9772
Duluth-Superior, MN-WI	1.0133	1.0091
Dutchess County, NY	1.0769	1.0520
Eau Claire, WI	0.9141	0.9403
Elkhart-Goshen, IN	0.9613	0.9733
Erie, PA	0.8530	0.8968
Eugene-Springfield, OR	1.0889	1.0601
Fargo-Moorhead, ND-MN	0.9444	0.9616
Fayetteville, NC	0.8957	0.9273
Flagstaff, AZ-UT	1.1086	1.0732
Flint, MI	1.0929	1.0627
Florence, AL	0.7824	0.8453
Florence, SC	0.8763	0.9135
Fort Collins-Loveland, CO	1.0201	1.0137
Ft. Lauderdale, FL	1.0534	1.0363
Fort Pierce-Port St. Lucie, FL	1.0227	1.0155
Fort Smith, AR-OK	0.7577	0.8270
Fort Walton Beach, FL	0.8700	0.9090
Forth Worth-Arlington, TX	0.9268	0.9493
Gadsden, AL	0.8295	0.8798
Grand Forks, ND-MN (ND Hospitals)	0.9031	0.9326
Grand Forks, ND-MN (MN Hospitals)	0.9243	0.9475
Grand Junction, CO	0.9940	0.9959
Grand Rapids-Muskegon-Holland, MI	0.9406	0.9589
Great Falls, MT	0.8977	0.9288
Greeley, CO	0.9516	0.9666
Green Bay, WI	0.9201	0.9446
Greensboro-Winston-Salem-High Point, NC (NC Hospitals)	0.8533	0.8971
Greensboro-Winston-Salem-High Point, NC (VA Hospitals)	0.8542	0.8977
Greenville, NC	0.9621	0.9739
Hamilton-Middletown, OH	0.9236	0.9470
Harrisburg-Lebanon-Carlisle, PA	0.9178	0.9430

TABLE 4C.—WAGE INDEX AND CAPITAL GEOGRAPHIC ADJUSTMENT FACTOR (GAF) FOR HOSPITALS THAT ARE RECLASSIFIED—Continued

Area	Wage index	GAF
Hartford, CT (MA Hospitals)	1.1234	1.0829
Hartford, CT (NY Hospitals)	1.1211	1.0814
Hattiesburg, MS	0.7810	0.8443
Hickory-Morganton-Lenoir, NC	0.8987	0.9295
Honolulu, HI	1.1176	1.0791
Houston, TX	0.9591	0.9718
Huntington-Ashland, WV-KY-OH	0.9080	0.9360
Huntsville, AL	0.8954	0.9271
Indianapolis, IN	0.9934	0.9955
Iowa City, IA	0.9460	0.9627
Jackson, MS	0.8459	0.8917
Jackson, TN	0.8602	0.9020
Jacksonville, FL	0.9426	0.9603
Johnson City-Kingsport-Bristol, TN-VA (VA Hospitals)	0.8542	0.8977
Johnson City-Kingsport-Bristol, TN-VA (KY Hospitals)	0.8371	0.8854
Jonesboro, AR (AR Hospitals)	0.7755	0.8402
Jonesboro, AR (MO Hospitals)	0.7793	0.8430
Joplin, MO	0.8621	0.9034
Kalamazoo-Battlecreek, MI	1.0554	1.0376
Kansas City, KS-MO	0.9551	0.9690
Knoxville, TN	0.8987	0.9295
Kokomo, IN	0.8963	0.9278
Lafayette, LA	0.8271	0.8781
Lakeland-Winter Haven, FL	0.8782	0.9149
Las Vegas, NV-AZ	1.1341	1.0900
Lawton, OK	0.8194	0.8725
Lexington, KY	0.8424	0.8892
Lima, OH	0.9457	0.9625
Lincoln, NE	0.9613	0.9733
Little Rock-North Little Rock, AR	0.8905	0.9237
Longview-Marshall, TX	0.8969	0.9282
Los Angeles-Long Beach, CA	1.1656	1.1106
Louisville, KY-IN	0.9056	0.9344
Lubbock, TX	0.8330	0.8824
Lynchburg, VA	0.9004	0.9307
Macon, GA	0.9011	0.9312
Madison, WI	1.0108	1.0074
Medford-Ashland, OR	1.0494	1.0336
Melbourne-Titusville-Palm Bay, FL	0.9837	0.9886
Memphis, TN-AR-MS	0.9010	0.9311
Miami, FL	0.9888	0.9923
Milwaukee-Waukesha, WI	0.9760	0.9835
Minneapolis-St. Paul, MN-WI	1.1064	1.0717
Missoula, MT	0.8943	0.9264
Mobile, AL	0.7948	0.8545
Modesto, CA	1.1183	1.0796
Monmouth-Ocean, NJ	1.1094	1.0737
Monroe, LA	0.7978	0.8567
Montgomery, AL	0.7856	0.8477
Nashville, TN	0.9582	0.9712
New Haven-Bridgeport-Stamford-Waterbury-Danbury, CT	1.2525	1.1667
New Orleans, LA	0.9167	0.9422
New York, NY	1.3867	1.2509
Newark, NJ	1.1417	1.0950
Newburgh, NY-PA	1.1377	1.0924
Norfolk-Virginia Beach-Newport News, VA-NC	0.8659	0.9061
Oakland, CA	1.5204	1.3323
Ocala, FL	0.9646	0.9756
Odessa-Midland, TX	0.9156	0.9414
Oklahoma City, OK	0.9027	0.9323
Olympia, WA	1.1030	1.0694
Omaha, NE-IA	0.9744	0.9824
Orange County, CA	1.1235	1.0830
Orlando, FL	0.9612	0.9733
Peoria-Pekiri, IL	0.8811	0.9170
Philadelphia, PA-NJ	1.0947	1.0639
Phoenix-Mesa, AZ	1.0213	1.0145
Pine Bluff, AR	0.7810	0.8443
Pittsburgh, PA	0.8788	0.9153
Pittsfield, MA	0.9861	0.9905
Pocatello, ID (ID Hospitals)	0.9103	0.9377
Pocatello, ID (WY Hospitals)	0.9137	0.9401
Portland, ME	0.9784	0.9852
Portland-Vancouver, OR-WA	1.1193	1.0802
Provo-Orem, UT	0.9912	0.9940
Raleigh-Durham-Chapel Hill, NC	0.9756	0.9832
Rapid City, SD	0.8865	0.9208
Reading, PA	0.8910	0.9240
Redding, CA	1.1357	1.0910
Reno, NV	1.0758	1.0513
Richland-Kennewick-Pasco, WA	1.0639	1.0433
Richmond-Petersburg, VA	0.9402	0.9587
Roanoke, VA	0.8759	0.9133
Rochester, MN	1.1802	1.1201
Rockford, IL	0.9500	0.9655
Sacramento, CA	1.1911	1.1272
Saginaw-Bay City-Midland, MI	0.9470	0.9634
St. Cloud, MN	0.9723	0.9809
St. Joseph, MO	0.9694	0.9789
St. Louis, MO-IL	0.9049	0.9339
Salinas, CA	1.4435	1.2858
Salt Lake City-Ogden, UT	0.9899	0.9931
San Antonio, TX	0.8876	0.9216
Santa Fe, NM	0.9543	0.9685
Santa Rosa, CA	1.2836	1.1865
Sarasota-Bradenton, FL	0.9834	0.9886
Savannah, GA	0.9556	0.9694
Seattle-Bellevue-Everett, WA	1.1557	1.1042
Sherman-Denison, TX	0.9084	0.9363
Shreveport-Bossier City, LA	0.9127	0.9394
Sioux City, IA-NE	0.8806	0.9166
Sioux Falls, SD	0.9246	0.9477
South Bend, IN	0.9780	0.9849
Spokane, WA	1.0770	1.0521
Springfield, IL	0.9004	0.9307
Springfield, MO	0.8269	0.8780
Stockton-Lodi, CA	1.1168	1.0786
Syracuse, NY	0.9381	0.9572
Tampa-St. Petersburg-Clearwater, FL	0.9111	0.9382
Texarkana,AR-Texarkana, TX	0.8018	0.8596
Toledo, OH	0.9551	0.9690
Topeka, KS	0.8791	0.9155
Tucson, AZ	0.8958	0.9274
Tulsa, OK	0.8876	0.9216
Tuscaloosa, AL	0.8134	0.8681
Tyler, TX	0.8789	0.9154
Vallejo-Fairfield-Napa, CA	1.3500	1.2282
Victoria, TX	0.8105	0.8660
Waco, TX	0.8449	0.8910
Washington, DC-MD-VA-WV	1.0707	1.0479
Waterloo-Cedar Falls, IA	0.8422	0.8890
Wausau, WI	0.9806	0.9867
West Palm Beach-Boca Raton, FL	0.9784	0.9852
Wichita, KS	0.9053	0.9341
Wichita Falls, TX	0.8407	0.8880
Wilmington-Newark, DE-MD	1.0782	1.0529
Wilmington, NC	0.9402	0.9587
York, PA	0.9154	0.9413
Youngstown-Warren, OH	0.9273	0.9496
Rural Alabama	0.7517	0.8225
Rural Florida	0.8782	0.9149
Rural Illinois	0.8282	0.8789
Rural Kentucky	0.7924	0.8527
Rural Louisiana	0.7565	0.8261
Rural Michigan	0.8807	0.9167
Rural Minnesota	0.9243	0.9475
Rural Mississippi	0.7810	0.8443
Rural Missouri	0.7793	0.8430
Rural Nebraska	0.8326	0.8821
Rural New Hampshire	0.9944	0.9962
Rural Texas	0.7673	0.8341
Rural Washington	1.0242	1.0165
Rural Wyoming	0.9020	0.9318

TABLE 4F.—PUERTO RICO WAGE INDEX AND CAPITAL GEOGRAPHIC ADJUSTMENT FACTOR (GAF)

Area	Wage index	GAF	Wage index—reclassified hospitals	GAF—reclassified hospitals
Aguadilla, PR	0.9218	0.9458		
Arecibo, PR	0.8782	0.9149		
Caguas, PR	0.8992	0.9298	0.8992	0.9298
Mayaguez, PR	1.0163	1.0111		
Ponce, PR	1.0124	1.0085		
San Juan-Bayamon, PR	1.0426	1.0290		
Rural Puerto Rico	0.8583	0.9007		

TABLE 4G.—PRE-RECLASSIFIED WAGE INDEX FOR URBAN AREAS

Urban area (constituent counties)	Wage index
0040 Abilene, TX	0.7714
Taylor, TX	
0060 Aguadilla, PR	0.4323
Aguada, PR	
Aguadilla, PR	
Moca, PR	
0080 Akron, OH	0.9175
Portage, OH	
Summit, OH	
0120 Albany, GA	1.0809
Dougherty, GA	
Lee, GA	
0160 Albany-Schenectady-Troy, NY	0.8669
Albany, NY	
Montgomery, NY	
Rensselaer, NY	
Saratoga, NY	
Schenectady, NY	
Schoharie, NY	
0200 Albuquerque, NM	0.9405
Bernalillo, NM	
Sandoval, NM	
Valencia, NM	
0220 Alexandria, LA	0.8048
Rapides, LA	
0240 Allentown-Bethlehem-Easton, PA	0.9550
Carbon, PA	
Lehigh, PA	
Northampton, PA	
0280 Altoona, PA	0.8841
Blair, PA	
0320 Amarillo, TX	0.8944
Potter, TX	
Randall, TX	
0380 Anchorage, AK	1.2264
Anchorage, AK	
0440 Ann Arbor, MI	1.1039
Lenawee, MI	
Livingston, MI	
Washtenaw, MI	
0450 Anniston, AL	0.8118
Calhoun, AL	
0460 Appleton-Oshkosh-Neenah, WI	0.9204
Calumet, WI	
Outagamie, WI	
Winnebago, WI	
0470 Arecibo, PR	0.4119
Arecibo, PR	
Camuy, PR	
Hatillo, PR	
0480 Asheville, NC	0.9671
Buncombe, NC	
Madison, NC	
0500 Athens, GA	0.9638
Clarke, GA	
Madison, GA	
Oconee, GA	
0520 Atlanta, GA	1.0000
Barrow, GA	
Bartow, GA	
Carroll, GA	
Cherokee, GA	
Clayton, GA	
Cobb, GA	
Coweta, GA	
DeKalb, GA	
Douglas, GA	
Fayette, GA	
Forsyth, GA	
Fulton, GA	
Gwinnett, GA	
Henry, GA	
Newton, GA	
Paulding, GA	
Pickens, GA	
Rockdale, GA	
Spalding, GA	
Walton, GA	
0560 Atlantic-Cape May, NJ	1.0833
Atlantic, NJ	
Cape May, NJ	
0580 Auburn-Opelika, AL	0.8517
Lee, AL	
0600 Augusta-Aiken, GA-SC	0.9698
Columbia, GA	
McDuffie, GA	
Richmond, GA	
Aiken, SC	
Edgefield, SC	
0640 Austin-San Marcos, TX	0.9525
Bastrop, TX	
Caldwell, TX	
Hays, TX	
Travis, TX	
Williamson, TX	
0680 Bakersfield, CA	0.9956
Kern, CA	
0720 Baltimore, MD	0.9924
Anne Arundel, MD	
Baltimore, MD	
Baltimore City, MD	
Carroll, MD	
Harford, MD	
Howard, MD	
Queen Anne's, MD	
0733 Bangor, ME	
Penobscot, ME	
0743 Barnstable-Yarmouth, MA	1.2859
Barnstable, MA	
0760 Baton Rouge, LA	0.8254
Ascension, LA	
East Baton Rouge, LA	
Livingston, LA	
West Baton Rouge, LA	
0840 Beaumont-Port Arthur, TX	0.8480
Hardin, TX	
Jefferson, TX	
Orange, TX	
0860 Bellingham, WA	1.1802
Whatcom, WA	
0870 Benton Harbor, MI	0.8862
Berrien, MI	
0875 Bergen-Passaic, NJ	1.1623
Bergen, NJ	
Passaic, NJ	
0880 Billings, MT	0.8865
Yellowstone, MT	
0920 Biloxi-Gulfport-Pascagoula, MS	0.9065
Hancock, MS	
Harrison, MS	
Jackson, MS	
0960 Binghamton, NY	0.8546
Broome, NY	
Tioga, NY	
1000 Birmingham, AL	0.9226
Blount, AL	
Jefferson, AL	
St. Clair, AL	
Shelby, AL	
1010 Bismarck, ND	0.7997
Burleigh, ND	
Morton, ND	
1020 Bloomington, IN	0.8944
Monroe, IN	
1040 Bloomington-Normal, IL	0.8867
McLean, IL	
1080 Boise City, ID	0.9246
Ada, ID	
Canyon, ID	
1123 Boston-Worcester-Lawrence-Lowell-Brockton, MA-NH (NH Hospitals)	1.1239
Bristol, MA	
Essex, MA	
Middlesex, MA	
Norfolk, MA	
Plymouth, MA	
Suffolk, MA	
Worcester, MA	
Hillsborough, NH	
0925 Merrimack, NH	

TABLE 4G.—PRE-RECLASSIFIED WAGE INDEX FOR URBAN AREAS—Continued

Urban area (constituent counties)	Wage index
Rockingham, NH	
Strafford, NH	
1125 Boulder-Longmont, CO	1.0092
Boulder, CO	
1145 Brazoria, TX	0.8170
Brazoria, TX	
1150 Bremerton, WA	1.0573
Kitsap, WA	
1240 Brownsville-Harlingen-San Benito, TX	1.0204
Cameron, TX	
1260 Bryan-College Station, TX	0.9008
Brazos, TX	
1280 Buffalo-Niagara Falls, NY	0.9574
Erie, NY	
Niagara, NY	
1303 Burlington, VT	0.9742
Chittenden, VT	
Franklin, VT	
Grand Isle, VT	
1310 Caguas, PR	0.4175
Caguas, PR	
Cayey, PR	
Cidra, PR	
Gurabo, PR	
San Lorenzo, PR	
1320 Canton-Massillon, OH	0.9103
Carroll, OH	
Stark, OH	
1350 Casper, WY	0.9187
Natrona, WY	
1360 Cedar Rapids, IA	0.8909
Linn, IA	
1400 Champaign-Urbana, IL	0.9881
Champaign, IL	
1440 Charleston-North Charleston, SC	0.9282
Berkeley, SC	
Charleston, SC	
Dorchester, SC	
1480 Charleston, WV	0.8730
Kanawha, WV	
Putnam, WV	
1520 Charlotte-Gastonia-Rock Hill, NC-SC	0.9739
Cabarrus, NC	
Gaston, NC	
Lincoln, NC	
Mecklenburg, NC	
Rowan, NC	
Stanly, NC	
Union, NC	
York, SC	
1540 Charlottesville, VA	1.0065
Albemarle, VA	
Charlottesville City, VA	
Fluvanna, VA	
Greene, VA	
1560 Chattanooga, TN-GA	0.8961
Catoosa, GA	
Dade, GA	
Walker, GA	
Hamilton, TN	
Marion, TN	
1580 Cheyenne, WY	0.9187
Laramie, WY	
1600 Chicago, IL	1.0982
Cook, IL	
DeKalb, IL	
DuPage, IL	
Grundy, IL	
Kane, IL	
Kendall, IL	
Lake, IL	
McHenry, IL	
Will, IL	
1620 Chico-Paradise, CA	1.0206
Butte, CA	
1640 Cincinnati, OH-KY-IN	0.9425
Dearborn, IN	
Ohio, IN	
Boone, KY	
Campbell, KY	
Gallatin, KY	
Grant, KY	
Kenton, KY	
Pendleton, KY	
Brown, OH	
Clermont, OH	
Hamilton, OH	
Warren, OH	
1660 Clarksville-Hopkinsville, TN-KY	0.8292
Christian, KY	
Montgomery, TN	
1680 Cleveland-Lorain-Elyria, OH	0.9691
Ashtabula, OH	
Cuyahoga, OH	
Geauga, OH	
Lake, OH	
Lorain, OH	
Medina, OH	
1720 Colorado Springs, CO	0.9063
El Paso, CO	
1740 Columbia, MO	0.8721
Boone, MO	
1760 Columbia, SC	0.8934
Lexington, SC	
Richland, SC	
1800 Columbus, GA-AL	0.8677
Russell, AL	
Chattahoochee, GA	
Harris, GA	
Muscogee, GA	
1840 Columbus, OH	0.9623
Delaware, OH	
Fairfield, OH	
Franklin, OH	
Licking, OH	
Madison, OH	
Pickaway, OH	
1880 Corpus Christi, TX	0.8542
Nueces, TX	
San Patricio, TX	
1890 Corvallis, OR	1.1562
Benton, OR	
1900 Cumberland, MD-WV (WV Hospital)	0.8202
Allegany, MD	
Mineral, WV	
1920 Dallas, TX	0.9703
Collin, TX	
Dallas, TX	
Denton, TX	
Ellis, TX	
Henderson, TX	
Hunt, TX	
Kaufman, TX	
Rockwall, TX	
1950 Danville, VA	0.9071
Danville City, VA	
Pittsylvania, VA	
1960 Davenport-Moline-Rock Island, IA-IL	0.8728
Scott, IA	
Henry, IL	
Rock Island, IL	
2000 Dayton-Springfield, OH	0.9391
Clark, OH	
Greene, OH	
Miami, OH	
Montgomery, OH	
2020 Daytona Beach, FL	0.9183
Flagler, FL	
Volusia, FL	
2030 Decatur, AL	0.8858
Lawrence, AL	
Morgan, AL	
2040 Decatur, IL	0.8321
Macon, IL	
2080 Denver, CO	1.0747
Adams, CO	
Arapahoe, CO	
Broomfield, CO	
Denver, CO	
Douglas, CO	
Jefferson, CO	
2120 Des Moines, IA	0.9024
Dallas, IA	
Polk, IA	
Warren, IA	
2160 Detroit, MI	1.0070
Lapeer, MI	
Macomb, MI	
Monroe, MI	
Oakland, MI	
St. Clair, MI	
Wayne, MI	
2180 Dothan, AL	0.7894
Dale, AL	
Houston, AL	
2190 Dover, DE	0.9844
Kent, DE	
2200 Dubuque, IA	0.8922
Dubuque, IA	
2240 Duluth-Superior, MN-WI	1.0145
St. Louis, MN	
Douglas, WI	
2281 Dutchess County, NY	1.0937
Dutchess, NY	
2290 Eau Claire, WI	0.9204
Chippewa, WI	
Eau Claire, WI	
2320 El Paso, TX	0.9242
El Paso, TX	
2330 Elkhart-Goshen, IN	0.9822
Elkhart, IN	
2335 Elmira, NY	0.8546
Chemung, NY	
2340 Enid, OK	0.8593
Garfield, OK	
2360 Erie, PA	0.8613
Erie, PA	
2400 Eugene-Springfield, OR	1.1501
Lane, OR	
2440 Evansville-Henderson, IN-KY (IN Hospitals)	0.8782
Posey, IN	
Vanderburgh, IN	
Warrick, IN	

TABLE 4G.—PRE-RECLASSIFIED WAGE INDEX FOR URBAN AREAS—Continued

Urban area (constituent counties)	Wage index
Henderson, KY	
2520 Fargo-Moorhead, ND-MN	0.9624
Clay, MN	
Cass, ND	
2560 Fayetteville, NC	0.8933
Cumberland, NC	
2580 Fayetteville-Springdale-Rogers, AR	0.8016
Benton, AR	
Washington, AR	
2620 Flagstaff, AZ-UT	1.1378
Coconino, AZ	
Kane, UT	
2640 Flint, MI	1.0900
Genesee, MI	
2650 Florence, AL	0.7751
Colbert, AL	
Lauderdale, AL	
2655 Florence, SC	0.8739
Florence, SC	
2670 Fort Collins-Loveland, CO	1.0173
Larimer, CO	
2680 Ft. Lauderdale, FL	1.0168
Broward, FL	
2700 Fort Myers-Cape Coral, FL	0.9851
Lee, FL	
2710 Fort Pierce-Port St. Lucie, FL	1.0028
Martin, FL	
St. Lucie, FL	
2720 Fort Smith, AR-OK	0.7741
Crawford, AR	
Sebastian, AR	
Sequoyah, OK	
2750 Fort Walton Beach, FL	0.8905
Okaloosa, FL	
2760 Fort Wayne, IN	0.9649
Adams, IN	
Allen, IN	
De Kalb, IN	
Huntington, IN	
Wells, IN	
Whitley, IN	
2800 Forth Worth-Arlington, TX	0.9243
Hood, TX	
Johnson, TX	
Parker, TX	
Tarrant, TX	
2840 Fresno, CA	1.0130
Fresno, CA	
Madera, CA	
2880 Gadsden, AL	0.8254
Etowah, AL	
2900 Gainesville, FL	0.8846
Alachua, FL	
2920 Galveston-Texas City, TX	0.9335
Galveston, TX	
2960 Gary, IN	0.9437
Lake, IN	
Porter, IN	
2975 Glens Falls, NY	0.8546
Warren, NY	
Washington, NY	
2980 Goldsboro, NC	0.8656
Wayne, NC	
2985 Grand Forks, ND-MN	0.8670
Polk, MN	
Grand Forks, ND	
2995 Grand Junction, CO	0.9661
Mesa, CO	
3000 Grand Rapids-Muskegon-Holland, MI	0.9372
Allegan, MI	
Kent, MI	
Muskegon, MI	
Ottawa, MI	
3040 Great Falls, MT	0.8843
Cascade, MT	
3060 Greeley, CO	0.9409
Weld, CO	
3080 Green Bay, WI	0.9498
Brown, WI	
3120 Greensboro-Winston-Salem-High Point, NC	0.8506
Alamance, NC	
Davidson, NC	
Davie, NC	
Forsyth, NC	
Guilford, NC	
Randolph, NC	
Stokes, NC	
Yadkin, NC	
3150 Greenville, NC	0.9595
Pitt, NC	
3160 Greenville-Spartanburg-Anderson, SC	0.9264
Anderson, SC	
Cherokee, SC	
Greenville, SC	
Pickens, SC	
Spartanburg, SC	
3180 Hagerstown, MD	0.9208
Washington, MD	
3200 Hamilton-Middletown, OH	0.9211
Butler, OH	
3240 Harrisburg-Lebanon-Carlisle, PA	0.9153
Cumberland, PA	
Dauphin, PA	
Lebanon, PA	
Perry, PA	
3283 Hartford, CT	1.2166
Hartford, CT	
Litchfield, CT	
Middlesex, CT	
Tolland, CT	
3285 Hattiesburg, MS	0.7812
Forrest, MS	
Lamar, MS	
3290 Hickory-Morganton-Lenoir, NC	0.9065
Alexander, NC	
Burke, NC	
Caldwell, NC	
Catawba, NC	
3320 Honolulu, HI	1.1142
Honolulu, HI	
3350 Houma, LA	0.7743
Lafourche, LA	
Terrebonne, LA	
3360 Houston, TX	0.9572
Chambers, TX	
Fort Bend, TX	
Harris, TX	
Liberty, TX	
Montgomery, TX	
Waller, TX	
3400 Huntington-Ashland, WV-KY-OH	0.9594
Boyd, KY	
Carter, KY	
Greenup, KY	
Lawrence, OH	
Cabell, WV	
Wayne, WV	
3440 Huntsville, AL	0.9213
Limestone, AL	
Madison, AL	
3480 Indianapolis, IN	0.9921
Boone, IN	
Hamilton, IN	
Hancock, IN	
Hendricks, IN	
Johnson, IN	
Madison, IN	
Marion, IN	
Morgan, IN	
Shelby, IN	
3500 Iowa City, IA	0.9579
Johnson, IA	
3520 Jackson, MI	0.9019
Jackson, MI	
3560 Jackson, MS	0.8388
Hinds, MS	
Madison, MS	
Rankin, MS	
3580 Jackson, TN	0.8579
Madison, TN	
Chester, TN	
3600 Jacksonville, FL	0.9342
Clay, FL	
Duval, FL	
Nassau, FL	
St. Johns, FL	
3605 Jacksonville, NC	0.5568
Onslow, NC	
3610 Jamestown, NY	0.8546
Chautauqua, NY	
3620 Janesville-Beloit, WI	0.9318
Rock, WI	
3640 Jersey City, NJ	1.1173
Hudson, NJ	
3660 Johnson City-Kingsport-Bristol, TN-VA	0.8348
Carter, TN	
Hawkins, TN	
Sullivan, TN	
Unicoi, TN	
Washington, TN	
Bristol City, VA	
Scott, VA	
Washington, VA	
3680 Johnstown, PA	0.8415
Cambria, PA	
Somerset, PA	
3700 Jonesboro, AR	0.7741
Craighead, AR	
3710 Joplin, MO	0.8715
Jasper, MO	
Newton, MO	
3720 Kalamazoo-Battlecreek, MI	1.0526
Calhoun, MI	
Kalamazoo, MI	
Van Buren, MI	
3740 Kankakee, IL	1.1044
Kankakee, IL	
3760 Kansas City, KS-MO	0.9525
Johnson, KS	
Leavenworth, KS	
Miami, KS	

TABLE 4G.—PRE-RECLASSIFIED WAGE INDEX FOR URBAN AREAS—Continued

Urban area (constituent counties)	Wage index
Wyandotte, KS	
Cass, MO	
Clay, MO	
Clinton, MO	
Jackson, MO	
Lafayette, MO	
Platte, MO	
Ray, MO	
3800 Kenosha, WI	0.9799
Kenosha, WI	
3810 Killeen-Temple, TX	0.9197
Bell, TX	
Coryell, TX	
3840 Knoxville, TN	0.8963
Anderson, TN	
Blount, TN	
Knox, TN	
Loudon, TN	
Sevier, TN	
Union, TN	
3850 Kokomo, IN	0.9080
Howard, IN	
Tipton, IN	
3870 La Crosse, WI-MN	0.9234
Houston, MN	
La Crosse, WI	
3880 Lafayette, LA	0.8250
Acadia, LA	
Lafayette, LA	
St. Landry, LA	
St. Martin, LA	
3920 Lafayette, IN	0.9027
Clinton, IN	
Tippecanoe, IN	
3960 Lake Charles, LA	0.8453
Calcasieu, LA	
3980 Lakeland-Winter Haven, FL	0.8846
Polk, FL	
4000 Lancaster, PA	0.9300
Lancaster, PA	
4040 Lansing-East Lansing, MI	0.9245
Clinton, MI	
Eaton, MI	
Ingham, MI	
4080 Laredo, TX	0.8123
Webb, TX	
4100 Las Cruces, NM	0.8509
Dona Ana, NM	
4120 Las Vegas, NV-AZ	1.1426
Mohave, AZ	
Clark, NV	
Nye, NV	
4150 Lawrence, KS	0.8712
Douglas, KS	
4200 Lawton, OK	0.8300
Comanche, OK	
4243 Lewiston-Auburn, ME	0.9364
Androscoggin, ME	
4280 Lexington, KY	0.8599
Bourbon, KY	
Clark, KY	
Fayette, KY	
Jessamine, KY	
Madison, KY	
Scott, KY	
Woodford, KY	
4320 Lima, OH	0.9432
Allen, OH	
Auglaize, OH	
4360 Lincoln, NE	1.0074
Lancaster, NE	
4400 Little Rock-North Little Rock, AR	0.8882
Faulkner, AR	
Lonoke, AR	
Pulaski, AR	
Saline, AR	
4420 Longview-Marshall, TX	0.9116
Gregg, TX	
Harrison, TX	
Upshur, TX	
4480 Los Angeles-Long Beach, CA	1.1607
Los Angeles, CA	
4520 Louisville, KY-IN	0.9149
Clark, IN	
Floyd, IN	
Harrison, IN	
Scott, IN	
Bullitt, KY	
Jefferson, KY	
Oldham, KY	
4600 Lubbock, TX	0.8308
Lubbock, TX	
4640 Lynchburg, VA	0.9177
Amherst, VA	
Bedford, VA	
Bedford City, VA	
Campbell, VA	
Lynchburg City, VA	
4680 Macon, GA	0.9005
Bibb, GA	
Houston, GA	
Jones, GA	
Peach, GA	
Twiggs, GA	
4720 Madison, WI	1.0208
Dane, WI	
4800 Mansfield, OH	0.9034
Crawford, OH	
Richland, OH	
4840 Mayaguez, PR	0.4767
Anasco, PR	
Cabo Rojo, PR	
Hormigueros, PR	
Mayaguez, PR	
Sabana Grande, PR	
San German, PR	
4880 McAllen-Edinburg-Mission, TX	0.9060
Hidalgo, TX	
4890 Medford-Ashland, OR	1.0815
Jackson, OR	
4900 Melbourne-Titusville-Palm Bay, FL	0.9775
Brevard, Fl	
4920 Memphis, TN-AR-MS	0.9300
Crittenden, AR	
DeSoto, MS	
Fayette, TN	
Shelby, TN	
Tipton, TN	
4940 Merced, CA	0.9956
Merced, CA	
5000 Miami, FL	0.9862
Dade, FL	
5015 Middlesex-Somerset-Hunterdon, NJ	1.1407
Hunterdon, NJ	
Middlesex, NJ	
Somerset, NJ	
5080 Milwaukee-Waukesha, WI	0.9862
Milwaukee, WI	
Ozaukee, WI	
Washington, WI	
Waukesha, WI	
5120 Minneapolis-St. Paul, MN-WI	1.1034
Anoka, MN	
Carver, MN	
Chisago, MN	
Dakota, MN	
Hennepin, MN	
Isanti, MN	
Ramsey, MN	
Scott, MN	
Sherburne, MN	
Washington, MN	
Wright, MN	
Pierce, WI	
St. Croix, WI	
5140 Missoula, MT	0.8806
Missoula, MT	
5160 Mobile, AL	0.7927
Baldwin, AL	
Mobile, AL	
5170 Modesto, CA	1.1313
Stanislaus, CA	
5190 Monmouth-Ocean, NJ	1.0934
Monmouth, NJ	
Ocean, NJ	
5200 Monroe, LA	0.7956
Ouachita, LA	
5240 Montgomery, AL	0.7835
Autauga, AL	
Elmore, AL	
Montgomery, AL	
5280 Muncie, IN	0.8782
Delaware, IN	
5330 Myrtle Beach, SC	0.8926
Horry, SC	
5345 Naples, FL	0.9840
Collier, FL	
5360 Nashville, TN	0.9809
Cheatham, TN	
Davidson, TN	
Dickson, TN	
Robertson, TN	
Rutherford TN	
Sumner, TN	
Williamson, TN	
Wilson, TN	
5380 Nassau-Suffolk, NY	1.2976
Nassau, NY	
Suffolk, NY	
5483 New Haven-Bridgeport-Stamford-Waterbury-Danbury, CT	1.2452
Fairfield, CT	
New Haven, CT	
5523 New London-Norwich, CT	1.2166
New London, CT	
5560 New Orleans, LA	0.9148
Jefferson, LA	
Orleans, LA	
Plaquemines, LA	
St. Bernard, LA	
St. Charles, LA	
St. James, LA	
St. John The Baptist, LA	

TABLE 4G.—PRE-RECLASSIFIED WAGE INDEX FOR URBAN AREAS—Continued

Urban area (constituent counties)	Wage index
St. Tammany, LA	
5600 New York, NY	1.3830
Bronx, NY	
Kings, NY	
New York, NY	
Putnam, NY	
Queens, NY	
Richmond, NY	
Rockland, NY	
Westchester, NY	
5640 Newark, NJ	1.1386
Essex, NJ	
Morris, NJ	
Sussex, NJ	
Union, NJ	
Warren, NJ	
5660 Newburgh, NY-PA	1.1283
Orange, NY	
Pike, PA	
5720 Norfolk-Virginia Beach-Newport News, VA-NC	0.8636
Currituck, NC	
Chesapeake City, VA	
Gloucester, VA	
Hampton City, VA	
Isle of Wight, VA	
James City, VA	
Mathews, VA	
Newport News City, VA	
Norfolk City, VA	
Poquoson City, VA	
Portsmouth City, VA	
Suffolk City, VA	
Virginia Beach City VA	
Williamsburg City, VA	
York, VA	
5775 Oakland, CA	1.5004
Alameda, CA	
Contra Costa, CA	
5790 Ocala, FL	0.9761
Marion, FL	
5800 Odessa-Midland, TX	0.9422
Ector, TX	
Midland, TX	
5880 Oklahoma City, OK	0.9010
Canadian, OK	
Cleveland, OK	
Logan, OK	
McClain, OK	
Oklahoma, OK	
Pottawatomie, OK	
5910 Olympia, WA	1.1001
Thurston, WA	
5920 Omaha, NE-IA	0.9718
Pottawattamie, IA	
Cass, NE	
Douglas, NE	
Sarpy, NE	
Washington, NE	
5945 Orange County, CA	1.1205
Orange, CA	
5960 Orlando, FL	0.9586
Lake, FL	
Orange, FL	
Osceola, FL	
Seminole, FL	
5990 Owensboro, KY	0.8407
Daviess, KY	
6015 Panama City, FL	0.8846
Bay, FL	
6020 Parkersburg-Marietta, WV-OH	0.8071
Washington, OH	
Wood, WV	
6080 Pensacola, FL	0.8846
Escambia, FL	
Santa Rosa, FL	
6120 Peoria-Pekin, IL	0.8769
Peoria, IL	
Tazewell, IL	
Woodford, IL	
6160 Philadelphia, PA-NJ	1.0917
Burlington, NJ	
Camden, NJ	
Gloucester, NJ	
Salem, NJ	
Bucks, PA	
Chester, PA	
Delaware, PA	
Montgomery, PA	
Philadelphia, PA	
6200 Phoenix-Mesa, AZ	1.0185
Maricopa, AZ	
Pinal, AZ	
6240 Pine Bluff, AR	0.7741
Jefferson, AR	
6280 Pittsburgh, PA	0.8764
Allegheny, PA	
Beaver, PA	
Butler, PA	
Fayette, PA	
Washington, PA	
Westmoreland, PA	
6323 Pittsfield, MA	1.0832
Berkshire, MA	
6340 Pocatello, ID	0.9078
Bannock, ID	
6360 Ponce, PR	0.4749
Guayanilla, PR	
Juana Diaz, PR	
Penuelas, PR	
Ponce, PR	
Villalba, PR	
Yauco, PR	
6403 Portland, ME	0.9958
Cumberland, ME	
Sagadahoc, ME	
York, ME	
6440 Portland-Vancouver, OR-WA	1.1162
Clackamas, OR	
Columbia, OR	
Multnomah, OR	
Washington, OR	
Yamhill, OR	
Clark, WA	
6483 Providence-Warwick-Pawtucket, RI	1.0995
Bristol, RI	
Kent, RI	
Newport, RI	
Providence, RI	
Washington, RI	
6520 Provo-Orem, UT	1.0016
Utah, UT	
6560 Pueblo, CO	0.9063
Pueblo, CO	
6580 Punta Gorda, FL	0.9493
Charlotte, FL	
6600 Racine, WI	0.9204
Racine, WI	
6640 Raleigh-Durham-Chapel Hill, NC	1.0073
Chatham, NC	
Durham, NC	
Franklin, NC	
Johnston, NC	
Orange, NC	
Wake, NC	
6660 Rapid City, SD	0.8841
Pennington, SD	
6680 Reading, PA	0.9018
Berks, PA	
6690 Redding, CA	1.1389
Shasta, CA	
6720 Reno, NV	1.0714
Washoe, NV	
6740 Richland-Kennewick-Pasco, WA	1.0599
Benton, WA	
Franklin, WA	
6760 Richmond-Petersburg, VA	0.9377
Charles City County, VA	
Chesterfield, VA	
Colonial Heights City, VA	
Dinwiddie, VA	
Goochland, VA	
Hanover, VA	
Henrico, VA	
Hopewell City, VA	
New Kent, VA	
Petersburg City, VA	
Powhatan, VA	
Prince George, VA	
Richmond City, VA	
6780 Riverside-San Bernardino, CA	1.1293
Riverside, CA	
San Bernardino, CA	
6800 Roanoke, VA	0.8735
Botetourt, VA	
Roanoke, VA	
Roanoke City, VA	
Salem City, VA	
6820 Rochester, MN	1.1770
Olmsted, MN	
6840 Rochester, NY	0.9530
Genesee, NY	
Livingston, NY	
Monroe, NY	
Ontario, NY	
Orleans, NY	
Wayne, NY	
6880 Rockford, IL	0.9704
Boone, IL	
Ogle, IL	
Winnebago, IL	
6895 Rocky Mount, NC	0.9034
Edgecombe, NC	
Nash, NC	
6920 Sacramento, CA	1.1879
El Dorado, CA	
Placer, CA	
Sacramento, CA	
6960 Saginaw-Bay City-Midland, MI	0.9594
Bay, MI	
Midland, MI	
Saginaw, MI	
6980 St. Cloud, MN	0.9508

TABLE 4G.—PRE-RECLASSIFIED WAGE INDEX FOR URBAN AREAS—Continued

Urban area (constituent counties)	Wage index
Benton, MN	
Stearns, MN	
7000 St. Joseph, MO	0.9796
Andrew, MO	
Buchanan, MO	
7040 St. Louis, MO-IL	0.9025
Clinton, IL	
Jersey, IL	
Madison, IL	
Monroe, IL	
St. Clair, IL	
Franklin, MO	
Jefferson, MO	
Lincoln, MO	
St. Charles, MO	
St. Louis, MO	
St. Louis City, MO	
Warren, MO	
7080 Salem, OR	1.0524
Marion, OR	
Polk, OR	
7120 Salinas, CA	1.4396
Monterey, CA	
7160 Salt Lake City-Ogden, UT	0.9872
Davis, UT	
Salt Lake, UT	
Weber, UT	
7200 San Angelo, TX	0.8266
Tom Green, TX	
7240 San Antonio, TX	0.8852
Bexar, TX	
Comal, TX	
Guadalupe, TX	
Wilson, TX	
7320 San Diego, CA	1.1176
San Diego, CA	
7360 San Francisco, CA	1.4310
Marin, CA	
San Francisco, CA	
San Mateo, CA	
7400 San Jose, CA	1.4603
Santa Clara, CA	
7440 San Juan-Bayamon, PR	0.4890
Aguas Buenas, PR	
Barceloneta, PR	
Bayamon, PR	
Canovanas, PR	
Caroiina, PR	
Catano, PR	
Ceiba, PR	
Comerio, PR	
Corozal, PR	
Dorado, PR	
Fajardo, PR	
Florida, PR	
Guaynabo, PR	
Humacao, PR	
Juncos, PR	
Los Piedras, PR	
Loiza, PR	
Luguillo, PR	
Manati, PR	
Morovis, PR	
Naguabo, PR	
Naranjito, PR	
Rio Grande, PR	
San Juan, PR	
Toa Alta, PR	
Toa Baja, PR	
Trujillo Alto, PR	
Vega Alta, PR	
Vega Baja, PR	
Yabucoa, PR	
7460 San Luis Obispo-Atascadero-Paso Robles, CA	1.1454
San Luis Obispo, CA	
7480 Santa Barbara-Santa Maria-Lompoc, CA	1.0483
Santa Barbara, CA	
7485 Santa Cruz-Watsonville, CA	1.2977
Santa Cruz, CA	
7490 Santa Fe, NM	1.0611
Los Alamos, NM	
Santa Fe, NM	
7500 Santa Rosa, CA	1.2801
Sonoma, CA	
7510 Sarasota-Bradenton, FL	0.9793
Manatee, FL	
Sarasota, FL	
7520 Savannah, GA	0.9530
Bryan, GA	
Chatham, GA	
Effingham, GA	
7560 Scranton—Wilkes-Barre—Hazleton, PA	0.8415
Columbia, PA	
Lackawanna, PA	
Luzerne, PA	
Wyoming, PA	
7600 Seattle-Bellevue-Everett, WA	1.1526
Island, WA	
King, WA	
Snohomish, WA	
7610 Sharon, PA	0.8415
Mercer, PA	
7620 Sheboygan, WI	0.9204
Sheboygan, WI	
7640 Sherman-Denison, TX	0.9482
Grayson, TX	
7680 Shreveport-Bossier City, LA	0.9119
Bossier, LA	
Caddo, LA	
Webster, LA	
7720 Sioux City, IA-NE	0.9028
Woodbury, IA	
Dakota, NE	
7760 Sioux Falls, SD	0.9345
Lincoln, SD	
Minnehaha, SD	
7800 South Bend, IN	0.9860
St. Joseph, IN	
7840 Spokane, WA	1.0940
Spokane, WA	
7880 Springfield, IL	0.8980
Menard, IL	
Sangamon, IL	
7920 Springfield, MO	0.8447
Christian, MO	
Greene, MO	
Webster, MO	
8003 Springfield, MA	1.0832
Hampden, MA	
Hampshire, MA	
8050 State College, PA	0.8775
Centre, PA	
8080 Steubenville-Weirton, OH-WV (WV Hospitals)	0.8431
Jefferson, OH	
Brooke, WV	
Hancock, WV	
8120 Stockton-Lodi, CA	1.0549
San Joaquin, CA	
8140 Sumter, SC	0.8478
Sumter, SC	
8160 Syracuse, NY	0.9457
Cayuga, NY	
Madison, NY	
Onondaga, NY	
Oswego, NY	
8200 Tacoma, WA	1.0526
Pierce, WA	
8240 Tallahassee, FL	0.8846
Gadsden, FL	
Leon, FL	
8280 Tampa-St. Petersburg-Clearwater, FL	0.9087
Hernando, FL	
Hillsborough, FL	
Pasco, FL	
Pinellas, FL	
8320 Terre Haute, IN	0.8782
Clay, IN	
Vermillion, IN	
Vigo, IN	
8360 Texarkana,AR-Texarkana, TX	0.8176
Miller, AR	
Bowie, TX	
8400 Toledo, OH	0.9525
Fulton, OH	
Lucas, OH	
Wood, OH	
8440 Topeka, KS	0.8997
Shawnee, KS	
8480 Trenton, NJ	1.0528
Mercer, NJ	
8520 Tucson, AZ	0.9017
Pima, AZ	
8560 Tulsa, OK	0.9113
Creek, OK	
Osage, OK	
Rogers, OK	
Tulsa, OK	
Wagoner, OK	
8600 Tuscaloosa, AL	0.8217
Tuscaloosa, AL	
8640 Tyler, TX	0.8766
Smith, TX	
8680 Utica-Rome, NY	0.8546
Herkimer, NY	
Oneida, NY	
8720 Vallejo-Fairfield-Napa, CA	1.3410
Napa, CA	
Solano, CA	
8735 Ventura, CA	1.0444
Ventura, CA	
8750 Victoria, TX	0.8084
Victoria, TX	
8760 Vineland-Millville-Bridgeton, NJ	1.0447
Cumberland, NJ	
8780 Visalia-Tulare-Porterville, CA	0.9956
Tulare, CA	
8800 Waco, TX	0.8427
McLennan, TX	
8840 Washington, DC-MD-VA-WV	1.0678
District of Columbia, DC	

TABLE 4G.—PRE-RECLASSIFIED WAGE INDEX FOR URBAN AREAS—Continued

Urban area (constituent counties)	Wage index
Calvert, MD	
Charles, MD	
Frederick, MD	
Montgomery, MD	
Prince Georges, MD	
Alexandria City, VA	
Arlington, VA	
Clarke, VA	
Culpeper, VA	
Fairfax, VA	
Fairfax City, VA	
Falls Church City, VA	
Fauquier, VA	
Fredericksburg City, VA	
King George, VA	
Loudoun, VA	
Manassas City, VA	
Manassas Park City, VA	
Prince William, VA	
Spotsylvania, VA	
Stafford, VA	
Warren, VA	
Berkeley, WV	
Jefferson, WV	
8920 Waterloo-Cedar Falls, IA	0.8431
Black Hawk, IA	
8940 Wausau, WI	0.9731
Marathon, WI	
8960 West Palm Beach-Boca Raton, FL	0.9758
Palm Beach, FL	
9000 Wheeling, WV-OH	0.8027
Belmont, OH	
Marshall, WV	
Ohio, WV	
9040 Wichita, KS	0.9275
Butler, KS	
Harvey, KS	
Sedgwick, KS	
9080 Wichita Falls, TX	0.8385
Archer, TX	
Wichita, TX	
9140 Williamsport, PA	0.8415
Lycoming, PA	
9160 Wilmington-Newark, DE-MD	1.0925
New Castle, DE	
Cecil, MD	
9200 Wilmington, NC	0.9579
New Hanover, NC	
Brunswick, NC	
9260 Yakima, WA	1.0526
Yakima, WA	
9270 Yolo, CA	0.9956
Yolo, CA	
9280 York, PA	0.9098
York, PA	
9320 Youngstown-Warren, OH	0.9248
Columbiana, OH	
Mahoning, OH	
Trumbull, OH	
9340 Yuba City, CA	1.0236
Sutter, CA	
Yuba, CA	
9360 Yuma, AZ	0.9017
Yuma, AZ	

TABLE 4H.—PRE-RECLASSIFIED WAGE INDEX FOR RURAL AREAS

Nonurban area	Wage index
Alabama	0.7470
Alaska	1.1958
Arizona	0.8906
Arkansas	0.7746
California	0.9907
Colorado	0.8897
Connecticut	1.2199
Delaware	0.9280
Florida	0.8782
Georgia	0.8365
Hawaii	0.9896
Idaho	0.8907
Illinois	0.8282
Indiana	0.8770
Iowa	0.8278
Kansas	0.7860
Kentucky	0.7922
Louisiana	0.7478
Maine	0.8995
Maryland	0.9175
Massachusetts	1.1234
Michigan	0.8807
Minnesota	0.9223
Mississippi	0.7795
Missouri	0.7793
Montana	0.8530
Nebraska	0.8326
Nevada	0.9758
New Hampshire	0.9944
[1] New Jersey	
New Mexico	0.8314
New York	0.8530
North Carolina	0.8355
North Dakota	0.7536
Ohio	0.8756
Oklahoma	0.7577
Oregon	0.9939
Pennsylvania	0.8429
Puerto Rico	0.4037
[1] Rhode Island	
South Carolina	0.8489
South Dakota	0.8093
Tennessee	0.7945
Texas	0.7673
Utah	0.9034
Vermont	0.9278
Virginia	0.8542
Washington	1.0242
West Virginia	0.8008
Wisconsin	0.9130
Wyoming	0.9137

[1] All counties within the State are classified as urban.

TABLE 5.—LIST OF DIAGNOSIS-RELATED GROUPS (DRGS), RELATIVE WEIGHTING FACTORS, AND GEOGRAPHIC AND ARITHMETIC MEAN LENGTH OF STAY (LOS)

DRG	MDC	Type	DRG title	Relative weights	Geometric mean LOS	Arithmetic mean LOS
1	1	SURG	CRANIOTOMY AGE >17 W CC	3.5287	7.9	10.6
2	1	SURG	CRANIOTOMY AGE >17 W/O CC	2.0797	4.1	5.3
3	1	SURG	*CRANIOTOMY AGE 0–17	1.9545	12.7	12.7
4	1	SURG	*NO LONGER VALID	0.0000	0.0	0.0
5	1	SURG	*NO LONGER VALID	0.0000	0.0	0.0
6	1	SURG	CARPAL TUNNEL RELEASE	0.7987	2.1	3.0
7	1	SURG	PERIPH & CRANIAL NERVE & OTHER NERV SYST PROC W CC	2.6451	6.7	9.9
8	1	SURG	PERIPH & CRANIAL NERVE & OTHER NERV SYST PROC W/O CC	1.5337	1.9	2.8
9	1	MED	SPINAL DISORDERS & INJURIES	1.3323	4.7	6.4
10	1	MED	NERVOUS SYSTEM NEOPLASMS W CC	1.2348	4.8	6.5
11	1	MED	NERVOUS SYSTEM NEOPLASMS W/O CC	0.8498	3.0	4.1
12	1	MED	DEGENERATIVE NERVOUS SYSTEM DISORDERS	0.9170	4.5	5.9
13	1	MED	MULTIPLE SCLEROSIS & CEREBELLAR ATAXIA	0.8129	4.0	5.0
14	1	MED	INTRACRANIAL HEMORRHAGE & STROKE W INFARCT	1.2589	4.7	6.1
15	1	MED	NONSPECIFIC CVA & PRECEREBRAL OCCLUSION W/O INFARCT	0.9588	3.9	4.9

* Medicare data have been supplemented by data from 19 States for low volume DRGs.
** DRGs 469 and 470 contain cases that could not be assigned to valid DRGs.
Note 1: Geometric mean is used only to determine payment for transfer cases.
Note 2: Arithmetic mean is presented for informational purposes only.
Note 3: Relative weights are based on Medicare patient data and may not be appropriate for other patients.

TABLE 5.—LIST OF DIAGNOSIS-RELATED GROUPS (DRGs), RELATIVE WEIGHTING FACTORS, AND GEOGRAPHIC AND ARITHMETIC MEAN LENGTH OF STAY (LOS)—Continued

DRG	MDC	Type	DRG title	Relative weights	Geometric mean LOS	Arithmetic mean LOS
16	1	MED	NONSPECIFIC CEREBROVASCULAR DISORDERS W CC	1.2518	4.8	6.4
17	1	MED	NONSPECIFIC CEREBROVASCULAR DISORDERS W/O CC	0.6939	2.5	3.2
18	1	MED	CRANIAL & PERIPHERAL NERVE DISORDERS W CC	0.9970	4.2	5.5
19	1	MED	CRANIAL & PERIPHERAL NERVE DISORDERS W/O CC	0.6971	2.8	3.5
20	1	MED	NERVOUS SYSTEM INFECTION EXCEPT VIRAL MENINGITIS	2.7213	8.0	10.5
21	1	MED	VIRAL MENINGITIS	1.5069	5.0	6.6
22	1	MED	HYPERTENSIVE ENCEPHALOPATHY	1.0671	3.9	5.1
23	1	MED	NONTRAUMATIC STUPOR & COMA	0.8187	3.2	4.3
24	1	MED	SEIZURE & HEADACHE AGE >17 W CC	1.0021	3.7	5.0
25	1	MED	SEIZURE & HEADACHE AGE >17 W/O CC	0.6060	2.5	3.2
26	1	MED	SEIZURE & HEADACHE AGE 0–17	1.4637	2.3	4.3
27	1	MED	TRAUMATIC STUPOR & COMA, COMA >1 HR	1.3235	3.2	5.2
28	1	MED	TRAUMATIC STUPOR & COMA, COMA <1 HR AGE >17 W CC	1.3285	4.4	6.1
29	1	MED	TRAUMATIC STUPOR & COMA, COMA <1 HR AGE >17 W/O CC	0.7042	2.7	3.5
30	1	MED	*TRAUMATIC STUPOR & COMA, COMA <1 HR AGE 0–17	0.3306	2.0	2.0
31	1	MED	*CONCUSSION AGE >17 W CC	0.8940	3.1	4.0
32	1	MED	CONCUSSION AGE >17 W/O CC	0.5571	2.0	2.5
33	1	MED	CONCUSSION AGE 0–17	0.2076	1.6	1.6
34	1	MED	OTHER DISORDERS OF NERVOUS SYSTEM W CC	0.9863	3.7	5.0
35	1	MED	OTHER DISORDERS OF NERVOUS SYSTEM W/O CC	0.6293	2.5	3.1
36	2	SURG	RETINAL PROCEDURES	0.6302	1.2	1.5
37	2	SURG	ORBITAL PROCEDURES	1.0539	2.5	3.8
38	2	SURG	PRIMARY IRIS PROCEDURES	0.4676	1.9	2.8
39	2	SURG	LENS PROCEDURES WITH OR WITHOUT VITRECTOMY	0.6263	1.5	2.1
40	2	SURG	EXTRAOCULAR PROCEDURES EXCEPT ORBIT AGE >17	0.8867	2.6	3.8
41	2	SURG	*EXTRAOCULAR PROCEDURES EXCEPT ORBIT AGE 0–17	0.3365	1.6	1.6
42	2	SURG	INTRAOCULAR PROCEDURES EXCEPT RETINA, IRIS & LENS	0.7032	1.9	2.7
43	2	MED	HYPHEMA	0.5402	2.4	3.4
44	2	MED	ACUTE MAJOR EYE INFECTIONS	0.6631	4.0	5.1
45	2	MED	NEUROLOGICAL EYE DISORDERS	0.7191	2.5	3.1
46	2	MED	OTHER DISORDERS OF THE EYE AGE >17 W CC	0.7876	3.4	4.5
47	2	MED	OTHER DISORDERS OF THE EYE AGE >17 W/O CC	0.5275	2.4	3.1
48	2	MED	*OTHER DISORDERS OF THE EYE AGE 0-17	0.2964	2.9	2.9
49	3	SURG	MAJOR HEAD & NECK PROCEDURES	1.7194	3.2	4.5
50	3	SURG	SIALOADENECTOMY	0.8279	1.5	1.9
51	3	SURG	SALIVARY GLAND PROCEDURES EXCEPT SIALOADENECTOMY	0.8429	1.9	2.8
52	3	SURG	CLEFT LIP & PALATE REPAIR	0.7986	1.5	1.8
53	3	SURG	SINUS & MASTOID PROCEDURES AGE >17	1.2474	2.2	3.6
54	3	SURG	*SINUS & MASTOID PROCEDURES AGE 0-17	0.4805	3.2	3.2
55	3	SURG	MISCELLANEOUS EAR, NOSE, MOUTH & THROAT PROCEDURES	0.9181	2.0	2.9
56	3	SURG	RHINOPLASTY	0.9174	1.9	2.9
57	3	SURG	T&A PROC, EXCEPT TONSILLECTOMY &/OR ADENOIDECTOMY ONLY, AGE >17.	1.0980	2.4	3.7
58	3	SURG	T&A PROC, EXCEPT TONSILLECTOMY &/OR *ADENOIDECTOMY ONLY, AGE 0–17.	0.2728	1.5	1.5
59	3	SURG	TONSILLECTOMY &/OR ADENOIDECTOMY ONLY, AGE >17	0.9629	1.9	2.7
60	3	SURG	*TONSILLECTOMY &/OR ADENOIDECTOMY ONLY, AGE 0-17	0.2077	1.5	1.5
61	3	SURG	MYRINGOTOMY W TUBE INSERTION AGE >17	1.2166	3.0	5.1
62	3	SURG	*MYRINGOTOMY W TUBE INSERTION AGE 0-17	0.2942	1.3	1.3
63	3	SURG	OTHER EAR, NOSE, MOUTH & THROAT O.R. PROCEDURES	1.3651	3.0	4.4
64	3	MED	EAR, NOSE, MOUTH & THROAT MALIGNANCY	1.3020	4.3	6.5
65	3	MED	DYSEQUILIBRIUM	0.5691	2.3	2.8
66	3	MED	EPISTAXIS	0.5755	2.4	3.1
67	3	MED	EPIGLOTTITIS	0.7751	2.9	3.7
68	3	MED	OTITIS MEDIA & URI AGE >17 W CC	0.6481	3.1	3.9
69	3	MED	OTITIS MEDIA & URI AGE >17 W/O CC	0.4951	2.5	3.0
70	3	MED	OTITIS MEDIA & URI AGE 0–17	0.3243	1.9	2.3
71	3	MED	LARYNGOTRACHEITIS	0.6908	2.4	3.4
72	3	MED	NASAL TRAUMA & DEFORMITY	0.6909	2.6	3.4
73	3	MED	OTHER EAR, NOSE, MOUTH & THROAT DIAGNOSES AGE >17	0.8128	3.3	4.5
74	3	MED	*OTHER EAR, NOSE, MOUTH & THROAT DIAGNOSES AGE 0-17	0.3344	2.1	2.1
75	4	SURG	MAJOR CHEST PROCEDURES	3.0248	7.7	10.0
76	4	SURG	OTHER RESP SYSTEM O.R. PROCEDURES W CC	2.7935	8.4	11.1
77	4	SURG	OTHER RESP SYSTEM O.R. PROCEDURES W/O CC	1.2268	3.5	4.8
78	4	MED	PULMONARY EMBOLISM	1.2641	5.6	6.6
79	4	MED	RESPIRATORY INFECTIONS & INFLAMMATIONS AGE >17 W CC	1.5867	6.7	8.5

* Medicare data have been supplemented by data from 19 States for low volume DRGs.
** DRGs 469 and 470 contain cases that could not be assigned to valid DRGs.
Note 1: Geometric mean is used only to determine payment for transfer cases.
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Note 3: Relative weights are based on Medicare patient data and may not be appropriate for other patients.

TABLE 5.—LIST OF DIAGNOSIS-RELATED GROUPS (DRGs), RELATIVE WEIGHTING FACTORS, AND GEOGRAPHIC AND ARITHMETIC MEAN LENGTH OF STAY (LOS)—Continued

DRG	MDC	Type	DRG title	Relative weights	Geometric mean LOS	Arithmetic mean LOS
80	4	MED	RESPIRATORY INFECTIONS & INFLAMMATIONS AGE >17 W/O CC	0.8340	4.3	5.4
81	4	MED	*RESPIRATORY INFECTIONS & INFLAMMATIONS AGE 0–17	1.5139	6.1	6.1
82	4	MED	RESPIRATORY NEOPLASMS	1.3626	5.1	6.9
83	4	MED	MAJOR CHEST TRAUMA W CC	0.9511	4.3	5.4
84	4	MED	MAJOR CHEST TRAUMA W/O CC	0.5304	2.6	3.3
85	4	MED	PLEURAL EFFUSION W CC	1.1847	4.8	6.3
86	4	MED	PLEURAL EFFUSION W/O CC	0.6805	2.8	3.6
87	4	MED	PULMONARY EDEMA & RESPIRATORY FAILURE	1.3301	4.8	6.3
88	4	MED	CHRONIC OBSTRUCTIVE PULMONARY DISEASE	0.8869	4.1	5.1
89	4	MED	SIMPLE PNEUMONIA & PLEURISY AGE >17 W CC	1.0374	4.9	5.9
90	4	MED	SIMPLE PNEUMONIA & PLEURISY AGE >17 W/O CC	0.6097	3.4	4.0
91	4	MED	SIMPLE PNEUMONIA & PLEURISY AGE 0–17	0.7390	3.1	5.1
92	4	MED	INTERSTITIAL LUNG DISEASE W CC	1.1938	5.0	6.3
93	4	MED	INTERSTITIAL LUNG DISEASE W/O CC	0.7123	3.3	4.0
94	4	MED	PNEUMOTHORAX W CC	1.1256	4.7	6.3
95	4	MED	PNEUMOTHORAX W/O CC	0.6112	3.0	3.8
96	4	MED	BRONCHITIS & ASTHMA AGE >17 W CC	0.7403	3.7	4.6
97	4	MED	BRONCHITIS & ASTHMA AGE >17 W/O CC	0.5464	2.9	3.5
98	4	MED	*BRONCHITIS & ASTHMA AGE 0–17	0.9560	3.7	3.7
99	4	MED	RESPIRATORY SIGNS & SYMPTOMS W CC	0.6974	2.4	3.2
100	4	MED	RESPIRATORY SIGNS & SYMPTOMS W/O CC	0.5185	1.7	2.1
101	4	MED	OTHER RESPIRATORY SYSTEM DIAGNOSES W CC	0.8582	3.3	4.4
102	4	MED	OTHER RESPIRATORY SYSTEM DIAGNOSES W/O CC	0.5363	2.1	2.6
103	PRE	SURG	HEART TRANSPLANT	18.5203	25.9	42.1
104	5	SURG	CARDIAC VALVE & OTH MAJOR CARDIOTHORACIC PROC W CARD CATH.	7.9220	12.2	14.4
105	5	SURG	CARDIAC VALVE & OTH MAJOR CARDIOTHORACIC PROC W/O CARD CATH.	5.7134	8.2	9.9
106	5	SURG	CORONARY BYPASS W PTCA	7.2710	9.6	11.4
107	5	SURG	CORONARY BYPASS W CARDIAC CATH	5.3525	9.2	10.5
108	5	SURG	OTHER CARDIOTHORACIC PROCEDURES	5.3651	7.3	9.8
109	5	SURG	CORONARY BYPASS W/O PTCA OR CARDIAC CATH	3.9294	6.7	7.7
110	5	SURG	MAJOR CARDIOVASCULAR PROCEDURES W CC	4.0328	6.3	8.9
111	5	SURG	MAJOR CARDIOVASCULAR PROCEDURES W/O CC	2.4669	3.2	4.1
112	5	SURG	NO LONGER VALID	0.0000	0.0	0.0
113	5	SURG	AMPUTATION FOR CIRC SYSTEM DISORDERS EXCEPT UPPER LIMB & TOE.	2.9875	10.4	13.3
114	5	SURG	UPPER LIMB & TOE AMPUTATION FOR CIRC SYSTEM DISORDERS	1.6337	6.4	8.7
115	5	SURG	PRM CARD PACEM IMPL W AMI/HR/SHOCK OR AICD LEAD OR GNRTR.	3.5189	5.0	7.5
116	5	SURG	OTHER PERMANENT CARDIAC PACEMAKER IMPLANT	2.3407	3.1	4.4
117	5	SURG	CARDIAC PACEMAKER REVISION EXCEPT DEVICE REPLACEMENT	1.3838	2.6	4.3
118	5	SURG	CARDIAC PACEMAKER DEVICE REPLACEMENT	1.5967	2.0	2.9
119	5	SURG	VEIN LIGATION & STRIPPING	1.3679	3.2	5.4
120	5	SURG	OTHER CIRCULATORY SYSTEM O.R. PROCEDURES	2.3033	5.6	9.0
121	5	MED	CIRCULATORY DISORDERS W AMI & MAJOR COMP, DISCHARGED ALIVE.	1.6033	5.3	6.6
122	5	MED	CIRCULATORY DISORDERS W AMI W/O MAJOR COMP, DISCHARGED ALIVE.	1.0202	2.9	3.7
123	5	MED	CIRCULATORY DISORDERS W AMI, EXPIRED	1.5486	2.9	4.8
124	5	MED	CIRCULATORY DISORDERS EXCEPT AMI, W CARD CATH & COMPLEX DIAG.	1.4273	3.3	4.4
125	5	MED	CIRCULATORY DISORDERS EXCEPT AMI, W CARD CATH W/O COMPLEX DIAG.	1.0885	2.2	2.8
126	5	MED	ACUTE & SUBACUTE ENDOCARDITIS	2.5295	9.3	11.8
127	5	MED	HEART FAILURE & SHOCK	1.0072	4.1	5.3
128	5	MED	DEEP VEIN THROMBOPHLEBITIS	0.7226	4.6	5.5
129	5	MED	CARDIAC ARREST, UNEXPLAINED	1.0089	1.7	2.6
130	5	MED	PERIPHERAL VASCULAR DISORDERS W CC	0.9430	4.5	5.7
131	5	MED	PERIPHERAL VASCULAR DISORDERS W/O CC	0.5634	3.4	4.1
132	5	MED	ATHEROSCLEROSIS W CC	0.6364	2.3	2.9
133	5	MED	ATHEROSCLEROSIS W/O CC	0.5502	1.8	2.3
134	5	MED	HYPERTENSION	0.5905	2.5	3.2
135	5	MED	CARDIAC CONGENITAL & VALVULAR DISORDERS AGE >17 W CC	0.9196	3.4	4.5
136	5	MED	CARDIAC CONGENITAL & VALVULAR DISORDERS AGE >17 W/O CC.	0.5698	2.2	2.7

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** DRGs 469 and 470 contain cases that could not be assigned to valid DRGs.
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Note 3: Relative weights are based on Medicare patient data and may not be appropriate for other patients.

TABLE 5.—LIST OF DIAGNOSIS-RELATED GROUPS (DRGS), RELATIVE WEIGHTING FACTORS, AND GEOGRAPHIC AND ARITHMETIC MEAN LENGTH OF STAY (LOS)—Continued

DRG	MDC	Type	DRG title	Relative weights	Geometric mean LOS	Arithmetic mean LOS
137	5	MED	*CARDIAC CONGENITAL & VALVULAR DISORDERS AGE 0-17	0.8156	3.3	3.3
138	5	MED	CARDIAC ARRHYTHMIA & CONDUCTION DISORDERS W CC	0.8289	3.1	4.0
139	5	MED	CARDIAC ARRHYTHMIA & CONDUCTION DISORDERS W/O CC	0.5120	2.0	2.5
140	5	MED	ANGINA PECTORIS	0.5240	2.0	2.5
141	5	MED	SYNCOPE & COLLAPSE W CC	0.7408	2.8	3.6
142	5	MED	SYNCOPE & COLLAPSE W/O CC	0.5706	2.1	2.6
143	5	MED	CHEST PAIN	0.5435	1.7	2.1
144	5	MED	OTHER CIRCULATORY SYSTEM DIAGNOSES W CC	1.2176	3.9	5.6
145	5	MED	OTHER CIRCULATORY SYSTEM DIAGNOSES W/O CC	0.5742	2.0	2.6
146	6	SURG	RECTAL RESECTION W CC	2.7198	8.6	10.3
147	6	SURG	RECTAL RESECTION W/O CC	1.5267	5.6	6.2
148	6	SURG	MAJOR SMALL & LARGE BOWEL PROCEDURES W CC	3.3748	10.1	12.3
149	6	SURG	MAJOR SMALL & LARGE BOWEL PROCEDURES W/O CC	1.4487	5.8	6.3
150	6	SURG	PERITONEAL ADHESIOLYSIS W CC	2.8525	9.2	11.3
151	6	SURG	PERITONEAL ADHESIOLYSIS W/O CC	1.2952	4.4	5.6
152	6	SURG	MINOR SMALL & LARGE BOWEL PROCEDURES W CC	1.8931	6.9	8.4
153	6	SURG	MINOR SMALL & LARGE BOWEL PROCEDURES W/O CC	1.1262	4.7	5.3
154	6	SURG	STOMACH, ESOPHAGEAL & DUODENAL PROCEDURES AGE >17 W CC.	3.9961	9.9	13.3
155	6	SURG	STOMACH, ESOPHAGEAL & DUODENAL PROCEDURES AGE >17 W/O CC.	1.2946	3.0	4.1
156	6	SURG	*STOMACH, ESOPHAGEAL & DUODENAL PROCEDURES AGE 0-17	0.8400	6.0	6.0
157	6	SURG	ANAL & STOMAL PROCEDURES W CC	1.3070	4.0	5.8
158	6	SURG	ANAL & STOMAL PROCEDURES W/O CC	0.6472	2.0	2.6
159	6	SURG	HERNIA PROCEDURES EXCEPT INGUINAL & FEMORAL AGE >17 W CC.	1.3654	3.8	5.1
160	6	SURG	HERNIA PROCEDURES EXCEPT INGUINAL & FEMORAL AGE >17 W/O CC.	0.8170	2.2	2.7
161	6	SURG	INGUINAL & FEMORAL HERNIA PROCEDURES AGE >17 W CC	1.1598	3.0	4.3
162	6	SURG	INGUINAL & FEMORAL HERNIA PROCEDURES AGE >17 W/O CC	0.6396	1.6	1.9
163	6	SURG	*HERNIA PROCEDURES AGE 0-17	0.6892	2.1	2.1
164	6	SURG	APPENDECTOMY W COMPLICATED PRINCIPAL DIAG W CC	2.3154	7.0	8.4
165	6	SURG	APPENDECTOMY W COMPLICATED PRINCIPAL DIAG W/O CC	1.2218	3.8	4.5
166	6	SURG	APPENDECTOMY W/O COMPLICATED PRINCIPAL DIAG W CC	1.4244	3.6	4.7
167	6	SURG	APPENDECTOMY W/O COMPLICATED PRINCIPAL DIAG W/O CC	0.8841	2.0	2.4
168	3	SURG	MOUTH PROCEDURES W CC	1.3135	3.3	4.9
169	3	SURG	MOUTH PROCEDURES W/O CC	0.7487	1.8	2.4
170	6	SURG	OTHER DIGESTIVE SYSTEM O.R. PROCEDURES W CC	2.8023	7.5	10.9
171	6	SURG	OTHER DIGESTIVE SYSTEM O.R. PROCEDURES W/O CC	1.1816	3.3	4.3
172	6	MED	DIGESTIVE MALIGNANCY W CC	1.3576	5.2	7.0
173	6	MED	DIGESTIVE MALIGNANCY W/O CC	0.7524	2.8	3.8
174	6	MED	G.I. HEMORRHAGE W CC	0.9942	3.9	4.8
175	6	MED	G.I. HEMORRHAGE W/O CC	0.5541	2.5	2.9
176	6	MED	COMPLICATED PEPTIC ULCER	1.0918	4.1	5.2
177	6	MED	UNCOMPLICATED PEPTIC ULCER W CC	0.9182	3.7	4.6
178	6	MED	UNCOMPLICATED PEPTIC ULCER W/O CC	0.6879	2.6	3.1
179	6	MED	INFLAMMATORY BOWEL DISEASE	1.0800	4.6	6.0
180	6	MED	G.I. OBSTRUCTION W CC	0.9562	4.2	5.5
181	6	MED	G.I. OBSTRUCTION W/O CC	0.5332	2.8	3.4
182	6	MED	ESOPHAGITIS, GASTROENT & MISC DIGEST DISORDERS AGE >17 W CC.	0.8153	3.4	4.4
183	6	MED	ESOPHAGITIS, GASTROENT & MISC DIGEST DISORDERS AGE >17 W/O CC.	0.5710	2.3	2.9
184	6	MED	ESOPHAGITIS, GASTROENT & MISC DIGEST DISORDERS AGE 0-17	0.4874	2.3	3.2
185	3	MED	DENTAL & ORAL DIS EXCEPT EXTRACTIONS & RESTORATIONS, AGE >17.	0.8680	3.3	4.7
186	3	MED	*DENTAL & ORAL DIS EXCEPT EXTRACTIONS & RESTORATIONS, AGE 0-17.	0.3202	2.9	2.9
187	3	MED	DENTAL EXTRACTIONS & RESTORATIONS	0.7731	3.0	4.0
188	6	MED	OTHER DIGESTIVE SYSTEM DIAGNOSES AGE >17 W CC	1.1000	4.1	5.6
189	6	MED	OTHER DIGESTIVE SYSTEM DIAGNOSES AGE >17 W/O CC	0.5936	2.4	3.1
190	6	MED	OTHER DIGESTIVE SYSTEM DIAGNOSES AGE 0–17	0.8080	3.7	5.2
191	7	SURG	PANCREAS, LIVER & SHUNT PROCEDURES W CC	4.2734	9.8	13.9
192	7	SURG	PANCREAS, LIVER & SHUNT PROCEDURES W/O CC	1.7906	4.7	6.2
193	7	SURG	BILIARY TRACT PROC EXCEPT ONLY CHOLECYST W OR W/O C.D.E. W CC.	3.4000	10.4	12.8

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TABLE 5.—LIST OF DIAGNOSIS-RELATED GROUPS (DRGS), RELATIVE WEIGHTING FACTORS, AND GEOGRAPHIC AND ARITHMETIC MEAN LENGTH OF STAY (LOS)—Continued

DRG	MDC	Type	DRG title	Relative weights	Geometric mean LOS	Arithmetic mean LOS
194	7	SURG	BILIARY TRACT PROC EXCEPT ONLY CHOLECYST W OR W/O C.D.E. W/O CC.	1.5934	5.7	6.8
195	7	SURG	CHOLECYSTECTOMY W C.D.E. W CC	3.0458	8.7	10.6
196	7	SURG	CHOLECYSTECTOMY W C.D.E. W/O CC	1.6025	4.8	5.6
197	7	SURG	CHOLECYSTECTOMY EXCEPT BY LAPAROSCOPE W/O C.D.E. W CC.	2.5296	7.5	9.2
198	7	SURG	CHOLECYSTECTOMY EXCEPT BY LAPAROSCOPE W/O C.D.E. W/O CC.	1.1732	3.8	4.4
199	7	SURG	HEPATOBILIARY DIAGNOSTIC PROCEDURE FOR MALIGNANCY	2.3704	6.9	9.8
200	7	SURG	HEPATOBILIARY DIAGNOSTIC PROCEDURE FOR NON-MALIGNANCY.	3.0260	6.7	10.6
201	7	SURG	OTHER HEPATOBILIARY OR PANCREAS O.R. PROCEDURES	3.6753	10.2	14.2
202	7	MED	CIRRHOSIS & ALCOHOLIC HEPATITIS	1.3013	4.8	6.4
203	7	MED	MALIGNANCY OF HEPATOBILIARY SYSTEM OR PANCREAS	1.3407	5.0	6.7
204	7	MED	DISORDERS OF PANCREAS EXCEPT MALIGNANCY	1.1582	4.4	5.8
205	7	MED	DISORDERS OF LIVER EXCEPT MALIG,CIRR,ALC HEPA W CC	1.1970	4.6	6.2
206	7	MED	DISORDERS OF LIVER EXCEPT MALIG,CIRR,ALC HEPA W/O CC	0.7045	2.9	3.8
207	7	MED	DISORDERS OF THE BILIARY TRACT W CC	1.1443	4.0	5.3
208	7	MED	DISORDERS OF THE BILIARY TRACT W/O CC	0.6540	2.3	2.9
209	8	SURG	MAJOR JOINT & LIMB REATTACHMENT PROCEDURES OF LOWER EXTREMITY.	2.0199	4.4	4.9
210	8	SURG	HIP & FEMUR PROCEDURES EXCEPT MAJOR JOINT AGE >17 W CC.	1.8335	6.1	7.0
211	8	SURG	HIP & FEMUR PROCEDURES EXCEPT MAJOR JOINT AGE >17 W/O CC.	1.2446	4.5	4.9
212	8	SURG	*HIP & FEMUR PROCEDURES EXCEPT MAJOR JOINT AGE 0-17	0.8436	11.1	11.1
213	8	SURG	AMPUTATION FOR MUSCULOSKELETAL SYSTEM & CONN TISSUE DISORDERS.	1.8736	6.7	9.2
214	8	SURG	NO LONGER VALID	0.0000	0.0	0.0
215	8	SURG	NO LONGER VALID	0.0000	0.0	0.0
216	8	SURG	BIOPSIES OF MUSCULOSKELETAL SYSTEM & CONNECTIVE TISSUE.	2.0981	5.0	8.0
217	8	SURG	WND DEBRID & SKN GRFT EXCEPT HAND,FOR MUSCSKELET & CONN TISS DIS.	2.9860	9.1	13.5
218	8	SURG	LOWER EXTREM & HUMER PROC EXCEPT HIP,FOOT,FEMUR AGE >17 W CC.	1.5612	4.3	5.5
219	8	SURG	LOWER EXTREM & HUMER PROC EXCEPT HIP,FOOT,FEMUR AGE >17 W/O CC.	1.0187	2.7	3.2
220	8	SURG	*LOWER EXTREM & HUMER PROC EXCEPT HIP,FOOT,FEMUR AGE 0-17.	0.5819	5.3	5.3
221	8	SURG	NO LONGER VALID	0.0000	0.0	0.0
222	8	SURG	NO LONGER VALID	0.0000	0.0	0.0
223	8	SURG	MAJOR SHOULDER/ELBOW PROC, OR OTHER UPPER EXTREMITY PROC W CC.	1.0493	2.2	3.0
224	8	SURG	SHOULDER,ELBOW OR FOREARM PROC,EXC MAJOR JOINT PROC, W/O CC.	0.7841	1.6	1.9
225	8	SURG	FOOT PROCEDURES	1.1638	3.6	5.3
226	8	SURG	SOFT TISSUE PROCEDURES W CC	1.5413	4.5	6.5
227	8	SURG	SOFT TISSUE PROCEDURES W/O CC	0.8139	2.1	2.6
228	8	SURG	MAJOR THUMB OR JOINT PROC,OR OTH HAND OR WRIST PROC W CC.	1.1547	2.7	4.2
229	8	SURG	HAND OR WRIST PROC, EXCEPT MAJOR JOINT PROC, W/O CC	0.6975	1.8	2.3
230	8	SURG	LOCAL EXCISION & REMOVAL OF INT FIX DEVICES OF HIP & FEMUR.	1.3026	3.6	5.6
231	8	SURG	*NO LONGER VALID	0.0000	0.0	0.0
232	8	SURG	ARTHROSCOPY	0.9638	1.8	2.7
233	8	SURG	OTHER MUSCULOSKELET SYS & CONN TISS O.R. PROC W CC	1.9896	5.0	7.4
234	8	SURG	OTHER MUSCULOSKELET SYS & CONN TISS O.R. PROC W/O CC	1.1937	2.2	3.1
235	8	MED	FRACTURES OF FEMUR	0.7516	3.8	5.0
236	8	MED	FRACTURES OF HIP & PELVIS	0.7299	3.9	4.8
237	8	MED	SPRAINS, STRAINS, & DISLOCATIONS OF HIP, PELVIS & THIGH	0.5948	2.9	3.7
238	8	MED	OSTEOMYELITIS	1.3446	6.5	8.7
239	8	MED	PATHOLOGICAL FRACTURES & MUSCULOSKELETAL & CONN TISS MALIGNANCY.	1.0524	5.1	6.4
240	8	MED	CONNECTIVE TISSUE DISORDERS W CC	1.3065	4.9	6.7
241	8	MED	CONNECTIVE TISSUE DISORDERS W/O CC	0.6297	3.0	3.8

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TABLE 5.—LIST OF DIAGNOSIS-RELATED GROUPS (DRGS), RELATIVE WEIGHTING FACTORS, AND GEOGRAPHIC AND ARITHMETIC MEAN LENGTH OF STAY (LOS)—Continued

DRG	MDC	Type	DRG title	Relative weights	Geometric mean LOS	Arithmetic mean LOS
242	8	MED	SEPTIC ARTHRITIS	1.1573	5.3	7.0
243	8	MED	MEDICAL BACK PROBLEMS	0.7535	3.7	4.7
244	8	MED	BONE DISEASES & SPECIFIC ARTHROPATHIES W CC	0.7092	3.7	4.7
245	8	MED	BONE DISEASES & SPECIFIC ARTHROPATHIES W/O CC	0.4741	2.6	3.3
246	8	MED	NON-SPECIFIC ARTHROPATHIES	0.5937	2.9	3.7
247	8	MED	SIGNS & SYMPTOMS OF MUSCULOSKELETAL SYSTEM & CONN TISSUE.	0.5672	2.6	3.3
248	8	MED	TENDONITIS, MYOSITIS & BURSITIS	0.8503	3.8	4.9
249	8	MED	AFTERCARE, MUSCULOSKELETAL SYSTEM & CONNECTIVE TISSUE.	0.6710	2.5	3.6
250	8	MED	FX, SPRN, STRN & DISL OF FOREARM, HAND, FOOT AGE >17 W CC.	0.7034	3.2	4.1
251	8	MED	FX, SPRN, STRN & DISL OF FOREARM, HAND, FOOT AGE >17 W/O CC.	0.4539	2.3	2.8
252	8	MED	*FX, SPRN, STRN & DISL OF FOREARM, HAND, FOOT AGE 0-17	0.2526	1.8	1.8
253	8	MED	FX, SPRN, STRN & DISL OF UPARM,LOWLEG EX FOOT AGE >17 W CC.	0.7512	3.7	4.7
254	8	MED	FX, SPRN, STRN & DISL OF UPARM,LOWLEG EX FOOT AGE >17 W/O CC. .	0.4417	2.6	3.2
255	8	MED	*FX, SPRN, STRN & DISL OF UPARM,LOWLEG EX FOOT AGE 0-17	0.2943	2.9	2.9
256	8	MED	OTHER MUSCULOSKELETAL SYSTEM & CONNECTIVE TISSUE DIAGNOSES.	0.8116	3.8	5.1
257	9	SURG	TOTAL MASTECTOMY FOR MALIGNANCY W CC	0.8851	2.1	2.6
258	9	SURG	TOTAL MASTECTOMY FOR MALIGNANCY W/O CC	0.6978	1.6	1.8
259	9	SURG	SUBTOTAL MASTECTOMY FOR MALIGNANCY W CC	0.9337	1.8	2.7
260	9	SURG	SUBTOTAL MASTECTOMY FOR MALIGNANCY W/O CC	0.6794	1.2	1.4
261	9	SURG	BREAST PROC FOR NON-MALIGNANCY EXCEPT BIOPSY & LOCAL EXCISION.	0.8947	1.6	2.1
262	9	SURG	BREAST BIOPSY & LOCAL EXCISION FOR NON-MALIGNANCY	0.9466	2.9	4.3
263	9	SURG	SKIN GRAFT &/OR DEBRID FOR SKN ULCER OR CELLULITIS W CC	2.1904	9.0	12.2
264	9	SURG	SKIN GRAFT &/OR DEBRID FOR SKN ULCER OR CELLULITIS W/O CC.	1.0940	5.2	6.8
265	9	SURG	SKIN GRAFT &/OR DEBRID EXCEPT FOR SKIN ULCER OR CELLULITIS W CC.	1.5921	4.2	6.6
266	9	SURG	SKIN GRAFT &/OR DEBRID EXCEPT FOR SKIN ULCER OR CELLULITIS W/O CC.	0.8719	2.3	3.2
267	9	SURG	PERIANAL & PILONIDAL PROCEDURES	0.9515	2.9	4.5
268	9	SURG	SKIN, SUBCUTANEOUS TISSUE & BREAST PLASTIC PROCEDURES	1.1516	2.5	3.9
269	9	SURG	OTHER SKIN, SUBCUT TISS & BREAST PROC W CC	1.7647	6.0	8.6
270	9	SURG	OTHER SKIN, SUBCUT TISS & BREAST PROC W/O CC	0.8085	2.5	3.6
271	9	MED	SKIN ULCERS	1.0219	5.6	7.2
272	9	MED	MAJOR SKIN DISORDERS W CC	1.0084	4.6	6.0
273	9	MED	MAJOR SKIN DISORDERS W/O CC	0.6167	3.0	3.9
274	9	MED	MALIGNANT BREAST DISORDERS W CC	1.1449	4.7	6.5
275	9	MED	MALIGNANT BREAST DISORDERS W/O CC	0.5738	2.4	3.5
276	9	MED	NON-MALIGANT BREAST DISORDERS	0.6410	3.5	4.5
277	9	MED	CELLULITIS AGE >17 W CC	0.8738	4.7	5.8
278	9	MED	CELLULITIS AGE >17 W/O CC	0.5391	3.5	4.2
279	9	MED	CELLULITIS AGE 0-17	0.7687	4.0	5.3
280	9	MED	TRAUMA TO THE SKIN, SUBCUT TISS & BREAST AGE >17 W CC	0.7035	3.2	4.1
281	9	MED	TRAUMA TO THE SKIN, SUBCUT TISS & BREAST AGE >17 W/O CC	0.4810	2.3	2.9
282	9	MED	*TRAUMA TO THE SKIN, SUBCUT TISS & BREAST AGE 0-17	0.2558	2.2	2.2
283	9	MED	MINOR SKIN DISORDERS W CC	0.7271	3.5	4.7
284	9	MED	MINOR SKIN DISORDERS W/O CC	0.4172	2.3	2.9
285	10	SURG	AMPUTAT OF LOWER LIMB FOR ENDOCRINE,NUTRIT,& METABOL DISORDERS.	2.0611	7.9	10.6
286	10	SURG	ADRENAL & PITUITARY PROCEDURES	2.0223	4.4	5.9
287	10	SURG	SKIN GRAFTS & WOUND DEBRID FOR ENDOC, NUTRIT & METAB DISORDERS.	1.8651	7.7	10.3
288	10	SURG	O.R. PROCEDURES FOR OBESITY	2.1578	3.9	5.0
289	10	SURG	PARATHYROID PROCEDURES	0.9427	1.8	2.7
290	10	SURG	THYROID PROCEDURES	0.8874	1.7	2.2
291	10	SURG	THYROGLOSSAL PROCEDURES	0.6425	1.4	1.6
292	10	SURG	OTHER ENDOCRINE, NUTRIT & METAB O.R. PROC W CC	2.7077	7.2	10.5
293	10	SURG	OTHER ENDOCRINE, NUTRIT & METAB O.R. PROC W/O CC	1.3678	3.2	4.7
294	10	MED	DIABETES AGE >35	0.7632	3.4	4.5

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TABLE 5.—LIST OF DIAGNOSIS-RELATED GROUPS (DRGS), RELATIVE WEIGHTING FACTORS, AND GEOGRAPHIC AND ARITHMETIC MEAN LENGTH OF STAY (LOS)—Continued

DRG	MDC	Type	DRG title	Relative weights	Geometric mean LOS	Arithmetic mean LOS
295	10	MED	DIABETES AGE 0–35	0.7959	3.0	4.0
296	10	MED	NUTRITIONAL & MISC METABOLIC DISORDERS AGE >17 W CC	0.8572	4.0	5.1
297	10	MED	NUTRITIONAL & MISC METABOLIC DISORDERS AGE >17 W/O CC	0.5041	2.7	3.3
298	10	MED	NUTRITIONAL & MISC METABOLIC DISORDERS AGE 0–17	0.4610	2.4	3.2
299	10	MED	INBORN ERRORS OF METABOLISM	0.9361	3.7	5.5
300	10	MED	ENDOCRINE DISORDERS W CC	1.0938	4.8	6.2
301	10	MED	ENDOCRINE DISORDERS W/O CC	0.6113	2.8	3.6
302	11	SURG	KIDNEY TRANSPLANT	3.2328	7.2	8.5
303	11	SURG	KIDNEY,URETER & MAJOR BLADDER PROCEDURES FOR NEOPLASM.	2.3540	6.4	8.1
304	11	SURG	KIDNEY,URETER & MAJOR BLADDER PROC FOR NON-NEOPL W CC.	2.3813	6.2	8.9
305	11	SURG	KIDNEY,URETER & MAJOR BLADDER PROC FOR NON-NEOPL W/O CC.	1.1767	2.8	3.6
306	11	SURG	PROSTATECTOMY W CC	1.2134	3.5	5.4
307	11	SURG	PROSTATECTOMY W/O CC	0.6094	1.7	2.1
308	11	SURG	MINOR BLADDER PROCEDURES W CC	1.5867	4.0	6.2
309	11	SURG	MINOR BLADDER PROCEDURES W/O CC	0.8931	1.7	2.1
310	11	SURG	TRANSURETHRAL PROCEDURES W CC	1.1402	2.9	4.4
311	11	SURG	TRANSURETHRAL PROCEDURES W/O CC	0.6203	1.5	1.8
312	11	SURG	URETHRAL PROCEDURES, AGE >17 W CC	1.0784	3.0	4.6
313	11	SURG	URETHRAL PROCEDURES, AGE >17 W/O CC	0.6747	1.7	2.3
314	11	SURG	*URETHRAL PROCEDURES, AGE 0–17	0.4931	2.3	2.3
315	11	SURG	OTHER KIDNEY & URINARY TRACT O.R. PROCEDURES	2.0680	3.8	7.0
316	11	MED	RENAL FAILURE	1.2907	4.9	6.6
317	11	MED	ADMIT FOR RENAL DIALYSIS	0.8488	2.4	3.6
318	11	MED	KIDNEY & URINARY TRACT NEOPLASMS W CC	1.1797	4.5	6.1
319	11	MED	KIDNEY & URINARY TRACT NEOPLASMS W/O CC	0.6754	2.2	2.9
320	11	MED	KIDNEY & URINARY TRACT INFECTIONS AGE >17 W CC	0.8785	4.3	5.4
321	11	MED	KIDNEY & URINARY TRACT INFECTIONS AGE >17 W/O CC	0.5640	3.1	3.7
322	11	MED	KIDNEY & URINARY TRACT INFECTIONS AGE 0-17	0.4571	2.7	3.2
323	11	MED	URINARY STONES W CC, &/OR ESW LITHOTRIPSY	0.8026	2.4	3.2
324	11	MED	URINARY STONES W/O CC	0.4752	1.6	1.9
325	11	MED	KIDNEY & URINARY TRACT SIGNS & SYMPTOMS AGE >17 W CC	0.6497	2.9	3.8
326	11	MED	KIDNEY & URINARY TRACT SIGNS & SYMPTOMS AGE >17 W/O CC	0.4181	2.1	2.6
327	11	MED	*KIDNEY & URINARY TRACT SIGNS & SYMPTOMS AGE 0-17	0.3688	3.1	3.1
328	11	MED	URETHRAL STRICTURE AGE >17 W CC	0.7474	2.7	3.7
329	11	MED	URETHRAL STRICTURE AGE >17 W/O CC	0.5254	1.7	2.1
330	11	MED	*URETHRAL STRICTURE AGE 0-17	0.3177	1.6	1.6
331	11	MED	OTHER KIDNEY & URINARY TRACT DIAGNOSES AGE >17 W CC	1.0546	4.2	5.6
332	11	MED	OTHER KIDNEY & URINARY TRACT DIAGNOSES AGE >17 W/O CC	0.5949	2.4	3.2
333	11	MED	OTHER KIDNEY & URINARY TRACT DIAGNOSES AGE 0-17	0.9552	3.7	5.8
334	12	SURG	MAJOR MALE PELVIC PROCEDURES W CC	1.4738	3.9	4.6
335	12	SURG	MAJOR MALE PELVIC PROCEDURES W/O CC	1.0778	2.8	3.0
336	12	SURG	TRANSURETHRAL PROSTATECTOMY W CC	0.8539	2.6	3.4
337	12	SURG	TRANSURETHRAL PROSTATECTOMY W/O CC	0.5832	1.8	2.0
338	12	SURG	TESTES PROCEDURES, FOR MALIGNANCY	1.2100	3.5	5.5
339	12	SURG	TESTES PROCEDURES, NON-MALIGNANCY AGE >17	1.1314	2.9	4.8
340	12	SURG	*TESTES PROCEDURES, NON-MALIGNANCY AGE 0-17	0.2823	2.4	2.4
341	12	SURG	PENIS PROCEDURES	1.2651	2.0	3.2
342	12	SURG	CIRCUMCISION AGE >17	0.7717	2.4	3.2
343	12	SURG	*CIRCUMCISION AGE 0–17	0.1534	1.7	1.7
344	12	SURG	OTHER MALE REPRODUCTIVE SYSTEM O.R. PROCEDURES FOR MALIGNANCY.	1.3244	1.6	2.5
345	12	SURG	OTHER MALE REPRODUCTIVE SYSTEM O.R. PROC EXCEPT FOR MALIGNANCY.	1.1523	3.0	4.9
346	12	MED	MALIGNANCY, MALE REPRODUCTIVE SYSTEM, W CC	1.0133	4.5	5.9
347	12	MED	MALIGNANCY, MALE REPRODUCTIVE SYSTEM, W/O CC	0.5436	2.2	3.0
348	12	MED	BENIGN PROSTATIC HYPERTROPHY W CC	0.7423	3.3	4.4
349	12	MED	BENIGN PROSTATIC HYPERTROPHY W/O CC	0.4562	2.0	2.5
350	12	MED	INFLAMMATION OF THE MALE REPRODUCTIVE SYSTEM	0.7298	3.6	4.5
351	12	MED	*STERILIZATION, MALE	0.2354	1.3	1.3
352	12	MED	OTHER MALE REPRODUCTIVE SYSTEM DIAGNOSES	0.7076	2.9	4.0
353	13	SURG	PELVIC EVISCERATION, RADICAL HYSTERECTOMY & RADICAL VULVECTOMY.	1.8469	5.0	6.6

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TABLE 5.—LIST OF DIAGNOSIS-RELATED GROUPS (DRGs), RELATIVE WEIGHTING FACTORS, AND GEOGRAPHIC AND ARITHMETIC MEAN LENGTH OF STAY (LOS)—Continued

DRG	MDC	Type	DRG title	Relative weights	Geometric mean LOS	Arithmetic mean LOS
354	13	SURG	UTERINE,ADNEXA PROC FOR NON-OVARIAN/ADNEXAL MALIG W CC.	1.4796	4.7	5.7
355	13	SURG	UTERINE,ADNEXA PROC FOR NON-OVARIAN/ADNEXAL MALIG W/O CC.	0.8855	3.0	3.2
356	13	SURG	FEMALE REPRODUCTIVE SYSTEM RECONSTRUCTIVE PROCEDURES.	0.7516	1.8	2.1
357	13	SURG	UTERINE & ADNEXA PROC FOR OVARIAN OR ADNEXAL MALIGNANCY.	2.2673	6.7	8.4
358	13	SURG	UTERINE & ADNEXA PROC FOR NON-MALIGNANCY W CC	1.1754	3.4	4.2
359	13	SURG	UTERINE & ADNEXA PROC FOR NON-MALIGNANCY W/O CC	0.8055	2.3	2.6
360	13	SURG	VAGINA, CERVIX & VULVA PROCEDURES	0.8613	2.2	2.8
361	13	SURG	LAPAROSCOPY & INCISIONAL TUBAL INTERRUPTION	1.0865	2.2	3.2
362	13	SURG	*ENDOSCOPIC TUBAL INTERRUPTION	0.3009	1.4	1.4
363	13	SURG	D&C, CONIZATION & RADIO-IMPLANT, FOR MALIGNANCY	0.9275	2.6	3.6
364	13	SURG	D&C, CONIZATION EXCEPT FOR MALIGNANCY	0.8939	2.9	4.1
365	13	SURG	OTHER FEMALE REPRODUCTIVE SYSTEM O.R. PROCEDURES	2.1194	5.3	8.2
366	13	MED	MALIGNANCY, FEMALE REPRODUCTIVE SYSTEM W CC	1.2567	4.8	6.7
367	13	MED	MALIGNANCY, FEMALE REPRODUCTIVE SYSTEM W/O CC	0.5496	2.2	3.0
368	13	MED	INFECTIONS, FEMALE REPRODUCTIVE SYSTEM	1.1619	5.2	6.7
369	13	MED	MENSTRUAL & OTHER FEMALE REPRODUCTIVE SYSTEM DISORDERS.	0.5997	2.4	3.3
370	14	SURG	CESAREAN SECTION W CC	0.9992	4.2	5.7
371	14	SURG	CESAREAN SECTION W/O CC	0.6267	3.2	3.5
372	14	MED	VAGINAL DELIVERY W COMPLICATING DIAGNOSES	0.5457	2.7	3.5
373	14	MED	VAGINAL DELIVERY W/O COMPLICATING DIAGNOSES	0.3831	2.0	2.3
374	14	SURG	VAGINAL DELIVERY W STERILIZATION &/OR D&C	0.7410	2.5	3.0
375	14	SURG	*VAGINAL DELIVERY W O.R. PROC EXCEPT STERIL &/OR D&C	0.5745	4.4	4.4
376	14	MED	POSTPARTUM & POST ABORTION DIAGNOSES W/O O.R. PROCEDURE.	0.5499	2.6	3.4
377	14	SURG	POSTPARTUM & POST ABORTION DIAGNOSES W O.R. PROCEDURE.	1.0123	3.2	4.1
378	14	MED	ECTOPIC PREGNANCY	0.7893	2.0	2.6
379	14	MED	THREATENED ABORTION	0.3647	2.0	3.0
380	14	MED	ABORTION W/O D&C	0.4261	1.6	2.0
381	14	SURG	ABORTION W D&C, ASPIRATION CURETTAGE OR HYSTEROTOMY	0.5247	1.5	1.9
382	14	MED	FALSE LABOR	0.2113	1.3	1.7
383	14	MED	OTHER ANTEPARTUM DIAGNOSES W MEDICAL COMPLICATIONS	0.5103	2.7	3.8
384	14	MED	OTHER ANTEPARTUM DIAGNOSES W/O MEDICAL COMPLICATIONS.	0.3463	1.9	2.6
385	15	MED	*NEONATES, DIED OR TRANSFERRED TO ANOTHER ACUTE CARE FACILITY.	1.3709	1.8	1.8
386	15	MED	*EXTREME IMMATURITY OR RESPIRATORY DISTRESS SYNDROME, NEONATE.	4.5207	17.9	17.9
387	15	MED	*PREMATURITY W MAJOR PROBLEMS	3.0876	13.3 1	3.3
388	15	MED	*PREMATURITY W/O MAJOR PROBLEMS	1.8630	8.6	8.6
389	15	MED	FULL TERM NEONATE W MAJOR PROBLEMS	1.2020	5.2	6.3
390	15	MED	*NEONATE W OTHER SIGNIFICANT PROBLEMS	1.1225	3.4	3.4
391	15	MED	*NORMAL NEWBORN	0.1520	3.1	3.1
392	16	SURG	SPLENECTOMY AGE >17	3.2999	7.1	9.7
393	16	SURG	*SPLENECTOMY AGE 0-17	1.3429	9.1	9.1
394	16	SURG	OTHER O.R. PROCEDURES OF THE BLOOD AND BLOOD FORMING ORGANS.	1.9216	4.7	7.6
395	16	MED	RED BLOOD CELL DISORDERS AGE >17	0.8159	3.2	4.3
396	16	MED	RED BLOOD CELL DISORDERS AGE 0-17	0.7409	3.0	4.4
397	16	MED	COAGULATION DISORDERS	1.2575	3.7	5.2
398	16	MED	RETICULOENDOTHELIAL & IMMUNITY DISORDERS W CC	1.2266	4.5	5.9
399	16	MED	RETICULOENDOTHELIAL & IMMUNITY DISORDERS W/O CC	0.6630	2.8	3.5
400	17	SURG	*NO LONGER VALID	0.0000	0.0	0.0
401	17	SURG	LYMPHOMA & NON-ACUTE LEUKEMIA W OTHER O.R. PROC W CC	2.8817	8.1	11.6
402	17	SURG	LYMPHOMA & NON-ACUTE LEUKEMIA W OTHER O.R. PROC W/O CC.	1.1371	2.7	4.0
403	17	MED	LYMPHOMA & NON-ACUTE LEUKEMIA W CC	1.8018	5.8	8.1
404	17	MED	LYMPHOMA & NON-ACUTE LEUKEMIA W/O CC	0.8509	3.0	4.1
405	17	MED	*ACUTE LEUKEMIA W/O MAJOR O.R. PROCEDURE AGE 0-17	1.9038	4.9	4.9
406	17	SURG	MYELOPROLIF DISORD OR POORLY DIFF NEOPL W MAJ O.R.PROC W CC.	2.6845	6.9	9.7

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TABLE 5.—LIST OF DIAGNOSIS-RELATED GROUPS (DRGs), RELATIVE WEIGHTING FACTORS, AND GEOGRAPHIC AND ARITHMETIC MEAN LENGTH OF STAY (LOS)—Continued

DRG	MDC	Type	DRG title	Relative weights	Geometric mean LOS	Arithmetic mean LOS
407	17	SURG	MYELOPROLIF DISORD OR POORLY DIFF NEOPL W MAJ O.R.PROC W/O CC.	1.2347	3.2	4.1
408	17	SURG	MYELOPROLIF DISORD OR POORLY DIFF NEOPL W OTHER O.R.PROC.	2.1935	4.8	8.3
409	17	MED	RADIOTHERAPY	1.2333	4.6	6.2
410	17	MED	CHEMOTHERAPY W/O ACUTE LEUKEMIA AS SECONDARY DIAGNOSIS.	1.0780	3.2	4.1
411	17	MED	*HISTORY OF MALIGNANCY W/O ENDOSCOPY	0.3906	4.7	4.7
412	17	MED	HISTORY OF MALIGNANCY W ENDOSCOPY	0.5721	2.5	3.7
413	17	MED	OTHER MYELOPROLIF DIS OR POORLY DIFF NEOPL DIAG W CC	1.3143	5.3	7.1
414	17	MED	OTHER MYELOPROLIF DIS OR POORLY DIFF NEOPL DIAG W/O CC	0.7332	3.2	4.2
415	18	SURG	O.R. PROCEDURE FOR INFECTIOUS & PARASITIC DISEASES	3.5998	10.4	14.4
416	18	MED	SEPTICEMIA AGE >17	1.5763	5.6	7.5
417	18	MED	SEPTICEMIA AGE 0-17	0.9864	4.4	5.8
418	18	MED	POSTOPERATIVE & POST-TRAUMATIC INFECTIONS	1.0605	4.9	6.3
419	18	MED	FEVER OF UNKNOWN ORIGIN AGE >17 W CC	0.8404	3.6	4.6
420	18	MED	FEVER OF UNKNOWN ORIGIN AGE >17 W/O CC	0.6052	2.8	3.4
421	18	MED	VIRAL ILLNESS AGE >17	0.7395	3.1	4.1
422	18	MED	VIRAL ILLNESS & FEVER OF UNKNOWN ORIGIN AGE 0–17	0.7271	2.5	3.7
423	18	MED	OTHER INFECTIOUS & PARASITIC DISEASES DIAGNOSES	1.8074	5.9	8.4
424	19	SURG	O.R. PROCEDURE W PRINCIPAL DIAGNOSES OF MENTAL ILLNESS	2.3708	8.0	12.9
425	19	MED	ACUTE ADJUSTMENT REACTION & PSYCHOSOCIAL DYSFUNCTION.	0.6723	2.8	3.8
426	19	MED	DEPRESSIVE NEUROSES	0.5051	3.2	4.5
427	19	MED	NEUROSES EXCEPT DEPRESSIVE	0.5029	3.1	4.4
428	19	MED	DISORDERS OF PERSONALITY & IMPULSE CONTROL	0.7222	4.5	7.1
429	19	MED	ORGANIC DISTURBANCES & MENTAL RETARDATION	0.8235	4.5	6.1
430	19	MED	PSYCHOSES	0.6750	5.6	7.9
431	19	MED	CHILDHOOD MENTAL DISORDERS	0.6551	4.4	6.9
432	19	MED	OTHER MENTAL DISORDER DIAGNOSES	0.6453	2.8	4.0
433	20	MED	ALCOHOL/DRUG ABUSE OR DEPENDENCE, LEFT AMA	0.2876	2.2	3.1
434	20	MED	NO LONGER VALID	0.0000	0.0	0.0
435	20	MED	NO LONGER VALID	0.0000	0.0	0.0
436	20	MED	NO LONGER VALID	0.0000	0.0	0.0
437	20	MED	NO LONGER VALID	0.0000	0.0	0.0
438	20		NO LONGER VALID	0.0000	0.0	0.0
439	21	SURG	SKIN GRAFTS FOR INJURIES	1.7409	5.1	8.1
440	21	SURG	WOUND DEBRIDEMENTS FOR INJURIES	1.8767	5.8	9.1
441	21	SURG	HAND PROCEDURES FOR INJURIES	0.9595	2.1	3.1
442	21	SURG	OTHER O.R. PROCEDURES FOR INJURIES W CC	2.4020	5.6	8.6
443	21	SURG	OTHER O.R. PROCEDURES FOR INJURIES W/O CC	0.9737	2.5	3.4
444	21	MED	TRAUMATIC INJURY AGE >17 W CC	0.7414	3.2	4.2
445	21	MED	TRAUMATIC INJURY AGE >17 W/O CC	0.4945	2.3	2.9
446	21	MED	*TRAUMATIC INJURY AGE 0–17	0.2951	2.4	2.4
447	21	MED	ALLERGIC REACTIONS AGE >17	0.5156	1.9	2.5
448	21	MED	*ALLERGIC REACTIONS AGE 0–17	0.0971	2.9	2.9
449	21	MED	POISONING & TOXIC EFFECTS OF DRUGS AGE >17 W CC	0.8275	2.6	3.7
450	21	MED	POISONING & TOXIC EFFECTS OF DRUGS AGE >17 W/O CC	0.4224	1.6	2.0
451	21	MED	*POISONING & TOXIC EFFECTS OF DRUGS AGE 0-17	0.2621	2.1	2.1
452	21	MED	COMPLICATIONS OF TREATMENT W CC	1.0373	3.5	4.9
453	21	MED	COMPLICATIONS OF TREATMENT W/O CC	0.5086	2.1	2.8
454	21	MED	OTHER INJURY, POISONING & TOXIC EFFECT DIAG W CC	0.8121	3.0	4.2
455	21	MED	OTHER INJURY, POISONING & TOXIC EFFECT DIAG W/O CC	0.4690	1.8	2.4
456	22		NO LONGER VALID	0.0000	0.0	0.0
457	22	MED	NO LONGER VALID	0.0000	0.0	0.0
458	22	SURG	NO LONGER VALID	0.0000	0.0	0.0
459	22	SURG	NO LONGER VALID	0.0000	0.0	0.0
460	22	MED	NO LONGER VALID	0.0000	0.0	0.0
461	23	SURG	O.R. PROC W DIAGNOSES OF OTHER CONTACT W HEALTH SERVICES.	1.1855	2.1	3.6
462	23	MED	REHABILITATION	1.0073	9.4	11.3
463	23	MED	SIGNS & SYMPTOMS W CC	0.6795	3.1	4.1
464	23	MED	SIGNS & SYMPTOMS W/O CC	0.4940	2.4	3.0
465	23	MED	AFTERCARE W HISTORY OF MALIGNANCY AS SECONDARY DIAGNOSIS.	0.9078	2.0	4.0

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TABLE 5.—LIST OF DIAGNOSIS-RELATED GROUPS (DRGS), RELATIVE WEIGHTING FACTORS, AND GEOGRAPHIC AND ARITHMETIC MEAN LENGTH OF STAY (LOS)—Continued

DRG	MDC	Type	DRG title	Relative weights	Geometric mean LOS	Arithmetic mean LOS
466	23	MED	AFTERCARE W/O HISTORY OF MALIGNANCY AS SECONDARY DIAGNOSIS.	0.7967	2.2	3.9
467	23	MED	OTHER FACTORS INFLUENCING HEALTH STATUS	0.4916	1.9	3.0
468	.....		EXTENSIVE O.R. PROCEDURE UNRELATED TO PRINCIPAL DIAGNOSIS.	3.7934	9.4	13.1
469	.....		PRINCIPAL DIAGNOSIS INVALID AS DISCHARGE **DIAGNOSIS	0.0000	0.0	0.0
470	.....		**UNGROUPABLE	0.0000	0.0	0.0
471	8	SURG	BILATERAL OR MULTIPLE MAJOR JOINT PROCS OF LOWER EXTREMITY.	3.0380	4.7	5.4
472	22	SURG	NO LONGER VALID	0.0000	0.0	0.0
473	17	MED	ACUTE LEUKEMIA W/O MAJOR O.R. PROCEDURE AGE >17	3.4644	7.4	12.7
474	4	SURG	NO LONGER VALID	0.0000	0.0	0.0
475	4	MED	RESPIRATORY SYSTEM DIAGNOSIS WITH VENTILATOR SUPPORT	3.5767	8.0	11.3
476	.....	SURG	PROSTATIC O.R. PROCEDURE UNRELATED TO PRINCIPAL DIAGNOSIS.	2.2299	8.0	11.1
477	.....	SURG	NON-EXTENSIVE O.R. PROCEDURE UNRELATED TO PRINCIPAL DIAGNOSIS.	1.8593	5.4	8.2
478	5	SURG	OTHER VASCULAR PROCEDURES W CC	2.3639	4.9	7.4
479	5	SURG	OTHER VASCULAR PROCEDURES W/O CC	1.4223	2.4	3.2
480	PRE	SURG	LIVER TRANSPLANT	9.6510	14.0	21.1
481	PRE	SURG	BONE MARROW TRANSPLANT	5.9571	19.1	21.7
482	PRE	SURG	TRACHEOSTOMY FOR FACE,MOUTH & NECK DIAGNOSES	3.4598	9.6	12.5
483	PRE	SURG	TRAC W MECH VENT 96+HRS OR PDX EXCEPT FACE,MOUTH & NECK DX OSES.	16.5997	34.1	41.3
484	24	SURG	CRANIOTOMY FOR MULTIPLE SIGNIFICANT TRAUMA	5.3969	9.9	14.7
485	24	SURG	LIMB REATTACHMENT, HIP AND FEMUR PROC FOR MULTIPLE SIGNIFICANT TRA.	3.1535	7.9	9.9
486	24	SURG	OTHER O.R. PROCEDURES FOR MULTIPLE SIGNIFICANT TRAUMA	4.8552	8.8	12.9
487	24	MED	OTHER MULTIPLE SIGNIFICANT TRAUMA	1.9609	5.3	7.3
488	25	SURG	HIV W EXTENSIVE O.R. PROCEDURE	4.7597	11.7	17.0
489	25	MED	HIV W MAJOR RELATED CONDITION	1.8340	6.0	8.6
490	25	MED	HIV W OR W/O OTHER RELATED CONDITION	1.0397	3.9	5.5
491	8	SURG	MAJOR JOINT & LIMB REATTACHMENT PROCEDURES OF UPPER EXTREMITY.	1.7059	2.8	3.4
492	17	MED	CHEMOTHERAPY W ACUTE LEUKEMIA OR W USE OF HIGH DOSE CHEMOAGENT.	3.8083	9.3	14.9
493	7	SURG	LAPAROSCOPIC CHOLECYSTECTOMY W/O C.D.E. W CC	1.8169	4.4	6.0
494	7	SURG	LAPAROSCOPIC CHOLECYSTECTOMY W/O C.D.E. W/O CC	0.9950	2.0	2.5
495	PRE	SURG	LUNG TRANSPLANT	8.3919	13.5	16.4
496	8	SURG	COMBINED ANTERIOR/POSTERIOR SPINAL FUSION	5.6730	6.8	8.9
497	8	SURG	SPINAL FUSION EXCEPT CERVICAL W CC	3.3896	5.2	6.3
498	8	SURG	SPINAL FUSION EXCEPT CERVICAL W/O CC	2.5213	3.6	4.0
499	8	SURG	BACK & NECK PROCEDURES EXCEPT SPINAL FUSION W CC	1.4186	3.3	4.5
500	8	SURG	BACK & NECK PROCEDURES EXCEPT SPINAL FUSION W/O CC	0.9344	2.0	2.4
501	9	SURG	KNEE PROCEDURES W PDX OF INFECTION W CC	2.6174	8.3	10.7
502	8	SURG	KNEE PROCEDURES W PDX OF INFECTION W/O CC	1.4062	5.2	6.2
503	8	SURG	KNEE PROCEDURES W/O PDX OF INFECTION	1.2152	3.0	3.9
504	22	SURG	EXTENSIVE 3RD DEGREE BURNS W SKIN GRAFT	11.8123	20.1	27.7
505	22	MED	EXTENSIVE 3RD DEGREE BURNS W/O SKIN GRAFT	2.0106	2.3	5.7
506	22	SURG	FULL THICKNESS BURN W SKIN GRAFT OR INHAL INJ W CC OR SIG TRAUMA.	4.0998	12.1	16.9
507	22	SURG	FULL THICKNESS BURN W SKIN GRFT OR INHAL INJ W/O CC OR SIG TRAUMA.	1.8145	6.5	9.1
508	22	MED	FULL THICKNESS BURN W/O SKIN GRFT OR INHAL INJ W CC OR SIG TRAUMA.	1.3754	5.7	8.0
509	22	MED	FULL THICKNESS BURN W/O SKIN GRFT OR INH INJ W/O CC OR SIG TRAUMA.	0.6404	3.0	4.3
510	22	MED	NON-EXTENSIVE BURNS W CC OR SIGNIFICANT TRAUMA	1.1762	4.6	6.8
511	22	MED	NON-EXTENSIVE BURNS W/O CC OR SIGNIFICANT TRAUMA	0.6654	3.1	4.6
512	PRE	SURG	SIMULTANEOUS PANCREAS/KIDNEY TRANSPLANT	5.3384	11.1	13.1
513	PRE	SURG	PANCREAS TRANSPLANT	6.0851	8.5	9.8
514	5	SURG	NO LONGER VALID	0.0000	0.0	0.0
515	5	SURG	CARDIAC DEFIBRILLATOR IMPLANT W/O CARDIAC CATH	5.3127	3.0	5.2
516	5	SURG	PERCUTANEOUS CARDIOVASC PROC W AMI	2.6723	3.7	4.7
517	5	SURG	PERC CARDIO PROC W NON-DRUG ELUTING STENT W/O AMI	2.1245	1.8	2.6
518	5	SURG	PERC CARDIO PROC W/O CORONARY ARTERY STENT OR AMI	1.8210	2.2	3.3

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DRG	MDC	Type	DRG title	Relative weights	Geometric mean LOS	Arithmetic mean LOS
519	8	SURG	CERVICAL SPINAL FUSION W CC	2.4228	3.2	5.1
520	8	SURG	CERVICAL SPINAL FUSION W/O CC	1.5749	1.7	2.1
521	20	MED	ALCOHOL/DRUG ABUSE OR DEPENDENCE W CC	0.7054	4.3	5.8
522	20	MED	ALC/DRUG ABUSE OR DEPEND W REHABILITATION THERAPY W/O CC.	0.5151	7.7	9.6
523	20	MED	ALC/DRUG ABUSE OR DEPEND W/O REHABILITATION THERAPY W/O CC.	0.3929	3.3	4.1
524	1	MED	TRANSIENT ISCHEMIA	0.7252	2.7	3.4
525	5	SURG	HEART ASSIST SYSTEM IMPLANT	11.4482	9.0	17.6
526	5	SURG	PERCUTNEOUS CARDIOVASULAR PROC W DRUG ELUTING STENT W AMI.	2.9729	3.6	4.5
527	5	SURG	PERCUTNEOUS CARDIOVASULAR PROC W DRUG ELUTING STENT W/O AMI.	2.4342	1.8	2.6
528	1	SURG	INTRACRANIAL VASCULAR PROC W PDX HEMORRHAGE	7.0434	14.1	17.2
529	1	SURG	VENTRICULAR SHUNT PROCEDURES W CC	3.1094	6.6	10.6
530	1	SURG	VENTRICULAR SHUNT PROCEDURES W/O CC	1.2664	2.9	3.9
531	1	SURG	SPINAL PROCEDURES W CC	3.0474	6.8	10.0
532	1	SURG	SPINAL PROCEDURES W/O CC	1.4487	2.9	4.0
533	1	SURG	EXTRACRANIAL PROCEDURES W CC	1.6578	2.7	4.1
534	1	SURG	EXTRACRANIAL PROCEDURES W/O CC	1.0689	1.6	2.0
535	5	SURG	CARDIAC DEFIB IMPLANT W CARDIAC CATH W AMI/HF/SHOCK	8.1344	8.1	11.0
536	5	SURG	CARDIAC DEFIB IMPLANT W CARDIAC CATH W/O AMI/HF/SHOCK	6.2536	3.9	5.8
537	8	SURG	LOCAL EXCIS & REMOV OF INT FIX DEV EXCEPT HIP & FEMUR W CC.	1.8090	4.7	7.0
538	8	SURG	LOCAL EXCIS & REMOV OF INT FIX DEV EXCEPT HIP & FEMUR W/O CC.	0.9874	2.1	2.9
539	17	SURG	LYMPHOMA & LEUKEMIA W MAJOR OR PROCEDURE W CC	3.3744	7.5	11.2
540	17	SURG	LYMPHOMA & LEUKEMIA W MAJOR OR PROCEDURE W/O CC	1.2851	2.9	4.1

*Medicare data have been supplemented by data from 19 States for low-volume DRGs.
**DRGs 469 and 470 contain cases that could not be assigned to valid DRGs.

TABLE 6A.—NEW DIAGNOSIS CODES

Diagnosis code	Description	CC	MDC	DRG
255.10	Primary aldosteronism	N	10	300, 301
255.11	Glucocorticoid-remediable aldosteronism	N	10	300, 301
255.12	Conn's syndrome	N	10	300, 301
255.13	Bartter's syndrome	N	10	300, 301
255.14	Other secondary aldosteronism	N	10	300, 301
277.81	Primary carnitine deficiency	N	10	299
277.82	Carnitine deficiency due to inborn errors of metabolism	N	10	299
277.83	Iatrogenic carnitine deficiency	N	10	299
277.84	Other secondary carnitine deficiency	N	10	299
277.89	Other specified disorders of metabolism	N	10	299
282.41	Sickle-cell thalassemia without crisis	Y	15	[1]387, [1]389
			16	395, 396
282.42	Sickle-cell thalassemia with crisis	Y	15	[1]387, [1]389
			16	395, 396
282.49	Other thalassemia	Y	15	[1]387, [1]389
			16	395, 396
282.64	Sickle-cell/Hb-C disease with crisis	Y	16	395, 396
282.68	Other sickle-cell disease without crisis	Y	16	395, 396
289.52	Splenic sequestration	N	16	398, 399
289.81	Primary hypercoagulable state	Y	16	398, 399
289.82	Secondary hypercoagulable state	Y	16	398, 399
289.89	Other specified diseases of blood and blood-forming organs	N	16	398, 399
331.11	Pick's disease	N	1	12
331.19	Other frontotemporal dementia	N	1	12
331.82	Dementia with Lewy bodies	N	1	12
348.30	Encephalopathy, unspecified	N	1	16, 17
			25	[2]489
348.31	Metabolic encephalopathy	N	1	16, 17
			25	[2]489
348.39	Other encephalopathy	N	1	16, 17
			25	[2]489

TABLE 6A.—NEW DIAGNOSIS CODES—Continued

Diagnosis code	Description	CC	MDC	DRG
358.00	Myasthenia gravis without (acute) exacerbation	Y	1	12
358.01	Myasthenia gravis with (acute) exacerbation	Y	1	12
414.07	Coronary atherosclerosis, Of bypass graft (artery) (vein) of transplanted heart	N	5	132,133
458.21	Hypotension of hemodialysis	N	5	141, 142
458.29	Other iatrogenic hypotension	N	5	141,142
493.81	Exercise induced bronchospasm	N	4	96, 97, 98
493.82	Cough variant asthma	N	4	96, 97, 98
517.3	Acute chest syndrome	N	4	92, 93
530.20	Ulcer of esophagus without bleeding	N	6	176
530.21	Ulcer of esophagus with bleeding	Y	6	176
530.85	Barrett's esophagus	N	6	176
600.00	Hypertrophy (benign) of prostate without urinary obstruction	N	12	348, 349
600.01	Hypertrophy (benign) of prostate with urinary obstruction	N	12	348, 349
600.10	Nodular prostate without urinary obstruction	N	12	348, 349
600.11	Nodular prostate with urinary obstruction	N	12	348, 349
600.20	Benign localized hyperplasia of prostate without urinary obstruction	N	12	348, 349
600.21	Benign localized hyperplasia of prostate with urinary obstruction	N	12	348, 349
600.90	Hyperplasia of prostate, unspecified, without urinary obstruction	N	12	348, 349
600.91	Hyperplasia of prostate, unspecified, with urinary obstruction	N	12	348, 349
607.85	Peyronie's disease	N	12	352
674.50	Peripartum cardiomyopathy, unspecified as to episode of care or not applicable	Y	14	469
674.51	Peripartum cardiomyopathy, delivered, with or without mention of antepartum condition.	Y	14	370, 371, 372, 374, 375
674.52	Peripartum cardiomyopathy, delivered, with mention of postpartum condition	Y	14	370, 371, 372, 374, 375
674.53	Peripartum cardiomyopathy, antepartum condition or complication	Y	14	383, 384
674.54	Peripartum cardiomyopathy, postpartum condition or complication	Y	14	376, 377
719.7	Difficulty in walking	N	8	247
728.87	Muscle weakness	N	8	247
728.88	Rhabdomyolysis	Y	8	248
752.81	Scrotal transposition	N	12	352
752.89	Other specified anomalies of genital organs	N	12	352
766.21	Post-term infant	N	15	391
766.22	Prolonged gestation of infant	N	15	391
767.11	Epicranial subaponeurotic hemorrhage (massive)	Y	15	389
767.19	Other injuries to scalp	N	15	391
779.83	Delayed separation of umbilical cord	N	15	391
780.93	Memory loss	N	23	463, 464
780.94	Early satiety	N	23	463, 464
781.94	Facial weakness	N	1	34, 35
785.52	Septic shock	Y	18	416, 417
788.63	Urgency of urination	N	11	325, 326, 327
790.21	Impaired fasting glucose	N	10	296, 297, 298
790.22	Impaired glucose tolerance test (oral)	N	10	296, 297, 298
790.29	Other abnormal glucose	N	10	296, 297, 298
799.81	Decreased libido	N	23	467
799.89	Other ill-defined conditions	N	23	467
850.11	Concussion, with loss of consciousness of 30 minutes or less	Y	1	31, 32, 33
			24	487
850.12	Concussion, with loss of consciousness from 31 to 59 minutes	Y	1	31, 32, 33
			24	487
959.11	Other injury of chest wall	N	21	444, 445, 446
			24	487
959.12	Other injury of abdomen	N	21	444, 445, 446
			24	487
959.13	Fracture of corpus cavernosum penis	N	21	444, 445, 446
			24	487
959.14	Other injury of external genitals	N	21	444, 445, 446
			24	487
959.19	Other injury of other sites of trunk	N	21	444, 445, 446
			24	487
996.57	Complication, Due to insulin pump	Y	21	452, 453
V04.81	Need for prophylactic vaccination and inoculation, Influenza	N	23	467
V04.82	Need for prophylactic vaccination and inoculation, Respiratory synctial virus (RSV).	N	23	467
V04.89	Need for prophylactic vaccination and inoculation, Other viral diseases	N	23	467
V15.87	History of Extracorporeal Membrance Oxygenation (ECMO)	N	23	467
V25.03	Encounter for emergency contraceptive counseling and prescription	N	23	467
V43.21	Organ or tissue replaced by other means, Heart assist device	Y	5	144, 145
V43.22	Organ or tissue replaced by other means, Fully implantable artificial heart	Y	5	144, 145
V45.85	Insulin pump status	N	23	467

TABLE 6A.—NEW DIAGNOSIS CODES—Continued

Diagnosis code	Description	CC	MDC	DRG
V53.90	Fitting and adjustment, Unspecified device	N	23	467
V53.91	Fitting and adjustment of insulin pump	N	23	467
V53.99	Fitting and adjustment, Other device	N	23	467
V54.01	Encounter for removal of internal fixation device	N	8	249
V54.02	Encounter for lengthening/adjustment of growth rod	N	8	249
V54.09	Other aftercare involving internal fixation device	N	8	249
V58.63	Long-term (current) use of antiplatelet/antithrombotic	N	23	465, 466
V58.64	Long-term (current) use of nonsteriodal anti-inflammatories	N	23	465, 466
V58.65	Long-term (current) use of steroids	N	23	465, 466
V64.41	Laparoscopic surgical procedure coverted to open procedure	N	23	467
V64.42	Thoracoscopic surgical procedure converted to open procedure	N	23	467
V64.43	Arthroscopic surgical procedure converted to open procedure	N	23	467
V65.11	Pediatric pre-birth visit for expectant mother	N	23	467
V65.19	Other person consulting on behalf of another person	N	23	467
V65.46	Encounter for insulin pump training	N	23	467

[1] Classified as a Major Problem.
[2] Classified as a Major Related Condition.

TABLE 6B.—NEW PROCEDURE CODES

Procedure Code	Description	OR	MDC	DRG
00.15	High-dose infusion interleukin-2 (IL-2)	N*	17	492
37.51	Heart transplantation	Y	PRE	103
37.52	Implantation of total replacement heart system	Y	5	525
37.53	Replacement or repair of thoracic unit of total replacement heart system	Y	5	525
37.54	Replacement or repair of other implantable component of total replacement heart system.	Y	5	525
68.31	Laparoscopic supracervical hysterectomy (LSH)	Y	13	354, 355,357, 358, 359
			14	375
68.39	Other subtotal abdominal hysterectomy, NOS	Y	13	354, 355, 357, 358, 359
			14	375
81.62	Fusion or refusion of 2–3 vertebrae	[1]N		
81.63	Fusion or refusion of 4–8 vertebrae	[1]N		
81.64	Fusion or refusion of 9 or more vertebrae	[1]N		

[1] Nonoperating room procedure, but affects DRG.
[1] Nonoperating room procedure code. The DRG assignment is made based on the specific fusion or refusion (81.00–81.08, 81.30–81.39, 81.61).

TABLE 6C.—INVALID DIAGNOSIS CODES

Diagnosis code	Description	CC	MDC	DRG
255.1	Hyperaldosteronism	N	10	300, 301
277.8	Other specified disorders of metabolism	N	10	299
282.4	Thalassemias	Y	15	[1]1381, [1]389
			16	395, 396
289.8	Other specified diseases of blood and blood-forming organs	N	16	398, 399
331.1	Pick's disease	N	1	12
348.3	Encephalopathy, unspecified	N	1	16, 17
			25	[2]489
358.0	Myasthenia gravis	Y	1	12
458.2	Iatrogenic hypotension	N	5	141, 142
530.2	Ulcer of esophagus	N	6	176
600.0	Hypertrophy (benign) of prostate	N	12	348, 349
600.1	Nodular prostate	N	12	348, 349
600.2	Benign localized hyperplasia of prostate	N	12	348, 349
600.9	Hyperplasia of prostate, unspecified	N	12	348, 349
719.70	Difficulty in walking, site unspecified	N	8	247
719.75	Difficulty in walking, pelvic region and thigh	N	8	247
719.76	Difficulty in walking, lower leg	N	8	247
719.77	Difficulty in walking, ankle and foot	N	8	247
719.78	Difficulty in walking, other specified sites	N	8	247
719.79	Difficulty in walking, multiple sites	N	8	247
752.8	Other specified anomalies of genital organs	N	12	352
			13	358, 359, 369

TABLE 6C.—INVALID DIAGNOSIS CODES—Continued

Diagnosis code	Description	CC	MDC	DRG
766.2	Post term infant, not "heavy for dates"	N	15	391
767.1	Injuries to scalp	N	15	391
790.2	Abnormal glucose tolerance test	N	10	296, 297, 298
799.8	Other ill-defined conditions	N	23	467
850.1	Concussion, with brief loss of consciousness	Y	1	31, 32, 33
			24	487
959.1	Injury, trunk	N	21	444, 445, 446
			24	487
V04.8	Need for prophylactic vaccination and inoculation against certain viral disease, Influenza.	N	23	467
V43.2	Organ or tissue replaced by other means, Heart	Y	5	144, 145
V53.9	Fitting and adjustment of other device, Other and unspecified device	N	23	467
V54.0	Aftercare involving removal of fracture plate or other internal fixation device	N	8	249
V64.4	Laparoscopic surgical procedure converted to open procedure	N	23	467
V65.1	Person consulting on behalf of another person	N	23	467

[1] Classified as a "Major Problem."
[2] Classified as a "Major Related Condition."

TABLE 6D.—INVALID PROCEDURE CODES

Procedure code	Description	OR	MDC	DRG
37.5	Heart transplantation	Y	PRE	103
68.3	Subtotal abdominal hysterectomy	Y	13	354, 355, 357, 358, 359
			14	375

TABLE 6E.—REVISED DIAGNOSIS CODE TITLES

Diagnosis code	Description	CC	MDC	DRG
282.60	Sickle-cell disease, unspecified	Y	16	395, 396
282.61	Hb-SS disease without crisis	Y	16	395, 396
282.62	Hb-SS disease with crisis	Y	16	395, 396
282.63	Sickle-cell/Hb-C disease without crisis	Y	16	395, 396
282.69	Other sickle-cell disease with crisis	Y	16	395, 396
414.06	Of native coronary artery of transplanted heart	N	5	132, 133
491.20	Obstructive chronic bronchitis, without exacerbation	Y	4	88
491.21	Obstructive chronic bronchitis, with (acute) exacerbation	Y	4	88
493.00	Extrinsic asthma, unspecified	N	4	96, 97, 98
493.02	Extrinsic asthma, with (acute) exacerbation	Y	4	96, 97, 98
493.10	Intrinsic asthma, unspecified	N	4	96, 97, 98
493.12	Intrinsic asthma, with (acute) exacerbation	Y	4	96, 97, 98
493.20	Chronic obstructive asthma, unspecified	Y	4	88
493.22	Chronic obstructive asthma, with (acute) exacerbation	Y	4	88
493.90	Asthma, unspecified, unspecified	N	4	96, 97, 98
493.92	Asthma, unspecified, with (acute) exacerbation	Y	4	96, 97, 98
V06.1	Diphtheria-tetanus-pertussis, combined [DTP] [DtaP]	N	23	467
V06.5	Tetanus-diphtheria [Td][DT]	N	23	467

TABLE 6F.—REVISED PROCEDURE CODE TITLES

Procedure code	Description	OR	MDC	DRG
37.33	Excision or destruction of other lesion or tissue of heart, open approach	Y	5	108
37.34	Excision or destruction of other lesion or tissue of heart, other approach	Y	5	516, 517, 518
39.79	Other endovascular repair (of aneurysm) of other vessels	Y	1	1, 2, 3
			5	110, 111
			11	315
			21	442, 443
			24	486

TABLE 6G.—ADDITIONS TO THE CC EXCLUSIONS LIST

[CCs that are added to the list are in Table 6G-Additions to the CC Exclusions List. Each of the principal diagnoses is shown with an asterisk, and the revisions to the CC Exclusions List are provided in an indented column immediately following the affected principal diagnosis.]

*25060	*2800	28242	2848	28262	28249	28268	2860
35800	28241	28249	2849	28263	28264	*28522	2861
35801	28242	28264	2850	28264	28268	28241	2862
*25061	28249	28268	2851	28268	*28310	28242	2863
35800	28264	*2821	*28249	28269	28241	28249	2864
35801	28268	28241	2800	2830	28242	28264	2865
*25062	*2801	28242	2814	28310	28249	28268	2866
35800	28241	28249	2818	28311	28264	*28529	2867
35801	28242	28264	28241	28319	28268	28241	2869
*25063	28249	28268	28242	2832	*28311	28242	2870
35800	28264	*2822	28249	2839	28241	28249	2871
35801	28268	28241	28260	2840	28242	28264	2872
*25080	*2808	28242	28261	2848	28249	28268	2873
35800	28241	28249	28262	2849	28264	*2858	2874
35801	28242	28264	28263	2850	28268	28241	2875
*25081	28249	28268	28264	2851	*28319	28242	2878
35800	28264	*2823	28268	*28268	28241	28249	2879
35801	28268	28241	28269	2800	28242	28264	2880
*25082	*2809	28242	2830	2814	28249	28268	2881
35800	28241	28249	28310	2818	28264	*2859	28981
35801	28242	28264	28311	28241	28268	28241	28982
*25083	28249	28268	28319	28242	*2832	28242	*28982
35800	28264	*28241	2832	28249	28241	28249	2800
35801	28268	2800	2839	28260	28242	28264	2814
*25090	*2810	2814	2840	28261	28249	28268	2818
35800	28241	2818	2848	28262	28264	*2880	28241
35801	28242	28241	2849	28263	28268	28981	28242
*25091	28249	28242	2850	28264	*2839	28982	28249
35800	28264	28249	2851	28268	28241	*2881	28260
35801	28268	28260	*2825	28269	28242	28981	28261
*25092	*2811	28261	28241	2830	28249	28982	28262
35800	28241	28262	28242	28310	28264	*2882	28263
35801	28242	28263	28249	28311	28268	28981	28264
*25093	28249	28264	28264	28319	*2840	28982	28268
35800	28264	28268	28268	2832	28241	*2883	28269
35801	28268	28269	*28260	2839	28242	28981	2830
*2515	*2812	2830	28241	2840	28249	28982	28310
53021	28241	28310	28242	2848	28264	*2888	28311
*25510	28242	28311	28249	2849	28268	28981	28319
2550	28249	28319	28264	2850	*2848	28982	2832
2580	28264	2832	28268	2851	28241	*2889	2839
2581	28268	2839	*28261	*28269	28242	28981	2840
2588	*2813	2840	28241	28241	28249	28982	2848
2589	28241	2848	28242	28242	28264	*28981	2849
*25511	28242	2849	28249	28249	28268	2800	2850
2550	28249	2850	28264	28264	*2849	2814	2851
2580	28264	2851	28268	28268	28241	2818	2860
2581	28268	*28242	*28262	*2827	28242	28241	2861
2588	*2814	2800	28241	28241	28249	28242	2862
2589	28241	2814	28242	28242	28264	28249	2863
*25512	28242	2818	28249	28249	28268	28260	2864
2550	28249	28241	28264	28264	*2850	28261	2865
2580	28264	28242	28268	28268	28241	28262	2866
2581	28268	28249	*28263	*2828	28242	28263	2867
2588	*2818	28260	28241	28241	28249	28264	2869
2589	28241	28261	28242	28242	28264	28268	2870
*25513	28242	28262	28249	28249	28268	28269	2871
2550	28249	28263	28264	28264	*2851	2830	2872
2580	28264	28264	28268	28268	28241	28310	2873
2581	28268	28268	*28264	*2829	28242	28311	2874
2588	*2819	28269	2800	28241	28249	28319	2875
2589	28241	2830	2814	28242	28264	2832	2878
*25514	28242	28310	2818	28249	28268	2839	2879
2550	28249	28311	28241	28264	*28521	2840	2880
2580	28264	28319	28242	28268	28241	2848	2881
2581	28268	2832	28249	*2830	28242	2849	28981
2588	*2820	2839	28260	28241	28249	2850	28982
2589	28241	2840	28261	28242	28264	2851	*28989
2800	35801	53201	53121	5789	53531	53021	*53451
2814	3581	53210	53131	*5307	53541	*53251	53021
2818	*3581	53211	53140	53021	53551	53021	*53460
28241	35800	53220	53141	*53082	53561	*53260	53021

TABLE 6G.—ADDITIONS TO THE CC EXCLUSIONS LIST—Continued

[CCs that are added to the list are in Table 6G-Additions to the CC Exclusions List. Each of the principal diagnoses is shown with an asterisk, and the revisions to the CC Exclusions List are provided in an indented column immediately following the affected principal diagnosis.]

28242	35801	53221	53150	53021	53783	53021	*53461
28249	*4560	53231	53151	*53085	53784	*53261	53021
28260	53021	53240	53160	4560	56202	53021	*53470
28261	*49381	53241	53161	53021	56203	*53270	53021
28262	49301	53250	53171	5307	56212	53021	*53471
28263	49302	53251	53191	53082	56213	*53271	53021
28264	49311	53260	53200	53100	5693	53021	*53490
28268	49312	53261	53201	53101	56985	*53290	53021
28269	49320	53271	53210	53110	56986	53021	*53491
2830	49321	53291	53211	53111	5780	*53291	53021
28310	49322	53300	53220	53120	5781	53021	*53501
28311	49391	53301	53221	53121	5789	*53300	53021
28319	49392	53310	53231	53131	*53100	53021	*53511
2832	*49382	53311	53240	53140	53021	*53301	53021
2839	49301	53320	53241	53141	*53101	53021	*53521
2840	49302	53321	53250	53150	53021	*53310	53021
2848	49311	53331	53251	53151	*53110	53021	*53531
2849	49312	53340	53260	53160	53021	*53311	53021
2850	49320	53341	53261	53161	*53111	53021	*53541
2851	49321	53350	53271	53171	53021	*53320	53021
2860	49322	53351	53291	53191	*53120	53021	*53551
2861	49391	53360	53300	53200	53021	*53321	53021
2862	49392	53361	53301	53201	*53121	53021	*53561
2863	*5173	53371	53310	53210	53021	*53330	53021
2864	2800	53391	53311	53211	*53130	53021	*53783
2865	2814	53400	53320	53220	53021	*53331	53021
2866	2818	53401	53321	53221	*53131	53021	*53789
2867	28241	53410	53331	53231	53021	*53340	53021
2869	28242	53411	53340	53240	*53140	53021	*5379
2870	28249	53420	53341	53241	53021	*53341	53021
2871	28260	53421	53350	53250	*53141	53021	*56202
2872	28261	53431	53351	53251	53021	*53350	53021
2873	28262	53440	53360	53260	*53150	53021	*56203
2874	28263	53441	53361	53261	53021	*53351	53021
2875	28264	53450	53371	53271	*53151	53021	*56212
2878	28268	53451	53391	53291	53021	*53360	53021
2879	28269	53460	53400	53300	*53160	53021	*56213
2880	2830	53461	53401	53301	53021	*53361	53021
2881	28310	53471	53410	53310	*53161	53021	*5693
28981	28311	53491	53411	53311	53021	*53370	53021
28982	28319	53501	53420	53320	*53170	53021	*56985
*2899	2832	53511	53421	53321	53021	*53371	53021
28241	2839	53521	53431	53331	*53171	53021	*5780
28242	2840	53531	53440	53340	53021	*53390	53021
28249	2848	53541	53441	53341	*53190	53021	*5781
28264	2849	53551	53450	53350	53021	*53391	53021
28268	2850	53561	53451	53351	*53191	53021	*5789
28981	2851	53783	53460	53360	53021	*53400	53021
28982	*53020	53784	53461	53361	*53200	53021	*60000
*33182	4560	56202	53471	53371	53021	*53401	5960
3314	53021	56203	53491	53391	*53201	53021	5996
*34830	5307	56212	53501	53400	53021	*53410	6010
34982	53082	56213	53511	53401	*53210	53021	6012
*34831	53100	5693	53521	53410	53021	*53411	6013
34982	53101	56985	53531	53411	*53211	53021	6021
*34839	53110	56986	53541	53420	53021	*53420	78820
34982	53111	5780	53551	53421	*53220	53021	78829
*34989	53120	5781	53561	53431	53021	*53421	*60001
35800	53121	5789	53783	53440	*53221	53021	5960
35801	53131	*53021	53784	53441	53021	*53430	5996
*3499	53140	4560	56202	53450	*53230	53021	6010
35800	53141	53021	56203	53451	53021	*53431	6012
35801	53150	5307	56212	53460	*53231	53021	6013
*35800	53151	53082	56213	53461	53021	*53440	6021
35800	53160	53100	5693	53471	*53240	53021	78820
35801	53161	53101	56985	53491	53021	*53441	78829
3581	53171	53110	56986	53501	*53241	53021	*60010
*35801	53191	53111	5780	53511	53021	*53450	5960
35800	53200	53120	5781	53521	*53250	53021	5996
6010	67450	67451	67452	67400	6143	7744	7994
6012	67451	67452	67453	67401	6145	7745	*78099
6013	67452	67453	67454	67402	6150	7747	78552

TABLE 6G.—ADDITIONS TO THE CC EXCLUSIONS LIST—Continued

[CCs that are added to the list are in Table 6G-Additions to the CC Exclusions List. Each of the principal diagnoses is shown with an asterisk, and the revisions to the CC Exclusions List are provided in an indented column immediately following the affected principal diagnosis.]

6021	67453	67454	*66994	67403	6163	7751	*78550
78820	67454	*66942	67450	67404	6164	7752	78552
78829	*64684	67450	67451	67450	6207	7753	*78551
*60011	67450	67451	67452	67451	*75289	7754	78552
5960	67451	67452	67453	67452	5970	7755	*78552
5996	67452	67453	67454	67453	5994	7756	04082
6010	67453	67454	*67400	67454	6140	7757	78550
6012	67454	*66943	67450	*67454	6143	7760	78551
6013	*64690	67450	67451	67400	6145	7761	78552
6021	67450	67451	67452	67401	6150	7762	78559
78820	67451	67452	67453	67402	6163	7763	*78559
78829	67452	67453	67454	67403	6164	7771	78552
*60020	67453	67454	*67401	67404	6207	7772	*7859
5960	67454	*66944	67450	67450	*7670	7775	78552
5996	*64691	67450	67451	67451	76711	7776	*78863
6010	67450	67451	67452	67452	*76711	7780	78820
6012	67451	67452	67453	67453	76711	7790	78829
6013	67452	67453	67454	67454	*7678	7791	*79981
6021	67453	67454	*67402	*7197	76711	7797	04082
78820	67454	*66980	67450	6960	*7679	*77989	44024
78829	*64693	67450	67451	71100	76711	76711	78001
*60021	67450	67451	67452	71101	*77981	*78091	78003
5960	67451	67452	67453	71102	76711	78552	7801
5996	67452	67453	67454	71103	*77982	*78092	78031
6010	67453	67454	*67403	71104	76711	78552	78039
6012	67454	*66981	67450	71105	*77983	*78093	7817
6013	*64890	67450	67451	71106	76501	04082	7854
6021	67450	67451	67452	71107	76502	44024	78550
78820	67451	67452	67453	71108	76503	78001	78551
78829	67452	67453	67454	71109	76504	78003	78552
*60090	67453	67454	*67404	71160	76505	7801	78559
5960	67454	*66982	67450	71161	76506	78031	7863
5996	*64891	67450	67451	71162	76507	78039	78820
6010	67450	67451	67452	71163	76508	7817	78829
6012	67451	67452	67453	71164	7670	7854	7895
6013	67452	67453	67454	71165	76711	78550	7907
6021	67453	67454	*67450	71166	7685	78551	7911
78820	67454	*66983	67400	71167	769	78552	7913
78829	*64892	67450	67401	71168	7700	78559	7991
*60091	67450	67451	67402	71169	7701	7863	7994
5960	67451	67452	67403	7141	7702	78820	*79989
5996	67452	67453	67404	7142	7703	78829	04082
6010	67453	67454	67450	71430	7704	7895	44024
6012	67454	*66984	67451	71431	7705	7907	78001
6013	*64893	67450	67452	71432	7707	7911	78003
6021	67450	67451	67453	71433	77084	7913	7801
78820	67451	67452	67454	*7280	7710	7991	78031
78829	67452	67453	*67451	72888	7711	7994	78039
*60785	67453	67454	67400	*72811	7713	*78094	7817
5970	67454	*66990	67401	72888	77181	04082	7854
5994	*64894	67450	67402	*72812	77183	44024	78550
*64680	67450	67451	67403	72888	77210	78001	78551
67450	67451	67452	67404	*72813	77211	78003	78552
67451	67452	67453	67450	72888	77212	7801	78559
67452	67453	67454	67451	*72819	77213	78031	7863
67453	67454	*66991	67452	72888	77214	78039	78820
67454	*650	67450	67453	*7282	7722	7817	78829
*64681	67450	67451	67454	72888	7724	7854	7895
67450	67451	67452	*67452	*7283	7725	78550	7907
67451	67452	67453	67400	72888	7730	78551	7911
67452	67453	67454	67401	*72881	7731	78552	7913
67453	67454	*66992	67402	72888	7732	78559	7991
67454	*66940	67450	67403	*72886	7733	7863	7994
*64682	67450	67451	67404	72888	7734	78820	*80000
67450	67451	67452	67450	*72888	7740	78829	85011
67451	67452	67453	67451	72888	7741	7895	85012
67452	67453	67454	67452	*75281	7742	7907	*80001
67453	67454	*66993	67453	5970	77430	7911	85011
67454	*66941	67450	67454	5994	77431	7913	85012
*64683	67450	67451	*67453	6140	77439	7991	*80002
85011	85012	*80063	85011	85012	*80154	85011	85012
85012	*80033	85011	85012	*80124	85011	85012	*80315

TABLE 6G.—ADDITIONS TO THE CC EXCLUSIONS LIST—Continued

[CCs that are added to the list are in Table 6G-Additions to the CC Exclusions List. Each of the principal diagnoses is shown with an asterisk, and the revisions to the CC Exclusions List are provided in an indented column immediately following the affected principal diagnosis.]

*80003	85011	85012	*80094	85011	85012	*80185	85011
85011	85012	*80064	85011	85012	*80155	85011	85012
85012	*80034	85011	85012	*80125	85011	85012	*80316
*80004	85011	85012	*80095	85011	85012	*80186	85011
85011	85012	*80065	85011	85012	*80156	85011	85012
85012	*80035	85011	85012	*80126	85011	85012	*80319
*80005	85011	85012	*80096	85011	85012	*80189	85011
85011	85012	*80066	85011	85012	*80159	85011	85012
85012	*80036	85011	85012	*80129	85011	85012	*80320
*80006	85011	85012	*80099	85011	85012	*80190	85011
85011	85012	*80069	85011	85012	*80160	85011	85012
85012	*80039	85011	85012	*80130	85011	85012	*80321
*80009	85011	85012	*80100	85011	85012	*80191	85011
85011	85012	*80070	85011	85012	*80161	85011	85012
85012	*80040	85011	85012	*80131	85011	85012	*80322
*80010	85011	85012	*80101	85011	85012	*80192	85011
85011	85012	*80071	85011	85012	*80162	85011	85012
85012	*80041	85011	85012	*80132	85011	85012	*80323
*80011	85011	85012	*80102	85011	85012	*80193	85011
85011	85012	*80072	85011	85012	*80163	85011	85012
85012	*80042	85011	85012	*80133	85011	85012	*80324
*80012	85011	85012	*80103	85011	85012	*80194	85011
85011	85012	*80073	85011	85012	*80164	85011	85012
85012	*80043	85011	85012	*80134	85011	85012	*80325
*80013	85011	85012	*80104	85011	85012	*80195	85011
85011	85012	*80074	85011	85012	*80165	85011	85012
85012	*80044	85011	85012	*80135	85011	85012	*80326
*80014	85011	85012	*80105	85011	85012	*80196	85011
85011	85012	*80075	85011	85012	*80166	85011	85012
85012	*80045	85011	85012	*80136	85011	85012	*80329
*80015	85011	85012	*80106	85011	85012	*80199	85011
85011	85012	*80076	85011	85012	*80169	85011	85012
85012	*80046	85011	85012	*80139	85011	85012	*80330
*80016	85011	85012	*80109	85011	85012	*80300	85011
85011	85012	*80079	85011	85012	*80170	85011	85012
85012	*80049	85011	85012	*80140	85011	85012	*80331
*80019	85011	85012	*80110	85011	85012	*80301	85011
85011	85012	*80080	85011	85012	*80171	85011	85012
85012	*80050	85011	85012	*80141	85011	85012	*80332
*80020	85011	85012	*80111	85011	85012	*80302	85011
85011	85012	*80081	85011	85012	*80172	85011	85012
85012	*80051	85011	85012	*80142	85011	85012	*80333
*80021	85011	85012	*80112	85011	85012	*80303	85011
85011	85012	*80082	85011	85012	*80173	85011	85012
85012	*80052	85011	85012	*80143	85011	85012	*80334
*80022	85011	85012	*80113	85011	85012	*80304	85011
85011	85012	*80083	85011	85012	*80174	85011	85012
85012	*80053	85011	85012	*80144	85011	85012	*80335
*80023	85011	85012	*80114	85011	85012	*80305	85011
85011	85012	*80084	85011	85012	*80175	85011	85012
85012	*80054	85011	85012	*80145	85011	85012	*80336
*80024	85011	85012	*80115	85011	85012	*80306	85011
85011	85012	*80085	85011	85012	*80176	85011	85012
85012	*80055	85011	85012	*80146	85011	85012	*80339
*80025	85011	85012	*80116	85011	85012	*80309	85011
85011	85012	*80086	85011	85012	*80179	85011	85012
85012	*80056	85011	85012	*80149	85011	85012	*80340
*80026	85011	85012	*80119	85011	85012	*80310	85011
85011	85012	*80089	85011	85012	*80180	85011	85012
85012	*80059	85011	85012	*80150	85011	85012	*80341
*80029	85011	85012	*80120	85011	85012	*80311	85011
85011	85012	*80090	85011	85012	*80181	85011	85012
85012	*80060	85011	85012	*80151	85011	85012	*80342
*80030	85011	85012	*80121	85011	85012	*80312	85011
85011	85012	*80091	85011	85012	*80182	85011	85012
85012	*80061	85011	85012	*80152	85011	85012	*80343
*80031	85011	85012	*80122	85011	85012	*80313	85011
85011	85012	*80092	85011	85012	*80183	85011	85012
85012	*80062	85011	85012	*80153	85011	85012	*80344
*80032	85011	85012	*80123	85011	85012	*80314	85011
85011	85012	*80093	85011	85012	*80184	85011	85012
*80345	85011	85012	*80436	85011	85012	80072	80163

TABLE 6G.—ADDITIONS TO THE CC EXCLUSIONS LIST—Continued

[CCs that are added to the list are in Table 6G-Additions to the CC Exclusions List. Each of the principal diagnoses is shown with an asterisk, and the revisions to the CC Exclusions List are provided in an indented column immediately following the affected principal diagnosis.]

85011	85012	*80406	85011	85012	*80499	80073	80164
85012	*80376	85011	85012	*80469	85011	80074	80165
*80346	85011	85012	*80439	85011	85012	80075	80166
85011	85012	*80409	85011	85012	*8500	80076	80169
85012	*80379	85011	85012	*80470	85011	80079	80170
*80349	85011	85012	*80440	85011	85012	80080	80171
85011	85012	*80410	85011	85012	*85011	80081	80172
85012	*80380	85011	85012	*80471	430	80082	80173
*80350	85011	85012	*80441	85011	431	80083	80174
85011	85012	*80411	85011	85012	4320	80084	80175
85012	*80381	85011	85012	*80472	4321	80085	80176
*80351	85011	85012	*80442	85011	436	80086	80179
85011	85012	*80412	85011	85012	78001	80089	80180
85012	*80382	85011	85012	*80473	78003	80090	80181
*80352	85011	85012	*80443	85011	80000	80091	80182
85011	85012	*80413	85011	85012	80001	80092	80183
85012	*80383	85011	85012	*80474	80002	80093	80184
*80353	85011	85012	*80444	85011	80003	80094	80185
85011	85012	*80414	85011	85012	80004	80095	80186
85012	*80384	85011	85012	*80475	80005	80096	80189
*80354	85011	85012	*80445	85011	80006	80099	80190
85011	85012	*80415	85011	85012	80009	80100	80191
85012	*80385	85011	85012	*80476	80010	80101	80192
*80355	85011	85012	*80446	85011	80011	80102	80193
85011	85012	*80416	85011	85012	80012	80103	80194
85012	*80386	85011	85012	*80479	80013	80104	80195
*80358	85011	85012	*80449	85011	80014	80105	80196
85011	85012	*80419	85011	85012	80015	80106	80199
85012	*80389	85011	85012	*80480	80016	80109	8021
*80359	85011	85012	*80450	85011	80019	80110	80220
85011	85012	*80420	85011	85012	80020	80111	80221
85012	*80390	85011	85012	*80481	80021	80112	80222
*80360	85011	85012	*80451	85011	80022	80113	80223
85011	85012	*80421	85011	85012	80023	80114	80224
85012	*80391	85011	85012	*80482	80024	80115	80225
*80361	85011	85012	*80452	85011	80025	80116	80226
85011	85012	*80422	85011	85012	80026	80119	80227
85012	*80392	85011	85012	*80483	80029	80120	80228
*80362	85011	85012	*80453	85011	80030	80121	80229
85011	85012	*80423	85011	85012	80031	80122	80230
85012	*80393	85011	85012	*80484	80032	80123	80231
*80363	85011	85012	*80454	85011	80033	80124	80232
85011	85012	*80424	85011	85012	80034	80125	80233
85012	*80394	85011	85012	*80485	80035	80126	80234
*80364	85011	85012	*80455	85011	80036	80129	80235
85011	85012	*80425	85011	85012	80039	80130	80236
85012	*80395	85011	85012	*80486	80040	80131	80237
*80365	85011	85012	*80456	85011	80041	80132	80238
85011	85012	*80426	85011	85012	80042	80133	80239
85012	*80396	85011	85012	*80489	80043	80134	8024
*80366	85011	85012	*80459	85011	80044	80135	8025
85011	85012	*80429	85011	85012	80045	80136	8026
85012	*80399	85011	85012	*80490	80046	80139	8027
*80369	85011	85012	*80460	85011	80049	80140	8028
85011	85012	*80430	85011	85012	80050	80141	8029
85012	*80400	85011	85012	*80491	80051	80142	80300
*80370	85011	85012	*80461	85011	80052	80143	80301
85011	85012	*80431	85011	85012	80053	80144	80302
85012	*80401	85011	85012	*80492	80054	80145	80303
*80371	85011	85012	*80462	85011	80055	80146	80304
85011	85012	*80432	85011	85012	80056	80149	80305
85012	*80402	85011	85012	*80493	80059	80150	80306
*80372	85011	85012	*80463	85011	80060	80151	80309
85011	85012	*80433	85011	85012	80061	80152	80310
85012	*80403	85011	85012	*80494	80062	80153	80311
*80373	85011	85012	*80464	85011	80063	80154	80312
85011	85012	*80434	85011	85012	80064	80155	80313
85012	*80404	85011	85012	*80495	80065	80156	80314
*80374	85011	85012	*80465	85011	80066	80159	80315
85011	85012	*80435	85011	85012	80069	80160	80316
85012	*80405	85011	85012	*80496	80070	80161	80319
*80375	85011	85012	*80466	85011	80071	80162	80320

TABLE 6G.—ADDITIONS TO THE CC EXCLUSIONS LIST—Continued

[CCs that are added to the list are in Table 6G-Additions to the CC Exclusions List. Each of the principal diagnoses is shown with an asterisk, and the revisions to the CC Exclusions List are provided in an indented column immediately following the affected principal diagnosis.]

80321	80412	8502	85184	85315	80056	80149	80305
80322	80413	8503	85185	85316	80059	80150	80306
80323	80414	8504	85186	85319	80060	80151	80309
80324	80415	8505	85189	85400	80061	80152	80310
80325	80416	8509	85190	85401	80062	80153	80311
80326	80419	85100	85191	85402	80063	80154	80312
80329	80420	85101	85192	85403	80064	80155	80313
80330	80421	85102	85193	85404	80065	80156	80314
80331	80422	85103	85194	85405	80066	80159	80315
80332	80423	85104	85195	85406	80069	80160	80316
80333	80424	85105	85196	85409	80070	80161	80319
80334	80425	85106	85199	85410	80071	80162	80320
80335	80426	85109	85200	85411	80072	80163	80321
80336	80429	85110	85201	85412	80073	80164	80322
80339	80430	85111	85202	85413	80074	80165	80323
80340	80431	85112	85203	85414	80075	80166	80324
80341	80432	85113	85204	85415	80076	80169	80325
80342	80433	85114	85205	85416	80079	80170	80326
80343	80434	85115	85206	85419	80080	80171	80329
80344	80435	85116	85209	*85012	80081	80172	80330
80345	80436	85119	85210	430	80082	80173	80331
80346	80439	85120	85211	431	80083	80174	80332
80349	80440	85121	85212	4320	80084	80175	80333
80350	80441	85122	85213	4321	80085	80176	80334
80351	80442	85123	85214	436	80086	80179	80335
80352	80443	85124	85215	78001	80089	80180	80336
80353	80444	85125	85216	78003	80090	80181	80339
80354	80445	85126	85219	80000	80091	80182	80340
80355	80446	85129	85220	80001	80092	80183	80341
80356	80449	85130	85221	80002	80093	80184	80342
80359	80450	85131	85222	80003	80094	80185	80343
80360	80451	85132	85223	80004	80095	80186	80344
80361	80452	85133	85224	80005	80096	80189	80345
80362	80453	85134	85225	80006	80099	80190	80346
80363	80454	85135	85226	80009	80100	80191	80349
80364	80455	85136	85229	80010	80101	80192	80350
80365	80456	85139	85230	80011	80102	80193	80351
80366	80459	85140	85231	80012	80103	80194	80352
80369	80460	85141	85232	80013	80104	80195	80353
80370	80461	85142	85233	80014	80105	80196	80354
80371	80462	85143	85234	80015	80106	80199	80355
80372	80463	85144	85235	80016	80109	8021	80356
80373	80464	85145	85236	80019	80110	80220	80359
80374	80465	85146	85239	80020	80111	80221	80360
80375	80466	85149	85240	80021	80112	80222	80361
80376	80469	85150	85241	80022	80113	80223	80362
80379	80470	85151	85242	80023	80114	80224	80363
80380	80471	85152	85243	80024	80115	80225	80364
80381	80472	85153	85244	80025	80116	80226	80365
80382	80473	85154	85245	80026	80119	80227	80366
80383	80474	85155	85246	80029	80120	80228	80369
80384	80475	85156	85249	80030	80121	80229	80370
80385	80476	85159	85250	80031	80122	80230	80371
80386	80479	85160	85251	80032	80123	80231	80372
80389	80480	85161	85252	80033	80124	80232	80373
80390	80481	85162	85253	80034	80125	80233	80374
80391	80482	85163	85254	80035	80126	80234	80375
80392	80483	85164	85255	80036	80129	80235	80376
80393	80484	85165	85256	80039	80130	80236	80379
80394	80485	85166	85259	80040	80131	80237	80380
80395	80486	85169	85300	80041	80132	80238	80381
80396	80489	85170	85301	80042	80133	80239	80382
80399	80490	85171	85302	80043	80134	8024	80383
80400	80491	85172	85303	80044	80135	8025	80384
80401	80492	85173	85304	80045	80136	8026	80385
80402	80493	85174	85305	80046	80139	8027	80386
80403	80494	85175	85306	80049	80140	8028	80389
80404	80495	85176	85309	80050	80141	8029	80390
80405	80496	85179	85310	80051	80142	80300	80391
80406	80499	85180	85311	80052	80143	80301	80392
80409	8500	85181	85312	80053	80144	80302	80393
80410	85011	85182	85313	80054	80145	80303	80394

TABLE 6G.—ADDITIONS TO THE CC EXCLUSIONS LIST—Continued

[CCs that are added to the list are in Table 6G-Additions to the CC Exclusions List. Each of the principal diagnoses is shown with an asterisk, and the revisions to the CC Exclusions List are provided in an indented column immediately following the affected principal diagnosis.]

80411	85012	85183	85314	80055	80146	80304	80395
80396	80489	85170	85301	*85111	85011	85012	*85202
80399	80490	85171	85302	85011	85012	*85172	85011
80400	80491	85172	85303	85012	*85142	85011	85012
80401	80492	85173	85304	*85112	85011	85012	*85203
80402	80493	85174	85305	85011	85012	*85173	85011
80403	80494	85175	85306	85012	*85143	85011	85012
80404	80495	85176	85309	*85113	85011	85012	*85204
80405	80496	85179	85310	85011	85012	*85174	85011
80406	80499	85180	85311	85012	*85144	85011	85012
80409	8500	85181	85312	*85114	85011	85012	*85205
80410	85011	85182	85313	85011	85012	*85175	85011
80411	85012	85183	85314	85012	*85145	85011	85012
80412	8502	85184	85315	*85115	85011	85012	*85206
80413	8503	85185	85316	85011	85012	*85176	85011
80414	8504	85186	85319	85012	*85146	85011	85012
80415	8505	85189	85400	*85116	85011	85012	*85209
80416	8509	85190	85401	85011	85012	*85179	85011
80419	85100	85191	85402	85012	*85149	85011	85012
80420	85101	85192	85403	*85119	85011	85012	*85210
80421	85102	85193	85404	85011	85012	*85180	85011
80422	85103	85194	85405	85012	*85150	85011	85012
80423	85104	85195	85406	*85120	85011	85012	*85211
80424	85105	85196	85409	85011	85012	*85181	85011
80425	85106	85199	85410	85012	*85151	85011	85012
80426	85109	85200	85411	*85121	85011	85012	*85212
80429	85110	85201	85412	85011	85012	*85182	85011
80430	85111	85202	85413	85012	*85152	85011	85012
80431	85112	85203	85414	*85122	85011	85012	*85213
80432	85113	85204	85415	85011	85012	*85183	85011
80433	85114	85205	85416	85012	*85153	85011	85012
80434	85115	85206	85419	*85123	85011	85012	*85214
80435	85116	85209	*8502	85011	85012	*85184	85011
80436	85119	85210	85011	85012	*85154	85011	85012
80439	85120	85211	85012	*85124	85011	85012	*85215
80440	85121	85212	*8503	85011	85012	*85185	85011
80441	85122	85213	85011	85012	*85155	85011	85012
80442	85123	85214	85012	*85125	85011	85012	*85216
80443	85124	85215	*8504	85011	85012	*85186	85011
80444	85125	85216	85011	85012	*85156	85011	85012
80445	85126	85219	85012	*85126	85011	85012	*85219
80446	85129	85220	*8505	85011	85012	*85189	85011
80449	85130	85221	85011	85012	*85159	85011	85012
80450	85131	85222	85012	*85129	85011	85012	*85221
80451	85132	85223	*8509	85011	85012	*85190	85011
80452	85133	85224	85011	85012	*85160	85011	85012
80453	85134	85225	85012	*85130	85011	85012	*85222
80454	85135	85226	*85100	85011	85012	*85191	85011
80455	85136	85229	85011	85012	*85161	85011	85012
80456	85139	85230	85012	*85131	85011	85012	*85223
80459	85140	85231	*85101	85011	85012	*85192	85011
80460	85141	85232	85011	85012	*85162	85011	85012
80461	85142	85233	85012	*85132	85011	85012	*85224
80462	85143	85234	*85102	85011	85012	*85193	85011
80463	85144	85235	85011	85012	*85163	85011	85012
80464	85145	85236	85012	*85133	85011	85012	*85225
80465	85146	85239	*85103	85011	85012	*85194	85011
80466	85149	85240	85011	85012	*85164	85011	85012
80469	85150	85241	85012	*85134	85011	85012	*85226
80470	85151	85242	*85104	85011	85012	*85195	85011
80471	85152	85243	85011	85012	*85165	85011	85012
80472	85153	85244	85012	*85135	85011	85012	*85229
80473	85154	85245	*85105	85011	85012	*85196	85011
80474	85155	85246	85011	85012	*85166	85011	85012
80475	85156	85249	85012	*85136	85011	85012	*85230
80476	85159	85250	*85106	85011	85012	*85199	85011
80479	85160	85251	85011	85012	*85169	85011	85012
80480	85161	85252	85012	*85139	85011	85012	*85231
80481	85162	85253	*85109	85011	85012	*85200	85011
80482	85163	85254	85011	85012	*85170	85011	85012
80483	85164	85255	85012	*85140	85011	85012	*85232
80484	85165	85256	*85110	85011	85012	*85201	85011

TABLE 6G.—ADDITIONS TO THE CC EXCLUSIONS LIST—Continued

[CCs that are added to the list are in Table 6G-Additions to the CC Exclusions List. Each of the principal diagnoses is shown with an asterisk, and the revisions to the CC Exclusions List are provided in an indented column immediately following the affected principal diagnosis.]

80485	85166	85259	85011	85012	*85171	85011	85012
80486	85169	85300	85012	*85141	85011	85012	*85233
85011	85012	*85414	8058	95219	8064	80609	80504
85012	*85304	85011	8059	9522	8065	80610	80505
*85234	85011	85012	80600	9523	80660	80611	80506
85011	85012	*85415	80601	9524	80661	80612	80507
85012	*85305	85011	80602	9528	80662	80613	80508
*85235	85011	85012	80603	9529	80669	80614	80510
85011	85012	*85416	80604	*95912	80670	80615	80511
85012	*85306	85011	80605	80500	80671	80616	80512
*85236	85011	85012	80606	80501	80672	80617	80513
85011	85012	*85419	80607	80502	80679	80618	80514
85012	*85309	85011	80608	80503	8068	80619	80515
*85239	85011	85012	80609	80504	8069	80620	80516
85011	85012	*8738	80610	80505	95200	80621	80517
85012	*85310	85011	80611	80506	95201	80622	80518
*85240	85011	85012	80612	80507	95202	80623	8052
85011	85012	*8739	80613	80508	95203	80624	8053
85012	*85311	85011	80614	80510	95204	80625	8054
*85241	85011	85012	80615	80511	95205	80626	8055
85011	85012	*8798	80616	80512	95206	80627	8056
85012	*85312	85011	80617	80513	95207	80628	8057
*85242	85011	85012	80618	80514	95208	80629	8058
85011	85012	*8799	80619	80515	95209	80630	8059
85012	*85313	85011	80620	80516	95210	80631	80600
*85243	85011	85012	80621	80517	95211	80632	80601
85011	85012	*9050	80622	80518	95212	80633	80602
85012	*85314	85011	80623	8052	95213	80634	80603
*85244	85011	85012	80624	8053	95214	80635	80604
85011	85012	*9251	80625	8054	95215	80636	80605
85012	*85315	85011	80626	8055	95216	80637	80606
*85245	85011	85012	80627	8056	95217	80638	80607
85011	85012	*9252	80628	8057	95218	80639	80608
85012	*85316	85011	80629	8058	95219	8064	80609
*85246	85011	85012	80630	8059	9522	8065	80610
85011	85012	*9290	80631	80600	9523	80660	80611
85012	*85319	85011	80632	80601	9524	80661	80612
*85249	85011	85012	80633	80602	9528	80662	80613
85011	85012	*9299	80634	80603	9529	80669	80614
85012	*85400	85011	80635	80604	*95913	80670	80615
*85250	85011	85012	80636	80605	80500	80671	80616
85011	85012	*9588	80637	80606	80501	80672	80617
85012	*85401	85011	80638	80607	80502	80679	80618
*85251	85011	85012	80639	80608	80503	8068	80619
85011	85012	*95901	8064	80609	80504	8069	80620
85012	*85402	85011	8065	80610	80505	95200	80621
*85252	85011	85012	80660	80611	80506	95201	80622
85011	85012	*95909	80661	80612	80507	95202	80623
85012	*85403	85011	80662	80613	80508	95203	80624
*85253	85011	85012	80669	80614	80510	95204	80625
85011	85012	*95911	80670	80615	80511	95205	80626
85012	*85404	80500	80671	80616	80512	95206	80627
*85254	85011	80501	80672	80617	80513	95207	80628
85011	85012	80502	80679	80618	80514	95208	80629
85012	*85405	80503	8068	80619	80515	95209	80630
*85255	85011	80504	8069	80620	80516	95210	80631
85011	85012	80505	95200	80621	80517	95211	80632
85012	*85406	80506	95201	80622	80518	95212	80633
*85256	85011	80507	95202	80623	8052	95213	80634
85011	85012	80508	95203	80624	8053	95214	80635
85012	*85409	80510	95204	80625	8054	95215	80636
*85259	85011	80511	95205	80626	8055	95216	80637
85011	85012	80512	95206	80627	8056	95217	80638
85012	*85410	80513	95207	80628	8057	95218	80639
*85300	85011	80514	95208	80629	8058	95219	8064
85011	85012	80515	95209	80630	8059	9522	8065
85012	*85411	80516	95210	80631	80600	9523	80660
*85301	85011	80517	95211	80632	80601	9524	80661
85011	85012	80518	95212	80633	80602	9528	80662
5012	*85412	8052	95213	80634	80603	9529	80669
*85302	85011	8053	95214	80635	80604	*95914	80670
85011	85012	8054	95215	80636	80605	80500	80671

TABLE 6G.—ADDITIONS TO THE CC EXCLUSIONS LIST—Continued

[CCs that are added to the list are in Table 6G-Additions to the CC Exclusions List. Each of the principal diagnoses is shown with an asterisk, and the revisions to the CC Exclusions List are provided in an indented column immediately following the affected principal diagnosis.]

85012	*85413	8055	95216	80637	80606	80501	80672
*85303	85011	8056	95217	80638	80607	80502	80679
85011	85012	8057	95218	80639	80608	80503	8068
8069	80620	*99609	*99671				
95200	80621	99657	99657				
95201	80622	*9961	*99672				
95202	80623	99657	99657				
95203	80624	*9962	*99673				
95204	80625	99657	99657				
95205	80626	*99630	*99674				
95206	80627	99657	99657				
95207	80628	*99639	*99675				
95208	80629	99657	99657				
95209	80630	*9964	*99676				
95210	80631	99657	99657				
95211	80632	*99651	*99677				
95212	80633	99657	99657				
95213	80634	*99652	*99678				
95214	80635	99657	99657				
95215	80636	*99653	*99679				
95216	80637	99657	99657				
95217	80638	*99654	*99680				
95218	80639	99657	V4321				
95219	8064	*99655	V4322				
9522	8065	99657	*99683				
9523	80660	*99656	V4321				
9524	80661	99657	V4322				
9528	80662	*99657	*99687				
9529	80669	99655	V4321				
*95919	80670	99656	V4322				
80500	80671	99657	*99791				
80501	80672	99659	99657				
80502	80679	99660	*99799				
80503	8068	99661	99657				
80504	8069	99662	*99881				
80505	95200	99663	99657				
80506	95201	99664	*99883				
80507	95202	99665	99657				
80508	95203	99666	*99889				
80510	95204	99667	99657				
80511	95205	99668	*9989				
80512	95206	99669	99657				
80513	95207	99670	*V421				
80514	95208	99671	V4321				
80515	95209	99672	V4322				
80516	95210	99673	*V4321				
80517	95211	99674	V4321				
80518	95212	99675	V4322				
8052	95213	99676	*V4322				
8053	95214	99677	V4321				
8054	95215	99678	V4322				
8055	95216	99679					
8056	95217	*99659					
8057	95218	99657					
8058	95219	*99660					
8059	9522	99657					
80600	9523	*99661					
80601	9524	99657					
80602	9528	*99662					
80603	9529	99657					
80604	*9598	*99663					
80605	85011	99657					
80606	85012	*99664					
80607	*9599	99657					
80608	85011	*99665					
80609	85012	99657					
80610	*99600	*99666					
80611	99657	99657					
80612	*99601	*99667					
80613	99657	99657					
80614	*99602	*99668					
80615	99657	99657					

TABLE 6G.—ADDITIONS TO THE CC EXCLUSIONS LIST—Continued

[CCs that are added to the list are in Table 6G-Additions to the CC Exclusions List. Each of the principal diagnoses is shown with an asterisk, and the revisions to the CC Exclusions List are provided in an indented column immediately following the affected principal diagnosis.]

80616	*99603	*99669
80617	99657	99657
80618	*99604	*99670
80619	99657	99657

TABLE 6H.—DELETIONS FROM THE CC EXCLUSIONS LIST

[CCs that are deleted from the list are in Table 6H-Deletions to the CC Exclusions List. Each of the principal diagnoses is shown with an asterisk, and the revisions to the CC Exclusions List are provided in an indented column immediately following the affected principal diagnosis.]

*25060	28263	28260	53201	6013	71169	6960	8501
3580	28269	28261	53210	6021	7141	71100	*80005
*25061	2830	28262	53211	78820	7142	71101	8501
3580	28310	28263	53220	78829	71430	71102	*80006
*25062	28311	28269	53221	*6001	71431	71103	8501
3580	28319	2830	53231	5960	71432	71104	*80009
*25063	2832	28310	53240	5996	71433	71105	8501
3580	2839	28311	53241	6010	*71976	71106	*80010
*25080	2840	28319	53250	6012	6960	71107	8501
3580	2848	2832	53251	6013	71100	71108	*80011
*25081	2849	2839	53260	6021	71106	71109	8501
3580	2850	2840	53261	78820	71108	71160	*80012
*25082	2851	2848	53271	78829	71109	71161	8501
3580	*2825	2849	53291	*6002	71160	71162	*80013
*25083	2824	2850	53300	5960	71166	71163	8501
3580	*28260	2851	53301	5996	71168	71164	*80014
*25090	2824	2860	53310	6010	71169	71165	8501
3580	*28261	2861	53311	6012	7141	71166	*80015
*25091	2824	2862	53320	6013	7142	71167	8501
3580	*28262	2863	53321	6021	71430	71168	*80016
*25092	2824	2864	53331	78820	71431	71169	8501
3580	*28263	2865	53340	78829	71432	7141	*80019
*25093	2824	2866	53341	*6009	71433	7142	8501
3580	*28269	2867	53350	5960	*71977	71430	*80020
*2551	2824	2869	53351	5996	6960	71431	8501
2550	*2827	2870	53360	6010	71100	71432	*80021
2580	2824	2871	53361	6012	71107	71433	8501
2581	*2828	2872	53371	6013	71108	*7528	*80022
2588	2824	2873	53391	6021	71109	5970	8501
2589	*2829	2874	53400	78820	71160	5994	*80023
*2800	2824	2875	53401	78829	71167	6140	8501
2824	*2830	2878	53410	*71970	71168	6143	*80024
*2801	2824	2879	53411	6960	71169	6145	8501
2824	*28310	2880	53420	71100	7141	6150	*80025
*2808	2824	2881	53421	71101	7142	6163	8501
2824	*28311	*2899	53431	71102	71430	6164	*80026
*2809	2824	2824	53440	71103	71431	6207	8501
2824	*28319	*3483	53441	71104	71432	*7998	*80029
*2810	2824	34982	53450	71105	71433	04082	8501
2824	*2832	*34989	53451	71106	*71978	44024	*80030
*2811	2824	3580	53460	71107	6960	78001	8501
2824	*2839	*3499	53461	71108	71100	78003	*80031
*2812	2824	3580	53471	71109	71101	7801	8501
2824	*2840	*3580	53491	71160	71102	78031	*80032
*2813	2824	3580	53501	71161	71103	78039	8501
2824	*2848	3581	53511	71162	71104	7817	*80033
*2814	2824	*3581	53521	71163	71105	7854	8501
2824	*2849	3580	53531	71164	71106	78550	*80034
*2818	2824	*5302	53541	71165	71107	78551	8501
2824	*2850	4560	53551	71166	71108	78559	*80035
*2819	2824	5307	53561	71167	71109	7863	8501
2824	*2851	53082	53783	71168	71160	78820	*80036
*2820	2824	53100	53784	71169	71161	78829	8501
2824	*28521	53101	56202	7141	71162	7895	*80039
*2821	2824	53110	56203	7142	71163	7907	8501
2824	*28522	53111	56212	71430	71164	7911	*80040
*2822	2824	53120	56213	71431	71165	7913	8501
2824	*28529	53121	5693	71432	71166	7991	*80041
*2823	2824	53131	56985	71433	71167	7994	8501
2824	*2858	53140	56986	*71975	71168	*80000	*80042
*2824	2824	53141	5780	6960	71169	8501	8501
2800	*2859	53150	5781	71100	7141	*80001	*80043

TABLE 6H.—DELETIONS FROM THE CC EXCLUSIONS LIST—Continued

[CCs that are deleted from the list are in Table 6H-Deletions to the CC Exclusions List. Each of the principal diagnoses is shown with an asterisk, and the revisions to the CC Exclusions List are provided in an indented column immediately following the affected principal diagnosis.]

2814	2824	53151	5789	71105	7142	8501	8501
2818	*2898	53160	*6000	71108	71430	*80002	*80044
2824	2800	53161	5960	71109	71431	8501	8501
28260	2814	53171	5996	71160	71432	*80003	*80045
28261	2818	53191	6010	71165	71433	8501	8501
28262	2824	53200	6012	71168	*71979	*80004	*80046
8501	*80093	8501	*80184	8501	*80375	8501	*80466
*80049	8501	*80140	8501	*80331	8501	*80422	8501
8501	*80094	8501	*80185	8501	*80376	8501	*80469
*80050	8501	*80141	8501	*80332	8501	*80423	8501
8501	*80095	8501	*80186	8501	*80379	8501	*80470
*80051	8501	*80142	8501	*80333	8501	*80424	8501
8501	*80096	8501	*80189	8501	*80380	8501	*80471
*80052	8501	*80143	8501	*80334	8501	*80425	8501
8501	*80099	8501	*80190	8501	*80381	8501	*80472
*80053	8501	*80144	8501	*80335	8501	*80426	8501
8501	*80100	8501	*80191	8501	*80382	8501	*80473
*80054	8501	*80145	8501	*80336	8501	*80429	8501
8501	*80101	8501	*80192	8501	*80383	8501	*80474
*80055	8501	*80146	8501	*80339	8501	*80430	8501
8501	*80102	8501	*80193	8501	*80384	8501	*80475
*80056	8501	*80149	8501	*80340	8501	*80431	8501
8501	*80103	8501	*80194	8501	*80385	8501	*80476
*80059	8501	*80150	8501	*80341	8501	*80432	8501
8501	*80104	8501	*80195	8501	*80386	8501	*80479
*80060	8501	*80151	8501	*80342	8501	*80433	8501
8501	*80105	8501	*80196	8501	*80389	8501	*80480
*80061	8501	*80152	8501	*80343	8501	*80434	8501
8501	*80106	8501	*80199	8501	*80390	8501	*80481
*80062	8501	*80153	8501	*80344	8501	*80435	8501
8501	*80109	8501	*80300	8501	*80391	8501	*80482
*80063	8501	*80154	8501	*80345	8501	*80436	8501
8501	*80110	8501	*80301	8501	*80392	8501	*80483
*80064	8501	*80155	8501	*80346	8501	*80439	8501
8501	*80111	8501	*80302	8501	*80393	8501	*80484
*80065	8501	*80156	8501	*80349	8501	*80440	8501
8501	*80112	8501	*80303	8501	*80394	8501	*80485
*80066	8501	*80159	8501	*80350	8501	*80441	8501
8501	*80113	8501	*80304	8501	*80395	8501	*80486
*80069	8501	*80160	8501	*80351	8501	*80442	8501
8501	*80114	8501	*80305	8501	*80396	8501	*80489
*80070	8501	*80161	8501	*80352	8501	*80443	8501
8501	*80115	8501	*80306	8501	*80399	8501	*80490
*80071	8501	*80162	8501	*80353	8501	*80444	8501
8501	*80116	8501	*80309	8501	*80400	8501	*80491
*80072	8501	*80163	8501	*80354	8501	*80445	8501
8501	*80119	8501	*80310	8501	*80401	8501	*80492
*80073	8501	*80164	8501	*80355	8501	*80446	8501
8501	*80120	8501	*80311	8501	*80402	8501	*80493
*80074	8501	*80165	8501	*80356	8501	*80449	8501
8501	*80121	8501	*80312	8501	*80403	8501	*80494
*80075	8501	*80166	8501	*80359	8501	*80450	8501
8501	*80122	8501	*80313	8501	*80404	8501	*80495
*80076	8501	*80169	8501	*80360	8501	*80451	8501
8501	*80123	8501	*80314	8501	*80405	8501	*80496
*80079	8501	*80170	8501	*80361	8501	*80452	8501
8501	*80124	8501	*80315	8501	*80406	8501	*80499
*80080	8501	*80171	8501	*80362	8501	*80453	8501
8501	*80125	8501	*80316	8501	*80409	8501	*8500
*80081	8501	*80172	8501	*80363	8501	*80454	8501
8501	*80126	8501	*80319	8501	*80410	8501	*8501
*80082	8501	*80173	8501	*80364	8501	*80455	430
8501	*80129	8501	*80320	8501	*80411	8501	431
*80083	8501	*80174	8501	*80365	8501	*80456	4320
8501	*80130	8501	*80321	8501	*80412	8501	4321
*80084	8501	*80175	8501	*80366	8501	*80459	436
8501	*80131	8501	*80322	8501	*80413	8501	78001
*80085	8501	*80176	8501	*80369	8501	*80460	78003
8501	*80132	8501	*80323	8501	*80414	8501	80000
*80086	8501	*80179	8501	*80370	8501	*80461	80001
8501	*80133	8501	*80324	8501	*80415	8501	80002
*80089	8501	*80180	8501	*80371	8501	*80462	80003

TABLE 6H.—DELETIONS FROM THE CC EXCLUSIONS LIST—Continued

[CCs that are deleted from the list are in Table 6H-Deletions to the CC Exclusions List. Each of the principal diagnoses is shown with an asterisk, and the revisions to the CC Exclusions List are provided in an indented column immediately following the affected principal diagnosis.]

8501	*80134	8501	*80325	8501	*80416	8501	80004
*80090	8501	*80181	8501	*80372	8501	*80463	80005
8501	*80135	8501	*80326	8501	*80419	8501	80006
*80091	8501	*80182	8501	*80373	8501	*80464	80009
8501	*80136	8501	*80329	8501	*80420	8501	80010
*80092	8501	*80183	8501	*80374	8501	*80465	80011
8501	*80139	8501	*80330	8501	*80421	8501	80012
80013	80104	80195	80353	80444	85126	85219	*8509
80014	80105	80196	80354	80445	85129	85220	8501
80015	80106	80199	80355	80446	85130	85221	*85100
80016	80109	8021	80356	80449	85131	85222	8501
80019	80110	80220	80359	80450	85132	85223	*85101
80020	80111	80221	80360	80451	85133	85224	8501
80021	80112	80222	80361	80452	85134	85225	*85102
80022	80113	80223	80362	80453	85135	85226	8501
80023	80114	80224	80363	80454	85136	85229	*85103
80024	80115	80225	80364	80455	85139	85230	8501
80025	80116	80226	80365	80456	85140	85231	*85104
80026	80119	80227	80366	80459	85141	85232	8501
80029	80120	80228	80369	80460	85142	85233	*85105
80030	80121	80229	80370	80461	85143	85234	8501
80031	80122	80230	80371	80462	85144	85235	*85106
80032	80123	80231	80372	80463	85145	85236	8501
80033	80124	80232	80373	80464	85146	85239	*85109
80034	80125	80233	80374	80465	85149	85240	8501
80035	80126	80234	80375	80466	85150	85241	*85110
80036	80129	80235	80376	80469	85151	85242	8501
80039	80130	80236	80379	80470	85152	85243	*85111
80040	80131	80237	80380	80471	85153	85244	8501
80041	80132	80238	80381	80472	85154	85245	*85112
80042	80133	80239	80382	80473	85155	85246	8501
80043	80134	8024	80383	80474	85156	85249	*85113
80044	80135	8025	80384	80475	85159	85250	8501
80045	80136	8026	80385	80476	85160	85251	*85114
80046	80139	8027	80386	80479	85161	85252	8501
80049	80140	8028	80389	80480	85162	85253	*85115
80050	80141	8029	80390	80481	85163	85254	8501
80051	80142	80300	80391	80482	85164	85255	*85116
80052	80143	80301	80392	80483	85165	85256	8501
80053	80144	80302	80393	80484	85166	85259	*85119
80054	80145	80303	80394	80485	85169	85300	8501
80055	80146	80304	80395	80486	85170	85301	*85120
80056	80149	80305	80396	80489	85171	85302	8501
80059	80150	80306	80399	80490	85172	85303	*85121
80060	80151	80309	80400	80491	85173	85304	8501
80061	80152	80310	80401	80492	85174	85305	*85122
80062	80153	80311	80402	80493	85175	85306	8501
80063	80154	80312	80403	80494	85176	85309	*85123
80064	80155	80313	80404	80495	85179	85310	8501
80065	80156	80314	80405	80496	85180	85311	*85124
80066	80159	80315	80406	80499	85181	85312	8501
80069	80160	80316	80409	8500	85182	85313	*85125
80070	80161	80319	80410	8501	85183	85314	8501
80071	80162	80320	80411	8502	85184	85315	*85126
80072	80163	80321	80412	8503	85185	85316	8501
80073	80164	80322	80413	8504	85186	85319	*85129
80074	80165	80323	80414	8505	85189	85400	8501
80075	80166	80324	80415	8509	85190	85401	*85130
80076	80169	80325	80416	85100	85191	85402	8501
80079	80170	80326	80419	85101	85192	85403	*85131
80080	80171	80329	80420	85102	85193	85404	8501
80081	80172	80330	80421	85103	85194	85405	*85132
80082	80173	80331	80422	85104	85195	85406	8501
80083	80174	80332	80423	85105	85196	85409	*85133
80084	80175	80333	80424	85106	85199	85410	8501
80085	80176	80334	80425	85109	85200	85411	*85134
80086	80179	80335	80426	85110	85201	85412	8501
80089	80180	80336	80429	85111	85202	85413	*85135
80090	80181	80339	80430	85112	85203	85414	8501
80091	80182	80340	80431	85113	85204	85415	*85136
80092	80183	80341	80432	85114	85205	85416	8501
80093	80184	80342	80433	85115	85206	85419	*85139

TABLE 6H.—DELETIONS FROM THE CC EXCLUSIONS LIST—Continued

[CCs that are deleted from the list are in Table 6H-Deletions to the CC Exclusions List. Each of the principal diagnoses is shown with an asterisk, and the revisions to the CC Exclusions List are provided in an indented column immediately following the affected principal diagnosis.]

80094	80185	80343	80434	85116	85209	*8502	8501
80095	80186	80344	80435	85119	85210	8501	*85140
80096	80189	80345	80436	85120	85211	*8503	8501
80099	80190	80346	80439	85121	85212	8501	*85141
80100	80191	80349	80440	85122	85213	*8504	8501
80101	80192	80350	80441	85123	85214	8501	*85142
80102	80193	80351	80442	85124	85215	*8505	8501
80103	80194	80352	80443	85125	85216	8501	*85143
8501	*85190	8501	*85402	8054	95215		
*85144	8501	*85236	8501	8055	95216		
8501	*85191	8501	*85403	8056	95217		
*85145	8501	*85239	8501	8057	95218		
8501	*85192	8501	*85404	8058	95219		
*85146	8501	*85240	8501	8059	9522		
8501	*85193	8501	*85405	80600	9523		
*85149	8501	*85241	8501	80601	9524		
8501	*85194	8501	*85406	80602	9528		
*85150	8501	*85242	8501	80603	9529		
8501	*85195	8501	*85409	80604	*9598		
*85151	8501	*85243	8501	80605	8501		
8501	*85196	8501	*85410	80606	*9599		
*85152	8501	*85244	8501	80607	8501		
8501	*85199	8501	*85411	80608	*99680		
*85153	8501	*85245	8501	80609	V432		
8501	*85200	8501	*85412	80610	*99683		
*85154	8501	*85246	8501	80611	V432		
8501	*85201	8501	*85413	80612	*99687		
*85155	8501	*85249	8501	80613	V432		
8501	*85202	8501	*85414	80614	*V421		
*85156	8501	*85250	8501	80615	V432		
8501	*85203	8501	*85415	80616	*V432		
*85159	8501	*85251	8501	80617	V432		
8501	*85204	8501	*85416	80618			
*85160	8501	*85252	8501	80619			
8501	*85205	8501	*85419	80620			
*85161	8501	*85253	8501	80621			
8501	*85206	8501	*8738	80622			
*85162	8501	*85254	8501	80623			
8501	*85209	8501	*8739	80624			
*85163	8501	*85255	8501	80625			
8501	*85210	8501	*8798	80626			
*85164	8501	*85256	8501	80627			
8501	*85211	8501	*8799	80628			
*85165	8501	*85259	8501	80629			
8501	*85212	8501	*9050	80630			
*85166	8501	*85300	8501	80631			
8501	*85213	8501	*9251	80632			
*85169	8501	*85301	8501	80633			
8501	*85214	8501	*9252	80634			
*85170	8501	*85302	8501	80635			
8501	*85215	8501	*9290	80636			
*85171	8501	*85303	8501	80637			
8501	*85216	8501	*9299	80638			
*85172	8501	*85304	8501	80639			
8501	*85219	8501	*9588	8064			
*85173	8501	*85305	8501	8065			
8501	*85221	8501	*95901	80660			
*85174	8501	*85306	8501	80661			
8501	*85222	8501	*95909	80662			
*85175	8501	*85309	8501	80669			
8501	*85223	8501	*9591	80670			
*85176	8501	*85310	80500	80671			
8501	*85224	8501	80501	80672			
*85179	8501	*85311	80502	80679			
8501	*85225	8501	80503	8068			
*85180	8501	*85312	80504	8069			
8501	*85226	8501	80505	95200			
*85181	8501	*85313	80506	95201			
8501	*85229	8501	80507	95202			
*85182	8501	*85314	80508	95203			
8501	*85230	8501	80510	95204			
*85183	8501	*85315	80511	95205			

TABLE 6H.—DELETIONS FROM THE CC EXCLUSIONS LIST—Continued

[CCs that are deleted from the list are in Table 6H-Deletions to the CC Exclusions List. Each of the principal diagnoses is shown with an asterisk, and the revisions to the CC Exclusions List are provided in an indented column immediately following the affected principal diagnosis.]

8501	*85231	8501	80512	95206
*85184	8501	*85316	80513	95207
8501	*85232	8501	80514	95208
*85185	8501	*85319	80515	95209
8501	*85233	8501	80516	95210
*85186	8501	*85400	80517	95211
8501	*85234	8501	80518	95212
*85189	8501	*85401	8052	95213
8501	*85235	8501	8053	95214

TABLE 7A.—MEDICARE PROSPECTIVE PAYMENT SYSTEM SELECTED PERCENTILE LENGTHS OF STAY [FY 2002 MEDPAR UPDATE DECEMBER 2002 GROUPER V20.0]

DRG	Number of discharges	Arithmetic mean length of stay	10th Percentile	25th Percentile	50th Percentile	75th Percentile	90th Percentile
1	29,262	10.8505	3	5	8	14	22
2	14,769	5.0718	1	2	4	7	10
3	3	5.0000	1	1	4	13	13
4	6,712	7.3524	1	2	5	9	16
5	95,618	2.9596	1	1	2	3	7
6	356	3.0197	1	1	2	4	7
7	14,683	9.8438	2	4	7	12	20
8	4,106	2.8015	1	1	1	3	7
9	1,711	5.2402	1	3	5	8	12
10	18,655	5.3850	2	3	5	8	13
11	3,291	4.0413	1	2	3	5	8
12	52,512	5.7513	2	3	4	7	11
13	7,068	5.0035	2	3	4	6	9
14	237,027	5.9456	2	3	5	7	11
15	94,223	4.8529	2	3	4	6	9
16	9,938	6.3106	2	3	5	8	12
17	2,744	3.2172	1	2	2	4	6
18	29,701	5.4868	2	3	4	7	10
19	8,519	3.5184	1	2	3	5	7
20	6,207	10.1927	3	5	8	13	20
21	1,885	5.5963	2	3	5	9	13
22	2,785	5.1178	2	2	4	6	10
23	12,583	4.1677	1	2	3	5	8
24	59,102	4.8803	1	2	4	6	10
25	27,433	3.1776	1	2	3	4	6
26	18	4.2778	1	1	2	3	4
27	4,398	5.1719	1	1	3	7	11
28	13,919	5.0265	1	3	5	8	12
29	5,282	3.4924	1	2	3	5	7
30	2	5.5000	2	2	11	11	11
31	3,897	4.0429	1	2	3	5	8
32	1,895	2.4776	1	1	2	3	5
34	23,811	4.9368	1	2	4	6	9
35	7,451	3.1094	1	1	3	4	6
36	2,117	1.5328	1	1	1	1	2
37	1,382	3.7685	1	1	2	5	8
38	97	2.8041	1	1	1	4	5
39	559	2.1163	1	1	1	2	4
40	1,549	3.8070	1	1	3	5	7
42	1,581	2.7381	1	1	1	3	6
43	94	3.3936	1	1	3	4	6
44	1,227	4.9935	2	3	4	6	9
45	2,668	3.1267	1	2	3	4	6
46	3,482	4.4730	1	2	3	6	8
47	1,402	3.0927	1	1	2	4	6
49	2,391	4.4676	1	2	3	6	9
50	2,429	1.8506	1	1	1	2	3
51	243	2.8354	1	1	1	3	8
52	223	1.8161	1	1	1	2	3
53	2,478	3.6186	1	1	2	4	6
55	1,481	2.9338	1	1	1	3	7
56	469	2.8955	1	1	1	3	6
57	711	3.6709	1	1	2	4	8
58	1	2.0000	2	2	2	2	2

TABLE 7A.—MEDICARE PROSPECTIVE PAYMENT SYSTEM SELECTED PERCENTILE LENGTHS OF STAY [FY 2002 MEDPAR UPDATE DECEMBER 2002 GROUPER V20.0]—Continued

DRG	Number of discharges	Arithmetic mean length of stay	10th Percentile	25th Percentile	50th Percentile	75th Percentile	90th Percentile
59	116	2.6724	1	1	1	3	6
60	1	3.0000	3	3	3	3	3
61	254	5.1535	1	1	3	7	11
62	2	7.0000	1	1	13	13	13
63	3,000	4.3860	1	2	3	5	9
64	3,126	6.4997	1	2	4	8	14
65	40,407	2.8127	1	1	2	4	5
66	7,841	3.0778	1	1	2	4	6
67	385	3.6442	1	2	3	5	7
68	11,658	3.8813	1	2	3	5	7
69	3,769	3.0186	1	2	3	4	5
70	30	2.3333	1	1	2	3	4
71	80	3.4000	1	1	2	4	6
72	964	3.4035	1	1	3	4	6
73	7,697	4.4433	1	2	3	6	9
75	43,504	9.9907	3	5	7	12	20
76	44,508	11.1024	3	5	9	14	21
77	2,458	4.8031	1	2	4	7	10
78	39,504	6.5709	3	4	6	8	11
79	169,239	8.4557	3	4	7	11	16
80	8,077	5.3480	2	3	4	7	10
81	5	4.4000	1	1	3	8	8
82	64,299	6.8753	2	3	5	9	14
83	6,665	5.3655	2	3	4	7	10
84	1,575	3.2565	1	2	3	4	6
85	22,398	6.2473	2	3	5	8	12
86	2,250	3.5364	1	2	3	4	7
87	61,129	6.3127	1	3	5	8	12
88	404,045	5.0463	2	3	4	6	9
89	535,162	5.8340	2	3	5	7	11
90	48,843	3.9563	2	2	3	5	7
91	45	5.0444	1	2	3	5	13
92	15,809	6.2907	2	3	5	8	12
93	1,778	4.0079	1	2	3	5	7
94	12,813	6.2387	2	3	5	8	12
95	1,655	3.8127	1	2	3	5	7
96	56,893	4.5613	2	2	4	6	8
97	28,776	3.5275	1	2	3	4	6
98	9	3.6667	1	1	2	2	5
99	21,400	3.1554	1	1	2	4	6
100	8,324	2.1371	1	1	2	3	4
101	22,329	4.3853	1	2	3	6	9
102	5,644	2.6487	1	1	2	3	5
103	484	42.1240	9	12	23	53	92
104	20,637	14.3306	6	8	12	17	25
105	29,223	9.8741	4	6	8	11	18
106	3,498	11.4019	5	7	10	14	20
107	83,307	10.4339	5	7	9	12	17
108	6,508	9.7617	2	5	8	12	18
109	57,450	7.7160	4	5	6	9	13
110	54,835	8.7534	2	4	7	11	17
111	9,568	4.0565	1	2	4	6	7
113	39,734	12.4805	4	6	9	15	24
114	8,315	8.6592	2	4	7	11	17
115	19,805	7.4228	1	3	6	10	15
116	116,294	4.3974	1	2	3	6	9
117	4,731	4.3075	1	1	2	5	10
118	8,299	2.8976	1	1	1	4	7
119	1,237	5.2967	1	1	3	7	13
120	38,109	9.0051	1	3	6	12	20
121	164,425	6.2836	2	3	5	8	12
122	77,231	3.5159	1	2	3	5	7
123	38,627	4.7915	1	1	3	6	11
124	135,291	4.3838	1	2	3	6	9
125	91,946	2.7616	1	1	2	4	5
126	5,395	11.5218	3	6	9	15	22
127	676,101	5.2357	2	3	4	7	10
128	7,187	5.4446	2	3	5	7	9
129	3,853	2.5951	1	1	1	3	6

TABLE 7A.—MEDICARE PROSPECTIVE PAYMENT SYSTEM SELECTED PERCENTILE LENGTHS OF STAY [FY 2002 MEDPAR UPDATE DECEMBER 2002 GROUPER V20.0]—Continued

DRG	Number of discharges	Arithmetic mean length of stay	10th Percentile	25th Percentile	50th Percentile	75th Percentile	90th Percentile
130	88,911	5.5991	2	3	5	7	10
131	27,124	4.0330	1	2	4	5	7
132	142,443	2.8904	1	1	2	4	5
133	8,694	2.2843	1	1	2	3	4
134	41,542	3.1609	1	2	2	4	6
135	7,810	4.4540	1	2	3	5	8
136	1,185	2.6641	1	1	2	3	5
138	208,716	3.9930	1	2	3	5	8
139	87,938	2.4733	1	1	2	3	5
140	55,735	2.5252	1	1	2	3	5
141	108,834	3.5704	1	2	3	4	7
142	52,684	2.5530	1	1	2	3	5
143	250,177	2.0911	1	1	2	3	4
144	94,588	5.5436	1	2	4	7	11
145	7,370	2.5700	1	1	2	3	5
146	10,785	10.2338	5	6	8	12	17
147	2,644	6.2266	3	5	6	8	9
148	134,125	12.2751	5	7	10	15	22
149	20,205	5.3062	4	5	6	7	9
150	21,184	11.3235	4	6	9	14	20
151	5,140	5.5565	2	3	5	7	10
152	4,578	8.3724	3	5	7	10	15
153	2,058	5.2546	3	4	5	7	8
154	28,368	13.2140	3	7	10	17	26
155	6,618	4.0801	1	2	3	6	8
156	4	2.5000	1	1	1	3	5
157	8,301	5.7459	1	2	4	7	12
158	4,362	2.6016	1	1	2	3	5
159	18,136	5.1194	1	2	4	7	10
160	12,203	2.6826	1	1	2	3	5
161	10,803	4.3270	1	2	3	6	9
162	6,421	1.9305	1	1	1	2	4
163	8	3.2500	1	1	2	3	6
164	5,400	3.3580	3	5	7	10	15
165	2,335	4.4882	2	3	4	6	7
166	4,206	4.7263	1	2	4	6	9
167	4,091	2.4133	1	1	2	3	4
168	1,425	4.8386	1	2	3	6	10
169	814	2.4005	1	1	2	3	5
170	15,682	10.8241	2	4	8	14	22
171	1,530	4.3333	1	2	4	6	9
172	31,435	6.9669	2	3	5	9	14
173	2,482	3.7808	1	2	3	5	8
174	252,303	4.7834	2	3	4	6	9
175	34,977	2.9157	1	2	3	4	5
176	13,498	5.2318	2	3	4	6	10
177	9,080	4.5719	2	3	4	6	8
178	3,382	3.1227	1	2	3	4	6
179	13,193	5.9431	2	3	5	7	11
180	90,752	5.4251	2	3	4	7	10
181	27,280	3.3710	1	2	3	4	6
182	273,118	4.4204	1	2	3	5	8
183	91,272	2.8962	1	1	2	4	5
184	69	3.2319	1	1	2	4	6
185	5,350	4.6680	1	2	3	6	10
186	6	6.6667	2	3	3	10	10
187	619	4.0307	1	2	3	6	8
188	84,099	5.5620	1	2	4	7	11
189	13,098	3.1005	1	1	2	4	6
190	75	5.1733	1	2	4	6	11
191	9,537	13.7975	3	6	10	17	28
192	1,322	6.2201	1	3	6	8	11
193	4,822	12.7242	5	7	10	16	23
194	650	6.7323	2	4	6	8	12
195	4,019	10.5175	4	6	9	13	19
196	998	5.6092	2	3	5	7	10
197	18,313	9.1566	3	5	7	11	17
198	5,418	4.4118	2	3	4	6	7
199	1,636	9.7353	2	4	7	13	21

TABLE 7A.—MEDICARE PROSPECTIVE PAYMENT SYSTEM SELECTED PERCENTILE LENGTHS OF STAY [FY 2002 MEDPAR UPDATE DECEMBER 2002 GROUPER V20.0]—Continued

DRG	Number of discharges	Arithmetic mean length of stay	10th Percentile	25th Percentile	50th Percentile	75th Percentile	90th Percentile
200	1,076	10.4898	2	3	7	14	23
201	2,130	14.1469	3	6	11	18	29
202	26,756	6.3872	2	3	5	8	13
203	30,055	6.6816	2	3	5	9	13
204	65,585	5.7470	2	3	4	7	11
205	27,481	6.1736	2	3	5	8	12
206	2,057	3.7832	1	2	3	5	8
207	32,881	5.1924	1	2	4	7	10
208	10,188	2.8924	1	1	2	4	5
209	399,893	4.8600	3	3	4	5	7
210	122,843	6.8859	3	4	6	8	11
211	30,096	4.8394	3	4	4	6	7
212	9	7.0000	1	1	4	5	7
213	9,950	9.2035	2	4	7	12	18
216	8,770	7.9789	1	2	6	11	17
217	17,292	13.3846	3	5	9	16	28
218	23,796	5.5121	2	3	4	7	10
219	19,891	3.1961	1	2	3	4	6
220	1	1.0000	1	1	1	1	1
223	13,308	3.0326	1	1	2	4	6
224	11,738	1.9052	1	1	1	2	3
225	6,481	5.2626	1	2	4	7	11
226	5,874	6.5259	1	2	4	8	14
227	4,854	2.6360	1	1	2	3	5
228	2,534	4.1492	1	1	3	5	9
229	1,263	2.3286	1	1	2	3	5
230	2,456	5.5668	1	2	3	7	12
231	13,312	5.0159	1	1	3	6	11
232	816	2.7132	1	1	1	2	6
233	9,940	7.3671	1	3	6	10	15
234	5,364	3.0626	1	1	2	4	7
235	5,107	4.8659	1	2	4	6	9
236	40,182	4.6505	1	3	4	6	8
237	1,782	3.6599	1	2	3	5	7
238	8,956	6.6382	3	4	7	10	17
239	46,252	6.2694	2	3	5	8	12
240	12,062	6.6231	2	3	5	8	13
241	3,173	3.7690	1	2	3	5	7
242	2,597	6.8814	2	3	5	9	14
243	96,552	4.6506	1	2	4	6	9
244	14,695	4.6521	1	2	4	6	9
245	5,861	3.2950	1	2	3	4	6
246	1,498	3.7216	1	2	3	5	7
247	20,507	3.3340	1	1	3	4	7
248	13,931	4.9200	1	3	4	6	8
249	12,932	3.6170	1	1	2	4	7
250	3,802	4.1302	1	2	3	5	8
251	2,375	2.7651	1	1	3	3	5
253	22,095	4.6939	2	3	4	6	8
254	10,763	3.1601	1	2	3	4	5
256	6,698	5.1020	1	2	4	6	10
257	15,758	2.6395	1	1	2	3	5
258	15,317	1.8212	1	1	2	2	3
259	3,517	2.6747	1	1	1	3	6
260	4,236	1.3973	1	1	1	1	2
261	1,776	2.0884	1	1	1	2	4
262	668	4.3204	1	1	3	6	9
263	23,192	11.4687	3	5	8	14	22
264	3,869	6.5585	2	3	5	8	13
265	4,103	6.6074	1	2	4	8	14
266	2,555	3.2337	1	1	2	4	7
267	241	4.4606	1	1	3	6	10
268	920	3.7978	1	1	2	4	6
269	9,852	6.5323	2	3	7	11	17
270	2,798	3.5615	1	1	2	5	7
271	19,436	7.2481	2	4	6	9	14
272	5,752	6.0176	2	3	5	7	12
273	1,343	3.9598	1	2	3	5	8
274	2,305	6.4586	1	3	5	8	13

TABLE 7A.—MEDICARE PROSPECTIVE PAYMENT SYSTEM SELECTED PERCENTILE LENGTHS OF STAY [FY 2002 MEDPAR UPDATE DECEMBER 2002 GROUPER V20.0]—Continued

DRG	Number of discharges	Arithmetic mean length of stay	10th Percentile	25th Percentile	50th Percentile	75th Percentile	90th Percentile
275	230	3.6217	1	1	2	4	7
276	1,327	4.4574	1	2	4	6	8
277	100,811	5.7271	2	3	5	7	10
278	32,531	4.1962	2	2	4	5	7
279	10	5.3000	2	2	3	7	7
280	17,882	4.1159	1	2	3	5	8
281	7,536	2.8879	1	1	2	4	5
283	6,093	4.6606	1	2	4	6	9
284	2,029	2.9359	1	1	2	4	6
285	6,962	10.5315	3	5	8	13	20
286	2,502	5.8981	2	3	4	7	12
287	6,287	10.2537	3	5	8	13	20
288	5,524	4.9716	2	3	4	5	8
289	6,938	2.7257	1	1	1	3	6
290	9,964	2.1995	1	1	1	2	4
291	58	1.6379	1	1	1	2	3
292	6,534	10.4645	2	4	8	14	21
293	364	4.7033	1	1	3	6	9
294	98,755	4.5121	1	2	3	6	9
295	3,550	3.9721	1	2	3	5	7
296	280,547	5.0716	1	2	4	6	10
297	48,715	3.2855	1	2	3	4	6
298	111	3.1802	1	1	2	4	7
299	1,276	5.4412	1	2	4	7	11
300	18,798	6.1364	2	3	5	8	12
301	3,636	3.5954	1	2	3	4	7
302	8,722	8.5255	4	5	6	9	15
303	21,880	8.0372	3	4	6	9	15
304	12,572	8.8705	2	4	6	11	18
305	3,047	3.5510	1	2	3	4	7
306	7,077	5.3740	1	2	3	7	12
307	2,035	2.0708	1	1	2	2	3
308	7,299	6.2077	1	2	4	8	14
309	4,183	2.0995	1	1	1	2	4
310	24,884	4.3725	1	1	3	6	10
311	7,495	1.8220	1	1	1	2	3
312	1,524	4.5623	1	1	3	8	10
313	555	2.2559	1	1	1	3	5
314	2	40.5000	1	1	80	80	80
315	34,134	6.9586	1	1	4	9	16
316	119,645	6.5348	2	3	5	8	13
317	2,018	3.6051	1	1	2	4	7
318	5,782	6.0930	1	3	5	8	12
319	412	2.9320	1	1	2	4	6
320	188,165	5.2818	2	3	4	6	10
321	31,355	3.7221	1	2	3	5	7
322	50	3.2200	1	2	3	4	5
323	19,957	3.1681	1	1	2	4	6
324	7,040	1.9006	1	1	1	2	4
325	9,310	3.6056	1	2	3	5	7
326	2,732	2.6190	1	1	2	3	5
327	7	2.5714	1	1	2	3	4
328	742	3.7251	1	1	3	5	8
329	94	2.0851	1	1	1	3	5
331	51,439	5.5878	1	3	4	7	11
332	5,006	3.1596	1	1	2	4	6
333	255	5.7843	1	2	3	7	11
334	10,536	4.5813	2	3	4	5	8
335	12,727	3.0264	2	2	3	4	5
336	35,950	3.3945	1	2	2	4	7
337	29,532	2.0157	1	1	2	2	3
338	940	5.4851	1	2	3	7	13
339	1,481	4.7968	1	1	3	6	11
340	1	2.0000	2	2	2	2	2
341	3,580	3.2031	1	1	2	3	7
342	693	3.1977	1	1	2	4	7
344	3,580	2.5232	1	1	1	2	5
345	1,370	4.9051	1	1	3	6	11
346	4,890	5.8937	2	3	5	8	12

TABLE 7A.—MEDICARE PROSPECTIVE PAYMENT SYSTEM SELECTED PERCENTILE LENGTHS OF STAY [FY 2002 MEDPAR UPDATE DECEMBER 2002 GROUPER V20.0]—Continued

DRG	Number of discharges	Arithmetic mean length of stay	10th Percentile	25th Percentile	50th Percentile	75th Percentile	90th Percentile
347	315	3.0762	1	1	2	4	7
348	3,401	4.3355	1	2	3	5	8
349	616	2.5049	1	1	2	3	5
350	6,748	4.4884	2	2	4	6	8
352	960	3.9740	1	2	3	5	7
353	2,600	6.4942	2	3	5	7	12
354	7,444	5.7016	3	3	4	6	10
355	5,590	3.1971	2	2	3	4	5
356	25,990	2.0785	1	1	2	3	3
357	5,663	8.3744	3	4	8	10	16
358	21,660	4.1750	2	2	3	5	7
359	32,036	2.5609	1	2	2	3	4
360	15,871	2.7521	1	1	2	3	4
361	346	3.2052	1	1	2	3	8
362	5	1.4000	1	1	1	2	2
363	2,527	3.6312	1	2	2	4	8
364	1,637	4.1307	1	1	3	5	8
365	1,843	8.1872	1	3	5	10	17
366	4,581	6.6619	1	3	5	8	14
367	487	3.0678	1	1	2	4	7
368	3,572	6.6551	2	3	5	8	13
369	3,482	3.3090	1	1	2	4	7
370	1,350	5.7911	2	3	4	5	9
371	1,691	3.4826	2	3	3	4	5
372	947	3.4805	2	2	2	3	5
373	4,145	2.2955	1	2	2	3	3
374	91	2.9341	1	2	2	3	6
376	325	3.4123	1	2	2	4	7
377	48	4.0833	1	2	3	5	8
378	175	2.5943	1	1	2	3	5
379	355	3.0028	1	1	2	3	5
380	99	1.9697	1	1	1	2	3
381	190	1.9053	1	1	1	2	4
382	49	1.6939	1	1	1	2	3
383	2,003	3.7913	1	1	3	4	7
384	129	2.6279	1	1	2	3	5
385	3	2.0000	1	1	2	3	3
387	1	55.0000	55	55	55	55	55
389	12	6.2500	2	3	5	9	10
390	20	4.3000	1	2	3	5	7
392	2,271	9.6874	3	4	7	12	21
393	1	4.0000	4	4	4	4	4
394	2,605	7.5965	1	2	5	9	17
395	108,024	4.3238	1	2	3	5	9
396	17	4.4118	1	1	3	7	9
397	19,035	5.1743	1	2	4	6	10
398	18,162	5.8655	2	3	5	7	11
399	1,693	3.4826	1	2	3	4	6
400	6,371	9.0333	1	3	6	12	21
401	5,845	11.5341	2	5	9	15	23
402	1,478	3.9831	1	1	3	5	9
403	31,947	8.1013	2	3	5	10	17
404	4,350	4.1069	1	2	3	5	8
405	1	31.0000	31	31	31	31	31
406	2,444	9.6579	2	4	7	12	20
407	643	4.0560	1	2	3	5	7
408	2,134	8.2291	1	2	5	10	20
409	2,154	6.1565	2	3	4	6	12
410	28,484	4.0951	1	2	4	5	6
411	7	2.2857	1	1	2	2	4
412	16	3.8125	1	1	3	6	7
413	5,349	7.0501	2	3	5	9	14
414	633	4.2354	1	2	3	5	8
415	43,349	14.3233	4	6	11	18	28
416	192,908	7.4362	2	4	6	9	14
417	36	5.8421	2	3	5	7	12
418	25,920	6.2986	2	3	5	8	12
419	16,446	4.5517	1	2	4	6	9
420	3,220	3.4202	1	2	3	4	6

TABLE 7A.—MEDICARE PROSPECTIVE PAYMENT SYSTEM SELECTED PERCENTILE LENGTHS OF STAY [FY 2002 MEDPAR UPDATE DECEMBER 2002 GROUPER V20.0]—Continued

DRG	Number of discharges	Arithmetic mean length of stay	10th Percentile	25th Percentile	50th Percentile	75th Percentile	90th Percentile
421	10,745	4.0624	1	2	3	5	8
422	56	3.6970	1	2	2	4	6
423	8,116	8.3228	2	3	6	10	17
424	1,236	12.7929	2	4	9	15	26
425	16,189	3.7961	1	2	3	5	8
426	4,589	4.4655	1	2	3	6	9
427	1,596	4.3784	1	2	3	5	9
428	796	7.1382	1	2	5	8	14
429	25,933	6.0111	2	3	4	7	11
430	65,276	7.8291	2	3	6	10	16
431	314	6.8248	1	2	4	7	12
432	451	4.0111	1	2	3	4	7
433	5,554	3.1300	1	1	2	4	6
439	1,520	8.1855	1	3	5	9	17
440	5,771	9.0806	2	3	6	11	19
441	677	3.1374	1	1	2	4	6
442	17,571	8.5216	1	3	6	10	18
443	3,920	3.3663	1	1	3	4	7
444	5,754	4.2011	1	2	3	5	8
445	2,546	2.8610	1	1	2	4	5
447	6,514	2.5091	1	1	2	3	5
448	1	1.0000	1	1	1	1	1
449	33,181	3.7059	1	1	3	4	7
450	7,441	1.9790	1	1	1	2	4
451	1	1.0000	1	1	1	1	1
452	25,679	4.9178	1	2	3	6	10
453	5,687	2.7579	1	1	2	3	5
454	4,792	4.2398	1	2	3	5	8
455	1,070	2.4140	1	1	2	3	5
461	5,216	3.5861	1	1	2	4	6
462	9,650	10.8636	4	6	9	14	20
463	27,061	4.0439	1	2	3	5	8
464	7,232	2.9887	1	1	2	4	6
465	200	3.9100	1	1	1	3	6
466	1,737	4.0219	1	1	2	4	7
467	1,140	3.0035	1	1	2	3	6
468	52,318	12.7674	3	6	10	16	25
471	13,363	5.3722	3	3	4	6	8
473	8,095	12.4119	2	3	7	17	32
475	109,726	11.1546	2	5	9	15	22
476	3,657	11.0941	2	5	10	15	21
477	25,400	8.1660	1	3	6	11	17
478	108,133	7.3130	1	3	5	9	15
479	24,052	3.1910	1	1	2	4	7
480	611	21.0638	6	8	12	22	47
481	865	21.7584	13	17	20	25	33
482	5,296	12.5015	4	6	9	15	24
483	45,427	39.2033	15	22	33	48	70
484	336	14.5744	2	6	11	21	28
485	3,220	9.8264	4	5	7	11	19
486	2,094	12.7612	1	6	10	17	26
487	3,731	7.1702	1	3	6	9	15
488	769	16.9129	4	7	13	22	36
489	13,373	8.5374	2	3	6	10	17
490	5,462	5.4886	1	2	4	7	11
491	15,370	3.3853	1	2	3	4	6
492	3,140	14.9239	3	5	7	25	33
493	59,615	5.9843	1	3	5	8	11
494	28,880	2.5293	1	1	2	3	5
495	192	16.4167	7	9	12	19	31
496	2,479	8.8709	3	4	6	11	18
497	22,473	6.3553	3	4	5	7	11
498	16,070	4.0191	2	3	4	5	6
499	34,688	4.5204	1	2	3	6	9
500	49,936	2.4069	1	1	2	3	4
501	2,608	10.6031	4	5	8	13	20
502	771	6.1647	3	4	5	7	11
503	5,970	3.9084	1	2	3	5	7
504	125	27.6560	7	13	21	37	55

TABLE 7A.—MEDICARE PROSPECTIVE PAYMENT SYSTEM SELECTED PERCENTILE LENGTHS OF STAY [FY 2002 MEDPAR UPDATE DECEMBER 2002 GROUPER V20.0]—Continued

DRG	Number of discharges	Arithmetic mean length of stay	10th Percentile	25th Percentile	50th Percentile	75th Percentile	90th Percentile
505	134	5.6567	1	1	1	5	11
506	919	16.8836	4	7	13	21	35
507	341	9.0411	2	4	7	13	19
508	631	7.8051	2	3	5	10	17
509	160	4.2688	1	2	3	5	9
510	1,651	6.7274	1	3	5	8	15
511	581	4.6076	1	1	3	6	10
512	481	13.1185	6	8	10	15	23
513	207	9.7585	5	6	8	10	15
514	26,570	6.9035	1	2	5	9	15
515	8,131	5.1646	1	1	3	7	12
516	84,846	4.6338	2	2	4	5	9
517	198,743	2.5406	1	1	1	3	5
518	56,613	3.2508	1	1	2	4	7
519	8,486	4.8547	1	1	3	6	11
520	12,687	2.0548	1	1	1	2	4
521	30,898	5.7395	2	3	4	7	11
522	6,069	9.5670	4	5	8	12	20
523	15,456	4.0538	1	2	3	5	7
524	132,651	3.3690	1	2	3	4	6
525	571	17.2907	1	4	9	18	37
	11,713,347						

TABLE 7B.—MEDICARE PROSPECTIVE PAYMENT SYSTEM SELECTED PERCENTILE LENGTHS OF STAY—FY 2002 MEDPAR UPDATE DECEMBER 2002 GROUPER V21.0

DRG	Number of discharges	Arithmetic mean length of stay	10th percentile	25th percentile	50th percentile	75th percentile	90th percentile
1	23,433	10.5551	3	5	8	14	21
2	11,715	5.2534	1	3	4	7	10
3	3	6.0000	1	1	4	13	13
6	356	3.0197	1	1	2	4	7
7	14,683	9.8438	2	4	7	12	20
8	4,106	2.8015	1	1	1	3	7
9	1,711	6.2402	1	3	5	8	12
10	18,655	6.3850	2	3	5	8	13
11	3,291	4.0413	1	2	3	5	8
12	52,512	5.7513	2	3	4	7	11
13	7,068	5.0035	2	3	4	6	9
14	237,027	5.9456	2	3	5	7	11
15	94,223	4.8529	2	3	4	6	9
16	9,938	6.3106	2	3	5	8	12
17	2,744	3.2172	1	2	2	4	6
18	29,701	5.4868	2	3	4	7	10
19	8,519	3.5184	1	2	3	5	7
20	6,207	10.1927	3	5	8	13	20
21	1,885	5.5963	2	3	5	9	13
22	2,785	5.1178	2	2	4	6	10
23	11,270	4.2627	1	2	3	5	8
24	59,102	4.8803	1	2	4	6	10
25	27,433	3.1776	1	2	3	4	6
26	18	4.2778	1	1	2	3	4
27	4,398	5.1719	1	1	3	7	11
28	13,919	6.0265	1	3	5	8	12
29	5,282	3.4924	1	2	3	5	7
30	2	5.5000	2	2	11	11	11
31	3,897	4.0429	1	2	3	5	8
32	1,895	2.4776	1	1	2	3	5
34	23,811	4.9368	1	2	4	6	9
35	7,451	3.1094	1	1	3	4	6
36	2,117	1.5328	1	1	1	1	2
37	1,382	3.7685	1	1	2	5	8
38	97	2.8041	1	1	1	4	5
39	559	2.1163	1	1	1	2	4
40	1,549	3.8070	1	1	3	5	7

TABLE 7B.—MEDICARE PROSPECTIVE PAYMENT SYSTEM SELECTED PERCENTILE LENGTHS OF STAY—FY 2002 MEDPAR UPDATE DECEMBER 2002 GROUPER V21.0—Continued

DRG	Number of discharges	Arithmetic mean length of stay	10th percentile	25th percentile	50th percentile	75th percentile	90th percentile
42	1,581	2.7381	1	1	1	3	6
43	94	3.3936	1	1	3	4	6
44	1,227	4.9935	2	3	4	6	9
45	2,668	3.1267	1	2	3	4	6
46	3,482	4.4730	1	2	3	6	8
47	1,402	3.0927	1	1	2	4	6
49	2,391	4.4676	1	2	3	6	9
50	2,429	1.8506	1	1	1	2	3
51	243	2.8354	1	1	1	3	8
52	223	1.8161	1	1	1	2	3
53	2,478	3.6186	1	1	2	4	8
55	1,481	2.9338	1	1	1	3	7
56	469	2.8955	1	1	1	3	6
57	711	3.6709	1	1	2	4	8
58	1	2.0000	2	2	2	2	2
59	116	2.6724	1	1	1	3	6
60	1	3.0000	3	3	3	3	3
61	254	5.1535	1	1	3	7	11
62	2	7.0000	1	1	13	13	13
63	3,000	4.3860	1	2	3	5	9
64	3,126	6.4997	1	2	4	8	14
65	40,407	2.8127	1	1	2	4	5
66	7,841	3.0778	1	1	2	4	6
67	385	3.6442	1	2	3	5	7
68	11,658	3.8813	1	2	3	5	7
69	3,769	3.0186	1	2	3	4	5
70	30	2.3333	1	1	2	3	4
71	80	3.4000	1	1	2	4	6
72	964	3.4035	1	1	3	4	6
73	7,697	4.4433	1	2	3	6	9
75	43,504	9.9907	3	5	7	12	20
76	44,508	11.1024	3	5	9	14	21
77	2,458	4.8031	1	2	4	7	10
78	39,504	6.5709	3	4	6	8	11
79	169,239	8.4557	3	4	7	11	16
80	8,077	5.3480	2	3	4	7	10
81	5	4.4000	1	1	3	8	8
82	64,299	6.8753	2	3	5	9	14
83	6,665	5.3655	2	3	4	7	10
84	1,575	3.2565	1	2	3	4	6
85	22,398	6.2473	2	3	5	8	12
86	2,250	3.5364	1	2	3	4	7
87	61,129	6.3127	1	3	5	8	12
88	404,045	5.0463	2	3	4	6	9
89	535,162	5.8340	2	3	5	7	11
90	48,843	3.9563	2	2	3	5	7
91	45	5.0444	1	2	3	5	13
92	15,809	6.2907	2	3	5	8	12
93	1,778	4.0079	1	2	3	5	7
94	12,813	6.2387	2	3	5	8	12
95	1,655	3.8127	1	2	3	5	7
96	56,893	4.5613	2	2	4	6	8
97	28,776	3.5275	1	2	3	4	6
98	9	3.6667	1	1	2	2	5
99	21,400	6.1554	1	1	2	4	6
100	8,324	2.1371	1	1	2	3	4
101	22,329	4.3853	1	2	3	6	9
102	5,644	2.6487	1	1	2	3	5
103	484	42.1240	9	12	23	53	92
104	20,637	14.3306	6	8	12	17	25
105	29,223	9.8741	4	6	8	11	18
106	3,498	11.4019	5	7	10	14	20
107	83,307	10.4339	5	7	9	12	17
108	6,508	9.7617	2	5	8	12	18
109	57,450	7.7160	4	5	6	9	13
110	54,856	8.7568	2	4	7	11	17
111	9,569	4.0574	1	2	4	6	7
113	39,734	12.4805	4	6	9	15	24
114	8,315	8.6592	2	4	7	11	17

TABLE 7B.—MEDICARE PROSPECTIVE PAYMENT SYSTEM SELECTED PERCENTILE LENGTHS OF STAY—FY 2002 MEDPAR UPDATE DECEMBER 2002 GROUPER V21.0—Continued

DRG	Number of discharges	Arithmetic mean length of stay	10th percentile	25th percentile	50th percentile	75th percentile	90th percentile
115	19,805	7.4228	1	3	6	10	15
116	116,294	4.3974	1	2	3	6	9
117	4,731	4.3075	1	1	2	5	10
118	8,299	2.8976	1	1	1	4	7
119	1,237	5.2967	1	1	3	7	13
120	38,109	9.0051	1	3	6	12	20
121	164,425	6.2836	2	3	5	8	12
122	77,231	3.5159	1	2	3	5	7
123	38,627	4.7915	1	1	3	6	11
124	135,291	4.3838	1	2	3	5	9
125	91,946	2.7616	1	1	2	4	5
126	5,395	11.5218	3	6	9	15	22
127	676,101	5.2357	2	3	4	7	10
128	7,187	5.4446	2	3	5	7	9
129	3,853	2.5951	1	1	1	3	6
130	88,911	5.5991	2	3	5	7	10
131	27,124	4.0330	1	2	4	5	7
132	142,443	2.8904	1	1	2	4	5
133	8,694	2.2843	1	1	2	3	4
134	41,542	3.1609	1	2	2	4	6
135	7,810	4.4540	1	2	3	5	8
136	1,185	2.6641	1	1	2	3	5
138	208,716	3.9930	1	2	3	5	8
139	87,938	2.4733	1	1	2	3	5
140	55,735	2.5252	1	1	2	3	5
141	108,834	3.5704	1	2	3	4	7
142	52,684	2.5530	1	1	2	3	5
143	250,177	2.0911	1	1	2	3	4
144	94,588	5.5436	1	2	4	7	11
145	7,370	2.5700	1	1	2	3	5
146	10,785	10.2338	5	6	8	12	17
147	2,644	6.2266	3	5	6	8	9
148	134,125	12.2751	5	7	10	15	22
149	20,205	6.3062	4	5	6	7	9
150	21,184	11.3235	4	6	9	14	20
151	5,140	5.5586	2	3	5	7	10
152	4,578	8.3724	3	5	7	10	15
153	2,058	5.2546	3	4	5	7	8
154	28,368	13.2140	3	7	10	17	26
155	6,618	4.0801	1	2	3	5	8
156	4	2.5000	1	1	1	3	5
157	8,301	5.7459	1	2	4	7	12
158	4,362	2.6016	1	1	2	3	5
159	18,136	5.1194	1	2	4	7	10
160	12,203	2.6826	1	1	2	3	5
161	10,803	4.3270	1	2	3	5	9
162	6,421	1.9305	1	1	1	2	4
163	8	3.2500	1	1	2	3	6
164	5,400	5.3580	3	5	7	10	15
165	2,335	4.4882	2	3	4	6	7
166	4,206	4.7263	1	2	4	6	9
167	4,091	2.4133	1	1	2	3	4
168	1,425	4.8386	1	2	3	6	10
169	814	2.4005	1	1	2	3	5
170	15,682	10.8241	2	4	8	14	22
171	1,530	4.3333	1	2	4	6	9
172	31,435	6.9669	2	3	5	9	14
173	2,482	3.7808	1	2	3	5	8
174	252,303	4.7834	2	3	4	6	9
175	34,977	2.9157	1	2	3	4	5
176	13,498	5.2318	2	3	4	6	10
177	9,080	4.5719	2	3	4	5	8
178	3,382	3.1227	1	2	3	4	6
179	13,193	5.9431	2	3	5	7	11
180	90,752	5.4251	2	3	4	7	10
181	27,280	3.3710	1	2	3	4	6
182	273,118	4.4204	1	2	3	5	8
183	91,272	2.8962	1	1	2	4	5
184	69	3.2319	1	1	2	4	6

TABLE 7B.—MEDICARE PROSPECTIVE PAYMENT SYSTEM SELECTED PERCENTILE LENGTHS OF STAY—FY 2002 MEDPAR UPDATE DECEMBER 2002 GROUPER V21.0—Continued

DRG	Number of discharges	Arithmetic mean length of stay	10th percentile	25th percentile	50th percentile	75th percentile	90th percentile
185	5,350	4.6680	1	2	3	6	10
186	6	6.6667	2	3	3	10	10
187	619	4.0307	1	2	3	6	8
188	84,099	5.5620	1	2	4	7	11
189	13,098	3.1005	1	1	2	4	6
190	75	5.1733	1	2	4	6	11
191	9,537	13.7975	3	6	10	17	28
192	1,322	6.2201	1	3	6	8	11
193	4,822	12.7242	5	7	10	16	23
194	850	6.7323	2	4	6	8	12
195	4,019	10.5175	4	6	9	13	19
196	998	5.6092	2	3	5	7	10
197	18,313	9.1566	3	5	7	11	17
198	5,418	4.4118	2	3	4	6	7
199	1,636	9.7353	2	4	7	13	21
200	1,076	10.4898	2	3	7	14	23
201	2,130	14.1469	3	6	11	18	29
202	26,756	6.3872	2	3	5	8	13
203	30,055	6.6816	2	3	5	9	13
204	65,585	5.7470	2	3	4	7	11
205	27,481	6.1736	2	3	5	8	12
206	2,057	3.7832	1	2	3	5	8
207	32,881	5.1924	1	2	4	7	10
208	10,188	2.8924	1	1	2	4	5
209	399,893	4.8600	3	3	4	5	7
210	122,843	6.8659	3	4	6	8	11
211	30,096	4.8394	3	4	4	6	7
212	9	7.0000	1	1	4	5	7
213	9,950	9.2035	2	4	7	12	18
216	8,770	7.9789	1	2	6	11	17
217	17,292	13.3846	3	5	9	16	28
218	23,796	5.5121	2	3	4	7	10
219	19,891	3.1961	1	2	3	4	6
220	1	1.0000	1	1	1	1	1
223	13,308	3.0326	1	1	2	4	6
224	11,738	1.9052	1	1	1	2	3
225	6,481	5.2626	1	2	4	7	11
226	5,874	6.5259	1	2	4	8	14
227	4,854	2.6360	1	1	2	3	5
228	2,534	4.1492	1	1	3	5	9
229	1,263	2.3286	1	1	2	3	5
230	2,456	5.5668	1	2	3	7	12
232	816	2.7132	1	1	1	2	6
233	9,940	7.3671	1	3	6	10	15
234	5,364	3.0626	1	1	2	4	7
235	5,107	4.8659	1	2	4	6	9
236	40,182	4.6505	1	3	4	6	8
237	1,782	3.6599	1	2	3	5	7
238	8,956	8.6382	3	4	7	10	17
239	46,252	5.2694	2	3	5	8	12
240	12,062	6.6231	2	3	5	8	13
241	3,173	3.7690	1	2	3	5	7
242	2,597	6.8814	2	3	5	9	14
243	96,552	4.6506	1	2	4	6	9
244	14,695	4.6521	1	2	4	6	9
245	5,861	3.2950	1	2	3	4	6
246	1,498	3.7216	1	2	3	5	7
247	20,507	3.3340	1	1	3	4	7
248	13,931	4.9200	1	3	4	6	9
249	12,932	3.6170	1	1	2	4	7
250	3,802	4.1302	1	2	3	5	8
251	2,375	2.7661	1	1	3	3	5
253	22,095	4.6939	2	3	4	6	8
254	10,763	3.1601	1	2	3	4	5
256	6,714	5.1008	1	2	4	6	10
257	15,758	2.6395	1	1	2	3	5
258	15,317	1.8212	1	1	2	2	3
259	3,517	2.6747	1	1	1	3	6
260	4,236	1.3973	1	1	1	1	2

TABLE 7B.—MEDICARE PROSPECTIVE PAYMENT SYSTEM SELECTED PERCENTILE LENGTHS OF STAY—FY 2002 MEDPAR UPDATE DECEMBER 2002 GROUPER V21.0—Continued

DRG	Number of discharges	Arithmetic mean length of stay	10th percentile	25th percentile	50th percentile	75th percentile	90th percentile
261	1,776	2.0884	1	1	1	2	4
262	668	4.3204	1	1	3	6	9
263	23,192	11.4687	3	5	8	14	22
264	3,869	6.5585	2	3	5	8	13
265	4,103	6.6074	1	2	4	8	14
266	2,555	3.2337	1	1	2	4	7
267	241	4.4606	1	1	3	6	10
268	920	3.7978	1	1	2	4	8
269	9,852	8.5323	2	3	7	11	17
270	2,798	3.5615	1	1	2	5	7
271	19,436	7.2481	2	4	6	9	14
272	5,752	6.0176	2	3	5	7	12
273	1,343	3.9598	1	2	3	5	8
274	2,305	6.4586	1	3	5	8	13
275	230	3.6217	1	1	2	4	7
276	1,327	4.4574	1	2	4	6	8
277	100,811	5.7271	2	3	5	7	10
278	32,531	4.1962	2	2	4	5	7
279	10	5.3000	2	2	3	7	7
280	17,882	4.1159	1	2	3	5	8
281	7,536	2.8879	1	1	2	4	5
283	6,093	4.6606	1	2	4	6	9
284	2,029	2.9359	1	1	2	4	6
285	6,962	10.5315	3	5	8	13	20
286	2,502	5.8981	2	3	4	7	12
287	6,287	10.2537	3	5	8	13	20
288	5,524	4.9716	2	3	4	5	8
289	6,938	2.7257	1	1	1	2	6
290	9,964	2.1995	1	1	1	2	4
291	58	1.6379	1	1	1	2	3
292	6,534	10.4645	2	4	6	14	21
293	364	4.7033	1	1	3	5	9
294	98,755	4.5121	1	2	3	5	9
295	3,550	3.9721	1	2	3	5	7
296	280,547	5.0716	1	2	4	6	10
297	48,715	3.2855	1	2	3	4	6
298	111	3.1802	1	1	2	4	7
299	1,276	5.4412	1	2	4	7	11
300	18,798	6.1364	2	3	5	8	12
301	3,636	3.5954	1	2	3	4	7
302	8,722	8.5255	4	5	6	9	15
303	21,880	8.0372	3	4	6	9	15
304	12,572	8.8705	2	4	6	11	18
305	3,047	3.5510	1	2	3	4	7
306	7,077	5.3740	1	2	3	7	12
307	2,035	2.0708	1	1	2	2	3
308	7,299	6.2077	1	2	4	8	14
309	4,183	2.0995	1	1	1	2	4
310	24,884	4.3725	1	1	3	5	10
311	7,495	1.8220	1	1	1	2	3
312	1,524	4.5623	1	1	3	5	10
313	555	2.2559	1	1	1	3	5
314	2	40.5000	1	1	60	60	60
315	34,134	5.9586	1	1	4	9	16
316	119,645	6.5348	2	3	5	8	13
317	2,018	3.6051	1	1	2	4	7
318	5,782	6.0930	1	3	5	8	12
319	412	2.9320	1	1	2	4	6
320	188,165	5.2818	2	3	4	6	10
321	31,355	3.7221	1	2	3	5	7
322	50	3.2200	1	2	3	4	5
323	19,957	3.1681	1	1	2	4	6
324	7,040	1.9006	1	1	1	2	4
325	9,310	3.8056	1	2	3	5	7
326	2,732	2.6190	1	1	2	3	5
327	7	2.5714	1	1	2	3	4
328	742	3.7251	1	1	3	5	8
329	94	2.0851	1	1	1	3	5
331	51,439	5.5878	1	3	4	7	11

TABLE 7B.—MEDICARE PROSPECTIVE PAYMENT SYSTEM SELECTED PERCENTILE LENGTHS OF STAY—FY 2002 MEDPAR UPDATE DECEMBER 2002 GROUPER V21.0—Continued

DRG	Number of discharges	Arithmetic mean length of stay	10th percentile	25th percentile	50th percentile	75th percentile	90th percentile
332	5,006	3.1596	1	1	2	4	6
333	255	5.7843	1	2	3	7	11
334	10,536	4.5813	2	3	4	5	8
335	12,727	3.0264	2	2	3	4	5
336	35,950	3.3945	1	2	2	4	7
337	29,532	2.0157	1	1	2	2	3
338	940	5.4851	1	2	3	7	13
339	1,481	4.7968	1	1	3	6	11
340	1	2.0000	2	2	2	2	2
341	3,580	3.2031	1	1	2	3	7
342	693	3.1977	1	1	2	4	7
344	3,580	2.5232	1	1	1	2	5
345	1,370	4.9051	1	1	3	6	11
346	4,890	5.8937	2	3	5	8	12
347	315	3.0762	1	1	2	4	7
348	3,401	4.3355	1	2	3	5	8
349	616	2.5049	1	1	2	3	5
350	6,748	4.4884	2	2	4	6	8
352	960	3.9740	1	2	3	5	7
353	2,600	6.4942	2	3	5	7	12
354	7,444	5.7016	3	3	4	6	10
355	5,590	3.1971	2	2	3	4	5
356	25,990	2.0785	1	1	2	3	3
357	5,663	8.3744	3	4	6	10	16
358	21,660	4.1750	2	2	3	5	7
359	32,036	2.5609	1	2	2	3	4
360	15,871	2.7521	1	1	2	3	4
361	346	3.2052	1	1	2	3	6
362	5	1.4000	1	1	1	2	2
363	2,527	3.6312	1	2	2	4	8
364	1,637	4.1307	1	1	3	5	8
365	1,843	8.1872	1	3	5	10	17
366	4,581	6.6619	1	3	5	8	14
367	487	3.0678	1	1	2	4	7
368	3,572	6.6551	2	3	5	8	13
369	3,482	3.3090	1	1	2	4	7
370	1,350	5.7911	2	3	4	5	9
371	1,691	3.4826	2	3	3	4	5
372	947	3.4805	2	2	2	3	5
373	4,145	2.2955	1	2	2	3	3
374	91	2.9341	1	2	2	3	6
376	325	3.4123	1	2	2	4	7
377	48	4.0833	1	2	3	5	8
378	175	2.5943	1	1	2	3	5
379	355	3.0028	1	1	2	3	5
380	99	1.9697	1	1	1	2	3
381	190	1.9053	1	1	1	2	4
382	49	1.6939	1	1	1	2	3
383	2,003	3.7913	1	1	3	4	7
384	129	2.6279	1	1	2	3	5
385	3	2.0000	1	1	2	3	3
387	1	55.0000	55	55	55	55	55
389	12	6.2500	2	3	5	9	10
392	2,271	9.6874	3	4	7	12	21
393	1	4.0000	4	4	4	4	4
394	2,605	7.5965	1	2	5	9	17
395	108,024	4.3238	1	2	3	5	9
396	17	4.4118	1	1	3	7	9
397	19,035	5.1743	1	2	4	6	10
398	18,162	5.8655	2	3	5	7	11
399	1,693	3.4826	1	2	3	4	6
401	5,845	11.5341	2	5	9	15	23
402	1,478	3.9831	1	1	3	5	9
403	31,947	8.1013	2	3	6	10	17
404	4,350	4.1069	1	2	3	5	8
405	1	31.0000	31	31	31	31	31
406	2,444	9.6579	2	4	7	12	20
407	643	4.0560	1	2	3	5	7
408	2,134	8.2291	1	2	5	10	20

TABLE 7B.—MEDICARE PROSPECTIVE PAYMENT SYSTEM SELECTED PERCENTILE LENGTHS OF STAY—FY 2002 MEDPAR UPDATE DECEMBER 2002 GROUPER V21.0—Continued

DRG	Number of discharges	Arithmetic mean length of stay	10th percentile	25th percentile	50th percentile	75th percentile	90th percentile
409	2,154	6.1565	2	3	4	6	12
410	28,484	4.0951	1	2	4	5	6
411	7	2.2857	1	1	2	2	4
412	16	3.8125	1	1	3	6	7
413	5,349	7.0501	2	3	5	9	14
414	633	4.2354	1	2	3	5	8
415	43,349	14.3233	4	6	11	18	28
416	192,908	7.4362	2	4	6	9	14
417	38	5.8421	2	3	5	7	12
418	25,920	6.2986	2	3	5	8	12
419	16,446	4.5517	1	2	4	6	9
420	3,220	3.4202	1	2	3	4	6
421	10,745	4.0624	1	2	3	5	8
422	66	3.6970	1	2	2	4	6
423	8,116	8.3228	2	3	6	10	17
424	1,236	12.7929	2	4	9	15	26
425	16,189	3.7961	1	2	3	5	8
426	4,589	4.4655	1	2	3	6	9
427	1,596	4.3784	1	2	3	5	9
428	796	7.1382	1	2	5	8	14
429	27,249	5.8827	2	3	4	7	11
430	65,276	7.8291	2	3	6	10	16
431	314	6.8248	1	2	4	7	12
432	451	4.0111	1	2	3	4	7
433	5,554	3.1300	1	1	2	4	5
439	1,520	8.1855	1	3	5	9	17
440	5,771	9.0806	2	3	6	11	19
441	677	3.1374	1	1	2	4	6
442	17,571	8.5218	1	3	6	10	18
443	3,920	3.3663	1	1	3	4	7
444	5,754	4.2011	1	2	3	5	8
445	2,546	2.8610	1	1	2	4	5
447	6,514	2.5091	1	1	2	3	5
448	1	1.0000	1	1	1	1	1
449	33,181	3.7059	1	1	3	4	7
450	7,441	1.9790	1	1	1	2	4
451	1	1.0000	1	1	1	1	1
452	25,679	4.9178	1	2	3	6	10
453	5,687	2.7579	1	1	2	3	5
454	4,792	4.2398	1	2	3	5	8
455	1,070	2.4140	1	1	2	3	5
461	5,216	3.5861	1	1	2	4	8
462	9,650	10.8636	4	6	9	14	20
463	27,061	4.0439	1	2	3	5	8
464	7,232	2.9887	1	1	2	4	6
465	200	3.9100	1	1	1	3	6
466	1,737	4.0219	1	1	2	4	7
467	1,141	3.0035	1	1	2	3	6
468	52,318	12.7674	3	6	10	16	25
471	13,363	5.3722	3	3	4	6	8
473	8,095	12.4119	2	3	7	17	32
475	109,726	11.1546	2	5	9	15	22
476	3,657	11.0941	2	5	10	15	21
477	25,400	8.1660	1	3	6	11	17
478	108,112	7.3110	1	3	5	9	15
479	24,051	3.1906	1	1	2	4	7
480	611	21.0638	6	8	12	22	47
481	855	21.7584	13	17	20	25	33
482	5,296	12.5015	4	6	9	15	24
483	45,427	39.2033	15	22	33	48	70
484	336	14.5744	2	6	11	21	28
485	3,220	9.8264	4	5	7	11	19
486	2,094	12.7612	1	6	10	17	26
487	3,731	7.1702	1	3	6	9	15
488	769	16.9129	4	7	13	22	36
489	13,373	8.5374	2	3	6	10	17
490	5,462	5.4888	1	2	4	7	11
491	15,370	3.3853	1	2	3	4	6
492	3,140	14.9239	3	5	7	25	33

TABLE 7B.—MEDICARE PROSPECTIVE PAYMENT SYSTEM SELECTED PERCENTILE LENGTHS OF STAY—FY 2002 MEDPAR UPDATE DECEMBER 2002 GROUPER V21.0—Continued

DRG	Number of discharges	Arithmetic mean length of stay	10th percentile	25th percentile	50th percentile	75th percentile	90th percentile
483	59,615	5.9843	1	3	5	8	11
484	28,880	2.5293	1	1	2	3	5
485	192	16.4167	7	9	12	19	31
486	2,479	6.8709	3	4	6	11	18
487	21,955	6.2773	3	4	5	7	11
488	15,754	4.0072	2	3	4	5	6
489	34,688	4.5204	1	2	3	6	9
500	49,936	2.4069	1	1	2	3	4
501	2,608	10.6031	4	5	8	13	20
502	771	6.1647	3	4	5	7	11
503	5,970	3.9084	1	2	3	5	7
504	125	27.6560	7	13	21	37	55
505	134	5.6567	1	1	1	5	11
506	919	16.8836	4	7	13	21	35
507	341	9.0411	2	4	7	13	19
508	631	7.8051	2	3	5	10	17
509	160	4.2688	1	2	3	5	9
510	1,651	6.7274	1	3	5	8	15
511	581	4.6076	1	1	3	6	10
512	481	13.1185	6	8	10	15	23
513	207	9.7585	5	6	8	10	15
515	8,131	5.1646	1	1	3	7	12
516	84,846	4.6338	2	2	4	5	9
517	198,743	2.5406	1	1	1	3	5
518	56,613	3.2508	1	1	2	4	7
519	9,004	5.1313	1	1	3	6	12
520	13,003	2.1170	1	1	2	2	4
521	30,898	5.7395	2	3	4	7	11
522	6,069	9.5670	4	5	8	12	20
523	15,456	4.0538	1	2	3	5	7
524	132,651	3.3690	1	2	3	4	6
525	571	17.2907	1	4	9	18	37
528	1,354	17.0990	6	10	15	22	31
529	4,687	10.5078	2	3	7	14	24
530	2,842	3.9170	1	2	3	5	8
531	3,802	9.9408	2	4	7	13	21
532	2,910	3.9704	1	1	3	5	8
533	43,264	4.1077	1	1	2	5	9
534	52,354	2.0108	1	1	1	2	4
535	6,005	10.9189	2	5	9	14	21
536	20,565	5.7310	1	2	4	6	12
537	6,870	7.0199	1	3	5	9	14
538	6,442	2.8788	1	1	2	4	6
539	4,472	11.1456	2	4	8	15	24
540	1,899	4.0590	1	1	3	5	8
	11,713,347						

TABLE 8A.—STATEWIDE AVERAGE OPERATING COST-TO-CHARGE RATIOS FOR URBAN AND RURAL HOSPITALS (CASE WEIGHTED)—MARCH 2003

State	Urban	Rural
Alabama	0.326	0.393
Alaska	0.401	0.662
Arizona	0.334	0.453
Arkansas	0.424	0.413
California	0.322	0.411
Colorado	0.408	0.532
Connecticut	0.501	0.538
Delaware	0.592	0.483
District of Columbia	0.382	
Florida	0.330	0.344
Georgia	0.449	0.444
Hawaii	0.402	0.447

TABLE 8A.—STATEWIDE AVERAGE OPERATING COST-TO-CHARGE RATIOS FOR URBAN AND RURAL HOSPITALS (CASE WEIGHTED)—MARCH 2003—Continued

State	Urban	Rural
Idaho	0.541	0.518
Illinois	0.384	0.476
Indiana	0.486	0.523
Iowa	0.456	0.587
Kansas	0.376	0.558
Kentucky	0.458	0.462
Louisiana	0.383	0.459
Maine	0.542	0.499
Maryland	0.760	0.820
Massachusetts	0.499	0.553
Michigan	0.438	0.534

TABLE 8A.—STATEWIDE AVERAGE OPERATING COST-TO-CHARGE RATIOS FOR URBAN AND RURAL HOSPITALS (CASE WEIGHTED)—MARCH 2003—Continued

State	Urban	Rural
Minnesota	0.460	0.619
Mississippi	0.431	0.419
Missouri	0.389	0.459
Montana	0.510	0.516
Nebraska	0.415	0.525
Nevada	0.284	0.461
New Hampshire	0.523	0.587
New Jersey	0.343	
New Mexico	0.473	0.479
New York	0.470	0.579
North Carolina	0.503	0.468
North Dakota	0.640	0.628
Ohio	0.481	0.567
Oklahoma	0.371	0.466
Oregon	0.525	0.568
Pennsylvania	0.367	0.497
Puerto Rico	0.479	0.569
Rhode Island	0.484	
South Carolina	0.435	0.452
South Dakota	0.484	0.535
Tennessee	0.411	0.434
Texas	0.373	0.477
Utah	0.481	0.581
Vermont	0.522	0.596
Virginia	0.428	0.499
Washington	0.532	0.581
West Virginia	0.572	0.545
Wisconsin	0.509	0.583
Wyoming	0.442	0.618

TABLE 8B.—STATEWIDE AVERAGE CAPITAL COST-TO-CHARGE RATIOS (CASE WEIGHTED)—MARCH 2003

State	Ratio
Alabama	0.040
Alaska	0.053
Arizona	0.033
Arkansas	0.042
California	0.031
Colorado	0.043
Connecticut	0.036
Delaware	0.050
District of Columbia	0.026
Florida	0.039
Georgia	0.047
Hawaii	0.041
Idaho	0.045
Illinois	0.037
Indiana	0.051
Iowa	0.046
Kansas	0.045
Kentucky	0.045
Louisiana	0.043
Maine	0.035
Maryland	0.013
Massachusetts	0.049
Michigan	0.043
Minnesota	0.042
Mississippi	0.041
Missouri	0.040
Montana	0.049

TABLE 8B.—STATEWIDE AVERAGE CAPITAL COST-TO-CHARGE RATIOS (CASE WEIGHTED)—MARCH 2003—Continued

State	Ratio
Nebraska	0.047
Nevada	0.032
New Hampshire	0.059
New Jersey	0.030
New Mexico	0.044
New York	0.047
North Carolina	0.046
North Dakota	0.065
Ohio	0.044
Oklahoma	0.040
Oregon	0.043
Pennsylvania	0.035
Puerto Rico	0.043
Rhode Island	0.033
South Carolina	0.046
South Dakota	0.051
Tennessee	0.046
Texas	0.043
Utah	0.046
Vermont	0.046
Virginia	0.048
Washington	0.052
West Virginia	0.045
Wisconsin	0.050
Wyoming	0.050

TABLE 9.—HOSPITAL RECLASSIFICATIONS AND REDESIGNATIONS BY INDIVIDUAL HOSPITAL—FY 2004

Provider No.	Actual MSA or rural area	Wage index MSA reclassification	Standardized amount MSA reclassification
010005	01	3440	3440
010008	01	5240	
010010	01	3440	3440
010012	01	2880	
010022	01	2880	
010029	0580	1800	
010035	01	1000	
010036	01	2750	
010043	01	1000	1000
010044	01	25	
010072	01	0450	0450
010089	01	1000	
010101	01	0450	0450
010118	01	5240	
010120	01	5160	
010121	01	5240	
010126	01	2180	
010150	01	5240	
010158	01	2030	
020008	02	0380	
030007	03	2620	
030012	03	6200	
030033	03	2620	
030043	03	8520	
040014	04	4400	
040017	04	25	
040019	04	4920	
040020	3700	4920	
040025	04	4400	
040027	04	7920	
040041	04	4400	
040066	04	4400	
040069	04	4920	
040072	04	4400	
040076	04	4400	
040078	04	4400	

TABLE 9.—HOSPITAL RECLASSIFICATIONS AND REDESIGNATIONS BY INDIVIDUAL HOSPITAL—FY 2004—Continued

Provider No.	Actual MSA or rural area	Wage index MSA reclassification	Standardized amount MSA reclassification
040080	04	3700	
040088	04	7680	
040091	04	8360	
040107	04	8360	
040119	04	4400	
050042	05	6690	
050045	05		7320
050071	7400	5775	
050073	8720	5775	
050101	8720	5775	
050150	05	6920	
050174	7500	8720	
050228	7360	5775	
050230	5945	4480	
050236	8735		4480
050236	8735	4480	
050251	05	6720	
050296	05	7120	
050325	05	5170	
050335	05	5170	
050419	05	6690	
050457	7360	5775	
050464	5170	8120	
050494	05	6920	
050510	7360	5775	
050541	7360	5775	
050549	8735	4480	
050569	05	7500	
050594	5945	4480	
050609	5945	4480	
050668	7360	5775	
050686	6780	5945	
060001	3060	2080	2080
060003	1125	2080	2080
060013	06	0200	
060023	2995	6520	
060027	1125	2080	2080
060044	06	2080	
060049	06	2080	
060057	06	2995	
060075	06	2995	
060076	06	3060	
060096	06	2080	
060103	1125	2080	2080
070006	5483	5600	
070018	5483	5600	
070033	5483	5600	
070034	5483	5600	
070036	3283	5483	
080002	08		0720
080004	2190	9160	
080006	08	2190	
080007	08	0560	
100022	5000	2680	
100023	10	5960	
100024	10	5000	
100045	2020		5960
100049	10	3980	
100098	10	8960	8960
100103	10	3600	3600
100105	10	4900	
100109	10	5960	
100150	10	5000	
100176	8960	2710	
100211	8280	3980	
100232	10	5790	2900
100239	8280	7510	
100249	10	8280	
100268	8960	2680	
110001	11		0520

TABLE 9.—HOSPITAL RECLASSIFICATIONS AND REDESIGNATIONS BY INDIVIDUAL HOSPITAL—FY 2004—Continued

Provider No.	Actual MSA or rural area	Wage index MSA reclassification	Standardized amount MSA reclassification
110001	11	0520	
110002	11	0520	
110003	11	3600	
110016	11	1800	
110023	11	0520	
110025	11		3600
110025	11	3600	
110029	11	0520	
110038	11	10	
110040	11	0500	0500
110041	11	0500	
110050	11	0520	
110054	11	0520	
110074	0500		0520
110075	11	7520	
110118	11	0120	
110122	11	10	
110150	11	4680	
110168	11	0520	
110187	11	0520	
110188	11	0520	
110189	11	0520	
110205	11	0520	
120028	12	3320	
130002	13	6340	
130003	13	50	
130011	13	50	
130018	13	6340	
130026	13	6340	
130028	6340	7160	
130049	13	7840	
130060	13	1080	
140014	6120	1040	
140015	14	7040	
140027	14	1960	
140031	14	1400	
140032	14	7040	
140034	14	7040	7040
140040	14	6120	
140043	14	6880	
140046	14	7040	
140058	14	7880	
140064	14	1960	
140086	14	7040	7040
140093	14	1400	
140102	14	7880	7880
140110	14	6120	
140141	14	7040	7040
140143	14	6120	
140160	14	6880	
140161	14	1600	
140164	14	7040	
140189	14	1400	
140230	14	1400	1400
140234	14	6120	
140245	14		7040
140271	14	7800	7800
150002	2960	1600	1600
150004	2960	1600	1600
150006	15	7800	
150008	2960	1600	1600
150011	15	3480	3480
150015	15	1600	1600
150027	15		3480
150030	15	3480	3480
150034	2960	1600	1600
150036	15	3850	
150048	15	3200	
150051	1020		3480
150062	15	3480	3480

TABLE 9.—HOSPITAL RECLASSIFICATIONS AND REDESIGNATIONS BY INDIVIDUAL HOSPITAL—FY 2004—Continued

Provider No.	Actual MSA or rural area	Wage index MSA reclassification	Standardized amount MSA reclassification
150065	15	3480	
150067	15		3480
150069	15	1640	1640
150076	15	7800	
150090	2960	1600	1600
150096	15	2330	
150102	15	7800	
150105	15	3480	
150112	15	3480	3480
150125	2960	1600	1600
150126	2960	1600	1600
150127	15	3480	
150132	2960	1600	1600
150133	15	2330	
150146	15	2330	
150147	2960	1600	1600
160001	16	2120	
160016	16	2120	
160026	16	2120	
160030	16	2120	
160037	16	24	
160057	16	3500	
160064	16	24	
160080	16	5880	
160088	16	2120	
160089	16	2120	
160094	16	8920	
160122	16	14	
160147	16	2120	
170001	17	9040	
170006	17	3710	
170010	17	8560	
170012	17	9040	
170013	17	9040	
170014	17	3760	
170020	17	9040	
170022	17	7000	
170023	17	9040	
170025	17	9040	
170033	17	9040	
170045	17	8440	
170058	17	3710	
170060	17	28	
170089	17	0320	
170094	17	8440	
170120	17	3710	
170131	17	8440	8440
170142	17	8440	
170145	17	8560	
170166	17	0320	
170175	17	9040	
180005	18	3400	
180011	18	4280	
180012	18	4520	
180013	18	5360	
180016	18	4520	
180018	18	4280	
180027	18	1660	
180028	18	3400	
180029	18	3660	
180044	18	3400	
180048	18	4280	
180054	18	1660	
180066	18	5360	
180069	18	3400	
180078	18	3400	
180102	18	1660	
180104	18	1660	
180116	18	1660	
180124	18	5360	

TABLE 9.—HOSPITAL RECLASSIFICATIONS AND REDESIGNATIONS BY INDIVIDUAL HOSPITAL—FY 2004—Continued

Provider No.	Actual MSA or rural area	Wage index MSA reclassification	Standardized amount MSA reclassification
180125	18	3410	
180127	18	4520	
180132	18	4280	
180139	18	4280	
190001	19		5560
190003	19	3880	
190010	19	5560	
190015	19	5560	
190025	19	3880	
190049	19		5560
190054	19	3880	
190083	19	5200	
190086	19	5200	
190099	19	3880	
190106	19	3880	
190131	19	5560	
190218	19	0220	
200002	20	6403	
200020	6403	1123	1123
200024	4243	6403	
200034	4243	6403	
200039	20	6403	
200040	6403		1123
200050	20	0733	
200063	20	6403	
220060	1123	0743	
220077	8003	3283	
220123	22	0743	
230022	23	0440	
230027	23	3000	3000
230030	23	6960	
230036	23	6960	
230037	23	0440	
230040	23	3720	3000
230054	23	3080	
230080	23	6960	
230093	23	3000	
230096	23	3720	
230097	23	3000	
230105	23	6960	
230106	23	3000	
230121	23	2640	2640
230188	23	6960	6960
230199	23	0670	0670
230235	23	6960	6960
230253	23	2160	
240011	24	5120	5120
240013	24	5120	
240014	24	5120	
240016	24	2520	
240018	24		5120
240023	24	5120	
240045	24	2240	
240052	24	2520	
240064	24	2240	
240069	24	6820	
240071	24		5120
240072	24	2240	
240075	24	6980	
240088	24	6980	
240089	24	5120	
240100	24	2985	
240119	24	2240	
240121	24	2240	
240139	24	5120	
240142	24	6980	
240152	24	5120	
240187	24	5120	
250002	25	2650	
250004	25	4920	

TABLE 9.—HOSPITAL RECLASSIFICATIONS AND REDESIGNATIONS BY INDIVIDUAL HOSPITAL—FY 2004—Continued

Provider No.	Actual MSA or rural area	Wage index MSA reclassification	Standardized amount MSA reclassification
250009	25	3580	
250025	25	01	
250030	25	3560	
250031	25	3560	
250034	25	4920	
250042	25	4920	
250058	25	3285	
250078	3285	0920	
250079	25	3560	
250081	25	3560	
250082	25	6240	
250084	25	19	
250088	25	0760	
250094	3285	0920	
250097	25	0760	
250100	25	8600	
250101	25	3560	
250104	25	3560	
250122	25	19	
250126	25	4920	
260009	26	3760	
260011	26	1740	
260015	26	3700	
260017	26	7040	
260022	26	1740	
260025	26	7040	
260034	26	3760	
260047	26	1740	
260064	26	1740	
260074	26	1740	
260078	26	7920	
260094	26	7920	
260110	26	7040	7040
260113	26	14	
260116	26	7040	
260119	26	3700	
260120	26	3700	
260127	26	7040	
260131	26	1740	
260164	26		7040
260183	26	7040	
260186	26	1740	
270002	27	0880	
270003	27	3040	
270011	27	3040	
270017	27	5140	
270051	27	5140	
270057	27	0880	
270082	27	3040	
280009	28	4360	
280020	28	4360	
280032	28	4360	
280054	28	4360	
280058	28	4360	
280061	28	53	
280065	28	3060	
280077	28	5920	
280111	28	5920	
280125	28	7720	
290006	29	6720	
290008	29	4120	
300003	30	1123	
300005	30	1123	
300019	30	1123	1123
300024	30		1123
310001	0875	5600	
310002	5640	5600	
310003	3640	5600	
310015	5640	0875	
310021	8480	5190	

TABLE 9.—HOSPITAL RECLASSIFICATIONS AND REDESIGNATIONS BY INDIVIDUAL HOSPITAL—FY 2004—Continued

Provider No.	Actual MSA or rural area	Wage index MSA reclassification	Standardized amount MSA reclassification
310031	6160	5190	
310032	8760	6160	6160
310038	5015	5600	
310045	0875	5600	
310047	0560	6160	
310048	5015	5640	
310064	0560	6160	
310070	5015	5600	
310076	5640	5600	
310087	8760	6160	
310088	0560	6160	
310119	5640	5600	
320005	32	0200	
320006	32	7490	
320011	32	7490	
320013	32	7490	
320063	32	5800	
320065	32	5800	
330001	5660	0875	0875
330004	33	2281	
330023	2281	5660	5600
330027	5380	5600	
330084	33	1303	
330085	33	8160	
330103	33		1280
330106	5380	5600	
330126	5660	0875	0875
330135	5660	0875	0875
330136	33	8160	
330157	33	8160	
330181	5380	5600	
330182	5380	5600	
330205	5660	0875	0875
330209	5660	0875	0875
330224	33	3283	
330235	8160		6840
330239	3610	2360	
330250	33	1303	
330264	5660	0875	0875
330307	33	8160	
330386	33	5660	
340003	34	3120	
340008	34	2560	
340010	2960	6640	
340013	34	1520	
340017	34	0480	
340021	34	1520	
340023	34	0480	
340027	34	3150	
340039	34		1520
340050	34	2560	
340051	34	3290	
340052	3120	1520	
340064	34	3120	
340068	34	9200	
340071	34	6640	6640
340088	34	0480	
340109	34	5720	5720
340115	34	6640	6640
340124	34	6640	6640
340126	34	6640	6640
340131	34	3150	
340143	3290	1520	
340147	6895	6640	
350003	35	1010	
350005	35	2985	
350006	35	1010	
350008	35	1010	
350009	35	2520	
350038	35	2985	

TABLE 9.—HOSPITAL RECLASSIFICATIONS AND REDESIGNATIONS BY INDIVIDUAL HOSPITAL—FY 2004—Continued

Provider No.	Actual MSA or rural area	Wage index MSA reclassification	Standardized amount MSA reclassification
360002	36		1680
360008	36	3400	
360010	36	0080	
360011	36	1840	1840
360013	36	2000	
360014	36	1840	
360024	36	1680	1680
360025	36	1680	1680
360036	36	0080	
360037	1680	0080	
360039	36	1840	1840
360046	3200		1640
360054	36	1480	
360056	3200		1640
360063	36	1680	
360065	36	1680	1680
360071	36	4320	4320
360076	3200		1640
360078	0080	1680	1680
360081	5400		2160
360084	1320	0080	
360088	36	1840	
360090	5400		2160
360092	36	1840	1840
360095	36	5400	
360107	36	5400	
360109	36	1840	1840
360112	5400	0440	
360121	36	0440	
360132	3200		1640
360142	36		1640
360144	1680	0080	
360150	0080		1680
360159	36	1840	
360175	36	3200	
360186	36	1640	
360197	36	1840	1840
360211	5080		6280
370004	37	3710	
370006	37	5560	
370014	37	7640	
370015	37	5560	
370018	37	5560	
370022	37	4200	
370023	37	4200	
370025	37	5560	
370034	37	2720	
370047	37	7640	
370048	37	5360	
370049	37	5880	
370054	37	5880	
370084	37	2720	
370103	37	45	
370153	37	4200	
370200	37	5880	
380001	38	6440	
380002	38	4890	
380006	38		6440
380022	38	1890	
380027	38	2400	
380040	38	2400	
380047	38	2400	
380050	38	4890	
380051	7080		5440
380065	38	2400	
380070	38	5440	
380090	38	2400	
390006	39	3240	
390008	39	6280	6280
390013	39	3240	

TABLE 9.—HOSPITAL RECLASSIFICATIONS AND REDESIGNATIONS BY INDIVIDUAL HOSPITAL—FY 2004—Continued

Provider No.	Actual MSA or rural area	Wage index MSA reclassification	Standardized amount MSA reclassification
390016	39	6280	6280
390017	39	6280	6280
390030	39	6680	6680
390031	39	6680	6680
390048	39	3240	
390052	39	0280	
390065	39	9280	9280
390079	39	0960	
390091	39	6280	
390093	39	6280	
390110	3680	6280	
390113	39	9320	
390133	0240	6160	
390138	39	8840	
390150	39	6280	
390151	39	8840	
390163	39	6280	
390181	39	6680	6680
390183	39	6680	6680
390189	39	3240	
390197	0240	6160	
390201	39	5640	5640
390263	0240	6160	
400018	40	1310	
410001	6483	1123	1123
410004	6483	1123	1123
410005	6483	1123	1123
410006	6483	1123	1123
410007	6483	1123	1123
410008	6483	1123	1123
410009	6483	1123	1123
410010	6483	1123	1123
410011	6483	1123	1123
410012	6483	1123	1123
410013	6483	1123	1123
420020	42	1440	
420030	42	1440	
420036	42	1520	
420059	42	2655	
420062	42	1520	
420068	42	0600	
420070	8140	1760	
420071	42	0600	
420080	42	7520	
420085	5330	9200	
430004	43	6660	
430008	43	24	
430012	43	7760	
430013	43	7760	
430014	43	2520	
430015	43	6660	
430047	43	28	
430048	43	53	
430089	43	7720	
440008	44	3580	
440020	44	3440	
440024	44	1560	
440050	44	0480	
440058	44	1560	
440059	44	5360	
440060	44	3580	
440067	44	3840	
440068	44	3840	
440072	44	4920	
440073	44	5360	
440148	44	5360	
440175	44	3440	
440180	44	3840	
440185	44	1560	
440186	44	5360	

TABLE 9.—HOSPITAL RECLASSIFICATIONS AND REDESIGNATIONS BY INDIVIDUAL HOSPITAL—FY 2004—Continued

Provider No.	Actual MSA or rural area	Wage index MSA reclassification	Standardized amount MSA reclassification
440187	44	18	
440192	44	5360	
440200	44	5360	
440203	44	1560	
450007	45	7240	
450014	45	8750	
450080	45	4420	
450085	45	9080	
450098	45	4420	
450099	45	0320	
450140	45	5800	
450144	45	5800	
450146	45	0320	
450163	45	1880	
450178	45	5800	
450187	45	3360	
450192	45	1920	
450194	45	1920	
450196	45	1920	
450211	45	3360	
450214	45	3360	
450224	45	8640	
450347	45	3360	
450351	45	2800	
450353	45	1880	
450373	45	4420	
450395	45	3360	
450400	45	8800	
450438	45	0640	
450447	45	1920	
450451	45	2800	
450484	45	3360	
450508	45	8640	
450534	45	0320	
450623	45	1920	
450626	45	8750	
450653	45	5800	
450656	45	8640	
450694	45	3360	
450747	45	1920	
450755	45	4600	
450763	45	0320	
450770	45	0640	
460011	46	6520	
460021	46	4120	
460027	46	6520	
460032	46	6520	
460036	46	6520	
460039	46	7160	
470001	47	30	
470011	47	1123	1123
470012	47	6323	
470018	47	1123	1123
490001	49	3660	
490004	49	1540	
490005	49	8840	
490013	49	4640	
490018	49	4640	
490038	49	3660	
490047	49	8840	
490066	5720	6760	
490079	49	3120	3120
490126	49	6800	
500002	50	6740	
500003	50	7600	
500007	50	0860	
500016	50	7600	
500031	50	5910	
500041	50	6440	
500059	50	7600	

TABLE 9.—HOSPITAL RECLASSIFICATIONS AND REDESIGNATIONS BY INDIVIDUAL HOSPITAL—FY 2004—Continued

Provider No.	Actual MSA or rural area	Wage index MSA reclassification	Standardized amount MSA reclassification
500072	50	7600	
500079	8200		7500
510001	51	6280	
510002	51	6800	
510006	51	6280	
510024	51	6280	6280
510028	51	1480	
510046	51	1480	
510047	51	6280	
510048	51	3400	
510062	51	1480	
510070	51	1480	
510071	51	1480	
520002	52	8940	
520006	52	8940	
520011	52	2290	
520021	3800	1600	1600
520028	52	4720	
520032	52	4720	
520037	52	8940	
520059	6600	5080	5080
520066	3620	4720	
520071	52	5080	5080
520076	52	4720	
520084	52	4720	
520088	52	5080	
520091	52	23	
520094	6600	5080	5080
520096	6600	5080	5080
520102	52	5080	5080
520107	52	3080	
520113	52	3080	
520116	52	5080	5080
520152	52	3080	
520173	52	2240	
520189	3800	1600	1600
530002	53	1350	
530008	53	1350	
530009	53	1350	
530015	53	6340	
530025	53	2670	
530032	53	7160	

TABLE 10.—MEAN AND STANDARD DEVIATION BY DIAGNOSIS-RELATED GROUPS (DRGS)—FY 2004 [1]

DRG	Cases	Mean + 1 standard deviation
1	23,157	$71,862
2	11,535	$41,916
3	3	$57,168
6	350	$15,743
7	14,489	$55,309
8	4,031	$33,403
9	1,677	$27,210
10	18,339	$25,124
11	3,244	$17,654
12	51,660	$17,776
13	6,919	$16,312
14	233,816	$24,738
15	92,167	$19,059
16	9,810	$25,016
17	2,700	$13,796
18	29,250	$20,071
19	8,385	$14,298
20	6,112	$57,114

TABLE 10.—MEAN AND STANDARD DEVIATION BY DIAGNOSIS-RELATED GROUPS (DRGS)—FY 2004 [1]—Continued

DRG	Cases	Mean + 1 standard deviation
21	1,869	$30,726
22	2,746	$21,754
23	11,062	$16,410
24	58,122	$19,963
25	26,945	$12,212
26	18	$22,836
27	4,348	$27,026
28	13,770	$26,999
29	5,226	$14,276
30	2	$19,365
31	3,834	$18,092
32	1,866	$11,256
34	23,474	$19,760
35	7,325	$12,760
36	2,079	$11,821
37	1,351	$21,123

TABLE 10.—MEAN AND STANDARD DEVIATION BY DIAGNOSIS-RELATED GROUPS (DRGS)—FY 2004 [1]—Continued

DRG	Cases	Mean + 1 standard deviation
38	94	$9,781
39	547	$12,494
40	1,508	$17,526
42	1,553	$14,008
43	93	$11,353
44	1,185	$13,306
45	2,622	$14,326
46	3,418	$16,038
47	1,373	$10,908
49	2,341	$34,744
50	2,385	$15,810
51	241	$16,991
52	216	$15,789
53	2,435	$23,943
55	1,458	$18,384
56	458	$16,976

TABLE 10.—MEAN AND STANDARD DEVIATION BY DIAGNOSIS-RELATED GROUPS (DRGS)—FY 2004 [1]—Continued

DRG	Cases	Mean + 1 standard deviation
57	700	$21,430
59	113	$16,063
61	249	$24,772
62	2	$20,652
63	2,964	$28,015
64	3,064	$27,189
65	39,700	$11,389
66	7,690	$11,535
67	379	$15,758
68	11,373	$12,869
69	3,665	$9,805
70	29	$6,582
71	79	$13,057
72	949	$13,674
73	7,561	$16,376
75	42,731	$60,129
76	43,909	$56,525
77	2,427	$23,987
78	38,870	$24,907
79	165,957	$32,680
80	7,866	$16,846
81	5	$20,229
82	63,317	$28,781
83	6,565	$19,177
84	1,552	$10,644
85	21,981	$24,242
86	2,201	$13,781
87	60,101	$27,456
88	396,200	$17,702
89	523,048	$20,511
90	47,344	$11,871
91	44	$14,737
92	15,549	$24,280
93	1,738	$14,448
94	12,597	$22,970
95	1,622	$12,263
96	55,628	$14,761
97	28,174	$10,803
98	9	$14,090
99	20,984	$13,983
100	8,129	$10,369
101	21,861	$17,290
102	5,503	$10,797
103	484	$378,244
104	20,223	$150,559
105	28,716	$108,046
106	3,432	$136,812
107	81,816	$99,133
108	6,341	$109,106
109	56,282	$73,253
110	53,777	$81,343
111	9,323	$49,746
113	39,244	$56,405
114	8,198	$33,220
115	19,499	$69,161
116	114,338	$44,903
117	4,622	$27,878
118	8,168	$31,457
119	1,211	$27,147
120	37,745	$46,550
121	161,616	$30,683
122	75,737	$19,715
123	38,021	$32,143
124	133,344	$27,371
125	90,371	$20,832
126	5,309	$51,405
127	663,251	$20,085
128	7,042	$14,239
129	3,774	$20,775
130	87,289	$18,660
131	26,583	$11,113
132	140,158	$12,462
133	8,475	$10,723
134	40,649	$11,970
135	7,697	$17,958
136	1,166	$11,432
138	204,872	$16,521
139	86,072	$10,173
140	54,193	$10,288
141	107,180	$14,813
142	51,782	$11,382
143	245,795	$10,741
144	93,108	$24,851
145	7,201	$11,714
146	10,627	$52,920
147	2,602	$29,373
148	132,078	$67,116
149	19,892	$27,061
150	20,888	$57,096
151	5,067	$25,243
152	4,490	$37,305
153	2,025	$21,509
154	27,969	$82,200
155	6,498	$25,001
156	4	$16,997
157	8,150	$25,875
158	4,273	$12,709
159	17,842	$26,972
160	11,973	$15,839
161	10,620	$22,659
162	6,290	$12,519
163	8	$9,397
164	5,322	$45,313
165	2,297	$22,967
166	4,142	$27,527
167	4,013	$16,618
168	1,406	$26,010
169	802	$14,782
170	15,473	$57,315
171	1,495	$23,568
172	30,878	$28,013
173	2,414	$15,971
174	247,933	$19,856
175	34,337	$11,032
176	13,301	$21,548
177	8,939	$18,108
178	3,315	$13,584
179	12,973	$21,773
180	88,999	$19,227
181	26,699	$10,651
182	268,140	$16,395
183	89,558	$11,492
184	69	$9,542
185	5,256	$17,532
186	6	$17,504
187	609	$15,462
188	82,829	$22,197
189	12,856	$12,176
190	75	$16,578
191	9,340	$88,382
192	1,299	$36,558
193	4,733	$68,254
194	638	$31,775
195	3,957	$59,356
196	969	$30,122
197	17,996	$50,435
198	5,289	$23,379
199	1,609	$48,963
200	1,069	$62,346
201	2,100	$75,551
202	26,307	$26,667
203	29,543	$28,095
204	64,510	$22,991
205	27,001	$24,271
206	2,015	$14,280
207	32,214	$22,980
208	9,967	$13,150
209	394,702	$35,979
210	121,348	$33,587
211	29,657	$22,493
212	9	$31,925
213	9,818	$37,689
216	8,691	$41,935
217	17,092	$61,011
218	23,524	$30,313
219	19,672	$19,359
220	13,125	$20,384
224	11,574	$14,926
225	6,390	$22,849
226	5,793	$30,350
227	4,783	$15,628
228	2,495	$22,908
229	1,245	$13,667
230	2,430	$25,765
232	809	$18,306
233	9,829	$40,036
234	5,300	$24,173
235	5,032	$14,695
236	39,468	$13,922
237	1,748	$11,857
238	8,729	$27,480
239	45,525	$20,661
240	11,846	$26,301
241	3,110	$12,646
242	2,542	$23,380
243	94,969	$15,031
244	14,423	$14,330
245	5,746	$9,757
246	1,473	$11,896
247	20,113	$11,410
248	13,674	$17,154
249	12,784	$13,336
250	3,727	$14,018
251	2,332	$9,097
253	21,753	$14,893
254	10,593	$8,759
256	6,586	$16,469
257	15,517	$16,712
258	15,055	$13,056
259	3,486	$17,996
260	4,160	$12,825
261	1,747	$17,565
262	653	$18,615
263	22,868	$41,675
264	3,819	$21,268
265	4,031	$31,156
266	2,516	$17,172
267	238	$20,021
268	895	$23,309
269	9,688	$35,630
270	2,743	$16,079

TABLE 10.—MEAN AND STANDARD DEVIATION BY DIAGNOSIS-RELATED GROUPS (DRGS)—FY 2004 [1]—Continued

DRG	Cases	Mean + 1 standard deviation
271	18,989	$20,610
272	5,658	$20,167
273	1,313	$12,601
274	2,264	$24,353
275	223	$12,616
276	1,304	$13,267
277	98,858	$17,235
278	31,750	$10,661
279	10	$15,979
280	17,551	$13,991
281	7,377	$9,589
283	5,976	$14,555
284	1,992	$8,504
285	6,869	$41,732
286	2,477	$39,318
287	6,166	$37,798
288	5,471	$41,746
289	6,830	$18,048
290	9,803	$16,847
291	58	$13,308
292	6,420	$55,995
293	356	$28,741
294	96,631	$15,356
295	3,475	$16,050
296	275,298	$17,000
297	47,552	$9,995
298	109	$9,503
299	1,253	$18,904
300	18,462	$22,372
301	3,554	$12,547
302	8,653	$61,825
303	21,521	$46,383
304	12,430	$47,807
305	3,009	$23,106
306	6,967	$24,014
307	1,983	$11,422
308	7,203	$31,717
309	4,094	$17,613
310	24,593	$22,507
311	7,407	$11,963
312	1,502	$21,429
313	547	$13,534
314	2	$815,660
315	33,535	$41,732
316	117,415	$26,424
317	1,994	$16,978
318	5,685	$24,541
319	403	$14,083
320	184,548	$17,149
321	30,606	$11,011
322	49	$9,127
323	19,641	$16,239
324	6,874	$9,611
325	9,136	$13,204
326	2,696	$8,569
327	7	$7,111
328	732	$15,295
329	93	$10,358
331	50,553	$21,469
332	4,905	$12,274
333	254	$19,142
334	10,300	$27,789
335	12,490	$19,981
336	35,495	$16,280
337	29,140	$10,776
338	929	$23,997
339	1,460	$22,362
341	3,545	$25,849
342	586	$14,916
344	3,549	$26,710
345	1,354	$22,352
346	4,775	$21,343
347	308	$11,845
348	3,361	$15,104
349	504	$9,831
350	6,602	$14,657
352	945	$14,499
353	2,491	$35,744
354	7,324	$28,230
355	5,481	$16,312
356	25,562	$14,230
357	5,570	$44,892
358	21,321	$22,339
359	31,420	$14,957
360	15,538	$16,445
361	339	$21,352
362	5	$16,578
363	2,471	$18,875
364	1,610	$18,054
365	1,815	$42,185
366	4,504	$25,764
367	477	$11,799
368	3,503	$23,599
369	3,419	$12,532
370	1,327	$18,299
371	1,662	$11,458
372	927	$10,237
373	4,076	$6,914
374	89	$13,913
376	316	$11,055
377	47	$21,747
378	171	$14,743
379	349	$7,238
380	98	$8,554
381	188	$10,611
382	48	$4,333
383	1,956	$10,030
384	129	$7,214
385	3	$34,210
389	12	$23,975
392	2,248	$66,268
394	2,567	$38,588
395	105,976	$16,486
396	17	$16,006
397	18,727	$25,519
398	17,860	$24,884
399	1,671	$13,548
401	5,768	$59,903
402	1,454	$22,863
403	31,365	$37,680
404	4,277	$18,437
406	2,391	$53,929
407	634	$24,003
408	2,081	$44,985
409	2,127	$25,574
410	28,001	$21,908
411	7	$7,483
412	15	$11,456
413	5,253	$27,415
414	622	$15,291
415	42,746	$75,112
416	189,451	$32,070
417	38	$22,076
418	25,456	$21,447
419	16,128	$17,016
420	3,139	$12,214
421	10,563	$14,503
422	66	$12,891
423	7,972	$36,726
424	1,224	$49,024
425	15,914	$13,506
426	4,462	$10,410
427	1,557	$10,483
428	782	$14,266
429	26,797	$15,953
430	64,123	$13,703
431	310	$12,670
432	443	$12,980
433	5,479	$5,805
439	1,493	$34,068
440	5,673	$36,892
441	668	$18,081
442	17,291	$48,763
443	3,848	$19,622
444	5,629	$14,813
445	2,485	$9,965
447	6,390	$10,119
449	32,589	$16,465
450	7,304	$8,328
452	25,308	$20,911
453	5,591	$10,522
454	4,691	$16,299
455	1,043	$9,576
461	5,133	$24,128
462	9,531	$19,503
463	26,512	$13,669
464	7,075	$9,864
465	192	$13,169
466	1,684	$14,122
467	1,106	$10,115
468	51,680	$77,692
470	52	$504,684
471	13,167	$54,184
473	7,976	$72,650
475	108,084	$75,747
476	3,608	$46,392
477	25,103	$37,665
478	106,238	$48,149
479	23,387	$27,938
480	610	$193,008
481	819	$122,102
482	5,175	$70,600
483	44,784	$328,441
484	334	$110,056
485	3,178	$61,849
486	2,077	$99,908
487	3,701	$40,225
488	760	$99,624
489	13,168	$37,620
490	5,356	$21,486
491	15,098	$31,213
492	3,052	$82,667
493	58,870	$35,610
494	28,431	$18,981
495	191	$165,379
496	2,444	$112,012
497	21,734	$66,414
498	15,556	$49,426
499	34,350	$27,633
500	49,302	$17,736
501	2,580	$51,260

TABLE 10.—MEAN AND STANDARD DEVIATION BY DIAGNOSIS-RELATED GROUPS (DRGS)—FY 2004 [1]—Continued

DRG	Cases	Mean + 1 standard deviation
502	761	$27,677
503	5,883	$24,011
504	125	$257,167
505	134	$36,044
506	916	$87,492
507	337	$37,309
508	612	$27,746
509	155	$13,241
510	1,625	$23,313
511	571	$13,248
512	481	$101,931
513	206	$107,611
515	8,028	$105,722
516	83,464	$45,394
517	194,015	$35,730
518	55,225	$36,574
519	8,892	$47,738
520	12,823	$29,760
521	30,454	$14,130
522	6,008	$10,049
523	15,103	$7,817
524	130,318	$14,293
525	562	$247,370
526	73,724	$42,080
527	194,015	$33,802
528	1,343	$140,528
529	4,633	$63,385
530	2,807	$24,282
531	3,766	$64,237
532	2,888	$30,290
533	42,601	$32,675
534	51,346	$20,340
535	5,896	$156,207
536	20,103	$118,567
537	6,765	$36,526
538	6,350	$19,355
539	4,388	$69,606
540	1,866	$25,633

[1] Cases are taken from the FY 2002 MedPAR file; DRGs are from GROUPER V21.0.

TABLE 11.—PROPOSED LTC–DRGS RELATIVE WEIGHTS AND GEOMETRIC AND FIVE-SIXTHS OF THE AVERAGE LENGTH OF STAY—FY 2004

LTC–DRG	Description	Relative weight	Geo-metric average length of stay	5/6ths of the average length of stay
1	[5] CRANIOTOMY AGE >17 W CC	1.9873	41.3	34.4
2	[5] CRANIOTOMY AGE > 17 W/O CC	1.9873	41.3	34.4
3	[5] CRANIOTOMY AGE 0-17	1.9873	41.3	34.4
6	[5] CARPAL TUNNEL RELEASE	0.5711	20.8	17.3
7	PERIPH & CRANIAL NERVE & OTHER NERV SYST PROC W CC	1.5898	42.5	35.4
8	[4] PERIPH & CRANIAL NERVE & OTHER NERV SYST PROC W/O CC	1.4090	34.1	28.4
9	SPINAL DISORDERS & INJURIES	1.5189	34.7	26.9
10	NERVOUS SYSTEM NEOPLASMS W CC	0.7590	23.4	19.5
11	NERVOUS SYSTEM NEOPLASMS W/O CC	0.7322	21.2	17.6
12	DEGENERATIVE NERVOUS SYSTEM DISORDERS	0.7760	26.4	22.0
13	MULTIPLE SCLEROSIS & CEREBELLAR ATAXIA	0.8287	28.3	23.5
14	INTERCRANIAL HEMORRHAGE & STROKE W INFARCT	0.9449	27.5	22.9
15	NONSPECIFIC CVA & PRECEREBRAL OCCULUSION W/O INFARCT	0.9058	28.9	24.0
16	NONSPECIFIC CEREBROVASCULAR DISORDERS W CC	0.9158	24.7	20.5
17	NONSPECIFIC CEREBROVASCULAR DISORDERS W/O CC	0.5478	20.0	16.6
18	CRANIAL & PERIPHERAL NERVE DISORDERS W CC	0.8845	24.9	20.7
19	CRANIAL & PERIPHERAL NERVE DISORDERS W/O CC	0.6378	22.6	18.8
20	NERVOUS SYSTEM INFECTION EXCEPT VIRAL MENINGITIS	1.0135	25.1	20.9
21	[2] VIRAL MENINGITIS	0.7347	23.1	19.2
22	[2] HYPERTENSIVE ENCEPHALOPATHY	0.7347	23.1	19.2
23	NONTRAUMATIC STUPOR & COMA	1.0331	30.8	25.6
24	SEIZURE & HEADACHE AGE >17 W CC	1.0059	28.1	23.4
25	SEIZURE & HEADACHE AGE >17 W/O CC	0.8044	25.6	21.3
26	[8] SEIZURE & HEADACHE AGE 0-17	0.7347	23.1	19.2
27	TRAUMATIC STUPOR & COMA, COMA >1 HR	1.1071	28.8	24.0
28	TRAUMATIC STUPOR & COMA, COMA <1 HR AGE >17 W CC	1.0527	29.2	24.3
29	TRAUMATIC STUPOR & COMA, COMA <1 HR AGE >17 W/O CC	0.9365	26.2	21.8
30	[8] TRAUMATIC STUPOR & COMA, COMA <1 HR AGE 0-17	0.9785	27.4	22.8
31	[3] CONCUSSION AGE >17 W CC	0.9785	27.4	22.8
32	[3] CONCUSSION AGE >17 W/O CC	0.9785	27.4	22.8
33	[8] CONCUSSION AGE 0-17	0.7347	23.1	19.2
34	OTHER DISORDERS OF NERVOUS SYSTEM W CC	0.9885	28.5	23.7
35	OTHER DISORDERS OF NERVOUS SYSTEM W/O CC	0.7817	26.9	22.4
36	[8] RETINAL PROCEDURES	0.5711	20.8	17.3
37	[8] ORBITAL PROCEDURES	0.5711	20.8	17.3
38	[8] PRIMARY IRIS PROCEDURES	0.5711	20.8	17.3
39	[8] LENS PROCEDURES WITH OR WITHOUT VITRECTOMY	0.5711	20.8	17.3
40	[8] EXTRAOCULAR PROCEDURES EXCEPT ORBIT AGE >17	0.5711	20.8	17.3
41	[8] EXTRAOCULAR PROCEDURES EXCEPT ORBIT AGE 0-17	0.5711	20.8	17.3
42	[8] INTRAOCULAR PROCEDURES EXCEPT RETINA, IRIS & LENS	0.5711	20.8	17.3
43	[8] HYPHEMA	0.5711	20.8	17.3
44	[1] ACUTE MAJOR EYE INFECTIONS	0.5711	20.8	17.3
45	[8] NEUROLOGICAL EYE DISORDERS	0.7347	23.1	19.2
46	[2] OTHER DISORDERS OF THE EYE AGE >17 W CC	0.7347	23.1	19.2

TABLE 11.—PROPOSED LTC–DRGS RELATIVE WEIGHTS AND GEOMETRIC AND FIVE-SIXTHS OF THE AVERAGE LENGTH OF STAY—FY 2004—Continued

LTC–DRG	Description	Relative weight	Geo-metric average length of stay	5/6ths of the average length of stay
47	[1] OTHER DISORDERS OF THE EYE AGE >17 W/O CC	0.5711	20.8	17.3
48	[8] OTHER DISORDERS OF THE EYE AGE 0-17	0.5711	20.8	17.3
49	[8] MAJOR HEAD & NECK PROCEDURES	1.4090	34.1	28.4
50	[8] SIALOADENECTOMY	0.9785	27.4	22.8
51	[8] SALIVARY GLAND PROCEDURES EXCEPT SIALOADENECTOMY	0.9785	27.4	22.8
52	[8] CLEFT LIP & PALATE REPAIR	0.9785	27.4	22.8
53	[2] SINUS & MASTOID PROCEDURES AGE >17	0.7347	23.1	19.2
54	[8] SINUS & MASTOID PROCEDURES AGE 0-17	0.9785	27.4	22.8
55	[5] MISCELLANEOUS EAR, NOSE, MOUTH & THROAT PROCEDURES	1.9873	41.3	34.4
56	[8] RHINOPLASTY	0.5711	20.8	17.3
57	[8] T&A PROC, EXCEPT TONSILLECTOMY &/OR ADENOIDECTOMY ONLY, AGE >17	0.9785	27.4	22.8
58	[8] T&A PROC, EXCEPT TONSILLECTOMY &/OR ADENOIDECTOMY ONLY, AGE 0-17	0.9785	27.4	22.8
59	[8] TONSILLECTOMY &/OR ADENOIDECTOMY ONLY, AGE >17	0.9785	27.4	22.8
60	[8] TONSILLECTOMY &/OR ADENOIDECTOMY ONLY, AGE 0-17	0.9785	27.4	22.8
61	[8] MYRINGOTOMY W TUBE INSERTION AGE >17	1.4090	34.1	28.4
62	[8] MYRINGOTOMY W TUBE INSERTION AGE 0-17	0.9785	27.4	22.8
63	[3] OTHER EAR, NOSE, MOUTH & THROAT O.R. PROCEDURES	0.9785	27.4	22.8
64	EAR, NOSE, MOUTH & THROAT MALIGNANCY	1.2957	27.9	23.2
65	[1] DYSEQUILIBRIUM	0.5711	20.8	17.3
66	[1] EPISTAXIS	0.5711	20.8	17.3
67	[8] EPIGLOTTITIS	0.9785	27.4	22.8
68	OTITIS MEDIA & URI AGE &>17 W CC	0.8396	23.5	19.5
69	[1] OTITIS MEDIA & URI AGE &>17 W/O CC	0.5711	20.8	17.3
70	[8] OTITIS MEDIA & URI AGE 0-17	0.5711	20.8	17.3
71	[8] LARYNGOTRACHEITIS	0.7347	23.1	19.2
72	[1] NASAL TRAUMA & DEFORMITY	0.5711	20.8	17.3
73	OTHER EAR, NOSE, MOUTH & THROAT DIAGNOSES AGE >17	0.9506	23.7	19.7
74	[8] OTHER EAR, NOSE, MOUTH & THROAT DIAGNOSES AGE 0-17	0.5711	20.8	17.3
75	[5] MAJOR CHEST PROCEDURES	1.9873	41.3	34.4
76	OTHER RESP SYSTEM O.R. PROCEDURES W CC	2.3848	42.2	35.1
77	[5] OTHER RESP SYSTEM O.R. PROCEDURES W/O CC	1.9873	41.3	34.4
78	PULMONARY EMBOLISM	0.9226	24.8	20.6
79	RESPIRATORY INFECTIONS & INFLAMMATIONS AGE >17 W CC	0.9853	23.7	19.7
80	RESPIRATORY INFECTIONS & INFLAMMATIONS AGE >17 W/O CC	0.8550	22.8	19.0
81	[8] RESPIRATORY INFECTIONS & INFLAMMATIONS AGE 0-17	0.5711	20.8	17.3
82	RESPIRATORY NEOPLASMS	0.7759	20.4	17.0
83	[3] MAJOR CHEST TRAUMA W CC	0.9785	27.4	22.8
84	[2] MAJOR CHEST TRAUMA W/O CC	0.7347	23.1	19.2
85	PLEURAL EFFUSION W CC	0.9068	23.9	19.9
86	PLEURAL EFFUSION W/O CC	0.7121	24.9	20.7
87	PULMONARY EDEMA & RESPIRATORY FAILURE	1.7382	32.9	27.4
88	CHRONIC OBSTRUCTIVE PULMONARY DISEASE	0.7996	21.0	17.5
89	SIMPLE PNEUMONIA & PLEURISY AGE >17 W CC	0.8675	22.9	19.0
90	SIMPLE PNEUMONIA & PLEURISY AGE >17 W/O CC	0.7429	21.7	18.0
91	[8] SIMPLE PNEUMONIA & PLEURISY AGE 0-17	0.7347	23.1	19.2
92	INTERSTITIAL LUNG DISEASE W CC	0.8403	21.8	18.1
93	INTERSTITIAL LUNG DISEASE W/O CC	0.7332	20.2	16.8
94	[7] PNEUMOTHORAX W CC	0.7917	21.1	17.5
95	[7] PNEUMOTHORAX W/O CC	0.7917	21.1	17.5
96	BRONCHITIS & ASTHMA AGE >17 W CC	0.7787	20.7	17.2
97	BRONCHITIS & ASTHMA AGE >17 W/O CC	0.6616	22.5	18.7
98	[8] BRONCHITIS & ASTHMA AGE 0-17	0.7347	23.1	19.2
99	RESPIRATORY SIGNS & SYMPTOMS W CC	1.0818	26.9	22.4
100	RESPIRATORY SIGNS & SYMPTOMS W/O CC	1.0374	26.0	21.6
101	OTHER RESPIRATORY SYSTEM DIAGNOSES W CC	1.0071	24.5	20.4
102	OTHER RESPIRATORY SYSTEM DIAGNOSES W/O CC	0.9460	24.2	20.1
103	[8] HEART TRANSPLANT	0.0000	0.0	0.0
104	[8] CARDIAC VALVE & OTHER MAJOR CARDIOTHORACIC PROC W CARDIAC CATH	1.9873	41.3	34.4
105	[8] CARDIAC VALVE & OTHER MAJOR CARDIOTHORACIC PROC W/O CARDIAC CATH	1.9873	41.3	34.4
106	[8] CORONARY BYPASS W PTCA	1.9873	41.3	34.4
107	[8] CORONARY BYPASS W CARDIAC CATH	1.9873	41.3	34.4
108	[5] OTHER CARDIOTHORACIC PROCEDURES	1.9873	41.3	34.4
109	[8] CORONARY BYPASS W/O PTCA OR CARDIAC CATH	1.9873	41.3	34.4
110	[5] MAJOR CARDIOVASCULAR PROCEDURES W CC	1.9873	41.3	34.4
111	[8] MAJOR CARDIOVASCULAR PROCEDURES W/O CC	1.9873	41.3	34.4
113	AMPUTATION FOR CIRC SYSTEM DISORDERS EXCEPT UPPER LIMB & TOE	1.5870	40.5	33.7
114	UPPER LIMB & TOE AMPUTATION FOR CIRC SYSTEM DISORDERS	1.4854	39.9	33.2
115	[5] PRM CARD PACEM IMPL W AMI,HRT FAIL OR SHK,OR AICD LEAD OR GNRTR P	1.9873	41.3	34.4

TABLE 11.—PROPOSED LTC–DRGs RELATIVE WEIGHTS AND GEOMETRIC AND FIVE-SIXTHS OF THE AVERAGE LENGTH OF STAY—FY 2004—Continued

LTC–DRG	Description	Relative weight	Geo-metric average length of stay	5/6ths of the average length of stay
116	[5]OTH PERM CARD PACEMAK IMPL OR PTCA W CORONARY ARTERY STENT IMPLNT	1.9873	41.3	34.4
117	[3]CARDIAC PACEMAKER REVISION EXCEPT DEVICE REPLACEMENT	0.9785	27.4	22.8
118	[5]CARDIAC PACEMAKER DEVICE REPLACEMENT	1.9873	41.3	34.4
119	[3]VEIN LIGATION & STRIPPING	0.9785	27.4	22.8
120	OTHER CIRCULATORY SYSTEM O.R. PROCEDURES	1.2476	34.1	28.4
121	CIRCULATORY DISORDERS W AMI & MAJOR COMP, DISCHARGED ALIVE	0.7531	21.9	18.2
122	CIRCULATORY DISORDERS W AMI W/O MAJOR COMP, DISCHARGED ALIVE	0.6915	20.0	16.6
123	CIRCULATORY DISORDERS W AMI, EXPIRED	0.8856	19.0	15.8
124	[4]CIRCULATORY DISORDERS EXCEPT AMI, W CARD CATH & COMPLEX DIAG	1.4090	34.1	28.4
125	[4]CIRCULATORY DISORDERS EXCEPT AMI, W CARD CATH W/O COMPLEX DIAG	1.4090	34.1	28.4
126	ACUTE & SUBACUTE ENDOCARDITIS	0.8902	25.7	21.4
127	HEART FAILURE & SHOCK	0.7968	21.9	18.2
128	[1]DEEP VEIN THROMBOPHLEBITIS	0.5711	20.8	17.3
129	CARDIAC ARREST, UNEXPLAINED	1.4170	28.5	23.7
130	PERIPHERAL VASCULAR DISORDERS W CC	0.8207	25.0	20.8
131	PERIPHERAL VASCULAR DISORDERS W/O CC	0.6269	22.4	18.6
132	ATHEROSCLEROSIS W CC	0.8211	22.5	18.7
133	ATHEROSCLEROSIS W/O CC	0.7264	22.6	18.8
134	HYPERTENSION	0.8971	28.4	23.6
135	CARDIAC CONGENITAL & VALVULAR DISORDERS AGE >17 W CC	0.9873	23.8	19.8
136	CARDIAC CONGENITAL & VALVULAR DISORDERS AGE >17 W/O CC	0.7492	22.9	19.0
137	[6]CARDIAC CONGENITAL & VALVULAR DISORDERS AGE 0-17	0.7347	23.1	19.2
138	CARDIAC ARRHYTHMIA & CONDUCTION DISORDERS W CC	0.9390	25.2	21.0
139	CARDIAC ARRHYTHMIA & CONDUCTION DISORDERS W/O CC	0.6224	21.9	18.2
140	ANGINA PECTORIS	0.6056	19.3	16.0
141	SYNCOPE & COLLAPSE W CC	0.6735	23.3	19.4
142	SYNCOPE & COLLAPSE W/O CC	0.5149	20.5	17.0
143	CHEST PAIN	0.7317	21.9	18.2
144	OTHER CIRCULATORY SYSTEM DIAGNOSES W CC	0.8588	22.9	19.0
145	OTHER CIRCULATORY SYSTEM DIAGNOSES W/O CC	0.7001	21.4	17.8
146	[8]RECTAL RESECTION W CC	1.9873	41.3	34.4
147	[8]RECTAL RESECTION W/O CC	1.9873	41.3	34.4
148	MAJOR SMALL & LARGE BOWEL PROCEDURES W CC	1.9660	36.8	30.6
149	[1]MAJOR SMALL & LARGE BOWEL PROCEDURES W/O CC	0.5711	20.8	17.3
150	[4]PERITONEAL ADHESIOLYSIS W CC	1.4090	34.1	28.4
151	[8]PERITONEAL ADHESIOLYSIS W/O CC	1.4090	34.1	28.4
152	[4]MINOR SMALL & LARGE BOWEL PROCEDURES W CC	1.4090	34.1	28.4
153	[8]MINOR SMALL & LARGE BOWEL PROCEDURES W/O CC	1.4090	34.1	28.4
154	[5]STOMACH, ESOPHAGEAL & DUODENAL PROCEDURES AGE >17 W CC	1.9873	41.3	34.4
155	[8]STOMACH, ESOPHAGEAL & DUODENAL PROCEDURES AGE >17 W/O CC	1.9873	41.3	34.4
156	[8]STOMACH, ESOPHAGEAL & DUODENAL PROCEDURES AGE 0-17	1.9873	41.3	34.4
157	[8]ANAL & STOMAL PROCEDURES W CC	1.4090	34.1	28.4
158	[3]ANAL & STOMAL PROCEDURES W/O CC	0.9785	27.4	22.8
159	[8]HERNIA PROCEDURES EXCEPT INGUINAL & FEMORAL AGE >17 W CC	1.4090	34.1	28.4
160	[8]HERNIA PROCEDURES EXCEPT INGUINAL & FEMORAL AGE >17 W/O CC	1.4090	34.1	28.4
161	[4]INGUINAL & FEMORAL HERNIA PROCEDURES AGE >17 W CC	1.4090	34.1	28.4
162	[8]INGUINAL & FEMORAL HERNIA PROCEDURES AGE >17 W/O CC	0.5711	20.8	17.3
163	[8]HERNIA PROCEDURES AGE 0-17	0.5711	20.8	17.3
164	[8]APPENDECTOMY W COMPLICATED PRINCIPAL DIAG W CC	1.9873	41.3	34.4
165	[8]APPENDECTOMY W COMPLICATED PRINCIPAL DIAG W/O CC	0.5711	20.8	17.3
166	[8]APPENDECTOMY W/O COMPLICATED PRINCIPAL DIAG W CC	1.9873	41.3	34.4
167	[8]APPENDECTOMY W/O COMPLICATED PRINCIPAL DIAG W/O CC	0.5711	20.8	17.3
168	[5]MOUTH PROCEDURES W CC	1.9873	41.3	34.4
169	[8]MOUTH PROCEDURES W/O CC	0.5711	20.8	17.3
170	[7]OTHER DIGESTIVE SYSTEM O.R. PROCEDURES W CC	1.7827	42.2	35.1
171	[7]OTHER DIGESTIVE SYSTEM O.R. PROCEDURES W/O CC	1.7827	42.2	35.1
172	DIGESTIVE MALIGNANCY W CC	0.8857	22.4	18.6
173	DIGESTIVE MALIGNANCY W/O CC	0.7843	21.9	18.2
174	G.I. HEMORRHAGE W CC	0.8741	24.8	20.6
175	G.I. HEMORRHAGE W/O CC	0.6770	21.8	18.1
176	COMPLICATED PEPTIC ULCER	0.7835	20.6	17.1
177	[2]UNCOMPLICATED PEPTIC ULCER W CC	0.7347	23.1	19.2
178	[1]UNCOMPLICATED PEPTIC ULCER W/O CC	0.5711	20.8	17.3
179	INFLAMMATORY BOWEL DISEASE	1.0317	26.2	21.8
180	G.I. OBSTRUCTION W CC	0.9491	24.2	20.1
181	G.I. OBSTRUCTION W/O CC	0.7694	21.2	17.6
182	ESOPHAGITIS, GASTROENT & MISC DIGEST DISORDERS AGE >17 W CC	0.9666	25.5	21.2
183	ESOPHAGITIS, GASTROENT & MISC DIGEST DISORDERS AGE >17 W/O CC	0.7038	22.4	18.6

TABLE 11.—PROPOSED LTC–DRGs RELATIVE WEIGHTS AND GEOMETRIC AND FIVE-SIXTHS OF THE AVERAGE LENGTH OF STAY—FY 2004—Continued

LTC–DRG	Description	Relative weight	Geo-metric average length of stay	5/6ths of the average length of stay
184	[8]ESOPHAGITIS, GASTROENT & MISC DIGEST DISORDERS AGE 0-17	0.7347	23.1	19.2
185	DENTAL & ORAL DIS EXCEPT EXTRACTIONS & RESTORATIONS, AGE >17	0.6932	24.6	20.5
186	[8]DENTAL & ORAL DIS EXCEPT EXTRACTIONS & RESTORATIONS, AGE 0-17	0.7347	23.1	19.2
187	[8]DENTAL EXTRACTIONS & RESTORATIONS	0.7347	23.1	19.2
188	OTHER DIGESTIVE SYSTEM DIAGNOSES AGE >17 W CC	1.0481	26.0	21.6
189	OTHER DIGESTIVE SYSTEM DIAGNOSES AGE >17 W/O CC	0.8501	23.5	19.5
190	[8]OTHER DIGESTIVE SYSTEM DIAGNOSES AGE 0-17	0.7347	23.1	19.2
191	[4]PANCREAS, LIVER & SHUNT PROCEDURES W CC	1.4090	34.1	28.4
192	[1]PANCREAS, LIVER & SHUNT PROCEDURES W/O CC	0.5711	20.8	17.3
193	[2]BILIARY TRACT PROC EXCEPT ONLY CHOLECYST W OR W/O C.D.E. W CC	0.7347	23.1	19.2
194	[2]BILIARY TRACT PROC EXCEPT ONLY CHOLECYST W OR W/O C.D.E. W/O CC	0.7347	23.1	19.2
195	[4]CHOLECYSTECTOMY W C.D.E. W CC	1.4090	34.1	28.4
196	[8]CHOLECYSTECTOMY W C.D.E. W/O CC	0.9785	27.4	22.8
197	[3]CHOLECYSTECTOMY EXCEPT BY LAPAROSCOPE W/O C.D.E. W CC	0.9785	27.4	22.8
198	[8]CHOLECYSTECTOMY EXCEPT BY LAPAROSCOPE W/O C.D.E. W/O CC	0.9785	27.4	22.8
199	[8]HEPATOBILIARY DIAGNOSTIC PROCEDURE FOR MALIGNANCY	0.7347	23.1	19.2
200	[2]HEPATOBILIARY DIAGNOSTIC PROCEDURE FOR NON-MALIGNANCY	0.7347	23.1	19.2
201	[5]OTHER HEPATOBILIARY OR PANCREAS O.R. PROCEDURES	1.9873	41.3	34.4
202	CIRRHOSIS & ALCOHOLIC HEPATITIS	0.7529	22.7	18.9
203	MALIGNANCY OF HEPATOBILIARY SYSTEM OR PANCREAS	0.8801	19.2	16.0
204	DISORDERS OF PANCREAS EXCEPT MALIGNANCY	1.0141	23.4	19.5
205	DISORDERS OF LIVER EXCEPT MALIG,CIRR,ALC HEPA W CC	0.7334	22.3	18.5
206	[2]DISORDERS OF LIVER EXCEPT MALIG,CIRR,ALC HEPA W/O CC	0.7347	23.1	19.2
207	DISORDERS OF THE BILIARY TRACT W CC	0.7940	22.1	18.4
208	[2]DISORDERS OF THE BILIARY TRACT W/O CC	0.7347	23.1	19.2
209	[5]MAJOR JOINT & LIMB REATTACHMENT PROCEDURES OF LOWER EXTREMITY	1.9873	41.3	34.4
210	[4]HIP & FEMUR PROCEDURES EXCEPT MAJOR JOINT AGE >17 W CC	1.4090	34.1	28.4
211	[2]HIP & FEMUR PROCEDURES EXCEPT MAJOR JOINT AGE >17 W/O CC	0.7347	23.1	19.2
212	[8]HIP & FEMUR PROCEDURES EXCEPT MAJOR JOINT AGE 0-17	0.7347	23.1	19.2
213	AMPUTATION FOR MUSCULOSKELETAL SYSTEM & CONN TISSUE DISORDERS	1.3912	34.9	29.0
216	[5]BIOPSIES OF MUSCULOSKELETAL SYSTEM & CONNECTIVE TISSUE	1.9873	41.3	34.4
217	WND DEBRID & SKN GRFT EXCEPT HAND,FOR MUSCSKELET & CONN TISS DIS	1.4438	39.3	32.7
218	[3]LOWER EXTREM & HUMER PROC EXCEPT HIP,FOOT,FEMUR AGE >17 W CC	0.9785	27.4	22.8
219	[8]LOWER EXTREM & HUMER PROC EXCEPT HIP,FOOT,FEMUR AGE >17 W/O CC	0.9785	27.4	22.8
220	[8]LOWER EXTREM & HUMER PROC EXCEPT HIP,FOOT,FEMUR AGE 0-17	0.9785	27.4	22.8
223	[3]MAJOR SHOULDER/ELBOW PROC, OR OTHER UPPER EXTREMITY PROC W CC	0.9785	27.4	22.8
224	[8]SHOULDER,ELBOW OR FOREARM PROC,EXC MAJOR JOINT PROC, W/O CC	0.7347	23.1	19.2
225	FOOT PROCEDURES	0.8912	26.7	22.2
226	[4]SOFT TISSUE PROCEDURES W CC	1.4090	34.1	28.4
227	[3]SOFT TISSUE PROCEDURES W/O CC	0.9785	27.4	22.8
228	[3]MAJOR THUMB OR JOINT PROC,OR OTH HAND OR WRIST PROC W CC	0.9785	27.4	22.8
229	[8]HAND OR WRIST PROC, EXCEPT MAJOR JOINT PROC, W/O CC	0.7347	23.1	19.2
230	[4]LOCAL EXCISION & REMOVAL OF INT FIX DEVICES OF HIP & FEMUR	1.4090	34.1	28.4
232	[2]ARTHROSCOPY	0.7347	23.1	19.2
233	OTHER MUSCULOSKELET SYS & CONN TISS O.R. PROC W CC	0.9797	28.5	23.7
234	[2]OTHER MUSCULOSKELET SYS & CONN TISS O.R. PROC W/O CC	0.7347	23.1	19.2
235	FRACTURES OF FEMUR	0.8715	29.7	24.7
236	FRACTURES OF HIP & PELVIS	0.7598	27.2	22.6
237	[2]SPRAINS, STRAINS, & DISLOCATIONS OF HIP, PELVIS & THIGH	0.7347	23.1	19.2
238	OSTEOMYELITIS	0.8818	28.5	23.7
239	PATHOLOGICAL FRACTURES & MUSCULOSKELETAL & CONN TISS MALIGNANCY	0.6892	22.4	18.6
240	CONNECTIVE TISSUE DISORDERS W CC	0.7118	21.4	17.8
241	CONNECTIVE TISSUE DISORDERS W/O CC	0.4744	19.4	16.1
242	SEPTIC ARTHRITIS	0.7814	26.2	21.8
243	MEDICAL BACK PROBLEMS	0.6867	23.5	19.5
244	BONE DISEASES & SPECIFIC ARTHROPATHIES W CC	0.5664	20.1	16.7
245	BONE DISEASES & SPECIFIC ARTHROPATHIES W/O CC	0.5134	19.5	16.2
246	NON-SPECIFIC ARTHROPATHIES	0.5556	23.0	19.1
247	SIGNS & SYMPTOMS OF MUSCULOSKELETAL SYSTEM & CONN TISSUE	0.5976	21.4	17.8
248	TENDONITIS, MYOSITIS & BURSITIS	0.7623	24.9	20.7
249	AFTERCARE, MUSCULOSKELETAL SYSTEM & CONNECTIVE TISSUE	0.8101	27.3	22.7
250	FX, SPRN, STRN & DISL OF FOREARM, HAND, FOOT AGE >17 W CC	0.8309	30.1	25.0
251	FX, SPRN, STRN & DISL OF FOREARM, HAND, FOOT AGE >17 W/O CC	0.6031	26.7	22.2
252	[6]FX, SPRN, STRN & DISL OF FOREARM, HAND, FOOT AGE 0-17	0.7347	23.1	19.2
253	FX, SPRN, STRN & DISL OF UPARM,LOWLEG EX FOOT AGE >17 W CC	0.8406	27.1	22.5
254	FX, SPRN, STRN & DISL OF UPARM,LOWLEG EX FOOT AGE >17 W/O CC	0.7028	25.8	21.5
255	[8]FX, SPRN, STRN & DISL OF UPARM,LOWLEG EX FOOT AGE 0-17	0.7347	23.1	19.2
256	OTHER MUSCULOSKELETAL SYSTEM & CONNECTIVE TISSUE DIAGNOSES	0.8577	26.6	22.1

TABLE 11.—PROPOSED LTC–DRGS RELATIVE WEIGHTS AND GEOMETRIC AND FIVE-SIXTHS OF THE AVERAGE LENGTH OF STAY—FY 2004—Continued

LTC–DRG	Description	Relative weight	Geo-metric average length of stay	5/6ths of the average length of stay
257	[3] TOTAL MASTECTOMY FOR MALIGNANCY W CC	0.9785	27.4	22.8
258	[8] TOTAL MASTECTOMY FOR MALIGNANCY W/O CC	0.9785	27.4	22.8
259	[8] SUBTOTAL MASTECTOMY FOR MALIGNANCY W CC	0.9785	27.4	22.8
260	[8] SUBTOTAL MASTECTOMY FOR MALIGNANCY W/O CC	0.9785	27.4	22.8
261	[5] BREAST PROC FOR NON-MALIGNANCY EXCEPT BIOPSY & LOCAL EXCISION	1.9873	41.3	34.4
262	[1] BREAST BIOPSY & LOCAL EXCISION FOR NON-MALIGNANCY	0.5711	20.8	17.3
263	SKIN GRAFT &/OR DEBRID FOR SKN ULCER OR CELLULITIS W CC	1.4696	41.1	34.2
264	SKIN GRAFT &/OR DEBRID FOR SKN ULCER OR CELLULITIS W/O CC	1.2160	39.9	33.2
265	[7] SKIN GRAFT &/OR DEBRID EXCEPT FOR SKIN ULCER OR CELLULITIS W CC	1.2294	34.7	28.9
266	[7] SKIN GRAFT &/OR DEBRID EXCEPT FOR SKIN ULCER OR CELLULITIS W/O CC	1.2294	34.7	28.9
267	[8] PERIANAL & PILONIDAL PROCEDURES	0.5711	20.8	17.3
268	[4] SKIN, SUBCUTANEOUS TISSUE & BREAST PLASTIC PROCEDURES	1.4090	34.1	28.4
269	OTHER SKIN, SUBCUT TISS & BREAST PROC W CC	1.5232	45.2	37.6
270	OTHER SKIN, SUBCUT TISS & BREAST PROC W/O CC	1.0105	35.9	29.9
271	SKIN ULCERS	0.9795	29.9	24.9
272	MAJOR SKIN DISORDERS W CC	0.7163	22.7	18.9
273	[1] MAJOR SKIN DISORDERS W/O CC	0.5711	20.8	17.3
274	MALIGNANT BREAST DISORDERS W CC	0.9469	24.9	20.7
275	[2] MALIGNANT BREAST DISORDERS W/O CC	0.7347	23.1	19.2
276	[1] NON-MALIGANT BREAST DISORDERS	0.5711	20.8	17.3
277	CELLULITIS AGE >17 W CC	0.7762	24.1	20.0
278	CELLULITIS AGE >17 W/O CC	0.6373	21.6	18.0
279	CELLULITIS AGE 0-178	0.5711	20.8	17.3
280	TRAUMA TO THE SKIN, SUBCUT TISS & BREAST AGE >17 W CC	0.9719	29.3	24.4
281	TRAUMA TO THE SKIN, SUBCUT TISS & BREAST AGE >17 W/O CC	0.7915	27.8	23.1
282	[8] TRAUMA TO THE SKIN, SUBCUT TISS & BREAST AGE 0-17	0.7347	23.1	19.2
283	MINOR SKIN DISORDERS W CC	0.6998	20.7	17.2
284	MINOR SKIN DISORDERS W/O CC	0.6259	23.0	19.1
285	AMPUTAT OF LOWER LIMB FOR ENDOCRINE,NUTRIT,& METABOL DISORDERS	1.5856	38.6	32.1
286	ADRENAL & PITUITARY PROCEDURES8	1.4090	34.1	28.4
287	SKIN GRAFTS & WOUND DEBRID FOR ENDOC, NUTRIT & METAB DISORDERS	1.4793	41.7	34.7
288	[5] O.R. PROCEDURES FOR OBESITY	1.9873	41.3	34.4
289	[8] PARATHYROID PROCEDURES	0.9785	27.4	22.8
290	[8] THYROID PROCEDURES	0.9785	27.4	22.8
291	[8] THYROGLOSSAL PROCEDURES	0.9785	27.4	22.8
292	OTHER ENDOCRINE, NUTRIT & METAB O.R. PROC W CC	1.5633	35.8	29.8
293	[3] OTHER ENDOCRINE, NUTRIT & METAB O.R. PROC W/O CC	0.9785	27.4	22.8
294	DIABETES AGE >35	0.8729	26.6	22.1
295	[3] DIABETES AGE 0-35	0.9785	27.4	22.8
296	NUTRITIONAL & MISC METABOLIC DISORDERS AGE >17 W CC	0.9560	26.3	21.9
297	NUTRITIONAL & MISC METABOLIC DISORDERS AGE >17 W/O CC	0.7552	26.4	22.0
298	[8] NUTRITIONAL & MISC METABOLIC DISORDERS AGE 0-17	0.7347	23.1	19.2
299	[2] INBORN ERRORS OF METABOLISM	0.7347	23.1	19.2
300	ENDOCRINE DISORDERS W CC	0.8175	23.9	19.9
301	ENDOCRINE DISORDERS W/O CC	0.7287	22.9	19.0
302	[6] KIDNEY TRANSPLANT	0.0000	0.0	0.0
303	[8] KIDNEY,URETER & MAJOR BLADDER PROCEDURES FOR NEOPLASM	1.9873	41.3	34.4
304	[5] KIDNEY,URETER & MAJOR BLADDER PROC FOR NON-NEOPL W CC	1.9873	41.3	34.4
305	[1] KIDNEY,URETER & MAJOR BLADDER PROC FOR NON-NEOPL W/O CC	0.5711	20.8	17.3
306	[4] PROSTATECTOMY W CC	1.4090	34.1	28.4
307	[8] PROSTATECTOMY W/O CC	1.4090	34.1	28.4
308	[4] MINOR BLADDER PROCEDURES W CC	1.4090	34.1	28.4
309	[2] MINOR BLADDER PROCEDURES W/O CC	0.7347	23.1	19.2
310	[4] TRANSURETHRAL PROCEDURES W CC	1.4090	34.1	28.4
311	[1] TRANSURETHRAL PROCEDURES W/O CC	0.5711	20.8	17.3
312	[4] URETHRAL PROCEDURES, AGE >17 W CC	1.4090	34.1	28.4
313	[8] URETHRAL PROCEDURES, AGE >17 W/O CC	0.5711	20.8	17.3
314	[8] URETHRAL PROCEDURES, AGE 0-17	0.5711	20.8	17.3
315	OTHER KIDNEY & URINARY TRACT O.R. PROCEDURES	1.5690	36.4	30.3
316	RENAL FAILURE	0.9869	24.5	20.4
317	[3] ADMIT FOR RENAL DIALYSIS	0.9785	27.4	22.8
318	KIDNEY & URINARY TRACT NEOPLASMS W CC	0.7466	21.7	18.0
319	[1] KIDNEY & URINARY TRACT NEOPLASMS W/O CC	0.5711	20.8	17.3
320	KIDNEY & URINARY TRACT INFECTIONS AGE >17 W CC	0.7744	23.5	19.5
321	KIDNEY & URINARY TRACT INFECTIONS AGE >17 W/O CC	0.6641	23.0	19.1
322	[8] KIDNEY & URINARY TRACT INFECTIONS AGE 0-17	0.7347	23.1	19.2
323	[2] URINARY STONES W CC, &/OR ESW LITHOTRIPSY	0.7347	23.1	19.2
324	[2] URINARY STONES W/O CC	0.7347	23.1	19.2

TABLE 11.—PROPOSED LTC–DRGS RELATIVE WEIGHTS AND GEOMETRIC AND FIVE-SIXTHS OF THE AVERAGE LENGTH OF STAY—FY 2004—Continued

LTC–DRG	Description	Relative weight	Geo-metric average length of stay	5/6ths of the average length of stay
325	KIDNEY & URINARY TRACT SIGNS & SYMPTOMS AGE >17 W CC	0.8854	27.2	22.6
326	KIDNEY & URINARY TRACT SIGNS & SYMPTOMS AGE >17 W/O CC	0.7590	24.7	20.5
327	[8] KIDNEY & URINARY TRACT SIGNS & SYMPTOMS AGE 0-17	0.7347	23.1	19.2
328	[1] URETHRAL STRICTURE AGE >17 W CC	0.5711	20.8	17.3
329	[8] URETHRAL STRICTURE AGE >17 W/O CC	0.5711	20.8	17.3
330	[8] URETHRAL STRICTURE AGE 0-17	0.5711	20.8	17.3
331	OTHER KIDNEY & URINARY TRACT DIAGNOSES AGE >17 W CC	0.8847	23.8	19.8
332	OTHER KIDNEY & URINARY TRACT DIAGNOSES AGE >17 W/O CC	0.6201	22.1	18.4
333	[8] OTHER KIDNEY & URINARY TRACT DIAGNOSES AGE 0-17	0.5711	20.8	17.3
334	[8] MAJOR MALE PELVIC PROCEDURES W CC	0.9785	27.4	22.8
335	[8] MAJOR MALE PELVIC PROCEDURES W/O CC	0.9785	27.4	22.8
336	[8] TRANSURETHRAL PROSTATECTOMY W CC	0.7347	23.1	19.2
337	[8] TRANSURETHRAL PROSTATECTOMY W/O CC	0.7347	23.1	19.2
338	[8] TESTES PROCEDURES, FOR MALIGNANCY	0.5711	20.8	17.3
339	[1] TESTES PROCEDURES, NON-MALIGNANCY AGE >17	0.5711	20.8	17.3
340	[8] TESTES PROCEDURES, NON-MALIGNANCY AGE 0-17	0.5711	20.8	17.3
341	[2] PENIS PROCEDURES	0.7347	23.1	19.2
342	[1] CIRCUMCISION AGE >17	0.5711	20.8	17.3
343	[8] CIRCUMCISION AGE 0-17	0.5711	20.8	17.3
344	[2] OTHER MALE REPRODUCTIVE SYSTEM O.R. PROCEDURES FOR MALIGNANCY	0.7347	23.1	19.2
345	[3] OTHER MALE REPRODUCTIVE SYSTEM O.R. PROC EXCEPT FOR MALIGNANCY	0.9785	27.4	22.8
346	[7] MALIGNANCY, MALE REPRODUCTIVE SYSTEM, W CC	0.7787	22.3	18.5
347	[7] MALIGNANCY, MALE REPRODUCTIVE SYSTEM, W/O CC	0.7787	22.3	18.5
348	[1] BENIGN PROSTATIC HYPERTROPHY W CC	0.5711	20.8	17.3
349	[1] BENIGN PROSTATIC HYPERTROPHY W/O CC	0.5711	20.8	17.3
350	INFLAMMATION OF THE MALE REPRODUCTIVE SYSTEM	1.1947	25.6	21.3
351	[8] STERILIZATION, MALE	0.5711	20.8	17.3
352	[3] OTHER MALE REPRODUCTIVE SYSTEM DIAGNOSES	0.9785	27.4	22.8
353	[8] PELVIC EVISCERATION, RADICAL HYSTERECTOMY & RADICAL VULVECTOMY	1.9873	41.3	34.4
354	[8] UTERINE,ADNEXA PROC FOR NON-OVARIAN/ADNEXAL MALIG W CC	1.9873	41.3	34.4
355	[8] UTERINE,ADNEXA PROC FOR NON-OVARIAN/ADNEXAL MALIG W/O CC	1.9873	41.3	34.4
356	[8] FEMALE REPRODUCTIVE SYSTEM RECONSTRUCTIVE PROCEDURES	1.4090	34.1	28.4
357	[8] UTERINE & ADNEXA PROC FOR OVARIAN OR ADNEXAL MALIGNANCY	1.4090	34.1	28.4
358	[8] UTERINE & ADNEXA PROC FOR NON-MALIGNANCY W CC	1.4090	34.1	28.4
359	[8] UTERINE & ADNEXA PROC FOR NON-MALIGNANCY W/O CC	1.4090	34.1	28.4
360	[4] VAGINA, CERVIX & VULVA PROCEDURES	1.4090	34.1	28.4
361	[8] LAPAROSCOPY & INCISIONAL TUBAL INTERRUPTION	0.5711	20.8	17.3
362	[8] ENDOSCOPIC TUBAL INTERRUPTION	0.5711	20.8	17.3
363	[8] D&C, CONIZATION & RADIO-IMPLANT, FOR MALIGNANCY	0.7347	23.1	19.2
364	[8] D&C, CONIZATION EXCEPT FOR MALIGNANCY	0.7347	23.1	19.2
365	[5] OTHER FEMALE REPRODUCTIVE SYSTEM O.R. PROCEDURES	1.9873	41.3	34.4
366	MALIGNANCY, FEMALE REPRODUCTIVE SYSTEM W CC	0.8153	23.0	19.1
367	[2] MALIGNANCY, FEMALE REPRODUCTIVE SYSTEM W/O CC	0.7347	23.1	19.2
368	INFECTIONS, FEMALE REPRODUCTIVE SYSTEM	0.6911	20.1	16.7
369	[3] MENSTRUAL & OTHER FEMALE REPRODUCTIVE SYSTEM DISORDERS	0.9785	27.4	22.8
370	[8] CESAREAN SECTION W CC	0.9785	27.4	22.8
371	[8] CESAREAN SECTION W/O CC	0.7347	23.1	19.2
372	[8] VAGINAL DELIVERY W COMPLICATING DIAGNOSES	0.7347	23.1	19.2
373	[8] VAGINAL DELIVERY W/O COMPLICATING DIAGNOSES	0.7347	23.1	19.2
374	[8] VAGINAL DELIVERY W STERILIZATION &/OR D&C	0.7347	23.1	19.2
375	[8] VAGINAL DELIVERY W O.R. PROC EXCEPT STERIL &/OR D&C	0.7347	23.1	19.2
376	[1] POSTPARTUM & POST ABORTION DIAGNOSES W/O O.R. PROCEDURE	0.5711	20.8	17.3
377	[8] POSTPARTUM & POST ABORTION DIAGNOSES W O.R. PROCEDURE	0.7347	23.1	19.2
378	[8] ECTOPIC PREGNANCY	0.9785	27.4	22.8
379	[8] THREATENED ABORTION	0.5711	20.8	17.3
380	[8] ABORTION W/O D&C	0.5711	20.8	17.3
381	[8] ABORTION W D&C, ASPIRATION CURETTAGE OR HYSTEROTOMY	0.5711	20.8	17.3
382	[8] FALSE LABOR	0.5711	20.8	17.3
383	[8] OTHER ANTEPARTUM DIAGNOSES W MEDICAL COMPLICATIONS	0.5711	20.8	17.3
384	[8] OTHER ANTEPARTUM DIAGNOSES W/O MEDICAL COMPLICATIONS	0.5711	20.8	17.3
385	[1] NEONATES, DIED OR TRANSFERRED TO ANOTHER ACUTE CARE FACILITY	0.5711	20.8	17.3
386	[8] EXTREME IMMATURITY	0.7347	23.1	19.2
387	[8] PREMATURITY W MAJOR PROBLEMS	0.7347	23.1	19.2
388	[8] PREMATURITY W/O MAJOR PROBLEMS	0.7347	23.1	19.2
389	[8] FULL TERM NEONATE W MAJOR PROBLEMS	0.7347	23.1	19.2
390	[8] NEONATE W OTHER SIGNIFICANT PROBLEMS	0.7347	23.1	19.2
391	[8] NORMAL NEWBORN	0.5711	20.8	17.3
392	[8] SPLENECTOMY AGE >17	0.7347	23.1	19.2

TABLE 11.—PROPOSED LTC–DRGS RELATIVE WEIGHTS AND GEOMETRIC AND FIVE-SIXTHS OF THE AVERAGE LENGTH OF STAY—FY 2004—Continued

LTC–DRG	Description	Relative weight	Geo-metric average length of stay	5/6ths of the aver-age length of stay
393	[8] SPLENECTOMY AGE 0-17	0.7347	23.1	19.2
394	[3] OTHER O.R. PROCEDURES OF THE BLOOD AND BLOOD FORMING ORGANS4	1.4090	34.1	28.4
395	RED BLOOD CELL DISORDERS AGE >17	0.9050	26.8	22.3
396	[8] RED BLOOD CELL DISORDERS AGE 0-17	0.5711	20.8	17.3
397	COAGULATION DISORDERS	1.0816	25.2	21.0
398	RETICULOENDOTHELIAL & IMMUNITY DISORDERS W CC	0.9248	23.0	19.1
399	[1] RETICULOENDOTHELIAL & IMMUNITY DISORDERS W/O CC	0.5711	20.8	17.3
401	[5] LYMPHOMA & NON-ACUTE LEUKEMIA W OTHER O.R. PROC W CC	1.9873	41.3	34.4
402	[3] LYMPHOMA & NON-ACUTE LEUKEMIA W OTHER O.R. PROC W/O CC	0.9785	27.4	22.8
403	LYMPHOMA & NON-ACUTE LEUKEMIA W CC	0.9099	22.7	18.9
404	LYMPHOMA & NON-ACUTE LEUKEMIA W/O CC	0.7410	17.9	14.9
405	[8] ACUTE-LEUKEMIA W/O MAJOR O.R. PROCEDURE AGE 0-17	0.7347	23.1	19.2
406	[5] MYELOPROLIF DISORD OR POORLY DIFF NEOPL W MAJ O.R.PROC W CC	1.9873	41.3	34.4
407	[8] MYELOPROLIF DISORD OR POORLY DIFF NEOPL W MAJ O.R.PROC W/O CC	0.9785	27.4	22.8
408	[3] MYELOPROLIF DISORD OR POORLY DIFF NEOPL W OTHER O.R.PROC	0.9785	27.4	22.8
409	RADIOTHERAPY	0.8961	25.1	20.9
410	[3] CHEMOTHERAPY W/O ACUTE LEUKEMIA AS SECONDARY DIAGNOSIS	0.9785	27.4	22.8
411	[3] HISTORY OF MALIGNANCY W/O ENDOSCOPY	0.9785	27.4	22.8
412	[5] HISTORY OF MALIGNANCY W ENDOSCOPY	1.9873	41.3	34.4
413	OTHER MYELOPROLIF DIS OR POORLY DIFF NEOPL DIAG W CC	0.9603	25.2	21.0
414	[2] OTHER MYELOPROLIF DIS OR POORLY DIFF NEOPL DIAG W/O CC	0.7347	23.1	19.2
415	O.R. PROCEDURE FOR INFECTIOUS & PARASITIC DISEASES	1.7239	40.9	34.0
416	SEPTICEMIA AGE >17	0.9553	25.2	21.0
417	[8] SEPTICEMIA AGE 0-17	0.9785	27.4	22.8
418	POSTOPERATIVE & POST-TRAUMATIC INFECTIONS	0.8612	25.3	21.0
419	[3] FEVER OF UNKNOWN ORIGIN AGE >17 W CC	0.9785	27.4	22.8
420	[1] FEVER OF UNKNOWN ORIGIN AGE >17 W/O CC	0.5711	20.8	17.3
421	[2] VIRAL ILLNESS AGE >17	0.7347	23.1	19.2
422	[8] VIRAL ILLNESS & FEVER OF UNKNOWN ORIGIN AGE 0-17	0.5711	20.8	17.3
423	OTHER INFECTIOUS & PARASITIC DISEASES DIAGNOSES	0.9930	25.9	21.5
424	O.R. PROCEDURE W PRINCIPAL DIAGNOSES OF MENTAL ILLNESS	1.2281	44.2	36.8
425	ACUTE ADJUSTMENT REACTION & PSYCHOLOGICAL DYSFUNCTION	0.6040	26.9	22.4
426	DEPRESSIVE NEUROSES	0.5583	23.3	19.4
427	[4] NEUROSES EXCEPT DEPRESSIVE	1.4090	34.1	28.4
428	[1] DISORDERS OF PERSONALITY & IMPULSE CONTROL	0.5711	20.8	17.3
429	ORGANIC DISTURBANCES & MENTAL RETARDATION	0.6562	27.4	22.8
430	PSYCHOSES	0.4808	22.6	18.8
431	[1] CHILDHOOD MENTAL DISORDERS	0.5711	20.8	17.3
432	[1] OTHER MENTAL DISORDER DIAGNOSES	0.5711	20.8	17.3
433	ALCOHOL/DRUG ABUSE OR DEPENDENCE, LEFT AMA	0.3416	14.6	12.1
439	SKIN GRAFTS FOR INJURIES	1.4429	41.2	34.3
440	WOUND DEBRIDEMENTS FOR INJURIES	1.6794	39.4	32.8
441	[5] HAND PROCEDURES FOR INJURIES	1.9873	41.3	34.4
442	OTHER O.R. PROCEDURES FOR INJURIES W CC	1.6280	46.4	38.6
443	[3] OTHER O.R. PROCEDURES FOR INJURIES W/O CC	0.9785	27.4	22.8
444	TRAUMATIC INJURY AGE >17 W CC	0.9311	30.7	25.5
445	TRAUMATIC INJURY AGE >17 W/O CC	0.8278	27.3	22.7
446	[8] TRAUMATIC INJURY AGE 0-17	0.7347	23.1	19.2
447	[3] ALLERGIC REACTIONS AGE >17	0.9785	27.4	22.8
448	[8] ALLERGIC REACTIONS AGE 0-17	0.5711	20.8	17.3
449	[3] POISONING & TOXIC EFFECTS OF DRUGS AGE >17 W CC	0.9785	27.4	22.8
450	[3] POISONING & TOXIC EFFECTS OF DRUGS AGE >17 W/O CC	0.9785	27.4	22.8
451	[8] POISONING & TOXIC EFFECTS OF DRUGS AGE 0-17	0.5711	20.8	17.3
452	COMPLICATIONS OF TREATMENT W CC	0.9830	25.5	21.2
453	COMPLICATIONS OF TREATMENT W/O CC	0.8894	25.5	21.2
454	[2] OTHER INJURY, POISONING & TOXIC EFFECT DIAG W CC	0.7347	23.1	19.2
455	[1] OTHER INJURY, POISONING & TOXIC EFFECT DIAG W/O CC	0.5711	20.8	17.3
461	O.R. PROC W DIAGNOSES OF OTHER CONTACT W HEALTH SERVICES	1.4214	36.6	30.5
462	REHABILITATION	0.6528	22.7	18.9
463	SIGNS & SYMPTOMS W CC	0.7824	26.4	22.0
464	SIGNS & SYMPTOMS W/O CC	0.6259	25.2	21.0
465	[1] AFTERCARE W HISTORY OF MALIGNANCY AS SECONDARY DIAGNOSIS	0.5711	20.8	17.3
466	AFTERCARE W/O HISTORY OF MALIGNANCY AS SECONDARY DIAGNOSIS	0.7783	22.6	18.8
467	OTHER FACTORS INFLUENCING HEALTH STATUS	1.4773	32.6	27.1
468	EXTENSIVE O.R. PROCEDURE UNRELATED TO PRINCIPAL DIAGNOSIS	2.0716	43.7	36.4
469	[6] PRINCIPAL DIAGNOSIS INVALID AS DISCHARGE DIAGNOSIS	0.0000	0.0	0.0
470	[6] UNGROUPABLE	0.0000	0.0	0.0
471	[5] BILATERAL OR MULTIPLE MAJOR JOINT PROCS OF LOWER EXTREMITY	1.9873	41.3	34.4

TABLE 11.—PROPOSED LTC–DRGS RELATIVE WEIGHTS AND GEOMETRIC AND FIVE-SIXTHS OF THE AVERAGE LENGTH OF STAY—FY 2004—Continued

LTC–DRG	Description	Relative weight	Geo-metric average length of stay	5/6ths of the aver-age length of stay
473	[2] ACUTE LEUKEMIA W/O MAJOR O.R. PROCEDURE AGE >17	0.7347	23.1	19.2
475	RESPIRATORY SYSTEM DIAGNOSIS WITH VENTILATOR SUPPORT	2.0241	33.0	27.5
476	PROSTATIC O.R. PROCEDURE UNRELATED TO PRINCIPAL DIAGNOSIS	1.0056	32.9	27.4
477	NON-EXTENSIVE O.R. PROCEDURE UNRELATED TO PRINCIPAL DIAGNOSIS	1.8688	40.7	33.9
478	[7] OTHER VASCULAR PROCEDURES W CC	1.3238	34.9	29.0
479	[7] OTHER VASCULAR PROCEDURES W/O CC	1.3238	34.9	29.0
480	[6] LIVER TRANSPLANT	0.0000	0.0	0.0
481	[8] BONE MARROW TRANSPLANT	0.5711	20.8	17.3
482	[5] TRACHEOSTOMY FOR FACE,MOUTH & NECK DIAGNOSES	1.9873	41.3	34.4
483	TRACH W MECH VENT 96+ HRS OR PDX EXCEPT FACE,MOUTH & NECK DIAG	3.1562	54.9	45.7
484	[8] CRANIOTOMY FOR MULTIPLE SIGNIFICANT TRAUMA	1.9873	41.3	34.4
485	[8] LIMB REATTACHMENT, HIP AND FEMUR PROC FOR MULTIPLE SIGNIFICANT TR	1.9873	41.3	34.4
486	[4] OTHER O.R. PROCEDURES FOR MULTIPLE SIGNIFICANT TRAUMA	1.4090	34.1	28.4
487	OTHER MULTIPLE SIGNIFICANT TRAUMA	1.2653	33.2	27.6
488	[5] HIV W EXTENSIVE O.R. PROCEDURE	1.9873	41.3	34.4
489	HIV W MAJOR RELATED CONDITION	0.9656	22.1	18.4
490	HIV W OR W/O OTHER RELATED CONDITION	0.7956	20.5	17.0
491	[8] MAJOR JOINT & LIMB REATTACHMENT PROCEDURES OF UPPER EXTREMITY	1.9873	41.3	34.4
492	[8] CHEMOTHERAPY W ACUTE LEUKEMIA AS SECONDARY DIAGNOSIS OR W USE HIGH DOSE CHEMOTHERAPY AGENT.	0.9785	27.4	22.8
493	[4] LAPAROSCOPIC CHOLECYSTECTOMY W/O C.D.E. W CC	1.4090	34.1	28.4
494	[4] LAPAROSCOPIC CHOLECYSTECTOMY W/O C.D.E. W/O CC	1.4090	34.1	28.4
495	[6] LUNG TRANSPLANT	0.0000	0.0	0.0
496	[8] COMBINED ANTERIOR/POSTERIOR SPINAL FUSION	1.4090	34.1	28.4
497	[3] SPINAL FUSION W CC	0.9785	27.4	22.8
498	[3] SPINAL FUSION W/O CC	0.9785	27.4	22.8
499	[5] BACK & NECK PROCEDURES EXCEPT SPINAL FUSION W CC	1.9873	41.3	34.4
500	[4] BACK & NECK PROCEDURES EXCEPT SPINAL FUSION W/O CC	1.4090	34.1	28.4
501	[5] KNEE PROCEDURES W PDX OF INFECTION W CC	1.9873	41.3	34.4
502	[2] KNEE PROCEDURES W PDX OF INFECTION W/O CC	0.7347	23.1	19.2
503	[3] KNEE PROCEDURES W/O PDX OF INFECTION	0.9785	27.4	22.8
504	[8] EXTENSIVE 3RD DEGREE BURNS W SKIN GRAFT	1.9873	41.3	34.4
505	[3] EXTENSIVE 3RD DEGREE BURNS W/O SKIN GRAFT	0.9785	27.4	22.8
506	[2] FULL THICKNESS BURN W SKIN GRAFT OR INHAL INJ W CC OR SIG TRAUMA	0.7347	23.1	19.2
507	[2] FULL THICKNESS BURN W SKIN GRFT OR INHAL INJ W/O CC OR SIG TRAUMA	0.7347	23.1	19.2
508	[2] FULL THICKNESS BURN W/O SKIN GRFT OR INHAL INJ W CC OR SIG TRAUMA	0.7347	23.1	19.2
509	[1] FULL THICKNESS BURN W/O SKIN GRFT OR INH INJ W/O CC OR SIG TRAUMA	0.5711	20.8	17.3
510	[2] NON-EXTENSIVE BURNS W CC OR SIGNIFICANT TRAUMA	0.7347	23.1	19.2
511	[1] NON-EXTENSIVE BURNS W/O CC OR SIGNIFICANT TRAUMA	0.5711	20.8	17.3
512	[6] SIMULTANEOUS PANCREAS/KIDNEY TRANSPLANT	0.0000	0.0	0.0
513	[6] PANCREAS TRANSPLANT	0.0000	0.0	0.0
515	[5] CARDIAC DEFIBRILATOR IMPLANT W/O CARDIAC CATH	1.9873	41.3	34.4
516	[8] PERCUTANEOUS CARDIVASCULAR PROCEDURE W AMI	0.9785	27.4	22.8
517	[4] PERCUTANEOUS CARDIVASCULAR PROC W NON-DRUG ELUTING STENT W/O AMI	1.4090	34.1	28.4
518	[3] PERCUTANEOUS CARDIVASCULAR PROC W/O CORONARY ARTERY STENT OR AMI	0.9785	27.4	22.8
519	[4] CERVICAL SPINAL FUSION W CC	1.4090	34.1	28.4
520	[8] CERVICAL SPINAL FUSION W/O CC	0.9785	27.4	22.8
521	ALCOHOL/DRUG ABUSE OR DEPENDENCE W CC	0.5064	20.9	17.4
522	ALCOHOL/DRUG ABUSE OR DEPENDENCE W REHABILITATION THERAPY W/O CC	0.4221	19.5	16.2
523	ALCOHOL/DRUG ABUSE OR DEPENDENCE W/O REHABILITATION THERAPY W/O CC	0.4366	21.9	18.2
524	TRANSIENT ISCHEMIA	0.6178	23.4	19.5
525	[8] HEART ASSIST SYSTEM IMPLANT	1.9873	41.3	34.4
526	[8] PERCUTANEOUS CARVIOVASCULAR PROC W DRUG-ELUTING STENT W AMI	1.4090	34.1	28.4
527	[8] PERCUTANEOUS CARVIOVASCULAR PROC W DRUG-ELUTING STENT W/O AMI	1.4090	34.1	28.4
528	[8] INTRACRANIAL VASCLUAR PROCEDURES WITH PDX HEMORRHAGE	1.9873	41.3	34.4
529	[2] VENTRICULAR SHUNT PROCEDURES WITH CC	0.7347	23.1	19.2
530	[8] VENTRICULAR SHUNT PROCEDURES WITHOUT CC	0.7347	23.1	19.2
531	[8] SPINAL PROCEDURES WITH CC	1.4090	34.1	28.4
532	[4] SPINAL PROCEDURES WITHOUT CC	1.4090	34.1	28.4
533	[8] EXTRACRANIAL VASCULAR PROCEDURES WITH CC	1.9873	41.3	34.4
534	[5] EXTRACRANIAL VASCULAR PROCEDURES WITHOUT CC	1.9873	41.3	34.4
535	[8] CARDIAC DEFIB IMPLANT WITH CARDIAC CATH WITH AMI/HF/SHOCK	1.9873	41.3	34.4
536	[5] CARDIAC DEFIB IMPLANT WITH CARDIAC CATH WITHOUT AMI/HF/SHOCK	1.9873	41.3	34.4
537	[8] LOCAL EXCISION AND REMOVAL OF INTERNAL FIXATION DEVICES EXCEPT HIP AND FEMUR WITH CC.	0.7347	23.1	19.2
538	[4] LOCAL EXCISION AND REMOVAL OF INTERNAL FIXATION DEVICES EXCEPT HIP AND FEMUR WITHOUT CC.	1.4090	34.1	28.4
539	[8] LYMPHOMA AND LEUKEMIA WITH MAJOR O.R. PROCEDURE WITH CC	1.9873	41.3	34.4

TABLE 11.—PROPOSED LTC–DRGS RELATIVE WEIGHTS AND GEOMETRIC AND FIVE-SIXTHS OF THE AVERAGE LENGTH OF STAY—FY 2004—Continued

LTC–DRG	Description	Relative weight	Geo-metric average length of stay	5/6ths of the average length of stay
540	[1] LYMPHOMA AND LEUKEMIA WITH MAJOR O.R. PROCEDURE WITHOUT CC	0.5711	20.8	17.3

[1] Proposed relative weights for these proposed LTC–DRGs were determined by assigning these cases to proposed low volume quintile 1.
[2] Proposed relative weights for these proposed LTC–DRGs were determined by assigning these cases to proposed low volume quintile 2.
[3] Proposed relative weights for these proposed LTC–DRGs were determined by assigning these cases to proposed low volume quintile 3.
[4] Proposed relative weights for these proposed LTC–DRGs were determined by assigning these cases to proposed low volume quintile 4.
[5] Proposed relative weights for these proposed LTC–DRGs were determined by assigning these cases to proposed low volume quintile 5.
[6] Proposed relative weights for these proposed LTC–DRGs were assigned a value of 0.0000.
[7] Proposed relative weights for these proposed LTC–DRGs were determined after adjusting to account for nonmonotonicity (see step 5 above).
[8] Proposed relative weights for these proposed LTC–DRGs were determined by assigning these cases to the appropriate proposed low volume quintile because they had no LTCH cases in the FY 2002 MedPAR.

Appendix A—Regulatory Analysis of Impacts

I. Background and Summary

We have examined the impacts of this proposed rule as required by Executive Order 12866 (September 1993, Regulatory Planning and Review) and the Regulatory Flexibility Act (RFA) (September 19, 1980, Pub. L. 96–354), section 1102(b) of the Social Security Act, the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4), and Executive Order 13132.

Executive Order 12866 directs agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). A regulatory impact analysis (RIA) must be prepared for major rules with economically significant effects ($100 million or more in any 1 year).

We have determined that this proposed rule is a major rule as defined in 5 U.S.C. 804(2). Based on the overall percentage change in payments per case estimated using our payment simulation model (a 2.5 percent increase), we estimate that the total impact of these proposed changes for FY 2004 payments compared to FY 2003 payments to be approximately a $2.1 billion increase. This amount does not reflect changes in hospital admissions or case-mix intensity, which would also affect overall payment changes.

The RFA requires agencies to analyze options for regulatory relief of small businesses. For purposes of the RFA, small entities include small businesses, nonprofit organizations, and government agencies. Most hospitals and most other providers and suppliers are small entities, either by nonprofit status or by having revenues of $5 million to $25 million in any 1 year. For purposes of the RFA, all hospitals and other providers and suppliers are considered to be small entities. Individuals and States are not included in the definition of a small entity.

In addition, section 1102(b) of the Act requires us to prepare a regulatory impact analysis for any proposed rule that may have a significant impact on the operations of a substantial number of small rural hospitals. This analysis must conform to the provisions of section 603 of the RFA. With the exception of hospitals located in certain New England counties, for purposes of section 1102(b) of the Act, we define a small rural hospital as a hospital with fewer than 100 beds that is located outside of a Metropolitan Statistical Area (MSA) or New England County Metropolitan Area (NECMA). Section 601(g) of the Social Security Amendments of 1983 (Pub. L. 98–21) designated hospitals in certain New England counties as belonging to the adjacent NECMA. Thus, for purposes of the acute care hospital inpatient prospective payment systems, we classify these hospitals as urban hospitals.

Section 202 of the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4) also requires that agencies assess anticipated costs and benefits before issuing any proposed rule (or a final rule that has been preceded by a proposed rule) that may result in an expenditure in any one year by State, local, or tribal governments, in the aggregate, or by the private sector, of $110 million. This proposed rule would not mandate any requirements for State, local, or tribal governments.

Executive Order 13132 establishes certain requirements that an agency must meet when it promulgates a proposed rule (and subsequent final rule) that imposes substantial direct requirement costs on State and local governments, preempts State law, or otherwise has Federalism implications. We have reviewed this proposed rule in light of Executive Order 13132 and have determined that it would not have any negative impact on the rights, roles, and responsibilities of State, local, or tribal governments.

In accordance with the provisions of Executive Order 12866, this proposed rule was reviewed by the Office of Management and Budget.

The following analysis, in conjunction with the remainder of this document, demonstrates that this proposed rule is consistent with the regulatory philosophy and principles identified in Executive Order 12866, the RFA, and section 1102(b) of the Act. The proposed rule would affect payments to a substantial number of small rural hospitals as well as other classes of hospitals, and the effects on some hospitals may be significant.

II. Objectives

The primary objective of the IPPS is to create incentives for hospitals to operate efficiently and minimize unnecessary costs while at the same time ensuring that payments are sufficient to adequately compensate hospitals for their legitimate costs. In addition, we share national goals of preserving the Medicare Trust Fund.

We believe the changes in this proposed rule would further each of these goals while maintaining the financial viability of the hospital industry and ensuring access to high quality health care for Medicare beneficiaries. We expect that these proposed changes would ensure that the outcomes of this payment system are reasonable and equitable while avoiding or minimizing unintended adverse consequences.

III. Limitations of Our Analysis

The following quantitative analysis presents the projected effects of our proposed policy changes, as well as statutory changes effective for FY 2004, on various hospital groups. We estimate the effects of individual proposed policy changes by estimating payments per case while holding all other payment policies constant. We use the best data available, but we do not attempt to predict behavioral responses to our proposed policy changes, and we do not make adjustments for future changes in such variables as admissions, lengths of stay, or case-mix. As we have done in previous proposed rules, we are soliciting comments and information about the anticipated effects of these proposed changes on hospitals and our methodology for estimating them.

IV. Hospitals Included In and Excluded From the IPPS

The prospective payment systems for hospital inpatient operating and capital-related costs encompass nearly all general short-term, acute care hospitals that participate in the Medicare program. There were 45 Indian Health Service hospitals in our database, which we excluded from the analysis due to the special characteristics of the prospective payment method for these hospitals. Among other short-term, acute care hospitals, only the 48 such hospitals in Maryland remain excluded from the IPPS under the waiver at section 1814(b)(3) of the Act.

There are approximately 729 critical access hospitals (CAHs). These small, limited service hospitals are paid on the basis of reasonable costs rather than under the IPPS. The remaining 20 percent are specialty hospitals that are excluded from the IPPS. These specialty hospitals include psychiatric hospitals and units, rehabilitation hospitals and units, long-term care hospitals, children's hospitals, and cancer hospitals. The impacts of our proposed policy changes on these hospitals are discussed below.

Thus, as of April 2003, we have included 4,087 hospitals in our analysis. This represents about 80 percent of all Medicare-participating hospitals. The majority of this impact analysis focuses on this set of hospitals.

V. Impact on Excluded Hospitals and Hospital Units

As of April 2003, there were 1,085 specialty hospitals excluded from the IPPS that were paid instead on a reasonable cost basis subject to the rate-of-increase ceiling under § 413.40. Broken down by specialty, there were 484 psychiatric, 214 rehabilitation, 296 long-term care, 80 children's, and 11 cancer hospitals. In addition, there were 1,410 psychiatric units and 979 rehabilitation units in hospitals otherwise subject to the IPPS. Under § 413.40(a)(2)(i)(A), the rate-of-increase ceiling is not applicable to the 48 specialty hospitals and units in Maryland that are paid in accordance with the waiver at section 1814(b)(3) of the Act.

In the past, hospitals and units excluded from the IPPS have been paid based on their reasonable costs subject to limits as established by the Tax Equity and Fiscal Responsibility Act of 1982 (TEFRA). Hospitals that continue to be paid based on their reasonable costs are subject to TEFRA limits for FY 2004. For these hospitals, the proposed update is the percentage increase in the excluded hospital market basket (currently estimated at 3.5 percent).

Inpatient rehabilitation facilities (IRFs) are paid under a prospective payment system (IRF PPS) for cost reporting periods beginning on or after January 1, 2002. For cost reporting periods beginning during FY 2004, the IRF PPS is based on 100 percent of the adjusted Federal IRF prospective payment amount, updated annually. Therefore, these hospitals would not be impacted by this proposed rule.

Effective for cost reporting periods beginning on or after October 1, 2002, LTCHs are paid under a LTCH PPS, based on the adjusted Federal prospective payment amount, updated annually. LTCHs will receive a blended payment (Federal prospective payment and a reasonable cost-based payment) over a 5-year transition period. However, under the LTCH PPS, a LTCH may also elect to be paid at 100 percent of the Federal prospective rate at the beginning of any of its cost reporting periods during the 5-year transition period. For purposes of the update factor, the portion of the LTCH PPS transition blend payment based on reasonable costs for inpatient operating services would be determined by updating the LTCH's TEFRA limit by the estimate of the excluded hospital market basket (or 3.5 percent).

The impact on excluded hospitals and hospital units of the update in the rate-of-increase limit depends on the cumulative cost increases experienced by each excluded hospital or unit since its applicable base period. For excluded hospitals and units that have maintained their cost increases at a level below the rate-of-increase limits since their base period, the major effect would be on the level of incentive payments these hospitals and hospital units receive. Conversely, for excluded hospitals and hospital units with per-case cost increases above the cumulative update in their rate-of-increase limits, the major effect would be the amount of excess costs that would not be reimbursed.

We note that, under § 413.40(d)(3), an excluded hospital or unit whose costs exceed 110 percent of its rate-of-increase limit receives its rate-of-increase limit plus 50 percent of the difference between its reasonable costs and 110 percent of the limit, not to exceed 110 percent of its limit. In addition, under the various provisions set forth in § 413.40, certain excluded hospitals and hospital units can obtain payment adjustments for justifiable increases in operating costs that exceed the limit. At the same time, however, by generally limiting payment increases, we continue to provide an incentive for excluded hospitals and hospital units to restrain the growth in their spending for patient services.

VI. Quantitative Impact Analysis of the Proposed Policy Changes Under the IPPS for Operating Costs

A. Basis and Methodology of Estimates

In this proposed rule, we are announcing policy changes and payment rate updates for the IPPS for operating and capital-related costs. Based on the overall percentage change in payments per case estimated using our payment simulation model (a 2.5 percent increase), we estimate the total impact of these changes for FY 2004 payments compared to FY 2003 payments to be approximately a $2.1 billion increase. This amount does not reflect changes in hospital admissions or case-mix intensity, which would also affect overall payment changes.

We have prepared separate impact analyses of the proposed changes to each system. This section deals with changes to the operating prospective payment system. Our payment simulation model relies on available data to enable us to estimate the impacts on payments per case of certain changes we are proposing in this proposed rule. However, there are other changes we are proposing for which we do not have data available that would allow us to estimate the payment impacts using this model. For those proposals, we have attempted to predict the payment impacts of those proposed changes based upon our experience and other more limited data.

The data used in developing the quantitative analyses of changes in payments per case presented below are taken from the FY 2002 MedPAR file and the most current Provider-Specific File that is used for payment purposes. Although the analyses of the changes to the operating PPS do not incorporate cost data, data from the most recently available hospital cost report were used to categorize hospitals. Our analysis has several qualifications. First, we do not make adjustments for behavioral changes that hospitals may adopt in response to these proposed policy changes, and we do not adjust for future changes in such variables as admissions, lengths of stay, or case-mix. Second, due to the interdependent nature of the IPPS payment components, it is very difficult to precisely quantify the impact associated with each proposed change. Third, we draw upon various sources for the data used to categorize hospitals in the tables. In some cases, particularly the number of beds, there is a fair degree of variation in the data from different sources. We have attempted to construct these variables with the best available source overall. However, for individual hospitals, some miscategorizations are possible.

Using cases in the FY 2002 MedPAR file, we simulated payments under the operating IPPS given various combinations of payment parameters. Any short-term, acute care hospitals not paid under the IPPSs (Indian Health Service hospitals and hospitals in Maryland) were excluded from the simulations. The impact of payments under the capital IPPS, or the impact of payments for costs other than inpatient operating costs, are not analyzed in this section. Estimated payment impacts of proposed FY 2004 changes to the capital IPPS are discussed in section IX. of this Appendix.

The proposed changes discussed separately below are the following:

- The effects of expanding the postacute care transfer policy to 19 additional DRGs.
- The effects of the proposed annual reclassification of diagnoses and procedures and the recalibration of the DRG relative weights required by section 1886(d)(4)(C) of the Act.
- The effects of the proposed changes in hospitals' wage index values reflecting wage data from hospitals' cost reporting periods beginning during FY 2000, compared to the FY 1999 wage data, including the effects of removing wage data for Part B costs of RCHs and FQHCs.
- The effects of geographic reclassifications by the MGCRB that will be effective in FY 2004.
- The total change in payments based on proposed FY 2004 policies relative to payments based on FY 2003 policies.

To illustrate the impacts of the proposed FY 2004 changes, our analysis begins with a FY 2004 baseline simulation model using: the FY 2003 DRG GROUPER (version 20.0); the current postacute care transfer policy for 10 DRGs; the FY 2003 wage index; and no MGCRB reclassifications. Outlier payments are set at 5.1 percent of total operating DRG and outlier payments.

Each proposed and statutory policy change is then added incrementally to this baseline model, finally arriving at an FY 2004 model incorporating all of the proposed changes. This allows us to isolate the effects of each proposed change.

Our final comparison illustrates the percent change in payments per case from FY

2003 to FY 2004. Five factors have significant impacts here. The first is the update to the standardized amounts. In accordance with section 1886(b)(3)(B)(i) of the Act, we are proposing to update the large urban and the other areas average standardized amounts for FY 2004 using the most recently forecasted hospital market basket increase for FY 2004 of 3.5 percent. Under section 1886(b)(3)(B)(iv) of the Act, the updates to the hospital-specific amounts for sole community hospitals (SCHs) and for Medicare-dependent small rural hospitals (MDHs) are also equal to the market basket increase, or 3.5 percent.

A second significant factor that impacts changes in hospitals' payments per case from FY 2003 to FY 2004 is the change in MGCRB status from one year to the next. That is, hospitals reclassified in FY 2003 that are no longer reclassified in FY 2004 may have a negative payment impact going from FY 2003 to FY 2004; conversely, hospitals not reclassified in FY 2003 that are reclassified in FY 2004 may have a positive impact. In some cases, these impacts can be quite substantial, so if a relatively small number of hospitals in a particular category lose their reclassification status, the percentage change in payments for the category may be below the national mean. However, this effect is alleviated by section 1886(d)(10)(D)(v) of the Act, which provides that reclassifications for purposes of the wage index are for a 3-year period.

A third significant factor is that we currently estimate that actual outlier payments during FY 2003 will be 5.5 percent of total DRG payments. When the FY 2003 final rule was published, we projected FY 2003 outlier payments would be 5.1 percent of total DRG plus outlier payments; the average standardized amounts were offset correspondingly. The effects of the higher than expected outlier payments during FY 2003 (as discussed in the Addendum to this proposed rule) are reflected in the analyses below comparing our current estimates of FY 2003 payments per case to estimated FY 2004 payments per case.

Fourth, we are proposing to expand the postacute care transfer policy to 19 additional DRGs. This proposed expansion would result in Medicare savings of $160 million because we would no longer pay a full DRG payment for these cases. As a result, there would be a lower total increase in Medicare spending for FY 2004.

Fifth, section 402(b) of Pub. L. 108–7 provided that the large urban standardized amount of the Federal rate is applicable for all IPPS hospitals for discharges occurring on or after April 1, 2003, and before October 1, 2003. For discharges occurring on or after October 1, 2003, the Federal rate will again be based on separate average standardized amounts for hospitals in large urban areas and for hospitals in other areas. The effect is to reduce the percent increase in FY 2004 payments compared to those made in FY 2003.

B. Analysis of Table I

Table I demonstrates the results of our analysis. The table categorizes hospitals by various geographic and special payment consideration groups to illustrate the varying impacts on different types of hospitals. The top row of the table shows the overall impact on the 4,087 hospitals included in the analysis. This number is 143 fewer hospitals than were included in the impact analysis in the FY 2003 final rule (67 FR 50279). There are 98 new CAHs that were excluded from last year's analysis.

The next four rows of Table I contain hospitals categorized according to their geographic location: all urban, which is further divided into large urban and other urban; and rural. There are 2,582 hospitals located in urban areas (MSAs or NECMAs) included in our analysis. Among these, there are 1,493 hospitals located in large urban areas (populations over 1 million), and 1,089 hospitals in other urban areas (populations of 1 million or fewer). In addition, there are 1,505 hospitals in rural areas. The next two groupings are by bed-size categories, shown separately for urban and rural hospitals. The final groupings by geographic location are by census divisions, also shown separately for urban and rural hospitals.

The second part of Table I shows hospital groups based on hospitals' FY 2004 payment classifications, including any reclassifications under section 1886(d)(10) of the Act. For example, the rows labeled urban, large urban, other urban, and rural show that the number of hospitals paid based on these categorizations after consideration of geographic reclassifications are 2,591, 1,572, 1,019, and 1,496, respectively.

The next three groupings examine the impacts of the proposed changes on hospitals grouped by whether or not they have GME residency programs (teaching hospitals that receive an IME adjustment) or receive DSH payments, or some combination of these two adjustments. There are 2,976 nonteaching hospitals in our analysis, 873 teaching hospitals with fewer than 100 residents, and 238 teaching hospitals with 100 or more residents.

In the DSH categories, hospitals are grouped according to their DSH payment status, and whether they are considered urban or rural after MGCRB reclassifications. Therefore, hospitals in the rural DSH categories represent hospitals that were not reclassified for purposes of the standardized amount or for purposes of the DSH adjustment. (However, they may have been reclassified for purposes of the wage index.)

The next category groups hospitals considered urban after geographic reclassification, in terms of whether they receive the IME adjustment, the DSH adjustment, both, or neither.

The next five rows examine the impacts of the proposed changes on rural hospitals by special payment groups (SCHs, rural referral centers (RRCs), and MDHs), as well as rural hospitals not receiving a special payment designation. The RRCs (149), SCHs (494), MDHs (254), and hospitals that are both SCH and RRC (78) shown here were not reclassified for purposes of the standardized amount.

The next two groupings are based on type of ownership and the hospital's Medicare utilization expressed as a percent of total patient days. These data are taken primarily from the FY 2000 Medicare cost report files, if available (otherwise FY 1999 data are used). Data needed to determine ownership status were unavailable for 120 hospitals. Similarly, the data needed to determine Medicare utilization were unavailable for 104 hospitals.

The next series of groupings concern the geographic reclassification status of hospitals. The first grouping displays all hospitals that were reclassified by the MGCRB for FY 2004. The next two groupings separate the hospitals in the first group by urban and rural status. The final row in Table I contains hospitals located in rural counties but deemed to be urban under section 1886(d)(8)(B) of the Act.

TABLE I.—IMPACT ANALYSIS OF PROPOSED CHANGES FOR FY 2004 OPERATING PROSPECTIVE PAYMENT SYSTEM

[Percent changes in payments per case]

	Number of hosps.[1]	Transfer changes 2004 base[2]	DRG changes[3]	New wage data[4]	New wage index without nonphys. part B[5]	DRG & wage index changes[6]	MCGRB reclassification[7]	ALL FY 2004 changes[8]
	(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)
By Geographic Location:								
All hospitals	4,087	−0.2	0.0	−0.4	0.1	0.0	0.0	2.5
Urban hospitals	2,582	−0.2	0.0	−0.5	0.1	0.0	−0.4	2.5
Large urban areas (populations over 1 million)	1,493	−0.2	0.0	−0.4	0.0	−0.1	−0.4	2.6

TABLE I.—IMPACT ANALYSIS OF PROPOSED CHANGES FOR FY 2004 OPERATING PROSPECTIVE PAYMENT SYSTEM—Continued

[Percent changes in payments per case]

	Number of hosps.[1]	Transfer changes 2004 base[2]	DRG changes[3]	New wage data[4]	New wage index without nonphys. part B[5]	DRG & wage index changes[6]	MCGRB reclassification[7]	ALL FY 2004 changes[8]
	(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)
Other urban areas (populations of 1 million of fewer)	1,089	−0.2	−0.1	−0.5	0.3	0.1	−0.2	2.2
Rural hospitals	1,505	−0.2	0.0	−0.2	0.0	0.5	2.6	3.1
Bed Size (Urban):								
0–99 beds	628	−0.3	0.0	−0.1	0.3	0.6	−0.7	2.7
100–199 beds	916	−0.2	0.0	−0.4	0.2	0.1	−0.4	2.6
200–299 beds	507	−0.2	0.0	−0.5	0.1	−0.1	−0.3	2.3
300–499 beds	377	−0.2	0.0	−0.3	0.1	0.1	−0.3	2.5
500 or more beds	156	−0.1	−0.1	−0.8	0.1	−0.5	−0.4	2.3
Bed Size (Rural):								
0–49 beds	690	−0.2	0.2	−0.3	0.0	0.7	0.6	3.4
50–99 beds	477	−0.2	0.0	−0.2	0.0	0.5	1.0	3.3
100–149 beds	202	−0.2	0.0	−0.3	0.0	0.3	2.9	2.8
150–199 beds	70	−0.2	−0.1	0.0	0.0	0.7	4.6	2.7
200 or more beds	66	−0.1	−0.1	−0.1	0.0	0.4	4.8	3.0
Urban by Region:								
New England	134	−0.4	0.0	−1.0	0.8	1.1	−0.1	2.7
Middle Atlantic	394	−0.2	0.0	−1.0	0.1	−0.7	0.1	1.7
South Atlantic	372	−0.2	0.0	−0.4	0.1	−0.1	−0.5	2.5
East North Central	429	−0.2	0.0	−0.5	0.1	−0.1	−0.4	2.5
East South Central	155	−0.1	−0.1	0.3	0.1	0.6	−0.6	3.1
West North Central	176	−0.2	−0.1	0.1	0.1	0.3	−0.7	2.8
West South Central	329	−0.1	0.0	−0.4	0.0	−0.2	−0.6	2.5
Mountain	131	−0.2	−0.2	0.5	0.1	0.7	−0.5	3.5
Pacific	416	−0.2	−0.1	−0.4	0.1	−0.1	−0.4	2.5
Puerto Rico	46	0.0	−0.1	−0.1	0.0	−0.1	−0.7	2.9
Rural by Region:								
New England	38	−0.2	−0.1	0.3	0.0	0.8	2.6	3.3
Middle Atlantic	67	−0.2	0.1	−0.1	0.0	0.3	2.4	2.6
South Atlantic	221	−0.2	0.0	−0.3	0.0	0.2	2.9	2.3
East North Central	199	−0.2	−0.1	0.2	0.0	0.8	2.1	3.1
East South Central	232	−0.2	0.1	−0.2	0.0	0.4	2.8	3.0
West North Central	254	−0.1	−0.1	−0.2	0.1	1.0	1.9	3.8
West South Central	273	−0.1	0.1	−0.4	0.1	0.2	3.7	3.5
Mountain	127	−0.1	−0.1	−0.2	0.0	0.3	1.5	3.2
Pacific	89	−0.2	−0.1	−0.5	0.1	0.5	2.5	3.5
Puerto Rico	5	0.0	−0.1	−4.1	0.0	−4.1	0.4	−0.2
By Payment Classification:								
Urban hospitals	2,591	−0.2	0.0	−0.5	0.1	0.0	−0.3	2.5
Large urban areas (populations over 1 million)	1,572	−0.2	0.0	−0.4	0.1	−0.1	−0.2	2.7
Other urban areas (populations of 1 million of fewer)	1,019	−0.2	−0.1	−0.5	0.3	0.1	−0.4	2.2
Rural areas	1,496	−0.2	0.0	−0.2	0.0	0.5	2.2	3.0
Teaching Status:								
Non-teaching	2,976	−0.2	0.0	−0.3	0.1	0.2	0.4	2.6
Fewer than 100 Residents	873	−0.2	−0.1	−0.2	0.1	0.2	−0.2	2.6
100 or more Residents	238	−0.2	−0.1	−0.9	0.1	−0.5	−0.1	2.3
Urban DSH:								
Non-DSH	1,381	−0.2	−0.1	−0.2	0.1	0.2	0.0	2.7
100 or more beds	1,398	−0.2	0.0	−0.6	0.1	−0.1	−0.3	2.4
Less than 100 beds	276	−0.3	0.0	−0.2	0.3	0.5	−0.5	2.4
Rural DSH:								
Sole Community (SCH)	484	−0.1	0.1	−0.2	0.0	0.5	0.4	3.7
Referral Center (RRC)	161	−0.1	−0.1	−0.1	0.0	0.4	4.6	2.8
Other Rural: 100 or more beds	75	−0.3	0.1	−0.5	0.0	0.1	1.0	1.9
Less than 100 beds	312	−0.3	0.2	−0.4	0.0	0.3	1.0	2.5
Urban teaching and DSH:								
DSH	771	−0.2	0.0	−0.6	0.1	−0.1	−0.3	2.5
Teaching and no DSH	273	−0.2	−0.1	−0.3	0.1	0.0	−0.2	2.6
No teaching and DSH	903	−0.2	0.0	−0.5	0.2	0.0	−0.2	2.3
No teaching and no DSH	644	−0.2	0.0	−0.2	0.1	0.3	−0.3	2.7
Rural Hospital Types:								

TABLE I.—IMPACT ANALYSIS OF PROPOSED CHANGES FOR FY 2004 OPERATING PROSPECTIVE PAYMENT SYSTEM—Continued

[Percent changes in payments per case]

	Number of hosps.[1]	Transfer changes 2004 base[2]	DRG changes[3]	New wage data[4]	New wage index without nonphys. part B[5]	DRG & wage index changes[6]	MGCRB reclassification[7]	ALL FY 2004 changes[8]
	(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)
Non special status hospitals	521	−0.3	0.1	−0.4	0.0	0.3	1.0	2.2
RRC	149	−0.2	−0.1	−0.1	0.0	0.6	5.9	2.6
SCH	494	−0.1	0.0	−0.1	0.0	0.5	0.3	3.9
Medicare-dependent hospitals (MDH)	254	−0.3	0.2	−0.2	0.0	0.8	0.7	3.3
SCH and RRC	78	0.0	−0.1	−0.1	0.0	0.3	1.4	3.3
Type of Ownership:								
Voluntary	2,435	−0.2	0.0	−0.5	0.1	0.0	0.0	2.5
Proprietary	699	−0.2	0.0	−0.2	0.1	0.2	0.0	2.6
Government	833	−0.2	0.0	−0.4	0.1	0.0	0.3	2.7
Unknown	120	−0.1	0.0	−1.1	0.0	−0.8	−0.4	1.8
Medicare Utilization as a Percent of Inpatient Days:								
0–25	304	−0.2	−0.1	0.0	0.0	0.1	−0.3	3.0
25–50	1,557	−0.2	0.0	−0.5	0.1	−0.1	−0.2	2.5
50–65	1,663	−0.2	0.0	−0.4	0.2	0.2	0.3	2.5
Over 65	459	−0.2	0.0	−0.1	0.1	0.4	0.7	2.7
Unknown	104	−0.2	−0.1	0.0	0.0	0.2	−0.6	3.0
Hospitals Reclassified by the Medicare Geographic Classification Review Board: FY 2004 Reclassifications:								
All Reclassified Hospitals	639	−0.2	0.0	−0.3	0.1	0.3	4.3	3.0
Standardized Amount Only	22	−0.2	0.0	−0.7	0.5	0.0	3.9	5.8
Wage Index Only	556	−0.2	0.0	−0.4	0.2	0.3	4.3	2.4
Both	33	−0.2	−0.1	−0.4	0.2	0.2	6.0	3.1
Nonreclassified Hospitals	3,442	−0.2	0.0	−0.4	0.1	0.0	−0.62.5	
All Reclassified Urban Hospitals	136	−0.2	0.0	−0.5	0.3	0.1	4.0	2.7
Standardized Amount Only	13	−0.2	−0.1	−1.4	0.2	−1.2	0.9	2.4
Wage Index Only	82	−0.2	0.0	−0.7	0.3	0.1	3.9	2.3
Both	41	−0.3	0.0	0.1	0.2	0.6	5.4	3.8
Urban Nonreclassified Hospitals	2,415	−0.2	0.0	−0.5	0.1	−0.1	−0.6	2.4
All Reclassified Rural Hospitals	503	−0.2	−0.1	−0.1	0.0	0.5	4.6	3.2
Standardized Amount Only	15	−0.2	0.1	−0.4	0.1	0.4	4.8	2.1
Wage Index Only	464	−0.1	−0.1	−0.1	0.0	0.5	4.2	3.2
Both	24	−0.2	0.0	−0.1	0.0	0.5	8.7	3.8
Rural Nonreclassified Hospitals	999	−0.2	0.1	−0.3	0.0	0.5	−0.5	2.8
Other Reclassified Hospitals (Section 1886(D)(8)(B))	34	−0.2	0.1	0.0	0.0	0.4	−2.0	1.8

[1] Because data necessary to classify some hospitals by category were missing, the total number of hospitals in each category may not equal the national total. Discharge data are from FY 2002, and hospital cost report data are from reporting periods beginning in FY 2000 and FY 1999.

[2] This column displays the payment impact of the expanded postacute care transfer policy.

[3] This column displays the payment impact of the recalibration of the DRG weights based on FY 2002 MedPAR data and the DRG reclassification changes, in accordance with section 1886(d)(4)(C) of the Act.

[4] This column displays the impact of updating the wage index with wage data from hospitals' FY 2000 cost reports.

[5] This column displays the impact of removing nonphysician Part B costs and hours from cost report data (Worksheet S–3, Part II, Line 5.01).

[6] This column displays the combined impact of the reclassification and recalibration of the DRGs, the updated and revised wage data used to calculate the wage index, the removal of nonphysician Part B costs and hours, and the budget neutrality adjustment factor for DRG and wage index changes, in accordance with sections 1886(d)(4)(C)(iii) and 1886(d)(3)(E) of the Act. Thus, it represents the combined impacts shown in columns 3, 4, and 5, and the proposed FY 2004 budget neutrality factor of 1.003133.

[7] Shown here are the effects of geographic reclassifications by the Medicare Geographic Classification Review Board (MGCRB). The effects demonstrate the FY 2004 payment impact of going from no reclassifications to the reclassifications scheduled to be in effect for FY 2004. Reclassification for prior years has no bearing on the payment impacts shown here.

[8] This column shows changes in payments from FY 2003 to FY 2004. It incorporates all of the changes displayed in columns 2, 6, and 7 (the changes displayed in columns 3, 4, and 5 are included in column 6). It also reflects the impact of the FY 2004 update, changes in hospitals' reclassification status in FY 2004 compared to FY 2003, and the difference in outlier payments from FY 2003 to FY 2004. The sum of these impacts may be different from the percentage changes shown here due to rounding and interactive effect.

C. Impact of the Proposed Changes to the Postacute Care Transfer Policy (Column 2)

In column 2 of Table I, we present the effects of the postacute care transfer policy expansion, as discussed in section IV.A. of the preamble to this proposed rule. We compared aggregate payments using the FY 2003 DRG relative weights (GROUPER version 21.0) with the expanded postacute care transfer policy to aggregate payments using the proposed expanded postacute care transfer policy (with the additional 19 DRGs). The changes we are proposing to make would result in 0.2 percent lower payments to hospitals overall. We estimate the total savings at approximately $160 million.

To simulate the impact of this proposed policy, we calculated hospitals' transfer-adjusted discharges and case-mix index values, including the proposed additional 19 DRGs. The transfer-adjusted discharge fraction is calculated in one of two ways, depending on the transfer payment methodology. Under our current transfer payment methodology, for all but the three DRGs receiving special payment consideration (DRGs 209, 210, and 211), this adjustment is made by adding 1 to the length of stay and dividing that amount by the geometric mean length of stay for the DRG (with the resulting fraction not to exceed 1.0). For example, a transfer after 3 days from a DRG with a geometric mean length of stay of 6 days would have a transfer-adjusted discharge fraction of 0.667 ((3+1)/6).

For transfers from any one of the three DRGs receiving the alternative payment methodology, the transfer-adjusted discharge fraction is 0.5 (to reflect that these cases receive half the full DRG amount the first day), plus one half of the result of dividing 1 plus the length of stay prior to transfer by the geometric mean length of stay for the DRG. None of the proposed 19 additional DRGs would receive the alternative payment methodology. As with the above adjustment, the result is equal to the lesser of the transfer-adjusted discharge fraction or 1.

The transfer-adjusted case-mix index values are calculated by summing the transfer-adjusted DRG weights and dividing by the transfer-adjusted discharges. The transfer-adjusted DRG weights are calculated by multiplying the DRG weight by the lesser of 1 or the transfer-adjusted discharge fraction for the case, divided by the geometric mean length of stay for the DRG. In this way, simulated payments per case can be compared before and after the proposed change to the transfer policy.

This proposed expansion of the policy has a negative 0.2 percent payment impact overall among both urban and rural hospitals. There is very small variation among all of the hospital categories from this negative 0.2 percent impact. This outcome is different than the impacts exhibited when we implemented the postacute care transfer policy for the current 10 DRGs in the July 31, 1998 **Federal Register** (63 FR 41108). At that time, the impact of going from no postacute transfer policy to a postacute care transfer policy applicable to 10 DRGs was a 0.6 percent decrease in payments per case. In addition, at that time, the impact was greatest among urban hospitals (0.7 percent payment decrease, compared to 0.4 percent among rural hospitals).

The less dramatic impact observed for this proposed expansion to additional DRGs is not surprising. The movement to transfer more and more patients for postacute care sooner appears to have abated in recent years. While it does appear that many patients continue to be transferred for postacute care early in the course of their acute care treatment, the rapid expansion of this trend that was apparent during the mid-90s appears to have subsided. To a large extent, this decline probably stems from the decreased payment incentives to transfer patients to postacute care settings as a result of the implementation of prospective payment systems for IRFs, SNFs, LTCHs, and HHAs.

D. Impact of the Proposed Changes to the DRG Reclassifications and Recalibration of Relative Weights (Column 3)

In column 3 of Table I, we present the combined effects of the DRG reclassifications and recalibration, as discussed in section II. of the preamble to this proposed rule. Section 1886(d)(4)(C)(i) of the Act requires us annually to make appropriate classification changes and to recalibrate the DRG weights in order to reflect changes in treatment patterns, technology, and any other factors that may change the relative use of hospital resources.

We compared aggregate payments using the FY 2003 DRG relative weights (GROUPER version 20.0) to aggregate payments using the proposed FY 2004 DRG relative weights (GROUPER version 21.0). Both simulations reflected the proposed expansion of the postacute care transfer policy. We note that, consistent with section 1886(d)(4)(C)(iii) of the Act, we have applied a budget neutrality factor to ensure that the overall payment impact of the DRG changes (combined with the wage index changes) is budget neutral. This proposed budget neutrality factor of 1.003133 is applied to payments in Column 6. Because this is a combined DRG reclassification and recalibration and wage index budget neutrality factor, it is not applied to payments in this column.

The major DRG classification changes we are proposing are: Creating additional DRGs that are split based on the presence or absence of CCs; creating a new DRG for cases with ruptured brain aneurysms; and creating a new DRG for cases involving the implantation of a cardiac defibrillator where the patient experiences acute myocardial infarction, heart failure, or shock. In the aggregate, these proposed changes would result in 0.0 percent change in overall payments to hospitals.

The overall level of the DRG weights are determined by the normalization factor intended to ensure that recalibration by itself neither increases nor decreases total payments under the IPPS. Because we count transfer cases as a fraction of a case in the recalibration process, expanding the postacute care transfer policy to 19 additional DRGs would affect the proposed relative weights for those DRGs. Therefore, we calculated the proposed FY 2004 normalization factor comparing the case-mix using the proposed FY 2004 DRG relative weights in which we treated postacute care transfer cases in the 19 additional DRGs being proposed for FY 2004 as a fraction of a case with the case-mix using the FY 2003 DRG relative weights without treating cases in these 19 additional DRGs as transfer cases. As noted above, the proposed expansion of the postacute care transfer policy impacts the overall level of the DRG weights, contributing to the impacts seen in this column.

Rural hospitals with fewer than 50 beds would experience a 0.2 percent increase due to these changes, while rural hospitals with more than 150 beds will experience a 0.1 percent decrease. Also, RRCs and hospitals classified with both SCH and RRC would experience a 0.1 percent decrease. MDHs would experience a 0.2 percent increase. Hospitals in the urban Mountain census division would experience the largest change, with a 0.2 percent decrease. Again, these impacts are ultimately offset by the budget neutrality factor of 1.003133.

E. Impact of Proposed Wage Index Changes (Columns 4 and 5)

Section 1886(d)(3)(E) of the Act requires that, beginning October 1, 1993, we annually update the wage data used to calculate the wage index. In accordance with this requirement, the proposed wage index for FY 2004 is based on data submitted for hospital cost reporting periods beginning on or after October 1, 1999 and before October 1, 2000. As with column 3, the impact of the new data on hospital payments is isolated in column 4 by holding the other payment parameters constant in this simulation. That is, column 4 shows the percentage changes in payments when going from a model using the FY 2003 wage index (based on FY 1999 wage data to a model using the FY 2004 pre-reclassification wage index based on FY 2000 wage data).

The wage data collected on the FY 2000 cost reports are similar to the data used in the calculation of the FY 2003 wage index. Also, as described in section III.B of this preamble, the proposed FY 2004 wage index is calculated by removing the nonphysician Part B costs and hours of RHCs and FQHCs, shown in column 5.

Column 4 shows the impacts of updating the wage data using FY 2000 cost reports. Overall, the new wage data would lead to a 0.4 percent reduction, but this reduction is offset by the budget neutrality factor. Urban hospitals' wage indexes would decline by 0.5 percent, and rural hospitals' wage indexes would decline by 0.2 percent. Among regions, the largest impact of updating the wage data is seen in rural Puerto Rico (a 4.1 percent decrease). Rural hospitals in the Pacific and West South Central regions would experience the next largest impact, a 0.5 percent and 0.4 percent decrease, respectively. Rural New England and East North Central regions would experience an increase of 0.3 percent and 0.2 percent, respectively.

Among urban hospitals, New England and the Middle Atlantic regions would experience 1.0 percent decreases, respectively. These impacts result, respectively, from a 9.0 percent decrease in the proposed FY 2004 wage index for Springfield, Massachusetts, and a 6.1 percent decrease in the Pittsburgh, Pennsylvania wage index. The East South Central, West North Central, and Mountain regions would experience increases of 0.3 percent, 0.1 percent, and 0.5 percent, respectively.

The next column shows the impacts on the calculation of the proposed FY 2004 wage index of removing nonphysician Part B data for RHCs and FQHCs. Column 5 shows the impacts of removing nonphysician Part B costs for RHCs and FQHCs. The effects of this proposed change are relatively small with the

exception of New England, which would experience a 0.8 percent decrease.

We note that the wage data used for the proposed wage index are based upon the data available as of March 2003 and, therefore, do not reflect revision requests received and processed by the fiscal intermediaries after that date. To the extent these requests are granted by hospitals' fiscal intermediaries, these revisions will be reflected in the final rule. In addition, we continue to verify the accuracy of the data for hospitals with extraordinary changes in their data from the prior year.

The following chart compares the shifts in wage index values for labor market areas for FY 2004 relative to FY 2003. This chart demonstrates the impact of the changes for the proposed FY 2004 wage index, including updating to FY 2000 wage data. The majority of labor market areas (331) would experience less than a 5-percent change. A total of 13 labor market areas would experience an increase of more than 5 percent and less than 10 percent. Two areas would experience an increase greater than 10 percent. A total of 24 areas would experience decreases of more than 5 percent and less than 10 percent. Finally, 3 areas would experience declines of 10 percent or more.

Percentage change in area wage index values	Number of labor market areas	
	FY 2003	FY 2004
Increase more than 10 percent	3	2
Increase more than 5 percent and less than 10 percent	11	13
Increase or decrease less than 5 percent	343	331
Decrease more than 5 percent and less than 10 percent	15	24
Decrease more than 10 percent	1	3

Among urban hospitals, 45 would experience an increase of between 5 and 10 percent and 8 more than 10 percent. A total of 64 rural hospitals would experience increases greater than 5 percent, but none would experience greater than 10-percent increases. On the negative side, 109 urban hospitals would experience decreases in their wage index values of at least 5 percent but less than 10 percent. Nine urban hospitals and one rural hospital would experience decreases in their wage index values greater than 10 percent. There are 25 rural hospitals that would experience decreases in their wage index values of greater than 5 percent but less than 10 percent. The following chart shows the projected impact for urban and rural hospitals.

Percentage change in area wage index values	Number of hospitals	
	Urban	Rural
Increase more than 10 percent	8	0
Increase more than 5 percent and less than 10 percent	45	64
Increase or decrease less than 5 percent	2,436	1,714
Decrease more than 5 percent and less than 10 percent	109	25
Decrease more than 10 percent	9	1

F. Combined Impact of Proposed DRG and Wage Index Changes, Including Budget Neutrality Adjustment (Column 6)

The impact of the DRG reclassifications and recalibration on aggregate payments is required by section 1886(d)(4)(C)(iii) of the Act to be budget neutral. In addition, section 1886(d)(3)(E) of the Act specifies that any updates or adjustments to the wage index are to be budget neutral. As noted in the Addendum to this proposed rule, we compared simulated aggregate payments using the FY 2003 DRG relative weights and wage index to simulated aggregate payments using the proposed FY 2004 DRG relative weights and blended wage index. In addition, we are required to ensure that any add-on payments for new technology under section 1886(d)(5)(K) of the Act are budget neutral. As discussed in section II.E. of the preamble of this proposed rule, we are proposing to maintain the new technology status of Xigris™ (approved in last year's final rule at 67 FR 50013). We estimate the proposed total add-on payments for this new technology for FY 2004 would be $50 million.

We computed a proposed wage and recalibration budget neutrality factor of 1.003133. The 0.0 percent impact for all hospitals demonstrates that these proposed changes, in combination with the proposed budget neutrality factor, are budget neutral. In Table I, the combined overall impacts of the effects of both the proposed DRG reclassifications and recalibration and the proposed updated wage index are shown in column 6. The proposed changes in this column are the sum of the proposed changes in columns 3, 4, and 5, combined with the budget neutrality factor and the wage index floor for urban areas required by section 4410 of Pub. L. 105–33 to be budget neutral. There also may be some variation of plus or minus 0.1 percentage point due to rounding.

G. Impact of MGCRB Reclassifications (Column 7)

Our impact analysis to this point has assumed hospitals are paid on the basis of their actual geographic location (with the exception of ongoing policies that provide that certain hospitals receive payments on bases other than where they are geographically located, such as hospitals in rural counties that are deemed urban under section 1886(d)(8)(B) of the Act). The changes in column 7 reflect the per case payment impact of moving from this baseline to a simulation incorporating the MGCRB decisions for FY 2004. These decisions affect hospitals' standardized amount and wage index area assignments.

By February 28 of each year, the MGCRB makes reclassification determinations that will be effective for the next fiscal year, which begins on October 1. The MGCRB may approve a hospital's reclassification request for the purpose of using another area's standardized amount, wage index value, or both. The proposed FY 2004 wage index values incorporate all of the MGCRB's reclassification decisions for FY 2004. The wage index values also reflect any decisions made by the CMS Administrator through the appeals and review process as of February 28, 2003. Additional changes that result from the Administrator's review of MGCRB decisions or a request by a hospital to withdraw its application will be reflected in the final rule for FY 2004.

The overall effect of geographic reclassification is required by section 1886(d)(8)(D) of the Act to be budget neutral. Therefore, we applied an adjustment of 1.003133 to ensure that the effects of reclassification are budget neutral. (See section II.A.4.b. of the Addendum to this proposed rule.)

As a group, rural hospitals benefit from geographic reclassification. Their payments would rise 2.6 percent in column 7. Payments to urban hospitals would decline 0.4 percent. Hospitals in other urban areas would experience an overall decrease in payments of 0.2 percent, while large urban hospitals would lose 0.4 percent. Among urban hospital groups (that is, bed size, census division, and special payment status), payments generally would decline.

A positive impact is evident among most of the rural hospital groups. The smallest increases among the rural census divisions are 0.4 and 1.5 percent for the Puerto Rico and Mountain regions, respectively. The largest increases are in the rural South Atlantic and West South Central regions. These regions would experience increases of 2.9 and 3.7 percent, respectively.

Among all the hospitals that were reclassified for FY 2004 (including hospitals that received wage index reclassifications in FY 2002 or FY 2003 that extend for 3 years), the MGCRB changes are estimated to provide a 4.3 percent increase in payments. Urban hospitals reclassified for FY 2004 are expected to receive an increase of 4.0 percent, while rural reclassified hospitals are expected to benefit from the MGCRB changes with a 4.6 percent increase in payments. Overall, among hospitals that were reclassified for purposes of the standardized amount only, a payment increase of 3.9 percent is expected, while those reclassified for purposes of the wage index only show a 4.3 percent increase in payments. Payments to urban and rural hospitals that did not reclassify are expected to decrease slightly due to the MGCRB changes, decreasing by 0.6 percent for urban hospitals and 0.5 percent for rural hospitals.

H. All Changes (Column 8)

Column 8 compares our estimate of payments per case, incorporating all changes reflected in this proposed rule for FY 2004 (including statutory changes), to our estimate of payments per case in FY 2003. This column includes all of the proposed policy changes. Because the reclassifications shown in column 7 do not reflect FY 2003 reclassifications, the impacts of FY 2004 reclassifications only affect the impacts from FY 2003 to FY 2004 if the reclassification impacts for any group of hospitals are different in FY 2004 compared to FY 2003.

Column 8 includes the effects of the 3.5 percent update to the standardized amounts and the hospital-specific rates for MDHs and SCHs. It also reflects the 0.4 percentage point difference between the projected outlier payments in FY 2003 (5.1 percent of total DRG payments) and the current estimate of the percentage of actual outlier payments in FY 2003 (5.5 percent), as described in the introduction to this Appendix and the Addendum to this proposed rule. As a result, payments are projected to be 0.4 percent higher in FY 2003 than originally estimated, resulting in a 0.4 percent smaller increase than would otherwise occur.

Section 213 of Public Law 106–554 provides that all SCHs may receive payment on the basis of their costs per case during their cost reporting period that began during 1996. For FY 2004, eligible SCHs receive 100 percent of their 1996 hospital-specific rate. The impact of this provision is modeled in column 8 as well.

The proposed expansion of the postacute care transfer policy also reduces payments by paying for discharges to postacute care in 19 additional DRGs as transfers. Because FY 2003 payments reflect full DRG payments for all cases in these 19 DRGs, there is a negative impact due to the proposed expansion of this policy compared to FY 2003. The net effect of this proposed policy, as displayed in column 2, is also seen in the lower overall percent change shown in column 8 comparing FY 2004 simulated payments per case to FY 2003 payments.

Another influence on the overall change reflected in this column is the requirement of section 402(b) of Public Law 108–7 that all hospitals receive the large urban standardized amount for all discharges occurring on or after April 1, 2003, and before October 1, 2003. For discharges occurring on or after October 1, 2003, the Federal rate will again be calculated based on separate average standardized amounts for hospitals in large urban areas and for hospitals in other areas. The effect is to reduce the percent increase reflected in the "all changes" column.

There might also be interactive effects among the various factors comprising the payment system that we are not able to isolate. For these reasons, the values in column 8 may not equal the sum of the changes described above.

The overall change in payments per case for hospitals in FY 2004 would increases by 2.5 percent. Hospitals in urban areas would experience a 2.5 percent increase in payments per case compared to FY 2003. Hospitals in rural areas, meanwhile, would experience a 3.1 percent payment increase. Hospitals in large urban areas would experience a 2.6 percent increase in payments.

Among urban census divisions, the largest payment increase was 3.5 percent in the Mountain region. Hospitals in the urban East South Central region and in Puerto Rico would experience an overall increase of 3.1 percent and 2.9 percent, respectively. The smallest increase would occur in the Middle Atlantic, with an increase of 1.7 percent. These below average increases are primarily due to the inflated outlier payments for some of these hospitals during FY 2003 compared to FY 2004. Among rural regions, the only hospital category that would experience overall payment decreases is Puerto Rico, where payments would decrease by 0.2 percent, largely due to the updated wage data. In the West North Central region, payments are projected to increase by 3.8 percent. West South Central and Pacific regions also would benefit, both with 3.5 percent increases.

Among special categories of rural hospitals, those hospitals receiving payment under the hospital-specific methodology (SCHs, MDHs, and SCH/RRCs) would experience payment increases of 3.9 percent, 3.3 percent, and 3.3 percent, respectively. This outcome is primarily related to the fact that, for hospitals receiving payments under the hospital-specific methodology, there are no outlier payments. Therefore, these hospitals would not experience negative payment impacts from the decline in outlier payments from FY 2003 to FY 2004 as would hospitals paid based on the national standardized amounts.

Hospitals that were reclassified for FY 2004 are estimated to receive a 3.0 percent increase in payments. Urban hospitals reclassified for FY 2004 are anticipated to receive an increase of 2.7 percent, while rural reclassified hospitals are expected to benefit from reclassification with a 3.2 percent increase in payments. Overall, among hospitals reclassified for purposes of the standardized amount, a payment increase of 5.8 percent is expected, while those hospitals reclassified for purposes of the wage index only would show an expected 2.4 percent increase in payments. Those hospitals located in rural counties but deemed to be urban under section 1886(d)(8)(B) of the Act are expected to receive an increase in payments of 1.8 percent.

TABLE II.—IMPACT ANALYSIS OF PROPOSED CHANGES FOR FY 2004 OPERATING PROSPECTIVE PAYMENT SYSTEM

[Payments per case]

	Number of hospitals (1)	Average FY 2003 payment per case [1] (2)	Average FY 2004 payment per case [1] (3)	All FY 2004 changes (4)
By Geographic Location:				
All hospitals	4,087	7,423	7,612	2.5
Urban hospitals	2,582	7,890	8,084	2.5
Large urban areas (populations over 1 million)	1,493	8,368	8,586	2.6
Other urban areas (populations of 1 million or fewer)	1,089	7,257	7,418	2.2
Rural hospitals	1,505	5,393	5,558	3.1
Bed Size (Urban):				
0–99 beds	528	5,479	5,625	2.7
100–199 beds	916	6,658	6,829	2.6
200–299 beds	507	7,610	7,788	2.3
300–499 beds	377	8,445	8,660	2.5
500 or more beds	156	10,027	10,261	2.3
Bed Size (Rural):				
0–49 beds	690	4,468	4,620	3.4
50–99 beds	477	5,037	5,204	3.3
100–149 beds	202	5,430	5,582	2.8
150–199 beds	70	5,780	5,937	2.7
200 or more beds	66	6,792	6,993	3.0
Urban by Region:				
New England	134	8,326	8,555	2.7
Middle Atlantic	394	8,916	9,064	1.7
South Atlantic	372	7,454	7,640	2.5
East North Central	429	7,416	7,604	2.5
East South Central	155	7,156	7,376	3.1

TABLE II.—IMPACT ANALYSIS OF PROPOSED CHANGES FOR FY 2004 OPERATING PROSPECTIVE PAYMENT SYSTEM—Continued

[Payments per case]

	Number of hospitals (1)	Average FY 2003 payment per case [1] (2)	Average FY 2004 payment per case [1] (3)	All FY 2004 changes (4)
West North Central	176	7,659	7,875	2.8
West South Central	329	7,343	7,523	2.5
Mountain	131	7,697	7,967	3.5
Pacific	416	9,598	9,840	2.5
Puerto Rico	46	3,329	3,426	2.9
Rural by Region:				
New England	38	6,841	7,067	3.3
Middle Atlantic	67	5,426	5,565	2.6
South Atlantic	221	5,486	5,614	2.3
East North Central	199	5,451	5,622	3.1
East South Central	232	4,922	5,071	3.0
West North Central	254	5,294	5,497	3.8
West South Central	273	4,711	4,875	3.5
Mountain	127	6,235	6,436	3.2
Pacific	89	7,151	7,399	3.5
Puerto Rico	5	2,553	2,548	−0.2
By Payment Classification:				
Urban hospitals	2,591	7,886	8,080	2.5
Large urban areas (populations over 1 million)	1,572	8,283	8,502	2.7
Other urban areas (populations of 1 million of fewer)	1,019	7,302	7,460	2.2
Rural areas	1,496	5,355	5,516	3.0
Teaching Status:				
Non-teaching	2,976	6,132	6,293	2.6
Fewer than 100 Residents	873	7,666	7,867	2.6
100 or more Residents	238	11,347	11,603	2.3
Urban DSH:				
Non-DSH	1,381	6,624	6,803	2.7
100 or more beds	1,398	8,502	8,706	2.4
Less than 100 beds	276	5,447	5,579	2.4
Rural DSH:				
Sole Community (SCH)	484	5,239	5,434	3.7
Referral Center (RRC)	161	6,159	6,331	2.8
Other Rural: 100 or more beds	75	4,696	4,785	1.9
Less than 100 beds	312	4,278	4,386	2.5
Urban teaching and DSH:				
Both teaching and DSH	771	9,333	9,562	2.5
Teaching and no DSH	273	7,618	7,814	2.6
No teaching and DSH	903	6,852	7,009	2.3
No teaching and no DSH	644	6,174	6,341	2.7
Rural Hospital Types:				
Non special status hospitals	521	4,445	4,544	2.2
RRC	149	5,851	6,003	2.6
SCH	494	5,630	5,849	3.9
Medicare-dependent hospitals (MDH)	254	4,168	4,305	3.3
SCH and RRC	78	6,757	6,982	3.3
Type of Ownership:				
Voluntary	2,435	7,532	7,722	2.5
Proprietary	699	7,087	7,272	2.6
Government	833	7,164	7,356	2.7
Unknown	120	7,431	7,565	1.8
Medicare Utilization as a Percent of Inpatient Days:				
0–25	304	9,997	10,294	3.0
25–50	1,557	8,448	8,657	2.5
50–65	1,663	6,450	6,613	2.5
Over 65	459	5,764	5,916	2.7
Unknown	104	6,720	6,921	3.0
Hospitals Reclassified by the Medicare Geographic Classification Review Board: FY 2004 Reclassifications:				
All Reclassified Hospitals	639	6,883	7,088	3.0
Standardized Amount Only	22	5,590	5,912	5.8
Wage Index Only	556	6,914	7,077	2.4
Both	33	6,081	6,269	3.1
All Nonreclassified Hospitals	3,442	7,542	7,734	2.5
All Urban Reclassified Hospitals	136	8,787	9,020	2.7
Urban Nonreclassified Hospitals	13	6,211	6,358	2.4
Standardized Amount Only	8	9,866	10,098	2.3
Wage Index Only	41	6,934	7,200	3.8
Both	2,415	7,853	8,045	2.4
All Reclassified Rural Hospitals	503	6,006	6,199	3.2
Standardized Amount Only	15	4,743	4,843	2.1
Wage Index Only	464	6,014	6,205	3.2
Both	24	6,242	6,482	3.8
Rural Nonreclassified Hospitals	999	4,624	4,756	2.8
Other Reclassified Hospitals (Section 1886(d)(8)(B))	34	4,950	5,039	1.8

[1] These payment amounts per case do not reflect any estimates of annual case-mix increase.

Table II presents the projected impact of the proposed changes for FY 2004 for urban and rural hospitals and for the different categories of hospitals shown in Table I. It compares the estimated payments per case for FY 2003 with the average estimated per case payments for FY 2004, as calculated under our models. Thus, this table presents, in terms of the average dollar amounts paid per discharge, the combined effects of the changes presented in Table I. The percentage changes shown in the last column of Table II equal the percentage changes in average payments from column 8 of Table I.

VII. Impact of Other Policy Changes

In addition to those proposed changes discussed above that we are able to model using our IPPS payment simulation model, we are proposing various other changes in this proposed rule. Generally, we have limited or no specific data available with which to estimate the impacts of these proposed changes. Our estimates of the likely impacts associated with these other proposed changes are discussed below.

A. Changes to Bed and Patient Day Counting Policies

1. Background

Under IPPS, both the IME and the DSH adjustments utilize statistics regarding the number of beds and patient days of a hospital to determine the level of the respective payment adjustment. For IME, hospitals receiving this adjustment want to minimize their numbers of beds in order to maximize their resident-to-bed ratio. For DSH, urban hospitals with 100 or more beds qualify for a higher payment adjustment, so some hospitals have an incentive to maximize their bed count to qualify for higher payments. Existing regulations specify that the number of beds is determined by counting the number of available bed days during the cost reporting period and dividing that number by the number of days in the cost reporting period.

2. Unoccupied Beds

Over the years, questions have arisen as to whether beds in rooms or entire units that are unoccupied for extended periods of time should continue to be counted on the basis that, if there would ever be a need, they could be put into use. In section IV.C. of the preamble of this proposed rule, we are proposing to base the determination of whether a bed is available upon whether the unit where the bed is located is staffed for patient care. If the bed is located in a unit that was staffed by nurses to provide patient care at any time during the 3 preceding months, all of the beds in the unit would be counted for purposes of determining available bed days during the current month. If no patient care were provided in that unit during the 3 preceding months, the beds in the unit would be excluded from the determination of available bed days during the current month.

This proposal is primarily intended to establish clear and consistent guidelines for hospitals and fiscal intermediaries to use when determining whether beds should be counted. We do not anticipate this proposal would have a significant impact on payments. In some cases, previously uncounted beds would now be counted, such as when a hospital is undertaking to remodel a unit and that unit is temporarily unavailable for patient occupancy. Under the proposed policy, if the remodeling is completed in less than 3 months and patients are again being treated in the unit, all of the beds in the unit would be counted as available for the entire year.

3. Nonacute Care Beds and Days

The proposed rule would clarify that days attributable to a nonacute care unit or ward, regardless of whether the unit or ward is separately certified by Medicare or is adjacent to a unit or ward used to provide an acute level of care, would not be included in the count of bed or patient days. In a recent decision by the Ninth Circuit Court of Appeals (*Alhambra Hosp.* v. *Thompson*, 259 F.3d 1017 (9th Cir. 2001)), the court found that our policy for counting patient days did not preclude a hospital from counting the patient days attributable to a nonacute care unit adjacent to an area of the hospital subject to the IPPS. Under this ruling, hospitals within the jurisdiction of the Ninth Circuit would be able to count those patient days.

Because the *Alhambra* decision was based on a regulatory interpretation, this proposed rule, when finalized, would supersede the *Alhambra* decision in the Ninth Circuit. We estimate that if all hospitals in the Ninth Circuit that could take advantage of this ruling were currently doing so, the impact of this provision of the proposed rule would be $184 million in reduced Medicare program payments to the affected hospitals in FY 2004 for DSH. This estimate reflects the impact of adding all days of non-Medicare certified nursing facilities to the count of inpatient days for hospitals in the nine States under the jurisdiction of the Ninth Circuit. For example, in Alaska, nursing facility days constitute 11 percent of total Medicaid inpatient days. If all of these nursing facility days are currently included in the Medicaid inpatient days count, we estimate this proposed provision would reduce Medicare DSH payments to Alaska's hospitals by $662,097.

We are unable to estimate the effect of this proposed provision on specific hospitals because we are not aware of specific hospitals that are presently including those inpatient days in their calculation of Medicaid days for purposes of determining their Medicare DSH percentage. However, we expect the impact on any particular hospital would be minimal (with no impact on the level of beneficiary services), because the days attributable to patients receiving these limited benefit programs should be only a small portion of the overall Medicaid days at any particular hospital. No other provider types would be affected. However, because our policy is to count patient days and beds consistently, inclusion of the days of postacute care units in the DSH calculation would lead to an offsetting negative payment impact for teaching hospitals. The inclusion of additional beds decreases the resident-to-bed ratios used to calculate the IME adjustments. Therefore, the actual potential impact on hospitals of this policy clarification is likely to be significantly less than $184 million.

4. Observation and Swing-Beds

We are proposing to revise our regulations to clarify that swing-bed and observation bed days are to be excluded from the count of bed and patient days. Because this certification reflects our current policy, despite the fact

that there has been some confusion and we have had adverse court decisions, we do not anticipate this clarification would have a significant impact on payments. We do not have data available that would enable us to identify those hospitals that have not been applying this policy and, therefore, would be required to change their policy. Consequently, we are unable to quantify the impacts of this clarification.

5. Labor, Delivery, Recovery, and Postpartum Beds and Days

Similarly, in the case of labor, delivery, recovery, and postpartum rooms, we would clarify that it is necessary to apportion the days and costs of a patient stay between the labor/delivery ancillary cost centers and the routine adults and pediatrics cost center on the basis of the percentage of time during the entire stay associated with these various services. Because this is a clarification of existing policy, we do not anticipate this proposed change would have a significant payment impact. However, we do not have data available that would enable us to identify those hospitals that have not been applying this policy and, therefore, would be required to change their policy. Consequently, we are unable to quantify the impacts of this clarification.

6. Days Associated With Demonstration Projects Under Section 1115 of the Act

Some States have demonstration projects that provide family planning or outpatient drug benefits that are limited benefits that do not include Medicaid coverage for inpatient services. In this proposed rule, we also would clarify that any hospital inpatient days attributed to a patient who is not eligible for Medicaid inpatient hospital benefits either under the approved State plan or through a section 1115 waiver must not be counted in the calculation of Medicaid days for purposes of determining a hospital's DSH percentage.

We estimated the potential impact of the proposed clarification to our policy of excluding days associated with inpatients who are eligible only for Medicaid outpatient benefits. We identified the percentage of individuals receiving only outpatient family planning benefits under Medicaid compared to all Medicaid-eligible beneficiaries (this is currently the only outpatient-only category for which we have numbers of eligible beneficiaries). These percentages were calculated on a statewide basis for each State with a family planning benefit. Based on these percentages, assuming family planning beneficiaries use inpatient services at the same rate as all other Medicaid beneficiaries, we estimated the amount of total Medicare DSH payments for each State that may be attributable to family planning beneficiaries' use of inpatient services.

For example, in Alabama, total Medicare DSH payments in 1999 (the latest year for which a complete database of cost reports from all hospitals is available) were $97.1 million. Because the percentage of family planning beneficiaries to total Medicaid eligible beneficiaries is 11.24 percent, we estimated 11.24 percent of $97.1 million in Medicare DSH payments, or $10.9 million, is the maximum amount of Medicare DSH that may currently be attributable to the inclusion of inpatient days for individuals who are only eligible for outpatient family planning Medicaid benefits. Based on this analysis, we have identified the potential impact upon hospitals to be as much as $290 million in reduced DSH payments from the Medicare program to those hospitals in FY 2004. Of this amount, $170 million is attributable to California. This amount is not an impact on State programs nor does it require States to spend any additional money. We also note that we are not aware of any specific hospitals that are including inpatient days attributable to individuals with no inpatient Medicaid benefits. Therefore, this estimate reflects the maximum potential impact, but the actual impact is very likely to be much less.

We are unable to estimate the effect of this clarification on specific hospitals because we are not aware of specific hospitals that are presently including those inpatient days in their calculation of Medicaid days for purposes of determining their Medicare DSH percentage. However, we expect the impact on any particular hospital would be minimal (with no impact on the level of beneficiary services), because the days attributable to patients receiving these limited benefit programs should be only a small portion of the overall Medicaid days at any particular hospital. No other provider types would be affected.

7. Dual-Eligible Patient Days

We are proposing to change our policy for counting days for patients who are Medicare beneficiaries and also eligible for Medicaid, to begin to count in the Medicaid fraction of the DSH patient percentage the patient days of these dual-eligible Medicare beneficiaries whose Medicare coverage has expired. Our current policy regarding dual-eligible patient days is they are counted in the Medicare fraction and excluded from the Medicaid fraction, even if the patient has no Medicare Part A coverage or coverage has been exhausted. However, we recognize it is often difficult for fiscal intermediaries to differentiate the days for dual-eligible patients whose Part A coverage has been exhausted. We believe the impact of this proposed change would be minimal, both because situations where dual-eligible patients exhaust their Medicare benefits occur infrequently, and because, due to the administrative difficulty separately identifying these days, in many cases they are already included in the hospital's Medicaid fraction. Accordingly, we do not have data available to allow us to quantify the impact of this proposed change precisely.

8. Medicare+Choice (M+C) Days

We have received questions whether patients enrolled in a Medicare+Choice (M+C) Plan should be counted in the Medicare fraction or the Medicaid fraction of the DSH patient percentage calculation. The questions stem from whether M+C plan enrollees are entitled to Medicare Part A because M+C plans are administered through Medicare Part C. We are proposing to clarify that once a beneficiary elects Medicare Part C, those patient days attributable to the beneficiary should not be included in the Medicare fraction of the DSH patient percentage. These patient days should be included in the count of total patient days in the Medicaid fraction (the denominator), and the patient's days for an M+C beneficiary who is also eligible for Medicaid would be included in the numerator of the Medicaid fraction.

We do not have data readily available to assess the impacts of this proposed change. In particular, it appears likely that there is some variation in how these days are currently being handled from one hospital and fiscal intermediary to the next. Nonetheless, we believe there should not be a major impact associated with this proposed change.

B. Costs of Approved Nursing and Allied Health Education Activities

1. Continuing Education

In section IV.E. of the preamble of this proposed rule, we are proposing to clarify further the distinction between continuing education, which is not eligible for pass-through payment, and approved educational programs, which are eligible for pass-through payment. An approved program that qualifies for pass-through payment is generally a program of long duration designed to develop trained practitioners in a nursing or allied health discipline, such as professional nursing, in which the individual learns "value-added" skills that enable him or her to work in a particular capacity upon completion of the program. Such a program is in contrast to a continuing education program in which a practitioner, such as a registered nurse, receives training in a specialized skill or a new technology. While such training is undoubtedly valuable in enabling the nurse to treat patients with special needs, the nurse, upon completion of the program, continues to function as a registered nurse, albeit one with an additional skill. We are proposing to clarify our policy concerning not allowing pass-through payment for continuing education because it has come to our attention that certain programs, which in our view constitute continuing education, such as pharmacy or clinical pastoral education, are inappropriately receiving pass-through payment.

To the extent that Medicare would no longer pay for such programs as pharmacy and clinical pastoral education, Medicare payments would be reduced. We believe that these two programs comprise a small fraction of the approximately $230 million that are paid for all nursing and allied health education programs under Medicare.

2. Nonprovider-Operated Nursing and Allied Health Education Programs With Wholly Owned Subsidiary Educational Institutions

As discussed in section IV.E.3. of this proposed rule, we are proposing that Medicare would not recoup reasonable cost payment from hospitals that have received pass-through payment for portions of cost reporting periods occurring on or before October 1, 2003 (the effective date of finalizing this proposed rule) for costs of nursing or allied health education program(s) where the program(s) had originally been operated by the hospital, and then operation of program(s) had been transferred by the hospital to a wholly owned subsidiary educational institution in order to meet accreditation standards prior to October 1, 2003, and where the hospital had continued to incur the costs of both the classroom and clinical training portions of the programs while the program(s) were operated by the educational institution. We estimate that the costs to the Medicare program of this proposal would be approximately $10 to $20 million. We do not believe many hospitals fit the criteria described above of previously receiving Medicare payment for direct operation of nursing or allied health education program(s) and then transferring operation of the program(s) to a wholly owned subsidiary educational institution, all the while incurring the classroom and clinical training costs of the program(s).

In addition, we are also proposing that, for portions of cost reporting periods beginning on or after October 1, 2003, a hospital that meets the criteria described above may continue to receive reasonable cost payments for clinical training costs incurred by the hospital for the nursing and allied health education program(s) that were operated by the hospital prior to the date the hospital transferred operation of the program(s) to its wholly owned subsidiary educational institution (and ceased to be a provider-operated program). We are further proposing that, with respect to classroom costs, only those classroom costs incurred by the hospital for the courses that were paid by Medicare on a reasonable cost basis and included in the hospital's provider-operated program(s) could continue to be reimbursed on a reasonable cost basis. We estimate the costs to the Medicare program for this proposal would be $1 to $2 million per year.

C. Prohibition Against Counting Residents Where Other Entities Have Previously Incurred the Training Costs

As we explain in section IV.F.2. of the preamble of this proposed rule, under section 1886(h) of the Act, hospitals may count the time that residents spend training in nonhospital sites if they meet certain conditions, including incurring "all or substantially all" of the costs of training at the nonhospital site. Legislative history indicates that the purpose of this provision is to encourage hospitals to provide more training outside the traditional hospital environment.

It has come to our attention that hospitals have been incurring the costs of and receiving direct GME and IME payment for residency training that had previously been occurring in nonhospital settings, without the financial support of the hospitals. We believe that where no new or additional training is provided in these nonhospital settings, the receipt of Medicare payment in such cases is contrary to Congressional intent and is, therefore, inappropriate. In addition, it violates Medicare's anti-redistribution principle, which states that Medicare will not share in the costs of educational activities of a hospital that represent a redistribution of costs from the community to the hospital. Accordingly, we are proposing to revise our policy concerning counting residents to ensure that Medicare IME and direct GME payments are not made to hospitals for training that had already been in place in the absence of the hospital's financial support. We are proposing that effective October 1, 2003, in order for a hospital to receive IME and direct GME payment, the hospital must have been continuously incurring the direct GME costs of residents training in a particular program since the date the resident first began training in the program in order for the hospital to count the FTE residents.

By prohibiting payment for residency training that had been previously supported by nonhospital institutions, this proposal would reduce the amount of direct GME and IME payments received by hospitals. Although we cannot estimate the impact on programs nationally, we are aware that two hospitals in New York were receiving over $10 million annually for payments for dental residents training in nonhospital sites (including a site in Hawaii). Another hospital in Boston was receiving over $2 million annually for dental residents training at a dental school.

D. Rural Track GME Training Programs

1. Reduction in the Time Required for Training Residents in a Rural Area

As explained in section IV.F.3 of the preamble of this proposed rule, under existing regulations, if an urban hospital rotates residents to a separately accredited rural track program in a rural area for two-thirds of the duration of the training program, the urban hospital may receive an increase in its FTE cap to reflect the time those residents train at the urban hospital. When we first implemented these regulations, we did so based on our understanding that the Accreditation Council for Graduate Medical Education (ACGME) requires that at least two-thirds of the duration of the program be spent in a rural area. However, it has come to our attention that, while the ACGME generally follows a one-third/two-thirds model for accreditation, the rural training requirement is actually somewhat less than two-thirds of the duration of the program. Therefore, we are proposing to revise the regulations to state that if an urban hospital rotates residents to a separately accredited rural track program in a rural area for more than 50 percent of the duration of the training program, the urban hospital may receive an increase in its FTE cap to reflect the time those residents train at the urban hospital. We estimate that this proposal would only slightly increase Medicare payments for IME and direct GME costs.

2. Inclusion of Rural Track FTE Residents in the Rolling Average Calculation

As explained in section IV.F.4 of the preamble of this proposed rule, when we first issued the regulations concerning residents training in a rural track program, we inadvertently did not specify in regulations that these residents would be included in the hospital's rolling average count of FTE residents used for computing GME payment. We are proposing to make this technical clarification to the regulations. We believe that this proposed provision would not have a budget impact because it is a clarification of existing policy.

VIII. Impact of Proposed Changes in the Capital PPS

A. General Considerations

Fiscal year 2001 was the last year of the 10-year transition period established to phase in the PPS for hospital capital-related costs. During the transition period, hospitals were paid under one of two payment methodologies: Fully prospective or hold harmless. Under the fully prospective methodology, hospitals were paid a blend of the Federal rate and their hospital-specific rate (see § 412.340). Under the hold-harmless methodology, unless a hospital elected payment based on 100 percent of the Federal rate, hospitals were paid 85 percent of reasonable costs for old capital costs (100 percent for SCHs) plus an amount for new capital costs based on a proportion of the Federal rate (see § 412.344). As we state in section V. of the preamble of this proposed rule, with the 10-year transition period ending with hospital cost reporting periods beginning on or after October 1, 2001 (FY 2002), beginning in FY 2004 capital prospective payment system payments for most hospitals are based solely on the Federal rate. Therefore, we no longer include information on obligated capital costs or projections of old capital costs and new capital costs, which were factors needed to calculate payments during the transition period, for our impact analysis.

In accordance with § 412.312, the basic methodology for determining a capital prospective payment system payment is:

(Standard Federal Rate) × (DRG weight) × (Geographic Adjustment Factor (GAF)) × (Large Urban Add-on, if applicable) × (COLA adjustment for hospitals located in Alaska and Hawaii) × (1 + Disproportionate Share (DSH) Adjustment Factor + Indirect Medical Education (IME) Adjustment Factor, if applicable).

In addition, hospitals may also receive outlier payments for those cases that qualify under the threshold established for each fiscal year.

The data used in developing the impact analysis presented below are taken from the December 2002 update of the FY 2002 MedPAR file and the December 2002 update of the Provider Specific File that is used for payment purposes. Although the analyses of the changes to the capital prospective payment system do not incorporate cost data, we used the December 2002 update of the most recently available hospital cost report data (FY 2000) to categorize hospitals. Our analysis has several qualifications. First, we do not make adjustments for behavioral changes that hospitals may adopt in response to policy changes. Second, due to the interdependent nature of the prospective payment system, it is very difficult to precisely quantify the impact associated with each proposed change. Third, we draw upon various sources for the data used to categorize hospitals in the tables. In some cases (for instance, the number of beds), there is a fair degree of variation in the data from different sources. We have attempted to construct these variables with the best available sources overall. However, for

individual hospitals, some miscategorizations are possible.

Using cases from the December 2002 update of the FY 2002 MedPAR file, we simulated payments under the capital prospective payment system for FY 2003 and FY 2004 for a comparison of total payments per case. Any short-term, acute care hospitals not paid under the general hospital inpatient prospective payment systems (Indian Health Service Hospitals and hospitals in Maryland) are excluded from the simulations.

As we explain in section III.A.4. of the Addendum of this proposed rule, payments will no longer be made under the regular exceptions provision under §§ 412.348(b) through (e). Therefore, we are no longer using the actuarial capital cost model (described in Appendix B of August 1, 2001 final rule (66 FR 40099)). We modeled payments for each hospital by multiplying the Federal rate by the GAF and the hospital's case-mix. We then added estimated payments for indirect medical education, disproportionate share, large urban add-on, and outliers, if applicable. For purposes of this impact analysis, the model includes the following assumptions:

- We estimate that the Medicare case-mix index would increase by 1.01505 percent in FY 2003 and would increase by 1.02010 percent in FY 2004.
- We estimate that the Medicare discharges will be 14,288,000 in FY 2003 and 14,507,000 in FY 2004 for a 1.5 percent increase from FY 2003 to FY 2004.
- The Federal capital rate was updated beginning in FY 1996 by an analytical framework that considers changes in the prices associated with capital-related costs and adjustments to account for forecast error, changes in the case-mix index, allowable changes in intensity, and other factors. The proposed FY 2004 update is 0.7 percent (*see* section III.A.1.a. of the Addendum to this proposed rule).
- In addition to the proposed FY 2004 update factor, the proposed FY 2004 Federal rate was calculated based on a GAF/DRG budget neutrality factor of 1.0038, an outlier adjustment factor of 0.9455, and a (special) exceptions adjustment factor of 0.9995.

2. Results

In the past, in this impact section we presented the redistributive effects that were expected to occur between "hold-harmless" hospitals and "fully prospective" hospitals and a cross-sectional summary of hospital groupings by the capital prospective payment system transition period payment methodology. We are no longer including this information since all hospitals (except new hospitals under § 412.324(b) and under § 412.304(c)(2)) are paid 100 percent of the Federal rate in FY 2004.

We used the actuarial model described above to estimate the potential impact of our proposed changes for FY 2004 on total capital payments per case, using a universe of 3,922 hospitals. As described above, the individual hospital payment parameters are taken from the best available data, including the December 2002 update of the FY 2002 MedPAR file, the December 2002 update to the Provider-Specific File, and the most recent cost report data from the December 2002 update of HCRIS. In Table III, we present a comparison of total payments per case for FY 2003 compared to FY 2004 based on the proposed FY 2004 payment policies. Column 2 shows estimates of payments per case under our model for FY 2003. Column 3 shows estimates of payments per case under our model for FY 2004. Column 4 shows the total percentage change in payments from FY 2003 to FY 2004. The change represented in Column 4 includes the 0.7 percent update to the Federal rate, a 1.02010 percent increase in case-mix, changes in the adjustments to the Federal rate (for example, the effect of the new hospital wage index on the geographic adjustment factor), and reclassifications by the MGCRB, as well as changes in special exception payments. The comparisons are provided by: (1) Geographic location; (2) region; and (3) payment classification.

The simulation results show that, on average, capital payments per case can be expected to increase 1.0 percent in FY 2004. Our comparison by geographic location shows an overall increase in payments to hospitals in all areas. This comparison also shows that urban and rural hospitals will experience different rates of increase in capital payments per case (0.9 percent and 1.5 percent, respectively). This difference is due to a projection that rural hospitals will experience a larger increase in the GAF due to reclassifications from rural to urban and a slightly larger increase in DSH and IME payments from FY 2003 to FY 2004 compared to urban hospitals.

All regions are estimated to receive an increase in total capital payments per case. Changes by region vary from a minimum increase of 0.4 percent (Middle Atlantic urban region) to a maximum increase of 2.1 percent (New England rural region). Hospitals located in Puerto Rico are expected to experience an increase in total capital payments per case of 1.3 percent.

By type of ownership, government hospitals are projected to have the largest rate of increase of total payment changes (1.2 percent). Similarly, payments to voluntary hospitals will increase 1.0 percent, while payments to proprietary hospitals will increase 0.9 percent.

Section 1886(d)(10) of the Act established the MGCRB. Hospitals may apply for reclassification for purposes of the standardized amount, wage index, or both. Although the Federal capital rate is not affected, a hospital's geographic classification for purposes of the operating standardized amount does affect a hospital's capital payments as a result of the large urban adjustment factor and the disproportionate share adjustment for urban hospitals with 100 or more beds. Reclassification for wage index purposes also affects the geographic adjustment factor, since that factor is constructed from the hospital wage index.

To present the effects of the hospitals being reclassified for FY 2004 compared to the effects of reclassification for FY 2003, we show the average payment percentage increase for hospitals reclassified in each fiscal year and in total. The reclassified groups are compared to all other nonreclassified hospitals. These categories are further identified by urban and rural designation.

Hospitals reclassified for FY 2004 as a whole are projected to experience a 1.7 percent increase in payments. Payments to nonreclassified hospitals would increase almost half as much (0.9 percent) as reclassified hospitals, overall. Hospitals reclassified during both FY 2003 and FY 2004 are projected to receive an increase in payments of 1.4 percent. Hospitals reclassified during FY 2004 only are projected to receive an increase in payments of 4.9 percent. This increase is primarily due to changes in the GAF (wage index).

TABLE III.—COMPARISON OF TOTAL PAYMENTS PER CASE

[FY 2003 payments compared to proposed FY 2004 payments]

	Number of hospitals	Average FY 2003 payments/case	Average FY 2004 payments/case	Change
By Geographic Location:				
All hospitals	3,922	706	713	1.0
Large urban areas (populations over 1 million)	1,420	808	815	0.9
Other urban areas (populations of 1 million of fewer)	1,041	693	700	1.0
Rural areas	1,461	476	483	1.5
Urban hospitals	2,461	758	765	0.9
0–99 beds	549	529	535	1.0
100–199 beds	884	643	649	1.0
200–299 beds	501	728	735	0.9
300–499 beds	373	809	817	1.1
500 or more beds	154	959	967	0.8
Rural hospitals	1,461	476	483	1.5
0–49 beds	659	390	396	1.6
50–99 beds	469	440	446	1.4
100–149 beds	198	483	488	1.2
150–199 beds	70	524	530	1.3
200 or more beds	55	594	606	2.0
By Region:				
Urban by Region	2,461	758	765	0.9
New England	131	808	820	1.5
Middle Atlantic	386	851	854	0.4
South Atlantic	356	724	729	0.8
East North Central	409	726	734	1.0
East South Central	152	684	695	1.6
West North Central	168	732	741	1.3
West South Central	303	711	715	0.6
Mountain	119	732	744	1.6
Pacific	393	893	904	1.2
Puerto Rico	44	317	322	1.3
Rural by Region	1,461	476	483	1.5
New England	38	591	603	2.1
Middle Atlantic	66	500	506	1.0
South Atlantic	218	490	496	1.2
East North Central	195	490	497	1.6
East South Central	229	435	443	1.6
West North Central	248	468	477	1.9
West South Central	263	426	432	1.5
Mountain	117	506	511	0.9
Pacific	82	564	574	1.7
By Payment Classification:				
All hospitals	3,922	706	713	1.0
Large urban areas (populations over 1 million)	1,497	799	807	1.0
Other urban areas (populations of 1 million of fewer)	972	697	703	0.9
Rural areas	1,453	474	479	1.2
Teaching Status:.				
Non-teaching	2,829	580	586	1.0
Fewer than 100 Residents	857	733	741	1.1
100 or more Residents	236	1,074	1,083	0.8
Urban DSH:				
100 or more beds	1,373	798	806	1.0
Less than 100 beds	258	526	531	0.7
Rural DSH:				
Sole Community (SCH/EACH)	476	417	423	1.5
Referral Center (RRC/EACH)	161	546	553	1.2
Other Rural:				
100 or more beds	72	447	448	0.3
Less than 100 beds	301	405	410	1.3
Urban teaching and DSH:				
Both teaching and DSH	762	876	885	1.0
Teaching and no DSH	264	766	774	1.0
No teaching and DSH	869	644	650	0.8
No teaching and no DSH	574	627	634	1.1
Rural Hospital Types:				
Non special status hospitals	495	426	430	0.8
RRC/EACH	148	554	561	1.2
SCH/EACH	482	437	444	1.4
Medicare-dependent hospitals (MDH)	250	394	400	1.6
SCH, RRC and EACH	78	540	546	1.2
Hospitals Reclassified by the Medicare Geographic Classification Review Board:				
Reclassification Status During FY2003 and FY2004:				
Reclassified During Both FY2003 and FY2004	562	621	629	1.4
Reclassified During FY2004 Only	68	600	630	4.9
Reclassified During FY2003 Only	43	601	575	−4.2
FY2004 Reclassifications:				
All Reclassified Hospitals	630	619	630	1.7
All Nonreclassified Hospitals	3,258	723	729	0.9
All Urban Reclassified Hospitals	131	815	828	1.6
Urban Nonreclassified Hospitals	2,299	756	763	0.9
All Reclassified Rural Hospitals	499	528	537	1.8
Rural Nonreclassified Hospitals	959	410	414	0.9

TABLE III.—COMPARISON OF TOTAL PAYMENTS PER CASE—Continued

[FY 2003 payments compared to proposed FY 2004 payments]

TABLE III.—COMPARISON OF TOTAL PAYMENTS PER CASE—Continued
[FY 2003 payments compared to proposed FY 2004 payments]

	Number of hospitals	Average FY 2003 payments/case	Average FY 2004 payments/case	Change
Other Reclassified Hospitals (Section 1886(D)(8)(B))	34	486	472	−2.8
Type of Ownership:				
Voluntary	2,404	719	726	1.0
Proprietary	674	691	697	0.9
Government	813	645	552	1.2
Medicare Utilization as a Percent of Inpatient Days:				
0–25	291	901	914	1.4
25–50	1,529	804	812	0.9
50–65	1,645	615	621	1.0
Over 65	446	556	561	1.0

Appendix B: Recommendation of Update Factors for Operating Cost Rates of Payment for Inpatient Hospital Services

I. Background

Section 1886(e)(4)(A) of the Act requires that the Secretary, taking into consideration the recommendations of the Medicare Payment Advisory Commission (MedPAC), recommend update factors for inpatient hospital services for each fiscal year that take into account the amounts necessary for the efficient and effective delivery of medically appropriate and necessary care of high quality. Under section 1886(e)(5) of the Act, we are required to publish the proposed update factors recommended under section 1886(e)(4) of the Act in this proposed rule, and the final update factors recommended by the Secretary in the final rule. Accordingly, this Appendix provides the recommendations of appropriate update factors for the IPPS standardized amounts, the hospital-specific rates for SCHs and MDHs, and the rate-of-increase limits for hospitals and hospitals units excluded from the IPPS. We also discuss our update framework and respond to MedPAC's recommendations concerning the update factors.

II. Secretary's Recommendations

Section 1886(b)(3)(B)(i)(XIX) of the Act sets the FY 2004 percentage increase in the operating cost standardized amounts equal to the rate of increase in the hospital market basket for IPPS hospitals in all areas. Based on the Office of the Actuary's first quarter 2003 forecast of the FY 2004 market basket increase, the proposed update to the standardized amounts is 3.5 percent (that is, the market basket rate of increase) for hospitals in both large urban and other areas.

Section 1886(b)(3)(B)(iv) of the Act sets the FY 2004 percentage increase in the hospital-specific rates applicable to SCHs and MDHs equal to the rate set forth in section 1886(b)(3)(B)(i) of the Act (that is, the same update factor as all other hospitals subject to the IPPS, or the rate of increase in the market basket). Therefore, the proposed update to the hospital-specific rate applicable to SCHs and MDHs is also 3.5 percent.

Under section 1886(b)(3)(B)(ii) of the Act, the FY 2004 percentage increase in the rate-of-increase limits for hospitals and hospital units excluded from the IPPS (psychiatric hospitals and units, rehabilitation hospitals and units (now referred to as IRFs), LTCHs, cancer hospitals, and children's hospitals) is the market basket percentage increase. In the past, hospitals and hospital units excluded from the IPPS have been paid based on their reasonable costs subject to limits as established by the Tax Equity and Fiscal Responsibility Act of 1982 (TEFRA). However, some of these categories of excluded hospitals and units have begun to be paid under prospective payment systems. Hospitals and units that receive any hospital-specific payments will have those payments subject to TEFRA limits for FY 2004. For these hospitals, the proposed update is the percentage increase in the excluded hospital market basket (currently estimated at 3.5 percent).

IRFs are paid under the IRF PPS for cost reporting periods beginning on or after January 1, 2002. For cost reporting periods beginning during FY 2004, the Federal prospective payment for IRFs is based on 100 percent of the adjusted Federal IRF prospective payment amount, updated annually.

Effective for cost reporting periods beginning during FY 2003, LTCHs are paid under the LTCH PPS under which they receive payment based on a 5-year transition period (see the August 30, 2002 final rule (67 FR 55954)). An LTCH may elect to be paid on 100 percent of the Federal prospective rate at the start of any of its cost reporting periods during the 5-year transition period. For purposes of the update factor, the portion of the LTCH PPS transition blend payment based on reasonable costs for inpatient operating services is determined by updating the LTCH's TEFRA limit by the current estimate of the excluded hospital market basket (or 3.5 percent).

III. Update Framework

Consistent with current law, we are proposing an update recommendation equal to the full market basket percentage increase for the IPPS operating cost standardized amounts for FY 2004. We also have analyzed changes in hospital productivity, scientific and technological advances, practice pattern changes, changes in case-mix, the effect of reclassification on recalibration, and forecast error correction. A discussion of this analysis is below.

A. Productivity

Service level labor productivity is defined as the ratio of total service output to full-time equivalent employees (FTEs). While we recognize that productivity is a function of many variables (for example, labor, nonlabor material, and capital inputs), we use the portion of productivity attributed to direct labor since this update framework applies to operating payment. To recognize that we are apportioning the short-run output changes to the labor input and not considering the nonlabor inputs, we weight our productivity measure by the share of direct labor services in the market basket to determine the expected effect on cost per case.

Our recommendation for the service productivity component is based on historical trends in productivity and total output for both the hospital industry and the general economy, and projected levels of future hospital service output. MedPAC's predecessor, the Prospective Payment Assessment Commission (ProPAC), estimated cumulative service productivity growth to be 4.9 percent from 1985 through 1989 or 1.2 percent annually. At the same time, ProPAC estimated total output growth at 3.4 percent annually, implying a ratio of service productivity growth to output growth of 0.35.

Absent a productivity measure specific to Medicare patients, we examined productivity (output per hour) and output (gross domestic product) for the economy. Depending on the exact time period, annual changes in productivity range from 0.30 to 0.35 percent of the change in output (that is, a 1.0 percent increase in output would be correlated with a 0.30 percent to a 0.35 percent change in output per hour).

Under our framework, the recommended update is based in part on expected productivity—that is, projected service output during the year, multiplied by the historical ratio of service productivity to total service output, multiplied by the share of direct labor in total operating inputs, as calculated in the hospital market basket. This method estimates an expected productivity improvement in the same proportion to expected total service growth that has occurred in the past and assumes that, at a minimum, growth in FTEs changes proportionally to the growth in total service output. Thus, the recommendation allows for unit productivity to be smaller than the historical averages in years during which output growth is relatively low and larger in years during which output growth is higher than the historical averages. Based on the above estimates from both the hospital industry and the economy, we have chosen to employ the range of ratios of productivity change to output change of 0.30 to 0.35.

The expected change in total hospital service output is the product of projected growth in total admissions (adjusted for outpatient usage), projected real case-mix growth, expected quality-enhancing intensity growth, and net of expected decline in intensity due to reduction of cost-ineffective practice. Case-mix growth and intensity numbers for Medicare are used as proxies for those of the total hospital, since case-mix increases (used in the intensity measure as well) are unavailable for non-Medicare patients. Normally, the expected FY 2004 hospital output growth would be simply the sum of the expected change in intensity (1.0 percent), projected admissions change (1.6 percent), and projected real case-mix growth (1.0 percent—a definition of real case mix growth appears below), or 3.6 percent. However, as discussed below and in relation to the proposed capital update, we believe our intensity estimate is skewed by hospitals' charge data. Therefore, we are including only the projected changes in admissions and real case-mix in our calculation of productivity gains. This results in an estimate of 2.6 percent.

The share of direct labor services in the market basket (consisting of wages, salaries, and employee benefits) is 61.6 percent. Multiplying the expected change in total hospital service output (2.6 percent) by the ratio of historical service productivity change to total service growth of 0.30 to 0.35 and by the direct labor share percentage of 61.6 provides our productivity standard of -0.6 to -0.5 percent. Because productivity gains hold down the rate of increase in hospitals' costs, this factor is applied as a negative offset to the market basket increase.

B. Intensity

The intensity factor for the operating update framework reflects how hospital services are utilized to produce the final product, that is, the discharge. This component accounts for changes in the use of quality-enhancing services, changes in within-DRG severity, and expected modification of practice patterns to remove non-cost-effective services. Under the capital IPPS framework, we also make an adjustment for changes in intensity. We calculate this adjustment using the same methodology and data that are used in the framework for the operating IPPS.

We calculate case-mix constant intensity as the change in total Medicare charges per admission, adjusted for price level changes (the Consumer Price Index (CPI) for hospital and related services) and changes in real case-mix. The use of total charges in the calculation of the intensity factor makes it a total intensity factor, that is, charges for capital services are already built into the calculation of the factor.

However, as discussed above in relation to the proposed capital update, because our intensity calculation relies heavily upon charge data and we believe that this charge data may be inappropriately inflated due to manipulation of charges to maximize outlier payments, we are proposing a 0.0 percent adjustment for intensity in FY 2004. In past fiscal years (1996 through 2000) when we found intensity to be declining, we believed a zero (rather then negative) intensity adjustment was appropriate. Similarly, we believe that it is appropriate to propose a zero intensity adjustment for FY 2004 until we determine that any increase in charges can be tied to intensity, rather than to attempts to maximize outlier payments.

C. Change in Case-Mix

Our analysis takes into account projected changes in real case-mix, less the changes attributable to improved coding practices. We define real case-mix change as actual changes in the mix (and resource requirements) of Medicare patients, as opposed to changes in coding behavior that result in assignment of cases to higher-weighted DRGs but do not reflect greater resource requirements. For our FY 2004 update recommendation, we are projecting a 1.0 percent increase in the case-mix index. We do not believe changes in coding behavior will impact the overall case-mix in FY 2004. As such, for FY 2004, we estimate that real case-mix is equal to projected change in case-mix. Thus, we are recommending a 0.0 percent adjustment for case-mix.

D. Effect of FY 2002 DRG Reclassification and Recalibration

We estimate that DRG reclassification and recalibration for FY 2002 (GROUPER version 19.0) resulted in a 0 percent change in the case-mix index when compared with the case-mix index that would have resulted if we had not made the reclassification and recalibration changes to the GROUPER (version 18.0). Therefore, we are recommending a 0 percent adjustment for the effect of FY 2002 DRG reclassification and recalibration.

E. Forecast Error Correction

We make a forecast error correction if the actual market basket changes differ from the forecasted market basket by 0.25 percentage points or more. There is a 2-year lag between the forecast and the measurement of forecast error. The estimated market basket percentage increase used to update the FY 2002 payment rates was 3.3 percent. Our most recent data indicates the actual FY 2002 increase was 2.9 percent. The resulting forecast error in the FY 2002 market basket rate of increase is (-0.4) percentage points. This overestimate was due largely to a lower-than-expected increase in energy costs that impacted natural gas and chemical prices. This follows consecutive years where the market basket was under-forecast by 0.7 percentage points each year.

The following is a summary of the update range supported by our analyses:

HHS'S FY 2004 UPDATE RECOMMENDATION

Market basket	MB
Policy Adjustment Factors:	
Productivity	−0.6 to −0.5
Intensity	0.0
Subtotal	−0.6 to −0.5
Case-Mix Adjustment Factors:	
Projected Case-Mix Change	1.0
Real Across DRG Change	−1.0
Subtotal	0.0
Effect of FY 2002 DRG Reclassification and Recalibration	0.0
Forecast Error Correction	−0.4
Total Recommendation Update	−1.0 to −0.9

IV. MedPAC Recommendations for Assessing Payment Adequacy and Updating Payments in Traditional Medicare

In the past, MedPAC recommended specific adjustments to its update recommendation for each of the factors discussed under section III. of this Appendix. In its March 2003 Report to Congress, MedPAC assesses the adequacy of current payments and costs and the relationship between payments and an appropriate cost base. MedPAC stresses that the issue at hand is whether payments are too high or too low, and not how they became such.

In the first portion of MedPAC's analysis on the assessment of payment adequacy, the Commission reviews the relationship between costs and payments (typically represented as a margin). Based on the latest cost report data available, MedPAC estimated an inpatient Medicare operating margin for

FY 2000 of 10.8 percent (down from 12.3 percent for FY 1999).

MedPAC also projects margins through FY 2003, making certain assumptions about changes in payments and costs. On the payment side, MedPAC applied the annual payment updates (as specified by law for FYs 2001 through 2003) and then modeled the effects of other policy changes that have affected the level of payments. On the cost side, MedPAC estimated the increases in cost per unit of output over the same time period at the rate of inflation as measured by the applicable market basket index generated by CMS adjusted downward, anticipating improvements in productivity. While nó specific Medicare inpatient margin is identified for a calendar year beyond 2000, MedPAC projected an overall Medicare margin for FY 2003 of 3.9 percent (page 41). The FY 2000 overall Medicare margin, as estimated by MedPAC, was 5.0 percent.

In addition to considering the relationship between estimated payments and costs, MedPAC also considered the following three factors to assess whether current payments are adequate (page 42):

- Changes in access to or quality of care;
- Changes in the volume of services or number of providers; and
- Change in providers' access to capital.

MedPAC's assessment of aggregate Medicare payments finds that payments were at least adequate as of FY 2003.

MedPAC's recommendation related to updating payments under the IPPS is that the Congress should increase the payment rates for the IPPS by the rate of increase in the hospital market basket, less 0.4 percent, for FY 2004. MedPAC focuses on the operating update exclusively because operating costs account for about 92 percent of total hospital costs and because the operating update is of most interest to Congress. Based on the current market basket estimate for FY 2003 of 3.5 percent, this update would increase Medicare inpatient payments to hospitals covered by IPPS by 3.1 percent.

Response: As described above, we are recommending a full market basket update for FY 2004 consistent with current law. We believe this will appropriately balance incentives for hospitals to operate efficiently with the need to provide sufficient payments to maintain access to quality care for Medicare beneficiaries.

Because the operating and capital prospective payment systems remain separate, CMS continues to use separate updates for operating and capital payments. The proposed update to the capital payment rate is discussed in section III. of the Addendum to this proposed rule.

[FR Doc. 03–11966 Filed 5–9–03; 3:51 pm]

BILLING CODE 4120–03–P

Federal Register

Monday,
May 19, 2003

Part III

The President

Notice of May 16, 2003—Continuation of the National Emergency With Respect to Burma

Federal Register
Vol. 68, No. 96
Monday, May 19, 2003

Presidential Documents

Title 3—

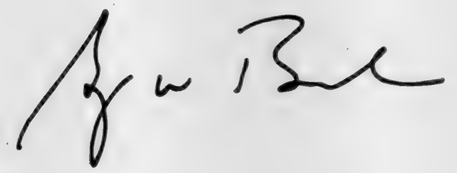
The President

Notice of May 16, 2003

Continuation of the National Emergency With Respect to Burma

On May 20, 1997, the President issued Executive Order 13047, certifying to the Congress under section 570(b) of the Foreign Operations, Export Financing, and Related Programs Appropriations Act, 1997 (Public Law 104–208), that the Government of Burma has committed large-scale repression of the democratic opposition in Burma after September 30, 1996, thereby invoking the prohibition on new investment in Burma by United States persons contained in that section. The President also declared a national emergency to deal with the threat posed to the national security and foreign policy of the United States by the actions and policies of the Government of Burma, invoking the authority, *inter alia*, of the International Emergency Economic Powers Act, 50 U.S.C. 1701 *et seq.*

Because actions and policies of the Government of Burma continue to pose an unusual and extraordinary threat to the national security and foreign policy of the United States, the national emergency declared on May 20, 1997, and the measures adopted on that date to deal with that emergency must continue in effect beyond May 20, 2003. Therefore, in accordance with section 202(d) of the National Emergencies Act (50 U.S.C. 1622(d)), I am continuing for 1 year the national emergency with respect to Burma. This notice shall be published in the **Federal Register** and transmitted to the Congress.



THE WHITE HOUSE,
May 16, 2003.

[FR Doc. 03–12722
Filed 5–16–03; 12:06 pm]
Billing code 3195–01–P

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Federal Register

Vol. 68, No. 96

Monday May 19, 2003

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Presidential Documents	
Executive orders and proclamations	**741–6000**
The United States Government Manual	**741–6000**
Other Services	
Electronic and on-line services (voice)	**741–6020**
Privacy Act Compilation	**741–6064**
Public Laws Update Service (numbers, dates, etc.)	**741–6043**
TTY for the deaf-and-hard-of-hearing	**741–6086**

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FEDERAL REGISTER PAGES AND DATE, MAY

23183–23376	1
23377–23568	2
23569–23884	5
23885–24332	6
24333–24604	7
24605–24858	8
24859–25278	9
25279–25478	12
25479–25808	13
25809–26200	14
26201–26456	15
26457–26980	16
26981–27426	19

CFR PARTS AFFECTED DURING MAY

At the end of each month, the Office of the Federal Register publishes separately a List of CFR Sections Affected (LSA), which lists parts and sections affected by documents published since the revision date of each title.

3 CFR

Proclamations:

7668	23821
7669	23823
7670	23825
7671	23827
7672	23829
7673	24333
7674	25277
7675	26195
7676	26197
7677	26199

Executive Orders:

12863 (Amended by 13301)	26981
12865 (Revoked by 13298)	24857
13069 (Revoked by 13298)	24857
13070 (Amended by 13301)	26981
13047 (Continued by Notice of May 16, 2003)	27425
13098 (Revoked by 13298)	24857
13298	24857
13299	25477
13300	25807
13301	26981

Administrative Orders:

Memorandums:

Memorandum of May 6, 2003	25275
Memorandum of May 7, 2003	26457

Presidential Determinations:

No. 2003-22 of May 6, 2003	25809
No. 2003-23 of May 7, 2003	26459

Notices:

Notice of May 16, 2003	27425

5 CFR

213	24605
Ch. XIV	23885
2424	23885
2429	23885
2471	23885
2472	23885

Proposed Rules:

2601	23876

7 CFR

6	25479
29	25484
46	23377
56	25484
301	24605, 24613, 26983
868	24589
932	23378
985	23569, 25486
989	25279
1410	24830
1424	24596
1491	26461
1710	24335

Proposed Rules:

274	23927
276	23927
278	23927
279	23927
280	23927
360	23425
1530	23230

9 CFR

82	26986, 26988
91	26990

Proposed Rules:

2	24052
130	25308

10 CFR

40	25281
70	23574
71	23574
72	23183
73	23574
150	25281

Proposed Rules:

20	23618
50	26511
490	23620

11 CFR

Proposed Rules:

104	26237
107	26237
110	26237
9003	26237
9004	26237
9008	26237
9032	26237
9033	26237
9034	26237
9035	26237
9036	26237
9038	26237

12 CFR

21	25090
208	25090
211	25090
326	25090
563	25090
740	23381
748	25090

Proposed Rules:

Ch. 6	26551
613	23425, 23426

14 CFR

1 25486
11 25486
25 ..... 24336, 24338, 26991
39 ..... 23183, 23186, 23190, 23384, 23387, 23575, 23886, 24614, 24861, 25488, 25811, 26201, 26478, 26481, 26482
71 ..... 23577, 23579, 23580, 23581, 23682, 24340, 24341, 24342, 24864, 24866, 24868, 24869, 24870, 24871, 24872, 24874, 25489, 25491, 25492, 25493, 25494, 25495, 25684, 26202, 26687, 26993, 26994
73 25495
77 23583
97 ..... 23888, 23889, 26484, 26486
382 24874

Proposed Rules:

3 ..... 23808, 27006
25 26237
39 ..... 23231, 23235, 23427, 23620, 24383, 25543, 26239, 26242, 26244, 26552, 26553, 27006
71 ..... 23622, 23624, 23625, 23626, 27007
119 24810
121 24810
135 24810
145 24810
255 ..... 24896, 25844
330 23627
399 ..... 24896, 25844

15 CFR

0 24878
270 24343
902 24615

16 CFR

305 23584

Proposed Rules:

309 24669

17 CFR

42 25149
211 26840
230 25788
232 ..... 24345, 25788
239 25788
240 25788
241 25281
249 25788
250 25788
259 25788
260 25788
269 25788
270 25131
274 25788

18 CFR

375 25814
376 25814

Proposed Rules:

35 24679

19 CFR

178 24052

20 CFR

Proposed Rules:

404 ..... 23192, 24896
416 ..... 23192, 24896

21 CFR

Ch. 1 24879
10 25283
14 25283
20 25283
310 24347
314 25283
358 24347
510 26995
522 26995
520 26204
522 26205
720 25283
1300 23195
1310 23195

Proposed Rules:

1 ..... 23630, 25242, 25188
11 25188
16 25242
101 23930
111 27008
112 27008
315 27008
601 27008
1308 26247
1310 24689

22 CFR

32 26488
42 24638
121 25088
228 23891

23 CFR

140 24639
646 24639
661 24642

Proposed Rules:

630 ..... 23239, 24384

24 CFR

200 26946
203 23370

Proposed Rules:

1000 26555

25 CFR

Proposed Rules:

170 23631

26 CFR

1 ..... 23586, 24349, 24351, 24644, 24880
301 24644
602 24644

Proposed Rules:

1 ..... 23632, 23931, 24404, 24405, 24406, 24898, 24903, 25310, 25845
54 24406
602 24406

27 CFR

Proposed Rules:

4 24903
5 24903
7 24903
9 25851
13 24903

28 CFR

Proposed Rules:

513 25545

29 CFR

Proposed Rules:

1480 23634
1910 23528
4022 26206
4044 26206

30 CFR

36 23892
917 24644
948 24355
950 24647

31 CFR

103 ..... 25090, 25149, 25113, 25163, 26489, 26996
315 24794
351 24794
353 24794
359 24794
360 24794
363 24794

Proposed Rules:

103 ..... 23640, 23646, 23653, 25163

32 CFR

311 24880
505 25816
806B 24881

Proposed Rules:

701 24904

33 CFR

100 ..... 25817, 25818
110 25496
117 ..... 23390, 23590, 24882, 24883, 25818, 26208
165 ..... 23390, 23393, 23399, 23591, 23594, 23595, 23893, 23894, 23896, 24359, 24361, 24883, 25288, 25498, 25500, 25818, 26208, 26490

Proposed Rules:

62 25855
66 25855
67 25855
72 25855
165 ..... 23935, 24406, 24408, 26247
401 25546

34 CFR

674 25821
682 25821
685 25821

36 CFR

Proposed Rules:

251 ..... 25748, 25751
1280 23430

37 CFR

Proposed Rules:

262 23241

38 CFR

2 25503
4 25822

Proposed Rules:

39 23249

39 CFR

Proposed Rules:

111 23937

40 CFR

51 25684
52 ..... 23206, 23207, 23404, 23597, 23604, 24363, 24365, 24368, 24885, 25414, 25418, 25442, 25504, 26210, 26212, 26492, 26495
62 ..... 23209, 25291
63 ..... 23898, 24562, 24653, 25690
71 25507
80 24300
81 ..... 24368, 25418, 25442, 26212
89 25823
180 ..... 24370, 25824, 25831
271 ..... 23407, 23607
300 23211
312 24888
438 25686

Proposed Rules:

Ch. 1 ..... 24410, 25312
52 ..... 23270, 23430, 23661, 23662, 24416, 24417, 25547, 26248, 26556
60 24692
62 ..... 23272, 25313
63 26249
71 25548
80 24311
81 26248
146 ..... 23666, 23673
258 25550
300 23939

42 CFR

Proposed Rules:

409 26758
412 ..... 26786, 27154
413 ..... 26758, 27154
440 26758
483 26758

44 CFR

64 23408
67 23898

Proposed Rules:

67 23941

45 CFR

2 25838
32 24052
148 23410
301 25293
302 25293
303 25293
304 25293
307 25293
1309 23212

46 CFR

Proposed Rules:

540 23947

47 CFR

0 26997
Ch. 1 25840
1 ..... 23417, 25841, 26997
2 25512
52 25843
73 ..... 23613, 23900, 23901, 25512, 25542, 26220, 26497
74 ..... 25512, 26220
76 26997
78 26997

80 25512
90 25512
97 25512

Proposed Rules:

1 23431
15 23677
64 25313
73 ..... 24417, 26556, 26557

48 CFR

511 24372
516 24372
532 24372
538 24372
546 24372
552 24372
1802 23423
1806 23423
1815 23423
1816 23423
1843 23423
1845 23424

Proposed Rules:

208 26265
219 26265
252 26265
245 25313

49 CFR

107 ..... 23832, 24653
171 ..... 23832, 24653
173 24653
176 23832
177 ..... 23832, 24653
180 24653
209 24891
383 23844
384 23844
571 ..... 23614, 24664
1570 23852
1572 23852

Proposed Rules:

193 23272
571 ..... 26269, 26384
572 24417
1137 ..... 23947, 25859

50 CFR

17 ..... 25934, 26498
216 24905
300 ..... 23224, 23901
600 ..... 23901, 26230
660 27004
622 26230
648 ..... 24914, 25305, 26510
660 ..... 23901, 23913, 23924
679 ..... 23925, 24615, 24667, 24668

Proposed Rules:

18 24700
20 24324
216 24905
622 23686
648 ..... 23275, 23948, 23949, 24914
660 26557

REMINDERS

The items in this list were editorially compiled as an aid to Federal Register users. Inclusion or exclusion from this list has no legal significance.

RULES GOING INTO EFFECT MAY 19, 2003

AGRICULTURE DEPARTMENT
Agricultural Marketing Service
Pears (winter) grown in—
Oregon and Washington; published 4-18-03
AGRICULTURE DEPARTMENT
Grain Inspection, Packers and Stockyards Administration
Practice and procedure:
Official inspection and weighing services; exceptions to geographic areas; published 4-18-03
ENVIRONMENTAL PROTECTION AGENCY
Air pollutants, hazardous; national emission standards:
Chemical recovery combustion sources at kraft, soda, sulfite, and stand-alone semichemical pulp mills; published 2-18-03
Air quality implementation plans; approval and promulgation; various States:
California; published 4-18-03
District of Columbia, Maryland, and Virginia; published 4-17-03
Missouri; published 3-18-03
FEDERAL COMMUNICATIONS COMMISSION
Common carrier services:
Federal-State Joint Board on Universal Service—
National Exchange Carrier Association, Inc.; changes to Board of Directors; published 4-17-03
Radio stations; table of assignments:
California; published 4-28-03
Colorado and Wyoming; published 4-15-03
HEALTH AND HUMAN SERVICES DEPARTMENT
Food and Drug Administration
Animal drugs, feeds, and related products:
Zinc gluconate; published 5-19-03
HEALTH AND HUMAN SERVICES DEPARTMENT
Health insurance reform:
Health Insurance Portability and Accountability Act of 1996—
Civil money penalties; investigations procedures, penalties imposition, and hearings; published 4-17-03
JUSTICE DEPARTMENT
Prisons Bureau
Inmate control, custody, care, etc.:
Volunteer community service projects; published 4-18-03
TRANSPORTATION DEPARTMENT
Federal Aviation Administration
Airworthiness directives:
Eurocopter France; published 4-14-03

COMMENTS DUE NEXT WEEK

AGRICULTURE DEPARTMENT
Food Safety and Inspection Service
Meat and poultry inspection:
Safe and suitable binder or antimicrobial agent usage in products with standards of identity or composition; comments due by 5-29-03; published 4-29-03 [FR 03-10392]
COMMERCE DEPARTMENT
National Oceanic and Atmospheric Administration
Fishery conservation and management:
Alaska; fisheries of Exclusive Economic Zone—
Bering Sea and Aleutian Islands groundfish; Pacific cod; comments due by 5-27-03; published 4-25-03 [FR 03-10282]
Caribbean, Gulf, and South Atlantic fisheries—
Gulf of Mexico shrimp; comments due by 5-29-03; published 4-29-03 [FR 03-10558]
Northeastern United States fisheries—
Northeast multispecies; comments due by 5-27-03; published 4-24-03 [FR 03-10163]
COMMERCE DEPARTMENT
Patent and Trademark Office
Patent cases:
Fee revisions (2004 FY); comments due by 5-30-03; published 4-30-03 [FR 03-10583]
Trademarks:
Madrid Protocol Implementation Act; rules of practice—
International applications and registrations; trademark-related filings; comments due by 5-27-03; published 3-28-03 [FR 03-07392]
ENVIRONMENTAL PROTECTION AGENCY
Air quality implementation plans; approval and promulgation; various States:
Alabama; comments due by 5-27-03; published 4-24-03 [FR 03-10061]
California; comments due by 5-27-03; published 4-25-03 [FR 03-10267]
Florida; comments due by 5-27-03; published 4-24-03 [FR 03-10063]
Idaho and Oregon; comments due by 5-27-03; published 4-24-03 [FR 03-10066]
FEDERAL COMMUNICATIONS COMMISSION
Radio stations; table of assignments:
California; comments due by 5-27-03; published 4-15-03 [FR 03-09164]
Florida; comments due by 5-27-03; published 4-15-03 [FR 03-09165]
Texas; comments due by 5-27-03; published 4-15-03 [FR 03-09170]
FEDERAL MARITIME COMMISSION
Passenger vessel financial responsibility:
Performance and casualty rules, Alternative Dispute Resolution program, etc.; miscellaneous amendments; oral comments and hearing; comments due by 5-30-03; published 4-8-03 [FR 03-08611]
HOMELAND SECURITY DEPARTMENT
Coast Guard
Ports and waterways safety:
Hampton Roads, VA; regulated navigation area; comments due by 5-29-03; published 4-29-03 [FR 03-10214]
Port Valdez and Valdez Narrows, AK; security zone; comments due by 5-27-03; published 3-27-03 [FR 03-07299]
Portland Captain of Port Zone, OR; safety zones; comments due by 5-27-03; published 3-27-03 [FR 03-07300]
Regattas and marine parades:
Thunder on the Narrows boat races; comments due by 5-30-03; published 3-31-03 [FR 03-07545]
HOMELAND SECURITY DEPARTMENT
Customs Service
Andean Trade Promotion and Drug Eradication Act; implementation; comments due by 5-27-03; published 3-25-03 [FR 03-06867]
INTERIOR DEPARTMENT
Minerals Management Service
Outer Continental Shelf; oil, gas, and sulphur operations:
OCS rights-of-use and easement and pipeline rights-of-way; requirements revision; comments due by 5-27-03; published 4-24-03 [FR 03-10173]
Royalty management:
Marginal properties; accounting and auditing relief; comments due by 5-30-03; published 3-31-03 [FR 03-06703]
Relief or reduction in rates; deep gas provisions; comments due by 5-27-03; published 3-26-03 [FR 03-07353]
INTERIOR DEPARTMENT
Surface Mining Reclamation and Enforcement Office
Permanent program and abandoned mine land reclamation plan submissions:
Kentucky; comments due by 5-29-03; published 4-29-03 [FR 03-10533]
SOCIAL SECURITY ADMINISTRATION
Organization and procedures:
Assignment of Social Security numbers for nonwork purposes; evidence requirements; comments due by 5-27-03; published 3-26-03 [FR 03-07188]
TRANSPORTATION DEPARTMENT
Federal Aviation Administration
Airworthiness directives:
Boeing; comments due by 5-27-03; published 5-1-03 [FR 03-10727]
Bombardier; comments due by 5-29-03; published 4-29-03 [FR 03-10235]
CFM International; comments due by 5-27-03; published 3-25-03 [FR 03-07003]
Empresa Brasileira de Aeronautica, S.A. (EMBRAER); comments due by 5-29-03; published 4-29-03 [FR 03-10236]
Pratt & Whitney; comments due by 5-27-03; published 3-25-03 [FR 03-06997]
Rolls-Royce plc; comments due by 5-27-03; published 3-25-03 [FR 03-07004]
Textron Lycoming; comments due by 5-27-03; published 3-25-03 [FR 03-06998]
Airworthiness standards:
Special conditions—
Learjet Model 24/25 Series airplanes; comments due by 5-29-03; published 4-29-03 [FR 03-10450]
Class E airspace; comments due by 5-29-03; published 3-31-03 [FR 03-07663]
TRANSPORTATION DEPARTMENT
Maritime Administration
Coastwise trade laws; administrative waivers for eligible vessels; comments due by 5-30-03; published 4-30-03 [FR 03-10578]
TREASURY DEPARTMENT
Alcohol and Tobacco Tax and Trade Bureau
Alcohol; vitcultural area designations:
Red Hill, Douglas County, OR; comments due by 5-27-03; published 4-24-03 [FR 03-10095]
VETERANS AFFAIRS DEPARTMENT
Adjudication; pensions, compensation, dependency, etc.:
Chronic lymphocytic leukemia; presumptive service connection; comments due by 5-27-03; published 3-26-03 [FR 03-07221]

LIST OF PUBLIC LAWS

This is a continuing list of public bills from the current session of Congress which have become Federal laws. It may be used in conjunction with "PLUS" (Public Laws Update Service) on 202–741–6043. This list is also available online at *http://www.nara.gov/fedreg/plawcurr.html*.

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S. 162/P.L. 108–22
Gila River Indian Community Judgment Fund Distribution Act of 2003 (May 14, 2003; 117 Stat. 696)

Last List May 2, 2003

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Title	Stock Number	Price	Revision Date
1, 2 (2 Reserved)	(869–050–00001–6)	9.00	[4]Jan. 1, 2003
3 (1997 Compilation and Parts 100 and 101)	(869–050–00002–4)	32.00	[1]Jan. 1, 2003
4	(869–050–00003–2)	9.50	Jan. 1, 2003
5 Parts:			
1–699	(869–050–00004–1)	57.00	Jan. 1, 2003
700–1199	(869–050–00005–9)	46.00	Jan. 1, 2003
1200–End, 6 (6 Reserved)	(869–050–00006–7)	58.00	Jan. 1, 2003
7 Parts:			
1–26	(869–050–00007–5)	40.00	Jan. 1, 2003
27–52	(869–050–00008–3)	47.00	Jan. 1, 2003
53–209	(869–050–00009–1)	36.00	Jan. 1, 2003
210–299	(869–050–00010–5)	59.00	Jan. 1, 2003
300–399	(869–050–00011–3)	43.00	Jan. 1, 2003
400–699	(869–050–00012–1)	39.00	Jan. 1, 2003
700–899	(869–050–00013–0)	42.00	Jan. 1, 2003
900–999	(869–050–00014–8)	57.00	Jan. 1, 2003
1000–1199	(869–050–00015–6)	23.00	Jan. 1, 2003
1200–1599	(869–050–00016–4)	58.00	Jan. 1, 2003
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9 Parts:			
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10 Parts:			
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51–199	(869–050–00026–1)	56.00	Jan. 1, 2003
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500–End	(869–050–00028–8)	58.00	Jan. 1, 2003
11	(869–050–00029–6)	38.00	Jan. 1, 2003
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200–219	(869–050–00031–8)	38.00	Jan. 1, 2003
220–299	(869–050–00032–6)	58.00	Jan. 1, 2003
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600–899	(869–050–00035–1)	54.00	Jan. 1, 2003
900–End	(869–050–00036–9)	47.00	Jan. 1, 2003
13	(869–050–00037–7)	47.00	Jan. 1, 2003
14 Parts:			
1–59	(869–050–00038–5)	60.00	Jan. 1, 2003
60–139	(869–050–00039–3)	58.00	Jan. 1, 2003
140–199	(869–050–00040–7)	28.00	Jan. 1, 2003
200–1199	(869–050–00041–5)	47.00	Jan. 1, 2003
1200–End	(869–050–00042–3)	43.00	Jan. 1, 2003
15 Parts:			
0–299	(869–050–00043–1)	37.00	Jan. 1, 2003
300–799	(869–050–00044–0)	57.00	Jan. 1, 2003
800–End	(869–050–00045–8)	40.00	Jan. 1, 2003
16 Parts:			
0–999	(869–050–00046–6)	47.00	Jan. 1, 2003
1000–End	(869–050–00047–4)	57.00	Jan. 1, 2003
17 Parts:			
1–199	(869–050–00049–1)	50.00	Apr. 1, 2003
200–239	(869–048–00049–6)	55.00	Apr. 1, 2002
240–End	(869–048–00050–0)	59.00	Apr. 1, 2002
18 Parts:			
1–399	(869–050–00052–1)	62.00	Apr. 1, 2003
*400–End	(869–050–00053–9)	25.00	Apr. 1, 2003
19 Parts:			
*1–140	(869–050–00054–7)	60.00	Apr. 1, 2003
141–199	(869–048–00054–2)	56.00	Apr. 1, 2002
200–End	(869–048–00055–1)	29.00	Apr. 1, 2002
20 Parts:			
1–399	(869–048–00056–9)	47.00	Apr. 1, 2002
400–499	(869–048–00057–7)	60.00	Apr. 1, 2002
500–End	(869–048–00058–5)	60.00	Apr. 1, 2002
21 Parts:			
1–99	(869–050–00060–1)	40.00	Apr. 1, 2003
100–169	(869–048–00060–7)	46.00	Apr. 1, 2002
170–199	(869–048–00061–5)	47.00	Apr. 1, 2002
200–299	(869–048–00062–3)	16.00	Apr. 1, 2002
300–499	(869–048–00063–1)	29.00	Apr. 1, 2002
500–599	(869–048–00064–0)	46.00	Apr. 1, 2002
*600–799	(869–050–00066–1)	15.00	Apr. 1, 2003
800–1299	(869–048–00066–6)	56.00	Apr. 1, 2002
*1300–End	(869–050–00068–7)	22.00	Apr. 1, 2003
22 Parts:			
1–299	(869–048–00068–2)	59.00	Apr. 1, 2002
300–End	(869–048–00069–1)	43.00	Apr. 1, 2002
23	(869–048–00070–4)	40.00	Apr. 1, 2002
24 Parts:			
0–199	(869–048–00071–2)	57.00	Apr. 1, 2002
200–499	(869–048–00072–1)	47.00	Apr. 1, 2002
*500–699	(869–050–00074–1)	30.00	Apr. 1, 2003
700–1699	(869–048–00074–7)	58.00	Apr. 1, 2002
1700–End	(869–048–00075–5)	29.00	Apr. 1, 2002
25	(869–048–00076–3)	68.00	Apr. 1, 2002
26 Parts:			
§§ 1.0-1–1.60	(869–048–00077–1)	45.00	Apr. 1, 2002
§§ 1.61–1.169	(869–048–00078–0)	58.00	Apr. 1, 2002
§§ 1.170–1.300	(869–050–00080–6)	57.00	Apr. 1, 2003
§§ 1.301–1.400	(869–048–00080–1)	44.00	Apr. 1, 2002
*§§ 1.401–1.440	(869–050–00082–2)	61.00	Apr. 1, 2003
*§§ 1.441–1.500	(869–050–00083–1)	50.00	Apr. 1, 2003
*§§ 1.501–1.640	(869–050–00084–9)	49.00	Apr. 1, 2003
§§ 1.641–1.850	(869–048–00084–4)	57.00	Apr. 1, 2002
§§ 1.851–1.907	(869–048–00085–2)	57.00	Apr. 1, 2002
§§ 1.908–1.1000	(869–048–00086–1)	56.00	Apr. 1, 2002
§§ 1.1001–1.1400	(869–048–00087–9)	58.00	Apr. 1, 2002
§§ 1.1401–End	(869–048–00088–7)	61.00	Apr. 1, 2002
*2–29	(869–050–00091–1)	60.00	Apr. 1, 2003
30–39	(869–048–00090–9)	39.00	Apr. 1, 2002
40–49	(869–048–00091–7)	26.00	Apr. 1, 2002
50–299	(869–048–00092–5)	38.00	Apr. 1, 2002
300–499	(869–048–00093–3)	57.00	Apr. 1, 2002
*500–599	(869–050–00096–2)	12.00	[5]Apr. 1, 2003
*600–End	(869–050–00097–1)	17.00	Apr. 1, 2003
27 Parts:			
1–199	(869–048–00096–8)	61.00	Apr. 1, 2002

Title	Stock Number	Price	Revision Date
200–End	(869–048–00097–6)	13.00	Apr. 1, 2002
28 Parts:			
0–42	(869–048–00098–4)	58.00	July 1, 2002
43–end	(869–048–00099–2)	55.00	July 1, 2002
29 Parts:			
0–99	(869–048–00100–0)	45.00	[6]July 1, 2002
100–499	(869–048–00101–8)	21.00	July 1, 2002
500–899	(869–048–00102–6)	58.00	July 1, 2002
900–1899	(869–048–00103–4)	35.00	July 1, 2002
1900–1910 (§§ 1900 to 1910.999)	(869–048–00104–2)	58.00	July 1, 2002
1910 (§§ 1910.1000 to end)	(869–048–00105–1)	42.00	[6]July 1, 2002
1911–1925	(869–048–00106–9)	29.00	July 1, 2002
1926	(869–048–00107–7)	47.00	July 1, 2002
1927–End	(869–048–00108–5)	59.00	July 1, 2002
30 Parts:			
1–199	(869–048–00109–3)	56.00	July 1, 2002
200–699	(869–048–00110–7)	47.00	July 1, 2002
700–End	(869–048–00111–5)	56.00	July 1, 2002
31 Parts:			
0–199	(869–048–00112–3)	35.00	July 1, 2002
200–End	(869–048–00113–1)	60.00	July 1, 2002
32 Parts:			
1–39, Vol. I		15.00	[2]July 1, 1984
1–39, Vol. II		19.00	[2]July 1, 1984
1–39, Vol. III		18.00	[2]July 1, 1984
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191–399	(869–048–00115–8)	60.00	July 1, 2002
400–629	(869–048–00116–6)	47.00	July 1, 2002
630–699	(869–048–00117–4)	37.00	July 1, 2002
700–799	(869–048–00118–2)	44.00	July 1, 2002
800–End	(869–048–00119–1)	46.00	July 1, 2002
33 Parts:			
1–124	(869–048–00120–4)	47.00	July 1, 2002
125–199	(869–048–00121–2)	60.00	July 1, 2002
200–End	(869–048–00122–1)	47.00	July 1, 2002
34 Parts:			
1–299	(869–048–00123–9)	45.00	July 1, 2002
300–399	(869–048–00124–7)	43.00	July 1, 2002
400–End	(869–048–00125–5)	59.00	July 1, 2002
35	(869–048–00126–3)	10.00	[7]July 1, 2002
36 Parts			
1–199	(869–048–00127–1)	36.00	July 1, 2002
200–299	(869–048–00128–0)	35.00	July 1, 2002
300–End	(869–048–00129–8)	58.00	July 1, 2002
37	(869–048–00130–1)	47.00	July 1, 2002
38 Parts:			
0–17	(869–048–00131–0)	57.00	July 1, 2002
18–End	(869–048–00132–8)	58.00	July 1, 2002
39	(869–048–00133–6)	40.00	July 1, 2002
40 Parts:			
1–49	(869–048–00134–4)	57.00	July 1, 2002
50–51	(869–048–00135–2)	40.00	July 1, 2002
52 (52.01–52.1018)	(869–048–00136–1)	55.00	July 1, 2002
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60 (Apps)	(869–048–00140–9)	51.00	[8]July 1, 2002
61–62	(869–048–00141–7)	38.00	July 1, 2002
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63 (63.600–63.1199)	(869–048–00143–3)	46.00	July 1, 2002
63 (63.1200–End)	(869–048–00144–1)	61.00	July 1, 2002
64–71	(869–048–00145–0)	29.00	July 1, 2002
72–80	(869–048–00146–8)	59.00	July 1, 2002
81–85	(869–048–00147–6)	47.00	July 1, 2002
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86 (86.600–1–End)	(869–048–00149–2)	47.00	July 1, 2002
87–99	(869–048–00150–6)	57.00	July 1, 2002
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136–149	(869–048–00152–2)	58.00	July 1, 2002
150–189	(869–048–00153–1)	47.00	July 1, 2002
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260–265	(869–048–00155–7)	47.00	July 1, 2002
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400–424	(869–048–00158–1)	54.00	July 1, 2002
425–699	(869–048–00159–0)	59.00	July 1, 2002
700–789	(869–048–00160–3)	58.00	July 1, 2002
790–End	(869–048–00161–1)	45.00	July 1, 2002
41 Chapters:			
1, 1–1 to 1–10		13.00	[3]July 1, 1984
1, 1–11 to Appendix, 2 (2 Reserved)		13.00	[3]July 1, 1984
3–6		14.00	[3]July 1, 1984
7		6.00	[3]July 1, 1984
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10–17		9.50	[3]July 1, 1984
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18, Vol. II, Parts 6–19		13.00	[3]July 1, 1984
18, Vol. III, Parts 20–52		13.00	[3]July 1, 1984
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102–200	(869–048–00164–6)	41.00	July 1, 2002
201–End	(869–048–00165–4)	24.00	July 1, 2002
42 Parts:			
1–399	(869–048–00166–2)	56.00	Oct. 1, 2002
400–429	(869–048–00167–1)	59.00	Oct. 1, 2002
430–End	(869–048–00168–9)	61.00	Oct. 1, 2002
43 Parts:			
1–999	(869–048–00169–7)	47.00	Oct. 1, 2002
1000–end	(869–048–00170–1)	59.00	Oct. 1, 2002
44	(869–048–00171–9)	47.00	Oct. 1, 2002
45 Parts:			
1–199	(869–048–00172–7)	57.00	Oct. 1, 2002
200–499	(869–048–00173–5)	31.00	[9]Oct. 1, 2002
500–1199	(869–048–00174–3)	47.00	Oct. 1, 2002
1200–End	(869–048–00175–1)	57.00	Oct. 1, 2002
46 Parts:			
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41–69	(869–048–00177–8)	37.00	Oct. 1, 2002
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47 Parts:			
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40–69	(869–048–00187–5)	36.00	Oct. 1, 2002
70–79	(869–048–00188–3)	58.00	Oct. 1, 2002
80–End	(869–048–00189–1)	57.00	Oct. 1, 2002
48 Chapters:			
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1 (Parts 52–99)	(869–048–00191–3)	47.00	Oct. 1, 2002
2 (Parts 201–299)	(869–048–00192–1)	53.00	Oct. 1, 2002
3–6	(869–048–00193–0)	30.00	Oct. 1, 2002
7–14	(869–048–00194–8)	47.00	Oct. 1, 2002
15–28	(869–048–00195–6)	55.00	Oct. 1, 2002
29–End	(869–048–00196–4)	38.00	[9]Oct. 1, 2002
49 Parts:			
1–99	(869–048–00197–2)	56.00	Oct. 1, 2002
100–185	(869–048–00198–1)	60.00	Oct. 1, 2002
186–199	(869–048–00199–9)	18.00	Oct. 1, 2002
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1000–1199	(869–048–00202–2)	25.00	Oct. 1, 2002

Title	Stock Number	Price	Revision Date
1200–End	(869–048–00203–1)	30.00	Oct. 1, 2002
50 Parts:			
1–17	(869–048–00204–9)	60.00	Oct. 1, 2002
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200–599	(869–048–00206–5)	38.00	Oct. 1, 2002
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[2] The July 1, 1985 edition of 32 CFR Parts 1–189 contains a note only for Parts 1–39 inclusive. For the full text of the Defense Acquisition Regulations in Parts 1–39, consult the three CFR volumes issued as of July 1, 1984, containing those parts.

[3] The July 1, 1985 edition of 41 CFR Chapters 1–100 contains a note only for Chapters 1 to 49 inclusive. For the full text of procurement regulations in Chapters 1 to 49, consult the eleven CFR volumes issued as of July 1, 1984 containing those chapters.

[4] No amendments to this volume were promulgated during the period January 1, 2002, through January 1, 2003. The CFR volume issued as of January 1, 2002 should be retained.

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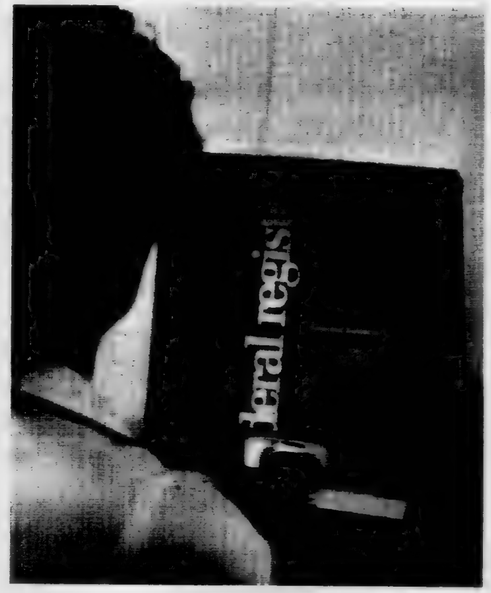
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5–20–03 Tuesday
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5–20–03 Tuesday
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Pages 27427–27726

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Contents

Federal Register
Vol. 68, No. 97
Tuesday, May 20, 2003

Agency for International Development
NOTICES
Agency information collection activities; proposals, submissions, and approvals, 27518

Agriculture Department
See Animal and Plant Health Inspection Service
See Forest Service
See Natural Resources Conservation Service
See Rural Business-Cooperative Service
RULES
Organization, functions, and authority delegations:
Revisions, 27431–27450

Air Force Department
NOTICES
Privacy Act:
Systems of records, 27540–27545

Animal and Plant Health Inspection Service
RULES
Organization, functions, and authority delegations:
Revisions, 27431–27450
PROPOSED RULES
Plant-related quarantine, foreign:
Solid wood packing material; importation, 27480–27491

Arts and Humanities, National Foundation
See National Foundation on the Arts and the Humanities

Centers for Disease Control and Prevention
NOTICES
Agency information collection activities; proposals, submissions, and approvals, 27565–27566

Civil Rights Commission
NOTICES
Meetings; State advisory committees:
Arizona, 27526
Hawaii, 27526–27527
Massachusetts, 27527
Montana, 27527
New York, 27527

Coast Guard
RULES
Drawbridge operations:
New Jersey, 27460–27462
Ports and waterways safety:
Alaska Marine Highway System, AK; security zone, 27469–27471
Chicago Captain of Port Zone, IL; safety zones, 27466–27469
Detroit Captain of Port Zone, MI; safety zone, 27462
Lake Michigan—
Betsie Bay, MI; safety zone, 27464–27466
Chicago, IL; safety zone, 27462–27464
Regattas and marine parades:
Chesapeake Bay Bridges Swim Races, 27459–27460
PROPOSED RULES
Anchorage regulations and ports and waterways safety:
Lake Michigan—
Chicago, IL; safety zone, 27501–27503
Drawbridge operations:
Florida, 27504–27505
Regattas and marine parades, and drawbridge operations:
Toledo Tall Ships Parade, OH, 27498–27501

Commerce Department
See Foreign-Trade Zones Board
See International Trade Administration
See National Oceanic and Atmospheric Administration
See Patent and Trademark Office

Copyright Office, Library of Congress
PROPOSED RULES
Copyright Arbitration Royalty Panel rules and procedures:
Sound recordings and ephemeral recordings; digital performance right, 27506–27513

Defense Department
See Air Force Department
RULES
Prototype projects; transactions other than contracts, grants, or cooperative agreements, 27452–27459
PROPOSED RULES
Prototype projects; transactions other than contracts, grants, or cooperative agreements, 27497–27498
NOTICES
Agency information collection activities; proposals, submissions, and approvals, 27539
Meetings:
Science Board task forces, 27539
Privacy Act:
Systems of records; correction, 27539–27540

Education Department
NOTICES
Grants and cooperative agreements; availability, etc.:
Elementary and secondary education—
Jacob K. Javits Gifted and Talented Students Education Program, 27546–27550
Meetings:
Federal Interagency Coordinating Council, 27550

Employment and Training Administration
NOTICES
Adjustment assistance:
Advanced Machining, Inc., 27591
AID Temporary Services, 27591
Beres Industries, Inc., 27591
Cerf Brothers Bag Co., 27591
Columbia Falls Aluminum Co., 27591–27592
DBM Technologies LLC, 27592
Flexcel-Batesville, 27592
GE Industrial Systems, 27592
Gemini Gas Compressors, 27592
General Electric Co., 27592
Kingston Technology, 27592–27593
OEM Worldwide, 27593
Pittsburgh Logistics Systems, 27593–27595
Potash Corp. of Saskachewan, Inc., 27595
Royal Hosiery Co., Inc., 27595
Sony Semiconductor, 27595
Springs Industries, 27595

Western Geco, LLC, 27595–27596
Willing B. Wire, 27596

Energy Department
See Federal Energy Regulatory Commission

Environmental Protection Agency
RULES
Air pollutants, hazardous; national emission standards:
Integrated iron and steel manufacturing facilities, 27645–27677
Air quality implementation plans; approval and promulgation; various States:
Pennsylvania, 27471–27473
PROPOSED RULES
Air quality implementation plans; approval and promulgation; various States:
Pennsylvania, 27513–27514
NOTICES
Agency information collection activities; proposals, submissions, and approvals, 27555–27556
Environmental statements; availability, etc.:
Coastal nonpoint pollution control programs; States and territories—
Maine, 27535
Reports and guidance documents; availability, etc.:
Environment and Aging; National Agenda, 27556–27557
Toxic and hazardous substances control:
Lead-based paint activities in target housing and child-occupied facilities; State and Indian Tribe authorization applications—
Mississippi, 27557–27559
New chemicals—
Receipt and status information, 27559–27563

Executive Office of the President
See Presidential Documents

Export-Import Bank
NOTICES
Meetings:
Advisory Committee, 27563

Federal Aviation Administration
RULES
Airworthiness directives:
Dassault, 27450–27452
PROPOSED RULES
Airworthiness directives:
Turbomeca S.A., 27492–27493
NOTICES
Airport noise compatibility program:
Noise exposure maps—
Greater Rockford Airport, IL, 27616–27617
Exemption petitions; summary and disposition, 27618–27624
Technical standard orders:
VHF radio communications receiving equipment operating within radio frequency range 117.975 to 137.000 Mhz, 27624–27625
VHF radio communications transmitting equipment operating within radio frequency range 117.975 to 137.000 Mhz, 27625

Federal Communications Commission
RULES
Digital television stations; table of assignments:
Pennsylvania; correction, 27478–27479
NOTICES
Agency information collection activities; proposals, submissions, and approvals, 27563–27564

Federal Emergency Management Agency
RULES
Flood elevation determinations:
Minnesota, 27477–27478
Various States, 27473–27477
PROPOSED RULES
Flood elevation determinations:
Missouri, 27514–27516
NOTICES
Disaster and emergency areas:
Alabama, 27573–27574
Kansas, 27574
Micronesia, 27574
Missouri, 27574
New York, 27575
Oklahoma, 27575–27576
Tennessee, 27576

Federal Energy Regulatory Commission
NOTICES
Electric rate and corporate regulation filings:
Allegheny Energy Supply Conemaugh, LLC, 27552–27554
Reports and guidance documents; availability, etc.:
Electric and natural gas prices; potential manipulation; fact-finding investigation, 27554–27555
Applications, hearings, determinations, etc.:
ANR Pipeline Co., 27550
Midwest Independent Transmission System Operator, Inc., 27550–27551
Southern Star Central Gas Pipeline, Inc., 27551
Southwest Gas Storage Co., 27551
Venice Gathering System, L.L.C., 27551–27552
Viking Gas Transmission Co., 27552

Federal Highway Administration
NOTICES
Environmental statements; notice of intent:
Hatillo-Aguadilla Corridor, PR, 27625–27626

Federal Railroad Administration
NOTICES
Agency information collection activities; proposals, submissions, and approvals, 27626–27627
Exemption petitions, etc.:
Oregon Transportation Department, 27627–27628

Federal Reserve System
NOTICES
Banks and bank holding companies:
Change in bank control, 27564
Formations, acquisitions, and mergers, 27564–27565
Permissible nonbanking activities, 27565

Fish and Wildlife Service
NOTICES
Comprehensive conservation plans; availability:
Rhode Island National Refuge Complex, RI, 27577
St. Catherine Creek National Wildlife Refuge, MS, 27576–27577

Food and Drug Administration
NOTICES
Meetings:
Endocrinologic and Metabolic Drugs Advisory Committee, 27566

Medical Devices Advisory Committee, 27566–27567
Reports and guidance documents; availability, etc.:
Investigational new drug applications, phase 2 and 3 studies; chemistry, manufacturing, and controls information, 27567–27568

Foreign-Trade Zones Board
NOTICES
Applications, hearings, determinations, etc.:
Illinois, 27527–27528

Forest Service
NOTICES
Meetings:
Oregon Coast Provincial Advisory Committee, 27519
Resource Advisory Committees—
Modoc County, 27519

Health and Human Services Department
See Centers for Disease Control and Prevention
See Food and Drug Administration
See Health Resources and Services Administration
See National Institutes of Health

Health Resources and Services Administration
NOTICES
Agency information collection activities; proposals, submissions, and approvals, 27568–27569

Homeland Security Department
See Coast Guard
See Federal Emergency Management Agency

Housing and Urban Development Department
NOTICES
Grants and cooperative agreements; availability, etc.:
Homeownership and Affordable Lending Research Studies, 27679–27719

Interior Department
See Fish and Wildlife Service
See Land Management Bureau
See Reclamation Bureau

Internal Revenue Service
PROPOSED RULES
Income taxes:
Qualified retirement plans; deemed IRAs, 27493–27497

International Trade Administration
NOTICES
Antidumping:
Carbon steel butt-weld pipe fittings from—
Thailand, 27528–27529
Corrosion-resistant carbon steel flat products from—
China, 27529–27530
Saccharin from—
China, 27530–27533
Export trade certificates of review, 27533–27534

Labor Department
See Employment and Training Administration

Land Management Bureau
NOTICES
Alaska Native claims selection:
Atxam Corp., 27577
Closure of public lands:
California, 27577–27578
Idaho, 27578
Opening of public lands:
Nevada, 27579
Oregon, 27579
Wyoming, 27579–27580
Public land orders:
Nevada, 27580–27581
Utah, 27581
Realty actions; sales, leases, etc.:
California, 27581–27582
Idaho, 27582–27584
Michigan, 27584–27585
Utah, 27585–27586
Recreation management restrictions, etc.:
Egin Lakes Access Recreation Site, ID; closure to overnight camping, 27586
Survey plat filings:
Minnesota, 27587

Library of Congress
See Copyright Office, Library of Congress

National Foundation on the Arts and the Humanities
NOTICES
Meetings:
Combined Arts Advisory Panel, 27596

National Institutes of Health
NOTICES
Agency information collection activities; proposals, submissions, and approvals, 27569–27570
Meetings:
National Institute of Child Health and Human Development, 27572
National Institute of Diabetes and Digestive and Kidney Diseases, 27570–27571
National Institute of General Medical Sciences, 27571–27572
Scientific Review Center, 27572–27573
Warren Grant Magnuson Clinical Center; correction, 27643

National Oceanic and Atmospheric Administration
RULES
Fishery conservation and management:
Alaska; fisheries of Exclusive Economic Zone—
Deep-water species; closure to vessels using trawl gear in Gulf of Alaska, 27479
PROPOSED RULES
Fishery conservation and management:
Northeastern United States fisheries—
Atlantic mackerel, squid, and butterfish, 27516–27517
NOTICES
Committees; establishment, renewal, termination, etc.:
Thunder Bay National Marine Sanctuary and Underwater Preserve Advisory Council, 27534–27535
Environmental statements; availability, etc.:
Coastal nonpoint pollution control programs; States and territories—
Maine, 27535
Permits:
Endangered and threatened species, 27535–27536
Marine mammals, 27536

Natural Resources Conservation Service
NOTICES
Environmental statements; availability, etc.:
Environmental Quality Incentives Program, 27519–27520

Nuclear Regulatory Commission
NOTICES
Certificates of compliance:
United States Enrichment Corp.—
Paducah Gaseous Diffusion Plant, KY, et al., 27597–27598
Meetings:
Reactor Safeguards Advisory Committee, 27598
Meetings; Sunshine Act, 27598
Regulatory guides; issuance, availability, and withdrawal, 27598–27599
Applications, hearings, determinations, etc.:
Florida Power Corp., 27596–27597

Patent and Trademark Office
NOTICES
Reports and guidance documents; availability, etc.:
Unity of invention standard in U.S.; study of changes needed to implement, 27536–27539

Personnel Management Office
NOTICES
Agency information collection activities; proposals, submissions, and approvals, 27599
Meetings:
Federal Prevailing Rate Advisory Committee, 27599–27600

Presidential Documents
PROCLAMATIONS
Special observances:
National Hurricane Awareness Week, 2003 (Proc. 7678), 27427–27428
EXECUTIVE ORDERS
Energy-related projects; amendments to Executive Order 13212 (EO 13302), 27429–27430
ADMINISTRATIVE ORDERS:
Burma:
Continuation of national emergency (Notice of May 16, 2003), 03–12722 [**Editorial Note:** The page number for this document was incorrectly listed in the Monday, May 19, 2003 **Federal Register** Table of Contents, both under Presidential Documents and Separate Parts in This Issue. In both cases, the correct page number is 27425.]

Reclamation Bureau
NOTICES
Agency information collection activities; proposals, submissions, and approvals, 27587–27591

Rural Business-Cooperative Service
NOTICES
Grants and cooperative agreements; availability, etc.:
University Value-Added Research Program, 27520–27526

Securities and Exchange Commission
PROPOSED RULES
Securities:
Nasdaq-listed securities; uniform trading rules; petition, 27721–27726
NOTICES
Agency information collection activities; proposals, submissions, and approvals, 27600–27602
Investment Company Act of 1940:
Exemption applications—
Claymore Securities, Inc., et al., 27603–27605
Meetings; Sunshine Act, 27605
Self-regulatory organizations; proposed rule changes:
National Association of Securities Dealers, Inc., 27605–27608
New York Stock Exchange, Inc., 27608–27609
Pacific Exchange, Inc., 27609–27610
Philadelphia Stock Exchange, Inc.; republication, 27610–27616

State Department
NOTICES
Meetings:
International Economic Policy Advisory Committe, 27616
Overseas Security Advisory Council, 27616

Transportation Department
See Federal Aviation Administration
See Federal Highway Administration
See Federal Railroad Administration
NOTICES
Aviation proceedings:
Hearings, etc.—
Valley Air Express, Inc., 27616

Treasury Department
See Internal Revenue Service
NOTICES
Agency information collection activities; proposals, submissions, and approvals, 27628–27630

Veterans Affairs Department
NOTICES
Diseases not associated with exposure to herbicide agents during Vietnam Era; list, 27630–27641
Meetings:
VA Nursing National Commission, 27641–27642

Separate Parts In This Issue

Part II
Environmental Protection Agency, 27645–27677

Part III
Housing and Urban Development Department, 27679–27719

Part IV
Securities and Exchange Commission, 27721–27726

Reader Aids
Consult the Reader Aids section at the end of this issue for phone numbers, online resources, finding aids, reminders, and notice of recently enacted public laws.

To subscribe to the Federal Register Table of Contents LISTSERV electronic mailing list, go to http://listserv.access.gpo.gov and select Online mailing list archives, FEDREGTOC-L, Join or leave the list (or change settings); then follow the instructions.

CFR PARTS AFFECTED IN THIS ISSUE

A cumulative list of the parts affected this month can be found in the Reader Aids section at the end of this issue.

3 CFR
Proclamations:
7678 27427
Executive Orders:
13212 (Amended by 13302) 27429
13302 27429

7 CFR
1 27431
2 27431
15 27431
15f 27431
371 27431
Proposed Rules:
319 27480

14 CFR
39 27450
Proposed Rules:
39 27492

17 CFR
Proposed Rules:
240 27722

26 CFR
Proposed Rules:
1 27493

32 CFR
3 27452
Proposed Rules:
3 27497

33 CFR
100 27459
117 27460
165 (5 documents) 27462, 27464, 27466, 27469
Proposed Rules:
100 27498
110 27501
117 (2 documents) 27498, 27504
165 27501

37 CFR
Proposed Rules:
262 27506

40 CFR
52 27471
63 27646
Proposed Rules:
52 27513

44 CFR
65 27473
67 27477
Proposed Rules:
67 (2 documents) 27514, 27515

47 CFR
73 27478

50 CFR
679 27479
Proposed Rules:
648 27516

Federal Register
Vol. 68, No. 97
Tuesday, May 20, 2003

Presidential Documents

Title 3—

The President

Proclamation 7678 of May 15, 2003

National Hurricane Awareness Week, 2003

By the President of the United States of America

A Proclamation

Destructive winds, tornadoes, torrential rains, ocean water storm surges, and flooding make hurricanes one of nature's most extreme hazards. As hurricane season approaches, Americans who live in hurricane-prone areas must prepare to help ensure their safety and minimize damage to their communities.

Hurricane season officially begins June 1 and continues through November 30. According to the National Oceanic and Atmospheric Administration (NOAA) and the Federal Emergency Management Agency (FEMA), an average of 10 tropical storms develop in the Atlantic Ocean, Caribbean Sea, and Gulf of Mexico, and 6 become hurricanes each year. In the past 2 years alone, 9 tropical storms and 1 hurricane hit our country, causing 54 deaths and more than $6 billion in damages. While we cannot stop these storms from occurring, we can take steps to limit our vulnerability. Being aware of the dangers of tropical storms and hurricanes and knowing what to do to mitigate their devastating effects are our best defenses.

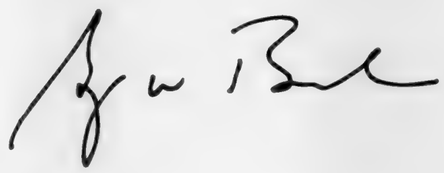
Federal, State, and local agencies across America are working diligently to prepare our communities for natural disasters. Beginning this year, NOAA's hurricane forecasts will look 5 days into the future, rather than 3 days. This enhanced forecasting ability, combined with efforts to improve the accuracy of hurricane warnings, enables coastal residents and emergency personnel to more effectively prepare for a storm's arrival. In addition, Federal agencies such as FEMA and organizations such as the American Red Cross have teamed up with State and local agencies, rescue and relief organizations, the private sector, and the news media to distribute information to the public and coordinate efforts before, during, and after a tropical storm or hurricane has struck.

To help individuals prepare for an approaching tropical storm or hurricane, FEMA recommends practical measures, to make sure that homes and businesses are ready by developing a plan for what to do; securing loose objects and protecting property by covering glass with plywood or shutters; and creating a disaster supply kit with flashlights, a battery-powered radio, food that does not need refrigeration, water, and first aid supplies. The National Weather Service also encourages acquiring a weather radio equipped with the Specific Area Message Encoder feature that provides automatic alerts when important weather information is issued for an area. For more information on how to prepare for the ravages of hazardous weather, you can go to the National Weather Service website at www.nws.noaa.gov.

Millions of Americans are at risk of being personally affected by a tropical storm or hurricane. More than one in six Americans in the continental United States lives along the Eastern Atlantic or Gulf of Mexico coast, and millions of tourists visit these areas annually. Because of the growing populations in coastal areas, it is essential that Americans prepare for hurricanes and other natural disasters. During National Hurricane Awareness Week, we promote awareness of these weather hazards, organize our efforts, and work to improve our ability to endure and survive tropical storms and hurricanes.

NOW, THEREFORE, I, GEORGE W. BUSH, President of the United States of America, by virtue of the authority vested in me by the Constitution and laws of the United States, do hereby proclaim May 18 through May 24, 2003, as National Hurricane Awareness Week. I call upon government agencies, private organizations, schools, and news media in hurricane-prone areas to share information about hurricane preparedness and response in order to help prevent storm damage and save lives. I also call upon Americans living in these coastal areas of our Nation to use this opportunity to learn more about how to protect themselves against the effects of hurricanes and tropical storms.

IN WITNESS WHEREOF, I have hereunto set my hand this fifteenth day of May, in the year of our Lord two thousand three, and of the Independence of the United States of America the two hundred and twenty-seventh.



[FR Doc. 03–12765
Filed 5–19–03; 8:45 am]
Billing code 3195–01–P

Presidential Documents

Executive Order 13302 of May 15, 2003

Amending Executive Order 13212, Actions to Expedite Energy-Related Projects

By the authority vested in me as President by the Constitution and the laws of the United States, including section 60133 of title 49, United States Code, and section 301 of title 3, United States Code, it is hereby ordered as follows:

Section 1. *Amendments to Executive Order 13212.* Executive Order 13212 of May 18, 2001, as amended, is further amended by:

(a) in section 1, immediately before the period at the end of the section, inserting "and projects that will strengthen pipeline safety";

(b) in section 2, after "energy-related projects" inserting "(including pipeline safety projects)"; and

(c) revising section 3 to read as follows:

"**Sec. 3.** *Interagency Task Force.* (a) There is established, within the Department of Energy for administrative purposes, an interagency task force (Task Force) to perform the following functions: (i) monitor and assist the agencies in their efforts to expedite their reviews of permits or similar actions, as necessary, to accelerate the completion of energy-related projects (including pipeline safety projects), increase energy production and conservation, and improve the transmission of energy;

(ii) monitor and assist agencies in setting up appropriate mechanisms to coordinate Federal, State, tribal, and local permitting in geographic areas where increased permitting activity is expected; and

(iii) perform the functions of the interagency committee for which section 60133 of title 49, United States Code, provides.

(b)(i) The Task Force shall consist exclusively of the following members:

(A) in the performance of all Task Force functions set out in sections 3(a)(i) and (ii) of this order, the Secretaries of State, the Treasury, Defense, Agriculture, Housing and Urban Development, Commerce, Transportation, the Interior, Labor, Education, Health and Human Services, Energy, and Veterans Affairs, the Attorney General, the Administrator of the Environmental Protection Agency, the Director of Central Intelligence, the Administrator of General Services, the Director of the Office of Management and Budget, the Chairman of the Council of Economic Advisers, the Assistant to the President for Domestic Policy, the Assistant to the President for Economic Policy, and such other heads of agencies as the Chairman of the Council on Environmental Quality may designate; and

(B) in the performance of the functions to which section 3(a)(iii) of this order refers, the officers listed in section 60133(a)(2)(A)-(H) of title 49, United States Code, and such other representatives of Federal agencies with responsibilities relating to pipeline repair projects as the Chairman of the Council on Environmental Quality may designate.

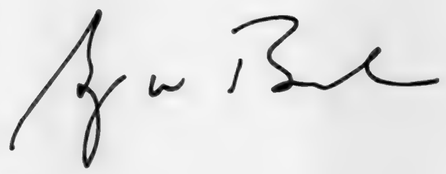
(ii) A member of the Task Force may designate, to perform the Task Force functions of the member, a full-time officer or employee of that member's agency or office.

(c) The Chairman of the Council on Environmental Quality shall chair the Task Force.

(d) Consultation in the implementation of this order with State and local officials and other persons who are not full-time or permanent part-time employees of the Federal Government shall be conducted in a manner that elicits fully the individual views of each official or other person consulted, without deliberations or efforts to achieve consensus on advice or recommendations.

(e) This order shall be implemented in a manner consistent with the President's constitutional authority to supervise the unitary executive branch."

Sec. 2. *Judicial Review.* This order is intended only to improve the internal management of the Federal Government, and is not intended to, and does not, create any right or benefit, substantive or procedural, enforceable at law or in equity by a party against the United States, its agencies, instrumentalities or entities, its officers or employees, or any other person.



THE WHITE HOUSE,
Washington, May 15, 2003.

[FR Doc. 03–12766
Filed 5–19–03; 8:45 am]
Billing code 3195–01–P

Rules and Regulations

Federal Register
Vol. 68, No. 97
Tuesday, May 20, 2003

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

DEPARTMENT OF AGRICULTURE

Office of the Secretary

7 CFR Parts 1, 2, 15, and 15f

Animal and Plant Health Inspection Service

7 CFR Part 371

Revision of Delegations of Authority

AGENCY: Office of the Secretary; Animal and Plant Health Inspection Service; USDA.

ACTION: Final rule.

SUMMARY: This document revises the delegations of authority from the Secretary of Agriculture and general officers of the Department of Agriculture (USDA) principally to reflect changes and additions to the delegations required by the Farm Security and Rural Investment Act of 2002, (FSRIA); the Public Health Security and Bioterrorism Preparedness and Response Act of 2002, the reorganization of offices under the Assistant Secretary for Administration and the establishment of the Homeland Security Staff; the authority delegated to the Judicial Officer to act in certain proceeding under the Plant Variety Protection Act, as amended, and the Agricultural Adjustment Act of 1938, as amended; the Livestock Mandatory Reporting Act of 1999; the Hass Avocado Promotion, Research, and Consumer Information Act of 2000; section 14 of the Watershed Protection and Flood Prevention Act; and the responsibilities of the United States related to activities of the Office International des Epizooties.

EFFECTIVE DATE: Effective May 20, 2003.

FOR FURTHER INFORMATION CONTACT: L. Benjamin Young, Jr., Deputy Assistant General Counsel, Office of the General Counsel, USDA, 1400 Independence Avenue, SW., Washington, DC 20250–1415, (202) 720–5565, *benjamin.young@usda.gov.*

SUPPLEMENTARY INFORMATION:

Farm Security and Rural Investment Act of 2002

The Secretary of Agriculture previously delegated authorities under the Farm Security and Rural Investment Act of 2002, Public Law 107–171 (FSRIA) in Secretary's Memorandum (SM) 1030–50 (July 10, 2002). This rule codifies those delegations as follows.

Title I of FSRIA authorizes the use of the Commodity Credit Corporation (CCC) to implement a number of programs for producers of agricultural commodities such as wheat, feed grains, cotton, rice, and oilseeds. Title X authorizes CCC to implement a livestock assistance program for producers who have incurred losses as the result of a natural disaster. Since Congress has routinely authorized, on an annual basis, the conduct by CCC of other similar commodity and disaster programs that consistently have been delegated to the Under Secretary for Farm and Foreign Agricultural Services, the delegations in 7 CFR 2.16 and 2.42 are amended to reflect the delegation of authority to the Under Secretary for Farm and Foreign Services and the Administrator of the Farm Service Agency, respectively, to implement all CCC-funded commodity programs that provide assistance to producers of agricultural commodities.

Additional, section 1504 of FSRIA expands the Dairy Products Mandatory Reporting program, which requires the collection and compilation of information with respect to prices, quantities sold, and inventories of dairy products in order to encourage competition, to include substantially identical products. The delegations at 7 CFR 2.21 and 2.68 are amended to reflect the delegation of this authority to the Under Secretary for Research, Education, and Economics and the Administrator of the National Agricultural Statistics Service, respectively.

Title II of FSRIA authorizes the use of the Commodity Credit Corporation (CCC) to implement a number of natural resources conservation programs. Since Congress has routinely authorized, on an annual basis, the conduct of CCC of the same or similar conservation programs that consistently have been delegated to the Under Secretary for Natural Resources and Environment, the delegations in 7 CFR 2.20 and 2.61 are amended to reflect the delegation of authority to the Under Secretary for Natural Resources and Environment and the Chief of the Natural Resources Conservation Service, respectively, to implement CCC-funded programs that provide assistance for natural resources conservation, except as elsewhere delegated.

Section 3107 of FSRIA authorized the President to establish the McGovern-Dole International Food for Education and Child Nutrition Program. By Presidential Memorandum dated March 11, 2003 (68 FR 12,569 (March 17, 2003)), the President delegated the authority to implement this program to the Secretary of Agriculture. The delegations in 7 CFR 2.16, 2.42, and 2.43, are amended to delegate to the Under Secretary for Farm and Foreign Agricultural Services and the Administrators of the Farm Service Agency and the Foreign Agricultural Service, respectively, the Secretary's authority to implement the program.

Section 4125 of FSRIA amended the Food Stamp Act to authorize a contract or grant to a nongovernmental organization meeting specified eligibility requirements to gather information on, and recommend, innovative programs for addressing common community problems. The delegations at 7 CFR 2.21 and 2.66 are amended to reflect the delegation of this authority by an SM signed September 27, 2002, to the Under Secretary for Research, Education, and Economics and the Administrator of the Cooperative State, Research, Education, and Extensions Service, respectively.

Section 4401 of FSRIA amended title IV of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (PRWORA) to restore Food Stamp Program eligibility to certain disabled aliens, qualified alien children, and qualified aliens who have resided in the United States for a period of 5 years from their date of entry. The delegations at 7 CFR 2.19 and 2.57 are amended to delegate authority to administer those functions under PRWORA relating to the eligibility of aliens for benefits under the domestic food assistance programs to the Under Secretary for Food, Nutrition, and Consumer Services

and the Administrator of the Food and Nutrition Service, respectively.

Section 4402 of FSRIA directs the Secretary to establish a Seniors Farmers' Market Nutrition Program (SFMNP) to operate through 2007. The purposes of the SFMNP are to provide resources in the form of fresh, nutritious, unprepared, locally grown fruits, vegetables and herbs from farmers' markets, roadside stands and community supported agriculture programs to low-income seniors and to increase domestic consumption of agricultural commodities by expanding and developing or aiding in the development of such outlets. The delegations at 7 CFR 2.19 and 2.57 are amended to delegate authority to administer the SFMNP to the Under Secretary for Food, Nutrition, and Consumer Services and the Administrator of the Food and Nutrition Service, respectively.

The delegations of authority at 7 CFR 2.16 and 2.42 are amended to reflect that the Under Secretary for Farm and Foreign Agricultural Services and the Administrator of the Farm Service Agency are delegated the responsibility to conduct studies and report to Congress on direct and guaranteed loan programs as required by section 5301 of FSRIA.

Title VI of FSRIA provided a number of new rural development program authorities to the Secretary. The delegations at 7 CFR 2.17 are amended to reflect delegation of these authorities to the Under Secretary for Rural Development, and 7 CFR 2.47, 2.48, and 2.49 are amended to reflect the further delegation of these authorities (with the exception of the Rural Strategic Investment Program) to the Administrators of the Rural Utilities Service (RUS), Rural Business-Cooperative Service (RBS), and Rural Housing Service (RHS), respectively, as follows: National Rural Development Partnership (RBS), the Rural Business Investment program (RBS), the Rural Telework program (RHS), the Historic Barn Preservation program (RHS), the Farm Workers Training Grant Program (RHS), the Value-Added Agricultural Product Market Development Grant program (RBS), the Agriculture Innovation Center Demonstration program (RBS), and the Rural Firefighters and Emergency Personnel Grant program (RHS), the Household Well-Water Grant program (RUS), the National Oceanic and Atmospheric Administration All-Hazards Weather Radio Transmitter Grant program (RUS), the SEARCH Grant program (RUS), and the Grants for Water Systems for Rural and Native Villages in Alaska (RUS).

Title VII of FSRIA provided a number of new research, education, economics, and extension authorities and requirements to the Secretary. The delegations at 7 CFR 2.21 are amended to reflect the delegation of these authorities to the Under Secretary for Reserach, Education, and Economics (REE), and the delegations at 7 CFR 2.65, 2.66, 2.67, and 2.68, are amended to reflect the further delegation of these authorities by the Under Secretary for REE to the Administrators of the Agricultural Research Service (ARS), Cooperative State Research, Education, and Extension Service (CSREES), Economic Research Service (ERS), and the National Agricultural Statistics Service (NASS), respectively, as follows: An overseas internship program with the Foreign Agricultural Service (CSREES); a competitive grants program for special purpose scientific research equipment (CSREES); authority for joint administration of grant programs with other Federal agencies (CSREES); a beginning farmer and rancher development program (CSREES); a program of grants to colleges and universities in insular areas for resident instruction and distance education (CSREES); a program of public education regarding use of biotechnology in producing food for human consumption (CSREES); a requirement to ensure organic agricultural product information is included in agricultural production and marketing data (NASS); a program of grants to the Girl Scouts of the United States of America, the Boy Scouts of America, National 4–H Council and the National Future Farmers of America Organization (CSREES); authority to terminate the Federal personnel appointments of certain State extension employees holding joint Federal-State employment appointments (CSREES); a requirement for the inclusion of certain data in estimates of net farm income (ERS); and a broad authority, using any legal authority available to the Secretary, to carry out agricultural research, education, and extension activities to counter chemical or biological terrorism and enhance the biosecurity of the United States (CSREES). Additionally, a grant program regarding certain diseases of wheat and barley was expanded to include diseases of triticale, specifically Tilletia indica and related fungi (ARS).

Title VII of FSRIA also included an authorization for establishment of a Senior Scientific Research Service that has been delegated through the Assistant Secretary for Administration to the Office of Human Resources Management.

Title IX of FSRIA authorizes several new programs related to energy. The delegations at 7 CFR 2.29 are amended to reflect the delegation of authority to the Chief Economist to develop guidelines and establish a voluntary labeling program for the Biobased Products Federal Procurement Program and to administer the Biodiesel Fuel Education grants program. 7 CFR 2.29 is also amended to reflect the delegation to the Chief Economist of responsibility for entering into a memorandum of understanding with the Secretary of Energy regarding hydrogen and fuel cell technology programs for rural communities and agricultural producers, and that responsibility is further delegated by the Chief Economist to the Director, Office of Energy Policy and New Uses by amendment of 7 CFR 2.73.

The delegations at 7 CFR 2.17 are amended to reflect the delegation of authority to the Under Secretary for Rural Development to administer the Renewable Energy System and Energy Efficiency Improvements program, the Biorefinery Development Grant program, and the Energy Audit and Renewable Energy Development Program, and 7 CFR 2.48 is further amended to reflect delegation of the Renewable Energy Systems and Energy Efficiency Improvements program to the Administrator of RBS.

The delegations at 7 CFR 2.21 and 2.66 are amended to reflect the delegation of authority to the Under Secretary for Research, Education, and Economics and the Administrator of CSREES to carry out a program of cooperative research and extension projects on carbon cycling and greenhouse gas exchanges from agriculture.

Title X, Subtitle E of FSRIA, titled the "Animal Health Protection Act," updates and consolidates a number of animal health statutes. Section 10504 of FSRIA authorizes the Secretary to develop a program to maintain in all regions of the United States a sufficient number of Federal and State veterinarians who are well trained in recognition and diagnosis of exotic and endemic animal diseases. The delegations at 7 CFR 2.22 and 2.80 are amended to reflect the delegation of authority to administer the Animal Health Protection Act and the section 10504 veterinary program to the Under Secretary for Marketing and Regulatory Programs and to the Administrator of the Animal and Plant Health Inspection Service (APHIS). 7 CFR 371.4 is amended to reflect the delegation of this authority further from the Administrator of APHIS to the Deputy Administrator for Veterinary Services. Titles 7 and 9 of the Code of Federal Regulations will be amended in a future rulemaking action to add the Animal Health Protection Act to authority citations and to make any other changes deemed necessary as a result of the enactment of this law.

Section 10605 of FSRIA requires the Secretary to establish a Farmers' Market Promotion Program to promote the establishment, expansion, and promotion of farmers' markets, section 10606 establishes a National Organic Certification Cost-Share program to provide funds to assist organic producers and handlers in obtaining certification under the national organic production program, and section 10607 exempts producers of 100 percent organic products from assessments under any commodity promotion law for any agricultural commodity produced on a certified organic farm. The delegations at 7 CFR 2.22 and 2.79 are amended to reflect the delegation of these authorities to the Under Secretary for Marketing and Regulatory Programs and the Administrator of the Agricultural Marketing Service, respectively.

Section 10704 authorizes the Secretary to establish the position of the Assistant Secretary for Civil Rights (ASCR). The Secretary established that position by SM 1030–57 (March 7, 2003). Accordingly, delegations of authority for civil rights previously made to the Assistant Secretary for Administration (ASA) under 7 CFR 2.24(a)(3) are transferred to the ASCR and codified in § 2.25, and the delegations to the Office of Civil Rights, currently at 7 CFR 2.89, are transferred to the ASCR under a new subpart R at § 2.800. Additionally, conforming changes are made in 7 CFR parts 15 and 15f to reflect the transfer of authority from the ASA to the ASCR.

Section 10805 of FSRIA authorizes a program of grants to the Food and Agricultural Policy Research Institute. The delegations at 7 CFR 2.21 and 2.66 are amended to reflect the delegation of this authority to the Under Secretary for Research, Education, and Economics and the Administrator of CSREES, respectively.

Section 10808(a) of FSRIA directs the Secretary of Agriculture to conduct an education program regarding the availability and safety of processes and treatments that eliminate or substantially reduce the level of pathogens on meat, meat food products, poultry, and poultry products. The delegations at 7 CFR 2.18 and 2.53 are amended to reflect the delegation of authority for this program to the Under Secretary for Food Safety and the Administrator of the Food Safety and Inspection Service.

Section 10816 of FSRIA establishes a Country of Origin Labeling program that requires retailers of specified agricultural commodities to inform consumers of the specified country of origin of those commodities. The delegations at 7 CFR 2.22 and 2.79 are amended to reflect the delegation of this authority to the Under Secretary for Marketing and Regulatory Programs and the Administrator of the Agricultural Marketing Service, respectively.

Public Health Security and Bioterrorism Preparedness and Response Act of 2002

Title II, Subtitle B, of the Public Health Security and Bioterrorism Preparedness and Response Act of 2002, Public Law 107–188, authorizes the Secretary to regulate the possession, use, and transfer of biological agents and toxins that pose a severe threat to plant or animal health, or animal or plant products. This authority was delegated to the Under Secretary for Marketing and Regulatory Programs and authorized to be delegated further to the Administrator of APHIS by SM 1030–054 (December 6, 2002). The delegations at 7 CFR 2.22 and 2.80 are amended to reflect the delegation of the Secretary's authority to administer Title II, Subtitle B, of the Act to the Under Secretary for Marketing and Regulatory Programs and APHIS. 7 CFR 371.3 and 371.4 is amended to reflect the further delegation of this authority from the Administrator of APHIS to the Deputy Administrators of Plant Protection and Quarantine and Veterinary Services.

Trade Act of 2002

Section 141 of the Trade Act of 2002, Public Law 107–210, amended title II of the Trade Act of 1974 to authorize the Secretary of Agriculture to provide "Trade Adjustment Assistance for Farmers." Under this program, a group of agricultural commodity producers may petition the Secretary for benefits if the Secretary determines that prices for the commodity produced by the group have declined by an amount specified in the statute and increases in imports contributed importantly to the decline. The delegations at 7 CFR 2.16 and 2.43 are amended to delegate to the Under Secretary for Farm and Foreign Agricultural Services and the Administrator, Foreign Agricultural Services, respectively, the authority to implement this new provision.

Departmental Administration

A number of changes are made to the delegations of authority to the Assistant Secretary for Administration and to the offices that report to him.

SM 1020–052 (August 15, 2002) established a new Homeland Security Staff and transferred the lead responsibility for hazardous materials management and federal facilities environmental compliance, previously delegated to the Director, Hazardous Materials Management Group (HMMG), to the ASA and under him, to the Director of the Office for Procurement and Property Management (OPPM), to whom the HMMG will now report. The delegations at 7 CFR 2.24, 2.25 (which as noted above become will now become the delegation for the ASCR), 2.32, and 2.93 are revised to reflect the removal of the HGGM from the published delegations and to reflect the division of the security and emergency planning and response functions formerly under the ASA and OPPM between OPPM and a new Homeland Security Staff. The ASA and OPPM are responsible for administration of the Continuity of Operations and Continuity of Government plans and the classification of information and administration of personnel security functions. The Homeland Security Staff is delegated authority for providing overall leadership and coordination of programs to plan for and respond to major natural and terrorist emergencies and threats.

The National Historic Preservation Act function and Indian affairs function are transferred from the Assistant Secretary for Congressional Relations to the ASA.

The ASA, the Director, Office of Operations, are delegated authority related to Department services for occupational health and related functions.

Responsibility for oversight of the Department Conflict Prevention and Resolution Center is transferred from the Office of Planning and Coordination to the Office of Human Resources Management (OHRM).

Finally, technical changes have been made to the delegations to the ASA and OHRM to make clear their authorities to take adverse actions are redelegable.

Judicial Officer

This rule simplifies the language of the delegation of authority to the Judicial Officer and makes three substantive changes to that authority.

Plant Variety Protection Act

Pursuant to section 63 of the Plant Variety Protection Act (7 U.S.C. 2443),

when the Plant Variety Protection Officers refuses an application for plant variety protection, the applicant may appeal to the Secretary of Agriculture. Effective December 1, 1977, the Secretary of Agriculture delegated authority to the Judicial Officer to exercise the functions of the Secretary of Agriculture where an appeal is filed under 7 U.S.C. 2443 (42 FR 61029). However, this delegation of authority is not reflected in the Code of Federal Regulations. Accordingly, this final rule amends 7 CFR 2.35 to reflect the Judicial Officer's authority to act as final deciding officer in appeals under section 63 of the Plant Variety Protection Act (7 U.S.C. 2443).

Pursuant to section 91 of the Plant Variety Protection Act, as amended (7 U.S.C. 2501), when a person notifies the Secretary of Agriculture of facts which may have a hearing on the protectability of a plant variety, the Secretary of Agriculture may cause the plant variety protection to be reexamined. This final rule delegates authority from the Secretary of Agriculture to the Judicial Officer to act as final deciding officer in reexamination proceedings under section 91 of the Plant Variety Protection Act, as amended (7 U.S.C. 2501).

Agricultural Adjustment Act of 1938

Pursuant to section 359i of the Agricultural Adjustment Act of 1938, as amended (7 U.S.C. 1359ii), adversely affected persons may appeal allocations of marketing allotments and arbitrated disputes between processors and producers or groups of producers regarding the sharing of processors' allocations to the Secretary of Agriculture. This final rule delegates authority from the Secretary of Agriculture to the Judicial Officer to act as final deciding officer in adjudicatory proceedings under section 359i of the Agricultural Adjustment Act of 1938, as amended (7 U.S.C. 1359ii), and to issue rules of practice applicable to proceedings conducted pursuant to section 359i of the Agricultural Adjustment Act of 1938, as amended (7 U.S.C. 1359ii).

Agricultural Risk Protection Act of 2000

Sections 203(f) and 253 of the Agricultural Risk Protection Act of 2000 (Pub. L. 106–244) ("ARPA"), respectively, authorize programs for Apple Loans and Emergency Loans for Seed Producers. The delegations at 7 CFR 2.16 and 2.42 are amended to reflect the delegation of authority to administer these programs to the Under Secretary for Farm and Foreign Agricultural Services and the Administrator of the Farm Service Agency.

The V of ARPA authorizes the Secretary of Agriculture to assess civil penalties not to exceed $10,000 against any person who causes harm to, or interferes with, an animal used for official inspections by the Department of Agriculture, and to subpoena witnesses and the production of documentary evidence relating to matters under investigation. The delegations at 7 CFR 2.22, 2.80, and 371.3 are amended to reflect the delegation of this authority to the Under Secretary for Marketing and Regulatory Programs, the Administrator of APHIS, and the Deputy Administrator for Plant Protection and Quarantine.

Livestock Mandatory Reporting Act of 1999

The Livestock Mandatory Reporting Act of 1999 (7 U.S.C. 1635–1636(h)) established a program requiring reporting of information regarding the marketing of cattle, swine, lambs, and products of such livestock in order to provide producers, packers, and others in the marketplace with information regarding pricing, contracting, and supply and demand conditions for livestock and livestock products. The delegations at 7 CFR 2.22 and 2.79 are amended to reflect the delegation of this authority to the Under Secretary for Marketing and Regulatory Programs and the Administrator of the Agricultural Marketing Service, respectively.

Hass Avocado Promotion, Research, and Consumer Information Act of 2000

The purpose of the Hass Avocado Promotion, Research, and Consumer Information Act of 2000 (7 U.S.C. 7801–7813) is to establish, through assessments on Hass avocados sold by producers and importers, a coordinated program of promotion, research, industry information, and consumer information to strengthen and expand the domestic market for Hass avocados. The delegations at 7 CFR 2.22 and 2.79 are amended to reflect the delegation of this authority to the Under Secretary for Marketing and Regulatory Programs and the Administrator of the Agricultural Marketing Service, respectively.

Office International des Epizooties (OIE)

The Office International des Epizooties (OIE) is the international forum for setting animal health standards, reporting global animal situations and disease status, and presenting guidelines and recommendations on sanitary measures relating to animal health. The Trade Agreement Act of 1979, as amended (19 U.S.C. 2531 *et seq.*), gives the Secretary of Agriculture responsibilities related to international standards for agricultural products, which include animals and animal products. Further, section 491 of the Trade Agreement Act of 1979, as amended (19 U.S.C. 2578), requires the President to designate an agency to be responsible for informing the public of the sanitary and phytosanitary (SPS) standard-setting activities of each international standard-setting organization. The President, pursuant to Proclamation No. 6780 of March 23, 1995 (60 FR 15845), designated the Secretary of Agriculture as the official responsible for informing the public of the SPS standard-setting activities of certain international standard-setting organizations, including the OIE.

The delegations at 7 CFR 2.22 and 2.80 are amended to reflect the delegation of authority for carrying out responsibilities of the United States related to activities of the OIE to the Under Secretary for Marketing and Regulatory Programs and to the Administrator of APHIS. 7 CFR 371.4 is amended to reflect the delegation of this authority further from the Administrator of APHIS to the Deputy Administrator for Veterinary Services.

Watershed Protection and Flood Prevention Act

Section 313 of the Grain Standards and Warehouse Improvement Act of 2002, Public Law 106–472, added a new section 14 to the Watershed Protection and Flood Prevention Act (16 U.S.C. 1012) authorizing the Secretary to provide technical and financial assistance to sponsoring organizations to rehabilitate water resource projects owned and operated by the sponsors that were installed under programs administered by the Natural Resources Conservation Service. The delegations at 7 CFR 2.20 and 2.61 are amended to reflect the delegation of that authority by SM 1030–049 (January 16, 2002) to the Under Secretary for Natural Resources and Environment and the Chief, Natural Resources Conservation Service, respectively.

Miscellaneous

A number of miscellaneous minor changes have been made to the delegations for other reasons. The delegation of authority in 7 CFR 1.189 to take final action in matters covered by the Equal Access to Justice Act, 5 U.S.C. 504, is revised. The headings for 7 CFR part 2, subpart N, § 2.22, and § 2.80(a) are revised to reflect the change in the title of the policy official responsible for Marketing and Regulatory Programs. The title of this position was changed from "Assistant Secretary" to "Under Secretary" by the Agriculture, Rural Development, Food and Drug Administration, and Related Agencies Appropriations Act, 1999 (Pub. L. 105–277). References in 7 CFR 2.22 and 2.80 references to statutes repealed by the Plant Protection Act (Title IV, Pub. L. 106–224, 114 Stat. 438, 7 U.S.C. 7701–7772) are removed. The delegations of authority for outreach and technical assistance to socially disadvantaged farmers and ranchers under 7 U.S.C. 2279 have been revised to reflect the fact that this authority has been removed from the Natural Resources Conservation Service, and that the authority to enter into contracts and other agreements pursuant to 7 U.S.C. 2279 has been transferred from the Assistant Secretary for Administration and Office of Outreach to the Under Secretary for Research, Education, and Economics and the Cooperative State Research, Education, and Extension Service. The reservations of authority by the Secretary in 7 CFR 2.22(b)(2) related to animal and plant health inspection are amended to update the authority citations.

Additional changes have been made to the REE mission area delegations to reflect the repeal of authorities, to consolidate some paragraphs, and to clarify the delegation regarding the McIntire-Stennis Cooperative Forestry Program.

Classification

Finally, this rules relates to internal agency management. Accordingly, pursuant to 5 U.S.C. 553, notice of proposed rulemaking and opportunity for comment are not required, and this rule may be made effective less than 30 days after publication in the **Federal Register**. This rule also is exempt from the provisions of Executive Orders 12866 and 12988. This action is not a rule as defined by the Regulatory Flexibility Act, Pub. L. 96–354, and the Small Business Regulatory Fairness Enforcement Act, 5 U.S.C. 801 *et seq.*, and thus is exempt from the provisions of those Acts.

This rule contains no information collection or recordkeeping requirements under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

List of Subjects

7 CFR Part 1

Administrative practice and procedure, Authority delegations (Government agencies), Equal access to justice.

7 CFR Part 2

Authority delegations (Government agencies).

7 CFR Part 15

Administrative practice and procedure, Authority delegations (Government agencies), Civil rights, Nondiscrimination.

7 CFR Part 15f

Administrative practice and procedure, Authority delegations (Government agencies), Civil rights.

7 CFR Part 371

Authority delegations (Government agencies).

■ Accordingly, Title 7 of the Code of Federal Regulations is amended as set forth below:

PART 1—ADMINISTRATIVE REGULATIONS

■ 1. The authority for Part 1 continues to read as follows:

Authority: 5 U.S.C. 301, unless otherwise noted. Subpart J also issued under 5 U.S.C. 504(c)(1).

■ 2. Revise § 1.189 to read as follows:

§ 1.189 Delegations of authority.

(a) Except as provided in paragraph (b) of this section, the Secretary of Agriculture delegates to the Judicial Officer authority to take final action on matters pertaining to the Act in proceedings covered by these rules. The Secretary by order may delegate authority to take final action on matters pertaining to the Act in particular cases to other subordinate officials or bodies.

(b)(1) The Secretary of Agriculture delegates to the Director of the National Appeals Division authority to take final actions on matters pertaining to the Act for proceedings under 7 CFR part 11.

(2) With respect to proceedings covered under § 1.183(b)(1)(ii) of this part, the Board of Contract Appeals is authorized by statute (41 U.S.C. 607) to take final action.

PART 2—DELEGATIONS OF AUTHORITY BY THE SECRETARY OF AGRICULTURE AND GENERAL OFFICERS OF THE DEPARTMENT

■ 1. The authority for Part 2 continues to read as follows:

Authority: 7 U.S.C. 6912(a)(1); 5 U.S.C. 301; Reorganization Plan No. 2 of 1953; 3 CFR 1949–1953 Comp., p. 1024.

Subpart C—Delegations of Authority to the Deputy Secretary, the Under Secretaries and Assistant Secretaries

■ 2.–3. Revise § 2.4 to read as follows:

§ 2.4 General officers.

The work of the Department is under the supervision and control of the Secretary who is assisted by the following general officers: the Deputy Secretary, the Under Secretary for Farm and Foreign Agricultural Services; the Under Secretary for Rural Economic and Community Development; the Under Secretary for Food Safety; the Under Secretary for Food, Nutrition, and Consumer Services; the Under Secretary for Natural Resources and Environment; the Under Secretary for Research, Education, and Economics; the Under Secretary for Marketing and Regulatory Programs; the Assistant Secretary for Congressional Relations; the Assistant Secretary for Administration; the Assistant Secretary for Civil Rights; the General Counsel; the Inspector General; the Chief Financial Officer; the Chief Information Officer; the Judicial Officer; the Director, Office of Budget and Program Analysis; the Chief Economist; the Director, National Appeals Division; and the Director of Communications.

■ 4. Amend § 2.16 to add paragraphs (a)(1)(xxv), (a)(1)(xxvi), (a)(2)(xiv), (a)(2)(xv), (a)(3)(xliii), and (a)(3)(xliv) to read as follows:

§ 2.16 Under Secretary for Farm and Foreign Agricultural Services

(a) * * *

(1) * * *

(xxv) Administer all programs of the Commodity Credit Corporation that provide assistance with respect to the production of agricultural commodities, including disaster assistance and the domestic marketing of such commodities, except as may otherwise be reserved by the Secretary of Agriculture.

(xxvi) Administer the following provisions of the Farm Security and Rural Investment Act of 2002 with respect to functions otherwise delegated to the Under Secretary for Farm and Foreign Agricultural Services:

(A) The equitable relief provisions of section 1613 (7 U.S.C. 7996).

(B) The tracking of benefits under section 1614 (7 U.S.C. 7997).

(C) The development of a plan and related report to coordinate land retirement and agricultural working land conservation programs under section 2005 (16 U.S.C. 3801 note).

* * * * *

(2) * * *

(xiv) Administer programs for Apple Loans and Emergency Loans for Seed

Producers under sections 203(f) and 253, respectively, of the Agricultural Risk Protection Act of 2000 (7 U.S.C. 1421 note, Pub. L. 106–224).

(xv) Administer evaluations of direct and guaranteed loan programs under section 5301 of the Farm security and Rural Investment Act of 2002 (7 U.S.C. 1922 note).

* * * * *

(3) * * *

(xliii) Implement provisions of the Trade Act of 1974 regarding adjustment assistance for farmers (19 U.S.C. 2401–2401g).

(xliv) Implement section 3107 of the Farm Security and Rural Investment Act of 2002 (7 U.S.C. 173o–1), expect for the authority to designate Federal agencies under section 3107(d) that is reserved to the President.

* * * * *

■ 5. Amend § 2.17 to revise paragraphs (a)(20)(iv), (a)(21)(ii), (a)(21)(xi), and (a)(22)(i), and add new paragraphs (a)(20)(x), (a)(21)(xxi), (a)(21)(xxii), (a)(21)(xxiii), (a)(22)(vi), (a)(24), (a)(25), and (a)(26) to read as follows:

§ 2.17 Under Secretary for Rural Development.

(a) * * *

(20) * * *

(iv) Administer the following sections of the Consolidated Farm and Rural Development Act (7 U.S.C. 1921, *et seq.*):

(A) Section 306 (7 U.S.C. 1926), related to water and waste facilities.

(B) Section 306A (7 U.S.C. 1926a).

(C) Section 306B (7 U.S.C. 1926b).

(D) Section 306C (7 U.S.C. 1926c).

(E) Section 306D (7 U.S.C. 1926d).

(F) Section 306E (7 U.S.C. 1926e).

(G) Section 309 (7 U.S.C. 1929) and 309A (7 U.S.C. 1929a), relating to assets and programs related to watershed facilities, resource and conservation facilities, and water and waste facilities.

(H) Section 310A (7 U.S.C. 1931), relating to watershed and resource conservation and development

(I) Section 310B(b) (7 U.S.C. 1932(b)).

(J) Section 310B(i) (7 U.S.C. 1932(i)), relating to loans for business telecommunications partnerships.

(K) Administrative Provisions of subtitle D of the consolidated Farm and Rural Development act relating to rural utility activities.

(L) Section 379B (7 U.S.C. 2008p).

* * * * *

(x) Administer the SEARCH Grants for Small Communities Program (7 U.S.C. 2009ee *et seq.*)

(21) * * *

(ii) Administer the following sections of the Consolidated Farm and Rural Development Act (7 U.S.C. 1921 *et seq.*):

(A) Section 306(a)(110(A) (7 U.S.C. 1926(a)(11)(A)), relating to grants for business technical assistance and planning.

(B) Section 304(b) (7 U.S.C. 1924(b)), relating to small business enterprises.

(C) Sections 309 (7 U.S.C. 1929) and 309A (7 U.S.C. 1929a), relating to assets and programs related to rural development.

(D) Section 310B (7 U.S.C. 1932), relating to rural industrialization assistance, rural business enterprises grants and rural technology and cooperative development grants.

(E) Section 312(b) (7 U.S.C. 1942(b)), relating to small business enterprises.

(F) Administrative Provisions of subtitle D of the Consolidated Farm and Rural Development Act relating to rural business-cooperative activities.

(G) Section 378 (7 U.S.C. 2008m) relating to the National Rural Development Partnership;

(H) Section 384A *et seq.* (7 U.S.C. 2009cc *et seq.*) relating to the Rural Business Investment Program;

(I) Section 385A *et seq.* (7 U.S.C. 2009dd *et seq.*) relating to Rural Strategic Investment Program.

* * * * *

(xi) Administer the assets of the Alternative Agricultural Research and Commercialization Corporation and the funds in the Alternative Agricultural Research and Commercialization Fund in accordance with section 6201 of the Farm Security and Rural Investment Act of 2000 (note to 7 U.S.C. 5901 (repealed)).

* * * * *

(xxi) Administer the Value-Added Agricultural Product Market Development Grant program (note to 7 U.S.C. 1621).

(xxii) Administer the Agriculture Innovation Center Demonstration program (note to 7 U.S.C. 1621).

(xxiii) Administer the Renewable Energy System and Energy Efficiency Improvements program (7 U.S.C. 8106).

(22) *Related to rural housing.* (i) Administer the following under the Consolidated Farm and Rural Development Act (7 U.S.C. 1921 *et seq.*):

(A) Section 306 (7 U.S.C. 1926), except with respect to financing for water and waste disposal facilities; or loans for rural electrification or telephone systems or facilities other than hydroelectric generating and related distribution systems and supplemental and supporting structures if they are eligible for Rural Utilities Service financing; and financing for grazing facilities and irrigation and drainage facilities; and subsection 306(a)(11).

(B) Section 309A (7 U.S.C. 1929a), regarding assets and programs relating to community facilities.

(C) Administrative Provisions of subtitle D of the Consolidated Farm and Rural Development Act relating to rural housing activities.

(D) Section 379 (7 U.S.C. 2008n) relating to the Rural Telework program;

(E) Section 379A (7 U.S.C. 2008o) relating to the Historic Barn Preservation program; and

(F) Section 379C (7 U.S.C. 2008q) relating to the Farm Workers Training Grant program.

* * * * *

(vi) Administer the Rural Firefighters and Emergency Personnel Grant program (7 U.S.C. 2655).

* * * * *

(24) Administer the Biorefinery Development Grant program (7 U.S.C. 8103).

(25) Administer the Energy Audit and Renewable Energy Development program (7 U.S.C. 8105).

(26) *Related cooperative agreements.* Enter into cooperative agreements with other Federal agencies, State and local governments, and any other organizations or individuals to improve the coordination and effectiveness of Federal programs, services, and actions affecting rural areas, including the establishment and financing of interagency groups, as long as the objectives of the agreement will serve the mutual interest of the parties in rural development activities (7 U.S.C. 2204b(b)(4)).

* * * * *

■ 6. Amend § 2.18 to revise paragraphs (a)(1)(ii)(F) and (G) and add paragraph (a)(1)(ii)(H) to read as follows:

§ 2.18 Under Secretary for Food Safety.

(a) * * *

(1) * * *

(ii) * * *

(F) National Laboratory Accreditation Program (7 U.S.C. 138–138i) with respect to laboratories accredited only for pesticide residue analysis in meat and poultry products;

(G) Administer and conduct a Food Safety Research Program (7 U.S.C. 427); and

(H) Conduct an education program regarding the availability and safety of processes and treatments that eliminate or substantially reduce the level of pathogens on meat, meat food products, poultry, and poultry products (21 U.S.C. 679b).

* * * * *

■ 7. Amend § 2.19 to revise paragraph (a)(l)(i) and add paragraph (a)(1)(vi) to read as follows:

§ 2.19 Under Secretary for Food, Nutrition, and Consumer Services.

(a) * * *

(1) * * *

(i) Administer the following legislation:

(A) the Food Stamp Act of 1977, as amended (7 U.S.C. 2011–2032).

(B) Richard B. Russell National School Lunch Act, as amended (42 U.S.C. 1751–1769h), except procurement of agricultural commodities and other foods under section thereof.

(C) Child Nutrition Act of 1966, as amended (42 U.S.C. 1771–1790).

(D) Sections 933–939 of the Food, Agriculture, Conservation, and Trade Act Amendments of 1991 (7 U.S.C. 5930 note).

(E) Section 301 of the Healthy Meals for Healthy Americans Act of 1994 (Pub. L. 103–448).

(F) Section 4402 of the Farm Security and Rural Investment Act of 2002 (7 U.S.C. 3007).

* * * * *

(vi) Administer those functions under title IV of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (8 U.S.C. 1612) relating to the eligibility of aliens for benefits under the domestic food assistance programs.

* * * * *

■ 8. Amend § 2.20 as follows:

■ a. Revise paragraphs (a)(3)(iv)(E), (a)(3)(xiii), (a)(3)(xvi), and (a)(3)(xviii),

■ b. Remove paragraph (a)(3)(xix) and (a)(9),

■ c. Redesignate paragraph (a)(3)(xx) as (xix) and paragraph (a)(3)(xxii) as paragraph (a)(3)(xii). The revisions read as follows:

§ 2.20 Under Secretary for Natural Resources and Environment.

(a) * * *

(3) * * *

(iv) * * *

(E) The Watershed Protection and Flood Prevention Program under 16 U.S.C. 1001–1010, including rehabilitation of water resource structural measures constructed under certain Department of Agriculture programs under 16 U.S.C. 1012, except for responsibilities assigned to the Under Secretary for Rural Development.

* * * * *

(xiii) Except as otherwise delegated, administer natural resources conservation authorities, including authorities related to programs of the Commodity Credit Corporation that provide assistance with respect to natural resources conservation, under Title XII of the Food Security Act of 1985 (the Act), as amended (16 U.S.C. 3801 *et seq.*), including the following:

(A) Technical assistance related to the conservation of highly erodible lands and wetlands pursuant to sections 1211–1223 of the Act (16 U.S.C. 3811–3823).

(B) Technical assistance related to the Conservation Reserve Program authorized by sections 1231–1235A of the Act (16 U.S.C. 3831–3835a).

(C) The Wetlands Reserve Program and the Emergency Wetlands Reserve Program authorized by sections 1237–1237F of the Act (16 U.S.C. 3837–3837f) and the Emergency Supplemental Appropriations for Relief from the Major, Widespread Flooding in the Midwest Act, Public Law 103–75.

(D) The Conservation Security Program authorized by sections 1238–1238C (16 U.S.C. 3838–3838c).

(E) The Farmland Protection Program authorized by sections 1238H–1238I of the Act (16 U.S.C. 3838h–3838i).

(F) The Farm Viability Program authorized by section 1238J of the Act (16 U.S.C. 3838j).

(G) The Environmental Easement Program authorized by sections 1239–1239D of the Act (16 U.S.C. 3839–3839d).

(H) The Environmental Quality Incentives Program authorized by sections 1240–1240I of the Act (16 U.S.C. 3839aa–3839aa–9).

(I) The conservation of private grazing lands authorized by section 1240M of the Act (16 U.S.C. 3839bb).

(J) The Wildlife Habitat Incentives Program authorized by section 1240N of the Act (16 U.S.C. 3839bb–1).

(K) The program for soil erosion and sedimentation control in the Great Lakes basin authorized by section 1240P of the Act (16 U.S.C. 3839bb–3).

(L) The delivery of technical assistance under section 1242 of the Act (16 U.S.C. 3842), including the approval of persons or entities outside of USDA to provide technical services.

(M) The authority for partnerships and cooperation provided by section 1243 of the Act (16 U.S.C. 3843), except for responsibilities assigned to the Under Secretary for Farm and Foreign Agricultural Services.

(N) The incentives for beginning farmers and ranchers and Indian tribes and the protection of certain proprietary information related to natural resources conservation programs as provided by section 1244 of the Act (16 U.S.C. 3844), except for responsibilities assigned to the Under Secretary for Farm and Foreign Agricultural Services.

* * * * *

(xvi) Administer the following provisions of the Farm Security and Rural Investment Act of 2002 with respect to functions otherwise delegated to the Under Secretary for Natural Resources and Environment:

(A) The equitable relief provisions of section 1613 (7 U.S.C. 7996).

(B) The tracking of benefits under section 1614 (7 U.S.C. 7997).

(C) The development of a plan and related report to coordinate land retirement and agricultural working land conservation programs under section 2005 (16 U.S.C. 3801 note).

* * * * *

(xviii) Administer the agricultural management assistance provisions of section 524(b) of the Federal Crop Insurance Act, as amended (7 U.S.C. 1524(b)), except for responsibilities assigned to the Under Secretary for Farm and Foreign Agricultural Services.

* * * * *

■ 9. Amend § 2.21 as follows:

■ a. Remove and reserve paragraphs (a)(1)(xxvi), (a)(1)(lxiii), (a)(1)(lxxxvii), (a)(1)(cxxii), and (a)(1)(cxlii);

■ b. Revise paragraphs (a)(1)(x), (a)(1)(xxxi), (a)(1)(xxxv), (a)(1)(liii), (a)(1)(ciii), (a)(1)(cxli), (a)(1)(clvii), and (a)(1)(clxiv);

■ c. Add new paragraphs (a)(1)(lv), (a)(1)(lxxviii), (a)(1)(lxxxii), (a)(1)(lxxxiii), (a)(1)clxxii) through (a)(1)(clxxxii), and (a)(8)(xiv) through (a)(1)(xvi); to read as follows:

§ 2.21 Under Secretary for Research, Education, and Economics.

(a) * * *

(1) * * *

(x) Evaluate, assess, and report to congressional agriculture committees on the merits of proposals for agricultural research facilities in the States, and ensure that each research activity conducted by an Agricultural Research Service facility serves a national or multistate need (7 U.S.C. 390 *et seq.*).

* * * * *

(xxvi) [Removed and reserved]

* * * * *

(xxxi) Make grants and enter into contracts and other agreements for outreach and technical assistance to socially disadvantaged farmers and ranchers (7 U.S.C. 2279(a)(3)).

* * * * *

(xxxv) Administer, in cooperation with land-grant colleges and universities where applicable, a rural development research and extension program, a small farm research and extension program, and a rural health and safety education program under the Rural Development Act of 1972, as amended (7 U.S.C. 2661–2667).

* * * * *

(liii) Provide policy direction and coordinate the Department's work with

national and international institutions and other persons throughout the world in the performance of agricultural research, extension, teaching, and development activities; administer a program of competitive grants for collaborative projects involving Federal scientists or scientists from colleges and universities working with scientists at international agricultural research centers in other nations focusing either on new technologies and programs for increasing the production of food and fiber or training scientists and a program of competitive grants to colleges and universities to strengthen United States economic competitiveness and to promote international market development; establish a program in coordination with the Foreign Agricultural Service to place interns from United States colleges and universities at Foreign Agricultural Service field offices overseas; and provide a biennial report to the Committee on Agriculture of the House of Representatives and the Committee on Agriculture, Nutrition, and Forestry of the Senate on efforts of the Federal Government to coordinate international agricultural research within the Federal Government, and to more effectively link the activities of domestic and international agricultural researchers, particularly researchers of the Agricultural Research Service (7 U.S.C. 3291, 3292b).

* * * * *

(lv) Administer a program of competitive grants to colleges and universities and State cooperative institutions for the acquisition of special purpose scientific research equipment for use in the food and agricultural sciences (7 U.S.C. 3310a).

* * * * *

(lxiii) [Removed and reserved]

(lxxviii) Administer a rural electronic commerce extension program through grants to regional rural development centers and competitive grants to land-grant colleges and universities and to colleges and universities (including community colleges) with agricultural or rural development programs (7 U.S.C. 5923).

* * * * *

(lxxxii) Administer competitive grants to support research and extension activities regarding organically grown and processed agricultural commodities (7 U.S.C. 5925b).

(lxxxiii) Facilitate access, through the Economic Research Service and the Agricultural Research Service (including the National Agricultural Library), by research and extensions professionals, farmers, and other interested persons in the United States to, and the use by those persons of, organic research conducted outside the United States (7 U.S.C. 5925d).

* * * * *

(lxxxvii) [Removed and reserved]

* * * * *

(ciii) Administer a cooperative forestry program in accordance with the McIntire-Stennis Cooperative Forestry Act, and administer a competitive forestry, natural resources, and environmental grant program (16 U.S.C. 582A–582A–8).

* * * * *

(cxxii) [Removed and reserved]

* * * * *

(cxli) Implement and administer the Community Food Projects Program and the Innovative Programs for Addressing Common Community Problems pursuant to the provisions of section 25 of the Food Stamp Act of 1977 (7 U.S.C. 2034).

(cxlii) [Removed and reserved]

* * * * *

(clvii) Administer an Initiative for Future Agriculture and Food Systems (7 U.S.C. 7621).

* * * * *

(clxiv) Administer grants to consortia of land-grant colleges and universities to enhance the ability of the consortia to carry out multi-State research projects aimed at understanding and combating diseases of wheat, triticale, and barley caused by Fusarium graminearum and related fungi or Tilletia indica and related fungi (7 U.S.C. 7628).

* * * * *

(clxxii) Cooperate with other Federal agencies (including the National Science Foundation) in issuing joint requests for proposals, awarding grants, and administering grants under any competitive agricultural research, education, or extension grant program (7 U.S.C. 3319b).

(clxxiii) Administer a program of competitive grants, establish education teams, and establish an online clearinghouse of curricula and training materials and programs, all for training, education, outreach, and technical assistance initiatives for the benefit of beginning farmers and ranchers (7 U.S.C. 3319f).

(clxxiv) Administer agricultural research, education, and extension activities (including through competitive grants), using any authority available to the Secretary, to reduce the vulnerability of the United States food and agricultural system to chemical or biological attack, to continue partnerships with institutions of higher education and other institutions to help form stable, long-term programs to enhance the biosecurity of the United States, to make competitive grants to universities and qualified research institutions for research on counterbioterrorsims, and to counter or otherwise respond to chemical or biological attack (7 U.S.C. 3351).

(clxxv) Administer a program of competitive grants to colleges and universities for expansion and security upgrades to enhance the security of agriculture against bioterrorism threats (7 U.S.C. 3352).

(clxxvi) Administer programs for distance education grants and resident instruction grants to eligible institutions in insular areas that have demonstrable capacity to carry out teaching and extension programs in the food and agricultural sciences (7 U.S.C. 3361–3363).

(clxxvii) Develop and implement a program to communicate with the public regarding the use of biotechnology in producing food for human consumption (7 U.S.C. 5921a).

(clxxviii) Administer a program of cooperative research (including through competitive award of grants and cooperative agreements to colleges and universities) and extension projects on carbon cycling in soils and plants, the exchange of other greenhouse gases from agriculture, and the carbon sequestration benefits of conservation practices (7 U.S.C. 6711).

(clxxix) Administer a program, in coordination with State veterinarians and other appropriate State animal health professionals, to conduct research, testing, and evaluation of programs for the control and management of Johne's disease in livestock (7 U.S.C. 7629).

(clxxx) Administer a program of grants to the Girl Scouts of the United States of America, the Boy Scouts of America, the National 4–H Council, and the National FFA Organization to establish pilot projects to expand the programs carried out by the organizations in rural areas and small towns (7 U.S.C. 7630).

(clxxxi) Oversee implementation of the termination of Federal schedule A civil service appointments of State agricultural extension employees at land-grant colleges and universities (section 7220 of Pub. L. 107–171).

(clxxxii) Administer a program of grants to the Food and Agricultural Policy Research Institute (section 10805 of Pub. L. 107–171).

* * * * *

(8) * * *

(xiv) Ensure that segregated data on the production and marketing of organic agricultural products is included in the ongoing baseline of data collection regarding agricultural production and marketing (7 U.S.C. 5925c).

(xv) Administer a program of mandatory reporting for dairy products and substantially identical products (7 U.S.C. 1637a, 1637b).

(xvi) Include in each issuance of projections of net farm income an estimate of the net farm income earned by commercial producers in the United States that will in addition show the estimate of net farm income attributable to commercial producers of livestock, loan commodities, and agricultural commodities other than loan commodities (7 U.S.C. 7998).

* * * * *

■ 10. Amend § 2.22 to revise the heading, the introductory text of paragraph (a), and paragraphs (a)(5) and (b)(2), and to add new paragraphs (a)(1)(viii)(CCC) through (a)(1)(viii)(FFF), (a)(2)(xlvii), (a)(2)(xlviii), (a)(2)(xlix), (a)(2)(xlx) to read as follows:

§ 2.22 Under Secretary for Marketing and Regulatory Programs

(a) The following delegations of authority are made by the Secretary to the Under Secretary for Marketing and Regulatory Programs:

* * * * *

(1) * * *

(viii) Exercise the functions of the Secretary of Agriculture with respect to the following programs:

(CCC) Farmers' Market Promotion Program (7 U.S.C. 2005).

(DDD) National Organic Certification Cost-Share Program (7 U.S.C. 6523).

(EEE) Exemption of Certified Organic Products from Assessment (7 U.S.C. 7401).

(FFF) Country of Origin Labeling (7 U.S.C. 1638–1638(d)).

(GGG) Hass Avocado Promotion, Research, and Consumer Information Act of 2000 (7 U.S.C. 7801–7813).

* * * * *

(2) * * *

(xlvii) Animal Health Protection Act (7 U.S.C. 8301–8317).

(xlviii) Section 10504 of the Farm Security and Rural Investment Act of 2002 (7 U.S.C. 8318).

(xlix) Title V of the Agricultural Risk Protection Act of 2000 (7 U.S.C. 2279e and 2279f).

(xlx) The responsibilities of the United States related to activities of the Office of International des Epizooties.

* * * * *

(5) *Related to defense and emergency preparedness.*

(i) Administer responsibilities and functions assigned under the Defense Production Act of 1950, as amended (50 U.S.C. App. 2061 *et seq.*), and title VI of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5195 *et seq.*), concerning protection of livestock, poultry and crops and products thereof from biological and chemical warfare; and utilization or disposal of livestock and poultry exposed to radiation.

(ii) Title II, Subtitles B and C, of the Public Health Security and Bioterrorism Preparedness and Response Act of 2002 (7 U.S.C. 8401 note, 8401, 8411).

* * * * *

(b) * * *

(2) *Related to animal and plant health inspection.*

(i) Determination that an emergency or extraordinary emergency exists under the Animal Health Protection Act (7 U.S.C. 8306, 8316).

(ii) Determination that an emergency or extraordinary emergency exists under the Plant Protection Act (7 U.S.C. 7715, 7772).

(iii) Approval of requests for apportionment of reserves for the control of outbreaks of insects, plant diseases, and animal diseases to the extent necessary to meet emergency conditions (31 U.S.C. 1512).

* * * * *

§ 2.23 [Amended]

■ 11. Remove in § 2.23 paragraphs (a)(2)(v) and (a)(3).

■ 12. Amend § 2.24 as follows:

■ a. Revise paragraphs (a)(4)(viii), (a)(5)(i), (a)(6)(vii), (a)(6)(ix)(L), (a)(6)(ix)(M), (a)(9), (a)(10), and (a)(17),

■ b. Remove and reserve paragraphs (a)(3), (a)(4)(ii), (a)(6)(x)(T), (a)(7)(xv), and (a)(14),

■ c. Remove paragraph (a)(14) added at 65 FR 77756, Dec. 13, 2003,

■ d. Add new paragraphs (a)(6)(xxv), (a)(6)(xxvi), (a)(18), (a)(19), and (a)(20) to read as follows:

§ 2.24 Assistant Secretary for Administration.

(a) * * *

(3) [Removed and reserved]

(4) * * *

(ii) [Removed and reserved]

* * * * *

(viii) Establish requirements and procedures for reporting agency outreach status and accomplishments including Departmental reporting under the Outreach and Assistance for Socially Disadvantaged Farmers and Ranchers Program (7 U.S.C. 2279).

(5) * * *

(i) Provide services for Department headquarters in the Washington, DC metropolitan area and at emergency relocation sites and certain critical facilities specified by the Assistant Secretary for Administration in the following areas:

(A) Acquiring, leasing, utilizing, constructing, maintaining, and disposing of real and personal property, including control of space assignments;

(B) Acquiring, storing, distributing, and disposing of forms;

(C) Mail management and all related functions; and

(D) Occupational health services and related functions.

* * * * *

(6) * * *

(vii) Authorize and make final decisions on adverse actions, except in those cases where the Assistant Secretary for Administration has participated.

* * * * *

(ix) * * *

(L) Authorize and make final decisions on adverse actions for positions in GS–1–15 or equivalent;

(M) Authorize and make final decisions on adverse actions for positions in the career Senior Executive Service or equivalent;

* * * * *

(x) * * *

(T) [Removed and reserved]

* * * * *

(xxv) Formulate and issue Department policy, standards, rules, and regulations relating to the Senior Scientific Research Service (7 U.S.C. 7657).

(xxvi) Redelegate, as appropriate, any authority delegated under paragraph (a)(6) to general officers of the Department and heads of Departmental agencies.

(7) * * *

(xv) [Removed and reserved]

* * * * *

(9) *Related to emergency preparedness.* Provide guidance to the development and administration of the Department's Continuity of Operations Plan and to USDA participation in the Continuity of Government Plan. This includes:

(i) Managing the Department Emergency Operations Center and alternate facilities.

(ii) Providing guidance and direction regarding continuity of operations to Departmental staff offices, mission areas, and agencies.

(iii) Representing and acting as liaison for the Department in contacts with other Federal entities and organizations concerning matters of assigned responsibilities.

(iv) Overseeing Department continuity of operations, planning, and emergency relocation facilities to ensure that resources are in a constant state of readiness.

(10) *Related to compliance with environmental laws and environmental*

management systems. (i) Take action pursuant to Executive Order 12088, 3 CFR, 1978 Comp., p. 243, to comply with environmental pollution control laws with respect to facilities and activities under his or her authority, including, but not limited to, entering into inter-agency agreements, administrative consent orders, consent judgments, or other agreements with the appropriate Federal, State, interstate, or local agencies to achieve and maintain compliance with applicable pollution control standards.

(ii) Provide program leadership and oversight for USDA compliance with applicable pollution control laws and executive orders, including Executive Order 13148, Greening of the Government Through Leadership in Environmental Management.

(iii) Provide program leadership and coordination for USDA's energy conservation and energy efficiency activities, and serve as USDA's principal Energy Conservation Officer, pursuant to Executive Order 13123, Greening of the Government Through Efficient Energy Management.

(iv) Promulgate policies, standards, techniques, and procedures, and represent the Department, in prevention, control, and abatement of pollution with respect to Federal facilities and activities under the control of the Department (Executive Order 12088, 3 CFR, 1978 Comp., p. 243).

(v) Review and approve exemptions for USDA contracts, subcontracts, grants, agreements, and loans from the requirements of the Clean Air Act, as amended (42 U.S.C. 7401, *et seq.*), the Clean Water Act, as amended (33 U.S.C. 1251, *et seq.*), and Executive Order 11738, 3 CFR, 1971–1975 Comp., p. 799, when he or she determines that the paramount interest of the United States so requires as provided in these acts and Executive Order and the regulations of the Environmental Protection Agency (40 CFR 32.215(b)).

(vi) Coordinate USDA waste prevention, recycling, and procurement, acquisition and use of recycled products and environmentally preferable products, including biobased products, and services, and serve as a USDA Environmental Executive, pursuant to Executive Order 13101.

(vii) Serve on the USDA Hazardous Materials Policy Council.

(viii) Represent USDA in consulting or working with the Environmental Protection Agency (EPA), the Council on Environmental Quality, the Domestic Policy Council, and others to develop policies relating to hazardous materials management and Federal facilities compliance with applicable pollution control laws.

(ix) Monitor, review, evaluate, and oversee hazardous materials management program activities and compliance Department-wide.

(x) Monitor, review, evaluate, and oversee USDA agency expenditures for hazardous materials management program accomplishments.

(xi) Prepare for the USDA Hazardous Materials Policy Council the Hazardous Materials Management Program budget request to the Office of Management and Budget (OMB) and Congress, prepare accomplishment reports to Congress, OMB, and EPA, and take a lead role in the preparation of replies to Congressional inquires.

(xii) Represent USDA on the National Response Team on hazardous spills and oil spills pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended (42 U.S.C. 9601, *et seq.*); the Clean Water Act, as amended (33 U.S.C. 1251, *est seq.*); Oil Pollution Act, as amended (33 U.S.C. 2701, *et seq.*); Executive Order 12580, 3 CFR, 1987 Comp., p. 193; Executive Order 12777, 3 CFR, 1991 Comp., p. 351, and the National Oil and Hazardous Substances Contingency Plan, 40 CFR Part 300.

(xiii) Approve disbursements from the New World Mine Response and Restoration Account, approve the New World Mine Response and Restoration Plan, and make quarterly reports to Congress under Sections 502(d) and (f) of Title V of the Department of the Interior and Related Agencies Appropriations Act of 1998, Public Law 105–83.

(xiv) Ensure that the Hazardous Materials Management Program Department-wide is accomplished with regard to, and in compliance with, Executive Order 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations.

(xv) Take such action as may be necessary, with the affected agency head and with the concurrence of the General Counsel, including issuance of administrative orders and agreements with any person to perform any response action under sections 106(a) and 122 (except subsection (b)(1)) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended (42 U.S.C. 9606(a), 9622), pursuant to sections 4(c)(3) and 4(d)(3) of Executive Order 12580, as amended by Executive Order 13016.

* * * * *

(14) [Removed and reserved]

* * * * *

(17) *Related to budget and finance.* Exercise general financial and budget authority over all organizations assigned to the Assistant Secretary for Administration.

(18) *Related to historic preservation.* Administer the implementation of the National Historic Preservation Act of 1966, 16 U.S.C. 470 *et seq.*, Executive Order 11593, 3 CFR, 1971–1975 Comp., p. 559, and regulations of the Advisory Council on Historic preservation, 36 CFR part 800, for the Department of Agriculture with authority to name the Secretary's designee to the Advisory Council on Historic Preservation.

(19) *Related to interactions with American Indians.* Serve as the official with the principal responsibility for the implementation of Executive order 13175, including consultation and collaboration with tribal officials, and coordinate the Department's programs involving assistance to American Indians and Alaska Natives.

(20) *Relating to personnel security and the safeguarding of national security information:*

(i) Direct and administer USDA's personnel security and public trust programs established pursuant to Executive Order 12968, Access to Classified Information (3 CFR 1995 Comp. pp 391–402) and 5 CFR 731.

(ii) Manage the personnel security functions of the Department including programs for eligibility access determinations, obtaining security clearances for USDA employees, denial or revocation of access to national security information, and developing and promulgating policies and training.

(iii) Direct and administer USDA's program under which information is safeguarded pursuant to Executive Order 12958, Classified National Security Information.

(iv) Establish Information Security (INFOSEC) policies and procedures for classifying, declassifying, safeguarding, and disposing of classified national security information and materials.

(v) Establish procedures under which authorized holders of information may challenge the classification of information believed to be improperly classified or unclassified.

(vi) Take corrective action for violations or infractions under section 5.7, par. (b), of Executive Order 12958.

(vii) Develop and maintain a secure facility for the receipt and safeguarding of classified material.

(viii) Coordinate security activities with the Chief Information Officer who has primary responsibility for PDD 63, Critical Infrastructure Assurance.

* * * * *

■ 13. Redesignate § 2.25 to Subpart C and revise to read as follows:

§ 2.25 Assistant Secretary for Civil Rights.

(a) The following delegations of authority are made by the Secretary to the Assistant Secretary for Civil Rights:

(1) Provide overall leadership, coordination, and direction for the Department's programs of civil rights, including program delivery, compliance, and equal employment opportunity, with emphasis on the following:

(i) Actions to enforce Title VI of the Civil Rights Act of 1964, 42 U.S.C. 2000d, prohibiting discrimination in Federally assisted programs.

(ii) Actions to enforce Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. 2000e, prohibiting discrimination in Federal employment.

(iii) Actions to enforce Title IX of the Education Amendments of 1972, 20 U.S.C. 1681, *et seq.*, prohibiting discrimination on the basis of sex in USDA education programs and activities funded by the Department.

(iv) Actions to enforce the Age Discrimination Act of 1975, 42 U.S.C. 6102, prohibiting discrimination on the basis of age in USDA programs and activities funded by the Department.

(v) Actions to enforce Section 504 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. 794, prohibiting discrimination against individuals with disabilities in USDA programs and activities funded by the Department.

(vi) Actions to enforce section 504 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. 794, prohibiting discrimination against individuals with disabilities in USDA conducted programs.

(vii) Actions to enforce Title II of the Americans with Disabilities Act of 1990, as amended, 42 U.S.C. 12131, *et seq.*, prohibiting discrimination against individuals with disabilities in State and local government services.

(viii) Actions to enforce related Executive Orders, Congressional mandates, and other laws, rules, and regulations, as appropriate.

(ix) Actions to develop and implement the Department's Federal Women's Program.

(x) Actions to develop and implement the Department's Hispanic Employment Program.

(2) Evaluate Departmental agency programs, activities, and impact statements for civil rights concerns.

(3) Provide leadership and coordinate Departmental agencies and systems for targeting, collecting, analyzing, and evaluating program participation data and equal employment opportunity data.

(4) Provide leadership and coordinate Departmentwide programs of public notification regarding the availability of USDA programs on a nondiscriminatory basis.

(5) Coordinate with the Department of Justice on matters relating to Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d), Title IX of the Education Amendments of 1972 (20 U.S.C. 1681, *et seq.*), and section 504 of Rehabilitation Act of 1973, as amended (29 U.S.C. 794), except those matters in litigation, including administrative enforcement actions, which shall be coordinated by the Office of the General Counsel.

(6) Coordinate with the Department of Health and Human Services on matters relating to the Age Discrimination Act of 1975, 42 U.S.C. 6102, except those matters in litigation, including administrative enforcement actions, which shall be coordinated by the Office of the General Counsel.

(7) Order proceedings and hearings in the Department pursuant to §§ 15.9(e) and 15.86 of this title which concern consolidated or joint hearings within the Department or with other Federal departments and agencies.

(8) Order proceedings and hearings in the Department pursuant to § 15.8 of this title after the program agency has advised the applicant or recipient of his or her failure to comply and has determined that compliance cannot be secured by voluntary means.

(9) Issue orders to give a notice of hearing or the opportunity to request a hearing pursuant to part 15 of this title; arrange for the designation of an Administrative Law Judge to preside over any such hearing; and determine whether the Administrative Law Judge so designated will make an initial decision or certify the record to the Secretary of Agriculture with his or her recommended findings and proposed action.

(10) Authorize the taking of action pursuant to § 15.8(a) of this title relating to compliance by "other means authorized by law."

(11) Make determinations required by § 15.8(d) of this title that compliance cannot be secured by voluntary means, and then take action, as appropriate.

(12) Make determinations, after legal sufficiency reviews by the Office of the General Counsel, that program complaint investigations performed under § 15.6 of this title establish a proper basis for findings of discrimination, and that actions taken to correct such findings are adequate.

(13) Perform investigations and make final determinations, after legal sufficiency reviews by the Office of the General Counsel, on both the merits and required corrective action, as to complaints filed under part 15d of this title.

(14) Conduct investigations and compliance reviews Departmentwide.

(15) Develop regulations, plans, and procedures necessary to carry out the Department's civil rights programs, including the development, implementation, and coordination of Action Plans.

(16) Coordinate the Department's affirmative employment program, special emphasis programs, Federal Equal Opportunity Recruitment Program, equal employment opportunity evaluations, and development of policy.

(17) Provide liaison on equal employment opportunity programs and activities with the Equal Employment Opportunity Commission and the Office of Personal Management.

(18) Monitor, evaluate, and report on agency compliance with established policy and Executive Orders which further the participation of historically Black colleges and universities, the Hispanic-serving institutions, 1994 tribal land grant institutions, and other colleges and universities with substantial minority group enrollment in Departmental programs and activities.

(19) Is designated as the Department's Director of Equal Employment Opportunity with authority to perform the functions and responsibilities of that position under 29 CFR part 1614, including the authority to make changes in programs and procedures designed to eliminate discriminatory practices and improve the Department's program for Equal Employment Opportunity (EEO), to provide equal opportunity services for managers and employees, and to make final agency decisions, after legal sufficiency reviews by the Office of the General Counsel, on EEO complaints by Department employees or applicants for employment and order such corrective measures in such complaints as may be considered necessary, including the recommendation for such disciplinary action as is warranted when an employee has been found to have engaged in a discriminatory practice.

(20) Maintain liaison with historically Black colleges and universities, the Hispanic-serving institutions, 1994 tribal land grant institutions, and other colleges and universities with substantial minority group enrollment, and assist Department agencies in strengthening such institutions by

facilitating institutional participation in Department programs and activities and by encouraging minority students to pursue curricula that could lead to careers in the food and agricultural sciences.

(21) Administer the Department's EEO Program.

(22) Oversee and manage the EEO counseling function for the Department.

(23) Administer the discrimination appeals and complaints program for the Department, including all formal individual or group appeals, where the system provides for an avenue of redress to the Department level, Equal Employment Opportunity Commission, or other outside authority.

(24) Process formal EEO discrimination complaints by employees or applicants for employment.

(25) Investigate Department EEO and program discrimination complaints.

(26) Make final decisions, after legal sufficiency reviews by the Office of the General Counsel, or both EEO and program discrimination complaints, except in those cases where the Assistant Secretary has participated in the events that gave rise to the matter.

(27) Order such corrective measures in EEO complaints as may be considered necessary, including the recommendation for such disciplinary action as is warranted when an employee has been found to engage in a discriminatory practice.

(28) Provide liaison on EEO matters concerning complaints and appeals with the Department agencies and Department employees.

(29) Make final determinations, or enter into settlement agreements, after legal sufficiency reviews by the Office of the General Counsel, on discrimination complaints in conducted programs subject to the Equal Credit Opportunity Act. This delegation includes the authority to make compensatory damage awards whether pursuant to a final determination or in a settlement agreement under the authority of the Equal Credit Opportunity Act and the authority to obligate agency funds, including CCC and FCIC funds to satisfy such an award.

(30) Require corrective action on findings on discrimination on program complaints and recommend to the Secretary that relief be granted under 7 U.S.C. 6998(d), notwithstanding the finality of National Appeals Divisions decisions.

(31) Make final determinations in proceedings under part 15f of this title where review of an administrative law judge decision is undertaken.

(32) Provide civil rights and equal employment opportunity support services, with authority to take actions required by law or regulation to perform such services for:

(i) The Secretary of Agriculture.

(ii) The general officers of the Department.

(iii) The offices and agencies reporting to the Assistant Secretary for Administration.

(iv) Any other offices or agencies of the Department as may be agreed.

Subpart D—Delegations of Authority to Other General Officers and Agency Heads

■ 14. Add to § 2.29 new paragraphs (a)(11)(vii), (a)(11)(viii) and (a)(11)(ix) to read as follows:

§ 2.29 Chief Economist.

(a) * * *

(11) * * *

(vii) Establish guidelines for use in the Federal procurement of biobased products in consultation with the Administrators of the Environmental Protection Agency and General Services and the Director, National Institute of Standards and Technology, and establish, in consultation with the Administrator of the Environmental Protection Agency, a voluntary "USDA Certified Biobased Product" labeling program (7 U.S.C. 8102).

(viii) Administer a competitive biodiesel fuel education grants program (7 U.S.C. 8104).

(ix) Implement a memorandum of understanding with the Secretary of Energy regarding cooperation in the application of hydrogen and fuel cell technology programs for rural communities and agricultural producers (7 U.S.C. 8107).

■ 15. Revise § 2.32 to read as follows:

§ 2.32 Director, Homeland Security Staff.

(a) The following delegations of authority are made by the Secretary to the Director, Homeland Security Staff:

(1) Administer the Department Emergency Preparedness Program. This includes the:

(i) Coordination of the delegations and assignments made to the Department under the Defense Production Act, 50 U.S.C. App. 2061, *et seq.*, and the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121, *et seq.*, by Executive Orders 12148, "Federal Emergency Management," and 12919, "National Defense Industrial Resources Preparedness," and Executive Order 12656, November 18, 1988, "Assignment of Emergency Preparedness Responsibilities," or any successor to these Executive Orders, to ensure that the Department has sufficient capabilities to respond to any occurrence, including natural disaster, military attack, technological emergency, or any other emergency.

(ii) Activation of the USDA incident management system and the Federal Response Plan responsibilities in the event of a major incident;

(iii) Establishment and oversight of a Departmentwide Incidence Command training program.

(iv) Development and promulgation of policies for the Department regarding emergency preparedness and national security, including matters relating to anti-terrorism and agriculture-related emergency preparedness planning both national and international; and guidance to USDA state and county emergency boards.

(v) Representation and liaison for the Department in contacts with other Federal entities and organizations, including the Office of Homeland Security (or successor organization), the Federal Emergency Management Agency, the National Security Council, the Office of Management and Budget, concerning matters of a national security, natural disaster, other emergencies, and agriculture-related international civil emergency planning and related activities, and as the primary USDA representative for anti-terrorism activities.

(vi) Development and submission of a coordinated budget request for homeland security.

(2) Serve as the USDA focal point to identify, receive, disseminate and store USDA intelligence requirements and convey information to the intelligence community.

(3) Serve as the primary point of contact for GAO and OIG audits of USDA homeland security activities.

(4) Coordinate interaction between Department agencies and private sector businesses and industries in emergency planning and public education under Department authorities delegated or assigned under the Federal Response Plan, the Defense Production Act 50 U.S.C. App. 2061, *et seq.*, and Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121, *et seq.*

(5) Serve as the document classification authority for the Department.

(6) Provide staff support to the USDA Homeland Security Council.

(b) [Reserved]

■ 16. Add to § 2.34 paragraph (c) to read as follows:

§ 2.34 Director, National Appeals Division

* * * * *

(c) Prepare a report each year on the number of requests for equitable relief and the disposition of such requests for inclusion in the report of the Secretary to Congress on equitable relief requests made to the Department under farm and conservation programs (7 U.S.C. 7996(g)(2).

■ 17. Revise § 2.35 to read as follows:

§ 2.35 Judicial Officer.

(a) Pursuant to the Act of April 4, 1940, as amended (7 U.S.C. 450c–450g), and Reorganization Plan No. 2 of 1953 (5 U.S.C. app.), the Secretary of Agriculture makes the following delegations of authority to the Judicial Officer. The Judicial Officer is authorized to:

(1) Act as final deciding officer in adjudicatory proceedings subject to 5 U.S.C. 556 and 557;

(2) Act as final deciding officer in adjudicatory proceedings which are or may be subject to the "Rules of Practice Governing Formal Adjudicatory Proceedings Instituted by the Secretary Under Various Statutes" set forth in part 1, subpart H, of this title;

(3) Act as final deciding officer in adjudicatory proceedings which are or may be subject to the "Rules of Practice Governing Cease and Desist Proceedings Under Section 2 of the Capper-Volstead Act" set forth in part 1, subpart I, of this title;

(4) Act as final deciding officer in adjudicatory proceedings subject to the "Procedures Related to Administrative Hearings Under the Program Fraud Civil Remedies Act of 1986" set forth in part 1, subpart L, of this title;

(5) Act as final deciding officer in adjudicatory proceedings subject to the "Rules of Practice Governing Adjudication of Sourcing Area Applications and Formal Review of Sourcing Areas Pursuant to the Forest Resources Conservation and Shortage Relief Act of 1990 (16 U.S.C. 620, *et seq.*)" set forth in part 1, subpart M, of this title;

(6) Act as final deciding officer in rate proceedings under the Packers and Stockyards Act, as amended and supplemented (7 U.S.C. 181–229);

(7) Act as final deciding officer in reparation proceedings under statutes administered by the United States Department of Agriculture;

(8) Act as final deciding officer in appeals under section 63 of the Plant Variety Protection Act (7 U.S.C. 2443), and in reexamination proceedings under section 91 of the Plant Variety Protection Act, as amended (7 U.S.C.. 2501);

(9) Act as final deciding officer in adjudicatory proceedings under section 359i of the Agricultural Adjustment Act of 1938, as amended (7 U.S.C. 1359ii); and

(10) Issue rules of practice applicable to proceedings conducted under section 359i of the Agricultural Adjustment Act of 1938, as amended (7 U.S.C. 1359ii).

(b) The delegation of authority from the Secretary of Agriculture to the Judicial Officer in paragraph (a) of this section shall not be construed to limit the authority of the Judicial Officer to perform any functions, in addition to those identified in the Act of April 4, 1940, as amended (7 U.S.C. 450c–450g), which may be assigned by the Secretary of Agriculture to the Judicial Officer.

(c) As used in this section, the term *Judicial Officer* shall mean any person or persons so designated by the Secretary of Agriculture.

Subpart F—Delegations of Authority by the Under Secretary for Farm and Foreign Agricultural Services

■ 18. Amend § 2.42 to revise paragraph (a)(12) and add paragraph (a)(45) through (a)(48) to read as follows:

§ 2.42 Administrator, Farm Service Agency.

(a) * * *

(12) Administer commodity procurement and supply, transportation (other than from point of export, except for movement to trust territories or possessions), handling, payment,and related services in connection with programs under titles II and III of Public Law 480 (7 U.S.C. 1691, 1701, *et seq.*) and section 3107 of the Farm Security and Rural Investment Act of 2002 (7 U.S.C. 1736o–1) (except for the authority under section 3107(d) to designate federal agencies that is reserved to the President), and payment and related services with respect to export programs and barter operations.

* * * * *

(45) Administer all programs of the Commodity Credit Corporation that provide assistance with respect to the production of agricultural commodities, including disaster assistance and the domestic marketing of such commodities, except as may otherwise be reserved by the Under Secretary for Farm and Agricultural Services.

(46) Administer the following provisions of the Farm Security and Rural Investment Act of 2002 with respect to functions otherwise delegated to the Administrator, Farm Service Agency:

(i) The equitable relief provisions of section 1613 (7 U.S.C. 7996).

(ii) The tracking of benefits under section 1614 (7 U.S.C. 7997).

(iii) The development of a plan and related report to coordinate land retirement and agricultural working land conservation programs under section 2005 (16 U.S.C. 3801 note).

(47) Administer programs for Apple Loans and Emergency Loans for Seed Producers under section 203(f) and 253, respectively, of the Agricultural Risk Protection Act of 2000 (7 U.S.C. 1421 note, Pub. L. 106–224).

(48) Administer evaluations of direct and guaranteed loan programs under section 5301 of the Farm Security and Rural Investment Act of 2002 (7 U.S.C. 1992 note).

* * * * *

■ 19. Amend § 2.43 to add paragraphs (a)(43) and (a)(44) to read as follows:

§ 2.43 Administrator, Foreign Agricultural Service.

(a) * * *

(43) Implement provisions of the Trade Act of 1974 regarding adjustment assistance for farmers. (19 U.S.C. 2401–2401g).

(44) Implement section 3107 of the Farm Security and Rural Investment Act of 2002 (7 U.S.C. 1736o–1), except as otherwise delegated in § 2.42(a)(12) and except for the authority under section 3107(d) to designate federal agencies that is reserved to the President.

* * * * *

Subpart G—Delegations of Authority by the Under Secretary for Rural Development

■ 20. Amend § 2.47 to revise paragraph (a)(4) and add paragraph and (a)(15) to read as follows:

§ 2.47 Administrator, Rural Utilities Service.

(a) * * *

(4) Administer the following sections of the Consolidated Farm and Rural Development Act (7 U.S.C. 1921, *et seq.*):

(i) Section 306 (7 U.S.C. 1926), related to water and waste facilities.

(ii) Section 306A (7 U.S.C. 1926a).

(iii) Section 306B (7 U.S.C. 1926b).

(iv) Section 306C (7 U.S.C. 1926c).

(v) Section 306D (7 U.S.C. 1926d).

(vii) Section 306E (7 U.S.C. 1926e).

(vii) Sections 309 (7 U.S.C. 1929 and 309A (7 U.S.C. 1929a), relating to assets and programs related to watershed facilities, resource and conservation facilities, and water and waste facilities.

(viii) Section 305 (7 U.S.C. 1926) relating to hazardous weather early warning systems.

(ix) Section 310A (7 U.S.C. 1931), relating to watershed and resource conservation and development.

(x) Section 310B(b) (7 U.S.C. 1932(b)).
(xi) Section 310B(i) (7 U.S.C. 1932(i)), relating to loans for business telecommunications partnerships.
(xii) Section 342 (7 U.S.C. 1013p).
(xiii) Administrative Provisions of subtitle D of the Consolidated Farm and Rural Development Act relating to Rural Utilities Service activities.
(xiv) Section 379B (7 U.S.C. 2009;).
* * * * *
(15) Admnister the SEARCH Grants for Small Communities Program (7 U.S.C. 2009ee *et seq.*).
* * * * *
21. Amend § 2.48 to revise paragraph (a)(27) and add new paragraphs (a)(2)(vii), (a)(2)(viii), (a)(28), (a)(29) and (a)(30) to read as follows:

§ 2.48 Administrator, Rural-Business Cooperative Service.

(a) * * *
(2) * * *
(vii) Section 378 (7 U.S.C., 2008m) relating to the National Rural Development Partnership; and
(viii) Section 384A *et seq.* (7 U.S.C. 2009cc *et seq.*) relating to the Rural Business Investment program.
* * * * *
(27) Administer the assets of the Alternative Agricultural Research and Commercialization Corporation and the funds in the Alternative Agricultural Research and Commercialization Fund in accordance with section 6201 of the Farm Security and Rural Investment Act of 2000 (*see* note to 7 U.S.C. 5901 (repealed)).
(28) Administer the Value-Added Agricultural Product Market Development Grant program (note to 7 U.S.C. 1621).
(29) Administer the Agriculture Innovation Center Demonstration program (note to 7 U.S.C. 1621).
(30) Administer the Renewable Energy Systems and Energy Efficiency Improvements program (7 U.S.C. 8106).
* * * * *
■ 22. Add to § 2.49, paragraphs (a)(1)(iv) through (vi) and (a)(11), to read as follows:

§ 2.49 Administrator, Rural Housing Service.

(a) * * *
(1) * * *
(iv) Section 379 (7 U.S.C. 2008n) relating to the Rural Telework program.
(v) Section 379A (7 U.S.C. 2008o) relating to the Historic Barn Preservation program.
(vi) Section 379C (7 U.S.C. 2008q) relating to the Farm Workers Training Grant program.
* * * * *
(11) Administer the Rural Firefighters and Emergency Personnel Grant program (7 U.S.C. 2655).

Subpart H—Delegations of Authority by the Under Secretary for Food Safety

■ 23. Add to § 2.53, paragraph (a)(9), to read as follows:

§ 2.53 Administrator, Food Safety and Inspection Service.

(a) * * *
(9) Conduct an education program regarding the availability and safety of processes and treatments that eliminate or substantially reduce the level of pathogens on meat, meat food products, poultry, and poultry products (21 U.S.C. 679b).
* * * * *

Subpart I—Delegations of Authority by the Under Secretary for Food, Nutrition, and Consumer Services

■ 24. Amend § 2.57 to revise paragraph (a)(1) and add paragraph (a)(14) to read as follows:

§ 2.57 Administrator, Food and Nutrition Service.

(a) * * *
(1) Administer the following legislation:
(i) The Food Stamp Act of 1977, as amended (7 U.S.C. 2011–2032).
(ii) Richard B. Russell National School Lunch Act, as amended (42 U.S.C. 1751–1769h), except procurement of agricultural commodities and other foods under section 6 thereof.
(iii) Child Nutrition Act of 1966, as amended (42 U.S.C. 1771–1790).
(iv) Sections 933–939 of the Food, Agriculture, Conservation, and Trade Act Amendments of 1991 (7 U.S.C. 5930 note).
(v) Section 301 of the Healthy Meals for Healthy Americans Act of 1994 (Pub. L. 103–448).
(vi) Section 4402 of the Farm Security and Rural Investment Act of 2002 (7 U.S.C. 3007).
* * * * *
(14) Administer those functions under title IV of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (8 U.S.C. 1612) relating to the eligibility of aliens for benefits under the domestic food assistance programs.
* * * * *

Subpart J—Delegations of Authority by the Under Secretary for Natural Resources and Environment

■ 25. Amend § 2.61 to revise paragraphs (a)(4)(v), (a)(13), (a)(18), and (a)(25) and remove and reserve paragraph (a)(19) to read as follows:

§ 2.61 Chief, Natural Resources Conservation Service.

(a) * * *
(4) * * *
(v) The Watershed Protection and Flood Prevention Program under 16 U.S.C. 1001–1010, including rehabilitation of water resource structural measures constructed under certain Department of Agriculture programs under 16 U.S.C. 1012, except for responsibilities assigned to the Rural Housing Service and the Forest Service.
* * * * *
(13) Administer natural resources conservation authorities, including authorities related to programs of the Commodity Credit Corporation that provide assistance with respect to natural resources conservation, under Title XII of the Food Security Act of 1985 (the Act), as amended (16 U.S.C. 3801 *et seq.*), including the following:
(i) Technical assistance related to the conservation of highly erodible lands and wetlands pursuant to sections 1211–1223 of the Act (16 U.S.C. 3811–3823);
(ii) Technical assistance related to the Conservation Reserve Program authorized by sections 1231–1235A of the Act (16 U.S.C. 3831–3835a);
(iii) The Wetlands Reserve Program and the Emergency Wetlands Reserve Program authorized by sections 1237–1237F of the Act (16 U.S.C. 3837–3837f) and the Emergency Supplemental Appropriations for Relief from the Major, Widespread Flooding in the Midwest Act, Pub. L. 103–75;
(iv) The Conservation Security Program authorized by sections 1238–1238C (16 U.S.C. 3838–3838c);
(v) The Farmland Protection Program authorized by sections 1238H–1238I of the Act (16 U.S.C. 3838h–3838i);
(vi) The Farm Viability Program authorized by section 1238J of the Act (16 U.S.C. 3838j);
(vii) The Environmental Easement Program authorized by sections 1239–1239D of the Act (16 U.S.C. 3839–3839d);
(viii) The Environmental Quality Incentives Program authorized by sections 1240–1240I of the Act (16 U.S.C. 3839aa–3839aa–9);
(xix) The conservation of private grazing lands authorized by section 1240M of the Act (16 U.S.C. 3839bb);
(x) The Wildlife Habitat Incentives Program authorized by section 1240N of the Act (16 U.S.C. 3839bb–1);
(xi) The program for soil erosion and sedimentation control in the Great Lakes basin authorized by section 1240P of the Act (16 U.S.C. 3839bb–3);

(xii) The delivery of technical assistance under section 1242 of the Act (16 U.S.C. 3842), including the approval of persons or entities outside of USDA to provide technical services;
(xiii) The authority for partnerships and cooperation provided by section 1243 of the Act (16 U.S.C. 3843), except for responsibilities assigned to the Under Secretary for Farm and Foreign Agricultural Services; and
(xiv) The incentives for beginning farmers and ranchers and Indian tribes and the protection of certain proprietary information related to natural resources conservation programs as provided by section 1244 of the Act (16 U.S.C. 3844), except for responsibilities assigned to the Administrator, Farm Service Agency.
* * * * *
(18) Administer the agricultural management assistance provisions of section 524(b) of the Federal Crop Insurance Act, as amended (7 U.S.C. 1524(b)), except for responsibilities assigned to the Administrator, Risk Management Agency.
(19) [Removed and reserved]
* * * * *
(25) Administer the following provisions of the Farm Security and Rural Investment Act of 2002 with respect to functions otherwise delegated to the Chief, Natural Resources and Environment:
(i) The equitable relief provisions of section 1613 (7 U.S.C. 7996);
(ii) The tracking of benefits under section 1614 (7 U.S.c. 7997); and
(iii) The development of a plan and related report to coordinate land retirement and agricultural working land conservation programs under section 2005 (16 U.S.C. 3801 note).
* * * * *

Subpart K—Delegations of Authority by the Under Secretary for Research, Education, and Economics

■ 26. Amend § 2.65 to revise paragraphs (a)(40) and (a)(104) to read as follows:

§ 2.65 Administrator, Agricultural Research Service.

(a) * * *
(40) Facilitate access, including through the National Agricultural Library, by research and extension professionals, farmers, and other interested persons in the United States to, and the use by those persons of, organic research conducted outside the United States (7 U.S.C. 5925d).
* * * * *
(104) Administer grants to consortia of land-grant colleges and universities to enhance the ability of the consortia to carry out multi-State research projects aimed at understanding and combating diseases of wheat, triticale, and barley caused by Fusarium graminearum and related fungi or Tilletia indica and related fungi (7 U.S.C. 7628).
* * * * *
■ 27. Amend § 2.66 as follows:
■ a. Remove and reserve paragraphs (a)(58), (a)(59), (a)(60), (a)(66) through (a)(71), (a)(75), (a)(77), (a)(87), (a)(94), (a)(103), and (a)(112);
■ b. Revise paragraphs (a)(9), (a)(10), (a)(20), (a)(39), (a)(51), (a)(102), and (a)(124); and
■ c. Add new paragraphs (a)(21), (a)(38), (a)(40), and (a)(131) through (a)(140) to read as follows:

§ 2.66 Administrator, Cooperative State Research, Education, and Extension Service.

(a) * * *
(9) Make grants and enter into contracts and other agreements for outreach and technical assistance to socially disadvantaged farmers and ranchers (7 U.S.C. 2279(a)(3)).
(10) Administer, in cooperation with land-grant colleges and universities where applicable, a rural development research and extension program, a small farm research and extension program, and a rural health and safety education program under the Rural Development Act of 1972, as amended (7 U.S.C. 2661–2667).
* * * * *
(20) Provide policy direction and coordinate the Department's work with national and international institutions and other persons throughout the world in the performance of agricultural research, extension, teaching, and development activities; administer a program of competitive grants for collaborative projects involving Federal scientists or scientists from colleges and universities working with scientists at international agricultural research centers in other nations focusing either on new technologies and programs for increasing the production of food and fiber or training scientists and a program of competitive grants to colleges and universities to strengthen United States economic competitiveness and to promote international market development; and establish a program in coordination with the Foreign Agricultural Service to place interns from United States colleges and universities at Foreign Agricultural Service field offices overseas (7 U.S.C. 3291, 3292b).
(21) Administer a program of competitive grants to colleges and universities and State cooperative institutions for the acquisition of special purpose scientific research equipment for use in the food and agricultural sciences (7 U.S.C. 3310a).
* * * * *
(38) Develop and implement a program to communicate with the public regarding the use of biotechnology in producing food for human consumption (7 U.S.C. 5921a).
(39) Administer a rural electronic commerce extension program through grants to regional rural development centers and competitive grants to land-grant colleges and universities and to colleges and universities (including community colleges) with agricultural or rural development programs (7 U.S.C. 5923).
(40) Conduct a research initiative known as the Agricultural Genome Initiative; and make grants or enter cooperative agreements on a competitive basis with individuals and organizations to carry out the Initiative (7 U.S.C. 5924).
* * * * *
(51) Administer a cooperative forestry program in accordance with the McIntire-Stennis Cooperative Forestry Act, and administer a competitive forestry, natural resources, and environmental grant program (16 U.S.C. 582a–582a–8).
* * * * *
(58)–(60) [Removed and reserved]
* * * * *
(66)–(71) [Removed and reserved]
* * * * *
(75) [Removed and reserved]
* * * * *
(77) [Removed and reserved]
* * * * *
(87) [Removed and reserved]
* * * * *
(94) [Removed and reserved]
* * * * *
(102) Implement and administer the Community Food Projects Program and the Innovative Programs for Addressing Common Community Problems pursuant to the provisions of section 25 of the Food Stamp Act of 1977 (7 U.S.C. 2034).
(103) [Removed and reserved]
* * * * *
(112) [Removed and reserved]
* * * * *
(124) Administer an Initiative for Future Agriculture and Food Systems (7 U.S.C. 7621).
* * * * *
(131) Cooperate with other Federal agencies (including the National Science Foundation) in issuing joint requests for proposals, awarding grants, and administering grants under any

competitive agricultural research, education, or extension grant program (7 U.S.C. 3319b).

(132) Administer a program of competitive grants, establish education teams, and establish an online clearinghouse of curricula and training materials and programs, all for training, education, outreach, and technical assistance initiatives for the benefit of beginning farmers and ranchers (7 U.S.C. 3319f).

(133) Administer agricultural research, education, and extension activities (including through competitive grants), using any authority available to the Secretary, to reduce the vulnerability of the United States food and agricultural system to chemical or biological attack, to continue partnerships with institutions of higher education and other institutions to help form stable, long-term programs to enhance the biosecurity of the United States, to make competitive grants to universities and qualified research institutions for research on counterbioterrorism, and to counter or otherwise respond to chemical or biological attack (7 U.S.C. 3351).

(134) Administer a program of competitive grants to colleges and universities for expansion and security upgrades to enhance the security of agriculture against bioterrorism (7 U.S.C. 3352).

(135) Administer programs for distance education grants and resident instruction grants to eligible institutions in insular areas that have demonstrable capacity to carry out teaching and extension programs in the food and agricultural sciences (7 U.S.C. 3361–3363).

(136) Administer a program of cooperative research (including through competitive award of grants and cooperative agreements to colleges and universities) and extension projects on carbon cycling in soils and plants, the exchange of other greenhouse gases from agriculture, and the carbon sequestration benefits of conservation practices (7 U.S.C. 6711).

(137) Administer a program, in coordination with State veterinarians and other appropriate State animal health professionals, to conduct research, testing, and evaluation of programs for the control and management of Johne's disease in livestock (7 U.S.C. 7629).

(138) Administer a program of grants to the Girl Scouts of the United States of America, the Boy Scouts of America, the National 4–H Council, and the National FFA Organization to establish pilot projects to expand the programs carried out by the organizations in rural areas and small towns (7 U.S.C. 7630).

(139) Oversee implementation of the termination of Federal schedule A civil service appointments of State agricultural extension employees at land-grant colleges and universities (section 7220 of Pub. L. 107–171).

(140) Administer and direct a program of grants to the Food and Agricultural Policy Research Institute (section 10805 of Pub. L. 107–171).

* * * * *

■ 28. Amend § 2.67 to add paragraph (a)(12) and paragraph (a)(18) to read as follows:

§ 2.67 Administrator, Economic Research Service

(a) * * *

(12) Facilitate access by research and extension professionals, farmers, and other interested persons in the United States to, and the use by those persons of, organic research conducted outside the United States (7 U.S.C. 5925d).

* * * * *

(18) Include in each issuance of projections of net farm income an estimate of the net farm income earned by commercial producers in the United States that will in addition show the estimate of net farm income attributable to commercial producers of livestock, loan commodities, and agricultural commodities other than loan commodities (7 U.S.C. 7998).

* * * * *

■ 29. Amend § 2.68 to add paragraphs (a)(10) and (a)(11) to read as follows:

§ 2.68 Administrator, National Agricultural Statistics Service

(a) * * *

(10) Ensure that segregated data on the production and marketing of organic agricultural products is included in the ongoing baseline of data collection regarding agricultural production and marketing (7 U.S.C. 5925c).

(11) Administer a program of mandatory reporting for dairy products and substantially identical products (7 U.S.C. 1637a, 1638b).

* * * * *

Subpart L—Delegations of Authority by the Chief Economist

■ 30. Add to § 2.73 new paragraphs (a)(8) and (a)(9) to read as follows:

§ 2.73 Director, Office of Energy Policy and New Uses.

(a) * * *

(8) Administer a competitive biodiesel fuel education grants program (7 U.S.C. 8104).

(9) Implement a memorandum of understanding with the Secretary of Energy regarding cooperation in the application of hydrogen and fuel cell technology programs for rural communities and agricultural producers (7 U.S.C. 8107).

* * * * *

Subpart N—Delegations of Authority by the Under Secretary for Marketing and Regulatory Programs

■ 31. Revise the subpart heading to read as set forth above.

■ 32. Revise § 2.77 to read as follows:

§ 2.77 Deputy Under Secretary for Marketing and Regulatory Programs.

Pursuant to § 2.22(a), subject to reservations in § 2.22(b), and subject to policy guidance and direction by the Under Secretary, the following delegation of authority is made by the Under Secretary for Marketing and Regulatory Programs to the Deputy Under Secretary for Marketing and Regulatory Programs, to be exercised only during the absence or unavailability of the Under Secretary: Perform all the duties and exercise all the powers which are now or which may hereafter be delegated to the Under Secretary for Marketing and Regulatory Programs.

■ 33. Amend § 2.79 to revise the introductory text of paragraph (a) and add paragraphs (a)(8)(lxiii) through (a)(8)(lxvi) to read as follows:

§ 2.79 Administrator, Agricultural Marketing Service.

(a) *Delegations.* Pursuant to § 2.22(a)(1), (a)(5) and (a)(8), subject to reservations in § 2.22(b)(1), the following delegations of authority are made by the Assistant Secretary for Marketing and Regulatory Programs to the Administrator, Agricultural Marketing Service:

* * * * *

(8) * * *

(lxiii) Farmers' Market Promotion Program (7 U.S.C. 2005).

(lxiv) National Organic Certification Cost-Share Program (7 U.S.C. 6523).

(lxv) Exemption of Certified Organic Products from Assessment (7 U.S.C. 7401).

(lxvi) Country of Origin Labeling (7 U.S.C. 1638–1638(d)).

(lxvii) Hass Avocado Promotion, Research, and Consumer Information Act of 2000 (7 U.S.C. 7801–7813).

* * * * *

■ 34. Amend § 2.80 to revise the introductory text of paragraph (a) and paragraph (b) and add new paragraphs (a)(52), (a)(53), (a)(54), (a)(55), and (a)(56) to read as follows:

§ 2.80 Administrator, Animal and Plant Health Inspection Service.

(a) *Delegations.* Pursuant to § 2.22(a)(2) and (a)(6) through (a)(9), and subject to reservations in § 2.22(b)(2), the following delegations of authority are made by the Under Secretary for Marketing and Regulatory Programs to the Administrator, Animal and Plant Health Inspection Service: Exercise functions of the Secretary of Agriculture under the following authorities:

* * * * * *

(52) Animal Health Protection Act (7 U.S.C. 8301–8317).

(53) Section 10504 of the Farm Security and Rural Investment Act of 2002 (7 U.S.C. 8318).

(54) Title V of the Agricultural Risk Protection Act of 2000 (7 U.S.C. 2279e and 2279f).

(55) The responsibilities of the United States related to activities of the Office International des Epizooties.

(56) Public Health Security and Bioterrorism Preparedness and Response Act of 2002 (Title II, Subtitles B and C; of the Public Health Security and Bioterrorism Preparedness Response Act of 2002 (7 U.S.C. 8401 note, 8401, 8411)).

(b) *Reservation.* The following authority is reserved to the Under Secretary for Marketing and Regulatory Programs: The authority to make determinations under 35 U.S.C. 156 as to whether an applicant acted with due diligence.

Subpart O—Delegations of Authority by the Assistant Secretary for Congressional Relations

■ 35. Remove in § 2.85 paragraphs (a)(7) and (a)(8).

Subpart P—Delegations of Authority by the Assistant Secretary for Administration

■ 36. Amend § 2.90 to revise the introductory text of paragraph (a) and to remove and reserve paragraph (a)(2) and revise paragraph (a)(8) to read as follows:

§ 2.90 Director, Office of Outreach.

(a) *Delegations.* Pursuant to § 2.24(a)(4), the following delegations of authority are made by the Assistant Secretary for Administration to the Director, Office of Outreach:

* * * * * *

(2) [Removed and reserved]

* * * * * *

(8) Establish requirements and procedures for reporting agency outreach status and accomplishments, including Departmental reporting under the Outreach and Assistance for Socially Disadvantaged Farmers and Ranchers Program (7 U.S.C. 2279).

* * * * *

■ 37. Amend § 2.91 to revise the introductory text of paragraph (a), revise paragraph (a)(1), and add paragraphs (a)(7) and (a)(8) to read as follows:

§ 2.91 Director, Office of Operations.

(a) *Delegations.* Pursuant to § 2.24(a)(5) and (a)(9), the following delegations of authority are made by the Assistant Secretary for Administration to the Director, Office of Operations:

(1) Provide services for Department headquarters in the Washington, DC metropolitan area and at emergency relocation sites and certain critical facilities specified by the Assistant Secretary for Administration in the following areas:

(i) Acquiring, leasing, utilizing, constructing, maintaining, and disposing of real and personal property, including control of space assignments.

(ii) Acquiring, storing, distributing, and disposing of forms.

(iii) Mail management and all related functions.

(iv) Occupational health services and related functions.

* * * * *

(7) *Related to compliance with environmental laws.* Take action pursuant to Executive Order 12088, 3 CFR, 1978 Comp., p. 243, to comply with environmental pollution control laws with respect to facilities and activities under his or her authority, including, but not limited to, entering into inter-agency agreements, administrative consent orders, consent judgments, or other agreements with the appropriate Federal, State, interstate, or local agencies to achieve and maintain compliance with applicable pollution control standards.

(8) Manage the Department Emergency Operations Center and alternate facilities.

* * * * *

■ 38. Amend § 2.92 as follows:

■ a. Revise the introductory text of paragraph (a),

■ b. Revise paragraphs (a)(7), (a)(9)(xii), and (a)(9)(xiii),

■ c. Remove and reserve paragraph (a)(10)(xx), and

■ d. Add paragraphs (a)(24), (a)(25), and (a)(26) to read as follows:

§ 2.92 Director, Office of Human Resources Management

(a) *Delegations.* Pursuant to § 2.24 (a)(6) and (a)(12), and subject to reservations in § 2.24(b)(1), the following delegations of authority are made by the Assistant Secretary for Administration to the Director, Office of Human Resources Management:

* * * * * *

(7) Authorize and make final decisions on adverse actions except in those cases where the Assistant Secretary for Administration or the Director, Office of Human Resources Management, has participated.

* * * * * *

(9) * * *

(xii) Authorize and make final decisions on adverse actions for positions in GS–1–15 or equivalent;

(xiii) Authorize and make final decisions on adverse actions for positions in the career Senior Executive Service or equivalent;

* * * * * *

(10) * * *

(xx) [Removed and reserved]

* * * * * *

(24) Oversee the Conflict Prevention and Resolution Center, the Director of which:

(i) Serves as the Department's Dispute Resolution Specialist under the Administrative Dispute Resolution Act of 1996, 5 U.S.C. 571, *et seq.*, and provides leadership, direction and coordination for the Department's conflict prevention and resolution activities;

(ii) Provides ADR services for:

(A) The Secretary of Agriculture.

(B) The general officers of the Department.

(C) The offices and agencies reporting to the Assistant Secretary for Administration.

(D) Any other officer or agency of the Department as may be agreed.

(iii) Develops and issues standards for mediators and other ADR neutrals utilized by the Department.

(iv) Coordinates ADR activities throughout the Department; and

(v) Monitors Agency ADR programs and reports at least annually to the Secretary on the Department's ADR activities.

(25) Formulate and issue Department policy, standards, rules, and regulations relating to the Senior Scientific Research Service (7 U.S.C. 7657).

(26) Redelegate, as appropriate, any authority delegated under this section to general officers of the Department and heads of Departmental agencies.

* * * * *

■ 39. Amend § 2.93 as follows:

a. Revise the heading, the introductory text to paragraph (a), and paragraphs (a)(2)(i), (a)(11), (a)(12, (a)(17),

b. Remove and reserve paragraphs (a)(1)(vii), (a)(6), and (a)(9), and

c. Add paragraph (a)(18) to read as follows:

§ 2.93 Director, Office of Procurement and Property Management.

(a) *Delegations.* Pursuant to §§ 2.24(a)(7), (a)(8), (a)(9), and (a)(10), the following delegations of authority are made by the Assistant Secretary for Administration to the Director, Office of Procurement and Property Management:

(1) * * *

(vii) [Removed and reserved]

* * * * *

(2) * * *

(i) The Director, Office of Procurement and Property Management, is designated as the Departmental Debarring Officer and authorized to perform the functions of 48 CFR part 9, subpart 9.4 related to procurement activities, except for commodity acquisitions on behalf of the Commodity Credit Corporation (7 CFR part 1407), with authority to redelegate suspension and debarment authority for contracts awarded under the School Lunch and Surplus Removal Programs (42 U.S.C. 1755 and 7 U.S.C. 612c);

* * * * *

(6) [Removed and reserved]

* * * * *

(9) [Removed and reserved]

* * * * *

(11) Issue regulations and directives to implement or supplement the Federal Acquisition Regulations (48 CFR chapters 1 and 4).

(12) Issue regulations and directives to implement or supplement the Federal Management Regulation (41 CFR part 102) and the Federal Property Management Regulations (41 CFR chapters 101).

* * * * *

(16) *Related to Emergency Preparedness.* Provide guidance to the development and administration of the Department Continuity of Operations Plan and to USDA participation in Continuity of Government Plan. This includes:

(i) Providing guidance and direction regarding continuity of operations to Departmental staff offices, mission areas, and agencies.

(ii) Representing and acting as liaison for the Department in contacts with other Federal entities and organizations concerning matters of assigned responsibilities.

(iii) Overseeing Department continuity of operations, planning, and emergency relocation facilities to ensure that resources are in a constant state of readiness.

(17) *Related to energy and environmental management:* (i) Provide program leadership and coordination for USDA's energy conservation and energy efficiency activities pursuant to Executive Order 13123, Greening of the Government Through Efficient Energy Management.

(ii) Promulgate policies, standards, techniques, and procedures, and represent the Department, in prevention, control, and abatement of pollution with respect to Federal facilities and activities under the control of the Department (Executive Order 12088, 3 CFR 1978 Comp., p. 243).

(iii) Review and approve exemptions for USDA contracts, subcontracts, grants, agreements, and loans from the requirements of the Clean Air Act, as amended (42 U.S.C. 7401, *et seq.*), the Clean Water Act, as amended (33 U.S.C. 1251, *et seq.*), and Executive Order 11738, 3 CFR, 1971–1975 Comp., p. 799, when he or she determines that the paramount interest of the United States so requires as provided in these acts and Executive Order and the regulations of the Environmental Protection Agency (40 CFR 32.215(b)).

(iv) Provide program leadership and oversight for USDA compliance with applicable pollution control laws and executive orders, including Executive Order 13148, Greening of the Government Through Leadership in Environmental Management.

(v) Coordinate USDA waste prevention, recycling, and procurement, acquisition and use of recycled products and environmentally preferable products, including biobased products, and services, and serve as USDA Environmental Executive, pursuant to Executive Order 13101.

(vi) Serve as Departmental Administration Member and Executive Secretary of the USDA Hazardous Materials Policy Council.

(vii) Represent USDA in consulting or working with the Environmental Protection Agency (EPA), the Council on Environmental Quality, the Domestic Policy Council, and others to develop policies relating to hazardous materials management and Federal facilities compliance with applicable pollution control laws.

(viii) Monitor, review, evaluate, and oversee hazardous materials management program activities and compliance Department-wide.

(ix) Monitor, review, evaluate, and oversee USDA agency expenditures for hazardous materials management program accomplishments.

(x) Prepare for the USDA Hazardous Materials Policy Council the Hazardous Materials Management Program budget request to the Office of Management and Budget (OMB) and Congress, prepare accomplishment reports to Congress, OMB, and EPA, and take a role in the preparation of replies to Congressional inquires.

(xi) Represent USDA on the National Response Team on hazardous spills and oil spills pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended (42 U.S.C. 9601, *et seq.*); the Clean Water Act, as amended (33 U.S.C. 1251, *et seq.*); Oil Pollution Act, as amended (33 U.S.C. 2701, *et seq.*); Executive Order 12580, 3 CFR 1987 Comp., p. 193; Executive Order 12777, 3 CFR, 1991 Comp., p. 351, and the National Oil and Hazardous Substances Contingency Plan, 40 CFR Part 300.

(xii) Approve disbursements from the New World Mine Response and Restoration Account, approve the New World Mine Response and Restoration Plan, and make quarterly reports to Congress under Sections 502(d) and (f) of Title V of the Department of the Interior and Related Agencies Appropriations Act of 1998, Public Law 105–83.

(xiii) Ensure that the Hazardous Materials Management Program Department-wide is accomplished with regard to, and in compliance with, Executive Order 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations.

(xiv) Take such action as may be necessary, with the affected agency head and with the concurrence of the General Counsel, including issuance of administrative orders and agreements with any person to perform any response action under sections 106(a) and 122 (except subsection (b)(1)) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended (42 U.S.C. 9606(a), 9622), pursuant to sections 4(c)(3) and 4(d)(3) of Executive Order 12580, as amended by Executive Order 13016.

(18) *Relating to personnel security and the safeguarding of national security information:*

(i) Direct and administer USDA's personnel security and public trust programs established pursuant to Executive Order 12968, Access to Classified Information (3 CFR 1995 Comp. pp 391–402) and 5 CFR part 731.

(ii) Manage the personnel security functions of the Department including programs for eligibility access determinations, obtaining security clearance for USDA employees, denial or revocation of access to national security information, and developing and promulgating policies training.

(iii) Direct and administer USDA's program under which information is safeguard pursuant to Executive Order 12958, Classified National Security Information.

(iv) Establish Information Security (INFOSEC) policies and procedures for classifying, declassifying, safeguarding, and disposing of classified national security information and materials.

(v) Establish procedures under which authorized holders of information may challenge the classification of information believed to be improperly classified or unclassified.

(vi) Take corrective action for violations or infractions under section 5.7 par. (b), of Executive Order 12958.

(vii) Develop and maintain a secure facility for the receipt and safeguarding of classified material.

(viii) Coordinate security activities with the Chief Information Officer who has primary responsibility for PDD 63, Critical Infrastructure Assurance.

* * * * *

■ 40. Amend § 2.94 to remove paragraph (a)(5) and revise the introductory text of paragraph (a) to read as follows:

§ 2.94 Director, Office of Planning and Coordination.

(a) *Delegations.* Pursuant to § 2.24(a)(11), the following delegations of authority are made by the Assistant Secretary for Administration to the Director, Office of Planning and Coordination:

* * * * *

■ 41. Add subpart R, consisting of § 2.300, to read as follows:

Subpart R—Delegations of Authority by the Assistant Secretary for Civil Rights

■ 42. Redesignate § 2.89 as § 2.300 transfer it to Subpart R, and revise the introductory text of redesignated § 2.300(a) to read as follows:

§ 2.300 Director, Office of Civil Rights.

(a) Pursuant to § 2.25, the following delegations of authority are made by the Assistant Secretary for Civil Rights to the Director, Office of Civil Rights.

* * * * *

PART 15—NONDISCRIMINATION

■ 1. The authority for Part 15 continues to read as follows:

Authority: 5 U.S.C. 301; 29 U.S.C. 794.

§ 15.6 [Amended]

■ 2. In § 15.6, remove the words "Assistant Secretary for Administration" and add, in their place, the words "Assistant Secretary for Civil Rights."

PART 15f—ADJUDICATIONS UNDER SECTION 741

■ 1. The authority for Part 15f continues to read as follows:

Authority: 5 U.S.C. 301; section 101(a) of Pub. L. 105–277, 112 Stat. 2681; Reorganization Plan No. 2 of 1953 (5 U.S.C. App.).

■ 2. Remove the definition of ASA in § 15f.4 and add, in its place, the definition of *ASCR*, to read as follows:

§ 15f.4 What do certain words and phrases in these regulations mean?

* * * * *

ASCR means the Assistant Secretary for Civil Rights.

* * * * *

■ 2. In addition to the amendment set forth above, in part 15f remove the word "ASA" and add, in its place, the word "ASCR" in the following places:

a. Section 15f.13(a).

b. Section 15f.16(a).

c. Section 15f.24(a).

PART 371—ORGANIZATION, FUNCTIONS, AND DELEGATIONS OF AUTHORITY

■ 1. The authority citation for part 371 continues to read as follows:

Authority: 5 U.S.C. 301.

■ 2. Amend § 371.3 to revise the section heading and add new paragraphs (b)(2)(xii) and (b)(2)(xiii) to read as follows:

§ 371.3 Plant Protection and Quarantine

* * * * *

(b) * * *

(2) * * *

(xii) Title V of the Agricultural Risk Protection Act of 2000 (7 U.S.C. 2279e and 2279f).

(xiii) title II, Subtitle B, of the Public Health Security and Bioterrorism Preparedness and Response Act of 2002 (7 U.S.C. 8401 not and 8401).

* * * * *

■ 3. Add to § 371.4 paragraphs (b)(3)(xxi), (b)(3)(xxii), (b)(3)(xxiii), and (b)(3)(xxiv) to read as follows:

§ 371.4 Veterinary Services

* * * * *

(b) * * *

(3) * * *

(xxi) Animal Health Protection Act (7 U.S.C. 8301–8317).

(xxii) Section 10504 of the Farm Security and Rural Investment Act of 2002 (7 U.S.C. 8318).

(xxiii) The responsibilities of the United States related to activities of the Office International des Epizooties.

(xxiv) Title II, Subtitles B and C, of the Public Health Security and Bioterrorism Preparedness and Response Act of 2002 (7 U.S.C. 8401 note, 8401, 8411).

* * * * *

For Part 1; Part 2, Subparts A, C, and D; and Parts 15 and 15f:

Dated: April 22, 2003.

Ann M. Veneman,

Secretary of Agriculture.

For Part 2, Subpart F:

Dated: April 29, 2003

J.B. Penn,

Under Secretary for Farm and Foreign Agricultural Services.

For Part 2, Subpart G:

Dated: April 22, 2003.

Thomas C. Dorr,

Under Secretary for Rural Development.

For Part 2, Subpart H:

Dated: April 22, 2003.

Elsa Murano,

Under Secretary for Food Safety.

For Part 2, Subpart I:

Dated: April 24, 2003.

Eric M. Bost,

Under Secretary for Food, Nutrition, and Consumer Services.

For Part 2, Subpart J:

Dated: April 22, 2003.

Mark Rey,

Under Secretary for Natural Resources and Environment.

For Part 2, Subpart K:

Dated: April 23, 2003.

Joseph Jen,

Under Secretary for Research, Education, and Economics.

For Part 2, Subpart L:

Dated: April 24, 2003.

Keith Collins,

Chief Economist.

For Part 2, Subpart N:

Dated: May 2, 2003.

William Hawks,

Under Secretary for Marketing and Regulatory Programs.

For Part 2, Subpart O:

Dated: April 28, 2003.

Mary Waters,

Assistant Secretary for Congressional Relations.

For Part 2, Subpart P:

Dated: April 29, 2003.

Lou Gallegos,

Assistant Secretary for Administration.

For Part 2, Subpart R:

Dated: April 30, 2003.

Vernon B. Parker,

Assistant Secretary for Civil Rights.

For Part 371:

Dated: May 1, 2003.

Bobby Accord,

Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 03–12142 Filed 5–19–03; 8:45 am]

BILLING CODE 3410–01–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2003–NM–118–AD; Amendment 39–13149; AD 2003–10–04]

RIN 2120–AA64

Airworthiness Directives; Dassault Model Mystere-Falcon 50 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; request for comments.

SUMMARY: This amendment adopts a new airworthiness directive (AD) that is applicable to certain Dassault Model Mystere-Falcon 50 series airplanes. This action requires a detailed inspection for clearance and chafing of the entire length of the hydraulic lines located within the engine pylons, and follow-on/corrective actions, as applicable. This action also requires a revision of the maintenance manual to ensure that the clamps that hold the hydraulic lines are in their initial position during normal maintenance, and that the position is identified with a yellow paint line. This action is necessary to prevent chafing and consequent leakage of the hydraulic lines located within the No. 1 and No. 3 engine pylons, which can result in failure of the No. 1 and No. 2 hydraulic systems, and consequent reduced controllability of the airplane. This action is intended to address the identified unsafe condition.

DATES: Effective June 4, 2003.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of June 4, 2003.

Comments for inclusion in the Rules Docket must be received on or before June 19, 2003.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2003–NM–118–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays. Comments may be submitted via fax to (425) 227–1232. Comments may also be sent via the Internet using the following address: *9-anm-iarcomment@faa.gov*. Comments sent via the Internet must contain "Docket No. 2003–NM–118–AD" in the subject line and need not be submitted in triplicate. Comments sent via fax or the Internet as attached electronic files must be formatted in Microsoft Word 97 or 2000 or ASCII text.

The service information referenced in this AD may be obtained from Dassault Falcon Jet, PO Box 2000, South Hackensack, New Jersey 07606. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Tom Rodriguez, Aerospace Engineer, International Branch, ANM–116, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–1137; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION: The Direction Générale de l'Aviation Civile (DGAC), which is the airworthiness authority for France, recently notified the FAA that an unsafe condition may exist on certain Dassault Model Mystere-Falcon 50 series airplanes. The DGAC advises that since September 2002, there have been four separate reports of interference and consequent chafing on the hydraulic lines located within the No. 1 and No. 3 engine pylons. The interference and consequent chafing were discovered during scheduled maintenance. In a recent occurrence (April 9, 2003), the No. 1 hydraulic system failed due to leakage of the hydraulic line where chafing had worn through the hydraulic line. The No. 1 and No. 3 engine pylon installations are symmetrical. Subsequent investigation of the No. 3 engine pylon revealed that the hydraulic lines of the No. 2 hydraulic system were also chafed severely. Such chafing and consequent leakage of the hydraulic lines located within the No. 1 and No. 3 engine pylons, if not corrected, can result in failure of the No. 1 and No. 2 hydraulic systems, and consequent reduced controllability of the airplane.

Explanation of Relevant Service Information

Dassault has issued Service Bulletin F50–A370, dated May 6, 2003, which describes procedures for a detailed inspection for clearance and chafing of the entire length of the hydraulic lines located within the engine pylons, and follow-on/corrective actions, as applicable. The follow-on actions include fastening the hydraulic clamps, ensuring proper clearance between the hydraulic lines and adjacent structure, and using yellow paint to mark the location of the clamps installed on the hydraulic lines. The corrective actions include inspecting for discrepancies (*i.e.*, evidence of contact, chafing, or abrasion) between the hydraulic lines, measuring the wear depth, and replacing the hydraulic line with a new hydraulic line, as applicable.

Dassault has issued Falcon 50 Maintenance Manual Temporary Revision 37, dated May 2003, which describes procedures for ensuring that the clamps that hold the hydraulic lines are reinstalled in their initial position during normal maintenance, and that the position is identified with a yellow paint line. Accomplishment of the actions specified in the service bulletin and the maintenance manual temporary revision are intended to adequately address the identified unsafe condition.

The DGAC classified this service bulletin and maintenance manual temporary revision as mandatory and issued French telegraphic airworthiness directive T2003–190(B), dated May 6, 2003, to ensure the continued airworthiness of these airplanes in France.

FAA's Conclusions

This airplane model is manufactured in France and is type certificated for operation in the United States under the provisions of § 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, the DGAC has kept the FAA informed of the situation described above. The FAA has examined the findings of the DGAC, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

Explanation of Requirements of Rule

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design registered in the United States, this AD is being issued to prevent chafing and consequent leakage of the hydraulic lines located within the No. 1 and No. 3 engine pylons, which can result in failure of the No. 1 and No. 2 hydraulic systems, and consequent reduced controllability of the airplane. This AD requires a detailed inspection for clearance and chafing of the entire length of the hydraulic lines within the pylons, and follow-on/corrective actions, as applicable. This AD also requires a revision of the maintenance manual to ensure that the clamps that hold the hydraulic lines are reinstalled in their initial position during normal maintenance, and that the position is identified with a yellow paint line. The actions are required to be accomplished in accordance with the service bulletin and maintenance manual temporary revision described previously.

Difference Between This AD and French Airworthiness Directive

Operators should note that the French telegraphic airworthiness directive specifies that the required actions be accomplished within the next 3 flights from the date of receipt of the French telegraphic airworthiness directive. The compliance time for this AD is within 7 days of the effective date of this AD.

We have determined that the identified unsafe condition is not a catastrophic event based on the following information:

- There is no indication that two hydraulic systems will fail simultaneously. The event that occurred on April 9, 2003, was a single system failure.
- The Falcon 50 Airplane Flight Manual contains procedures for single and dual hydraulic systems failure.
- Model Mystere-Falcon 50 series airplanes are certified for manual reversion of the flight control system with the loss of the No. 1 and No. 2 hydraulic systems.
- Model Mystere-Falcon 50 series airplanes have an electric auxiliary hydraulic system in the event that No. 1 and No. 2 hydraulic systems fail.

In light of all of these factors, we find a 7-day compliance time for completing the required actions to be warranted, in that it represents an appropriate interval of time allowable for affected airplanes to continue to operate without compromising safety.

Changes to 14 CFR Part 39/Effect on the AD

On July 10, 2002, the FAA issued a new version of 14 CFR part 39 (67 FR 47997, July 22, 2002), which governs the FAA's airworthiness directives system. The regulation now includes material that relates to altered products, special flight permits, and alternative methods of compliance (AMOC). Because we have now included this material in part 39, only the office authorized to approve AMOCs is identified in each individual AD.

Determination of Rule's Effective Date

Since a situation exists that requires the immediate adoption of this regulation, it is found that notice and opportunity for prior public comment hereon are impracticable, and that good cause exists for making this amendment effective in less than 30 days.

Comments Invited

Although this action is in the form of a final rule that involves requirements affecting flight safety and, thus, was not preceded by notice and an opportunity for public comment, comments are invited on this rule. Interested persons are invited to comment on this rule by submitting such written data, views, or arguments, as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified under the caption **ADDRESSES.** All communications received on or before the closing date for comments will be considered, and this rule may be amended in light of the comments received. Factual information that supports the commenter's ideas and suggestions is extremely helpful in evaluating the effectiveness of the AD action and determining whether additional rulemaking action would be needed.

Submit comments using the following format:

- Organize comments issue-by-issue. For example, discuss a request to change the compliance time and a request to change the service bulletin reference as two separate issues.
- For each issue, state what specific change to the AD is being requested.
- Include justification (*e.g.*, reasons or data) for each request.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the rule that might suggest a need to modify the rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report that summarizes each FAA-public contact concerned with the substance of this AD will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this rule must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 2003–NM–118–AD." The postcard will be date stamped and returned to the commenter.

Regulatory Impact

The regulations adopted herein will not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this final rule does not have federalism implications under Executive Order 13132.

The FAA has determined that this regulation is an emergency regulation that must be issued immediately to correct an unsafe condition in aircraft, and that it is not a "significant regulatory action" under Executive Order 12866. It has been determined further that this action involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979). If it is determined that this emergency regulation otherwise would be significant under DOT Regulatory Policies and Procedures, a final regulatory evaluation will be prepared and placed in the Rules Docket. A copy of it, if filed, may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

■ Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

■ 1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

■ 2. Section 39.13 is amended by adding the following new airworthiness directive:

2003–10–04 Dassault Aviation: Amendment 39–13149. Docket 2003–NM–118–AD.

Applicability: Model Mystere-Falcon 50 series airplanes having serial numbers 2 through 329 inclusive, certificated in any category.

Compliance: Required as indicated, unless accomplished previously.

To prevent chafing and consequent leakage of the hydraulic lines located within the No. 1 and No. 3 engine pylons, which can result in failure of the No. 1 and No. 2 hydraulic systems, and consequent reduced

controllability of the airplane, accomplish the following:

Service Information

(a) The following information pertains to the service bulletin referenced in this AD:

(1) The term "service bulletin," as used in this AD, means the Accomplishment Instructions of Dassault Service Bulletin F50–A370, dated May 6, 2003.

(2) Although the service bulletin referenced in this AD specifies to submit inspection results to the manufacturer, this AD does not include such a requirement.

Inspection

(b) Within 7 days after the effective date of this AD, do a detailed inspection of the entire length of the hydraulic lines located within the No. 1 and No. 3 engine pylons for clearance, per paragraph 2.C.(2)(b) of the service bulletin.

Note 1: For the purposes of this AD, a detailed inspection is defined as: "An intensive visual examination of a specific structural area, system, installation, or assembly to detect damage, failure, or irregularity. Available lighting is normally supplemented with a direct source of good lighting at intensity deemed appropriate by the inspector. Inspection aids such as mirror, magnifying lenses, etc., may be used. Surface cleaning and elaborate access procedures may be required."

Proper Clearance

(c) If the clearance of both hydraulic lines is found within the limits specified in the service bulletin during the inspection required by paragraph (b) of this AD, do the actions specified in paragraph (e) of this AD.

Incorrect Clearance

(d) If the clearance of any hydraulic line is found outside the limits specified in the service bulletin during the inspection required by paragraph (b) of this AD, before further flight, do a detailed inspection for discrepancies (*i.e.*, evidence of contact, chafing, or abrasion) between the hydraulic lines, per the service bulletin.

(1) If no discrepancy is detected, do the actions specified in paragraph (e) of this AD.

(2) If any discrepancy is detected, before further flight, measure the wear depth per the service bulletin.

(i) If the measurement is less than 0.004-inch (0.10 millimeter (mm)), no further action is required by this paragraph.

(ii) If the measurement is greater than or equal to 0.004-inch (0.10 mm), at the applicable time specifed in Figure 1, 2, or 3 of the service bulletin following the inspection required by paragraph (d) of this AD, replace the hydraulic line with a new hydraulic line per the service bulletin. The term "flights," as used in Figures 1, 2, and 3 of the service bulletin, means "flight cycles" for this AD.

Fastening Lines, Ensuring Proper Clearance, and Marking Location of Clamps

(e) Before further flight following any inspection or replacement required by this AD, do the actions specified in paragraphs (e)(1), (e)(2), and (e)(3) of this AD per the service bulletin.

(1) Using clamps, screws, and nuts, fasten the hydraulic line(s) as indicated in Figure 4 of the service bulletin.

(2) Ensure proper clearance between the hydraulic line(s) and adjacent structure as indicated in paragraph 2.C.(2)(b) of the service bulletin.

(3) Using yellow paint, mark the location of the clamps installed on the hydraulic line(s).

Revision to Maintenance Manual

(f) Within 7 days after the effective date of this AD, revise the Dassault Falcon 50 Maintenance Manual by inserting a copy of Dassault Falcon 50 Maintenance Manual Temporary Revision 37, dated May 2003.

Alternative Methods of Compliance

(g) In accordance with 14 CFR 39.19, the Manager, International Branch, ANM–116, Transport Airplane Directorate, FAA, is authorized to approve alternative methods of compliance for this AD.

Incorporation by Reference

(h) The actions shall be done per Dassault Service Bulletin F50–A370, dated May 6, 2003; and Dassault Falcon 50 Maintenance Manual Temporary Revision 37, dated May 2003; as applicable. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Dassault Falcon Jet, PO Box 2000, South Hackensack, New Jersey 07606. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

Note 2: The subject of this AD is addressed in French telegraphic airworthiness directive T2003–190(B), dated May 6, 2003.

Effective Date

(i) This amendment becomes effective on June 4, 2003.

Issued in Renton, Washington, on May 9, 2003.

Vi L. Lipski,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 03–12110 Filed 5–19–03; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF DEFENSE

Office of the Secretary

32 CFR Part 3

RIN 0790–AH01

Transactions Other Than Contracts, Grants, or Cooperative Agreements for Prototype Projects

AGENCY: Office of the Secretary, DoD.

ACTION: Final rule.

SUMMARY: This final rule establishes the Department's audit policy for prototype projects that use "other transaction" authority. Representatives of the military departments, Defense agencies and other DoD activities, have agreed on a final rule that amends the proposed rule as a result of comments received.

EFFECTIVE DATES: This final rule will become effective on June 19, 2003. This final rule will become effective for new solicitations issued on June 19, 2003, and for any issued thereafter. This final rule may be used for new prototype awards that result from solicitations issued prior to June 19, 2003.

FOR FURTHER INFORMATION CONTACT: David Capitano, (703) 847–7486.

SUPPLEMENTARY INFORMATION:

Background and Purpose

Section 845 of the National Defense Authorization Act for Fiscal Year 1994, Public Law 103–160, 107 Stat. 1547, as amended, authorizes the Secretary of a Military Department, the Director of Defense Advanced Research Projects Agency and any other official designated by the Secretary of Defense, to enter into transactions other than contracts, grants or cooperative agreements in certain situations for prototype projects that are directly relevant to weapons or weapon systems proposed to be acquired or developed by the Department of Defense. Such transactions are commonly referred to as "other transaction" agreements for prototype projects. To the extent that a particular statute or regulation is limited in its applicability to the use of a procurement contract, it would generally not apply to "other transactions" for prototype projects.

Part 3 to 32 CFR was established to codify policy pertaining to prototype "other transactions" that have a significant impact on the public and are subject to rulemaking. Additional guidance on prototype "other transactions" directed at Government officials can be found at the Defense Procurement Web site at: *http://www.osd.dp.mil.*

A proposed rule was published in the **Federal Register** (66 FR 58422–58425) for public comment on November 21, 2001. A notice of public meeting was published in the **Federal Register** on March 4, 2002 (67 FR 9632), and held on March 27, 2002. The proposed rule addressed conditions on use of "other transactions" for prototype projects, the nontraditional Defense contractor definition and audit policy. Comments on the proposed rule were received from five respondents and approximately 50 representatives of Government and industry attended the public meeting. The majority of the written comments and discussion at the public meeting focused on the audit policy and are addressed in this final rule. The following summarizes the comments regarding audit policy and the disposition.

The following is a summary of the public input and the DoD response thereto (the source of the input is annotated after each comment):

A. General

1. *Public Comment:* The policy will discourage nontraditional Defense contractors from doing business with DoD (written public comments—five commenters).

DoD Response: A key concept of our form of government is accountability for its resources. DoD recognizes the balance that must be achieved between encouraging nontraditional contractors to do business with the DoD and the key concept of accountability for public funds. DoD believes there are certain instances when the government, either through use of an Independent Public Accountant (IPA) or a government employee, must have access to the awardee's books and records. However, in response to this and other comments, a number of revisions have been made to the proposed rule to reduce the potential for discouraging nontraditional Defense contractors. These revisions include raising the mandatory applicability requirements to $5 million per cost-type agreement, providing for a deviation from the mandatory applicability requirements for agreements in excess of $5 million, specifying instances in which the government could have no direct access to the contractor's books and records, and specifying that the government will make copies of IPA work papers when there is evidence that the audit has not been properly performed.

2. *Public Comment:* The value of the expanded policy and oversight is questionable (written public comment—one commenter).

DoD Response: DoD believes there is value in having an access to records policy that properly balances the need to encourage contractor participation with the need to obtain access to records necessary to ensure compliance with the terms of the agreement. However, DoD recognizes that the proposed rule needed to be revised to provide more flexibility towards achieving this balance.

3. *Public Comment:* Balance the need for audit access with the possible loss of access to technology (public meeting).

DoD Response: DoD agrees there must be an appropriate balance between the need to access new technologies and the level of access required to assure compliance with the terms of the agreement. DoD believes the final rule achieves this appropriate balance.

4. *Public Comment:* Review the language throughout the rule to ensure consistency of terms (public meeting).

DoD Response: DoD has reviewed the terms in the final rule to ensure consistency.

5. *Public Comment:* Revise the tone and verbiage of the proposed rule to reduce the perception of intrusion (public meeting).

DoD Response: DoD believes the final rule reduces the perception of intrusion noted at the public meeting. For example, the final rule states that the purpose of the government's review of an IPA's work papers is to verify compliance with Generally Accepted Government Auditing Standards (GAGAS). The rule also states that the government has no direct access to awardee records for nontraditional Defense contractors that refuse to accept government access. Another example is the language that provides for the government to make copies of audit work papers only if the audit has not been performed in accordance with GAGAS. Finally, the length and extent of audit access language specifies that access should be provided only to the extent needed to verify the actual costs or statutory cost share.

B. Definitions

1. *Public Comment:* Definition of "Key Participant" should be clarified for applicability to subawardees and their segments (written public comments—two commenters).

DoD Response: Revisions to the proposed rule have eliminated the need for the term "key participant" in the final rule.

2. *Public Comment:* Delete or define terms "subordinate element" and "awardee" (written public comments—two commenters).

DoD Response: Revisions to the proposed rule have eliminated the need for the term "subordinate" in the final rule. The term "awardee" was defined in the final rule issued on August 27, 2002 (67 FR 54955), regarding conditions for use.

3. *Public Comment:* Define "Qualified Independent Public Accountant" (written public comment—one commenter).

DoD Response: The final rule provides a definition of a "Qualified Independent Public Accountant."

C. Statutory Basis

Public Comment: Withdraw audit policy and clauses in their entirety because they are not required or implied by statute, rule, or regulation. The audit policy is not supported by legislative direction and not tailored to implement changes in 2000 or 2001 DoD Authorization Acts. The audit policy should incorporate only those provisions in section 803 of the FY 2000 DoD Authorization Act (written public comments—two commenters).

DoD Response: DoD does not believe the policy should be withdrawn. DoD believes that issuance of this final rule is consistent with the statutory requirements for the use of other transactions. The statutory authority for other transactions specifically requires, at 10 U.S.C. 2371, that the Secretary of Defense " * * * shall prescribe regulations to carry out this section." DoD believes that this access to records policy is consistent with that statutory requirement.

D. Flexibility

1. *Public Comment:* Replace audit policy with a general statement such as "If the Agreements Officer determines that an audit right is required, the coverage, length and extent shall be mutually agreed to by the parties. The audit shall be performed by an independent auditor that is mutually acceptable to the parties, and all audit expenses shall be reimbursed by the government" (written public comment—one commenter).

DoD Response: For agreements that are less than $5 million, DoD agrees that general language providing the Contracting Officer with flexibility in negotiating the coverage, length, and extent of access is appropriate. DoD believes that, for cost-type agreements in excess of $5 million, more specific policy is necessary. However, the final rule provides flexibility to deviate from the specific policy when supported by the particular facts and circumstances.

2. *Public Comment:* Rely on awardee's internal auditors, certification of accounting procedures and documentation, and if necessary a tailored audit clause providing limited access for independent auditor (written public comment—one commenter).

DoD Response: DoD does not believe it is sufficient to rely on an awardee's internal auditors when cost-type agreements provide for government payments that exceed $5 million. DoD agrees that access is limited to those records that are needed to verify the established cost-share, actual costs or reporting used as the basis for payments.

3. *Public Comment:* Limit audits to post-verification of cost sharing only. Costs incurred should not be subject to

audit other than GAO (written public comments—three commenters).

DoD Response: DoD believes the government should not preclude reviews when payments are based on amounts generated from awardee's financial or cost records. The government needs to have some reasonable assurance regarding the appropriateness of those amounts. DoD believes the final rule provides such reasonable assurance while also providing appropriate flexibility in its application.

4. *Public Comment:* Audits for other than cost sharing should apply only if there is reason to believe an impropriety has occurred (written public comment—one commenter).

DoD Response: DoD believes the government should not limit reviews of actual costs incurred to cases where there is a reason to believe an impropriety has occurred. When cost-type agreements provide for government payments that exceed $5 million, the government needs to have some reasonable assurance regarding the appropriateness of those amounts. DoD believes the final rule provides such reasonable assurance while also providing appropriate flexibility in its application.

E. Applicability

1. *Public Comment:* Need to establish a threshold for applicability to prime recipients (written public comment—one commenter).

DoD Response: DoD agrees that a threshold for mandatory application of the policy is needed. The final rule establishes that threshold at $5 million per cost-type agreement. DoD believes this is an appropriate threshold because it will cover a majority of the dollars while exempting a majority of the agreements from mandatory application of the policy. Using data from the past eight years, it is anticipated that this threshold will provide the government with access to records for 89% of all government dollar under cost-type agreements, while also exempting 78% of those agreements from mandatory application of the policy.

2. *Public Comment:* Consider whether the language regarding "payments generated from financial records" could be misconstrued and applied too broadly. Examples of when the language would and would not apply should be considered (public meeting).

DoD Response: The language "payments generated from financial records" has been included in the final rule within the definition of a cost-type other transaction. To reduce potential misunderstanding or inappropriate application, the final rule includes examples of what constitutes a cost-type agreement.

3. *Public Comment:* Consider providing the Agreements Officer more flexibility in the application of the audit access clause (public meeting).

DoD Response: The final rule provides the Agreements Officer with the flexibility to negotiate the length and extent of access for any agreements that are less than $5 million. It also provides for the ability to deviate from some or all of the specific access requirements for cost-type agreements in excess of $5 million when such deviation is adequately supported by the particular facts and circumstances. The Agreements Officer should consult with the cognizant auditor to ensure that the benefits of such a deviation outweigh any increased risks to the Government.

4. *Public Comment:* Consider addressing the circumstances where a single agreement has both cost-based and fixed-price portions (public meeting).

DoD Response: DoD believes the examples of a cost-type agreement included in the proposed rule provides sufficient guidance for use by Agreements Officers in determining proper application of the policy to those unique circumstances in which an agreement has both cost-type and fixed-price portions.

5. *Public Comment:* Consider using different thresholds for nontraditional vs. traditional contractors (public meeting).

DoD Response: DoD considered using different thresholds for nontraditional and traditional contractors, but believes such an application would result in unnecessary complexity. DoD believes requiring application of the policy to all cost-type agreements in excess of $5 million is a more desirable approach because (1) it is anticipated to include a majority of the Government dollars on cost-type agreements while also exempting most of the agreements from mandatory application, and (2) it provides for the same threshold as the Comptroller General access, thereby providing a simple unified threshold for applying the two requirements.

6. *Public Comment:* Make the application of the audit policy at the discretion of the Agreements Officer regardless of the dollar amount of the agreement (public meeting).

DoD Response: DoD believes it is desirable to provide some specific policy for access to records when agreements exceed $5 million. However, DoD recognizes the need for an Agreements Officer to be able to exercise good business judgment. Under the final rule, for agreements that are less than $5 million, application of the audit policy is solely at the discretion of the Agreements Officer. In addition, for cost-type agreements in excess of $5 million, the final rule provides for a deviation from application of the policy if supported by the particular facts and circumstances.

7. *Public Comment:* Make the application of the audit policy mandatory regardless of the dollar amount of the agreement (public meeting).

DoD Response: DoD established a threshold that minimizes its risk. We did so to encourage participation by non traditional contractors. DoD believes that, for agreements that are less than $5 million, the Agreements Officer should have the flexibility to negotiate audit access to records based on their assessment of risk of the particular agreement.

8. *Public Comment:* Apply the audit threshold requirements at $5 million per agreement. This is the same as the GAO access requirements and the trigger for Earned Value Management (public meeting).

DoD Response: DoD agrees that this threshold is appropriate for mandatory application of the policy. In addition to being the same as the GAO access requirements (which simplifies application), DoD also believes that threshold, with its accompanying provisions for deviation, properly balances the need for access to records with the need to encourage contractor participation.

9. *Public Comment:* Consider using a trigger threshold requirement such as that used in applying the Cost Accounting Standards (public meeting).

DoD Response: DoD considered using a trigger concept, but believes such a concept would be unnecessarily complex. The $5 million threshold per cost-type agreement is a simplified approach that achieves the proper balance between the need for access to records and the need to encourage contractor participation.

10. *Public Comment:* The rule should not apply to nontraditional contractors (written public comment—one commenter).

DoD Response: DoD believes the final rule properly balances the need to access records with the concerns of nontraditional Defense contractors. The final rule provides for application of the policy for cost-type agreements in excess of $5 million. It is anticipated, based on past history, that this will exempt about 78% of the agreements. For the remaining 22%, the final rule provides for a deviation when supported by the particular facts and circumstances. In those remaining instances where the access requirements are applied to nontraditional Defense contractors, the rule provides for use of an Independent Public Accountant if the nontraditional Defense contractor refuses Government access to its records.

11. *Public Comment:* The rule should state that it does not apply to existing agreements (written public comment—one commenter).

DoD Response: The final rule specifies the Other Transactions to which the policy applies, which does not include existing agreements.

F. Use of an Independent Public Accountant (IPA)

1. *Public Comment:* Use of an IPA will discourage nontraditional contractors because of the need for accounting systems to fully document costs and government access to IPA work papers that include company proprietary information (written public comments—two commenters).

DoD Response: DoD believes an awardee should maintain an accounting system that adequately supports the amounts used as the basis for payment regardless of whether the Government has access to the awardee's records. An awardee that enters into a cost-type agreement should have some sort of accounting system that adequately supports those amounts. In regard to company proprietary information, the final rule addresses this concern by limiting the government's right to make copies of the IPA's work papers to instances where there is evidence the audit has not been performed in accordance with GAGAS.

2. *Public Comment:* Delete government access to IPA work papers to protect propriety information of awardees/participants (written public comments—two commenters).

DoD Response: DoD believes it is important for the government to have access to IPA work papers to assure the audit has been performed in accordance with GAGAS. However, in recognition of the concern expressed by the commenter, the final rule limits the government's right to make copies of the IPA's work papers to instances where there is evidence the audit has not been performed in accordance with those standards.

3. *Public Comment:* The statements "Use amounts generated from the awardee's financial or cost records as the basis for payment" and "direct access to sufficient records to ensure full accountability for all government funding" are too broad and too vague. Audit access should be for very limited with focused purposes (written public comment—one commenter).

DoD Response: The final rule includes specific examples of a cost-type agreements which is defined as agreements where payments are based on amounts generated from the awardee's financial or cost records or that require at least one third of the total costs to be provided by non-Federal parties pursuant to statute. The statement "direct access to sufficient records to ensure full accountability for all government funding" has been replaced by a more focused requirement that the government have access to directly pertinent records "needed to verify the actual costs or reporting used as the basis of payment or to verify statutorily required cost share under the agreement."

4. *Public Comment:* Define GAGAS (written public comment—one commenter).

DoD Response: The final rule includes a description of Generally Accepted Government Auditing Standards and where those standards can be found.

5. *Public Comment:* The rule should require the agreement to specify the percentage of payments that may be withheld when an audit by an IPA is not adequately performed (written public comment—one commenter).

DoD Response: The final rule states that the Agreements Officer has the right to "withhold or disallow a specified percentage of costs until the audit is completed satisfactorily. The specified percentage should be sufficient to enhance performance or corrective action while also not being unfairly punitive."

6. *Public Comment:* Change "should" to "shall" in statement that "Agreement Officer should grant approval to use an IPA when participant is not performing contract subject to Cost Principles/CAS and refuses to accept award if government has access" (written public comment—one commenter).

DoD Response: The final rule states that the access to records clause for business units not performing contracts subject to the Cost Principles/CAS "must provide for the use of a qualified IPA if such a business unit will not accept the agreement if the government has access to the business unit's records."

7. *Public Comment:* Sample audit clause should revise "The audit will be conducted by an IPA" to "The audit will be conducted by a mutually acceptable IPA at government expense" (written public comment—one commenter).

DoD Response: To reduce the complexity of the rule and assure maximum flexibility for the Agreements Officer, the final rule deletes all of the sample audit clauses. Sample audit clauses intended to serve as a guide can be found at *http://www.osd.mil/dp* (under the "Other Transactions" Special Interest Item in "Questions and Answers"). These samples may be modified as necessary to address the particular facts and circumstances of each agreement.

8. *Public Comment:* Add language stating that the purpose of the audit of an IPA's work papers is to verify compliance with GAGAS (public meeting).

DoD Response: The final rule states that the government will have access to the IPA's audit reports and working papers to ensure that the IPA has performed the audit in accordance with GAGAS.

9. *Public Comment:* Eliminate the need to access an IPA's work papers and rely on AICPA standards and public accounting peer reviews (public meeting).

DoD Response: DoD does not believe the AICPA standards and peer reviews provide adequate assurance that the audit of the other transaction has been performed in accordance with GAGAS because (a) GAGAS has some requirements that are not included in the AICPA standards, and (b) public accounting peer reviews focus on financial statement reviews and compliance with GAAS (as opposed to government financial payment reviews and compliance with GAGAS).

10. *Public Comment:* Require that IPA's comply with Generally Accepted Auditing Standards (GAAS) instead of GAGAS (public meeting).

DoD Response: The requirement to comply with GAGAS is a statutory requirement that cannot be waived by DoD. The Inspector General Act of 1978 (as amended) requires that audit work of Federal organizations, programs, activities, and functions comply with GAGAS.

11. *Public Comment:* Add language stating that, when an IPA's report is not adequate, an Agreements Officer should consider terminating an agreement only if it is impractical to withhold monies or suspend performance until the audit is satisfactorily performed (public meeting).

DoD Response: The final rule states that the Agreements Officer may terminate the agreement only if it is not practical to either (a) withhold monies, or (b) suspend performance until the audit is completed satisfactorily.

G. DoDIG Access

Public Comment: Delete 3.7(f)(2) that states if Agreements Officer gets access, DoDIG also gets access. This is not supported by statute. The only audit access in section 804 of Public Law 106–398 is for GAO, not DoDIG (written public comment—two commenters).

DoD Response: While section 804 of Public Law 106–398 does not provide for DoDIG access, such access is provided for in the Inspector General Act (Public Law 95–452). Public Law 95–452 provides that the Inspector General shall have access to the same records as the agency (DoD) and its employees (*e.g.*, the Agreements Officer). Thus, in accordance with this statute, if an agreement gives the Agreements Officer or another DoD component official access to a business unit's records, the DoDIG is granted the same access to those records.

H. Audit Performance

1. *Public Comment:* Delete the word "normally" from "Audits normally will be performed only when Agreements Officer determines it is necessary to verify the awardee's compliance with the terms of the agreement" (written public comment—one commenter).

DoD Response: The final rule deletes the word "normally." The final rule states that "Audits will be performed when the Agreements Officer determines it is necessary to verify statutory cost share or to verify amounts generated from financial or cost records that will be used as the basis for payment or adjustment of payment."

2. *Public Comment:* Consider adding a "problem statement" describing what the policy is intending to correct (public meeting).

DoD Response: DoD does not believe it adds value to include a "problem statement" in the final rule. However, in response to the public comment, DoD notes that in developing the proposed and final rule, DoD has considered the "problem" to be the extent of access to records required by the government on cost-type agreements. The goal is to achieve an appropriate balance between the need to access new technologies and the level of access required to assure compliance with the terms of the agreement.

3. *Public Comment:* Consider permitting reviews of records at the awardee facility only, *i.e.*, the government would be precluded from removing records from the contractor's facility (public meeting).

DoD Response: DoD does not believe it is necessary to limit access to records at the awardee facility. However, DoD recognizes the concern expressed at the public meeting. For traditional contractors, the final rule does not provide any more access than the government currently has under procurement contracts with those contractors. For nontraditional Defense contractors, the rule provides for the use of an IPA if the nontraditional Defense contractor refuses to grant access to the government. In those instances, the government has no direct access to the nontraditional Defense contractors' books and records, and can only make copies of the IPA's work papers if there is evidence the audit was not performed in accordance with GAGAS.

I. Flowdown to Subawardees/ Subagreements

1. *Public Comment:* Revise flow down requirements because they appear to be nonnegotiable (written public comment—one commenter).

DoD Response: The final rule provides for flexibility in negotiating flow down requirements for subagreements that are less than $5 million. For cost-type subagreements that are in excess of $5 million, a deviation from the flow down requirements is permitted when supported by the particular facts and circumstances. Note, that Single Audit Act requirements apply to subawardees/ subagreements where appropriate.

2. *Public Comment:* The threshold of $300,000 for flow down to key participants is unusually low. Recommend using the $500,000 in legislation for traditional contractors or the $5 million used for GAO access (written public comments—two commenters).

DoD Response: DoD agrees that the $300,000 threshold in the proposed rule was too low. The final rule establishes a subagreement threshold of $5 million.

3. *Public Comment:* Delete the mandatory clauses for subagreements and instead make the awardee responsible for providing sufficient support for subawardee costs (public meeting).

DoD Response: The final rule deletes the requirement to apply the policy for subagreements that are less than $5 million. For cost-type subagreements that are in excess of $5 million, deviation from application of the policy is permitted when supported by the particular facts and circumstances.

4. *Public Comment:* The flow down requirements will discourage technology rich subcontractors from participating in other transactions (written public comment—one commenter).

DoD Response: DoD has strived to balance the potential discouragement of technology rich subcontractors from the need to assure compliance with the terms of the agreement. DoD believes this balance has been achieved in the final rule because (a) application of the policy is not required for subagreements that are $5 million or less, and (b) deviation from the policy is permitted for subagreements that are in excess of $5 million if warranted by the particular facts and circumstances.

J. Sample Audit Clauses

1. *Public Comment:* Sample audit clauses should revise "awardee" to "business unit of the awardee", and "awardee's records" to "directly pertinent records of those business units of the awardee performing the work under the OT agreement" (written public comment—one commenter).

DoD Response: DoD has deleted the sample clauses from the final rule because they add unnecessary complexity and could serve to reduce the flexibility of the Agreements Officer by becoming quasi-standard and/or quasi-required clauses. Sample clauses maintained at *http://www.osd.mil/dp* (under the "Other Transactions" Special Interest Item in "Questions and Answers") that are intended to serve as a guide do clarify access is to the specified business unit.

2. *Public Comment:* Consider adding language to the audit access clause that states when it applies (public meeting).

DoD Response: The final rule does provide specific language as to when a DoD access to records clause is applicable.

K. Traditional vs. Non-Traditional Contractor

1. *Public Comment:* Distinguish between nontraditional and traditional contractors based on the agreement value using TINA threshold of $550,000, or based on the CAS threshold for full ($50 million) or modified ($7.5 million) coverage (public meeting).

DoD Response: The final rule distinguishes between traditional and nontraditional Defense contractors for purposes of determining the level of approval for (a) the use of an IPA and (b) deviating from application of the policy. DoD believes that, when used for these purposes, the statutory definitions are adequate. In addition, the use of definitions that are consistent with those in statute reduces complexity, thereby simplifying implementation of the rule.

2. *Public Comment:* Consider whether using the cost principles as a criteria for use of an Independent Public Accountant is overly broad (public meeting).

DoD Response: DoD does not believe using the cost principles is overly broad for purposes of the final rule, which uses cost principles for determining the level of approval to (a) use an IPA and (b) deviate from application of the policy. When a contractor is performing on a contract subject to the cost principles, a government representative (*e.g.*, Defense Contract Audit Agency (DCAA)) has access to that contractors books and records. Therefore, DoD believes that cost principles are an appropriate for determining when an IPA may be used.

Regulatory Evaluation

Executive Order 12866, "Regulatory Planning and Review"

It has been determined that this rule is not a significant rule as defined under section 3(f)(1) through 3(f)(4) of Executive Order 12866.

Unfunded Mandates Reform Act (Section 202 of Public Law 104–4)

It has been certified that this rule does not contain a Federal mandate that may result in the expenditure by State, local and tribal governments, in aggregate, or by the private sector, of $100 million or more in any one year.

Public Law 96–354, "Regulatory Flexibility Act" (5 U.S.C. 601)

It has been certified that this part is not subject to the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) because it would not, if promulgated, have a significant economic impact on a substantial number of small entities. The rule does not require additional record keeping or other significant expense by project participants.

Public Law 96–511, "Paperwork Reduction Act of 1995" (44 U.S.C. 3501 et seq.)

It has been certified that this rule does not impose any reporting or record keeping requirements under the Paperwork Reduction Act of 1995.

Executive Order 13132, "Federalism"

It has been certified that this rule does not have federalism implications, as set forth in Executive Order 13132.

List of Subjects in 32 CFR Part 3

Government procurement, Transactions for prototype projects.

■ Accordingly, 32 CFR part 3 is amended to read as follows:

PART 3—TRANSACTIONS OTHER THAN CONTRACTS, GRANTS, OR COOPERATIVE AGREEMENTS FOR PROTOTYPE PROJECTS

■ 1. The authority citation for 32 CFR part 3 continues to read as follows:

Authority: Section 845 of Public Law 103–160, 107 STAT. 1547, as amended.

■ 2. Section 3.4 is revised to read as follows:

§ 3.4 Definitions.

Agency point of contact (POC). The individual identified by the military department or defense agency as its POC for prototype OTs.

Agreements Officer. An individual with the authority to enter into, administer, or terminate OTs for prototype projects and make related determinations and findings.

Approving Official. The official responsible for approving the OTs acquisition strategy and resulting OT agreement. This official must be at least one level above the Agreements Officer and at no lower level than existing agency thresholds associated with procurement contracts.

Awardee. Any business unit that is the direct recipient of an OT agreement.

Business unit. Any segment of an organization, or an entire business organization which is not divided into segments.

Contracting activity. An element of an agency designated by the agency head and delegated broad authority regarding acquisition functions. It includes elements designated by the Director of a Defense Agency which has been delegated contracting authority through its agency charter.

Cost-type OT. Agreements where payments are based on amounts generated from the awardee's financial or cost records or that require at least one third of the total costs to be provided by non-Federal parties pursuant to statute or require submittal of financial or cost records/reports to determine whether additional effort can be accomplished for the fixed amount.

Fixed-price type OT. Agreements where payments are not based on amounts generated from the awardee's financial or cost records.

Head of the contracting activity. (HCA). The official who has overall responsibility for managing the contracting activity.

Nontraditional Defense contractor. A business unit that has not, for a period of at least one year prior to the date of the OT agreement, entered into or performed on (1) any contract that is subject to full coverage under the cost accounting standards prescribed pursuant to section 26 of the Office of Federal Procurement Policy Act (41 U.S.C. 422) and the regulations implementing such section; or (2) any other contract in excess of $500,000 to carry out prototype projects or to perform basic, applied, or advanced research projects for a Federal agency, that is subject to the Federal Acquisition Regulation.

Procurement contract. A contract awarded pursuant to the Federal Acquisition Regulation.

Qualified Independent Public Accountant. An accountant that is licensed or works for a firm that is licensed in the state or other political jurisdiction where they operate their professional practice and comply with the applicable provisions of the public accountancy law and rules of the jurisdiction where the audit is being conducted.

Segment. One of two or more divisions, product departments, plants, or other subdivisions of an organization reporting directly to a home office, usually identified with responsibility for profit and/or producing a product or service.

Senior Procurement Executive. The following individuals:

(1) Department of the Army—Assistant Secretary of the Army (Acquisition, Logistics and Technology);

(2) Department of the Navy—Assistant Secretary of the Navy (Research, Development and Acquisition);

(3) Department of the Air Force—Assistant Secretary of the Air Force (Acquisition).

(4) The Directors of Defense Agencies who have been delegated authority to act as Senior Procurement Executive for their respective agencies.

Single Audit Act. Establishes uniform audit requirements for audits of state and local government, universities, and non-profit organizations that expend Federal awards.

Subawardee. Any business unit of a party, entity or subordinate element performing effort under the OT agreement, other than the awardee.

Traditional Defense contractor. Any business unit that does not meet the definition of a nontraditional Defense contractor.

■ 3. New § 3.8 is added to read as follows:

§ 3.8 DoD access to records policy.

(a) *Applicability.* This section provides policy concerning DoD access to awardee and subawardee records on OT agreements for prototype projects. This access is separate and distinct from Comptroller General access.

(1) *Fixed-price type OT agreements.* (i) *General*—DoD access to records is not generally required for fixed-price type OT agreements. In order for an agreement to be considered a fixed-price type OT agreement, it must adequately specify the effort to be accomplished for a fixed amount and provide for defined payable milestones, with no provision for financial or cost reporting that would be a basis for making adjustment in either the work scope or price of the effort.

(ii) *Termination considerations.* The need to provide for DoD access to records in the case of termination of a fixed-price type OT can be avoided by limiting potential termination settlements to an amount specified in the original agreement or to payment for the last completed milestone. However, if a fixed-price agreement provides that potential termination settlement amounts may be based on amounts generated from cost or financial records and the agreement exceeds the specified threshold, the OT should provide that DoD will have access to records in the event of termination.

(2) *Cost-type OT agreements.* (i) *Single Audit Act*—In accordance with the requirements of Public Law 98–502, as amended by Public Law 104–156, 110 STAT. 1396–1404, when a business unit that will perform the OT agreement, or a subawardee, meets the criteria for an audit pursuant to the Single Audit Act, the DoD must have sufficient access to the entity's records to assure compliance with the provisions of the Act.

(ii) *Traditional Defense contractors.* The DoD shall have access to records on cost-type OT agreements with traditional Defense contractors that provide for total Government payments in excess of $5,000,000. The content of the access to records clause shall be in accordance with paragraph (c) of this section. The value establishing the threshold is the total value of the agreement including all options.

(iii) *Nontraditional Defense contractors.* The DoD should have access to records on cost-type OT agreements with nontraditional Defense contractors that provide for total Government payments in excess of $5,000,000. The content of the access to records clause should be in accordance with paragraph (c) of this section. The value establishing the threshold is the total value of the agreement including all options.

(iv) *DoD access below threshold.* The Agreements Officer has the discretion to determine whether to include DoD access to records when the OT does not meet any of the requirements in (a)(2)(i) through (a)(2)(iii) of this section. The content of that access to records clause should be tailored to meet the particular circumstances of the agreement.

(v) *Examples of cost-type OT agreements.* (A) An agreement that requires at least one-third cost share pursuant to statute.

(B) An agreement that includes payable milestones, but provides for adjustment of the milestone amounts based on actual costs or reports generated from the awardee's financial or cost records.

(C) An agreement that is for a fixed-Government amount, but the agreement provides for submittal of financial or cost records/reports to determine whether additional effort can be accomplished for the fixed amount.

(3) *Subawardees.* When a DoD access to records provision is included in the OT agreement, the awardee shall use the criteria established in paragraphs (a)(2)(i) through (a)(2)(iii) of this section to determine whether DoD access to records clauses should be included in subawards.

(b) *Exceptions.* (1) *Nontraditional Defense contractors*—(i) The Agreements Officers may deviate, in part or in whole, from the application of this access to records policy for a nontraditional Defense contractor when application of the policy would adversely impact the government's ability to incorporate commercial technology or execute the prototype project.

(ii) The Agreements Officer will document:

(A) What aspect of the audit policy was not applied;

(B) Why it was problematic;

(C) What means will be used to protect the Government's interest; and

(D) Why the benefits of deviating from the policy outweigh the potential risks.

(iii) This determination will be reviewed by the approving official as part of the pre-award approval of the agreement and submitted to the agency POC within 10 days of award.

(iv) The agency POC will forward all such documentation received in any given fiscal year, to the Director, Defense Procurement by 15 October of each year.

(2) *Traditional Defense contractor.* (i) Any departure from this policy for other than nontraditional Defense contractors must be approved by the Head of the Contracting Activity prior to award and set forth the exceptional circumstances justifying deviation.

(ii) Additionally, the justification will document:

(A) What aspect of the policy was not applied;

(B) Why it was problematic;

(C) What means will be used to protect the Government's interest; and

(D) Why the benefits of deviating from the policy outweigh the potential risks.

(iii) The HCA will forward documentation associated with such waivers in any given fiscal year, to the Director, Defense Procurement by 15 October of each year.

(3) *DoD access below the threshold.* When the Agreements Officer determines that access to records is appropriate for an agreement below the $5,000,000 threshold, the content, length and extent of access may be mutually agreed to by the parties, without documenting reasons for departing from the policy of this section.

(4) *Flow down provisions.* The awardee shall submit justification for any exception to the DoD access to records policy to the Agreements Officer for subawardees. The Agreements Officer will review and obtain appropriate approval, as set forth in paragraphs (b)(1) and (b)(2) of this section.

(c) *Content of DoD access to records clause.* When a DoD access to records clause is included as part of the OT agreement, address the following areas during the negotiation of the clause:

(1) *Frequency of audits.* Audits will be performed when the Agreements Officer determines it is necessary to verify statutory cost share or to verify amounts generated from financial or cost records that will be used as the basis for payment or adjustment of payment.

(2) *Means of accomplishing audits.* (i) *Business units subject to the Single Audit Act*—When the awardee or subawardee is a state government, local government, or nonprofit organization whose Federal cost reimbursement contracts and financial assistance agreements are subject to the Single Audit Act (Public Law 98–502, as amended by Public Law 104–156, 110 STAT. 1396–1404), the clause must apply the provisions of that Act for purposes of performing audits of the awardee or subawardee under the agreement.

(ii) *Business units not subject to the Single Audit Act currently performing on procurement contracts.* The clause must provide that DCAA will perform any necessary audits if, at the time of agreement award, the awardee or subawardee is not subject to the Single Audit Act and is performing a procurement contract that is subject to the Cost Principles Applicable to Commercial Organizations (48 CFR part 31.2) and/or the Cost Accounting Standards (48 CFR part 99).

(iii) *Other business units.* DCAA or a qualified IPA may perform any necessary audit of a business unit of the awardee or subawardee if, at the time of agreement award, the business unit does not meet the criteria in (c)(2)(i) or (c)(2)(ii) of this section. The clause must provide for the use of a qualified IPA if such a business unit will not accept the agreement if the Government has access to the business unit's records. The Agreements Officer will include a statement in the file that the business unit is not performing on a procurement contract subject to the Cost Principles or Cost Accounting Standards at the time of agreement award, and will not accept the agreement if the government has access to the business unit's records. The Agreements Officer will also prepare a report (Part III to the annual report submission) for the Director, Defense Procurement that identifies, for each business unit that is permitted to use an IPA: the business unit's name, address and the expected value of its award. When the clause provides for use of an IPA to perform any necessary audits, the clause must state that:

(A) The IPA will perform the audit in accordance with Generally Accepted Government Auditing Standards (GAGAS). Electronic copies of the standards may be accessed at *www.gao.gov*. Printed copies may be purchased from the U.S. Government Printing Office (for ordering information, call (202) 512–1800 or access the Internet Site at *www.gpo.gov*).

(B) The Agreements Officers' authorized representative has the right to examine the IPA's audit report and working papers for 3 years after final payment or three years after issuance of the audit report, whichever is later, unless notified otherwise by the Agreements Officer.

(C) The IPA will send copies of the audit report to the Agreements Officer and the Assistant Inspector General (Audit Policy and Oversight) [AIG(APO)], 400 Army Navy Drive, Suite 737, Arlington, VA 22202.

(D) The IPA will report instances of suspected fraud directly to the DoDIG.

(E) The Government has the right to require corrective action by the awardee or subawardee if the Agreements Officer determines (subject to appeal under the disputes clause of the agreement) that the audit has not been performed or has not been performed in accordance with GAGAS. The Agreements Officer should take action promptly once the Agreements Officer determines that the audit is not being accomplished in a timely manner or the audit is not performed in accordance with GAGAS but generally no later than twelve (12) months of the date requested by the Agreements Officer. The awardee or subawardee may take corrective action by having the IPA correct any deficiencies identified by the Agreements Officer, having another IPA perform the audit, or electing to have the Government perform the audit. If corrective action is not taken, the Agreements Officer has the right to take one or more of the following actions:

(*1*) Withhold or disallow a specified percentage of costs until the audit is completed satisfactorily. The agreement should include a specified percentage that is sufficient to enhance performance of corrective action while also not being unfairly punitive.

(*2*) Suspend performance until the audit is completed satisfactorily; and/or

(*3*) Terminate the agreement if the agreements officer determines that imposition of either (c)(2)(iii)(E)(1) or (c)(2)(iii)(e)(2) of this section is not practical.

(F) If it is found that the awardee or subawardee was performing a procurement contract subject to Cost Principles Applicable to Commercial Organizations (48 CFR part 31.2) and/or Cost Accounting Standards (48 CFR part 99) at the time of agreement award, the Agreements Officer, or an authorized representative, has the right to audit records of the awardee or subawardee to verify the actual costs or reporting information used as the basis for payment or to verify statutorily required cost share under the agreement, and the IPA is to be paid by the awardee or subawardee. The cost of an audit performed in accordance with this policy is reimbursable based on the business unit's established accounting practices and subject to any limitations in the agreement.

(3) *Scope of audit.* The Agreements Officer should coordinate with the auditor regarding the nature of any audit envisioned.

(4) *Length and extent of access.* (i) *Clauses that do not provide for use of an IPA*—The clause must provide for the Agreements Officer's authorized representative to have access to directly pertinent records of those business units of the awardee or subawardee's performing effort under the OT agreement, when needed to verify the actual costs or reporting used as the basis for payment or to verify statutorily required cost share under the agreement.

(ii) *Clauses that provide for use of an IPA to perform the audits.* The clause must:

(A) Provide the Agreements Officer's authorized representative access to the IPA's audit reports and working papers to ensure that the IPA has performed the audit in accordance with GAGAS.

(B) State that the Government will make copies of contractor records contained in the IPA's work papers if needed to demonstrate that the audit was not performed in accordance with GAGAS.

(C) State that the Government has no direct access to any awardee or subawardee records unless it is found that the awardee or subawardee was performing a procurement contract subject to Cost Principles (48 CFR part 31) and/or Cost Accounting Standards (48 CFR part 99) at the time of agreement award.

(iii) *Business Units subject to the Single Audit Act.* The clause must provide access to the extent authorized by the Single Audit Act.

(iv) *Record Retention/Period of Access.* The clause must require that the awardee and subawardee retain, and provide access to, the records referred to in (c)(4)(i) and (c)(4)(ii) of this section for three years after final payment, unless notified of a shorter or longer period by the Agreements Officer.

(5) *Awardee flow down responsibilities.* Agreements must require awardees to include the necessary provisions in subawards that meet the conditions set forth in this DoD access to records policy.

(d) *DoDIG and GAO access.* In accordance with statute, if an agreement gives the Agreements Officer or another DoD component official access to a business unit's records, the DoDIG or GAO are granted the same access to those records.

Dated: May 12, 2003.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 03–12553 Filed 5–19–03; 8:45 am]

BILLING CODE 5001–08–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 100

[CGD05–03–047]

RIN 1625–AA08

Special Local Regulations for Marine Events; Chesapeake Bay Bridges Swim Races, Chesapeake Bay, MD

AGENCY: Coast Guard, DHS.

ACTION: Notice of implementation of regulation.

SUMMARY: The Coast Guard is implementing the special local regulations at 33 CFR 100.507 during the Twelfth Annual Great Chesapeake Bay Swim Event to be held on June 8, 2003. This action is necessary to provide for the safety of life on navigable waters before, during and after the event. The effect will be to restrict general navigation in the regulated area for the safety of participants and support vessels in the event area.

EFFECTIVE DATES: 33 CFR 100 507 is effective from 11 a.m. to 3 p.m. local time on June 8, 2003.

FOR FURTHER INFORMATION CONTACT: Ron Houck, Marine Information Specialist, Commander, Coast Guard Activities Baltimore, 2401 Hawkins Point Road, Baltimore, MD 21226–1971, at (410) 576–2674.

SUPPLEMENTARY INFORMATION: The Great Chesapeake Bay Swim, Inc. will sponsor the "Great Chesapeake Bay Swim Event" on the waters of the Chesapeake Bay between and adjacent to the spans of the William P. Lane Jr. Memorial Bridge. Approximately 600 swimmers will start from Sandy Point State Park and swim between the spans of the William P. Lane Jr. Memorial Bridge to the Eastern Shore. A large fleet of support vessels will be accompanying the swimmers. Therefore, to ensure the safety of participants and support vessels, 33 CFR 100.507 will be in effect for the duration of the event. Under provisions of 33 CFR 100.507, a vessel may not enter the regulated area unless it receives permission from the Coast Guard Patrol Commander. Vessel traffic will be allowed to transit the regulated area as the swim progresses, when the Patrol Commander determines it is safe to do so.

In addition to this notice, the maritime community will be provided extensive advance notification via the Local Notice to Mariners, marine information broadcasts, and area newspapers, so mariners can adjust their plans accordingly.

Dated: May 13, 2003.

Ben R. Thomason III,

Captain, Coast Guard, Acting Commander, Fifth Coast Guard District.

[FR Doc. 03–12550 Filed 5–19–03; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 117

[CGD05–02–065]

RIN 1625–AA09

Drawbridge Operation Regulation; Raccoon Creek, NJ

AGENCY: Coast Guard, DHS.

ACTION: Final rule.

SUMMARY: The Coast Guard is changing the operating regulations for the Consolidated Rail Corporation (CONRAIL) Railroad Bridge across Raccoon Creek at mile 2.0, in Bridgeport, New Jersey. This final rule for the CONRAIL Railroad Bridge eliminates the need for a bridge tender by allowing the bridge to be operated by a train crewmember. The final rule will provide for the reasonable needs of navigation.

DATES: This rule is effective June 19, 2003.

ADDRESSES: Comments and material received from the public, as well as documents indicated in this preamble as being available in the docket, are part of docket CGD05–02–065 and are available for inspection or copying at Commander (oan), Fifth Coast Guard District, Federal Building, 4th Floor, 431 Crawford Street, Portsmouth, Virginia 23704–5004 between 8 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Waverly W. Gregory, Jr., Bridge Administrator, Fifth Coast Guard District, at (757) 398–6222.

SUPPLEMENTARY INFORMATION:

Regulatory History

On February 6, 2003, we published a notice of proposed rulemaking (NPRM) entitled "Drawbridge Operation Regulations; Raccoon Creek, New Jersey" in the **Federal Register** (68 FR 6100). We received one letter commenting on the proposed rule. No public hearing was requested nor held.

Background and Purpose

CONRAIL, who owns and operates this movable (swing-type) bridge, requested changes to the operating procedure for the drawbridge located at mile 2.0 across Raccoon Creek, in Bridgeport, New Jersey. Currently, Title 33 Code of Federal Regulations (CFR) Part 117.741 requires the bridge to open on signal from March 1 through November 30, from 7 a.m. to 11 p.m. At all other times, the draw must open on signal if at least four hours notice is given. The draw must also open at all times as soon as possible for passage of a public vessel of the United States.

CONRAIL installed a new Programmable Logic Controller and associated mechanical, electrical and signal apparatus on the CONRAIL Railroad Bridge over Raccoon Creek in Bridgeport, New Jersey. This rule allows a radio-controlled system to operate the opening and closing of the swing span from the cab of the locomotive. From March 1 through November 30, the swing bridge will normally be left in the fully opened position displaying flashing green channel lights indicating that vessels may pass through. At all other times, the draw of the CONRAIL Railroad Bridge need only open on signal if at least four hours notice is given by calling (856) 231–2393.

Under this rule, when a train approaches the bridge it will stop and a train crewmember will observe the waterway for approaching craft, which will be allowed to pass. The train crewmember will then enter a prearranged code number using a radio keypad. The radio code will send a radio signal to the Programmable Logic Controller attached to the bridge, which will begin the process of closing the bridge. At that time, the bridge channel lights will change from flashing green to flashing red, a horn blast will sound four times, followed by a pause, then the four horn blasts will be repeated and the bridge will close. Once closed, the train will proceed across the bridge. After the train has cleared the swing span, which is approximately 300 feet from the bridge, the horn will automatically sound five times to indicate the span of the bridge is about to return to the full open position. Channel traffic lights would change from flashing green to flashing red any time the bridge is not in the full open position. In the full open position, the channel traffic lights will turn from flashing red to flashing green.

This rule will make the closure process of the CONRAIL Railroad Bridge more efficient during train crossings and periodic maintenance, and will save operational costs by eliminating bridge tenders while providing greater bridge operating capabilities.

Discussion of Comments and Change

The Coast Guard received one comment on the NPRM. The comment offered by the U.S. Fish and Wildlife Service (Service) indicated that the federally listed (threatened) bald eagle currently nests within 1.6 miles of the CONRAIL Railroad Bridge. The Service

states that bald eagles from the nearby nest site may occasionally forage or roost in the vicinity of the bridge. Based on the current available information, the Service does not anticipate adverse impacts to the bald eagle and does not object to the proposed changes in the operation of the CONRAIL Railroad Bridge. Therefore, no changes were made to the final rule.

Regulatory Evaluation

This rule is not a "significant regulatory action" under section 3(f) of Executive Order 12866, Regulatory Planning and Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that Order. It is not "significant" under the regulatory policies and procedures of the Department of Homeland Security (DHS).

We reached this conclusion based on the fact that this final rule for the CONRAIL Railroad Bridge will provide for greater flow of vessel traffic than the current regulations for the drawbridge. Under the current regulations, the CONRAIL Railroad Bridge remains closed and opens after proper signal from March 1 through November 30. The final rule will require the bridge to remain in the open position during this period, permitting vessels to pass freely. The bridge will close only for train crossings and bridge maintenance. This final rule will provide for the reasonable needs of navigation.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), we have considered whether this rule would have a significant economic impact on a substantial number of small entities. The term "small entities" comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000.

The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities.

This final rule will not have a significant economic impact on a substantial number of small entities for the following reasons. The final rule will provide for the CONRAIL Railroad Bridge to remain in the open position from March 1 through November 30, allowing the free flow of vessel traffic. The bridge would only close for the passage of trains and maintenance.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we offered to assist small entities in understanding the rule so that they could better evaluate its effects on them and participate in the rulemaking process. In our notice of proposed rulemaking, we provided a point of contact to small entities who could answer questions concerning proposed provisions or option for compliance.

Collection of Information

This rule calls for no new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

Federalism

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on State or local governments and would either preempt State law or impose a substantial direct cost of compliance on them. We have analyzed this rule under that Order and have determined that it does not have implications for federalism.

Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of $100,000,000 or more in any one year. Though this rule will not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

Taking of Private Property

This rule will not affect a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

Civil Justice Reform

This rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

Protection of Children

We have analyzed this rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and would not create an environmental risk to health or risk to safety that might disproportionately affect children.

Indian Tribal Governments

This rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

Energy Effects

We have analyzed this rule under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. We have determined that it is not a "significant energy action" under that order because it is not a "significant regulatory action" under Executive Order 12866 and is not likely to have a significant adverse effect on the supply, distribution, or use of energy. It has not been designated by the Administrator of the Office of Information and Regulatory Affairs as a significant energy action. Therefore, it does not require a Statement of Energy Effects under Executive Order 13211.

Environment

We have considered the environmental impact of this rule and concluded that under figure 2–1, paragraph (32)(e), of Commandant Instruction M16475.lD, this rule is categorically excluded from further environmental documentation. The final rule only involves the operation of an existing drawbridge and will not have any impact on the environment. A "Categorical Exclusion Determination" is available in the docket where indicated under **ADDRESSES**.

List of Subjects in 33 CFR Part 117

Bridges.

■ For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 117 as follows:

PART 117—DRAWBRIDGE OPERATION REGULATIONS

■ 1. The authority citation for part 117 continues to read as follows:

Authority: 33 U.S.C. 499; Department of Homeland Security Delegation No. 0170; 33 CFR 1.05–1(g); § 117.255 also issued under the authority of P.L. 102–587, 106 Stat. 5039.

■ 2. § 117.741 is revised to read as follows:

§ 117.741 Raccoon Creek.

(a) The draw of the Route 130 highway bridge, mile 1.8 at Bridgeport, shall open on signal:

(1) March 1 through November 30, from 7 a.m. to 11 p.m.

(2) At all other times, if at least four hours notice is given.

(b) The draw of the CONRAIL Railroad Bridge, mile 2.0 at Bridgeport, shall operate as follows:

(1) From March 1 through November 30, the draw shall be left in the open position at all times and will only be closed for the passage of trains and to perform periodic maintenance authorized in accordance with subpart A of this part.

(i) Trains shall be controlled so that any delay in opening of the draw shall not exceed ten minutes except as provided in § 117.31(b).

(ii) Before the bridge closes for any reason, a train crewmember will observe the waterway for approaching craft, which will be allowed to pass. A train crewmember will then operate the bridge by radiophone. The bridge shall only be closed if a train crewmember's visual inspection shows that the channel is clear and there are no vessels transiting in the area.

(iii) While the CONRAIL Railroad Bridge is moving from the full open to the full closed position, a train crewmember will maintain constant surveillance of the navigational channel to ensure no conflict with maritime traffic exists. In the event of failure or obstruction, the train crewmember will stop the bridge and return the bridge to the open position.

(iv) The CONRAIL Railroad channel traffic lights will change from flashing green to flashing red anytime the bridge is not in the full open position.

(v) During closing of the span, the channel traffic lights will change from flashing green to flashing red, the horn will sound four times, followed by a pause, then the four blasts will be repeated and the bridge will close. When the rail traffic has cleared the swing span, the horn will automatically sound five times to signal the draw of the CONRAIL Railroad Bridge is about to return to its full open position.

(vi) During open span movement, the channel traffic lights will be flashing red, the horn will sound four times, followed by a pause, then four blasts will be repeated until the bridge is in the full open position. In the full open position, the channel traffic lights will then turn from flashing red to flashing green.

(2) At all other times, the draw may be left in the closed position and opened on signal if at least four hours notice is given by telephone at (856) 231–2393.

Dated: April 29, 2003.

Sally Brice O'Hara,

Rear Admiral, Coast Guard, Commander, Fifth Coast Guard District.

[FR Doc. 03–12491 Filed 5–19–03; 8:45 am]

BILLING CODE 4910–15–U

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[CGD09–01–002]

RIN 1625–AA00

Safety Zone; Captain of the Port Detroit Zone

AGENCY: Coast Guard, DHS.

ACTION: Notice of implementation of regulation.

SUMMARY: The Coast Guard is implementing safety zones for annual fireworks displays in the Captain of the Port Detroit Zone during June 2003. This action is necessary to provide for the safety of life and property on navigable waters during these events. These zones will restrict vessel traffic from a portion of the Captain of the Port Detroit Zone.

DATES: Effective from 9 p.m. (Eastern Time) on June 23, 2003 to 11 p.m. (Eastern Time) on June 29, 2003.

FOR FURTHER INFORMATION CONTACT: Lieutenant Junior Grade Brandon Sullivan, U.S. Coast Guard Marine Safety Office, Detroit, MI at (313) 568–9580.

SUPPLEMENTARY INFORMATION: The Coast Guard is implementing the permanent safety zones in 33 CFR 165.907 (66 FR 27868, May 21, 2001), for fireworks displays in the Captain of the Port Detroit Zone during June 2003. The following safety zones are in effect for fireworks displays occurring in the month of June 2003:

(1) *Bay-Rama Fishfly Festival, New Baltimore, MI. Location.* All waters off New Baltimore City Park, Lake St. Clair-Anchor Bay bounded by the arc of a circle with a 300-yard radius with its center located at approximate position 42°41′ N, 082°44′ W (NAD 83).

Enforcement period. June 26, 2003, from 9 p.m. to 11 p.m.

(2) *St. Clair Shores Fireworks, St. Clair Shores, MI. Location.* All waters of Lake St. Clair within a 300-yard radius of the fireworks barge in approximate position 42°32′ N, 082°51′ W, about 1000 yards east of Veterans Memorial Park (off Masonic Rd.), St. Clair Shores, MI (NAD 83).

Enforcement period. June 27, 2003, from 10 p.m. to 11 p.m.

(3) *Port Huron 4th of July Fireworks, Port Huron, MI. Location.* All waters of the Black River within a 300 yard radius of the fireworks barge in approximate position 42°58′ N, 082°25′ W about 300 yards east of 223 Huron Ave., in the Black River (NAD 83).

Enforcement period. June 29, 2003, from 10 p.m. until 11 p.m.

(4) *Sigma Gamma Assoc., Grosse Pointe Farms, MI.*

Location. The waters off Ford's Cove, Lake St. Clair bounded by the arc of a circle with a 300-yard radius with its center in approximate position 42°27′ N, 082°52′ W (NAD 83).

Enforcement period. June 23, 2003 from 9 p.m. to 10 p.m.

In order to ensure the safety of spectators and transiting vessels, these safety zones will be in effect for the duration of the events. In cases where shipping is affected, commercial vessels may request permission from the Captain of the Port Detroit to transit the safety zone. Approval will be made on a case-by case basis. Requests must be made in advance and approved by the Captain of Port before transits will be authorized. The Captain of the Port may be contacted via U.S. Coast Guard Group Detroit on channel 16, VHF–FM.

Dated: May 9, 2003.

Patrick G. Gerrity,

Commander, U.S. Coast Guard, Captain of the Port Detroit.

[FR Doc. 03–12498 Filed 5–19–03; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[CGD09–03–212]

RIN 1625–AA00

Safety Zone; Lake Michigan, Chicago, IL

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary safety for the Chicago to Michigan City sailboat race. The safety zone encompasses a portion of Lake Michigan. This safety zone is necessary to ensure vessel safety in the vicinity of the race start area, protecting both competitors and spectators from hazards associated with this sail boat race. This safety zone is intended to restrict vessel traffic from a portion of southern Lake Michigan.

DATES: This temporary final rule is effective from 7 a.m. (local), until 10 a.m. on June 7, 2003.

ADDRESSES: Documents indicated in this preamble as being available in the docket are part of docket CDG09–03–212 and are available for inspection or copying at U.S. Coast Guard Marine Safety Office Chicago, 215 W. 83rd Street, Chicago, Illinois 60527 between 7:30 a.m. and 4 p.m. Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: MST2 Kenneth Brockhouse, U.S. Coast Guard Marine Safety Office Chicago, at (630) 986–2125.

SUPPLEMENTARY INFORMATION:

Regulatory Information

We did not publish a notice of proposed rulemaking (NPRM) for this regulation. Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing an NPRM. The permit application was not received in time to publish an NPRM followed by a final rule before the effective date. Delaying this rule would be contrary to the public interest of ensuring the safety of spectators and vessels during this event and immediate action is necessary to prevent possible loss of life or property. The Coast Guard has not received any complaints or negative comments previously with regard to this event.

Under 5 U.S.C 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the **Federal Register**. Delaying the effective date would be contrary to public interest because the June 7, 2003 event would then be without an enforceable zone, thus placing the safety and property of spectators at unnecessary risk.

Background and Purpose

During the start of the Chicago to Michigan City sailboat race, the Coast Guard is establishing a safety zone encompassing the starting area. The Coast Guard expects approximately 150 vessels to participate in this event. This safety zone is required to ensure the safety of vessels and spectators from hazards associated with this sailing event. Entry into, transit through or anchoring within this safety zone is prohibited unless authorized by the Captain of the Port, Chicago or the designated Patrol Commander. The designated Patrol Commander on scene may be contacted on VHF Channel 16.

Discussion of Rule

The safety zone will encompass all waters of Lake Michigan bounded by the arc of a circle with a 1000 foot radius with its center in approximate position 41°52′67″ N; 087°35′24″ W. These coordinates are based upon North American Datum 1983. All vessels except those officially participating in this event are prohibited from entering the safety zone without the permission of the Captain of the Port Chicago or his on-scene representative. The on-scene representative will be the Patrol Commander.

Regulatory Evaluation

This proposed rule is not a "significant regulatory action" under section 3(f) of Executive Order 12866 and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed this rule under that Order. It is not significant under the regulatory policies and procedures of the Department of Homeland Security (DHS).

We expect the economic impact of this proposed rule to be so minimal that a full Regulatory Evaluation under paragraph 10(e) of the regulatory policies and procedures of DOT is unnecessary.

This determination is based on the minimal time that vessels will be restricted from the zone and the zone is in an area where the Coast Guard expects insignificant adverse impact to mariners from the zones' activation.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), we have considered whether this proposed rule would have a significant impact on a substantial number of small entities. The term "small entities" comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000.

The Coast Guard certifies under 5 U.S.C. 605(b) that this proposed rule would not have a significant economic impact on a substantial number of small entities.

This proposed rule would affect the following entities, some of which might be small entities: The owners or operators of commercial vessels intending to transit a portion of an activated safety zone.

This safety zone will not have a significant economic impact on a substantial number of small entities for the following reasons: The proposed zone is only in effect for two hours on the day of the event.

The designated area is being established to allow for maximum use of the waterway for commercial vessels to enjoy the fireworks display in a safe manner. In addition, commercial vessels transiting the area can transit around the area. The Coast Guard will give notice to the public via a Broadcast to Mariners that the regulation is in effect.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we want to assist small entities in understanding this rule so that they can better evaluate its effects and participate in the rulemaking process. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact Marine Safety Office Chicago (see **ADDRESSES.**)

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1–888–REG–FAIR (1–888–734–3247).

Collection of Information

This proposed rule would call for no new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

Federalism

We have analyzed this proposed rule under Executive Order 13132 and have determined that this rule does not have implications for federalism under that Order.

Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) governs the issuance of Federal regulations that requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of $100,000,000 or more in any one year. Though this proposed rule would not result in such an

expenditure, we do discuss the effects of this rule elsewhere in this preamble.

Taking of Private Property

This proposed rule would not effect a taking of private property or otherwise have taking implications under Executive Order 12630, governmental Actions and Interference with Constitutionally Protected Property Rights.

Civil Justice Reform

This proposed rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

Protection of Children

The Coast Guard has analyzed this proposed rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and does not concern an environmental risk to health or risk to safety that may disproportionately affect children.

Environment

We have considered the environmental impact of this proposed rule and concluded that, under figure 2–1, paragraph 32(g) of Commandant Instruction M16475.1D, this proposed rule is categorically excluded from further environmental documentation. A written categorical exclusion determination is available in the docket for inspection or copying where indicated under **ADDRESSES.**

Energy Effects

We have analyzed this proposed rule under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. We have determined that it is not a "significant energy action" under that Order because it is not a "significant regulatory action" under Executive Order 12866 and is not likely to have a significant adverse effect on the supply, distribution, or use of energy. It has not been designated by the Administrator of the Office of Information and Regulatory Affairs as a significant energy action. Therefore, it does not require a Statement of Energy Effects under Executive Order 13211.

Indian Tribal Governments

This rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, Waterways.

■ For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 165 as follows:

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

■ 1. The authority citation for part 165 continues to read as follows:

Authority: 33 U.S.C. 1231; 50 U.S.C. 191, 33 CFR 1.05–1(g), 6.04–1, 6.04–6, 160.5; Department of Homeland Security Delegation No. 0170.

■ 2. A new temporary § 165.T09–212 is added to read as follows:

§ 165.T09–212 Safety Zone; Lake Michigan, Chicago, Illinois.

(a) *Location.* The following is a safety zone: All waters of Lake Michigan bounded by the arc of a circle with a 1000-foot radius with its center in approximate position 41°52′67″N; 087°35′24″W. These coordinates are based upon North American Datum 1983.

(b) *Regulations.* All vessels, except those officially participating in the Chicago to Michigan City Sailboat Race, are prohibited from entering this safety zone without the permission of the Captain of the Port Chicago or his designated on-scene representative which will be the Patrol Commander.

(c) *Effective date.* This rule is effective from 7 a.m. until 10 a.m. on June 7, 2003.

Dated: May 5, 2003.

Raymond E. Seebald,

Captain, U.S. Coast Guard, Captain of the Port Chicago.

[FR Doc. 03–12497 Filed 5–19–03; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[CGD09–03–213]

RIN 1625–AA00

Safety Zone; Betsie Bay, Lake Michigan

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary safety zone in Betsie Bay, Frankfort, Michigan. This safety zone is necessary to protect vessels and spectators from potential airborne hazards during a planned fireworks display over a portion of Betsie Bay. The safety zone is intended to restrict vessel traffic from a portion of Betsie Bay in Lake Michigan, Frankfort, Michigan.

DATES: This temporary final rule is effective from 9 p.m. (local) until 11 p.m. (local) on June 28, 2003.

ADDRESSES: Documents indicated in this preamble as being available in the docket, are part of docket CDG09–03–213 and are available for inspection or copying at: U.S. Coast Guard Marine Safety Office Chicago, 215 W. 83rd Street, Chicago, Illinois 60527 between 7:30 a.m. and 4 p.m. Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: MST2 Kenneth Brockhouse, U.S. Coast Guard Marine Safety Office Chicago, at (630) 986–2125.

SUPPLEMENTARY INFORMATION:

Regulatory Information

We did not publish a notice of proposed rulemaking (NPRM) for this regulation. Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing an NPRM. The permit application was not received in time to publish an NPRM followed by a final rule before the effective date. Delaying this rule would be contrary to the public interest of ensuring the safety of spectators and vessels during this event and immediate action is necessary to prevent possible loss of life or property. The Coast Guard has not received any complaints or negative comments previously with regard to this event.

Background and Purpose

A temporary safety zone is necessary to ensure the safety of vessels and spectators from the hazards associated with fireworks displays. Based on recent accidents that have occurred in other Captain of the Port zones, and the explosive hazard of fireworks, the Captain of the Port Chicago has determined fireworks launches in close proximity to watercraft pose significant risks to public safety and property. The likely combination of large numbers of recreational vessels, congested waterways, darkness punctuated by bright flashes of light, alcohol use, and debris falling into the water could easily result in serious injuries or fatalities. Establishing a safety zone to control vessel movement around the location of the launch platform will help ensure the safety of persons and property at these events and help minimize the associated risks.

Discussion of Rule

The safety zone for the Elberta fireworks will encompass all waters of Betsie Bay in Lake Michigan, off Frankfort, Michigan within the arc of a circle with a 250-foot radius from the fireworks launch site with its center in the approximate position 44°37′41″ N, 086°14′05″ W. These coordinates are based upon North American Datum 1983 (NAD 83).

All persons and vessels shall comply with the instructions of the Coast Guard Captain of the Port or the designated on scene patrol personnel. Entry into, transiting, or anchoring within the safety zone is prohibited unless authorized by the Captain of the Port Chicago or his designated on scene representative. The Captain of the Port or his designated on scene representative may be contacted via VHF Channel 16.

Regulatory Information

This proposed rule is not a "significant regulatory action" under section 3(f) of Executive Order 12866, Regulatory Planning and Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. It is not "significant" under the regulatory policies and procedures of the Department of Homeland Security (DHS).

We expect the economic impact of this proposed rule to be so minimal that the full Regulatory Evaluation under the regulatory policies and procedures of DHS is unnecessary.

Regulatory Evaluation

This proposed rule is not a "significant regulatory action" under section 3(f) of Executive Order 12866 and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed this rule under that Order. It is not significant under the regulatory policies and procedures of the Department of Homeland Security (DHS).

We expect the economic impact of this proposed rule to be so minimal that a full Regulatory Evaluation under paragraph 10(e) of the regulatory policies and procedures of DOT is unnecessary.

This determination is based on the minimal time that vessels will be restricted from the zone and the zone is in an area where the Coast Guard expects insignificant adverse impact to mariners from the zones' activation.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), we have considered whether this proposed rule would have a significant impact on a substantial number of small entities. The term "small entities" comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000.

The Coast Guard certifies under 5 U.S.C. 605(b) that this proposed rule would not have a significant economic impact on a substantial number of small entities.

This proposed rule would affect the following entities, some of which might be small entities: The owners or operators of commercial vessels intending to transit a portion of an activated safety zone.

This safety zone will not have a significant economic impact on a substantial number of small entities for the following reasons: The proposed zone is only in effect for two hours on the day of the event.

The designated area is being established to allow for maximum use of the waterway for commercial vessels to enjoy the fireworks display in a safe manner. In addition, commercial vessels transiting the area can transit around the area. The Coast Guard will give notice to the public via a Broadcast to Mariners that the regulation is in effect.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we want to assist small entities in understanding this rule so that they can better evaluate its effects and participate in the rulemaking process. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact Marine Safety Office Chicago (see **ADDRESSES.**)

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1–888–REG–FAIR (1–888–734–3247).

Collection of Information

This proposed rule would call for no new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

Federalism

We have analyzed this proposed rule under Executive Order 13132 and have determined that this rule does not have implications for federalism under that Order.

Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) governs the issuance of Federal regulations that requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of $100,000,000 or more in any one year. Though this proposed rule would not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

Taking of Private Property

This proposed rule would not effect a taking of private property or otherwise have taking implications under Executive Order 12630, governmental Actions and Interference with Constitutionally Protected Property Rights.

Civil Justice Reform

This proposed rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

Protection of Children

The Coast Guard has analyzed this proposed rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically

significant rule and does not concern an environmental risk to health or risk to safety that may disproportionately affect children.

Environment

We have considered the environmental impact of this proposed rule and concluded that, under figure 2–1, paragraph 32(g) of Commandant Instruction M16475.1D, this proposed rule is categorically excluded from further environmental documentation. A written categorical exclusion determination is available in the docket for inspection or copying where indicated under **ADDRESSES.**

Energy Effects

We have analyzed this proposed rule under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. We have determined that it is not a "significant energy action" under that Order because it is not a "significant regulatory action" under Executive Order 12866 and is not likely to have a significant adverse effect on the supply, distribution, or use of energy. It has not been designated by the Administrator of the Office of Information and Regulatory Affairs as a significant energy action. Therefore, it does not require a Statement of Energy Effects under Executive Order 13211.

Indian Tribal Governments

This rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, Waterways.

■ For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 165 as follows:

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

■ 1. The authority citation for part 165 continues to read as follows:

Authority: 33 U.S.C. 1231; 50 U.S.C. 191, 33 CFR 1.05–1(g), 6.04–1, 6.04–6, 160.5; Department of Homeland Security Delegation No. 0170.

■ 2. A new temporary § 165.T09–213 is added to read as follows:

§ 165.T09–213 Safety Zone; Betsie Bay, Frankfort, Michigan.

(a) *Location.* The following area is a safety zone: all waters and adjacent shoreline of Betsie Bay (off Frankfort, Michigan), Lake Michigan within the arc of a circle with a 250-foot radius from the fireworks launch site with its center in the approximate position of 44°37′41″ N, 086°14′05″ W (NAD 83).

(b) *Effective date.* This safety zone is effective from 9 p.m. (local) until 11 p.m. (local), June 28, 2003.

(c) *Regulations.* This safety zone is being established to protect the boating public during a planned fireworks display. In accordance with the general regulations in § 165.23 of this part, entry into this zone is prohibited unless authorized by the Coast Guard Captain of the Port, Chicago, or the designated Patrol Commander.

Dated: May 5, 2003.

Raymond E. Seebald,

Captain, U.S. Coast Guard, Captain of the Port Chicago.

[FR Doc. 03–12495 Filed 5–19–03; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[CGD09–03–203]

RIN 1625–AA00

Safety Zones; Captain of the Port Chicago Zone

AGENCY: Coast Guard, DHS.

ACTION: Final rule.

SUMMARY: The Coast Guard is establishing fifteen permanent safety zones for annual fireworks displays throughout the Captain of the Port Chicago Zone. These safety zones are necessary to control vessel traffic within the immediate vicinity of fireworks launch sites and to ensure the safety of life and property during each event. These safety zones are intended to restrict vessels from the area encompassed by the safety zone for the duration of each fireworks display.

DATES: This rule is effective on May 20, 2003.

ADDRESSES: Comments and material received from the public, as well as documents indicated in this preamble as being available in the docket, are part of docket CGD09–03–203 and are available for inspection or copying at Coast Guard Marine Safety Office Chicago, between 7:30 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: MST2 Kenneth Brockhouse, U.S. Coast Guard Marine Safety Office Chicago, at (630) 986–2175.

SUPPLEMENTARY INFORMATION:

Regulatory Information

On February 14, 2003, we published a notice of proposed rulemaking (NPRM) entitled Safety Zones; Captain of the Port Chicago Zone, in the **Federal Register** (68 FR 7473, February 14, 2003). We received no letters commenting on the proposed rule. No public hearing was requested, and none was held.

Under 5 U.S.C 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the **Federal Register**. The events listed in this rule have been regularly held on an annual basis with widespread public participation. The Coast Guard has not received any complaints or negative comments previously with regard to these events. Delaying the effective date would be contrary to public interest because events being held in early June would be without an enforceable zone, thus placing the safety and property of spectators at unnecessary risk.

Background and Purpose

Each year, various organizations in Illinois and Michigan sponsor fireworks displays at the same locations during the same general time periods. Based on recent accidents that have occurred in other Captain of the Port zones, and the explosive hazards associated with these events, the Captain of the Port Chicago has determined that fireworks launches in close proximity to watercraft pose a risk to public safety and property. The likely combination of large numbers of inexperienced recreational boaters, congested waterways, darkness punctuated by bright flashes of light, alcohol use, and debris falling into the water could easily result in serious injuries or fatalities. Establishing a safety zone to control vessel movement will ensure the safety of persons and property at these events and help minimize the associated risk.

In the past, and for those reasons stated above, the Captain of the Port has annually promulgated separate temporary rulemaking for each fireworks event. This proposed rule merely consolidates past temporary rulemakings into one rulemaking, includes other events for the purpose of uniformity, and allows for a more thoughtful, timely rulemaking process. This rulemaking will create a permanent rule listing the safety zones for each fireworks launch platform used for each fireworks display. All geographic coordinates are based upon North American Datum 1983 (NAD 83).

Discussion of Comments and Changes

During the public comment period, the Coast Guard received no comments or related information pertaining to this rulemaking.

Regulatory Evaluation

This rule is not a significant regulatory action under section 3(f) of Executive Order 12866 and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has exempted it from review under that Order. It is not significant under the regulatory policies and procedures of the Department of Homeland Security (DHS). The Coast Guard expects the economic impact of this proposal to be so minimal that a full Regulatory Evaluation under paragraph 10(e) of the regulatory policies and procedures of DHS is unnecessary.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), we have considered whether this final rule would have a significant economic impact on a substantial number of small entities. The term "small entities" comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000.

The Coast Guard certifies under 5 U.S.C. 605(b) that this final rule will not have a significant economic impact on a substantial number of small entities.

These safety zones will not have a significant economic impact on a substantial number of small entities for the following reasons. The safety zone sizes were carefully considered and consist in size such that they will not obstruct the regular flow of commercial traffic and will allow vessel traffic to pass around the safety zone. In addition, in the event that it may be necessary, prior to transiting commercial vessels can request permission from the Captain of the Port Chicago to transit through the zone.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we offered to assist small entities in understanding this final rule so that they can better evaluate its effects on them and participate in the rulemaking process. No comments or questions were received from any small businesses.

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1–888–REG–FAIR (1–888–734–3247).

Collection of Information

This rule calls for no new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

Federalism

We have analyzed this rule under Executive Order 13132, Federalism, and have determined that this rule does not have implications for federalism under that Order.

Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of $100,000,000 or more in any one year. Though this rule will not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

Taking of Private Property

This rule will not affect a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

Civil Justice Reform

This rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

Protection of Children

We have analyzed this rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and would not create an environmental risk to health or risk to safety that might disproportionately affect children.

Indian Tribal Governments

This rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it would not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

Energy Effects

We have analyzed this rule under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. We have determined that it is not a "significant energy action" under that Order because it is not a "significant regulatory action" under Executive Order 12866 and is not likely to have a significant adverse effect on the supply, distribution, or use of energy. It has not been designated by the Administrator of the Office of Information and Regulatory Affairs as a significant energy action.

Environment

We have considered the environmental impact of this rule and concluded that, under figure 2–1, paragraph (34) (g), of Commandant Instruction M16475.lC, this rule is categorically excluded from further environmental documentation. A "Categorical Exclusion Determination" is available in the docket for inspection or copying where indicated under **ADDRESSES**.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, Waterways.

■ For the reasons discussed in the preamble, the Coast Guard proposes to amend 33 CFR part 165 as follows:

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

■ 1. The authority citation for Part 165 continues to read as follows:

Authority: 33 U.S.C. 1231; 50 U.S.C. 191, 33 CFR 1.05–1(g), 6.04–1, 6.04–6 and 160.5; Department of Homeland Security Delegation No. 0170.

■ 2. Add § 165.918 to read as follows:

§ 165.918 Safety Zones; Annual Fireworks Displays in the Captain of the Port Chicago Zone

(a) *Safety zones.* The following areas are designated safety zones:

(1) *Evanston Fourth of July Fireworks—Evanston, IL:*

(i) *Location.* All waters and adjacent shoreline of Lake Michigan bounded by the arc of a circle with a 1000-foot radius from the fireworks launch site with its center in approximate position 42§ 02′58″ N, 087§ 40′22″ W (NAD 83).

(ii) *Expected date and time.* First Week in July; sunset to termination of display.

(2) *Independence Day Fireworks—Manistee, MI:*

(i) *Location.* All waters and adjacent shoreline of Lake Michigan within the arc of a circle with a 1000-foot radius from the fireworks launch site with its center in approximate position 44°14′51″ N, 086°20′46″ W (NAD 83) (Off First Street Beach).

(ii) *Expected date and time.* First Week in July; sunset to termination of display.

(3) *Independence Day Fireworks—Lake Kalamazoo, Saugatuck, MI:*

(i) *Location.* All waters and adjacent shoreline of Lake Kalamazoo, Saugatuck, MI. within the arc of a circle with a 1000-foot radius from the fireworks launch site with its center in approximate position 42°38′52.5″ N, 086°12′18.5″ W (NAD 83).

(ii) *Expected date and time.* First Week in July; sunset to termination of display.

(4) *Independence Day Fireworks—White Lake, Whitehall, MI:*

(i) *Location.* All waters and adjacent shoreline of White Lake, Whitehall, MI. within the arc of a circle with a 1000-foot radius from the fireworks launch site with its center in approximate position of 43°24′33.5″ N, 086°21′28.5″ W (NAD 83).

(ii) *Expected date and time.* First Week in July; sunset to termination of display.

(5) *Pentwater July 3rd Fireworks—Lake Michigan, Pentwater, MI:*

(i) *Location.* All waters and adjacent shoreline of Lake Michigan and the Shipping Channel, Pentwater, MI. within the arc of a circle with a 1000-foot radius from the fireworks launch site on the North Breakwall with its center in approximate position of 43°46′56.5″ N, 086°26′38″ W (NAD 83).

(ii) *Expected date and time.* First Week in July; sunset to termination of display.

(6) *Venetian Night Fireworks—Lake Kalamazoo, Saugatuck, MI:*

(i) *Location.* All waters and adjacent shoreline of Lake Kalamazoo, Saugatuck, MI. within the arc of a circle with a 1000-foot radius from the fireworks launch site with its center in approximate position 42°38′52.5″ N, 086°12′18.5″ W (NAD 83).

(ii) *Expected date and time.* The fourth weekend in July; or the first weekend in August; sunset to termination of display:

(7) *Venetian Night Fireworks—Lake Michigan, Hammond, IN:*

(i) *Location.* All waters and adjacent shoreline of Lake Michigan, Hammond, IN. within the arc of a circle with a 840-foot radius from the fireworks launch site with its center in approximate position of 41°41′54″ N, 087°30′46″ W (NAD 83).

(ii) *Expected date and time.* The first weekend in August; sunset to termination of display.

(8) *Venetian Night Fireworks—Monroe Street Harbor—Chicago, IL:*

(i) *Location.* All waters and adjacent shoreline of Lake Michigan, Chicago, IL. within the arc of a circle with a 1000-foot radius from the fireworks launch site at Monroe Street Harbor with its center in approximate position of 41°52′41″ N, 087°36′37″ W (NAD 83).

(ii) *Expected date and time.* The fourth weekend in July; or the first weekend in August; sunset to termination of display.

(9) *Wings Over the Lake Air Show—Michigan City, IN:*

(i) *Location.* All waters and adjacent shoreline of Lake Michigan, off Washington Park, Michigan City, IN. encompassed by a line drawn between the following coordinates starting at 41°43′39″ N, 086°54′32″ W; northwest to 41°44′06″ N, 086°54′44″ W; northeast to 41°44′21″ N, 086°53′52″ W; southeast to 41°43′55″ N, 086°53′40″ W; then southwest back to the point of origin (NAD 83). The safety zone starts approximately 250-feet from the East Pierhead and 250-feet from Washington Park Beach.

(ii) *Expected Date and Time.* The first week in July.

(10) *YMCA Lake Michigan Swim—Ferrysburg, MI:*

(i) *Location.* All waters and adjacent shoreline of Lake Michigan, off the Ferrysburg North Pier within 100-feet of a straight line from 43°03.45′ N, 086°13.4′ W; to 43°05′ N, 086°15.24′ W (NAD 83).

(ii) *Expected date and time.* The 3rd week in July; from 8 a.m. (local) until the end of the event.

(11) *Team Aquatics Ski Show—Grand River, Grand Haven, MI:*

(i) *Location.* All waters and adjacent shoreline of the Grand River, Grand Haven, MI. from 43°04′08″ N, 086°14′13″ W; thence east to 43°04′06″ N, 086°14′07″ W; thence southwest to 43°03′53″ N, 086°14′14″ W; and east to 43°03′51.5″ N, 086°14′07.5″ W (NAD 83).

(ii) *Expected date and time.* The 4th week in July; from 6 p.m. (local) until 8:30 p.m. (local).

(12) *Chicago Flatwater Classic—Chicago River, Chicago, IL:*

(i) *Location.* All waters and adjacent shoreline of the Chicago River from a line drawn across the river at mile marker 323 to a line drawn across the river at mile marker 331.

(ii) *Expected date and time.* The 2nd weekend in August; from 9 a.m. (local) until 3:30 p.m. (local).

(13) *Navy Pier Summer Fireworks—Lake Michigan, Chicago, IL.*

(i) *Locations.*

(1) *Primary launch site.* All waters and adjacent shoreline of Lake Michigan bounded by the arc of a circle with a 1400-foot radius from the fireworks launch platform with its center in approximate position 41°53′18″ N, 087°36′08″ W (NAD 83).

(2) *Alternate launch site.* In the case of inclement weather, the alternate launch site is all waters and adjacent shoreline of Lake Michigan bounded by the arc of a circle with a 1400-foot radius with its center in approximate position 41°53′24″ N, 087°35′44″ W (NAD 83).

(ii) *Expected dates and times.* Every Wednesday and Saturday evening from 9 p.m. (local) until termination of display from June 1 thru September 1.

(14) *Navy Pier 4th of July Fireworks—Lake Michigan, Chicago, IL.*

(i) *Locations.*

(1) *Primary launch site.* All waters and adjacent shoreline of Lake Michigan bounded by the arc of a circle with a 1400-foot radius from the fireworks launch platform with its center in approximate position 41°53′18″ N, 087°36′08″ W (NAD 83).

(2) *Alternate launch site.* In the case of inclement weather, the alternate launch site is all waters and adjacent shoreline of Lake Michigan bounded by the arc of a circle with a 1400-foot radius with its center in approximate position 41°53′24″ N, 087°35′44″ W (NAD 83).

(ii) *Expected date and time.* The first week of July; sunset to termination of display.

(15) *St. Joseph's River Marathon Swim—St. Joseph, MI.*

(i) *Location.* All the waters of Lake Michigan (off of St. Joseph, MI.), and the St. Joseph River, within 100 feet of the race course.

(ii) *Expected date and time.* The 3rd week in July; from 11 a.m. (local) until the end of the event.

(b) *Regulations.*

(1) The general regulations contained in 33 CFR 165.23 apply.

(2) All persons and vessels shall comply with the instructions of the Coast Guard Captain of the Port or the designated on scene patrol personnel. Coast Guard patrol personnel include commissioned, warrant, and petty officers of the U.S. Coast Guard. Upon being hailed by a U.S. Coast Guard vessel via siren, radio, flashing light, or other means, the operator shall proceed as directed. U.S. Coast Guard Auxiliary, representatives of the event organizer, and local or state officials may be present to inform vessel operators of this regulation and other applicable laws.

(3) In cases where shipping is affected, commercial vessels may request permission from the Captain of the Port Chicago to transit the safety zone. Approval in such cases will be case-by-case. Requests must be made in advance and approved by the Captain of the Port before transits will be authorized. The Captain of the Port may be contacted via Channel 16, VHF-FM.

(c) Captain of the Port Chicago will announce the exact time and location of the annual events listed in this regulation by Notice of Implementation, Broadcast Local Notice to Mariners, or any other means deemed appropriate.

Dated: May 5, 2003.

Raymond E. Seebald,

Captain, U.S. Coast Guard, Captain of the Port, Chicago.

[FR Doc. 03–12493 Filed 5–19–03; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[COTP Western Alaska 03–002]

RIN 1625–AA00

Security Zone: Protection of Alaska Marine Highway System (AMHS) Vessel M/V Kennicott in Western Alaska Waters

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: Increases in the Coast Guard's maritime security posture necessitate establishing temporary regulations for the security of Alaska Marine Highway System (AMHS) vessels in the navigable waters of Western Alaska. This security zone will provide for the regulation of vessel traffic in the vicinity of AMHS vessels in the navigable waters of Western Alaska.

DATES: This temporary rule is effective April 28, 2003, until September 19, 2003.

ADDRESSES: Documents indicated in this preamble as being available in the docket, are part of docket COTP Anchorage 03–012 and are available for inspection or copying at Marine Safety Office Anchorage, 510 L Street, Suite 100, Anchorage, Alaska 99501, between 8 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: CDR Robert Forgit, Marine Safety Office Anchorage, 510 L Street, Suite 100, Anchorage, Alaska 99501, (907) 271–6771.

SUPPLEMENTARY INFORMATION:

Regulatory Information

We did not publish a notice of proposed rulemaking (NPRM) for this regulation. Under 5 U.S.C. 553(b)(B) and 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for not publishing an NPRM and for making this rule effective less than 30 days after publication in the **Federal Register**. Publishing a NPRM would be contrary to public interest since immediate action is necessary to safeguard AMHS vessels from sabotage, other subversive acts, or accidents. If normal notice and comment procedures were followed, this rule would not become effective soon enough to provide immediate protection to AMHS vessels from the threats posed by hostile entities and would compromise the vital national interest in protecting maritime transportation and commerce. The security zone in this regulation has been carefully designed to minimally impact the public while providing a reasonable level of protection for AMHS vessels. For these reasons, following normal rulemaking procedures in this case would be impracticable, unnecessary, and contrary to the public interest.

Background and Purpose

The Coast Guard, through this action, intends to assist AMHS vessels by establishing a security zone to exclude persons and vessels from the immediate vicinity. Recent events highlight the fact that there are hostile entities operating with the intent to harm U.S. National Security. The President has continued the national emergencies he declared following the September 11, 2001 terrorist attacks (67 FR 58317 (Sept. 13, 2002) (continuing national emergency with respect to terrorist attacks), 67 FR 59447 (Sept. 20, 2002) (continuing national emergency with respect to persons who commit, threaten to commit or support terrorism)). The President also has found pursuant to law, including the Act of June 15, 1917, as amended August 9, 1950, by the Magnuson Act (50 U.S.C. 191 *et seq*), that the security of the United States is and continues to be endangered following the attacks (E.O. 13,273, 67 FR 56215 (Sept. 3, 2002) (security endangered by disturbances in international relations of U.S. and such disturbances continue to endanger such relations)).

Entry into this zone will be prohibited unless authorized by the Captain of the Port or his designee. The Captain of the Port may be assisted by other federal, state, or local agencies.

Discussion of Rule

This rule controls vessel movement in a regulated area surrounding AMHS high capacity passenger vessels that are in service. For the purpose of this regulation, the AMHS vessel is the M/V Kennicott. All vessels authorized to be within 100 yards of this vessel shall operate at the minimum speed necessary to maintain a safe course, and shall proceed as directed by the on-scene official patrol or AMHS vessel master. No vessel, except a public vessel (defined below), is allowed within 100 yards of the subject vessel, unless authorized by the on-scene official patrol or AMHS vessel master. Vessels requesting to pass within 100 yards of this vessel shall contact the on-scene official patrol or AMHS vessel master on VHF–FM channel 16 or 13. The on-scene official patrol or AMHS vessel master may permit vessels that can only operate safely in a navigable channel to pass within 100 yards of the subject AMHS vessels in order to ensure a safe passage in accordance with the Navigation Rules. Similarly, commercial vessels anchored in a designated anchorage area may be permitted to remain at anchor within 100 yards of passing this AMHS vessel. Public vessels for the purpose of this Temporary Final Rule are vessels owned, chartered, or operated by the United States, or by a State or political subdivision thereof.

Regulatory Evaluation

This rule is not a "significant regulatory action" under section 3(f) of Executive Order 12866, Regulatory Planning and Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that Order. It is not "significant" under the regulatory policies and procedures of

the Department of Homeland Security (DHS).

We expect the economic impact of this proposed rule to be so minimal that a full Regulatory Evaluation under paragraph 10e of the regulatory policies and procedures of DHS is unnecessary.

Although this regulation restricts access to the regulated area, the effect of this regulation will not be significant because: (i) Individual AMHS vessel security zones are limited in size; (ii) the on-scene official patrol or AMHS vessel master may authorize access to the AMHS vessel security zone; (iii) the AMHS vessel security zone for any given transiting AMHS vessel will effect a given geographical location for a limited time; and (iv) the Coast Guard will make notifications via maritime advisories so mariners can adjust their plans accordingly.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), we have considered whether this rule would have a significant economic impact on a substantial number of small entities. The term "small entities" comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000.

The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities.

This rule may affect the following entities, some of which may be small entities: the owners or operators of vessels intending to operate near or anchor in the vicinity of AMHS vessels in the navigable waters of the United States.

This temporary regulation will not have a significant economic impact on a substantial number of small entities for the following reasons: (i) Individual AMHS vessel security zones are limited in size; (ii) the on-scene official patrol or AMHS vessel master may authorize access to the AMHS vessel security zone; (iii) the AMHS vessel security zone for any given transiting AMHS vessel will affect a given geographic location for a limited time; and (iv) the Coast Guard will make notifications via maritime advisories so mariners can adjust their plans accordingly.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Public Law 104–121), we want to assist small entities in understanding this proposed rule so that they can better evaluate its effects on them and participate in the rulemaking. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact one of the points of contact listed under **FOR FURTHER INFORMATION CONTACT.**

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1–888–REG–FAIR (1–888–734–3247).

Collection of Information

This rule calls for no new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

Federalism

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on State or local governments and would either preempt State law or impose a substantial direct cost of compliance on them. We have analyzed this rule under that Order and have determined that it does not have implications for federalism.

Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of $100,000,000 or more in any one year. Though this rule will not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

Taking of Private Property

This rule will not effect a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

Civil Justice Reform

This rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

Protection of Children

We have analyzed this rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and does not create an environmental risk to health or risk to safety that may disproportionately affect children.

Indian Tribal Governments

The Coast Guard is committed to working with Tribal Governments to implement local policies to mitigate tribal concerns. Given the flexibility of the Temporary Final Rule to accommodate the special needs of mariners in the vicinity of AMHS vessels and the Coast Guard's commitment to working with the Tribes, we have determined that AMHS vessel security and fishing rights protection need not be incompatible and therefore have determined that this Temporary Final Rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

Energy Effects

We have analyzed this rule under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. We have determined that it is not a "significant energy action" under that order because it is not a "significant regulatory action" under Executive Order 12866 and is not likely to have a significant adverse effect on the supply, distribution, or use of energy. It has not been designated by the Administrator of the Office of Information and Regulatory Affairs as a significant energy action. Therefore, it does not require a Statement of Energy Effects under Executive Order 13211.

Environment

We have analyzed this proposed rule under Commandant Instruction M16475.lD, which guides the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4370f), and have concluded that there are no factors in this case that would limit the use of a categorical exclusion under section 2.B.2 of the Instruction. Therefore, this rule is categorically excluded, under figure 2–1, paragraph (34)(g), of the Instruction, from further environmental documentation. A final "Environmental Analysis Check List" and a "Categorical Exclusion Determination" (CED) will be available in the docket where indicated under **ADDRESSES.**

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and record keeping requirements, Security measures, Waterways

■ For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 165 as follows:

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

■ 1. The authority citation for Part 165 continues to read as follows:

Authority: 33 U.S.C. 1231; 50 U.S.C. 191; 33 CFR 1.05–1(g), 6.04–1, 6.04–6, and 160.5; Department of Homeland Security Delegation No. 0170.

■ 2. From APR 28, 2003, until SEPT 19, 2003, § 165.T17–005 is added to read as follows:

§ 165.T17–005 Security Zone Regulations, Alaska Marine Highway System Vessel Security Zone, Western Alaska, Captain of the Port Zone.

(a) The following definitions apply to this section:

Alaska Law Enforcement Officer means any General Authority Alaska Peace Officer, Limited Authority Alaska Peace Officer, or Specially Commissioned Alaska Peace Officer as defined by Alaska State laws.

Alaska Marine Highway System High Capacity Passenger Vessel ("AMHS vessel") includes the following vessel; M/V Kennicott.

AMHS Vessel Security Zone is a regulated area of land and water, established by this section, surrounding AMHS vessels for a 100 yard radius, that is necessary to provide for the security of these vessels.

Federal Law Enforcement Officer means any employee or agent of the United States government who has the authority to carry firearms and make warrantless arrests and whose duties involve the enforcement of criminal laws of the United States.

Navigable waters of the United States means those waters defined as such in 33 CFR part 2.05–25 and includes those waters described in 33 U.S.C. 1222(5) and 50 U.S.C. 195(2).

Navigation Rules means the Navigation Rules, International-Inland.

Official Patrol means those persons designated by the Captain of the Port to monitor an AMHS vessel security zone, permit entry into the zone, give legally enforceable orders to persons or vessels within the zone and take other actions authorized by the Captain of the Port. Persons authorized to enforce this section are designated as the Official Patrol.

Public vessel means vessels owned, chartered, or operated by the United States, or by a State or political subdivision thereof.

Western Alaska Captain of the Port Zone means the area of land and water described in 33 CFR 3.85–15.

(b) This section applies to any vessel or person in or adjacent to the navigable waters of the United States in or adjacent to the State of Alaska west of 148° 26′ longitude and within the Western Alaska Captain of the Port Zone.

(c) An AMHS vessel security zone is established and exists for a 100 yard radius around AMHS vessels at all times when located in the navigable waters of the United States in or adjacent to the State of Alaska and within the Western Alaska Captain of the Port Zone, whether the AMHS vessel is underway, anchored, or moored.

(d) The Navigation Rules shall apply at all times within an AMHS vessel security zone.

(e) All vessels within an AMHS vessel security zone shall operate at the minimum speed necessary to maintain a safe course and shall proceed as directed by the on-scene official patrol or AMHS vessel master. No vessel or person located in or adjacent to the navigable waters of the United States to which this section applies is allowed within 100 yards of an AMHS vessel, unless authorized by the on-scene official patrol or AMHS vessel master.

(f) To request authorization to operate within 100 yards of an AMHS vessel, contact the on-scene official patrol or AMHS vessel master on VHF-FM channel 16 or 13.

(g) When conditions permit, the on-scene official patrol or AMHS vessel master should:

(1) Permit vessels constrained by their navigational draft or restricted in their ability to maneuver to pass within 100 yards of an AMHS vessel in order to ensure a safe passage in accordance with the Navigation Rules; and

(2) Permit commercial vessels anchored in a designated anchorage area to remain at anchor within 100 yards of a passing AMHS vessel; and

(3) Permit vessels that must transit via a navigable channel or waterway to pass within 100 yards of a moored or anchored AMHS vessel with minimal delay consistent with security.

(h) Public vessels as defined in paragraph (a) of this section are exempt from complying with paragraphs (b), (c), (e), (f), (g), (i), and (j) of this section.

(i) Any Coast Guard commissioned, warrant or petty officer may enforce the rules in this section. When immediate action is required and representatives of the Coast Guard are not present or not present in sufficient force to exercise effect control in the vicinity of an AMHS vessel, any Federal Law Enforcement Officer or Alaska State Law Enforcement Officer may enforce the rules contained in this regulation pursuant to 33 CFR 6.04–11. In addition, the Captain of the Port may be assisted by other federal, state or local agencies in enforcing this rule.

(j) The Captain of the Port Western Alaska may waive any of the requirements of this section for any vessel upon finding that a vessel or class of vessels, operational conditions or other circumstances are such that application of this section is unnecessary or impractical for the purpose of port security, safety or environmental safety.

Dated: April 21, 2003.

Ronald J. Morris,

Captain, U.S. Coast Guard, Captain of the Port, Western Alaska.

[FR Doc. 03–12551 Filed 5–19–03; 8:45 am]

BILLING CODE 4910–15–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[PA203–4207a; FRL–7494–4]

Approval and Promulgation of Air Quality Implementation Plans; Pennsylvania; NO_X RACT Determinations for Lafayette College

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is taking direct final action to approve a revision to the Commonwealth of Pennsylvania's State Implementation Plan (SIP). The revision was submitted by the Pennsylvania Department of Environmental Protection (PADEP) to establish and require reasonably available control technology (RACT) for Lafayette College, Easton Campus, a major source of nitrogen oxides (NO_X) located in Northampton County, Pennsylvania. EPA is approving this revision to establish RACT requirements in the SIP in accordance with the Clean Air Act (CAA).

DATES: This rule is effective on July 21, 2003, without further notice, unless EPA receives adverse written comment by June 19, 2003. If EPA receives such comments, it will publish a timely withdrawal of the direct final rule in the **Federal Register** and inform the public that the rule will not take effect.

ADDRESSES: Written comments should be mailed to Makeba Morris, Acting Branch Chief, Air Quality Planning & Information Services Branch, Air Protection Division, Mailcode 3AP21, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103. Copies of the documents relevant to this action are available for public inspection during normal business hours at the Air Protection Division, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103; the Air and Radiation Docket and Information Center, U.S. Environmental Protection Agency, 1301 Constitution Avenue, NW., Room B108, Washington, DC 20460; and the Pennsylvania Department of Environmental Protection, Bureau of Air Quality Control, PO Box 8468, 400 Market Street, Harrisburg, Pennsylvania 17105.

FOR FURTHER INFORMATION CONTACT: Ellen Wentworth at (215) 814–2034, or via e-mail at *wentworth.ellen@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. Background

Pursuant to sections 182(b)(2) and 182(f) of the CAA, the Commonwealth of Pennsylvania (the Commonwealth or Pennsylvania) is required to establish and implement RACT for all major volatile organic compound (VOC) and NO_X sources. The major source size is determined by its location, the classification of that area, and whether it is located in the Ozone Transport Region (OTR). Under section 184 of the CAA, RACT, as specified in sections 182(b)(2) and 182(f) applies throughout the OTR. The entire Commonwealth is located within the OTR. Therefore, RACT is applicable statewide in Pennsylvania.

II. Summary of the SIP Revision

On February 4, 2003, PADEP submitted formal revisions to its SIP to establish and impose case-by-case RACT for several major sources of VOC and NO_X. This rulemaking pertains to one of those sources. The other sources are subject to separate rulemaking actions. The RACT determinations and requirements in this SIP revision are included in the operating permit (OP) issued by PADEP. Lafayette College, Easton Campus, is located in the City of Easton, Northampton County, Pennsylvania, and is considered a major source of NO_X. In this instance, RACT has been established and imposed by PADEP in an operating permit. On February 4, 2003, PADEP submitted operating permit No. OP 48–0034 to EPA as a SIP revision. This operating permit incorporates RACT determinations for NO_X for the following sources: One (1) Titusville boiler; Boiler No. 1; two (2) Keller boilers, Boiler Nos. 2 and 3; one (1) Babcock & Wilcox boiler; Boiler No. 4; six (6) oil-fired boilers; two (2) gas-fired boilers; seventeen (17) natural gas-fired emergency generators; three (3) propane-fired emergency generators; twenty-one (21) natural gas-fired water heaters; and thirty-seven (37) natural gas-fired hot air furnaces.

NO_X RACT for the two (2) Keeler boilers at maximum heat input of 28.44MMBtu/hr. and the one (1) Babcock & Wilcox boiler at maximum heat input of 49.0MMBtu/hr., shall be the maintenance and operation of the sources according to the manufacturer's specifications in accordance with the presumptive RACT emission limitations found in 25 Pa. Code, Chapter 129.93(b)(2)–(3). The sources shall be operated and maintained in accordance with good air pollution control practices. NO_X RACT for the seventeen (17) natural gas-fired emergency generators and the three (3) propane-fired emergency generators shall be regulated under the presumptive RACT emission limitations as described under 15 Pa. Code, Chapter 129.93(c)(5). Each generator must operate less than 500 hours in a consecutive 12-month period. Presumptive RACT shall be the maintenance and operation of the sources in accordance with the manufacturer's specifications. The sources shall also be operated and maintained in accordance with good air pollution control practices. NO_X RACT for the Titusville boiler at maximum heat input of 10.82MMBtu/hr., six (6) oil-fired boilers, two (2) natural gas-fired boilers, twenty-one (21) water heaters, and thirty-seven (37) hot air heaters shall be regulated under the presumptive RACT emission limitations described under 25 Pa. Code, Chapter 129.93(c)(1). Each source shall be limited to a maximum heat input of 20MMBtu/hr. The sources shall also be operated and maintained in accordance with good air pollution control practices. The facility shall maintain a file containing all records and other data required to be collected pursuant to 25 Pa. Code section 129.95. These records must provide sufficient data and calculations to clearly demonstrate that the requirements of 25 Pa. Code sections 129.91 through 94 are met. All measurements, records and other data required to be maintained by the company shall be retained for at least two years following the date on which such measurements, records or data are recorded. If requested by PADEP, the facility shall perform a stack test in accordance with the provisions of 25 Pa. Code Chapter 139 within the time specified by PADEP.

III. EPA's Evaluation of the SIP Revision

EPA is approving this SIP submittal because the Commonwealth established and imposed requirements in accordance with the criteria set forth in SIP-approved regulations for imposing RACT or for limiting a source's potential to emit. The Commonwealth has also imposed record-keeping, monitoring, and testing requirements on these sources sufficient to determine compliance with these requirements.

IV. Final Action

EPA is approving the revision to the Commonwealth of Pennsylvania's SIP which establishes and requires RACT for Lafayette College, Easton Campus, (OP 48–0034) located in Northampton County, Pennsylvania. EPA is publishing this rule without prior proposal because we view this as a noncontroversial amendment and anticipate no adverse comment. However, in the "Proposed Rules" section of today's **Federal Register**, EPA is publishing a separate document that will serve as the proposal to approve the SIP revision if adverse comments are filed. This direct final rule will be effective on July 21, 2003, without further notice unless we receive adverse comment by June 19, 2003. If EPA receives adverse comment, EPA will publish a timely withdrawal in the **Federal Register** informing the public that the rule will not take effect. EPA will address all public comments in a subsequent final rule based on the proposed rule. EPA will not institute a second comment period on this action. Any parties interested in commenting must do so at this time.

V. Statutory and Executive Order Reviews

A. General Requirements

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a "significant regulatory action" and therefore is not subject to review by the Office of Management and Budget. For this reason, this action is also not subject to Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use" (66 FR 28355, May 22, 2001). This action merely approves state law as meeting Federal requirements and imposes no additional requirements beyond those imposed by state law. Accordingly, the Administrator certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this rule approves pre-existing requirements under state law and does not impose any additional enforceable duty beyond that required by state law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104–4). This rule also does not have tribal implications because it will not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000). This action also does not have Federalism implications because it does not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999). This action merely approves a state rule implementing a Federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. This rule also is not subject to Executive Order 13045 "Protection of Children from Environmental Health Risks and Safety Risks" (62 FR 19885, April 23, 1997), because it is not economically significant.

In reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. In this context, in the absence of a prior existing requirement for the State to use voluntary consensus standards (VCS), EPA has no authority to disapprove a SIP submission for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews a SIP submission, to use VCS in place of a SIP submission that otherwise satisfies the provisions of the Clean Air Act. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 *note*) do not apply. This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

B. Submission to Congress and the Comptroller General

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. Section 804 exempts from section 801 the following types of rules: (1) Rules of particular applicability; (2) rules relating to agency management or personnel; and (3) rules of agency organization, procedure, or practice that do not substantially affect the rights or obligations of non-agency parties. 5 U.S.C. 804(3). EPA is not required to submit a rule report regarding today's action under section 801 because this is a rule of particular applicability establishing source-specific requirements for Lafayette College, Easton Campus.

C. Petitions for Judicial Review

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by July 21, 2003. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action approving the Commonwealth's source-specific RACT requirements to control NO_X from Lafayette College, Easton Campus, may not be challenged later in proceedings to enforce its requirements. (*See* section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Nitrogen dioxide, Ozone, Reporting and recordkeeping requirements.

Dated: April 25, 2003.

Donald S. Welsh,

Regional Administrator, Region III.

■ 40 CFR part 52 is amended as follows:

PART 52—[AMENDED]

■ 1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

Subpart NN—Pennsylvania

■ 2. Section 52.2020 is amended by adding paragraph (c)(205) to read as follows:

§ 52.2020 Identification of plan.

* * * * *

(c) * * *

(205) Revision pertaining to NO_X RACT determinations for a major source submitted by the Pennsylvania Department of Environmental Protection on February 4, 2003:

(i) Incorporation by reference.

(A) Letter submitted on February 4, 2003 by the Pennsylvania Department of Environmental Protection transmitting source-specific NO_X RACT determinations.

(B) Operating Permit (OP) for Lafayette College, Easton Campus, Northampton County, OP 48–0034, effective August 18, 1997.

(ii) Additional Material. Other materials submitted by the Commonwealth of Pennsylvania in support of and pertaining to the RACT determinations for the source listed in paragraph (c)(205)(i) of this section.

[FR Doc. 03–12474 Filed 5–19–03; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

44 CFR Part 65

Changes in Flood Elevation Determinations

AGENCY: Federal Emergency Management Agency, Emergency Preparedness and Response Directorate, Department of Homeland Security.

ACTION: Final rule.

SUMMARY: Modified Base (1-percent-annual-chance) Flood Elevations (BFEs) are finalized for the communities listed below. These modified elevations will be used to calculate flood insurance premium rates for new buildings and their contents.

EFFECTIVE DATES: The effective dates for these modified BFEs are indicated on the table below and revise the Flood Insurance Rate Maps (FIRMs) in effect for the listed communities prior to this date.

ADDRESSES: The modified BFEs for each community are available for inspection at the office of the Chief Executive Officer of each community. The respective addresses are listed in the table below.

FOR FURTHER INFORMATION CONTACT: Mary Jean Pajak, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472, (202) 646–2831.

SUPPLEMENTARY INFORMATION: The Federal Emergency Management Agency makes the final determinations listed below for the modified BFEs for each community listed. These modified elevations have been published in newspapers of local circulation and ninety (90) days have elapsed since that publication. The Mitigation Division Director of the Emergency Preparedness and Response Directorate has resolved any appeals resulting from this notification.

The modified BFEs are not listed for each community in this notice. However, this rule includes the address of the Chief Executive Officer of the community where the modified BFE determinations are available for inspection.

The modifications are made pursuant to section 206 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4105, and are in accordance with the National Flood Insurance Act of 1968, 42 U.S.C. 4001 *et seq.*, and with 44 CFR part 65.

For rating purposes, the currently effective community number is shown and must be used for all new policies and renewals.

The modified BFEs are the basis for the floodplain management measures that the community is required to either adopt or to show evidence of being already in effect in order to qualify or to remain qualified for participation in the National Flood Insurance Program (NFIP).

These modified BFEs, together with the floodplain management criteria required by 44 CFR 60.3, are the minimum that are required. They should not be construed to mean that the community must change any existing ordinances that are more stringent in their floodplain management requirements. The community may at any time enact stricter requirements of its own, or pursuant to policies established by other Federal, State, or regional entities.

These modified BFEs are used to meet the floodplain management requirements of the NFIP and are also used to calculate the appropriate flood insurance premium rates for new buildings built after these elevations are made final, and for the contents in these buildings.

The changes in BFEs are in accordance with 44 CFR 65.4.

National Environmental Policy Act

This rule is categorically excluded from the requirements of 44 CFR Part 10, Environmental Consideration. No environmental impact assessment has been prepared.

Regulatory Flexibility Act

The Mitigation Division Director of the Emergency Preparedness and Response Directorate certifies that this rule is exempt from the requirements of the Regulatory Flexibility Act because modified base flood elevations are required by the Flood Disaster Protection Act of 1973, 42 U.S.C. 4105, and are required to maintain community eligibility in the NFIP. No regulatory flexibility analysis has been prepared.

Regulatory Classification

This final rule is not a significant regulatory action under the criteria of section 3(f) of Executive Order 12866 of September 30, 1993, Regulatory Planning and Review, 58 FR 51735.

Executive Order 12612, Federalism

This rule involves no policies that have federalism implications under Executive Order 12612, Federalism, dated October 26, 1987.

Executive Order 12778, Civil Justice Reform

This rule meets the applicable standards of section 2(b)(2) of Executive Order 12778.

List of Subjects in 44 CFR Part 65

Flood insurance, Floodplains, Reporting and record keeping requirements.

■ Accordingly, 44 CFR Part 65 is amended to read as follows:

PART 65—[AMENDED]

■ 1. The authority citation for Part 65 continues to read as follows:

Authority: 42 U.S.C. 4001 *et seq.*; Reorganization Plan No. 3 of 1978, 3 CFR, 1978 Comp., p. 329; E.O. 12127, 44 FR 19367, 3 CFR, 1979 Comp., p. 376.

§ 65.4 [Amended]

■ 2. The tables published under the authority of § 65.4 are amended as follows:

State and county	Location	Dates and names of newspaper where notice was published	Chief executive officer of community	Effective date of modification	Community No.
Arkansas: Faulkner (Case No. 01–06–1902P) (FEMA Docket No. P7616).	City of Conway.	Sept. 5, 2002, Sept. 12, 2002, *Log Cabin Democrat.*	The Honorable Tab Townsell Mayor, City of Conway, 1201 Oak Street, Conway, AR 72033.	Nov. 25, 2002 ...	050078
Illinois: Lake and Cook (Case No. 02–05–2130P) (FEMA Docket No. P7618).	Village of Deerfield .	Sept. 19, 2002, Sept. 23, 2002, *Deerfield Review.*	The Honorable Steven Harris Mayor, Village of Deerfield, Village Hall, 850 Waukegan Road, Deerfield, IL 60015.	Sept. 6, 2002	170361
Indiana: Hamilton (Case No. 02–05–2995P) (FEMA Docket No. P7618).	Town of Westfield ...	Oct. 22, 2002, Oct. 29, 2002, *The Noblesville Ledger.*	Mr. Michael McDonald, Town Council President, Town of Westfield, 130 Penn Street, Westfield, IN 46074.	Sept. 24, 2002 ..	180083
Kansas:					
Harvey (Case No. 02–07–1808P) (FEMA Docket No. P7618).	City of Newton	Sept. 20, 2002, Sept. 27, 2002 *The Newton Kansan.*	The Hon. Marjorie Roberson, Mayor, City of Newton, 201 E. 6th Street, Newton, KS 67114.	Sept. 19, 2002 ..	200133
Riley (Case No. 02–07–667P) (FEMA Docket No. P7616).	City of Riley	Aug. 15, 2002, Aug. 22, 2002, *The Riley Countain.*	The Honorable Gerald Baer Mayor, City of Riley, 902 West Walnut Street, Riley, KS 66531.	Nov. 21, 2002 ...	200303

State and county	Location	Dates and names of newspaper where notice was published	Chief executive officer of community	Effective date of modification	Community No.
Riley, (Case No. 02–07–666P) (FEMA Docket No. P7616).	Unincorporated Areas.	Aug. 15, 2002, Aug 22, 2002, *The Manhattan Mercury.*	Mr. Robert Newsome, Chairman, Riley County, Commissioner, Courthouse Plaza East, 115 North 4th Street, Manhattan, KS 66502.	Nov. 21, 2002 ...	200298
Michigan: Wayne (Case No. 01–05–3983P) (FEMA Docket No. P7618).	Charter Township of Brownstown.	Sept. 11, 2002, Sept. 18, 2002, *The News-Hearld.*	Mr. W. Curt Boller, Supervisor, Brownstown Twp., 21313 Telegraph Road, Brownstown Township, MI 481883.	Dec. 11, 2002 ...	260218
Missouri:					
Greene (Case No. 00–07–676P) (FEMA Docket No. P7618).	Unincorporated Areas.	Oct. 9, 2002, Oct. 16, 2002, *Springfield News-Leader.*	The Honorable David Coonrod, Presiding Commissioner, County of Greene, 940 Boonville Avenue, Springfield, MO 65802.	Jan. 15, 2003 ...	290782
Jasper and Newton (Case No. 01–07–831P) (FEMA Docket No. P7618).	City of Joplin	Oct. 4, 2002, Oct. 11, 2002, *The Joplin Globe.*	The Hon. Richard Russell, Mayor, City of Joplin, 1710 East 32nd Street, Joplin, MO 64804.	Jan. 10, 2003 ...	290183
St. Charles (Case No. 01–07–726P) (FEMA Docket No. P7616).	City of St. Peters	Aug. 21, 2002, Aug. 28, 2002, *St. Peters Journal.*	The Honorable Tom Brown, Mayor, City of St. Peters, 1 St. Peters Center Boulevard, St. Peters, MO 63376.	Nov. 27, 2002 ...	290319
New Mexico:					
Dona Ana (Case No. 02–06–1099P) (FEMA Docket No. P7616).	Unincorporated areas	Aug. 22, 2002, Aug. 29, 2002, *Las Cruces Sun News.*	Mr. David R. King, Dona Ana, County Manager, County Managers Complex, 180 West Amador Avenue, Las Cruces, NM 88001.	Aug. 8, 2002	350012
Dona Ana (Case No. 02–06–1099P) (FEMA Docket No. P7616).	City of Las Cruces ..	Aug. 22, 2002, Aug. 29, 2002, *Las Cruces Sun News.*	The Honorable Ruben Smith, Mayor, City of Las Cruces, P.O. Box 2000, Las Cruces, NM 88004.	Aug. 8, 2002	355332
Ohio:					
Franklin and Delaware (Case No. 02–05–1027P) (FEMA Docket No. P7616).	City of Dublin	Aug. 21, 2002, Aug. 28, 2002, *Dublin News.*	The Hon. Thomas McCash, Mayor, City of Dublin, 5200 Emerald Parkway, Dublin, OH 43017–1006.	Nov. 27, 2002 ...	390673
Franklin (Case No. 02–05–1027P) (FEMA Docket No. P7616).	Unincorporated areas.	Aug. 21, 2002, Aug. 28, 2002, *Dublin News.*	Mr. Dewey R. Stokes, President, Franklin County Board of Commissioners, 373 South High Street, 26th Floor, Columbus, OH 43215.	Nov. 27, 2002 ...	390167
Franklin (Case No. 02–05–1849P) (FEMA Docket No. P7616).	Unincorporated areas.	Aug. 30, 2002, Sept. 6, 2002, *The Columbus Dispatch.*	Mr. Dewey R. Stokes, President, Franklin County Board of Commissioners, 373 South High Street, 26th Floor, Columbus, OH 43215–6304.	Dec. 6, 2002	390167
Greene (Case No. 02–05–2322P) (FEMA Docket No. P7616).	Unincorporated areas.	Aug. 23, 2002, Aug. 30, 2002, *Xenia Daily Gazette.*	Mr. Stephen Stapleton, Greene County Administrator, 35 Greene Street, Xenia, OH 45385.	Nov. 29, 2002 ...	390193
Lucas (Case No. 02–05–2988P) (FEMA Docket No. P7616).	Village of Holland ...	Aug. 21, 2002, Aug. 28, 2002, *The Blade.*	The Hon. Michael Yunker, Mayor, Villlage of Holland, 1245 Clarion Avenue, Holland, OH 43528.	July 25, 2002	390659
Montgomery (Case No. 02–05–1438P) (FEMA Docket No. P7616).	City of Kettering	Aug. 30, 2002, Sept. 6, 2002, *Dayton Daily News.*	The Honorable Marilou Smith, Mayor, City of Kettering, 3600 Shroyer Road, Kettering, OH 45429.	Aug. 19, 2002 ...	390412
Greene (Case No. 02–05–2322P) (FEMA Docket No. P7616).	City of Xenia	Aug. 23, 2002, Aug. 30, 2002, *Xenia Daily Gazette.*	The Honorable John T. Saraga, Mayor, City of Xenia, 101 N. Detroit Street, Xenia, OH 45385.	Nov. 29, 2002 ...	390197
Texas:					
Bastrop (Case No. 01–06–1169P) (FEMA Docket No. P7616).	Unincorporated areas.	Aug. 29, 2002, Sept. 5, 2002, *Bastrop Advertiser and County News.*	The Hon. Ronnie McDonald, Judge, Bastrop County, 804 Pecan Street, Bastrop, TX 78602.	Dec. 5, 2002, ...	481193

State and county	Location	Dates and names of newspaper where notice was published	Chief executive officer of community	Effective date of modification	Community No.
Bexar (Case No. 02–06–1263P) (FEMA Docket No. P7618).	Unincorporated areas.	Sept. 23, 2002, Sept. 30, 2002, *San Antonio Express News.*	The Hon. Cyndi Taylor Krier, Judge, Bexar County, 100 Dolorosa, Suite 101, San Antonio, TX 78205.	Oct. 14, 2002 ...	480035
Dallas (Case No. 01–06–1163P) (FEMA Docket No. P7618).	City of Dallas	Sept. 13, 2002, Sept. 20, 2002, *Dallas Morning News.*	The Honorable Laura Miller, Mayor, City of Dallas, 1500 Marilla Street, City Hall, Dallas, TX 75201.	Dec. 20, 2002 ...	480171
Dallas (Case No. 01–06–1425P) (FEMA Docket No. P7616).	City of Dallas	Aug. 30, 2002, Sept. 6, 2002, *Dallas Morning News.*	The Honorable Laura Miller, Mayor, City of Dallas, 1500 Marilla Street, City Hall, Dallas, TX 75201.	Dec. 6, 2002	480171
Denton (Case No. 02–06–355P) (FEMA Docket No. P7616).	City of Denton	Aug. 23, 2002, Aug. 30, 2002, *Denton Record Chronicle.*	The Honorable Euline Brock, Mayor, City of Denton, 215 East McKinney Street, Denton, TX 76201.	Nov. 29, 2002 ...	480194
Denton (Case No. 01–06–1875P) (FEMA Docket No. P7616).	Unincorporated areas.	Aug. 23, 2002, Aug. 30, 2002, *Denton Record Chronicle.*	The Honorable Kirk Wilson, Judge, Denton County, Courthouse on the Square, 110 West Hickory Street, Denton, TX 76201.	Nov. 29, 2002 ...	480774
Fort Bend (Case No. 02–06–266P) (FEMA Docket No. P7618).	Unincorporated areas.	Sept. 4, 2002, Sept. 11, 2002, *Fort Bend Star.*	The Hon. James Adolphus, Judge, Fort Bend County, 301 Jackson Street, Suite 719, Richmond, TX 77469.	Aug. 22, 2002 ...	480228
Tarrant (Case No. 02–06–830P) (FEMA Docket No. P7616).	City of Fort Worth ...	Aug. 23, 2002, Aug. 30, 2002, *Fort Worth Star Telegram.*	The Honorable Kenneth Barr, Mayor, City of Fort Worth, 1000 Throckmorton Street, Fort Worth, TX 76102.	Nov. 29, 2002 ...	480596
Tarrant (Case No. 02–06–1073P) (FEMA Docket No. P7618).	City of Fort Worth ...	Sept. 26, 2002, Oct. 3, 2002, *Fort Worth Star Telegram.*	The Honorable Kenneth Barr, Mayor, City of Fort Worth, 1000 Throckmorton Street, Fort Worth, TX 76102.	Jan. 2, 2003	480596
Tarrant (Case No. 02–06–064P) (FEMA Docket No. P7618).	City of Forth Worth	Sept. 13, 2002, Sept. 20, 2002, *Fort Worth Star Telegram.*	The Honorable Kenneth Barr, Mayor, City of Fort Worth, 1000 Throckmorton Street, Fort Worth, TX 76102.	Aug. 30, 2002 ...	480596
Tarrant (Case No. 01–06–1571P) (FEMA Docket No. P7616).	City of Grapevine	Aug. 22, 2002, Aug. 29, 2002, *Grapevine Sun.*	The Honorable William Tate Mayor, Grapevine P.O. Box 95104, Grapevine, TX 76099.	July 29, 2002	480598
Dallas (Case No. 02–06–1091P) (FEMA Docket No. P7618).	City of Irving	Sept. 5, 2002, Sept. 12, 2002, *Irving Morning News.*	The Honorable Joe Putnam, Mayor, City of Irving, P.O. Box 152288, Irving, TX 75015.	Aug. 19, 2002 ...	480180
Dallas (Case No. 02–06–384P) (FEMA Docket No. P7618).	City of Irving	Sept. 12, 2002, Sept. 19, 2002, *Irving Morning News.*	The Honorable Joe Putnam, Mayor, City of Irving, P.O. Box 152288, 825 West Irving Boulevard, Irving, Texas 75015.	Dec. 19, 2002 ...	480180
Dallas (Case No. 01–06–1088P) (FEMA Docket No. P7618).	City of Lancaster	Oct. 24, 2002, Oct. 31, 2002, *Lancaster Today.*	The Honorable Joe Tillotson, Mayor, City of Lancaster, P.O. Box 940, Lancaster, TX 75146.	Jan. 27, 2003 ...	480182
Denton (Case No. 02–06–731P) (FEMA Docket No. P7618).	City of Lewisville	Sept. 25, 2002, Oct. 2, 2002, *Denton County Morning News.*	The Hon. Bobbie J. Mitchell, Mayor, City of Lewisville, P.O. Box 299002, Lewisville, TX 75029.	Sept. 12, 2002 ..	480195
Montgomery (Case No. 01–06–1444P) (FEMA Docket No. P7618).	City of Magnolia	Sept. 11, 2002, Sept. 18, 2002, *Magnolia Potpourri.*	The Hon. Frank Parker, III, Mayor, City of Magnolia, P.O Box 996, Magnolia, TX 77355.	Aug. 30, 2002 ...	481261
Dallas (Case No. 01–06–1230P) (FEMA Docket No. P7620).	City of Mesquite	Nov. 7, 2002, Nov. 14, 2002, *Mesquite Morning News.*	The Hon. Mike Anderson, Mayor, City of Mesquite, P.O. Box 850137, Mesquite, TX 75185.	Oct. 9, 2002	485490
Midland (Case No. 02–06–1417P) (FEMA Docket No. P7620).	City of Midland	Nov. 12, 2002, Nov. 19, 2002, *Midland Reporter Telegram.*	The Hon. Michael J. Canon, Mayor, City of Midland, 300 North Loraine, P.O. Box 1152, Midland, TX 79702.	Nov. 6, 2002	480477

State and county	Location	Dates and names of newspaper where notice was published	Chief executive officer of community	Effective date of modification	Community No.
Midland (Case No. 02–06–1417P) (FEMA Docket No. P7620).	Unincorporated areas.	Nov. 12, 2002, Nov. 19, 2002, *Midland Reporter Telegram.*	The Hon. William C. Morrow, Judge, Midland County, County Courthouse, 200 West Wall Street, Midland, TX 79701.	Nov. 6, 2002	481239
Fort Bend (Case No. 02–06–266P) (FEMA Docket No. P7618).	City of Missouri City	Sept. 5, 2002, Sept. 12, 2002, *Fort Bend Mirror.*	The Honorable Allen Owen, Mayor, City of Missouri City, P.O. Box 666, Missouri City, TX 77459.	Aug. 22, 2002 ...	480304
Montgomery (Case No. 01–06–1444P) (FEMA Docket No. P7618).	Unincorporated Areas.	Sept. 11, 2002, Sept. 18, 2002, *The Courier.*	The Honorable Alan B. Sadler, Judge, Montgomery County, 301 North Thompson Street, Suite 210, Conroe, TX 77301.	Aug. 30, 2002 ...	480483
Tarrant (Case No. 02–06–830P) (FEMA Docket No. P7616).	City of Saginaw	Aug. 23, 2002, Aug. 30, 2002, *Fort Worth Star Telegram.*	The Hon. Frankie Robbins, Mayor, City of Saginaw, 333 West McLeroy Boulevard, P.O. Box 79070, Saginaw, TX 76179.	Nov. 29, 2002 ...	480610
Bexar (Case No. 02–06–1263P) (FEMA Docket No. P7618).	City of San Antonio	Sept. 23, 2002, Sept. 30, 2002, *San Antonio Express News.*	The Honorable Ed Garza, Mayor, City of San Antonio, P.O. Box 839966, San Antonio, TX 78283.	Sept. 13, 2002 ..	480045
Bexar (Case No. 02–06–2309P) (FEMA Docket No. P7618).	City of San Antonio	Oct. 15, 2002, Oct. 22, 2002, *San Antonio Express News.*	The Honorable Ed Garza, Mayor, City of San Antonio, P.O. Box 839966, San Antonio, TX 78283.	Jan. 21, 2003 ...	480045
Bexar (Case No. 02–06–1679P) (FEMA Docket No. P7618).	City of San Antonio	Oct. 23, 2002, Oct. 30, 2002, *San Antonio Express News.*	The Honorable Ed Garza, Mayor, City of San Antonio, P.O. Box 839966, San Antonio, TX 78283.	Jan. 29, 2003 ...	480045
Bexar (Case No. 02–06–2309P) (FEMA Docket No. P7618).	City of Shavano Park.	Oct. 15, 2002, Oct. 22, 2002, *San Antonio Express News.*	The Hon. Tommy Peyton, Mayor, City of Shavano Park, City Hall, 99 Saddletree Road, San Antonio, TX 78231.	Jan. 21, 2003 ...	480047
Tarrant (Case No. 02–06–1098P) (FEMA Docket No. P7618).	City of Southlake	Sept. 12, 2002, Sept. 19, 2002, *Fort Worth Star Telegram.*	The Honorable Rick Stacy, Mayor, City of Southlake, 1400 Main Street, Southlake, TX 76092.	Dec. 19, 2002 ...	480612
Fort Bend (Case No. 02–06–266P) (FEMA Docket No. P7618).	City of Sugar Land	Sept. 4, 2002, Sept. 11, 2002, *Fort Bend Star.*	The Honorable David Wallace, Mayor, City of Sugar Land, P.O. Box 110, Sugar Land, TX 77487.	Aug. 22, 2002 ...	480234
Tarrant (Case No. 02–06–830P) (FEMA Docket No. P7616).	Unicorporated Areas	Aug. 23, 2002, Aug. 30, 2002, *Fort Worth Star Telegram.*	The Hon. Tom Vandergriff, Judge, Tarrant County, 100 E. Weatherford, Fort Worth, TX 76179.	Nov. 29, 2002 ...	480582

(Catalog of Federal Domestic Assistance No. 83.100, "Flood Insurance")

Dated: May 9, 2003.

Anthony S. Lowe,

Mitigation Division Director, Emergency Preparedness and Response Directorate.

[FR Doc. 03–12579 Filed 5–19–03; 8:45 am]

BILLING CODE 6718–04–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

44 CFR Part 67

Final Flood Elevation Determinations

AGENCY: Federal Emergency Management Agency, Emergency Preparedness and Response Directorate, Department of Homeland Security.

ACTION: Final rule.

SUMMARY: Base (1-percent-annual-chance) Flood Elevations and modified Base Flood Elevations (BFEs) are made final for the communities listed below. The BFEs and modified BFEs are the basis for the floodplain management measures that each community is required either to adopt or to show evidence of being already in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP).

EFFECTIVE DATE: The date of issuance of the Flood Insurance Rate Map (FIRM) showing BFEs and modified BFEs for each community. This date may be obtained by contacting the office where the FIRM is available for inspection as indicated in the table below.

ADDRESSES: The final base flood elevations for each community are

available for inspection at the office of the Chief Executive Officer of each community. The respective addresses are listed in the table below.

FOR FURTHER INFORMATION CONTACT: Mary Jean Pajak, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472, (202) 646–2831.

SUPPLEMENTARY INFORMATION: The Federal Emergency Management Agency makes final determinations listed below of BFEs and modified BFEs for each community listed. The proposed BFEs and proposed modified BFEs were published in newspapers of local circulation and an opportunity for the community or individuals to appeal the proposed determinations to or through the community was provided for a period of ninety (90) days. The proposed BFEs and proposed modified BFEs were also published in the **Federal Register**.

This final rule is issued in accordance with section 110 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4105, and 44 CFR part 67.

The Federal Emergency Management Agency has developed criteria for floodplain management in floodprone areas in accordance with 44 CFR part 60.

Interested lessees and owners of real property are encouraged to review the proof Flood Insurance Study and FIRM available at the address cited below for each community.

The BFEs and modified BFEs are made final in the communities listed below. Elevations at selected locations in each community are shown.

National Environmental Policy Act

This rule is categorically excluded from the requirements of 44 CFR part 10, Environmental Consideration. No environmental impact assessment has been prepared.

Regulatory Flexibility Act

The Mitigation Division Director of the Emergency Preparedness and Response Directorate certifies that this rule is exempt from the requirements of the Regulatory Flexibility Act because modified base flood elevations are required by the Flood Disaster Protection Act of 1973, 42 U.S.C. 4105, and are required to maintain community eligibility in the NFIP. No regulatory flexibility analysis has been prepared.

Regulatory Classification

This final rule is not a significant regulatory action under the criteria of section 3(f) of Executive Order 12866 of September 30, 1993, Regulatory Planning and Review, 58 FR 51735.

Executive Order 12612, Federalism

This rule involves no policies that have federalism implications under Executive Order 12612, Federalism, dated October 26, 1987.

Executive Order 12778, Civil Justice Reform

This rule meets the applicable standards of section 2(b)(2) of Executive Order 12778.

List of Subjects in 44 CFR Part 67

Administrative practice and procedure, Flood insurance, Reporting and record keeping requirements.

■ Accordingly, 44 CFR Part 67 is amended to read as follows:

PART 67—[AMENDED]

■ 1. The authority citation for Part 67 continues to read as follows:

Authority: 42 U.S.C. 4001 *et seq.*; Reorganization Plan No. 3 of 1978, 3 CFR, 1978 Comp., p. 329; E.O. 12127, 44 FR 19367, 3 CFR, 1979 Comp., p. 376.

§ 67.11 [Amended]

■ 2. The tables published under the authority of § 67.11 are amended as follows:

State	City/town/county	Source of flooding	Location	#Depth in feet above ground. *Elevation in feet (NGVD) Modified ♦Elevation in feet (NAVD) Modified
MN	Upper Sioux Community (Yellow Medicine County) (FEMA Docket No. 7621).	Minnesota		*882

Maps are available for inspection at the Office of the Tribal Council Secretary/FDPO Administrator, Upper Sioux Community Board of Trustees, Granite Falls, Minnesota.

(Catalog of Federal Domestic Assistance No. 83.100, "Flood Insurance")

Dated: May 9, 2003.

Anthony S. Lowe,

Mitigation Division Director, Emergency Preparedness and Response Directorate.

[FR Doc. 03–12581 Filed 5–19–03; 8:45 am]

BILLING CODE 6718–04–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 03–1531, MB Docket No. 02–81, RM–10422]

Digital Television Broadcast Service; Bethlehem, PA

AGENCY: Federal Communications Commission.

ACTION: Correcting amendment.

SUMMARY: The Federal Communications Commission published in the **Federal Register** of March 6, 2003 (68 FR 10664), a document (DA 03–491) to change the DTV Table of Allotments to reflect the substitution of DTV channel 9 for DTV channel 59c at Bethlehem. However, DTV channel 59 was inadvertently published without the "c" designation. This document corrects that amendment contained in section 73.622(b) of the Commission's Rules.

DATES: Effective April 14, 2003.

FOR FURTHER INFORMATION CONTACT: Pam Blumenthal, Media Bureau, (202) 418–1600.

SUPPLEMENTARY INFORMATION:

Background

The FCC published a document in the **Federal Register** of March 6, 2003, (68 FR 10664) removing DTV channel 59 and adding DTV channel 9 at Bethlehem, Pennsylvania. DTV channel 59 was inadvertently published in lieu of DTV channel 59c. This correction removes DTV channel 59c in lieu DTV channel 59 at Bethlehem.

Need for Correction

As published, the final regulations contain an error, which may prove to be misleading, and needs to be clarified.

List of Subjects in 47 CFR Part 73

Digital television broadcasting, Television.

■ Part 73 of Title 47 of the Code of Federal Regulations is amended as follows:

PART 73—[AMENDED]

■ 1. The authority citation for Part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303, 334 and 336.

§ 73.622 [Amended]

■ 2. Section 73.622(b), the Table of Digital Television Allotments under Pennsylvania, is amended by removing DTV channel 59c at Bethlehem.

Federal Communications Commission.

Barbara A. Kreisman,

Chief, Video Division, Media Bureau.

[FR Doc. 03–12543 Filed 5–19–03; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 021122286–3036–02; I.D. 051403B]

Fisheries of the Economic Exclusive Zone Off Alaska; Deep-Water Species Fishery by Vessels Using Trawl Gear in the Gulf of Alaska

AGENCY: National Marine Fisheries Service (NMFS), NationalOceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Closure.

SUMMARY: NMFS is prohibiting directed fishing for species that comprise the deep-water species fishery by vessels using trawl gear in the Gulf of Alaska (GOA). This action is necessary because the second seasonal apportionment of the 2003 Pacific halibut bycatch allowance specified for the deep-water species fishery in the GOA has been reached.

DATES: Effective 1200 hrs, Alaska local time (A.l.t.), May 16, 2003, through 1200 hrs, A.l.t., June 29, 2003.

FOR FURTHER INFORMATION CONTACT: Mary Furuness, 907–586–7228.

SUPPLEMENTARY INFORMATION: NMFS manages the groundfish fishery in the GOA exclusive economic zone according to the Fishery Management Plan for Groundfish of the Gulf of Alaska (FMP) prepared by the North Pacific Fishery Management Council under authority of the Magnuson-Stevens Fishery Conservation and Management Act. Regulations governing fishing by U.S. vessels in accordance with the FMP appear at subpart H of 50 CFR part 600 and 50 CFR part 679.

The Pacific halibut bycatch allowance for the GOA trawl deep-water species fishery, which is defined at § 679.21(d)(3)(iii)(B), as established by the final 2003 harvest specifications for groundfish of the GOA (68 FR 9924, March 3, 2003) for the second season, the period April 1, 2003, through 1200 hrs, A.l.t., June 29, 2003, is 300 metric tons.

In accordance with § 679.21(d)(7)(i), the Administrator, Alaska Region, NMFS (Regional Administrator), has determined that the second seasonal apportionment of the 2003 Pacific halibut bycatch allowance specified for the trawl deep-water species fishery in the GOA has been reached.

Consequently, NMFS is prohibiting directed fishing for the deep-water species fishery by vessels using trawl gear in the GOA. The species and species groups that comprise the deep-water species fishery are: all rockfish of the genera *Sebastes* and *Sebastolobus*, deep water flatfish, rex sole, arrowtooth flounder, and sablefish.

Maximum retainable amounts may be found in the regulations at § 679.20(e) and (f).

Classification

This action responds to the best available information recently obtained from the fishery. The Assistant Administrator for Fisheries, NOAA (AA), finds good cause to waive the requirement to provide prior notice and opportunity for public comment pursuant to the authority set forth at 5 U.S.C. 553(b)(B) as such requirement is contrary to the public interest. This requirement is contrary to the public interest as it would delay the closure of the fishery, lead to exceeding the second seasonal apportionment of the 2003 Pacific halibut bycatch allowance, and therefore reduce the public's ability to use and enjoy the fishery resource.

The AA also finds good cause to waive the 30–day delay in the effective date of this action under 5 U.S.C. 553(d)(3). This finding is based upon the reasons provided above for waiver of prior notice and opportunity for public comment.

This action is required by § 679.20 and is exempt from review under Executive Order 12866.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: May 14, 2003.

Bruce C. Morehead,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 03–12634 Filed 5–15–03; 2:40 pm]

BILLING CODE 3510–22–S

Proposed Rules

Federal Register
Vol. 68, No. 97
Tuesday, May 20, 2003

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

7 CFR Part 319

[Docket No. 02–032–2]

RIN 0579–AB48

Importation of Solid Wood Packing Material

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Proposed rule and notice of public hearings.

SUMMARY: We are proposing to amend the regulations for the importation of unmanufactured wood articles to adopt an international standard entitled "Guidelines for Regulating Wood Packaging Material in International Trade" that was approved by the Interim Commission on Phytosanitary Measures of the International Plant Protection Convention on March 15, 2002. The standard calls for wood packaging material to be either heat treated or fumigated with methyl bromide, in accordance with the Guidelines, and marked with an approved international mark certifying treatment. We propose to adopt the IPPC Guidelines because they represent the current international standard determined to be necessary and effective for controlling pests in wood packaging material used in global trade, and because current United States requirements for wood packaging material are not fully effective, as shown by analyses of pest interceptions at ports that show an increase in pests associated with wood packaging material. This increase in pests was found in wood packaging material that does not meet the IPPC Guidelines (*e.g.*, wood packaging material from everywhere except China, which must already be treated due to past pest interceptions). There has been a decrease in pests associated with wood packaging material from China since we began requiring that material be treated prior to importation. This change would affect all persons using wood packaging material in connection with importing goods into the United States.

DATES: We will consider all comments that we receive on or before July 21, 2003. We will also consider comments made at public hearings to be held in Seattle, WA, on June 23, 2003; Long Beach, CA, on June 25, 2003; and Washington, DC, on June 27, 2003.

ADDRESSES: You may submit comments by postal mail/commercial delivery or by e-mail. If you use postal mail/commercial delivery, please send four copies of your comment (an original and three copies) to: Docket No. 02–032–2, Regulatory Analysis and Development, PPD, APHIS, Station 3C71, 4700 River Road Unit 118, Riverdale, MD 20737–1238. Please state that your comment refers to Docket No. 02–032–2. If you use e-mail, address your comment to *regulations@aphis.usda.gov*. Your comment must be contained in the body of your message; do not send attached files. Please include your name and address in your message and "Docket No. 02–032–2" on the subject line.

You may read any comments that we receive on this docket in our reading room. The reading room is located in room 1141 of the USDA South Building, 14th Street and Independence Avenue SW., Washington, DC. Normal reading room hours are 8 a.m. to 4:30 p.m., Monday through Friday, except holidays. To be sure someone is there to help you, please call (202) 690–2817 before coming.

APHIS documents published in the **Federal Register**, and related information, including the names of organizations and individuals who have commented on APHIS dockets, are available on the Internet at *http://www.aphis.usda.gov/ppd/rad/webrepor.html*.

Public hearings regarding this rule will be held at the following locations:

1. Seattle, WA: Renaissance Madison Hotel, 515 Madison Street, Seattle, WA.

2. Long Beach, CA: Hilton Long Beach, 701 W. Ocean Blvd., Long Beach, CA.

3. Washington, DC: United States Department of Agriculture, Jefferson Auditorium, South Building Wing 4, 1400 Independence Avenue SW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Mr. Ray Nosbaum, Senior Regulatory Coordinator, PPQ, APHIS, 4700 River Road Unit 131, Riverdale, MD 20737–1231; (301) 734–6280.

SUPPLEMENTARY INFORMATION:

Public Hearings

We are advising the public that we are hosting three public hearings on this proposed rule. The first public hearing will be held in Seattle, WA, on Monday, June 23, 2003. The second public hearing will be held in Long Beach, CA, on Wednesday, June 25, 2003. The third public hearing will be held in Washington, DC, on Friday, June 27, 2003.

A representative of the Animal and Plant Health Inspection Service (APHIS), U.S. Department of Agriculture (USDA), will preside at the public hearings. Any interested person may appear and be heard in person, by attorney, or by other representative. Written statements may be submitted and will be made part of the hearing record. A transcript of the public hearings will be placed in the rulemaking record and will be available for public inspection.

The purpose of the hearings is to give interested persons an opportunity for presentation of data, views, and arguments. Questions about the content of the proposed rule may be part of the commenters' oral presentations. However, neither the presiding officer nor any other representative of APHIS will respond to comments at the hearings, except to clarify or explain provisions of the proposed rule.

The public hearings will begin at 9 a.m. and are scheduled to end at 5 p.m., local time. The presiding officer may limit the time for each presentation so that all interested persons appearing at each hearing have an opportunity to participate. Each hearing may be terminated at any time if all persons desiring to speak have been heard.

Registration for the hearings may be accomplished by registering with the presiding officer between 8:30 a.m. and 9 a.m. on the day of the hearing. Persons who wish to speak at a hearing will be asked to sign in with their name and organization to establish a record for the hearing. We ask that anyone who reads a statement provide two copies to the presiding officer at the hearing. Those who wish to form a panel to present their views will be asked to provide the name of each member of the panel and the organizations the panel members represent.

Persons or panels wishing to speak at one or more of the public hearings may register in advance by phone or e-mail. Persons wishing to register by phone should call the Regulatory Analysis and Development voice mail at (301) 734–8136. Callers must leave a message clearly stating (1) the location of the hearing the registrant wishes to speak at, (2) the registrant's name and organization, and, if registering for a panel, (3) the name of each member of the panel and the organization each panel member represents. Persons wishing to register by e-mail must send an e-mail with the same information described above to *richard.r.kelly@usda.gov*. Please write "Public Hearing Registration" in the subject line of your e-mail. Advance registration for any hearing must be received by 3 p.m. on Thursday, June 19, 2003.

If you require special accommodations, such as a sign language interpreter, please contact the person listed under **FOR FURTHER INFORMATION CONTACT**.

Background

Logs, lumber, and other unmanufactured wood articles imported into the United States pose a significant hazard of introducing plant pests, including pathogens, detrimental to agriculture and to natural, cultivated, and urban forest resources. The regulations in 7 CFR 319.40–1 through 319.40–11 (referred to below as the regulations) contain provisions to mitigate plant pest risks presented by the importation of logs, lumber, and other unmanufactured wood articles.

The Animal and Plant Health Inspection Service (APHIS) is proposing to amend the regulations to decrease the risk of solid wood packing material (SWPM) introducing plant pests into the United States. SWPM is defined in the regulations as "[w]ood packing materials other than loose wood packing materials, used or for use with cargo to prevent damage, including, but not limited to, dunnage, crating, pallets, packing blocks, drums, cases, and skids." Introductions into the United States of exotic plant pests such as the pine shoot beetle and the Asian longhorned beetle have been linked to the importation of SWPM. These and other plant pests that are carried by some imported SWPM pose a serious threat to U.S. agriculture and to natural, cultivated, and urban forests.

The introduction of pests associated with SWPM is a worldwide problem.[1] Because SWPM is very often re-used, recycled or re-manufactured, the true origin of any piece of SWPM is difficult to determine and thus its phytosanitary status cannot be ascertained. This often precludes national plant protection organizations from conducting useful specific risk analyses focused on the pests associated with SWPM of a particular type or place of origin, and imposing particular mitigation measures based on the results of such analysis. For this reason, there is a need to develop globally accepted measures that may be applied to SWPM by all countries to practically eliminate the risk for most quarantine pests and significantly reduce the risk from other pests that may be associated with the SWPM.

Such issues are generally addressed under the World Trade Organization's Agreement on the Application of Sanitary and Phytosanitary Measures (1994, World Trade Organization, Geneva) (the Agreement). The Agreement fosters the use of harmonized sanitary and phytosanitary measures developed by international standards organizations. In the case of phytosanitary standards, the authorized standard-setting organization is the International Plant Protection Convention (IPPC). Article 3 of the Agreement states, "To harmonize sanitary and phytosanitary measures on as wide a basis as possible, Members shall base their sanitary or phytosanitary measures on international standards, guidelines or recommendations, where they exist," except when Members opt to impose a higher level of sanitary or phytosanitary protection than the international standards provide. The same Article also states, "Sanitary or phytosanitary measures which conform to international standards, guidelines or recommendations shall be deemed to be necessary to protect human, animal or plant life or health, and presumed to be consistent with the relevant provisions of this Agreement and of GATT 1994."

We propose to adopt the international standard[2] approved by the IPPC on March 15, 2002 (referred to below as the IPPC Guidelines).[3] The IPPC Guidelines were developed after the IPPC determined that worldwide, the movement of SWPM made of unprocessed raw wood is a pathway for the introduction and spread of a variety of pests (IPPC Guidelines, p. 5). The IPPC Guidelines list the major categories of these pests, and establish a heat treatment and a fumigation treatment determined to be effective against them (IPPC Guidelines, p. 10). As many of these pests have been associated with SWPM inspected at U.S. ports, we propose to adopt the IPPC Guidelines because they represent the current international standard determined to be necessary and effective for controlling pests in SWPM. The need to adopt the IPPC Guidelines is further supported by analysis of pest interceptions at ports that show an increase in dangerous pests associated with certain SWPM. This increase in pests was found in SWPM that does not meet the IPPC Guidelines (*e.g.*, SWPM from everywhere except China). There has been a decrease in pests associated with SWPM material from China since we began requiring that material be treated prior to importation.

Another reason to adopt the IPPC Guidelines at this time is that adopting them would simplify and standardize trade requirements, China, Canada, the European Union, and many other countries are preparing to implement the IPPC Guidelines requirements. Given the difficulty of identifying the source of SWPM and the recycling of SWPM in trade, successful reduction of the pest risk posed by SWPM requires all trading partners to take action on a similar timeline. Furthermore, if the United States does not do so, U.S. companies will need to comply with one set of SWPM requirements for goods exported from the United States and another set of requirements for goods imported into the United States. Companies engaged in both import and export would have particular difficulties

[1] Problems with pests associated with SWPM have also been addressed on a regional level, *e.g.*, when the North American Plant Protection Organization, acting on behalf of the United States, Canada, and Mexico, approved the document "NAPPO Standards for Phytosanitary Measures: Import Requirements for Wood Dunnage and Other Wood Packing Materials into a NAPPO Member Country," The Secretariat of the North American Plant Protection Organization, Ottawa, August 12, 2001. Also, the three NAPPO countries have agreed to a target date of June 1, 2003, to implement the IPPC Guidelines among them; this announcement is on the NAPPO Web site at *http://www.nappo.org/Standards/Desicions-e.htm*.

[2] "International Standards for Phytosanitary Measures: Guidelines for Regulating Wood Packaging Material in International Trade," Secretariat of the International Plant Protection Convention, Food and Agriculture Organization of the United Nations, Rome: 2002.

[3] Regarding "guidelines" vs. "standards": While the IPPC document refers to itself as "Guidelines" in the title, it refers to itself as a "standard" throughout its body. The distinction does not appear to be meaningful; *cf.* IPPC Convention, Art. 3, "Members shall base their sanitary or phytosanitary measures on international standards, guidelines or recommendations, where they exist * * *."

in ensuring that their SWPM supply chain is sorted and routed for use for appropriate destinations. If the United States adopts the IPPC Guidelines, these companies would be able to use SWPM that complies with the Guidelines for both import and export purposes, leveling the trade playing field with regard to SWPM.

Basis of the IPPC Guidelines

The IPPC is a multilateral convention adopted in 1952 for the purpose of securing common and effective action to prevent the spread and introduction of pests of plants and plant products and to promote appropriate measures for their control. The IPPC is placed under the authority of the Food and Agriculture Organization (FAO) of the United Nations, and the members of the Secretariat of the IPPC are appointed by the FAO. The IPPC is implemented by national plant protection organizations, including APHIS, in cooperation with regional plant protection organizations, the Interim Commission on Phytosanitary Measures (ICPM), and the Secretariat of the IPPC. The United States plays a major role in all standard-setting activities under the IPPC and has representation on FAO's highest governing body, the FAO Conference.

The United States became a contracting party to the IPPC in 1972 and has been actively involved in furthering the work of the IPPC ever since. The IPPC was amended in 1997 to update phytosanitary concepts and formalize the standard-setting structure within the IPPC. The U.S. Senate gave its advice and consent to acceptance of the newly revised IPPC on October 18, 2000. The President submitted the official letter of acceptance to the FAO Director General on October 4, 2001.

The eight-step process by which the IPPC develops new phytosanitary standards is described in detail in a notice APHIS published in the **Federal Register** on August 23, 2002 (Docket No. 02–051–1, 67 FR 54615–54621). APHIS technical experts were deeply involved throughout the process used to develop the IPPC Guidelines for wood packaging materials. A team of international experts studied all published data available at the time and recommended the treatment schedules that are in the IPPC Guidelines. Scientific studies evaluated during this process documented the risks associated with SWPM, the need to treat it, and the efficacy of the treatments included in the IPPC Guidelines (see, *e.g., http://www.aphis.usda.gov/ppq/swp/heat_treatment.pdf*).

Terms Used in the IPPC Guidelines and in APHIS Regulations

The IPPC Guidelines employ the term "wood packaging material," which the Guidelines define as "wood or wood products (excluding paper products) used in supporting, protecting or carrying a commodity (includes dunnage)." Later, in a discussion of issues, the IPPC Guidelines state that wood packaging material includes "coniferous and non-coniferous raw wood packaging material that may serve as a pathway for plant pests posing a threat mainly to living trees. They cover wood packaging material such as pallets, dunnage, crating, packing blocks, drums, cases, load boards, pallet collars, and skids * * * Wood packaging made wholly of wood-based products such as plywood, particle board, oriented strand board or veneer that have been created using glue, heat and pressure or a combination thereof should be considered sufficiently processed to have eliminated the risk associated with the raw wood. It is unlikely to be infested by raw wood pests during its use and therefore should not be regulated for these pests. Wood packaging material such as veneer peeler cores, sawdust, wood wool, and shavings, and raw wood cut into thin pieces may not be pathways for introduction of quarantine pests and should not be regulated unless technically justified." APHIS uses the term "solid wood packing material" in its regulations to cover the same class of materials.

In this document, and in our regulations, we have elected to continue using the term solid wood packing material (SWPM) rather than the IPPC term wood packaging material. We do so for reasons of enforcement and history. Unlike the IPPC Guidelines, our regulations must be enforced daily in a wide variety of situations, dealing with many regulated parties. To enforce our regulations, we need to precisely define terms in a manner consistent with the entire body of our regulations. Our definition of SWPM meets these needs. Also, for over 10 years, APHIS has published a large number of informational guides, agreements, certificates, and other documents employing the SWPM term, and we believe it would be confusing rather than helpful to change to another term.

The IPPC Guidelines Compared to Current APHIS Requirements

The IPPC Guidelines require SWPM to be heat treated or fumigated with methyl bromide. These two treatments are efficacious in treating the target pests named in the IPPC Guidelines, *i.e.*, bark beetles, wood borers, and certain nematodes. These pests represent over 95 percent of all of the pests that APHIS intercepted in association with imported SWPM in 2000 and 2001.

Target Pest Groups of the IPPC Guidelines

Insects
- Anobiidae
- Bostrichidae
- Buprestidae
- Cerambycidae
- Curculionidae
- Isoptera
- Lyctidae (with some exceptions for HT)
- Oedemeridae
- Scolytidae
- Siricidae

Nematodes
- *Bursaphelenchus xylophilus*

Currently, the regulations allow, subject to certain restrictions, SWPM to be imported into the United States from any country. In § 319.40–3, paragraph (b)(1) provides that bark-free SWPM used with nonregulated wood articles is subject to inspection upon arrival, but treatment is not required. Paragraph (b)(4) of § 319.40–3 provides that bark-free pallets moved as cargo are subject to inspection upon arrival, but, in general, treatment is not required. Paragraphs (b)(2) and (b)(3) of § 319.40–3 require, in general, that bark-free SWPM used with regulated wood articles or SWPM not free of bark be heat treated, fumigated, or treated with preservatives. Likewise, as of the end of 1998, SWPM from China, including Hong Kong, is subject to stricter regulation in that it also must be heat treated, fumigated, or treated with preservatives, in accordance with § 319.40–5, paragraphs (g) and (i). The treatment schedules for SWPM in the current regulations have an effectiveness against target pests for SWPM that is very similar to that provided by the treatments in the IPPC Guidelines. We are proposing to adopt the IPPC Guidelines in lieu of all the current requirements for SWPM described in this paragraph.

The treatments authorized by the IPPC Guidelines include a heat treatment schedule and a methyl bromide fumigation schedule. The IPPC Guidelines also acknowledge that other treatments currently under laboratory evaluation for their effectiveness may be added to the IPPC Guidelines in the future. These possible additional treatments include fumigation with chemicals other than methyl bromide, chemical pressure impregnation, irradiation, and treatment in controlled atmosphere.

The IPPC Guidelines state, with respect to heat treatment, that SWPM should be heated in accordance with a specific time-temperature schedule that achieves a minimum wood core temperature of 56 °C for a minimum of 30 minutes. It notes that kiln-drying, chemical pressure impregnation (CPI), or other treatments may be considered heat treatments to the extent that these meet the heat treatment specifications. For example, CPI may meet the specification through the use of steam, hot water, or dry heat.

The IPPC Guidelines state, with respect to methyl bromide fumigation, that the SWPM should be fumigated in an enclosed area for at least 16 hours at the following dosage, stated in terms of grams of methyl bromide per cubic meter of the enclosure being fumigated:

Temperature	Initial dose (g/m³)	Minimum required concentration (g/m³) after:			
		0.5 hrs.	2 hrs.	4 hrs.	16 hrs.
21 °C or above	48	36	24	17	14
16 °C or above	56	42	28	20	17
11 °C or above	64	48	32	22	19

The methyl bromide fumigation schedule in the IPPC Guidelines parallels, though it is not identical to, the schedules APHIS requires for fumigation of SWPM (*e.g.*, for shipments from China). The heat treatment schedule in the IPPC Guidelines has a lesser time-temperature requirement than the existing APHIS heat treatment schedule in § 319.40–7(c), which requires maintaining a core temperature of at least 71.1 °C for a minimum of 75 minutes. However, it is generally acknowledged, and supported by research discussed below, that the APHIS heat treatment schedule in § 319.40–7(c) exceeds the treatment level necessary to control the IPPC target pests in SWPM. The time-temperature combination in § 319.40–7(c) was set to ensure destruction of a wide variety of pests and pathogens, some of which are not target pests for SWPM, in wood articles of a variety of sizes and shapes, some of which, being thicker and larger, require more stringent treatments than does SWPM. It is not certain whether the heat and methyl bromide treatments we are proposing may provide less mitigation of all possible pest risks than the more stringent treatments currently required for SWPM from China. The proposed treatments should be just as effective with regard to the target pests identified in this rule and in the IPPC Guidelines. Approximately 95 percent of pests our inspectors intercept on shipments worldwide are pests on the IPPC target pest list, and research demonstrates the IPPC standard treatments are effective against these pests. For the remaining 5 percent of pests we intercept—primarily defoliators and rarely sapsucking insects, pathogens, or nematodes—limited data supports a conclusion that most are likely to be effectively mitigated by the treatments in the IPPC standard. If there are any remaining pests not effectively mitigated by the IPPC standard treatments, we do not have conclusive scientific evidence that the treatments currently required for SWPM from China would be more effective against them than the IPPC standard treatments. Such a conclusion would be conjectural, that the additional heat treatment or fumigation would be enough to destroy the pest. Instead of retaining the China treatments merely because they require higher doses that might be effective against pests with unknown tolerances, APHIS intends to develop more information about such pests and address them when we can verify effective treatment. As stated in the IPPC Guidelines, APHIS or other nations' plant protection agencies may promulgate additional rules as needed to address additional pest risks on a case-by-case basis.

In addition to describing heat and methyl bromide treatment schedules and an approved international mark for SWPM, the IPPC Guidelines require that a country's national plant protection organization develop procedures to ensure that SWPM treated and marked in that country for export complies with the IPPC Guidelines. Countries must monitor the SWPM certification and marking systems that verify compliance and must establish procedures to inspect, register or accredit, and audit commercial companies that apply the SWPM treatments.

Risks to U.S. Resources, Recent Pest Interceptions, and Other Data Supporting Adoption of the IPPC Guidelines

There is worldwide consensus among national plant protection organizations that pest interceptions associated with SWPM indicate a serious problem in which the movement of certain dangerous pests is not sufficiently controlled by current restrictions on SWPM. There is ample data indicating that the United States is at particular risk with regard to this problem. For many years, pests associated with SWPM, including highly destructive wood borers and beetles, have been intercepted at U.S. ports. Pests of these types are often well-concealed inside SWPM, in larval forms or dormant stages that increase their survival potential. These pests may easily survive movement to the final destination or to cargo redistribution sites, many of which are vulnerable, heavily forested regions. About one-third of the land area of the United States is forest land, and there are millions of acres of urban, suburban, and ornamental trees as well. There are many areas where the climate, tree species, and lack of natural predators would allow introduced pests to flourish and become established.

One confirmation of the SWPM pest problem can be seen using an APHIS database, the Port Information Network (PIN–309), which records interceptions of quarantine pests [4] found in cargo arriving at United States ports. These reports of interceptions are based on sampling inspections conducted by APHIS inspectors at U.S. ports. For many years the PIN–309 reports have recorded interceptions in imported SWPM of the types of pests the IPPC Guidelines were developed to control. In recent years PIN–309 data has shown increasing levels of pests of concern, in addition to recording evidence that the treatments contained in the IPPC Guidelines are effective when they are applied.

From 1996 through 1998, PIN–309 reported [5] an average of 402 live pests

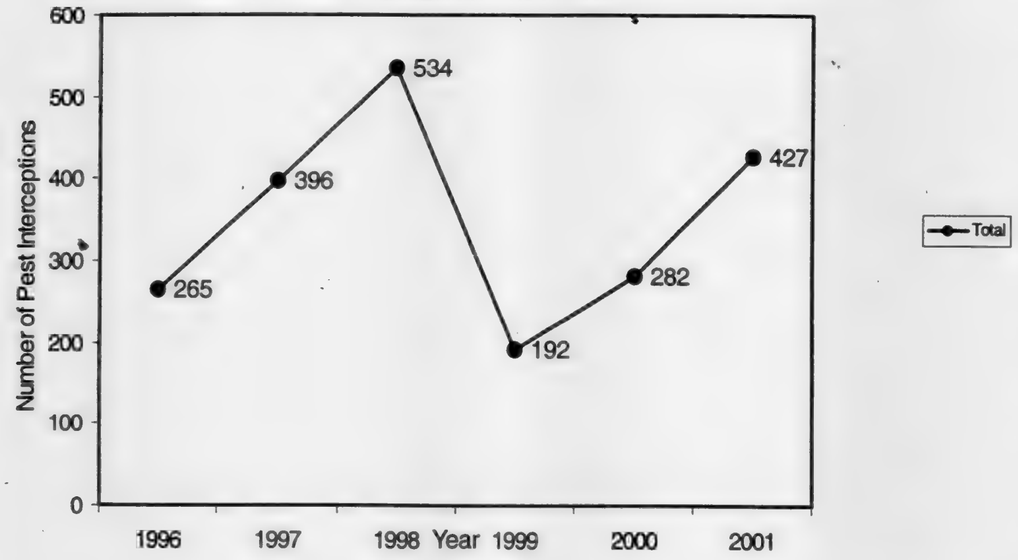
[4] "Quarantine pest": A pest of potential economic importance to the area endangered thereby and not yet present there, or present but not widely distributed and being officially controlled. (FAO, 1990; revised FAO, 1995; IPPC, 1997).

[5] The scope and limits of PIN–309 data suggest that many more pests associated with SWPM went unreported. First, PIN–309 reports are made by inspectors, who inspect less than 1 percent of the more than 4 million wood pallets and other SWPM

Continued

per year associated with SWPM were intercepted at U.S. ports of entry; of these, 156, or 39 percent, were from China. Starting at the end of 1998, APHIS began requiring that SWPM from China be heat treated, fumigated, or pressure treated. This caused a marked decline in pest interceptions associated with SWPM from China, but interceptions from other countries have increased. For 2000–2001, an average of 355 pests per year associated with SWPM were intercepted at U.S. ports of entry; of these, 24, or 7 percent, were from China.

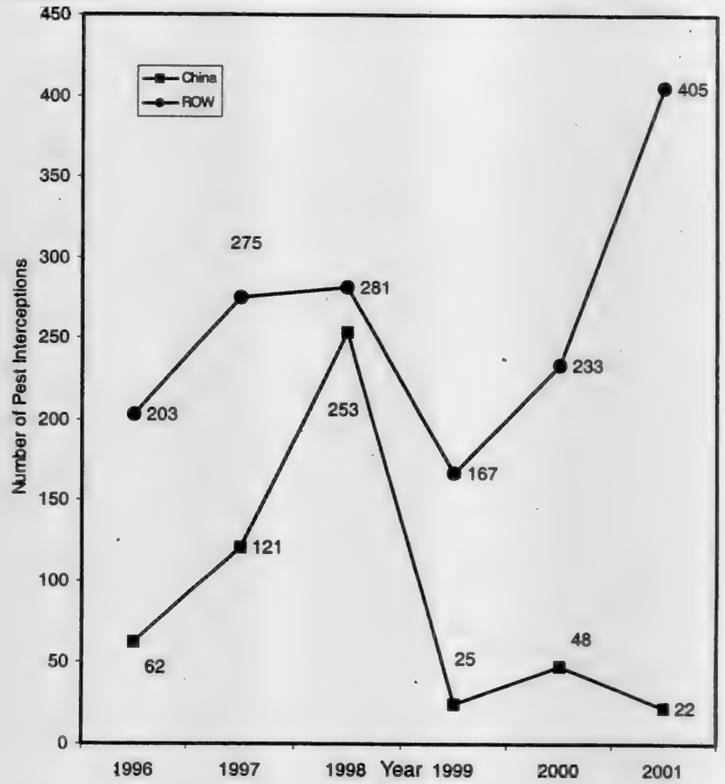
Chart 1. Interceptions of pests associated with Solid Wood Packaging Materials (1996 - 2001) based on the PIN-309 (Pest Interception Network database, USDA / APHIS).



If we subtract the China data from the PIN–309 reports, there was an average of 246 interceptions associated with SWPM from the rest of the world (ROW) each year from 1996–1998; this has risen to an average of 331 for each year from 2000–2001. APHIS believes that the increase in pest interceptions associated with ROW shipments is due to a real increase in pests associated with them, probably due to increased volume of trade that required increased sources of SWPM, causing shippers to use SWPM of lesser quality that is more likely to have pests associated with it. In discussions with APHIS, other countries have also indicated concern that increased trade has lead to use of riskier SWPM, and have endorsed the IPPC Guidelines as a means to address this phenomenon.

articles imported each year. Second, usually when inspectors find the first actionable pest in a shipment, they order treatment or re-export; they do not inspect the remainder of the shipment for more pests, which therefore are not recorded in PIN–309.

Chart 2. Interceptions of pests associated with Solid Wood Packaging Materials (1996 - 2001) from China versus Rest of the World (ROW) based on the PIN-309 (Pest Interception Network database, USDA/APHIS)



The types of pests intercepted include many that could cause significant damage if established. They included Coleoptera: Scolytidae (bark beetles); Hemiptera: Heteroptera, Coleoptera: Buprestidae, and Cerambycidae, (wood borers). Some pests had already moved beyond ports of entry when found; *Hylurgops palliatus*, a Palearctic bark beetle, was found beyond the port in Erie, PA, in May and June 2001, and *Hylurgus ligniperda Fabricus*, a red haired pine bark beetle, was found on a Christmas tree plantation in Rochester, NY, in November 2000. These two bark beetles were likely introduced into the United States with SWPM from Europe.

Many of these pests have the potential to cause damage comparable to that demonstrated by other recent introductions, *e.g.*, the Asian longhorned beetle (ALB) and the pine shoot beetle (PSB). The ALB was discovered in New York in 1996 and in Illinois in 1998, and since then APHIS has spent over $50 million on surveys, destruction and replacement of infested trees, treatment of surrounding trees, and other control activities. The State and local governments of Illinois and New York together have spent approximately $9 million. While containment efforts are expected to succeed, if they fail, ALB could devastate forests covering more than 100 million acres—the maple-dominated forests stretching from New England to the Midwest, with additional range in Canada; and the aspens of the Great Lakes region, central Canada, and the Rocky Mountains. APHIS has also spent millions of dollars to control the PSB since its discovery near Cleveland, OH, in 1992, after which it spread to nine Midwestern and Eastern States, as well as Ontario. It is continuing to spread to new areas within some affected States, and may spread to additional States. One recent study[6] estimated the value of urban trees at risk from ALB in nine cities. The resources at risk ranged from $72 million for Jersey City, NJ to $2.3 billion for New York City.

Another recent example of a pest apparently introduced through SWPM movement is the emerald ash borer. This Buprestid beetle was recently discovered feeding on ash (*Fraxinus* sp.) trees in southeastern Michigan; it was positively identified in July 2002 as *Agrilus planipennis* Fairmaire, an insect that is indigenous to Asia, with large populations in ash forests in China and eastern Russia. Evidence suggests that *A. planipennis* has been established in

[6] Nowak, David, J., Judith E. Pasek, Ronald A. Sequeira, Daniel E. Crane, and Victor C. Mastro, 2001. "Potential Effect of Anaplophora glabripennis (Coleoptera:Cerambycidae) on Urban Trees in the U.S." Journal of Economic Entomology 94(1): 116–122 (2001).

Michigan for at least 5 years. The State of Michigan has imposed a quarantine to restrict movement of ash trees, firewood, nursery stock, and other articles that could spread the pest to new areas. Surveys to determine the extent of the infested area are underway.

The emerald ash borer attacks green, black and white ash trees, which are widely planted shade trees in the Midwest. It frequently kills nearly all the ash trees in areas where it lacks natural predators. The insect's larvae tunnel under the bark in late summer and fall, disrupting the phloem layer and often causing death within 2 to 3 years.

To control these substantial, recently analyzed pest risks, we propose to adopt the IPPC Guidelines. Taking this action would promptly address a weakness in our current regulations and improve protection of our natural and agricultural wood resources. It would also make U.S. SWPM requirements consistent with those of our major trading partners, who intend to adopt the IPPC Guidelines soon.

Efficacy of the IPPC Guidelines Treatments

The IPPC standard-setting process, discussed earlier, established the efficacy of the treatment standards recommended by the IPPC Guidelines. A great deal of research also supports the effectiveness of the treatments in the IPPC Guidelines for controlling risks associated with target pests than can move with SWPM.

Evidence of Effectiveness of the Heat Treatment in the IPPC Guidelines

The Asian longhorned beetle (*Anoplophora glabripennis*) or ALB is often used as a representative species for detailed assessment of the effectiveness of heat treatment. Recently completed and ongoing studies on both ALB and *Monochamus* species (a species of similar size and life cycle used as a surrogate for ALB) have confirmed that heat treatment to a 56 °C core temperature for 30 minutes is 100 percent effective against ALB larvae in wood.

Early experiments on heat treatment to a 56 °C core temperature for 30 minutes focused on eradication of pinewood nematode (Dwinell 1995, 1997). Dwinell (1997) cites a trilateral study involving Canada, the United States, and the European Union (EOLAS, 1991), which concluded that heat treating unseasoned lumber to a core temperature of 56 °C for 30 minutes eradicates the pinewood nematode and pine sawyer beetles.

Heating lumber from many species of wood at a core temperature of 56 °C for 30 minutes eradicated the pinewood nematode and pine sawyer beetles (Family *Cerambycidae: Monochamus*) (USDA, 1994). The genus *Monochamus* is a host of the pinewood nematode.

Pine sawyer beetle, *Monochamus* spp., belongs to the Family *Cerambycidae*, the same family that contains the ALB. Dwinell (1997) also indicated that heating infested Virginia pine logs to a core temperature of 53 °C for 30 minutes killed all pine sawyer beetles and all pine wood nematodes.

Evidence of Effectiveness of the Methyl Bromide Fumigation Treatment in the IPPC Guidelines

There are differences between the methyl bromide dosages over time required by the IPPC Guidelines and those currently required by the APHIS Plant Protection and Quarantine Treatment Manual. The dosage the Treatment Manual requires to be maintained over a 16-hour period is consistently higher than that required in the IPPC Guidelines. However, both treatment schedules effectively destroy the target pests for SWPM.

The U.S. Department of Agriculture (USDA), in collaboration with China, performed studies of methyl bromide fumigation of the Asian longhorned beetle that demonstrated 100 percent mortality of ALB larvae and pupae (Mack, 2002 per. comm). These studies used 10 cm square by 1.15 meter long wood timbers of *Populus* spp. exposed to methyl bromide for 24 hours at four concentration-temperature combinations: 80 mg/l @ 4.4 °C; 64 mg/l @ 10.0 °C; 56 mg/l @ 15.6 °C; and 48 mg/l @ 21.1 °C. In all cases, 100 percent mortality of ALB larvae and pupae was observed. The methyl bromide dose in these studies was greater than the one in the IPPC Guidelines. However, a prediction of the level of mortality of ALB using a Polo Probit 9 computer routine (Robertson 1997) indicated that 99.714 percent of ALB larvae would be killed after 16 hours at 15.6 °C with a cumulative CT (concentration x time) of 347. This is very close to the IPPC standard of a cumulative CT of 388 at 16 °C and 16 hours exposure; it is considered biologically equivalent. At 21.1 °C at 16 hours exposure and a cumulative CT of 293 (*i.e.*, the IPPC Standard), the predicted mortality level using the Polo Probit 9 computer routine (Robertson 1997) was 99.984 percent. Experiments by USDA at lower temperatures (*e.g.*, at 11 °C) confirm the effectiveness of the full range of optional IPPC temperature levels.

Also, although the above studies employed a methyl bromide dose greater than the IPPC Guidelines, the experiments were performed using a "most risk scenario." For example, the wood was in larger pieces than is typical of SWPM, and was green wood, with a much higher moisture content than typical SWPM. Increased moisture and size both cause significant resistance to fumigant penetration. Also, in these studies, only wood was fumigated in the chamber, while most SWPM fumigations consist of about 35 percent SWPM and 65 percent cargo. The cargo is usually non-sorbtive materials, which increases the exposure of the SWPM to methyl bromide and increases the effectiveness of the treatment. These experiments provide evidence that fumigation with methyl bromide over the IPPC temperature and dosage ranges is effective against ALB in wood (Barak, 2002 per. comm). Other experimental evidence includes McMullen (1952), Michelsen (1964), Hanula and Berisford (1982), and Yu *et al.* (1984), among others.

Proposed Changes to the Regulations to Adopt the IPPC Guidelines

In order to incorporate the IPPC Guidelines into our regulations, we propose to amend "Subpart—Logs, Lumber, and Other Unmanufactured Wood Articles" (7 CFR 319.40–1 through 319.40–11), as follows.

We do not propose to make any changes in the definitions in § 319.40–1. The definition of *solid wood packing material* would remain unchanged, and SWPM would continue to be included in the definition of *regulated article*. This means that SWPM, except for types that have received more than primary processing (*e.g.*, plywood, particle board, oriented strand board, veneer, or other processed types of SWPM), would continue to be subject to the regulations.

We do not propose to make any changes to § 319.40–3(a), which exempts SWPM (and other regulated articles) from Canada and border States in Mexico adjacent to the United States from most of the requirements of the regulations.[7] The Canadian exemption

[7] On June 11, 1999, APHIS published a proposed rule in the **Federal Register** (Docket No. 98–054–1, 64 FR 31512–31518) to eliminate this exemption for many types of regulated articles, including SWPM, from Mexican border States. This proposal was based on a recent pest risk assessment that challenged the premise that, because forests in the United States share a common forested boundary with adjacent States in Mexico, the two countries' forests share, to a reasonable degree, the same forest pests. The pest risk assessment concluded that a significant pest risk exists in the movement of raw wood material into the United States from the adjacent States of Mexico, because certain forests in these Mexican States should be viewed as biological islands containing their own unique combination of forest pests, not as an extension of the U.S. forest ecosystem. APHIS has not yet taken final action on this proposal.

exists because there are no significant pests associated with Canadian-origin SWPM. There has been some concern that SWPM from other countries imported into Canada could harbor pests, and could then be moved to the United States, spreading pests. However, Canada has signed an agreement to implement regulations in the near future requiring that all SWPM imported into Canada meet the conditions of the IPPC Guidelines. Also, heat treatment of pallets is rapidly becoming a standard throughout North America, and we expect that even before Canada formally complies with the IPPC Guidelines, a substantial portion of the wood pallets and wood crating imported from Canada will meet the provisions of the IPPC Guidelines.

We propose to make substantial changes to § 319.40–3(b), which sets forth the conditions under which SWPM may be imported under general permit. Currently, § 319.40–3(b) imposes varying restrictions on imported SWPM based on whether it is free of bark or not; whether it is used to pack regulated or nonregulated articles; and whether it is in actual use as packing or is moved as cargo. It appears that these distinctions would be unnecessary under the IPPC Guidelines, where all SWPM would be heat treated or fumigated with methyl bromide, and marked with an official mark to document the treatment. Therefore, we propose to replace § 319.40–3(b) with the following requirements.

SWPM, whether in actual use as packing for regulated or nonregulated articles or imported as cargo, may be imported into the United States under a general permit in accordance with the following conditions:

(1) The SWPM must have been:

- Heat treated to achieve a minimum wood core temperature of 56 °C for a minimum of 30 minutes. Such treatment may employ kiln-drying, chemical pressure impregnation, or other treatments that achieve this specification through the use of steam, hot water, or dry heat; or
- Fumigated with methyl bromide in an enclosed area for at least 16 hours at the following dosage, stated in terms of grams of methyl bromide per cubic meter of the enclosure being fumigated:

Temperature	Initial dose (g/m³)	Minimum required concentration (g/m³) after:			
		0.5 hrs.	2 hrs.	4 hrs.	16 hrs.
21 °C or above	48	36	24	17	14
16 °C or above	56	42	28	20	17
11 °C or above	64	48	32	22	19

- Following fumigation, fumigated products must be aerated to reduce the concentration of fumigant below hazardous levels, in accordance with label instructions approved by the U.S. Environmental Protection Agency. As noted in other APHIS regulations (*e.g.*, those for importing SWPM from China), when articles are fumigated, the articles must be aerated afterward to ensure that the articles are safe for handling, storage, and transportation. Aeration is required by the Environmental Protection Agency (EPA) in EPA-approved label instructions for all fumigants utilized pursuant to the regulations. Also, Occupational Safety and Health Administration (OSHA) regulations contained in title 29 of the Code of Federal Regulations require employers of cargo handlers to determine that the concentration of fumigants is below the level specified as hazardous before the cargo is loaded or discharged.

(2) The SWPM must be marked in a visible location on each article, preferably on at least two opposite sides of the article, with a legible and permanent mark that indicates that the article has been treated as required. The mark must be approved by the International Plant Protection Convention in its International Standards for Phytosanitary Measures to certify that wood packaging material has been subjected to an approved measure, and must include a unique graphic symbol, the ISO two-letter country code for the country that produced the SWPM, a unique number assigned by the national plant protection agency of that country to the producer of the SWPM, and an abbreviation disclosing the type of treatment (*e.g.*, HT for heat treatment or MB for methyl bromide fumigation).

Importation under a general permit means that no paperwork, certificate, or importer document needs to accompany the SWPM. The mark required by the regulations would be applied by treatment facilities treating SWPM, and the contents of the mark (*i.e.*, the country and producer codes) would allow APHIS to trace SWPM back to its producer if necessary—for example, if APHIS finds that SWPM is not treated properly. We propose that the mark should be applied "preferably on at least two opposite sides of the article" because multiple marks would make inspection and enforcement easier and reduce the need to shift cargo in order to see marks. While a single mark would meet the minimum legal requirement, shippers may want to use SWPM with multiple marks to speed the inspection and clearance of their cargo.

The "unique graphic symbol" portion of this mark is not available at this time, but the IPPC should have approved such a symbol by the time this action reaches the final rule stage. The IPPC Guidelines contain such a symbol, but its use has been suspended because the Food and Agriculture Organization has not been able to legally protect the symbol for use according to the IPPC Guidelines. Legal registration of a substitute symbol is underway.

We are proposing that APHIS inspectors at the port of first arrival could order the immediate reexport of SWPM articles that arrive without the mark required by § 319.40–3(b)(2) that indicates required treatment. In most cases involving SWPM that is not properly marked, APHIS would order such shipments to be immediately reexported, because it is not practical to treat large volumes of SWPM after arrival. Not only are the facilities for such treatment lacking, but the untreated SWPM would represent an unacceptable pest risk while it is in storage at a port awaiting treatment. Therefore, we propose to specifically authorize inspectors to order the immediate reexport of unmarked SWPM. In some cases it would also be necessary to order the reexport of the cargo associated with the SWPM, although in most cases the cargo could be separated from the SWPM at the port and moved to its destination under safeguards—with the importer charged for the costs of these services. It would

be necessary to order the reexport of the cargo as well as the SWPM associated in cases where it is impossible to safely separate cargo from SWPM without substantial risk that pests would be spread during the process, or when pests would likely move with the cargo even after it is separated from the SWPM. This authority would be in addition to the authority inspectors already have in accordance with § 319.40–9 to inspect regulated articles, order their cleaning or treatment, and refuse them entry under certain conditions.

We are proposing special conditions for SWPM used by the Department of Defense (DOD) to move material from foreign locations into the United States. DOD often moves material in SWPM fashioned by its own woodworkers, rather than SWPM produced at the type of facilities that produce and treat SWPM for general commercial use. Also, DOD must often produce unusual or unique SWPM to safely pack its material. For reasons of security, practicality, and timeliness, it would be inappropriate to require DOD to use only SWPM that was produced and treated commercially and marked as meeting the IPPC Guidelines. Instead, we propose that SWPM used by DOD must meet the heat treatment or fumigation requirements of the IPPC Guidelines, but need not bear the proposed mark. We believe that this requirement will be as effective as the IPPC Guidelines with regard to SWPM used by DOD. While we do not propose to require a marking on such DOD SWPM, we would employ APHIS inspectors who already work in concert with DOD to monitor their use of SWPM and ensure that it is properly heat treated or fumigated.

In § 319.40–5, "Importation and entry requirements for specified articles," we propose to remove paragraphs (g) through (k). This would remove all of the requirements established in 1998 and 1999 for importation of SWPM from the People's Republic of China, including Hong Kong, since the new requirements for complying with the IPPC Guidelines would apply to the People's Republic of China, including Hong Kong, as well as the rest of the world.

Finally, current § 319.40–9 describes inspection and other requirements at the port of first arrival. This proposal would not change this section, but it should be noted that this section has implications for anyone who imports SWPM that has not been properly treated and marked in accordance with § 319.40–3(b) of this proposed rule. APHIS inspectors at ports would examine SWPM for the IPPC-approved international mark required by the regulations. In accordance with the IPPC Guidelines, each national plant protection organization is expected to develop procedures to ensure that SWPM treated and marked in each country complies with the IPPC Guidelines. Therefore, the international mark is, in effect, a certificate verifying proper treatment. Persons who forge, alter, or fraudulently use the mark would be subject to administrative or criminal penalties.

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Executive Order 12866 and Regulatory Flexibility Act

This proposed rule has been reviewed under Executive Order 12866. The rule has been determined to be significant for the purposes of Executive Order 12866 and, therefore, has been reviewed by the Office of Management and Budget.

Below is a summary of the economic analysis for the changes in SWPM import requirements proposed in this document. The economic analysis provides a cost-benefit analysis as required by Executive Order 12866 and an analysis of the potential economic effects on small entities as required by the Regulatory Flexibility Act. A copy of the full economic analysis is available for review at the location listed in the **ADDRESSES** section at the beginning of this document, or on the Internet at *http://www.aphis.usda.gov/ppq/swp/*.

We do not have enough data for a comprehensive analysis of the economic effects of this proposed rule on small entities. Therefore, in accordance with 5 U.S.C. 603, we have performed an initial regulatory flexibility analysis for this proposed rule. We are inviting comments about this proposed rule as it relates to small entities. In particular, we are interested in determining the number and kind of small entities who may incur benefits or costs from implementation of this proposed rule and the economic impact of those benefits or costs.

Under the Plant Protection Act (7 U.S.C. 7701–7772), the Secretary of Agriculture is authorized to regulate the importation of plants, plant products, and other articles to prevent the introduction of injurious plant pests.

This analysis evaluates a proposed rule that would adopt the International Plant Protection Convention (IPPC) standards on wood packaging materials, which are guidelines on globally accepted measures that may be applied to solid wood packing material (SWPM) to reduce the entry of pests via this pathway. The IPPC guidelines require SWPM to be heat treated at 56 °C for 30 minutes, or fumigated with methyl bromide.

We believe it is appropriate and necessary to adopt the IPPC Guidelines because they were developed as an international standard to control pests associated with SWPM. The types of

pests the IPPC Guidelines were developed to control have been intercepted at U.S. ports for many years, and pose significant risks to U.S. resources. Recent interceptions of pests at ports of entry show a steady increase in serious pests associated with SWPM from everywhere except China, whose SWPM must already be treated due to past pest interceptions. If left unchecked, pests imported with SWPM have the potential to cause significant economic damage to the agricultural and forest resources of the United States. The damage they cause could be similar in magnitude to the recent introduction of the Asian long-horned beetle (ALB) *Anaplophora glabripennis* (Coleoptera: Cerambycidae). Our regulations have already been changed to prevent further introductions of ALB from China, but adopting the IPPC guidelines could prevent the introduction of ALB or similar wood borers from other parts of the world, as well as prevent the introduction of other types of pests such as woodwasps and bark beetles. Imposing the IPPC guidelines' treatment and other requirements to prevent these introductions would yield net benefits. The benefits (avoided losses) that can be gained by preventing introduction of these pest types are discussed below. The actual magnitude of the benefits cannot be definitively ascertained, but they are likely to be much larger than the associated costs.

As an indicator of the damage ALB or similar wood borers could cause if introduced again in the future, consider the costs of the ALB introduction from China. The ALB, first discovered in New York City in 1996 and in Chicago, Illinois in 1998, was most likely introduced on wood packing material from China. The present value of urban trees at risk in the two affected cities is estimated at $59 million over some 50 years. About $6 million of urban trees have been destroyed due to pest infestation and eradication efforts since the introduction of ALB. So far, APHIS and State and local governments have spent over $59 million in eradicating the pest in the two localities. If only New York City and Chicago were considered, it would appear that the current eradication program has yielded a net loss of about $6 million (spending $59 million in control activities to save $53 million in resources). However, the eradication and quarantine activities are also the reason the pest has been confined to the two cities where it was initially detected. The potential damages from ALB spread to other areas can be gleaned from the Nowak *et al.* study that estimated losses to seven other cities. The present value of damage to urban trees in Baltimore City alone, not allowing for intervention, was estimated to be $399 million. Additionally, without governmental intervention, forest resources would also be at risk.

Wood borers such as ALB could cause the most damage of all types of pests associated with SWPM, but we have also projected that other types of pests could cause substantial damage. These include the Sirex woodwasp (Family: Siricidae) and the Eurasian spruce bark beetle (Family: Scolytidae). Projections of physical damages that can be caused by these types of pests range up to $48—$607 million and $208 million, respectively. Perhaps the greatest devastation posed by these pests that cannot be fully captured monetarily is their potential to cause irreversible loss to native tree species and consequential alterations to the environment and ecosystem.

The recent introduction of the emerald ash borer (EAB), Agrilus planipennis (Coleoptera: Buprestidae) a pest of ash trees, in Michigan and parts of Canada in June 2002 is a reminder of this threat. It is not known how the pest arrived in North America but, as with other exotic beetles, infested SWPM from Asia is suspected. The pest may have arrived some five years ago, before the interim rule on China was implemented. Ironically, many of the large ash trees favored by the pest were originally planted to replace elm trees killed by Dutch elm disease caused by yet another exotic pathogen. A preliminary assessment of the potential impact of the EAB on urban and timberland ash trees in the six quarantined counties in Michigan comes to about $11 billion in replacement costs alone. The nursery stock industry in the affected counties reported a loss in sales so far of $2 million. These estimates serve to highlight the potential magnitude of damage that could be caused by one outbreak alone of a pest on the targeted list.

The adoption of the IPPC treatment standards for all importing countries would address pest threats posed not only by Cerambycidae, which was the primary target of the China rule, but nine other pest families as well. Approximately 95 percent of pests intercepted by APHIS inspectors in shipments worldwide are pests on the IPPC target pest list.

The treatment requirements proposed in this rule are not expected to completely eliminate all pest interceptions related to SWPM. As evident from data reported between 2000 and 2001, two years following the implementation of the China rule, 7 percent of pest interceptions was still associated with China imports. To the extent that pest interceptions would be reduced, the risk of an outbreak would also be lower than in the absence of the rule. However, because pests continue to be intercepted albeit at a lower rate, benefits need to be correspondingly adjusted to reflect the risk.

In discussing the costs that might result from adopting this proposed rule, it is essential to recognize that to some degree these costs will accrue when other countries adopt the IPPC Guidelines, whether or not the United States also adopts them. As other countries impose IPPC treatment requirements on imports containing SWPM the global SWPM market will be greatly affected, likely causing a broader impact on the domestic wood packaging industry than the provisions of this proposed rule.

The impact of this rule would fall largely on foreign manufacturers of pallets. The increased treatment cost may add to the cost of packaging and transporting of goods which, in turn, would affect importers of commodities transported on pallets and final consumers of those goods are potentially impacted by this rule. The required treatments would add to the cost of packaging and transport of goods. Due to the very large number of pallets that are used to assist imported cargo, the overall cost may be substantial. The extent of the impact on U.S. consumers would depend on the ability of importers to pass on the additional costs to respective buyers. It is expected that most of the cost of treating pallets will be borne by foreign pallet manufacturers. Furthermore, given the small value of pallets as compared to the value of trade, increases in pallet prices are not expected to have a measurable effect on domestic consumers or on trade.

We also expect this proposed rule to affect U.S. purchasers of imported pallets, crates and boxes. Between 1999 and 2001, an average of 38 million pallets was imported into the United States, over 80 percent of which came from Canada. Imported SWPM was valued at $150 million during this time period. At approximately $3.95 per piece, imported pallets are less expensive than domestic pallets where the average price ranges between $8 and $12 per pallet. Canadian pallets are primarily used by industries close to the U.S. and Canadian border. The wood pallet market is highly competitive and the demand for imported pallets can be

characterized as elastic. While pallets made of alternative materials such as plastic, corrugated fiberboard, or processed wood are imperfect substitutes for wood, one wood pallet can easily substitute for another wood pallet.

Assuming a perfectly elastic supply and perfectly inelastic demand for imported pallets, and assuming a treatment cost that adds about $2 on average to a pallet, U.S. purchasers of imported pallets could lose an estimated $76 million in higher costs. The true extent of the impact however would be lower than this amount because demand is likely to be elastic and foreign importers are expected to share a greater burden of the cost increase. We do not know treatment costs for foreign pallet producers, but given the availability of substitutable domestic wood pallets, we do not expect U.S. purchasers of imported pallets to be significantly impacted.

The adoption of this rule would indirectly affect manufacturers who sell pallets, crates and boxes to foreign buyers. There are an estimated 3,000 manufacturers of pallets and containers in the United States. The primary importers of these items are Canada and Mexico. As these two countries prepare to implement the IPPC standard in 2003, only treated wood packing materials would likely be in demand for export. The extent of the impact on pallet and container manufacturers would depend on the ability of individual firms to put in place the necessary infrastructure for conducting treatments as required by the international standard. The number of firms that engage in export and would therefore be impacted is unknown. Regardless, the impact on the overall SWPM industry is expected to be small as the quantity of total pallets exported, estimated at about 10 million units, comprises only 2.5 percent of the 400 to 500 million pallets in production in the U.S. each year.

Domestic manufacturers of wood pallets may be indirectly affected in one other way. Because of the increasing trend in recycling of pallets for cost-cutting purposes, manufacturers may be faced with new demands for treated SWPM from domestic exporters who reuse pallets and wood containers to ship goods back from foreign countries. The number of firms affected in this way is unknown and may be large.

In sum, this rule would impact foreign manufacturers of pallets which may, in turn, affect importers and final consumers of goods transported on pallets. Because the cost of a pallet is a very small share of the bundle of goods transported on pallets, cost increases due to the treatment requirements are not expected to significantly affect domestic consumers and thus would not have a measurable impact on the flow of trade. This rule is not expected to reduce the amount of goods shipped internationally as is evident from observing trends in imports from China since implementation of the interim rule in 1999.

This rule would also affect U.S. consumers of imported pallets. Given the substitutability of wood pallets, the impact on consumers is expected to be small due to the availability of wood pallets. Foreign importers are likely to absorb a greater share of the cost increase.

The simultaneous adoption of the treatment standards by IPPC member countries that is directed at U.S. exports would likely create a broader impact on the domestic wood packaging industry than the provisions of this proposed rule. The adoption of the standard globally would ensure that U.S. producers and exporters are not placed at a competitive disadvantage by this rule as compared to their trading partners.

Executive Order 12988

This proposed rule has been reviewed under Executive Order 12988, Civil Justice Reform. If this proposed rule is adopted: (1) All State and local laws and regulations that are inconsistent with this rule will be preempted; (2) no retroactive effect will be given to this rule; and (3) administrative proceedings will not be required before parties may file suit in court challenging this rule.

National Environmental Policy Act

An environmental impact statement (EIS) has been prepared for this proposed rule in accordance with: (1) The National Environmental Policy Act of 1969 (NEPA), as amended (42 U.S.C. 4321 *et seq.*), (2) regulations of the Council on Environmental Quality for implementing the procedural provisions of NEPA (40 CFR parts 1500–1508), (3) USDA regulations implementing NEPA (7 CFR part 1b), and (4) APHIS' NEPA Implementing Procedures (7 CFR part 372).

Copies of the EIS are available for public inspection in our reading room (information on the location and hours of the reading room is provided at the beginning of this proposed rule under the heading **ADDRESSES**). In addition, copies may be obtained by calling or writing to the individual listed under **FOR FURTHER INFORMATION CONTACT**.

A notice of intent to prepare the EIS was published in the **Federal Register** on August 14, 2002 (67 FR 52893; Docket No. 02–032–1) and a notice availability of the draft EIS was published in the **Federal Register** on November 15, 2002 (67 FR 69216–69217, Docket No. ER–FRL–6634–9).

Paperwork Reduction Act

In accordance with section 3507(d) of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the information collection or recordkeeping requirements included in this proposed rule have been submitted for approval to the Office of Management and Budget (OMB). Please send written comments to the Office of Information and Regulatory Affairs, OMB, Attention: Desk Officer for APHIS, Washington, DC 20503. Please state that your comments refer to Docket No. 02–032–2. Please send a copy of your comments to: (1) Docket No. 02–032–2, Regulatory Analysis and Development, PPD, APHIS, Station 3C71, 4700 River Road Unit 118, Riverdale, MD 20737–1238, and (2) Clearance Officer, OCIO, USDA, room 404–W, 14th Street and Independence Avenue SW., Washington, DC 20250. A comment to OMB is best assured of having its full effect if OMB receives it within 30 days of publication of this proposed rule.

This rule would require persons treating SWPM in accordance with the regulations to apply an internationally recognized mark, and would require the plant protection services of countries where the SWPM is treated to develop procedures to monitor and audit the treatments. The information we propose to collect is the minimum needed to protect the United States from incursion by destructive insect pests and plant diseases. Failing to collect this information would cripple our ability to ensure that SWPM does not harbor destructive plant pests. APHIS inspectors at ports would examine SWPM for the IPPC-approved international mark required by the regulations. Therefore, the international mark is, in effect, a certificate verifying proper treatment. Persons who forge, alter, or fraudulently use the mark would be subject to administrative or criminal penalties.

We are soliciting comments from the public (as well as affected agencies) concerning our proposed information collection and recordkeeping requirements. These comments will help us:

(1) Evaluate whether the proposed information collection is necessary for the proper performance of our agency's functions, including whether the information will have practical utility;

(2) Evaluate the accuracy of our estimate of the burden of the proposed information collection, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the information collection on those who are to respond (such as through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology; *e.g.*, permitting electronic submission of responses).

Estimate of burden: Public reporting burden for this collection of information is estimated to average 0.0041 hours per response.

Respondents: Importers/exporters of goods sent to the United States and foreign plant health protection authorities.

Estimated annual number of respondents: 3,000.

Estimated annual number of responses per respondent: 3,300.

Estimated annual number of responses: 9,900,000.

Estimated total annual burden on respondents: 40,590 hours. (Due to averaging, the total annual burden hours may not equal the product of the annual number of responses multiplied by the reporting burden per response.)

Copies of this information collection can be obtained from Mrs. Celeste Sickles, APHIS' Information Collection Coordinator, at (301) 734–7477.

Government Paperwork Elimination Act Compliance

The Animal and Plant Health Inspection Service is committed to compliance with the Government Paperwork Elimination Act (GPEA), which requires Government agencies in general to provide the public the option of submitting information or transacting business electronically to the maximum extent possible. For information pertinent to GPEA compliance related to this proposed rule, please contact Mrs. Celeste Sickles, APHIS' Information Collection Coordinator, at (301) 734–7477.

List of Subjects in 7 CFR Part 319

Bees, Coffee, Cotton, Fruits, Honey, Imports, Logs, Nursery Stock, Plant diseases and pests, Quarantine, Reporting and recordkeeping requirements, Rice, Vegetables.

Accordingly, we propose to amend 7 CFR part 319 as follows:

PART 319—FOREIGN QUARANTINE NOTICES

1. The authority citation for part 319 would continue to read as follows:

Authority: 7 U.S.C. 450, 7711–7714, 7718, 7731, 7732, 7751–7754, and 7760; 21 U.S.C. 136 and 136a; 7 CFR 2.22, 2.80, and 371.3.

2. In § 319.40–3, paragraph (b) would be revised to read as follows:

§ 319.40–3 General permits; articles that may be imported without a specific permit; articles that may be imported without either a specific permit or an importer document.

* * * * *

(b) *Solid wood packing material.* Solid wood packing material, whether in actual use as packing for regulated or nonregulated articles or imported as cargo, may be imported into the United States under a general permit in accordance with the following conditions:

(1) *Treatment.* The solid-wood packing materials must have been:

(i) Heat treated to achieve a minimum wood core temperature of 56°C for a minimum of 30 minutes. Such treatment may employ kiln-drying, chemical pressure impregnation, or other treatments that achieve this specification through the use of steam, hot water, or dry heat; or,

(ii) Fumigated with methyl bromide in an enclosed area for at least 16 hours at the following dosage, stated in terms of grams of methyl bromide per cubic meter of the enclosure being fumigated. Following fumigation, fumigated products must be aerated to reduce the concentration of fumigant below hazardous levels, in accordance with label instructions approved by the U.S. Environmental Protection Agency:

Temperature	Initial dose (g/m³)	Minimum required concentration (g/m³) after:			
		0.5 hrs.	2 hrs.	4 hrs.	16 hrs.
21 °C or above	48	36	24	17	14
16 °C or above	56	42	28	20	17
11 °C or above	64	48	32	22	19

(2) *Marking.* The solid wood packing material must be marked in a visible location on each article, preferably on at least two opposite sides of the article, with a legible and permanent mark that indicates that the article meets the requirements of this paragraph. The mark must be approved by the International Plant Protection Convention in its International Standards for Phytosanitary Measures to certify that wood packaging material has been subjected to an approved measure, and must include a unique graphic symbol, the ISO two-letter country code for the country that produced the solid wood packing material, a unique number assigned by the national plant protection agency of that country to the producer of the solid wood packing material, and an abbreviation disclosing the type of treatment (*e.g.*, HT for heat treatment or MB for methyl bromide fumigation).

(3) *Immediate reexport of SWPM without required mark.* An inspector at the port of first arrival may order the immediate reexport of SWPM that is imported without the mark required by paragraph (b)(2) of this section, in addition to or in lieu of any port of first arrival procedures required by § 319.40–9 of this part.

(4) *Exception for Department of Defense.* Solid wood packing material used by the Department of Defense (DOD) of the U.S. Government to package nonregulated articles, including commercial shipments pursuant to a DOD contract, may be imported into the United States without the mark required by paragraph (b)(2) of this section.

* * * * *

§ 319.40–5 [Amended]

3. In § 319.40–5, paragraphs (g) through (k) would be removed.

Done in Washington, DC, this 14th day of May 2003.

Bill Hawks,

Under Secretary, Marketing and Regulatory Programs.

[FR Doc. 03–12503 Filed 5–19–03; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2003–NE–05–AD]

RIN 2120–AA64

Airworthiness Directives; Turbomeca S.A. Arrius 2 B1, 2 B1A, 2 B1A 1, and 2 K1 Turboshaft Engines

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: The FAA proposes to adopt a new airworthiness directive (AD) for Turbomeca S.A. Arrius 2 B1, 2 B1A, 2 B1A 1, and 2 K1 turboshaft engines. This proposed AD would require replacement of the gas generator high pressure (HP) turbine disk before further flight after the engine has accumulated 5 minutes of operating time at the 2½ minute one engine inoperative (OEI) power rating. This proposed AD is prompted by a failure of an HP turbine blade during accelerated aging simulation tests performed by the manufacturer on an Arrius 2 B1A engine. The actions specified in this proposed AD are intended to prevent engine failure of the only operating engine while experiencing an OEI condition.

DATES: We must receive any comments on this proposed AD by July 21, 2003.

ADDRESSES: Use one of the following addresses to submit comments on this proposed AD:

- *By mail:* Federal Aviation Administration (FAA), New England Region, Office of the Regional Counsel, Attention: Rules Docket No. 2003–NE–05–AD, 12 New England Executive Park, Burlington, MA 01803–5299.
- *By fax:* (781) 238–7055.
- *By e-mail: 9-ane-adcomment@faa.gov.*

You may get the service information identified in this proposed AD from Turbomeca S.A., 64511 Bordes Cedex, France; telephone 33 05 59 64 40 00, fax 33 05 59 64 60 80.

You may examine the AD docket at the FAA, New England Region, Office of the Regional Counsel, 12 New England Executive Park, Burlington, MA.

FOR FURTHER INFORMATION CONTACT: Antonio Cancelliere, Aerospace Engineer, Engine Certification Office, FAA, Engine and Propeller Directorate, 12 New England Executive Park, Burlington, MA 01803–5299; telephone (781) 238–7751; fax (781) 238–7199.

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite you to submit any written relevant data, views, or arguments regarding this proposal. Send your comments to an address listed under **ADDRESSES.** Include "AD Docket No. 2003–NE–05–AD" in the subject line of your comments. If you want us to acknowledge receipt of your mailed comments, send us a self-addressed, stamped postcard with the docket number written on it; we will date-stamp your postcard and mail it back to you. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of the proposed AD. If a person contacts us through a nonwritten communication, and that contact relates to a substantive part of this proposed AD, we will summarize the contact and place the summary in the docket. We will consider all comments received by the closing date and may amend the proposed AD in light of those comments.

We are reviewing the writing style we currently use in regulatory documents. We are interested in your comments on whether the style of this document is clear, and your suggestions to improve the clarity of our communications that affect you. You may get more information about plain language at *http://www.plainlanguage.gov.*

Examining the AD Docket

You may examine the AD Docket (including any comments and service information), by appointment, between 8 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays. See **ADDRESSES** for the location.

Discussion

The Direction Generale de L'Aviation Civile (DGAC), which is the airworthiness authority for France, recently notified the FAA that an unsafe condition may exist on Turbomeca S.A. Arrius 2 B1, 2 B1A, 2 B1A 1, and 2 K1 turboshaft engines. The DGAC advises that the manufacturer has performed accelerated aging simulation tests on an Arrius 2 B1A engine. The simulation tests were interrupted due to a failure of an HP turbine blade while the engine was running at the "one engine inoperative" power rating. The manufacturer has concluded that prolonged exposure of the HP turbine disk and blades at the 2½ minute OEI power rating may cause high exhaust gas temperature to initiate a creeping phenomenon of the blade material, leading to blade and disk failure. To date, no such failure event in the worldwide fleet has been reported.

FAA's Determination and Requirements of the Proposed AD

These Turbomeca S.A. Arrius 2 B1, 2 B1A, 2 B1A 1, and 2 K1 turboshaft engines, manufactured in France, are type-certificated for operation in the United States under the provisions of section 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, the DGAC has kept us informed of the situation described above. We have examined the DGAC's findings, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States. Therefore, we are proposing this AD, which would require replacement of the gas generator HP turbine disk before further flight after an engine's accumulated operating time at the 2½ minute OEI power rating exceeds 5 minutes.

Changes to 14 CFR Part 39—Effect on the Proposed AD

On July 10, 2002, we published a new version of 14 CFR part 39 (67 FR 47997, July 22, 2002), which governs the FAA's AD system. This regulation now includes material that relates to altered products, special flight permits, and alternative methods of compliance. This material previously was included in each individual AD. Since this material is included in 14 CFR part 39, we will not include it in future AD actions.

Costs of Compliance

There are approximately 396 Turbomeca S.A. Arrius 2 B1, 2 B1A, and 2 B1A 1, turboshaft engines, and 57 Arrius 2 K1 turboshaft engines of the affected design in the worldwide fleet. We estimate that 57 engines installed on helicopters of U.S. registry would be affected by this proposed AD. To date, no failure events in the worldwide fleet have been reported. Since the engine operating time usage at the 2½ minute OEI power rating is very limited, no cost to U.S. operators is foreseen.

Regulatory Findings

We have determined that this proposed AD would not have federalism implications under Executive Order 13132. This proposed AD would not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government.

For the reasons discussed above, I certify that the proposed regulation:

1. Is not a "significant regulatory action" under Executive Order 12866;
2. Is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and
3. Would not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

We prepared a summary of the costs to comply with this proposal and placed it in the AD Docket. You may get a copy of this summary by sending a request to us at the address listed under **ADDRESSES.** Include "AD Docket No. 2003–NE–05–AD" in your request.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, under the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend 14 CFR part 39 as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. The FAA amends § 39.13 by adding the following new airworthiness directive:

Turbomeca S.A.: Docket No. 2003–NE–05–AD.

Comments Due Date

(a) The Federal Aviation Administration (FAA) must receive comments on this airworthiness directive (AD) action by July 21, 2003.

Affected ADs

(b) None.

Applicability

(c) This AD is applicable to Turbomeca S.A. Arrius 2 B1, 2 B1A, 2 B1A 1, and 2 K1 turboshaft engines. These engines are installed on, but not limited to, Eurocopter Deutschland GmbH model EC135 T1 and Agusta S.p.A. model A109 helicopters.

Unsafe Condition

(d) This AD was prompted by a failure of an HP turbine blade during accelerated aging simulation tests performed by the manufacturer on an Arrius 2 B1A engine. The actions specified in this AD are intended to prevent engine failure of the only operating engine while at one engine inoperative (OEI) condition.

Compliance

(e) Compliance with this AD is required as indicated, unless already done.

(f) After the effective date of this AD, replace the gas generator HP turbine disk before further flight after the engine has accumulated 5 minutes operating time at the 2½ minute OEI power rating.

Alternative Methods of Compliance

(g) Alternative methods of compliance must be requested in accordance with 14 CFR part 39.19, and must be approved by the Manager, Engine Certification Office, FAA.

Material Incorporated by Reference

(h) None.

Related Information

(i) The subject of this AD is addressed in DGAC airworthiness directive 2003–098(A), dated March 5, 2003, and Turbomeca S.A. Alert Service Letters No. 2174/02/ ARRIUS2B1/19 and No. 2175/02/ ARRIUS2K1/3, both dated July 30, 2002.

Issued in Burlington, Massachusetts, on May 14, 2003.

Francis A. Favara,

Acting Manager, Engine and Propeller Directorate, Aircraft Certification Service.

[FR Doc. 03–12541 Filed 5–19–03; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[REG–157302–02]

RIN 1545–BB58

Deemed IRAs in Qualified Retirement Plans

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: This document contains proposed regulations that provide guidance regarding accounts or annuities added to qualified employer plans where such accounts or annuities are to be treated as individual retirement plans. These regulations reflect changes made to the law by the Economic Growth and Tax Relief Reconciliation Act of 2001 and by the Job Creation and Worker Assistance Act of 2002. These regulations will affect administrators of, participants in, and beneficiaries of qualified employer plans.

DATES: Written and electronic comments and requests for a public hearing must be received by August 18, 2003.

ADDRESSES: Send submissions to: CC:PA:RU (REG–157302–02) room 5226, Internal Revenue Service, POB 7604, Ben Franklin Station, Washington, DC 20044. Submissions may be hand-delivered Monday through Friday between the hours of 8 a.m. and 4 p.m. to: CC:PA:RU (REG–157302–02), Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue, NW., Washington DC. Alternatively, taxpayers may submit comments electronically directly to the IRS Internet site at *www.irs.gov/regs.*

FOR FURTHER INFORMATION CONTACT: Concerning the regulations, Linda C. Phillips or Robert M. Walsh at (202) 622–6090; concerning submissions and delivery of comments, LaNita VanDyke (202) 622–7180 (not toll-free numbers).

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act

The collection of information contained in this notice of proposed rulemaking has been submitted to the Office of Management and Budget for review in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)). Comments on the collection of information should be sent to the Office of Management and Budget, Attn: Desk Officer for the Department of the Treasury, Office of Information and Regulatory Affairs, Washington, DC 20503, with copies to the Internal Revenue Service, Attn: IRS Reports Clearance Officer, W:CAR:MP:T:T:SP, Washington, DC 20224. Comments on the collection of information should be received by July 21, 2003. Comments are specifically requested concerning:

Whether the proposed collection of information is necessary for the proper performance of the functions of the IRS, including whether the information will have practical utility;

The accuracy of the estimated burden associated with the proposed collection of information (see below);

How the quality, utility, and clarity of the information to be collected may be enhanced;

How the burden of complying with the proposed collection of information may be minimized, including through the application of automated collection techniques or other forms of information technology; and

Estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

The collection of information in this proposed regulation is in § 1.408(q)–1(f)(2). This collection of information is required by the IRS to ensure that the separate requirements of qualified employer plans and individual retirement plans are satisfied. The

collection of information is required to obtain a benefit. Specifically, this information is required for a taxpayer who wants to include individual retirement plans as part of its qualified employer plan.

Estimated total annual reporting and/or recordkeeping burden: 40,000 hours.

Estimated average annual burden hours per respondent and/or recordkeeper: 50 hours.

Estimated number of respondents and/or recordkeepers: 800.

The estimated frequency of responses is on occasion.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a valid control number assigned by the Office of Management and Budget.

Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Background

This document contains proposed amendments to the Income Tax Regulations (26 CFR part 1) under section 408(q) of the Internal Revenue Code (Code) relating to the addition of separate accounts and annuities to qualified employer plans. Section 408(q) was added to the Code by section 602 of the Economic Growth and Tax Relief Reconciliation Act of 2001 (EGTRRA), Public Law 107–16 (115 Stat.117) and amended by section 411 of the Job Creation and Worker Assistance Act of 2002 (JCWAA), Public Law 107–147 (116 Stat. 21).

Explanation of Provisions

Section 408(q) provides that, if a qualified employer plan allows employees to make voluntary employee contributions to a separate account or annuity established under the plan and under the terms of the qualified employer plan such account or annuity meets the applicable requirements of section 408 or section 408A for an individual retirement account or annuity, then such account or annuity shall be treated for purposes of the Code in the same manner as an individual retirement plan rather than as a qualified employer plan. It further provides that contributions to such a "deemed IRA" shall be treated as contributions to the deemed IRA rather than to the qualified employer plan. Section 408(q) also expressly provides that the prohibition of commingling IRA assets with other property except in a common trust fund or common investment fund shall not apply to deemed IRAs. These proposed regulations define *qualified employer plan* and *voluntary employee contribution* as they are defined in section 408(q) of the Code.

Rules regarding deemed IRAs are also provided in section 4(c) of the Employee Retirement Income Security Act of 1974, Public Law 93–406 (88 Stat. 829) (ERISA), 29 U.S.C. 1003(c), as amended by Public Law 107–147 (116 Stat. 21). Section 4(c) provides that if a pension plan allows an employee to make voluntary employee contributions to a deemed IRA under section 408(q) of the Code, then the deemed IRA shall not be treated as part of such plan (or as a separate pension plan) for purposes of any provision of title I of ERISA other than section 403(c), 404, or 405 (relating to exclusive benefit, and fiduciary and co-fiduciary responsibilities). Section 4(c), as amended by JCWAA, further provides that the enforcement and administration rules of part 5 of subtitle B of title I of ERISA apply to deemed IRAs and that the applicable ERISA provisions shall apply to deemed IRAs in a manner similar to their application to a simplified employee pension (SEP) under Code section 408(k). Because title I of ERISA is within the jurisdiction of the Department of Labor, these regulations do not address the application of title I to deemed IRAs. Also, these regulations do not address the application of Code section 4975 to deemed IRAs. Section 102 of Reorganization Plan No. 4 of 1978 provides that the authority to interpret section 4975 has been transferred to the Department of Labor.

In general, these proposed regulations provide that a qualified employer plan and a deemed IRA are to be treated as separate entities under the Code and that each entity is subject to the rules generally applicable to that entity for purposes of the Code. Thus, a qualified employer plan (excluding the deemed IRA portion of the plan), whether it is a plan under section 401(a) (including defined benefit plans), 403(a), or 403(b), or a governmental plan under section 457(b), is subject to the rules applicable to that type of plan rather than to the rules applicable to IRAs under section 408 or 408A. Similarly, the deemed IRA portion of the qualified employer plan is generally subject to the rules applicable to traditional and Roth IRAs under sections 408 and 408A, respectively, and not to the rules applicable to plans under section 401(a), 403(a), 403(b), or 457.

Accordingly, these proposed regulations provide that issues regarding eligibility, participation, disclosure, nondiscrimination, contributions, distributions, investments, and plan administration are generally to be resolved under the separate rules (if any) applicable to each entity. In addition, these regulations specifically address several issues regarding the separate applicability of plan and IRA rules. For example, these proposed regulations provide that the availability of a deemed IRA is not a benefit, right or feature of the qualified employer plan under § 1.401(a)(4)–4. Thus, the availability of a deemed IRA is not subject to § 1.401(a)(4)–1(b)(3) which requires that benefits, rights, and features be available in a plan in a nondiscriminatory manner.

Similarly, these proposed regulations provide that the rules applicable to deemed IRAs with respect to the trusteeship of the IRA and deductibility of IRA contributions are the rules applicable to traditional IRAs and Roth IRAs under the Code. Thus, for example, taxpayers with compensation in excess of the limits imposed by sections 219 and 408A may either not be able to make contributions to deemed IRAs or the deductibility of such contributions may be limited. For deemed IRAs that are traditional IRAs, as with other traditional IRAs, the employee must make a determination as to whether a particular contribution is deductible and make the proper entries on his or her tax return. Pursuant to section 219(f)(3), a contribution made on account of the preceding taxable year will be treated as made on the last day of such taxable year if the contribution is actually made to the IRA not later than the time prescribed by law for filing the return for such taxable year (not including extensions). However, section 219(f)(5), regarding the taxable year in which amounts paid by an employer to an individual retirement plan are includible in the employee's income, is not applicable to deemed IRAs. Thus, amounts withheld from an employee's compensation and contributed to a deemed IRA, and which are treated as made on the last day of the preceding taxable year pursuant to section 219(f)(3), shall be includible in income in the year in which they are withheld rather than in the preceding taxable year.

The proposed regulations also provide that the minimum distribution rules of section 401(a)(9) of the Code must be met separately with respect to the qualified employer plan and the deemed IRA. The determination of whether a qualified employer plan satisfies the required minimum distribution rules is made without regard to whether a participant satisfies the required minimum distribution rules with respect to the deemed IRA.

Although section 408(a) provides that an individual retirement account is a trust, these regulations do not require that a separate trust be created for each deemed IRA that is an individual retirement account. Rather, the regulations provide that all such deemed IRAs may be held in a single trust as long as that trust is separate from the trust that holds the other assets of the plan. Where a single trust is created for the deemed IRAs, the regulations also provide that there must be separate accounting for each deemed IRA and each deemed IRA must satisfy all of the requirements of section 408(a) (except the prohibition of commingling under paragraph (a)(5) of that section). These proposed regulations also provide a comparable rule for deemed IRAs that are individual retirement annuities.

These regulations provide three exceptions to the general rule that the qualified employer plan and the deemed IRA are separate entities subject to their separate rules for purposes of the Code. First, the regulations state that the qualified employer plan document must contain the deemed IRA provisions. In general, the plan document must provide for a deemed IRA and a deemed IRA must be in effect at the time the deemed IRA contributions are accepted. However, plan sponsors who want to provide deemed IRAs for plan years beginning in 2003 are not required to have such provisions in their plan document before the end of such plan years. *See* Revenue Procedure 2003–13 (2003–4 I.R.B. 317).

Second, pursuant to section 408(q)(1), the prohibition of section 408(a)(5) on the commingling of IRA assets with other property except in a common trust fund or a common investment fund is not applicable to the assets of a deemed IRA. Thus, the assets of the deemed IRA may be commingled for investment purposes with the assets of the other portion of the plan. Where the assets are commingled, the regulations require that separate accounts be maintained and that gains and losses must be allocated to these separate accounts. For example, if a deemed IRA is established under a defined contribution plan that is qualified under section 401(a) and the assets of the plan and the deemed IRA are commingled for investment purposes, then any gains or losses from the investment of the commingled assets of an employee must be allocated to the separate accounts of the employee under the deemed IRA and the plan.

Third, these proposed regulations provide that the failure of any of the deemed IRAs maintained by the plan to satisfy the applicable requirements of section 408 or 408A will cause the plan as a whole to fail to satisfy the plan's qualification requirements. Section 408(q) states that if a qualified employer plan elects to allow voluntary employee contributions to a separate account or annuity and that separate account or annuity meets the applicable requirements of section 408 or section 408A, then the account or annuity will be treated as an individual retirement plan rather than as a qualified employer plan. Section 408(q) applies only if the deemed IRAs maintained by the plan meet the requirements of section 408 or section 408A. If any of the deemed IRAs do not meet the applicable requirements, then section 408(q) does not apply, and the qualified employer plan will fail to satisfy its qualification requirements.

These proposed regulations provide a different rule where the portion of the plan that is not a deemed IRA fails to satisfy the qualification requirements of section 401(a). In that case, the deemed IRA is not a deemed IRA because section 408(q) does not apply where the plan is not a qualified employer plan. The regulations provide, however, that although the account or annuity that was intended to be a deemed IRA is not a deemed IRA, it may still be treated as a traditional or a Roth IRA if it satisfies the applicable requirements of section 408 or 408A (including the prohibition of commingling under paragraph (a)(5) of section 408).

If, as discussed above, a qualified employer plan or a deemed IRA fails to satisfy the applicable qualification requirements, it may nevertheless be treated as satisfying those requirements if the Employee Plans Compliance Resolution System (EPCRS), Rev. Proc. 2002–47 (2002–29 I.R.B. 133), or other administrative practice is used to correct the qualification failures. In this regard, the IRS intends that when Rev. Proc. 2002–47 is updated, it will include provisions permitting submissions for deemed IRAs.

These regulations also provide that a deemed IRA may be either a traditional IRA under section 408 or a Roth IRA under section 408A. However, because contributions to deemed IRAs are limited to employee contributions, while SIMPLE IRAs under section 408(p) and SEPs under section 408(k) may only receive employer contributions, the regulations provide that SIMPLE IRAs and SEPs may not be used as deemed IRAs.

As noted above, these regulations provide a general principle that a qualified employer plan and the deemed IRA feature are generally treated as separate entities under the Code and each is subject to the rules applicable to that entity. This principle can be applied to address a variety of issues which might arise with respect to deemed IRAs and, as a result, the regulations do not contain specific provisions addressing these issues. For example, as noted in Announcement 99–2 (1999–1 C.B. 305), employers may permit employees to contribute to traditional or Roth IRAs by direct deposits through payroll deduction. In addition, employees making direct deposits to traditional IRAs of deductible contributions may be able to adjust their Federal income tax withholding to receive a more immediate tax benefit from their contributions. Because the IRA rules apply to deemed IRAs as they would to traditional and Roth IRAs, the provisions of Announcement 99–2 apply to deemed IRAs.

Similarly, these regulations expressly provide that the rules applicable to rollovers and transfers to and from IRAs also apply to rollovers and transfers to and from deemed IRAs, but the regulations do not address all of the aspects of such rollovers or transfers. For example, because section 408(c)(3) permits the surviving spouse of an IRA owner to treat the IRA as his or her own, the same rules apply to deemed IRAs although not expressly stated in these regulations. Thus, in accordance with section 408(c)(3), a qualified employer plan may permit a surviving spouse to treat a decedent's deemed IRA as his or her own. However, the surviving spouse, as a non-employee, may not make voluntary employee contributions to that deemed IRA.

Also, because the qualified employer plan and the deemed IRA are generally treated as separate entities, the early distribution rules of section 72(t) are applied separately to the two entities. Thus, a determination as to whether a distribution is a part of a series of substantially equal periodic payments under section 72(t)(2)(iv) will be determined separately for the qualified employer plan and for the deemed IRA.

Proposed Effective Date

The regulations are proposed to apply beginning on or after August 1, 2003. Taxpayers may rely upon these proposed regulations for guidance pending the issuance of final regulations. If, and to the extent, future guidance is more restrictive than the guidance in these proposed regulations,

the future guidance will be applied without retroactive effect.

Special Analyses

It has been determined that this notice of proposed rulemaking is not a significant regulatory action as defined in Executive Order 12866. Therefore, a regulatory assessment is not required. It has also been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to these regulations. It is hereby certified that the collection of information in these regulations will not have a significant economic impact on a substantial number of small entities. The collection of information in the regulations is in § 1.408(q)–1(f)(2) and consists of the requirement that deemed IRAs must be held in trusts or annuity contracts separate from the trust or annuity contract of the qualified employer plan. This certification is based on the fact that the cost of maintaining these separate trusts and annuity contracts is small, particularly for small entities. Therefore, a Regulatory Flexibility Analysis under the Regulatory Flexibility Act (5 U.S.C. chapter 6) is not required. Pursuant to section 7805(f) of the Code, this notice of proposed rulemaking will be submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business.

Drafting Information

The principal authors of these regulations are Robert M. Walsh and Linda C. Phillips, Office of Division Counsel/Associate Chief Counsel (Tax Exempt and Government Entities). However, other personnel from the IRS and Treasury participated in the development of these regulations.

List of Subjects in 26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

Proposed Amendments to the Regulations

Accordingly, 26 CFR part 1 is proposed to be amended as follows:

PART 1—INCOME TAXES

Paragraph 1. The authority citation for part 1 is amended by adding an entry in numerical order to read in part as follows:

Authority: 26 U.S.C. 7805 * * *

§ 1.408(q)–1 also issued under 26 U.S.C. 408(q). * * *

Par. 2. Section 1.408(q)–1 is added to read as follows:

§ 1.408(q)–1 Deemed IRAs in qualified employer plans.

(a) *In general.* Under section 408(q) a qualified employer plan may permit employees to make voluntary employee contributions to a separate account or annuity established under the plan. If the requirements of section 408(q) and this section are met, such account or annuity is treated in the same manner as an individual retirement plan under section 408 or section 408A (and contributions to such an account or annuity are treated as contributions to an individual retirement plan and not to the qualified employer plan). The account or annuity is referred to as a deemed IRA.

(b) *Types of IRAs.* If the account or annuity meets the requirements applicable to traditional IRAs under section 408, the account or annuity is deemed to be a traditional IRA, and if the account or annuity meets the requirements applicable to Roth IRAs under section 408A, the account or annuity is deemed to be a Roth IRA. Simplified employee pensions (SEPs) under section 408(k) and SIMPLE IRAs under section 408(p) may not be used as deemed IRAs.

(c) *Separate entities.* Except as provided in paragraph (d) and (g) of this section, the qualified employer plan and the deemed IRA are treated as separate entities under the Internal Revenue Code and are subject to the separate rules applicable to qualified employer plans and IRAs, respectively. Issues regarding eligibility, participation, disclosure, nondiscrimination, contributions, distributions, investments, and plan administration are generally to be resolved under the separate rules (if any) applicable to each entity under the Internal Revenue Code.

(d) *Exceptions.* The following exceptions to treatment of a deemed IRA and the qualified employer plan as separate entities apply:

(1) The plan document of the qualified employer plan must contain the deemed IRA provisions and a deemed IRA must be in effect at the time the deemed IRA contributions are accepted. Notwithstanding the preceding sentence, employers that want to provide for deemed IRAs for plan years beginning before January 1, 2004 (but after December 31, 2002), are not required to have such provisions in their plan documents before the end of such plan years.

(2) The requirements of section 408(a)(5) regarding commingling of assets do not apply to deemed IRAs. Accordingly, the assets of a deemed IRA may be commingled for investment purposes with those of the qualified employer plan. However, the restrictions on the commingling of plan and IRA assets with non-plan assets apply to the assets of the qualified employer plan and the deemed IRA,

(e) *Application of distribution rules.* (1) Rules applicable to distributions from qualified employer plans under the Internal Revenue Code and regulations do not apply to distributions from deemed IRAs. Instead, the rules applicable to distributions from IRAs apply to distributions from deemed IRAs. Also, any restrictions that a trustee, custodian or insurance company is permitted to impose on distributions from traditional and Roth IRAs may be imposed on distributions from deemed IRAs (for example, early withdrawal penalties on annuities).

(2) The required minimum distribution rules of section 401(a)(9) must be met separately with respect to the qualified employer plan and the deemed IRA. The determination of whether a qualified employer plan satisfies the required minimum distribution rules of section 401(a)(9) is made without regard to whether a participant satisfies the required minimum distribution requirements with respect to the deemed IRA that is established under such plan.

(f) *Additional rules.*—(1) *Trustee.* The trustee or custodian of an individual retirement account must be a bank, as required by section 408(a)(2), or, if the trustee is not a bank, as defined in section 408(n), the trustee must be an entity that receives approval from the Internal Revenue Service to serve as a nonbank trustee or nonbank custodian pursuant to § 1.408–2(e) of the regulations.

(2) *Separate trusts and annuity contracts.* (i) Deemed IRAs that are individual retirement accounts may be held in a single trust (rather than in separate, individual trusts), provided the trust would qualify as a single plan within the meaning of § 1.414(l)–1(b). See also § 1.410(b)–7(a) and (b). However, any trust holding deemed IRA assets must be separate from the trust holding the other assets of the qualified employer plan. A deemed IRA trust must be created or organized in the United States for the exclusive benefit of the participants. In addition, the written governing instrument creating the trust must satisfy the requirements of paragraphs (1), (2), (3), (4), and (6) of section 408(a), and there must be separate accounting for the interest of each participant.

(ii) Deemed IRAs that are individual retirement annuities may be held under a single annuity contract or under separate annuity contracts. However, any such contract must be separate from any annuity contract or contracts for the qualified employer plan. In addition, such contract must satisfy the requirements of section 408(b) and there must be separate accounting for the interest of each participant.

(3) *Deductibility.* The deductibility of voluntary employee contributions to a deemed traditional IRA is determined in the same manner as if it were made to any other traditional IRA. Thus, for example, taxpayers with compensation that exceeds the limits imposed by section 219(g) may not be able to make contributions to deemed IRAs, or the deductibility of such contributions may be limited in accordance with sections 408(a) and 219(g). However, section 219(f)(5), regarding the taxable year in which amounts paid by an employer to an individual retirement plan are includible in the employee's income, is not applicable to deemed IRAs.

(4) *Rollovers and transfers.* The same rules apply to rollovers and transfers to and from deemed IRAs as apply to rollovers and transfers to and from other IRAs. Thus, for example, an employee may request and receive a distribution of his or her deemed IRA account balance and may roll it over to an eligible retirement plan in accordance with section 408(d)(3), regardless of whether that employee may receive a distribution of any other plan benefits.

(5) *Nondiscrimination.* The availability of a deemed IRA is not a benefit, right or feature of the qualified employer plan under § 1.401(a)(4)–4 of the regulations.

(g) *Disqualifying defects.* If the qualified employer plan fails to satisfy its qualification requirements, either in form or in operation, section 408(q) does not apply. Accordingly, any account or annuity maintained under the plan as a deemed IRA is not a deemed IRA, and its status as an IRA will be determined by considering whether the account or annuity satisfies the applicable requirements of section 408 and 408A (including the prohibition of commingling under paragraph (a)(5) of section 408). Also, if any of the deemed IRAs fail to satisfy the applicable requirements of section 408 or 408A, section 408(q) does not apply and the plan will fail to satisfy the plan's qualification requirements.

(h) *Definitions.* The following definitions apply for purposes of this section:

(1) *Qualified employer plan.* A *qualified employer plan* is a plan described in section 401(a), an annuity plan described in section 403(a), a section 403(b) plan, or a governmental plan under section 457(b).

(2) *Voluntary employee contribution.* A *voluntary employee contribution* is any contribution (other than a mandatory contribution within the meaning of section 411(c)(2)(C)) which is made by an individual as an employee under a qualified employer plan that allows employees to elect to make contributions to deemed IRAs and with respect to which the individual has designated the contribution as a contribution to which section 408(q) applies.

(i) *Effective date.* These regulations are applicable beginning on or after August 1, 2003.

David A. Mader,

Assistant Deputy Commissioner of Internal Revenue.

[FR Doc. 03–12675 Filed 5–19–03; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF DEFENSE

Office of the Secretary

32 CFR Part 3

RIN 0790–AG97

Transactions Other than Contracts, Grants, or Cooperative Agreements for Prototype Projects

AGENCY: Office of the Secretary, DoD.

ACTION: Proposed rule.

SUMMARY: This document proposes to implement section 822 of the National Defense Authorization Act for Fiscal Year 2002, Public Law 107–107, 115 Stat. 1182. Section 822 provides for award of a follow-on production contract to traditional Defense contractors, without further competition, when the other transaction (OT) agreement for the prototype project provided for at least one-third non-Federal cost-share, consistent with law, and the OT agreement for the prototype project satisfies certain additional conditions of law.

DATES: Comments on the proposed rule must be received in writing to the address specified below by July 21, 2003, to be considered in the formation of the final rule.

ADDRESSES: Interested parties should submit written comments on the proposed rule to: Office of the Director, Defense Procurement, Attn: Mr. David Boyd, OUSD(AT&L)/DPAP(P), 3060 Defense Pentagon, Washington, DC 20301–3060. Telefax (703) 614–1254.

FOR FURTHER INFORMATION CONTACT: David Boyd, (703) 697–6710.

SUPPLEMENTARY INFORMATION:

Background and Purpose

Section 845 of the National Defense Authorization Act for Fiscal Year 1994, Public Law 103–160, 107 Stat. 1721, as amended, authorizes the Secretary of a Military Department, the Director of Defense Advanced Research Projects Agency and any other official designated by the Secretary of Defense, to enter into transactions other than contracts, grants or cooperative agreements in certain situations for prototype projects that are directly relevant to weapons or weapon systems proposed to be acquired or developed by the Department of Defense. Such transactions are commonly referred to as "other transaction" agreements for prototype projects. To the extent that a particular statute or regulation is limited in its applicability to the use of a procurement contract, it would generally not apply to "other transactions" for prototype projects.

Use of OT authority is authorized by law in the absence of the significant participation of a nontraditional Defense contractor, when at least one-third of the costs of the prototype project are to be provided by non-Federal parties to the agreement. The authority granted by section 822 of the National Defense Authorization Act for Fiscal Year 2002 provides for the authority to continue such prototype projects into production without competition in certain circumstances. The circumstances are identified in this rule. Additionally, a rule will be issued to the Defense Federal Acquisition Regulation Supplement that exempts such production contracts from further competition, notwithstanding the requirements of section 2304 of title 10, United States Code.

In implementing the law, the Department clarifies that the number of production units and target prices proposed for production must be evaluated during the competition for the prototype project. This is consistent with the law's competition requirement and is the basis for being exempted from the need for further competition for the stated production quantity.

Regulatory Evaluation

Executive Order 12866, "Regulatory Planning and Review"

It has been determined that this rule is not a significant rule as defined under section 3(f)(1) through 3(f)(4) of Executive Order 12866.

Unfunded Mandates Reform Act (Sec. 202, Pub. L. 104–4)

It has been certified that this rule does not contain a Federal mandate that may

result in the expenditure by State, local and tribal governments, in aggregate, or by the private sector, of $100 million or more in any one year.

Pub. L. 96–354, "Regulatory Flexibility Act" (5 U.S.C. 601)

It has been certified that this rule is not subject to the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) because it would not, if promulgated, have a significant economic impact on a substantial number of small entities. The rule does not require additional record keeping or other significant expense by project participants.

Pub. L. 96–511, "Paperwork Reduction Act of 1995" (44 U.S.C. 3501 et seq.)

It has been certified that this rule does not impose any reporting or record keeping requirements under the Paperwork Reduction Act of 1995.

Federalism (Executive Order 13132)

It has been certified that this rule does not have federalism implications, as set forth in Executive Order 13132.

List of Subjects in 32 CFR Part 3

Government procurement, Transactions for prototype projects.

Accordingly, 32 CFR part 3 is proposed to be amended to read as follows:

PART 3—TRANSACTIONS OTHER THAN CONTRACTS, GRANTS, OR COOPERATIVE AGREEMENTS FOR PROTOTYPE PROJECTS

1. The authority citation for 32 CFR part 3 continues to read as follows:

Authority: Section 845 of Public Law 103–160, 107 Stat. 1721, as amended.

2. Section 3.4 is amended to add new definitions in alphabetical order to read as follows:

Project Manager. The government manager for the prototype project.

Contracting Officer. A person with the authority to enter into, administer, and/or terminate contracts and make related determinations and findings as defined in chapter 1 of title 48, CFR, Federal Acquisition Regulation, part 2.101(b).

3. New § 3.9 is added to read as follows:

§ 3.9 Follow-on production contracts.

(a) *Authority.* A competitively awarded OT agreement for a prototype project that satisfies the condition set forth in law that requires non-Federal parties to the OT agreement to provide at least one-third of the costs of the prototype project may provide for the award of a follow-on production contract to the awardee of the OT prototype agreement for a specific number of units at specific target prices, without further competition.

(b) *Conditions.* The Agreements Officer must do the following in the award of the prototype project:

(1) Ensure non-Federal parties to the OT prototype agreement offer at least-one third of the costs of the prototype project pursuant to subsection (d)(1)(B)(i), 10 U.S.C. 2371 note.

(2) Use competition to select parties for participation in the OT prototype agreement and evaluate the proposed quantity and target prices for the follow-on production units as part of that competition.

(3) Determine the production quantity that may be procured without further competition, by balancing of the level of the investment made in the project by the non-Federal parties with the interest of the Federal Government in having competition among sources in the acquisition of the product or products prototyped under the project.

(4) Specify the production quantity and target prices in the OT prototype agreement and stipulate in the agreement that the Contracting Officer for the follow-on contract may award a production contract without further competition if the awardee successfully completes the prototype project and agrees to production quantities and prices that do not exceed those specified in the OT prototype agreement (see part 206.001 of the Defense Federal Acquisition Regulation Supplement).

(c) *Limitation.* As a matter of policy, establishing target prices for production units should only be considered when the risk of the prototype project permits realistic production pricing without placing undue risks on the awardee.

(d) *Documentation.* (1) The Agreements Officer will need to provide information to the Contracting Officer from the agreement and award file that the conditions set forth in paragraph (b) of this section have been satisfied.

(2) The information shall contain, at a minimum:

(i) The competitive procedures used;

(ii) How the production quantities and target prices were evaluated in the competition;

(iii) The percentage of cost-share; and

(iv) The production quantities and target prices set forth in the OT agreement.

(3) The Project Manager will provide evidence of successful completion of the prototype project to the Contracting Officer.

Dated: May 12, 2003.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 03–12554 Filed 5–19–03; 8:45 am]

BILLING CODE 5001–08–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Parts 100 and 117

[CGD09–03–208]

RIN 1625–AA08
RIN 1625–AA09

Toledo Tall Ships Parade 2003, Port of Toledo, OH

AGENCY: Coast Guard, DHS.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard proposes to establish temporary regulations, including an exclusionary area and spectator anchorage areas, as well as drawbridge regulations for the Parade of Sail Toledo 2003 in the Port of Toledo, Ohio, on July 16, 2003. These regulations are necessary to promote the safe navigation of vessels and the safety of life and property during the heavy volume of vessel traffic expected during this event. These regulations are intended to restrict vessel traffic from a portion of Lake Erie and the Maumee River.

DATES: Comments and related material must reach the Coast Guard on or before June 15, 2003.

ADDRESSES: You may mail or hand-deliver comments and related material to Marine Safety Office (MSO) Toledo, 420 Madison Ave, Suite 700, Toledo, Ohio 43604. MSO Toledo maintains the public docket for this rulemaking. Comments and materials received from the public, as well as documents indicated in this preamble as being available in the docket, will become part of this docket and will be available for inspection or copying between 8 a.m. and 4 p.m., Monday through Friday, except Federal Holidays.

FOR FURTHER INFORMATION CONTACT: LT Herb Oertli, Chief of Port Operations, MSO Toledo, at (419) 418–6050.

SUPPLEMENTARY INFORMATION:

Request for Comments

We encourage you to participate in this rulemaking by submitting comments and related material. If you do so, please include your name and address, identify the docket number for this rulemaking (CGD09–03–208), indicate the specific section of this document to which each comment applies, and give the reason for each comment. Comments and attachments should be submitted on 8 ½″ × 11″ unbound paper in a format suitable for copying. Persons requesting acknowledgement of receipt of comments should include a stamped, self-addressed postcard or envelope. We will consider all comments and material received during the comment period. We may change this proposed rule in view of them.

Public Meeting

We do not now plan to hold a public meeting. But you may submit a request for a meeting by writing to MSO Toledo at the address under **ADDRESSES** explaining why one would be beneficial. If we determine that one would aid this rulemaking, we will hold one at a time and place announced by a later notice in the **Federal Register**.

Background and Purpose

The proposed temporary special local regulations are for the Toledo 2003 Tall Ships Parade of Sail that will be held in the Maumee River. The parade is currently scheduled to occur from 2 p.m. until 7 p.m. on July 16, 2003. These regulations will assist in providing for the safety of life on navigable waters and to protect commercial vessels, tall ships, spectators, and the Port of Toledo during this event.

American Sail Training Association is sponsoring Sail Toledo 2003. The scheduled events will occur July 16, 2003 in the Port of Toledo and surrounding waters. This event will consist of a Parade of Sail from the mouth of the Maumee River to Independence Park. The parade route will originate in Maumee Bay and continue inbound up the Maumee Bay and Maumee River channel to various berths throughout the Port of Toledo.

The Coast Guard expects several hundred spectator crafts to attend the parade of sail and tall ship celebration. The proposed regulations would create temporary anchorage regulations and vessel movement controls through the regulated area. The proposed regulations would be in effect from 9 a.m. until 7 p.m. on July 16, 2003. Vessel congestion, due to the anticipated large number of participating and spectator vessels, introduces extra or unusual hazards during this event poses a significant threat to the safety of life. This proposed rulemaking is necessary to ensure the safety of life on the navigable waters of the United States.

The Coast Guard proposes to establish a regulated area in the Maumee River that will be in effect during the Toledo Parade of Sail 2003 event. This proposed regulated area is needed to permit unrestricted law enforcement vessel access to support facilities. Additionally, the regulated areas will protect the maritime public and participating vessels from possible hazards to navigation associated with the dense vessel traffic.

The regulated area would cover all portions of the Maumee River upriver of a line drawn between north-east corner of Grassy Island at 41°42′24″N, 083°26′48″W and the south-west corner of Spoil area at 41°42′17″N, 083°26′38″W to the downriver side of the Anthony Wayne Bridge. All coordinates are based upon North American Datum 1983 (NAD 83). This temporary regulated area would be in effect from 9 a.m. until 7 p.m. on July 16, 2003.

On July 16, 2003, following the Parade of Sail, restrictions on vessels on the Maumee River will reopen in sequence with the movement and mooring of the final flotilla of tall ships. After the final flotilla of tall ships have passed the Martin Luther King, Jr. Bridge, vessel operators anchored in spectator anchorages north of the Martin Luther King Bridge may depart for locations outside of the Maumee River. After the final flotilla of tall ships has safely moored, vessel operators may transit the Maumee River. Vessels transiting the Maumee River must proceed as directed by on-scene Coast Guard personnel.

The Coast Guard proposes to establish spectator anchorage areas for spectator craft. All other vessels except those viewing the Parade of Sail Toledo 2003 are restricted from using these spectator anchorages. These spectator anchorage areas will be in effect on July 16, 2003.

To ensure the safety of the participating vessels during the parade, there will be two prolonged bridge openings on July 16, 2003. The CSX railroad bridge at mile 1.07, the Norfolk & Southern railroad bridge at mile 1.80, the Craig Memorial bridge at mile 3.30, and the Martin Luther King Memorial (a.k.a. Cherry Street) bridge at mile 4.30 will remain open to navigation from 12 p.m. until 1:30 p.m. and then from 2 p.m. until 3:30 p.m. Having two prolonged openings will accommodate participating vessels while at the same time allowing for both vehicular and pedestrian traffic the opportunity to cross the bridges during the parade.

Regulatory Evaluation

This proposed rule is not "significant regulatory action" under section 3(f) of Executive Order 12866 and does not require an assessment of potential costs and benefits under section 6(a)(3) of the Order. The Office of Management and Budget has not reviewed it under that Order. It is not significant under the regulatory policies and procedures of the Department of Homeland Security.

We expect the economic impact of this proposed rule to be so minimal that a full Regulatory Evaluation under the regulatory policies and procedures of DHS is unnecessary.

While this proposed regulation imposes traffic restrictions in portions of the Maumee River during the events, the effect of this regulation will not be significant for the following reasons: The regulated areas, spectator anchorages, will be limited in duration; and extensive advance notice will be made to the maritime community via Local Notice to Mariners, facsimile, marine safety information broadcasts, local Port Operators Group meetings, the Internet, and Toledo area newspapers and media. The advance notice will permit mariners to adjust their plans accordingly. Additionally, these regulated areas are tailored to impose the least impact on maritime interests without compromising safety.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), an initial review was conducted to determine whether this proposed rule would have a significant economic impact on a substantial number of small entities. The term "small entities" comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000.

For the reasons stated in the Regulatory Evaluation section above, the Coast Guard certifies under 5 U.S.C. 605(b) that this proposed rule, if adopted, will not have a significant economic impact on a substantial number of small entities.

This proposed rule would affect the following entities, some of which might be small entities: The owners or operators of vessels intending to transit or anchor in portions of Maumee River during various times on July 16, 2003. These regulations would not have a significant economic impact on a substantial number of small entities because the Coast Guard will notify the public via mailings, facsimiles, Local

Notice to Mariners, marine safety information broadcasts, local Port Operators Group meetings, the media, the Internet, and Toledo area newspapers. In addition, the sponsoring organization, Huntington Toledo Tall Ships 2003, plans to announce event information in local newspapers, pamphlets, and television and radio broadcasts. This advance notice will permit mariners to adjust their plans accordingly. Although these regulations would apply to a substantial portion of the Port of Toledo, areas for viewing the Parade of Sail, are being established to maximize the use of the waterways by commercial vessels that usually operate in the affected areas.

If you think that your businesses, organization, or governmental jurisdiction qualifies as a small entity and believe that this rule would significantly impact them may submit a comment (see **ADDRESSES**) explaining why they think they qualify and how and to what degree this rule would economically affect them.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), the Coast Guard aims to assist small entities in understanding this proposed rule so that they can better evaluate its effects on them and participate in the rulemaking. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact Lieutenant Herb Oertli, MSO Toledo, at (419) 418–6040.

Collection of Information

This proposed rule would call for no new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

Federalism

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on State or local governments and would either preempt State law or impose a substantial direct cost of compliance on them. We have analyzed this proposed rule under that Order and have determined that it does not have implications for federalism.

Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of $100,000,000 or more in any one year. Though this proposed rule would not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

Taking of Private Property

This proposed rule would not effect a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

Civil Justice Reform

This proposed rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

Protection of Children

We have analyzed this proposed rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and does not concern an environmental risk to health or risk to safety that may disproportionately affect children.

Indian Tribal Governments

This proposed rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it would not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

Energy Effects

We have analyzed this proposed rule under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. We have determined that it is not a "significant energy action" under that Order because it is not a "significant regulatory action" under Executive Order 12866 and is not likely to have a significant adverse effect on the supply, distribution, or use of energy. It has not been designated by the Administrator of the Office of Information and Regulatory Affairs as a significant energy action. Therefore, it does not require a Statement of Energy Effects under Executive Order 13211.

Environment

The Coast Guard considered the environmental impact of this proposed rule and concluded that, under figure 2–1, paragraphs 34 (f, g, and h) of Commandant Instruction M16475.1C, this proposed rule is categorically excluded from further environmental documentation. A written "Categorical Exclusion Determination" is available in the docket where indicated under **ADDRESSES.**

List of Subjects

33 CFR Part 100

Marine safety, Navigation (water), Reporting and recordkeeping requirements, Waterways.

33 CFR Part 117

Bridges.

For the reasons discussed in the preamble, the Coast Guard proposes to amend 33 CFR part 100 and 117 as follows:

PART 100—SAFETY OF LIFE ON NAVIGABLE WATERS

1. The authority citation for part 100 continues to read as follows:

Authority: 33 U.S.C. 1233 through 1236; Department of Homeland Security Delegation No. 0170.

2. Add temporary § 100.T09–208 to read as follows:

§ 100.T09–208 Regulated area, Toledo Tall Ships Parade 2003, Port of Toledo, OH

(a) *Definitions.*

(1) *Regulated Area.* All waters of the Maumee River between a line drawn between north-east corner of Grassy Island at 41°24′24″ N, 083°26′48″ W and the south-west corner of Spoil area at 41°42′17″ N, 083°26′38″ W; to the downriver side of the Anthony Wayne Bridge at mile 4.30.

(2) *Spectator Vessel Anchorage Areas.*

(i) *Area A.* All waters of Maumee river south of Grassy Island, bounded by the following: Beginning at 41°41.56′ N, 083°28.35′ W; then south-east to 41°41.52′ N, 083°28.29′ W; then south-west to 41°41.18′ N, 083°28.73′ W; then north-west to 41°41.23′ N, 083°28.8′ W; then back to the beginning (NAD 83).

(ii) *Area B.* All waters of Maumee River bounded by the following: Beginning at 41°41.06′ N, 083°29.04′ W; then south-east to 41°41.01′ N, 083°28.96′ W; then south-west to 41°40.61′ N, 083°29.38′ W; then north-west to 41°40.661′ N, 083° 29.45′ W; then back to the beginning (NAD 83).

(iii) *Area C.* All waters of the Maumee River bounded by the following: Beginning at 41°40.48′ N, 083°29.66′ W; then south-east to 41°40.43′ N, 083°29.56′ W; then south-west to 41°40.18′ N, 083°29.89′ W; then north-west to 41°40.24′ N, 083°29.98′ W; then back to the beginning (NAD 83).

(iv) *Area D.* All waters of the Maumee River bounded by the following: Beginning at 41°39.22′ N, 083°31.51′ W; then south-east to 41°39.16′ N, 083°31.45′ W; then south-west to 41°39.09′ N, 083°31.58′ W then north-west to 41°39.14′ N, 083°31.63′ W; then back to the of beginning (NAD 83).

Note to paragraph (a)(2): Mariners are cautioned that these areas being established as spectator areas have not been subject to any special survey or inspection and that charts may not show all seabed obstructions or the shallowest depths. In addition, substantial currents may exist in these spectator areas and not all portions of these areas are over good holding ground. Mariners are advised to take appropriate precautions when using these spectator areas.

(3) *Coast Guard Patrol Commander.* The Coast Guard Patrol Commander is a commissioned, warrant, or petty officer who has been designated by the Commander, Group Detroit.

(b) *Special Local Regulations.* (1) Except for vessels officially participating in the Toledo Tall Ships Parade 2003, or those vessels in designated spectator areas, no person or vessel may enter or remain in the regulated area without the permission of the Coast Guard Patrol Commander.

(2) Vessels in any spectator area shall proceed at no wake speeds not to exceed five miles per hour, unless otherwise authorized by the Captain of the Port.

(3) Vessel operators shall comply with the instructions of on-scene Coast Guard patrol personnel.

(4) After completion of the Parade of Sail on July 16, 2003, vessel operators within the Regulated Area are prohibited from passing outbound patrol vessels showing blue lights.

(5) Anchorage Area D, in paragraph (b)(iv) of his section, is restricted for use the of those vessels officially participating in Parade of Sail Toledo 2000 activities. No other vessels will be permitted in Spectator Area D without permission of the Captain of the Port.

(7) Vessels, except emergency, law enforcement, and those authorized by the Captain of the Port, may not transit through the regulated area.

(8) Vessels must vacate all spectator areas after the termination of the effective period for this regulation.

(9) Vessels must mark with an identifiable buoy any anchors which have been fouled on obstructions if such anchors cannot be freed or raised.

(10) Vessels which would like to view the tall ship events occurring in Maumee Bay prior to the tall ships entering the Maumee River must use Spectator Area A.

(11) Vessels are not to be left unattended in any spectator area at any time.

(12) Vessels are prohibited from securing tying off to any buoy or any other vessel within any spectator area.

(13) Vessels should maintain at least twenty (20) feet of clearance if maneuvering between anchored vessels.

(14) Vessels are prohibited from blocking access to any designated emergency medical evacuation areas.

(c) *Effective period.* This section is effective from 9 a.m. until 7 p.m. on July 16, 2003.

PART 117—DRAWBRIDGE OPERATION REGULATIONS

3. The authority citation for part 117 continues to read as follows:

Authority: 33 U.S.C. 499; 33 CFR 1.05–1(g); Section 117.255 also issued under authority of Pub. L. 102–587, 106 Stat. 5039; Department of Homeland Security Delegation No. 0170.

4. From 12 p.m. until 3:30 p.m., Wednesday, July 16, 2003, suspend § 117.855, and add temporary § 117.T856 to read as follows:

§ 117.T856 Maumee River.

(a) The draws of the CSX Transportation railroad bridge, mile 1.07, Norfolk Southern railroad bridge, mile 1.80, Craig Memorial highway bridge, mile 3.30, and the Martin Luther King Memorial Bridge (a.k.a. Cherry Street Highway Bridge), mile 4.30, will remain open to navigation from 12 p.m. until 1:30 p.m. and from 2 p.m. until 3:30 p.m.

(b) The draw of the Norfolk Southern railroad bridge, mile 5.76, shall open on signal.

Dated: May 6, 2003.

Ronald F. Silva,

Rear Admiral, U.S. Coast Guard, Commander, Ninth Coast Guard District.

[FR Doc. 03–12492 Filed 5–19–03; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Parts 110 and 165

[CGD09–03–207]

RIN 1625–AA00
RIN 1625–AA01

Tall Ships 2003, Navy Pier, Lake Michigan, Chicago, IL

AGENCY: Coast Guard, DHS.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard proposes to establish a temporary regulated navigation area (RNA), a moving safety zone and temporarily suspend two anchorage areas encompassed by the RNA for the 2003 Tall Ships Challenge. These regulations are necessary to control vessel traffic in the immediate vicinity for the protection of both participant and spectator vessels during the 2003 Tall Ships Challenge and Parade of Ships. These regulations are intended to restrict vessel traffic in a portion of Lake Michigan in the vicinity of Chicago Harbor for the duration of the event.

DATES: Comments and related material must reach the Coast Guard on or before June 10, 2003.

ADDRESSES: You may mail or hand-deliver comments and related material to Commanding Officer, U.S. Coast Guard Marine Safety Office Chicago, 215 W. 83rd Street Suite D, Burr Ridge, IL 60527. Marine Safety Office (MSO) Chicago maintains the public docket for this rulemaking. Comments and material received from the public, as well as the documents indicated in this preamble as being available in the docket, will become part of this docket and will be available for inspection or copying at MSO Chicago between 8 a.m. and 4 p.m. Monday through Friday, except federal holidays.

FOR FURTHER INFORMATION CONTACT: MST2 Kenneth Brockhouse, MSO Chicago, at (630) 986–2155.

SUPPLEMENTARY INFORMATION:

Request for Comments

We encourage you to participate in this rulemaking by submitting comments and related material. If you do so, please include your name and address, identify the docket number for this rulemaking (CGD09–03–207), indicate the specific section of this document to which each comment applies, and give the reason for each comment. Comments and attachments

should be submitted on 8½″ × 11″ unbound paper in a format suitable for copying. Persons requesting acknowledgement of receipt of comments should include a stamped, self-addressed postcard or envelope. We will consider all comments and material received during the comment period. We may change this proposed rule in view of them.

Public Meeting

We do not now plan to hold a public meeting. But you may submit a request for a meeting by writing to Marine Safety Office Detroit at the address under **ADDRESSES** explaining why one would be beneficial. If we determine that one would aid this rulemaking, we will hold one at a time and place announced by a later notice in the **Federal Register**.

Background and Purpose

During the Chicago Tall Ships event, tall ships will be participating in a Tall Ships Parade and then mooring in Chicago harbor and in the Chicago River. A Regulated Navigation Area (RNA) would be established that encompasses portions of both of the Chicago Harbor as well as the Chicago River to protect those boarding the tall ships as well as spectator vessels from vessels transiting at excessive speeds creating large wakes, and also to prevent obstructed waterways. The RNA would be established on July 30, 2003 and terminate on August 3, 2003 after all the tall ships have departed the area.

A moving safety zone would be established around those vessels officially participating in the Tall Ships Parade of Ships. The Parade of Ships is the start of the Tall Ships 2003 in Chicago, Illinois and a large number of spectator vessels are expected. The parade will include approximately 20 to 30 tall ships and will take place starting on the morning of July 30, 2003 until the evening of July 30, 2003.

Discussion of Proposed Rule

The Coast Guard is proposing to establish an RNA starting at the Southeast Guide Wall light at 41°53′17.76″ N, 87°36′09.110″ W; then south south-easterly to 41°52′48″ N, 087°36′08″ W; then east to the southern most end of the outer Chicago Harbor break wall at 41°52′48″ N, 087°35′26″ W; then north following the outer Chicago Harbor break wall to 41°54′11″ N, 087°36′29″ W; then southwest to the north-eastern tip of the Central District Filtration Plant; then to the southeastern tip of the Central Filtration Plant; then to the north-east corner of the Navy Pier; then following the shoreline and/or seawall, including up the Chicago River to the eastern side of the Michigan Avenue bridge, back to the point of origin (NAD 83).

Within the RNA, no vessel shall exceed 5 mph nor produce a wake. No vessel in the RNA shall pass within 20 feet of a moored tall ship. Any vessel within the RNA must adhere to the direction of the Captain of the Port or his on scene representative which will be the Patrol Commander.

On July 30, 2003, from 10 a.m. until approximately 8 p.m. the Parade of Sail is scheduled to take place. A moving safety zone would be established around all tall ships participating in the parade. The safety zone would extend 100 yards in all directions of each vessel officially participating in the parade. The safety zone will be in effect as tall ships pass the mustering point at 42°03′24″ N, 087°38′20.4″ W heading south towards Chicago Harbor (NAD 83).

Regulatory Evaluation

This proposed rule is not a "significant regulatory action" under section 3(f) of Executive Order 12866 on Regulatory Planning and Review and therefore does not require an assessment of potential costs and benefits under section 6(a)(3) of that order. The Office of Management and Budget has not reviewed this rule under that order. It is non-significant under Department of Homeland Security regulatory policies and procedures. We expect the economic impact of this proposed rule to be so minimal that a full Regulatory Evaluation under paragraph 10(e) of the regulatory policies and procedures of DHS is unnecessary. This finding is based on the minimal time that vessels will be restricted from the zone.

Small Entities

In accordance with the Regulatory Flexibility Act (5 U.S.C. 601–612) has determined that this rule will not have a significant impact on a substantial number of small entities. The term "small entities" comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000.

The Coast Guard certifies under 5 U.S.C. 605(b) that this proposed rule would not have a significant economic impact on a substantial number of small entities. This proposed rule would affect the following entities, some of which might be small entities: the owners or operators of vessels intending to transit or anchor in a portion of an activated safety zone. The safety zone and suspended anchorage area would not have a significant economic impact on a substantial number of small entities for the following reasons. Vessel traffic can safely pass outside the proposed safety zone during the event. Traffic would be allowed to pass through the safety zone only with the permission of the Captain of the Port or his on scene representative which will be the Patrol Commander. In addition, before the effective period, the Coast Guard would issue maritime advisories widely available to users who might be in the affected area.

If you think that your business, organization, or governmental jurisdiction qualifies as a small entity and that this rule would have a significant economic impact on it, please submit a comment (see **ADDRESSES**) explaining why you think it qualifies and how and to what degree this rule would economically affect it.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Public Law 104–121), the Coast Guard wants to assist small entities in understanding this rule so that they can better evaluate its effects and participate in the rulemaking process. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact MSO Chicago (see **ADDRESSES.**)

Collection of Information

This proposed rule would call for no new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

Federalism

We have analyzed this proposed rule under Executive Order 13132 and have determined that this rule does not have implications for federalism under that Order.

Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) governs the issuance of Federal regulations that require unfunded mandates. An unfunded mandate is a regulation that requires a state, local, or tribal government or the private sector to incur direct costs without the Federal Government's having first provided the funds to pay those costs. This proposed rule would not impose an unfunded mandate.

Taking of Private Property

This proposed rule would not effect a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

Civil Justice Reform

This proposed rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

Protection of Children

We have analyzed this proposed rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and does not concern an environmental risk to health or risk to safety that may disproportionately affect children.

Indian Tribal Governments

This proposed rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it would not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

Energy Effects

We have analyzed this proposed rule under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. We have determined that it is not a "significant energy action" under that Order because it is not a "significant regulatory action" under Executive Order 12866 and is not likely to have a significant adverse effect on the supply, distribution, or use of energy. It has not been designated by the Administrator of the Office of Information and Regulatory Affairs as a significant energy action. Therefore, it does not require a Statement of Energy Effects under Executive Order 13211.

Environment

The Coast Guard has considered the environmental impact of this proposed rule and concluded that, under figure 2–1, paragraph 32(g) of Commandant Instruction M16475.1C, this proposed rule is categorically excluded from further environmental documentation. A written categorical exclusion determination is available in the docket for inspection or copying where indicated under **ADDRESSES.**

List of Subjects

33 CFR Part 110

Anchorage grounds.

33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, Waterways.

For the reasons discussed in the preamble, the Coast Guard proposes to amend 33 CFR parts 110 and 165 as follows:

PART 110—ANCHORAGE REGULATIONS

1. The authority citation for part 110 continues to read as follows:

Authority: 33 U.S.C. 471, 1221 through 1236, 2030, 2035, 2071; 33 CFR 1.05–1(g), and Department of Homeland Security No. 0170.

§ 110.205 Suspended

2. From 10:30 a.m. (local time) on July 30, 2003, until 8 p.m. (local time) on August 3, 2003, § 110.205(a)(1) and (a)(2) are temporarily suspended.

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

3. The authority citation for part 165 continues to read as follows:

Authority: 33 U.S.C. 1231; 50 U.S.C. 191, 33 CFR 1.05–1(g), 6.04–1, 6.04–6 and 160.5; Department of Homeland Security Delegation No. 0170.

4. From 10 a.m. on Wednesday, July 30, 2003 through 5 p.m. on Sunday, August 3, 2003, add § 165.T09–207 to read as follows:

§ 165.T09–207 Tall Ships 2003, Navy Pier, Lake Michigan, Chicago, IL.

(a) *Regulated navigation area.*

(1) *Location.* The following is a regulated navigation area (RNA): starting at the Southeast Guide Wall light at 41°53′17.76″ N, 87°36′09.110″ W; then south south-easterly to 41°52′48″ N, 087°36′08″ W; then east to the southern most end of the outer Chicago Harbor break wall at 41°52′48″ N, 087°35′26″ W; then north following the outer Chicago Harbor break wall to 41°54′11″ N, 087°36′29″ W; then southwest to the north-eastern tip of the Central District Filtration Plant; then to the southeastern tip of the Central Filtration Plant; then to the north-east corner of the Navy Pier; then following the shoreline and/or seawall, including up the Chicago River to the eastern side of the Michigan Avenue bridge, back to the point of origin (NAD 83).

(2) *Enforcement period.* The section will be enforced from 8 p.m. on Wednesday, July 30, 2003 until 5 p.m. on Sunday, August 3, 2003.

(3) *Special regulations.* Vessels within the RNA shall not exceed 5 miles per hour or shall proceed at no-wake speed, whichever is slower. Vessels within the RNA shall not pass within 20 feet of a moored tall ship. Vessels within the RNA must adhere to the direction of the Patrol Commander or other official patrol craft.

(b) *Safety zone.*—(1) *Location.* The following is a moving safety zone: All navigable waters 100 yards ahead of the first official parade vessel, 50 yards abeam of each parade vessel, and 50 yards astern of the last vessel in the parade between the muster point at 42°03′24″ N, 087°36′20.4″ W until each official parade vessel is moored (NAD 83).

(2) *Enforcement period.* This section will be enforced from 10 a.m. until 8 p.m., or until the last tall ship is moored, on Wednesday, July 30, 2003.

(c) *Regulations.*—(1) All persons and vessels shall comply with the instructions of the Coast Guard Captain of the Port or the designated on scene patrol personnel. Coast Guard patrol personnel include commissioned, warrant, and petty officers of the U.S. Coast Guard. Upon being hailed by a U.S. Coast Guard vessel via siren, radio, flashing light, or other means, the operator shall proceed as directed. U.S. Coast Guard Auxiliary, representatives of the event organizer, and local or state officials may be present to inform vessel operators of this regulation and other applicable laws.

(2) In cases where shipping is affected by this section, commercial vessels may request permission from the Captain of the Port, Chicago to transit the safety zone. Approval in such cases will be case-by-case. Requests must be made in advance and approved by the Captain of the Port or his designated on-scene representative. The Captain of the Port, Chicago or his designated on-scene representative may be contacted on Channel 16, VHF–FM.

Dated: May 6, 2003.

Ronald F. Silva,

Rear Admiral, U.S. Coast Guard, Commander, Ninth Coast Guard District.

[FR Doc. 03–12494 Filed 5–19–03; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 117

[CGD07–02–160]

RIN 1625–AA09

Drawbridge Operation Regulations; Canaveral Barge Canal, Cape Canaveral, Brevard County, FL

AGENCY: Coast Guard, DHS.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard proposes to change the operating regulations of the Christa McAuliffe bridge, SR 3, across the Canaveral Barge Canal at Cape Canaveral, Florida. Under the proposed rule, the bridge need open only twice an hour from 6 a.m. to 10 p.m. for vessel traffic, except during the morning and evening rush hours when the bridge may remain closed to facilitate vehicular traffic. The proposed rule would also require the bridge to open with 3 hours notice from 10:01 p.m. to 5:59 a.m. This change would improve the flow of vehicular traffic without significantly impacting the needs of navigation.

DATES: Comments and related material must reach the Coast Guard on or before July 21, 2003.

ADDRESSES: You may mail comments and related material to Commander (obr), Seventh Coast Guard District, 909 S.E. 1st Ave., Room 432, Miami, FL 33131. Comments and material received from the public, as well as documents indicated in the preamble as being available in the docket, are part of [CGD07–02–160] and are available for inspection or copying at Commander (obr), Seventh Coast Guard District, 909 S.E. 1st Avenue, Room 432, Miami, FL 33131 between 8 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Mr. Barry Dragon, Seventh Coast Guard District, Bridge Branch, 909 S.E. 1st Ave Miami, FL 33131, telephone number 305–415–6743.

SUPPLEMENTARY INFORMATION:

Request for Comments

We encourage you to participate in this rulemaking by submitting comments and related material. If you do so, please include your name and address, identify the docket number for this rulemaking [CGD07–02–160], indicate the specific section of this document to which each comment applies, and give the reason for each comment. Please submit all comments and related material in an unbound format, no larger than 8½ by 11 inches, suitable for copying. If you would like to know they reached us, please enclose a stamped, self-addressed postcard or envelope. We will consider all comments and material received during the comment period. We may change this proposed rule in view of them.

Public Meeting

A public meeting has not been scheduled for this proposed rule. However, you may submit a request for a meeting in writing to Bridge Branch, Seventh Coast Guard District, 909 SE 1st Ave, Room 432, Miami, FL 33131, explaining why one would be beneficial. If we determine that one would aid this rulemaking, we will hold one at a time and place announced by a later notice in the **Federal Register**.

Background and Purpose

The Christa McAuliffe bridge, SR 3, across the Canaveral Barge Canal is a twin, double bascule leaf bridge with a vertical clearance of 21.6 feet at mean high water and a horizontal clearance of 90.3 feet. The current operating regulations published in 33 CFR 117.273(a), provide for the bridge to open on signal from 6 a.m. to 10 p.m. except that, from 6:15 a.m. to 7:45 a.m. and from 3:30 p.m. to 5:15 p.m., Monday through Friday, except Federal holidays, the bridge need not open for the passage of vessels. From 10:01 p.m. to 5:59 a.m., everyday, the bridge shall open on signal if at least three hours notice is given to the bridge tender. The bridge shall open as soon as possible for the passage of public vessels of the United States, tugs with tows and vessels in distress. The local residents requested a change to the current operating schedule to ease the flow of vehicular traffic on and off of Cape Canaveral through their neighborhood. On May 22, 2002, a temporary final rule was published in the **Federal Register** (Volume 67, Number 99, pages 35903–35904) to facilitate repairs to the bridge. In pertinent part, for four months, from 8:15 a.m. to 3 p.m., Monday through Friday except Federal holidays, the draw opened on the hour and half hour for the passage of vessels. This temporary change to bridge openings for limited times during the day met the reasonable needs of navigation and the needs of vehicular traffic in the neighborhood while facilitating repair to the bridge. Additionally, the difference between the number of bridge openings under this proposed rule and the historical number of bridge openings under the existing, permanent rule is minimal. Accordingly, based on the results of the temporary rule and the minimal difference in bridge openings, the proposed rule will meet the reasonable needs of navigation on this waterway.

Discussion of Proposed Rule

Under the proposed rule, the bridge need only open on the hour and half-hour from 6 a.m. to 10 p.m., except from 6:15 a.m. to 8:15 a.m. and from 3:10 p.m. to 5:59 p.m., Monday through Friday, except Federal holidays, the bridge need not open. From 10:01 p.m. to 5:59 a.m., everyday, the bridge shall open on signal if at least 3 hours advance notice is given to the bridge tender. The bridge shall open as soon as possible for the passage of tugs with tows, public vessels of the United States and vessels in distress.

Regulatory Evaluation

This proposed rule is not a "significant regulatory action" under section 3(f) of Executive Order 12866, Regulatory Planning and Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that Order. It is not "significant" under the regulatory policies and procedures of the Department of Homeland Security (DHS). The Coast Guard expects the economic impact of this proposed rule to be so minimal that a full Regulatory Evaluation is unnecessary, because the proposed rule only slightly modifies the current closure periods and still provides for regular openings.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), we have considered whether this proposed rule would have a significant economic impact on a substantial number of small entities. The term "small entities" comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000.

The Coast Guard certifies under 5 U.S.C. 605(b) that this proposed rule would not have a significant economic impact on a substantial number of small entities. The proposed rule only slightly modifies the current closure periods, because it still provides for two openings per hour during the daytime and allows for passage of tugs with tows on signal between 6 a.m. and 10 p.m.

If you think that your business, organization, or governmental jurisdiction qualifies as a small entity and that this rule would have a significant economic impact on it, please submit a comment to the address under **ADDRESSES.** In your comment, explain why you think it qualifies and how and to what degree this proposed rule would economically affect it.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we want to assist small entities in understanding this proposed rule so that they can better evaluate its effects on them and participate in the rulemaking. If this proposed rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please consult the person listed under **FOR FURTHER INFORMATION CONTACT.** Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1–888–REG–FAIR (1–888–734–3247).

Collection of Information

This proposed rule would call for no new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

Federalism

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on State or local governments and would either preempt State law or impose a substantial direct cost of compliance on them. We have analyzed this proposed rule under that Order and determined that it does not have implications for federalism.

Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires federal agencies to assess the effects of their regulatory actions not specifically required by law. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of $100,000,000 or more in any one year. Although this proposed rule would not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

Taking of Private Property

This proposed rule would not effect a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

Civil Justice Reform

This proposed rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

Protection of Children

We have analyzed this proposed rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and would not create an environmental risk to health or risk to safety that might disproportionately affect children.

Environment

We have analyzed this proposed rule under Commandant Instruction M16475.lD, which guides the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA)(42 U.S.C. 4321–4370f), and have concluded that there are no factors in this case that would limit the use of a categorical exclusion under section 2.B.2 of the Instruction. Therefore, this rule is categorically excluded, under figure 2–1, paragraph (32)(e), of the Instruction from further environmental documentation. Under figure 2–1, paragraph (32)(e), of the Instruction, an "Environmental Analysis Check List" and a "Categorical Exclusion Determination" are not required for this rule. Comments on this section will be considered before we make the final decision on whether to categorically exclude this rule from further environmental review.

Indian Tribal Governments

This proposed rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it would not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

Energy Effects

We have analyzed this proposed rule under Executive Order 13211, Actions Concerning Regulations that Significantly Affect Energy Supply, Distribution, or Use. We have determined that it is not a "significant energy action" under that order because it is not a "significant regulatory action" under Executive Order 12866 and is not likely to have a significant adverse effect on the supply, distribution, or use of energy. It has not been designated by the Administrator of the Office of Information and Regulatory Affairs as a significant energy action. Therefore, it does not require a statement of Energy Effects under Executive Order 13211.

List of Subjects in 33 CFR Part 117

Bridges.

For the reasons discussed in the preamble, the Coast Guard proposes to amend 33 CFR part 117 as follows:

PART 117—DRAWBRIDGE OPERATION REGULATIONS

1. The authority citation for part 117 continues to read as follows:

Authority: 33 U.S.C. 499; Department of Homeland Security Delegation No. 0170; 33 CFR 1.05–1(g); Section 117.255 also issued under authority of Pub. L. 102–587, 106 Stat. 5039.

2. Section 117.273(a) is revised to read as follows:

§ 117.273 Canaveral Barge Canal.

(a) The draws of the Christa McAuliffe bridge, SR 3, mile 1.0, across the Canaveral Barge Canal need only open daily for vessel traffic on the hour and half-hour from 6 a.m. to 10 p.m.; except that from 6:15 a.m. to 8:15 a.m. and from 3:10 p.m. to 5:59 p.m., Monday through Friday, except Federal holidays, the bridge need not open. From 10:01 p.m. to 5:59 a.m., everyday, the bridge shall open on signal if at least 3 hours notice is given to the bridge tender. The bridge shall open as soon as possible for the passage of tugs with tows, public vessels of the United States and vessels in distress.

* * * * *

Dated: May 5, 2003.

James S. Carmichael,

Rear Admiral, U.S. Coast Guard, Commander, Seventh Coast Guard District.

[FR Doc. 03–12496 Filed 5–19–03; 8:45 am]

BILLING CODE 4910–15–P

LIBRARY OF CONGRESS

Copyright Office

37 CFR Part 262

[Docket Nos. 2002–1 CARP DTRA3 and 2001–2 CARP DTNSRA]

Digital Performance Right in Sound Recordings and Ephemeral Recordings

AGENCY: Copyright Office, Library of Congress.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Copyright Office of the Library of Congress is requesting comment on proposed regulations that set rates and terms for the use of sound recordings in eligible nonsubscription transmissions and new subscription services, other than transmissions made by certain noncommercial entities, together with related ephemeral recordings. The rates and terms are for the 2003 and 2004 statutory licensing period, except in the case of new subscription services in which case the license period runs from 1998 through 2004. The agreement published herein supersedes the agreement published in the **Federal Register** on May 1, 2003, and parties should only comment on the proposed rates and terms set forth in this notice.

DATES: Comments are due no later than June 19, 2003.

ADDRESSES: An original and five copies of any comment shall be delivered by hand to: Office of the General Counsel, James Madison Memorial Building, Room LM–403. First and Independence Avenue, SE., Washington, DC 20559–6000; or mailed to: Copyright Arbitration Royalty Panel (CARP), P.O. Box 70977, Southwest Station, Washington, DC 20024–0977.

FOR FURTHER INFORMATION CONTACT: David O. Carson, General Counsel, or Tanya M. Sandros, Senior Attorney, Copyright Arbitration Royalty Panel (CARP), P.O. Box 70977, Southwest Station, Washington, DC 20024. Telephone: (202) 707–8380; Telefax: (202) 252–3423.

SUPPLEMENTARY INFORMATION: On May 1, 2003, the Copyright Office published a notice in the **Federal Register** requesting comment on proposed regulations that set rates and terms for the use of sound recordings in certain eligible nonsubscription transmissions made pursuant to sections 114 of the Copyright Act, title 17 of the United States Code, during the 2003 and 2004 statutory licensing period, as well as for the making of ephemeral recordings necessary for the facilitation of such transmissions in accordance with a second statutory license set forth in section 112(e). The proposal also included rates and terms for the use of sound recordings in transmissions made by new subscription services from 1998 through December 31, 2004, and the making of the related ephemeral recordings under these same statutory licenses. 68 FR 23241 (May 1, 2003). These proposed rates and terms were part of a settlement agreement negotiated by Sound Exchange, a division of the Recording Industry Association of America, Inc., the American Federation of Television and Radio Artists, the American Federation of Musicians of the United States and Canada, and the Digital Media Association, and were submitted to the Copyright Office on April 14, 2003, along with a petition, requesting that the Office publish the proposed rates and terms pursuant to § 251.63(b) of title 37 of the Code of Federal Regulations, which it did. *Id.*

However, the April 14 proposal has been superseded by a second proposal which was submitted to the Copyright Office on May 8, 2003. The new agreement amends the proposal in the April 14 submission with the approval of the parties to the first agreement, who did not participate in the new round of negotiations, and includes for the first time rates and terms for simulcasts of AM and FM radio broadcast programming.[1] These new rates are the result of an agreement between Copyright Owners and Performers and Broadcasters.[2] The May 8 agreement also includes proposed rates and terms for the use of sound recordings in the reproduction of ephemeral recordings by business establishment services. These rates and terms were agreed to by the Copyright Owners and Performers and Music Choice, the only business establishment service participating in this proceeding, and cover the 2003 and 2004 statutory license period. As before, the Petitioners request that the Office publish the amended proposed rates and terms for public comment pursuant to 37 CFR 251.63(b).

Section 251.63(b) of title 37 of the Code of Federal Regulations allows the Librarian to adopt the parties' proposed rates and terms without convening a Copyright Arbitration Royalty Panel ("CARP") for this purpose, provided that the proposed rates and terms are published in the **Federal Register** and no interested party with an intent to participate in the proceeding files a comment objecting to the proposed terms. In other words, unless there is an objection from a person with a significant interest in the proceeding who is prepared and eligible to participate in a CARP proceeding, the purpose of which is to adjust the rates and terms for use of sound recordings in eligible nonsubscription transmissions and new subscription services pursuant to the section 112 and section 114 statutory licenses, the Librarian can adopt the rates and terms in the proposed settlement in final regulations without convening a CARP. This procedure to adopt negotiated rates and terms in the case where an agreement has been reached has been specifically endorsed by Congress.

> If an agreement as to rates and terms is reached and there is no controversy as to these matters, it would make no sense to subject the interested parties to the needless expense of an arbitration proceeding conducted under [section 114(f)(2)(1995)]. Thus, it is the Committee's intention that in such a case, as under the Copyright Office's current regulations concerning rate adjustment proceedings, the Librarian of Congress should notify the public of the proposed agreement in a notice-and-comment proceeding and, if no opposing comment is received from a party with a substantial interest and an intent to participate in an arbitration proceeding, the Librarian of Congress should adopt the rates embodied in the agreement without convening an arbitration panel.
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> S. Rep. No. 104–128, at 29 (1995)(citations omitted).

Accordingly, the Copyright Office is granting the joint petition filed on May 8 and is publishing for public comment the proposed rates and terms embodied in the amended agreement as submitted to the Office on May 8. Because this notice includes amendments to the proposal published in the May 1 notice, interested parties should comment only on the rates and terms published herein and should not comment on those published in the May 1 notice. Any party who objects to the amended proposed rates and terms set forth herein must file a written objection with the Copyright Office and an accompanying Notice of Intent to Participate, if the party has not already done so, in accordance with the requirements set forth in the Copyright Office's November 20, 2001, Notice. *See* 66 FR 58180, 58181 (November 20, 2001). The content of the written challenge should describe the party's interest in the proceeding, the proposed rule the party finds objectionable, and the reasons for the challenge. If no comments are received, the regulations shall become final upon publication of a final rule and shall cover the period from January 1, 2003, to December 31, 2004, except that the period covered for new subscription services runs from October 28, 1998, to December 31, 2004.

[1] Petitioners note that a dispute over the scope of certain exemptions to Section 106(6) pertaining to the broadcasters is pending in the U.S. Court of Appeals for the Third Circuit, *Bonneville Int'l Corp. v. Peters*, No. 01–CV–408 (E.D. Pa. Aug. 1, 2001), appeal docketed, No. 01–3720 (3rd Cir. Oct. 1, 2001) and that "[n]othing in this Joint Petition is intended to resolve that dispute, prejudice the position of any of the parties thereto, or imply that any activities determined to be exempt are 'covered' by the rates and terms set forth herein." Petition at 3 n.3 (May 8, 2003).

[2] Those entities who negotiated on behalf of the broadcasters include, Bonneville International Corporation, Clear Channel Communications, Inc., the National Religious Broadcasters Music License Committee, Salem Communications Corporation and Susquehanna Radio Corporation.

List of Subjects in 37 CFR Part 262

Copyright, Digital audio transmissions, Performance right, Sound recordings.

Proposed Regulation

In consideration of the foregoing, the Copyright Office proposes adding part 262 to 37 CFR to read as follows:

PART 262—RATES AND TERMS FOR CERTAIN ELIGIBLE NONSUBSCRIPTION TRANSMISSIONS, NEW SUBSCRIPTION SERVICES AND THE MAKING OF EPHEMERAL REPRODUCTIONS

Sec.

262.1 General.
262.2 Definitions.
262.3 Royalty fees for public performance of sound recordings and for ephemeral recordings.
262.4 Terms for making payment of royalty fees and statements of account.
262.5 Confidential information.
262.6 Verification of statements of account.
262.7 Verification of royalty payments.
262.8 Unclaimed funds.

Authority: 17 U.S.C. 112(e), 114, 801(b)(1).

§ 262.1 General.

(a) *Scope.* This part 262 establishes rates and terms of royalty payments for the public performance of sound recordings in certain digital transmissions by certain Licensees in accordance with the provisions of 17 U.S.C. 114, and the making of Ephemeral Recordings by certain Licensees in accordance with the provisions of 17 U.S.C. 112(e), during the period 2003–2004 and in the case of Subscription Services 1998–2004 (the "License Period").

(b) *Legal compliance.* Licensees relying upon the statutory licenses set forth in 17 U.S.C. 112 and 114 shall comply with the requirements of those sections, the rates and terms of this part and any other applicable regulations.

(c) *Relationship to voluntary agreements.* Notwithstanding the royalty rates and terms established in this part, the rates and terms of any license agreements entered into by Copyright Owners and services shall apply in lieu of the rates and terms of this part to transmissions within the scope of such agreements.

§ 262.2 Definitions.

For purposes of this part, the following definitions shall apply:

(a) *Aggregate Tuning Hours* means the total hours of programming that the Licensee has transmitted during the relevant period to all Listeners within the United States from all channels and stations that provide audio programming consisting, in whole or in part, of eligible nonsubscription transmissions or noninteractive digital audio transmissions as part of a new subscription service, less the actual running time of any sound recordings for which the Licensee has obtained direct licenses apart from 17 U.S.C. 114(d)(2) or which do not require a license under United States copyright law. By way of example, if a service transmitted one hour of programming to 10 simultaneous Listeners, the service's Aggregate Tuning Hours would equal 10. If 30 minutes of that hour consisted of transmission of a directly licensed recording, the service's Aggregate Tuning Hours would equal 9 hours and 30 minutes. As an additional example, if one Listener listened to a service for 10 hours (and none of the recordings transmitted during that time was directly licensed), the service's Aggregate Tuning Hours would equal 10.

(b) *Broadcast Simulcast* means

(1) A simultaneous Internet transmission or retransmission of an over-the-air terrestrial AM or FM radio broadcast, including one with previously broadcast programming substituted for programming for which requisite licenses or clearances to transmit over the Internet have not been obtained and one with substitute advertisements, and

(2) An Internet transmission in accordance with 17 U.S.C. 114(d)(2)(C)(iii) of an archived program, which program was previously broadcast over-the-air by a terrestrial AM or FM broadcast radio station, in either case whether such Internet transmission or retransmission is made by the owner and operator of the AM or FM radio station that makes the broadcast or by a third party.

(c) *Business Establishment Service* means a service making transmissions of sound recordings under the limitation on exclusive rights specified by 17 U.S.C. 114(d)(1)(C)(iv).

(d) *Copyright Owner* is a sound recording copyright owner who is entitled to receive royalty payments made under this part pursuant to the statutory licenses under 17 U.S.C. 112(e) or 114.

(e) *Designated Agent* is the agent designated by the Librarian of Congress as provided in § 262.4(b).

(f) *Ephemeral Recording* is a phonorecord created for the purpose of facilitating a transmission of a public performance of a sound recording under the limitations on exclusive rights specified by 17 U.S.C. 114(d)(1)(C)(iv) or for the purpose of facilitating a transmission of a public performance of a sound recording under a statutory license in accordance with 17 U.S.C. 114(f), and subject to the limitations specified in 17 U.S.C. 112(e).

(g) *Licensee* is a person or entity that

(1) Has obtained a compulsory license under 17 U.S.C. 114 and the implementing regulations therefor to make eligible nonsubscription transmissions, or noninteractive digital audio transmissions as part of a new subscription service (as defined in 17 U.S.C. 114(j)(8)), or that has obtained a compulsory license under 17 U.S.C. 112(e) and the implementing regulations therefor to make Ephemeral Recordings for use in facilitating such transmissions, or

(2) Is a Business Establishment Service that has obtained a compulsory license under 17 U.S.C. 112(e) and the implementing regulations therefor to make Ephemeral Recordings, but not a person or entity that:

(i) Is exempt from taxation under section 501 of the Internal Revenue Code of 1986 (26 U.S.C. 501);

(ii) Has applied in good faith to the Internal Revenue Service for exemption from taxation under section 501 of the Internal Revenue Code and has a commercially reasonable expectation that such exemption shall be granted; or

(iii) Is a State or possession or any governmental entity or subordinate thereof, or the United States or District of Columbia, making transmissions for exclusively public purposes.

(h) *Listener* is a player, receiving device or other point receiving and rendering a transmission of a public performance of a sound recording made by a Licensee, irrespective of the number of individuals present to hear the transmission.

(i) *Nonsubscription Service* means a service making eligible nonsubscription transmissions.

(j) *Performance* is each instance in which any portion of a sound recording is publicly performed to a Listener by means of a digital audio transmission or

retransmission (*e.g.*, the delivery of any portion of a single track from a compact disc to one Listener) but excluding the following:

(1) A performance of a sound recording that does not require a license (*e.g.*, the sound recording is not copyrighted);

(2) A performance of a sound recording for which the service has previously obtained a license from the Copyright Owner of such sound recording; and

(3) An incidental performance that both:

(i) Makes no more than incidental use of sound recordings including, but not limited to, brief musical transitions in and out of commercials or program segments, brief performances during news, talk and sports programming, brief background performances during disk jockey announcements, brief performances during commercials of sixty seconds or less in duration, or brief performances during sporting or other public events and

(ii) Other than ambient music that is background at a public event, does not contain an entire sound recording and does not feature a particular sound recording of more than thirty seconds (as in the case of a sound recording used as a theme song).

(k) *Performers* means the independent administrators identified in 17 U.S.C. 114(g)(2)(B) and (C) and the parties identified in 17 U.S.C. 114(g)(2)(D).

(l) *Subscription Service* means a new subscription service (as defined in 17 U.S.C. 114(j)(8)) making noninteractive digital audio transmissions.

(m) *Subscription Service Revenues* shall mean all monies and other consideration paid or payable, including the fair market value of non-cash or in-kind consideration paid or payable by third parties, from the operation of a Subscription Service, as comprised of the following:

(1) Subscription fees and other monies and consideration paid for access to the Subscription Service by or on behalf of subscribers receiving within the United States transmissions made as part of the Subscription Service;

(2) Monies and other consideration (including without limitation customer acquisition fees) from audio or visual advertising, promotions, sponsorships, time or space exclusively or predominantly targeted to subscribers of the Subscription Service, whether

(i) On or through the Subscription Service media player, or on pages accessible only by subscribers or that are predominantly targeted to subscribers, or

(ii) In e-mails addressed exclusively or predominantly to subscribers of the Subscription Service, or

(iii) Delivered exclusively or predominantly to subscribers of the Subscription Service in some other manner, in each case less advertising agency commissions (not to exceed 15% of those monies and other consideration) actually paid to a recognized advertising agency not owned or controlled by Licensee;

(3) Monies and other consideration (including without limitation the proceeds of any revenue-sharing or commission arrangements with any fulfillment company or other third party, and any charge for shipping or handling) from the sale of any product or service directly through the Subscription Service media player or through pages or advertisements accessible only by subscribers or that are predominantly targeted to subscribers (but not pages or advertisements that are not predominantly targeted to subscribers), less

(i) Monies and other consideration from the sale of phonorecords and digital phonorecord deliveries of sound recordings,

(ii) The Licensee's actual, out-of-pocket cost to purchase for resale the products or services (except phonorecords and digital phonorecord deliveries of sound recordings) from third parties, or in the case of products produced or services provided by the Licensee, the Licensee's actual cost to produce the product or provide the service (but not more than the fair market wholesale value of the product or service), and

(iii) Sales and use taxes, shipping, and credit card and fulfillment service fees actually paid to unrelated third parties; provided that:

(A) The fact that a transaction is consummated on a different page than the page/location where a potential customer responds to a "buy button" or other purchase opportunity for a product or service advertised directly through such player, pages or advertisements shall not render such purchase outside the scope of Subscription Service Revenues hereunder, and

(B) Monies and other consideration paid by or on behalf of subscribers for software or any other access device owned by Licensee (or any subsidiary or other affiliate of the Licensee, but excluding, for the avoidance of doubt, any entity that sells a third-party product, whether or not bearing the Licensee's brand) to access the Licensee's Subscription Service shall not be deemed part of Subscription Service Revenues, unless such software or access device is required as a condition to access the Subscription Service and either is purchased by a subscriber contemporaneously with or after subscribing or has no independent function other than to access the Subscription Service;

(4) Monies and other consideration for the use or exploitation of data specifically and separately concerning subscribers or the Subscription Service, but not monies and other consideration for the use or exploitation of data wherein information concerning subscribers or the Subscription Service is commingled with and not separated or distinguished from data that predominantly concern nonsubscribers or other services; and

(5) Bad debts recovered with respect to paragraphs (m)(1) through (4) of this section; provided that the Subscription Service shall be permitted to deduct bad debts actually written off during a reporting period.

§ 262.3 Royalty fees for public performances of sound recordings and for ephemeral recordings.

(a) *Basic royalty rate.* Royalty rates and fees for eligible nonsubscription transmissions made by Licensees pursuant to 17 U.S.C. 114(d)(2) during the period January 1, 2003, through December 31, 2004, and the making of Ephemeral Recordings pursuant to 17 U.S.C. 112(e) to facilitate such transmissions; noninteractive digital audio transmissions made by Licensees pursuant to 17 U.S.C. 114(d)(2) as part of a new subscription service during the period October 28, 1998, through December 31, 2004, and the making of Ephemeral Recordings pursuant to 17 U.S.C. 112(e) to facilitate such transmissions; and the making of Ephemeral Recordings by Business Establishment Services pursuant to 17 U.S.C. 112(e) during the period January 1, 2003, through December 31, 2004, shall be as follows:

(1) *Nonsubscription Services.* For their operation of Nonsubscription Services, Licensees other than Business Establishment Services shall, at their election as provided in paragraph (b) of this section, pay at one of the following rates:

(i) *Per Performance Option.* $0.000762 (0.0762¢) per Performance for all digital audio transmissions, except that 4% of Performances shall bear no royalty to approximate the number of partial Performances of nominal duration made by a Licensee due to, for example, technical interruptions, the closing down of a media player or channel switching; Provided that this provision is not intended to imply that permitting users of a service to "skip" a recording is or is not permitted under 17 U.S.C. 114(d)(2). For the avoidance of doubt, this 4% exclusion shall apply to all Licensees electing this payment option irrespective of the Licensee's actual experience in respect of partial Performances.

(ii) *Aggregate Tuning Hour Option.*—(A) *Non-Music Programming.* $0.000762 (0.0762¢) per Aggregate Tuning Hour for programming reasonably classified as news, talk, sports or business programming.

(B) *Broadcast Simulcasts.* $0.0088 (0.88¢) per Aggregate Tuning Hour for Broadcast Simulcast programming not reasonably classified as news, talk, sports or business programming.

(C) *Other Programming.* $0.0117 (1.17¢) per Aggregate Tuning Hour for programming other than Broadcast Simulcast programming and programming reasonably classified as news, talk, sports or business programming.

(2) *Subscription Services.* For their operation of Subscription Services, Licensees other than Business Establishment Services shall, at their election as provided in paragraph (b) of this section, pay at one of the following rates:

(i) *Per Performance Option.* $0.000762 (0.0762¢) per Performance for all digital audio transmissions, except that 4% of Performances shall bear no royalty to approximate the number of partial Performances of nominal duration made by a Licensee due to, for example, technical interruptions, the closing down of a media player or channel switching; Provided that this provision is not intended to imply that permitting users of a service to "skip" a recording is or is not permitted under 17 U.S.C. 114(d)(2). For the avoidance of doubt, this 4% exclusion shall apply to all Licensees electing this payment option irrespective of the Licensee's actual experience in respect of partial Performances.

(ii) *Aggregate Tuning Hour Option.*—(A) *Non-Music Programming.* $0.000762 (0.0762¢) per Aggregate Tuning Hour for programming reasonably classified as news, talk, sports or business programming.

(B) *Broadcast Simulcasts.* $0.0088 (0.88¢) per Aggregate Tuning Hour for Broadcast Simulcast programming not reasonably classified as news, talk, sports or business programming.

(C) *Other Programming.* $0.0117 (1.17¢) per Aggregate Tuning Hour for programming other than Broadcast Simulcast programming and programming reasonably classified as news, talk, sports or business programming.

(iii) *Percentage of Subscription Service Revenues Option.* 10.9% of Subscription Service Revenues, but in no event less than 27¢ per month for each person who subscribes to the Subscription Service for all or any part of the month or to whom the Subscription Service otherwise is delivered by Licensee without a fee (*e.g.*, during a free trial period), subject to the following reduction associated with the transmission of directly licensed sound recordings (if applicable). For any given payment period, the fee due from Licensee shall be the amount calculated under the formula described in the immediately preceding sentence *multiplied by* the following fraction: the total number of Performances (as defined under § 262.2(j), which excludes directly licensed sound recordings) made by the Subscription Service during the period in question, *divided by* the total number of digital audio transmissions of sound recordings made by the Subscription Service during the period in question (inclusive of Performances and equivalent transmissions of directly licensed sound recordings). Any Licensee paying on such basis shall report to the Designated Agent on its statements of account the pertinent music use information upon which such reduction has been calculated. This option shall not be available to a Subscription Service where—

(A) A particular computer software product or other access device must be purchased for a separate fee from the Licensee as a condition of receiving transmissions of sound recordings through the Subscription Service, and the Licensee chooses not to include sales of such software product or other device to subscribers as part of Subscription Service Revenues in accordance with § 262.2(m)(3), or

(B) The consideration paid or given to receive the Subscription Service also entitles the subscriber to receive or have access to material, products or services other than the Subscription Service (for example, as in the case of a "bundled service" consisting of access to the Subscription Service and also access to the Internet in general). In all events, in order to be eligible for this payment option, a Licensee may not engage in pricing practices whereby the Subscription Service is offered to subscribers on a "loss leader" basis or whereby the price of the Subscription Service is materially subsidized by payments made by the subscribers for other products or services.

(3) *Business Establishment Services.* For the making of any number of Ephemeral Recordings in the operation of a service pursuant to the limitation on exclusive rights specified by 17 U.S.C. 114(d)(1)(C)(iv), a Licensee that is a Business Establishment Service shall pay 10% of such Licensee's "Gross Proceeds" derived from the use in such service of musical programs that are attributable to copyrighted recordings. "Gross Proceeds" as used in paragraph (a)(3) of this section means all fees and payments, including those made in kind, received from any source before, during or after the License Period that are derived from the use of copyrighted sound recordings pursuant to 17 U.S.C. 112(e) for the sole purpose of facilitating a transmission to the public of a performance of a sound recording under the limitation on exclusive rights specified in 17 U.S.C. 114(d)(1)(C)(iv). The attribution of Gross Proceeds to copyrighted recordings may be made on the basis of:

(i) For classical programs, the proportion that the playing time of copyrighted classical recordings bears to the total playing time of all classical recordings in the program, and

(ii) For all other programs, the proportion that the number of copyrighted recordings bears to the total number of all recordings in the program.

(b) *Election process.* A Licensee other than a Business Establishment Service shall elect the particular Nonsubscription Service and/or Subscription Service royalty rate categories it chooses (that is, among paragraph (a)(1)(i) or (ii) of this section and/or paragraph (a)(2)(i), (ii) or (iii) of this section) for the License Period by no later than [the date 30 days after these rates and terms are adopted by the Librarian of Congress and published in the **Federal Register**.] Notwithstanding the preceding sentence, where a Licensee has not previously provided a Nonsubscription Service or Subscription Service, as the case may be, the Licensee may make its election by no later than thirty (30) days after the new service first makes a digital audio transmission of a sound recording under the 17 U.S.C. 114 statutory license. Each such election shall be made by notifying the Designated Agent in writing of such election, using an election form provided by the Designated Agent. A Licensee that fails to make a timely election shall pay royalties as provided in paragraphs (a)(1)(i) and (a)(2)(i) of this section, as applicable. Notwithstanding the foregoing, a Licensee eligible to make royalty payments under an agreement entered into pursuant to the Small Webcaster

Settlement Act of 2002 may elect to make payments under such agreement as specified in such agreement.

(c) *Ephemeral Recordings.* The royalty payable under 17 U.S.C. 112(e) for any reproduction of a phonorecord made by a Licensee other than a Business Establishment Service during the License Period, and used solely by the Licensee to facilitate transmissions for which it pays royalties as and when provided in this section and § 262.4 shall be deemed to be included within, and to comprise 8.8% of, such royalty payments. The royalty payable under 17 U.S.C. 112(e) for the reproduction of phonorecords by a Business Establishment Service shall be as set forth in paragraph (a)(3) of this section.

(d) *Minimum fee.*—(1) Business Establishment Services. Each Licensee that is a Business Establishment Service shall pay a minimum fee of $10,000 for each calendar year in which it makes Ephemeral Recordings for use to facilitate transmissions under the limitation on exclusive rights specified by 17 U.S.C. 114(d)(1)(C)(iv), whether or not it does so for all or any part of the year.

(2) *Other Services.* Each Licensee other than a Business Establishment Service shall pay a minimum fee of $2,500, or $500 per channel or station (excluding archived programs, but in no event less than $500 per Licensee), whichever is less, for each calendar year in which it makes eligible nonsubscription transmissions, noninteractive digital audio transmissions as part of a new subscription service or Ephemeral Recordings for use to facilitate such transmissions, whether or not it does the foregoing for all or any part of the year; except that the minimum annual fee for a Licensee electing to pay under paragraph (a)(2)(iii) of this section shall be $5,000.

(3) *In General.* These minimum fees shall be nonrefundable, but shall be fully creditable to royalty payments due under paragraph (a) of this section for the same calendar year (but not any subsequent calendar year).

(e) *Continuing Obligation.* For the limited purpose of the period immediately following the License Period, and on an entirely without prejudice and nonprecedential basis relative to other time periods and proceedings, if successor statutory royalty rates for Licensees for the period beginning January 1, 2005, have not been established by January 1, 2005, then Licensees shall pay to the Designated Agent, effective January 1, 2005, and continuing for the period through April 30, 2005, or until successor rates and terms are established, whichever is earlier, an interim royalty pursuant to the same rates and terms as are provided for the License Period. Such interim royalties shall be subject to retroactive adjustment based on the final successor rates. Any overpayment shall be fully creditable to future payments, and any underpayment shall be paid within thirty days after establishment of the successor rates and terms, except as may otherwise be provided in the successor terms. If there is a period of such interim payments, Licensees shall elect the particular royalty rate categories it chooses for the interim period as described in paragraph (b) of this section, except that the election for a service that is in operation shall be made by no later than January 15, 2005.

(f) *Other royalty rates and terms.* This part 262 does not apply to persons or entities other than Licensees, or to Licensees to the extent that they make other types of transmissions beyond those set forth in paragraph (a) of this section. For transmissions other than those governed by paragraph (a) of this section, or the use of Ephemeral Recordings to facilitate such transmissions, persons making such transmissions must pay royalties, to the extent (if at all) applicable, under 17 U.S.C. 112(e) and 114 or as prescribed by other law, regulation or agreement.

§ 262.4 Terms for making payment of royalty fees and statements of account.

(a) *Payment to designated agent.* A Licensee shall make the royalty payments due under § 262.3 to the Designated Agent.

(b) *Designation of agent and potential successor designated agents.*—(1) Until such time as a new designation is made, SoundExchange, presently an unincorporated division of the Recording Industry Association of America, Inc. ("RIAA"), is designated as the Designated Agent to receive statements of account and royalty payments from Licensees due under § 262.3 and to distribute such royalty payments to each Copyright Owner and Performer entitled to receive royalties under 17 U.S.C. 112(e) or 114(g). SoundExchange shall continue to be designated after its separate incorporation.

(2) If SoundExchange should fail to incorporate by July 1, 2003, dissolve or cease to be governed by a board consisting of equal numbers of representatives of Copyright Owners and Performers, then it shall be replaced by successor entities upon the fulfillment of the requirements set forth in paragraphs (b)(2)(i) and (ii) of this section.

(i) By a majority vote of the nine copyright owner representatives on the SoundExchange Board as of the last day preceding the condition precedent in paragraph (b)(2) of this section, such representatives shall file a petition with the Copyright Office designating a successor Designated Agent to distribute royalty payments to Copyright Owners and Performers entitled to receive royalties under 17 U.S.C. 112(e) or 114(g) that have themselves authorized such Designated Agent.

(ii) By a majority vote of the nine performer representatives on the SoundExchange Board as of the last day preceding the condition precedent in paragraph (b)(2) of this section, such representatives shall file a petition with the Copyright Office designating a successor Designated Agent to distribute royalty payments to Copyright Owners and Performers entitled to receive royalties under 17 U.S.C. 112(e) or 114(g) that have themselves authorized such Designated Agent.

(iii) The Copyright Office shall publish in the **Federal Register** within thirty days of receipt of a petition filed under paragraph (b)(2)(i) or (ii) of this section an order designating the Designated Agents named in such petitions. Nothing contained in this section shall prohibit the petitions filed under paragraphs (b)(2)(i) and (ii) of this section from naming the same successor Designated Agent.

(3) If petitions are filed under paragraphs (b)(2)(i) and (ii) of this section, then, following the actions of the Copyright Office in accordance with paragraph (b)(2)(iii) of this section:

(i) Each of the successor entities shall have all the rights and responsibilities of a Designated Agent under this part 262, except as specifically set forth in this paragraph (b)(3).

(ii) Licensees shall make their royalty payments to the successor entity named by the copyright owner representatives under paragraph (b)(2)(i) of this section (the "Receiving Agent") and shall provide statements of account on a form prepared by the Receiving Agent. Licensees shall submit a copy of each statement of account to the collective named by the performer representatives under paragraph (b)(2)(ii) of this section at the same time such statement of account is delivered to the Receiving Agent.

(iii) The Designated Agents shall agree between themselves concerning responsibility for distributing royalty payments to Copyright Owners and Performers that have not themselves authorized either Designated Agent. The Designated Agents also shall agree to a corresponding methodology for allocating royalty payments between them using the information provided by the Licensee pursuant to the regulations governing records of use of performances for the period for which the royalty payment was made. Such methodology shall value all performances equally. Within 30 days after their agreement concerning such responsibility and methodology, the Designated Agents shall inform the Register of Copyrights thereof.

(iv) With respect to any royalty payment received by the Receiving Agent from a Licensee, a designation by a Copyright Owner or Performer of a Designated Agent must be made no later than 30 days prior to the receipt by the Receiving Agent of that royalty payment.

(v) The Receiving Agent shall promptly allocate the royalty payments it receives between the two Designated Agents in accordance with the agreed methodology. A final adjustment, if necessary, shall be agreed and paid or refunded, as the case may be, between the Receiving Agent and the collectives named under paragraph (b)(2) of this section for each calendar year no later than 180 days following the end of each calendar year. The Designated Agents shall agree on a reasonable basis for the sharing on a pro-rata basis of any costs associated with the allocations set forth in paragraph (b)(3)(iii) of this section.

(vi) If a Designated Agent is unable to locate a Copyright Owner or Performer that the Designated Agent otherwise would be required to pay under this paragraph (b) within 3 years from the date of payment by Licensee, such Copyright Owner's or Performer's share of the payments made by Licensees may first be applied to the costs directly attributable to the administration of the royalty payments due such Copyright Owners and Performers by that Designated Agent and shall thereafter be allocated between the Designated Agents on a pro rata basis (based on distributions to entitled parties) to offset any costs permitted to be deducted by a designated agent under 17 U.S.C. 114(g)(3). The foregoing shall apply notwithstanding the common law or statutes of any State.

(c) *Monthly payments.* A Licensee shall make any payments due under § 262.3(a) by the 45th day after the end of each month for that month, except that payments due under § 262.3(a) for the period from the beginning of the License Period through the last day of the month in which these rates and terms are adopted by the Librarian of Congress and published in the **Federal Register** shall be due 45 days after the end of such period. All monthly payments shall be rounded to the nearest cent.

(d) *Minimum payments.* A Licensee shall make any payment due under § 262.3(d) by January 31 of the applicable calendar year, except that:

(1) Payment due under § 262.3(d) for 2003, and in the case of a Subscription Service any earlier year, shall be due 45 days after the last day of the month in which these rates and terms are adopted by the Librarian of Congress and published in the **Federal Register**; and

(2) Payment for a Licensee that has not previously made eligible nonsubscription transmissions, noninteractive digital audio transmissions as part of a new subscription service or Ephemeral Recordings pursuant to licenses under 17 U.S.C. 114(f) and/or 17 U.S.C. 112(e) shall be due by the 45th day after the end of the month in which the Licensee commences to do so.

(e) *Late payments.* A Licensee shall pay a late fee of 0.75% per month, or the highest lawful rate, whichever is lower, for any payment received by the Designated Agent after the due date. Late fees shall accrue from the due date until payment is received by the Designated Agent.

(f) *Statements of account.* For any part of the period beginning on the date these rates and terms are adopted by the Librarian of Congress and published in the **Federal Register** and ending on December 31, 2004, during which a Licensee operates a service, by 45 days after the end of each month during the period, the Licensee shall deliver to the Designated Agent a statement of account containing the information set forth in this paragraph (f) on a form prepared, and made available to Licensees, by the Designated Agent. If a payment is owed for such month, the statement of account shall accompany the payment. A statement of account shall include only the following information:

(1) Such information as is necessary to calculate the accompanying royalty payment, or if no payment is owed for the month, to calculate any portion of the minimum fee recouped during the month, including, as applicable, the Performances, Aggregate Tuning Hours (to the nearest minute) or Subscription Service Revenues for the month;

(2) The name, address, business title, telephone number, facsimile number, electronic mail address and other contact information of the individual or individuals to be contacted for information or questions concerning the content of the statement of account;

(3) The handwritten signature of:

(i) The owner of the Licensee or a duly authorized agent of the owner, if the Licensee is not a partnership or a corporation;

(ii) A partner or delegee, if the Licensee is a partnership; or

(iii) An officer of the corporation, if the Licensee is a corporation;

(4) The printed or typewritten name of the person signing the statement of account;

(5) The date of signature;

(6) If the Licensee is a partnership or a corporation, the title or official position held in the partnership or corporation by the person signing the statement of account;

(7) A certification of the capacity of the person signing; and

(8) A statement to the following effect:

I, the undersigned owner or agent of the Licensee, or officer or partner, if the Licensee is a corporation or partnership, have examined this statement of account and hereby state that it is true, accurate and complete to my knowledge after reasonable due diligence.

(g) *Distribution of payments.*—(1) The Designated Agent shall distribute royalty payments directly to Copyright Owners and Performers, according to 17 U.S.C. 114(g)(2); Provided that the Designated Agent shall only be responsible for making distributions to those Copyright Owners and Performers who provide the Designated Agent with such information as is necessary to identify and pay the correct recipient of such payments. The agent shall distribute royalty payments on a basis that values all performances by a Licensee equally based upon the information provided by the Licensee pursuant to the regulations governing records of use of sound recordings by Licensees; Provided, however, Performers and Copyright Owners that authorize the Designated Agent may agree with the Designated Agent to allocate their shares of the royalty payments made by any Licensee among themselves on an alternative basis. Parties entitled to receive payments under 17 U.S.C. 114(g)(2) may agree with the Designated Agent upon payment protocols to be used by the Designated Agent that provide for alternative arrangements for the payment of royalties consistent with the percentages in 17 U.S.C. 114(g)(2).

(2) The Designated Agent shall inform the Register of Copyrights of:

(i) Its methodology for distributing royalty payments to Copyright Owners and Performers who have not themselves authorized the Designated Agent (hereinafter "nonmembers"), and any amendments thereto, within 60 days of adoption and no later than 30

days prior to the first distribution to Copyright Owners and Performers of any royalties distributed pursuant to that methodology;

(ii) Any written complaint that the Designated Agent receives from a nonmember concerning the distribution of royalty payments, within 60 days of receiving such written complaint; and

(iii) The final disposition by the Designated Agent of any complaint specified by paragraph (g)(2)(ii) of this section, within 60 days of such disposition.

(3) A Designated Agent may request that the Register of Copyrights provide a written opinion stating whether the Designated Agent's methodology for distributing royalty payments to nonmembers meets the requirements of this section.

(h) *Permitted deductions.* The Designated Agent may deduct from the payments made by Licensees under § 262.3, prior to the distribution of such payments to any person or entity entitled thereto, all incurred costs permitted to be deducted under 17 U.S.C. 114(g)(3); Provided, however, that any party entitled to receive royalty payments under 17 U.S.C. 112(e) or 114(g) may agree to permit the Designated Agent to make any other deductions.

(i) *Retention of records.* Books and records of a Licensee and of the Designated Agent relating to the payment, collection, and distribution of royalty payments shall be kept for a period of not less than 3 years.

§ 262.5 Confidential information.

(a) *Definition.* For purposes of this part, "Confidential Information" shall include the statements of account, any information contained therein, including the amount of royalty payments, and any information pertaining to the statements of account reasonably designated as confidential by the Licensee submitting the statement.

(b) *Exclusion.* Confidential Information shall not include documents or information that at the time of delivery to the Receiving Agent or a Designated Agent are public knowledge. The Designated Agent that claims the benefit of this provision shall have the burden of proving that the disclosed information was public knowledge.

(c) *Use of Confidential Information.* In no event shall the Designated Agent use any Confidential Information for any purpose other than royalty collection and distribution and activities directly related thereto; Provided, however, that the Designated Agent may disclose to Copyright Owners and Performers Confidential Information provided on statements of account under this part in aggregated form, so long as Confidential Information pertaining to any individual Licensee cannot readily be identified, and the Designated Agent may disclose the identities of services that have obtained licenses under 17 U.S.C. 112(e) or 114 and whether or not such services are current in their obligations to pay minimum fees and submit statements of account (so long as the Designated Agent does not disclose the amounts paid by the Licensee).

(d) *Disclosure of Confidential Information.* Except as provided in paragraph (c) of this section and as required by law, access to Confidential Information shall be limited to:

(1) Those employees, agents, attorneys, consultants and independent contractors of the Designated Agent, subject to an appropriate confidentiality agreement, who are engaged in the collection and distribution of royalty payments hereunder and activities related thereto, who are not also employees or officers of a Copyright Owner or Performer, and who, for the purpose of performing such duties during the ordinary course of their work, require access to the records;

(2) An independent and qualified auditor, subject to an appropriate confidentiality agreement, who is authorized to act on behalf of the Designated Agent with respect to the verification of a Licensee's statement of account pursuant to § 262.6 or on behalf of a Copyright Owner or Performer with respect to the verification of royalty payments pursuant to § 262.7;

(3) The Copyright Office, in response to inquiries concerning the operation of the Designated Agent;

(4) In connection with future Copyright Arbitration Royalty Panel proceedings under 17 U.S.C. 114(f)(2) and 112(e), and under an appropriate protective order, attorneys, consultants and other authorized agents of the parties to the proceedings, Copyright Arbitration Royalty Panels, the Copyright Office or the courts; and

(5) In connection with bona fide royalty disputes or claims that are the subject of the procedures under § 262.6 or § 262.7, and under an appropriate confidentiality agreement or protective order, the specific parties to such disputes or claims, their attorneys, consultants or other authorized agents, and/or arbitration panels or the courts to which disputes or claims may be submitted.

(e) *Safeguarding of Confidential Information.* The Designated Agent and any person identified in paragraph (d) of this section shall implement procedures to safeguard all Confidential Information using a reasonable standard of care, but no less than the same degree of security used to protect Confidential Information or similarly sensitive information belonging to such Designated Agent or person.

§ 262.6 Verification of statements of account.

(a) *General.* This section prescribes procedures by which the Designated Agent may verify the royalty payments made by a Licensee.

(b) *Frequency of verification.* The Designated Agent may conduct a single audit of a Licensee, upon reasonable notice and during reasonable business hours, during any given calendar year, for any or all of the prior 3 calendar years, but no calendar year shall be subject to audit more than once.

(c) *Notice of intent to audit.* The Designated Agent must file with the Copyright Office a notice of intent to audit a particular Licensee, which shall, within 30 days of the filing of the notice, publish in the **Federal Register** a notice announcing such filing. The notification of intent to audit shall be served at the same time on the Licensee to be audited. Any such audit shall be conducted by an independent and qualified auditor identified in the notice, and shall be binding on all parties.

(d) *Acquisition and retention of records.* The Licensee shall use commercially reasonable efforts to obtain or to provide access to any relevant books and records maintained by third parties for the purpose of the audit and retain such records for a period of not less than three years. The Designated Agent shall retain the report of the verification for a period of not less than 3 years.

(e) *Acceptable verification procedure.* An audit, including underlying paperwork, which was performed in the ordinary course of business according to generally accepted auditing standards by an independent and qualified auditor, shall serve as an acceptable verification procedure for all parties with respect to the information that is within the scope of the audit.

(f) *Consultation.* Before rendering a written report to the Designated Agent, except where the auditor has a reasonable basis to suspect fraud and disclosure would, in the reasonable opinion of the auditor, prejudice the investigation of such suspected fraud, the auditor shall review the tentative written findings of the audit with the appropriate agent or employee of the Licensee being audited in order to remedy any factual errors and clarify any issues relating to the audit; Provided that the appropriate agent or employee of the Licensee reasonably cooperates with the auditor to remedy promptly any factual errors or clarify any issues raised by the audit.

(g) *Costs of the verification procedure.* The Designated Agent shall pay the cost of the verification procedure, unless it is finally determined that there was an underpayment of 10% or more, in which case the Licensee shall, in addition to paying the amount of any underpayment, bear the reasonable costs of the verification procedure.

§ 262.7 Verification of royalty payments.

(a) *General.* This section prescribes procedures by which any Copyright Owner or Performer may verify the royalty payments made by the Designated Agent; Provided, however, that nothing contained in this section shall apply to situations where a Copyright Owner or a Performer and the Designated Agent have agreed as to proper verification methods.

(b) *Frequency of verification.* A Copyright Owner or a Performer may conduct a single audit of the Designated Agent upon reasonable notice and during reasonable business hours, during any given calendar year, for any or all of the prior 3 calendar years, but no calendar year shall be subject to audit more than once.

(c) *Notice of intent to audit.* A Copyright Owner or Performer must file with the Copyright Office a notice of intent to audit the Designated Agent, which shall, within 30 days of the filing of the notice, publish in the **Federal Register** a notice announcing such filing. The notification of intent to audit shall be served at the same time on the Designated Agent. Any such audit shall be conducted by an independent and qualified auditor identified in the notice, and shall be binding on all Copyright Owners and Performers.

(d) *Acquisition and retention of records.* The Designated Agent shall use commercially reasonable efforts to obtain or to provide access to any relevant books and records maintained by third parties for the purpose of the audit and retain such records for a period of not less than 3 years. The Copyright Owner or Performer requesting the verification procedure shall retain the report of the verification for a period of not less than 3 years.

(e) *Acceptable verification procedure.* An audit, including underlying paperwork, which was performed in the ordinary course of business according to generally accepted auditing standards by an independent and qualified auditor, shall serve as an acceptable verification procedure for all parties with respect to the information that is within the scope of the audit.

(f) *Consultation.* Before rendering a written report to a Copyright Owner or Performer, except where the auditor has a reasonable basis to suspect fraud and disclosure would, in the reasonable opinion of the auditor, prejudice the investigation of such suspected fraud, the auditor shall review the tentative written findings of the audit with the appropriate agent or employee of the Designated Agent in order to remedy any factual errors and clarify any issues relating to the audit; Provided that the appropriate agent or employee of the Designated Agent reasonably cooperates with the auditor to remedy promptly any factual errors or clarify any issues raised by the audit.

(g) *Costs of the verification procedure.* The Copyright Owner or Performer requesting the verification procedure shall pay the cost of the procedure, unless it is finally determined that there was an underpayment of 10% or more, in which case the Designated Agent shall, in addition to paying the amount of any underpayment, bear the reasonable costs of the verification procedure.

§ 262.8 Unclaimed funds.

If a Designated Agent is unable to identify or locate a Copyright Owner or Performer who is entitled to receive a royalty payment under this part, the Designated Agent shall retain the required payment in a segregated trust account for a period of 3 years from the date of payment. No claim to such payment shall be valid after the expiration of the 3-year period. After the expiration of this period, the Designated Agent may apply the unclaimed funds to offset any costs deductible under 17 U.S.C. 114(g)(3). The foregoing shall apply notwithstanding the common law or statutes of any State.

Dated: May 12, 2003.

David O. Carson,

General Counsel.

[FR Doc. 03–12349 Filed 5–19–03; 8:45 am]

BILLING CODE 1410–33–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[PA203–4207b; FRL–7494–3]

Approval and Promulgation of Air Quality Implementation Plans; Pennsylvania; NO_X RACT Determinations for Lafayette College

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA proposes to approve the State Implementation Plan (SIP) revision submitted by the Commonwealth of Pennsylvania to establish and require reasonably available control technology (RACT) requirements for Lafayette College, Easton Campus. Lafayette College, Easton Campus, is a major source of nitrogen oxides (NO_X) located in Northampton County, Pennsylvania. In the Final Rules section of this **Federal Register**, EPA is approving the Commonwealth's SIP revision as a direct final rule without prior proposal because the Agency views this as a noncontroversial submittal and anticipates no adverse comments. A detailed rationale for the approval is set forth in the direct final rule. If no adverse comments are received in response to this action, no further activity is contemplated. If EPA receives adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this proposed rule. EPA will not institute a second comment period. Any parties interested in commenting on this action should do so at this time.

DATES: Comments must be received in writing by June 19, 2003.

ADDRESSES: Written comments should be addressed to Makeba Morris, Acting Branch Chief, Air Quality Planning and Information Services Branch, Mailcode 3AP21, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103. Copies of the documents relevant to this action are available for public inspection during normal business hours at the Air Protection Division, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103; and the Pennsylvania Department of Environmental Resources, Bureau of Air Quality Control, PO Box 8468, 400 Market Street, Harrisburg, Pennsylvania 17105.

FOR FURTHER INFORMATION CONTACT: Ellen Wentworth at (215) 814–2034, or by e-mail at *wentworth.ellen@epa.gov*

SUPPLEMENTARY INFORMATION: For further information, please see the information provided in the direct final action, Pennsylvania's Approval of NO_X RACT Determinations for Lafayette College, Easton Campus, that is located in the "Rules and Regulations" section of this **Federal Register** publication.

Dated: April 25, 2003.

Donald S. Welsh,

Regional Administrator, Region III.

[FR Doc. 03–12475 Filed 5–19–03; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

44 CFR Part 67

[Docket No. FEMA–P–7631]

Proposed Flood Elevation Determinations

AGENCY: Federal Emergency Management Agency (FEMA), Emergency Preparedness and Response Directorate, Department of Homeland Security.

ACTION: Proposed rule.

SUMMARY: Technical information or comments are requested on the proposed Base (1% annual-chance) Flood Elevations (BFEs) and proposed BFE modifications for the communities listed below. The BFEs and modified BFEs are the basis for the floodplain management measures that the community is required either to adopt or to show evidence of being already in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP).

DATES: The comment period is ninety (90) days following the second publication of this proposed rule in a newspaper of local circulation in each community.

ADDRESSES: The proposed BFEs for each community are available for inspection at the office of the Chief Executive Officer of each community. The respective addresses are listed in the table below.

FOR FURTHER INFORMATION CONTACT: Mary Jean Pajak, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472, (202) 646–2831.

SUPPLEMENTARY INFORMATION: The Federal Emergency Management Agency makes the final determinations listed below for the modified BFEs for each community listed. These modified elevations have been published in newspapers of local circulation and ninety (90) days have elapsed since that publication. The Mitigation Division Director of the Emergency Preparedness and Response Directorate has resolved any appeals resulting from this notification.

These proposed BFEs and modified BFEs, together with the floodplain management criteria required by 44 CFR 60.3, are the minimum that are required. They should not be construed to mean that the community must change any existing ordinances that are more stringent in their floodplain management requirements. The community may at any time enact stricter requirements of its own, or pursuant to policies established by other Federal, State, or regional entities. These proposed elevations are used to meet the floodplain management requirements of the NFIP and are also used to calculate the appropriate flood insurance premium rates for new buildings built after these elevations are made final, and for the contents in these buildings.

National Environmental Policy Act

This proposed rule is categorically excluded from the requirements of 44 CFR Part 10, Environmental Consideration. No environmental impact assessment has been prepared.

Regulatory Flexibility Act

The Mitigation Division Director of the Emergency Preparedness and Response Directorate certifies that this rule is exempt from the requirements of the Regulatory Flexibility Act because modified base flood elevations are required by the Flood Disaster Protection Act of 1973, 42 U.S.C. 4105, and are required to maintain community eligibility in the NFIP. No regulatory flexibility analysis has been prepared.

Regulatory Classification

This proposed rule is not a significant regulatory action under the criteria of Section 3(f) of Executive Order 12866 of September 30, 1993, Regulatory Planning and Review, 58 FR 51735.

Executive Order 12612, Federalism

This proposed rule involves no policies that have federalism implications under Executive Order 12612, Federalism, dated October 26, 1987.

Executive Order 12778, Civil Justice Reform

This proposed rule meets the applicable standards of Section 2(b)(2) of Executive Order 12778.

List of Subjects in 44 CFR Part 67

Administrative practice and procedure, flood insurance, reporting and record keeping requirements.

Accordingly, 44 CFR Part 67 is proposed to be amended as follows:

PART 67—[AMENDED]

1. The authority citation for Part 67 continues to read as follows:

Authority: 42 U.S.C. 4001 *et seq.*; Reorganization Plan No. 3 of 1978, 3 CFR, 1978 Comp., p. 329; E.O. 12127, 44 FR 19367, 3 CFR, 1979 Comp., p. 376.

§ 67.4 [Amended]

2. The tables published under the authority of § 67.4 are proposed to be amended as follows:

Source of flooding and location of referenced elevation	*Elevation in feet (NAVD)		Communities affected
	Existing	*Modified*	
Mile Branch:			
Approximately 1,320 feet downstream of the Burlington Northern & Santa Fe Railway.	None	*993	City of Bolivar, Polk County (Unincorporated Areas).
Approximately 1,050 feet upstream of 103rd Road	None	*1,075	
Mile Branch Tributary No. 2:			
Approximately 775 feet downstream of West Parkview	None	*1,005	City of Bolivar, Polk County (Unincorporated Areas).
Approximately 1,520 feet upstream of West Parkview	None	*1,046	
Mile Branch Tributary No. 3:			
At confluence with Mile Branch	None	*1,012	City Bolivar.
At Limit of Detailed Study	None	*1,056	

Source of flooding and location of referenced elevation	*Elevation in feet (NAVD)		Communities affected
	Existing	*Modified*	
Mile Branch Tributary No. 4:			
At confluence with Mile Branch	None	*1,024	City Bolivar.
At Limit of Detailed Study	None	*1,060	
Mile Branch Tributary No. 6:			
At confluence with Mile Branch	None	*1,046	City Bolivar.
At Limit of Detailed Study	None	*1,064	
Mile Branch Tributary No. 7:			
At confluence with Mile Branch	None	*1,068	City Bolivar.
At Limit of Detailed Study	None	*1,078	
Southern Tributary to Town Branch:			
Approximately 2,440 feet downstream of Buffalo Street	None	*996	City of Bolivar, Polk County (Unincorporated Areas).
Approximately 600 feet upstream of Circle Drive	None	*1,052	
Southern Tributary to Town Branch—Tributary No. 1:			
At confluence with Southern Tributary to Town Branch	None	*1,036	City Bolivar.
At Limit of Detailed Study	None	*1,061	
Town Branch:			
Approximately 1,750 feet downstream of Broadway Street (State Highway 32)	None	*980	City of Bolivar, Polk County (Unincorporated Areas).
Approximately 1,500 feet upstream of Lakewood Drive	None	*1,081	
Town Branch Tributary No. 1:			
Approximately 150 feet downstream of East Walnut Street	None	*1,027	City Bolivar.
Approximately 50 feet upstream of Buffalo Street	None	*1,049	
Town Branch Tributary No. 2:			
Approximately 135 feet downstream from Jefferson Street	None	*1,033	City Bolivar.
At Burlington Northern & Santa Fe Railway	None	*1,055	
Town Branch Tributary No. 3:			
At confluence with Town Branch	None	*1,070	City Bolivar.
At Limit of Detailed Study	None	*1,081	

Polk County (Unincorporated Areas)

Maps available for inspection at 102 East Broadway Street, Room 11, Bolivar, MO.

Send comments to Mr. Denzil Roberts, Presiding Commissioner, 102 East Broadway Street, Room 12, Bolivar, MO 65613.

City of Bolivar

Maps available for inspection at City Hall, 345 South Main Street, Bolivar, MO.

Send comments to the Honorable Charles Ealy, City Hall, 345 South Main Street, Bolivar, MO 65613.

*North American Vertical Datum.

(Catalog of Federal Domestic Assistance No. 83.100, "Flood Insurance")

Dated: May 9, 2003.

Anthony S. Lowe,

Mitigation Division Director, Emergency Preparedness and Response Directorate.

[FR Doc. 03–12580 Filed 5–19–03; 8:45 am]

BILLING CODE 6718–04–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

44 CFR Part 67

Docket No. FEMA–P–7629

Proposed Flood Elevation Determinations

AGENCY: Federal Emergency Management Agency (FEMA), Emergency Preparedness and Response Directorate, Department of Homeland Security.

ACTION: Proposed rule.

SUMMARY: Technical information or comments are requested on the proposed Base (1% annual-chance) Flood Elevations (BFEs) and proposed BFE modifications for the communities listed below. The BFEs and modified BFEs are the basis for the floodplain management measures that the community is required either to adopt or to show evidence of being already in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP).

DATES: The comment period is ninety (90) days following the second publication of this proposed rule in a newspaper of local circulation in each community.

ADDRESSES: The proposed BFEs for each community are available for inspection at the office of the Chief Executive Officer of each community. The respective addresses are listed in the table below.

FOR FURTHER INFORMATION CONTACT: Mary Jean Pajak, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472, (202) 646–2831.

SUPPLEMENTARY INFORMATION: The Federal Emergency Management Agency makes the final determinations listed below for the modified BFEs for each community listed. These modified elevations have been published in newspapers of local circulation and ninety (90) days have elapsed since that publication. The Mitigation Division Director of the Emergency Preparedness and Response Directorate has resolved any appeals resulting from this notification.

These proposed BFEs and modified BFEs, together with the floodplain management criteria required by 44 CFR 60.3, are the minimum that are required. They should not be construed to mean that the community must change any existing ordinances that are more stringent in their floodplain management requirements. The community may at any time enact stricter requirements of its own, or

pursuant to policies established by other Federal, State, or regional entities. These proposed elevations are used to meet the floodplain management requirements of the NFIP and are also used to calculate the appropriate flood insurance premium rates for new buildings built after these elevations are made final, and for the contents in these buildings.

National Environmental Policy Act

This proposed rule is categorically excluded from the requirements of 44 CFR part 10, Environmental Consideration. No environmental impact assessment has been prepared.

Regulatory Flexibility Act

The Mitigation Division Director of the Emergency Preparedness and Response Directorate certifies that this rule is exempt from the requirements of the Regulatory Flexibility Act because modified base flood elevations are required by the Flood Disaster Protection Act of 1973, 42 U.S.C. 4105, and are required to maintain community eligibility in the NFIP. No regulatory flexibility analysis has been prepared.

Regulatory Classification

This proposed rule is not a significant regulatory action under the criteria of Section 3(f) of Executive Order 12866 of September 30, 1993, Regulatory Planning and Review, 58 FR 51735.

Executive Order 12612, Federalism

This proposed rule involves no policies that have federalism implications under Executive Order 12612, Federalism, dated October 26, 1987.

Executive Order 12778, Civil Justice Reform

This proposed rule meets the applicable standards of Section 2(b)(2) of Executive Order 12778.

List of Subjects in 44 CFR Part 67

Administrative practice and procedure, Flood insurance, Reporting and Recordkeeping requirements.

Accordingly, 44 CFR Part 67 is proposed to be amended as follows:

PART 67—[AMENDED]

1. The authority citation for Part 67 continues to read as follows:

Authority: 42 U.S.C. 4001 *et seq.*; Reorganization Plan No. 3 of 1978, 3 CFR, 1978 Comp., p. 329; E.O. 12127, 44 FR 19367, 3 CFR, 1979 Comp., p. 376.

§ 67.4 [Amended]

2. The tables published under the authority of § 67.4 are proposed to be amended as follows:

State	City/town/county	Source of flooding	Location	#Depth in feet above ground. *Elevation in feet.*(NGVD) ◆(NAVD)	
				Existing	Modified
MO	Seneca (City) (Newton County).	Little Lost Creek	At confluence with Lost Creek	*849	*847
			Approximately 2,650 feet upstream of St. Louise Street.	*874	*872
		Lost Creek	Approximately 3,00 feet downstream of Cherokee Avenue.	None	*847
			Approximately 3,900 feet upstream of Seneca Avenue.	*863	*862

Maps are available for inspection at the Seneca City Hall, 1303 Cherokee, Seneca, Missouri.
Send comments to The Honorable Gary Roark, Mayor, City of Seneca, 1303 Cherokee Avenue, Seneca, Missouri 64865.

(Catalog of Federal Domestic Assistance No. 83.100, "Flood Insurance.")

Dated: May 9, 2003.

Anthony S. Lowe,

Mitigation Division Director, Emergency Preparedness and Response Directorate.

[FR Doc. 03–12578 Filed 5–19–03; 8:45 am]

BILLING CODE 6718–04–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[Docket No. 030513122–3122–01; ID 050103C]

RIN 0648–AR01

Fisheries of the Northeastern United States; Atlantic Mackerel, Squid, and Butterfish Fisheries; Control Date for Loligo and Illex Squid

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Advance notice of proposed rulemaking; notice of a control date for the purposes of controlling capacity in the commercial fishery for *Loligo* squid and discouraging speculative entry into the *Illex* commercial fishery.

SUMMARY: NMFS announces that it is considering and is seeking public comment on proposed rulemaking to control future access to the *Illex* (*Illex illecebrosus*) and *Loligo* (*Loligo pealei*) squid fisheries under the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act). This announcement is intended, in part, to discourage speculative entry and increases in effort or capacity in these fisheries while the Mid-Atlantic Fishery Management Council (Council) and NMFS consider alternative allocation schemes and whether and how to further control capacity in the *Illex* and *Loligo* fisheries. The date of publication of this document, May 20, 2003, shall be known as the "control date" and may be used for establishing eligibility criteria for determining levels of future access to the *Illex* and *Loligo* fisheries subject to Federal authority.

DATES: Written comments must be received on or before 5 p.m., local time, June 19, 2003.

ADDRESSES: Comments should be directed to Daniel T. Furlong, Executive Director, Mid-Atlantic Fishery Management Council, 300 South New Street, Dover, DE 19904–6790. Mark the outside of the envelope, "Comments on Squid Control Date." Comments may also be sent via facsimile (fax) to (302) 674–5399. Comments will not be accepted if submitted via e-mail or Internet.

FOR FURTHER INFORMATION CONTACT: Paul H. Jones, Fishery Policy Analyst, 978–281–9273, email: *Paul.H.Jones@noaa.gov.*

SUPPLEMENTARY INFORMATION: In the 1990s, the simultaneous growth of the domestic squid fisheries and reduction in the estimate of sustainable yield resulted in the *Illex* and *Loligo* fisheries moving toward full capitalization and exploitation. As a result, limited entry programs became necessary and were implemented separately for each fishery in Amendment 5 to the Fishery Management Plan (FMP) (Loligo squid at 61 FR 14465, April 2, 1996 and Illex squid at 62 FR 28638, May 27, 1997).

In the case of the *Illex* fishery, a 5–year sunset provision was placed on the *Illex* moratorium when it was implemented through Amendment 5 to the FMP, due to concerns that capacity might prove to be insufficient to fully exploit the annual quota for the fishery. The sunset provision for the moratorium on entry into the Illex fishery, implemented in 1997, was set to expire in July 1, 2002. It was extended through July 1, 2003, under Framework 2 to the FMP (67 FR 44392, July 2, 2002) and is currently being considered for an additional extension through July 1, 2004, under Framework 3 to the FMP (68 FR 14571, March 26, 2003). The Council is addressing this issue through development of Amendment 9 to the FMP. However, the Council is concerned that a hiatus in the Illex limited access program could occur should the moratorium for this fishery expire before Amendment 9 is implemented. At its March 20, 2003, meeting, the Council requested that NMFS publish an advance notice of proposed rulemaking issuing this control date to discourage speculative entry into the *Illex* fishery, should such a hiatus occur.

In the case of the *Loligo* fishery, the primary issue the Council is concerned with is excess and/or latent capacity. Quota management in this fishery, in conjunction with restrictions in other fisheries, has created a derby fishery in certain quota periods of the *Loligo* fishery. Therefore, the Council has expressed a need to examine excess capacity and/or latent capacity in the limited entry section of this fishery. Accordingly, at its March 20, 2003, meeting, the Council requested that NMFS also publish this control date to discourage speculative activation of previously unused effort or capacity in the *Loligo* fishery while alternative allocation schemes and potential management regimes to control capacity or latent effort are discussed and possibly developed and implemented. The control date communicates to fishermen that performance or fishing effort after the date of publication may not be treated the same as performance or effort that was expanded before the control date. The Council could choose different and variably weighted methods to qualify fishermen based on the type and length of participation in the Loligo fishery or on the quantity of landings. The Council may also choose to take no further action to control entry or access to the *Loligo* fishery.

This notification establishes May 20, 2003, as the control date for potential use in determining historical or traditional participation in the Loligo and Illex fisheries. Consideration of a control date does not commit the Council to develop any particular management regime or criteria for participation in these fisheries. The Council may choose a different control date; or may choose a management program that does not make use of such a date. Any action by the Council will be taken pursuant to the requirements for FMP development established under the Magnuson-Stevens Act.

This notification also gives the public notice that interested participants should locate and preserve records that substantiate and verify their participation in the Loligo and Illex fisheries in Federal waters.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: May 15, 2003.

John Oliver,

Deputy Assistant Administrator for Operations, National Marine Fisheries Service.

[FR Doc. 03–12648 Filed 5–19–03; 8:45 am]

BILLING CODE 3510–22–S

Notices

Federal Register
Vol. 68, No. 97
Tuesday, May 20, 2003

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

AGENCY FOR INTERNATIONAL DEVELOPMENT

Notice of Public Information Collections being Reviewed by the U.S. Agency for International Development; Comments Requested

SUMMARY: U.S. Agency for International Development (USAID) is making efforts to reduce the paperwork burden. USAID invites the general public and other Federal agencies to take this opportunity to comment on the following proposed and/or continuing information collections, as required by the Paperwork Reduction Act for 1995. Comments are requested concerning: (a). Whether the proposed or continuing collections of information are necessary for the proper performance of the functions of the agency, including the information shall have practical utility; (b) the accuracy of the burden estimates; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

DATES: Submit comments on or before July 21, 2003.

FOR FURTHER INFORMATION CONTACT: Beverly Johnson, Bureau for Management, Office of Administrative Services, Information and Records Division, U.S. Agency for International Development, Room 2.07–106, RRB, Washington, DC, 20523, (202) 712–1365 or vis e-mail *bjohnson@usaid.gov*.

SUPPLEMENTARY INFORMATION:

OMB No: OMB 0412–0020.

Form. No.: AID 1450–4.

Title: Supplier's Certificate and Agreement with the U.S. Agency for International Development for Project Commodities/Invoice and Contract Abstract.

Type of Review: Renewal of Information Collection.

Purpose: When USAID is not a party to a contract which it finances, it needs some means of collecting information directly from the suppliers of such commodities and related services to enable it take appropriate action in the event that they do not comply with applicable USAID regulations. The information collection, recordkeeping, and reporting requirements are necessary to assure that USAID funds are expended in accordance with statutory requirements and USAID policies. It also allows for positive identification of transactions where overcharges occur.

Annual Reporting Burden:

Respondents: 60.

Total annual responses: 360.

Total annual hours requested: 231 hours.

Dated: May 13, 2003.

Joanne Pasker

Chief, Information and Records Division, Office of Administrative Service, Bureau of Management.

[FR Doc. 03–12591 Filed 5–19–03; 8:45 am]

BILLING CODE 6116–01–M

AGENCY FOR INTERNATIONAL DEVELOPMENT

Notice of Public Information Collection being Reviewed by the U.S. Agency for International Development; Comments Requested

SUMMARY: U.S. Agency for International Development (USAID) is making efforts to reduce the paperwork burden. USAID invites the general public and other Federal agencies to take this opportunity to comment on the following proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995. Comments are requested concerning: (a) whether the proposed or continuing collections of information are necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the burden estimates; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

DATES: Submit comments on or before July 21, 2003.

FOR FURTHER INFORMATION CONTACT: Beverly Johnson, Bureau for Management, Office of Administrative Services, Information and Records Division, U.S. Agency for International Development, Room 2.07–106, RRB, Washington, DC, 20523, (202) 712–1365 or via e-mail *bjohnson@usaid.gov*.

SUPPLEMENTARY INFORMATION:

OMB No: OMB 0412–0017.

Form No.: AID 1440–3.

Title: Contractor's Certificate and Agreement with the U.S. Agency for International Development/Contractor's Invoice and Contract Abstract

Type of Review: Renewal of Information Collection.

Purpose: USADI finances host country contracts, for technical and professional services and for the construction of physical facilities, between the contractors for such services and entities in teh country receiving assistance under loan or grant agreements with the recipient country. USAID is not a party to these contracts, and the contracts are not subject to the FAR. In its role as the financing agency, USAID needs some means of collecting information directly from the contractors supplying such services so that it may take appropriate action in the event that the contractor does not comply with applicable USAID regulations. The information collection, recordkeeping, and reporting requirements are necessary to assure that USAID funds are expended in accordance with statutory requirements and USAID policies.

Annual Reporting Burden:

Respondents: 25.

Total annual responses: 300.

Total annual hours requested: 175 hours.

Dated: May 13, 2003.

Joanne Paskar,

Chief, Information and Records Division, Office of Administrative Services, Bureau for Management.

[FR Doc. 03–12592 Filed 5–19–03; 8:45 am]

BILLING CODE 6116–01–M

DEPARTMENT OF AGRICULTURE

Forest Service

Oregon Coast Provincial Advisory Committee

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The Oregon Coast Province Advisory Committee will meet in Corvallis, OR, May 29, 2003. The theme of the meeting is Introduction/Overview/Business Planning. The agenda includes: Orientation of the NW Forest Plan; Set Future Meetings and Topics—Monitoring Field Trip; Lower Siuslaw Sub-Committee Update/Round Robin and Public Input.

DATES: The meeting will be held May 29, 2003, beginning at 9 a.m.

ADDRESSES: The meeting will be held at the LaSells Stewart Center, 100 LaSells Stewart Center, Oregon State University, Corvallis, Oregon 97331.

FOR FURTHER INFORMATION CONTACT: Joni Quarnstrom, Public Affairs Specialist, Siuslaw National Forest, 541–750–7075, or write to Siuslaw National Forest Supervisor, P.O. Box 1148, Corvallis, OR 97339.

SUPPLEMENTARY INFORMATION: The meeting is open to the public. Council Discussion is limited to Forest/BLM staff and Council Members. Lunch will be on your own. A public input session will be at 3:15 p.m. for fifteen minutes. The meeting is expected to adjourn around 3:30 p.m.

Dated: May 13, 2003.

George Buckingham,

District Ranger.

[FR Doc. 03–12534 Filed 5–19–03; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Forest Service

Notice of Modoc County RAC Meetings

SUMMARY: Pursuant to the authorities in the Federal Advisory Committees Act (Public Law 92–463) and under the Secure Rural Schools and Community Self-Determination Act of 2000 (Public Law 106–393), the Modoc National Forest's Modoc County Resource Advisory Committee will meet Monday, June 9, in Alturas, California. The meetings are open to the public.

SUPPLEMENTARY INFORMATION: The business meeting June 9, begins at 4 p.m., at the Modoc National Forest Office, Conference Room, 800 West 12th St., Alturas. Agenda topics will include approval of May 12 Minutes, consideration of new projects for funding in 2004, and discuss community outreach for projects for fiscal year 2004 that will improve the maintenance of existing infrastructure, implement stewardship objectives that enhance forest ecosystems, provide economic benefits and restore and improve health and water quality that meet the intent of Public Law 106–393. Time will also be set aside for public comments at the beginning of the meeting.

FOR FURTHER INFORMATION CONTACT: Forest Supervisor Stan Sylva, at (530) 233–8700; or Public Affairs Officer Nancy Gardner at (530) 233–8713.

Stanley G. Sylva,

Forest Supervisor.

[FR Doc. 03–12533 Filed 5–19–03; 8:45 am]

BILLING CODE 3410–11–P

DEPARTMENT OF AGRICULTURE

Natural Resources Conservation Service

Notice of Availability of Finding of No Significant Impact and Environmental Assessment for the Environmental Quality Incentives Program

AGENCY: Natural Resources Conservation Service, USDA.

ACTION: Notice.

SUMMARY: The Natural Resources Conservation Service (NRCS) has prepared a Finding of No Significant Impact (FONSI) and an Environmental Assessment (EA) consistent with the National Environmental Policy Act (NEPA) of 1969, as amended, to implement the Environmental Quality Incentives Program, which is authorized by 16 U.S.C. 3839aa. Upon review of the analysis of potential environmental impacts from a national perspective, the Chief of NRCS found that the program would not result in a significant impact on the quality of the human environment, particularly when focusing on the significant adverse impacts that NEPA is intended to help decision-makers avoid and mitigate against. Therefore, a FONSI was issued, and no environmental impact statement is required for national implementation of the program.

DATES: To ensure consideration, comments on the EA and FONSI must be postmarked on or before June 19, 2003.

ADDRESSES: Comments must be sent to Charles Whitmore, Acting Director, Conservation Operations Division, NRCS, U.S. Department of Agriculture, P.O. Box 2890, Room 6034–S, Washington, DC 20013–2890.

FOR FURTHER INFORMATION CONTACT: Copies of the FONSI, the Final EA, or additional information on matters related to this **Federal Register** Notice can be obtained by contacting one of the following individuals at the addresses and telephone numbers shown below:

Mr. Anthony Esser, Environmental Quality Incentives Program Manager, Conservation Operations Division, NRCS, U.S. Department of Agriculture, P.O. Box 2890, Room 6039–S, Washington, DC 20013–2890, Telephone: (202) 720–1840. Ms. Andrée DuVarney, National Environmental Specialist, Ecological Sciences Division, NRCS, U.S. Department of Agriculture, P.O. Box 2890, Room 6158–S, Washington, DC 20013–2890, Telephone: (202) 720–4925.

SUPPLEMENTARY INFORMATION:

Description of the Proposed Action

The Environmental Quality Incentives Program (EQIP) is a voluntary program providing technical and financial assistance to agricultural producers for planning and implementing natural resource conservation practices on their farms and ranches. The purposes of EQIP, as amended by the 2002 Act, are to promote agricultural production and environmental quality as compatible national goals, and to optimize environmental benefits. The need to which NRCS is responding by proposing action is the need to implement EQIP as amended by the 2002 Act in a manner that achieves the purposes for which Congress authorized EQIP, including:

1. Assisting producers to comply with local, State, and national regulatory requirements concerning soil, water, and air quality; wildlife habitat; and surface and groundwater conservation;

2. Assisting producers to address national, State, Tribal, and local resource concerns so that there is no need for resource and regulatory programs;

3. Providing flexible assistance to producers to install and maintain conservation practices that enhance soil, water, related natural resources (including grazing lands and wetlands), and wildlife, while sustaining production of food and fiber; and

4. Assisting producers to make beneficial, cost-effective changes to cropping systems, grazing management, nutrient management associated with livestock, pest or irrigation management, or other practices on agricultural land.

Alternatives Analyzed

The allocation of EQIP funds is the only major program decision made at the national level that has an impact on the quality of the human environment because of the authority and flexibility that must be given to the NRCS State Conservationists to meet the program purposes, and because funding affects where practices will be implemented. NRCS considered three alternatives describing ways to allocate EQIP funds to the States, including allocating EQIP funds based on a national allocation formula, allocating EQIP funds in equal amounts to all States, or a no action alternative. The 2002 Act authorized the expenditure of additional, separate funds for promotion of ground and surface water conservation, so a separate set of alternatives addressed allocation of those funds, including allocating Ground and Surface Water Conservation (GSWC) funds based on an annual national evaluation of critical ground and surface water conservation needs, allocating the GSWC funds in equal amounts to all States, or a no action alternative.

The EA describes potential impacts associated with the alternatives described. The alternatives did not directly result in impacts to the quality of the human environment, but they do have an indirect effect on the geographic location of acres treated by EQIP funded conservation practices. The discussion under each alternative focused on the effects that the decision alternatives would have on where conservation practices would most likely be implemented. NRCS developed network diagrams depicting the chain of natural resource effects resulting from the application of each practice. Based on the analysis, NRCS determined that the use of a national allocation formula best ensured that funds were distributed in a manner that environmental benefits are optimized, and States and Territories with the most significant environmental and natural resource concerns can effectively address national conservation priorities.

Finding of No Significant Impact

Upon review of the analysis of potential environmental impacts associated with the selected alternatives, the Chief of NRCS found that, from a national perspective, the program would not result in a significant impact on the quality of the human environment, particularly when focusing on the significant adverse impacts that NEPA is intended to help decision-makers avoid and mitigate against. Because of the potential to affect one type of resource while improving the condition of another resource, there may, at times, be minimal site-specific adverse environmental effects, individually or cumulatively. As in the past administration of EQIP, NRCS will continue to prepare documentation of an environmental evaluation on a site-specific level, and will consult with the appropriate entities to avoid, reduce, or mitigate adverse impacts on protected resources. NRCS will also comply with requirements protecting unique geographic features and other resources, as well as policies protecting natural resources. To the extent that other NRCS EQIP activities may result in significant effects to the quality of the human environment, a State or area-wide EA or Environmental Impact Statement may be prepared separately from the National EA. Therefore, a FONSI was issued and no environmental impact statement is required to support national implementation of the program.

Copies of the EA and FONSI may be reviewed at the following location: Conservation Operations Division, NRCS, U.S. Department of Agriculture, Room 5227–S, Washington, DC 20013–2890. The documents may also be accessed on the Internet, at *http://www.nrcs.usda.gov/programs/EnvAssess/EQIP/EQIP.html.*

Signed in Washington, DC, on May 8, 2003.

Bruce I. Knight,

Chief, Natural Resources Conservation Service.

[FR Doc. 03–12526 Filed 5–19–03; 8:45 am]

BILLING CODE 3410–16–P

DEPARTMENT OF AGRICULTURE

Rural Business-Cooperative Service

Notice of Funding Availability (NOFA) Inviting Applications for a University Value-Added Research Grant

AGENCY: Rural Business-Cooperative Service, USDA.

ACTION: Notice.

SUMMARY: This Notice announces the availability of $300,000 in fiscal year (FY) 2003 to fund a grant for research at a university concerning the effects of projects for value-added agricultural commodities or products on agricultural producers and the commodity markets. Only qualified universities are eligible to apply. This Notice lists the information needed to submit an application for these funds.

DATES: The deadline for receipt of an application is 4 p.m. EST on July 29, 2003. Comments regarding the information collection requirements under the Paperwork Reduction Act of 1995 must be received on or before July 21, 2003.

ADDRESSES: The address for hand-delivered applications or applications submitted using an express mail or overnight courier service is: Marc Warman, USDA Rural Business-Cooperative Service, 1400 Independence Ave., SW., Room 4016, Washington, DC 20250; Telephone: (202) 720–8460. Applications sent via the U.S. Postal Service must be sent to the following address: Marc Warman, USDA Rural Business-Cooperative Service, STOP 3252, 1400 Independence Ave., SW., Washington, DC 20250–3252. Applications sent via email attachment must be sent to the following address: *marc.warman@usda.gov.*

FOR FURTHER INFORMATION CONTACT: Jim Haskell, Acting Deputy Administrator, Rural Business-Cooperative Service, USDA, Stop 3250, Room 4016, 1400 Independence Ave., SW., Washington, DC 20250–3250, telephone: (202) 720–8460, or email: *james.haskell@usda.gov.*

SUPPLEMENTARY INFORMATION:

Programs Affected

The research funded by this grant relates to a program listed in the Catalog of Federal Domestic Assistance Program under the assigned number 10.352 (Value-Added Grants). This program is not subject to the provisions of Executive Order 12372, which requires intergovernmental consultation with State and local officials.

Paperwork Reduction Act

The information collection requirements contained in this Notice have received temporary emergency clearance by the Office of Management and Budget (OMB) under Control Number 0570–0046. However, in accordance with the Paperwork Reduction Act of 1995, RBS will seek standard OMB approval of the reporting requirements contained in this Notice and hereby opens a 60-day public comment period.

Title: Value-Added University Research Grant.

Type of Request: New Collection.

Abstract: This program will be administered by Cooperative Services within the Rural Business-Cooperative Service. The Farm Security and Rural Investment Act of 2002 (Pub. L. 107–171, signed May 13, 2002) authorized the Secretary of the U.S. Department of Agriculture (USDA) to award a grant to support research at a university concerning the effects of projects for value-added agricultural commodities or products on agricultural producers and the commodity markets.

This is a competitive grant program; it does not have a matching funds requirement. The Notice Inviting Applications sets forth the policies and procedures associated with the grant application and evaluation procedures and ongoing administration requirements for the grant award. The paperwork burden associated with the application process and ongoing reporting is included in this collection.

Estimate of Burden: Public reporting burden for this collection of information is estimated to average 17.7 hours per response.

Estimated Number of Respondents: 15.

Estimated Number of Responses per Respondent: 1.8.

Estimated Number of Responses: 27.

Estimate of Total Annual Burden on Respondents: 478.5 hours.

Copies of this information collection can be obtained from Tracy Givelekian, Regulations and Paperwork Management Branch, Support Services Division at (202) 692–0039.

Comments

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of RBS, including whether the information will have practical utility; (b) the accuracy of RBS' estimate of the burden of the proposed collection of information including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology. Comments may be sent to Tracy Givelekian, Regulations and Paperwork Management Branch, Support Services Division, U.S. Department of Agriculture, Rural Development, STOP 0742, 1400 Independence Ave., SW., Washington, DC 20250–0742. All responses to this notice will be summarized and included in the request for OMB approval. All comments will also become a matter of public record.

Program Administration

The program is administered by the Office of Cooperative Services within the Agency.

Background

Section 6402 of the Farm Security and Rural Investment Act of 2002 (Pub. L. 107–171) (2002 Farm Bill) authorized a new grant initiative to establish up to 15 agriculture innovation demonstration centers (Agriculture Innovation Centers or AICs) with the intent of fostering the ability of agricultural producers to reap the benefits of producing and marketing value-added products. Section 6402(g) also provided that the Secretary shall use $300,000 of the funds made available for that section to support research into the effects of value-added projects on agricultural products and commodity markets. This Notice relates to the $300,000 research grant authorized in section 6402(g).

Definitions

Agency—Rural Business-Cooperative Service (RBS), an agency of the United States Department of Agriculture (USDA), or its successor agency.

Cooperative Services—The office within RBS, and its successor organization, that administers programs authorized by the Cooperative Marketing Act of 1926 (7 U.S.C. 451 *et seq.*) and such other programs so identified in USDA regulations.

Fixed equipment—Tangible personal property used in trade or business that would ordinarily be subject to depreciation under the Internal Revenue Code, including processing equipment, but not including property for equipping and furnishing offices such as computers, office equipment, desks or file cabinets.

Independent Producers—Agricultural producers, to include individuals, for profit and not for profit corporations, LLCs, partnerships or LLPs, when these entities are solely owned or controlled by producers who do not produce the agricultural product under contract or joint ownership with any other organization. An independent producer can also be a steering committee composed of independent agricultural producers in the process of organizing an association to operate a value-added venture that is owned and controlled by the independent producers supplying agricultural products to the market.

National Office—The Agency office at USDA headquarters in Washington, DC.

Nonprofit institution—Any organization or institution, including an accredited institution of higher education, no part of the net earnings of which may inure to the benefit of any private shareholder or individual.

Product segregation—Physical separation of a product or commodity from similar products. Physical separation requires a barrier to prevent mixing with the similar product.

Public body—Any state, county, city, township, incorporated town or village, borough, authority, district, economic development authority, or Indian tribe on federal or state reservations or other federally recognized Indian tribe in rural areas.

Rural and rural area—Includes all the territory of a state that is not within the outer boundary of any city or town having a population of 50,000 or more and the urbanized area contiguous and adjacent to such city or town, as defined by the U.S. Bureau of the Census using the latest decennial census of the United States.

Rural Development—A mission area within the USDA consisting of the Office of the Under Secretary, the Office of Community Development, the Rural Business-Cooperative Service, the Rural Housing Service and the Rural Utilities Service and their successors.

State—Includes each of the several States, the Commonwealth of Puerto Rico, the Virgin Islands of the United States, Guam, American Samoa, the Commonwealth of the Northern Mariana Islands, and, as may be determined by the Secretary to be feasible, appropriate and lawful, the Freely Associated States and the Federated States of Micronesia.

State Office—USDA State Rural Development offices for the applicable states.

Value-Added—The incremental value that is realized by the producer from an agricultural commodity or product as the result of (1) a change in its physical state, (2) differentiated production or marketing, as demonstrated in a business plan, or (3) product segregation. Also, the economic benefit realized from the production of farm or ranch-based renewable energy. Incremental value may be realized by the producer as a result of either an increase in value to buyers or the expansion of the overall market for the product. Examples include milling wheat into flour, slaughtering livestock or poultry, making strawberries into jam, the marketing of organic products, an identity-preserved marketing system, and collecting and converting methane from animal waste to generate energy. Identity-preserved marketing systems include labeling that identifies how the product was produced and by whom.

Eligibility Requirements

1. The applicant must be an accredited university.

2. The applicant must have the capacity, including a well developed econometric model or the equivalent, to conduct the study.

3. The applicant must have a demonstrated record of conducting the type of study to be funded.

4. The applicant must demonstrate that studies proffered under item (3) above have been subjected to peer review and the peer reviews found the studies to be credible.

5. A university may participate in more than one application.

6. The description of the research proposed to be done using grant funds must conform to the eligible uses for the funds.

7. An outstanding judgment obtained against an applicant by the United States in a Federal Court (other than in the United States Tax Court), which has been recorded, shall cause the applicant to be ineligible to receive a grant award.

Uses of Grant Funds

Grant funds are to be used to perform a study of the effects of projects for value-added agricultural commodities or products on agricultural producers and the commodity markets. The universe of projects studied shall include, but is not necessarily limited to, value-added projects funded by USDA pursuant to section 231 of the Agricultural Risk Protection Act of 2000 (7 U.S.C. 1621 *note*).

1. The study must systematically examine, using linked, long-term, global projections of the agricultural sector, the potential effects of the value-added projects identified by the study on (a) the demand for agricultural commodities, (b) market prices, (c) farm income and (d) Federal outlays on commodity programs. The study must include an assessment of the effectiveness of the agricultural innovation centers funded pursuant to section 6402 of the 2002 Farm Bill.

2. Grant funds may be used to assess the performance of USDA value-added program grant recipients, including agricultural innovation centers as part of the study.

3. Grant funds may be used to assess the requirements imposed by USDA on agricultural innovation centers to determine which have the effect of maximizing the positive effects of the services provided by these centers on (a) the demand for agricultural commodities, (b) market prices, (c) farm income and (d) Federal outlays on commodity programs.

4. Grant funds may be used to subcontract component parts of the study with prior USDA written approval.

5. Grant funds may be used to develop data series directly related to the research effort, where such data are not otherwise available.

Ineligible Uses of Grant Funds

1. Developing computer applications for performing the study, other than minor modifications to a fully operational model or software application. "Minor modifications" may not, in the aggregate, exceed 5 percent of the total grant award.

2. Construction (in any form).

3. Improvement, refurbishment or renovation of the grantee's research, education or extension space.

4. Planning, repair, rehabilitation, acquisition, or construction of buildings or facilities.

5. Repair or maintenance of privately owned vehicles.

6. Purchase of real estate.

7. Paying obligations incurred before the date of grant approval or after the end of the grant period.

8. General operating costs other than the allowed indirect cost rate.

9. Any other purpose prohibited in 7 CFR parts 3015 and 3019, as applicable.

Program Restrictions

Grant funds are to be used only to perform the research effort. All travel using Federal funds must be directly related to the research effort as described in the applicable grant agreement. Use of Federal funds for attendance at non-related meetings must have prior written approval by USDA. Travel and per diem expenses will not exceed those paid to federal agency employees. Rates are based upon location. Rate information can be accessed on the Internet at *http://policyworks.gov/perdiem*. Recipients will be restricted to traveling coach class on common carrier airlines. Meals and incidental expenses will be reimbursed at a rate not to exceed that used by federal agency employees. Mileage and gas reimbursement will be at a rate not to exceed that used by federal agency employees.

Grant Award Selection Process

1. *Initial Screening.* The Agency will screen each application to determine eligibility during the period immediately following the application deadline.

2. *Rating and Ranking.* Applications will be rated and ranked by a review panel based on the "Evaluation Criteria and Weights" contained in this Notice. If there are tied scores after the applications have been rated and ranked, the tie will be resolved by reviewing the scores for "Nature of the Proposed Research" and the applicant with the highest score in that category will receive a higher ranking. If the scores for "Nature of the Proposed Research" are the same, the scores will be compared for the next criterion, in sequential order, until one highest score can be determined.

Evaluation Criteria and Weights

1. Nature of the Proposed Research (Maximum 35 points)

The description of the proposed research must be detailed and should include an explanation of how the applicant will systematically examine, using linked, long-term, global projections of the agricultural sector, the effects of value-added projects on the following: (a) Demand for agricultural commodities, (b) market prices, (c) farm income, and (d) Federal outlays on commodity programs. Proposals substantively addressing all four areas will score higher than proposals that do not. Any econometric model used for the examination must be explained with an emphasis on how the model has been developed, the key assumptions incorporated within the model, how the model is used, any peer review of the model, and how the applicant has used the model to date, with an evaluation of its effectiveness. Proposals demonstrating solidly developed models designed for agricultural analysis that have been peer reviewed and used for analysis similar to the proposal will receive more points than proposals discussing untried models. The description should also include what data will be used and how it was or will be gathered. Proposals demonstrating that the applicant already has access to the data will score higher than proposals indicating that the data needs to be gathered. Proposals demonstrating good quality control methods for data collection will score higher than those proposals lacking in quality control methods for data collection.

2. Qualifications of the Researchers (Maximum 20 points)

The qualifications of the researchers who will be involved with the proposed research must reflect an ability to perform the study. High education levels and experience in conducting agricultural or value-added research will receive more points than economic research not related to agriculture. Publications of work in the value-added and agricultural fields will receive more points than publications not so related. For each of these research efforts and publications, points will be awarded for evidence that the research was favorably reviewed by scholastic peers as evidenced by citations to this research in peer research publications. Those who can demonstrate favorable peer reviews of research in value-added agriculture will receive more points than positively reviewed research in other areas.

3. Work Plan/Budget (Maximum 20 points)

The work plan and budget will be reviewed for specificity, realistic timetables and detail. Logical, realistic, and economically efficient plans and budgets will result in higher scores.

4. Measuring Effectiveness of Value-Added Projects (Maximum 25 points)

Proposals that address performance measures applicable to a wide range of value-added products and for various stages of producer organizational development, will receive more points than those with a more narrow range of applicability. Also, those proposals that can effectively demonstrate that performance measures contain predictive success or failure thresholds will receive higher scores.

Deliverables

Interim and final project deliverables, inclusive of supporting documentation, are due in the form and on the due dates as specified in the applicable grant agreement.

Grant Amounts

USDA reserves the right to make a single grant award or multiple smaller awards. In the event an applicant is awarded a grant that is less than the amount requested, the applicant will be required to modify its application to conform to the reduced amount before execution of the grant agreement. The Agency reserves the right to reduce or de-obligate the award if acceptable modifications are not submitted by the awardee within 15 working days from the date the request for modification is made. Any modifications must be within the scope of the original application.

Other Considerations

1. *Environmental review.* Any grant made by the Agency is subject to the requirements of 7 CFR part 1940, subpart G or its successor regulation. Some applications may be generally excluded from the environmental review process by 7 CFR 1940.333. Applicants for grant funds must consider and document within their plans the important environmental factors and the potential environmental impacts of the activity proposed in the grant application.

2. *Civil rights.* Any grant made is subject to the requirements of title VI of the Civil Rights Act of 1964, which prohibits discrimination on the basis of race, color and national origin as outlined in 7 CFR part 1901, subpart E. In addition, any grant made under this subpart is subject to the requirements of section 504 of the Rehabilitation Act of 1973, as amended, which prohibits discrimination on the basis of disability; the requirements of the Age Discrimination Act of 1975, which prohibits discrimination on the basis of age; and titles II and III of the Americans with Disabilities Act, which prohibits discrimination on the basis of disability in places of public accommodations. This program will also be administered in accordance with 7 CFR part 15, subpart A and all other applicable Civil Rights laws.

3. *Other USDA regulations.* This grant program is subject to the provisions of the following regulations, as applicable: (a) 7 CFR part 3015, Uniform Federal Assistance Regulations, (b) 7 CFR part 3017, Governmentwide Debarment and Suspension (nonprocurement) and Governmentwide Requirements for Drug-Free Workplace (Grants), (c) 7 CFR part 3018, New Restrictions on Lobbying, and (d) 7 CFR part 3019, Uniform Administrative Requirements for Grants and Agreements with Institutions of Higher Education, Hospitals and other Nonprofit Organizations.

4. *Audit requirements.* Any grantee must comply with the audit requirements of 7 CFR part 3052. The audit requirements apply to the years in which grant funds are received and years in which work is accomplished using grant funds.

Grant Closing

1. *Letter of conditions.* The Agency will notify an approved applicant in writing, setting out the conditions under which the grant will be made.

2. *Applicant's intent to meet conditions.* Upon reviewing the conditions and requirements in the letter of conditions, the applicant must complete, sign and return the Agency's "Letter of Intent To Meet Conditions," or, if certain conditions cannot be met, the applicant may propose alternate conditions to the Agency. The Agency must concur with any changes proposed to the letter of conditions by the applicant before the application will be further processed.

3. *Grant agreement.* The grantee must enter into a grant agreement with USDA in form and substance similar to the form of agreement as published at the end of this NOFA prior to the advance of funds.

Award Requirements

Any approved applicant will be required to do the following:

1. Execute a "Request for Obligation of Funds". The following statement will be entered in the comment section of the Request for Obligation of Funds, and must be signed by the grantee:

"The grantee certifies that it is in compliance with and will continue to comply with all applicable laws, regulations, Executive Orders and other generally applicable requirements, including those contained in 7 CFR parts 3015, 3017, 3018, 3019 and 3052 in effect on the date of grant approval, and the approved Letter of Conditions."

2. Use SF–270 "Request for Advance or Reimbursement" to request advances or reimbursements, as applicable, but not more frequently than once a month. (This form can be downloaded from the following Web site: *http://www.whitehouse.gov/omb/grants/sf270.pdf*);

3. Maintain a financial management system that is acceptable to the Agency;

4. Collect and maintain data on race, sex and national origin of the beneficiaries of the project.

Reporting Requirements

Grantee must submit the following to the Agency;

1. A "Financial Status Report" listing expenditures according to agreed upon budget categories, on a semi-annual basis. Reporting periods end each March 31 and September 30. Reports are due 30 days after the reporting period ends.

2. Semi-annual performance reports that compare accomplishments to the milestones stated in the proposal. Identify all tasks completed to date and provide documentation supporting the reported results. If the original schedule provided in the work plan for interim and final project deliverables is not being met, the report should discuss the problems or delays that may affect completion of the study. Objectives for the next reporting period should be listed. Compliance with any special condition on the use of award funds should be discussed. Reporting periods end each March 31 and September 30. Reports are due 30 days after the reporting period ends.

Grant Servicing

The grant will be serviced in accordance with 7 CFR parts 1951, 3015 and 3019. Grantee will permit periodic inspection of the program operations by a representative of the Agency. All non-confidential information resulting from the Grantee's activities shall be made available to the general public on an equal basis.

Performance Reviews

1. USDA will provide for peer review of the deliverables in the grant agreement.

2. USDA may elect to suspend or terminate a grant in all or part if USDA determines (a) that the grantee or subcontractor has demonstrated insufficient progress in complying with the terms of the grant agreement, or (b) such other cause as USDA identifies in writing to the grantee (including but not limited to the use of federal grant funds for ineligible purposes).

Grant Disbursement

The Agency will determine, based on 7 CFR parts 3015 and 3019, as applicable, whether disbursement of a grant will be by advance or reimbursement.

Contents of Application Package

A complete application for a value-added research grant must include the following:

1. A summary page listing the following items. This information should be double-spaced between items and not in narrative form.

(a) Name of applicant.

(b) Address of applicant.

(c) Telephone number of applicant.

(d) Contact person name, telephone number and email address.

(e) Fax number of applicant.

(f) Name of eligible university (if different from applicant).

(g) County where eligible university is located.

(h) Congressional district number where applicant is located.

(i) Amount of grant request.

2. A detailed Table of Contents containing page numbers for each component of the application.

3. A summary of the research to be performed, no longer than five pages, which must include the following items.

(a) The universe of value-added activities to be studied.

(b) The nature and quality of the data to be used in the study.

(c) The method by which the value added producer grant and agricultural innovation center programs funded by USDA will be evaluated and incorporated into the overall study.

(d) The proposed form of output of the results of the study.

4. Organizational documents confirming the accreditation of the eligible university.

5. Eligibility. The application must include a detailed discussion of how the applicant meets each of the eligibility requirements.

6. Evaluation Criteria. Address each of the evaluation criteria specifically and individually by category in narrative form.

(a) *Nature of the Proposed Research.* Describe the proposed research in detail. The description should include an explanation of how the applicant will systematically examine, using linked, long-term, global projections of the agricultural sector, the potential effects of value-added projects on the following: (i) Demand for agricultural commodities, (ii) market prices, (iii) farm income, and (iv) Federal outlays on commodity programs. Any econometric model used for the examination must be explained with an emphasis on how the model has been developed, its intended use, any peer review of the model, and how the applicant has used the model to date, with an evaluation of its effectiveness. The description should also include what data will be used and how it was or will be gathered, including measures to be taken to ensure quality control in data collection.

(b) *Qualifications of the Researchers.* Describe the qualifications of the researchers who will be involved with the proposed research. Discuss education levels and experience levels of the researchers with an emphasis on any prior experience conducting agricultural or value-added research. Also describe any research efforts and publications completed by the researchers.

(c) *Work Plan/Budget.* The budget must present a detailed line item breakdown of estimated costs associated with the proposed research and allocate these costs to each of the tasks to be undertaken. The work plan must present the order the tasks will be undertaken and the estimated time for completing each task. Categories such as salaries, administrative, other and indirect costs must be clearly identified for each task and each task must be clearly defined and described in detail. Include supporting documentation for each category.

(d) *Measuring Effectiveness of Value-Added Projects.* Describe appropriate performance measures that the applicant believes should be used to evaluate the success of value-added activities in agriculture. Suggested measures should evaluate both outputs and outcomes of producer value-added activities and be easily and objectively measured.

7. Proposed criteria to be used for performance evaluation. The Agency seeks applicant input for performance criteria to be utilized in developing the grant agreement. The performance criteria suggested by the applicant are not binding on the Agency.

8. Identify and report any association or relationship with Rural Development employees.

9. *Required forms.* The following forms must be completed, signed and submitted as part of the application package.

(a) SF–424, "Application for Federal Assistance." Do not submit Form SF–424A, "Budget Information." A separate line item budget should be presented as described in item 6(c) of this section listing the contents of the application package. All costs must be categorized as either eligible or ineligible.

(b) SF–424B, "Assurances—Non-Construction Programs."

(c) Form AD–1047, "Certification Regarding Debarment, Suspension and other Responsibility Matters—Primary Covered Transactions."

(d) Form AD–1049, "Certification Regarding Drug-Free Workplace Requirements."

(e) Form RD 400–1, "Equal Opportunity Agreement."

(f) Form RD 400–4, "Assurance Agreement."

(g) SF-LLL, "Disclosure of Lobbying Activities," if applicable; otherwise, a Certification of Non-Lobbying Activities in a form satisfactory to the Agency.

The required application forms and certifications can be downloaded from the following Web site: *http://www.rurdev.usda.gov/rhs/rcdi/rcdi_forms.htm.*

Form of Submission

Applicants and grant awardee are encouraged, but not required, to submit applications and reports in electronic form. A complete, original application may be electronically sent as an e-mail attachment to *marc.warman@usda.gov.* If applications are submitted electronically, a signature page must be submitted via facsimile to the attention of Marc Warman at (202) 720–4641 or in hard copy to Marc Warman at the address provided at the beginning of this Notice. Alternatively, an original application package plus two paper copies may be submitted to the addresses provided at the beginning of this Notice.

Dated: May 10, 2003.

Thomas C. Dorr,

Under Secretary, Rural Development.

University Value-Added Research Grant Agreement

This grant agreement (Agreement) dated _____, is a contract for receipt of grant funds pursuant to section 6402(g) of the Farm Security and Rural Investment Act of 2002 (2002 Farm Bill) (7 U.S.C. 1621 note). These requirements do not supercede the applicable requirements for receipt of Federal funds stated in 7 CFR parts 3015, "Uniform Federal Assistance Regulations" or 3019, "Uniform Administrative Requirements for Grants and Agreements with Institutions of Higher Education, Hospitals, and other Nonprofit Organizations."

Between _____(Grantee) and the United States of America acting through the Rural Business-Cooperative Service (RBS), Department of Agriculture, (Grantor).

Witnesseth:

All references herein to "Value-Added Research" refer to the proposal submitted by Grantee and approved by Grantor for evaluating the effects of projects for value-added agricultural commodities or products on agricultural producers and the commodity markets which is attached as Exhibit A. The principal amount of the grant is $300,000 (Grant Funds).

Whereas

Grantee has proposed to conduct the research described in the proposal as approved by Grantor;

Grantee is an accredited university for purposes of granting undergraduate and graduate degrees;

The Grantee is able to finance or directly fund any amounts as may be necessary to supplement Grant Funds in order to ensure that sufficient funds are available for the Value-Added Research;

Grantee has provided a total budget and funding schedule, acceptable to the Grantor, for how the Grant Funds and other funds (if applicable) are to be spent which is attached as Exhibit B;

The Grantor has agreed to give the Grantee the Grant Funds, subject to the terms and conditions established by the Grantor. Provided, however, that any Grant Funds actually advanced and not needed for grant purposes shall be returned immediately to the Grantor. The Grantor may terminate the grant in whole, or in part, at any time, whenever it is determined that the Grantee has failed to comply with the conditions of this Agreement, including satisfactory performance reviews, or the applicable regulation(s) and applicable Notice of Funding Availability (NOFA).

As a condition of this Agreement, the Grantee assures and certifies that it is in compliance with and will comply in the course of the Agreement with all applicable laws, regulations, Executive Orders and other generally applicable requirements, including those contained in 7 CFR 3015.205(b) and the NOFA, or referenced therein, and that are hereby incorporated into this agreement by reference and such other statutory provisions as are specifically contained herein.

Now, therefore, in consideration of said grant, Grantee agrees to:

A. Cause said Value-Added Research to be conducted, within one year of the date of this Agreement, within the total sums, including Grant Funds, available to the Grantee.

B. Provide periodic reports to the Grantor and respond promptly and completely to requests for status updates on the Value-Added Research by a representative of the Grantor. The reports to be provided in form and substance satisfactory to the Grantor are as follows:

1. A "Financial Status Report" listing expenditures according to agreed upon budget categories, on a semi-annual basis. Reporting periods end each March 31 and September 30. Financial Status Reports are due 30 days after the reporting period ends.

2. A "Performance" report that compares accomplishments to the objectives stated in the proposal. This report will identify all tasks completed to date and include documentation supporting the reported results. If the original schedule agreed to by the Grantor is not being met, this report will discuss the problems or delays, explain why the original objectives were not met and establish the objectives for the next reporting period. Reporting periods end each March 31 and September 30. Performance reports are due 30 days after the reporting period ends.

These reports are to be submitted in an electronic form acceptable to the Grantor at the following address: *marc.warman@usda.gov.*

At the option of the Grantee, reports may be submitted in hard copy (one copy) to the following address:

Marc Warman, Program Leader, USDA Rural Business-Cooperative Service, Stop 3252, Room 4016, 1400 Independence Ave., SW., Washington, DC 20250–3252. Telephone (for courier deliveries); (202) 690–1431.

Grantor may change the name and address for report submissions upon written notice to Grantee.

C. Provide the following deliverables on the dates specified:

1. Preliminary impact study of value-added activities other than the value added producer grant and agricultural innovation center programs funded by USDA no later than 6 months from date of Agreement. This deliverable should discuss what the experience of other value-added efforts suggests can be incorporated in USDA's implementation of the value added producer grant and agricultural innovation center in order to maximize the benefits of these value-added programs to agricultural producers and commodity markets.

(a) This deliverable should report what have been the most challenging or unexpected aspects of developing value-added businesses with respect to agricultural products and commodities.

(b) This deliverable should also report what other value-added project participants would, if they had the opportunity, have done differently.

2. First year evaluation reports for the value added producer grant and agricultural innovation center programs funded by USDA no later than 1 year from date of the last grant award for the applicable program obligated in fiscal year 2003. A separate evaluation report for each program will be prepared.

The evaluation report on the value-added producer grant should include a brief assessment of each project, a conclusion as to whether the project was successful, a quantitative assessment of the benefit realized by the grant recipient as a result of the project to date and a quantitative assessment of the benefit that may reasonably be expected to accrue to the grant recipient as a result of the project.

The evaluation report on the agricultural innovation center program should include an assessment of the number of agricultural producers that received services, a breakdown of services provided (expressed by hours per type of service), areas of needed improvement and a quantitative assessment of benefits directly realized as a result of services provided by each center.

Each report generated for this deliverable should:

(a) Report what have been the most challenging or unexpected aspects of developing value-added businesses with respect to agricultural products and commodities.

(b) Report what the value-added project participants would, if they had the opportunity, have done differently.

(c) An assessment of what information and reports are appropriate for ongoing program performance monitoring by USDA of grant recipients under each value-added grant program.

(d) An assessment of the extent USDA's implementation of each USDA Value-Added program maximizes the positive effects of each program on (i) the demand for agricultural products, (ii) market prices, (iii) farm income and (iv) Federal outlays on commodity programs and where improvement is needed.

3. Final report on the impacts of value-added activities, including activities being conducted by state and private entities, on (a) the demand for agricultural products, (b) market prices, (c) farm income and (d) Federal outlays on commodity programs no later than 30 days after the end of the grant period.

D. Use Grant Funds and other funds provided by Grantee only for the purposes and activities specified in the Proposal. Any uses not provided for in the approved budget must be approved in writing by RBS in advance of obligation by the Grantor.

E. Deliver the results of a study or activity to the Grantor upon completion of each task outlined in the Proposal.

F. Not use Grant Funds to replace any financial support previously provided or assured from any other source. The Grantee agrees, if applicable, that the Grantee's level of expenditure for the Value-Added Research shall be maintained and not reduced as a result of Grant Funds.

G. Conduct the Value-Added Research without discrimination as to race, color, religion, sex, national origin, age, sexual orientation, marital status, or physical disability.

H. To execute any agreements required by Grantor which Grantee is legally authorized to execute.

I. Upon any default under its representations or agreements contained in this instrument, Grantee, at the option and demand of Grantor, will immediately repay to Grantor the Grant Funds with any legally permitted interest from the date of the default. Default by the Grantee will constitute termination of the grant thereby causing cancellation of Federal assistance under the grant. The provisions of this Agreement may be enforced by Grantor, at its option and without regard to prior waivers of previous defaults by Grantee, by judicial proceedings to require specific performance of the terms

of this Agreement or by such other proceedings in law or equity, in either Federal or State courts, as may be deemed necessary by Grantor to assure compliance with the provisions of this Agreement and the laws and regulations under which this grant is made.

J. Provide a Financial Management System for the Value-Added Research that includes:

1. Accurate, current and complete disclosure of the financial results of each grant. Financial reporting will be on an accrual or cash basis.

2. Records that identify adequately the source and application of funds for grant-supported activities. Those records shall contain information pertaining to grant awards and authorizations, obligations, unobligated balances, assets, liabilities, outlays and income.

3. Effective control over and accountability for all funds, property and other assets. Grantees shall adequately safeguard all such assets and shall ensure that they are used solely for authorized purposes.

4. Accounting records supported by source documentation.

K. Retain financial records, supporting documents, statistical records and all other records pertinent to the grant for a period of at least three years after grant closing except that the records shall be retained beyond the three-year period if audit findings have not been resolved. Microfilm or photo copies or similar methods may be substituted in lieu of original records. The Grantor and the Comptroller General of the United States, or any of their duly authorized representatives, shall have access to any books, documents, papers and records of the Grantee's that are pertinent to the specific grant program for the purpose of making audits, examinations, excerpts and transcripts.

L. Provide either an audit report, annual financial statements or other documentation prepared in accordance with Grantor regulations to allow the Grantor to determine that funds have been used in compliance with the approved Proposal, any applicable laws and regulations and this Agreement.

M. Agree to account for and to return to Grantor interest earned on grant funds pending their disbursement for program purposes.

N. Not provide services that are duplicative of other program purposes, for which monies have been received, are committed, or are applied to from other sources (public or private).

O. Will meet the following performance goals for the Value-Added Research by the dates specified:

[To be determined by Grantor after consideration of the performance measures suggested by the Grantee in the Proposal. This may be combined with the deliverable schedule in item C.]

Grantor agrees that it:

A. Will make available to Grantee for the purpose of this Agreement funds not to exceed $300,000 that the Grantor will advance on a reimbursement basis in accordance with 7 CFR 3019.22. The funds will be reimbursed based on Grantee's submission of Form SF–270.

B. At its sole discretion and at any time may give any consent, deferment, subordination, release, satisfaction, or termination of any or all of Grantee's grant obligations, with or without valuable consideration, upon such terms and conditions as Grantor may determine to be (1) advisable to further the purpose of the grant or to protect Grantor's financial interest therein and (2) consistent with both the statutory purposes of the grant and the limitations of the statutory authority under which it is made.

Termination of this Agreement:

This Agreement may be terminated for cause in the event of default on the part of the Grantee or for convenience of the Grantor and Grantee prior to the date of completion of grant purpose. Termination for convenience will occur when both the Grantee and Grantor agree that the continuation of the Value-Added Research will not produce beneficial results commensurate with the further expenditure of funds.

In witness whereof, Grantee has this day authorized and caused this Agreement to be executed

By: _____
Name of person
Title

And attested with its corporate seal affixed (if applicable)

By: _____
Name of Entity

Attest: _____
United States of America Rural Business-Cooperative Service.

By: _____
Name of person
Title

[FR Doc. 03–12531 Filed 5–19–03; 8:45 am]

BILLING CODE 3410–XY–P

COMMISSION ON CIVIL RIGHTS

Agenda and Notice of Public Meeting of the Arizona Advisory Committee

Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights, that a conference call of the Arizona Advisory Committee to the Commission will convene at 10 a.m. and adjourn at 11:30 a.m. (PDT) on Thursday, May 22, 2003. The purpose of the meeting is to plan future projects.

This conference call is available to the public through the following call-in number: 1–800–923–4216, access code: 16639343. Any interested member of the public may call this number and listen to the meeting. Callers can expect to incur charges for calls not initiated using the supplied call-in number or made over wireless lines, and the Commission will not refund any incurred charges. Callers will incur no charge for calls using the call-in number over land-line connections. Persons with hearing impairments may also follow the proceedings by first calling the Federal Relay Service at 1–800–977–8339 and providing the Service with the conference call number and access code.

To ensure that the Commission secures an appropriate number of lines for the public, persons are asked to register by contacting Philip Montez, Director of the Western Regional Office, 213–894–3437 (TDD 213–894–3435), by 4 p.m. on Wednesday, May 21, 2003.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, DC, April 24, 2003.

Ivy L. Davis,

Chief, Regional Programs Coordination Unit.

[FR Doc. 03–12646 Filed 5–15–03; 3:14 pm]

BILLING CODE 6335–01–M

COMMISSION ON CIVIL RIGHTS

Agenda and Notice of Public Meeting on the Hawaii Advisory Committee

Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights that a conference call of the Hawaii Advisory Committee to the Commission will convene at 1 p.m. and adjourn at 2:30 p.m on May 22, 2003. The purpose of this conference call is to identify pressing civil rights problems. In addition, committee members will hear presentations from civil rights experts and state officials on various civil rights topics affecting the state.

This conference call is available to the public through the following call-in number: 1–800–473–7796, access code: 16752963. Any interested member of the public may call this number and listen to the meeting. Callers can expect to incur charges for calls for initiated using the supplied call-in number or made or wireless lines, and the Commission will not refund any incurred charges. Callers will incur no charge for calls using the call-in number over land-line connections. Persons with hearing impairments may also follow the proceedings by first calling the Federal Relay Service at 1–800–977–8339 and providing the Service with the conference call number and access code.

To ensure that the Commission secures an appropriate number of lines for the public, persons are asked to register by contacting Philip Montez, Director of the Western Regional Office, 213–894–3437 (TDD 213–894–3435).

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, DC, April 30, 2003.

Ivy L. Davis,

Chief, Regional Programs Coordination Unit.

[FR Doc. 03–12645 Filed 5–15–03; 3:14 pm]

BILLING CODE 6335–01–M

COMMISSION OF CIVIL RIGHTS

Agenda and Notice of Public Meeting of the Massachusetts Advisory Committee

Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights, that a conference call of the Massachusetts Advisory Committee will convene at 1 p.m. and adjourn at 2 p.m., on Tuesday, June 3, 2003. The purpose of the conference call is to hear subcommittee reports on possible topics for the committee's next civil rights project.

The conference call is available to the public through the following call-number: 1–800–556–3649, access code number: 16876767. Any interested member of the public may call this number and listen to the meeting. Callers can expect to incur charges for calls not initiated using the supplied call-in number or over wireless lines and the Commission will not refund any incurred charges. Callers will incur no charge for calls using the call-in number over land-line connections. Persons with hearing impairments may also follow the proceedings by first calling the Federal Relay Service at 1–800–977–8339 and providing the Service with the conference call number and contact name.

To ensure that the Commission secures an appropriate number of lines for the public, persons are asked to register by contacting Aonghas St. Hilaire of the Eastern Regional Office, 202–376–7533 (TDD 202–376–8116), by 4 p.m. on Monday, June 2, 2003.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated: at Washington, DC, May 7, 2003.

Ivy L. Davis,

Chief, Regional Programs Coordination Unit.

[FR Doc. 03–12643 Filed 5–15–03; 3:13 pm]

BILLING CODE 6335–01–M

COMMISSION ON CIVIL RIGHTS

Agenda and Notice of Public Meeting of the Montana Advisory Committee

Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights, that a conference call of the Montana Advisory Committee to the Commission will convene at 12 p.m. and adjourn at 1:15 p.m. (MDT) on Monday, May 19, 2003. The purpose of this conference call will be to brief on the follow-up activities to the Committee's report Equal Educational Opportunity for Native American students in Montana Public Schools. In addition, the committee hopes to hear from person who, among other things, will: discuss efforts to develop a statewide tribal education department that collaborates with the Office of Public Instruction, and report on services provided by the Public Defender's Office to indigent clients.

This conference call is available to the public through the following call-in number: 1–800–923–4216, access code: 16800432. Any interested member of the public may call this number and listen to the meeting. Callers can expect to incur charges for calls not initiated using the supplied call-in number or made over wireless lines, and the Commission will not refund any incurred charges. Callers will incur no charge for calls using the call-in number over land-line connections. Persons with hearing impairments may also follow the proceedings by first calling the Federal Relay Service at 1–800–977–8339 and providing the Service with the conference call number and access code.

To ensure that the Commission secures an appropriate number of lines for the public, persons are asked to register by contacting, John Dulles, Director of the Rocky Mountain Regional Office, 303–866–1040 (TDD 303–866–1049), by 4:00 p.m. on Friday May 17, 2003.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, DC, May 7, 2003.

Ivy L. Davis,

Chief, Regional Programs Coordination Unit.

[FR Doc. 03–12642 Filed 5–15–03; 8:45 am]

BILLING CODE 6335–01–M

COMMISSION ON CIVIL RIGHTS

Agenda and Notice of Public Meeting of the New York Advisory Committee

Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights, that a community forum will convene at 9:30 a.m. and adjourn at 5:30 p.m. on Wednesday, May 21, 2003, at the Greenberg Lounge, New York University Law School, 40 Washington Square South, New York, New York 10012. The purpose of the community forum is to discuss civil rights issues and Post-9/11 law enforcement-community relations in New York.

Persons desiring additional information, or planning a presentation to the Committee, should contact Aonghas St. Hilaire of the Eastern Regional Office at 202–376–7533 (TDD 202–376–8116. Hearing impaired persons who will attend the meeting and require the services of a sign language interpreter should contact the Regional office at least ten (10) working days before the scheduled date of the meeting.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, DC, April 24, 2003.

Ivy L. Davis,

Chief, Regional Programs Coordination Unit.

[FR Doc. 03–12644 Filed 5–15–03; 3:24 pm]

BILLING CODE 6335–01–M

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Docket 23–2003]

Foreign-Trade Zone 22—Chicago, Illinois, Area Application for Expansion

An application has been submitted to the Foreign-Trade Zones (FTZ) Board (the Board), by the Illinois International Port District, grantee of Foreign-Trade Zone 22, requesting authority to expand its zone to include an additional site in the Chicago, Illinois, area, within the Chicago Customs port of entry. The application was submitted pursuant to the provisions of the Foreign-Trade Zones Act, as amended (19 U.S.C. 81a–81u), and the regulations of the Board (15 CFR Part 400). It was formally filed on May 12, 2003.

FTZ 22 was approved on October 29, 1975 (Board Order 108, 40 FR 51242, 11/4/75) and expanded on April 9, 1987 (Board Order 353, 52 FR 12217, 4/15/87); December 11, 1992 (Board Order 614, 57 FR 61044, 12/23/92); and, November 21, 2000 (Board Order 1127, 65 FR 76218, 12/6/00). The general-purpose zone project currently consists of the following sites: *Site 1* (19 acres)—within the Port's 2,250-acre Lake Calumet Harbor terminal facility; *Site 2* (578 acres)—industrial park at One Diversatech Drive, Manteno; *Site 3* (8 acres)—at 703 Foster Avenue, Bensonville; and, *Site 4* (8 acres)—at Gerry Drive and Hansen Court, Wood Dale.

The applicant is now requesting authority to expand the general-purpose zone to include an additional site (Proposed Site 5) in Elwood (Will

County). Proposed Site 5 (2,029 acres) is located at the CenterPoint Intermodal Center just west of the Village of Elwood, approximately 2½ miles east of Interstate 55 and approximately 1 mile south of Arsenal Road. The site was formerly the Joliet Arsenal, a U.S. Army ammunition plant, and is currently being developed for commercial use as an intermodal facility and industrial park. The majority of the site is owned by CenterPoint Properties Trust. No specific manufacturing requests are being made at this time. Such requests would be made to the Board on a case-by-case basis.

In accordance with the Board's regulations, a member of the FTZ Staff has been designated examiner to investigate the application and report to the Board.

Public comment on the application is invited from interested parties. Submissions (original and 3 copies) shall be addressed to the Board's Executive Secretary at one of the addresses below:

1. Submissions via Express/Package Delivery Services: Foreign-Trade Zones Board, U.S. Department of Commerce, Franklin Court Building—Suite 4100W, 1099—14th Street NW., Washington, DC 20005; or

2. Submissions via the U.S. Postal Service: Foreign-Trade Zones Board, U.S. Department of Commerce, FCB—Suite 4100W, 1401 Constitution Avenue NW. Washington, DC 20230.

The closing period for their receipt is July 21, 2003. Rebuttal comments in response to material submitted during the foregoing period may be submitted during the subsequent 15-day period to August 4, 2003.

A copy of the application and accompanying exhibits will be available for public inspection at the Office of the Foreign-Trade Zones Board's Executive Secretary at the first address listed above, and at the U.S. Department of Commerce Export Assistance Center, 55 West Monroe Street, Suite 2440, Chicago, Illinois 60603.

Dated: May 12, 2003.

Dennis Puccinelli,

Executive Secretary.

[FR Doc. 03–12637 Filed 5–19–03; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A-549–807]

Notice of Final Rescission of Antidumping Duty Administrative Review: Certain Carbon Steel Butt-Weld Pipe Fittings From Thailand

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of Final Rescission of Antidumping Duty Administrative Review.

SUMMARY: We are rescinding the administrative review of the antidumping duty order on certain carbon steel butt-weld pipe fittings from Thailand with respect to Thai Benkan Corporation, Ltd., (TBC) for the period of July 1, 2001, through June 30, 2002.

EFFECTIVE DATE: May 20, 2003.

FOR FURTHER INFORMATION CONTACT: Zev Primor or Ronald Trentham, Antidumping/Countervailing Duty Enforcement, Office 4, Group II, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 482–4114 or 482–6320, respectively.

SUPPLEMENTARY INFORMATION:

Background

On July 6, 1992, the Department of Commerce (the Department) published in the **Federal Register** an antidumping duty order on certain carbon steel butt-weld pipe fittings (pipe fittings) from Thailand (57 FR 29702). On July 1, 2002, the Department published a "Notice of Opportunity to Request an Administrative Review" on pipe fittings from Thailand (67 FR 44172). On July 31, 2002, the petitioner in this proceeding, Trinity Fitting Group, requested, in accordance with section 351.213(b) (2002) of the Department's regulations, an administrative review of the antidumping duty order on pipe fittings from Thailand covering the period July 1, 2001, through June 30, 2002, with respect to TBC. On August 15, 2002, TBC submitted a letter certifying that neither it nor its U.S. affiliate, Benkan America, Inc., sold, exported or shipped for entry and/or consumption in the United States subject merchandise during the period of review (POR). We published a notice of initiation of the review with respect to TBC on August 27, 2002. *See Initiation of Antidumping and Countervailing Duty Administrative Reviews and Requests for Revocation in Part*, 67 FR 55000 (August 27, 2002). On March 24, 2003, the Department published the preliminary notice of intent to rescind this administrative review. *See Certain Carbon Steel Butt-Weld Pipe Fittings From Thailand: Preliminary Notice of Intent to Rescind Administrative Review*, 68 FR 14192 (March 24, 2003). As discussed in the notice of preliminary results, this review covers TBC's shipments of the subject merchandise during the POR; however, based upon our shipment data query, we determined that TBC was a non-shipper for the purpose of this review. We invited interested parties to comment on our preliminary results. Interested parties did not submit case briefs or request a hearing.

Scope of the Review

The product covered by this order is certain carbon steel butt-weld pipe fittings, having an inside diameter of less than 14 inches, imported in either finished or unfinished form. These formed or forged pipe fittings are used to join sections in piping systems where conditions require permanent, welded connections, as distinguished from fittings based on other fastening methods (*e.g.*, threaded, grooved, or bolted fittings). Carbon steel pipe fittings are currently classified under subheading 7307.93.30 of the Harmonized Tariff Schedule of the United States (HTSUS). Although the HTSUS subheadings are provided for convenience and customs purposes, our written description of the scope of this proceeding is dispositive.

Rescission of Administrative Review

We provided interested parties with an opportunity to comment on the preliminary results. As noted above, however, we received no comments. As discussed in the preliminary results, because TBC made no entries, exports or sales of the subject merchandise to the United States during the POR, we determine that it was a non-shipper. In accordance with 19 CFR 351.213(d)(3) and consistent with Department practice, we are rescinding our review of TBC (see, e.g., *Certain Non-Frozen Apple Juice Concentrate from the People's Republic of China: Final Results of 1999–2001 Administrative Review and Partial Rescission of Review*, 67 FR 68987 (November 14, 2002); see also, *Frozen Concentrated Orange Juice From Brazil: Final Results and Partial Rescission of Antidumping Duty Administrative Review*, 67 FR 40913(June 14, 2002)).

This notice also serves as a reminder to parties subject to an administrative protective order (APO) of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 351.305. Timely notification of return and/or destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and the terms of an APO are sanctionable violations.

This determination is issued and published pursuant to sections 751(a) and 777(i) of the Tariff Act of 1930, as amended, and section 351.213(d) of the Department's regulations.

Dated: May 13, 2003.

Holly A. Kuga,

Acting Deputy Assistant Secretary for Import Administration.

[FR Doc. 03–12635 Filed 5–19–03; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

[A-122–822]

Certain Corrosion-Resistant Carbon Steel Flat Products from Canada; Amended Final Results of Antidumping Duty Administrative Review in Accordance with North American Free Trade Agreement Binational Panel Decision

AGENCY: Import Administration, International Trade Administration, U.S. Department of Commerce.

SUMMARY: On September 13, 1999, the North American Free Trade Agreement (NAFTA) Panel affirmed the Department of Commerce's (the Department) second remand determination arising from the administrative review of the antidumping duty order on certain corrosion-resistant carbon steel flat products from Canada. *See North American Free Trade Agreement Article 1904 Binational Panel Review*, USA-97–1904–3, September 13, 1999. As a result of this final and conclusive Binational Panel Review decision, we are amending the final results of review in this matter and will instruct the U.S. Bureau of Customs and Border Protection (BCBP) to liquidate entries subject to these amended final results.

EFFECTIVE DATE: May 20, 2003.

FOR FURTHER INFORMATION CONTACT: Mark Hoadley or Julio Fernandez, Antidumping/Countervailing Duty Enforcement, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington D.C. 20230; telephone (202) 482–3148 and (202) 482–0961, respectively.

SUPPLEMENTARY INFORMATION:

Background

On August 18, 1993, the Department issued antidumping duty orders on certain corrosion-resistant carbon steel flat products and certain cut-to-length carbon steel plate from Canada. *See Antidumping Duty Orders: Certain Corrosion-Resistant Carbon Steel Flat Products and Certain Cut-to-Length Carbon Steel Plate From Canada*, 58 FR 44162 (August 19, 1993). On April 15, 1997, the Department issued its final results of the second administrative review of certain corrosion-resistant carbon steel flat products for three exporters, Dofasco, Inc. (Dofasco), Continuous Colour Coat (CCC), and Stelco, Inc. (Stelco), and certain cut-to-length carbon steel plate for two exporters, Algoma Inc. and Stelco, covering the period of August 1, 1994 through July 31, 1995. *See Certain Corrosion-Resistant Carbon Steel Flat Products and Certain Cut-to-Length Carbon Steel Plate From Canada; Final Results of Antidumping Duty Administrative Reviews*, 62 FR 18448 (April 15, 1997) (*Final Results*).

At the request of Stelco, a NAFTA Binational Panel (the Panel) was established, and, on June 4, 1998, the Panel remanded the review of the final results on certain corrosion-resistant carbon steel flat products to the Department. The Panel remanded the review for the Department to reconsider, among other issues, its valuation of coating services performed by Stelco's affiliate, Baycoat Partnership (Baycoat). The Panel instructed the Department to reconsider Stelco's costs for coating services under § 773(f)(1)(A) of the Tariff Act of 1930, as amended (the Act), in conjunction with § 351.407(b)of the Department's regulations. At the same time, the Panel ruled that §§ 773(f)(2) and (f)(3) of the Act were inapplicable. *See NAFTA Binational Panel Decision of June 4, 1998* (*Panel Decision I*). The other two companies subject to the second administrative review of certain corrosion-resistant carbon steel flat products from Canada (Dofasco and CCC) were not involved in the *Second Remand Determination*.

On September 3, 1998, in accordance with the Panel's remand order, the Department issued its first remand determination in this matter. *See Final Remand Determination: NAFTA, Article 1904 Binational Panel Review, USA-97–1904–3* (September 3, 1998). Stelco challenged the Department's decision not to adjust the transfer price by its affiliate's return of profit. On January 29, 1999, the Panel remanded the review to the Department for the second time to reconsider the calculation of transfer price, and to take into account all evidence on the record. *See NAFTA Binational Panel Decision of January 20, 1999* (*Panel Decision II*). To ensure that the record contained all information necessary to make a final determination that would comply with the Panel's instructions, the Department reopened the record and verified the new information submitted by Stelco.

On June 14, 1999, in accordance with the Panel's remand order, the Department issued its second remand determination in this matter. *See Final Remand Determination: NAFTA, Article 1904 Binational Panel Review, USA-97–1904–3* (June 14, 1999) (*Second Remand Determination*). In this *Second Remand Determination*, the Department explained that there is a difference in Stelco's accounting records regarding Baycoat profits recorded and Baycoat profits remitted, as well as Baycoat profits on amounts charged to Stelco. Since profits remitted cannot be tied to any individual invoices, adjustments to transfer price cannot be made by profits remitted on individual sales. Baycoat profits, as recorded in Stelco's financial statements, may include profits on job orders performed for Baycoat's other owner, as well as other parties. Therefore, the Department made adjustments to the transfer price based on an allocated amount of the profits earned by Baycoat on Stelco job orders. The Department reallocated total per unit profit (Stelco's per-unit profit, as derived by Stelco, multiplied by two), by multiplying it by the ratio of the value charged to Stelco by Baycoat (as it appears in Baycoat's records) to the total value produced by Baycoat. We allocated interest and general and administrative expenses (G&A) by class by multiplying the interest and G&A per net ton times two, and then multiplying the product by the ratio of total value of Baycoat sales to Stelco to Baycoat's total sales value. We subtracted allocated interest and G&A expenses from the cost per net ton, since Baycoat's interest and G&A are already included and accounted for in Stelco's overall interest and G&A expense calculation. On September 13, 1999, the Panel upheld the Department's Second Remand Determination.

The Department faced a similar issue in the subsequent administrative review of certain corrosion-resistant carbon steel flat products from Canada, covering the period August 1, 1995 through July 31, 1996, which was also remanded to the Department by the

Panel for issues similar to those in the *Second Remand Determination*. *See Certain Corrosion-Resistant Carbon Steel Flat Products From Canada; Notice of Amended Final Results of Administrative Review in Accordance With North American Free Trade Agreement Panel Decision*, 66 FR 52095 (October 12, 2001).

Therefore, as there is a final and conclusive Binational Panel Review decision in this action, we are amending our final results of review for the period August 1, 1994 through July 31, 1995. The revised weighted average margins are as follows:

Manufacturer/exporter	Weighted-average margin percent
Stelco	0.55

The Department shall determine, and the BCBP shall assess, antidumping duties on all appropriate entries. The Department will issue appraisement instructions directly to the BCBP.

This notice is published in accordance with section 751(a)(1) of the Act (19 U.S.C. 1675(a)(1)), and 19 CFR 353.22.

Dated: May 14, 2003.

Jeffrey May,

Acting Assistant Secretary for Import Administration.

[FR Doc. 03–12638 Filed 5–19–03; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

[A-570–878]

Notice of Final Determination of Sales at Less Than Fair Value: Saccharin From the People's Republic of China

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: May 20, 2003.

FOR FURTHER INFORMATION CONTACT: Mark Hoadley (Suzhou Fine Chemicals Group Co., Ltd.) at (202) 482–3148, Javier Barrientos or Jessica Burdick (Shanghai Fortune Chemical Co., Ltd.) at (202) 482–2243 or (202) 482–0666, or Sally C. Gannon at (202) 482–0162; Office of AD/CVD Enforcement VII, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington DC 20230.

SUPPLEMENTARY INFORMATION:

Final Determination

We determine that saccharin from the People's Republic of China (PRC) is being, or is likely to be, sold in the United States at less than fair value (LTFV), as provided in section 735 of the Tariff Act of 1930, as amended (the Act). The estimated margins of sales at LTFV are shown in the "Suspension of Liquidation" section of this notice.

Background

The preliminary determination in this investigation was published on December 27, 2002. *See Notice of Preliminary Determination of Sales at Less Than Fair Value: Saccharin From the People's Republic of China*, 67 FR 79049 (December 27, 2002) (*Preliminary Determination*). Since the issuance of the preliminary determination, the following events have occurred.

On January 8, 2003, petitioner, PMC Specialities Group Inc., requested a hearing. On January 8, 2003, the Department received a timely factor value submission from Shanghai Fortune Chemical Co. (Shanghai Fortune) and Suzhou Fine Chemicals Group Co., Ltd. (Suzhou) (collectively, "respondents") and Kaifeng Xinghua Fine Chemical Factory (Kaifeng). On February 11, 2003, the Department extended the due date for the final determination of this investigation (68 FR 6885). On February 21, 2003, the Department received timely factor value submissions from petitioner, respondents and Kaifeng, and Procter & Gamble Co. On March 3, 2003, the Department received a supplemental factor value submission from petitioner. On April 10, 2003, the Department received timely written case briefs from petitioner, respondents, Procter & Gamble Co., and Colgate Palmolive Co. On April 15, 2003, the Department received timely rebuttal comments from petitioner and respondents. On April 22, 2003, a public hearing was held in this proceeding. We have now completed this investigation in accordance with section 735 of the Act.

Scope of the Investigation

The product covered by this investigation is saccharin. Saccharin is defined as a non-nutritive sweetener used in beverages and foods, personal care products such as toothpaste, table top sweeteners, and animal feeds. It is also used in metalworking fluids. There are four primary chemical compositions of saccharin: (1) sodium saccharin (American Chemical Society Chemical Abstract Service (CAS) Registry 128–44–9); (2) calcium saccharin (CAS Registry 6485–34–3); (3) acid (or insoluble) saccharin (CAS Registry 81–07–2); and (4) research grade saccharin. Most of the U.S.-produced and imported grades of saccharin from the PRC are sodium and calcium saccharin, which are available in granular, powder, spray-dried powder, and liquid forms.

The merchandise subject to this investigation is classifiable under subheading 2925.11.00 of the Harmonized Tariff Schedule of the United States (HTSUS) and includes all types of saccharin imported under this HTSUS subheading, including research and specialized grades. Although the HTSUS subheading is provided for convenience and Customs (as of March 1, 2003, renamed the U.S. Bureau of Customs and Border Protection) purposes, the Department's written description of the scope of this investigation remains dispositive.

Period of Investigation

The period of investigation (POI) is January 1, 2002 through June 30, 2002. This period corresponds to the two most recent fiscal quarters prior to the month of the filing of the Petition (*i.e.*, July 2002), and is in accordance with our regulations. *See* 19 CFR 351.204(b)(1).

Analysis of Comments Received

All issues raised in the case and rebuttal briefs by parties to this investigation are addressed in the *Issues and Decision Memorandum for the Final Determination of the Antidumping Duty Investigation of Saccharin from the People's Republic of China*, to Joseph A. Spetrini, Acting Assistant Secretary for Import Administration, from Barbara E. Tillman, Acting Deputy Assistant Secretary for Import Administration, dated May 12, 2003 (*Decision Memorandum*), which is hereby adopted by this notice. A list of the issues which parties have raised and to which we have responded, all of which are addressed in the *Decision Memorandum*, is attached to this notice as an appendix. Parties can find a complete discussion of all issues raised in this review and the corresponding recommendations in this public memorandum which is on file in the Central Records Unit, Room B-099 of the main Department building. In addition, a complete version of the *Decision Memorandum* can be accessed directly on the Web at *http://ia.ita.doc.gov*. The paper copy and electronic version of the *Decision Memorandum* are identical in content.

Non-Market Economy Country Status

The Department has treated the PRC as a non-market economy (NME) country in all past antidumping investigations. *See, e.g., Notice of Final Determination of Sales at Less Than Fair Value: Ferrovanadium from the People's Republic of China*, 67 FR 71137 (November 29, 2002); *Notice of Final Determination of Sales at Less Than Fair Value: Cold-Rolled Carbon Steel Flat Products from the People's Republic of China*, 67 FR 62107 (October 3, 2002). A designation as an NME remains in effect until it is revoked by the Department (*see* section 771(18)(C) of the Act). The respondents in this investigation have not requested a revocation of the PRC's NME status. Therefore, we have continued to treat the PRC as an NME in this investigation. For further details, *see* the *Preliminary Determination*.

Separate Rates

In the *Preliminary Determination*, the Department found that respondents and Kaifeng met the criteria for the application of separate, company-specific antidumping duty rates. We have not received any other information since the *Preliminary Determination* which would warrant reconsideration of our separates rates determination with respect to respondents and Kaifeng. For a complete discussion of the Department's determination that the respondents and Kaifeng are eligible for a separate rate, *see* the *Preliminary Determination*.

The PRC-Wide Rate

In the *Preliminary Determination*, we found that the use of adverse facts available for the PRC-wide rate was appropriate for other exporters in the PRC based on our presumption that those companies who failed to demonstrate that they met the requirements for a separate rate constitute a single enterprise under common control by the Chinese government. The PRC-wide rate applies to all entries of the merchandise under investigation except for entries from the respondents and Kaifeng.

When analyzing the petition for purposes of the initiation, the Department reviewed all of the data upon which the petitioner relied in calculating the estimated dumping margin and determined that the margin in the petition was appropriately calculated and supported by adequate evidence in accordance with the statutory requirements for initiation. In order to corroborate the petition margin for purposes of using it as adverse facts available, we examined the price and cost information provided in the petition in the context of our preliminary determination. For further details, *see Preliminary Determination of Saccharin from the People's Republic of China: Analysis and Corroboration of Adverse Facts Available Rate*, Memorandum from Mark Hoadley, through Sally Gannon, to the File (December 18, 2002). We received no comments concerning the Department's calculation of the PRC-wide rate; therefore, the Department finds that, for the final determination, the rate contained in the petition, recalculated as described below, has probative value.

Since the *Preliminary Determination*, we have revised several of the surrogate values based on Indian import data. In order to take into account these values, we have recalculated the petition margin using, where possible, the revised surrogate values. As a result of this recalculation, the PRC-wide rate, for the final determination, is 329.33 percent. These revised surrogate values are based on updated versions of the same source documentation used in the preliminary determination. Therefore, additional corroboration analysis is not necessary. *See Final Determination of Saccharin from the People's Republic of China: Analysis of Adverse Facts Available Rate*, Memorandum from Mark Hoadley to the File (May 12, 2003).

Margins for Cooperative Exporters Not Selected

The exporter who responded to Section A of the Department's antidumping questionnaire but was not selected as a respondent in this investigation, Kaifeng, has applied for a separate rate and provided information for the Department to make this determination. Although it is not practicable for the Department to calculate a separate rate for Kaifeng in addition to Suzhou and Shanghai Fortune (*see Respondent Selection Memorandum*, explaining the Department's decision to limit the investigation to two exporters), the company did cooperate in providing all information that the Department requested. We received no comments concerning the preliminary margin applied to Kaifeng; therefore, for the final determination, we have continued to apply to Kaifeng a separate rate based on the weighted-average of the rates calculated for those exporters that were selected to participate in this investigation, excluding any rates that are zero, de minimis, or based entirely on adverse facts available. *See Notice of Final Determination of Sales at Less Than Fair Value; Honey from the People's Republic of China*, 66 FR 50608, 50609 (October 4, 2001).

Surrogate Country

For purposes of the final determination, we continue to find that India remains the appropriate surrogate country for the PRC. For further discussion and analysis regarding the surrogate country selection for the PRC, *see* the *Preliminary Determination*.

Verification

As provided in section 782(i) of the Act, we verified the information submitted by respondents for use in our final determination. We used standard verification procedures including examination of relevant accounting and production records, and original source documents provided by the respondents.

Date of Sale

In the *Preliminary Determination*, the Department determined that invoice date was the most appropriate date of sale for respondents. Normally, the Department presumes that invoice date is the date of sale; however, "[i]f the Department is presented with satisfactory evidence that the material terms of sale are finally established on a date other than the date of invoice, the Department will use that alternative date as the date of sale." *Antidumping Duties; Countervailing Duties: Final Rule*, 62 FR 27296, 27349 (May 19, 1997) (*Preamble*). *See also* 19 CFR 351.401(i). After examining Shanghai Fortune's sales documentation at verification, we determine that because there were no material changes to the essential terms of sale (quantity and price) between the purchase order date and the invoice date, purchase order date is the most appropriate date of sale for Shanghai Fortune. *See Decision Memorandum* and *Memorandum to the File from Javier Barrientos and Jessica Burdick, Case Analysts, through Sally Gannon, Program Manager; Antidumping Duty Investigation of Saccharin from the People's Republic of China (PRC) (A-570–878): PRC Sales Verification Report for Shanghai Fortune Chemical Co.*, at 5–6 (March 26, 2003) (*Shanghai Fortune Verification Report*).

After examining Suzhou's sales documentation at verification, we determine that, for the final determination, invoice date continues to be the most appropriate date of sale for Suzhou. Suzhou reported purchase order dates and invoice dates as dates of sale. For those sales for which it reported invoice date, it did so because material sales terms were not set until this date. Given that the Department must choose one date of sale for all sales

in a particular market by a single respondent, we, therefore, are choosing invoice date as the date of sale for Suzhou. This choice is consistent with our regulatory presumption in favor of invoice date, and with the fact that material sales terms sometimes are not set until invoice date for this particular exporter.

Fair Value Comparisons

To determine whether sales of saccharin to the United States by Suzhou and Shanghai Fortune were made at LTFV, we compared the export price (EP), for Shanghai Fortune, and the constructed export price (CEP), for Suzhou, to normal value (NV), as discussed in the *Decision Memorandum, Final Determination in the Antidumping Duty Investigation of Saccharin from the People's Republic of China: Analysis of Suzhou Fine Chemicals Group Co., Ltd.*, from Mark Hoadley, through Sally Gannon, to the File (May 12, 2003) (*Suzhou Analysis Memorandum*), *Final Determination in the Antidumping Duty Investigation of Saccharin from the People's Republic of China: Analysis of Shanghai Fortune Chemical Co., Ltd.*, from Javier Barrientos, through Sally Gannon, to the File (May 12, 2003) (*Shanghai Fortune Analysis Memorandum*), *and Antidumping Duty Investigation of Saccharin from the People's Republic of China: Factor Valuation*, Memorandum from Sebastian Wright, Case Analyst, through Mark Hoadley, Senior Analyst, Office VII, to the File (May 12, 2003) (*Factor Valuation Memorandum*). In accordance with section 777A(d)(1)(A)(i) of the Act, for Shanghai Fortune, we calculated a weighted-average margin based on EP. *See also* "Use of Facts Otherwise Available" section of this notice. With regard to Suzhou, in accordance with section 777A(d)(1)(A)(ii) of the Act, we calculated a weighted-average margin based on CEP.

Use of Facts Otherwise Available

Section 776(a)(2) of the Act provides that, if an interested party withholds information that has been requested by the Department, fails to provide such information in a timely manner or in the form or manner requested, significantly impedes a proceeding under the antidumping statute, or provides information which cannot be verified, the Department shall use, subject to sections 782(d) and (e) of the Act, facts otherwise available in reaching the applicable determination. Pursuant to section 782(e), the Department shall not decline to consider such information if all of the following requirements are met: (1) the information is submitted by the established deadline; (2) the information can be verified; (3) the information is not so incomplete that it cannot serve as a reliable basis for reaching the applicable determination; (4) the interested party has demonstrated that it acted to the best of its ability; and (5) the information can be used without undue difficulties.

As discussed above, section 776(a)(2)(A) of the Act requires the Department to use facts available when a party withholds information which has been required by the Department. On September 10, 2002 and again on November 4, 2002, the Department requested that Shanghai Fortune report all sales of saccharin to the United States during the POI. The Department requested that Shanghai Fortune provide this sales information, whether the date of sale was based on purchase order/contract date or invoice date. On October 25, 2002 and November 25, 2002, Shanghai Fortune submitted to the Department what it reported to be all sales of saccharin sold to the United States during the POI, based upon both purchase order/contract date, as well as invoice date. After the preliminary determination, but prior to verification, Shanghai Fortune had additional opportunities to provide the Department with all sales information. At Shanghai Fortune's verification, the Department discovered an unreported sale of saccharin to the United States during the POI. Therefore, application of facts available is appropriate pursuant to 776(a)(2)(A), because Shanghai Fortune withheld information the Department requested, namely, one of its sales.

Once the Department determines that the use of facts available is warranted, section 776(b) of the Act further permits the Department to apply an adverse inference if it makes the additional finding that "an interested party has failed to cooperate by not acting to the best of its ability to comply with a request for information." The Department finds that Shanghai Fortune's failure to report this sale constitutes a failure to cooperate to the best of its ability and that the use of adverse facts available is appropriate under section 776(b) for the following reasons. The Department requested on two occasions that Shanghai Fortune report all of its sales during the POI (first, on the basis of what Shanghai Fortune believed to be the date of sale, and, second, on the basis of both purchase order/contract date and invoice date). In filing its second supplemental, Shanghai Fortune certified that it had reported all sales on both a purchase order/contract date basis and an invoice date basis. Shanghai Fortune explained at verification that it inadvertently failed to report this sale. *See Shanghai Fortune Verification Report* at 10 and 16. For this reason, and because it failed to report only this one sale, the Department finds that the application of partial, rather than total, adverse facts available for the missing POI sale is appropriate in this case. Section 776(b) of the Act states that adverse facts available may include information derived from the petition, the final determination, a previous administrative review, or other information placed on the record. As adverse facts available, and in accordance with section 776(b), the Department is applying the highest rate from the petition for an export price sale to the quantity of Shanghai Fortune's missing sale for the final determination. *See Shanghai Fortune Analysis Memorandum*. As discussed in "The PRC-Wide Rate" section of this notice, the Department has adjusted the petition rate, and the petition rate has been corroborated. Moreover, we determine that the highest rate from the petition is relevant to Shanghai Fortune, given that it represents a sale of a product also sold by Shanghai Fortune, made on the same sales basis (export price) as Shanghai Fortune.

Changes Since the Preliminary Determination

Based on our findings at verification and on our analysis of the comments received, we have made adjustments to the calculation methodologies used in the preliminary determination. In particular, we have made changes involving the following issues: surrogate valuation, concentration strength of inputs, byproduct offset, normal value financial ratios, Suzhou USA's indirect selling expenses, and date of sale, as well as several miscellaneous calculation issues. These changes are discussed in detail in the *Decision Memorandum*, *Suzhou Analysis Memorandum*, and *Shanghai Fortune Analysis Memorandum*. In addition to the *Decision Memorandum*, public versions of the *Suzhou Analysis Memorandum* and *Shanghai Fortune Analysis Memorandum* are on file in the Central Records Unit, Room B-099, of the main Commerce Building.

Continuation of Suspension of Liquidation

In accordance with section 735(c)(1)(B) of the Act, we are directing the U.S. Bureau of Customs and Border Protection (BCBP) to continue to suspend liquidation of all entries of saccharin from the PRC that are entered, or withdrawn from warehouse, for consumption, on or after December 27, 2003 (the date of publication of the *Preliminary Determination* in the **Federal Register**). BCBP shall continue to require a cash deposit or the posting of a bond equal to the weighted-average amount by which the normal value exceeds the U.S. price, as indicated in the chart below. The suspension of liquidation instructions will remain in effect until further notice. The weighted-average dumping margins are as follows:

Manufacturer/Exporter	Margin (percent)
Suzhou Fine Chemical Group Co., Ltd.	291.57%
Shanghai Fortune Chemical Co., Ltd.	249.39%
Kaifeng Xinhua Fine Chemical Factory	281.97%
PRC-Wide	329.33%

International Trade Commission Notification

In accordance with section 735(d) of the Act, we have notified the International Trade Commission (ITC) of our determination. The ITC will determine, within 45 days, whether these imports are materially injuring, or threatening material injury to, an industry in the United States. If the ITC determines that material injury or threat of material injury does not exist, the proceeding will be terminated and all securities posted will be refunded or canceled. If the ITC determines that such injury does exist, the Department will issue an antidumping duty order directing BCBP officials to assess antidumping duties on all imports on the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the effective date of the suspension of liquidation.

Notification Regarding APO

This notice also serves as a reminder to parties subject to administrative protective order (APO) of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 351.305. Timely notification of return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and the terms of an APO is a sanctionable violation.

This determination is issued and published in accordance with sections 733(f) and 777(i)(1) of the Act.

Dated: May 12, 2003.

Jeffrey May,

Acting Assistant Secretary for Import Administration.

Appendix

Issues in Decision Memorandum

Comment 1: Surrogate Values: Most Appropriate Source for Surrogate Values
Comment 2: Surrogate Values: Adjustments to Surrogate Values for Concentration Strengths
Comment 3: Surrogate Values: Choice of Surrogate Values for Byproducts
Comment 4: Application of "Sigma" Rule
Comment 5: Market Economy Inputs: Valuation of Phthalic Anhydride
Comment 6: Byproduct Offset
Comment 7: Packing Expenses
Comment 8: Suzhou's Self-Produced Inputs
Comment 9: Normal Value Financial Ratios
Comment 10: Suzhou USA's Indirect Selling Expenses
Comment 11: Calculation of Suzhou USA's CEP Profit
Comment 12: Date of Sale
Comment 13: Calculation Issue: Freight
Comment 14: Calculation Issue: Conversion Error/Ice, Water, and Steam
Comment 15: Calculation Issue: Conversion Error/Labor
Comment 16: Calculation Issue: Discrepancy Between Prelim Factor Values Memo and Calculations

[FR Doc. 03–12636 Filed 5–19–03; 8:45 am]
BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

Export Trade Certificate of Review

ACTION: Notice of application to amend an Export Trade Certificate of Review.

SUMMARY: The Office of Export Trading Company Affairs ("OETCA"), International Trade Administration, U.S. Department of Commerce, has received an application to amend an Export Trade Certificate of Review ("Certificate"). This notice summarizes the proposed amendment and requests comments relevant to whether the Certificate should be issued.

FOR FURTHER INFORMATION CONTACT: Jeffrey C. Anspacher, Director, Office of Export Trading Company Affairs, International Trade Administration, (202) 482–5131 (this is not a toll-free number) or by E-mail at *oetca@ita.doc.gov*.

SUPPLEMENTARY INFORMATION: Title III of the Export Trading Company Act of 1982 (15 U.S.C. 4001–21) authorizes the Secretary of Commerce to issue Export Trade Certificates of Review. An Export Trade Certificate of Review protects the holder and the members identified in the Certificate from state and federal government antitrust actions and from private treble damage antitrust actions for the export conduct specified in the Certificate and carried out in compliance with its terms and conditions. Section 302(b)(1) of the Export Trading Company Act of 1982 and 15 CFR 325.6(a) require the Secretary to publish a notice in the **Federal Register** identifying the applicant and summarizing its proposed export conduct.

Request for Public Comments

Interested parties may submit written comments relevant to the determination whether an amended Certificate should be issued. If the comments include any privileged or confidential business information, it must be clearly marked and a nonconfidential version of the comments (identified as such) should be included. Any comments not marked privileged or confidential business information will be deemed to be nonconfidential. An original and five (5) copies, plus two (2) copies of the nonconfidential version, should be submitted no later than 20 days after the date of this notice to: Office of Export Trading Company Affairs, International Trade Administration, U.S. Department of Commerce, Room 1104H, Washington, DC 20230. Information submitted by any person is exempt from disclosure under the Freedom of Information Act (5 U.S.C. 552). However, nonconfidential versions of the comments will be made available to the applicant if necessary for determining whether or not to issue the Certificate. Comments should refer to this application as "Export Trade Certificate of Review, application number 87–7A001."

The American Film Marketing Association's ("AFMA") original Certificate was issued on April 10, 1987 (52 FR 12578, April 17, 1987) and last amended on December 9, 1998 (64 FR 10993, March 8, 1999). A summary of the application for an amendment follows.

Summary of the Application:

Applicant: American Film Marketing Association ("AFMA"), 10850 Wilshire Blvd., 9th Floor, Los Angeles, California 90024–4321.

Contact: Thomas E. Arend, Jr., Attorney, Telephone: (202) 663–8070.

Application No.: 87–7A001.

Date Deemed Submitted: May 8, 2003.

Proposed Amendment: AFMA seeks to amend its Certificate to:

1. Add each of the following companies as a new "Member" of the Certificate within the meaning of section 325.2(l) of the Regulations (15 CFR 325.2(l): Adriana Chiesa Enterprises SRL, Rome, Italy; Alain Siritzky Productions (ASP), Paris, France; Alliance Atlantis Communications Corporation, Toronto, Canada; Arclight Films PTY. LtD., Sydney, Australia; Atlas International Film GMBH, Munich, Germany; Atrium Productions KFT, Rotterdam, The Netherlands; Beyond Films, Ltd., Surry Hills, Australia; British Film Institute, London, United Kingdom; Buena Vista Television, a Division of Disney/ABC Int'l TV Inc., Burbank, California; BV International Pictures AS, Avaldsnes, Norway; Capitol Films Limited, London, United Kingdom; China Star Entertainment Group, TST, Kowloon, Hong Kong; Cinemavault Releasing, Toronto, Canada; CORI Distribution Group, London, United Kingdom; Distant Horizon, Ltd., Surrey, United Kingdom; DZ Bank, London, United Kingdom; FIDEC, Montreal, Canada; Film Finance Corporation Australia, Sydney, Australia; Filmax-SOGEDASA, Barcelona, Spain; Filmexport Group SRL, Rome, Italy; Filmfour International, London, United Kingdom; Fintage House, Leiden, The Netherlands; Fleetboston Financial, Boston, Massachusetts; Focus Features, New York, New York; Fortissimo Film Sales, Amsterdam, The Netherlands; Freeway Entertainment Group Ltd., Budapest, Hungary; Fremantlemedia Enterprises, London, United Kingdom; Goldcrest Films International, Ltd., London, United Kingdom; Golden Harvest Entertainment Co., Ltd., Beverly Hills, California; Good Times Entertainment, Inc., Bel Air, California; Han Entertainment, Hong Kong: Hanway Films, London, United Kingdom; Hollywood Previews Entertainment, Inc., Santa Monica, California; Horizon Entertainment, Inc., Vancouver, Canada; IAC Film & Television, London, United Kingdom; Icon Entertainment International, London, United Kingdom; IFD Films & Arts, Ltd., Tsing Yi, New Territories, Hong Kong; IFM World Releasing, Inc., Glendale, California; In-Motion Pictures, Inc., London, United Kingdom; Intermedia, London, United Kingdom; Intra-Movies SRL, Rome, Italy; JP Morgan Securities, Inc. Entertainment Industries Group, Los Angeles, California; Kevin Williams Associates, S.A., Madrid, Spain; Lolafilms, Madrid, Spain; Media Asia Distribution, Ltd., Causeway Bay, Hong Kong; Moviehouse Entertainment, London, United Kingdom; New Zealand Film Commission, Wellington, New Zealand; North American Releasing, Inc., Vancouver, Canada; North by Northwest Distribution, Spokane, Washington; Oasis International, Toronto, Canada; Pathe International, Paris, France; Powerhouse Entertainment Group, Inc., Beverly Hills, California; Pueblo Film Group, Zurich, Switzerland; Renaissance Films, Ltd., London, United Kingdom; Safir Films, LtTD., Harrow, Middlesex, United Kingdom; SOGEPAQ S.A., Madrid, Spain; Solo Entertainment Group, Inc., Beverly Hills, California; Splendid Pictures, Inc., Bel Air, California; Stadsparkasse Koeln, Entertainment Finance, Cologne, Germany; Studiocanal, Boulogne, France; Svensk Filmindustri, AB, Stockholm, Sweden; Telepool, Munich, Germany; TF 1 International, Boulogne Billancourt Cedex, France; Trust Film Sales, Hvidovre, Denmark; TVA Films, a Division of Group TVA, Inc., Montreal, Canada; UGC International, Neuilly sur Seine, France; Vine International Pictures, Ltd., Downe, Orpington, United Kingdom; and The Works, London, United Kingdom; and

2. Delete each of the following companies as a "Member" of the Certificate: Arama Entertainment, Encino, California; Associated Television International, Los Angeles, California; Atmosphere Entertainment, Inc., Westlake Village, California; Blue Rider Pictures, Manhattan Beach, California; Gapella Films, Los Angeles, California; Film Four International, Burbank, California; Helkon International Pictures, Inc., Beverly Hills, California; IFM Film Associates, Inc., Glendale, California; Largo Entertainment, Beverly Hills, California, NBC Enterprises, Burbank, California; Odyssey Pictures Corporation, Dallas, Texas; Saban Pictures International, Los Angeles, California; The Kushner-Locke Company, Beverly Hills, California; Village Roadshow Pictures, Burbank, California; CAL Fed Bank, Sherman Oaks, California; Chase Manhattan, Los Angeles, California; Cinema Completions International, Studio City, California; Far East National Bank, Los Angeles, California; Mizuho Corporate Bank, Ltd., Los Angeles, California; Motion Picture Bond Company, Los Angeles, California; Aura Entertainments LLC, Beverly Hills, California; Imageworks Entertainment International, Inc., Woodland Hills, California; Switch Entertainment, Norfolk, Virginia; Vortex Pictures, LLC, Santa Monica, California, and York Entertainment, Encino, California.

Dated: May 14, 2003.

Jeffrey C. Anspacher,

Director, Office of Export Trading, Company Affairs.

[FR Doc. 03–12632 Filed 5–19–03; 8:45 am]

BILLING CODE 3510–DR–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Availability of Seats for the Thunder Bay National Marine Sanctuary and Underwater Preserve Advisory Council

AGENCY: Office of National Marine Sanctuaries (ONMS), National Oceanic and Atmospheric Administration (NOAA), Department of Commerce (DOC).

ACTION: Notice and request for applications.

SUMMARY: The Thunder Bay National Marine Sanctuary and Underwater Preserve (TBNMS&UP) is seeking applications for the following seats on the Advisory Council: Tourism, Diving, Education K–12, Maritime History and Interpretation, Citizen-At-Large.

Applicants are chosen based upon their particular expertise and experiences in relation to the seat for which they are applying; community and professional affiliations; and the length of residence in the area affected by the Sanctuary & Preserve. Applicants who are chosen as members should expect to serve two-year terms pursuant to the Council's Charter. Applicants should be available to attend approximately six meetings annually.

DATES: Applications are due by June 6, 2003.

ADDRESSES: Application kits may be obtained from Kate Thompson, NOAA/Thunder Bay National Marine Sanctuary and Underwater Preserve, 145 Water Street, Alpena, Michigan 49707. Applications are also available on-line at: *www.thunderbay.noaa.gov.* All completed applications should be sent to the Alpena address.

FOR FURTHER INFORMATION CONTACT: Jeff Gray, NOAA/Thunder Bay National Marine Sanctuary and Underwater Preserve, 145 Water Street Alpena, MI 49707, (989) 356–8805 ext. 12 PHONE, (989) 354–0144 FAX, *jeff.gray@noaa.gov.*

SUPPLEMENTARY INFORMATION: The current TBNMS&UP Advisory Council was established in 2001 to provide advice and recommendations to the Sanctuary Manager and the Joint Management Committee (a state/federal body to oversee major policy, management and budget issues concerning the Sanctuary & Preserve) regarding the management and operation of the Thunder Bay NMS & UP. Since its establishment, the Council has played a vital role in the decisions affecting the Sanctuary & Preserve waters.

The Council's 15 voting members represent a variety of local constituent groups, as well as the general public, plus five local governmental jurisdictions.

The Council is supported by four working groups: Education, Outreach, Volunteer and Mooring Buoy Working Groups. Each group deals with matters concerning education, outreach, volunteers and resource protection.

The Council functions in an advisory capacity to the Sanctuary Manager and is instrumental in helping to develop program goals. The Council works to advise the Sanctuary Manager by keeping him informed about areas of concern from their constituents, as well as offering recommendations on specific issues that may occur.

The Sanctuary & Preserve was established to manage and protect Thunder Bay's historic collection of over 100 shipwrecks. NOAA and the State of Michigan are equal partners in the manager of TBNMS&UP. Both NOAA and the State will mutually agree on the selection of the vacant seat members.

Authority: 16 U.S.C. Sections 1431, *et seq.*

(Federal Domestic Assistance Catalog Number 11.429 Marine Sanctuary Program)

Dated: May 14, 2003.

Jamison S. Hawkins,

Acting Assistant Administrator for Ocean Services and Coastal Zone Management.

[FR Doc. 03–12629 Filed 5–19–03; 8:45 am]

BILLING CODE 3510–NK–M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

ENVIRONMENTAL PROTECTION AGENCY

Coastal Nonpoint Pollution Control Program: Approval Decision on Maine Coastal Nonpoint Pollution Control Program

AGENCY: National Oceanic and Atmospheric Administration, U.S. Department of Commerce and the U.S. Environmental Protection Agency.

ACTION: Notice of Intent to Approve the Maine Coastal Nonpoint Program.

SUMMARY: Notice is hereby given of the intent to fully approve the Maine Coastal Nonpoint Pollution Control Program (coastal nonpoint program) and of the availability of the draft Approval Decisions on conditions for the Maine coastal nonpoint program. Section 6217 of the Coastal Zone Act Reauthorization Amendments (CZARA), 16 U.S.C. section 1455b, requires States and Territories with coastal zone management programs that have received approval under section 306 of the Coastal Zone Management Act to develop and implement coastal nonpoint programs. Coastal States and Territories were required to submit their coastal nonpoint programs to the National Oceanic and Atmospheric Administration (NOAA) and the U.S. Environmental Protection Agency (EPA) for approval in July 1995. NOAA and EPA conditionally approved the Maine coastal nonpoint program on February 23, 1998. NOAA and EPA have drafted approval decisions describing how Maine has satisfied the conditions placed on its program and therefore has a fully approved coastal nonpoint program.

NOAA and EPA are making the draft decisions for the Maine coastal nonpoint program available for a 30-day public comment period. If comments are received, NOAA and EPA will consider whether such comments are significant enough to affect the decision to fully approve the program.

Copies of the draft Approval Decisions can be found on the NOAA Web site at *http://www.ocrm.nos.noaa.gov/czm/* or may be obtained upon request from: Helen Farr, Coastal Programs Division (N/ORM3), Office of Ocean and Coastal Resource Management, NOS, NOAA, 1305 East-West Highway, Silver Spring, Maryland, 20910, phone (301) 713–3155, x150, e-mail *helen.farr@noaa.gov.*

DATES: Individuals or organizations wishing to submit comments on the draft Approval Decisions should do so by June 19, 2003.

ADDRESSES: Comments should be made to: John King, Acting Chief, Coastal Programs Division (N/ORM3), Office of Ocean and Coastal Resource Management, NOS, NOAA, 1305 East-West Highway, Silver Spring, Maryland, 20910, phone (301) 713–3155, x188, e-mail *john.king@noaa.gov.*

FOR FURTHER INFORMATION CONTACT: Helen Farr, Coastal Programs Division (N/ORM3), Office of Ocean and Coastal Resource Management, NOS, NOAA, 1305 East-West Highway, Silver Spring, Maryland, 20910, phone (301) 713–3155, x150, e-mail *helen.farr@noaa.gov.*

(Federal Domestic Assistance Catalog 11.419 Coastal Zone Management Program Administration)

Dated: May 15, 2003.

Jamison S. Hawkins,

Acting Assistant Administrator for Ocean Services and Coastal Zone Management, National Oceanic and Atmospheric Administration.

G. Tracy Mehan, III

Assistant Administrator Office of Water, Environmental Protection Agency.

[FR Doc. 03–12527 Filed 5–17–03; 8:45 am]

BILLING CODE 3510–08–M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 032103C]

Endangered Species; File No. 1418

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Receipt of application.

SUMMARY: Notice is hereby given that Lawrence D. Wood, Marine Life Center of Juno Beach, 14200 U.S. Hwy. 1, Juno Beach, FL 33408, has applied in due form for a permit to take hawksbill sea turtles (*Eretmochelys imbricata*) for purposes of scientific research.

DATES: Written or telefaxed comments must be received on or before June 19, 2003.

ADDRESSES: The application and related documents are available for review upon written request or by appointment in the following office(s):

Permits, Conservation and Education Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13705, Silver Spring, MD 20910; phone (301)713–2289; fax (301)713–0376; and

Southeast Region, 9721 Executive Center Drive North, St. Petersburg, FL 33702–2432; phone (727)570–5301; fax (727)570–5320.

FOR FURTHER INFORMATION CONTACT: Patrick Opay (301)713–1401 or Carrie Hubard, (301)713–2289.

SUPPLEMENTARY INFORMATION: The subject permit is requested under the authority of the Endangered Species Act of 1973, as amended (ESA; 16 U.S.C. 1531 *et seq.*) and the regulations governing the taking, importing, and exporting of endangered and threatened species (50 CFR 222–226).

The applicant proposes to study the abundance and distribution of hawksbill

sea turtles in the waters of Palm Beach County, FL. The purpose of this project is to support hawksbill recovery efforts by surveying the local population to document the distribution and movement of individuals in these waters. Larger turtles will be hand captured and smaller individuals will be captured using a 24 inch (60 cm) diameter dip-net. Turtles will be retained on a vessel for the collection of morphometric data, tagging, numbering, photographs, and tissue sampling, and then released. Seventy-five turtles of all sizes will be captured annually, and the requested duration of this permit is 5 years.

Written comments or requests for a public hearing on this application should be mailed to the Chief, Permits, Conservation and Education Division, F/PR1, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13705, Silver Spring, MD 20910. Those individuals requesting a hearing should set forth the specific reasons why a hearing on this particular request would be appropriate.

Comments may also be submitted by facsimile at (301)713–0376, provided the facsimile is confirmed by hard copy submitted by mail and postmarked no later than the closing date of the comment period. Please note that comments will not be accepted by e-mail or by other electronic media.

Dated: May 14, 2003.

Stephen L. Leathery,

Chief, Permits, Conservation and Education Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 03–12650 Filed 5–19–03; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 051203B]

Marine Mammals; File No. 1004–1656

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Issuance of permit amendment.

SUMMARY: Notice is hereby given that Funtime, Inc. d/b/a Six Flags Worlds of Adventure, 1060 North Aurora Road, Aurora, OH 44202, has been issued an amendment to public display Permit No. 1004–1656–00 to extend the expiration date through May 16, 2004.

ADDRESSES: The amendment and related documents are available for review upon written request or by appointment in the following office(s):

Permits, Conservation and Education Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13705, Silver Spring, MD 20910; phone (301)713–2289; fax (301)713–0376; and

Northeast Region, NMFS, One Blackburn Drive, Gloucester, MA 01930–2298; phone (978)281–9200; fax (978)281–9371.

FOR FURTHER INFORMATION CONTACT: Jennifer Skidmore or Amy Sloan, (301)713–2289.

SUPPLEMENTARY INFORMATION: On May 22, 2002, notice was published in the **Federal Register** (67 FR 35965) that Permit No. 1004–1656–00 had been issued to Funtime, Inc. d/b/a Six Flags Worlds of Adventure to import two killer whales, one adult female from Marineland S.A., Antibes, France and one adult male from Mundo Marino, Buenos Aires, Argentina, for the purposes of public display. This permit amendment extends the duration of the permit from May 16, 2003, to May 16, 2004. The requested permit amendment has been issued under the authority of the Marine Mammal Protection Act of 1972, as amended (16 U.S.C. 1361 *et seq.*), and the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR part 216).

Dated: May 13, 2003.

Stephen L. Leathery,

Chief, Permits, Conservation and Education Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 03–12649 Filed 5–19–03; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

Patent and Trademark Office

[Docket No.: 2003–P–018]

Request for Comments on the Study of the Changes Needed To Implement a Unity of Invention Standard in the United States

AGENCY: United States Patent and Trademark Office, Commerce.

ACTION: Notice; request for comments.

SUMMARY: The United States Patent and Trademark Office (USPTO) has established a 21st Century Strategic Plan to transform the USPTO into a quality-focused, highly productive, responsive organization supporting a market-driven intellectual property system. As part of this plan, the USPTO will conduct a study of the changes needed to implement a Patent Cooperation Treaty (PCT) style Unity of Invention standard in the United States. Prior to starting a detailed study, the USPTO is seeking public comment on a number of issues to help guide the scope and content of a study on the adoption of a Unity of Invention standard in the United States.

COMMENT DEADLINE DATE: To be ensured of consideration, written comments must be received on or before July 21, 2003. No public hearing will be held at this stage of the study.

ADDRESSES: Comments should be sent by electronic mail message over the Internet addressed to: *unity.comments@uspto.gov*. Comments may also be submitted by mail addressed to: Mail Stop Comments—Patents, Commissioner for Patents, PO Box 1450, Alexandria, VA 22313–1450; or by facsimile to (703) 872–9411, marked to the attention of Robert Clarke. Although comments may be submitted by mail or facsimile, the USPTO prefers to receive comments via the Internet. If comments are submitted by mail, the USPTO would prefer that the comments be submitted on a DOS formatted 3½ inch disk accompanied by a paper copy.

The comments will be available for public inspection at the Office of Patent Legal Administration, Office of the Deputy Commissioner for Patent Examination Policy, located at Room 3D65 of Crystal Plaza 3/4, 2201 South Clark Place, Arlington, Virginia, 22202, and will be available through anonymous file transfer protocol (ftp) via the Internet (address: *http://www.uspto.gov*). Since comments will be made available for public inspection, information that is not desired to be made public, such as an address or phone number, should not be included in the comments.

FOR FURTHER INFORMATION CONTACT: Robert A. Clarke directly by phone at (703) 305–9177, by e-mail at *robert.clarke@uspto.gov*, by facsimile to (703) 305–1013, marked to the attention of Robert A. Clarke, or by mail addressed to: Mail Stop Comments—Patents, Commissioner for Patents, PO Box 1450, Alexandria, VA 22313–1450.

SUPPLEMENTARY INFORMATION: The Unity of Invention standard (in PCT applications) and United States restriction practice (in United States applications) are mechanisms by which the USPTO determines whether patent applicants are entitled to examination of all of the claims in an application by determining whether the claims are directed to a single invention, or to multiple inventions that are capable of supporting separate patents.

The Unity of Invention standard is a component of many foreign patent laws and is also used in international search and preliminary examination proceedings conducted pursuant to the PCT.

United States restriction practice is based on 35 U.S.C. 121, which provides that: "[i]f two or more independent and distinct inventions are claimed in one application, the Director may require the application to be restricted to one of the inventions." This allows examiners to limit applicants to one set of patentably indistinct inventions per application. The USPTO may "restrict" the application to one set of patentably indistinct inventions: (1) If the application includes multiple independent and patentably distinct sets of inventions, and (2) if there is an undue burden to examine more than one invention in the same application. Restriction practice was designed to balance the interest of granting an applicant reasonable breadth of protection in a single patent against the burden on the USPTO of examining multiple inventions in a single application.

Current USPTO policy allows for restriction between related inventions as well as between independent inventions. However, if the USPTO adopts a Unity of Invention standard, restriction would, as a general rule, no longer be permitted between certain related inventions that currently may be restricted under United States restriction practice. Some examples of related inventions that are often filed together and typically can be restricted under current United States practice before a prior art search is conducted, but do not lack unity under the Unity of Invention standard, include: (1) A process, and the apparatus for carrying out the process; (2) a process for making a product, and the product made; (3) an apparatus, and the product made by the apparatus; (4) a product, and the process of using the product.

A lack of Unity of Invention is different from restriction practice in some major aspects. Unity of Invention is practiced, with slight variations, in PCT applications and in applications examined by the European Patent Office (EPO) and the Japan Patent Office (JPO). The primary consideration for establishing Unity of Invention is that the claims are entitled to be examined in a single application if the claims are so linked together as to form a single general inventive concept, premised on the concept of a common feature (referred to as a "special technical feature" in the context of PCT Rule 13) that can be present in multiple inventions within a single application. As long as the same or corresponding common feature is found in each claim and that common feature makes a contribution over the prior art, the claims comply with the requirement for Unity of Invention. If the inventions lack a common feature that makes a contribution over the prior art, then a holding of lack of Unity of Invention would be proper. The determination of whether an invention makes a contribution over the prior art can effectively be done only after a prior art search for the common feature has been performed.

Adoption of any of the various styles of Unity of Invention practice will likely have significant impacts on current USPTO examination practices and organization. The degree of the impacts will depend upon the particulars of how the Unity of Invention standard is implemented. A complete study will need to consider, at a minimum, the impacts and changes to: quality, pendency, workload, revenue, fees, patent term adjustment, examination resources, organizational structure of the Patent Examining Corps, and the United States patent classification system.

Issues for Comment

Issue 1: Unity of Invention as practiced in the EPO is interlinked to EPC-style claim drafting and EPO claim treatment practice, including certain limitations on claiming that are not present in current United States patent practice. For example, the EPO (under EPC rule 29(2)) usually allows only one independent claim per category of invention (category of invention is that of product, process or apparatus of use), and emphasizes the search and examination of independent claims. In contrast, the USPTO searches and examines every claim, independent and dependent, and every limitation of every claim. In addition, EPC-style claim drafting is generally termed "central claiming". In central claiming, the inventive concept is essentially claimed in the independent claim. If the independent claim is found allowable, the EPO examination will not be unduly concerned with respect to the dependent claims, according to EPO Guidelines, C–III, 3.6.

Should the USPTO study ways to adopt EPO claim treatment practice, including normally allowing only one independent claim per category of invention, when considering ways to adopt a Unity of Invention standard, and why?

Should the USPTO emphasize the examination of independent claims and modifying the examination of dependent claims in the same fashion as the EPO?

If so, would there be any reason to consider changes to the presumption of validity under 35 U.S.C. 282 of those dependent claims?

Issue 2: In United States restriction practice, the applicant can file a subsequent application that is directed to an invention that was divided out of the parent application. These are called Divisional applications. Divisional applications are typically subsequently filed and are not normally examined concurrently with the parent application. Divisional applications retain the benefit of the filing date of the original application if the conditions set forth in 35 U.S.C. 120 are met. This allows an applicant to continue to pursue protection for the inventions subject to restriction that were in the original application without being affected by double patenting. All member states of the Paris Convention for the Protection of Industrial Property (1967) (including Japan and all EPC member states), as well as the EPO, also provide for the filing of Divisional applications. However, the PCT does not yet provide for the filing of Divisional international applications. Consequently, the PCT rules provide for applicant to pay for the search and examination of additional inventions that "lack unity" in a single international application. Adoption of a Unity of Invention standard could, in some instances, require examining more inventions during the examination of a single application than occurs presently, thereby possibly causing delay in the examination of other applications if examination resources are limited. This could increase the USPTO's average patent pendency time.

If the USPTO adopts a Unity of Invention standard, should the USPTO provide applicants the option of a PCT-style Unity of Invention practice to pay for additional inventions that lack Unity of Invention in the same application?

If so, should the USPTO consider any changes to patent term adjustment under 35 U.S.C. 154(b) for applications which have more inventions examined in a single application under a Unity of Invention standard than are permitted under current practice?

In view of the fact that examining multiple inventions in a single application could cause examination delay in other applications, what other revisions to patent term adjustment provisions under 35 U.S.C. 154(b) should be considered by the USPTO, or

should the USPTO also consider revising the order that cases are taken up for examination?

Issue 3: Under the PCT, examination proceeds on the basis of the first claimed invention if applicant does not pay for additional inventions that lack unity.

Should the USPTO adopt, for national applications, the practice currently used under the PCT of examining the first claimed invention where there is a holding of lack of Unity of Invention?

Optionally, where Unity of Invention is lacking: (1) Should the USPTO examine the first claimed product, or the first claimed invention if there are no product claims; or (2) should applicant be given the opportunity to elect an invention to be examined?

Issue 4: A determination of lack of Unity of Invention is predicated on assessing whether a common feature (referred to as a "special technical feature" in the context of PCT Rule 13) defines a contribution over the prior art. Certain PCT member states assess this requirement only with respect to patentable advances over prior art. However, issues of lack of support, enablement, clarity, or conciseness, generally resulting from excessive breadth of claims or excessive numbers of claims, may occur that render examination unduly burdensome. In such circumstances, some International Authorities will make a "partial search" declaration to limit the extent of search and examination. The USPTO does not follow this practice. On the other hand, it may be viewed that if the common feature or "special technical feature" is not adequately supported by the disclosure or lacks utility ("industrial applicability" in the PCT context), the special technical feature does not make a contribution over the prior art.

When adopting the Unity of Invention standard, should the USPTO follow the practice of performing only a "partial search" if the examination of the entire scope of the claims is unduly burdensome due to non-prior art issues?

Alternatively, should the USPTO assess adequacy of the disclosure and industrial applicability in addition to the prior art when determining whether the claims' common feature makes a contribution over the prior art?

Issue 5: The USPTO's 21st Century Strategic Plan is predicated on a certain level of revenue to provide the resources needed to meet quality and timeliness goals. The Plan currently does not account for any additional resource requirements, and any corresponding revenue shortfalls, that may result from adopting a Unity of Invention standard. Statutory fees under 35 U.S.C. 41(a) and (b), in the aggregate, are set to cover USPTO operating costs. If the average cost of processing patent applications goes up, the USPTO will need to increase fees. Assuming that there will be extra costs of examination under Unity of Invention, possible increases would be: (1) All filing fees; (2) all filing fees and an additional fee for examination of claims that lack Unity of Invention with an elected invention; (3) increased issue and/or maintenance fees of all applications; (4) increased issue and/or maintenance fees for applications paying the additional invention fee; or (5) a combination of two or more of (1) through (4) above.

Which of the above approaches should the USPTO propose in regard to any fee increases?

Issue 6: Adopting a Unity of Invention standard would impact the number of inventions that would be examined in a single application, and require examining multiple inventions that cross multiple disciplines in a single application. Due to the current level of technical specialization in the Patent Examination Corps, the USPTO will have to consider the impact any change would have on the ability of the USPTO to maintain high quality examination.

How should work be assigned to ensure that examination quality would not suffer if examiners have to examine multiple inventions from different disciplines in a single application?

Should the USPTO consider: (1) Using team examination, similar to the EPO where applications are examined using three-person teams called "examination divisions" (2) extending the use of patentability report procedures provided for in section 705 of the Manual of Patent Examining Procedure (8th ed. 2001) (Rev. 1, Feb. 2003); (3) maintaining the current process of a single examiner on an application; or (4) using some other option of how work is performed by examiners?

Issue 7: One way of adopting aspects of Unity of Invention without making any statutory changes would be for the USPTO to use its authority under the continued examination provisions of 35 U.S.C. 132(b) (authorizes request for continued examination or RCE practice) to permit applicants to pay an RCE fee and submit or rejoin claims to additional inventions after prosecution has been closed on a first invention, so long as the claims presented with the RCE fee either depend from or otherwise include the features of the allowed claims which make a contribution over the prior art. In this option, most applications will continue to be examined under the USPTO's current restriction practice. Under any new provisions to implement this option, when a claim is determined to be allowable, the applicant would be entitled to request continued examination under the Unity of Invention standard. The required submission would be additional claims that either depend from or otherwise include the features of the earlier-examined claims that are in condition for allowance (if such additional claims were not previously pending in the application).

Should the USPTO consider this option?

Should this option be available only to applicants whose applications are published?

If so, how should the new RCE fee be set relative to the current fee structure?

Issue 8: As a second example of adopting aspects of Unity of Invention without making any statutory changes, the USPTO could use its authority under continued examination to permit requests that the USPTO continue examination of claims which were withdrawn from consideration. This option would require applicants to make a decision to request continued examination rather than file a divisional application, to pay a fee for the treatment of one additional invention, and to present claims drawn only to that additional invention. This option would be available in addition to the continuing option of filing a divisional application.

Should the USPTO consider this option?

If so, how should the loss in issue and maintenance fee collections be offset relative to the current structure?

Issue 9: In view of the previous questions and the range of issues and options, should the USPTO consider: (1) Seeking a change to 35 U.S.C. 121 to adopt a Unity of Invention standard (and if so, what would such statutory change be, including whether such a statute would provide for applicants to pay for additional inventions that lack Unity of Invention to be examined in the same application); (2) maintaining the current restriction practice in the USPTO; and/or (3) modifying the USPTO rules and procedures to adopt aspects of Unity of Invention practice without making any statutory changes (if so, in what manner should rule changes be made)?

Issue 10: Do you have other solutions to offer which are not addressed in this notice?

Dated: May 9, 2003.

James E. Rogan,

Under Secretary of Commerce for Intellectual Property and, Director of the United States Patent and Trademark Office.

[FR Doc. 03–12500 Filed 5–19–03; 8:45 am]

BILLING CODE 3510–16–P

DEPARTMENT OF DEFENSE

Office of the Secretary

Submission for OMB Review; Comment Request

ACTION: Notice.

SUMMARY: The Department of Defense will submit to the Office of Management and Budget for emergency processing, the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. 35).

DATES: An approval date by May 23, 2003, has been requested.

Title and OMB Number: Foreign Sourcing for Defense Applications; OMB Number 0704–0419.

Type of Request: Reinstatement.

Number of Respondents: 500

Responses per Response: 1.

Annual Responses: 500.

Average Burden per Response: 5 hours.

Annual Burden Hours: 2,500.

Needs and Uses: This information collection is required for the Department of Defense to assess the impact of potential supply disruption of key components provided by non-US suppliers. The information to be analyzed under the study shall be collected from prime contractors and first and second tier subcontractors. Specifically, DoD will determine the: (1) Extent of foreign sourcing within the specified defense products; (2) impact such foreign sourcing has on military readiness; and, (3) extent to which DoD or contractor policies, procedures, practices, or actions encourage or discourage consideration of foreign sources for defense products.

Affected Public: Business or Other For-Profit.

Frequency: One-time.

Respondent's Obligation: Voluntary.

OMB Desk Officer: Ms. Jackie Zeiher.

Written comments and recommendations on the proposed information collection should be sent to Ms. Zeiher at the Office of Management and Budget, Desk Officer for DoD, Room 10236, New Executive Office Building, Washington, DC 20503.

DOD Clearance Officer: Mr. Robert Cushing.

Written request for copies of the information collection proposal should be sent to Mr. Cushing, WHS/DIOR, 1215 Jefferson Davis Highway, Suite 1204, Arlington, VA 22202–4302.

Dated: May 13, 2003.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 03–12505 Filed 5–19–03; 8:45 am]

BILLING CODE 5001–08–M

DEPARTMENT OF DEFENSE

Office of the Secretary

Defense Science Board

AGENCY: Department of Defense.

ACTION: Notice of Advisory Committee Meetings.

SUMMARY: The Defense Science Board Task Force on Missile Defense, Phase III (Modeling and Simulation) will meet in closed session on June 4, 2003, at the Institute for Defense Analyses, 1801 N. Beauregard Street, Alexandria, VA. The Task Force will assess: the scope of the modeling and simulation effort; the appropriateness of the level of fidelity of classes of simulations; the impact of communications in the end-to-end models; the approaches to ensuring the validity of simulations for all uses, including exercises and wargaming done for training and operations concept development; and additional opportunities for modeling and simulation contribution to Ballistic Missile Defense Systems development and evaluation.

The mission of the Defense Science Board is to advise the Secretary of Defense and the Under Secretary of Defense for Acquisition, Technology & Logistics on scientific and technical matters as they affect the perceived needs of the Department of Defense. At this meeting, the Defense Science Board Task Force will address the above mentioned issues in a system of systems context with particular emphasis on battle management systems, command and control systems, and the global sensor system. The Task Force will provide advice on the state of modeling and simulation for use in assessing overall performance of segments of the Ballistic Missile Defense Systems; e.g., ground-based midcourse intercept system, space-based interceptor system.

In accordance with Section 10(d) of the Federal Advisory Committee Act, Pub. L. 92–463, as amended (5 U.S.C. App. II), it has been determined that this Defense Science Board Task Force meeting concerns matters listed in 5 U.S.C. 552b(c)(1) and that, accordingly, the meeting will be closed to the public.

Dated: May 13, 2003.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer Department of Defense.

[FR Doc. 03–12506 Filed 5–19–03; 8:45 am]

BILLING CODE 5001–08–M

DEPARTMENT OF DEFENSE

Department of the Army

Privacy Act of 1974; System of Records

AGENCY: Department of the Army, DoD.

ACTION: Notice to Correct a System of Records.

SUMMARY: The Department of the Army altered the system of records notice A0635–200 TAPC, entitled 'Separations: Administrative Board Proceedings' on December 8, 2000, at 65 FR 77002. The alteration consisted of adding a new routine use. Although the change was listed as part of the publication, the notice, as amended, did not contain the new routine use. This publication corrects this administrative oversight.

DATES: This proposed action will be effective without further notice on June 19, 2003 unless comments are received which result in a contrary determination.

ADDRESSES: Department of the Army, Freedom of Information/ Privacy Act Office, U.S. Army Records Management and Declassification Agency, ATTN: TAPC–PDD–FP, 7798 Cissna Road, Suite 205, Springfield, VA 22153–3166.

FOR FURTHER INFORMATION CONTACT: Ms. Janice Thornton at (703) 806–7137 / DSN 656–7137.

SUPPLEMENTARY INFORMATION: The Department of the Army systems of records notices subject to the Privacy Act of 1974, (5 U.S.C. 552a), as amended, have been published in the **Federal Register** and are available from the address above.

The specific changes to the records system being amended are set forth below followed by the notice, as amended, published in its entirety. The proposed amendments are not within the purview of subsection (r) of the Privacy Act of 1974, (5 U.S.C. 552a), as amended, which requires the submission of a new or altered system report.

Dated: May 13, 2003.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

A0635–200 TAPC

SYSTEM NAME:

Separations: Administrative Board Proceedings.

SYSTEM LOCATION:

U.S. Total Army Personnel Command, ATTN: TAPC–PDT–P, 200 Stovall Street Alexandria, VA 22332–0478. Segments exist at Major Army Commands and subordinate commands, field operating agencies, and activities exercising general courts-martial jurisdiction. Official mailing addresses are published as an appendix to the Army's compilation of record systems notices.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Military members on whom allegations of defective enlistment/agreement/fraudulent entry/alcohol or other drug abuse rehabilitation failure/unsatisfactory performance/misconduct/homosexuality under the provisions of Chapters 7, 9, 13, 14, or 15 of Army Regulation 635–200, Enlisted Personnel, result in administrative board proceedings.

CATEGORIES OF RECORDS IN THE SYSTEM:

Notice to service member of allegations on which proposed separation from the Army is based; supporting documentation; DA Form 2627, Records of Proceedings under Article 15, UCMJ; DD Form 493, Extract of Military Records of Previous Convictions; medical evaluations; military occupational specialty evaluation and aptitude scores; member's statements, testimony, witness statements, affidavits, rights waiver record; hearing transcript; board findings and recommendations for separation or retention; final action.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

10 U.S.C. 1169, Regular enlisted members; limitations on discharge, 10 U.S.C. 3013, Secretary of the Army; 42 U.S.C. 10606 *et seq.*; Department of Defense Directive 1030.1, Victim and Witness Assistance; and E.O. 9397 (SSN).

PURPOSE(S):

Information is used by processing activities and the approval authority to determine if the member meets the requirements for retention or separation.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

To victims and witnesses of a crime for purposes of providing information, consistent with the requirements of the Victim and Witness Assistance Program, regarding the investigation and disposition of an offense.

The DoD 'Blanket Routine Uses' set forth at the beginning of the Army's compilation of systems of records notices also apply to this system.

Policies and practices for storing, retrieving, accessing, retaining, and disposing of records in the system:

STORAGE:

Paper records in file folders and electronic storage media.

RETRIEVABILITY:

By individual's surname or Social Security Number.

SAFEGUARDS:

Records are accessed only by designated persons having official need; in locked cabinets, in locked rooms within secure buildings.

RETENTION AND DISPOSAL:

The original of board proceedings becomes a permanent part of the member's Official Military Personnel Record. When separation is ordered, a copy is sent to member's commander where it is retained for two years before being destroyed. When separation is not ordered, board proceedings are filed at the headquarters of the separation authority for two years, then destroyed. A copy of board proceedings in cases where the final authority is the U.S. Total Army Personnel Command, pursuant to Army Regulation 635–200, is retained by that headquarters (TAPC-PDT) for one year following decision.

SYSTEM MANAGER(S) AND ADDRESS:

Commander, U.S. Total Army Personnel Command, ATTN: TAPC–PDT–P, 200 Stovall Street, Alexandria, VA 22332–0478.

NOTIFICATION PROCEDURE:

Individuals seeking to determine if information about themselves is contained in this record system should address written inquiries to the commander of the installation where administrative board convened or to the Commander, U.S. Total Army Personnel Command, ATTN: TAPC–PDT–P, 200 Stovall Street, Alexandria, VA 22332–0478.

Individual should provide the full name, details concerning the proposed or actual separation action to include location and date, and signature.

RECORD ACCESS PROCEDURES:

If individual has been separated from the Army, address written inquiries to the National Personnel Records Center, General Services Administration, 9700 Page Avenue, St Louis, MO 63132–5200: proceedings will be part of the Official Military Personnel Record.

If member is on active duty, address written inquiries to the commander of the installation where administrative board convened.

Individual should provide the full name, details concerning the proposed or actual separation action to include location and date, and signature.

CONTESTING RECORD PROCEDURES:

The Army's rules for accessing records, and for contesting contents and appealing initial agency determinations are contained in Army Regulation 340–21; 32 CFR part 505; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

From the individual; individual's commander; Army personnel, medical, and/or investigative records; witnesses; the Administrative Separation Board; federal, state, local, and/or foreign law enforcement agencies.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

[FR Doc. 03–12507 Filed 5–19–03; 8:45 am]

BILLING CODE 5001–08–P

DEPARTMENT OF DEFENSE

Department of the Air Force

Privacy Act of 1974; System of Records

AGENCY: Department of the Air Force, DoD.

ACTION: Notice to delete and amend systems of records.

SUMMARY: The Department of the Air Force is deleting four systems of records notices from its existing inventory of record systems and amending four notices subject to the Privacy Act of 1974, (5 U.S.C. 552a), as amended.

Three of the amendments are required to alert the users of these systems of records of the additional requirements of the Health Insurance Portability and Accountability Act (HIPAA) of 1996, as implemented by DoD 6025.18–R, DoD Health Information Privacy Regulation. Language being added under the 'Routine Use' category is as follows:

Note: This system of records contains individually identifiable health information. The DoD Health Information Privacy Regulation (DoD 6025.18-R) issued pursuant to the Health Insurance Portability and Accountability Act of 1996, applies to most such health information. DoD 6025.18–R may place additional procedural requirements on the uses and disclosures of such information beyond those found in the Privacy Act of 1974 or mentioned in this system of records notice.''

DATES: This proposed actions will be effective without further notice on June 19, 2003, unless comments are received which result in a contrary determination.

ADDRESSES: Send comments to the Air Force Privacy Act Manager, Office of the Chief Information Officer, AF–CIO/P, 1155 Air Force Pentagon, Washington, DC 20330–1155.

FOR FURTHER INFORMATION CONTACT: Mrs. Anne Rollins at (703) 601–4043.

SUPPLEMENTARY INFORMATION: The Department of the Air Force systems of records notices subject to the Privacy Act of 1974, (5 U.S.C. 552a), as amended, have been published in the **Federal Register** and are available from the address above.

The specific changes to the records systems being amended are set forth below followed by the notices, as amended, published in their entirety. The proposed amendments are not within the purview of subsection (r) of the Privacy Act of 1974, (5 U.S.C. 552a), as amended, which requires the submission of a new or altered system report.

Dated: May 13, 2003.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

Deletions

F033 AFSG A

SYSTEM NAME:

High Level Inquiry File (June 11, 1997, 62 FR 31793).

Reason: Records are now being maintained under the Air Force Privacy Act system of records notice F033 AFSG B, entitled 'Professional Inquiry Records System'.

F036 AETC C

SYSTEM NAME:

Air Force Reserve Officer Training Corps Qualifying Test Scoring System (June 11, 1997, 62 FR 31793).

Reason: The system of records is no longer needed. All records have been destroyed.

F036 AETC Q

SYSTEM NAME:

Institutional Research Analysis System (June 11, 1997, 62 FR 31793).

Reason: The system of records was never established.

F044 AFSGA

SYSTEM NAME:

United States Air Force Hearing Conservation Record System (June 11, 1997, 62 FR 31793).

Reason: Records are now being maintained under the Air Force Privacy Act systems of records notices F044 AF SG D, entitled 'Automated Medical/Dental Record System'' and F044 AF SG E, entitled 'Medical Record System'.

Amendments

F044 AF SG H

SYSTEM NAME:

Air Force Aerospace Physiology Training Programs (June 11, 1997, 62 FR 31793).

Changes:

* * * * *

CATEGORIES OF RECORDS IN THE SYSTEM:

Delete 'quality performance, training flight profiles'; after 'location of training' add 'Social Security Number, rank, crew position, aero rating, organization, base assigned, MAJCOM, phone number; delete 'age, height, weight'.

PURPOSE(S):

After 'trainees' add 'academic grade'; delete 'performance'; delete 'Physiological' and add 'Aerospace Physiology'; delete 'Unit'; add 'Flight'; delete 'Coordinator'; add 'Consultant'; delete 'Human System Center, Data Science Division'; add 'Air Force Research Laboratory, Biodynamic and Protection Division'; delete 'Armstrong Laboratory'; add 'USAF School of Aerospace Medicine, Performance Enhancement Department,'

* * * * *

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Add to end of entry '**Note:** This system of records contains individually identifiable health information. The DoD Health Information Privacy Regulation (DoD 6025.18–R) issued pursuant to the Health Insurance Portability and Accountability Act of 1996, applies to most such health information. DoD 6025.18–R may place additional procedural requirements on the uses and disclosures of such information beyond those found in the Privacy Act of 1974 or mentioned in this system of records notice.'

* * * * *

STORAGE:

Replace entry with 'Maintained in file folders, on computers, and on computer output products.''

SAFEGUARDS:

Replace entry with 'Records are accessed by person(s) responsible for servicing the record system in performance of their official duties and by authorized personnel who are properly screened and cleared for need-to-know. Records are stored in locked rooms and cabinets. Those in computer storage devices are protected by computer system software.'

* * * * *

RECORD SOURCE CATEGORIES:

Replace entry with 'Aerospace Physiology Training Flight (APTF)'.

* * * * *

F044 AF SG H

SYSTEM NAME: AIR FORCE AEROSPACE PHYSIOLOGY TRAINING PROGRAMS.

SYSTEM LOCATION:

Chamber Flight Records located at Human Systems Center, Data Sciences Branch, 2510 Kennedy Circle, Suite 3, Brooks Air Force Base, TX 78235–5199; Aerospace Physiology Training monthly reports at each Air Force Physiological Training Flight; Headquarters Air Force Medical Operation Agency, 110 Luke Avenue, Suite 405, Bolling Air Force Base, DC 20332–7050; Medical records at USAF School of Aerospace Medicine, Force Enhancement Department Hyperbaric Medicine Division, 2510 Kennedy Drive, Suite 117, Brooks Air Force Base, TX 78235–5119. Physiological training records at Air Force Aerospace Physiology Training Flights; individual physiological training records for non-aircrew personnel at consolidated flight record custodians at Air Force installations. Official mailing addresses are published as an appendix to the Air Force's compilation of systems of records notices. National Personnel Records Center, Military Personnel Records, 9700 Page Boulevard, St. Louis, MO 63132–5100.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

All Aircrew and non-aircrew personnel required to fly on Air Force aircraft.

CATEGORIES OF RECORDS IN THE SYSTEM:

Contains data on attendance at formal training, type of course received, Social Security Number, rank, crew position, aero rating, organization, base assigned, MAJCOM, phone number, and sex of trainees.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

10 U.S.C. 8013, Secretary of the Air Force and Air Force Instruction 11–403, Air Force Aerospace Physiological Training Program.

PURPOSE(S):

Authenticate type of training, location and trainees academic grade during course. Flight profiles (altitude chamber) and any reactions occurring during flight are maintained by each Aerospace Physiology Training Flight for future authentication of training. Additional authentication is provided flight managers and scheduling officers and copies of flight profiles and reaction data are provided United States Air Force School of Aerospace Medicine for research. A compilation of select data is forwarded to appropriate Command Consultant for Physiological Training for management purposes, to United States Air Force School of Aerospace Medicine, and Air Force Research Laboratory, Biodynamic and Protection Division for analysis and research, and to the Air Force Medical Operations Agency for management and research. Data for specific reactors to low pressure are handled as medical records with additional distribution to appropriate Major Air Command Surgeon for information and possible corrective action, to USAF School of Aerospace Medicine, Performance Enhancement Department, Hyperbaric Medicine Division for research and analysis and to Headquarters Air Force Medical Operations Agency for policy/management/statistical and research analysis.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records, or information contained therein, may specifically be disclosed outside the DOD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

The DoD 'Blanket Routine Uses' published at the beginning of the Air Force's compilation of systems of records notices apply to this system.

Note: This system of records contains individually identifiable health information. The DoD Health Information Privacy Regulation (DoD 6025.18–R) issued pursuant to the Health Insurance Portability and Accountability Act of 1996, applies to most such health information. DoD 6025.18–R may place additional procedural requirements on the uses and disclosures of such information beyond those found in the Privacy Act of 1974 or mentioned in this system of records notice.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Maintained in file folders, on computers, and on computer output products.

RETRIEVABILITY:

Data relative to reactors to low pressure, management analysis procedures retrieved by Social Security Number. Authentication of training filed by name.

SAFEGUARDS:

Records are accessed by commanders of medical centers and hospitals and by person(s) responsible for servicing the record system in performance of their official duties and by authorized personnel who are properly screened and cleared for need-to-know. Records are stored in locked rooms and cabinets.

RETENTION AND DISPOSAL:

Chamber Flight Record at United States Air Force School of Aerospace Medicine retained until entered into computer files, until superseded, obsolete, or no longer needed for reference. Physiological Training Monthly Reports at Headquarters Air Force Medical Operations Agency and 89th AMDS/SGPT, Andrews AFB are retained in secure databases no longer needed for reference. Copies at Aerospace Physiology Training Flights are retained in office files or databases until no longer needed for reference, or on inactivation. Physiological Training Record are retained until no longer needed for reference; Individual Physiological Training Records for non-flying personnel retained as a part of individual medical record until member separates from active or Reserve duty. For flying personnel, record is retained in flight records and turned over to individual upon discharge, separation, or retirement.

SYSTEM MANAGER(S) AND ADDRESS:

Commander, Air Force Medical Operations Agency, 110 Luke Avenue, Suite 405, Bolling Air Force Base, DC 20332–7050.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether this system of records contains information on themselves should address written inquiries to the Chief Aerospace Physiology, Air Force Medical Operations Agency, 110 Luke Avenue, Suite 405, Bolling Air Force Base, DC 20332–7050.

Students should provide full name, military status, approximate date and last location of training; officers and technicians assigned Air Force Aerospace Physiology Programs provide full name and location of last training.

RECORD ACCESS PROCEDURES:

Individuals seeking to access records about themselves contained in this system should address written requests to the Chief Aerospace Physiology, Air Force Medical Operations Agency, 110 Luke Avenue, Suite 405, Bolling Air Force Base, DC 20332–7050.

Students should provide full name, military status, approximate date and last location of training; officers and technicians assigned Air Force Aerospace Physiology Programs provide full name and location of last training.

CONTESTING RECORD PROCEDURES:

The Air Force rules for accessing records and for contesting contents and appealing initial agency determinations are published in Air Force Instruction 37–132; 32 CFR part 806b; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

Aerospace Physiology Training Flight.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

F044 AF SG B

SYSTEM NAME:

Drug Abuse Rehabilitation Report System (June 11, 1997, 62 FR 31793).

CHANGES:

* * * * *

STORAGE:

Replace entry with 'Maintained in file folders and on computer, and on computer output products.'

RETENTION AND DISPOSAL:

Add to entry 'Computer records are destroyed by erasing, deleting, or overwriting.'

* * * * *

F044 AF SG B

SYSTEM NAME:

Drug Abuse Rehabilitation Report System.

SYSTEM LOCATION:

Headquarters United States Air Force and major command headquarters.

Official mailing addresses are published as an appendix to the Air Force's compilation of systems of records notices.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Any active duty military personnel who are confirmed as drug abusers as a result of drug abuse urinalysis testing. These individuals are not patients as defined in 42 U.S.C. 300s–3(6).

CATEGORIES OF RECORDS IN THE SYSTEM:

File contains Drug Abuse Rehabilitation Reports in Electrical Message Form in which demographic data; urine testing results and abuser disposition are detailed.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Pub. L. 91–513 as applied to Federal agencies by Section 2b of E.O. 11599, June 17, 1971, Comprehensive Drug Abuse Prevention and Control Act of 1970.

PURPOSE(S):

At HQ USAF to provide statistical data for required reports to Department of Defense (DoD) and to the Special Action Office on Drug Abuse Prevention, White House; to perform epidemiological and statistical studies for use in evaluating the effectiveness of Air Force urinalysis testing programs; to provide information for answering congressional inquiries.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

The DoD 'Blanket Routine Uses' published at the beginning of the Air Force's compilation of systems of records notices apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Maintained in file folders and on computer, and on computer output products.

RETRIEVABILITY:

Retrieved by Social Security Number.

SAFEGUARDS:

Records are accessed by custodian of the record system and are controlled by personnel screening.

RETENTION AND DISPOSAL:

Retained in office files for fifteen years after annual cut-off, then destroyed by tearing into pieces, shredding, pulping, macerating or burning. Computer records are destroyed by erasing, deleting, or overwriting.

SYSTEM MANAGER(S) AND ADDRESS:

The Surgeon General, Headquarters United States Air Force, 110 Luke Avenue, Room 400, Washington, DC 20332–7050.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether information about themselves is contained in this system should address written inquiries to or visit the Surgeon General, Headquarters United States Air Force, 110 Luke Avenue, Room 400, Washington, DC 20332–7050.

RECORD ACCESS PROCEDURES:

Individuals seeking access to information about themselves contained in this system should address written inquiries to or visit the Surgeon General, Headquarters United States Air Force, 110 Luke Avenue, Room 400, Washington DC 20332–7050.

CONTESTING RECORD PROCEDURES:

The Air Force rules for accessing records, and for contesting contents and appealing initial agency determinations are published in Air Force Instruction 37–132; 32 CFR part 806b; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

Information obtained from medical institutions.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

F033 AFSG B

SYSTEM NAME:

Professional Inquiry Records System (June 11, 1997, 62 FR 31793).

CHANGES:

* * * * *

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Add to end of entry 'Note: This system of records contains individually identifiable health information. The DoD Health Information Privacy Regulation (DoD 6025.18–R) issued pursuant to the Health Insurance Portability and Accountability Act of 1996, applies to most such health information. DoD 6025.18–R may place additional procedural requirements on the uses and disclosures of such information beyond those found in the Privacy Act of 1974 or mentioned in this system of records notice.'

* * * * *

F033 AFSG B

SYSTEM NAME:

Professional Inquiry Records System.

SYSTEM LOCATION:

At Headquarters United States Air Force, Office of the Surgeon General, Assistant for Congressional and Public Affairs, Bolling Air Force Base, Washington, DC 20332.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Persons who have corresponded with a member of Congress, White House, or other high level federal or state executive officials concerning the professional aspects of care provided in Air Force medical facilities.

CATEGORIES OF RECORDS IN THE SYSTEM:

File contains copies of all correspondence concerning the inquiry; substantiating documents, such as correspondence or memorandums of telephone conversations with the appropriate medical facility, draft replies, medical records and any other background data.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

10 U.S.C. 8013, Secretary of the Air Force.

PURPOSE(S):

Records are used as background data for statistical presentations, and historical evidence for repeat inquiries by the same individuals. Portions of records may be loaned or copies provided to the Department of Defense activities for use as background data in evaluating inquiries.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

The DoD 'Blanket Routine Uses' published at the beginning of the Air Force's compilation of systems of records notices apply to this system.

Note: This system of records contains individually identifiable health information. The DoD Health Information Privacy Regulation (DoD 6025.18-R) issued pursuant to the Health Insurance Portability and Accountability Act of 1996, applies to most

such health information. DoD 6025.18-R may place additional procedural requirements on the uses and disclosures of such information beyond those found in the Privacy Act of 1974 or mentioned in this system of records notice.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Maintained in file folders.

RETRIEVABILITY:

Retrieved by name.

SAFEGUARDS:

Records are accessed by custodian of the record system and by person(s) responsible for servicing the record system in performance of their official duties. Records are protected by guards.

RETENTION AND DISPOSAL:

Retained in office files for two years after annual cut-off, then destroyed by tearing into pieces, shredding, pulping, macerating, or burning.

SYSTEM MANAGER(S) AND ADDRESS:

The Surgeon General, Headquarters, United States Air Force, 110 Luke Avenue, Room 400, Washington, DC 20332–7050.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether information about themselves is contained in this system should address written inquiries to or visit the Surgeon General, Headquarters, United States Air Force, 110 Luke Avenue, Room 400, Washington, DC 20332–7050.

RECORD ACCESS PROCEDURES:

Individuals seeking access to information about themselves contained in this system should address written inquiries to or visit the Surgeon General, Headquarters, United States Air Force, 110 Luke Avenue, Room 400, Washington, DC 20332–7050.

CONTESTING RECORD PROCEDURES:

The Air Force rules for accessing records, and for contesting contents and appealing initial agency determinations are published in Air Force Instruction 37–132; 32 CFR part 806b; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

Information obtained from medical institutions and from source documents.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

F044 AF SG C

SYSTEM NAME:

Dental Health Records (June 11, 1997, 62 FR 31793).

CHANGES:

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SYSTEM LOCATION:

Delete 'Military' from 'Air Force Military Personnel Center'.

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ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Add to end of entry 'Note: This system of records contains individually identifiable health information. The DoD Health Information Privacy Regulation (DoD 6025.18–R) issued pursuant to the Health Insurance Portability and Accountability Act of 1996, applies to most such health information. DoD 6025.18–R may place additional procedural requirements on the uses and disclosures of such information beyond those found in the Privacy Act of 1974 or mentioned in this system of records notice.'

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SYSTEM NAME:

Dental Health Records.

SYSTEM LOCATION:

Air Force hospitals, medical centers and clinics; other authorized medical units serving military personnel and/or dependents. Official mailing addresses are published as an appendix to the Air Force's compilation of record systems notices. Air Force Personnel Center, Randolph Air Force Base, TX 78150; National Personnel Records Center, Military Personnel Records, 9700 Page Boulevard, St. Louis, MO 63132–5100, National Personnel Records Center, Civilian Personnel Records, 111 Winnebago Street, St. Louis, MO 63118.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Active duty and retired Air Force military personnel; Air Force Academy nominees/applicants; family members of military and retired personnel; foreign Nationals residing in the United States; American Red Cross personnel; other DOD civilian employees, Peace Corps and State Department personnel; Exchange Officers.

CATEGORIES OF RECORDS IN THE SYSTEM:

Chronological record of all care received in military dental facilities. This is primarily a record of all treatment received on an outpatient basis with supporting documentation such as consultations, dental history, laboratory, and x-ray reports; the record also includes temporary copies of appointment slips and attendance records until entered in the record.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

10 U.S.C. 55, Medical and Dental Care.

PURPOSE(S):

Chronological record of patient's dental health while authorized care in a military dental facility. Used by patient for further dental care, other uses such as insurance requests or compensation claims as specifically authorized by the patient, Used by dentist for further dental care of the patient, research, and teaching. Used by other patient care providers within the hospital for further medical/dental care of the patient, research, and teaching. Used by hospital and dental staff for evaluation of dental staff performance in the dental care rendered; dental research; teaching; hospital accreditation; preparation of statistical reports. Used by Army, Navy, Department of Veterans Affairs, Public Health Service, and other hospitals/clinics, for further dental care of the patient if currently undergoing treatment there. Record is released only upon receipt of the patient's signed authorization or a court order. Insurance companies require the patients' written consent for release. Used for establishing insurance benefits or payment of benefits. Used by other Air Force Agencies such as Central Tumor Registry, which maintains files on all patients in whom a malignancy has been diagnosed.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

The DoD 'Blanket Routine Uses' published at the beginning of the Air Force's compilation of record system notices apply to this system, except as stipulated in 'Note' below.

Information from the inpatient or outpatient dental records of retirees and dependents may be disclosed to third party payers in accordance with 10 U.S.C. 1095 as amended by Public Law 99–272, for the purpose of collecting reasonable inpatient/outpatient hospital care costs incurred on behalf of retirees or dependents.

Records are used and reviewed by health care providers in the performance of their duties. Health care providers include military and civilian providers assigned to the medical facility where care is being provided.

Students participating in a training affiliation program with a USAF medical facility may also use and review records as part of their training program.

In addition, records may be disclosed to: (1) Officials and employees of the Department of Veterans Affairs in the performance of their official duties relating to the adjudication of veterans claims and in providing medical care to members of the Air Force. (2) Officials and employees of other departments and agencies of the Executive Branch of government upon request in the performance of their official duties relating to review of the official qualifications and medical history of applicants and employees who are covered by this record system and for the conduct of research studies. (3) Private organizations (including educational institutions) and individuals for authorized health research in the interest of the Federal government and the public. When not considered mandatory, patient identification data shall be eliminated from records used for research studies. (4) Officials and employees of the National Research Council in cooperative studies of the National History of Disease; of prognosis and of epidemiology. Each study in which the records of members and former members of the Air Force are used must be approved by the Surgeon General of the Air Force. (5) Officials and employees of local and state governments and agencies in the performance of their official duties pursuant to the laws and regulations governing local control of communicable diseases, preventive medicine and safety programs, child abuse and other public health and welfare programs. (6) Authorized surveying bodies for professional certification and accreditations. (7) The individual's organization or government agency as necessary when required by Federal statute, E.O., or by treaty.

Note: Records of identity, diagnosis, prognosis or treatment of any client/patient, irrespective of whether or when he/she ceases to be a client/patient, maintained in connection with the performance of any alcohol/drug abuse treatment function conducted, requested, or directly or indirectly assisted by any department or agency of the United States, shall, except as provided herein, be confidential and be disclosed only for the purposes and under the circumstances expressly authorized in 42 U.S.C. 290dd-2. These statutes take precedence over the Privacy Act of 1974 in regard to accessibility of such records except to the individual to whom the record pertains. The DoD 'Blanket Routine Uses' do not apply to these types of records.

Note: This system of records contains individually identifiable health information. The DoD Health Information Privacy Regulation (DoD 6025.18-R) issued pursuant to the Health Insurance Portability and Accountability Act of 1996, applies to most such health information. DoD 6025.18-R may place additional procedural requirements on the uses and disclosures of such information beyond those found in the Privacy Act of 1974 or mentioned in this system of records notice.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Maintained in file folders, notebooks/binders, visible file binders/cabinets, card files, on x-ray film, and as photographs.

RETRIEVABILITY:

Retrieved by name and Social Security Number.

SAFEGUARDS:

Records are accessed by commanders of medical centers and hospitals, custodian of the record system and by person(s) responsible for servicing the record system in performance of their official duties and who are properly screened and cleared for need-to-know. Records are stored in locked cabinets or rooms, protected by guards, and controlled by personnel screening.

RETENTION AND DISPOSAL:

Records for military personnel are retained for 50 years after date of last document; for all others, 25 years. While on active duty, the Health Record of a U.S. military member is maintained at the dental unit at which the person receives treatment. On separation/retirement the records are forwarded to National Personnel Records Center (NPRC/MPR) or other designated depository; such as Air Reserve Personnel Center, if reservist; to appropriate state National Guard unit, if National Guard member, to appropriate Department of Veterans Affairs Regional Office, if VA claim has been filed. Records of other personnel may be hand carried or mailed to the next military medical facility at which treatment will be received, or the records are retained at the treating facility for a minimum of 1 year after date of last treatment then retired to NPRC or other designated depository, such as but not limited to, Commandant (G-PO) U.S. Coast Guard, Washington DC 20593 for Coast Guard active duty members; Medical Director, American Red Cross, Washington DC 20006 for Red Cross Personnel.

SYSTEM MANAGER(S) AND ADDRESS:

The Surgeon General, Headquarters United States Air Force. Assistant Surgeon General for Dental Services USAF; commanders of medical centers, hospitals, clinics, and medical aid stations. Official mailing addresses are published as an appendix to the Air Force's compilation of record systems notices.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether this system of records contains information on them should address inquiries to or visit the system manager giving complete name, social security number of individual through whom eligibility for care is established, year in which treatment was received, location treatment was received, whether treatment was on an inpatient or outpatient basis.

RECORD ACCESS PROCEDURES:

Individuals seeking to access records about themselves contained in this system should address requests to the system manager. An appropriately signed authorization for the release of information is required with complete name and Social Security Number of individual through whom eligibility for care was established.

CONTESTING RECORD PROCEDURES:

The Air Force rules for accessing records, and for contesting contents and appealing initial agency determinations are published in Air Force Instruction 37–132; 32 CFR part 806b; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

Information obtained from patient and other medical institutions.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

[FR Doc. 03–12508 Filed 5–19–03; 8:45 am]

BILLING CODE 5000–06–P

DEPARTMENT OF EDUCATION

[CFDA No. 84.206A]

Office of Elementary and Secondary Education; Jacob K. Javits Gifted and Talented Students Education Program; Notice Inviting Applications for New Awards for Fiscal Year (FY) 2003 and Establishing Two Absolute Priorities

Purpose of Program: The purpose of the Jacob K. Javits Gifted and Talented Students Education Program (the Javits program) is to carry out a coordinated program of scientifically based research, demonstration projects, innovative strategies, and similar activities designed to build and enhance the ability of elementary and secondary schools nationwide to meet the special educational needs of gifted and talented students.

Eligible Applicants: State educational agencies (SEAs), local educational agencies (LEAs), institutions of higher education, other public agencies, and other private agencies and organizations (including Indian tribes and Indian organizations and Native Hawaiian organizations). Under the first priority in this competition, all of these entities are eligible to apply. Under the second priority, an SEA and one or more LEAs collaborate on the project and either the SEA or an LEA is eligible to apply and to serve as the fiscal agent.

Notification of Intent to Apply for Funding: We strongly encourage each potential applicant to notify us by June 6, 2003, of its intent to submit an application for funding. We will be able to develop a more efficient process of reviewing grant applications if we have an early estimate of the number of entities that intend to apply for funding under this competition. Notifications should be sent by e-mail to the following Internet address: *jacobk.javits@ed.gov*.

Please put "Notice of Intent, Priority 1" or "Notice of Intent, Priority 2" in the subject line. Applicants that choose not to provide this e-mail notification may still apply for funding.

Applications Available: May 20, 2003.

Deadline for Transmittal of Applications: July 7, 2003.

Deadline for Intergovernmental Review: September 2, 2003.

Available Funds: Priority 1—$5,100,000. Priority 2—$3,676,875.

Estimated Number of Awards: Priority 1—10. Priority 2—12.

Estimated Size of Awards: Priority 1—$400,000—$600,000. Priority 2—$200,000—$300,000.

Estimated Average Size of Awards: Priority 1—$500,000. Priority 2—$250,000.

Note: These estimates are projections for the guidance of potential applicants. The Department is not bound by any estimates in this notice.)

Project Period: Up to 60 months for the first priority and up to 36 months for the second priority.

Applicable Regulations: The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 74, 75, 77, 79, 80, 81, 82, 85, 97, 98, and 99.

Page Limit: The application narrative is where you, the applicant, address the selection criteria that reviewers use to evaluate your application. Applicants are strongly encouraged to limit the program narrative (text plus all figures, charts, tables and diagrams) to the equivalent of 25 pages, using the following standards:

- A page is 8.5″ x 11″, on one side only, with 1″ margins at the top, bottom and both sides.
- Double space (no more than three lines per vertical inch) all text in the application narrative.
- Use a font that is either 12 point or larger or no smaller than 10 pitch (characters per inch).
- The page limit does not apply to Standard Form 424; the project abstract; the budget section, including the narrative budget justification; the assurances and certifications; or the resumes, bibliography, or letters of support.

We have found that reviewers are able to conduct the highest-quality review when applications are concise and easy to read, with pages consecutively numbered.

SUPPLEMENTARY INFORMATION: The Assistant Secretary for Elementary and Secondary Education invites applications for new grant awards for FY 2003 for the Javits program. In 2001, the Javits program was rewritten in its entirety by Pub. L. 107–110, the No Child Left Behind Act (NCLB) as the "Jacob K. Javits Gifted and Talented Students Education Act of 2001" (The Act), and is now located in title V, part D, subpart 6 of the Elementary and Secondary Education Act of 1965, as amended (ESEA), under which these grants are authorized (20 U.S.C 7253 *et seq.*). The Act supports a coordinated program of research, demonstration projects, and other activities designed to build and enhance the ability of schools nationwide to serve gifted and talented students.

The Assistant Secretary also announces two final absolute priorities and final selection criteria to govern this competition and the FY 2003 Javits program grant awards. In accordance with § 5465(a) and (b) of the statute, the Assistant Secretary intends to give priority to projects designed to: (1) develop new information that improves the capability of schools to plan, conduct, and improve programs to identify and serve gifted and talented students and, (2) identify and serve students from underrepresented groups, including economically disadvantaged, limited English proficient, and disabled students. The Assistant Secretary also will implement § 5464(c) of the statute, requiring funding of certain projects when appropriation levels for the Javits program in a given year exceed the FY 2001 appropriation.

Accordingly, the Assistant Secretary will make awards under the following two absolute priorities to encourage activities that will contribute to an understanding of the most effective ways to educate gifted and talented students. These priorities will help to target funds to high-needs populations within the general program purpose of assisting States and local school districts to better serve gifted and talented students.

The Assistant Secretary's first priority implements § 5465(a) of the statute and focuses on projects that propose to develop, conduct, "scale up", and evaluate programs that identify and serve gifted and talented students who are economically disadvantaged or limited English proficient, or who have disabilities, and who may not be identified and served through traditional assessment methods. According to a 2002 report by the National Research Council titled "Minority Students in Special and Gifted Education," these groups of students remain significantly underrepresented at the highest levels of performance. Over the past decade, small-scale model projects and intervention strategies have produced some evidence of effectiveness in raising student achievement to high levels. The goal of this first priority is to expand upon, field-test, and evaluate research-based interventions that have existing evidence of success in increasing the proportion of economically disadvantaged, limited English proficient, or disabled students performing at high levels of achievement. Based on the experience of previous grant recipients, the Assistant Secretary believes that these projects will be most successful if they are carried out by applicants that can demonstrate an expertise in: education research and program evaluation, one or more of the core academic subject areas (English, reading or language arts, mathematics, science, foreign languages, civics and government, economics, arts, history, and geography), the needs of disadvantaged or other underrepresented students, and gifted and talented education. In order to meet the absolute priority, projects must: (1) build on successful interventions and strategies that show evidence that they have increased student achievement, (2) draw on expertise in research and program evaluation, disciplinary knowledge in the core subject areas, the needs of underrepresented groups, and gifted and talented education, (3) expand upon the intervention by carrying it out in multiple sites, and (4) propose a careful research and evaluation plan.

The Assistant Secretary establishes this first priority after having reviewed the relevant research base and the evaluations of previously funded projects, holding discussions with project directors, and consulting with experts in the field.

The Assistant Secretary's second absolute priority implements the "Special Rule" in § 5464(c) of the authorizing legislation that requires any funds available in a fiscal year that exceed the amount that was available in FY 2001 to be awarded to SEAs or LEAs, or both, to carry out such activities as: research and development on gifted and talented education and how it may be used to improve the education of all students, program evaluations and information collection activities, model projects and innovative strategies, technical assistance and information dissemination, distance learning opportunities, and professional development. Because the FY 2001 appropriation was $7.5 million and the FY 2003 appropriation is $11,176,875, $3,676,875 will support Priority 2 activities. To ensure the most effective use of funds for the above-stated purposes, under this second priority the Assistant Secretary will fund collaborative projects submitted by SEAs and one or more LEAs to carry out a coordinated set of activities to build capacity to serve gifted and talented students. Under this priority, either the SEA or an LEA may submit the application on behalf of the other participants in the collaborative project and either may be the fiscal agent for the collaborative project.

Waiver of Proposed Rulemaking: It is the Secretary's practice, in accordance with the Administrative Procedure Act (5 U.S.C. 553), to offer interested parties the opportunity to comment on proposed rules that are not taken directly from statute. Ordinarily, this practice would have applied to the priorities in this notice. However, section 437(d)(2) of the General Education Provisions Act (GEPA), exempts the Secretary from this rulemaking requirement where the Secretary has determined that going through rulemaking would cause extreme hardship to the intended beneficiaries of the program that would be affected by those rules or regulations. In accordance with section 437(d)(2) of GEPA, the Secretary has decided to forgo public comment with respect to the priorities in this notice in order to be able to make timely and high-quality awards. These priorities will apply only to the FY 2003 grant competition.

Absolute Priorities: Under 34 CFR 75.105(c)(3) and the Jacob K. Javits Gifted and Talented Students Education Act of 2001, the Assistant Secretary gives absolute priority to applications that meet one of the following priorities, meaning that only applications that meet one of these absolute priorities will be funded. Each application must address one of these two priorities. However, applicants cannot address both priorities in the same application. Applicants eligible to apply under both priorities must submit separate applications to address each of the priorities, and the applications will be reviewed separately.

Absolute Priority 1—Javits Demonstration Programs

Under this priority, applicants must propose to support projects to plan, implement, "scale up", and evaluate models designed to close the achievement gap and increase the number of students from underrepresented groups who are performing at high levels. Underrepresented groups include students who are economically disadvantaged, limited English proficient, or disabled.

To meet this priority each project must include all of the following:

(1) Evidence from one or more scientifically based research and evaluation studies indicating that the proposed intervention has raised the achievement of underrepresented groups to high levels of achievement in one or more core subject areas.

(2) Evidence that the applicant has significant expertise on its leadership team in research and program evaluation, knowledge in one or more core academic subject areas, experience working with underrepresented groups, and knowledge about gifted and talented education.

(3) A sound plan for implementing the model in multiple settings.

(4) A research and evaluation plan that will yield both formative and summative information on the effectiveness of the model, including student achievement data.

Absolute Priority 2—Javits State Capacity-Building Grants

Under this priority, SEAs, in collaboration with one or more LEAs, must propose projects to improve services to gifted and talented students and develop the capacity of the State and the LEAs to serve these students more effectively. Either the SEA, or one of the participating LEAs, may submit the application on behalf of the other participants and serve as the fiscal agent for the collaborative project. Under this priority, applicants must propose to carry out one or more of the following activities:

(1) Conducting scientifically based research on methods and techniques for identifying and teaching gifted and talented students and for using gifted and talented programs and methods to serve all students; and conducting program evaluations, surveys, and the collection, analysis, and development of information needed to accomplish the proposed project.

(2) Conducting professional development (including fellowships) for personnel (including leadership personnel) involved in the education of gifted and talented students.

(3) Establishing and operating model projects and exemplary programs for serving gifted and talented students, including innovative methods for identifying and educating students who might not be served by traditional gifted and talented programs. (These model projects might include summer programs, mentoring programs, service-learning programs, and cooperative programs involving business, industry, and education.)

(4) Implementing innovative strategies, such as cooperative learning, peer tutoring, and service learning.

(5) Providing programs of technical assistance and information dissemination, including assistance and information with respect to how gifted and talented programs and methods, where appropriate, may be adapted for use by all students.

(6) Making materials and services available through State regional educational service centers, institutions of higher education, or other entities.

(7) Providing challenging, high-level course work, disseminated through technologies (including distance learning), for individual students or groups of students in schools and LEAs that would not otherwise have the resources to provide such course work.

Other Requirements

The Assistant Secretary directs the applicants' attention to the requirements in § 5464(a)(2) of the statute, stating that each applicant requesting support under the Javits program must describe how:

(1) The proposed gifted and talented services, materials, and methods can be adapted, if appropriate, for use by all students, and

(2) The proposed programs can be evaluated.

Definitions: The definitions contained in the Jacob K. Javits Gifted and Talented Students Education Act of 2001, at title IX, part A of the ESEA, apply to the Javits program and this competition. In particular, the Assistant Secretary directs applicants' attention to the following definition:

Core Academic Subjects. The term "core academic subjects" means English, reading or language arts, mathematics, science, foreign languages, civics and government, economics, arts, history, and geography. (20 U.S.C. 7801(11)).

Selection Criteria: The Assistant Secretary uses the following selection criteria to evaluate applications for new grants under this competition. Each of the two absolute priorities in this competition has separate selection criteria tailored to the specific requirements of the priority. These selection criteria are drawn from EDGAR § 75.210. In both sets of selection criteria, the maximum score for all of these criteria is 100 points. The maximum score for each criterion is indicated in parentheses.

Selection Criteria for Priority 1 (Javits Demonstration Programs)

(1) *Significance.* (15 points.)

In determining the significance of the proposed project, the following factors are considered:

(i) The potential contribution of the proposed project to the development and advancement of theory, knowledge, and practices in the field of study.

(ii) The potential for generalizing from the findings or results of the proposed project.

(2) *Quality of the project design.* (20 points.) In determining the quality of the project design of the proposed project, the following factors are considered:

(i) The extent to which the goals, objectives, and outcomes to be achieved by the proposed project are clearly specified and measurable.

(ii) The extent to which the proposed activities constitute a coherent, sustained program of research and development in the field, including, as appropriate, a substantial addition to an ongoing line of inquiry.

(iii) The extent to which the proposed project represents an exceptional approach to the priority established for the competition.

(iv) The quality of the methodology to be employed in the proposed project.

(3) *Quality of project services.* (20 points.) In determining the quality of the services to be provided by the proposed project, the quality and sufficiency of strategies for ensuring equal access and treatment for eligible project participants without regard to race, color, national origin, gender, age, or disability is considered. In addition, the following factors are considered:

(i) The extent to which the services to be provided by the proposed project are appropriate to the needs of the intended recipients or beneficiaries of those services.

(ii) The likelihood that the services to be provided will lead to improvements in the achievement of students as measured against rigorous academic standards.

(iii) The extent to which the services to be provided by the proposed project involve the collaboration of appropriate partners for maximizing the effectiveness of project services.

(4) *Quality of project personnel.* (10 points.) In determining the quality of project personnel, the extent to which the applicant encourages applications for employment without regard to race, color, national origin, gender, age, or disability is considered. In addition, the following factors are considered:

(i) The qualifications, including relevant training and experience, of the project director or principal investigator.

(ii) The qualifications, including relevant training and experience, of key project personnel.

(5) *Adequacy of resources.* (10 points.) In determining the adequacy of resources for the proposed project, the following factors are considered:

(i) The adequacy of support, including facilities, equipment, supplies and other resources, from the applicant organization or the lead applicant organization.

(ii) The extent to which the costs are reasonable in relation to the objectives, design, and potential significance of the proposed project.

(6) *Quality of project evaluation (25 points.)* In determining the quality of the project evaluation, the following factors are considered:

(i) The extent to which the methods of evaluation are thorough, feasible, and appropriate to the goals, objectives, and outcomes of the proposed project.

(ii) The extent to which the evaluation will provide guidance about effective strategies suitable for replication or testing in other settings.

Section Criteria for Priority 2 (Javits State Capacity-Building Grants)

(1) *Need for the project.* (15 points.) In determining the need for the project, the extent to which specific gaps or weaknesses in services, infrastructure, or opportunities have been identified and will be addressed by the proposed project, including the nature and magnitude of those gaps or weaknesses, is considered.

(2) *Quality of the project design.* (20 points.) In determining the quality of the design of the proposed project, the following factors are considered:

(i) The extent to which the goals, objectives, and outcomes to be achieved by the proposed project are clearly specified and measurable.

(ii) The extent to which the design of the proposed project is appropriate to, and will successfully address, the needs of the target population or other identified needs.

(iii) The extent to which the proposed project represents an exceptional approach to the priority established for the competition.

(3) *Quality of project services.* (15 points.) In determining the quality of the services to be provided by the proposed project, the quality and sufficiency of strategies for ensuring equal access and treatment for eligible project participants without regard to race, color, national origin, gender, age, or disability is considered. In addition, the following factors are considered:

(i) The extent to which the services to be provided by the proposed project reflect up-to-date knowledge from research and effective practice.

(ii) The likely impact of the services to be provided by the proposed project on the intended recipients of those services.

(4) *Quality of project personnel.* (10 points.)

In determining the quality of the project personnel, the extent to which the applicant encourages applications for employment without regard to race, color, national origin, gender, age, or disability, is considered. In addition, the following factors are considered:

(i) The qualifications, including relevant training and experience, of the project director or principal investigator.

(ii) The qualifications, including relevant training and experience, of the key project personnel.

(5) *Adequacy of resources.* (10 points.)

The adequacy of resources for the proposed project is considered.

(6) *Quality of the management plan.* (10 points.)

In determining the quality of the management plan for the proposed project, the following factors are considered:

(i) The adequacy of the management plan to achieve the objectives of the proposed project on time and within budget, including clearly defined responsibilities, timelines, and milestones for accomplishing project tasks.

(ii) The adequacy of the procedures for ensuring feedback and continuous improvement in the operation of the proposed project.

(7) *Quality of the project evaluation.* (20 points.)

In determining the quality of the evaluation, the following factors are considered:

(i) The extent to which the methods of evaluation are thorough, feasible, and appropriate to the goals, objectives, and outcomes of the proposed project.

(ii) The extent to which the evaluation will provide guidance about effective strategies suitable for replication or testing in other settings.

Application Procedures

Pilot Project for Electronic Submission of Applications

In FY 2003, the U.S. Department of Education is continuing to expand its pilot project for electronic submission of applications to include additional formula grant programs and additional discretionary grant competitions. The Javits program—CFDA # 84.206A is one of the programs included in the pilot project. If you are an applicant under the Javits program, you may submit your application to us in either electronic or paper format.

The pilot project involves the use of the Electronic Grant Application System (e-Application) portion of the Grant Administration and Payment System (GAPS). Users of e-Application will be entering data on-line while completing their applications. You may not e-mail a soft copy of a grant application to us. If you participate in this voluntary pilot project by submitting an application electronically, the data you enter on-line will be saved into a database. We request your participation in e-Application. We shall continue to evaluate its success and solicit suggestions for improvement.

If you participate in e-Application, please note the following:

- Your participation is voluntary.
- You will not receive any additional point value because you submit a grant application in electronic format, nor will we penalize you if you submit an application in paper format. When you enter the e-Application system, you will find information about its hours of operation.
- You may submit all documents electronically, including the Application for Federal Assistance (ED 424), Budget Information—Non-Construction Programs (ED 524), and all necessary assurances and certifications.
- After you electronically submit your application, you will receive an automatic acknowledgement, which will include a PR/Award number (an identifying number unique to your application).
- Within three working days after submitting your electronic application, fax a signed copy of the Application for Federal Assistance (ED 424) to the Application Control Center after following these steps:

(1) Print ED 424 from the e-Application system.

(2) The institution's Authorizing Representative must sign this form.

(3) Place the PR/Award number in the upper right hand corner of the hard copy signature page of the ED 424.

(4) Fax the signed ED 424 to the Application Control Center at (202) 260–1349.

- We may request that you give us original signatures on all other forms at a later date.
- *Closing Date Extension in Case of System Unavailability:* If you elect to participate in the e-Application pilot for the Javits program and you are prevented from submitting your application on the closing date because the e-Application system is unavailable, we will grant you an extension of one business day in order to transmit your application electronically, by mail, or by hand delivery. For us to grant this extension—

(1) You must be a registered user of e-Application, and have initiated an e-Application for this competition; and

(2)(a) The e-Application system must be unavailable for 60 minutes or more between the hours of 8:30 and 3:30 p.m., Washington, DC time, on the deadline date; or

(b) The e-Application system must be unavailable for any period of time during the last hour of operation (that is, for any period of time between 3:30 and 4:30 p.m., Washington, DC time) on the deadline date. The Department must acknowledge and confirm these periods of unavailability before granting you an extension. To request this extension you must contact either (1) the person listed elsewhere in this notice under **FOR FURTHER INFORMATION CONTACT** or (2) the e-GRANTS help desk at 1–888–336–8930.

You may access the electronic grant application for the Javits program at: *http://e-grants.ed.gov.*

We have included additional information about the e-Application pilot project in the application package.

For Applications Contact: Education Publications Center (EDPubs), P.O. Box 1398, Jessup, MD 20794–1398. Telephone (toll free): 1–877–433–7827. FAX: (301) 470–1244. If you use a telecommunications device for the deaf (TDD) you may call (toll free): 1–877–576–7734.

You may also contact ED Pubs at its Web site: *http://www.ed.gov/about/ordering.jsp.*

Or you may contact ED Pubs at its e-mail address: edpubs@inet.ed.gov.

If you request an application from ED Pubs, identify this competition as: CFDA number 84.206A.

FOR FURTHER INFORMATION CONTACT:

For Information on Priority 1: Lar'Mara O'Neal, U.S. Department of Education, 400 Maryland Avenue, SW., Washington, DC 20202–6200. Telephone: (202) 205–1860 or via Internet: jacobk.javits@ed.gov.

For Information on Priority 2: Susan Toy, U.S. Department of Education, 400 Maryland Avenue, SW., Washington, DC 20202–6200. Telephone: (202) 260–0995 or via Internet: *jacobk.javits@ed.gov.*

If you use a telecommunications devise for the deaf (TDD), you may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

Individuals with disabilities may obtain this document, or an application package in an alternative format (*e.g.*, Braille, large print, audiotape, or computer diskette) on request using the contact information provided under *For Applications Contact.*

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Program Authority: 20 U.S.C. 7253 *et seq.*

Dated: May 14, 2003.

Eugene W. Hickok,

Under Secretary of Education.

[FR Doc. 03–12602 Filed 5–19–03; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Federal Interagency Coordinating Council Meeting

AGENCY: Department of Education.

ACTION: Notice of a public meeting.

SUMMARY: This notice describes the schedule and agenda of the forthcoming meeting of the Federal Interagency Coordinating Council (FICC). Notice of this meeting is intended to inform members of the general public of their opportunity to attend the meeting. The FICC will engage in policy discussions related to health services for young children with disabilities and their families. The meeting will be open and accessible to the general public.

DATES: FICC Meeting: Thursday, June 12, 2003 from 9 a.m. to 4:30 p.m.

ADDRESSES: U.S. Department of Health and Human Services, 200 Independence Avenue, SW., Room 505A, Washington, DC, 20201.

FOR FURTHER INFORMATION CONTACT: Obral Vance, U.S. Department of Education, 330 C Street, SW., Room 3090, Switzer Building, Washington, DC 20202. Telephone: (202) 205–5507 (press 3). Individuals who use a telecommunications device for the deaf (TDD) may call (202) 205–5637.

SUPPLEMENTARY INFORMATION: The FICC is established under section 644 of the Individuals with Disabilities Education Act (20 U.S.C. 1444). The FICC is established to: (1) Minimize duplication across Federal, State, and local agencies of programs and activities relating to early intervention services for infants and toddlers with disabilities and their families and preschool services for children with disabilities; (2) ensure effective coordination of Federal early intervention and preschool programs, including Federal technical assistance and support activities; and (3) identify gaps in Federal agency programs and services and barriers to Federal interagency cooperation. To meet these purposes, the FICC seeks to: (1) Identify areas of conflict, overlap, and omissions in interagency policies related to the provision of services to infants, toddlers, and preschoolers with disabilities; (2) develop and implement joint policy interpretations on issues related to infants, toddlers, and preschoolers that cut across Federal agencies, including modifications of regulations to eliminate barriers to interagency programs and activities; and (3) coordinate the provision of technical assistance and dissemination of best practice information. The FICC is chaired by Dr. Robert H. Pasternack, Assistant Secretary for Special Education and Rehabilitative Services.

Individuals who need accommodations for a disability in order to attend the meeting (*i.e.*, interpreting services, assistive listening devices, material in alternative format) should notify Obral Vance at (202) 205–5507 (press 3) or (202) 205–5637 (TDD) ten days in advance of the meeting. The meeting location is accessible to individuals with disabilities.

Summary minutes of the FICC meetings will be maintained and available for public inspection at the U.S. Department of Education, 330 C Street, SW., Room 3090, Switzer Building, Washington, DC 20202, from the hours of 9 a.m. to 5 p.m., weekdays, except Federal holidays.

Loretta Petty Chittum,

Acting Assistant Secretary for Special Education and Rehabilitative Services.

[FR Doc. 03–12525 Filed 5–19–03; 8:45 am]

BILLING CODE 4000–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP99–301–076]

ANR Pipeline Company; Notice of Negotiated Rates

May 14, 2003.

Take notice that on May 9, 2003, ANR Pipeline Company (ANR) tendered for filing as part of its FERC Gas Tariff, Twelfth Revised Sheet No. 190, Second Revised Volume No. 1, with an effective date of April 1, 2003.

ANR states that the tariff sheet is being filed in compliance with the Commission's April 30, 2003, order accepting ANR's negotiated rate agreement with Dynegy Marketing and Trade, effective April 1, 2003.

ANR states that copies of the filing have been mailed to all affected customers and state regulatory Commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with sections 385.214 or 385.211 of the Commission's rules and regulations. All such motions or protests must be filed in accordance with section 154.210 of the Commission's regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link.

Comment Date: May 21, 2003.

Magalie R. Salas,

Secretary.

[FR Doc. 03–12627 Filed 5–19–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER02–1420–009]

Midwest Independent Transmission System Operator, Inc.; Notice of Filing

May 14, 2003.

Take notice that on April 4, 2003, Midwest Independent Transmission System Operator, Inc. tendered for filing with the Federal Energy Regulatory Commission (Commission) a request to withdraw the Resulting Company Open Access Transmission Tariff (Resulting Company Tariff) and the Agreement of Transmission Owners to Organize (Resulting Company Agreement) filed with the Commission on November 1, 2002, in Docket No. ER02–1420–006.

Any person desiring to intervene or to protest this filing should file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's rules of practice and procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. All such motions or protests should be filed on or before the comment date, and, to the extent applicable, must be served on the applicant and on any other person designated on the official service list. This filing is available for review at the Commission or may be viewed on the Commission's Web site at *http://www.ferc.gov*, using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866)208–3676, or for TTY, contact (202)502–8659. Protests and interventions may be filed electronically via the Internet in lieu of paper; *see* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link. The Commission strongly encourages electronic filings.

Comment Date: May 22, 2003.

Magalie R. Salas,

Secretary.

[FR Doc. 03–12622 Filed 5–19–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP02–416–001]

Southern Star Central Gas Pipeline, Inc.; Notice of Site Visit

May 14, 2003.

On Wednesday, May 28, 2003, Office of Energy Projects staff will participate in a site visit to the area proposed for construction of natural gas pipeline facilities by Southern Star Central Gas Pipeline, Inc. for its Southwest Missouri Expansion Project in Cherokee County, Kansas, and Jasper County, Missouri, in the above-referenced docket. The site visit will begin at 8:30 a.m. from the Holiday Inn, 3615 Range Line Road, Joplin, Missouri. All interested parties may attend the site visit. Those planning to attend must provide their own transportation. Anyone interested in additional information on the site visit may contact the Commission's Office of External Affairs at 1–866–208–FERC.

Magalie R. Salas,

Secretary.

[FR Doc. 03–12620 Filed 5–19–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP00–471–002]

Southwest Gas Storage Company; Notice of Compliance Filing

May 14, 2003.

Take notice that on May 9, 2003, Southwest Gas Storage Company (Southwest) tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1, Sub First Revised Sheet No. 100, to be effective May 25, 2003.

Southwest states that the purpose of this filing, made in accordance with the provisions of section 154.204 of the Commission's regulations, is to conform the pagination and content of Tariff Sheet No. 100 to reflect the Commission's acceptance of tariff revisions in Docket Nos. RP00–471–001 and RP02–447–000. Southwest is proposing no change to the content on Sheet No. 100 that has been accepted by the Commission in these two separate filings.

Southwest states that copies of this filing are being served on all jurisdictional customers, interested state regulatory agencies and parties to this proceeding.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with section 385.211 of the Commission's rules and regulations. All such protests must be filed in accordance with section 154.210 of the Commission's regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link.

Protest Date: May 21, 2003.

Magalie R. Salas,

Secretary.

[FR Doc. 03–12624 Filed 5–19–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP03–475–000]

Venice Gathering System, L.L.C.; Notice of Compliance Filing

May 14, 2003.

Take notice that on May 9, 2003, Venice Gathering System, L.L.C. (Venice) tendered for filing as part of its FERC Gas Tariff, Original Volume No. 1, the following tariff sheets to become effective July 1, 2003, except for those identified with an asterisk, which are to become effective May 1, 2004:

Fourth Revised Sheet No. 49
Third Revised Sheet No. 119*
Fourth Revised Sheet No. 122*
First Revised Sheet No. 122A*
Fourth Revised Sheet No. 123*
First Revised Sheet No. 123A*
Second Revised Sheet No. 185
First Revised Sheet No. 191
Fifth Revised Sheet No. 192
Sixth Revised Sheet No. 192*
Fifth Revised Sheet No. 196
Sixth Revised Sheet No. 196*
Third Revised Sheet No. 197
Fourth Revised Sheet No. 197*
First Revised Sheet No. 198*
Original Sheet No. 199*

Venice states that these proposed tariff sheets are intended to comply with the Commission's Order No. 587-R. In particular, Venice states that the proposed tariff changes provide for the adoption of NAESB Standards Version 1.6, and the WGQ standards governing partial day recalls.

Venice further states that certain of the tariff changes required under Order No. 587–R cannot be made effective on July 1, 2003, due to delays in the delivery of the software necessary to implement such changes. Venice states that the vendor has indicated that necessary software will be delivered on or before March 31, 2004. Accordingly, Venice has submitted tariff sheets with a proposed effective date of July 1, 2003, for all Version 1.6 changes that are not dependent upon the new software; those tariff changes that cannot be implemented until receipt of the new software bear a proposed effective date

of May 1, 2004. The May 1, 2004, effective date is proposed because, according to Venice, approximately one month additional time will be required to test and implement the new software.

Venice states that copies of the filing have been mailed to each customers and interested state commission.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with sections 385.214 or 385.211 of the Commission's rules and regulations. All such motions or protests must be filed in accordance with section 154.210 of the Commission's regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link.

Protest Date: May 21, 2003.

Magalie R. Salas,

Secretary.

[FR Doc. 03–12625 Filed 5–19–03; 8:45 am]

BILLING CODE 6717–01–P

Viking states that copies of this filing have been sent to all of Viking's contracted shippers and interested State regulatory commissions.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with section 385.211 of the Commission's rules and regulations. All such protests must be filed in accordance with section 154.210 of the Commission's regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link.

Protest Date: May 21, 2003.

Magalie R. Salas,

Secretary.

[FR Doc. 03–12626 Filed 5–19–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP03–387–001]

Viking Gas Transmission Company; Notice of Compliance Filing

May 14, 2003.

Take notice that on May 9, 2003, Viking Gas Transmission Company (Viking) tendered for filing to become part of its FERC Gas Tariff, First Revised Volume No. 1, Third Revised Sheet No. 15E, to become effective July 1, 2003.

Viking states that the purpose of this filing is to correct a pagination error on Sheet No. 15E filed on May 1, 2003.

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. EG03–66–000, *et al.*]

Allegheny Energy Supply Conemaugh, LLC; Electric Rate and Corporate Filings.

May 13, 2003.

The following filings have been made with the Commission. The filings are listed in ascending order within each docket classification:

1. Allegheny Energy Supply Conemaugh, LLC

[Docket No. EG03–66–000]

Take notice that on May 7, 2003, Allegheny Energy Supply Conemaugh, LLC filed an amendment to its Application for Determination of Exempt Wholesale Generator Status pursuant to section 32(a)(1) of the Public Utility Holding Company Act of 1935, as amended (PUHCA) to correct the description of the eligible facility.

Comment Date: May 22, 2003.

2. Kinder Morgan Michigan, LLC v. Michigan Electric Transmission Company, LLC

[Docket No. EL03–12–003]

Take notice that on May 7, 2003, Michigan Electric Transmission Company, LLC (METC) submitted for filing with the Federal Energy Regulatory Commission (Commission), a substitute Generator Interconnection & Operating Agreement (GIOA) with Kinder Morgan Michigan LLC in compliance with the Commission's April 22, 2003, Order in Docket No. EL03–12–002.

A copy of the filing was served on all parties compiled on the official service list in Docket No. EL03–12.

Comment Date: May 28, 2003.

3. Kinder Morgan Michigan, LLC v. Michigan Electric Transmission Company, LLC

[Docket No. EL03–12–004]

Take notice that on May 8, 2003, Michigan Electric Transmission Company, LLC (METC) submitted for filing with the Federal Energy Regulatory Commission (Commission), a Generator Interconnection & Operating Agreement (GIOA) with Kinder Morgan Michigan LLC. METC requests that the Commission accept the GIOA and allow it to replace the GIOA submitted by METC on May 7, 2003, in compliance with the Commission's April 22, 2003, Order in Docket No. EL03–12–002. METC explains that the appropriate Order No. 614 designations were inadvertently omitted from the May 7 Compliance Filing, and this submission reflects the appropriate designations. There are no additional changes.

A copy was served on all parties compiled on the official service list in Docket No. EL03–12.

Comment Date: May 29, 2003.

4. Horsehead Industries, Inc.

[ER00–2333–001]

Take notice that on May 6, 2003, Horsehead Industries, Inc., submitted for filing a revised Triennial Market Analysis through its unincorporated division Zinc Corporation of America.

Comment Date: May 27, 2003.

5. Entergy Services, Inc.

[Docket No. ER02–2014–011]

Take notice that on May 7, 2003, Entergy Services, Inc., (Entergy) tendered for filing a Second Informational Report regarding Entergy's implementation of the Generator Operating Limits as required by the Commission's Order issued March 13, 2003, in Docket No. ER02–2014–006.

Comment Date: May 28, 2003.

6. American Electric Power Service Corporation; Commonwealth Edison Company; Dayton Power and Light Company; Virginia Electric and Power Company; PJM Interconnection, L.L.C.

[Docket No. ER03–262–004]

Take notice that on May 7, 2003, New PJM Companies and PJM Interconnection, L.L.C. filed a second errata for a single exhibit that was inadvertently omitted from the filing in Docket No. ER03–262–004 submitted on May 6, 2003.

Comment Date: May 28, 2003.

7. Entergy Services, Inc.

[Docket No. ER03–363–002]

Take notice that on May 2, 2003, Entergy Services, Inc., on behalf of Entergy Arkansas, Inc., Entergy Gulf States, Inc., Entergy Louisiana, Inc., Entergy Mississippi, Inc., and Entergy New Orleans, Inc., (collectively, the Entergy Operating Companies) filed an amendment to its filing for approval of the Long-Term Firm Point-to-Point Transmission Service Agreement between Entergy Services, Inc., as agent for the Entergy Operating Companies, and City Water and Light of The City of Jonesboro, Arkansas.

Comment Date: May 23, 2003.

8. Unitil Power Corp.

[Docket No. ER03–483–001]

Take notice that on May 7, 2003, Unitil Power Corp. submitted for filing information concerning the rate impact of the Amended System Agreement as required by the Commission's letter order issued on March 21, 2003, in Docket No. ER03–483–000.

Unitil Power Corp., states that a copy of the filing was served on the service list in Docket No. ER03–483–000 and on the New Hampshire Public Utilities Commission.

Comment Date: May 28, 2003.

9. Baltimore Gas and Electric Company

[Docket No. ER03–551–001]

Take notice that on May 8, 2003, Baltimore Gas and Electric Company (BGE), submitted for filing a revised Interconnection Agreement dated May 7, 2003, between BGE and Constellation Power Source Generation, Inc., pursuant to Commission Order dated April 10, 2003. BGE states that the revised Interconnection Agreement has been designated as Original Service Schedule No. 871 under PJM's Open Access Transmission Tariff.

Comment Date: May 29, 2003.

10. MidAmerican Energy Company

[Docket No. ER03–825–000]

Take notice that on May 7, 2003, MidAmerican Energy Company (MidAmerican), filed with the Commission a Construction and Expense Reimbursement Agreement with the City of Ames, Iowa (Ames), dated April 30, 2003, in order to facilitate the provisions of service pursuant to MidAmerican's Open Access Transmission Tariff.

MidAmerican requests an effective date of May 8, 2003, for the Agreement with Ames, and accordingly seeks a waiver of the Commission's notice requirement. MidAmerican states that it has served a copy of the filing on Ames, the Iowa Utilities Board, the Illinois Commerce Commission and the South Dakota Public Utilities Commission.

Comment Date: May 28, 2003.

11. Southern California Edison Company

[Docket No. ER03–826–000]

Take notice that on May 7, 2003, Southern California Edison Company (SCE) tendered for filing the amended Service Agreement for Wholesale Distribution Service (Amended Service Agreement) and the amended Added Facilities Agreement (Amended Added Facilities Agreement) between the City of Colton (Colton) and SCE. SCE states that the purpose of the amendments is to reflect required changes to these agreements due to the interconnection of the Agua Mansa Project to Colton's electrical system.

SCE states that copies of this filing were served upon the Public Utilities Commission of the State of California and Colton.

Comment Date: May 28, 2004.

12. Florida Power Corporation

[Docket No. ER03–829–000]

Take notice that on May 7, 2003, Florida Power Corporation (Florida Power) doing business as Progress Energy Florida (Progress Florida), tendered for filing cost support updates for its interchange service agreements pursuant to part 35 of the Commission's regulations. Florida Power states that it also filed revised rate schedule sheets incorporating necessary rate changes reflecting the cost updates. Florida Power indicates that the filing also updates the Real Power Loss Factors in the Open Access Transmission Tariffs of Florida Power and Carolina Power and Light Company.

Florida Power states that copies of the filing letter (which identifies the updated charges) have been served on the counter-parties to the interchange service agreements and the interested state utility commissions. The entire submittal has been posted on the Florida Power and Carolina Power & Light Company Web site at: *www.progress-energy.com.*

Comment Date: May 28, 2003.

13. Minnesota Power

[Docket No. ER03–831–000]

Take notice that on May 8, 2003, Minnesota Power tendered for filing Original Sheet Nos. 39, 40, 41, and 42 of the Second Revised Rate Schedule FERC No. 125, designated as required by Commission Order No. 614, for wholesale service to the Public Utilities Commission of Brainerd, Minnesota (Brainerd). Minnesota Power states that this filing includes an extension of the term of the Electric Service Agreement between Brainerd and Minnesota Power and a wheeling rate for energy wheeled by Brainerd over Minnesota Power facilities. Minnesota Power requests an effective date of February 28, 2003, for this filing.

Comment Date: May 29, 2003.

14. Alliant Energy Corporate Services, Inc.

[Docket No. ER03–832–000]

Take notice that on May 8, 2003, Alliant Energy Corporate Services, Inc. (Alliant Energy) on behalf of Interstate Power Company (IPC) tendered for filing a Negotiated Capacity Transaction (Agreement) between IPC and Wisconsin Power & Light Company (WPL) for the period May 1 through October 31, 2003. The Agreement was negotiated to provide service under the Alliant Energy System Coordination and Operating Agreement among IES Utilities Inc., IPC, WPL and Alliant Energy.

Comment Date: May 29, 2003.

15. Tampa Electric Company

[Docket No. ER03–834–000]

Take notice that on May 8, 2003, Tampa Electric Company (Tampa Electric) tendered for filing Notices of Cancellation of the service agreements under its Market-Based Sales Tariff with Florida Power Corporation (FPC), Duke Energy Trading and Marketing, L.L.C. (Duke Energy), and Enron Power Marketing, Inc. (Enron). Tampa Electric proposes that the cancellations be made effective on July 7, 2003.

Tampa Electric states that copies of the filing have been served on FPC, Duke Energy, Enron, and the Florida Public Service Commission.

Comment Date: May 29, 2003.

16. PJM Interconnection, L.L.C.

[Docket No. ER03–835–000]

Take notice that on May 8, 2003, PJM Interconnection, L.L.C. (PJM), submitted amendments to the Schedule 2 chart of the PJM Open Access Transmission Tariff (PJM Tariff) to incorporate into the Sixth Revised version of the PJM Tariff the revenue requirements for Reactive Supply and Voltage Control from General Sources Service (Reactive Service) that the Commission accepted for WPS Westwood Generation, LLC (Westwood), Liberty Electric Power, LLC (Liberty), Armstrong Energy Limited Partnership, LLLP (Armstrong), Handsome Lake Energy, LLC (Handsome Lake), Pleasants Energy, LLC (Pleasants) and Safe Harbor Water Power Corporation (Safe Harbor). PJM states that it also filed an amendment to the Schedule 2 chart in the Fifth Revised version of the PJM Tariff to reflect Handsome Lake's revised Reactive Service revenue requirements that were effective prior to the requested effective date of the Sixth Revised version of the PJM Tariff, but not previously incorporated into the Fifth Revised version of the PJM Tariff.

Consistent with the requested effective date of the Sixth Revised version of the PJM Tariff and the effective dates of the Commission's acceptance of the parties' Reactive Service revenue requirements, PJM requests the following effective dates for the revised sheets of the Sixth Revised version of the PJM Tariff filed in this docket: (1) First Revised Sheet No. 230—March 20, 2003, (incorporating Westwood's Liberty's, Armstrong's and Handsome Lake's revenue requirements); and (2) Second Revised Sheet No. 230—April 1, 2003, (incorporating Pleasants' and Safe Harbor's revenue requirements). PJM also requests an effective date of February 1, 2003, for the Eighth Revised Sheet No. 112A of the Fifth Revised volume of the PJM Tariff (incorporating Handsome Lake's revenue requirements).

PJM states that copies of this filing have been served on all PJM members, Westwood, Liberty, Armstrong, Handsome Lake, Pleasants, Safe Harbor, and each state electric utility regulatory commission in the PJM region.

Comment Date: May 29, 2003.

Standard Paragraph

Any person desiring to intervene or to protest this filing should file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with rules 211 and 214 of the Commission's rules of practice and procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. All such motions or protests should be filed on or before the comment date, and, to the extent applicable, must be served on the applicant and on any other person designated on the official service list. This filing is available for review at the Commission or may be viewed on the Commission's Web site at *http://www.ferc.gov*, using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866)208–3676, or for TTY, contact (202)502–8659. Protests and interventions may be filed electronically via the Internet in lieu of paper; *see* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link. The Commission strongly encourages electronic filings.

Magalie R. Salas,

Secretary.

[FR Doc. 03–12621 Filed 5–19–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. PA02–2–000]

Fact Finding Investigation of Potential Manipulation of Electric and Natural Gas Prices; Notice of Intent to Re-Release Information

May 14, 2003.

On March 5, 2003, the Commission issued a notice that it intended to release to the public information collected in its investigation into the manipulation of energy prices in the west, and sought, by March 12, 2003, comments from those companies and individuals who submitted information during the course of the investigation. On March 21, 2003, the Commission issued an order addressing the comments and responses to its March 5 notice, and further announced that it would release the information, except as noted in the order, in no less than five days after issuance of the order.[1] One exception to the release was personal personnel information. Thereafter, on March 26, 2003, the Commission released the remaining information.

Subsequent to the release of the information, on March 28, 2003, the Commission received the first of numerous motions from Enron asking that certain parts of the released information be removed from public access. These motions in particular attempted to identify Enron employees' personal information. The Commission also received calls on its Enforcement Hotline from Enron employees who were concerned about their personal information being available on the internet. As quickly as possible, the Commission staff accommodated these requests in keeping with the Commission's stated concerns in the March 21 order about releasing certain personal data.

On April 7, 2003, the Commission removed all Enron e-mails from its web site. The Commission's action removing the Enron e-mails from its Web site coincided exactly with the United States Court of Appeals for the Fifth Circuit's stay of the March 21 order to the extent the stay action implicated the withdrawal of Enron e-mails from the agency's web site. *See Enron Corp.* v. *FERC*, No. 03–60295.

On April 22, 2003, the Commission issued an order stating that it would not re-release any of the documents that respondents sought to be withheld with specificity until the Commission reviewed those documents and gave the respondents and the public notice of its intent to re-release specific documents.[2] In the April 22 order, the Commission directed its staff to review the data proffered for removal and ascertain whether indeed it should be in the public domain. With respect to the data that was removed from the Commission's Web site pursuant to the April 7 notice but that was not identified by any company or individual for permanent removal, the Commission directed its staff to return that data to the agency's web site.

Take notice that pursuant to the Commission's April 22 order in this docket, no later than May 14, 2003, the Commission shall re-release the data that was removed from the Commission's Web site pursuant to the April 7 notice but was not identified by any company or individual for permanent removal. The data that was identified for permanent removal will not be re-released, if at all, until the Commission's staff has reviewed the documents as directed by the April 22 order. The Commission will issue further orders as that review progresses.

[1] 102 FERC ¶ 61,311 (2003).

[2] 103 FERC ¶ 61,077 (2003).

Magalie R. Salas,

Secretary.

[FR Doc. 03–12623 Filed 5–19–03; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[OW–2003–0013, FRL–7501–2]

Agency Information Collection Activities: Title IV of the Public Health Security and Bioterrorism Preparedness and Response Act of 2002: Drinking Water Security and Safety (Act); Comment Request

AGENCY: Environmental Protection Agency.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this document announces that EPA is planning to submit the following continuing Information Collection Request (ICR) to the Office of Management and Budget (OMB): Title IV of the Public Health Security and Bioterrorism Preparedness and Response Act of 2002: Drinking Water Security and Safety (Act), hereinafter referred to as the Bioterrorism Act; ICR No. 2103.02; OMB Control No. 2040–0253; expiration date September 30, 2003. Before submitting this continuing ICR to OMB for review and approval, EPA is soliciting comments on specific aspects of the proposed information collection as described below.

DATES: Comments must be submitted on or before July 21, 2003.

ADDRESSES: Follow the detailed instructions in **SUPPLEMENTARY INFORMATION.**

FOR FURTHER INFORMATION CONTACT: Susan Dolgin, Water Protection Task Force, Office of Ground Water and Drinking Water, 4601M, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: (202) 564–9895; fax number: (202) 564–3753; e-mail address: *dolgin.susan@epa.gov*.

SUPPLEMENTARY INFORMATION: EPA has established a public docket for this ICR under Docket ID number OW–2003–0013, which is available for public viewing at the Water Docket in the EPA Docket Center (EPA/DC), EPA West, Room B102, 1301 Constitution Ave., NW., Washington, DC. The EPA Docket Center Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Reading Room is (202) 566–1744, and the telephone number for the Water Docket is (202) 566–2426. An electronic version of the public docket is available through EPA Dockets (EDOCKET) at *http://www.epa.gov/edocket*. Use EDOCKET to obtain a copy of the draft collection of information, submit or view public comments, access the index listing of the contents of the public docket, and to access those documents in the public docket that are available electronically. Once in the system, select "search," then key in the docket ID number identified above.

Any comments related to this ICR should be submitted to EPA within 60 days of this notice, and according to the following detailed instructions: (1) Submit your comments to EPA online using EDOCKET (our preferred method), (2) by email to *OW-Docket@epa.gov*, or (3) by mail to: EPA Docket Center, Environmental Protection Agency, Water Docket (mail code 4101T), 1200 Pennsylvania Ave., NW., Washington, DC 20460.

EPA's policy is that public comments, whether submitted electronically or on paper, will be made available for public viewing in EDOCKET as EPA receives them and without change, unless the comment contains copyrighted material, CBI, or other information for which public disclosure is restricted by statute. When EPA identifies a comment containing copyrighted material, EPA will provide a reference to that material in the version of the comment that is placed in EDOCKET. The entire printed comment, including the copyrighted material, will be available in the public docket. Although identified as an item in the official docket, information claimed as CBI, or whose disclosure is otherwise restricted by statute, is not included in the official public docket, and will not be available for public viewing in EDOCKET. For further information about the electronic docket, *see* EPA's **Federal Register** notice describing the electronic docket at 67 FR 38102 (May 31, 2002), or go to *http://www.epa.gov./edocket*.

Affected Entities: Entities potentially affected by this action are community water systems serving more than 3,300 people.

Title: Title IV of the Public Health Security and Bioterrorism Preparedness and Response Act of 2002: Drinking Water Security and Safety (Act); OMB Control Number 2040–0253; EPA ICR Number 2103.02; expiring September 30, 2003.

Abstract: The Bioterrorism Act requires each community water system serving a population of more than 3,300 people to conduct a vulnerability assessment of its water system and to prepare or revise an emergency response plan that incorporates the results of the vulnerability assessment. These requirements are mandatory under the statute. EPA will use the information collected under this ICR to determine whether community water systems have conducted vulnerability assessments and prepared or revised emergency response plans in compliance with that Act. EPA is required to protect all vulnerability assessments and all information derived from them from disclosure to unauthorized parties and has established an Information Protection Protocol describing how that will be accomplished.

This Notice provides the opportunity to comment on EPA's request to renew this ICR, which was approved by the Office of Management and Budget (OMB) on an emergency basis for 180 days, beginning March 31, 2003. During the 10-day comment period that was provided during that action, the following comments were raised:

i. EPA should reassess its burden estimates for developing emergency response plans;

ii. EPA should present total burden estimates in a clearer format;

iii. EPA should explain more clearly what is meant by a "compliance review;"

iv. EPA should clarify the statutory deadlines for submitting emergency response plan certifications.

EPA has changed the information document that supports this Notice to explain more clearly what is meant by a vulnerability assessment "compliance review" and also to clarify the statutory deadlines for submitting emergency response plan certifications to EPA.

At this time, EPA would like to solicit comments to:

(i) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the Agency, including whether the information will have practical utility;

(ii) evaluate the accuracy of the Agency's estimate of the burden of the proposed collection of information (especially pertaining to the development of emergency response plans), including the validity of the methodology and assumptions used;

(iii) enhance the quality, utility, and clarity of the information to be collected; and

(iv) minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated electronic, mechanical, or other technological

collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR part 9 and 48 CFR chapter 15.

Burden Statement: Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

Respondents or Affected Entities: Community water systems serving populations greater than 3,300 persons.

Estimated Number of Respondents: 8,487 systems.

Average Annual Reporting Burden: 2,652,393 hours/year over a three-year period. This includes the burden required for all affected community water systems to conduct vulnerability assessments, prepare or update emergency response plans, and submit the required items to EPA. The total burden for these systems is 7,957,179 hours, which is largely concentrated in calendar years 2003 and 2004.

Average burden per response: 117.9 hours/response. This figure is an average that was calculated from burden estimates applicable to systems ranging in size from the smallest (serving 3,301 persons) up to the very largest (serving millions of persons). The burden hours vary widely, then, depending on system size, and the average burden figure should not be interpreted as applicable to all systems.

Frequency of Response: Varies based on statutory schedule and system size.

Average Annual Cost: $156,540,365; includes $82,211 O&M costs and $0 capital and startup costs.

Dated: May 13, 2003.

Cynthia C. Dougherty,

Director, Office of Ground Water and Drinking Water.

[FR Doc. 03–12617 Filed 5–19–03; 8:45 am]

BILLING CODE 5560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7501–1]

Notice of Extension of Public Comment Period for Development of a National Agenda for the Environment and the Aging

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of extension of public comment period.

SUMMARY: In October 2002 EPA launched an Aging Initiative to study the effects of environmental health hazards on older persons and examine the impact that a rapidly aging population will have on the environment. The Initiative will also identify model programs that will provide opportunities for older persons to volunteer in their communities to reduce environmental hazards and protect the environment for future generations.

DATES: On March 4, 2003 (68 FR 10238) EPA published a notice seeking public comment on the National Agenda on the Environment and the Aging with a deadline of May 16, 2003. EPA has extended the deadline for public comments through Tuesday, September 30, 2003.

FOR FURTHER INFORMATION CONTACT: Kathy Sykes, EPA's Aging Initiative Coordinator, at (202) 564–2188 or by email: *aging.info@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. Identifying Research Gaps in Environmental Health

Strategy To Address Environmental Hazards That Threaten the Health of Older Persons: Research and Educational Priorities

The National Agenda for the Environment and the Aging will lay out a strategy that combines research and educational programs that promote preventive actions to address environmental health hazards. One fundamental question is: How do environmental hazards affect older persons differently from younger persons? Understanding the biology underlying differing age-related responses can inform a scientific rationale for decisions on how to appropriately incorporate the differential sensitivity of those who are aging into environmental risk assessment, decisions and actions.

EPA's effort to develop a national agenda to address environmental issues that affect the health and well-being of the nation's older persons has been advanced by a workshop on the "Differential Susceptibility and Exposure of Older Persons to Environmental Hazards" convened by the National Academy of Sciences in December 2002. At that meeting, experts discussed priority issues for the National Agenda for the Environment and the Aging. Experts focused on exposures to environmental hazards found in drinking water, indoor and outdoor air, and food residues that may have health effects including respiratory and cardiopulmonary disease, neurotoxicity, infectious disease and cancer.

EPA invites public comments on environmental hazards that may affect the health of older persons in states and local communities. Among questions which may be considered are:

What specific environmental exposures in your community particularly affect the health of older persons?

Which health conditions specific to older adults may increase their susceptibility to chemical toxicants?

Which lifestyle factors of older adults may increase the exposure to environmental hazards?

What steps may individuals and communities take to reduce the potential environmental health risks that older adults may face?

II. Preparing for an Aging Society

Impact of an Aging Population on the Environment

The EPA invites comments on the extent to which an aging population may affect the environment. The nation's demographics will have changed dramatically by 2030: the U.S. population over 65 years of age is expected to double. The largest cohort born in U.S. history (76 million Americans were born between 1946 and 1964) begins to turn 65 in 2011 and will markedly influence the quality of life for both older persons and young people. The National Agenda will focus on the interface between older persons and their environment.

As an increasing number of adults approach retirement age, migration may substantially increase to areas characterized by temperate climates, lower population and traffic density, and better environmental quality. These areas may be sparsely populated and ecologically diverse regions. To ensure harmony between the needs of this growing population and preserving important natural resources, it is important to have the tools available for regional and landscape planning. The EPA invites comments on the extent to which an aging population has unique needs with respect to housing, transportation, health care, recreation, and other quality of life issues, and how these needs may affect the environment. Issues which may be considered include:

What can city, county and regional planners do to meet the needs of today's older adults and prepare for the anticipated increase in the number of retirees and at the same time enhance preservation of natural resources for recreation, wildlife, water, air and land quality?

Can you identify unique resource needs and utilization patterns of older adults that may generate novel ecological pressures?

What steps can individual baby boomers and older adults take to not only reduce potential hazards to the environment but also preserve and enhance the quality of the environment for themselves and future generations?

III. Encouraging Older Adults To Volunteer To Reduce Environmental Hazards

Opportunities for Older Persons To Enhance the Environment and Their Health

The National Agenda will not only identify strategies to protect the quality of life for older persons from environmental hazards, but also suggest ways to engage the nation's older persons in programs and strategies designed to enhance the environment for all generations.

Many older Americans contribute their time, energy and expertise to protect their environment and educate their communities about environmental hazards to citizens and threats to natural resources. The EPA intends to encourage further involvement and expand opportunities for older persons to volunteer in programs designed to lessen environmental hazards. Programs or activities that are of interest include activities that increase awareness of environmental hazards, and preserve the quality of the environment for today and tomorrow's citizens. The EPA welcomes comments on encouraging older adults to volunteer to reduce environmental hazards in their communities. Among the questions to which the EPA invites comments are the following:

Which volunteer programs that address environmental hazards in your community warrant examination for possible replication in other communities?

What incentives are needed to encourage older persons to volunteer their time and ideas to protect the environment, reduce environmental hazards and enhance the health of and the environment for people of all ages?

In an effort to raise awareness of environmental factors important to all citizens, how can older persons serve as models of good practice and mentors for younger generations about environmental hazards found in the community?

In your community or state, what intergenerational environmental projects have been successful in improving the health of children or older persons?

What potential barriers exist to volunteering in your community to reduce environmental hazards?

Public comments will be accepted until Tuesday, September 30, 2003.

(1) To submit written comments, please send them by mail or hand deliver to: EPA's Aging Initiative, Mail Code 1107A, 1200 Pennsylvania Avenue, NW., Room 2512 Ariel Rios North, Washington, DC 20460, or

(2) Fax comments to: National Agenda for the Environment and the Aging (202) 564–2733, or

(3) E-mail comments to: *aging.info@epa.gov.*

Dated: May 13, 2003.

Joanne Rodman,

Acting Director, Office of Children's Health Protection.

[FR Doc. 03–12618 Filed 5–19–03; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[OPPT–2002–0079; FRL–7306–2]

Lead-Based Paint Activities in Target Housing and Child-Occupied Facilities, State of Mississippi Authorization of Lead-Based Paint Activities Program; Final Approval

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: On January 21, 2003, the State of Mississippi submitted a self-certification letter stating that Mississippi's Lead-Based Paint Training and Certification Program meets the requirements for approval of a State program under section 404 of the Toxic Substances Control Act (TSCA) and that Mississippi has the legal authority and ability to implement the appropriate elements to run the program. The State program will administer and enforce training and certification requirements, training program accreditation requirements, and work practice standards for lead-based paint activities in target housing and child-occupied facilities under section 402 of TSCA. Recent changes to the State's audit privilege and penalty mitigation statutes, which previously impaired the States's ability to fully administer and enforce the Lead-Based Paint Program, have resulted in the State program now providing adequate enforcement. This notice announces the authorization of the State of Mississippi's Lead-Based Program.

DATES: Lead-based paint activities program authorization was granted to the State of Mississippi effective on January 21, 2003.

FOR FURTHER INFORMATION CONTACT: Keith Bates, Pesticides and Toxic Substances Branch; Air, Pesticides and Toxics Management Division; Environmental Protection Agency; Region IV, Sam Nunn Atlanta Federal Center, 61 Forsyth St., SW., Atlanta, GA 30303; telephone number: (404) 562–8992; e-mail address: *bates.keith@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. General

A. Does this Action Apply to Me?

This notice is directed to the public in general. This notice may, however, be of interest to firms and individuals engaged in lead-based paint activities in Mississippi. Since other entities may also be interested, the Agency has not attempted to describe all the specific entities that may be affected by the notice. If you have any questions regarding the applicability of this notice to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT.**

B. How Can I Get Copies of this Document and Other Related Information?

1. *Docket.* EPA has established an official public docket for this action under docket identification (ID) number OPPT–2002–0079. The official public docket consists of the documents specifically referenced in this action, any public comments received, and other information related to this action. Although a part of the official docket, the public docket does not include Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. The official public docket is the collection of materials that is available for public viewing at the EPA Docket Center, Rm. B102-Reading

Room, EPA West, 1301 Constitution Ave., NW., Washington, DC. The EPA Docket Center is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The EPA Docket Center Reading Room telephone number is (202) 566–1744 and the telephone number for the OPPT Docket, which is located in EPA Docket Center, is (202) 566–0280.

2. *Electronic access.* You may access this **Federal Register** document electronically through the EPA Internet under the "**Federal Register**" listings at *http://www.epa.gov/fedrgstr/*.

An electronic version of the public docket is available through EPA's electronic public docket and comment system, EPA Dockets. You may use EPA Dockets at *http://www.epa.gov/edocket/* to submit or view public comments, access the index listing of the contents of the official public docket, and to access those documents in the public docket that are available electronically. Although not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the docket facility identified in Unit I.B.1. Once in the system, select "search," then key in the appropriate docket ID number.

II. Background

A. What Action is the Agency Taking?

The State of Mississippi has been operating its Lead-Based Paint Program under interim approval since June 28, 1999, with interim approval expiring on June 28, 2002. On December 17, 2001, the State of Mississippi submitted an application for EPA final approval of its Lead-Based Paint Program. Notice of Mississippi's December 17, 2001, application, a solicitation for public comment regarding the application, and background information supporting the application were published in the **Federal Register** on July 19, 2002 (67 FR 47541) (FRL–7187–5). No public comments were received regarding any aspect of Mississippi's application.

At the time of the December 2001 application, two deficiencies in the State's audit privilege and penalty mitigation statutes at Mississippi Code Annotated sections 49–2–71 and 49–17–43(g) impaired the State's ability to provide adequate enforcement in criminal proceedings and investigations and in assessment of appropriate penalties, thus preventing the Agency from fully approving the program. During the 2003 legislative session, however, the State amended the audit privilege and penalty mitigation statutes, which corrected the deficiencies identified by EPA. On January 21, 2003, the State of Mississippi supplemented its December 17, 2001, application with a discussion addressing how the amendments to Mississippi's audit privilege and penalty mitigation statutes, Mississippi Code Annotated sections 17–17–29, 49–2–71, 49–17–43, and 49–17–427, resulted in the State Lead-Based Paint Program providing adequate enforcement. The supplement also contained a statement certifying the Lead-Based Paint Program is at least as protective as the Federal program and provides adequate enforcement.

Based upon the State's certification, and EPA's review and assessment of Mississippi's complete application, Mississippi has successfully demonstrated that the State's Lead-Based Paint Program achieves the protectiveness and enforcement criteria, as required for Federal authorization. Therefore, by this notice, EPA is announcing approval of the application and authorization of the State of Mississippi's Lead-Based Program, effective January 21, 2003.

B. What is the Agency's Authority for Taking this Action?

On October 28, 1992, the Housing and Community Development Act of 1992, Public Law 102–550, became law. Title X of that statute was the Residential Lead-Based Paint Hazard Reduction Act of 1992. That Act amended TSCA (15 U.S.C. 2601 *et seq.*) by adding Title IV (15 U.S.C. 2681–2692), titled *Lead Exposure Reduction.*

Section 402 of TSCA (15 U.S.C. 2682) authorizes and directs EPA to promulgate final regulations governing lead-based paint activities in target housing, public and commercial buildings, bridges, and other structures. Those regulations are to ensure that individuals engaged in such activities are properly trained, that training programs are accredited, and that individuals engaged in these activities are certified and follow documented work practice standards. Under section 404 of TSCA (15 U.S.C. 2684), a State may seek authorization from EPA to administer and enforce its own lead-based paint activities program.

In the **Federal Register** of August 29, 1996 (61 FR 45777) (FRL–5389–9), EPA promulgated final TSCA section 402/404 regulations governing lead-based paint activities in target housing and child-occupied facilities (a subset of public buildings). Those regulations are codified at 40 CFR part 745, and allow both States and Indian Tribes to apply for program authorization. Pursuant to section 404(h) of TSCA (15 U.S.C. 2684(h)), EPA is to establish the Federal program in any State or Tribal Nation without its own authorized program in place by August 31, 1998.

States and Tribes that choose to apply for program authorization must submit a complete application to the appropriate Regional EPA Office for review. To receive EPA approval, a State or Tribe must demonstrate that its program is at least as protective of human health and the environment as the Federal program, and provides for adequate enforcement (section 404(b) of TSCA, 15 U.S.C. 2684(b)). EPA's regulations (40 CFR part 745, subpart Q) provide the detailed requirements a State or Tribal program must meet in order to obtain EPA approval.

A State may choose to certify that its lead-based paint activities program meets the requirements for EPA approval, by submitting a letter signed by the Governor or Attorney General stating that the program meets the requirements of section 404(b) of TSCA. Upon submission of such certification letter, the program is deemed authorized (15 U.S.C. 2684(a)). This authorization becomes ineffective, however, if EPA disapproves the application or withdraws the program authorization.

III. Federal Overfiling

Section 404(b) of TSCA, makes it unlawful for any person to violate, or fail or refuse to comply with, any requirement of an approved State or Tribal program. Therefore, EPA reserves the right to exercise its enforcement authority under TSCA against a violation of, or a failure or refusal to comply with, any requirement of an authorized State or Tribal program.

IV. Withdrawal of Authorization

Pursuant to TSCA section 404(c), the Administrator may withdraw a State or Tribal lead-based paint activities program authorization, after notice and opportunity for corrective action, if the program is not being administered or enforced in compliance with standards, regulations, and other requirements established under the authorization. The procedures EPA will follow for the withdrawal of an authorization are found at 40 CFR 745.324(i).

V. Congressional Review Act

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before certain actions may take effect, the agency promulgating the action must submit a report, which includes a copy of the action, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this action and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of this document in the **Federal Register**. This action is not a "major rule" as defined by 5 U.S.C. 804(2).

List of Subjects

Environmental protection, Hazardous substances, Lead, Reporting and recordkeeping requirements.

Dated: May 2, 2003.

J. I. Palmer, Jr.,

Regional Administrator, Region IV.

[FR Doc. 03–12628 Filed 5–19–03; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[OPPT–2003–0024; FRL–7309–4]

Certain New Chemicals; Receipt and Status Information

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: Section 5 of the Toxic Substances Control Act (TSCA) requires any person who intends to manufacture (defined by statute to include import) a new chemical (i.e., a chemical not on the TSCA Inventory) to notify EPA and comply with the statutory provisions pertaining to the manufacture of new chemicals. Under sections 5(d)(2) and 5(d)(3) of TSCA, EPA is required to publish a notice of receipt of a premanufacture notice (PMN) or an application for a test marketing exemption (TME), and to publish periodic status reports on the chemicals under review and the receipt of notices of commencement to manufacture those chemicals. This status report, which covers the period from April 7, 2003 to April 25, 2003, consists of the PMNs and TMEs, both pending or expired, and the notices of commencement to manufacture a new chemical that the Agency has received under TSCA section 5 during this time period.

DATES: Comments identified by the docket ID number OPPT–2003–0024 and the specific PMN number or TME number, must be received on or before June 19, 2003.

ADDRESSES: Comments may be submitted electronically, by mail, or through hand delivery/courier. Follow the detailed instructions as provided in Unit I. of the **SUPPLEMENTARY INFORMATION.**

FOR FURTHER INFORMATION CONTACT: Barbara Cunningham, Director, Environmental Assistance Division, Office of Pollution Prevention and Toxics (7408M), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (202) 554–1404; e-mail address: TSCA-Hotline@epa.gov.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

This action is directed to the public in general. As such, the Agency has not attempted to describe the specific entities that this action may apply to. Although others may be affected, this action applies directly to the submitter of the premanufacture notices addressed in the action. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT.**

B. How Can I Get Copies of This Document and Other Related Information?

1. *Docket.* EPA has established an official public docket for this action under docket identification (ID) number OPPT–2003–0024. The official public docket consists of the documents specifically referenced in this action, any public comments received, and other information related to this action. Although a part of the official docket, the public docket does not include Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. The official public docket is the collection of materials that is available for public viewing at the EPA Docket Center, Rm. B102-Reading Room, EPA West, 1301 Constitution Ave., NW., Washington, DC. The EPA Docket Center is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The EPA Docket Center Reading Room telephone number is (202) 566–1744 and the telephone number for the OPPT Docket, which is located in EPA Docket Center, is (202) 566–0280.

2. *Electronic access.* You may access this **Federal Register** document electronically through the EPA Internet under the "**Federal Register**" listings at *http://www.epa.gov/fedrgstr/*.

An electronic version of the public docket is available through EPA's electronic public docket and comment system, EPA Dockets. You may use EPA Dockets at *http://www.epa.gov/edocket/* to submit or view public comments, access the index listing of the contents of the official public docket, and to access those documents in the public docket that are available electronically. Although not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the docket facility identified in Unit I.B.1. Once in the system, select "search," then key in the appropriate docket ID number.

Certain types of information will not be placed in the EPA Dockets. Information claimed as CBI and other information whose disclosure is restricted by statute, which is not included in the official public docket, will not be available for public viewing in EPA's electronic public docket. EPA's policy is that copyrighted material will not be placed in EPA's electronic public docket but will be available only in printed, paper form in the official public docket. To the extent feasible, publicly available docket materials will be made available in EPA's electronic public docket. When a document is selected from the index list in EPA Dockets, the system will identify whether the document is available for viewing in EPA's electronic public docket. Although not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the docket facility identified in Unit I.B.1. EPA intends to work towards providing electronic access to all of the publicly available docket materials through EPA's electronic public docket.

For public commenters, it is important to note that EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing in EPA's electronic public docket as EPA receives them and without change, unless the comment contains copyrighted material, CBI, or other information whose disclosure is restricted by statute. When EPA identifies a comment containing copyrighted material, EPA will provide a reference to that material in the version of the comment that is placed in EPA's electronic public docket. The entire printed comment, including the copyrighted material, will be available in the public docket.

Public comments submitted on computer disks that are mailed or delivered to the docket will be transferred to EPA's electronic public docket. Public comments that are mailed or delivered to the docket will be scanned and placed in EPA's electronic public docket. Where practical, physical objects will be photographed, and the

photograph will be placed in EPA's electronic public docket along with a brief description written by the docket staff.

C. How and To Whom Do I Submit Comments?

You may submit comments electronically, by mail, or through hand delivery/courier. To ensure proper receipt by EPA, identify the appropriate docket ID number and specific PMN number or TME number in the subject line on the first page of your comment. Please ensure that your comments are submitted within the specified comment period. Comments received after the close of the comment period will be marked "late." EPA is not required to consider these late comments. If you wish to submit CBI or information that is otherwise protected by statute, please follow the instructions in Unit I.D. Do not use EPA Dockets or e-mail to submit CBI or information protected by statute.

1. *Electronically.* If you submit an electronic comment as prescribed in this unit, EPA recommends that you include your name, mailing address, and an e-mail address or other contact information in the body of your comment. Also include this contact information on the outside of any disk or CD ROM you submit, and in any cover letter accompanying the disk or CD ROM. This ensures that you can be identified as the submitter of the comment and allows EPA to contact you in case EPA cannot read your comment due to technical difficulties or needs further information on the substance of your comment. EPA's policy is that EPA will not edit your comment, and any identifying or contact information provided in the body of a comment will be included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment.

i. *EPA Dockets.* Your use of EPA's electronic public docket to submit comments to EPA electronically is EPA's preferred method for receiving comments. Go directly to EPA Dockets at *http://www.epa.gov/edocket,* and follow the online instructions for submitting comments. Once in the system, select" search," and then key in docket ID number OPPT–2003–0024. The system is an "anonymous access" system, which means EPA will not know your identity, e-mail address, or other contact information unless you provide it in the body of your comment.

ii. *E-mail.* Comments may be sent by e-mail to *oppt.ncic@epa.gov,* Attention: Docket ID Number OPPT–2003–0024 and PMN Number or TME Number. In contrast to EPA's electronic public docket, EPA's e-mail system is not an "anonymous access" system. If you send an e-mail comment directly to the docket without going through EPA's electronic public docket, EPA's e-mail system automatically captures your e-mail address. E-mail addresses that are automatically captured by EPA's e-mail system are included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket.

iii. *Disk or CD ROM.* You may submit comments on a disk or CD ROM that you mail to the mailing address identified in Unit I.C.2. These electronic submissions will be accepted in WordPerfect or ASCII file format. Avoid the use of special characters and any form of encryption.

2. *By mail.* Send your comments to: Document Control Office (7407M), Office of Pollution Prevention and Toxics (OPPT), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001.

3. *By hand delivery or courier.* Deliver your comments to: OPPT Document Control Office (DCO) in EPA East Building Rm. 6428, 1201 Constitution Ave., NW., Washington, DC. Attention: Docket ID Number OPPT–2003–0024 and PMN Number or TME Number. The DCO is open from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The telephone number for the DCO is (202) 564–8930.

D. How Should I Submit CBI To the Agency?

Do not submit information that you consider to be CBI electronically through EPA's electronic public docket or by e-mail. You may claim information that you submit to EPA as CBI by marking any part or all of that information as CBI (if you submit CBI on disk or CD ROM, mark the outside of the disk or CD ROM as CBI and then identify electronically within the disk or CD ROM the specific information that is CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

In addition to one complete version of the comment that includes any information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket and EPA's electronic public docket. If you submit the copy that does not contain CBI on disk or CD ROM, mark the outside of the disk or CD ROM clearly that it does not contain CBI. Information not marked as CBI will be included in the public docket and EPA's electronic public docket without prior notice. If you have any questions about CBI or the procedures for claiming CBI, please consult the technical person listed under **FOR FURTHER INFORMATION CONTACT.**

E. What Should I Consider as I Prepare My Comments for EPA?

You may find the following suggestions helpful for preparing your comments:

1. Explain your views as clearly as possible.

2. Describe any assumptions that you used.

3. Provide copies of any technical information and/or data you used that support your views.

4. If you estimate potential burden or costs, explain how you arrived at the estimate that you provide.

5. Provide specific examples to illustrate your concerns.

6. Offer alternative ways to improve the notice or collection activity.

7. Make sure to submit your comments by the deadline in this document.

8. To ensure proper receipt by EPA, be sure to identify the docket ID number assigned to this action and the specific PMN number you are commenting on in the subject line on the first page of your response. You may also provide the name, date, and **Federal Register** citation.

II. Why is EPA Taking this Action?

Section 5 of TSCA requires any person who intends to manufacture (defined by statute to include import) a new chemical (i.e., a chemical not on the TSCA Inventory to notify EPA and comply with the statutory provisions pertaining to the manufacture of new chemicals. Under sections 5(d)(2) and 5(d)(3) of TSCA, EPA is required to publish a notice of receipt of a PMN or an application for a TME and to publish periodic status reports on the chemicals under review and the receipt of notices of commencement to manufacture those chemicals. This status report, which covers the period from April 7, 2003 to April 25, 2003, consists of the PMNs and TMEs, both pending or expired, and the notices of commencement to manufacture a new chemical that the Agency has received under TSCA section 5 during this time period.

III. Receipt and Status Report for PMNs and TMEs

This status report identifies the PMNs and TMEs, both pending or expired, and the notices of commencement to manufacture a new chemical that the Agency has received under TSCA section 5 during this time period. If you are interested in information that is not included in the following tables, you may contact EPA as described in Unit II. to access additional non-CBI information that may be available.

In Table I of this unit, EPA provides the following information (to the extent that such information is not claimed as CBI) on the PMNs received by EPA during this period: the EPA case number assigned to the PMN; the date the PMN was received by EPA; the projected end date for EPA's review of the PMN; the submitting manufacturer; the potential uses identified by the manufacturer in the PMN; and the chemical identity.

I. 47 PREMANUFACTURE NOTICES RECEIVED FROM: 04/07/03 TO 04/25/03

Case No.	Received Date	Projected Notice End Date	Manufacturer/Importer	Use	Chemical
P–03–0469	04/07/03	07/06/03	CBI	(S) Adhesive used in exterior finishes	(G) Vinyl ester acrylate copolymer
P–03–0470	04/07/03	07/06/03	CBI	(G) Water-soluble packaging films (applies to both categories of use)	(G) Acrylic ester, polymer with ethenyl acetate, hydrolyzed, sodium salt
P–03–0471	04/07/03	07/06/03	CBI	(G) Additive for industrial applications	(G) Bis oxetanyl ether
P–03–0472	04/09/03	07/08/03	CBI	(G) Additive for coating formulations.	(G) Condensation polymer of anhydride and polyol.
P–03–0473	04/09/03	07/08/03	CBI	(G) Additive for coating formulations.	(G) Condensation polymer of anhydride and polyol.
P–03–0474	04/09/03	07/08/03	CBI	(G) Form control and wetting agent for waterborne coating, inks adhesive formulations	(G) Hydrophobically modified acetylenic glycol
P–03–0475	04/09/03	07/08/03	Bedoukian Research, Inc.	(S) Chemical intermediate	(G) 2h-pyran-2-one, substituted
P–03–0476	04/10/03	07/09/03	UCB Chemicals Corporation	(S) Resin for paints and coatings	(G) Hydroxyfunctional acrylic copolymer
P–03–0477	04/10/03	07/09/03	UCB Chemicals Corporation	(S) Resins for paints and coatings	(G) Modified alkaline epoxy resin
P–03–0478	04/10/03	07/09/03	CIBA Specialty Chemicals Corporation, Textile Effects	(S) Exhaust dyeing of polyester fibers; masterbatch for polymer incorporation	(G) Substituted-9, 10-dihydro-9,10-dioxo-anthracentyl-phenylhalo compound
P–03–0479	04/10/03	07/09/03	CIBA Specialty Chemicals Corporation, Textile Effects	(S) Exhaust dyeing of polyester fibers; masterbatch for polymer incorporation	(G) Substituted-9, 10-dihydro-9,10-dioxo-anthracentyl-phenylhalo compound
P–03–0480	04/10/03	07/09/03	CIBA Specialty Chemicals Corporation, Textile Effects	(S) Exhaust dyeing of polyester fibers; masterbatch for polymer incorporation	(G) Substituted-9, 10-dihydro-9,10-dioxo-anthracentyl-phenylhalo compound
P–03–0481	04/10/03	07/09/03	ATK Thiokol Propulsion	(S) Explosives	(G) 5,2,6-(iminomethyenimino)-1h-imidazo[4,5-b]pyrazine, octahydro-1,3,4,7,8,10-hexanitro-
P–03–0482	04/11/03	07/10/03	Cognis Corporation	(G) Lubricant	(S) Isooctanoic acid, 2-ethylhexyl ester*
P–03–0483	04/15/03	07/14/03	CBI	(G) Unsaturated polyester resin	(G) Medium reactive dicyclopentadiene polyester resin
P–03–0484	04/14/03	07/13/03	CBI	(S) Printing inks	(G) Fatty ester
P–03–0485	04/15/03	07/14/03	Na Industries, Inc.	(S) Thickner for coatings	(G) Polymer with 2-methyl-2-propenoic acid,alkyl 2-propenoate and modified poly(oxyethylene)
P–03–0486	04/17/03	07/16/03	CIBA Specialty Chemicals Corporation, Textile Effects	(S) Optical brightener additive for laundry detergent	(G) Sodium salt of a sulfonated triazine derivative
P–03–0487	04/16/03	07/15/03	AOC, LLC	(S) Vinyl ester component for laminating fiberglass reinforced plastic parts	(S) 2-propenenitrile, polymer with 1,3-butadiene, 3-carboxy-1-cyano-1-methylpropyl-terminated, reaction products with 2,2'-[(1-methylethylidene)bis [(2,6-dibromo-4,1-phenylene)oxymethylene]] bis[oxirane]-4,4'(1-methylethylidene) bis[2,6-dibromophenol] polymer, dimethacrylates (esters)
P–03–0488	04/22/03	07/21/03	CBI	(G) Unsaturated polyester resin	(G) Epoxy acrylate urethane modified polymer with maleic anhydrid
P–03–0489	04/16/03	07/15/03	Dow Corning Corporation	(G) Treating agent	(G) Poly (dimethyl) siloxane
P–03–0490	04/16/03	07/15/03	Dow Corning Corporation	(G) Treating agent	(G) Poly (dimethyl) siloxane
P–03–0491	04/16/03	07/15/03	Dow Corning Corporation	(G) Treating agent	(G) Poly(dimethyl) siloxane

I. 47 PREMANUFACTURE NOTICES RECEIVED FROM: 04/07/03 TO 04/25/03—Continued

Case No.	Received Date	Projected Notice End Date	Manufacturer/Importer	Use	Chemical
P–03–0492	04/16/03	07/15/03	Color Resources International, Co.	(S) Direct dye for paper color	(S) 2-naphthalenesulfonic acid, 3-[[4-[[4-(acetylamino)phenyl]azo-6-sulfo-1-naphthalenyl]azo]-6-[[2,4-diamino-5-sulfophenyl)azo]-4-hydroxy-, trisodium salt
P–03–0493	04/17/03	07/16/03	CBI	(S) Binder/tackifier for inks	(G) Phenolic modified hydrocarbon resin
P–03–0494	04/17/03	07/16/03	CBI	(S) Binder/tackifier for inks	(G) Phenolic modified hydrocarbon resin
P–03–0495	04/17/03	07/16/03	CBI	(S) Binder/tackifier for inks	(G) Phenolic modified hydrocarbon resin
P–03–0496	04/17/03	07/16/03	CBI	(S) Binder/tackifier for inks	(G) Phenolic modified hydrocarbon resin
P–03–0497	04/17/03	07/16/03	CBI	(S) Binder/tackifier for inks	(G) Phenolic modified hydrocarbon resin
P–03–0498	04/17/03	07/16/03	CBI	(S) Binder/tackifier for inks	(G) Phenolic modified hydrocarbon resin
P–03–0499	04/18/03	07/17/03	CBI	(G) Moisture curing polyurethane adhesives	(G) Isocyanate terminated urethane polymer
P–03–0500	04/21/03	07/20/03	3M Company	(S) Fluoroelastomer for molded parts	(G) Fluoroelastomer
P–03–0501	04/23/03	07/22/03	Forbo Adhesives, LLC	(G) Hot melt polyurethane adhesive	(G) Isocyanate functional polyester polyether urethane polymer
P–03–0502	04/23/03	07/22/03	Zeon Chemicals L.P.	(S) Pressure sentive adhesives; hot melt; rubber compounds; road markings	(S) Benzene, ethenyl-, polymer with cyclopentene and 1,3-pentadien
P–03–0504	04/24/03	07/23/03	CBI	(S) Ultraviolet (uv) absorber for engineering plastics - injection molding and extrusion; uv absorber for engineering plastics - for thermoplastic polyurethane	(S) Propanedioic acid, 2,2′-(1,4-phenylenedimethylidyne)bis-, tetraethyl ester
P–03–0505	04/22/03	07/21/03	Degussa Corporation	(S) Fiberglass treatment	(S) Siloxanes and silicones, 3-[[2-[[[3(or4)-(ethenylpheny-l)methyl]amino]ethyl]amino]propyl methoxy, methoxy-terminated, hydrochlorides
P–03–0506	04/25/03	07/24/03	CBI	(G) Intermediate	(G) Phosphate esters of acrylate
P–03–0507	04/24/03	07/23/03	The Dow Chemical Company	(S) Chemical intermediate	(G) Cyclic nitrile
P–03–0508	04/25/03	07/24/03	CBI	(G) Open, non-dispersive use.	(G) Water dispersible polyurethane
P–03–0509	04/25/03	07/24/03	CBI	(G) Open, non-dispersive use.	(G) Water dispersive polyurethane
P–03–0510	04/25/03	07/24/03	CBI	(G) Open, non-dispersive use.	(G) Water dispersible polyurethane
P–03–0511	04/25/03	07/24/03	CBI	(G) Open, non-dispersive use.	(G) Water dispersive polyurethane
P–03–0512	04/25/03	07/24/03	CBI	(G) Open, non-dispersive use.	(G) Water dispersive polyurethane
P–03–0513	04/25/03	07/24/03	CBI	(G) Open, non-dispersive use.	(G) Water dispersible polyurethane
P–03–0514	04/24/03	07/23/03	The Dow Chemical Company	(S) Chemical intermediate	(G) Cyclic nitrile aldehyde
P–03–0515	04/24/03	07/23/03	The Dow Chemical Company	(S) Chemical intermediate	(G) Cyclic nitrile aldehyde
P–03–0516	04/24/03	07/23/03	The Dow Chemical Company	(S) Chemical intermediate	(G) Cyclic nitrile aldehyde
P–03–0517	04/24/03	07/23/03	The Dow Chemical Company	(S) Chemical intermediate	(G) Cyclic nitrile aldehyde

In Table II of this unit, EPA provides the following information (to the extent that such information is not claimed as CBI) on the TMEs received:

II. 2 TEST MARKETING EXEMPTION NOTICES RECEIVED FROM: 04/07/03 TO 04/25/03

Case No.	Received Date	Projected Notice End Date	Manufacturer/Importer	Use	Chemical
T–03–0002	04/24/03	07/23/03	Forbo Adhesives, LLC	(G) Hot melt polyurethane adhesive	(G) Isocyanate functional polyester polyether urethane polymer
T–03–0003	04/24/03	07/23/03	Forbo Adhesives, LLC	(G) Hot melt polyurethane adhesive	(G) Isocyanate functional polyester polyether

In Table III of this unit, EPA provides the following information (to the extent that such information is not claimed as CBI) on the Notices of Commencement to manufacture received:

III. 28 NOTICES OF COMMENCEMENT FROM: 04/07/03 TO 04/25/03

Case No.	Received Date	Commencement/ Import Date	Chemical
P–01–0287	04/21/03	04/02/03	(S) Hexanoic acid, 3,5,5-trimethyl-, mixed tetraesters with 2-ethylhexanoic acid and pentaerythritol
P–01–0288	04/21/03	04/02/03	(S) Isononanoic acid, mixed tetraesters with 2-ethylhexanoic acid and pentaerythritol
P–01–0289	04/21/03	04/02/03	(S) Isononanoic acid, mixed tetraesters with 2-ethylhexanoic acid, pentaerythritol and 3,5,5-trimethylhexanoic
P–01–0762	04/16/03	03/28/03	(S) 1,9-cyclohexadecadiene
P–01–0819	04/14/03	03/17/03	(G) Alkane diols
P–01–0846	04/10/03	03/27/03	(G) Aqueous polyurethane dispersion
P–02–0284	04/18/03	09/09/02	(S) D-glucopyranose, oligomeric, branched undecyl glycosides
P–02–0373	04/10/03	03/29/03	(G) Anthracene dyestuff
P–02–0647	04/22/03	03/28/03	(G) Hydroxyl-terminated aliphatic polycarbonate
P–02–0885	04/23/03	03/22/03	(G) Disubstituted cresol
P–02–0887	04/23/03	03/22/03	(G) Phosphine oxide derivative
P–02–0897	04/10/03	03/27/03	(G) Polyurethane
P–02–0959	04/23/03	04/08/03	(G) Ethoxylate/urethane copolymer
P–02–0960	04/15/03	04/04/03	(G) Metallic acrylate
P–03–0041	04/08/03	02/18/03	(G) Alkyl silane methacrylate
P–03–0070	04/22/03	04/03/03	(G) Organomodified siloxane
P–03–0119	04/18/03	04/04/03	(G) Polyurethane resin
P–03–0120	04/08/03	04/02/03	(G) Acrylic emulsion
P–03–0131	04/25/03	03/27/03	(G) Polysilazane
P–03–0132	04/25/03	04/09/03	(G) Polysilazane
P–03–0141	04/08/03	03/31/03	(G) Alkyl ether
P–03–0155	04/16/03	04/11/03	(G) Co-poly-2-methyl-1,5-pentane isophthalimide
P–03–0156	04/16/03	04/11/03	(G) Co-poly-2-methyl-1,5-pentane isophthalimide
P–03–0157	04/16/03	04/11/03	(G) Co-poly-2-methyl-1,5-pentane isophthalimide
P–03–0171	04/22/03	04/02/03	(G) Epoxy-acrylic graft copolymer
P–03–0197	04/22/03	03/27/03	(G) Polyoxyethylene polyalkylarylphenylether sulfate ammonium salt
P–03–0211	04/15/03	04/04/03	(S) Siloxanes and silicones, methyl methoxy, polymers with methyl silsesquioxanes methoxy terminated, reaction products with methyl ethyl ketone 0,0′,0″-(methylsilylidyne)trioxime and 2,4,6-trimethyl-2,4,6-tris(3,3,3-trifluoropropyl)cyclotrisiloxane
P–03–0218	04/25/03	04/11/03	(G) Alkyl borate

List of Subjects

Environmental protection, Chemicals, Premanufacturer notices.

Dated: May 14, 2003.

Sandra R. Wilkins,

Acting Director, Information Management Division, Office of Pollution Prevention and Toxics.

[FR Doc. 03–12619 Filed 5–19–03; 8:45 am]

BILLING CODE 6560–50–S

EXPORT-IMPORT BANK

Notice of Open Special Meeting of the Advisory Committee of the Export-Import Bank of the United States (Ex-Im Bank)

SUMMARY: The Advisory Committee was established by Pub. L. 98–181, November 30, 1983, to advise the Export-Import Bank on its programs and to provide comments for inclusion in the reports of the Export-Import Bank of the United States to Congress.

Time and Place: Tuesday, June 3, 2003, at 9:30 a.m. to 1 p.m. The meeting will be held at Ex-Im Bank in Room 1143, 811 Vermont Avenue, NW., Washington, DC 20571.

Agenda: Agenda items include reports and discussion on the Advisory Committee's Sub-Committees on services and agriculture and of the Annual Competitiveness Report.

Public Participation: The meeting will be open to public participation, and the last 10 minutes will be set aside for oral questions or comments. Members of the public may also file written statement(s) before or after the meeting. If any person wishes auxiliary aids (such as a sign language interpreter) or other special accommodations, please contact, prior to May 29, 2003, Teri Stumpf, Room 1203, 811 Vermont Avenue., NW., Washington, DC 20571, Voice: (202) 565–3542 or TDD (202) 565–3377.

FOR FURTHER INFORMATION CONTACT: Teri Stumpf, Room 1203, 811 Vermont Ave., NW., Washington, DC 20571, (202) 565–3502.

Peter Saba,

General Counsel.

[FR Doc. 03–12603 Filed 5–19–03; 8:45 am]

BILLING CODE 6690–01–M

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collection(s) being Submitted to OMB for Review and Approval

May 8, 2003.

SUMMARY: The Federal Communications Commissions, as part of its continuing effort to reduce paperwork burden invites the general public and other Federal agencies to take this opportunity to comment on the following information collection, as required by the Paperwork Reduction Act of 1995, Public Law 104–13. An agency may not conduct or sponsor a collection of information unless it

displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a valid control number. Comments are requested concerning (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

DATES: Written comments should be submitted on or before June 19, 2003. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: Direct all comments to Les Smith, Federal Communications Commission, Room 1–A804, 445 12th Street, SW., Washington, DC 20554 or via the Internet to *Leslie.Smith@fcc.gov*.

FOR FURTHER INFORMATION CONTACT: For additional information or copies of the information collections contact Les Smith at (202) 418–0217 or via the Internet at *Leslie.Smith@fcc.gov*.

SUPPLEMENTARY INFORMATION:

OMB Control Number: 3060–0906.

Title: Annual DTV Report, FCC Form 317.

Form Number: FCC 317.

Type of Review: Revision of a currently approved collection.

Respondents: Business or other for-profit entities; Not-for-profit institutions.

Number of Respondents: 525.

Estimated Time per Response: 0.5–4.0 hours.

Frequency of Response: Recordkeeping; On occasion, annual, and license renewal reporting requirements.

Total Annual Burden: 1,150.

Total Annual Costs: $52,500.

Needs and Uses: The Commission has established a program for assessing and collecting fees for the provision of ancillary or supplementary services by commercial digital television licensees in compliance with Section 336(e)(1) of the Telecommunications Act of 1996. On October 11, 2001, the Commission adopted a Report and Order, *In the Matter of Ancillary or Supplementary Use of Digital Television Capacity by Noncommercial Licensees*, MM Docket No. 98–203, which extended this requirement to noncommercial educational television licensees. Licensees are required to report, using FCC 317, whether they provided ancillary or supplementary services, which services were provided, the services provided which are subject to a fee, gross revenues received from all feeable ancillary and supplementary services, and the amount of bitstream used to provide ancillary or supplementary service. This data are collected annually from digital television licensees. Licensees providing services subject to a fee will additionally be required annually to file FCC Form 159 (3060–0589) to remit the required fee. Each licensee is required to retain the records supporting the calculation of the fees due for three years from the date of remittance of fees. The data are used by FCC staff to ensure that DTV licensees comply with the requirements of Section 336(e) of the Communications Act.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. 03–12499 Filed 5–19–03; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL RESERVE SYSTEM

Change in Bank Control Notices; Acquisition of Shares of Bank or Bank Holding Companies

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. The notices also will be available for inspection at the office of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than June 5, 2003.

A. Federal Reserve Bank of Chicago (Phillip Jackson, Applications Officer) 230 South LaSalle Street, Chicago, Illinois 60690–1414:

1. J. Reilly, Glencoe, Illinois; to acquire voting shares of Hawthorn Corporation, Mundelein, Illinois, and thereby indirectly acquire Hawthorn Bank, Mundelein, Illinois.

Board of Governors of the Federal Reserve System, May 15, 2003.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. 03–12654 Filed 5–19–03; 8:45 am]

BILLING CODE 6210–01–S

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR Part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The application also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States. Additional information on all bank holding companies may be obtained from the National Information Center website at www.ffiec.gov/nic/.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than June 16, 2003.

A. Federal Reserve Bank of Dallas (W. Arthur Tribble, Vice President) 2200 North Pearl Street, Dallas, Texas 75201–2272:

1. Inwood Bancshares, Inc., Dallas, Texas, and Inwood Delaware, Inc., Dover, Delaware; to acquire 100 percent of WB&T Bancshares, Inc., Duncanville, Texas, and thereby indirectly acquire WB&T Delaware, Inc., Duncanville, Texas, and Western Bank & Trust, Duncanville, Texas.

Board of Governors of the Federal Reserve System, May 15, 2003.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. 03–12655 Filed 5–19–03; 8:45 am]

BILLING CODE 6210–01–S

FEDERAL RESERVE SYSTEM

Notice of Proposals to Engage in Permissible Nonbanking Activities or to Acquire Companies that are Engaged in Permissible Nonbanking Activities

The companies listed in this notice have given notice under section 4 of the Bank Holding Company Act (12 U.S.C. 1843) (BHC Act) and Regulation Y (12 CFR Part 225) to engage *de novo*, or to acquire or control voting securities or assets of a company, including the companies listed below, that engages either directly or through a subsidiary or other company, in a nonbanking activity that is listed in § 225.28 of Regulation Y (12 CFR 225.28) or that the Board has determined by Order to be closely related to banking and permissible for bank holding companies. Unless otherwise noted, these activities will be conducted throughout the United States.

Each notice is available for inspection at the Federal Reserve Bank indicated. The notice also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether the proposal complies with the standards of section 4 of the BHC Act. Additional information on all bank holding companies may be obtained from the National Information Center website at www.ffiec.gov/nic/.

Unless otherwise noted, comments regarding the applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than June 3, 2003.

A. Federal Reserve Bank of New York (Betsy Buttrill White, Senior Vice President) 33 Liberty Street, New York, New York 10045-0001:

1. Commerzbank Aktiengesellschaft, Frankfurt, Germany; to engage *de novo* through its subsidiary, Commerzbank Capital Markets Corporation, New York, New York, in serving as the investment adviser to and the general partner or general member of, and holding and placing equity interest in, certain investment funds which invest only in securities and other assets which are permitted to be held directly under the Bank Holding Company Act (the "BHC Act"), including acting as a commodity pool operator for private investment funds organized as commodity pools that invest in assets which a bank holding company is permitted to hold directly under the BHC Act, as permitted under Board precedent, *see First Security Corporation*, 85 Fed. Res. Bull. 207 (1999), *Dresdner Bank AG*, 84 Fed. Res. Bull. 361 (1998).

Board of Governors of the Federal Reserve System, May 14, 2003.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. 03–12501 Filed 5–19–03; 8:45 am]

BILLING CODE 6210–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[60Day–03–67]

Proposed Data Collections Submitted for Public Comment and Recommendations

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 for opportunity for public comment on proposed data collection projects, the Centers for Disease Control and Prevention (CDC) will publish periodic summaries of proposed projects. To request more information on the proposed projects or to obtain a copy of the data collection plans and instruments, call the CDC Reports Clearance Officer on (404) 498–1210.

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Send comments to Anne O'Connor, CDC Assistant Reports Clearance Officer, 1600 Clifton Road, MS-D24, Atlanta, GA 30333. Written comments should be received within 60 days of this notice.

Proposed Project: Evaluating the Effectiveness of the Asthma Intervention Program, Power Breathing—New—National Center for Environmental Health (NCEH), Centers for Disease Control and Prevention (CDC).

Background

The Centers for Disease Control and Prevention (CDC) seeks to conduct an evaluation of the effectiveness of the asthma intervention program, Power Breathing, in two school districts in Kansas City, KS and Fredericksburg, VA. The overall aim of this program, developed by the Asthma and Allergy Foundation of America, is to provide adolescents with a basic understanding of asthma and its management in a peer-friendly environment and to empower them to take control of their asthma on a personal level. The proposed data collection for the evaluation will provide feedback to CDC about the

usefulness and cost-effectiveness of this teen asthma intervention program. Sample participants will come from students, parents, program facilitators, and school personnel (school nurses and teachers) in the selected two school districts. Self-administered questionnaires will be given to students at baseline (pre-intervention program), immediately post-program, and at 6-months post-program, while parents receive baseline and 6-month post-program surveys. The student survey will focus on: knowledge, attitudes, and behaviors regarding their asthma; perception of their health status and quality of life; assessment of the program; and impact of the program on their asthma management skills. Parents will be asked about their child's asthma condition, assessment of the program, and cost-related issues for their child's asthma. Individual, one-time interviews will be conducted with program facilitators and school personnel regarding their perceptions of the intervention program and its impact on the students. Two focus groups will be conducted with students post-program to obtain additional, in-depth information about their perceptions of the program.

Respondents	Number of respondents	Number of responses/ respondent	Average burden/ response (in hrs.)	Total burden (in hrs.)
Students:				
Baseline	524	1	30/60	262
Post-program	524	1	15/60	131
6-month follow-up	524	1	30/60	262
Focus group	16	1	1	16
Parents:				
Baseline	524	1	10/60	87
6-month follow-up	524	1	15/60	131
Program facilitators:				
Interview	6	1	40/60	4
Program sessions	6	12	30/60	36
School nurses:				
School profile	6	1	10/60	1
Record abstraction	6	87	10/60	87
Interview	6	1	40/60	4
Teachers Interview	12	1	40/60	8
Total				1029

Dated: May 13, 2003.

Thomas Bartenfeld,

Acting Associate Director for Policy, Planning and Evaluation, Centers for Disease Control and Prevention.

[FR Doc. 03–12535 Filed 5–19–03; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

Endocrinologic and Metabolic Drugs Advisory Committee; Amendment of Notice

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

The Food and Drug Administration (FDA) is announcing an amendment to the notice of the meeting of the Endocrinologic and Metabolic Drugs Advisory Committee. This meeting was announced in the **Federal Register** of May 6, 2003 (68 FR 24003). The amendment is being made to reflect a change in the *Agenda* portion of the document. There are no other changes.

FOR FURTHER INFORMATION CONTACT: Dornette Spell-LeSane, Center for Drug Evaluation and Research (HFD–21), Food and Drug Administration, 5600 Fishers Lane (for express delivery, 5630 Fishers Lane, rm. 1093), Rockville, MD 20857, 301-827–7001, or FDA Advisory Committee Information Line, 1–800–741–8138 (301–443–0572 in the Washington, DC area), code 12536. Please call the Information Line for up-to-date information on this meeting.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of May 6, 2003 (68 FR 24003), FDA announced that a meeting of the Endocrinologic and Metabolic Drugs Advisory Committee would be held on June 10, 2003. On page 24003, in the third column, the *Agenda* portion of the meeting is amended to read as follows:

Agenda: The committee will discuss supplemental new drug application (sNDA) 19–604/S–033 HUMATROPE (somatropin recombinant deoxyribonucleic acid (rDNA) origin) for injection), Eli Lilly and Co., for the proposed indication of treatment of nongrowth hormone deficiency short stature.

The notice of this meeting is given under the Federal Advisory Committee Act (5 U.S.C. app. 2) and 21 CFR part 14, relating to advisory committees.

Dated: May 13, 2003.

Peter J. Pitts,

Associate Commissioner for External Relations.

[FR Doc. 03–12544 Filed 5–19–03; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

Obstetrics and Gynecology Devices Panel of the Medical Devices Advisory Committee; Notice of Meeting

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

This notice announces a forthcoming meeting of a public advisory committee of the Food and Drug Administration (FDA). At least one portion of the meeting will be closed to the public.

Name of the Committee: Obstetrics and Gynecology Devices Panel of the Medical Devices Advisory Committee.

General Function of the Committee: To provide advice and recommendations to the agency on FDA's regulatory issues.

Date and Time: The meeting will be held on June 9, 2003, from 12:30 p.m. to 5 p.m. and June 10, 2003, from 8:30 a.m. to 4:30 p.m.

Location: Hilton DC North—Gaithersburg, Salons A, B, and C, 620 Perry Pkwy., Gaithersburg, MD.

Contact: Joyce M. Whang, Center for Devices and Radiological Health (HFZ–470), Food and Drug Administration, 9200 Corporate Blvd., Rockville, MD 20850, 301–594–1180, or FDA Advisory Committee Information Line, 1–800–741–8138 (301–443–0572 in the Washington, DC area), code 12524. Please call the Information Line for up-to-date information on this meeting.

Agenda: On June 9, 2003, the committee will hear a presentation on post-approval studies and adverse events related to an intrapartum fetal pulse oximeter. On June 10, 2003, the committee will discuss, make recommendations, and vote on a premarket approval application for an endometrial ablation device. Background information, including the agenda and questions for the committee, will be available to the public 1 business day before the meeting on the Internet at *http://www.fda.gov/cdrh/panelmtg.html*. Material for the June 9, 2003, session will be posted on June 6, 2003. Material for the June 10, 2003, session will be posted on June 9, 2003.

Procedure: On June 9, 2003, from 2:30 p.m. to 5 p.m. and on June 10, 2003, from 8:30 a.m. to 4:30 p.m., the meeting is open to the public. Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Written submissions may be made to the contact person by May 30, 2003. Oral presentations from the public will be scheduled between approximately 3 p.m. and 4 p.m. on June 9, 2003, and between approximately 8:45 a.m. and 9:15 a.m. and 3 p.m. and 3:30 p.m. on June 10, 2003. Time allotted for each presentation may be limited. Those desiring to make formal oral presentations should notify the contact person before May 30, 2003, and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time requested to make their presentation.

Closed Committee Deliberations: On June 9, 2003, from 12:30 p.m. to 2:30 p.m., the meeting will be closed to permit discussion and review of trade secret and/or confidential commercial information (5 U.S.C. 552b(c)(4)) presented by a sponsor.

Persons attending FDA's advisory committee meetings are advised that the agency is not responsible for providing access to electrical outlets.

FDA welcomes the attendance of the public at its advisory committee meetings and will make every effort to accommodate persons with physical disabilities or special needs. If you require special accommodations due to a disability, please contact AnnMarie Williams, Conference Management Staff, at 301–594–1283, ext. 113, at least 7 days in advance of the meeting.

Notice of this meeting is given under the Federal Advisory Committee Act (5 U.S.C. app. 2).

Dated: May 13, 2003.

Peter J. Pitts,

Associate Commissioner for External Relations.

[FR Doc. 03–12678 Filed 5–19–03; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 99D–0674]

Guidance for Industry on INDs for Phase 2 and Phase 3 Studies; Chemistry, Manufacturing, and Controls Information; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of a guidance for industry entitled "INDs for Phase 2 and Phase 3 Studies; Chemistry, Manufacturing, and Controls Information." This guidance is intended to provide recommendations to sponsors of investigational new drug applications (INDs) on the chemistry, manufacturing, and controls documentation (CMC), including microbiology documentation, that should be submitted for phase 2 and 3 studies conducted under INDs. The guidance applies to human drugs (as defined in the Federal Food, Drug, and Cosmetic Act). The guidance does not apply to botanical drug products, protein drugs derived from natural sources or produced by the use of biotechnology, or other biologics.

DATES: Submit written or electronic comments on agency guidances at any time.

ADDRESSES: Submit written requests for single copies of this guidance to the Division of Drug Information (HFD–240), Center for Drug Evaluation and Research, Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857. Send one self-addressed adhesive label to assist that office in processing your requests. Submit written comments on the guidance to the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. Submit electronic comments to http://www.fda.gov/dockets/ecomments. See the **SUPPLEMENTARY INFORMATION** section for electronic access to the guidance document.

FOR FURTHER INFORMATION CONTACT: Charles Hoiberg, Center for Drug Evaluation and Research (HFD–800), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–5918.

SUPPLEMENTARY INFORMATION:

I. Background

FDA is announcing the availability of a guidance for industry entitled "INDs for Phase 2 and Phase 3 Studies; Chemistry, Manufacturing, and Controls Information." The guidance is intended to: (1) Ensure that sufficient data will be submitted to the agency to assess from the CMC perspective the safety and quality of the proposed clinical studies; (2) expedite the entry of new drugs into the marketplace by clarifying the type, extent, and reporting of CMC information for phase 2 and 3 studies; and (3) facilitate drug discovery and development.

In the **Federal Register** of April 21, 1999 (64 FR 19543), FDA announced the availability of a draft version of this guidance entitled "INDs for Phase 2 and 3 Studies of Drugs, Including Specified Therapeutic Biotechnology-Derived Products; Chemistry, Manufacturing, and Controls Content and Format." The April 1999 guidance gave interested persons an opportunity to submit comments through July 20, 1999. All comments received during the comment period have been carefully reviewed and, where appropriate, incorporated in the guidance. The format of the guidance has been reorganized to include the relevant headings and to follow the order recommended for an application submitted in the "Common Technical Document: Quality" format (see the Quality section of the guidance entitled "M4 Organization of the Common Technical Document for the Registration of Pharmaceuticals for Human Use" that FDA announced in the **Federal Register** on October 16, 2001 (66 FR 52634)). Additional information has been included to explain the difference between CMC safety information, which should be submitted in an information amendment, and corroborating information that can be submitted in an

annual report. As a result of the public comments and editorial changes, the guidance is clearer and more concise than the draft version. Furthermore, the scope of the guidance has been changed to exclude proteins and biologics. The agency is considering developing a separate guidance on INDs for these types of drugs.

This guidance contains information collection provisions that are subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520). The collections of information in this guidance were approved under OMB Control No. 0910–0014.

This guidance is being issued consistent with FDA's good guidance practices regulation (21 CFR 10.115). The guidance represents the agency's current thinking on CMC content and format of INDs for phase 2 and 3 studies of certain drugs. It does not create or confer any rights for or on any person and does not operate to bind FDA or the public. An alternative approach may be used if such approach satisfies the requirements of the applicable statutes and regulations.

II. Comments

Interested persons may submit to the Dockets Management Branch (see **ADDRESSES**) written or electronic comments on the guidance. Submit a single copy of electronic comments or two paper copies of any mailed comments, except that individuals may submit one paper copy. Comments are to be identified with the docket number found in brackets in the heading of this document. The guidance and received comments may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

III. Electronic Access

Persons with access to the Internet may obtain the document at either http://www.fda.gov/cder/guidance/index.htm or http://www.fda.gov/ohrms/dockets/default.htm.

Dated: May 13, 2003.

Jeffrey Shuren,

Assistant Commissioner for Policy.

[FR Doc. 03–12545 Filed 5–19–03; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Agency Information Collection Activities: Proposed Collection; Comment Request

In compliance with the requirement for the opportunity for public comment on proposed data collection projects (section 3506 (c)(2)(A) of Title 44, United States Code, as amended by the Paperwork Reduction Act of 1995, Public Law 104–13), the Health Resources and Services Administration (HRSA) publishes periodic summaries of proposed projects being developed for submission to OMB under the Paperwork Reduction Act of 1995. To request more information on the proposed project or to obtain a copy of the data collection plans and draft instruments, call the HRSA Reports Clearance Officer at (301) 443–1129.

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the Agency, including whether the information shall have practical utility; (b) the accuracy of the Agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Proposed Project: Ryan White Comprehensive AIDS Resources Emergency (CARE) Act and Minority AIDS Initiative (MAI) Survey: New

The purpose of the Ryan White CARE Act is to provide emergency assistance to localities that are disproportionately affected by the human immunodeficiency virus (HIV) epidemic and to make financial assistance available for the development, organization, coordination, and operation of more effective and cost-efficient systems for the delivery of essential services to persons with HIV disease. The CARE Act also provides grants to States, eligible metropolitan areas, community-based programs, and early intervention programs for the delivery of services to individuals and families with HIV infection.

The HRSA's HIV/AIDS Bureau (HAB) administers Titles I, II, III, and IV of the Ryan White CARE Act of 1990, as amended by the Ryan White CARE Act Amendments of 1996 and 2000 (codified under Title XXVI of the Public Health Service Act).

In 1998, President Clinton declared that HIV was a severe and ongoing health crisis among racial/ethnic minority communities. In response to the President's declaration, in fiscal year 1999 the Congressional Black Caucus (CBC) announced funding of a new initiative to address the disproportionate impact of HIV on African-American and Hispanic communities. Since 1999, the initial CBC initiative has been broadened to address the HIV epidemic in other racial and ethnic minority communities. Currently, the HRSA, the Centers for Disease Control and Prevention, the National Institutes of Health, the Office of Public Health and Sciences' Office of Minority Health, the Indian Health Service, and the Substance Abuse and Mental Health Services Administration allocate MAI funds. Direct service providers receiving MAI funds through HAB include organizations whose board of directors and/or direct service employees are racial/ethnic minorities, as well as organizations whose mission is focused on providing care to racial/ethnic minority populations.

The Fax Consultation Form for Minority Providers and Providers Receiving MAI Funds is designed to collect information from (1) service providers receiving MAI funds and (2) service providers funded by the Ryan White CARE Act whose board members or direct service staff are predominantly racial/ethnic minority members.

The Fax Consultation Form will address several over-arching questions including: (1) Have the MAI funds increased the number of persons served and the type and availability of services provided in communities of color; (2) have the MAI funds increased the capacity of minority and other CARE Act service providers to provide care and services in communities of color; (3) what has been the impact of MAI funded training, technical assistance (TA), and capacity building of minority and other organizations; and (4) what administrative impact have MAI funds had on CARE Act programs? Information obtained from the Fax Consultation Form for Minority Providers and Providers Receiving MAI Funds will be used to address the over-arching questions, plan new technical assistance and capacity development activities, and inform HAB policies and program management.

The Fax Consultation Form for Minority Providers and Providers Receiving MAI Funds will be transmitted by facsimile to service providers who meet the criteria for participating in the survey. Responding service providers will return their completed forms by the United States Postal Service, an Internet web-based response form, or by facsimile. The form will be designed to include check box responses and open-ended questions. The form will not require additional data to be collected or analyzed by the responding provider. The form will take no longer than 20 minutes to complete. The form will include questions regarding facilitators and barriers to CARE Act and MAI funding, training and technical assistance needs, ways in which the number of minority service providers engaged in HIV care might be increased, new and expanded activities funded by MAI, extent to which MAI funds have met the needs of racial/ethnic communities, the impact of MAI funds on the administration activities, and methods used to track MAI funds.

The estimated response burden for service providers is as follows:

Estimated number of provider respondents	Estimated responses per provider	Estimated minutes per response	Estimated total minutes burden	Estimated total hour burden
1,500	1	20	30,000	500

Send comments to Susan G. Queen, Ph.D., HRSA Reports Clearance Officer, Room 14–45, Parklawn Building, 5600 Fishers Lane, Rockville, MD 20857. Written comments should be received within 60 day of this notice.

Dated: May 13, 2003.

Jane M. Harrison,

Director, Division of Policy Review and Coordination.

[FR Doc. 03–12546 Filed 5–19–03; 8:45 am]

BILLING CODE 4165–15–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institute of Health

[OMB #0925–0479]

Proposed collection; Comment Request; Evaluation of the NIDCD Partnership Program

SUMMARY: In compliance with the requirement of Section 3507(a)(1)(D) of the Paperwork Reduction Act of 1995, for opportunity for public comment on proposed data collection projects, the National Institute on Deafness and Other Communication Disorders (NIDCD), the National Institutes of Health (NIH), will publish periodic summaries of proposed projects to be submitted to the Office of Management and Budget (OMB) for review and approval.

Proposed Collection

Title: Evaluation of the NIDCD Partnership Program.

Type of Information Collection Request: Extension.

Need and Use of Information Collection: The NIDCD was established to support biomedical and behavioral research and research training in hearing, smell, balance, taste, voice, speech and language. Although minorities and women will dominate the work force within the next decade, both groups are under represented in the science and health professional field. Because of this concern, the NIDCD, with assistance from the Office of Research on Minority Health, established the Partnership Program in 1994 to increase the number of minority scientists and health care professionals doing research on communication and communication disorders. The proposed survey will yield data about: (1) Reasons for participation in the program; (2) satisfaction of participants with the program and (3) how participation in the program has lead to the pursuit of a career in the health field. This survey will track the Partnership Program's success at increasing the number of women and minorities who are scientists.

Frequency of Response: One.

Affected Public: Individuals.

Type of Respondent: Partnership Program Participants and Applicants. The annual reporting burden is as follows:

Estimated Number of Respondents: 51;

Estimated Number of Responses per Respondent: 1;

Average Burden Hours Per Response: 30; and *Estimated Total Annual Burden Hours Requested:* 18.

The annualized cost to respondents is estimated at: $288. There are no Capital Costs to report. There are no Operating or Maintenance Costs to report.

(**Note:** The following table is acceptable for the Respondent and Burden Estimate Information, if appropriate, instead of the text as shown above.)

Type of respondents	Estimated number of respondents	Estimated number of responses per respondent	Average burden hours per response	Estimated total annual burden hours requested
New program participants	7	1	.30	3.5
Past program participants	14	1	.30	7
Program applicants	30	.1	.25	7.5
Total	51			18

Request for Comments: Written comments and/or suggestions from the public and affected agencies are invited on one or more of the following points: (1) Whether the proposed collection of information is necessary for fulfillment of the NIDCD mission, including whether the information will have practical utility; (2) the accuracy of the estimate of the burden of the proposed data collection, including the variety of the methodology; (3) ways to enhance the quality, utility, and clarity of the data collection and (4) ways to minimize the burden of the collection of information on the respondents, including appropriate use of automated collection techniques and information technology.

Direct Comments to OMB: Written comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time, should be directed to the Office of Management and Budget, Office of

Regulatory Affairs, New Executive Office Building, Room 10235, Washington, DC 20503, Attention: Desk Officer for NIH. To request more information on the proposed project or to obtain a copy of the data collection plans and instruments, contact: Mrs. Kay C. Johnson-Graham, EEO Officer, Office of Equal Employment Opportunity, NIDCD, NIH, Building 31, Room 3C08, 31 Center Drive, Bethesda, MD 20892, or call non-toll-free number 301–402–6415 or E-mail your request, including your address to: *kay_johnson@ms.nidcd.nih.gov.*

Comments Due Date: Comments regarding this information collection are best assured of having their full effect if received within 30-days of the date of this publication.

Dated: May 15, 2003.

W. David Kerr,

Executive Officer, NIDCD, National Institutes of Health.

[FR Doc. 03–12662 Filed 5–19–03; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Submission for OMB Review; Comment Request; Ethical Problems Encountered by Registered Nurses and Social Workers: Implications for Job Satisfaction and Retention

SUMMARY: Under the provisions of section 3507(a)(1)(D) of the Paperwork Reduction Act of 1995, the National Institutes of Health (NIH) has submitted to the Office of Management and Budget (OMB) a request to review and approve the information collected listed below. This proposed information collection was previously published in the **Federal Register** on January 16, 2003, page 2341 and allowed 60 days for public comment. Public comments were received. The purpose of this notice is to allow an additional 30 days for public comment. The National Institutes of Health may not conduct or sponsor, and the respondent is not required to respond to, an information collection that has been extended, revised, or implemented on or after October 1, 1995, unless it displays a currently valid OMB control number.

Proposed Collection

Title: The Ethical Problems Encountered by Nurses and Social Workers: Implications for Job Satisfaction and Retention.

Type of Information Collection Request: New.

Need and Use of Information Collected: The purposes of the study are (1) To identify common ethical problems experienced by nurses and social workers in health care settings; (2) to identify the relationships between selected individual and organizational factors and perceptions of ethics stress, job satisfaction, and retention; and (3) to identify the availability of ethics support services. The findings will provide valuable information concerning: (1) The extent to which ethical problems and stress are contributing to a shortage of health care providers; (2) the importance of ethics related content in nurses' and social workers' education; and (3) the importance of ethics support services.

Frequency of Response: Once.

Affected Public: Individuals; Academic Institutions; Business or for-profit; Not-for-profit organizations.

Type of Respondents: Registered Nurses and Social Workers. The annual reporting burden is as follows:

Estimated Number of Respondents: 3000;

Estimated Number of Responses per Respondent: 1;

Average Burden Hours Per Response: .33; and

Estimated Total Annual Burden Hours Requested: 990.

The annualized cost to respondents is estimated at: $75,000. There are not Capital Costs to report. There are no Operating or Maintenance Costs to report.

Direct Comments to OMB: Written comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time, should be directed to the: Office of Management and Budget, Office of Regulatory Affairs, New Executive Office Building, Room 10235, Washington, DC 20503, Attention: Desk Officer for NIH. To request more information on the proposed project or to obtain a copy of the data collection plans and instruments, contact: Connie Ulrich, RN, PhD., Principal Investigator, Department of Clinical Bioethics, Warrent G. Magnuson Clinical Center, Building 10, Room 1C118, Bethesda, MD 20892, or call non-toll-free number (301) 451–8338 or E-mail your request, including your address to *culrich@cc.nih.gov.*

Requested for Comments: Written comments and/or suggestions from the public and affected agencies are invited on one or more of the following points: (1) Whether the proposed collection of information is necessary for the proper performance of the function of the agency, including whether the information will have practical utility; (2) The accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) Ways to enhance the quality, utility, and clarity of the information to be collected; and (4) Ways to minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Comments Due Date: Comments regarding this information collection are best assured of having their full effect if received within 30 days of the date of this publication.

Dated: May 12, 2003.

David K. Henderson

Deputy Director, Warrent G. Magnuson Clinical Center, National Institutes of Health.

Ezekiel J. Emanual

Director, Department of Clinical Bioethics, Warren G. Magnuson Clinical Center, National Institutes of Health.

[FR Doc. 03–12663 Filed 5–19–03; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Diabetes and Digestive and Kidney Diseases; Notice of Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of meetings of the National Diabetes and Digestive and Kidney Diseases Advisory Council.

The meetings will be open to the public as indicated below, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contract Person listed below in advance of the meeting.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Diabetes and Digestive and Kidney Diseases Advisory Council.

Date: June 11–12, 2003.

Open: June 11, 2003, 8:30 a.m. to 1:30 p.m.

Agenda: To present the Director's Report and other scientific presentations.

Place: National Institutes of Health, Natcher Building, 45 Center Drive, Conference Room E1/E2, Bethesda, MD 20892.

Closed: June 12, 2003, 9:45 a.m. to 10:15 a.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Natcher Building, 45 Center Drive, Conference Room E1/E2, Bethesda, MD 20892.

Open: June 12, 2003, 10:15 a.m. to 12:00 p.m.

Agenda: Continuation of the Director's Report and other scientific presentations.

Place: National Institutes of Health, Natcher Building, 45 Center Drive, Conference Room E1/E2, Bethesda, MD 20892.

Contact Person: Robert D. Hammond, PhD, Director for Extramural Activities, National Institute of Diabetes and Digestive and Kidney Diseases, National Institutes of Health, 6707 Democracy Blvd, Room 715, MSC 5452, Bethesda, MD 20892–5452. (301)–594–8834, *hammond@extra.niddk.nih.gov.*

Name of Committee: National Diabetes and Digestive and Kidney Diseases Advisory Council Diabetes, Endocrinology, and Metabolic Diseases Subcommittee.

Date: June 11–12, 2003.

Open: June 11, 2003, 1:30 p.m. to 4:00 p.m.

Agenda: To review the Division's scientific and planning activities.

Place: National Institutes of Health, Natcher Building, 45 Center Drive, Conference Room E1/E2, Bethesda, MD 20892.

Closed: June 11, 2003, 4:00 p.m. to 5:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Natcher Building, 45 Center Drive, Conference Room E1/E2, Bethesda, MD 20892.

Closed: June 12, 2003, 8 a.m. to 8:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Natcher Building, 45 Center Drive, Conference Room E1/E2, Bethesda, MD 20892.

Open: June 12, 2003, 8:30 a.m. to 9:30 a.m.

Agenda: Continuation of the review of the Division's scientific and planning activities.

Place: National Institutes of Health, Natcher Building, 45 Center Drive, Conference Room E1/E2, Bethesda, MD 20892.

Contact Person: Robert D. Hammond, PhD, Director for Extramural Activities, National Institute of Diabetes and Digestive and Kidney Diseases, National Institutes of Health, 6707 Democracy Blvd, Room 715, MSC 5452, Bethesda, MD 20892–5452. (301) 594–8834, *hammondr@extra.niddk.nih.gov.*

Name of Committee: National Diabetes and Digestive and Kidney Diseases Advisory Council, Kidney, Urologic, and Hematologic Diseases Subcommittee.

Date: June 11–12, 2003.

Open: June 11, 2003, 1:30 p.m. to 5:30 p.m.

Agenda: To review the Division's scientific and planning activities.

Place: National Institutes of Health, Natcher Building, 45 Center Drive, Conference Room F1/F2, Bethesda, MD 20892.

Closed: June 12, 2003, 8 a.m. to 9:30 a.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Natcher Building, 45 Center Drive, Conference Room F1/F2, Bethesda, MD 20892.

Contact Person: Robert D. Hammond, PhD, Director for Extramural Activities, National Institute of Diabetes and Digestive and Kidney Diseases, National Institutes of Health, 6707 Democracy Blvd, Room 715, MSC 5452, Bethesda, MD 20892–5452, (301) 594–8834, *hammondr@extra.niddk.nih.gov.*

In the interest of security, NIH has instituted stringent procedures for entrance into the building by non-government employees. Persons without a government I.D. will need to show a photo I.D. and sign-in at the security desk upon entering the building.

Information is also available on the Institute's/Center's Home page: *http://www.niddk.nih.gov/fund/divisions/DEA/Council/coundesc.htm.*, where an agenda and any additional information for the meeting will be posted when available.

(Catalogue of Federal Domestic Assistance Program Nos. 93.847, Diabetes, Endocrinology and Metabolic Research; 93.848, Digestive Diseases and Nutrition Research; 93.849, Kidney Diseases, Urology and Hematology Research, National Institutes of Health, HHS)

Dated: May 13, 2003.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 03–12656 Filed 5–19–03; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of General Medical Sciences; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of General Medical Sciences Initial Review Group, Biomedical Research and Research Training Review Subcommittee B.

Date: June 12, 2003.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Four Points by Sheraton Bethesda, 8400 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Arthur L. Zachary, PhD, Scientific Review Administrator, Office of Scientific Review, National Institute of General Medical Sciences, National Institutes of Health, Natcher Building, Room 3AN–18, Bethesda, MD 20892, (301) 594–2886, *zacharya@nigms.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.375, Minority Biomedical Research Support; 93.821, Cell Biology and Biophysics Research; 93.859, Pharmacology, Physiology, and Biological Chemistry Research; 93.862, Genetics and Developmental Biology Research; 93.88, Minority Access to Research Careers; 93.96, Special Minority Initiatives, National Institutes of Health, HHS)

Dated: May 13, 2003.

LaVerne Y. Springfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 03–12657 Filed 5–19–03; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Child Health and Human Development; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Child Health and Human Development Special Emphasis Panel Activin and Inhibin Signaling and Reproduction.

Date: June 10, 2003.

Time: 2 p.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6100 Executive Boulevard, 5B01, Rockville, MD 20852, (Telephone Conference Call).

Contact Person: Jon M. Ranhand, PhD, Scientific Review Administrator, Division of Scientific Review, National Institute of Child Health and Human Development, NIH, 6100 Executive Blvd, Room 5E03, Bethesda, MD 20892, 301–435–6884.

(Catalogue of Federal Domestic Assistance Program Nos. 93.864, Population Research; 93.865, Research for Mothers and Children; 93.929, Center for Medical Rehabilitation Research; 93.209, Contraception and Infertility Loan Repayment Program, National Institutes of Health, HHS)

Dated: May 13, 2003.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 03–12658 Filed 5–19–02; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of General Medical Sciences; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal property.

Name of Committee: National Institute of General Sciences Initial Review Group, Biomedical Research and Research Training Review Subcommittee A.

Date: June 11, 2003.

Time: 8 a.m. to 6 p.m.

Agenda: To review and evaluate grant applications.

Place: Four Points by Sheraton, 8400 Wisconsin Ave, Bethesda, MD 20814.

Contact Person: Carole H. Latker, PhD, Scientific Review Administrator, Office of Scientific Review, National Institute of General Medical Sciences, National Institutes of Health, Natcher Building, Room 1AS–13, Bethesda, MD 20892, (301) 594–2848, *latkerc@nigms.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.375, Minority Biomedical Research Support; 93.821, Cell Biology and Biophysics Research; 93.859, Pharmacology, Physiology, and Biological Chemistry Research; 93.862, Genetics and Developmental Biology Research; 93.88, Minority Access to Research Careers; 93.96, Special Minority Initiatives, National Institutes of Health, HHS)

Dated: May 13, 2003.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 03–12659 Filed 5–19–03; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Center for Scientific Review Special Emphasis Panel, ZRG1 ICP–3 AIDS International Collaborative Programs.

Date: June 2–3, 2003.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Embassy Suites at the Chevy Chase Pavilion, 4300 Military Road, NW., Washington, DC 20015.

Contact Person: Hilary Sigmon, PhD, RN, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive 2, RM 5216, MSC 7852, Bethesda, MD 20892, (301) 594–6377, *sigmonh@csr.nih.gov.*

Name of Committee: Cardiovascular Sciences Integrated Review Group, Pathology A Study Section.

Date: June 3–4, 2003.

Time: 8:30 a.m. to 4 p.m.

Agenda: To review and evaluate grant applications.

Place: St. Gregory Hotel, 2033 M Street, NW., Washington, DC 20036.

Contact Person: Larry Pinkus, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4132, MSC 7802, Bethesda, MD 20892, (301) 435–1214.

Name of Committee: Oncological Sciences Integrated Review Group, Pathology B Study Section.

Date: June 3–6, 2003.

Time: 6 p.m. to 6 p.m.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn Georgetown, 2101 Wisconsin Avenue, NW., Washington, DC 20007.

Contact Person: Martin L. Padarathsingh, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6212, MSC 7804, Bethesda, MD 20892, (301) 435–1717.

Name of Committee: Center for Scientific Review Special Emphasis Panel, ZRG1 ELB(30)I:RR–03–002: NCRR Shared Instrumentation Grant.

Date: June 4–5, 2003.

Time: 8:30 a.m. to 12 p.m.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn Chevy Chase, 5520 Wisconsin Avenue, Chevy Chase, MD 20815.

Contact Person: Jerrold Fried, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4126, MSC 7802, Bethesda, MD 20892–7802, (301) 435–1777, *friedj@csr.nih.gov.*

Name of Committee: Molecular, Cellular and Developmental Neuroscience Integrated Review Group, Molecular, Cellular and Developmental Neurosciences 1.

Date: June 5–6, 2003.

Time: 8 a.m. to 6 p.m.

Agenda: To review and evaluate grant applications.

Place: Churchill Hotel, 1914 Connecticut Avenue, NW., Washington, DC 20009.

Contact Person: Carl D. Banner, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5212, MSC 7850, Bethesda, MD 20892, (301) 435–1251, *bannerc@drg.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, Aging, Neuroimaging and Cognition.

Date: June 5, 2003.

Time: 12 p.m. to 1:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Dana Plude, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (301) 435–1856, *pluded@csr.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine; 93.333, Clinical Research, 93.306; 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: May 13, 2003.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 03–12660 Filed 5–19–03; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[FEMA–1466–DR]

Alabama; Major Disaster and Related Determinations

AGENCY: Federal Emergency Management Agency, Emergency Preparedness and Response Directorate, Department of Homeland Security.

ACTION: Notice.

SUMMARY: This is a notice of the Presidential declaration of a major disaster for the State of Alabama (FEMA–1466-DR), dated May 12, 2003, and related determinations.

EFFECTIVE DATE: May 12, 2003.

FOR FURTHER INFORMATION CONTACT: Magda Ruiz, Recovery Division, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–2705.

SUPPLEMENTARY INFORMATION: Notice is hereby given that, in a letter dated May 12, 2003, the President declared a major disaster under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121–5206 (the Stafford Act), as follows:

I have determined that the damage in certain areas of the State of Alabama, resulting from severe storms, tornadoes, and flooding on May 5, 2003, and continuing, is of sufficient severity and magnitude to warrant a major disaster declaration under the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121–5206 (the Stafford Act). I, therefore, declare that such a major disaster exists in the State of Alabama.

In order to provide Federal assistance, you are hereby authorized to allocate from funds available for these purposes, such amounts as you find necessary for Federal disaster assistance and administrative expenses.

You are authorized to provide Individual Assistance and Public Assistance in the designated areas, and Hazard Mitigation throughout the State. Direct Federal Assistance is authorized. Consistent with the requirement that Federal assistance be supplemental, any Federal funds provided under the Stafford Act for Public Assistance, direct Federal assistance, Hazard Mitigation, and the Other Needs Assistance under section 408 of the Stafford Act will be limited to 75 percent of the total eligible costs

Further, you are authorized to make changes to this declaration to the extent allowable under the Stafford Act.

The time period prescribed for the implementation of section 310(a), Priority to Certain Applications for Public Facility and Public Housing Assistance, 42 U.S.C. 5153, shall be for a period not to exceed six months after the date of this declaration.

The Federal Emergency Management Agency (FEMA) hereby gives notice that pursuant to the authority vested in the Under Secretary for Emergency Preparedness and Response, Department of Homeland Security, under Executive Order 12148, as amended, Gracia Szczech, of FEMA is appointed to act as the Federal Coordinating Officer for this declared disaster.

I do hereby determine the following areas of the State of Alabama to have been affected adversely by this declared major disaster:

Bibb, Blount, Calhoun, Cullman, DeKalb, Etowah, Jackson, Jefferson, Madison, Marshall, Morgan, Shelby, St. Clair, Talladega, Tuscaloosa, and Walker Counties for Individual Assistance.

DeKalb, Jackson, Limestone, and Madison Counties for Public Assistance.

All counties within the State of Alabama are eligible to apply for assistance under the Hazard Mitigation Grant Program.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 83.537, Community Disaster Loans; 83.538, Cora Brown Fund Program; 83.539, Crisis Counseling; 83.540, Disaster Legal Services Program; 83.541, Disaster Unemployment Assistance (DUA); 83.556, Fire Management Assistance; 83.558, Individual and Household Housing; 83.559, Individual and Household Disaster Housing Operations; 83.560, Individual and Household Program-Other Needs; 83.544, Public Assistance Grants; 83.548, Hazard Mitigation Grant Program.)

Michael D. Brown,

Under Secretary, Emergency Preparedness and Response.

[FR Doc. 03–12587 Filed 5–19–03; 8:45 am]

BILLING CODE 6718–02–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[FEMA–1466–DR]

Alabama; Amendment No. 1 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency, Emergency Preparedness and Response Directorate, Department of Homeland Security.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster declaration for the State of Alabama, (FEMA–1466–DR), dated May 12, 2003, and related determinations.

EFFECTIVE DATE: May 13, 2003.

FOR FURTHER INFORMATION CONTACT: Magda Ruiz, Recovery Division, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–2705.

SUPPLEMENTARY INFORMATION: The notice of a major disaster declaration for the State of Alabama is hereby amended to include the following areas among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of May 12, 2003:

Barbour, Bullock, Chambers, Cherokee, Clay, Cleburne, Colbert, Coosa, Lauderdale, Lawrence, Lee, Macon, Randolph, Russell, and Tallapoosa Counties for Individual Assistance.

Limestone County for Individual Assistance (already designated for Public Assistance).

Jefferson, Marshall, St. Clair, and Talladega Counties for Public Assistance (already designated for Individual Assistance).

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 83.537, Community Disaster Loans; 83.538, Cora Brown Fund Program; 83.539, Crisis Counseling; 83.540, Disaster Legal Services Program; 83.541, Disaster Unemployment Assistance (DUA); 83.556, Fire Management Assistance; 83.558, Individual and Household Housing; 83.559, Individual and Household Disaster Housing Operations; 83.560, Individual and Household Program-

Other Needs, 83.544, Public Assistance Grants; 83.548, Hazard Mitigation Grant Program.)

Michael D. Brown,

Under Secretary, Emergency Preparedness and Response.

[FR Doc. 03–12588 Filed 5–19–03; 8:45 am]

BILLING CODE 6718–02–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[FEMA–1462–DR]

Kansas; Amendment No. 1 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency, Emergency Preparedness and Response Directorate, Department of Homeland Security.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster declaration for the State of Kansas, (FEMA–1462–DR), dated May 6, 2003, and related determinations.

EFFECTIVE DATE: May 9, 2003.

FOR FURTHER INFORMATION CONTACT: Magda Ruiz, Recovery Division, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–2705.

SUPPLEMENTARY INFORMATION: The notice of a major disaster declaration for the State of Kansas is hereby amended to include Categories C through G under the Public Assistance program for the following areas among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of May 6, 2003:

Cherokee, Crawford, Labette, Neosho and Wyandotte for Categories C through G under the Public Assistance program (already designated for Individual Assistance, debris removal (Category A) and emergency protective measures (Category B) under the Public Assistance program.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 83.537, Community Disaster Loans; 83.538, Cora Brown Fund Program; 83.539, Crisis Counseling; 83.540, Disaster Legal Services Program; 83.541, Disaster Unemployment Assistance (DUA); 83.556, Fire Management Assistance; 83.558, Individual and Household Housing; 83.559, Individual and Household Disaster Housing Operations; 83.560 Individual and Household Program-Other Needs, 83.544, Public Assistance Grants; 83.548, Hazard Mitigation Grant Program.)

Michael D. Brown,

Undersecretary, Emergency Preparedness and Response.

[FR Doc. 03–12583 Filed 5–19–03; 8:45 am]

BILLING CODE 6718–02–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[FEMA–1449–DR]

Federated States of Micronesia; Amendment No. 2 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency, Emergency Preparedness and Response Directorate, Department of Homeland Security.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster declaration for the Federated States of Micronesia (FEMA–1449–DR), dated January 6, 2003, and related determinations.

EFFECTIVE DATE: May 9, 2003.

FOR FURTHER INFORMATION CONTACT: Magda Ruiz, Recovery Division, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–2705.

SUPPLEMENTARY INFORMATION: The notice of a major disaster declaration for the Federated States of Micronesia is hereby amended to include the Hazard Mitigation Grant Program for the following areas among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of January 6, 2003:

Chuuk, Kosrae, Pohnpei and Yap States are eligible to apply for assistance under the Hazard Mitigation Grant program.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 83.537, Community Disaster Loans; 83.538, Cora Brown Fund Program; 83.539, Crisis Counseling; 83.540, Disaster Legal Services Program; 83.541, Disaster Unemployment Assistance (DUA); 83.556, Fire Management Assistance; 83.558, Individual and Household Housing; 83.559, Individual and Household Disaster Housing Operations; 83.560 Individual and Household Program-Other Needs, 83.544, Public Assistance Grants; 83.548, Hazard Mitigation Grant Program.)

Michael D. Brown,

Undersecretary, Emergency Preparedness and Response.

[FR Doc. 03–12582 Filed 5–19–03; 8:45 am]

BILLING CODE 6718–02–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[FEMA–1463–DR]

Missouri; Amendment No. 1 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency, Emergency Preparedness and Response Directorate, Department of Homeland Security.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster declaration for the State of Missouri, (FEMA–1463–DR), dated May 6, 2003, and related determinations.

EFFECTIVE DATE: May 9, 2003.

FOR FURTHER INFORMATION CONTACT: Magda Ruiz, Recovery Division, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–2705.

SUPPLEMENTARY INFORMATION: The notice of a major disaster declaration for the State of Missouri is hereby amended to include the following areas among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of May 6, 2003:

Bollinger, Cape Girardeau, Franklin, Jefferson, Perry, Saint Francois, Sainte Genevieve, Saint Louis, Scott, Stoddard, Washington Counties for Individual Assistance.

Cape Girardeau and Jefferson Counties for debris removal (Cateogry A) and emergency protective measures (Category B) under the Public Assistance program.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 83.537, Community Disaster Loans; 83.538, Cora Brown Fund Program; 83.539, Crisis Counseling; 83.540, Disaster Legal Services Program; 83.541, Disaster Unemployment Assistance (DUA); 83.556, Fire Management Assistance; 83.558, Individual and Household Housing; 83.559, Individual and Household Disaster Housing Operations; 83.560 Individual and Household Program-Other Needs, 83.544, Public Assistance Grants; 83.548, Hazard Mitigation Grant Program.)

Michael D. Brown,

Undersecretary, Emergency Preparedness and Response.

[FR Doc. 03–12584 Filed 5–19–03; 8:45 am]

BILLING CODE 6718–02–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[FEMA–1467–DR]

New York; Major Disaster and Related Determinations

AGENCY: Federal Emergency Management Agency, Emergency Preparedness and Response Directorate, Department of Homeland Security.

ACTION: Notice.

SUMMARY: This is a notice of the Presidential declaration of a major disaster for the State of New York (FEMA–1467–DR), dated May 12, 2003, and related determinations.

EFFECTIVE DATE: May 12, 2003.

FOR FURTHER INFORMATION CONTACT: Magda Ruiz, Recovery Division, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–2705.

SUPPLEMENTARY INFORMATION: Notice is hereby given that, in a letter dated May 12, 2003, the President declared a major disaster under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121–5206 (the Stafford Act), as follows:

I have determined that the damage in certain areas of the State of New York, resulting from an ice storm on April 3–5, 2003, is of sufficient severity and magnitude to warrant a major disaster declaration under the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121–5206 (the Stafford Act). I, therefore, declare that such a major disaster exists in the State of New York.

In order to provide Federal assistance, you are hereby authorized to allocate from funds available for these purposes, such amounts as you find necessary for Federal disaster assistance and administrative expenses.

You are authorized to provide Individual Assistance and Public Assistance in the designated areas, and Hazard Mitigation throughout the State. Consistent with the requirement that Federal assistance be supplemental, any Federal funds provided under the Stafford Act for Public Assistance, Hazard Mitigation, and the Other Needs Assistance under Section 408 of the Stafford Act will be limited to 75 percent of the total eligible costs.

Further, you are authorized to make changes to this declaration to the extent allowable under the Stafford Act.

The time period prescribed for the implementation of section 310(a), Priority to Certain Applications for Public Facility and Public Housing Assistance, 42 U.S.C. 5153, shall be for a period not to exceed six months after the date of this declaration.

The Federal Emergency Management Agency (FEMA) hereby gives notice that pursuant to the authority vested in the Under Secretary for Emergency Preparedness and Response, Department of Homeland Security, under Executive Order 12148, as amended, Marianne Jackson, of FEMA is appointed to act as the Federal Coordinating Officer for this declared disaster.

I do hereby determine the following areas of the State of New York to have been affected adversely by this declared major disaster:

Cayuga, Monroe, Oneida, Onondaga, Ontario, Oswego, Seneca, and Wayne Counties for Individual Assistance.

Cayuga, Chenango, Monroe, Oneida, Onondaga, Ontario, Oswego, Wayne, and Yates Counties for Public Assistance.

All counties within the State of New York are eligible to apply for assistance under the Hazard Mitigation Grant Program.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 83.537, Community Disaster Loans; 83.538, Cora Brown Fund Program; 83.539, Crisis Counseling; 83.540, Disaster Legal Services Program; 83.541, Disaster Unemployment Assistance (DUA); 83.556, Fire Management Assistance; 83.558, Individual and Household Housing; 83.559, Individual and Household Disaster Housing Operations; 83.560, Individual and Household Program-Other Needs; 83.544, Public Assistance Grants; 83.548, Hazard Mitigation Grant Program.)

Michael D. Brown,

Under Secretary, Emergency Preparedness and Response.

[FR Doc. 03–12589 Filed 5–19–03; 8:45 am]

BILLING CODE 6718–02–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[FEMA–1465–DR]

Oklahoma; Major Disaster and Related Determinations

AGENCY: Federal Emergency Management Agency, Emergency Preparedness and Response Directorate, Department of Homeland Security.

ACTION: Notice.

SUMMARY: This is a notice of the Presidential declaration of a major disaster for the State of Oklahoma (FEMA–1465–DR), dated May 10, 2003, and related determinations.

EFFECTIVE DATES: May 10, 2003.

FOR FURTHER INFORMATION CONTACT: Magda Ruiz, Recovery Division, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–2705.

SUPPLEMENTARY INFORMATION: Notice is hereby given that, in a letter dated May 10, 2003, the President declared a major disaster under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121–5206 (the Stafford Act), as follows:

I have determined that the damage in certain areas of the State of Oklahoma, resulting from severe storms and tornadoes on May 8, 2003, and continuing, is of sufficient severity and magnitude to warrant a major disaster declaration under the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121–5206 (the Stafford Act). I, therefore, declare that such a major disaster exists in the State of Oklahoma.

In order to provide Federal assistance, you are hereby authorized to allocate from funds available for these purposes, such amounts as you find necessary for Federal disaster assistance and administrative expenses.

You are authorized to provide Individual Assistance and assistance for debris removal (Category A) and emergency protective measures (Category B) under the Public Assistance program in the designated areas, and Hazard Mitigation throughout the State, and any other forms of assistance under the Stafford Act you may deem appropriate subject to completion of Preliminary Damage Assessments. Consistent with the requirement that Federal assistance be supplemental, any Federal funds provided under the Stafford Act for Public Assistance, Hazard Mitigation, and the Other Needs Assistance under section 408 of the Stafford Act will be limited to 75 percent of the total eligible costs.

Further, you are authorized to make changes to this declaration to the extent allowable under the Stafford Act.

The time period prescribed for the implementation of section 310(a), Priority to Certain Applications for Public Facility and Public Housing Assistance, 42 U.S.C. 5153, shall be for a period not to exceed six months after the date of this declaration.

The Federal Emergency Management Agency (FEMA) hereby gives notice that pursuant to the authority vested in the Undersecretary for Emergency Preparedness and Response, Department of Homeland Security, under Executive Order 12148, as amended, Justin DeMello, of FEMA is appointed to act as the Federal Coordinating Officer for this declared disaster.

I do hereby determine the following areas of the State of Oklahoma to have been affected adversely by this declared major disaster:

Canadian, Cleveland, Grady, Kingfisher, Lincoln, Logan, McClain, Oklahoma, and Pottawatomie Counties for Individual Assistance.

Cleveland and Oklahoma Counties for debris removal (Category A) and emergency protective measures (Category B) under the Public Assistance program.

All counties within the State of Oklahoma are eligible to apply for assistance under the Hazard Mitigation Grant Program.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 83.537, Community Disaster Loans; 83.538, Cora Brown Fund Program; 83.539, Crisis Counseling; 83.540, Disaster Legal Services Program; 83.541, Disaster Unemployment Assistance (DUA); 83.556, Fire Management Assistance; 83.558, Individual and Household Housing; 83.559, Individual and Household Disaster Housing Operations; 83.560, Individual and Household Program-Other Needs; 83.544, Public Assistance Grants; 83.548, Hazard Mitigation Grant Program.)

Michael D. Brown,

Undersecretary, Emergency Preparedness and Response.

[FR Doc. 03–12586 Filed 5–19–03; 8:45 am]

BILLING CODE 6718–02–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[FEMA–1464–DR]

Tennessee; Major Disaster and Related Determinations

AGENCY: Federal Emergency Management Agency, Emergency Preparedness and Response Directorate, Department of Homeland Security.

ACTION: Notice.

SUMMARY: This is a notice of the Presidential declaration of a major disaster for the State of Tennessee (FEMA–1464–DR), dated May 8, 2003, and related determinations.

EFFECTIVE DATE: May 8, 2003.

FOR FURTHER INFORMATION CONTACT: Magda Ruiz, Recovery Division, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–2705.

SUPPLEMENTARY INFORMATION: Notice is hereby given that, in a letter dated May 8, 2003, the President declared a major disaster under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121–5206 (the Stafford Act), as follows:

I have determined that the damage in certain areas of the State of Tennessee, resulting from severe storms, tornadoes, and flooding on May 4, 2003, and continuing, is of sufficient severity and magnitude to warrant a major disaster declaration under the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121–5206 (the Stafford Act). I, therefore, declare that such a major disaster exists in the State of Tennessee.

In order to provide Federal assistance, you are hereby authorized to allocate from funds available for these purposes, such amounts as you find necessary for Federal disaster assistance and administrative expenses.

You are authorized to provide Individual Assistance and Public Assistance in the designated areas, and Hazard Mitigation throughout the State. Consistent with the requirement that Federal assistance be supplemental, any Federal funds provided under the Stafford Act for Public Assistance, Hazard Mitigation, and the Other Needs Assistance under section 408 of the Stafford Act will be limited to 75 percent of the total eligible costs.

Further, you are authorized to make changes to this declaration to the extent allowable under the Stafford Act.

The time period prescribed for the implementation of section 310(a), Priority to Certain Applications for Public Facility and Public Housing Assistance, 42 U.S.C. 5153, shall be for a period not to exceed six months after the date of this declaration.

The Federal Emergency Management Agency (FEMA) hereby gives notice that pursuant to the authority vested in the Undersecretary for Emergency Preparedness and Response, Department of Homeland Security, under Executive Order 12148, as amended, Michael E. Bloch, of FEMA is appointed to act as the Federal Coordinating Officer for this declared disaster.

I do hereby determine the following areas of the State of Tennessee to have been affected adversely by this declared major disaster:

Carroll, Cheatham, Chester, Crockett, Dickson, Dyer, Gibson, Hardeman, Haywood, Henderson, Henry, Houston, Lake, Lauderdale, Madison, Montgomery, Obion, Robertson, Stewart, and Weakley Counties for Individual Assistance.

Dyer, Madison, Montgomery, and Weakley Counties for Public Assistance.

All counties within the State of Tennessee are eligible to apply for assistance under the Hazard Mitigation Grant Program.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 83.537, Community Disaster Loans; 83.538, Cora Brown Fund Program; 83.539, Crisis Counseling; 83.540, Disaster Legal Services Program; 83.541, Disaster Unemployment Assistance (DUA); 83.556, Fire Management Assistance; 83.558, Individual and Household Housing; 83.559, Individual and Household Disaster Housing Operations; 83.560 Individual and Household Program-Other Needs, 83.544, Public Assistance Grants; 83.548, Hazard Mitigation Grant Program.)

Michael D. Brown,

Undersecretary, Emergency Preparedness and Response.

[FR Doc. 03–12585 Filed 5–19–03; 8:45 am]

BILLING CODE 6718–02–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

St. Catherine Creek National Wildlife Refuge

AGENCY: Fish and Wildlife Service.

ACTION: Notice of intent to prepare a comprehensive conservation plan and environmental assessment for St. Catherine Creek National Wildlife Refuge, located in Adams County, Mississippi.

SUMMARY: This notice advises the public that the Fish and Wildlife Service, Southeast Region, intends to gather information necessary to prepare a comprehensive conservation plan and environmental assessment pursuant to the National Environmental Policy Act and its implementing regulations. The Service is furnishing this notice in compliance with the National Refuge System Administration Act of 1966, as amended (16 U.S.C. 668dd *et seq.*), to achieve the following:

(1) Advise other agencies and the public of our intentions, and

(2) Obtain suggestions and information on the scope of issues to include in the environmental document.

Special mailings, newspaper articles, and other media announcements will be used to inform the public and government and non-government agencies of the opportunities for input throughout the planning process.

ADDRESSES: Address comments, questions, and requests for more information to the following: Laura King, Natural Resource Planner, Central Mississippi National Wildlife Refuge Complex, 728 Yazoo Refuge Road, Hollandale, Mississippi 38748; Telephone 662–839–2638; E-Mail *Laura_King@fws.gov*. Additional information concerning this refuge may be found at the Service's Internet site *http://www.fws.gov*.

SUPPLEMENTARY INFORMATION: By Federal law, all lands within the National Wildlife Refuge System are to be managed in accordance with an approved comprehensive conservation plan. The plan guides management decisions and identifies refuge goals, long-range objectives, and strategies for achieving refuge purposes. The planning process will consider many elements including wildlife and habitat management, public recreational activities, and cultural resource protection. Public input into the planning process is essential.

St. Catherine Creek National Wildlife Refuge was established in January 1990, to preserve, improve, and create habitat for waterfowl. The refuge encompasses 24,125 acres and is located in the western section of Adams County in southwest Mississippi, 7 miles south of Natchez, Mississippi. The western boundary of the refuge is the Mississippi River with the eastern boundary following the bluffs and the southern boundary, the Homochitto River.

Authority: This notice is published under the authority of the National Wildlife Refuge System Improvement Act of 1997, Pub. L. 105–57.

Dated: May 3, 2003.

J. Mitch King,

Acting Regional Director.

[FR Doc. 03–12536 Filed 5–19–03; 8:45 am]

BILLING CODE 4310–55–M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Notice of Availability of the Final Comprehensive Conservation Plans for the Five Refuges in the Rhode Island National Wildlife Refuge Complex

AGENCY: U.S. Fish and Wildlife Service, Department of the Interior.

ACTION: Notice of availability.

SUMMARY: The U.S. Fish and Wildlife Service (Service) announces that final comprehensive conservation plans (CCP) are available for each of the five refuges in the Rhode Island National Wildlife Refuge (NWR) Complex: Trustom Pond NWR, Block Island NWR, Sachuest Point NWR, Ninigret NWR, and John H. Chafee NWR at Pettaquamscutt Cove. These CCPs, prepared pursuant to the National Wildlife Refuge System Administration Act of 1966, as amended by the National Wildlife Refuge System Improvement Act of 1997 (16 U.S.C. 6688dd *et seq.*), and the National Environmental Policy Act of 1969, describe how the Service intends to manage these refuges over the next 15 years.

ADDRESSES: Copies of the CCPs are available on compact diskette or hard copy, and can be obtained by writing: Rhode Island NWR Complex, 3769D Old Post Road, Charlestown, Rhode Island, 02813, 401–364–9124. Copies of the CCPs can also be accessed and downloaded at the following Web site address: *http://northeast.fws.gov/planning*.

FOR FURTHER INFORMATION CONTACT: Charlie Vandemoer, Refuge Manager, at the address above, or Nancy McGarigal, Planning Team Leader, U.S. Fish and Wildlife Service, Northeast Regional Office, 300 Westgate Center Drive, Hadley, Massachusetts, 01035, (413) 253–8562.

SUPPLEMENTARY INFORMATION: A CCP is required by the National Wildlife Refuge System Administration Act of 1966, as amended by the National Wildlife Refuge System Improvement Act of 1997 (16 U.S.C. 6688dd *et seq.*). The purpose in developing CCPs is to provide refuge managers with a 15-year strategy for achieving refuge purposes and contributing toward the mission of the National Wildlife Refuge System, consistent with sound principles of fish and wildlife science, conservation, legal mandates, and Service policies. In addition to outlining broad management direction on conserving wildlife and their habitats, the CCPs identify wildlife-dependent recreational opportunities available to the public, including opportunities for hunting, fishing, wildlife observation and photography, and environmental education and interpretation. These CCPs will be reviewed and updated at least every 15 years in accordance with the National Wildlife Refuge System Administration Act of 1966, as amended by the National Wildlife Refuge System Improvement Act of 1997 (16 U.S.C. 6688dd *et seq.*), and the National Environmental Policy Act of 1969.

Dated: September 9, 2002.

Dr. Mamie A. Parker,

Regional Director, U.S. Fish and Wildlife Service.

Note: This document was received at the Office of the Federal Register on May 15, 2003.

[FR Doc. 03–12630 Filed 5–19–03; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[AK–962–1410–HY–P; AA–6649–C, ALA–2]

Alaska Native Claims Selection

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of decision approving lands for conveyance.

SUMMARY: As required by 43 CFR 2650.7(d), notice is hereby given that an appealable decision approving lands for conveyance pursuant to the Alaska Native Claims Settlement Act will be issued to Atxam Corporation for lands in T. 52 S., R. 73 W., and T. 53 S., R. 79 W., Seward Meridian, Alaska, located in the vicinity of Atka, Alaska, aggregating approximately 42 acres. Notice of this decision will also be published four times in the Anchorage Daily News.

DATES: The time limits for filing an appeal are:

1. Any party claiming a property interest which is adversely affected by the decision shall have until June 19, 2003 to file an appeal.

2. Parties receiving service of the decision by certified mail shall have 30 days from the date of receipt to file an appeal.

Parties who do not file an appeal in accordance with the requirements of 43 CFR part 4, subpart E, shall be deemed to have waived their rights.

ADDRESSES: A copy of the decision may be obtained from: Bureau of Land Management, Alaska State Office, 222 West Seventh Avenue, #13, Anchorage, Alaska 99513–7599.

FOR FURTHER INFORMATION CONTACT: Barbara Waldal, by phone at (907) 271–5669, or by e-mail at *barbara_waldal@ak.blm.gov*.

Barbara Opp Waldal,

Land Law Examiner, Branch of ANCSA Adjudication.

[FR Doc. 03–12511 Filed 5–19–03; 8:45 am]

BILLING CODE 4310–$$–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[CA–650–01–1220–JG–064B]

Closure Order for Motorized Vehicle Use, Furnace Creek Canyon Road, Mono County, California

AGENCY: Bureau of Land Management, United States Department of the Interior.

ACTION: Notice of vehicle closure in Furnace Creek Canyon, White Mountains, Mono County, California.

SUMMARY: Notice is hereby given that the route through Furnace Creek Canyon is closed to motorized vehicle use.

Order: The public lands, located to the southwest from a point near the mouth of Furnace Creek canyon approximately 1.25 miles below the U.S. Forest Service boundary and 2.5 miles from HWY 264, are closed to the use of

motorized or off-road vehicles. No person may use, drive, transport, park, let stand, or have charge or control over any motorized vehicle in the area located east of the closure signs and locked gate. Exemptions to this order may be granted to law enforcement and other emergency vehicles in the course of official duties and for other approved administrative activities performed by the Bureau of Land Management or U.S. Forest Service. Exemptions may also be granted to those persons involved with ranching activities associated with the Whitewolf Grazing Allotment.

EFFECTIVE DATE: This closure became effective Friday, March 7, 2003. The closure will remain in effect unless rescinded by the authorizing official. The permanent decision regarding motorized or off-road vehicle use in Furnace Creek will be determined through an amendment of the California Desert Conservation Area Plan, which is expected to occur by June 30, 2004. BLM will implement the purposed action soon after the effective closure date of March 7, 2003 without prior notice and opportunity for public comment because of the imminent need for regulatory authority to prevent damage to wetland and riparian resources.

FOR FURTHER INFORMATION CONTACT: Field Office Manager, Bureau of Land Management, Ridgecrest Field Office, 300 South Richmond Road, Ridgecrest CA 93555, (760) 384–5400.

SUPPLEMENTARY INFORMATION: The BLM has established national standards for the management and protection of riparian and wetland habitat on the Public Lands. Monitoring conducted during November 2002 and February 2003 indicates that the Furnace Creek fluvial system is not meeting the BLM's standards for a properly functioning riparian system. presently, portions of the Furnace Creek drainage are considered "functional-at risk". Riparian-wetland areas are considered "functional-at risk" when an existing soil, water, or vegetation condition makes them susceptible to degradation. Presently, there are seven locations in Furnace Creek where the existing vehicle route crosses the stream. Significant erosion and sedimentation of the stream are occurring at two stream crossings. Erosion in both locations is contributing excessive sediment to the adjacent riparian area. moreover, head-cutting is forming at both locations. Head-cuts are a fluvial geomorphic feature indicative of unstable conditions. The proposed closure order is consistent with protecting and restoring Furnace Creek to a properly functioning riparian system.

Bureau of Land Management's regulatory policy concerning the use of off-road vehicles on public lands is found in 43 CFR 8341. Whenever the authorized officer determines that OHV use will cause or is causing considerable adverse effects on resources (soil, vegetation, wildlife habitat, cultural, historic, scenic, recreation, or other resources), the area must be immediately closed to the type of use causing the adverse effects. The closure must remain in force only until the adverse effects are eliminated and measures to prevent their recurrency have been implemented (whichever occurs first). A considerable adverse environmental effect resulting from the use of off-road vehicles is defined in 43 CFR part 8341 as any environmental impact that causes:

(a) Significant damage to cultural or natural resources, including but not limited to historic, archaeological, soil, water, air, vegetation, scenic values; or

(b) Significant harassment of wildlife and/or significant disruption of wildlife habitats; . . . and is irreparable due to the impossibility or impracticality of performing corrective or remedial action.

Furnace Creek canyon will remain open for human use that does not entail the use of a motorized vehicle within the area closed by this order. Maps depicting the affected area are available by contacting the Ridgecrest Field Office, California Desert Conservation Area, Ridgecrest, CA. A gate will be erected at the closure points and the affected area will be posted with public notices and standard motorized vehicle closure signs.

Authority for this closure is found in 43 CFR 8364.1. Violations of this order may be subject to the penalties provided according to 43 CFR 8360.0–7.

Dated: March 11, 2003.

Hector A. Villalobos,

Ridgecrest Field Manager.

[FR Doc. 03–12522 Filed 5–19–03; 8:45 am]

BILLING CODE 4310–AG–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[ID–076–1220–BA]

Notice of Closure to Off-highway Vehicle Use

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of closure to off-highway vehicle use.

SUMMARY: With the publication of this notice, all existing trails and cross-country travel on certain lands administered by the Bureau of Land Management (BLM) Shoshone Field Office are closed to off-highway vehicle (OHV) use. The closure will remain in effect until the proposed Resource Management Plan (FY2005) can implement OHV designations, or until such time as the authorized officer of the Shoshone Field Office determines the closure may be lifted. The closure is in accordance with 43 CFR 9268.3(d)(1)(i–iii) and 43 CFR 8341.1(f)(4).

FOR FURTHER INFORMATION CONTACT: John Kurtz, Outdoor Recreation Planner, (208) 732–7296, BLM Shoshone Field Office, 400 West F Street, Shoshone, ID 83352.

SUPPLEMENTARY INFORMATION: The Blaine County Muldoon Summit Road dips where it passes through Bureau of Land Management administered land, resulting in limited visibility for ¼ of a mile causing public safety issues. Within this section, All Terrain Vehicles (ATV), motorcycles and snowmobiles cross the county road to gain momentum to hill climb. These vehicles are climbing steep slopes resulting in ruts, vegetation damage, noxious weed spread and erosion. The vertical trails also cause visual scars for the surrounding residents and communities. These lands are also important winter wildlife habitat areas. This closure will protect these resources and reduce the potential for further noxious weed invasion. Private landowners adjacent to the lands have complained about the resource damage. This closure is in response to those complaints.

The area of closure includes BLM lands, specifically described wholly or partially:

Boise Meridian

T. 2 N., R. 19 E., Sec.31, N½NW¼ (80 Acres).

Detailed maps of the area closed to OHV and recreational use are available at the BLM Shoshone Field Office, 400 West F Street, Shoshone, ID 83352.

Dated: April 3, 2003.

Rick VanderVoet,

Acting Shoshone Field Manager.

[FR Doc. 03–12516 Filed 5–19–03; 8:45 am]

BILLING CODE 4310–GG–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[NV–010–1430–FM; N–74293]

Termination of Segregation, Exchange N–74293; Nevada

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of termination of segregation.

SUMMARY: This action terminates a portion of the segregation of the Exchange Proposal N–74293 initiated by Nevada Land and Resource Company, LLC. The land will be opened to the operation of the public land laws, including location and entry under the mining laws.

EFFECTIVE DATE: July 21, 2003.

FOR FURTHER INFORMATION CONTACT: Helen Hankins, Elko Field Office, 3900 E. Idaho St., Elko, Nevada 89801, 775–753–0200.

SUPPLEMENTARY INFORMATION: On May 4, 2001, the land described below was segregated as to a proposed exchange with Nevada Land and Resource Company, LLC. The exchange is no longer being pursued on the following lands identified below.

The segregative effect is hereby terminated for the following described land:

Mount Diablo Meridian, Nevada

T. 33 N., R. 45 E.,
Section 24, All
Section 26, All

The area described contains 1,280.00 acres in Lander County.

1. At 9 a.m., on July 21, 2003, the land described above will be opened to the operation of the public land laws, subject to valid existing rights, the provisions of existing withdrawls, other segregations of record, and the requirements of applicable law. All valid applications received at or prior to 9 a.m. July 21, 2003, shall be considered as simultaneously filed at that time. Those received thereafter shall be considered in the order of filing.

2. At 9 a.m. on July 21, 2003, the land described above will be opened to location and entry under the United States mining laws, subject to valid existing rights, the provisions of existing withdrawls, other segregations of record, and the requirements of applicable law. Appropriation of any of the land described in this order under the general mining laws prior to the date and time of segregation is unauthorized. Any such attempted appropriation, including attempted adverse possession under 30 U.S.C. 39 (1994), shall vest no rights against the United States. Acts required to establish a location and to initiate a right of possession are governed by State law where not in conflict with Federal law. The Bureau of Land Management will not intervene in disputes between rival locators over possessory rights since Congress has provided for such determinations in local courts.

Dated: March 31, 2003.

Helen Hankins,

Elko Field Office Manager.

[FR Doc. 03–12514 Filed 5–19–03; 8:45 am]

BILLING CODE 4310–HC–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[OR–100–1430–ET; ORE–05564]

Termination of Classification and Opening Order, Oregon

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of realty action.

SUMMARY: This notice terminates a Small Tract Classification and opens certain land near Winston, Oregon, that was classified for small tract lease under the Small Tract Act of June 1, 1938 (52 Stat. 609) as amended, to such uses as may be made of Reconveyed Coos Bay Wagon Road Grant Lands.

EFFECTIVE DATE: May 20, 2003.

FOR FURTHER INFORMATION CONTACT: Diann Rasmussen, South River Field Office, 777 NW., Garden Valley Blvd, Roseburg, Oregon 97470; 541–464–3292.

SUPPLEMENTARY INFORMATION: Classification Order No. L–10891 dated October 7, 1958, segregated the land described below from the public land laws and location and entry under the United States mining laws. The land remained open to the mineral leasing laws and the Small Tract Act for which a lease was issued. The lease has since expired and the land restored to its previous condition thereby making it suitable for such uses as may be made of Revested Coos Bay Wagon Road Grant Lands. Therefore, subject to valid existing rights, the provisions of existing withdrawals and other segregations of record, and pursuant to the regulations contained under 43 CFR 2091.7–1(b)(2), at 8 a.m. on May 20, 2003 land classification number L–10891, dated October 7, 1958, is hereby terminated in its entirety insofar as it affects the following described land:

Willamette Meridian, Oregon

T. 28 S., R. 7 W.,
Sec. 15, that portion of lots 12 and 13 formerly described as the south 3 chains of lot 6.

The area described contains 3 acres, more or less, in Douglas County.

All valid applications received prior to 8 a.m., on June 19, 2003, shall be considered as simultaneously filed at that time.

Mark Buckbee,

Acting District Manager.

[FR Doc. 03–12513 Filed 5–19–03; 8:45 am]

BILLING CODE 4310–33–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[WY–920–1430–EU; WYW 147166]

Opening of National Forest System Land; Wyoming

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: This notice terminates the temporary segregative effect as to 40.00 acres of National Forest System lands which were originally included in an application for exchange in the Teton National Forest.

EFFECTIVE DATE: May 20, 2003.

FOR FURTHER INFORMATION CONTACT: Jimi Metzger, BLM Wyoming State Office, 5353 Yellowstone Rd., P.O. Box 1828, Cheyenne, Wyoming 82003, 307–775–6250.

SUPPLEMENTARY INFORMATION: Pursuant to the regulations contained in 43 CFR 2091.3–2(b), at 9 a.m. on May 20, 2003, the following described lands will be relieved of the temporary segregative effect of exchange application WYW 147166:

Sixth Principal Meridian, Wyoming

T. 39 N., R. 116 W.,
sec. 13, N½N½SE¼.

The area described contains 40.00 acres in Teton County.

At 9 a.m. on May 20, 2003, the lands shall be opened to such forms of disposition as may by law be made of National Forest System lands, including location and entry under the United States mining laws, subject to valid existing rights, the provisions of existing withdrawals, other segregations of record, and the requirements of applicable law. Appropriation of lands described in this order under the general mining laws prior to the date and time of restoration is unauthorized.

Any such attempted appropriation, including attempted adverse possession under 30 U.S.C. 38 (1994) shall vest no rights against the United States. Acts required to establish a location and to initiate a right of possession are governed by State law where not in conflict with Federal law. The BLM will not intervene in disputes between rival locators over possessory rights since Congress has provided for such determination in local courts.

Dated: March 31, 2003.

Michael Madrid,

Chief, Fluid Minerals, Lands, and Appraisal.

[FR Doc. 03–12512 Filed 5–19–03; 8:45 am]

BILLING CODE 4310–22–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[NV–930–1430–ET; NVN 73931]

Public Land Order No. 7566; Withdrawal of Public Lands for the Rhyolite Historic Site; Nevada

AGENCY: Bureau of Land Management, Interior.

ACTION: Public land order.

SUMMARY: This order withdraws 277.046 acres of public lands from surface entry and mining for a period of 20 years for the Bureau of Land Management to protect the Rhyolite historic site. The lands have been and will remain open to mineral leasing.

EFFECTIVE DATE: May 20, 2003.

FOR FURTHER INFORMATION CONTACT: Dennis Samuelson, BLM Nevada State Office, PO Box 12000, Reno, Nevada 89520, 775–861–6532.

Order

By virtue of the authority vested in the Secretary of the Interior by Section 204 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1714 (1994), it is ordered as follows:

1. Subject to valid existing rights, the following described public lands are hereby withdrawn from settlement, sale, location, or entry under the general land laws, including the United States mining laws (30 U.S.C. Ch. 2 (1994)), but not the mineral leasing laws, to protect the Rhyolite Historic Site:

Mount Diablo Meridian

T. 12 S., R. 46 E.,
Secs. 9, 16, and 21;

All those certain lots, pieces, or parcels of land situate in the County of Nye, State of Nevada, described as follows:

Parcel 1: The sleeper lode mining claim designated by the Surveyor General as Survey No. 3156, embracing a portion of the unsurveyed public domain in the Bullfrog Mining District, Nye County, Nevada, and bounded and described in that certain Patent recorded in Book 395 of Official Records, Page 317 as File No. 89058, Nye County Nevada Records, which further stipulated that portion of ground in said mining claim which is embraced in Sang De Cristo lode claim or Survey No. 2472 and also all veins, lodes and ledges throughout their entire depth, the tops or apexes of which lie inside of such ground are expressly excepted and excluded from said land.

Parcel 2: The Terry Mine, Cyclops and Side Scope lode mining claims designated by the Surveyor General as Survey No. 2585, embracing a portion of the unsurveyed public domain in the Bullfrog Mining District, Nye County, Nevada, and bounded and described in that certain Patent recorded in Book 395 of Official Records, Page 333 as File No. 89062, Nye County, Nevada Records, which further stipulated that all that portion of ground described in said mining claims which is embraced in Survey Nos. 2422, 2457, and 2583, the Trail Fraction and Touch Me Not lode claims, unsurveyed, that portion of Survey No. 2384 in conflict with survey No. 2457 and also all veins, lodes and ledges throughout their entire depth, the tops or apexes of which lie inside of such ground are expressly excepted and excluded from said land.

Parcel 3: The Sang De Cristo lode mining claim designated by the surveyor General as Survey No. 2472, embracing a portion of the unsurveyed public domain in the Bullfrog Mining District, Nye County, Nevada, and bounded and described in that certain Patent recorded in Book 395 of Official Records, Page 343 as File No. 89064, Nye County Nevada Records, which further stipulated that portion of ground in said mining claim which is embraced in mining claim or Survey 2584, the White Monument lode claim Survey No. 2650, and also all veins, lodes and ledges throughout their entire depth, the tops or apexes of which lie inside of such ground are expressly excepted and excluded from said land.

Parcel 4: The White Monument, Bonanza Fraction and Trail Fraction lode mining claims designated by the Surveyor General as Survey No. 2650, embracing a portion of the unsurveyed public domain in the Bullfrog Mining District, Nye County, Nevada, and bounded and described in that certain Patent recorded in Book 17 of Deeds, Page 162 as File No. 36763, Nye County Nevada Records, which further stipulated that portion of ground in said mining claim which is embraced in mining claim or Survey No. 2584, the Terry mine and Cyclops lode claims Survey No. 2585, that portion of survey No. 2472 in conflict with the Bonanza Fraction lode calm and also all veins, lodes and ledges throughout their entire depth, the tops or apexes of which lie inside of such ground are expressly excepted and excluded from said land.

Parcel 5: The Golden Sceptre and Golden Sceptre No. 2 lode mining claims designated by the Surveyor General as Survey No. 2584, embracing a portion of the unsurveyed public domain in the Bullfrog Mining District, Nye County, Nevada, and bounded and described in that certain Patent recorded in Book 17 of Deeds, Page 169 as File No. 36764, Nye County Nevada Records.

Parcel 6: The Gold Wedge lode mining claim designated by the Surveyor General as Survey No. 2583, embracing a portion of the unsurveyed public domain in the Bullfrog Mining District, Nye County, Nevada, and bounded and described in that certain Patent recorded in Book 395 of Official Records, Page 352 as File No. 89065, Nye County Nevada Records, which further stipulated that portion of ground in said mining claim which is embraced in mining claims or Surveys 2457, 2487 and 2488 and also all veins, lodes and ledges throughout their entire depth, the tops or apexes of which lie inside of such ground are expressly excepted and excluded from said land.

Parcel 7: The East half (E½) of the Northeast quarter (NE¼) of the Southwest quarter (SW¼) of the Southeast quarter (SE¼) of Section 9, Township 12 South, Range 46 East, M.D.B.&M., according to the Official Plat of the surveys of said land on file in the Office of the Bureau of Land Management.

Parcel 8: The West half (W½) of the Northwest quarter (NW¼) of the Southeast quarter (SE¼) of the Southeast quarter (SE¼) of Section 9, Township 12 South, Range 46 East, M.D.B.&M., according to the Official Plat of the surveys of said land on file in the Office of the Bureau of Land Management.

Parcel 9: Lots 15, 19 and 40 of Section 9, Township 12 South, Range 46 East, M.D.B.&M., according to the Official Plat of the surveys of said land on file in the Office of the Bureau of Land Management.

Parcel 10: Lots 1, 19, and 20, and the Northeast (NE¼) quarter of the Northeast (NE¼) quarter of Section 16, Township 12 South, Range 46 East, M.D.B.&M., according to the Official Plat of the surveys of said land on file in the Office of the Bureau of Land Management.

Parcel 11: The Southwest quarter (SW¼) of the Southwest quarter (SW¼) of the Northeast quarter (NE¼) of the Northeast quarter (NE¼), the Southeast quarter (SE¼) of the Southeast quarter (SE¼) of the Northwest quarter (NW¼) of the Northeast quarter (NE¼), the East half (E½) of the Northeast quarter (NE¼) of the Southwest quarter (SW¼) of the Northeast quarter (NE¼), and the West half (W½) of the Northwest quarter (NW¼) of the Southeast quarter (SE¼) of the Northeast quarter (NE¼) of Section 21 , Township 12 South, Range 46 East, M.D.B.&M., according to the Official Plat of the surveys of said land on file in the Office of the Bureau of Land Management.

The areas described aggregate 277.046 acres in Nye County.

2. The withdrawal made by this order does not alter the applicability of those public land laws governing the use of the lands under lease, license, or permit, or governing the disposal of the mineral or vegetative resources other than under the mining laws.

3. This withdrawal will expire 20 years from the effective date of this order, unless, as a result of a review conducted before the expiration date pursuant to Section 204(f) of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1714(f) (1994), the Secretary determines that the withdrawal shall be extended.

Dated: April 25, 2003.

Rebecca W. Watson,

Assistant Secretary—Land and Minerals Management.

[FR Doc. 03–12601 Filed 5–19–03; 8:45 am]

BILLING CODE 4310–22–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[UT–010–1430–ET; UTU 42892]

Public Land Order No. 7567; Revocation of Public Land Order No. 62; Utah

AGENCY: Bureau of Land Management, Interior.

ACTION: Public land order.

SUMMARY: This order revokes a public land order in its entirety as to 106.83 acres of public land withdrawn for protection of manganese ore in support of prosecution of World War II. The withdrawal is no longer needed. The land will be opened to surface entry, mining, and mineral leasing.

EFFECTIVE DATE: June 19, 2003.

FOR FURTHER INFORMATION CONTACT: Nancy Demille, BLM Fillmore Field Office, 35 East 500 North, Fillmore, Utah 84631, 435–743–3127.

Order

By virtue of the authority vested in the Secretary of the Interior by Section 204 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1714 (1994), it is ordered as follows:

1. Public Land Order No. 62, which withdrew land to protect manganese ore in support of prosecution of World War II, is hereby revoked in its entirety as it affects the following described land:

Salt Lake Meridian

T. 14 S., R. 11 W.,
Sec. 25, lots 3, 4, 5, and 6.

The area described contains 106.83 acres in Juab County.

2. At 10 a.m. on June 19, 2003, the land will be opened to the operation of the public land laws generally, subject to valid existing rights, the provisions of existing withdrawals, other segregations of record, and the requirements of applicable law. All valid applications received at or prior to 10 a.m. on June 19, 2003, shall be considered as simultaneously filed at that time. Those received thereafter shall be considered in the order of filing.

3. At 10 a.m. on June 19, 2003, the land will be opened to location and entry under the United States mining laws and to the operation of the mineral leasing laws, subject to valid existing rights, the provisions of existing withdrawals, other segregations of record, and the requirements of applicable law. Appropriation of any of the land described in this order under the general mining laws prior to the date and time of restoration is unauthorized. Any such attempted appropriation, including attempted adverse possession under 30 U.S.C. 38 (1994), shall vest no rights against the United States. State law governs acts required to establish a location and to initiate a right of possession where not in conflict with Federal law. The Bureau of Land Management will not intervene in disputes between rival locators over possessory rights since Congress has provided for such determinations in local courts.

Dated: April 25, 2003.

Rebecca W. Watson,

Assistant Secretary—Land and Minerals Management.

[FR Doc. 03–12600 Filed 5–19–03; 8:45 am]

BILLING CODE 4310–09–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[CA–180–5700–EU; CACA–43503]

Notice of Realty Action: Non-Competitive Sale of Public Lands, Amador, CA

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The public lands identified below have been examined and found suitable for disposal pursuant to sections 203 and 209 of the Federal Land Policy and Management Act of October 21, 1976 (90 Stat. 2750–51; 43 U.S.C. 1713, and 90 Stat. 2757–58, 43 U.S.C. 1719), and the Federal Land Transaction Facilitation Act of July 25, 2000 (Pub. L. 106–248), at not less than appraised market value. The market value opinion of the approved appraisal is $5,000. The potential buyer of the parcel will make application under section 209 of the Federal Land Policy and Management Act of October 21, 1976, to purchase the mineral estate along with the surface.

Mount Diablo Meridian

T. 6 N., R. 12 E.,
Sec. 9, Lot 49
containing 1.17 acres more or less.

The purpose of the proposed sale is to dispose of a parcel of public land that is difficult and uneconomic to manage as part of the public lands of the United States. It is also proposed for sale in order to resolve a trespass of Isak Hansen. The proposed sale is consistent with the Folsom Field Office Sierra Planning Area Management Framework Plan (July 1988), and the public interest will be served by offering the parcel for sale. The parcel will be offered for non-competitive sale to Isak Hansen, the adjacent landowner.

Pursuant to the Federal Land Transaction Facilitation Act of July 25, 2000 (Pub. L. 106–248), the proceeds from the sale will be deposited into a Federal Land Disposal Account and used to acquire non-federal land within the State of California. The money will be used to purchase lands for the BLM, National Park Service, Forest Service, or Fish and Wildlife Service.

Conveyance of the available mineral interests would occur simultaneously with the sale of the land. The mineral interests being offered for conveyance have no known mineral value. Acceptance of a direct sale offer will constitute an application for conveyance of those mineral interests. The applicant will be required to pay a $50.00 non-returnable filing fee for conveyance of the available mineral interests.

The patent, when issued, will reserve the following: By Executive Order for Power Site Reserve 416, subject to Section 24 of the Federal Power Act on July 24, 1997. Reservation for ditches and canals

DATES: Until July 7, 2003, interested parties may submit comments pertaining to this action. The lands will not be offered for sale until at least 60 days after the date of publication of this notice in the **Federal Register**.

ADDRESSES: Written comments concerning the proposed sale should be sent to the Bureau of Land Management, Folsom Field Office, 63 Natoma Street, Folsom, California 95630.

FOR FURTHER INFORMATION CONTACT: Additional information concerning the land sale, including relevant planning and environmental documentation, may be obtained from the Folsom Field Office at the above address. Telephone calls may be directed to Jodi Swaggerty at (916) 985–4474.

SUPPLEMENTARY INFORMATION: Objections to the sale will be reviewed by the State Director, who may sustain, vacate, or modify this realty action. In the absence of any objections, this proposal will

become the final determination of the Department of the Interior.

Publication of this notice in the **Federal Register** will segregate the public lands from appropriations under the public land laws, including the mining laws, pending disposition of this action, or 270 days from the date of publication of this notice, whichever occurs first. Pursuant to the application to convey the mineral estate, the mineral interests of the United States are segregated from appropriation under the public land laws, including the mining laws for a period of two years from the date of filing the application.

Dated: January 17, 2003.

Howard K. Stark,

Chief, Branch of Lands Management.

[FR Doc. 03–12515 Filed 5–19–03; 8:45 am]

BILLING CODE 4310–40–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[CA–680–1430–ES; CALA 0165216]

Renewal of Airport Lease for the Baker Airport, Baker, CA

AGENCY: Bureau of Land Management, (BLM) Interior.

ACTION: Notice of Realty Action.

SUMMARY: Notice is given that the County of San Bernardino has filed an application to renew its airport lease CALA 0165216 for a twenty-year period. The application was filed pursuant to the Act of May 24, 1928, as amended and the regulations at 43 CFR 2911. This airport is located on public lands within the California Desert District, Barstow Field Office, California. In accordance with 43 CFR 2911.2–3, a Notice of Realty Action shall be issued for a 45-day comment period from the public.

DATES: Submit comments on or before July 7, 2003.

ADDRESSES: Mail written comments to the BLM, Attn: Realty Section, 2601 Barstow Road, Barstow, CA, 92311.

FOR FURTHER INFORMATION CONTACT: Joan Patrovsky, Barstow Field Office Manager, Bureau of Land Management, 2601 Barstow Road, Barstow, CA 92311; or call (760) 252–6032.

SUPPLEMENTARY INFORMATION: The described public lands:

San Bernardino Meridian, CA

T.14 N., R. 8 E., Sec. 24, W ½ NE ¼ and SE ¼.

Containing a total of 240 acres.

The San Bernardino County Department of Airports, a County government agency, has filed an application to renew the lease of the above-described public lands. The land is located approximately 65 miles northeast of Barstow, CA, in the small unincorporated community of Baker, CA, which is situated adjacent to Interstate 15.

The Department of Airports proposes to continue use of the land for general aviation public use that supports the needs of the community, serves as an emergency airfield for pilots transiting the area between Las Vegas, Nevada, and the southern coastal basin area of Southern California, and provides a vital public safety role for law enforcement and emergency ambulance flights. Renewal of the lease will allow these services and needs to continue.

Until July 7, 2003, interested persons may submit comments, regarding the proposed lease of the lands, to the Field Manager, Barstow Field Office, 2601 Barstow Road, Barstow, CA 92311, (760) 252–6000. The Barstow Field Manager will review any adverse comments. In the absence of any adverse comments, a lease may be issued upon completion of the 45 day comment period.

Dated: April 8, 2003.

Duane Marti,

Acting Chief, Branch of Lands Management.

[FR Doc. 03–12521 Filed 5–19–03; 8:45 am]

BILLING CODE 4310–40–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[ID–077–1430–ES; IDI–34149]

Notice of Realty Action, Recreation and Public Purposes (R&PP) Act Classification, ID

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Realty Action.

SUMMARY: The following public lands, managed by the Bureau of Reclamation (BOR), in Minidoka County, Idaho have been examined and found suitable for classification for sale to the City of Rupert, Idaho (City), under the provisions of the Recreation and Public Purposes Act, as amended (43 U.S.C. 869 *et seq.*). The City proposes to use the land for the application of treated waste water from their existing waste water treatment plant by center pivot, wheel line and hand line sprinkler irrigation systems and to allow farming of the land via agreements with local farmers.

T. 8 S., R. 24 E., Boise Meridian
section 34: S½SE¼,NW¼,SW¼,
section 35: E½,SW¼.

The area described contains 600 acres, more or less, in Minidoka County, ID.

Approximately 100 acres of the parcel proposed for sale is currently being used for land application and farming purposes under a lease from the BOR to the City. The City is proposing to add two additional pivots as well as wheel lines and hand lines so as to provide approximately 565 acres of land application/farmed area within the 600 acre parcel.

The above described lands are not needed for Federal (BOR) purposes in accordance with their land use planning and a notice has been filed with the BLM to revoke the reclamation withdrawals on these lands. The sale of these lands is consistent with the Monument Resource Management Plan and would be in the public interest.

The R & PP Patent, when issued, will be subject to the following terms, conditions, and reservations:

1. Provisions of the Recreation and Public Purposes Act and to all applicable regulations of the Secretary of the Interior.

2. A right-of-way for ditches and canals constructed by the authority of the United States.

3. All minerals shall be reserved to the United States, together with the right to prospect for, mine and remove the minerals.

Detailed information concerning this action is available for review at the Burley Field Office of the Bureau of Land Management, 15 East 200 South, Burley, Idaho.

Upon publication of this notice in the **Federal Register**, the lands will be segregated from all other forms or appropriation under the public land laws, including the general mining laws, except for sale under the Recreation and Public Purposes Act and leasing under the mineral leasing laws.

For a period of 45 days from the date of publication of this notice in the **Federal Register**, interested persons may submit comments regarding the proposed classification or sale of the lands to the Field Office Manager, Burley Field Office, 15 East 200 South, Burley, Idaho 83318.

Classification Comments: Interested parties may submit comments involving the suitability of the land for application of treated waste water. Comments on the classification are restricted to whether the land is physically suited for the proposal, whether the use will maximize the future use or uses of the land, whether the use is consistent with local planning and zoning, or if the use is consistent with State and Federal programs.

Application Comments: Interested parties may submit comments regarding the specific use proposed in the application and plan of development, whether the BLM followed proper administrative procedures in reaching the decision, or any other factor not directly related to the suitability of the land for application of treated waste water.

Any adverse comments will be reviewed by the State Director. In the absence of any adverse comments, the classification will become effective 60 days from the date of publication of this notice in the **Federal Register**.

Dated: March 28, 2003.

Bernie Jansen,

Acting Burley Field Office Manager.

[FR Doc. 03–12510 Filed 5–19–03; 8:45 am]

BILLING CODE 4310–GG–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[ID–076–1430–ES–IDI–33109]

Notice of Realty Action, Recreation and Public Purposes (R&PP) Act Classification; ID

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Realty Action; Recreation and Public Purposes (R&PP) Act Classification; Idaho.

SUMMARY: The following public lands near the community of Shoshone, Lincoln County, Idaho have been examined and found suitable for classification for lease or conveyance to Lincoln County Sheriff's Department, Idaho under the provisions of the Recreation and Public Purposes Act, as amended (43 U.S.C. 869 *et seq.*). The Lincoln County Sheriff's Department proposes to use the lands for a public shooting range, special weapon training, and a building entry/high-risk vehicle training area

Boise Meridian

T. 6 S., R. 17 E.,
Sec. 12, W2NWNW (portion of Lot 4).
Containing 20 acres more or less.

The lands are not needed for Federal purposes. Lease or conveyance is consistent with current BLM land use planning and would be in the public interest. The lease/patent, when issued, will be subject to the following terms, conditions and reservations:

1. Provisions of the Recreation and Public Purposes Act and to all applicable regulations of the Secretary of the Interior.

2. A right-of-way for ditches and canals constructed by the authority of the United States.

3. Any other reservations that the authorized officer determines appropriate to ensure public access and proper management of Federal lands and interests therein.

SUPPLEMENTARY INFORMATION: Upon publication of this notice in the **Federal Register**, the lands will be segregated from all other forms of appropriation under the public land laws, including the general mining laws, except for lease or conveyance under the Recreation and Public Purposes Act and leasing under the mineral leasing laws. For a period of 45 days from the date of publication of this notice in the **Federal Register**, interested persons may submit comments regarding the proposed lease/conveyance or classification of the lands to the District Manager; Upper Snake River District, 1405 Hollipark Drive, Idaho Falls, Idaho 83401–2100. Detailed information concerning this action is available for review at the office of the Bureau of Land Management, Upper Snake River District, Shoshone Field Office, and 400 West F Street, Shoshone, Idaho 83352.

Classification Comments: Interested parties may submit comments involving the suitability of the land for a shooting range, special weapon training, and building entry and high-risk vehicle training area. Comments on the classification are restricted to whether the land is physically suited for the proposal, whether the use will maximize the future use or uses of the land, whether the use is consistent with local planning and zoning, or if the use is consistent with State and Federal programs.

Application Comments: Interested parties may also submit comments regarding the specific use proposed in the application and plan of development, whether the BLM followed proper administrative procedures in reaching the decision, or any other factor not directly related to the suitability of the land for a shooting range, special weapon training, and building entry and high-risk vehicle training area.

The State Director will review any adverse comments. In the absence of any adverse comments, the classification will become effective 60 days from the date of publication of this notice in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: The BLM Shoshone Field Office, 400 West F Street, Shoshone, ID 83352.

Dated: April 1, 2003.

James E. May,

District Manager.

[FR Doc. 03–12520 Filed 5–19–03; 8:45 am]

BILLING CODE 4310–GG–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[ID–090–5700–EU; IDI–34203; DBG–03–003]

Notice of Realty Action, Sale of Public Land in Owyhee County, Idaho; Termination of Desert Land Entry and Carey Act Classifications and Opening Order

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice and sale of public land in Owyhee County.

SUMMARY: This notice terminates a suitable Desert Land Entry and Carey Act classification on 80.00 acres so that a portion of the land can be patented under the Federal Land Policy and Management Act (Act of October 21, 1976, as amended). The following-described public land has been examined and found suitable for disposal by direct sale under Section 203 of the Federal Land Policy and Management Act of 1976 (90 Stat. 2750, 43 U.S.C. 1713) at not less than the appraised fair market value of $2,200. The land will not be offered for sale until at least 60 days after the date of publication of this notice in the **Federal Register**.

Boise Meridian, Owyhee County, Idaho

T. 7 S., R. 6 E., section 7: Lot 6
Containing ± 0.96 acres.

The patent, when issued, will contain a reservation to the United States for ditches and canals.

DATES: On May 20, 2003 the Desert Land Entry and Carey Act classification on the 80 acres of public land described below will be terminated. Also, the 0.96-acre parcel described above for sale will be segregated from appropriation under the public land laws, including the mining laws, except the sale provisions of the Federal Land Policy and Management Act. The segregative effect will end upon issuance of patent or on February 16, 2004, whichever occurs first.

ADDRESSES: Owyhee Field Office 3948 Development Avenue, Boise, Idaho 83705–5389.

FOR FURTHER INFORMATION CONTACT: Candi Miracle, Realty Specialist, at the address shown above or (208) 384–3455.

SUPPLEMENTARY INFORMATION: On April 10, 1986, the following public land was classified as suitable for entry under the authority of the Desert Land Act of March 3, 1877, as amended and supplemented (43 U.S.C. 321 *et seq.*) and the Carey Act of August 18, 1894 (28 Stat.42), as amended (43 U.S.C. 641 *et seq.*)

Boise Meridian, Owyhee County, Idaho

T. 7 S., R. 6 E., section 7: W½SE¼.
Containing ± 80.00 acres.

The classifications are hereby terminated and the segregation for Desert Land Entry and Carey Act are hereby terminated.

This 0.96 acre parcel of land is being offered by direct sale to Susan H. Davis of Boise, Idaho, based on historic use and value of added improvements. It has been determined that the subject parcel contains no known mineral values; therefore, mineral interests will be conveyed simultaneously.

Interested parties may submit comments to the Owyhee Field Office Manager at the above address until July 7, 2003. The Owyhee Field Manager, who may vacate or modify this realty action to accommodate any protests, will review any adverse comments received. If a protest is not accommodated, the comments are subject to review of the District Manager who may sustain, vacate, or modify this realty action. In the absence of any adverse comments, this realty action will become the final determination of the Department of the Interior.

Dated: April 1, 2003.

Jenna Whitlock,

Owyhee Field Manager.

[FR Doc. 03–12524 Filed 5–19–03; 8:45 am]

BILLING CODE 4310–GG–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[ES–032–3–1430–EU]

Realty Action; Recreation and Public Purpose Act Classification; Leelanau County, MI

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of realty action.

SUMMARY: The following public lands near the community of Northport in Leelanau County, Michigan have been examined and found suitable for classification for lease or conveyance to the State of Michigan Department of Natural Resources, under the provisions of the Recreation and Public Purposes (R&PP) Act of 1926, as amended (43 U.S.C. 869 *et seq.*). Therefore, in accordance with section 7 of the Act of June 28, 1934, as amended (43 U.S.C. 315f) and EO 6964, the following described lands are hereby classified as suitable for disposal under the provisions of the R&PP Act of 1926, as amended (43 U.S.C. 869 *et seq.*) and, accordingly, opened for only that purpose.

Michigan Meridian

T. 32 N., R. 10 W.,

Grand Traverse Light Station Reservation, located in Lot 3, Section 6 being more particularly described as:

Beginning at the intersection of sections 5, 6, 7 and 8, T. 32 N., R. 10 W.,

Thence,

N. 53° 27′ W., 34.456 chains, to Angle Point #1, the place of beginning,

N. 0° 18′ E., 12.600 chains, to Angle Point #2 on the present shoreline of Lake Michigan,

Thence, with the meanders of Lake Michigan,

S. 89° 41′ W., 2.199 chains,

S. 70° 45′ W., 3.741 chains,

N. 82° 22′ W., 4.781 chains,

S. 80° 33′ W., 2.563 chains,

S. 19° 35′ W., 5.144 chains,

S. 9° 47′ E., 6.241 chains to Special Meander Corner,

S. 89° 42′ E., 13.636 chains to Angle Point #1, the place of beginning, as shown on the plat of survey for the Grand Traverse Light Station in Lot 3, Section 6, accepted for the Director on January 22, 2002.

The area described contains 16.37 acres in Leelanau County.

The State of Michigan, Department of Natural Resources proposes to integrate the lands into the existing Leelanau State Park. This action classifies the lands identified above for disposal through the Recreation and Public Purposes Act of 1926 (43 U.S.C. 869 *et seq.*) to protect the historic lighthouse, lighthouse related structures and the surrounding lands. The subject land was identified in the Michigan Resource Management Plan Amendment, approved June 30, 1997, as not needed for Federal purposes and having potential for disposal to protect the historic structures and surrounding lands. Lease or conveyance of the land for recreational and public purpose use would be in the public interest. Detailed information concerning this action is available for review at the office of the Bureau of Land Management, Milwaukee Field Office, Wisconsin.

FOR FURTHER INFORMATION CONTACT: Paul J. Salvatore, Realty Specialist, Bureau of Land Management, Milwaukee Field Office, 310 West Wisconsin Avenue, Suite 450, Milwaukee, Wisconsin 53203, (414) 297–4413.

SUPPLEMENTARY INFORMATION: Pursuant to an Executive Order dated June 30, 1851, a parcel of public land totaling 58.75 acres was reserved for lighthouse purposes on the Leelanau Peninsula. In accordance with Public Law 827 dated March 3, 1931, a deed was issued on February 15, 1932, to the State of Michigan for that portion of the lighthouse reservation no longer needed for lighthouse purposes. The portion conveyed was to be used for public park purposes and comprised approximately 42.38 acres.

The Department of Transportation, United States Coast Guard, submitted a Notice of Intent (NOI) to relinquish custody, accountability, and control of the remaining 16.37 acres, more or less. The Bureau of Land Management has recommended that the remaining lands be determined suitable for return to their former status as public lands, such determination to be made by the Secretary of the Interior and accomplished by the issuance of a public land order revoking the Executive Order as to the remaining lands. A proposed public land order for this purpose currently is pending and awaiting action within the Department.

The State of Michigan Department of Natural Resources has applied for patent to the land under the R&PP Act of 1926, as an addition to Leelanau State Park.

The lease/patent when issued, will be subject to the following terms, conditions and reservations:

1. Provisions of the Recreation and Public Purposes Act of 1926, as amended and to all applicable regulations of the Secretary of the Interior.

2. Valid existing rights.

3. All minerals are reserved to the United States, together with the right to prospect for, mine and remove the minerals.

4. Terms and conditions identified through the site specific environmental analysis.

5. Any other rights or reservations that the authorized officer deems appropriate to ensure public access and proper management of Federal lands and interest therein.

Upon publication of this notice in the **Federal Register**, the above described lands will be segregated from all forms of disposal or appropriation under the public land laws, except for lease or conveyance under the Recreation and Public Purposes Act and leasing under the mineral leasing laws. Interested parties may submit comments regarding

the proposed conveyance or classification of the lands to the Field Manager, Milwaukee Field Office, Bureau of Land Management, 310 West Wisconsin Avenue, Suite 450, Milwaukee, Wisconsin 53203 until July 7, 2003.

Classification Comments: Interested parties may submit comments involving the suitability of the land for R&PP Act classification, and particularly, whether the land is physically suited for inclusion in the state park, whether the use will maximize future use or uses of the land, whether the use is consistent with local planning and zoning, or if the use is consistent with State and Federal programs.

Application Comments: Interested parties may submit comments regarding the specific use proposed in the application, the development plan, the management plan, whether the BLM followed proper administrative procedures in reaching the decision, or any other factor not directly related to the suitability of the land for inclusion in the state park.

Any adverse comments will be evaluated by the State Director who may sustain, vacate, or modify this realty action. In the absence of any adverse comments, the classification will become effective on July 21, 2003.

Dated: April 11, 2003.

James W. Dryden,

Milwaukee Field Manager.

[FR Doc. 03–12523 Filed 5–19–03; 8:45 am]

BILLING CODE 4310–PN–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[UT–050–1430–ES; UTU–77200, UTU–79470]

Notice of Realty Action, Recreation and Public Purposes Act (R&PP) Classifications, Utah

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of realty action.

SUMMARY: The following public lands in Sevier County near the community of Glenwood, Utah have been examined and found suitable for classification for lease or conveyance to the Town of Glenwood for cemetery purposes under the provisions of the Recreation and Public Purposes Act, as amended (43 U.S.C. 869 *et eq.*):

Salt Lake Meridian

T. 23 S., R. 2 W.
Sec. 23, SE¼NW¼SW¼SE¼, NE¼SW¼SW¼SE¼, SW¼SW¼SW¼SE¼, and SE¼SW¼SW¼SE¼.
containing 10.00 acres more or less.

The following public lands in a Piute County near the community of Marysvale, Utah has been examined and found suitable for classification for lease or conveyance to the Town of Marysvale for city park purposes under the provisions of the Recreation and Public Purposes Act, as amended (43 U.S.C. 869 *et seq.*):

Salt Lake Meridian

T. 27 S., R. 4 W.
Sec. 35, lot 3.
containing 5.15 acres more or less.

The existing amended Mountain Valley Management Framework Plan (MFP) allows for these types of actions under the Recreation and Public Purposes Act. The proposed actions are in conformance with the land use plan. Because of the resource values, public values and objectives involved, the public interest may well be served by making these public lands available under the R&PP Act. An environmental assessment will be prepared by an interdisciplinary team to analyze the impacts of these proposals and alternatives.

The lease or conveyance of the lands, when issued will be subject to the following terms, conditions and reservations:

1. Provisions of the Recreation and Public Purposes Act and all applicable regulations of the Secretary of the Interior.

2. A right-of-way for ditches and canals constructed by the authority of the United States.

3. All minerals shall be reserved to the United States, together with the right to prospect for, mine and remove the minerals.

4. Any other reservations that the authorized officer determines appropriate to ensure public access and proper management of Federal lands and interests therein.

Detailed information concerning this action is available at the office of the Bureau of Land Management, 150 East 900 North, Richfield, Utah, 84701.

On May 20, 2003 the public lands described above are segregated from all other forms of appropriation under the public land laws, including the general mining laws, the mineral leasing laws and the Materials Act of 1947, except for lease or conveyance under the Recreation and Public Purposes Act.

DATES: Interested persons may submit comments regarding the proposed classifications and lease/conveyance of the lands to the Bureau of Land Management Richfield Field Manager, Richfield Field Office, 150 East 900 North, Richfield, Utah 84701 until July 7, 2003.

Classification Comments: Interested parties may submit comments involving the suitability of the public lands for the proposed uses. Comments on the classifications are restricted to whether the lands are physically suited for the proposed uses, whether the uses will maximize the future use or uses of the lands, whether the uses are consistent with local planning and zoning, or if the uses are consistent with State and Federal programs.

Application Comments: Interested parties may submit comments regarding the specific uses proposed in the applications and plan of development, whether the BLM followed proper administrative procedures in reaching the decision, or any other factor not directly related to the suitability of the land for purposes proposed. Comments, including names and addresses of respondents will be available for public review at the BLM Richfield Field Office and may be published as part of the Environmental Assessment and other related documents. Individual respondents may request confidentiality. If you wish to withhold your name or street address from public review and disclosure under the Freedom of Information Act, you must state this prominently at the beginning of your written request. Such requests will be honored to the extent allowed by law. All submissions from organizations and businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, will be made available for public inspection in their entity.

Any adverse comments will be reviewed by the State Director. In the absence of any adverse comments, the classification will become effective on July 21, 2003.

FOR FURTHER INFORMATION CONTACT: Additional information concerning the R&PP leases or conveyances may be obtained from the Richfield Field Office at the above address. Telephone call may be directed to Kay Erickson at (435) 896–1500.

Dated: March 31, 2003.

Aden Seidlitz,

Field Manager.

[FR Doc. 03–12518 Filed 5–19–03; 8:45 am]

BILLING CODE 4310–DQ–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[UT–050–1430–UTU–79468]

Realty Action Notice

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of realty action.

SUMMARY: The following public lands in Sevier County, Utah, have been examined and found suitable for sale utilizing non-competitive procedures, at not less than the fair market value of $167,000. Salt Lake Meridian, Utah. T. 22 S., R. 1 W. Section 1, Lots 1 thru 4 and S½N½, N½SW¼, SW¼SW¼, containing 440.85 acres. Authority for the sale is Section 203 of the Federal Land Policy and Management Act of 1976 (FLPMA). The land will not be offered for sale until at least 60 days after the date of this notice.

DATES: For a period of 45 days from the date of publication of this notice in the **Federal Register**, interested persons may submit comments regarding the sale of the lands to the Field Manager, Richfield Field Office at the address shown below. In the absence of timely objections, this proposal shall become the final determination of the Department of the Interior.

ADDRESSES: Comments on the proposed sale should be sent to Aden Seidlitz, Field Manager, Richfield Field Office, 150 East 900 North, Richfield, Utah 84701. Comments, including names and addresses of respondents will be available for public review at the Bureau of Land Management, Richfield Field Office and will be subject to disclosure under the Freedom of Information Act (FOIA). Individual respondents may request confidentiality. If you wish to have your name or street address from public review and disclosure under the FOIA, you must state this prominently at the beginning of your written comment. Such requests will be honored to the extent allowed by law. All submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, will be made available for public inspection in their entirety.

FOR FURTHER INFORMATION CONTACT: Aden Seidlitz, Richfield Field Manager, 150 East 900 North, Richfield, Utah 84701 or telephone (435) 896–1500. Existing planning documents and information are available at the above address.

SUPPLEMENTARY INFORMATION: Upon publication of this notice in the **Federal Register**, the lands described above will be segregated from all forms of appropriation under the public land laws, including the mining laws, pending disposition of this action or 270 days from the date of publication of this notice, whichever occurs first. The land is being offered to Salina City, Utah, at not less than the appraised fair market value of $167,000. All minerals in the lands would be reserved to the United States. Detailed information concerning the sale will be available to interested parties from the Richfield Field Office, Bureau of Land Management, 150 East 900 North, Richfield, Utah 84701.

Dated: March 7, 2003.

Aden L. Seidlitz,

Field Manager, Richfield Field Office.

[FR Doc. 03–12519 Filed 5–19–03; 8:45 am]

BILLING CODE 4310–DQ–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[ID–074–1654–HB DA5V]

Temporary Closure of Egin Lakes Access Recreation Site to Overnight Camping, ID

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of closure.

SUMMARY: Notice is hereby given that the following described lands are temporarily closed to overnight camping until further notice during the construction of Egin Lakes Access Recreation Site overnight and day use facilities. The temporary closure is for the protection of public users' health and safety under the provisions of 43 CFR 8364.1 and the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1701). Day use access will still be permitted with the possible exception of days where there is heavy construction activity. Persons with authorizations to utilize the area by BLM regulations, contracts, leases or permits, may use the area described in accordance with those authorizations. This temporary closure will remain in effect for up to three years or until rescinded or modified by the Idaho Falls Field Manager.

EFFECTIVE DATE: This order is effective when published in the **Federal Register**.

Legal Description:

Boise Meridian, Idaho

Township 7 N, Range 39 E, Section 3: N ½, NW ¼ SW ¼

SUPPLEMENTARY INFORMATION: About 20 acres of public land are involved in the construction project, which is adjacent to the Sand Mountain Wilderness Study Area (WSA) and the 36,900 acre St. Anthony Sand Dunes Special Recreation Management Area (SRMA) in Fremont and Jefferson Counties. Modifications to the site are in accordance with the BLM's overall Recreation Project Site Plan that was approved in August 2001. This project plan involves three phases of development as part of BLM's Deferred Maintenance Program. All three phases are planned to be completed by 2006. The project is to accommodate the current number of users who use the site for dispersed camping and day use parking for access onto the St. Anthony Sand Dunes. Visitor use to the existing four-acre site has increased dramatically during the past two decades. The site received over 88,000 visits in FY2000. The majority of use is from April through October. On most spring and summer weekends and holidays the site with its facilities is over utilized beyond its capacity.

The first phase of the project is to upgrade the existing access road and prepare the surface for a 50-unit campground, visitor contact area, and additional day use parking areas. This phase started last fall and will be completed sometime in the summer of 2003. The site will be posted: Closed to Overnight Camping.

During the construction of the recreation site, the public can camp and access the sand dunes from the nearby private campgrounds or off public land along the Red Road where allowed.

This closure will be monitored and enforced by the BLM and Fremont County Sheriff's Department. Authority for this temporary closure order may be found in 43 CFR 8364.1. Violation of this closure is punishable by a fine not to exceed $1,000.00 and/or imprisonment not to exceed 12 months.

FOR FURTHER INFORMATION CONTACT: Bill Boggs, Bureau of Land Management, Upper Snake River District, Idaho Falls Field Office, 1405 Hollipark Drive, Idaho Falls, Idaho 83401, (208) 524–7527. A map showing the available overnight camping and the closure area will be available from the BLM, Idaho Falls Field Office.

Dated: April 14, 2003.

Carol McCoy Brown,

Idaho Falls Field Manager.

[FR Doc. 03–12517 Filed 5–19–03; 8:45 am]

BILLING CODE 4310–AG–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[ES–030–1430–BJ, ES–051868, Group 551, Minnesota]

Notice of Filing of Plat of an Island; Minnesota

1. The Bureau of Land Management (BLM) will officially file the plat of the planimetric survey of an island in Two Inlets Lake, Township 141 North, Range 36 West, Fifth Principal Meridian, Minnesota, accepted on May 6, 2003, in the Eastern States Office, Springfield, Virginia, 30 calendar days from the date of publication in the **Federal Register**. The tract shown below describes the island omitted from the original survey. Fifth Principal Meridian, Minnesota T. 141 N. R. 36 W. Tract No. 37

2. Tract No. 37, Lakes States County Sequential Control No. 001, Becker County, is firm land rising 10–15 ft. above the ordinary high water mark. The north and northeast sides of the island have a well defined bank, 2–3 ft. high. The soil composition is of glacial till topped with a layer of humus 6–9 in. deep and is similar to the soil found on the adjacent uplands. Several large stumpholes from wind-thrown trees were observed on the island. Tree species consist of aspen, clump basswood, balsam fir, elm, and birch, ranging in size from 4 to 23 inches in diameter, with a maximum age of 75+ years. The ground cover consists of sapling trees, briar, hazel, cranberry, sumac and native grasses.

3. MN Department of Natural Resources (DNR) has recorded the water levels of Two Inlets Lake from 1938 to the present. The MN DNR reports the average water level for this period to be 1456.09 ft. NGVD 1929. The DNR reading taken closest to the date of the aerial imagery was recorded on May 5, 1991, as 1456.21 ft. NGVD 1929. The present water level of the lake agrees with the levels reported by the MN DNR. The record meander line was overlaid to scale on the 1991 aerial imagery and found to compare favorably. The open water channel between the south end of the island and the adjoining upland is 4 chains across and averages 10 feet deep.

4. The upland character of this island along with the depth and width of the channel attests to its existence in 1858 when Minnesota was admitted to the Union; in 1878 at the time of the original survey; and at all subsequent dates.

5. The island returned by this plat is classified as being more than 50 percent upland in character within the purview of the Swamp and Overflow Act of September 28, 1850 (9 Stat. 519) as extended to the State of Minnesota under the Act of March 12, 1860 (12 Stat. 3).

6. The survey was requested by the Assistant Field Manager, Division of Natural Resource Management, under the authority of the Minnesota Public Lands Improvement Act (MPLIA) of 1990, Pub. L. 101–442 (104 Stat. 1020).

7. Except for valid existing rights, this island will not be subject to application, petition, location or selection under any public law until 30 calendar days after the date of publication in the **Federal Register**.

8. Interested parties protesting the determination that this island is public land of the United States, must present valid proof showing that the island did not exist at the time of statehood or that it was attached to the mainland at the time of the original survey. Such protests must be submitted in writing to the Chief Cadastral Surveyor, Eastern States, Bureau of Land Management, 7450 Boston Boulevard, Springfield, Virginia 22153, prior to the date of the official filing.

We will place a copy of the plat we described in the open files. Copies of the plat will be made available upon request and prepayment of the appropriate fee.

Dated: May 13, 2003.

Stephen D. Douglas,

Chief Cadastral Surveyor.

[FR Doc. 03–12537 Filed 5–19–03; 8:45 am]

BILLING CODE 4310–GJ–P

DEPARTMENT OF THE INTERIOR

Bureau of Reclamation

Agency Information Collection Activities Under OMB Review; Comment Request

AGENCY: Bureau of Reclamation, Interior.

ACTION: Notice of renewal of currently approved collection (OMB No. 1006–0005).

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), this notice announces the following Information Collection Request (ICR) has been forwarded to the Office of Management and Budget (OMB) for review and comment: Individual Landholder's and Farm Operator's Certification and Reporting Forms for Acreage Limitation, 43 CFR part 426 and 43 CFR part 428, OMB Control Number: 1006–0005. The ICR describes the nature of the information collection and its expected cost and burden.

DATES: Your comments must be received on or before June 19, 2003.

ADDRESSES: You may send comments regarding the burden estimate, or any other aspect of the information collection, including suggestions for reducing the burden, to the Desk Officer for the Department of the Interior at the Office of Management and Budget, Office of Information and Regulatory Affairs, via facsimile at (202) 395–5806 or e-mail at *Ruth_Solomon@omb.eop.gov*. A copy of your comments should also be directed to the Bureau of Reclamation, Attention: D–5200, PO Box 25007, Denver, CO 80225–0007.

FOR FURTHER INFORMATION CONTACT: For further information or a copy of the proposed forms contact Stephanie McPhee, D–5200, PO Box 25007, Denver, CO 80225–0007; or by telephone: (303) 445–2897.

SUPPLEMENTARY INFORMATION:

Title: Individual Landholder's and Farm Operator's Certification and Reporting Forms for Acreage Limitation, 43 CFR part 426 and 43 CFR part 428.

Abstract: This information collection requires certain landholders (direct or indirect landowners or lessees) and farm operators to complete forms demonstrating their compliance with the acreage limitation provisions of Federal reclamation law. These forms are submitted to districts who use the information to establish each landholder's status with respect to landownership limitations, full-cost pricing thresholds, lease requirements, and other provisions of Federal reclamation law. In addition, forms are submitted by certain farm operators to provide information concerning the services they provide and the nature of their farm operating arrangements.

All landholders whose entire westwide landholdings total 40 acres or less are exempt from the requirement to submit Reclamation Reform Act of 1982 (RRA) forms. Landholders who are "qualified recipients" have RRA forms submittal thresholds of 80 acres or 240 acres depending on the district's RRA forms submittal threshold category where the land is held. Only farm operators who provide multiple services to more than 960 acres held in trusts or by legal entities are required to submit forms. This collection of information allows the Bureau of Reclamation (we, our, or us) to establish landholders' compliance with Federal reclamation law.

Changes to the RRA Forms and the Instructions to Those Forms.

Several proposed changes were made to the current RRA forms and the instructions to those forms prior to the 60-day comment period initiated by the notice published in the **Federal Register** on December 27, 2002 (67 FR 79144, Dec. 27, 2002). Those changes were designed to increase the respondents' understanding of the forms, instructions to the forms, and what information is required to be submitted with the forms to the districts. Comments resulting from the 60-day comment period consisted of minor language additions, deletions, and revisions to specific areas of certain RRA forms. Such additions, deletions, and revisions reflected language found in current RRA directives and/or in other places within the current RRA forms. Changes based on the comments received were made when the changes resulted in increased clarity and increased correctness of the RRA forms and the corresponding instructions. All other changes that were made are editorial or typographical in nature. The proposed revisions to the RRA forms will be included starting in the 2004 water year.

Frequency: Annually.

Respondents: Landholders and farm operators of certain lands in our projects, whose westwide landholdings exceed specified RRA forms submittal thresholds.

Estimated Total Number of Respondents: 18,272.

Estimated Number of Responses per Respondent: 1.02.

Estimated Total Number of Annual Responses: 18,638.

Estimated Total Annual Burden on Respondents: 13,902 hours.

Estimate of Burden for Each Form:

Form No.	Estimated number of respondents	Frequency of response	Total annual reponses	Burden estimate per form (in minutes)	Total burden hours
Form 7–2180	5,019	1.02	5,119	60	5,119
Form 7–2180EZ	503	1.02	513	45	385
Form 7–2181	1,620	1.02	1,652	78	2,148
Form 7–2184	38	1.02	39	45	29
Form 7–2190	1,845	1.02	1,882	60	1,882
Form 7–2190EZ	109	1.02	111	45	83
Form 7–2191	880	1.02	898	78	1,167
Form 7–2194	4	1.02	4	45	3
Form 7–21PE	188	1.02	192	66	211
Form 7–21PE-IND	5	1.02	5	12	1
Form 7–21TRUST	1,083	1.02	1,105	60	1,105
Form 7–21VERIFY	6,375	1.02	6,503	12	1,301
Form 7–21FC	243	1.02	248	30	124
Form 7–21XS	164	1.02	167	30	84
Form 7–21FARMOP	196	1.02	200	78	260
Total	18,272	1.02	18,638	.....	13,902

Comments

Comments are invited on:

(a) Whether the proposed collection of information is necessary for the proper performance of our functions, including whether the information will have practical use;

(b) The accuracy of our burden estimate for the proposed collection of information;

(c) Ways to enhance the quality, usefulness, and clarity of the information to be collected; and

(d) Ways to minimize the burden of the collection of information on respondents, including the use of automated collection techniques or other forms of information technology.

An agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. Reclamation will display a valid OMB control number on the RRA forms. A **Federal Register** notice with a 60-day comment period soliciting comments on this collection of information was published in the **Federal Register** on December 27, 2002 (67 FR 79144, Dec. 27, 2002). A list of the comments received and our responses to those comments will be sent to: (1) All districts, (2) all commenters, and (3) OMB with the ICR; it is also available from us upon request.

OMB has up to 60 days to approve or disapprove this information collection, but may respond after 30 days; therefore, public comment should be submitted to OMB within 30 days in order to assure maximum consideration.

Department of the Interior practice is to make comments, including names and home addresses of respondents, available for public review. Individual respondents may request that we withhold their home address from public disclosure, which we will honor to the extent allowable by law. There also may be circumstances in which we would withhold a respondent's identity from public disclosure, as allowable by law. If you wish us to withhold your name and/or address, you must state this prominently at the beginning of your comment. We will make all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, available for public disclosure in their entirety.

Dated: April 2, 2003.

Richard Rizzi,

Acting Director, Office of Policy.

[FR Doc. 03–12538 Filed 5–19–03; 8:45 am]

BILLING CODE 4310–MN–P

DEPARTMENT OF THE INTERIOR

Bureau of Reclamation

Agency Information Collection Activities Under OMB Review; Comment Request

AGENCY: Bureau of Reclamation, Interior.

ACTION: Notice of renewal of currently approved collection (OMB No. 1006–0023).

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), this notice announces the following Information Collection Request (ICR) has been forwarded to the Office of Management and Budget (OMB) for review and comment: Limited Recipient Identification Sheet and Trust Information Sheet for Acreage Limitation, 43 CFR part 426, OMB Control Number: 1006–0023. The ICR describes the nature of the information collection and its expected cost and burden.

DATES: Your comments must be received on or before June 19, 2003.

ADDRESSES: You may send comments regarding the burden estimate, or any other aspect of the information collection, including suggestions for reducing the burden, to the Desk Officer for the Department of the Interior at the Office of Management and Budget, Office of Information and Regulatory Affairs, via facsimile at (202) 395–5806 or e-mail at *Ruth_Solomon@omb.eop.gov*. A copy of your comments should also be directed to the Bureau of Reclamation, Attention: D–5200, PO Box 25007, Denver, CO 80225–0007.

FOR FURTHER INFORMATION CONTACT: For further information or a copy of the proposed forms contact Stephanie McPhee, D–5200, PO Box 25007, Denver, CO 80225–0007; or by telephone: (303) 445–2897.

SUPPLEMENTARY INFORMATION:

Title: Limited Recipient Identification Sheet and Trust Information Sheet for Acreage Limitation, 43 CFR part 426.

Abstract: Identification of limited recipients—Some entities that receive Reclamation irrigation water may believe themselves to be under the Reclamation Reform Act of 1982 (RRA) forms submittal threshold and consequently, may not submit the appropriate RRA form(s). However, some of these entities may in fact have a different RRA forms submittal threshold than what they believe it to be due to the number of natural persons benefitting from each entity. In addition, some entities that are exempt from the requirement to submit RRA forms due to the size of their landholdings (directly and indirectly owned and leased land) may in fact be receiving Reclamation irrigation water for which the full-cost rate must be paid because the entity first started to receive Reclamation irrigation water deliveries after October 1, 1981 (43 CFR 426.6(b)(2)). The information obtained through completion of the Limited Recipient Identification Sheet allows the Bureau of Reclamation (we, our, or us) to establish entities' compliance with Federal reclamation law. The Limited Recipient Identification Sheet is disbursed at our discretion.

Trust review—We are required to review and approve all trusts (43 CFR part 426.7(b)(2)) in order to ensure trusts meet the regulatory criteria specified in 43 CFR part 426.7. Land held in trust generally will be attributed to the beneficiaries of the trust rather than the trustee if the regulatory criteria are met. When we become aware of trusts with a relatively small landholding (40 acres or less), we may extend to those trusts the option to complete and submit for our review the proposed Trust Information Sheet instead of actual trust documents. If we find nothing on the completed, Trust Information Sheet that would warrant the further investigation of a particular trust, that trustee will not be burdened with submitting trust documents to us for in-depth review. The Trust Information Sheet is disbursed at our discretion.

Changes to the RRA Forms and the Instructions to Those Forms

Several proposed changes were made to the current forms prior to the 60-day comment period initiated by the notice published in the **Federal Register** on December 27, 2002 (67 FR 79145, Dec. 27, 2002). Those changes were designed to increase the respondents' understanding of the forms and how to complete them. Comments resulting from the 60-day comment period consisted of minor language revisions, layout revisions to specific areas of the forms, and the addition of two questions (one per form) that will diminish the need for Reclamation to pursue further information from respondents in certain cases. Changes based on the comments received were made when the changes resulted in increased clarity and increased correctness of the forms and the corresponding instructions. All other changes that were made are editorial or typographical in nature. The proposed revisions to the forms will be included starting in the 2004 water year.

Frequency: Generally, these forms will be submitted once per identified entity or trust. Each year, we expect new responses in accordance with the following numbers.

Respondents: Entity landholders and trusts identified by Reclamation that are subject to the acreage limitation provisions of Federal reclamation law.

Estimated Total Number of Respondents: 325.

Estimated Number of Responses per Respondent: 1.00.

Estimated Total Number of Annual Responses: 325.

Estimated Total Annual Burden on Respondents: 27 hours.

Estimate of Burden for Each Form:

Form No.	Estimated number of respondents	Frequency of response	Total annual responses	Burden estimate per form (in minutes)	Total burden hours
Limited Recipient Identification Sheet	175	1.00	175	5	15
Trust Information Sheet	150	1.00	150	5	12
Total	325	1.00	325	.....	25

Comments.

Comments are invited on:

(a) Whether the proposed collection of information is necessary for the proper performance of our functions, including whether the information will have practical use;

(b) The accuracy of our burden estimate for the proposed collection of information;

(c) Ways to enhance the quality, usefulness, and clarity of the information to be collected; and

(d) Ways to minimize the burden of the collection of information on respondents, including the use of automated collection techniques or other forms of information technology.

An agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. Reclamation will display a valid OMB control number on the "Limited Recipient Identification Sheet" and the "Trust Information Sheet." A **Federal Register** notice with a 60-day comment period soliciting comments on this collection of information was published in the **Federal Register** on December 27, 2002 (67 FR 79145, Dec. 27, 2002).

A list of the comments received and our responses to those comments will be sent to: (1) All districts, (2) all commenters, and (3) OMB with the ICR; it is also available from us upon request.

OMB has up to 60 days to approve or disapprove this information collection, but may respond after 30 days; therefore, public comment should be submitted to OMB within 30 days in order to assure maximum consideration.

Department of the Interior practice is to make comments, including names and home addresses of respondents, available for public review. Individual respondents may request that we withhold their home address from public disclosure, which we will honor to the extent allowable by law. There also may be circumstances in which we would withhold a respondent's identity from public disclosure, as allowable by law. If you wish us to withhold your name and/or address, you must state this prominently at the beginning of your comment. We will make all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, available for public disclosure in their entirety.

Dated: April 2, 2003.

Richard Rizzi,

Acting Director, Office of Policy.

[FR Doc. 03–12539 Filed 5–19–03; 8:45 am]

BILLING CODE 4310–MN–P

DEPARTMENT OF THE INTERIOR

Bureau of Reclamation

Agency Information Collection Activities Under OMB Review; Comment Request

AGENCY: Bureau of Reclamation, Interior.

ACTION: Notice of renewal of a currently approved collection (OMB No. 1006–0006).

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), this notice announces the following Information Collection Request (ICR) has been forwarded to the Office of Management and Budget (OMB) for review and comment: Certification Summary Form and Reporting Summary Form for Acreage Limitation, 43 CFR part 426 and 43 CFR part 428, OMB Control Number: 1006–0006. The ICR describes the nature of the information collection and its expected cost and burden.

DATES: Your comments must be received on or before June 19, 2003.

ADDRESSES: You may send comments regarding the burden estimate, or any other aspect of the information collection, including suggestions for reducing the burden, to the Desk Officer for the Department of the Interior at the Office of Management and Budget, Office of Information and Regulatory Affairs, via facsimile at (202) 395–5806 or e-mail at *Ruth_Solomon@omb.eop.gov.* A copy of your comments should also be directed to the Bureau of Reclamation, Attention: D–5200, PO Box 25007, Denver, CO 80225–0007.

FOR FURTHER INFORMATION CONTACT: For further information or a copy of the proposed forms contact Stephanie McPhee, D–5200, PO Box 25007, Denver, CO 80225–0007; or by telephone: (303) 445–2897.

SUPPLEMENTARY INFORMATION:

Title: Certification Summary Form and Reporting Summary Form for Acreage Limitation, 43 CFR part 426 and 43 CFR part 428.

Abstract: The summary forms in this information collection are to be used by district offices to summarize individual landholder (direct or indirect landowner or lessee) and farm operator certification and reporting forms as required by the Reclamation Reform Act of 1982 (RRA), 43 CFR part 426 and 43 CFR part 428. This information allows the Bureau of Reclamation (we, our, or us) to establish water user compliance with Federal reclamation law.

Changes to the Reclamation Reform Act of 1982 (RRA) Forms and the Instructions to Those Forms

Proposed changes were made to the current Form 7–21SUMM–C, Form 7–21SUMM–R, the corresponding tabulation sheets, and the corresponding instructions prior to the 60-day comment period initiated by the notice published in the **Federal Register** on December 27, 2002 (67 FR 79147, Dec. 27, 2002). Those changes were designed to increase the respondents' understanding of the summary forms, the instructions to the summary forms, and what information is required to be submitted to Reclamation. Comments resulting from the 60-day comment period consisted of minor language additions, deletions, and revisions to specific areas of certain summary forms. Such additions, deletions, and revisions reflected language found in current RRA directives and/or in other places within the current summary forms. Changes based on the comments received were made when the changes resulted in increased clarity and increased correctness of the summary forms and the corresponding instructions. All other changes that were made are editorial or typographical in nature. The proposed revisions to the summary forms will be included starting in the 2004 water year.

Frequency: Annually.

Respondents: Contracting entities that are subject to the acreage limitation provisions of Federal reclamation law.

Estimated Total Number of Respondents: 256.

Estimated Number of Responses per Respondent: 1.25.

Estimated Total Number of Annual Responses: 320.

Estimated Total Annual Burden on Respondents: 12,800 hours.

Estimate of Burden for Each Form:

Form No.	Estimated number of respondents	Frequency of response	Total annual responses	Burden hours per response	Total burden hours
7–21SUMM–C and tabulation sheets	203	1.25	254	40	10,160
7–21SUMM–R and tabulation sheets	53	1.25	66	40	2,640
Total	256	1.25	320	.....	12,800

Comments

Comments are invited on:

(a) Whether the proposed collection of information is necessary for the proper performance of our functions, including whether the information will have practical use;

(b) The accuracy of our burden estimate for the proposed collection of information;

(c) Ways to enhance the quality, usefulness, and clarity of the information to be collected; and

(d) Ways to minimize the burden of the collection of information on respondents, including the use of automated collection techniques or other forms of information technology.

An agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. Reclamation will display a valid OMB control number on the RRA forms. A **Federal Register** notice with a 60-day comment period soliciting comments on this collection of information was published in the **Federal Register** on December 27, 2002 (676 FR 79147, Dec. 27 2002). A list of the comments received and our responses to those comments will be sent to: (1) All districts, (2) all commenters, and (3) OMB with the ICR; it is also available from us upon request.

OMB has up to 60 days to approve or disapprove this information collection, but may respond after 30 days; therefore, public comment should be submitted to OMB within 30 days in order to assure maximum consideration.

Department of the Interior practice is to make comments, including names and home addresses of respondents, available for public review. Individual respondents may request that we withhold their home address from public disclosure, which we will honor to the extent allowable by law. There also may be circumstances in which we would withhold a respondent's identity from public disclosure, as allowable by law. If you wish us to withhold your name and/or address, you must state this prominently at the beginning of your comment. We will make all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, available for public disclosure in their entirety.

Dated: April 2, 2003.

Richard Rizzi,

Acting Director, Office of Policy.

[FR Doc. 03–12540 Filed 5–19–03; 8:45 am]

BILLING CODE 4310–MN–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–50,983]

Advanced Machining, Inc., Newberg, Oregon; Notice of Termination of Investigation

Pursuant to section 221 of the Trade Act of 1974, as amended, an investigation was initiated on February 26, 2003, in response to a worker petition which was filed by a company official on behalf of workers at Advanced Machining, Inc., Newberg, Oregon.

The petitioner has requested that the petition be withdrawn. Consequently, the investigation has been terminated.

Signed in Washington, DC, this 8th day of May, 2003.

Richard Church,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 03–12559 Filed 5–19–03; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–51,653]

AID Temporary Services Osceola, Arkansas; Notice of Termination of Investigation

Pursuant to section 221 of the Trade Act of 1974, as mended, an investigation was initiated on April 30, 2003 in response to a worker petition filed on behalf of workers at AID Temporary Services, Osceola, Arkansas.

The petitioning group of workers is covered by an active certification (TA–W–50,548 amended) which remains in effect.

Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed in Washington, DC this 6th day of May, 2003.

Elliott S. Kushner,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 03–12573 Filed 5–19–03; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–50,242]

Beres Industries, Inc., Lakewood, New Jersey; Notice of Termination of Investigation

Pursuant to Section 221 of the Trade Act of 1974, an investigation was initiated on December 4, 2002 in response to a petition dated November 20, 2002, and filed by a company official on behalf of workers at Beres Industries, Inc., Lakewood, New Jersey. The workers produced plastic injection molds, audio cassettes and computer printed cartridges.

The investigation revealed that the subject firm was sold in May 2000.

Section 223(b)(1) of the Trade Act of 1974, specifies that no certification may apply to a worker separated more than one year prior to the date of the petition. Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed in Washington, DC this 9th day of May 2003.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 03–12556 Filed 5–19–03; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–51,129]

CERF Brothers Bag Company Vandalia, Missouri; Notice of Termination of Investigation

Pursuant to Section 221 of the Trade Act of 1974, an investigation was initiated on March 11, 2003 in response to a worker petition which was filed by a company official on behalf of workers at Cerf Brothers Bag Company, Vandalia, Missouri, (TA–W–51,129) and Cerf Brothers Bag Company, New London, Missouri.

The petitioner has requested that the petition be withdrawn. Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed in Washington, DC this 9th day of May 2003.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 03–12560 Filed 5–19–03; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–51,183]

Columbia Falls Aluminum Company, a Wholly-Owned Subsidiary of Glencore International, Columbia Falls, Montana; Notice of Termination of Investigation

Pursuant to section 221 of the Trade Act of 1974, as amended, an investigation was initiated on March 17, 2003 in response to a petition filed by a company official on behalf of workers at Columbia Falls Aluminum Company, Columbia Falls, Montana.

The petitioner has requested that the petition be withdrawn. Consequently,

further investigation would serve no purpose, and the investigation has been terminated.

Signed at Washington, DC this 1st day of May, 2003.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 03–12569 Filed 5–19–03; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–51,157]

DBM Technologies LLC, Blow Molding, Corunna, Michigan; Notice of Termination of Investigation

Pursuant to section 221 of the Trade Act of 1974, as amended, an investigation was initiated on March 14, 2003, in response to a worker petition filed on behalf of workers at DBM Technologies LLC, Blow Molding, Corunna, Michigan.

The subject plant closed more than one year prior to the date of the petition. Section 223(b) of the Act specifies that no certification may apply to any worker whose last separation occurred more than one year before the date of the petition. Consequently, the investigation has been terminated.

Signed in Washington, DC, this 9th day of May, 2003.

Elliott S. Kushner,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 03–12561 Filed 5–19–03; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–50,800]

Flexcel-Batesville, Batesville, Mississippi; Notice of Termination of Investigation

Pursuant to section 221 of the Trade Act of 1974, as amended, an investigation was initiated on February 6, 2003, in response to a petition filed by the company on behalf of workers of Flexcel-Batesville, Batesville, Mississippi. The workers produce metal furniture and automotive components.

The petitioner has requested that the petition be withdrawn. Consequently, the investigation has been terminated.

Signed in Washington, DC, this 5th day of May, 2003.

Elliott S. Kushner,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 03–12558 Filed 5–19–03; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–51,672]

GE Industrial Systems, a Wholly-Owned Subsidiary of General Electric, Inc., Shreveport, Louisiana and Conover, North Carolina; Notice of Termination of Investigation

Pursuant to section 221 of the Trade Act of 1974, as amended, an investigation was initiated on May 2, 2003, in response to a petition filed by a company official on behalf of workers at GE Industrial Systems, a wholly-owned subsidiary of General Electric, Inc., Shreveport, Louisiana and Conover, North Carolina.

The petitioner has requested that the petition be withdrawn. Consequently, further investigation would serve no purpose, and the investigation has been terminated.

Signed in Washington, DC, this 8th day of May, 2003.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 03–12565 Filed 5–19–03; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–51,219]

Gemini Gas Compressors Corpus Christi, Texas; Notice of Termination of Investigation

Pursuant to section 221 of the Trade Act of 1974, as amended, an investigation was initiated on March 19, 2003, in response to a worker petition filed March 10, 2003, on behalf of workers at Gemini Gas Compressors, Corpus Christi, Texas.

The petitioning group of workers is covered by an earlier petition filed on March 17, 2003 (TA–W–51,180) that is the subject of an ongoing investigation for which a determination has not yet been issued. Further investigation in this case would duplicate efforts and serve no purpose; therefore the investigation under this petition has been terminated.

Signed at Washington, DC this 6th day of May 2003.

Elliott S. Kushner,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 03–12570 Filed 5–19–03; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–50,796]

General Electric Company, GE Lighting Inc. Tungston Products Plant, Euclid, Ohio; Notice of Termination of Investigation

Pursuant to section 221 of the Trade Act of 1974, an investigation was initiated on February 6, 2003 in response to a worker petition filed on behalf of workers at General Electric Company, GE Lighting Inc., Tungston Products Plant, Euclid, Ohio.

The petitioning group of workers is covered by an active certification issued on February 27, 2003 and which remains in effect (TA–W–50,647). Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed at Washington, DC this 2nd day of May 2003.

Richard Church,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 03–12567 Filed 5–19–03; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–51,433]

Kingston Technology, Fountain Valley, California; Notice of Termination of Investigation

Pursuant to section 221 of the Trade Act of 1974, as amended, an investigation was initiated on April 7, 2003, in response to a petition filed on behalf of workers at Kingston Technology, Fountain Valley, California.

The petitioner has requested that the petition be withdrawn. Consequently, the investigation has been terminated.

Signed in Washington, DC, this 8th day of May, 2003.

Richard Church,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 03–12563 Filed 5–19–03; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–51,382]

OEM Worldwide, Spearfish, South Dakota; Notice of Termination of Investigation

Pursuant to section 221 of the Trade Act of 1974, as amended, an investigation was initiated on April 1, 2003, in response to a petition filed by a company official on behalf of workers at OEM Worldwide, Spearfish, South Dakota.

The petitioner has requested that the petition be withdrawn. Consequently, the investigation has been terminated.

Signed in Washington, DC, this 9th day of May, 2003.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 03–12562 Filed 5–19–03; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–41,185]

Pittsburgh Logistics Systems, A Subsidiary of Quadrivius, Inc. on Location at LTV Steel Corp.; Independence, Ohio; Notice of Negative Determination of Reconsideration on Remand

The United States Court of International Trade (USCIT) remanded for further investigation of the Secretary of Labor's negative determination in *Former Employees of Pittsburgh Logistics Systems* v. *U.S. Secretary of Labor* (02–00387).

The petition listed Pittsburgh Logistics Systems (PLS) in Rochester, Pennsylvania and PLS in Independence, Ohio as the workers' firm and relevant subdivision. Administrative Record (AR), 3. Therefore, Department of Labor (DOL) investigated both facilities for possible certification. AR, 15. DOL's initial denial of the petition for certification of both worker groups was issued March 29, 2002 and published in the **Federal Register** on April 17, 2002 (67 FR 18923). DOL determined neither facility fulfilled the requirements because, in short, the workers' firm did not produce an article as required by section 222(a)(3) of the Act. AR 17–19.

The PLS Independence, Ohio worker group requested administrative reconsideration on April 29, 2002 as they felt "that Department of Labor's decision is in error because: Our jobs were eliminated due to lack of work caused by LTV Steel Co., Inc., shutdown due to imports." AR 25. DOL denied the request, finding that LTV's closure "is not relevant" because the "subject workers may be certified only if their separation was caused importantly by a reduced demand for their services from a parent firm, a firm otherwise related to the subject firm by ownership, or a firm otherwise related to the subject firm by control." AR 28. DOL's denial was issued on May 30, 2002 and published in the **Federal Register** on June 12, 2002 (67 FR 40341).

Mr. Robert Weintzetl, on behalf of the other petitioners, appealed to the CIT on May 29, 2002, and, on September 5, 2002, attorneys at King & Spalding representing the petitioners *pro bono* filed an amended complaint. On February 28, 2003, the CIT issued an Order remanding the case to DOL "for redetermination consistent with this Opinion of whether the plaintiffs were eligible for TAA benefits, either as 'production' workers or 'service' workers.'

On the point of whether the employees should be certified as production workers, the CIT ordered DOL to clarify on remand why the work of "manag[ing] warehousing and distribution" and "managing traffic and processing of freight invoices" makes a petitioner ineligible for certification as a production worker. *Former Employees of Pittsburgh Logistics Systems* v. *United States Secretary of Labor*, Slip Op. 03–21, February 28, 2003, pg. 13. Regarding whether the employees should be certified as service workers, the CIT found that DOL had failed to fully investigate and articulate the "corporate control" issue that is part of DOL's service worker analysis.

Section 222(a)(3) of the Trade Act establishes that DOL must not certify a group unless "increases of imports of articles like or directly competitive with articles produced by such workers' firm or an appropriate subdivision thereof contributed importantly to such total or partial separation, or threat thereof, and to such decline in sales or production." The phrase of particular importance in this case is "articles produced by such workers' firm or an appropriate subdivision thereof." Under this requirement, DOL must deny certification to a worker group unless the workers' firm or an appropriate subdivision of the workers' firm produced an import-impacted article.

DOL's interpretation of the phrase "appropriate subdivision thereof" is limited to related or affiliated firms; cannot be expanded to encompass two unaffiliated firms. This interpretation of the phrase "appropriate subdivision" is consistent with section 222(a)(1) which requires DOL to consider whether a significant number of workers have been separated from "the workers' firm or appropriate subdivision of the firm." Because the Act clearly limits "appropriate subdivision" to just "the" workers' firm in the first requirement, DOL understands Congress to have intended to similarly limit "appropriate subdivision" in the immediately following requirements.

This limitation is reflected in the regulations. The regulatory definition of "firm" states, "[a] firm, together with any predecessor or successor-in-interest, or together with any affiliated firm controlled or substantially beneficially owned by substantially the same persons, may be considered a single firm." 29 CFR 90.2. This language allows the phrase "workers' firm" to include more than one entity, but only to the extent that those multiple entities are "controlled or substantially beneficially owned by substantially the same persons." Section 90.2 of the regulations defines "appropriate subdivision" as one of three types of subdivisions, none of which permit the inclusion of a worker group employed by one firm to be included as within the "appropriate subdivision" of another, unaffiliated firm. The first two types of "appropriate subdivisions" are expressly limited to one "firm": either "an establishment in a multi-establishment firm" or "a distinct part or section of an establishment (whether or not the firm has more than one establishment) where the articles are produced." "One definition of establishment * * * is 'a permanent organization,' and would encompass any subdivision *up to* the size of the entire corporation." (Emphasis added.) *International Union, UAW* v. *Marshall*, 584 F.2d 390 (D.C. Cir. 1978).

The third type of "appropriate subdivision" encompasses "auxiliary facilities operated in conjunction with (whether or not physically separate from) production facilities." This broadens the term "appropriate subdivision" to include a facility that does not produce an article. However, this definition "has connotations that a

subdivision can never be larger than a single 'establishment.' The definition's limited use of 'auxiliary facilities' implies that any physically separate operation may be part of a subdivision only if it is merely auxiliary and used in conjunction with the main production unit." *Lloyd* v. *U.S. Dep't of Labor*, 637 F.2d 1267, 1274 (9th Cir. 1980). In *Lloyd*, the CIT stated that the word "auxiliary" implies that a facility will only be deemed an appropriate subdivision if it is a subsidiary part of a firm that is producing an article. In addition, the phrase "'[o]perated in conjunction with' implies that the auxiliary facility must be run by the same firm as the production facility or facilities." *Id.*

Production Worker Analysis

When a worker group applies for assistance, the fundamental test DOL applies is whether the workers' firm or an appropriate subdivision of the workers' firm produced an import-impacted article during the relevant period. If the worker group produces such an article, then they are deemed "production workers."

Because an "appropriate subdivision" is limited to the "workers' firm" and Section 90.2 of the regulations permits the inclusion of multiple entities within the term "firm" only if they are affiliated entities, on remand DOL conducted additional investigation of the relationship between PLS and LTV. The investigation indicates that substantially the same persons do not control PLS and LTV. Supplemental Administrative Record (SAR) 43. No corporate official of one company is also a board member or officer of the other (or of Quadrivius). SAR 42. Substantially the same persons do not own PLS and LTV. LTV was a publicly owned company. PLS is a wholly owned subsidiary of Quadrivius. SAR 36. Quadrivius is a privately owned company. SAR 39. After LTV's bankruptcy, PLS continued business. AR 25. The contract between LTV and PLS indicates that they are separate corporations. SAR 108. Therefore, DOL finds that LTV and PLS are not "controlled or substantially beneficially owned by substantially the same persons." 29 CFR 90.2. They are independent business entities and as the word "firm" is defined by section 90.2, "workers' firm" cannot mean both LTV and PLS.

DOL has considered which factors of employment exercised by a firm establish that it is "the" workers' firm. DOL has consistently determined that the critical employment factor is which firm was obligated to pay the employee during the relevant period. Because PLS was so obligated, DOL has determined that PLS is "the" workers' firm. SAR 40. Furthermore, the contract establishes that "PLS shall hire and use its own employees to provide the services described in this contract" (SAR 108) and "PLS is supplying its own employees, which is (*sic*) controls and directs for employment purposes." SAR 111. PLS "hired and fired" the relevant worker group. SAR 40. Therefore, DOL finds that the petitioners are employees of PLS and cannot be certified as an appropriate subdivision (or as part of an appropriate subdivision) of LTV.

The CIT Opinion ordered DOL "to explain to petitioners how their work was unrelated to production, not merely state that it was." This suggests that the CIT wants DOL to change the test of whether one qualifies as a production worker to whether the workers' tasks are "related" to production. Such a change would violate section 222(a)(3) which, as stated earlier, requires actual production by the workers' firm or an appropriate subdivision of the workers' firm. In addition, this change conflicts with previous CIT decisions that support DOL's determination that the test for production must involve the transformation of a thing into something "new and different." *Nagy* v. *Donovan*, 6 CIT 141, 145, 571 F.Supp. 1261, 1264 (1983).

DOL thoroughly investigated and could not find any evidence that any employees of PLS or Quadrivius actually produced any articles. AR 4, AR 11, AR 13, SAR 39. The workers' job descriptions indicate that from their workstations in LTV's Independence, Ohio facility, they managed the transportation of items to and from LTV's production facility in Cleveland, Ohio. SAR 20–28. Because there is no evidence that the petitioners transformed anything into something "new and different," they are not eligible for certification as production workers.

Service Worker Analysis

On the issue of whether the petitioners should be certified as service workers, the petitioners argued that they should be certified because: they performed their job inside an LTV facility, they were supervised by LTV employees, and they were employees of LTV prior to their employment with PLS. (LTV's employees at the Independence, Ohio facility did not produce any articles. AR 16, SAR 37, SAR 48, SAR 50, SAR 68. They were certified as a third type of appropriate subdivision because they provided services to LTV's Cleveland, Ohio production facility. SAR 57.)

As stated earlier, when a worker group applies for assistance, the fundamental test called for by section 222 of the Trade Act is whether the workers' firm or an appropriate subdivision of the workers' firm produced an import-impacted article during the relevant period. If there is no evidence that the worker group applying for certification produced an import-impacted article, it may only be certified if: (1) The workers' separations were caused importantly by a reduced demand for their services from a parent firm, a firm otherwise related to the subject firm by ownership, or a firm related by control; (2) the reduction in the demand for their services originated at a production facility whose workers independently met the statutory criteria for certification; and (3) the reduction directly related to the product impacted by imports. *Abbott* v. *Donovan*, 6 CIT 92, 100–101, 570 F.Supp. 41, 49 (1983). This "elaborated" analysis is necessary to determine whether a worker group has met the regulatory requirements of a type three appropriate subdivision: that the worker groups' facility is "auxiliary" and "operates in conjunction with a production facility." This analysis is customarily called the "support service" analysis, but it is actually not much different than the fundamental test that DOL applies to every application for certification.

The first requirement ("the workers' separation were caused importantly by a reduced demand for their services from a parent firm, a firm otherwise related to the subject firm by ownership, or a firm related by control") focuses on the definition of "firm" as it is used in the fundamental test. For multiple entities to be considered a single workers' firm, such entities must be "controlled or substantially beneficially owned by substantially the same persons." 29 CFR 90.2. As discussed earlier, PLS and LTV are not controlled or substantially beneficially owned by substantially the same persons. The regulations establish that DOL cannot certify the petitioners as service workers because their firm is unaffiliated with a firm that produces or produced an import-impacted article.

Conclusion

Whether the performance of services by the petitioners is related or unrelated to production is not relevant to determining their eligibility for certification. Under section 222 of the Act, what is relevant is whether the workers' firm or an appropriate subdivision of the workers' firm produces an article. The workers' firm in this case is PLS. As acknowledged in the Court's Opinion, the relevant petitioners in this remand action "were employed by Pittsburgh Logistics Systems, Inc. (PLS) and worked on-site at LTV's facilities in Independence, Ohio." Slip Op. 2. PLS is a subsidiary of Quadrivius. SAR 36. Neither PLS not Quadrivius are affiliated with LTV. SAR 43. The evidence clearly establishes that PLS and Quadrivius do not produce, directly or through an appropriate subdivision, an import-impacted article. "Once DOL concludes that the workers' employer was not a firm that produced an import-impacted article, it may conclude that the workers are not eligible for assistance without further analysis." *Stanley Smith* v. *U.S. Sec'y of Labor*, 20 CIT 201, 204, 967 F.Supp.512, 515 (1996). Because the petitioners are employees of a firm or subdivision that does not produce a trade-impacted article, they are not eligible for certification.

After reconsideration on remand, I affirm the original notice of negative determination of eligibility to apply for adjustment assistance for the former workers of PLS.

Signed at Washington, DC, this 5th day of May, 2003.

Elliott S. Kushner,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 03–12566 Filed 5–19–03; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–51,598]

Potash Corporation of Saskachewan, Inc., Information Systems Department, North Brook, Illinois; Notice of Termination of Investigation

Pursuant to section 221 of the Trade Act of 1974, as amended, an investigation was initiated on April 25, 2003, in response to a worker petition filed on behalf of workers at Potash Corporation of Saskatchewan, Inc., Information Systems Department, North Brook, Illinois, and Aurora, North Carolina.

The petition regarding the investigation was not signed by three workers employed at each of the locations indicated in the petition and has therefore been deemed invalid. Consequently, the investigation has been terminated.

Signed in Washington, DC, this 9th day of May, 2003.

Richard Church,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 03–12564 Filed 5–19–03; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–51,439]

Royal Hosiery Company, Inc., Granite Falls, North Carolina; Notice of Termination of Investigation

Pursuant to section 221 of the Trade Act of 1974, as amended, an investigation was initiated on April 7, 2003 in response to a petition filed by a company official on behalf of workers at Royal Hosiery Company, Inc., Granite Falls, North Carolina.

The company official has requested that the investigation be terminated.

Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed at Washington, DC this 1st day of May, 2003.

Elliott S. Kushner,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 03–12571 Filed 5–19–03; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–51,603]

Sony Semiconductor San Antonio, Texas; Notice of Termination of Investigation

Pursuant to section 221 of the Trade Act of 1974, an investigation was initiated on April 25, 2003, in response to a petition filed on behalf of workers at Sony Semiconductor, San Antonio, Texas.

The workers who filed the petition have requested that the petition be withdrawn. Consequently, further investigation in this case would serve no purpose and the investigation has been terminated.

Signed in Washington, DC this 6th day of May 2003.

Elliott S. Kushner,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 03–12572 Filed 5–19–03; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–51,656]

Springs Industries Customer Service Center Lancaster, South Carolina; Notice of Termination of Investigation

Pursuant to section 221 of the Trade Act of 1974, an investigation was initiated on May 1, 2003, in response to a petition filed on behalf of workers at Springs Industries, Customer Service Center, Lancaster, South Carolina.

The petitioners were separated from the subject firm more than one year prior to the date on the petition. Section 223 (b) of the Act specifies that no certification may apply to any worker whose last separation occurred more than one year before the date of the petition. Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed in Washington, DC this 6th day of May 2003.

Elliott S. Kushner,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 03–12574 Filed 5–19–03; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–51,046]

Western Geco, LLC, Houston, Texas; Notice of Termination of Investigation

Pursuant to section 221 of the Trade Act of 1974, as amended, an investigation was initiated on March 4, 2003 in response to a worker petition filed on behalf of workers at Western Geco, LLC, Houston, Texas.

The Department issued a negative determination applicable to the petitioning group of workers on April 9, 2003 (TA–W–51,251). No new information or change in circumstances is evident which would result in a reversal of the Department's previous determination. Consequently, further investigation would serve no purpose, and the investigation has been terminated.

Signed at Washington, DC this 1st day of May 2003.

Richard Church,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 03–12568 Filed 5–19–03; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–50,425]

Willing B. Wire Willingboro, New Jersey; Notice of Termination of Investigation

Pursuant to Section 221 of the Trade Act of 1974, as amended, an investigation was initiated on January 2, 2003 in response to petition filed by a state agency representative on behalf of workers at Willing B. Wire, Willingboro, New Jersey.

The petitioner has requested that the petition be withdrawn. Consequently, the investigation has been terminated.

Signed at Washington, DC this 6th day of May, 2003.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 03–12557 Filed 5–19–03; 8:45 am]

BILLING CODE 4510–30–P

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

National Endowment for the Arts

Combined Arts Advisory Panel

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Public Law 92–463), as amended, notice is hereby given that six meetings of the Combined Arts Advisory Panel to the National Council on the Arts will be held at the Nancy Hanks Center, 1100 Pennsylvania Avenue, NW., Washington, DC, 20506 as follows:

Folk and Traditional Arts: June 2, 2003, Room 716 (Creativity and Services to Arts Organizations and Artists categories). This meeting will be closed.

Media Arts: June 10–13, 2003, Room 716 (Creativity and Services to Arts Organizations and Artists categories). A portion of this meeting, from 1 p.m. to 2 p.m. on June 13th, will be open to the public for policy discussion. The remaining portions of this meeting, from 9 a.m. to 6:30 p.m. on June 10th through 12th, and from 9 a.m. to 1 p.m. and 2 p.m. to 3:30 p.m. on June 13th, will be closed.

Design: June 17, 2003, Room 716 (Creativity and Services to Arts Organizations and Artists categories). A portion of this meeting, from 2 p.m. to 3 p.m., will be open to the public for policy discussion. The remaining portions of this meeting, from 9 a.m. to 2 p.m. and from 3 p.m. to 6 p.m., will be closed.

Opera: June 24–25, 2003, Room 714 (Creativity category). A portion of this meeting, from 3:15 p.m. to 4:15 p.m. on June 25th, will be open to the public for policy discussion. The remaining portions of this meeting, from 9 a.m. to 5:30 p.m. on June 24th, and from 9 a.m. to 3:15 p.m. and 4:15 p.m. to 4:45 p.m. on June 25th, will be closed.

Opera: June 25, 2003, Room 714 (Services to Arts Organizations and Artists category). This meeting will be closed.

Visual Arts: June 24–26, 2003, Room 716 (Creativity and Services to Arts Organizations and Artists categories). A portion of this meeting, from 1 p.m. to 2 p.m. on June 26th, will be open to the public for policy discussion. The remaining portions of this meeting, from 9 a.m. to 6 p.m. on June 24th and 25th, and from 9 a.m. to 1 p.m. and from 2 p.m: to 5 p.m., will be closed.

The closed meetings and portions of meetings are for the purpose of Panel review, discussion, evaluation, and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including information given in confidence to the agency by grant applicants. In accordance with the determination of the Chairman of April 30, 2003, these sessions will be closed to the public pursuant to (c)(4)(6) and (9)(B) of section 552b of Title 5, United States Code.

Any person may observe meetings, or portions thereof, of advisory panels that are open to the public, and, if time allows, may be permitted to participate in the panel's discussions at the discretion of the panel chairman and with the approval of the full-time Federal employee in attendance.

If you need special accommodations due to a disability, please contact the Office of AccessAbility, National Endowment for the Arts, 1100 Pennsylvania Avenue, NW., Washington, DC 20506, 202/682–5532, TDY–TDD 202/682–5496, at least seven (7) days prior to the meeting.

Further information with reference to this meeting can be obtained from Ms. Kathy Plowitz-Worden, Office of Guidelines & Panel Operations, National Endowment for the Arts, Washington, DC, 20506, or call 202/682–5691.

Dated: May 14, 2003.

Kathy Plowitz-Worden,

Panel Coordinator, Panel Operations, National Endowment for the Arts.

[FR Doc. 03–12528 Filed 5–19–03; 8:45 am]

BILLING CODE 7537–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–302]

Florida Power Corporation, Crystal River Unit 3 Nuclear Generating Plant; Exemption

1.0 Background

Florida Power Corporation (the licensee) is the holder of Facility Operating License No. DPR–72, which authorizes operation of the Crystal River Unit 3 Nuclear Generating Plant (Crystal River). The license provides, among other things, that the facility is subject to all rules, regulations, and orders of the U.S. Nuclear Regulatory Commission (the Commission) now or hereafter in effect.

The facility consists of one pressurized-water reactor located in Citrus County, Florida.

2.0 Request/Action

Title 10 of the Code of Federal Regulations (10 CFR) Section 55.59 requires that a facility's licensed operator requalification program be conducted for a continuous period not to exceed 2 years (24 months) and upon conclusion must be promptly followed, pursuant to a continuous schedule, by successive requalification programs. Each 2-year requalification program must include a biennial comprehensive written examination and annual operating tests.

By letter dated March 6, 2003, the licensee requested a one-time exemption under 10 CFR 55.11 from the schedule requirements of 10 CFR 55.59. Specifically, for Crystal River, the licensee has requested a one-time extension from December 31, 2004, to February 28, 2005, for completing the current licensed operator requalification program. The next requalification program period would begin March 1, 2005, and continue for 24 months to February 28, 2007, with successive periods running for 24 months. This requested exemption would allow an extension of 2 months beyond the 24-month requalification program schedule required by 10 CFR 55.59.

3.0 Discussion

Pursuant to 10 CFR 55.11, the Commission may, upon application by an interested person, or upon its own initiative, grant exemptions from the requirements of 10 CFR Part 55 when the exemptions are authorized by law and will not endanger life or property and are otherwise in the public interest. The exemption being requested for Crystal River is to alleviate potential scheduling difficulties associated with administering requalification examinations and completing the requalification program at the end of the 2004 calendar year. Moving the end of the requalification program to February 28, 2005, would: (1) Minimize the fall refueling outage impact on requalification examination development; (2) minimize the potential impact from any fall refueling outage extensions; (3) minimize the scheduling and resource impact from both the Thanksgiving and Christmas holidays; (4) minimize the potential scheduling and resource impact of any examination remediation or retesting requirements during the holidays; and (5) minimize the potential impact from future bargaining unit negotiations, which occur periodically in the fourth calendar quarter.

Although the 24-month schedule requirement of 10 CFR 55.59 at Crystal River would be exceeded, operator performance continues to be satisfactory, as demonstrated by the operators' strong performance during the recent end-of-cycle requalification examinations. Granting this exemption will allow Crystal River to continue with safe plant operations without undue hardship to plant personnel and Crystal River licensed operators.

4.0 Conclusion

Accordingly, the Commission has determined that, pursuant to 10 CFR 55.11, granting an exemption to the licensee from the schedule requirements in 10 CFR 55.59, by allowing Crystal River a one-time extension in the allowed time for completing the current licensed operator requalification program, is authorized by law and will not endanger life or property and is otherwise in the public interest. Therefore, the Commission hereby grants Florida Power Corporation an exemption on a one-time only basis from the schedule requirement of 10 CFR 55.59, to allow the completion date for the current licensed operator requalification program for the Crystal River Unit 3 Nuclear Generating Plant to be extended from December 31, 2004, to February 28, 2005. The next requalification program period would begin March 1, 2005, and continue for 24 months to February 28, 2007, with successive periods running for 24 months.

Pursuant to 10 CFR 51.32, the Commission has determined that the granting of this exemption will not have a significant effect on the quality of the human environment (68 FR 25069).

This exemption is effective upon issuance and expires on February 28, 2005.

For the Nuclear Regulatory Commission.

Dated at Rockville, Maryland, this 14th day of May 2003.

Bruce A. Boger,

Director, Division of Inspection Program Management, Office of Nuclear Reactor Regulation.

[FR Doc. 03–12598 Filed 5–19–03; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 70–7001 and 70–7002]

Paducah Gaseous Diffusion Plant, Portsmouth Gaseous Diffusion Plant, United States Enrichment Corporation; Notice of Request for Certificate Renewal and Opportunity for Comment

I. Receipt of Application and Availability of Documents

Notice is hereby given that the U. S. Nuclear Regulatory Commission (NRC or the Commission) has received by letters dated April 11, 2003, applications from the United States Enrichment Corporation (USEC) for the renewal of the certificates of compliance for the gaseous diffusion plants (GDPs) located near Paducah, Kentucky and Piketon, Ohio. The NRC issued the initial certificates of compliance for the GDPs on November 26, 1996, and assumed regulatory oversight for the GDPs on March 3, 1997. The GDPs were last issued renewed certificates of compliance on January 29, 1999. Those certificates expire December 31, 2003. The USEC renewal requests are for a five-year period, extending from the current expiration date of December 31, 2003, to December 31, 2008. The USEC applications for renewal contain a revised Depleted Uranium Management Plan and a revised Decommissioning Funding Plan but do not contain any other changes to the existing Application and Safety Analysis Report. The USEC application for the renewal of the Paducah Gaseous Diffusion Plant is based on USEC's previous Application, as revised through Revision 81 dated April 11, 2003, and USEC's previous Compliance Plan, as revised through Revision 9 dated December 1, 2000. No additional changes to the Application or Compliance Plan are requested. The USEC application for the renewal of the Portsmouth Gaseous Diffusion Plant is based on USEC's previous Application, as revised through Revision 65 dated April 11, 2003, and USEC's previous Compliance Plan, as revised through Revision 11 dated January 31, 2003. No additional changes to the Application or Compliance Plan are requested.

Copies of the renewal application for certification (except for classified and proprietary portions which are withheld in accordance with 10 CFR 2.790, "Availability of Public Records") are available for inspection at NRC's Public Electronic Reading Room at *http://www.nrc.gov/reading-rm/adams.html*. Documents may also be examined and/or copied for a fee, at the NRC's Public Document Room, located at One White Flint North, 11555 Rockville Pike, Rockville, MD 20854.

II. Notice of Comment Period

Any interested party may submit written comments on the application for renewal of the certificate of compliance for either the Paducah plant or the Portsmouth plant for consideration by the staff. To be certain of consideration, comments must be received by (insert date 30 days from day of publication).

Comments received after the due date will be considered if it is practical to do so, but the Commission is able to assure consideration only for comments received on or before this date. Written comments on the application should be mailed to the Chief, Rules and Directives Branch, Division of Administrative Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555, or may be hand delivered to 11545 Rockville Pike, Rockville, MD 20852 between 7:45 a.m. and 4:15 p.m. Federal workdays. Comments should be legible and reproducible, and include the name, affiliation (if any), and address of the comment provider. All comments received by the Commission will be made available for public inspection at the Commission's Public Document Room located in Rockville, MD.

Following evaluation of USEC's applications for renewal, and any public comments received, the Commission staff will issue a written decision, and publish notice of the decision in the **Federal Register**. Upon publication of the notice of decision, any person whose interest may be affected may then request review of the decision within 30 days, pursuant to 10 CFR 76.62(c) or 76.64(d), whichever applies.

III. Further Information

For further information you may contact Mr. Dan E. Martin, concerning the Paducah plant, at (301) 415–7254, or Mr. Michael G. Raddatz, concerning the Portsmouth plant, at (301) 415–6334, of the Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555.

Dated at Rockville, Maryland, this 8th day of May 2003.

For the Nuclear Regulatory Commission.

Margaret V. Federline,

Deputy Director, Office of Nuclear Material Safety and Safeguards.

[FR Doc. 03–12599 Filed 5–19–03; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Advisory Committee on Reactor Safeguards, Subcommittee Meeting on Planning and Procedures; Notice of Meeting

The ACRS Subcommittee on Planning and Procedures will hold a meeting on June 11, 2003, Room T–2B1, 11545 Rockville Pike, Rockville, Maryland.

The entire meeting will be open to public attendance, with the exception of a portion that may be closed pursuant to 5 U.S.C. 552b(c) (2) and (6) to discuss organizational and personnel matters that relate solely to internal personnel rules and practices of ACRS, and information the release of which would constitute a clearly unwarranted invasion of personal privacy.

The agenda for the subject meeting shall be as follows: Wednesday, June 11, 2003—4:15 p.m.—6:15 p.m.

The Subcommittee will discuss proposed ACRS activities and related matters. The Subcommittee will gather information, analyze relevant issues and facts, and formulate proposed positions and actions, as appropriate, for deliberation by the full Committee.

Members of the public desiring to provide oral statements and/or written comments should notify the Designated Federal Official, Mr. Sam Duraiswamy (telephone: 301/415–7364) between 7:30 a.m. and 4:15 p.m. (ET) five days prior to the meeting, if possible, so that appropriate arrangements can be made. Electronic recordings will be permitted only during those portions of the meeting that are open to the public.

Further information regarding this meeting can be obtained by contacting the Designated Federal Official between 7:30 a.m. and 4:15 p.m. (ET). Persons planning to attend this meeting are urged to contact the above named individual at least two working days prior to the meeting to be advised of any potential changes in the agenda.

Dated: May 14, 2003.

Sher Bahadur,

Associate Director for Technical Support, ACRS/ACNW.

[FR Doc. 03–12596 Filed 5–19–03; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Sunshine Act Notice

AGENCY HOLDING THE MEETING: Nuclear Regulatory Commission.

DATES: Weeks of May 19, 26, June 2, 9, 16, 23, 2003.

PLACE: Commissioners' Conference Room, 11555 Rockville Pike, Rockville, Maryland.

STATUS: Public and Closed.

MATTERS TO BE CONSIDERED:

Week of May 19, 2003

There are no meetings scheduled for the Week of May 19, 2003.

Week of May 26, 2003—Tentative

Wednesday, May 28, 2003

9:30 a.m.—Meeting with Advisory Committee on the Medical Uses of Isotopes (ACMUI) (Public Meeting) (Contact: Angela Williamson, 301–415–5030)

This meeting will be webcast live at the Web address—*www.nrc.gov*

2:45 p.m.—Discussion of Management Issues (Closed—Ex. 2)

Thursday, May 29, 2003

9:30 a.m.—Briefing on Status of Revisions to the Regulatory Framework for Steam Generator Tube Integrity (Public Meeting) (Contact: Louise Lund, 301–415–3248)

This meeting will be webcast live at the Web address—*www.nrc.gov*

2 p.m.—Briefing on Equal Employment Opportunity Program (Public Meeting) (Contact: Corenthis Kelley, 301–415–7380)

Week of June 2, 2003—Tentative

Friday, June 6, 2003

10:00 a.m.—Discussion of Security Issues (Closed—Ex. 1)

Week of June 9, 2003—Tentative

Wednesday, June 11, 2003

10:30 a.m.—All Employees Meeting (Public Meeting)

1:30 p.m.—All Employees Meeting (Public Meeting)

Week of June 16, 2003—Tentative

There are no meetings scheduled for the Week of June 16, 2003.

Week of June 23, 2003—Tentative

There are no meetings scheduled for the Week of June 23, 2003.

* The schedule for Commission meetings is subject to change on short notice. To verify the status of meetings call (recording)—(301) 415–1292. Contact person for more information: David Louis Gamberoni (301) 415–1651.

The NRC Commission Meeting Schedule can be found on the Internet at: *www.nrc.gov/what-we-do/policy-making/schedule.html.*

This notice is distributed by mail to several hundred subscribers; if you no longer wish to receive it, or would like to be added to the distribution, please contact the Office of the Secretary, Washington, DC 20555 (301–415–1969). In addition, distribution of this meeting notice over the Internet system is available. If you are interested in receiving this Commission meeting schedule electronically, please send an electronic message to *dkw@nrc.gov.*

Dated: May 15, 2003.

R. Michelle Schroll,

Acting Technical Coordinator, Office of the Secretary.

[FR Doc. 03–12711 Filed 5–16–03; 10:36 am]

BILLING CODE 7590–01–M

NUCLEAR REGULATORY COMMISSION

Draft Regulatory Guide; Issuance, Availability

The Nuclear Regulatory Commission (NRC) has issued for public comment a proposed revision of a guide in its Regulatory Guide Series. Regulatory Guides are developed to describe and make available to the public such information as methods acceptable to the NRC staff for implementing specific parts of the NRC's regulations, techniques used by the staff in evaluating specific problems or postulated accidents, and data needed by the staff in its review of applications for permits and licenses.

The draft guide is temporarily identified by its task number, DG–1079, which should be mentioned in all correspondence concerning this draft guide. Draft Regulatory Guide DG–1079, "Criteria for Power Systems for Nuclear Power Plants," is being developed to describe a method that is acceptable to the NRC staff for complying with the NRC's regulations for the design, operation, and testing of electric power systems in nuclear power plants. The guide proposes to endorse IEEE Std. 308–2001, "Criteria for Class 1E Power Systems for Nuclear Power Generating Stations."

This draft guide has not received complete staff approval and does not represent an official NRC staff position.

Comments may be accompanied by relevant information or supporting data. Written comments may be submitted by mail to the Rules and Directives Branch, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555; or they may be hand-delivered to the Rules and Directives Branch, Office of Administration, at 11555 Rockville Pike, Rockville, MD. Copies of comments received may be examined at the NRC Public Document Room, 11555 Rockville Pike, Rockville, MD. Comments will be most helpful if received by July 31, 2003.

You may also provide comments via the NRC's interactive rulemaking web site through the NRC Home page (*http://www.nrc.gov*). This site provides the ability to upload comments as files (any format) if your web browser supports that function. For information about the interactive rulemaking web site, contact Ms. Carol Gallagher, 301–415–5905; e-mail *CAG@NRC.GOV*. For technical information about Draft Regulatory Guide DG–1079, contact Mr. S.K. Aggarwal at 301–415–6005, (e-mail *SKA@NRC.GOV*).

Although a deadline is given for comments on these draft guides, comments and suggestions in connection with items for inclusion in guides currently being developed or improvements in all published guides are encouraged at any time.

Regulatory guides are available for inspection at the NRC's Public Document Room, 11555 Rockville Pike, Rockville, MD; the PDR's mailing address is USNRC PDR, Washington, DC 20555; telephone 301–415–4737 or (800) 397–42056; fax 301–415–3548; e-mail *PDR@NRC.GOV*. Requests for single copies of draft or final regulatory guides (which may be reproduced) or for placement on an automatic distribution list for single copies of future draft guides in specific divisions should be made in writing to the U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Reproduction and Distribution Services Section, or by fax to 301–415–2289; e-mail *DISTRIBUTION@NRC.GOV*. Telephone requests cannot be accommodated. Regulatory guides are not copyrighted, and NRC approval is not required to reproduce them.

(5 U.S.C. 552(a))

Dated at Rockville, Maryland, this 12th day of May 2003.

For the Nuclear Regulatory Commission.

Michael Mayfield,

Director, Division of Engineering Technology, Office of Nuclear Regulatory Research.

[FR Doc. 03–12597 Filed 5–19–03; 8:45 am]

BILLING CODE 7590–01–P

OFFICE OF PERSONNEL MANAGEMENT

Proposed Collection; Comment Request for Collection: Scholarship for Service Program Internet Web Page, OMB No. 3206–0246

AGENCY: Office of Personnel Management.

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–13, May 22, 1995), this notice announces that the Office of Personnel Management (OPM) intends to submit a request to the Office of Management and Budget (OMB). The OPM is requesting OMB to approve a collection associated with the Scholarship For Service (SFS) Program Internet Web page. Approval of the Web page is necessary to facilitate the timely registration, selection and placement of program-enrolled students in Federal agencies.

The SFS Program was established by the National Science Foundation in accordance with the Federal Cyber Service Training and Education Initiative as described in the President's *National Plan for Information Systems Protection*. This program seeks to increase the number of qualified students entering the fields of information assurance and computer security in an effort to respond to the threat to the Federal Government's information technology infrastructure. The program provides capacity building grants to selected 4-year colleges and universities to develop or improve their capacity to train information assurance professionals. It also provides selected 4-year colleges and universities scholarship grants to attract students to the information assurance field. Participating students who receive scholarships from this program are required to serve a 10-week internship during their studies and complete a post-graduation employment commitment equivalent to the length of the scholarship or one year, whichever is longer.

At present, there are 192 enrolled participants. Forty students will need permanent placement and 100 students will need internship placement in the summer 2003. Based on other programs that collect similar information, we estimate the collection of information for registering and creating an online resume to be 45 minutes to 1-hour in length of time to answer questions. We estimate the total number of hours to be 200.

Comments are particularly invited on: whether this information is necessary for the proper performance of functions of OPM, and whether it will have practical utility; whether our estimate of the public burden of this collection of information is accurate, and based on valid assumptions and methodology; and ways in which we can minimize the burden of the collection of information on those who are to respond, through the use of appropriate technological collection techniques or other forms of information technology.

For copies of this proposal, contact Mary Beth Smith-Toomey at (202) 606–8358, FAX (202) 418–3251 or e-mail to *mbtoomey@opm.gov*. Please include your mailing address with your request.

DATES: Comments on this proposal should be received by July 19, 2003.

ADDRESSES: Send or deliver comments to: U.S. Office of Personnel Management, ATTN: Rob Timmins, 1900 E Street, NW., Room 1425, Washington, DC 20415–9820, e-mail: *ratimmin@opm.gov*.

Office of Personnel Management.

Kay Coles James,

Director.

[FR Doc. 03–12576 Filed 5–19–03; 8:45 am]

BILLING CODE 6325–38–P

OFFICE OF PERSONNEL MANAGEMENT

Federal Prevailing Rate Advisory Committee

Open Committee Meetings

According to the provisions of section 10 of the Federal Advisory Committee Act (Pub. L. 92–463), notice is hereby given that meetings of the Federal Prevailing Rate Advisory Committee will be held on: Thursday, June 19, 2003, Thursday, July 10, 2003, and Thursday, July 24, 2003.

The meetings will start at 10 a.m. and will be held in Room 5A06A, Office of Personnel Management Building, 1900 E Street, NW., Washington, DC.

The Federal Prevailing Rate Advisory Committee is composed of a Chair, five representatives from labor unions holding exclusive bargaining rights for Federal blue-collar employees, and five representatives from Federal agencies.

Entitlement to membership on the Committee is provided for in 5 U.S.C. 5347.

The Committee's primary responsibility is to review the Prevailing Rate System and other matters pertinent to establishing prevailing rates under subchapter IV, chapter 53, 5 U.S.C., as amended, and from time to time advise the Office of Personnel Management.

This scheduled meeting will start in open session with both labor and management representatives attending. During the meeting either the labor members or the management members may caucus separately with the Chair to devise strategy and formulate positions. Premature disclosure of the matters discussed in these caucuses would unacceptably impair the ability of the Committee to reach a consensus on the matters being considered and would disrupt substantially the disposition of its business. Therefore, these caucuses will be closed to the public because of a determination made by the Director of the Office of Personnel Management under the provisions of section 10(d) of the Federal Advisory Committee Act (Pub. L. 92–463) and 5 U.S.C. 552b(c)(9)(B). These caucuses may, depending on the issues involved, constitute a substantial portion of a meeting.

Annually, the Chair compiles a report of pay issues discussed and concluded recommendations. These reports are available to the public, upon written request to the Committee's Secretary.

The public is invited to submit material in writing to the Chair on Federal Wage System pay matters felt to be deserving of the Committee's attention. Additional information on this meeting may be obtained by contacting the Committee's Secretary, Office of Personnel Management, Federal Prevailing Rate Advisory Committee, Room 5538, 1900 E Street, NW., Washington, DC 20415; (202) 606–1500.

Dated: May 6, 2003.

Mary M. Rose,

Chairperson, Federal Prevailing Rate Advisory Committee.

[FR Doc. 03–12577 Filed 5–19–03; 8:45 am]

BILLING CODE 6325–49–P

SECURITIES AND EXCHANGE COMMISSION

Existing Collection; Comment Request

Upon Written Request, Copies Available From: Securities and Exchange Commission, Office of Filings and Information Services, Washington, DC 20549.

Extension: Rule 17g–1 [17 CFR 270.17g–1], SEC File No. 270–208, OMB Control No. 3235–0213.

Notice is hereby given that, pursuant to the Paperwork Reduction Act of 1995 [44 U.S.C. 350l–3520], the Securities and Exchange Commission (the "Commission") is soliciting comments on the collection of information summarized below. The Commission plans to submit this existing collection of information to the Office of Management and Budget for extension and approval.

Rule 17g–1 [17 CFR 270.17g–1] under the Investment Company Act of 1940 (the "Act") governs the fidelity bonding of officers and employees of registered management investment companies ("funds") and their advisers. Rule 17g–1 requires, in part, the following:

• *Independent Directors' Approval Requirements.* At least annually, the independent directors of a fund must approve the form and amount of the fund's fidelity bond. Rule 17g–1 provides a schedule of minimum amounts for fidelity bonds based on a fund's size. The independent directors also must approve the amount of any premium paid for any "joint bond" covering multiple funds or certain other affiliates of the fund.

• *Fidelity Bond Content Requirements.* The fidelity bond must provide that it shall not be cancelled, terminated or modified except upon 60-days written notice to the affected party and to the Commission. In the case of a joint bond, this 60-day notice also must be given to each fund and to the Commission. In addition, a joint bond must provide that the fidelity insurance company will provide all funds covered by the bond with (i) a copy of the bond and any amendments to the bond; (ii) a copy of any formal filing of a claim on the bond; and (iii) notification of the terms of the settlement on any claim prior to execution of that settlement.

• *Joint Bond Agreement Requirement.* A fund that is insured by a joint bond must enter into an agreement with all other parties insured by the joint bond regarding recovery under the joint bond.

• *Required Filings with the Commission.* Upon execution of a fidelity bond or any amendment thereto, a fund must file with the Commission a copy of: (i) the executed fidelity bond; (ii) the resolution of the fund's independent directors approving the fidelity bond; and (iii) a statement as to the period for which the fidelity bond premiums have been paid. In the case of a joint bond, a fund also must file a copy of: (i) a statement showing the amount of a single insured bond the fund would have maintained under the rule had it not been named under a joint bond; and (ii) each agreement between the fund and all other insured parties. A fund also must notify the Commission in writing within 5 days of any claim and settlement on a claim made under a fidelity bond.

• *Required Notices to Directors.* A fund must notify by registered mail each member of its board of directors of (i) any cancellation, termination or modification of the fidelity bond at least 45 days prior to the effective date; and (ii) the filing or settlement of any claim under the fidelity bond when the notification is filed with the Commission.

Rule 17g–1's independent directors' annual review requirements, fidelity bond content requirements, joint bond agreement requirement and the required notices to directors seek to ensure the safety of fund assets against losses due to the conduct of persons who may obtain access to those assets. These requirements also seek to facilitate oversight of a fund's fidelity bond. The rule's required filings with the Commission are designed to assist the Commission in monitoring funds' compliance with the fidelity bond requirements.

The Commission staff estimates that approximately 4600 funds are subject to the requirements of rule 17g–1, and that on average a fund spends approximately one hour per year complying with the rule's paperwork requirements. The Commission staff therefore estimates the total annual burden of the rule's paperwork requirements to be 4600 hours.

These estimates of average burden hours are made solely for the purposes of the Paperwork Reduction Act. These estimates are not derived from a comprehensive or even a representative survey or study of Commission rules. The collection of information required by rule 17g-1 is mandatory and will not be kept confidential. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid control number.

Written comments are requested on: (a) Whether the collection of information is necessary for the proper performance of the functions of the Commission, including whether the information has practical utility; (b) the accuracy of the Commission's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted in writing within 60 days of this publication.

Please direct your written comments to Kenneth A. Fogash, Acting Associate Executive Director/CIO, Office of Information Technology, Securities and Exchange Commission, 450 5th Street, NW., Washington, DC 20549.

Dated: May 13, 2003.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 03–12605 Filed 5–19–03; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

Submission for OMB Review; Comment Request

Upon Written Request, Copies Available From: Securities and Exchange Commission, Office of Filings and Information Services, 450 Fifth Street, NW., Washington, DC 20549.

Extension: Form 24F–2, SEC File No. 270–399, OMB Control No. 3235–0456.

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520), the Securities and Exchange Commission ("Commission") has submitted to the Office of Management and Budget ("OMB") a request for extension of the previously approved collection of information.

Under 17 CFR 270.24f–2, any open-end management companies ("mutual funds"), unit investment trusts ("UITs") or face-amount certificate companies (collectively, "funds") that are deemed to have registered an indefinite amount of securities must, not later than 90 days after the end of any fiscal year in which it has publicly offered such securities, file Form 24F–2 with the Commission. Form 24F–2 is the annual notice of securities sold by funds that accompanies the payment of registration fees with respect to the securities sold during the fiscal year.

The Commission estimates that 7,428 funds file Form 24F–2 on the required annual basis. The average annual burden per respondent for Form 24F–2 is estimated to be two hours. The total annual burden for all respondents to Form 24F–2 is estimated to be 14,856 hours.

The estimate of average burden hours is made solely for the purposes of the Paperwork Reduction Act, and is not derived from a comprehensive or even a representative survey or study of the costs of Commission rules.

Compliance with the collection of information required by Form 24F–2 is mandatory. The Form 24F–2 filing that must be made to the Commission is available to the public. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid control number.

Written comments regarding the above information should be directed to the following persons: (i) Desk Officer for the Securities and Exchange Commission, Office of Information and Regulatory Affairs, Office of Management and Budget, Room 10102, New Executive Office Building, Washington, DC 20503 and (ii) Mr. Kenneth A. Fogash, Acting Associate Executive Director/CIO, Office of Information Technology, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Comments must be submitted to OMB within 30 days of this notice.

Dated: May 15, 2003.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 03–12606 Filed 5–19–03; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

Submission for OMB Review; Comment Request

Upon Written Request, Copies Available From: Securities and Exchange Commission, Office of Filings and Information Services, Washington, DC 20549.

Extension: Regulation S–P, SEC File No. 270–480, OMB Control No. 3235–0537.

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission ("Commission") has submitted to the Office of Management and Budget ("OMB") request for extension of the previously approved collection of information discussed below.

Regulation S–P—Privacy of Consumer Financial Information

On June 22, 2000, effective November 13, 2000, the Commission adopted Regulation S–P under the Securities Exchange Act of 1934 ("Exchange Act") to implement Title V of the Gramm-Leach-Bliley Act ("G–L–B Act" or "Act"). Among other things, Title V of the G–L–B Act requires that at the time of establishing a customer relationship with a consumer and not less than annually during the continuation of such relationship, a financial institution shall provide a clear and conspicuous disclosure to such consumer of such financial institution's policies and practices with respect to disclosing nonpublic personal information to affiliates and nonaffiliated third parties ("privacy notice"). Title V of the Act also provides that, unless an exception applies, a financial institution may not disclose nonpublic personal information of a consumer to a nonaffiliated third party unless the financial institution clearly and conspicuously discloses to the consumer that such information may be disclosed to such third party; the consumer is given the opportunity, before the time that such information is initially disclosed, to direct that such information not be disclosed to such third party; and the consumer is given an explanation of how the consumer can exercise that nondisclosure option ("opt out notice").

The privacy notices required by the Act are mandatory. The opt out notices are not mandatory for financial institutions that do not share nonpublic personal information with nonaffiliated third parties except as permitted under an exception to the statute's opt out provisions. Regulation S–P implements the statute's requirements with respect to broker-dealers, investment companies, and registered investment advisers ("covered entities"). The Act and Regulation S–P also contain consumer reporting requirements. In order for consumers to opt out, they must respond to opt out notices. At any time during their continued relationship, consumers have the right to change or update their opt out status. Most covered entities do not share nonpublic personal information with nonaffiliated third parties and therefore are not required to provide opt out notices to consumers under Regulation S–P. Therefore, few consumers are required to respond to opt out notices under the rule.

Currently, there are approximately 18,500 covered entities (approximately 5,600 broker-dealers that conduct business with the general public, 5,100 investment companies, and 7,800 registered investment advisers) that must prepare or revise the annual and initial privacy notices they provide to their customers. To prepare or revise their privacy notices, each of the approximately 10,700 covered entities that is a broker-dealer or investment company requires an estimated 40 hours at a cost of $5,248 (32 hours of professional time at $160 per hour plus 8 hours of clerical or administrative time at $16 per hour) and each of the approximately 7,800 covered entities that is a registered investment adviser requires an estimated 5 hours at a cost

of $656 (4 hours of professional time at $160 per hour plus 1 hour of clerical or administrative time at $16 per hour). Thus, the total compliance burden per year is 740,000 hours (40 hours for 10,700 broker-dealers and investment companies, and 5 hours for 7,800 registered investment advisers (40 × 10,700 = 428,000, 5 × 7,800 = 39,000, and 428,000 + 39,000 = 467,000), and $57,401,600 ($5,248 × 10,700 = $56,153,600, $160 × 7,800 = $1,248,000, and $56,153,600 + $1,248,000 = $57,401,600).

It is not anticipated that covered entities will need to incur any capital or start-up cost to comply with Regulation S–P. However, covered entities generally will include initial and annual privacy notices to customers with disclosure documents or account statements that they currently receive. These statements typically are assembled and sent by organizations that specialize in mailing and distribution. The additional material might result in an increase in total annual distribution costs of approximately $2.6 million for all covered entities. This estimate is based on an average additional cost per mailing of $0.02 for 130.7 million investor accounts. The number of investor accounts assumes there are 53 million brokerage accounts, 77.3 million individual investment company shareholders, and 400,000 customers of investment advisers.

Compliance with Regulation S–P is necessary for covered entities to achieve compliance with the consumer financial privacy notice requirements of Title V of the G–L–B Act. The required consumer notices are not submitted to the Commission. Because the notices do not involve a collection of information by the Commission, Regulation S–P does not involve the collection of confidential information. Regulation S–P does not have a record retention requirement per se, although the notices to consumers it requires are subject to the recordkeeping requirements of Rules 17a–3 and 17a–4. Please note that an agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid control number.

Written comments regarding the above information should be directed to the following persons: (i) Desk Officer for the Securities and Exchange Commission, Office of Information and Regulatory Affairs, Office of Management and Budget, Room 10102, New Executive Office Building, Washington, DC 20503; and (ii) Kenneth A. Fogash, Acting Associate Executive Director/CIO, Office of Information Technology, Securities and Exchange Commission, 450 Fifth Street, NW, Washington, DC 20549. Comments must be submitted to OMB within 30 days of this notice.

Dated: May 13, 2003.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 03–12607 Filed 5–19–03; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

Submission for OMB Review; Comment Request

Upon Written Request, Copies Available From: Securities and Exchange Commission, Office of Filings and Information Services, Washington, DC 20549.

Extension:

Rule 6e–2, SEC File No. 270–177, OMB Control No. 3235–0177.

Notice is hereby given that, pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission ("Commission") has submitted to the Office of Management and Budget request for extension of the previously approved collection of information discussed below.

Rule 6e–2 [17 CFR 270.6e–2] under the Investment Company Act of 1940 ("Act") is an exemptive rule that permits separate accounts, formed by life insurance companies, to fund certain variable life insurance products. The rule exempts such separate accounts from the registration requirements under the Act, among others, on condition that they comply with all but certain designated provisions of the Act and meet the other requirements of the rule. The rule sets forth several information collection requirements.

Rule 6e–2 provides a separate account with an exemption from the registration provisions of section 8(a) of the Act if the account files with the Commission Form N–6EI–1, a notification of claim of exemption.

The rule also exempts a separate account from a number of other sections of the Act, provided that the separate account makes certain disclosure in its registration statements, reports to contractholders, proxy solicitations, and submissions to state regulatory authorities, as prescribed by the rule.

Paragraph (b)(9) of rule 6e–2 provides an exemption from the requirements of section 17(f) of the Act and imposes a reporting burden and certain other conditions. Section 17(f) requires that every registered management company meet various custody requirements for its securities and similar investments. Paragraph (b)(9) applies only to management accounts that offer life insurance contracts subject to rule 6e–2.

Since 2000, there have been no filings under paragraph (b)(9) of rule 6e–2 by management accounts. Further, all variable life separate accounts that have filed post-effective amendments to their registration statements during this period have been structured as unit investment trusts and thus have not been subject to the requirements of paragraph (b)(9) of the rule. Therefore, since 2000, there has been no cost or burden to the industry regarding the information collection requirements of paragraph (b)(9) of rule 6e–2. In addition, there have been no filings of Form N–6EI–1 by separate accounts since 2000. Therefore there has been no cost or burden to the industry since that time.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid control number.

Written comments regarding the estimated burden hours should be directed to the Desk Officer for the Commission at the address below. Any comments concerning the accuracy of the estimated average burden hours for compliance with Commission rules and forms should be directed to Kenneth A. Fogash, Acting Associate Executive Director/CIO, Office of Information Technology, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549, and Desk Officer, Securities and Exchange Commission, Office of Information and Regulatory Affairs, Office of Management and Budget, Room 10102, New Executive Office Building, Washington, DC 20503. Comments must be submitted to OMB within 30 day of this notice.

Dated: May 14, 2003.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 03–12608 Filed 5–19–03; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. IC–26046; 812–12768]

Claymore Securities, Inc. and Claymore Securities Defined Portfolios; Notice of Application

May 14, 2003.

AGENCY: Securities and Exchange Commission ("Commission").

ACTION: Notice of an application under: (i) section 6(c) of the Investment Company Act of 1940 ("Act") for exemptions from sections 14(a) and 19(b) of the Act and from rule 19b–1 thereunder; (ii) sections 6(c) and 17(b) of the Act for an exemption from section 17(a) of the Act; and (iii) section 12(d)(1)(J) of the Act for an exemption from section 12(d)(1)(F)(ii) of the Act.

SUMMARY OF APPLICATION: Applicants Claymore Securities Inc. ("Sponsor"), Claymore Securities Defined Portfolios (the "Claymore Trust"), as well as any unit investment trust ("UIT") for which the Sponsor or an entity controlling, controlled by, or under common control with the Sponsor serves as the sponsor in the future (together with the Claymore Trust, the "Trusts") and any presently outstanding or subsequently issued series of the Trusts (each, a "Trust Series") request an order: (a) under section 12(d)(1)(J) of the Act to permit each Trust Series to offer and sell to the public units ("Units") with a sales load that exceeds the 1.5% limit in section 12(d)(1)(F)(ii) of the Act; (b) under sections 6(c) and 17(b) for an exemption from section 17(a) of the Act to permit the Trust Series to invest in affiliated registered investment companies within the limits of section 12(d)(1)(F) of the Act; and (c) under section 6(c) of the Act for exemptions from sections 14(a) and 19(b) of the Act and rule 19b–1 under the Act to permit Units to be publicly offered without requiring the Sponsor to take for its own account or place with others $100,000 worth of Units, and to permit the Trust Series to distribute capital gains resulting from the sale of portfolio securities within a reasonable time after receipt.

FILING DATES: The application was filed on January 30, 2002, and amended on May 8, 2003.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the Commission's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the Commission by 5:30 p.m. on June 9, 2003 and should be accompanied by proof of service on the applicants, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the Commission's Secretary.

ADDRESSES: Secretary, Commission, 450 Fifth Street, NW., Washington, DC, 20549–0609; Applicants: Nicholas Dalmaso, c/o Claymore Securities, Inc., 210 North Hall Street, Wheaton, Illinois 60187.

FOR FURTHER INFORMATION CONTACT: Deepak T. Pai, Senior Counsel, at (202) 942–0574 or Todd F. Kuehl, Branch Chief, at (202) 942–0564 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee at the Commission's Public Reference Branch, 450 Fifth Street, NW., Washington, DC, 20549–0102 (tel. (202) 942–8090).

Applicants' Representations

1. The Sponsor, a broker-dealer registered under the Securities Exchange Act of 1934, will serve as the sponsor to the Claymore Trust and any future Trusts.[1] The Claymore Trust is a UIT registered under the Act and each Trust Series is organized under a trust indenture between the Sponsor, a banking institution or trust company as trustee ("Trustee") and an evaluator. The Trustee, the Sponsor or an affiliate may serve as the evaluator. The evaluator, will be a "qualified evaluator" as defined in rule 22c–1(b)(2) under the Act. Pursuant to the trust indenture, the Sponsor will deposit into each Trust Series shares of existing registered investment companies ("Funds"), or contracts and monies for the purchase of shares of the Funds. The Funds may be closed-end or open-end investment companies or UITs. Certain of the Funds are open-end investment companies or UITs that have received exemptive relief under the Act to sell their shares at negotiated prices on an exchange ("Exchange Funds"). In addition, a Trust Series may invest a portion of its assets directly in equity securities, fixed income securities and other investment instruments (together with the Funds, the "Securities").

2. The purpose of each Trust Series is to provide retail investors (1) an investment with a professionally selected asset allocation model or investment theme based upon the Sponsor's assessment of the overall economic climate and financial markets, and (2) the opportunity for income and/or capital appreciation through a diversified fixed portfolio of Funds professionally selected by the Sponsor from the total population of available Funds within the various market sectors of the Sponsor's asset allocation model or consistent with the enunciated investment theme (together with any other Securities selected in accordance with the Sponsor's asset allocation model or investment theme for the particular Trust Series). Applicants anticipate that certain of the Funds selected may be advised and/or distributed by the Sponsor or one of its affiliates ("Affiliated Funds"). Applicants anticipate that most of the Funds selected will be unaffiliated with the Sponsor ("Unaffiliated Funds"). Applicants state that the Trust Series' investments in Affiliated Funds and Unaffiliated Funds will comply with section 12(d)(1)(F) in all respects except for the sales load restriction of section 12(d)(1)(F)(ii).

3. Shares of each of the Funds (except closed-end Funds or Exchange Funds) will be purchased by or deposited into any Trust Series at their public offering price (*i.e.*, such Funds' net asset values, plus any applicable sales loads). Shares of closed-end Funds and Exchange Funds will be purchased by or deposited into a Trust Series at their market value as determined by an evaluator. Investors in the Trust Series ("Unitholders") will pay a specified sales load to the Sponsor in connection with the purchase of their Units.

4. The Trustee may receive service fees under a rule 12b–1 plan from certain Funds to compensate it for providing servicing and sub-accounting functions with respect to Fund shares held by the Trust Series. In such cases, the Trustee will reduce its regular fee to a Trust Series directly by the fees it receives from the Funds and rebate any excess fees it receives to the Trust Series. Any fees so rebated will be utilized by the Trust Series to absorb other bona fide Trust Series' expenses. To the extent that these fees exceed the total Trust Series' expenses, the excess will be distributed along with other income earned by the Trust Series.

[1] The Claymore Trust is currently the only existing Trust intending to rely on the requested order. Any other existing or future Trust that may rely on the order in the future will do so only in accordance with the terms and conditions of the application.

Applicants' Legal Analysis

A. Section 12(d)(1) of the Act

1. Section 12(d)(1)(A) of the Act provides that no registered investment company may acquire securities of another investment company if those securities represent more than 3% of the acquired company's total outstanding voting stock, more than 5% of the acquiring company's total assets, or if the securities, together with the securities of any other acquired investment companies, represent more than 10% of the acquiring company's total assets.

2. Section 12(d)(1)(F) of the Act provides that section 12(d)(1) does not apply to an acquiring company if the company and its affiliated persons own no more than 3% of an acquired company's total outstanding securities, provided that the acquiring company does not impose a sales load of more than 1.5%. In addition, the section provides that no acquired company may be obligated to honor any acquiring company's redemption request in excess of 1% of the acquired company's securities during any period of less than 30 days, and the acquiring company must vote its acquired company shares either in accordance with instructions from its shareholders or in the same proportion as all other shareholders of the acquired company.

3. A Trust Series will invest in Affiliated and Unaffiliated Funds in reliance on section 12(d)(1)(F) of the Act. If the requested relief is granted, the Trust Series will offer Units to the public with a sales load that exceeds the 1.5% limit in section 12(d)(1)(F)(ii).

4. Section 12(d)(1)(J) of the Act provides that the Commission may exempt persons or transactions from any provision of section 12(d)(1), if and to the extent that such exemption is consistent with the public interest and the protection of investors.

5. Applicants have agreed, as a condition to the requested relief, that any sales charges and/or service fees charged with respect to Units of a Trust Series will not exceed the limits set forth in rule 2830 of the National Association of Securities Dealers, Inc. ("NASD") Conduct Rules applicable to a fund of funds. Applicants believe that it is appropriate to apply the NASD's rule to the proposed arrangement instead of the sales load limitation in section 12(d)(1)(F)(ii). Applicants assert that the NASD's rule more accurately reflects today's regulatory environment with respect to the methods by which investment companies finance sales expenses.

6. Applicants state that, with respect to Securities issued by closed-end Funds which are traded on the open market, no front-end sales load, contingent deferred sales charges, 12b–1 fees, or other distribution fees or redemption fees will be charged in connection with the purchase or sale of the Securities by a Trust Series. Similarly, no front-end sales loads, contingent deferred sales charges or redemption fees will be assessed in connection with the purchase or sale of Securities of an Exchange Fund, but certain Exchange Funds may assess a rule 12b–1 fee. Although the Trust Series will likely incur brokerage commissions in connection with their open market purchases of Securities of closed-end Funds or Exchange Funds, these commissions will not differ from commissions otherwise incurred in connection with the purchase or sale of comparable portfolio securities.

7. Applicants also agree, as a condition to the requested relief, that each Trust Series will not invest in any underlying Fund which acquires securities of any other investment company in excess of the limits contained in section 12(d)(1)(A) of the Act.

B. Section 17(a) of the Act

1. With regard to the Trust Series' investments in Affiliated Funds, applicants request relief from section 17(a) of the Act under sections 6(c) and 17(b). Section 17(a) of the Act generally prohibits an affiliated person, or an affiliated person of an affiliated person, of a registered investment company from selling securities to, or purchasing securities from, the company. Section 2(a)(3) of the Act defines an "affiliated person" of another person to include any person directly or indirectly controlling, controlled by, or under common control with the other person. Applicants submit that the Trust Series and Affiliated Funds may be deemed to be affiliated persons of one another by virtue of being under common control of the Sponsor. Applicants state that purchases and redemptions of Securities of the Affiliated Funds that are open-end investment companies or UITs by a Trust Series could be deemed to be principal transactions between affiliated persons under section 17(a).

2. Section 6(c) of the Act provides that the Commission may exempt persons or transactions from any provisions of the Act if the exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act. Section 17(b) of the Act provides that the Commission will exempt a proposed transaction from section 17(a) if evidence establishes that: (a) the terms of the proposed transaction, including the consideration to be paid or received, are reasonable and fair and do not involve overreaching; (b) the proposed transaction is consistent with the policies of the registered investment company involved; and (c) the proposed transaction is consistent with the general purposes of the Act.

3. Applicants state that Securities of open-end Funds and UITs will be sold to the Trust Series at the Fund's public offering price (*i.e.*, such Fund's net asset value, plus any applicable sales loads). As a result, Applicants believe that the transactions in Securities of Affiliated Funds, including the consideration to be paid or received, will be reasonable and fair and will not involve overreaching on the part of any person involved. Furthermore, Applicants believe that the proposed transactions will be consistent with the policies of the Trust Series as recited in the registration statements for the Trust Series.

C. Section 14(a) of the Act

1. Section 14(a) of the Act requires in substance that a registered investment company have $100,000 of net worth prior to making a public offering. Applicants believe that each Trust Series will comply with this requirement because the Sponsor will deposit substantially more than $100,000 of Securities in each Trust Series. Applicants assert, however, that the Commission has interpreted section 14(a) as requiring that the initial capital investment in an investment company be made without any intention to dispose of the investment. Applicants state that, under this interpretation, a Trust Series would not satisfy section 14(a) because of the Sponsor's intention to sell all of the Units of the Trust Series.

2. Rule 14a–3 under the Act exempts UITs from section 14(a) if certain conditions are met, one of which is that the UIT invest only in "eligible trust securities," as defined in the rule. Applicants submit that the Trust Series cannot rely on the rule because the Trust Series will invest all or a portion of their assets in Fund shares (or in a combination of Fund shares and other Securities) and such Fund shares and certain equity Securities are not eligible trust securities. Pursuant to section 6(c) of the Act, Applicants request an exemption from the net worth requirement of section 14(a) of the Act. Applicants state that the Trust Series and the Sponsor will comply in all respects with the requirements of rule 14a–3, except that the Trust Series will not restrict their portfolio investments to "eligible trust securities."

D. Section 19(b) of the Act

1. Section 19(b) of the Act and rule 19b–1 under the Act provide that, except under limited circumstances, no registered investment company may distribute long-term gains more than once every twelve months. Rule 19b–1(c), under certain circumstances, excepts a UIT investing in "eligible trust securities" (as defined in rule 14a–3) from the requirements of rule 19b–1. Because the Trust Series do not limit their investments to "eligible trust securities," the Trust Series do not qualify for the exemption in paragraph (c) of rule 19b–1. Therefore, applicants request an exemption under section 6(c) from section 19(b) and rule 19b–1 to the extent necessary to permit capital gains earned in connection with the redemption of Fund shares, or sales of closed-end Fund shares, Exchange Fund shares, or other portfolio Securities, to be distributed to Unitholders along with the Trust Series' regular distributions. Applicants state that, in all other respects, the Trust Series will comply with section 19(b) and rule 19b–1. Applicants assert that the abuses that section 19(b) and rule 19b–1 were designed to prevent do not exist with regard to the Trust Series. Applicants state that any gains from the redemption or sale of Fund shares or other portfolio Securities would be triggered by the need to meet Trust Series' expenses or by requests to redeem Units, events over which the Sponsor and the Trust Series have no control.

Applicants' Conditions

Applicants agree that the order granting the requested relief will be subject to the following conditions:

1. Each Trust Series will comply with section 12(d)(1)(F) in all respects except for the sales load limitation of section 12(d)(1)(F)(ii).

2. Any sales charges and/or service fees (as those terms are defined in NASD Conduct Rule 2830) charged with respect to Units of a Trust Series will not exceed the limits set forth in NASD Conduct Rule 2830 applicable to a fund of funds (as defined in NASD Conduct Rule 2830).

3. No Fund will acquire securities of any other investment company in excess of the limits contained in section 12(d)(1)(A) of the Act.

4. The Trust Series and the Sponsor will comply in all respects with the requirements of rule 14a–3, except that the Trust Series will not restrict their portfolio investments to "eligible trust securities."

5. No Trust Series will terminate within thirty days of the termination of any other Trust Series that holds shares of one or more common Funds.

6. The prospectus of each Trust Series and any sales literature or advertising that mentions the existence of an in-kind distribution option will disclose that Unitholders who elect to receive Fund shares will incur any applicable rule 12b–1 fees.

For the Commission, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 03–12609 Filed 5–19–03; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

Sunshine Act Meeting

FEDERAL REGISTER CITATION OF PREVIOUS ANNOUNCEMENT: 68 FR 25071, May 9, 2003.

STATUS: Closed Meeting.

PLACE: 450 Fifth Street, NW., Washington, DC.

ANNOUNCEMENT OF ADDITIONAL MEETING: Additional Meeting.

A Closed Meeting was held on Thursday, May 15, 2003 at 5:30 p.m.

Commissioner Goldschmid, as duty officer, determined that no earlier notice thereof was possible.

The subject matter of the Closed Meeting held on Thursday, May 15, 2003 was: Litigation Matter.

Commissioners, Counsel to the Commissioners, the Secretary to the Commission, and recording secretaries attended the Closed Meeting. Certain staff members who had an interest in the matter also attended the Closed Meeting.

At times, changes in Commission priorities require alterations in the scheduling of meeting items. For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact the Office of the Secretary at (202) 942–7070.

Dated: May 15, 2003.

Jonathan G. Katz,

Secretary.

[FR Doc. 03–12796 Filed 5–16–03; 4:10 pm]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–47856; File No. SR–NASD–2003–78]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the National Association of Securities Dealers, Inc. To Amend Rule 6230 To Reduce TRACE Reporting Period

May 14, 2003.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on May 2, 2003, the National Association of Securities Dealers, Inc. ("NASD") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by NASD. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons. For the reasons discussed below, NASD is requesting that the Commission grant accelerated approval of the proposed rule change.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

NASD is proposing to amend Rule 6230 to reduce the period to report a transaction in a TRACE-eligible debt security from 75 minutes to 45 minutes. Rule 6230 is one of the Trade Reporting and Compliance Engine ("TRACE") rules. Below is the text of the proposed rule change. Proposed new language is in *italics;* proposed deletions are in brackets.[3]

* * * * *

6200. TRADE REPORTING AND COMPLIANCE ENGINE (TRACE)

6230. Transaction Reporting

(a) When and How Transactions Are Reported

A member that is required to report transaction information pursuant to paragraph (b) below must report such transaction information within [one hour and fifteen]*45* minutes of the time of execution, except as otherwise provided below, or the transaction report will be "late." The member must

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] NASD corrected a typographical error in the text of the proposed rule change in a telephone conversation between Sharon K. Zakula, Assistant General Counsel, Office of General Counsel, Regulatory Policy and Oversight, NASD, and Mary N. Simpkins, Special Counsel, Division of Market Regulation, Commission, on May 13, 2003.

transmit the report to TRACE during the hours the TRACE system is open ("TRACE system hours"), which are 8:00 a.m. Eastern Time through 6:29:59 p.m. Eastern Time. Specific trade reporting obligations during a 24-hour cycle are set forth below.

(1) Transactions Executed During TRACE System Hours

Transactions in TRACE-eligible securities executed on a business day at or after 8:00 a.m. Eastern Time through 6:29:59 p.m. Eastern Time must be reported within *45*[one hour and fifteen] minutes of the time of execution. If a transaction is executed on a business day less than *45*[one hour and fifteen] minutes before 6:30 p.m. Eastern Time, a member may report the transaction the next business day within *45*[one hour and fifteen] minutes after the TRACE system opens. If reporting the next business day, the member must indicate "as/of" and provide the actual transaction date.

(2) Transactions Executed at or After 6:30 P.M. Through 11:59:59 P.M. Eastern Time

Transactions in TRACE-eligible securities executed on a business day at or after 6:30 p.m. Eastern Time through 11:59:59 p.m. Eastern Time must be reported the next business day within *45*[one hour and fifteen] minutes after the TRACE system opens. The member must indicate "as/of" and provide the actual transaction date.

(3) Transactions Executed at or After 12:00 A.M. Through 7:59:59 A.M. Eastern Time

Transactions in TRACE-eligible securities executed on a business day at or after 12:00 a.m. Eastern Time through 7:59:59 a.m. Eastern Time must be reported the same day within *45*[one hour and fifteen] minutes after the TRACE system opens.

(4) Transactions Executed on a Non-Business Day

Transactions in TRACE-eligible securities executed on a Saturday, Sunday, or a federal or religious holiday on which the TRACE system is closed, at any time during that day (determined using Eastern Time), must be reported the next business day within *45*[one hour and fifteen] minutes after the TRACE system opens. The transaction must be reported as follows: the date of execution must be the first business day (the same day the report must be made); the execution time must be "12:01:00 a.m. Eastern Time" (stated in military time as "00:01:00"); and the modifier, "special price," must be selected. In addition, the transaction must not be designated "as/of". When the reporting method chosen provides a "special price" memo field, the member must enter the actual date and time of the transaction in the field.

(5) Through (6) No Change.

(b) Through (f) No Change.

* * * * *

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, NASD included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. NASD has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

NASD Rule 6230(a) currently requires a member that is a party to a transaction in a TRACE-eligible security to report the transaction information to TRACE within 75 minutes of the time of execution.[4]

NASD is proposing to reduce the period to report from 75 minutes to 45 minutes. In Rule 6230(a), the general requirement to report transaction information within 75 minutes of the time of execution is restated as 45 minutes. In addition, NASD is proposing to amend the next-day reporting exceptions in Rules 6230(a)(1) through (4) to require that the report be filed within 45 minutes of the time the TRACE system opens instead of the current 75 minutes. Specifically, in Rule 6230(a)(1), a member *could elect* to report the next business day if a transaction occurs within 45 minutes before the TRACE system closing. If the member elects to report the following business day that the TRACE system is open, the member *must report* the transaction within 45 minutes after the TRACE system opens. In addition, in Rule 6230(a)(2) through (4), a member would be required to report transaction information for specified transactions the next business day that the TRACE system is open and would be required to do so within 45 minutes after the system's opening.

The proposed rule change, if approved, would result in important trade information reaching the market in a timelier manner, furthering NASD's goals with respect to improving transparency under TRACE, and enhancing specific TRACE reporting provisions. The goal to reduce the reporting period in TRACE has been understood by the industry for several years and has been noted as a goal in rule filings with the SEC since 1999, as well as in the SEC's first order approving the full set of the TRACE Rules.[5]

The SEC approved the current 75-minute period after several phases of discussion about the appropriate reporting period.[6] In early TRACE discussions occurring in 1998 and 1999, NASD staff recommended that the industry prepare for a 15-minute reporting period. In response to industry feedback, NASD revised its proposal to include a 60-minute period, with the caveat that NASD intended to reduce the reporting period to 15-minutes after TRACE became operational and members had acquired experience with reporting.[7]

Prior to the July 1, 2002 TRACE effective date, the SEC staff requested NASD to coordinate with the National Securities Clearing Corporation ("NSCC") regarding the TRACE reporting initiative. Certain member firms utilizing NSCC for reporting municipal bond transactions to the Municipal Securities Rulemaking Board ("MSRB") requested that NASD and NSCC develop a TRACE reporting option so that members could utilize the same NSCC functionality for reporting transactions in TRACE-eligible securities. Because of NSCC operational issues, it became clear that firms would be precluded from reporting through NSCC unless NSCC improved its "batch processing" to allow for more submissions per day, and NASD adopted a slightly longer reporting period. As a result the SEC approved the NASD's proposal to extend the reporting period to 75 minutes for the initial period of reporting under TRACE. The basis for extending the period to 75 minutes was that NASD planned to reduce the reporting period substantially after TRACE became operational. Consistent with the NASD's goal of a reduced reporting period, NSCC has publicly committed to support the proposed 45-minute reporting requirement.

The NASD proposal to reduce the reporting period at this time to 45 minutes is supported by statistical evidence from TRACE data. The data indicates that the industry generally has achieved technological readiness to implement the proposed rule change. For example, in the fourth quarter of 2002, eighty-three percent (83%) of all trades reported to TRACE were reported within 45 minutes of execution. NASD will work with firms that are currently not able to report trades within 45 minutes generally between the date of the SEC's approval of the proposed rule change, if so approved, and October 1, 2003, the planned date of implementation, to assist such firms to be ready and able to comply with a 45-minutes reporting period on October 1, 2003.

2. Statutory Basis

NASD believes that the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Act[8], which requires, among other things, that NASD's rules must be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest. NASD believes that the proposed rule change, if approved, will provide NASD, as the self-regulatory organization designated to regulate the over-the-counter markets, with heightened capabilities to regulate and provide surveillance of the debt securities markets to prevent fraudulent and manipulative acts and practices, and will improve transparency by reducing the period between the time of execution of a transaction and the dissemination of the transaction information, for securities subject to dissemination, for the protection of customers and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

NASD does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act, as amended.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

NASD has requested that the Commission find good cause pursuant to Section 19(b)(2) for approving the proposed rule change prior to the 30th day after publication in the **Federal Register**. NASD believes that accelerated approval will benefit investors and member firms as follows. Member firms will receive prior notification, by several months, of a clear, fixed, certain deadline to implement a modest reduction in the reporting period. Firms will have sufficient notice to enable firms' operational staffs to make any necessary systems changes or enhancements to comply with the reduced reporting period on October 1, 2003. As noted above, NASD is aware that some firms may have greater operational and technical difficulties in making the operational enhancements to support a 45-minute reporting period. NASD is interested in working with these firms, and believes that an accelerated approval and a fixed implementation date would encourage such firms to begin addressing 45-minute reporting concerns earlier in 2003.

In addition, NASD believes that approval of this provision on an accelerated basis to create a date certain for implementation is likely to improve price transparency for the benefit of investors by effectively reducing the reporting period prior to the time this rule change would take effect on October 1, 2003. Specifically, members have indicated that they will begin to modify operations and systems, as necessary, as soon as the membership is certain that the reporting period will be reduced, and to what extent, and is able to ascertain the effective date of the new reporting requirement. As firms reduce their reporting windows, reported prices will begin to be disseminated more quickly.

Moreover, NASD believes that members have been aware that the NASD would reduce the TRACE reporting period because NASD, the SEC, and the industry have publicly discussed reduction of the reporting period for several years. TRACE has now been operational for almost nine months, and NASD's proposal to reduce the reporting period would not take effect until October 1, 2003, which is 15 months from the date of implementation of TRACE. The Commission is not, at this time, granting accelerated approval of the proposed rule change.

NASD intends to respond to comments filed with the SEC regarding the proposed reduction.

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

A. By order approve such proposed rule change, or

B. Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW, Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of NASD. All submissions should refer to file number SR–NASD–2003–78 and should be submitted by June 10, 2003.

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[4] Limited exceptions to the general requirement are stated in Rule 6230(a)(1) through (4), which provide for reporting a transaction the next business day that the TRACE system is open in certain circumstances. Specifically, in Rule 6230(a)(1), a member currently *may elect* to report a transaction the next business day that the TRACE system is open at any time within 75 minutes after the TRACE system opens, if the member executed the trade the prior business day less than 75 minutes before the TRACE system closed. (Currently, on a business day, the TRACE system is open from 8 a.m. Eastern Time to 6:30 p.m. Eastern Time to receive reports.) In Rule 6230(a)(2) through (4), members are directed how to report trades that occur (1) after TRACE system hours, (2) before TRACE system hours, or (3) on a weekend or a holiday. In each case, the member must report the transaction the next business day that the TRACE system is open within 75 minutes of the opening.

[5] Securities Exchange Act Release No. 43873 (January 23, 2001), 66 FR 8131, 8135 (January 29, 2001) (order approving SR–NASD–99–65).

[6] Securities Exchange Act Release No. 46144 (June 28, 2002), 67 FR 44907 (July 5, 2002) (order approving SR-NASD–2002–46).

[7] Currently, NASD staff intends to recommend a further reduction in the TRACE reporting period to 15 minutes that would be effective mid-year 2004. The reduction in the TRACE reporting period would be consistent with the Municipal Securities Rulemaking Board's published plan to implement a 15-minute transaction reporting requirement for municipal securities that would take effect on July 1, 2004.

[8] 15 U.S.C. 78o–3(b)(6).

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[9]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 03–12611 Filed 5–19–03; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–47836; File No. SR–NYSE–2003–16]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Changes by the New York Stock Exchange, Inc. Relating to Arbitration

May 12, 2003.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and rule 19b–4 thereunder,[2] notice is hereby given that on May 9, 2003, the New York Stock Exchange, Inc. ("NYSE" or "Exchange") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in items I, II, and III below, which items have been prepared by NYSE. NYSE filed the proposed rule change pursuant to section 19(b)(3)(A) of the Act[3] and rule 19b–4(f)(6) thereunder,[4] which renders the proposal effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The proposed rule change consists of an extension of rule 600(g).

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in item IV below. The NYSE has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

[9] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A).

[4] 17 CFR 240.19b–4(f)(6).

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The proposed rule change is intended to:

• Extend until September 30, 2003,[5] rule 600(g) that was approved by the Commission for a six-month period ending May 12, 2003.[6]

The Exchange's statement of purpose is contained in the Commission's Approval Order. In that Approval Order the Commission stated: "The Exchange's Director of Arbitration will monitor the progress of the above described litigation *[NASD Dispute Resolution, Inc. and New York Stock Exchange, Inc.* v. *Judicial Council of California*, No. C 02 3485 (N.D. Cal.)] and determine whether there is a continuing need for the waiver option."[7]

The above litigation, in which the Exchange and NASD Dispute Resolution, Inc. sought a declaratory judgment that the Ethics Standards for Neutral Arbitrators in Contractual Arbitrations (the "California Standards") are preempted by Federal law, has not been concluded. On November 12, 2002, Judge Samuel Conti dismissed the action on Eleventh Amendment grounds.[8] A Notice of Appeal from Judge Conti's decision has been filed with the United States Court of Appeals for the Ninth Circuit.[9] The Exchange's Director of Arbitration has determined that, in the absence of a final judicial determination or legislative resolution of the preemption issue, there is a continuing need for the waiver option.

[5] The Commission recently approved an extension of a similar pilot rule of the National Association of Securities Dealers, Inc. ("NASD"), contained in its Code of Arbitration Procedure, until September 30, 2003. Release No. 34–47631 (April 3, 2003), 68 FR 17713 (April 10, 2003). By proposing to extend its own pilot rule until September 30, 2003, the Exchange seeks to conform the duration of the NASD and Exchange pilot programs.

[6] Release No. 34–46816 (November 12, 2002), 67 FR 69793 (November 19, 2002).

[7] *Id.* at 69794.

[8] *NASD Dispute Resolution, Inc.* v. *Judicial Council of California*, 232 F. Supp. 2d 1055 (N.D. Cal. 2002).

[9] In another case, *Mayo* v. *Dean Witter Reynolds, Inc., Morgan Stanley Dean Witter & Co. dba Morgan Stanley Dean Witter, and Does 1–50*, No. C–01–20336 JF, 2003 WL 1922963 (N.D. Cal., April 22, 2003), Judge Jeremy Fogel recently held that application of the California Standards to the Exchange and other self-regulatory organizations is preempted by the Act, the comprehensive system of federal regulation of the securities industry established pursuant to the Act, and the Federal Arbitration Act.

2. Statutory Basis

The Exchange states that the proposed changes are consistent with section 6(b)(5) of the Act[10] in that they promote just and equitable principles of trade by ensuring that members and member organizations and the public have a fair and impartial forum for the resolution of their disputes.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others

The Exchange has neither solicited nor received written comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The NYSE has stated that because the proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days (or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest), it has become effective pursuant to section 19(b)(3)(A) of the Act[11] and rule 19b–4(f)(6) thereunder.[12] At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate the rule change if it appears to the Commission that the action is necessary or appropriate in the public interest, for the protection of investors, or would otherwise further the purposes of the Act.

Pursuant to rule 19b–4(f)(6)(iii) under the Act,[13] the proposal may not become operative for 30 days after the date of its filing, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest, and the self-regulatory organization must file notice of its intent to file the proposed rule change at least five business days beforehand. The Exchange has requested that the Commission waive the five-day pre-filing requirement and the 30-day operative delay so that the proposed rule change will become immediately effective upon filing.

[10] 15 U.S.C. 78f(b)(5).

[11] 15 U.S.C. 78s(b)(3)(A).

[12] 17 CFR 240.19b–4(f)(6).

[13] 17 CFR 240.19b–4(f)(6)(iii).

The Commission believes that waiving the five-day pre-filing provision and the 30-day operative delay is consistent with the protection of investors and the public interest.[14] Waiving the pre-filing requirement and accelerating the operative date will merely extend a pilot program that is designed to provide investors with a mechanism to resolve disputes with broker " dealers. During the period of this extension, the Commission and NYSE will continue to monitor the status of the previously discussed litigation. For these reasons, the Commission designates the proposed rule change as effective and operative immediately.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the NYSE. All submissions should refer to File No. NYSE–2003–16 and should be submitted by June 10, 2003.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[15]

Jill M. Peterson,

Assistant Secretary.

[FR Doc. 03–12457 Filed 5–19–03; 8:45 am]

BILLING CODE 8010–01–P

[14] For purposes of accelerating the operative date of this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[15] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–47843; File No. SR–PCX–2002–54]

Self-Regulatory Organizations; Order Approving Proposed Rule Change and Amendment No. 1 Thereto by the Pacific Exchange, Inc. Relating to a One Tick Step Up Requirement for Auto-Ex in Certain Option Issues

May 13, 2003.

I. Introduction

On August 27, 2002, the Pacific Exchange, Inc. ("PCX" or "Exchange") filed with the Securities and Exchange Commission ("SEC" or "Commission") pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b–4 thereunder,[2] a proposed rule change to adopt a one-tick step up requirement for market makers who are participating on the Exchange's Automatic Execution System ("Auto-Ex"). On March 19, 2003, the Exchange submitted Amendment No. 1 to the proposed rule change. The proposed rule change, as amended, was published in the **Federal Register** on April 9, 2003.[3] The Commission received no comments regarding the proposal. This order approves the proposed rule change, as amended.

II. Description

The Exchange is proposing to adopt PCX Rule 6.87(e)(8) relating to the Exchange's Auto-Ex System for options trading. Currently, options market makers who are logged on to Auto-Ex are obligated to meet certain requirements with respect to their use of Auto-Ex. These obligations are set forth in PCX Rule 6.87(e)(1)–(7). The Exchange is proposing to adopt a new rule that would require Lead Market Makers ("LMMs") participating on Auto-Ex to step up and execute certain orders at prices better than the Exchange is disseminating under specified conditions.

PCX Rule 6.87(i) currently allows the Options Floor Trading Committee ("OFTC") to require market makers to step up at least one trading increment to the national best bid or offer ("NBBO") for electronic orders in selected issues.[4] The proposed rule change would impose an alternative step up requirement on LMMs. Under the proposal, if the OFTC has not exercised its authority to require step up to the NBBO, the Exchange will set the Auto-Ex System to require LMMs to step up and execute trades in selected issues at the NBBO if the LMM is quoting a price within one tick of the NBBO as disseminated by another exchange. If the LMM is quoting a price that is more than one trading increment inferior to the price being disseminated by another options exchange, the order will default for manual representation in the trading crowd.

Proposed PCX Rule 6.87(e)(8) only will apply to non-broker-dealer orders for ten contracts or less in option issues that are ranked in the 120 most actively traded equity options based on the total number of contracts traded nationally for a specified month based on volume as reported by the Options Clearing Corporation. In addition, the rule will only apply to orders in option series that are not designated as LEAPS pursuant to PCX Rule 6.4(e).

The Exchange's determination of whether an equity option ranks in the top 120 most active, nationally-traded issues will be based on volume statistics reported by the Options Clearing Corporation. The Exchange's determination of whether an equity option ranks in the top 120 most active issues will be based on volume statistics for the three calendar months of trading activity beginning four months prior to the current month. The Exchange has represented that it intends to notify its Members of the issues that are designated to be in the top 120 via a regulatory bulletin that will be published at the beginning of each month.

III. Discussion

After careful consideration, the Commission finds that the proposed rule change is consistent with the Act and the rules and regulations thereunder applicable to a national securities exchange. In particular the Commission finds that the proposed rule change is consistent with section 6(b)(5) of the Act,[5] which requires among other things, that the Exchange's rules be designed to promote just and equitable principles of trade, to remove impediments and to perfect the mechanism of a free and open market and a national market system, and in general, to protect investors and the

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act No. 47615 (April 2, 2003), 68 FR 17420.

[4] Further, pursuant to PCX Rule 6.87(i), the OFTC may designate that an order will default for manual representation in the trading crowd if the order would be executed at a price that is more than one trading increment away from the PCX market price.

[5] 15 U.S.C. 78f(b)(5).

public interest.[6] The Commission believes that requiring LMMs to step up one tick to match the NBBO in the most highly traded options series should increase the ability of investors to gain access to the best bids and offers available in those options series.

IV. Conclusion

For all of the aforementioned reasons, the Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.

It is therefore ordered, pursuant to section 19(b)(2) of the Act,[7] that the proposed rule change (SR–PCX–2002–54), as amended, is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[8]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 03–12610 Filed 5–19–03; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–47646; File No. SR–Phlx–2003–18]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change and Amendment No. 1 Thereto by the Philadelphia Stock Exchange, Inc. Relating to Equal Firm Quotation Size and AUTO–X Guarantees for Customer and Broker-Dealer Orders

April 8, 2003.

Editorial Note: Due to numerous footnote errors, this document is being reprinted in its entirety. It was originally printed in the **Federal Register** on Monday, April 14, 2003 at 68 FR 17976–17979.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on March 20, 2003, the Philadelphia Stock Exchange, Inc. ("Exchange" or "Phlx") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Phlx. The proposed rule change has been filed by the Phlx as a "non-controversial" rule change under Rule 19b–4(f)(6) under the Act.[3] On April 7, 2003, the Phlx filed Amendment No. 1 to the proposed rule change.[4] The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Phlx proposes to implement an options program to be firm for, and to automatically execute eligible orders against, the Exchange's disseminated size for both customer and broker-dealer orders. Specifically, the Exchange proposes to amend Exchange Rule 1082, Firm Quotations, to provide that all Phlx options quotations would be firm for all incoming customer and broker-dealer orders for their full disseminated size.

The Exchange further proposes to amend Exchange Rule 1080, Philadelphia Stock Exchange Automated Options Market (AUTOM) and Automatic Execution System (AUTO–X),[5] to provide automatic executions for eligible customer and off-floor broker-dealer orders up to the Exchange's disseminated size, subject to a maximum guaranteed AUTO–X size of 250 contracts. Options on the Nasdaq-100 Index Tracking Stock ("QQQ"SM)[6] would continue to have a maximum guaranteed AUTO–X size of 2,000 contracts in the first two near term expiration months, and 1,000 contracts for all other expiration months.[7]

Below is the text of the proposed rule change. Proposed new language is in *italics;* proposed deletions are in brackets.

* * * * *

Firm Quotations

Rule 1082. (a) No change.

(b) Except as provided in paragraph (c) of this Rule, all quotations made available by the Exchange and displayed by quotation vendors shall be firm for customer *and broker-dealer* orders at the disseminated price in an amount up to the disseminated size. Responsible brokers or dealers bidding (or offering) at the disseminated price shall be collectively required to execute orders presented to them at such price up to the disseminated size in accordance with Rule 1015, or, if the responsible broker or dealer is representing (as agent) a limit order, such responsible broker or dealer shall be responsible (as agent) up to the size of such limit order, but may be responsible as principal for all or a portion of the excess of the disseminated size over the size of such limit order to the extent provided in Rule 1015.

(c) No change.

(d) [In accordance with paragraph (d)(l)(ii) of the SEC Quote Rule, the quotation size for a disseminated price with respect to an order for the account of a broker or dealer ("broker-dealer order") shall be one (1) contract ("quotation size"), and all quotations made available by the Exchange and displayed by quotation vendors shall be firm for broker-dealer orders at the disseminated price in an amount up to the quotation size. The quotation size for broker-dealer orders provided in this paragraph (d) shall be periodically published by the Exchange. Responsible brokers or dealers bidding (or offering) at the disseminated price shall be collectively required to execute broker-dealer orders at such price up to the quotation size. (e)] If responsible brokers or dealers receive an order to buy or sell a listed option at the disseminated price in an amount greater than the disseminated size [(for customer orders) or the quotation size (for broker-dealer orders)], such responsible broker or dealer shall, within thirty (30) seconds of receipt of the order, (i) execute the entire order at the disseminated price (or better), or (ii) execute that portion of the order equal to the disseminated size [(in the case of a customer order) or the quotation size (in the case of a broker-dealer order)] at the disseminated price (or better), and revise its bid or offer.

Commentary:

.01. For purposes of this Rule 1082, the term "broker-dealer orders" includes orders for the account(s) of market makers on another exchange and Registered Options Traders ("ROTs") on the Exchange.

* * * * *

Philadelphia Stock Exchange Automated Options Market (AUTOM) and Automatic Execution System (AUTO–X)

Rule 1080. (a)–(b) No change.

(c) AUTO–X.—AUTO–X is a feature of AUTOM that automatically executes eligible market and marketable limit orders up to the number of contracts permitted by the Exchange for certain strike prices and expiration months in equity options and index options, unless the Options Committee determines otherwise. AUTO–X automatically executes eligible orders using the Exchange disseminated quotation (except if executed pursuant to the NBBO Feature in sub-paragraph (i) below) and then automatically routes execution reports to the originating member organization. AUTOM orders not eligible for AUTO–X are executed manually in accordance with Exchange rules. Manual execution may also occur when AUTO–X is not engaged, such as pursuant to sub-paragraph (iv) below. An order may also be executed partially by AUTO–X and partially manually.

The Options Committee may for any period restrict the use of AUTO–X on the Exchange in any option or series provided that the effectiveness of any such restriction shall be conditioned upon its having been approved by the Securities and Exchange Commission pursuant to Section 19(b) of the Securities Exchange Act of 1934 and the rules and regulations thereunder. Any such restriction on the use of AUTO–X approved by the Options Committee will be clearly communicated to Exchange membership and AUTOM users through an electronic message sent via AUTOM and through an Exchange information circular. Such restriction would not take effect until after such communication has been made.

Currently, the Exchange's maximum allowable AUTO–X guarantee is 250 contracts. With respect to options on the Nasdaq-100 Index Tracking Stock ("QQQ")SM, orders of up to 2,000 contracts in the first two (2) near term expiration months, and 1,000 contracts for all other expiration months, are eligible for AUTO–X.

For each option, there shall be a minimum guaranteed AUTO–X size and a maximum guaranteed AUTO–X size. Such minimum and maximum sizes may be for a different number of contracts for customer orders than for broker-dealer orders], as determined by the specialist and subject to the approval of the Options Committee.

The Exchange shall provide automatic executions for eligible *customer and broker-dealer* orders up to the Exchange's disseminated size as defined in Exchange Rule 1082, subject to a minimum guaranteed AUTO–X size and a maximum guaranteed AUTO–X size (up to a size of 250 contracts).

- If the Exchange's disseminated size is greater than the minimum guaranteed AUTO–X size, and less than the maximum guaranteed AUTO–X size, inbound eligible orders shall be automatically executed up to Exchange's disseminated size. Remaining contracts shall be executed manually by the specialist or placed on the limit order book.
- If the Exchange's disseminated size is less than the minimum guaranteed AUTO–X size for that option, inbound eligible orders shall be automatically executed up to such minimum guaranteed AUTO–X size. Remaining contracts shall be executed manually by the specialist or placed on the limit order book.
- If the Exchange's disseminated size is greater than the maximum guaranteed AUTO–X size, inbound eligible orders shall be automatically executed up to such maximum guaranteed AUTO–X size. Remaining contracts shall be executed manually by the specialist.

The minimum and maximum guaranteed AUTO–X size applicable to each option shall be posted on the Exchange's Web site.

The Options Committee may, in its discretion, increase the size of orders in one or more classes of multiply-traded equity options eligible for AUTO–X to the extent necessary to match the size of orders in the same options eligible for entry into the automated execution system of any other options exchange, provided that the effectiveness of any such increase shall be conditioned upon its having been filed with the Securities and Exchange Commission pursuant to Section 19(b)(3)(A) of the Securities Exchange Act of 1934.

(i)–(v) No change.

(d)–(j) No change.

Commentary

.01–.04 No change.

.05 Off-floor broker-dealer limit orders delivered through AUTOM must be represented on the Exchange Floor by a floor member. Off-floor broker-dealer orders delivered via AUTOM shall be for a minimum size of one (1) contract. Off-floor broker-dealer limit orders are subject to the following other provisions:

(i)–(iii) No Change

(iv) [(a) The minimum guaranteed AUTO–X size shall be at least 10 contracts for off-floor broker-dealer limit orders in the 120 most actively traded equity options (the "Top 120 Options"). A Top 120 Option is defined as one of the 120 most actively traded equity options in terms of the total number of contracts that were traded nationally for a specified month based on volume reflected by The Options Clearing Corporation ("OCC").

(b) With respect to all other options, off-floor broker-dealer limit orders may be eligible for automatic execution via AUTO–X on an issue-by-issue basis, subject to the approval of the Options Committee.

(c) The AUTO–X guarantee for off-floor broker-dealer limit orders may be for a different number of contracts, on an issue-by-issue basis, than the AUTO–X guarantee for public customer orders, subject to the approval of the Options Committee. (v)] Off-floor broker-dealer AUTO–X eligible limit orders may be eligible for the Exchange's National Best Bid or Offer ("NBBO") Step-Up Feature on an issue-by-issue basis, subject to the approval of the Options Committee.

* * * * *

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Phlx included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Phlx has prepared summaries, set forth in Sections A, B and C below, of the most significant aspects of such statements.

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[6] In approving this proposal, the Commission has considered the proposed rule's impact on efficiency, competition and capital formation. 15 U.S.C. 78c(f).

[7] 15 U.S.C. 78s(b)(2).

[8] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 17 CFR 240.19b–4(f)(6).

[4] *See* letter from Richard S. Rudolph, Director and Counsel, Phlx, to Deborah Lassman Flynn, Assistant Director, Division of Market Regulation, Commission, dated April 4, 2003 ("Amendment No. 1"). In Amendment No. 1, Phlx deleted certain proposed language stating that "[t]he minimum guaranteed AUTO–X size is 1 contract, and the current maximum AUTO–X size is 250 contracts, except for QQQ options"; retained current language that the minimum and maximum guaranteed AUTO–X sizes for each option will be posted in the Phlx's website; and retained current language that there be a minimum guaranteed AUTO–X size and maximum guaranteed AUTO–X size, as determined by the specialist and subject to approval of the Options Committee.

[5] AUTOM is the Exchange's electronic order delivery, routing, execution and reporting system, which provides for the automatic entry and routing of equity option and index option orders to the Exchange trading floor. Orders delivered through AUTOM may be executed manually, or certain orders are eligible for AUTOM's automatic execution feature, AUTO–X. Equity option and index option specialists are required by the Exchange to participate in AUTOM and its features and enhancements. Option orders entered by Exchange members into AUTOM are routed to the appropriate specialist unit on the Exchange trading floor. *See* Exchange Rule 1080.

[6] The Nasdaq-100®, Nasdaq-100 Index®, Nasdaq®, The Nasdaq Stock Market®, Nasdaq-100 SharesSM, Nasdaq-100 TrustSM, Nasdaq-100 Index Tracking StockSM, and QQQSM are trademarks or service marks of Nasdaq and have been licensed for use for certain purposes by the Philadelphia Stock Exchange pursuant to a License Agreement with Nasdaq. The Nasdaq-100 Index® (the Index) is determined, composed, and calculated by Nasdaq without regard to the Licensee, the Nasdaq-100 TrustSM, or the beneficial owners of Nasdaq-100 SharesSM. Nasdaq has complete control and sole discretion in determining, comprising, or calculating the Index or in modifying in any way its method for determining, comprising, or calculating the Index in the future.

[7] *See* Securities Exchange Act Release No. 46531 (September 23, 2002), 67 FR 61370 (September 30, 2002) (SR–Phlx–2002–47).

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Phlx proposes to require that all Phlx quotations would be firm for all incoming customer and broker-dealer orders for their full disseminated size, thus eliminating any distinction between customer orders and broker-dealer orders respecting firm quotation size. The Phlx also proposes to provide that all Phlx guaranteed AUTO–X sizes would be the same for both customer and broker-dealer orders.

a. Firm Quotation Size

Currently, Exchange Rule 1082(b) requires that all quotations made available by the Exchange and displayed by quotation vendors shall be firm for customer orders at the disseminated price in an amount up to the disseminated size. Exchange Rule 1082(d) sets forth a different "quotation size" of one contract applicable to broker-dealer orders, which is distinguished from the "disseminated size" for which responsible brokers or dealers are firm for customer orders.[8] The Exchange proposes to amend Exchange Rule 1082(b) to require that all quotations made available by the Exchange and displayed by quotation vendors shall be firm for customer orders and broker-dealer orders at the disseminated price in an amount up to the disseminated size, thus eliminating any distinction between customer orders and broker-dealer orders with respect to the size for which Exchange option quotations are firm.

The Exchange would also delete any references to "quotation size" and "broker-dealer" from Exchange Rule 1082(e). This would be to require all quotations made available by the Exchange and displayed by quotation vendors to be firm at the disseminated price in an amount up to the disseminated size for both customers and broker-dealers. The Phlx represents that the purpose of this provision is to provide both customers and broker-dealers with full access to the entire disseminated size of the Exchange's quotations. Thus, the Exchange proposes to eliminate any distinction between the size for which its quotes are firm, whether for customers or broker-dealers, including market makers on other exchanges and Registered Options Traders ("ROTs").

b. Automatic Executions at the Disseminated Size for Eligible Customer and Broker-Dealer Orders

In November 2002, the Commission approved an Exchange proposal to provide automatic executions for eligible orders at the Exchange's disseminated size, subject to a minimum and maximum eligible size range to be determined by the specialist and subject to approval of the Options Committee, on an issue-by-issue basis.[9] The Exchange now proposes to amend Exchange Rule 1080(c) by deleting the provision that such minimum and maximum sizes may be for a different number of contracts for customer orders than for broker-dealer orders. Corresponding sections of the Commentary to Exchange Rule 1080 concerning AUTO–X eligibility and different guaranteed AUTO–X sizes for customers and broker-dealers would also be deleted. This would result in automatic executions for both eligible customer orders and eligible broker-dealer orders at the Exchange's disseminated size.

The Exchange proposes to eliminate the distinction among customer orders and broker-dealer orders respecting AUTO–X guarantees. In order to ensure that customer and broker-dealer orders receive the same AUTO–X size guarantee, the Phlx proposes to delete the current provisions in Exchange Rule 1080, Commentary .05 requiring a minimum guaranteed AUTO–X size of ten contracts for off-floor broker-dealer orders in Top 120 options. Additionally, the current Commentary includes a provision that, with respect to all other options, off-floor broker-dealer limit orders may be eligible for automatic execution via AUTO–X on an issue-by-issue basis, subject to the approval of the Options Committee. The Exchange proposes to delete this provision in order to enable all eligible broker-dealer orders to be treated the same as eligible customer orders with respect to the Exchange's guaranteed AUTO–X size.

Finally, the Exchange proposes to delete from the Commentary the provision that the AUTO–X guarantee for off-floor broker-dealer limit orders may be for a different number of contracts, on an issue-by-issue basis, than the AUTO–X guarantee for public customer orders, subject to the approval of the Options Committee.

c. Conclusion

The Exchange believes that this proposed "one size fits all" approach, as set forth in subsections a. and b. above, should enable the Exchange to compete for broker-dealer orders by ensuring that there would be no distinction between broker-dealer and customer orders with respect to: (i) the size for which the Exchange is firm at its disseminated price; and (ii) the Exchange's guaranteed AUTO–X size. Furthermore, the Exchange believes that the proposal should enhance the transparency of its markets and result in a larger number of orders automatically executed.

2. Statutory Basis

The Exchange believes the proposed rule change, as amended, is consistent with Section 6(b) of the Act[10] in general, and furthers the objectives of Section 6(b)(5) of the Act[11] in particular, because it is designed to promote just and equitable principles of trade, remove impediments to and perfect the mechanism of a free and open market and protect investors and the public interest by requiring Exchange specialists and ROTs to be firm for up to the Exchange's disseminated size for all orders, and providing automatic executions at the same guaranteed size for all eligible orders.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any inappropriate burden on competition that is not necessary in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change: (1) Does not significantly affect the protection of investors or the public interest; (2) does not impose any significant burden on competition; and (3) does not become operative for 30 days from the date of filing, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest, the proposed rule change has become effective pursuant to Section 19(b)(3)(A)[12] of the Act and Rule 19b–4(f)(6)[13] thereunder.[14]

A proposed rule change filed under Rule 19b–4(f)(6) normally does not become operative prior to 30 days after the date of filing. However, Rule 19b–4(f)(6)(iii) permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest. The Phlx seeks to have the proposed rule change become operative immediately upon filing so that the Exchange may remain competitive with other exchanges with similar rules in effect.

The Commission, consistent with the protection of investors and the public interest, has determined to waive the 30-day operative date and make the proposed rule change operative immediately upon filing, in order to allow the Phlx to compete for broker-dealer orders by removing any distinction between broker-dealer and customer orders with respect to the size for which the Exchange is firm at its disseminated price and the Exchange's guaranteed AUTO–X size.[15] At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change, as amended, is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the Phlx. All submissions should refer to File No. SR–Phlx–2003–18 and should be submitted by May 5, 2003.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[16]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 03–9034 Filed 4–11–03; 8:45 am]

Editorial Note: Due to numerous footnote errors, this document is being reprinted in its entirety. It was originally printed in the **Federal Register** on Monday, April 14, 2003 at 68 FR 17976–17979.

[FR Doc. R3–9034 Filed 5–19–03; 8:45 am]

BILLING CODE 1505–01–D

[8] Rule 11Ac1–1(d)(1)(ii) under the Act provides that an exchange or association may establish by rule and periodically publish a quotation size, which shall not be for less than one contract, for which responsible brokers or dealers who are members of such exchange or association are obligated under paragraph (c)(2) of this section to execute an order to buy or sell a listed option for the account of a broker or dealer that is in an amount different from the quotation size for which it is obligated to execute an order for the account of a customer. 17 CFR 240.11Ac1–1(d)(1)(ii).

[9] *See* Securities Exchange Act Release No. 46886 (November 22, 2002), 67 FR 72015 (December 3, 2002) (SR–Phlx–2002–39).

[10] 15 U.S.C. 78f(b).

[11] 15 U.S.C. 78f(b)(5).

[12] 15 U.S.C. 78s(b)(3)(A).

[13] 17 CFR 240.19b–4(f)(6).

[14] As required under Rule 19b–4(f)(6)(iii), the Exchange provided the Commission with written notice of its intent to file the proposed rule change at least five business days prior to the filing date or such shorter period as designated by the Commission.

[15] For purposes only of accelerating the operative date of this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[16] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–47647; File No. SR–Phlx–2003–20]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the Philadelphia Stock Exchange, Inc. To Adopt a License Fee for Transactions in DIAMONDS® Exchange Traded Funds

April 8, 2003.

Editorial Note: Due to numerous footnote errors, this document is being reprinted in its entirety. It was originally printed in the **Federal Register** on Monday, April 14, 2003 at 68 FR 17979–17982.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on March 28, 2003, the Philadelphia Stock Exchange, Inc. ("Phlx" or "Exchange") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend its Summary of Equity Charges to adopt a license fee of $0.00025 per share per trade side for sides greater than 500 shares, with no maximum fee per trade side charged to Non-PACE Customers[3] and Electronic Communications Networks ("ECNs"),[4] and a license fee of $0.0005 per share per trade side, with no maximum fee per trade side charged to specialists for transactions on the Phlx in the DIAMONDS® Exchange Traded Funds ("DIAMONDS").[5] The Exchange also proposes to make minor, technical changes to its equity fee schedule to make corresponding references to the proposed fees. All other equity charges currently assessed by the Phlx will be imposed where applicable.[6]

The Exchange proposes to implement this fee as of April 1, 2003, the date that

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] PACE is the acronym for the Exchange's Automated Communication and Execution System, which is the Exchange's order routing, delivery, execution and reporting system for its equity trading floor. *See* Exchange Rules 229 and 229A.

[4] ECNs shall mean any electronic system that widely disseminates to third parties orders entered therein by an Exchange market maker or over-the-counter ("OTC") market maker, and permits such orders to be executed against in whole or in part; except that the term ECN shall not include: any system that crosses multiple orders at one or more specified times at a specified price set by the ECN, algorithm, or by any derivative pricing mechanism and does not allow orders to be crossed or executed against directly by participants outside of such times; or, any system operated by or on behalf of an OTC market-maker or exchange market-maker that executes customer orders primarily against the account of such market maker as principal, other than riskless principal.

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[6] These charges may include equity transaction charges, an equity floor brokerage assessment, an equity floor brokerage transaction fee, an off-Exchange trade information fee, an SEC fee, a remote information access fee, an Electronic Communications Network fee, an outbound Inter-Market Trading System ("ITS") fee and a net inbound ITS credit. Additionally, the PACE Specialist charge does not apply because specialists are not eligible for further PACE volume discounts. *See* Securities Exchange Act No. 44259 (May 4, 2001), 66 FR 23962 (May 10, 2001) (SR–Phlx–2001–41).

it began trading in the DIAMONDS.[7]

Text of the proposed rule change is set forth below. New text is in italics. Deleted text is in brackets.

Summary of Equity Charges (p 1/3)*—Equity Transaction Charge I

[Based on total shares per transaction with the exception of specialist trades and PACE trades.[1]]

Monthly transaction value	Rate per share
First 500 shares	$0.00
Next 2,000 shares	0.0075
Next 7,500 shares	0.005
Remaining shares	0.004

$50 maximum fee per trade side.

License Fee

SPDRs, Standard & Poor's Depositary Receipts**

Customer Non-PACE and Electronic Communications Network[E] ("ECN") License Fee:
$0.00025 per share per trade side for sides greater than 500 shares
No maximum fee per trade side

Specialist License Fee:
$0.00035 per share per trade side
No maximum fee per trade side

*DIAMONDS® Exchange Traded Funds***

Customer Non-PACE and Electronic Communications Network[E] ("ECN") License Fee:
$0.00025 per share per trade side for sides greater than 500 shares
No maximum fee per trade side

Specialist License Fee:
$0.0005 per share per trade side
No maximum fee per trade side

See Appendix A for additional fees.
I denotes fee eligible for monthly credit of up to $1,000.
* Not applicable to transactions in Nasdaq-100 Index Tracking Stock℠ (see page 4 for fees).

Summary of Equity Charges (p 2/3)*—PACE Specialist Charge[2] I

$.20 per PHLX Specialist Trade against PACE Executions (Not applicable to PACE trades on the opening)

Equity Floor Brokerage Assessment I

$250 monthly charge[3]

Equity Floor Brokerage Transaction Fee I

$.05 per 100 shares or fraction thereof, for floor broker executing transactions for their own member firms.

SEC Fee

The amount shall be determined by Section 31 of the Securities Exchange Act of 1934.

Off-Exchange Trade Information Fee I

$.10 per DOT trade

Remote Information Access Fee I

$300.00 per month

Electronic Communications Network[E] ("ECN") Fee

$2,500.00 per month (in lieu of equity transaction charges)

Outbound ITS Fee I (also applicable to transactions in Nasdaq-100 Index Tracking Stock℠)[4]

For PACE orders sent over ITS with the customer information attached:

500 shares or less	$0.60 per 100 shares
501 to 4,999 shares	0.30 per 100 shares

Summary of Equity Charges (p 3/3)

Net Inbound ITS Credit (also applicable to transactions in Nasdaq-100 Index Tracking Stock ℠)[5]

$0.30 per 100 shares on the excess, if any, of the number of inbound ITS shares executed over the number of outbound ITS shares sent and executed on a monthly basis.

See Appendix A for additional fees.
I denotes fee eligible for monthly credit of up to $1,000.
* Not applicable to transactions in Nasdaq-100 Index Tracking Stock℠ (see next page for fees).
[E] ECNs shall mean any electronic system that widely disseminates to third parties orders entered therein by an Exchange market maker or over-the-counter ("OTC") market maker, and permits such orders to be executed against in whole or in part; except that the term ECN shall not include: Any system that crosses multiple orders at one or more specified times at a specified price set by the ECN, algorithm, or by any derivative pricing mechanism and does not allow orders to be crossed or executed against directly by participants outside of such times; or, any system operated by or on behalf of an OTC market-maker or exchange market-maker that executes customer orders primarily against the account of such market maker as principal, other than riskless principal.

[7] The license fees will not be eligible for the monthly credit of up to $1,000 to be applied against certain fees, dues and charges and other amounts owed to the Exchange by certain members. *See* Securities Exchange Act Release No. 44292 (May 11, 2001), 66 FR 27715 (May 18, 2001) (SR–Phlx–2001–49).

Any fees, credits, discounts and other charges in the Exchange's fee schedule which are based upon an equity specialist's specialist activity apply to competing specialists.

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[1] However, this charge applies where an order, after being delivered to the Exchange by the PACE system is executed by the specialist by way of an outbound commitment, when such outbound ITS commitment reflects the PACE order's clearing information, but does not apply where a PACE trade was executed against an inbound ITS commitment.

[2] This charge does not apply to transactions in Nasdaq-100 Index Tracking Stock℠ [and] SPDRs *and DIAMONDS®*.

[3] Applies to each member who derives at least 80% of gross income generated from Phlx floor based activities from his/her floor brokerage business conducted on the Exchange. Floor brokerage business conducted on the Exchange includes orders that are received on the Phlx, even if those orders are executed on an exchange other than the Phlx. The 5% floor brokerage assessment is waived until Dec. 31, 2003 and is scheduled to be reinstated Jan. 1, 2004.

[4] This fee will only apply when the specialist sends an order received over PACE to ITS and receives an execution, if the specialist used the PACE customer's clearing information on the outbound ITS commitment.

[5] This credit will include all inbound and outbound ITS executions, including both PACE and non-PACE and both proprietary and customer commitments.

* * * * *

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item III below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of the proposed rule change is to adopt a license fee that will apply to trading DIAMONDS on the Exchange. The Exchange recently determined to begin trading DIAMONDS. The license fees should help off-set licensing fees incurred by the Exchange associated with the trading of these products on the Exchange.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,[8] in general, and furthers the objectives of Section 6(b)(4) of the Act,[9] in particular, in that it is an equitable allocation of reasonable dues, fees, and other charges among Exchange members. The Exchange believes that charging members that trade these products a licensing fee is an equitable means of recovering a portion of the licensing fees incurred by the Exchange.[10]

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any inappropriate burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change establishes or changes a due, fee, or charge imposed by the Exchange and, therefore, has become effective upon filing pursuant to Section 19(b)(3)(A)(ii) of the Act[11] and Rule 19b–4(f)(2) thereunder.[12] At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purpose of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the Exchange. All submissions should refer to File No. SR–Phlx–2003–20 and should be submitted by May 5, 2003.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[13]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 03–9035 Filed 4–11–03; 8:45 am]

Editorial Note: Due to numerous footnote errors, this document is being reprinted in its

[8] 15 U.S.C. 78f(b).

[9] 15 U.S.C. 78f(b)(4).

[10] With regard to the distinction between Customer PACE and Non-PACE license fees, the Exchange states that it is consistent with its current practice to not impose customer charges for equity transactions delivered through PACE, but to impose customer charges for Non-PACE executions. *See, e.g.*, Securities Exchange Act Release Nos. 47385 (February 20, 2003), 68 FR 10295 (March 4, 2003) (SR–Phlx–2003–06); 44381 (June 1, 2001), 66 FR 31264 (June 11, 2001) (SR–Phlx–2001–57); and 43776 (December 28, 2000), 66 FR 1166 (January 5, 2001) (SR–Phlx–2000–103). Also, consistent with its current practice, the Exchange charges customer transaction fees and specialist transaction fees at different rates. *See, e.g.*, Securities Exchange Act Release Nos. 44381 (June 1, 2001), 66 FR 31264 (June 11, 2001) (SR–Phlx–2001–57); 47109 (December 30, 2002), 68 FR 841 (January 7, 2003) (SR–Phlx–2002–78); and 42332 (January 12, 2000), 65 FR 3517 (January 21, 2000) (SR–Phlx–2000–59).

[11] 15 U.S.C. 78(s)(b)(3)(A)(ii).

[12] 17 CFR 240.19b–4(f)(2).

[13] 17 CFR 200.30–3(a)(12).

entirety. It was originally printed in the **Federal Register** on Monday, April 14, 2003 at 68 FR 17979–17982.

[FR Doc. R3–9035 Filed 5–19–03; 8:45 am]

BILLING CODE 1505–01–D

DEPARTMENT OF STATE

[Public Notice 4349]

Advisory Committee on International Economic Policy Notice of Open Meeting

The Advisory Committee on International Economic Policy (ACIEP) will meet from 9 a.m. to 12 noon on Wednesday, June 4, 2003 in Suite 602, Elliott School of International Affairs, George Washington University, 1957 E Street NW, Washington, DC 20052. The meeting will be hosted by Assistant Secretary of State for Economic and Business Affairs E. Anthony Wayne and Committee Chairman R. Michael Gadbaw.

The ACIEP serves the U.S. Government in a solely advisory capacity concerning issues and problems in international economic policy. Proposed topics for the March 6 meeting are rebuilding Iraq and subcommittee reports.

The public may attend these meetings as seating capacity allows. The media are welcome but discussions are off the record. For individuals interested in attending, please provide your name, title, company, or other affiliation, if appropriate, to the Advisory Committee Executive Secretariat by fax (202) 647–5936 (Attention: Gwendolyn Jackson); Tel: (202) 647–0847; or e-mail: (*jacksongl@state.gov*) by May 30, 2003.

For further information about the meeting, please contact Eliza Koch, ACIEP Secretariat, Office of Economic Policy and Public Diplomacy, Bureau of Economic and Business Affairs, U.S. Department of State, Room 3526, 2201 C Street NW, Washington, DC 20520, Tel (202) 647–1310.

Dated: May 15, 2003.

Eliza Koch,

ACIEP Secretariat, Office of Economic Policy and, Public Diplomacy Bureau of Economic Affairs, Department of State.

[FR Doc. 03–12677 Filed 5–19–03; 8:45 am]

BILLING CODE 4710–07–P

DEPARTMENT OF STATE

[Public Notice 4189]

Overseas Security Advisory Council (OSAC) Meeting Notice: Closed Meeting

The Department of State announces a meeting of the U.S. State Department—Overseas Security Advisory Council on June 24 and 25, 2003 at the Boeing Company, Arlington, Virginia. Pursuant to section 10 (d) of the Federal Advisory Committee Act and 5 U.S.C. 552b (c)(1) and (4), it has been determined the meeting will be closed to the public. Matters relative to classified national security information as well as privileged commercial information will be discussed. The agenda will include updated committee reports, a global threat overview, and other discussions involving sensitive and classified information, and corporate proprietary/security information, such as private sector physical and procedural security policies and protective programs and the protection of U.S. business information overseas.

For more information contact Marsha Thurman, Overseas Security Advisory Council, Department of State, Washington, DC 20522–1003, phone: 202–663–0533.

Dated: May 8, 2003.

Joe D. Morton,

Director of the Diplomatic Security Service, Department of State.

[FR Doc. 03–12651 Filed 5–19–03; 8:45 am]

BILLING CODE 4710–24–P

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

Fitness Determination of Valley Air Express, Inc.

AGENCY: Department of Transportation.

ACTION: Notice of Order to Show Cause (Order 2003–5–16), Docket OST–02–13159.

SUMMARY: The Department of Transportation is directing all interested persons to show cause why it should not issue an order finding Valley Air Express, Inc., fit, willing, and able to provide scheduled passenger operations as a commuter air carrier under 49 U.S.C. 41738.

Responses: Objections and answers to objections should be filed in Docket OST–02–13159 and addressed to the Department of Transportation Dockets, SVC–124.1, Room PL–401, 400 Seventh Street, SW., Washington, DC 20590, and should be served on all persons listed in Attachment A to the order. Persons wishing to file objections should do so no later than May 28, 2003.

FOR FURTHER INFORMATION CONTACT: Mr. James Lawyer, Air Carrier Fitness Division (X–56, Room 6401), U.S. Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590, (202) 366–1064.

Dated: May 13, 2003.

Read C. Van De Water,

Assistant Secretary for Aviation and International Affairs.

[FR Doc. 03–12548 Filed 5–19–03; 8:45 am]

BILLING CODE 4910–62–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Noise Exposure Map Notice; Receipt of Noise Compatibility Program and Request for Review Greater Rockford Airport Rockford, IL

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice.

SUMMARY: The Federal Aviation Administration (FAA) announces its determination that the noise exposure maps submitted by the Greater Rockford Airport Authority for the Greater Rockford Airport under the provisions 49 U.S.C. 47501 *et. seq.* (Aviation Safety and Noise Abatement Act) and 14 CFR part 150 are in compliance with applicable requirements. The FAA also announces that it is reviewing a proposed noise compatibility program that was submitted for the Greater Rockford Airport under Part 150 in conjunction with the noise exposure maps, and that this program will be approved or disapproved on or before November 4, 2003.

EFFECTIVE DATES: The effective date of the FAA's determination on the noise exposure maps and of the start of its review of the associated noise compatibility program is May 8, 2003. The public comment period ends July 7, 2003.

FOR FURTHER INFORMATION CONTACT: Prescott C. Snyder, Airports Environmental Program Manager, 2300 East Devon Avenue, Des Plaines, Illinois 60018. [Telephone Number (847) 294–7538/Fax Number (847) 294–7046] Comments on the proposed noise compatibility program should also be submitted to the above office.

SUPPLEMENTARY INFORMATION: This notice announces that the FAA finds that the noise exposure maps submitted for the Greater Rockford Airport are in compliance with applicable requirements of Part 150, effective May 8, 2003. Further, FAA is reviewing a proposed noise compatibility program for that airport which will be approved or disapproved on or before November 4, 2003. This notice also announces the availability of this program for public review and comment.

Under 49 U.S.C., section 47503 (Aviation Safety and Noise Abatement Act, hereinafter referred to as "the Act"), an airport operator may submit to the FAA noise exposure maps which meet applicable regulations and which depict noncompatible land uses as of the date of submission of such maps, a description of projected aircraft operations, and the ways in which such operations will affect such maps. The Act requires such maps to be developed in consultation with interested and affected parties in the local community, government agencies, and persons using the airport.

An airport operator who has submitted noise exposure maps that are found by FAA to be in compliance with the requirements of Federal Aviation Regulations (FAR) Part 150, promulgated pursuant to the Act, may submit a noise compatibility program for FAA approval which sets forth the measures the operator has taken or proposes to take to reduce existing non-compatible uses and prevent the introduction of additional non-compatible uses.

The Greater Rockford Airport Authority submitted to the FAA on April 7, 2003, noise exposure maps, descriptions and other documentation, which were produced during the Greater Rockford Airport's FAR Part 150 Noise Compatibility Study, April 2003. It was requested that the FAA review this material as the noise exposure maps, as described in section 47503 of the Act, and that the noise mitigation measures, to be implemented jointly by the airport and surrounding communities, be approved as a noise compatibility program under Section 47504 of the Act.

The FAA has completed its review of the noise exposure maps and related descriptions submitted by the Greater Rockford Airport Authority. The specific documentation determined to constitute the noise exposure maps includes information found in Appendix F, Noise Modeling Methodology as well as the submittal letter, maps and certification found in the beginning of the April 2003 FAR Part 150 Noise Compatibility Study Update for Greater Rockford Airport. The noise exposure maps and certification follow page NCP–6 in the submission. They are the 2002 Existing Noise Exposure Map and 2008 Noise Compatibility Program Noise Exposure Map. The FAA has determined that these maps for the Greater Rockford Airport are in compliance with applicable requirements. This determination is effective on May 8, 2003. FAA's determination on an airport operator's noise exposure maps is limited to a finding that the maps were developed in accordance with the procedures contained in appendix A of FAR Part 150. Such determination does not constitute approval of the applicant's data, information or plans, or constitute a commitment to approve a noise compatibility program or to fund the implementation of that program.

If questions arise concerning the precise relationship of specific properties to noise exposure contours depicted on a noise exposure map submitted under section 47503 of the Act, it should be noted that the FAA is not involved in any way in determining the relative locations of specific properties with regard to the depicted noise contours, or in interpreting the noise exposure maps to resolve questions concerning, for example, which properties should be covered by the provisions of section 47506 of the Act. These functions are inseparable from the ultimate land use control and planning responsibilities of local government. These local responsibilities are not changed in any way under Part 150 or through FAA's review of noise exposure maps. Therefore, the responsibility for the detail overlaying of noise exposure contours onto the map depicting properties on the surface rests exclusively with the airport operator that submitted those maps, or with those public agencies and planning agencies with which consultation is required under section 47503 of the Act. The FAA has relied on the certification by the airport operator, under section 150.21 of FAR Part 150, that the statutorily required consolation has been accomplished.

The FAA has formally received the noise compatibility program for Greater Rockford Airport, also effective on May 8, 2003. Preliminary review of the submitted material indicates that it conforms to the requirements for the submittal of noise compatibility programs, but that further review will be necessary prior to approval or disapproval of the program. The formal review period, limited by law to a maximum of 180 days, will be completed on or before November 4, 2003.

The FAA's detailed evaluation will be conducted under the provisions of 14 CFR Part 150, section 150.33. The primary considerations in the evaluation process are whether the proposed measures may reduce the level of aviation safety create an undue burden on interstate or foreign commerce, or be reasonably consistent with obtaining the goal of reducing existing noncompatible land uses and preventing the introduction of additional non-compatible land uses.

Interested persons are invited to comment on the proposed program with specific reference to these factors. All comments, other than those properly addressed to local land use authorities, will be considered by the FAA to the extent practicable. Copies of the noise exposured maps, the FAA's evaluation of the maps, and the proposed noise compatibility program are available for examination at the following locations.

Federal Aviation Administration, Chicago Airports District Office, Room 320, 2300 East Devon Avenue, Des Plaines, Illinois 60018.

Greater Rockford Airport Authority, Airport Manager's Office, 60 Airport Drive, Rockford, Illinois 61109.

Illinois Department of Transportation, Division of Aeronautics, One Langhorne Bond Drive, Capital Airport, Springfield, Illinois 62707.

Copies of the FAR Part 150 Noise Compatibility Program documents are also available for public review during normal business hours at the following locations:

Rockford City Council Clerk, Rockford City Hall, 425 East State Street, Rockford, Illinois 61104.

Rockford Public Library, 215 North Wyman, Rockford, Illinois 61101.

Winnebago County Courthouse, County Clerk's Office, 400 West State Street, Rockford, Illinois 61101.

Questions may be directed to the individual named above under the heading **FOR FURTHER INFORMATION CONTACT.**

Issued in Chicago, Illinois, on May 8, 2003.

Phillip M. Smithmeyer,

Manager, Chicago Airports District Office, FAA Great Lakes Region.

[FR Doc. 03–12490 Filed 5–19–03; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Summary Notice No. PE–2003–29]

Petitions for Exemption; Dispositions of Petitions Issued

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of dispositions of prior petitions for exemption.

SUMMARY: Pursuant to FAA's rulemaking provisions governing the application, processing, and disposition of petitions for exemption part 11 of Title 14, Code of Federal Regulations (14 CFR), this notice contains a summary of dispositions of certain petitions previously received. The purpose of this notice is to improve the public's awareness of, and participation in, this aspect of FAA's regulatory activities. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of any petition.

FOR FURTHER INFORMATION CONTACT: Sandy Buchanan-Sumter (202) 267–7271, Vanessa Wilkins (202) 267–8029,or Denise Emrick (202) 267–5174, Office of Rulemaking (ARM–1), Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591.

This notice is published pursuant to 14 CFR 11:85 and 11.91.

Issued in Washington, DC, on May 14, 2003.

Donald P. Byrne,

Assistant Chief Counsel for Regulations.

Dispositions of Petitions

Docket No.: FAA–2002–14166.
Petitioner: Kent W. Ewing.
Section of 14 CFR Affected: 14 CFR 91.109(a).
Description of Relief Sought/ Disposition: To permit Kent W. Ewing to conduct certain flight instruction and simulated instrument flights to meet the recent experience requirements in Beechcraft Bononza, Baron and Travel Air airplanes equipped with a functioning throwover control wheel in place of functioning dual controls. *Grant, January 27, 2003, Exemption No. 7961.*

Docket No.: FAA–2002–14098.
Petitioner: Brian Daniel.
Section of 14 CFR Affected: 14 CFR 61.109(d)(2)(i).
Description of Relief Sought/ Disposition: To permit Brian Daniel to apply for a private pilot certificate with rotorcraft category and gyroplane class rating without meeting the night cross-country flight training requirement. *Grant, January 27, 2003, Exemption No. 7417A.*

Docket No.: FAA–2000–8337.
Petitioner: Alaska's Lake Clark Inn (ALCI).
Section of 14 CFR Affected: 14 CFR 135.143(c)(2).
Description of Relief Sought/ Disposition: To permit ALCI to operate certain aircraft under part 135 without a TSO–C112 (Mode S) transponder installed on those aircraft. *Grant, January 17, 2003, Exemption No. 7426A.*

Docket No.: FAA–2002–12484.
Petitioner: Dynamic Aviation Group, Inc. (Dynamic).
Section of 14 CFR Affected: 14 CFR 137.53(c)(2).
Description of Relief Sought/ Disposition: To permit Dynamic to conduct aerial applications of insecticides or pheromones from aircraft not equipped with a load jettisoning system. *Grant, January 16, 2003, Exemption No. 7827B.*

Docket No.: FAA–2000–8454.
Petitioner: United Air Lines, Inc. (United).
Section of 14 CFR Affected: 14 CFR 121.434(c)(1)(ii).
Description of Relief Sought/ Disposition: To permit United to substitute a qualified and authorized check airman in place of an FAA inspector to observe a qualifying pilot in command (PIC) while that PIC is performing prescribed duties during at least one flight leg that includes a takeoff and a landing. *Grant, January 16, 2003, Exemption No. 6570D.*

Docket No.: FAA–2000–8525.
Petitioner: United Air Lines, Inc.
Section of 14 CFR Affected: 14 CFR 121.135(a)(3).
Description of Relief Sought/ Disposition: To permit United to use electronic digital technology to document the revision level in lieu of printing the last revision date on each page of each manual required under § 121.133. *Grant, January 16, 2003, Exemption No. 6612C.*

Docket No.: FAA–2001–9672.
Petitioner: Hangar 10, Inc.
Section of 14 CFR Affected: 14 CFR 119.3.
Description of Relief Sought/ Disposition: To permit Hangar 10 to operate certain Convair-Liner 340 airplanes with a maximum payload greater than 7,500 pounds in all-cargo service under 14 CFR part 135 rather than under 14 CFR part 121. *Denial, January 13, 2003, Exemption No. 7951.*

Docket No.: FAA–2001–9594.
Petitioner: Edwards & Associates, Inc. (Edwards).
Section of 14 CFR Affected: 14 CFR 135.143(c)(2).
Description of Relief Sought/ Disposition: To permit Edwards to operate certain aircraft under part 135 without a TSO–C112 (Mode S) transponder installed on those aircraft. *Grant, January 13, 2003, Exemption No. 7524A.*

Docket No.: FAA–2001–9593.
Petitioner: TNT Leasing Company, Inc. (TNT).
Section of 14 CFR Affected: 14 CFR 135.143(c)(2)
Description of Relief Sought/ Disposition: To permit TNT to operate certain aircraft under part 135 without a TSO-C112 (Mode S) transponder installed on those aircraft. *Grant, January 13, 2003, Exemption No. 7525A.*

Docket No.: FAA–2001–8743.
Petitioner: Beaver Air Taxi, L.L.C. (Beaver Air).
Section of 14 CFR Affected: 14 CFR 135.143(c)(2).
Description of Relief Sought/ Disposition: To permit Beaver Air to operate certain aircraft under part 135 without a TSO–C112 (Mode S) transponder installed on those aircraft. *Grant, January 13, 2003, Exemption No. 7517A.*

Docket No.: FAA–2002–14147.
Petitioner: Helicorp, Inc.
Section of 14 CFR Affected: 14 CFR 135.143(c)(2).
Description of Relief Sought/ Disposition: To permit Helicorp to operate certain aircraft under part 135 without a TSO–C112 (Mode S) transponder installed on those aircraft. *Grant, January 13, 2003, Exemption No. 7947.*

Docket No.: FAA–2002–14105.
Petitioner: Michael S. Friedman.
Section of 14 CFR Affected: 14 CFR 91.109(a).
Description of Relief Sought/ Disposition: To permit Michael S. Friedman to conduct certain flight instruction and simulated instrument flights to meet the recent experience requirements in Beechcraft Bonanza, Baron, and Travel Air airplanes equipped with a functioning throwover control wheel in place of functioning dual controls. *Grant, January 9, 2003, Exemption No. 7950.*

Docket No.: FAA–2003–14204.
Petitioner: Abilene Aero, Inc. (Abilene).
Section of 14 CFR Affected: 14 CFR 135.143(c)(2).
Description of Relief Sought/ Disposition: To permit Abilene to operate certain aircraft under part 135 without a TSO–C112 (Mode S) transponder installed on those aircraft. *Grant, January 13, 2003, Exemption No. 7948.*

Docket No.: FAA–2002–14137.
Petitioner: United Parcel Service of America, Inc. (UPS).
Section of 14 CFR Affected: 14 CFR 121.344(f).
Description of Relief Sought/ Disposition: To permit UPS to operate eight Airbus Industrie 300–600 (A300–600) airplanes manufactured after August 18, 2002, without those airplanes being equipped with a digital flight data recorder capable of recording parameter (a)(84) in accordance with the range, accuracy, resolution, and recording interval specified in Appendix M to part 121. *Grant, January 6, 2003, Exemption No. 7940.*

Docket No.: FAA–2002–13887.
Petitioner: Henry D. Canterbury.
Section of 14 CFR Affected: 14 CFR 91.109(a) and (b)(3).
Description of Relief Sought/ Disposition: To permit Henry D. Canterbury to conduct certain flight instruction and simulated instrument flights to meet the recent experience requirements in certain Beechcraft airplanes equipped with a functioning throwover control wheel in place of functioning dual control. *Grant, January 3, 2003, Exemption No. 7941.*

Docket No.: FAA–2001–8786.
Petitioner: Lynden Air Cargo (LAC).
Section of 14 CFR Affected: 14 CFR 121.344.
Description of Relief Sought/ Disposition: To permit LAC to operate five Lockheed Martin 382G Hercules aircraft (L382G) (registration Nos. N401LC, N402LC, N403LC, N404LC, and N405LC; serial Nos. 4606, 4698, 4590, 4763, and 5025) under part 121 without equipping each aircraft with an approved flight data recorder. *Grant, January 21, 2003, Exemption No. 6921C.*

Docket No.: FAA–2001–8754.
Petitioner: Everts Air Fuel, Inc. (Everts).
Section of 14 CFR Affected: 14 CFR 91.9(a).
Description of Relief Sought/ Disposition: To permit Everts to operate its McDonnell Douglas DC–6 aircraft (registration Nos. N451CE, N251CE, N444CE, and N888DG) at a 5-percent-increased zero fuel weight and landing weight for operating all-cargo aircraft to provide supplies to people in isolated villages in Alaska. *Grant, January 27, 2003, Exemption No. 4296J.*

Docket No.: FAA–2002–13834.
Petitioner: Richard L. Flechsig.
Section of 14 CFR Affected: 14 CFR 121.383(c).
Description of Relief Sought/ Disposition: To permit Richard L. Flechsig to act as a pilot in operations conducted under part 121 after reaching his 60th birthday. *Denial, January 2, 2003, Exemption No. 7939.*

Docket No.: FAA–2002–14080.
Petitioner: Air 1st Aviation Companies of Oklahoma, Inc. (Air 1st).
Section of 14 CFR Affected: 14 CFR 135.143(c)(2).
Description of Relief Sought/ Disposition: To permit Air 1st to operate certain aircraft under part 135 without a TSO–C112 (Mode S) transponder installed on those aircraft. *Grant, December 24, 2002, Exemption No. 7938.*

Docket No.: FAA–2000–8050.
Petitioner: Alexandria Aviation, Inc. (AAI).
Section of 14 CFR Affected: 14 CFR 135.143(c)(2).
Description of Relief Sought/ Disposition: To permit AAI to operate certain aircraft under part 135 without a TSO–C112 (Mode S) transponder installed on those aircraft. *Grant, December 24, 2002, Exemption No. 7937.*

Docket No.: FAA–2000–8140.
Petitioner: Alaska Island Air, Inc. (AIA).
Section of 14 CFR Affected: 14 CFR 135.143(c)(2).
Description of Relief Sought/ Disposition: To permit AIA to operate certain aircraft under part 135 without a TSO–C112 (Mode S) transponder installed on those aircraft. *Grant, December 24 2002, Exemption No. 7936.*

Docket No.: FAA–2000–7992.
Petitioner: Hartley, Inc., dba Branch River Air Service (Branch River).
Section of 14 CFR Affected: 14 CFR 135.143(c)(2).
Description of Relief Sought/ Disposition: To permit Branch River to operate certain aircraft under part 135 without a TSO–C112 (Mode S) transponder installed on those aircraft. *Grant, December 24, 2002, Exemption No. 7396A.*

Docket No.: FAA–2000–8142.
Petitioner: J.R. Aviation, Inc. (JRA).
Section of 14 CFR Affected: 14 CFR 135.143 (c)(2).
Description of Relief Sought/ Disposition: To permit JRA to operate certain aircraft under part 135 without a TSO–C112 (Mode S) transponder installed on those aircraft. *Grant, December 24, 2002, Exemption No. 7423A.*

Docket No.: FAA–2000–8215.
Petitioner: Telesis TransAir, Inc. (TTI).
Section of 14 CFR Affected: 14 CFR 135.143(c)(2).
Description of Relief Sought/ Disposition: To permit TTI to operate certain aircraft under part 135 without a TSO–C112 (Mode S) transponder installed on those aircraft. *Grant, December 24, 2002, Exemption No. 7391B.*

Docket No.: FAA–2002–11712.
Petitioner: Franklin Peter Toups.
Section of 14 CFR Affected: 14 CFR 61.65(a)(1) and 61.153(d)(1).
Description of Relief Sought/ Disposition: To permit Mr. Toups, whose airman certificate (No. 439880504) was revoked on September 28, 1990, to take a single checkride to obtain his airline transport pilot certificate and instrument rating without first retaking the private and commercial pilot practical tests. *Denial, January 13, 2003, Exemption No. 7952.*

Docket No.: FAA–2001–10969.
Petitioner: Andrew R. Young.
Section of 14 CFR Affected: 14 CFR 61.65(d)(1).
Description of Relief Sought/ Disposition: To permit Mr. Young to apply for an instrument-airplane rating having logged at least 10 hours of cross-country flight time as pilot in command (PIC) in an airplane instead of having logged at least 50 hours of cross-country flight time as PIC, of which at least 10 hours are in airplanes. *Denial, December 18, 2002, Exemption No. 7935.*

Docket No.: FAA–2001–10191.
Petitioner: United States Air Force (USAF).
Section of 14 CFR Affected: 14 CFR 91.209(a)(1) and (b).
Description of Relief Sought/ Disposition: To permit the USAF to conduct night-vision-goggle lights-out training in certain military operations areas. *Grant, January 24, 2003, Exemption No. 7960.*

Docket No.: FAA–2002–14041.
Petitioner: American Airlines (AAL).
Section of 14 CFR Affected: 14 CFR 121.313(j)(1).
Description of Relief Sought/ Disposition: To permit AAL to operate 15 Airbus Industries A300–B4–605R (A–300) airplanes after April 9, 2003. *Denial, February 7, 2003, Exemption No. 7970.*

Docket No.: FAA–2002–13988.
Petitioner: AirTran Airways, Inc. (AirTran).
Section of 14 CFR Affected: 14 CFR 121.313(j).
Description of Relief Sought/ Disposition: To permit AirTran to operate 12 McDonnell Douglas DC–9 airplanes after April 9, 2003. *Denial, February 7, 2003, Exemption No. 7969.*

Docket No.: FAA–2001–11097.
Petitioner: Business Jet Services, LTD (BJS).
Section of 14 CFR Affected: 14 CFR 135.145.
Description of Relief Sought/ Disposition: To permit BJS to place turbojet airplanes in service under part 135 without conducting proving tests. *Denial, January 31, 2003, Exemption No. 7967.*

Docket No.: FAA–2001–9033.
Petitioner: Silverhawk Aviation, Inc. (Silverhawk).
Section of 14 CFR Affected: 14 CFR 135.143(c)(2).
Description of Relief Sought/ Disposition: To permit Silverhawk to operate certain aircraft under part 135 without a TSC–C112 (Mode S) transponder installed on those aircraft. *Grant, February 7, 2003, Exemption No. 7499A.*

Docket No.: FAA–2001–9105.
Petitioner: Ameristar Jet Charter, Inc. (Ameristar).
Section of 14 CFR Affected: 14 CFR 135.143(c)(2).
Description of Relief Sought/ Disposition: To permit Ameristar to operate certain aircraft under part 135 without a TSC-C112 (Mode S) transponder installed on those aircraft. *Grant, February 7, 2003, Exemption No. 7500A.*

Docket No.: FAA–2001–9081.
Petitioner: Helicopter Experts, Inc. (HEI).
Section of 14 CFR Affected: 14 CFR 135.143(c)(2).
Description of Relief Sought/ Disposition: To permit HEI to operate certain aircraft under part 135 without a TSO–C112 (Mode S) transponder installed on those aircraft. *Grant, February 7, 2003, Exemption No. 7497A.*

Docket No.: FAA–2001–8740.
Petitioner: Helicopter AirTransport, Inc. (HATI).
Section of 14 CFR Affected: 14 CFR 133.45(e)(1).
Description of Relief Sought/ Disposition: To permit HATI to conduct Class D rotorcraft-load combination operations with an Agusta A109E certificated in the normal category under 14 CFR part 27. *Grant, February 5, 2003, Exemption No. 7486A.*

Docket No.: FAA–2002–14012.
Petitioner: The Blue Angels.
Section of 14 CFR Affected: 14 CFR 91.117(a) and (b), 91.119(c), and 91.303(c), (d), and (e).
Description of Relief Sought/ Disposition: To permit The Blue Angels to conduct demonstration rehearsals involving low-level, high-speed, and aerobatic flight, subject to certain conditions and limitations. *Grant February 5, 2003, Exemption No. 4504G.*

Docket No.: FAA–2000–8436.
Petitioner: FAA Technical Center.
Section of 14 CFR Affected: 14 CFR 91.117(a), 91.119(c), 91.159(a), and 91.303(e).
Description of Relief Sought/ Disposition: To permit the FAA Technical Center to conduct flight operations in support of its research and development projects without meeting certain FAA regulations governing aircraft speed, minimum safe altitudes, cruising altitudes for flights conducted under visual flight rules, and aerobatic flight. *Grant, February 6, 2003, Exemption No. 6883B.*

Docket No.: FAA–2000–8486.
Petitioner: Hyannis Air Service, Inc. dba Cape Air/Nantucket Airlines.
Section of 14 CFR Affected: 14 CFR 135.143(c)(2).
Description of Relief Sought/ Disposition: To permit HAS to operate certain aircraft under part 135 without a TSO–C112 (Mode S) transponder installed on those aircraft. *Grant, February 7, 2003, Exemption No. 7492A.*

Docket No.: FAA–2002–13995.
Petitioner: Blue Water Aviation, Inc.
Section of 14 CFR Affected: 14 CFR 135.152(a).
Description of Relief Sought/ Disposition: To permit Blue Water Aviation to operate its Canadair Challenger 601–1A aircraft (CL–601) under part 135 without installing on the aircraft a digital flight data recorder capable of recording all required parameters. *Denial, February 12, 2003, Exemption No. 7978.*

Docket No.: FAA–2003–14323.
Petitioner: Air Transport International LLC (ATI).
Section of 14 CFR Affected: 14 CFR 121.313(j)(1).
Description of Relief Sought/ Disposition: To permit ATI to operate its fleet of McDonnell Douglas DC–8 aircraft after April 9, 2003, that do not meet the safety requirements set forth in 14 CFR 25.795(a). *Denial, February 12, 2003, Exemption No. 7977.*

Docket No.: FAA–2003–14422.
Petitioner: Trans States Airlines, Inc. (TSA).
Section of 14 CFR Affected: 14 CFR 121.313(j)(1).
Description of Relief Sought/ Disposition: To permit TSA to operate its fleet of BAE Systems Limited Jetstream 4100 aircraft after April 9, 2003, that do not meet the safety requirements set forth in 14 CFR 25.795(a). *Denial, February 12, 2003, Exemption No. 7975.*

Docket No.: FAA–2002–13274.
Petitioner: China Airlines, Ltd. (CAL).
Section of 14 CFR Affected: 14 CFR 61.77(a) and (b) and 63.23(a) and (b).
Description of Relief Sought/ Disposition: To permit CAL airmen who operate certain U.S.-registered aircraft that are leased to a non-U.S. citizen, for carrying persons or property for compensation or hire, to be eligible for a special purpose pilot authorization and a special purpose flight engineer certificate, without holding a current foreign license or certificate issued by a foreign contracting state to the Convention on International Civil Aviation. *Grant, February 12, 2003, Exemption No. 7980.*

Docket No.: FAA–2002–13747.
Petitioner: James T. Northington.
Section of 14 CFR Affected: 14 CFR 121.383(c).
Description of Relief Sought/ Disposition: To permit James T. Northington to act as a pilot in operations conducted under part 121 after reaching his 60th birthday. *Denial, February 10, 2003, Exemption No. 7973.*

Docket No.: FAA–2002–13938.
Petitioner: Walter P. Sullivan.
Section of 14 CFR Affected: 14 CFR 121.383(c).
Description of Relief Sought/ Disposition: To permit Walter P. Sullivan to act as a pilot in operations conducted under part 121 after reaching his 60th birthday. *Denial, February 10, 2003, Exemption No. 7974.*

Docket No.: FAA–2000–8093.
Petitioner: Headquarters Air Force Flight Standards Agency.
Section of 14 CFR Affected: 14 CFR 91.177(a)(2) and 91.179 (b)(1).
Description of Relief Sought/ Disposition: To permit the Air Force to conduct low-level operations without complying with en route minimum altitudes for flight under instrument flight rules (IFR) or direction of flight requirements for IFR en route segments in uncontrolled airspace. *Grant, February 11, 2003, Exemption No. 4371H.*

Docket No.: FAA–2001–10356.
Petitioner: U.S. Army Special Operations Command (USASOC).
Section of 14 CFR Affected: 14 CFR 91.177(a)(2) and 91.179(b)(1).
Description of Relief Sought/ Disposition: To permit properly equipped USASOC aircraft to conduct low-level operations without complying with en route minimum altitudes for flight under instrument flight rules (IFR) or direction of flight requirements for IFR en route segment in uncontrolled airspace. *Grant, February 11, 2003, Exemption No. 7631A.*

Docket No.: FAA–2003–14453.

Petitioner: DFW Air Transport, Inc. (DFW).
Section of 14 CFR Affected: 14 CFR 35.143(c)(2).
Description of Relief Sought/ Disposition: To permit DFW to operate certain aircraft under part 135 without a TSO–C112 (Mode S) transponder installed on those aircraft. *Grant, February 25, 2003, Exemption No. 7984.*

Docket No.: FAA–2003–14350.
Petitioner: Helicopter Experts, Inc.
Section of 14 CFR Affected: 14 CFR 135.143(c)(2).
Description of Relief Sought/ Disposition: To permit Helicopter Experts to operate certain aircraft under part 135 without a TSO–C112 (Mode S) transponder installed on those aircraft. *Grant, February 25, 2003, Exemption No. 7986.*

Docket No.: FAA–2003–14331.
Petitioner: Sea Island Aviation International, Inc.
Section of 14 CFR Affected: 14 CFR 135.143(c)(2).
Description of Relief Sought/ Disposition: To permit Sea Island to operate certain aircraft under part 135 without a TSO–C112 (Mode S) transponder installed on those aircraft. *Grant, February 25, 2003, Exemption No. 7989.*

Docket No.: FAA–2000–8463.
Petitioner: Peninsula Airways, Inc. (PenAir).
Section of 14 CFR Affected: 14 CFR 91.323(b)(4).
Description of Relief Sought/ Disposition: To permit PenAir to operate one Grumman G–21A Goose aircraft at a maximum weight of 8,920 pounds, which exceeds that aircraft's maximum certificated weight. *Grant, February 27, 2003, Exemption No. 6963B.*

Docket No.: FAA–2001–9282.
Petitioner: Air Transport Association of America, Inc. (ATA).
Section of 14 CFR Affected: 14 CFR 63.39(b)(1) and (2), and 121.425(a)(2)(i) and (ii).
Description of Relief Sought/ Disposition: To permit ATA-member airlines and other qualifying part 121 certificated holders conducting part 121 approved flight engineer training programs to meet the certification requirements of § 63.39(b)(1) and (2) concurrently with the qualification requirements of § 121.425(a)(2)(i) and (ii) in a single flight check. *Grant, February 27, 2003, Exemption No. 4901H.*

Docket No.: FAA–2001–8762.
Petitioner: Regional Airline Association (RAA).
Section of 14 CFR Affected: 14 CFR 91.203.
Description of Relief Sought/ Disposition: To permit RAA-member airlines to temporarily operate certain U.S.-registered aircraft in domestic airline operations without the airworthiness certificate or certificate of aircraft registration, or both, onboard the aircraft. *Grant, February 27, 2003, Exemption No. 5515F.*

Docket No.: FAA–2001–8528.
Petitioner: Popular Rotorcraft Association, Inc. (PRA).
Section of 14 CFR Affected: 14 CFR 91.319(a).
Description of Relief Sought/ Disposition: To permit PRA and its member flight instructors to conduct pilot and flight instructor training in an experimental gyroplane for compensation or hire. *Grant, February 27, 2003, Exemption No. 5209H.*

Docket No.: FAA–2001–9445.
Petitioner: Aurora Aviation.
Section of 14 CFR Affected: 14 CFR 135.143(c)(2).
Description of Relief Sought/ Disposition: To permit Aurora to operate certain aircraft under part 135 without a TSO-C112 (Mode S) transponder installed on those aircraft. *Grant, February 27, 2003, Exemption No. 7544A.*

Docket No.: FAA–2003–14245.
Petitioner: Air Transport Association of America, Inc. (ATA).
Section of 14 CFR Affected: 14 CFR 121.311(f) and 121.391(d).
Description of Relief Sought/ Disposition: To permit ATA member airlines and other similarly situated certificate holders operating under part 121 to continue to locate a required flight attendant at the midcabin flight attendant station during takeoff and landing on Boeing 767 airplanes. *Grant, February 20, 2003, Exemption No. 4298I.*

Docket No.: FAA–2001–8939.
Petitioner: Experimental Aircraft Association, Inc. (EAA).
Section of 14 CFR Affected: 14 CFR 103.1(a) and(e).
Description of Relief Sought/ Disposition: To permit individuals authorized by EAA to give instruction in power ultralights that have a maximum empty weight of not more than 496 pounds, have a maximum fuel capacity of not more than 10 U.S. gallons, are not capable of more than 75 knots calibrated airspeed at full power in level flight, and have a power-off stall speed that does not exceed 35 knots calibrated airspeed. *Grant, February 20, 2003, Exemption No. 3784L.*

Docket No.: FAA–2003–14309.
Petitioner: Kenmore Air Harbor, Inc. (Kenmore).
Section of 14 CFR Affected: 14 CFR 135.203(a)(1).
Description of Relief Sought/ Disposition: To permit Kenmore to conduct seaplane operations under visual flight rules, outside controlled airspace, over water, and at an altitude below 500 feet above ground level. *Grant, February 24, 2003, Exemption No. 2528L.*

Docket No.: FAA–2001–9349.
Petitioner: TWA Airlines, L.L.C.
Section of 14 CFR Affected: 14 CFR 121.433(c)(1)(iii), 121.441(a)(1) and (b)(1), and appendix F.
Description of Relief Sought/ Disposition: To permit TWA to combine recurrent flight and ground training and proficiency checks for TWA's flight crew members in a single annual training and proficiency evaluation program. *Grant, February 24, 2003, Exemption No. 7481A.*

Docket No.: FAA–2003–14219.
Petitioner: Douglas M. Melson.
Section of 14 CFR Affected: 14 CFR 121.383(c).
Description of Relief Sought/ Disposition: To permit you to act as a pilot in operations conducted under part 121 after reaching your 60th birthday. *Denial, February 24, 2003, Exemption No. 7979.*

Docket No.: FAA–2001–9159.
Petitioner: Omniflight Helicopters, Inc.
Section of 14 CFR Affected: 14 CFR 135.143(c)(2).
Description of Relief Sought/ Disposition: To permit Omniflight to operate certain aircraft under part 135 without a TSO–C112 (Mode S) transponder installed on those aircraft. *Grant, February 25, 2003, Exemption No. 6653C.*

Docket No.: FAA–2000–8433.
Petitioner: New Air Helicopters, LLC (NAH).
Section of 14 CFR Affected: 14 CFR 135.143(c)(2).
Description of Relief Sought/ Disposition: To permit NAH to operate certain aircraft under part 135 without a TSO–C112 (Mode S) transponder installed on those aircraft. *Grant, February 25, 2003, Exemption No. 6884B.*

Docket No.: FAA–2003–14463.
Petitioner: GTA Air, Inc.
Section of 14 CFR Affected: 14 CFR 135.143(c)(2).
Description of Relief Sought/ Disposition: To permit GTA to operate certain aircraft under part 135 without a TSO–C112 (Mode S) transponder installed on those aircraft. *Grant, February 25, 2003, Exemption No. 7988.*

Docket No.: FAA–2003–14251.

Petitioner: Frontline Aviation, Inc.
Section of 14 CFR Affected: 14 CFR 135.143(c)(2).
Description of Relief Sought/ Disposition: To permit Frontline to operate certain aircraft under part 135 without a TSO–C112 (Mode S) transponder installed on those aircraft. *Grant, February 25, 2003, Exemption No. 7987.*

Docket No.: FAA–2003–14279.
Petitioner: South Aero, Inc.
Section of 14 CFR Affected: 14 CFR 135.143(c)(2).
Description of Relief Sought/ Disposition: To permit South Aero to operate certain aircraft under part 135 without a TSO–C112 (Mode S) transponder installed on those aircraft. *Grant, February 25, 2003, Exemption No. 7985.*

Docket No.: FAA–2001–9228.
Petitioner: Bridger Aviation Services, Inc. (Bridger).
Section of 14 CFR Affected: 14 CFR 135.143(c)(2).
Description of Relief Sought/ Disposition: To permit Bridger to operate certain aircraft under part 135 without a TSO–C112 (Mode S) transponder installed on those aircraft. *Grant, February 25, 2003, Exemption No. 7519A.*

Docket No.: FAA–2003–14300.
Petitioner: Aircraft Owners and Pilots Association (AOPA).
Section of 14 CFR Affected: 14 CFR 61.3(c) and 61.23(a)(3)(ii) and (iii).
Description of Relief Sought/ Disposition: To permit each AOPA member to conduct recreational pilot flight activities using a current and valid U.S. driver's license instead of an FAA-issued medical certificate. *Denial, March 3, 2003, Exemption No. 7998.*

Docket No.: FAA–2002–13467.
Petitioner: Experimental Aircraft Association, Inc. (EAA).
Section of 14 CFR Affected: 14 CFR 61.23.
Description of Relief Sought/ Disposition: To permit each EAA member to conduct recreational pilot flight activities using a current and valid U.S. driver's license instead of an FAA-issued medical certificate. *Denial, March 3, 2003, Exemption No. 7997.*

Docket No.: FAA–2003–14354.
Petitioner: Joel A. Schneider, MD.
Section of 14 CFR Affected: 14 CFR 91.9 and 91.531.
Description of Relief Sought/ Disposition: To permit certain qualified pilots of Dassault Mystere-Falcon 10 aircraft (Falcon 10) (serial Nos. 001 through 226) to operate those aircraft without a pilot who is designated as second in command. *Denial, February 25, 2003, Exemption No. 7994.*

Docket No.: FAA–2003–14220.
Petitioner: Gerald S. Ross.
Section of 14 CFR Affected: 14 CFR 121.383(c).
Description of Relief Sought/ Disposition: To permit Gerald S. Ross to act as a pilot in operations conducted under part 121 after reaching his 60th birthday. *Grant/February 27, 2003, Exemption No. 7992.*

Docket No.: FAA–2000–8454.
Petitioner: United Air Lines, Inc. (United).
Section of 14 CFR Affected: 14 CFR 121.434(c)(1)(ii).
Description of Relief Sought/ Disposition: To permit United to substitute a qualified and authorized check airman in place of an FAA inspector to observe a qualifying pilot-in-command (PIC) while that PIC is performing prescribed duties during at least one flight leg that includes a takeoff and a landing when completing initial or upgrade training as specified in § 121.424. *Grant, February 28, 2003, Exemption No. 6570E.*

Docket No.: FAA–2003–14249.
Petitioner: Dan E. Chauvet.
Section of 14 CFR Affected: 14 CFR 91.109(a) and (b)(3).
Description of Relief Sought/ Disposition: To permit Dan E. Chauvet to conduct certain flight instruction and simulated instrument flights to meet recent experience requirements in Beechcraft Baron, Bonanza, Debonair, and Travel Air aircraft equipped with a functioning throwover control wheel instead of functioning dual controls. *Grant, February 28, 2003, Exemption No. 7990.*

Docket No.: FAA–2003–14252.
Petitioner: Jack Oliphant.
Section of 14 CFR Affected: 14 CFR 91.109(a).
Description of Relief Sought/ Disposition: To permit Jack Oliphant to conduct certain flight instruction in Beechcraft Bonanza aircraft equipped with a functioning throwover control wheel instead of functioning dual controls. *Grant, February 28, 2003, Exemption No. 7991.*

Docket No.: FAA–2002–13347.
Petitioner: Executive Jet Management, dba (EJM).
Section of 14 CFR Affected: 14 CFR 135.145(a).
Description of Relief Sought/ Disposition: To permit EJM to place turbojet airplanes in service under part 135 without conducting proving tests. *Denial, March 10, 2003, Exemption No. 7999.*

Docket No.: FAA–2001–9227.
Petitioner: Colgan Air Services (Colgan).
Section of 14 CFR Affected: 14 CFR 135.143(c)(2).
Description of Relief Sought/ Disposition: To permit Colgan to operate certain aircraft under part 135 without a TSO–C112 (Mode S) transponder installed on those aircraft. *Grant, March 11, 2003, Exemption No. 7515A.*

Docket No.: FAA–2001–9229.
Petitioner: Trail Ridge Air, Inc. (TRA).
Section of 14 CFR Affected: 14 CFR 135.143(c)(2).
Description of Relief Sought/ Disposition: To permit TRA to operate certain aircraft under part 135 without a TSO–C112 (Mode S) transponder installed on those aircraft. *Grant, March 11, 2003, Exemption No. 7514A.*

Docket No.: FAA–2003–14605.
Petitioner: Planemasters, Ltd.
Section of 14 CFR Affected: 14 CFR 135.143(c)(2).
Description of Relief Sought/ Disposition: To permit Planemasters to operate certain aircraft under part 135 without a TSO–C112 (Mode S) transponder installed on those aircraft. *Grant, March 11, 2003, Exemption No. 7976.*

Docket No.: FAA–2001–9364.
Petitioner: Jacqueline A. Julio.
Section of 14 CFR Affected: 14 CFR 121.311(b).
Description of Relief Sought/ Disposition: To permit Ms. Jacqueline A. Julio to be secured by a personal safety belt and held on her caregiver's lap while aboard an aircraft although she has reached her second birthday. *Grant, March 11, 2003, Exemption No. 5195F.*

Docket No.: FAA–2003–14641.
Petitioner: Aris, Inc.
Section of 14 CFR Affected: 14 CFR 135.143(c)(2).
Description of Relief Sought/ Disposition: To permit Aris to operate certain aircraft under part 135 without a TSO–C112 (Mode S) transponder installed on those aircraft. *Grant, March 11, 2003, Exemption No. 7962.*

Docket No.: FAA–2001–9096.
Petitioner: Air Transport Association of America, Inc.
Section of 14 CFR Affected: 14 CFR 121.485(b).
Description of Relief Sought/ Disposition: To permit ATA-member airlines and other similarly situated part 121 air carries to conduct flights of less than 12 hours' duration with an airplane having a flightcrew of three or more pilots and an additional flight crewmember without requiring the rest period following that flight to be twice the hours flown since the last rest period at each flight crewmember's home base. *Grant, March 11, 2003, Exemption No. 4317I.*

Docket No.: FAA–2001–8612.
Petitioner: William L. Hale.
Section of 14 CFR Affected: 14 CFR 91.109(a) and (b)(3).
Description of Relief Sought/ Disposition: To permit William L. Hale to conduct certain flight instruction and simulated instrument flights to meet recent instrument experience requirements in certain Beechcraft airplanes equipped with a functioning throwover control wheel in place of functioning dual controls. *Grant, March 11, 2003, Exemption No. 6897B.*

Docket No.: FAA–2003–14616.
Petitioner: Rotocraft Leasing Company, L.L.C. (RLC).
Section of 14 CFR Affected: 14 CFR 135.143(c)(2).
Description of Relief Sought/ Disposition: To permit RLC to operate certain aircraft under part 135 without a TSO–C112 (Mode S) transponder installed on those aircraft. *Grant, March 14, 2003, Exemption No. 8003.*

Docket No.: FAA–2003–14653.
Petitioner: Tex Star Air Freight, Inc. (Tex Star).
Section of 14 CFR Affected: 14 CFR 135.143(c)(2).
Description of Relief Sought/ Disposition: To permit Tex Star to operate certain aircraft under part 135 without a TSO–C112 (Mode S) transponder installed on those aircraft. *Grant, March 14, 2003, Exemption No. 8002.*

Docket No.: FAA–2003–14327.
Petitioner: MG Aviation, Inc. (MGA).
Section of 14 CFR Affected: 14 CFR 135.143(c)(2).
Description of Relief Sought/ Disposition: To permit MGA to operate certain aircraft under part 135 without a TSO–C112 (Mode S) transponder installed on those aircraft. *Grant, March 3, 2003, Exemption No. 7995.*

Docket No.: FAA–2003–14474.
Petitioner: Leon A. Boyd.
Section of 14 CFR Affected: 14 CFR 121.383 (c).
Description of Relief Sought/ Disposition: To permit Leon A. Boyd to act as a pilot in operations conducted under part 121 after reaching his 60th birthday. *Denial, March 3, 2003, Exemption No. 7996.*

Docket No.: FAA–2001–9030.
Petitioner: State of Alaska, Division of Forestry (DOF).
Section of 14 CFR Affected: 14 CFR 91.119(b) and (c).
Description of Relief Sought/ Disposition: To permit pilots employed by DOF or acting under a DOF contract to conduct certain firefighting operations. Such operations require the aerial application of fire retardants or water over congested areas and require cargo paradrops and/or the aerial application of fire retardants or water over other than congested areas in the State of Alaska. *Grant, March 3, 2003, Exemption No. 4063D.*

Docket No.: FAA–2001–9438.
Petitioner: Aberdeen Flying Service (Aberdeen).
Section of 14 CFR Affected: 14 CFR 135.143(c)(2).
Description of Relief Sought/ Disposition: To permit Aberdeen to operate certain aircraft under part 135 without a TSO–C–112 (Mode S) transponder installed on those aircraft. *Grant, March 3, 2003, Exemption No. 7550A.*

Docket No.: FAA–2000–8182.
Petitioner: Washoe County Sheriff's Office.
Section of 14 CFR Affected: 14 CFR 61.113 (e).
Description of Relief Sought/ Disposition: To permit members of the Washoe County Sheriff's Air Squadron who hold private pilot certificates to continue to be reimbursed for fuel, oil, and maintenance expenses incurred while performing search and location missions for the Sheriff's Office. *Grant, March 11, 2003, Exemption No. 7473A.*

Docket No.: FAA–2001–8863.
Petitioner: Department of the Navy.
Section of 14 CFR Affected: 14 CFR 91.215(c).
Description of Relief Sought/ Disposition: To permit the Navy to provide realistic air combat training in airspace defined in the exemption as the "Transponder-Off Area." *Grant, March 25, 2003, Exemption No. 6741B.*

Docket No.: FAA–2001–8966.
Petitioner: M. Shannon & Associates.
Section of 14 CFR Affected: 14 CFR 91.9(a) and 91.531(a)(1) and (2).
Description of Relief Sought/ Disposition: To permit Shannon and certain operators of Cessna Model 500, 550, and S550 Citation airplanes to operate those airplanes without a pilot designated as second in command. *Grant, March 28, 2003, Exemption No. 6480E.*

Docket No.: FAA–2002–13323.
Petitioner: Eagle Jet Charter, Inc., dba Scenic Airlines, Inc. (EJC).
Section of 14 CFR Affected: 14 CFR 121.313(j)(1).
Description of Relief Sought/ Disposition: To permit EJC to operate three Fokker F–27 airplanes after April 9, 2003. *Grant, April 2, 2003, Exemption No. 8011.*

Docket No.: FAA–2001–9463.
Petitioner: Fare Share, Ltd. (FSL).
Section of 14 CFR Affected: 14 CFR 135.143(c)(2).
Description of Relief Sought/ Disposition: To permit FSL to operate certain aircraft under part 135 without a TSO–C112 (Mode S) transponder installed on those aircraft. *Grant, April 1, 2003, Exemption No. 7542A.*

Docket No.: FAA–2001–10058.
Petitioner: Rhoades Aviation, Inc.
Section of 14 CFR Affected: 14 CFR 135.143(c)(2).
Description of Relief Sought/ Disposition: To permit Rhoades to operate certain aircraft under part 135 without a TSO–C112 (Mode S) transponder installed on those aircraft. *Grant, April 1, 2003, Exemption No. 7614A.*

Docket No.: FAA–2001–9097.
Petitioner: Federal Express Corporation (FedEx).
Section of 14 CFR Affected: 14 CFR 135.143(c)(2).
Description of Relief Sought/ Disposition: To permit FedEx to operate certain aircraft under part 135 without a TSO–C112 (Mode S) transponder installed on those aircraft. *Grant, April 1, 2003, Exemption No. 5711G.*

Docket No.: FAA–2003–14676.
Petitioner: Western Oregon Aviation (WOA).
Section of 14 CFR Affected: 14 CFR 135.143(c)(2).
Description of Relief Sought/ Disposition: To permit WOA to operate certain aircraft under part 135 without a TSO–C112 (Mode S) transponder installed on those aircraft. *Grant, April 1, 2003, Exemption No. 8008.*

Docket No.: FAA–2003–14770.
Petitioner: Blue Sky Helicopter, Inc.
Section of 14 CFR Affected: 14 CFR 135.143(c)(2).
Description of Relief Sought/ Disposition: To permit Blue Sky to operate certain aircraft under part 135 without a TSO–C112 (Mode S) transponder installed on those aircraft. *Grant, April 1, 2003, Exemption No. 8009.*

Docket No.: FAA–2003–14728.
Petitioner: LonAire Flying Service, Inc.
Section of 14 CFR Affected: 14 CFR 135.143(c)(2).
Description of Relief Sought/ Disposition: To permit LonAire to operate certain aircraft under part 135 without a TSO–C112 (Mode S) transponder installed on those aircraft. *Grant, April 1, 2003, Exemption No. 8010.*

Docket No.: FAA–2003–14681.
Petitioner: Royal Jordanian Airlines (RJA).
Section of 14 CFR Affected: 14 CFR 129.28(c).

Description of Relief Sought/ Disposition: To permit RJA to operate its Airbus 340 and 310 airplanes after the April 9, 2003, compliance date for reinforced flight deck doors. *Denial, April 8, 2003, Exemption No. 8022.*

Docket No.: FAA–2003–14820.
Petitioner: Dutch Caribbean Airline N.V. (DCA).
Section of 14 CFR Affected: 14 CFR 129.28(c).
Description of Relief Sought/ Disposition: To permit DCA to operate three MD–80 aircraft after the April 9, 2003, compliance date for reinforced flight deck doors. *Denial, April 8, 2003, Exemption No. 8023.*

Docket No.: FAA–2003–14643.
Petitioner: Aeroflot.
Section of 14 CFR Affected: 14 CFR 129.28(c).
Description of Relief Sought/ Disposition: To permit Aeroflot to operate some of its Boeing 767 and Airbus 310 aircraft after the April 9, 2003, compliance date for reinforced flight deck doors. *Denial, April 8, 2003, Exemption No. 8020.*

Docket No.: FAA–2003–14692.
Petitioner: Air Luxor.
Section of 14 CFR Affected: 14 CFR 129.28(c).
Description of Relief Sought/ Disposition: To permit Air Luxor to operate its Lockheed L1011–500 aircraft after the April 9, 2003, compliance date for reinforced flight deck doors. *Denial, April 7, 2003, Exemption No. 8013.*

Docket No.: FAA–2003–14709.
Petitioner: El Al Israel Airlines.
Section of 14 CFR Affected: 14 CFR 129.28(c).
Description of Relief Sought/ Disposition: To permit El Al to operate three Boeing 747–200 classic airplanes after the April 9, 2003, compliance date for reinforced flight deck doors. *Denial, April 7, 2003, Exemption No. 8014.*

Docket No.: FAA–2003–14498.
Petitioner: Aeromexico (AMA).
Section of 14 CFR Affected: 14 CFR 129.28(b) and (c).
Description of Relief Sought/ Disposition: To permit AMA to operate some of its MD–80 aircraft after the April 9, 2003, compliance date for reinforced flight deck doors. *Denial, April 8, 2003, Exemption No. 8019.*

Docket No.: FAA–2003–14660.
Petitioner: Pakistan International Airlines (PIA).
Section of 14 CFR Affected: 14 CFR 129.28(c).
Description of Relief Sought/ Disposition: To permit PIA to operate its fleet of Boeing 747–200 Combi, Boeing 747–300 and Airbus 310–300 aircraft after the April 9, 2003, compliance date for reinforced flight deck doors. *Denial, April 8, 2003, Exemption No. 8021.*

Docket No.: FAA–2003–14545.
Petitioner: Temsco Helicopters, Inc.
Section of 14 CFR Affected: 14 CFR 135.143(c)(2).
Description of Relief Sought/ Disposition: To permit Temsco to operate certain aircraft under part 135 without a TSO–C112 (Mode S) transponder installed on those aircraft. *Grant, February 27, 2003, Exemption No. 7993.*

[FR Doc. 03–12489 Filed 5–19–03; 8:45 am]
BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Docket No. FAA–2003–15179]

Technical Standard Order–C38e, VHF Radio Communications Receiving Equipment Operating Within the Radio Frequency Radio Frequency Range 117.975 to 137.000 Megahertz

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of availability and requests for public comment.

SUMMARY: This notice announces the availability of and request comments on a revised Technical Standard Order (TSO)–C38e, VHF Radio Communications Receiving Equipment Operating within the Radio Frequency Range 117.975 to 137.000 Megahertz. The revised TSO tells manufacturers seeking TSO authorization or letter of design approval what minimum performance standards (MPS) their VHF radio communications receiving equipment must first meet for approval and identification with the applicable TSO markings.

DATES: Submit comments on or before June 19, 2003.

ADDRESSES: Send all comments on the proposed TSO revision to: Federal Aviation Administration, Aircraft Engineering Division, Aircraft Certification Service, Room 815, AIR–130, 800 Independence Avenue, SW., Washington, DC 20591. ATTN: Mr. Moin Abulhosn, AIR–130. You may deliver comments to: Federal Aviation Administration, Room 815, 800 Independence Avenue, SW., Washington, DC 20591.

FOR FURTHER INFORMATION CONTACT: Mr. Moin Abulhosn, AIR–130, Room 815, Federal Aviation Administration, Aircraft Engineering Division, Aircraft Certification Service, 800 Independence Avenue, SW., Washington, DC 20591, Telephone (202) 385–4648, FAX: (202) 385–4651.

SUPPLEMENTARY INFORMATION:

Comments Invited

You are invited to comment on the proposed revised TSO listed in this notice by submitting written data, views, or arguments to the address listed above. Your comments should identify "Comments to TSO–C38e" You can examine all comments on the proposed revised TSO before and after the comment closing date at the Federal Aviation Administration, Room 815, 800 Independence Avenue, SW., Washington, DC 20591, weekdays except Federal holidays, between 8:30 a.m. and 4:30 p.m. The Director of the Aircraft Certification Service will considers all communications received on or before the closing date before issuing the final revised TSO.

Background

This proposed revision to TSO–C38d includes the latest TSO boilerplate language. This language incorporates a Functionality definition used to specify the Function Hazard Classification. Furthermore, the data required with the TSO application has been slightly modified to include:

a. The minimum operational performance standards defined by RTCA/DO–186A, "Minimum Operational Performance Standards for Airborne Radio Communications, Equipment Operating Within the Radio Frequency Range 117.975–137.00 Mhz," Section 2.0, dated October 20, 1995, including Change 1, dated September 29, 1998, and Change 2, dated March 5, 2002.

b. The minimum requirements of 8.33 kHz channel spacing receivers (Class E) as defined by RTCA/DO–186A, including Changes 1 and 2, while retaining requirements of 25 kHZ channel spacing receivers (Class C and D) of TSO–37d.

c. By reference to RTCA/DO 186A, including Changes 1 and 2, addresses electromagnetic compatibility with the Global Navigation Satellite System (GNSS0.

d. The environmental conditions and test procedures specified in RTCA/DO–160D, including Changes 1, 2, and 3.

The basic TSO provide minimum performance standards for VHF radio communications receiver equipment. Incorporated with this standard are equipment characteristics that should be useful to users, designers, manufacturers, and installations of VHF radio communications receiver equipment.

How To Obtain Copies

You may get a copy of the proposed revised TSO from the Internet at: *http://av-info.faa.gov/tso/Tsopro/Proposed.htm.* You may also request a copy from Moin Abulhosn. See the section entitled **FOR FURTHER INFORMATION CONTACT** for the complete address.

Dated: Issued in Washington, DC, on May 14, 2003.

David W. Hempe,

Manager, Aircraft Engineering Division, Aircraft Certification Service.

[FR Doc. 03–12640 Filed 5–19–03; 8:45 am]
BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Docket No. FAA–2003–15158

Technical Standard Order—C37e, VHF Radio Communications Transmitting Equipment Operating Within the Radio Frequency Range 117.975 to 137.000 Megahertz

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of availability and requests for public comment.

SUMMARY: This notice announces the availability of and request comments on a revised Technical Standard Order (TSO)–C37e, VHF Radio Communications Transmitting Equipment Operating Within the Radio Frequency Range 117.975 to 137.000 Megahertz. The revised TSO tells manufacturers seeking TSO authorization or letter of design approval what minimum performance standards (MPS) their VHF radio communications transmitting equipment must first meet for approval and identification with the applicable TSO markings.

DATES: Submit comments on or before June 19, 2003.

ADDRESSES: Send all comments on the proposed TSO revision to: Federal Aviation Administration, Aircraft Engineering Division, Aircraft Certification Service, Room 815, AIR–130, 800 Independent Avenue, SW., Washington, DC 20591. Attn: Mr. Moin Abulhosn, AIR–130. You may deliver comments to: Federal Aviation Administration, Room 815, 800 Independent Avenue, SW., Washington, DC 20591.

FOR FURTHER INFORMATION CONTACT: Mr. Moin Abulhosn, AIR–130, Room 815, Federal Aviation Administration, Aircraft Engineering Division, Aircraft Certification Service, 800 Independent Avenue, SW., Washington, DC 20591, telephone (202) 385–4648, Fax: (202) 385–4651.

SUPPLEMENTARY INFORMATION:

Comments Invited

You are invited to comment on the proposed revised TSO listed in this notice by submitting written data, views, or arguments to the address listed above. Your comments should identify "Comments to TSO–C37e." You can examine all comments on the proposed revised TSO before and after the comment closing date at the Federal Aviation Administration, Room 815, 800 Independent Avenue, SW., Washington, DC 20591, weekdays except Federal holidays, between 8:30 a.m. and 4:30 p.m. The Director of the Aircraft Certification Service will consider all communications received on or before the closing date before issuing the final revised TSO.

Background

This proposed revision to TSO–C37d includes the latest TSO boilerplate language. This language incorporates a Functionality definition used to specify the Function Hazard Classification. Furthermore, the data required with the TSO application has been slightly modified to include:

a. The minimum operational performance standards defined by RTCA/DO–186A, "Minimum Operational Performance Standards for Airborne Radio Communications Equipment Operating Within the Radio Frequency Range 117.975–137.00 Mhz," Section 2.0, dated October 20, 1995, including Change 1, dated September 29, 1998, and Change 2, dated March 5, 2002.

b. The minimum requirements of 8.33 kHz channel spacing transmitters (Class 5 and 6) as defined by RTCA/DO–186A, including Changes 1 and 2, while retaining requirements of 25 kHz channel spacing transmitters (Class 3 and 4) of TSO–37d.

c. By reference to RTCA/DO–186A, including Channels 1 and 2, addresses the electromagnetic compatibility with the Global Navigation Satellite System (GNSS).

d. The environmental conditions and test procedures specified in RTCA/DO–160D, including Changes 1, 2, and 3.

The basic TSO provides minimum performance standards for VHF radio communications transmitting equipment. Incorporated within this standard are equipment characteristics that should be useful to users, designers, manufacturers, and installers of VHF radio communications transmitting equipment.

How To Obtain Copies

You may get a copy of the proposed revised TSO from the Internet at: *http://av-info.faa.gov./tso/Tsopro/Proposed.htm.* You may also request a copy from Mr. Moin Abulhosn. *See* the section entitled **FOR FURTHER INFORMATION CONTACT** for the complete address.

Issued in Washington, DC, on May 14, 2003.

David W. Hempe,

Manager, Aircraft Engieering Division, Aircraft Certification Service.

[FR Doc. 03–12641 Filed 5–19–03; 8:45 am]
BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Environmental Impact Statement; Hatillo-Aguadilla Corridor, Puerto Rico

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of intent.

SUMMARY: The FHWA is issuing this notice to advise the public that an environmental impact statement (EIS) will be prepared for the Hatillo-Aguadilla Corridor in the northwestern area of Puerto Rico.

FOR FURTHER INFORMATION CONTACT: Jose Luis Torres, P.E., Federal Highway Administration, Puerto Rico Division, 350 Carlos Chardon Street, Suite 210, San Juan, Puerto Rico 00918, Telephone (787)766–5600 Ext. 234; or Ms. Irma Garcia, P.E., Programming and Special Studies Area, Puerto Rico Highway and Transportation Authority, PO Box 42007, San Juan, Puerto Rico, 00940–2007, Telephone (787)729–1580.

SUPPLEMENTARY INFORMATION:

Electronic Access

An electronic copy of this document may be downloaded by using a computer, modem and suitable communications software from the Government Printing Office's Electronic Bulletin Board Service at (202) 512–1661. Internet users may reach the Office of the **Federal Register's** home page at: *http://www.archives.gov* and the Government Printing Office's Web site at: *http://www.access.gpo.gov/nara.*

Background

The FHWA, in cooperation with the Commonwealth of Puerto Rico Department of Transportation and Public Works (PRDTPW), through its

Highway and Transportation Authority (HTA), will prepare a joint environmental impact statement (EIS) on a proposal to construct a new roadway between the municipalities of Hatillo and Aguadilla.

Various environmental resources and issues are known to exist within the limits of the study area for this project. These resources and issues include, but are not limited to: location of prime agricultural land; archaeological resources; historic resources; residential, business and recreational land uses; geology; water quality; scenic viewsheds; native plant communities; wetlands; noise; and preservation of the natural, cultural, scenic and recreational values of the area. Any resources protected under Section 4(f) of the Department of Transportation Act [1] (49 U.S.C. 303 and 23 U.S.C. 138; 23 CFR 771.135(a)) will be addressed in a section 4(f) statement to be prepared for this project.

Section 106 of the National Historic Preservation Act (Pub. L. 89–665, 80 Stat. 915; 36 CFR part 800) applies to the project. Consultation pursuant to Section 106 is being initiated.

The EIS will address the impacts related to the construction of a new roadway in the Hatillo-Aguadilla Corridor. Recent planning efforts leading to the preparation of an EIS include development of design concepts for the following alternatives: (1) No Action; (2) Conversion to Expressway of existing road PR–2; (3) A New Road, and; (4) A combination of alternatives (2) and (3).

Correspondence describing this proposed action and requesting comments will be sent to appropriate Federal, Commonwealth, and local agencies and to private organizations and individuals that have previously expressed, or are known to have, an interest in this proposal. In addition, public scoping meetings will be held in the Spring/Summer of 2003.

To ensure that the full range of issues and alternatives related to this proposed action is addressed and all significant issues identified, comments and suggestions are invited from interested parties. Comments or questions concerning this proposed action should be directed to the FHWA at the address provided above. The view of agencies having interest on this proposal or knowledge of potential effects on the environmental resources listed above is requested.

(Authority: 23 U.S.C. 315; 49 CFR 1.48)

Issued on: May 13, 2003.

Lubin M.Quiñones,

Division Administrator, Puerto Rico Division Office.

[FR Doc. 03–12542 Filed 5–19–03; 8:45 am]

BILLING CODE 4910–22–P

[1] Section 4(f) of Pub. L. 89–670, 80 Stat. 934, was repealed by Pub. L. 97–449, 96 Stat. 2444, and enacted without substantive change at 49 U.S.C. 303; Section 138 of title 23, U.S.C., remains unchanged. Because of common usage and familiarity, the term section 4(f) continues to be used by the Department of Transportation in matters relating to 49 U.S.C. 303 and 23 U.S.C. 138.

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

Proposed Agency Information Collection Activities; Comment Request

AGENCY: Federal Railroad Administration, DOT.

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 and its implementing regulations, the Federal Railroad Administration (FRA) hereby announces that it is seeking renewal of the following currently approved information collection activities. Before submitting these information collection requirements for clearance by the Office of Management and Budget (OMB), FRA is soliciting public comment on specific aspects of the activities identified below.

DATES: Comments must be received no later than July 21, 2003.

ADDRESSES: Submit written comments on any or all of the following proposed activities by mail to either: Mr. Robert Brogan, Office of Safety, Planning and Evaluation Division, RRS–21, Federal Railroad Administration, 1120 Vermont Ave., NW., Mail Stop 17, Washington, DC 20590, or Ms. Debra Steward, Office of Information Technology and Productivity Improvement, RAD–20, Federal Railroad Administration, 1120 Vermont Ave., NW., Mail Stop 35, Washington, DC 20590. Commenters requesting FRA to acknowledge receipt of their respective comments must include a self-addressed stamped postcard stating, "Comments on OMB control number __." Alternatively, comments may be transmitted via facsimile to (202) 493–6230 or (202) 493–6170, or E-mail to Mr. Brogan at *robert.brogan@fra.dot.gov*, or to Ms. Steward at *debra.steward@fra.dot.gov*. Please refer to the assigned OMB control number in any correspondence submitted. FRA will summarize comments received in response to this notice in a subsequent notice and include them in its information collection submission to OMB for approval.

FOR FURTHER INFORMATION CONTACT: Mr. Robert Brogan, Office of Planning and Evaluation Division, RRS–21, Federal Railroad Administration, 1120 Vermont Ave., NW., Mail Stop 17, Washington, DC 20590 (telephone: (202) 493–6292) or Debra Steward, Office of Information Technology and Productivity Improvement, RAD–20, Federal Railroad Administration, 1120 Vermont Ave., NW., Mail Stop 35, Washington, DC 20590 (telephone: (202) 493–6139). (These telephone numbers are not toll-free.)

SUPPLEMENTARY INFORMATION: The Paperwork Reduction Act of 1995 (PRA), Pub. L. 104–13, § 2, 109 Stat. 163 (1995) (codified as revised at 44 U.S.C. 3501–3520), and its implementing regulations, 5 CFR part 1320, require Federal agencies to provide 60-days notice to the public for comment on information collection activities before seeking approval for reinstatement or renewal by OMB. 44 U.S.C. 3506(c)(2)(A); 5 CFR 1320.8(d)(1), 1320.10(e)(1), 1320.12(a). Specifically, FRA invites interested respondents to comment on the following summary of proposed information collection activities regarding (i) whether the information collection activities are necessary for FRA to properly execute its functions, including whether the activities will have practical utility; (ii) the accuracy of FRA's estimates of the burden of the information collection activities, including the validity of the methodology and assumptions used to determine the estimates; (iii) ways for FRA to enhance the quality, utility, and clarity of the information being collected; and (iv) ways for FRA to minimize the burden of information collection activities on the public by automated, electronic, mechanical, or other technological collection techniques or other forms of information technology (*e.g.*, permitting electronic submission of responses). *See* 44 U.S.C. 3506(c)(2)(A)(i)–(iv); 5 CFR 1320.8(d)(1)(i)–(iv). FRA believes that soliciting public comment will promote its efforts to reduce the administrative and paperwork burdens associated with the collection of information mandated by Federal regulations. In summary, FRA reasons that comments received will advance three objectives: (i) Reduce reporting burdens; (ii) ensure that it organizes information collection requirements in a "user friendly" format to improve the use of such information; and (iii) accurately assess the resources expended to retrieve and produce information requested. *See* 44 U.S.C. 3501.

Below are brief summaries of the three currently approved information collection activities that FRA will submit for clearance by OMB as required under the PRA:

Title: State Safety Participation Regulations and Remedial Actions.

OMB Control Number: 2130–0509.

Abstract: The collection of information is set forth under 49 CFR part 212, and requires qualified state inspectors to provide various reports to FRA for monitoring and enforcement purposes concerning state investigative, inspection, and surveillance activities regarding railroad compliance with Federal railroad safety laws and regulations. Additionally, railroads are required to report to FRA actions taken to remedy certain alleged violations of law.

Form Number(s): FRA F 6180.10; FRA F 6180.29/29A/33; FRA F 6180.61; FRA F 6180.67; FRA F 6180.68/68A/69/96/96A/96B.

Affected Public: Businesses.

Respondent Universe: States and railroads.

Reporting Burden:

CFR section	Respondent universe	Total annual responses	Average time per response	Total annual burden hours	Total annual burden cost
Application For Participation.	15 States	15 updates	2.5 hours	38	$1,748
Training Funding Agreement.	30 States	30 agreements	1 hour	30	1,380
Inspector Training Reimbursement.	30 States	300 vouchers	1 hour	300	12,600
Supervisor Travel Reimbursement.	30 States	30 vouchers	1 hour	30	1,380
Annual Work Plan	30 States	30 reports	15 hours	450	20,700
Inspection Form	30 States	18,000 reports	15 minutes	4,500	189,000
Violation Form	30 States	629 reports	4 hours	2,516	105,672
Remedial Actions Reports	573 Railroads	5,048 reports	15 minutes	1,262	80,768
Violation Report Challenge.	573 Railroads	1,010 challenges	1 hour	1,010	64,640
Delayed Reports	573 Railroads	505 reports	30 minutes	253	16,192

Total Responses: 25,597.

Estimated Total Annual Burden: 10,389 hours.

Status: Regular review.

Title: Certification of Glazing Materials.

OMB Control Number: 2130–0525.

Abstract: The collection of information is set forth under 49 CFR Part 223, which requires the certification and permanent marking of glazing materials by the manufacturer. The manufacturer is also responsible for making available test verification data to railroads and FRA upon request.

Form Number(s): N/A.

Affected Public: Businesses.

Respondent Universe: 5 manufacturers.

Total Responses: 25,211.

Estimated Total Annual Burden: 119 hours.

Status: Regular review.

Title: Two-Way End-of-Train Devices.

OMB Control Number: 2130–0540.

Abstract: Section 20141 of the United States Code amended the Federal Rail Safety Laws by adding certain statutory mandates related to power brake safety, specifically regarding two-way end-of-train telemetry devices (two-way EOTs). This Section required two-way end-of-train devices (or devices able to perform the same function) on road trains other than locals, road switchers, or work trains to enable the initiation of emergency braking from the rear of the train. The information collected enhances rail safety by ensuring that the locomotive engineer is notified if someone other than a train crew member tests the two-way end-of-train devices at the initial terminal or other point of installation to confirm that the device is capable of initiating an emergency power brake application from the rear of the train. The information collected is also used to by FRA to verify that the end-of-train telemetry equipment is properly calibrated for accuracy according to the manufacturer's specifications at least every 365 days. Additionally, the information collected verifies that the two-way end-of-train devices standards—such as the front unit having a manually operated switch that is labeled "Emergency" which can initiate an emergency brake transmission to the rear unit (when activated)—are met.

Form Number(s): N/A.

Affected Public: Businesses.

Respondent Universe: Railroads.

Total Responses: 521,500.

Estimated Total Annual Burden: 5,042 hours.

Status: Regular review.

Pursuant to 44 U.S.C. 3507(a) and 5 CFR 1320.5(b), 1320.8(b)(3)(vi), FRA informs all interested parties that it may not conduct or sponsor, and a respondent is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

Authority: 44 U.S.C. 3501–3520.

Issued in Washington, DC on May 14, 2003.

Kathy A. Weiner,

Office of Information Technology and Support Systems, Federal Railroad Administration.

[FR Doc. 03–12488 Filed 5–19–03; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

Petition for Waiver of Compliance

In accordance with part 211 of Title 49 Code of Federal Regulations (CFR), notice is hereby given that the Federal Railroad Administration (FRA) received a request for a waiver of compliance with certain requirements of its safety standards. The individual petition is described below, including the party seeking relief, the regulatory provisions involved, the nature of the relief being requested, and the petitioner's arguments in favor of relief.

Oregon Department of Transportation

(Waiver Petition Docket Number FRA–2003–15168)

The State of Oregon, Department of Transportation (ODOT) owns three self-propelled passenger coaches (Railway Diesel Cars—RDC) which were built by the Budd Company in 1956. These cars are not used in regular commuter service, but only on a limited seasonal

basis in conjunction with the Lewis and Clark Expedition bicentennial. The cars operate one round trip per day, four days per week (Thursday to Sunday), on trackage owned by the Portland and Western Railroad. The excursion trains operate from a station in Portland, Oregon to Astoria, Oregon where passengers may board special shuttle busses to nearby Fort Clatsop National Historic Site where Lewis and Clark wintered over in 1805–06.

The route traversed by this train goes through three very different types of geography:

1. The first four miles of BNSF track and first two miles of the Portland & Western Railroad are mostly through an industrial area of northwest Portland. This route is also used by Portland to Seattle, Washington intercity trains. Vandalism to passenger trains has not been reported as being a problem;

2. The next 87 miles is mostly rural and a light density population area. This section has no known history of vandalism or incidents of property damage to railroad equipment;

3. The last six miles in Astoria is located on fills and trestles with no public access to trackside. The final segment is adjacent to the Astoria Waterfront Trolley which has not been subjected to incidents of vandalism.

ODOT requests temporary relief from the requirements of Title 49 Code of Federal Regulations (CFR) 223.15 *Requirements for existing passenger cars* due to the infrequent use of the cars, the planned usage for excursion service, and the cost schedule of installing compliant glazing prior to initiation of service. The cars are former VIA Rail Canada equipment and have a double-pane combination of ¼-inch thick safety glass inside and plate glass outside. This glazing system remains the standard in Canada for passenger equipment and these cars are fully compliant with Canadian glazing standards. Also, removable emergency exit windows have been installed in each car as required by 49 CFR 223.15(c). Therefore, the petitioner believes that the operation of these cars, as equipped, would not pose a safety hazard to passengers or employees.

ODOT intends to replace the side facing windows with compliant FRA Type II glazing and has requested funding to do so from the Oregon State Legislature. ODOT believes that the glazing on all three cars can be brought into compliance with the requirements of 49 CFR 223.15 by May 2004.

Interested parties are invited to participate in these proceedings by submitting written views, data, or comments. FRA does not anticipate scheduling a public hearing in connection with these proceedings since the facts do not appear to warrant a hearing. If any interested party desires an opportunity for oral comment, they should notify FRA in writing before the end of the comment period and specify the basis for their request.

FRA's Office of Safety Assurance and Compliance issued a letter to ODOT on May 13, 2003 which stated that no exception will be taken to the continued use of these cars in excursion service until a Final Decision is rendered by FRA's Railroad Safety Board which shall take precedence. Due to exigent circumstances related to the start of planned service, FRA may act on this waiver request before the close of the comment period. However, FRA reserves the right to rescind or modify any approval or denial based upon receipt of comments which, in FRA's judgement, raise significant issues.

All communications concerning these proceedings should identify the appropriate docket number (*e.g.*, Waiver Petition Docket Number FRA–2003–15168) and must be submitted in triplicate to the Docket Clerk, Office of Chief Counsel, FRA Nassif Building, 400 Seventh Street, SW., Washington, DC 20590. Communications received within 30 days of the date of this notice will be considered by FRA. Comments received after that date will be considered as far as practicable. All written communications concerning these proceedings are available for examination during regular business hours (9 a.m.–5 p.m.) at FRA's temporary docket room located at 1120 Vermont Avenue, NW., Room 7051, Washington, DC 20005.

Issued in Washington, DC on May 14, 2003.

Grady C. Cothen, Jr.,

Deputy Associate Administrator, for Safety Standards and Program Development.

[FR Doc. 03–12633 Filed 5–19–03; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF THE TREASURY

Submission for OMB Review; Comment Request

May 12, 2003.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Pub. L. 104–13. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 11000, 1750 Pennsylvania Avenue, NW., Washington, DC 20220.

Dates: Written comments should be received on or before June 19, 2003 to be assured of consideration.

Internal Revenue Service (IRS)

OMB Number: 1545–0169.

Form Number: IRS Forms 4461, 4461–A, and 4461–B.

Type of Review: Revision.

Title: Form 4461: Application for Approval of Master or Prototype Defined Contribution Plan;

Form 4461–A: Application for Approval of Master or Prototype Defined Benefit Plan; and

Form 4461–B: Application for Approval of Master or Prototype Plan, Mass Submitter Adopting Sponsor.

Description: The IRS uses these forms to determine from the information submitted whether the applicant plan qualifies under section 401(a) of the Internal Revenue Code for plan approval. The application is also used to determine if the related trust qualifies for tax exempt status under Code section 501(a).

Respondents: Business or other for-profit.

Estimated Number of Respondents/Recordkeepers: 1,000.

Estimated Burden Hours Per Respondent/Recordkeeper:

	4461	4461–A	4461–B
Recordkeeping	43 hr., 17 min.	42 hr., 34 min.	5 hr., 58 min.
Learning about the law or the form	6 hr., 43 min.	6 hr., 1 min.	52 min.
Preparing the form	8 hr., 39 min.	7 hr., 55 min.	1 hr., 56 min.
Copying, assembling, and sending the to the IRS	16 min.	16 min.	16 min.

Frequency of Response: On occasion.

Estimated Total Reporting/Recordkeeping Burden: 109,298 hours.

OMB Number: 1545–0881.

Form Number: IRS Form 8271.

Type of Review:

Title: Investor Reporting of Tax Shelter Registration Number.

Description: All persons who are claiming a deduction, loss, credit, or other tax benefit, or reporting any income on their returns from a tax shelter required to be registered (under IRC 6111) must report the tax shelter registration number on that return. Form 8271 is sued for this purpose. We use the information to associate claimed benefits with the tax shelter and to determine if any compliance actions are needed.

Respondents: Individuals or households, business or other for-profit, not-for-profit institutions, farms, State, Local or Tribal Government.

Estimated Number of Respondents/Recordkeepers: 297,500.

Estimated Burden Hours Per Respondent/Recordkeeper:

Recordkeeping—6 min.

Learning about the law or the form—7 min.

Preparing the form—16 min.

Copying, assembling, and sending the form to the IRS—10 min.

Frequency of Response: Annually.

Estimated Total Reporting/Recordkeeping Burden: 205,275 hours.

OMB Number: 1545–1099.

Form Number: IRS Form 8811.

Type of Review: Extension.

Title: Information Return for Real Estate Mortgage Investment Conduits (REMICs) and Issuers of Collateralized Debt Obligations

Description: Form 8811 is used to collect the name, address, and phone number of a representative of a REMIC who can provide brokers with the correct income amounts that the broker's clients must report on their income tax returns. The form allows the IRS to provide the REMIC industry the information necessary to issue correct information returns to investors.

Respondents: Business or other for-profit.

Estimated Number of Respondents/Recordkeepers: 1,000.

Estimated Burden Hours Per Respondent/Recordkeeper:

Recordkeeping—3 hr., 49 min.

Learning about the law or the form—35 min.

Preparing, copying, assembling, and sending the form to the IRS—41 min.

Frequency of Response: Other (One-time for each obligation).

Estimated Total Reporting/Recordkeeping Burden: 5,110 hours.

OMB Number: 1545–1277.

Form Number: IRS Form 1040-TeleFile.

Type of Review: Revision.

Title: TeleFile.

Description: Form 1040EZ filers whose IRS mail label has not changed, will be given the option to file their return by telephone, with no return to send in to the IRS. The IRS will use the information obtained to compute the taxpayer's refund or balance due.

Respondents: Individuals or households.

Estimated Number of Respondents/Recordkeepers: 4,578,000.

Estimated Burden Hours Per Respondent/Recordkeeper:

Recordkeeping—6 min.

Learning about the law or the Tax Record—26 min.

Preparing the Tax Record—39 min.

TeleFile phone call—10 min.

Preparing Form 8855–V—22 min.

Frequency of Response: Annually.

Estimated Total Reporting/Recordkeeping Burden: 7,133,900 hours.

Clearance Officer: Glenn Kirkland (202) 622–3428, Internal Revenue Service, Room 6411–03, 1111 Constitution Avenue, NW., Washington, DC 20224.

OMB Reviewer: Joseph F. Lackey, Jr. (202) 395–7316, Office of Management and Budget, Room 10235, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,

Departmental Reports Management Officer.

[FR Doc. 03–12595 Filed 5–19–03; 8:45 am]

BILLING CODE 4830–01–J

DEPARTMENT OF THE TREASURY

Submission for OMB Review; Comment Request

May 13, 2003.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 11000, 1750 Pennsylvania Avenue, NW., Washington, DC 20220.

DATES: Written comments should be received on or before June 19, 2003 to be assured of consideration.

Bureau of the Public Debt (PD)

OMB Number: 1535–0012.

Form Number: PD F 1455.

Type of Review: Extension.

Title: Request by Fiduciary for Reissue of United States Savings Bonds/Notes.

Description: PD F 1455 is used by fiduciary to request distribution of U.S. Savings Bonds/Notes to the person(s) entitled.

Respondents: Individuals or households.

Estimated Number of Respondents: 72,000.

Estimated Burden Hours Per Respondent: 30 minutes.

Frequency of Response: On occasion.

Estimated Total Reporting Burden Hours: 36,000 hours.

OMB Number: 1535–0032.

Form Number: PD F 3565.

Type of Review: Extension.

Title: Application for disposition of Retirement Plan/Individual Retirement Bonds Without Administration of Deceased Owner's Estate.

Description: PD F 3565 is used by heirs of deceased owners of Retirement Plan/Individual Retirement Bonds to request disposition.

Respondents: Individuals or households.

Estimated Number of Respondents: 50.

Estimated Burden Hours Per Respondent: 20 minutes.

Frequency of Response: On occasion.

Estimated Total Reporting Burden Hours: 17 hours.

OMB Number: 1535–0055.

Form Number: PD F 1050.

Type of Review: Extension.

Title: Creditors Consent to Disposition of U.S. Securities and Related Checks Without Administration of Deceased Owner's Estate.

Description: PD F 1050 is used to obtain creditors consent to dispose of Savings Bonds of a deceased owner's estate without administration.

Respondents: Business or other for-profit, Individuals or households.

Estimated Number of Respondents: 3,000.

Estimated Burden Hours Per Respondent: 6 minutes.

Frequency of Response: On occasion.

Estimated Total Reporting Burden Hours: 300 hours.

OMB Number: 1535–0084.

Form Number: PD F 5263, PD F 5263–1, PD F 5374, and PD F 5374–1.

Type of Review: Extension.

Title: Order for Series EE U.S. Savings Bonds (PD F 5263); Order for Series EE U.S. Savings Bonds to be Registered in Name of Fiduciary (PD F 5263–I); Series

I Order for U.S. Savings Bonds (PD F 5374); and Series I Order for U.S. Savings Bonds to be Registered in Name of Fiduciary (PD F5374–1).

Description: These forms are completed by the purchaser to issue United States Savings Bonds.

Respondents: Individuals or households.

Estimated Number of Respondents: 10,000,000.

Estimated Burden Hours Per Respondent: 5 minutes per form.

Frequency of Response: On occasion.

Estimated Total Reporting Burden Hours: 830,000 hours.

OMB Number: 1535–0102.

Form Number: PD F 1071.

Type of Review: Extension.

Title: Certificate of Ownership of United States Bearer Securities.

Description: PD F 1071 is used to establish ownership and support a request for payment.

Respondents: Individuals or households, Business or other for-profit.

Estimated Number of Respondents: 1,000.

Estimated Burden Hours Per Respondent: 15 minutes.

Frequency of Response: On occasion.

Estimated Total Reporting Burden Hours: 250 hours.

OMB Number: 1535–0126.

Form Number: PD F 3871.

Type of Review: Extension.

Title: Application for Issue of United States Mortgage Guaranty Insurance Company Tax and Loss Bonds.

Description: PD F 3871 is submitted by companies engaged in the business of writing mortgage guaranty insurance for purpose of purchasing "Tax and Loss" bonds.

Respondents: Business or other for-profit.

Estimated Number of Respondents: 37 Estimated Burden Hours Per Respondent: 15 minutes.

Frequency of Response: On occasion.

Estimated Total Reporting Burden Hours: 20 hours.

Clearance Officer: Vicki S. Thorpe (304) 480–6553, Bureau of the Public Debt, 200 Third Street, Parkersburg, West VA 26106–1328.

OMB Reviewer: Joseph F. Lackey, Jr., Office of Management and Budget, Room 10235, New Executive Office Building, Washington, DC 20503, (202) 395–7316.

Mary A. Able,

Departmental Reports Management Officer.

[FR Doc. 03–12676 Filed 5–19–03; 8:45 am]

BILLING CODE 4810–39–P

DEPARTMENT OF VETERANS AFFAIRS

Diseases Not Associated With Exposure to Certain Herbicide Agents

AGENCY: Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: As required by law, the Department of Veterans Affairs (VA) hereby gives notice that the Secretary of Veterans Affairs, under the authority granted by the Agent Orange Act of 1991 and the Veterans Education and Benefits Expansion Act of 2001, has determined that a presumption of service connection based on exposure to herbicides used in the Republic of Vietnam during the Vietnam Era is not warranted for the following conditions: Hepatobiliary cancers, nasopharyngeal cancer, bone and joint cancer, breast cancer, cancers of the female reproductive system, urinary bladder cancer, renal cancer, testicular cancer, leukemia (other than chronic lymphocytic leukemia (CLL)), abnormal sperm parameters and infertility, Parkinson's disease and parkinsonism, amyotrophic lateral sclerosis (ALS), chronic persistent peripheral neuropathy, lipid and lipoprotein disorders, gastrointestinal and digestive disease, immune system disorders, circulatory disorders, respiratory disorders (other than certain respiratory cancers), skin cancer, cognitive and neuropsychiatric effects, gastrointestinal tract tumors, brain tumors, light chain-associated (AL) amyloidosis, endometriosis, adverse effects on thyroid homeostasis, and any other condition for which the Secretary has not specifically determined a presumption of service connection is warranted.

FOR FURTHER INFORMATION CONTACT: Cheryl Konieczny, Consultant, Regulations Staff, Compensation and Pension Service, Veterans Benefits Administration, 810 Vermont Avenue, NW, Washington, DC 20420, telephone (202) 273–6779.

SUPPLEMENTARY INFORMATION: Section 3 of the Agent Orange Act of 1991, Pub. L. 102–4, 105 Stat. 11, directed the Secretary to seek to enter into an agreement with the National Academy of Sciences (NAS) to review and summarize the scientific evidence concerning the association between exposure to herbicides used in support of military operations in the Republic of Vietnam during the Vietnam Era and each disease suspected to be associated with such exposure. Congress mandated that NAS determine, to the extent possible: (1) Whether there is a statistical association between the suspect diseases and herbicide exposure, taking into account the strength of the scientific evidence and the appropriateness of the methods used to detect the association; (2) the increased risk of disease among individuals exposed to herbicides during service in the Republic of Vietnam during the Vietnam Era; and (3) whether there is a plausible biological mechanism or other evidence of a causal relationship between herbicide exposure and the suspect disease. Section 3 of Pub. L. 102–4 also required that NAS submit reports on its activities every two years (as measured from the date of the first report) for a ten-year period.

Section 2 of Pub. L. 102–4, codified in pertinent part at 38 U.S.C. 1116(b) and (c), provides that whenever the Secretary determines, based on sound medical and scientific evidence, that a positive association (*i.e.*, the credible evidence for the association is equal to or outweighs the credible evidence against the association) exists between exposure of humans to an herbicide agent (*i.e.*, a chemical in an herbicide used in support of the United States and allied military operations in the Republic of Vietnam during the Vietnam Era) and a disease, the Secretary will publish regulations establishing presumptive service connection for that disease. If the Secretary determines that a presumption of service connection is not warranted, he is to publish a notice of that determination, including an explanation of the scientific basis for that determination. The Secretary's determination must be based on consideration of the NAS reports and all other sound medical and scientific information and analysis available to the Secretary.

Section 2 of the Agent Orange Act of 1991 provided that the Secretary's authority and duties under that section would expire 10 years after the first day of the fiscal year in which NAS transmitted its first report to VA. The first NAS report was transmitted to VA in July 1993, during the fiscal year that began on October 1, 1992. Accordingly, VA's authority under section 2 of the Agent Orange Act of 1991 expired on September 30, 2002. In December 2001, however, Congress enacted the Veterans Education and Benefits Expansion Act of 2001, Public Law 107–103. Section 201(d) of that Act extended VA's authority under 38 U.S.C. 1116(b)–(d) through September 30, 2015.

Although 38 U.S.C. 1116 does not define "credible," it does instruct the Secretary to "take into consideration whether the results [of any study] are statistically significant, are capable of replication, and withstand peer review." Simply comparing the number of studies which report a positive relative risk to the number of studies which report a negative relative risk for a particular condition is not a valid method for determining whether the weight of evidence overall supports a finding that there is or is not a positive association between herbicide exposure and the subsequent development of the particular condition. Because of differences in statistical significance, confidence levels, control for confounding factors, bias, and other pertinent characteristics, some studies are clearly more credible than others, and the Secretary has given the more credible studies more weight in evaluating the overall weight of the evidence concerning specific diseases.

NAS issued its initial report, entitled "Veterans and Agent Orange: Health Effects of Herbicides Used in Vietnam," (VAO) on July 27, 1993. The Secretary subsequently determined that a positive association exists between exposure to herbicides used in the Republic of Vietnam and the subsequent development of Hodgkin's disease, porphyria cutanea tarda, multiple myeloma, and certain respiratory cancers; and that there was no positive association between herbicide exposure and any other condition, other than chloracne, non-Hodgkin's lymphoma, and soft-tissue sarcomas, for which presumptions already existed. A notice of the diseases that the Secretary determined were not associated with exposure to herbicide agents was published on January 4, 1994. (See 59 FR 341 [1994].)

NAS issued its second report, entitled "Veterans and Agent Orange: Update 1996" (Update 1996), on March 14, 1996. The Secretary subsequently determined that a positive association exists between exposure to herbicides used in the Republic of Vietnam and the subsequent development of prostate cancer and acute and subacute peripheral neuropathy in exposed persons. The Secretary further determined that there was no positive association between herbicide exposure and any other condition, other than those for which presumptions already existed. A notice of the diseases that the Secretary determined were not associated with exposure to herbicide agents was published on August 8, 1996. (*See* 61 FR 41442 (1996).)

NAS issued a third report, entitled "Veterans and Agent Orange: Update 1998" (Update 1998), on February 11, 1999. The focus of this updated review was on new scientific studies published since the release of Update 1996 and updates of scientific studies previously reviewed. After NAS issued Update 1998, the Secretary determined that there was no positive association between herbicide exposure and any other condition, other than those for which presumptions already existed. A notice of the diseases that the Secretary determined were not associated with exposure to herbicide agents was published on November 2, 1999. (*See* 64 FR 59232 [1999].)

At VA's request, NAS issued a special interim report, "Veterans and Agent Orange: Herbicide/Dioxin Exposure and Type 2 Diabetes" (VAO: Diabetes) on October 11, 2000. NAS concluded "there is limited/suggestive evidence of an association between exposure to the herbicides used in Vietnam or the contaminant dioxin and Type 2 diabetes." NAS based its conclusion on the totality of the scientific evidence on this issue, not one particular study. (VAO: Diabetes.) After considering all of the evidence, the Secretary determined that there is a positive association between exposure to herbicides and Type 2 diabetes and, therefore, a presumption of service connection was warranted. (*See 66 FR* 2376 (2001).)

NAS issued a fourth report, entitled "Veterans and Agent Orange: Update 2000" (Update 2000), on April 19, 2001. The focus of this updated review was on new scientific studies published since the release of Update 1998 and updates of scientific studies previously reviewed. After NAS issued Update 2000, the Secretary determined that there was no positive association between herbicide exposure and any other condition, other than those for which presumptions already existed. A notice of the diseases that the Secretary determined were not associated with exposure to herbicide agents was published on June 24, 2002 (*See* 67 FR 42600–608).

NAS issued its fifth report, entitled "Veterans and Agent Orange: Update 2002" (Update 2002) on January 23, 2003. The focus of this updated review was on new scientific studies published since the release of Update 2000, and to review the studies previously reviewed along with the newest scientific evidence. The Secretary subsequently determined that a positive association exists between exposure to herbicides used in the Republic of Vietnam and the subsequent development of chronic lymphocytic leukemia (CLL) in exposed persons. A proposed rule to establish a presumption of service connection for CLL was published in the **Federal Register** of March 26, 2003 (See 68 FR 14567). The Secretary also determined that there is no positive association between herbicide exposure and hepatobiliary cancers, nasopharyngeal cancer, bone and joint cancer, breast cancer, cancers of the female reproductive system, urinary bladder cancer, renal cancer, testicular cancer, leukemia (other than CLL), abnormal sperm parameters and infertility, Parkinson's disease and parkinsonism, amyotrophic lateral sclerosis (ALS), chronic persistent peripheral neuropathy, lipid and lipoprotein disorders, gastrointestinal and digestive disease including liver toxicity, immune system disorders, circulatory disorders, respiratory disorders (other than certain respiratory cancers), skin cancer, cognitive and neuropsychiatric effects, gastrointestinal tract tumors, brain tumors, AL amyloidosis, endometriosis, adverse effects on thyroid homeostasis, and any other condition for which the Secretary has not specifically determined a presumption of service connection is warranted. This notice, pursuant to 38 U.S.C. 1116(c)(1)(B), summarizes the scientific data reviewed by NAS in its Update 2002, and conveys the Secretary's determination regarding no positive association between herbicide exposure and the above-cited conditions.

NAS, in Update 2002, assigns hepatobiliary cancers, nasopharyngeal cancer, bone and joint cancer, breast cancer, cancers of the female reproductive system, urinary bladder cancer, renal cancer, testicular cancer, leukemia (other than CLL), abnormal sperm parameters and infertility, Parkinson's disease and parkinsonism, chronic persistent peripheral neuropathy, lipid and lipoprotein disorders, gastrointestinal and digestive disease, immune system disorders, circulatory disorders, respiratory disorders (other than certain respiratory cancers), skin cancer, cognitive and neuropsychiatric effects, AL amyloidosis, endometriosis, and adverse effects on thyroid homeostasis to a category labeled inadequate/insufficient evidence to determine whether an association exists. This is defined as meaning that the available studies are of insufficient quality, consistency, or statistical power to permit a conclusion regarding the presence or absence of an association with herbicide exposure. In Update 2002, NAS assigned gastrointestinal tract tumors and brain tumors to a category labeled limited or suggestive evidence of no association. This is defined as meaning that the available studies are mutually consistent in not showing a positive association between exposure to

herbicides and the outcome at any level of exposure.

The Secretary's determinations regarding individual diseases are based on all available evidence in Update 2002 and prior NAS reports. This notice generally states specific information only with respect to significant additional studies that were first reviewed by NAS in Update 2002. Information regarding additional relevant studies has previously been stated in VA's prior notices following earlier NAS reports, and will not be repeated here.

Hepatobiliary Cancers

Hepatobiliary cancers are cancers of the liver and intrahepatic bile ducts. There are a variety of known risk factors, including chronic infections with hepatitis B or C, exposure to aflatoxin, vinyl chloride and polychlorinated biphenyl (PCB), and smoking, that should be considered by a credible study.

NAS noted in VAO and subsequent reports that there were relatively few occupational, environmental, or veteran studies of hepatobiliary cancer. It also noted that most of the few existing studies addressing hepatobiliary cancer contain methodological difficulties such as small study size and inadequate control for life-style-related risk factors, or do not support an association with herbicide exposure.

An environmental study of the residents of Chapaevsk, Russia, an industrial community with documented contamination by dioxins and other chemicals of the food and water supply, revealed a higher incidence of liver cancer than in Russia as a whole or the Samara region of Russia, in which Chapaevsk is located, although no information was provided on exposed cases or estimated relative risk for morbidity. (Revich B, Aksel E, Ushakova T, Ivanova I, Zuchenko N, Lyuev N, Brodsky B, Sotsov Y. 2001. Dioxin exposure and public health in Chapaevsk, Russia. Chemosphere 43:951–966) In Update 2002, NAS determined that this study cannot be taken as strong evidence for an association between dioxins and liver cancer because the study failed to adjust for confounding by socioeconomic, lifestyle, comorbidity and other factors, and because of the likelihood of multiple exposures and concerns regarding the study design.

NAS found that there was no information contained in the research reviewed for Update 2002 to change the conclusion that there is inadequate or insufficient evidence to determine whether an association exists between exposure to herbicides and hepatobiliary cancer.

Taking account of the available evidence and NAS' analysis, the Secretary has found that the credible evidence against an association between herbicide exposure and hepatobiliary cancer outweighs the credible evidence for such an association, and he has determined that a positive association does not exist.

Nasopharyngeal Cancer

Nasal and nasopharyngeal cancers are relatively rare in the United States and thus difficult to study epidemiologically. Reported risk factors for nasal cancer include occupational exposure to nickel and chromium compounds, wood dust, and formaldehyde. Studies of nasopharyngeal cancer have reported associations with the consumption of salt-preserved foods, cigarette smoking, and Epstein-Barr virus. NAS noted in VAO and subsequent reports that there was inadequate or insufficient evidence to determine whether an association exists between herbicide exposure and nasal and nasopharyngeal cancer.

An environmental study of the residents of Chapaevsk, Russia, revealed a higher incidence of pharyngeal cancer in females than in Russia as a whole, although no information was provided on exposed cases or estimated relative risk for morbidity. (Revich et al., 2001.) Male residents of Chapaevsk did not show a higher incidence of pharyngeal cancer. NAS reported, in Update 2002, that the usefulness of these data is restricted because of factors such as lack of adjustment for confounding, the likelihood of multiple exposures, concern regarding the study design, and the absence of information on the completeness and accuracy of cancer incidence data.

NAS found that there was no information contained in the research reviewed for Update 2002 to change the conclusion that there is inadequate or insufficient evidence to determine whether an association exists between exposure to herbicides and nasopharyngeal cancer.

Taking account of the available evidence and NAS' analysis, the Secretary has found that the credible evidence against an association between herbicide exposure and nasopharyngeal cancer outweighs the credible evidence for such an association, and he has determined that a positive association does not exist.

Bone and Joint Cancer

NAS noted that bone cancer is more common in teenagers than adults, and, therefore, the incidence among Vietnam veterans is quite low. Among the risk factors for adults contracting bone and joint cancer are exposure to ionizing radiation from treatment for other cancers and a history of certain noncancerous bone diseases. NAS found in VAO and subsequent reports that there is inadequate or insufficient information to determine whether an association exists between exposure to herbicides and bone cancer.

An environmental study of the residents of Chapaevsk, Russia, revealed seven deaths in male residents and seven deaths in female residents due to cancer of the bones or soft tissues. (Revich et al., 2001.) In Update 2002, NAS reported that these results cannot be taken as evidence for an association between bone cancer and dioxins, because cancers of the bone and soft tissue were combined in the analysis. Further, the increased risk for death due to bone cancer and soft-tissue cancer combined was not statistically significant.

NAS found that there was no information contained in the research reviewed for Update 2002 to change the conclusion that there is inadequate or insufficient evidence to determine whether an association exists between exposure to herbicides and bone and joint cancer.

Taking account of the available evidence and NAS' analysis, the Secretary has found that the credible evidence against an association between herbicide exposure and bone and joint cancer outweighs the credible evidence for such an association, and he has determined that a positive association does not exist.

Breast Cancer

NAS noted that breast cancer is the second most common cancer among women in the United States. Breast cancer incidence generally increases with age. Risk factors other than aging include a personal or family history of breast cancer and certain reproductive characteristics; specifically, early onset of menarche, late onset of menopause, and either no pregnancies or first full-term pregnancy after age 30. NAS noted in VAO and subsequent reports that there is inadequate or insufficient information to determine whether an association exists between exposure to herbicides and breast cancer.

In its prior reports, NAS reviewed several studies finding no increased risk of breast cancer associated with herbicide exposure or Vietnam service, and possibly even showing a limited protective effect for new incidence of breast cancer

NAS reviewed a number of new studies for Update 2002. A follow up to an occupational study reviewed in Update 2000 published results on the reproducibility of the self-reported data on farm exposures to potentially hazardous agents such as pesticides. (Duell EJ, Millikan RC, Savitz DA, Schell MJ, Newman B, Tse CJ, Sandler DP. 2001. Reproducibility of reported farming activities and pesticide use among breast cancer cases and controls: A comparison of two modes of data collection. Annals of Epidemiology 11(3):178–185) It was found that the farming-exposure information was generally reproducible, which provided some assurance that the prior conclusion of no overall excess risk of breast cancer was not due to measurement error in the exposure assessment.

An environmental study of the joint effects of all congeners of polychlorinated biphenyls (PCBs) (Holford TR, Zheng T, Mayne ST, Zahm SH, Tessari JD, Boyle P. 2000. Joint effects of nine polychlorinated biphenyl (PCB) congeners on breast cancer risk. International Journal of Epidemiology 29 (6):975–82) showed that total PCB was not significantly associated with breast cancer risk. NAS noted, however, that significant protective effects were detected for potential antiestrogens and a dioxin-like congener. This study was consistent with results of previously reported studies. General population controls were not used, which limited the external validity of the results.

The relationship between the relatively high dioxin concentrations in Chapaevsk, Russia and breast cancer incidence and related mortality was studied in Revich *et al.* (2001). The incidence rate of female breast cancer, age-adjusted to the Russian standard population, was higher in Chapaevsk in all age groups than in Russia and the Samara region. NAS noted that the lack of adjustment for such risk factors as family size, breastfeeding, alcohol use, body-mass index and fat consumption was one of the main weakness of this study.

Two environmental studies provided evidence of a relationship between the development of breast cancer and increased concentrations of PCB congeners that have dioxin-like activity. (Aronson KJ, Miller AB, Woolcott CG, Sterns EE, McCready DR, Lickley LA, Fish EB, Hiraki GY, Holloway C, Ross T, Hanna WM, SenGupta SK, Weber J-P. 2000. Breast adipose tissue concentrations of polychlorinated biphenyls and other organochlorines and breast cancer risk. Cancer Epidemiology, Biomarkers and Prevention 9(1):53–63; Demers A, Ayotte P, Brisson J, Dodin S, Robert J, Dewailly E. 2002. Plasma concentrations of polychlorinated biphenyls and the risk of breast cancer: A congener-specific analysis. American Journal of Epidemiology 155(7):629–635) NAS noted that the external validity of one of the studies (Aronson *et al.*) was limited by the lack of general-population controls. NAS found that the other study (Demers *et al.*) was well conducted and appears to have used appropriate statistical methods. NAS also noted, however, that PCB cogeners also have non-dioxin-like components, and that the observed effects may be attributable to those components.

Another study found further evidence of increased breast cancer risk associated with increased serum TCDD. (Warner M, Eskenazi B, Mocarelli P, Gerthoux PM, Samuels S, Needham L, Patterson D, Brambilla P. Serum dioxin concentrations and breast cancer risk in the Seveso Women's Health Study. Environmental Health Perspectives 2002; 110(7) 625–628) NAS found that this study adjusted for risk factors and was apparently free from potential bias. NAS also noted, however, that the findings were potentially limited because they were based on only 15 cases.

In a Vietnam veteran study that included 4,140 female Vietnam veterans and 4,140 veteran controls that did not service in Vietnam, it was concluded that Vietnam veterans did not experience a significantly higher prevalence of breast cancer. (Kang HK, Mahan CM, Lee KY, Magee CA, Selvin S. 2000. Prevalence of gynecologic cancers among female Vietnam veterans. Journal of Occupational & Environmental Medicine 42(11):1121–1127.) Although the prevalence of breast cancer was higher in female Vietnam veterans than in non-Vietnam veterans, the difference was not considered statistically significant. This study, also, was considered by NAS to be well designed, have adequate power, and be highly relevant for the assessment of the effect of Agent Orange and other herbicides on breast cancer risk in Vietnam veterans. NAS also noted, however, that the study's usefulness may be limited because questions on exposure focused on the Vietnam experience as a whole instead of on exposures to Agent Orange, other herbicides or their contaminants.

NAS concluded that there is still inadequate or insufficient evidence to determine whether there is an association between exposure to herbicides and breast cancer.

As noted above, studies reviewed in prior NAS reports predominately showed no association between breast cancer and herbicide exposure, or possibly a limited protective association. The additional evidence reviewed in Update 2002 includes evidence consistent with those prior studies, as well as some studies providing evidence of an association, subject to the limitations discussed above.

Taking account of the available evidence and NAS's analysis, the Secretary has found that the credible evidence against an association between herbicide exposure and breast cancer outweighs the credible evidence for such an association, and he has determined that a positive association does not exist.

Cancers of the Female Reproductive System

NAS noted that the cancers of the female reproductive system include cancers of the cervix, endometrium (also referred to as the corpus uteri), and ovaries. Cervical cancers occur more often in African-American women than in white women, whereas white women are more likely to develop endometrial and ovarian cancers. The incidence of endometrial and ovarian cancer also depends on age, with older women at greater risk. Human papillomavirus infection is the most important risk factor for cervical cancer. Diet, a family history of the disease, and breast cancer are among the risk factors for endometrial and ovarian cancers. NAS noted in VAO and subsequent reports that there is inadequate or insufficient information to determine whether an association exists between exposure to herbicides and cancers of the female reproductive system.

In Update 2002, NAS reported that the environmental study involving Chapaevsk, Russia (Revich et al., 2001) appeared to show an increased risk of cervical cancer, but noted that the number of cases on which the rates were calculated was not provided and may have been small, and further noted that the potential for confounding by socioeconomic factors was not addressed.

NAS noted that the Kang et al. (2000) environmental study on gynecologic cancers among female Vietnam veterans provided some evidence that service in Vietnam does not substantially increase the risk of uterine, ovarian or cervical cancer, but the report made no attempt to examine exposures to herbicides or TCDD in Vietnam.

NAS found that no strong studies addressing female reproductive cancers

in relation to herbicides or their contaminants had been conducted since Update 2000. They concluded that there was no information contained in the research reviewed for Update 2002 to change the conclusion that there is inadequate or insufficient evidence to determine whether an association exists between exposure to herbicides and cancers of the female reproductive system.

Taking account of the available evidence and NAS" analysis, the Secretary has found that the credible evidence against an association between herbicide exposure and cancers of the female reproductive system outweighs the credible evidence for such an association, and he has determined that a positive association does not exist.

Urinary Bladder Cancer

Urinary bladder cancer is the most common of the genitourinary tract cancers. Bladder cancer incidence increases greatly with age over 40 years. The most important known risk factor for bladder cancer is smoking. Occupational exposures to aromatic amines (also called arylamines), polycyclic aromatic hydrocarbons (PAHs), and certain other organic chemicals used in the rubber, leather, textile, paint products, and printing industries are also associated with higher incidence of bladder cancer. High-fat diets have been implicated as risk factors, along with exposure to the parasite Schistosoma haematobium. Exposure to inorganic arsenic is also a risk factor for bladder cancer, and cacodylic acid is a metabolite of inorganic arsenic. The data remain insufficient to conclude that studies of inorganic arsenic exposure are directly relevant to exposure to cacodylic acid. Therefore, NAS did not consider the literature on inorganic arsenic.

NAS noted in VAO and Update 1996 that there was limited or suggestive evidence of no association between exposure to herbicides used in Vietnam or the contaminant dioxin and urinary bladder cancer. NAS, beginning with Update 1998, changed that conclusion to inadequate or insufficient information regarding an association.

In Update 2002, NAS reviewed an updated occupational study of mortality in Dow chemical workers potentially exposed to herbicides (Burns CJ, Beard KK, Cartmill JB. 2001. Mortality in chemical workers potentially exposed to 2,4-dichlorophenoxyacetic acid (2,4-D) 1945–1994: an update. Occupational and Environmental Medicine 58(1):24–30), which found no increased risk of mortality due to bladder cancer.

NAS also reviewed Revich *et al.* (2001), in which an increase in age-adjusted bladder cancer incidence was shown in Chapaevsk compared to the Samara Region of the Russian Republic. NAS noted, however, that the study did not control for occupation and smoking history, and there was no information on the number of cases included in the analysis or the completeness of surveillance for cancer in Chapaevsk and the Samara region.

In Update 2002, NAS concluded that there is no evidence to support changing the "inadequate or insufficient" categorization for bladder cancer.

Taking account of the available evidence and NAS" analysis, the Secretary has found that the credible evidence against an association between herbicide exposure and urinary bladder cancer outweighs the credible evidence for such an association, and he has determined that a positive association does not exist.

Renal Cancer

Renal cancer is twice as common in men as in women. With the exception of Wilm's tumor, which is more likely to occur in children, renal cancer is more common in individuals over age 50. Smoking is a well-established risk factor for renal cancer. Other potential risk factors include diet, weight, and occupational exposure to asbestos and cadmium. Firefighters, who are routinely exposed to the decomposition of organic substances caused by a rise in temperature, are a known higher-risk group.

NAS noted in VAO and subsequent reports that there was inadequate or insufficient information to determine whether an association exists between exposure to herbicides and renal cancer.

In Update 2002, NAS reviewed an updated occupational study of mortality in Dow chemical workers potentially exposed to herbicides (Burns *et al.*, 2001), which concluded that there was no evidence of an association between exposure to 2,4–D and mortality due to renal cancer. NAS noted that this study has low precision due to the small number of deaths from renal cancer.

NAS also reviewed the results of Revich *et al.* (2001), which found age-adjusted incidence of renal cancer to be similar between Chapaevsk and the Samara region. Incidence rates of renal cancer in all of Russia was slightly lower. However, NAS noted that no information was given on the number of cases in the calculation of those incidence rates or the stability of those rates in previous years, and does not consider confounders other than age.

NAS stated that there is no information contained in the research reviewed for Update 2002 to change the conclusion that there is inadequate or insufficient evidence to determine whether an association exists between exposure to herbicides and renal cancer.

Taking account of the available evidence and NAS analysis, the Secretary has found that the credible evidence against an association between herbicide exposure and renal cancer outweighs the credible evidence for such an association, and he has determined that a positive association does not exist.

Testicular Cancer

Testicular cancer is far more likely in men younger than 40 than in those who are older. Undescended testicles is a major risk factor for testicular cancer. Family history of the disease also appears to be a risk factor for testicular cancer.

NAS noted in VAO and subsequent reports that there was inadequate or insufficient information to determine whether an association exists between exposure to herbicides and testicular cancer.

In Update 2002, NAS reviewed an update of an occupational study of mortality in chemical workers at Dow Chemical Company (Burns *et al.*, 2001). One death from testicular cancer was identified among 1,517 male Dow employees. The study concluded that there is no significant risk of testicular cancer in this cohort. NAS concluded that the updated study analysis provided no evidence to suggest that chronic herbicide exposure increases the risk of testicular cancer.

Taking account of the available evidence and NAS' analysis, the Secretary has found that the credible evidence against an association between herbicide exposure and testicular cancer outweighs the credible evidence for such an association, and he has determined that a positive association does not exist.

Leukemia (Other than chronic lymphocytic leukemia (CLL))

There are four primary types of leukemia: The acute and chronic forms of lymphocytic leukemia and the acute and chronic forms of myeloid (or granulocytic) leukemia.

Acute lymphocytic leukemia (ALL) is a disease of the young and of individuals older than 70, and plays a small role in the age groups that characterize most Vietnam veterans. Exposure to high doses of ionizing radiation is a known risk factor. Acute myeloid leukemia (AML) is the most common leukemia among adults. Risk factors for AML include high doses of ionizing radiation, occupational exposure to benzene, and some medications used in cancer chemotherapy. Genetic disorders including Fanconi's anemia and Down's syndrome are associated with an increased risk for AML. Tobacco smoking has been suggested as a risk factor.

The incidence of chronic myeloid leukemia (CML) increases with age for individuals over 30. For individuals in the age groups that characterize most Vietnam veterans, CML accounts for about one in five leukemias. CML is associated with an acquired chromosomal abnormality known as the "Philadelphia chromosome." Exposure to high doses of ionizing radiation is a known risk factor for that abnormality.

NAS noted in VAO and subsequent reports that there is inadequate or insufficient information to determine whether an association exists between exposure to herbicides and leukemia. Because CLL, the most common form of leukemia, shares many traits with lymphomas, NAS reviewed it separately from the other leukemias in Update 2002.

In Update 2002, NAS reviewed one new occupational study (Burns *et al.*, (2001)) which reported data on a cohort male workers involved in the manufacture or formulation of 2,4–D. Mortality from leukemia in the entire cohort was similar to rates in all U.S. males. Similar results were obtained in an analysis based on a 20-year induction period. In the comparison with nonexposed workers, an excess in lymphopoietic mortality was noted in workers with high-cumulative-dose exposure to 2,4–D. NAS noted, however, that at least some of the deaths may have been due to Hodgkin's disease or multiple myeloma.

In another occupational study, cancer incidence and mortality were assessed in a cohort of 504 forestry workers in Sweden who were characterized by presence or absence of exposure to phenoxy herbicides in 1954–1967 (Thorn A, Gustavsson P, Sadigh J, Westerlund-Hannerstrand B, Hogstedt C 2000. Mortality and cancer incidence among Swedish lumberjacks exposed to phenoxy herbicides. Occupational and Environmental Medicine 57:718–720). No cases of leukemia occurred in the exposed members of this cohort.

In an environmental study, Revich *et al.* (2001) analyzed data on cancer incidence and mortality in Chapaevsk, Russia. Mortality due to leukemia during the years 1995–1998 was compared with mortality in the Samara region as a whole. Age-adjusted incidences during 1998 were reported for leukemia and lymphoma combined. The rates in Chapaevsk were lower than in the Samara region in men but higher in women. NAS noted a number of weaknesses contained in this study, including failure to report the actual number of cases, failure to calculate confidence intervals, and lack of adjustment for factors other than age.

NAS found no compelling or consistent evidence of an association with exposure to herbicides contained in the new reports reviewed for Update 2002 to change the conclusion that there is inadequate or insufficient evidence to determine whether as association exists between exposure to herbicides and leukemia (other than CLL).

Taking account of the available evidence and NAS' analysis, the Secretary has found that the credible evidence against an association between herbicide exposure and leukemia (other than CLL) outweighs the credible evidence for such an association, and he has determined that a positive association does not exist.

Abnormal Sperm Parameters and Infertility

NAS noted in VAO and subsequent reports that there is inadequate or insufficient information to determine whether an association exists between exposure to herbicides and altered sperm parameters or infertility.

In Update 2002, NAS reviewed the results of an environmental study which assessed whether exposure to heavy metals, PCBs, volatile organic compounds, and polycyclic aromatic hydrocarbons is related to early reproductive effects. (Staessen JA, Nawrot T, Hond ED, Thijs L, Fagard R, Hoppenbrouwers K, Koppen G, Nelen V, Schoeters G, Vanderschueren D, Van Hecke E, Verschaeve L, Vlietinck R, Roels HA. 2001. Renal function, cytogenetic measurements, and sexual development in adolescents in relation to environmental pollutants: a feasibility study of biomarkers. Lancet 357(9269):1660–1669. [Comment in Lancet 2001. 358(9295):1816–1817.]) The study compared 100 17-year-old lifetime residents of two highly exposed suburbs of Antwerp, Belgium, with 100 17-year-old lifetime residents of a rural control community. Concentrations of several environmental agents, including dioxin-like compounds in serum samples, were found to be higher in the two suburban locations than in the control community, after adjustment for sex, body-mass index (BMI), weeks of breastfeeding, parental social class, and dietary fat intake. NAS noted that the results indicate that children in the two suburban locations experienced substantial and statistically significant delays in sexual maturation and lower testicular volume. NAS further noted that the results of this study support a potential effect on male reproductive capacity, but that the implication for Vietnam veterans remains unclear, inasmuch as most veterans were past their pubertal development during their tours of duty.

NAS also discussed a review of medical literature (Figá-Talamance I, Traina ME, Urbani E. 2001. Occupational exposures to metals, solvents, and pesticides: recent evidence on male reproductive effects and biological markers. Occupational Medicine 51(3): 174–88.), the authors of which concluded that there is insufficient evidence to conclude that the use of pesticides leads to significantly higher risk to human reproduction.

NAS stated that there is no information in the research reviewed for Update 2002 to change the conclusion that there is inadequate or insufficient evidence to determine whether an association exists between exposure to herbicides and altered sperm parameters or infertility.

Taking account of the available evidence and NAS' analysis, the Secretary has found that the credible evidence against an association between herbicide exposure and reproductive effects in veterans outweighs the credible evidence for such an association, and he has determined that a positive association does not exist.

Parkinson's Disease and Parkinsonism

Because of the increasing concern that a link exists between Parkinson's disease (PD) and various chemicals used in herbicides, NAS, in VAO and subsequent reports, suggested that as Vietnam veterans move into the age groups when PD is more prevalent, attention be given to the frequency and character of new cases of PD in exposed versus nonexposed individuals.

NAS noted in VAO and subsequent reports that there is inadequate or insufficient information to determine whether an association exists between exposure to herbicides and PD.

In Update 2002, NAS reviewed an occupational study in which 238 subjects exposed to pesticides in an occupational setting and 72 nonexposed controls were examined for the presence of parkinsonism. (Engel LS, Checkoway H, Keifer MC, Seixas NS, Longstreth WT, Scott KC, Hudnell K, Anger WK, Camicioli R. 2001. Parkinsonism and occupational exposure to pesticides.

Occupational and Environmental Medicine 58:582–589.) NAS stated that the overall results of this study are similar to those of many other studies reviewed in Update 2000, in which an association with many years of occupational exposure is associated with parkinsonism but no association is found with any individual pesticide or class of pesticides.

NAS also reviewed a prospective cohort study with 30 years of follow up on 7,986 Japanese-American men (Honolulu Heart Program) who worked on sugar cane and pineapple plantations in Hawaii to determine whether working on a plantation or exposure to pesticides is associated with an increased risk of PD. (Petrovich *et al.* (2002, in press).) The study showed that as the duration of work increased, pesticide exposure increased significantly. NAS stated that even though age-adjusted incidence of PD increased with increasing pesticide exposure, the trend was not significant. Those with over 20 years of plantation work had twice the risk of PD of those with no plantation work. With 10 years of plantation work or less, there was no increase in risk of PD, but a significant trend of increased risk occurred with further years of exposure.

NAS noted that an association of PD with exposure to 2,4–D, 2,4,5–T, or TCDD is not reported in any of the studies.

Based on the totality of the evidence, NAS concluded that there remains inadequate or insufficient evidence of an association between exposure to herbicides and PD.

Taking account of the available evidence and NAS' analysis, the Secretary has found that the credible evidence against an association between herbicide exposure and PD outweighs the credible evidence for such an association, and he has determined that a positive association does not exist.

Amyotrophic Lateral Sclerosis (ALS)

ALS is a progressive motor neuron disease with adult onset that presents with muscle atrophy, weaknesses, and fasciculations. The incidence of ALS peaks between the ages of 55 to 75 years. Known risk factors for ALS are age and a family history of ALS. Interest in the role of occupational or environmental exposure originated in cases of motor neuron disease associated with exposure to heavy metals, chemical plants, animal carcasses, heavy manual labor, work with electricity, pneumatic tools, work in the plastic industry, and work as a truck driver.

In Update 2002, NAS summarized the results of five epidemiologic studies of pesticide exposure and ALS. One study found the association between pesticides and ALS was not statistically significant but was positive. (Deapen DM, Henderson BE. 1986. A case-control study of amyotrophic lateral sclerosis. American Journal of Epidemiology 123:790–799.) In another study, no statistically significant associations were found between ALS and several risk factors, including agricultural chemicals and organic solvents, although there was a positive association between ALS and agricultural chemicals. (Savettieri G, Salemi G, Arcara A, Cassata M. Castiglione MG, Fierro B. 1991. A case-control study of amyotrophic lateral sclerosis. Neuroepidemiology 10:242–245.)

A case-control epidemiologic study in Scotland of 103 ALS cases from a Scottish motor neuron disease register and 103 age- and sex-matched controls identified risk factors for development of the disease. (Chancellor AM, Slattery JM, Fraser H. 1993. Risk factors for motor neuron disease: A case-control study based on patients from the Scottish motor neuron disease register. Journal of Neurology, Neurosurgery, and Psychiatry 56:1200–1206.) Significant differences with increased exposure in cases were found for occupational exposure to lead and "solvent/chemicals." NAS noted that occupational pesticide exposure was not significantly different but did have a positive association.

The results of a mortality study of male employees of the Dow Chemical Company (Burns *et al.*, 2001) showed three deaths due to ALS. The study found a significantly increased relative risk of death due to ALS. All three died more than 20 years after their first exposure; duration of employment was 1.3, 1.8, and 12.5 years.

A population-based case-control epidemiologic study was conducted to examine the relationship between ALS and occupational exposures to metals, solvents, and agricultural chemicals. (McGuire V, Longstreth WT, Nelson LM, Koepsell TD, Checkoway H. Morgan MS, van Belle G. 1997. Occupational exposure and amyotrophic lateral sclerosis: A population-based case-control study. American Journal of Epidemiology 145:1076–1088.) Exposure to metals and solvents was not associated with ALS. Association between exposure to agricultural chemicals and ALS was observed in men. Exposure to specific agricultural chemicals, such as herbicides, did not pose a significantly increased risk of ALS. Excess exposure to agricultural chemicals from accidents or spills was associated with ALS, but this accounted for six cases and only three controls. NAS noted that the careful attention to exposure assessment in this study makes the association between agricultural chemicals and ALS intriguing, but that there are few exposed subjects and further studies are needed.

NAS concluded that there is inadequate or insufficient evidence of an association between exposure to herbicides and motor neuron disease or ALS.

Taking account of the available evidence and NAS' analysis, the Secretary has found that the credible evidence against an association between herbicide exposure and ALS outweighs the credible evidence for such an association, and he has determined that a positive association does not exist.

Chronic Persistent Peripheral Neuropathy

NAS noted in VAO and subsequent reports that there was inadequate or insufficient evidence of an association between exposure to herbicides and chronic persistent peripheral neuropathy.

A publication relating serum TCDD and peripheral neuropathy from the 1982, 1985, 1987, 1992, and 1997 examinations of the Ranch Hand study found significantly increased risk of peripheral neuropathy among Ranch Hand veterans in the high-exposure category in 1997. (Michalek JE, Akhtar FZ, Arezzo JC, Garabrant DH, Albers JW. 2001. Serum dioxin and peripheral neuropathy in veterans of operation ranch hand. Neurotoxicology 22:479–490.) NAS noted a major problem in the interpretation of TCDD effects on the peripheral nerves in light of the presence of diabetes and preclinical diabetes in the majority of the cases identified. NAS also noted that the cases of probable and possible peripheral neuropathy were identified for the first time in 1992 and 1997, with prior examinations being normal. NAS determined that these findings weakened the ability to implicate TCDD exposure as the etiologic agent given that the peripheral nerve is known to repair itself after cessation of exposure or after diminution of the body burden of the responsible toxicant.

NAS concluded that there remains inadequate or insufficient evidence of an association between exposure to herbicides and chronic persistent peripheral neuropathy.

Taking account of the available evidence and NAS' analysis, the Secretary has found that the credible evidence against an association between herbicide exposure and chronic persistent peripheral neuropathy outweighs the credible evidence for such an association, and he has determined that a positive association does not exist.

Lipid and Lipoprotein Disorders

Plasma lipid (notably cholesterol) concentrations have been shown to predict cardiovascular disease and are considered fundamental to the underlying atherosclerotic process. The two major types of lipids, cholesterol and triglycerides, are carried in the blood attached to proteins to form lipoproteins. NAS in VAO and subsequent reports found there was inadequate or insufficient information to determine whether an association exists between exposure to herbicides and lipid and lipoprotein disorders.

An occupational study of 92 workers at a municipal waste incinerator in Japan included measures of serum polychlorinated dibenzo-p-dioxins (PCDD) and self-reported history of a number of diseases and health-related conditions. (Kitamura K, Kikuchi Y, Watanabe S, *et al.* Health effects of chronic exposure to polychlorinated dibenzo-p-dioxins (PCDD), dibenzofurans (PCDF) and coplanar PCB (Co-PCB) of municipal waste incinerator workers. Journal of Epidemiology 2000;10:262–270.) Eight of the 92 subjects reported having been diagnosed with high cholesterol.

NAS noted that this study's contribution to the literature is limited for a number of reasons: the study is cross-sectional, so there is no opportunity to establish that the exposure clearly preceded the outcome; the sample is small; the exposure is an aggregate measure of PCDD (with TCDD as only one component); and the measure of high cholesterol is based solely on self-report. NAS stated that, because of those limitations, the study does not change the inconclusive status of the epidemiologic evidence on the relationship between exposure to herbicides and high serum lipids.

Taking account of the available evidence and NAS' analysis, the Secretary has found that the credible evidence against an association between herbicide exposure and lipid and lipoprotein disorders outweighs the credible evidence for such an association, and he has determined that a positive association does not exist.

Gastrointestinal and Digestive Disease, Including Liver Toxicity

Gastrointestinal and digestive disease includes diseases of the esophagus, stomach, intestines, rectum, liver, and pancreas. NAS, in VAO and subsequent reports, found there was inadequate or insufficient information to determine whether an association exists between exposure to herbicides and gastrointestinal and digestive disease, including liver toxicity.

An occupational study reported on two cases of heavy TCDD intoxication, and presented a 2-year follow-up. (Geusau A, Abraham K, Geissler K, Sator MO, Stingl G. Tschachler E. 2001. Severe 2,3,7,8-tetrachlorodibenzo-p-dioxin (TCDD) intoxication: clinical and laboratory effects. Environmental Health Perspectives 109(8):865–869.) One patient, a 30-year-old woman, presented with chloracne and had the highest TCDD concentration ever recorded in a human. The other patient was a 27-year-old woman who worked in the same room as the first patient. Both patients experienced gastrointestinal symptoms, including nausea, vomiting, epigastric pain, and loss of appetite, which lasted about 4 months. Liver function studies were within the normal limits, except for one value in the first patient of alkaline phosphatase at 1.5 times the upper limit of normal. Apart from the chloracne and gastrointestinal symptoms, few clinical signs or symptoms were observed in the acute phase of the intoxication.

In a report evaluating hepatic abnormalities in Vietnam veterans of Operation Ranch Hand, the authors examined exposure to TCDD and the prevalence of liver disease and hepatomegaly through March 1993 in relation to tests of liver function at the 1992 physical examination. (Michalek JE, Ketchum NS, Longnecker MP. 2001. Serum dioxin and hepatic abnormalities in veterans of Operation Ranch Hand. Annals of Epidemiology 11(5):304–311.) Hepatomegaly among veterans in the high-exposure category was slightly higher than that in nonexposed veterans in the comparison category. The prevalence of nonspecific liver disorders increased across categories of TCDD exposure and among Ranch Hands in the high-exposure category. The study authors and NAS noted that the significance of those findings may be limited because heightened levels of the enzyme GGT, an abnormality sometimes reported in association with TCDD exposure, may also be caused by alcohol consumption, and the mean GGT in the high-exposure group was significantly increased among veterans with history of light to moderate drinking. The authors concluded that evidence of clinically significant liver disease was limited to the increase in hepatomegaly, and that the increased GGT could have been due to confounding.

NAS stated that the evaluation of the effects of herbicide exposure on noncancer gastrointestinal ailments is very difficult, due to limitations of medical history and physical examination in diagnosing such ailments and the strong interdependence between individual characteristics of a person and the body burden of TCDD.

NAS concluded that there was no information contained in the research reviewed for Update 2002 to change the conclusion that there is inadequate or insufficient evidence to determine whether an association exists between exposure to herbicides and gastrointestinal and digestive diseases.

Taking account of the available evidence and NAS' analysis, the Secretary has found that the credible evidence against an association between herbicide exposure and gastrointestinal and digestive disease outweighs the credible evidence for such an association, and he has determined that a positive association does not exist.

Immune System Disorders

The immune system is responsible for protecting the body against invasion by infectious microorganisms. NAS noted in VAO and subsequent reports that there was inadequate or insufficient information to determine whether an association exists between exposure to herbicides and immune system disorders.

No relevant occupational, environmental, or Vietnam-veteran studies were published subsequent to Update 2000.

NAS concluded that there was no information reviewed for Update 2002 to change the conclusion that there is inadequate or insufficient evidence to determine whether an association exists between exposure to herbicides and immune system disorders.

Taking account of the available evidence and NAS' analysis, the Secretary has found that the credible evidence against an association between immune system disorders and herbicide exposure outweighs the credible evidence for such an association, and he has determined that a positive association does not exist.

Circulatory Disorders

NAS noted in VAO and subsequent reports that there was inadequate or

insufficient information to determine whether an association exists between exposure to herbicides and circulatory disorders.

In Update 2002, NAS noted that there is growing evidence that exposure to inorganic arsenic is a risk factor for cardiovascular disease, and cacodylic acid (DMA) is a metabolite of inorganic arsenic. However, the data remain insufficient to conclude that studies of inorganic arsenic exposure are directly relevant to exposure to cacodylic acid. Therefore, the literature on inorganic arsenic was not considered by NAS.

NAS reviewed an occupational study of mortality in male workers at a Dow chemical plant (Burns *et al.*, 2001). NAS stated that mortality due to circulatory conditions among the workers was similar to that experienced by U.S. white males in general. NAS noted that mortality analyses of other occupational cohorts have tended to find cardiovascular effects among the more highly exposed workers, but that a dose-specific analysis of the data on this outcome was not reported.

A cross-sectional occupational study was conducted in 1998 to assess the association between serum PCDD and a variety of health conditions in a sample of workers employed at a municipal waste incinerator in Japan (Kitamura *et al.*, 2000). Fourteen of the 92 workers participating in the study reported a history of hypertension. No information was provided on the date of this diagnosis relative to dates of employment at the plant. The coefficients for the categories of PCDD were reported as not statistically significant, but the values of the coefficients and their standard errors were not given.

In an environmental study, a survey was administered to 727 adult residents of farming households and 262 residents of nonfarming households. (Masley ML, Semchuk KM, Senthilselvan A, at al. Health and environment of rural families: results of a community canvass survey in the Prairie Ecosystem Study. Journal of Agricultural Safety and Health 2000;6:103–115.) The survey included questions about the use of pesticides and fertilizers and a number of health conditions and symptoms that might be associated with agricultural exposures. Physician-diagnosed hypertension and heart disease were reported by 154 and 44 survey respondents, respectively. Neither condition was associated with residing on a farm. No information was provided on the validity of measurement of the self-reported health conditions, and the report did not examine more specific associations with pesticide or fertilizer use.

NAS noted that neither Kitamura *et al.* (2000) nor Masley *et al.* (2000) provided data on validation from medical records or direct measurement of blood pressure, that some misclassification is likely (with false negatives being more common than false positives), and that both studies used nonspecific assessment of exposure. NAS further noted the possibility that the null findings on hypertension in these studies reflect the influence of misclassification that led to bias toward the null.

Mortality from cardiovascular diseases was examined by Revich *et al.* (2001) in their study of multiple health outcomes among the residents of Chapaevsk. The authors reported that mortality from cardiovascular diseases in men was 1.14 times greater than the mortality rate for Russia as a whole, and that the difference in mortality was especially pronounced in men 30 to 49 years old. The authors also noted, however, that trends in mortality were directly related to trends in unemployment, which NAS noted suggests the simultaneous effects of other aspects of the environment in the area.

NAS concluded that there is no information contained in the research reviewed for Update 2002 to change the conclusion that there is inadequate or insufficient evidence to determine whether an association exists between exposure to herbicides and circulatory disorders.

Taking account of the available evidence and NAS' analysis, the Secretary has found that the credible evidence against an association between herbicide exposure and circulatory disorders outweighs the credible evidence for such an association, and he has determined that a positive association does not exist.

Respiratory Disorders

The major risk factor for both acute and chronic respiratory disorders is cigarette smoking. Cigarette smoking is a major confounding factor in interpreting the literature on risk factors for respiratory disease. NAS noted in VAO and subsequent reports that there was inadequate or insufficient information to determine whether an association exists between exposure to herbicides and nonmalignant respiratory disorders.

In Update 2002, NAS reviewed an occupational study of a cohort of male employees of the Dow Chemical Company (Burns *et al.*, 2001). No excess mortality from nonmalignant respiratory disorders was demonstrated.

NAS concluded that there is no information contained in the research reviewed for Update 2002 to change the conclusion that, except for respiratory cancers, there is inadequate or insufficient evidence to determine whether an association exists between exposure to herbicides and respiratory disorders.

Taking account of the available evidence and NAS' analysis, the Secretary has found that the credible evidence against an association between herbicide exposure and respiratory disorders other than respiratory cancers outweighs the credible evidence for such an association, and he has determined that a positive association does not exist.

Skin Cancer

NAS noted in VAO and subsequent reports that there was inadequate or insufficient information to determine whether an association exists between exposure to herbicides and skin cancer. NAS discussed the evidence concerning two categories of skin cancer: Melanoma and nonmelanoma (basal-cell and squamous-cell).

In Update 2002, NAS reviewed an occupational study of mortality in a cohort of male Dow Chemical Company workers (Burns *et al.*, 2001). No deaths due to skin cancer of any type were reported in the study.

NAS also reviewed an occupational study which analyzed cancer incidence and mortality in a cohort of forestry workers in Sweden (Thorn *et al.*, 2000). The observed frequency of cancer was compared with expected values on the basis of data on the population of Sweden. One case of melanocytic skin cancer was recorded in an exposed female worker. Nonmelanocytic skin cancer was diagnosed in one exposed foreman, and in three nonexposed workers. The report found increased risks for both types of skin cancer, but the findings were not statistically significant and were limited by the small number of cases.

An environmental study analyzed cancer incidence and mortality in Chapaevsk, Russia (Revich *et al.*, 2001). Mortality data were not reported for skin cancer. The age-adjusted incidence of melanoma in Chapaevsk relative to the Samara region during 1998 was somewhat lower in men but notably higher in women. The age-adjusted incidence of skin cancers other than melanoma was similar in men and somewhat higher in women. NAS noted that the number of cases was not given, hypothesis testing and interval estimation were not performed, and no confounding factors were considered besides age. NAS noted that the lack of complete information prevented conclusions based on the study.

NAS stated that the new studies add little information on the association between exposure to herbicides and the incidence of skin cancer.

NAS concluded that there is no information contained in the research reviewed for Update 2002 to change the conclusion that there is inadequate or insufficient evidence to determine whether an association exists between exposure to herbicides and skin cancer.

Taking account of the available evidence and NAS' analysis, the Secretary has found that the credible evidence against an association between herbicide exposure and skin cancer outweighs the credible evidence for such an association, and he has determined that a positive association does not exist.

Cognitive and Neuropsychiatric Effects

NAS noted in VAO and subsequent reports that there was inadequate or insufficient information to determine whether an association exists between exposure to herbicides and cognitive and neuropsychiatric effects.

Results of a Vietnam veteran study of cognitive functioning from an Air Force Health Study (AFHS) examination in 1982 were reviewed by NAS in Update 2002. (Barrett DH, Morris RD, Akhtar FZ, Michalek JE. 2001. Serum dioxin and cognitive functioning among veterans of operation ranch hand. Neurotoxicology 22:491–502.) NAS noted that cognitive functioning in the Ranch Hand veterans evaluated with about 33 measures assessed through a variety of tests found eight significant group differences that did not support a dose-effect relationship with TCDD; that is, worse performance was seen in the background or low-TCDD groups. Ranch Hand veterans with the highest TCDD exposure had significantly lower scores on Logical Memory (Wechsler Memory Scale Form 1 (WMS)). NAS stated that finding could be attributed to chance alone and was not in agreement with other administered tests of verbal memory. NAS further stated that overall, the significant weaknesses in the study design, analyses, and interpretation of the results in the examination of serum TCDD and cognitive functioning in the Ranch Hand veterans prevent an association between exposure and neuropsychologic effects from being established.

In Update 2002, NAS reviewed a 30-year follow-up occupational study of 13 men in Czechoslovakia with TCDD exposure during the production of 2,4,5–T. (Pelclova D, Fenclova Z, Dlaskova Z, Urban P, Lukas E, Prochazka B, Rappe C. 2001. Biochemical, neuropsychological, and neurological abnormalities following 2,3,7,8-tetrachlorodibenzo-p-dioxin (TCDD) exposure. Archives of Environmental Health 56:493–500.) TCDD was correlated significantly with the memory quotient from WMS, the verbal IQ from the Wechsler Adult Intelligence Scale-Revised (WAIS–R), and the Benton test of visual memory. Age-corrected norms were used to determine abnormal performance. Education did not affect the results, but no demographic data on education were presented. Ten of 13 subjects drank alcohol daily, but this was not taken into account in the analyses. NAS reported that the low-voltage electroencephalogram with increased beta activity seen in 7 subjects could be related to the daily alcohol consumption. NAS further noted that it is not possible to determine the relationship between TCDD and cognitive functioning without attention to confounding.

An environmental study (Gauthier E, Fortier I, Courchesne F, Pepin P, Mortimer J, Gauvreau D. 2001. Environmental pesticide exposure as a risk factor for Alzheimer's disease: A case-control study. Environmental Research Section A 86:37–45) found that long-term exposure to herbicides and insecticides was not significantly related to the development of Alzheimer's disease. Occupational exposure to neurotoxic substances, including pesticides, was also not significantly related to Alzheimer's disease.

NAS concluded that there is still inadequate or insufficient evidence to determine whether an association exists between exposure to herbicides and cognitive and neuropsychiatric effects.

Taking account of the available evidence and NAS' analysis, the Secretary has found that the credible evidence against an association between herbicide exposure and cognitive and neuropsychiatric effects outweighs the credible evidence for such an association, and he has determined that a positive association does not exist.

Gastrointestinal Tract Tumors

The incidence of stomach, colon, rectal, and pancreatic cancers increases with age for individuals between 45 and 59 years old. Other risk factors vary for these cancers but always include family history of the same form of cancer, certain diseases of the affected organ, and dietary factors.

NAS noted in VAO and subsequent reports that there was limited or suggestive evidence of no association between exposure to herbicides and gastrointestinal (GI) tract tumors.

An occupational study (Burns *et al.*, 2001) of mortality of male employees of the Dow Chemical Company found fewer deaths than expected from all malignant neoplasms and specifically cancers of the digestive organs and peritoneum.

An environmental study of residents of Chapaevsk, Russia (Revich *et al.*, 2001) showed a higher incidence of colon cancer in males than Russia as a whole or the Samara region of Russia. Female residents of Chapaevsk did not have a higher incidence. However, female residents of Chapaevsk did have a higher incidence of stomach cancer than Russia or Samara. Male residents of Chapaevsk had a lower incidence of stomach cancer than Russia, but higher than Samara. Both male and female residents of Chapaevsk had a lower incidence of rectal cancer than Russia or Samara. NAS stated that, because of the lack of adjustment for confounding, the likelihood of multiple exposures, the absence of information on the completeness and accuracy of cancer diagnoses, and the ecologic study design, this study provides little evidence for associations with gastrointestinal cancers.

NAS concluded that there was no new evidence to change the previous determination that there is limited or suggestive evidence of no association between exposure to herbicides and gastrointestinal tract cancer.

Taking account of the available evidence and NAS' analysis, the Secretary has found that the credible evidence against an association between herbicide exposure and gastrointestinal tract cancer outweighs the credible evidence for such an association, and he has determined that a positive association does not exist.

Brain Tumors

Exposure to ionizing radiation is an established risk factor for brain cancer. Several other potential factors have been examined, but most brain cancers are not associated with any known risk factors. Brain cancer occurs relatively infrequently.

NAS noted in VAO and subsequent reports that there was limited or suggestive evidence of no association between exposure to herbicides and brain tumors.

Two occupational studies published since Update 2000 were reviewed by

NAS in Update 2002. Both studies (Burns *et al.*, 2001; Thorn *et al.*, 2000) demonstrated no excess mortality from brain cancer. NAS noted, however, that both studies were small and had limited power to detect an increase in an uncommon outcome.

NAS concluded that there was no new evidence to change the previous determination that there is limited or suggestive evidence of no association between exposure to herbicides and brain tumors.

Taking account of the available evidence and NAS' analysis, the Secretary has found that the credible evidence against an association between herbicide exposure and brain tumors outweighs the credible evidence for such an association, and he has determined that a positive association does not exist.

AL Amyloidosis

Amyloidosis refers to a group of diseases in which insoluble fibrillar proteins (amyloid) accumulate in tissues to a point that causes organs to malfunction. NAS reviewed AL amyloidosis (also sometimes referred to as primary amyloidosis), in which the light chain of immunoglobulin molecules is the aberrant protein. AL amyloidosis is the most common form of amyloidosis in the United States.

NAS in Update 2000 found there was inadequate or insufficient information to determine whether an association exists between exposure to herbicides and AL amyloidosis.

No relevant occupational, environmental, or Vietnam-veteran studies have been published since Update 2000.

NAS concluded that there is no information to change the conclusion that there is inadequate or insufficient evidence to determine whether an association exists between exposure to herbicides and AL amyloidosis.

Taking account of the available evidence and NAS' analysis, the Secretary has found that the credible evidence against an association between herbicide exposure and amyloidosis outweighs the credible evidence for such an association, and he has determined that a positive association does not exist.

Endometriosis

NAS reviewed endometriosis for the first time in Update 2002.

Endometrium is the tissue that lines the inside of the uterus. In endometriosis, endometrium is found outside the uterus, usually in other parts of the reproductive system, the abdomen, or the tissues near the reproductive organs, and results in inflammation, internal bleeding, and degeneration of blood and tissue which can cause scarring, pain, infertility, adhesions, and intestinal problems. The cause of endometriosis is unknown.

Suspicion that TCDD is involved in the etiology of endometriosis began after the observation that the incidence of endometriosis was higher in monkeys treated with low doses of TCDD than in control monkeys.

In Update 2002, NAS reviewed a study which analyzed blood TCDD concentrations in 79 women who were being evaluated for infertility, 44 of whom were diagnosed with endometriosis by laparoscopy. (Mayani A, Barel S, Soback S, and Almagor M. 1997. Dioxin concentration in women with endometriosis. Human Reproduction. 12:373–375.) Eight of the 44 women with endometriosis were positive for TCDD compared with one of the 35 controls. NAS noted that the number of subjects in this study is small, the ethnic distribution differed, and the limit of TCDD detection was not clear. Although the study reported an increased risk, the confidence interval was very wide and the finding was not statistically significant.

Another study assessed whether TCDD toxic equivalents (TEQs) in serum are associated with endometriosis in an infertile population of women who enrolled in fertility treatment. (Pauwels A, Schepens PJ, D'Hooghe T, Delbeke L, Dhont M, Brouwer A, Weyler J. 2001. The risk of endometriosis and exposure to dioxins and polychlorinated biphenyls: A case-control study of infertile women. Human Reproduction. 16:2050–5.) The case-control study evaluated 42 women with endometriosis and 27 controls without endometriosis, but with infertility related to other causes. The authors reported no association between median total TEQs and endometriosis in infertile women.

NAS concluded that there is inadequate or insufficient evidence to determine whether an association exists between exposure to herbicides and endometriosis.

Taking account of the available evidence and NAS' analysis, the Secretary has found that the credible evidence against an association between herbicide exposure and endometriosis outweighs the credible evidence for such an association, and he has determined that a positive association does not exist.

Thyroid Homeostasis

NAS reviewed the thyrotoxic potential of herbicides for the first time in Update 2002.

The thyroid gland secretes hormones (T4 and T3) which stimulate metabolic rate. Secretion of T4 and T3 is under the control of thyroid-stimulating hormone (TSH), which is secreted by the anterior pituitary gland. The thyroid also secretes calcitonin, a hormone that controls calcium concentration in the blood and storage of calcium in bones. Chemical-induced alterations in thyroid homeostasis can adversely affect the development of many organ systems, including the nervous and reproductive systems. Most adverse effects are caused by lack of thyroid hormone alone rather than by increases in TSH. TCDD affects the concentrations of thyroid hormones; the effects appear to be species-dependent and may reflect both the dose and the duration of exposure. TCDD influences the metabolism of thyroid hormones and TSH. Studies of environmental exposure have emphasized thyroid alterations in prenatal and early childhood development rather than in adults.

One environmental study reviewed by NAS evaluated 38 mother-infant pairs, selected for normal birth weight and no complications. (Pluim HJ, Koppe JG, Olie K, Vd Slikke JW, Kok JH, Vulsma T, Van Tijn D, De Vijlder JJ. 1992. Effects of dioxins on thyroid function in newborn babies. Lancet. 339:1303.) In cord blood, the concentrations of total T4 and thyroxine-binding globulin (TBG) were suggestively higher in the high exposure group, but no other measurements approached significance. At 1 week, total T4 and the ratio of total T4 to TBG were significantly greater in the high-exposure than the low-exposure group, and the same was true at 11 weeks. TSH concentrations were also significantly higher at 11 weeks. When only infants who were breastfed for the full 11 weeks were considered, only the ratio of total T4 to TBG remained significantly different. In a subset of the births for which values were obtained in both the cord and 1-week samples, the increases in total T4 and in TBG were substantially higher in the high-exposure group. NAS stated that concerns about those results are related to the size of the study sample and the loss of nearly one-fourth of the maternal-blood samples and five of the cord-blood samples for all thyroid measurements. Several more samples were insufficient for some of the analyses.

A larger study of 105 mother-infant pairs conducted similar analyses. (Koopman-Esseboom C, Morse DC, Weisglas-Kuperus N, Lutkeschipholt IJ, Van der Paauw CG, Tuinstra LG, Brouwer A, Sauer PJ. 1994. Effects of dioxins and polychlorinated biphenyls on thyroid hormone status of pregnant women and their infants. Pediatric Research. 36:468–73.) TEQ correlated negatively with maternal pregnancy total T3 and maternal postdelivery total T3 and total T4; similar associations were seen for planar PCB TEQ and total PCB and TEQ, and the associations with total T3 were also observed for nonplanar PCB TEQ. In addition, all four TEQ measurements correlated positively with infant 2-week TSH, and all except the nonplanar PCB TEQ were positively associated with the infant 3-month TSH.

Another environmental study examined PCB concentrations in breast-milk specimens, without adjustment for lipids, in relation to thyroid hormones in cord serum in a population with background exposure. (Longnecker MP, Gladen BC, Patterson DG, Rogan WJ. 2000. Polychlorinated biphenyl (PCB) exposure in relation to thyroid hormone levels in neonates. Epidemiology 11:249–254.) They found little evidence of an association, although the direction of the coefficient for TSH in multiple-regression analysis was consistent with findings in other studies: increases in TSH with increases in PCBs. NAS stated that because non-dioxin-like PCBs are the most abundant, and PCBs are contaminated with furans, this study is not very informative for the effects of TCDD or the herbicides used in Vietnam.

Another environmental study examined TCDD-exposed workers at two plants who were engaged in the production of 2,4,5-T or one of its derivatives. (Calvert GM, Sweeney MH, Deddens J, Wall DK. 1999. Evaluation of diabetes mellitus, serum glucose, and thyroid function among United States workers exposed to 2,3,7,8-tetrachlorodibenzo-p-dioxin. Occupational and Environmental Medicine 56(4):270–276.) Referents were residents in the neighborhood of each worker, matched by age, race, and sex. Serum specimens were analyzed for TCDD, total T4, TSH, and thyroid hormone binding resin, and the free T4 index was calculated. The results showed that workers had a significantly higher adjusted mean free T4 index than referents, and the highest index was among those with the highest half-life extrapolated TCDD, but a clear dose-response relationship was not observed.

A Vietnam veteran study examined thyroid-hormone status in the AFHS cohort. (Pavuk M, Schecter AJ, Akhtar FZ, Michalek JE. Serum 2,3,7,8–Tetrachlorodibenzo-p-dioxin (TCDD) Levels and Thyroid Function in Air Force Veterans of the Vietnam War (in press).) At each of the 1982, 1985, 1987, 1992, and 1997 examinations, there was a trend toward an increasing concentration of TSH, which was not accompanied by changes in circulating T4 or in the percentage uptake of T3 (measured only in the earlier years). In a repeated-measures linear regression adjusted for age, race, and military occupation, the low-exposure and high-exposure Ranch Hands had TSH significantly higher than the comparison population. There was no evidence of changes in clinical thyroid disease. The percentage with abnormally high TSH was higher at each examination in the high-exposure group than in the comparison population, but these findings were not very precise.

After reviewing the relevant literature, NAS stated that although some effects on thyroid homeostasis have been observed, mainly in the perinatal period (the period shortly before and after birth), the functional importance of those changes is unclear because adaptive capacity may be adequate to accommodate them. NAS noted that the AFHS study demonstrated biologic changes in TSH levels, but without any accompanying effect on the health of the Ranch Hand veterans. NAS further stated that the evidence indicates that both infants and Ranch Hand personnel were able to adapt to the changes that may have been induced by higher body burdens of TCDD.

NAS concluded that there is inadequate or insufficient evidence to determine whether an association exists between exposure to herbicides and adverse effects on thyroid homeostasis.

Taking account of the available evidence and NAS' analysis, the Secretary has found that the credible evidence against an association between herbicide exposure and adverse effects on thyroid homeostasis outweighs the credible evidence for such an association, and he has determined that a positive association does not exist.

NAS reviewed scientific and medical articles published since the publication of its first report as an integral part of the process that resulted in "Veterans and Agent Orange: Update 2002." The comprehensive review and evaluation of the available literature which NAS conducted in conjunction with its report has permitted VA to identify all conditions for which the current body of knowledge supports a finding of an association with herbicide exposure. Accordingly, the Secretary has determined that there is no positive association between exposure to herbicides and any other condition for which he has not specifically determined that a presumption of service connection is warranted.

Approved: May 8, 2003.

Anthony J. Principi,

Secretary of Veterans Affairs.

[FR Doc. 03–12593 Filed 5–19–03; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

National Commission on VA Nursing; Notice of Meeting

The Department of Veterans Affairs (VA) gives notice under Public Law 92–463 (Federal Advisory Committee Act) that the National Commission on VA Nursing will hold its fifth meeting on June 11–12, 2003, at the Hyatt Regency Crystal City, 2799 Jefferson Davis Highway, Arlington, VA 22202. On Wednesday, June 11, the meeting will begin with registration at 8:30 a.m. and adjourn at 5 p.m. On Thursday, June 12, the meeting will begin at 8 a.m. and adjourn at 2 p.m. The meeting is open to the public.

The purpose of the Commission is to provide advice and make recommendations to Congress and the Secretary of Veterans Affairs regarding legislative and organizational policy changes to enhance the recruitment and retention of nurses and other nursing personnel in VA. The Commission is required to submit to Congress and the Secretary of Veterans Affairs a report, not later than two years from May 8, 2002, on its findings and recommendations.

On June 11, the Commission will discuss the findings of several recent surveys on nurse turnover and work environment, and will review testimony from Commission hearings held during April. On June 12, the Commission will focus most of its work on finalizing its interim report.

No time will be allocated at this meeting for receiving oral presentations from the public. However, members of the public may direct written questions or submit prepared statements for review by the Commission in advance of the meeting, to Ms. Oyweda Moorer, Director of the National Commission on VA Nursing, at Department of Veterans Affairs (108N), 810 Vermont Avenue, NW., Washington, DC 20420. Any member of the public wishing to attend the meeting should contact Ms. Stephanie Williams, Program Analyst at (202) 273–4944.

Dated: May 13, 2003.
By Direction of the Secretary.

E. Philip Riggin,

Committee Management Officer.

[FR Doc. 03–12594 Filed 5–19–03; 8:45 am]

BILLING CODE 8320–01–M

Corrections

Federal Register
Vol. 68, No. 97
Tuesday, May 20, 2003

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Clinical Center; Notice of Meeting

Correction

In notice document 03–12091 appearing on page 26325 in the issue of Thursday, May 15, 2003, make the following correction:

On page 26325, in the third column, in the second paragraph, in the second line, "closed" should read, "open".

[FR Doc. C3–12091 Filed 5–19–03; 8:45 am]

BILLING CODE 1505–01–D

Federal Register

Tuesday,
May 20, 2003

Part II

Environmental Protection Agency

40 CFR Part 63
National Emission Standards for Hazardous Air Pollutants: Integrated Iron and Steel Manufacturing; Final Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 63

[OAR 2002–0083; FRL–7460–2]

RIN 2060–AE48

National Emission Standards for Hazardous Air Pollutants: Integrated Iron and Steel Manufacturing

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This action promulgates national emission standards for hazardous air pollutants (NESHAP) for integrated iron and steel manufacturing facilities. The final standards establish emission limitations for hazardous air pollutants (HAP) emitted from new and existing sinter plants, blast furnaces, and basic oxygen process furnace (BOPF) shops. The final standards will implement section 112(d) of the Clean Air Act (CAA) by requiring all major sources to meet HAP emission standards reflecting application of the maximum achievable control technology (MACT).

The HAP emitted by integrated iron and steel manufacturing facilities include metals (primarily manganese and lead with small quantities of other metals) and trace amounts of organic HAP (such as polycyclic organic matter, benzene, and carbon disulfide). Exposure to these substances has been demonstrated to cause adverse health effects, including chronic and acute disorders of the blood, heart, kidneys, reproductive system, and central nervous system.

EFFECTIVE DATE: May 20, 2003. The incorporation by reference of certain publications listed in the final rule is approved by the Director of the Federal Register as of May 20, 2003.

ADDRESSES: *Docket.* The official public docket is the collection of materials used in developing the final rule and is available for public viewing at the EPA Docket Center (EPA/DC), EPA West, Room B102, 1301 Constitution Ave., NW., Washington, DC 20004.

FOR FURTHER INFORMATION CONTACT: Phil Mulrine, Metals Group (C439–02), Emission Standards Division, U.S. EPA, Research Triangle Park, NC 27711, telephone number (919) 541–5289, electronic mail (e-mail) address, *mulrine.phil@epa.gov.*

SUPPLEMENTARY INFORMATION:

Regulated Entities. Categories and entities potentially regulated by this action include:

Category	NAICS code*	Example of regulated entities
Industry	331111	Integrated iron and steel mills, steel companies, sinter plants, blast furnaces, BOPF shops.
Federal government		Not affected.
State/local/tribal government		Not affected.

*North American Industry Classification System.

This table is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be regulated by this action. To determine whether your facility is regulated by this action, you should examine the applicability criteria in § 63.7781 of the final rule. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed in the preceding **FOR FURTHER INFORMATION CONTACT** section. *Docket.* The EPA has established an official public docket for this action under Docket ID No. OAR–2002–0083. The official public docket consists of the documents specifically referenced in this action, any public comments received, and other information related to this action. Although a part of the official docket, the public docket does not include Confidential Business Information or other information whose disclosure is restricted by statute. The official public docket is the collection of materials that is available for public viewing at the Air Docket in the EPA Docket Center (EPA/DC), EPA West, Room B102, 1301 Constitution Ave., NW., Washington, DC. The EPA Docket Center Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Reading Room is (202) 566–1744, and the telephone number for the Air Docket is (202) 566–1742. *Electronic Docket Access.* You may access the final rule electronically through the EPA Internet under the "**Federal Register**" listings at *http://www.epa.gov/fedrgstr/.*

An electronic version of the public docket is available through EPA's electronic public docket and comment system, EPA Dockets. You may use EPA Dockets at *http://www.epa.gov/edocket/* to view public comments, access the index listing of the contents of the official public docket, and to access those documents in the public docket that are available electronically. Although not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the docket facility in the above paragraph entitled "Docket." Once in the system, select "search," then key in the appropriate docket identification number. *Worldwide Web (WWW).* In addition to being available in the docket, an electronic copy of the final rule will also be available on the WWW through the Technology Transfer Network (TTN). Following signature, a copy of the final rule will be placed on the TTN's policy and guidance page for newly proposed or promulgated rules at *http://www.epa.gov/ttn/oarpg.* The TTN provides information and technology exchange in various areas of air pollution control. If more information regarding the TTN is needed, call the TTN HELP line at (919) 541–5384.

Judicial Review. This action constitutes final administrative action on the proposed NESHAP for integrated iron and steel manufacturing facilities (66 FR 36836, July 13, 2001). Under CAA section 307(b)(1), judicial review of the final rule is available only by filing a petition for review in the U.S. Court of Appeals for the District of Columbia Circuit by July 21, 2003. Under CAA section 307(b)(2), the requirements that are the subject of this document may not be challenged later in civil or criminal proceedings brought by the EPA to enforce these requirements.

Outline. The information presented in this preamble is organized as follows:

I. Background
II. Summary of Final Rule
A. Who must comply with the final rule?
B. What are the affected sources and emission points?
C. What are the emission limitations?
D. What are the operation and maintenance requirements?
E. What are the general compliance requirements?
F. What are the initial compliance requirements?
G. What are the continuous compliance requirements?
H. What are the notification, recordkeeping, and reporting requirements?
I. What are the compliance deadlines?
III. Summary of Responses to Major Comments
A. How did we develop the MACT floors?
B. What surrogates did we use for HAP?
C. Is a risk analysis warranted?
D. How did we revise the emission limitations?
E. How did we revise the performance test requirements?
F. How did we revise the cost estimates and economic analysis?
IV. Summary of Environmental, Energy, and Economic Impacts
A. What are the air emission impacts?
B. What are the cost impacts?
C. What are the economic impacts?
D. What are the non-air health, environmental and energy impacts?
V. Statutory and Executive Order Reviews
A. Executive Order 12866: Regulatory Planning and Review
B. Paperwork Reduction Act
C. Regulatory Flexibility Act
D. Unfunded Mandates Reform Act
E. Executive Order 13132: Federalism
F. Executive Order 13175: Consultation and Coordination with Indian Tribal Governments
G. Executive Order 13045: Protection of Children from Environmental Health & Safety Risks
H. Executive Order 13211: Actions that Significantly Affect Energy Supply, Distribution, or Use
I. National Technology Transfer Advancement Act
J. Congressional Review Act

I. Background

Section 112(d) of the CAA requires us (the EPA) to establish national emission standards for all categories and subcategories of major sources of HAP and for area sources listed for regulation under section 112(c). Major sources are those that emit or have the potential to emit at least 10 tons per year (tpy) of any single HAP or 25 tpy of any combination of HAP. Area sources are stationary sources of HAP that are not major sources. Additional information on the NESHAP development process can be found in the preamble to the proposed rule (66 FR 36836).

We received a total of 16 comment letters on the proposed NESHAP from industry and trade association representatives, State agencies, industry experts, environmental groups, universities, and private citizens. We offered to provide interested individuals the opportunity for oral presentations of data, views, or arguments concerning the proposed rule, but a public hearing was not requested.

Today's final rule reflects our full consideration of all the comments we received. Major public comments on the proposed rule along with our responses to these comments are summarized in section III of this document. A detailed response to all the comments is included in the Background Information Document (BID) for the Promulgated Standards (Docket ID No. OAR–2002–0083).

II. Summary of Final Rule

A. Who Must Comply With the Final Rule?

Each owner or operator of an affected source at an integrated iron and steel manufacturing facility that is (or is part of) a major source of HAP emissions must comply with the final rule.

B. What Are the Affected Sources and Emission Points?

The affected sources are each new or existing sinter plant, blast furnace, and BOPF shop at an integrated iron and steel manufacturing facility that is (or is part of) a major source of HAP emissions. Emission limitations apply to the sinter plant windbox exhaust, discharge end, and sinter cooler; the blast furnace casthouse; and the BOPF shop including each furnace and ancillary operations (hot metal transfer, hot metal desulfurization, slag skimming, and ladle metallurgy). These processes, as well as their emissions and controls, are described in the preamble to the proposed rule (66 FR 36838–36839).

C. What Are the Emission Limitations?

The final rule includes particulate matter (PM) emission limits and opacity limits as well as operating limits for capture systems and control devices. An operating limit also applies either to the oil content of the sinter plant feedstock or to the volatile organic compound (VOC) emissions from the sinter plant windbox exhaust stream. Particulate matter and opacity serve as surrogate measures of HAP emissions.

1. Sinter Plants

The PM emission limits for a windbox exhaust stream are 0.4 pounds per ton (lb/ton) of product sinter for an existing sinter plant and 0.3 lb/ton for a new sinter plant. The final rule limits PM emissions from a discharge end to 0.02 grains per dry standard cubic foot (gr/dscf) for an existing plant and 0.01 gr/dscf for a new plant. The discharge end PM limits are a flow-weighted average when multiple control devices are operated in parallel. A 20 percent opacity limit applies to fugitive emissions from a discharge end at an existing sinter plant; a 10 percent opacity limit applies to a new sinter plant (both are 6-minute averages). The PM emission limits for sinter cooler stacks are 0.03 gr/dscf for an existing plant and 0.01 gr/dscf for a new plant. If the sinter cooler is vented to the same control device as the discharge end, the PM limit is 0.02 gr/dscf for an existing plant and 0.01 gr/dscf for a new plant.

2. Blast Furnaces

The PM emission limits for a control device applied to emissions from a casthouse are 0.01 gr/dscf for an existing blast furnace and 0.003 gr/dscf for a new blast furnace. The opacity limits for fugitive emissions from a casthouse are 20 percent for an existing blast furnace and 15 percent for a new blast furnace (both are 6-minute averages).

3. BOPF Shops

For primary emissions from BOPF, different PM emission limits apply based on the type of hood system (closed or open). For BOPF with closed hood systems at a new or existing BOPF shop, the PM emission limit is 0.03 gr/dscf, and it only applies during periods of primary oxygen blow. The primary oxygen blow is the period in which oxygen is initially blown into the furnace and does not include any subsequent reblows. For BOPF with open hood systems, the PM emission limits are 0.02 gr/dscf for an existing BOPF shop and 0.01 gr/dscf for a new BOPF shop. These emission limits apply during all periods of the steel production cycle. The steel production cycle begins when the furnace is first charged with scrap and ends 3 minutes after slag is removed. The BOPF limits are a flow-weighted average when multiple control devices are operated in parallel.

The PM emission limits for a control device applied solely to secondary emissions from a BOPF are 0.01 gr/dscf for an existing BOPF shop and 0.0052 gr/dscf for a new BOPF shop. Secondary emissions are those not controlled by the primary emission control system, including emissions that escape from open and closed hoods and openings in the ductwork to the primary control system.

For the BOPF shop, the PM emission limit for a control device applied to emissions from ancillary operations (hot metal transfer, skimming, and desulfurization) is 0.01 gr/dscf for an existing BOPF shop and 0.003 for a new BOPF shop. The PM emission limits for ladle metallurgy operations are 0.01 gr/dscf for an existing BOPF shop and 0.004 gr/dscf for a new BOPF shop.

For the BOPF roof monitor, a 20 percent opacity limit applies to fugitive emissions from the BOPF or BOPF shop operations in an existing BOPF shop. This opacity limit is based on 3-minute

averages. For a new BOPF shop housing a bottom-blown furnace, a 10 percent opacity limit applies (6-minute average) except that one 6-minute period not to exceed 20 percent may occur once during each steel production cycle. For a new BOPF shop housing a top-blown furnace, a 10 percent opacity limit applies (3-minute average) except that one 3-minute period greater than 10 percent but less than 20 percent may occur once during each steel production cycle.

4. Capture Systems

We revised the requirements for capture systems to allow plants to choose operating parameters appropriate for assessing capture system performance, establish the values or settings for the parameters, and designate monitoring requirements. At a minimum, the limits must indicate the level of the ventilation draft and damper position settings. Plants must include information to support their selected parameter(s) in their operation and maintenance plan (including other process configurations that may be used) and certify in their performance test report that during the tests, the capture system operated at the limit(s) established in their plan.

5. Operating Limits

For bag leak detection systems, we require that corrective actions be initiated within 1 hour of a bag leak detection system alarm. For a venturi scrubber, the hourly average pressure drop and scrubber water flow rate must remain at or above the level established during the initial performance test. Plants using an electrostatic precipitator (ESP) must install and operate a continuous opacity monitoring system (COMS) according to Performance Specification 1 in 40 CFR part 60, appendix B. The average opacity for each 6-minute period must remain at or below the site-specific limit. The final rule uses a statistical approach, requiring that the limit be based on the COMS average corresponding to the 99 percent upper confidence limit on the mean of a normal distribution of average opacity values established during the initial performance test. Plants must submit information on monitoring parameters if another type of control device is used.

The final rule requires sinter plants to maintain the oil content of the feedstock at or below 0.02 percent. This limit is based on a 30-day rolling average. We are including an alternative VOC limit of 0.2 pound of VOC per ton (lb/ton) of sinter produced. This limit is also based on a 30-day rolling average.

D. What Are the Operation and Maintenance Requirements?

All plants subject to the final rule must prepare and implement a written startup, shutdown, and malfunction plan according to the requirements in 40 CFR 63.6(e). A written operation and maintenance plan is also required for capture systems and control devices subject to an operating limit. This plan must describe procedures for monthly inspections of capture systems, preventative maintenance requirements for control devices, and corrective action requirements for baghouses. To avoid potential implementation issues, we have added specific descriptions of the equipment to be inspected and a requirement to correct any deficiency or defect as soon as practicable. In the event of a bag leak detection system alarm, the plan must include specific requirements for initiating corrective action to determine the cause of the problem within 1 hour, initiating corrective action to fix the problem within 24 hours, and completing all corrective actions needed to fix the problem as soon as practicable. If applicable, the plan also must include procedures for determining and recording the sinter plant production rate.

E. What Are the General Compliance Requirements?

The final rule requires compliance with the emission limitations and operation and maintenance requirements at all times, except during periods of startup, shutdown, and malfunction as defined in 40 CFR 63.2. The owner or operator must develop and implement a written startup, shutdown, and malfunction plan according to the requirements in 40 CFR 63.6(e)(3).

The final rule also requires keeping a log detailing the operation and maintenance of the process and emission control equipment. This requirement applies during the period between the compliance date and the date that continuous monitoring systems are installed and any operating limits set.

F. What Are the Initial Compliance Requirements?

The final rule requires performance tests to demonstrate that each affected source meets all applicable emission and opacity limits. The final rule allows the owner or operator to conduct representative sampling of stacks where there are more than three stacks associated with a process (subject to approval by the permitting authority). The PM concentration (front-half filterable catch only) is to be measured using EPA Method 5, 5D, or 17 in 40 CFR part 60, appendix A. The EPA Method 9 in 40 CFR part 60, appendix A, is required for determining the opacity of emissions, with instructions for computing 6-minute and 3-minute block averages.

The final rule also includes procedures for establishing site-specific operating limits for control devices during the performance test. We have also included procedures to be followed during opacity tests to ensure capture systems operate at the limits established in the operation and maintenance plan.

The final rule requires a performance test to demonstrate initial compliance with the operating limit for the oil content of the sinter plant feedstock using OSW 846 Method 9071B (Revision 2, April 1998). Plants must sample for 30 consecutive days and compute the 30-day rolling average for each operating day. Plants electing the alternative operating limit must conduct a performance test by sampling VOC emissions and analyzing the samples according to EPA Method 25 in 40 CFR part 60, appendix A. Plants may use an alternative method that has been previously approved by the permitting authority in lieu of OSW 846 Method 9071B for oil content or EPA Method 25 for VOC emissions.

To demonstrate initial compliance with the operation and maintenance requirements, owners or operators must prepare the operation and maintenance plan, certify in the performance test report that capture systems operated at the limits established in the operation and maintenance plan, and submit their notification of compliance status. In the notification of compliance status, the owner or operator must certify that the capture systems will be operated at the limits established in the plan.

G. What Are the Continuous Compliance Requirements?

Plant owners or operators must conduct PM and opacity performance tests at least twice during each title V operating permit term (at midterm and renewal). Owners or operators also must monitor operating parameters for capture systems and control devices subject to operating limits, and carry out the procedures in their operation and maintenance plan.

To demonstrate continuous compliance with the operating limit for the oil content of sinter plant feedstock, owners or operators must determine the oil content every 24 hours (from the composite of at least three samples taken at 8-hour intervals) and compute and record the 30-day rolling average percent oil content of sinter feed for each operating day. Plants electing the alternative limit must determine VOC emissions every 24 hours (from at least three samples taken at 8-hour intervals) and compute and record the 30-day rolling average emissions (in lb/ton of sinter) for each operating day.

The final rule requires a continuous parameter monitoring system (CPMS) to measure and record operating parameters for capture systems subject to an operating limit. Dampers that are manually set and remain in the same position are exempt from the CPMS requirement. For dampers that are not manually set and remain in the same position, the final rule requires a daily visual check (every 24 hours) to verify they are in the correct positions.

For baghouses, owners or operators are required to monitor the relative change in PM loading using a bag leak detection system and make inspections at specified intervals. The bag leak detection system must be installed and operated according to the EPA guidance document "Fabric Filter Bag Leak Detection Guidance," EPA 454/R–98–015, September 1997. The document is available on the TTN at *http://www.epa.gov/ttnemc01/cem/tribo.pdf*. If the system does not work based on the triboelectric effect, it must be installed and operated consistent with the manufacturer's written specifications and recommendations. The basic inspection requirements include daily, weekly, monthly, or quarterly inspections of specified parameters or mechanisms with monitoring of bag cleaning cycles by an appropriate method. To demonstrate continuous compliance, the final rule requires records documenting conformance with the operation and maintenance plan, as well as the inspection and maintenance procedures.

For venturi scrubbers, owners or operators must use CPMS to measure and record the hourly average pressure drop and scrubber water flow rate. For ESP, owners or operators must use COMS to measure and record the average opacity of emissions exiting each stack of the control device for each 6-minute period. Owners or operators must operate and maintain the COMS according to the requirements in 40 CFR 63.8 and Performance Specification 1 in 40 CFR part 60, appendix B. These requirements include a quality control program including a daily calibration drift assessment, quarterly performance audit, and annual zero alignment.

The final rule requires owners or operators to prepare a site-specific monitoring plan for CPMS that addresses installation, performance, operation and maintenance, quality assurance, and recordkeeping and reporting procedures. These requirements replace the more detailed performance specifications contained in the proposed rule.

To demonstrate continuous compliance, owners or operators must keep records documenting compliance with the monitoring requirements (including installation, operation, and maintenance requirements for monitoring systems) and the operation and maintenance plan.

H. What Are the Notification, Recordkeeping, and Reporting Requirements?

The notification, recordkeeping, and reporting requirements are based on the NESHAP General Provisions in 40 CFR part 63, subpart A. Table 4 to subpart FFFFF lists each of the requirements in the General Provisions (§§ 63.2 through 63.15) with an indication of whether they apply.

The plant owner or operator must submit each initial notification required in the NESHAP General Provisions that applies to their facility. These include an initial notification of applicability with general information about the facility and notifications of performance tests, performance evaluations, and compliance status.

Owners or operators are required to maintain the records required by the NESHAP General Provisions that are needed to document compliance, such as performance test results; copies of startup, shutdown, and malfunction plans and associated corrective action records; monitoring data; and inspection records. Except for the operation and maintenance plan for capture systems and control devices, all records must be kept for a total of 5 years, with the records from the most recent 2 years kept onsite. The final rule requires that the operation and maintenance plan for capture systems and control devices subject to an operating limit be kept onsite and available for inspection upon request for the life of the affected source or until the affected source is no longer subject to the final rule requirements.

We clarified the recordkeeping requirements required to demonstrate compliance with the operating limit for sinter plants. The final rule requires records of the sampling date and time, sampling values (oil content or VOC measurements), sinter produced (tons/day), and the 30-day rolling average for each operating day.

Semiannual reports are required for any deviation from an emission limitation (including an operating limit) or operation and maintenance requirement. Each report is due no later than 30 days after the end of the reporting period. If no deviation occurs, only a summary report is required. If a deviation does occur, more detailed information is required.

An immediate report is required if actions taken during a startup, shutdown, or malfunction are not consistent with the startup, shutdown, and malfunction plan. Deviations that occur during a period of startup, shutdown, or malfunction are not violations if the owner or operator demonstrates to the authority with delegation for enforcement that the source was operating in accordance with the startup, shutdown, and malfunction plan.

I. What Are the Compliance Deadlines?

The owner or operator of an existing affected source must comply by May 22, 2006. An existing affected source is one constructed or reconstructed before July 13, 2001. We changed the compliance date for existing affected sources from 2 years to 3 years after the effective date because some plants must install new capture and control systems and perform significant upgrades of primary emission control systems.

In the final rule, we have corrected a printing error that incorrectly listed the date defining a new affected source as July 23, 2001. A new affected source is one constructed or reconstructed on or after July 13, 2001. New or reconstructed sources that startup on or before the effective date of today's final rule must comply by May 20, 2003. New or reconstructed sources that startup after the effective date of the final rule must comply upon initial startup.

III. Summary of Responses to Major Comments

A. How Did We Develop the MACT Floors?

We stated in the proposal preamble that we may take alternative approaches to establish a MACT floor, depending on the type, quality, and applicability of available data. The three approaches most commonly used involve: (1) Reliance on State regulations or permit limits in conjunction with emission test data; (2) use of emissions test data alone to estimate actual emissions; and (3) use of control technology information in conjunction with emission test data to estimate actual emissions performance. In practice, regardless of what approach we select, we attempt to ensure that our emissions performance estimates reasonably characterize the level of performance that the relevant sources

consistently achieve, considering normal operational variability.

Comment. One commenter contends that EPA may use State regulations or permit limits to set floors only to the extent that such regulations and limits provide a demonstrably accurate picture of the relevant best source's actual performance. The commenter also states that EPA may only use the performance of a chosen floor technology to set floors if such technology is the only factor influencing the relevant best sources' actual performance. In addition, the floor must reflect actual performance, not what EPA thinks is achievable with a particular technology. The commenter concludes that all of EPA's floors suffer from the same basic defect in that ". . . they do not represent the actual performance of the relevant best sources."

Response. While EPA may use any reasonable approach to estimate the emissions control achieved in practice by the best-controlled similar source and the average emissions limitation achieved by the best-performing 12 percent of units in a category (or best 5 units for categories of less that 30 sources), we generally agree with the commenter that it is preferable to use actual performance test data to determine the MACT floor when there are adequate such data available to reasonably characterize the level of performance of the relevant sources. Our approach to identifying the MACT floors and establishing emission limits for the various emission points at integrated iron and steel facilities is consistent with this preference. Nonetheless, we did use State regulations and permit limits in some instances to help us estimate the MACT floor level of performance for certain emission points for which we have limited emission test data. However, in each case where we used such information, we also evaluated the available emission test data and other factors (such as type of control technology and the design parameters that affect performance) to confirm that the State limits reasonably reflect the actual performance of the best units.

In those instances where we had a sufficient quantity of emission test data to reasonably estimate the performance of the relevant best units, we applied a statistical approach to confirm and refine the emission estimates from proposal. This process involved application of a statistical approach to determine the average emission limitation achieved and account for normal operational variability. As described below, this approach ensures that the emissions estimates used to identify the MACT floors reasonably reflect the level of control that is actually achieved by the relevant units over time, and under the most adverse foreseeable circumstances. (The full supplemental analysis is documented in the docket.) We had adequate test data to apply this approach to the emission limits for the sinter plant windboxes, casthouse control devices, primary control systems on open and closed hood BOPF, and control devices applied to hot metal transfer, desulfurization, and ladle metallurgy.

For each of these emission points we confirmed and refined our earlier estimates of the performance of the relevant best-performing units used to identify the MACT floors. At proposal, we estimated the performance of the best-controlled sources by identifying the best control technology that had been demonstrated for each source. We then evaluated the available data for sources using the best control technology and established emission limits for new and existing sources based on the level of control that sources with the technology had achieved.

Conceptually, our approach to estimating the performance of the best-controlled units is relatively straightforward. While we believe each emissions source test gives a good indication of the level of control achieved by the control device during the time of the emissions test, we do not believe a single emissions source test can be used as an estimate of the long term emissions performance achieved by that source. Normal variations in process and control device performance and other factors, such as the inherent imprecision of sampling and analysis, which cannot be controlled, will result in variability in the performance of every source over time, including the best-performing sources. We believe that the MACT floor performance level must reasonably account for the ordinary variability in the performance of the best-controlled sources over time and under the most adverse circumstances which can reasonably be expected to occur. As such, the MACT floor performance limit must include a consideration for the variability inherent in the process operations and the control device performance.

For today's final rule, when emissions source test data were available, we used a statistical method to confirm and refine the emission estimates used at proposal to identify the MACT floors for the relevant units. For each case where emissions source test data were available, we estimated the emissions limitation achieved for each source at the 95th percentile using the one-sided z-statistic test (*i.e.*, the emission limitation which the emission point is estimated to be able to achieve 95 percent of the time). Assuming a normal distribution, the 95th percentile is 1.645 standard deviations above the mean. We chose the median of the 95th percentiles of the top-performing sources as the MACT floor. We used the median as the most representative estimate of the average emission limitation achieved by the best-performing five sources because the median points to the performance of an actual unit, with a specific combination of process operations and control device performance.

We evaluated several options to estimate the standard deviation that is needed to perform the analysis. We decided not to estimate the standard deviation for each source based on the available emissions data for just that one source since we have only three data points for most sources to use in estimating the standard deviation-one data point for each run in a three run emissions source test. Instead, we calculated a relative standard deviation (RSD) for each test and then averaged the RSD to provide our best estimate of the variability of the test data. The RSD is the standard deviation divided by the mean. The RSD provides a way to estimate the standard deviation for different values of the mean when there are too few data points to calculate the standard deviation directly. We believe this method adequately accounts for the normal variability in emissions source test data and provides a reasonable estimate of the long term emissions limitation achieved.

For new sources, the MACT floor is the emissions control that is achieved in practice by the best-controlled similar source. In order to confirm and refine our emissions estimates for new sources, we identified the best-controlled source based on test data and applied the same statistical techniques to determine the emission limitation achieved in practice for new sources. We calculated the upper 95th percentile of performance for the best-controlled source, and we chose this value as the emission limitation that can be achieved by new sources.

We believe the statistical technique used to account for general variability is appropriate and reasonable. However, we also recognize that some of the empirical test data may imply a level of accuracy that is not present throughout the entire data set. As a result, we have some reservations about identifying a MACT floor with a level of accuracy that is not warranted by the underlying data. Accordingly, we have concluded

that it is appropriate in some instances to round the results to two decimal places. This approach encompasses the specific statistically-derived numbers, while acknowledging that there is some residual uncertainty about the representativeness of the data. Thus, while we believe generally that our use of the 95th percentile adequately identifies the range of actual performance of individual facilities, our rounding approach should alleviate any concerns regarding whether the statistics sufficiently capture the full range of ordinary performance of the best-performing units over time and under the most adverse circumstances that can be reasonably expected to occur.

Changes resulting from rounding will have no practical effect on how industry responds to the emission limitations. That is, the control technology needed is exactly the same and the equipment must be operated in the same manner regardless of whether the numbers are rounded or not. A properly designed and operated control device will still be required to meet the rounded emission limit. Today's final rule has provisions for operating parameters and operation and maintenance plans to ensure proper operation. Thus, other than serving to better reflect uncertainties in the underlying data, the rounding has no practical impact on the stringency of the requirements.

Additional information on the statistical analysis used to confirm and refine our emissions estimates, including the data used and the complete ranking of sources, is available in the docket.

The objective of both the MACT floor methodology used at proposal, and the methodology used here to confirm and refine the proposed estimates of performance, is exactly the same. For each relevant operation at integrated iron and steel facilities, both approaches expressly are intended to provide a quantified estimate of the emission performance of the best-controlled similar source, or of the average emission limitation achieved by the relevant best-performing sources in the category, taking into consideration the ordinary and unavoidable variations in process operations and performance of the emissions control equipment.

Moreover, the conclusions growing from the supplemental statistical analysis, regarding the levels of performance that reflect the MACT floor for both new and existing units, in large measure simply confirm that the analysis underlying the proposal provided a reasonable estimation of performance.

Indeed, none of the refinements to our performance estimates will have any practical effect on how industry responds to the emission limitations. As is the case with our decision to round the emission estimates, any changes in the emission limitations in the final rule will require the same control technology as would have been needed to meet the proposed limits, and the control equipment will need to be operated in the same manner as would have been the case with the proposed emission limitations.

For three emission points (sinter cooler, sinter plant discharge end, and control devices for BOPF fugitive emissions), we had only one or two test results. Consequently, we did not have an adequate set of emissions test data to directly estimate the actual performance of the top-performing sources. Consequently, we developed the floors for these three emission points based on the facilities subject to the most stringent State regulations or permit limits, and we used the available emissions information (emissions data and a characterization of the operational processes and emissions controls) to confirm that the identified State limits reasonably reflect the actual performance of the relevant best-performing units. That is, the best units are able to achieve the required State limits but are not consistently achieving a level of emissions performance that is more stringent than the State limits. The EPA may use State limits as long as we demonstrate that such limits provide a reasonable estimate of the actual performance of the best-performing sources.

For floors based on State opacity regulations that limit fugitive emissions, we collected additional data and found that sources are achieving a level of performance that is within the current limits, but they are not consistently achieving a level of control more stringent than the identified State limits. Consequently, we believe these State limits provide an accurate picture of the best sources' actual performance considering inherent and unavoidable variability. We used this approach to develop the MACT floor for opacity from the sinter plant discharge end, blast furnace casthouse, and BOPF shop.

We provide additional rationale in the following sections where we discuss in detail the development of the MACT floors for each emission point.

1. Sinter Plant Windbox Exhaust

Comment. One commenter stated that EPA proposed an emission limitation of 0.3 lb/ton of PM based on the performance of either a baghouse or scrubber. According to the commenter, EPA's floor does not reflect the actual performance of the relevant best sources—the average emission limitation achieved by the top five sources. As shown in the BID, the average emission limitation achieved by the best-performing five sources is 0.079 pound per ton (lb/ton), not the proposed limit of 0.3 lb/ton. Second, floor reflects what EPA believed to be achievable with the control technologies and not the actual performance of the relevant best sources. Third, EPA admits that several factors other than the performance of the technologies influence emissions.

Response. As we documented in appendix B of the BID, the floor for sinter plant windboxes was based on actual source test data and the five best-performing sources. We collected test data and verified that EPA Method 5 (40 CFR part 60, appendix A) was used. We ranked the results (in lb/ton of sinter) and calculated the average of the five best-performing sources (0.3 lb/ton). Contrary to the commenter's assertion, we did not rely on control technology to identify the best-performing units or to estimate the performance of the best units. In this particular case, we had adequate test data to directly estimate the average emission limitation achieved by the five best-performing sources.

The calculation performed by the commenter is inappropriate and does not provide an accurate estimate of the emission limitation achieved by the plants. The commenter misinterpreted the information in the BID, which is not source test data, but is simply a best estimate of annual average emissions based on approximate emissions factors and the assumption that all plants operate continuously at their design capacity. Such an estimate cannot be used to represent actual performance in a MACT floor calculation.

After proposal, we reviewed our approach for developing the MACT floor and concluded that our original analysis did not sufficiently account for the normal and unavoidable variability inherent in the process operations and emission control equipment (as demonstrated by the emission test data). The average performance of the five best-performing sinter plants ranged from 0.26 to 0.32 lb/ton of sinter. To account for inherent variability, we applied the z-statistic to estimate the 95th percentile of a normal distribution for each source. The median of the 95th percentiles of the five best-performing sources is 0.4 lb/ton, which we chose to represent the MACT floor. This level of performance reasonably reflects the

average emission limitation achieved by the five best-performing sources considering inherent variability. The best-controlled source averaged 0.26 lb/ton with a 95th percentile of 0.3 lb/ton, which represents the MACT floor for new sources.

2. Sinter Plant Limit on Oil Content

Comment. Two commenters stated that the proposed limit on oil content of 0.025 percent was based on the highest oil percentage of any of the four plants for which EPA had oil percentage data. They claim this is not a valid approach because it does not represent the actual performance of the relevant best sources. One commenter recommended that EPA consider beyond-the-floor technologies for dioxin emissions, such as elimination of rolling mill scale from sinter feed, de-greasing of sinter plant feed, quality control of water used in sinter plant feed preparation, and use of low-organic waterborne rolling mill lubricants.

Response. Our research indicates that emissions of organic compounds from sinter plant windboxes are controlled by limiting the amount of oil in the sinter feed. Emission control devices applied to sinter plants are designed primarily for the removal of PM and not for the various organic compounds that are formed from the oil. We believe that oil content is the most significant factor affecting organic compound HAP emissions. Consequently, we identified the MACT floor for organic HAP emissions from sinter plants based on the level of oil content that we observed for the sinter plants with the best programs to control oil in the sinter feed.

We obtained data from four sinter plants that have implemented a program to control the oil content of the sinter feed. We then examined the data and evaluated the variability to determine the level of control that has been achieved. The average results for oil content for each plant ranged from 0.014 to 0.025 percent. These are the best-performing plants because they were the only ones that routinely sample for oil content. We applied the z-statistic and estimated the 95th percentile for each plant. (The statistical analysis considered that the limit is based on a 30-day rolling average, which reduces the inherent variability as indicated by a lower standard deviation than that associated with a single analysis of oil content.) The median of the 95th percentiles for the top-performing plants is 0.022 percent. We rounded this value to 0.02 percent, and this level represents the MACT floor for existing units. The best-performing source averaged 0.014 percent oil with a 95th percentile of 0.015 percent. We rounded this value to 0.02 percent, and this level represents the MACT floor for new units.

We reviewed opportunities for control beyond the floor. We do not believe it is practical or feasible to eliminate rolling mill scale from the sinter feed. The sinter plant provides the only opportunity to recycle and recover the raw material value. Otherwise, the mill scale would be landfilled. De-greasing or de-oiling the sinter feed has been investigated by the industry, but there is no demonstrated technology in use at any sinter plant that has proven to be successful. There is no indication that the water used in preparing the sinter feed contributes to the oil content; therefore, water quality control is not expected to have an impact on emissions of organic compounds. Waterborne lubricants may have some advantages in certain applications. However, they are problematic in some applications in the demanding environment of steel rolling mills. We could find no indication that the practices cited by the commenter have been demonstrated to reduce dioxin or other organic compound emissions. Consequently, we selected a limit on oil content as the MACT floor. We believe it is more appropriate to set a performance standard that limits oil content rather than mandating a technology that an owner or operator must use to reduce oil content. The performance standard for oil content will encourage owners or operators to investigate technologies that reduce oil content to find the most effective approach for their specific situation.

Comment. Six commenters object to the proposed limit on oil content because EPA has not shown that it is achievable by the best-performing sinter plants under the most adverse anticipated circumstances over time.

Response. As we discussed in our previous response, we confirmed and refined the MACT floor estimates using a statistical approach to account for inherent variability. Based on this approach, we believe the MACT floor has been achieved on a continuing basis by the best-performing units. In addition, the limit is enforced based on a 30-day rolling average, which further enhances achievability because it allows an occasional high daily value to be averaged with lower values on other days to achieve compliance. A 30-day rolling average also provides time to take corrective action and lower the oil content before the limit is exceeded.

3. PM Standard for Blast Furnace Casthouse Control Device

Comment. One commenter stated that the technology approach used to develop the floor does not reflect the actual performance of the relevant best sources. The commenter further states that EPA admits that there are factors other than the type of control technology that affect the actual emission control performance of blast furnace casthouse control devices. Specifically, factors affecting emissions include duration of tapping, exposed surface area of metal and slag, length of runners, and the presence or absence of runner covers or flame suppression. Thus, the performance of a baghouse cannot be representative of the best sources's actual performance.

Response. We proposed a PM standard of 0.009 gr/dscf for blast furnace casthouse control devices based on the performance of existing units using baghouses. We re-evaluated the emissions test data for blast furnace casthouses based on the statistical approach previously discussed in order to confirm and refine our emissions estimates for the best-performing units. We have test data for fugitive emissions from source tests at four casthouses. The available data clearly indicate that a baghouse is the best technology for controlling emissions from blast furnace casthouses. We reviewed the test data and the design features of these baghouses (such as air-to-cloth ratio), and we concluded that the baghouses that had been tested were among the best-performing units. The test results ranged from 0.002 to 0.0072 gr/dscf. We calculated the 95th percentile for each plant. The median of the 95th percentiles for the top-performing plants is 0.005 gr/dscf. We rounded this value to two decimal places and chose 0.01 gr/dscf to represent the MACT floor level of control for existing sources.

The best-controlled source averaged 0.002 gr/dscf with a 95th percentile of 0.0034 gr/dscf. We rounded the 95th percentile to 0.003 gr/dscf to represent the MACT floor for new sources.

4. PM Standard for BOPF Primary Control Devices

Comment. One commenter stated that the chosen floor technologies do not represent the actual performance of the relevant best sources.

Response. We proposed a PM limit of 0.019 gr/dscf for new and existing open hood BOPF primary control systems based on the performance of existing units using ESP. We re-evaluated the emissions test data for open hood BOPF using the statistical approach previously discussed, in order to confirm and refine our emissions estimates for the best-performing units. The available data clearly indicate that ESP perform better than venturi scrubbers in controlling emissions from open hood shops. We have test data for five ESP that are similar in design, each of which, based on design and operating data, are among the best-performing units at open hood shops. The data include multiple tests at some plants, and these data indicate there is variability in performance from test to test and from run to run. The plant averages ranged from 0.007 to 0.019 gr/dscf, and individual tests (three-run averages) ranged from 0.004 to 0.019 gr/dscf. We calculated the 95th percentile for each plant. The median of the 95th percentiles for the top-performing plants is 0.019 gr/dscf. We rounded this value to two decimal places and chose 0.02 gr/dscf to represent the MACT floor for existing units.

The best-controlled open hood shop averaged 0.0066 gr/dscf with a 95th percentile of 0.01 gr/dscf, which we chose to represent the MACT floor for new sources.

We proposed a limit of 0.024 gr/dscf for new and existing closed hood BOPF primary control systems based on the performance of existing units using venturi scrubbers. All of the closed hood shops use venturi scrubbers as the primary control device. The test data and design information indicated that shops having high-energy venturi scrubbers with a pressure drop of 50 inches of water or more are the best-performing sources. We have recent test data for only one closed hood shop. However, we have data from 1971 to 1978 for high-energy venturi scrubbers on closed hood shops. These data include four BOPF shops that are currently operating. The test results range from 0.021 to 0.024 gr/dscf. For purposes of today's final rule, we did not include Kaiser Steel because the plant has been closed for several years. We calculated the 95th percentile for each plant. The median of the 95th percentiles for the top-performing plants is 0.027 gr/dscf. We rounded this value to two decimal places and chose 0.03 gr/dscf to represent the MACT floor for existing sources.

The best-controlled closed hood shop averaged 0.021 gr/dscf with a 95th percentile of 0.027 gr/dscf. We rounded the 95th percentile to two decimal places and chose 0.03 gr/dscf to represent the MACT floor for new sources.

Comment. Six commenters said EPA used test data dating from 1971 through 1978 to establish the limit for closed hood systems. These commenters believe the data do not reflect current configurations or actual performance and cannot be used to establish the floor. Many systems have been upgraded to increase capture efficiency (including some furnaces used to establish the standard). Because there are little or no data for these sources, the commenters recommend that EPA use existing State implementation plans (SIP) to determine the floor. Another commenter agrees, adding that the test data used to support the 0.024 gr/dscf limit ranged up to 0.031 gr/dscf and represent the minimum anticipated variation of emissions from a MACT floor technology source. The proposed limit is more stringent than existing SIP and may not be achievable by plants using MACT floor controls. The analysis does not consider the current PM limit of 0.03 gr/dscf for plants in Ohio, which the commenter believes should be the limit.

Response. The test data for closed hood shops are not just from tests in 1971 to 1978—there is a 1992 test for Geneva Steel. The commenters did not provide any information on the nature of the upgrades or rationale as to their effect on emissions. For closed hood systems, testing is performed only during the oxygen blow with the capture hood tightly fitted to the furnace. Our understanding is that capture system upgrades have been made primarily to improve the capture of fugitive emissions from charging and tapping, which are not included in the performance testing for closed hood furnaces. In addition, the operating conditions of the scrubbers during the tests (*e.g.*, pressure drops of 50 inches of water or more) are representative of the way these scrubbers are currently operated. Data for venturi scrubbers in other similar processes indicate that high-pressure drop scrubbers can achieve control levels of 0.03 gr/dscf or less. We believe the statistical approach that we used to confirm and refine emissions estimates for the floor analysis accounts for inherent variability over time. We believe that source test data provide a better picture of actual performance than the use of State limits as the commenter suggests. Moreover, based on our analysis of the emission tests, we have identified as MACT an emissions limit of 0.03 gr/dscf which is consistent with the emissions limits that the commenters identified as appropriate.

5. PM Standards for Ancillary Operations at BOPF Shops

Comment. According to eight commenters, the three data points for hot metal transfer and desulfurization are not sufficient to define the floor, accurately represent current operating conditions, or reflect a level that is consistently achievable under the most adverse foreseeable circumstances over time. If sufficient data are not available, EPA should use existing State limits, if it can show that the level of control is realistically achievable under the most adverse anticipated circumstances over time. The commenters also question that the data used for characterizing performance were collected using the same test procedures specified in the proposed rule (average of three 1-hour tests during actual operation of the processes). Using data from a test method other than the required compliance method to set a standard does not meet CAA requirements.

Response. We proposed a PM standard of 0.007 gr/dscf for a control device serving BOPF ancillary processes based on the performance of existing units using baghouses. We reviewed the emissions data and confirmed the tests were conducted using EPA Method 5 (40 CFR part 60, appendix A). Every test result was presented as the average of three runs, which is consistent with our performance test requirements. Several test reports confirmed that sampling was conducted under normal operating conditions, and none of the reports indicated conditions were not normal. The tests used a sampling time of 1 hour or more to ensure an adequate sample volume was collected. As explained earlier, in response to another comment, EPA believes that it is preferable to use actual performance test data to determine the MACT floor when there are adequate such data available to reasonably characterize the level of performance of the relevant sources. The commenters did not provide us with any additional facts or data to show that any of the data we relied upon are invalid. For the reasons described above, we believe that these data are adequate to reasonably estimate the performance of the best sources for purposes of establishing a MACT floor, and these estimates more accurately reflect the actual performance of the best-performing sources than would estimates based on State permit data. Moreover, the approach that we used to confirm and refine the emissions estimates for the top-performing sources assures that we have adequately accounted for variability over time, and, therefore, addresses the concerns of the commenter.

We re-evaluated the emissions test data for ancillary operations based on the statistical approach previously discussed, in order to confirm and

refine our earlier analysis. At proposal, we considered the combined data for hot metal transfer/desulfurization and ladle metallurgy. However, we believe it is necessary to separate the two operations because hot metal transfer/desulfurization is performed on molten iron before charging to the BOPF. Ladle metallurgy is performed on molten steel from the BOPF. Consequently, the two processes have different emission characteristics which suggests each should have a separate MACT floor determination.

We have test data from three source tests of desulfurization and hot metal transfer. The control device used in these source tests, and the only type of control used for these processes, is a baghouse. We reviewed the test data and the design features of these baghouses (such as air-to-cloth ratio), and we concluded that the baghouses that had been tested were among the best-performing units. The three tests ranged from 0.0016 to 0.012 gr/dscf. We calculated the 95th percentile for each plant. The median of the 95th percentiles for the top-performing plants is 0.006 gr/dscf. We rounded this value to two decimal places and chose 0.01 gr/dscf to represent the MACT floor for existing units.

The best-controlled source averaged 0.0016 gr/dscf with a 95th percentile of 0.003 gr/dscf, which we chose to represent the MACT floor for new sources.

We have test results for six source tests of typical ladle metallurgy operations. As with desulfurization, the control device used in these source tests, and the only type of control used for these processes, is a baghouse. We reviewed the test data and the design features of these baghouses (such as air-to-cloth ratio), and we concluded that the baghouses that had been tested were among the best-performing units. The five best-performing units ranged from 0.0021 to 0.0047 gr/dscf. We calculated the 95th percentile for each plant. The median of the 95th percentiles for the top-performing plants is 0.006 gr/dscf. We rounded this value to two decimal places and chose 0.01 gr/dscf to represent the MACT floor for existing units.

The best-controlled source with typical ladle metallurgy operations (lance injection, electromagnetic stirring, and alloy addition), averaged 0.0021 gr/dscf with a 95th percentile of 0.004 gr/dscf, which we chose to represent the MACT floor for ladle metallurgy for new sources.

6. Opacity Standard for Sinter Plant Discharge End

Comment. According to one commenter, EPA does not explain how the floor determination represents an accurate picture of the relevant best sources' actual performance, or how it knows that the best sources are not doing better than their permits require.

Response. We proposed an opacity limit of 20 percent for the sinter plant discharge end based on the five sources subject to the most stringent existing State regulations or permit limits. One plant has a 10 percent opacity limit, and four plants have a 20 percent opacity limit. We chose the median (20 percent) to represent the MACT floor.

A total of six of the seven operating plants use a capture and control system vented to a baghouse for the discharge end, and engineering knowledge of their design features and the nature of emissions indicate that these baghouses are the best demonstrated control technology for the discharge end. Following the end of the comment period, in order to confirm the appropriateness of the proposed opacity limit, we surveyed the industry to obtain additional opacity data for the discharge end. The only substantive data we obtained was from Ispat-Inland, which submitted the results of 1,745 hours of observations by EPA Method 9 (40 CFR part 60, appendix A) conducted over 4 years (1997 to 2000). Ispat-Inland is among the better-performing plants because it controls the discharge end, crusher, and hot screen by capturing emissions using local hooding and ventilation and venting them to a baghouse for collection. Consequently, we believe that the control system at Ispat-Inland is representative of the best-performing sources.

At Ispat-Inland, approximately one percent of the hourly opacity observations had a 6-minute average that exceeded 20 percent opacity, and the plant met the proposed limit 99 percent of the time. Although many of the observations were below 20 percent opacity, the limit accommodates the normal variability in the process operations and control equipment. The data clearly show that Ispat-Inland is not consistently performing substantially better than what their permit requires and that our proposed limit is a reasonable picture of what the best-controlled sources can achieve.

Comment. Seven commenters contend that EPA has not shown that existing State limits are consistently achievable under the worst foreseeable conditions over time. The commenters claimed that opacity data they submitted to EPA demonstrates that the limits are not consistently achievable by well-operated and maintained sinter plants. The EPA must reevaluate the achievability of the proposed opacity standard.

Response. None of the commenters provided evidence that facilities subject to the identified State limits have been unable to meet those limits (*e.g.*, in the form of reported violations). Moreover, as discussed in the previous response, approximately 99 percent of the hourly opacity observations at Ispat-Inland never had a 6-minute average in excess of 20 percent opacity. Performance improved to 99.9 percent compliance for more recent, 1998 to 2000, observations. As stated previously, these data show that the opacity limit based on existing State limits is achievable because it has been achieved on a continuing basis. Our analysis considered all of the data that we could obtain, and the only data available was that for Ispat-Inland which we discussed in detail.

7. Opacity Standard for Blast Furnace Casthouse

Comment. One commenter states that we failed to explain how the floor we selected reflects the best-performing 12 percent of the blast furnace casthouses. The commenter further states that we failed to pursue and collect from the affected sources or State and local agencies available opacity data, and we undermined the floor-setting process of the CAA.

Response. For blast furnace casthouses, we established the MACT floor as a 20 percent opacity limit based on the five sources subject to the most stringent existing State regulations or permit limits. Two casthouses are subject to a 15 percent opacity limit, and the next most stringent limit is 20 percent, which is applied to 22 of the 37 blast furnace casthouses.

Following the end of the comment period, in order to confirm the appropriateness of the proposed opacity limit, we obtained additional opacity data for operating blast furnace casthouses to supplement the limited data we had available at proposal. We now have opacity data for 25 of the 37 existing blast furnace casthouses, and the data range in coverage from a 1-hour test to several years of observations. (Although there were 39 blast furnace casthouses at proposal, two have subsequently shut down.) We closely examined the data that covered a reasonably long period of time (*e.g.*, at least 1 year to capture seasonal variations); which included 12 of the 25 casthouses for which we had data. We

believe it is important to account for seasonal variations and examine data covering 1 year or more to account for variability due to differences in ventilation rates, weather conditions, and changes in the process over time. We found that the casthouses with the lowest opacities were those with secondary capture and control systems. For some casthouses, most of the 6-minute averages were routinely below the proposed 20 percent limit with occasional readings that approached or exceeded 20 percent. The blast furnace casthouses at U.S. Steel (Gary) achieved the 20 percent opacity limit 99 to 100 percent of the time. One blast furnace casthouse had a maximum 6-minute average of 21 percent opacity, and another casthouse had a maximum of 20 percent opacity. At Ispat-Inland, the casthouses achieved 20 percent opacity 98 to 99.6 percent of the time. At LTV Steel, the casthouses achieved 20 percent opacity 99.5 to 99.8 percent of the time. These blast furnaces were achieving the 20 percent limit, but they were not demonstrably able to consistently achieve a level of performance more stringent than this limit. Consequently, the opacity data confirm that the 20 percent opacity limit based on the median value of the sources with the five most stringent emission limits is an accurate reflection of the MACT floor.

Comment. Eight commenters contend that the limits are not consistently achievable under the worst foreseeable conditions over time even by the casthouses used to establish the MACT floor. In support, the commenters claimed they had provided opacity data showing that the limits have not been consistently achieved by well-operated and maintained casthouses. Achievability of the opacity limit for blast furnace casthouses is of particular concern because the process is subject to infrequent but significant swings in emission rates. The commenters recommend that EPA collect and analyze all available opacity data from States, Regions, and industry and determine the standard based on achievability. They recommend using a statistically-derived limit based on a high confidence level (the 99.97th percentile) to avoid an unachievable standard that would result in many violations.

Response. Following proposal, in order to confirm the appropriateness of the proposed opacity limit, we collected additional opacity data and identified the best-performing sources in terms of low opacity. Our analysis considered all of the opacity data submitted by the commenters and data obtained from other sources. For the five best-performing blast furnace casthouses (*i.e.*, lowest opacities) with observations over at least 1 year, a 20 percent opacity limit was achieved for 99 to 99.8 percent of the time. We believe the data clearly show that an opacity limit of 20 percent represents what has been achieved by the best-performing sources and that it can be achieved on a continuing basis.

8. Opacity Standards for BOPF Shops

Comment. Eight commenters contend that the limits are not consistently achievable under the worst foreseeable conditions over time. They claim that opacity data submitted to EPA by the industry demonstrate that the limits are not consistently achieved by well-operated and maintained BOPF shops, and as a result, EPA must reevaluate the achievability of the proposed opacity standards.

Response. Following proposal, in order to confirm the appropriateness of the proposed 20 percent opacity limit, we obtained additional opacity data for operating BOPF shops to supplement the limited data we had available at proposal. We now have opacity data for 19 of the 23 existing BOPF shops ranging in coverage from a single 2-hour test to multiple tests covering several years of observations. Our analysis considered all of the opacity data submitted by the commenters and data obtained from other sources. We examined the data and found that the best-controlled BOPF shops were those with secondary capture and control systems. In contrast, several BOPF shops without secondary controls experienced frequent exceedances of the 20 percent opacity limit. A total of eight BOPF shops have capture systems for secondary emissions that are vented to baghouses. We re-evaluated the data to determine the appropriateness and achievability of the proposed 20 percent opacity limit. We focused on BOPF shops for which we had a reasonable amount of long-term data. Specifically, we examined opacity data only from shops for which we had 12 months or more of observations (*i.e.*, all seasons of the year), which included observations for 11 of the 23 existing shops. The five best-performing shops achieved the limit 99.5 to 99.98 percent of the time. These data clearly indicate that the best-performing units in the category achieve the proposed opacity limit (but do not achieve a more stringent level of control), and, therefore, that the State limits are a good proxy for actual best performance. Thus, we are confident that the proposed opacity limit of 20 percent is achievable and that it provides an accurate picture of the actual performance achieved by the best-performing sources.

Our analysis of the opacity data for BOPF shops indicated that opacity observations are routinely made over several consecutive steel production cycles. In the proposal, we had included a provision that the opacity observations during the performance test did not have to be consecutive. In today's final rule, we have removed the provision which allowed non-consecutive observations. This is consistent with the opacity data used to support the opacity limit and with the procedures routinely used to make opacity observations for BOPF.

9. Sinter Cooler Stack

Comment. Six commenters note that one of the plants used to calculate the MACT floor is permanently shut down. Consequently, the floor analysis does not reflect the SIP requirements for actual operating sources. In addition, EPA has not shown that the proposed standard is achievable by the best-performing sources under the foreseeable range of operating conditions.

Response. Our investigation into this comment indicates that all five of the sinter plants listed in Table B–11 of the BID are operating (Ispat-Inland at East Chicago, IN; WCI Steel at Youngstown, OH; Bethlehem Steel at Sparrows Point, MD; U.S. Steel at Gary, IN; and AK Steel at Middletown, OH). Because we had only limited test data, we based the MACT floor on the average of the top five sources subject to the most stringent existing State regulations or permit limits. One plant has a limit of 0.01 gr/dscf (for one-half of its cooler), three of the five best-performing plants are subject to a limit of 0.03 gr/dscf, and one plant has a lb/hr limit that is equivalent to about 0.05 gr/dscf. The average and median limit applied to the top five plants is 0.03 gr/dscf. Although our data are limited, they show that the proposed emission limit is achievable and has been achieved based on the available test results. Nationwide, baghouses are used at three plants, a cyclone at one plant, and three plants are uncontrolled. Consequently, the best-performing plants and the median of the top five would be a plant with a baghouse. A test at WCI Steel, which controls these emissions with a baghouse, ranged from 0.005 to 0.02 gr/dscf and averaged 0.009 gr/dscf. The results for WCI show significant variability in the run-to-run results, which range up to 0.02 gr/dscf. The test results indicate that the better-controlled plants can achieve the limit

of 0.03 gr/dscf; however, considering the high variability from run to run, the plant is not substantially overachieving the limit.

No commenters provided any evidence that the existing State limits were not being achieved on a continuing basis (*e.g.*, in the form of violation reports), and we have no evidence that any facility has been in violation of the existing State limits. Consequently, we believe the floor based on State limits represents a reasonably accurate picture of what the best-performing sources have and continue to achieve. For new sources, we chose a limit of 0.01 gr/dscf based on the most stringent State limit. The average test results for WCI Steel (0.009 gr/dscf) show that this limit is achievable by a properly-designed and operated baghouse.

10. PM Standard for Sinter Discharge End Control Device

Comment. According to one commenter, EPA claims it has PM test data from six plants, but asserts in the preamble that it has credible test data for only one plant and never explains why data for only one plant is credible. The EPA does not explain how this represents an accurate picture of the relevant best sources' actual performance, or how it knows that the best sources are not doing better than their permits require.

Response. The reference to test data in the BID is correct; however, use of the term "test data" in the BID was not correct. We had estimates of PM emissions from the discharge end from several plants based on emission factors that they supplied in a survey questionnaire. However, these estimates were not supported by the use of reference methods for sampling and analysis or substantiated by emission test reports. For units in this category, it is not feasible to use estimates based on typical emission factors to identify the level of control that a plant routinely achieves. Therefore, this information is of no practical value for purposes of identifying the best-performing sinter discharge ends. We found the only test data we could validate for the discharge end was for the EPA test conducted at WCI Steel. The results of this test support our conclusion that the existing State limits reasonably approximate actual emissions and performance. However, we have no indication or expectation that the best-performing plants are achieving a level of control more stringent than the proposed emission limit. Consequently, we based the floor on the most stringent State limits.

Comment. Seven commenters state that three of the nine sinter plants in the existing population are now shut down, including one of the five plants used to calculate the floor for the discharge end. The commenters assert that EPA must recalculate the floor to reflect only operating sources. Also, EPA must show that the standard is consistently achievable by the best-performing sources under the foreseeable range of operating conditions.

Response. We agree that one of the five best-performing plants (Wheeling-Pittsburgh Steel) used to determine the floor was shut down at the time of the floor analysis. We elected to re-calculate the floor and exclude this plant. We determined that the floor based on the average of the five best-performing sources remains the same (0.02 gr/dscf). One plant is subject to a limit of 0.01 gr/dscf, two plants are subject to a limit of 0.02 gr/dscf, one is subject to 0.03 gr/dscf, and the fifth plant has a mass rate limit that is equivalent to about 0.04 gr/dscf. The average and median value associated with the top five limits is 0.02 gr/dscf. We have detailed design information for the baghouses applied to the discharge end, and our engineering analysis of the design information, coupled with test data for baghouses in similar applications, indicates that these controls can achieve 0.02 gr/dscf under the foreseeable range of operating conditions. Although we have test data for only one baghouse, the test averaged 0.006 gr/dscf and further supports the achievability of the MACT floor. We based the MACT floor for new sources on the most stringent State limit of 0.01 gr/dscf. Again, the available test data indicate that this limit can be achieved by a properly-designed and operated baghouse.

11. PM Standard for BOPF Fugitive Emissions

Comment. One commenter stated that EPA does not explain how the floor determination represents an accurate picture of the relevant best sources' actual performance, or how it knows that the best sources are not doing better than their permits require.

Response. We have test data for only one baghouse applied to BOPF fugitive emissions, and because of the nature of the test, the results are not useful for determining the MACT floor. During the test, sampling was performed continuously over a 3-hour period, even when the furnace was not operating and when fugitive emissions were not occurring. Consequently, the reported concentrations for the baghouse outlet are unrepresentative of the concentrations that would be measured when fugitive emissions from charging and tapping are occurring. Because of the lack of data, we based the floor on existing State limits and have made no changes to the proposed emission limits. We chose 0.01 gr/dscf as the floor from the median of the five sources with the most stringent limits (one at 0.0052, one at 0.006, two at 0.01, and one at 0.012 gr/dscf). One unit is subject to the most stringent State limit of 0.0052 gr/dscf, and we selected this limit as the MACT floor for new sources. These limits are achieved by using a capture system vented to a baghouse, and these levels are consistent with the performance of well-designed and operated baghouses. We have no evidence that plants are violating their current limits, and we have no indication they are achieving a level of control more stringent than the identified State limits. This observation is consistent with an EPA design manual for baghouses which states that typical outlet concentrations for all applications range from 0.001 to 0.01 gr/dscf (depending primarily on the design parameters).

B. What Surrogates Did We Use for HAP?

1. PM for Metal HAP

Comment. One commenter contends that PM is not a valid surrogate for HAP metal compounds and that specific limits for individual metals should be established. In support, the commenter points to other rules where EPA has recognized that PM is not a valid surrogate for mercury, lead, and cadmium because of their volatility and that these emissions cannot necessarily be controlled merely by controlling PM emissions. Consequently, EPA cannot claim PM is a valid surrogate for metal HAP in the final rule or that setting standards for individual metals would ". . . achieve little, if any, HAP emission reduction beyond what would be achieved using the surrogate pollutant approach based on total PM." Because EPA has already recognized that PM is not an adequate surrogate for mercury, lead, and cadmium, EPA must set individual emission standards for such HAP.

Response. We disagree with the commenter and believe that PM is a valid surrogate for the HAP metal compounds emitted from integrated iron and steel sources. The rationale in the preamble for the hazardous waste combustors (HWC) rule is unique to that source category and does not apply to the metal HAP emissions and controls in the integrated iron and steel industry.

The preamble for the final HWC rule makes this point clearly:

> . . . However, for sources not burning hazardous waste and without a significant potential for extreme variability in metals feed rates, PM is an adequate surrogate for metal HAP (*e.g.*, for nonhazardous waste burning cement kilns).[1]

Hazardous waste combustors are unique and different from integrated iron and steel sources in several respects:

- They have significant levels of volatile and semi-volatile HAP metal compounds in the waste-derived fuels being burned,
- The feed rate of these metals can be highly variable, and
- The high temperatures in the combustion process can volatilize semi-volatile metals and form fine PM, which can be harder to control. In contrast, the raw materials used in iron and steel processes have relatively low levels of metal HAP, the level of metal HAP does not vary significantly as do the HAP metals in waste materials fed to HWC, and test data indicate that PM control devices effectively control the HAP metals from iron and steel processes.

A key parameter for the control of both semi-volatile and non-volatile metal compounds is the operating temperature of the air pollution control device that is applied. At temperatures of 200 to 400°F, the range typical of control devices applied to emissions from integrated iron and steel processes, any semi-volatile and non-volatile HAP metal compounds present would exist in the form of fine PM, and, therefore, will be controlled in direct relationship to PM.

Mercury is an exception because of its high volatility. However, we have no data that show any significant emissions of mercury from integrated iron and steel plants, and there is no reason to suspect its presence in any appreciable quantities in emissions from ironmaking and steelmaking. In the two sinter plant tests we conducted, we sampled and analyzed for mercury. The results showed only trace levels of mercury (7×10^{-7} to 2×10^{-6} gr/dscf). Thus, we believe that mercury emissions from integrated iron and steel sources are negligible and that the performance of these units with respect to any trace levels of mercury can not be measurably improved. Moreover, no iron and steel plants operate an emissions control system that would further reduce these trace amounts of mercury emissions, or otherwise take any steps that would reduce such emissions. Because no units currently reduce mercury emissions from the integrated iron and steel industry, the MACT floor for mercury (for both new and existing sources) would be no reduction in emissions. Because the mercury concentrations are already so low, no technically feasible control technologies can be identified that could reduce these trace levels of mercury emissions. Therefore, no mercury emissions standards are proposed for integrated iron and steel sources.

[1] See Footnote 40 in preamble to the final HWC rule (64 FR 52846, September 30, 1999).

2. Oil Content for Organic HAP

Comment. Two commenters urged us to establish emission standards for specific organic HAP, including dioxin, in lieu of the oil content limit. One commenter contends that the proposed rule should contain emission limits for the many organic HAP emitted from iron and steel plants, including dioxin, polycyclic organic matter, benzene, and toluene. The proposed operating requirement for sinter plants is not an emission standard and does not satisfy CAA requirements. Furthermore, regulations pursuant to section 112 of the CAA must include emission standards for each HAP emitted from an affected source category. The commenter adds that EPA provided no data in support of the proposed approach for controlling dioxin emissions. This commenter believes the proposed rule effectively ignores organic HAP in contradiction of CAA requirements because vapor phase organics are not removed by the fabric filters or wet scrubbers.

Several commenters contend that EPA has not met its requirements to show a correlation between the surrogate to be controlled and the object of control. Two commenters state that EPA has not provided sufficient data to demonstrate a correlation. Eight other commenters do not believe that there is a correlation to dioxin emissions or that control of the oil and grease would reduce HAP organic emissions. In support, they claim data from one plant (Bethlehem Steel, Sparrows Point) show no VOC increase in windbox emissions as oil content increases.

Response. The only available data regarding organic HAP emissions from these units are from two tests we conducted. These tests are insufficient to generate a meaningful characterization of emission control levels that can be achieved under varying process conditions over time, and there is no way to use this emissions test data to identify the best-performing plants. Moreover, the add-on emission controls used by units in the category (baghouses and venturi scrubbers) do not control vapor phase organic compounds. As a result, we believe that the best way to assess current levels of VOC emission control, and to limit such emissions is to rely upon existing methods of pollution prevention. Accordingly, we have established limits on the amount of organic HAP precursor material (specifically oil and grease) that may be in the sinter feed, in order to control emissions of organic compounds. Additionally, section 112(d)(2) of the CAA specifically allows EPA to establish MACT standards based on emission controls that rely on pollution prevention techniques.

We have added information to the docket from a European study that shows dioxin emissions are related to oil content-emissions increase as the oil content increases. We have also added information from two U.S. sinter plants that show VOC emissions increase as oil content increases, and the VOC contains volatile HAP such as benzene. In fact, plants in Indiana control VOC emissions by limiting the amount of oil in the sinter feed. Because the two are related, Indiana allows monitoring oil content as an alternative to VOC monitoring. In the past, sinter plants with baghouses have voluntarily limited oil content because the organic compounds that were emitted tend to condense and blind the bags as well as pose a fire hazard. We believe these studies conclusively show that oil content correlates with organic emissions.

An emission limit for individual organic compounds is not practical because the emission controls that are used do not effectively control all organic HAP. Conventional control systems used for organics, such as incineration or carbon adsorption, would not be practicable because they are ineffective at the very low concentration (parts per million levels) in the windbox exhaust stream. On the other hand, a limit on oil content effectively limits emissions of organic HAP, and control of oil content is a proven emission control measure. Consequently, in this instance, we believe that a limit on oil content is the only feasible way to ensure that all plants achieve the MACT level of control for organic HAP from the sinter plant windbox exhaust.

C. Is a Risk Analysis Warranted?

Comment. Seven commenters urge EPA to perform a risk assessment under section 112(d)(4) of the CAA for manganese to determine if HAP controls are necessary. Manganese is a health threshold pollutant, and there is little likelihood of chronic or widespread

exposure at concentrations above the threshold at iron and steel plants. The EPA conducted this analysis for the pulp and paper standards and decided not to regulate hydrogen chloride emissions. According to the commenters, risk-based standards under section 112(d)(4) would result in no standards, or less stringent and more cost effective standards.

Response. Section 112(d)(4) of the CAA provides EPA with authority, at its discretion, to develop risk-based standards for HAP ". . . for which a health threshold has been established," provided that the standard achieves an "ample margin of safety." Section 112(d)(4) says:

> [w]ith respect to pollutants for which a health threshold has been established, the Administrator may consider such threshold level, with an ample margin of safety, when establishing emission standards under this subsection.

As EPA has indicated in the past (*see* 63 FR 18754 and 67 FR 44713), we generally apply section 112(d)(4) of the CAA only to HAP that are not carcinogens because Congress clearly expected that carcinogens would be non-threshold pollutants. The legislative history further indicates that if EPA invokes this provision, it must assure that any emission standard results in ambient concentrations less than the health threshold, with an ample margin of safety, and that the standards must also be sufficient to protect against adverse environmental effects. (*See* S. Rep. No. 228, 101st Cong. at 171.) The EPA is not to consider cost in establishing a standard pursuant to section 112(d)(4).

Therefore, EPA believes it has the discretion under section 112(d)(4) of the CAA to develop risk-based standards for some categories emitting threshold pollutants, which may be less stringent than the corresponding floor-based MACT standard would be. Where EPA develops standards under this provision, we seek to ensure that emissions from every source in the category or subcategory are less than the threshold level to an individual exposed at the upper end of the exposure distribution. We believe that assuring protection to persons at the upper end of the exposure distribution is consistent with the ample margin of safety requirement in section 112(d)(4). (*See* 63 FR 18754 at 18768.)

However, the EPA emphasizes that use of section 112(d)(4) of the CAA authority is wholly discretionary. As the legislative history described above indicates, cases may arise in which other considerations dictate that the Agency should not invoke this authority to establish less stringent standards, despite the existence of a health effects threshold that is not jeopardized. For instance, EPA does not anticipate that it would set less stringent standards where evidence indicates a threat of significant or widespread environmental effects, although it may be shown that emissions from a particular source category do not approach or exceed a level requisite to protect public health with an ample margin of safety. The EPA may also elect not to set less stringent standards where the estimated health threshold for a contaminant is subject to large uncertainty. Thus, in considering appropriate uses of its discretionary authority under section 112(d)(4), EPA considers other factors in addition to health thresholds, including uncertainty and potential adverse environmental effects, as that phrase is defined in section 112(a)(7) of the CAA.

For several reasons, in this case, we have decided not to exercise our discretion to consider existing threshold levels for manganese in setting the emission standards for metal HAP compounds from integrated iron and steel facilities. This decision is appropriate because we have insufficient data about the nature and degree of public exposures to these emissions, including background exposure levels and other relevant factors, to meaningfully consider whether maximum exposures to manganese emissions from integrated iron and steel facilities would remain below the relevant threshold. In fact, it is clear that facilities in this source category emit significant quantities of manganese, totaling about 250 tpy. Because the commenters did not provide us with any of the detailed site-specific information that we would need to perform an adequate assessment of emissions and exposures, we have concluded that it would be inappropriate to consider the threshold nature of manganese in establishing MACT standards for the integrated iron and steel source category. Additionally, the commenters have supplied no information about the environmental impact of metal emissions from integrated iron and steel plants, and we have no data upon which we can rely for such an environmental assessment.

Moreover, even if we had access to more detailed data regarding emissions, exposures, and environmental impact, it is not clear whether consideration of the manganese health threshold would have any practical effect on the MACT standards established in today's final rule. In particular, emissions from integrated iron and steel plants include metal HAP besides manganese that are not threshold pollutants (including lead, nickel, and chromium compounds), and these pollutants are controlled using the same control technologies that reduce emissions of manganese. As with manganese, we have no data regarding maximum exposures or environmental impacts from such emissions at integrated iron and steel facilities, and we have no data specifically characterizing these metal emissions. These plants emit about 360 tpy of HAP metal compounds—including about 111 tpy of lead, nickel and chromium compounds. Certain lead, nickel and chromium compounds are listed as carcinogens and have no applicable human health threshold. For additional information, see our guidance document entitled "Guidance on the Major Source Determination for Certain Hazardous Air Pollutants" available on our Web site at *http://www.epa.gov//ttn/oarpg/t3/memoranda/agghapmem.pdf*.

Today's final rule controls all metal HAP emissions (including lead, nickel, and chromium) by using PM as a surrogate. Because we use PM as a surrogate, eliminating only one or some of the metal HAP from consideration would have little if any practical impact on the MACT standards. Consequently, we believe the MACT standards finalized today are appropriate and will reduce emissions of all HAP at integrated iron and steel plants to the levels currently being achieved by the best-performing facilities.

D. How Did We Revise the Emission Limitations?

1. Sinter Cooler Emissions

Comment. Seven commenters explain that some exhaust systems on the sinter plant discharge end are designed to capture emissions at the point where sinter is loaded onto the sinter cooler and portions of the sinter cooler itself. In situations where cooler emissions are exhausted in part or in whole to the discharge end control system, the commenters request that the cooler stack emissions standard of 0.03 gr/dscf (for existing facilities) apply to the discharge end baghouse.

Response. We disagree and have written the final rule to clarify that the limit of 0.02 gr/dscf for the discharge end applies even when other emissions are ducted to the control device. The most effective technology for controlling emissions from the discharge end is a baghouse, and a properly-designed and operated baghouse can achieve 0.02 gr/dscf on a continuing basis. An emission limit of 0.03 gr/dscf is too high to be representative of the MACT floor, and does not reflect what is currently achieved by the five best-performing sources.

2. Sinter Plant Oil Content Requirement

Comment. Sinter plants in Maryland and Indiana already must comply with rules that regulate the oil and grease content for the sinter plant raw material blend. The rules limit VOC emissions to no more than 0.25 lb/ton of sinter (except Indiana allows 0.36 lb/ton during non-ozone season). Maryland requires VOC testing and Indiana provides the option of VOC testing or sampling for oil content. Seven commenters recommend VOC testing as an option in the final rule because most plants in these states already use them; some comments also suggest a 30-day rolling average for VOC.

Response. We reviewed data submitted by two plants that showed VOC emissions correlated with oil content. LTV Steel (now owned by International Steel Group) performed simultaneous testing of oil content and VOC emissions, correlated the results, and showed that an oil content of 0.024 percent was equivalent to the State VOC limit of 0.25 lb/ton of sinter. As a result, the State allowed them to use alternative monitoring procedures. Based on our review of the data, we believe that maintaining the VOC at a level of 0.2 lb/ton or lower will ensure that the operating limit of 0.02 percent oil is maintained. Consequently, we have written the final rule to include an alternative emission limitation for VOC of 0.2 lb/ton of sinter. A plant electing the alternative limit is required to measure VOC emissions (total gaseous nonmethane organics as carbon) in source emissions using EPA Method 25 in 40 CFR part 60, appendix A (or a previously approved method). As with the oil content, the VOC limit is based on a 30-day rolling average. The 30-day average provides additional flexibility because it allows an occasional high daily value to be averaged with lower values on other days to achieve compliance. We believe the 30-day average accounts for day-to-day variability and enhances the achievability of the limit.

3. ESP Operating Limit

Comment. For plants required to use COMS to monitor ESP, the proposed rule establishes an enforceable operating limit based on the opacity observed during the initial performance test. Eight commenters argue that COMS data should not be used for compliance determinations because of measurement uncertainties and unreliability. They point to the recognized limitation for measuring opacity below 10 percent and provide supporting data comparing COMS measurements in ESP stacks to EPA Method 9 data. Like the steel pickling MACT standard, COMS data should be used only to indicate if the ESP is operating properly and to institute corrective action as appropriate; subsequent EPA Method 9 observations may be appropriate in the event of a high number of measured excursions. These commenters also object to the operating limit for ESP equipped with COMS because EPA has not demonstrated a correlation between opacity and PM emissions from BOPF controlled by ESP to support using opacity as a surrogate for PM. A COMS opacity reading that is above that observed during a performance test does not necessarily indicate an exceedance because the high reading could have been caused by water vapor or another interference. The commenters believe EPA has not demonstrated that the tiny amount of data collected during the initial performance test would be representative of the opacity performance of ESP over the full range of foreseeable operating conditions. Thirty 6-minute averages taken over a 3-hour period will not adequately characterize the range of 87,600 6-minute averages generated over an entire year. Thus, EPA has not demonstrated that a limit set in this manner would be consistently achievable by well-operated and maintained equipment under the most adverse operating conditions over time.

Response. We believe that opacity is well established as a surrogate for PM. However, we understand the concerns of the commenters with respect to variability and have written the procedures in the final rule for determining the COMS operating limit to account for variability. The opacity operating limit is based on measurement of 6-minute averages during the performance test, and then calculating the 99 percent upper confidence limit on the mean of a normal distribution of the average opacity values. This statistical approach will account for normal variability and still provide assurance that the ESP is operating properly.

4. Operating Limits for Capture Systems

Comment. Nine commenters believe that an enforceable range of operating limits applicable under all operating conditions cannot be determined from the initial performance test for damper systems. Fixed damper positions for one set of operating conditions are not appropriate due to varying simultaneous operations, normal process variations, and seasonable variations. The final rule should allow sources to specify multiple operating scenarios or ranges of operation in the operation and maintenance plan and require plants to meet the values in the plan rather than those set in the initial performance test. Eight of these commenters also recommend that the final rule include an alternative allowing continuous monitoring of fan amperage, like the provisions included in the proposed standards for coke plants.

Response. We investigated this issue further, and based on the additional information we received, we agree that fixed damper settings are not practicable or desirable in many cases. For example, damper settings may need to be changed in the BOPF shop depending on the operations underway at the time, such as hot metal transfer, desulfurization, charging, oxygen blowing, and tapping. We have written the final rule to provide flexibility and have modeled it after the MACT standard for primary copper smelters. The owner or operator must specify in the operation and maintenance plan the damper settings that will be used under different operating scenarios and for seasonal variations. These damper settings must be checked once per day. We have also added fan amperage as an acceptable alternative, consistent with the MACT standards for coke ovens and for primary copper smelters.

E. How Did We Revise the Performance Test Requirements?

1. Overlapping Cycles

Comment. Some plants have the capability of overlapping cycles of two separate furnaces (*e.g.*, they may blow one furnace while another is being tapped). It appears that EPA's database is comprised of tests conducted on single furnaces. For this reason, seven commenters ask EPA to clarify that testing of primary emissions from BOPF is to be conducted during the steel production cycle of a single furnace. Other shop operations may be suspended during the testing. This approach is consistent with the manner in which the data were collected.

Response. We specify in the final rule exactly when owners or operators must test primary emissions from BOPF. For closed hood BOPF, plants must sample only during the primary oxygen blow. For open hood BOPF, plants must sample during the steel production cycle. We clarified that the steel production cycle begins when scrap is charged to the furnace and ends 3 minutes after the slag is emptied from the vessel. These requirements are

consistent with the way the emission test data were collected. We do not agree that testing should be performed under conditions that do not represent normal operations, such as suspending certain shop operations. The provisions in 40 CFR 63.7(e) apply and require that sampling be conducted under conditions that are based on representative performance (*i.e.*, performance based on normal operating conditions of the affected source).

2. Testing Multiple Stacks

Comment. Eight commenters believe it is impractical and burdensome to require simultaneous tests of multiple stacks or vents for a control device (*e.g.*, baghouse with eight modules, each with its own fan and stack). Successive testing of each stack or vent could be more manageable, but still has excessive costs. One commenter estimates 42 days of testing could be needed at one plant if each stack and vent must be tested. For these reasons, the proposed rule should be revised to allow for performance tests of a representative exhaust flow where control devices with multiple stacks are used.

Response. We agree and believe that because of the site-specific nature of this problem, decisions should be made on a case-by-case basis by the applicable permitting authority. We have written the final rule such that a source may conduct a representative sampling of stacks subject to the approval of the permitting authority when there are more than three stacks associated with a process.

F. How Did We Revise the Cost Estimates and Economic Impact Analysis?

Comment. Several commenters stated that we significantly underestimated the cost of the proposed rule. At proposal, we estimated a capital cost of $34 million. The commenters said that the total capital cost was in the range of $270 to $320 million. Their estimate includes the cost of controls for plants not included in EPA's estimate as well as higher estimates of the cost for controls and monitoring in general.

Response. Following proposal and the receipt of comments, we contacted facilities to discuss the details of their cost estimates. Some facilities provided the details and basis of their estimates, and we incorporated them into our revised estimates. Other plants did not provide details or documentation; consequently, we developed our best estimate of potential costs for these facilities. In addition, we collected opacity data for most of the operating plants. We used these data to identify plants that may need to install capture and control systems in the blast furnace casthouse or BOPF shop to meet the 20 percent opacity limit. Our revised capital cost estimate increased to $93 million.

Comment: Eight commenters urge EPA to update it's economic impact analysis to represent current economic conditions of the steel industry and the cumulative effect of all other pending environmental regulatory requirements facing the industry during the same time period.

Response: We agree with the commenters and have performed a revised economic impact analysis. The revised analysis attempts to account for the factors mentioned in the comment. At proposal, we estimated domestic production from integrated steel mills would decline by 3,100 tons, and operating profits were expected to decrease by $5.2 million annually. With our revised analysis, we estimate domestic production from integrated mills will decline by 73,000 tons, and operating profits will decrease by $13 million per year. A complete copy of the economic impact analysis is available in the docket.

IV. Summary of Environmental, Energy, and Economic Impacts

A. What Are the Air Emission Impacts?

The installation of new controls and upgrades will result in reductions in emissions of metal HAP and PM. We estimate that five new capture and control systems for the blast furnace casthouses will reduce these emissions by 90 percent, a reduction of 14 tpy of HAP and 2,100 tpy of PM. The new BOPF scrubbers at one plant and upgrades at two others will result in a 50 percent reduction in emissions, 5 tpy of HAP and 350 tpy of PM. Six new capture and control systems for fugitive emissions from BOPF shops will result in a 90 percent reduction in emissions, 48 tpy of HAP and 3,300 tpy of PM.

Most plants currently operate air pollution control equipment sufficient to meet the final rule requirements. We expect the standard to reduce metal HAP emissions from plants that will need to install or upgrade controls by 67 tpy and PM emissions by 5,800 tpy. Nationwide emissions of metal HAP and PM from integrated iron and steel plants will be reduced by nearly 20 percent from current levels.

B. What Are the Cost Impacts?

The nationwide capital and annual costs of new and upgraded capture and control systems are estimated at $93 million and $15 million/yr, respectively. The total nationwide annual costs (including monitoring and recordkeeping) are about $16 million/yr. These costs are based on a new primary control system (high-pressure drop venturi scrubbers) for one BOPF shop, upgraded primary controls at two others, six new capture and control systems for fugitive BOPF emissions, and five new capture and control systems for blast furnace casthouses. In addition, the estimate includes a capital cost of $0.9 million and a total annual cost of $1 million for monitoring, reporting, and recordkeeping.

C. What Are the Economic Impacts?

We conducted a detailed economic impact analysis to determine the impacts of the final rule on both the industry and the U.S. market for steel mill products. We estimate the economic impacts in both areas to be negligible. We project the price of steel mill products, in aggregate, to increase by less than 0.1 percent with domestic production from integrated mills declining by 73,100 short tons. This decline in production at affected integrated mills is somewhat offset by increases at nonintegrated domestic steel producers (15,800 short tons) and foreign imports (49,500 short tons). In terms of industry impacts, the integrated steel producers are projected to experience a slight decrease in operating profits of $13 million annually, which reflects increased costs of compliance and associated reductions in revenues from producing final steel mill products. In addition, we don't foresee any individual integrated facility being in jeopardy of closure as a result of implementing the rule.

Based on the market analysis, the annual costs to society of today's final rule are projected to be $15.4 million. As a result of slightly higher prices for steel mill products, the final consumers of these products will incur an additional $6.2 million annually. Profits at integrated steel mills are expected to decline by $13 million annually because of directly incurred control costs and reduced product revenues, while nonintegrated steel mills that compete in these markets and are unaffected by today's rule will experience an increase in profits of $2.2 million. Similarly, foreign steel producers will also experience an increase in profits of $1.7 million due to the slightly higher prices and increases in imports to the U.S. market. For more information, consult the economic impact analysis supporting the proposed rule.

D. What Are the Non-Air Health, Environmental, and Energy Impacts?

Implementation of the rule will result in a small increase in solid waste-3,200 tpy of sludge and 5,500 tpy of dust. The energy increase is estimated at 24,000 megawatt-hours per year, primarily due to the energy requirements of new venturi scrubbers.

V. Statutory and Executive Order Reviews

A. Executive Order 12866: Regulatory Planning and Review

Under Executive Order 12866 (58 FR 51735, October 4, 1993), the EPA must determine whether the regulatory action is "significant" and, therefore, subject to review by the Office of Management and Budget (OMB) and the requirements of the Executive Order. The Executive Order defines a "significant regulatory action" as one that is likely to result in a rule that may:

(1) Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities;

(2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) Materially alter the budgetary impact of entitlement, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or

(4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

It has been determined that the final rule is not a "significant regulatory action" under the terms of Executive Order 12866, and is, therefore, not subject to OMB review.

B. Paperwork Reduction Act

The information collection requirements in the final rule have been submitted for approval to OMB under the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* An information collection request (ICR) document has been prepared by EPA (ICR No. 2003.02), and a copy may be obtained from Susan Auby by mail at U.S. EPA, Office of Environmental Information, Collection Strategies Division (2822T), 1200 Pennsylvania Avenue, NW., Washington, DC 20460, by e-mail at *auby.susan@epa.gov*, or by calling (202) 566–1672. A copy also may be downloaded off the Internet at *http://www.epa.gov/icr*. The information requirements are not enforceable until OMB approves them.

The information requirements are based on notification, recordkeeping, and reporting requirements in the NESHAP General Provisions (40 CFR part 63, subpart A), which are mandatory for all operators subject to NESHAP. These recordkeeping and reporting requirements are specifically authorized by section 112 of the CAA (42 U.S.C. 7414). All information submitted to the EPA pursuant to the recordkeeping and reporting requirements for which a claim of confidentiality is made is safeguarded according to Agency policies in 40 CFR part 2, subpart B.

The final rule requires applicable one-time notifications required by the General Provisions for each affected source. As required by the NESHAP General Provisions, all plants must prepare and operate by a startup, shutdown, and malfunction plan. Plants also are required to prepare an operation and maintenance plan for capture systems and control devices subject to operating limits. Records are required to demonstrate continuous compliance with the monitoring, operation, and maintenance requirements for capture systems, control devices, and monitoring systems. Semiannual compliance reports also are required. These reports must describe any deviation from the standards, any period a continuous monitoring system was out-of-control, or any startup, shutdown, or malfunction event where actions taken to respond were inconsistent with startup, shutdown, and malfunction plan. If no deviation or other event occurred, only a summary report is required. Consistent with the General Provisions, if actions taken in response to a startup; shutdown, or malfunction event are not consistent with the plan, an immediate report must be submitted within 2 days of the event with a letter report 7 days later.

The annual public reporting and recordkeeping burden for this collection of information averaged over the first 3 years after May 20, 2003 is estimated to total 4,772 labor hours per year at a total annual cost of $347,115, including labor, capital, and operation and maintenance. Total capital costs associated with the monitoring equipment is estimated at $885,000. The total annualized cost of the monitoring equipment is estimated at $126,000. This estimate includes the capital, operating, and maintenance costs associated with the installation and operation of the monitoring equipment.

Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purpose of collecting, validating, and verifying information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to respond to a collection of information; search existing data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

An Agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR part 9 and 48 CFR chapter 15.

C. Regulatory Flexibility Act

The EPA has determined that it is not necessary to prepare a regulatory flexibility analysis in connection with the final rule. The EPA has also determined that the final rule will not have a significant economic impact on a substantial number of small entities. For purposes of assessing the impacts of today's final rule on small entities, small entity is defined as: (1) A small business according to the U.S. Small Business Administration (SBA) size standards for NAICS code 33111 (Iron and Steel Mills) of 1,000 or fewer employees; (2) a small governmental jurisdiction that is a government of a city, county, town, school district or special district with a population of less than 50,000; and (3) a small organization that is any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.

After considering the economic impacts of today's final rule on small entities, EPA has concluded that this action will not have a significant economic impact on a substantial number of small entities. Based on the SBA size category for this source category, no small businesses are subject to the final rule and its requirements.

D. Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Pub. L. 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. Under section 202 of the UMRA, the EPA generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with "Federal mandates" that may

result in expenditures by State, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more in any one year. Before promulgating an EPA rule for which a written statement is needed, section 205 of the UMRA generally requires the EPA to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective, or least-burdensome alternative that achieves the objectives of the rule. The provisions of section 205 do not apply when they are inconsistent with applicable law. Moreover, section 205 allows the EPA to adopt an alternative other than the least-costly, most cost-effective, or least-burdensome alternative if the Administrator publishes with the final rule an explanation why that alternative was not adopted. Before the EPA establishes any regulatory requirements that may significantly or uniquely affect small governments, including tribal governments, it must have developed under section 203 of the UMRA a small government agency plan. The plan must provide for notifying potentially affected small governments, enabling officials of affected small governments to have meaningful and timely input in the development of EPA regulatory proposals with significant Federal intergovernmental mandates, and informing, educating, and advising small governments on compliance with the regulatory requirements.

Today's final rule contains no Federal mandate (under the regulatory provisions of the UMRA) for State, local, or tribal governments. The EPA has determined that the final rule does not contain a Federal mandate that may result in expenditures of $100 million or more for State, local, and tribal governments, in the aggregate, or the private sector of $100 million or more in any one year. Thus, the final rule is not subject to the requirements of sections 202 and 205 of the UMRA. The EPA has also determined that the final rule contains no regulatory requirements that might significantly or uniquely affect small governments. Thus, today's final rule is not subject to the requirements of section 203 of the UMRA.

E. Executive Order 13132: Federalism

Executive Order 13132 (64 FR 43255, August 10, 1999) requires EPA to develop an accountable process to ensure "meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications." "Policies that have federalism implications" is defined in the Executive Order to include regulations that have "substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government."

The final rule does not have federalism implications. It will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132. None of the affected facilities are owned or operated by State governments. Thus, Executive Order 13132 does not apply to the final rule.

F. Executive Order 13175: Consultation and Coordination With Indian Tribal Governments

Executive Order 13175 (65 FR 67249, November 9, 2000) requires EPA to develop an accountable process to ensure "meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications."

The final rule does not have tribal implications, as specified in Executive Order 13175. It will not have substantial direct effects on tribal governments, on the relationship between the Federal government and Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes. No tribal governments own facilities subject to the NESHAP. Thus, Executive Order 13175 does not apply to the final rule.

G. Executive Order 13045: Protection of Children From Environmental Health & Safety Risks

Executive Order 13045 (62 FR 19885, April 23, 1997) applies to any rule that: (1) Is determined to be "economically significant," as defined under Executive Order 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the EPA must evaluate the environmental health or safety effects of the planned rule on children and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency.

The EPA interprets Executive Order 13045 as applying only to those regulatory actions that are based on health or safety risks, such that the analysis required under section 5–501 of the Executive Order has the potential to influence the regulation. The final rule is not subject to Executive Order 13045 because it is based on control technology and not on health or safety risks.

H. Executive Order 13211: Actions That Significantly Affect Energy Supply, Distribution, or Use

The final rule is not subject to Executive Order 13211 (66 FR 28355, May 22, 2001) because it is not a significant regulatory action under Executive Order 12866.

I. National Technology Transfer Advancement Act

Section 12(d) of the National Technology Transfer and Advancement Act (NTTAA) of 1995 (Pub. L. 104–113; 15 U.S.C. 272 note) directs the EPA to use voluntary consensus standards in their regulatory and procurement activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (*e.g.*, materials specifications, test methods, sampling procedures, business practices) developed or adopted by one or more voluntary consensus bodies. The NTTAA directs EPA to provide Congress, through annual reports to OMB, with explanations when an agency does not use available and applicable voluntary consensus standards.

The final rule involves technical standards. Therefore, the EPA conducted a search to identify potentially applicable voluntary consensus standards. However, we identified no such standards as alternatives to EPA Methods 2F, 2G, 5D, 9 and OSW 846 Method 9071B, and none were brought to our attention in comments.

The Agency identified ASTM D4536–96, "Test Method for High Volume Sampling for Solid Particulate Matter and Determination of Particle Emissions," as being potentially applicable and proposed it as an alternative to Method 5 or 17 for testing positive pressure fabric filters. However, this standard has been replaced by ASTM D6331–98, "Standard Test Method for Determination of Mass Concentration of Particulate Matter from Stationary Sources at Low Concentrations (Manual Gravimetric Method)." We have decided not to use ASTM D6331 in the final rule. The use of this voluntary consensus standard would be impractical or inconsistent with applicable law because it is not similar enough to replace ASTM D4536–96.

The search for emissions measurement procedures identified 16 other voluntary consensus standards. The EPA has not adopted these standards as alternatives in the final rule because they are impractical or still under development. Our search and review results are available in the docket.

J. Congressional Review Act

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. The EPA will submit a report containing the final rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the final rule in the **Federal Register**. The final rule is not a "major rule" as defined by 5 U.S.C. 804(2).

List of Subjects in 40 CFR Part 63

Environmental protection, Air pollution control, Hazardous substances, Incorporation by reference, Reporting and recordkeeping requirements.

Dated: February 28, 2003.

Christine Todd Whitman,

Administrator.

■ For the reasons stated in the preamble, title 40, chapter I, part 63 of the Code of Federal Regulations is amended as follows:

PART 63—[AMENDED]

■ 1. The authority citation for part 63 continues to read as follows:

Authority: 42 U.S.C. 7401, *et seq.*

Subpart A—[Amended]

■ 2. Section 63.14 is amended by adding a new paragraph (k) to read as follows:

§ 63.14 Incorporation by reference.

* * * * *

(k) The following material may be obtained from U.S. EPA, Office of Solid Waste (5305W), 1200 Pennsylvania Avenue, NW., Washington, DC 20460:

(1) Method 9071B, "n-Hexane Extractable Material(HEM) for Sludge, Sediment, and Solid Samples," (Revision 2, April 1998) as published in EPA Publication SW–846: "Test Methods for Evaluating Solid Waste, Physical/Chemical Methods." The incorporation by reference of Method 9071B is approved for Section 63.7824(e) of Subpart FFFFF of this part.

■ 3. Part 63 is amended by adding subpart FFFFF to read as follows:

Subpart FFFFF—National Emission Standards for Hazardous Air Pollutants for Integrated Iron and Steel Manufacturing Facilities

Sec.

What This Subpart Covers

63.7780 What is the purpose of this subpart?
63.7781 Am I subject to this subpart?
63.7782 What parts of my plant does this subpart cover?
63.7783 When do I have to comply with this subpart?

Emission Limitations

63.7790 What emission limitations must I meet?

Operation and Maintenance Requirements

63.7800 What are my operation and maintenance requirements?

General Compliance Requirements

63.7810 What are my general requirements for complying with this subpart?

Initial Compliance Requirements

63.7820 By what date must I conduct performance tests or other initial compliance demonstrations?
63.7821 When must I conduct subsequent performance tests?
63.7822 What test methods and other procedures must I use to demonstrate initial compliance with the emission limits for particulate matter?
63.7823 What test methods and other procedures must I use to demonstrate initial compliance with the opacity limits?
63.7824 What test methods and other procedures must I use to establish and demonstrate initial compliance with the operating limits?
63.7825 How do I demonstrate initial compliance with the emission limitations that apply to me?
63.7826 How do I demonstrate initial compliance with the operation and maintenance requirements that apply to me?

Continuous Compliance Requirements

63.7830 What are my monitoring requirements?
63.7831 What are the installation, operation, and maintenance requirements for my monitors?
63.7832 How do I monitor and collect data to demonstrate continuous compliance?
63.7833 How do I demonstrate continuous compliance with the emission limitations that apply to me?
63.7834 How do I demonstrate continuous compliance with the operation and maintenance requirements that apply to me?
63.7835 What other requirements must I meet to demonstrate continuous compliance?

Notifications, Reports, and Records

63.7840 What notifications must I submit and when?
63.7841 What reports must I submit and when?
63.7842 What records must I keep?
63.7843 In what form and how long must I keep my records?

Other Requirements and Information

63.7850 What parts of the General Provisions apply to me?
63.7851 Who implements and enforces this subpart?
63.7852 What definitions apply to this subpart?

Tables to Subpart FFFFF of Part 63

Table 1 to Subpart FFFFF of Part 63—Emission and Opacity Limits
Table 2 to Subpart FFFFF of Part 63—Initial Compliance with Emission and Opacity Limits
Table 3 to Subpart FFFFF of Part 63—Continuous Compliance with Emission and Opacity Limits
Table 4 to Subpart FFFFF of Part 63—Applicability of General Provisions to Subpart FFFFF

Subpart FFFFF—National Emission Standards for Hazardous Air Pollutants for Integrated Iron and Steel Manufacturing Facilities

What This Subpart Covers

§ 63.7780 What is the purpose of this subpart?

This subpart establishes national emission standards for hazardous air pollutants (NESHAP) for integrated iron and steel manufacturing facilities. This subpart also establishes requirements to demonstrate initial and continuous compliance with all applicable emission limitations and operation and maintenance requirements in this subpart.

§ 63.7781 Am I subject to this subpart?

You are subject to this subpart if you own or operate an integrated iron and steel manufacturing facility that is (or is part of) a major source of hazardous air pollutants (HAP) emissions. Your integrated iron and steel manufacturing facility is a major source of HAP if it emits or has the potential to emit any single HAP at a rate of 10 tons or more per year or any combination of HAP at a rate of 25 tons or more per year.

§ 63.7782 What parts of my plant does this subpart cover?

(a) This subpart applies to each new and existing affected source at your integrated iron and steel manufacturing facility.

(b) The affected sources are each new or existing sinter plant, blast furnace, and basic oxygen process furnace (BOPF) shop at your integrated iron and steel manufacturing facility.

(c) This subpart covers emissions from the sinter plant windbox exhaust, discharge end, and sinter cooler; the blast furnace casthouse; and the BOPF shop including each individual BOPF and shop ancillary operations (hot metal transfer, hot metal desulfurization, slag skimming, and ladle metallurgy).

(d) A sinter plant, blast furnace, or BOPF shop at your integrated iron and steel manufacturing facility is existing if you commenced construction or reconstruction of the affected source before July 13, 2001.

(e) A sinter plant, blast furnace, or BOPF shop at your integrated iron and steel manufacturing facility is new if you commence construction or reconstruction of the affected source on or after July 13, 2001. An affected source is reconstructed if it meets the definition of reconstruction in § 63.2.

§ 63.7783 When do I have to comply with this subpart?

(a) If you have an existing affected source, you must comply with each emission limitation and operation and maintenance requirement in this subpart that applies to you no later than May 22, 2006.

(b) If you have a new affected source and its initial startup date is on or before May 20, 2003, then you must comply with each emission limitation and operation and maintenance requirement in this subpart that applies to you by May 20, 2003.

(c) If you have a new affected source and its initial startup date is after May 20, 2003, you must comply with each emission limitation and operation and maintenance requirement in this subpart that applies to you upon initial startup.

(d) If your integrated iron and steel manufacturing facility is not a major source and becomes a major source of HAP, the following compliance dates apply to you.

(1) Any portion of the existing integrated iron and steel manufacturing facility that becomes a new affected source or a new reconstructed source must be in compliance with this subpart upon startup.

(2) All other parts of the integrated iron and steel manufacturing facility must be in compliance with this subpart no later than 2 years after it becomes a major source.

(e) You must meet the notification and schedule requirements in § 63.7840. Several of these notifications must be submitted before the compliance date for your affected source.

Emission Limitations

§ 63.7790 What emission limitations must I meet?

(a) You must meet each emission limit and opacity limit in Table 1 to this subpart that applies to you.

(b) You must meet each operating limit for capture systems and control devices in paragraphs (b)(1) through (3) of this section that applies to you.

(1) You must operate each capture system applied to emissions from a sinter plant discharge end or blast furnace casthouse or to secondary emissions from a BOPF at or above the lowest value or settings established for the operating limits in your operation and maintenance plan;

(2) For each venturi scrubber applied to meet any particulate emission limit in Table 1 to this subpart, you must maintain the hourly average pressure drop and scrubber water flow rate at or above the minimum levels established during the initial performance test.

(3) For each electrostatic precipitator applied to emissions from a BOPF, you must maintain the average opacity of emissions for each 6-minute period at or below the site-specific opacity value corresponding to the 99 percent upper confidence limit on the mean of a normal distribution of average opacity values established during the initial performance test.

(c) An owner or operator who uses an air pollution control device other than a baghouse, venturi scrubber, or electrostatic precipitator must submit a description of the device; test results collected in accordance with § 63.7822 verifying the performance of the device for reducing emissions of particulate matter to the atmosphere to the levels required by this subpart; a copy of the operation and maintenance plan required in § 63.7800(b); and appropriate operating parameters that will be monitored to maintain continuous compliance with the applicable emission limitation(s). The monitoring plan identifying the operating parameters to be monitored is subject to approval by the Administrator.

(d) For each sinter plant, you must either:

(1) Maintain the 30-day rolling average oil content of the feedstock at or below 0.02 percent; or

(2) Maintain the 30-day rolling average of volatile organic compound emissions from the windbox exhaust stream at or below 0.2 lb/ton of sinter.

Operation and Maintenance Requirements

§ 63.7800 What are my operation and maintenance requirements?

(a) As required by § 63.6(e)(1)(i), you must always operate and maintain your affected source, including air pollution control and monitoring equipment, in a manner consistent with good air pollution control practices for minimizing emissions at least to the levels required by this subpart.

(b) You must prepare and operate at all times according to a written operation and maintenance plan for each capture system or control device subject to an operating limit in § 63.7790(b). Each plan must address the elements in paragraphs (b)(1) through (5) of this section.

(1) Monthly inspections of the equipment that is important to the performance of the total capture system (*e.g.*, pressure sensors, dampers, and damper switches). This inspection must include observations of the physical appearance of the equipment (*e.g.*, presence of holes in ductwork or hoods, flow constrictions caused by dents or accumulated dust in the ductwork, and fan erosion). The operation and maintenance plan also must include requirements to repair any defect or deficiency in the capture system before the next scheduled inspection.

(2) Preventative maintenance for each control device, including a preventative maintenance schedule that is consistent with the manufacturer's instructions for routine and long-term maintenance.

(3) Operating limits for each capture system applied to emissions from a sinter plant discharge end or blast furnace casthouse, or to secondary emissions from a BOPF. You must establish the operating limits according to the requirements in paragraphs (b)(3)(i) through (iii) of this section.

(i) Select operating limit parameters appropriate for the capture system design that are representative and reliable indicators of the performance of the capture system. At a minimum, you must use appropriate operating limit parameters that indicate the level of the ventilation draft and the damper position settings for the capture system when operating to collect emissions, including revised settings for seasonal variations. Appropriate operating limit parameters for ventilation draft include, but are not limited to, volumetric flow rate through each separately ducted hood, total volumetric flow rate at the inlet to the control device to which the capture system is vented, fan motor amperage, or static pressure.

(ii) For each operating limit parameter selected in paragraph (b)(3)(i) of this section, designate the value or setting for the parameter at which the capture system operates during the process operation. If your operation allows for more than one process to be operating simultaneously, designate the value or setting for the parameter at which the capture system operates during each possible configuration that you may operate.

(iii) Include documentation in your plan to support your selection of the operating limits established for the capture system. This documentation must include a description of the capture system design, a description of the capture system operating during production, a description of each selected operating limit parameter, a rationale for why you chose the parameter, a description of the method used to monitor the parameter according to the requirements of § 63.7830(a), and the data used to set the value or setting for the parameter for each of your process configurations.

(4) Corrective action procedures for bag leak detection systems. In the event a bag leak detection system alarm is triggered, you must initiate corrective action to determine the cause of the alarm within 1 hour of the alarm, initiate corrective action to correct the cause of the problem within 24 hours of the alarm, and complete the corrective action as soon as practicable. Corrective actions may include, but are not limited to:

(i) Inspecting the baghouse for air leaks, torn or broken bags or filter media, or any other condition that may cause an increase in emissions.

(ii) Sealing off defective bags or filter media.

(iii) Replacing defective bags or filter media or otherwise repairing the control device.

(iv) Sealing off a defective baghouse compartment.

(v) Cleaning the bag leak detection system probe, or otherwise repair the bag leak detection system.

(vi) Shutting down the process producing the particulate emissions; and

(5) Procedures for determining and recording the daily sinter plant production rate in tons per hour.

General Compliance Requirements

§ 63.7810 What are my general requirements for complying with this subpart?

(a) You must be in compliance with the emission limitations and operation and maintenance requirements in this subpart at all times, except during periods of startup, shutdown, and malfunction as defined in § 63.2.

(b) During the period between the compliance date specified for your affected source in § 63.7783 and the date upon which continuous monitoring systems have been installed and certified and any applicable operating limits have been set, you must maintain a log detailing the operation and maintenance of the process and emissions control equipment.

(c) You must develop and implement a written startup, shutdown, and malfunction plan according to the provisions in § 63.6(e)(3).

Initial Compliance Requirements

§ 63.7820 By what date must I conduct performance tests or other initial compliance demonstrations?

(a) You must conduct a performance test to demonstrate initial compliance with each emission and opacity limit in Table 1 to this subpart that applies to you. You must also conduct a performance test to demonstrate initial compliance with the 30-day rolling average operating limit for the oil content of the sinter plant feedstock in § 63.7790(d)(1) or alternative limit for volatile organic compound emissions from the sinter plant windbox exhaust stream in § 63.7790(d)(2). You must conduct the performance tests within 180 calendar days after the compliance date that is specified in § 63.7783 for your affected source and report the results in your notification of compliance status.

(b) For each operation and maintenance requirement that applies to you where initial compliance is not demonstrated using a performance test or opacity observation, you must demonstrate initial compliance within 30 calendar days after the compliance date that is specified for your affected source in § 63.7783.

(c) If you commenced construction or reconstruction between July 13, 2001 and May 20, 2003, you must demonstrate initial compliance with either the proposed emission limit or the promulgated emission limit no later than November 17, 2003 or no later than 180 days after startup of the source, whichever is later, according to § 63.7(a)(2)(ix).

(d) If you commenced construction or reconstruction between July 13, 2001 and May 20, 2003, and you chose to comply with the proposed emission limit when demonstrating initial compliance, you must conduct a second performance test to demonstrate compliance with the promulgated emission limit by November 17, 2006, or no later than 180 days after startup of the source, whichever is later, according to § 63.7(a)(2)(ix).

§ 63.7821 When must I conduct subsequent performance tests?

You must conduct subsequent performance tests to demonstrate compliance with all applicable PM and opacity limits in Table 1 to this subpart no less frequently than twice (at mid-term and renewal) during each term of your title V operating permit. For sources without a title V operating permit, you must conduct subsequent performance tests every 2.5 years.

§ 63.7822 What test methods and other procedures must I use to demonstrate initial compliance with the emission limits for particulate matter?

(a) You must conduct each performance test that applies to your affected source according to the requirements in § 63.7(e)(1) and the conditions detailed in paragraphs (b) through (i) of this section.

(b) To determine compliance with the applicable emission limit for particulate matter in Table 1 to this subpart, follow the test methods and procedures in paragraphs (b)(1) and (2) of this section.

(1) Determine the concentration of particulate matter according to the following test methods in appendix A to part 60 of this chapter:

(i) Method 1 to select sampling port locations and the number of traverse points. Sampling ports must be located at the outlet of the control device and prior to any releases to the atmosphere.

(ii) Method 2, 2F, or 2G to determine the volumetric flow rate of the stack gas.

(iii) Method 3, 3A, or 3B to determine the dry molecular weight of the stack gas.

(iv) Method 4 to determine the moisture content of the stack gas.

(v) Method 5, 5D, or 17, as applicable, to determine the concentration of particulate matter (front half filterable catch only).

(2) Collect a minimum sample volume of 60 dry standard cubic feet (dscf) of gas during each particulate matter test run. Three valid test runs are needed to comprise a performance test.

(c) For each sinter plant windbox exhaust stream, you must complete the requirements of paragraphs (c)(1) and (2) of this section:

(1) Follow the procedures in your operation and maintenance plan for measuring and recording the sinter production rate for each test run in tons per hour; and

(2) Compute the process-weighted mass emissions (E_p) for each test run using Equation 1 of this section as follows:

$$E_p = \frac{C \times Q}{P \times K} \qquad \text{(Eq. 1)}$$

Where:

E_p = Process-weighted mass emissions of particulate matter, lb/ton;
C = Concentration of particulate matter, grains per dry standard cubic foot (gr/dscf);
Q = Volumetric flow rate of stack gas, dry standard cubic foot per hour (dscf/hr);
P = Production rate of sinter during the test run, tons/hr; and
K = Conversion factor, 7,000 grains per pound (gr/lb).

(d) If you apply two or more control devices in parallel to emissions from a sinter plant discharge end or a BOPF, compute the average flow-weighted concentration for each test run using Equation 2 of this section as follows:

$$C_W = \frac{\sum_{i=1}^{n} C_i Q_i}{\sum_{i=1}^{n} Q_i} \qquad \text{(Eq. 2)}$$

Where:

C_w = Flow-weighted concentration, gr/dscf;
C_i = Concentration of particulate matter from exhaust stream "i", gr/dscf; and
Q_i = Volumetric flow rate of effluent gas from exhaust stream "i", dry standard cubic foot per minute (dscfm).

(e) For a control device applied to emissions from a blast furnace casthouse, sample for an integral number of furnace tapping operations sufficient to obtain at least 1 hour of sampling for each test run.

(f) For a primary emission control device applied to emissions from a BOPF with a closed hood system, sample only during the primary oxygen blow and do not sample during any subsequent reblows. Continue sampling for each run for an integral number of primary oxygen blows.

(g) For a primary emission control system applied to emissions from a BOPF with an open hood system and for a control device applied solely to secondary emissions from a BOPF, you must complete the requirements of paragraphs (g)(1) and (2) of this section:

(1) Sample only during the steel production cycle. Conduct sampling under conditions that are representative of normal operation. Record the start and end time of each steel production cycle and each period of abnormal operation; and

(2) Sample for an integral number of steel production cycles. The steel production cycle begins when the scrap is charged to the furnace and ends 3 minutes after the slag is emptied from the vessel into the slag pot.

(h) For a control device applied to emissions from BOPF shop ancillary operations (hot metal transfer, skimming, desulfurization, or ladle metallurgy), sample only when the operation(s) is being conducted.

(i) Subject to approval by the permitting authority, you may conduct representative sampling of stacks when there are more than three stacks associated with a process.

§ 63.7823 What test methods and other procedures must I use to demonstrate initial compliance with the opacity limits?

(a) You must conduct each performance test that applies to your affected source according to the requirements in § 63.7(h)(5) and the conditions detailed in paragraphs (b) through (d) of this section.

(b) You must conduct each visible emissions performance test such that the opacity observations overlap with the performance test for particulate matter.

(c) To determine compliance with the applicable opacity limit in Table 1 to this subpart for a sinter plant discharge end or a blast furnace casthouse:

(1) Using a certified observer, determine the opacity of emissions according to Method 9 in appendix A to part 60 of this chapter.

(2) Obtain a minimum of 30 6-minute block averages. For a blast furnace casthouse, make observations during tapping of the furnace. Tapping begins when the furnace is opened, usually by creating a hole near the bottom of the furnace, and ends when the hole is plugged.

(d) To determine compliance with the applicable opacity limit in Table 1 to this subpart for BOPF shops:

(1) For an existing BOPF shop:

(i) Using a certified observer, determine the opacity of emissions according to Method 9 in appendix A to part 60 of this chapter except as specified in paragraphs (d)(1)(ii) and (iii) of this section.

(ii) Instead of procedures in section 2.4 of Method 9 in appendix A to part 60 of this chapter, record observations to the nearest 5 percent at 15-second intervals for at least three steel production cycles.

(iii) Instead of procedures in section 2.5 of Method 9 in appendix A to part 60 of this chapter, determine the 3-minute block average opacity from the average of 12 consecutive observations recorded at 15-second intervals.

(2) For a new BOPF shop housing a bottom-blown BOPF:

(i) Using a certified observer, determine the opacity of emissions according to Method 9 in appendix A to part 60 of this chapter.

(ii) Determine the highest and second highest sets of 6-minute block average opacities for each steel production cycle.

(3) For a new BOPF shop housing a top-blown BOPF:

(i) Determine the opacity of emissions according to the requirements for an existing BOPF shop in paragraphs (d)(1)(i) through (iii) of this section.

(ii) Determine the highest and second highest sets of 3-minute block average opacities for each steel production cycle.

(4) Opacity observations must cover the entire steel production cycle and must be made for at least three cycles. The steel production cycle begins when the scrap is charged to the furnace and ends 3 minutes after the slag is emptied from the vessel into the slag pot.

(5) Determine and record the starting and stopping times of the steel production cycle.

§ 63.7824 What test methods and other procedures must I use to establish and demonstrate initial compliance with operating limits?

(a) For each capture system subject to an operating limit in § 63.7790(b)(1), you must certify that the system operated during the performance test at the site-specific operating limits established in your operation and maintenance plan using the procedures in paragraphs (a)(1) through (4) of this section.

(1) Concurrent with all opacity observations, measure and record values for each of the operating limit parameters in your capture system operation and maintenance plan according to the monitoring requirements specified in § 63.7830(a).

(2) For any dampers that are manually set and remain at the same position at all times the capture system is operating, the damper position must be visually checked and recorded at the beginning and end of each opacity observation period segment.

(3) Review and record the monitoring data. Identify and explain any times the capture system operated outside the applicable operating limits.

(4) Certify in your performance test report that during all observation period segments, the capture system was operating at the values or settings established in your capture system operation and maintenance plan.

(b) For a venturi scrubber subject to operating limits for pressure drop and scrubber water flow rate in § 63.7790(b)(2), you must establish site-specific operating limits according to the procedures in paragraphs (b)(1) and (2) of this section.

(1) Using the continuous parameter monitoring system (CPMS) required in § 63.7830(c), measure and record the pressure drop and scrubber water flow rate during each run of the particulate matter performance test.

(2) Compute and record the hourly average pressure drop and scrubber water flow rate for each individual test run. Your operating limits are the lowest average pressure drop and scrubber water flow rate value in any of the three runs that meet the applicable emission limit.

(c) For an electrostatic precipitator subject to the operating limit in § 63.7790(b)(3) for opacity, you must establish a site-specific operating limit according to the procedures in paragraphs (c)(1) through (3) of this section.

(1) Using the continuous opacity monitoring system (COMS) required in § 63.7830(d), measure and record the opacity of emissions from each control device stack during each run of the particulate matter performance test.

(2) Compute and record the 6-minute block average opacity from 36 or more data points equally spaced over each 6-minute period during the test runs.

(3) Determine, based on the 6-minute block averages, the opacity value corresponding to the 99 percent upper confidence limit on the mean of a normal distribution of average opacity values.

(d) You may change the operating limits for a capture system, venturi scrubber, or electrostatic precipitator if you meet the requirements in paragraphs (d)(1) through (3) of this section.

(1) Submit a written notification to the Administrator of your request to conduct a new performance test to revise the operating limit.

(2) Conduct a performance test to demonstrate compliance with the applicable emission limitation in Table 1 to this subpart.

(3) Establish revised operating limits according to the applicable procedures in paragraphs (a) through (c) of this section for a control device or capture system.

(e) For each sinter plant subject to the operating limit for the oil content of the sinter plant feedstock in § 63.7790(d)(1), you must demonstrate initial compliance according to the procedures in paragraphs (e)(1) through (3) of this section.

(1) Sample the feedstock at least three times a day (once every 8 hours), composite the three samples each day, and analyze the composited samples using Method 9071B, "n-Hexane Extractable Material(HEM) for Sludge, Sediment, and Solid Samples," (Revision 2, April 1998). Method 9071B is incorporated by reference (see § 63.14) and is published in EPA Publication SW–846 "Test Methods for Evaluating Solid Waste, Physical/Chemical Methods." Record the sampling date and time, oil content values, and sinter produced (tons/day).

(2) Continue the sampling and analysis procedure for 30 consecutive days.

(3) Each day, compute and record the 30-day rolling average using that day's value and the 29 previous daily values.

(f) To demonstrate initial compliance with the alternative operating limit for volatile organic compound emissions from the sinter plant windbox exhaust stream in § 63.7790(d)(2), follow the test methods and procedures in paragraphs (f)(1) through (5) of this section.

(1) Determine the volatile organic compound emissions according to the following test methods in appendix A to part 60 of this chapter:

(i) Method 1 to select sampling port locations and the number of traverse points. Sampling ports must be located at the outlet of the control device and prior to any releases to the atmosphere.

(ii) Method 2, 2F, or 2G to determine the volumetric flow rate of the stack gas.

(iii) Method 3, 3A, or 3B to determine the dry molecular weight of the stack gas.

(iv) Method 4 to determine the moisture content of the stack gas.

(v) Method 25 to determine the mass concentration of volatile organic compound emissions (total gaseous nonmethane organics as carbon) from the sinter plant windbox exhaust stream stack.

(2) Determine volatile organic compound (VOC) emissions every 24 hours (from at least three samples taken at 8-hour intervals) using Method 25 in 40 CFR part 60, appendix A. Record the sampling date and time, sampling results, and sinter produced (tons/day).

(3) Compute the process-weighted mass emissions (E_v) each day using Equation 1 of this section as follows:

$$E_v = \frac{M_C \times Q}{35.31 \times 454{,}000 \times K} \qquad \text{(Eq. 1)}$$

Where:

E_v = Process-weighted mass emissions of volatile organic compounds, lb/ton;
M_c = Average concentration of total gaseous nonmethane organics as carbon by Method 25 (40 CFR part 60, appendix A), milligrams per dry standard cubic meters (mg/dscm) for each day;
Q = Volumetric flow rate of stack gas, dscf/hr;
35.31 = Conversion factor (dscf/dscm);
454,000 = Conversion factor (mg/lb); and
K = Daily production rate of sinter, tons/hr.

(4) Continue the sampling and analysis procedure in paragraphs (f)(1) through (3) of this section for 30 consecutive days.

(5) Compute and record the 30-day rolling average of VOC emissions for each operating day.

(g) You may use an alternative test method to determine the oil content of the sinter plant feedstock or the volatile organic compound emissions from the sinter plant windbox exhaust stack if you have already demonstrated the equivalency of the alternative method for a specific plant and have received previous approval from the applicable permitting authority.

§ 63.7825 How do I demonstrate initial compliance with the emission limitations that apply to me?

(a) For each affected source subject to an emission or opacity limit in Table 1 to this subpart, you have demonstrated initial compliance if:

(1) You meet the conditions in Table 2 to this subpart; and

(2) For each capture system subject to the operating limit in § 63.7790(b)(1), you have established appropriate site-specific operating limit(s) and have a record of the operating parameter data measured during the performance test in accordance with § 63.7824(a)(1).

(3) For each venturi scrubber subject to the operating limits for pressure drop and scrubber water flow rate in § 63.7790(b)(2), you have established appropriate site-specific operating limits and have a record of the pressure drop and scrubber water flow rate measured during the performance test in accordance with § 63.7824(b); and

(4) For each electrostatic precipitator subject to the opacity operating limit in § 63.7790(b)(3), you have established an appropriate site-specific operating limit and have a record of the opacity measurements made during the performance test in accordance with § 63.7824(c).

(b) For each existing or new sinter plant subject to the operating limit in § 63.7790(d)(1), you have demonstrated initial compliance if the 30-day rolling average of the oil content of the feedstock, measured during the initial performance test in accordance with § 63.7824(e) is no more than 0.02

percent or the volatile organic compound emissions from the sinter plant windbox exhaust stream, measured during the initial performance test in accordance with § 63.7824(f), is no more than 0.2 lb/ton of sinter produced.

(c) For each emission limitation that applies to you, you must submit a notification of compliance status according to § 63.7840(e).

§ 63.7826 How do I demonstrate initial compliance with the operation and maintenance requirements that apply to me?

(a) For a capture system applied to emissions from a sinter plant discharge end or blast furnace casthouse or to secondary emissions from a BOPF, you have demonstrated initial compliance if you meet all of the conditions in paragraphs (a)(1) through (4) of this section.

(1) Prepared the capture system operation and maintenance plan according to the requirements of § 63.7800(b), including monthly inspection procedures and detailed descriptions of the operating parameter(s) selected to monitor the capture system;

(2) Certified in your performance test report that the system operated during the test at the operating limits established in your operation and maintenance plan;

(3) Submitted a notification of compliance status according to the requirements in § 63.7840(e), including a copy of the capture system operation and maintenance plan and your certification that you will operate the capture system at the values or settings established for the operating limits in that plan; and

(4) Prepared a site-specific monitoring plan according to the requirements in § 63.7831(a).

(b) For each control device subject to operating limits in § 63.7790(b)(2) or (3), you have demonstrated initial compliance if you meet all the conditions in paragraphs (b)(1) through (3) of this section.

(1) Prepared the control device operation and maintenance plan according to the requirements of § 63.7800(b), including a preventative maintenance schedule and, if applicable, detailed descriptions of the procedures you use for corrective action for baghouses;

(2) Submitted a notification of compliance status according to the requirements in § 63.7840(e), including a copy of the operation and maintenance plan; and

(3) Prepared a site-specific monitoring plan according to the requirements in § 63.7831(a).

Continuous Compliance Requirements

§ 63.7830 What are my monitoring requirements?

(a) For each capture system subject to an operating limit in § 63.7790(b)(1) established in your capture system operation and maintenance plan, you must install, operate, and maintain a CPMS according to the requirements in § 63.7831(e) and the requirements in paragraphs (a)(1) through (3) of this section.

(1) Dampers that are manually set and remain in the same position are exempt from the requirement to install and operate a CPMS. If dampers are not manually set and remain in the same position, you must make a visual check at least once every 24 hours to verify that each damper for the capture system is in the same position as during the initial performance test.

(2) If you use a flow measurement device to monitor the operating limit parameter for a sinter plant discharge end or blast furnace casthouse, you must monitor the hourly average rate (*e.g.*, the hourly average actual volumetric flow rate through each separately ducted hood, the average hourly total volumetric flow rate at the inlet to the control device) according to the requirements in § 63.7832.

(3) If you use a flow measurement device to monitor the operating limit parameter for a capture system applied to secondary emissions from a BOPF, you must monitor the average rate for each steel production cycle (*e.g.*, the average actual volumetric flow rate through each separately ducted hood for each steel production cycle, the average total volumetric flow rate at the inlet to the control device for each steel production cycle) according to the requirements in § 63.7832.

(b) For each baghouse applied to meet any particulate emission limit in Table 1 of this subpart, you must install, operate, and maintain a bag leak detection system according to § 63.7831(f), monitor the relative change in particulate matter loadings according to the requirements in § 63.7832, and conduct inspections at their specified frequencies according to the requirements in paragraphs (b)(1) through (8) of this section.

(1) Monitor the pressure drop across each baghouse cell each day to ensure pressure drop is within the normal operating range identified in the manual.

(2) Confirm that dust is being removed from hoppers through weekly visual inspections or other means of ensuring the proper functioning of removal mechanisms.

(3) Check the compressed air supply for pulse-jet baghouses each day.

(4) Monitor cleaning cycles to ensure proper operation using an appropriate methodology.

(5) Check bag cleaning mechanisms for proper functioning through monthly visual inspection or equivalent means.

(6) Make monthly visual checks of bag tension on reverse air and shaker-type baghouses to ensure that bags are not kinked (kneed or bent) or laying on their sides. You do not have to make this check for shaker-type baghouses using self-tensioning (spring-loaded) devices.

(7) Confirm the physical integrity of the baghouse through quarterly visual inspections of the baghouse interior for air leaks.

(8) Inspect fans for wear, material buildup, and corrosion through quarterly visual inspections, vibration detectors, or equivalent means.

(c) For each venturi scrubber subject to the operating limits for pressure drop and scrubber water flow rate in § 63.7790(b)(2), you must install, operate, and maintain CPMS according to the requirements in § 63.7831(g) and monitor the hourly average pressure drop and water flow rate according to the requirements in § 63.7832.

(d) For each electrostatic precipitator subject to the opacity operating limit in § 63.7790(b)(3), you must install, operate, and maintain a COMS according to the requirements in § 63.7831(h) and monitor the 6-minute average opacity of emissions exiting each control device stack according to the requirements in § 63.7832.

(e) For each sinter plant subject to the operating limit in § 63.7790(d), you must either:

(1) Compute and record the 30-day rolling average of the oil content of the feedstock for each operating day using the procedures in § 63.7824(e); or

(2) Compute and record the 30-day rolling average of volatile organic compound emissions (lbs/ton of sinter) for each operating day using the procedures in § 63.7824(f).

§ 63.7831 What are the installation, operation, and maintenance requirements for my monitors?

(a) For each CPMS required in § 63.7830, you must develop and make available for inspection upon request by the permitting authority a site-specific monitoring plan that addresses the requirements in paragraphs (a)(1) through (6) of this section.

(1) Installation of the CPMS sampling probe or other interface at a measurement location relative to each affected process unit such that the measurement is representative of control of the exhaust emissions (*e.g.*, on or downstream of the last control device);

(2) Performance and equipment specifications for the sample interface, the parametric signal analyzer, and the data collection and reduction system;

(3) Performance evaluation procedures and acceptance criteria (*e.g.*, calibrations);

(4) Ongoing operation and maintenance procedures in accordance with the general requirements of §§ 63.8(c)(1), (c)(3), (c)(4)(ii), (c)(7), and (c)(8);

(5) Ongoing data quality assurance procedures in accordance with the general requirements of § 63.8(d); and

(6) Ongoing recordkeeping and reporting procedures in accordance the general requirements of §§ 63.10(c), (e)(1), and (e)(2)(i).

(b) Unless otherwise specified, each CPMS must:

(1) Complete a minimum of one cycle of operation for each successive 15-minute period and collect a minimum of three of the required four data points to constitute a valid hour of data;

(2) Provide valid hourly data for at least 95 percent of every averaging period; and

(3) Determine and record the hourly average of all recorded readings.

(c) You must conduct a performance evaluation of each CPMS in accordance with your site-specific monitoring plan.

(d) You must operate and maintain the CPMS in continuous operation according to the site-specific monitoring plan.

(e) For each capture system subject to an operating limit in § 63.7790(b)(1), you must install, operate, and maintain each CPMS according to the requirements in paragraphs (a) through (d) of this section.

(f) For each baghouse applied to meet any particulate emission limit in Table 1 of this subpart, you must install, operate, and maintain a bag leak detection system according to the requirements in paragraphs (f)(1) through (7) of this section.

(1) The system must be certified by the manufacturer to be capable of detecting emissions of particulate matter at concentrations of 10 milligrams per actual cubic meter (0.0044 grains per actual cubic foot) or less.

(2) The system must provide output of relative changes in particulate matter loadings.

(3) The system must be equipped with an alarm that will sound when an increase in relative particulate loadings is detected over a preset level. The alarm must be located such that it can be heard by the appropriate plant personnel.

(4) Each system that works based on the triboelectric effect must be installed, operated, and maintained in a manner consistent with the guidance document, "Fabric Filter Bag Leak Detection Guidance," EPA–454/R–98–015, September 1997. You may install, operate, and maintain other types of bag leak detection systems in a manner consistent with the manufacturer's written specifications and recommendations.

(5) To make the initial adjustment of the system, establish the baseline output by adjusting the sensitivity (range) and the averaging period of the device. Then, establish the alarm set points and the alarm delay time.

(6) Following the initial adjustment, do not adjust the sensitivity or range, averaging period, alarm set points, or alarm delay time, except as detailed in your operation and maintenance plan. Do not increase the sensitivity by more than 100 percent or decrease the sensitivity by more than 50 percent over a 365-day period unless a responsible official certifies, in writing, that the baghouse has been inspected and found to be in good operating condition.

(7) Where multiple detectors are required, the system's instrumentation and alarm may be shared among detectors.

(g) For each venturi scrubber subject to operating limits in § 63.7790(b)(2) for pressure drop and scrubber water flow rate, you must install, operate, and maintain each CPMS according to the requirements in paragraphs (a) through (d) of this section.

(h) For each electrostatic precipitator subject to the opacity operating limit in § 63.7790(b)(3), you must install, operate, and maintain each COMS according to the requirements in paragraphs (h)(1) through (4) of this section.

(1) You must install, operate, and maintain each COMS according to Performance Specification 1 in 40 CFR part 60, appendix B.

(2) You must conduct a performance evaluation of each COMS according to § 63.8 and Performance Specification 1 in appendix B to 40 CFR part 60.

(3) Each COMS must complete a minimum of one cycle of sampling and analyzing for each successive 10-second period and one cycle of data recording for each successive 6-minute period.

(4) COMS data must be reduced as specified in § 63.8(g)(2).

§ 63.7832 How do I monitor and collect data to demonstrate continuous compliance?

(a) Except for monitoring malfunctions, out-of-control periods as specified in § 63.8(c)(7), associated repairs, and required quality assurance or control activities (including as applicable, calibration checks and required zero and span adjustments), you must monitor continuously (or collect data at all required intervals) at all times an affected source is operating.

(b) You may not use data recorded during monitoring malfunctions, associated repairs, and required quality assurance or control activities in data averages and calculations used to report emission or operating levels or to fulfill a minimum data availability requirement, if applicable. You must use all the data collected during all other periods in assessing compliance.

(c) A monitoring malfunction is any sudden, infrequent, not reasonably preventable failure of the monitoring to provide valid data. Monitoring failures that are caused in part by poor maintenance or careless operation are not malfunctions.

§ 63.7833 How do I demonstrate continuous compliance with the emission limitations that apply to me?

(a) You must demonstrate continuous compliance for each affected source subject to an emission or opacity limit in § 63.7790(a) by meeting the requirements in Table 3 to this subpart.

(b) You must demonstrate continuous compliance for each capture system subject to an operating limit in § 63.7790(b)(1) by meeting the requirements in paragraphs (b)(1) and (2) of this section.

(1) Operate the capture system at or above the lowest values or settings established for the operating limits in your operation and maintenance plan; and

(2) Monitor the capture system according to the requirements in § 63.7830(a) and collect, reduce, and record the monitoring data for each of the operating limit parameters according to the applicable requirements of this subpart;

(c) For each baghouse applied to meet any particulate emission limit in Table 1 to this subpart, you must demonstrate continuous compliance by completing the requirements in paragraphs (c)(1) and (2) of this section:

(1) Maintaining records of the time you initiated corrective action in the event of a bag leak detection system alarm, the corrective action(s) taken, and the date on which corrective action was completed.

(2) Inspecting and maintaining each baghouse according to the requirements in § 63.7831(f) and recording all information needed to document conformance with these requirements. If you increase or decrease the sensitivity of the bag leak detection system beyond the limits specified in § 63.7831(f)(6), you must include a copy of the required written certification by a responsible official in the next semiannual compliance report.

(d) For each venturi scrubber subject to the operating limits for pressure drop and scrubber water flow rate in § 63.7790(b)(2), you must demonstrate continuous compliance by completing the requirements of paragraphs (d)(1) through (3) of this section:

(1) Maintaining the hourly average pressure drop and scrubber water flow rate at levels no lower than those established during the initial or subsequent performance test;

(2) Operating and maintaining each venturi scrubber CPMS according to § 63.7831(g) and recording all information needed to document conformance with these requirements; and

(3) Collecting and reducing monitoring data for pressure drop and scrubber water flow rate according to § 63.7831(b) and recording all information needed to document conformance with these requirements.

(e) For each electrostatic precipitator subject to the site-specific opacity operating limit in § 63.7790(b)(3), you must demonstrate continuous compliance by completing the requirements of paragraphs (e)(1) and (2) of this section:

(1) Maintaining the average opacity of emissions for each 6-minute period no higher than the site-specific limit established during the initial or subsequent performance test; and

(2) Operating and maintaining each COMS and reducing the COMS data according to § 63.7831(h).

(f) For each new or existing sinter plant subject to the operating limit in § 63.7790(d), you must demonstrate continuous compliance by either:

(1) For the sinter plant feedstock oil content operating limit in § 63.7790(d)(1),

(i) Computing and recording the 30-day rolling average of the percent oil content for each operating day according to the performance test procedures in § 63.7824(e);

(ii) Recording the sampling date and time, oil content values, and sinter produced (tons/day); and

(iii) Maintaining the 30-day rolling average oil content of the feedstock no higher than 0.02 percent.

(2) For the volatile organic compound operating limit in § 63.7790(d)(2),

(i) Computing and recording the 30-day rolling average of volatile organic compound emissions for each operating day according to the performance test procedures in § 63.7824(f);

(ii) Recording the sampling date and time, sampling values, and sinter produced (tons/day); and

(iii) Maintaining the 30-day rolling average of volatile organic compound emissions no higher than 0.2 lb/ton of sinter produced.

§ 63.7834 How do I demonstrate continuous compliance with the operation and maintenance requirements that apply to me?

(a) For each capture system and control device subject to an operating limit in § 63.7790(b), you must demonstrate continuous compliance with the operation and maintenance requirements in § 63.7800(b) by meeting the requirements of paragraphs (a)(1) through (3) of this section:

(1) Making monthly inspections of capture systems and initiating corrective action according to § 63.7800(b)(1) and recording all information needed to document conformance with these requirements;

(2) Performing preventative maintenance according to § 63.7800(b)(2) and recording all information needed to document conformance with these requirements; and

(3) Initiating and completing corrective action for a bag leak detection system alarm according to § 63.7800(b)(4) and recording all information needed to document conformance with these requirements.

(b) You must maintain a current copy of the operation and maintenance plan required in § 63.7800(b) onsite and available for inspection upon request. You must keep the plans for the life of the affected source or until the affected source is no longer subject to the requirements of this subpart.

§ 63.7835 What other requirements must I meet to demonstrate continuous compliance?

(a) *Deviations.* You must report each instance in which you did not meet each emission limitation in § 63.7790 that applies to you. This includes periods of startup, shutdown, and malfunction. You also must report each instance in which you did not meet each operation and maintenance requirement in § 63.7800 that applies to you. These instances are deviations from the emission limitations and operation and maintenance requirements in this subpart. These deviations must be reported according to the requirements in § 63.7841.

(b) *Startups, shutdowns, and malfunctions.* During periods of startup, shutdown, and malfunction, you must operate in accordance with your startup, shutdown, and malfunction plan.

(1) Consistent with §§ 63.6(e) and 63.7(e)(1), deviations that occur during a period of startup, shutdown, or malfunction are not violations if you demonstrate to the Administrator's satisfaction that you were operating in accordance with the startup, shutdown, and malfunction plan.

(2) The Administrator will determine whether deviations that occur during a period of startup, shutdown, or malfunction are violations, according to the provisions in § 63.6(e).

Notifications, Reports, and Records

§ 63.7840 What notifications must I submit and when?

(a) You must submit all of the notifications in §§ 63.6(h)(4) and (5), 63.7(b) and (c), 63.8(e) and (f)(4), and 63.9(b) through (h) that apply to you by the specified dates.

(b) As specified in § 63.9(b)(2), if you startup your affected source before May 20, 2003, you must submit your initial notification no later than September 17, 2003.

(c) As specified in § 63.9(b)(3), if you start your new affected source on or after May 20, 2003, you must submit your initial notification no later than 120 calendar days after you become subject to this subpart.

(d) If you are required to conduct a performance test, you must submit a notification of intent to conduct a performance test at least 60 calendar days before the performance test is scheduled to begin as required in § 63.7(b)(1).

(e) If you are required to conduct a performance test, opacity observation, or other initial compliance demonstration, you must submit a notification of compliance status according to § 63.9(h)(2)(ii).

(1) For each initial compliance demonstration that does not include a performance test, you must submit the notification of compliance status before the close of business on the 30th calendar day following completion of the initial compliance demonstration.

(2) For each initial compliance demonstration that does include a performance test, you must submit the notification of compliance status, including the performance test results, before the close of business on the 60th calendar day following the completion of the performance test according to § 63.10(d)(2).

§ 63.7841 What reports must I submit and when?

(a) *Compliance report due dates.* Unless the Administrator has approved a different schedule, you must submit a semiannual compliance report to your permitting authority according to the requirements in paragraphs (a)(1) through (5) of this section.

(1) The first compliance report must cover the period beginning on the compliance date that is specified for your affected source in § 63.7783 and ending on June 30 or December 31, whichever date comes first after the compliance date that is specified for your source in § 63.7783.

(2) The first compliance report must be postmarked or delivered no later than July 31 or January 31, whichever date comes first after your first compliance report is due.

(3) Each subsequent compliance report must cover the semiannual reporting period from January 1 through June 30 or the semiannual reporting period from July 1 through December 31.

(4) Each subsequent compliance report must be postmarked or delivered no later than July 31 or January 31, whichever date comes first after the end of the semiannual reporting period.

(5) For each affected source that is subject to permitting regulations pursuant to 40 CFR part 70 or 71, and if the permitting authority has established dates for submitting semiannual reports pursuant to 40 CFR 70.6(a)(3)(iii)(A) or 40 CFR 71.6(a)(3)(iii)(A), you may submit the first and subsequent compliance reports according to the dates the permitting authority has established instead of according to the dates in paragraphs (a)(1) through (4) of this section.

(b) *Compliance report contents.* Each compliance report must include the information in paragraphs (b)(1) through (3) of this section and, as applicable, paragraphs (b)(4) through (8) of this section.

(1) Company name and address.

(2) Statement by a responsible official, with that official's name, title, and signature, certifying the truth, accuracy, and completeness of the content of the report.

(3) Date of report and beginning and ending dates of the reporting period.

(4) If you had a startup, shutdown, or malfunction during the reporting period and you took actions consistent with your startup, shutdown, and malfunction plan, the compliance report must include the information in § 63.10(d)(5)(i).

(5) If there were no deviations from the continuous compliance requirements in §§ 63.7833 and 63.7834 that apply to you, a statement that there were no deviations from the emission limitations or operation and maintenance requirements during the reporting period.

(6) If there were no periods during which a continuous monitoring system (including a CPMS, COMS, or continuous emission monitoring system (CEMS) was out-of-control as specified in § 63.8(c)(7), a statement that there were no periods during which the CPMS was out-of-control during the reporting period.

(7) For each deviation from an emission limitation in § 63.7790 that occurs at an affected source where you are not using a continuous monitoring system (including a CPMS, COMS, or CEMS) to comply with an emission limitation in this subpart, the compliance report must contain the information in paragraphs (b)(1) through (4) of this section and the information in paragraphs (b)(7)(i) and (ii) of this section. This includes periods of startup, shutdown, and malfunction.

(i) The total operating time of each affected source during the reporting period.

(ii) Information on the number, duration, and cause of deviations (including unknown cause, if applicable) as applicable and the corrective action taken.

(8) For each deviation from an emission limitation occurring at an affected source where you are using a continuous monitoring system (including a CPMS or COMS) to comply with the emission limitation in this subpart, you must include the information in paragraphs (b)(1) through (4) of this section and the information in paragraphs (b)(8)(i) through (xi) of this section. This includes periods of startup, shutdown, and malfunction.

(i) The date and time that each malfunction started and stopped.

(ii) The date and time that each continuous monitoring was inoperative, except for zero (low-level) and high-level checks.

(iii) The date, time, and duration that each continuous monitoring system was out-of-control as specified in § 63.8(c)(7), including the information in § 63.8(c)(8).

(iv) The date and time that each deviation started and stopped, and whether each deviation occurred during a period of startup, shutdown, or malfunction or during another period.

(v) A summary of the total duration of the deviation during the reporting period and the total duration as a percent of the total source operating time during that reporting period.

(vi) A breakdown of the total duration of the deviations during the reporting period including those that are due to startup, shutdown, control equipment problems, process problems, other known causes, and other unknown causes.

(vii) A summary of the total duration of continuous monitoring system downtime during the reporting period and the total duration of continuous monitoring system downtime as a percent of the total source operating time during the reporting period.

(viii) A brief description of the process units.

(ix) A brief description of the continuous monitoring system.

(x) The date of the latest continuous monitoring system certification or audit.

(xi) A description of any changes in continuous monitoring systems, processes, or controls since the last reporting period.

(c) *Immediate startup, shutdown, and malfunction report.* If you had a startup, shutdown, or malfunction during the semiannual reporting period that was not consistent with your startup, shutdown, and malfunction plan, you must submit an immediate startup, shutdown, and malfunction report according to the requirements in § 63.10(d)(5)(ii).

(d) *Part 70 monitoring report.* If you have obtained a title V operating permit for an affected source pursuant to 40 CFR part 70 or 71, you must report all deviations as defined in this subpart in the semiannual monitoring report required by 40 CFR 70.6(a)(3)(iii)(A) or 40 CFR 71.6(a)(3)(iii)(A). If you submit a compliance report for an affected source along with, or as part of, the semiannual monitoring report required by 40 CFR 70.6(a)(3)(iii)(A) or 40 CFR 71.6(a)(3)(iii)(A), and the compliance report includes all the required information concerning deviations from any emission limitation or operation and maintenance requirement in this subpart, submission of the compliance report satisfies any obligation to report the same deviations in the semiannual monitoring report. However, submission of a compliance report does not otherwise affect any obligation you may have to report deviations from permit requirements for an affected source to your permitting authority.

§ 63.7842 What records must I keep?

(a) You must keep the following records:

(1) A copy of each notification and report that you submitted to comply with this subpart, including all documentation supporting any initial notification or notification of

compliance status that you submitted, according to the requirements in § 63.10(b)(2)(xiv).

(2) The records in § 63.6(e)(3)(iii) through (v) related to startup, shutdown, and malfunction.

(3) Records of performance tests, performance evaluations, and opacity observations as required in § 63.10(b)(2)(viii).

(b) For each COMS, you must keep the records specified in paragraphs (b)(1) through (4) of this section.

(1) Records described in § 63.10(b)(2)(vi) through (xi).

(2) Monitoring data for a performance evaluation as required in § 63.6(h)(7)(i) and (ii).

(3) Previous (that is, superceded) versions of the performance evaluation plan as required in § 63.8(d)(3).

(4) Records of the date and time that each deviation started and stopped, and whether the deviation occurred during a period of startup, shutdown, or malfunction or during another period.

(c) You must keep the records required in § 63.6(h)(6) for visual observations.

(d) You must keep the records required in §§ 63.7833 and 63.7834 to show continuous compliance with each emission limitation and operation and maintenance requirement that applies to you.

§ 63.7843 In what form and how long must I keep my records?

(a) Your records must be in a form suitable and readily available for expeditious review, according to § 63.10(b)(1).

(b) As specified in § 63.10(b)(1), you must keep each record for 5 years following the date of each occurrence, measurement, maintenance, corrective action, report, or record.

(c) You must keep each record on site for at least 2 years after the date of each occurrence, measurement, maintenance, corrective action, report, or record according to § 63.10(b)(1). You can keep the records offsite for the remaining 3 years.

Other Requirements and Information

§ 63.7850 What parts of the General Provisions apply to me?

Table 4 to this subpart shows which parts of the General Provisions in §§ 63.1 through 63.15 apply to you.

§ 63.7851 Who implements and enforces this subpart?

(a) This subpart can be implemented and enforced by us, the United States Environmental Protection Agency (U.S. EPA), or a delegated authority such as your State, local, or tribal agency. If the U.S. EPA Administrator has delegated authority to your State, local, or tribal agency, then that agency has the authority to implement and enforce this subpart. You should contact your U.S. EPA Regional Office to find out if this subpart is delegated to your State, local, or tribal agency.

(b) In delegating implementation and enforcement authority of this subpart to a State, local, or tribal agency under subpart E of this part, the authorities contained in paragraph (c) of this section are retained by the Administrator of the U.S. EPA and are not transferred to the State, local, or tribal agency.

(c) The authorities that will not be delegated to State, local, or tribal agencies are specified in paragraphs (c)(1) through (4) of this section.

(1) Approval of alternative opacity emission limits in Table 1 to this subpart under § 63.6(h)(9).

(2) Approval of major alternatives to test methods under § 63.7(e)(2)(ii) and (f) and as defined in § 63.90, except for approval of an alternative method for the oil content of the sinter plant feedstock or volatile organic compound measurements for the sinter plant windbox exhaust stream stack as provided in § 63.7824(g).

(3) Approval of major alternatives to monitoring under § 63.8(f) and as defined in § 63.90.

(4) Approval of major alternatives to recordkeeping and reporting under § 63.10(f) and as defined in § 63.90.

§ 63.7852 What definitions apply to this subpart?

Terms used in this subpart are defined in the Clean Air Act, in § 63.2, and in this section as follows.

Bag leak detection system means a system that is capable of continuously monitoring relative particulate matter (dust) loadings in the exhaust of a baghouse to detect bag leaks and other upset conditions. A bag leak detection system includes, but is not limited to, an instrument that operates on tribroelectric, light scattering, light transmittance, or other effect to continuously monitor relative particulate matter loadings.

Basic oxygen process furnace means any refractory-lined vessel in which high-purity oxygen is blown under pressure through a bath of molten iron, scrap metal, and fluxes to produce steel. This definition includes both top and bottom blown furnaces, but does not include argon oxygen decarburization furnaces.

Basic oxygen process furnace shop means the place where steelmaking operations that begin with the transfer of molten iron (hot metal) from the torpedo car and end prior to casting the molten steel, including hot metal transfer, desulfurization, slag skimming, refining in a basic oxygen process furnace, and ladle metallurgy occur.

Basic oxygen process furnace shop ancillary operations means the processes where hot metal transfer, hot metal desulfurization, slag skimming, and ladle metallurgy occur.

Blast furnace means a furnace used for the production of molten iron from iron ore and other iron bearing materials.

Bottom-blown furnace means any basic oxygen process furnace in which oxygen and other combustion gases are introduced into the bath of molten iron through tuyeres in the bottom of the vessel or through tuyeres in the bottom and sides of the vessel.

Casthouse means the building or structure that encloses the bottom portion of a blast furnace where the hot metal and slag are tapped from the furnace.

Certified observer means a visible emission observer certified to perform EPA Method 9 opacity observations.

Desulfurization means the process in which reagents such as magnesium, soda ash, and lime are injected into the hot metal, usually with dry air or nitrogen, to remove sulfur.

Deviation means any instance in which an affected source subject to this subpart, or an owner or operator of such a source:

(1) Fails to meet any requirement or obligation established by this subpart, including but not limited to any emission limitation (including operating limits) or operation and maintenance requirement;

(2) Fails to meet any term or condition that is adopted to implement an applicable requirement in this subpart and that is included in the operating permit for any affected source required to obtain such a permit; or

(3) Fails to meet any emission limitation in this subpart during startup, shutdown, or malfunction, regardless of whether or not such failure is permitted by this subpart.

Discharge end means the place where those operations conducted within the sinter plant starting at the discharge of the sintering machine's traveling grate including (but not limited to) hot sinter crushing, screening, and transfer operations occur.

Emission limitation means any emission limit, opacity limit, or operating limit.

Hot metal transfer station means the location in a basic oxygen process furnace shop where molten iron (hot metal) is transferred from a torpedo car or hot metal car used to transport hot metal from the blast furnace casthouse to a holding vessel or ladle in the basic oxygen process furnace shop. This location also is known as the reladling station or ladle transfer station.

Integrated iron and steel manufacturing facility means an establishment engaged in the production of steel from iron ore.

Ladle metallurgy means a secondary steelmaking process that is performed typically in a ladle after initial refining in a basic oxygen process furnace to adjust or amend the chemical and/or mechanical properties of steel.

Primary emissions means particulate matter emissions from the basic oxygen process furnace generated during the steel production cycle which are captured and treated in the furnace's primary emission control system.

Primary emission control system means the combination of equipment used for the capture and collection of primary emissions (*e.g.*, an open hood capture system used in conjunction with an electrostatic precipitator or a closed hood system used in conjunction with a scrubber).

Primary oxygen blow means the period in the steel production cycle of a basic oxygen process furnace during which oxygen is blown through the molten iron bath by means of a lance inserted from the top of the vessel (top-blown) or through tuyeres in the bottom and/or sides of the vessel (bottom-blown).

Responsible official means responsible official as defined in § 63.2.

Secondary emissions means particulate matter emissions that are not controlled by a primary emission control system, including emissions that escape from open and closed hoods, lance hole openings, and gaps or tears in ductwork to the primary emission control system.

Secondary emission control system means the combination of equipment used for the capture and collection of secondary emissions from a basic oxygen process furnace.

Sinter cooler means the apparatus used to cool the hot sinter product that is transferred from the discharge end through contact with large volumes of induced or forced draft air.

Sinter plant means the machine used to produce a fused clinker-like aggregate or sinter of fine iron-bearing materials suited for use in a blast furnace. The machine is composed of a continuous traveling grate that conveys a bed of ore fines and other finely divided iron-bearing material and fuel (typically coke breeze), a burner at the feed end of the grate for ignition, and a series of downdraft windboxes along the length of the strand to support downdraft combustion and heat sufficient to produce a fused sinter product.

Skimming station means the locations inside a basic oxygen process furnace shop where slag is removed from the top of the molten metal bath.

Steel production cycle means the operations conducted within the basic oxygen process furnace shop that are required to produce each batch of steel. The following operations are included: scrap charging, preheating (when done), hot metal charging, primary oxygen blowing, sampling, (vessel turndown and turnup), additional oxygen blowing (when done), tapping, and deslagging. The steel production cycle begins when the scrap is charged to the furnace and ends after the slag is emptied from the vessel into the slag pot.

Top-blown furnace means any basic oxygen process furnace in which oxygen is introduced into the bath of molten iron by means of an oxygen lance inserted from the top of the vessel.

Windboxes means the compartments that provide for a controlled distribution of downdraft combustion air as it is drawn through the sinter bed of a sinter plant to make the fused sinter product.

Tables to Subpart FFFFF of Part 63

TABLE 1 TO SUBPART FFFFF OF PART 63.—EMISSION AND OPACITY LIMITS

[As required in § 63.7790(a), you must comply with each applicable emission and opacity limit in the following table]

For . . .	You must comply with each of the following . . .
1. Each windbox exhaust stream at an existing sinter plant.	You must not cause to be discharged to the atmosphere any gases that contain particulate matter in excess of 0.4 lb/ton of product sinter.
2. Each windbox exhaust stream at a new sinter plant.	You must not cause to be discharged to the atmosphere any gases that contain particulate matter in excess of 0.3 lb/ton of product sinter.
3. Each discharge end at an existing sinter plant	a. You must not cause to be discharged to the atmosphere any gases that exit from one or more control devices that contain, on a flow-weighted basis, particulate matter in excess of 0.02 gr/dscf [1]; and b. You must not cause to be discharged to the atmosphere any secondary emissions that exit any opening in the building or structure housing the discharge end that exhibit opacity greater than 20 percent (6-minute average).
4. Each discharge end at a new sinter plant	a. You must not cause to be discharged to the atmosphere any gases that exit from one or more control devices that contain, on a flow weighted basis, particulate matter in excess of 0.01 gr/dscf; and b. You must not cause to be discharged to the atmosphere any secondary emissions that exit any opening in the building or structure housing the discharge end that exhibit opacity greater than 10 percent (6-minute average).
5. Each sinter cooler stack at an existing sinter plant.	You must not cause to be discharged to the atmosphere any gases that contain particulate matter in excess of 0.03 gr/dscf.
6. Each sinter cooler stack at a new sinter plant	You must not cause to be discharged to the atmosphere any gases that contain particulate matter in excess of 0.01 gr/dscf.
7. Each casthouse at an existing blast furnace	a. You must not cause to be discharged to the atmosphere any gases that exit from a control device that contain particulate matter in excess of 0.01 gr/dscf; and b. You must not cause to be discharged to the atmosphere any secondary emissions that exit any opening in the casthouse or structure housing the blast furnace that exhibit opacity greater than 20 percent (6-minute average).
8. Each casthouse at a new blast furnace	a. You must not cause to be discharged to the atmosphere any gases that exit from a control device that contain particulate matter in excess of 0.003 gr/dscf; and b. You must not cause to be discharged to the atmosphere any secondary emissions that exit any opening in the casthouse or structure housing the blast furnace that exhibit opacity greater than 15 percent (6-minute average).

TABLE 1 TO SUBPART FFFFF OF PART 63.—EMISSION AND OPACITY LIMITS—Continued

[As required in § 63.7790(a), you must comply with each applicable emission and opacity limit in the following table]

For . . .	You must comply with each of the following . . .
9. Each BOPF at a new or existing shop	a. You must not cause to be discharged to the atmosphere any gases that exit from a primary emission control system for a BOPF with a closed hood system at a new or existing BOPF shop that contain, on a flow-weighted basis, particulate matter in excess of 0.03 gr/dscf during the primary oxygen blow [2]; b. You must not cause to be discharged to the atmosphere any gases that exit from a primary emission control system for a BOPF with an open hood system that contain, on a flow-weighted basis, particulate matter in excess of 0.02 gr/dscf during the steel production cycle for an existing BOPF shop or 0.01 gr/dscf during the steel production cycle for a new BOPF shop [2]; and c. You must not cause to be discharged to the atmosphere any gases that exit from a control device used solely for the collection of secondary emissions from the BOPF that contain particulate matter in excess of 0.01 gr/dscf for an existing BOPF shop or 0.0052 gr/dscf for a new BOPF shop.
10. Each hot metal transfer, skimming, and desulfurization operation at a new or existing BOPF shop.	You must not cause to be discharged to the atmosphere any gases that exit from a control device that contain particulate matter in excess of 0.01 gr/dscf for an existing BOPF shop or 0.003 gr/dscf for a new BOPF shop.
11. Each ladle metallurgy operation at a new or existing BOPF shop.	You must not cause to be discharged to the atmosphere any gases that exit from a control device that contain particulate matter in excess of 0.01 gr/dscf for an existing BOPF shop or 0.004 gr/dscf for a new BOPF shop.
12. Each roof monitoring at an existing BOPF shop.	You must not cause to be discharged to the atmosphere any secondary emissions that exit any opening in the BOPF shop or any other building housing the BOPF or BOPF shop operation that exhibit opacity greater than 20 percent (3-minute average).
13. Each roof monitor at a new BOPF shop	a. You must not cause to be discharged to the atmosphere any secondary emissions that exit any opening in the BOPF shop or other building housing a bottom-blown BOPF or BOPF shop operations that exhibit opacity (for any set of 6-minute averages) greater than 10 percent, except that one 6-minute period not to exceed 20 percent may occur once per steel production cycle; or b. You must not cause to be discharged to the atmosphere any secondary emissions that exit any opening in the BOPF shop or other building housing a top-blown BOPF or BOPF shop operations that exhibit opacity (for any set of 3-minute averages) greater than 10 percent, except that one 3-minute period greater than 10 percent but less than 20 percent may occur once per steel production cycle.

[1] This limit applies if the cooler is vented to the same control device as the discharge end.
[2] This limit applies to control devices operated in parallel for a single BOPF during the oxygen blow.

TABLE 2 TO SUBPART FFFFF OF PART 63.—INITIAL COMPLIANCE WITH EMISSION AND OPACITY LIMITS

[As required in § 63.7825(a)(1), you must demonstrate initial compliance with the emission and opacity limits according to the following table]

For . . .	You have demonstrated initial compliance if . . .
1. Each windbox exhaust stream at an existing sinter plant.	The process-weighted mass rate of particulate matter from a windbox exhaust stream, measured according to the performance test procedures in § 63.7822(c), did not exceed 0.4 lb/ton of product sinter.
2. Each windbox exhaust stream at a new sinter plant.	The process-weighted mass rate of particulate matter from a windbox exhaust stream, measured according to the performance test procedures in § 63.7822(c), did not exceed 0.3 lb/ton of product sinter.
3. Each discharge end at an existing sinter plant	a. The flow-weighted average concentration of particulate matter from one or more control devices applied to emissions from a discharge end, measured according to the performance test procedures in § 63.7822(d), did not exceed 0.02 gr/dscf; and b. The opacity of secondary emissions from each discharge end, determined according to the performance test procedures in § 63.7823(c), did not exceed 20 percent (6-minute average).
4. Each discharge end at a new sinter plant	a. The flow-weighted average concentration of particulate matter from one or more control devices applied to emissions from a discharge end, measured according to the performance test procedures in § 63.7822(d), did not exceed 0.01 gr/dscf; and b. The opacity of secondary emissions from each discharge end, determined according to the performance test procedures in § 63.7823(c), did not exceed 10 percent (6-minute average).
5. Each sinter cooler stack at an existing sinter plant.	The average concentration of particulate matter from a sinter cooler stack, measured according to the performance test procedures in § 63.7822(b), did not exceed 0.03 gr/dscf.
6. Each sinter cooler stack at a new sinter plant	The average concentration of particulate matter from a sinter cooler stack, measured according to the performance test procedures in § 63.7822(b), did not exceed 0.01 gr/dscf.
7. Each casthouse at an existing blast furnace	a. The average concentration of particulate matter from a control device applied to emissions from a casthouse, measured according to the performance test procedures in § 63.7822(e), did not exceed 0.01 gr/dscf; and b. The opacity of secondary emissions from each casthouse, determined according to the performance test procedures in § 63.7823(c), did not exceed 20 percent (6-minute average).

TABLE 2 TO SUBPART FFFFF OF PART 63.—INITIAL COMPLIANCE WITH EMISSION AND OPACITY LIMITS—Continued

[As required in § 63.7825(a)(1), you must demonstrate initial compliance with the emission and opacity limits according to the following table]

For . . .	You have demonstrated initial compliance if . . .
8. Each casthouse at a new blast furnace	a. The average concentration of particulate matter from a control device applied to emissions from a casthouse, measured according to the performance test procedures in § 63.7822(e), did not exceed 0.003 gr/dscf; and b. The opacity of secondary emissions from each casthouse, determined according to the performance test procedures in § 63.7823(c), did not exceed 15 percent (6-minute average).
9. Each BOPF at a new or existing BOPF shop	a. The average concentration of particulate matter from a primary emission control system applied to emissions from a BOPF with a closed hood system, measured according to the performance test procedures in § 63.7822(f), did not exceed 0.03 gr/dscf for a new or existing BOPF shop; b. The average concentration of particulate matter from a primary emission control system applied to emissions from a BOPF with an open hood system, measured according to the performance test procedures in § 63.7822(g), did not exceed 0.02 gr/dscf for an existing BOPF shop or 0.01 gr/dscf for a new BOPF shop; and c. The average concentration of particulate matter from a control device applied solely to secondary emissions from a BOPF, measured according to the performance test procedures in § 63.7822(g), did not exceed 0.01 gr/dscf for an existing BOPF shop or 0.0052 gr/dscf for a new BOPF shop.
10. Each hot metal transfer skimming, and desulfurization at a new or existing BOPF shop.	The average concentration of particulate matter from a control device applied to emissions from hot metal transfer, skimming, or desulfurization, measured according to the performance test procedures in § 63.7822(h), did not exceed 0.01 gr/dscf for an existing BOPF shop or 0.003 gr/dscf for a new BOPF shop.
11. Each ladle metallurgy operation at a new or existing BOPF shop.	The average concentration of particulate matter from a control device applied to emissions from a ladle metallurgy operation, measured according to the performance test procedures in § 63.7822(h), did not exceed 0.01 gr/dscf for an existing BOPF shop or 0.004 gr/dscf for a new BOPF shop.
12. Each roof monitor at an existing BOPF shop	The opacity of secondary emissions from each BOPF shop, determined according to the performance test procedures in § 63.7823(d), did not exceed 20 percent (3-minute average).
13. Each roof monitor at a new BOPF shop	a. The opacity of the highest set of 6-minute averages from each BOPF shop housing a bottom-blown BOPF, determined according to the performance test procedures in § 63.7823(d), did not exceed 20 percent and the second highest set of 6-minute averages did not exceed 10 percent; or b. The opacity of the highest set of 3-minute averages from each BOPF shop housing a top-blown BOPF, determined according to the performance test procedures in § 63.7823(d), did not exceed 20 percent and the second highest set of 3-minute averages did not exceed 10 percent.

TABLE 3 TO SUBPART FFFFF OF PART 63.—CONTINUOUS COMPLIANCE WITH EMISSION AND OPACITY LIMITS

[As required in § 63.7833(a), you must demonstrate continuous compliance with the emission and opacity limits according to the following table]

For . . .	You must demonstrate continuous compliance by . . .
1. Each windbox exhaust stream at an existing sinter plant.	a. Maintaining emissions of particulate matter at or below 0.4 lb/ton of product sinter; and b. Conducting subsequent performance tests at least twice during each term of your title V operating permit (at midterm and renewal).
2. Each windbox exhaust stream at a new sinter plant.	a. Maintaining emissions of particulate matter at or below 0.3 lb/ton of product sinter; and b. Conducting subsequent performance tests at least twice during each term of your title V operating permit (at midterm and renewal).
3. Each discharge end at an existing sinter plant	a. Maintaining emissions of particulate matter from one or more control devices at or below 0.02 gr/dscf; and b. Maintaining the opacity of secondary emissions that exit any opening in the building or structure housing the discharge end at or below 20 percent (6-minute average); and c. Conducting subsequent performance tests at least twice during each term of your title V operating permit (at midterm and renewal).
4. Each discharge end at a new sinter plant	a. Maintaining emissions of particulate matter from one or more control devices at or below 0.01 gr/dscf; b. Maintaining the opacity of secondary emissions that exit any opening in the building or structure housing the discharge end at or below 10 percent (6-minute average); and c. Conducting subsequent performance tests at least twice during each term of your title V operating permit (at midterm and renewal).
5. Each sinter cooler stack at an existing sinter plant.	a. Maintaining emissions of particulate matter at or below 0.03 gr/dscf; and b. Conducting subsequent performance sinter plant tests at least twice during each term of your title V operating permit (at midterm and renewal).
6. Each sinter cooler stack at a new sinter plant	a. Maintaining emissions of particulate matter at or below 0.01 gr/dscf; and b. Conducting subsequent performance tests at least twice during each term of your title V operating permit (at midterm and renewal).
7. Each casthouse at an existing blast furnace	a. Maintaining emissions of particulate matter from a control device at or below 0.01 gr/dscf;

TABLE 3 TO SUBPART FFFFF OF PART 63.—CONTINUOUS COMPLIANCE WITH EMISSION AND OPACITY LIMITS—Continued

[As required in §63.7833(a), you must demonstrate continuous compliance with the emission and opacity limits according to the following table]

For . . .	You must demonstrate continuous compliance by . . .
	b. Maintaining the opacity of secondary emissions that exit any opening in the casthouse or structure housing the blast furnace at or below 20 percent (6-minute average); and c. Conducting subsequent performance tests at least twice during each term of your title V operating permit (at midterm and renewal).
8. Each casthouse at a new blast furnace	a. Maintaining emissions of particulate matter from a control device at or below 0.003 gr/dscf; b. Maintaining the opacity of secondary emissions that exit any opening in the casthouse or building housing the casthouse at or below 15 percent (6-minute average); and c. Conducting subsequent performance tests at least twice during each term of your title V operating permit (at midterm and renewal).
9. Each BOPF at a new or existing BOPF shop	a. Maintaining emissions of particulate matter from the primary emission control system for a BOPF with a closed hood system at or below 0.03 gr/dscf; b. Maintaining emissions of particulate matter from the primary emission control system for a BOPF with an open hood system at or below 0.02 gr/dscf for an existing BOPF shop or 0.01 gr/dscf for a new BOPF shop; c. Maintaining emissions of particulate matter from a control device applied solely to secondary emissions from a BOPF at or below 0.01 gr/dscf for an existing BOPF shop or 0.0052 gr/dscf for a new BOPF shop; and d. Conducting subsequent performance tests at least twice during each term of your title V operating permit (at midterm and renewal).
10. Each hot metal transfer, skimming, and desulfurization operation at a new or existing BOPF shop.	a. Maintaining emissions of particulate matter from a control device at or below 0.01 gr/dscf at an existing BOPF or 0.003 gr/dscf for a new BOPF; and b. Conducting subsequent performance tests at least twice during each term of your title V operating permit (at midterm and renewal).
11. Each ladle metallurgy operation at a new or existing BOPF shop.	a. Maintaining emissions of particulate matter from a control device at or below 0.01 gr/dscf at an existing BOPF shop or 0.004 gr/dscf for a new BOPF shop; and b. Conducting subsequent performance tests at least twice during each term of your title V operating permit (at midterm and renewal).
12. Each roof monitor at an existing BOPF shop	a. Maintaining the opacity of secondary emissions that exit any opening in the BOPF shop or other building housing the BOPF or shop operation at or below 20 percent (3-minute average); and b. Conducting subsequent performance tests at least twice during each term of your title V operating permit (at midterm and renewal).
13. Each roof monitor at a new BOPF shop	a. Maintaining the opacity (for any set of 6-minute averages) of secondary emissions that exit any opening in the BOPF shop or other building housing a bottom-blown BOPF or shop operation at or below 10 percent, except that one 6-minute period greater than 10 percent but no more than 20 percent may occur once per steel production cycle; b. Maintaining the opacity (for any set of 3-minute averages) of secondary emissions that exit any opening in the BOPF shop or other building housing a top-blown BOPF or shop operation at or below 10 percent, except that one 3-minute period greater than 10 percent but less than 20 percent may occur once per steel production cycle; and c. Conducting subsequent performance tests at least twice during each term of your title V operating permit (at midterm and renewal).

TABLE 4 TO SUBPART FFFFF OF PART 63.—APPLICABILITY OF GENERAL PROVISIONS TO SUBPART FFFFF

[As required in §63.7850, you must comply with the requirements of the NESHAP General Provisions (40 CFR part 63, subpart A) shown in the following table]

Citation	Subject	Applies to Subpart FFFFF	Explanation
§63.1	Applicability	Yes.	
§63.2	Definitions	Yes.	
§63.3	Units and Abbreviations	Yes.	
§63.4	Prohibited Activities	Yes.	
§63.5	Construction/Reconstruction	Yes.	
§63.6(a), (b), (c), (d), (e), (f), (g), (h)(2)(ii)–(h)(9).	Compliance with Standards and Maintenance Requirements.	Yes.	
§63.6(h)(2)(i)	Determining Compliance with Opacity and VE Standards.	No	Subpart FFFFF specifies Method 9 in appendix A to part 60 of this chapter to comply with roof monitor opacity limits.
§63.7(a)(1)–(2)	Applicability and Performance Test Dates.	No	Subpart FFFFF and specifies performance test applicability and dates.
§63.7(a)(3), (b), (c)–(h)	Performance Testing Requirements	Yes.	
§63.8(a)(1)–(a)(3), (b), (c)(1)–(3), (c)(4)(i)–(e), (c)(7)–(8), (f)(1)–(5), (g)(1)–(4).	Monitoring Requirements	Yes	CMS requirements in §63.8(c)(4) (i)–(ii), (c)(5) and (6), (d), and (e) apply only to COMS for electrostatic precipitators.

TABLE 4 TO SUBPART FFFFF OF PART 63.—APPLICABILITY OF GENERAL PROVISIONS TO SUBPART FFFFF—Continued

[As required in §63.7850, you must comply with the requirements of the NESHAP General Provisions (40 CFR part 63, subpart A) shown in the following table]

Citation	Subject	Applies to Subpart FFFFF	Explanation
§63.8(a)(4)	Additional Monitoring Requirements for Control Devices in §63.11.	No	Subpart FFFFF does not require flares.
§63.8(c)(4)	Continuous Monitoring System Requirements.	No	Subpart FFFFF specifies requirements for operation of CMS.
§63.8(f)(6)	RATA Alternative	No.	
§63.9	Notification Requirements	Yes	Additional notifications for CMS in §63.9(g) apply to COMS for electrostatic precipitators.
§63.9(g)(5)	DATA Reduction	No	Subpart FFFFF specifies data reduction requirements.
§63.10(a), (b)(1)–(2)(xii), (b)(2)(xiv), (b)(3), (c)(1)–(6), (c)(9)–(15), (d), (e)(1)–(2), (e)(4), (f).	Recordkeeping and Reporting Requirements.	Yes	Additional records for CMS in §63.10(c) (1)–(6), (9)–(15), and reports in §63.10(d)(1)–(2) apply only to COMS for electrostatic precipitators.
§63.10(b)(2)(xiii)	CMS Records for RATA Alternative	No.	
§63.10(c)(7)–(8)	Records of Excess Emissions and Parameter Monitoring Exceedances for CMS.	No	Subpart FFFFF specifies record requirements.
§63.11	Control Device Requirements	No	Subpart FFFFF does not require flares.
§63.12	State Authority and Delegations	Yes.	
§63.13–§63.15	Addresses, Incorporation by Reference, Availability of Information.	Yes.	

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Part III

Department of Housing and Urban Development

Notice of Funding Availability (NOFA) for the Research Studies on Homeownership and Affordable Lending Fiscal Year (FY 2002); Notice

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4778–N–01]

Notice of Funding Availability (NOFA) for the Research Studies on Homeownership and Affordable Lending Fiscal Year (FY 2002)

AGENCY: Office of Policy Development and Research, HUD.

ACTION: Notice of funding availability (NOFA).

SUMMARY: *Purpose of the NOFA.* The purpose of this NOFA is to fund technical studies that will guide development of public policy to increase affordable lending, reduce downpayment constraints, and promote homeownership, especially for low- and moderate-income and minority families and in geographical areas which have been underserved by the mortgage finance system. HUD particularly seeks studies that will provide empirical basis for its regulation and monitoring of two Government-Sponsored Enterprises (GSEs)—Fannie Mae and Freddie Mac, including the effects of such regulation and monitoring on affordable lending in the primary mortgage market. Specific topics of interest include:

1. Homeownership

a. Factors underlying the increase in homeownership during the 1990s and policy implications for the current decade;

b. Accounting for the remaining income and racial disparities in homeownership rates, and policy approaches that could remove barriers for prospective low-income and minority homeowners; and

c. Supply constraints and regulatory barriers that impact homeownership opportunities and could potentially impair the effectiveness of affordable lending programs.

2. Affordable Lending

a. Determinants of problems faced by low-income and minority families in accessing mortgage credit;

b. Determinants of downpayments;

c. The role of major mortgage market institutions such as Fannie Mae, Freddie Mac, the Federal Housing Administration, and depository institutions in increasing credit access for low- and moderate-income and minority families and their communities; and

d. Effects on targeted populations of setting alternative levels of the GSE affordable housing goals and defining the goals in alternative ways.

Available Funds. $570,000 from HUD's FY 2002 research and technology appropriation. HUD anticipates funding 15 to 20 studies on these topics; studies will be funded through cooperative agreements, up to a maximum of $40,000.

Eligible Applicants. Academic and not-for-profit institutions located in the U.S., state and local governments, and federally recognized Indian tribes are eligible to apply. For-profit businesses also are eligible; however, they are not allowed to earn a fee or profit.

Application Deadline. July 21, 2003.

Match. None required.

Additional Information

I. Application Due Date, Further Information and Technical Assistance

Application Due Date. Your completed application is due on or before July 21, 2003.

Address for Submitting Applications. All applications must be either mailed or sent via overnight/express mail delivery, addressed to: Department of Housing and Urban Development, Financial Institutions Regulation Division, Office of Policy Development and Research, 451 Seventh St., SW., Room 8212, Washington, DC 20410.

Application Submission Requirements. New Security Procedures. HUD has implemented new security procedures that affect application submission procedures. Please read the following instructions carefully and completely. HUD will not accept hand-delivered applications. Applications may be mailed using the United States Postal Service (USPS) or may be shipped via one of the following delivery services: DHL, Falcon Carrier, FedEx, United Parcel Service (UPS), or United States Postal Service Express Mail. *No other delivery services are permitted into HUD Headquarters without escort. You must, therefore, use one of these carriers.*

Mailed Applications. Your application will be considered timely filed if your application is postmarked on or before 12 midnight on the application due date and received by the designated HUD office on or within fifteen (15) calendar days of the application due date. *All applicants must obtain and save* a Certificate of Mailing showing the date when the application was submitted to the USPS. The Certificate of Mailing (which is USPS Form 3817) will be your documentary evidence that your application was timely filed.

Applications Sent by Overnight/Express Mail Delivery. If your application is sent by overnight delivery or express mail, your application will be timely filed if it is received before or on the application due date, or when you submit documentary evidence that your application was placed in transit with the overnight delivery/express mail service by no later than the application due date. Due to new security measures, you must use either USPS express mail or one of four carrier services that do business with HUD headquarters regularly. These services are DHL, Falcon Carrier, FedEx, and UPS. Delivery by these services must be made during HUD's headquarters business hours, *i.e.*, between 8:30 a.m. and 5:30 p.m. eastern time, Monday through Friday.

Other Transmission Methods. Only applications submitted via mail or one of the express carrier services identified above will be accepted. Facsimile, e-mail, or other types of transmission are not acceptable.

For Further Information. You may contact: Dr. John Gardner, Financial Institutions Regulation Division, at the Department of Housing and Urban Development, Financial Institutions Regulation Division, Office of Policy Development and Research, 451 Seventh St., SW., Room 8212, Washington, DC 20410, telephone (202) 708–0614, extension 5868, or Mr. Patrick Tewey, Grants Officer, extension 4098 (these are not toll-free numbers). Hearing- and speech-impaired persons may access the above telephone number via TTY by calling the toll-free Federal Information Relay Service at 1–800–877–8339.

II. Amount Allocated

Approximately $570,000 from HUD's FY 2002 Research and Technology appropriation will be available to fund research studies proposals in FY 2002. Cooperative agreements will be awarded on a competitive basis according to the Rating Factors described in Section VII(D). HUD anticipates awarding 15 to 20 cooperative agreements ranging up to $40,000 each. Applications exceeding this amount (unless the excess is provided through cost-sharing) will be deemed to be non-responsive.

III. Program Description; Eligible Applicants; Eligible Activities

(A) *Program Description. Background.*

(1) *General Goals and Objectives. Homeownership.* HUD invites proposals for studies of:

(i) Homeownership changes during the 1990s, particularly models that explain national and local trends in home buying, and policy implications of the changes;

(ii) How economic, demographic, and other factors influence gains and losses in homeownership across metropolitan and rural housing markets;

(iii) Factors that enable low-income families to stay in their homes;

(iv) House price changes and associated impacts on affordability;

(v) Effects of supply constraints, including zoning or other types of regulations, that restrict housing supply and could create barriers to homeownership and lessen the impacts of targeted affordable housing programs; and

(vi) Issues related to immigrant homeownership, the causes of racial gaps in homeownership, and other important policy issues and topics related to homeownership. These studies should provide diverse insights on homeownership across local housing markets, which will help HUD identify the best vehicles to advance its future homeownership strategies to close existing gaps in homeownership.

Affordable Lending. HUD invites proposals for studies of:

(i) The effects on lower-income families of the increase in low-downpayment mortgage programs and the growth of affordable lending during the 1990s, and particularly the programs of Fannie Mae and Freddie Mac;

(ii) The role of major mortgage market institutions such as Fannie Mae, Freddie Mac, the Federal Housing Administration, and depository institutions in increasing credit access for low- and moderate-income and minority families and their communities;

(iii) The extent to which low-downpayment initiatives have furthered affordable lending and homeownership;

(iv) Effects on targeted populations of setting alternative levels of the GSE affordable housing goals and defining the goals in alternative ways; and

(v) Barriers that limit access to credit for low-income and minority families and families in inner cities and low-income neighborhoods.

(2) *Background on Homeownership.* Promoting homeownership has been a long-standing goal of HUD. Underlying this goal is the belief that homeownership is an important aspiration of many American families and that homeownership confers advantages to the homeowner family as well as to society at large. An owned home can provide a decent and safe living environment and is an important source of wealth accumulation. The wealth accumulated from homeownership has made possible the funding of college education of children and a secure retirement for many American families. The homeownership rate is at a record high, not only for the entire population, but also for the major minority groups in the nation. Even with the current high homeownership rates, many American families who do not yet own a home continue to aspire for homeownership. Homeownership studies are part of an ongoing agenda at HUD to increase opportunities for homeownership for low-income and minority households.[1] HUD recently sponsored studies of the benefits of homeownership[2] and the impact of the GSE housing goals on homeownership.[3] HUD's Office of Policy Development and Research recently published staff research on homeownership issues.[4] HUD has an ongoing study on the determinants of homeownership gaps among low-income and minority borrowers and neighborhoods.[5] The studies under this Request for Applications will complement these other studies.

(3) *Background on Affordable Lending. Growth of Affordable Lending During the 1990s.* Economic expansion and lower mortgage rates substantially improved housing affordability during the 1990s. These underlying economic developments were enhanced by new and expanded affordable lending programs developed by primary mortgage market originators, private mortgage insurers, nonprofits, and Fannie Mae and Freddie Mac. During the 1990s, FHA also continued to offer its low-downpayment program that was particularly attractive to low-income and minority first-time homebuyers. As a result of initiatives in both the conventional and government markets, many young, low-income, and minority families who were closed out of the housing market during the 1980s re-entered the market during the 1990s. However, many households still lacked the financial resources and earning power to take advantage of housing opportunities in recent years. Several trends contributed to the reduction in the real earnings of young adults without college education over the last 15 years, including technological changes that favored white-collar employment, losses of manufacturing jobs, and wage pressures exerted by globalization. Fully 45 percent of the nation's population between the ages of 25 and 34 have no advanced education and are therefore at risk of being unable to afford homeownership. This is especially true of African Americans and Hispanics, who have lower average levels of educational attainment than whites.

HUD's Secondary Mortgage Market Regulatory Role. Fannie Mae and Freddie Mac, government-sponsored enterprises (GSEs) in the secondary mortgage market, are the two largest sources of housing finance in the United States. They play a dominant role in determining the nature and volume of affordable lending activities in the primary mortgage market. They provide funding for additional mortgage lending by purchasing loans from mortgage lenders and holding purchased loans in portfolio. Fannie Mae and Freddie Mac also issue mortgage-backed securities (MBS), which are then sold in the capital markets to a wide variety of investors.

In 1992, Congress enacted the Federal Housing Enterprises Financial Safety and Soundness Act of 1992 (FHEFSSA). This act established the current regulatory structure for the GSEs. One important aspect of this legislation required the Secretary of HUD to establish annual affordable and geographic goals for the GSEs' purchases of mortgages. Under this authority, the Secretary initially set goals for 1993–95 (referred to as the "transition period"), raised them for 1996–2000, and raised them again for 2001–03. The three broad goals include:

1. A low- and moderate-income goal, which focuses on families with below-median incomes;

2. An underserved areas goal, targeted to low-income and minority census tracts in metropolitan areas and counties in non-metro areas; and

[1] In this NOFA, "low-income households" refers generally to households with incomes below 80 percent of area median income. Details appear in HUD's regulation on its oversight of Fannie Mae and Freddie Mac, at 24 CFR part 81.

[2] Robert Dietz and Donald R. Haurin, "The Social and Private Consequences of Homeownership." Report submitted to the U.S. Department of Housing and Urban Development, Office of Policy Development and Research, May 15, 2001, Grant P-CHI–00615.

[3] Brent Ambrose, Thomas Thibodeau, and Ken Temkin, *An Analysis of the Effects of the GSE Affordable Goals on Low- and Moderate-Income Families.* Conducted under contract by the Urban Institute for the U.S. Department of Housing and Urban Development, Office of Policy Development and Research, April 2002.

[4] Recent examples include "First-Time Homebuyers: Trends From The American Housing Survey," *U.S. Housing Market Conditions, 3rd Quarter 2001*, U.S. Department of Housing and Urban Development, Office of Policy Development and Research, November 2001; and "Changing Importance of Unmarried Women as Homebuyers: Trends From The American Housing Survey," *U.S. Housing Market Conditions, 4th Quarter 2001*, U.S. Department of Housing and Urban Development, Office of Policy Development and Research, February 2002.

[5] A HUD-funded study, "Homeownership Gaps Among Low-Income and Minority Borrowers and Neighborhoods," is being conducted by Abt Associates under contract C–OPC–21895 Task Order 4.

3. A special affordable goal, directed to very low-income families and low-income families in low-income areas.

Congress also expressed concern in 1992 about an "information vacuum" with regard to the activities of Fannie Mae and Freddie Mac. Thus, FHEFSSA required the GSEs to submit loan-level data to the Secretary about their mortgage purchases, including detailed information on borrower, property, and mortgage characteristics. It also required HUD, after taking proprietary considerations into account, to make the loan-level data submitted by the GSEs available to interested parties in the form of a public use database. The studies to be funded under this NOFA will further this mission of providing state-of-the-art research on the affordable lending efforts of Fannie Mae and Freddie Mac.

Previous and Ongoing PD&R Research. The Financial Institutions Regulation Division of the Office of Policy Development and Research (PD&R) has conducted considerable internal research on affordable lending in recent years, and it has contracted for or provided grants for additional research.

Specifically, the Division inaugurated a series of studies, *Working Papers in Housing Finance*, which has resulted in the publication of 16 reports to date. The most recent papers are "The GSEs' Funding of Affordable Loans: A 2000 Update," by Harold L. Bunce, and "Black and White Disparities in Subprime Mortgage Refinance Lending," by Randall M. Scheessele, both published in April 2002, and "Goal Performance and Characteristics of Mortgages Purchased by Fannie Mae and Freddie Mac, 1998–2000," by Paul B. Manchester, published in May 2002.

In 1997, the Division funded grants for 11 studies on various aspects of the GSEs' mortgage purchase activities. These studies provided useful background information for the reconsideration of the housing goals in 2000. Five of these studies were published in PD&R's journal *Cityscape*, Volume 5, Number 3 (2001), and four more were published in *Cityscape*, Volume 6, Number 1 (2002). The other two studies have been published in professional journals.

Examples of recent contract studies funded by the Financial Institutions Regulation Division include three studies by the Urban Institute: *A Study of the GSEs' Single Family Underwriting Guidelines* (February 1999); *Subprime Markets, the Role of the GSEs, and Risk-Based Pricing* (March 2002); and, *An Analysis of the Effects of the GSE Affordable Goals on Low- and Moderate-Income Families* (May 2002). In addition, Abt Associates wrote *A Study of Multifamily Underwriting and the GSEs' Role in the Multifamily Market* (August 2001). Additional studies are underway.

(4) *Background on Relevant Data Sources.* HUD anticipates that a variety of mortgage and housing market data sources may be used, including the 1990 and 2000 censuses, Home Mortgage Disclosure Act (HMDA) data, American Housing Survey, Panel Survey of Income Dynamics, Survey of Consumer Finance, Survey of Residential Finance, and databases on mortgages insured by the Federal Housing Administration and mortgages purchased or securitized by Fannie Mae and Freddie Mac, among others. For example, the Census 2000 long-form data on family incomes and housing characteristics provide an important data source for examining issues covered by this solicitation. HUD anticipates that these studies will be among the first to utilize these newly available Census data to examine issues related to homeownership and affordable lending. The American Housing Survey offers a consistent longitudinal sample to study homeownership and affordable lending issues through 2001.

The GSEs have provided HUD with loan-level data on each of their mortgage transactions since the beginning of 1993. From this database, HUD has extracted a Public Use Data Base for each calendar year from 1993 through 2001. The single-family component of the Public Use Data Base is structured as three separate loan-level data files including fields such as the loan amount, the census tract location of each property backing a GSE mortgage acquisition, demographic characteristics of these tracts, loan-to-value ratio, degree of affordability, demographic information on the borrower, loan purpose (refinance/purchase), and whether the property is owner-occupied.

(B) *Eligible Activities.*

Below you will find a listing of major topics and questions on which HUD seeks information. HUD is interested in high-quality research that offers a unique contribution to the literature on affordable lending and homeownership.

- Your study may combine descriptive and analytical approaches.
- Your study may identify or measure the factors associated with particular outcomes and the underlying causes of particular outcomes.
- You may describe and analyze the impacts of existing policies, and in this case your proposal should highlight the policy implications of the potential findings of your proposed research, particularly with respect to affordable lending and homeownership policies that have been successful in underserved markets.
- Your methodology may include statistical techniques, econometric estimation, application of geographic information systems (GIS) techniques, case studies, or critical review of the present state of knowledge and meta-analysis of existing studies. In each case, the methodology must reflect the state-of-the-art in the respective discipline.
- If your study is empirical, your final report must include a succinct discussion of the literature related to the issue being analyzed that provides background for the methodology of the study and a useful context for identifying the analytical and policy contributions of the study.

(1) *Studies on Homeownership.*

(a) *Changes in Homeownership Rates.* The release of the 2000 Census data (short and long form data) now presents an opportunity to study changes in homeownership over the past decade (1990–2000), at both the national and local levels. Similarly, the recent release of the 2001 American Housing Survey offers the opportunity to study homeownership changes over the past 10–15 years with that database as well. The 1990s was a decade that saw a great emphasis on promoting homeownership. Significant housing policy measures such as the setting of quantitative goals for GSE purchase activity were implemented in this decade. There was a greater emphasis in the 1990s on promoting homeownership among first-time homebuyers, low-income families, minority families, and families living in underserved areas. Research under this sub-topic includes, but is not limited to, the following:

(i) What are the general policy implications of the changes in homeownership rates in the decade 1990–2000 and specific implications arising from the pattern of changes across regions, locations, income groups, racial and ethnic groups, groups such as the elderly and the disabled, and household types?

(ii) Are there significant differences in the homeownership rates of recent immigrant groups compared with non-immigrants? What is the pattern of homeownership rate changes for particular immigrant groups? What factors influence the greater likelihood of homeownership among certain recent immigrant groups compared with other recent immigrant groups?

(iii) What factors are responsible for the changes in homeownership rates experienced between 1990 and 2000? What is the relative importance of different factors, such as demographic factors (age composition and household composition of the population, cultural background, etc.); economic factors (income and wealth, interest rates, house prices and their appreciation); and public policy factors, in determining the changes in homeownership rates?

(iv) What changes were seen in the home value of owner-occupied homes over 1990–2000 (or some similar recent period)? What patterns may be discerned from the changes in home value? Was there greater home value appreciation in certain regions and locations? Did home value changes vary by the minority status of owner-occupants or the minority composition of the tract? Did these results hold after certain relevant factors were controlled for?

(v) How have recent changes in house prices (as measured by repeat sales and other house price indexes) affected the affordability of homeownership, in the nation as a whole, in particular regions and metropolitan areas, and for particular groups such as minorities and immigrants?

(vi) What have been the changes in homeownership in rural areas over the decade, 1990–2000? What have been the changes in home values in rural areas over 1990–2000? What factors explain these changes?

(vii) How has the geography of homeownership changed between 1990 and 2000? Has there been greater suburbanization of homeownership over this period? What was the nature of homeownership gains in our inner cities in terms of the types of homes owned, home values, and income and racial/ethnic characteristics of homeowners?

(viii) Did minority homeowners live in more segregated or less segregated neighborhoods in 2000 than in 1990? How has the degree of integration changed over this period?

Many of these research topics could be addressed using the 1990 and 2000 Census data (short and long forms).[6] While homeownership data are available in the short form data, home value is available only in the long form data. Longer-term comparisons may be made using data from the Censuses before 1990. The Census data may be supplemented with other databases such as the Home Mortgage Disclosure Act (HMDA) data, the American Housing Survey data (including the geocoded version of that database), or other national or local databases. Tract-level analyses may be conducted using these multiple databases. In addition, there are several available measures of house prices and their change that could be used for this analysis (*e.g.*, NAR median house price series, Freddie Mac's repeat sales index, AHS and Census home value information).

(b) *Sustaining Homeownership and Wealth-Accumulation for Low- and Moderate-Income and Minority Families.*[7] While increasing numbers of low- and moderate-income and minority families have achieved the American Dream of homeownership, sustaining the Dream has sometimes presented enormous challenges. The difficulty in making mortgage, insurance, tax and utility payments on time has put many households on the brink of foreclosure or other hardship. Many benefits of homeownership such as gains from price appreciation accrue only after a certain period of sustained homeownership. Thus, ensuring that new homeowners can sustain their homeownership is integral to realizing the American Dream of homeownership as a public policy goal. Even with sustained homeownership, the wealth accumulated in home equity can be dissipated through refinances that overtap equity. In recent times, many households have engaged in such refinances, and often repeatedly. Low-income and elderly households are particularly affected by such transactions. Refinance counseling to educate homeowners of the possibility of erosion in accumulated wealth in the home through refinances is seen as necessary. Research related to sustaining homeownership for low- and moderate-income and minority families includes, but is not limited to, the following:

(i) What has been the recent experience of low- and moderate-income and minority households with respect to sustained homeownership? How many low- and moderate-income and minority households have sustained homeownership for several years?

(ii) Have low- and moderate-income and minority families built assets (wealth) through homeownership? Have refinances resulted in erosion of accumulated housing wealth? What has been the level of appreciation in the values of the homes that low- and moderate-income and minority households have owned for different time horizons (but at least eight years)? How is the home value appreciation distributed across different locations (*e.g.*, regional, urban versus suburban, neighborhoods) and population groups (*e.g.*, different racial groups and their neighborhoods)? What are the policy implications of these developments?

(iii) What factors can be identified as being associated with sustained homeownership among low- and moderate-income and minority families? What is the relative importance of the socio-economic characteristics of these families, the role of institutions (such as special mortgage lending programs and homeownership and refinance counseling programs), and the state of the economy (local and national) in helping sustain homeownership among low- and moderate-income and minority families?

(iv) How many low- and moderate-income and minority households failed to sustain homeownership in spite of having wanted to remain homeowners? What were the causes of failure to sustain homeownership? Can failure to sustain homeownership be reliably predicted using available data sets?

(v) What housing adjustments and non-housing adjustments have homeowners, on the brink of losing their homes, made in order to sustain homeownership? Has housing counseling made a difference?

(vi) Are difficulties with sustaining homeownership associated more with certain types of mortgages? If so, are mortgage characteristics responsible for the difficulties; or are the characteristics of the households (who are more likely to use such mortgages), their housing units, or neighborhoods, responsible?

(vii) What role have non-profit organizations, such as Community Development Corporations (CDCs), faith-based organizations and HUD-approved counseling agencies[8] played in helping sustain homeownership? What types of programs of these institutions (such as financial counseling, job training, providing micro-finance and assistance with renovations) have been most effective in helping sustain homeownership?

Longitudinal panel data, such as the AHS (panel of non-mover sample), Survey of Income and Program Participation (SIPP), Panel Study of Income Dynamics (PSID) and the National Longitudinal Surveys (NLS), are examples of databases that could be used to address these topics. Other special purpose databases may also be available. Case studies on

[6] Applicants should take note of changes in minority categorization, metropolitan area specification, etc. that became effective with the 2000 Census.

[7] "Families" and "households" are also used interchangeably here.

[8] HUD-approved housing counseling agencies are listed on the Internet at *http://www.hud.gov/offices/hsg/sfh/hcc/hccprof14.cfm*.

homeownership experiences may be used where appropriate.

(c) *Barriers to Homeownership.* Aspiration for homeownership is widespread among American families who are not yet owners. Many such families perceive barriers that prevent them from becoming homeowners. Financial barriers, including down payment and credit constraints, are faced by many households. Other barriers to homeownership include discrimination and information barriers. Studying the nature and significance of these barriers is a first step towards designing policies to remove, minimize, or overcome these barriers. Research on barriers to homeownership includes, but is not limited to, the following:

(i) What are the main barriers to homeownership that American families currently face?

(ii) What is the relative importance of homeownership barriers such as financial barriers, poor credit history, information barriers, discrimination barriers, lack of availability of affordable housing stock, and lack of personal capacities to manage homeownership? What is the relative importance of these barriers for different population groups such as minorities, the elderly, the disabled, and first-time homebuyers?

(iii) To what extent is a downpayment constraint a barrier to homeownership? What are the common sources of downpayment for American homebuyers? Is homeownership for persons below a certain age related to parental wealth? What roles do family gifts and gifts from others play in opening up homeownership opportunities for young, low-income, and minority families?

(iv) Are homeownership rates among minority groups in particular locations related to some measure of the degree of discrimination that the minority groups face at those locations? Researchers may use long-range panel data like the PSID to address some of these questions. Researchers may also use the Survey of Consumer Finances (SCF), AHS, HMDA data, and other databases.

(v) To what extent do housing supply constraints affect homeownership? For example, do zoning or other types of regulations that restrain housing supply tend to create barriers to homeownership through their effects on housing prices? Are there barriers and supply constraints specifically in underserved neighborhoods that lessen the impacts of targeted affordable housing programs?

(d) *Promoting Homeownership.* There are a number of programs and policies aimed at promoting homeownership in the U.S. Some of these directly address the barriers to homeownership mentioned above. The mortgage finance industry clearly has a vital role to play in promoting homeownership. The role of secondary mortgage market institutions, including the GSEs, in promoting homeownership is of critical interest. FHA has played a major role in the first-time homebuyer market. It is important to study the role played by these institutions in the past and present, as well as their potential role in promoting homeownership in the future. Many first-time homebuyers with low-income, as well as other buyers, have benefited from the efforts of non-profit organizations such as Community Development Corporations (CDCs) and faith-based organizations. The efforts of these institutions include promoting innovative homeownership programs, such as sweat-equity programs, rent-to-own programs and co-operative forms of ownership, and providing micro-finance and homeownership counseling to households. HUD has worked with non-profit organizations in promoting homeownership through a number of its programs, including the Self-Help Housing Opportunity Program (SHOP). HUD's Homeownership Voucher Program specifically addresses the downpayment constraint that low-income households face. Research related to promoting homeownership includes, but is not limited to, the following:

(i) What has been the role of secondary mortgage market institutions in promoting homeownership? What role have the GSEs (including Fannie Mae, Freddie Mac, Federal Home Loan Banks), and the Federal Housing Administration played in promoting homeownership? Has the introduction of quantitative housing goals for Fannie Mae and Freddie Mac in 1993 directly increased homeownership among low- and moderate-income households and among households in underserved areas?[9]

(ii) How has the purchase activity of Fannie Mae and Freddie Mac with respect to mortgages obtained by low-income, minority or first-time homebuyers changed over the recent years? Can these changes be seen as being beneficial to the promotion of homeownership among these groups?

(iii) What is the evidence on the effectiveness of pre- and post-purchase homeownership counseling programs of HUD-approved counseling agencies, and programs sponsored by FHA, the GSEs and other organizations? Does homeownership counseling adequately address homeowners' decisions to refinance?

(iv) What is the role of manufactured housing in promoting homeownership through providing affordable housing? Are first-time homebuyers, low-income households, and minority households more likely to achieve homeownership through purchasing manufactured housing? What are the barriers (such as financial, technological, informational and attitudinal) to homeowners achieving homeownership through buying manufactured homes?

(v) What has been the role of non-profits, Community Development Corporations (CDCs) and faith-based organizations in promoting homeownership? What types of programs of these institutions have been most effective in increasing homeownership? What constraints do these institutions face in promoting homeownership in their communities? What is the scope for HUD programs (existing and new) to help overcome some of these constraints?

Researchers may use the Fannie Mae and Freddie Mac Public Use Data Base (PUDB), HMDA data, case studies, AHS, and other databases in addressing these research areas.

(2) *Studies on Affordable Lending.*

(a) *Studies on Barriers to Credit Access.* Barriers to credit access include limited savings to make a downpayment, insufficient income to afford the requisite monthly payments, high debt burdens, and an inadequately documented or poor credit history. In some or many cases, obtaining credit to purchase a home may not be realistic, and such families may need to rent for a time to build their savings, increase their incomes, reduce their debts, and establish a satisfactory credit history. However, in many other cases, credit may be obtainable if lenders adopt more flexible underwriting guidelines and devote additional time to reviewing applications that do not qualify under the automated underwriting programs commonly in use in today's mortgage market.

An additional barrier to obtaining credit is the fear and uncertainty about the buying process and the risks of ownership. To overcome this, a number of programs have been developed to enhance education about the credit process in recent years, including Freddie Mac's "Don't Borrow Trouble" campaign. Also, despite progress in recent years, there is evidence that discrimination in mortgage lending continues to exist.[10] Disparities in treatment between borrowers of different races and neighborhoods of different racial makeup have been well documented.

HUD seeks information on these various barriers to credit access and feasible steps that might be taken to improve such access among minorities and other groups that have traditionally had difficulty in obtaining credit. Study topics include, but are not limited to, the following:

(i) The effectiveness of credit education programs established by various participants in the mortgage process in recent years.

(ii) The nature and adequacy of lender reviews of mortgage applications that don't qualify for approval under automated underwriting.

(iii) The effects on savings for down payments of various policy initiatives in recent years, such as Individual Development Accounts (IDAs), under which participants' savings in restricted accounts are matched by outside sources, and under which these matching funds can only be withdrawn for program-specified purposes, such as to put a down payment on a home.

(b) *Impacts of Broad Initiatives to Promote Affordable Lending.* HUD is interested in quantitative studies of the impacts of broad initiatives to promote affordable lending. Data sources for such studies are listed above in section III (A)(4), but other databases may also yield useful insights.

These studies could utilize econometric techniques to evaluate these questions. An example of this type of study is a recent report prepared for HUD by the Urban Institute. This report, authored by Brent Ambrose, Thomas Thibodeau, and Ken Temkin, is titled *An Analysis of the Effects of the GSE Affordable Goals on Low- and Moderate-Income Families.* The report presented several theoretical models and developed empirical analyses relating to the relationships among GSE market shares and interest rates, financing for target groups, and homeownership.

Study topics could include, but are not limited to, the following:

(i) Factors accounting for changes in GSE market shares over time.

(ii) Effects of HUD's GSE affordable housing goals on homeownership rates for underserved groups and areas targeted by the goals.

(iii) Relationship between GSE market share in specific metropolitan areas and the homeownership rate for targeted groups in those areas.

(c) *Evaluation of Specific Affordable Lending Programs.* In addition to the quantitative studies outlined in the previous section, HUD seeks information on the effects, costs, and benefits of various affordable lending programs developed in the 1990s. Programs that could be analyzed include, but are not limited to, the following:

(i) Freddie Mac's affordable lending programs. Information on these programs is available from Freddie Mac's Web site and from its Annual Housing Activity Reports (AHARs) submitted to HUD.

(ii) Fannie Mae's affordable lending programs. With respect to Fannie Mae, information is available on Fannie Mae's Web site and from its AHARs submitted to HUD.

(iii) Programs of primary mortgage market lenders.

(iv) Programs of primary mortgage market insurers, including private insurers and the Federal Housing Administration (FHA).

(d) *Studies on Down Payments.* Several studies have suggested that the greatest barrier to affordable lending is not the inability to make monthly mortgage payments; rather it is the lack of sufficient resources to make the initial down payment. While FHA has traditionally been the main source of low-downpayment loans for first-time homebuyers, data suggest that conventional lenders increased their low-downpayment lending during the latter half of the 1990s. Fannie Mae and Freddie Mac began offering less-than-five-percent down payment programs during that period. There has been little recent research on the determinants of down payments and on the characteristics of conventional low-downpayment loans originated during the mid-to-late 1990s. Research is particularly needed on the relationship between the new conventional programs and first-time homeownership. Are these conventional and GSE low-downpayment programs providing an avenue for cash-constrained families to obtain first-time homeownership, along the same lines that FHA has been doing? Topics, issues, and questions that could be analyzed include:

(i) Market sectors (*e.g.*, FHA, depositories, the GSEs) that provide substantial numbers of low-downpayment mortgages for low-income and minority families and for first-time homebuyers.

(ii) Characteristics that differentiate between low-income and minority borrowers who are able to make substantial down payments and those who are not able to do so.

(iii) The GSEs' role in the low-downpayment mortgage market. Do their low-downpayment loans go to low-income and minority homebuyers? To first-time homebuyers?

(iv) Comparisons of the down payment characteristics of mortgages originated in the entire primary conventional mortgage market and mortgages purchased by the GSEs.

(v) In order for HUD to define the GSE housing goals in precise terms and set the goals at specific levels, HUD is seeking research that will determine whether the goals affect supply in the market. Specifically, HUD is interested in a model that can provide quantitative estimates of the impact of setting the goals at various levels on the financial condition of the GSEs and on targeted outcomes.

IV. Cooperative Agreement Structure; Publication of Studies

The awards will be structured as cooperative agreements, in order to provide latitude to researchers to proceed independently, but with opportunity for HUD to provide comments at appropriate points in the research. As detailed below, HUD's participation in the research will include review and comment on the detailed study design, review and comment on the draft final report, and organizing and participating in a seminar on the research. If you believe that a greater extent of HUD involvement in your project would be advantageous for the successful accomplishment of your research objectives, please include in your project description/narrative a discussion of the desired HUD resources and the rationale. (This is item 6 in the list of application items provided in section VI.A, below.) Formal commitments regarding this aspect of the cooperative agreement would then become a matter for negotiation prior to award.

The technical study plan portion of your application (*see* item 3 in Section VI(A)(5) below) must include provisions for the following work steps to be performed by you and by HUD:

(a) You must submit a detailed study design, comprising identified research issue(s), a technical proposal, and methodological approach. This will be due no later than six weeks from the

[9] The Urban Institute has recently completed a report for HUD, "An Analysis of the Effects of the GSE Affordable Goals on Low- and Moderate-Income Families." The study is a significant first step in addressing this issue.

[10] Recent studies include *What We Know About Mortgage Lending Discrimination in America*, U.S. Department of Housing and Urban Development, Office of Policy Development and Research, September 1999, and *All Other Things Being Equal: A Paired Testing Study of Mortgage Lending Institutions*, report prepared by The Urban Institute for the U.S. Department of Housing and Urban Development, Office of Fair Housing and Equal Opportunity, April 2002.

date of award, unless you indicate a specific rationale for a different schedule. HUD will provide comments to you on the study design.

(b) You must submit a draft report to HUD no later than twenty (20) weeks prior to the scheduled ending date of the project. HUD will provide comments on the draft report, which may include comments of peer reviewers engaged by HUD.

(c) Travel to Washington (or another location, as mutually agreed) to present the study, at a time to be arranged with HUD representatives, subsequent to submission of the draft final report. Your project budget must include provision for this.

(d) You must submit a final report taking account of the comments.

A cost-reimbursement award based on the negotiated budget is anticipated.

A payment schedule based on the completion of project milestones will be established in negotiation. An amount equal to 20 percent of the total amount of the cooperative agreement will be withheld and paid by HUD only after the final project report has been received and accepted by HUD.

The terms and conditions of the cooperative agreement will include restrictions against release of work products, quotation or paraphrasing from work products, or disclosures of interim findings prior to 60 days after HUD acceptance of your final report except with HUD approval. Thereafter, recipients are free to publish without HUD approval. The present provisions of OMB-Circular A–110, and HUD regulations at 24 CFR part 84 subpart C shall govern the right to intellectual or intangible property developed as a result of a recipient's performance under a cooperative agreement.

V. Program Requirements.

(A) Threshold Requirements.

(1) *Eligible Applicants.* Academic and not-for-profit institutions located in the U.S., state and local governments, and federally recognized Indian tribes are eligible to apply under this NOFA. For-profit firms also are eligible; however, they are not allowed to earn a fee (*i.e.*, no profit can be made from the project). Federal agencies and federal employees are not eligible to submit applications.

(2) *Compliance with Fair Housing and Civil Rights Laws.*

(a) With the exception of federally recognized Indian tribes and their instrumentalities, all applicants and their subrecipients must comply with all Fair Housing and Civil Rights laws, statutes, regulations, and Executive Orders as enumerated in 24 CFR 5.105(a). If you are a federally recognized Indian tribe, you must comply with the non-discrimination provisions enumerated at 24 CFR 1003.601, as applicable.

(b) If you, the applicant:

(i) Have been charged with a systemic violation of the Fair Housing Act alleging ongoing discrimination;

(ii) Are a defendant in a Fair Housing Act lawsuit filed by the Department of Justice alleging an on-going pattern or practice of discrimination; or,

(iii) Have received a letter of non-compliance findings under title VI, section 504, or section 109, and if the charge, lawsuit, or letter of findings has not been resolved to HUD's satisfaction before the application deadline stated in this NOFA, then you may not apply for assistance under this NOFA. HUD will not rate and rank your application. HUD's decision regarding whether a charge, lawsuit, or a letter of findings has been satisfactorily resolved will be based upon whether appropriate actions have been taken to address allegations of on-going discrimination in the policies or practices involved in the charge, lawsuit, or letter of findings.

(3) *Conducting Business In Accordance With Core Values and Ethical Standards.* Entities subject to 24 CFR parts 84 and 85 (most non-profit organizations and state, local and tribal governments or government agencies or instrumentalities that receive federal awards of financial assistance) are required to develop and maintain a written code of conduct (*see* §§ 84.42 and 85.36(b)(3)). Consistent with regulations governing specific programs, your code of conduct must: prohibit real and apparent conflicts of interest that may arise among officers, employees, or agents; prohibit the solicitation and acceptance of gifts or gratuities by your officers, employees, and agents for their personal benefit in excess of minimal value; and, outline administrative and disciplinary actions available to remedy violations of such standards. If awarded assistance under this NOFA, you will be required, prior to entering into a cooperative agreement with HUD, to submit a copy of your code of conduct and describe the methods you will use to ensure that all officers, employees, and agents of your organization are aware of your code of conduct.

(B) *Program Requirements.*

(1) *Number of Proposals and Topics.* A particular author or group of co-authors may submit separate research proposals on more than one topic, but no more than one award will be made to any one such author or group of co-authors.

You may address more than one of the technical study topic areas within your proposal or submit separate applications for different topic areas. Projects need not address all of the objectives within a given topic area. While you will not be penalized for not addressing all of the specific objectives for a given topic area, if two applications for technical study in a given topic have equal scores, HUD will select the applicant whose project addresses the most objectives.

(2) *Period of Performance.* The period of performance may not exceed 18 months from the time of award.

(3) *Conflict of Interest.* You must include information in your proposal concerning any past and current relationships that you and any other individuals, contractors, subcontractors or consultants proposed to be involved in the work may have with Fannie Mae or Freddie Mac. Substantial conflict of interest may be a basis for HUD disapproval of a proposed investigator's involvement.

If your study bears in any way on the role or activities of financial institutions, you will be required upon the completion of your work to provide to HUD a succinct statement summarizing any past or current relationships between project personnel (either individually or through their institutions), and Fannie Mae, or Freddie Mac. In any subsequent public release of the research by the Office of Policy Development and Research, either through formal publication or otherwise, this statement will be included, to inform readers of the nature and extent of any such relationships.

(4) *Existing Resources.* HUD technical studies funds may not replace existing resources dedicated to any ongoing project.

(5) *Protection of Human Subjects.* Human research subjects must be protected from research risks in conformance with Federal Policy for the Protection of Human Subjects, codified by HUD at 24 CFR part 60.

(6) *Ensuring the Participation of Small Businesses, Small Disadvantaged Businesses, and Women-Owned Businesses.* HUD is committed to ensuring that small businesses, small disadvantaged businesses, and women-owned businesses participate fully in HUD's direct contracting and in contracting opportunities generated by HUD cooperative agreement funds. Too often, these businesses still experience difficulty accessing information and successfully bidding on federal contracts. State, local, and tribal governments are required by 24 CFR 85.36(e), and non-profit recipients of assistance by 24 CFR 84.44(b), to take all necessary affirmative steps in contracting for purchase of goods or services to assure that minority firms, women's business enterprises, and labor surplus area firms are used when possible.

(7) *Additional Non-Discrimination Requirements.* You, the applicant, and your subrecipients must comply with the Americans with Disabilities Act of 1990 (42 U.S.C. 1201 *et seq.*) and title IX of the Education Amendments Act of 1972 (20 U.S.C. 1681 *et seq.*)

(8) *Prohibition Against Lobbying Activities.* Applicants for funding under this NOFA are subject to the provisions of section 319 of the Department of Interior and Related Agencies Appropriation Act for Fiscal Year 1991 (31 U.S.C. 1352) (the Byrd Amendment) and to the provisions of the Lobbying Disclosure Act of 1995 (Pub. L. 104–65, approved December 19, 1995).

The Byrd Amendment, which is implemented in regulations at 24 CFR part 87, prohibits applicants for federal contracts and grants from using appropriated funds to attempt to influence federal executive or legislative officers or employees in connection with obtaining such assistance, or with its extension, continuation, renewal, amendment, or modification. The Byrd Amendment applies to the funds that are the subject of this NOFA. Therefore, applicants must file a certification stating that they have not made and will not make any prohibited payments and, if any payments or agreement to make payments of non-appropriated funds for these purposes have been made, a form SF-LLL disclosing such payments must be submitted.

The Lobbying Disclosure Act of 1995 (Pub. L. 104–65, approved December 19, 1995), which repealed section 112 of the HUD Reform Act, requires all persons and entities who lobby covered executive or legislative branch officials to register with the Secretary of the Senate and the Clerk of the House of Representatives, and file reports concerning their lobbying activities.

VI. Application Submission Requirements

(A) *Applicant Information.*

Your application must contain the items listed in this section VI, as follows:

(1) A transmittal letter (limited to one page) which identifies the purpose for which the technical study program funds are requested, the dollar amount requested, and the applicant or applicants submitting the application. If two or more organizations are working together on the project, a primary applicant must be designated.

(2) Checklist and submission table of contents (*see* Appendix A).

(3) Name of primary applicant and any sub-recipients (such as consortium associates, partners, subcontractors, joint venture participants, or others contributing resources to your project), with contact information (*i.e.*, name, mailing address, and telephone number of principal contact person) for each.

(4) An abstract (limited to two pages) containing the following information: The project title, the names and affiliations of all investigators, and a summary of the research problem and study design as described in the project narrative.

(5) A project narrative (limited to a total of 25 pages) that discusses your qualifications and your study plan and addresses the following topics, which correspond to the rating factors for award of funding as stated in section VII(D), below. The narrative statement must be organized in sections numbered in accordance with this outline:

1. Applicant and organizational qualifications, including qualifications of the principal investigator and key personnel, experience in managing similar projects, and past performance in managing project funds. *See* the discussion of Rating Factor 1 in section VII(D).

2. The problem to be addressed. *See* Rating Factor 2.

3. Technical study plan, including study design, quality assurance mechanisms, and project management plan. *See* Rating Factor 3; *also see* section IV, above.

4. Statement of non-HUD resources to be applied, if any. *See* Rating Factor 4.

5. Statement on coordination, self-sufficiency, and sustainability of your work. *See* Rating Factor 5. Any pages in excess of the 25-page limit will not be read.

(6) Discussion of desired HUD resources, if applicable. *See* section IV.

(7) Conflict of interest disclosure. *See* section V(B)(3).

(8) You may provide attachments, appendices, bibliography, or other relevant materials that support your project narrative, but these must not exceed 20 pages in the aggregate. Any pages in excess of this limit will not be read.

(9) The resumes of the principal investigator and other key personnel. Resumes shall not exceed three pages each and are limited to information that is relevant in assessing the qualifications of key personnel to conduct and/or manage the proposed technical studies.

(10) Indirect Cost Rate Agreement, if available. Applicants that have established indirect cost rate agreements shall provide a copy of the agreement from their cognizant Federal agency. The cognizant agency is the Federal agency responsible for negotiating.

(B) *Standard Forms, Certifications and Assurances.*

You, the applicant, are required to submit signed copies of the following forms, certifications, and assurances:

(i) Application for Federal Assistance (HUD–424);

(ii) Applicant Assurances and Certifications (HUD–424–B);

(iii) Detailed Budget (HUD–424–CB);

(iv) Detailed Budget Worksheet (HUD–424–CBW);

Note that the thoroughness, clarity, and coherence of the budget information that you provide on the Detailed Budget Worksheet will be evaluated under Rating Factor 3, item 4. You must thoroughly document and justify all budget categories and costs and all major tasks, for yourself and any sub-recipients contributing resources to the project. Your budget should include the cost of travel to Washington for at least one investigator to meet with HUD representatives or participate in a research seminar or symposium.

(v) If required, the Disclosure Form Regarding Lobbying (SF–LLL). *See* the first paragraph under "certifications" on page 2 of form HUD–424. *See also* section V(B)(8) above;

(vi) Disclosure/Update Report (HUD–2880);

(vii) Acknowledgment of Application Receipt (HUD–2993); and

(viii) Client Comments and Suggestions (HUD 2994).

Copies of these standard forms, with instructions as applicable, are appended to this NOFA.

VII. Application Selection Process

(A) *Program Threshold Requirements.* HUD will review your application to determine whether it meets all of the program threshold requirements described in section V(A) above. Only applications that meet all of the threshold requirements will be eligible to be rated and ranked.

(B) *Rating.* Applications that meet all of the threshold requirements will be eligible to be scored and ranked, based on the total number of points allocated for each of the rating factors described below. Your application must receive a total score of at least 70 points to remain in consideration for funding.

(C) *Ranking and Selection.* Selection of award recipients will be based on the ranking of aggregate scores, within the limits of funding availability. Awards may be made to two or more recipients proposing work on a particular topic, if deemed to be in the best interests of the government. HUD reserves the right to

select applications out of rank order to achieve balance among the topics selected for funding.

(D) *Rating Factors.* The factors for rating and ranking applicants, and maximum points for each factor, are provided below. The maximum number of points to be awarded is 100.

Rating Factor 1: Capacity of the Applicant and Relevant Organizational Experience (30 Points)

Points will be awarded under the following three sub-factors, based on the extent to which your proposal indicates that you have the ability and organizational resources necessary to implement successfully your proposed activities in a timely manner. The rating of you, the "applicant," will include any sub-recipients that will contribute resources to the project. In rating this factor, HUD will consider and award points based on the extent to which your application demonstrates:

(1) *That the principal investigator and key personnel are capable and qualified to accomplish the proposed research, based on their education/training and previous completed research.* (15 points.) Qualifications to carry out the proposed study will be evaluated based on the academic background of personnel, relevant publications, and recent (within the past 10 years) research experience relevant to the type of work proposed. Publications and research experience are considered relevant if they required the acquisition and use of knowledge and skills that can be applied in the planning and execution of the technical study that is proposed.

(2) *That the project manager(s) have demonstrated ability to manage this research, based on past performance in managing similar projects.* (10 points.) Points will be awarded based on demonstrated ability to successfully manage your study in such areas as personnel management, project management, data management, quality control, community study involvement (if applicable), and report writing, as well as overall success in project completion (*i.e.*, projects completed on time and within budget). You should also demonstrate that your project would have adequate administrative support, including clerical and specialized support in areas such as accounting and equipment maintenance, as relevant.

(3) *That the primary applicant and any sub-recipients are capable of managing project funds, based on past performance.* (5 points.) Points will be awarded based on the extent of demonstrated ability to account for funds appropriately as well as on timely use of funds received either from HUD or from other Federal, state, or local programs, or private programs. HUD may consider information at hand or available from public sources such as, but not limited to, newspapers, Inspector General or Government Accounting Office Reports or Findings, and/or hotline complaints that have been proven to have merit.

Rating Factor 2: Need/Extent of the Problem (10 Points)

Points will be awarded based on the extent to which your proposal establishes that your proposed research will address documented problems, target areas or target groups. In responding to this factor, you should document in detail how your project would make a significant contribution towards achieving some or all of HUD's stated goals and objectives for one or more of the topic areas described in section III (A).

Rating Factor 3: Soundness of Technical Study Approach (50 Points)

Points will be awarded based on the quality of the technical study plan portion of your application, under the following four sub-factors. Specific components that will be evaluated include the following:

(1) *Soundness of the study design.* (30 points.) The thoroughness and feasibility of your project description/study design, and the extent to which it reflects a comprehensive understanding of the relevant technical literature. It should clearly describe how your study builds upon the current state of knowledge for your focus area. If possible, your study should be designed to address testable hypotheses, which are clearly stated. Your study design should be statistically based, with sufficient data to provide an adequate test of your stated hypotheses. The study design should be presented as a logical sequence of steps or phases, with individual activities or tasks described for each. You should identify any important "decision points" in your study plan, and you should discuss plans for data management, analysis and archiving.

(2) *Quality assurance mechanisms.* (10 points.) The adequacy of quality assurance mechanisms that will be integrated into your project design to ensure the validity and quality of the results. Areas to be addressed include acceptance criteria for data quality, procedures for selection of samples/sample sites, sample handling, measurement and analysis, and any standard/nonstandard quality assurance/control procedures to be followed. Documents (*e.g.*, government reports, peer-reviewed academic literature) that provide the basis for your quality assurance mechanisms should be cited.

(3) *Project management plan.* (8 points.) The extent to which your schedule for the completion of major activities, tasks and deliverables, and your budget, confirm that there will be adequate resources (*e.g.*, personnel, financial) to carry out your study design successfully within the proposed time frame, taking account of timing requirements stated in section IV, above.

(4) *Budget proposal.* (2 Points) Two points will be awarded if your budget proposal on the HUD–424CB thoroughly estimates all applicable direct and indirect costs and is presented in a clear and coherent format as provided in section VI (B). One point, or no point, will be awarded if your budget proposal is deficient in these regards, based on the degree of deficiency.

Rating Factor 4: Leveraging of Resources (5 Points)

You are encouraged to demonstrate that the effectiveness of HUD's funds will be increased by securing other public and/or private resources or by structuring the project in a cost-effective manner, such as integrating the project into an existing study. Resources may include funding or in-kind contributions (such as services, facilities or equipment) allocated to the purpose(s) of your project. Staff and in-kind contributions should be given a monetary value. Larger commitments of this kind will be awarded more points under this rating factor.

You should provide evidence of leveraging/partnerships by attaching to your application letters of firm commitment, memoranda of understanding, or agreements to participate from those entities identified as partners in the project efforts. Each letter of commitment, memorandum of understanding, or agreement to participate must include the organization's name, proposed level of commitment (with monetary value) and responsibilities as they relate to specific activities or tasks of your proposed program. The commitment must also be signed by an official of the organization legally able to make commitments on behalf of the organization.

Rating Factor 5: Coordination, Self-Sufficiency and Sustainability (5 Points)

(1) The extent to which you have coordinated your activities with other organizations that have been or are in the process of conducting similar or related work.

(2) Evidence that your proposed study builds upon the existing body of related work and it does not significantly duplicate work that is currently being conducted, or has been conducted, by other organizations (to the extent that this can be ascertained).

(3) The extent to which your project will help generate practical solutions that can be implemented on the local or national level for increasing homeownership and/or improving housing affordability for low- and moderate-income families, minority families, and families in underserved geographical areas.

(E) *Adjustments to Funding.*

(1) HUD reserves the right to fund less than the full amount requested in your application to ensure the fair distribution of the funds and that the purposes of this program are met.

(2) HUD will not fund any portion of your application that is not eligible for funding under specific program statutory or regulatory requirements; does not meet the requirements of this NOFA; or that may be duplicative of other funded programs or activities from previous years' awards or other selected applicants. Only the eligible portions of your application (including non-duplicative portions) may be funded.

(3) Purchase or lease of equipment having a per unit cost in excess of $5,000 will not be funded unless prior written approval is obtained from HUD.

(4) If funds remain after funding the highest-ranking applications, HUD may fund all or part of the next highest-ranking application in a given program. If you, the applicant, turn down an award offer, HUD will make an offer of funding to the next highest-ranking application. If funds remain after all selections have been made, remaining funds may be available for other competitions for each program where there is a balance of funds.

(5) In the event HUD commits an error that, when corrected, would result in selection of an otherwise eligible applicant during the funding round of this NOFA, HUD may select that applicant when sufficient funds become available.

(F) *Audit.*

Grantees/applicants that expend $300,000 or more in a year in federal awards shall have a single or program-specific audit conducted for that year in accordance with OMB Circular A–133. Grantees/applicants shall ensure that their most recent completed audit has been submitted to the Federal Audit Clearinghouse for review by HUD (refer to *harvester.census.gov/sac/*). Grantees that do not have such an audit or are not subject to OMB Circular A–133 will be asked to provide a copy of their organization's most recent audit or other evidence that financial controls are in place before an award can be finalized.

VIII. Corrections, Debriefing

(A) *Corrections to Deficient Applications.* After the application due date, HUD may not, consistent with its regulations in 24 CFR part 4, subpart B, consider any unsolicited information you, the applicant, may want to provide. HUD may contact you to clarify an item in your application or to correct technical deficiencies. HUD may not seek clarification of items or responses that improve the substantive quality of your response to any rating factors. In order not unreasonably to exclude applications from being rated and ranked, HUD may contact applicants to ensure proper completion of the application and will do so on a uniform basis for all applicants. Examples of curable (correctable) technical deficiencies include failure to submit the proper certifications or failure to submit an application that contains an original signature by an authorized official. In each case, HUD will notify you in writing by describing the clarification or technical deficiency. HUD will notify applicants by facsimile (FAX) or by USPS, return receipt requested. Clarifications or corrections of technical deficiencies in accordance with the information provided by HUD must be submitted within 14 calendar days of the date of receipt of the HUD notification. (If the due date falls on a Saturday, Sunday, or Federal holiday, your correction must be received by HUD on the next day that is not a Saturday, Sunday, or Federal holiday.) If the deficiency is not corrected within this time period, HUD will reject the application as incomplete and it will not be considered for funding.

(B) *Applicant Debriefing.* Beginning not less than 30 days after the awards for assistance are announced in the **Federal Register**, and for at least 120 days after awards for assistance are announced, HUD will provide any requesting applicant with a debriefing on their application. All requests for debriefing must be made by the principal investigator for the proposed study or by the authorized official whose signature appears on the HUD–424 or his or her successor in office. Submit your request to Mr. Patrick Tewey, who may be reached at (202) 702–0614, extension 4098 (this is not a toll-free number). Information provided to you during your debriefing will include, at a minimum, the final score you received for each rating factor, final evaluator comments for each rating factor, and the final assessment indicating the basis upon which assistance was provided or denied.

IX. Findings and Certifications

(A) *Federalism Impact.* Executive Order 13132 (captioned "Federalism") prohibits, to the extent practicable and permitted by law, an agency from promulgating a regulation that has federalism implications and either imposes substantial direct compliance costs on state and local governments and is not required by statute, or preempts state law, unless the relevant requirements of section 6 of the Executive Order are met. This NOFA does not have federalism implications and does not impose substantial direct compliance costs on state and local governments nor preempt state law within the meaning of the Executive Order.

(B) *Accountability in the Provision of HUD Assistance.*

Section 102 of the Department of Housing and Urban Development Reform Act of 1989 (HUD Reform Act) and the regulations in 24 CFR part 4, subpart A contain a number of provisions that are designed to ensure greater accountability and integrity in the provision of certain types of assistance administered by HUD. On January 14, 1992 (57 FR 1942), HUD published a notice that also provides information on the implementation of section 102. HUD will comply with the documentation, public access, and disclosure requirements of section 102 with regard to the assistance awarded under this NOFA, as follows:

(1) *Documentation and public access requirements.* HUD will ensure that documentation and other information regarding each application submitted pursuant to this NOFA are sufficient to indicate the basis upon which assistance was provided or denied. This material, including any letters of support, will be made available for public inspection for a 5-year period beginning not less than 30 days after the award of the assistance. Material will be made available in accordance with the Freedom of Information Act (5 U.S.C. 552) and HUD's implementing regulations at 24 CFR part 15.

(2) *Disclosures.* HUD will make available for public inspection for 5 years all applicant disclosure reports (HUD Form 2880) submitted in connection with this NOFA. Update reports (also reported on HUD Form 2880) will be made available along with the applicant disclosure reports, but in no case for a period of less than three

years. All reports, both applicant disclosures and updates, will be made available in accordance with the Freedom of Information Act (5 U.S.C. 552) and HUD's implementing regulations at 24 CFR part 15.

(3) *Publication of Recipients of HUD Funding.* HUD's regulations at 24 CFR part 4 provide that HUD will publish a notice in the **Federal Register** to notify the public of all decisions made by the Department to provide:

(i) Assistance subject to section 102(a) of the HUD Reform Act; and/or,

(ii) Assistance provided through grants or cooperative agreements on a discretionary (non-formula, non-demand) basis, but that is not provided on the basis of a competition.

(C) *Section 103 HUD Reform Act.* HUD will comply with section 103 of the Department of Housing and Urban Development Reform Act of 1989 and HUD's implementing regulations in subpart B of 24 CFR part 4 with regard to the funding competition announced today. These requirements continue to apply until the announcement of the selection of successful applicants. HUD employees involved in the review of applications and in the making of funding decisions are limited by section 103 from providing advance information to any person (other than an authorized employee of HUD) concerning funding decisions, or from otherwise giving any applicant an unfair competitive advantage. Persons who apply for assistance in this competition should confine their inquiries to the subject areas permitted under section 103 and subpart B of 24 CFR part 4.

Applicants or employees who have ethics related questions should contact the HUD Ethics Law Division at (202) 708–3815 (this is not a toll-free number). For HUD employees who have specific program questions, such as whether particular subject matter can be discussed with persons outside HUD, the employee should contact the appropriate Field Office Counsel.

(D) *Paperwork Reduction Act Statement.* The information collection requirements in this NOFA have been approved by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520). The OMB control number is 2528–0228. Under the Paperwork Reduction Act, an agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection displays a valid control number.

(E) *Environmental Requirements.* This NOFA does not direct, provide for assistance or loan and mortgage insurance for, or otherwise govern or regulate, real property acquisition, disposition, leasing, rehabilitation, alteration, demolition, or new construction, or establish, revise or provide for standards for construction or construction materials, manufactured housing, or occupancy. In accordance with 24 CFR 50.19(b)(1) of HUD regulations, activities under this program are categorically excluded from environmental review under the National Environmental Policy Act of 1969 (42 U.S.C. 4321), and are not subject to environmental review under the related laws and authorities.

(F) *Catalog of Federal Domestic Assistance Numbers.* The Federal Domestic Assistance number for this program is 14.506.

X. Authority

These cooperative agreements are authorized under sections 501 and 502 of the Housing and Urban Development Act of 1970 (12 U.S.C. 1701z–1 *et seq.*).

Dated: May 9, 2003.

Christopher Lord,

Deputy Assistant Secretary for Policy Development and Research.

BILLING CODE 4210–62–P

APPENDIX A

CHECKLIST AND SUBMISSION TABLE OF CONTENTS

RESEARCH STUDIES ON HOMEOWNERSHIP AND AFFORDABLE LENDING

The following checklist is provided to ensure you have submitted all required items to receive consideration for funding. You must assemble the application in the order shown below and note the corresponding page number where the response is located. **You must include this checklist and submission table of contents with the proposal.**

page number

[] Transmittal Letter (limited to one page) *cover page*
[] Checklist and submission table of contents (i.e., this page) ____
[] Name of primary applicant and any sub-recipients, with contact information for each ____
[] Abstract (limited to two pages) ____

Project narrative (limited to 25 pages total)
[] 1. Applicant and organizational qualifications ____
[] 2. The problem to be addressed ____
[] 3. Technical study plan (study design, quality assurance mechanisms, and project management plan) ____
[] 4. Non-HUD resources to be applied (if any) ____
[] 5. Statement on coordination, self-sufficiency, and sustainability ____

[] Discussion of desired HUD resources, if applicable ____
[] Conflict of interest disclosure ____
[] Attachments, appendices, bibliography, or other relevant materials, if any (limited to 20 pages) ____
[] Resumes (limited to three pages per individual) ____
[] Indirect cost rate agreement, if available ____

[] Application for Federal Assistance (Form HUD-424) ____
[] Applicant Assurances and Certifications (Form HUD 424-B) ____
[] Detailed Budget (Form HUD-424-CB) ____
[] Detailed Budget Worksheet (Form HUD-424-CBW) ____
[] Disclosure of Lobbying Activities, if required (Standard Form LLL) ____
[] Disclosure/Update Report (Form HUD-2880) ____
[] Acknowledgment of Application Receipt (Form HUD-2993) ____
[] Client Comments and Suggestions (Form HUD-2994) ____

Application for Federal Assistance

U.S. Department of Housing and Urban Development

OMB Approval No.2501-0017 (exp. 03/31/2005)

1. Type of Submission
☐ Application ☐ Preapplication

2. Date Submitted	4. HUD Application Number
3. Date and Time Received by HUD	5. Existing Grant Number
	6. Applicant Identification Number

7. Applicant's Legal Name	8. Organizational Unit
9. Address (give city, county, State, and zip code) A. Address: B. City: C. County: D. State: E. Zip Code:	10. Name,title,telephone number,fax number, and e-mail of the person to be contacted on matters involving this application (including area codes) A. Name: B. Title: C. Phone: D. Fax: E. E-mail:
11. Employer Identification Number (EIN) or SSN	12. Type of Applicant (enter appropriate letter in box) A. State — I. University or College B. County — J. Indian Tribe C. Municipal — K. Tribally Designated Housing Entity (TDHE) D. Township — L. Individual E. Interstate — M. Profit Organization F. Intermunicipal — N. Non-profit G. Special District — O. Public Housing Authority H. Independent School District — P. Other (Specify)
13. Type of Application ☐ New ☐ Continuation ☐ Renewal ☐ Revision If Revision, enter appropriate letters in box(es) ☐ ☐ A. Increase Amount B. Decrease Amount C. Increase Duration D. Decrease Duration E. Other (Specify)	14. Name of Federal Agency **U.S. Department of Housing and Urban Development**
15. Catalog of Federal Domestic Assistance (CFDA) Number 14 --- Title: Component Title:	16. Descriptive Title of Applicant's Program
17. Areas affected by Program (boroughs, cities, counties, States, Indian Reservation, etc.)	

18a. Proposed Program start date	18b. Proposed Program end date	19a. Congressional Districts of Applicant	19b. Congressional Districts of Program

20. Estimated Funding: **Applicant must complete the Funding Matrix on Page 2.**

21. Is Application subject to review by State Executive Order 12372 Process?
A. Yes ☐ This preapplication/application was made available to the State Executive Order 12372 Process for review on: Date_____
B. No ☐ Program is not covered by E.O. 12372
☐ Program has not been selected by State for review.

22. Is the Applicant delinquent on any Federal debt? ☐ No
☐ Yes If "Yes," explain below or attach an explanation.

Funding Matrix

The applicant must provide the funding matrix shown below, listing each program for which HUD funding is being requested, and complete the certifications.

Grant Program*	HUD Share	Applicant Match	Other HUD Funds	Other Federal Share	State Share	Local/Tribal Share	Other	Program Income	Total
Grand Totals									

* For FHIPs, show both initiative and component

Certifications

I certify, to the best of my knowledge and belief, that no Federal appropriated funds have been paid, or will be paid, by or on behalf of the applicant, to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress, in connection with the awarding of this Federal grant or its extension, renewal, amendment or modification. If funds other than Federal appropriated funds have or will be paid for influencing or attempting to influence the persons listed above, I shall complete and submit Standard Form-LLL, Disclosure Form to Report Lobbying. I certify that I shall require all sub awards at all tiers (including sub-grants and contracts) to similarly certify and disclose accordingly.

Federally recognized Indian Tribes and tribally designated housing entities (TDHEs) established by Federally-recognized Indian tribes as a result of the exercise of the tribe's sovereign power are excluded from coverage of the Byrd Amendment, but State-recognized Indian tribes and TDHEs established under State law are not excluded from the statute's coverage.

This application incorporates the Assurances and Certifications (HUD-424B) attached to this application or renews and incorporates for the funding you are seeking the Assurances and Certifications currently on file with HUD. To the best of my knowledge and belief, all information in this application is true and correct and constitutes material representation of fact upon which HUD may rely in awarding the agreement.

23. Signature of Authorized Official	Name (printed)
Title	Date (mm/dd/yyyy)

Instructions for the HUD-424

Public reporting burden for this collection of information is estimated to average 45 minutes per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. HUD may not conduct or sponsor, and a person is not required to respond to, a collection of information unless that collection displays a valid OMB control number.

This form must be used by applicants requesting funding from the Department of Housing and Urban Development. This application form HUD-424 incorporates the Assurances and Certifications (HUD-424-B). You may either (1) attach the Assurances and Certifications to the application or (2) renew the certifications that you previously made on behalf of your organization and submitted to HUD if the legal name of your organization has not changed and you were the authorized representative who signed the Assurances and Certifications.

Item Number Instructions

1. Please indicate whether your application is for a formal application submission or a preliminary application (pre-application). HUD does not accept pre-applications for programs funded through the SuperNOFA.
2. Enter the date you are submitting your application to HUD.
3. This box will be completed by HUD. When received by HUD, your application will be stamped:
   (a) with a date; and
   (b) with the time received.
4. Leave Blank. This will be completed by the HUD program office receiving your application. When HUD accepts electronic applications for the grant program you are applying for, this number will be computer generated.
5. If your application is to renew or continue an existing grant, provide the existing grant number. If a new award, please leave blank.
6. Leave blank if you have not been provided a HUD ID number or user number. If you are a Public Housing Authority, enter your HUD issued Public Housing Authority ID number.
7. Enter the legal name of your organization applying for HUD funding.
8. Enter the name of the primary unit in your organization, if applicable, which will be responsible for the program.
9. Enter the complete address of your organization.
10. Enter the name, title, telephone number, fax number, and E-mail of the person to contact on matters related to your application.
11. Enter your organization's Employer Identification Number (EIN) as assigned by the Internal Revenue Service or if you are applying as an individual, your Social Security Number.
12. Choose from the list and enter the appropriate letter in the space provided. You must be an eligible applicant to apply for assistance. You must read the program information requirements to determine if you are a type of applicant that is eligible to apply for assistance under the program.
13. Enter the type of application you are submitting for funding consideration.

Check the appropriate box.

[redacted] "New" means you are applying for a new grant award.

[redacted] "Continuation" means you are requesting an extension of an existing award.

[redacted] "Renewal" means you are requesting funding for renewal of an existing grant. e.g. Supportive Housing Program (SHP) or Shelter + Care grant.

[redacted] "Revision" means you are submitting a revision prior to the application due date in response to HUD's request for clarification or modification to your initial submission.

14. Pre-filled.
15. Enter the Catalog of Federal Domestic Assistance (CFDA) number and title and, if applicable, component title of the program.
16. Enter a brief description of your program and key activities.
17. Identify the location(s) where your activities will take place. If this is the entire state, enter "Entire State".
18a. Enter the proposed start date.
18b. Enter the proposed end date.
19a. List the Congressional District(s) where your organization is located.
19b. List any Congressional District(s) where your program of activities or project sites will be located.
20. You must complete the funding matrix on page 2 of this form. Enter the following information:

Grant Program: The HUD funding program under which you are applying.

HUD Share: Please check the program requirements. Enter the amount of HUD funds you are requesting in your application.

Applicant Match: Enter the amount of funds or cash equivalent of in-kind contributions you are contributing to your project or program of activities.

Other Federal Share: Enter the amount of other Federal funds for your program of activities.

Instructions for the HUD-424 (Continued)

State Share: Enter the amount of funds or cash equivalent of in-kind services the State is providing to your project or program of activities.

Local/Tribal Share: Enter the amount of funds or cash equivalent of in-kind services your local/tribal government is providing to your project or program of activities.

Other: Enter the amount of other sources of private, non-profit, or other funds or cash equivalent of in-kind services being provided to your project or program of activities.

Program Income: Enter the amount of program income you expect to generate over the life of your award.

Total: Please total all columns and fill in the amounts.

21. You should contact the State Single Point of Contact (SPOC) for Federal Executive Order 12372 or check your application kit to determine whether the State Intergovernmental Review Process is required.
22. This question applies to your applicant organization, not the person signing as your organization's authorized representative. Categories of debt include disallowed costs that requires repayment to HUD.
23. To be signed by the authorized representative of your organization. A copy of your governing body's authorization for you to sign this application must be available in your organization's office.

Applicant Assurances and Certifications	U.S. Department of Housing and Urban Development	OMB Approval No. 2501-0017 (exp. 03/31/2005)

Instructions for the HUD-424-B Assurances and Certifications

As part of your application for HUD funding, you, as the official authorized to sign on behalf of your organization or an an individual must provide the following assurances and certifications. By signing this form, you are stating that to the best of your knowledge and belief, all assertions are true and correct.

As the duly authorized representative of the applicant, I certify that the applicant [Insert below the Name and title of the Authorized Representative, name of Organization and the date of signature]:

Name:_____, Title:_____,

Organization;_____, Date:_____.

1. Has the legal authority to apply for Federal assistance, has the institutional, managerial and financial capability (including funds to pay the non-Federal share of program costs) to plan, manage and complete the program as described in the application and the governing body has duly authorized the submission of the application, including these assurances and certifications, and authorized me as the official representative of the applicant to act in connection with the application and to provide any additional information as may be required.

2. Will administer the grant in compliance with Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000(d)) and implementing regulations (24 CFR Part 1), which provide that no person in the United States shall, on the grounds of race, color or national origin, be excluded from participation in, be denied the benefits of, or otherwise be subjected to discrimination under any program or activity that receives Federal financial assistance **OR** if the applicant is a Federally recognized Indian tribe or its tribally designated housing entity, is subject to the Indian Civil Rights Act (25 U.S.C. 1301-1303).

3. Will administer the grant in compliance with Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794), as amended, and implementing regulations at 24 CFR Part 8, and the Age Discrimination Act of 1975 (42 U.S.C. 6101-07), as amended, and implementing regulations at 24 CFR Part 146 which together provide that no person in the United States shall, on the grounds of disability or age, be excluded from participation in, be denied the benefits of, or otherwise be subjected to discrimination under any program or activity that receives Federal financial assistance; except if the grant program authorizes or limits participation to designated populations, then the applicant will comply with the nondiscrimination requirements within the designated population.

4. Will comply with the Fair Housing Act (42 U.S.C. 3601-19), as amended, and the implementing regulations at 24 CFR Part 100, which prohibit discrimination in housing on the basis of race, color, religion, sex, disability, familial status, or national origin; except an applicant which is an Indian tribe or its instrumentality which is excluded by statute from coverage does not make this certification and further except if the grant program authorizes or limits participation to designated populations, then the applicant will comply with the nondiscrimination requirements within the designated population.

5. Will comply with the acquisition and relocation requirements of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended (42 U.S.C. 4601) and implementing regulations at 49 CFR Part 24 and 24 CFR 42, Subpart A.

6. Will comply with the environmental requirements of the National Environmental Policy Act (42 U.S.C. 4321 *et seq.*) and related Federal authorities prior to the commitment or expenditure of funds for property acquisition and physical development activities subject to implementing regulations at 24 CFR parts 50 or 58.

7. Will or will continue to provide a drug-free workplace by:

(a) Publishing a statement notifying employees that the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance is prohibited in the applicant's workplace and specifying the actions that will be taken against employees for violation of such prohibition;

(b) Establishing an on-going drug-free awareness program to inform employees about –

(1) The dangers of drug abuse in the workplace;

(2) The applicant's policy of maintaining a drug-free workplace;

(3) Any available drug counseling, rehabilitation, and employee assistance programs; and

(4) The penalties that may be imposed upon employees for drug abuse violations occurring in the workplace;

(c) Making it a requirement that each employee to be engaged in the performance of the grant be given a copy of the statement required in Paragraph (a);

(d) Notifying the employee in the statement required by paragraph (a) that, as a condition of employment under the grant, the employee will –

(1) Abide by the terms of the statement; and

(2) Notify the employer in writing of his or her conviction for a violation of a criminal drug statute occurring in the workplace no later than five calendar days after such conviction;

Applicant Assurances and Certifications (Continued)	U.S. Department of Housing and Urban Development	OMB Approval No. 2501-0017 (exp. 03/31/2005)

(e) Notifying the agency in writing, within ten calendar days after receiving notice under paragraph (d)(2) from an employee or otherwise receiving actual notice of such conviction. Employers of convicted employees must provide notice, including position title, to every grant officer or other designee on whose grant activity the convicted employee has worked, unless the Federal agency has designated a central point for the receipt of such notices. Notice shall include the identification number(s) of each affected grant;

(f) Taking one of the following actions, within 30 calendar days of receiving notice under paragraph (d)(2), with respect to any employee who is so convicted–

(1) Taking appropriate personnel action against such an employee, up to and including termination, consistent with the requirements of the Rehabilitation Act of 1973, as amended; or

(2) Requiring such employee to participate satisfactorily in a drug abuse assistance or rehabilitation program approved for such purposes by Federal, State, or local health, law enforcement, or other appropriate agency;

(g) Making a good faith effort to continue to maintain a drug-free workplace through implementation of paragraphs (a), (b), (c), (d), (e), and (f).

(h). The applicant may insert in the space provided below the site(s) for the performance of work or may provide this information in connection with each application.

(i). Place of Performance (street address, city, county, state, zip code)

8. In accordance with 24 CFR Part 24, and its principals:

(a) Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal department or agency;

(b) Have not within a three year period preceding this proposal, been convicted of or had a civil judgement rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State or local) transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification, or destruction of records, making false statements, or receiving stolen property;

(c) Are not presently indicted for otherwise criminally or civilly charged by a governmental entity (Federal, State, or local) with commission of any of the offenses enumerated in the preceding paragraph of this certification; and

(d) Where the applicant is unable to certify to any of the statements in this certification, an explanation shall be attached.

(e) Will include the clause titled "Certification Regarding Debarment, Suspension, Ineligibility, and Voluntary Exclusion - Lower Tier Covered Transaction, " provided by the HUD without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions.

These certifications and assurances are material representations of the fact upon which HUD can rely when awarding a grant. If it is later determined that I, the applicant, knowingly made an erroneous certifications or assurance, I may be subject to criminal prosecution. HUD may also terminate the grant and take other available remedies.

Grant Application Detailed Budget
(Applicant should duplicate this first page as necessary)

U.S. Department of Housing and Urban Development

OMB Approval No. 2501-0017 (exp. 03/31/2005)

Functional Categories (Year 1)

Name of Project/Activity:	Column 1 HUD Share	Column 2 Applicant Match	Column 3 Other HUD Funds	Column 4 Other Federal Share	Column 5 State Share	Column 6 Local/Tribal Share	Column 7 Other	Column 8 Program Income	Column 9 Total
a. Personnel (Direct Labor)	$	$	$	$	$	$	$	$	$
b. Fringe Benefits									
c. Travel									
d. Equipment (Only Items > $5,000 Depreciated Value)									
e. Supplies (Only Items with Depreciated Value < $5,000)									
f. Contractual									
g. Construction									
1. Administration and legal expenses									
2. Land, structures, rights-of way, appraisals, etc.									
3. Relocation expenses and payments									
4. Architectural and engineering fees									
5. Other architectural and engineering fees									
6. Project inspection fees									
7. Site work									
8. Demolition and removal									
9. Construction									
10. Equipment									
11. Contingencies									
12. Miscellaneous									
h. Other (Direct Costs)									
i. Subtotal of Direct Costs									
j. Indirect Costs (% Approved Indirect Cost Rate: ___%)									
Grand Total (Year 1):									

form **HUD-424-CB** (2/2003)

Grant Application Detailed Budget
(Applicant should duplicate this first page as necessary)

U.S. Department of Housing and Urban Development

OMB Approval No. 2501-0017 (exp. 03/31/2005)

Functional Categories (Year 2)

Name of Project/Activity:	Column 1 HUD Share	Column 2 Applicant Match	Column 3 Other HUD Funds	Column 4 Other Federal Share	Column 5 State Share	Column 6 Local/Tribal Share	Column 7 Other	Column 8 Program Income	Column 9 Total
a. Personnel (Direct Labor)	$	$	$	$	$	$	$	$	$
b. Fringe Benefits									
c. Travel									
d. Equipment (Only Items > $5,000 Depreciated Value)									
e. Supplies (Only Items with Depreciated Value < $5,000)									
f. Contractual									
g. Construction									
1. Administration and legal expenses									
2. Land, structures, rights-of way, appraisals, etc.									
3. Relocation expenses and payments									
4. Architectural and engineering fees									
5. Other architectural and engineering fees									
6. Project inspection fees									
7. Site work									
8. Demolition and removal									
9. Construction									
10. Equipment									
11. Contingencies									
12. Miscellaneous									
h. Other (Direct Costs)									
i. Subtotal of Direct Costs									
j. Indirect Costs (% Approved Indirect Cost Rate: ___%)									
Grand Total (Year 2):									

form **HUD-424-CB** (2/2003)

Grant Application Detailed Budget

(Applicant should duplicate this first page as necessary)

U.S. Department of Housing and Urban Development

OMB Approval No. 2501-0017 (exp. 03/31/2005)

Name of Project/Activity:	Functional Categories (Year 3)								
	Column 1	Column 2	Column 3	Column 4	Column 5	Column 6	Column 7	Column 8	Column 9
	HUD Share	Applicant Match	Other HUD Funds	Other Federal Share	State Share	Local/Tribal Share	Other	Program Income	Total
a. Personnel (Direct Labor)	$	$	$	$	$	$	$	$	$
b. Fringe Benefits									
c. Travel									
d. Equipment (Only Items > $5,000 Depreciated Value)									
e. Supplies (Only Items with Depreciated Value < $5,000)									
f. Contractual									
g. Construction									
1. Administration and legal expenses									
2. Land, structures, rights-of way, appraisals, etc.									
3. Relocation expenses and payments									
4. Architectural and engineering fees									
5. Other architectural and engineering fees									
6. Project inspection fees									
7. Site work									
8. Demolition and removal									
9. Construction									
10. Equipment									
11. Contingencies									
12. Miscellaneous									
h. Other (Direct Costs)									
i. Subtotal of Direct Costs									
j. Indirect Costs (% Approved Indirect Cost Rate:___%)									
Grand Total (Year 3):									

Instructions for the HUD Grant Application Detailed Budget Form

Public reporting Burden for this collection of information is estimated to average 3 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. This agency may not collect this information, and you are not required to complete this form, unless it displays a currently valid OMB Control Number.

General Instructions

This form is designed so that an application can be made for any of HUD's grant programs. Space is provided for 3 separate program years.

In preparing the budget, adhere to any existing HUD requirements which prescribe how and whether budgeted amounts should be separately shown for different functions or activities within the program. For some programs, HUD may require budgets to be shown separately by function or activity.

Your budget information should show the entire cost of your proposed program of activities per year. If you are not using funds in any of the line item categories, you should leave the item blank. Pages may be duplicated to show budget data for individual programs, projects or activities.

NOTE: Not all budget categories on this form are eligible for funding under all programs. Please see eligible activities under the specific program for which you are seeking funding.

Budget Categories

The budget categories identifies how your program funds will be allocated by type of use, e.g., funds going for salaries, travel, contracts, etc. Each of these line items should be broken out under each applicable column.

Lines a-f--Show the totals of Lines a to f in each column.

Lines g. Show construction related expenses in the appropriate categories below.

Line g.1.--Enter estimated amounts needed to cover administrative expenses. Do not include costs which are related to the normal functions of government.

Line g.2.--Enter estimated site and right(s)-of-way acquisition costs (this includes purchase, lease, and/or easements).

Line g.3.--Enter estimated costs related to relocation advisory assistance, replacement housing, relocation payments to displaced persons and businesses, etc.

Line g.4.--Enter estimated basic engineering fees related to construction (this includes start-up services and preparation of project performance work plan).

Line g.5.--Enter estimated engineering costs, such as surveys, tests, soil borings, etc.

Line g.6.--Enter estimated engineering inspection costs.

Line g.7.--Enter the estimated site preparation and restoration which are not included in the basic construction contract.

Line g.8.--Enter the estimated costs related to demolition activities.

Line g.9.--Enter estimated costs of the construction contract.

Line g.10.--Enter estimated cost of office, shop, laboratory, safety equipment, etc. to be used at the facility, if such costs are not included in the construction contract.

Line g.11.--Enter any estimated contingency costs.

Line g.12.--Enter estimated miscellaneous costs.

Line h.--Enter any other direct costs not already addressed above.

Line i.--Calculate the totals of all applicable columns to determine the Subtotal of Direct Costs.

Line j.--Indicate the approved Indirect Cost Rate (if any) and calculate the indirect cost in accordance with the terms of your approved indirect cost rate and enter the resulting amount.

Grand Total (by Year)--Enter the sum of lines i. and j. under column 9 for each year.

For each budget category (personnel, fringe benefits, travel, etc) you should identify the amount of funding you plan on using in your grant program. You should complete each column as follows:

Column 1 - Identify the amount of funds that you will need from the HUD grant program for which you are seeking funding.

Column 2 - Identify any matching funds that you are required to include in your proposed program in order to be eligible for assistance.

Column 3 - Identify any other HUD funds that you will be adding to this program either through your formula or competitive grant programs.

Column 4 - Identify any other Federal funds that you will be adding to this program either through your formula or competitive grant programs.

Column 5 - Identify any State funds that you will be adding to this program.

Column 6 - Identify any Local or Tribal Government funds that you will be adding to this program.

Column 7 - Identify any additional funds not previously identified in Columns 1 - 6, that you intend to use for your proposed program.

Column 8 - Identify any program income that you expect to generate under this program.

Column 9 - Add columns 1 - 8 across and place the total in Column 9.

OMB Approval No. 2501-0017
(Exp. 03/31/2005)

Grant Application Detailed Budget Worksheet

Name and Address of Applicant:

Category — **Detailed Description of Budget (for full grant period)**

1. Personnel (Direct Labor)	Estimated Hours	Rate per Hour	Estimated Cost	HUD Share	Applicant Match	Other HUD Funds	Other Federal Share	State Share	Local/Tribal Share	Other	Program Income
Position or Individual											
Total Direct Labor Cost											
2. Fringe Benefits	**Rate (%)**	**Base**	**Estimated Cost**	HUD Share	Applicant Match	Other HUD Funds	Other Federal Share	State Share	Local/Tribal Share	Other	Program Income
Total Fringe Benefits Cost											
3. Travel											
3a. Transportation - Local Private Vehicle	**Mileage**	**Rate per Mile**	**Estimated Cost**	HUD Share	Applicant Match	Other HUD Funds	Other Federal Share	State Share	Local/Tribal Share	Other	Program Income
Subtotal - Trans - Local Private Vehicle											

1

form HUD-424-CBW (8/98)

Grant Application Detailed Budget Worksheet

Detailed Description of Budget

3b. Transportation - Airfare (show destination)	Trips	Fare	Estimated Cost	HUD Share	Applicant Match	Other HUD Funds	Other Federal Share	State Share	Local/Tribal Share	Other	Program Income
Subtotal - Transportation - Airfare											
3c. Transportation - Other	**Quantity**	**Unit Cost**	**Estimated Cost**	HUD Share	Applicant Match	Other HUD Funds	Other Federal Share	State Share	Local/Tribal Share	Other	Program Income
Subtotal - Transportation - Other											
3d. Per Diem or Subsistence (indicate location)	**Days**	**Rate per Day**	**Estimated Cost**	HUD Share	Applicant Match	Other HUD Funds	Other Federal Share	State Share	Local/Tribal Share	Other	Program Income
Subtotal - Per Diem or Subsistence											
Total Travel Cost											
4. Equipment (Only items over $5,000 Depreciated value)	**Quantity**	**Unit Cost**	**Estimated Cost**	HUD Share	Applicant Match	Other HUD Funds	Other Federal Share	State Share	Local/Tribal Share	Other	Program Income
Total Equipment Cost											

2

form HUD-424-CBW (8/98)

Grant Application Detailed Budget Worksheet

Detailed Description of Budget

5. Supplies and Materials (Items under $5,000 Depreciated Value)										
5a. Consumable Supplies	Quantity	Unit Cost	Estimated Cost	HUD Share	Applicant Match	Other HUD Funds	Other Federal Share	State Share	Local/Tribal Share	Other	Program Income
Subtotal - Consumable Supplies											
5b. Non-Consumable Materials	Quantity	Unit Cost	Estimated Cost	HUD Share	Applicant Match	Other HUD Funds	Other Federal Share	State Share	Local/Tribal Share	Other	Program Income
Subtotal - Non-Consumable Materials											
Total Supplies and Materials Cost											
6. Consultants (Type)	Days	Rate per Day	Estimated Cost	HUD Share	Applicant Match	Other HUD Funds	Other Federal Share	State Share	Local/Tribal Share	Other	Program Income
Total Consultants Cost											
7. Contracts and Sub-Grantees (List individually)	Quantity	Unit Cost	Estimated Cost	HUD Share	Applicant Match	Other HUD Funds	Other Federal Share	State Share	Local/Tribal Share	Other	Program Income
Total Subcontracts Cost											

3

form HUD-424-CBW

Grant Application Detailed Budget Worksheet

Detailed Description of Budget

8. Construction Costs										
8a. Administrative and legal expenses	Quantity	Unit Cost	Estimated Cost	HUD Share	Applicant Match	Other HUD Funds	Other Federal Share	State Share	Local/Tribal Share	Other	Program Income
Subtotal - Administrative and legal expenses											
8b. Land, structures, rights-of way, appraisal, etc	Quantity	Unit Cost	Estimated Cost	HUD Share	Applicant Match	Other HUD Funds	Other Federal Share	State Share	Local/Tribal Share	Other	Program Income
Subtotal - Land, structures, rights-of way, ...											
8c. Relocation expenses and payments	Quantity	Unit Cost	Estimated Cost	HUD Share	Applicant Match	Other HUD Funds	Other Federal Share	State Share	Local/Tribal Share -	Other	Program Income
Subtotal - Relocation expenses and payments											
8d. Architectural and engineering fees	Quantity	Unit Cost	Estimated Cost	HUD Share	Applicant Match	Other HUD Funds	Other Federal Share	State Share	Local/Tribal Share	Other	Program Income
Subtotal - Architectural and engineering fees											
8e. Other architectural and engineering fees	Quantity	Unit Cost	Estimated Cost	HUD Share	Applicant Match	Other HUD Funds	Other Federal Share	State Share	Local/Tribal Share	Other	Program Income
Subtotal - Other architectural and engineering fees											

4

form HUD-424-

Grant Application Detailed Budget Worksheet

8f. Project inspection fees	Quantity	Unit Cost	Estimated Cost	HUD Share	Applicant Match	Other HUD Funds	Other Federal Share	State Share	Local/Tribal Share	Other	Program Income
Subtotal - Project inspection fees											
8g. Site work	**Quantity**	**Unit Cost**	**Estimated Cost**	HUD Share	Applicant Match	Other HUD Funds	Other Federal Share	State Share	Local/Tribal Share	Other	Program Income
Subtotal - Site work											
8h. Demolition and removal	**Quantity**	**Unit Cost**	**Estimated Cost**	HUD Share	Applicant Match	Other HUD Funds	Other Federal Share	State Share	Local/Tribal Share	Other	Program Income
Subtotal - Demolition and removal											
8i. Construction	**Quantity**	**Unit Cost**	**Estimated Cost**	HUD Share	Applicant Match	Other HUD Funds	Other Federal Share	State Share	Local/Tribal Share	Other	Program Income
Subtotal - Construction											
8j. Equipment	**Quantity**	**Unit Cost**	**Estimated Cost**	HUD Share	Applicant Match	Other HUD Funds	Other Federal Share	State Share	Local/Tribal Share	Other	Program Income
Subtotal - Equipment											
8k. Contingencies	**Quantity**	**Unit Cost**	**Estimated Cost**	HUD Share	Applicant Match	Other HUD Funds	Other Federal Share	State Share	Local/Tribal Share	Other	Program Income
Subtotal - Contingencies											
8l. Miscellaneous	**Quantity**	**Unit Cost**	**Estimated Cost**	HUD Share	Applicant Match	Other HUD Funds	Other Federal Share	State Share	Local/Tribal Share	Other	Program Income
Subtotal - Miscellaneous											
Total Construction Costs											

5

form HUD-424-CBW (8/2003)

Grant Application Detailed Budget Worksheet

9. Other Direct Costs	Quantity	Unit Cost	Estimated Cost	HUD Share	Applicant Match	Other HUD Funds	Other Federal Share	State Share	Local/Tribal Share	Other	Program Income
Item											
Total Other Direct Costs											
Subtotal of Direct Costs											
10. Indirect Costs	**Rate**	**Base**	**Estimated Cost**	HUD Share	Applicant Match	Other HUD Funds	Other Federal Share	State Share	Local/Tribal Share	Other	Program Income
Type											
Total Indirect Costs											
Total Estimated Costs											

6

form HUD-424-CBW (8/2003)

OMB Approval No. 2501-0017
(Exp. 03/31/2005)

Grant Application Detailed Budget Worksheet

Analysis of Total Estimated Costs	Detailed Description of Budget	Estimated Cost	Percent of Total
1 Personnel (Direct Labor)			
2 Fringe Benefits			
3 Travel			
4 Equipment			
5 Supplies and Materials			
6 Consultants			
7 Contracts and Sub-Grantees			
8 Construction			
9 Other Direct Costs			
10 Indirect Costs			
Total:			
Federal Share:			
Match (Expressed as a percentage of the Federal Share):			

7

form HUD-424-CBW (2/2003)

Instructions for Completing the Grant Application Detailed Budget Worksheet

Item	Discussion
This form is to be used to provide detailed budget information regarding your proposed program. If your program requires you to provide program activity information you should use a separate HUD-424-CBW to provide information related to each program activity. The detailed information provided on this form should be summarized on either the HUD-424-C or HUD-424-CB forms depending on whether you are requesting funding for a one year period or a multi year period of performance.	
1 - Personnel (Direct Labor)	This section should show the labor costs for all individuals supporting the grant program effort (regardless of the source of their salaries). The hours and costs are for the full life of the grant. If an individual is employed by a contractor or sub-grantee, their labor costs should not be shown here. Please include all labor costs that are associated with the proposed grant program, including those costs that will be paid for with in-kind or matching funds. Do not show fringe or other indirect costs in this section. Please use the hourly labor cost for salaried employees (use 2080 hours per year or the value your organization uses to perform this calculation). An employee working less than full time on the grant should show the numbers of hours they will work on the grant.
2 - Fringe Benefits	Use the standard fringe rates used by your organization. You may use a single fringe rate (a percentage of the total direct labor) or list each of the individual fringe charges. The spreadsheet is set up to use the Total Direct Labor Cost as the base for the fringe calculation. If your organization calculates fringe benefits differently, please use a different base and discuss how you calculate fringe as a comment.
3 - Travel	
3a - Transportation - Local Private Vehicle	If you plan on reimbursing staff for the use of privately owned vehicles or if you are required to reimburse your organization for mileage charges, show your mileage and cost estimates in this section.
3b - Transportation - Airfare	Show the estimated cost of airfare required to support the grant program effort. Show the destination and the purpose of the travel as well as the estimated cost of the tickets. Each program notice of funding availability (NOFA) discusses the travel requirements that should be listed here.
3c - Transportation - Other	If you or are charged monthly by your organization for a vehicle for use by the grant program, indicate those costs in this section. Provide estimates for other transportation costs that may be incurred (taxi, etc.).

form HUD-424-CBW-I (2/2003)

3d - Per Diem or Subsistence	For travel which will require the payment of subsistence or per diem in accordance with your organization's policies. Indicate the location of the travel. Each program NOFA discusses the travel requirements that should be listed here.
4 – Equipment	Equipment is defined by HUD regulations as tangible, nonexpendable, personal property having a useful life of more than one year and an acquisition cost of $5,000 or more per unit. Each program NOFA describes what equipment may be purchased using grant funding.
5 - Supplies and Materials	Supplies and materials are consumable and non-consumable items that have a depreciated unit value of less than $5,000. Please list the proposed supplies and materials as either Consumable Supplies or as Non-Consumable Materials.
5a - Consumable Supplies	List the consumable supplies you propose to purchase. General office or other common supplies may be estimated using an anticipated consumption rate.
5b - Non-consumable materials	List furniture, computers, printers, and other items that will not be consumed in use. Please list the quantity and unit cost.
6 – Consultants	Please indicate the consultants you will use. Indicate the type of consultant (skills), the number of days you expect to use them, and their daily rate.
7 - Contracts and Sub-Grantees	List the contractors and sub-grantees that will help accomplish the grant effort. Examples of contracts that should be shown here include contracts with Community Based Organizations; liability insurance; and training and certification for contractors and workers. If any contractor, sub-contractor, or sub-grantee is expected to receive over 10% of the total Federal amount requested, a separate Grant Application Detailed Budget (Worksheet) should be developed for that contractor or sub-grantee and the total amount of their proposed effort should be shown as a single entry in this section. Unless your proposed program will perform the primary grant effort with in-house employees (which should be listed in section 1), the costs of performing the primary grant activities should be shown in this section. Types of activities which should be shown in this section: • Contracts for all services • Training for individuals not on staff • Contracts with Community Based Organizations or Other Governmental Organizations (note the 10% requirement discussed above) • Insurance if your program will procure it separately Please provide a short description of the activity the contractor or subgrantee will perform, if not evident.

8 – Construction Costs	
8a – Administrative and legal expenses	Enter estimated amounts needed to cover administrative expenses. Do not include costs that are related to the normal functions of government.
8b – Land, structures, rights-of way, appraisal, etc.	Enter estimated site and right(s)-of-way acquisition costs (this includes purchase, lease, and/or easements).
8c – Relocation expenses and payments	Enter estimated costs related to relocation advisory assistance, replacement housing, relocation payments to displaced persons and businesses, etc.
8d – Architectural and engineering fees	Enter estimated basic engineering fees related to construction (this includes start-up services and preparation of project performance work plan).
8e – Other architectural and engineering fees	Enter estimated engineering costs, such as surveys, tests, soil borings, etc.
8f – Project inspection fees	Enter estimated engineering inspection costs.
8g – Site work	Enter the estimated site preparation and restoration costs that are not included in the basic construction contract.
8h – Demolition and removal	Enter the estimated costs related to demolition activities.
8i – Construction	Enter estimated costs of the construction contract.
8j - Equipment	Enter estimated cost of office, shop, laboratory, safety equipment, etc. to be used at the facility, if such costs are not included in the construction contract.
8k – Contingencies	Enter any estimated contingency costs.
8l – Miscellaneous	Enter estimated miscellaneous costs.
9 - Other Direct Costs	Other Direct Costs include a number of items that are not appropriate for other sections. Other Direct Costs may include: • Staff training • Telecommunications • Printing and postage Relocation, if costs are paid directly by your organization (if relocation costs are paid by a subgrantee, it should be reflected in Section 7)
10 - Indirect Costs	Indirect costs (including Facilities and Administration costs) are those costs that have been incurred for common or joint purposes. These costs benefit more than one cost objective and cannot be readily identified with a particular final cost objective without effort disproportionate to the results achieved. Indicate your approved Indirect Cost Rate (if any) and calculate the indirect costs in accordance with the terms of your approved indirect cost rate and enter the resulting amount. Also show the applicable cost base amount and identify the proposed cost base type.
Total Estimated Costs	Enter the grand total of all the applicable columns.

The eight rightmost columns allow you to identify how the costs will be spread between the HUD Share and other contributors (including Match funds and Program Income). This information will help the reviewers better understand your program and priorities.

DISCLOSURE OF LOBBYING ACTIVITIES

Complete this form to disclose lobbying activities pursuant to 31 U.S.C. 1352
(See reverse for public burden disclosure.)

Approved by OMB
0348-0046

1. Type of Federal Action:	2. Status of Federal Action:	3. Report Type
☐ a. CONTRACT b. GRANT c. COOPERATIVE AGREEMENT d. LOAN e. LOAN GUARANTEE f. LOAN INSURANCE	☐ a. BID/OFFER/APPLICATION b. INITIAL AWARD c. POST-AWARD	☐ a. INITIAL FILING b. MATERIAL CHANGE FOR MATERIAL CHANGE ONLY: YEAR _____ QUARTER _____ DATE OF LAST REPORT _____

4. Name and Address of Reporting Entity:	5. If Reporting Entity in No. 4 is Subawardee, Enter Name and Address of
☐ PRIME ☐ SUBAWARDEE TIER _____, *IF KNOWN:* **Congressional District,** *if known:*	**Congressional District,** *if known:*
6. Federal Department/Agency	**7. Federal Program Name/Description:** CFDA Number, *if applicable:* _____
8. Federal Action Number *if known:*	**9. Award Amount** *if known:* $
10a. Name and Address of Lobbying Entity *(If individual, last name, first name, MI)*	**b. Individual Performing Services** *(including address if different from No. 10A) (last name, first name, MI)*

(attach Continuation sheet(s) SF LLL-A, if necessary)

11. Amount of Payment *(check all that apply):*	13. Type of Payment *(check all that apply):*
$ _____ ☐ actual ☐ planned	☐ a. RETAINER ☐ b. ONE-TIME FEE ☐ c. COMMISSION ☐ d. CONTINGENT FEE ☐ e. DEFERRED ☐ f. OTHER; SPECIFY:
12. Form of Payment *(check all that apply):* ☐ a. cash ☐ b. in-kind; specify: nature _____ value _____	

14. Brief Description of Services performed or to be Performed and Date(s) of Service, including officer(s), employee(s), or Member(s) contacted, for Payment indicated in Item 11:

(attach Continuation sheet(s) SF LLL-A, if necessary)

15. Continuation Sheet(s) SF-LLL-A attached: ☐ Yes ☐ No

11.	
Information requested through this form is authorized by title 31 U.S.C. section 1352. This disclosure of lobbying activities is a material representation of fact upon which reliance was placed by the tier above when this transaction was made or entered into. This disclosure is required pursuant to 31 U.S.C. 1352. This information will be available for public inspection. Any person who fails to file the required disclosure shall be subject to a civil penalty of not less than $10,000 and not more than $100,000 for each such failure.	**Signature:** _____ **Printed Name:** _____ **Title:** _____ **Telephone No.:** _____ **Date:** _____

[redacted] AUTHORIZED FOR LOCAL REPRODUCTION
Standard Form - LLL

DISCLOSURE OF LOBBYING ACTIVITIES CONTINUATION SHEET

Approved by OMB
0348-0046

Reporting Entity: _____ **Page** _____ **of** _____

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Standard Form - LLL-A

INSTRUCTIONS

This disclosure form shall be completed by the reporting entity, whether subawardee or prime Federal recipient, at the initiation or receipt of a covered Federal action, or a material change to a previous filing, pursuant to title 31 U.S.C. section 1352. The filing of a form is required for each payment or agreement to make payment to any lobbying entity for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with a covered Federal action. Use the SF-LLL-A Continuation Sheet for additional information if the space on the form is inadequate. Complete all items that apply for both the initial filing and material change report. Refer to the implementing guidance published by the Office of Management and Budget for additional information.

1. Identify the type of covered Federal action for which lobbying activity is and/or has been secured to influence the outcome of a covered Federal action.

2. Identify the status of the covered Federal action.

3. Identify the appropriate classification of this report. If this is a followup report caused by a material change to the information previously reported, enter the year and quarter in which the change occurred. Enter the date of the last previously submitted report by this reporting entity for this covered Federal action.

4. Enter the full name, address, city, state and zip code of the reporting entity. Include Congressional District, if known. Check the appropriate classification of the reporting entity that designates if it is, or expects to be, a prime or subaward recipient. Identify the tier of the subawardee, e.g., the first subawardee of the prime is the 1st tier. Subawards include but are not limited to subcontracts, subgrants and contract awards under grants.

5. If the organization filing the report in Item 4 checks "Subawardee", then enter the full name, address, city, state and zip code of the prime Federal recipient. Include Congressional District, if known.

6. Enter the name of the Federal agency making the award or loan commitment. Include at least one organizational level below agency name, if known. For example, Department of Transportation, United States Coast Guard.

7. Enter the Federal program name or description for the covered Federal action (Item 1). If known, enter the full Catalog of Federal Domestic Assistance (CFDA) number for grants, cooperative agreements, loans, and loan commitments.

8. Enter the most appropriate Federal identifying number available for the Federal action identified in Item 1 (e.g., Request for Proposal (RFP) number; Invitation for Bid (IFB) number; grant announcement number; the contract, grant, or loan award number; the application/proposal control number assigned by the Federal agency). Include prefixes, e.g., "RFP-DE-90-001."

9. For a covered Federal action where there has been an award or loan commitment by the Federal agency, enter the Federal amount of the award/loan commitment for the prime entity identified in Item 4 or 5.

10. (a) Enter the full name, address, city, state and zip code of the lobbying entity engaged by the reporting entity identified in Item 4 to influence the covered Federal action.

    (b) Enter the full names of the individual(s) performing services, and include full address if different from 10 9a). Enter Last Name, First Name, and Middle Initial (MI).

11. Enter the amount of compensation paid or reasonably expected to be paid by the reporting entity (Item 4) to the lobbying entity (item 10). Indicate whether the payment has been made (actual) or will be made (planned). Check all boxes that apply. If this is a material change report, enter the cumulative amount of payment made or planned to be made.

12. Check the appropriate box(es). Check all boxes that apply. If payment is made through an in-kind contribution, specify the nature and value of the in-kind payment.

13. Check the appropriate box(es). Check all boxes that apply. In other, specify nature.

14. Provide a specific and detailed description of the services that the lobbyist has performed, or will be expected to perform, and the date(s) of any services rendered. Include all preparatory and related activity, not just time spent in actual contact with Federal officials. Identify the Federal official(s) or employee(s) contacted or the officer(s), employee(s), or Member(s) of Congress that were contacted.

15. Check whether or not a SF-LLL-A Continuation Sheet(s) is attached.

16. The certifying official shall sign and date the form, print his/her name, title, and telephone number.

Public reporting burden for this collection of information is estimated to average 30 minutes per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Office of Management and Budget, Paperwork Reduction Project (0348-0046), Washington, DC 20503.

Applicant/Recipient Disclosure/Update Report

U.S. Department of Housing and Urban Development

OMB Approval No. 2510-0011 (exp. 3/31/2003)

Instructions. (See Public Reporting Statement and Privacy Act Statement and detailed instructions on page 2.)

Applicant/Recipient Information Indicate whether this is an Initial Report ☐ or an Update Report ☐

1. Applicant/Recipient Name, Address, and Phone (include area code): ( ) -	2. Social Security Number or Employer ID Number: - -
3. HUD Program Name	4. Amount of HUD Assistance Requested/Received

5. State the name and location (street address, City and State) of the project or activity:

Part I Threshold Determinations

1. Are you applying for assistance for a specific project or activity? These terms do not include formula grants, such as public housing operating subsidy or CDBG block grants. (For further information see 24 CFR Sec. 4.3). ☐ Yes ☐ No

2. Have you received or do you expect to receive assistance within the jurisdiction of the Department (HUD), involving the project or activity in this application, in excess of $200,000 during this fiscal year (Oct. 1 - Sep. 30)? For further information, see 24 CFR Sec. 4.9 ☐ Yes ☐ No.

If you answered **"No"** to either question 1 or 2, **Stop!** You do not need to complete the remainder of this form. ***However***, you must sign the certification at the end of the report.

Part II Other Government Assistance Provided or Requested / Expected Sources and Use of Funds.

Such assistance includes, but is not limited to, any grant, loan, subsidy, guarantee, insurance, payment, credit, or tax benefit.

Department/State/Local Agency Name and Address	Type of Assistance	Amount Requested/Provided	Expected Uses of the Funds

(Note: Use Additional pages if necessary.)

Part III Interested Parties. You must disclose:

1. All developers, contractors, or consultants involved in the application for the assistance or in the planning, development, or implementation of the project or activity and
2. any other person who has a financial interest in the project or activity for which the assistance is sought that exceeds $50,000 or 10 percent of the assistance (whichever is lower).

Alphabetical list of all persons with a reportable financial interest in the project or activity (For individuals, give the last name first)	Social Security No. or Employee ID No.	Type of Participation in Project/Activity	Financial Interest in Project/Activity ($ and %)

(Note: Use Additional pages if necessary.)

Certification

Warning: If you knowingly make a false statement on this form, you may be subject to civil or criminal penalties under Section 1001 of Title 18 of the United States Code. In addition, any person who knowingly and materially violates any required disclosures of information, including intentional non-disclosure, is subject to civil money penalty not to exceed $10,000 for each violation.

I certify that this information is true and complete.

Signature: X	Date: (mm/dd/yyyy)

Form HUD-2880 (3/99)

Public reporting burden for this collection of information is estimated to average 2.0 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. This agency may not conduct or sponsor, and a person is not required to respond to, a collection information unless that collection displays a valid OMB control number.

Privacy Act Statement. Except for Social Security Numbers (SSNs) and Employer Identification Numbers (EINs), the Department of Housing and Urban Development (HUD) is authorized to collect all the information required by this form under section 102 of the Department of Housing and Urban Development Reform Act of 1989, 42 U.S.C. 3531. Disclosure of SSNs and EINs is optional. The SSN or EIN is used as a unique identifier. The information you provide will enable HUD to carry out its responsibilities under Sections 102(b), (c), and (d) of the Department of Housing and Urban Development Reform Act of 1989, Pub. L. 101-235, approved December 15, 1989. These provisions will help ensure greater accountability and integrity in the provision of certain types of assistance administered by HUD. They will also help ensure that HUD assistance for a specific housing project under Section 102(d) is not more than is necessary to make the project feasible after taking account of other government assistance. HUD will make available to the public all applicant disclosure reports for five years in the case of applications for competitive assistance, and for generally three years in the case of other applications. Update reports will be made available along with the disclosure reports, but in no case for a period generally less than three years. All reports, both initial reports and update reports, will be made available in accordance with the Freedom of Information Act (5 U.S.C. §552) and HUD's implementing regulations at 24 CFR Part 15. HUD will use the information in evaluating individual assistance applications and in performing internal administrative analyses to assist in the management of specific HUD programs. The information will also be used in making the determination under Section 102(d) whether HUD assistance for a specific housing project is more than is necessary to make the project feasible after taking account of other government assistance. You must provide all the required information. Failure to provide any required information may delay the processing of your application, and may result in sanctions and penalties, including imposition of the administrative and civil money penalties specified under 24 CFR §4.38.

Note: This form only covers assistance made available by the Department. States and units of general local government that carry out responsibilities under Sections 102(b) and (c) of the Reform Act must develop their own procedures for complying with the Act.

Instructions

Overview.

A. Coverage. You must complete this report if:

(1) You are applying for assistance from HUD for a specific project or activity and you have received, or expect to receive, assistance from HUD in excess of $200,000 during the during the fiscal year;

(2) You are updating a prior report as discussed below; or

(3) You are submitting an application for assistance to an entity other than HUD, a State or local government if the application is required by statute or regulation to be submitted to HUD for approval or for any other purpose.

B. Update reports (filed by "Recipients" of HUD Assistance): General. All recipients of covered assistance must submit update reports to the Department to reflect substantial changes to the initial applicant disclosure reports.

Line-by-Line Instructions.

Applicant/Recipient Information.

All applicants for HUD competitive assistance, must complete the information required in blocks 1-5 of form HUD-2880:

1. Enter the full name, address, city, State, zip code, and telephone number (including area code) of the applicant/recipient. Where the applicant/recipient is an individual, the last name, first name, and middle initial must be entered.
2. Entry of the applicant/recipient's SSN or EIN, as appropriate, is optional.
3. Applicants enter the HUD program name under which the assistance is being requested.
4. Applicants enter the amount of HUD assistance that is being requested. Recipients enter the amount of HUD assistance that has been provided and to which the update report relates. The amounts are those stated in the application or award documentation. NOTE: In the case of assistance that is provided pursuant to contract over a period of time (such as project-based assistance under section 8 of the United States Housing Act of 1937), the amount of assistance to be reported includes all amounts that are to be provided over the term of the contract, irrespective of when they are to be received.
5. Applicants enter the name and full address of the project or activity for which the HUD assistance is sought. Recipients enter the name and full address of the HUD-assisted project or activity to which the update report relates. The most appropriate government identifying number must be used (e.g., RFP No.; IFB No.; grant announcement No.; or contract, grant, or loan No.) Include prefixes.

Part I. Threshold Determinations - Applicants Only

Part I contains information to help the applicant determine whether the remainder of the form must be completed. **Recipients filing Update Reports should not complete this Part.**

If the answer to ***either*** questions 1 or 2 is No, the applicant need not complete Parts II and III of the report, but must sign the certification at the end of the form.

Part II. Other Government Assistance and Expected Sources and Uses of Funds.

A. Other Government Assistance. This Part is to be completed by both applicants and recipients for assistance and recipients filing update reports. Applicants and recipients must report any other government assistance involved in the project or activity for which assistance is sought. Applicants and recipients must report any other government assistance involved in the project or activity. Other government assistance is defined in note 4 on the last page. For purposes of this definition, other government assistance is expected to be made available if, based on an assessment of all the circumstances involved, there are reasonable grounds to anticipate that the assistance will be forthcoming.

Both applicant and recipient disclosures must include all other government assistance involved with the HUD assistance, as well as any other government assistance that was made available before the request, but that has continuing vitality at the time of the request. Examples of this latter category include tax credits that provide for a number of years of tax benefits, and grant assistance that continues to benefit the project at the time of the assistance request.

The following information must be provided:

1. Enter the name and address, city, State, and zip code of the government agency making the assistance available.
2. State the type of other government assistance (e.g., loan, grant, loan insurance).
3. Enter the dollar amount of the other government assistance that is, or is expected to be, made available with respect to the project or activities for which the HUD assistance is sought (applicants) or has been provided (recipients).
4. Uses of funds. Each reportable use of funds must clearly identify the purpose to which they are to be put. Reasonable aggregations may be used, such as "total structure" to include a number of structural costs, such as roof, elevators, exterior masonry, etc.

B. Non-Government Assistance. Note that the applicant and recipient disclosure report must specify all expected sources and uses of funds - both from HUD ***and any other source*** - that have been or are to be, made available for the project or activity. Non-government sources of

funds typically include (but are not limited to) foundations and private contributors.

Part III. Interested Parties.

This Part is to be completed by both applicants and recipients filing update reports. Applicants must provide information on:

1. All developers, contractors, or consultants involved in the application for the assistance or in the planning, development, or implementation of the project or activity and
2. any other person who has a financial interest in the project or activity for which the assistance is sought that exceeds $50,000 or 10 percent of the assistance (whichever is lower).

Note: A financial interest means any financial involvement in the project or activity, including (but not limited to) situations in which an individual or entity has an equity interest in the project or activity, shares in any profit on resale or any distribution of surplus cash or other assets of the project or activity, or receives compensation for any goods or services provided in connection with the project or activity. Residency of an individual in housing for which assistance is being sought is not, by itself, considered a covered financial interest.

The information required below must be provided.

1. Enter the full names and addresses. If the person is an entity, the listing must include the full name and address of the entity as well as the CEO. Please list all names alphabetically.
2. Entry of the Social Security Number (SSN) or Employee Identification Number (EIN), as appropriate, for each person listed is optional.
3. Enter the type of participation in the project or activity for each person listed: i.e., the person's specific role in the project (e.g., contractor, consultant, planner, investor).
4. Enter the financial interest in the project or activity for each person listed. The interest must be expressed both as a dollar amount and as a percentage of the amount of the HUD assistance involved.

Note that if any of the source/use information required by this report has been provided elsewhere in this application package, the applicant need not repeat the information, but need only refer to the form and location to incorporate it into this report. (It is likely that some of the information required by this report has been provided on SF 424A, and on various budget forms accompanying the application.) If this report requires information beyond that provided elsewhere in the application package, the applicant must include in this report all the additional information required.

Recipients must submit an update report for any change in previously disclosed sources and uses of funds as provided in Section I.D.5., above.

Notes:

1. All citations are to 24 CFR Part 4, which was published in the Federal Register. [April 1, 1996, at 63 Fed. Reg. 14448.]
2. Assistance means any contract, grant, loan, cooperative agreement, or other form of assistance, including the insurance or guarantee of a loan or mortgage, that is provided with respect to a specific project or activity under a program administered by the Department. The term does not include contracts, such as procurements contracts, that are subject to the Fed. Acquisition Regulation (FAR) (48 CFR Chapter 1).
3. See 24 CFR §4.9 for detailed guidance on how the threshold is calculated.
4. "Other government assistance" is defined to include any loan, grant, guarantee, insurance, payment, rebate, subsidy, credit, tax benefit, or any other form of direct or indirect assistance from the Federal government (other than that requested from HUD in the application), a State, or a unit of general local government, or any agency or instrumentality thereof, that is, or is expected to be made, available with respect to the project or activities for which the assistance is sought.
5. For the purpose of this form and 24 CFR Part 4, "person" means an individual (including a consultant, lobbyist, or lawyer); corporation; company; association; authority; firm; partnership; society; State, unit of general local government, or other government entity, or agency thereof (including a public housing agency); Indian tribe; and any other organization or group of people.

Acknowledgment of Application Receipt

U.S. Department of Housing and Urban Development

Type or clearly print the Applicant's name and full address in the space below.

(fold line)

Type or clearly print the following information:

Name of the Federal Program to which the applicant is applying: _____

To Be Completed by HUD

☐ HUD received your application by the deadline and will consider it for funding. In accordance with Section 103 of the Department of Housing and Urban Development Reform Act of 1989, no information will be released by HUD regarding the relative standing of any applicant until funding announcements are made. However, you may be contacted by HUD after initial screening to permit you to correct certain application deficiencies.

☐ HUD did not receive your application by the deadline; therefore, your application will not receive further consideration. Your application is:

- ☐ Enclosed
- ☐ Being sent under separate cover

Processor's Name _____

Date of Receipt _____

form **HUD-2993** (2/99)

Client Comments and Suggestions

U.S. Department of Housing and Urban Development

You are our Client! Your comments and suggestions, please!

The Department of Housing and Urban Development in preparing this Notice of Funding Availability and application forms, has tried to produce a more user friendly, customer driven funding process. Please let us have your comments and recommendations for improvements to this document. You may leave this form attached to your application, or feel free to detach the form and return it to:

The Department of Housing and Urban Development
Office of Departmental Grants Management and Oversight
Room 3156
451 7th Street, SW
Washington, DC 20410

Please Provide Comments on HUD's Efforts:

The NOFA (insert title) _____

is: (please check one)

(a) ☐ is clear and easily understandable

(b) ☐ better than before, but still needs improvement (please specify)

(c) other (please specify)

The application form (insert title) _____

is: (please check one)

(a) ☐ is acceptable given the volume of information required by statute and the volume of information required for accountability in selecting and funding projects.

(b) ☐ is simpler and more user-friendly than before, but still needs work (please specify).

(c) other comments (please specify)

Name & Organization (Optional):

Are additional pages attached? ☐ Yes ☐ No

Previous versions obsolete

form **HUD-2994** (03/2003)

[FR Doc. 03–12458 Filed 5–19–03; 8:45 am]
BILLING CODE 4210–62–C

Federal Register

Tuesday,
May 20, 2003

Part IV

Securities and Exchange Commission

17 CFR Part 240

Request for Comment on Nasdaq Petition Relating to the Regulation of Nasdaq-Listed Securities; Proposed Rule

SECURITIES AND EXCHANGE COMMISSION

17 CFR Part 240

[Release No. 34–47849; File No. S7–11–03]

RIN 3235–AI86

Request for Comment on Nasdaq Petition Relating to the Regulation of Nasdaq-Listed Securities

AGENCY: Securities and Exchange Commission.

ACTION: Concept release; request for comment.

SUMMARY: The Securities and Exchange Commission ("Commission") seeks comment on a petition submitted by the Nasdaq Stock Market, Inc. ("Nasdaq") concerning the regulation of Nasdaq-listed securities. Specifically, Nasdaq requests that the Commission amend the rules of all markets that trade Nasdaq-listed securities to establish uniform trading rules, and to ensure equal surveillance and enforcement of those rules; order that the exchanges' costs of regulation, including costs associated with proper data collection, surveillance, and enforcement, be aggregated and deducted from the market data revenue collected pursuant to the Nasdaq Unlisted Trading Privileges Plan ("UTP Plan"); and prohibit the launch or continuation of Nasdaq trading by any market that fails to protect investors as required under the Securities Exchange Act of 1934 ("Act"). In addition, the Commission requests comment on whether the same actions would be appropriate for the regulation and trading of exchange-listed securities.

DATES: Comments must be received on or before June 19, 2003.

ADDRESSES: To help us process and review your comments more efficiently, comments should be sent by one of the two methods specified below. Persons wishing to submit written comments should send three copies to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Comments also may be submitted electronically at the following E-mail address: *rule-comments@sec.gov*. All comment letters should refer to File No. S7–11–03. Comments submitted by E-mail should include this file number in the subject line. Comment letters received will be available for public inspection and copying in the Commission's Public Reference Room, 450 Fifth Street, NW., Washington, DC 20549–1001. Electronically submitted comment letters will be posted on the Commission's Internet Web site (*http://www.sec.gov*).[1]

FOR FURTHER INFORMATION CONTACT: Terri L. Evans at (202) 942–4162 or Ian K. Patel at (202) 942–0089 in the Division of Market Regulation, Commission, 450 Fifth Street, NW., Washington, DC 20549–1001.

SUPPLEMENTARY INFORMATION:

I. Introduction

On April 14, 2003, the Commission received a petition from Nasdaq requesting that the Commission take certain actions ("Nasdaq Petition") to respond to the greater fragmentation of trading in Nasdaq-listed securities across markets. The Commission is publishing Nasdaq's Petition to expedite and facilitate dialogue among all market participants on the issues raised by Nasdaq. The Commission is not endorsing Nasdaq's characterization of the regulation of Nasdaq-listed securities or its proposed solutions. Rather, the Commission is seeking comment on Nasdaq's Petition and, more generally, the issues raised by the Nasdaq Petition.

II. Background

A. Duties of a Self-Regulatory Organization

In fashioning the Act, Congress chose to develop a unique pattern of regulation combining both industry and government responsibility.[2] This pattern calls upon the exchanges and the National Association of Securities Dealers, Inc. ("NASD") to exercise delegated governmental power to enforce at their own initiative compliance by members of the securities industry with both the legal requirements laid down in the Act and ethical standards which go beyond those requirements.[3] As a result, the regulatory roles that self-regulatory organizations ("SROs") play are a vital element in the regulation of the securities industry. An SRO is required to carry out the purposes of the Act, as well as enforce compliance by its members, and persons associated with its members, with the federal securities laws and the SRO's rules.[4]

An SRO is required to have rules designed, among other things, to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and to refrain from imposing any unnecessary or inappropriate burdens on competition.[5] For example, an SRO must maintain procedures to surveil against rule violations, including insider trading and market manipulation. While different market structures may imply different procedures for accomplishing this task, SROs are required to expend sufficient resources, in terms of both staff and technology, to support their surveillance functions. This includes having officers with expertise in monitoring for compliance with federal securities laws and SRO rules, and an understanding of the role of a registered exchange or association as an SRO. An SRO must deploy adequate examination and surveillance systems and maintain an audit trail of the transactions in its system. And SROs must have adequate measures in place to maintain listing and maintenance standards. SROs' regulatory programs, including those related to the trading of Nasdaq securities, are periodically inspected by the Commission.

An SRO also is required to enforce compliance with applicable laws and rules, and discipline members for violations relating to transactions executed in its market.[6] This responsibility includes the establishment of a disciplinary process including appropriate sanctions for violations of the rules and a fair procedure for administering the disciplinary process.[7] The Commission has previously permitted SROs to agree, with Commission approval, with each other on how to allocate regulatory responsibilities. Rule 17d–2 under the Act permits SROs to establish joint plans for allocating the regulatory responsibilities imposed by the Act with respect to common members.[8] An SRO participating in a regulatory plan is relieved of regulatory responsibilities with respect to a broker-dealer member of such SRO, if those regulatory responsibilities have been designated to another SRO under the regulatory plan. In addition, the Commission recognizes that an SRO can contract with other SROs, pursuant to a regulatory service agreement, to perform certain of these oversight activities. Nonetheless, an SRO retains ultimate responsibility for its self-regulatory responsibilities, even if it has contracted with another SRO to perform oversight activities.

B. Trading in NASDAQ Listed Securities

On April 14, 2003, Nasdaq submitted the Nasdaq Petition, requesting that the Commission address "unequal and inadequate regulation by some markets that trade securities listed on Nasdaq."[9] As discussed in Nasdaq's Regulation White Paper,[10] Nasdaq believes that as trading in Nasdaq securities spreads to a greater number of venues, it becomes increasingly difficult for the NASD or any other individual SRO to oversee adequately trading in those securities. Moreover, Nasdaq contends that this difficulty is particularly true with respect to broker-dealers that quote on one market while printing trades to another market or those that quote and trade the same security in more than one market. Nasdaq believes that it is often unclear which market is responsible for regulating such broker-dealers' activities, and that no market is likely to have adequate information to effectively oversee that activity.[11]

Until recently, most trading in Nasdaq-listed securities was regulated by the NASD. With guidance from the Commission, the NASD developed a regulatory framework to provide investor protection in an open trading environment with multiple market makers. Nasdaq claims that when trading in Nasdaq stocks was almost exclusively limited to the Nasdaq system, NASD was able to view trading in Nasdaq stocks and respond quickly and effectively to protect investors.

According to Nasdaq, the fragmentation of trading of securities listed on Nasdaq by various national and regional exchanges has caused the regulation of Nasdaq trading to become uncoordinated. Nasdaq states that there are harmful disparities in the markets' abilities to regulate the trading of Nasdaq-listed securities: for instance, Nasdaq states that several exchanges do not have rules approved by the Commission for gathering the detailed trading data necessary for the detection of fraud, manipulation, insider trading, and other violations.

In addition, Nasdaq asserts that some markets are lowering their execution and reporting fees to compete for trades in Nasdaq-listed securities. Nasdaq also states that, to hold down costs, these markets avoid incurring new regulatory expenses, such as the costs of adapting their existing rules and surveillance systems to the unique structure and patterns of Nasdaq trading. According to Nasdaq, these markets use the savings from less regulation as an inducement to attract trading away from the NASD's highly regulated markets to less regulated markets, to the detriment of investors.

Nasdaq initially raised many of these concerns in its Regulation White Paper prior to submitting its Petition. In response to the Regulation White Paper, The Cincinnati Stock Exchange, Inc. ("CSE") asserted that "the current surveillance infrastructure provides an effective means for the ongoing regulation of the markets. This infrastructure, which has been in place for over 20 years, is organized in a manner that fairly distributes responsibilities and costs among the various self-regulatory organizations."[12] CSE also noted that the Intermarket Surveillance Group ("ISG") was established for the purpose of coordinating regulatory efforts to address potential intermarket manipulations and trading abuses. As a result, CSE recommended, in part, that Nasdaq work with the ISG to address its concerns regarding intermarket surveillance methodologies and the allocation of intermarket responsibilities prior to abandoning the existing SRO and ISG infrastructure. In addition, CSE contended that Nasdaq is merely speculating about the adequacy of other markets' surveillance programs, the adequacy of which is subject to Commission oversight and generally kept confidential between the Commission and the respective regulator. And lastly, CSE noted that if the regulatory concerns raised by Nasdaq exist, they exist for all securities, including exchange-listed securities.

III. Summary of the NASDAQ Petition

To address the regulatory issues identified by Nasdaq, Nasdaq requests that the Commission intercede in three ways. First, Nasdaq requests that the Commission exercise its authority under section 19(c) of the Act[13] and Rule 192 of the Commission's Rules of Practice[14] to amend the rules of all markets that trade Nasdaq-listed securities to establish uniform trading rules, and to ensure equal surveillance and enforcement of those rules. Second, Nasdaq requests that the Commission exercise its authority under section 11A(a)(3)(B) of the Act,[15] and Rule 11Aa3–2(b)(2)[16] to immediately order that the exchanges' costs of regulation—including audit trail collection, surveillance, and enforcement—be aggregated and deducted from the market data revenue collected pursuant to the UTP Plan.[17] Finally, Nasdaq asks the Commission to identify markets that trade Nasdaq-listed securities without approved rules, order audit trails, surveillance, and examination programs that are sufficient to protect investors that buy and sell Nasdaq-listed securities on those markets. For those that do not, Nasdaq requests that the Commission exercise its authority under

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[1] Personal identifying information, such as names or e-mail addresses, will not be edited from electronic submission. Submit only information that you wish to make publicly available.

[2] H.R. Doc. No. 123, 94th Cong., 1st Sess. 48 (1975), Legislative History of the Securities Reform Act of 1975.

[3] *Id.* The Commission is charged with supervising the exercise of this regulatory power to assure that it is used effectively to fulfill the responsibilities assigned to the self-regulatory organizations and that it is not used in a manner inimical to the public interest.

[4] *See* section 6(b)(1) of the Act, 15 U.S.C. 78f(b)(1) and section 15A(b)(2), 15 U.S.C. 78*o*–3(b)(2).

[5] *See* section 6(b)(5) of the Act, 15 U.S.C. 78f(b)(5); section 6(b)(8) of the Act, 15 U.S.C. 78f(b)(8); section 15A(b)(6), 15 U.S.C. 78*o*–3(b)(6); and section 15A(b)(9), 15 U.S.C. 78*o*–3(b)(9). For example, an SRO must also have written listing and maintenance standards, as well as an adequate regulatory staff to apply those standards. *See* section 12(d) of the Act, 15 U.S.C. 78l(d); Rule 12d2–2, 17 CFR 240.12d2–2 (requiring national securities exchanges to file an application with the Commission to strike a security from listing and registration). In addition, an SRO must have rules that ensure that no member's order is unfairly disadvantaged and all members are treated fairly. An SRO also is expected to have rules establishing procedures for the clearance and settlement of trades effected on the exchange. *See* Regulation of Exchanges and Alternative Trading Systems, Exchange Act Release No. 40760 (December 8, 1998), 63 FR 70844 (December 22, 1998), at section IVB(1).

[6] *See* 19(g)(1) of the Act, 15 U.S.C. 78s(g)(1); *See also* Regulation of Exchanges and Alternative Trading Systems, Exchange Act Release No. 40760 (December 8, 1998), 63 FR 70844 (December 22, 1998), at section IVB(1).

[7] *See* section 6(b)(6) of the Act, 15 U.S.C. 78f(b)(6); section 6(b)(7) of the Act, 15 U.S.C. 78f(b)(7); section 15A(b)(7), 15 U.S.C. 78*o*–3(b)(7); and section 15A(b)(8), 15 U.S.C. 78*o*–3(b)(8). While exchanges are required to enforce compliance by their members, and persons associated with their members, with applicable laws and rules, the Commission has used its authority under sections 17 and 19 of the Act to allocate to particular SROs oversight of broker-dealers that are members of more than one SRO. *See* 15 U.S.C. 78q and 78s. *See also* 17 CFR 240.17d–2; 17 CFR 240.19g2–1.

[8] 17 CFR 240.17d–2.

[9] *See* letter to Jonathan G. Katz, Secretary, Commission, from Edward Knight, Executive Vice President and General Counsel, Nasdaq, dated April 11, 2003 at 2 (File No. 4–479).

[10] Nasdaq Regulation White Paper: A Call for a Fairer Allocation of Responsibilities and Costs in a Fragmented Market, dated January 24, 2003 ("Regulation White Paper").

[11] *See* Regulation White Paper, *supra* note, at 1.

[12] *See* letter from Jeffrey T. Brown, Senior Vice President, Secretary and General Counsel, CSE, to Chairman Pitt, Commissioner Atkins, Commissioner Campos, Commissioner Glassman, and Commissioner Goldschmid, dated February 19, 2003, at 1 ("CSE Letter"). The CSE also stated that if "weaknesses exist in the system, CSE supports efforts by all markets to work together and improve intermarket coordination of securities regulation to ensure that our markets are fair, orderly and protect investors." *Id.*

[13] 15 U.S.C. 78s(c).

[14] 17 CFR 201.192.

[15] 15 U.S.C. 78k–1(a)(3)(B).

[16] 17 CFR 240.11Aa3–2(b)(2).

[17] The UTP Plan is the Joint Self-Regulatory Organization Plan Governing the Collection, Consolidation and Dissemination of Quotation and Transaction Information for Nasdaq Listed Securities Traded on Exchanges on an Unlisted Trading Privileges Basis.

section 12(f)(2) and (f)(3) of the Act[18] to prohibit the launch or continuation of Nasdaq trading by any market that fails to protect investors as required under the Act.

Each of Nasdaq's proposals is set forth in great detail below.

A. Uniform Trading Rules

Nasdaq requests that the Commission act immediately to establish uniform trading rules and ensure equal surveillance and enforcement of those rules because of its concern that investors are potentially harmed by the lack of uniform trading rules and from unequal surveillance and enforcement of rules.[19] Nasdaq states that it attempted, unsuccessfully, to persuade the other exchanges that trade Nasdaq stocks to act jointly to adopt uniform market rules and surveillance and enforcement mechanisms to eliminate these regulatory disparities.

Specifically, Nasdaq asked that the UTP Plan be amended to prohibit certain defined conduct. Under that proposal, so-called Prohibited Conduct would have included, without limitation: any activity that is prohibited by any provision of the Act or rule adopted under the Act, market manipulation, illegal short selling, insider trading, fraud, front running, marking the open or the close, and non-compliance with the limit order display rule, and firm quote rule.[20] Nasdaq believes that to prevent regulatory arbitrage all SROs' rulebooks should contain uniform rules on these matters, and that each SRO should vigorously surveil and enforce those uniform rules.

For example, Nasdaq claims that although it has a short-sale rule, several UTP Exchanges trade Nasdaq issues with no short-sale price test. Nasdaq asserts that industry participants route short-sale orders to exchanges without short-sale rules specifically to avoid NASD and Nasdaq rule restrictions. Nasdaq claims that certain exchanges publicize this disparity to attract order flow to their markets.

In addition, Nasdaq concludes, after review of the rulebooks of various markets, that no other market currently executing trades in Nasdaq-listed securities has rules requiring its members to report order audit trail information or operates a Commission-approved order audit trail. Nasdaq collects order audit trail information through its Order Audit Trail System ("OATS") and through its Automated Confirmation Transaction service ("ACT"). Nasdaq asserts that the NASD uses this data to create a fully integrated audit trail of quotes, trades, and orders to run its surveillance programs to detect insider trading, fraud, best execution violations, spoofing, purposeful late trade reporting, short-sale violations, untimely execution of market orders, and a wide variety of other potential rule violations.

For transactions reported away from Nasdaq, Nasdaq states that the NASD eventually receives the quotes and trade reports of the regional exchanges through the ISG. However, Nasdaq claims that the ISG audit trail only provides trade information at the clearing firm level (as opposed to both the clearing firm and the executing firm levels). In addition, according to Nasdaq, the time fields in the data are not generated by clocks subject to uniform synchronization protocols, as is the case with OATS data. Moreover, Nasdaq states that ISG data is not provided in a format that is conducive to integration into NASD's automated surveillance systems. As a result, manually processing this information can be time-intensive; furthermore, Nasdaq states that this data is not received until two days after the trade date. Nasdaq believes that such a delay can significantly hinder NASD's ability to investigate unlawful trading activity on a real-time basis and can prevent NASD from obtaining non-stale regulatory information in an ongoing investigation. The NASD uses this information to detect violations involving wash sales, fraud, insider trading, marking the close, best execution, riskless principal trade reporting, Regulation M, firm quote compliance, and limit order protection, among others.[21]

At a more fundamental level, Nasdaq believes that consolidated regulation protects investors better than the coordinated regulation that ISG facilitates. In addition, Nasdaq believes that consolidated regulation should be crafted by the entities that will be governed. ISG is a voluntary organization whose membership includes SROs (only some of which trade Nasdaq-listed securities) and certain foreign entities that are not regulated as SROs by the Commission.

To combat these perceived problems, Nasdaq asks the Commission, at a minimum, to add to the rules of all SROs that trade Nasdaq-listed securities, rules requiring an electronic audit trail identical to the NASD's OATS Rules[22] and short-sale restrictions similar to NASD Rule 3350. Nasdaq also asks that, if the Commission's review of other markets' rules, surveillance, or enforcement reveals inequalities that can be addressed through the adoption of uniform rules, the Commission add those rules as well, to ensure that there are no regulatory inconsistencies among SROs that trade Nasdaq-listed securities.

Request for Comments on the Need for Uniform Trading Rules and Surveillance

The Commission welcomes comment on all aspects of Nasdaq's petition, including the following matters:

Q1. Do commenters agree with Nasdaq that there is unequal regulation of trading in Nasdaq securities?

Q2. Should all exchanges and associations trading Nasdaq securities have rules requiring detailed audit trail information?

Q3. Should all exchanges and associations trading Nasdaq securities be required to automate their surveillance and examination of Nasdaq trading on their markets?

Q4. Should all exchanges and associations trading Nasdaq securities have similar rules to regulate short selling?

Q5. What other trading rules should be uniform across all markets?

Q6. How should the Commission address any regulatory gaps that can arise when trading in the same security is fragmented across different SROs?

Q7. To what extent is ISG a useful mechanism for coordinating intermarket regulatory efforts? Does ISG fully address the regulatory gaps Nasdaq contends exist? Does the fact that the Commission does not have direct oversight of ISG limit the sufficiency of the ISG framework in ensuring adequate regulation of violative conduct in the trading of Nasdaq securities that can occur across markets, such as insider trading or certain market manipulations?

Q8. Are there models sufficient to address potential concerns raised by fragmentation of regulation by multiple SROs trading Nasdaq securities?

Q9. Are there advantages or disadvantages to a single market regulator with regulatory oversight across all markets trading Nasdaq securities?

Q10. Should a competitive bidding process be required to determine which entity will serve as the single regulator?

B. Allocation of Regulatory Costs

Nasdaq urges the Commission to equitably allocate regulatory costs across markets that trade Nasdaq-listed securities to ensure that intermarket competition does not come at the cost of adequate regulation. As set forth in the Regulation White Paper, Nasdaq believes that all markets that trade the same securities should share the responsibility of equal regulation. In Nasdaq's view, these shared responsibilities include the uniform rules, surveillance, and enforcement discussed above.

Nasdaq claims that in the absence of a framework for adopting uniform order audit trails and uniform enforcement of marketplace rules, Nasdaq is forced to subsidize other markets' regulatory costs, creating a classic free-riding dilemma. Nasdaq funds NASD's OATS to collect trading information from all NASD members, whether or not the trades are reported to Nasdaq. For example, Nasdaq claims that Island ECN ("Island"), an NASD member, reports 15 percent of all Nasdaq trades to the CSE, and then, where Island is the reporting party, Island sends detailed information about those trades to OATS. Therefore, according to Nasdaq, although CSE receives the market data revenue attributable to those trades, the NASD and Nasdaq bear the costs of receiving and storing Island's OATS data as well as the costs of regulating Island's conduct as an NASD member.

Nasdaq believes that the fairest way to allocate the costs of supervising the trading of Nasdaq stocks is to aggregate the exchanges' costs of regulation, which include costs associated with surveillance and enforcement, and to deduct that amount from the market data revenue collected pursuant to the Nasdaq UTP Plan. Nasdaq believes that the Commission could apply this allocation method to today's regulatory environment, as well as in the future to the single regulator, ISG, and DEA regulatory models that Nasdaq has identified in its Regulation White Paper. Nasdaq believes that this means of funding aggregate regulatory costs will counter the existing economic incentives that are leading markets to reduce their regulatory costs to compete for order flow.

Request for Comments on the Allocation of Regulatory Costs

The Commission welcomes comment on all aspects of Nasdaq's petition requesting the reallocation of regulatory costs, including the following matters:

Q1. Should proceeds from the Nasdaq UTP Plan be withheld to pay for regulatory costs?

Q2. Would Nasdaq's proposal to aggregate and deduct regulatory costs from market data revenue result in adequate regulation? If so, what costs would appropriately be considered regulatory costs and therefore, appropriately deducted from the market data revenue?

Q3. Should other methods of fairly allocating regulatory costs be considered?

Q4. Should the NASD be required, as suggested by the CSE, to alter its systems to include more data from inter-market trading to improve inter-market surveillance?[23] If so, who should pay for this enhancement?

Q5. Who would determine what are legitimate regulatory costs? On what basis should such a determination be made?

C. Prohibition of Trading in Nasdaq-Listed Securities

Finally, Nasdaq asks the Commission to identify the markets that trade Nasdaq-listed securities without approved rules, order audit trails, surveillance, and examination programs sufficient to protect investors that buy and sell Nasdaq-listed securities on those markets. Specifically, Nasdaq believes it is unclear whether SROs, other than the NASD, have comparable algorithmic systems and examinations focused on detecting violations of Commission and SRO investor protection and trading rules.[24] In addition, while trading on Nasdaq is subject to a short-sale price test (NASD Rule 3350), several exchanges trade Nasdaq-listed securities without being subject to a comparable price test.[25] As a result of such disparities, Nasdaq believes that the level of regulatory protection an investor receives depends almost entirely on the market to which the investor's order is routed. For those markets that in Nasdaq's view do not have adequate regulatory protections, Nasdaq asks the Commission to exercise its authority under section 12(f)(2) and (f)(3) of the Act[26] to prohibit the launch or continuation of Nasdaq trading by any market that fails to protect investors as required under the Act.

IV. Exchange-Listed Securities and Exchange-Listed Options

In response to the Regulation White Paper, CSE asserted that Nasdaq ignored that "the same cross-market manipulation issues that form the predicate for the regulatory solution it advocates in the Nasdaq world apply equally to all other securities, including the NYSE-listed stocks in which Nasdaq trades over 10% of the volume."[27] The CSE noted that, contrary to its position on the regulation of Nasdaq securities, Nasdaq did not appear to be arguing that the same surveillance programs were inadequate as applied toward NYSE-listed securities.[28] Subsequently, in its Petition, Nasdaq expressly stated that it was not addressing the application of the principles expressed in its Petition to exchange-listed securities.[29]

The Commission notes that exchange-listed securities and securities options may be traded on more than one market and, therefore, the same regulatory issues raised by Nasdaq could arise. At present, trading in exchange-listed securities is more concentrated than the trading in Nasdaq securities.[30] In addition, the options markets are in the process of implementing a consolidated options audit trail system that will enable the options exchanges to reconstruct markets promptly, effectively surveil them and enforce order handling, firm quote, trade reporting and other rules.[31]

Request for Comments on the Application of Nasdaq's Recommendations to Exchange Listed Securities

The Commission requests comment on whether the same regulatory concerns raised by Nasdaq for Nasdaq securities, such as regulatory

[18] 15 U.S.C. 78l(f)(2), (f)(3).

[19] Nasdaq discussed in greater details its views about the harmful regulatory arbitrage that occurs when markets apply different trading rules to the same conduct in its Regulation White Paper.

[20] Most members of the UTP Operating Committee asserted that the Nasdaq UTP Plan was not the proper forum for resolving regulatory issues.

[21] Nasdaq states that on an average day, OATS processes 65 million order reports and that NASD currently has six full time staff members dedicated to OATS compliance.

[22] See NASD Rules 6951 through 6957.

[23] *See* CSE Letter, *supra* note at note 4.

[24] Nasdaq represented that while the CSE has asserted that its Firm Order Submission system is an order audit system for the surveillance of trading on the CSE, it was Nasdaq's understanding that FOS is a voluntary system used primarily for settling commercial disputes between traders rather than an integrated, comprehensive means for surveilling trading on the CSE.

[25] The Commission notes, however, that short sales in Nasdaq securities would be subject to borrowing requirements, pursuant to an NASD or UTP exchange rule. *See, e.g.* NASD Rule 3370.

[26] 15 U.S.C. 78l.

[27] *See* CSE Letter, *supra* note 12, at 2.

[28] *Id.*

[29] *See* Nasdaq Petition at note 11.

[30] *See* Table 12, Share Volume by Exchanges, SEC Annual Report 2002 at 175. In 2001, the NYSE had 84.31 percent of the share volume for exchanges. Share volume for exchanges includes stocks, rights, and warrants.

[31] *See* Exchange Act Release No. 43268 (September 11, 2000) (order requiring, in part, the options markets to design and implement a consolidated options audit trail system that provides an accurate, time-sequenced record of electronic orders, quotations, and transactions). The International Securities Exchange ("ISE") was not a respondent in the proceedings instituted by this order and therefore has not been ordered to comply with the undertaking. Nevertheless, the ISE has agreed to participate in the audit trail.

fragmentation and arbitrage, exist for exchange-listed stocks and options. In addition, the Commission specifically requests comment on the following:

Q1. Do commenters believe that there is unequal regulation of exchange-listed securities among the markets trading such securities? If so, do commenters believe that the proposals made by Nasdaq with respect to Nasdaq securities would address such unequal regulation in the listed markets? If not, what other approaches do commenters recommend?

Q2. Should the Commission require an intermarket consolidated order audit trial system for Nasdaq-listed and exchange-listed securities, other than options?

V. General Request for Comments

In addition to the questions above, the Commission seeks comment on issues presented in the Nasdaq Petition. More specifically, how should the Commission make sure that each SRO that trades Nadsaq securities fulfills its statutory obligations to surveil trading in such securities?

By the Commission.

Dated: May 14, 2003.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 03–12604 Filed 5–19–03; 8:45 am]

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Federal Register

Vol. 68, No. 97

Tuesday May 20, 2003

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Executive orders and proclamations	741–6000
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Other Services	
Electronic and on-line services (voice)	741–6020
Privacy Act Compilation	741–6064
Public Laws Update Service (numbers, dates, etc.)	741–6043
TTY for the deaf-and-hard-of-hearing	741–6086

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FEDERAL REGISTER PAGES AND DATE, MAY

23183–23376	1
23377–23568	2
23569–23884	5
23885–24332	6
24333–24604	7
24605–24858	8
24859–25278	9
25279–25478	12
25479–25808	13
25809–26200	14
26201–26456	15
26457–26980	16
26981–27426	19
27427–27726	20

CFR PARTS AFFECTED DURING MAY

At the end of each month, the Office of the Federal Register publishes separately a List of CFR Sections Affected (LSA), which lists parts and sections affected by documents published since the revision date of each title.

3 CFR

Proclamations:
7668 23821
7669 23823
7670 23825
7671 23827
7672 23829
7673 24333
7674 25277
7675 26195
7676 26197
7677 26199
7678 27427

Executive Orders:
12863 (Amended by 13301) 26981
12865 (Revoked by 13298) 24857
13069 (Revoked by 13298) 24857
13070 (Amended by 13301) 26981
13047 (Continued by Notice of May 16, 2003) 27425
13098 (Revoked by 13298) 24857
13298 24857
13299 25477
13300 25807
13301 26981
13212 (Amended by 13302) 27429
13302 27429

Administrative Orders:
Memorandums:
Memorandum of May 6, 2003 25275
Memorandum of May 7, 2003 26457
Presidential Determinations:
No. 2003-22 of May 6, 2003 25809
No. 2003-23 of May 7, 2003 26459
Notices:
Notice of May 16, 2003 27425

5 CFR

213 24605
Ch. XIV 23885
2424 23885
2429 23885
2471 23885
2472 23885

Proposed Rules:
2601 23876

7 CFR

1 27431
2 27431
6 25479
15 27431
15f 27431
29 25484
46 23377
56 25484
301 ..... 24605, 24613, 26983
371 27431
868 24589
932 23378
985 ..... 23569, 25486
989 25279
1410 24830
1424 24596
1491 26461
1710 24335

Proposed Rules:
274 23927
276 23927
278 23927
279 23927
280 23927
319 27480
360 23425
1530 23230

9 CFR

82 ..... 26986, 26988
91 26990

Proposed Rules:
2 24052
130 25308

10 CFR

40 25281
70 23574
71 23574
72 23183
73 23574
150 25281

Proposed Rules:
20 23618
50 26511
490 23620

11 CFR

Proposed Rules:
104 26237
107 26237
110 26237
9003 26237
9004 26237
9008 26237
9032 26237
9033 26237
9034 26237
9035 26237
9036 26237
9038 26237

12 CFR

21 25090

208.....25090
211.....25090
326.....25090
563.....25090
740.....23381
748.....25090

Proposed Rules:
Ch. 6.....26551
613.....23425, 23426

14 CFR

1.....25486
11.....25486
25.....24336, 24338, 26991
39.....23183, 23186, 23190, 23384, 23387, 23575, 23886, 24614, 24861, 25488, 25811, 26201, 26478, 26481, 26482, 27450
71.....23577, 23579, 23580, 23581, 23682, 24340, 24341, 24342, 24864, 24866, 24868, 24869, 24870, 24871, 24872, 24874, 25489, 25491, 25492, 25493, 25494, 25495, 25684, 26202, 26687, 26993, 26994
73.....25495
77.....23583
97.....23888, 23889, 26484, 26486
382.....24874

Proposed Rules:
3.....23808, 27006
25.....26237
39.....23231, 23235, 23427, 23620, 24383, 25543, 26239, 26242, 26244, 26552, 26553, 27006, 27492
71.....23622, 23624, 23625, 23626, 27007
119.....24810
121.....24810
135.....24810
145.....24810
255.....24896, 25844
330.....23627
399.....24896, 25844

15 CFR

0.....24878
270.....24343
902.....24615

16 CFR

305.....23584

Proposed Rules:
309.....24669

17 CFR

42.....25149
211.....26840
230.....25788
232.....24345, 25788
239.....25788
240.....25788
241.....25281
249.....25788
250.....25788
259.....25788
260.....25788
269.....25788
270.....25131
274.....25788

Proposed Rules:
240.....27722

18 CFR

375.....25814
376.....25814

Proposed Rules:
35.....24679

19 CFR

178.....24052

20 CFR

Proposed Rules:
404.....23192, 24896
416.....23192, 24896

21 CFR

Ch. 1.....24879
10.....25283
14.....25283
20.....25283
310.....24347
314.....25283
358.....24347
510.....26995
522.....26995
520.....26204
522.....26205
720.....25283
1300.....23195
1310.....23195

Proposed Rules:
1.....23630, 25242, 25188
11.....25188
16.....25242
101.....23930
111.....27008
112.....27008
315.....27008
601.....27008
1308.....26247
1310.....24689

22 CFR

32.....26488
42.....24638
121.....25088
228.....23891

23 CFR

140.....24639
646.....24639
661.....24642

Proposed Rules:
630.....23239, 24384

24 CFR

200.....26946
203.....23370

Proposed Rules:
1000.....26555

25 CFR

Proposed Rules:
170.....23631

26 CFR

1.....23586, 24349, 24351, 24644, 24880
301.....24644
602.....24644

Proposed Rules:
1.....23632, 23931, 24404, 24405, 24406, 24898, 24903, 25310, 25845, 27493
54.....24406
602.....24406

27 CFR

Proposed Rules:
4.....24903
5.....24903
7.....24903
9.....25851
13.....24903

28 CFR

Proposed Rules:
513.....25545

29 CFR

Proposed Rules:
1480.....23634
1910.....23528
4022.....26206
4044.....26206

30 CFR

36.....23892
917.....24644
948.....24355
950.....24647

31 CFR

103.....25090, 25149, 25113, 25163, 26489, 26996
315.....24794
351.....24794
353.....24794
359.....24794
360.....24794
363.....24794

Proposed Rules:
103.....23640, 23646, 23653, 25163

32 CFR

3.....27452
311.....24880
505.....25816
806B.....24881

Proposed Rules:
3.....27497
701.....24904

33 CFR

100.....25817, 25818, 27459
110.....25496
117.....23390, 23590, 24882, 24883, 25818, 26208, 27460
165.....23390, 23393, 23399, 23591, 23594, 23595, 23893, 23894, 23896, 24359, 24361, 24883, 25288, 25498, 25500, 25818, 26208, 26490, 27462, 27464, 27466, 27469

Proposed Rules:
62.....25855
66.....25855
67.....25855
72.....25855
100.....27498
110.....27501
117.....27498, 27504
165.....23935, 24406, 24408, 26247, 27501
401.....25546

34 CFR

674.....25821
682.....25821
685.....25821

35 CFR

Proposed Rules:
251.....25748, 25751
1280.....23430

37 CFR

Proposed Rules:
262.....23241, 27506

38 CFR

2.....25503
4.....25822

Proposed Rules:
39.....23249

39 CFR

Proposed Rules:
111.....23937

40 CFR

51.....25684
52.....23206, 23207, 23404, 23597, 23604, 24363, 24365, 24368, 24885, 25414, 25418, 25442, 25504, 26210, 26212, 26492, 26495, 27471
62.....23209, 25291
63.....23898, 24562, 24653, 26690, 27646
71.....25507
80.....24300
81.....24368, 25418, 25442, 26212
89.....25823
180.....24370, 25824, 25831
271.....23407, 23607
300.....23211
312.....24888
438.....25686

Proposed Rules:
Ch. 1.....24410, 25312
52.....23270, 23430, 23661, 23662, 24416, 24417, 25547, 26248, 26556, 27513
60.....24692
62.....23272, 25313
63.....26249
71.....25548
80.....24311
81.....26248
146.....23666, 23673
258.....25550
300.....23939

42 CFR

Proposed Rules:
409.....26758
412.....26786, 27154
413.....26758, 27154
440.....26758
483.....26758

44 CFR

64.....23408
65.....27473
67.....23898, 27477

Proposed Rules:
67.....23941, 27514, 27515

45 CFR

2.....25838
32.....24052
148.....23410
301.....25293
302.....25293

303.....25293
304.....25293
307.....25293
1309.....23212

46 CFR

Proposed Rules:
540.....23947

47 CFR

0.....26997
Ch. 1.....25840
1.....23417, 25841, 26997
2.....25512
52.....25843
73.....23613, 23900, 23901, 25512, 25542, 26220, 26497, 27478
74.....25512, 26220
76.....26997
78.....26997
80.....25512
90.....25512
97.....25512

Proposed Rules:
1.....23431
15.....23677
64.....25313
73.....24417, 26556, 26557

48 CFR

511.....24372
516.....24372
532.....24372
538.....24372
546.....24372
552.....24372
1802.....23423
1806.....23423
1815.....23423
1816.....23423
1843.....23423
1845.....23424

Proposed Rules:
208.....26265
219.....26265
252.....26265
245.....25313

49 CFR

107.....23832, 24653
171.....23832, 24653
173.....24653
176.....23832
177.....23832, 24653
180.....24653
209.....24891
383.....23844
384.....23844
571.....23614, 24664
1570.....23852
1572.....23852

Proposed Rules:
193.....23272
571.....26269, 26384
572.....24417
1137.....23947, 25859

50 CFR

17.....25934, 26498
216.....24905
300.....23224, 23901
600.....23901, 26230
660.....27004
622.....26230
648.....24914, 25305, 26510
660.....23901, 23913, 23924
679.....23925, 24615, 24667, 24668, 27479

Proposed Rules:
18.....24700
20.....24324
216.....24905
622.....23686
648.....23275, 23948, 23949, 24914, 27516
660.....26557

REMINDERS

The items in this list were editorially compiled as an aid to Federal Register users. Inclusion or exclusion from this list has no legal significance.

RULES GOING INTO EFFECT MAY 20, 2003

AGRICULTURE DEPARTMENT
Animal and Plant Health Inspection Service
Organization, functions, and authority delegations:
Revisions; published 5-20-03
AGRICULTURE DEPARTMENT
Organization, functions, and authority delegations:
Revisions; published 5-20-03
ENVIRONMENTAL PROTECTION AGENCY
Air pollutants, hazardous; national emission standards:
Integrated iron and steel manufacturing; published 5-20-03
Air quality implementation plans; approval and promulgation; various States:
California; published 3-21-03
FEDERAL COMMUNICATIONS COMMISSION
Television broadcasting:
Cable television systems
Telecommunications services inside wiring customer premises equipment; published 3-21-03
HOMELAND SECURITY DEPARTMENT
Coast Guard
Drawbridge operations:
Louisiana; published 5-9-03
Ports and waterways safety:
Chicago Captain of Port Zone, IL; safety zones; published 5-20-03
Regattas and marine parades:
U.S. Naval Academy Blue Angels Airshow; published 5-14-03
TRANSPORTATION DEPARTMENT
Federal Aviation Administration
Airworthiness directives:
Boeing; published 4-15-03
Quality Aerospace, Inc.; published 4-1-03
Rolls-Royce Deutschland Ltd. & Co. KG; published 4-15-03

COMMENTS DUE NEXT WEEK

AGRICULTURE DEPARTMENT
Food Safety and Inspection Service
Meat and poultry inspection:
Safe and suitable binder or antimicrobial agent usage in products with standards of identity or composition; comments due by 5-29-03; published 4-29-03 [FR 03-10392]
COMMERCE DEPARTMENT
National Oceanic and Atmospheric Administration
Fishery conservation and management:
Alaska; fisheries of Exclusive Economic Zone—
Bering Sea and Aleutian Islands groundfish; Pacific cod; comments due by 5-27-03; published 4-25-03 [FR 03-10282]
Caribbean, Gulf, and South Atlantic fisheries—
Gulf of Mexico shrimp; comments due by 5-29-03; published 4-29-03 [FR 03-10558]
Northeastern United States fisheries—
Northeast multispecies; comments due by 5-27-03; published 4-24-03 [FR 03-10163]
COMMERCE DEPARTMENT
Patent and Trademark Office
Patent cases:
Fee revisions (2004 FY); comments due by 5-30-03; published 4-30-03 [FR 03-10583]
Trademarks:
Madrid Protocol Implementation Act; rules of practice—
International applications and registrations; trademark-related filings; comments due by 5-27-03; published 3-28-03 [FR 03-07392]
ENVIRONMENTAL PROTECTION AGENCY
Air quality implementation plans; approval and promulgation; various States:
Alabama; comments due by 5-27-03; published 4-24-03 [FR 03-10061]
California; comments due by 5-27-03; published 4-25-03 [FR 03-10267]
Florida; comments due by 5-27-03; published 4-24-03 [FR 03-10063]
Idaho and Oregon; comments due by 5-27-03; published 4-24-03 [FR 03-10066]
FEDERAL COMMUNICATIONS COMMISSION
Radio stations; table of assignments:
California; comments due by 5-27-03; published 4-15-03 [FR 03-09164]
Florida; comments due by 5-27-03; published 4-15-03 [FR 03-09165]
Texas; comments due by 5-27-03; published 4-15-03 [FR 03-09170]
FEDERAL MARITIME COMMISSION
Passenger vessel financial responsibility:
Performance and casualty rules, Alternative Dispute Resolution program, etc.; miscellaneous amendments; oral comments and hearing; comments due by 5-30-03; published 4-8-03 [FR 03-08611]
HOMELAND SECURITY DEPARTMENT
Coast Guard
Ports and waterways safety:
Hampton Roads, VA; regulated navigation area; comments due by 5-29-03; published 4-29-03 [FR 03-10214]
Port Valdez and Valdez Narrows, AK; security zone; comments due by 5-27-03; published 3-27-03 [FR 03-07299]
Portland Captain of Port Zone, OR; safety zones; comments due by 5-27-03; published 3-27-03 [FR 03-07300]
Regattas and marine parades:
Thunder on the Narrows boat races; comments due by 5-30-03; published 3-31-03 [FR 03-07545]
HOMELAND SECURITY DEPARTMENT
Customs Service
Andean Trade Promotion and Drug Eradication Act; implementation; comments due by 5-27-03; published 3-25-03 [FR 03-06867]
INTERIOR DEPARTMENT
Minerals Management Service
Outer Continental Shelf; oil, gas, and sulphur operations:
OCS rights-of-use and easement and pipeline rights-of-way; requirements revision; comments due by 5-27-03; published 4-24-03 [FR 03-10173]
Royalty management:
Marginal properties; accounting and auditing relief; comments due by 5-30-03; published 3-31-03 [FR 03-06703]
Relief or reduction in rates; deep gas provisions; comments due by 5-27-03; published 3-26-03 [FR 03-07353]
INTERIOR DEPARTMENT
Surface Mining Reclamation and Enforcement Office
Permanent program and abandoned mine land reclamation plan submissions:
Kentucky; comments due by 5-29-03; published 4-29-03 [FR 03-10533]
SOCIAL SECURITY ADMINISTRATION
Organization and procedures:
Assignment of Social Security numbers for nonwork purposes; evidence requirements; comments due by 5-27-03; published 3-26-03 [FR 03-07188]
TRANSPORTATION DEPARTMENT
Federal Aviation Administration
Airworthiness directives:
Boeing; comments due by 5-27-03; published 5-1-03 [FR 03-10727]
Bombardier; comments due by 5-29-03; published 4-29-03 [FR 03-10235]
CFM International; comments due by 5-27-03; published 3-25-03 [FR 03-07003]
Empresa Brasileira de Aeronautica, S.A. (EMBRAER); comments due by 5-29-03; published 4-29-03 [FR 03-10236]
Pratt & Whitney; comments due by 5-27-03; published 3-25-03 [FR 03-06997]
Rolls-Royce plc; comments due by 5-27-03; published 3-25-03 [FR 03-07004]
Textron Lycoming; comments due by 5-27-03; published 3-25-03 [FR 03-06998]
Airworthiness standards:
Special conditions—
Learjet Model 24/25 Series airplanes; comments due by 5-29-03; published 4-29-03 [FR 03-10450]
Class E airspace; comments due by 5-29-03; published 3-31-03 [FR 03-07663]
TRANSPORTATION DEPARTMENT
Maritime Administration
Coastwise trade laws; administrative waivers for eligible vessels; comments due by 5-30-03; published 4-30-03 [FR 03-10578]
TREASURY DEPARTMENT
Alcohol and Tobacco Tax and Trade Bureau
Alcohol; vitcultural area designations:
Red Hill, Douglas County, OR; comments due by 5-27-03; published 4-24-03 [FR 03-10095]
VETERANS AFFAIRS DEPARTMENT
Adjudication; pensions, compensation, dependency, etc.:
Chronic lymphocytic leukemia; presumptive service connection; comments due by 5-27-03; published 3-26-03 [FR 03-07221]

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S. 162/P.L. 108–22
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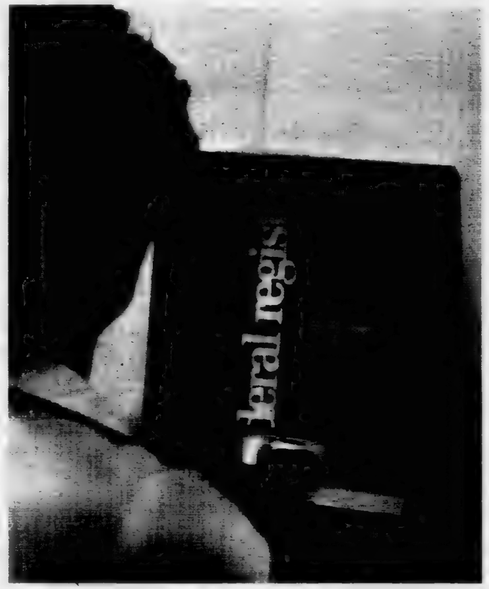
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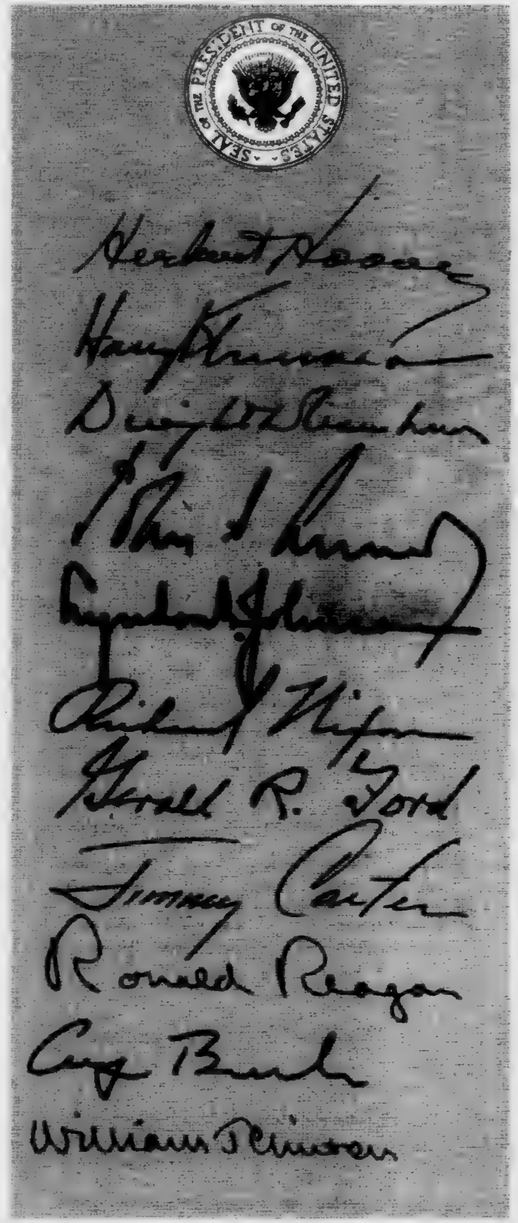
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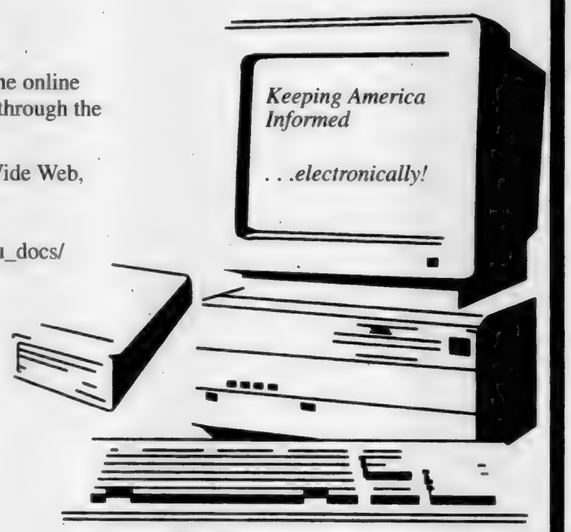
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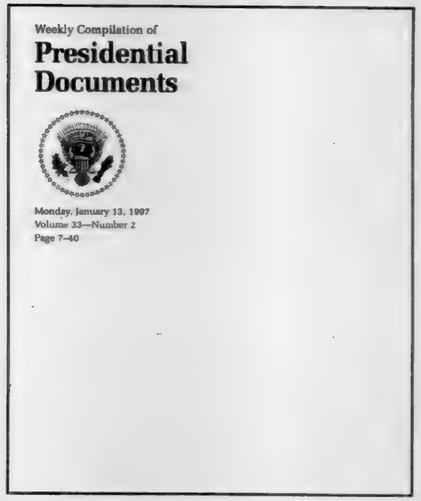
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Contents

Federal Register
Vol. 68, No. 98
Wednesday, May 21, 2003

Agriculture Department
See Forest Service
See Rural Business-Cooperative Service
NOTICES
Agency information collection activities; proposals, submissions, and approvals, 27778–27780

Antitrust Division
NOTICES
Competitive impact statements and proposed consent judgments:
Univision Communications Inc., 27851–27863
Village Voice Media, LLC, et al., 27863–27864
National cooperative research notifications:
Global Climate and Energy Project, 27865

Arts and Humanities, National Foundation
See National Foundation on the Arts and the Humanities

Centers for Disease Control and Prevention
NOTICES
Grants and cooperative agreements; availability, etc.:
Birth defects—
Clinical Practices to Prevent Birth Defects and Developmental Disabilities to Promote Health Among Women with Disabilities Program, 27808–27810
Duchenne and Becker Muscular Dystrophy and other single gene disorders; surveillance and epidemiologic research, 27810–27813
Meetings:
Disease, Disability, and Injury Prevention and Control Special Emphasis Panels, 27813

Centers for Medicare & Medicaid Services
NOTICES
Medicaid:
State plan amendments, reconsideration; hearings—
Arkansas, 27815–27816
Michigan, 27813–27815

Children and Families Administration
NOTICES
Grants and cooperative agreements; availability, etc.:
Help America Vote Act—
Election Assistance for Individuals with Disabilities Program, 27816–27818

Coast Guard
RULES
Ports and waterways safety:
Des Plaines River, Joliet, IL; regulated navigation area, 27727–27729

Commerce Department
See International Trade Administration
See National Oceanic and Atmospheric Administration
See Patent and Trademark Office

Committee for the Implementation of Textile Agreements
NOTICES
Cotton, wool, and man-made textiles:
China, 27787–27789

Comptroller of the Currency
PROPOSED RULES
National banks:
Securities; reporting and disclosure requirements, 27753–27757

Defense Department
See Navy Department

Education Department
NOTICES
Agency information collection activities; proposals, submissions, and approvals, 27790–27791

Energy Department
NOTICES
Grants and cooperative agreements; availability, etc.:
Biological and Environmental Research Office programs—
Genomic sequencing targets; input and nominations request, 27791–27793

Environmental Protection Agency
RULES
Pesticides; tolerances in food, animal feeds, and raw agricultural commodities:
Indoxacarb, 27740–27746
Pyraflufen-ethyl, 27729–27740
Superfund program:
National oil and hazardous substances contingency plan—
National priorities list update, 27746–27747
NOTICES
Agency information collection activities; proposals, submissions, and approvals, 27793–27797
Meetings:
Environmental Policy and Technology National Advisory Council, 27797–27799
Pesticide, food, and feed additive petitions:
Interregional Research Project (No. 4), 27799–27802
Pesticides; emergency exemptions, etc.:
Carbofuran, 27802–27805
Pesticides; experimental use permits, etc.:
HBB Partnership, 27805
Reports and guidance documents; availability, etc.:
Review of reference dose and reference concentration processes, 27805–27806
Superfund; response and remedial actions, proposed settlements, etc.:
Southern Solvents Site, FL, 27806
Water pollution; discharge of pollutants (NPDES):
Alaska; oil and gas extraction facilities on north slope of Brooks Range; general permit, 27806–27807

Executive Office of the President
See Presidential Documents
See Trade Representative, Office of United States

Farm Credit Administration
PROPOSED RULES
Farm credit system:
Financing eligibility and scope, loan policies and operations, and general provisions—
Credit and related services; miscellaneous amendments, 27757–27760

Federal Communications Commission
PROPOSED RULES
Digital television stations; table of assignments:
Montana, 27767–27768

Federal Maritime Commission
NOTICES
Agreements filed, etc., 27807
Ocean transportation intermediary licenses:
Uraycar Transport Services, Inc., et al., 27807–27808

Fish and Wildlife Service
NOTICES
Comprehensive conservation plans; availability, etc:
Noxubee National Wildlife Refugee, MS, 27840–27841
Environmental statements; availability, etc.:
Incidental take permits—
Riverside County, CA; coastal California gnatcatcher, 27841–27842

Food and Drug Administration
RULES
Animal drugs, feeds, and related products:
Bambermycins, 27727
NOTICES
Agency information collection activities; proposals, submissions, and approvals, 27818–27822
Reports and guidance documents; availability, etc.:
FDA Modernization Act of 1997—
Drug and biologics firms conducting postmarketing commitment studies; performance report, 27822–27823

Forest Service
NOTICES
Environmental statements; notice of intent:
Wallowa-Whitman National Forest, OR; withdrawn, 27780
Meetings:
Resource Advisory Committees—
Sanders County, 27780

Health and Human Services Department
See Centers for Disease Control and Prevention
See Centers for Medicare & Medicaid Services
See Children and Families Administration
See Food and Drug Administration
See Health Resources and Services Administration
See National Institutes of Health

Health Resources and Services Administration
NOTICES
Grants and cooperative agreements; availability, etc.:
Continuing Clinical Education Program in Pacific Basin; planning, development, implementation, and operation, 27823–27826
National Vaccine Injury Compensation Program:
Petitions received, 27826–27836

Homeland Security Department
See Coast Guard
See Transportation Security Administration

Housing and Urban Development Department
NOTICES
Agency information collection activities; proposals, submissions, and approvals, 27838–27840

Interior Department
See Fish and Wildlife Service
See Land Management Bureau
See Minerals Management Service
See Surface Mining Reclamation and Enforcement Office

Internal Revenue Service
NOTICES
Meetings:
Taxpayer Advocacy Panels; correction, 27884–27885

International Trade Administration
NOTICES
Antidumping:
Stainless steel sheet and strip in coils from—
Taiwan, 27782–27783
Antidumping and countervailing duties:
Administrative review requests, 27781–27782

Justice Department
See Antitrust Division
See National Institute of Corrections
NOTICES
Grants and cooperative agreements; availability, etc.:
Community Oriented Policing Services Office—
Community policing discretionary grants (2002 FY), 27846–27851

Land Management Bureau
NOTICES
Meetings:
Wild Horse and Burro Advisory Board, 27842–27843

Minerals Management Service
NOTICES
Agency information collection activities; proposals, submissions, and approvals, 27843–27845
Royalty management:
Indian gas production in designated areas not associated with index zones; additional royalty payments; major portion prices and due dates; correction, 27845

National Aeronautics and Space Administration
NOTICES
Meetings:
Advisory Council
Aerospace Technology Advisory Committee, 27865

National Foundation on the Arts and the Humanities
NOTICES
Meetings:
Humanities Panel, 27865–27866
Senior Executive Service:
Performance Review Board; membership, 27866

National Institute of Corrections
NOTICES
Meetings:
Advisory Board, 27865

National Institutes of Health
NOTICES
Meetings:
National Cancer Institute, 27836–27837
National Institute of Child Health and Human Development, 27838
National Institute of Mental Health, 27837
National Institute on Aging, 27838

National Oceanic and Atmospheric Administration
PROPOSED RULES
Fishery conservation and management:
Northeastern United States fisheries—
Northeast multispecies, 27774–27777
Summer flounder, scup, and black sea bass, 27768–27773
NOTICES
Agency information collection activities; proposals, submissions, and approvals, 27783–27784
Electronic Navigation Charts released as Nautical Charts; digital navigation and associated data; distribution to public on Internet, 27784–27785
Meeting:
North Pacific Fishery Management Council, 27785–27786
Meetings:
Gulf of Mexico Fishery Management Council et al., 27786
Permits:
Foreign fishing, 27787

National Science Foundation
NOTICES
Antarctic Conservation Act of 1978; permit applications, etc., 27866

Navy Department
NOTICES
Base realignment and closure:
Surplus Federal property—
Naval Air Station, Key West, FL; withdrawn, 27790
Inventions, Government-owned; availability for licensing, 27790

Office of United States Trade Representative
See Trade Representative, Office of United States

Patent and Trademark Office
NOTICES
Patents:
Human drug products:
Ranolazine; interim term extension, 27787

Postal Service
PROPOSED RULES
Domestic Mail Manual:
Customized MarketMail; mailing nonrectangular- or irregular-shaped items; classification change, 27760–27767

Presidential Documents
PROCLAMATIONS
Special observances:
World Trade Week (Proc. 7679), 27887–27890

Railroad Retirement Board
NOTICES
Agency information collection activities; proposals, submissions, and approvals, 27866–27867

Rural Business-Cooperative Service
NOTICES
Agency information collection activities; proposals, submissions, and approvals, 27780–27781

Securities and Exchange Commission
NOTICES
Regulatory responsibility allocation program:
National Association of Securities Dealers, Inc., et al., 27869–27872
Self-regulatory organizations; proposed rule changes:
American Stock Exchange LLC, 27872–27876
Depository Trust Co., 27876–27879
National Association of Securities Dealers, Inc., 27879–27880
National Securities Clearing Corp., 27880–27882
Applications, hearings, determinations, etc.:
MainStay Funds, et al., 27867–27869

Small Business Administration
NOTICES
Disaster loan areas:
Alabama, 27882
Kansas, 27882
Mississippi, 27883
Texas, 27883

State Department
NOTICES
Art objects; importation for exhibition:
Anne Frank the Writer: An Unfinished Story, 27883

Surface Mining Reclamation and Enforcement Office
NOTICES
Agency information collection activities; proposals, submissions, and approvals, 27845–27846

Textile Agreements Implementation Committee
See Committee for the Implementation of Textile Agreements

Trade Representative, Office of United States
NOTICES
Dominican Republic; reinstatement of government procurement treatment of products, 27883

Transportation Security Administration
RULES
Aviation security infrastructure fees, 27747–27752

Treasury Department
See Comptroller of the Currency
See Internal Revenue Service
NOTICES
Agency information collection activities; proposals, submissions, and approvals, 27883–27884

Separate Parts In This Issue

Part II
Executive Office of the President, Presidential Documents, 27887–27890

Reader Aids
Consult the Reader Aids section at the end of this issue for phone numbers, online resources, finding aids, reminders, and notice of recently enacted public laws.

To subscribe to the Federal Register Table of Contents LISTSERV electronic mailing list, go to http://listserv.access.gpo.gov and select Online mailing list archives, FEDREGTOC-L, Join or leave the list (or change settings); then follow the instructions.

CFR PARTS AFFECTED IN THIS ISSUE

A cumulative list of the parts affected this month can be found in the Reader Aids section at the end of this issue.

3 CFR
Proclamations:
7679 27889

12 CFR
Proposed Rules:
11 27753
16 27753
613 27757
614 27757
618 27757

21 CFR
558 27727

33 CFR
165 27727

39 CFR
Proposed Rules:
111 27760

40 CFR
180 (2 documents) 27729, 27740
300 27746

47 CFR
Proposed Rules:
73 27767

49 CFR
1510 27747
1511 27747

50 CFR
Proposed Rules:
648 (2 documents) 27768, 27774

Rules and Regulations

Federal Register
Vol. 68, No. 98
Wednesday, May 21, 2003

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 558

New Animal Drugs for Use in Animal Feeds; Bambermycins

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect approval of a supplemental new animal drug application (NADA) filed by Intervet, Inc. The supplemental NADA provides for use of bambermycins Type A medicated articles to make Type B and Type C medicated feeds used to increase rate of weight gain in pasture cattle (slaughter, stocker, feeder cattle, and dairy and beef replacement heifers) when consumed free-choice or hand-fed at a rate of not less than 10 milligrams (mg) nor more than 40 mg bambermycins per head per day.

DATES: This rule is effective May 21, 2003.

FOR FURTHER INFORMATION CONTACT: Eric S. Dubbin, Center for Veterinary Medicine (HFV–126), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301–827–0232, e-mail: *edubbin@cvm.fda.gov.*

SUPPLEMENTARY INFORMATION: Intervet, Inc., PO Box 318, 405 State St., Millsboro, DE 19966, filed a supplement to NADA 141–034 that provides for use of GAINPRO (bambermycins) Type A medicated articles to make Type B and Type C medicated feeds used to increase rate of weight gain in pasture cattle (slaughter, stocker, feeder cattle, and dairy and beef replacement heifers) when consumed free-choice or hand-fed at a rate of not less than 10 mg nor more than 40 mg bambermycins per head per day. The supplemental NADA is approved as of February 10, 2003, and the regulations are amended in 21 CFR 558.95 to reflect the approval. The basis of approval is discussed in the freedom of information summary.

In accordance with the freedom of information provisions of 21 CFR part 20 and 21 CFR 514.11(e)(2)(ii), a summary of safety and effectiveness data and information submitted to support approval of this application may be seen in the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852, between 9 a.m. and 4 p.m., Monday through Friday.

The agency has carefully considered the potential environmental impact of this action and has concluded that the action will not have a significant impact on the human environment and that an environmental impact statement is not required. FDA's finding of no significant impact and the evidence supporting that finding, contained in an environmental assessment, may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

This rule does not meet the definition of "rule" in 5 U.S.C. 804(3)(A) because it is a rule of "particular applicability." Therefore, it is not subject to the congressional review requirements in 5 U.S.C. 801–808.

List of Subjects in 21 CFR Part 558

Animal drugs, Animal feeds.

■ Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Veterinary Medicine, 21 CFR part 558 is amended as follows:

PART 558—NEW ANIMAL DRUGS FOR USE IN ANIMAL FEEDS

■ 1. The authority citation for 21 CFR part 558 continues to read as follows:

Authority: 21 U.S.C. 360b, 371.

§ 558.95 [Amended]

■ 2. Section 558.95 *Bambermycins* is amended by:

■ a. In paragraphs (d)(4)(ii)(*b*) and (d)(4)(iv)(*a*) by removing "20" and by adding in its place "40";

■ b. In paragraph (d)(4)(iii)(*d*) by adding "cattle, and dairy and beef replacement heifers" after "feeder", and by removing "5.33" and "10- to 20–milligrams" and by adding in their respective places "10.66" and "10 to 40 milligrams"; and

■ c. In paragraphs (d)(4)(ii)(*b*), (d)(4)(iii)(*d*), and (d)(4)(iv)(*c*) by adding "Daily bambermycins intakes in excess of 20 mg/head/day have not been shown to be more effective than 20 mg/head/day." at the end of the paragraph.

Dated: May 8, 2003.

Steven D. Vaughn,

Director, Office of New Animal Drug Evaluation, Center for Veterinary Medicine.

[FR Doc. 03–12721 Filed 5–20–03; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[CGD09–03–214]

RIN 1625–AA11

Regulated Navigation Area; Des Plaines River, Joliet, IL

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule; request for comments.

SUMMARY: The Coast Guard is establishing a regulated navigation area on the Des Plaines River in Joliet, Illinois. This temporary final rule requires that certain southbound tows passing under the Jefferson Street bridge use an assist tug. This action is necessary to ensure vessel and public safety due to an allision with this bridge structure. This rule is intended to restrict vessel traffic in a portion of the Des Plaines River near Joliet, Illinois.

DATES: This rule is effective from 8 a.m. (local) on May 11, 2003 until November 15, 2003.

ADDRESSES: Documents indicated in this preamble as being available in the docket are part of docket [CGD09–02–214] and are available for inspection or copying at Coast Guard Marine Safety Office (MSO) Chicago, 215 W. 83rd St, Suite D, Burr Ridge, Illinois 60521 between 8 a.m. and 3:30 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: MST2 Kenneth Brockhouse, U.S. Coast Guard Marine Safety Office Chicago, at (630) 986–2175.

SUPPLEMENTARY INFORMATION:

Request for Comments

We encourage you to participate in this rulemaking by submitting comments and related material. We encourage comments on whether a regulated navigation area is the appropriate tool to provide for the safe navigation of tows transiting through the draws of the Jefferson Street bridge on the Des Plaines River in the vicinity of Joliet, Illinois. If you do so, please include your name and address, identify the docket number for this rulemaking (CGD09–03–214), indicate the specific section of this document to which each comment applies, and give the reason for each comment. Please submit all comments and related material in an unbound format, no larger than 8½ by 11 inches, suitable for copying. If you would like to know they reached us, please enclose a stamped, self-addressed postcard or envelope. We will consider all comments and material received during the comment period. We may change this proposed rule in view of them.

Public Meeting

We do not now plan to hold a public meeting. But you may submit a request for a meeting by writing to Marine Safety Office Chicago at the address under **ADDRESSES** explaining why one would be beneficial. If we determine that one would aid this rulemaking, we will hold one at a time and place announced by a later notice in the **Federal Register**.

Regulatory Information

We did not publish a notice of proposed rulemaking (NPRM) for this regulation. Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing an NPRM, and under 5 U.S.C. 553(d)(3), good cause exists for making this rule effective less than 30 days after publication in the **Federal Register**. On May 2, 2003, a tow allided with the pier of the Jefferson Street Bridge which resulted in substantial damage to the bridge structure. As a result, it is estimated that the bridge will be inoperable for 4 to 6 months while repairs are made. The Captain of the Port Chicago believes that immediate action is necessary to help prevent any future allisions with the pier. Further, additional allisions might result in total structural failure, closure of the river for a period of time as a result of an allision, and the possible loss of life as a result of another allision.

Background and Purpose

On May 2, 2003, a southbound tow allided with the pier of the Jefferson Street bridge. This allision resulted in significant structural damage to the bridge pier. Southbound tows with a 3 by 5 configuration, transiting under the Cass Street Bridge and then the Jefferson Street Bridge, only have 100 feet of horizontal maneuvering room. In addition, the Des Plaines River regularly has significant current in this area.

In order to prevent future allisions, a regulated navigation area (RNA) is being established from the Ruby Street Bridge to the McDonough Street Bridge in which southbound tows in a 3 by 5 configuration must use an assist tug. This RNA is being established until an adequate protection cell is constructed around the bridge pier.

Discussion of Rule

Southbound tows greater than 89 feet in overall width and more than 800 feet in length must use an assist tug when transiting through the RNA. This RNA encompasses the Des Plaines River from mile 288.7 (the Ruby Street Bridge), to mile 287.3 (the McDonough Street Bridge). Deviation from this rule is prohibited unless specifically authorized by the Commander, Ninth Coast Guard District or his designated representative. His designated representative is the Captain of the Port Chicago.

Regulatory Evaluation

This rule is not a "significant regulatory action" under section 3(f) of Executive Order 12866, Regulatory Planning and Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that Order. It is not "significant" under the regulatory policies and procedures of the Department of Homeland Security. The operational reporting requirements of the RNA are minimal and necessary to provide immediate, improved security for the public, vessels, and U.S. ports and waterways. The requirements do not alter normal barge cargo loading operations or transits. Additionally, this rule is temporary in nature and the Coast Guard may issue a NPRM as it considers whether to make this rule permanent. The minimal hardships that may be experienced by persons or vessels are necessary to the national interest in protecting the public, vessels, and vessel crews from the devastating consequences of acts of terrorism, and from sabotage or other subversive acts, accidents, or other causes of a similar nature.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), we have considered whether this rule would have a significant economic impact on a substantial number of small entities. The term "small entities" comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000.

The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities. This rule will affect the following entities, some of which may be small entities: The operators of southbound tows, in a 3 by 5 configuration, intending to transit through the RNA. This RNA will not have a significant economic impact on a substantial number of small entities because this rule will only remain in effect until a protection cell can be erected or until other recommendations are provided which reduce the risk of allisions with the Jefferson Street Bridge.

If you think that your business, organization, or governmental jurisdiction qualifies as a small entity and that this rule would have a significant economic impact on it, please submit a comment (*see* **ADDRESSES**) explaining why you think it qualifies and how and to what degree this rule would economically affect it.

Assistance for Small Entities

Under subsection 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Public Law 104–121), we offered to assist small entities in understanding the rule so that they can better evaluate its effects on them and participate in the rulemaking process. Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1–888–REG–FAIR (1–888–734–3247).

Collection of Information

This rule calls for no new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

Federalism

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on State or local governments and would either preempt State law or impose a substantial direct cost of compliance on them. We have analyzed this rule under that Order and have determined that it does not have implications for federalism.

Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of $100,000,000 or more in any one year. Though this rule will not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

Taking of Private Property

This rule will not effect a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

Civil Justice Reform

This rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

Protection of Children

We have analyzed this rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and does not create an environmental risk to health or risk to safety that may disproportionately affect children.

Indian Tribal Governments

This rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

Energy Effects

We have analyzed this rule under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. We have determined that it is not a "significant energy action" under that order because it is not a "significant regulatory action" under Executive Order 12866 and is not likely to have a significant adverse effect on the supply, distribution, or use of energy. The Administrator of the Office of Information and Regulatory Affairs has not designated it as a significant energy action. Therefore, it does not require a Statement of Energy Effects under Executive Order 13211.

Environment

We have analyzed this rule under Commandant Instruction M16475.1D, which guides the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4370f), and have concluded that there are no factors in this case that would limit the use of categorical exclusion under section 2.B.2 of the Instruction. Therefore, this rule is categorically excluded, under figure 2–1 paragraph (34)(g), of the instruction, from further environmental documentation because this rule is not expected to result in any significant environmental impact as described in NEPA. A final "Environmental Analysis Check List" and a final "Categorical Exclusion Determination" are available in the docket where indicated under **ADDRESSES**.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, Vessels, Waterways.

■ For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 165 as follows:

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

■ 1. The authority citation for part 165 continues to read as follows:

Authority: 33 U.S.C. 1231; 50 U.S.C. 191, 33 CFR 1.05–1(g), 6.04–1, 6.04–6, and 160.5; Department of Homeland Security Delegation No. 0170.

■ 2. From 8 a.m. on May 11, 2003 through 8 p.m. on November 15, 2003 add temporary § 165.T09–214 to read as follows:

§ 165.T09–214 Regulated Navigation Area; Des Plaines River, Joliet, Illinois

(a) *Regulated navigation area.* The following waters are a Regulated Navigation Area (RNA): All portions of the Des Plaines River between mile 287.3 (McDonough St. Bridge) and mile 288.7 (Ruby Street Bridge).

(b) *Applicability.* This section applies to operators of all southbound tows transiting beneath the Jefferson Street Bridge (mile 287.9), Joliet, Illinois with barge configurations of over 89 feet in overall width and more than 800 feet in length.

(c) *Regulations.* (1) All southbound tows to which this section applies must use an assist tug when transiting through the RNA.

(2) The general regulations contained in 33 CFR 165.13 apply to this section.

(3) Deviation from this section is prohibited unless specifically authorized by the Commander, Ninth Coast Guard District or his designated representatives. Designated representatives include the Captain of the Port Chicago.

Dated: May 9, 2003.

Ronald F. Silva,

Rear Admiral, Coast Guard, Commander, Ninth Coast Guard District.

[FR Doc. 03–12687 Filed 5–20–03; 8:45 am]

BILLING CODE 4910–15–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[OPP–2003–0163; FRL–7306–1]

Pyraflufen-ethyl; Pesticide Tolerance

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation establishes a tolerance for combined residues of pyraflufen-ethyl in or on cotton. Nichino America Incorporated requested this tolerance under the Federal Food, Drug, and Cosmetic Act (FFDCA), as amended by the Food Quality Protection Act of 1996 (FQPA).

DATES: This regulation is effective May 21, 2003. Objections and requests for hearings, identified by docket ID number OPP–2003–0163, must be received on or before July 21, 2003.

ADDRESSES: Written objections and hearing requests may be submitted electronically, by mail, or through hand delivery/courier. Follow the detailed instructions as provided in Unit VI. of the **SUPPLEMENTARY INFORMATION**.

FOR FURTHER INFORMATION CONTACT: Joanne I. Miller, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington,

DC 20460–0001; telephone number: (703) 305–6224; e-mail address: *miller.joanne@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

You may be potentially affected by this action if you an agricultural producer, food manufacturer, or pesticide manufacturer. Potentially affected entities may include, but are not limited to:

- Crop production (NAICS 111)
- Animal production (NAICS 112)
- Food manufacturing (NAICS 311)
- Pesticide manufacturing (NAICS 32532)

This listing is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in this unit could also be affected. The North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether this action might apply to certain entities. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

B. How Can I Get Copies of this Document and Other Related Information?

1. *Docket.* EPA has established an official public docket for this action under docket identification ID number OPP–2003–0163. The official public docket consists of the documents specifically referenced in this action, any public comments received, and other information related to this action. Although a part of the official docket, the public docket does not include Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. The official public docket is the collection of materials that is available for public viewing at the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA. This docket facility is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The docket telephone number is (703) 305–5805.

2. *Electronic access.* You may access this **Federal Register** document electronically through the EPA Internet under the "**Federal Register**" listings at *http://www.epa.gov/fedrgstr/*. A frequently updated electronic version of 40 CFR part 180 is available at *http://www.access.gpo.gov/nara/cfr/cfrhtml_00/Title_40/40cfr180_00.html*, a beta site currently under development. To access the OPPTS Harmonized Guidelines referenced in this document, go directly to the guidelines at *http://www.epa.gov/opptsfrs/home/guidelin.htm*.

An electronic version of the public docket is available through EPA's electronic public docket and comment system, EPA Dockets. You may use EPA Dockets at *http://www.epa.gov/edocket/* to submit or view public comments, access the index listing of the contents of the official public docket, and to access those documents in the public docket that are available electronically. Although not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the docket facility identified in Unit I.B.1. Once in the system, select "search," then key in the appropriate docket ID number.

II. Background and Statutory Findings

In the **Federal Register** of November 20, 2002 (67 FR 70073) (FRL–7184–7), EPA issued a notice pursuant to section 408 of FFDCA, 21 U.S.C. 346a, as amended by FQPA (Public Law 104–170), announcing the filing of a pesticide petition (1F6428) by Nichino America Incorporated, 4550 New Linden Hill Road, Suite 501, Wilmington, DE 19808. That notice included a summary of the petition prepared by Nichino America Incorporated, the registrant. There were no comments received in response to the notice of filing.

The petition requested that 40 CFR 180.585 be amended by establishing tolerances for combined residues of the herbicide pyraflufen-ethyl (ethyl 2-chloro-5-(4-chloro-5-difluoromethoxy-1-methyl-1H-pyrazol-3-yl)-4-fluorophenoxyacetate) and its acid metabolite, E-1 (2-chloro-5-(4-chloro-5-difluoromethoxy-1-methyl-1H-pyrazol-3-yl)-4-fluorophenoxyacetic acid), expressed as the ester equivalent in or on cotton undelinted seed at 0.05 parts per million (ppm) and cotton gin byproduct at 1.5 ppm.

Section 408(b)(2)(A)(i) of the FFDCA allows EPA to establish a tolerance (the legal limit for a pesticide chemical residue in or on a food) only if EPA determines that the tolerance is "safe." Section 408(b)(2)(A)(ii) of the FFDCA defines "safe" to mean that "there is a reasonable certainty that no harm will result from aggregate exposure to the pesticide chemical residue, including all anticipated dietary exposures and all other exposures for which there is reliable information." This includes exposure through drinking water and in residential settings, but does not include occupational exposure. Section 408(b)(2)(C) of the FFDCA requires EPA to give special consideration to exposure of infants and children to the pesticide chemical residue in establishing a tolerance and to "ensure that there is a reasonable certainty that no harm will result to infants and children from aggregate exposure to the pesticide chemical residue...."

EPA performs a number of analyses to determine the risks from aggregate exposure to pesticide residues. For further discussion of the regulatory requirements of section 408 of the FFDCA and a complete description of the risk assessment process, see the final rule on Bifenthrin Pesticide Tolerances November 26, 1997) (62 FR 62961) (FRL–5754–7).

III. Aggregate Risk Assessment and Determination of Safety

Consistent with section 408(b)(2)(D) of the FFDCA, EPA has reviewed the available scientific data and other relevant information in support of this action. EPA has sufficient data to assess the hazards of and to make a determination on aggregate exposure, consistent with section 408(b)(2) of the FFDCA, for tolerances for residues of pyraflufen-ethyl on cotton undelinted seed at 0.04 ppm and cotton gin byproduct at 1.5 ppm. EPA's assessment of exposures and risks associated with establishing the tolerance follows.

A. Toxicological Profile

EPA has evaluated the available toxicity data and considered its validity, completeness, and reliability as well as the relationship of the results of the studies to human risk. EPA has also considered available information concerning the variability of the sensitivities of major identifiable subgroups of consumers, including infants and children. The nature of the toxic effects caused by pyraflufen-ethyl are discussed in Table 1 of this unit as well as the no observed adverse effect level (NOAEL) and the lowest observed adverse effect level (LOAEL) from the toxicity studies reviewed.

TABLE 1.—SUBCHRONIC, CHRONIC, AND OTHER TOXICITY

Guideline No.	Study Type	Results
870.3100	90–day oral toxicity in rats	NOAEL = 5,000 parts per million (ppm) (456–499 milligrams/kilograms/day (mg/kg/day)). LOAEL = 15,000 ppm (1,489–1,503 mg/kg/day) based on clinical signs, death, effects on erythrocytes, changes in clinical chemicals for liver function and splenomegaly.
870.3150	90–day oral toxicity in dogs	NOAEL = 1,000 mg/kg/day. LOAEL not established, no effects observed.
870.3200	28–Day dermal toxicity in rats	NOAEL = 1,000 mg/kg/day. LOAEL not established; no effects observed.
870.3700	Prenatal developmental in rats	Maternal NOAEL ≥ 1,000 mg/kg/day Maternal LOAEL not determined; no effects observed. Developmental NOAEL ≥ 1,000 mg/kg/day. Developmental LOAEL not determined; no effects observed.
870.3700	Prenatal developmental in rabbits	Maternal NOAEL = 20 mg/kg/day. Maternal LOAEL= 60 mg/kg/day based on mortality. Developmental = 60 mg/kg/day. Developmental LOAEL = 150 mg/kg/day based on increased incidence of abortion.
870.3800	Reproduction and fertility effects	Parental NOAEL = 1,000 ppm (70.8–82.3 mg/kg/day (M); 80.1–91.2 (F). Parental LOAEL = 10,000 ppm (721–844 and 813–901 mg/kg/day) based on decreased body weight (bwt) and bwt gains of F_0 and F_1(M) and F_1(F), gross and microscopic liver lesions of (M) and (F)-both generations. Reproductive NOAEL ≥ 10,000 ppm (721–844 and 813–901 mg/kg/day). Reproductive LOAEL not determined; no effects observed. Offspring NOAEL = 1,000 ppm (70.8–82.3 mg/kg/day (M); 80.1–91.2 (F). Offspring LOAEL = 10,000 ppm (721–844 and 813–901 mg/kg/day) based on decreased bwt and bwt gains of the F_1 and F_2 pups.
870.4100	Chronic toxicity in dogs	NOAEL ≥ 1,000 mg/kg/day. LOAEL not determined; no effects observed.
870.4200	Carcinogenicity in mice	NOAEL = 200 ppm (20.99 mg/kg/day (M); 19.58 mg/kg/day (F). LOAEL = 1,000 ppm (109.7 mg/kg/day (M); 98.3 mg/kg/day (F) based on liver toxicity, hepatocellular tumors at 5,000 ppm; possibly hemangioma/ hemangioasarcomas.
870.4300	Chronic toxicity in rodents/carcinogenicity in rats	NOAEL = 2,000 ppm (86.7 mg/kg/day (M); 111.5 mg/kg/day (F). LOAEL = 10,000 ppm (468.1 mg/kg/day (M); 578.5 mg/kg/day (F) based on decreased bwt and bwt gain in males and microcytic anemia, liver lesions and kidney toxicity (both sexes); possible increase pheochromocytomas in females.
870.5100	Gene nutation	Non-mutagenic when tested up to 5,000 µg/plate, in presence and absence of metabolic activation (S9-mix), in *S. typhimurium* strains TA98, TA100, TA1535, TA1537 and TA1538 and *E.coli* strain WP2(uvrA). There was no evidence of induced mutant colonies over background.

TABLE 1.—SUBCHRONIC, CHRONIC, AND OTHER TOXICITY—Continued

Guideline No.	Study Type	Results
870.5300	Gene mutation	In mammalian cell gene mutation assays at the TK locus, L5178Y mouse lymphoma cells cultured *in vitro* were exposed to pyraflufen-ethyl in dimethylsulfoxide (DMOS) in the absence of mammalian metabolic activation (S9-mix) and with S9-mix. Concentrations 160 μg/mL were insoluble; cytotoxicity was seen at 80 μg/mL -S9 and 160 μg/mL +S9. There was no increase in the number of mutant colonies over background in the absence of S9-mix but a non-reproducible dose-related increase in the number of mutant colonies was seen in the presence of S9-mix. In mammalian cell gene mutation assays at the TK locus, L5178Y mouse lymphoma cells cultured *in vitro* were exposed to pyraflufen-ethyl in DMSO in the absence of mammalian metabolic activation (S9-mix) and with S9-mix. There was no evidence of induced mutant colonies over background up to cytotoxic concentrations (50 μg/mL-S9; and 350 μg/mL +S9.
870.5375	Chromosomal aberration	In a mammalian cell cytogenetics assay, human primary lymphocyte cultures were exposed to pyraflufen-ethyl in DMSO without metabolic activation (S9-mix) or with S9-mix. Compound precipitation occurred at 2,600 μg/mL +/- S9. There was no evidence of chromosomal aberration induction over background.
870.5395	Cytogenetics	In a CD-1 mouse bone marrow micronucleus assay, five mice/sex/dose/harvest time were treated via oral gavage with pyraflufen-ethyl in corn oil. ET-751 was tested to the limit (LTD) dose of 5,000 mg/kg bwt. Signs of compound toxicity were limited to piloerection, hunched posture in one female, and piloerection and hunched posture in one male receiving 5,000 mg/kg. No bone marrow cytotoxicity was seen at any dose. There was no statistically significant increase in the frequency of micronucleated polychromatic erythrocytes in bone marrow after any dose or treatment time.
870.5500	Bacillus subtilis	In a differential killing/growth inhibition assay in bacteria, strains H17 (rec+) and M45 (rec-) of *B. subtilis* were exposed to pyraflufen-ethyl in DMSO in the presence and absence of metabolic activation (S9-mix). There was no evidence of greater growth inhibition or cell killing in repair-defective strains compared to repair competent strains up to the limit of test material solubility.
870.5550	Unscheduled DNA synthesis (UDS)	In an *in vivo/in vitro* UDS assay in rat hepatocytes, pyraflufen-ethyl was administered to five SPF outbred albino Hsd/Ola Sprague-Dawley male rats per test group by oral gavage (four of the five rats were used for hepatocyte culture). No signs of overt toxicity to the test animals or cytotoxic effects to the target cells were seen up to the LTD (2,000 mg/kg). The mean net nuclear grain count was below zero for both doses at both treatment times indicating no induction of UDS as tested in this study.

TABLE 1.—SUBCHRONIC, CHRONIC, AND OTHER TOXICITY—Continued

Guideline No.	Study Type	Results
870.7485	Metabolism and pharmacokinetics	Pyraflufen-ethyl was readily absorbed and excreted within 96 hours following a single or repeated oral dose of 5 mg/kg (plasma $t_{1/2}$ of 3–3.5 hours). However, at a dose of 500 mg/kg, absorption was saturated as indicated by Cmax values which did not reflect the 100-fold dose differential (2.7–2.8 Fg eq/g for the low-dose group and 100–107 Fg eq-hr/g for the high-dose group). Following single or multiple oral low doses (5 mg/kg) of pyraflufen ethyl, urinary excretion accounted for 27–33% of the administered radioactivity suggesting that a multiple exposure regimen did not affect the absorption/excretion processes. Urinary excretion was reduced to only 5–7% following a single 500 mg/kg dose. Excretion via the feces accounted for the remainder of the administered radioactivity in all treatment groups. Analysis of biliary excretion following a single 5 mg/kg dose showed that 36% of the administered dose appeared in the bile. Based upon the excretion data, total bioavailability of a low dose was approximately 56%. Biliary excretion data were not available for a high-dose group which prevented a definitive assessment of bioavailability. Excretory patterns did not exhibit gender-related variability. However, plasma and blood clearance was more rapid in females than in males as shown by plasma/blood radioactivity time-course and the greater AUC values for males (32.3 vs 18.4 Fg eq-hr/g for the low-dose group and 2,738 vs 1,401 Fg eq-hr/g for the high-dose group). Radioactivity concentrations indicated tissue concentrations at or near detection limits (generally <0.01 Fg eq/g and never exceeding 0.02 Fg eq/g) at 96 hrs postdose for any tissues. Therefore, neither pyraflufen-ethyl nor its metabolites appear to undergo significant sequestration. Tissue burden data following compound administration did not suggest a specific target beyond those tissues, namely liver and kidney, which are associated with absorption and elimination of orally administered xenobiotics.

B. Toxicological Endpoints

The dose at which no observed adverse effects levels are (the NOAEL) from the toxicology study identified as appropriate for use in risk assessment is used to estimate the toxicological level of concern (LOC). However, the lowest dose at which observed adverse effects of levels concern are identified (the LOAEL) is sometimes used for risk assessment if no NOAEL was achieved in the toxicology study selected. An uncertainty factor (UF) is applied to reflect uncertainties inherent in the extrapolation from laboratory animal data to humans and in the variations in sensitivity among members of the human population as well as other unknowns. An UF of 100 is routinely used, 10X to account for interspecies differences and 10X for intraspecies differences.

For dietary risk assessment (other than cancer) the Agency uses the UF to calculate an acute or chronic reference dose (aRfD or cRfD) where the RfD is equal to the NOAEL divided by the appropriate UF (RfD = NOAEL/UF). Where an additional safety factor (SF) is retained due to concerns unique to the FQPA, this additional factor is applied to the RfD by dividing the RfD by such additional factor. The acute or chronic Population Adjusted Dose (aPAD or cPAD) is a modification of the RfD to accommodate this type of FQPA SF.

For non-dietary risk assessments (other than cancer) the UF is used to determine the LOC. For example, when 100 is the appropriate UF (10X to account for interspecies differences and 10X for intraspecies differences) the LOC is 100. To estimate risk, a ratio of the NOAEL to exposures (margin of exposure (MOE) = NOAEL/exposure) is calculated and compared to the LOC.

The linear default risk methodology (Q*) is the primary method currently used by the Agency to quantify carcinogenic risk. The Q* approach assumes that any amount of exposure will lead to some degree of cancer risk. A Q* is calculated and used to estimate risk which represents a probability of occurrence of additional cancer cases (e.g., risk is expressed as 1×10^{-6} or one in a million). Under certain specific circumstances, MOE calculations will be used for the carcinogenic risk assessment. In this non-linear approach, a "point of departure" is identified below which carcinogenic effects are not expected. The point of departure is typically a NOAEL based on an endpoint related to cancer effects though it may be a different value derived from the dose response curve. To estimate risk, a ratio of the point of departure to exposure (MOE_{cancer} = point of departure/exposures) is calculated. A summary of the toxicological endpoints for pyraflufen-ethyl used for human risk assessment is shown in Table 2:

TABLE 2.—SUMMARY OF TOXICOLOGICAL DOSE AND ENDPOINTS FOR PYRAFLUFEN-ETHYL FOR USE IN HUMAN RISK ASSESSMENT

Exposure Scenario	Dose (mg/kg/day) UF/MOE	Hazard Based Special FQPA Safety Factor	Endpoint for Risk Assessment
Dietary Risk Assessments			
Acute dietary	Not applicable	Not applicable	No adverse effect attributable to a single exposure (dose) was observed in oral toxicity studies, including the developmental toxicity studies in rats and rabbits.
Chronic dietary	NOAEL= 20 UF = 100 Chronic RfD = 0.20 mg/kg/day	1X	Mouse carcinogenicity. LOAEL = 98 mg/kg/day based on liver toxicity.
Incidental oral short-term (1–30 days) residential only	NOAEL= 20 UF = 100 MOE=100	1X	Developmental toxicity-rabbit. LOAEL = 60 mg/kg/day based on decreases in body weight and food consumption, GI observations, and abortions.
Incidental oral intermediate-term (1–6 months) residential only	NOAEL= 20 UF = 100 MOE=100	1X	Mouse carcinogenicity. LOAEL = 98 mg/kg/day based on liver toxicity at interim sacrifice.
Non-Dietary Risk Assessments			
Dermal short-term and intermediate-term	Not applicable	Not applicable	In a 28-dermal toxicity study in rats, no dermal or systemic toxicity was seen at the LTD (1,000 mg/kg/day). The physical and chemical characteristics (e.g., Kow is low) indicate that dermal absorption is not expected to occur to any appreciable extent. There is no concern for prenatal and/or postnatal toxicity. Therefore, no hazard was identified and quantification of dermal risk is not required.
Residential	MOE = not applicable	Not applicable	
Occupational	MOE = not applicable	Not applicable	
Inhalation[1] short-term (1–30 days)	Oral NOAEL= 20	1X	Developmental toxicity-rabbit. LOAEL = 60 mg/kg/day based on decreases in bwt and food consumption, GI observations, and abortions.
Residential	MOE = 100		
Occupational	MOE= 100		
Inhalation[1] intermediate-term (1–6 months)	Oral NOAEL= 20	1X	Mouse carcinogenicity. LOAEL = 98 mg/kg/day based on liver toxicity at interim sacrifice.
Residential	MOE = 100		
Occupational	MOE= 100		
Inhalation[1] long-term (< 6 months)	Oral NOAEL= 20	1X	Mouse carcinogenicity. LOAEL = 98 mg/kg/day based on liver toxicity.
Residential	MOE =100		
Occupational	MOE= 100		
Cancer	Classification: "Likely to be Carcinogenic to Humans" by the oral route $Q_1^* = 3.32 \times 10^{-2}$ (mg/kg/day)$^{-1}$		

1-Oral endpoints were selected because inhalation studies were unavailable. Absorption via the inhalation route is presumed to be equivalent to oral absorption.

* The reference to the FQPA SF refers to any additional SF retained due to concerns unique to the FQPA.

C. Exposure Assessment

1. *Dietary exposure from food and feed uses.* Tolerances have been established (40 CFR 180.585) for the combined residues of pyraflufen-ethyl (ethyl 2-chloro-5-(4-chloro-5-difluoromethoxy-1-methyl-1H-pyrazol-3-yl)-4-fluorophenoxyacetate) and its acid metabolite, E-1 (2-chloro-5-(4-chloro-5-difluoromethoxy-1-methyl-1H-pyrazol-3-yl)-4-fluorophenoxyacetic acid), expressed as the ester equivalent in or on a variety of raw agricultural commodities. Risk assessments were conducted by EPA to assess dietary exposures from pyraflufen-ethyl in food as follows:

i. *Acute exposure.* Acute dietary risk assessments are performed for a food-use pesticide if a toxicological study has indicated the possibility of an effect of concern occurring as a result of a 1–day or single exposure. No adverse effect attributable to a single exposure (dose) of pyraflufen-ethyl was observed in the oral toxicity studies, including the developmental toxicity studies in rats and rabbits. Therefore, EPA did not identify an acute dietary endpoint and an acute dietary assessment was not performed because no acute risk is expected.

ii. *Chronic exposure.* In conducting this chronic dietary risk assessment the Dietary Exposure Evaluation Model (DEEM™) analysis evaluated the individual food consumption as reported by respondents in the United State Department of Agriculture (USDA) nationwide Continuing Surveys of Food Intake by Individuals (CSFII) 1989–1992 and accumulated exposure to the chemical for each commodity. The following assumptions were made for the chronic exposure assessments: 100% crop treated (PCT) and tolerance-level residues for pyraflufen-ethyl on all treated crops. This assessment was Tier I analysis. The exposure from pyraflufen-ethyl residues in food occupies less than 1% of the chronic population adjusted dose (cPAD) for all population subgroups and is not a concern.

iii. *Cancer.* The cancer dietary exposure assessment was conducted using the DEEM analysis evaluated the individual food consumption as reported by respondents in the USDA nationwide CSFII 1989–1992 and accumulated exposure to the chemical for each commodity. The following assumptions were made for the cancer assessments: 100% PCT and tolerance-level residues for pyraflufen-ethyl on all treated crops. The estimated exposure to the U.S. population (total) to pyraflufen-ethyl is 2×10^{-5} mg/kg/day. Applying the Q_1^* of 0.0332 (mg/kg/day)$^{-1}$ to the exposure value results in a cancer risk estimate of 6.6×10^{-7}. Therefore, the lifetime cancer risk to the U.S. population is below EPA's level of concern.

2. *Dietary exposure from drinking water.* The Agency lacks sufficient monitoring exposure data to complete a comprehensive dietary exposure analysis and risk assessment for pyraflufen-ethyl in drinking water. Because the Agency does not have comprehensive monitoring data, drinking water concentration estimates are made by reliance on simulation or modeling taking into account data on the chemical and physical characteristics of pyraflufen-ethyl.

The Agency uses the First Index Reservoir Screening Tool (FIRST) or the Pesticide Root Zone/Exposure Analysis Modeling System (PRZM/EXAMS), to produce estimates of pesticide concentrations in an index reservoir. The Screening Concentration in Ground Water (SCI-GROW) model is used to predict pesticide concentrations in shallow ground water. For a screening-level assessment for surface water EPA will use FIRST (a tier 1 model) before using PRZM/EXAMS (a tier 2 model). The FIRST model is a subset of the PRZM/EXAMS model that uses a specific high-end runoff scenario for pesticides. While both FIRST and PRZM/EXAMS incorporate an index reservoir environment, the PRZM/EXAMS model includes a PCT crop area factor as an adjustment to account for the maximum PCT crop coverage within a watershed or drainage basin.

None of these models include consideration of the impact processing (mixing, dilution, or treatment) of raw water for distribution as drinking water would likely have on the removal of pesticides from the source water. The primary use of these models by the Agency at this stage is to provide a coarse screen for sorting out pesticides for which it is highly unlikely that drinking water concentrations would ever exceed human health levels of concern.

Since the models used are considered to be screening tools in the risk assessment process, the Agency does not use estimated environmental concentrations (EECs) from these models to quantify drinking water exposure and risk as a percent referance dose (%RfD) or percent population adjusted dose (%PAD). Instead, drinking water levels of comparison (DWLOCs) are calculated and used as a point of comparison against the model estimates of a pesticide's concentration in water. DWLOCs are theoretical upper limits on a pesticide's concentration in drinking water in light of total aggregate exposure to a pesticide in food, and from residential uses. Since DWLOCs address total aggregate exposure to pyraflufen-ethyl they are further discussed in the aggregate risk sections below.

Based on the FIRST and SCI-GROW models the EECs of pyraflufen-ethyl for acute exposures are estimated to be 1.25 parts per billion (ppb) for surface water and 0.002 ppb for ground water. The EECs for chronic exposures are estimated to be 0.28 ppb for surface water and 0.002 ppb for ground water.

3. *From non-dietary exposure.* The term "residential exposure" is used in this document to refer to non-occupational, non-dietary exposure (e.g., for lawn and garden pest control, indoor pest control, termiticides, and flea and tick control on pets).

Pyraflufen-ethyl is currently registered for use on the following residential non-dietary sites: Airports, nurseries, ornamental turf, golf courses, roadsides, and railroads. The risk assessment was conducted using the following residential exposure assumptions: adults and children may be exposed to residues of pyraflufen-ethyl through postapplication contact with treated areas which may include residential/recreational areas.

4. *Cumulative exposure to substances with a common mechanism of toxicity.* Section 408(b)(2)(D)(v) of the FFDCA requires that, when considering whether to establish, modify, or revoke a tolerance, the Agency consider "available information" concerning the cumulative effects of a particular pesticide's residues and "other substances that have a common mechanism of toxicity."

EPA does not have, at this time, available data to determine whether pyraflufen-ethyl has a common mechanism of toxicity with other substances or how to include this pesticide in a cumulative risk assessment. Unlike other pesticides for which EPA has followed a cumulative risk approach based on a common mechanism of toxicity, pyraflufen-ethyl does not appear to produce a toxic metabolite produced by other substances. For the purposes of this tolerance action, therefore, EPA has not assumed that pyraflufen-ethyl has a common mechanism of toxicity with other substances. For information regarding EPA's efforts to determine which chemicals have a common mechanism of toxicity and to evaluate the cumulative effects of such chemicals, see the final rule for

Bifenthrin Pesticide Tolerances (62 FR 62961, November 26, 1997).

D. Safety Factor for Infants and Children

1. *In general.* Section 408 of the FFDCA provides that EPA shall apply an additional tenfold margin of safety (MOS) for infants and children in the case of threshold effects to account for prenatal and postnatal toxicity and the completeness of the database on toxicity and exposure unless EPA determines that a different MOS will be safe for infants and children. MOS are incorporated into EPA risk assessments either directly through use of a MOE analysis or through using uncertainty (safety) factors in calculating a dose level that poses no appreciable risk to humans.

2. *Prenatal and postnatal sensitivity.* There is no evidence of increased susceptibility of rat or rabbit fetuses following *in utero* exposure in the developmental studies with pyraflufen-ethyl. There is no evidence of increased susceptibility of young rats in the reproduction study with pyraflufen-ethyl. EPA concluded there are no residual uncertainties for prenatal and/or postnatal exposure.

3. *Conclusion.* There is a complete toxicity database for pyraflufen-ethyl and exposure data are complete or are estimated based on data that reasonably accounts for potential exposures. The field trial data on cotton, while some of which may be limited in geographic representation or lack of early season application, indicate that residues of pyraflufen-ethyl are expected to be finite. EPA determined that the 10X SF to protect infants and children should be removed and instead, a different additional safety factor of 1X should be used. The FQPA factor is removed because: There is no evidence of increased susceptibility of rat or rabbit fetuses following *in utero* exposure in the developmental studies with pyraflufen-ethyl; there is no evidence of increased susceptibility of young rats in the reproduction study with pyraflufen-ethyl; there are no residual uncertainties identified in the exposure databases; the dietary food exposure assessment is expected to be conservative, tolerance-level residues and 100% crop treated information were used; and dietary drinking water exposure is based on conservative modeling estimates.

E. Aggregate Risks and Determination of Safety

To estimate total aggregate exposure to a pesticide from food, drinking water, and residential uses, the Agency calculates DWLOCs which are used as a point of comparison against the model estimates of a pesticide's concentration in water (EECs). DWLOC values are not regulatory standards for drinking water. DWLOCs are theoretical upper limits on a pesticide's concentration in drinking water in light of total aggregate exposure to a pesticide in food and residential uses. In calculating a DWLOC, the Agency determines how much of the acceptable exposure (i.e., the PAD) is available for exposure through drinking water e.g., allowable chronic water exposure (mg/kg/day) = cPAD - (average food + residential exposure). This allowable exposure through drinking water is used to calculate a DWLOC.

A DWLOC will vary depending on the toxic endpoint, drinking water consumption, and bwts. Default bwts and consumption values as used by the United States Environmental Protection Agency Office of Water are used to calculate DWLOCs: 2 liter (L)/70 kg (adult male), 2L/60 kg (adult female), and 1L/10 kg (child). Default bwts and drinking water consumption values vary on an individual basis. This variation will be taken into account in more refined screening-level and quantitative drinking water exposure assessments. Different populations will have different DWLOCs. Generally, a DWLOC is calculated for each type of risk assessment used: Acute, short-term, intermediate-term, chronic, and cancer.

When EECs for surface water and ground water are less than the calculated DWLOCs, EPA concludes with reasonable certainty that exposures to the pesticide in drinking water (when considered along with other sources of exposure for which EPA has reliable data) would not result in unacceptable levels of aggregate human health risk at this time. Because EPA considers the aggregate risk resulting from multiple exposure pathways associated with a pesticide's uses, levels of comparison in drinking water may vary as those uses change. If new uses are added in the future, EPA will reassess the potential impacts of residues of the pesticide in drinking water as a part of the aggregate risk assessment process.

1. *Acute risk.* No adverse effect attributable to a single exposure (dose) of pyraflufen-ethyl was observed in the oral toxicity studies, including the developmental toxicity studies in rats and rabbits. Therefore, an acute RfD was not established and no acute risk is expected.

2. *Chronic risk.* Using the exposure assumptions described in this unit for chronic exposure, EPA has concluded that exposure to pyraflufen-ethyl from food will utilize <1% of the cPAD for the U.S. population and <1% of the cPAD for children (1–6 years). Based on the use pattern, chronic residential exposure to residues of pyraflufen-ethyl is not expected. In addition, there is potential for chronic dietary exposure to pyraflufen-ethyl in drinking water. After calculating DWLOCs and comparing them to the EECs for surface and ground water, EPA does not expect the aggregate exposure to exceed 100% of the cPAD, as shown in the following Table 3:

TABLE 3.—AGGREGATE RISK ASSESSMENT FOR CHRONIC (NON- CANCER) EXPOSURE TO PYRAFLUFEN-ETHYL

Population Subgroup[1]	cPAD mg/kg/day	% cPAD (Food)	Surface Water EEC (ppb)[2]	Ground Water EEC (ppb)[2]	Chronic DWLOC (ppb)[3]
U.S population	0.20	<1	0.28	0.002	7,000
Males (20+ years old)	0.20	<1	0.28	0.002	7,000
Females (13–50 years old)	0.20	<1	0.28	0.002	6,000
Children (1–6 years old)	0.20	<1	0.28	0.002	2,000
Males (13–19 years old)	0.20	<1	0.28	0.002	7,000

[1] Subgroups with the highest food-source dietary exposure were selected for adult males, adult females and children. The following bwts were used (70 kg adult male; 60 kg adult females; 10 kg child).
[2] The crop producing the highest level was used (potatoes, 0.009 lb active ingredient/acre).
[3] Chronic DWLOC (ppb) = [maximum chronic water exposure (mg/kg/day) x bwt (kg)] ÷ [water consumption (L) x 10^{-3} mg/kg]).

3. *Short-term risk.* The short-term aggregate risk assessment estimates risks likely to result from 1–30 days exposure to pyraflufen-ethyl residues from food, drinking water, and residential pesticide uses. High-end estimates of residential exposure are used in the short-term aggregate assessment, while average (chronic) values are used to account for dietary (food only) exposure. The short-term aggregate risk assessment is considered conservative because food-source dietary exposure is based on a Tier 1 DEEM assessment (tolerance level residues and 100% crop treated information were used).

A short-term aggregate risk assessment is not performed for adults because no handler exposure is expected and postapplication inhalation exposure is expected to be negligible. A short-term aggregate risk assessment is required for infants and children because there is a potential for oral post-application exposure resulting from residential uses.

Pyraflufen-ethyl is currently registered for use that could result in short-term residential exposure and the Agency has determined that it is appropriate to aggregate chronic food and water and short-term exposures for pyraflufen-ethyl.

Using the exposure assumptions described in this unit for short-term exposures, EPA has concluded that food and residential exposures aggregated result in aggregate MOEs of 170,000 for children (1–6 years old). These aggregate MOEs do not exceed the Agency's level of concern for aggregate exposure to food and residential uses. In addition, short-term DWLOCs were calculated and compared to the EECs for chronic exposure of pyraflufen-ethyl in ground and surface water. After calculating DWLOCs and comparing them to the EECs for surface and ground water, EPA does not expect short-term aggregate exposure to exceed the Agency's level of concern, as shown in Table 4:

TABLE 4.—AGGREGATE RISK ASSESSMENT FOR SHORT-TERM EXPOSURE TO PYRAFLUFEN-ETHYL

Population Subgroup	Aggregate MOE (Food + Residential)[1]	Aggregate Level of Concern (LOC)	Surface Water EEC (ppb)[2]	Ground Water EEC (ppb)[2]	Short-Term DWLOC (ppb)[3]
Children (1–6 years old)	170,000	100	0.28	0.002	2,000

[1] Aggregate MOE = NOAEL (Avg Food Exposure + Residential Exposure).
[2] The crop producing the highest level was used (potatoes, 0.009 lb ai/acre).
[3] DWLOC(ppb) = [maximum water exposure (mg/kg/day) x bwt (kg)] ÷ [water consumption (L) x 10^{-3} mg/kg]
*(bwt: Children-10 kg).

4. *Intermediate-term risk.* The intermediate-term aggregate risk assessment estimates risks likely to result from 1–6 months of exposure to pyraflufen-ethyl residues from food, drinking water, and residential pesticide uses. High-end estimates of residential exposure are used in the intermediate-term assessment, while average values are used for food and drinking water exposure.

An intermediate-term aggregate risk assessment is not preformed for adults because no handler exposure is expected and postapplication inhalation exposure is expected to be negligible. Also, an intermediate-term aggregate risk assessment is not preformed for infants and children because postapplication exposure over the intermediate-term duration is not likely based on the use pattern.

5. *Aggregate cancer risk for U.S. population.* Pyraflufen-ethyl has been classified as a "Likely to be Carcinogenic to Humans" by the oral route of exposure (Q_1^* of 3.32×10^{-2} $(mg/kg/day)^{-1}$). Using the exposure assumptions discussed in this unit for cancer, the cancinogenic risk is determined for the U.S. population (total) only. The aggregate cancer DWLOC (2.3 ppb) is greater than EPA's estimates of pyraflufen-ethyl residues in drinking water. Therefore, the aggregate cancer risk from residues of pyraflufen-ethyl in food and drinking water does not exceed EPA's level of concern as shown in the following Table 5:

TABLE 5.—CANCER DWLOC CALCULATIONS FOR THE U.S. POPULATION

Q_1^* mg/kg/day)$^{-1}$	Negligible Risk Level[1]	Aggregate cancer risk (food and residential	Ground Water EEC[2] (ppb)	Surface Water EEC[2] (ppb)	Cancer DWLOC[3] (ppb)
0.0332	3.0E-6	8.3E-7	0.002	0.28	2.3

[1] Negligible risk is that below 10^{-6}. 3.0E-6 is statistically within the range that EPA generally accepts as "negligible risk".
[2] The crop producing the highest level was used (potatoes).
[3] Cancer DWLOC (ppb) = [maximum water exposure (mg/kg/day) x bwt (kg)] ÷ [water consumption (L) x 10^{-3} mg/kg]

6. *Determination of safety.* Based on these risk assessments, EPA concludes that there is a reasonable certainty that no harm will result to the general population, and to infants and children from aggregate exposure to pyraflufen-ethyl residues.

IV. Other Considerations

A. Analytical Enforcement Methodology

Nichino America, Inc. has submitted a petition method validation (PMV) and an independent laboratory validation for a Gas Chromatography/Mass Spectometry (GC/MS) method proposed for the enforcement of tolerances for residues of *pyraflufen ethyl* and its acid metabolite, E-1. The proposed plant method is adequate for enforcement of tolerances in/on cotton.

Adequate enforcement methodology (example—GC) is available to enforce the tolerance expression. The method may be requested from: Chief, Analytical Chemistry Branch, Environmental Science Center, 701 Mapes Rd., Ft. Meade, MD 20755–5350; telephone number: (410) 305–2905; e-mail address: *residuemethods@epa.gov.*

B. International Residue Limits

There is neither a Codex proposal, nor Canadian or Mexican limits, for residues of pyraflufen-ethyl in/on cotton. Harmonization is not an issue for this petition.

C. Conditions

A risk assessment for human health has been conducted for this proposed use. Using the proposed or recommended tolerances, the chronic estimates are well below the Agency's level of concern and the cancer risk estimate is also within Agency's level of concern. The following data are being required by the Agency to complete the database requirements prior to approval of an unconditional registration of pyraflufen-ethyl on cotton:

- Product label contain a statement limiting use to commercial applicators only so that possible use by homeowners on residential turf would be minimized and/or include a restriction prohibiting use by homeowners for the turf and ornamental use sites.
- Proposed uses in farmyards, farm buildings, fence lines, dry ditches and ditch banks be removed from the label due to the potential for residues to contact food sources in these use sites.
- The label for pyraflufen ethyl should clearly state the allowable number of applications per season.

V. Conclusion

Therefore, tolerances are established for combined residues of pyraflufen-ethyl (ethyl 2-chloro-5-(4-chloro-5-difluoromethoxy-1-methyl-1H-pyrazol-3-yl)-4-fluorophenoxyacetate) and its acid metabolite, E-1 (2-chloro-5-(4-chloro-5-difluoromethoxy-1-methyl-1H-pyrazol-3-yl)-4-fluorophenoxyacetic acid), expressed pyraflufen-ethyl in or on cotton undelinted seed at 0.04 ppm and cotton gin byproduct at 1.5 ppm.

VI. Objections and Hearing Requests

Under section 408(g) of the FFDCA, as amended by the FQPA, any person may file an objection to any aspect of this regulation and may also request a hearing on those objections. The EPA procedural regulations which govern the submission of objections and requests for hearings appear in 40 CFR part 178. Although the procedures in those regulations require some modification to reflect the amendments made to the FFDCA by the FQPA, EPA will continue to use those procedures, with appropriate adjustments, until the necessary modifications can be made. The new section 408(g) of the FFDCA provides essentially the same process for persons to "object" to a regulation for an exemption from the requirement of a tolerance issued by EPA under new section 408(d) of FFDCA, as was provided in the old sections 408 and 409 of the FFDCA. However, the period for filing objections is now 60 days, rather than 30 days.

A. What Do I Need to Do to File an Objection or Request a Hearing?

You must file your objection or request a hearing on this regulation in accordance with the instructions provided in this unit and in 40 CFR part 178. To ensure proper receipt by EPA, you must identify docket ID number OPP–2003–0163 in the subject line on the first page of your submission. All requests must be in writing, and must be mailed or delivered to the Hearing Clerk on or before July 21, 2003.

1. *Filing the request.* Your objection must specify the specific provisions in the regulation that you object to, and the grounds for the objections (40 CFR 178.25). If a hearing is requested, the objections must include a statement of the factual issues(s) on which a hearing is requested, the requestor's contentions on such issues, and a summary of any evidence relied upon by the objector (40 CFR 178.27). Information submitted in connection with an objection or hearing request may be claimed confidential by marking any part or all of that information as CBI. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the information that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice.

Mail your written request to: Office of the Hearing Clerk (1900C), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001. You may also deliver your request to the Office of the Hearing Clerk in Rm.104, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA. The Office of the Hearing Clerk is open from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Office of the Hearing Clerk is (703) 603–0061.

2. *Tolerance fee payment.* If you file an objection or request a hearing, you must also pay the fee prescribed by 40 CFR 180.33(i) or request a waiver of that fee pursuant to 40 CFR 180.33(m). You must mail the fee to: EPA Headquarters Accounting Operations Branch, Office of Pesticide Programs, P.O. Box 360277M, Pittsburgh, PA 15251. Please identify the fee submission by labeling it "Tolerance Petition Fees."

EPA is authorized to waive any fee requirement "when in the judgement of the Administrator such a waiver or refund is equitable and not contrary to the purpose of this subsection." For additional information regarding the waiver of these fees, you may contact James Tompkins by phone at (703) 305–5697, by e-mail at *tompkins.jim@epa.gov*, or by mailing a request for information to Mr. Tompkins at Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001.

If you would like to request a waiver of the tolerance objection fees, you must mail your request for such a waiver to: James Hollins, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001.

3. *Copies for the Docket.* In addition to filing an objection or hearing request with the Hearing Clerk as described in Unit VI.A., you should also send a copy of your request to the PIRIB for its inclusion in the official record that is described in Unit I.B.1. Mail your copies, identified by docket ID number OPP–2003–0163, to: Public Information and Records Integrity Branch, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001. In person or by courier, bring a copy to the location of the PIRIB described in Unit I.B.1. You may also send an electronic copy of your request via e-mail to: *opp-docket@epa.gov*. Please use an ASCII file format and avoid the use of special characters and any form of encryption. Copies of electronic objections and hearing requests will also be accepted on disks in WordPerfect 6.1/8.0 or ASCII file format. Do not include any CBI in your electronic copy. You may also submit an electronic copy of your request at many Federal Depository Libraries.

B. When Will the Agency Grant a Request for a Hearing?

A request for a hearing will be granted if the Administrator determines that the material submitted shows the following: There is a genuine and substantial issue of fact; there is a reasonable possibility that available evidence identified by the requestor would, if established resolve one or more of such issues in favor of the requestor, taking into account uncontested claims or facts to the contrary; and resolution of the factual issues(s) in the manner sought by the requestor would be adequate to justify the action requested (40 CFR 178.32).

VII. Statutory and Executive Order Reviews

This final rule establishes a tolerance under section 408(d) of the FFDCA in response to a petition submitted to the Agency. The Office of Management and Budget (OMB) has exempted these types of actions from review under Executive Order 12866, entitled *Regulatory Planning and Review* (58 FR 51735, October 4, 1993). Because this rule has been exempted from review under Executive Order 12866 due to its lack of significance, this rule is not subject to Executive Order 13211, *Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use* (66 FR 28355, May 22, 2001). This final rule does not contain any information collections subject to OMB approval under the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq.*, or impose any enforceable duty or contain any unfunded mandate as described under Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) (Public Law 104–4). Nor does it require any special considerations under Executive Order 12898, entitled *Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations* (59 FR 7629, February 16, 1994); or OMB review or any Agency action under Executive Order 13045, entitled *Protection of Children from Environmental Health Risks and Safety Risks* (62 FR 19885, April 23, 1997). This action does not involve any technical standards that would require Agency consideration of voluntary consensus standards pursuant to section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law 104–113, section 12(d) (15 U.S.C. 272 note). Since tolerances and exemptions that are established on the basis of a petition under section 408(d) of the FFDCA, such as the tolerance in this final rule, do not require the issuance of a proposed rule, the requirements of the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*) do not apply. In addition, the Agency has determined that this action will not have a substantial direct effect on States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132, entitled *Federalism*(64 FR 43255, August 10, 1999). Executive Order 13132 requires EPA to develop an accountable process to ensure "meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications." "Policies that have federalism implications" is defined in the Executive Order to include regulations that have "substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government." This final rule directly regulates growers, food processors, food handlers and food retailers, not States. This action does not alter the relationships or distribution of power and responsibilities established by Congress in the preemption provisions of section 408(n)(4) of the FFDCA. For these same reasons, the Agency has determined that this rule does not have any "tribal implications" as described in Executive Order 13175, entitled *Consultation and Coordination with Indian Tribal Governments* (65 FR 67249, November 6, 2000). Executive Order 13175, requires EPA to develop an accountable process to ensure "meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications." "Policies that have tribal implications" is defined in the Executive Order to include regulations that have "substantial direct effects on one or more Indian tribes, on the relationship between the Federal Government and the Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes." This rule will not have substantial direct effects on tribal governments, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified in Executive Order 13175. Thus, Executive Order 13175 does not apply to this rule.

VIII. Congressional Review Act

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of this final rule in the **Federal Register**. This final rule is not a "major rule" as defined by 5 U.S.C. 804(2).

List of Subjects in 40 CFR Part 180

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: May 7, 2003.

Debra Edwards,

Director, Registration Division, Office of Pesticide Programs.

■ Therefore, 40 CFR chapter I is amended as follows:

PART 180—[AMENDED]

■ 1. The authority citation for part 180 continues to read as follows:

Authority: 21 U.S.C. 321(q), 346(a) and 371.

■ 2. Section 180.585 is amended by alphabetically adding commodities in the table in paragraph (a) to read as follows:

§ 180.585 Pyraflufen-ethyl; tolerances for residues.

(a) * * *

Commodity	Parts per million
Cotton, gin byproduct	1.5
Cotton, undelinted seed	0.04

* * * * *

[FR Doc. 03–12359 Filed 5–20–03; 8:45 am]
BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[OPP–2003–0151; FRL–7305–2]

Indoxacarb; Pesticide Tolerances for Emergency Exemptions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation establishes a time-limited tolerance for combined residues of indoxacarb and its R-enantimomer in or on collards. This action is in response to EPA's granting of an emergency exemption under section 18 of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) authorizing use of the pesticide on collards. This regulation establishes a maximum permissible level for residues of indoxacarb in this food commodity. The tolerance will expire and is revoked on June 30, 2006.

DATES: This regulation is effective May 21, 2003. Objections and requests for hearings, identified by docket ID number OPP–2003–0151, must be received on or before July 21, 2003.

ADDRESSES: Written objections and hearing requests may be submitted electronically, by mail, or through hand delivery/courier. Follow the detailed instructions as provided in Unit VII. of the **SUPPLEMENTARY INFORMATION.**

FOR FURTHER INFORMATION CONTACT: Barbara Madden, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 305–6463; e-mail address: *Madden.Barbara@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

You may be potentially affected by this action if you are a federal or state government agency (NAICS 9241) involved in administration of environmental quality programs (i.e., Departments of Agriculture, Environment, etc).

This listing is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in this unit could also be affected. The North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether this action might apply to certain entities. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT.**

B. How Can I Get Copies of this Document and Other Related Information?

1. *Docket.* EPA has established an official public docket for this action under docket identification (ID) number OPP–2003–0151. The official public docket consists of the documents specifically referenced in this action, any public comments received, and other information related to this action. Although a part of the official docket, the public docket does not include Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. The official public docket is the collection of materials that is available for public viewing at the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA. This docket facility is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The docket telephone number is (703) 305–5805.

2. *Electronic access.* You may access this **Federal Register** document electronically through the EPA Internet under the "**Federal Register**" listings at *http://www.epa.gov/fedrgstr/.* A frequently updated electronic version of 40 CFR part 180 is available at *http://www.access.gpo.gov/nara/cfr/cfrhtml_00/Title_40/40cfr180_00.html,* a beta site currently under development.

An electronic version of the public docket is available through EPA's electronic public docket and comment system, EPA Dockets. You may use EPA Dockets at *http://www.epa.gov/edocket/* to submit or view public comments, access the index listing of the contents of the official public docket, and to access those documents in the public docket that are available electronically. Although not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the docket facility identified in Unit I.B.1. Once in the system, select "search," then key in the appropriate docket ID number.

II. Background and Statutory Findings

EPA, on its own initiative, in accordance with sections 408(e) and 408(l)(6) of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a, is establishing a tolerance for combined residues of the insecticide indoxacarb [(S)-methyl 7-chloro-2,5-dihydro-2-[[(methoxycarbonyl)[4-(trifluoromethoxy)phenyl] amino]carbonyl]indeno [1,2-e][1,3,4]oxadiazine-4a(3H)-carboxylate] and its R-enantimomer [(R)-methyl 7-chloro-2,5-dihydro-2-[[(methoxycarbonyl)[4-(trifluoromethoxy)phenyl] amino]carbonyl]indeno [1,2-e][1,3,4]oxadiazine-4a(3H)-carboxylate in or on collards at 3.0 parts per million (ppm). This tolerance will expire and is revoked on June 30, 2006. EPA will publish a document in the **Federal Register** to remove the revoked tolerance from the Code of Federal Regulations.

Section 408(l)(6) of the FFDCA requires EPA to establish a time-limited tolerance or exemption from the requirement for a tolerance for pesticide chemical residues in food that will result from the use of a pesticide under an emergency exemption granted by EPA under section 18 of FIFRA. Such tolerances can be established without providing notice or period for public comment. EPA does not intend for its actions on section 18-related tolerances to set binding precedents for the application of section 408 of the FFDCA and the new safety standard to other tolerances and exemptions. Section 408(e) of the FFDCA allows EPA to establish a tolerance or an exemption from the requirement of a tolerance on its own initiative, i.e., without having received any petition from an outside party.

Section 408(b)(2)(A)(i) of the FFDCA allows EPA to establish a tolerance (the legal limit for a pesticide chemical residue in or on a food) only if EPA determines that the tolerance is "safe." Section 408(b)(2)(A)(ii) of the FFDCA defines "safe" to mean that "there is a reasonable certainty that no harm will result from aggregate exposure to the pesticide chemical residue, including all anticipated dietary exposures and all other exposures for which there is reliable information." This includes exposure through drinking water and in residential settings, but does not include occupational exposure. Section 408(b)(2)(C) of the FFDCA requires EPA to give special consideration to exposure of infants and children to the pesticide chemical residue in establishing a tolerance and to "ensure that there is a reasonable certainty that no harm will result to infants and children from aggregate exposure to the pesticide chemical residue. . . ."

Section 18 of the FIFRA authorizes EPA to exempt any Federal or State agency from any provision of FIFRA, if EPA determines that "emergency conditions exist which require such exemption." This provision was not amended by the Food Quality Protection Act of 1996 (FQPA). EPA has established regulations governing such emergency exemptions in 40 CFR part 166.

III. Emergency Exemption for Indoxacarb on Collards and FFDCA Tolerances

The State of Georgia requested an emergency exemption use for indoxacarb (Avaunt®) for control of the diamondback moth in collards, since this pest appears to have developed resistance to almost all available chemical alternatives. Although spinosad has provided satisfactory diamondback moth control until recently, field failures were detected in 2002, suggesting that resistance may be involved. According to the State, potential yield losses tend to be either 0% or 100%, since in affected fields the damage level may be considered either acceptable or a cause for rejection, in which case the crop would not be harvested. The State estimated an overall 10% decrease in yield in the absence of effective insecticides and a doubling of insecticide costs from $24.50 to $49.00 because of a lack of efficacy leading to repeated applications. The 10% estimate represents anticipated total losses in a few fields and minor losses in fields with manageable moth populations. EPA has authorized under FIFRA section 18 the use of indoxacarb on collards for control of diamond back moth in Georgia. After having reviewed the submission, EPA concurs that emergency conditions exist for this State.

As part of its assessment of this emergency exemption, EPA assessed the potential risks presented by residues of indoxacarb in or on collards. In doing so, EPA considered the safety standard in section 408(b)(2) of the FFDCA, and EPA decided that the necessary tolerance under section 408(l)(6) of the FFDCA would be consistent with the safety standard and with FIFRA section 18. Consistent with the need to move quickly on the emergency exemption in order to address an urgent non-routine situation and to ensure that the resulting food is safe and lawful, EPA is issuing this tolerance without notice and opportunity for public comment as provided in section 408(l)(6) of the FFDCA. Although this tolerance will expire and is revoked on June 30, 2006, under section 408(l)(5) of the FFDCA, residues of the pesticide not in excess of the amounts specified in the tolerance remaining in or on collards after that date will not be unlawful, provided the pesticide is applied in a manner that was lawful under FIFRA, and the residues do not exceed a level that was authorized by this tolerance at the time of that application. EPA will take action to revoke this tolerance earlier if any experience with, scientific data on, or other relevant information on this pesticide indicate that the residues are not safe.

Because this tolerance is being approved under emergency conditions, EPA has not made any decisions about whether indoxacarb meets EPA's registration requirements for use on collards or whether a permanent tolerance for this use would be appropriate. Under these circumstances, EPA does not believe that this tolerance serves as a basis for registration of indoxacarb by a State for special local needs under FIFRA section 24(c). Nor does this tolerance serve as the basis for any State other than Georgia to use this pesticide on this crop under section 18 of FIFRA without following all provisions of EPA's regulations implementing FIFRA section 18 as identified in 40 CFR part 166. For additional information regarding the emergency exemption for indoxacarb, contact the Agency's Registration Division at the address provided under **FOR FURTHER INFORMATION CONTACT.**

IV. Aggregate Risk Assessment and Determination of Safety

EPA performs a number of analyses to determine the risks from aggregate exposure to pesticide residues. For further discussion of the regulatory requirements of section 408 of the FFDCA and a complete description of the risk assessment process, see the final rule on Bifenthrin Pesticide Tolerances (62 FR 62961, November 26, 1997) (FRL–5754–7).

Consistent with section 408(b)(2)(D) of the FFDCA, EPA has reviewed the available scientific data and other relevant information in support of this action. EPA has sufficient data to assess the hazards of indoxacarb and to make a determination on aggregate exposure, consistent with section 408(b)(2) of the FFDCA, for a time-limited tolerance for combined residues of indoxacarb [(S)-methyl 7-chloro-2,5-dihydro-2-[[(methoxycarbonyl)[4-(trifluoromethoxy) phenyl] amino] carbonyl]indeno[1,2-e][1,3,4]oxadiazine-4a(3H)-carboxylate] and its R-enantimomer [(R)-methyl 7-chloro-2,5-dihydro-2- [[(methoxycarbonyl)[4-(trifluoromethoxy)phenyl] amino] carbonyl]indeno[1,2-e][1,3,4] oxadiazine-4a(3H)-carboxylate] in or on collards at 3.0 ppm. EPA's assessment of the dietary exposures and risks associated with establishing the tolerance follows.

A. Toxicological Endpoints

EPA has evaluated the available toxicity data and considered its validity, completeness, and reliability as well as the relationship of the results of the studies to human risk. EPA has also considered available information concerning the variability of the sensitivities of major identifiable subgroups of consumers, including infants and children. The nature of the toxic effects caused by indoxacarb and the endpoints used in risk assessment are discussed in Unit III.A. and B. of the final rule on indoxacarb pesticide tolerances published in the **Federal Register** of July 18, 2002 (67 FR 47299) (FRL–7186–2). Please refer to that document should you desire detailed toxicological information on indoxacarb.

The Agency has identified an acute dietary endpoint for females 13 years and older and for the general population, including infants and children. The acute population adjusted dose (aPAD) for females is 0.02 milligrams/kilogram/day (mg/kg/day). The acute dietary endpoint for the general population including infants and children is 0.12 mg/kg/day. The chronic population adjusted dose (cPAD) for all populations is 0.02 mg/kg/day. Indoxacarb has been classified as "not likely" to be carcinogenic to humans.

B. Exposure Assessment

1. *Dietary exposure from food and feed uses.* Tolerances have been established (40 CFR 180.564) for the combined residues of indoxacarb, in or on a variety of raw agricultural commodities including alfalfa, head lettuce, peanuts, potatoes, and soybeans. Additionally, there are tolerances for milk, milk fat, meat, fat and meat by-products of cattle, goat, hog, horse, and sheep. Risk assessments were conducted by EPA to assess dietary exposures from indoxacarb in food as follows:

i. *Acute exposure.* Acute dietary risk assessments are performed for a food-use pesticide if a toxicological study has indicated the possibility of an effect of concern occurring as a result of a 1–day or single exposure. The Dietary Exposure Evaluation Model (DEEM® version 7.76) analysis evaluated the individual food consumption as reported by respondents in the U.S. Department of Agriculture (USDA) 1989–1992 nationwide Continuing

Surveys of Food Intake by Individuals (CSFII) and accumulated exposure to the chemical for each commodity. The following assumptions were made for the acute exposure assessments: Acute Tier II assessment, a partially refined analysis with use of anticipated residues (ARs) from field trial data, refined processing factors, and 100% crop treated.

ii. *Chronic exposure.* In conducting this chronic dietary risk assessment the DEEM® (version 7.76) analysis evaluated the individual food consumption as reported by respondents in the USDA 1989–1992 nationwide Continuing Surveys of Food Intake by Individuals (CSFII) and accumulated exposure to the chemical for each commodity. The following assumptions were made for the chronic exposure assessments: Tolerance level residues for all commodities and assumed all raw agricultural commodities were 100% treated with indoxacarb. Refined processing factors were used in the chronic analysis for several commodities, in place of the DEEM® default processing factors.

iii. *Cancer.* Indoxacarb has been classified as "not likely" to be carcinogenic to humans. Therefore, cancer risk was not assessed.

iv. *Anticipated residue information.* Section 408(b)(2)(E) of the FFDCA authorizes EPA to use available data and information on the anticipated residue levels of pesticide residues in food and the actual levels of pesticide chemicals that have been measured in food. If EPA relies on such information, EPA must require that data be provided 5 years after the tolerance is established, modified, or left in effect, demonstrating that the levels in food are not above the levels anticipated. Following the initial data submission, EPA is authorized to require similar data on a time frame it deems appropriate. As required by section 408(b)(2)(E) of the FFDCA, EPA will issue a data call-in for information relating to anticipated residues to be submitted no later than 5 years from the date of issuance of this tolerance.

2. *Dietary exposure from drinking water.* The Agency lacks sufficient monitoring exposure data to complete a comprehensive dietary exposure analysis and risk assessment for indoxacarb in drinking water. Because the Agency does not have comprehensive monitoring data, drinking water concentration estimates are made by reliance on simulation or modeling taking into account data on the physical characteristics of indoxacarb.

The Agency uses the Generic Estimated Environmental Concentration (GENEEC) or the Pesticide Root Zone/Exposure Analysis Modeling System (PRZM/EXAMS) to estimate pesticide concentrations in surface water and SCI-GROW, which predicts pesticide concentrations in ground water. In general, EPA will use GENEEC (a Tier I model) before using PRZM/EXAMS (a Tier II model) for a screening-level assessment for surface water. The GENEEC model is a subset of the PRZM/EXAMS model that uses a specific high-end runoff scenario for pesticides. GENEEC incorporates a farm pond scenario, while PRZM/EXAMS incorporate an index reservoir environment in place of the previous pond scenario. The PRZM/EXAMS model includes a percent crop area factor as an adjustment to account for the maximum percent crop coverage within a watershed or drainage basin.

None of these models include consideration of the impact processing (mixing, dilution, or treatment) of raw water for distribution as drinking water would likely have on the removal of pesticides from the source water. The primary use of these models by the Agency at this stage is to provide a coarse screen for sorting out pesticides for which it is highly unlikely that drinking water concentrations would ever exceed human health levels of concern.

Since the models used are considered to be screening tools in the risk assessment process, the Agency does not use estimated environmental concentrations (EECs) from these models to quantify drinking water exposure and risk as a percent reference dose (%RfD) or percent population adjusted dose (%PAD). Instead drinking water levels of comparison (DWLOCs) are calculated and used as a point of comparison against the model estimates of a pesticide's concentration in water. DWLOCs are theoretical upper limits on a pesticide's concentration in drinking water in light of total aggregate exposure to a pesticide in food, and from residential uses. Since DWLOCs address total aggregate exposure to indoxacarb they are further discussed in the aggregate risk sections below.

Based on the PRZM/EXAMS and SCI-GROW models, the EECs of indoxacarb for acute exposures are estimated to be 13.7 parts per billion (ppb) for surface water and 0.02 ppb for ground water. The EECs for chronic exposures are estimated to be 3.7 ppb for surface water and 0.02 ppb for ground water.

3. *From non-dietary exposure.* The term "residential exposure" is used in this document to refer to non-occupational, non-dietary exposure (e.g., for lawn and garden pest control, indoor pest control, termiticides, and flea and tick control on pets). Indoxacarb is not registered for use on any sites that would result in residential exposure.

4. *Cumulative exposure to substances with a common mechanism of toxicity.* Section 408(b)(2)(D)(v) of the FFDCA requires that, when considering whether to establish, modify, or revoke a tolerance, the Agency consider "available information" concerning the cumulative effects of a particular pesticide's residues and "other substances that have a common mechanism of toxicity."

EPA does not have, at this time, available data to determine whether indoxacarb has a common mechanism of toxicity with other substances or how to include this pesticide in a cumulative risk assessment. Unlike other pesticides for which EPA has followed a cumulative risk approach based on a common mechanism of toxicity, indoxacarb does not appear to produce a toxic metabolite produced by other substances. For the purposes of this tolerance action, therefore, EPA has not assumed that indoxacarb has a common mechanism of toxicity with other substances. For information regarding EPA's efforts to determine which chemicals have a common mechanism of toxicity and to evaluate the cumulative effects of such chemicals, see the final rule for Bifenthrin Pesticide Tolerances (62 FR 62961, November 26, 1997).

C. Safety Factor for Infants and Children

Section 408 of the FFDCA provides that EPA shall apply an additional tenfold margin of safety for infants and children in the case of threshold effects to account for prenatal and postnatal toxicity and the completeness of the data base on toxicity and exposure unless EPA determines that a different margin of safety will be safe for infants and children. Margins of safety are incorporated into EPA risk assessments either directly through use of a MOE analysis or through using uncertainty (safety) factors in calculating a dose level that poses no appreciable risk to humans.

The prenatal and postnatal toxicology data base for indoxacarb is complete with respect to FQPA considerations. The nature of the toxic effects caused by indoxacarb are discussed in Unit III.D. of the final rule on indoxacarb pesticide tolerances published in the **Federal Register** of July 18, 2002 (67 FR 47299) (FRL–7186–2). Please refer to that document should you desire detailed toxicological information on indoxacarb regarding FQPA considerations.

The Agency concluded that the FQPA safety factor could be reduced to 1X for indoxacarb. There is no indication of quantitative or qualitative increased susceptibility of rats or rabbits to *in utero* and/or postnatal exposure. EPA did require a developmental neurotoxicity study as confirmatory data. The requirement of a developmental neurotoxicity study is not based on the criteria reflecting special concern for the developing fetuses or young which are generally used for requiring a DNT study - and a safety factor (e.g., neuropathy in adult animals; central nervous system malformations following prenatal exposure; brain weight or sexual maturation changes in offspring; and/or functional changes in offspring) and therefore, does not warrant an FQPA safety factor; and the dietary (food and drinking water) exposure assessments will not underestimate the potential exposures for infants and children. There are no registered residential uses at the current time.

D. Aggregate Risks and Determination of Safety

To estimate total aggregate exposure to a pesticide from food, drinking water, and residential uses, the Agency calculates DWLOCs which are used as a point of comparison against the model estimates of a pesticide's concentration in water (EECs). DWLOC values are not regulatory standards for drinking water. DWLOCs are theoretical upper limits on a pesticide's concentration in drinking water in light of total aggregate exposure to a pesticide in food and residential uses. In calculating a DWLOC, the Agency determines how much of the acceptable exposure (i.e., the PAD) is available for exposure through drinking water (e.g., allowable chronic water exposure (mg/kg/day) = cPAD - (average food + chronic non-dietary, non-occupational exposure)). This allowable exposure through drinking water is used to calculate a DWLOC.

A DWLOC will vary depending on the toxic endpoint, drinking water consumption, and body weights. Default body weights and consumption values as used by the USEPA Office of Water are used to calculate DWLOCs: 2 liter (L)/70 kg (adult male), 2L/60 kg (adult female), and 1L/10 kg (child). Default body weights and drinking water consumption values vary on an individual basis. This variation will be taken into account in more refined screening-level and quantitative drinking water exposure assessments. Different populations will have different DWLOCs. Generally, a DWLOC is calculated for each type of risk assessment used: Acute, short-term, intermediate-term, chronic, and cancer.

When EECs for surface water and ground water are less than the calculated DWLOCs, EPA concludes with reasonable certainty that exposures to indoxacarb in drinking water (when considered along with other sources of exposure for which EPA has reliable data) would not result in unacceptable levels of aggregate human health risk at this time. Because EPA considers the aggregate risk resulting from multiple exposure pathways associated with a pesticide's uses, levels of comparison in drinking water may vary as those uses change. If new uses are added in the future, EPA will reassess the potential impacts of indoxacarb on drinking water as a part of the aggregate risk assessment process.

1. *Acute risk.* Using the exposure assumptions discussed in this unit for acute exposure, the acute dietary exposure from food to indoxacarb will occupy 12% of the aPAD for the U.S. population, 64% of the aPAD for females 13 years and older, 67% of the aPAD for all infants (<1 year old) and 79% of the aPAD for children 1–5 years old, the children subpopulations at greatest exposure. In addition, despite the potential for acute dietary exposure to indoxacarb in drinking water, after calculating DWLOCs and comparing them to conservative model EECs of indoxacarb in surface and ground water, EPA does not expect the aggregate exposure to exceed 100% of the aPAD, as shown in Table 1. below:

TABLE 1.—AGGREGATE RISK ASSESSMENT FOR ACUTE EXPOSURE TO INDOXACARB

Population Subgroup	aPAD (mg/kg)	% aPAD (Food)	Surface Water EEC (ppb)	Ground Water EEC (ppb)	Acute DWLOC (ppb)
U.S. population	0.12	12	13.7	0.02	3,700
All Infants (< 1year old)	0.12	67	13.7	0.02	400
Children (1–5 years old)	0.12	79	13.7	0.02	760
Females (13–40 years old)	0.02	64	13.7	0.02	218

2. *Chronic risk.* Using the exposure assumptions described in this unit for chronic exposure, EPA has concluded that exposure to indoxacarb from food will utilize 30% of the cPAD for the U.S. population, 29% of the cPAD for all infants (<1 year old) and 79% of the cPAD for children (1–2 years old), the children subpopulation at greatest exposure. There are no residential uses for indoxacarb that result in chronic residential exposure to indoxacarb. In addition, despite the potential for chronic dietary exposure to indoxacarb in drinking water, after calculating DWLOCs and comparing them to conservative model EECs of indoxacarb in surface and ground water, EPA does not expect the aggregate exposure to exceed 100% of the cPAD, as shown in Table 2. below:

TABLE 2.—AGGREGATE RISK ASSESSMENT FOR CHRONIC (NON- CANCER) EXPOSURE TO INDOXACARB

Population Subgroup	cPAD mg/kg/day	% cPAD (Food)	Surface Water EEC (ppb)	Ground Water EEC (ppb)	Chronic DWLOC (ppb)
U.S. population	0.02	30	3.7	0.02	490
All infants (< 1 year old)	0.02	29	3.7	0.02	65

TABLE 2.—AGGREGATE RISK ASSESSMENT FOR CHRONIC (NON- CANCER) EXPOSURE TO INDOXACARB—Continued

Population Subgroup	cPAD mg/kg/day	% cPAD (Food)	Surface Water EEC (ppb)	Ground Water EEC (ppb)	Chronic DWLOC (ppb)
Children (1–2 years old)	0.02	79	3.7	0.02	30

3. *Short-term risk.* Short-term aggregate exposure takes into account residential exposure plus chronic exposure to food and water (considered to be a background exposure level). Indoxacarb is not registered for use on any sites that would result in residential exposure. Therefore, the aggregate risk is the sum of the risk from food and water, which were previously addressed.

4. *Intermediate-term risk.* Intermediate-term aggregate exposure takes into account non-dietary, non-occupational exposure plus chronic exposure to food and water (considered to be a background exposure level). Indoxacarb is not registered for use on any sites that would result in residential exposure. Therefore, the aggregate risk is the sum of the risk from food and water, which were previously addressed.

5. *Aggregate cancer risk for U.S. population.* Indoxacarb has been classified as "not likely" to be carcinogenic to humans. Therefore, cancer risk was not assessed.

6. *Determination of safety.* Based on these risk assessments, EPA concludes that there is a reasonable certainty that no harm will result to the general population, and to infants and children from aggregate exposure to indoxacarb residues.

V. Other Considerations

A. Analytical Enforcement Methodology

The petitioner has submitted a method for enforcing tolerances of indoxacarb in/on plant commodities, a high-performance liquid chromatography (HPLC)/column switching/ultraviolet (UV) detector method (AMR 2712–93). This method has been radiovalidated and undergone a successful independent laboratory validation (ILV) and a successful petition method validation (PMV) trial by the Analytical Chemistry Laboratory (ACL). The HPLC/UV Method AMR 2712–93 was forwarded to the Food and Drug Administration for inclusion in the Pesticide Analytical Manual (PAM), Vol. II). The Agency has determined that this method is suitable for enforcement of the tolerances associated with this petition.

Adequate enforcement methodology is available to enforce the tolerance expression. The method may be requested from: Chief, Analytical Chemistry Branch, Environmental Science Center, 701 Mapes Rd., Ft. Meade, MD 20755–5350; telephone number: (410) 305–2905; e-mail address: *residuemethods@epa.gov*.

B. International Residue Limits

There are no Mexican, Canadian or Codex Maximum Residue Limits (MRLs) established for indoxacarb on collards. Therefore, no compatibility problems exist for the proposed tolerance.

VI. Conclusion

Therefore, the tolerance is established for combined residues of the insecticide indoxacarb [(S)-methyl 7-chloro-2,5-dihydro-2-[[(methoxycarbonyl)[4-(trifluoromethoxy)phenyl] amino]carbonyl]indeno[1,2-e][1,3,4]oxadiazine-4a(3H)-carboxylate] and its R-enantimomer [(R)-methyl 7-chloro-2,5-dihydro-2-[[(methoxycarbonyl) [4-(trifluoromethoxy)phenyl] amino]carbonyl] indeno[1,2-e][1,3,4]oxadiazine-4a(3H)-carboxylate] in or on collards at 3.0 ppm.

VII. Objections and Hearing Requests

Under section 408(g) of the FFDCA, as amended by the FQPA, any person may file an objection to any aspect of this regulation and may also request a hearing on those objections. The EPA procedural regulations which govern the submission of objections and requests for hearings appear in 40 CFR part 178. Although the procedures in those regulations require some modification to reflect the amendments made to the FFDCA by the FQPA, EPA will continue to use those procedures, with appropriate adjustments, until the necessary modifications can be made. The new section 408(g) of the FFDCA provides essentially the same process for persons to "object" to a regulation for an exemption from the requirement of a tolerance issued by EPA under new section 408(d) of the FFDCA, as was provided in the old sections 408 and 409 of the FFDCA. However, the period for filing objections is now 60 days, rather than 30 days.

A. What Do I Need to Do to File an Objection or Request a Hearing?

You must file your objection or request a hearing on this regulation in accordance with the instructions provided in this unit and in 40 CFR part 178. To ensure proper receipt by EPA, you must identify docket ID number OPP–2003–0151 in the subject line on the first page of your submission. All requests must be in writing, and must be mailed or delivered to the Hearing Clerk on or before July 21, 2003.

1. *Filing the request.* Your objection must specify the specific provisions in the regulation that you object to, and the grounds for the objections (40 CFR 178.25). If a hearing is requested, the objections must include a statement of the factual issues(s) on which a hearing is requested, the requestor's contentions on such issues, and a summary of any evidence relied upon by the objector (40 CFR 178.27). Information submitted in connection with an objection or hearing request may be claimed confidential by marking any part or all of that information as CBI. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the information that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice.

Mail your written request to: Office of the Hearing Clerk (1900C), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001. You may also deliver your request to the Office of the Hearing Clerk in Rm.104, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA. The Office of the Hearing Clerk is open from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Office of the Hearing Clerk is (703) 603–0061.

2. *Tolerance fee payment.* If you file an objection or request a hearing, you must also pay the fee prescribed by 40 CFR 180.33(i) or request a waiver of that fee pursuant to 40 CFR 180.33(m). You must mail the fee to: EPA Headquarters Accounting Operations Branch, Office of Pesticide Programs, P.O. Box 360277M, Pittsburgh, PA 15251. Please identify the fee submission by labeling it "Tolerance Petition Fees."

EPA is authorized to waive any fee requirement "when in the judgement of the Administrator such a waiver or refund is equitable and not contrary to the purpose of this subsection." For additional information regarding the waiver of these fees, you may contact James Tompkins by phone at (703) 305–5697, by e-mail at *tompkins.jim@epa.gov*, or by mailing a request for information to Mr. Tompkins at Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001.

If you would like to request a waiver of the tolerance objection fees, you must mail your request for such a waiver to: James Hollins, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001.

3. *Copies for the Docket.* In addition to filing an objection or hearing request with the Hearing Clerk as described in Unit VII.A., you should also send a copy of your request to the PIRIB for its inclusion in the official record that is described in Unit I.B.1. Mail your copies, identified by the docket ID number OPP–2003–0151, to: Public Information and Records Integrity Branch, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001. In person or by courier, bring a copy to the location of the PIRIB described in Unit I.B.1. You may also send an electronic copy of your request via e-mail to: *opp-docket@epa.gov*. Please use an ASCII file format and avoid the use of special characters and any form of encryption. Copies of electronic objections and hearing requests will also be accepted on disks in WordPerfect 6.1/8.0 or ASCII file format. Do not include any CBI in your electronic copy. You may also submit an electronic copy of your request at many Federal Depository Libraries.

B. When Will the Agency Grant a Request for a Hearing?

A request for a hearing will be granted if the Administrator determines that the material submitted shows the following: There is a genuine and substantial issue of fact; there is a reasonable possibility that available evidence identified by the requestor would, if established resolve one or more of such issues in favor of the requestor, taking into account uncontested claims or facts to the contrary; and resolution of the factual issues(s) in the manner sought by the requestor would be adequate to justify the action requested (40 CFR 178.32).

VIII. Statutory and Executive Order Reviews

This final rule establishes a time-limited tolerance under section 408 of the FFDCA. The Office of Management and Budget (OMB) has exempted these types of actions from review under Executive Order 12866, entitled *Regulatory Planning and Review* (58 FR 51735, October 4, 1993). Because this rule has been exempted from review under Executive Order 12866 due to its lack of significance, this rule is not subject to Executive Order 13211, *Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use* (66 FR 28355, May 22, 2001). This final rule does not contain any information collections subject to OMB approval under the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq.*, or impose any enforceable duty or contain any unfunded mandate as described under Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) (Public Law 104–4). Nor does it require any special considerations under Executive Order 12898, entitled *Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations* (59 FR 7629, February 16, 1994); or OMB review or any Agency action under Executive Order 13045, entitled *Protection of Children from Environmental Health Risks and Safety Risks* (62 FR 19885, April 23, 1997). This action does not involve any technical standards that would require Agency consideration of voluntary consensus standards pursuant to section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law 104–113, section 12(d) (15 U.S.C. 272 note). Since tolerances and exemptions that are established on the basis of a FIFRA section 18 exemption under section 408 of the FFDCA, such as the tolerance in this final rule, do not require the issuance of a proposed rule, the requirements of the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*) do not apply. In addition, the Agency has determined that this action will not have a substantial direct effect on States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132, entitled *Federalism* (64 FR 43255, August 10, 1999). Executive Order 13132 requires EPA to develop an accountable process to ensure "meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications." "Policies that have federalism implications" is defined in the Executive Order to include regulations that have "substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government." This final rule directly regulates growers, food processors, food handlers, and food retailers, not States. This action does not alter the relationships or distribution of power and responsibilities established by Congress in the preemption provisions of section 408(n)(4) of the FFDCA. For these same reasons, the Agency has determined that this rule does not have any "tribal implications" as described in Executive Order 13175, entitled *Consultation and Coordination with Indian Tribal Governments* (65 FR 67249, November 6, 2000). Executive Order 13175, requires EPA to develop an accountable process to ensure "meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications." "Policies that have tribal implications" is defined in the Executive Order to include regulations that have "substantial direct effects on one or more Indian tribes, on the relationship between the Federal Government and the Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes." This rule will not have substantial direct effects on tribal governments, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified in Executive Order 13175. Thus, Executive Order 13175 does not apply to this rule.

IX. Congressional Review Act

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of this final

rule in the **Federal Register**. This final rule is not a "major rule" as defined by 5 U.S.C. 804(2).

List of Subjects in 40 CFR Part 180

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: May 9, 2003.

Debra Edwards,

Director, Registration Division, Office of Pesticide Programs.

■ Therefore, 40 CFR chapter I is amended as follows:

PART 180—[AMENDED]

■ 1. The authority citation for part 180 continues to read as follows:

Authority: 21 U.S.C. 321(q), 346(a) and 371.

■ 2. Section 180.564 is amended by alphabetically adding the following commodity to the table in paragraph (b) to read as follows:

§ 180.564 Indoxacarb; tolerances for residues.

* * * * *

(b) * * *

Commodity	Parts per million	Expiration/revocation date
Collards	3.0	06/30/06

* * * * *

[FR Doc. 03–12480 Filed 5–20–03; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 300

[FRL–7499–8]

National Oil and Hazardous Substances Pollution Contingency Plan; National Priorities List

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of partial deletion of Cecil Field Naval Air Station (Site) From the National Priorities List (NPL).

SUMMARY: The Environmental Protection Agency, Region 4, announces the partial deletion of the Cecil Field Naval Air Station Superfund Site (the "Site") (EPA ID# FL 5170022474) from the National Priorities List (NPL). The portion to be deleted is described below. The NPL is codified as appendix B to the National Oil and Hazardous Substances Pollution Contingency Plan (NCP), 40 CFR part 300, which EPA promulgated pursuant to section 105 of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), as amended, 42 U.S.C. 9605. The EPA has determined, with the concurrence of the State of Florida through its Department of Environmental Protection, that the parcels to be deleted under this action do not pose a significant threat to public health or the environment, as defined by CERCLA, and therefore, further remedial measures pursuant to CERCLA are not appropriate for these parcels.

The remaining parcels comprising the Cecil Field Naval Air Station Superfund Site will remain on the NPL. Response actions are either underway at these parcels or the parcels do not require any further response action other than operation and maintenance activities and enforcement.

EFFECTIVE DATE: June 20, 2003.

FOR FURTHER INFORMATION CONTACT: Deborah A. Vaughn-Wright, Remedial Project Manager, Federal Facilities Branch, Waste Management Division, U.S. Environmental Protection Agency, 61 Forsyth Street, Atlanta, Georgia 30303, 404–562–8539, fax 404–562–8518, e-mail *vaughn-wright.debbie@epa.gov*.

SUPPLEMENTARY INFORMATION: The portions of Cecil Field to be deleted from the NPL include OU 4 (site 10), OU 5 (site 14), OU 12 (sites 44, 42 and the Old Golf Course) and an additional 16,527 acres which are not associated with an operable unit that have been evaluated as not posing a risk to human health and the environment (BRAC environmental condition of property 1, 2, 3 and 4).

The boundaries of the base are within the following coordinates: 30.3012 North Latitude, 81.9306 West Longitude; 30.3012 North Latitude, 81.9244 West Longitude; 30.3063 North Latitude, 81.8781 West Longitude; 30.2468 North Latitude, 81.8445 West Longitude; 30.1784 North Latitude, 81.8676 West Longitude; 30.1783 North Latitude, 81.8847 West Longitude. Within these coordinates are several areas which are not part of this partial deletion. The areas not included are Building 635, Building 605, Potential Source of Contamination (PSC) 51 (Current golf Course), Operable Unit (OU) 1 (Sites 1—Old Landfill and Site 2—recent landfill), OU 2 (Site 5—Oil Disposal Area Northwest and Site 17—Oil and Sludge Disposal Pit Southwest), OU 3 (Site 7—Old Firefighter Training Area and Site 8—Boresite Range/Hazardous Waste Storage/Firefighting Area), OU 5 (Site 15—Blue 10 Ordnance Disposal Area, Site 49—Recent Skeet Range), OU 6 (site 11—Golf Course Pesticide Disposal Area), OU 7, (Site 16—AIMD Seepage Pit/NDI Holding Tank), OU 8 (Site 3—Oil and Sludge Disposal Pit), OU 9 (Site 36—Control Tower TCE Plume, Site 37—Hangars 13 and 14 DCE Plume, Site 57—Building 824A/Day Tank 1 Area, and Site 58—Building 312 Area), OU 10 (Site 21—Golf Course Maintenance Area and Site 25—Former Transformer Storage Area), OU 11 (Site 45—Former Steam Generating Plant), and OU 12 (Site 32—Former DRMO Area). A Notice of Intent to Delete for this site was published in the **Federal Register** on January 29, 2003 (68 FR 4429). The closing date for comments on the Notice of Intent to Delete was March 31, 2003. EPA received no comments during this period.

The EPA identifies sites which appear to present a significant risk to public health, welfare, or the environment and it maintains the NPL as the list of those sites. Deletion from the NPL does not necessarily preclude further remedial action. Federal Facilities are not subject of the Hazardous Substances Response Fund (Fund) financed remedial actions. However, all federal facilities have a continuing statutory duty to conduct further remediation, if required even after the federal property is transferred to non-federal owners.

List of Subjects in 40 CFR Part 300

Environmental protection, Air pollution control, Chemicals, Hazardous substances, Hazardous waste, Intergovernmental relations, Penalties, Reporting and recordkeeping requirements, Superfund, Water pollution control, Water supply.

Dated: April 18, 2003.

A. Stanley Meiburg,

Acting Regional Administrator, Region 4.

■ For the reasons set out in the preamble, 40 CFR part 300, Title 40 of Chapter 1 of the Code of Federal Regulations is amended as follows:

PART 300—[AMENDED]

■ 1. The authority citation for part 300 continues to read as follows:

Authority: 42 U.S.C. 9601–9657; 33 U.S.C. 1321(c)(2); E.O. 12777, 56 FR 54757, 3 CFR, 1991 Comp.; p. 351; E.O. 12580, 52 FR 2923, 3 CFR, 1987 Comp.; p. 193.

Appendix B—[Amended]

■ 2. Table 2 of appendix B to part 300 is amended by revising the entry for Cecil Field Naval Air Station to read as follows:

Appendix B to Part 300—National Priorities List

* * * * *

TABLE 2.—FEDERAL FACILITIES SECTION

St	Site name	City/County	Notes (a)
FL	Cecil Field Naval Air Station	Jacksonville	P

(a) * * *

* * * * * * *

P=Sites within partial deletion(s).

[FR Doc. 03–12476 Filed 5–20–03; 8:45 am]

BILLING CODE 6560–50–M

DEPARTMENT OF HOMELAND SECURITY

Transportation Security Administration

49 CFR Parts 1510 and 1511

[Docket No. TSA–2001–11120 and TSA–2002–11334; Amendment Nos. 1510–2 and 1511–1]

RIN 1652–AA29

Temporary Suspension of the September 11th Security Fee and the Aviation Security Infrastructure Fee

AGENCY: Transportation Security Administration (TSA), DHS.

ACTION: Temporary final rule.

SUMMARY: The Transportation Security Administration (TSA) is issuing this rule to temporarily suspend the September 11, 2001, Passenger Civil Aviation Security Service Fee and the Aviation Security Infrastructure Fee (ASIF) during the period beginning June 1, 2003, and ending September 30, 2003, as provided in Public Law 108–11, enacted on April 16, 2003, titled, "Emergency Wartime Supplemental Appropriations Act, 2003" (Appropriations Act).

TSA interprets the Appropriations Act to prohibit TSA from requiring passengers to pay the September 11th Security Fee if they purchase air transportation during the suspension period, regardless of whether the air transportation actually takes place during the suspension period. Accordingly, TSA will not impose the September 11th Security Fee on air transportation purchased from 12 a.m., Eastern Daylight Time, on June 1, 2003, through 11:59 p.m., Eastern Daylight Time, on September 30, 2003.

The Appropriations Act also prohibits TSA from imposing the ASIF during the suspension period. Therefore, air carriers and foreign air carriers engaged in air transportation will not incur any obligations to make ASIF payments to TSA for the months of June, July, August, and September of 2003, which otherwise would have been required to be paid to TSA by the last day of July, August, September, and October of 2003, respectively.

DATES: This rule is effective from June 1, 2003, through September 30, 2003.

FOR FURTHER INFORMATION CONTACT: Randall Fiertz, Office of Revenue, Office of Finance and Administration, Transportation Security Administration Headquarters, West Building, Floor 5, TSA–14, 400 Seventh Street, SW., Washington, DC 20590; e-mail: *TSA-Fees@dhs.gov*, telephone: 571–227–2323; or Susan Truax, Office of the Chief Counsel, Transportation Security Administration Headquarters, West Building, Floor 8, TSA–2, 400 Seventh Street, SW., Washington, DC 20590; e-mail: *Susan.Truax@dhs.gov*, telephone: 571–227–1996.

SUPPLEMENTARY INFORMATION:

Availability of Rulemaking Document

You can get an electronic copy using the Internet by—

(1) Searching the Department of Transportation's electronic Docket Management System (DMS) web page (*http://dms.dot.gov/search*);

(2) Accessing the Government Printing Office's web page at *http://www.access.gpo.gov/su_docs/aces/aces140.html*; or

(3) Visiting the TSA's Law and Policy web page at *http://www.tsa.dot.gov/public/index.jsp*.

In addition, copies are available by writing or calling the individuals in the **FOR FURTHER INFORMATION CONTACT** section. Make sure to identify the docket number of this rulemaking.

Small Entity Inquiries

The Small Business Regulatory Enforcement Fairness Act (SBREFA) of 1996 requires TSA to comply with small entity requests for information and advice about compliance with statutes and regulations within the TSA's jurisdiction. Any small entity that has a question regarding this document may contact the individuals listed in **FOR FURTHER INFORMATION CONTACT**. Persons can obtain further information regarding SBREFA on the Small Business Administration's web page at *http://www.sba.gov/advo/laws/law_lib.html*.

Good Cause for Immediate Adoption

This action is being taken without providing the opportunity for notice and comment, and it provides for an effective date less than 30 days after publication in the **Federal Register**.

Section 44940(d)(1) of title 49, U.S.C. explicitly exempts the imposition of the civil aviation security fees authorized in section 44940 from the procedural rulemaking notice and comment procedures set forth in 5 U.S.C. 553 of the Administrative Procedure Act (APA). Apart from that exemption, the APA allows an agency to forego notice and comment rulemaking when "the agency for good cause finds * * * that notice and public procedures thereon are impracticable, unnecessary, or contrary to the public interest." 5 U.S.C. 553(b). TSA finds good cause under 5 U.S.C. 553 that notice and comment are impracticable and contrary to the public interest before issuing this rule. Immediate action is necessary to provide sufficient time to direct and foreign air carriers to implement any necessary changes in their business practices before the beginning of the suspension period.

Further, as the Appropriations Act mandates the effective dates for the suspension period of the civil aviation security fees, the Administrator finds

that good cause exists under 5 U.S.C. 553(d) for making this final rule effective less than 30 days after the date of publication in the **Federal Register**.

Background

Under 49 U.S.C. 44940 and the Transportation Security Regulations at 49 CFR parts 1510 and 1511, respectively, air carriers and foreign air carriers are required to pay to TSA fees known as the September 11th Security Fee and the Aviation Security Infrastructure Fee (ASIF).

The September 11th Security Fee is a fee in the amount of $2.50 per enplanement imposed by TSA on passengers of domestic and foreign air carriers in air transportation, foreign air transportation, and intrastate air transportation originating at airports in the United States. This fee is limited to $2.50 per enplanement for up to two enplanements (or up to $5) per one-way trip or four enplanements (or up to $10) per round trip. 49 CFR 1510.5(a). Section 118 of the Aviation and Transportation Security Act (ATSA) (Pub. L. 107–71; 11/19/2001) authorized TSA to impose the September 11th Security Fee to help pay TSA's costs of providing civil aviation security services. Under 49 CFR 1510.9(a) and (b), direct air carriers and foreign air carriers must collect from each passenger a September 11th Security Fee on air transportation sold on or after February 1, 2002.

The ASIF is a fee imposed by TSA on air carriers and foreign air carriers engaged in air transportation, foreign air transportation, and intrastate air transportation, based on each carrier's security costs incurred in the year 2000. Section 118 of the ATSA authorized TSA to impose the ASIF, to the extent that the September 11th Security Fee was insufficient to pay TSA's costs of providing civil aviation security services. Under 49 CFR 1511.5 and 1511.7(b), each air carrier and foreign air carrier engaged in air transportation must pay to TSA the ASIF incurred for each month by the last calendar day of the following month. For months up to and including September of 2004, the payment is 8.333 percent of the total amount of the carrier's costs of screening passengers and property transported by passenger aircraft in the United States during calendar year 2000.

On April 16, 2003, the President signed into law the Appropriations Act, which among other things, prohibits the Under Secretary for Border and Transportation Security (BTS) of the Department of Homeland Security from imposing the September 11th Security Fee and the ASIF during the period beginning June 1, 2003, and ending September 30, 2003 (suspension period). TSA, which is an agency within the Department of Homeland Security and operating under the direction of the Under Secretary of BTS, is the agency charged with imposing these fees by regulation. Therefore, TSA is publishing this rule to temporarily suspend these fees as required by the Appropriations Act. Unless otherwise defined in this document, any terms used in this document have the meaning set forth in 49 CFR parts 1510 and 1511.

Discussion of the Rule

During the suspension period from June 1, 2003, through September 30, 2003, TSA is suspending §§ 1510.5 and 1510.9(a) through (c), as well as §§ 1511.5(a) through (c) and 1511.7(b), and adding new §§ 1510.23 and 1511.15, respectively.

Suspension of the September 11th Security Fee

The Appropriations Act prohibits TSA from imposing the September 11th Security Fee during the suspension period. TSA interprets this provision to mean that TSA may not require passengers to pay the September 11th Security Fee if they purchase air transportation (tickets) during the suspension period, regardless of whether the air transportation actually takes place during the suspension period. Accordingly, TSA is establishing the following requirements governing direct and foreign air carrier compliance with 49 CFR part 1510 during the suspension period.

Tickets Purchased During the Suspension Period. Under TSA's regulation at 49 CFR 1510.9, where a passenger purchases a ticket from a direct or foreign air carrier, or from the carrier's agent such as a travel agent, the carrier must collect the September 11th Security Fee from the passenger at that time. Notwithstanding 49 CFR 1510.9(a) and (b), a direct air carrier or foreign air carrier must not collect the September 11th Security Fee from any passenger for air transportation sold during the suspension period. This means that when a passenger purchases a ticket from a direct or foreign air carrier or its agent and the passenger pays in full for the ticket at any time from 12 a.m., Eastern Daylight Time, on June 1, 2003 through 11:59 p.m., Eastern Daylight Time, on September 30, 2003, the carrier must not collect the September 11th Security Fee from the passenger. Since 49 CFR 1510.5(c) imposes the security fee on passengers obtaining tickets by redeeming frequent flyer awards, the carrier must not collect the fee on such tickets issued during the suspension period. In addition, notwithstanding 49 CFR 1510.9(c), the direct or foreign air carrier will not incur any obligation to pay the amount of such uncollected fee to TSA.

Under 49 CFR 1510.9(d), direct and foreign air carriers may not collect the September 11th Security Fee unless required by part 1510. Therefore, if a direct or foreign air carrier collects a September 11th Security Fee from a passenger who purchases a ticket during the suspension period, the carrier must refund the fee to the passenger.

Direct and foreign air carriers must continue to collect the September 11th Security Fee on air transportation purchased by passengers through 11:59 p.m., Eastern Daylight Time, on May 31, 2003, even if the flight for which the transportation is purchased is to be operated during the suspension period.

Tickets Reissued During the Suspension Period. If a passenger purchases a ticket before the suspension period begins and the carrier reissues a replacement ticket during the suspension period without any changes to the original itinerary, the carrier continues to be responsible for collecting the amount of the September 11th Security Fee that applied upon the initial purchase of the ticket. If, as a result of the reissuance, however, the ticket is repriced during the suspension period, TSA considers the date the ticket was reissued to be the date the passenger purchased the ticket. Therefore, the September 11th Security Fee will not apply to the reissued ticket. Repricing a ticket means a transaction in which the itinerary of a paid ticket is revised due to voluntary changes made by the passenger and the ticket is reissued to determine the new price of the itinerary. Section 1510.5(c) of 49 CFR imposes the fee on tickets obtained by redeeming frequent flyer awards. However, upgrades using these awards are not charged an additional fee. Therefore, redeeming these awards during the suspension period for cabin upgrades must not be treated as repricing the ticket and the fee must continue to be charged. Free upgrades also do not constitute repricing and therefore do not result in refund of the fee.

Example 1. A passenger purchases a round-trip ticket before the suspension period with two enplanements per one-way trip (for a total of four enplanements) and, due to changes made by the passenger, the carrier reissues the ticket during the suspension period with a revised itinerary of one enplanement per trip (for a total of two enplanements), which results in repricing of the itinerary. The carrier must refund to the passenger the amount of the September 11th Security Fee previously collected when the passenger initially purchased the ticket, and the carrier must not collect the fee for the reissued ticket.

Example 2. If a passenger purchases a ticket before the suspension period and the carrier reissues the ticket during the suspension period because the passenger redeems frequent flier awards in order to obtain an upgrade, the carrier must not refund the September 11th Security Fee it collected when the passenger initially purchased the ticket. Similarly, if the carrier reissues the ticket during the suspension period because the carrier provided a free upgrade, the carrier must not refund the September 11th Security Fee.

Example 3. If a passenger purchases a ticket prior to the suspension period and the travel is already underway during the suspension period and there is a repricing of the ticket, the carrier must not collect the September 11th Security Fee for the changed or unused portion of the itinerary. Therefore, any fee collected for the changed or unused portion of the itinerary must be refunded to the passenger.

Prepaid Air Transportation. In the case of prepaid air transportation (for example, prepaid ticket advice), if the passenger fully prepays air transportation before the suspension period and the carrier issues a ticket against the prepaid amount during the suspension period, the carrier must collect the September 11th Security Fee for that ticket, because TSA considers the air transportation to have been purchased before the suspension period. However, if a passenger fully prepays air transportation during the suspension period and the carrier issues a ticket against the prepaid amount during or after the suspension period, the carrier must not collect the September 11th Security Fee for that ticket.

Tickets for Passengers on Public Charter Flights. As discussed above, under TSA's regulation at 49 CFR 1510.9, where a passenger purchases a ticket from a direct or foreign air carrier, or from the carrier's agent such as a travel agent, the carrier must collect the September 11th Security Fee from the passenger at the time of ticket purchase. On January 25, 2002, TSA issued a letter clarifying when the fee is considered to be collected in the case of passengers who purchase tickets on public charter flights.[1]

[1] You may obtain an electronic copy of the letter by accessing TSA's electronic docket for TSA 2001–11120. Using the search function of the Department of Transportation's electronic Docket Management System (DMS) Web page (*http://dms.dot.gov/search*), type in the last 5 digits of the docket number shown above. Click on "search." On the next page, which contains the docket summary information for the docket you selected, click on the link for TSA 2001–11120–11.

Unlike in the case of scheduled passenger flights, passengers on public charter flights purchase their tickets from a public charter operator. Regulations of the Department of Transportation require the charter operator to place all funds collected from passengers in an escrow account and to forward payment to the direct or foreign air carrier operating the flight at a later date.[2] In its January 25th letter, TSA made clear that tickets purchased by public charter passengers are not considered to be sold for purposes of TSA's regulations governing the September 11th Security Fee, until the earlier of: (1) The time the direct or foreign air carrier receives funds from the public charter escrow account; or (2) the date the direct or foreign air carrier operates the flight. The purpose of this interpretation by TSA was to more closely align a direct or foreign air carrier's obligation to pay the fee to TSA with its actual receipt of the fee from the public charter operator. TSA will maintain the existing payment structure for the charter operators to remit the September 11th Security Fees to direct and foreign air carriers while also maintaining the requirements for direct and foreign air carriers to remit the fees to TSA during and after the suspension period.

As a result, however, the definition of when air transportation is sold on a public charter flight for purposes of 49 CFR part 1510 does not coincide with the time the passenger actually purchases a ticket for that flight. As discussed above, the Appropriations Act suspends the imposition of fees on air transportation that a passenger actually purchases during the suspension period. Accordingly, TSA is providing the following guidance to direct and foreign air carriers related to air transportation on public charter flights. During the suspension of the September 11th Security Fee, TSA will (1) continue to allow direct air carriers to remit the already collected fees to TSA according to the structure identified in the January 25, 2002, letter; however (2) Charter operators may not collect September 11th Security Fees from passengers paying in full during the suspension period.

Additional Guidance for Suspension of Fees for Public Charter Passengers. For passengers on public charter flights, when the passenger purchases a ticket from the charter operator, which means paying the charter operator *in full* for the ticket at any time from 12 a.m., Eastern Daylight Time, on June 1, 2003 through 11:59 p.m., Eastern Daylight Time, on September 30, 2003, the public charter operator must not collect the September 11th Security Fee from the passenger. In addition, since the fee will not be imposed on passengers, the direct or foreign air carrier operating the flight must not collect the September 11th Security Fee from the charter operator for any passengers who purchased tickets from the public charter operator during the suspension period. Notwithstanding 49 CFR 1510.9(c), the direct or foreign air carrier will not incur any obligation to pay the amount of such fee (not collected from passengers) to TSA.

Continuing Payment of Fees to TSA. Under 49 CFR 1510.13(a), direct and foreign air carriers must pay all September 11th Security Fees imposed each calendar month to TSA by the last calendar day of the month following the imposition of the fee. Therefore, direct and foreign air carriers must pay to TSA any September 11th Security Fees imposed on tickets purchased during the month of May, 2003, no later than June 30, 2003. In addition, any other security fees imposed prior to the suspension period, but not remitted by air carriers to TSA, are still due to TSA during and after the suspension period.

In the case of tickets purchased on public charter flights, direct and foreign air carriers must continue to forward to TSA, in accordance with 49 CFR 1510, any September 11th Security Fees paid by passengers who purchased tickets prior to the beginning of the suspension period. These payments continue to be due to TSA by the last calendar day of June, July, August, and September of 2003.

For example, if a passenger purchases a ticket from a public charter operator on May 15, 2003, for a flight that will take place on June 15, 2003, the public charter operator will collect the September 11th Security Fee from the passenger and place it in an escrow account. As explained in TSA's letter of January 25, 2002, in order to more closely align a direct or foreign air carrier's obligation to pay the fee to TSA with the carrier's actual receipt of the fee from the public charter operator, the ticket is considered to be sold at the time the charter operator provides the escrow funds to the direct or foreign air carrier operating the flight or the date the flight occurs, whichever comes first. If the public charter operator, in the example, provides the escrow funds to the carrier on June 14, 2003, the carrier must pay the fee to TSA by July 31, 2003. If a direct or foreign air carrier does not collect the appropriate fee from a passenger, the air carrier is still responsible for paying the fee to TSA.

[2] *See* 14 CFR 212.8.

A carrier may offset fees refunded to passengers during the suspension period against future amounts of September 11th Security Fees due to TSA in June 2003 and following months under 49 CFR part 1510.

Resumption of Imposition of the September 11th Security Fee. TSA will resume imposition of the September 11th Security Fee beginning at 12 a.m. on October 1, 2003, without any further notice. Therefore, direct and foreign air carriers must resume collecting and paying to TSA the September 11th Security Fee on tickets purchased by passengers beginning on 12 a.m., Eastern Daylight Time, on October 1, 2003, in accordance with the requirements of 49 CFR part 1510. If an air carrier does not collect the appropriate fee from a passenger, that should have been collected before the suspension period, the air carrier is still responsible for paying the fee to TSA.

In the case of public charter flights, because public charter operators will not collect September 11th Security Fees from passengers who purchase tickets during the suspension period, there will be instances where the escrow payments that direct or foreign air carriers receive from public charter operators after September 30, 2003, will not include September 11th Security Fees for some or all of the tickets sold for a flight. If the public charter operator did not collect the fee due to the suspension, the direct or foreign air carrier will not incur any obligation to pay those fees to TSA, notwithstanding 49 CFR part 1510.

Reporting Requirements Continue During the Suspension Period. In accordance with 49 CFR 1510.17, each direct and foreign air carrier must continue to provide TSA with quarterly reports that provide an accounting of fees imposed, collected, refunded, and remitted to TSA. If a carrier collects no fees during the suspension period, the carrier must submit the required report showing zeros in the appropriate fields in the report. The Bureau of Transportation Statistics collects such data for TSA. The Bureau website address for reporting the data is *http://www.bts.gov/oai/tsa/*. For further information on these reporting requirements, air carriers may also contact Ms. Nancy Sharpe, Data Administrator, Bureau of Transportation Statistics, Office of Airline Information, K–14, 400 7th Street, SW., Room 4125, Washington, DC 20590, phone: 202–366–2261, fax: 202–366–3383.

Travel Involving More than One Carrier. For purposes of 49 CFR part 1510, a direct air carrier or foreign air carrier that provides or offers to provide air transportation is considered to be the selling carrier. If a passenger's air transportation includes travel on two or more carriers, or if the passenger's air transportation is otherwise on an aircraft not operated by the selling carrier, the selling carrier is responsible for paying the September 11th Security Fee applicable to the air transportation.

Suspension of the ASIF

The Appropriations Act prohibits TSA from imposing the ASIF during the suspension period, June 1, 2003, to September 30, 2003. Therefore, notwithstanding 49 CFR 1511.5 (a) through (c) and 1511.7(b), air carriers and foreign air carriers engaged in air transportation will not incur any obligations to make payments to TSA for the months of the suspension period that otherwise would be required under 49 CFR 1511.7(b) to be paid in July, August, September, and October of 2003. Payment due under 49 CFR 1511.7(b) for May of 2003 remains due by June 30, 2003. Any other ASIF incurred prior to the suspension period, but not remitted to TSA, continues to be due to TSA during and after the suspension period.

TSA will resume imposition of the ASIF beginning October 1, 2003, without any further notice. Therefore, direct and foreign air carriers must resume making payments to TSA under 49 CFR part 1511, beginning with the payment due under 49 CFR 1511.7(b) no later than November 30, 2003.

Paperwork Reduction Act

The Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)) requires that the TSA consider the impact of paperwork and other information collection burdens imposed on the public. We have determined that there are no new information collection requirements associated with this rule.

Regulatory Impact Analyses

Changes to Federal regulations must undergo several economic analyses. First, Executive Order 12866, Regulatory Planning and Review (58 FR 51735, October 4, 1993), directs each Federal agency to propose or adopt a regulation only upon a reasoned determination that the benefits of the intended regulation justify its costs. Second, the Regulatory Flexibility Act of 1980 (5 U.S.C. 601–612) requires agencies to analyze the economic impact of regulatory changes on small entities. Third, the Office of Management and Budget directs agencies to assess the effect of regulatory changes on international trade. Fourth, the Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires agencies to prepare a written assessment of the costs, benefits, and other effects of proposed or final rules that include a Federal mandate likely to result in the expenditure by State, local, or tribal governments, in the aggregate, or by the private sector, of $100 million or more annually (adjusted for inflation.)

Executive Order 12866 Assessment

In conducting these analyses, TSA has determined that the economic impact of this rule does not meet the standards for a "significant regulatory action" under section 3(f) of Executive Order 12866 and does not require an assessment of potential costs and benefits under section 6(a)(3), of that Order. However, TSA has determined that because of the public interest in the subject of security fees, this rule is considered significant and, therefore, has been reviewed by the Office of Management and Budget. Although a regulatory analysis or evaluation does not accompany this rule, TSA recognizes the rule will impose no or de minimus costs on the aviation industry and the public other than those weighed by Congress in passing the Appropriations Act. Air carriers will benefit through not having to collect the security fees and the public will benefit by not having to pay the security fees. The September 11th Security Fee that passengers will not have to pay and air carriers will not have to collect and remit to TSA is estimated to be $600 million. The Aviation Security Infrastructure Fee that air carriers will not incur, and therefore will not remit to TSA, is estimated to be $100 million. This mandatory security fee suspension totaling $700 million is imposed by the Appropriations Act and is not a direct impact of this rulemaking. This rule addresses implementation of the suspension of the fee as it relates to the initial fee imposition requirements provided in 49 CFR part 1510.

Regulatory Flexibility Act Assessment

The Regulatory Flexibility Act (RFA) of 1980 requires that agencies perform a review to determine whether a proposed or final rule will have a significant economic impact on a substantial number of small entities. If the determination is that it will, the agency must prepare a regulatory flexibility analysis as described in the RFA. For purposes of the RFA, small entities include small businesses, not-for-profit organizations, and small governmental jurisdictions. Individuals and States are not included in the definition of a small entity. When no notice of proposed rulemaking has first been published, no such assessment is required for a final rule.

International Trade Impact Assessment

The Trade Agreement Act of 1979 prohibits Federal agencies from establishing any standards or engaging in related activities that create unnecessary obstacles to the foreign commerce of the United States. Legitimate domestic objectives, such as safety, are not considered unnecessary obstacles. The statute also requires consideration of international standards and, where appropriate, that they be the basis for U.S. standards. TSA has assessed the potential effect of this rulemaking and has determined that it will not have a significant impact on foreign commerce and, therefore, has no effect on any trade-sensitive activity.

Unfunded Mandates Assessment

The Unfunded Mandates Reform Act of 1995 is intended, among other things, to curb the practice of imposing unfunded Federal mandates on State, local, and tribal governments. Title II of the Act requires each Federal agency to prepare a written statement assessing the effects of any Federal mandate in a proposed or final agency rule that may result in a $100 million or more expenditure (adjusted annually for inflation) in any one year by State, local, and tribal governments, in the aggregate, or by the private sector; such a mandate is deemed to be a "significant regulatory action."

This rulemaking does not contain such a mandate. The requirements of Title II of the Act, therefore, do not apply and TSA has not prepared a statement under the Act.

Executive Order 13132, Federalism

The TSA has analyzed this final rule under the principles and criteria of Executive Order 13132, Federalism. We determined that this action will not have a substantial direct effect on the States, or the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government, and therefore does not have federalism implications.

Environmental Analysis

The TSA has reviewed this action for purposes of the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4347) and has determined that this action will not have a significant effect on the human environment.

Energy Impact

The energy impact of the notice has been assessed in accordance with the Energy Policy and Conservation Act (EPCA) Public Law 94–163, as amended (42 U.S.C. 6362). We have determined that this rulemaking is not a major regulatory action under the provisions of the EPCA.

List of Subjects in 49 CFR Parts 1510 and 1511

Accounting, Auditing, Air carriers, Air transportation, Enforcement, Federal oversight, Foreign air carriers, Reporting and recordkeeping requirements, Security measures.

The Amendment

■ In consideration of the foregoing, the Transportation Security Administration amends Chapter XII of Title 49, Code of Federal Regulations, as follows:

SUBCHAPTER A—ADMINISTRATIVE AND PROCEDURAL RULES

PART 1510—PASSENGER CIVIL AVIATION SECURITY SERVICE FEES

■ 1. The authority citation for part 1510 continues to read as follows:

Authority: 49 U.S.C. 44940.

■ 2. From June 1, 2003, through September 30, 2003, suspend §§ 1510.5 and 1510.9(a) through (c), and add a new § 1510.23 to read as follows:

§ 1510.23 Temporary suspension of the September 11th Security Fee.

(a) *Suspension of the September 11th Security Fee.* (1) Notwithstanding 49 CFR 1510.9(a) and (b), a direct air carrier or foreign air carrier must not collect the September 11th Security Fee from any passenger for air transportation sold during the suspension period. For purposes of this section, the suspension period is 12:00 a.m., Eastern Daylight Time, on June 1, 2003, through 11:59 p.m., Eastern Daylight Time, on September 30, 2003. When a passenger purchases a ticket from a direct or foreign air carrier or its agent and the passenger pays in full, including through redemption of frequent flier awards, for the ticket during the suspension period, the carrier must not collect the September 11th Security Fee from the passenger. In addition, notwithstanding 49 CFR 1510.9(c), the direct or foreign air carrier will not incur any obligation to pay the amount of such uncollected fee to TSA.

(2) If a direct or foreign air carrier collects a September 11th Security Fee from a passenger who purchases a ticket during the suspension period, the carrier must refund the fee to the passenger.

(3) Direct and foreign air carriers must continue to collect the September 11th Security Fee on air transportation purchased by passengers through 11:59 p.m., Eastern Daylight Time, on May 31, 2003, even if the flight for which the transportation is purchased is to be operated during the suspension period.

(b) *Tickets reissued during the suspension period.* (1) If a passenger purchases a ticket before the suspension period begins and the carrier reissues a replacement ticket during the suspension period without any changes to the original itinerary, the carrier continues to be responsible for collecting the amount of the September 11th Security Fee that applied upon the initial purchase of the ticket. If, as a result of the reissuance, however, the ticket is repriced during the suspension period, the September 11th Security Fee will not apply to the reissued ticket. Repricing a ticket means a transaction in which the itinerary of a paid ticket is revised due to voluntary changes made by the passenger and the ticket is reissued to determine the new price of the itinerary. Redemption of frequent flyer awards during the suspension period for cabin upgrades does not constitute repricing of the ticket and therefore the fee must continue to be charged. Free upgrades do not constitute repricing and therefore do not result in refund of the fee.

(i) *Example 1.* A passenger purchases a round-trip ticket before the suspension period with two enplanements per one-way trip (for a total of four enplanements) and, due to changes made by the passenger, the carrier reissues the ticket during the suspension period with a revised itinerary of one enplanement per trip (for a total of two enplanements), which results in repricing of the itinerary. The carrier must refund to the passenger the amount of the September 11th Security Fee previously collected when the passenger initially purchased the ticket, and the carrier must not collect the fee for the reissued ticket.

(ii) *Example 2.* If a passenger purchases a ticket before the suspension period and the carrier reissues the ticket during the suspension period because the passenger redeems frequent flier awards in order to obtain an upgrade, the carrier must not refund the September 11th Security Fee it collected when the passenger initially purchased the ticket. Similarly, if the carrier reissues the ticket during the suspension period because the carrier provided a free upgrade, the carrier must not refund the September 11th Security Fee.

(iii) *Example 3.* If a passenger purchases a ticket prior to the suspension period and the travel is already underway during the suspension period and there is a repricing of the ticket, the carrier must not collect the September 11th Security Fee for the changed or unused portion of the itinerary. Therefore, any fee collected for the changed or unused portion of the itinerary must be refunded to the passenger.

(2) *Prepaid air transportation.* In the case of prepaid air transportation (for example, prepaid ticket advice), if the passenger prepays air transportation before the suspension period and the carrier issues a ticket against the prepaid amount during the suspension period, the carrier must collect the September 11th Security Fee for that ticket. However, if a passenger prepays air transportation *during* the suspension period and the carrier issues a ticket against the prepaid amount during or after the suspension period, the carrier must not collect the September 11th Security Fee for that ticket.

(c) *Tickets for passengers on public charter flights.* (1) A direct or foreign air carrier operating a public charter flight must not collect the September 11th Security Fee from the charter operator for any passengers who purchased air transportation (tickets) from the public charter operator and paid in full during the suspension period. Notwithstanding 49 CFR 1510.9(c), the direct or foreign air carrier will not incur any obligation to pay the amount of such fee (not collected from passengers) to TSA.

(d) *Continuing payment of fees to TSA.* (1) Direct and foreign air carriers must pay to TSA any September 11th Security Fees imposed on tickets purchased during the month of May, 2003, no later than June 30, 2003. In addition, any other security fees imposed prior to the suspension period, but not remitted by air carriers to TSA, remain due to TSA during and after the suspension period.

(2) In the case of tickets purchased on public charter flights; direct and foreign air carriers must continue to forward to TSA, in accordance with 49 CFR 1510, any September 11th Security Fees paid by passengers who purchased tickets prior to the beginning of the suspension period. These payments continue to be due to TSA by the last calendar day of June, July, August, and September of 2003.

(i) *Example.* If a passenger purchases a ticket from a public charter operator on May 15, 2003, for a flight that will take place on June 15, 2003, the public charter operator will collect the September 11th Security Fee from the passenger and place it in an escrow account. If the public charter operator provides the escrow funds to the carrier on June 14, 2003, the carrier must pay the fee to TSA by July 31, 2003.

(ii) [Reserved]

(3) A carrier may offset fees refunded to passengers during the suspension period against future amounts of September 11th Security Fees due to TSA in June 2003 and following months under 49 CFR part 1510.

(4) If a carrier does not collect the appropriate fee from a passenger that should have been collected before the suspension period, the air carrier remains responsible for paying the fee to TSA.

(e) *Resumption of imposition of the September 11th Security Fee.* (1) TSA will resume imposition of the September 11th Security Fee beginning at 12 a.m. on October 1, 2003, without any further notice. Therefore, direct and foreign air carriers must resume collecting and paying to TSA the September 11th Security Fee on tickets purchased by passengers beginning on 12 a.m., Eastern Daylight Time, on October 1, 2003, in accordance with the requirements of 49 CFR part 1510. These fees imposed in October 2003 are due to TSA no later than November 30, 2003.

(2) In the case of public charter flights, because public charter operators will not collect September 11th Security Fees from passengers who purchase tickets during the suspension period, there will be instances where the escrow payments that direct or foreign air carriers receive from public charter operators after September 30, 2003, will not include September 11th Security Fees for some or all of the tickets sold for a flight. If the public charter operator did not collect the fee for this reason, the direct or foreign air carrier will not incur any obligation to pay those fees to TSA, notwithstanding 49 CFR part 1510.

(f) *Reporting requirements continue during the suspension period.* In accordance with 49 CFR 1510.17, each direct and foreign air carrier must provide TSA with quarterly reports that provide an accounting of fees imposed, collected, refunded, and remitted to TSA. If a carrier collects no fees during the suspension period, the carrier must submit the required report showing zeros in the appropriate fields in the report. The Bureau of Transportation Statistics collects such data for TSA. The Bureau website address for reporting the data is *http://www.bts.gov/oai/tsa/*. For further information on these reporting requirements, air carriers may also contact Ms. Nancy Sharpe, Data Administrator, Bureau of Transportation Statistics, Office of Airline Information, K–14, 400 Seventh Street, SW., Room 4125, Washington, DC 20590, phone: 202–366–2261, fax: 202–366–3383.

(g) *Travel involving more than one carrier.* For purposes of 49 CFR part 1510, a direct air carrier or foreign air carrier that provides or offers to provide air transportation is considered to be the selling carrier. If a passenger's air transportation includes travel on two or more carriers, or if the passenger's air transportation is otherwise on an aircraft not operated by the selling carrier, the selling carrier is responsible for paying the September 11th Security Fee applicable to the air transportation.

PART 1511—AVIATION SECURITY INFRASTRUCTURE FEE

■ 3. The authority citation for part 1511 continues to read as follows:

Authority: 49 U.S.C. 44901 and 44940.

■ 4. From June 1, 2003, through September 30, 2003, suspend §§ 1511.5(a) through (c) and 1511.7(b), and add a new § 1511.15 to read as follows:

§ 1511.15 Temporary Suspension of the ASIF.

(a) Notwithstanding 49 CFR 1511.5 (a) through (c) and 1511.7(b), an air carrier or foreign air carrier engaged in air transportation will not incur any obligation to make payments to TSA for the months of the suspension period that otherwise would be required under 49 CFR 1511.7(b) to be paid in July, August, September, and October of 2003. Payment due under 49 CFR 1511.7(b) for May of 2003 remains due by June 30, 2003. Any other ASIF incurred by an air carrier or foreign air carrier prior to the suspension period, but not remitted to TSA, continues to be due to TSA during and after the suspension period.

(b) TSA will resume imposition of the ASIF beginning October 1, 2003, without any further notice. Therefore, each air carrier and foreign air carriers must resume making payments to TSA under 49 CFR part 1511, beginning with the payment due under 49 CFR 1511.7(b) no later than November 30, 2003.

Issued in Arlington, VA, on May 15, 2003.

James M. Loy,

Administrator.

[FR Doc. 03–12775 Filed 5–19–03; 10:52 am]

BILLING CODE 4910–62–P

Proposed Rules

Federal Register

Vol. 68, No. 98

Wednesday, May 21, 2003

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF THE TREASURY

Office of the Comptroller of the Currency

12 CFR Parts 11 and 16

[Docket No. 03–09]

RIN 1557–AC12

Reporting and Disclosure Requirements for National Banks With Securities Registered Under the Securities Exchange Act of 1934; Securities Offering Disclosure Rules

AGENCY: Office of the Comptroller of the Currency.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Office of the Comptroller of the Currency (OCC) is proposing to revise its regulations to reflect amendments to the Securities Exchange Act of 1934 (Exchange Act) made by the Sarbanes-Oxley Act of 2002 (Sarbanes-Oxley Act). These amendments to the Exchange Act give the OCC the authority to administer and enforce a number of the Sarbanes-Oxley Act's new reporting, disclosure, and corporate governance requirements with respect to national banks that have a class of securities registered under the Exchange Act. We are also proposing to make conforming revisions to our rules which prescribe securities offering disclosure rules for national banks that issue securities that are not subject to the registration requirements of Securities Act of 1933.

DATES: Comments must be received by June 20, 2003.

ADDRESSES: Written comments should be submitted to the Communications Division, Office of the Comptroller of the Currency, 250 E Street, SW., Attention: Docket No. 03–09, Public Information Room, Mailstop 1–5, Washington, DC 20219. Due to disruptions in paper mail delivery in the Washington, DC area, commenters are encouraged to submit comments by fax or electronic mail when possible. Comments may be sent by fax to (202) 874–4448 or by electronic mail to *regs.comments@occ.treas.gov*. Comments may be inspected and photocopied at the OCC's Public Reference Room, 250 E Street, SW., Washington, DC. You may make an appointment to inspect comments by calling (202) 874–5043.

FOR FURTHER INFORMATION CONTACT: Mary Ann Nash, Counsel, 202–874–5090; or Martha Clarke, Acting Assistant Director, Legislative & Regulatory Activities Division, 202–874–5090.

SUPPLEMENTARY INFORMATION:

Background

Section 12(i) of the Exchange Act vests the OCC with the powers, functions, and duties otherwise vested with the Securities and Exchange Commission (SEC) to administer and enforce certain provisions of the Exchange Act as they apply to national banks that have a class of securities registered under the Exchange Act (registered national banks).[1]

On July 30, 2002, President Bush signed into law the Sarbanes-Oxley Act.[2] Prior to the enactment of the Sarbanes-Oxley Act, section 12(i) gave the OCC the authority to administer and enforce sections 12, 13, 14(a), 14(c), 14(d), 14(f), and 16 of the Exchange Act. The Sarbanes-Oxley Act amends some of those sections of the Exchange Act to impose additional requirements and, as a result, the OCC will administer and enforce these new requirements as they apply to registered national banks. In addition, the Sarbanes-Oxley Act amends section 12(i) to add new sections of the securities laws to the list of provisions that are enforced and administered by the OCC.

Titles III and IV of the Sarbanes-Oxley Act include a number of provisions that are designed to improve the corporate governance and financial disclosures of issuers that have a class of securities registered under sections 12(b) or 12(g) of the Exchange Act or that are required to file periodic reports with the SEC under section 15(d) of the Exchange Act (public issuers). All registered national banks are public issuers for purposes of the law.

Pursuant to the amendments to section 12(i) made by the Sarbanes-Oxley Act, the OCC administers and enforces the following new provisions of the Act with respect to registered national banks in addition to any new requirements that were added through amendments to sections of the Exchange Act that were enforced by the OCC prior to the enactment of the Sarbanes-Oxley Act.

- Section 301[3] establishes certain oversight, independence, funding, and other requirements for the audit committees of public issuers. It requires the SEC to issue implementing rules that prohibit any national securities exchange or national securities association from listing the securities of an issuer that fails to comply with these audit committee requirements. The SEC issued final rules to implement section 301 on April 9, 2003.[4] The rules took effect on April 25, 2003.
- Section 302 requires the SEC to adopt rules that require the principal executive officers and principal financial officers of public issuers to include certain certifications in the issuer's annual and quarterly reports filed under the Exchange Act. The SEC issued final rules implementing this section on August 29, 2002.[5] The rules took effect on the same day.

[1] Under section 12(i), the OCC and the other Federal banking agencies have the power to issue rules that are necessary to carry out their functions under the Exchange Act. These rules are required to be substantially similar to the SEC's rules unless a Federal banking agency determines that substantially similar regulations with respect to the insured depository institutions that it supervises are not necessary or appropriate in the public interest or for the protection of investors and the agency publishes its findings in the **Federal Register** within 60 days after the SEC issues regulations.

[2] Public Law 107–204, 116 Stat. 745 (July 30, 2002).

[3] U.S.C. 78j–1(m).

[4] 68 FR 18788 (April 16, 2003).

[5] 67 FR 57275 (Sept. 9, 2002). Section 906 of the Sarbanes-Oxley Act is a criminal statute and includes another certification requirement that is separate from the certification requirements of section 302. Section 906 provides that all periodic reports that contain financial statements and that are filed by public issuers under sections 13(a) or 15(d) of the Exchange Act must include a written certification by the chief executive officer and chief financial officer (or equivalent) that (1) the report complies with the requirements of section 13(a) or 15(d) of the Exchange Act, and (2) the information contained in the periodic report fairly presents, in all material respects, the financial condition and results of operations of the issuer. Section 906 became effective on July 30, 2002, and persons who knowingly or willfully make false certifications are subject to specified criminal penalties. See 18 U.S.C. 1350. The plain language of section 906 specifically refers to periodic reports filed by a public issuer with the SEC although Section 12(i) of the Exchange Act requires bank issuers to file periodic reports with their banking regulator.

Continued

• Section 303 requires the SEC to issue rules prohibiting the officers and directors of public issuers, and persons acting under their direction, from fraudulently influencing, coercing, manipulating, or misleading the issuer's independent auditor for purposes of rendering the issuer's financial statements materially misleading. The SEC published proposed rules implementing this section on October 24, 2002.[6] On April 24, 2003, the SEC voted to adopt final rules, which will take effect 30 days after publication in the **Federal Register**.[7]

• Section 304 requires the chief executive officer and chief financial officer of public issuers to reimburse the issuer for certain compensation and profits received if the issuer is required to restate its financial reports due to material noncompliance, as a result of misconduct, with any financial reporting requirements under the Federal securities laws. The requirements of section 304 took effect on July 30, 2002. No implementing regulations are required.

• Section 306(a) prohibits the directors and executive officers of any public issuer of equity securities from purchasing, selling, or transferring any equity security acquired by the director or executive officer in connection with his or her service as a director or executive officer during any "blackout period" with respect to the security. A "blackout period" generally is a period of three consecutive business days during which trading in the issuer's securities is suspended for 50% or more of the beneficiaries of the issuer's individual account plans. The SEC adopted final regulations pursuant to section 306(a) on January 26, 2003. [8] The rules took effect on the same day.

• Section 401(b) requires the SEC to issue rules that prohibit issuers from including misleading *pro forma* financial information in their reports under the securities laws or in any public release. Issuers also must reconcile any *pro forma* financial information included in such filings or public releases with the issuer's financial statements prepared in accordance with generally accepted accounting principles (GAAP). The SEC has issued final implementing regulations,[9] which apply to releases and disclosures made after March 28, 2003, and to annual and quarterly reports filed with respect to fiscal periods ending after March 28, 2003.

• Section 404 mandates that the SEC issue rules that require all annual reports filed under section 13(a) or 15(d) of the Exchange Act to include certain statements and assessments related to the issuer's internal control structures and procedures for financial reporting.[10] There is no statutory deadline for adoption of final rules implementing the requirements of section 404. The SEC published a proposed rule on October 30, 2002.[11]

• Section 406 mandates that the SEC adopt rules that require public issuers to (1) disclose in their periodic reports filed under the Exchange Act whether the issuer has adopted a code of ethics for its senior financial officers and, if not, the reasons why such a code has not been adopted; and (2) promptly disclose on Form 8–K any change to, or waiver of, the issuer's code of ethics. The SEC published a final rule implementing this section on January 31, 2003. [12] The requirements of that rule took effect on March 3, 2003.

• Section 407 mandates that the SEC adopt rules that require public issuers to disclose in their periodic reports filed under the Exchange Act whether the audit committee of the issuer includes at least one financial expert and, if not, the reasons why the audit committee does not include such an expert. The SEC published a final rule implementing this section on January 31, 2003.[13] The requirements of that rule took effect on March 3, 2003.

Description of the Proposed Rule

Part 11 of the OCC's regulations, entitled "Securities Exchange Act Disclosure Rules," currently implements the requirements of section 12(i) by applying to registered national banks, by means of cross-reference, the SEC's regulations implementing the reporting and disclosure provisions of sections 12, 13, 14(a), 14(c), 14(d), 14(f), and 16 of the Exchange Act. Part 11 requires national banks to file with the OCC any reports or forms required by the SEC's regulations.

We are proposing to amend part 11 to reflect the new provisions of the Sarbanes-Oxley Act that the OCC is required to administer and enforce with respect to registered national banks. Accordingly, the proposal revises § 11.2 to cross-reference new subsection 10A(m) of the Exchange Act and sections 302, 303, 304, 306, 401(b), 404, 406, and 407 of the Sarbanes-Oxley Act. The effect of the proposal is to require registered national banks to comply with the rules issued by the SEC pursuant to those statutory provisions.

Part 16 of the OCC's regulations, entitled "Securities Offering Disclosure Rules," sets forth rules governing the offer and sale of securities by national bank issuers that are not subject to the registration and reporting requirements of the Securities Act of 1933.[14] Section 16.20 of the regulation mirrors the requirements of section 15(d) of the Exchange Act [15] and requires each national bank that files a registration statement that has been declared effective by the OCC pursuant to part 16 to file the current and periodic reports required by section 13 of the Exchange Act [16] in accordance with the SEC's regulation 15D, as if the securities covered by the registration statement were securities registered pursuant to section 12 of the Exchange Act.

The proposal revises section 16.20 to reference sections 10A(m) and 13 of the Exchange Act and to cross-reference the requirements of the revised § 11.2(a)(1)(ii). The effect of the proposal is to require banks filing registration statements pursuant to part 16 to comply with certain provisions of the Exchange Act, including new subsection 10A(m), and those sections of the Sarbanes-Oxley Act that are directly applicable to section 15(d) filers and that are administered and enforced by the OCC with respect to registered national banks. The proposal is thus consistent with the objectives of part 16, which we adopted in order to promote generally comparable treatment between national bank issuers of securities and other issuers that are directly subject to section 15(d).[17]

Sections 11.2 and 16.20 currently cross-reference both the statutory provisions that the OCC has the authority to administer and enforce and the SEC's regulations implementing those provisions. The proposed rule eliminates cross-references to the specific sections of the SEC's regulations in favor of a more general reference to the rules, regulations, and forms adopted by the SEC pursuant to the listed statutory provisions. The existing statutory cross-references in parts 11 and 16 are adequate, in our judgment, to alert registered national banks and national banks required by part 16 to make filings pursuant to section 15(d) of the Exchange Act of the requirements that apply to them and to prompt them to consult the appropriate SEC regulations.

National banks may also monitor the **Federal Register**, the SEC's Web site,[18] and other appropriate publications to ensure that they are aware of developments that affect them. If the rules or forms issued by the SEC under these sections require issuers to file documents with the SEC, national banks must make such filings with the OCC in accordance with the provisions of part 11 or part 16, as appropriate.

Request for Comments

The OCC solicits comment on all aspects of the proposed rule. Commenters who suggest that the OCC modify the requirements of the SEC's rules, regulations, and forms for registered national banks should support their request by demonstrating how such a modification would satisfy the standard in section 12(i); that is, with respect to registered national banks, that the SEC's rules, regulations or forms are not necessary or appropriate in the public interest or for the protection of investors.

Solicitation of Comments on Use of Plain Language

Section 722 of the Gramm-Leach-Bliley Act, Public Law 106–102, section 722, 113 Stat. 1338, 1471 (November 12, 1999), requires the Federal banking agencies to use plain language in all proposed and final rules published after January 1, 2000. We invite your comments on how to make this proposal easier to understand. For example:

• Have we organized the material to suit your needs? If not, how could this material be better organized?

• Are the requirements in the proposed regulation clearly stated? If not, how could the regulation be more clearly stated? Is it appropriate to eliminate specific cross-references in our rules to specific provisions of the SEC's rules?

• Does the proposed regulation contain language or jargon that is not clear? If so, which language requires clarification?

• Would a different format (grouping and order of sections, use of headings, paragraphing) make the regulation easier to understand? If so, what changes to the format would make the regulation easier to understand?

• What else could we do to make the regulation easier to understand?

Regulatory Analysis

Regulatory Flexibility Act

Pursuant to section 605(b) of the Regulatory Flexibility Act, 5 U.S.C. 605(b) (RFA), the regulatory flexibility analysis otherwise required under section 604 of the RFA is not required if the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities and publishes its certification and a short, explanatory statement in the **Federal Register** along with its rule. As of December 31, 2002, there were approximately 25 national banks that had a class of securities registered under sections 12(b) or 12(g) of the Exchange Act and therefore subject to the proposed amendments to part 11. As of the same date, only 15 of these institutions have assets of less than $100 million and are considered small entities for purposes of the RFA. *See* 5 U.S.C. 601; 13 CFR 121.201. As of December 31, 2002, there were approximately 20 national banks subject to part 16 reporting requirements.

Based on the relatively small number of national banks affected by the proposed revisions to parts 11 and 16 of our rules, the OCC hereby certifies that this proposal will not have a significant economic impact on a substantial number of small entities. Accordingly, a regulatory flexibility analysis is not needed.

Paperwork Reduction Act of 1995

In accordance with the Paperwork Reduction Act of 1995, the OCC may not conduct or sponsor, and a respondent is not required to respond to, an information collection unless it displays a currently valid Office of Management and Budget (OMB) control number.

The information collection requirements contained in this notice of proposed rulemaking have been submitted to OMB for review and approval under OMB Control Number 1557–0106 ((MA)—Securities Exchange Act Disclosure Rules—12 CFR part 11) and OMB Control Number 1557–0120 ((MA)—Securities Offering Disclosure Rules—12 CFR part 16).

The OCC is proposing to revise 12 CFR part 11 to reflect amendments to section 12(i) of the Securities Exchange Act of 1934 (Exchange Act) made by the Sarbanes-Oxley Act of 2002. These amendments to section 12(i) give the OCC the authority to administer and enforce a number of the Sarbanes-Oxley Act's new reporting, disclosure, and corporate governance requirements with respect to national banks that have a class of securities registered under the Exchange Act.

The OCC is also proposing to make conforming revisions to 12 CFR part 16, which prescribes securities offering disclosure rules for national banks that issue securities that are not subject to the registration requirements of the Securities Act of 1933. The proposed rule amends section 16.20 to include references to the requirements of the Sarbanes-Oxley Act that the OCC is authorized to administer and enforce.

12 CFR part 11 incorporates by reference the applicable SEC regulations. The OCC does not maintain its own forms for collecting information and instead requires reporting banks to file SEC forms. Part 11 ensures that publicly owned national banks provide adequate information about their operation to current and potential shareholders, depositors, and to the public. The OCC reviews the information to ensure that it complies with Federal law and makes public all information required to be filed under these rules. Investors, depositors, and the public use the information to make informed investment decisions.

Title: (MA)—Securities Exchange Act Disclosure Rules (12 CFR part 11).
OMB Number: 1557–0106.
Form Numbers: SEC Forms 3, 4, 5, 8–K, 10, 10–K, 10–Q, Schedules 13D, 13G, 14A, 14B, and 14C.
Estimated number of respondents: 75.
Estimated number of responses: 456.
Average hours per response: Varies.
Estimated total burden hours: 4,156.5 hours.
The likely respondents: National banks, individuals.

The information collection requirements in 12 CFR part 16 enable the OCC to perform its responsibilities relating to offerings of securities by national banks by providing the investing public with facts about the condition of a bank, the reasons for raising new capital, and the terms of securities offerings. Part 16 generally requires banks to conform to the Securities and Exchange Commission rules.

Title: (MA)—Securities Offering Disclosure Rules (12 CFR part 16).
OMB Number: 1557–0120.
Description: Sections 16.3 and 16.5 require a national bank to file its

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Because section 906 is a criminal statute, the Department of Justice has jurisdiction to determine whether the requirements of the statute apply to issuers that file their periodic reports with the Federal banking agencies rather than the SEC. Until the Department of Justice clarifies this issue, national bank issuers should continue to file their section 906 certifications as part of the periodic reports that they file with the OCC.

[6] 67 FR 65325 (Oct. 24, 2002).

[7] *See* SEC Press Release 2003–51 (Apr. 24 2003). The publication of this rule in the **Federal Register** is pending.

[8] 68 FR 4338 (Jan. 28, 2003).

[9] 68 FR 4820 (Jan. 30, 2003).

[10] Section 404 also requires the registered public accounting firm that prepares or issues the audit report for the issuer's annual report to attest to, and report on, the issuer's assessment of its internal control structures and procedures for financial reporting.

[11] 67 FR 66207 (Oct. 30, 2002).

[12] 68 FR 5110 (Jan. 31, 2003).

[13] 68 FR 5110 (Jan. 31, 2003).

[14] As of December 31, 2002, there were approximately 20 national banks subject to the requirements of part 16.20.

[15] 15 U.S.C. 78o(d).

[16] 15 U.S.C. 78m.

[17] *See* 59 FR 54789, 54790 (Nov. 2, 1994) (preamble to most recent revisions to part 16).

[18] See *http://www.sec.gov.*

registration statement with the OCC. Section 16.4 requires a national bank to submit certain communications not deemed an offer to the OCC. Section 16.5 provides an exemption for items that satisfy the requirements of SEC Rule 144, which, in turn, requires certain filings. Section 16.6 requires a national bank to file documents with the OCC and to make certain disclosures to purchasers in sales of nonconvertible debt. Section 16.7 requires a national bank to file a notice with the OCC. Section 16.8 requires a national bank to file offering documents with the OCC. Section 16.15 requires a national bank to file a registration statement and sets forth content requirements for the registration statement. Section 16.17 requires a national bank to file four copies of each document filed under part 16, and requires filers of amendments or revisions to underline or otherwise indicate clearly any changed information. Section 16.18 requires a national bank to file an amended prospectus when the information in the current prospectus becomes stale, or when a change in circumstances makes the current prospectus incorrect. Section 16.19 requires a national bank to submit a request to the OCC if it wishes to withdraw a registration statement, amendment, or exhibit. Section 16.20 requires a national bank to file current and periodic reports as required by sections 10A and 13 of the Exchange Act and those provisions of the Sarbanes-Oxley Act that the OCC is authorized to enforce. Section 16.30 requires a national bank to include certain elements and follow certain procedures in any request to the OCC for a no-objection letter.

Estimated number of respondents: 73.
Estimated number of responses: 73.
Average hours per response: Varies.
Estimated total burden hours: 2,275 hours.
Likely respondents: National banks.

Comments

The OCC invites comments on:

(1) Whether the collection of information contained in the proposed rulemaking is necessary for the proper performance of the OCC's functions, including whether the information has practical utility;

(2) The accuracy of the OCC's estimate of the burden of the information collection, including the validity of the methodology and assumptions used;

(3) Ways to enhance the quality, utility, and clarity of the information to be collected:

(4) Ways to minimize the burden of the information collection on respondents, including the use of automated collection techniques or other forms of information technology; and

(5) Estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

OMB is required to make a decision concerning these collections of information between 30 and 60 days after publication of this document in the **Federal Register**. Therefore, a comment is best assured of having its full effect if OMB receives it within 30 days of publication. Comments should be sent to:

Jessie Dunaway, Clearance Officer, Office of the Comptroller of the Currency, Legislative and Regulatory Activities Division, Attention: 1557–0106 & 1557–0120, 250 E Street, SW., Mailstop 8–4, Washington, DC, 20219. Due to delays in delivery of paper mail in the Washington area, commenters are encouraged to submit comments by fax or email. Comments may be sent by fax to 202–874–4448 or by e-mail to *regs.comments@occ.treas.gov*.

Joseph F. Lackey, Jr., Desk Officer, Office of Information and Regulatory Affairs, Attention: 1557–0106 & 1557–0120, Office of Management and Budget, Room 10235, Washington, DC 20503. Comments may also be sent by e-mail to *jlackeyj@omb.eop.gov*.

Unfunded Mandates Reform Act

Section 202 of the Unfunded Mandates Reform Act of 1995 requires that an agency prepare a budgetary impact statement before promulgating a rule that includes a Federal mandate that may result in expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, or $100 million or more in any one year. If a budgetary impact statement is required, section 205 of the Unfunded Mandates Reform Act also requires an agency to identify and consider a reasonable number of regulatory alternatives before promulgating a rule. The OCC has determines that this proposal will not result in expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, or $100 million or more in any one year. Accordingly, we have not prepared a budgetary impact statement.

Executive Order 12866

The Comptroller of the Currency has determined that this proposal does not constitute a "significant regulatory action" for the purposes of Executive Order 12866.

List of Subjects

12 CFR Part 11

Confidential business information, National banks, Reporting and recordkeeping requirements, Securities.

12 CFR Part 16

National banks, Reporting and recordkeeping requirements, Securities.

Authority and Issuance

For the reasons set forth in the preamble, the OCC proposes to amend parts 11 and 16 of chapter I of title 12 of the Code of Federal Regulations as follows:

PART 11—SECURITIES EXCHANGE ACT DISCLOSURE RULES

1. The authority citation for part 11 is revised to read as follows:

Authority: 12 U.S.C. 93a; 15 U.S.C. 78*l*, 78m, 78n, 78p, 78w, 7241, 7242, 7243, 7244, 7261, 7262, 7264 and 7265.

2. Section 11.2 is revised to read as follows:

§ 11.2 Reporting requirements for registered national banks.

(a) *Filing, disclosure and other requirements—(1) General.* Except as otherwise provided in this section, a national bank whose securities are subject to registration pursuant to section 12(b) or section 12(g) of the Securities Exchange Act of 1934 (the 1934 Act) (15 U.S.C. 78*l*(b) and (g)) shall comply with the rules, regulations, and forms adopted by the Securities and Exchange Commission (Commission) pursuant to—

(i) Sections 10A(m), 12, 13, 14(a), 14(c), 14(d), 14(f) and 16 of the 1934 Act (15 U.S.C. 78f(m), 78l, 78m, 78n(a), (c), (d) and (f), and 78p); and

(ii) Sections 302, 303, 304, 306, 401(b), 404, 406 and 407 of the Sarbanes-Oxley Act of 2002 (codified at 15 U.S.C. 7241, 7242, 7243, 7244, 7261, 7262, 7264 and 7265).

(2) [Reserved]

(b) *References to the Commission.* Any references to the "Securities and Exchange Commission" or the "Commission" in the rules, regulations and forms described in paragraph (a)(1) of this section shall with respect to securities issued by registered national banks be deemed to refer to the OCC unless the context otherwise requires.

PART 16—SECURITIES OFFERING DISCLOSURE RULES

1. The authority citation for part 16 continues to read as follows:

Authority: 12 U.S.C. 1 *et seq.* and 93a.

2. Section 16.20 is revised to read as follows:

§ 16.20 Compliance with requirements of the securities laws.

(a) Each bank that files a registration statement that has been declared effective pursuant to this part shall comply with the rules, regulations, and forms adopted by the Commission pursuant to sections 10A(m) and 13 of the Exchange Act and those provisions of the Sarbanes-Oxley Act of 2002 that are listed in § 11.2(a)(1)(ii) of this chapter as if the securities covered by the registration statement were securities registered pursuant to section 12 of the Exchange Act (15 U.S.C. 78*l*).

(b) Suspension of the duty to file current and periodic reports under this section will be in accordance with section 15(d) of the Exchange Act (15 U.S.C. 78o(d)).

(c) Paragraph (a) of this section does not apply if the bank is a subsidiary of a one-bank holding company, the financial statements of the bank and the parent bank holding company are substantially the same, and the bank's parent bank holding company files current and periodic reports pursuant to section 13 of the Exchange Act (15 U.S.C. 78m).

(d) Paragraph (a) of this section does not apply if the bank files the registration statement in connection with a merger, consolidation, or acquisition of assets subject to 12 CFR 5.33(e)(8).

Dated: April 29, 2003.

John D. Hawke, Jr.,

Comptroller of the Currency.

[FR Doc. 03–12259 Filed 5–20–03; 8:45 am]

BILLING CODE 4810–33–P

FARM CREDIT ADMINISTRATION

12 CFR Parts 613, 614, and 618

RIN 3052–AC06

Eligibility and Scope of Financing; Loan Policies and Operations; General Provisions; Credit and Related Services

AGENCY: Farm Credit Administration.

ACTION: Proposed rule.

SUMMARY: The Farm Credit Administration (FCA, we, our) proposes to amend regulations governing domestic and international lending, certain intra-Farm Credit System (FCS or System) agreements concerning similar entity participation transactions, provisions of general financing agreements, and related services. We are proposing amendments to conform our regulations to recent changes in the Farm Credit Act of 1971, as amended (Act), to address comments we received requesting that the FCA reduce regulatory burden, ensure compliance with the Act, and clarify certain regulations.

DATES: Please send your comments to the FCA by June 20, 2003.

ADDRESSES: You may send comments by electronic mail to *"reg-comm@fca.gov,"* through the Pending Regulations section of FCA's Web site, *"http://www.fca.gov,"* or through the government-wide *"http://www.regulations.gov"* portal. You may also send comments to Robert E. Donnelly, Acting Director, Regulation and Policy Division, Office of Policy and Analysis, Farm Credit Administration, 1501 Farm Credit Drive, McLean, Virginia 22102–5090 or by facsimile to (703) 734–5784. You may review copies of all comments we receive at our office in McLean, Virginia.

FOR FURTHER INFORMATION CONTACT:

Dale Aultman, Policy Analyst, Office of Policy and Analysis, Farm Credit Administration, McLean, VA 22102–5090, (703) 883–4498; TTY (703) 883–4434; or

James Morris, Senior Counsel, Office of General Counsel, Farm Credit Administration, McLean, VA 22102–5090, (703) 883–4020, TTY (703) 883–4020.

SUPPLEMENTARY INFORMATION:

I. Objectives

The primary objectives of our proposal are to conform our regulations to recent statutory amendments and to reduce regulatory burden imposed on System institutions, while ensuring compliance with the Act and FCA regulations. We expect our amendments to improve the flow of credit to System customers, make similar entity participation transactions less burdensome, and help ensure compliance with the Act and FCA regulations.

II. Background

We are proposing these amendments for three reasons: (1) To address comments we received in response to our request that the public identify ways we could reduce regulatory burden;[1] (2) to conform our regulations to the Act, as amended by the Farm Security and Rural Investment Act (Pub. L. 107–171) (2002 Farm Bill or FSRIA); and (3) to help ensure that FCS association lending complies with the Act and our regulations.

A. Reducing Regulatory Burden

In response to our regulatory burden solicitation discussed above, CoBank, ACB (CoBank), requested that we address several issues concerning regulations governing title III banks.

1. Domestic Title III Lending

CoBank requested that we amend § 613.3100 that pertains to eligibility and scope of financing for domestic borrowers because § 613.3100(c)(1) appears to prohibit loans to subsidiaries of subsidiaries of certain eligible borrowers. Because the Act does not prohibit financing subsidiaries or other entities in which an eligible utility or an eligible cooperative has an ownership interest, we propose to clarify our regulations to permit a title III bank to provide limited financing to such entities. The financing provided shall not exceed the percentage of ownership attributable to the eligible cooperative or utility, multiplied by the value of the total assets of such entity.

In addition, CoBank asked that we amend § 613.3100(c)(2) to clarify that it authorizes financing activities broader than those permitted under the Rural Electrification Act. The legislative history of the Farm Credit Act of 1971, as amended, clearly demonstrates that Congress intended for banks for cooperatives (BCs) and agricultural credit banks (ACBs) to provide financing for "non act" purposes.[2] This legislative history is discussed in the preamble proposing the existing rule. *See* 61 FR 42092, August 13, 1996. We propose amending this section to clarify that a subsidiary that is eligible to borrow under § 613.3100(c)(1)(iii) may also obtain financing for energy-related or public utility-related purposes that cannot be financed by the lenders referred to in § 613.3100(c)(1)(ii). Operation of a licensed cable television utility is one example of such purpose.

Since the legislative history of the relevant language of section 3.8 of the Act indicates that the permissible "non act" purposes usually involve providing of communication services such as cable television facilities and cellular radio facilities, the permissible purposes do not appear to be restricted to cable television or communication services.

[1] On August 18, 1998, we published a document in the **Federal Register** inviting the public to identify existing FCA regulations and policies that impose unnecessary burdens on the System. *See* 63 FR 44176.

[2] "Non act" purpose means a purpose that is ineligible for financing by the Rural Utilities Service (RUS) or the Rural Telephone Bank (RTB) as described in paragraph § 613.3100(c)(1)(ii).

However, because title III generally authorizes lending to those that provide energy or utility services, it is reasonable to interpret section 3.8 of the Act to authorize financing for "non act" purposes, provided they are energy-related or public utility-related.

2. Related Services

CoBank also requested that we clarify that it is able to provide the same related services as Farm Credit Banks (FCBs) and BCs. We amended §§ 618.8000 and 618.8005 to clarify that CoBank has the same authority to provide related services under title I of the Act as FCBs and the same authorities to provide related services under title III of the Act as BCs.

B. Conforming FCA Regulations To Reflect Recent Amendments to the Act

Enactment of the FSRIA amended the Act with respect to:

(1) International lending by BCs, and

(2) similar entity transactions.

1. International Lending

FSRIA amended section 3.7 of the Act to authorize a bank operating under title III of the Act to finance certain international transactions involving "agricultural supplies." This section formerly authorized a bank operating under title III of the Act to finance certain transactions involving "farm supplies." After the amendment of section 3.7, CoBank can finance certain transactions involving "agricultural supplies," which is statutorily defined to include a farm supply, agriculture-related processing equipment, agriculture-related machinery, and other capital goods related to the storage or handling of agricultural commodities or products. Because of this amendment, the definition of "farm supplies" in part 613 no longer defines the limit of CoBank's authority. The proposed rule makes conforming changes to part 613 to add a definition of "agricultural supply."

2. Similar Entity Participations

FSRIA also amended sections 3.1(11)(B) and 4.18A of the Act so that one type of FCS institution no longer needs approval from another type of FCS institution when it participates with a non-FCS lender in certain loans to a similar entity.[3] These amendments to the Act have eliminated the statutory basis for some approvals required by existing FCA regulations.

However, the FSRIA did not amend the requirement in section 3.1 for approval to finance certain similar entities having System loan commitments or who are System customers. The proposed regulation would codify the remaining approval requirement. We note that System institutions may enter into agreements on such terms and conditions as they choose, including, where appropriate, annual agreements.

C. Ensure Loan Making Complies With the Act and Regulations

During examinations of some System institutions, we have identified loans that fail to comply with various requirements of the Act and our regulations. The Act provides FCA broad authorities and remedies with respect to such "ineligible" loans. For example, FCA may require a direct lender association to divest itself of the loan or cure the ineligibility. In appropriate cases, FCA may use its cease and desist or civil money penalty authorities. However, a review of general financing agreements (GFAs) between FCBs and the ACB and their direct lender associations has revealed that, while most GFAs address ineligible loans in some fashion, they do not all expressly prohibit funding ineligible loans.

Without in any way limiting FCA's other authorities or remedies under the Act, the proposed regulations mandate that the GFA between the funding bank and the direct lender association expressly require that the calculation of financing available be based solely on loans that comply with the Act and FCA regulations.

III. Section-by-Section Analysis

Subpart B—Financing for Banks Operating Under Title III of the Farm Credit Act

Sections 613.3100(b)(2)(ii) and 613.3100(c)(1)(v)—Domestic Lending

We propose to clarify that a bank operating under title III may finance a subsidiary or other entity in which eligible cooperatives or certain eligible utilities have an ownership interest. Proposed § 613.3100(b)(2)(ii) permits a title III bank to provide limited financing to a subsidiary or other entity in which an eligible cooperative has an ownership interest. Proposed § 613.3100(c)(1)(v) permits a title III bank to provide limited financing to a subsidiary or other entity in which certain eligible utilities have an ownership interest. If the eligible cooperative or eligible utility owns less than 50 percent of the entity, then the financing provided may not exceed the percentage of ownership attributable to the eligible cooperative or utility, multiplied by the value of the total assets of such entity.

Section 613.3100(c)(2)—Purposes for Financing Electric and Telecommunication Utilities

We propose to clarify that a BC or ACB may provide financing for subsidiaries of cooperatives or other entities that are eligible under § 613.3100(c)(1)(ii) for energy-related or public utility-related purposes even if such purposes would be ineligible for financing by the RUS or the RTB. Section 3.8(b)(1)(A) of the Act authorizes BCs and ACBs to finance rural utilities that are eligible to borrow from the RUS or RTB, and their subsidiaries. Although the Rural Electrification Act prohibits the RUS or RTB from financing the activities of certain subsidiaries, section 3.8(b)(1)(A) of the Act expressly authorizes a BC or ACB to extend credit to the same subsidiaries. As FCA discussed in its preamble when the present § 613.3100 was proposed in 1996, the legislative history makes it clear the present language of section 3.8 of the Act was intended to authorize title III banks to finance activities that are ineligible for RUS or RTB loans. *See* 61 FR 42092, August 13, 1996. Because the present language of § 613.3100(c)(2) could be narrowly read to limit such financing to subsidiaries that "operate a licensed cable television utility," FCA is now proposing an amendment to clarify that banks operating under title III may provide such financing for any energy-related or public utility-related purpose. We believe it is important for the System to be able to finance these operations that provide valuable services to rural consumers and essential revenues for rural utility systems.

Section 613.3200—International Lending

We propose to conform our regulations to recent changes in section 3.7 of the Act made by FSRIA that authorize a bank operating under title III of the Act to finance certain international transactions involving "agricultural supplies." We propose to amend § 613.3200(a) by adding a definition of "agricultural supply." The proposed definition of "agricultural supply" in § 613.3200(a)(1) includes a farm supply, agriculture-related processing equipment, agriculture-related machinery, and other capital goods related to the storage or handling of agricultural commodities or products. The term "farm supply," which is included in the new definition of "agricultural supply," is defined in § 613.3200(a)(2).

Subpart C—Similar Entity Authority Under Sections 3.1(11)(B) and 4.18A of the Act

Section 613.3300—Participations and Other Interests in Loans to Similar Entities

We propose to amend our regulations to conform them to changes the 2002 Farm Bill made in sections 3.1(11)(B) and 4.18A of the Act regarding similar entity transactions. Because of these changes, FCS institutions are no longer required to obtain the approvals now required by present § 613.3300(d). Although the FSRIA removed the statutory provisions that were the basis of the § 613.3300(d) approval requirements, it did not remove the statutory requirement that a bank operating under title III not participate in a loan to a similar entity under section 3.1 if the similar entity has a loan or loan commitment outstanding with an FCB or association, unless agreed to by the FCB or association. Therefore, while we propose deleting present § 613.3100(d) to reflect the elimination of other statutory approval requirements, we propose adding a new section to reflect this statutory requirement. Proposed § 613.3100(d) requires a bank operating under title III to obtain the agreement of an FCB or association in order to participate in a loan to a similar entity under section 3.1 if the similar entity has a loan, or a loan commitment outstanding, with the FCB or association. System institutions may structure the terms and conditions of the agreement to accommodate their specific situations. For example, they may grant approvals on an annual basis allowing similar entity participations in their chartered territory.

Subpart C—Bank/Association Lending Relationship

Section 614.4125—Funding and Discount Relationships Between Farm Credit Banks or Agricultural Credit Banks and Direct Lender Associations

Direct lender associations may not make or hold any loan that does not comply with the Act and FCA regulations, including, without limitation, part 613. We propose to amend § 614.4125(a) to mandate that each GFA require that the calculation of financing available be based solely on loans that are in compliance. Without limiting FCA's other authorities or remedies, proposed § 614.4125(a) would expressly state that if financing under a GFA is based on a loan that FCA determines does not comply with the Act and these regulations, then the financing available must be recalculated without that loan. We emphasize that the remedies described in this section do not limit our other authorities or remedies under the Act.

Subpart A—Related Services

Section 618.8000—Definitions and Section 618.8005—Eligibility

We propose to amend §§ 618.8000(b) and 618.8005(c) to clarify that ACBs have the same authority to offer related services under title III of the Act as BCs, and the same authority to offer related services under title I of the Act as FCBs. Proposed § 618.8000(b) deletes the phrase, "that is appropriate to the recipient's on-farm, aquatic, or cooperative operations" in order to eliminate any possible confusion about limitations on related services offerings under title III. Similarly, proposed § 618.8005(c) deletes the phrase, "appropriate to cooperative operations."

In addition, proposed § 618.8005(a) adds the phrase "appropriate to on-farm and aquatic operations" to the existing paragraph, in order to reflect the statutory limitation on related services offered under title I.

IV. Regulatory Flexibility Act

Pursuant to section 605(b) of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), the FCA hereby certifies that the proposed rule will not have a significant economic impact on a substantial number of small entities. Each of the banks in the System, considered together with its affiliated associations, has assets and annual income in excess of the amounts that would qualify them as small entities. Therefore, System institutions are not "small entities" as defined in the Regulatory Flexibility Act.

List of Subjects

12 CFR Part 613

Advertising, Aged, Agriculture, Banks, banking, Civil rights, Credit, Fair housing, Marital status discrimination, Religious discrimination, Rural areas, Sex discrimination, Signs and symbols.

12 CFR Part 614

Agriculture, Banks, banking, Flood insurance, Foreign trade, Reporting and recordkeeping requirements, Rural areas.

12 CFR Part 618

Agriculture, Archives and records, Banks, banking, Insurance, Reporting and recordkeeping requirements, Rural areas, Technical assistance.

For the reasons stated in the preamble, parts 613, 614, and 618 of chapter VI, title 12 of the Code of Federal Regulations, are proposed to be amended as follows:

PART 613—ELIGIBILITY AND SCOPE OF FINANCING

1. The authority citation for part 613 continues to read as follows:

Authority: Secs. 1.5, 1.7, 1.9, 1.10, 1.11, 2.2, 2.4, 2.12, 3.1, 3.7, 3.8, 3.22, 4.18A, 4.25, 4.26, 4.27, 5.9, 5.17 of the Farm Credit Act (12 U.S.C. 2013, 2015, 2017, 2018, 2019, 2073, 2075, 2093, 2122, 2128, 2129, 2143, 2206a, 2211, 2212, 2213, 2243, 2252).

Subpart B—Financing for Banks Operating Under Title III of the Farm Credit Act

2. Amend § 613.3100 by revising paragraphs (b)(2)(ii), (c)(1)(v), and (c)(2) to read as follows:

§ 613.3100 Domestic lending.

(b) * * *

* * * * * *

(2) * * *

* * * * * *

(ii) Any legal entity in which an eligible cooperative (or a subsidiary or other entity in which an eligible cooperative has an ownership interest) has an ownership interest, *provided that* if the percentage of ownership attributable to the eligible cooperative is less than 50 percent, financing may not exceed the percentage of ownership attributable to the eligible cooperative multiplied by the value of the total assets of such entity; or

* * * * * *

(c) * * *

* * * * * *

(1) * * *

* * * * * *

(v) Any legal entity in which an eligible utility under paragraph (c)(1)(ii) of this section (or a subsidiary or other entity in which an eligible utility under paragraph (c)(1)(ii) has an ownership interest) has an ownership interest, *provided that* if the percentage of ownership attributable to the eligible utility is less than 50 percent, financing may not exceed the percentage of ownership attributable to the eligible utility multiplied by the value of the total assets of such entity.

(2) *Purposes for financing.* A bank for cooperatives or agricultural credit bank may extend credit to entities that are

[3] "Similar entity" means a party that is ineligible for a loan from a Farm Credit bank or association, but has operations that are functionally similar to the activities of eligible borrowers in that a majority of its income is derived from, or a majority of its assets are invested in, the conduct of activities that are performed by eligible borrowers.

eligible to borrow under paragraph (c)(1) of this section in order to provide electric or telecommunication services in a rural area. A subsidiary that is eligible to borrow under paragraph (c)(1)(iii) of this section may also obtain financing from a bank for cooperatives or agricultural credit bank for energy-related or public utility-related purposes that cannot be financed by the lenders referred to in paragraph (c)(1)(ii), including, without limitation, financing to operate a licensed cable television utility.

* * * * *

3. Amend § 613.3200 to read as follows:

a. Revise paragraph (a); and

b. Remove the words "farm supplies" and add in their place, the words "agricultural supplies" each place they appear in paragraphs (b) introductory text, (c) introductory text, and (c)(1).

§ 613.3200 International lending.

(a) *Definitions.* For the purpose of this section only the following definitions apply:

(1) *Agricultural supply* includes:

(i) A farm supply; and

(ii) Agriculture-related processing equipment, agriculture-related machinery, and other capital goods related to the storage or handling of agricultural commodities or products.

(2) *Farm supply* refers to an input that is used in a farming or ranching operation.

* * * * *

Subpart C—Similar Entity Authority Under Sections 3.1(11)(B) and 4.18A of the Act

4. Revise § 613.3300(d) to read as follows:

§ 613.3300 Participations and other interests in loans to similar entities.

* * * * *

(d) *Approval by other Farm Credit System institutions.* A bank for cooperatives or agricultural credit bank may not participate in a loan to a similar entity under title III of the Act if the similar entity has a loan or loan commitment outstanding with a Farm Credit Bank or an association chartered under the Act, unless agreed to by the Farm Credit Bank or association.

PART 614—LOAN POLICIES AND OPERATIONS

5. The authority citation for part 614 continues to read as follows:

Authority: 42 U.S.C. 4012a, 4104a, 4104b, 4106, and 4128; secs. 1.3, 1.5, 1.6, 1.7, 1.9, 1.10, 1.11, 2.0, 2.2, 2.3, 2.4, 2.10, 2.12, 2.13, 2.15, 3.0, 3.1, 3.3, 3.7, 3.8, 3.10, 3.20, 3.28, 4.12, 4.12A, 4.13B, 4.14, 4.14A, 4.14C, 4.14D, 4.14E, 4.18, 4.18A, 4.19, 4.25, 4.26, 4.27, 4.28, 4.36, 4.37, 5.9, 5.10, 5.17, 7.0, 7.2, 7.6, 7.8, 7.12, 7.13, 8.0, 8.5 of the Farm Credit Act (12 U.S.C. 2011, 2013, 2014, 2015, 2017, 2018, 2019, 2071, 2073, 2074, 2075, 2091, 2093, 2094, 2097, 2121, 2122, 2124, 2128, 2129, 2131, 2141, 2149, 2183, 2184, 2201, 2202, 2202a, 2202c, 2202d, 2202e, 2206, 2206a, 2207, 2211, 2212, 2213, 2214, 2219a, 2219b, 2243, 2244, 2252, 2279a; 2279a–2, 2279b, 2279c–1, 2279f, 2279f–1, 2279aa, 2279aa–5); sec. 413 of Pub. L. 100–233, 101 Stat. 1568, 1639.

Subpart C—Bank/Association Lending Relationship

6. Amend § 614.4125(a) by adding a second sentence to read as follows:

§ 614.4125 Funding and discount relationships between Farm Credit Banks or agricultural credit banks and direct lender associations.

(a) * * * Each general financing agreement must require that the amount of financing available to a direct lender association be based solely on loans that comply with the Act and these regulations. If financing under a general financing agreement is based on a loan that FCA determines does not comply with the Act and these regulations, then the amount of financing available must be reduced by the amount of the ineligible loan.

* * * * *

PART 618—GENERAL PROVISIONS

7. The authority citation for part 618 continues to read as follows:

Authority: Secs. 1.5, 1.11, 1.12, 2.2, 2.4, 2.5, 2.12, 3.1, 3.7, 4.12, 4.13A, 4.25, 4.29, 5.9, 5.10, 5.17 of the Farm Credit Act (12 U.S.C. 2013, 2019, 2020, 2073, 2075, 2076, 2093, 2122, 2128, 2183, 2200, 2211, 2218, 2243, 2244, 2252).

Subpart A—Related Services

8. Amend § 618.8000(b) by revising the first sentence to read as follows:

§ 618.8000 Definitions.

* * * * *

(b) *Related service* means any service or type of activity provided by a System bank or association that is appropriate to the recipient's operations, including control of related financial matters.

* * *

* * * * *

§ 618.8005 [Amended]

9. Amend § 618.8005 by:

a. Adding the phrase "appropriate to on-farm and aquatic operations" after the word "services" in paragraph (a); and

b. Removing the phrase "appropriate to cooperative operations of" and adding in its place, the word "to" in paragraph (c).

Dated: May 15, 2003.

Jeanette C. Brinkley,

Secretary, Farm Credit Administration Board.

[FR Doc. 03–12631 Filed 5–20–03; 8:45 am]

BILLING CODE 6705–01–P

POSTAL SERVICE

39 CFR Part 111

Customized MarketMail™

AGENCY: Postal Service.

ACTION: Proposed rule.

SUMMARY: On March 14, 2003, the United States Postal Service, in conformance with sections 3622 and 3623 of the Postal Reorganization Act (39 U.S.C. 101 *et seq.*), filed a request for a recommended decision by the Postal Rate Commission (PRC) on the establishment of Customized MarketMail™ as a minor classification change. ThePRC designated this filing as Docket No. MC2003–1.

In view of this filing, the Postal Service proposes to amend current mailing standards in the *Domestic Mail Manual* (DMM) that would permit mailers to mail irregular-shaped and nonrectangular-shaped Regular Standard Mail and Nonprofit Standard Mail pieces, including pieces that are ¼ inch thick or less. Such pieces would be limited to the nonletter basic rate categories in the Standard Mail Regular and Nonprofit subclasses.

Current mailing standards require that any mailpiece that is ¼ inch thick or less may not be mailed if the piece is not rectangular in shape. This ban on nonrectangular letter-size mail and, in some cases, nonrectangular flat-size mail has limited the options available to businesses and various organizations that might wish to reach existing or potential customers with advertising messages and designs—including the shape of the mailpiece—that are more creative than those now permitted under Postal Service mailing standards.

Customized MarketMail (CMM) would significantly overcome this limitation under controlled circumstances that would ensure minimal impact on Postal Service operations, while allowing mailers the latitude to target a specific audience with highly individualized mailpiece designs. More creative designs could encourage greater customer interest and response rates to promotions, advertising, or other types of communications.

DATES: Submit comments on or before June 5, 2003.

ADDRESSES: Mail or deliver written comments to the Manager, Mailing Standards, ATTN: Neil Berger, U.S. Postal Service, 1735 N. Lynn Street, Room 3025, Arlington, VA 22209–6038. Written comments may also be submitted via fax to (703) 292–4058. Copies of all written comments will be available for inspection and photocopying between 9 a.m. and 4 p.m., Monday through Friday, at the Postal Service Headquarters Library, 475 L'Enfant Plaza SW., 11th Floor North, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Garry A. Rodriguez, (212) 613–8748, New York Rates and Classification Service Center; or Neil Berger, (703) 292–3645, Mailing Standards.

SUPPLEMENTARY INFORMATION: A basic requirement for mailability in Domestic Mail Classification Schedule (DMCS) § 6020 (and *Domestic Mail Manual* (DMM) § C010.1.1) is that "[a]ll items, other than keys and identification devices, which are 0.25 inch thick or less must be rectangular in shape, at least 3.5 inches in width, and at least 5 inches in length." Administrative rulings issued by the Postal Service have interpreted and further clarified that the term "rectangular" implies that rectangular mailpieces must have four right-angle corners, four straight and regular edges, and no holes or other voids within their dimensions.

Mailpieces that are ¼ inch thick or thinner typically meet the dimensional standards for "letter-size mail" or "flat-size mail." These two mail processing categories represent both the vast majority of mailpieces sorted and distributed in mail processing facilities and virtually all mail sorted into cases and delivered by Postal Service carriers.

The requirement that mail must be rectangular within certain dimensions for the typical letter-size or flat-size mailpieces was established to ensure that the Postal Service could efficiently handle and deliver such mail, whether by automated, mechanized, or manual means.

CMM items would differ from other letter-size mail and flat-size mail that is ¼ inch thick or less in two significant aspects. First, CMM items could be nonrectangular or irregular in shape. Second, such mail would be required to bypass all Postal Service handling between the mailer's plant (or point of origin) and the post office delivery unit. CMM items would therefore not be expected or required to be compatible with mechanical or automated processing because their entry profile was specifically developed so that CMM pieces would bypass mail processing operations designed for fairly standardized, rectangular-shaped mail.

CMM Verification and Entry

At the mailer's option, CMM items would have to be presented for postage verification at the origin office under existing plant-verified drop shipment (PVDS) procedures as defined in DMM P950, prepared as Express Mail or Priority Mail drop shipment standards under DMM M072, or taken directly to a destination Postal Service facility with a business mail entry unit as a presorted mailing subject to the requirements in DMM E610.8.0.

Under the PVDS option, current standards for a 200-piece minimum volume would apply only to the entire PVDS mailing job rather than to the quantity for each destination delivery unit (DDU). Normally, the DDU is the facility where the mail would be distributed to and cased for delivery by the corresponding mail carrier or, for noncarrier offices, the facility where the mail is distributed into post office boxes. Transportation to each destination would be either on a vehicle owned or contracted by the mailer, or it would be through the use of existing Express Mail or Priority Mail drop shipment standards in DMM D072.

CMM Preparation

Each CMM mailing would be subject to the current minimum volume requirement of 200 pieces for presorted Standard Mail mailpieces only. There would be, however, no minimum volume requirements for packaging or containerization because all mail processing operations would be bypassed.

Packaging of CMM pieces would be required for all types of containers used in order to maintain mailpiece orientation, inhibit movement of the pieces, and ensure stability in transit. At the same time, packaging would help protect the individual mailpieces from damage. The number of pieces in each package and the method of packaging would be at the mailer's discretion, subject to applicable standards for suitable materials and package sizes in DMM M020.

CMM would be required to be prepared in containers as appropriate to the volume of mail destined for the DDU. Equipment such as sleeved letter trays, Express Mail and Priority Mail containers (*i.e.*, Postal Service pouches, sacks, envelopes, and boxes) or envelopes or boxes supplied by the mailer would be permitted as containers. Each mailing presented in mailer-supplied containers, including those prepared as Express Mail and Priority Mail drop shipment, would be required to be accompanied by sample containers for tare weight calculations. Mailings with more than three different types of containers or mailings consisting of nonidentical-weight pieces would be required to be presented using a manifest mailing system (MMS) under DMM P910 or any other available postage payment system if approved by the Business Mailer Support (BMS) manager, Postal Service Headquarters.

CMM containers would be required to bear the correct container label and be endorsed to the attention of the delivery unit supervisor or postmaster with instructions to "open and distribute" the contents. At the DDU, the CMM pieces would be distributed to mail carriers for casing, and delivery, or in the case of noncarrier offices, to clerks for distribution directly into post office boxes.

At the mailer's option, every piece in a mailing would be permitted to bear the correct carrier route code under DMM M014. If applied, the carrier route code would require the use of CASS-certified software and the current USPS Carrier Route File scheme, hard-copy Carrier Route Files, or another AIS product containing carrier route information, subject to DMM A930 and A950. Carrier route information would also require updating within 90 days before the mailing date.

CMM Rates

CMM pieces would be subject to the basic nonletter piece rates, with no destination entry discount, in the Standard Mail Regular and Nonprofit subclasses. Owing to the irregular or nonrectangular shape inherent with CMM pieces, such pieces would also be subject to the residual shape surcharge (RSS). Currently, the RSS is applied only to mailable pieces within the Standard Mail subclasses that are prepared as a parcel or are not within the dimensional standards for either letter-size mail or flat-size mail.

CMM pieces would not be eligible for any destination entry discount, automation rate, or other presort rate. In addition, because CMM pieces would not be handled in mail processing facilities, such pieces would not be eligible for the parcel barcode discount, which currently is available to appropriately barcoded pieces that are also subject to the residual shape surcharge. Special services, as provided in DMM S900, would not be available for CMM pieces.

CMM Postage Payment

CMM pieces would be subject to the same options of postage payment (precanceled stamps, metered postage, or permit imprint) for Standard Mail pieces as permitted by current standards in DMM P600. CMM mailers would not be required to obtain special mailing permits or authorizations other than those already required for Regular or Nonprofit Standard Mail.

Mailers would, in most cases, be required to pay postage through an approved manifest mailing system (MMS) when more than three different types of mailing containers are used or when the mailing consists of nonidentical-weight pieces. Express Mail and Priority Mail drop shipments generally are also better processed through a manifesting system. The Business Mail Support (BMS) manager at Headquarters would approve the manifest mailing systems and any other postage payment system such as an optional procedure.

CMM Markings and Endorsements

In addition to the current class and rate markings required for Standard Mail pieces, CMM pieces would have to bear the marking "CUSTOMIZED MARKETMAIL" (or the approved abbreviations "CUST MKTMAIL" or "CMM"). The standards and placement of applicable markings and endorsements would follow existing requirements for Standard Mail pieces under DMM M012.

CMM Physical Characteristics

CMM mailpieces could be constructed of any material that is safe for handling by Postal Service personnel. However, CMM pieces would have to be sufficiently flexible to withstand normal handling required for carrier casing and delivery and for placement into mail receptacles and post office boxes.

CMM pieces would not be allowed to have attachments or enclosures. However, it would be permissible for a CMM piece to be constructed or assembled from layers or parts to form a single item.

For purposes of defining the dimensional requirements, a straight line drawn between the most distant outer points on a CMM mailpiece would define the axis of its length and a perpendicular line to that axis would be the axis of its height. The minimum and maximum dimensions and weight are as follows:

(1) *Height:* No less than 3½ inches and no more than 12 inches.

(2) *Length:* No less than 5 inches and no more than 15 inches.

(3) *Thickness:* No less than 0.007 inch at its thinnest point and no more than ¾ inch when measured at its thickest point.

(4) *Weight:* No more than 3.3 ounces.

CMM pieces would be permitted to have voids or holes within their dimensions, and they would also be permitted to have a nonuniform thickness. If pieces are of nonuniform thickness, packages of CMM pieces would be required to be prepared by counterstacking under DMM M020 to ensure stability in transit.

Mailpiece design approval by the manager of business mail entry in the district serving the office of mailing, though not required, would be highly recommended. Physical or graphic content would be subject to current standards in DMM C020 and C030 and to any applicable nonpostal statutes and regulations.

CMM Addressing

Each CMM piece would be required to bear a complete mailing address including an accurate 5-digit ZIP Code or ZIP+4 code. CMM pieces must bear the exceptional address format or the occupant address format under DMM A040.

The exceptional address format uses both a recipient's name and the alternative "Current Occupant" or "Current Resident," followed by a complete delivery address, city, state, and ZIP Code or ZIP+4 code. If the named recipient has moved, mail bearing an exceptional address format is neither forwarded to the recipient's new address nor returned to the sender. Instead, such mail is left at the indicated delivery address for the current resident.

The occupant address format does not use an actual recipient's name but only the designation "Occupant," "Householder," or "Resident" in place of a name, followed by a complete delivery address, city, state, and ZIP Code or ZIP+4 code. Mail bearing an occupant address is never forwarded or returned.

The address block could be placed anywhere on the mailpiece as currently permitted for flat-size mailpieces, whether printed directly on the mailpiece, or printed on an address label permanently affixed to the piece. The address and other mandatory information such as postage indicia and class and rate markings would be required to be clearly identifiable and legible, following current mailing standards.

CMM pieces would be subject to the standard for address quality and address list maintenance that requires all 5-digit ZIP Codes included in addresses on pieces claimed at Regular Standard Mail and Nonprofit Standard Mail rates to be verified and corrected within 12 months before the mailing date using a method approved by the Postal Service. This requirement ensures that mail is addressed for the correct ZIP Code destination and eliminates potential misdirection of mail. The use of detached address labels (DALs) would not be permitted for CMM pieces.

CMM Delivery

Postal Service handling of CMM mailpieces would end when the mail carrier delivers the pieces to the addresses shown on the pieces or when the postal employee distributes the pieces to the correct post office boxes. Deliverable CMM pieces would be delivered or left at the address, and CMM pieces that are undeliverable as addressed because of an invalid address would be discarded.

Ancillary service endorsements used for address correction services and the forwarding and return of mail would not be available. Each piece would also be required to bear the appropriate carrier release endorsement in DMM D042 ("Carrier—Leave If No Response") to indicate that a deliverable CMM piece is to be left in a safe location near the recipient's mail receptacle if the piece cannot be placed inside the receptacle.

Although exempt from the notice and comment requirements of the Administrative Procedure Act [5 U.S.C. of 553(b), (c)] regarding proposed rulemaking by 39 U.S.C. 410(a), the Postal Service invites public comment on the following proposed revisions to the *Domestic Mail Manual*, incorporated in the *Code of Federal Regulations. See* 39 CFR 111.1.

List of Subjects in 39 CFR Part 111

Postal Service.

PART 111—[AMENDED]

1. The authority citation for 39 CFR part 111 continues to read as follows:

Authority: 5 U.S.C. 552(a); 39 U.S.C. 101, 401, 403, 404, 414, 416, 3001–3011, 3201–3219, 3403–3406, 3621, 3626, 5001.

2. Amend the following sections of the *Domestic Mail Manual* (DMM) as set forth below:

Domestic Mail Manual (DMM)

* * * * *

C Characteristics and Content

C000 General Information

C010 General Mailability Standards

1.0 MINIMUM AND MAXIMUM DIMENSIONS

1.1 Minimum

[Revise 1.1 to read as follows:]

For mailability, the following standards apply:

a. All mailpieces (except Customized MarketMail mailed under E660 and keys and identification devices mailed under E130) that are ¼ inch thick or less must be rectangular, with four square corners and parallel opposite sides.

b. All mailpieces must be at least 3½ inches high and at least 5 inches long (see Exhibit 1.1).

c. All mailpieces must be at least 0.007 inch thick.

* * * * *

1.3 Length and Height

* * * * *

[Redesignate current 1.3c as 1.3d and add new 1.3c to read as follows:]

c. Standard Mail Customized MarketMail.

* * * * *

C800 Standard Mail

1.0 DIMENSIONS

1.1 Basic Standards

These standards apply to Standard Mail:

* * * * *

[Revise 1.1b to read as follows:]

b. Presorted rate and Customized MarketMail pieces are subject only to the basic mailability standards in C010.

* * * * *

[Redesignate current 2.0 through 5.0 as 3.0 through 6.0, respectively; add new 2.0 to read as follows:]

2.0 CUSTOMIZED MARKETMAIL

Mailpieces prepared as Customized MarketMail (CMM) under E660 must meet these additional standards and physical characteristics:

a. The material used for constructing the pieces, including paper, plastic, or any other suitable material, must be free of sharp edges, protrusions, and other design elements that could cause harm or injury to USPS personnel handling these pieces.

b. The dimensions of the pieces must not be smaller than the minimum dimensions for letter-size mail in C050 or greater than the maximum dimensions for flat-size mail in C050. Length and height are defined as follows:

(1) The length and the axis of length are determined by drawing a straight line between the two outer points most distant from each other.

(2) The height is determined by drawing perpendicular lines to the points that are the greatest distance above and below the axis of length. The sum of these two lines defines the height.

c. The maximum weight may not exceed 3.3 ounces.

d. Pieces may be rectangular or nonrectangular, may be of irregular thickness, and may include die cuts, holes, and voids.

e. Pieces must be flexible enough to fit inside a minimum-size mail receptacle measuring 4⅞ inches wide, 14⅞ inches high, and 5⅞ inches long (deep).

f. Design approval by the district business mail entry manager is not required, but it is recommended.

3.0 RESIDUAL SHAPE SURCHARGE

[Revise redesignated 3.0 to read as follows:]

Mail that is prepared as a parcel or is not letter-size or flat-size as defined in C050 is subject to a residual shape surcharge. Mail that is prepared as Customized MarketMail under E660 is also subject to the residual shape surcharge. There are different surcharges for Presorted rate pieces and Enhanced Carrier Route rate pieces.

* * * * *

D Deposit, Collection, and Delivery

D000 Basic Information

* * * * *

D040 Delivery of Mail

* * * * *

D042 Conditions of Delivery

* * * * *

[Revise heading of 7.0 to read as follows:]

7.0 CARRIER RELEASE

[Redesignate current text of 7.0 as 7.1 and add heading to read as follows:]

7.1 Parcels

An uninsured parcel may not be left in an unprotected place, such as a porch or stairway, unless the addressee has filed a written order, or the mailer has endorsed the parcel "Carrier—Leave If No Response." The endorsement must appear directly below the return address as specified in M012.

[Add new 7.2 to read as follows:]

7.2 Customized MarketMail

Any matter mailed as Customized MarketMail under E660 must bear the endorsement "Carrier—Leave If No Response" as specified in M012.

* * * * *

E Eligibility

* * * * *

E100 First-Class Mail

E110 Basic Standards

1.0 CLASSIFICATION AND DESCRIPTION

1.1 Eligibility

[Revise 1.1 to read as follows:]

All mailable matter may be sent as First-Class Mail (which for the purposes of the standards in 1.0 includes Priority Mail) or as Express Mail, except Customized MarketMail under E660 or other matter prohibited by the respective standards.

* * * * *

E600 Standard Mail

E610 Basic Standards

* * * * *

4.0 ENCLOSURES AND ATTACHMENTS

* * * * *

4.3 Nonincidental First-Class Enclosures

[Revise first sentence of 4.3 to read as follows; no other change:]

Letters or other pieces of nonincidental First-Class Mail, subject to postage at First-Class Mail rates, may be enclosed with Standard Mail (except matter mailed as Customized MarketMail under E660). * * *

4.4 Nonincidental First-Class Attachments

[Revise first sentence of 4.4 to read as follows; no other change:]

Letters or other pieces of nonincidental First-Class Mail may be placed in an envelope and securely attached to the address side of a Standard Mail piece (except matter mailed as Customized MarketMail under E660), or of the principal piece, as applicable. * * *

4.5 Attachment of Other Standard Mail Matter

[Revise introductory sentence and 4.5b to read as follows:]

The front or back cover page of a Standard Mail piece (except Customized MarketMail) may bear an attachment that is also Standard Mail matter if:

* * * * *

b. The material qualifies for and is mailed at Standard Mail rates.

* * * * *

5.0 RATES

5.1 General Information

[Revise 5.1 to read as follows:]

All Standard Mail rates are presorted rates (including all nonprofit rates). These rates apply to mailings meeting the basic standards in E610 and the corresponding standards for Presorted rates under E620, Enhanced Carrier Route rates under E630, automation rates under E640, or Customized MarketMail rates under E660. Except for Customized MarketMail, destination entry discount rates are available under E650, and barcode discounts are available for machinable parcels under E620. A mailpiece is subject to the residual shape surcharge if it is prepared as a parcel, or if it is not letter-size or flat-size under C050, or if it is prepared as Customized MarketMail under E660. Nonprofit rates may be used only by organizations authorized by the USPS under E670. Not all processing categories qualify for every rate. Pieces are subject to either a single minimum per piece rate or a combined piece/pound rate, depending on the weight of the individual pieces in the mailing under 5.2 or 5.3.

5.2 Minimum per Piece Rates

The minimum per piece rates (*i.e.*, the minimum postage that must be paid for each piece) apply as follows:

* * * * *

[Revise 5.2b and 5.2c to read as follows:]

b. Letters and Nonletters. In applying the minimum per piece rates, a mailpiece is categorized as either a letter or a nonletter, based on whether the piece meets the letter-size standard in C050, without regard to placement of the address on the piece, except under these conditions:

(1) If the piece meets both the definition of a letter in C050 and the definition of an automation flat in C820, the piece may be prepared and entered at an automation flat (nonletter) rate.

(2) If the piece is prepared for automation letter rates, address placement is used to determine the length when applying the size standards and aspect ratio requirements to qualify for automation letter rates under C810. For this purpose, the length is considered to be the dimension parallel to the address.

(3) If the piece is mailed as Customized MarketMail under E660, the piece is always subject to the applicable Regular or Nonprofit Standard Mail basic nonletter per piece rate and must not exceed the maximum weight for those rates.

c. *Individual Rates.* There are separate minimum per piece rates for each subclass (Regular, Enhanced Carrier Route, Nonprofit, and Nonprofit Enhanced Carrier Route) and within each subclass for the type of mailing and the level of presort within each mailing under E620, E630, E640, and E660. Except for Customized MarketMail, discounted per piece rates also may be claimed for destination entry mailings (destination bulk mail center (DBMC), destination sectional center facility (DSCF), and destination delivery unit (DDU)) under E650. DDU rates are available only for mail entered at Enhanced Carrier Route or Nonprofit Enhanced Carrier Route rates. See R600 for individual per piece rates.

5.3 Piece/Pound Rates

[Revise 5.3 by adding a new sentence after the first sentence to read as follows; no other change:]

* * * Pieces exceeding 3.3 ounces may not be mailed as Customized MarketMail. * * *

* * * * *

[Revise heading of 5.4 to read as follows:]

5.4 Machinable Parcel Barcode Discount

[Revise last sentence to read as follows:]

* * * Pieces mailed at Enhanced Carrier Route, Nonprofit Enhanced Carrier Route, or Customized MarketMail rates are not eligible for a barcoded discount.

5.5. Residual Shape Surcharge

[Revise 5.5 to read as follows:]

Standard Mail that is prepared as a parcel or is not letter-size or flat-size as defined in C050 is subject to a residual shape surcharge. Mail that is prepared as Customized MarketMail under E660 is also subject to the residual shape surcharge. There are different surcharges for Presorted rate pieces and Enhanced Carrier Route rate pieces. Only the surcharges for Presorted rate pieces apply to Customized MarketMail.

* * * * *

9.0 SPECIAL SERVICES

* * * * *

9.3 Ineligible Matter

Special services may not be used for any of the following types of Standard Mail:

* * * * *

[Add 9.3e to read as follows:]

e. Pieces mailed as Customized MarketMail.

* * * * *

E620 Presorted Rates

* * * * *

[Revise heading and text of 3.0 to read as follows:]

3.0 RESIDUAL SHAPE SURCHARGE

Presorted Standard Mail that is prepared as a parcel or is not letter-size or flat-size as defined in C050 is subject to a residual shape surcharge.

* * * * *

E630 Enhanced Carrier Route Rates

* * * * *

5.0 RESIDUAL SHAPE SURCHARGE

[Revise 5.0 to read as follows:]

Enhanced Carrier Route Standard Mail that is prepared as a parcel or is not letter-size or flat-size as defined in C050 is subject to a residual shape surcharge.

* * * * *

E650 Destination Entry

1.0 BASIC STANDARDS

1.1 Rate Application

[Revise first sentence of 1.1 to read as follows; no other change:]

Except for Customized MarketMail as defined in E660, Regular, Nonprofit, Enhanced Carrier Route, and Nonprofit Enhanced Carrier Route Standard Mail meeting the basic standards in E610 may qualify for the destination BMC, SCF, or DDU entry rates, as applicable, if deposited at the correct destination postal facility, subject to the general standards below and the specific standards in 5.0, 6.0, and 7.0, respectively. * * *

* * * * *

[Add new E660 to read as follows:]

E660 Customized MarketMail

Summary

E660 describes the eligibility standards for Customized MarketMail (CMM) including standards for minimum volumes, addressing, and drop shipment.

1.0 BASIC STANDARDS

1.1 General

Customized MarketMail (CMM) is an option for mailing nonrectangular and irregular-shaped Regular Standard Mail and Nonprofit Standard Mail pieces if the pieces weigh 3.3 ounces or less and meet the physical characteristics and the dimensional requirements in C600 and the mail preparation standards in M660. Other Regular and Nonprofit Standard Mail measuring ¾ inch thick or less and meeting the applicable standards in C600, E660, and M660 may be entered as CMM at the mailer's option. CMM must be entered directly at a destination delivery unit (DDU).

1.2 Basic Standards

All pieces in a CMM mailing must:

a. Meet the basic standards for Standard Mail in E610 and, for Nonprofit Standard Mail, the additional standards in E670.

b. Be part of a single mailing of at least 200 addressed pieces. All pieces must be identical in size, shape, and weight unless excepted by standard under an approved postage payment system.

c. Bear a complete delivery address using the exceptional address format or occupant address format under A040 with the correct ZIP Code or ZIP+4 code. Each piece must also bear a carrier release endorsement as specified by D042.7.0. These additional addressing standards apply:

(1) Detached address labels (DALs) under A060 are not permitted.

(2) Ancillary service endorsements under F010 are not permitted.

(3) All 5-digit ZIP Codes included in addresses on pieces must be verified and corrected within 12 months before the mailing date, using a USPS-approved method. The mailer's signature on the postage statement certifies that this standard has been met when the corresponding mail is presented to the USPS. This standard applies to each address individually, not to a specific list or mailing. An address meeting this standard may be used in mailings at any other rates to which the standard applies during the 12-month period after its most recent update.

(4) At the mailer's option, a carrier route information line under M014 may be added. If this option is used, a carrier route code must be applied to every piece in the mailing and must be applied using CASS-certified software and the current USPS Carrier Route File scheme, hard copy Carrier Route Files, or another AIS product containing carrier route information, subject to A930 and A950. Carrier route information must be updated within 90 days before the mailing date.

d. Be marked, sorted, and documented as specified in M660.

e. Be entered at the destination delivery unit appropriate to the delivery address on the corresponding mail, as a mailing subject to the applicable requirements in E650, as a mailing using Express Mail or Priority Mail drop shipment under M072, or as a plant-verified drop shipment (PVDS) mailing under P950. Minimum volumes per destination are not required.

2.0 RATES

Each CMM piece is subject to the Presorted Regular or Nonprofit Standard Mail nonletter, nondestination entry basic rate plus the residual shape surcharge. CMM is not eligible for the parcel barcode discount.

3.0 SPECIAL SERVICES

CMM is not eligible for any special service.

* * * * *

E700 Package Services

E710 Basic Standards

1.0 BASIC INFORMATION

1.1 Definition

[Revise first sentence of 1.1 to read as follows; no other change:]

Package Services mail consists of mailable matter that is neither mailed or required to be mailed as First-Class Mail nor entered as Periodicals (unless permitted or required by standard) or as Customized MarketMail as defined in E660. * * *

* * * * *

F Forwarding and Related Services

F000 Basic Services

F010 Basic Information

* * * * *

5.0 CLASS TREATMENT FOR ANCILLARY SERVICES

* * * * *

5.3 Standard Mail

Undeliverable-as-addressed (UAA) Standard Mail is treated as described in Exhibit 5.3a and Exhibit 5.3b, with these additional conditions:

* * * * *

[Add 5.3k to read as follows:]

k. Customized MarketMail under E660 is not eligible to use ancillary service endorsements.

* * * * *

M Mail Preparation and Sortation

M000 General Preparation Standards

M010 Mailpieces

M011 Basic Standards

1.0 TERMS AND CONDITIONS

* * * * *

1.4 Mailings

Mailings are defined as:

* * * * *

d. *Standard Mail.* Except as provided in E620.1.2, the types of Standard Mail listed below may not be part of the same mailing. *See* M041, M045, M610, M620, and M900 for copalletized, combined, or mixed-rate mailings.

* * * * *

[Add 1.4d(8) to read as follows:]

(8) Customized MarketMail and any other type of mail.

* * * * *

M012 Markings and Endorsements

* * * * *

2.0 MARKINGS—FIRST-CLASS MAIL AND STANDARD MAIL

2.1 Placement

Markings must be placed as follows:

* * * * *

[Revise 2.1b to read as follows:]

b. Other Markings. The rate-specific markings "AUTO," "AUTOCR," "Presorted" (or "PRSRT"); "Single-Piece" (or "SNGLP") (First-Class Mail only); and "ECRLOT," "ECRWSH," "ECRWSS," and "Customized MarketMail" (or "CUST MKTMAIL" or "CMM") (Standard Mail only)) may be placed as follows:

(1) In the location specified in 2.1a.

(2) In the address area on the line directly above or two lines above the address if the marking appears alone or if no other information appears on the line with the marking except optional endorsement line information under M013 or carrier route package information under M014.

(3) If preceded by two asterisks (**), the "AUTO," "AUTOCR," "PRESORTED" (or "PRSRT"), "CUSTOMIZED MARKETMAIL" (or "CUST MKTMAIL" or "CMM"), or "Single-Piece" (or "SNGLP") marking also may be placed on the line directly above or two lines above the address in a mailer keyline or a manifest keyline, or it may be placed above the address and below the postage in an MLOCR ink-jet printed date correction/meter drop shipment line. Alternatively, the "AUTO," "AUTOCR," "PRSRT," or "SNGLP" marking may be placed to the left of the barcode clear zone (subject to the standards in C840) on letter-size pieces.

* * * * *

M070 Mixed Classes

* * * * *

M072 Express Mail and Priority Mail Drop Shipment

1.0 BASIC STANDARDS

1.1 Enclosed Mail

[Revise last sentence of 1.1 to read as follows; no other change:]

* * * When a drop shipment is destined to a 5-digit facility, then sacking or traying is not required for letters or flats, if all enclosed presort destination packages are destined to the same 5-digit ZIP Code as the Express Mail or Priority Mails pouch, sack, or container.

* * * * *

1.3 Containers for Expedited Transport

[Revise 1.3 to read as follows:]

Acceptable containers for expedited transport are as follows:

a. An Express Mail drop shipment must be contained in a blue and orange Express Mail pouch, except that Customized MarketMail under E660 may be contained in USPS-provided Express Mail envelopes and cartons or in any properly labeled container supplied by the mailer.

b. A Priority Mail drop shipment must be contained in either an orange Priority Mail sack or a letter-size tray, except that Customized MarketMail under E660 may be contained in USPS-provided Priority Mail envelopes and cartons or in any properly labeled container supplied by the mailer.

* * * * *

1.7 Label 23

[Revise 1.7 to read as follows:]

As an alternative to sacks for Priority Mail drop shipments, letter trays or mailer-supplied containers for Customized MarketMail under E660 may be used. Label 23 is affixed to the letter tray or mailer-supplied container. A single Label 23 may be used to identify two letter trays strapped together. The two trays must be of identical size, and each individual tray must be strapped under M033.1.5. Label 23 must be affixed to the sleeve of the top tray before strapping. These trays must be strapped securely around the length of the two trays. The total weight of two trays strapped together or mailer-supplied containers used for CMM may not exceed 70 pounds.

* * * * *

M600 Standard Mail

* * * * *

[Add new M660 to read as follows:]

M660 Customized MarketMail

Summary

M660 describes the basic preparation and marking standards for CustomizedMarketMail (CMM) meeting the eligibility standards in E660.

1.0 BASIC STANDARDS

1.1 All Mailings

All mailings and all pieces in each mailing prepared as Customized MarketMail (CMM) are subject to specific preparation standards in 1.0 and 2.0 and to these general standards:

a. All pieces must meet the standards for basic eligibility in E610 and specific eligibility in E660. Nonprofit Standard Mail must meet the additional eligibility standards in E670.

b. CMM pieces must not be part of a mailing containing any other type of Standard Mail.

c. Each mailing must meet the applicable standards for mail preparation in M010 and M020 and the following:

(1) Subject to the marking standards in M012, Regular Standard Mail pieces must be marked "Presorted Standard" (or "PRSRT STD") and Nonprofit Standard Mail pieces must be marked "Nonprofit Organization" (or "Nonprofit Org." or "Nonprofit"). All pieces must also be marked Customized MarketMail," "CUST MKTMAIL," or "CMM."

(2) At the mailer's option, a carrier route information line under M014 may be added. If this option is used, a carrier route code must be applied to every piece in the mailing and must be applied using CASS-certified software and the current USPS Carrier Route File scheme, hard copyCarrier Route Files, or another AIS product containing carrier route information, subject to A930 and A950. Carrier route information must be updated within 90 days before the mailing date.

d. All pieces in the mailing must meet the specific sortation and preparation standards in M660.

e. Pieces are subject to the rate eligibility specified in E660.

1.2 Postage

CMM is subject to the same options of postage payment (precanceled stamps, metered postage, or permit imprint) for Standard Mail as permitted under P600.

1.3 Documentation

A complete, signed postage statement, using the correct USPS form or an approved facsimile with the residual shape surcharge, must accompany each mailing. Mailings of nonidentical-weight pieces or mailings using more than three different types of containers must also be supported by standardized documentation meeting the standards in P012. Documentation for nonidentical-weight pieces is not required if the correct rate is affixed to each piece.

2.0 PREPARATION

2.1 Packaging

Two or more pieces to the same 5-digit destination must be packaged under M020 in any container to maintain the integrity and stability of the pieces throughout transit and handling. The maximum weight for any package is 20 pounds. Pieces of irregular thickness must also be counterstacked as provided in M020. At the mailer's option, CMM may be prepared in carrier route packages, subject to the applicable standards in M050 and E630.

2.2 Containers

If more than three types of containers are used, the mailing must be prepared using an approved manifest mailing system (MMS) under P910, unless the Business Mailer Support (BMS) manager approves another postage payment system. Each mailing presented in mailer-supplied containers must be accompanied by sample containers for tare weight calculations. The size of the containers must be appropriate to the dimensions of the pieces, and the number of containers must be appropriate to the volume of pieces in the mailing. If Express Mail or Priority Mail drop shipment is used, containers are subject to the standards in M072.

2.3 Containerizing and Labeling

Mail must be prepared in 5-digit, 5-digit scheme using L606, or 5-digit carrier route containers, with no minimum volume (piece or weight) required for an individual container. In addition to the required labeling, mailer-supplied containers must be marked "DELIVERY UNIT—OPEN AND DISTRIBUTE" on the container label or on the address side of the container. Containers are prepared and labeled as follows:

a. PVDS drop shipments must be prepared in 5-digit or 5-digit carrier route letter trays or in mailer-supplied containers and labeled as follows:

(1) *Line 1:* City, state, and 5-digit ZIP Code on mail.

(2) *Line 2:* "DELIVERY UNIT—STD CMM."

(3) *Line 3:* Office of mailing or mailer information (see M031).

b. Express Mail and Priority Mail drop shipments must be prepared in USPS-provided Express Mail or Priority Mail containers (*i.e.*, pouches, sacks, cartons, or envelopes) or in mailer-supplied containers and must be labeled under M072.

* * * * *

P Postage and Payment Methods

P000 Basic Information

* * * * *

P040 Permit Imprints

* * * * *

4.0 INDICIA FORMAT

4.1 Basic Standard

Exhibit 4.1b Indicia Formats

[Revise Exhibit 4.1b, Standard Mail by adding an example of "CustomizedMarketMail," "Cust MktMail," or "CMM" marking.]

PRSRT STD
CUST MKTMAIL
U.S. POSTAGE PAID
NEW YORK, NY
PERMIT NO. 1

* * * * *

R Rates and Fees

* * * * *

R600 Standard Mail

1.0 REGULAR STANDARD MAIL

* * * * *

1.2 Nonletters—3.3 oz. or Less

* * * * *

[Add footnote 2 to "Presorted" to read as follows:]

2. Customized MarketMail pieces are subject to the Basic nondestination entry nonletter rate, plus the residual shape surcharge.

* * * * *

3.0 NONPROFIT STANDARD MAIL

* * * * *

3.2 Nonletters—3.3 oz. or Less

* * * * *

[Add footnote 2 to "Presorted" to read as follows:]

2. Customized MarketMail pieces are subject to the Basic nondestination entry nonletter rate, plus the residual shape surcharge.

* * * * *

S Special Services

S000 Miscellaneous Services

* * * * *

S070 Mixed Classes

1.0 BASIC INFORMATION

[Revise 1.0 to read as follows:]

For a Priority Mail drop shipment, no special services may be added to the Priority Mail segment, and the mail enclosed may receive only the following services:

a. First-Class Mail may be sent with certified, special handing, or, for First-Class Mail parcels only, electronic option Delivery Confirmation or electronic option Signature Confirmation.

b. Standard Mail subject to the residual shape surcharge (except Customized MarketMail) may be sent with electronic option Delivery Confirmation.

c. Package Services mail may be sent with special handling or, for Package Services parcels only, electronic option Delivery Confirmation or electronic option Signature Confirmation.

* * * * *

S500 Special Services for Express Mail

* * * * *

2.0 EXPRESS MAIL DROP SHIPMENT

[Revise 2.0 to read as follows:]

For an Express Mail drop shipment, the content of each Express Mail pouch is considered one mailpiece for indemnity coverage, and the mail enclosed may receive only the following services:

a. First-Class Mail may be sent with certified, special handing, or, for First-Class Mail parcels only, electronic option Delivery Confirmation or electronic option Signature Confirmation.

b. Priority Mail may be sent with certified, special handing, electronic option Delivery Confirmation, or electronic option Signature Confirmation.

c. Standard Mail subject to the residual shape surcharge (except Customized MarketMail) may be sent with electronic option Delivery Confirmation.

d. Package Services mail may be sent with special handling or, for Package Services parcels only, electronic option Delivery Confirmation or electronic option Signature Confirmation.

* * * * *

I Index Information

I000 Information

* * * * *

I020 References

* * * * *

I022 Subject Index

* * * * *

[Add the following two entries to read as follows:]

Customized MarketMail, C600, E660, M660

* * * * *

Standard Mail

* * * * *

mail preparation

* * * * *

Customized MarketMail, M660

* * * * *

An appropriate amendment to 39 CFR 111 to reflect these changes will be published if the proposal is adopted.

Neva R. Watson,

Attorney, Legislative.

[FR Doc. 03–12719 Filed 5–20–03; 8:45 am]

BILLING CODE 7710–12–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 03–1545, MB Docket No. 03–118, RM–10585]

Digital Television Broadcast Service; Butte, MT

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Commission requests comments on a petition filed by KXLF Communications, Inc., licensee of KXLF–TV, NSTC channel 4, Butte, Montana, requesting the substitution of DTV channel 5 for DTV channel 15. DTV Channel 5 can be allotted to Butte, Montana, at reference coordinates 46–00–27 N. and 112–26–30 W. with a power of 10.7, a height above average terrain HAAT of 588 meters. Since the community of Butte is located within 400 kilometers of the U.S.-Canadian border, concurrence from the Canadian must be obtained for this allotment.

DATES: Comments must be filed on or before July 7, 2003, and reply comments on or before July 22, 2003.

ADDRESSES: The Commission permits the electronic filing of all pleadings and comments in proceeding involving petitions for rule making (*except in broadcast allotment proceedings. See Electronic Filing of Documents in Rule Making Proceedings*, GC Docket No. 97–113 (rel. April 6, 1998). Filings by paper can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail (although we continue to experience delays in receiving U.S. Postal Service mail). The Commission's contractor, Vistronix, Inc., will receive hand-delivered or

messenger-delivered paper filings for the Commission's Secretary at 236 Massachusetts Avenue, NE., Suite 110, Washington, DC 20002. The filing hours at this location are 8 a.m. to 7 p.m. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes must be disposed of before entering the building. Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9300 East Hampton Drive, Capitol Heights, MD 20743. U.S. Postal Service first-class mail, Express Mail, and Priority Mail should be addressed to 445 12th Street, SW., Washington, DC 20554. All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: Scott S. Patrick, Dow, Lohnes & Albertson, PLLC, 1200 New Hampshire Avenue, NW., Suite 800, Washington, DC 20036–6802 (Counsel for KXLF Communications, Inc.).

FOR FURTHER INFORMATION CONTACT: Pam Blumenthal, Media Bureau, (202) 418–1600.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MB Docket No. 03–118, adopted May 8, 2003, and released May 15, 2003. The full text of this document is available for public inspection and copying during regular business hours in the FCC Reference Information Center, Portals II, 445 12th Street, SW., Room CY–A257, Washington, DC 20554. This document may also be purchased from the Commission's duplicating contractor, Qualex International, Portals II, 445 12th Street, SW., Room CY–B402, Washington, DC 20554, telephone 202–863–2893, facsimile 202–863–2898, or via e-mail *qualexint@aol.com*.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. *See* 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, *see* 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Digital television broadcasting, Television.

For the reasons discussed in the preamble, the Federal Communications Commission proposes to amend 47 CFR Part 73 as follows:

PART 73—RADIO BROADCAST SERVICES

1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303, 334 and 336.

§ 73.622 [Amended]

2. Section 73.622(b), the Table of Digital Television Allotments under Montana is amended by removing DTV channel 15 and adding DTV channel 5 at Butte.

Federal Communications Commission.

Barbara A. Kreisman,

Chief, Video Division, Media Bureau.

[FR Doc. 03–12685 Filed 5–20–03; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[Docket No. 030509120–3120–01; I.D. 033103D]

RIN 0648–AQ32

Fisheries of the Northeastern United States; Recreational Measures for the Summer Flounder, Scup, and Black Sea Bass Fisheries; Fishing Year 2003

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Proposed rule; request for comments.

SUMMARY: NMFS proposes recreational measures for the 2003 summer flounder, scup, and black sea bass fisheries. The implementing regulations for these fisheries require NMFS to publish recreational measures for the upcoming fishing year and to provide an opportunity for public comment. The intent of these measures is to prevent overfishing of the summer flounder, scup, and black sea bass resources.

DATES: Comments must be received on or before June 5, 2003.

ADDRESSES: Comments on the proposed recreational specifications should be sent to Patricia A. Kurkul, Regional Administrator, Northeast Region, NMFS, One Blackburn Drive, Gloucester, MA 01930–2298.

Copies of supporting documents used by the Summer Flounder, Scup, and Black Sea Bass Monitoring Committee and of the Environmental Assessment, Regulatory Impact Review, Initial Regulatory Flexibility Analysis (EA/RIR/IRFA) are available from Daniel Furlong, Executive Director, Mid-Atlantic Fishery Management Council, Room 2115, Federal Building, 300 South Street, Dover, DE 19901–6790. The EA/RIR/IRFA is also accessible via the Internet at *http:/www.nero.nmfs.gov*.

FOR FURTHER INFORMATION CONTACT: Sarah McLaughlin, Fishery Policy Analyst, (978) 281–9279, fax (978) 281–9135, e-mail *sarah.mclaughlin@noaa.gov*.

SUPPLEMENTARY INFORMATION:

Background

The summer flounder, scup, and black sea bass fisheries are managed cooperatively by the Atlantic States Marine Fisheries Commission (Commission) and the Mid-Atlantic Fishery Management Council (Council), in consultation with the New England and South Atlantic Fishery Management Councils.

The management units specified in the Fishery Management Plan (FMP) for the Summer Flounder, Scup, and Black Sea Bass Fisheries include summer flounder (*Paralichthys dentatus*) in U.S. waters of the Atlantic Ocean from the southern border of North Carolina (NC) northward to the U.S./Canada border, and scup (Stenotomus chrysops) and black sea bass (*Centropristis striata*) in U.S. waters of the Atlantic Ocean from 35°13.3′ N. lat. (the latitude of Cape Hatteras Lighthouse, Buxton, NC) northward to the U.S./Canada border.

The FMP and its implementing regulations found at 50 CFR part 648, subparts A, G (summer flounder), H (scup), and I (black sea bass), describe the process for specifying annual recreational measures that apply in the Exclusive Economic Zone (EEZ). The states manage these fisheries within 3 miles of their coast, under the Commission's Interstate Summer Flounder, Scup, and Black Sea Bass FMP. The Federal regulations govern vessels fishing in the EEZ, as well as vessels possessing a Federal fisheries permit, regardless of where they fish.

The Council's FMP established Monitoring Committees (Committees) for the three fisheries, consisting of representatives from the Commission, the Mid-Atlantic, New England, and South Atlantic Councils, and NMFS. The FMP and its implementing regulations require the Committees to review scientific and other relevant information annually and to recommend management measures necessary to achieve the recreational harvest limits established for the summer flounder, scup, and black sea bass fisheries for the upcoming fishing year. The Council's FMP limits these measures to minimum fish size, possession limit, and fishing season.

The Council's Demersal Species Committee and the Commission's Summer Flounder, Scup, and Black Sea Bass Management Board (Board) then consider the Committees' recommendations and any public comment in making their recommendations to the Council and the Commission, respectively. The Council then reviews the recommendations of the Demersal Species Committee, makes its own recommendations, and forwards them to NMFS for review. The Commission similarly adopts recommendations for the states. NMFS is required to review the Council's recommendations to ensure that they are consistent with the targets specified for each species in the FMP.

Final quota specifications for the 2003 summer flounder, scup, and black sea bass fisheries were published on January 2, 2003 (68 FR 60). These specifications were determined to be consistent with the 2003 target fishing mortality rate (F) (for summer flounder) and target exploitation rates (for scup and black sea bass). The 2003 coastwide recreational harvest limits are 9.28 million lb (4,209 mt) for summer flounder, 4.01 million lb (1,819 mt) for scup, and 3.43 million lb (1,557 mt) for black sea bass. The specifications do not establish recreational measures, since final recreational catch data were not available when the Council made its recreational harvest limit recommendation to NMFS.

All minimum fish sizes discussed below are total length (TL) measurements of the fish, i.e., the straight-line distance from the tip of the snout to the end of the tail while the fish is lying on its side.

Summer Flounder

The 2003 summer flounder recreational harvest limit is 9.28 million lb (4,209 mt), 4.5 percent less than the 2002 recreational harvest limit. However, 2002 recreational summer flounder landings are projected to be 8.13 million lb (3,688 mt), 12 percent less than the 2002 recreational harvest limit. Assuming the same level of fishing effort in 2003, no coastwide reductions in landings would be required for summer flounder. However, as described below, under the Council-recommended conservation equivalency measures, Virginia (VA) would be required to reduce summer flounder landings in 2003 (by 11 percent).

NMFS implemented Framework Adjustment 2 to the FMP in July 2001 (66 FR 36208). This framework implemented a process that makes conservation equivalency a management option for the summer flounder recreational fishery. Conservation equivalency allows each state to establish its own recreational management measures (possession limits, fish size limits, and fishing seasons), as long as the combined effect of all of the states' management measures achieve the same level of conservation as would Federal coastwide measures developed to achieve the recreational harvest limit, if implemented by all of the states (i.e., both would have equivalent Fs). Conservation equivalency was implemented for the 2002 summer flounder recreational fishery.

The Council and Board recommend annually either conservation equivalency (whereby states develop state-specific measures) or coastwide management measures (whereby all states adopt the same measures as the Federal measures) for the summer flounder recreational fishery to ensure that the recreational harvest limit will not be exceeded. If the Council and the Board recommend conservation equivalency, they must also recommend coastwide management measures that would be implemented if, following NMFS review and public comment, conservation equivalency is not implemented in the final rule. In addition, the Council and the Board must recommend precautionary default measures that would apply in states that do not implement conservation equivalent measures, or for which management proposals are not approved by the Board. The precautionary default measures are defined as the set of measures that would achieve the greatest reduction in landings required for any state.

In December 2002, the Council and Board voted to recommend conservation equivalency to achieve the 2003 recreational harvest limit. Additionally, the Board agreed to allow states that landed less than their 2002 target to liberalize regulations for 2003. The precautionary default measures specified by the Council and Board are the same as specified for 2002 and consist of an 18–inch (45.72–cm) minimum fish size, a possession limit of one fish per person, and no closed season. The precautionary default alternative would reduce landings by 67 percent, assuming the measures are implemented by all states. Because the precautionary default measures must be restrictive enough to achieve the necessary reductions in the state requiring the greatest reductions, application of the precautionary default would achieve higher than necessary reductions in most states. State-specific reductions would range from 41 percent in Delaware (DE) to 88 percent in NC.

Finally, the coastwide alternative recommended by the Council and Board to be implemented in the EEZ if conservation equivalency is not implemented, consists of a 17–inch (43.18–cm) minimum fish size, a possession limit of four fish per person, and no closed season. The coastwide alternative would reduce recreational landings by 32 percent, based on 2001 data, assuming the coastwide regulations are implemented by all states. State-specific reductions would range from 0 percent in DE to 63 percent in NC.

The Commission has established conservation equivalency guidelines that require each state, using state-specific equivalency tables, to determine and implement an appropriate possession limit, size limit, and closed season to achieve the landings reduction necessary for each state. The state-specific tables are adjusted to account for the past effectiveness of the regulations in each state. State-specific reductions associated with the 2003 coastwide recreational harvest limit of 9.28 million lb (4,209 mt) are based on the number of fish landed in 1998 (because 1998 is the last year that recreational summer flounder regulations were consistent along the coast), and the number of fish projected to have been landed in 2002. Recreational landings in 1998 were 6.978 million fish, coastwide. Based on the mean weight of landed fish for 2000, 2001, and 2002, the harvest limit for 2003 was converted to numbers of fish, i.e., 4.122 million fish. Landings projections for 2002 indicate that VA is the only state required to reduce summer flounder landings (by 11 percent) in 2003. States other than VA (from Maine (ME) to NC) do not require any reductions in recreational summer flounder landings if their current regulations are maintained.

The Board required each state to submit its conservation equivalency proposal to the Commission by January 15, 2003. The Commission's Summer Flounder Technical Committee has since evaluated the proposals and advised the Board of each proposal's

consistency with respect to achieving the coastwide recreational harvest limit. After the Technical Committee evaluation, the Board met on February 25, 2003, to approve or disapprove each state's proposal.

The Commission invited public participation in its review process by holding public meetings and offering the public the opportunity to comment on the state proposals. During the comment period, the Commission will notify NMFS as to which state proposals have been approved or disapproved. NMFS will provide this information in the final rule, establishing the 2003 recreational measures for these fisheries.

If, at the final rule stage, the Commission recommends, and NMFS accepts, conservation equivalency, NMFS would waive the Federal recreational measures for federally permitted charter/party permit holders and recreational vessels fishing for summer flounder in the EEZ. Those vessels would be required to abide by the requirements enacted by the state in which they land summer flounder. States that do not submit proposals, or for which proposals were disapproved by the Commission, would be required by the Commission to adopt the precautionary default measures. States assigned the precautionary default measures would be allowed to resubmit revised management measures. The Commission would notify NMFS of any resubmitted proposals that were approved after publication of the final rule implementing the recreational specifications. NMFS then would publish a notice in the **Federal Register** to notify the public of any changes in the state's management measures.

Scup

The 2003 scup recreational harvest limit is 4.01 million lb (1,819 mt), 48 percent more than the recreational harvest limit for 2002. The 2002 recreational scup landings are projected to have been 3.76 million lb (1,706 mt). As a result of the increase in the harvest limit, recreational scup landings can increase by 7 percent in 2003, relative to the projected landings for 2002. Although it appears that constraints on the fishery could be relaxed, any relaxation should be balanced with the consideration of stock status. The most recent assessment indicates that the scup biomass increased in 2002 and is likely to increase again in 2003. Survey information indicates that regulations may have protected a large 1997 year class and also indicate that strong year classes were produced in 1999 through 2001. If the 1999, 2000, and 2001 year classes are large, and mortality of undersized fish is reduced, substantial biomass could be added to the stock by 2003 and availability of legal-sized fish could increase. Because fewer fish were landed by in the recreational fishery in 2002 than in 2001, the Council decided that the 2001 landings should be used as a basis to determine the appropriate possession and size limits to constrain the 2003 landings to the recreational harvest limit. Additionally, to evaluate properly the required coastwide measures, it is necessary first to extrapolate the 2001 landings to estimate the level of landings that would have resulted if the states had not implemented any scup fishery closures. As a result, to achieve the 2003 harvest limit, a 27–percent reduction from the extrapolated 2001 level of landings is necessary.

The 2003 scup recreational fishery will be managed under separate regulations for state and Federal waters; the Federal measures would apply only to party/charter boats with Federal permits. In Federal waters, the Council recommended coastwide management measures of a 10–inch (25.4–cm) minimum fish size, a 50–fish possession limit, and open seasons of January 1 through February 28, and July 1 through November 30. The Council has estimated that these measures would reduce recreational scup landings (from the extrapolated 2001 level) by 27 percent, assuming that regulations will be implemented by all of the states. For comparative purposes, the current (status quo) scup recreational measures in the EEZ are a 10–inch (25.4–cm) minimum fish size, a 20–fish possession limit and open seasons of January 1 through February 28, and July 1 through October 2. NMFS has reviewed the Council's analyses of these measures and is proposing the Council's preferred alternative without modification.

The Board postponed making a final decision on state measures for scup at its December 2002 meeting and advised its staff to prepare an addendum to the Commission's Interstate FMP that would provide the states with a mechanism for effectively managing their 2003 recreational scup fisheries on a state-by-state basis. A prior addendum that addressed the 2002 recreational fishery expired at the end of 2002. On February 25, 2003, the Board approved Addendum IX to the Commission's Interstate FMP (Addendum IX), which allows states from Massachusetts (MA) through New York (NY) to develop either regional or state-specific management measures. For New Jersey (NJ), which has limited recreational scup landings data, the Board approved a 10–inch (25.4–cm) minimum size, a 50–fish possession limit, and an open season of July 1 through December 31. Due to low scup landings in the southern range of the species, the Board approved a 10–inch (25.4–cm) minimum fish size, a 50–fish possession limit, and no closed season for DE, Maryland (MD), VA, and NC. The Monitoring Committee has recommended that, should the Board implement conservation equivalency for the 2003 scup fishery, states from MA through NY adopt a 10–inch minimum fish size and a 50–fish possession limit, and achieve the necessary reductions through state-specific season modification. Although MA is permitted a 22–percent increase in landings, it has chosen to maintain its 2002 regulations for the 2003 season. Because the Federal FMP does not contain provisions for conservation equivalency, and states may adopt their own unique measures under Addendum IX, it is likely that state and Federal recreational scup measures will differ for the 2003 season.

Black Sea Bass

The 2003 black sea bass recreational harvest limit is 3.43 million lb (1,557 mt), the same as that implemented in 2002. However, the 2002 recreational black sea bass landings are projected to be 4.4 million lb (1,996 mt). After extrapolating the 2002 landings to estimate the level of landings that would have been expected if the states had not implemented any seasonal black sea bass fishery closures, the Council determined that the extrapolated 2002 landings would have to be reduced by 27 percent to achieve the 2003 harvest limit.

The Council and Board recommended the following measures for the 2003 coastwide recreational black sea bass fishery: A 12–inch minimum fish size, a 25–fish possession limit, and open seasons of January 1 through September 1, and September 16 through November 30. These measures are expected to provide a 27–percent reduction in recreational black sea bass landings (from the 2002 level). For comparative purposes, the current (status quo) black sea bass regulations include an 11.5–inch (29.21–cm) minimum fish size, a 25–fish possession limit, and no closed season. NMFS has reviewed the Council's analyses of these measures and is proposing the Council's preferred alternative without modification.

Classification

This proposed rule has been determined to be not significant for purposes of E.O. 12866.

The Council prepared an IRFA that describes the economic impact this proposed rule, if adopted, would have on small entities.

A description of the action, why it is being considered, and the legal basis for this action are contained in the preamble to this rule. This proposed rule does not duplicate, overlap, or conflict with other Federal rules. A copy of the complete IRFA is available from the Council (see **ADDRESSES**). A summary of the analysis follows.

The proposed action could affect any recreational angler who fishes for summer flounder, scup, or black sea bass. However, this summary of the IRFA focuses upon the impacts on party/charter vessels issued a Federal permit for summer flounder, scup, and/or black sea bass because these vessels can be specifically identified in the Federal vessel permit database and would be impacted by the recreational measures, regardless of whether they fish in Federal or state waters. Although other recreational anglers are likely to be impacted, they are not considered small entities, nor is there a permit requirement to participate in these fisheries.

In the EA, the no action alternative for each species is defined as the continuation of the management measures implemented for the 2002 fishing season. The Council did not analyze an alternative combining the status quo measures in place for all three species. In consideration of the Council-recommended recreational harvest limits established for the 2003 fishing year, implementation of the same recreational measures established for the 2002 fishing year would be inconsistent with the goals and objectives of the FMP and its implementing regulations, and, because it could result in overfishing of the black sea bass fishery, it also would be inconsistent with National Standard 1 of the Magnuson-Stevens Act. Therefore, the no action alternative was not considered to be a reasonable alternative to the preferred action and its collective impacts were not analyzed in the EA/RIR/IRFA. The no action measure for summer flounder was analyzed in Alternative 1, in combination with preferred measures for scup and black sea bass. The no action measures for scup and black sea bass were considered as part of Alternative 2, in combination with the non-preferred coastwide measure for summer flounder, i.e., the measure that would be implemented if conservation equivalency is not implemented in the final rule.

The Council estimated that the proposed measures could affect any of the 760 vessels possessing a Federal charter/party permit for summer flounder, scup, and/or black sea bass in 2001, the most recent year for which complete permit data are available. Only 368 of these vessels reported active participation in the recreational summer flounder, scup, and/or black sea bass fisheries in 2001.

The effects of the various management measures were analyzed by employing quantitative approaches, to the extent possible. Where quantitative data were not available, the Council conducted qualitative analyses. Although NMFS' Regulatory Flexibility Act guidance recommends assessing changes in profitability as a result of proposed measures, the quantitative impacts were instead evaluated using changes in party/charter vessel revenues as a proxy. This is because reliable cost data are not available for these fisheries. Without reliable cost data, profits cannot be discriminated from gross revenues. As reliable cost data become available, impacts to profitability can be more accurately forecast. Similarly, changes to long-term solvency were not assessed due both to the absence of cost data and because the recreational management measures change annually according to the specification-setting process.

Data from the Marine Recreational Fisheries Statistical Survey (MRFSS) were used to project the number of recreational party/charter vessel trips made in each state. The MRFSS data indicate that anglers fished 30.96 million days in 2002 in the Northeast Region (ME through NC). In the Northeast Region, party/charter anglers comprised about 5 percent of the angler fishing days, and party/charter anglers fishing in MA, NY, NJ, MD, and NC comprised 82 percent of the total projected party/charter effort. The number of trips in each state ranged from approximately 365,500 in NJ to approximately 12,700 trips in ME. The number of trips that targeted summer flounder, scup, and/or black sea bass was identified, as appropriate, for each measure, and the number of trips that would be impacted by the proposed measures was estimated. Finally, the revenue impacts were estimated by calculating the average fee paid by anglers on party/charter vessels in the Northeast Region in 2002 ($40.72 per angler), and the revenue impacts on individual vessels were estimated. The analysis assumed that angler effort and catch rates in 2003 will be similar to 2002.

The Council noted that this method is likely to result in overestimation of the potential revenue losses that would result from implementation of the proposed coastwide measures in these three fisheries for several reasons. First, the analysis likely overestimates the potential revenue impacts of these measures because some anglers would continue to take party/charter vessel trips, even if the restrictions limit their landings. Also, some may engage in catch and release fishing, and others may target other species. It was not possible to estimate the sensitivity of anglers to specific management measures. Second, the universe of party/charter vessels that participate in the fisheries is likely to be even larger than presented in these analyses, as party/charter vessels that do not possess a Federal summer flounder, scup, or black sea bass permit because they fish only in state waters are not represented in the assessments. Considering the large proportion of landings from state waters (approximately 92 percent of summer flounder, 94 percent of scup landings, and 19 percent of black sea bass landings in 2001), it is probable that some party/charter vessels fish only in state waters and, thus, do not hold Federal permits for these fisheries. Third, vessels that hold only state permits likely will be fishing under different, potentially less restrictive, recreational measures for summer flounder and scup in state waters under the Commission's conservation equivalency programs. For all of these reasons, actual party/charter losses may be less than the amounts shown in this assessment.

Impacts of Summer Flounder Alternatives

The proposed action for the summer flounder recreational fishery would limit coastwide catch to 9.28 million lb (4,209 mt) and reduce landings by at least 4.5 percent, compared to 2002, by either deferring management to the states or imposing coastwide Federal measures throughout the EEZ.

There is very little information available to estimate empirically how sensitive the affected party/charter boat anglers might be to the proposed fishing regulations. It is possible that the proposed management measures could restrict the recreational fishery for 2003 and cause a decrease in satisfaction that recreational anglers experience (i.e., via a reduced possession limit, larger minimum fish size, or closed season) and/or demand for party/charter trips. Due to lack of data on angler satisfaction, these effects cannot be quantified.

The impact of the proposed summer flounder conservation equivalency alternative among states is likely to be similar to the level of landings reductions that are required of each state. Landings projections for 2002

indicate that VA is the only state required to reduce summer flounder landings (by 11 percent) in 2003. States other than VA (from ME to NC) do not require any reductions in recreational summer flounder landings if their current regulations are maintained. If the preferred conservation equivalency alternative is effective at achieving the recreational harvest limit, then it is likely to be the only alternative that minimizes economic impacts, to the extent practicable, yet achieves the biological objectives of the FMP. Because states have a choice, it is more rational for the states to adopt conservation equivalent measures that result in fewer adverse economic impacts that to acquiesce to the much more restrictive measures contained in the precautionary default alternative.

The impacts of the non-preferred summer flounder coastwide alternative (in Alternative 2), which proposes a 17–inch (43.2–cm) minimum fish size, a possession limit of four fish per person, and no closed season, were evaluated using the quantitative method described above. Impacted trips were defined as individual angler trips taken aboard party/charter vessels in 2002 that landed at least one summer flounder smaller than 17 inches (43.2 cm), or that landed more than four summer flounder. The analysis concluded that the measures would affect 1 percent or less of the party/charter trips in most states, with state revenue losses identified for MA ($927), Rhode Island (RI) ($15,850), NY ($155,636), NJ ($22,208), DE ($570), MD ($570), VA ($7,362), and NC ($161). (These figures are for all vessels operating in each state rather than for each vessel.) No state revenue losses were identified for ME, New Hampshire (NH), or Connecticut (CT).

The average maximum gross revenue loss per party/charter vessel was estimated to be $9 in MA, $634 in RI, $2,993 in NY, $347 in NJ, $285 in DE, $190 in MD, $409 in VA, and $23 in NC. For the reasons noted above (alternative species, catch and release fishing, etc.), it is very likely that some anglers would continue to take party/charter vessel trips, even if the restrictions limit their landings. Therefore, this method is likely to overestimate the potential revenue impacts of the proposed measures. In addition, an average of 8 percent of recreational summer flounder landings were derived from the EEZ in 2001. Federal coastwide measures would apply to federally permitted vessels wherever they fish. However, the states could potentially implement different recreational measures for summer flounder.

Precautionary default measures are defined as measures that would achieve at least the overall required reduction in landings for each state. The precautionary default measures specified by the Council and Board (in Alternative 3) consists of an 18–inch (45.72–cm) minimum fish size, a possession limit of one fish per person, and no closed season.

The precautionary default measures would reduce state specific landings by a range of 41 percent (DE) to 88 percent (NC). As specified by Framework 2 to the Federal FMP, states that fail to implement conservation equivalent measures would be required to implement precautionary default measures. The state-specific landings reductions associated with the precautionary default measures are substantially higher than the reductions that would be implemented using conservation equivalency. As such, it is expected that states will avoid the impacts of precautionary approach measures by establishing conservation equivalent management measures. Therefore, the precautionary default provision that is included in the conservation equivalency proposal was not analyzed as a separate provision.

Impacts of Scup Alternatives

The proposed action for scup would limit coastwide landings to 4.01 million lb (1,819 mt) and reduce landings by at least 27 percent compared to 2001.

For the preferred scup alternative (in Alternative 1), impacted trips were defined as indiyidual angler trips taken aboard party/charter vessels in 2002 that landed at least one scup smaller than 10 inches (25.4 cm), that landed more than 50 scup, or that landed at least one scup during the proposed closed seasons of March 1 through June 30, and December 1 through December 31. The analysis concluded that the measures would affect 10 percent of the party/charter trips in MA and 1 percent or less of the party/charter trips in five states, with statewide revenue losses identified for MA ($421,057), RI ($2,324), NY ($1,829), NJ ($6,475), MD ($25,450), and NC ($8,064).

The average maximum gross revenue loss per party/charter vessel associated with the preferred scup alternative was estimated to be $8,593 in MA, $166 in RI, $59 in NY, $185 in NJ, $25,450 in MD, and $2,688 in NC.

For the scup no action alternative (in Alternative 2), impacted trips were defined as individual angler trips taken aboard party/charter vessels in 2002 that landed at least one scup smaller than 10 inches (25.4 cm), that landed more than 20 scup, or that landed at least one scup during the periods of March 1 through June 30, and October 3 through December 31. The analysis concluded that the measures would affect 11 percent of angler trips taken aboard party/charter boats in MA, 4 percent in RI, 5 percent in NY, and less than 1 percent in NJ, DE, MD, and NC, with statewide revenue losses identified for MA ($486,423), RI ($55,664), NY ($702,429), NJ ($67,060), MD ($25,450), and NC ($8,064). No state revenue losses were identified for ME, NH, CT, DE, or VA.

The average maximum gross revenue loss per party/charter vessel associated with this alternative was estimated to be $9,927 in MA, $3,976 in RI, $22,659 in NY, $1,916 in NJ, $25,450 in MD, and $2,688 in NC.

For the scup measures considered in Alternative 3, impacted trips were defined as individual angler trips taken aboard party/charter vessels in 2002 that landed at least one scup smaller than 10 inches, that landed more than 50 scup, or that landed at least one scup during the period of March 1 through July 13. The analysis concluded that the measures in this alternative would affect 11 percent of the party/charter trips in MA and 1 percent or less of the party/charter trips in most states, with statewide revenue losses identified for MA ($469,518), RI ($9,576), NY ($81,902), NJ ($19,880), MD ($25,450), and NC ($8,064). No state revenue losses were identified for ME, NH, CT, DE, or VA.

The average maximum gross revenue loss per party/charter vessel associated with this alternative was estimated to be $9,582 in MA, $684 in RI, $2,642 in NY, $568 in NJ, $25,450 in MD, and $2,688 in NC.

Impacts of Black Sea Bass Alternatives

The proposed action for black sea bass would limit coastwide landings to 3.43 million lb (1,557 mt) and reduce landings by at least 27 percent compared to 2002.

For the preferred black sea bass alternative (in Alternative 1), impacted trips were defined as individual angler trips taken aboard party/charter vessels in 2002 that landed at least one black sea bass smaller than 12 inches (30.48 cm), that landed more than 25 black sea bass, or that landed at least one black sea bass during the proposed closed seasons of September 2 through September 15, and December 1 through December 31. The analysis concluded that the measures would affect 3 percent of the party/charter trips in NJ, 4 percent in DE, and 1 percent or less in most states, with statewide revenue losses identified for MA ($1,805), RI ($5,404), CT ($368), NY ($20,332), NJ ($441,702), DE ($89,544), MD ($41,331), VA ($19,418), and NC ($364). No state revenue losses were identified for ME or NH.

The average maximum gross revenue loss per party/charter vessel associated with the proposed black sea bass alternative was estimated to be $19 in MA, $193 in RI, $46 in CT, $442 in NY, $8,334 in NJ, $44,772 in DE, $13,777 in MD, $1,022 in VA, and $52 in NC.

For the non-preferred black sea bass measures considered in Alternative 2, impacted trips were defined as individual angler trips taken aboard party/charter vessels in 2002 that landed at least one black sea bass smaller than 11.5 inches (29.21 cm), or that landed more than 25 black sea bass. The analysis concluded that the proposed alternative would affect 3 percent of the party/charter trips in DE, 2 percent in NJ, and 1 percent or less in most states, with statewide revenue losses identified for RI ($1,960), CT ($368), NJ ($248,570), DE ($82,988), MD ($16,329), VA ($21,261), and NC ($119). No state revenue losses were identified for ME, NH, MA, or NY.

The average maximum gross revenue loss per party/charter vessel associated with this alternative was estimated to be $70 in RI, $46 in CT, $4,690 in NJ, $41,494 in DE, $5,443 in MD, $1,119 in VA, and $17 in NC.

For the non-preferred black sea bass measures considered in Alternative 3, impacted trips were defined as individual angler trips taken aboard party/charter vessels in 2002 that landed at least one black sea bass smaller than 12.5 inches (31.75 cm) or that landed more than 25 black sea bass. The analysis concluded that the measures would affect approximately 5 percent of the party/charter trips in DE, 3 percent in NJ, and 1 percent or less in most states, with statewide revenue losses identified for RI ($1,960), CT ($368), NY ($3,220), NJ ($483,095), DE ($125,132), MD ($40,395), VA ($29,602), and NC ($364). No state revenue losses were identified for ME, NH, or MA.

The average maximum gross revenue loss per party/charter vessel associated with this alternative was estimated to be $70 in RI, $46 in CT, $70 in NY, $9,115 in NJ, $62,566 in DE, $13,465 in MD, $1,558 in VA, and $52 in NC.

Combined Impacts of Summer Flounder, Scup, and Black Sea Bass Alternatives

Potential revenue losses in 2003 could differ for party/charter vessels that land more than one of the regulated species. The cumulative maximum gross revenue loss per vessel varies by the combination of permits held and by state. In RI, for example, revenue losses could reach $993 for vessels that land all three species in 2003, compared to expected revenues for 2002. However, in MD, a vessel that lands all three species could potentially lose up to a maximum of $39,417 in 2003. On average, the largest potential losses were projected for party/charter vessels operating out of MA, NJ, DE, and MD in 2003.

There are no new reporting or recordkeeping requirements contained in any of the alternatives considered for this action.

List of Subjects in 50 CFR Part 648

Fisheries, Fishing, Reporting and recordkeeping requirements.

Dated: May 14, 2003.

John Oliver,

Deputy Assistant Administrator for Operations, National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR part 648 is proposed to be amended as follows:

PART 648—FISHERIES OF THE NORTHEASTERN UNITED STATES

1. The authority citation for part 648 continues to read as follows:

Authority: 16 U.S.C. 1801 *et seq.*

2. In § 648.105, the first sentence of paragraph (a) is revised to read as follows:

§ 648.105 Possession restrictions.

(a) Unless otherwise specified pursuant to § 648.107, no person shall possess more than four summer flounder in, or harvested from, the EEZ, unless that person is the owner or operator of a fishing vessel issued a summer flounder moratorium permit, or is issued a summer flounder dealer permit. ***

* * * * *

3. In § 648.107, the first sentence of paragraph (a) introductory text is revised to read as follows:

§ 648.107 Conservation equivalent measures for the summer flounder fishery.

(a) For 2003, the Regional Administrator has determined that conservation equivalent measures shall be implemented by the states for the recreational summer flounder fishery. ***

* * * * *

4. In § 648.122, paragraph (g) is revised to read as follows:

§ 648.122 Time and area restrictions.

* * * * *

(g) *Time restrictions.* Vessels that are not eligible for a moratorium permit under § 648.4(a)(6), and fishermen subject to the possession limit, may not possess scup, except from January 1 through February 28 and from July 1 through November 30. This time period may be adjusted pursuant to the procedures in § 648.120.

5. In § 648.125, the first sentence of paragraph (a) is revised to read as follows:

§ 648.125 Possession limit.

(a) No person shall possess more than 50 scup in, or harvested from, the EEZ unless that person is the owner or operator of a fishing vessel issued a scup moratorium permit, or is issued a scup dealer permit.***

* * * * *

6. Section 648.142 is revised to read as follows:

§ 648.142 Time restrictions.

Vessels that are not eligible for a moratorium permit under § 648.4(a)(7), and fishermen subject to the possession limit, may not possess black sea bass, except from January 1 through September 1 and September 16 through November 30. This time period may be adjusted pursuant to the procedures in § 648.140.

7. In § 648.143, paragraph (b) is revised to read as follows:

§ 648.143 Minimum sizes.

* * * * *

(b) The minimum size for black sea bass is 12 inches (30.48 cm) TL for all vessels that do not qualify for a moratorium permit, and for party boats holding a moratorium permit, if fishing with passengers for hire or carrying more than five crew members, and for charter boats holding a moratorium permit, if fishing with more than three crew members. The minimum size may be adjusted for recreational vessels pursuant to the procedures in § 648.140.

* * * * *

[FR Doc. 03–12647 Filed 5–20–03; 8:45 am]

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[Docket No. 030514123–3123–01; I.D. 041003B]

RIN 0648–AQ76

50 CFR Part 648

Fisheries of the Northeastern United States; Northeast Multispecies Fishery; Framework Adjustment 38

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Proposed rule; request for comments.

SUMMARY: NMFS proposes measures contained in Framework Adjustment 38 (Framework 38) to the Northeast Multispecies Fishery Management Plan (FMP) that would exempt a fishery from the Gulf of Maine (GOM)/Georges Bank (GB) Regulated Mesh Area mesh size regulations. Framework 38 would establish an exempted small mesh silver hake (Merluccius bilinearis) (whiting) fishery in the inshore GOM. The exempted fishery would be authorized from July 1 through November 30 each year; require the use of specific exempted grate raised footrope trawl gear; establish a maximum whiting possession limit of 7,500 lb (3,402 kg); and include incidental catch restrictions.

DATES: Comments on this proposed rule must be received on or before June 5, 2003.

ADDRESSES: Copies of the Framework 38 document, its Regulatory Impact Review (RIR), the Initial Regulatory Flexibility Analysis (IRFA), the Environmental Assessment, and other supporting documents for the framework adjustment are available from Paul J. Howard, Executive Director, New England Fishery Management Council, 50 Water Street, Mill 2, Newburyport, MA 01950. These documents are also available online at *http://www.nefmc.org.*

Written comments on the proposed rule should be sent to Patricia A. Kurkul, Regional Administrator, NMFS, Northeast Regional Office, One Blackburn Drive, Gloucester, MA 01930. Mark the outside of the envelope "Comments on Framework 38." Comments may also be sent via facsimile (fax) to (978) 281–9135. Comments will not be accepted if submitted via e-mail or the Internet.

FOR FURTHER INFORMATION CONTACT: E. Martin Jaffe, Fishery Policy Analyst, 978–281–9272.

SUPPLEMENTARY INFORMATION: In September 2002, the New England Fishery Management Council's (Council) Whiting Monitoring Committee (WMC) released the 2002 Stock Assessment and Fishery Evaluation (SAFE) Report for small-mesh multispecies (whiting, red hake, and offshore hake), which represents the WMC's third-year review of the whiting management program implemented in Amendment 12 to the FMP. The 2002 SAFE Report also includes the WMC's recommendations regarding the future management of the small mesh multispecies resources. The WMC determined that the fishing mortality objectives of the whiting management program appear to have been achieved, based on the evaluation of relative exploitation indices as a proxy for fishing mortality.

The northern stock of whiting (as well as the northern stock of red hake) is considered to be "rebuilt," or above its target biomass level according to the Amendment 12 overfishing definition. The relative exploitation of northern whiting is far below the target value that the WMC set as a proxy for FMSY, so overfishing is not thought to be occurring. The current relative exploitation index is only 11 percent of the WMC's FMSY proxy. With respect to management thresholds, targets, and biological objectives, the WMC concluded that exploitation of the northern stock of whiting could absorb some increase. As one way to increase exploitation in the northern stock area, the WMC recommended consideration of new exempted fisheries for small mesh multispecies if experimental data demonstrate that these fisheries can minimize regulated species bycatch.

Based on this recommendation, the Council initiated a framework action pursuant to 50 CFR 648.80(a)(8)(ii), which allows additions or deletions to small mesh exemptions in the NE multispecies regulated mesh areas in cases where there may be insufficient data or information to determine, without public comment, the percentage catch of regulated species or small mesh species. This framework adjustment would establish a seasonal exempted grate raised footrope trawl fishery for silver hake (whiting) in the inshore GOM. This action would allow for a transition from a successful experimental fishery for whiting focused on minimizing regulated species bycatch to a more permanent fishery that provides a seasonal small mesh fishing opportunity for vessels in the GOM. The exempted grate raised footrope trawl fishery proposed in this framework adjustment is the product of 8 years of experimental work conducted by the Maine Department of Marine Resources (ME DMR), in cooperation with the fishing industry. The gear itself evolved throughout the course of the experimental fisheries, as different mesh configurations and grate bar spacing were tested. The gear proposed for the exempted fishery in this framework adjustment represents the configuration that encountered the most success minimizing regulated species bycatch when vessels used it to target whiting in the area proposed for exemption. The proposed season (July 1 - November 30) and area (see coordinates below) for this fishery most closely represents the traditional Maine whiting fishery and the area utilized by the fishermen who participated in the experimental whiting grate fisheries.

The biological analyses in Framework 38 indicate that establishing a seasonal grate raised footrope trawl fishery in the inshore GOM would not be expected to significantly impact fishing mortality or rebuilding schedules for any small mesh multispecies or large mesh regulated groundfish stocks. Fishing mortality (F) on whiting in the northern area is very low and the increase in F that would be created by the grate fishery is projected to be very low.

The Groundfish Plan Development Team (PDT) reviewed the grate raised footrope trawl experimental fishery data in the context of juvenile groundfish bycatch and determined that the impacts of this fishery on juvenile groundfish mortality would not likely be significant. The PDT concluded that, based on the experimental data, this fishery would primarily take juvenile American plaice, redfish, witch flounder, and white hake as bycatch. The amount of bycatch would depend in large measure on the amount of effort in the fishery. In terms of weight, data presented in the Framework 38 document indicate that expected regulated species bycatch would be less than 5 percent of the total catch. Using additional data provided by ME DMR from the 2002 experimental fishery, the PDT estimated that the numbers of juvenile fish that may be caught in this fishery could increase the catch of juvenile plaice by 1.5 7 percent and the catch of juvenile witch flounder could increase less than 0.5 percent. While catch-at-age estimates are not available to make these comparisons for redfish and white hake, the PDT expects bycatch of these species to be minimal.

Exempted Grate Raised Footrope Trawl Fishery Area

The proposed area is an inshore area in the GOM extending to the Loran 44500 line and northward along the coast of Maine. This area most closely represents the historical whiting fishery and the area utilized by the fishermen who have participated in the experimental whiting grate fisheries between 1996 and 2002. During the development of this framework adjustment, the Council considered three options for the fishery area, including the proposed area option. The first option was the largest area under consideration and included an offshore component to the proposed area. Another option was the smallest area under consideration and represented a subset of the proposed action where past experimental fishing was concentrated. The proposed option was selected by the Council, following an endorsement by the PDT, even though sampling was not conducted throughout the entire area. The proposed option was selected because there are sufficient similarities (species composition, hydrography, habitat, current flow, bottom topography) between it and the subset where the experiment occurred to suggest that bycatch in the proposed area option may be similar to that observed in the experiments. Thus, the rate of capture of regulated species would not be expected to differ over the proposed area.

Fishing Season

The proposed season for the GOM Grate Raised Footrope Trawl Fishery is July 1- November 30. This period encompasses the traditional seasonal presence of whiting along the coast of Maine in the GOM and the period of documented catch and bycatch during research trials and experimental small mesh fisheries permitted by NMFS between 1996 and 2002. The PDT expressed support for a season from July 1 November 30, based on documented catch rates and experimental data from 2001 and 2002, which were reviewed by the PDT in detail.

During the development of this framework adjustment, the Council considered establishing a season for this fishery from June 1 November 30, but ultimately decided to eliminate the month of June from consideration after evaluating the data. These data show that the coastal whiting fishery started in July and ended in November.

The majority of experimental tows with the proposed sweepless trawl were conducted during October and November 2001 and 2002. Past experience demonstrates that the catches of whiting are generally lower and the bycatch of regulated species is relatively higher during these months than during the summer. Given that the 2001 and 2002 data for the proposed sweepless trawl show low absolute bycatch of regulated species during October and November, the gear should fish with even lower bycatch during the summer.

Gear Specifications

Several gear specifications are proposed for this fishery, including net specifications for the raised footrope trawl that are consistent with those in the Cape Cod Bay whiting fishery, a requirement to use a sweepless trawl, and a requirement to use a Nordmore-style grate with a maximum bar spacing of 50 mm (1.97 inches). A minimum codend mesh requirement of 2.5 inches (6.35 cm) (square or diamond mesh) is also proposed. Vessels would be allowed to use net strengtheners in this fishery, provided that they are consistent with the existing net strengthener provisions for 2.5 inch (6.35 cm) mesh.

Whiting/Offshore Hake Possession Limit

A maximum whiting/offshore hake possession limit of 7,500 lb (3,402 kg) is proposed for this fishery. Vessels using mesh larger than the minimum 2.5 inches (6.35 cm) would not be allowed to possess more than 7,500 lb (3,402 kg) of whiting/offshore hake.

Incidental Catch Restrictions

Incidental catch restrictions are proposed to ensure that the net is fished properly and remains off the ocean bottom. The incidental catch restrictions mirror those incorporated into the Cape Cod Bay raised footrope trawl fishery, with the addition of a prohibition on the possession of dogfish. Vessels participating in the GOM Grate Raised Footrope Trawl Fishery may retain red hake, squid, butterfish, mackerel, alewife, and herring up to the amounts allowed by the regulations for those species, provided they comply with all regulations for those species. The following additional restrictions apply: A prohibition on the possession of regulated species (Atlantic cod, witch flounder, American plaice, yellowtail flounder, winter flounder, windowpane flounder, haddock, pollock, redfish, and white hake), monkfish, lobsters, skates, crabs, longhorn sculpin, sea raven, summer flounder (fluke), ocean pout, and spiny dogfish.

The prohibition on the possession of monkfish, lobsters, and skates would help to ensure that fishermen rig the net correctly, so that the footrope is not in contact with the sea floor and thus, much less likely to catch these species. The prohibition on crabs, longhorn sculpin, sea raven and dogfish is designed to reduce the damage to whiting, a soft bodied fish, from abrasion and puncture, as well as to encourage keeping the footrope off the sea floor. Except for a few juveniles, very few dogfish are retained by the grate raised footrope trawl net, as they are toolarge to pass through the grate.

Annual Review

The PDT would annually review sea sampling data from the fishery and develop recommendations, as necessary, to ensure that groundfish bycatch remains at a minimum. Because this would be a seasonal fishery, the Council could modify the specifications for this fishery through a framework adjustment to the FMP prior to the next season, if the PDT recommended adjustments to address regulated species bycatch.

The Council desires 10–percent observer coverage in this fishery. No later than 2006, NMFS, in consultation with the PDT, would determine if the level of observer coverage is sufficient to monitor catch and bycatch in this fishery with an acceptable level of precision. If practicable, the level of desired observer coverage would be adjusted (increased or decreased) consistent with that analysis. The PDT could recommend adjustments to the level of observer coverage prior to 2006, based on information examined during the annual review described above.

Classification

This proposed rule has been determined to be not significant for purposes of Executive Order 12866.

The Council prepared an IRFA that describes the economic impact this proposed rule, if adopted, would have on small entities. A description of the reasons why this action is being considered, and the objectives of and legal basis for this action are contained at the beginning of this section in the preamble. There are no new recordkeeping or reporting requirements proposed in this rule. There are no relevant Federal rules that duplicate, overlap, or conflict with this rule. All vessels that would be impacted by this proposed rulemaking are considered to be small entities; therefore, there will be no disproportionate impacts between large and small entities. A summary of the analysis follows:

The Council considered the no action alternative–not establishing an exempted grate raised footrope trawl

fishery. While there would be no adverse economic impacts on the fishing industry as a result of the no action alternative, the economic opportunities resulting from the proposed action would be foregone.

Slight variations to the proposed action were considered by the Council as follows: Beginning the season in June; increasing the size of the exemption area; or less restrictive gear restrictions. Several of these options (larger area, longer season) may have resulted in increased economic benefits to the participants compared with the proposed action. However, there was sufficient uncertainty regarding bycatch rates of regulated multispecies associated with these options, which the Council considered the risk to associated bycatch species (particularly regulated multispecies) to be too great to warrant further consideration. The uncertainty resulted from the lack of experimental data in the larger area and during the month of June. Because the experiment had not been conducted in the larger area, there were no data to support a decision to allow an exempted fishery in the area outside of the proposed area. Similarly, there were no experimental data during the month of June, but data from May indicated significantly higher bycatch rates than during the proposed season. Due to a lack of data on bycatch rates during the month of June and from the larger area, the exemption could not be justified. Therefore, the Council made a precautionary decision to constrain the exempted fishery to the season and area in which experimental data demonstrated low bycatch rates.

The economic effects of the proposed exempted grate raised footrope trawl fishery are not expected to be significant to the economy as a whole or to the fishing industry in general. However, past experience suggests that approximately 50 vessels could be expected to participate in this exempted fishery, and these vessels would be expected to share in a possible $1 million in increased revenue (an additional $20,000 in annual revenue per participating vessel). Analyses suggest that the initial fishery using the proposed grate raised footrope trawl would not be expected to expand quickly, but would probably allow bait fishing activities to occur and would likely result in activity levels similar to those that occurred in 1996. Whiting market limitations, the characteristics of the grate raised footrope trawl fishery (area, season, etc.), and other factors suggest that a similar number of vessels, with similar characteristics (size, tonnage, homeport) as those that participated in the experimental fisheries, would participate in and benefit from this experimental fishery. The economic benefits, although not significant at the large scale, would be important to participating vessels, especially those along the coast of Maine and in smaller ports adjacent to the the GOM.

List of Subjects in 50 CFR Part 648

Fishing, Fisheries, Reporting and recordkeeping requirements.

Dated: May 15, 2003.

Rebecca Lent,

Deputy Assistant Administrator for Regulatory Programs, National Marine Fisheries Service.

For the reasons stated in the preamble, 50 CFR part 648 is proposed to be amended as follows:

PART 648—FISHERIES OF THE NORTHEASTERN UNITED STATES

1. The authority citation for part 648 continues to read as follows:

Authority: 16 U.S.C. 1801 *et seq.*

2. In § 648.80, paragraph (a)(16) is redesignated as paragraph (a)(17) and a new paragraph (a)(16) is added to read as follows:

§ 648.80 Multispecies regulated mesh areas and restrictions on gear and methods of fishing.

* * * * *

(a) * * * * *

(16) GOM Grate Raised Footrope Trawl Exempted Whiting Fishery. Vessels subject to the minimum mesh size restrictions specified in paragraphs (a)(3) or (4) of this section may fish with, use, or possess in the GOM Grate Raised Footrope Trawl Whiting Fishery area from July 1 through November 30 of each year, nets with a mesh size smaller than the minimum size specified, if the vessel complies with the requirements specified in paragraphs (a)(16)(i) and (ii) of this section. The GOM Grate Raised Footrope Trawl Whiting Fishery Area (copies of a chart depicting the area are available from the Regional Administrator upon request) is defined by straight lines connecting the following points in the order stated:

GOM GRATE RAISED FOOTROPE TRAWL WHITING FISHERY EXEMPTION AREA

(July 1 through November 30)

Point	N. Lat.	W. Long.
GRF1	43° 15′	70° 35.4′
GRF2	43° 15′	70° 00′
GRF3	43° 25.2′	70° 00′

GOM GRATE RAISED FOOTROPE TRAWL WHITING FISHERY EXEMPTION AREA—Continued

(July 1 through November 30)

Point	N. Lat.	W. Long.
GRF4	43° 41.8′	69° 20′
GRF5	44° 58.8′	69° 20′

(i) *Mesh requirements and possession restrictions.* (A) All nets must comply with a minimum mesh size of 2.5 inch (6.35 cm) square or diamond mesh, subject to the restrictions specified in paragraph (a)(16)(i)(B) of this section. An owner or operator of a vessel participating in the GOM Grate Raised Footrope Trawl Exempted Whiting Fishery may not fish for, possess on board, or land any species of fish, other than whiting and offshore hake, subject to the applicable possession limits as specified in paragraph (a)(16)(i)(C) of this section, except for the following allowable incidental species: Red hake; butterfish; herring; mackerel; squid; and alewife.

(B) All nets must comply with the minimum mesh size specified in paragraph (a)(16)(i)(A) of this section. Counting from the terminus of the net, the minimum mesh size is applied to the first 100 meshes (200 bars in the case of square mesh) from the terminus of the net for vessels greater than 60 ft (18.3 m) in length and is applied to the first 50 meshes (100 bars in the case of square mesh) from the terminus of the net for vessels less than or equal to 60 ft (18.3 m) in length.

(C) An owner or operator of a vessel participating in the GOM Grate Raised Footrope Trawl Exempted Whiting Fishery may fish for, possess, and land combined silver hake and offshore hake only up to 7,500 lb (3,402 kg). An owner or operator fishing with mesh larger than the minimum mesh size specified in paragraph (a)(16)(i)(A) of this section may not fish for, possess, or land silver hake or offshore hake in quantities larger than 7,500 lb (3,402 kg).

(ii) *Gear specifications.* In addition to the requirements specified in paragraph (a)(16)(i) of this section, an owner or operator of a vessel fishing in the GOM Grate Raised Footrope Trawl Exempted Whiting Fishery must configure the vessel's trawl gear as specified in paragraphs (a)(16)(ii)(A) through (C) of this section.

(A) An owner or operator of a vessel fishing in the GOM Grate Raised Footrope Trawl Exempted Whiting Fishery must configure the vessel's trawl gear with a raised footrope trawl as specified in paragraphs (a)(9)(ii)(A) through (C) of this section. In addition, the restrictions specified in paragraphs (a)(16)(ii)(B) and (C) apply to vessels fishing in the GOM Grate Raised Footrope Trawl Exempted Whiting Fishery.

(B) The raised footrope trawl must be used without a sweep of any kind (chain, roller frame, or rockhopper). The drop chains must be a maximum of 3/8–inch (0.95 cm) diameter bare chain and must be hung from the center of the footrope and each corner (the quarter, or the junction of the bottom wing to the belly at the footrope). Drop chains must be at least 42 inches (106.7 cm) in length and must be hung at intervals of 8 ft (2.4 m) along the footrope from the corners to the wing ends.

(C) The raised footrope trawl net must have a rigid or semi-rigid grate consisting of parallel bars of not more than 50 mm (1.97 inches) spacing that excludes all fish and other objects, except those that are small enough to pass between its bars into the codend of the trawl. The grate must be secured in the trawl, forward of the codend, in such a manner that it precludes the passage of fish or other objects into the codend without the fish or objects having to first pass between the bars of the grate. The net must have an outlet or hole to allow fish or other objects that are too large to pass between the bars of the grate to exit the net. The aftermost edge of this outlet or hole must be at least as wide as the grate at the point of attachment. The outlet or hole must extend forward from the grate toward the mouth of the net. A funnel of net material is allowed in the lengthening piece of the net forward of the grate to direct catch towards the grate.

(iii) *Annual review.* On an annual basis, the Groundfish PDT will review data from this fishery, including sea sampling data, to determine whether adjustments are necessary to ensure that regulated species bycatch remains at a minimum. If the Groundfish PDT recommends adjustments to ensure that regulated species bycatch remains at a minimum, the Council may take action prior to the next season through the framework adjustment process specified in § 648.90(b), subject to the Administrative Procedures Act.

* * * * *

[FR Doc. 03–12742 Filed 5–20–03; 8:45 am]

BILLING CODE 3510–22–S

Notices

Federal Register
Vol. 68, No. 98
Wednesday, May 21, 2003

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Submission for OMB Review; Comment Request

May 16, 2003.

The Department of Agriculture has submitted the following information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Comments regarding (a) whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of burden including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology should be addressed to: Desk Officer for Agriculture, Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Washington, DC 20503 and to Departmental Clearance Office, USDA, OCIO, Mail Stop 7602, Washington, DC 20250–7602. Comments regarding these information collections are best assured of having their full effect if received within 30 days of this notification. Copies of the submission(s) may be obtained by calling (202) 720–8681.

An agency may not conduct or sponsor a collection of information unless the collection of information displays a currently valid OMB control number and the agency informs potential persons who are to respond to the collection of information that such persons are not required to respond to the collection of information unless it displays a currently valid OMB control number.

Rural Business-Cooperative Service

Title: Rural Economic Development Loan and Grant Program.

OMB Control Number: 0570–0012.

Summary of Collection: Section 313 of the Rural Electrification Act of 1936 (7 U.S.C. 940(c)) established a loan and grant program. The program provides zero interest loans and grants to Rural Utilities Service (RUS) borrowers for the purpose of promoting rural economic development and job creation projects. The loans and grants under this program may be provided to approximately 1,700 electric and telephone utilities across the country that borrowed funds from RUS. Under this program, the RUS borrowers may receive the loan funds and pass them on to businesses or other organizations.

Need and Use of the Information: The information collected is used to evaluate applications for funding consideration, conduct an environmental review, prepare legal documents, receive loan payments, oversee the operation of a revolving loan fund, monitor the use of funds, enforce other government requirements such as compliance with civil rights regulations. If the information were not collected, the agency would be unable to select the projects that will receive loan or grant funds.

Description of Respondents: Business or other for-profit.

Number of Respondents: 120.

Frequency of Responses: Recordkeeping; reporting: on occasion; annually.

Total Burden Hours: 4,273.

Rural Utilities Service

Title: 7 CFR Part 1778, Emergency and Imminent Community Water Assistance Grants.

OMB Control Number: 0572–0110.

Summary of Collection: The Rural Utilities Service (RUS) is authorized under section 306A of the Consolidated Farm and Rural Development Act, (7 U.S.C. 1926(a)) to provide grants to rural areas and small communities to secure adequate quantities of safe water. Grants made under this program shall be made for 100 percent of the project cost and may be made to public bodies and private nonprofit corporations serving rural areas. Grants can serve rural areas with population not in excess of 5000, and household income should not exceed 100 percent of a State's non-metropolitan median household income.

Need and Use of the Information: RUS will collect the information from applicants applying for grants under 7 CFR part 1778. Applicants must demonstrate that there is an imminent emergency or that a decline occurred within 2 years of the date the application was filed with Rural Development. The information is unique to each borrower and emergency situation.

Description of Respondents: Not-for-profit institutions; State, local or tribal government.

Number of Respondents: 100.

Frequency of Responses: Reporting: on occasion.

Total Burden Hours: 400.

Rural Utility Service

Title: 7 CFR Part 1755, Telecommunications Field Trials.

OMB Control Number: 0572–NEW.

Summary of Collection: Title 7 CFR 1755.3 prescribes the conditions and provision of a field trial. Field trials are contractual obligations that a manufacturer and Rural Utility Service (RUS) telecommunications borrower enter into. They consist of limited field installation of a qualifying product in closely monitored situations designed to determine to RUS' satisfaction the products effectiveness under actual field conditions. RUS will use field trials as a means for determining the operational effectiveness of a new or revised product where such experience does not already exist. Field trial process allows manufacturers a means of immediate access to the RUS borrower market; provides borrowers an opportunity to immediately utilize advance products and a means to safely obtain the necessary information on technically advanced products which will address the products suitability for use in the harsh environment of rural America.

Need and Use of the Information: RUS will use various forms to enter into contractual obligations, to establish agreements by the manufacturer and a borrower, or identify the product(s) that are under field trial.
Telecommunication borrowers participate in field trials do so on a voluntary basis. The information is closely reviewed to determine that the products comply with the established

RUS standards and specifications and that the products are otherwise acceptable for use on rural telecommunications systems. Without this information, RUS has no means of determining the acceptability of advanced technology in a manner that is timely enough for RUS borrowers to take advantage of the improved benefits and promise that such products may provide for rural America.

Description of Respondents: Business or other for-profit; not-for-profit institutions.

Number of Respondents: 4.

Frequency of Responses: Reporting: on occasion.

Total Burden Hours: 72.

Animal Plant and Health Inspection Service

Title: Johne's Disease in Domestic Animals; Interstate Movement, 9 CFR Part 80.

OMB Control Number: 0579–0148.

Summary of Collection: Title 21 U.S.C. authorizes sections 111, 114, 114a, 114–1, 115, 120, 121, 125, 126 134a, 134c, 134f, and 134g. These authorities permit the Secretary to prevent, control and eliminate domestic diseases such as Johne's disease, as well as to take actions to prevent and to manage exotic diseases such as foot-and-mouth, classical swine fever, and other foreign diseases. Johne's disease affects cattle, sheep, goats, other ruminants and is incurable and contagious eventually resulting in death. The disease is nearly always introduced into a healthy herd by an infected animal that is not showing symptoms of the disease. Moving livestock affected with Johne's disease requires the use of an owner-shipper statement, official eartags, and State participation in the program. Disease prevention is the most effective method for maintaining a healthy animal population and for enhancing the Animal Plant and Health Inspection Service (APHIS) ability to compete in the world market of animal and animal product trade.

Need and Use of the Information: APHIS will collect information that includes: (1) The number of animals to be moved, (2) the species of the animals, (3) the point of origin and destination, and (4) the consignor and consignee. Without the information APHIS would be unable to ensure that Johne's disease is not spread to healthy animal populations throughout the United States.

Description of Respondents: Business or other for profit.

Number of Respondents: 250.

Frequency of Responses: Reporting on occasion.

Total Burden Hours: 50.

Rural Housing Service

Title: 7 CFR Part 1944–E, Rural Rental and Cooperative Housing Loan Policies, Procedures, and Authorizations.

OMB Control Number: 0575–0047.

Summary of Collection: The Rural Housing Agency (RHS), an agency of the U.S. Department of Agriculture is authorized to make loans to finance rural rental and cooperative housing projects and related facilities under section 515 and 521 of title V of the Housing Act of 1949, as amended. The intent of the program is to provide affordable rental housing for elderly or handicapped persons or families, or other persons and families of low or moderate income in rural areas.

Need and Use of the Information: RHS will collect information using various forms to evaluate the cost, benefits, feasibility and financial performance of the proposed project, as well as the eligibility of the applicant. Failure to collect this information would result in unauthorized Federal assistance being granted.

Description of Respondents: Business or other for-profit; individuals or households; not-for-profit institutions; State, local, or tribal government.

Number of Respondents: 623.

Frequency of Responses: Reporting: On Occasion.

Total Burden Hours: 35,088.

Rural Housing Service

Title: 7 CFR Part 1951–A, Account Servicing Policies.

OMB Control Number: 0575–0075.

Summary of Collection: The Rural Housing Service (RHS) provides supervised credit in the form of Single Family Housing, Multi-Family Housing, and Community Facility loans and grants. Regulation 7 CFR part 1951–A sets forth the policies and procedures, including the collection and use of information, regarding the application of payments on loans made under the programs administered by the agencies and the return of paid-in-full and satisfied promissory notes.

Need and Use of the Information: Borrowers submit information to the local agency office servicing the county in which their operation is located. The agency-servicing official reviews and verifies the information. The information is collected when needed and on an individual case basis.

Description of Respondents: Individuals or households; business or other for-profit.

Number of Respondents: 110.

Frequency of Responses : Reporting: on occasion.

Total Burden Hours: 28.

Animal & Plant Health Inspection Service

Title: Mexican Fruit Fly; Treatments.

OMB Control Number: 0579–0215.

Summary of Collection: The Department of Agriculture is responsible for preventing plant disease or insect pests from entering the United States, preventing the spread of pests and noxious weeds not widely distributed in the United States, and eradicating those imported pests when eradication is feasible. The Mexican fruit fly regulations, contained in 7 CFR 301.64 through 301.64–10 were established to prevent the spread of the Mexican fruit fly to noninfested areas of the United States. The Mexican fruit fly is a destructive pest of citrus and many other types of fruit. The short life cycle of the Mexican fruit fly allows rapid development of serious outbreaks that can cause severe economic losses in commercial citrus-producing areas. The Animal and Plant Health Inspection Service (APHIS) will collect information using form PPQ 519, Compliance Agreement.

Need and Use of the Information: APHIS will collect information to ensure that permit conditions are met, and that proper labeling, marking, and other handling procedures are done before movement of the regulated article. Failure to collect this information would cripple APHIS ability to ensure that citrus and many other types of fruit do not carry Mexican fruit flies.

Description of Respondents: Business or other for-profit; State; local or tribal government.

Number of Respondents: 722.

Frequency of Responses: Reporting: On occasion.

Total Burden Hours: 462.

Food and Nutrition Service

Title: Report of The Emergency Food Assistance Program (TEFAP) Administrative.

OMB Control Number: 0584–0385.

Summary of Collection: The Common Rule entitled Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments (published by the Department as 7 CFR part 3106) sets financial reporting requirements for State agencies administering non-entitlement programs, such as The Emergency Food Assistance Program (TEFAP). The Food and Nutrition Service (FNS) requires state agencies to use the FNS–667, Report of the

Emergency Food Assistance Program. This form is completed quarterly with a close-out report by State agencies administering TEFAP.

Need and Use of the Information: FNS will collect information to ensure that States meet the requirements, that States match all Federal administrative funds that are not passed down to local agencies. Form FNS–667 is used to report how Federal administrative funds are utilized in three separate categories. States may use funds to pay costs incurred by the State agency itself, or to pay costs incurred by local recipient agencies-emergency feeding organizations (EFOs) that distribute USDA commodities to households.

Description of Respondents: State, local, or tribal government; Federal government; farms; not-for-profit institutions; business or other for-profit; individuals or households.

Number of Respondents: 55.

Frequency of Responses: Reporting: Quarterly.

Total Burden Hours: 963.

Sondra A. Blakey,

Departmental Information Collection Clearance Officer.

[FR Doc. 03–12728 Filed 5–20–03; 8:45 am]

BILLING CODE 3410–01–M

DEPARTMENT OF AGRICULTURE

Forest Service

Beaver Creek Fuels Reduction and Associated Restoration Activities Project, Wallowa-Whitman National Forest, Union County, OR

AGENCY: Forest Service, USDA.

ACTION: Cancellation notice.

SUMMARY: On December 30, 1996, a Notice of Intent (NOI) to prepare an environmental (EIS) for the Beaver Creek Salvage Timber Sale and Other Restoration Projects, on the La Grande Ranger District of the Wallowa-Whitman National Forest, was published in the **Federal Register** (61 FR 68704). The name of this project was later changed on September 5, 1997, to "Beaver Creek Fuels Reduction and Associated Restoration Activities Project" in the **Federal Register** (62 FR 46942). A Notice of Availability for the draft EIS was published in the **Federal Register** on November 6, 1998 (63 FR 59988). Forest Service has decided to cancel the preparation of a final EIS analyzing fuel reduction proposals and related activities within the Beaver Creek unroaded area and La Grande Municipal Watershed. The NOI is hereby rescinded.

FOR FURTHER INFORMATION CONTACT: Questions maybe addressed to Cindy Whitlock, Resource Analyst, La Grande Ranger District, 3502 Highway 30, La Grande, OR 97850, telephone: 541–962–8501.

Dated: May 8, 2003.

Karyn L. Wood,

Forest Supervisor.

[FR Doc. 03–12702 Filed 5–20–03; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Forest Service

Notice of Sanders County Resource Advisory Committee Meeting

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: Pursuant to the authorities in the Federal Advisory Committee Act (Pub. L. 92–463) and under the Secure Rural Schools and Community Self-Determination Act of 2000 (Pub. L. 106–393) to Lolo and Kootenai National Forests' Sanders County Resource Advisory Committee will meet on July 10, at 6:30 p.m., in Thompson Fall, Montana for a business meeting. The meeting is open to the public.

DATES: July 10, 2003, at 6:30 p.m.

ADDRESSES: The meeting will be held at the Thompson Falls Courthouse, 1111 Main Street, Thompson Falls, MT 59873.

FOR FURTHER INFORMATION CONTACT: Lisa Krueger, Designated Forest Official (DFO), District Ranger Plains/Thompson Falls District, Lolo National Forest at (406) 826–4321, Brian Avery, District Ranger Cabinet Ranger District, Kootenai National Forest at (406) 827–3533.

SUPPLEMENTARY INFORMATION: Agenda topics include reviewing the status of selected projects and receiving public comment. If the meeting location is changed, notice will be posted in the local newspaper, including the Clark Fork Valley Press, Sanders County Ledger, Daily Interlake, Missoulian, and River Journal.

Dated: May 13, 2003.

Lisa Krueger,

Designated Federal Official, District Ranger, Plains/Thompson Falls Ranger District.

[FR Doc. 03–12737 Filed 5–20–03; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Rural Business-Cooperative Service

Notice of Request for Extension of a Currently Approved Information Collection

AGENCY: Rural Business-Cooperative Service.

ACTION: Proposed collection; comments requested.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces the Rural Business-Cooperative Service's (RBS) intention to request information collection in support of the program for 7 CFR part 1942–G Rural Business Enterprise Grants (RBEG) and Televisions Demonstration Grants.

DATES: Comments on this notice must be received by July 21, 2003 to be assured of consideration.

FOR FURTHER INFORMATION CONTACT: Amy Cavanaugh, Specialty Lenders Division, Rural Business-Cooperative Service, U.S. Department of Agriculture, STOP 3225, 1400 Independence Ave. SW., Washington, DC 20250–3225, Telephone (202) 690–2516.

SUPPLEMENTARY INFORMATION:

Title: Rural Business Enterprise Grants and Televisions Demonstration Grants.

OMB Number: 0570–0022.

Expiration Date of Approval: October 31, 2003.

Type of Request: Extension of a currently approved information collection.

Abstract: The objective of the RBEG program is to facilitate the development of small and emerging private businesses in rural areas. This purpose is achieved through grants made by RBS to public bodies and nonprofit corporations. Television Demonstration grants are available to private, nonprofit, public television systems to provide information on agriculture and other issues of importance to farmers and rural residents. The regulation contains various requirements for information from the grantees, and some requirements may cause the grantees to require information from other parties. The information requested is vital for RBS to be able to process applications in a responsible manner, make prudent program decisions, and effectively monitor the grantees' activities to protect the Government's financial interest and ensure that funds obtained from the Government are used appropriately. It includes information to determine eligibility, the specific purpose for which grant funds will be used, timeframes, who will be carrying out the grant purposes, project priority, applicant experience, employment improvement, and mitigation of economic distress.

Estimate of Burden: Public reporting burden for this collection of information is estimated to average 2.5 hours per response.

Respondents: Nonprofit corporations and public bodies.

Estimated Number of Respondents: 720.

Estimated Number of Responses per Respondent: 12.

Estimated Number of Responses: 8,660.

Estimated Total Annual Burden on Respondents: 22,395.

Copies of this information collection can be obtained from Cheryl Thompson, Regulations and Paperwork Management Branch, at (202) 692–0043.

Comments

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of RBS, including whether the information will have practical utility; (b) the accuracy of the RBS estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology. Comments may be sent to Cheryl Thompson, Regulations and Paperwork Management Branch, U.S. Department of Agriculture, Rural Development, STOP 0742, 1400 Independence Ave. SW., Washington, DC 20250. All responses to this notice will be summarized and included in the request for Office of Management and Budget approval. All comments will also become a matter of public record.

Dated: May 12, 2003.

John Rosso,

Administrator, Rural Business-Cooperative Service.

[FR Doc. 03–12760 Filed 5–20–03; 8:45 am]

BILLING CODE 3410–15–P

DEPARTMENT OF COMMERCE

International Trade Administration

Initiation of Antidumping and Countervailing Duty Administrative Reviews and Request for Revocation in Part

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of Initiation of Antidumping and Countervailing Duty Administrative Reviews and Request for Revocation in Part.

SUMMARY: The Department of Commerce has received requests to conduct administrative reviews of various antidumping and countervailing duty orders and findings with April anniversary dates. In accordance with the Department's regulations, we are initiating those administrative reviews. The Department of Commerce also received a request to revoke one antidumping duty order in part.

EFFECTIVE DATE: May 21, 2003.

FOR FURTHER INFORMATION CONTACT: Holly A. Kuga, Office of AD/CVD Enforcement, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230, telephone: (202) 482–4737.

SUPPLEMENTARY INFORMATION:

Background

The Department has received timely requests, in accordance with 19 CFR 351.213(b)(2002), for administrative reviews of various antidumping and countervailing duty orders and findings with April anniversary dates. The Department also received a timely request to revoke in part the antidumping duty order on Certain Steel Concrete Reinforcing Bars from Turkey.

Initiation of Reviews

In accordance with section 19 CFR 351.221(c)(1)(i), we are initiating administrative reviews of the following antidumping and countervailing duty orders and findings. We intend to issue the final results of these reviews not later than April 30, 2004.

	Period to be reviewed
Antidumping Duty Proceedings	
The People's Republic of China: Automotive Replacement Glass Windshields [1], A–570–867	9/19/01–3/31/03
Changchun Pilkington Safety Glass Company, Ltd.	
Dongguan Kongwan Automobile Glass, Ltd.	
Fuyao Glass Industry Group company, Ltd.	
Guilin Pilkington Safety Glass Company, Ltd.	
Peaceful City, Ltd.	
Shanghai Yaohua Pilkington Autoglass Company, Ltd.	
Shenzen CSG Automotive Glass Co., Ltd. (formerly Shenzhen Benxum AutoGlass Co., Ltd.)	
TCG International, Inc.	
Wuhan Yaohua Pilkington Safety Glass Company, Ltd.	
Xinyi Automotive Glass (Shenzhen) Co., Ltd.	
The People's Republic of China: Brake Rotors [2], A–570–846	4/1/02–3/31/03
China National Machinery and Equipment Import & Export (Xianjiang) Corporation, and manufactured by any company other than Zibo Botai Manufacturing Co., Ltd.	
China National Automotive Industry Import & Export Corporation, and manufactured by any company other than Laizhou CAPCO Machinery Co., Ltd.	
Laizhou CAPCO Machinery Co., Ltd., and manufactured by any company other than Laizhou CAPCO Machinery Co., Ltd.	
Laizhou Luyuan Automobile Fittings Co., and manufactured by any company other than Laizhou Luyuan Automobile Fittings Co., or Shenyang Honbase Machinery Co., Ltd.	
Shenyang Honbase Machinery Co., Ltd., and manufactured by any company other than Laizhou Luyuan Automobile Fittings Co. or Shenyang Honbase Machinery Co., Ltd.,	
China National Industrial Machinery Import & Export Corporation	
Laizhou Auto Brake Equipment Co., Ltd.	
Qingdao Gren (Group) Co.	

	Period to be reviewed
Yantai Winhere Auto-Part Manufacturing Co., Ltd.	
Longkou Haimeng Machinery Co., Ltd.	
Zibo Luzhou Automobile Parts Co., Ltd.	
Laizhou Hongda Auto Replacement Parts Co., Ltd.	
Hongfa Machinery (Dalian) Co., Ltd.	
Qingdao Meita Automotive Industry Co., Ltd.	
Shangdong Huanri (Group) General Company	
Longkou TLC Machinery Co., Ltd.	
Zibo Golden Harvest Machinery Limited Company	
Shanxi Fengkun Metalurgical Limited Company	
Xianghè Xumingyuan Auto Parts Co., Ltd.	
Xiangfen Hengtai Brake Systems Co., Ltd.	
Turkey: Certain Steel Concrete Reinforcing Bars, A–489–807	4/1/02–3/31/03.
Cebitas Demir Celik Endustrisi A.S.	
Cemtas Celik Makina Sanayi ve Ticaret A.S.	
Colakoglu Metalurji A.S.	
Demirsan Haddecilik Sanayi ve Ticaret A.S.	
Diler Demir Celik Endustri ve Ticaret A.S.	
Ege Celik Endustrisi Sanayi ve Ticaret A.S.	
Ege Metal Demir Celik Sanayi ve Ticaret A.S.	
Ekinciler Holding A.S. and Ekinciler Demir Celik San A.S.	
Habas Sinai ve Tibbi Gazlar Istihsal Endustrisi A.S.	
Icdas Celik Enerji Tersane ve Ulasim Sanayi, A.S.	
Iskenderun Iron & Steel Works Co.	
Izmir Demir Celik Sanayi A.S.	
Kaptan Demir Celik Endustrisi ve Ticaret A.S.	
Kardemir—Karabuk Demir Celik Sanayi ve Ticaret A.S.	
Kroman Celik Sanayi A.S.	
Kurum Demir Sanayi ve Ticaret Metalenerji A.S.	
Metas Izmir Metalurji Fabrikasi Turk A.S.	
Nurmet Celik Sanayi ve Ticaret A.S.	
Nursan Celik Sanayi ve Haddecilik A.S.	
Sivas Demir Celik Isletmeleri A.S.	
Tosyali Demir Celik Sanayi A.S.	
Ucel Haddecilik Sanayi ve Ticaret A.S.	
Yazici Demir Celik Sanayi ve Ticaret A.S.	

Countervailing Duty Proceedings: None.

Suspension Agreements: None.

[1] If one of the named companies does not qualify for a separate rate, all other exporters of automotive replacement glass windshields from the People's Republic of China who have not qualified for a separate rate are deemed to be covered by this review as part of the single PRC entity of which the named exporters are a part.

[2] If one of the named companies does not qualify for a separate rate, all other exporters of brake rotors from the People's Republic of China who have not qualified for a separate rate are deemed to be covered by this review as part of the single PRC entity of which the named exporters are a part.

During any administrative review covering all or part of a period falling between the first and second or third and fourth anniversary of the publication of an antidumping duty order under § 351.211 or a determination under § 351.218(f)(4) to continue an order or suspended investigation (after sunset review), the Secretary, if requested by a domestic interested party within 30 days of the date of publication of the notice of initiation of the review, will determine whether antidumping duties have been absorbed by an exporter or producer subject to the review if the subject merchandise is sold in the United States through an importer that is affiliated with such exporter or producer. The request must include the name(s) of the exporter or producer for which the inquiry is requested.

Interested parties must submit applications for disclosure under administrative protective orders in accordance with 19 CFR 351.305.

These initiations and this notice are in accordance with section 751(a) of the Tariff Act of 1930, as amended (19 U.S.C. 1675(a)), and 19 CFR 351.221(c)(1)(i).

Dated: May 15, 2003.

Holly A. Kuga,

Acting Deputy Assistant Secretary, Group II for Import Administration.

[FR Doc. 03–12769 Filed 5–20–03; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–583–831]

Stainless Steel Sheet and Strip in Coils from Taiwan: Extension of Time Limits for Preliminary Results of Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Extension of time limits for the preliminary results of antidumping duty administrative review.

SUMMARY: The Department of Commerce ("the Department") is extending the time limits for the preliminary results of the antidumping duty administrative review of stainless steel sheet and strip ("SSSS") from Taiwan.

EFFECTIVE DATE: May 21, 2003.

FOR FURTHER INFORMATION CONTACT: Lilit Astvatsatrian, AD/CVD Enforcement Group III, Office 9, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 482–6412.

Background

On July 1, 2002, the Department published a notice of opportunity to request an administrative review of the antidumping duty order on SSSS from Taiwan. *See Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity to Request Administrative Review,* 67 FR 44172 (July 1, 2002). On July 30, 2002, Yieh United Steel Corporation ("YUSCO") and Chia Far Industrial Factory Co. Ltd. ("Chia Far"), Taiwanese producers of subject merchandise, requested that the Department conduct an administrative review of their sales of subject merchandise during the period of review ("POR"). On July 31, 2002, petitioners [1] requested that the Department conduct an administrative review of Chia Far, YUSCO, Tung Mung Development Co., Ltd. ("Tung Mung") and Ta Chen Stainless Pipe Co., Ltd. ("Ta Chen"). On August 27, 2002, the Department published a notice of initiation of a review of SSSS from Taiwan covering the period July 1, 2001 through June 30, 2002. *See Initiation of Antidumping and Countervailing Duty Administrative Reviews and Requests for Revocation in Part,* 67 FR 55000 (August 27, 2002). On March 24, 2003, the Department extended the time limit for the preliminary results of this administrative review by 90 days. *See Stainless Steel Sheet and Strip in Coils from Taiwan: Extension of Time Limits for Preliminary Results of Antidumping Duty Administrative Review,* 68 FR 14195 (March 24, 2003). The preliminary results of review are currently due no later than July 1, 2003.

Extension of Time Limits for Preliminary Results

Section 751(a)(3)(A) of the Tariff Act of 1930, as amended ("the Act") states that the administering authority shall make a preliminary determination within 245 days after the last day of the month in which occurs the anniversary of the date of publication of the order, finding, or suspension agreement for which the review under section 751(a)(1) is requested. If it is not practicable to complete the review within the foregoing time, the administering authority may extend that 245-day period to 365 days. Completion of the preliminary results within 245-day period is impracticable for the following reasons: (1) This review requires the Department to analyze YUSCO's complex affiliations and corporate relationships; (2) this review requires the Department to gather and analyze a significant amount of information pertaining to Chia Far's manufacturing costs due to new structural plant changes affecting the POR; (3) this review involves a large number of transactions and complex adjustments; and (4) this review involves examining complex relationships between the producers and their customers and suppliers.

Because it is not practicable to complete this review within the time specified under the Act, we are extending the due date for the preliminary results by an additional 30 days until July 31, 2003, in accordance with section 751(a)(3)(A) of the Act. The final results continue to be due 120 days after the publication of the preliminary results. This notice is issued and published in accordance with section 751(a)(3)(A) of the Act, and section 351.213(h)(2) of the Department's regulations.

Dated: May 14, 2003.

Barbara E. Tillman,

Acting Deputy Assistant Secretary for Import Administration, Group III.

[FR Doc. 03–12768 Filed 5–20–03; 8:45 am]

BILLING CODE 3510–DS–P

[1] Petitioners are Allegheny Ludlum Corporation, AK Steel Corporation, Butler Armco Independent Union, J&L Specialty Steel, Inc., United States Steelworkers of America, AFL–CIO/CLC, and Zanesville Armco Independent Organization.

DEPARTMENT OF COMMERCE

[I.D. 051603A]

Submission for OMB Review; Comment Request

The Department of Commerce has submitted to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Agency: National Oceanic and Atmospheric Administration (NOAA).

Title: Commercial Harvesters and Recreational Party and Charter Boat Socio-cultural and Economic Data Collection Pilot.

Form Number(s): None.

OMB Approval Number: 0648–0400.

Type of Request: Regular submission.

Burden Hours: 793.

Number of Respondents: 1,555.

Average Hours Per Response: 15 minutes for an interview, 15 minutes for a vessel captain/owner to gather business information.

Needs and Uses: This is a request to extend Paperwork Reduction Act approval for data collection for the Socio-Economic Pilot Study sponsored by the Atlantic Coast Cooperative Statistics Program (ACCSP) and conducted by the National Marine Fisheries Service. Due to a one year delay in initiating the project, data collection efforts must be extended through June 30, 2004 to allow for completion of the proposed data collection cycle.This pilot study is designed to develop socio-cultural and economic information systems for commercial and recreational fisheries. Three specific arenas will be addressed during this study. The first is to identify and address potential problems with the mechanics of implementing the system. These include all data gathering, entry, and storage activities as well as the ability to link the data to all other ACCSP data. The second is to carry out a field test of the survey instrument across the different cultural and socio-economic contexts in which the data-gathering system must eventually be implemented. Field testing questions and instruments is standard procedure in preparing for any survey research. The third arena is to verify the economic model. Initial data gathering in the summer flounder fishery will be carried out and the data used for test runs of several standard economic models.

Affected Public: Business or other for-profit organizations, individuals or households.

Frequency: Quarterly, semi-annually.

Respondent's Obligation: Voluntary.

OMB Desk Officer: David Rostker, (202) 395–3897.

Copies of the above information collection proposal can be obtained by calling or writing Diana Hynek, Departmental Paperwork Clearance Officer, (202) 482–0266, Department of Commerce, Room 6625, 14th and Constitution Avenue, NW, Washington, DC 20230 (or via the Internet at dHynek@doc.gov).Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to David Rostker, OMB Desk Officer, Room 10202, New Executive Office Building, Washington, DC 20503.

Dated: May 15, 2003.

Gwellnar Banks,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. 03–12738 Filed 5–20–03; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Distribution of Digital Navigation and Associated Data; NOAA Electronic Navigational Charts® Released as Nautical Charts

AGENCY: National Ocean Service, National Oceanic and Atmospheric Administration, Department of Commerce.

ACTION: Notice.

SUMMARY: NOAA's National Ocean Service (NOS) is announcing the distribution of certain digital navigation and related data to the public on the Internet. In July 2001, NOS began posting its Electronic Navigational Charts (NOAA ENCs®) on the Internet. Now NOS is or will be making digital versions of the U.S. Coast Pilot®, Tide and Current Tables, Shoreline Data and certain other products available on the Internet. These products have primary application in navigation and in a broad range of Geographic Information System activities. The electronic distribution of navigational and related data will supplement other methods of distribution; paper versions of these products are expected to continue to be available from existing sources.

A primary purpose of providing this information and data on the Internet is to improve marine safety and reduce the risk of accidents, including injury to people, property, the environment and local economies. Providing mariners with more timely and accurate information via the Internet is expected to improve their decision-making capability in an often rapidly changing marine environment.

In addition, NOS is announcing its intention to remove the "provisional" label for NOAA ENCs® distributed on the Internet. Once that label is removed, a NOAA ENC® will constitute a "nautical chart" for the purposes of the 1974 International Convention for the Safety of Life at Sea, as previously announced in **Federal Register**, Volume 67, Number 111, pages 39695–39696, published June 10, 2002.

DATES: Comments on this action should be submitted on or before 5 p.m., EST, June 20, 2003.

ADDRESSES: Comments in writing should be submitted to Director, Office of Coast Survey, National Ocean Service, NOAA (N/CS), 1315 East-West Highway, Silver Spring, MD 20910. Written comments may be FAXed to (301) 713–4019. Comments by e-mail should be submitted to *ECDIS@noaa.gov*.

FOR FURTHER INFORMATION CONTACT: Mike Brown, Electronic Chart Products Manager, Marine Chart Division, Office of Coast Survey, NOS/NOAA, (301) 713–2724, Extension 153, FAX, (301) 713–4516.

SUPPLEMENTARY INFORMATION: Under 33 U.S.C. 883a *et seq.* NOS is responsible for providing nautical charts and related information for safe navigation and other purposes. In fulfilling this responsibility, NOS collects and compiles hydrographic, tidal and current, geodetic and a variety of other data and information. In the past, NOS made this information available to the public primarily by publishing and distributing various paper charts and other printed materials. It is now technologically feasible to disseminate much of this information in digital format on the Internet and NOS intends to do so when it is reasonable and feasible to take such action. NOAA consulted with the U.S. Coast Guard concerning its proposal to make digital navigation data, including NOAA ENCs®, available on the Internet. The Coast Guard concurred that such action would promote marine safety.

NOS digital products that are being distributed are expected to be distributed on the Internet include but are not limited to NOAA ENCs®, the U.S. Coast Pilots®, Water Level, Observations, Water Level Time Series Plots, Predicted Tides and Tidal Currents, Tidal Predictions Program, Published Bench Mark Sheets with Tidal Datums, Harmonic Constituents, Coastal Survey Maps/Shoreline Data, CORS—Global Positioning System Continuously Operating Reference Station data, Geodetic Control Data Sheets, Tidal and Orthometric Elevations, Gravity Data, Online User Positioning Service, Geoid data, and various types of positioning and conversion software such as HTDP, NADCON, LVL DH, and Surface Gravity Prediction.

NOS data that might be affected by the above announcement is posted at the following NOAA Web sites: *http://chartmaker.ncd.noaa,gov. http://co-ops.nos.noaa.gov;* and *http://www.ngs.noaa.gov* NOS may also release other present or future nautical products or data on the Internet; NOS Web sites.

One of the primary reasons for making digital navigational and related data available to the public on the Internet is to promote safe navigation. In the past, mariners would have to wait until new editions of nautical charts, the U.S. Coast Pilot® and other publications were released before they would have access to updated information. Today's digital technologies and widespread access to the Internet provide the means to make this information available to the mariner much sooner, sometimes in near real-time. In addition, often much more accurate or complete information can be distributed in digital format that could be provided in a printed document.

Releasing NOS digital navigation data and information available on the Internet is expected to encourage commercial mariners, recreational boaters and others to use the most accurate and complete digital information available. Digital navigation data that are easily accessible is in demand; if NOS data were not available or accessible, people would be expected to utilize less reliable, less accurate or less complete data with the attendant increased risks.

Another safety benefit from the release of these data is that it may encourage the development of new and better navigation products that utilize the best data available. For example, several navigation software programs have been developed to utilize products such as NOAA ENCs®.

A secondary benefit of releasing these data on the Internet is that it is expected to promote the open and efficient exchange of public, scientific and technical information. The public generally, not just mariners, has an interest in these data. Internet access to NOS navigation and other data will maximize dissemination of this information to ocean engineers, marine scientists, emergency response personnel, a mangers and policy makers, including those in state and local governments, academia and other institutions as well as the private sector. Such action may promote scientific advances, sound marine and coastal management, and commercial development of new and better navigation or other products.

Such action is designed to be consistent with section 2 of the Paperwork Reduction Act, 44 U.S.C. 3506(d) and Office of Management and Budget Circular A–130 regarding information management and dissemination and is expected to maximize the usefulness of government

data. Currently NOAA collects, compiles and maintains these data and little or no expense will be incurred in making these data available to the public on the Internet.

Generally, NOAA does not intend to limit access to, or restrict use of the data it makes available on the Internet. Of course, sensitive data will be reviewed and if there are homeland security issues, proprietary concerns, privacy implications or similar issues, such data may not be placed on the Internet. In addition, in some cases where the data or use of the data are not completely reliable, where procedures for updating the data are not fully tested and operational, where the public may lack familiarity with the use of those data and associated products, or for other reasons, NOS may release the data on a provisional basis with a statement that the data are not to be used for navigational purposes. This was the case with the original release of NOAA ENCs® in 2001.

From all indications, mariners and other users are now familiar with NOAA ENCs®. The response to NOAA ENCs on the Internet has been overwhelmingly positive, with more than 480,000 individual files downloaded. NOAA ENCs were designed to comply with International Hydrographic Organization's S–57 ENC Product Specification and have been greatly successful with a notable absence of significant errors. Further, the NOAA ENC® files are now being updated for Notices to Mariners on a monthly basis and then posted to the NOAA ENC® Web page, available for downloading. Consequently, NOS will remove the "provisional" label for NOAA ENCs® distributed on the Internet in the near future. Once that label is removed, a NOAA ENC® will constitute a "nautical chart" for the purposes of the 1974 International Convention for the Safety of Life at Sea.

In the future NOAA intends to monitor the release and use of its data and may remove, or in some cases, add provisional use labels or other warnings or restrictions through an announcement on the Web site associated with the data.

NOS does not seek to limit access or restrict use of the data it provides on the Internet for most purpose, but it is concerned about the use of these data in situations that may compromise marine safety. Consequently, NOS plans to work with mariners, product developers and others to establish specific procedures for users who wish to incorporate NOS data into certain navigation products. Thus, in order for a value-added navigational product to be certified, the developer may be required to establish a process to ensure that NOS data are incorporated into the product without compromise to the data quality or data lineage.

NOS intends to issue standards governing the certification process for derived navigational products. Among the standards under consideration are: (1) The operation of a quality assurance system that is in essential compliance with a recognized quality standard, such as ISO 9000 series or equivalent, and (2) the certification by a U.S. Coast Guard-approved quality standards organization that results in products being consistently manufactured to the same specification.

NOS is publishing this notice consistent with section 8.a(6)(j) of the Office of Management and Budget Circular A–130.

Dated: May 14, 2003.

Jamison S. Hawkins,

Acting Assistant Administrator, Ocean Services and Coastal Zone Management, National Oceanic and Atmospheric Administration.

[FR Doc. 03–12703 Filed 5–20–03; 8:45 am]

BILLING CODE 3510–JE–M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 051303D]

North Pacific Fishery Management Council; Public Meetings

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of public meetings.

SUMMARY: The North Pacific Fishery Management Council (Council) and its advisory committees will hold public meetings in Kodiak, AK.

DATES: The meetings will be held June 9 through June 18, 2003. See **SUPPLEMENTARY INFORMATION** for specific dates and times. All meetings are open to the public except executive sessions.

ADDRESSES: The meetings will be held at the Best Western Kodiak Inn, 236 Rezanof, Kodiak, AK 99615.

Council address: North Pacific Fishery Management Council, 605 W. 4th Ave., Suite 306, Anchorage, AK 99501–2252.

FOR FURTHER INFORMATION CONTACT: Council staff, phone: 907–271–2809.

SUPPLEMENTARY INFORMATION: The Council's Advisory Panel will begin at 8 a.m., Monday, June 9 and continue through Saturday, June 14, 2003. The Scientific and Statistical Committee will begin at 8 a.m. on Monday, June 9, and continue through Wednesday, June 11, 2003.

The Council will begin its plenary session at 8 a.m. on Wednesday, June 11 continuing through Wednesday June 18.

Council Plenary Session: The agenda for the Council's plenary session will include the following issues. The Council may take appropriate action on any of the issues identified.

1. Reports
(a) Executive Director's Report
(b) Trawl 3rd Wire Report
(c) NMFS Management/Enforcement Reports
2. Gulf of Alaska Rationalization (GOA): Review discussion papers and refine alternatives, elements and options.
3. Programmatic Groundfish Supplemental Environmental Impact Statement (PGSEIS): Select draft preferred alternative.
4. Essential Fish Habitat (EFH)/ Habitat Areas of Particular Concern (HAPC): Update on Supplemental Environmental Impact Statement development, report on Coral/Sponge bycatch limits, Committee report on HAPC process.
5. Bering Sea/Aleutian Island (BSAI) Pacific Cod Allocation: Final action on Amendment 77 (fixed gear allocations).
6. Improved Retention/Improved Utilization (IR/IU): Review alternatives and options for Trailing Amendment A (multi-species co-ops for head and gut catcher/processor sector and species allocation). Final action on Trailing Amendment C (minimum retention standards).
7. Steller Sea Lion (SSL): SSL Mitigation Committee Report.
8. Groundfish Management: Target/ Non-target workgroup report. BSAI Cod depletion study - Review 1st year results.
9. Crab Management: Initial Review Pribilof Blue King Crab Rebuilding Plan.
10. Staff Tasking: Review tasking and committees and provide direction to staff.
11. Other Business: Approve updated Statement of Organization Practices and Procedures (SOPPs).

Scientific and Statistical Committee (SSC): The SSC agenda will include the following issues:

1. Programmatic Groundfish SEIS
2. Essential Fish Habitat
3. Improved Retention/Improved Utilization
4. Groundfish Management
5. Crab Management

Advisory Panel: The Advisory Panel will address the same agenda issues as the Council.

Although non-emergency issues not contained in this agenda may come before this Council for discussion, in accordance with the Magnuson-Stevens Fishery Conservation and Management Act, these issues may not be the subject of formal Council action during the meeting. Council action will be restricted to those issues specifically identified in the agenda listed in this notice and any issues arising after publication of this notice that require emergency action under section 305(c) of the Magnuson-Stevens Act, provided the public has been notified of the Council's intent to take final action to address the emergency.

Special Accommodations

These meetings are physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Gail Bendixen at 907–271–2809 at least 7 working days prior to the meeting date.

Dated: May 14, 2003.

Richard W. Surdi,

Acting Director, Office of ustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 03–12740 Filed 5–20–03; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 051403D]

Gulf of Mexico Fishery Management Council; Public Meeting

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of public meeting.

SUMMARY: The Gulf of Mexico Fishery Management Council (Gulf Council) and South Atlantic Fishery Management Council (South Atlantic Council) in cooperation with the Florida Marine Research Institute (FMRI) of the Florida Fish and Wildlife Conservation Commission (FFWCC) and the Southeast Fisheries Science Center of the National Marine Fisheries Service (NOAA Fisheries) will convene a yellowtail snapper Stock Assessment Workshop as part of the 2003 Southeast Data Assessment and Review (SEDAR) process. The workshop will be held from Monday June 9, 2003 through Friday, June 13, 2003.

DATES: The workshop will be held from Monday June 9, 2003 through Friday, June 13, 2003.

ADDRESSES: The meeting will be held at the Florida Marine Research Institute, 100 Eighth Avenue, Southeast, St. Petersburg, FL 33701–5095; telephone: 727–896–8626.

Council address: Gulf of Mexico Fishery Management Council, 3018 U.S. Highway 301 North, Suite 1000, Tampa, FL 33619.

FOR FURTHER INFORMATION CONTACT: Mr. Phil Steele, NMFS Southeast Regional Office, 9721 North Executive Center Drive, St. Petersburg, FL 33702; telephone: 727–570–5305.

SUPPLEMENTARY INFORMATION: The Stock Assessment Workshop will focus on the single yellowtail snapper stock off the U.S. mainland that falls within the jurisdictional boundaries of the Gulf Council, South Atlantic Council, and FFWCC. Yellowtail snapper in the Caribbean appear to be a different population based on preliminary genetic analyses, and will not be included in this assessment.

The Stock Assessment Workshop is the second step in the three-part SEDAR process. The first step was the Data Review Workshop (held March 3–7, 2003) and involved the assembly and review of available fishery data, life history information, analytical techniques and models for the stock assessment. The second step is the Stock Assessment Workshop, where data sets from the Data Review Workshop are used with population dynamics modeling techniques to determine the status of stocks. The third step of SEDAR is the Stock Assessment Review Workshop (to be scheduled in July, 2003), where the stock assessment is reviewed by an independent peer review panel.

The Stock Assessment Workshop will convene a select group of scientists, industry representatives, and other knowledgeable persons to review the available data and the yellowtail snapper stock assessment presented by FFWCC biologists. The workshop participants will prepare a written Workshop report that provides an overview of the analyses, general findings, and recommendations of the workshop. As part of the Stock Assessment Workshop, the Gulf Council will convene a meeting of its Reef Fish Stock Assessment Panel (RFSAP). The RFSAP is composed of biologists who are trained in the specialized field of population dynamics. Based on its review of the yellowtail snapper stock assessment, the RFSAP may recommend whether to declare the stocks overfished and/or undergoing overfishing, and may recommend a range of acceptable biological catch (ABC) for 2004. The RFSAP may also recommend management measures to achieve the ABC. The RFSAP may also make recommendations pertaining to its role in future SEDAR meetings.

The RFSAP will hold it's own session in conjunction with the Stock Assessment Workshop to review the following issues: (1) role of the RFSAP in the SEDAR process; (2) review of alternatives for revision of the rebuilding plan for Gulf red snapper, and; (3) new information on Goliath grouper if that data is available.

Both the Stock Assessment Workshop report and the conclusions of the RFSAP will be reviewed by the Stock Assessment Review Workshop, the Council's Standing and Special Reef Fish Scientific and Statistical Committee (SSC), (which will be convened as part of the Stock Assessment Review Workshop), the Socioeconomic Panel (SEP), and the Reef Fish Advisory Panel (AP). The reports and recommendations of these groups will then be presented to the Gulf Council, which may set year a 2004 total allowable catch (TAC) as well as other management measures for the Gulf of Mexico exclusive economic zone component of the yellowtail snapper stock.

A copy of the agenda for the RFSAP portion of the meeting can be obtained by calling 813–228–2815.

Although other issues not on the agenda may come before the RFSAP for discussion, in accordance with the Magnuson-Stevens Fishery Conservation and Management Act, those issues may not be the subject of formal action during this meeting. Actions of the RFSAP will be restricted to those issues specifically identified in the agenda listed as available by this notice.

The RFSAP meeting is open to the public and is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to the Council office (see **ADDRESSES**)by June 30, 2003.

Dated: May 15, 2003.

Richard W. Surdi,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 03–12741 Filed 5–20–03; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 051203D]

Permits; Foreign Fishing

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of receipt of foreign fishing application.

SUMMARY: NMFS publishes for public review and comment a summary of an application submitted by the Government of the Russian Federation requesting authorization to conduct fishing operations in the U.S. Exclusive Economic Zone (EEZ) in 2003 under provisions of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act).

ADDRESSES: Comments may be submitted to NMFS, Office of Sustainable Fisheries, International Fisheries Division, 1315 East-West Highway, Silver Spring, MD 20910; and/or to the Regional Fishery Management Councils listed here:

Paul J. Howard, Executive Director, New England Fishery Management Council, 50 Water Street, Mill 2, Newburyport, MA 01905, Phone (978) 465–0492, Fax (978) 465–3116;

Daniel T. Furlong, Executive Director, Mid-Atlantic Fishery Management Council, Federal Building, Room 2115, 300 South New Street, Dover, DE 19904, Phone (302) 674–2331, Fax (302) 674–4136.

FOR FURTHER INFORMATION CONTACT: Robert A. Dickinson, Office of Sustainable Fisheries, (301) 713–2276.

SUPPLEMENTARY INFORMATION: In accordance with a Memorandum of Understanding with the Secretary of State, NMFS publishes, for public review and comment, summaries of applications received by the Secretary of State requesting permits for foreign fishing vessels to fish in the U.S. EEZ under provisions of the Magnuson-Stevens Act (16 U.S.C. 1801 *et seq.*).

This notice concerns the receipt of an application from the Government of the Russian Federation requesting authorization to conduct joint venture (JV) operations in 2003 in the Northwest Atlantic Ocean for Atlantic mackerel and Atlantic herring. The factory ship DAURIYA is identified as the Russian vessel that would receive Atlantic mackerel and Atlantic herring from U.S. vessels in JV operations.

Dated: May 14, 2003.

Bruce C. Morehead,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 03–12739 Filed 5–20–03; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

Patent and Trademark Office

Grant of Interim Extension of the Term of U.S. Patent No. 4,567,264; Ranolazine

AGENCY: Patent and Trademark Office.

ACTION: Notice of interim patent term extension.

SUMMARY: The United States Patent and Trademark Office has issued a certificate under 35 U.S.C. 156(d)(5) for a one-year interim extension of the term of U.S. Patent No. 4,567,264.

FOR FURTHER INFORMATION CONTACT: Karin Ferriter by telephone at (703)306–3159; by mail marked to her attention and addressed to Mail Stop Patent Ext., Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313–1450; by fax marked to her attention at (703)872–9411, or by e-mail to *Karin.Ferriter@uspto.gov*.

SUPPLEMENTARY INFORMATION: Section 156 of title 35, United States Code, generally provides that the term of a patent may be extended for a period of up to five years if the patent claims a product, or a method of making or using a product, that has been subject to certain defined regulatory review, and that the patent may be extended for interim periods of up to a year if the regulatory review is anticipated to extend beyond the expiration date of the patent.

On March 5, 2003, patent owner Roche Palo Alto LLC, timely filed an application under 35 U.S.C. 156(d)(5) for an interim extension of the term of U.S. Patent No. 4,567,264. The patent claims the active ingredient ranolazine (Ranexa™). The application indicates that a New Drug Application for the human drug product ranolazine has been filed and is currently undergoing regulatory review before the Food and Drug Administration for permission to market or use the product commercially.

Review of the application indicates that, except for permission to market or use the product commercially, the subject patent would be eligible for an extension of the patent term under 35 U.S.C. 156. Since it is apparent that the regulatory review period will continue beyond the original expiration date of the patent (May 18, 2003), the term of the patent is extended under 35 U.S.C. 156(d)(5) for a term of one year, *i.e.*, until May 18, 2004.

Dated: May 9, 2003.

James E. Rogan,

Under Secretary of Commerce for Intellectual Property and Director of the United States Patent and Trademark Office.

[FR Doc. 03–12729 Filed 5–20–03; 8:45 am]

BILLING CODE 3510–16–P

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Procedures for Considering Requests from the Public for Textile and Apparel Safeguard Actions on Imports from China

May 19, 2003.

AGENCY: The Committee for the Implementation of Textile Agreements (The Committee).

ACTION: Notice of Procedures

SUMMARY: This notice sets forth the procedures the Committee for the Implementation of Textile Agreements (the Committee) will follow in considering requests from the public for textile and apparel safeguard actions as provided for in the Report of the Working Party on the Accession of China to the World Trade Organization (the Accession Agreement). The Committee hereby notifies interested parties of the procedures it will follow in considering requests.

EFFECTIVE DATE: May 21, 2003.

ADDRESS: Request must be submitted to: the Chairman, Committee for the Implementation of Textile Agreements, Room H3100, U.S. Department of Commerce, 14th and Constitution Avenue, N.W., Washington, D.C. 20230. Ten copies of any such request must be provided.

FOR FURTHER INFORMATION CONTACT: William Dulka, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482-4058.

SUPPLEMENTARY INFORMATION:

Authority: Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Executive Order 11651 of March 3, 1972, as amended.

BACKGROUND:

The Accession Agreement textile and apparel safeguard allows the United States and other World Trade Organization Member countries that believe imports of Chinese origin textile and apparel products are, due to market disruption, threatening to impede the orderly development of trade in these

products to request consultations with China with a view to easing or avoiding such market disruption. Upon receipt of the request, China has agreed to hold its shipments to a level no greater than 7.5 percent (6 percent for wool product categories) above the amount entered during the first 12 months of the most recent 14 months preceding the request for consultations. The United States may implement such a limit. Consultations with China will be held within 30 days of receipt of the request for consultations, and every effort will be made to reach agreement on a mutually satisfactory solution within 90 days of receipt of the request for consultations. If agreement on a different limit is reached, the Committee will issue a **Federal Register** Notice containing a directive to the Bureau of Customs and Border Protection that implements the negotiated limit.

The limit is effective beginning on the date of the request for consultations and ending on December 31 of the year in which consultations were requested, or where three or fewer months remained in the year at the time of the request for consultations, for the period ending 12 months after the request for consultations. No limit may remain in effect beyond one year, without reapplication, unless otherwise agreed between the United States and China. No limit may be applied to the same product at the same time under these procedures and under the product-specific China safeguard implemented by Section 421 of the Trade Act of 1974 (19 U.S.C. 2451).

In order to facilitate the implementation of the Accession Agreement textile and apparel safeguard, the Committee has determined that it is appropriate to publish procedures it will follow in considering requests for Accession Agreement textile and apparel safeguard actions. However, the Committee has determined that actions taken under this safeguard fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1), and this notice does not waive that determination. These procedures are not subject to the requirement to provide prior notice and opportunity for public comment, pursuant to 5 U.S.C. 553(a)(1) and 553(b)(A).

1. Requirements for Requests.

The Committee will review requests from the public for Accession Agreement textile and apparel safeguard actions on imports of Chinese origin textile and apparel products (such products must have been covered by the WTO Agreement on Textiles and Clothing as of the date the WTO Agreement entered into force) sent to the Chairman, Committee for the Implementation of Textile Agreements, Room H3100, U.S. Department of Commerce, 14th and Constitution Avenue, NW., Washington, DC 20230. Ten copies of any such request must be provided. The Committee will protect any business confidential information that is marked business confidential from disclosure to the full extent permitted by law. To the extent that business confidential information is provided, two copies of a non-confidential version must also be provided, in which business confidential information is summarized or, if necessary, deleted. Within 15 working days of receipt of a request, the Committee will determine whether the request provides the information necessary for the Committee to consider the request in light of the considerations set forth below. If the request does not, the Committee will promptly notify the requester of the reasons for this determination and the request will not be considered. However, the Committee will reevaluate any request that is resubmitted with additional information.

Consistent with longstanding Committee practice in considering textile safeguard actions, requests may be filed by an entity (which may be a trade association, firm, certified or recognized union, or group of workers) that is representative of either: (A) a domestic producer or producers of a product that is a like or directly competitive with the subject Chinese textile or apparel product; or (B) a domestic producer or producers of a component used in the production of a product that is like or directly competitive with the subject Chinese textile or apparel product.

A request will only be considered if the request includes the specific information set forth below in support of a claim that the Chinese origin textile or apparel product is, due to market disruption, threatening to impede the orderly development of trade in like or directly competitive products.

A. Product description. Name and description of the imported product concerned, including the category or categories or part thereof of the U.S. Textile and Apparel Category System (see "Textile Correlation" at http://otexa.ita.doc.gov/corr.htm) under which such product is classified, the Harmonized Tariff Schedule of the United States subheading(s) under which such product is classified, and the name and description of the like or directly competitive domestic product concerned.

B. Import data. The following data, in quantity by category unit (see "Textile Correlation"), on total imports into the United States and imports from China into the United States:

* Annual data for the most recent five full calendar years for which such data are available;

* Quarterly data for the most recent year for which such data are partially available, and quarterly data for the same quarter(s) of the previous year (e.g. January-March 2002, April-June 2002 and January-March 2001, April-June 2001).

The data should demonstrate that imports of Chinese origin textile and apparel products that are like or directly competitive with the product produced by the domestic industry concerned are increasing rapidly in absolute terms.

C. Production Data. The following data, in quantity by category unit (see "Textile Correlation"), on United States domestic production of the like or directly competitive products of U.S. origin indicating the nature and extent of market disruption:

* Annual data for the most recent five full calendar years for which such data are available;

* Quarterly data for the most recent year for which such data are partially available, and quarterly data for the same quarter(s) of the previous year (e.g. January-March 2002, April-June 2002 and January-March 2001, April-June 2001).

If the like or directly competitive product(s) of U.S. origin does not correspond to a category or categories of the U.S. Textile and Apparel Category system for which production data are available from official statistics of the U.S. Department of Commerce (see "U.S. Imports, Production, Markets, Import Production Ratios and Domestic Market Shares for Textile and Apparel Product Categories" at website: http://otexa.ita.doc.gov/ipbook.pdf), the requester must provide a complete listing of all sources from which the data were obtained and an affirmation that to the best of the requester's knowledge, the data represent substantially all of the domestic production of the like or directly competitive product(s) of U.S. origin. In such cases, data should be reported in the first unit of quantity in the Harmonized Tariff Schedule of the United States (http://dataweb.usitc.gov/SCRIPTS/tariff/toc.html) for the Chinese origin textile and/or apparel products and the like or directly competitive products of U.S. origin.

D. Market Share Data. The following data, in quantity by category unit (see "Textile Correlation"), on imports from China as a percentage of the domestic market (defined as the sum of domestic production of like or directly competitive products and total imports); on total imports as a percentage of the domestic market; and on domestic production of like or directly competitive products as a percentage of the domestic market:

* Annual data for the most recent five full calendar years for which such data are available;

* Quarterly data for the most recent year for which such data is partially available, and quarterly data for the same quarter(s) of the previous year (e.g. January-March 2002, April-June 2002 and January-March 2001, April-June 2001).

E. Additional Information. A description of how the Chinese origin textile and apparel product(s) have adversely affected the domestic industry producing like or directly competitive articles, such as the effect of imports from China on prices in the United States or any other data deemed to be pertinent.

2. Consideration of Requests.

If the Committee determines that the request provides the information necessary for it to be considered, the Committee will cause to be published in the **Federal Register** a notice seeking public comments regarding the request, which will include the request and the date by which comments must be received. The **Federal Register** notice and the request, with the exception of information marked "business confidential", will be posted by the Department of Commerce's Office of Textiles and Apparel on the Internet (otexa.ita.doc.gov). The comment period shall be 30 calendar days. To the extent business confidential information is provided, a non-confidential version must also be provided, in which business confidential information is summarized or, if necessary, deleted. Comments received, with the exception of information marked "business confidential", will be available in the Department of Commerce's Trade Reference Room for review by the public. If a comment alleges that there is no market disruption or that the subject imports are not the cause of market disruption, the Committee will closely review any supporting information and documentation, such as information about domestic production or prices of like or directly competitive products. In the case of requests submitted by entities that are not the actual producers of a like or directly competitive product, particular consideration will be given to comments representing the views of actual producers in the United States of a like or directly competitive product.

With respect to any request considered by the Committee, the Committee will make a determination within 60 calendar days of the close of the comment period as to whether the Committee will request consultations with China. If the Committee is unable to make a determination within 60 calendar days, it will cause to be published in a notice in the **Federal Register**, including the date by which it will make a determination. If the Committee makes a negative determination, it will cause this determination and the reasons therefore to be published in the **Federal Register**. If the Committee makes an affirmative determination that imports of Chinese origin textiles and apparel products are, due to market disruption, threatening to impede the orderly development of trade in these products, the Committee will request consultations with China with a view to easing or avoiding such market disruption. Consultations with China will be held within 30 days of receipt of the request for consultations, and every effort will be made to reach agreement on a mutually satisfactory solution within 90 days of receipt of the request for consultations. Immediately after the Chinese Government receives the requests for consultations, the Committee will cause to be published a notice in the **Federal Register** that such consultations have been requested. The notice will identify quantitative limits on imports into the United States of Chinese origin textile and apparel products subject to the request for consultations. The notice will further provide that, absent a mutually satisfactory solution, the limits will terminate on December 31 of the year in which the request for consultations was made, unless three or fewer months remain in that year at the time of the request. If three or fewer months remain in the year at the time of the request, the notice will provide that, absent a mutually satisfactory solution, the limits will terminate one year from the date on which consultations were requested. The quantitative limits identified in the notice shall be 7.5 percent (6 percent for wool products) above the amount of Chinese origin textile and apparel products subject to the request for consultations entered into the United States during the first 12 months of the most recent 14 months preceding the month in which the request for consultations was made. The notice also will contain a summary statement of the reasons and justifications for the request for consultations with China.

3. Self Initiation. The Committee may, on its own initiative, consider whether imports of Chinese origin textile and apparel products are, due to market disruption, threatening to impede the orderly development of trade in these products. In such considerations, the Committee will follow procedures consistent with those set forth in Section 2 of this notice, including causing to be published in the **Federal Register** a notice seeking public comment regarding the action it is considering.

4. Reapplication. Under the Accession Agreement, no action may remain in effect beyond one year, without reapplication, unless otherwise agreed between the United States and China. Reapplication will only take place if the Committee makes a new affirmative determination that imports of Chinese origin textiles and apparel products are, due to market disruption, threatening to impede the orderly development of trade in these products. In considering requests or in considerations begun on its own initiative for reapplication, the Committee will follow procedures consistent with those set forth in this notice.

5. Business Confidential Information. Public Reading Room. The Committee will protect any business confidential information that is marked business confidential from disclosure to the full extent permitted by law. To the extent that business confidential information is provided, two copies of a non-confidential version must also be provided, in which business confidential information is summarized or, if necessary, deleted. The Committee will make available to the public non-confidential versions of the request that is being considered, non-confidential versions of any public comments received with respect to a request, and, in the event consultations are requested, the statement of the reasons and justifications for the request subsequent to the delivery of the statement to China.

D. Michael Hutchinson,

Acting Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc.03–12893 Filed 5–20–03; 8:45 am]

BILLING CODE 3510–DR–S

DEPARTMENT OF DEFENSE

Department of the Navy

Withdrawal of Surplus Land at a Military Installation Designated for Realignment: Naval Air Station (NAS), Key West, FL

AGENCY: Department of the Navy, DOD.

ACTION: Notice.

SUMMARY: This notice provides information on withdrawal of surplus property at NAS Key West, FL.

FOR FURTHER INFORMATION CONTACT: Richard A. Engel, Head, BRAC Real Estate Section, Naval Facilities Engineering Command, 1322 Patterson Ave. SE., Suite 1000, Washington Navy Yard, DC 20374–5065, telephone (202) 685–9203, or E. R. Nelson, Director, Real Estate Department, Southern Division, Naval Facilities Engineering Command, P.O. Box 190010, 2155 Eagle Drive, North Charleston, SC 29419–9010, telephone (843) 820–7494.

SUPPLEMENTARY INFORMATION: In 1995, NAS Key West, FL, was designated for realignment pursuant to the Defense Base Closure and Realignment Act of 1990 (DBCRA), Public Law 101–510, as amended. Pursuant to this designation, in April of 1996, approximately 168.14 acres of land and related facilities at this installation were declared surplus to the Federal Government and available for use by (a) non-Federal public agencies pursuant to various statutes which authorize conveyance of property for public projects, and (b) homeless provider groups pursuant to the Stewart B. McKinney Homeless Assistance Act (42 U.S.C. 11411), as amended. Approximately 35 acres of land improved with 10 buildings have been requested for transfer by other Federal agencies and was not included within the 168.14 acres. On July 3, 1997, a second determination was made to withdraw approximately 16 acres of improved and unimproved fee simple land at NAS Key West, FL, known as the Trumbo Point Annex Tank Farm. A third determination was made on December 20, 1999, to withdraw 3.54 acres of improved and unimproved fee simple land at NAS Key West, FL, known as the Seminole Battery. A fourth determination was made on May 2, 2003, to withdraw land and facilities previously reported as surplus that are now required by the Federal Government. This withdrawal is required to satisfy new military requirements and security concerns.

Notice of Surplus Property: Pursuant to paragraph (7)(B) of Section 2905(b) of the DBCRA, as amended by the Base Closure Community Redevelopment and Homeless Assistance Act of 1994, the following information is regarding the withdrawal of previously reported surplus property at NAS Key West, FL, which was published in 61 FR 19614, May 2, 1996.

Withdrawn Property Description: The following is a description of land and facilities at NAS Key West, FL, that are withdrawn from surplus by the Federal government.

Land: Approximately 16.1 acres of improved and unimproved fee simple land at NAS Key West, FL, known as Truman Annex. This also includes the berthing wharf known as the Mole Pier.

Buildings: The following is a summary of the facilities located on the above-described land. General Warehouses: three structures of approximately 34,120 square feet.

Dated: May 15, 2003.

P.C. LeBlanc,

Lieutenant Commander, Judge Advocate General's Corps, U.S. Navy, Alternate Federal Register Liaison Officer.

[FR Doc. 03–12704 Filed 5–20–03; 8:45 am]

BILLING CODE 3810–FF–P

DEPARTMENT OF DEFENSE

Department of the Navy

Notice of Availability of Government-Owned Invention; Available for Licensing

AGENCY: Department of the Navy, DOD.

ACTION: Notice.

SUMMARY: The invention listed below is assigned to the United States Government as represented by the Secretary of the Navy and is available for licensing by the Department of the Navy. Navy Case No. 84,717, entitled "Multiparameter System for Environmental Monitoring".

ADDRESS: Requests for information about the invention cited should be directed to the Naval Research . Laboratory, Code 1004, 4555 Overlook Avenue, SW., Washington, DC 20375–5320, and must include the Navy Case number.

FOR FURTHER INFORMATION CONTACT: Catherine M. Cotell, Ph.D., Head, Technology Transfer Office, NRL Code 1004, 4555 Overlook Avenue, SW., Washington, DC 20375–5320, telephone (202) 767–7230. Due to temporary U.S. Postal Service delays, please fax (202) 404–7920, E-Mail: *cotell@nrl.navy.mil* or use courier delivery to expedite response.

Authority: 35 U.S.C. 207, 37 CFR Part 404.

Dated: May 15, 2003.

P.C. LeBlanc,

Lieutenant Commander, Judge Advocate General's Corps, U.S. Navy, Alternate Federal Register Liaison Officer.

[FR Doc. 03–12705 Filed 5–20–03; 8:45 am]

BILLING CODE 3810–FF–P

DEPARTMENT OF EDUCATION

Notice of Proposed Information Collection Requests

AGENCY: Department of Education.

SUMMARY: The Acting Leader, Regulatory Management Group, Office of the Chief Information Officer, invites comments on the proposed information collection requests as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before July 21, 2003.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Acting Leader, Regulatory Management Group, Office of the Chief Information Officer, publishes that notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, *e.g.* new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. OMB invites public comment.

The Department of Education is especially interested in public comment addressing the following issues: (1) Is this collection necessary to the proper functions of the Department; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the Department enhance the quality, utility, and clarity of the information to be collected; and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology.

Dated: May 15, 2003.

Joseph Schubart,

Acting Leader, Regulatory Management Group, Office of the Chief Information Officer.

Office of Postsecondary Education

Type of Review: Extension.

Title: Ronald E. McNair Postbaccalaureate Achievement Program Annual Performance Report Form.

Frequency: Annually.

Affected Public: Not-for-profit institutions; State, Local, or Tribal Gov't, SEAs or LEAs.

Reporting and Recordkeeping Hour Burden:

Responses: 156.

Burden Hours: 702.

Abstract: McNair Program grantees must submit the report annually. The report provides the Department of Education with information needed to evaluate a grantee's performance and compliance with program requirements and to award prior experience points in accordance with the program regulations. The data collected is also aggregated to provide national information on project participants and program outcomes.

Requests for copies of the proposed information collection request may be accessed from *http://edicsweb.ed.gov*, by selecting the "Browse Pending Collections" link and by clicking on link number 2279. When you access the information collection, click on "Download Attachments" to view. Written requests for information should be addressed to Vivian Reese, Department of Education, 400 Maryland Avenue, SW., Room 4050, Regional Office Building 3, Washington, DC 20202–4651 or to the e-mail address *vivian_reese@ed.gov*. Requests may also be electronically mailed to the internet address OCIO_RIMG@ed.gov or faxed to 202–708–9346. Please specify the complete title of the information collection when making your request.

Comments regarding burden and/or the collection activity requirements should be directed to Joseph Schubart at (202) 708–9266 or via his e-mail address *Joe.Schubart@ed.gov*. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

[FR Doc. 03–12696 Filed 5–20–03; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Office of Science; Office of Biological and Environmental Research; Recommendations for Sequencing Targets in Support of the Science Missions of the Office of Biological and Environmental Research (BER)

AGENCY: Department of Energy (DOE).

ACTION: Notice of recommendations for sequencing targets.

SUMMARY: This **Federal Register** notice seeks the input and nominations of interested parties for candidate microbes, microbial consortia, and 100Mb-or-less-sized organisms for draft genomic sequencing in support of Office of Biological and Environmental Research (BER) programs, among them, the Climate Change Research Program, the Natural and Accelerated Bioremediation Research (NABIR) Program, the Environmental Management Science Program (EMSP), the Microbial Genome Program (MGP), and the GTL Program. Nominated candidates should be relevant to DOE mission needs, *e.g.*, organisms involved in environmental processes, including waste remediation, carbon management, and energy production. This announcement is not an offer of direct financial support for research on these organisms. Those nominations selected will result in the DNA sequence of selected organisms being determined at a draft level (6–8 × coverage) at the DOE Production Genomics Facility (PGF) at the Joint Genome Institute (JGI), (*http://www.jgi.doe.gov*). This announcement is designed to assist DOE in determining and prioritizing a list of microbes, microbial consortia, or modest-genome sized (not more than 100Mb) organisms (including eukaryotes) that address DOE mission needs. Following merit review, and subject to the availability of funding and programmatic relevance, draft sequencing will be carried out at the PGF.

DATES: To assure consideration, nominations in response to this notice should be received by 4:30 p.m. (EST), June 26, 2003, to be accepted for merit review. It is anticipated that review will be completed early in the fall of 2003 with draft sequencing at the DOE PGF to commence towards the end of 2003 or early in 2004, conditional upon the provision of high quality DNA.

ADDRESSES: Nominations responding to this notice should be sent to Dr. Daniel W. Drell, Office of Biological and Environmental Research, SC–72, Office of Science, U.S. Department of Energy, 1000 Independence Ave., SW., Washington, DC 20585–1290; email is acceptable and encouraged for submitting nominations using the following addresses: *joanne.corcoran@science.doe.gov* and *daniel.drell@science.doe.gov*.

FOR FURTHER INFORMATION CONTACT: Dr. Daniel W. Drell, SC–72, Office of Biological and Environmental Research, Office of Science, U.S. Department of Energy, 1000 Independence Ave. SW., Washington, DC 20585–1290, phone: (301) 903–4742, email: *daniel.drell@science.doe.gov*. The full text of this notice is available via the Internet using the following Web site address: *http://www.sc.doe.gov/ober/microbial.html*.

SUPPLEMENTARY INFORMATION: The DOE Office of Biological and Environmental Research supports fundamental research in a variety of missions (*http://www.sc.doe.gov/ober/ober_top.html*). Relevant BER programs may include the Climate Change Research Program, the Natural and Accelerated Bioremediation Research (NABIR) Program, the Environmental Management Science Program (EMSP), the Microbial Genome Program (MGP) and the GTL program. The Climate Change Research Program supports investigations of microbially-mediated fixation of atmospheric CO_2. The NABIR program supports research on microbial biotransformations and/or immobilization of metal and radionuclide wastes. The EMSP supports research into microbially-mediated biotransformations of DOE-relevant organic wastes such as chlorinated solvents. The MGP supports key DOE missions by providing and analyzing microbial DNA sequence information to further the understanding and application of microbiology relating to energy production, chemical and materials production, environmental carbon management, and environmental cleanup. The GTL Program builds on the successes of the DOE Human Genome Program (HGP) by seeking to understand biological function in DOE mission relevant microbes with emphases on identifying the multi-component protein complexes in cells, characterizing gene regulatory networks, probing the functional capabilities of the environmental microbial repertoire of genes, and beginning to model these processes computationally.

Over the last nine years, sequencing of a range of microorganisms that live in a wide diversity of environments has provided a considerable information base for scientific research related not only to DOE missions, but also to other federal agency missions and U.S.

industry. (*http://www.tigr.org/tdb/mdb/mdbcomplete.html, http://www.ornl.gov/microbialgenomes/organisms.html* and *http://www.jgi.doe.gov/JGI_microbial/html/*). Nonetheless, most of our current knowledge of microbiology still is derived from individual species that either cause disease or grow easily and readily as monocultures under laboratory conditions and are thus easy to study. The preponderance of species in the environment remains largely unknown to science. Many are thought to grow as part of interdependent consortia in which one species supplies a nutrient necessary for the growth of another. Virtually nothing is known of the organization, membership, or functioning of these consortia, especially those involved in environmental processes of DOE interest. Fungi and small multicellular eukaryotes play important roles in the environment as well.

Genomic analyses of sequenced microbes have suggested that processes such as lateral gene transfers at various times in the evolutionary history of some microbial lineages may have blurred the understanding of their phylogenetic relationships. For this notice, groups of microbes that may have exchanged (or may be exchanging) genetic information via lateral gene exchange or plasmid mediated exchanges can be proposed if the processes of genetic exchange result in functions relevant to DOE missions noted above.

Genomic analyses are badly needed of microbial consortia and species refractory to laboratory culture that play important roles in environments challenged with metals, radionuclides, chlorinated solvents, or are involved in carbon sequestration. The candidate(s) must mediate or catalyze metabolic events of energy or environmental importance. Priority will be given to studies on those microbes or microbial consortia that can bioremediate metals and radionuclides, degrade significant biopolymers such as celluloses and lignins, produce potentially useful energy-related materials (H_2, CH_4, ethanol, etc.), or fix or sequester CO_2.

For this notice, candidate organisms (either individual organisms, consortia of organisms, or eukaryotes with small genomes) comprised of archaea, bacteria, fungi, algae, and other eukaryotes with genome sizes not greater than 100Mbp can be proposed for draft sequencing. For a current list of microbes that have been and are being sequenced see *http://www.ornl.gov/microbialgenomes/organisms.html* and *http://www.ornl.gov/microbialgenomes/seq2003.html*.

Aims: This request for nominations of candidate sequencing targets has two broad foci:

(1) Single culturable organisms. These may be bacteria, archaea, fungi, microalgae or multicellular organisms with genomes not larger than 100Mb. The criteria that will be used to evaluate proposed candidates for draft sequencing will include:

(a) The candidate has significant relevance to the DOE missions noted above;

(b) The genome size and structure are known;

(c) The source of genomic DNA (*i.e.*, strain or isolate, and researcher) is identified, and a clonal sample (or samples with low and characterized polymorphism) are available;

(d) A brief description of post sequencing follow-up work (*e.g.*, a data use plan and how will data be annotated to enable rapid and open use) is included;

(e) The availability of a DNA/gene transfer system supporting genetic analyses is known;

(f) Biological novelty or uniqueness (*i.e.*, unusual genetically determined characteristics pertinent to DOE missions) is described;

(g) Place in the currently understood, 16s RNA based, "Tree of Life" is identified, *e.g.*, is the proposed candidate in a sparsely populated or more heavily populated section of the tree?

(h) A brief description of the user community is given;

(i) The potential impact on the scientific community is large;

(j) Explicit commitment to a data-release schedule, consistent with the guidelines given below is provided.

(2) Currently unculturable or hard-to-culture organisms and environmental consortia. The review criteria that will be used to evaluate proposed candidates for draft sequencing will include most of the criteria listed above for single culturable organisms (with less emphasis on genome size/structure, presence/absence of a genetic system, or position in the "Tree of Life" since it is recognized that few data on these attributes will be available), but in addition, the following considerations will be included:

(a) Some measure of the "complexity" of the target consortium being proposed, *e.g.*, approximate number of species, size(s) of genomes, and proportions of different members (it is understood that in most cases, only estimates of these parameters may be available) is discussed. When the environmental consortia are complex, approaches should be described to normalize the DNA libraries in order to reduce the amount of sequencing required and assure adequate sampling of the complexity of the consortia. Additionally, the proposer(s) should be prepared to work together with JGI scientists to optimize the yield from the sequencing effort required;

(b) Past attempts to cultivate consortium members are described, *e.g.*, have any members of this consortium been successfully cultured;

(c) Some spatial/temporal/hydrochemical/geochemical or other characterization of the environment is given, *e.g.*, the physicochemical parameters of the site from which the selected community is derived; a description of the site contaminants; the accessibility of the site for future sampling; the adequacy of site documentation;

(d) If proposed, technical approaches and technology development specific for defining and isolating members of a given consortium are described;

(e) Some indication of the biological function of the relationships, within consortium members, where available along with a discussion of the scientific and programmatic importance of understanding these relationships is given;

(f) Information where available is given about the phylogenetic position(s) of the members of the consortium and what is known about closely related organisms.

(g) Available informatics tools and annotation plan (*e.g.*, for annotating genes from a consortium analysis or grouping identified genes into a putative "consortium phenotype" within the chosen environment) are described;

(h) Explicit commitment to a data-release schedule, consistent with the guidelines given below is provided.

Scientific community standards regarding access to sequencing data are evolving. BER conforms to the general guidance contained within the Draft Rapid Data Release Policy (*http://www.genome.gov/page.cfm?pageID=10506537*) for "community resource projects." The usual and customary practice for the JGI is to put all sequencing data up on its web site (*http://www.jgi.doe.gov/*) at frequent and periodic intervals. However, for the purposes of this notice, BER does not regard individual genome sequencing efforts involving less than 50Mb, or microbial community sequencing efforts, as requested herein, as "community resource projects" within the definition of the Draft Rapid Data Release policy. BER's position, which is provisional and subject to evolution, is that no more than 6 months from the completion of 6 × coverage of the sequence for a single-genome project, the data will be released on the JGI web site or to a publicly accessible database with no use restrictions. For microbial community projects, the JGI will conduct normal QA/QC assessments on the sequence output (at approximately 2 × coverage), then discuss with the proposer(s) and with BER staff the extent to which sequencing will be continued to achieve a satisfactory genomic "view" of the selected microbial community. From the time of initiation of this discussion, not more than 6 months will be permitted to elapse before unconditional release of these data. BER is fully aware that some ambiguity remains in the precise initiation of this "embargo" period but stresses its intention and commitment to the rapid release, without any use restrictions, of this data into publicly accessible databases.

Upon selection of a nominated microbial sequencing target, BER expects that Principal Investigators will collaborate with the JGI by providing high quality, high MW genomic DNA for library construction as well as assisting in annotating the draft sequence data until a sufficiently complete annotation is achieved (understanding that this will be sensitive to hypothetical gene predictions and the usual uncertainties of annotation). Following data acquisition and annotation, DOE expects that those whose nominations have been sequenced will make good faith efforts to publish in the open scientific literature the results of their subsequent work, including both the genome sequences of the organisms sequenced under this notice as well as the annotation. (BER also expects the Principal Investigator of a selected effort to either deposit a culture of the microbe or consortium into a publicly accessible collection or repository, or make it available directly so others can have access). These parties are encouraged to create process- and cost-effective partnerships that will maximize data production and analysis, data dissemination, and progress towards understanding basic biological mechanisms that can further the aims of this effort. Additionally, it must be explicitly understood that DOE will provide an assembled and computationally annotated draft (roughly 6 ×; carried out in a paired-end sequencing approach) sequence of the microbe(s) selected, but that research using that sequence data should be funded from separate sources and/or separate solicitations. Finally, there is no commitment to finish a given drafted sequence, although this option may be considered at a later time.

Submission Information: Interested parties should submit a brief white paper to either of the foci given above, consisting of not more than 5 pages of narrative exclusive of attachments (which are discouraged) responding to each of the specific criteria set forth. Electronic submission (to *joanne.corcoran@science.doe.gov* and *daniel.drell@science.doe.gov*) is strongly encouraged. It is expected that the Principal Investigator will serve as the main point of contact for additional information on the nominated microbe. Nominations must contain a very short abstract or project summary and a cover page with the name of the applicant, mailing address, phone, fax, and email. The nomination should include 2-page curriculum vitae of the key investigators; letters of intent from collaborators (suggesting the size of the interested community) are permitted.

Nominations will be reviewed relative to the scope and research needs of the BER relevant programs cited above. A brief response to each nomination will be provided electronically following merit and programmatic reviews.

Other useful Web sites include:

DOE JGI Microbial Sequencing Priorities for FY2003—*http://www.ornl.gov/microbialgenomes/seq2003.html*

Microbial Genome Program Home Page—*http://www.sc.doe.gov/ober/microbial.html*

DOE Joint Genome Institute Microbial Web Page—*http://www.jgi.doe.gov/JGI_microbial/html/*

GenBank Home Page—*http://www.ncbi.nlm.nih.gov/*

Human Genome Home Page—*http://www.ornl.gov/hgmis*

DOE Genomes to Life—*http://DOEGenomestoLife.org*

DOE Natural and Accelerated Bioremediation Research (NABIR) Program—*http://www.lbl.gov/nabir*

Biotechnology Investigations—Ocean Margins Program—*http://www.sc.doe.gov/ober/GC/omp.html*

Issued in Washington, DC, May 14, 2003.

John Rodney Clark,

Associate Director of Science for Resource Management.

[FR Doc. 03–12715 Filed 5–20–03; 8:45 am]

BILLING CODE 6450–01–P

ENVIRONMENTAL PROTECTION AGENCY

[OW–2003–0026, FRL–7501–4]

Agency Information Collection Activities: Proposed Collection; Comment Request; National Water Quality Inventory Reports (Clean Water Act Sections 305(b), 303(d), 314(a), and 106(e))

AGENCY: Environmental Protection Agency

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this document announces that EPA is planning to submit the following continuing Information Collection Request (ICR) to the Office of Management and Budget (OMB): National Water Quality Inventory Reports (Clean Water Act Sections 305(b), 303(d), 314(a), and 106(e)); EPA ICR Number 1560.07, OMB Control Number 2040–0071, expiring on July 31, 2003. Before submitting the ICR to OMB for review and approval, EPA is soliciting comments on specific aspects of the proposed information collection as described below.

DATES: Comments must be submitted on or before July 21, 2003.

ADDRESSES: Follow the detailed instructions in **SUPPLEMENTARY INFORMATION.**

FOR FURTHER INFORMATION CONTACT: John Wilson, Assessment and Watershed Protection Division, Office of Water, Mail Code: 4503T, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: 202–566–2385; fax number: 202–566–1331; e-mail address: *Wilson.John@epa.gov*.

SUPPLEMENTARY INFORMATION: EPA has established a public docket for this ICR under Docket ID number OW–2003–0026, which is available for public viewing at the Water Docket in the EPA Docket Center (EPA/DC), EPA West, Room B102, 1301 Constitution Ave., NW., Washington, DC. The EPA Docket Center Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Reading Room is (202) 566–1744, and the telephone number for the Water Docket is (202) 566–2426. An electronic version of the public docket is available through EPA Dockets (EDOCKET) at *http://www.epa.gov/edocket*. Use EDOCKET to obtain a copy of the draft collection of information, submit or view public comments, access the index listing of the contents of the public

docket, and to access those documents in the public docket that are available electronically. Once in the system, select "search," then key in the docket ID number identified above.

Any comments related to this ICR should be submitted to EPA and OMB within 60 days of this notice, and according to the following detailed instructions: Submit your comments to EPA online using EDOCKET (our preferred method), by e-mail to *ow-docket@epa.gov*, or by mail to: EPA Docket Center, Environmental Protection Agency, Water Docket, Mail Code 4101T, 1200 Pennsylvania Ave., NW., Washington, DC 20460.

EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing in EDOCKET as EPA receives them and without change, unless the comment contains copyrighted material, CBI, or other information whose public disclosure is restricted by statute. When EPA identifies a comment containing copyrighted material, EPA will provide a reference to that material in the version of the comment that is placed in EDOCKET. The entire printed comment, including the copyrighted material, will be available in the public docket. Although identified as an item in the official docket, information claimed as CBI, or whose disclosure is otherwise restricted by statute, is not included in the official public docket, and will not be available for public viewing in EDOCKET. For further information about the electronic docket, see EPA's **Federal Register** notice describing the electronic docket at 67 FR 38102 (May 31, 2002), or go to *http://www.epa.gov./edocket.*

Affected entities: Entities potentially affected by this action are States, Territories and Tribes with Clean Water Act (CWA) responsibilities.

Title: National Water Quality Inventory Reports (Clean Water Act Sections 305(b), 303(d), 314(a), and 106(e)). (OMB Control Number 2040–0071; EPA ICR Number 1560.07 expiring 07/31/2003.

Abstract: Section 303(d) of the Clean Water Act requires States to identify and rank waters which cannot meet water quality standards (WQS) following the implementation of technology-based controls. Under section 303(d), States are also required to establish total maximum daily loads (TMDLs) for listed waters not meeting standards as a result of pollutant discharges. In developing the section 303(d) lists, States are required to consider various sources of water quality related data and information, including the section 305(b) State water quality reports. The section 305(b) reports contain information on the extent of water quality degradation, the pollutants and sources affecting water quality, and State progress in controlling water pollution.

EPA's Assessment and Watershed Protection Division (AWPD) works with its Regional counterparts to review and approve or disapprove State section 303(d) lists and TMDLs from 56 respondents (the 50 States, the District of Columbia, and the five Territories). Section 303(d) specifically requires States to develop lists and TMDLs "from time to time" and EPA to review and approve or disapprove the lists and the TMDLs. EPA also collects State 305(b) reports from 59 respondents (the 50 States, the District of Columbia, five Territories, and 3 River Basin commissions).

This announcement includes the reapproval of current, ongoing activities related to 305(b) and 303(d) reporting and TMDL development for the period of August 1, 2003 through July 31, 2006.During the period covered by this ICR renewal, respondents will: complete their 2004 305(b) reports and 2004 303(d) lists; complete their 2006 305(b) reports and 2006 303(d) lists; transmit annual electronic updates of their 305(b) databases in 2003 through 2006; and continue to develop TMDLs according to their established schedules. EPA will prepare two biennial Reports to Congress: one in 2003 and one in 2005, and EPA will review TMDL submissions from respondents.

The respondent community for 305(b) reporting consists of 50 States, the District of Columbia, 5 Territories (Puerto Rico, the Virgin Islands, Guam, American Samoa, and the Northern Mariana Islands), and 3 River Basin Commissions. The Ohio River Valley Sanitation Commission, the Delaware River Basin Commission, and the Interstate Sanitation Commission have jurisdiction over basins that lie in multiple States. Indian Tribes are exempt from the 305(b) reporting requirement, but some Tribes choose to participate as a way of presenting assessments and water quality issues to the public and Congress. One Tribe or Tribal Group prepared 305(b) reports in 1996 and 1997. However, since Tribal 305(b) reporting is a voluntary effort, it is not included in the burden estimates for this ICR.

The respondent community for 303(d) activities consists of 50 States, the District of Columbia, and 5 Territories (Puerto Rico, the Virgin Islands, Guam, American Samoa, and the Northern Mariana Islands). Although Indian Tribes are not exempt from 303(d) requirements, there is not a process currently in place to designate them for this purpose. Further, very few Tribes have established water quality standards, and EPA is currently in the process of preparing standards where they are needed. Therefore, we assume that there would be no burden to Indian Tribes over the period covered by this ICR for 303(d) activities.

The burden of specific activities that States undertake as part of their 305(b) and 303(d) programs are derived from an ongoing project among EPA, States and other interested stakeholders to develop a tool for estimating the States' resource needs for State water quality management programs. This project has developed the State Water Quality Management Workload Model (SWQMWM), which estimates and sums the workload involved in more than one hundred activities or tasks comprising a State water quality management program. Over twenty States have contributed information about their activities that became the basis for the model. According to the SWQMWM, the States will carry out the following activities or tasks to meet the 305(b) and 303(d) reporting requirements: watershed characterization; modeling and analysis; development of a TMDL document for public review; public outreach; formal public participation; tracking; planning; legal support; etc. In general, respondents have conducted each of these reporting and record keeping activities for past 305(b) and 303(d) reporting cycles and thus have staff and procedures in place to continue their 305(b) and 303(d) reporting programs. The burden associated with these tasks is estimated in this ICR to include the total number of TMDLs that may be submitted during the period covered by this ICR.

The biennial frequency of the collection is mandated by section 305(b)(1) of the CWA. Section 305(b) originally required respondents to submit water quality reports on an annual basis. In 1977, the annual requirement was amended to a biennial requirement in the CWA. EPA has determined that abbreviated reporting for hard-copy 305(b) reports, combined with annual electronic reporting using respondent databases, will meet the CWA reporting requirements while reducing burden to respondents. The biennial period with annual electronic reporting ensures that information needed for analysis and water program decisions is reasonably current, yet abbreviated reporting requirements provides respondents with sufficient time to prepare the reports.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR part 9 and 48 CFR chapter 15.

The EPA would like to solicit comments to:

(i) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(ii) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(iii) Enhance the quality, utility, and clarity of the information to be collected; and

(iv) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

Burden Statement: Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

For current 305(b) and 303(d) reporting activities, the primary source we use in estimating burden for tasks to be performed by States is the State Water Quality Management Workload Model (SWQMWM), which estimates and sums the workload involved in more than one hundred activities or tasks comprising a State water quality management program.

The average annual burden per respondent for current 305(b) (59 respondents) and 303(d)(56 respondents) reporting activities is 6,491 hours and the total annual burden to all respondents is 372,403 hours. The table below displays a summary of the burden estimates.

AVERAGE OF ANNUAL BURDEN FOR 305(B) AND 303(D) REPORTING ACTIVITIES

Activity	Number of respondents	Total annual burden
1. Review regs and guidance for 305(b) & 303(d)	59	7,434
2. Plan and coordinate data acquisition and compile and screen data for assessments	59	65,490
3. Development and submission of complete 305(b) report and response to EPA comments	59	83,013
4. Develop, review and update 303(d) listing and de-listing methodology	56	46,536
5. Prepare 303(d) list (includes identifying waters, setting priorities, and schedules)	56	123,648
6. Required public outreach for 303(d) list	56	14,840
7. Submission of 303(d) list to EPA and response to EPA comments	56	12,208
8. Prepare annual electronic updates	59	19,234
9. Implement enhanced benefit cost of WQS	59	40,710
Total		413,113

The additional burden for States to assess the costs and benefits of achieving water quality standards depends on the level of detail and sophistication that the States choose to provide as well as factors such as the number of impaired waters in the State, the State's diversity of water resources, and the intensity of use of those resources. The estimate of the burden associated with the enhanced benefit cost analysis, resulting in an average increase in State burden of 690 hours annually.

We use a separate analysis to estimate the burden associated with current TMDL development. Based on estimates of the number of TMDLs per year (4,000), the total average current burden associated with developing TMDLs under the current 303(d) program is estimated to be 59,409 hours per respondent, and the total annual burden for all 56 respondents is estimated to be 3,326,904 hours.

To estimate respondent costs, we applied an average fully loaded cost per hour to the burden estimates. This fully loaded hourly labor rate represents the total cost for obtaining an hour's worth of work, and includes: direct salary paid, paid or accrued vacation, paid or accrued sick leave, cost of other fringe benefits (*e.g.*, health, pension, etc.), general training, indirect expenses such as professional support (*e.g.*, clerical, accounting, supervisory, etc.), office space, utilities, telephone service, equipment (*e.g.*, fax machines, basic computing needs such as hardware and software, etc.), etc. The average annual cost to each respondent for current 305(b) and 303(d) reporting (including the enhanced benefit cost activities) is estimated to be $298,227. The total annual costs imposed on all 59 respondents is estimated to be $17,156,583. Average annual respondent costs for current TMDL development is estimated at $2,467,256 per respondent and $138,166,323 for all 56 respondents.

Agency burden estimates are based on EPA's prior experience in developing 305(b) and 303(d) guidance, preparing the Report to Congress, providing technical support to respondents, and reviewing and approving/disapproving 303(d) lists and TMDL submissions. The hourly cost estimates were calculated for a technical federal position, Grade 10 Step 7 effective as of January 2003 ($22.49 per hour). The total costs are based upon an overhead rate of 110 percent. The average annual Agency burden for 305(b) and 303(d) reporting activities is estimated at 9,089 hours at a cost of $456,774. The cost of the Agency's additional burden to develop new guidance required by States to improve their estimates of the benefits and costs of achieving WQS is estimated at approximately $300,000 which would be incurred during 2004 and 2005. Over the 3-year period of this ICR, the annual cost would be $100,000 which translates into a burden of 2,117 hours annually. The annual average Agency burden and costs for TMDL review is 11,200 hours and $528,976.

Respondent Total

Annual Burden: 3,740,017 hours per year.

Annual Costs: $155,322,906 per year.

Agency Total

Annual Burden: 22,406 hours per year.

Annual Costs: $1,085,750 per year.

Dated: May 15, 2003.

Diane C. Regas,

Director, Office of Wetlands, Oceans and Watersheds.

[FR Doc. 03–12759 Filed 5–20–03; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[OAR–2003–0070, FRL–7501–7]

Agency Information Collection Activities: Proposed Collection; Comment Request; The SunWise School Program

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this document announces that EPA is planning to submit the following continuing Information Collection Request (ICR) to the Office of Management and Budget (OMB): The SunWise School Program, Global Programs Division, EPA ICR No. 1904.01, expiration date: 11/30/03. Before submitting the ICR to OMB for review and approval, EPA is soliciting comments on specific aspects of the continuing information collection as described below.

DATES: Comments must be submitted on or before July 21, 2003.

ADDRESSES: Follow the detailed instructions in **SUPPLEMENTARY INFORMATION.**

FOR FURTHER INFORMATION CONTACT: Kristin Kenausis, Office of Atmospheric Programs, Global Programs Division, U.S. Environmental Protection Agency, 1200 Pennsylvania Ave., NW. (6205J), Washington, DC 20460, (202) 564–2289, *kenausis.kristin@epa.gov.*

SUPPLEMENTARY INFORMATION: EPA has established a public docket for this ICR under Docket ID number OAR–2003–0070, which is available for public viewing at the Air and Radiation Docket in the EPA Docket Center (EPA/DC), EPA West, Room B102, 1301 Constitution Ave., NW., Washington, DC. The EPA Docket Center Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Reading Room is (202) 566–1744, and the telephone number for Air and Radiation Docket is (202) 566–1744. An electronic version of the public docket is available through EPA Dockets (EDOCKET) at *http://www.epa.gov/edocket.* Use EDOCKET to obtain a copy of the draft collection of information, submit or view public comments, access the index listing of the contents of the public docket, and to access those documents in the public docket that are available electronically. Once in the system, select "search," then key in the docket ID number identified above.

Any comments related to this ICR should be submitted to EPA within 60 days of this notice, and according to the following detailed instructions: Submit your comments to EPA online using EDOCKET (our preferred method), by email to *a-and-r-Docket@epa.gov,* or by mail to: EPA Docket Center, Environmental Protection Agency, Air and Radiation Docket, Mailcode 6102T, 1200 Pennsylvania Ave., NW., Washington, DC 20460.

EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing in EDOCKET as EPA receives them and without change, unless the comment contains copyrighted material, CBI, or other information whose public disclosure is restricted by statute. When EPA identifies a comment containing copyrighted material, EPA will provide a reference to that material in the version of the comment that is placed in EDOCKET. The entire printed comment, including the copyrighted material, will be available in the public docket. Although identified as an item in the official docket, information claimed as CBI, or whose disclosure is otherwise restricted by statute, is not included in the official public docket, and will not be available for public viewing in EDOCKET. For further information about the electronic docket, *see* EPA's **Federal Register** notice describing the electronic docket at 67 FR 38102 (May 31, 2002), or go to *www.epa.gov./edocket.*

Affected entities: Entities potentially affected by this action are elementary and middle school students, parents, and teachers (SIC Div. I: Group 8211).

Title: SunWise School Program; (OMB Control Number 2060–0439; EPA ICR No. 1904.01, expiring on 11/30/03).

Abstract: The goal of the SunWise School Program is to teach children and their care givers how to protect themselves from overexposure to the sun. The SunWise School Program recognizes the challenge of measuring the progress and evaluating the effectiveness of an environmental and public health education program where the ultimate goal is to reduce risk and improve public health. Therefore, the continual and careful evaluation of program effectiveness through a variety of means, including data from pre- and post-intervention surveys, tracking and monitoring of classroom activities and school policies, and advisory board meetings, is necessary to monitor progress and refine the program. Surveys to be developed and administered include: (1) Student survey to identify current sun safety knowledge and behaviors among students; (2) Parent survey to compare findings with those of their children as well as to draw comparisons with the benchmarks established in other national surveys; and (3) Teacher questionnaire for measuring their receptivity to the educational component of the Program. The data will be analyzed and results will indicate the Program's effect on participants' sun-protection attitudes and behaviors. Responses to the collection of information are voluntary. All responses to the collection of information remain anonymous and confidential. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR part 9 and 48 CFR chapter 15.

Burden Statement: The annual public reporting and record keeping burden for this collection of information is estimated to average .5 hours per response.

Number to be surveyed annually (A)	Total Hours Burden (B)	Rate per hour ($) (C)	Total Cost (D=B*C) (D)
3,000 Students	3,000		
1,000 Teachers	500	$36.88	$18,440.00

Number to be surveyed annually (A)	Total Hours Burden (B)	Rate per hour ($) (C)	Total Cost (D=B*C) (D)
1,000 Parents	250	$20.29	$5,072.50
Total (Annual)	3,750		$23,512.50
ICR Total (3 years)	11,250		$70,537.50

The contractor (Boston University Medical Center) will assist EPA in data collection and analysis. EPA has contracted for a total of 400 professional hours. At an average rate of $100 per hour, the total cost for the contractor is $40,000 annually. Agency burden to manage this contract is estimated at 4 hours/month or 48 hours annually. The cost of this labor will be calculated based on a GS 12 Step 5 pay level ($44.75/hour using the salary associated with this grade and step, multiplied by a benefits factor of 1.6[16]). Total hours (48) multiplied by $44.75 per hour amounts to a total agency labor cost of $2,196/per annum.

Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

Dated: May 6, 2003.

Drusilla Hufford,

Director, Global Programs Division.

[FR Doc. 03–12763 Filed 5–20–03; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[OPPT–2003–0016; FRL–7304–9]

Endocrine Disruptor Methods Validation Subcommittee under the National Advisory Council for Environmental Policy and Technology; Notice of Public Meeting

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of public meeting.

SUMMARY: There will be a meeting of the Endocrine Disruptor Methods Validation Subcommittee (EDMVS), a Subcommittee under the National Advisory Council for Environmental Policy and Technology (NACEPT), on June 5–6, 2003. This meeting, as with all EDMVS meetings, is open to the public. Seating is on a first-come basis.

DATES: The meeting will be held on Thursday, June 5, 2003, from 9 a.m. to 5 p.m., and Friday, June 6, 2003, from 8:30 a.m. to 3 p.m. eastern daylight time. The telephone number at RESOLVE is (202) 944–2300.

Individuals requiring special accommodations at the meeting, including wheelchair access, should contact Jane Smith at the address listed under **FOR FURTHER INFORMATION CONTACT** at least 5 business days prior to the meeting, so appropriate arrangements can be made.

ADDRESSES: The meeting will be held at RESOLVE, 1255 23rd St., NW., Suite 275, Washington, DC.

Requests and comments may be submitted electronically, by telephone, fax, or through hand delivery/courier. Follow the detailed instructions as provided in Unit I.C. of the **SUPPLEMENTARY INFORMATION.**

FOR FURTHER INFORMATION CONTACT: Jane Smith, Designated Federal Official for the EDMVS, Exposure Assessment Coordination and Policy Division (7203M), Office of Science Coordination and Policy, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (202) 564–8476; fax number: (202) 564–8483; or e-mail address: *smith.jane-scott@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Notice Apply to Me?

This action is directed to the public in general. This action may, however, be of interest if you produce, manufacture, use, consume, work with or import pesticide chemicals and other substances. To determine whether you or your business may have an interest in this notice you should carefully examine section 408(p) of the Federal Food, Drug, and Cosmetic Act (FFDCA), as amended by the Food Quality Protection Act (FQPA) of 1996 (Public Law 104–170), 21 U.S.C. 346a(p) and amendments to the Safe Drinking Water Act (SDWA) (Public Law 104–182), 42 U.S.C. 300j–17. Since other entities may also be interested, the Agency has not attempted to describe all the specific entities that may be interested in this action. If you have any questions regarding this action, consult the person listed under **FOR FURTHER INFORMATION CONTACT.**

B. How Can I Get Additional Information, Including Copies of this Document or Other Related Documents?

1. *Docket.* EPA has established an official public docket for this action under docket identification (ID) number OPPT–2003–0016. The official public docket consists of the documents specifically referenced in this action, any public comments received, and other related information. Although a part of the official docket, the public docket does not include Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. The official public docket is the collection of materials that are available for public viewing at the EPA Docket Center, Rm. B102-Reading Room, EPA West, 1301 Constitution Ave., NW., Washington, DC. The EPA Docket Center is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The EPA Docket Center Reading Room telephone number is (202) 566–1744 and the telephone number for the OPPT Docket, which is located in EPA Docket Center, is (202) 566–0282.

2. *Electronic access.* A meeting agenda, a list of EDMVS members and information from previous meetings are available electronically, from the EPA Internet Home Page at *http://www.epa.gov/scipoly/oscpendo/edmvs.htm.* You may also go directly to the "**Federal Register**" listings at *http://www.epa.gov/fedrgstr/.*

An electronic version of the public docket is available through EPA's electronic docket and comment system, EPA Dockets. You may use EPA Dockets at *http://www.epa.gov/edocket* to view public comments, access the index

listing of the contents of the official public docket, and to access those documents in the public docket that are available electronically. Once in the system, select "search," then key in docket ID number OPPT–2003–0016. Although not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the docket facility identified in Unit I.B.I.

C. How Can I Request to Participate in the Meeting?

You may submit a request to participate in the meeting through electronic mail, telephone, fax, or in person. EPA would normally accept requests by mail, but in this time of delays in delivery of government mail due to health and security concerns, EPA cannot assure your request would arrive in a timely manner. Do not submit any information in your request that is considered CBI. Your request must be received by EPA on or before May 27, 2003. To ensure proper receipt by EPA, it is imperative that you identify docket ID number OPPT–2003–0016 in the subject line on the first page of your request.

1. *Electronically.* You may submit your request to participate electronically. Do not submit any information electronically that you consider to be CBI. Use WordPerfect 6.1/8.0 or ASCII file format and avoid the use of special characters and any form of encryption.

i. *EPA Docket.* You may use EPA's electronic public docket to submit a request to participate in this meeting. Go to EPA Dockets at *http://epa.gov/edocket*, and follow the online instructions for submitting materials. Once in the system, select "search," and then key in docket ID number OPPT–2003–0016.

ii. *E-mail.* Request to participate may be sent by e-mail to the person listed in **FOR FURTHER INFORMATION CONTACT**, or directly to the docket at *oppt.ncic@epa.gov*, Attention: Docket ID Number OPPT–2003–0016.

2. *Telephone or fax.* Send your request to participate to the individual identified in **FOR FURTHER INFORMATION CONTACT**.

D. How and to Whom Do I Submit Comments?

In accordance with the Federal Advisory Committee Act (FACA), the public is encouraged to submit written comments on the topic of this meeting. The EDMVS will have a brief period available during the meeting for public comment. It is the policy of the EDMVS to accept written public comments of any length, and to accommodate oral public comments whenever possible. The EDMVS expects that public statements presented at its meeting will be on the meeting topic and not be repetitive of previously submitted oral or written statements.

You may submit comments electronically or through hand delivery/courier. To ensure proper receipt by EPA, identify the appropriate docket ID number in the subject line on the first page of your comment. EPA is not required to consider these late comments. If you wish to submit CBI or information that is otherwise protected by statute, please follow the instructions in Unit I.E. Do not use EPA Dockets or e-mail to submit CBI or information protected by statute.

1. *Electronically.* If you submit an electronic comment as prescribed in this unit, EPA recommends that you include your name, mailing address, and an e-mail address or other contact information in the body of your comment. Also include this contact information on the outside of any disk or CD ROM you submit, and in any cover letter accompanying the disk or CD ROM. This ensures that you can be identified as the submitter of the comment and allows EPA to contact you in case EPA cannot read your comment due to technical difficulties or needs further information on the substance of your comment. EPA's policy is that EPA will not edit your comment, and any identifying or contact information provided in the body of a comment will be included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment.

i. *EPA Dockets.* Your use of EPA's electronic public docket to submit comments to EPA electronically is EPA's preferred method for receiving comments. Go directly to EPA Dockets at *http://www.epa.gov/edocket/*, and follow the online instructions for submitting comments. Once in the system, select "search," and then key in docket ID number OPPT–2003–0016. The system is an "anonymous access" system, which means EPA will not know your identity, e-mail address, or other contact information unless you provide it in the body of your comment.

ii. *E-mail.* Comments may be sent by e-mail to *oppt.ncic@epa.gov*, Attention: Docket ID Number OPPT–2003–0016. In contrast to EPA's electronic public docket, EPA's e-mail system is not an "anonymous access" system. If you send an e-mail comment directly to the docket without going through EPA's electronic public docket, EPA's e-mail system automatically captures your e-mail address. E-mail addresses that are automatically captured by EPA's e-mail system are included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket.

iii. *Disk or CD ROM.* You may submit comments on a disk or CD ROM by courier or package service, such as Federal Express to the address identified in Unit I.D.2. These electronic submissions will be accepted in WordPerfect or ASCII file format. Avoid the use of special characters and any form of encryption.

2. *By hand delivery or courier.* Deliver your comments to: OPPT Document Control Office (DCO) in EPA East Bldg., Rm. 6428, 1201 Constitution Ave., NW., Washington, DC. Attention: Docket ID Number OPPT–2003–0016. The DCO is open from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The telephone number for the DCO is (202) 564–8930.

E. How Should I Submit CBI to the Agency?

Do not submit information that you consider to be CBI electronically through EPA's electronic public docket or by e-mail. You may claim information that you submit to EPA as CBI by marking any part or all of that information as CBI (if you submit CBI on disk or CD ROM, mark the outside of the disk or CD ROM as CBI and then identify electronically within the disk or CD ROM the specific information that is CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

In addition to one complete version of the comment that includes any information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket and EPA's electronic public docket. If you submit the copy that does not contain CBI on disk or CD ROM, mark the outside of the disk or CD ROM clearly that it does not contain CBI. Information not marked as CBI will be included in the public docket and EPA's electronic public docket without prior notice. If you have any questions about CBI or the procedures for claiming CBI, please consult the technical person listed under **FOR FURTHER INFORMATION CONTACT**.

II. Background

In 1996, through enactment of the Food Quality Protection Act, which amended the Federal Food, Drug, and Cosmetic Act, Congress directed EPA to develop a screening program, using appropriate validated test systems and other scientifically relevant information, to determine whether certain substances may have hormonal effects in humans. In 1996, EPA chartered a scientific advisory committee, the Endocrine Disruptor Screening and Testing Advisory Committee (EDSTAC), under the authority of the Federal Advisory Committee Act (FACA) to advise it on establishing a program to carry out Congress' directive. EDSTAC recommended a multi-step approach including a series of screens (Tier I screens) and tests (Tier II tests) for determining whether a chemical substance may have an effect in humans similar to that produced by naturally occurring hormones. EPA adopted almost all of EDSTAC's recommendations in the program that it developed, the Endocrine Disruptor Screening Program (EDSP), to carry out Congress' directive.

EDSTAC also recognized that there currently are no validated test systems for determining whether a chemical may have an effect in humans that is similar to an effect produced by naturally occurring hormones. Consequently, EPA is in the process of developing and validating the screens and tests that EDSTAC recommended for inclusion in the EDSP. In carrying out this validation exercise, EPA is working closely with, and adhering to the principles of the Interagency Coordinating Committee for the Validation of Alternate Methods (ICCVAM). EPA also is working closely with the Organization for Economic Cooperation and Development's (OECD) Endocrine Testing and Assessment Task Force to validate and harmonize endocrine screening tests of international interest.

Finally, to ensure that EPA has the best and most up-to-date advice available regarding the validation of the screens and tests in the EDSP, EPA formed the Endocrine Disruptor Methods Validation Subcommittee (EDMVS) of the National Advisory Council for Environmental Policy and Technology (NACEPT). EDMVS provides independent advice and counsel to the Agency through NACEPT, on scientific and technical issues related to validation of the EDSP Tier I screens and Tier II tests, including advice on methods for reducing animal use, refining procedures involving animals to make them less stressful, and replacing animals where scientifically appropriate.

The EDMVS has held six meetings since its establishment in September 2001.

The objectives of the first meeting, which was held in October 2001, (docket control number OPPT–42212D) were for EPA to provide:

1. An overview of EPA's Endocrine Disruptor Program.
2. Background information on test protocol validation and approaches.
3. For the EDMVS to develop a clear understanding of their scope, purpose, and operating procedures.
4. The EDMVS and the EDSP to determine the next steps.

The objectives of the December 2001 meeting (docket control number OPPT–42212E) were for the EDMVS to provide input and advice on:

1. EDMVS's mission statement and work plan.
2. The *in utero* through lactation assay detailed review paper.
3. The pubertal assay study design for the multi-dose and chemical array protocols.
4. The mammalian one-generation study design.

The objectives of the March 2002 meeting (docket control number 42212F) were for the EDMVS to provide input and advice on:

1. EPA's implementation process and practical aspects of validation.
2. The *in utero* through lactation assay protocol.
3. The fish reproduction assay detailed review paper.
4. Special studies, the fathead minnow assays, vitellogenin assay, and avian dosing protocol.
5. The steroidogenesis detailed review paper.
6. The aromatase detailed review paper.
7. A proposed standard suite of chemicals for testing in the Tier I screening assays.
8. The current efforts related to evaluating the relevance of animal data to human health.
9. EPA's approach to addressing low dose issues.

The objective of the June 2002 teleconference meeting (docket ID number OPPT–2002–0020) was for the EDMVS to provide input and advice on the steroidogenesis detailed review paper.

The objectives of the July 2002 meeting (docket ID number OPPT–2002–0029) were:

1. To review the screening criteria, recommended by EDSTAC and adopted by EDSP for screens.
2. To receive an update of the NICEATM estrogen and androgen receptor binding efforts.
3. To discuss and provide advice on general dose setting issues; and to provide comments and advice on:
   - A pubertal–special study–restricted feeding.
   - A mammalian 2-generation draft PTU special study.
   - An amphibian metamorphosis detailed review paper.
   - An invertebrate detailed review paper.

The objective of the December 2002 teleconference meeting (docket ID number OPPT–2002–0059) was for the EDMVS to provide input and advice on the Tier II fish life cycle assay detailed review paper.

III. Meeting Objectives for the June 5–6, 2003 Meeting

The objectives of the June 5–6, 2003 (docket ID number OPPT–2003–0016) are for EDMVS to provide input and advice on:

1. The Tier II Mammalian 2-generation special study on the one-generation extension results.
2. The Tier I steroidogenesis (sliced testes) study results.
3. To provide the status of the Tier I study results of the aromatase placental tissue study.

A list of the EDMVS members and meeting materials are available on our web site (*http://www.epa.gov/scipoly/oscpendo/edmvs.htm*) and in the public docket.

List of Subjects

Environmental protection, Endocrine system, Endocrine disruptors, Endocrine disruptor screening program.

Dated: May 9, 2003.

Joseph Merenda,

Director, Office of Science Coordination and Policy, Office of Prevention, Pesticides and Toxic Substances.

[FR Doc. 03–12484 Filed 5–20–03; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[OPP–2003–0142; FRL–7308–4]

Fenhexamid; Notice of Filing Pesticide Petitions to Establish a Tolerance for a Certain Pesticide Chemical in or on Food

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces the initial filing of pesticide petitions proposing the establishment of regulations for residues of a certain

pesticide chemical in or on various food commodities.

DATES: Comments, identified by docket ID number OPP–2003–0142, must be received on or before June 20, 2003.

ADDRESSES: Comments may be submitted electronically, by mail, or through hand delivery/courier. Follow the detailed instructions as provided in Unit I. of the **SUPPLEMENTARY INFORMATION**.

FOR FURTHER INFORMATION CONTACT: Sidney Jackson, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 305–7610; e-mail address: *jackson.sidney@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

You may be potentially affected by this action if you are an agricultural producer, food manufacturer, or pesticide manufacturer. The North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether this action might apply to certain entities. Potentially affected entities may include, but are not limited to:

- Crop production (NAICS 111)
- Animal production (NAICS 112)
- Food manufacturing (NAICS 311)
- Pesticide manufacturing (NAICS 32532)

This listing is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in this unit could also be affected. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

B. How Can I Get Copies of this Document and Other Related Information?

1. *Docket.* EPA has established an official public docket for this action under docket identification (ID) number OPP–2003–0142. The official public docket consists of the documents specifically referenced in this action, any public comments received, and other information related to this action. Although a part of the official docket, the public docket does not include Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. The official public docket is the collection of materials that is available for public viewing at the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA. This docket facility is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The docket telephone number is (703) 305–5805.

2. *Electronic access.* You may access this **Federal Register** document electronically through EPA's Internet under the "**Federal Register**" listings at *http://www.epa.gov/fedrgstr/*.

An electronic version of the public docket is available through EPA's electronic public docket and comment system, EPA Dockets. You may use EPA Dockets at *http://www.epa.gov/edocket/* to submit or view public comments, access the index listing of the contents of the official public docket, and to access those documents in the public docket that are available electronically. Although not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the docket facility identified in Unit I.B.1. Once in the system, select "search," then key in the appropriate docket ID number.

Certain types of information will not be placed in EPA's Dockets. Information claimed as CBI and other information whose disclosure is restricted by statute, which is not included in the official public docket, will not be available for public viewing in EPA's electronic public docket. EPA's policy is that copyrighted material will not be placed in EPA's electronic public docket but will be available only in printed, paper form in the official public docket. To the extent feasible, publicly available docket materials will be made available in EPA's electronic public docket. When a document is selected from the index list in EPA Dockets, the system will identify whether the document is available for viewing in EPA's electronic public docket. Although not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the docket facility identified in Unit I.B. EPA intends to work towards providing electronic access to all of the publicly available docket materials through EPA's electronic public docket.

For public commenters, it is important to note that EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing in EPA's electronic public docket as EPA receives them and without change, unless the comment contains copyrighted material, CBI, or other information whose disclosure is restricted by statute. When EPA identifies a comment containing copyrighted material, EPA will provide a reference to that material in the version of the comment that is placed in EPA's electronic public docket. The entire printed comment, including the copyrighted material, will be available in the public docket.

Public comments submitted on computer disks that are mailed or delivered to the docket will be transferred to EPA's electronic public docket. Public comments that are mailed or delivered to the docket will be scanned and placed in EPA's electronic public docket. Where practical, physical objects will be photographed, and the photograph will be placed in EPA's electronic public docket along with a brief description written by the docket staff.

C. How and to Whom Do I Submit Comments?

You may submit comments electronically, by mail, or through hand delivery/courier. To ensure proper receipt by EPA, identify the appropriate docket ID number in the subject line on the first page of your comment. Please ensure that your comments are submitted within the specified comment period. Comments received after the close of the comment period will be marked "late." EPA is not required to consider these late comments. If you wish to submit CBI or information that is otherwise protected by statute, please follow the instructions in Unit I.D. Do not use EPA Dockets or e-mail to submit CBI or information protected by statute.

1. *Electronically.* If you submit an electronic comment as prescribed in this unit, EPA recommends that you include your name, mailing address, and an e-mail address or other contact information in the body of your comment. Also include this contact information on the outside of any disk or CD ROM you submit, and in any cover letter accompanying the disk or CD ROM. This ensures that you can be identified as the submitter of the comment and allows EPA to contact you in case EPA cannot read your comment due to technical difficulties or needs further information on the substance of your comment. EPA's policy is that EPA will not edit your comment, and any identifying or contact information provided in the body of a comment will be included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment.

i. *EPA dockets.* Your use of EPA's electronic public docket to submit comments to EPA electronically is EPA's preferred method for receiving comments. Go directly to EPA Dockets at *http://www.epa.gov/edocket*, and follow the online instructions for submitting comments. Once in the system, select "search," and then key in docket ID number OPP–2003–0142. The system is an "anonymous access" system, which means EPA will not know your identity, e-mail address, or other contact information unless you provide it in the body of your comment.

ii. *E-mail.* Comments may be sent by e-mail to *opp-docket@epa.gov*, Attention: Docket ID number OPP–2003–0142. In contrast to EPA's electronic public docket, EPA's e-mail system is not an "anonymous access" system. If you send an e-mail comment directly to the docket without going through EPA's electronic public docket, EPA's e-mail system automatically captures your e-mail address. E-mail addresses that are automatically captured by EPA's e-mail system are included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket.

iii. *Disk or CD ROM.* You may submit comments on a disk or CD ROM that you mail to the mailing address identified in Unit I.C.2. These electronic submissions will be accepted in WordPerfect or ASCII file format. Avoid the use of special characters and any form of encryption.

2. *By mail.* Send your comments to: Public Information and Records Integrity Branch (PIRIB) (7502C), Office of Pesticide Programs (OPP), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001, Attention: Docket ID number OPP–2003–0142.

3. *By hand delivery or courier.* Deliver your comments to: Public Information and Records Integrity Branch (PIRIB), Office of Pesticide Programs (OPP), Environmental Protection Agency, Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA, Attention: Docket ID number OPP–2003–0142. Such deliveries are only accepted during the docket's normal hours of operation as identified in Unit I.B.1.

D. How Should I Submit CBI to the Agency?

Do not submit information that you consider to be CBI electronically through EPA's electronic public docket or by e-mail. You may claim information that you submit to EPA as CBI by marking any part or all of that information as CBI (if you submit CBI on disk or CD ROM, mark the outside of the disk or CD ROM as CBI and then identify electronically within the disk or CD ROM the specific information that is CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

In addition to one complete version of the comment that includes any information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket and EPA's electronic public docket. If you submit the copy that does not contain CBI on disk or CD ROM, mark the outside of the disk or CD ROM clearly that it does not contain CBI. Information not marked as CBI will be included in the public docket and EPA's electronic public docket without prior notice. If you have any questions about CBI or the procedures for claiming CBI, please consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

E. What Should I Consider as I Prepare My Comments for EPA?

You may find the following suggestions helpful for preparing your comments:

1. Explain your views as clearly as possible.

2. Describe any assumptions that you used.

3. Provide copies of any technical information and/or data you used that support your views.

4. If you estimate potential burden or costs, explain how you arrived at the estimate that you provide.

5. Provide specific examples to illustrate your concerns.

6. Make sure to submit your comments by the deadline in this notice.

7. To ensure proper receipt by EPA, be sure to identify the docket ID number assigned to this action in the subject line on the first page of your response. You may also provide the name, date, and **Federal Register** citation.

II. What Action is the Agency Taking?

EPA has received pesticide petitions as follows proposing the establishment and/or amendment of regulations for residues of a certain pesticide chemical in or on various food commodities under section 408 of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a. EPA has determined that these petitions contain data or information regarding the elements set forth in FFDCA section 408(d)(2); however, EPA has not fully evaluated the sufficiency of the submitted data at this time or whether the data support granting of the petitions. Additional data may be needed before EPA rules on the petitions.

List of Subjects

Environmental protection, Agricultural commodities, Feed additives, Food additives, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: May 9, 2003.

Debra Edwards,

Director, Registration Division, Office of Pesticide Programs.

Summary of Petitions

The petitioner's summary of the pesticide petitions is printed below as required by FFDCA section 408(d)(3). The summary of the petitions was prepared by the Arvesta Corporation, 100 First Street, Suite 1700, San Francisco, CA 94105 and represents the view of Arvesta Corporation. The petitions summary announces the availability of a description of the analytical methods available to EPA for the detection and measurement of the pesticide chemical residues or an explanation of why no such method is needed.

Interregional Research Project Number 4

PP 2E6463, 2E6496, 3E6532, and 3E6541

EPA has received pesticide petitions 2E6463, 2E6496, 3E6532, and 3E6541, from the Interregional Research Project Number 4 (IR–4), Center for Minor Crop Pest Management, Rutgers, The State University of New Jersey, 681 U.S. Highway #1 South, North Brunswick, NJ 08902–3390 proposing, pursuant to section 408(d) of the FFDCA, 21 U.S.C. 346a(d), to amend 40 CFR 180.553 by establishing tolerances for residues of fenhexamid, *N*-(2,3-dichloro-4-hydroxyphenyl)-1-methyl-cyclohexane carboxamide, in or on raw agricultural commodities as follows:

1. PP 2E6463 proposes a tolerance in or on kiwifruit (post harvest) at 15.0 parts per million (ppm).

2. PP 2E6496 proposes to establish tolerances in or on cucumber at 2.0 ppm, and vegetable, fruiting, group 8 at 2.0 ppm.

3. PP 3E6532 proposes a tolerance in or on leafy greens subgroup 4A, except spinach, at 30.0 ppm.

4. PP 3E6541 proposes a tolerance in or on fruit, stone, group 12 (post harvest) at 10 ppm.

This action also proposes to further amend 40 CFR 180.553 by deleting the

entry for stone fruit, except plum (fresh prune) tolerance at 6.0 ppm as a higher tolerance of 10 ppm for fruit, stone, group 12 (post harvest) is proposed herein.

A. Residue Chemistry

1. *Plant metabolism.* The qualitative nature of fenhexamid residues in plants is adequately understood.

2. *Analytical method.* An adequate method for purposes of enforcement of the proposed fenhexamid tolerances in plant commodities is available.

3. *Magnitude of residues.* The magnitude of residues for fenhexamid on the proposed commodities is adequately understood.

B. Toxicological Profile

In the **Federal Register** of February 8, 2002 (67 FR 6028) (FRL–6821–2), EPA published the Notice of Filing proposing the establishment of tolerances for residues of fenhexamid on a number of raw agricultural commodities, including caneberry, *et. al.* That publication summarizes in detail the current state of knowledge regarding the toxicological profile of fenhexamid including aggregate exposure assessment and determination of safety. Interested readers are referred to that document for specific information under Unit II.

C. Aggregate Exposure

1. *Dietary exposure*—i. *Food.* Dietary exposure to fenhexamid is limited to the established tolerances for residues of fenhexamid on grapes (at 4.0 ppm), raisins (at 6.0 ppm), strawberries (at 3.0 ppm), almond nutmeat (at 0.02 ppm), almond hulls (at 2.0 ppm), stonefruit (pre-harvest, at 5.0 ppm), pear (at 15 ppm), bushberries (at 5.0 ppm), caneberries (at 20 ppm), and pistachios (at 0.02 ppm); the proposed tolerances in the current submission which are as follows: Cucumber (at 2.0 ppm), crop group 8 (fruiting vegetables, at 2.0 ppm), kiwi (post-harvest, at 15.0 ppm), lettuce (at 30.0 ppm), and crop group 12 (stonefruit, pre-harvest and post-harvest, at 10.0 ppm).

ii. *Drinking water.* Review of the environmental fate data indicates that fenhexamid is relatively immobile and rapidly degrades in the soil and water. Fenhexamid dissipates in the environment via several processes. Therefore, Arvesta Corporation believes that a significant contribution to aggregate risk from fenhexamid in drinking water is unlikely.

2. *Non-dietary exposure.* There is no significant potential for non-occupational exposure to the general public. The proposed uses are limited to agricultural and horticultural use.

D. Cumulative Effects

Consideration of a common mechanism of toxicity is not appropriate at this time since it has a unique mode of action. Moreover, there is no significant toxicity observed for fenhexamid. Even at toxicology limit doses, only minimal toxicity is observed for fenhexamid. Therefore, Arvesta Corporation concludes that only the potential risks of fenhexamid are considered in the exposure assessment.

E. Safety Determination

1. *U.S. population.* Considering that the percent of the chronic population adjusted dose (cPAD) utilized by all current uses (almonds, bushberries, caneberries, grapes, pear, pistachios, raisins, pre-harvest stonefruit, and strawberry) is estimated to be 7% in the **Federal Register** of April 18, 2002 (67 FR 19114) (FRL–6829–9); considering also the proposed tolerances, proportion of the crops treated and their importance in the diet, the percent of the cPAD utilized by the proposed uses is estimated to 14%. Therefore, Arvesta Corporation believes that the estimates of dietary exposure indicate adequate safety margins for the overall U.S. population.

2. *Infants and children.* Considering that the percent of the cPAD utilized by all current uses (almonds, bushberries, caneberries, grapes, pear, pistachios, raisins, pre-harvest stonefruit, and strawberry) is estimated to be 66% (infants) and 17% (children) (67 FR 19114, April 18, 2002); considering also the proposed tolerances, proportion of the crops treated and their importance in the diet, the percent of the cPAD utilized by the proposed uses is estimated to 11% (infants) and 13% (children). Therefore, the estimates of dietary exposure indicate adequate safety margins for children. In assessing the potential for additional sensitivity of infants and children to residues of fenhexamid, the available developmental toxicity and reproductive toxicity studies and the potential for endocrine modulation by fenhexamid were considered. Developmental toxicity studies in two species indicate that fenhexamid does not impose additional risks to developing fetuses and is not a teratogen. The 2–generation reproduction study in rats demonstrated that there were no adverse effects on reproductive performance, fertility, fecundity, pup survival, or pup development at non-maternally toxic levels. Maternal and developmental no observed adverse effect levels (NOAELs) and lowest observed adverse effect levels (LOAELs) were comparable, indicating no increase in susceptibility of developing organisms. No evidence of endocrine effects was noted in any study. It is therefore concluded by Arvesta Corporation that fenhexamid poses no additional risk for infants and children and no additional uncertainty factor is warranted.

F. International Tolerances

International tomato tolerances are in effect in France, Germany, Greece, Italy, Slovenia, Spain, Turkey (1 ppm), and other European countries (2 ppm). Kiwi tolerances are as follows: Greece, Italy, and Slovenia (10 ppm). Stonefruit tolerances already exist in the U.S. for pre-harvest applications as well as in Canada (6 ppm), Austria (cherry, 5 ppm; plum, 2 ppm); Belgium (cherry, 5 ppm); Germany and Slovenia (cherry, 5 ppm; peach and plum, 2 ppm), Italy (cherry, 5 ppm; apricot, peach, and plum 2 ppm); Japan (peach, 1 ppm), Switzerland (cherry, 2 ppm) and the United Kingdom (plum, 1 ppm), and other European countries (peach and plum, 1 ppm; cherry, 5 ppm).

[FR Doc. 03–12485 Filed 5–20–03; 8:45 am]
BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[OPP–2003–0167; FRL–7306–9]

Carbofuran; Receipt of Applications for Emergency Exemption, Solicitation of Public Comment

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has received specific exemption requests from the Texas Department of Agriculture; the Oklahoma Department of Agriculture, Food, and Forestry; and the Louisiana Department of Agriculture and Forestry to use the pesticide flowable carbofuran (Furadan 4F Insecticide/Nematicide) (EPA Reg. No. 279–2876) to treat up to 1.8 million acres of cotton in Texas; 100,000 acres of cotton in Oklahoma; and 500,000 acres of cotton in Louisiana to control cotton aphid. The Applicants propose the use of a chemical which has been the subject of a Special Review within EPA's Office of Pesticide Programs, and is intended for a use that could pose a risk similar to the risk posed by uses evaluated under the Special Review. The granular formulation of carbofuran was the subject of a Special Review between the years of 1986–1991, which resulted in a negotiated settlement whereby most of the registered uses of granular carbofuran were phased out. While the flowable formulation of carbofuran is not the subject of a Special Review, EPA believes that the proposed use of flowable carbofuran on cotton could pose a risk similar to the risk assessed by EPA under the Special Review of granular carbofuran. EPA is soliciting public comment before making the decision whether or not to grant the exemption.

DATES: Written comments, identified by docket ID number OPP–2003–0167, must be received on or before June 5, 2003.

ADDRESSES: Comments may be submitted electronically, by mail, or through hand delivery/courier. Follow the detailed instructions as provided in Unit I. of the **SUPPLEMENTARY INFORMATION**.

FOR FURTHER INFORMATION CONTACT: Stephen A. Schaible, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 308–9362; fax number: (703) 308–6920; e-mail address: *schaible.stephen@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

You may be potentially affected by this action if you are a Federal or State government agency (NAICS 9241) involved in administration of environmental quality programs.

This listing is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in this unit could also be affected. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

B. How Can I Get Copies of this Document and Other Related Information?

1. *Docket.* EPA has established an official public docket for this action under docket identification (ID) number OPP–2003–0167. The official public docket consists of the documents specifically referenced in this action, any public comments received, and other information related to this action. Although a part of the official docket, the public docket does not include Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. The official public docket is the collection of materials that is available for public viewing at the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA. This docket facility is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The docket telephone number is (703) 305–5805.

2. *Electronic access.* You may access this **Federal Register** document electronically through the EPA Internet under the "**Federal Register**" listings at *http://www.epa.gov/fedrgstr/*.

An electronic version of the public docket is available through EPA's electronic public docket and comment system, EPA Dockets. You may use EPA Dockets at *http://www.epa.gov/edocket/* to submit or view public comments, access the index listing of the contents of the official public docket, and to access those documents in the public docket that are available electronically. Once in the system, select "search," then key in the appropriate docket ID number.

Certain types of information will not be placed in the EPA Dockets. Information claimed as CBI and other information whose disclosure is restricted by statute, which is not included in the official public docket, will not be available for public viewing in EPA's electronic public docket. EPA's policy is that copyrighted material will not be placed in EPA's electronic public docket but will be available only in printed, paper form in the official public docket. To the extent feasible, publicly available docket materials will be made available in EPA's electronic public docket. When a document is selected from the index list in EPA Dockets, the system will identify whether the document is available for viewing in EPA's electronic public docket. Although not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the docket facility identified in Unit I.B.1. EPA intends to work towards providing electronic access to all of the publicly available docket materials through EPA's electronic public docket.

For public commenters, it is important to note that EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing in EPA's electronic public docket as EPA receives them and without change, unless the comment contains copyrighted material, CBI, or other information whose disclosure is restricted by statute. When EPA identifies a comment containing copyrighted material, EPA will provide a reference to that material in the version of the comment that is placed in EPA's electronic public docket. The entire printed comment, including the copyrighted material, will be available in the public docket.

Public comments submitted on computer disks that are mailed or delivered to the docket will be transferred to EPA's electronic public docket. Public comments that are mailed or delivered to the Docket will be scanned and placed in EPA's electronic public docket. Where practical, physical objects will be photographed, and the photograph will be placed in EPA's electronic public docket along with a brief description written by the docket staff.

C. How and to Whom Do I Submit Comments?

You may submit comments electronically, by mail, or through hand delivery/courier. To ensure proper receipt by EPA, identify the appropriate docket ID number in the subject line on the first page of your comment. Please ensure that your comments are submitted within the specified comment period. Comments received after the close of the comment period will be marked "late." EPA is not required to consider these late comments. If you wish to submit CBI or information that is otherwise protected by statute, please follow the instructions in Unit I.D. Do not use EPA Dockets or e-mail to submit CBI or information protected by statute.

1. *Electronically.* If you submit an electronic comment as prescribed in this unit, EPA recommends that you include your name, mailing address, and an e-mail address or other contact information in the body of your comment. Also include this contact information on the outside of any disk or CD ROM you submit, and in any cover letter accompanying the disk or CD ROM. This ensures that you can be identified as the submitter of the comment and allows EPA to contact you in case EPA cannot read your comment due to technical difficulties or needs further information on the substance of your comment. EPA's policy is that EPA will not edit your comment, and any identifying or contact information provided in the body of a comment will be included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment.

i. *EPA Dockets.* Your use of EPA's electronic public docket to submit comments to EPA electronically is EPA's preferred method for receiving comments. Go directly to EPA Dockets at *http://www.epa.gov/edocket*, and follow the online instructions for submitting comments. Once in the system, select "search," and then key in docket ID number OPP–2003–0167. The system is an "anonymous access" system, which means EPA will not know your identity, e-mail address, or other contact information unless you provide it in the body of your comment.

ii. *E-mail.* Comments may be sent by e-mail to *opp-docket@epa.gov*, Attention: Docket ID Number OPP–2003–0167. In contrast to EPA's electronic public docket, EPA's e-mail system is not an "anonymous access" system. If you send an e-mail comment directly to the docket without going through EPA's electronic public docket, EPA's e-mail system automatically captures your e-mail address. E-mail addresses that are automatically captured by EPA's e-mail system are included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket.

iii. *Disk or CD ROM.* You may submit comments on a disk or CD ROM that you mail to the mailing address identified in Unit I.C.2. These electronic submissions will be accepted in WordPerfect or ASCII file format. Avoid the use of special characters and any form of encryption.

2. *By mail.* Send your comments to: Public Information and Records Integrity Branch (PIRIB) (7502C), Office of Pesticide Programs (OPP), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001, Attention: Docket ID Number OPP–2003–0167.

3. By hand delivery or courier. Deliver your comments to: Public Information and Records Integrity Branch (PIRIB), Office of Pesticide Programs (OPP), Environmental Protection Agency, Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA, Attention: Docket ID Number OPP–2003–0167. Such deliveries are only accepted during the docket's normal hours of operation as identified in Unit I.B.1.

D. How Should I Submit CBI to the Agency?

Do not submit information that you consider to be CBI electronically through EPA's electronic public docket or by e-mail. You may claim information that you submit to EPA as CBI by marking any part or all of that information as CBI (if you submit CBI on disk or CD ROM, mark the outside of the disk or CD ROM as CBI and then identify electronically within the disk or CD ROM the specific information that is CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

In addition to one complete version of the comment that includes any information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket and EPA's electronic public docket. If you submit the copy that does not contain CBI on disk or CD ROM, mark the outside of the disk or CD ROM clearly that it does not contain CBI. Information not marked as CBI will be included in the public docket and EPA's electronic public docket without prior notice. If you have any questions about CBI or the procedures for claiming CBI, please consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

E. What Should I Consider as I Prepare My Comments for EPA?

You may find the following suggestions helpful for preparing your comments:

1. Explain your views as clearly as possible.

2. Describe any assumptions that you used.

3. Provide copies of any technical information and/or data you used that support your views.

4. If you estimate potential burden or costs, explain how you arrived at the estimate that you provide.

5. Provide specific examples to illustrate your concerns.

6. Offer alternative ways to improve the notice.

7. Make sure to submit your comments by the deadline in this document.

8. To ensure proper receipt by EPA, be sure to identify the docket ID number assigned to this action in the subject line on the first page of your response. You may also provide the name, date, and **Federal Register** citation.

II. Background

What Action is the Agency Taking?

Under section 18 of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) (7 U.S.C. 136p), at the discretion of the Administrator, a Federal or State agency may be exempted from any provision of FIFRA if the Administrator determines that emergency conditions exist which require the exemption. The Louisiana Department of Agriculture and Forestry; the Oklahoma Department of Agriculture, Food, and Forestry; and the Texas Department of Agriculture have requested the Administrator to issue specific exemptions for the use of carbofuran on cotton to control cotton aphids. Information in accordance with 40 CFR part 166 was submitted as part of this request.

As part of this request, the Applicants assert that the States of Louisiana, Oklahoma, and Texas are likely to experience non-routine infestations of aphids during the 2003 cotton growing season. The Applicants further claim that resistance to currently registered alternatives may occur and that without a specific exemption from registration under FIFRA for the use of flowable carbofuran on cotton to control cotton aphids, cotton growers in these states will suffer significant economic losses.

The Applicants propose to make no more than two applications of flowable carbofuran on cotton at the rate of 0.25 lb. active ingredient (a.i.) (8 fluid ounces) in a minimum of 2 gallons of finished spray per acre by air, or 10 gallons of finished spray per acre by ground application. The total maximum proposed use during the 2003 growing season (April 1, 2003 - October 31, 2003 in Texas, July 1, 2003 - October 15, 2003 in Oklahoma, and June 1, 2003 - September 30, 2003 in Louisiana) would be 0.5 lb. a.i. (16 fl. oz.) per acre. The Applicants propose that the maximum acreage which could be treated under the requested exemptions would be 1.8 million acres in Texas; 100,000 acres in Oklahoma; and 500,000 acres in Louisiana. If all of these acres were treated at the maximum proposed rates and for the maximum allowed number of times, 900,000 lb. a.i. (225,000 gallons of Furadan 4F Insecticide/Nematicide) would be used in Texas, 50,000 lb. a.i. would be used in Oklahoma, and 250,000 lb. a.i. would be used in Louisiana.

This notice does not constitute a decision by EPA on the application itself. The regulations governing section 18 of FIFRA require publication of a notice of receipt of an application for a specific exemption proposing use of a chemical (i.e., an active ingredient) which has been the subject of a Special Review within EPA's Office of Pesticide Programs and is intended for a use that could pose a risk similar to the risk posed by uses evaluated under the Special Review. The granular formulation of carbofuran was the subject of a Special Review between the years of 1986–1991, which resulted in a negotiated settlement whereby most of the registered uses of granular carbofuran were phased out. While the flowable formulation of carbofuran is not the subject of a Special Review, EPA believes that the proposed use of flowable carbofuran on cotton could pose a risk similar to the risk assessed by EPA under the Special Review of granular carbofuran. The notice provides an opportunity for public comment on the application.

The Agency, will review and consider all comments received during the comment period in determining whether to issue the specific exemptions requested by the Louisiana Department of Agriculture and Forestry; the Oklahoma Department of Agriculture, Food, and Forestry; and the Texas Department of Agriculture.

List of Subjects

Environmental protection, Pesticides and pests.

Dated: May 8, 2003.

Debra Edwards,

Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 03–12483 Filed 5–20–03; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[OPP–2003–0143; FRL–7394–1]

Issuance of an Experimental Use Permit

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has granted an experimental use permit (EUP) to HBB Partnership. An EUP permits use of a pesticide for experimental or research purposes only in accordance with the limitations in the permit.

FOR FURTHER INFORMATION CONTACT: Denise Greenway, Biopesticides and Pollution Prevention Division (7511C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 308–8263; e-mail address: *greenway.denise@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

This action is directed to the public in general. Although this action may be of particular interest to those persons who conduct or sponsor research on pesticides, the Agency has not attempted to describe all the specific entities that may be affected by this action. If you have any questions regarding the information in this action, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

B. How Can I Get Copies of this Document and Other Related Information?

1. *Docket.* EPA has established an official public docket for this action under docket identification (ID) number OPP–2003–0143. The official public docket consists of the documents specifically referenced in this action, any public comments received, and other information related to this action. Although a part of the official docket, the public docket does not include Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. The official public docket is the collection of materials that is available for public viewing at the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA. This docket facility is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The docket telephone number is (703) 305–5805.

2. *Electronic access.* You may access this **Federal Register** document electronically through the EPA Internet under the "**Federal Register**" listings at *http://www.epa.gov/fedrgstr/*.

An electronic version of the public docket is available through EPA's electronic public docket and comment system, EPA Dockets. You may use EPA Dockets at *http://www.epa.gov/edocket/* to submit or view public comments, access the index listing of the contents of the official public docket, and to access those documents in the public docket that are available electronically. Although not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the docket facility identified in Unit I.B.1. Once in the system, select "search," then key in the appropriate docket ID number.

II. EUP

EPA has issued the following EUP: *75108–EUP–1. Issuance.* HBB Partnership, 5151 N. Palm Ave., Suite 820, Fresno, CA 93704–2221. This EUP allows the use of 1.46 pounds of the California red scale pheromone, (3S, 6R)-3-methyl-6-isopropenyl-9-decen-1-yl acetate and (3S, 6S)-3-methyl-6-isopropenyl-9-decen-1-yl acetate, on 4,050 acres of citrus, as a mating disruptor, to evaluate the control of California red scale. The program is authorized only in the States of Arizona, California, Florida, Hawaii, and Texas. The EUP is effective from April 3, 2003 to September 30, 2003. The experimental use of this new pheromone active ingredient, delivered by dispenser, is covered by the tolerance exemptions established at 40 CFR 180.1122 and 180.1124.

Authority: 7 U.S.C. 136c.

List of Subjects

Environmental protection, Experimental use permits.

Dated: May 7, 2003.

Janet L. Andersen,

Director, Biopesticides and Pollution Prevention Division, Office of Pesticide Programs.

[FR Doc. 03–12481 Filed 5–20–03; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7501–8]

A Review of the Reference Dose and Reference Concentration Processes

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of availability of a final report.

SUMMARY: The U.S. Environmental Protection Agency's (EPA) Risk Assessment Forum (RAF) announces the availability of a final report, A Review of the Reference Dose and Reference Concentration Processes (EPA/630/P–02/002F, December 2002).

ADDRESSES: The document is available electronically through the Risk Assessment Forum's Web site *(http://cfpub.epa.gov/ncea/raf/recordisplay.cfm?deid=55365)*. A limited number of paper copies will be available from the EPA's National Service Center for Environmental Publications (NSCEP), P.O. Box 42419, Cincinnati, OH 45242; telephone: 1–800–490–9198 or 513–489–8190; facsimile: 513–489–8695. Please provide your name and mailing address and the title and EPA number of the requested publication.

FOR FURTHER INFORMATION CONTACT: Dr. Carole Kimmel, National Center for Environmental Assessment, (8623D), U.S. Environmental Protection Agency, 1200 Pennsylvania Avenue, NW., Washington, DC 20460; telephone: 202–564–3307; facsimile: 202–565–0078; email: *kimmel.carole@epa.gov*.

SUPPLEMENTARY INFORMATION: This report, entitled, "A Review of the Reference Dose and Reference Concentration Processes," summarizes the review and deliberations of the Risk

Assessment Forum's RfD/RfC Technical Panel and its recommendations for improvements in the process of deriving reference values, including setting less than lifetime as well as chronic reference values. It discusses revisions to the overall framework for the derivation of reference values that broaden and expand the information considered in setting reference values. The document is a review, not guidance, and it evaluates the current state-of-the-art for hazard characterization with a focus on protection of potentially sensitive subpopulations. The report make a number of recommendations that should be considered in the implementation of changes in the current process and/or development of needed guidance. The Technical Panel views the RfD/RfC process as one that should be continually evolving as new information becomes available and new scientific and risk assessment approaches are developed. This does not mean that current RfDs or RfCs are invalid, but these new scientific issues should be included in the process of re-evaluating current reference values. As a follow-up to the recommendation for deriving less than lifetime reference values, the report includes a review of current testing guideline protocols to determine what data are collected that can be used in setting these reference values. The Technical Panel has provided specific recommendations for deriving reference values and the development of guidance in some cases and more general conclusions and recommendations in others. Case studies are included to illustrate the recommendations of the Technical Panel.

Dated: May 15, 2003.

Peter W. Preuss,

Director, National Center for Environmental Assessment.

[FR Doc. 03–12762 Filed 5–20–03; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7501–3]

Southern Solvents Superfund Site; Notice of Proposed Settlement

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of proposed settlement.

SUMMARY: The United States Environmental Protection Agency is proposing to enter into an Administrative Order on Consent pursuant to section 122(h)(1) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA), as amended regarding the Southern Solvents Superfund Site located in Tampa, Hillsborough County, Florida. This Agreement is made and entered into by EPA and by Southern Solvents, Inc., ("Settling Parties"). EPA will consider public comments on the proposed settlement until June 20, 2003.

EPA may withdraw from or modify the proposed settlement should such comments disclose facts or considerations which indicate the proposed settlement in appropriate, improper, or inadequate. Copies of the proposed settlement are available from: Ms. Paula V. Batchelor, U.S. EPA, Region 4, Sam Nunn Atlanta Federal Center, Waste Management Division, 61 Forsyth Street, SW., Atlanta, Georgia 30303. (404) 562–8887.

Written comments may be submitted to Ms. Batchelor within thirty (30) calendar days of the date of this publication.

Dated: April 28, 2003.

Archie Lee,

Chief, CERCLA Program Services Branch, Waste Management Division.

[FR Doc. 03–12767 Filed 5–20–03; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7501–6]

Proposed Reissuance of a General NPDES Permit for Facilities Related to Oil and Gas Extraction on the North Slope of the Brooks Range, AK (Permit Number AKG–33–0000 Formerly AKG–31–0000)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of proposed reissuance of a general permit.

SUMMARY: On April 10, 2002, the general permit regulating activities related to the extraction of oil and gas on the North Slope of the Brooks Range in the state of Alaska expired. This proposed reissuance of a general permit is intended to regulate activities related to the extraction of oil and gas on the North Slope of the Brooks Range in the state of Alaska. The proposed general permit would cover the same discharges as the previous general permit: domestic wastewater discharges, gravel pit dewatering, construction dewatering, and hydrostatic test water. The proposed reissuance also includes two new outfall designations for the discharge of storm water from industrial activities and discharges of treated effluent from mobile spill response units. When issued, the proposed permit will establish effluent limitations, standards, prohibitions and other conditions on discharges from covered facilities. These conditions are based on existing national effluent guidelines, the state of Alaska's Water Quality Standards and material contained in the administrative record. A description of the basis for the conditions and requirements of the proposed general permit is given in the fact sheet. This is also notice of EPA's issuance of a Finding of No Significant Impact (FNSI) coverage under this GP for the new source facility, BP Exploration (Alaska), Inc.'s Badami facility covered by NPDES permit AKG–31–0001 which will be reauthorized with the number AKG–33–0001.

DATES: Interested persons may submit comments on the proposed reissuance of the general permit to EPA, Region 10 at the address below. Comments must be postmarked by July 7, 2003.

ADDRESSES: Comments on the proposed general permit reissuance should be sent to the attention of the Director, Office of Water, 1200 Sixth Avenue OW–130, Seattle, Washington 98101. Comments may also be submitted electronically to *godsey.cindi@epa.gov*.

FOR FURTHER INFORMATION CONTACT: Copies of the proposed general permit and Fact Sheet are available upon request. Requests may be made to Audrey Washington at (206) 553–0523 or to Cindi Godsey at (907) 271–6561. Requests may also be electronically mailed to: *washington.audrey@epa.gov* or *godsey.cindi@epa.gov*.

The proposed general permit and Fact Sheet may also be found on the EPA Region 10 Web site at *www.epa.gov/r10earth/water.htm* then click on NPDES permits under Programs and draft permits under EPA Region 10 Information.

SUPPLEMENTARY INFORMATION: *Executive Order 12866:* The Office of Management and Budget has exempted this action from the review requirements of Executive Order 12866 pursuant to section 6 of that order.

Regulatory Flexibility Act: After review of the facts presented in the notice printed above, I hereby certify pursuant to the provision of 5 U.S.C. 605(b) that this proposed general NPDES permit will not have a significant impact on a substantial number of small entities. Moreover, the permit reduces a significant administrative burden on regulated sources.

Dated: May 12, 2003.

Randall F. Smith,

Director, Office of Water, Region 10.

[FR Doc. 03–12764 Filed 5–20–03; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL MARITIME COMMISSION

Notice of Agreement(s) Filed

The Commission hereby gives notice of the filing of the following agreement(s) under the Shipping Act of 1984. Interested parties can review or obtain copies of agreements at the Washington, DC offices of the Commission, 800 North Capitol Street, NW., Room 940. Interested parties may submit comments on an agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days of the date this notice appears in the **Federal Register**.

Agreement No.: 011623–002.
Title: APL/MOL/HMM Asia-U.S. Atlantic Coast Space Sharing Agreement.
Parties: American President Lines, Ltd., APL Co. Pte Ltd., Hyundai Merchant Marine Co. Ltd., Mitsui O.S.K. Lines, Ltd.
Synopsis: The agreement is amended to increase the number of vessels deployed and their capacity, rearrange certain of the vessel loops, adjust the space allocation among the parties and provide for certain operational actions.

Agreement No.: 011637–008.
Title: Ampac Cooperative Working Agreement.
Parties: TMM Lines Limited, LLC, Hamburg-Suüdamerikanische Dampfschifffahrts-gesellschaft KG d/b/a Columbus Line, Maruba S.C.A., Compania Chilena de Navegación Interoceánica, S.A.
Synopsis: The proposed agreement modification corrects the address of Columbus Line, deletes Japan from the geographic scope, revises Article 5(a) to reflect changes in the service operated under the agreement, revises Article 5(b)(1) to reflect changes in the chartering of slots under the agreement, revises Article 7 to eliminate the restriction on when a party may provide notice of resignation, and republishes the agreement in a third edition.

Agreement No.: 011692–003.
Title: Indamex Agreement.
Parties: Contship Containerlines, a division of CP Ships (UK) Limited, CMA CGM, S.A., The Shipping Corporation of India Ltd.
Synopsis: The proposed agreement modification deletes all conference-related provisions from the agreement and turns it into a rate discussion agreement. It also republishes the agreement in a fourth edition.

Agreement No.: 011794–002.
Title: COSCON/KL/YMUK/Hanjin/Senator Worldwide Slot Allocation & Sailing Agreement.
Parties: COSCO Container Lines Company, Limited, Kawasaki Kisen Kaisha, Ltd., Yangming (UK) Ltd., Hanjin Shipping Co., Ltd., Senator Lines GmbH.
Synopsis: The proposed agreement modification would restate the current vessel/TEU deployments by the parties, allow Senator Lines certain flexibility to adjust its vessel/TEU deployment without amendment of the agreement, change the arbitration clause to indicate that arbitration will occur in London under English law, and confirm that Senator Lines is not a VOCC.

Agreement No.: 011854.
Title: GreenSea Inc. Joint Service Agreement.
Parties: Green Chartering AS, Seatrade Group N.V.
Synopsis: The agreement establishes a joint service between the parties in the trade from ports on the Atlantic and Gulf Coasts of the United States to ports in Continental Europe, to be operated by a corporate entity known as GreenSea, Inc. It will be owned equally by the parties.

Agreement No.: 011855.
Title: CCNI/Maruba Slot Charter Agreement for Central America and Caribbe Service.
Parties: Compañia Chilena de Navegación Interoceánica, Maruba S.C.A.
Synopsis: The agreement authorizes the parties to charter slots to each other in the trade between Port Everglades and ports in Puerto Rico, on the one hand, and ports in Costa Rica, Guatemala, Dominican Republic and the Caribbean Coast of Colombia, on the other hand. Initial operations will involve two CCNI vessels of 300–TEU capacity offering weekly service. Maruba will be allocated up to 60 TEUs per voyage. The parties request expedited review.

Agreement No.: 201143.
Title: West Coast MTO Discussion Agreement.
Parties: California United Terminals, Inc., Husky Terminals, Inc., International Transportation Service, Inc., Long Beach Container Terminal, Inc., Marine Terminals Corp., Metropolitan Stevedore Company, Pasha Stevedoring & Terminals, L.P., SSA Marine, Trans Bay Container Terminal, Inc., Trans Pacific Container Service Corporation, Yusen Terminals, Inc.
Synopsis: The proposed agreement would allow the parties to discuss and agree on rates, charges, rules, regulations, procedures, practices, terms and other conditions of service pertaining to the transport, handling, receipt, or delivery of cargo by marine terminal operators.

Dated: May 16, 2003.

By Order of the Federal Maritime Commission.

Bryant L. VanBrakle,

Secretary.

[FR Doc. 03–12750 Filed 5–20–03; 8:45 am]

BILLING CODE 6730–01–P

FEDERAL MARITIME COMMISSION

Ocean Transportation Intermediary License Applicants

Notice is hereby given that the following applicants have filed with the Federal Maritime Commission an application for license as a Non-Vessel Operating Common Carrier and Ocean Freight Forwarder—Ocean Transportation Intermediary pursuant to section 19 of the Shipping Act of 1984 as amended (46 U.S.C. app. 1718 and 46 CFR part 515).

Persons knowing of any reason why the following applicants should not receive a license are requested to contact the Office of Transportation Intermediaries, Federal Maritime Commission, Washington, DC 20573.

Non-Vessel Operating Common Carrier Ocean Transportation Intermediary Applicants:

Uraycar Transport Services, Inc., 87 Madison Avenue, Irvington, NJ 07111, Officers: Elhu M. Nisbett, President (Qualifying Individual), Louis W. Nisbett, Vice President

Cargo Express International Shipping, Inc., 3010 Eastchester Road, Bronx, NY 10469, Officer: Erol Lewis, President (Qualifying Individual)

Global Ocean Freight, Inc., 4634 N. University Drive, Lauderhill, FL 33351–5733, Officers: Eti Cohen, Vice President (Qualifying Individual), Arik Y. Cohen, President

Hye Mi Express U.S.A., Inc., 3545 McCall Place, Suite A, Officers: Yong J. Kim, Managing Director (Qualifying Individual), Seung Ku Cho, President

Quality One International Shipping Inc., 3817 Dyre Avenue, Bronx, NY 10466, Officer: Howard Leslie, President, (Qualifying Individual)

AAA Cargo LLC dba AAA Cargo Express LLC, 14536 Roscoe Blvd., Suite #101, Panorama City, CA 91402, Officers: Jake J. Son, President (Qualifying Individual), Belen Mercano, Vice President/Treasurer

Non-Vessel Operating Common Carrier and Ocean Freight Forwarder Transportation Intermediary Applicants:

Caribbean Freight Forwarders, 4715 NW 72 Avenue, Miami, FL 33166, Officers: William Abbadie, President (Qualifying Individual), Maricel Abbadie, Vice President, Ofer Prori, CEO

All International Solutions Inc. dba All International Solutions, 8622 Bellanca Avenue, Suite G, Los Angeles, CA 90045, Officer: Alexis F. Robin, CEO (Qualifing Individual)

Ocean Freight Forwarder—Ocean Transportation Intermediary Applicants:

Senator International Freight Forwarding LLC, 5148 Kennedy Road, Suite 700, Forest Park, GA 30297, Officers: Lorne Neal, C.O.O. (Qualifying Individual), Uwe Kirschbaum, President

AG International, 3300 West McGraw Street, #225, Seattle, WA 98199, George Aoyama, Sole Proprietor

Airmar Global International, 5126 S. State Road 7, Ft. Lauderdale, FL 33314, Officers: Germaine Indacochea, Vice President (Qualifying Individual), Andres Indacochea, President

Independent Brokerage, LLC, 800 Atlanta South Parkway, Suite 100, Atlanta, GA 30349, Officers: Robin T. Craig, Vice President (Qualifying Individual), Melody Kersey, President

Dated: May 16, 2003.

Bryant L. VanBrakle,

Secretary.

[FR Doc. 03–12749 Filed 5–20–03; 8:45 am]

BILLING CODE 6730–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[Program Announcement 03103]

Cooperative Agreement To Enhance Clinical Practices To Prevent Birth Defects and Developmental Disabilities and To Promote Health Among Women With Disabilities; Notice of Availability of Funds

Application Deadline: June 20, 2003.

A. Authority and Catalog of Federal Domestic Assistance Number

This program is authorized under section 301, 311, and 317C of the Public Health Service Act, [42 U.S.C. 241, 243, and 247b–4], as amended. The Catalog of Federal Domestic Assistance number is 93.184.

B. Purpose

The Centers for Disease Control and Prevention (CDC) announces the availability of fiscal year (FY) 2003 funds for a cooperative agreement program to enhance clinical practices to prevent birth defects and developmental disabilities and to promote health among women with disabilities. This program addresses the "Healthy People 2010" focus areas of Maternal, Infant and Child Health and Disability and Secondary Conditions.

The purpose of this program is to prevent birth defects and developmental disabilities and to improve access to preventive and health promotion obstetric/gynecologic services to women with disabilities through: (1) Understanding the current knowledge, skills, attitudes and practices among obstetricians/gynecologists and their clients related to the prevention of birth defects/developmental disabilities and to provision of services to women with disabilities; (2) Identifying the information and training needs of obstetricians/gynecologists in these areas; (3) Developing information, communication, education, and training programs to meet those needs; and, (4) Providing targeted training, education, and information to obstetricians/gynecologists for more effective practice.

Measurable outcomes of the program will be in alignment with one or more of the following performance goals for the National Center on Birth Defects and Developmental Disabilities: Prevent birth defects and developmental disabilities and improve the health and quality of life of American's with disabilities.

Research involving human participants will not be supported under this cooperative agreement.

C. Eligible Applicants

Assistance will be provided only to applicants that are well established national, non-profit organizations who are: (1) Involved in providing health care services for women; (2) who are able to reach out to and work with, obstetricians/gynecologists to collect information AND to disseminate information to obstetricians/gynecologists and their clients; and, (3) who are able to provide them with proper education and training.

Note: Title 2 of the United States Code Section 1611 states that an organization described in Section 501(c)(4) of the Internal Revenue Code that engages in lobbying activities is not eligible to receive Federal funds constituting an award, grant or loan.

D. Availability of Funds

Approximately $250,000 is available in FY 2003 to fund one award. It is expected that the award will begin on or about September 1, 2003, and will be made for a 12-month budget period within a project period of up to five years. Funding estimates may change.

Continuation awards within an approved project period will be made on the basis of satisfactory progress as evidenced by required reports and the availability of funds.

Recipient Financial Participation

Matching funds are not required for this program.

E. Program Requirements

In conducting activities to achieve the purpose of this program, the recipient will be responsible for the activities under 1. (Recipient Activities), and CDC will be responsible for the activities listed under 2. (CDC Activities).

1. Recipient Activities

a. Collect information from obstetricians/gynecologists regarding their knowledge and application of interventions that have been proven to prevent birth defects/developmental disabilities, particularly before conception, such as the use of folic acid to prevent neural tube defects, abstinence from alcohol during pregnancy to prevent fetal alcohol syndrome, and the need for newborn screening.

b. Collect information about women's knowledge and use of interventions that prevent birth defects and developmental disabilities; in particular the use of folic acid by women whose infants were born with and died, of neural tube defects.

c. Collect information about obstetricians/gynecologists' ability to provide services to women with disabilities; in particular: their training in providing services to women with disabilities; access of their facilities to women in wheelchairs; appropriateness of the instruments/machines/technology in their offices for providing services to women with disabilities (exam tables, mammogram machines, etc).

d. Analyze data, organize and disseminate information collected from obstetricians/gynecologists and their clients.

e. Use information to design and implement communication, education and training activities that will promote professional development for obstetricians/gynecologists in birth defects and developmental disabilities and improve provider health care practices and prevention of birth defects.

f. Evaluate the effectiveness of these programs in enhancing the ability of obstetricians/gynecologists in providing effective prevention/health promotion services.

g. Collaborate with organizations such as the American Academy of Pediatrics, American College of Obstetricians and Gynecologists, March of Dimes, American College of Nurse Midwives and others that could provide professional development activities and assist in the dissemination of information on birth defects and health promotion for women with disabilities.

h. Convene selected panels of experts to assist in identifying the knowledge and practices in the areas related to birth defects and developmental disabilities, and to provide expert opinions and advice on needed research services and education.

i. Disseminate information on prevention of birth defects, developmental disabilities and health promotion for women with disabilities.

j. Develop and utilize collaborative relationships with State and local medical societies and health care professionals, in order to enhance health care providers' understanding of the information and resources available in the areas relating to birth defects prevention and health promotion among women with disabilities.

k. Identify research topics that address prevention effectiveness and development of best practices.

2. CDC Activities

a. Participate in the panel of experts meeting and assist in the identification of knowledge and practices in the areas related to birth defects and developmental disabilities, and disability and health.

b. Assist in developing and evaluating projects in health and disability services.

c. Assist in providing data for targeting or evaluation of various initiatives carried out through this project.

d. Participate in materials development and evaluation to support interventions.

e. Assist in the development of forums and critical issues related to health and disability services.

f. Participate in the development of health care provider training programs.

g. Participate in planning meetings that identify gaps in services and research topics on prevention effectiveness.

h. Serve as a resource for sharing regional and/or national pertinent data.

F. Content

Letter of Intent (LOI)

A LOI is requested for this program. The Program Announcement title and number must appear in the LOI. The narrative should be no more than 2 pages, double-spaced, printed on one side, with one-inch margins, and unreduced 12-point font. Your letter of intent will be used to enable CDC to determine the level of interest in the announcement and plan the review more efficiently.

Applications

The Program Announcement title and number must appear in the application. Use the information in the Program Requirements, Other Requirements, and Evaluation Criteria sections to develop the application content. The application will be evaluated on the criteria listed, so it is important to follow them in completing the description of the program plan. The application narrative should be no more than 25 double-spaced pages, printed on one side, with one-inch margins, and unreduced font. Applicants should include a Table of Contents (not to exceed one page) to provide a guide for locating key topics.

1. Understanding of the Project. Briefly identify and describe the target audience of the project.

2. Objectives. Establish long-range (five year) and short-term (one year) objectives for programmatic plans. Objectives should be specific, measurable, time-phased and realistic.

3. Operational Plan. Describe the operation plan for achieving the objectives. Describe each component or major activity and how it will be carried out.

4. Evaluation Plan. Discuss the plan for monitoring progress toward each of the objectives.

5. Program Management. Give the name and qualifications of the professional personnel who will manage this project.

6. Collaborate with State/Local Health Departments. Describe plans for coordination with state or local health departments.

7. Budget. Submit a detailed and line item justification that is consistent with the project purpose and proposed activities.

G. Submission and Deadline

Letter of Intent (LOI) Submission

On or before June 2, 2003, submit the LOI to the Program Officer, at the address designated for programmatic technical assistance identified in the "Where to Obtain Additional Information" section on this announcement.

Application Forms

Submit the original and two copies of PHS–5161 (OMB Number 0937–0189) Forms are available at the following Internet address: *http://www.cdc.gov/od/pgo/forminfo.htm*. If you do not have access to the internet, or if you have difficulty accessing the forms on-line, you may contact the CDC Procurement and Grants Office Technical Information Management Section at telephone number (770) 488–2700. Application forms can be mailed to you.

Submission Date, Time, and Address

The application must be received by 4 p.m. Eastern Time on June 20, 2003. Submit the application to: Technical Information Management Section—PA #, CDC Procurement and Grants Office, 2920 Brandywine Road, Atlanta, GA 30341–4146.

Applications may not be submitted electronically.

CDC Acknowledgement of Application Receipt

A postcard will be mailed by PGO–TIM, notifying you that CDC has received your application.

Deadline

Letters of intent and applications shall be considered as meeting the deadline if they are received before 4 p.m. Eastern Time on the deadline date. Any applicant who sends their application by the United States Postal Service or commercial delivery services must ensure that the carrier will be able to guarantee delivery of the application by the closing date and time. If an application is received after closing due to (1) carrier error, when the carrier accepted the package with a guarantee for delivery by the closing date and time, or (2) significant weather delays or natural disasters, CDC will upon receipt of proper documentation, consider the application as having been received by the deadline.

Any application that does not meet the above criteria will not be eligible for competition, and will be discarded. The applicant will be notified of their failure to meet the submission requirements.

H. Evaluation Criteria

Application

Applicants are required to provide measures of effectiveness that will demonstrate the accomplishment of the various identified objectives of the cooperative agreement. Measures of effectiveness must relate to the performance goals stated in the purpose

section of this announcement. Measures must be objective and quantitative and must measure the intended outcome. The measures of effectiveness must be submitted with the application and will be an element of evaluation.

An independent review group appointed by CDC will evaluate each application against the following criteria:

1. The adequacy of the operational plans for carrying out the various initiatives involved in the project. (30 points)
2. The extent to which professional personnel proposed to be involved in this project are qualified, including evidence of past achievements appropriate to this project (20 points)
3. The degree to which the proposed objectives are clearly stated, realistic, time-phased, and related to the purpose of the project. (15 points)
4. The quality and feasibility of the evaluation plan for the various initiatives involved in the project. (15 points)
5. The extent to which the applicant understands the requirements, problems, objectives and complexities of the project. (10 points)
6. The extent to which the applicant proposes potentially effective coordination with state/local health departments. (10 points)
7. Budget and its description. The applicant must provide justification for budget expenditures as well as appropriateness of activities proposed in their application. (Not scored)

I. Other Requirements

Technical Reporting Requirements

Provide CDC with original plus two copies of

1. Interim progress report, which will be due on April 22nd of each budget year. The progress report will serve as your non-competing continuation application, and must contain the following elements:
   a. Current Budget Period Activities Objectives;
   b. Current Budget Period Financial Progress;
   c. New Budget Period Program Proposed Activity and Objectives;
   d. Detailed Line-Item Budget and Justification; and
   e. Additional Requested Information.
2. Financial status report, due no more than 90 days after the end of the budget period (December 30th of each budget year); and
3. Final financial and performance reports, no more than 90 days after the end of the project period.

Send all reports to the Grants Management Specialist identified in the "Where to Obtain Additional Information" section of this announcement.

Additional Requirements

The following additional requirements are applicable to this program. For a complete description of each, see Attachment I of the announcement, as posted on the CDC web site.

AR–09 Paperwork Reduction Act
AR–10 Smoke-Free Workplace Requirements
AR–11 Healthy People 2010
AR–12 Lobbying Restrictions
AR–14 Accounting System Requirements
AR–15 Proof of Non-Profit Status

Executive Order 12372 does not apply.

J. Where to Obtain Additional Information

This and other CDC announcements can be found on the CDC home page Internet address—*http://www.cdc.gov.* Click on "Funding" then "Grants and Cooperative Agreements."

For general questions about this announcement, contact: Technical Information Management, CDC Procurement and Grants Office, 2920 Brandywine Road, Atlanta, GA 30341–4146, Telephone: 770–488–2700.

For business management technical assistance, contact: Sheryl Heard, Grants Management Specialist, Acquisition and Assistance Branch B., Procurement and Grants Office, Centers for Disease Control and Prevention, 2920 Brandywine Road, Room 3000, Atlanta, GA 30341–4146. Telephone number: 770–488–2723. *Email: slh3@cdc.gov.*

For program technical assistance, contact: Hani Atrash, Associate Director for Program Development, National Center on Birth Defects and Developmental Disabilities, 4770 Buford Highway, Atlanta, Georgia 30341, Telephone number: 770–488–4943, *Email: hka1@cdc.gov.*

Dated: May 15, 2003.

Sandra R. Manning,

Director, Procurement and Grants Office, Centers for Disease Control and Prevention.

[FR Doc. 03–12709 Filed 5–20–03; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[Program Announcement 03070]

Surveillance and Epidemiologic Research of Duchenne and Becker Muscular Dystrophy; Notice of Availability of Funds

Application Deadline: July 21, 2003.

A. Authority and Catalog of Federal Domestic Assistance Number

This program is authorized under Sections 301, 311 and 317C of the Public Health Service Act [42 U.S.C. 241, 243, and 247b–4 as amended]. The Catalog of Federal Domestic Assistance number is 93.184.

B. Purpose

The Centers for Disease Control and Prevention (CDC) announces the availability of fiscal year (FY) 2003 funds for a cooperative agreement program on surveillance and epidemiologic research of Duchenne and Becker Muscular Dystrophy (DBMD). This Program addresses the "Healthy People 2010" focus areas for Disability and Secondary Conditions.

The purpose of the program is to support (1) the development and/or expansion of active case ascertainment surveillance systems to characterize the epidemiology of DBMD and it's complications; and (2) the participation of the state DBMD surveillance system in the Collaborative DBMD Project. Long-term population-based follow-up research activities will be planned to describe history of treated and/or untreated cases, and to determine factors that affect outcome of the condition among three populations: (a) Those who access care at specialty clinics (*e.g.*, Muscular Dystrophy Association (MDA) or other muscular dystrophy clinics), (b) those who receive their care elsewhere, and (c) those who are not receiving care or are undiagnosed. See Attachment I for Background and Definitions. All attachments referenced in this announcement are posted with the announcement on the CDC Web site.

Measurable outcomes of this program will be in alignment with the following performance goal for the National Center for Birth Defects and Developmental Disabilities (NCBDDD): to find causes and risk factors for birth defects and developmental disabilities in order to develop prevention strategies.

C. Eligible Applicants

Assistance will be provided only to the health departments of States or their bona fide agents including the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, the Commonwealth of the Northern Mariana Islands, American Samoa, Guam, the Federated States of Micronesia, the Republic of the Marshall Islands, the Republic of Palau, and federally recognized Indian tribal governments.

Recipients funded under CDC Program Announcement 02172, (Surveillance and Epidemiologic Research of Duchenne and Becker Muscular Dystrophy and Other Single Gene Disorders) currently involved in type 1 projects are not eligible. *See* Attachment II for a list of the States currently funded.

To be eligible, applicants must document a study population of at least 30,000 live births per year within a State, a contiguous area of a State (such as the catchment of a local health agency), or an area comprising a combination of States, based on U.S. Census Data. In addition, a copy of the state Legislation that allows the authority for state Health Departments to collect information on birth defects, genetic diseases or related conditions needs to be included.

This information should be placed directly behind the face page of the application. Applications that fail to submit the evidence requested above will be considered non-responsive and returned without review.

Note: Title 2 of the United States Code, Section 1611 states that an organization described in section 501(c)(4) of the Internal Revenue Code that engages in lobbying activities is not eligible to receive Federal funds constituting an award, grant, or loan.

D. Funding

Availability of Funds

Approximately $1,000,000 is available in FY 2003 to fund up to two awards. It is expected that up to two awards will be made, ranging from $400,000 to $500,000. It is expected that the award will begin on or about September 1, 2003, and will be made for a 12-month budget period within a two-year project period. Funding estimates may change.

Continuation awards within the project period will be made on the basis of satisfactory programmatic progress and the availability of funds.

Recipient Financial Participation

Matching funds are not required for this program.

Funding Preference

Relative to and consistent with the technical merit of the application, funding preference will be given to applicants who complement the existing funded programs by balancing the geographic and racial/ethnic diversity of the multi-state collaborative effort.

E. Program Requirements

In conducting activities to achieve the purpose of this program, the recipient will be responsible for the activities under 1. Recipient Activities. CDC will be responsible for the activities listed under 2. CDC Activities.

1. Recipient Activities:
   a. Develop, implement and evaluate methods and approaches which will improve or expand the capacity of the applicant's existing surveillance system to ascertain cases and generate timely population-based data of DBMD and its complications. Make any necessary modifications to the surveillance system to comply with the Collaborative DBMD Project case definitions. The Collaborative DBMD Project case definitions and other information developed by the current grantees may be obtained from the programmatic technical assistance point-of-contact in the "Where to Obtain Additional Information" section.
   b. Establish or enhance collaborative relationships with appropriate stakeholders, *i.e.*, specialty treatment centers (*e.g.*, MDA clinics, other muscular dystrophy clinics), state or regional chapters or associations related to genetic conditions, hospitals, emergency care centers, private physicians, managed care organizations, clinical and diagnostic laboratories that provide diagnosis of genetic conditions (*e.g.*, creatine kinase measurements, muscle biopsy analysis, genetic analysis, *etc.*), and others.
   c. Collaborate with other funded recipients to design and develop one common protocol for all recipients to implement and evaluate as described in Attachment III. The Collaborative DBMD Project current draft protocol and other information developed by the current grantees may be obtained from the programmatic technical assistance point-of-contact in the "Where to Obtain Additional Information" section.
   d. Implement active case ascertainment of DBMD among reporting sources to determine the prevalence of the genetic condition(s) in the defined geographic area, including a complete count of all prevalent cases, including ages birth to 21 years, and supplemented in later years by newly diagnosed cases.
   e. Describe the source, frequency, and type of preventive and medical care among persons with DBMD among three populations: (a) Those who access care at specialty clinics (*e.g.*, MDA or other muscular dystrophy clinics), (b) those who receive their care elsewhere, and (c) those who are not receiving care or are undiagnosed.
   f. Determine the prevalence of related complications.
   g. Conduct population-based long-term follow-up of persons with DBMD to relate health outcomes to the source, frequency, and type of preventive and therapeutic care.
   h. Obtain buccal samples or other biologics, as agreed-upon by awardees, from children with DBMD and other family members.
   i. Evaluate and disseminate the findings.
2. CDC Activities:
   a. Provide technical assistance in designing, developing, and evaluating methodologies and approaches used for population-based surveillance of genetic conditions.
   b. Provide technical assistance in the collection, management, and analysis of surveillance data related to genetic conditions.
   c. Provide technical assistance in the development and planning of the study protocol. Provide final approval for the study protocol.
   d. Provide technical assistance in the analysis and reporting of aggregate surveillance data collected from funded initiatives; coordinate and consolidate the transfer of tabulated data, analyses, and conclusions among recipients.
   e. Provide technical assistance to national, state, or regional programs in the use of data to develop or improve care programs for genetic conditions.
   f. Provide technical assistance to recipients in developing a plan for the collection, storage and access of biologic samples.
   g. Provide technical assistance to recipients in the evaluation and dissemination of the findings.

F. Content

Letter of Intent (LOI)

A LOI is requested for this program. The Program Announcement title and number must appear in the LOI. The narrative should be no more than two, double-spaced pages, printed on one side, with one inch margins and 12 point font. The LOI will not be used to eliminate potential applicants, but it will enable CDC to determine the level of interest in this announcement, and plan the review more efficiently. The LOI should include the following

information: Program announcement number; applicant's name and address; project director's name, phone number, and e-mail address; a brief description of the number of births in the defined geographic region and a brief description of the planned cooperative agreement activities.

Applications

The Program Announcement title and number must appear in the application. Use the information in the Program Requirements, Other Requirements, and Evaluation Criteria sections to develop the application content. Your application will be evaluated on the criteria listed, so it is important to follow them in laying out your program plan. The program plan should include activities to be conducted over the entire two year project period. The application's narrative (excluding budget narrative and any appendices) should be no more than 40 double-spaced pages, printed on one side, with one inch margins, and no smaller than 12-point font. Number each page consecutively and provide a complete table of contents.

The application should contain the following:

1. Executive Summary (one-page, may be single spaced):
   This section should briefly summarize:
   a. amount of federal assistance requested
   b. existing capacity
   c. key objectives and activities
2. Proposal Narrative
   a. introduction, statement of need, proposed goals and objectives
   b. existing program and capacity
   c. proposed methods and activities
   d. project management and project staff
   e. proposed methods to evaluate the attainment of objectives
3. Budget and Budget Justification—Provide a detailed budget which indicates the anticipated costs. Please provide a copy of the appropriate indirect rate agreement letter or cost allocation plan.
4. Human Subjects
5. Appendices, which may include letters of commitment from key collaborators (including specialty clinics such as MDA clinics and other muscular dystrophy clinics), resumes of key staff, brief summary reports of analyses of surveillance data for other genetic conditions.

G. Submission and Deadline

LOI Submission

On or before June 20, 2003, submit the LOI to the Program Technical Assistance contact, at the address designated for programmatic technical assistance identified in the "Where to Obtain Additional Information" section of this announcement.

Application Forms

Submit the signed original and two copies of PHS–5161 (OMB Number 0920–0428) Forms are available at the following Internet address: *http://www.cdc.gov/od/pgo/forminfo.htm*. If you do not have access to the internet, or if you have difficulty accessing the forms on-line, you may contact the CDC Procurement and Grants Office Technical Information Management Section (PGO–TIM) at telephone number (770) 488–2700. Application forms can be mailed to you.

Submission Date, Time, and Address

The application must be received by 4 p.m. Eastern Time on July 21, 2003. Submit the application to: Technical Information Management—PA #03070, Procurement and Grants Office, Centers for Disease Control and Prevention, 2920 Brandywine Rd., Atlanta, GA 30341–4146.

Applications may not be submitted electronically.

CDC Acknowledgment of Application Receipt

A postcard will be mailed by PGO–TIM, notifying you that CDC has received your application.

Deadline

Letters of intent and applications will be considered as meeting the deadline if they are received before 4 p.m. Eastern Time on the deadline date. Applicants sending applications by the United States Postal Service or commercial delivery services must ensure that the carrier will be able to guarantee delivery of the application by the closing date and time. If an application is received after closing due to: (1) Carrier error (when the carrier accepted the package with a guarantee for delivery by the closing date and time) or (2) significant weather delays or natural disasters, CDC will upon receipt of proper documentation, consider the application as having been received by the deadline.

Applications which do not meet the above criteria will not be eligible for competition and will be discarded. Applicants will be notified of their failure to meet the submission requirements.

H. Evaluation Criteria

Applicants are required to provide measures of effectiveness that will demonstrate the accomplishment of the various identified objectives of the cooperative agreement. Measures of effectiveness must relate to the performance goals as stated in section "B. Purpose" of this announcement. Measures must be objective/quantitative and must measure the intended outcome. These measures of effectiveness shall be submitted with the application and shall be an element of evaluation.

Each application will be evaluated and scored individually by an objective review panel. Evaluations and scoring will be conducted according to the following criteria:

1. Methods and Activities (30 points):
   a. The quality of the applicant's plan for conducting program activities and the extent to which surveillance methods proposed are: (1) Appropriate to accomplish stated goals and objectives; (2) adaptable to a variety of health care settings, and to the collection of longitudinal data; (3) accurate to produce valid and reliable data, and (4) feasible within programmatic and fiscal restrictions.
   b. The applicant's willingness to cooperate with CDC and other funded applicants to (1) identify optimal surveillance methods, (2) develop standardized surveillance protocols, data collection instruments, interview questionnaires, progress report forms, and database software, and (3) modify proposed methods and activities to conform to standardized protocols.
2. Capacity (20 points):
   The extent to which the applicant can access the state or regional community with genetic conditions that is receiving care within and outside of the specialty clinics (*e.g.*, MDA and other muscular dystrophy clinics), as measured by (1) the extent that this proposal incorporates shared responsibility between specialty clinics and state or local health departments as delineated in letters of agreement, and (2) the extent of collaboration obtained from these entities with other organizations involved in the delivery of care and/or services to persons with genetic conditions.
3. Goals and objectives (20 points):
   The extent to which the project goals and objectives are relevant, specific, achievable, measurable, time-linked and can be addressed through the proposed methods.
4. Management and Staffing (20 points):
   a. The extent to which the scientific resources for project planning and data management/analysis are demonstrated within the applicant's organization or through collaboration with universities or other agencies.

   b. The extent to which proposed staffing, staff qualifications and experience, and project organization indicates ability to accomplish the active case findings and other objectives of the program.
5. Evaluation (10 points):
   The degree to which the applicant includes plans to evaluate the attainment of proposed objectives and to evaluate the quality of the data collected.
6. Human Subjects (not scored):
   Does the application adequately address the requirements of Title 45 CFR part 46 for the protection of human subjects? (Not scored; however, an application can be disapproved if the research risks are sufficiently serious and protection against risks are so inadequate as to make the entire application unacceptable.)
7. Budget (not scored):
   The budget will be evaluated for the extent to which it is reasonable, clearly justified, and consistent with the intended use of the cooperative agreement funds.

I. Other Requirements

Technical Reporting Requirements

Provide CDC with original plus two copies of:

1. Interim progress report, no less than 90 days before the end of the budget period. The interim progress report will serve as your non-competing continuation application and must include the following elements:
   a. Current Budget Period Activities Objectives.
   b. Current Budget Period Financial Progress.
   c. New Budget Period Proposed Activity Objectives.
   d. Detailed Line-Item Budget and Justification.
   e. Additional Requested Information.
2. Financial status report, no more than 90 days after the end of the budget period.
3. Final financial and performance reports, no more than 90 days after the end of the project period.

Send all reports to the Grants Management Specialist identified in the "Where to Obtain Additional Information" section of this announcement.

Additional Requirements

The following additional requirements are applicable to this program. For a complete description of each, see Attachment IV of the program announcement as posted on the CDC web site.

AR–1 Human Subjects Requirements
AR–7 Executive Order 12372 Review
AR–9 Paperwork Reduction Act Requirements
AR–10 Smoke-Free Workplace Requirements
AR–11 Healthy People 2010
AR–12 Lobbying Restrictions

J. Where to Obtain Additional Information

This and other CDC announcements, the necessary applications, and associated forms can be found on the CDC home page Internet address: *http://www.cdc.gov*. Click on "Funding" then "Grants and Cooperative Agreements."

For general questions about this announcement, contact: Technical Information Management, CDC Procurement and Grants Office, 2920 Brandywine Road, Atlanta, GA 30341–4146, Telephone: 770–488–2700.

For business management and budget assistance, contact: Sheryl L. Heard, Grants Management Specialist, Procurement and Grants Office, Centers for Disease Control and Prevention, Announcement 03070, 2920 Brandywine Road, Atlanta, GA 30341–4146, Telephone: (770) 488–2723, Email address: *slh3@cdc.gov*.

For program technical assistance contact: Aileen Kenneson, National Center on Birth Defects and Developmental Disabilities, Centers for Disease Control and Prevention, 1600 Clifton Road, MailStop F–35, Atlanta, GA 30333, Telephone: (404) 498–3039, Email address: *alk6@cdc.gov*.

Dated: May 14, 2003.

Sandra R. Manning,

Director, Procurement and Grants Office, Centers for Disease Control and Prevention.

[FR Doc. 03–12708 Filed 5–20–03; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Disease, Disability, and Injury Prevention and Control Special Emphasis Panel: South Carolina Traumatic Brain Injury Follow-Up Study, Program Announcement #02073

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), the Centers for Disease Control and Prevention (CDC) announces the following meeting:

Name: Disease, Disability, and Injury Prevention and Control Special Emphasis Panel (SEP): South Carolina Traumatic Brain Injury Follow-Up Study, Program Announcement #02073.

Times and dates: 7:30 p.m.–7:45 p.m., June 11, 2003. (Open). 7:45 p.m.–9:30 p.m., June 11, 2003. (Closed). 8 a.m.–6:30 p.m., June 12, 2003. (Closed).

Place: The Francis Marion Hotel, 387 King Street, Charleston, SC 29403, Telephone 843–722–0600.

Status: Portions of the meeting will be closed to the public in accordance with provisions set forth in section 552b(c) (4) and (6), Title 5 U.S.C., and the Determination of the Director, Management Analysis and Services Office, CDC, pursuant to Public Law 92–463.

Matters to be Discussed: The meeting will include the review, discussion, and evaluation of applications received in response to Program Announcement #02073.

For Further Information Contact: Richard W. Sattin, M.D., F.A.C.P., Associate Director for Science, Associate Director for Division of Injury and Disability Outcomes and Programs, National Center for Injury Prevention and Control, CDC, 4770 Buford Highway, NE, MS–K02, Chamblee, GA 30341, Telephone 770–488–4031.

The Director, Management Analysis and Services Office, has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities, for both CDC and the Agency for Toxic Substances and Disease Registry.

Dated: May 14, 2003.

Alvin Hall,

Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.

[FR Doc. 03–12706 Filed 5–20–03; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

Notice of Hearing: Reconsideration of Disapproval of Michigan State Plan Amendment (SPA) 02–021

AGENCY: Centers for Medicare & Medicaid Services (CMS), HHS.

ACTION: Notice of hearing.

SUMMARY: This notice announces an administrative hearing on July 10, 2003, at 10 a.m., at the Centers for Medicare & Medicaid Services (CMS), Chicago Regional Office, 233 North Michigan Avenue; Suite R5–5 NW Minnesota; Chicago, Illinois 60601.

Closing Date: Requests to participate in the hearing as a party must be filed with the presiding officer by June 5, 2003.

FOR FURTHER INFORMATION CONTACT: Kathleen Scully-Hayes, Presiding Officer, CMS, 2520 Lord Baltimore

Drive, Suite L, Baltimore, Maryland 21244–2670, Telephone: (410) 786–2055.

SUPPLEMENTARY INFORMATION: This notice announces an administrative hearing to reconsider the decision to disapprove Michigan SPA 02–021, which was submitted to the Centers for Medicare & Medicaid Services (CMS) on December 23, 2002. This SPA was disapproved on February 14, 2003. In this amendment, Michigan proposes to allow the imposition of prior authorization requirements in the Medicaid program on prescription drugs when the manufacturer of the drug does not offer rebates to two State-funded, non-Medicaid programs. The State-funded programs are the Children's Special Health Care Services program (CSHCS) and the State Medical program (SMP).

At issue is whether CMS properly concluded as a basis for disapproving the amendment that: (1) The State had not demonstrated that its proposed prior authorization program would be consistent with simplicity of administration and the best interests of Medicaid recipients, as required by section 1902(a)(19) of the Social Security Act (the Act); and (2) the State had not demonstrated that its proposed prior authorization program would be consistent with efficiency, economy, or quality of care, as required by section 1902 (a)(30)(A) of the Act. In addition, Michigan contends that CMS does not have the authority to review the State's implementation of prior authorization requirements in the Medicaid program, other than for consistency with section 1927(d)(5) of the Act.

As indicated in a letter to state Medicaid directors dated September 18, 2002, CMS stated that it would review proposed state plan amendments seeking to secure prescription drug benefits, rebates, or discounts for non-Medicaid populations for consistency with the goals and objectives of the Medicaid program. After review, CMS did not find the evidence presented by the State in support of this SPA demonstrated that its prior authorization program furthered Medicaid goals and objectives. The CMS concluded that Michigan failed to show that a significant proportion of beneficiaries in either the CSHCS or SMP programs would meet the requirements needed to become eligible for Medicaid if their pharmacy benefit was terminated. In light of the burden that prior authorization may impose on Medicaid beneficiaries and the absence of documented benefit to current or potential Medicaid eligibles, CMS determined that the State had failed to document that such prior authorization procedures would further the goals and objectives of the Medicaid program and thus be consistent with sections 1902(a)(19) and 1902(a)(30) of the Act.

Therefore, based on the reasoning above, and after consultation with the Secretary as required under 42 CFR 430.15 (c)(2), CMS disapproved Michigan SPA 02–021.

Section 1116 of the Act and 42 CFR part 430 establish Departmental procedures that provide an administrative hearing for reconsideration of a disapproval of a state plan or plan amendment. The CMS is required to publish a copy of the notice to a state Medicaid agency that informs the agency of the time and place of the hearing and the issues to be considered. If we subsequently notify the agency of additional issues that will be considered at the hearing, we will also publish that notice.

Any individual or group that wants to participate in the hearing as a party must petition the presiding officer within 15 days after publication of this notice, in accordance with the requirements contained at 42 CFR 430.76(b)(2). Any interested person or organization that wants to participate as amicus curiae must petition the presiding officer before the hearing begins, in accordance with the requirements contained at 42 CFR 430.76(c). If the hearing is later rescheduled, the presiding officer will notify all participants.

The notice to Michigan announcing an administrative hearing to reconsider the disapproval of its SPA reads as follows:

Janet Olszewski,
Director, Michigan Department of Community Health,
Lewis Cass Building,
320 South Walnut Street—Sixth Floor
Lansing, Michigan 48913

Dear Ms. Olszewski:

I am responding to your request for reconsideration of the decision to disapprove Michigan State Plan Amendment (SPA) 02–021, which was submitted on December 23, 2002. This SPA was disapproved on February 14, 2003. In this amendment, Michigan proposes to allow the imposition of prior authorization requirements in the Medicaid program on prescription drugs when the manufacturer of the drug does not offer rebates to two State-funded, non-Medicaid programs. The State-funded programs are the Children's Special Health Care Services program (CSHCS) and the State Medical program (SMP).

At issue is whether the Centers for Medicare & Medicaid Services (CMS) properly concluded as a basis for disapproving the amendment that: (1) The State had not demonstrated that its proposed prior authorization program would be consistent with simplicity of administration and the best interests of Medicaid recipients, as required by section 1902(a)(19) of the Social Security Act (the Act); and (2) the State had not demonstrated that its proposed prior authorization program would be consistent with efficiency, economy, or quality of care, as required by section 1902 (a)(30)(A). In addition, Michigan contends that CMS does not have the authority to review the State's implementation of prior authorization requirements in the Medicaid program, other than for consistency with section 1927(d)(5) of the Act.

As indicated in a letter to state Medicaid directors dated September 18, 2002, CMS stated that it would review proposed state plan amendments seeking to secure prescription drug benefits, rebates, or discounts for non-Medicaid populations for consistency with the goals and objectives of the Medicaid program. After review, CMS did not find that the evidence presented by the State in support of this SPA demonstrated that its prior authorization program furthered Medicaid goals and objectives. The CMS concluded that Michigan failed to show that a significant proportion of beneficiaries in either the CSHCS or SMP programs would meet the requirements needed to become eligible for Medicaid if their pharmacy benefit was terminated. In light of the burden that prior authorization may impose on Medicaid beneficiaries and the absence of documented benefit to current or potential Medicaid eligibles, CMS determined that the State had failed to document that such prior authorization procedures would further the goals and objectives of the Medicaid program and thus be consistent with sections 1902(a)(19) and 1902(a)(30) of the Act. Therefore, based on the reasoning set forth above, and after consultation with the Secretary as required under 42 CFR 430.15(c)(2), CMS disapproved Michigan SPA 02–021.

I am scheduling a hearing on your request for reconsideration to be held on July 10, 2003, at 10 a.m., Centers for Medicare & Medicaid Services, Chicago Regional Office, 233 Michigan Avenue; Suite R5–5 NW Minnesota; Chicago, Illinois 60601.

If this date is not acceptable, we would be glad to set another date that is mutually agreeable to the parties. The hearing will be governed by the procedures prescribed at 42 CFR, part 430.

I am designating Ms. Kathleen Scully-Hayes as the presiding officer. If these arrangements present any problems, please contact the presiding officer. In order to facilitate any communication which may be necessary between the parties to the hearing, please notify the presiding officer to indicate acceptability of the hearing date that has been scheduled and provide names of the individuals who will represent the State at the hearing.

The presiding officer may be reached at (410) 786–2055.

Sincerely,
Thomas A. Scully.

(Sect. 1116 of the Social Security Act (42 U.S.C. section 1316); (42 CFR 430.18))

(Catalog of Federal Domestic Assistance Program No. 13.714, Medicaid Assistance Program)

Dated: May 12, 2003.

Thomas A. Scully,

Administrator, Centers for Medicare & Medicaid Services.

[FR Doc. 03–12697 Filed 5–20–03; 8:45 am]

BILLING CODE 4120–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

Notice of Hearing: Reconsideration of Disapproval of Arkansas (SPA) 02–17 State Plan Amendment

AGENCY: Centers for Medicare & Medicaid Services (CMS), HHS.

ACTION: Notice of hearing.

SUMMARY: This notice announces an administrative hearing on June 25, 2003, at 10 a.m., at the Centers for Medicare & Medicaid Services (CMS), Dallas Regional Office, 1301 Young Street, Room 1119; Dallas, Texas 75202.

Closing Date: Requests to participate in the hearing as a party must be received by the presiding officer by June 5, 2003.

FOR FURTHER INFORMATION CONTACT: Kathleen Scully-Hayes, Presiding Officer CMS, 2520 Lord Baltimore Drive, Suite L, Baltimore, Maryland 21244–2670, Telephone: (410) 786–2055.

SUPPLEMENTARY INFORMATION: This notice announces an administrative hearing to reconsider the decision to disapprove Arkansas State Plan Amendment (SPA) 02–17, which was submitted to the Centers for Medicare & Medicaid Services (CMS) on July 29, 2002. This amendment proposes to provide supplemental payments to physicians and other allied health professionals who provide services through Faculty Group Practices associated with the University of Arkansas School of Medicine. The supplemental payment would be equal to the difference between the existing fee schedule rates and Faculty Group Practices' charges. CMS issued its initial determination disapproving Arkansas SPA 02–17 on March 6, 2003.

Arkansas timely requested reconsideration by letter dated April 14, 2003. At issue is whether the State has demonstrated that this SPA is consistent with the requirements of section 1902 (a)(30)(A) of the Social Security Act (the Act). The CMS concluded that the information provided with this SPA was insufficient to document consistency with economy, efficiency, and quality of care. Arkansas indicated that no other major payers in the State pay these Faculty Group Practices at these levels; indeed, Arkansas indicated that the five largest private third-party payers pay less than half of these levels. Arkansas provided no documentation to show that the Faculty Group Practices have higher costs than other providers of the same type in the State. In the light of evidence, CMS found that the State had not established that it was consistent with economy or efficiency for Medicaid to pay twice the rate paid by other third-party insurers for the same services. Moreover, the annualized payment methodology proposed by the State is not a customary method for paying physicians and other allied health professionals. The methodology would make it difficult to track payments for specific services and would complicate auditing processes. In the initial decision, CMS also cited the complicated nature of this payment scheme and difficulty in tracking and auditing payments for services as a reason why the proposed payment methodology was not consistent with section 1902(a)(30)(A) of the Act.

Section 1116 of the Act and 42 CFR part 430 establish Department procedures that provide an administrative hearing for reconsideration of a disapproval of a State plan or plan amendment. The Centers for Medicare & Medicaid Services (CMS) is required to publish a copy of the notice to a state Medicaid agency that informs the agency of the time and place of the hearing and the issues to be considered. If we subsequently notify the agency of additional issues that will be considered at the hearing, we will also publish that notice. Any individual or group that wants to participate in the hearing as a party must petition the presiding officer within 15 days after publication of this notice, in accordance with the requirements contained at 42 CFR 430.76(b)(2). Any interested person or organization that wants to participate as amicus curiae must petition the presiding officer before the hearing begins in accordance with the requirements contained at 42 CFR 430.76(c). If the hearing is later rescheduled, the presiding officer will notify all participants.

The notice to Arkansas announcing an administrative hearing to reconsider the disapproval of the SPA reads as follows:

Mr. Kurt Knickrehm, Director
Arkansas Department of Human Services
Donaghey Plaza South
PO Box 1437, Slot S401
Little Rock, Arkansas 72203–1437

Dear Mr. Knickrehm:

I am responding to your request for reconsideration of the decision to disapprove Arkansas State Plan Amendment (SPA) 02–17, which was submitted to the Centers for Medicare & Medicaid Services (CMS) on July 29, 2002. This amendment proposes to provide supplemental payments to physicians and other allied health professionals who provide services through Faculty Group Practices associated with the University of Arkansas School of Medicine. The supplemental payment would be equal to the difference between the existing fee schedule rates and Faculty Group Practices' charges. The CMS issued its initial determination disapproving Arkansas SPA 02–17 on March 6, 2003. Arkansas timely requested reconsideration by letter dated April 14, 2003.

At issue is whether the State has demonstrated that this SPA is consistent with the requirements of section 1902(a)(30)(A) of the Social Security Act. The CMS concluded that the information provided with this SPA was insufficient to document consistency with economy, efficiency and quality of care. Arkansas indicated that no other major payers in the State pay these Faculty Group Practices at these levels; indeed, Arkansas indicated that the five largest private third-party payers pay less than half of these levels. Arkansas provided no documentation to show that the Faculty Group Practices have higher costs than other providers of the same type in the State. In the light of evidence,CMS found that the State had not established that it was consistent with economy or efficiency for Medicaid to pay twice the rate paid by other third-party insurers for the same services. Moreover, the annualized payment methodology proposed by the State is not a customary method for paying physicians and other allied health professionals. The methodology would make it difficult to track payments for specific services and would complicate auditing processes. In the initial decision, CMS also cited the complicated nature of this payment scheme and difficulty in tracking and auditing payments for services as a reason why the proposed payment methodology was not consistent with section 1902(a)(30)(A).

This notice announces an administrative hearing on June 25, 2003, at 10 a.m., Centers for Medicare & Medicaid Services (CMS), Dallas Regional Office, 1301 Young Street, Room 1119; Dallas, Texas 75202.

If this date is not acceptable, we would be glad to set another date that is mutually agreeable to the parties. The hearing will be governed by the procedures prescribed at 42 CFR, part 430.

I am designating Ms. Kathleen Scully-Hayes as the presiding officer. If these arrangements present any problems, please contact the presiding officer. In order to facilitate any communication which may be necessary between the parties to the hearing, please notify the presiding officer to indicate acceptability of the hearing date that has been scheduled and provide names of the individuals who will represent the State at the hearing. The presiding officer may be reached at (410) 786–2055.

Sincerely,
Thomas A. Scully.

(Sect. 1116 of the Social Security Act (42 U.S.C. section 1316); (42 CFR 430.18))
(Catalog of Federal Domestic Assistance Program No. 13.714, Medicaid Assistance Program)

Dated: May 12, 2003.

Thomas A. Scully,

Administrator, Centers for Medicare & Medicaid Services.

[FR Doc. 03–12698 Filed 5–20–03; 8:45 am]
BILLING CODE 4120–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

State Grants for Election Assistance for Individuals With Disabilities (EAID)

AGENCY: Administration on Developmental Disabilities (ADD), Administration for Children and Families, Department of Health and Human Services.

ACTION: Notification of the Availability of Fiscal Year 2003 Funds under the Help America Vote Act, Public Law (Pub. L.) 107–252, title II subtitle D, part 2, section 261, Payments to States and Units of Local Governments to Assure Access for Individuals with Disabilities (42 U.S.C. 15421).

SUMMARY: The purposes of this notice are: (1) To set forth the requirements that must be met by a State seeking a payment under 42 U.S.C. 15421 of the Help America Vote Act of 2002 (HAVA); and (2) to secure assurances from such a State related to conditions prior to receiving a payment.

EFFECTIVE DATE: May 21, 2003.

FOR FURTHER INFORMATION CONTACT: Contact Diann Winford at (202) 690–5963, *dwinford@acf.hhs.gov* or Carla Brown at (202) 690–8332, *crbrown@acf.hhs.gov.*

SUPPLEMENTARY INFORMATION:

Part I: Introduction

The Help America Vote Act (HAVA), signed into law by President George W. Bush on October 29, 2002, contains several provisions that will enable an applicant to establish, expand, and improve access to and participation by individuals with the full range of disabilities (*e.g.*, blindness or visual impairment, deafness or hearing impairment, mobility-related, dexterity-related, emotional or intellectual) in the election process. The Catalog of Federal Domestic Assistance Number for this announcement is: 93.617.

Background

On February 20, 2003, in Division (N)—"Emergency Relief and Offsets," Title I Election Reform, Disabled Voters Services, the Miscellaneous Appropriations Act, 2003, Pub. L. 108–7, Congress appropriated $13 million for States to operate the Election Assistance for Individuals with Disabilities (EAID) grant program. HAVA assigned responsibility for the EAID to the Secretary of Health and Human Services (the Secretary), who has assigned responsibility for carrying out this program to the Administration for Children and Families (ACF). Within ACF, the Administration on Developmental Disabilities (ADD) is responsible for the administration of the EAID grant program.

Eligible Applicants

As defined by section 901 of HAVA, States (including the District of Columbia, the Commonwealth of Puerto Rico, Guam, American Samoa, and the Virgin Islands) are eligible to apply for grants under the EAID program. Grants are not available to local units of government directly from the Federal Government in FY 2003 because Division (N)—"Emergency Relief and Offsets," Title I Election Reform, Disabled Voters Services, the Miscellaneous Appropriations Act, 2003, Pub. L. 108–7, only appropriated funds for grants to States for FY 2003. Thus, while units of local government as well as States are eligible for funding under Section 261 of the Help America Vote Act, the annual appropriations statute did not make funds available for grants to local governments.

Availability and Distribution of Funds

Congress appropriated $13,000,000 for payments to States for Federal fiscal year 2003. Payment amounts to States and Territories will be based on the relative size of the voting age population (*i.e.*, number of individuals 18 years of age or older as reported in the 2000 U.S. Census) of those States and Territories requesting payment, with the exception that no State or Territory applying for funds shall receive a payment of less than $100,000. See Table I for the amount reserved for each State and Territory, assuming all 55 States and Territories submit applications. If fewer than 55 States and Territories submit applications, those States and Territories applying for payment will receive a proportionately higher amount than that listed on Table I.

Any payment distributed shall remain available until expended.

In order to receive a payment a State must meet all of the requirements in Part II of this Notice. State governments receiving funds under this announcement will need to collaborate with local chief election officials and local units of government to determine where and how to expend funds.

The Federal Government reserves the right to audit expenditure of funds received under this announcement pursuant to section 902 of the Help American Vote Act, 42 U.S.C. 15542 and 45 CFR 92.26, where applicable.

Use of Allotments

Section 261 of HAVA provides that funds be made available to:

a. Make polling places, including the path of travel, entrances, exits, and voting areas of each polling facility, accessible to individuals with the full range of disabilities (*e.g.*, blindness or visual impairment, deafness or hearing impairment, mobility-related, dexterity-related, emotional, or intellectual).

b. Provide the same opportunity for access and participation (including privacy and independence) to individuals with the full range of disabilities.

c. Train election officials, poll workers, and election volunteers on how best to promote the access and participation of individuals with the full range of disabilities in elections for Federal office.

d. Provide individuals with the full range of disabilities with information about the accessibility of polling places.

Part II: Application Requirements

All of the following conditions must be met by an applicant seeking a payment under 42 U.S.C. 15421 of the Help America Vote Act of 2002. An applicant must agree to these conditions in writing prior to receiving a payment by submitting an application. The conditions are to ensure that a payment will be used in compliance with HAVA. Payments must be used to pay for the activities described under Part I, Use of Allotments.

Conditions

1. Some portion of the grant must be used for each of the following activities.

a. Make polling places, including the path of travel, entrances, exits, and voting areas of each polling facility, accessible to individuals with the full range of disabilities.

b. Provide the same opportunity for access and participation (including privacy and independence) to individuals with the full range of disabilities as for other voters.

c. Train election officials, poll workers, and election volunteers on how best to promote the access and participation of individuals with the full range of disabilities in elections for Federal office.

d. Provide individuals with the full range of disabilities with information about the accessibility of polling places.

2. In an application an applicant must provide:

a. The name of the State submitting the application.

b. The name of the Chief Election Official of the State submitting the application.

c. Contact person: name, title, address, phone, fax, and e-mail address.

d. A description of what the applicant intends to do in *each* of the four categories of activities outlined under #1 above.

e. How much of the payment that the applicant intends to spend on each of the four categories of activities outlined in #1 above.

f. An assurance that six months after the ending of the fiscal year in which a payment is received, the Chief Election Official or his/her designee will submit a report to the Administration on Developmental Disabilities for the Secretary of Health and Human Services describing how the payment received was used with regard to the four categories of activities.

3. The application must include a completed SF 424, available at this Web address: *http://www.acf.hhs.gov/programs/add/announce.htm*

4. The application must include the following certifications:

a. Anti-Lobbying Certification and Disclosure Form (45 CFR part 93).

b. Other Certifications: The signature on the application by the authorized official attests to the intent to comply with the following other certifications:

A. Certification Regarding Drug-Free Work Place (45 CFR part 76)

B. Debarment Certification (45 CFR 76); and

C. Certification Regarding Environmental Tobacco Smoke.

5. The application must be signed by the Chief Election Official.

6. An application must be received 45 days from date of this notice, and no later than 4:30 p.m. EDT, at the U.S. Department of Health and Human Services, ACF/Office of Grants Management, 370 L'Enfant Promenade SW, Mail Stop 326F, Washington, DC 20447–0002, Attention: Joseph Lonergan. Hand-delivered applications should be delivered to Joseph Lonergan, Director, Division of Mandatory Grants, Office of Grants Management, 901 D Street, SW., 4th Floor East, Washington, DC (Telephone number: (202) 401–6603)). Any applications received after 4:30 p.m. on the deadline date will not be considered for payment.

Part III: Additional Information

Closing Date for Receipt of Assurances

The closing date for receipt of all applications is 45 days from the date of this notice.

Grant Administration Regulations

The regulations that govern the administration of these grants are: 45 CFR part 16—Procedures of the Departmental Grant Appeals Board; 45 CFR part 30—Claims Collection; 45 CFR part 76—Governmentwide Debarment and Suspension (Nonprocurement) and Governmentwide Requirements for Drug-Free Workplace (Grants); 45 CFR part 80—Nondiscrimination Under Programs Receiving Federal Assistance Through the Department of Health and Human Services Effectuation of Title VI of the Civil Rights Act of 1964; 45 CFR part 81—Practice and Procedure for Hearings Under Part 80 of This Title; 45 CFR part 84—Nondiscrimination on the Basis of Handicap in Programs and Activities Receiving Federal Financial Assistance; 45 CFR part 91—Nondiscrimination on the Basis of Age in HHS Programs or Activities Receiving Federal Financial Assistance; 45 CFR part 92—Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments; and 45 CFR part 93—New Restrictions on Lobbying.

Reporting Requirements

Each grantee is required to submit annually a narrative report that describes how the funds are used in regard to the four categories of activities authorized under 42 U.S.C. 15461 of the Help America Vote Act of 2002. These reports are due no later than March 31 of each year. Reports must be mailed to:

Administration on Developmental Disabilities, 200 Independence Avenue, Southwest, Room 300–F, Washington, DC 20201, Attention: Debbie Powell.

Expenditures under the EAID program are to be reported using a Financial Status Report (SF–269A). Grantees are required to submit annual financial reports (SF–269A) at the end of each 12 month grant period (September 1–August 31) until all funds have been expended. Funds under EAID are available until expended. Reports are due 90 days after the end of the grant period (November 30).

Submit the original SF–269A to ACF at the address below:

Administration for Children and Families, Office of Administration, Division of Mandatory Grants, Attn: Joseph Lonergan, 370 L'Enfant Promenade, SW, Washington, DC 20447.

Notification Under Executive Order 12372

This program is covered under E.O. 12372, "Intergovernmental Review of Federal Programs" and 45 CFR part 100, "Intergovernmental Review of Department of Health and Human Services Programs and Activities." However, since units of local governments are not funded in Fiscal Year 2003, the review and comment provisions of the Executive Order and Part 100 do not apply for fiscal year 2003.

Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1980 (Pub. L. 96–511), the application requirements contained in this notice have been approved by the Office of Management and Budget under control number 0348–0043.

FY 2003 TENTATIVE ALLOCATIONS FOR ELECTION ASSISTANCE FOR INDIVIDUALS WITH DISABILITIES.—TABLE I

State	FY 2003 tentative allotments
Alabama	185,341
Alaska	100,000
American Samoa	100,000
Arizona	209,686
Arkansas	109,029
California	1,371,756
Colorado	178,308
Connecticut	142,841
Delaware	100,000
District of Columbia	100,000
Florida	687,278
Georgia	335,237
Guam	100,000
Hawaii	100,000
Idaho	100,000
Illinois	511,102
Indiana	251,048
Iowa	122,161
Kansas	110,057
Kentucky	169,755
Louisiana	181,021
Maine	100,000
Maryland	219,527
Massachusetts	270,154
Michigan	409,083
Minnesota	202,382
Mississippi	115,296
Missouri	232,185
Montana	100,000
Nebraska	100,000
Nevada	100,000
New Hampshire	100,000
New Jersey	352,485
New Mexico	100,000
New York	795,936
North Carolina	339,029
North Dakota	100,000
Oregon	143,454
Pennsylvania	521,409

FY 2003 TENTATIVE ALLOCATIONS FOR ELECTION ASSISTANCE FOR INDIVIDUALS WITH DISABILITIES.—TABLE I—Continued

State	FY 2003 tentative allotments
Puerto Rico	151,345
Rhode Island	100,000
South Carolina	167,271
South Dakota	100,000
Tennessee	240,958
Texas	833,749
Utah	100,000
Vermont	100,000
Virgin Islands	100,000
Virginia	297,522
Washington	244,039
West Virginia	100,000
Wisconsin	185,426
Wyoming	100,000
Total	13,000,000

Dated: May 14, 2003.

Patricia A. Morrissey,

Commissioner, Administration on Developmental Disabilities.

[FR Doc. 03–12699 Filed 5–20–03; 8:45 am]

BILLING CODE 4184–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 03N–0038]

Agency Information Collection Activities; Submission for OMB Review; Comment Request; Medical Device User Fee Cover Sheet; Form FDA 3601

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that the proposed collection of information listed below has been submitted to the Office of Management and Budget (OMB) for review and clearance under the Paperwork Reduction Act of 1995.

DATES: Submit written or electronic comments on the collection of information by June 20, 2003.

ADDRESSES: The Office of Management and Budget (OMB) is still experiencing significant delays in the regular mail, including first class and express mail, and messenger deliveries are not being accepted. To ensure that comments on the information collection are received, OMB recommends that written comments be electronically mailed to *sshapiro@omb.eop.gov* or faxed to the Office of Information and Regulatory Affairs, OMB, Attn: Stuart Shapiro, Desk Officer for FDA, FAX: 202–395–6974.

FOR FURTHER INFORMATION CONTACT: Peggy Robbins, Office of Information Resources Management (HFA–250), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–1223.

SUPPLEMENTARY INFORMATION: In compliance with 44 U.S.C. 3507, FDA has submitted the following proposed collection of information to OMB for review and clearance.

Medical Device User Fee Cover Sheet; Form FDA 3601

The Federal Food, Drug, and Cosmetic Act, as amended by the Medical Device User Fee and Modernization Act of 2002 (MDUFMA) (Public Law 107–250), authorizes FDA to collect user fees for certain medical device applications. Under this authority, companies pay a fee for certain new medical device applications or supplements submitted to the agency for review. Because the submission of user fees concurrently with applications and supplements is required, the review of an application cannot begin until the fee is submitted. Form FDA 3601, the "Medical Device User Fee Cover Sheet," is designed to provide the minimum necessary information to: (1) Determine whether a fee is required for review of an application, (2) determine the amount of the fee required, and (3) account for and track user fees. The form provides a cross-reference of the fees submitted for an application with the actual application by using a unique number tracking system. The information collected is used by FDA's Center for Devices and Radiological Health (CDRH) and Center for Biologics Evaluation and Research (CBER) to initiate the administrative screening of new medical device applications and supplemental applications.

Respondents to this collection of information are device manufacturers. Based on FDA's database system, there are an estimated 5,000 manufacturers of products subject to MDUFMA. However, not all manufacturers will have any submissions in a given year and some may have multiple submissions. The total number of annual responses is based on the number of submissions received by FDA in fiscal year 2002. CDRH estimates 5,000 annual responses that include the following: 50 premarket approval applications, 4,400 premarket notifications, 30 modular premarket applications, 1 product development protocol, 1 premarket report, 20 panel track supplements, 150 real-time supplements, and 348 180-day supplements. CBER estimates 50 annual responses that include the following: 2 premarket approval applications, 3 biologics license applications, 30 premarket notifications, 10 modular premarket applications, and 5 180-day supplements. The estimated hours per response are based on past FDA experience with the various submissions, and range from 5 to 30 minutes. The hours per response are based on the average of these estimates.

In the **Federal Register** of February 26, 2003 (68 FR 8907) FDA published a 60-day notice requesting public comment on the information collection provisions. No comments were received.

TABLE 1.—ESTIMATED ANNUAL REPORTING BURDEN[1]

Form	No. of Respondents	Annual Frequency per Response	Total Annual Responses	Hours per Response	Total Hours
FDA 3601	5,000	1	5,000	.30	1,500

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

Dated: May 15, 2003.

Jeffrey Shuren,

Assistant Commissioner for Policy.

[FR Doc. 03–12717 Filed 5–20–03; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 03N–0194]

Agency Information Collection Activities; Proposed Collection; Comment Request; Agreement for Shipment of Devices for Sterilization

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act of 1995 (the PRA), Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information including each proposed extension of an existing information collection, and to allow 60 days for public comment in response to the notice. This notice solicits comments on information collection requirements relating to shipment of nonsterile devices that are to be sterilized elsewhere or are shipped to other establishments for further process labeling or repacking.

DATES: Submit written or electronic comments on the collection of information by July 21, 2003.

ADDRESSES: Submit electronic comments on the collection of information to *http://www.accessdata.fda.gov/scripts/oc/dockets/edockethome.cfm*. Submit written comments on the collection of information to the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. All comments should be identified with the docket number found in brackets in the heading of this document.

FOR FURTHER INFORMATION CONTACT: Peggy Robbins, Office of Information Resources Management (HFA–250), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–1223.

SUPPLEMENTARY INFORMATION: Under the PRA (44 U.S.C. 3501–3520), Federal agencies must obtain approval from the Office of the Management and Budget (OMB) for each collection of information they conduct or sponsor. "Collection of information" is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c) and includes agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. Section 3506(c)(2)(A) of the PRA (44 U.S.C. 3506(c)(2)(A)) requires Federal agencies to provide a 60-day notice in the **Federal Register** concerning each proposed collection of information including each proposed extension of an existing collection of information, before submitting the collection to OMB for approval. To comply with this requirement, FDA is publishing notice of the proposed collection of information set forth in this document.

With respect to the following collection of information, FDA invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of FDA's functions, including whether the information will have practical utility; (2) the accuracy of FDA's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques, when appropriate, and other forms of information technology.

Agreement for Shipment of Devices for Sterilization—21 CFR 801.150(e) (OMB Control Number 0910–0131)—Extension

Under sections 501(c) and 502(a) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 351(c) and 352(a)), nonsterile devices that are labeled as sterile but are in interstate transit to a facility to be sterilized are adulterated and misbranded. FDA regulations in § 801.150(e) (21 CFR 801.150(e)) establish a control mechanism by which firms may manufacture and label medical devices as sterile at one establishment and ship the devices in interstate commerce for sterilization at another establishment; a practice that facilitates the processing of devices and is economically necessary for some firms. Under § 801.150(e), manufacturers and sterilizers may sign an agreement containing the following: (1) Instructions for maintaining accountability of the number of units in each shipment; (2) acknowledgment that the devices that are nonsterile are being shipped for further processing; and (3) specifications for sterilization processing.

This agreement allows the manufacturer to ship misbranded products to be sterilized without initiating regulatory action and provides FDA with a means to protect consumers from use of nonsterile products. During routine plant inspections, FDA normally reviews agreements that must be kept for 2 years after final shipment or delivery of devices.

The respondents to this collection of information are device manufacturers and contact sterilizers.

FDA estimates the reporting burden of this collection of information as follows:

TABLE 1.—ESTIMATED ANNUAL REPORTING BURDEN[1]

CFR Section	No. of Respondents	Annual Frequency per Response	Hours per Response	Total Hours	Total Hours
801.150(e)	90	20	1,800	4	7,200
Total					7,200

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

FDA's estimate of the burden is based on actual data obtained from industry over the past 6 years where there are approximately 90 firms subject to this requirement.

No burden has been estimated for the recordkeeping requirement in 21 CFR 801.150(a)(2) because these records are maintained as a usual and customary part of normal business activities. Under 5 CFR 1320.3(b)(2), the time, effort, and financial resources necessary to comply with a collection of information are excluded from the burden estimate if the reporting, recordkeeping, or disclosure activities needed to comply are usual and customary because they

would occur in the normal course of activities.

Dated: May 15, 2003.

Jeffrey Shuren,

Assistant Commissioner for Policy.

[FR Doc. 03–12718 Filed 5–20–03; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 02N–0452]

Agency Information Collection Activities; Announcement of OMB Approval; New Drugs and Biological Drug Products; Evidence Needed to Demonstrate Effectiveness of New Drugs When Human Efficacy Studies Are Not Ethical or Feasible

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that a collection of information entitled "New Drugs and Biological Drug Products; Evidence Needed to Demonstrate Effectiveness of New Drugs When Human Efficacy Studies Are Not Ethical or Feasible" has been approved by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995.

FOR FURTHER INFORMATION CONTACT: Karen L. Nelson, Office of Information Resources Management (HFA–250), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–1482.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of March 7, 2003 (68 FR 11119), the agency announced that the proposed information collection had been submitted to OMB for review and clearance under 44 U.S.C. 3507. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. OMB has now approved the information collection and has assigned OMB control number 0910–0423. The approval expires on May 31, 2006. A copy of the supporting statement for this information collection is available on the Internet at http://www.fda.gov/ohrms/dockets.

Dated: May 15, 2003.

Jeffrey Shuren,

Assistant Commissioner for Policy.

[FR Doc. 03–12723 Filed 5–20–03; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 02N–0516]

Agency Information Collection Activities; Submission for OMB Review; Comment Request; Request for Samples and Protocols

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that the proposed collection of information listed below has been submitted to the Office of Management and Budget (OMB) for review and clearance under the Paperwork Reduction Act of 1995.

DATES: Fax or electronically mail written comments on the collection of information by June 20, 2003.

ADDRESSES: OMB is still experiencing significant delays in the regular mail, including first class and express mail, and messenger deliveries are not being accepted. To ensure that comments on the information collection are received, OMB recommends that written comments be electronically mailed to sshapiro@omb.eop.gov or faxed to the Office of Information and Regulatory Affairs, OMB, Attn: Stuart Shapiro, Desk Officer for FDA, FAX: 202–395–6974.

FOR FURTHER INFORMATION CONTACT: JonnaLynn P. Capezzuto, Office of Information Resources Management (HFA 250), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–4659.

SUPPLEMENTARY INFORMATION: In compliance with 44 U.S.C. 3507, FDA has submitted the following proposed collection of information to OMB for review and clearance.

Request for Samples and Protocols—(OMB Control Number 0910–0206)—Extension

Under section 351 of the Public Health Service Act (the PHS Act) (42 U.S.C. 262), FDA has the responsibility to issue regulations that prescribe standards designed to ensure the safety, purity, and potency of biological products and to ensure that licenses for such products are only issued when a product meets the prescribed standards. Under § 610.2 (21 CFR 610.2), FDA may at any time require manufacturers of licensed biological products to submit to FDA samples of any lot along with the protocols showing the results of applicable tests before marketing the lot of the product. In addition to § 610.2, there are other regulations in part 660 (21 CFR part 660) that require the submission of samples and protocols for specific licensed biological products: §§ 660.6 (Antibody to Hepatitis B Surface Antigen), 660.36 (Reagent Red Blood Cells), and 660.46 (Hepatitis B Surface Antigen). Section 660.6(a) provides requirements for the frequency of submission of samples from each lot of Antibody to Hepatitis B Surface Antigen product, and § 660.6(b) provides the requirements for the submission of a protocol containing specific information along with each required sample. For § 660.6 products subject to official release by FDA, one sample from each filling of each lot is required to be submitted along with a protocol consisting of a summary of the history or manufacture of the product, including all results of each test for which test results are requested by the Center for Biologics Evaluation and Research (CBER). After official release is no longer required, one sample along with a protocol is required to be submitted at an interval of 90 days. In addition, samples, which must be accompanied by a protocol, may at any time be required to be submitted to FDA if continued evaluation is deemed necessary. Section 660.36(a) requires, after each routine establishment inspection by FDA, the submission of samples from a lot of final Reagent Red Blood Cell product along with a protocol containing specific information. Section 660.36(a)(2) requires a protocol contain information including, but not limited to, manufacturing records, test records, and test results. Section 660.36(b) requires a copy of the antigenic constitution matrix specifying the antigens present or absent to be submitted to FDA at the time of initial distribution of each lot. Section 660.46(a) provides requirements for the frequency of submission of samples from each lot of Hepatitis B Surface Antigen product, and § 660.46(b) provides the requirements for the submission of a protocol containing specific information along with each required sample. For § 660.46 products subject to official release by FDA, one sample from each filling of each lot is required to be submitted along with a protocol consisting of a summary of the history or manufacture of the product, including all results of each test for which test results are requested by CBER. After notification of official release is received, one sample along with a protocol is required to be submitted at an interval of 90 days. In addition, samples, which must be accompanied by a protocol, may at any time be required to be submitted to FDA if continued evaluation is deemed necessary. Samples and protocols are required by FDA to help ensure the safety, purity, or potency of the product because of the potential lot-to-lot variability of a product produced from living organisms. In cases of certain biological products (e.g., Albumin, Plasma Protein Fraction, and specified biotechnology and specified synthetic biological products) that are known to have lot-to-lot consistency, official lot release is not normally required. However, submissions of samples and protocols of these products may still be required for surveillance, licensing, and export purposes, or in the event that FDA obtains information that the manufacturing process may not result in consistent quality of the product. The following burden estimate is for protocols required to be submitted with each sample. The collection of samples is not a collection of information under 5 CFR 1320.3(h)(2). Respondents to the collection of information under § 610.2 are manufacturers of any licensed biological product. Respondents to the collection of information under §§ 660.6(b), 660.36(a)(2) and (b), and 660.46(b) are manufacturers of the specific products referenced previously. The estimated number of respondents for each regulation is based on the annual number of manufacturers that submitted samples and protocols for biological products including submissions for lot release, surveillance, licensing, or export. There are an estimated 329 manufacturers of licensed biological products, however, based on information obtained from FDA's database system, approximately 83 manufacturers submitted samples and protocols in fiscal years 1999 and 2000, under the regulations cited previously. FDA estimates that approximately 76 manufacturers submitted protocols under § 610.2 and 7 manufacturers submitted protocols under the regulations for the specific products. The total annual responses are based on the annual average of FDA's final actions completed in fiscal years 1999 and 2000, which totaled 6,747, for the various submission requirements of samples and protocols for biological products. The rate of final actions is not expected to change significantly in the next few years. The hours per response are based on information provided by industry. The burden estimates provided by industry ranged from 1 to 5.5 hours. Under § 610.2, the hours per response are based on the average of these estimates and rounded to 3 hours. Under the remaining regulations, the hours per response are based on the higher end of the estimate (rounded to 5 or 6 hours) because more information is generally required to be submitted in the protocol than under § 610.2.

In the **Federal Register** of December 27, 2002 (67 FR 79127), FDA published a 60-day notice requesting public comment on the information collection provisions. FDA received one comment on the information collection in response to the 60-day notice.

The comment recommended that we should review the regulations under § 610.2(a) concerning lot release and consider modifications to reflect current manufacturing technology standards in light of industry's ability to control and test products to ensure identity, purity, and potency. The comment provided some suggestions to consider regarding the lot release requirements.

The comment's suggested regulatory revisions that pertain to provisions or matters that are outside the scope of the proposed information collection. Consequently, we decline to adopt the comment's recommendations.

FDA estimates the burden of this information collection as follows:

TABLE 1.—ESTIMATED ANNUAL REPORTING BURDEN[1]

21 CFR Section	No. of respondents	Annual frequency per response	Total annual responses	Hours per response	Total hours
610.2	76	86.5	6,574	3	19,722
660.6(b)	4	28.5	114	5	570
660.36(a)(2) and (b)	1	1	1	6	6
660.46(b)	2	29	58	5	290
Total	83		6,747		20,588

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

Dated: May 15, 2003.

Jeffrey Shuren,

Assistant Commissioner for Policy.

[FR Doc. 03–12724 Filed 5–20–03; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 03N–0135]

Agency Information Collection Activities; Announcement of OMB Approval; Guidance: Establishing and Maintaining a List of U.S. Dairy Product Manufacturers With Interest in Exporting to Chile

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that a collection of information entitled "Establishing and Maintaining a List of U.S. Dairy Product Manufacturers With Interest in Exporting to Chile" has been approved by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995.

FOR FURTHER INFORMATION CONTACT: Peggy Robbins, Office of Information Resources Management (HFA–250), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–1223.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of April 10, 2003 (68 FR 17655), the agency announced that the proposed information collection had been submitted to OMB for review and

clearance under 44 U.S.C. 3507. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. OMB has now approved the information collection and has assigned OMB control number 0910–0509. The approval expires on October 31, 2003. A copy of the supporting statement for this information collection is available on the Internet at http://www.fda.gov/ohrms/dockets.

Dated: May 15, 2003.

Jeffrey Shuren,

Assistant Commissioner for Policy.

[FR Doc. 03–12725 Filed 5–20–03; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 03N–0170]

Report on the Performance of Drug and Biologics Firms in Conducting Postmarketing Commitment Studies; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice of availability.

SUMMARY: The Food and Drug Administration (FDA) is required, under the Food and Drug Administration Modernization Act of 1997 (Modernization Act), to report annually in the **Federal Register** on the status of postmarketing study commitments made by sponsors of approved drug and biological products. This is the agency's first report on the status of the study commitments that sponsors have agreed to conduct and for which an annual status report on the study has been received by FDA.

FOR FURTHER INFORMATION CONTACT: Kim Colangelo, Center for Drug Evaluation and Research (HFD–20), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–594–3937; or Robert Yetter, Center for Biologics Evaluation and Research (HFM–25), 1400 Rockville Pike, Rockville, MD 20852, 301–827–0373.

SUPPLEMENTARY INFORMATION:

I. Background

Section 130(a) of the Modernization Act (Public Law 105–115) amended the Federal Food, Drug, and Cosmetic Act (the act) by adding a new provision (section 506B of the act (21 U.S.C. 356b)) requiring reports of postmarketing studies for human drugs and biological products. Section 506B provides FDA with additional authority to monitor the progress of a postmarketing study commitment that an applicant has been required or has agreed to conduct by requiring the applicant to submit a report annually providing information on the status of the postmarketing study commitment. This report must also include reasons, if any, for failure to complete the commitment.

On December 1, 1999 (64 FR 67207), FDA published a proposed rule providing a framework for the content and format of the annual progress report. The proposed rule also clarified the scope of the reporting requirement and timing for submission of the annual progress reports. The final rule, published on October 30, 2000 (65 FR 64607), modified annual report requirements for new drug applications (NDAs) and abbreviated new drug applications (ANDAs) by establishing § 314.81(b)(2)(vii) (21 CFR 314.81(b)(2)(vii)). The rule also created a new annual reporting requirement for biologics license applications (BLAs) by establishing § 601.70 (21 CFR 601.70). These regulations became effective on April 26, 2001. The regulations apply only to human drugs, including biological drugs. They do not apply to animal drugs or to licensed biological products that also meet the definition of a medical device.

Sections 314.81(b)(2)(vii) and 601.70 apply to postmarketing commitments made on or before enactment of the Modernization Act (November 21, 1997) as well as those made after that date. Sections 314.81(b)(2)(vii) and 601.70 require applicants of approved drugs and biological products to submit annually a report on the status of each clinical safety, clinical efficacy, clinical pharmacology, and nonclinical toxicology study that is required by FDA (e.g., accelerated approval clinical benefit studies) or that they have committed to conduct either at the time of approval or after approval of their NDA, ANDA, BLA, or supplement. The status of other types of postmarketing commitments (e.g., those concerning chemistry, manufacturing, production controls, and studies conducted on an applicant's own initiative) are not required to be reported under §§ 314.81(b)(2)(vii) and 601.70 and are not addressed in this report. It should be noted, however, that applicants are required to report to FDA on these commitments made for NDAs and ANDAs under § 314.81(b)(2)(viii).

According to the regulations, once a postmarketing study commitment has been made, an applicant must report on the progress of the commitment on the anniversary of the product's approval until the postmarketing study commitment is completed or terminated and FDA determines that the postmarketing study commitment has been fulfilled or that the postmarketing study commitment is either no longer feasible or would no longer provide useful information. The annual progress report must include a description of the postmarketing study commitment, a schedule for completing the study commitment, and a characterization of the current status of the study commitment. The report must also provide an explanation of the postmarketing study commitment's status by describing briefly the postmarketing study commitment's progress. A postmarketing study commitment schedule is expected to include the actual or projected dates for: (1) Submission of the study protocol to FDA, (2) completion of patient accrual or initiation of an animal study, (3) completion of the study, and (4) submission of the final study report to FDA. The postmarketing study commitment status must be described in the annual report according to the following definitions:

- Pending: The study has not been initiated, but does not meet the criterion for delayed;
- Ongoing: The study is proceeding according to or ahead of the original schedule;
- Delayed: The study is behind the original schedule;
- Terminated: The study was ended before completion, but a final study report has not been submitted to FDA; or
- Submitted: The study has been completed or terminated, and a final study report has been submitted to FDA.

Databases containing information on postmarketing study commitments are maintained at the Center for Drug Evaluation and Research (CDER) and the Center for Biologics Evaluation and Research (CBER). Information in this report covers any postmarketing study commitment that was made, in writing, at the time of approval or after approval of an application or a supplement to an application, including those required (e.g., to demonstrate clinical benefit of a product following accelerated approval) and those agreed to with the applicant. Information summarized in this report includes: (1) The number of applicants with open (uncompleted) postmarketing commitments, (2) the number of open postmarketing commitments, (3) the status of open postmarketing commitments as reported in § 314.81(b)(2)(vii) or § 601.70 annual reports, (4) the status of concluded postmarketing studies as determined by FDA, and (5) the number of open postmarketing commitments for which FDA did not receive an annual report.

Additional information about postmarketing study commitments made by sponsors to CDER and CBER are provided on FDA's Web site at *http://www.fda.gov/cder*. Like this notice, the site does not list postmarketing study commitments containing proprietary information. It is FDA policy not to post information on the Web site until it has been reviewed for accuracy. The information currently available on the site includes only postmarketing study commitments made since January 1, 1991. The numbers published in this notice cannot be compared with the numbers resulting from searches of the Web site. This notice incorporates totals for all postmarketing study commitments in FDA databases, including those made prior to 1991 as well as those undergoing review for accuracy. The report in this notice will be updated annually while the Web site will be updated quarterly (in April, July, October, and January).

II. Summary of Information From Postmarketing Study Progress Reports

This report summarizes the status of postmarketing commitments as of September 30, 2002. If a commitment did not have a schedule and a postmarketing progress report was not received, the commitment is categorized according to the most recent information available to the agency.

Data in table 1 are numerical summaries generated from FDA databases. The data are broken out according to application type (NDAs/ANDAs or BLAs).

TABLE 1.—SUMMARY OF POSTMARKETING STUDY COMMITMENTS TO CBER AND CDER

(NUMBERS AS OF SEPTEMBER 30, 2002)

	NDAs/ANDAs (% of total)	BLAs (% of total)
Applicants with open postmarketing commitments	126	44
Number of open postmarketing commitments	1,339	223
Status of open postmarketing commitments		
• Pending	820 (61%)	67 (30%)
• Ongoing	285 (21%)	102 (46%)
• Delayed	25 (2%)	17 (8%)
• Terminated	8 (1%)	2 (1%)
• Submitted	201 (15%)	35 (16%)
Concluded studies	349	52
• Commitment met	240 (69%)	47 (90%)
• Commitment not met	0 (0%)	1 (2%)
• Study no longer needed or feasible	109 (31%)	4 (8%)
Open postmarketing commitments with annual report due but not received	289 (22%)	77 (35%)

Dated: May 12, 2003.

Jeffrey Shuren,

Assistant Commissioner for Policy.

[FR Doc. 03–12720 Filed 5–20–03; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

HRSA–03–87 Notice of Cooperative Agreement to Plan, Develop, Implement, and Operate a Continuing Clinical Education Program in the Pacific Basin (CPAC) CFDA Number 93.884

The Health Resources and Services Administration (HRSA) announces that applications will be accepted for a Cooperative Agreement for fiscal year (FY) 2003 to Plan, Develop, Implement, and Operate a Continuing Clinical Education Program in the Pacific Basin.

The purpose of this Cooperative Agreement is to plan, develop, implement and operate a continuing clinical education (CCE) program in the U.S-Associated Pacific Islands. Six island jurisdictions comprise the U.S.-Associated Pacific Basin: American Samoa, the Commonwealth of the North Mariana Islands, Guam, the Federated States of Micronesia, the Republic of the Marshall Islands and the Republic of Palau. A cooperative agreement will be awarded to assist the eligible entity to develop, implement and operate a CCE program in the U.S.-Associated Pacific Basin. The goal is to meet the needs of the health care workforce in all six island jurisdictions by providing training to a full range of primary care and allied health providers emphasizing cultural competency and distance learning; developing a needs assessment to identify the specific educational needs and develop curricula and recruit faculty; demonstrate linkages and relationships within all six island jurisdictions; and establish an advisory board with all six island jurisdictions represented.

The Pacific Basin health care workforce is comprised of Pacific Basin Medical Officers and other primary care providers (family physicians, general internists, general pediatricians, dental professionals, physician assistants, nurses, health assistants, and allied health workers). Allied Health professionals include health professionals who have received a certificate, an associate's degree, a

bachelor's degree, a master's degree, a doctoral degree, or post baccalaureate training, in a science relating to health care. Allied health professionals may include, but are not limited to, speech pathologists, physical therapists, physical therapy assistants, nutritionists, dental hygienists, dental assistants, medical technologists, cytotechnologists, laboratory assistants, medical informaticians, respiratory therapists, occupational therapists, ultrasound technicians, sonographists, nuclear medicine technicians, radiography technicians, clinical psychologists, social workers, and counselors. Although these primary care and allied health care providers may have the same title as primary care and allied health care providers in the United States, their skill levels and the roles they perform can be quite different from their U.S. counterparts. This Cooperative Agreement program will support a wide range of objectives to meet the needs of the primary care and allied health care providers in the Pacific Basin.

Eligible entities are required to use funds in collaboration with two or more disciplines Activities conducted under this cooperative should include: (a) The recruitment of representatives from all six jurisdictions that will comprise an Advisory Committee responsible for providing appropriate input to all key aspects of the project and to facilitate conducting the clinical education courses; (b) a needs assessment for all six jurisdictions in the Pacific Basin to identify their specific educational needs; (c) the recruitment of faculty and the development of curricula that will meet the needs of all six jurisdictions; (d) the development, implementation and operation of on-site and distance learning continuing clinical education programs for the primary care and allied health care providers in all six jurisdictions of the Pacific Basin; and (d) cultural competency training that emphasizes sensitivity to cultural differences, socioeconomic factors and geographic issues that impact the population in the Pacific Basin.

Authorizing Legislation

This Cooperative Agreement is solicited under the following authority of Title VII of the Public Health Service (PHS) Act, Sections 747 and 755. Section 747, as amended, that authorizes grants to plan, develop and operate, or participate in an approved professional training program (including an approved residency or internship program) in the field of family medicine, internal medicine, or pediatrics for medical (M.D. and D.O.) students, interns (including interns in internships in osteopathic medicine), residents, or practicing physicians that emphasizes training for the practice of family medicine, general internal medicine, or general pediatrics. Section 755, as amended, authorizes grants to assist allied health programs in meeting the costs associated with expanding or establishing programs that will increase the number of individuals trained in allied health professions, which may include those that provide career advancement training for practicing allied health professionals.

Federal Involvement

The Federal role in the conduct of this cooperative agreement is substantial and will be maintained by HRSA's Bureau of Health Professions (BHPr), Division of Medicine and Dentistry (DMD) staff through technical assistance and guidance to the grantee beyond the normal stewardship responsibilities in the administration of grant awards. The Federal Government will provide technical assistance and advice with respect to the following activities:

1. Planning, development, administration, and evaluation of all phases of the program, including all curricula developed for the program, the content and staffing of faculty training, and the review of the evaluation plan for the project initiated at its inception;

2. Reviewing and approving the plans at the end of the curriculum development phase of the project to assure appropriate direction and redirection of activities, if necessary;

3. Participation in all appropriate meetings, committees, conference calls, and working groups related to the Cooperative Agreement and its projects;

4. Reviewing and approving the curricula vitae documenting the credentials and experience for selection to the Advisory Committee and proposed members; and

5. Reviewing and approving the curriculum development phase to the implementation phase of this work.

Availability of Funds

Up to $400,000 will be available in FY 2003 to fund one award made under this Cooperative Agreement. It is expected that funding will be continued to complete a 4-year total project period. It is expected that awards will be made on or before September 1, 2003. Continuation awards beyond the first year of the project period will be based on the achievement of satisfactory progress and the availability of funds.

Background

HRSA's mission is to improve the Nation's health by assuring equitable access to comprehensive, quality health care for all. In addressing this goal, HRSA's Bureau of Health Professions has responsibility for the education of health professionals.

The Institute of Medicine (IOM) was commissioned by HRSA in the late 1990s to examine the health needs of the populations in the U.S.-Associated Pacific Islands. The IOM made recommendations for improvement of jurisdictional health needs in their report, "Pacific Partnerships for Health: Charting a Course for the 21st Century," January 1998. The four key recommendations were (1) adopt and support a viable system of community-based primary and preventive health care; (2) improve coordination within and between the jurisdictions and the U.S.; (3) increase community involvement and investment in health care; and (4) promote the education and training of the health care workforce.

One of the main focuses for BHPr is to promote continuing clinical education for primary care and allied health care providers. This is consistent with IOM recommendation number four. The goal is to maintain and improve the clinical capacity of primary care and allied health care providers in the Pacific Basin, especially for the Medical Officers trained in the HRSA-supported Pacific Basin Medical Officer Training Program (whose operations terminated on December 31, 1996). BHPr's focus will help improve the health status of Pacific Basin residents and support a viable system of community-based primary care. Furthermore, this will improve the overall system of primary, preventive, and allied health care in the Pacific Basin and lead to overall sustainability of program efforts.

Applicants to this Cooperative Agreement must focus on planning, developing, implementing and operating a continuing clinical education program that will meet the specific needs of all six jurisdictions in the Pacific Basin.

Eligible Applicants

Eligible applicants are public or nonprofit private hospitals, accredited schools of medicine or osteopathic medicine, health professions schools, academic health centers, State or local governments, or public or private nonprofit entities, including faith-based and community-based organizations. Eligible entities are required to use

funds in collaboration with two or more disciplines.

Funding Preference

A funding preference is defined as the funding of a specific category or group of approved applications ahead of other categories or groups of applications. As provided in section 791(a) of the PHS Act, a preference will be given to any qualified applicant that meets the criteria for a "new program" under this Cooperative Agreement.

For the purposes of this Cooperative Agreement, all proposed CCE programs are eligible to be considered as new programs; however, applicants cannot automatically receive the preference. Preference will be given to those proposed CCE programs that request the preference and that meet at least four of the following criteria:

(1) The mission statement of the program identifies a specific purpose of this program as being the preparation of health professionals to serve underserved populations;

(2) The curriculum of the program includes content which will help to prepare practitioners to serve underserved populations;

(3) Substantial clinical training experience is required under the program in medically underserved communities;

(4) A minimum of 20% of the clinical faculty of the program spend at least 50% of their time providing or supervising care in medically underserved communities;

(5) The entire program or a substantial portion of the program is physically located in a medically underserved community;

(6) Student assistance, which is linked to service in medically underserved communities following graduation, is available to the students in the program; and

(7) The program provides a placement mechanism for deploying graduates to medically underserved communities.

This statutory general preference will only be applied to applications that rank above the 20th percentile of applications recommended for approval by the peer review group.

The term "medically underserved community (MUC)" means an urban or rural area or population that:

(a) Is eligible for designation under section 332 as a Health Professional Shortage Area (HPSA);

(b) Is eligible to be served by a Migrant Health Center under section 330 of the PHS Act, a Community Health Center under section 330 of the Act, a grantee under section 330 of the Act (relating to homeless individuals), or a grantee under section 330 of the Act (relating to residents of public housing);

(c) Is eligible for certification under section 1861(aa)(2) of the Social Security Act (relating to rural health clinics); or

(d) Is designated by a State Governor (in consultation with the medical community) as a shortage area or MUC. (Section 799B(6) of the PHS Act.).

Allied Health Funding Priority

A "funding priority" is defined as the favorable adjustment of aggregate review scores of individually approved applications. A funding priority will be given to approved applicants who devote resources to educate and train allied health professionals in areas experiencing shortages in the disciplines of medical technology and cytotechnology.

To qualify for the priority, the applicant should satisfactorily demonstrate that this Cooperative Agreement includes the training of allied health professionals in areas experiencing shortages in the disciplines of medical technology and cytotechnology.

Applicants meeting the funding priority will receive an additional 5 points. Peer reviewers will determine which applications receive the funding priority.

Special Considerations

A special consideration is the enhancement of priority scores by individual merit reviewers of approved applications, because the application addresses special areas of concern.

Title VII, section 747(c)(3) provides for a statutory special consideration to be given to projects that prepare practitioners to care for underserved populations and other high risk groups such as the elderly, individuals with HIV/AIDS, substance abusers, homeless and victims of domestic violence.

An administrative special consideration will be given to projects that propose approaches for enhancing current and/or developing new educational opportunities using distance learning methodologies, with the goal of improving access to primary health care for medically and/or dentally underserved communities and/or underserved populations or other high risk groups. The proposed project should focus on educational opportunities for trainees and not on providing clinical services.

Statutory Matching or Cost Sharing Requirement

None.

Review Criteria

The specific review criteria used to review and rank applications are included in the application guidance that will be provided to each potential applicant. Peer reviewers will evaluate applications based on: (1) The quality of the applicants' proposed geographic needs assessment, including addressing the needs of underserved populations and other high risk groups and the incorporation of distance learning methodologies; (2) the quality of the proposed curriculum, including evaluation of curriculum specific to geriatrics, oral health, and diabetes; (3) the applicants' overall management capabilities, including its ability to demonstrate strong partnerships with the U.S.-Associated Pacific Island jurisdictions and its knowledge of ongoing HRSA-funded activities in the Pacific Islands; and (4) the quality of the proposed outcome measures and dissemination strategies, including qualitative and quantitative evaluation plans and the project's impact at multiple levels (local, national, and international). Applicants should pay strict attention to addressing these criteria, as they are the basis upon which applications will be judged by the reviewers.

The following generic review criteria are also applicable to this Cooperative Agreement:

(a) That the estimated cost to the Government of the project is reasonable considering the level and complexity of activity and the anticipated results.

(b) That project personnel are well qualified by training and/or experience for the support sought, that project personnel understand the cultural differences, socioeconomic factors, and geographic issues that impact the population in the Pacific Basin, and that the applicant organization or the organization to provide training has adequate facilities and manpower.

(c) That insofar as practical, the proposed activities, if well executed, are capable of attaining project objectives.

(d) That the project objectives are capable of achieving the specific program objectives defined in the program announcement and the proposed results are measurable.

(e) That the method for evaluating proposed results includes criteria for determining the extent to which the program has achieved its stated objectives and the extent to which the accomplishment of objectives can be attributed to the program.

(f) That, insofar as practical, the proposed activities, when accomplished, are replicable, national

in scope, and include plans for broad dissemination.

Application Requests, Dates and Address

The **Federal Register** notice and the application form for this Cooperative Agreement are available on the HRSA Web site address at *http://bhpr.hrsa.gov/grants*. Applicants may also request a hard copy of these materials from the Division of Grants Management Operations (CPAC), HRSA Grants Application Center (GAC), 901 Russell Avenue, Suite 450, Gaithersburg, MD 20879, telephone number 1–877–477–2123 or 1–877–HRSA–123. The GAC e-mail address is *HRSAGAC@hrsa.gov*. If mailing the application, send the original and two copies of the application to GAC.

Applicants should note that HRSA anticipates accepting grant applications online in the last quarter of the Fiscal Year (July through September). Please refer to the HRSA grants schedule at *http://www.hrsa.gov/grants.htm* for more information.

Applications for this Cooperative Agreement must be postmarked or submitted by the due date June 30, 2003. Applications postmarked after this due date or sent to any address other than the Gaithersburg, MD address will be returned to the applicant and not reviewed.

National Health Objectives for the Year 2010

The PHS urges applicants to submit their work plans that address specific Federal workforce objectives. These objectives are stated in the DHHS publication Healthy People 2010, dated January 2000. The Internet address for this document is: *http://www.health.gov/healthypeople/*, or you may call 1–800–367–4725 for information. Particular attention should focus on Healthy People 2010 such as Objective 21 (oral health); and Objective 23–8 (incorporating specific competencies in the public health workforce).

Smoke-Free Workplace

The PHS strongly encourages all grant recipients to provide a smoke-free workplace; to promote the non-use of all tobacco products; and to promote Public Law 103–227, the Pro-Children Act of 1994, which prohibits smoking in certain facilities that receive Federal funds in which education, library, day care, health care, and early childhood development services are provided to children.

Additional Information

Questions concerning programmatic aspects of this Cooperative Agreement may be directed to Ellie Grant, Program Specialist, Primary Care Medical Education Branch, Division of Medicine and Dentistry, Bureau of Health Professions, HRSA. Ms. Grant's e-mail is *egrant@hrsa.gov* and her telephone number is 301–443–5404.

Paperwork Reduction Act

The standard application form HRSA–6025–1, the HRSA Competing Training Grant Application, has been approved by the Office of Management and Budget (OMB) under the Paperwork Reduction Act. The OMB clearance number is 0915–0060. If the methods for developing the proposed comprehensive outcome evaluation of all efforts delivered through this Cooperative Agreement (as described in the Background section of this notice) fall under the purview of the Paperwork Reduction Act, awardees will assist HRSA in seeking OMB clearance for proposed data collection activities.

This program is not subject to the provisions of Executive Order 12372, Intergovernmental Review of Federal Programs (as implemented through 45 CFR part 100).

Dated: April 23, 2003.

Elizabeth M. Duke,

Administrator.

[FR Doc. 03–12774 Filed 5–20–03; 8:45 am]

BILLING CODE 4165–15–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

National Vaccine Injury Compensation Program; List of Petitions Received

AGENCY: Health Resources and Services Administration, HHS.

ACTION: Notice.

SUMMARY: The Health Resources and Services Administration (HRSA) is publishing this notice of petitions received under the National Vaccine Injury Compensation Program ("the Program"), as required by section 2112(b)(2) of the Public Health Service (PHS) Act, as amended. While the Secretary of Health and Human Services is named as the respondent in all proceedings brought by the filing of petitions for compensation under the Program, the United States Court of Federal Claims is charged by statute with responsibility for considering and acting upon the petitions.

FOR FURTHER INFORMATION CONTACT: For information about requirements for filing petitions, and the Program in general, contact the Clerk, United States Court of Federal Claims, 717 Madison Place, NW., Washington, DC 20005, (202) 219–9657. For information on HRSA's role in the Program, contact the Director, National Vaccine Injury Compensation Program, 5600 Fishers Lane, Room 16C–17, Rockville, MD 20857; (301) 443–6593.

SUPPLEMENTARY INFORMATION: The Program provides a system of no-fault compensation for certain individuals who have been injured by specified childhood vaccines. Subtitle 2 of Title XXI of the PHS Act, 42 U.S.C. 300aa–10 *et seq.*, provides that those seeking compensation are to file a petition with the U.S. Court of Federal Claims and to serve a copy of the petition on the Secretary of Health and Human Services, who is named as the respondent in each proceeding. The Secretary has delegated his responsibility under the Program to HRSA. The Court is directed by statute to appoint special masters who take evidence, conduct hearings as appropriate, and make initial decisions as to eligibility for, and amount of, compensation.

A petition may be filed with respect to injuries, disabilities, illnesses, conditions, and deaths resulting from vaccines described in the Vaccine Injury Table (the Table) set forth at section 2114 of the PHS Act or as set forth at 42 CFR 100.3, as applicable. This Table lists for each covered childhood vaccine the conditions which will lead to compensation and, for each condition, the time period for occurrence of the first symptom or manifestation of onset or of significant aggravation after vaccine administration. Compensation may also be awarded for conditions not listed in the Table and for conditions that are manifested after the time periods specified in the Table, but only if the petitioner shows that the condition was caused by one of the listed vaccines.

Section 2112(b)(2) of the PHS Act, 42 U.S.C. 300aa–12(b)(2), requires that the Secretary publish in the **Federal Register** a notice of each petition filed. Set forth below is a list of petitions received by HRSA on October 1, 2002, through December 31, 2002.

Section 2112(b)(2) also provides that the special master "shall afford all interested persons an opportunity to submit relevant, written information" relating to the following:

1. The existence of evidence "that there is not a preponderance of the evidence that the illness, disability, injury, condition, or death described in the petition is due to factors unrelated to the administration of the vaccine described in the petition," and

2. Any allegation in a petition that the petitioner either:

(a) "Sustained, or had significantly aggravated, any illness, disability, injury, or condition not set forth in the Table but which was caused by" one of the vaccines referred to in the Table, or

(b) "Sustained, or had significantly aggravated, any illness, disability, injury, or condition set forth in the Table the first symptom or manifestation of the onset or significant aggravation of which did not occur within the time period set forth in the Table but which was caused by a vaccine" referred to in the Table.

This notice will also serve as the special master's invitation to all interested persons to submit written information relevant to the issues described above in the case of the petitions listed below. Any person choosing to do so should file an original and three (3) copies of the information with the Clerk of the U.S. Court of Federal Claims at the address listed above (under the heading "For Further Information Contact"), with a copy to HRSA addressed to Director, Division of Vaccine Injury Compensation Program, Office of Special Programs, 5600 Fishers Lane, Room 16C–17, Rockville, MD 20857. The Court's caption (Petitioner's Name v. Secretary of Health and Human Services) and the docket number assigned to the petition should be used as the caption for the written submission.

Chapter 35 of title 44, United States Code, related to paperwork reduction, does not apply to information required for purposes of carrying out the Program.

List of Petitions

1. Lisa and Maximo Salinas on behalf of Eric Alfred Salinas, Richmond, Virginia, Court of Federal Claims Number 02–1286V
2. Kimberly and Jason Murray on behalf of Emily Renee Murray, Richmond, Virginia, Court of Federal Claims Number 02–1287V
3. Chauncey and Robert Ford on behalf of Logan Davis Ford, Richmond, Virginia, Court of Federal Claims Number 02–1288V
4. Margie and John Eyman on behalf of Ian Carter Eyman, Richmond, Virginia, Court of Federal Claims Number 02–1289V
5. Virginia and Daniel Dougherty on behalf of Austin Daniel Dougherty, Richmond, Virginia, Court of Federal Claims Number 02–1290V
6. Amy and Dennis Colannino on behalf of Adam Michael Colannino, Richmond, Virginia, Court of Federal Claims Number 02–1291V
7. Dee and Dino Ferra on behalf of Ryan Ferra, Hackensack, New Jersey, Court of Federal Claims Number 02–1292V
8. Wendy and Eric Dietsche on behalf of Katelyn Dietsche, Chattanooga, Tennessee, Court of Federal Claims Number 02–1293V
9. Amy and Ryan Reed on behalf of Arik Reed, Portland, Oregon, Court of Federal Claims Number 02–1295V
10. Amy and Ryan Reed on behalf of Kadin Reed, Portland, Oregon, Court of Federal Claims Number 02–1296V
11. Doris Brown on behalf of Nathayn Brown, Portland, Oregon, Court of Federal Claims Number 02–1297V
12. Judy Nichols on behalf of Jack Nichols, Portland, Oregon, Court of Federal Claims Number 02–1298V
13. R. Charles Ellis on behalf of Frederick W. Ellis, Portland, Oregon, Court of Federal Claims Number 02–1299V
14. Dana and Craig Knapp on behalf of Andrew Knapp, Portland, Oregon, Court of Federal Claims Number 02–1300V
15. Susan Fortino on behalf of Brandon Fortino, Portland, Oregon, Court of Federal Claims Number 02–1301V
16. Michelle and Bruce McPherran on behalf of Stuart McPherran, Portland, Oregon, Court of Federal Claims Number 02–1302V
17. Michelle and Bruce McPherran on behalf of Kaylen McPherran, Portland, Oregon, Court of Federal Claims Number 02–1303V
18. Kelly Church on behalf of Jordan Church, Portland, Oregon, Court of Federal Claims Number 02–1304V
19. Kristian Kabasares on behalf of Chad Kabasares, Portland, Oregon, Court of Federal Claims Number 02–1305V
20. Shelley and Lori Winn on behalf of Justin Winn, Portland, Oregon, Court of Federal Claims Number 02–1306V
21. Jodie Lynn Lovern on behalf of Alexander Lovern, Portland, Oregon, Court of Federal Claims Number 02–1307V
22. Lisa Baumann on behalf of Brett Baumann, Portland, Oregon, Court of Federal Claims Number 02–1308V
23. Shelley Segal on behalf of Joshua Segal, Terre Haute, Indiana, Court of Federal Claims Number 02–1309V
24. Jacqueline and Orlando Hislop on behalf of Catalina E. Hislop, Melbourne, Florida, Court of Federal Claims Number 02–1310V
25. Keri and Brian Elwell on behalf of Kaylie J. Elwell, Melbourne, Florida, Court of Federal Claims Number 02–1311V
26. Beth Pearce and Wayne Bosch on behalf of Victoria C. Bosch, Melbourne, Florida, Court of Federal Claims Number 02–1312V
27. Cheryl and Jerald Difiglio on behalf of Anthony J. Difiglio, Melbourne, Florida, Court of Federal Claims Number 02–1313V
28. Donna and Bruce Anderson on behalf of Ryan Anderson, Melbourne, Florida, Court of Federal Claims Number 02–1314V
29. Martha Lin and Ned Benfield on behalf of Elia C. Benfield, Melbourne, Florida, Court of Federal Claims Number 02–1315V
30. Carol Lazar, Los Angeles, California, Court of Federal Claims Number 02–1316V
31. Michael Kerr on behalf of Eric Kerr, Boston, Massachusetts, Court of Federal Claims Number 02–1318V
32. Donna Feld on behalf of Joshua Feld, Boston, Massachusetts, Court of Federal Claims Number 02–1319V
33. Donna Feld on behalf of Joseph Feld, Boston, Massachusetts, Court of Federal Claims Number 02–1320V
34. Carolyn Beyers on behalf of Cameron Beyers, Boston, Massachusetts, Court of Federal Claims Number 02–1321V
35. Stacy Alvarez on behalf of Ariana Alvarez, Boston, Massachusetts, Court of Federal Claims Number 02–1322V
36. Stacy Alvarez on behalf of Hunter Alvarez, Boston, Massachusetts, Court of Federal Claims Number 02–1323V
37. Mary Etebari on behalf of Brandon Etebari, Boston, Massachusetts, Court of Federal Claims Number 02–1324V
38. Alexandra Givens and J. Mortimer O'Sullivan on behalf of Reed Gilmore O'Sullivan, New York, New York, Court of Federal Claims Number 02–1325V
39. Melissa and Richard Webber on behalf of Lawrence B. Webber, Melbourne, Florida, Court of Federal Claims Number 02–1329V
40. Fatmeh and Ahmad Shihadeh on behalf of Sammy Shihadeh, Melbourne, Florida, Court of Federal Claims Number 02–1330V
41. Jacqueline and David Mancini on behalf of Adriana Mancini, Melbourne, Florida, Court of Federal Claims Number 02–1331V
42. Maureen and Kenneth Wilkerson on behalf of Carter Wilkerson, Melbourne, Florida, Court of Federal Claims Number 02–1332V
43. Maureen and Kenneth Wilkerson on behalf of Connor Wilkerson, Melbourne, Florida, Court of Federal Claims Number 02–1333V
44. William McAllister on behalf of David Edward McAllister, Richmond, Virginia, Court of Federal Claims Number 02–1334V
45. Georgia and Keith Meuller on behalf of Keith C. Meuller, Houston, Texas, Court of Federal Claims Number 02–1336V
46. Mary and Kent Brauninger on behalf of Max Brauninger, Houston, Texas, Court of Federal Claims Number 02–1337V
47. Jeanne and Edward Happel on behalf of Keith Happel, Vienna, Virginia, Court of Federal Claims Number 02–1338V
48. Lisa Ventimiglia on behalf of Natalie Ventimiglia, Vienna, Virginia, Court of Federal Claims Number 02–1339V
49. Lisa Ventimiglia on behalf of Dominic Ventimiglia, Vienna, Virginia, Court of Federal Claims Number 02–1340V
50. Wendy Beasley on behalf of Connor Beasley, Vienna, Virginia, Court of Federal Claims Number 02–1341V
51. Beverly Willis on behalf of Benjamin Willis, Vienna, Virginia, Court of Federal Claims Number 02–1342V
52. Howard Sobelman on behalf of Tyler Sobelman, Vienna, Virginia, Court of Federal Claims Number 02–1343V
53. Cynthia Johnson, Vienna, Virginia, Court of Federal Claims Number 02–1344V
54. Anita Greene, Raleigh, North Carolina, Court of Federal Claims Number 02–1348V
55. Jacquelyn and Christopher Brooks on behalf of Christopher Jonathyn Brooks, Los Angeles, California, Court of Federal Claims Number 02–1352V
56. Jeanette Early on behalf of Jameliah Chantel Early, Torrance, California, Court of Federal Claims Number 02–1353V
57. Kerry and Steven Cooper on behalf of Aidan Scott Cooper, Richmond, Virginia, Court of Federal Claims Number 02–1354V

58. Keisha and Jacob Grillo on behalf of Malachi Daniel Grillo, Rolla, Missouri, Court of Federal Claims Number 02–1355V
59. Cheryl and Mark Sprado on behalf of Jason Tyler Sprado, Orlando, Florida, Court of Federal Claims Number 02–1356V
60. Cynthia and Eddie Stanley on behalf of Armand Porche-Tyrell Stanley, Lancaster, Pennsylvania, Court of Federal Claims Number 02–1357V
61. Jacqueline and Bryant Yearby on behalf of Omari Bryant Yearby, North Babylon, New York, Court of Federal Claims Number 02–1358V
62. Cynthia and Ramido Ramirez on behalf of Destiny Alexis Ramirez, Casa Grande, Arizona, Court of Federal Claims Number 02–1359V
63. Gloria and Michael Ponosuk on behalf of Alyssa Jade Ponosuk, Hackensack, New Jersey, Court of Federal Claims Number 02–1360V
64. Courtney Shorter on behalf of Christopher Barnett, Miami, Florida, Court of Federal Claims Number 02–1361V
65. Lisa and Stephen Finn on behalf of Sean P. Finn, Melbourne, Florida, Court of Federal Claims Number 02–1362V
66. Toya and Barry Cunningham on behalf of Barry Cunningham, Jr., Charleston, South Carolina, Court of Federal Claims Number 02–1365V
67. Kristen and Timothy Fisher on behalf of Katherine Linsey Fisher, Dallas, Texas, Court of Federal Claims Number 02–1366V
68. Stacie and Jeffrey Brown on behalf of Jonathan Christian Brown, Oakland, California, Court of Federal Claims Number 02–1369V
69. Michelle and Kenneth Bowe on behalf of Brandon Bowe, Smithtown, New York, Court of Federal Claims Number 02–1370V
70. Elizabeth and Reginald Sharp on behalf of Christopher James Peter Sharp, Scottsdale, Arizona, Court of Federal Claims Number 02–1371V
71. Kara and Kelly Drake on behalf of Dalton Richard Drake, Elmore, Minnesota, Court of Federal Claims Number 02–1372V
72. Janetta and Ronald Miller on behalf of Anthony Dean Miller, Inglewood, California, Court of Federal Claims Number 02–1373V
73. Tammy and Ronnie Jones on behalf of Brandon Isaiah Jones, Dothan, Alabama, Court of Federal Claims Number 02–1374V
74. Kelly Barnhill on behalf of Fletcher Barnhill, Boston, Massachusetts, Court of Federal Claims Number 02–1375V
75. Joann Mrozinsky on behalf of Fletcher Barnhill and Ryan Dead, Boston, Massachusetts, Court of Federal Claims Number 02–1376V
76. Sonia and Chuck Young on behalf of Emelie S. Young, Melbourne, Florida, Court of Federal Claims Number 02–1377V
77. Rhonda and Robert Lofland on behalf of Barrett Lofland, Great Neck, New York, Court of Federal Claims Number 02–1378V
78. Kimberly K. Dennie on behalf of Calvin M. Dennie, Indianapolis, Indiana, Court of Federal Claims Number 02–1379V
79. LaKesha Mitchell on behalf of Taivis Byron Mitchell, Portland, Oregon, Court of Federal Claims Number 02–1380V
80. Londa and Jerry Corcoran on behalf of Jacob Corcoran, Portland, Oregon, Court of Federal Claims Number 02–1381V
81. Brian Peterson on behalf of Jack Peterson, Portland, Oregon, Court of Federal Claims Number 02–1382V
82. Domenick Venditti on behalf of Jake Venditti, Vienna, Virginia, Court of Federal Claims Number 02–1384V
83. Carol Nigro on behalf of Matthew Nigro, Vienna, Virginia, Court of Federal Claims Number 02–1385V
84. Celeste Demarsico on behalf of Isaak Demarsico, Vienna, Virginia, Court of Federal Claims Number 02–1386V
85. Susan Andrews on behalf of Joseph Andrews, Vienna, Virginia, Court of Federal Claims Number 02–1387V
86. Faith Ingersoll on behalf of Kyle Ingersoll, Vienna, Virginia, Court of Federal Claims Number 02–1388V
87. Kristi Pool on behalf of Abigail Pool, Vienna, Virginia, Court of Federal Claims Number 02–1389V
88. Sid Armer, Vienna, Virginia, Court of Federal Claims Number 02–1390V
89. Lisa Duff-Dugan, Fort Wayne, Indiana, Court of Federal Claims Number 02–1391V
90. Pam and Randy Coyne on behalf of Carson Coyne, Jackson, Tennessee, Court of Federal Claims Number 02–1392V
91. Jennifer and James Clawson on behalf of Sarah Danielle Clawson, Salisbury, North Carolina, Court of Federal Claims Number 02–1397V
92. Lori and Christian McIlwain on behalf of Connor Joseph McIlwain, Salisbury, North Carolina, Court of Federal Claims Number 02–1398V
93. Allison and Daniel Weeks on behalf of Hayden F. Weeks, Salisbury, North Carolina, Court of Federal Claims Number 02–1399V
94. Paula and Michael Rader on behalf of Nicolas Austin Rader, Salisbury, North Carolina, Court of Federal Claims Number 02–1400V
95. Deborah and Brian Flagg on behalf of Devin P. Flagg, Salisbury, North Carolina, Court of Federal Claims Number 02–1401V
96. Cynthia and Johnny Lambert on behalf of Johnny W. Lambert, Salisbury, North Carolina, Court of Federal Claims Number 02–1402V
97. Cynthia and Michael Stirk on behalf of Michael Hunter Stirk, Salisbury, North Carolina, Court of Federal Claims Number 02–1403V
98. Natasha Switkovitz on behalf of Marcellous Shemar Shuttles, Grand Rapids, Michigan, Court of Federal Claims Number 02–1404V
99. Lisa and Christopher Miller on behalf of Christopher Chase Miller, Philadelphia, Pennsylvania, Court of Federal Claims Number 02–1405V
100. Elizabeth and Thomas Steenbergen on behalf of Samuel Steenbergen, Great Neck, New York, Court of Federal Claims Number 02–1407V
101. Jose Brito and Lourdes Rivero-Brito on behalf of Ariel J. Brito, Melbourne, Florida, Court of Federal Claims Number 02–1408V
102. Anita and Paul Dost on behalf of Lauren Paige Dost, Salisbury, North Carolina, Court of Federal Claims Number 02–1409V
103. Fonda and D. Scott DuPre on behalf of Joseph Scott DuPre, Salisbury, North Carolina, Court of Federal Claims Number 02–1410V
104. Melissa and Carl Oliver on behalf of Kenny Wayne Oliver, Salisbury, North Carolina, Court of Federal Claims Number 02–1411V
105. Melissa and Carl Oliver on behalf of Amanda Diane Oliver, Salisbury, North Carolina, Court of Federal Claims Number 02–1412V
106. Annette and Dennis Alexander on behalf of Lauren D. Alexander, Salisbury, North Carolina, Court of Federal Claims Number 02–1413V
107. Elizabeth Steenbergen on behalf of Samuel T. Steenbergen, Miami, Florida, Court of Federal Claims Number 02–1414V
108. Cherie Gates on behalf of Riyo Gates, Miami, Florida, Court of Federal Claims Number 02–1415V
109. Rayshawn Lockhart on behalf of Noah Lockhart, Miami, Florida, Court of Federal Claims Number 02–1416V
110. Cheryl Lee Stanescu on behalf of Nicholad Stanescu, Miami, Florida, Court of Federal Claims Number 02–1417V
111. Cheryl Lee Stanescu on behalf of Gabrielle Stanescu, Miami, Florida, Court of Federal Claims Number 02–1418V
112. Dawn and Jerril Fant on behalf of Lynze Fant, Memphis, Tennessee, Court of Federal Claims Number 02–1419V
113. Harry Gibson on behalf of Christian Vilchis, Vienna, Virginia, Court of Federal Claims Number 02–1421V
114. Cindy Whitby on behalf of Ronnie Whitby, Vienna, Virginia, Court of Federal Claims Number 02–1422V
115. Tonya Taylor on behalf of Noah Taylor-Ortiz, Vienna, Virginia, Court of Federal Claims Number 02–1423V
116. Amanda Meyers on behalf of Abigail Meyers, Vienna, Virginia, Court of Federal Claims Number 02–1424V
117. Ruth Davis on behalf of Akiva Davis, Vienna, Virginia, Court of Federal Claims Number 02–1425V
118. James Ramey on behalf of Johnathan Ramey, Vienna, Virginia, Court of Federal Claims Number 02–1426V
119. Margaret Merenda on behalf of Anthony Merenda, Vienna, Virginia, Court of Federal Claims Number 02–1427V
120. Lisa Lewis on behalf of Ethan B. Lewis, Vienna, Virginia, Court of Federal Claims Number 02–1428V
121. Barbara Pontius on behalf of William D. Pontius, Vienna, Virginia, Court of Federal Claims Number 02–1429V
122. Barry Gore on behalf of Chayley Allison Gore, Vienna, Virginia, Court of Federal Claims Number 02–1430V
123. Nancy and Steven Gard on behalf of Maverick Gard, Vienna, Virginia, Court of Federal Claims Number 02–1431V
124. Linda Flower on behalf of Robert L. Elder, Vienna, Virginia, Court of Federal Claims Number 02–1432V
125. Sara and Matt Bytk on behalf of Michael Bytk, Vienna, Virginia, Court of Federal Claims Number 02–1433V
126. Cindy Alexander on behalf of Alton Alexander, Vienna, Virginia, Court of Federal Claims Number 02–1434V

127. Joseph Landy on behalf of Tyler Landy, Vienna, Virginia, Court of Federal Claims Number 02–1435V
128. Glenda Faye Mathes, Pella, Iowa, Court of Federal Claims Number 02–1436V
129. Dawn and Tony Turner on behalf of Austin Brady Turner, Dallas, Texas, Court of Federal Claims Number 02–1437V
130. Kathleen Caldwell on behalf of Scott Caldwell, Boston, Massachusetts, Court of Federal Claims Number 02–1438V
131. Marylou Plummer on behalf of Christopher Plummer, Boston, Massachusetts, Court of Federal Claims Number 02–1439V
132. Rebecca Carlson on behalf of Ethan Carlson, Boston, Massachusetts, Court of Federal Claims Number 02–1440V
133. Joshua Carter, Boston, Massachusetts, Court of Federal Claims Number 02–1441V
134. Amy Jones on behalf of Meghan Elizabeth Jones, Twin Falls, Idaho, Court of Federal Claims Number 02–1445V
135. Piedad Sanchez on behalf of Carlos Narjes, Orlando, Florida, Court of Federal Claims Number 02–1446V
136. Charlotte Cook on behalf of Kylah C. Cook, Alexandria, Virginia, Court of Federal Claims Number 02–1448V
137. Martha Bridges on behalf of Victoria Bridges, Alexandria, Virginia, Court of Federal Claims Number 02–1449V
138. Randy and Matthew Hutton on behalf of Billie K. Hutton, Alexandria, Virginia, Court of Federal Claims Number 02–1450V
139. Corkie and William Cline on behalf of Jared Cline, Alexandria, Virginia, Court of Federal Claims Number 02–1451V
140. Allison and David Bell on behalf of Aiden Bell, Salt Lake City, Utah, Court of Federal Claims Number 02–1452V
141. Jennifer and Gabriel Venuto on behalf of Tommy Venuto, Philadelphia, Pennsylvania, Court of Federal Claims Number 02–1453V
142. Linda and Robert Malecky on behalf of Margaret Malecky, Lansdale, Pennsylvania, Court of Federal Claims Number 02–1461V
143. Cynthia Sauer on behalf of Christopher Sauer, Vienna, Virginia, Court of Federal Claims Number 02–1464V
144. Willa Tyler on behalf of Jonathan Tyler, Vienna, Virginia, Court of Federal Claims Number 02–1465V
145. Terry and Jon Poling on behalf of Hannah Poling, Vienna, Virginia, Court of Federal Claims Number 02–1466V
146. Mark Friedman on behalf of Johnathan Friedman, Houston, Texas, Court of Federal Claims Number 02–1467V
147. Christina and Bruce Dowlen on behalf of Chase Dowlen, Melbourne, Florida, Court of Federal Claims Number 02–1468V
148. Barbara Russick on behalf of Alyssa Russick, Millville, New Jersey, Court of Federal Claims Number 02–1469V
149. Lisa and John Sportelli-Wright on behalf of Ean Sportelli-Wright, Dallas, Texas, Court of Federal Claims Number 02–1470V
150. Dorothy and Michael Marue on behalf of Paul Marue, Trenton, New Jersey, Court of Federal Claims Number 02–1471V
151. Donna and Earl Lewis on behalf of Logan Lewis, Baton Rouge, Louisiana, Court of Federal Claims Number 02–1473V
152. Cortney Elizabeth Goldberg on behalf of Jacob Nash Goldberg, Royal Oak, Michigan, Court of Federal Claims Number 02–1475V
153. Gene Velchek, Decatur, Illinois, Court of Federal Claims Number 02–1479V
154. Laurie Christiansen on behalf of Raymond Christiansen, Boston, Massachusetts, Court of Federal Claims Number 02–1480V
155. Laurie Christiansen on behalf of Matthew Christiansen, Boston, Massachusetts, Court of Federal Claims Number 02–1481V
156. Darlene Waters-D'India on behalf of Michael David D'India, Boston, Massachusetts, Court of Federal Claims Number 02–1482V
157. Marjorie Shulsinger on behalf of Rachel Shulsinger, Boston, Massachusetts, Court of Federal Claims Number 02–1483V
158. Jennifer Dick on behalf of Jared Dick, Boston, Massachusetts, Court of Federal Claims Number 02–1484V
159. Carrie Hammers on behalf of Ian Hammers, Boston, Massachusetts, Court of Federal Claims Number 02–1485V
160. Martha Anderson on behalf of Woodrow Pugh, Boston, Massachusetts, Court of Federal Claims Number 02–1486V
161. Jantha and Samuel Houston on behalf of Donald Gray Houston, Houston, Texas, Court of Federal Claims Number 02–1487V
162. Charlotte Kemper on behalf of Sullivan Kemper, Vienna, Virginia, Court of Federal Claims Number 02–1489V
163. Carolyn Reed, Vienna, Virginia, Court of Federal Claims Number 02–1490V
164. Michelle Howie on behalf of Kaleigh Briele Grimes, Vienna, Virginia, Court of Federal Claims Number 02–1491V
165. Sherry and Scott Pearson on behalf of Tristen Lloyd Pearson, Nacogdoches, Texas, Court of Federal Claims Number 02–1492V
166. Christine and Lee Kiester on behalf of Connor William Kiester, Roseburg, Oregon, Court of Federal Claims Number 02–1493V
167. Tracie McNeil on behalf of Jontrell Rayveen Pritchett, Flint, Michigan, Court of Federal Claims Number 02–1494V
168. Patricia and Don Adams on behalf of Christian Adrian Adams, Chula Vista, California, Court of Federal Claims Number 02–1495V
169. Lydia Lynk on behalf of Nailah Kyarah Lynk, Chicago, Illinois, Court of Federal Claims Number 02–1496V
170. Theresa Goosby and Michael Brickner on behalf of Mikel Eric Brickner, Coraopoloa, Pennsylvania, Court of Federal Claims Number 02–1497V
171. Gerri and Edward Graboski on behalf of Andrew Edward Graboski, Staten Island, New York, Court of Federal Claims Number 02–1501V
172. Carol and Greg Fuller on behalf of Blake Garrison Fuller, Cincinnati, Ohio, Court of Federal Claims Number 02–1502V
173. Patricia Noble on behalf of Zachary Noble, Boston, Massachusetts, Court of Federal Claims Number 02–1503V
174. La'Kesha Ray on behalf of Derrick Ray, Jr., Boston, Massachusetts, Court of Federal Claims Number 02–1504V
175. Alina White on behalf of Marquise White, Boston, Massachusetts, Court of Federal Claims Number 02–1505V
176. Cecilia Thompson on behalf of Sarah Thompson, Boston, Massachusetts, Court of Federal Claims Number 02–1506V
177. Alberto Espinosa on behalf of Christian Espinosa, Boston, Massachusetts, Court of Federal Claims Number 02–1507V
178. Kathleen Jurkowich on behalf of Austin Jurkowich, Boston, Massachusetts, Court of Federal Claims Number 02–1508V
179. Scott Carlson on behalf of Matthew Carlson, Boston, Massachusetts, Court of Federal Claims Number 02–1509V
180. Kimberly Haltom on behalf of Justin Haltom, Boston, Massachusetts, Court of Federal Claims Number 02–1510V
181. Monica Schons on behalf of Nicholas Schons, Boston, Massachusetts, Court of Federal Claims Number 02–1511V
182. Rasheeda McAllister on behalf of Braxton Alford, Charleston, South Carolina, Court of Federal Claims Number 02–1512V
183. Kelly Matthew and Nick Joseph on behalf of Bridgette Joseph, Melbourne, Florida, Court of Federal Claims Number 02–1513V
184. Clay Heighton and Debra Caudy on behalf of Jon Brigham Heighton, Dallas, Texas, Court of Federal Claims Number 02–1524V
185. Joanne Blair and Malae Pete on behalf of Malaetasi Sue-Sue Blair-Pete, San Pedro, California, Court of Federal Claims Number 02–1525V
186. Karen and David Smith on behalf of David Edward Smith, New Orleans, Louisiana, Court of Federal Claims Number 02–1526V
187. Marie and Ed Winegardner on behalf of Damon Edward Fuzz Winegardner, Logansport, Indiana, Court of Federal Claims Number 02–1527V
188. Frances and Ricky Peralta on behalf of Ricky Quitasol Peralta, San Diego, Carolina, Court of Federal Claims Number 02–1528V
189. Melissa Williams on behalf of Andrew Dante Williams, Selma, Alabama, Court of Federal Claims Number 02–1532V
190. Lea Bass on behalf of Augus Anthony Bass, Torrance, California, Court of Federal Claims Number 02–1533V
191. Janoah White on behalf of Marshawn Antonio Burrell, Chicago, Illinois, Court of Federal Claims Number 02–1534V
192. Linda Kaye Schiding on behalf of Anthony Joseph Thomas, Baltimore, Maryland, Court of Federal Claims Number 02–1535V
193. Eletha Eades on behalf of Nathan Kenneth Eades, Tonopah, Nevada, Court of Federal Claims Number 02–1536V
194. Barbara Ramirez on behalf of Katherine Ramirez, Yarmouth, Maine, Court of Federal Claims Number 02–1538V
195. Barbara Ramirez on behalf of Aaron Ramirez, Yarmouth, Maine, Court of Federal Claims Number 02–1539V
196. Debra and Richard Levinton on behalf of Molly Hannah Levinton, Sugar Land, Texas, Court of Federal Claims Number 02–1540V
197. Peggy and Timothy Casey on behalf of Jennifer Elise Casey, Hinsdale, Illinois, Court of Federal Claims Number 02–1541V
198. Betty and Leon Cooper on behalf of Tianna Latrice Cooper, Natchez,

Mississippi, Court of Federal Claims Number 02–1542V
199. Sonya and Fred Theilen on behalf of Anastasia Elizabeth Theilen, Springfield, Illinois, Court of Federal Claims Number 02–1543V
200. Rhonda and Lee Weber on behalf of Ryan Lee Weber, Frankfort, Kentucky, Court of Federal Claims Number 02–1544V
201. Mary and Jeff Dillard on behalf of Claudia Amanda Dillard, Birmingham, Alabama, Court of Federal Claims Number 02–1545V
202. Christine and Stephen Spanola on behalf of Joseph Spanola, Great Neck, New York, Court of Federal Claims Number 02–1547V
203. Deborah and Stephen Beroske on behalf of Kyle Beroske, Great Neck, New York, Court of Federal Claims Number 02–1548V
204. Meredith and Jeffrey Hess on behalf of Joshua Hess, Great Neck, New York, Court of Federal Claims Number 02–1549V
205. Elizabeth and Steven Parker on behalf of Kiera Parker, Melbourne, Florida, Court of Federal Claims Number 02–1553V
206. Jennifer Dixon on behalf of Parker Landon Dixon, Houston, Texas, Court of Federal Claims Number 02–1555V
207. Melinda and Geoffrey Alleyne on behalf of Joshua Alleyne, Houston, Texas, Court of Federal Claims Number 02–1556V
208. Joan M. Kelley on behalf of Ian Michael Pitcherello, Wilmington, Delaware, Court of Federal Claims Number 02–1557V
209. Deborah and Robert Edwards on behalf of Tyler Garrett Edwards, Mount Holly, New Jersey, Court of Federal Claims Number 02–1558V
210. Kerry and Adrian Kost on behalf of Brendan Patrick Kost, Palos Heights, Illinois, Court of Federal Claims Number 02–1559V
211. Robert Wooten on behalf of Nicholas Dale Wooten, Dallas, Texas, Court of Federal Claims Number 02–1560V
212. Delorise Lee Coleman on behalf of Reshawnda Denise Jenkins, Houston, Texas, Court of Federal Claims Number 02–1561V
213. Linda Lee Lewis on behalf of Cortney Danielle Quinn, Houston, Texas, Court of Federal Claims Number 02–1562V
214. Dekita R. Mays on behalf of T'Neesha Jsh'Leotishia Edwards, Houston, Texas, Court of Federal Claims Number 02–1563V
215. Dekita R. Mays on behalf of Kia Tyroneshia Mays, Houston, Texas, Court of Federal Claims Number 02–1564V
216. Viola P. McDonald on behalf of David McDonald, Jr., Houston, Texas, Court of Federal Claims Number 02–1565V
217. Viola P. McDonald on behalf of Randy McDonald, Houston, Texas, Court of Federal Claims Number 02–1566V
218. Polly Mealey on behalf of Renee Jones, Houston, Texas, Court of Federal Claims Number 02–1567V
219. Helen Quinn on behalf of Jahaquial Antonio Lambert, Houston, Texas, Court of Federal Claims Number 02–1568V
220. Marilyn Wilson on behalf of Samuel Israel Wilson, Houston, Texas, Court of Federal Claims Number 02–1569V
221. Lucy Woods on behalf of Joshua Woods, Houston, Texas, Court of Federal Claims Number 02–1570V
222. Jeanine Dillon on behalf of Janaca Dillon, Houston, Texas, Court of Federal Claims Number 02–1571V
223. Jeanine Dillon on behalf of Tra'Vione Bates, Houston, Texas, Court of Federal Claims Number 02–1572V
224. May Good on behalf of Devin Devinski Reshad Good, Houston, Texas, Court of Federal Claims Number 02–1573V
225. May Good on behalf of Kentadrin Shunntez Good, Houston, Texas, Court of Federal Claims Number 02–1574V
226. LaQuanda Lewis on behalf of MyKayla Ware, Houston, Texas, Court of Federal Claims Number 02–1575V
227. LaQuanda Lewis on behalf of Candi Me'Sha Ware, Houston, Texas, Court of Federal Claims Number 02–1576V
228. Phyllis Roby on behalf of Crisetta Renee Roby, Houston, Texas, Court of Federal Claims Number 02–1577V
229. Jessica Shannon on behalf of Tory Taquorin Shannon, Houston, Texas, Court of Federal Claims Number 02–1578V
230. Tyese Washington on behalf of Brandilyn Z. Page, Houston, Texas, Court of Federal Claims Number 02–1579V
231. Shelia Watson on behalf of Jamal Lee Watson, Houston, Texas, Court of Federal Claims Number 02–1580V
232. Linda Kay White on behalf of Darius Deon Duck, Houston, Texas, Court of Federal Claims Number 02–1581V
233. Annie Sanders on behalf of Alyssa Colette Mixon, Houston, Texas, Court of Federal Claims Number 02–1582V
234. Annie Sanders on behalf of Maurice Eugene Mixon, Houston, Texas, Court of Federal Claims Number 02–1583V
235. Annie Sanders on behalf of Mack Neese Sanders, III, Houston, Texas, Court of Federal Claims Number 02–1584V
236. Patricia Metcalf on behalf of Adrian Ryan Metcalf, Houston, Texas, Court of Federal Claims Number 02–1585V
237. Patricia Metcalf on behalf of Ruben Avery Metcalf, Houston, Texas, Court of Federal Claims Number 02–1586V
238. Antreinika Tenner on behalf of Aysia DeMonaye Tenner, Houston, Texas, Court of Federal Claims Number 02–1587V
239. Tangela Strong on behalf of Tiffany Andrea Lane, Houston, Texas, Court of Federal Claims Number 02–1588V
240. Detrossa Rule on behalf of Darrion DeVante" Rule, Houston, Texas, Court of Federal Claims Number 02–1589V
241. Sarah Patterson on behalf of Akili Patterson, Houston, Texas, Court of Federal Claims Number 02–1590V
242. Robin Chambliss on behalf of Calvin Chambliss, Jr., Houston, Texas, Court of Federal Claims Number 02–1591V
243. Jody and Alma Buck on behalf of Malcolm O'Tan Buck, Houston, Texas, Court of Federal Claims Number 02–1592V
244. Patricia Brown on behalf of Jerome D'Wayne Brown, Houston, Texas, Court of Federal Claims Number 02–1593V
245. Patricia Brown on behalf of Desmond Allen Brown, Houston, Texas, Court of Federal Claims Number 02–1594V
246. Edna Brown on behalf of Charles De'Angelo Brown, Houston, Texas, Court of Federal Claims Number 02–1595V
247. Felicia Banks on behalf of Frederick Felisco Van Norman, Houston, Texas, Court of Federal Claims Number 02–1596V
248. Lavonne M. Belton on behalf of Jimmie Lee Belton, Houston, Texas, Court of Federal Claims Number 02–1597V
249. Lavonne M. Belton on behalf of Rober Lee Belton, Jr., Houston, Texas, Court of Federal Claims Number 02–1598V
250. Erica Jones on behalf of Solomon John Ben Jones, Houston, Texas, Court of Federal Claims Number 02–1599V
251. Cora Haynes on behalf of Jadale Lamon Haynes, Houston, Texas, Court of Federal Claims Number 02–1600V
252. Cora Haynes on behalf of Jamel Antwan Haynes, Houston, Texas, Court of Federal Claims Number 02–1601V
253. Chandra Haggan on behalf of Shandarius Leron Haggan, Houston, Texas, Court of Federal Claims Number 02–1602V
254. Lakeisha Felder on behalf of Alphonse Nathan Rogers, Jr., Houston, Texas, Court of Federal Claims Number 02–1603V
255. Jennifer Edwards on behalf of Justin Johnvann Terry, Houston, Texas, Court of Federal Claims Number 02–1604V
256. Marilyn Davis on behalf of Javonte' Da Juan Nelson, Houston, Texas, Court of Federal Claims Number 02–1605V
257. Carolyn Davillier on behalf of Melvin Davillier, Houston, Texas, Court of Federal Claims Number 02–1606V
258. Galaundra Myles on behalf of Jeremy Dawayne Miles, Houston, Texas, Court of Federal Claims Number 02–1607V
259. Heather Berg on behalf of Ysanna P. Jones, Alexandria, Virginia, Court of Federal Claims Number 02–1608V
260. Marcella and Devonna Herbert on behalf of Van Herbert, Alexandria, Virginia, Court of Federal Claims Number 02–1609V
261. Kimberly and Richard Cullen on behalf of Liam H. Cullen, Melbourne, Florida, Court of Federal Claims Number 02–1610V
262. Kimberly and Richard Cullen on behalf of Sean R. Cullen, Melbourne, Florida, Court of Federal Claims Number 02–1611V
263. Liquan Wang and Jianqiang Mao on behalf of Jeff Mao, Great Neck, New York, Court of Federal Claims Number 02–1612V
264. Kelly and Timothy Lucas on behalf of Abigale Lucas, Great Neck, New York, Court of Federal Claims Number 02–1613V
265. Teresa and David Barschi on behalf of Andre Barschi, Great Neck, New York, Court of Federal Claims Number 02–1614V
266. Randy Lockhart on behalf of Noah Lockhart, Great Neck, New York, Court of Federal Claims Number 02–1615V
267. Terry Donner and Michael Small on behalf of Ian Michael Small, Great Neck, New York, Court of Federal Claims Number 02–1616V
268. Kim Kassick on behalf of Kody Kassick, Great Neck, New York, Court of Federal Claims Number 02–1617V
269. Mary Landis on behalf of Andrew Valenta, Encinitas, California, Court of Federal Claims Number 02–1618V
270. Bradley Hall, Mesa, Arizona, Court of Federal Claims Number 02–1626V
271. Christopher Sabella, Voorhees, New Jersey, Court of Federal Claims Number 02–1627V
272. Cindy and Brad Canfield on behalf of Theodore Canfield, Nashua, New Hampshire, Court of Federal Claims Number 02–1629V
273. Darsky McMorris on behalf of Kayla Alice McMorris, Houston, Texas, Court of Federal Claims Number 02–1633V
274. Pauline Cooley on behalf of Jermaine Jerome Cooley, Jr., Houston, Texas, Court of Federal Claims Number 02–1634V
275. Helen Hicks on behalf of Alexandria D. Hicks, Houston, Texas, Court of Federal Claims Number 02–1635V
276. Letticia Lockhart on behalf of Nathaniel Lockhart, Houston, Texas, Court of Federal Claims Number 02–1636V
277. Teresa Minton on behalf of Earvin Jerome Minton, Jr., Houston, Texas, Court of Federal Claims Number 02–1637V
278. Kaura Perkins on behalf of La'Jerrious Perkins, Houston, Texas, Court of Federal Claims Number 02–1638V
279. Charmaine O'Bryant on behalf of Ben Edward Varnado, Houston, Texas, Court of Federal Claims Number 02–1639V
280. Sharon Reed on behalf of Trevor Anthony Reed, Houston, Texas, Court of Federal Claims Number 02–1640V
281. Carla Wallace on behalf of A'Ja Wallace, Houston, Texas, Court of Federal Claims Number 02–1641V
282. Shalottie Reynolds on behalf of Michael Anthony Fort, Jr., Houston, Texas, Court of Federal Claims Number 02–1642V
283. Rozella Webb on behalf of Cadarrious Hodges, Houston, Texas, Court of Federal Claims Number 02–1643V
284. Maple Campbell on behalf of Jamie Gilson, Houston, Texas, Court of Federal Claims Number 02–1644V
285. Lori and Jeffrey Bradstreet on behalf of Matthew James Bradstreet, Melbourne, Florida, Court of Federal Claims Number 02–1645V
286. Suzanne and Russell Pieper on behalf of Sean Pieper, Melbourne, Florida, Court of Federal Claims Number 02–1646V
287. Lori and Jeffrey Bradstreet on behalf of Elizabeth Bradstreet, Melbourne, Florida, Court of Federal Claims Number 02–1647V
288. Alison and Daniel Bushnell on behalf of Joshua Bushnell, Auburn, Massachusetts, Court of Federal Claims Number 02–1648V
289. Natasha and John Hooks on behalf of Nijah Shemar Hooks, Hammond, Louisiana, Court of Federal Claims Number 02–1649V
290. Meri and Shawn Kelly on behalf of Daniel Laurnece Kelly, Whitestone, New York, Court of Federal Claims Number 02–1650V
291. Elizabeth and Robert Davis on behalf of Brandon Taylor Davis, Glendale, California, Court of Federal Claims Number 02–1651V
292. Bridgette and Stephen Hernandez on behalf of Stephen Matthew Hernandez, Gilbert, Arizona, Court of Federal Claims Number 02–1652V
293. Aimee and John Lewis on behalf of Brandon Thomas Lewis, Ridley Park, Pennsylvania, Court of Federal Claims Number 02–1653V
294. Julie and David Baskin on behalf of Danielle Alise Baskin, Houston, Texas, Court of Federal Claims Number 02–1654V
295. Kelly and Peter Brush on behalf of Peter James Brush, Harve De Grace, Maryland, Court of Federal Claims Number 02–1655V
296. Traci and Rodney Miller on behalf of Sydney Paige Miller, Latrobe, Pennsylvania, Court of Federal Claims Number 02–1656V
297. Jennifer and Kenneth Bartels on behalf of Jeremy Curtis Bartels, Neenah, Wisconsin, Court of Federal Claims Number 02–1657V
298. Jennifer and Kenneth Bartels on behalf of Joshua Aaron Bartels, Neenah, Wisconsin, Court of Federal Claims Number 02–1658V
299. Kimberly and Orville Baumgardner on behalf of Alexander Michael Baumgardner, Portland, Oregon, Court of Federal Claims Number 02–1659V
300. Catherine and Peter Marasco on behalf of Thomas Marasco, New York, New York, Court of Federal Claims Number 02–1660V
301. Donna and Elias Hourani on behalf of Stefan E. Hourani, Melbourne, Florida, Court of Federal Claims Number 02–1662V
302. Alfred Lonky, Bayside, New York, Court of Federal Claims Number 02–1663V
303. Jo Ann and Nicholas Stadtmueller on behalf of Mark Stadtmueller, Vienna, Virginia, Court of Federal Claims Number 02–1665V
304. Ben Radecky, Vienna, Virginia, Court of Federal Claims Number 02–1666V
305. Jillian and Scott Copeland on behalf of Nicolas Copeland, Vienna, Virginia, Court of Federal Claims Number 02–1667V
306. Haidee and Carl DeRouen on behalf of Isabella DeRouen, Cape Girardeau, Missouri, Court of Federal Claims Number 02–1668V
307. Connie Hudson on behalf of Adam Ebinger, Cape Girardeau, Missouri, Court of Federal Claims Number 02–1669V
308. Carrie and Clint Harlan on behalf of Hunter Harlan, Cape Girardeau, Missouri, Court of Federal Claims Number 02–1670V
309. Carola and Herman Bernard on behalf of Reginald L. Bernard, New Orleans, Louisiana, Court of Federal Claims Number 02–1672V
310. Ellen Schneider and Samuel Alexander on behalf of Benjamin D. Alexander, New Orleans, Louisiana, Court of Federal Claims Number 02–1673V
311. Georgia and Freddie Anderson on behalf of Robert Thomas-Anderson, New Orleans, Louisiana, Court of Federal Claims Number 02–1674V
312. Melissa McGrew and Larry Blackwell on behalf of Martin F. Blackwell, New Orleans, Louisiana, Court of Federal Claims Number 02–1675V
313. Chundra and Oscar Blakely on behalf of Ryan B. Blakely, New Orleans, Louisiana, Court of Federal Claims Number 02–1676V
314. Camilla and Gary Brown on behalf of Justin F. Brown, New Orleans, Louisiana, Court of Federal Claims Number 02–1677V
315. Allyson and Bryan Collins on behalf of Zachary W. Collins, New Orleans, Louisiana, Court of Federal Claims Number 02–1678V
316. Sherry and C.A. Cook on behalf of Darron A. Cook, New Orleans, Louisiana, Court of Federal Claims Number 02–1679V
317. Beverly and Jules Cousin on behalf of Evan C. Cousin, New Orleans, Louisiana, Court of Federal Claims Number 02–1680V
318. Cheryl and David Cutler on behalf of Jeremiah S. Cutler, New Orleans, Louisiana, Court of Federal Claims Number 02–1681V
319. Maurica Johnson and Lee Dickey on behalf of Demarkus Dickey, New Orleans, Louisiana, Court of Federal Claims Number 02–1682V
320. Sonja and Tony Flournoy on behalf of Tony K. Flournoy, Jr., New Orleans, Louisiana, Court of Federal Claims Number 02–1683V
321. Sue Ann and David Forbat on behalf of Luke E. Forbat, New Orleans, Louisiana, Court of Federal Claims Number 02–1684V
322. Connie and John Gamberi on behalf of John A. Gamberi, Jr., New Orleans, Louisiana, Court of Federal Claims Number 02–1685V
323. Gena Adams on behalf of Christopher T. Glover, New Orleans, Louisiana, Court of Federal Claims Number 02–1686V
324. Carolyn and Elton Green on behalf of Michael Green, New Orleans, Louisiana, Court of Federal Claims Number 02–1687V
325. Mary Jane and Scott Guidry on behalf of William Hunt Guidry, New Orleans, Louisiana, Court of Federal Claims Number 02–1688V
326. Wendy and Dustin Hilton on behalf of Hannah Hilton, New Orleans, Louisiana, Court of Federal Claims Number 02–1689V
327. Michelle Stewart Holloway on behalf of Arnissa Lachell Holloway, New Orleans, Louisiana, Court of Federal Claims Number 02–1690V
328. Jaquary Jackson on behalf of Kheirin Jackson, New Orleans, Louisiana, Court of Federal Claims Number 02–1691V
329. Laurie and Mark Klinedinst on behalf of Kelsey F. Klinedinst, New Orleans, Louisiana, Court of Federal Claims Number 02–1692V
330. Shirley Lacey on behalf of Ahkeem Lacey, New Orleans, Louisiana, Court of Federal Claims Number 02–1693V
331. Kristi Lee on behalf of Justin Samuel, New Orleans, Louisiana, Court of Federal Claims Number 02–1694V
332. Catherine and Kenneth Montz on behalf of Seth J. Montz, New Orleans, Louisiana, Court of Federal Claims Number 02–1695V
333. Teri and Tracy Pitts on behalf of Jerod A. Pitts, New Orleans, Louisiana, Court of Federal Claims Number 02–1696V
334. Brandi Poteat on behalf of Ethan Poteat, New Orleans, Louisiana, Court of Federal Claims Number 02–1697V
335. Victoria and Kelvin Samuel on behalf of Karnisha L. Samuel, New Orleans, Louisiana, Court of Federal Claims Number 02–1698V
336. Dianna Lyn Schumacher, New Orleans, Louisiana, Court of Federal Claims Number 02–1699V
337. Annette and John Stewart on behalf of Ian E. Stewart, New Orleans, Louisiana, Court of Federal Claims Number 02–1700V
338. Vanessa and Sherman Thomas on behalf of Sherman A. Thomas, Jr., New Orleans, Louisiana, Court of Federal Claims Number 02–1701V
339. Jennifer and James Toombs on behalf of Jacob M. Toombs, New Orleans, Louisiana, Court of Federal Claims Number 02–1702V
340. Lauren and David Underwood on behalf of Rachael H. Underwood, New Orleans, Louisiana, Court of Federal Claims Number 02–1703V

341. Donna and Thomas Williams on behalf of Dylan R. Williams, New Orleans, Louisiana, Court of Federal Claims Number 02–1704V
342. Shawanda and Theodore Williams on behalf of Elijah Williams, New Orleans, Louisiana, Court of Federal Claims Number 02–1705V
343. Shawanda and Theodore Williams on behalf of Jeremy Williams, New Orleans, Louisiana, Court of Federal Claims Number 02–1706V
344. Julie and James Christiansen on behalf of Karissa Joann Christiansen, Temecula, California, Court of Federal Claims Number 02–1707V
345. Tony Vi and Thuy Hunyh on behalf of Brandon Vi, Temecula, California, Court of Federal Claims Number 02–1708V
346. Michelle and Harold Hannon on behalf of Christian Hannon, Temecula, California, Court of Federal Claims Number 02–1709V
347. Monica and Scott Mattias on behalf of Alexander Scott Mattias, Temecula, California, Court of Federal Claims Number 02–1710V
348. Charleyne Stumpf on behalf of Kyle William Stumpf, Chelmsford, Massachusetts, Court of Federal Claims Number 02–1711V
349. Alton Alexander on behalf of Alton Aaron Alexander, Tyler, Texas, Court of Federal Claims Number 02–1712V
350. Ann-Marie and Patrick Growe on behalf of Danile Growe, Minneapolis, Minnesota, Court of Federal Claims Number 02–1713V
351. Kelly and Richard Kerns on behalf of Kayle Kerns, Olathe, Kansas, Court of Federal Claims Number 02–1714V
352. Kelly and Richard Kerns on behalf of Daniel Kerns, Olathe, Kansas, Court of Federal Claims Number 02–1715V
353. Janel McGrath on behalf of Amanda McGrath, Portland, Oregon, Court of Federal Claims Number 02–1716V
354. Cindy Nix on behalf of Garrett Nix, Portland, Oregon, Court of Federal Claims Number 02–1717V
355. Julia Oh on behalf of Brayden Oh, Portland, Oregon, Court of Federal Claims Number 02–1718V
356. Christine Roberts on behalf of Carl Roberts, Portland, Oregon, Court of Federal Claims Number 02–1719V
357. Andrea Sovern on behalf of Kolin Sovern, Portland, Oregon, Court of Federal Claims Number 02–1720V
358. Karen and Christopher Stanley on behalf of Heath Stanley, Portland, Oregon, Court of Federal Claims Number 02–1721V
359. Rachel Kirk on behalf of Deven Kirk, Portland, Oregon, Court of Federal Claims Number 02–1722V
360. Angela Bliss-Chavelas on behalf of Alexander Chavelas, Portland, Oregon, Court of Federal Claims Number 02–1723V
361. Kemberlya Finnie on behalf of Sha Quana Finnie, Portland, Oregon, Court of Federal Claims Number 02–1724V
362. Tracey Imper on behalf of Jadin Imper, Portland, Oregon, Court of Federal Claims Number 02–1725V
363. Bree Lyn Lewis on behalf of Hope Lewis, Portland, Oregon, Court of Federal Claims Number 02–1726V
364. Jonathan Mahurin on behalf of Tristan Mahurin, Portland, Oregon, Court of Federal Claims Number 02–1727V
365. Sha and Jason Hurst on behalf of Hannah Hurst, Birmingham, Alabama, Court of Federal Claims Number 02–1732V
366. Terri Nagel on behalf of Ethan Nathan McCabe, Great Neck, New York, Court of Federal Claims Number 02–1733V
367. Kelly and Bradley King on behalf of Sean King, Great Neck, New York, Court of Federal Claims Number 02–1734V
368. Joanne and Gregory Killiam on behalf of Zackery S. Killiam, Great Neck, New York, Court of Federal Claims Number 02–1735V
369. Cindy and Jason Kifer on behalf of Austin Kifer, Great Neck, New York, Court of Federal Claims Number 02–1736V
370. Michele and Vincent Lovenduski on behalf of Austin Lovenduski, Great Neck, New York, Court of Federal Claims Number 02–1737V
371. Kim Lampp on behalf of Joseph R. Lampp, Great Neck, New York, Court of Federal Claims Number 02–1738V
372. Dale Norman on behalf of Alexander Norman, Boston, Massachusetts, Court of Federal Claims Number 02–1739V
373. Benjamin Blood on behalf of Paul Blood, Boston, Massachusetts, Court of Federal Claims Number 02–1740V
374. Vincent Fusco on behalf of Vincent A. Fusco, Boston, Massachusetts, Court of Federal Claims Number 02–1741V
375. Nathaniel Brogan-Kim on behalf of Paul Kim, Boston, Massachusetts, Court of Federal Claims Number 02–1742V
376. Lori Matula on behalf of Paul Matula, Arlington Heights, Illinois, Court of Federal Claims Number 02–1743V
377. Donna Manente on behalf of Mélanie Manente, Vienna, Virginia, Court of Federal Claims Number 02–1746V
378. Donna Manente on behalf of Michael Manente, Vienna, Virginia, Court of Federal Claims Number 02–1747V
379. Julie and Seth Hemingway on behalf of Colter Hemingway, Vienna, Virginia, Court of Federal Claims Number 02–1748V
380. Kelly and Richard Kerns on behalf of Andrew Kerns, Olathe, Kansas, Court of Federal Claims Number 02–1749V
381. Jinger Rosalez-Fergus on behalf of Charles Fergus, Boston, Massachusetts, Court of Federal Claims Number 02–1750V
382. Shelley Woodard on behalf of Dylan Hunt, Boston, Massachusetts, Court of Federal Claims Number 02–1751V
383. Sandra Cuevas on behalf of Jacob Cuevas, Boston, Massachusetts, Court of Federal Claims Number 02–1752V
384. Margaret Simms on behalf of Joshua Simms, Boston, Massachusetts, Court of Federal Claims Number 02–1753V
385. Ursula Zettlemoyer on behalf of Melanie Zettlemoyer, Boston, Massachusetts, Court of Federal Claims Number 02–1754V
386. Toby Gregory on behalf of Jonathan Dean Gregory, Boston, Massachusetts, Court of Federal Claims Number 02–1755V
387. Mary Wallace on behalf of Grant Wallace, Boston, Massachusetts, Court of Federal Claims Number 02–1756V
388. Gabriele Sausnock on behalf of Joseph Brady, IV, Boston, Massachusetts, Court of Federal Claims Number 02–1757V
389. Richard A. Diamond on behalf of Richard F. Diamond, Boston, Massachusetts, Court of Federal Claims Number 02–1758V
390. Irene Sturgeon on behalf of Jacob Sturgeon, Boston, Massachusetts, Court of Federal Claims Number 02–1759V
391. Kay and Thomas Dykes on behalf of Thomas Dykes, Jr., Houston, Texas, Court of Federal Claims Number 02–1760V
392. Jacquelyn Wilkerson and Scott Shirley on behalf of Jordan Shirley, Houston, Texas, Court of Federal Claims Number 02–1761V
393. Martin O'Brien and Jacqueline Mooney O'Brien on behalf of Kevin O'Brien, Houston, Texas, Court of Federal Claims Number 02–1762V
394. Cheryl and Donald Bondank on behalf of Gunnar H. Bondank, Houston, Texas, Court of Federal Claims Number 02–1763V
395. Ilene and Thomas Bassler on behalf of Daniel Bassler, Great Neck, New York, Court of Federal Claims Number 02–1764V
396. Carmen and Craig Carley on behalf of Collin Seamus Carley, Dallas, Texas, Court of Federal Claims Number 02–1765V
397. Jennifer and Scott Kincaid on behalf of Lauren Kincaid, Lewisville, Texas, Court of Federal Claims Number 02–1766V
398. Cathy Dean, Lyburn, West Virginia, Court of Federal Claims Number 02–1769V
399. Lisa and Michael Fesanco on behalf of Michael John Fesanco, North Miami, Florida, Court of Federal Claims Number 02–1770V
400. Adraine and David Kerns on behalf of Christopher Wayne Kerns, Richmond, Virginia, Court of Federal Claims Number 02–1771V
401. Kim and Paul Morel on behalf of Brittany Mashell Morel, Milton, Florida, Court of Federal Claims Number 02–1772V
402. Edward Page, Sr. on behalf of Florence Page, Deceased, Boston, Massachusetts, Court of Federal Claims Number 02–1774V
403. Barbara Hall on behalf of Dennis Culbert, Houston, Texas, Court of Federal Claims Number 02–1775V
404. Kenyada Snell on behalf of Cedarrious Dunmore, Houston, Texas, Court of Federal Claims Number 02–1776V
405. Lisa Jackson on behalf of Sabrina Jackson, Houston, Texas, Court of Federal Claims Number 02–1777V
406. Shamarion Jones on behalf of Ronald Williams, Jr., Houston, Texas, Court of Federal Claims Number 02–1778V
407. Yakima Thomas on behalf of Anfernee Thomas, Hotston, Texas, Court of Federal Claims Number 02–1779V
408. Brenda White on behalf of Steven White, Houston, Texas, Court of Federal Claims Number 02–1780V
409. Cathy Hedrick on behalf of Jayce Hedrick, Houston, Texas, Court of Federal Claims Number 02–1781V
410. Cathy Hedrick on behalf of Marvin Hedrick, Houston, Texas, Court of Federal Claims Number 02–1782V
411. Lynda Green on behalf of Anthony Dean, Jr., Houston, Texas, Court of Federal Claims Number 02–1783V
412. Victoria Andrews on behalf of Orry Andrews, Houston, Texas, Court of Federal Claims Number 02–1784V

413. Penny Taylor on behalf of Brianna Ainsworth, Houston, Texas, Court of Federal Claims Number 02–1785V
414. Steven Gretchko on behalf of Benjamin Gretchko, Birmingham, Michigan, Court of Federal Claims Number 02–1788V
415. Kathleen and Jordan Vickers on behalf of Jordan Vickers, Jr., Houston, Texas, Court of Federal Claims Number 02–1789V
416. Renee and James Stepnoski on behalf of Tyler Stepnoski, Houston, Texas, Court of Federal Claims Number 02–1790V
417. Carol and Ken Stanton on behalf of Krystal L. Stanton, Houston, Texas, Court of Federal Claims Number 02–1791V
418. Pattie and Galen Gamble on behalf of Garet E. Bamble, Houston, Texas, Court of Federal Claims Number 02–1792V
419. Melanie G. Mulderig on behalf of Nicholas J. Mulderig, Alexandria, Virginia, Court of Federal Claims Number 02–1793V
420. Karen Harbin on behalf of Ryka Nicole Harbin, Deceased, Gurly, Alabama, Court of Federal Claims Number 02–1794V
421. Katheryn and Timothy Hartigan on behalf of Conner M. Hardigan, Melbourne, Florida, Court of Federal Claims Number 02–1796V
422. Beth and Bill Wilson on behalf of Mitchell Wilson, Deceased, Los Gatos, California, Court of Federal Claims Number 02–1797V
423. Angela and Renato Spennato on behalf of Gennaro Spennato, Great Neck, New York, Court of Federal Claims Number 02–1798V
424. Cherie and Richard Gates on behalf of Riyo Gates, Great Neck, New York, Court of Federal Claims Number 02–1799V
425. Elaine Sorenson on behalf of Eldon Sorenson, Portland, Oregon, Court of Federal Claims Number 02–1800V
426. Kimberly Ngo on behalf of Joan Ngo, Portland, Oregon, Court of Federal Claims Number 02–1801V
427. Melissa Hicks on behalf of Liberty Hicks, Portland, Oregon, Court of Federal Claims Number 02–1802V
428. Darren Lamar Cooks on behalf of Jason Lawrence Cooks, Tyler, Texas, Court of Federal Claims Number 02–1803V
429. Helen Vaglia on behalf of Dean Vaglia, Boston, Massachusetts, Court of Federal Claims Number 02–1804V
430. Denise and Michael Carrillo on behalf of Matthew Carrillo, Chicago, Illinois, Court of Federal Claims Number 02–1805V
431. Julie and Mark Murtagh on behalf of Mark G. Murtagh, III, Alexandria, Virginia, Court of Federal Claims Number 02–1806V
432. Shirley Cruel on behalf of Carlos Anderson, Houston, Texas, Court of Federal Claims Number 02–1808V
433. Yulunda Henry-Lacking on behalf of Kevonte Henry, Houston, Texas, Court of Federal Claims Number 02–1809V
434. Sharon Kaho on behalf of Joseph Knight, Jr., Houston, Texas, Court of Federal Claims Number 02–1810V
435. Sharon Kaho on behalf of Joshua Knight, Houston, Texas, Court of Federal Claims Number 02–1811V
436. Bessie DuVaul on behalf of JaJuan DeVaul, Houston, Texas, Court of Federal Claims Number 02–1812V
437. Nicole Freeman on behalf of Shukeven Freeman, Houston, Texas, Court of Federal Claims Number 02–1813V
438. Michael Goff on behalf of Maegan Goff, Houston, Texas, Court of Federal Claims Number 02–1814V
439. Michelle Wilson on behalf of Rodreckos Hill, Houston, Texas, Court of Federal Claims Number 02–1815V
440. Michelle Wilson on behalf of James Hill, Houston, Texas, Court of Federal Claims Number 02–1816V
441. Margie January on behalf of Elmo January, Houston, Texas, Court of Federal Claims Number 02–1817V
442. Dorothy Green on behalf of Earl Manning, Jr., Houston, Texas, Court of Federal Claims Number 02–1818V
443. Connie Thomas on behalf of Cordrion Tucker, Houston, Texas, Court of Federal Claims Number 02–1819V
444. Barbara Wells-Henry on behalf of Quatavieus Wells, Houston, Texas, Court of Federal Claims Number 02–1820V
445. Catherine and Jared Cook on behalf of McCrae Cook, Melbourne, Florida, Court of Federal Claims Number 02–1821V
446. Patricia and Brett Brenner on behalf of Bradley Brenner, Melbourne, Florida, Court of Federal Claims Number 02–1822V
447. Virginia and Robin Conner on behalf of Matthew R. Conner, Melbourne, Florida, Court of Federal Claims Number 02–1823V
448. Kimberly and James Barry on behalf of Shawn P. Barry, Melbourne, Florida, Court of Federal Claims Number 02–1824V
449. Susan and Jimmy Carr on behalf of Daniel V. Carr, Panama City Beach, Florida, Court of Federal Claims Number 02–1825V
450. Laurey Tedeschi on behalf of Jagger Thomas Geroge-Tedeschi, Dallas, Texas, Court of Federal Claims Number 02–1826V
451. Sandra Daneri on behalf of Erik Daneri, Harvest, Alabama, Court of Federal Claims Number 02–1831V
452. Elizabeth and Steven Skovron on behalf of Quinn Philip Skovron, Philadelphia, Pennsylvania, Court of Federal Claims Number 02–1832V
453. Atoya Moses on behalf of Gadarius Gavon Russell, Dallas, Texas, Court of Federal Claims Number 02–1833V
454. Gregory Newman on behalf of Benjamin Lawrence Newman, Ridgeland, Mississippi, Court of Federal Claims Number 02–1834V
455. Kathren Pigg-Kelly on behalf of Jason Mark Kelly, Petal, Mississippi, Court of Federal Claims Number 02–1835V,
456. Billy Gresham on behalf of Joshua Gresham, Jackson, Mississippi, Court of Federal Claims Number 02–1836V
457. Nina Del Rio on behalf of Rachel Renee Del Rio, Jackson, Mississippi, Court of Federal Claims Number 02–1837V
458. Jornella M. Hattix on behalf of Ladasia N. Brown, Jackson, Mississippi, Court of Federal Claims Number 02–1838V
459. Melanie Yelverton on behalf of Jasmine Hope Abel, Jackson, Mississippi, Court of Federal Claims Number 02–1839V
460. James E. Nicholson on behalf of Jeremy Clydell Nicholson, Jackson, Mississippi, Court of Federal Claims Number 02–1840V
461. Kacey Black Burgess on behalf of Maxwell Parker Lee Burgess, Jackson, Mississippi, Court of Federal Claims Number 02–1841V
462. Sylvia Brown on behalf of Jasmine Racquel Brown, Mesquite, Texas, Court of Federal Claims Number 02–1842V
463. Rosa E. Douglas on behalf of John William Douglas, El Paso, Texas, Court of Federal Claims Number 02–1843V
464. Krissy J. Fagan on behalf of Bradley Kole Fagan, Arlington, Texas, Court of Federal Claims Number 02–1844V
465. Rhonda L. Jones on behalf of Kristin M. Jones, Beaumont, Texas, Court of Federal Claims Number 02–1845V
466. Lilly Martinez Davila on behalf of Adrian Andrew Martinez, El Paso, Texas, Court of Federal Claims Number 02–1846V
467. Joel Salas, Sr. on behalf of Joel Salas, Jr., Dallas, Texas, Court of Federal Claims Number 02–1847V
468. Bennetta Chiles on behalf of Toni Chiles, Arlington, Texas, Court of Federal Claims Number 02–1848V
469. Gricelda Gonzalez on behalf of Evelyn S. Uvalle, Dallas, Texas, Court of Federal Claims Number 02–1849V
470. Gricelda Gonzalez on behalf of Rolando Uvalle, Dallas, Texas, Court of Federal Claims Number 02–1850V
471. Cheryl Karns on behalf of Scott David Karns, Tyler, Texas, Court of Federal Claims Number 02–1852V
472. Patricia Demoville on behalf of Dakota Lee Demoville, Tyler, Texas, Court of Federal Claims Number 02–1853V
473. Sherry Pearson on behalf of Tristen Lloyd Pearson, Tyler, Texas, Court of Federal Claims Number 02–1857V
474. Annette Lagan on behalf of Bryan Lagan, Vienna, Virginia, Court of Federal Claims Number 02–1858V
475. Monica and Matthew White on behalf of Kendrick White, Richmond, Virginia, Court of Federal Claims Number 02–1859V
476. Rosemary and Joel Walker on behalf of Benjamin Walker, Salisbury, North Carolina, Court of Federal Claims Number 02–1860V
477. Brandi Lewellyn on behalf of Brandon Pressler, Salisbury, North Carolina, Court of Federal Claims Number 02–1861V
478. Luann and Kent McIver on behalf of David McIver, Salisbury, North Carolina, Court of Federal Claims Number 02–1862V
479. Luann and Kent McIver on behalf of Eric McIver, Salisbury, North Carolina, Court of Federal Claims Number 02–1863V
480. Amy and Vernon Marion on behalf of Nicholas Chase Marion, Salisbury, North Carolina, Court of Federal Claims Number 02–1864V
481. Cynthia Davis on behalf of Zachary Davis, Salisbury, North Carolina, Court of Federal Claims Number 02–1865V
482. Kasandra Adams on behalf of Terrence Adams, Jr., Houston, Texas, Court of Federal Claims Number 02–1866V
483. Sheila Lumpkin on behalf of Eliezer Beamen, Houston, Texas, Court of Federal Claims Number 02–1867V
484. Lavena Williams on behalf of Eddronica Williams, Houston, Texas, Court of Federal Claims Number 02–1868V
485. Thelma Wilson on behalf of Richandra Thomas, Houston, Texas, Court of Federal Claims Number 02–1869V

486. Supermia Shannon on behalf of Stanton Scott, Jr., Houston, Texas, Court of Federal Claims Number 02–1870V
487. Sherry Luss on behalf of Martin Robertson, Houston, Texas, Court of Federal Claims Number 02–1871V
488. Belinda Flowers on behalf of Eugena Grisby, Houston, Texas, Court of Federal Claims Number 02–1872V
489. Valerie Shropshire on behalf of Israel Smith, Houston, Texas, Court of Federal Claims Number 02–1873V
490. Stephanie and Eric Roan on behalf of Ashley E. Roan, Houston, Texas, Court of Federal Claims Number 02–1874V
491. Cindy and William Van Lammeren on behalf of John Van Lammeren, Houston, Texas, Court of Federal Claims Number 02–1875V
492. Angela and Joseph Rockhold on behalf of Trayven Rockhold, Houston, Texas, Court of Federal Claims Number 02–1876V
493. Jennifer and Kevin Teague on behalf of Tristan R. Teague, Houston, Texas, Court of Federal Claims Number 02–1877V
494. Cindy and William Van Lammeren on behalf of Hannah Van Lammeren, Houston, Texas, Court of Federal Claims Number 02–1878V
495. Marlene Sirianno on behalf of Matthew Ryan Sirianno, Hamburg, New York, Court of Federal Claims Number 02–1879V
496. Connie Parish on behalf of Crystal Marian Parrish, Tyler, Texas, Court of Federal Claims Number 02–1880V
497. Nadia Keyes on behalf of Keith DiMauni London, Tyler, Texas, Court of Federal Claims Number 02–1881V
498. Frances Dinkins on behalf of Blake Turner Dinkins, Tyler, Texas, Court of Federal Claims Number 02–1882V
499. Jeannette Ortiz Quintero on behalf of Armando Quintero, Boston, Massachusetts, Court of Federal Claims Number 02–1883V
500. Philip Lanzatella on behalf of Philip J. Lanzatella, III, Boston, Massachusetts, Court of Federal Claims Number 02–1884V
501. Susan Cottingham on behalf of Meagan Cottingham, Boston, Massachusetts, Court of Federal Claims Number 02–1885V
502. Rita Black on behalf of Harmon Black, Boston, Massachusetts, Court of Federal Claims Number 02–1886V
503. Michael Farquhar on behalf of Katelyn Farquhar, Boston, Massachusetts, Court of Federal Claims Number 02–1887V
504. Rosemarie Scott on behalf of Clarita Faith Scott, Boston, Massachusetts, Court of Federal Claims Number 02–1888V
505. Thomas Marateo on behalf of Nicholas Marateo, Boston, Massachusetts, Court of Federal Claims Number 02–1889V
506. Donna Knepple on behalf of Taylor Knepple, Boston, Massachusetts, Court of Federal Claims Number 02–1890V
507. Brian Aaron on behalf of Liam Aaron, Boston, Massachusetts, Court of Federal Claims Number 02–1891V
508. Patricia and Kyle Sonnier on behalf of Benjamin Sonnier, Baton Rouge, Louisiana, Court of Federal Claims Number 02–1892V
509. Laura and Jay Stutz on behalf of Jeremy Stutz, New York, New York, Court of Federal Claims Number 02–1893V
510. Cheryl Hammonds on behalf of Myles Hammonds, Alexandria, Virginia, Court of Federal Claims Number 02–1898V
511. Misti McGill on behalf of Patric Conner, Boston, Massachusetts, Court of Federal Claims Number 02–1899V
512. Barbara Fortin on behalf of Kelly Fortin, Boston, Massachusetts, Court of Federal Claims Number 02–1900V
513. Amy Pressley on behalf of Tyler Pressley, Boston, Massachusetts, Court of Federal Claims Number 02–1901V
514. Stephen Osmon on behalf of Grant Osmon, Boston, Massachusetts, Court of Federal Claims Number 02–1902V
515. Marie Graves on behalf of Joshua Graves, Boston, Massachusetts, Court of Federal Claims Number 02–1903V
516. Cynthia Rosas on behalf of Tyler Santana, Boston, Massachusetts, Court of Federal Claims Number 02–1904V
517. Tracy Yale on behalf of Richard Logan Yale, Boston, Massachusetts, Court of Federal Claims Number 02–1905V
518. James Novorr on behalf of Jacob Novorr, Boston, Massachusetts, Court of Federal Claims Number 02–1906V
519. Melissa Coleman on behalf of Brendon King, Brockton, Massachusetts, Court of Federal Claims Number 02–1907V
520. Michelle and David Lane on behalf of Aaron Keith Lane, Dallas, Texas, Court of Federal Claims Number 02–1910V
521. Debra Abbott on behalf of Brent Abbott, Boston, Massachusetts, Court of Federal Claims Number 02–1911V
522. Cynthia Pichardo on behalf of George Pichardo, Boston, Massachusetts, Court of Federal Claims Number 02–1912V
523. Eric Thacker on behalf of Trenton Thacker, Boston, Massachusetts, Court of Federal Claims Number 02–1913V
524. Cynthia Dougherty on behalf of Matthew Dougherty, Vienna, Virginia, Court of Federal Claims Number 02–1926V
525. Cynthia Dougherty on behalf of Jennifer Dougherty, Vienna, Virginia, Court of Federal Claims Number 02–1927V
526. Anette Arthur and Peter Salmon on behalf of Peter Lothar Salmon, Jr., Brick, New Jersey, Court of Federal Claims Number 02–1928V
527. Patricia and Bradford Wheeler on behalf of Sheridan Laine Wheeler, Scottsdale, Arizona, Court of Federal Claims Number 02–1929V
528. Michele and Joel Wright on behalf of Mason Patrick Wright, Somers Point, New Jersey, Court of Federal Claims Number 02–1930V
529. Carmella and Spencer Shumate on behalf of Kenneth Spencer Shumate, Chicago, Illinois, Court of Federal Claims Number 02–1931V
530. Lisa and David Wilcox on behalf of Parker Bruce Wilcox, Lansing, Michigan, Court of Federal Claims Number 02–1932V
531. Shannon and Chad Beaty on behalf of Kade Anthony Beaty, Little Rock, Arkansas, Court of Federal Claims Number 02–1933V
532. Gisele Swanson on behalf of Mick Swanson, Portland, Oregon, Court of Federal Claims Number 02–1934V
533. Daniel Krasner and Alexandria Martins on behalf of Edward M. Martins-Krasner, Dallas, Texas, Court of Federal Claims Number 02–1935V
534. Mary Beth and Eric Williams on behalf of Samuel Williams, Vienna, Virginia, Court of Federal Claims Number 02–1938V
535. Carl Bialorucki on behalf of Bonnie Bialorucki, Boston, Massachusetts, Court of Federal Claims Number 02–1939V
536. Andrea Abraham on behalf of Jesse Abraham, Boston, Massachusetts, Court of Federal Claims Number 02–1940V
537. Carolyn Bunt on behalf of Michael Bunt, Boston, Massachusetts, Court of Federal Claims Number 02–1941V
538. Leslie Villarreal on behalf of Tyler Villarreal, Boston, Massachusetts, Court of Federal Claims Number 02–1942V
539. Deanna Wagner on behalf of Samantha Barefield, Boston, Massachusetts, Court of Federal Claims Number 02–1943V
540. Angela Vines on behalf of Colton Vines, Boston, Massachusetts, Court of Federal Claims Number 02–1944V
541. Sariah Wilson on behalf of Kaleb Wilson, Boston, Massachusetts, Court of Federal Claims Number 02–1945V
542. Deborah Haney on behalf of Allison Haney, Boston, Massachusetts, Court of Federal Claims Number 02–1946V
543. Amy Ellsworth on behalf of Daniel Ellsworth, Boston, Massachusetts, Court of Federal Claims Number 02–1947V
544. Jenni Ogden on behalf of Alexis Ogden, Boston, Massachusetts, Court of Federal Claims Number 02–1948V
545. Rebecca and Kevin Wagnon on behalf of Andrew Ryan Wagnon, Dallas, Texas, Court of Federal Claims Number 02–1949V
546. Darla and Kirk Botter on behalf of Cody Wyatt Botter, Dallas, Texas, Court of Federal Claims Number 02–1950V
547. Madeline and Robert Kennedy on behalf of Michael Jacob Kennedy, Saint Louis, Missouri, Court of Federal Claims Number 02–1951V
548. Syed Muniruzzaman on behalf of Nafessa Syed, Tyler, Texas, Court of Federal Claims Number 02–1954V
549. Wilhelmina York on behalf of Joshua York, Tyler, Texas, Court of Federal Claims Number 02–1955V
550. Laronica Smith on behalf of Quindon Jawan Wooten, Tyler, Texas, Court of Federal Claims Number 02–1956V
551. Elmer Valle on behalf of Diego Isai Valle, Tyler, Texas, Court of Federal Claims Number 02–1957V
552. Keva Washington on behalf of Kevone Maurice Washington, Tyler, Texas, Court of Federal Claims Number 02–1958V
553. Sherry Pitre on behalf of Catherine Ann Pitre, Tyler, Texas, Court of Federal Claims Number 02–1959V
554. Tracy Ball on behalf of Chase Xavier Washington, Tyler, Texas, Court of Federal Claims Number 02–1960V
555. Myrna Manco on behalf of Steven Manco, Great Neck, New York, Court of Federal Claims Number 02–1961V
556. Anna and Irving Sepulveda on behalf of Kenneth Mikale Sepulveda, New York, New York, Court of Federal Claims Number 02–1962V
557. Joseph Donohue on behalf of Sean J. Donohue, Rochester, New York, Court of Federal Claims Number 02–1963V
558. Elaine and Ronald Muthig on behalf of Joseph Muthig, Schenectady, New York, Court of Federal Claims Number 02–1964V

559. Rebecca and Timothy Gleeson on behalf of Anthony Gleeson, Harrisburg, Pennsylvania, Court of Federal Claims Number 02–1965V
560. Darlene & Nicholas Downes on behalf of Alannah Mary Downes & Sean Andrew Downes, New York, New York, Court of Federal Claims Number 02–1966V
561. Susan Zottoli on behalf of Anthony Zottoli, Meuthen, Massachusetts, Court of Federal Claims Number 02–1967V
562. Annette Farrell on behalf of Shelby G. Farrell-Romeo, Cambridge, Massachusetts, Court of Federal Claims Number 02–1968V
563. Jean M. Whelan on behalf of Daniel Joseph Whelan, Dover, New Hampshire, Court of Federal Claims Number 02–1969V
564. Jean M. Whelan on behalf of William Tierney Whelan, Dover, New Hampshire, Court of Federal Claims Number 02–1970V
565. Regina and Terry Harper on behalf of Brandon Tyler Harper, Dallas, Texas, Court of Federal Claims Number 02–1971V
566. Renea and Keith Reynolds on behalf of Benjamin Michael Reynolds, New York, New York, Court of Federal Claims Number 02–1972V
567. Celeste Hopkins, Las Vegas, Nevada, Court of Federal Claims Number 02–1973V
568. Christine Coffin on behalf of Alex Coffin, Scotia, New York, Court of Federal Claims Number 02–1975V
569. Melissa Paisley on behalf of Kareem Nelson, Manning, South Carolina, Court of Federal Claims Number 02–1976V
570. Christine Brooks on behalf of Christopher Brooks, Walterboro, South Carolina, Court of Federal Claims Number 02–1977V
571. Tracy and Joel Enzor on behalf of Natalie Danielle Enzor, Garden City, South Carolina, Court of Federal Claims Number 02–1978V
572. Mary Williams on behalf of Courtney N. Williams, Great Neck, New York, Court of Federal Claims Number 02–1979V
573. Elena Byrd on behalf of Jonathan S. Byrd, Great Neck, New York, Court of Federal Claims Number 02–1980V
574. Tracy Ranno on behalf of Dominic Ranno, Great Neck, New York, Court of Federal Claims Number 02–1981V
575. Thelma Janina Reyes and Collin Richard on behalf of Donald Carter Richard, Great Neck, New York, Court of Federal Claims Number 02–1982V
576. Bryan Weissman on behalf of Michael Weissman, Great Neck, New York, Court of Federal Claims Number 02–1983V
577. Gloria M. Masse on behalf of Alec Masse, Great Neck, New York, Court of Federal Claims Number 02–1984V
578. Edward William Shannon on behalf of Maria K. Shannon, Great Neck, New York, Court of Federal Claims Number 02–1985V
579. Desiree and Troy Feliciano on behalf of Isaiah Feliciano, Great Neck, New York, Court of Federal Claims Number 02–1986V
580. James Searle on behalf of Jonathan Emmanuel Searle, Great Neck, New York, Court of Federal Claims Number 02–1987V
581. Brenda Vactor on behalf of Julian Vactor, Great Neck, New York, Court of Federal Claims Number 02–1988V
582. Joanne Schmitt on behalf of Ryan James Sarver, Great Neck, New York, Court of Federal Claims Number 02–1989V
583. Anita M. Sherman on behalf of Benjamin Moriss Sherman, Great Neck, New York, Court of Federal Claims Number 02–1990V
584. Cheryl Stanescu on behalf of Nicholas Stanescu, Great Neck, New York, Court of Federal Claims Number 02–1991V
585. Maria and Philip Ehrlich on behalf of Brandon L.M. Ehrlich, Great Neck, New York, Court of Federal Claims Number 02–1992V
586. Angela Tresize on behalf of Travis Mathew Tresize, Great Neck, New York, Court of Federal Claims Number 02–1993V
587. Jose Montalvo and Maria Rivero on behalf of Diego Rivero, Great Neck, New York, Court of Federal Claims Number 02–1994V
588. Justina Burke on behalf of Jada Burke, Great Neck, New York, Court of Federal Claims Number 02–1995V
589. Cheryl Stanescu on behalf of Gabriella Stanescu, Great Neck, New York, Court of Federal Claims Number 02–1996V
590. Maureen Schell on behalf of Vincent Schell, Great Neck, New York, Court of Federal Claims Number 02–1997V
591. Kimberly Robert on behalf of Hannah Kay Robert, Great Neck, New York, Court of Federal Claims Number 02–1998V
592. Gloria Paria and Gustavo Rincon on behalf of Kevin Rincon, Great Neck, New York, Court of Federal Claims Number 02–1999V
593. Luwana and Russell Brown on behalf of Trevor Michael Brown, Miami, Florida, Court of Federal Claims Number 02–2000V
594. Hope and David Clayman on behalf of Jeremy Clayman, Miami, Florida, Court of Federal Claims Number 02–2001V
595. Beth and Gary Kompothecras on behalf of Jefferson Kompothecras, Miami, Florida, Court of Federal Claims Number 02–2002V
596. Wendy and Steven Bredall on behalf of Conor Bredall, Miami, Florida, Court of Federal Claims Number 02–2003V
597. Beth Ann and Lawrence Volpe on behalf of Zachary Lawrence Volpe, Miami, Florida, Court of Federal Claims Number 02–2004V
598. Idalmis Rodriguez on behalf of Emmanuel Placeres, Miami, Florida, Court of Federal Claims Number 02–2005V
599. Stephanie and Robert Taylor on behalf of Tyson Taylor, Miami, Florida, Court of Federal Claims Number 02–2006V
600. Judith and Eric Vartal on behalf of Eric Vartal, Miami, Florida, Court of Federal Claims Number 02–2007V
601. Candace and John Shanaughy on behalf of Tyler Shanaughy, Miami, Florida, Court of Federal Claims Number 02–2008V
602. Jane and Jim Mitchell on behalf of Thomas Mitchell, Miami, Florida, Court of Federal Claims Number 02–2009V
603. Monica and Patrick McAloney on behalf of John McAloney, Miami, Florida, Court of Federal Claims Number 02–2010V
604. Paula Mueller on behalf of Michael Mueller, Miami, Florida, Court of Federal Claims Number 02–2011V
605. Barbara Lupo on behalf of Michael Lupo, Miami, Florida, Court of Federal Claims Number 02–2012V
606. Maryann Rubio on behalf of Anthony J. Rubio, Miami, Florida, Court of Federal Claims Number 02–2013V
607. Deann and Gregory Sanders on behalf of Colter Lynn Sanders, Miami, Florida, Court of Federal Claims Number 02–2014V
608. Cindy and Thomas Whitby on behalf of Ronnie Whitby, Miami, Florida, Court of Federal Claims Number 02–2015V
609. Charis and Brian Wheless on behalf of Joseph Wheless, Miami, Florida, Court of Federal Claims Number 02–2016V
610. John Errington on behalf of Nicholas C. Errington, Miami, Florida, Court of Federal Claims Number 02–2017V
611. Ellen and Greg Blackburn on behalf of Aaron Blackburn, Miami, Florida, Court of Federal Claims Number 02–2018V
612. Julianna and Michael Boisvert on behalf of Benjamin Boisvert, Miami, Florida, Court of Federal Claims Number 02–2019V
613. Beth and Gary Kompothecras on behalf of Sarah Kompothecras, Miami, Florida, Court of Federal Claims Number 02–2020V
614. Christine and Todd Standish on behalf of Cara Standish, Melbourne, Florida, Court of Federal Claims Number 02–2021V
615. Donna and Larry Hardin on behalf of Mikayla A. Hardin, Melbourne, Florida, Court of Federal Claims Number 02–2022V
616. James Garner on behalf of James Garner, III, Boston, Massachusetts, Court of Federal Claims Number 02–2023V
617. Despina Novie on behalf of Damien Vaughn, Boston, Massachusetts, Court of Federal Claims Number 02–2024V
618. Ayanna Taylor on behalf of Damien Vaughn, Boston, Massachusetts, Court of Federal Claims Number 02–2025V
619. Shelly Johnson on behalf of Chase Johnson, Boston, Massachusetts, Court of Federal Claims Number 02–2026V
620. Valerie Shropshire on behalf of Jessica Brown, Houston, Texas, Court of Federal Claims Number 02–2027V
621. Mirian Green on behalf of Nigel Green, Houston, Texas, Court of Federal Claims Number 02–2028V
622. Iranus Minor Robinson on behalf of Eric Minor, Houston, Texas, Court of Federal Claims Number 02–2029V
623. Tawanda Smith on behalf of Roamond Gaulden, Jr., Houston, Texas, Court of Federal Claims Number 02–2030V
624. Lauree Hutchins on behalf of Martavious Robertson, Houston, Texas, Court of Federal Claims Number 02–2031V
625. Ethel Jackson on behalf of Charterion Moore, Houston, Texas, Court of Federal Claims Number 02–2032V
626. Vallessa Clavelle on behalf of Diamond Clavelle, Houston, Texas, Court of Federal Claims Number 02–2033V
627. Viviana and Joe Saldana on behalf of Daniel Jose Saldana, Houston, Texas, Court of Federal Claims Number 02–2034V
628. Christine and Pedro Carreira on behalf of Nicholas Carreira, Houston, Texas, Court of Federal Claims Number 02–2035V
629. Deborah and Gabriel Adames on behalf of David Adames, Houston, Texas, Court of Federal Claims Number 02–2036V
630. Denise and Paul Ventiquattro on behalf of Jordan Ventiquattro, Houston, Texas, Court of Federal Claims Number 02–2037V
631. Mary and Thomas Long on behalf of Thomas Long, III, Houston, Texas, Court of Federal Claims Number 02–2038V

632. Lynn and Matthew English on behalf of Richard English, Houston, Texas, Court of Federal Claims Number 02–2039V
633. Zahira Matos-Plemons on behalf of Joshua Cullen Plemons, Dallas, Texas, Court of Federal Claims Number 02–2040V
634. Carlos D. Robertson on behalf of Carlos D. Hinton, Hattiesburg, Mississippi, Court of Federal Claims Number 02–2041V
635. Donna Meter on behalf of Jordan Meter, Cape Coral, Florida, Court of Federal Claims Number 02–2044V
636. Nancy Cannon on behalf of Michael Cannon, Cape Coral, Florida, Court of Federal Claims Number 02–2045V
637. Stephanie and Matthew Bushak on behalf of Ryan Matthew Bushak, New York, New York, Court of Federal Claims Number 02–2046V
638. Ronald Weingarten on behalf of Noah Weingarten, Boston, Massachusetts, Court of Federal Claims Number 02–2047V
639. Parbatie and John Errington on behalf of Nicholas C. Errington, Miami, Florida, Court of Federal Claims Number 02–2048V
640. Kelly and Mark Porrey on behalf of Mark Anthony Porrey, Miami, Florida, Court of Federal Claims Number 02–2049V
641. Theresa and Joseph Herbert on behalf of Joseph David Herbert, Lake Charles, Louisiana, Court of Federal Claims Number 02–2050V
642. Kellie and Ronald Miller on behalf of Avery Hope Miller, Elizabethtown, Kentucky, Court of Federal Claims Number 02–2051V
643. Claudia and Michael Popson on behalf of Jeremy Thomas Popson, Louisville, Kentucky, Court of Federal Claims Number 02–2052V
644. Lisa and A. Tom Canady on behalf of Daniel T. Canady, Baton Rouge, Louisiana, Court of Federal Claims Number 02–2053V
645. Jeannie Wakelyn-Boyce and John Boyce on behalf of Adam Grayson Boyce, Newport News, Virginia, Court of Federal Claims Number 02–2054V
646. Jeannie Wakelyn-Boyce and John Boyce on behalf of Austin Michael Boyce, Newport News, Virginia, Court of Federal Claims Number 02–2055V
647. Tonja and James Callender on behalf of James Callender, Jr., Baton Rouge, Louisiana, Court of Federal Claims Number 02–2056V
648. Caroline and Matthew Maddock on behalf of Nicholas Maddock, Haslet, Texas, Court of Federal Claims Number 02–2057V
649. John Cloar on behalf of Thomas Jake Cloar, Mayfield, Kentucky, Court of Federal Claims Number 02–2058V
650. Amy Holmes and Charles Weinstein on behalf of Michael D. Weinstein, Baton Rouge, Louisiana, Court of Federal Claims Number 02–2059V
651. Ginger and Dennis Brown on behalf of Robert Lee Brown, Columbus, Indiana, Court of Federal Claims Number 02–2060V
652. Jodie and Tommy Cockrell on behalf of Joseph Kaye Cockrell, Bossier City, Louisiana, Court of Federal Claims Number 02–2061V
653. Sandra Bryant on behalf of Laura Elizabeth Bryant, Saint Francisville, Louisiana, Court of Federal Claims Number 02–2062V
654. Rita and Robert Parry on behalf of Robert J. Parry, Houston, Texas, Court of Federal Claims Number 02–2063V
655. Kathy Jo and Phil Boriskie on behalf of Matthew Boriskie, Houston, Texas, Court of Federal Claims Number 02–2064V
656. Jaunice and A. Lamar Glaze on behalf of Johnathan Christopher Glaze, Hattiesburg, Mississippi, Court of Federal Claims Number 02–2065V
657. Jaunice and A. Lamar Glaze on behalf of Matthew Jameson Glaze, Hattiesburg, Mississippi, Court of Federal Claims Number 02–2066V
658. Jaunice and A. Lamar Glaze on behalf of Lauren Alexandra Glaze, Hattiesburg, Mississippi, Court of Federal Claims Number 02–2067V
659. Toni and Todd Marks on behalf of Tad Nelson Marks, Baton Rouge, Louisiana, Court of Federal Claims Number 02–2068V
660. Erin Holmes on behalf of Jacob Holmes, Deceased, Clark County, Nevada, Court of Federal Claims Number 02–2069V
661. Jami Nelson on behalf of River Gene White, Tyler, Texas, Court of Federal Claims Number 02–2070V
662. Kimberly Campbell on behalf of Dillon Campbell, Tyler, Texas, Court of Federal Claims Number 02–2071V
663. Michael Sammons on behalf of Cody Michael Sammons, Tyler, Texas, Court of Federal Claims Number 02–2072V
664. Suzanne Robinson on behalf of Celeste Angelie Robinson, Tyler, Texas, Court of Federal Claims Number 02–2073V
665. Chiniqua Ward-Newsome on behalf of Jalen Jaamal Newsome, Tyler, Texas, Court of Federal Claims Number 02–2074V
666. Kimberly Campbell on behalf of Corey Campbell, Tyler, Texas, Court of Federal Claims Number 02–2075V
667. Amy Blubaugh and Kelly Tanner on behalf of Dalton Tanner-Blubaugh, Cape Girardeau, Missouri, Court of Federal Claims Number 02–2076V

Dated: May 16, 2003.

Elizabeth M. Duke,

Administrator.

[FR Doc. 03–12773 Filed 5–20–03; 8:45 am]

BILLING CODE 4165–15–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Cancer Institute; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The contract proposals and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the contract proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Cancer Institute Special Emphasis Panel. Preclinical Toxicology of New Cancer Preventing Agents.

Date: June 24, 2003.

Time: 8 AM to 6 PM.

Agenda: To review and evaluate contract proposals.

Place: Bethesda, Marriott Suites, 6711 Democracy Boulevard, Bethesda, MD 20817.

Contact Person: Lalita D. Palekar, PhD, Scientific Review Administrator, Special Review and Resources Branch, Division of Extramural Activities, National Cancer Institute, National Institutes of Health, 6116 Executive Boulevard, Room 8105, Bethesda, MD 20892–7405, (301) 496–7575.

(Catalogue of Federal Domestic Assistance Program Nos. 93.392, Cancer Construction; 93.393, Cancer Cause and Prevention Research; 93.394, Cancer Detection and Diagnosis Research; 93.395, Cancer Treatment Research; 93.396, Cancer Biology Research; 93.397, Cancer Centers Support; 93.398, Cancer Research Manpower; 93.399, Cancer Control, National Institutes of Health, HHS)

Dated: May 14, 2003.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 03–12754 Filed 5–20–03; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institute of Health

National Cancer Institute; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant application, the disclosure of which could constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Cancer Institute Special Emphasis Panel, Network of Translational Research; Optical Imaging.

Date: June 26–27, 2003.

Time: 8 a.m. to 6 p.m.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn Select Bethesda, 8120 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Joyce C. Pegues, PhD, Scientific Review Administrator, Special Review and Resources Branch, Division of Extramural Activities, National Cancer Institute, 6116 Executive Boulevard, Room 7149, Bethesda, MD 20892. 301/594–1286.

Name of Committee: National Cancer Institute Special Emphasis Panel, Consortium Therapeutic Studies of Primary Central Nervous System Malignancies in Adults.

Date: July 2, 2003.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Bethesda Marriott, 5151 Pooks Hill Road, Bethesda, MD 20814.

Contact Person: Timothy C. Meeker, MD, Scientific Review Administrator, Special Referral and Resources Branch, Division of Extramural Activities, National Cancer Institute, 6116 Executive Boulevard, Room 8088, Rockville, MD 20852. 301/594–1279.

Name of Committee: National Cancer Institute Special Emphasis Panel, Behavioral Research in Cancer Control.

Date: July 8, 2003.

Time: 9 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6116 Executive Boulevard, Rockville, MD 20852. (Telephone conference call.)

Contact Person: Mary Jane Slesinski, PhD, Scientific Review Administrator, Special Review and Resources Branch, Division of Extramual Activities, National Cancer Institute, National Institutes of Health, 6116 Executive Boulevard, Room 8045, Bethesda, MD 20892. 301/594–1566.

Name of Committee: National Cancer Institute Special Emphasis Panel, Prevention Research and Epidemiology.

Date: July 29–30, 2003.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Gaithersburg Marriott Washingtonian Center, 9751 Washingtonian Boulevard, Gaithersburg, MD 20878.

Contact Person: Mary Jane Slesinski, PhD, Scientific Review Administrator, Special Review and Resources Branch, Division of Extramural Activities, National Cancer Institute, National Institute of Health, 6116 Executive Boulevard, Room 8045, Bethesda, MD 20892. 301/594–1566.

(Catalogue of Federal Domestic Assistance Program Nos. 93.392, Cancer Construction; 93.393, Cancer Cause and Prevention Research; 93.394, Cancer Detection and Diagnosis Research; 93.395, Cancer Treatment Research; 93.396, Cancer Biology Research; 93.397, Cancer Centers Support; 93.398, Cancer Research Manpower; 93.399, Cancer Control, National Institutes of Health, HHS.)

Dated: May 14, 2003.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 03–12756 Filed 5–20–03; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Cancer Institute; Notice of Meeting

Pursuant to section 10(a) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of a meeting of the National Cancer Institute Board of Scientific Advisors.

The meeting will be open to the public, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

Name of Committee: National Cancer Institute Board of Scientific Advisors.

Date: June 26–27, 2003.

Time: June 26, 2003, 8 AM to 6 PM.

Agenda: Director's Report; Ongoing and New Business; Reports of Program Review Group(s); and Budget Presentation; Reports of Special Initiatives; RFA and RFP Concept Reviews; and Scientific Presentations.

Place: National Cancer Institute, 9000 Rockville Pike, Building 31, C Wing, 6 Floor, Conference Room 10, Bethesda, MD 20892.

Time: June 27, 2003, 8:30 AM to 6 PM.

Agenda: Ongoing and New Business; Reports of Program Review Group(s); and Budget Presentation; Reports of Special Initiatives; RFA and RFP Concept Reviews; and Scientific Presentations.

Place: National Cancer Institute, 9000 Rockville Pike, Building 31, C Wing, 6 Floor, Conference Room 10, Bethesda, MD 20892.

Contact Person: Paulette S. Gray, PhD, Executive Secretary, Acting Director, Division of Extramural Activities, National Cancer Institute, National Institutes of Health, 6116 Executive Boulevard, 8th Floor, RM. 8141, Bethesda, MD 20892, 301–496–4218.

Information is also available on the Institute's/Center's home page: *deainfo.nci.nih.gov/advisory/bsa.htm*, where an agenda and any additional information for the meeting will be posted when available.

(Catalogue of Federal Domestic Assistance Program Nos. 93.392, Cancer Construction; 93.393, Cancer Cause and Prevention Research; 93.394, Cancer Detection and Diagnosis Research; 93.395, Cancer Treatment Research; 93.396, Cancer Biology Research; 93.397, Cancer Centers Support; 93.398, Cancer Research Manpower; 93.399, Cancer Control, National Institutes of Health, HHS)

Dated: May 14, 2003.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 03–12758 Filed 5–20–03; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Mental Health; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Mental Health Special Emphasis Panel, Services Review Committee.

Date: June 11–12, 2003.

Time: 8 a.m. to 4 p.m.

Agenda: To review and evaluate grant applications.

Place: Melrose Hotel, 2430 Pennsylvania Ave., NW., Washington, DC 20037.

Contact Person: Henry J. Jaigler, Ph.D., Scientific Review Administrator, Division of Extramural Activities, National Institute of Mental Health, NIH, Neuroscience Center, 6001 Executive Blvd., Rm. 6150, MSC 9608, Bethesda, MD 20892–9608, (301) 443–7216, *hhaigler@mail.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93–242, Mental Health Research Grants; 93.281, Scientist Development Award, Scientist Development Award for Clinicians, and Research Scientist Award; 93.282, Mental Health National Research Service Awards for Research Training, National Institutes of Health, HHS)

Dated: May 14, 2003.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 03–12753 Filed 5–20–03; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Child Health and Human Development; Notice of Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of a meeting of the Board of Scientific Counselors, NICHD.

The meeting will be open to the public as indicated below, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

The meeting will be closed to the public as indicated below in accordance with the provisions set forth in section 552b(c)(6), title 5 U.S.C., as amended for the review, discussion, and evaluation of individual intramural programs and projects conducted by the National Institute of Child Health and Human Development, including consideration of personnel qualifications and performance, and the competence of individual investigators, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Board of Scientific Counselors, NICHD.

Date: June 6, 2003.

Open: 8 a.m. to 11 a.m.

Agenda: To review and discuss current NICHD intramural research activities.

Place: National Institutes of Health, Building 31, Conference Room 2A48, Bethesda, MD 20892.

Closed: 11 a.m. to Adjournment.

Agenda: To review and evaluate personal qualifications and performance, and competence of individual investigators.

Place: National Institutes of Health, Building 31, Conference Room 2A48, Bethesda, MD 20892.

Contact Person: Owen M. Rennert, MD, Scientific Director, National Institute of Child Health and Human Development, 9000 Rockville Pike, Building 31, Room 2A50, Bethesda, MD 20892. (301) 496–2133. *rennerto@mail.nih.gov.*

Information is also available on the Institute's/Center's home page: *www.nichd.nih.gov/about/bsd/htm,* where an agenda and any additional information for the meeting will be posted when available.

(Catalogue of Federal Domestic Assistance Program Nos. 93.864, Population Research; 93.865, Research for Mothers and Children; 93.929, Center for Medical Rehabilitation Research; 93.209, Contraception and Infertility Loan Repayment Program, National Institutes of Health, HHS.)

Dated: May 14, 2003.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 03–12755 Filed 5–20–03; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Aging; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute on Aging Initial Review Group, Biological Aging Review Committee.

Date: June 2–3, 2003.

Time: 6 p.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn Chevy Chase, 5520 Wisconsin Avenue, Chevy Chase, MD 20815.

Contact Person: James P. Harwood, PhD, Deputy Chief, Scientific Review Office, The Bethesda Gateway Building, 7201 Wisconsin Avenue/Suite 2C212, Bethesda, MD 20892. (301) 496–9666. *harwoodj@mail.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: National Institute on Aging Initial Review Group, Neuroscience of Aging Review Committee.

Date: June 2–3, 2003.

Time: 6 p.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn Chevy Chase, 5520 Wisconsin Avenue, Chevy Chase, MD 20815.

Contact Person: Louise L. Hsu, PhD, The Bethesda Gateway Building, 7201 Wisconsin Avenue/Suite 2C212, Bethesda, MD 20892. (301) 496–9666. *hsul@exmur.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: National Institute on Aging Special Emphasis Panel, Alzheimer's Disease Clinical Trial.

Date: June 6, 2003.

Time: 9 a.m. to 11 a.m.

Agenda: to review and evaluate grant applications.

Place: National Institute on Aging, Gateway Building, 7201 Wisconsin Avenue 2C212, Bethesda, MD 20814. (Telephone conference call.)

Contact Person: Ramesh Vemuri, PhD, National Institute on Aging, The Bethesda Gateway Building, 7201 Wisconsin Ave., Suite 2C212, Bethesda, MD 20892. 301–402–7700. *rv23r@nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: National Institute on Aging Initial Review Group, Behavior and Social Science of Aging Review Committee. NIA–S COMMITTEE.

Date: June 12–13, 2003.

Time: 4 p.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn Georgetown, 2101, Wisconsin Avenue, NW., Washington, DC 20007.

Contact Person: Alfonso R. Latoni, PhD, Scientific Review Administrator, Scientific Review Office, National Institute on Aging, Gateway Building, 2C212, 7201 Wisconsin Avenue, Bethesda, MD 20892. 301/496–9666. *latonia@mail.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.866, Aging Reseach, National Institutes of Health, HHS.)

Dated: May 15, 2003.

Anna Snouffer,

Aging Director, Office of Federal Advisory Committee Policy.

[FR Doc. 03–12757 Filed 5–20–03; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4815–N–26]

Notice of Submission of Proposed Information Collection to OMB: Housing for Older Persons Exemption for Familial Status Discrimination

AGENCY: Office of the Chief Information Officer, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below has been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

DATES: *Comments Due Date:* June 20, 2003.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB approval number (2529–0046) and should be sent to: Lauren Wittenberg, OMB Desk Officer, Office of Management and Budget, Room 10235, New Executive Office Building, Washington, DC 20503; Fax number (202) 395–6974; E-mail *Lauren_Wittenberg@omb.eop.gov.*

FOR FURTHER INFORMATION CONTACT: Wayne Eddins, Reports Management Officer, AYO, Department of Housing and Urban Development, 451 Seventh Street, Southwest, Washington, DC 20410; e-mail *Wayne_Eddins@HUD.gov;* telephone (202) 708–2374. This is not a toll-free number. Copies of the proposed forms and other available documents submitted to OMB may be obtained from Mr. Eddins.

SUPPLEMENTARY INFORMATION: The Department has submitted the proposal for the collection of information, as described below, to OMB for review, as required by the Paperwork Reduction Act (44 U.S.C. Chapter 35). The Notice lists the following information: (1) The title of the information collection proposal; (2) the office of the agency to collect the information; (3) the OMB approval number, if applicable; (4) the description of the need for the information and its proposed use; (5) the agency form number, if applicable; (6) what members of the public will be affected by the proposal; (7) how frequently information submissions will be required; (8) an estimate of the total number of hours needed to prepare the information submission including number of respondents, frequency of response, and hours of response; (9) whether the proposal is new, an extension, reinstatement, or revision of an information collection requirement; and (10) the name and telephone number of an agency official familiar with the proposal and of the OMB Desk Officer for the Department.

This Notice also lists the following information:

Title of Proposal: Housing for Older Persons exemption for familial status discrimination.

OMB Approval Number: 2529–0046.

Form Numbers: None.

Description of the Need for the Information and its Proposed Use: This information collection supports an allowance for housing providers to claim exemption to the familial status provision of the Fair Housing Act, as amended by the Housing for Older Persons Act of 1995.

Respondents: Business or other for-profit, not-for-profit institutions, State, Local or Tribal Government.

Frequency of Submission: Other upon declaring housing for older persons; upon receipt of a familial status complaint, on occasion.

	Number of respondents	×	Annual responses	×	Hours per response	=	Burden hours
Reporting burden	12,000		1		0.45		5,500

Total Estimated Burden Hours: 5,500.

Status: Extension of a currently approved collection.

Authority: Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. 35, as amended.

Dated: May 14, 2003.

Wayne Eddins,

Departmental Reports Management Officer, Office of the Chief Information Officer.

[FR Doc. 03–12682 Filed 5–20–03; 8:45 am]

BILLING CODE 4210–72–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4818–N–05]

Notice of Proposed Information Collection for Public Comment: Extension of Survey of Housing Conditions for Households Living in Federally-Assisted Units

AGENCY: Office of the Assistant Secretary for Policy Development and Research, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below will be submitted to the Office of Management and Budget (OMB) for review as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

DATES: *Comments Due Date:* July 21, 2003.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB Control Number and should be sent to: Reports Liaison Officer, Office of Policy Development and Research, Department of Housing and Urban Development, 451 7th Street, SW., Room 8226, Washington, DC 20410–6000.

FOR FURTHER INFORMATION CONTACT: Barbara Haley, 202–708–5537, ext. 5708 (this is not a toll-free number), for copies of the proposed forms and other available documents.

SUPPLEMENTARY INFORMATION: The Department will submit the proposed information collection to OMB for review, as required by the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35, as amended). This notice is soliciting comments from members of the public and affected agencies concerning the proposed collection of information to: (1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (3) enhance the quality, utility, and clarity of the information to be collected; and (4) minimize the burden of the collection of information on those who are to respond; including through the use of appropriate automated collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

This notice also lists the following information:

Title of Proposal: Extension of Survey of Housing Conditions for Households Living in Federally-Assisted Units.

OMB Control Number: 2528–0170 (exp. 02/21/04).

Description of the Need for the Information and Proposed Use: HUD developed and tested a cost-effective mail survey instrument for assessing the condition of housing units assisted through HUD's Choice Voucher Program (formerly known as section 8). The pilot survey, which elicited renters' ratings of their housing, provided high levels of agreement with independent condition ratings by professional inspectors. HUD implements the survey as an ongoing tool to assess customer ratings of the condition of housing assisted through the Housing Choice Voucher Program. This survey helps HUD focus its monitoring and technical assistance resources on property owners and

housing authorities whose performance most need improvement. It also provides policy and program managers with valid measures for tracking housing conditions over time.

Agency Form Numbers: None.

Members of the Affected Public: Households residing in units receiving assistance from the Housing Choice Voucher Program.

Estimation of the Total Number of Hours Needed to Prepare the Information Collection Including Number of Respondents, Frequency of Response, and Hours of Response: Information will be collected by a periodic mail survey of 259,000 of the 1.8 million households who live in housing units assisted through the Housing Choice Voucher Program. Based on the first year of data collection, a 62 percent response rate is expected. The survey will take approximately 15 minutes to complete. This means a total of 40,145 hours of response time annually is expected for the information collection.

Status of the Proposed Extension of Information Collection: Pending submission to the Office of Management and Budget (OMB).

Authority: Section 3506 of the Paperwork Reduction Act of 1995, 44 U.S.C. chapter 35, as amended.

Dated: May 14, 2003.

Christopher D. Lord,

Deputy Assistant Secretary for Policy Development.

[FR Doc. 03–12684 Filed 5–20–03; 8:45 am]

BILLING CODE 4210–62–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Noxubee National Wildlife Refuge

AGENCY: Fish and Wildlife Service, Department of the Interior.

ACTION: Notice of availability of the Draft Comprehensive Conservation Plan and Environmental Assessment for Noxubee National Wildlife Refuge located in Noxubee, Oktibbeha, and Winston Counties, Mississippi.

SUMMARY: The Fish and Wildlife Service announces that a Draft Comprehensive Conservation Plan and Environmental Assessment for Noxubee National Wildlife Refuge are available for review and comment. These documents have been prepared pursuant to the National Wildlife Refuge System Improvement Act of 1997, and the National Environmental Policy Act of 1969, and describe the Service's proposal for managing the refuge over the next 15 years. Proposed goals for the refuge include:

- Perpetuating a diversity of high quality, more natural-like communities as habitats for trust and resident species;
- Continuing to protect, maintain, and enhance native plant and animal species;
- Improving conditions for fish, wildlife, habitats, special management areas, and wilderness through the use of current land protection programs, laws, policies, and partnerships;
- Developing recreation and education opportunities that promote fish and wildlife conservation consistent with the Service's mission and policies, and the purpose for which the refuge was established;
- Protecting the cultural resources of the refuge; and
- Developing and maintaining a comprehensive refuge facility responsive to supporting the management of fish and wildlife resources, and the safety and experience of refuge visitors.

Also available for review are the draft compatibility determinations for recreational hunting, recreational fishing, wildlife observation and photography, environmental education and interpretation, forest habitat management, haying, and research and collections.

Proposed Action

The proposed action is to adopt and implement a comprehensive conservation plan for the refuge that best achieves the refuge's purpose, vision, and goals; contributes to the National Wildlife Refuge System mission; addresses the significant issues and relevant mandates; and is consistent with principles of sound fish and wildlife management. The Service analyzed three alternatives for future management of the refuge and chose Alternative 2, as the one to best achieve all of these elements.

Alternatives

The draft comprehensive conservation plan and environmental assessment evaluates the three alternatives for managing the refuge over the next 15 years. These alternatives are briefly described as follows:

Alternative I represents the status quo; *e.g.*, no changes from current management of the refuge. The refuge would continue with its existing forest management plan that emphasizes older age classes of trees and late successional wildlife communities. Waters and wetlands would be managed under current policies. Cultural resources would be protected at current levels.

Under Alternative 2, the Service's proposed action, wildlife and habitat would be managed with emphasis on old growth forest communities, and increasing emphasis on education and recreation programs. Refuge programs provide the public with an opportunity to learn about, enjoy, and appreciate fish and wildlife. these programs include hunting, fishing, wildlife observation and photography, and environmental education and interpretation. Deer hunting opportunities would continue in order to manage the population, and small game and waterfowl hunting opportunities would continue as well. Game fish populations at Bluff and Loakfoma lakes would be maintained to support an annual average of 13,000 angler-use days through natural reproduction, habitat management, regulated harvest, and stocking when appropriate. Under this alternative, the refuge would seek to maintain and improve overlooks, boardwalks and trails, and provide special guided and education program tours each season, with an objective of increasing interpretation activities to at least 15 events annually. The refuge would coordinate with the local school district and others to share expertise, host meetings at the environmental education center, refuge outdoor classroom, and off-site locations to support 15,000 students annually. This alternative emphasizes providing habitat for forest nesting birds dependent on mature hardwood forests and adequate habitat for resident and migratory waterfowl. Current partnerships that assist the refuge in accomplishing its conservation objectives would continue under this alternative, as would coordination with the Service's private lands' biologist to implement the Partners for Fish and Wildlife Program with local landowners and other conservation groups. Communication with local landowners and community groups would continue in order to promote wildlife conservation. A comprehensive cultural resources' survey would be conducted, and protection and interpretation of cultural resources would be improved.

Alternative 3 emphasizes providing early successional forest habitat and increases in certain education and recreation programs. Forest management of pine and pine/hardwood forests would be directed towards providing old growth adequate to support the refuge's goal for the redcockaded woodpecker, and for providing early successional habitat for neotropical migratory birds and certain game species. Management of the hardwood forest would also be directed towards providing early successional habitat.

Actions Common to All Alternatives

All three alternatives share the following management concepts and techniques for achieving the goals of the refuge:

- Restoring native habitats;
- Establishing, maintaining, and improving partnerships with landowners and local, state, and federal agencies and organizations;
- Coordinating management actions with local and state land and resource management agencies;
- Monitoring breeding red-cockaded woodpecker populations in partnership with others;
- Removing non-native invasive plants;
- Encouraging scientific research on the refuge; and
- Exploring expansion of the refuge boundary.

DATES: A meeting will be held at the refuge's education center to present the plan to the public. Mailings, newspaper articles, and postings on the refuge website will be the avenues to inform the public of the date and time for this meeting. Individuals wishing to comment on the Draft Comprehensive Conservation Plan and Environmental Assessment for Noxubee National Wildlife Refuge should do so within 60 days following the date of this notice. Public comments were requested, considered, and incorporated throughout the planning process in numerous ways. Public outreach has included public scoping meetings, technical workgroups, planning updates and a **Federal Register** notice.

ADDRESSES: Comments on the Draft Comprehensive Conservation Plan and Environmental Assessment should be addressed to Refuge Manager, Noxubee National Wildlife Refuge, 224 Office Road, Brooksville, Mississippi 39739. Comments may also be submitted via electronic mail to *Noxubee@fws.gov*. If you wish to submit comments by electronic mail, please submit them as an ASCII file, avoiding the use of special characters and any form of encryption. Please include your name and return address to your Internet message. If you do not receive a confirmation from the system that we have received your Internet message, contact us at the phone number or address listed in this notice. Our practice is to make comments, including names and home addresses of respondents, available for public review during regular business hours. Individuals respondents may request that we withhold their home addresses from the record, which we will honor to the extent allowable by law.

SUPPLEMENTARY INFORMATION: Noxubee National Wildlife Refuge, located in east-central Mississippi, consists of 47,959 acres, of which 42,500 acres are in bottomland hardwood, upland hardwood, mixed pine/hardwood, and pine forests. These forests support a variety of upland species including turkey, deer, and quail. The endangered red-cockaded woodpecker is found in the refuge's old-growth pine habitat. Many neotropical bird species benefit from refuge forests. Greentree reservoirs, natural ponds, and man-made impoundments provide important habitat for other migratory birds, as well as wintering habitat for waterfowl and bald eagles.

Annually, more than 150,000 visitors participate in refuge activities, including fishing, hunting, hiking, wildlife photography, wildlife observation, and environmental education and interpretation.

FOR FURTHER INFORMATION CONTACT: Refuge Manager, Noxubee National Wildlife Refuge at 662/323–5548; fax 662/323–5806, or by writing to the Refuge Manager at the above address.

Authority: This notice is published under the authority of the National Wildlife Refuge System Improvement Act of 1997, Public Law 105–57.

Dated: May 14, 2003.

J. Mitch King,

Acting Regional Director.

[FR Doc. 03–12710 Filed 5–20–03; 8:45 am]

BILLING CODE 4310–55–M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Availability of an Environmental Assessment and Receipt of an Application for an Incidental Take Permit for the Harley John Reservoir Replacement in Riverside County, CA

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of availability and receipt of application.

SUMMARY: Western Municipal Water District (Applicant) has applied to the Fish and Wildlife Service (Service) for an incidental take permit pursuant to section 10(a)(1)(B) of the Endangered Species Act (Act) of 1973, as amended. The Service is considering issuing a 3-year permit to the Applicant that would authorize take of the threatened coastal California gnatcatcher (*Polioptila californica californica*, "gnatcatcher") incidental to otherwise lawful activities associated with the replacement of an existing 300,000 gallon water tank reservoir with a 4 million gallon reservoir on 2.7 acres in Riverside County, California. The project would result in the incidental take of one pair of gnatcatchers on the project site through permanent removal of approximately 2.3 acres of habitat.

We request comments from the public on the permit application and an Environmental Assessment, both of which are available for review. The permit application includes the proposed Habitat Conservation Plan (HCP) and an accompanying Implementing Agreement. The HCP describes the proposed action and the measures that the Applicant will undertake to minimize and mitigate take of the gnatcatcher. To review the permit application or Environmental Assessment, see "Availability of Documents" in the **SUPPLEMENTARY INFORMATION** section.

DATES: We must receive your written comments on or before July 21, 2003.

ADDRESSES: Please address written comments to Mr. Jim Bartel, Field Supervisor, U.S. Fish and Wildlife Service, 6010 Hidden Valley Road, Carlsbad, California 92009. You also may send comments by facsimile to (760) 918–0638.

FOR FURTHER INFORMATION CONTACT: Ms. Karen Evans, Assistant Field Supervisor, at the above address or call (760) 431–9440.

SUPPLEMENTARY INFORMATION:

Availability of Documents

You may obtain copies of these documents for review by contacting the Assistant Field Supervisor (**FOR FURTHER INFORMATION CONTACT**). Documents also will be available for public inspection, by appointment, during normal business hours at the above address (*see* **ADDRESSES**) and at the Woodcrest Library, Riverside County Library System, 17024 Van Buren Blvd., Riverside, California.

Background

Section 9 of the Act and federal regulations prohibit the "take" of fish and wildlife species listed as endangered or threatened. Take of federally listed fish and wildlife is defined under the Act as including to "harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect, or to attempt to engage in any such conduct." The Service may, under limited circumstances, issue permits to

authorize incidental take (*i.e.*, take that is incidental to, and not the purpose of, the carrying out of an otherwise lawful activity). Regulations governing incidental take permits for threatened species are found in 50 CFR 17.32.

The Applicant proposes to replace an existing 300,000-gallon reservoir with a 4-million gallon reservoir on 2.7 acres. The project site is located approximately one-quarter mile west of Harley John Road, two-thirds of a mile north of Cajalco Road, one-half mile east of El Sobrante Road, and one-quarter mile south of Scottsdale Drive, in Riverside County, California. The existing water tank has been in use for approximately 40 years. The project site occurs at the northern periphery of the Lake Mathews Estelle Mountain Reserve. Rural residences and orchards exist southeast of the site. The project site contains and is adjacent to gnatcatcher habitat within the Lake Mathews region. The project site does not occur within gnatcatcher proposed critical habitat.

One pair of gnatcatchers and a juvenile were detected during surveys conducted according to Service protocol in 1994, 1999, and 2000. Based on these survey results, the Service concluded that implementation of the proposed project will likely result in take of one pair of gnatcatchers through the permanent removal of 2.3 acres of vegetation on the 2.7-acre site.

The federally endangered Quino checkerspot butterfly (*Euphydryas editha quino*) was not detected on the project site during a survey conducted in 1999. The federally endangered Stephens' kangaroo rat (*Dipodomys stephensi*) may occupy portions of the proposed project site; however, no Stephens' kangaroo rat surveys have been conducted at the project site. Because the proposed project site occurs within the plan area boundary of the Habitat Conservation Plan for the Stephens' Kangaroo Rat in Western Riverside County, California (March 1996), compliance with this Plan and its associated implementation agreement will be required prior to any ground-disturbing activities.

To mitigate take of gnatcatchers on the project site, the Applicant proposes to purchase 7 credits towards conservation in perpetuity of 7 acres of gnatcatcher habitat, composed of riversidean sage scrub vegetation, from an off-site conservation bank in western Riverside County. The conservation bank collects fees supporting a management endowment to ensure the permanent management and monitoring of sensitive species and habitats, including the gnatcatcher, within the area protected by the bank.

Although not reflected in the HCP and Implementing Agreement available for public comment, we anticipate that the conservation bank landowner and land manager will be signatories to the Agreement, committing to the protection, management, and monitoring of the conservation bank lands to conserve riversidean sage scrub habitat and gnatcatchers in perpetuity.

The Service's Environmental Assessment considers the environmental consequences of two alternatives, including: (1) The Proposed Project Alternative, which consists of issuance of the incidental take permit and implementation of the HCP and Implementing Agreement; and (2) the No Action Alternative, which consists of no permit issuance and no replacement of the reservoir at this time. The alternative to the Proposed Project Alternative would result in less long-term conservation for the gnatcatcher within western Riverside County, as it would not contribute as much, or at all, to conservation of areas within habitat being considered by the Service and local agencies for long-term conservation of the species.

This notice is provided pursuant to section 10(a) of the Act and the regulations of the National Environmental Policy Act (NEPA) of 1969 (40 CFR 1506.6). All comments that we receive, including names and addresses, will become part of the official administrative record and may be made available to the public. We will evaluate the application, associated documents, and comments submitted thereon to determine whether the application meets the requirements of NEPA regulations and section 10(a) of the Act. If we determine that those requirements are met, we will issue a permit to the Applicant for the incidental take of the gnatcatcher. We will make our final permit decision no sooner than 60 days after the date of this notice.

Dated: May 14, 2003.

Ken McDermond,

Deputy Manager, California/Nevada Operations Office, Sacramento, California.

[FR Doc. 03–12679 Filed 5–20–03; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[WO–260–09–1060–00–24 1A]

Wild Horse and Burro Advisory Board; Meeting

AGENCY: Bureau of Land Management, Interior.

ACTION: Announcement of meeting.

SUMMARY: The Bureau of Land Management (BLM) announces that the Wild Horse and Burro Advisory Board will conduct a meeting on matters pertaining to management and protection of wild, free-roaming horses and burros on the Nation's public lands.

DATES: The Advisory Board will meet Monday, June 16, 2003, from 8 a.m., to 5 p.m., local time, and on Tuesday, June 17, 2003, from 8 a.m., to 3 p.m., local time.

ADDRESSES: The Advisory Board will meet at the Sheraton Billings Hotel, 27 N. 27th Street, Billings, MT, phone 406–252–7400.

Written comments pertaining to the Advisory Board meeting should be sent to: Bureau of Land Management, National Wild Horse and Burro Program, WO 260, Attention: Ramona Delorme, 1340 Financial Boulevard, Reno, Nevada, 89502–7147. Submit written comments pertaining to the Advisory Board meeting no later than close of business June 6, 2003. *See* **SUPPLEMENTARY INFORMATION** section for electronic access and filing address.

FOR FURTHER INFORMATION CONTACT: Janet Nordin, Wild Horse and Burro Public Outreach Specialist, 775–861–6583. Individuals who use a telecommunications device for the deaf (TDD) may reach *Ms. Nordin* at any time by calling the Federal Information Relay Service at 1–800–877–8339.

SUPPLEMENTARY INFORMATION:

I. Public Meeting

Under the authority of 43 CFR part 1784, the Wild Horse and Burro Advisory Board advises the Secretary of the Interior, the Director of the BLM, the Secretary of Agriculture, and the Chief, Forest Service, on matters pertaining to management and protection of wild, free-roaming horses and burros on the Nation's public lands. The tentative agenda for the meeting is:

Monday, June 16, 2003 (8 a.m.–5 p.m.)

8 a.m.—Call to Order & Introductions:
8:15 a.m.—Old Business:
8:45 a.m.—Program Update
9 a.m.—Status of WH&B Strategic Plan
9:30 a.m.—Break

9:45 a.m.—Old Business (continued):
10:45 a.m.—Report on "Reaching AML by 2005: A Mid-Course Review
12:30 p.m.—Lunch
1:30 p.m.—Old Business (continued):
2:30 p.m.—Break
2:45 p.m.—Old Business (continued):
4 p.m.—Public Comments
4:45 p.m.—Recap/Summary
5–6 p.m.—Adjourn: Roundtable Discussion

Tuesday, June 17, 2003 (8 a.m.–3 p.m.)

8 a.m.—New Business:
Break—(9:45 a.m.–10 a.m.)
10 a.m.—Organizational Discussion on Advisory Board Hosted Symposium
12 p.m.—Lunch
1 p.m.—Board Recommendations
2:30 p.m.—Next Meeting/Date/Site
3 p.m.—Adjourn

The meeting site is accessible to individuals with disabilities. An individual with a disability needing an auxiliary aid or service to participate in the meeting, such as interpreting service, assistive listening device, or materials in an alternate format, must notify the person listed under **FOR FURTHER INFORMATION CONTACT** two weeks before the scheduled meeting date. Although the BLM will attempt to meet a request received after that date, the requested auxiliary aid or service may not be available because of insufficient time to arrange it.

The Federal advisory committee management regulations [41 CFR 101–6.1015(b),] require BLM to publish in the **Federal Register** notice of a meeting 15 days prior to the meeting date.

II. Public Comment Procedures

Members of the public may make oral statements to the Advisory Board on June 16, 2003, at the appropriate point in the agenda. This opportunity is anticipated to occur at 4 p.m., local time. Persons wishing to make statements should register with the BLM by noon June 16, 2003, at the meeting location. Depending on the number of speakers, the Advisory Board may limit the length of presentations. At previous meetings, presentations have been limited to three minutes in length. Speakers should address the specific wild horse and burro-related topics listed on the agenda. Speakers must submit a written copy of their statement to the address listed in the **ADDRESSES** section or bring a written copy to the meeting.

Participation in the Advisory Board meeting is not a prerequisite for submission of written comments. The BLM invites written comments from all interested parties. Your written comments should be specific and explain the reason for any recommendation. The BLM appreciates any and all comments, but those most useful and likely to influence decisions on management and protection of wild horses and burros are those that are either supported by quantitative information or studies or those that include citations to and analysis of applicable laws and regulations. Except for comments provided in electronic format, speakers should submit two copies of their written comments where feasible. The BLM will not necessarily consider comments received after the time indicated under the **DATES** section or at locations other than that listed in the **ADDRESSES** section.

In the event there is a request under the Freedom of Information Act (FOIA) for a copy of your comments, the BLM will make them available in their entirety, including your name and address. However, if you do not want the BLM to release your name and address in response to a FOIA request, you must state this prominently at the beginning of your comment. The BLM will honor your request to the extent allowed by law. The BLM will release all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, in their entirety, including names and addresses.

Electronic Access and Filing Address

Speakers may transmit comments electronically via the Internet to: *Janet_Nordin@blm.gov*. Please include the identifier "WH&B" in the subject of your message and your name and address in the body of your message.

Dated: May 15, 2003.

Bud Cribley,

Acting Deputy Assistant Director, Renewable Resources and Planning.

[FR Doc. 03–12680 Filed 5–20–03; 8:45 am]

BILLING CODE 4310–84–P

DEPARTMENT OF THE INTERIOR

Minerals Management Service

Agency Information Collection Activities: Submitted for Office of Management and Budget (OMB) Review; Comment Request

AGENCY: Minerals Management Service (MMS), Interior.

ACTION: Notice of extension of an information collection (1010–0041).

SUMMARY: To comply with the Paperwork Reduction Act of 1995 (PRA), we are notifying the public that we have submitted to OMB an information collection request (ICR) to renew approval of the paperwork requirements in the regulations under 30 CFR 250, Subpart K, "Oil and Gas Production Rates." This notice also provides the public a second opportunity to comment on the paperwork burden of these regulatory requirements.

DATES: Submit written comments by June 20, 2003.

ADDRESSES: You may submit comments directly to the Office of Information and Regulatory Affairs, OMB, Attention: Desk Officer for the Department of the Interior (1010–0041), 725 17th Street, NW., Washington, DC 20503. Mail or hand-carry a copy of your comments to the Department of the Interior; Minerals Management Service; Attention: Rules Processing Team; Mail Stop 4024; 381 Elden Street; Herndon, Virginia 20170–4817. If you wish to e-mail your comments to MMS, the address is: *rules.comments@MMS.gov*. Reference Information Collection 1010–0041 in your subject line and mark your message for return receipt. Include your name and return address in your message text.

FOR FURTHER INFORMATION CONTACT: Arlene Bajusz, Rules Processing Team, telephone (703) 787–1600. You may also contact Arlene Bajusz to obtain a copy, at no cost, of the regulations that require the subject collection of information.

SUPPLEMENTARY INFORMATION:

Title: 30 CFR 250, Subpart K, Oil and Gas Production Rates.

OMB Control Number: 1010–0041.

Abstract: The Outer Continental Shelf (OCS) Lands Act, 43 U.S.C. 1331 *et seq.*, gives the Secretary of the Interior (Secretary) the responsibility to preserve, protect, and develop oil and gas resources in the OCS, consistent with the need to make such resources available to meet the Nation's energy needs as rapidly as possible; balance orderly energy resource development with protection of the human, marine, and coastal environments; ensure the public a fair and equitable return on the resources of the OCS; and preserve and maintain free enterprise competition. Section 1334(g)(2) states " * * * the lessee shall produce such oil or gas, or both, at rates * * * to assure the maximum rate of production which may be sustained without loss of ultimate recovery of oil or gas, or both, under sound engineering and economic principles, and which is safe for the duration of the activity covered by the approved plan."

Regulations at 30 CFR part 250, subpart K, implement these statutory requirements. We use the information collected to determine if produced gas can be put to beneficial use economically, to analyze the risks of transporting the liquid hydrocarbons against the value of the resource, and to account for volumes of flared gas and burned liquid hydrocarbons. The MMS uses the information in its efforts to conserve natural resources, prevent waste, and protect correlative rights including the Government's royalty interest. Specifically, MMS uses the information to review records of burning liquid hydrocarbons and venting and flaring actions to ensure that they are not excessive; to determine maximum production and maximum efficient rates; to compare the volume of hydrogen sulfide (H_2S) flared and the sulphur dioxide (SO_2) emitted with the specified amounts in approved contingency plans; to monitor monthly atmospheric emissions of SO_2 for air quality; to review applications for downhole commingling to ensure that action does not result in harm to ultimate recovery or undervalued royalties.

We will protect information from respondents considered proprietary under the Freedom of Information Act (5 U.S.C. 552) and its implementing regulations (43 CFR part 2) and under regulations at 30 CFR 250.196. No items of a sensitive nature are collected. Responses are mandatory.

Frequency: On occasion and monthly.

Estimated Number and Description of Respondents: Approximately 130 Federal OCS oil and gas lessees.

Estimated Reporting and Recordkeeping "Hour" Burden: The estimated annual "hour" burden for this information collection is a total of 15,636 hours. The following chart details the individual components and estimated hour burdens. In calculating the burdens, we assumed that respondents perform certain requirements in the normal course of their activities. We consider these to be usual and customary and took that into account in estimating the burden.

Citation 30 CFR 250 subpart K	Reporting & recordkeeping requirement	Hour burden	Average No. annual responses	Annual burden hours
1101(b)	Request approval to produce within 500 feet of a lease line	5	21 requests	105
1101(c)	Request approval to produce gas cap of a sensitive reservoir	12	125 requests	1,500
1102	Submit forms MMS–0 126, MMS–127, and MMS–128—burden covered under 1010–0039, 1010–0018, and 1010–0017.			0
1102(a)(5)	Submit alternative plan for overproduction status—MMS is not currently collecting this information.			0
1102(b)(6)	Request extension of time to submit results of semiannual well test.	½	37 requests	19
1103(a)	Request approval of test periods of less than 4 hours and pretest stabilization periods of less than 6 hours.	½	37 requests	19
1103(c)	Provide advance notice of time and date of well tests	½	10 notices	5
1104(c)	Submit results of all static bottomhole pressure surveys obtained by lessee. Information is submitted on form MMS–140 in the Gulf of Mexico Region.	1	1,235 surveys	1,235
1105(a), (b)	Request special approval to flare or vent oil-well gas	½	506 requests	253
1105(c)	Request approval to burn produced liquid hydrocarbons	½	60 requests	30
1105(f)	Submit monthly reports of flared or vented gas containing H_2S	2	3 operators × 12 mos. = 36	72
1105(f)	H_2S Contingency, Exploration, or Development and Production Plans—burden covered under 1010–0053 and 1010–0049.			0
1106	Submit application to commingle hydrocarbons produced from multiple reservoirs and inform other lessees having an interest.	6	118 applications	708
1107(b)	Submit proposed plan for enhanced recovery operations	12	24 plans	288
1107(c)	Submit periodic reports of volumes of oil, gas, or other substances injected, produced, or reproduced.	2	67 reports	134
1100–1107	General departure or alternative compliance requests not specifically covered elsewhere in subpart K, including bottomhole pressure survey waivers and reservoir reclassification requests.	1 6	120 survey waivers 20 requests	120 120
	Reporting Subtotal		**2,416**	**4,608**
1105(d), (e)	Maintain records for 2 years detailing gas flaring or venting.	13	846 platforms	10,998
1105(d), (e)	Maintain records for 2 years detailing liquid hydrocarbon burning.	½	60 occurences	30
	Recordkeeping Subtotal		130 Recordkeepers	11,028
Total Burden			2,546	15,636

Estimated Reporting and Recordkeeping "Non-Hour Cost" Burden: We have identified no cost burdens for this collection.

Public Disclosure Statement: The PRA (44 U.S.C. 3501, *et seq.*) provides that an agency may not conduct or sponsor a collection of information unless it displays a currently valid OMB control number. Until OMB approves a collection of information, you are not obligated to respond.

Comments: Section 3506(c)(2)(A) of the PRA (44 U.S.C. 3501, *et seq.*) requires each agency " * * * to provide notice * * * and otherwise consult with members of the public and affected agencies concerning each proposed collection of information * * *" Agencies must specifically solicit comments to: (a) Evaluate whether the proposed collection of information is necessary for the agency to perform its duties, including whether the information is useful; (b) evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) enhance the quality, usefulness, and clarity of the information to be collected; and (d) minimize the burden on the respondents, including the use of automated collection techniques or other forms of information technology.

To comply with the public consultation process, on December 6, 2002, we published a **Federal Register** notice (67 FR 72693) announcing that we would submit this ICR to OMB for approval. The notice provided the required 60-day comment period. In addition, § 250.199 provides the OMB control number for the information collection requirements imposed by the 30 CFR 250 regulations and forms. The regulation also informs the public that they may comment at any time on the collections of information and provides the address to which they should send comments. We have received no comments in response to these efforts.

If you wish to comment in response to this notice, you may send your comments to the offices listed under the **ADDRESSES** section of this notice. OMB has up to 60 days to approve or disapprove the information collection but may respond after 30 days. Therefore, to ensure maximum consideration, OMB should receive public comments by June 20, 2003.

Public Comment Policy: Our practice is to make comments, including names and home addresses of respondents, available for public review during regular business hours. Individual respondents may request that we withhold their home address from the record, which we will honor to the extent allowable by the law. There may be circumstances in which we would withhold from the record a respondent's identity, as allowable by the law. If you wish us to withhold your name and/or address, you must state this prominently at the beginning of your comment. However, we will not consider anonymous comments. We will make all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, available for public inspection in their entirety.

MMS Information Collection Clearance Officer: Jo Ann Lauterbach, (202) 208–7744.

Dated: March 11, 2003.

E. P. Danenberger,

Chief, Engineering and Operations Division.

[FR Doc. 03–12693 Filed 5–20–03; 8:45 am]

BILLING CODE 4310–MR–P

DEPARTMENT OF THE INTERIOR

Minerals Management Service

RIN 1010–AB57

Major Portion Prices and Due Dates for Additional Royalty Payments on Indian Gas Production in Designated Areas Not Associated With an Index Zone

AGENCY: Minerals Management Service.

ACTION: Notice; correction.

SUMMARY: The Minerals Management Service published a document in the **Federal Register** of April 29, 2003, concerning major portion prices and due dates for additional royalty payments on Indian gas production in designated areas not associated with an index zone. Information was erroneously omitted from the table.

FOR FURTHER INFORMATION CONTACT: John Barder, 303–231–3702.

Correction

In the **Federal Register** of April 29, 2003, in FR Doc. 03–10534, on page 22736, the second entry of the table is corrected to read:

MMS-designated areas	October 2001 (MMBtu)	November 2001 (MMBtu)	December 2001 (MMBtu)
Ute Allotted Leases in the Uintah and Ouray Reservation	0.90	2.32	1.90

Dated: May 15, 2003.

Lucy Querques Denett,

Associate Director for Minerals Revenue Management.

[FR Doc. 03–12714 Filed 5–20–03; 8:45 am]

BILLING CODE 4310–MR–P

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

Notice of Proposed Information Collection for 1029–0061 and 1029–0110

AGENCY: Office of Surface Mining Reclamation and Enforcement.

ACTION: Notice and request for comments.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995, the Office of Surface Mining Reclamation and Enforcement (OSM) is announcing its intention to request renewed approval for the collections of information for 30 CFR part 795, Permanent Regulatory Program—Small Operator Assistance Program (SOAP), and two technical training program course effectiveness evaluation forms. These collection requests have been forwarded to the Office of Management and Budget (OMB) for review and comment. The information collection requests describe the nature of the information collections and the expected burden and cost.

DATES: OMB has up to 60 days to approve or disapprove the information collections but may respond after 30 days. Therefore, public comments should be submitted to OMB by June 20, 2003, in order to be assured of consideration.

FOR FURTHER INFORMATION CONTACT: To request a copy of either information collection request, explanatory information and related forms, contact John A. Trelease at (202) 208–2783, or electronically to *jtreleas@osmre.gov*.

SUPPLEMENTARY INFORMATION: The Office of Management and Budget (OMB) regulations at 5 CFR part 1320, which implement provisions of the Paperwork Reduction Act of 1995 (Pub. L. 104–13), require that interested members of the public and affected agencies have an opportunity to comment on information collection and recordkeeping activities (*see* 5 CFR 1320.8(d)). OSM has submitted two requests to OMB to renew its approval of the collections of information contained in: 30 CFR 795, Permanent Regulatory Program—Small Operator Assistance Program (SOAP); and two technical training program course effectiveness evaluation forms. OSM is requesting a 3-year term of approval for each information collection activity.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for these collections of information are 1029–0061 for Part 795, and 1029–0110 for the technical training effectiveness evaluation forms.

As required under 5 CFR 1320.8(d), a **Federal Register** notice soliciting comments on these collections of information was published on January 23, 2003 (68 FR 3266). No comments were received. This notice provides the public with an additional 30 days in which to comment on the following information collection activities;

Title: 30 CFR Part 795—Permanent Regulatory Program—Small Operator Assistance Program.

OMB Control Number: 1029–0061.

Summary: This information collection requirement is needed to provide assistance to qualified small mine operators under section 507(c) of Pub. L. 95–87. The information requested will provide the regulatory authority with data to determine the eligibility of the applicant and the capability and expertise of laboratories to perform required tasks.

Bureau Form Number: FS–6

Frequency of Collection: Once per application.

Description of Respondents: Small operators, laboratories, and State regulatory authorities.

Total Annual Responses: 156.

Total Annual Burden Hours: 7,373 hours.

Title: Technical Training Program Course Effectiveness Evaluation.

OMB Control Number: 1029–0100.

Summary: Executive Order 12862 requires agencies to survey customers to determine the kind and quality of services they want and their level of satisfaction with existing services. The information supplied by this evaluation will determine customer satisfaction with OSM's training program and identify needs of respondents.

Bureau Form Number: None.

Frequency of Collection: On occasion.

Description of Respondents: State regulatory authority and tribal employees and their supervisors.

Total Annual Responses: 315.

Total Annual Burden Hours: 53 hours.

Send comments on the need for the collections of information for the performance of the functions of the agency; the accuracy of the agency's burden estimates; ways to enhance the quality, utility and clarity of the information collections; and ways to minimize the information collection burdens on respondents, such as use of automated means of collections of the information, to the following addresses. Please refer to OMB control number 1029–0061 for part 795, and 1029–0110 for the technical training effectiveness evaluation forms.

ADDRESSES: Submit comments to the Office of Information and Regulatory Affairs, Office of Management and Budget, Attention: Department of Interior Desk Officer, by fax at (202) 395–5806 or via e-mail to *Ruth_Solomon@omb.eop.gov.* Also, please send a copy of your comments to John A. Trelease, Office of Surface Mining Reclamation and Enforcement, 1951 Constitution Ave., NW., Room 210—SIB, Washington, DC 20240, or electronically to *jtreleas@osmre.gov.*

Dated: May 16, 2003.

Richard G. Bryson,

Acting Assistant Director, Program Support.

[FR Doc. 03–12772 Filed 5–20–03; 8:45 am]

BILLING CODE 4310–05–M

DEPARTMENT OF JUSTICE

Office of Community Oriented Policing Services FY 2003 Community Policing Discretionary Grants

AGENCY: Office of Community Oriented Policing Services, Department of Justice.

ACTION: Notice of funding availability.

SUMMARY: The U.S. Department of Justice Office of Community oriented Policing Services (COPS Office) is seeking proposals to fund a variety of initiatives designed to enhance local law enforcement community policing efforts. This solicitation provides background on the COPS Office and outlines the types of projects and programs the Office is interested in funding through grants or cooperative agreements. The solicitation should be of particular interest to law enforcement agencies, universities, and profit and non-profit institutions with an interest in an experience with community policing. The purpose of this solicitation is to provide funding for community policing efforts through their direct enhancement, the development of products, tools, or applied research that will facilitate their adoption and implementation and/or the development of training and technical assistance. This solicitation is being announced as an open competition. Awardees will be expected to begin work immediately upon selection.

Background: Since 1994, the U.S. Department of Justice Office of Community Oriented Policing Services has been the Federal government office whose unique mission it is to directly serve the needs of local law enforcement. COPS is responsible for making grants to States, units of local government, Indian tribal governments, other public and private entities, and multi-jurisdictional or regional consortia with the goals of increasing police presence, expanding and improving cooperative efforts between law enforcement agencies and members of the community, supporting innovative community policing projects, and otherwise enhancing public safety through reductions in crime and social disorder.

The COPS Office has awarded grants to more than 13,000 policing agencies across the country and has provided funding for over 116,000 officers through direct hiring grants and the redeployment of officers through the purchase of time-saving technology and the hiring of civilians. The Office has also funded a wide-variety of innovative policing grants to combat crime and enhance public safety.

Innovative grants have included funding to foster collaborative problem-solving between police and community-based agencies or schools, engaging faith based communities, domestic violence response and prevention, 311 systems, anti-gang efforts, and methamphetamine reduction. The COPS Office has also funded the creation of 31 Regional Community Policing Institutes (RCPIs) to foster training in community policing at the regional level. The Office has a history of producing practical and useable products and publications for the law enforcement field. Additional information regarding the COPS Office can be found at *www.cops.usdoj.gov.*

Funding Availability and Applicant Criteria: Depending on the fundability of proposals received by the COPS Office, funding amounts may be increased or decreased within categories. In addition, all categories/parts may not receive funding based upon the quality of applications. Additional projects may be funded from this solicitation with fiscal year 2004 appropriations if such appropriations are forthcoming. Grants or cooperative agreements will be awarded for a minimum of a one-year grant period and a maximum of a two-year grant period.

The COPS Office is seeking proposals under an Open Topic area where applicants are encouraged to develop innovative original proposals that support the mission and goals of the COPS Office. In addition, the COPS Office is seeking specific proposals in the following two general categories: Applied Research/Pilot Programs and Evaluations. Descriptions of the specific types of proposals the Office is seeking are provided under each of these general areas. Please note that applicants are eligible to apply for several projects under multiple areas. Applicants are strongly encouraged to submit original and innovative ideas under the Open Topics area.

A. Open Topics (A)

Approximate Funding per Project: $250,000

Applicants are encouraged to present original and innovative proposals under this topic area. Proposals must support the mission and goals of the COPS Office to advance the community policing efforts of local law enforcement. Applicants may propose such projects as the direct funding of innovative pilot programs (for example community oriented government pilot projects), the development of tools, products or applied research that will facilitate the implementation or advancement of community policing efforts, or providing training and/or technical assistance to local law enforcement concerning issues relevant to community policing topics (for example community policing as it relates to intelligence gathering). Note that if pilot programs are proposed, they must include an evaluation component to ensure that program effectiveness can be determined and replicated by other agencies.

B. Applied Research/Pilot Programs

1. Institutionalizing Problem Analysis (B1)

Approximate Funding: $500,000

Purpose/Goal: Effective problem-solving requires the in-depth analysis of the underlying conditions that give rise to community problems. The COPS Office recognizes the need to increase the capability of law enforcement agencies to engage in such problem analysis activities to develop effective solutions to them. In furtherance of this objective, the COPS Office recently convened a forum of leading experts and practitioners to discuss and clarify the notion of problem analysis. The publication "Problem Analysis in Policing" details the primary results of this forum and can be found at *www.cops.usdoj./gov/Default.asp?Open=True&Item=847.*

Applicants should familiarize themselves with this document; as the primary goal of this project is to facilitate the implementation of problem analysis into approximately five law enforcement agencies of varying size.

Objectives/Expectations: The applicant will develop a process to select five law enforcement agencies that have a demonstrated commitment to and understanding of the problemsolving process. A significant portion of the funding requested should be used to provide "incentive" monies directly to each of the selected agencies to enhance their problem analysiscapabilities. For example, this enhancement may include funding such items as a portion of the salary of a new problem analyst or funding to perform problem analysis research and hardware/software used for problem analysis. The applicant will be expected to provide technical assistance throughout the course of the project to ensure the greatest possibility of achieving the institutionalization of problem analysis capabilities within the policing agencies. The applicant will also be expected to engage in a detailed process evaluation, including case studies of each of the sites, which will enable other agencies to replicate and learn from these efforts.

Deliverables: The applicant will be expected to deliver a description of site selection criteria, any training curriculum/technical assistance resources developed for the agencies, a final detailed process evaluation, and case studies of each of the five selected sites. The applicant will also be expected to develop a final guide for use by police agencies who are seeking to institutionalize a problem analytic function.

Knowledge/Experience Required: Proposals should provide a definition of problem analysis, differentiating it from crime analysis as it is currently conducted, and discuss the current state of problem analysis in the nation's law enforcement agencies. The applicant should provide a preliminary outline of the process that will be used to select the five agencies and demonstrate their knowledge of law enforcement agencies and past experience working closely with them. The applicant should demonstrate a thorough understanding of community policing and problem-solving processes and the ability to train others in them.

2. Hiring/Recruitment/Retention of Community Police Officers (B2)

Approximate funding: $400,000

Purpose/Goal: Hiring and retaining top quality police officers has long been both a priority and a challenge for police agencies. This has become even more critical in an era of community policing since the events of 9/11. There are many stages and activities associated with recruiting, hiring, and retaining officers with the skills to meet today's challenges. The COPS Office seeks to expand upon the development of hiring, recruitment and retention tools that both reflect community policing principles and respond to the hiring pressures facing law enforcement. The state of knowledge and experience regarding successful and innovative recruitment, hiring and retention practices has grown in recent years, and the purpose of this funding is to continue this advancement.

Objectives/Expectations: Local law enforcement is the front line in the fight against terrorism at home. Yet law enforcement agencies are losing sworn officers at a rapid rate due to retirement, the creation of new federal positions that often provide competitive salary and benefits packages, and military call-ups. These factors, along with the emergence of community policing as the predominant policing paradigm, necessitate the development and testing of innovative practices to recruit and retain quality sworn personnel.

In two Chief Executive Officer Symposia convened by the COPS Office both pre- and post-9/11, police and sheriff executives identified several points of need in the area of police recruitment and hiring. These include a definition of an ideal candidate that incorporates the perspectives of not only those in law enforcement, but also the views of the community. Similarly, a national job description and a validated set of core competencies that more comprehensively reflect community policing and problem solving principles are needed. Another identified priority was research into private sector best practices on recruitment, retention, leadership, and succession planning that could be leveraged in a policing environment. Tools and techniques for confronting institutional biases within these processes are also important to develop. Finally, these leaders also expressed an interest in the development of a national marketing campaign geared towards promoting policing in the 21st Century.

The expectations for grants and cooperative agreements funded under this section are to respond to these recommendations through innovative projects, applied research, and/or the development of practical tools for use by law enforcement.

Deliverables/Outcomes: Projects under this topic area could take several forms, such as the development of pilot programs that are able to be replicated, monograph publications, recruitment tools for use by police departments, innovative testing and interviewing instruments, or the development of effective model print, radio and television employment public service announcements for use by agencies. Applied research projects that examine the effectiveness of recruitment and retention efforts, separately and combined, in attracting and retaining women and minorities may also be funded. For instance, it may be important to evaluate the relative effectiveness of various assessment instruments in predicting future police performance (according to community policing principles)—and as important—who will remain in law enforcement. Issues related to whether

what recruits learn in the academy accurately reflects the work they will do, and whether gaps in training contribute to attrition could also be addressed through funding.

Knowledge/Experience Required: Applicants must demonstrate a strong knowledge of the issues associated with police recruitment, hiring, and retention. Additionally, any non-law enforcement agency applicants must have experience working with law enforcement agencies.

3. Volunteers in Police Service (B3)

Approximate Funding per Project: $50,000

Purpose/Goal: In his 2002 State of the Union Address, President George W. Bush announced the creation of the *USA Freedom Corps,* which is an effort to foster a culture of service, citizenship, and responsibility, building on the generous spirit of the American people. The *Citizen Corps* programs are part of the USA Freedom Corps initiative and share the common goal of helping communities prevent, prepare for, and respond to crime, natural disasters, and other emergencies.

One of the Citizen Corps programs is Volunteers in Police Service (VIPS), administered by the *U.S. Department of Justice.* The goal of VIPS is to enhance the capacity of state and local law enforcement to utilize volunteers. These civilian volunteers provide support for resource-constrained law enforcement agencies by supplementing their community's law enforcement professionals to free officers for frontline duty. Funding will be provided to enhance and institutionalize a volunteer in police service program within local police departments.

Objectives/Expectations: To help expand the VIPS program, the COPS Office is seeking proposals from local law enforcement agencies to establish or enhance their volunteer program and recruitment efforts. Preliminary information from the VIPS program stresses the importance of a volunteer coordinator. An effective volunteer coordinator is often linked to a success of VIPS programs and funds from this grant can (but are not required) be used to help cover costs of this position. Among other items, funding may also be used for such things as advertisements and marketing of volunteer programs (including Web site development), activities associated with neighborhood watch and other resources for volunteer coordination, implementation, and evaluation efforts. Grantees will be required to attend a COPS Office VIPS-related training and should budget travel for 2 individuals to attend this training. Law enforcement agencies receiving funding must register with USA Freedom Corps as an official VIPS site.

Deliverables/Outcomes: The primary outcome will be an operational volunteer in police service program that enhances the ability of the local police department to effectively provide public services. Grantees will provide a final report to the COPS Office documenting how the funding directly enhanced their volunteer program and the overall benefits to the agency, so that these efforts can be promoted and replicated in other law enforcement agencies.

Knowledge/Experience Required: Applicants must be law enforcement agencies. Applicants should familiarize themselves with the Volunteers in Police Service program (*www.policevolunteers.org*) for additional information about programs that could possibly be replicated in their agency using this funding. Grantees must also express a strong commitment to maintain volunteer program efforts after grant expiration.

4. Topic Focused Law Enforcement Technology Guides (B4)

Approximate Funding: $250,000

Purpose/Goal: While the benefits of implementing technology are obvious, the obstacles to getting the most from that technology often are not. In a time when growing responsibilities greatly increase the duties of local law enforcement agencies, a natural response is to turn to technology as a force multiplier. However, there are a limited number of technology resources that are specifically tailored for law enforcement. To meet the need for additional resources, in 2001 the COPS Office funded the development of a Law Enforcement Tech Guide, a comprehensive "A to Z" technology planning, acquisition, implementation and integration guide that helps agencies address crime and social disorder issues. This guide can be found on the COPS Office Web site at *www.cops.usdoj.gov/Default.asp?Item=512.*

The guide has been well received by the law enforcement community. However, there are numerous other issues in the area of law enforcement technology that could be addressed by similar guides. Funding will be provided to produce additional law enforcement technology guidebooks.

Objectives/Expectations: To meet these evolving needs, the COPS Office is seeking proposals for the development of multiple technology-specific guidebooks for law enforcement. Topics that may be addressed include, but are not limited to, interoperability, crime mapping, 311, integration, technology training, managing change due to technology implementation, records management systems, and technology for the small/rural agencies.

Deliverables/Outcomes: Applicants will produce guidebooks designed for a law enforcement audience on multiple technology-specific topics.

Knowledge/Experience Required: The applicants should address their knowledge and experience in the area of information systems implementation in law enforcement environments.

Proposals should also demonstrate the applicant's knowledge and experience regarding the specific topics of the guidebooks being proposed and the ability to write for a law enforcement audience.

5. 311 for Homeland Security and Crisis Management (B5)

Approximate Funding per Project: $300,000

Purpose/Goal: Since 9/11 homeland security concerns have prompted the Administration to call on citizens to be vigilant. In addition, recent domestic criminal events, such as the October 2002 sniper attacks in the Washington Metropolitan Area, have further illustrated the need to encourage citizen information sharing for crime prevention and crime solving. The effects of such heightened awareness and calls for citizen participation have resulted, in part, in a 911 system challenged to keep up with calls from concerned citizens, many of whom use 911 as their primary vehicle to initiate contact with the police or other public service agencies.

311 Public Service Model non-emergency call systems can support and be integrated into homeland security and emergency preparedness plans and policies. 311 systems can be especially effective when they allow for coordinated efforts and information sharing between multiple public service agencies (*e.g.,* transportation, health, sanitation, victim services etc.). 311 systems can support emergency management efforts and enhance public service agency response efforts to prepare for emergencies.

Proposals are being sought from law enforcement agencies prepared to establish a Public Service Model 311 non-emergency call system that includes multiple public service agencies such as law enforcement, EMS, transportation, health, sanitation, victim services etc. for the purposes of improving homeland security and crisis management plans and practice. Funding is available for equipment (hardware and software) necessary to establish a Public service Model 311 non-emergency call system and for an impact evaluation of such a system. Funding is available to law enforcement agencies currently operating within jurisdictions that do not have a 311 system or those interested in expanding a law enforcement only 311 system into one that includes multiple public service agencies.

Objectives/Expectations: This project would require applicants to:

1. Establish a Public Service model 311 system involving multiple public service agencies, designing this non-emergency communication system to fill current gaps in information sharing between public service agencies and enhance the effectiveness of current homeland security and crisis management plans.

2. Develop innovative ideas for improving emergency dispatching, call prioritization, and records management systems.

3. Evaluate the impact of the 311 system on homeland security and crisis management plans and provide results of the evaluation to public safety personnel (including first-responders), other public service agencies, and the community-at-large. The evaluation should clearly demonstrate the utility of 311 in homeland security and crisis management.

Deliverables/Outcomes: Deliverables will include an operational Public Service Model 311 system (that includes multiple public service agencies). An impact evaluation is expected to be completed six months after the system has become operational and should be budgeted for.

Knowledge/Experience Required: Proposals should include the following items:

1. Applicants may apply for funding to either start-up a 311 system that includes multiple public service agencies or to expand current law enforcement only 311 systems. Due to the focus on developing cooperation and accountability between multiple public service agencies, jurisdictions currently operating a multi-agency Public Service Model 311 system are ineligible for funding under this topic.

2. Funding may be contingent on the current technological infrastructure of the applicant agency. Applicants must provide details of current technological infrastructure available to support the project.

3. Applicants must provide a demonstration of need, showing that a Public Service Model 311 non-emergency system will aid in the development of Homeland Security and Crisis Management plans and practice. This demonstration of need should be included as a separate document (no longer than 15 double-spaced typed pages) and will not count towards the proposal page limit.

4. Applicants must demonstrate that they have secured support from the primary stakeholders, including government executives, and at least two non-public safety agency executives. Stakeholders must have determined that a Public Service Model 311 system involving multiple public agencies will benefit the homeland security and crisis management plans and practices of the jurisdiction.

5. Applicants must address the implications of utilizing a 311 system for homeland security and crisis management efforts on current organizational processes, delineating each affected agency. The potential impact of 311 on police non-emergency calls must be described in the proposal.

6. Applicants must demonstrate the availability of in-kind contributions for establishing this system. This information is necessary, as the cost of most 311 systems will most likely exceed the amount of COPS-funding available.

7. Smaller law enforcement agencies are encouraged to partner with one or more neighboring jurisdictions in this effort.

C. Evaluations

1. Evaluation of MORE Grant Effectiveness (C1)

Approximate Funding: $200,000

Purpose/Goal: The COPS MORE (Making Officer Redeployment Effective) program is one of several approaches developed by the COPS Office to increase the deployment of law enforcement officers devoted to community policing. COPS MORE grants have been used to purchase law enforcement technology. One primary requirement of COPS MORE is that the time-savings experienced by officers as a result of the additional technology must result in redeployment into community policing activities. Some examples of the types of time-saving technology purchased through MORE grants include: mobile data terminals, record management systems, computer aided dispatch systems, and automated fingerprint identification systems.

Over the past seven years, the COPS Office has also recognized that technology can result in increased officer effectiveness. This increased effectiveness contributes to the overall COPS aim of reducing crime and social disorder through community policing.

Last year the COPS Office funded 295 agencies under the COPS MORE 2002 program. while MORE grantees were previously required to track and report time-savings and redeployment resulting from their grant, this requirement was removed under MORE 2002. while time-savings and redeployment still occur, the COPS Office is interested in an evaluation that will document or estimate the full-time equivalents (FTE's) redeployed, as well as the impacts of these technologies on department operations, communication, and community policing.

Objectives/Expectations: The COPS Office is seeking proposals that seek to document the efficiencies and effectiveness outcomes created as a result of the technology funded under the COPS MORE 2002 program.

Deliverables/Outcomes: The applicant will be expected to produce documentation that examines the efficiencies created as a result of the MORE 2002 program, and also examine and document any increases in effectiveness resulting from the program. The project deliverable(s) should also inform the profession on these findings in the form of a guidebook that will assist law enforcement agencies in achieving maximum efficiency and effectiveness with these technologies. This guidebook should demonstrate how to realize the desired results; provide instruction on police technologies based on the documented experiences of these grantees; and develop a model for agencies to use to self-evaluate their technology projects.

Knowledge/Experience Required: Applicants should demonstrate their knowledge of the COPS MORE program and of other technology-related outcomes beyond time-savings. Proposals should also provide a summary of the evaluation design and methods that would be used to measure effectiveness and efficiencies generated as a result of COPS MORE grants.

2. Analysis of COPS Start-Up Agencies (C2)

Approximate Funding: $150,000

Purpose/Goal: The COPS Office has provided funding to approximately 300 jurisdictions to initiate the development of police departments. These "start-up" agencies provide an opportunity to learn more about the factors associated with the implementation and initiation of

police departments and community policing activities in smaller settings.

Objectives/Expectations: The COPS Office is seeking proposals that examine the nature of these COPS funded start-up law enforcement agencies, trace their history, and document impediments and facilitators to the institutionalization of community oriented police services in smaller settings.

Deliverables/Outcomes: Applicants will be expected to produce a final report documenting the nature of COPS funded start-up law enforcement agencies and a guidebook aimed at assisting the development of police agencies in smaller settings. This guidebook should highlight important factors that should be taken into consideration when "starting-up" a police department and provide guidance on how to best effectively accomplish this task.

Knowledge/Experience Required: The applicant should have working knowledge of policing in smaller settings and the processes and procedures involved in initiating the development of an effective police department.

3. Managing Local Evaluations: A Guide for Law Enforcement (C3)

Approximate Funding: $100,000

Purpose/Goal of Proposed Project: Law enforcement is frequently called upon to provide evaluation information regarding local public safety efforts. Some agencies employ in-house evaluators, but many must seek external assistance from local universities or with private consultants. In some cases, evaluations that are conducted may not adequately meet the needs of the law enforcement agency.

This project will assist law enforcement agencies in providing funding for and in conducting and utilizing program evaluations.

Objectives/Expectations of Proposed Project: Proposals are being sought to develop a Law Enforcement Practitioner Guide to Managing Local Evaluations. This guide should assist law enforcement agencies through the evaluation process from start to finish-from how to select an evaluator, the managing on-going evaluations, to evaluating the final deliverable. Possible issues to be addressed include how to best communicate needs to potential evaluators, the types of documents that should be obtained and reviewed prior to selecting an evaluator, and how to best formulate a contract with an evaluator. The benefits of securing and speaking with references, the need for a detailed research plan, the importance of selecting the right agency official to work with the evaluator, and how to address whether an evaluator will meet their needs should also be discussed. The guide may also help the law enforcement practitioner understand the true costs of evaluations, predict potential budget pitfalls, and discuss how to spot trouble early-on and what to do in situations of non-compliance. Finally, the guide should help law enforcement practitioners generally understand how to apply the findings of an effective evaluation.

Deliverables/Outcomes: The primary deliverable is a publishable copy of a Law Enforcement Practitioner Guide to Managing Local Evaluations.

Specific Knowledge/Experience Required: Applicants must demonstrate a through understanding of the evaluation process and ability to write content for a law enforcement auidence. They must have documented program evaluation experience. A sample of an original published or unpublished program evaluation should be included with the application. This writing sample will not count towards the proposal page limit.

4. Analysis of COPS Police Integrity Initiative (C4)

Approximately Funding: $500,000

Purpose/Goal: This request is presented in two parts. Proposals should address both parts.

Part I:

The COPS Office is seeking the development of a comprehensive product that will summarize and highlight current work being done by COPS grantees to prevent racial profiling and to increase trust between police and citizens. In Fiscal Year 2001, the COPS Office funded (21) police departments under the Promoting Cooperative Strategies to Reduce Racial Profiling initiative to develop strategies that would address racial profiling. These strategies include:

- Collecting and analyzing traffic-stop data;
- Accountability and supervision;
- Recruitment and selection;
- Training and education of police and citizens;
- Using technology to prevent racial profiling; and
- Minority community engagement initiatives.

At the conclusion of these projects, each of the 21 police departments will produce a technical assistance guide that will document lessons learned and model practices that can be replicated by other law enforcement agencies. The technical assistance guides will be developed so that other police-community partnerships can benefit from the lessons learned when addressing police integrity issues. In that regard, these technical assistance guides are intended to include what worked, what did not work, the barriers to project implementation, solutions to obstacles in solving problems, and a discussion on how the project strengthened police integity, police-community relationships, and the related impact on racial profiling prevention.

Part II:

The COPS Office is also seeking a preliminary assessment of current work being done by COPS grantees to create cultures of integrity. In Fiscal Year 2002, the COPS Office funded 60 law enforcement agencies to develop a strategy that would support a culture of integrity, and 41 state chiefs' and sheriffs' associations to host police integrity training workshops at their annual meetings. The law enforcement strategy areas include:

- Use of force policy and training;
- Development of early intervention systems;
- Mapping integrity violations and related interventions;
- Self assessment techniques for internal monitoring;
- Strengthening internal affairs division operations;
- Improving citizen complaint processes;
- Utilizing a civilian review board;
- Command staff integrity training;
- Ensuring accountability to the community;
- Outreach to minority youth;
- Traffic stop data collection; and
- Recruiting quality recruits from local communities.

The association strategy areas include:

- Integrity training to support community policing;
- Homeland security and police integrity;
- Building public trust and confidence;
- Integrity challenges to police leadership; and
- Developing policy that strengthens integrity.

For more information on the COPS Police Integrity Initiatives, please visit the COPS Web site at: *http://www.cops.usdoj.gov/Deault.asp?Open=True&Item=393*

Objectives/Expectations:

Part I:

In order to maximize the work being done in the field through this important initiatives, the COPS Office is seeking the development of a comprehensive product that will summarize and highlight varied approaches across the six strategy areas under the Promoting Cooperative Strategies to Reduce Racial Profiling initiative. This project will require the applicant to:

- Provide on-site and/or telephone technical assistance to the agencies, if necessary, to assist in the completion of the final technical assistance guides;
- Review the 21 technical assistance guides for the purpose of compiling successes, model practices and lessons learned during strategy development/enhancement and implementation;
- Incorporate the following information/discussion into the final product:

(1) The impact of the strategies on the reduction and/or prevention of racial profiling and the perceptions of its practice;

(2) How strategy development and implementation contributed to building trust between police and citizens and to advancing community policing;

(3) Recommendations and considerations for other agencies that are interested in replicating these strategies.

Part II:

This project will require the applicant to:

- Work with the COPS Office to develop a preliminary assessment plan for documenting the progress of 101 grantees funded under the Creating a Culture of Integrity initiative;
- Submit a final report that discusses the following information:

(1) How COPS funding was used to meet project goals and objectives;

(2) Successes and challenges in developing and implementing the projects;

(3) The impact of the funding on advancing police integrity and creating cultures of integrity.

Deliverable/Outcomes:

Part I:

The applicant will be expected to produce a comprehensive final product that will summarize the experiences of the 21 police departments in developing their strategy under the Promoting Cooperative Strategies to Reduce Racial Profiling initiative, and the related impact on advancing community policing and racial profiling prevention. This product will provide an overview of varied approaches to addressing this significant issue for other law enforcement agencies that are interested in replicating these strategies.

Part II:

The applicant will be expected to conduct a preliminary assessment of 101 law enforcement agencies and police chiefs' and sheriffs' associations funded under the Creating a Culture of Integrity initiative. The purpose of this assessment will be to assist the COPS Office in documenting the progress of these pilot projects. The COPS office will expect a final report that discusses the outcomes of the preliminary assessment.

Knowledge/Experience Required: In addition to the general criteria listed in the solicitation, the applicant should address knowledge and experience in the areas of police integrity and racial profiling. In addition, the applicant should address knowledge and experience in each of the six strategy topic areas under the Promoting Cooperative Strategies to Reduce Racial Profiling initiative. The applicant should demonstrate a thorough understanding of community policing, and the importance of mutual trust and respect between police and citizens in order to strengthen police integrity and to advance the principles of community policing. Applicants should also have a demonstrated awareness of the COPS Police Integrity Initiatives.

How To Apply. Those interested in submitting an application in response to this solicitation must complete a Community Policing Development Application Packet. A detailed project description that is responsive to the criteria presented above must be included under section I of the packet. In this project description also discuss your management plan for implementing this project with respect to internal and external management of personnel and resources and your experience with managing grants and cooperative agreements. Resumes of key project staff/named consultants (relevant experience for the proposed project should be highlighted) should also be included and does not count towards the page limit.

Applicants may submit distinct multiple applications for different topic areas or propose projects that effectively combine topic areas. However, each distinct project must be described in detail in a separate Community Policing Development Application Packet with original signatures.

Notice of Intent To Apply: Please fax the accompanying notice of intent to reply form to the COPS Office, indicating the topic area(s) you are planning to apply under. The letter should be faxed to the attention of Angel Winters at 202–616–8658 no later than June 2, 2003.

ADDRESSES: Applications for this solicitation are due to the COPS Office by June 30, 2003 by 6 p.m. Please submit an original application package (with original signatures) and four copies to: U.S. Department of Justice, Office of Community Oriented Policing Services, 1100 Vermont Ave., NW., Washington, DC 20530, *Attn:* Angel Winters, PPSE.

FOR FURTHER INFORMATION CONTACT: Please contact Angel Winters at (202) 514–9199 to obtain additional information about the solicitation. Application forms and information regarding the COPS Office are also available by calling the U.S. Department of Justice Response Center at 1–800–421–6770 or by visiting the COPS Office Internet Web site at *www.cops.usdoj.gov.*

(The Catalog of Federal Domestic Assistance (CFDA) reference for this program is 16.710.)

Dated: May 5, 2003.

Carl R. Peed,

Director, Office of Community Oriented Policing Services.

[FR Doc. 03–12692 Filed 5–20–03; 8:45 am]

BILLING CODE 4140–AT–M

DEPARTMENT OF JUSTICE

Antitrust Division

[Civil Action No. 1: 03CV 000758]

United States v. Univision Communications Inc. & Hispanic Broadcasting Corp.

Proposed Final Judgment and Competitive Impact Statement. Notice is hereby given pursuant to the Antitrust Procedures and Penalties Act, 15 U.S.C. 16(b)–(h), that a proposed Final Judgment, Stipulation and Order, and Competitive Impact Statement have been filed with the United States District Court for the District of Columbia in *United States* v. *Univision Communications Inc.*, Civil Action No. 03CV000758. On March 26, 2003, the United States filed a Complaint alleging that Univision Communications Inc. ("Univision") and Hispanic Broadcasting Corp. ("HBC") violated Section 7 of the Clayton Act, 15 U.S.C. 18. The Complaint alleges that, due to Univision's partial ownership of Entravision Communications Corp. ("Entravision"), a principal competitor of HBC, the proposed acquisition, if consummated, will substantially lessen competition in the sale of advertising time on Spanish-language radio stations in many geographic markets. The proposed Final Judgment requires Univision to exchange its Entravision shares for a nonvoting equity interest, divest a substantial portion of its

ownership in Entravision, give up its seats on Entravision's Board of Directors, eliminate certain rights Univision has to veto important Entravision actions, and restrain certain conduct that would interfere with the governance of Entravision's radio business. The proposed Final Judgment specifically requires Univision, presently owning approximately thirty percent of Entravision, to divest down to fifteen-percent owership within three years, and ten-percent ownership within six years. Copies of the Complaint, proposed Final Judgment, and Competitive Impact Statement are available for inspection at the Department of Justice in Washington, DC., Room 200, 325 Seventh Street, NW., on the Internet at *http://www.usdoj.gov/atr*, and at the Office of the Clerk of the United States District Court for the District of Columbia, 333 Constitution Avenue, NW., Washington, DC 20001.

Public comment is invited within sixty days of the date of this notice. Such comments, and responses thereto, will be published in the **Federal Register** and filed with the Court. Comments should be directed to James R. Wade, Chief, Litigation III Section, Anitrust Division, Department of Justice, 325 Seventh Street, NW., Suite 300, Washington, D.C. 20530 (telephone: (202) 616–5935).

Constance K. Robinson,
Director of Operations.

Competitive Impact Statement

Plaintiff, the United States of America, by and through the Antitrust Division of the Department of Justice ("Department"), pursuant to Section 2(b) of the Antitrust Procedures and Penalties Act ("APPA"), 15 U.S.C. 16(b)–(h), files this competitive Impact Statement relating to the proposed Final Judgment submitted for entry in this civil antitrust proceeding.

I. Nature and Purpose of the Proceeding

The Department filed a civil antitrust complaint on March 26, 2003, alleging that the proposed acquisition of Hispanic Broadcasting Corporation ("HBC") by Univision Communications Inc. ("Univision") would violate Section 7 of the Clayton Act, as amended, 15 U.S.C. 18. HBC is the nation's largest Spanish-language radio broadcaster. Univision, the largest Spanish-language media company in the United States, owns a significant equity interest, and possesses governance rights, in Entravision Communications Corporation ("Entravision"), another Spanish-language media company and HBC's principal competitor in Spanish-language radio in many markets. The Complaint alleges that, due to Univision's substantial partial ownership and governance rights in Entravision, the proposed acquisition of HBC would lessen competition substantially in the provision of Spanish-language radio advertising time to a significant number of advertisers in several geographic areas of the United States. The request for relief seeks: (a) A judgment that Univision's proposed acquisition would violate Section 7 of the Clayton Act; (b) preliminary and permanent injunctive relief preventing the consummation of the proposed merger; (c) an award to the United States of the costs of this action; and (d) such other relief as is just and proper.

Before this suit was filed, the Department reached an agreement with Univision and HBC on the terms of a proposed consent decree, which, if entered, would require Univision to reduce its equity interest in Entravision to 15 percent of outstanding shares within three years from the filing of the proposed decree and to 10 percent within six years. The decree would also require Univision to relinquish its rights to place directors on Entravision's Board, eliminate certain rights Univision has to veto important Entravision actions, and restrain certain conduct that would interfere with the governance of Entravision's radio business.

A Stipulation and proposed Final Judgment embodying the settlement were filed simultaneously with the Complaint on March 26, 2003. The Department and the defendants have stipulated that they will be bound by the proposed Final judgment upon its filing. The proposed Final Judgment may be entered after compliance with the APPA unless rejected by the Court. Entry of the proposed Final Judgment would terminate this action, except that the Court would retain jurisdiction to construe, modify, or enforce the provisions of the proposed Final Judgment and to punish violations thereof.

II. Description of the Events Giving Rise to the Alleged Violation

A. The Defendants and the Proposed Transaction

Univision, a Delaware corporation with its principal place of business in Los Angeles, California, is the largest broadcaster of Spanish-language television programming in the United States with two broadcast networks, Univision and Telefutura, and one cable channel, Galavision. It also has several other Spanish-language media operations, including Internet sites and services, music recording, distribution, and publishing.

Univision has a significant and long-standing relationship with Entravision, a Spanish-language media company with television, radio, outdoor advertising, and publishing businesses. Entravision, which is not a party to this action, currently owns or operates approximately 55 radio stations throughout the United States, most of which broadcast Spanish-language programming. Entravision also owns or operates 49 television stations that broadcast Univision programming pursuant to an affiliation agreement that does not expire until December 31, 2021. As part of this affiliation agreement, Univision serves as Entravision's sole representative for the sale of television advertisements sold on a national basis.

At the time the proposed acquisition was announced, Univision owned an approximate 30-percent equity and seven-percent voting interest in Entravision. In addition, Univision, as the sole holder of Entravision's Class C common stock, has significant governance rights with respect to Entravision. Although Univision's representatives resigned after the proposed acquisition was announced, Univision has the right to place two representatives on Entravision's Board of Directors. Univision also has the right to veto important Entravision business decisions. Entravision's Bylaws provide Univision the right to veto Entravision's (a) Issuance of equity, (b) incurrence of debt at certain levels, and (c) acquisitions or dispositions of assets valued at greater than $25 million. Entravision's Certificate of Incorporation provides Univision the right to approve any Entravision (a) Merger, consolidation, business combination or reorganization, (b) dissolution, liquidation, or termination, and (c) transfer of any FCC license with respect to a television station that is an affiliate of Univision.

HBC, a Delaware corporation with its principal place of business in Dallas, Texas, is a media company that owns or operates more than 60 radio stations in 18 geographic regions in the United States. Nearly all of the HBC's stations broadcast in Spanish. HBC's other businesses include a marketing group and interactive online services.

On June 11, 2002, Univision agreed to acquire all of the voting securities of HBC. This transaction, if consummated, would result in a reduction in competition between HBC and Entravision in the provision of Spanish-language radio advertising in certain markets where the firms compete.

B. Markets

The Complaint alleges that the provision of advertising time on Spanish-language radio stations to advertisers that consider Spanish-language radio to be a particularly effective medium is a relevant product market, and that the Dallas, Texas; El Paso, Texas; Las Vegas, Nevada; McAllen-Brownsville-Harlingen, Texas; Phoenix, Arizona; and San Jose, California metro areas ("Overlap Markets") are each a relevant geographic market.

1. Relevant Product Market

Radio broadcasters, like HBC and Entravision, sell advertising time to local and national advertisers in areas where their stations are located. HBC and Entravision each negotiate these transactions individually with each local and national advertiser, and the resulting price for advertising time reflects the circumstances of these individual negotiations and the preferences of each advertiser.

There are a significant number of local and national advertisers in the geographic markets identified below that consider Spanish-language radio to be particularly effective in reaching desired customers who speak Spanish and who listen predominately or exclusively to Spanish-language radio. Such advertisers view Spanish-language radio, either alone or in conjunction with other media, to be the most effective way to reach their target audience and do not consider other media, including non-Spanish-language radio, to be a reasonable substitute. These advertisers would not turn to other media, including radio that is not broadcast in Spanish, if faced with a small but significant increase in the price of advertising time on Spanish-language radio or a reduction in the value of the services provided.

Given the nature of individualized negotiations between radio stations and advertisers discussed above, Spanish-language radio stations are likely able to identify advertisers that place a high value on utilizing Spanish-language radio to reach their targeted audience. Such advertisers would not find it economical to switch, or credibly threaten to switch, to other media to avoid a post-merger price increase. In the geographic markets identified below, there are a significant number of advertisers that consider Spanish-language radio advertising to be a particularly effective medium, and the provision of advertising time on Spanish-language radio stations to these advertisers is a relevant product market within the meaning of Section 7 of the Clayton Act.

2. Relevant Geographic Markets

Advertising placed by local and national advertisers on radio stations in the Overlap Markets is aimed at reaching listening audiences within each of those Overlap Markets, and radio stations outside an Overlap Market do not provide effective access to that audience. If there were a small but significant increase in the price of advertising time on Spanish-language radio stations within an Overlap Market, advertisers would not switch enough purchases of advertising time to stations outside the Overlap Market and/or otherwise reduce their purchases to defeat the price increase. Thus, the Overlap Markets of Dallas, El Paso, Las Vegas, McAllen-Brownsville-Harlengen, Phoenix, and San Jose are each relevant geographic markets for the purpose of Section 7 of the Clayton Act.

C. Harm to Competition in Radio Advertising Markets

1. Current Competition Between HBC and Entravision

The Compliant alleges that Entravision and HBC are vigorous competitors in the provision of Spanish-language radio. They heavily promote their stations against each other in order to gain ratings; they program and format their stations with an eye toward attracting listeners from each other; they aggressively seek to acquire stations; and they closely monitor each other's competitive positions in the Overlap Markets. Most importantly, the Compliant alleges that HBC and Entravision compete aggressively to sell advertising time to advertisers that seek to reach Spanish-language audiences. During individualized rate negotiations, advertisers targeting Spanish-language listeners benefit from its competition, including the ability to play off HBC stations against Entravision stations to reach better terms.

2. Reduction in Competition From the Acquisition

The Complaint alleges that, given Univision's significant ownership stake and governance rights in HBC's principal competitor, Entravision, the acquisition of HBC by Univision will lessen competition substantially in the sale of advertising time on Spanish-language radio in the Overlap Markets. The market for the provision of Spanish-language radio in the Overlap Markets is highly concentrated, with HBC and Entravision's combined share of advertising revenue ranging from 70 to 95 percent. HBC and Entravision face few other significant competitors and, for many local and national advertisers buying advertising time on Spanish-language radio, they are the next best substitutes for each other.

The Complaint alleges that Univision's ownership of a substantial equity stake in Entravision, and its ability to influence or control competitively significant Entravision decisions, will lessen the incentives of both companies to compete aggressively against each other and will result in higher prices and lower service quality in the sale of Spanish-language radio advertising time. Univision's right to place directors on Entravision's board and right to veto certain strategic business decisions (namely any Entravision issuance of equity or debt, or acquisitions over $25 million) give it a significant degree of control or influence over Entravision and will likely impair Entravision's ability and incentive to compete with Univision/HBC. For example, Univision's right to veto any Entravision acquisition of assets over $25 million would allow Univision/HBC to prevent Entravision from purchasing any significant radio station assets in a market where HBC competes. A Univision veto on the issuance of new stock or debt could leave Entravision without access to capital it may need to make acquisition or otherwise compete effectively with HBC. Entravision has frequently taken actions in the past that have been subject to these Univision veto rights and, because its plans call for more growth through acquisition, Entravision is likely to need Univision's approval on many occasions in the future. Indeed, the existence of these veto rights lessons competitions even if they are not exercised because Entravision will have the incentive to constrain its normal competitive behavior against Univision/HBC to ensure that Univision/HBC provides the necessary approval.

Univision's approximately 30-percent equity interest in Entravision also will substantially reduce competition between Univision/HBC and Entravision. Univision/HBC will have reduced incentives to compete against Entravision for advertisers seeking a Spanish-language radio audience because Univision/HBC, as a substantial owner of Entravision stock, will benefit even if a customer chooses Entravision rather than HBC. Consequently, HBC will compete less aggressively to gain customers at the expense of Entravision, resulting in an increase in prices for a significant number of advertisers in the

Overlap Markets. Advertisers that consider Spanish-language radio to be a particularly effective medium will find it difficult or impossible to "buy around" Univision/HBC and Entravision, *i.e.*, to effectively reach their targeted audience without using Univision/HBC and Entravision radio stations.

Entry of new Spanish-language radio stations into the relevant geographic markets would not be timely, likely, or sufficient to mitigate the competitive harm likely to result from this acquisition. In theory, entry could occur by obtaining a license for new radio spectrum or by reformatting an existing station. New radio spectrum acquisition is highly unlikely, however, because spectrum is a scarce and expensive commodity and reformatting by existing stations is unlikely to defeat a price increase by Univision/HBC or Entravision. Radio stations are unlikely to undertake a format change solely in response to small but significant increases in price being charged to advertisers by a firm such as Univision/HBC, and even given such a format change, radio stations that did change formats would be unlikely to attract enough listeners to provide sufficient alternatives to the merged entity. Reformatting is an expensive endeavor that involves the loss of the station's existing audience, a significant expense to attract new listeners, and no assurance of attracting a significant listening base to justify the costs involved. It generally occurs when a station believes that a particular format is not being sufficiently served or when a station finds an niche between existing formats. An increase in the price of advertising rates charged by existing stations serving a specific format does not in itself provide assurance that a newly formatted station would attract a sufficient audience base, particularly if there are strong incumbents already in that format.

III. Explanation of the Proposed Final Judgment

The proposed Final Judgment is designed to preserve competition in the sale of advertising time on Spanish-language radio stations in the Overlap Markets by restricting Univision's ability to control or influence Entravision's radio business and by significantly reducing Univision's equity stake in Entravision. The proposed Final Judgment has three principal provisions: (1) Exchange of Univision's Entravision stock for a nonvoting equity interest with limited shareholder rights; (2) divestitures of a substantial portion of the defendants' equity stake in Entravision; and (3) restrictions on the defendant's ability to interfere with the governance of Entravision's radio business. The proposed Final Judgment also has several sections designed to ensure its effectiveness and adequate compliance. Each of these sections is discussed below.

A. Exchange of Shares for Nonviting Equity

Section IV of the proposed Final Judgment requires Univision to exchange all of its Entravision Class A and Class C common stock for a nonvoting equity interest with limited rights and to certify that the voting and director rights that Univision has held in connection with its Entravision stock has been eliminated. The limited rights to be associated with the new class of stock to be issued to defendants are set forth in a Certificate of Designations, Preferences and Rights of Series U Preferred Stock, which is attached to the proposed Final Judgment. The exchange of stock must occur prior to the closing of the Univision/HBC merger.

These provisions will significantly curtail Univision's ability to influence or control Entravision's business conduct. As part of the acquisition of a new class of stock, Univision will relinquish certain rights it previously had in connection with Entravision governance. First, Univision will relinquish all shareholder voting rights so that it will not be able to vote on any corporate matters. Second, Univision will relinquish its two seats on Entravision's Board of Directors so that it will no longer have access to confidential Entravision information or the ability to vote on matters before the Board. Third, Univision will relinquish certain "veto" rights over important Entravision decisions, namely Univision's rights under the Entravision Bylaws to veto Entravision's issuance of equity, incurrence of debt at certain levels, and acquisitions or dispositions of assets valued at greater than $25 million. Retention of these rights would have allowed Univision to affect Entravision's strategic decision-making by preventing, or threatening to prevent, Entravision from making acquisitions or raising capital. Moreover, the continued existence of these veto rights would lessen competition even if they were not exercised because Entravision would have the incentive to constrain its normal competitive behavior against Univision/HBC to ensure that Univision/HBC would grant necessary approvals for future transactions subject to the veto rights.

The proposed Final Judgment does not require elimination of all shareholder rights that Univision currently possesses. As set forth in the Certificate of Designations, Univision will retain the modified right to veto any decision by Entravision to merge, consolidate, or otherwise reorganize Entravision with or into one or more entities that results in a transfer of all or substantially all of the assets of Entravision or a transfer of a majority of the voting power of Entravision.[1] Univision also retains the right to veto any Entravision dissolution, liquidation, or termination. Finally, Univision will also have the right to veto any disposition of any interest in any FCC license with respect to television stations that are affiliates of Univision. The proposed Final Judgment makes clear that these rights may be terminated if Entravision and the defendants choose not to do so. See Section VII.C. Defendants, however, are restrained from seeking to expand or modify these limited rights in any manner.

B. Divestiture of Defendants' Entravision Holdings

Section V of the proposed Final Judgment requires Univision to reduce its equity stake in Entravision so that it owns no more than 15 percent of all outstanding Entravision stock by March 26, 2006, and no more than 10 percent by March 26, 2009. The divestitures of this stock may be made by any combination of open-market sale, public offering, private sale, or repurchase by Entravision. The stock may not be sold by private sale or placement to any Spanish-language radio broadcaster other than Entravision unless the Department agrees to such a transaction in writing.

As explained above, if Univision/HBC owned a substantial, partial-ownership interest in Entravision, Univision/HBC would have an incentive to compete less aggressively. This is because Univision/HBC would receive some significant benefit even on sales it loses to Entravision. Reducing Univision/HBC's stake in Entravision to a much lower

[1] Section D(i) of the Certificate provides that without Univision's approval, Entravision will not "merge, consolidate or enter into a business combination, or otherwise reorganize this Corporation with or into one or more entities (other than a merger of a wholly-owned subsidiary of this Corporation into another wholly-owned subsidiary of this Corporation)." This approval right is identical to one that Univision possessed previously. Section VI.C of the proposed Final Judgment, however, limits Univision's rights in that it provides that Univision may not exercise its rights under D(i) unless the transaction at issue "results in a transfer of all or substantially all of the assets of Entravision or a transfer of a majority of the voting power of Entravision."

percentage reduces substantially the likelihood that Univision/HBC's competitive incentives will be affected by its partial ownership of Entravision, thus preserving Univision/HBC's incentive to compete with Entravision.

The terms of the proposed Final Judgment reflect a balancing of the potential harm to competition that might arise from a divestiture that proceeds either too slowly or too rapidly. In merger cases in which the Department seeks a divestiture of assets as a remedy, the Department requires completion of the divestiture within the shortest time period reasonable under the circumstances. In this case, the time periods for divestiture of stock are appropriate, however, because of concerns that a more rapid divestiture might harm competition by adversely affecting Entravision's ability to raise capital to fund expansion of its radio business.

C. Restrictions on Defendants Ability to Participate in the Governance of Entravision

Section VI of the proposed Final Judgment restrains defendants from directly or indirectly: (1) Suggesting or nominating any candidate for election to Entravision's board or serving as an officer, director, manager, or employee of Entravision; (2) accessing any nonpublic information relating to the governance of Entravision; (3) voting or permitting to be voted any shares of Entravision stock that defendants own; (4) using or attempting to use any ownership interest in Entravision to exert any influence over Entravision in the conduct of Entravision's radio business; (5) using or attempting to use any rights or duties under the television affiliation agreement or relationship to influence Entravision in the conduct of Entravision's radio business; and (6) communicating to or receiving from Entravision any nonpublic information relating to Entravision's radio business.

Collectively, these provisions are intended to prevent defendants from participating in Entravision's governance or in the conduct of Entravision's radio business, notwithstanding the defendants' remaining equity interest in Entravision and the television affiliation relationship. While recognizing that Univision and Entravision have a mutual interest in matters affecting their television affiliation relationship, these provisions seek to ensure the competitive independence of the two companies in matters involving the radio business.

D. Permitted Conduct

Section VII of the proposed Final Judgment identifies certain conduct that is permitted. Individual managers, agents, and employees of the defendants are allowed to hold, acquire, or sell Entravision stock solely for personal investment. Officers and directors also may hold or sell Entravision stock but may not acquire any additional Entravision stock. Any Entravision stock held by these individuals is not subject to the stock-exchange or divestiture requirements of Sections IV and V of the proposed Final Judgment.

Section VII also provides that Univision may acquire a majority of Entravision's voting securities so long as the transaction is subject to the reporting and waiting requirements of the Hart-Scott-Rodino Antitrust Improvements Act of 1976, as amended, 15 U.S.C. 18a, provided, however, that Univision cannot acquire or retain any interest in Entravision's radio assets in any of the Overlap Markets as part of such a transaction without the approval of the Department, in its sole discretion. This provision makes clear that the proposed Final Judgment does not prohibit a transaction in which Univision would acquire a majority stake in Entravision so long as the Department is afforded the ability to review the transaction pursuant to the established Hart-Scott-Rodino framework. The Department, of course, would review any such transaction to determine whether it was likely to lessen competition in any relevant market. Because the Department has determined that a combination of Univision and Entravision would lessen competition in the sale of advertising on Spanish-language radio in the Overlap Markets, a transaction in which Univision acquired Entravision may not include any Entravision radio assets from the markets that are the subject of the Complaint unless the Department gives its approval.

E. Compliance, Inspection, and Other Provisions Designed To Ensure Effectiveness of the Proposed Final Judgment

Section VIII of the proposed Final Judgment provides for appointment of a trustee should defendants not comply with the terms of the proposed Final Judgment that require stock divestitures within the established time periods. The trustee would have the power to accomplish the divestitures. Section IX requires the defendants to distribute the proposed Final Judgment to certain officers, directors, and appropriate employees, and obtain statements from these individuals that they understand their obligations under the Final Judgment. The terms of this provision are designed to ensure that those individuals responsible for complying with the Final Judgment are aware of its existence and understand its requirements. Section IX also requires annual reports and certifications during the life of the decree. Section X provides a means for the Department to obtain information from the defendants to determine or secure compliance with the proposed Final Judgment. Under Section XI, the Court would retain jurisdiction over this matter to modify or terminate any of its provisions, to enforce compliance, and to punish any violations of its provisions. Section XII provides that the proposed Final Judgment will expire 10 years after it is entered by the Court. Section XIII states that the entry of the proposed Final Judgment is in the public interest.

IV. Remedies Available to Potential Private Litigants

Section 4 of the Clayton Act, 15 U.S.C. 15, provides that any person who has been injured as a result of conduct prohibited by the antitrust laws may bring suit in federal court to recover three times the damages the person has suffered, as well as costs and reasonable attorneys' fees. Entry of the proposed Final Judgment will neither impair nor assist the bringing of any private antitrust damage action. Under the provisions of Section 5(a) of the Clayton Act, 15 U.S.C. 16(a), the proposed Final Judgment has no *prima facie* in any subsequent private lawsuit that may be brought against defendants.

V. Procedures Available for Modification of the Proposed Final Judgment

The Department and the defendants have stipulated that the proposed Final Judgment may be entered by the Court after compliance with the provisions of the APPA, provided that the Department has not withdrawn its consent. The APPA conditions entry upon the Court's determination that the proposed Final Judgment is in the public interest.

The APPA provides a period of at least 60 days preceding the effective date of the proposed Final Judgment within which any person may submit to the Department written comments regarding the proposed Final Judgment. Any person who wishes to comment should do so within 60 days of the date of publication of this Competitive Impact Statement in the **Federal Register**. The Department will evaluate and respond to the comments. All comments will be given due

consideration by the Department, which remains free to withdraw its consent to the proposed Final Judgment at any time prior to entry. The comments and the response of the Department will be filed with the Court and published in the **Federal Register**.

Written comments should be submitted to: James R. Wade, Chief, Litigation III Section, Antitrust Division, United States Department of Justice, 325 7th Street, NW., Suite 300, Washington, DC 20530.

The proposed Final Judgment provides that the Court retains jurisdiction over this action, and that the parties may apply to the Court for any order necessary or appropriate for the modification, interpretation, or enforcement of the Final Judgment.

VI. Alternatives to the Proposed Final Judgment

The Department considered, as an alternative to the proposed Final Judgment, a full trial on the merits of its Complaint for Injunctive Relief against Univision and HBC as well as a proposal by the defendants that they would, in lieu of divestitures, place their Entravision stock in a long-term trust. The Department is satisfied, however, that the divestiture of a substantial portion of equity interest in Entravision by Univision, the surrender of several key control rights, and the other relief contained in the proposed Final Judgment will preserve competition in the sale of radio advertising time on Spanish-language stations serving the Overlap Markets. Thus, the proposed Final Judgment would achieve substantially all the relief the Department would have obtained through litigation, but avoids the time, expense, and uncertainty of a full trial on the merits of the Complaint.

VII. Standard of Review Under the APPA for Proposed Final Judgment

The APPA requires that proposed consent judgments in antitrust cases brought by the United States be subject to a 60-day comment period, after which the Court shall determine whether entry of the proposed Final Judgment "is in the public interest." In making that determination, the Court may consider:

(1) The competitive impact of such judgment, including termination of alleged violations, provisions for enforcement and modification, duration or relief sought, anticipated effects to alternative remedies actually considered, and any other considerations bearing upon the adequacy of such judgment;

(2) The impact of entry of such judgment upon the public generally and individuals alleging specific injury from the violations set forth in the complaint including consideration of the public benefit, if any, to be derived from a determination of the issues at trial.

15 U.S.C. 16(e). As the United States Court of Appeals for the D.C. Circuit held, this statute permits a court to consider, among other things, the relationship between the remedy secured and the specific allegations set forth in the government's complaint, whether the decree is sufficiently clear, whether enforcement mechanisms are sufficient, and whether the decree may positively harm third parties. *See United States* v. *Microsoft*, 56 F.3d 1448, 1461–62 (D.C. Cir. 1995).

In conducting this inquiry, "[t]he court is nowhere compelled to go to trial or to engage in extended proceedings which might have the effect of vitiating the benefits of prompt and less costly settlement through the consent decree process." 119 Cong. Rec. 24,598 (1973) (statement of Senator Tunney).[2] Rather,

> [a]bsent a showing of corrupt failure of the government to discharge its duty, the Court, in making its public interest finding, should * * * carefully consider the explanations of the government in the competitive impact statement and its responses to comments in order to determine whether those explanations are reasonable under the circumstances.

United States v. *Mid-Am. Dairymen, Inc.*, 1977–1 Trade Cas. (CCH) ¶ 61,508, at 71,980 (W.D. Mo. May 17, 1977).

Accordingly, with respect to the adequacy of the relief secured by the decree, a court may not "engage in an unrestricted evaluation of what relief would best serve the public." *United State* v. *BNS, Inc.*, 858 F.2d 456, 462 (9th Cir. 1988) (citing *United States* v. *Bechtel Corp.*, 648 F.2d 660, 666 (9th Cir. 1981)); *see* also Microsoft, 56 F.3d at 1460–62. Precedent requires that

> [t]he balancing of competing social and political interests affected by a proposed antitrust consent decree must be left, in the first instance, to the discretion of the Attorney General. The court's role in protecting the public interest is one of insuring that the government has not breached its duty to the public in consenting to the decree. The court is required to determine not whether a particular decree is the one that will best serve society, but whether the settlement is "within the reaches of the public interest." More elaborate requirements might undermine the effectiveness of antitrust enforcement by consent decree.

Bechtel, 648 F.2d at 666 (emphasis added) (citations omitted).[3]

The proposed Final Judgment, therefore, should not be reviewed under a standard of whether it is certain to eliminate every anticompetitive effect of a particular practice or whether it mandates certainty of free competition in the future. Court approval of a final judgment requires a standard more flexible and less strict than the standard required for a finding of liability. "[A] proposed decree must be approved even if it falls short of the remedy the court would impose on its own, as long as it falls within the range of acceptability or is 'within the reaches of public interest'" *United States* v. *Am. Tel. & Tel. Co.*, 552 F. Supp. 131, 151 (D.D.C. 1982) (citations omitted) (quoting *Gillette*, 406 F. Supp. at 716), aff'd sub nom. *Maryland* v. *United States*, 460 U.S. 1001 (1983); see also *United States* v. *Alcan Aluminum Ltd.*, 605 F. Supp. 619, 622 (W.D. Ky. 1985) (approving the consent decree even though the court would have imposed a greater remedy).

Moreover, the Court's role under the APPA is limited to reviewing the remedy in relationship to the violations that the United States has alleged in its Complaint, and does not authorize the Court to "construct [its] own hypothetical case and then evaluate the decree against that case." *Microsoft*, 56 F.3d at 1459. Because the "court's authority to review the decree depends entirely on the government's exercising its prosecutorial discretion by bringing a case in the first place," it follows that "the court is only authorized to review the decree itself," and not to "effectively redraft the complaint" to inquire into other matters that the United States might have but did not pursue. *Id.* at 1459–60.

VIII. Determinative Documents

There are no determinative materials or documents within the meaning of the APPA that were considered by the Department in formulating the proposed Final Judgment.

[2] *See also United States* v. *Gillette Co.*, 406 F. Supp. 713, 716 (D. Mass. 1975) (recognizing it was not the court's duty to settle; rather, the court must only answer "whether the settlement achieved [was] within the reaches of the public interest"). A "public interest" determination can be made properly on the basis of the Competitive Impact Statement and Response to Comments filed pursuant to the APPA. Although the APPA authorizes the use of additional procedures, 15 U.S.C. § 16(f), those procedures are discretionary. A court need not invoke any of them unless it believes that the comments have raised significant issues and that further proceedings would aid the court in resolving those issues. *See* H.R. Rep. No. 93–1463, 93rd Cong., 2d Sess. 8–9 (1974), *reprinted in* 1974 U.S.C.C.A.N. 6535, 6538.

[3] Cf. BNS, 858 F.2d at 463 (holding that the court's "ultimate authority under the [APPA] is limited to approving or disapproving the consent decree"); Gillette, 406 F. Supp. at 716 (noting that, in this way, the court is constrained to "look at the overall picture not hypercritically, nor with a microscope, but with an artist's reducing glass"). *See* generally Microsoft, 56 F.3d at 1461 (discussing whether "the remedies [obtained in the decree are] so inconsonant with the allegations charged as to fall outside of the 'reaches of the public interest'").

Dated this 7th day of May 2003.

Respectfully submitted,

/s/

William H. Stallings,
Litigation III Section, Antitrust Division, United States Department of Justice, 325 7th Street, NW., Suite 300, Washington, DC 20530.

Certificate of Service

The undersigned certifies that a copy of the foregoing Competitive Impact Statement was served on the following counsel, by electronic mail in PDF format and by hand delivery, this 7th day of May, 2003:

John M. Taladay,
Howrey, Simon, Arnold & White L.L.P., 1299 Pennsylvania Avenue, NW., Washington, DC 20004–2402.

Neil W. Imus,
Vinson & Elkins L.L.P., The Willard Office Building, 1455 Pennsylvania Avenue, NW., Washington, DC 20004–1008.

/s/

William H. Stallings,

Stipulation and Order

It is hereby stipulated by and between the undersigned parties, through their respective counsel as follows:

1. The Court has jurisdiction over the subject matter of plaintiff's Complaint alleging defendants Univision Communications Inc. ("Univision") and Hispanic Broadcasting Corporation ("HBC") violated Section 7 of the Clayton Act (15 U.S.C. 18), and the parties do not object either to the Court's exercise of personal jurisdiction over them in this case, or to the propriety of venue of this action in the United States District Court for the District of Columbia. The defendants authorize John M. Taladay, Esq. of Howrey, Simon, Arnold & White L.L.P. to accept service of all process in this matter on their behalf.

2. The parties stipulate that a Final Judgment in the form hereto attached may be filed and entered by the Court, upon the motion of any party or upon the Court's own motion, at any time after compliance with the requirements of the Antitrust Procedure and Penalties Act (15 U.S.C. 16), and without further notice to any party or other proceedings, provided that plaintiff has not withdrawn its consent, which it may do at any time before the entry of the proposed Final Judgment by serving notice thereof on defendants and by filing that notice with the Court.

3. Defendants shall abide by and comply with the provisions of the proposed Final Judgment pending entry of the Final Judgment by the Court, or until expiration of time for all appeals of any Court ruling declining entry of the proposed Final Judgment, and shall, from the date of the signing of this Stipulation by the parties, comply with all the terms and provisions of the proposed Final Judgment as though they were in full force and effect as an order of the Court.

4. This Stipulation shall apply with equal force and effect to any amended proposed Final Judgment agreed upon in writing by the parties and submitted to the Court.

5. In the event that (1) plaintiff withdraws its consent, as provided in paragraph two above, (2) defendants provide notice to plaintiff and the Court that the Agreement and Plan of Reorganization dated June 11, 2002 has been terminated or that the Merger of Univision and HBC (as defined in the Agreement and Plan of Reorganization) has been abandoned; or (3) that the proposed Final Judgment is not entered pursuant to this Stipulation, the time has expired for all appeals of any Court ruling declining entry of the proposed Final Judgment, and the Court has not otherwise ordered continued compliance with the terms and provisions of the proposed Final Judgment, then the parties are released from all further obligations under this Stipulation, and the making of this Stipulation shall be without prejudice to any party in this or any other proceeding.

6. Defendants represent that the required actions set forth in Sections IV, V, and VI of the proposed Final Judgment can and will be implemented and followed and that the defendants will later raise no claim of hardship or difficulty as grounds for asking the Court to modify any of the provisions contained therein.

Respectfully submitted,

For Plaintiff United States of America:

William H. Stallings,
U.S. Department of Justice, Antitrust Division, Litigation III Section, 325 7th Street, NW., Suite 300, Washington, D.C. 20530, Tel: (202) 514–9323, Fax: (202) 307–9952.

Dated: March 26, 2003.

For Defendant Univision Communications Inc.:

John M. Taladay
Howrey, Simon, Arnold & White, L.L.P. 1299 Pennsylvania Avenue, NW., Washington, D.C. 20004–2402, Tel: (202) 383–6564, Fax: (202) 383–6610.

For Defendant Hispanic Broadcasting Corporation:

Neil W. Imus,
Vinson & Elkins L.L.P. The Willard Office Building, 1455 Pennsylvania Avenue, NW., Washington, D.C. 20004–1008, Tel: (202) 639–6675, Fax: (202) 879–8875 D.C. Bar 394544.

Order

It is *so ordered*, this__day of March, 2003.

United States District Court Judge

Final Judgment

Whereas, plaintiff, United States of America, filed its Complaint on March 26, 2003, alleging that defendants, Univision Communications Inc. ("Univision") and Hispanic Broadcasting Corporation ("HBC"), violated Section 7 of the Clayton Act, 15 U.S.C. 18, and plaintiff and defendants, by their attorneys, have consented to the entry of this Final Judgment without trial or adjudication of any issue of fact or law, and without this Final Judgment constituting any evidence against, or an admission by, any party with respect to any issue of fact or law;

And Whereas, defendant have agreed to be bound by the provisions of this Final Judgment pending its approval by the Court:

And Whereas, the essence of this Final Judgment is the prompt and certain divestiture of certain rights or assets by and the imposition of related injunctive relief against the defendants to ensure that competition is not substantially lessened:

And Whereas, defendants have represented to plaintiff that the divestitures required below can and will be made and that defendants will later raise no claim of hardship of difficulty as grounds for asking the Court to modify any of the divestiture provisions contained below:

Now Therefore, before the taking of any testimony, and without trial or adjudication of any issue of fact or law, and upon the consent of the parties, *it is Ordered, adjudged and decreed* as follows:

I. Jurisdiction

This Court has jurisdiction over the subject matter of, and each of the parties to, this action. The Complaint states a claim upon which relief may be granted against defendants under Section 7 of the Clayton Act, as amended 15 U.S.C. 18.

II. Definitions

As used in this Final Judgment:

A. "*Univision*" means defendant Univision Communications Inc., a Delaware corporation with its principal place of business in Los Angeles, California, its successors and assigns,

and its subsidiaries, divisions, groups, affiliates, partnerships, and joint ventures, and their directors, officers, managers, agents, and employees.

B. "*HBC*" means defendant Hispanic Broadcasting Corporation, a Delaware corporation with its principal place of business in Dallas, Texas, its successors and assigns, and its subsidiaries, divisions, groups, affiliates, partnerships, and joint ventures, and their directors, officers, managers, agents, and employees.

C. *Entravision* means Entravision Communications Corporation, a Delaware corporation with its principal place of business in Santa Monica, California, its successors and assigns, and its subsidiaries, divisions, groups, affiliates, partnerships, and joint ventures, and their directors, officers, managers, agents, and employees.

D. *Divestiture Assets* means that portion of the Entravision Holdings required to be divested under this Final Judgment.

E. *Entravision Holdings* means any equity interest, whether voting or nonvoting, of Entravision that defendants own or control, directly or indirectly, including, but not limited to, the 21,983,392 shares of Entravision's Class C common shares and the 14,943,231 shares of Entravision's Class A common shares owned by Univision as of the date of the filing this Final Judgment.

F. *The Univision/HBC Merger* means the Agreement and Plan of Reorganization dated June 11, 2002, by and among Univision and HBC under which Univision will acquire 100 percent of the voting securities of HBC.

G. *Own* means to have or retain any right, title, or interest in any asset, including any ability to control or direct actions with respect to such asset, either directly or indirectly, individually or through any other party.

H. *Overlap Markets* are the following Metro Survey Areas: Dallas, Texas; El Paso, Texas; Las Vegas, Nevada; McAllen-Brownsville-Harlingen, Texas: Phoenix, Arizona; and San Jose, California. A Metro Survey Area is a geographical unit for which Arbitron, a company that surveys radio listeners, furnishes radio stations, advertisers, and advertising agencies in a particular area with data to aid in evaluating radio size composition.

III. Applicability

This final Judgment applies to Univision and HBC, both individually and jointly, and all other persons in active concert or participation with any of them who receive actual notice of this Final Judgment by personal service or otherwise.

IV. Exchange or Entravision Shares

A. Univision is hereby ordered and directed, prior to closing of the Univision/HBC Merger, to exchange all of its Entravision Class A and Class C common stock for a nonvoting equity interest with rights and restrictions as specified in the Certificate of Designations. Preferences and Rights of Series U Preferred Stock (attached hereto as Schedule A and made a part of this Final Judgment).

B. Univision is hereby ordered and directed, prior to closing of the Univision/BBC Merger, to provide written certification and supporting documentation to plaintiff that all voting and director rights associated with Entravision's Class C common shares contained in Univision's First Restated Certificate of Incorporation, dated July 24, 2000, and Entravision's Second Amended and Restated Bylaws, dated July 11, 2002, have been eliminated.

V. Divestiture of Entravision Holdings

A. Defendants are hereby ordered and directed, in accordance with the terms of this Final Judgment, on or before three (3) years from the date of filing of this Final Judgment, to divest that portion of the Entravision Holdings sufficient to cause defendants to own no more than fifteen (15) percent of all outstanding shares of Entravision on a fully converted basis. On or before six (6) years from the date of this Final Judgment, defendants shall divest that portion of the Entravision Holdings sufficient to cause defendants to own no more than ten (10) percent of all outstanding shares of Entravision on a fully converted basis.

B. Defendants are enjoined and restrained from the date of the filing of this Final Judgment until the completion of the divestitures required by Section V.A from acquiring, directly or indirectly, any additional share of Entravision stock, except pursuant to a transaction that does not increase defendants' proportion of the outstanding equity of Entravision, such as a stock split, stock dividend, rights offering, recapitalization, reclassification, merger, consolidation, or corporate reorganization. Any additional Entravision equity acquired by defendants as specifically permitted in this Section V.B. shall be part of the Entravision Holdings and be subject (1) the divestiture obligations of Section V.A of this Final Judgment: and (2) to the rights and restrictions set forth in Section IV.A and embodied in the attached Certificate of Designations, Preferences and Rights of Series U Preferred Stock.

C. Upon completion of the divestitures required by Section V.A. defendants may acquire additional shares of Entravision, but defendants are enjoined and restrained from owning any more than ten (10) percent of all outstanding shares of Entravision on a fully converted basis. Any additional Entravision shares acquired by defendants shall be subject to the rights and restrictions set forth in Section IV.A and embodied in the attached Certificate of Designations. Preferences and Rights of Series U Preferred Stock.

D. The divestitures required by Section V.A may be made by open market sale, public sale, repurchase by Entravision, or a combination thereof. Such divestitures shall not be made by private sale or placement to any person who provides Spanish-language radio broadcasting services other than Entravision unless plaintiff, in its sole discretion, shall otherwise agree in writing.

E. Univision shall notify plaintiff no less than sixty (60) calendar days prior to the expiration of each of the time periods for the divestitures required by Section V.A of this Final Judgment of the arrangements it has made to complete each required divestiture in a timely fashion.

VI. Entravision Governance

A. From the date of the filing of this Final Judgment and until its expiration, defendants are enjoined and restrained, directly or indirectly, from:

1. Suggesting or nominating, individually or as part of a group, any candidate for election to Entravision's Board of Directors, or having any officer, director, manager, employee, or agent serve as an officer, director, manager, employee, or in a comparable position with or for Entravision:

2. Participating in, being present at, or receiving any notes, minutes, or agendas of, information from, or any documents distributed in connection with, any nonpublic meeting of Entravision's Board of Directors or any committee thereof, or any other governing body of Entravision. For purposes of this provision, the term "meeting" includes any action taken by consent of the relevant directors in lieu of a meeting:

3. Voting or permitting to be voted any Entravision shares that defendants own, provided, however, that Univision shall have the right to vote on matters arising under the attached Certificate of Designations. Preferences and Rights of Series U Preferred Stock:

4. Using or attempting to use any ownership interest in Entravision to exert any influence over Entravision in the conduct of Entravision's radio business:

5. Using or attempting to use any rights or duties under any television affiliation agreement or relationship between Univision and Entravision (including any duties Univision may have as national television sales representative for Entravision), to influence Entravision in the conduct of Entravision's radio business: and

6. Communicating to or receiving from any officer, director, manager, employee, or agent or Entravision any nonpublic information regarding any aspect of defendants' or Entravision radio business, including any plans or proposals with respect thereto. Nothing in this prohibition, however, is intended to prevent: (1) Entravision from advertising its radio business on defendants' stations or to prevent defendants from advertising on Entravision stations: (2) joint promotions between Entravision and defendants and communications regarding the same; (3) Univision from hiring Entravision personnel or Entravision from hiring Univision personnel: and (4) nonpublic communications regarding industry-wide issues or possible potential business transactions between the two companies provided that such communications do not violate the antitrust laws or any other applicable law or regulation.

B. Defendants are enjoined and restrained from preventing, or attempting to prevent, Entravision from making any changes in any corporate governance documents (including its First Restated Certificate of Incorporation and Second Amended and Restated Bylaws) to implement the prohibitions contained in Section VI.A.

C. Defendants are enjoined and restrained from exercising the rights contained in Section D(i) of the attached Certificate of Designations, Preferences and Rights of Series U Preferred Stock except in connection with a decision by Entravision to merge, consolidate or otherwise reorganize Entravision with or into one or more entities which results in a transfer of all or substantially all of the assets of Entravision or a transfer of a majority of the voting power of Entravision.

VII. Permitted Conduct

A. Nothing in this Final Judgment shall prohibit individual managers, agents, and employees of defendants, other than individual directors and officers of defendants, from holding, acquiring, or selling shares of Entravision stock solely for personal investment, and any shares so held will not be subject to the requirements of Sections IV and V of this Final Judgment.

B. Nothing in this Final Judgment shall prohibit individual directors or officers of defendants from continuing to hold, sell, or otherwise dispose of shares of Entravision stock acquired prior to the filing of this Final Judgment and held solely for personal investment, and any shares so held will not be subject to the requirements of Sections IV and V of this Final Judgment. Individual directors and officers of defendants shall not acquire any additional shares of Entravision stock after the filing of this Final Judgment.

C. Nothing in this Final Judgment shall prohibit defendants from agreeing with Entravision to terminate the rights under Section D of the attached Certificate of Designations. Preferences and Rights of Series U Preferred Stock.

D. Nothing in this Final Judgment shall prohibit defendants from entering into a transaction in which Univision would acquire a majority of the voting securities of Entravision so long as the transaction is subject to the reporting and waiting period requirements of the Hart-Scott-Rodino Antitrust Improvements Act of 1976, as amended, 15 U.S.C. 18a; provided however, that Univision shall not acquire or retain any direct or indirect interest in Entravision's radio assets in any of the Overlap Markets as part of that transaction without the approval of plaintiff, in its sole discretion.

VIII. General Powers and Duties of the Trustee

In the event that plaintiff, in its sole discretion, determines (a) that, upon receipt of the notice called for in Section V.E. defendants have not made arrangements that will result in completion of any divestiture within the time limits specified in Section V.A, or (b) that defendants have not completed any of the divestitures required in Section V.A. within the specified time limits, the Court shall, upon application of plaintiff, appoint a trustee selected by plaintiff to effect such divestiture. Plaintiff may request, and the Court may appoint, a trustee before any of the time periods for divestiture specified in Section V.A. expire. The following provisions apply to the trustee:

A. After the appointment of a trustee becomes effective, only that trustee shall have the right to sell the Divestiture Assets. The trustee shall have the power and authority to accomplish the divestitures to an acquirer(s) acceptable to plaintiff at such price and on such terms as are then obtainable upon the best reasonable effort by the trustee, and shall have such other powers as the Court shall deem appropriate. The trustee may hire at the cost and expense of defendants any investment bankers, attorneys, or other agents, who shall be solely accountable to the trustee, reasonably necessary in the trustee's judgment to assist in the divestitures.

B. Defendants shall not object to a sale by the trustee on any grounds other than the trustee's malfeasance. Any such objections by defendants must be conveyed in writing to plaintiff and the trustee within ten (10) calendar days after the trustee has provided the notice required under sectioons VIII.E and F.

C. The trustee shall serve at the cost and expense of defendants on such terms and conditions as plaintiff approves, and shall account for all monies derived from the sale of the assets sold by the trustee and all costs and expenses so incurred. After approval by the Court of the trustee's accounting, including fees for its services and those of any professionals and agents retained by the trustee, all remaining money shall be paid to defendants and the trust shall then be terminated. The compensation of the trustee and any professionals and agents retained by the trustee shall be reasonable in light of the Divestiture Assets and based on a fee arrangement providing the trustee with incentives based on the price and terms of the divestitures and the speed with which they are accomplished.

D. Defendants shall use their best efforts to assist the trustee in accomplishing the required divestitures. The trustee and any consultants, accountant, attorney's, and other persons retained by the trustee shall have full and complete access to all information held by defendants relating to the Divestiture Assets. Defendants shall take no action to interfere with or impede the trustee's accomplishment of the divestitures.

E. After his or her appointment becomes effective, the trustee shall file monthly reports with the Court and plaintiff, setting forth the trustee's efforts to accomplish the divestitures ordered under this Final Judgment. To the extent that such reports contain information that the trustee deems confidential, such reports shall not be in the public docket of the Court. Such reports shall include the name, address, and telephone number of each person who, during the preceding month, made an offer to acquire, expressed an interest in acquiring , entered into negotiations to acquire, or was contacted or made an

inquiry about acquiring, any interest in the Divestiture Assets by means of private sale or placement, and shall describe in detail each contact with any such person. The trustee shall maintain full records of all efforts made to divest the Divestiture Assets.

F. If the trustee has not accomplished such divestitures within sixty (60) calendar days after his or her appointment, the trustee shall promptly file with the Court a report setting forth: (1) the trustee's efforts to accomplish the required divestitures, (2) the reasons, in the trustees judgment, why the required divestitures have not been accomplished, and (3) the trustee's recommendations. To the extent such reports contain in formation that the trustee deems confidential, such reports shall not be filed in the public docket of the Court. The trustee at the same time shall furnish such reports to plaintiff, who shall have the right to make additional recommendations consistent with the purpose of the trust. The Court thereafter shall enter such order as it deems appropriate to carry out the purpose of this Final Judgment, which may, if necessary, include extending the trust and the term of the trustee's appointment by a period requested by the United States.

IX. Compliance

A. Defendants shall maintain an antitrust compliance program which shall include designating, within thirty (30) days of filing of this Final Judgment, an Antitrust Compliance Officer with responsibility for achieving compliance with this Final Judgment. The Antitrust Compliance Officer shall, on a continuing basis, supervise the review of current and proposed activities to ensure compliance with this Final Judgment. In the event that individual is unable to perform his or her duties, defendants shall appoint, subject to plaintiff's approval, a replacement Antitrust Compliance Officer within five (5) working days. Should defendants fail to appoint a replacement acceptable to plaintiff within this time period, plaintiff shall appoint a replacement.

B. The Antitrust Compliance Officer shall be responsible for accomplishing the following activities:

(1) Distributing within forty-five (45) days of the filing of this Final Judgment, a copy of this Final Judgment to each current director and each current officer, and obtaining within ninety (90) days from the filing of this Final Judgment and retaining for the duration of this Final Judgment, a written certification from each such director or officer that he or she: (a) Has received, read, understands, and agrees to abide by the terms of this Final Judgment; (b) understands that failure to comply with this Final Judgment may result in conviction for contempt of court: and (c) is not aware of any violation of this Final Judgment that has not been reported to plaintiff.

(2) Distributing within forty-five (45) days of the filing of this Final Judgment, a copy of this Final Judgment to each employee and any manager of any such employee who has any responsibility for or authority over the sale of advertising time on radio stations, and obtaining within ninety (90) days from the filing of this Final Judgment and retaining for the duration of this Final Judgment, a written certification from each such employee or manager that he or she: (a) Has received this Final Judgment and has read, understands, and agrees to abide by the terms of Section VI of this Final Judgment; (b) understands that failure to comply with Section VI of this Final Judgment may result in conviction for contempt of court; (c) is not aware of any violation of Section VI of this Final Judgment that has not been reported to plaintiff.

(3) Obtaining, within thirty (30) days from the time of such succession, a written certification from each director or officer identified in Section IX.B.1 who succeeds to such a position that he or she: (a) Has received, read, understands, and agrees to abide by the terms of this Final Judgment; (b) understands that failure to comply with this Final Judgment may result in conviction for contempt of court; and (c) is not aware of any violation of this Final Judgment that has not been reported to plaintiff.

(4) Obtaining within thirty (30) days from the time of such succession, a written certification from each employee or manager identified in Section IX.B.2. who succeeds to such a position that he or she: (a) Has received this Final Judgment and has read, understands, and agrees to abide by the terms of Section VI of this Final Judgment; (b) understands that failure to comply with Section VI of this Final Judgment may result in conviction for contempt of court; and (c) is not aware of any violation of Section VI of this Final Judgment that has not been reported to plaintiff.

(5) Obtaining annually thereafter, and retaining for the duration of this Final Judgment, a written certification from (a) each director; (b) each officer with responsibility for or authority over the sale of advertising time on radioi stations; (c) the individual or individuals with primary operational responsibility for the Univision Television Group (currently the co-Presidents of UTG); and (d) the individual or individuals with primary supervisory responsibility for National Sales within the Univision Television Group (currently the Senior Vice President of National Sales for UTG), that he or she: (i) Has received, read, understands, and agrees to abide by the terms of this Final Judgment; (ii) understands that failure to comply with this Final Judgment may result in conviction for contempt of court; and (iii) is not aware of any violation of this Final Judgment that has not been reported to plaintiff.

C. Within sixty (60) days of filing of this Final Judgment, defendants shall certify to plaintiff that it has: (1) Designated an Antitrust Compliance Officer, specifying his or her name, business address, and telephone number: and (2) distributed the Final Judgment in accordance with Section IX.B.1 and 2.

D. For the term of this Final Judgment, on or before each annual anniversary of the date of its filing, defendants shall file with plaintiff a statement as to the fact and manner of its compliance with the provisions of Section V, VI, and IX.B, including a statement of the percentage of all outstanding shares of Entravision owned by defendants.

E. If the Antitrust Compliance Officer or any of defendants' director, officers, or employees learn of any violation of this Final Judgment, defendant shall: (1) Within three (3) business days take appropriate action to terminate or modify the activity so as to assure compliance with this Final Judgment, and (2) within ten (10) business days notify plaintiff of any such violation and the actions taken with respect to it.

X. Plaintiff's Access and Inspection

A. For the purpose of determining or securing compliance with this Final Judgment, and subject to any legally recognized privilege, duly authorized representatives of the United States Department of Justice, including consultants and other persons retained by the United States, shall, upon written request of a duly authorized representative of the Assistant Attorney General in charge of the Antitrust Division, and on reasonable notice to defendants, be permitted:

(1) Access during defendants' office hours to inspect and copy, or at plaintiff's option, to require defendants to provide copies of, all records and documents in its possession or control relating to any matters contained in this Final Judgment; and

(2) To interview, either informally or on the record, defendants' director, officers, employees, agents or other persons, who may have their individual counsel present, relating to any matters contained in this Final Judgment. The interviews shall be subject to the reasonable convenience of the interviewee and without restraint or interference by defendants.

B. Upon written request of a duly authorized representative of the Assistant Attorney General in charge of the Antitrust Division, defendants shall submit written reports, under oath if requested, relating to any of the matters contained in this Final Judgment as may be requested.

C. No information or documents obtained by the means provided in this Section shall be divulged by plaintiff to any person other than an authorized representative of the executive branch of the United States, except in the course of legal proceedings to which the United States is a party (including grand jury proceedings), or for the purpose of securing compliance with this Final Judgment, or as otherwise required by law.

D. If, at the time information or documents are furnished by defendants to plaintiff, defendants represent and identify in writing the material in any such information or documents to which a claim of protection may be asserted under Rule 26(c)(7) of the Federal Rules of Civil Procedure, and defendants mark each pertinent page of such material. "Subject to claim of protection under Rule 26(c)(7) of the Federal Rules of Civil Procedure," then plaintiff shall give defendants ten (10) calendar days' notice prior to divulging such material in any legal proceeding (other than a grand jury proceeding) to which defendants are not a party.

XI. Retention of Jurisdiction

This Court retains jurisdiction to enable any party to this Final Judgment to apply to this Court at any time for such further orders and directions as may be necessary or appropriate to carry out or construe this Final Judgment, to modify or terminate any of its provisions, to enforce compliance, and to punish any violations of its provisions.

XII. Expiration of Final Judgment

Unless extended by this Court, this Final Judgment shall expire ten (10) years from the date of its entry.

XIII. Public Interest Determination

Entry of this Final Judgment is in the public interest.

DATED:_____

Court approval subject to the Antitrust Procedures and Penalties Act, 15 U.S.C. 16.

United States District Judge

Certificate of Designations, Preferences and Rights of Series U Preferred Stock of Entravision Communications Corporation

Pursuant to Section 151 of the General Corporation Law of the State of Delaware:

Whereas, Entravision Communications Corporation, a corporation organized and existing under the laws of the State of Delaware (this "Corporation"), does hereby certify that, pursuant to the authority conferred on the Board of Directors of this Corporation by the First Restated Certificate of Incorporation, as amended, of this Corporation in accordance with Section 151 of the General Corporation Law of the State of Delaware, the Board of Directors of this Corporation adopted the following resolution establishing a new series of preferred stock of this Corporation.

Resolved, that pursuant to the authority conferred on the Board of Directors of this Corporation by Article 4 of the First Restated Certificate of Incorporation, as amended, the Board of Directors of this Corporation hereby establishes a series of the authorized preferred stock of this Corporation, $0.0001 per value per share, which series will be designated as "Series U Preferred Stock," and which will consist of 369,266 shares and will have the following rights, preferences, privileges and restrictions (capitalized terms not defined herein shall have the meaning given to such terms in the First Restated Certificate of Incorporation, as amended, of this Corporation):

A. *Dividends and Distributions.* The holders of shares of Series U Preferred Stock will be entitled to participate with the holders of Class A Common Stock with respect to any dividend declared on the Class A Common Stock in proportion to the number of shares of Class A Common Stock issuable upon conversion of the shares of Series U Preferred Stock held by them.

B. *Liquidation Preference.* (i) In the event of any liquidation, dissolution or winding up of this Corporation, either voluntary or involuntary, subject to the rights of the Series A Preferred Stock and any other series of Preferred Stock to be established by the Board of Directors of this Corporation (collectively, the "Senior Preferred Stock"), the holders of the Series U Preferred Stock shall be entitled to receive, after any distribution with respect to the Senior Preferred Stock and prior to and in preference to any distribution of any of the assets of this Corporation to the holders of Common Stock by reason of their ownership thereof, $0.0001 for each share (as adjusted for any stock split, stock division or consolidation) of Series U Preferred Stock then-outstanding.

(ii) Upon the completion of the distribution required by subparagraph (i) of this Section B, the remaining assets of this Corporation available for distribution to stockholders shall be distributed among the holders of Series U Preferred Stock and Common Stock pro rata based on the number of shares of Common Stock held by each (assuming conversion of all such Series U Preferred Stock.)

C. *Voting.* Except as provided in this Certificate of Designations, the holders of shares of Series U Preferred Stock will have no right to vote on any matters, questions or proceedings of this Corporation including, without limitation, the election of directors.

D. *Protective Provisions.* So long as Univision Communications Inc. ("Univision"), or any Permitted Transferee of Univision, owns at least 65,950 shares of Series U Preferred Stock, without the consent of the holders of at least a majority of the shares of Series U Preferred Stock then outstanding, in their sole discretion, voting as a separate series, given in writing or by vote at a meeting of such called for such purpose, this Corporation will not:

(i) Merge, consolidate or enter into a business combination, or otherwise reorganize this Corporation with or into one or more entities (other than a merger of a wholly-owned subsidiary of this Corporation into another wholly-owned subsidiary of this Corporation);

(ii) Dissolve, liquidate or terminate this Corporation;

(iii) Directly or indirectly dispose of any interest in any FCC license with respect to television stations which are affiliates of Univision Communications Inc.;

(iv) Amend, alter or repeal any provision of the Certificate of Incorporation or bylaws of this Corporation or this Certificate of Designations, each as amended, so as to adversely affect any of the rights, preferences, privileges, limitation's or restrictions provided for the benefit of the holders of the Series U Preferred Stock; or

(v) Issue or sell, or obligate itself to issue or sell, any additional shares of Series U Preferred Stock, or any securities that are convertible into or

exchangeable for shares of Series U Preferred Stock.

E. *Conversion.*

(i) *Voluntary Conversion.* Each share of Series U Preferred Stock shall convert automatically without any further action by the holder thereof into a number of shares of Class A Common Stock determined in accordance with Section E(ii) upon its sale, conveyance, assignment, hypothecation, disposition or other transfer (each a "Transfer") to any third party other than an "affiliate" (as such term is defined in Rule 405 promulgated under the Securities Act of 1933, as amended) of the transferor and may be so converted at the option of the holder thereof in connection with any such Transfer.

(ii) *Conversion Rate.* Each share of Series U Preferred Stock shall be convertible in accordance with Section E(i) into the number of shares of Class A Common Stock that results from multiplying (x) 1 by (y) the conversion rate for the Series U Preferred Stock that is an effect at the time of conversion (the "Conversion Rate"). The Conversion Rate for the Series U Preferred Stock initially shall be 100. The Conversion Rate shall be subject to adjustment from time to time as provided in this Certificate of Designations. All references to the Conversion Rate herein mean the Conversion Rate as so adjusted.

(iii) *Mandatory Conversion.* When and if this Corporation is authorized to issue a class of Common Stock that has generally the same rights, preferences, privileges and restrictions as the Series U Preferred Stock (other than the liquidation preference provided for in Section B), the final terms of such class of Common Stock to be mutually agreed upon by this Corporation and the holders of the Series U Preferred Stock, then this Corporation shall have the right, without any further action by the holder of the Series U Preferred Stock, to cause each share of Series U Preferred Stock to convert into the number of shares of Class U Common Stock that results from multiplying (x) 1 by (y) the Conversion Rate. The Conversion of the Series U Preferred Stock pursuant to this subsection D(iii) shall be deemed to occur on the date this Corporation deposits written notice of such conversion in the United States mail, postage prepaid, and addressed to the holder of the Series U Preferred Stock at its address appearing on the books of this Corporation.

(iv) *Subdivisions: Combinations.* In the event this Corporation should at any time prior to the conversion of the Series U Preferred Stock fix a record date for the effectuation of a split or subdivision of the outstanding shares of Class A Common Stock or the determination of holders of Class A Common Stock entitled to receive a dividend or other distribution payable in additional shares of Common Stock, then, as of such record date (or the date of such dividend, distribution, split or subdivision if no record date is fixed), the Conversion Rate shall be appropriately decreased so that the number of shares of Class A Common Stock issuable on conversion of each share of such series shall be increased in proportion to such increase in the aggregate number of shares of Class A Common Stock outstanding. If the number of shares of Class A Common Stock outstanding at any time prior to the conversion of the Series U Preferred Stock is decreased by a reverse split or combination of the outstanding shares of Class A Common Stock, then, following the record date for such reverse split or combination, the Conversion Rate shall be appropriately increased so that the number of shares of Class A Common Stock issuable on conversion of each share of such series shall be decreased in proportion to such decrease in outstanding shares.

(v) *Recapitalizations.* If at any time or from time to after the effective date of this Certificate of Designations there is a recapitalization, reclassification, reorganization or similar event, then in any such event each holder of a share of Series U Preferred Stock shall have the right thereafter to convert such share into the kind and amount of stock and other securities and property receivable upon such recapitalization, reclassification, reorganization or other change by a holder of the number of shares of Class A Common Stock into which such share of Series U Preferred Stock could have been converted immediately prior to such recapitalization, reclassification, reorganization, or other change, all subject to further adjustment as provided herein or with respect to such other securities or property by the terms thereof.

(vi) *No Impairment.* This Corporation will not, by amendment of its Certificate of Incorporation or this Certificate of Designations (except in accordance with applicable law) or through any reorganization, recapitalization, transfer of assets, consolidation, merger, dissolution, issue or sale of securities or any other voluntary action, avoid or seek to avoid the observance or performance of any of the terms to be observed or performed under this Section E by this Corporation, but will in good faith assist in the carrying out of all the provisions of this Section E and in the taking of all such action as may be necessary or appropriate in order to protect the conversion rights of the holders of Series U Preferred Stock against impairment.

(vii) *Unconverted Shares.* If less than all of the outstanding shares of Series U Preferred Stock are converted pursuant to Sections E(i) and E(iii) above, and such shares are evidenced by a certificate representing shares in excess of the shares being converted and surrendered to this Corporation in accordance with the procedures as the Board of Directors of this Corporation may determine, this Corporation shall execute and deliver to or upon the written order of the holder of such certificate, without charge to the holder, a new certificate evidencing the number of shares of Series U Preferred Stock not converted. No fractional shares shall be issued upon the conversion of any share or shares of Series U Preferred Stock, and the number of shares to be issued shall be rounded to the nearest whole share.

(viii) *Reservation.* This Corporation shall at all times reserve and keep available out of its authorized but unissued shares of Class A Common Stock, to effect conversions, such number of duly authorized shares of Class A Common Stock as shall from time to time be sufficient to effect the conversion of all outstanding shares of Series U Preferred Stock; and if at any time the number of authorized but unissued shares of Class A Common Stock shall not be sufficient to effect the conversion of all then outstanding shares of the Series U Preferred Stock; in addition to such other remedies as shall be available to the holder of the Series U Preferred Stock, this corporation will take such corporate action as may, in the opinion of counsel, be necessary to increase its authorized but unissued shares of Class A Common Stock to such number of shares as shall be sufficient for such purposes, including, without limitation, engaging in best efforts to obtain the requisite stockholder approval of any necessary amendment to this Corporation's Certificate of Incorporation.

F. *Redemption by this Corporation.* The Series U Preferred Shares shall not be redeemable by this Corporation.

G. *Reacquired Shares.* Any shares of Series U Preferred Stock which will have been converted will be retired and cancelled promptly after the acquisition thereof. All such shares will upon their cancellation become authorized but unissued shares of Preferred Stock and may be reissued as part of a new series of Preferred Stock subject to the conditions and restrictions on issuance set forth herein, in the Certificate of Incorporation, or in any other certificate or designations creating a series or any similar stock or as otherwise required by law.

Resolved, further, that the officers of this Corporation be, and each of them hereby is, authorized and empowered on behalf of this Corporation to execute, verify and file a certificate of designations of preferences in accordance with Delaware law.

In Witness whereof, Entravision Communications Corporation has caused this certificate to be duly executed by its duly authorized officers this day of March, 2003.

Entravision Communications Corporation

By: _____

Walter F. Ulloa,

Chairman and Chief Executive Officer.

By: _____

John F. DeLorenzo,

Chief Financial Officer.

[FR Doc. 03–12746 Filed 5–20–03; 8:45 am]

BILLING CODE 4410–11–M

DEPARTMENT OF JUSTICE

Antitrust Division

United States v. Village Voice Media, LLC, & NT Media, LLC; Public Comments and Plaintiff's Response

Pursuant to the Antitrust Procedures and Penalties Act, 15 U.S.C. 16(b) and (d), the United States hereby publishes below the written comments received on the proposed Final Judgment in *United States of America* v. *Village Voice Media, LLC, and NT Media, LLC,* Civil Action No. 1:03CV0164, filed in the United States District Court for the Northern District of Ohio, together with the United States' response to the comments.

Copies of the comments and the United States' response are available for inspection at the United States Department of Justice, Antitrust Division, 325 Seventh Street, NW., Suite 300, Washington, DC 20530, and at the Office of the Clerk, United States District Court for the Northern District of Ohio, Carl B. Stokes United States Court House, 801 West Superior Avenue, Cleveland, OH 44113–1830. Copies of these materials may be obtained upon request and payment of a copying fee.

Constance K. Robinson,

Director of Operations.

Response to Public Comments

Pursuant to the requirements of the Antitrust Procedures and Penalties Act, 15 U.S.C. 16(b)–(h) ("APPA" or "Tunney Act"), the United States hereby responds to the public comments received regarding the Proposed Final Judgment in this case.

I. Background

On January 27, 2003, the United States filed the Complaint in this matter to terminate the Defendants' illegal agreement to allocate markets for advertisers in, and readers of, alternative newsweeklies in metropolitan Cleveland, Ohio, and Los Angeles, California, in violation of Section 1 of the Sherman Act, 15 U.S.C. 1. Simultaneously with the filing of the Complaint, the United States filed a Proposed Final Judgment. A Competitive Impact Statement ("CIS") was also filed with the Court on February 3, 2003, and published in the **Federal Register**, along with the Proposed Final Judgment, on February 12, 2003 (*see* 68 FR 7132). Pursuant to 15 U.S.C. 16(c), a summary of the terms of the Proposed Final Judgment and CIS was published in The Plain Dealer during the period of February 6 through 12, 2003, and The Washington Post, a newspaper of general circulation in the District of Columbia, during the period of February 14 through 20, 2003.

As explained more fully in the Complaint and CIS, prior to entering into their unlawful agreement, Defendants NT Media ("New Times") and Village Voice Media were head-to-head competitors in publishing alternative newsweeklies in Cleveland and Los Angeles. In October 2002, New Times agreed to shut down its Los Angeles alternative newsweekly, the New Times Los Angeles, if Village Voice Media closed its newsweekly in Cleveland, the Cleveland Free Times. Thus, Defendants "swapped" markets, leaving New Times with a monopoly in Cleveland and Village Voice Media with a monopoly in Los Angeles. This unlawful agreement eliminated the competition that had brought advertisers in both cities lower advertising rates, more promotional opportunities and better service, and that had benefitted readers with a higher quality product.

The Proposed Final Judgment requires, in part, that New Times and Village Voice Media terminated their unlawful agreement, allow affected advertisers in Los Angeles and Cleveland to terminate their contracts, notify the United States before entering into any merger, sale, or joint venture involving their alternative newsweeklies, and divest the assets of the New Times Los Angles and the Cleveland Free Times to new entrants in those markets. The proposed consent decree also prohibits the companies from entering into any market or customer allocation agreements in the future.

The sixty-day period for public comment expired on April 21, 2003. As of today, the United States has received written comments from; (1) Citizens for Voluntary Trade, whose president filed an amicus motion with this Court, (2) Gary Beberman, and (3) Denise D'Anne. The United States has carefully considered the views expressed in these comments, but nothing in the comments has altered the United States' conclusion that the Proposed Final Judgment is in the public interest. Pursuant to section 16(d) of the Tunney Act, the United States is now filing with this Court its response to such comments. Once these comments and this response are published in the **Federal Register**, the United States will have fully compiled with the Tunney Act and will file a motion for entry of the Proposed Final Judgment.

II. Response to Public Comments

A. Citizens for Voluntary Trade's Comment

In its written comment, Citizens for Voluntary Trade ("CVT") states that the First Amendment to the U.S. Constitution preempts the Proposed Final Judgment, as "[e]ven the most 'anti-competitive' conduct is protected by the First Amendment." (CVT Comment at 2, a copy of which is attached at Exhibit A.)

The Supreme Court as long ago as 1945 dismissed this assertion. The restraints imposed by these private arrangements are not protected by the First Amendment. *Citizen Publishing Co.* v. *United States,* 394 U.S. 131 (1969); *Associated Press* v. *United States,* 326 U.S. 1, 20 (1945). Neither news gathering nor news dissemination are being regulated by the Proposed Final Judgment, which addresses only the Defendants' per se illegal restraints on certain business or commercial practices. The Defendants' unreasonable restraints on competition—which the Proposed Final Judgment remedies—comport neither with the antitrust laws nor with the First Amendment. As the Supreme Court held in the Associated Press case, and reiterated twenty-four years later in the Citizen Publishing decision:

> It would be strange indeed * * * if the grave concern for freedom of the press which prompted adoption of the First Amendment should be read as a command that the government was without power to protect that freedom. The First Amendment, far from providing an argument against application of the Sherman Act, here provides powerful

reasons to the contrary. That Amendment rests on the assumption that the widest possible dissemination of information from diverse and antagonistic sources is essential to the welfare of the public, that a free press is a condition of a free society. Surly a command that the government itself shall not impede the free flow of ideas does not afford nongovernmental combinations a refuge if they impose restraints upon that constitutionally guaranteed freedom. Freedom to publish means freedom for all and not for some. Freedom to publish is guaranteed by the Constitution, but freedom to combine to keep others from publishing is not. Freedom of the press from governmental interference under the First Amendment does not sanction repression of that freedom by private interests. The First Amendment affords not the slightest support for the contention that a combination to restrain trade in news and views has any constitutional immunity.[1]

In his *amicus* brief, S.M. Oliva, CVT's president, does not address the merits of the Proposed Final Judgment but rather objects to certain procedural aspects of the Proposed Final Judgment. In particular, Oliva alleges that the United States intentionally violated the Tunney Act by requiring the Defendants to complete certain divestitures within thirty days after the filing of the Complaint. (*Amicus* brief at 3, a copy of which is attached as Exhibit B.)

First, nothing in the Tunney Act precludes the United States from taking or refraining from certain actions during the sixty-day comment period. The statute also does not prohibit the Defendants from divesting certain assets and refraining from certain action before this Court enters the Proposed Final Judgment.

Second, contrary to Mr. Oliva's assertion, the required divestitures do not preclude this Court from evaluating whether entry of the Proposed Final Judgment is in the public interest or declining to enter the order if it believes the settlement is unacceptable. As Section IV(A) of the Hold Separate Stipulation and Order provides, the United States may withdraw its consent to the Proposed Final Judgment at any time before the entry of the Proposed Final Judgment. Moreover, the Hold Separate Stipulation and Order contemplates that this Court may not enter the Proposed Final Judgment. By divesting certain assets and refraining from any action in furtherance of their illegal market allocation agreement, the Defendants have assumed the risk that the United States might withdraw its consent and proceed to trial or that this Court may decline the Proposed Final Judgment.

[1] Citizen Publ'g, 394 U.S. at 139–40 (quoting Associated Press, 326 U.S. at 20).

Furthermore, the divestitures at issued are common in many other Tunney act proceedings, It is customary in the vast majority of mergers that are resolved by consent in the form of proposed final judgments to permit the defendants to merge at the time when the complaint and proposed final judgment are filed, subject to the defendant's obligations under the proposed final judgment to take steps to divest certain specified assets. In these mergers, the defendants are generally allowed to complete the merger prior to the close of the sixty-day comment period and entry of the final judgment by the court. The defendants in such cases, as here, understand that the proposed final judgment is subject to public comment, that the United States may revoke its consent at any time before the final judgment is entered, and that the final judgment will not be entered unless a court finds that it is in the public interest.

Third, to delay any remedial measures until after the sixty-day comment period expires might undermine the effectiveness of the relief. As the CIS states, "[g]iven that Defendants had closed the Cleveland Free Times and New Times Los Angeles in October 2002, a quick and effective remedy was necessary to reestablish competition." (CIS at 14.) Readers and advertisers will sooner benefit in Cleveland and Los Angeles as a result of a quick and effective divestiture.

B. Gary Beberman's Comment

In his e-mail, Mr. Beberman writes that the United States "may have been correct that the Village voice was colluding in anti-competitive behavior" but that "their actions were merely attempts to survive." (A copy of Mr. Beberman's comment is attached as Exhibit C.) Mr. Beberman, however, never states whether he supports or opposes entry of the Proposed Final Judgment. And any critique of whether this investigation should have been brought in the first place amounts to a challenge of the initial exercise of the United States' prosecutorial discretion, which is outside the scope of this proceeding. *See, e.g., United States* v. *Western Elec. Co.*, 993 F.2d 1572, 1577 (D.C. Cir. 1993)(noting that Tunney Act proceeding does not permit "de novo determination of facts and issues" because "[t]he balancing of competing social and political interests affected by a proposed antitrust decree must be left, in the first instance, to the discretion of the Attorney General")(citations omitted). Likewise, Mr. Beberman's comments about another case, *United States* v. *Microsoft Corp.*, are extraneous to this matter. (Also, the sixty-day comment period in that case ended on January 28, 2002, and the United States District Court for the District of Columbia entered the final judgment on November 12, 2002.)

C. Denise D'Anne's Comment

Mr. D'Anne thanked the United States for pursuing this action. (A copy of Ms. D'Anne's comment is attached as Exhibit D.)

III. Conclusion

After careful consideration of these public comments, the United States has concluded that entry of the Proposed Final Judgment will provide an effective and appropriate remedy for the antitrust violation alleged in the Complaint, and is therefore in the public interest. Pursuant to seciton 16(d) of the APPA, the United States is submitting these public comments and this response to the **Federal Register** for publication. After these comments and this response are published in the **Federal Register**, the United States will move this Court to enter the Proposed Final Judgment.

Dated: May 1, 2003.

Maurice E. Stucke,
Carol A. Bell,
Matthews J. Bester,
Attorneys for the United States, United States Department of Justice, Antitrust Division, Litigation III Section, 325 Seventh Street, NW., Suite 300, Washington, DC 20530, (202) 305–1489 (telephone), (202) 514–1517 (facsimile), Maurice.Stucke@usdoj.gov.
Jon R. Smibert,
Attorney for the United States, United States Department of Justice, Antitrust Division, Cleveland Field Office, 55 Erieview Plaza, Suite 700, Cleveland, Ohio 44114–1816, (216) 522–4070, telephone, (216) 522–8332, facsimile, Jon.Smiber@usdoj.gov.

Certificate of Service

I hereby certify that I served a copy of the foregoing Response to Public Comments via First Class United States Mail, this 1st day of May, 2003, on:

Melanie Sabo,
Preston Gates Ellis & Rouvelas Meeds, LLP, 1735 New York Avenue, NW., Suite 500, Washington, DC 20006–5209, Counsel for Defendant Village Voice Media, LLC.
Joseph Kattan,
Gibson, Dunn & Crutcher, LLP, 1050 Connecticut Avenue, NW., Washington, DC 20036, Counsel for Defendant NT Media, LLC.
Carol A. Bell,
Attorney for the United States, United States Department of Justice, Antitrust Division, Litigation III Section, 325 Seventh Street, NW., Suite 300, Washington, DC 20530, (202) 307–3076.

[FR Doc. 03–12745 Filed 5–20–03; 8:45 am]
BILLING CODE 4410–11–M

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—Global Climate and Energy Project

Notice is hereby given that, on April 16, 2003, pursuant to section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* ("the Act"), Global Climate and Energy Project has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership status. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, Toyota Motor Corporation, Aichi, Japan has been added as a party to this venture.

No other changes have been made in either the membership or planned activity of the group research project. Membership in this group research project remains open, and Global Climate and Energy Project intends to file additional written notification disclosing all changes in membership.

On March 12, 2003, Global Climate and Energy Project filed its original notification pursuant to section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to section 6(b) of the Act on April 4, 2003 (68 FR 16552).

Constance K. Robinson,
Director of Operations, Antitrust Division.

[FR Doc. 03–12747 Filed 5–20–03; 8:45 am]
BILLING CODE 4410–11–M

DEPARTMENT OF JUSTICE

National Institute of Corrections

Advisory Board Meeting

TIME AND DATE: 8:30 a.m. to 5 p.m. on Monday, June 23–24, 2003.

PLACE: Sheraton North Houston at George Bush Intercontinental Airport, 15700 JFK Boulevard, Houston, TX 77032.

STATUS: Open.

MATTERS TO BE CONSIDERED: Director's report; Panel Presentation on NICs Leadership/Management Training; Tour of the state Texas Department of Criminal Justice, Jester III Unit, the Inner Change Program (a faith-based initiative); Division reports; Up date on Interstate Compact activities; and Quarterly Report by Office of Justice Programs.

CONTACT PERSON FOR MORE INFORMATION: Larry Solomon, Deputy Director, 202–307–3106, ext. 44254.

Morris L. Thigpen,
Director.

[FR Doc. 03–12744 Filed 5–20–03; 8:45 am]
BILLING CODE 4410–36–M

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice (03–052)]

NASA Advisory Council, Aerospace Technology Advisory Committee; Meeting

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, Public Law 92–463, as amended, the National Aeronautics and Space Administration announces a meeting of the NASA Advisory Council, Aerospace Technology Advisory Committee (ATAC).

DATES: Wednesday, June 25, 2003, 8 a.m. to 5 p.m.; and Thursday, June 26, 2003, 8 a.m. to 12 noon.

ADDRESSES: National Aeronautics and Space Administration, 300 E Street, SW., Room 6H46 (MIC 6), Washington, DC 20546.

FOR FURTHER INFORMATION CONTACT: Mrs. Mary-Ellen McGrath, Code RG, National Aeronautics and Space Administration, Washington, DC 20546, (202) 358–4729.

SUPPLEMENTARY INFORMATION: The meeting will be open to the public up to the seating capacity of the room. The agenda for the meeting is as follows:

—Opening Remarks
—Status of FY 2004 Aeronautics Initiatives
—Subcommittee Reports
—Status of Joint Program Office
—Potential Items for FY 2005 Budget
—Closing Comments

Attendees will be requested to sign a register and to comply with NASA security requirements, including the presentation of a valid picture ID, before receiving an access badge. Foreign nationals attending this meeting will be required to provide the following information: Full name; gender; date/place of birth; citizenship; visa/greencard information (number, type, expiration date); passport information (number, country, expiration date); employer/affiliation information (name of institution, address, country, phone); title/position of attendee. To expedite admittance, attendees can provide identifying information in advance by contacting Mary-Ellen McGrath via email at *mary.E.mcgrath@nasa.gov* or by telephone at 202–358–4729. Attendees will be escorted at all times.

It is imperative that the meeting be held on these dates to accommodate the scheduling priorities of the key participants.

June W. Edwards,
Advisory Committee Management Officer, National Aeronautics and Space Administration.

[FR Doc. 03–12726 Filed 5–20–03; 8:45 am]
BILLING CODE 7510–01–P

THE NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

Meetings of Humanities Panel

AGENCY: The National Endowment for the Humanities.

ACTION: Notice of meetings.

SUMMARY: Pursuant to the provisions of the Federal Advisory Committee Act (Pub. L. 92–463, as amended), notice is hereby given that the following meetings of the Humanities Panel will be held at the Old Post Office, 1100 Pennsylvania Avenue, NW., Washington, DC 20506.

FOR FURTHER INFORMATION CONTACT: Heather Gottry, Acting Advisory Committee Management Officer, National Endowment for the Humanities, Washington, DC 20506; telephone (202) 606–8322. Hearing-impaired individuals are advised that information on this matter may be obtained by contacting the Endowment's TDD terminal on (202) 606–8282.

SUPPLEMENTARY INFORMATION: The proposed meetings are for the purpose of panel review, discussion, evaluation and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including discussion of information given in confidence to the agency by the grant applicants. Because the proposed meetings will consider information that is likely to disclose trade secrets and commercial or financial information obtained from a person and privileged or confidential and/or information of a personal nature the disclosure of which would constitute a clearly unwarranted invasion of personal privacy, pursuant to authority granted me by the Chairman's Delegation of Authority to

Close Advisory Committee meetings, dated July 19, 1993, I have determined that these meetings will be closed to the public pursuant to subsections (c)(4), and (6) of section 552b of Title 5, United States Code.

1. *Date:* June 2, 2003.
Time: 8:30 a.m. to 5 p.m.
Room: 415.
Program: This meeting will review applications for Humanities Focus Grants, submitted to the Division of Education Programs at the April 15, 2003 deadline.

2. *Date:* June 30, 2003.
Time: 8:30 a.m. to 5:30 p.m.
Room: 415.
Program: This meeting will review applications for Colleges and Universities, submitted to the Office of Challenge Grants at the May 1, 2003 deadline.

Heather Gottry,
Acting Advisory Committee Management Officer.
[FR Doc. 03–12770 Filed 5–20–03; 8:45 am]
BILLING CODE 7536–01–P

THE NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

SES Performance Review Board

AGENCY: The National Endowment for the Humanities.

ACTION: Notice.

SUMMARY: This notice announces the membership of the Performance Review Board of the National Endowment for the Humanities.

FOR FURTHER INFORMATION CONTACT: Timothy G. Connelly, Director of Human Resources, National Endowment for the Humanities, 1100 Pennsylvania Avenue, NW., Washington, DC 20506; telephone (202) 606–8415.

SUPPLEMENTARY INFORMATION: 5 U.S.C. 3393 and 4314(c)(1) through (5) require each agency to establish, in accordance with regulations prescribed by the Office of Personnel Management, both an executive resources board and a performance review board for SES. The National Endowment for the Humanities has a combined Board, which is referred to as the Executive Resources and Performance Review Board (ERPRB).

Effective July 1, 2003, the members of the National Endowment for the Humanities SES Performance Review Board are Jeffrey Thomas, Assistant Chairman for Planning and Operations—Board Chair, Cherie Harder, Senior Counselor to the Chairman, and Stephen Ross, Director, Office of Challenge Grants. All members will serve until replaced.

Bruce Cole,
Chairman.
[FR Doc. 03–12771 Filed 5–20–03; 8:45 am]
BILLING CODE 7536–01–P

NATIONAL SCIENCE FOUNDATION

Notice of Permits Issued Under the Antarctic Conservation Act of 1978

AGENCY: National Science Foundation.

ACTION: Notice of permits issued under the Antarctic Conservation Act of 1978, Public Law 95–541.

SUMMARY: The National Science Foundation (NSF) is required to publish notice of permits issued under the Antarctic Conservation Act of 1978. This is the required notice.

FOR FURTHER INFORMATION CONTACT: Nadene G. Kennedy, Permit Office, Office of Polar Programs, Rm. 755, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230.

SUPPLEMENTARY INFORMATION: On March 26, 2003, the National Science Foundation published a notice in the **Federal Register** of a permit application received. A permit was issued on May 15, 2003 to: Werner Stambach, Permit No. 2004–001.

Nadene G. Kennedy,
Permit Officer.
[FR Doc. 03–12694 Filed 5–20–03; 8:45 am]
BILLING CODE 7555–01–M

RAILROAD RETIREMENT BOARD

Proposed Collection: Comment Request

SUMMARY: In accordance with the requirement of Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 which provides opportunity for public comment on new or revised data collections, the Railroad Retirement Board (RRB) will publish periodic summaries of proposed data collections.

Comments are invited on: (a) Whether the proposed collection is necessary for the proper performance of the functions of the agency, including whether the information has practical utility; (b) the accuracy of the RRB's estimate of the burden of the collection of the information; (c) ways top enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden related to the collection of information on respondents, including the use of automated collection techniques or other forms of information technology.

Title and purpose of information collection: Statement of Claimant or Other Person; OMB 3220–0183. To support an application for an annuity under Section 2 of the Railroad Retirement Act (RRA) or for unemployment benefits under Section 2 of the Railroad Unemployment Insurance Act (RUIA), pertinent information and proofs must be furnished for the RRB to determine benefit entitlement. Circumstances may require an applicant or other person(s) having knowledge of facts relevant to the applicant's eligibility for an annuity or benefits to provide written statements supplementing or changing statements previously provided by the applicant. Under the railroad retirement program these statements may relate to changes in annuity beginning date(s), dates for marriage(s), birth(s), prior railroad or non-railroad employment, an applicant's request for reconsideration of an unfavorable RRB eligibility determination for an annuity or various other matters. The statements may also be used by the RRB to secure a variety of information needed to determine eligibility to unemployment and sickness benefits. Procedures related to providing information needed for RRA annuity or RUIA benefit eligibility determinations are prescribed in 20 CFR parts 217 and 320 respectively.

The RRB utilizes Form G–93, *Statement of Claimant or Other Person* to obtain the supplemental or corrective information from applicants or other persons needed to determine applicant eligibility for an RRA annuity or RUIA benefits.

The RRB proposes no changes to Form G–93.

The completion time for Form G–93 is estimated at 15 minutes per response. The RRB estimates that approximately 900 Form G–93's are received annually. Completion is voluntary. One response is requested of each respondent.

Additional Information or Comments: To request more information or to obtain a copy of the information collection justification, forms, and/or supporting material, please call the RRB Clearance Officer at (312) 751–3363. Comments regarding the information collection should be addressed to Ronald J. Hodapp, Railroad Retirement Board, 844 North Rush Street, Chicago, Illinois, 60611–2092. Written comments should be received within 60 days of this notice.

Chuck Mierzwa,
Clearance Officer.
[FR Doc. 03–12691 Filed 5–20–03; 8:45 am]
BILLING CODE 7905–01–M

SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. 26047; 812–12770]

The MainStay Funds, et al.; Notice of Application

May 15, 2003.

AGENCY: Securities and Exchange Commission ("Commission").

ACTION: Notice of an application for an order under section 12(d)(1)(J) of the Investment Company Act of 1940 (the "Act") for an exemption from sections 12(d)(1)(A) and (B) of the Act, under sections 6(c) and 17(b) of the Act for an exemption from section 17(a) of the Act, and under section 17(d) of the Act and rule 17d–1 under the Act to permit certain joint transactions.

Summary of the Application: The requested order would permit certain registered management investment companies to invest uninvested cash and cash collateral in affiliated money market funds in excess of the limits in sections 12(d)(1)(A) and (B) of the Act.

Applicants: The MainStay Funds ("MainStay"), Mainstay VP Series Fund, Inc. ("VP"), Eclipse Funds, Eclipse Funds, Inc., New York Life Investment Management Institutional Funds ("NYLIM Institutional") and McMorgan Funds (together the "Funds"), all existing and future series of the Funds (together the "Portfolios"), New York Life Investment Management LLC ("NYLIM"), MacKay Shields LLC ("MacKay") and McMorgan & Company LLC ("McMorgan," together with NYLIM and Mackay, the "Adviser"), and any other registered management investment company and series thereof currently or in the future advised by the Adviser or any entity controlling, controlled by, or under common control with the Adviser (included in the term "Adviser")(each such investment company included in the term "Funds" and its series included in the term "Portfolios").

Filing Dates: The application was filed on February 12, 2002 and amended on May 9, 2003.

Hearing or Notification of Hearing: An order granting the requested relief will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the Commission's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the Commission by 5:30 p.m. on June 9, 2003, and should be accompanied by proof of service on applicants, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the Commission's Secretary.

ADDRESSES: Secretary, Commission, 450 Fifth Street, NW., Washington, DC, 20549–0609. Applicants, c/o Paul Schott Stevens, Esq., Dechert, 1775 Eye Street NW., Washington, DC, 20006.

FOR FURTHER INFORMATION CONTACT: Emerson S. Davis, Sr., Senior Counsel, at (202) 942–0714, or Nadya B. Roytblat, Assistant Director, at (202) 942–0564, (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee at the Commission's Public Reference Branch, 450 Fifth Street, NW., Washington, DC, 20549–0102 (tel. 202–942–8090).

Applicants' Representations

1. Each Fund is registered under the Act as an open management investment company. MainStay and Eclipse Funds are Massachusetts business trusts and consist of twenty-four and four Portfolios, respectively. VP and Eclipse Funds, Inc., are Maryland corporations and are comprised of nineteen and fourteen Portfolios, respectively. McMorgan Funds and NYLIM Institutional are Delaware business trusts and consist of five and one Portfolios, respectively. The Portfolio of NYLIM Institutional holds itself out as a money market fund that complies with rule 2a–7 under the Act (together with any future Portfolios that comply with rule 2a–7 under the Act, the "Money Market Funds").[1]

2. NYLIM, an investment adviser registered under the Investment Advisers Act of 1940 ("Advisers Act"), serves as investment adviser to the Portfolios. MacKay and McMorgan, investment advisers registered under the Advisers Act, are subadvisers to certain Portfolios. The Adviser serves or may serve as investment adviser to privately managed accounts which are entities that are not pooled investment vehicles ("Managed Accounts"). NYLIM, MacKay and McMorgan are indirect wholly-owned subsidiaries of New York Life Insurance Company.

3. Portfolios that are not Money Market Funds (the "Investing Funds") and Managed Accounts have, or are expected to have, cash reserves ("Uninvested Cash"). Such Uninvested Cash may result from a variety of sources, including dividends or interest received on portfolio securities, unsettled securities transactions, strategic reserves, matured investments, liquidated proceeds from investment securities, or new investor monies. Certain Investing Funds and Managed Accounts also may participate in a securities lending program under which an Investing Fund may lend its portfolio securities to registered broker-dealers or other institutional investors ("Securities Lending Program"). The loans will be continuously secured by collateral, equal at all times to at least the market value of the securities loaned (such collateral, when in the form of cash, "Cash Collateral" and together with Uninvested Cash, "Cash Balances"). The Managed Accounts also may have Cash Collateral.

4. Applicants request an order to permit the Investing Funds and Managed Accounts to invest their Cash Balances in shares of one or more Money Market Funds and the Money Market Funds to sell their shares to, and redeem their shares from, the Investing Funds and Managed Accounts and the Adviser to effect the proposed transactions. Investment of Cash Balances in shares of the Money Market Funds will be made consistent with each Investing Fund's investment restrictions and policies as set forth in its prospectus and statement of additional information. Applicants believe that the proposed transactions may reduce transaction costs, create more liquidity, increase returns, and further diversify holdings.

5. Applicants state that the Managed Accounts and Money Market Funds engage in the purchase and sale transactions with each other in reliance of rule 17a–7 under the Act. Applicants seek relief to permit these interfund transactions to continue in the event that the Managed Accounts become 5% or more owners of the Money Market Funds ("Interfund Transactions").

[1] All existing Funds that currently intend to rely on the requested relief are named as applicants. The term "Adviser" shall include successor(s) in interests, which are entities that result from a reorganization of the entity into another jurisdiction or a change in the type of business organization of the entity. Any other existing and future entity that may rely on the relief in the future will do so only in accordance with the terms and conditions of the application.

Applicants' Legal Analysis

I. Investment of Cash Balances in the Money Market Funds

A. Section 12(d)(1) of the Act

1. Section 12(d)(1)(A) of the Act provides, in pertinent part, that no registered investment company may acquire securities of another investment company if such securities represent more than 3% of the acquired company's outstanding voting stock, more than 5% of the acquiring company's total assets, or if such securities, together with the securities of other acquired investment companies, represent more than 10% of the acquiring company's total assets. Section 12(d)(1)(B) of the Act, in pertinent part, provides that no registered open-end investment company may sell its securities to another investment company if the sale will cause the acquiring company to own more than 3% of the acquired company's voting stock, or if the sale will cause more than 10% of the acquired company's voting stock to be owned by investment companies.

2. Section 12(d)(1)(J) of the Act authorizes the Commission to exempt any person, security, or transaction from any provision of section 12(d)(1) if, and to the extent that, such exemption is consistent with the public interest and the protection of investors. Applicants request relief under section 12(d)(1)(J) from the percentage limitations of sections 12(d)(1)(A) and (B) to permit the Investing Funds to invest Cash Balances in the Money Market Funds.

3. Applicants state that the proposed arrangement would not result in the abuses that sections 12(d)(1)(A) and (B) were intended to prevent. Applicants state that because each Money Market Fund will maintain a highly liquid portfolio, an Investing Fund will not be in a position to gain undue influence over a Money Market Fund through threat of redemption. Applicants represent that the proposed arrangement will not result in an inappropriate layering of fees because shares of the Money Market Funds sold to and redeemed from the Investing Funds will not be subject to a sales load, redemption fee, distribution fee under a plan adopted in accordance with rule 12b–1 under the Act, or service fee (as defined in rule 2830(b)(9) of the National Association of Securities Dealers' ("NASD") Conduct Rules). If a Money Market Fund offers more than one class of securities, each Investing Fund will invest Cash Balances only in the class with the lowest expense ratio at the time of the investment. Before approving any advisory contract with the Adviser for an Investing Fund, its board of directors (the "Board"), including a majority of the trustees who are not "interested persons," as defined in section 2(a)(19) of the Act ("Independent Trustees"), will consider to what extent, if any, the advisory fees charged to the Investing Fund by the Adviser should be reduced to account for reduced services provided to the Investing Funds by the Adviser as a result of the investment of Uninvested Cash in a Money Market Fund. Applicants represent that no Money Market Fund will acquire securities of any other investment company in excess of the limitations contained in section 12(d)(1)(A) of the Act.

B. Section 17(a) of the Act

4. Section 17(a) of the Act makes it unlawful for any affiliated person of a registered investment company, or an affiliated person of such person, acting as principal, to sell or purchase any security to or from the company. Section 2(a)(3) of the Act defines an "affiliated person" of an investment company to include, among others, any person directly or indirectly controlling, controlled by, or under common control with the other person and any person owning, controlling, or holding with power to vote, 5% or more of the other person. Applicants state that, because the Portfolios and Managed Accounts share a common investment adviser, a Portfolio may be deemed to be under common control with each of the other Portfolios, and thus an affiliated person of each of the other Portfolios. In addition, if the relief is granted, an Investing Fund and Managed Account may own more than 5% of certain Money Market Funds and such Investing Funds and Managed Accounts may be deemed affiliated persons of each other. As a result, section 17(a) would prohibit the sale of the shares of a Money Market Fund to the Investing Funds and Managed Accounts, and the redemption of such shares by the Investing Funds and the Managed Accounts.

5. Section 17(b) of the Act authorizes the Commission to exempt a transaction from section 17(a) if the terms of the proposed transaction, including the consideration to be paid or received, are reasonable and fair and do not involve overreaching on the part of any person concerned, the proposed transaction is consistent with the policy of each investment company concerned, and the proposed transaction is consistent with the general purposes of the Act. Section 6(c) of the Act permits the Commission to exempt persons or transactions from any provision of the Act if the exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act.

6. Applicants submit that their request for relief to permit the purchase and redemption of shares of a Money Market Fund by the Investing Funds and Managed Accounts satisfies the standards in sections 6(c) and 17(b) of the Act. Applicants note that shares of the Money Market Funds will be purchased and redeemed at their net asset value, the same consideration paid and received for these shares by any other shareholder. Applicants state that the Investing Funds will retain their ability to invest Cash Balances directly in money market instruments as authorized by their respective investment objectives and policies if they believe they can obtain a higher rate of return or for any other reason. Applicants also state that each Money Market Fund may discontinue selling shares to any of the Investing Funds if the Board of the Money Market Fund or the Adviser determines that such sale would adversely affect the Money Market Fund's portfolio management and operations.

C. Section 17(d) of the Act and Rule 17d–1 under the Act

7. Section 17(d) of the Act and rule 17d–1 under the Act prohibit an affiliated person of an investment company, acting as principal, from participating in or effecting any transaction in connection with any joint enterprise or joint arrangement in which the investment company participates. Applicants state that each Investing Fund and Managed Account, by purchasing shares of the Money Market Funds, each Money Market Fund, by selling shares to and redeeming shares from, the Investing Funds and Managed Accounts, and the Adviser, by effecting the proposed transactions, could be deemed to be participants in a joint enterprise or arrangement within the meaning of section 17(d) of the Act and rule 17d–1 under the Act.

8. Rule 17d–1 permits the Commission to approve a proposed joint transaction covered by the terms of section 17(d) of the Act. In determining whether to approve a transaction, the Commission will consider whether the proposed transaction is consistent with the provisions, policies, and purposes of the Act, and the extent to which participation by the investment company is on a basis different from or less advantageous than that of other participants. Applicants submit that the investment by the Investing Funds and Managed Accounts in shares of a Money Market Fund would be made on the same basis and indistinguishable from those of any other shareholders. Applicants state that, for the reasons discussed above, the proposed transactions meet the standards for an order under rule 17d–1.

II. Interfund Transactions

9. Applicants state that Money Market Funds and Managed Accounts may rely on rule 17a–7 under the Act to conduct Interfund Transactions. Rule 17a–7 under the Act provides an exemption from section 17(a) for purchase and sale transactions between a registered investment company and an affiliated person of such company (or an affiliated person of an affiliated person), provided certain condition are met, including that the affiliation between the registered investment company and the affiliated person (or an affiliated person of the affiliated person) must exist solely by reason of having a common investment adviser, common officers and/or common directors. Applicants state that by virtue of the Managed Accounts owning 5% or more of the outstanding voting securities of a Money Market Fund, the Managed Accounts and the Money Market Funds would no longer be affiliated solely by reason of having a common investment adviser, common officers and/or common directors.

10. Applicants request relief under sections 6(c) and 17(b) of the Act to permit the Interfund Transactions. Applicants state that to engage in Interfund Transactions, the Managed Accounts and Money Market Funds will comply with rule 17a–7 under the Act in all respects other than the requirement that the parties to the transaction be affiliated persons (or affiliated person of affiliated persons) of each other solely by reason of having a common investment adviser or investment advisers that are affiliated persons of each other, common officer and/or common directors, solely because the Managed Accounts and the Money Market Funds might become affiliated persons within the meaning of sections 2(a)(3)(A) and (B) of the Act.

Applicants' Conditions

Applicants agree that any order granting the requested relief will be subject to the following conditions:

1. Shares of the Money Market Funds sold to and redeemed by the Investing Funds will not be subject to a sales load, redemption fee, distribution fee under a plan adopted in accordance with rule 12b–1 under the Act or service fee (as defined in rule 2830(b)(9) of the NASD's Conduct Rules).

2. No Money Market Fund will acquire securities of any other investment company in excess of the limits contained in section 12(d)(1)(A) of the Act.

3. Each of the Investing Funds will invest Uninvested Cash in, and hold shares of, a Money Market Fund only to the extent that such Investing Fund's aggregate investment of Uninvested Cash in the Money Market Funds does not exceed 25 percent of the Investing Fund's total assets. For purposes of this limitation, each Investing Fund will be treated as a separate investment company.

4. Each Investing Fund, Managed Account and Money Market Fund relying on the order will be advised by the Adviser. An Investing Fund that is subadvised, but not advised, by a NYLIM Adviser may rely on the order provided that the NYLIM Adviser managers the Cash Balances and the Investing Fund is in the same group of investment companies (as defined in section 12(d)(1)(G) of the Act) as the Money Market Fund in which the Investing Fund invests its Cash Balances.

5. Investment of Cash Balances by an Investing Fund in shares of the Money Market Funds will be in accordance with each Investing Fund's respective investment restrictions and will be consistent with each Investing Fund's policies as set forth in its prospectus and statement of additional information.

6. Before the next meeting of the Board is held for the purpose of voting on an advisory contract under section 15 of the Act, the Adviser to the Investing Fund will provide the Board with specific information regarding the approximate cost to the Adviser of, or portion of the advisory fee under the existing advisory contract, attributable to managing the Uninvested Cash of the Investing Fund that can be expected to be invested in the Money Market Funds. In connection with approving any advisory contract for an Investing Fund, the Board, including a majority of the Independent Trustees, shall consider to what extent, if any, the advisory fees charged to the Investing Fund by the Adviser should be reduced to account for reduced services provided to the Investing Fund by the Adviser as a result of the Uninvested Cash being invested in the Money Market Funds. The minute books of the Investing Fund will record fully the Board's consideration in approving the advisory contract, including the considerations referred to above.

7. Before any Investing Fund may participate in a Securities Lending Program, a majority of the Board, including a majority of the Independent Trustees of the Investing Fund, will approve the Investing Fund's participation in the Securities Lending Program. Such trustees also will evaluate the securities lending arrangement and its results no less frequently than annually and determine that any investment of Cash Collateral in the Money Market Funds is in the best interest of the shareholders of such Investing Fund.

8. To engage in Interfund Transactions, the Managed Accounts and Money Market Funds will comply with rule 17a–7 under the Act in all respects other than the requirement that the parties to the transactions be affiliated persons (or affiliated persons of affiliated persons) of each other solely by reason of having a common investment adviser or investment advisers that are affiliated persons of each other, common officers and/or common directors, solely because the Managed Accounts and the Money Market Funds might become affiliated persons within the meaning of sections 2(a)(3)(A) and (B) of the Act.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

J. Lynn Taylor,

Assistant Secretary.

[FR Doc. 03–12736 Filed 5–20–03; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–4781; File No. S7–966]

Program for Allocation of Regulatory Responsibilities Pursuant to Rule 17d–2; Notice of Filing of the Plan for Allocation of Regulatory Responsibilities Between the National Association of Securities Dealers, Inc. and the International Securities Exchange, Inc.

May 14, 2003.

Pursuant to section 17(d) of the Securities Exchange of 1934 ("Act")[1] and Rule 17d–2 thereunder,[2] notice is hereby given that on January 7, 2003, the National Association of Securities Dealers, Inc. ("NASD" or "Association") and the International Securities Exchange, Inc. ("ISE") filed with the Securities and Exchange Commission ("SEC" or "Commission") a plan for

[1] 15 U.S.C. 78q(d).

[2] 17 CFR 240.17d–2.

allocation of regulatory responsibilities relating to options-related sales practices ("ISE/NASD Options-related Sales Practice 17d–2 Plan"). On May 1, 2003, NASD and ISE filed Amendment No. 1 to the ISE/NASD Options-related Sales Practice 17d–2 Plan.[3]

I. Introduction

Section 19(g)(1) of the Act,[4] among other things, requires every national securities exchange and registered securities association ("SRO") to examine for and enforce compliance by, its members and persons associated with its members with the Act, the rules and regulations thereunder, and the SRO's own rules, unless the SRO is relieved of this responsibility pursuant to section 17(d) or 19(g)(2) of the Act.[5] Without this relief, the statutory obligation of each individual SRO could result in a pattern of multiple examinations of broker-dealers that maintain memberships in more than one SRO ("common members"). This regulatory duplication would add unnecessary expenses for common members and their SROs.

Section 17(d)(1) of the Act was intended, in part, to eliminate unnecessary multiple examinations and regulatory duplication.[6] With respect to a common member, section 17(d)(1) authorizes the Commission, by rule or order, to relieve an SRO of the responsibility to receive regulatory reports, to examine for and enforce compliance with applicable statutes, rules and regulations, or to perform other specified regulatory functions.

To implement section 17(d)(1), the Commission adopted two rules: Rule 17d–1 and Rule 17d–2 under the Act.[7] Rule 17d–1, adopted on April 20, 1976,[8] authorizes the Commission to name a single SRO as the designated examining authority ("DEA") to examine common members for compliance with financial responsibility requirements imposed by the Act, or by Commission or SRO rules. When an SRO has been named as a common member's DEA, all other SROs to which the common member belongs are relieved of the responsibility to examine the firm for compliance with applicable financial responsibility rules.

On its face, Rule 17d–1 deals only with an SRO's obligations to enforce broker-dealers' compliance with the financial responsibility requirements. Rule 17d–1 does not relieve an SRO from its obligation to examine a common member for compliance with its own rules and provisions of the federal securities laws governing matters other than financial responsibility, including sales practices, and trading activities and practices.

To address regulatory duplication in these other areas, on October 28, 1976, the Commission adopted Rule 17d–2 under the Act.[9] This rule permits SROs to propose joint plans allocating regulatory responsibilities with respect to common members. Under paragraph (c) of Rule 17d–2, the Commission may declare such a plan effective if, after providing for notice and comment, it determines that the plan is necessary or appropriate in the public interest and for the protection of investors, to foster cooperation and coordination among the SROs, to remove impediments to and foster the development of a national market system and a national clearance and settlement system, and in conformity with the factors set forth in section 17(d) of the Act. Commission approval of a plan filed pursuant to Rule 17d–2 relieves an SRO of those regulatory responsibilities allocated by the plan to another SRO.

II. The Plan

On September 8, 1983, the Commission approved a plan for allocating regulatory responsibility pursuant to Rule 17d–2 for certain options-related sale practice matters ("Options-related Sales Practice 17d–2 Plan").[10] Under this plan, the SRO to whom a firm was designated was responsible for conducting options-related sales practice examinations and investigating options-related customer complaints and terminations for cause of associated persons; the designated SRO was also known as the firm's "Designated Options Examining Authority" or "DOEA." Under the Options-related Sales Practice Plan, only the AMEX, CBOE, NASD and NYSE were DOEAs. On May 23, 2000, the Commission approved an Amendment to the Options-related Sales Practice Plan that added ISE as a participant.[11] On November 8, 2002, the Commission approved another Amendment that replaced the Options-related Sale Practice Plan in its entirety and, among other things, allocated regulatory responsibilities among all the participants in a more equitable manner ("Revised Options-related Sales Practice 17d–2 Plan").[12] The current proposed plan between ISE and NASD transfers to the NASD all the regulatory responsibilities for each common member allocated to the ISE under the Revised Options-related Sales Practice 17d–2 Plan.

The text of the proposed ISE/NASD Options-related Sales Practice 17d–2 Plan is as follows:

Agreement Between the National Association of Securities Dealers, Inc., and the International Securities Exchange, Pursuant to Section 17(d) and Rule 17d–2

This agreement (Agreement) pursuant to section 17(d) of the Securities Exchange Act of 1934 (Act) and Rule 17d–2 thereunder is by and between the National Association of Securities Dealers, Inc. (NASD), a Delaware Corporation registered as a national securities association subject to regulation by the Securities and Exchange Commission under the Act, whose principal offices are located at 1735 K Street, NW., Washington, DC 20006, and the International Securities Exchange, Inc. (ISE), a New York corporation whose principal place of business is located at 60 Broad Street, New York, NY 10004 (NASD and ISE are collectively referred to as Parties).

In consideration of the mutual covenants contained hereafter, and in consideration of other valuable consideration, NASD and ISE hereby agree as follows:

1. *Term.* This Agreement shall be effective on the date the SEC approves this Agreement under section 17(d) (Effective Date).

2. *Entities.* ISE is a self-regulatory organization (SRO), as defined in section 3(a)(26) of the Act. NASD is a registered securities association, as defined in section 15A of the Act and an SRO, and is responsible for fulfilling certain regulatory obligations and performing certain regulatory functions under the Act.

3. *Members.* The Parties have brokers or dealers as their members, and some of the brokers or dealers are members of both Parties (hereinafter, members of both Parties and persons associated with such members are referred to collectively as Common Members). Each Party hereto has regulatory obligations under the Act and the rules of the Party for Common Members.

4. *Structure.* The Parties are participants in a multiparty options 17d–2 Agreement by and among the American Stock Exchange LLC, the Chicago Board Options Exchange, Inc., ISE, NASD, the New York Stock Exchange, the Pacific Exchange Inc., and the Philadelphia Stock Exchange ("Multiparty 17d–2 Agreement"). Under the Multiparty 17d–2 Agreement, ISE is assigned as Designated Options Examining Authority ("DOEA") for certain Common Members. Under the Multiparty 17d–2 Agreement, a DOEA has examination and enforcement responsibilities ("Regulatory Responsibilities") relating to compliance by a Common Member and persons associated with such Common Member for certain Common Rules (as defined in the Multiparty 17d–2 Agreement) insofar as they apply to the conduct of accounts for listed options and index options (the "Covered Rules").

5. *Services.* NASD shall perform all the Regulatory Responsibilities (as set forth in the Multiparty 17d–2 Agreement, as amended (attached hereto as Exhibit 1–A)), for each Common Member that is allocated to ISE under the Multiparty 17d–2 Agreement as if NASD were the Designated Options Examining Authority (the "Covered Member").

6. *Fees.* NASD will charge ISE and ISE shall pay NASD a fee for services performed under this Agreement. In the event that NASD raises its rates in excess of what has been agreed to by the parties, NASD will provide ISE with ninety (90) days advance written notice of its intent. ISE will then have thirty (30) days from the date of such notification to inform NASD that ISE will perform for itself the applicable regulatory responsibilities allocated NASD under the Agreement or enter into an agreement pursuant to applicable rules of the SEC with respect to the performance of such responsibilities. ISE's failure to pay for services performed is a material breach of this Agreement.

7. *Indemnification.* Neither Party, including respective directors, governors, officers, employees and agents, will be liable to the other Party and its directors, governors, officers, employees and agents for liability, loss or damage resulting from any delays, inaccuracies, errors or omissions with respect to its performing or failing to perform regulatory responsibilities, obligations, or functions, except in instances of gross negligence, willful misconduct or reckless disregard, or breach of confidentially. Both Parties understand and agree with each other that the regulatory responsibilities are being performed on a good faith and best effort basis and no warranties, express or implied, are made by either Party to the other Party with respect to any of the responsibilities to be performed by either of these Parties hereunder.

8. *Arbitration.* Any claim, dispute, controversy or other matter in question with regard to the Agreement that cannot be resolved by negotiation between the Parties shall be submitted to arbitration in accordance with the rules and regulations of the American Arbitration Association, provided, however, that (1) submission of any such claim, dispute, controversy or other matter in question to the American Arbitration Association shall not be required if the Parties agree upon another arbitration forum, (2) the foregoing shall not preclude either Party from pursuing all available administrative, judicial or other remedies for infringement of a registered patent, trademark, service mark or copyright, (3) the Parties shall not submit claims for punitive damages and do hereby waive any right to the same, and (4) the arbitrators shall not be authorized to award punitive damages.

9. *SEC Approval.*

(a) The Parties agree to promptly file this Agreement with the SEC for its review and approval.

(b) If approved by the SEC, the Parties agree to send out a joint notice to Covered Members to announce this Agreement.

10. *Special or Cause Examinations.* Nothing in this Agreement shall restrict or in any way encumber the right of a Party to conduct special or cause examinations of Covered Members as either Party, in its sole discretion, shall deem appropriate or necessary.

11. *Definitions.* Unless otherwise defined in this Agreement, or unless the context otherwise requires, the terms used in this Agreement shall have the same meaning as they have under the Act and the rules and regulations thereunder.

12. *Subsequent Parties; Limited Relationship.* This Agreement shall inure to the benefit of and shall be binding upon the Parties hereto and their respective legal representatives, successors, and assigns. Nothing in this Agreement, expressed or implied, is intended to or shall (i) confer on any person other than the Parties hereto, or their respective legal representatives, successors, and assigns, any rights, remedies, obligations or liabilities under or by reason of this Agreement, (ii) constitute the Parties hereto partners or participants in a joint venture, or (iii) appoint one Party the agent of the other.

13. *Assignment.* Neither Party may assign the Agreement without the prior written consent of the other Party, which consent shall not be unreasonably withheld, conditioned or delayed, provided, however, that either Party may assign the Agreement to a corporation controlling, controlled by or under common control with the assigning Party without the prior written consent of the other Party.

14. *Severability.* Any term or provision of this Agreement which is invalid or unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective to the extent of such invalidity or unenforceability without rendering invalid or unenforceable the remaining terms and provisions of this Agreement or affecting the validity or enforceability of any of the terms or provisions of this Agreement in any other jurisdiction.

15. *Termination.*

(a) *Termination for Cause.* Either Party may terminate the Agreement due to breach by the other Party. The Party aggrieved by the breach shall give written notice to the other Party that the Agreement shall be terminated not earlier than sixty (60) calendar days from receipt of the notice, and such notice shall state with specificity the grounds for termination. If the breach is curable, the Party in breach will have the right to cure such breach prior to the date stated for termination, and, should the breach be cured and written notice of such cure served on the aggrieved Party prior to the date stated for termination, such notice shall vacate the notice to terminate.

(b) *Termination for Convenience.* Either Party may terminate the Agreement for any other reason by giving written notice to the other Party that the Agreement will terminate not less than ninety (90) days from receipt of the notice. The notice will specify the basis for termination. ISE will pay NASD the amount due for authorized work and expenses incurred in completion of such authorized work as of the effective date of termination.

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[3] See letter from Michael Simon, Senior Vice President and General Counsel, ISE, to Nancy Sanow, Assistant Director, Division of Market Regulation, SEC, dated April 30, 2003. Amendment No. 1 deleted paragraphs 5.1 and 5.2 of the ISE/NASD Options-related Sale Practice 17d–2 Plan filed on January 7, 2003.

[4] 15 U.S.C. 78s(g)(1).

[5] 15 U.S.C. 78q(d) and 15 U.S.C. 78s(g)(2).

[6] 15 U.S.C. 78q(d). *See also* Securities Acts Amendments of 1975, Report of the Senate Committee on Banking, Housing, and Urban Affairs to Accompany S. 249, S. Rep. No. 94–75, 94th Cong., 1st Session. 32 (1975).

[7] 17 CFR 240.17d–1 and 17 CFR 240.17d–2.

[8] Securities Exchange Act Release No. 12352, 41 FR 18809 (May 3, 1976).

[9] Securities Exchange Act Release No. 12935, 41 FR 49093 (November 8, 1976).

[10] Securities Exchange Act Release No. 20158, 48 FR 41256 (September 14, 1983). The participation in this plan were the American Stock Exchange LLC ("AMEX") the Chicago Board Options Exchange, Inc. ("CBOE"), the Midwest Stock Exchange, Inc., NASD, the New York Stock Exchange, Inc. ("NYSE"), the Pacific Stock Exchange, Inc. and the Philadelphia Stock Exchange, Inc.

[11] Securities Exchange Act Release No. 42816 (May 23, 2000); 65 FR 34759 (May 31, 2000). This Amendment also updated the corporate names of the AMEX, the Midwest Stock Exchange (now known as the Chicago Stock Exchange, Inc.), and the Pacific Stock Exchange Incorporated (now known as the Pacific Exchange, Inc.).

[12] Securities Exchange Act Release No. 46800, 67 FR 69774 (November 19, 2002).

16. *General obligations.* The Parties agree to perform all acts and execute all supplementary instruments or documents that may be reasonably necessary or desirable to carry out the provisions of this Agreement.

17. *Liaison and Notices.* All questions regarding the implementation of this Agreement shall be directed to the persons identified in subsections (a) and (b), as applicable, below. All notices and other communications required or permitted to be given under this Agreement shall be in writing and shall be deemed to have been duly given upon (i) actual receipt by the notified Party or (ii) constructive receipt (as of the date marked on the return receipt) if sent by certified or registered mail, return receipt requested, to the following addresses:

(a) *If to NASD:*
NASD, 9509 Key West Avenue, Rockville, Maryland 20850, *Attn:* Jim Price.
With, if a notice of breach or default, a required copy to:
National Association of Securities Dealers, Inc., 1735 K Street, NW., Washington, DC 20006, *Attn:* Office of General Counsel—Contracts Group.

(b) *If to ISE:*
International Securities Exchange, Inc., 60 Broad Street, 26th Floor, New York, NY 10004, *Attn:* Legal Department.
With, if a notice of breach or default, a required copy to:
Same address as above.

18. *Regulatory responsibility.* Pursuant to section 17(d)(1)(A) of the Act, and Rule 17d–2 thereunder, NASD and ISE jointly request the SEC, upon its approval of this Agreement, to relieve ISE of any and all responsibilities with respect to the matters performed by NASD pursuant to this Agreement for purposes of sections 17(d) and 19(g) of the Act.

19. *Governing Law.* This Agreement shall be deemed to have been made in the State of New York and shall be construed and enforced in accordance with the law of the state of New York, without reference to principles of conflicts of laws thereof. Each of NASD and ISE hereby consents to submit to the jurisdiction of the courts by or for the State of New York in connection with any action or proceeding relating to this Agreement.

20. *Survival of Provisions.* Provisions intended by their terms or context to survive and continue notwithstanding delivery of the Services by NASD, the payment of the price by ISE, and any expiration of this Agreement shall survive and continue, including but not limited to, the items referred to in Sections 6, 8, and 9.

III. Solicitation of Comments

In order to assist the Commission in determining whether to approve this plan and to relieve the ISE of those responsibilities designated to the NASD, interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submission should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed plan that are filed with the Commission, and all written communications relating to the proposed plan between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of ISE. All submissions should refer to File No. S7–966 and should be submitted by June 13, 2003.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[13]

J. Lynn Taylor,

Assistant Secretary.

[FR Doc. 03–12730 Filed 5–20–03; 8:45 am]

BILLING CODE 8010–01–M

[13] 17 CFR 200.30–3(a)(34).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–47858; File No. SR–Amex–2003–40]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the American Stock Exchange LLC to Extend the Suspension of Transaction Charges for Certain Exchange-Traded Funds

May 14, 2003.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b-4 thereunder,[2] notice is hereby given that on May 1, 2003, the American Stock Exchange LLC ("Amex") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Amex proposes to extend until May 31, 2003 the suspension of Exchange transaction charges for specialist, Registered Trader, and broker-dealer orders for the iShares Lehman 1–3 year Treasury Bond Fund; iShares Lehman 7–10 year Treasury Bond Fund; Treasury 10 FITR ETF; Treasury 5 FITR ETF; Treasury 2 FITR ETF; and Treasury 1 FITR ETF.
Proposed new language is *italicized*; proposed deletions are in [brackets].

* * * * *

AMEX Equity Fee Schedule

I. Transaction Charges
No change.
II. Regulatory Fee
No Change.
Notes:
1. and 2. No change.
3. Customer transaction charges for the following Portfolio Depositary Receipts, Index Fund Shares, and Trust Issued Receipts have been suspended:

DIA—DIAMONDS®
QQQ—Nasdaq-100® Index Tracking Stock
SPY—SPDR®
IVV—iShares S&P 500
MDY—MidCap SPDRs
XLY—Select Sector SPDR-Consumer Discretionary
XLP-Select Sector SPDR-Consumer Staples
XLE-Select Sector SPDR-Energy
XLF-Select Sector SPDR-Financial
XLV-Select Sector SPDR-Health Care
XLI-Select Sector SPDR-Industrial
XLB-Select Sector SPDR-Materials
XLK-Select Sector SPDR-Technology
XLU-Select Sector SPDR-Utilities
BHH-B2B Internet HOLDRs™
BBH-Biotech HOLDRs
BDH-Broadband HOLDRs
EKH-Europe 2001 HOLDRs
IAH-Internet Architecture HOLDRs
HHH-Internet HOLDRs
IIH-Internet Infrastructure HOLDRs
MKH-Market 2000+ HOLDRs
OIH-Oil Service HOLDRs
PPH-Pharmaceutical HOLDRs
RKH-Regional Bank HOLDRs
RTH-Retail HOLDRs
SMH-Semiconductor HOLDRs
SWH-Software HOLDRs
TTH-Telecom HOLDRs
UTH-Utilities HOLDRs
WMH-Wireless HOLDRs
SHY-iShares Lehman 1–3 Year Treasury Bond Fund
IEF-iShares Lehman 7–10 Year Treasury Bond Fund
TLT-iShares Lehman 20+ Year Treasury Bond Fund
LQD-iShares GS $ InvesTop Corporate Bond Fund
TFT—Treasury 1 FITR ETF
TOU—Treasury 2 FITR ETF
TFI—Treasury 5 FITR ETF
TTE—Treasury 10 FITR ETF

Customer transaction charges for the iShares S&P 100 Index Fund are $.0015 per share ($.15 per 100 shares), capped at $100 per trade.

Until [April 30] May 31, 2003, transaction charges also have been suspended in SHY, IEF, TFT, TOU, TFI and TTE for specialist, Registered Trader and broker dealer orders.

* * * * *

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Amex included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange is extending until May 31, 2003 the suspension of transaction charges in iShares Lehman 1–3 year Treasury Bond Fund (Symbol: SHY); iShares Lehman 7–10 year Treasury Bond Fund (Symbol: IEF); Treasury 10 FITR ETF (Symbol: TTE); Treasury 5 FITR ETF (TFI); Treasury 2 FITR ETF (TOU); and Treasury 1 FITR ETF (TFT) for specialist, Registered Trader and broker-dealer orders. The Exchange previously filed a suspension in such charges until November 30, 2002,[3] December 13, 2002,[4] January 31, 2003,[5] February 28, 2003,[6] March 31, 2003,[7] and April 30, 2003.[8]

The Exchange believes a suspension of fees for these securities is appropriate to enhance the competitiveness of executions in these securities on the Amex. The Exchange will reassess the fee suspension as appropriate, and will file any modification to the fee suspension with the Commission pursuant to section 19(b)(3)(A) of the 1934 Act.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with section 6(b) of the Act[9] in general, and furthers the objectives of section 6(b)(4)[10] in particular, in that it provides for the equitable allocation of reasonable dues, fees and other charges among its members and other persons using its facilities.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

The Exchange has neither solicited nor received comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to section 19(b)(3)(A) of the Act[11] and Rule 19b–4(f)(6)[12] thereunder because the proposal: (i) Does not significantly affect the protection of investors or the public interest; (ii) does not impose any significant burden on competition; and (iii) does not become operative prior to 30 days after the date of filing or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest; provided that the Exchange has given the Commission notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such short time as designated by the Commission. At any time within 60 days of the filing of such proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors or otherwise in furtherance of the purposes of the Act.

The Amex has requested that the Commission waive the five-day pre-filing notice and the 30-day operative delay. The Commission believes that waiving the five-day pre-filing notice and the 30-day operative delay is consistent with the protection of investors and the public interest. The Commission notes that fee suspensions for the exchange-traded funds that are the subject of this filing have been previously filed with the Commission.[13] Further, extension of the fee suspension for specialist, Registered Trader, and broker-dealer orders will permit the fee suspensions to continue uninterrupted. For these reasons, the Commission

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b-4.

[3] See Securities Exchange Act Release No. 46765 (November 1, 2002), 67 FR 68893 (November 13, 2002) (SR–Amex–2002–91).

[4] See Securities Exchange Act Release No. 46996 (December 13, 2002), 67 FR 78264 (December 23, 2002) (SR–Amex–2002–98).

[5] See Securities Exchange Act Release No. 47141 (January 8, 2003), 68 FR 2090 (January 15, 2003) (SR–Amex–2002–115).

[6] See Securities Exchange Act Release No. 47361 (February 13, 2003), 68 FR 8534 (February 21, 2003) (SR–Amex–2003–04).

[7] See Securities Exchange Act Release No. 47455 (March 6, 2003), 68 FR 12111 (March 13, 2003) (SR–Amex–2003–15).

[8] See Securities Exchange Act Release No. 47668 (April 11, 2003), 68 FR 19241 (April 18, 2003) (SR–Amex–2003–22).

[9] 15 U.S.C. 78f(b).

[10] 15 U.S.C. 78f(b)(4).

[11] 15 U.S.C. 78s(b)(3)(A).

[12] 17 CFR 240.19b–4(f)(6).

[13] See *supra* notes 3–8.

designates the proposal to be effective and operative upon filing with the Commission.[14]

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the Exchange. All submissions should refer to File No. SR–Amex–2003–40 and should be submitted by June 11, 2003.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[15]

J. Lynn Taylor,

Assistant Secretary.

[FR Doc. 03–12690 Filed 5–20–03; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–47862; File No. SR–Amex–2003–38]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the American Stock Exchange LLC Relating to the Withdrawal of Approval for Securities Underlying Options Traded on the Exchange

May 14, 2003.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on May 1, 2003, the American Stock Exchange LLC ("Amex" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The proposed rule change has been filed by the Amex as a "non-controversial" rule change under Rule 19b–4(f)(6) under the Act.[3] The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Amex proposes to amend Exchange Rule 916, which governs the withdrawal of approval for securities underlying options traded on the Exchange. Below is the text of the proposed rule change. Proposed new language is in italics.

* * * * *

Rule 916. Withdrawal of Approval of Underlying Securities

No Change

Commentary.

01 The Board of Governors has established guidelines to be considered by the Exchange in determining whether an underlying security previously approved for Exchange option transactions no longer meets its requirements for the continuance of such approval. Absent exceptional circumstances, with respect to items 1, 2, or 3 listed below, an underlying security will not be deemed to meet the Exchange's requirements for continued approval whenever any of the following occur:

1. There are fewer than 6,300,000 shares of the underlying security held by persons other than those who are required to report their security holdings under section 16(a) of the Securities Exchange Act of 1934.

2. There are fewer than 1,600 holders of the underlying security.

3. The trading volume (in all markets in which the underlying security is traded) was less than 1,800,000 shares in the preceding twelve months.

4. Subject to Commentary .02 below, the market price per share of the underlying security closed below $3 on the previous trading day as measured by the highest closing price reported in the primary market (as that term is defined in Rule 900(26)) in which the underlying security traded.

5. The issuer has failed to make timely reports as required by applicable requirements of the Securities Exchange Act of 1934, and such failure has not been corrected within 30 days after the date the report was due to be filed.

6. The issue, in the case of an underlying security that is principally traded on a national securities exchange, is delisted from trading on that exchange and neither meets NMS criteria nor is traded through the facilities of a national securities association, or the issue, in the case of an underlying security that is principally traded through the facilities of a national securities association, is no longer designated as an NMS security.

7. If an underlying security is approved for options listing and trading under the provisions of Commentary .05 of Rule 915, the trading volume and price history of the Original Security (as therein defined) prior to but not after the commencement of trading in the Restructured Security (as therein defined), including "when issued" trading, may be taken into account in determining whether the trading volume and market price requirements of paragraphs 3. and 4. of the Commentary .01 are satisfied, provided however, that in the case of a Restructured Security approved for options listing and trading under paragraph (d) of Commentary .05 under Rule 915, such trading volume requirements must be satisfied based on the trading volume history of the Restructured Security.

.02–.09 No Change

.10 In determining whether any of the events specified in Commentary .01(1) or (2) of this Rule have occurred, the Exchange will monitor on a daily basis news sources for information of corporate actions, including stock splits, mergers and acquisitions, distribution of special cash dividends, recapitalizations, and stock buy-backs. If a corporate action indicates that an underlying security no longer meets the Exchange's requirements for continued approval under Commentary .01 (1) or (2) of this Rule, the Exchange will not open additional series of option contracts of the class covering the underlying security. If, however, information of a corporate action does not indicate that any of the events specified in Commentary .01(1) or (2) have occurred, the Exchange shall consider the events specified in Commentary .01(1) and (2) to have been satisfied.

* * * * *

[14] For purposes only of accelerating the operative date of this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[15] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 17 CFR 240.19b–4(f)(6).

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

Exchange Rule 916 sets forth the guidelines to be considered by the Exchange in determining whether an underlying security previously approved for Exchange option transactions no longer meets its requirements for the continuance of such approval. Specifically, Commentary .01(1) to Exchange Rule 916 provides that, absent exceptional circumstances, the Exchange may not list additional series on an option class if there are fewer than 6,300,000 shares of the underlying security held by persons other than those who are required to report their security holdings under section 16(a) of Act[4] (the "float" requirement). Commentary .01(2) to Exchange Rule 916 provides that, absent exceptional circumstances, the Exchange may not list additional series on an option class if there are fewer than 1,600 holders of the underlying security (the "holders" requirement). The Exchange is now proposing to add Commentary .10 to Exchange Rule 916 to clarify the manner in which the Exchange determines whether the "float" and "holders" requirements found in Commentary .01 to Exchange Rule 916 are met.[5]

The Exchange proposes to expressly state that in determining whether any of the events specified in Commentary .01(1) or (2) to Exchange Rule 916 have occurred, the Exchange would monitor on a daily basis news sources for information of corporate actions, including stock splits, mergers and acquisitions, distribution of special cash dividends, recapitalizations, and stock buy backs. If a corporate action indicates that an underlying security no longer meets the Exchange's requirements for continued approval under Commentary .01(1) or (2) to Exchange Rule 916, the Exchange would not open additional series of option contracts of the class covering the underlying security. If, however, information of a corporate action does not indicate that any of the events specified in Commentary .01(1) or (2) to Exchange Rule 916 have occurred, the Exchange shall consider the events specified in Commentary .01(1) and (2) to have been satisfied.[6]

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with section 6(b) of the Act[7] in general, and furthers the objectives of Section 6(b)(5) of the Act[8] in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange believes that the proposed rule change will impose no burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were neither solicited nor received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because, the foregoing proposed rule change (1) does not significantly affect the protection of investors or the public interest; (2) does not impose any significant burden on competition; and (3) by its terms, does not become operative until 30 days from the date on which it was filed, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest, and the exchange provided the Commission with written notice of its intent to file the proposed rule change at least five business days prior to the date of filing of the proposed rule change,[9] it has become effective pursuant to section 19(b)(3)(A) of the Act[10] and Rule 19b–4(f)(6) thereunder.[11]

The Amex has requested that the Commission waive the usual 30-day pre-operative waiting period. The Commission notes that this proposal is the same in all material respects to another proposal submitted by the Chicago Board Options Exchange, Inc. ("CBOE") and recently approved by the Commission.[12] As a result, the Commission believes that it is consistent with the protection of investors and the public interest to accelerate the operative date because the proposal raises no new regulatory issues. Therefore, the Commission designates that the proposal become operative immediately.[13]

At any time within 60 days of the filing of this proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the

[4] 15 U.S.C. 78p(a).

[5] Proposed Commentary .10 to Exchange Rule 916 will clarify how the Exchange will determine whether the float of an underlying security is less than 6.3 million shares or the number of holders of the underlying security is fewer than 1,600.

[6] The Exchange represents that existing Commentary .03 to Exchange Rule 916 would continue to apply when the Exchange considers whether any of the events specified in Commentary .01 have occurred with respect to an underlying security. Specifically, Commentary .03 to Exchange Rule 916 provides that the Exchange shall ordinarily rely on information made publicly available by the issuer and/or markets in which such security is traded.

[7] 15 U.S.C. 78f(b).

[8] 15 U.S.C. 78f(b)(5).

[9] *See* e-mail from Jeffrey P. Burns, Associate General Counsel, Amex, to Nancy Sanow, Assistant Director, Division of Market Regulation, Commission, dated April 15, 2003.

[10] 15 U.S.C. 78s(b)(3)(A).

[11] 17 CFR 240.19b–4(f)(6).

[12] *See* Securities Exchange Act Release No. 47400 (February 25, 2003), 68 FR 10286 (March 4, 2003).

[13] For purposes only of accelerating the operative date of this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section. Copies of such filing will also be available for inspection and copying at the principal office of the Amex. All submissions should refer to File No. SR–Amex–2003–38 and should be submitted by June 11, 2003.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[14]

J. Lynn Taylor,

Assistant Secretary.

[FR Doc. 03–12735 Filed 5–20–03; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–47826; File No. SR–DTC–2002–19]

Self-Regulatory Organizations; The Depository Trust Company; Notice of Filing of Proposed Rule Change to Establish an Inventory Management System

May 9, 2003

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] notice is hereby given that on December 19, 2002, The Depository Trust Company ("DTC") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which items have been prepared primarily by DTC. The Commission is publishing this notice to solicit comments on the proposed rule change from interested parties.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

DTC is seeking to establish an Inventory Management System ("IMS") which will provide new central control capabilities for the settlement process including new capabilities for transaction authorization and new controls for the management of pending deliveries.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, DTC included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. DTC has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of these statements.[2]

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The industry's prolonged discussions of the development of a new matching model that promotes straight through processing ("STP") for institutional transactions identified a series of deficiencies in the processing systems for settling those transactions.[3] Industry members, particularly members of the Securities Industry Association's Institutional Trade Processing Committee, pressed DTC to develop a series of capabilities to permit participants to centrally manage their own settlements as a way of furthering STP in the settlement process itself. A working group under the Settlement Advisory Board of The Depository Trust & Clearing Corporation ("DTCC") assisted in crafting the framework for IMS.

Today, participants control the processing of their institutional deliveries received from a matching utility (such as Omgeo's TradeSuite system) through the Authorization and Exception system ("ANE"). ANE will not send a delivery to the processing system without an affirmative authorization from the delivering participant. This affirmative authorization is given either on an item-by-item basis or through a "global" authorization. A participant can submit exceptions to explicitly withhold a delivery from processing. Conversely, deliveries from the National Securities Clearing Corporation's ("NSCC's") Continuous Net Settlement system ("CNS") are automatically processed unless the participant instructs NSCC otherwise via an exemption. Other deliveries (*e.g.*, Night Deliver Orders ["NDOs"]) along with authorized institutional deliveries and CNS deliveries are processed by DTC at predefined times. All of these transactions may pend ("recycle") in the event of a position deficiency or a problem with system controls. Recycles are processed based on one of two recycle options; a "First In First Out" process or a DTC preestablished recycle queue.

Participants generally have sought greater control over the processing of their deliveries than these procedures permit. Therefore, participants have built internal inventory management systems or adopted internal manual procedures that exempt deliveries from automatic processing so that the participants can control the sequence and timing of their deliveries. This has created an STP shortfall, caused the industry to build redundant systems, and has increased the number of reclaims.

DTC is now seeking to allow a participant to choose how it wants to authorize its deliveries. The key components of IMS include:

(1) New authorization capabilities (replacing the ANE system) which participants can use to stage transactions for automated settlement;

(2) A new "profiling" system which will allow participants greater control over the timing and order of their deliveries by transaction type and asset class via predefined profiles to eliminate today's frequent direct intervention in the settlement process that inhibits STP;

(3) Capabilities permitting the linkage of transactions so particular receive transactions are associated with particular deliveries;[4] and

(4) Controls permitting the retention of failed deliveries for the following settlement day eliminating participants' need to reinput these instructions.

As a result of industry feedback, DTC has designed IMS to permit authorization and control of different transaction types (*e.g.*, NDOs, *etc.*) within each asset class (*e.g.*, equities) and to permit increased authorization options. The creation of IMS also makes possible a warehousing[5] facility for future deliveries through the NDO function and the reintroduction of dropped deliveries.[6] At the participant's option, the system could require reauthorization of reintroduced "drops" before they are resubmitted for processing on the following day.

If approved by the Commission, IMS will be implemented in two phases. Three initiatives, (1) the replacement of ANE, (2) warehousing, and (3) the reintroduction of dropped deliveries, will be available in Phase I. Phase I is scheduled to begin in July 2003. Phase II, scheduled to be implemented in December 2003, will create an optional customized delivery and recycle profile.[7]

A participant can choose to authorize its deliveries either actively or passively. In the active mode, deliveries will not be processed unless an authorization is sent. Authorizations and exemptions can be on a trade-for-trade basis or a global basis. Global authorization or exemption capabilities will also be available via the Participant Browser System display screens. The new passive mode authorization option will immediately authorize a delivery when it is received and process it on its settlement day unless the participant exempts it.

Recognizing the need for flexibility and options, a participant will be able to create authorization profiles for the following asset classes: equity, municipal debt, corporate debt, and money market instruments. Within each asset class, a participant can choose which authorization mode it would like applied as its default for the different transaction types.[8] For example, for the asset class equities, a participant could choose to use active mode authorization for matched institutional deliveries and passive mode authorization for CNS deliveries.

Participants would not be required to make systemic changes and can continue to process their deliveries as they do today. All IMS features will be optional, and participants will be able to migrate to any or all features they deem valuable. As a result of this new system, participants will be able to centrally manage their own settlements and achieve higher levels of straight through processing.

DTC believes that the proposed rule change is consistent with the requirements of section 17A of the Act[9] and the rules and regulations thereunder applicable to DTC because it will permit the accurate clearance and settlement of securities by allowing participants to centrally manage their own settlements and control the order and timing of their deliveries earlier in the settlement cycle.

(B) Self-Regulatory Organization's Statement on Burden on Competition

DTC does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act, in the public interest, and for the protection of investors.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

DTC has discussed this rule change proposal in its current form with various DTC participants and industry groups, a number of whom have worked closely in developing the proposed IMS system.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within thirty-five days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to ninety days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve such proposed rule change or

(B) institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act.

Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Comments may also be submitted electronically at the following e-mail address: *rule-comments@sec.gov*. All comment letters should refer to File No. SR–DTC–2002–19. This file number should be included on the subject line if e-mail is used. To help us process and review comments more efficiently, comments should be sent in hardcopy or by e-mail but not by both methods. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing also will be available for inspection and copying at the principal office of DTC.

All submissions should refer to File No. SR–DTC–2002–19 and should be submitted by June 11, 2003.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[10]

J. Lynn Taylor,

Assistant Secretary.

[FR Doc. 03–12731 Filed 5–20–03; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–47875; File No. SR–DTC–2003–08]

Self-Regulatory Organizations; the Depository Trust Company; Notice of Filing of a Proposed Rule Change Relating to Rule 4A, Pledge of Property to the Corporation and Its Lenders

May 15, 2003.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] notice is hereby given that on May 6, 2003, The Depository Trust Company ("DTC") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which items have been

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[14] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] The Commission has modified the text of the summaries prepared by DTC.

[3] The present U.S. system has evolved over time in different ways for different instruments, participants, and marketplaces. While the current system has met the needs of the industry well, the result is an intricate web of processing steps that are not standardized and are quite complex and inflexible. Many participants manage their processing with late-cycle interventions such as (a) withholding or "exempting" trades from more automatic processes, subsequently intervening in the system to reintroduce the transaction when they are ready to process it and (b) reversing or "reclaiming" problem transactions before or after settlement has occurred. These practices late in the settlement cycle disrupt automated processing and contribute to the incidence of fails, which creates costs and risks for participants and for the system as a whole.

[4] Such a linkage would permit customers to associate securities they expected to receive with specific securities they expected to deliver so that they no longer need to exempt a delivery until they receive providing the securities for it has been processed.

[5] DTC's current front-end edits do not permit a delivery to have a future settlement date. The current NDO function only permits deliveries to have a future settlement date of the next business day or earlier. The IMS warehouse feature will store deliveries on its database and direct these deliveries into the processing system as NDOs that are due to settle on the appropriate settlement day.

[6] "Dropped" deliveries are deliveries from the previous day that were incomplete. Under this new option, "drops" would be automatically retained and reintroduced into the system for processing on the following day.

[7] DTC will file another proposed rule change for Commission approval before implementing Phase II.

[8] In Phase I, authorization modes can be assigned for the following transaction types:

(1) Institutional deliveries from a matching utility;

(2) CNS;

(3) NDOs;

(4) Reintroduced drops; and

(5) ACATS auto deliveries.

[9] 15 U.S.C. 78q–1.

[10] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

prepared primarily by DTC. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The proposed rule change would modify DTC's Rule 4A, Section 1, and would make a technical correction to the definition of the term pledge in DTC's Rule 1.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, DTC included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. DTC has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.[2]

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

Each DTC participant pays or receives the net debit or net credit balance in its DTC money settlement account at the end of each day. DTC's principal risk is the possible failure of one or more participants to settle their net debit obligations. To assure that it is able to complete its settlement obligations each day, DTC maintains liquidity resources, including a committed line of credit in the maximum amount of $1.75 billion with a consortium of banks that is part of a combined syndicated facility with National Securities Clearing Corporation ("End of Day Facility").

The End of Day Facility matures annually. As part of the negotiations to extend the facility for the year beginning May 27, 2003, DTC's lenders have requested that Section 1 of DTC's Rule 4A, "Pledge of Property to the Corporation and its Lenders," be clarified. This provision currently provides that for the purpose of securing loans to DTC, DTC may pledge and repledge and grant its lenders a security interest in (i) cash deposits in the participants fund and all securities, repurchase agreements, or deposits in which such cash is invested, (ii) net additions, including any security entitlements of participants in net additions, and (iii) preferred stock. This section provides that any such loan to DTC may be on such terms as DTC, in its discretion, may deem necessary or advisable and may be in amounts greater and extend for time periods longer than the obligations of any participant in DTC. It further provides that no lender shall be obligated to return any pledged collateral prior to the full repayment of any loan secured thereby.

DTC is proposing to add language to Section 1 of Rule 4A to make clear what is implicit in the current rule that while there remain any outstanding obligations under any such loan, no participant may assert a claim against the lender for the return of any collateral pledged by DTC as security therefore.[3] Subject to the foregoing and the terms of any such loan, the obligation of DTC to return any items of pledged collateral to its participants or to permit substitutions and withdrawals thereof remains unaffected.

In addition, the proposed rule change would make a technical correction to the definition of the term "pledge" in Rule 1 necessitated by the recent revisions to Article 9 of the New York Uniform Commercial Code ("NYUCC"). Currently, the definition of "pledge" refers to section 9–115 of the NYUCC. As proposed, the references to that specific section would be deleted so the definition would refer to the NYUCC in general.

DTC believes that the proposed rule change is consistent with the requirements of Section 17A of the Act and the rules and regulations thereunder applicable to DTC because it will assist DTC in maintaining a committed end-of-day line of credit to facilitate completion of daily money settlement and as such will assist DTC to assure the safeguarding of securities and funds which are in its custody or control or for which it is responsible.

(B) Self-Regulatory Organization's Statement on Burden on Competition

DTC perceives no adverse impact on competition by reason of the proposed rule change.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Comments from DTC participants or others have not been solicited or received on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within thirty-five days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to ninety days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(a) By order approve the proposed rule change or

(b) institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549–0609. Comments may also be submitted electronically at the following e-mail address: *rule-comments@sec.gov*. All comment letters should refer to File No. SR–DTC–2003–08. This file number should be included on the subject line if e-mail is used. To help us process and review comments more efficiently, comments should be sent in hardcopy or by e-mail but not by both methods. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of DTC. All submissions should refer to the File No. SR–DTC–2003–08 and should be submitted by June 11, 2003.

[2] The Commission has modified parts of these statements.

[3] The proposed language would state, "No Participant shall have any right, claim or action against any secured Lender (or any collateral agent of such secured Lender) for the return, or otherwise in respect, of any such collateral Pledged by the Corporation to such secured Lender (or its collateral agent), so long as any loans made by such Lender to the Corporation or other obligations, secured by such collateral, are unpaid and outstanding."

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[4]

J. Lynn Taylor,

Assistant Secretary.

[FR Doc. 03–12732 Filed 5–20–03; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–47857; File No. SR–NASD–2003–77]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by National Association of Securities Dealers, Inc. To Amend the Fee Schedule for the Nasdaq Application of the Primex Auction System®

May 14, 2003.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on April 30, 2003, the National Association of Securities Dealers, Inc. ("NASD"), through its subsidiary, The Nasdaq Stock Market, Inc. ("Nasdaq"), filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by Nasdaq. On May 2, 2003, Nasdaq filed a letter to correct a typographical error in the proposal.[3] Nasdaq has designated this proposal as one constituting a fee filing under section 19(b)(3)(A) of the Act,[4] which renders the rule effective upon the Commission's receipt of this filing. Nasdaq began assessing fees pursuant to the revised fee schedule beginning on May 1, 2003. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of the Substance of the Proposed Rule Change

Nasdaq proposes to amend NASD Rule 7010(r) to modify the fee schedule for the Nasdaq Application of the Primex Auction System ("Primex"). Nasdaq will implement the proposed rule change on May 1, 2003. The text of the proposed rule change is below. Proposed new language is in italics; proposed deletions are in brackets.

Rule 7010(r). Nasdaq Application of the Primex Auction System

The following charges shall apply to the use of the Nasdaq Application of the Primex Auction System:

(1) Transaction Charges:

Execution Services—for all participants:

- Order entry—No fee.
- Auction Response (per share, per execution).*—$[.005] *.003*

Matching Rights—Primex Auction Market Makers (PAMMs) only:

- 50 Percent Match—No fee.
- Two-Cent Match (per share, per retained order—$2.50 Maximum).**—$ .0025

Revenue Sharing—PAMMs only.

- Each order executed:***—⅓ of transaction fee.

(2) Monthly Access fees [No change.]

* * * * *

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, Nasdaq included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. Nasdaq has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The amendments modify NASD Rule 7010(r), which establishes the fee schedule for Primex. Specifically, the amendments reduce the auction response fee from $.005 to $.003 per execution, per share.

While the fee schedule for Primex was filed initially in December 2001, the prices for the fee schedule were established in 2000.[5] Nasdaq represents that since that time transaction prices in the overall market have decreased. As a result, Nasdaq believes that the Primex fee schedule is no longer competitive. This proposal responds to the developments in the market and reduces the auction response fee.

2. Statutory Basis

Nasdaq believes that the proposed rule change is consistent with the provisions of Section 15A of the Act,[6] in general, and with Section 15A(b)(5) of the Act,[7] in particular, in that it provides for the equitable allocation of reasonable fees among members. Nasdaq believes the fee reduction recognizes the changes in pricing that have occurred in the market and are designed to make the fees for Primex competitive with other trading venues. Nasdaq represents that these fees will be charged consistently to all members that choose to use Primex.

B. Self-Regulatory Organization's Statement on Burden on Competition

Nasdaq does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

[4] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* letter from Eleni Constantine, Associate General Counsel, Nasdaq, to Katherine England, Assistant Director, Division of Market Regulation, Commission, dated May 2, 2003 ("Clarification Letter"). In the Clarification Letter, Nasdaq corrected a typographical error in a footnote that is not part of the text being amended regarding the revenue sharing payment schedule. Nasdaq stated that the revenue sharing amounts are paid on a monthly basis, not on a quarterly basis, as previously published in the **Federal Register**. *See* Securities Exchange Act Release No. 45285A (March 5, 2002), 67 FR 10962 (March 11, 2002). Thus, footnote * * * should read: "Paid to a PAMM when it enters an order that interacts with crowd interest in the system. Revenue sharing applies only to orders in those securities in which the firm is registered as a PAMM. The revenue sharing amounts will be paid on a monthly basis." Nasdaq represents that the footnote reads this way in its Manual.

[4] 15 U.S.C. 78s(b)(3)(A).

* This fee applies to both Indications and "real-time" Responses. When two orders match directly, a fee is charged to the party that entered the second order.

** This fee is charged in the event a PAMM attaches its matching right to an order, and the crowd offers two cents or less price improvement to that order.

*** Paid to a PAMM when it enters an order that interacts with crowd interest in the system. Revenue sharing applies only to orders in those securities in which the firm is registered as a PAMM. The revenue sharing amounts will be paid on a monthly basis.

[5] *See* Securities Exchange Act Release No. 45285 (January 15, 2002), 67 FR 3521 (January 24, 2002). In the filing establishing the original fee schedule for Primex, Nasdaq indicated it would not charge any fees during the initial few months Primex was operating, and that it would notify members through a Head Trader Alert when it would begin assessing fees. On July 31, 2002, Nasdaq filed a proposed rule change revising the original fee schedule for Primex. *See* Securities Exchange Act Release No. 46361 (August 15, 2002), 67 FR 54246 (August 21, 2002). Nasdaq began assessing fees on August 1, 2002 according to the revised fee schedule; fees were never charged under the original fee schedule.

[6] 15 U.S.C. 78*o*–3.

[7] 15 U.S.C. 78*o*–3(b)(5).

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective upon filing pursuant to Section 19(b)(3)(A) of the Act[8] and subparagraph (f)(2) of Rule 19b–4 thereunder[9] in that it establishes the fee schedule for the use of a Nasdaq system. At any time within 60 days of the filing of a rule change pursuant to Section 19(b)(3)(A) of the Act, the Commission may summarily abrogate the rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the NASD. All submissions should refer to File No. SR–NASD–2003–77 should be submitted by June 11, 2003.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[10]

J. Lynn Taylor,

Assistant Secretary.

[FR Doc. 03–12689 Filed 5–20–03; 8:45 am]

BILLING CODE 8010–01–P

[8] 15 U.S.C. 78s(b)(3)(A).

[9] 17 CFR 240.19b–4(f)(2).

[10] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–47873; File No. SR–NSCC–2002–15]

Self-Regulatory Organizations; National Securities Clearing Corporation; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to Modifying NSCC Rule 15

May 15, 2003.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] notice is hereby given that on December 20, 2002, National Securities Clearing Corporation ("NSCC") filed with the Securities and Exchange Commission ("Commission") and on December 24, 2002, amended the proposed rule change as described in Items I, II, and III below, which items have been prepared primarily by NSCC. The Commission is publishing this notice to solicit comments on the proposed rule change from interested parties.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The purpose of the proposed rule change is to modify NSCC Rule 15 to specify what additional information participants and applicants must file with NSCC regarding their financial responsibility and operational capability.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, NSCC included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. NSCC has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of these statements.[2]

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The purpose of the proposed rule filing is to modify Section 2 of NSCC Rule 15, "Financial Responsibility and Operational Capability." The proposed rule filing specifically: (1) Codifies the current practice that applicable members provide copies to NSCC of consolidated reports of condition and income (*i.e.*, "call reports"), (2) require broker-dealer members to provide copies to NSCC of their most recent audited financial statements within sixty days after their fiscal year end and non-broker-dealer members to provide copies to NSCC of their most recent audited financial statements within ninety days after their fiscal year end, (3) require members to file copies with NSCC of all Rule 17a–11 letters filed with the Commission, and (4) require members to file with NSCC copies of such filings as determined by NSCC from time to time which members are required to file pursuant to the Sarbanes-Oxley Act of 2002 and any amendments thereunder.[3]

Rule 15, Section 2 currently permits NSCC to examine the financial responsibility and operational capability of members and applicants and to require them to provide certain information to NSCC. The proposed rule change modifies Rule 15 to more specifically delineate other information that participants must file with NSCC.

The proposed rule change is consistent with Section 17A(b)(3)(F) of the Act[4] and the rules and regulations thereunder because it will assure the safeguarding of securities and funds in NSCC's custody or control.

(B) Self-Regulatory Organization's Statement on Burden on Competition

NSCC does not believe that the proposed rule change will have an impact on or impose a burden on competition.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

No written comments relating to the proposed rule change have been solicited or received. NSCC will notify the Commission of any written comments received by NSCC.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(i) of the Act[5] and Rule 19b–4(f)(1)[6] thereunder because the proposed rule change constitutes an interpretation with respect to the administration and enforcement of an existing NSCC rule. At any time within sixty days of the filing of such rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

[1] 15 U.S.C. 78s(b)(1).

[2] The Commission has modified the text of the summaries prepared by NSCC.

[3] Pub. L. 107–204, 116 Stat. 745 (2002).

[4] 15 U.S.C. 78q(b)(3)(F).

[5] 15 U.S.C. 78s(b)(3)(A)(i).

[6] 17 CFR 240.19b–4(f)(1).

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Comments may also be submitted electronically at the following e-mail address: *rule-comments@sec.gov*. All comment letters should refer to File No. SR–NSCC–2002–15. This file number should be included on the subject line if e-mail is used. To help us process and review comments more efficiently, comments should be sent in hardcopy or by e-mail but not by both methods. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of such filing also will be available for inspection and copying at the principal office of NSCC. All submissions should refer to File No. SR–NSCC–2002–15 and should be submitted by June 11, 2003.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[7]

J. Lynn Taylor,

Assistant Secretary.

[FR Doc. 03–12733 Filed 5–20–03; 8:45 am]

BILLING CODE 8010–01–P

[7] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–47874; File No. SR–NSCC–2003–08]

Self-Regulatory Organizations; National Securities Clearing Corporation; Notice of Filing of a Proposed Rule Change Relating to Rule 4, Section 12, Clearing Fund and Pledges of Deposits

May 15, 2003.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] notice is hereby given that on May 6, 2003, the National Securities Clearing Corporation ("NSCC") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which items have been prepared primarily by NSCC. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The proposed rule change would modify NSCC's Rule 4, Section 12, to make clear NSCC's ability to pledge clearing fund deposits and NSCC's members' rights to pledged deposits.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, NSCC included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. NSCC has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.[2]

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

Each NSCC member pays or receives the net debit or net credit balance in its NSCC money settlement account at the end of each day. NSCC's principal risk is the possible failure of one or more members to settle their net debit obligations. To assure that it is able to complete its settlement obligations each day, NSCC maintains liquidity resources, including a committed line of credit in the maximum amount of $1.9 billion with a consortium of banks that is part of a combined syndicated facility with The Depository Trust Company ("End of Day Facility").

The End of Day Facility matures annually. As part of the negotiations to extend the facility for the year beginning May 27, 2003, NSCC's lenders have requested that Section 12 of NSCC's Rule 4, "Clearing Fund," be clarified. Section 12 currently provides that for the purpose of securing loans to NSCC, NSCC may pledge and repledge and grant its lenders a security interest in (i) cash deposits in the clearing fund, (ii) all securities, repurchase agreements, or deposits in which such cash is invested, and (iii) qualified bonds pledged by a member or letters of credit issued on a member's behalf for NSCC's benefit to secure the member's open account indebtedness to NSCC. This section provides that any such loan to NSCC may be on such terms as NSCC, in its discretion, may deem necessary or advisable and may be in amounts greater and extend for time periods longer than the obligations of any member in NSCC. Subject to the terms and conditions of such loan, NSCC remains obligated to its members to return any items of pledged collateral or permit substitutions and withdrawals thereof as provided in its rules.

It was always the intent and understanding of NSCC and its members that by virtue of Rule 4, Section 12, members had authorized NSCC to pledge to its lenders a member's actual deposits.[3] In order to accommodate NSCC's lenders, NSCC is proposing to modify the language of the rule itself to make clear NSCC's right to pledge its members' actual deposits to one or more lenders for the purposes enumerated in the rule. In addition, NSCC is also proposing to add language to the rule to make clear what is implicit in the current rule that while there remain any outstanding obligations under any such loan, no member may assert a claim against the lender for the return of any collateral pledged by NSCC as security therefore.[4] Subject to the foregoing and

[1] 15 U.S.C. 78s(b)(1).

[2] The Commission has modified parts of these statements.

[3] Securities Exchange Act Release No. 28784 (January 16, 1991), 56 FR 2575 (January 23, 1991) [File No. SR–NSCC–90–22].

[4] The proposed language would state, "No Member, Insurance Carrier Member or Fund Member shall have any right, claim or action against any secured Lender (or any collateral agent of such secured Lender) for the return, or otherwise in respect, of any such collateral Pledged by the Corporation to such secured Lender (or its collateral agent), so long as any loans made by such Lender

Continued

the terms of any such loan, the obligation of NSCC to return any items of pledged collateral to its members or to permit substitutions and withdrawals thereof remains unaffected.

NSCC believes that the proposed rule change is consistent with the requirements of Section 17A of the Act and the rules and regulations thereunder applicable to NSCC because it will assist NSCC in maintaining a committed end-of-day line of credit to facilitate completion of daily money settlement and as such will assist NSCC to assure the safeguarding of securities and funds which are in its custody or control or for which it is responsible.

(B) Self-Regulatory Organization's Statement on Burden on Competition

NSCC perceives no adverse impact on competition by reason of the proposed rule change.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Comments from NSCC members or others have not been solicited or received on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within thirty five days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to ninety days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(a) By order approve the proposed rule change or

(b) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549–0609. Comments may also be submitted electronically at the following e-mail address: *rule-comments@sec.gov*. All comment letters should refer to File No. SR–NSCC–2003–08. This file number should be included on the subject line if e-mail is used. To help us process and review comments more efficiently, comments should be sent in hardcopy or by e-mail but not by both methods. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of NSCC. All submissions should refer to the File No. SR–NSCC–2003–08 and should be submitted by June 11, 2003.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[5]

J. Lynn Taylor,

Assistant Secretary.

[FR Doc. 03–12734 Filed 5–20–03; 8:45 am]

BILLING CODE 8010–01–P

to the Corporation or other obligations, secured by such collateral, are unpaid and outstanding."

[5] 17 CFR 200.30–3(a)(12).

SMALL BUSINESS ADMINISTRATION

[Declaration of Disaster #3500]

State of Alabama; (Amendment #1)

In accordance with a notice received from the Department of Homeland Security—Federal Emergency Management Agency, effective May 13, 2003, the above numbered declaration is hereby amended to include Barbour, Bullock, Chambers, Cherokee, Clay, Cleburne, Colbert, Coosa, Lauderdale, Lawrence, Lee, Limestone, Macon, Randolph, Russell and Tallapoosa Counties in the State of Alabama as disaster areas due to damages caused by severe storms, tornadoes, and flooding occurring on May 5, 2003 and continuing.

In addition, applications for economic injury loans from small businesses located in the contiguous counties of Dale, Elmore, Franklin, Henry, Montgomery and Pike in the State of Alabama; Carroll, Chatahoochee, Clay, Floyd, Haralson, Harris, Heard, Muscogee, Polk, Quitman, Stewart and Troup Counties in the State of Georgia; Tishomingo County in the State of Mississippi; and Giles, Hardin, Lawrence and Wayne Counties in the State of Tennessee may be filed until the specified date at the previously designated location. All other counties contiguous to the above named primary county have been previously declared.

The economic injury number assigned to Mississippi is 9V3400.

All other information remains the same, *i.e.*, the deadline for filing applications for physical damage is July 11, 2003, and for economic injury the deadline is February 12, 2004.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008).

Dated: May 14, 2003.

Herbert L. Mitchell,

Associate Administrator for Disaster Assistance.

[FR Doc. 03–12701 Filed 5–20–03; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[Declaration of Disaster #3496]

State of Kansas; (Amendment #1)

In accordance with a notice received from the Department of Homeland Security—Federal Emergency Management Agency, effective May 14, 2003, the above numbered declaration is hereby amended to include Anderson, Douglas, Osage, and Woodson Counties in the State of Kansas as disaster areas due to damages caused by severe storms, tornadoes and flooding occurring on May 4, 2003 and continuing.

In addition, applications for economic injury loans from small businesses located in the contiguous counties of Coffey, Greenwood, Lyon, Shawnee and Wabaunsee in the State of Kansas may be filed until the specified date at the previously designated location. All other counties contiguous to the above named primary county have been previously declared.

All other information remains the same, *i.e.*, the deadline for filing applications for physical damage is July 7, 2003, and for economic injury the deadline is February 6, 2004.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008).

Dated: May 15, 2003.

Herbert L. Mitchell,

Associate Administrator for Disaster Assistance.

[FR Doc. 03–12751 Filed 5–20–03; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[Declaration of Disaster #3492]

State of Mississippi; (Amendment #1)

In accordance with a notice received from the Department of Homeland Security—Federal Emergency Management Agency, effective May 14, 2003, the above numbered declaration is hereby amended to reestablish the incident period for this disaster as beginning on April 6 and continuing through April 25, 2003.

All other information remains the same, *i.e.*, the deadline for filing applications for physical damage is June 23, 2003, and for economic injury the deadline is January 26, 2004.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008).

Dated: May 15, 2003.

Herbert L. Mitchell,

Associate Administrator for Disaster Assistance.

[FR Doc. 03–12752 Filed 5–20–03; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[Declaration of Disaster #3502]

State of Texas

Hidalgo County and the contiguous counties of Brooks, Cameron, Kenedy, Starr and Willacy in the State of Texas constitute a disaster area due to a tornado that occurred on April 29, 2003. Applications for loans for physical damage as a result of this disaster may be filed until the close of business on July 14, 2003, and for economic injury until the close of business on February 16, 2004, at the address listed below or other locally announced locations: U.S. Small Business Administration, Disaster Area 3 Office, 4400 Amon Carter Boulevard, Suite 102, Forth Worth, TX 76155.

The interest rates are:

	Percent
For Physical Damage:	
Homeowners with credit available elsewhere	5.625
Homeowners without credit available elsewhere	2.812
Businesses with credit available elsewhere	5.906
Businesses and non-profit organizations without credit available elsewhere	2.953
Others (including non-profit organizations) with credit available elsewhere	5.500
For Economic Injury:	
Businesses and small agricultural cooperatives without credit available elsewhere	2.953

The number assigned to this disaster for physical damage is 350212 and for economic injury the number is 9V3300.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008)

Dated: May 14, 2003.

Hector V. Barreto,

Administrator.

[FR Doc. 03–12700 Filed 5–20–03; 8:45 am]

BILLING CODE 8025–01–P

DEPARTMENT OF STATE

[Public Notice 4372]

Culturally Significant Objects Imported for Exhibition Determinations: "Anne Frank the Writer—An Unfinished Story"

AGENCY: Department of State.

ACTION: Notice.

SUMMARY: Notice is hereby given of the following determinations: Pursuant to the authority vested in me by the Act of October 19, 1965 (79 Stat. 985; 22 U.S.C. 2459), Executive Order 12047 of March 27, 1978, the Foreign Affairs Reform and Restructuring Act of 1998 (112 Stat. 2681, *et seq.*; 22 U.S.C. 6501 note, *et seq.*), Delegation of Authority No. 234 of October 1, 1999, and Delegation of Authority No. 236 of October 19, 1999, as amended, I hereby determine that the objects to be included in the exhibition "Anne Frank the Writer—An Unfinished Story," imported from abroad for temporary exhibition within the United States, are of cultural significance. The objects are imported pursuant to loan agreements with the foreign owners. I also determine that the exhibition or display of the exhibit objects at the United States Holocaust Memorial Museum, from on or about June 12, 2003 until on or about September 12, 2003, and at possible additional venues yet to be determined, is in the national interest. Public Notice of these Determinations is ordered to be published in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: For further information, including a list of the exhibit objects, contact Orde F. Kittrie, Attorney-Adviser, Office of the Legal Adviser, U.S. Department of State, (telephone: (202) 401–4779). The address is U.S. Department of State, SA–44, 301 4th Street, SW., Room 700, Washington, DC 20547–0001.

Dated: May 19, 2003.

C. Miller Crouch,

Principal Deputy Assistant Secretary for Educational and Cultural Affairs, Department of State.

[FR Doc. 03–12895 Filed 5–20–03; 8:45 am]

BILLING CODE 4710–06–P

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

Reinstatement of Treatment of Government Procurement of Products of the Dominican Republic

AGENCY: Office of the United States Trade Representative.

ACTION: Reinstatement of treatment of government procurement of products of the Dominican Republic.

Under the authority delegated to me by the President in section 1–201 of Executive Order 12260 of December 31, 1980, I hereby direct that products of the Dominican Republic shall be treated as eligible products for purposes of section 1–101 of the Executive Order. Such treatment shall not apply to products originating in the Dominican Republic that are excluded from duty free treatment under 19 U.S.C. 2703(b). Decisions on the continued application of this treatment will be based on ongoing evaluation of the Dominican Republic's efforts to improve domestic procurement practices, its support for relevant international initiatives, such as those in the World Trade Organization (WTO) Working Group on Transparency in Government Procurement and the Free Trade Area of the Americas (FTAA) Negotiating Group on Government Procurement. Performance with respect to the foregoing factors will be analyzed annually in September, although changes in the application of this treatment may be made at any time. Notice of any changes in this treatment with respect to any beneficiary will be published in the **Federal Register**.

Robert B. Zoellick,

United States Trade Representative.

[FR Doc. 03–12727 Filed 5–20–03; 8:45 am]

BILLING CODE 3190–01–P

DEPARTMENT OF THE TREASURY

Submission for OMB Review; Comment Request

May 14, 2003.

The Department of Treasury has submitted the following public information collection requirement(s) to

OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 11000, 1750 Pennsylvania Avenue, NW., Washington, DC 20220.

DATES: Written comments should be received on or before June 20, 2003, to be assured of consideration.

Internal Revenue Service (IRS)

OMB Number: 1545–0022.
Form Number: IRS Form 712.
Type of Review: Revision.
Title: Life Insurance Statement.
Description: Form 712 is used to establish the value of life insurance policies for estate and gift tax purposes. The tax is based on the value of these policies. The form is completed by life insurance companies.
Respondents: Business or other for-profit.
Estimated Number of Respondents/Recordkeepers: 60,000.
Estimated Burden Hours Per Respondent/Recordkeeper:

Recordkeeping	18 hrs., 10 min.
Learning about the form	6 min.
Preparing the form	24 min.

Frequency of Response: On occasion.
Estimated Total Reporting/Recordkeeping Burden: 1,120,200 hours.

OMB Number: 1545–0190.
Form Number: IRS Form 4876–A.
Type of Review: Revision.
Title: Election to be Treated as an Interest Charge DISC.
Description: A domestic corporation and its shareholders must elect to be an interest charge domestic international sales corporation (IC–DISC). Form 4876–A is used to make the election. IRS uses the information to determine if the corporation qualifies to be an IC–DISC.
Respondents: Business or other for-profit.
Estimated Number of Respondents/Recordkeepers: 1,000.
Estimated Burden Hours Per Respondent/Recordkeeper:

Recordkeeping	4 hr., 4 min.
Learning about the law or the form.	53 min.
Preparing and sending the form to the IRS.	1 hr., 00 min.

Frequency of Response: Other (one-time election).
Estimated Total Reporting/Recordkeeping Burden: 6,360 hours.

OMB Number: 1545–0902.
Form Number: IRS Forms 8288 and 8288–A.
Type of Review: Revision.
Title: U.S. Withholding Tax Return for Dispositions by Foreign Persons of U.S. Real Property Interests (Form 8288); and Statement of Withholding on Dispositions by Foreign Persons of U.S. Real Property Interests (Form 8288–A).
Description: Form 8288 is used by the withholding agent to report and transmit the withholding to IRS. Form 8288–A is used to validate the withholding and to return a copy to the transferor for his/her use in filing a tax return.
Respondents: Business or other for-profit, Individuals or households.
Estimated Number of Respondents/Recordkeepers: 10,000.
Estimated Burden Hours Per Respondent/Recordkeeper:

	Form 8288	Form 8288–A
Recordkeeping	5 hr., 15 min.	2 hr., 52 min.
Learning about the law or the form	5 hr., 8 min.	30 min.
Preparing and sending the form to the IRS	6 hr., 38 min.	34 min.

Frequency of Response: On occasion.
Estimated Total Reporting/Recordkeeping Burden: 239,175 hours.

OMB Number: 1545–1683.
Form Number: IRS Form 56–A (Formerly Forms 12575 and 12575–A).
Type of Review: Extension.
Title: Notice Concerning Fiduciary Relationship—Illinois Type Land Trust.
Description: The data collected on the forms provides trustees of Illinois Land Trusts a convenient method of reporting information related to creating, changing, and closing such trusts.
Respondents: Business or other for-profit.
Estimated Number of Respondents/Recordkeepers: 10,000.
Estimated Burden Hours Per Respondent/Recordkeeper:

Recordkeeping	1 hr., 18 min.
Learning about the law or the form.	7 min.
Preparing the form	25 min.
Copying, assembling, and sending the form to the IRS.	20 min.

Frequency of Response: On occasion.
Estimated Total Reporting/Recordkeeping Burden: 22,000 hours.

OMB Number: 1545–1684.
Revenue Procedure Number: Revenue Procedure 2001–22.
Type of Review: Extension.
Title: Pre-filing Agreements Program.
Description: Revenue Procedure 2001–22 describes a program under which certain large business taxpayers may request examination and resolution of specific issues relating to tax returns. The resolution of such issues under the program will be memorialized by a type of closing agreement under Code section 7121 called a pre-filing agreement.
Respondents: Business or other for-profit.
Estimated Number of Respondents/Recordkeepers: 225.
Estimated Burden Hours Per Respondent/Recordkeeper: 45 hours, 20 minutes.
Frequency of Response: On occasion.
Estimated Total Reporting/Recordkeeping Burden: 10,200 hours.
Clearance Officer: Glenn Kirkland, (202) 622–3428, Internal Revenue Service, Room 6411–03, 1111 Constitution Avenue, NW., Washington, DC 20224.
OMB Reviewer: Joseph F. Lackey, Jr., (202) 395–7316, Office of Management and Budget, Room 10235, New Executive Office Building, Washington, DC 20503.

Mary A. Able,
Departmental Reports Management Officer.
[FR Doc. 03–12716 Filed 5–20–03; 8:45 am]
BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Open Meeting of the Taxpayer Advocacy Panel Earned Income Tax Credit Issue Committee

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice; correction.

SUMMARY: This document contains a correction to a notice of an Open Meeting of the Taxpayer Advocacy Panel Earned Income Tax Credit Issue Committee, which was published in the **Federal Register** on April 22, 2003 (68 FR 19881).

FOR FURTHER INFORMATION CONTACT: Marisa Knispel at 1–888–912–1227, or (718) 488–3557.

Need for Correction

As published, this notice of an Open Meeting of the Taxpayer Advocacy Panel Earned Income Tax Credit Issue Committee contains an error that may prove to be misleading and is in need of clarification.

Correction of Publication

Accordingly, the publication of the notice of an open meeting of the taxpayer advocacy panel earned income tax credit issue committee which is the subject of FR Doc 03–9944.

1. On page 19881, column 3, under the paragraph heading "Supplementary Information", line 7, the language "EST to 3 p.m. EST via a telephone", is corrected to read "EDT to 3 p.m. EDT via a telephone".

Cynthia E. Grigsby,
Chief, Regulations Unit, Associate Chief Counsel (Procedure and Administration).
[FR Doc. 03–12777 Filed 5–19–03; 8:56 am]
BILLING CODE 4830–01–P

Federal Register

Wednesday,
May 21, 2003

Part II

The President

Proclamation 7679—World Trade Week, 2003

Federal Register
Vol. 68, No. 98
Wednesday, May 21, 2003

Presidential Documents

Title 3—

The President

Proclamation 7679 of May 16, 2003

World Trade Week, 2003

By the President of the United States of America

A Proclamation

Trade expands prosperity, helps raise millions from poverty, and is an engine of economic growth within our Nation and around the world. Trade injects new energy and vitality into the global economy by fostering the exchange of ideas and innovations among people around the world. Free and open trade also helps promote peace and security. During World Trade Week, we renew our commitment to developing and implementing trade policies that create new opportunities and promote global economic growth.

My Administration is pursuing an ambitious trade agenda that is restoring America's leadership in the global trading system. We worked hard for the passage of the Trade Act of 2002, which reinstated Trade Promotion Authority after an 8-year lapse. Trade Promotion Authority re-established the ability of the United States to credibly negotiate comprehensive trade agreements by ensuring that agreements will be approved or rejected, by the Congress, but not amended. This gives other countries renewed confidence in their trade negotiations with the United States.

To extend the benefits of trade and to improve the lives of people in our Nation and around the world, my Administration continues to pursue global, regional, and bilateral trade agreements. Through the Doha Development Agenda negotiations at the World Trade Organization, the United States is seeking to strengthen the multilateral trading system, increase market access opportunities, and promote global development. Regionally, we are working to build on the success of the North American Free Trade Agreement (NAFTA) with the Free Trade Area of the Americas, which will expand free trade benefits throughout the Western Hemisphere. We are also encouraging the free flow of trade and investment in the Pacific among our partners in the Asia-Pacific Economic Cooperation forum and the Association of Southeast Asian Nations. In addition, we are negotiating a free trade agreement with five Central American democracies and will soon begin free trade agreement negotiations with the Southern African Customs Union to help spur economic growth in these two regions. Bilaterally, I recently signed a historic free trade agreement with Singapore—the first of its kind between the United States and an Asian/Pacific country, and we are finalizing a similar agreement with Chile. Free trade agreement negotiations are also underway with Australia and Morocco.

In America, trade is also critical to maintaining our economic competitiveness in the global market. It has been estimated that one in eleven American jobs—over 12 million—are supported by exports of goods and services. In the 1990s, exports accounted for about one-quarter of our economic growth. Our Nation's two major trade agreements during this time, NAFTA and the Uruguay Round, provided consumers with a greater choice of goods at better prices, while raising living standards for a typical American family of four by up to $2,000 a year.

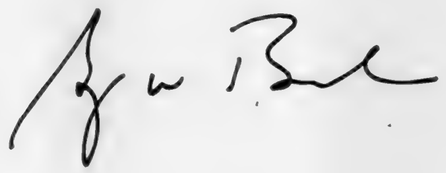
My Administration is also providing assistance to help trade-impacted workers adapt to the challenge of international competition. The Trade Adjustment Assistance program helps trade-impacted workers gain or enhance job-related skills and find new jobs. The program provides eligible workers with up

to 2 years of training, income support during training, job search assistance, and relocation allowances.

World trade allows all nations to share in the great economic, social, and political progress of our age and provides a foundation for a more peaceful and stable world. This week, we recognize the importance of free trade in promoting prosperity and freedom in the United States and around the world.

NOW, THEREFORE, I, GEORGE W. BUSH, President of the United States of America, by virtue of the authority vested in me by the Constitution and laws of the United States, do hereby proclaim May 18 through May 24, 2003, as World Trade Week. I encourage all Americans to observe this week with events, trade shows, and educational programs that celebrate the benefits of trade to our Nation and the global economy.

IN WITNESS WHEREOF, I have hereunto set my hand this sixteenth day of May, in the year of our Lord two thousand three, and of the Independence of the United States of America the two hundred and twenty-seventh.



[FR Doc. 03–12945
Filed 5–20–03; 8:45 am]
Billing code 3195–01–P

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Federal Register
Vol. 68, No. 98
Wednesday May 21, 2003

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Executive orders and proclamations	741–6000
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Electronic and on-line services (voice)	741–6020
Privacy Act Compilation	741–6064
Public Laws Update Service (numbers, dates, etc.)	741–6043
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FEDERAL REGISTER PAGES AND DATE, MAY

23183–23376	1
23377–23568	2
23569–23884	5
23885–24332	6
24333–24604	7
24605–24858	8
24859–25278	9
25279–25478	12
25479–25808	13
25809–26200	14
26201–26456	15
26457–26980	16
26981–27426	19
27427–27726	20
27727–27890	21

CFR PARTS AFFECTED DURING MAY

At the end of each month, the Office of the Federal Register publishes separately a List of CFR Sections Affected (LSA), which lists parts and sections affected by documents published since the revision date of each title.

3 CFR

Proclamations:

7668	23821
7669	23823
7670	23825
7671	23827
7672	23829
7673	24333
7674	25277
7675	26195
7676	26197
7677	26199
7678	27427
7679	27889

Executive Orders:

12863 (Amended by 13301)	26981
12865 (Revoked by 13298)	24857
13069 (Revoked by 13298)	24857
13070 (Amended by 13301)	26981
13047 (Continued by Notice of May 16, 2003)	27425
13098 (Revoked by 13298)	24857
13298	24857
13299	25477
13300	25807
13301	26981
13212 (Amended by 13302)	27429
13302	27429

Administrative Orders:

Memorandums:	
Memorandum of May 6, 2003	25275
Memorandum of May 7, 2003	26457
Presidential Determinations:	
No. 2003-22 of May 6, 2003	25809
No. 2003-23 of May 7, 2003	26459
Notices:	
Notice of May 16, 2003	27425

5 CFR

213	24605
Ch. XIV	23885
2424	23885
2429	23885
2471	23885
2472	23885

Proposed Rules:

2601	23876

7 CFR

1	27431
2	27431
6	25479
15	27431
15f	27431
29	25484
46	23377
56	25484
301	24605, 24613, 26983
371	27431
868	24589
932	23378
985	23569, 25486
989	25279
1410	24830
1424	24596
1491	26461
1710	24335

Proposed Rules:

274	23927
276	23927
278	23927
279	23927
280	23927
319	27480
360	23425
1530	23230

9 CFR

82	26986, 26988
91	26990

Proposed Rules:

2	24052
130	25308

10 CFR

40	25281
70	23574
71	23574
72	23183
73	23574
150	25281

Proposed Rules:

20	23618
50	26511
490	23620

11 CFR

Proposed Rules:

104	26237
107	26237
110	26237
9003	26237
9004	26237
9008	26237
9032	26237
9033	26237
9034	26237
9035	26237
9036	26237
9038	26237

12 CFR

21	25090

208 25090
211 25090
326 25090
563 25090
740 23381
748 25090

Proposed Rules:
11 27753
16 27753
Ch. 6 26551
613 ..... 23425, 23426, 27757
614 27757
618 27757

14 CFR
1 25486
11 25486
25 ..... 24336, 24338, 26991
39 ..... 23183, 23186, 23190, 23384, 23387, 23575, 23886, 24614, 24861, 25488, 25811, 26201, 26478, 26481, 26482, 27450
71 ..... 23577, 23579, 23580, 23581, 23682, 24340, 24341, 24342, 24864, 24866, 24868, 24869, 24870, 24871, 24872, 24874, 25489, 25491, 25492, 25493, 25494, 25495, 25684, 26202, 26687, 26993, 26994
73 25495
77 23583
97 ..... 23888, 23889, 26484, 26486
382 24874

Proposed Rules:
3 ..... 23808, 27006
25 26237
39 ..... 23231, 23235, 23427, 23620, 24383, 25543, 26239, 26242, 26244, 26552, 26553, 27006, 27492
71 ..... 23622, 23624, 23625, 23626, 27007
119 24810
121 24810
135 24810
145 24810
255 ..... 24896, 25844
330 23627
399 ..... 24896, 25844

15 CFR
0 24878
270 24343
902 24615

16 CFR
305 23584

Proposed Rules:
309 24669

17 CFR
42 25149
211 26840
230 25788
232 ..... 24345, 25788
239 25788
240 25788
241 25281
249 25788
250 25788
259 25788
260 25788
269 25788
270 25131
274 25788

Proposed Rules:
240 27722

18 CFR
375 25814
376 25814

Proposed Rules:
35 24679

19 CFR
178 24052

20 CFR

Proposed Rules:
404 ..... 23192, 24896
416 ..... 23192, 24896

21 CFR
Ch. 1 24879
10 25283
14 25283
20 25283
310 24347
314 25283
358 24347
510 26995
522 26995
520 26204
522 26205
558 27727
720 25283
1300 23195
1310 23195

Proposed Rules:
1 ..... 23630, 25242, 25188
11 25188
16 25242
101 23930
111 27008
112 27008
315 27008
601 27008
1308 26247
1310 24689

22 CFR
32 26488
42 24638
121 25088
228 23891

23 CFR
140 24639
646 24639
661 24642

Proposed Rules:
630 ..... 23239, 24384

24 CFR
200 26946
203 23370

Proposed Rules:
1000 26555

25 CFR

Proposed Rules:
170 23631

26 CFR
1 ..... 23586, 24349, 24351, 24644, 24880
301 24644
602 24644

Proposed Rules:
1 ..... 23632, 23931, 24404, 24405, 24406, 24898, 24903, 25310, 25845, 27493
54 24406
602 24406

27 CFR

Proposed Rules:
4 24903
5 24903
7 24903
9 25851
13 24903

28 CFR

Proposed Rules:
513 25545

29 CFR

Proposed Rules:
1480 23634
1910 23528
4022 26206
4044 26206

30 CFR
36 23892
917 24644
948 24355
950 24647

31 CFR
103 ..... 25090, 25149, 25113, 25163, 26489, 26996
315 24794
351 24794
353 24794
359 24794
360 24794
363 24794

Proposed Rules:
103 ..... 23640, 23646, 23653, 25163

32 CFR
3 27452
311 24880
505 25816
806B 24881

Proposed Rules:
3 27497
701 24904

33 CFR
100 ..... 25817, 25818, 27459
110 25496
117 ..... 23390, 23590, 24882, 24883, 25818, 26208, 27460
165 ..... 23390, 23393, 23399, 23591, 23594, 23595, 23893, 23894, 23896, 24359, 24361, 24883, 25288, 25498, 25500, 25818, 26208, 26490, 27462, 27464, 27466, 27469, 27727

Proposed Rules:
62 25855
66 25855
67 25855
72 25855
100 27498
110 27501
117 ..... 27498, 27504
165 ..... 23935, 24406, 24408, 26247, 27501
401 25546

34 CFR
674 25821
682 25821
685 25821

36 CFR

Proposed Rules:
251 ..... 25748, 25751
1280 23430

37 CFR

Proposed Rules:
262 ..... 23241, 27506

38 CFR
2 25503
4 25822

Proposed Rules:
39 23249

39 CFR

Proposed Rules:
111 ..... 23937, 27760

40 CFR
51 25684
52 ..... 23206, 23207, 23404, 23597, 23604, 24363, 24365, 24368, 24885, 25414, 25418, 25442, 25504, 26210, 26212, 26492, 26495, 27471
62 ..... 23209, 25291
63 ..... 23898, 24562, 24653, 26690, 27646
71 25507
80 24300
81 ..... 24368, 25418, 25442, 26212
89 25823
180 ..... 24370, 25824, 25831, 27729, 27740
271 ..... 23407, 23607
300 ..... 23211, 27746
312 24888
438 25686

Proposed Rules:
Ch. 1 ..... 24410, 25312
52 ..... 23270, 23430, 23661, 23662, 24416, 24417, 25547, 26248, 26556, 27513
60 24692
62 ..... 23272, 25313
63 26249
71 25548
80 24311
81 26248
146 ..... 23666, 23673
258 25550
300 23939

42 CFR

Proposed Rules:
409 26758
412 ..... 26786, 27154
413 ..... 26758, 27154
440 26758
483 26758

44 CFR
64 23408
65 27473
67 ..... 23898, 27477

Proposed Rules:
67 ..... 23941, 27514, 27515

45 CFR
2 25838

32 24052
148 23410
301 25293
302 25293
303 25293
304 25293
307 25293
1309 23212

46 CFR

Proposed Rules:
540 23947

47 CFR
0 26997
Ch. 1 25840
1 ..... 23417, 25841, 26997
2 25512
52 25843
73 ..... 23613, 23900, 23901, 25512, 25542, 26220, 26497, 27478
74 ..... 25512, 26220
76 26997
78 26997
80 25512
90 25512
97 25512

Proposed Rules:
1 23431
15 23677
64 25313
73 ..... 24417, 26556, 26557, 27767

48 CFR
511 24372
516 24372
532 24372
538 24372
546 24372
552 24372
1802 23423
1806 23423
1815 23423
1816 23423
1843 23423
1845 23424

Proposed Rules:
208 26265
219 26265
252 26265
245 25313

49 CFR
107 ..... 23832, 24653
171 ..... 23832, 24653
173 24653
176 23832
177 ..... 23832, 24653
180 24653
209 24891
383 23844
384 23844
571 ..... 23614, 24664
1510 27747
1511 27747
1570 23852
1572 23852

Proposed Rules:
193 23272
571 ..... 26269, 26384
572 24417
1137 ..... 23947, 25859

50 CFR
17 ..... 25934, 26498
216 24905
300 ..... 23224, 23901
600 ..... 23901, 26230
660 27004
622 26230
648 ..... 24914, 25305, 26510
660 ..... 23901, 23913, 23924
679 ..... 23925, 24615, 24667, 24668, 27479

Proposed Rules:
18 24700
20 24324
216 24905
622 23686
648 ..... 23275, 23948, 23949, 24914, 27516, 27768, 27774
660 26557

REMINDERS

The items in this list were editorially compiled as an aid to Federal Register users. Inclusion or exclusion from this list has no legal significance.

RULES GOING INTO EFFECT MAY 21, 2003

DEFENSE DEPARTMENT

Engineers Corps

Natural disaster procedures; preparedness, response, and recovery activities; published 4-21-03

ENERGY DEPARTMENT

Federal Energy Regulatory Commission

Electric utilities (Federal Power Act), natural gas companies (Natural Gas Act), and oil pipeline companies (Interstate Commerce Act):

Asset retirement obligations; accounting, financial reporting, and rate filing requirements; published 4-21-03

ENVIRONMENTAL PROTECTION AGENCY

Pesticides; tolerances in food, animal feeds, and raw agricultural commodities:

Indoxacarb; published 5-21-03

Pyraflufen-ethyl; published 5-21-03

FEDERAL COMMUNICATIONS COMMISSION

Radio services, special:

Private land mobile services—

Low power operations in 450-470 MHz band; applications and licensing; published 4-21-03

INTERIOR DEPARTMENT

Minerals Management Service

Outer Continental Shelf; oil, gas, and sulfur operations:

American Petroleum Institute Recommended Practice 2A-WSD (21st edition); incorporation by reference; published 4-21-03

TRANSPORTATION DEPARTMENT

Federal Aviation Administration

Airworthiness directives:

Boeing; published 4-16-03

COMMENTS DUE NEXT WEEK

AGRICULTURE DEPARTMENT

Food Safety and Inspection Service

Meat and poultry inspection:

Safe and suitable binder or antimicrobial agent usage in products with standards of identity or composition; comments due by 5-29-03; published 4-29-03 [FR 03-10392]

COMMERCE DEPARTMENT

National Oceanic and Atmospheric Administration

Fishery conservation and management:

Alaska; fisheries of Exclusive Economic Zone—

Bering Sea and Aleutian Islands groundfish; Pacific cod; comments due by 5-27-03; published 4-25-03 [FR 03-10282]

Caribbean, Gulf, and South Atlantic fisheries—

Gulf of Mexico shrimp; comments due by 5-29-03; published 4-29-03 [FR 03-10558]

Northeastern United States fisheries—

Northeast multispecies; comments due by 5-27-03; published 4-24-03 [FR 03-10163]

COMMERCE DEPARTMENT

Patent and Trademark Office

Patent cases:

Fee revisions (2004 FY); comments due by 5-30-03; published 4-30-03 [FR 03-10583]

Trademarks:

Madrid Protocol Implementation Act; rules of practice—

International applications and registrations; trademark-related filings; comments due by 5-27-03; published 3-28-03 [FR 03-07392]

ENVIRONMENTAL PROTECTION AGENCY

Air quality implementation plans; approval and promulgation; various States:

Alabama; comments due by 5-27-03; published 4-24-03 [FR 03-10061]

ENVIRONMENTAL PROTECTION AGENCY

Air quality implementation plans; approval and promulgation; various States:

Alabama; comments due by 5-27-03; published 4-24-03 [FR 03-10062]

California; comments due by 5-27-03; published 4-25-03 [FR 03-10267]

ENVIRONMENTAL PROTECTION AGENCY

Air quality implementation plans; approval and promulgation; various States:

California; comments due by 5-30-03; published 4-30-03 [FR 03-10426]

ENVIRONMENTAL PROTECTION AGENCY

Air quality implementation plans; approval and promulgation; various States:

Florida; comments due by 5-27-03; published 4-24-03 [FR 03-10063]

ENVIRONMENTAL PROTECTION AGENCY

Air quality implementation plans; approval and promulgation; various States:

Florida; comments due by 5-27-03; published 4-24-03 [FR 03-10064]

ENVIRONMENTAL PROTECTION AGENCY

Air quality implementation plans; approval and promulgation; various States:

Idaho and Oregon; comments due by 5-27-03; published 4-24-03 [FR 03-10066]

ENVIRONMENTAL PROTECTION AGENCY

Air quality implementation plans; approval and promulgation; various States:

Idaho and Oregon; comments due by 5-27-03; published 4-24-03 [FR 03-10067]

FEDERAL COMMUNICATIONS COMMISSION

Radio stations; table of assignments:

California; comments due by 5-27-03; published 4-15-03 [FR 03-09164]

Florida; comments due by 5-27-03; published 4-15-03 [FR 03-09165]

Texas; comments due by 5-27-03; published 4-15-03 [FR 03-09170]

FEDERAL MARITIME COMMISSION

Passenger vessel financial responsibility:

Performance and casualty rules, Alternative Dispute Resolution program, etc.; miscellaneous amendments; oral comments and hearing; comments due by 5-30-03; published 4-8-03 [FR 03-08611]

HOMELAND SECURITY DEPARTMENT

Coast Guard

Ports and waterways safety:

Hampton Roads, VA; regulated navigation area; comments due by 5-29-03; published 4-29-03 [FR 03-10214]

Port Valdez and Valdez Narrows, AK; security zone; comments due by 5-27-03; published 3-27-03 [FR 03-07299]

Portland Captain of Port Zone, OR; safety zones; comments due by 5-27-03; published 3-27-03 [FR 03-07300]

Regattas and marine parades:

Thunder on the Narrows boat races; comments due by 5-30-03; published 3-31-03 [FR 03-07545]

HOMELAND SECURITY DEPARTMENT

Customs Service

Andean Trade Promotion and Drug Eradication Act; implementation; comments due by 5-27-03; published 3-25-03 [FR 03-06867]

INTERIOR DEPARTMENT

Minerals Management Service

Outer Continental Shelf; oil, gas, and sulphur operations:

OCS rights-of-use and easement and pipeline rights-of-way; requirements revision; comments due by 5-27-03; published 4-24-03 [FR 03-10173]

Royalty management:

Marginal properties; accounting and auditing relief; comments due by 5-30-03; published 3-31-03 [FR 03-06703]

Relief or reduction in rates; deep gas provisions; comments due by 5-27-03; published 3-26-03 [FR 03-07353]

INTERIOR DEPARTMENT

Surface Mining Reclamation and Enforcement Office

Permanent program and abandoned mine land reclamation plan submissions:

Kentucky; comments due by 5-29-03; published 4-29-03 [FR 03-10533]

SOCIAL SECURITY ADMINISTRATION

Organization and procedures:

Assignment of Social Security numbers for nonwork purposes; evidence requirements; comments due by 5-27-03; published 3-26-03 [FR 03-07188]

TRANSPORTATION DEPARTMENT

Federal Aviation Administration

Airworthiness directives:

Boeing; comments due by 5-27-03; published 5-1-03 [FR 03-10727]

TRANSPORTATION DEPARTMENT

Federal Aviation Administration

Airworthiness directives:

Bombardier; comments due by 5-29-03; published 4-29-03 [FR 03-10235]

TRANSPORTATION DEPARTMENT

Federal Aviation Administration

Airworthiness directives:

CFM International; comments due by 5-27-03; published 3-25-03 [FR 03-07003]

TRANSPORTATION DEPARTMENT

Federal Aviation Administration

Airworthiness directives:

Empresa Brasileira de Aeronautica, S.A. (EMBRAER); comments due by 5-29-03; published 4-29-03 [FR 03-10236]

TRANSPORTATION DEPARTMENT

Federal Aviation Administration

Airworthiness directives:

Pratt & Whitney; comments due by 5-27-03; published 3-25-03 [FR 03-06997]

Rolls-Royce plc; comments due by 5-27-03; published 3-25-03 [FR 03-07004]

Textron Lycoming; comments due by 5-27-03; published 3-25-03 [FR 03-06998]

TRANSPORTATION DEPARTMENT

Federal Aviation Administration

Airworthiness standards:

Special conditions—

Learjet Model 24/25 Series airplanes; comments due by 5-29-03; published 4-29-03 [FR 03-10450]

TRANSPORTATION DEPARTMENT

Federal Aviation Administration

Class E airspace; comments due by 5-29-03; published 3-31-03 [FR 03-07663]

TRANSPORTATION DEPARTMENT

Federal Aviation Administration

Class E airspace; comments due by 5-27-03; published 4-15-03 [FR 03-09179]

TRANSPORTATION DEPARTMENT

Federal Aviation Administration

Class E airspace; comments due by 5-30-03; published 4-23-03 [FR 03-10047]

TRANSPORTATION DEPARTMENT

Maritime Administration

Coastwise trade laws; administrative waivers for eligible vessels; comments due by 5-30-03; published 4-30-03 [FR 03-10578]

TREASURY DEPARTMENT

Alcohol and Tobacco Tax and Trade Bureau

Alcohol; vitcultural area designations:

Red Hill, Douglas County, OR; comments due by 5-27-03; published 4-24-03 [FR 03-10095]

VETERANS AFFAIRS DEPARTMENT

Adjudication; pensions, compensation, dependency, etc.:

Chronic lymphocytic leukemia; presumptive service connection; comments due by 5-27-03; published 3-26-03 [FR 03-07221]

LIST OF PUBLIC LAWS

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H.R. 289/P.L. 108–23

Ottawa National Wildlife Refuge Complex Expansion and Detroit River International Wildlife Refuge Expansion Act (May 19, 2003; 117 Stat. 704)

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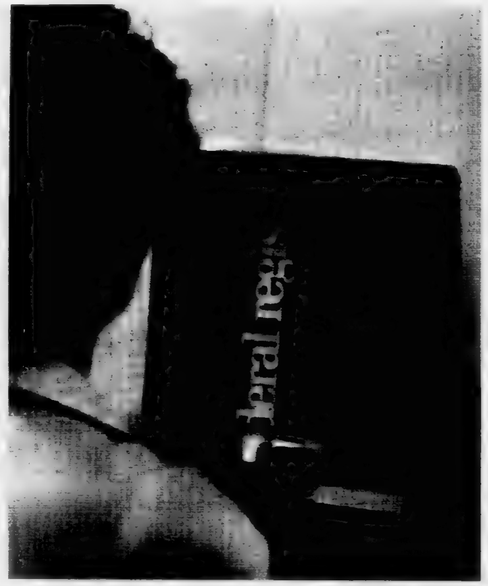
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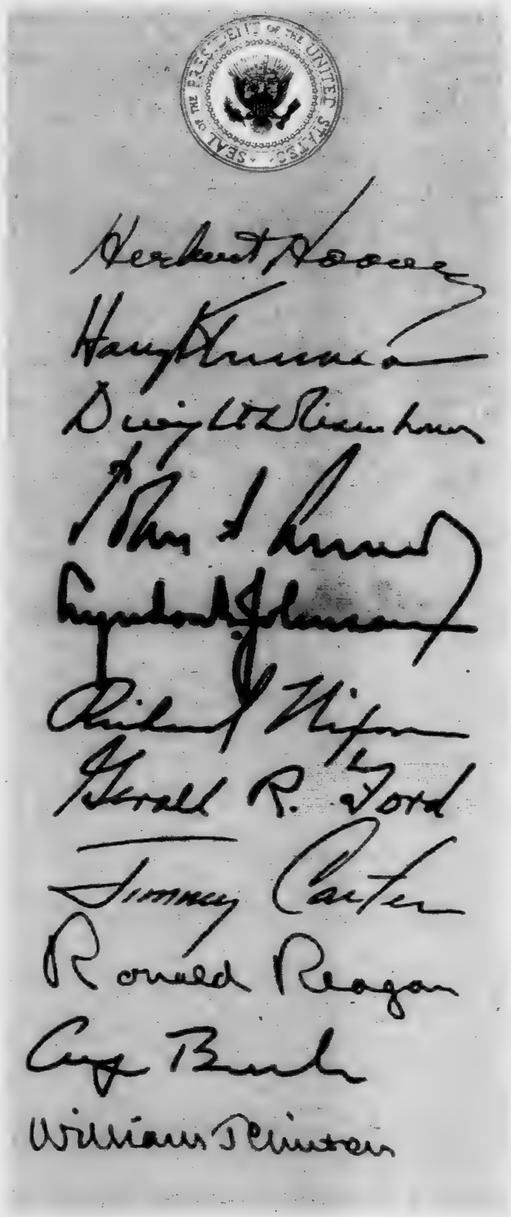
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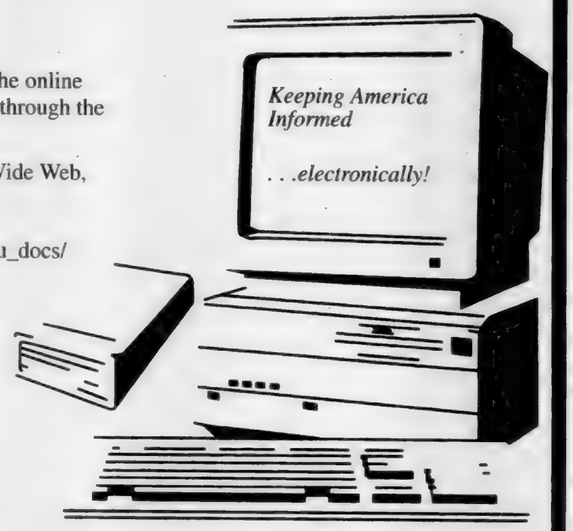
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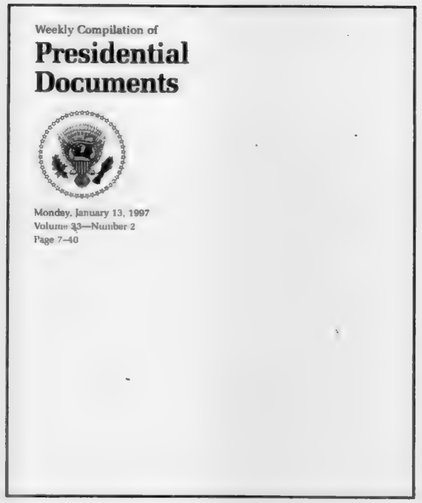
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Contents

Federal Register
Vol. 68, No. 99
Thursday, May 22, 2003

Agricultural Marketing Service
RULES
Cotton classing, testing, and standards:
Classification services to growers; 2003 user fees, 27897–27898
Cotton research and promotion order:
Cotton Board Rules and Regulations; amendments, 27898–27903
PROPOSED RULES
Cherries (tart) grown in—
Michigan et al., 27943–27946
Organic Foods Production Act:
National Organic Program; National List of Allowed and Prohibited Substances; amendments, 27941–27943

Agriculture Department
See Agricultural Marketing Service
See Grain Inspection, Packers and Stockyards Administration
See Rural Utilities Service

Centers for Disease Control and Prevention
NOTICES
Meetings:
Disease, Disability, and Injury Prevention and Control Special Emphasis Panels; correction, 28008
Public Health Service Activities and Research at DOE Sites Citizens Advisory Committee, 28008–28009

Centers for Medicare & Medicaid Services
NOTICES
Agency information collection activities; proposals, submissions, and approvals, 28009–28010

Children and Families Administration
NOTICES
Adoption and Foster Care Analysis and Reporting System; improvement; correction, 28010

Coast Guard
RULES
Ports and waterways safety:
Vessels arriving in or departing from U.S. ports; notification requirements
Partial suspension, 27907–27908
PROPOSED RULES
Navigation aids:
Technical information affecting buoys, sound signals, international rules at sea, communications procedures, and large navigational buoys; revision
Correction, 28052
Ports and waterways safety:
Hampton Roads, VA; regulated navigation area, 27948–27953

Commerce Department
See Foreign-Trade Zones Board
See International Trade Administration
See National Institute of Standards and Technology
See National Oceanic and Atmospheric Administration
See Technology Administration

Committee for the Implementation of Textile Agreements
NOTICES
Textile and apparel categories:
Andean Trade Promotion and Drug Eradication Act; short supply requests—
Cotton corduroy fabrics, 27992–27993

Defense Department
RULES
Federal Acquisition Regulation (FAR):
Commercial items contract terms and conditions required to implement statute or Executive orders, 28095–28098
Cost-reimbursement contracts for services; prompt payment, 28091–28093
Electronic signatures, 28092–28094
Federal Prison Industries contracts; past performance evaluation, 28094–28096
Federal Prison Industries, Inc.; increased waiver threshold, 28093–28095
Introduction, 28077–28079
Miscellaneous cost principles, 28090–28092
Small entity compliance guide, 28097–28100
Technical amendments, 28097–28098
United States; geographic use of term, 28078–28090
Wendell H. Ford Aviation Investment and Reform Act for 21st Century; implementation:
Excess DOD aircraft sales to persons or entities providing oil spill response services, 27904–27907
PROPOSED RULES
Federal Acquisition Regulation (FAR):
Unallowable costs accounting and application of cost principles and procedures, 28107–28109

Employee Benefits Security Administration
NOTICES
Employee benefit plans; individual exemptions:
Metropolitan Life Insurance Co. et al., 28031–28033
Employee benefit plans; prohibited transaction exemptions:
Deutsche Bank AG et al., 28018–28030
Travelers Group, Inc., 28033

Energy Department
See Federal Energy Regulatory Commission
NOTICES
Grants and cooperative agreements; availability, etc.:
Million Solar Roofs Initiative; State and Local Partnerships, 27993–27994

Environmental Protection Agency
RULES
Air pollutants, hazardous; national emission standards:
Semiconductor manufacturing operations, 27913–27931
Air programs; approval and promulgation; State plans for designated facilities and pollutants:
Vermont, 27911–27913
Air quality implementation plans; approval and promulgation; various States:
Montana, 27908–27911
Superfund program:
National oil and hazardous substances contingency plan—
National priorities list update, 27931–27936

PROPOSED RULES
Air programs; approval and promulgation; State plans for designated facilities and pollutants:
Vermont, 27953–27954
Superfund program:
National oil and hazardous substances contingency plan—
National priorities list update, 27954–27955
NOTICES
Agency information collection activities; proposals, submissions, and approvals, 28002–28003
Meetings:
Clean Air Act Advisory Committee, 28003–28004
Gulf of Mexico Program Citizens Advisory Committee, 28003
Toxic and hazardous substances control:
New chemicals—
Test marketing exemption approvals, 28004–28006

Federal Aviation Administration
PROPOSED RULES
Class E5 airspace, 27946–27947
NOTICES
Environmental statements; notice of intent:
Midwest Airspace Plan, 28042–28043
Passenger facility charges; applications, etc.:
Helena Regional Airport, MT, 28044

Federal Bureau of Investigation
NOTICES
Agency information collection activities; proposals, submissions, and approvals, 28017

Federal Communications Commission
RULES
Radio stations; table of assignments:
Arkansas and Louisiana, 27940
Oregon, 27939–27940
PROPOSED RULES
Radio stations; table of assignments:
California, 27960
Kentucky, 27961

Federal Election Commission
NOTICES
Special elections; filing dates:
Texas, 28006–28007

Federal Energy Regulatory Commission
NOTICES
Electric rate and corporate regulation filings:
Calpine California Equipment Finance Co., LLC, et al., 27999–28000
Empire District Electric Co. et al., 27997–27999
Environmental statements; availability, etc.:
Pacific Gas & Electric Co., 28000
Hydroelectric applications, 28000–28001
Reports and guidance documents; availability, etc.:
Electric Quarterly Reports; public utility filing requirements and software demonstrations, 28001–28002
Applications, hearings, determinations, etc.:
American Electric Power Service Corp. et al., 27994
ANR Pipeline Co., 27994–27995
CenterPoint Energy Gas Transmission Co., 27994
Columbia Gas Transmission Corp., 27995
Entergy Services, Inc., 27995
Northwest Pipeline Corp., 27995–27996
Plantation Pipe Line Co. et al., 27996
Portland Natural Gas Transmission System, 27996–27997
Tennessee Gas Pipeline Co., 27997

Federal Maritime Commission
NOTICES
Meetings; Sunshine Act, 28007

Federal Railroad Administration
NOTICES
Environmental statements; notice of intent:
Southeast High Speed Rail Corridor, VA and NC, 28044–28045

Federal Reserve System
NOTICES
Banks and bank holding companies:
Formations, acquisitions, and mergers, 28007
Permissible nonbanking activities, 28007

Fish and Wildlife Service
RULES
Endangered and threatened species:
Critical habitat designations—
Plant species from Northwestern Hawaiian Islands, HI, 28053–28075
PROPOSED RULES
Endangered and threatened species:
Findings on petitions, etc.—
Johnston's frankenia; delisting, 27961–27969

Food and Drug Administration
RULES
Animal drugs, feeds, and related products:
Biuret, feed-grade, 27904
NOTICES
Food additive petitions:
Arkion Life Sciences, 28010

Foreign-Trade Zones Board
NOTICES
Applications, hearings, determinations, etc.:
California, 27985
Florida
Federal Mogul Corp.; plant subzone termination, 27985
Hawaii
Dole Packaged Foods Co; plant subzone termination, 27985
Michigan
Perrigo Co.; pharmaceutical manufacturing and distribution facilities, 27985–27986
New York
Bulova Corp.; watch and clock warehousing/distribution/repair facilities, 27986
Texas, 27987

General Services Administration
RULES
Federal Acquisition Regulation (FAR):
Commercial items contract terms and conditions required to implement statute or Executive orders, 28095–28098
Cost-reimbursement contracts for services; prompt payment, 28091–28093
Electronic signatures, 28092–28094
Federal Prison Industries contracts; past performance evaluation, 28094–28096
Federal Prison Industries, Inc.; increased waiver threshold, 28093–28095

Introduction, 28077–28079
Miscellaneous cost principles, 28090–28092
Small entity compliance guide, 28097–28100
Technical amendments, 28097–28098
United States; geographic use of term, 28078–28090
Federal travel:
Promotional materials; conference planning; clarification, 27936–27937
PROPOSED RULES
Federal Acquisition Regulation (FAR):
Unallowable costs accounting and application of cost principles and procedures, 28107–28109
NOTICES
Agency information collection activities; proposals, submissions, and approvals, 28008

Government Ethics Office
RULES
Privacy Act; implementation, 27891–27897

Grain Inspection, Packers and Stockyards Administration
NOTICES
Agency designation actions:
Indiana and Virginia, 27982–27983
Mississippi, 27983
Various States, 27983–27984
Meetings:
Grain Inspection Advisory Committee, 27984

Health and Human Services Department
See Centers for Disease Control and Prevention
See Centers for Medicare & Medicaid Services
See Children and Families Administration
See Food and Drug Administration
RULES
Human drugs:
Opiate addiction; opioid drugs use in maintenance and detoxification treatment
List additions, 27937–27939

Homeland Security Department
See Coast Guard

Housing and Urban Development Department
RULES
Federal and Federally funded construction projects; open competition and government neutrality towards government contractors' labor relations, 28101–28105
NOTICES
Agency information collection activities; proposals, submissions, and approvals, 28011

Interior Department
See Fish and Wildlife Service
See Land Management Bureau
PROPOSED RULES
Hearings and appeals procedures:
Public land; special rules, 27955–27960
NOTICES
Grants and cooperative agreements; availability, etc.:
Gulf Ecosystem Monitoring and Research Program, 28011–28012

Internal Revenue Service
NOTICES
Agency information collection activities; proposals, submissions, and approvals, 28049–28051

International Trade Administration
NOTICES
Antidumping:
Fresh Atlantic salmon from—
Chile, 27987–27988
Stainless steel butt-weld pipe fittings from—
Taiwan, 27988
North American Free Trade Agreement (NAFTA); binational panel reviews:
Pure magnesium from—
Canada, 27988–27989

International Trade Commission
NOTICES
Meetings; Sunshine Act, 28015

Justice Department
See Federal Bureau of Investigation
NOTICES
Pollution control; consent judgments:
Arizona Public Service Co., 28015–28016
Tecumseh Products Co., 28016
Virginia Electric & Power Co., 28016–28017

Labor Department
See Employee Benefits Security Administration
See Occupational Safety and Health Administration

Land Management Bureau
NOTICES
Realty actions; sales, leases, etc.:
Oregon, 28012–28014
Survey plat filings:
Idaho, 28014–28015

National Aeronautics and Space Administration
RULES
Federal Acquisition Regulation (FAR):
Commercial items contract terms and conditions required to implement statute or Executive orders, 28095–28098
Cost-reimbursement contracts for services; prompt payment, 28091–28093
Electronic signatures, 28092–28094
Federal Prison Industries contracts; past performance evaluation, 28094–28096
Federal Prison Industries, Inc.; increased waiver threshold, 28093–28095
Introduction, 28077–28079
Miscellaneous cost principles, 28090–28092
Small entity compliance guide, 28097–28100
Technical amendments, 28097–28098
United States; geographic use of term, 28078–28090
PROPOSED RULES
Federal Acquisition Regulation (FAR):
Unallowable costs accounting and application of cost principles and procedures, 28107–28109
NOTICES
Meetings:
Advisory Council
Planetary Protection Advisory Committee, 28035

National Institute of Standards and Technology
NOTICES
Meetings:
Information Security and Privacy Advisory Board, 27989

National Oceanic and Atmospheric Administration
PROPOSED RULES
Fishery conservation and management:
West Coast States and Western Pacific fisheries—
Pacific Coast groundfish, 27972
Pacific Coast groundfish vessel monitoring system, 27972–27981
Western Pacific Fishery Management Council; meetings, 27969–27971
NOTICES
Environmental statements; notice of intent:
Channel Islands National Marine Sanctuary, CA, 27989–27990
Permits:
Marine mammals, 27990–27991

Nuclear Regulatory Commission
RULES
Radiation protection standards:
Radiation exposure reports; personal information labeling, 27903–27904
NOTICES
Agency information collection activities; proposals, submissions, and approvals, 28035–28036
Environmental statements; availability, etc.:
Teledyne Brown Engineering, Inc., 28036

Occupational Safety and Health Administration
NOTICES
Nationally recognized testing laboratories, etc.:
Canadian Standards Association, 28033–28034

Rural Utilities Service
NOTICES
Agency information collection activities; proposals, submissions, and approvals, 27984–27985

Securities and Exchange Commission
NOTICES
Securities:
Transfer agents; registration, cancellation, etc., 28038
Self-regulatory organizations; proposed rule changes:
National Association of Securities Dealers, Inc., et al., 28039–28041
Applications, hearings, determinations, etc.:
Kadant Inc., 28037
Public utility holding company filings, 28037–28038

State Department
NOTICES
Arms Export Control Act:
Countries not cooperating fully with U.S. antiterrorism efforts; determination and certification; congressional notifications, 28041

Surface Transportation Board
NOTICES
Rail carriers:
Control exemptions—
International Steel Group, Inc., 28045
Railroad operation, acquisition, construction, etc.:
Keystone Railroad LLC, 28045–28046
Railroad services abandonment:
V&S Railway, Inc., 28046

Technology Administration
NOTICES
Committees; establishment, renewal, termination, etc.:
Joint Science and Technology Cooperation Advisory Council, 27991–27992

Tennessee Valley Authority
NOTICES
Agency information collection activities; proposals, submissions, and approvals, 28041–28042

Textile Agreements Implementation Committee
See Committee for the Implementation of Textile Agreements

Transportation Department
See Federal Aviation Administration
See Federal Railroad Administration
See Surface Transportation Board
PROPOSED RULES
Computer reservation systems, carrier-owned; public hearing, 27948
NOTICES
Aviation proceedings:
Agreements filed; weekly receipts, 28042
Certificates of public convenience and necessity and foreign air carrier permits; weekly applications, 28042

Treasury Department
See Internal Revenue Service
NOTICES
Privacy Act:
Systems of records, 28046–28049

Separate Parts In This Issue

Part II
Interior Department, Fish and Wildlife Service, 28053–28075

Part III
Defense Department; General Services Administration; National Aeronautics and Space Administration, 28077–28100

Part IV
Housing and Urban Development Department, 28101–28105

Part V
Defense Department; General Services Administration; National Aeronautics and Space Administration, 28107–28109

Reader Aids

Consult the Reader Aids section at the end of this issue for phone numbers, online resources, finding aids, reminders, and notice of recently enacted public laws.

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CFR PARTS AFFECTED IN THIS ISSUE

A cumulative list of the parts affected this month can be found in the Reader Aids section at the end of this issue.

5 CFR
2606 27891

7 CFR
28 27897
1205 27898
Proposed Rules:
205 27941
930 27943

10 CFR
20 27903

14 CFR
Proposed Rules:
71 27946
255 27948
399 27948

21 CFR
573 27904

24 CFR
5 28102

32 CFR
207 27904

33 CFR
160 27907
Proposed Rules:
72 28052
165 27948

40 CFR
52 27908
62 27911
63 27913
300 (2 documents) 27931, 27933
Proposed Rules:
62 27953
300 (2 documents) 27954

41 CFR
301-53 27936
301-74 27936

42 CFR
8 27937

43 CFR
Proposed Rules:
4 27955

47 CFR
73 (2 documents) 27939, 27940
Proposed Rules:
73 (2 documents) 27960, 27961

48 CFR
Ch. 1 (2 documents) 28078, 28098
2 (3 documents) 28079, 28091, 28092
3 28079
4 (2 documents) 28079, 28093
5 28079
6 28079
8 (3 documents) 28079, 28094, 28095
9 28079
14 28079
19 28079
22 28079
23 28079
25 28079
26 28079
28 28079
29 28079
31 (2 documents) 28079, 28091
32 28092
35 28079
36 28079
42 (2 documents) 28079, 28095
45 28079
47 (2 documents) 28079, 28091
52 (5 documents) 28079, 28091, 28092, 28096, 28098
53 28079

48 CFR
Proposed Rules:
31 28108

50 CFR
17 28054
Proposed Rules:
17 27961
660 (3 documents) 27969, 27972

Rules and Regulations

Federal Register
Vol. 68, No. 99
Thursday, May 22, 2003

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

OFFICE OF GOVERNMENT ETHICS

5 CFR Part 2606

RIN 3209–AA18

Privacy Act; Implementation

AGENCY: Office of Government Ethics (OGE).

ACTION: Final rule.

SUMMARY: The Office of Government Ethics is adopting as final, with two minor changes, a proposed rule establishing procedures relating to access, maintenance, disclosure, and amendment of records which are in OGE systems of records under the Privacy Act of 1974. This rule also establishes rules of conduct for OGE personnel who have responsibilities under that Act.

EFFECTIVE DATE: May 22, 2003.

FOR FURTHER INFORMATION CONTACT: Elaine Newton, Attorney Advisor, Office of Government Ethics, Suite 500, 1201 New York Avenue, NW., Washington, DC 20005–3917; telephone: 202–208–8000; TDD: 202–208–8025; FAX: 202–208–8037.

SUPPLEMENTARY INFORMATION: In this rulemaking document, OGE is adopting final rules under the Privacy Act, 5 U.S.C. 552a. On January 22, 2003, at 68 FR 2923–2929, OGE published a proposed rule that would establish procedures relating to OGE systems of records under the Privacy Act, for codification at 5 CFR part 2606. The proposed rule invited comments from the public, to be received by OGE on or before March 24, 2003. No comments were received. After consultation with the Office of Management and Budget during the course of Executive Order 12866 review of this final rule, OGE has determined that only two minor changes are needed to the proposed rule in adopting it as final. The first change is that OGE is dropping the proposed reference in § 2606.203(c) to any possible fee for certified copies of records when such are provided. Instead, the section simply provides that OGE and concerned agencies generally will not furnish certified copies of records. The second change is that OGE is clarifying in § 2606.206(a)(2)(ii)(B) that only a previous failure to timely pay a *Privacy Act* fee can serve as an alternate basis for the possible requirement of an advance payment for additional copies of records being provided under the Privacy Act.

In addition, OGE published in the **Federal Register** on January 22, 2003 (in a separate part II), at 68 FR 3097–3109, a notice of proposed new and revised systems of records under the Privacy Act. Public comments were invited, to be received by OGE by March 24, 2003. Likewise, OGE did not receive any comments on the notice. Pursuant to that notice, the new and revised records systems will become effective on May 22, 2003 without change (except for the correction of some minor errors, *see* 68 FR 24744 (May 8, 2003)). Therefore, OGE is making this final rule effective on the same date, May 22, 2003.

Administrative Procedure Act

Pursuant to 5 U.S.C. 553(d), as Director of the Office of Government Ethics, I find good cause exists for waiving the 30-day delay in effectiveness as to this final rule. The delayed effective date provision is being waived in part because this final OGE Privacy Act rule makes only two minor changes to the previously published proposed rule (as explained above). Furthermore, it is in the public interest that this OGE Privacy Act regulation become effective on the same date, May 22, 2003, as OGE's new and revised Privacy Act systems of records.

Executive Order 12866

In promulgating this final rule, the Office of Government Ethics has adhered to the regulatory philosophy and the applicable principles of regulation set forth in section 1 of Executive Order 12866, Regulatory Planning and Review. This regulation has also been approved by the Office of Management and Budget under the Executive order.

Executive Order 12988

As Director of the Office of Government Ethics, I have reviewed this final rule in light of section 3 of Executive Order 12988, Civil Justice Reform, and certify that it meets the applicable standards provided therein.

Regulatory Flexibility Act

As Director of the Office of Government Ethics, I certify under the Regulatory Flexibility Act (5 U.S.C. chapter 6) that this regulation will not have a significant economic impact on a substantial number of small entities, because it will primarily affect current and former executive branch Federal employees.

Unfunded Mandates Reform Act

For purposes of the Unfunded Mandates Reform Act of 1995 (2 U.S.C. chapter 25, subpart II), this regulation would not significantly or uniquely affect small governments and would not result in increased expenditures by State, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more (as adjusted for inflation) in any one year.

Paperwork Reduction Act

The Paperwork Reduction Act (44 U.S.C. chapter 35) does not apply to this regulation because it does not contain information collection requirements that require the approval of the Office of Management and Budget.

Congressional Review Act

The Office of Government Ethics has determined that this regulation involves a nonmajor rule under the Congressional Review Act (5 U.S.C. chapter 8) and will submit a report thereon to the U.S. Senate, House of Representatives and General Accounting Office in accordance with that law at the same time this rulemaking document is sent to the Office of the Federal Register for publication in the **Federal Register**.

List of Subjects in 5 CFR Part 2606

Administrative practice and procedure, Archives and records, Conflict of interests, Government employees, Privacy Act.

Approved: May 16, 2003.

Amy L. Comstock,

Director, Office of Government Ethics.

■ Accordingly, for the reasons set forth in the preamble, the Office of Government Ethics is amending subchapter A of chapter XVI of title 5 of

the Code of Federal Regulations by adding part 2606 to read as follows:

PART 2606—PRIVACY ACT RULES

Subpart A—General Provisions

Sec.
2606.101 Purpose.
2606.102 Definitions.
2606.103 Systems of records.
2606.104 OGE and agency responsibilities.
2606.105 Rules for individuals seeking to ascertain if they are the subject of a record.
2606.106 OGE employee Privacy Act rules of conduct and responsibilities.

Subpart B—Access to Records and Accounting of Disclosures

2606.201 Requests for access.
2606.202 OGE or other agency action on requests.
2606.203 Granting access.
2606.204 Request for review of an initial denial of access.
2606.205 Response to a request for review of an initial denial of access.
2606.206 Fees.
2606.207 Accounting of disclosures.

Subpart C—Amendment of Records

2606.301 Requests to amend records.
2606.302 OGE or other agency action on requests.
2606.303 Request for review of an initial refusal to amend a record.
2606.304 Response to a request for review of an initial refusal to amend; disagreement statements.

Authority: 5 U.S.C. 552a, 5 U.S.C. App. (Ethics in Government Act of 1978).

Subpart A—General Provisions

§ 2606.101 Purpose.

This part sets forth the regulations of the Office of Government Ethics (OGE) implementing the Privacy Act of 1974, as amended (5 U.S.C. 552a). It governs access, maintenance, disclosure, and amendment of records contained in OGE's executive branch Governmentwide and internal systems of records, and establishes rules of conduct for OGE employees who have responsibilities under the Act.

§ 2606.102 Definitions.

For the purpose of this part, the terms listed below are defined as follows:

Access means providing a copy of a record to, or allowing review of the original record by, the data subject or the requester's authorized representative, parent or legal guardian;

Act means the Privacy Act of 1974, as amended, 5 U.S.C. 552a;

Amendment means the correction, addition, deletion, or destruction of a record or specific portions of a record;

Data subject means the individual to whom the information pertains and by whose name or other individual identifier the information is maintained or retrieved;

He, his, and *him* include she, hers and her.

Office or *OGE* means the U.S. Office of Government Ethics;

System manager means the Office or other agency official who has the authority to decide Privacy Act matters relative to a system of records;

System of records means a group of any records containing personal information controlled and managed by OGE from which information is retrieved by the name of an individual or by some personal identifier assigned to that individual;

Working day as used in calculating the date when a response is due means calendar days, excepting Saturdays, Sundays, and legal public holidays.

§ 2606.103 Systems of records.

(a) *Governmentwide systems of records.* The Office of Government Ethics maintains two executive branch Governmentwide systems of records: the OGE/GOVT–1 system of records, comprised of Executive Branch Personnel Public Financial Disclosure Reports and Other Name-Retrieved Ethics Program Records; and the OGE/GOVT–2 system of records, comprised of Executive Branch Confidential Financial Disclosure Reports. These Governmentwide systems of records are maintained by OGE, and through Office delegations of authority, by Federal executive branch departments and agencies with regard to their own employees, applicants for employment, individuals nominated to a position requiring Senate confirmation, candidates for a position, and former employees.

(b) *OGE Internal systems of records.* The Office of Government Ethics internal systems of records are under OGE's physical custody and control and are established and maintained by the Office on current and former OGE employees regarding matters relating to the internal management of the Office. These systems of records consist of the OGE/INTERNAL–1 system, comprised of Pay, Leave and Travel Records; the OGE/INTERNAL–2 system, comprised of Telephone Call Detail Records; the OGE/INTERNAL–3 system, comprised of Grievance Records; the OGE/INTERNAL–4 system, comprised of Computer Systems Activity and Access Records; and the OGE/INTERNAL–5 system, comprised of Employee Locator and Emergency Notification Records.

§ 2606.104 OGE and agency responsibilities.

(a) The procedures in this part apply to:

(1) All initial Privacy Act access and amendment requests regarding records contained in an OGE system of records.

(2) Administrative appeals from an Office or agency denial of an initial request for access to, or to amend, records contained in an OGE system of records.

(b) For records contained in an OGE Governmentwide system of records, each agency is responsible (unless specifically excepted by the Office) for responding to initial requests for access or amendment of records in its custody and administrative appeals of denials thereof.

(c) For records and material of another agency that are in the custody of OGE, but not under its control or ownership, OGE may refer a request for the records to that other agency, consult with the other agency prior to responding, or notify the requester that the other agency is the proper agency to contact.

§ 2606.105 Rules for individuals seeking to ascertain if they are the subject of a record.

An individual seeking to ascertain if any OGE system of records contains a record pertaining to him must follow the access procedures set forth at § 2606.201(a) and (b).

§ 2606.106 OGE employee Privacy Act rules of conduct and responsibilities.

Each OGE employee involved in the design, development, operation, or maintenance of any system of records, or in maintaining any record covered by the Privacy Act, shall comply with the pertinent provisions of the Act relating to the treatment of such information. Particular attention is directed to the following provisions of the Privacy Act:

(a) *5 U.S.C. 552a(e)(7).* The requirement to maintain in a system of records no record describing how any individual exercises rights guaranteed by the First Amendment of the Constitution of the United States unless expressly authorized by statute or by the individual about whom the record is maintained or unless pertinent to and within the scope of an authorized law enforcement activity.

(b) *5 U.S.C. 552a(b).* The requirement that no agency shall disclose any record which is contained in a system of records by any means of communication to any person or to another agency, except pursuant to a written request by, or with the prior written consent of, the individual to whom the record pertains, except under certain limited conditions specified in subsections (b)(1) through (b)(12) of the Privacy Act.

(c) *5 U.S.C. 552a(e)(1).* The requirement for an agency to maintain in its systems of records only such information about an individual as is relevant and necessary to accomplish a purpose of the agency required to be accomplished by statute or by Executive order.

(d) *5 U.S.C. 552a(e)(2).* The requirement to collect information to the greatest extent practicable directly from the subject individual when the information may result in adverse determinations about an individual's rights, benefits, and privileges under Federal programs.

(e) *5 U.S.C. 552a(e)(3).* The requirement to inform each individual asked to supply information to be maintained in a system of records the authority which authorizes the solicitation of the information and whether disclosure of such information is mandatory or voluntary; the principal purpose or purposes for which the information is intended to be used; the routine uses which may be made of the information; and the effects on the individual, if any, of not providing all or any part of the requested information.

(f) *5 U.S.C. 552a(b) and (e)(10).* The requirement to comply with established safeguards and procedures to ensure the security and confidentiality of records and to protect personal data from any anticipated threats or hazards to their security or integrity which could result in substantial harm, embarrassment, inconvenience, or unfairness to an individual on whom information is maintained in a system of records.

(g) *5 U.S.C. 552a(c)(1), (c)(2) and (c)(3).* The requirement to maintain an accounting of specified disclosures of personal information from systems of records in accordance with established Office procedures.

(h) *5 U.S.C. 552a(e)(5) and (e)(6).* The requirements to maintain all records in a system of records which are used by the agency in making any determination about an individual with such accuracy, relevance, timeliness, and completeness as is reasonably necessary to assure fairness to the individual in the determination; and to make reasonable efforts to assure that such records are accurate, complete, timely, and relevant for agency purposes, prior to disseminating any record about an individual to any person other than an agency (unless the dissemination is required by the Freedom of Information Act, 5 U.S.C. 552).

(i) *5 U.S.C. 552a(d)(1), (d)(2) and (d)(3).* The requirement to permit individuals to have access to records pertaining to themselves in accordance with established Office procedures and to have an opportunity to request that such records be amended.

(j) *5 U.S.C. 552a(c)(4) and (d)(4).* The requirement to inform any person or other agency about any correction or notation of dispute made by the agency in accordance with subsection (d) of the Act of any record that has been disclosed to the person or agency if an accounting of the disclosure was made; and, in any disclosure of information about which an individual has filed a statement of disagreement, to note clearly any portion of the record which is disputed and to provide copies of the statement (and if the agency deems it appropriate, copies of a concise statement of the reasons of the agency for not making the amendments requested) to persons or other agencies to whom the disputed record has been disclosed.

(k) *5 U.S.C. 552a(n).* The requirement for an agency not to sell or rent an individual's name or address, unless such action is specifically authorized by law.

(l) *5 U.S.C. 552a(i).* The criminal penalties to which an employee may be subject for failing to comply with certain provisions of the Privacy Act.

Subpart B—Access to Records and Accounting of Disclosures

§ 2606.201 Requests for access.

(a) *Records in an OGE Governmentwide system of records.* An individual requesting access to records pertaining to him in an OGE Governmentwide system of records should submit a written request, which includes the words "Privacy Act Request" on both the envelope and at the top of the request letter, to the appropriate system manager as follows:

(1) *Records filed directly with OGE by non-OGE employees:* The Deputy Director, Office of Agency Programs, Office of Government Ethics, Suite 500, 1201 New York Avenue, NW., Washington, DC 20005–3917;

(2) *Records filed with a Designated Agency Ethics Official (DAEO) or the head of a department or agency:* The DAEO at the department or agency concerned; or

(3) *Records filed with the Federal Election Commission by candidates for President or Vice President:* The General Counsel, Office of General Counsel, Federal Election Commission, 999 E Street, NW., Washington, DC 20463.

(b) *Records in an OGE Internal System of Records.* An individual requesting access to records pertaining to him in an OGE internal system of records should submit a written request, which includes the words "Privacy Act Request" on both the envelope and at the top of the request letter, to the Deputy Director, Office of Administration and Information Management, Office of Government Ethics, Suite 500, 1201 New York Avenue, NW., Washington, DC 20005–3917.

(c) *Content of request.* (1) A request should contain a specific reference to the OGE system of records from which access to the records is sought. Notices of OGE systems of records subject to the Privacy Act are published in the **Federal Register**, and copies of the notices are available on OGE's Web site at *http://www.usoge.gov,* or upon request from OGE's Office of General Counsel and Legal Policy. A biennial compilation of such notices also is made available online and published by the Office of Federal Register at the GPO Access Web site *(http://www.access.gpo.gov/su_docs/aces/PrivacyAct.shtml)* in accordance with 5 U.S.C. 552a(f) of the Act.

(2) If the written inquiry does not refer to a specific system of records, it should include other information that will assist in the identification of the records for which access is being requested. Such information may include, for example, the individual's full name (including her maiden name, if pertinent), dates of employment, social security number (if any records in the system include this identifier), current or last place and date of Federal employment. If the request for access follows a prior request to determine if an individual is the subject of a record, the same identifying information need not be included in the request for access if a reference is made to that prior correspondence, or a copy of the response to that request is attached.

(3) The request should state whether the requester wants a copy of the record, or wants to examine the record in person.

§ 2606.202 OGE or other agency action on requests.

A response to a request for access should include the following:

(a) A statement that there is a record or records as requested or a statement that there is not a record in the system of records;

(b) The method of access (if a copy of all the records requested is not provided with the response);

(c) The amount of any fees to be charged for copies of records under § 2606.206 of this part or other agencies' Privacy Act regulations as referenced in that section;

(d) The name, title, and telephone number of the official having operational control over the record; and

(e) If the request is denied in whole or in part, or no record is found in the system, a statement of the reasons for the denial, or a statement that no record has been found, and notice of the procedures for appealing the denial or no record finding.

§ 2606.203 Granting access.

(a) The methods for allowing access to records, when such access has been granted by OGE or the other agency concerned are:

(1) Examination in person in a designated office during the hours specified by OGE or the other agency;

(2) Providing photocopies of the records; or

(3) Transfer of records at the option of OGE or the other agency to another more convenient Federal facility.

(b) When a requester has not indicated whether he wants a copy of the record, or wants to examine the record in person, the appropriate system manager may choose the means of granting access. However, the means chosen should not unduly impede the data subject's right of access. A data subject may elect to receive a copy of the records after having examined them.

(c) Generally, OGE or the other agency concerned will not furnish certified copies of records. When copies are to be furnished, they may be provided as determined by OGE or the other agency concerned.

(d) When the data subject seeks to obtain original documentation, the Office and the other agencies concerned reserve the right to limit the request to copies of the original records. Original records should be made available for review only in the presence of the appropriate system manager or his designee.

Note to paragraph (d) of § 2606.203: Section 2071(a) of title 18 of the United States Code makes it a crime to conceal, remove, mutilate, obliterate, or destroy any record filed in a public office, or to attempt to do so.

(e) *Identification requirements*—(1) *Access granted in person*—(i) *Current or former employees.* Current or former employees requesting access to records pertaining to them in a system of records may, in addition to the other requirements of this section, and at the sole discretion of the official having operational control over the record, have their identity verified by visual observation. If the current or former employee cannot be so identified by the official having operational control over the records, adequate identification documentation will be required, *e.g.*, an employee identification card, driver's license, passport, or other officially issued document with a picture of the person requesting access.

(ii) *Other than current or former employees.* Individuals other than current or former employees requesting access to records pertaining to them in a system of records must produce adequate identification documentation prior to being granted access. The extent of the identification documentation required will depend on the type of records to be accessed. In most cases, identification verification will be accomplished by the presentation of two forms of identification with a picture of the person requesting access (such as a driver's license and passport). Any additional requirements are specified in the system notices published pursuant to subsection (e)(4) of the Act.

(2) *Access granted by mail.* For records to be accessed by mail, the appropriate system manager shall, to the extent possible, establish identity by a comparison of signatures in situations where the data in the record is not so sensitive that unauthorized access could cause harm or embarrassment to the individual to whom they pertain. No identification documentation will be required for the disclosure to the data subject of information required to be made available to the public by 5 U.S.C. 552, the Freedom of Information Act. When, in the opinion of the system manager, the granting of access through the mail could reasonably be expected to result in harm or embarrassment if disclosed to a person other than the individual to whom the record pertains, a notarized statement of identity or some similar assurance of identity may be required.

(3) *Unavailability of identification documentation.* If an individual is unable to produce adequate identification documentation, the individual will be required to sign a statement asserting identity and acknowledging that knowingly or willfully seeking or obtaining access to records about another person under false pretenses may result in a criminal fine of up to $5,000 under subsection (i)(3) of the Act. In addition, depending upon the sensitivity of the records sought to be accessed, the appropriate system manager or official having operational control over the records may require such further reasonable assurances as may be considered appropriate, *e.g.*, statements of other individuals who can attest to the identity of the data subject. No verification of identity will be required of data subjects seeking access to records which are otherwise available to any person under 5 U.S.C. 552.

(4) *Inadequate identification.* If the official having operational control over the records in a system of records determines that an individual seeking access has not provided sufficient identification documentation to permit access, the official shall consult with the appropriate system manager prior to denying the individual access. Whenever the system manager determines, in accordance with the procedures herein, that access will not be granted, the response will also include a statement of the procedures to obtain a review of the decision to deny access in accordance with § 2606.205.

(f) *Access by the parent of a minor, or legal guardian.* A parent of a minor, upon presenting suitable personal identification as otherwise provided under this section, may access on behalf of the minor any record pertaining to the minor in a system of records. A legal guardian, upon presentation of documentation establishing guardianship and suitable personal identification as otherwise provided under this section, may similarly act on behalf of a data subject declared to be incompetent due to physical or mental incapacity or age by a court of competent jurisdiction. Minors are not precluded from exercising on their own behalf rights given to them by the Privacy Act.

(g) *Accompanying individual.* A data subject requesting access to his records in a system of records may be accompanied by another individual of the data subject's choice during the course of the examination of the record. The official having operational control of the record may require the data subject making the request to submit a signed statement authorizing the accompanying individual's access to the record.

(h) *Access to medical records.* When a request for access involves medical or psychological records that the appropriate system manager believes requires special handling, the data subject should be advised that the material will be provided only to a physician designated by the data subject. Upon receipt of the designation and upon verification of the physician's identity as otherwise provided under this section, the records will be made available to the physician, who will disclose those records to the data subject.

(i) *Exclusion.* Nothing in these regulations permits a data subject's access to any information compiled in reasonable anticipation of a civil action or proceeding (*see* subsection (d)(5) of the Act).

(j) *Maximum access.* This regulation is not intended to preclude access by a data subject to records that are available to that individual under other processes, such as the Freedom of Information Act (5 U.S.C. 552) or the rules of civil or criminal procedure, provided that the appropriate procedures for requesting access thereunder are followed.

§ 2606.204 Request for review of an initial denial of access.

(a)(1) A data subject may submit a written appeal of the decision by OGE or the other agency to deny an initial request for access to records or a no record response.

(i) For records filed directly with OGE, the appeal must be submitted to the Director, Office of Government Ethics, Suite 500, 1201 New York Avenue, NW., Washington, DC 20005–3917.

(ii) For records in OGE's executive branch Governmentwide systems of records that are filed directly with an agency (including the Federal Election Commission) other than OGE, the appeal must be submitted to the Privacy Act access appeals official as specified in the agency's own Privacy Act regulations or the respective head of the agency concerned if it does not have any Privacy Act regulations.

(2) The words "Privacy Act Appeal" should be included on the envelope and at the top of the letter of appeal.

(b) The appeal should contain a brief description of the records involved or copies of the correspondence from OGE or the agency in which the initial request for access was denied. The appeal should attempt to refute the reasons given by OGE or the other agency concerned in its decision to deny the initial request for access or the no record finding.

§ 2606.205 Response to a request for review of an initial denial of access.

(a) If the OGE Director or agency reviewing official determines that access to the records should be granted, the response will state how access will be provided if the records are not included with the response.

(b) Any decision that either partially or fully affirms the initial decision to deny access shall inform the requester of the right to seek judicial review of the decision in accordance with 5 U.S.C. 552a(g) of the Privacy Act.

§ 2606.206 Fees.

(a) *Fees for records filed with OGE*—(1) *Services for which fees will not be charged:*

(i) The search and review time expended by OGE to produce a record;

(ii) The first copy of the records provided; or

(iii) The Office of Government Ethics making the records available to be personally reviewed by the data subject.

(2) *Additional copies of records.* When additional copies of records are requested, an individual may be charged $.15 per page.

(i) *Notice of anticipated fees in excess of $25.00.* If the charge for these additional copies amounts to more than $25.00, the requester will be notified and payment of fees may be required before the additional copies are provided, unless the requester has indicated in advance his willingness to pay fees as high as those anticipated.

(ii) *Advance payments.* An advance payment before additional copies of the records are made will be required if:

(A) The Office estimates or determines that the total fee to be assessed under this section is likely to exceed $250.00. When a determination is made that the allowable charges are likely to exceed $250.00, the requester will be notified of the likely cost and will be required to provide satisfactory assurance of full payment where the requester has a history of prompt payment of Privacy Act fees, or will be required to submit an advance payment of an amount up to the full estimated charges in the case of requesters with no history of payment; or

(B) The requester has previously failed to pay a Privacy Act fee charged in a timely fashion (*i.e.*, within 30 days of the date of the billing). In such cases, the requester may be required to pay the full amount owed plus any applicable interest as provided by paragraph (a)(2)(iii) of this section, and to make an advance payment of the full amount of the estimated fee before the Office begins to process a new request.

(iii) *Interest charges.* Interest charges on an unpaid bill may be assessed starting on the 31st day following the day on which the billing was sent. Interest shall be at the rate prescribed in 31 U.S.C. 3717 and shall accrue from the date of billing. To collect unpaid bills, the Office will follow the provisions of the Debt Collection Act of 1982, as amended (96 Stat. 1749 *et seq.*) and the Debt Collection Improvement Act of 1996 (110 Stat. 1321–358 *et seq.*), including the use of consumer reporting agencies, collection agencies, and offset.

(iv) *Remittance.* Remittance should be made by either a personal check, bank draft or a money order that is payable to the Department of the Treasury of the United States.

(b) *Fees for records filed with agencies other than OGE.* An agency shall apply its own Privacy Act fee schedule for records in OGE's executive branch Governmentwide systems that are filed directly with the agency. An agency that does not have a Privacy Act fee schedule may apply the fee schedule in this section.

§ 2606.207 Accounting of disclosures.

(a) The Office of Government Ethics or the other agency concerned will maintain an accounting of disclosures in cases where records about the data subject are disclosed from OGE's system of records except—

(1) When the disclosure is made pursuant to the Freedom of Information Act, as amended (5 U.S.C. 552); or

(2) When the disclosure is made to those officers and employees of OGE or the other agency which maintains the records who have a need for the records in the performance of their duties.

(b) This accounting of disclosures will be retained for at least five years or for the life of the record, whichever is longer, and will contain the following information:

(1) A brief description of the record disclosed;

(2) The date, nature, and purpose for the disclosure; and

(3) The name and address of the individual, agency, or other entity to whom the disclosure is made.

(c) Under sections 102 and 105 of the Ethics in Government Act, 18 U.S.C. 208(d) and 5 CFR parts 2634 and 2640 of OGE's executive branch regulations, a requester other than the data subject must submit a signed, written application on the OGE Form 201 or agency equivalent form to inspect or receive copies of certain records, such as SF 278 Public Financial Disclosure Reports, Certificates of Divestiture, 18 U.S.C. 208(b)(1) and (b)(3) waivers, and OGE certified qualified blind and diversified trust instruments and other publicly available qualified trust materials. The written application requests the name, occupation and address of the requester as well as lists the prohibitions on obtaining or using the records. These applications are used as the accounting of disclosures for these records.

(d) Except for the accounting of a disclosure made under subsection (b)(7) of the Privacy Act for a civil or criminal law enforcement activity that is authorized by law, the accounting of disclosures will be made available to the data subject upon request in accordance with the access procedures of this part.

Subpart C—Amendment of Records

§ 2606.301 Requests to amend records.

(a) *Amendment request.* A data subject seeking to amend a record or records that pertain to him in a system of records must submit his request in writing in accordance with the following procedures, unless this requirement is waived by the appropriate system manager. Records not subject to the Privacy Act will not be amended in accordance with these provisions.

(b) *Addresses*—(1) *Records in an OGE Governmentwide system of records.* A request to amend a record in an OGE Governmentwide system of records should be sent to the appropriate system manager as follows:

(i) *Records filed directly with OGE by non-OGE employees:* The Deputy Director, Office of Agency Programs, Office of Government Ethics, Suite 500, 1201 New York Avenue, NW., Washington, DC 20005–3917;

(ii) *Records filed with a Designated Agency Ethics Official (DAEO) or the head of a department or agency:* The DAEO at the department or agency concerned; or

(iii) *Records filed with the Federal Election Commission by candidates for President or Vice President:* The General Counsel, Office of General Counsel, Federal Election Commission, 999 E Street, NW., Washington, DC 20463.

(2) *Records in an OGE internal system of records.* A request to amend a record in an OGE internal system of records should include the words "Privacy Act Amendment Request" on both the envelope and at the top of the request letter, and should be sent to the Deputy Director, Office of Administration and Information Management, Office of Government Ethics, Suite 500, 1201 New York Avenue, NW., Washington, DC 20005–3917.

(c) *Contents of request.* (1) A request to amend a record in an OGE Governmentwide system of records or an OGE internal system of records should include the words "Privacy Act Amendment Request" on both the envelope and at the top of the request letter.

(2) The name of the system of records and a brief description of the record(s) proposed for amendment must be included in any request for amendment. In the event the request to amend the record(s) is the result of the data subject's having gained access to the record(s) in accordance with the provisions concerning access to records as set in subpart B of this part, copies of previous correspondence between the requester and OGE or the agency will serve in lieu of a separate description of the record.

(3) The exact portion of the record(s) the data subject seeks to have amended should be indicated clearly. If possible, proposed alternative language should be set forth, or, at a minimum, the reasons why the data subject believes his record is not accurate, relevant, timely, or complete should be set forth with enough particularity to permit OGE or the other agency concerned not only to understand the data subject's basis for the request, but also to make an appropriate amendment to the record.

(d) *Burden of proof.* The data subject has the burden of proof when seeking the amendment of a record. The data subject must furnish sufficient facts to persuade the appropriate system manager of the inaccuracy, irrelevance, untimeliness, or incompleteness of the record.

(e) *Identification requirement.* When the data subject's identity has been previously verified pursuant to § 2606.203, further verification of identity is not required as long as the communication does not suggest a need for verification. If the data subject's identity has not been previously verified, the appropriate system manager may require identification validation as described in § 2606.203.

§ 2606.302 OGE or other agency action on requests.

(a) *Time limit for acknowledging a request for amendment.* To the extent possible, OGE or the other agency concerned will acknowledge receipt of a request to amend a record or records within 10 working days.

(b) *Initial determination on an amendment request.* The decision of OGE or the other agency in response to a request for amendment of a record in a system of records may grant in whole, or deny any part of the request to amend the record(s).

(1) If OGE or the other agency concerned grants the request, the appropriate system manager will amend the record(s) and provide a copy of the amended record(s) to the data subject. Where an accounting of disclosure has been maintained, the system manager shall advise all previous recipients of the record that an amendment has been made and give the substance of the amendment. Where practicable, the system manager shall send a copy of the amended record to previous recipients.

(2) If OGE or the other agency concerned denies the request in whole or in part, the reasons for the denial will be stated in the response letter. In addition, the response letter will state:

(i) The name and address of the official with whom an appeal of the denial may be lodged; and

(ii) A description of any other procedures which may be required of the data subject in order to process the appeal.

§ 2606.303 Request for review of an initial refusal to amend a record.

(a)(1) A data subject may submit a written appeal of the initial decision by OGE or an agency denying a request to amend a record in an OGE system of records.

(i) For records which are filed directly with OGE, the appeal must be submitted to the Director, Office of Government Ethics, Suite 500, 1201 New York Avenue, NW., Washington, DC 20005–3917.

(ii) For records which are filed directly with an agency (including the Federal Election Commission) other than OGE, the appeal must be submitted to the Privacy Act amendments appeals official as specified in the agency's own Privacy Act regulations, or to the respective head of the agency concerned if it does not have Privacy Act regulations.

(2) The words "Privacy Act Appeal" should be included on the envelope and at the top of the letter of the appeal.

(b) The request for review should contain a brief description of the record(s) involved or copies of the correspondence from OGE or the agency in which the request to amend was denied, and the reasons why the data subject believes that the disputed information should be amended.

§ 2606.304 Response to a request for review of an initial refusal to amend; disagreement statements.

(a) The OGE Director or agency reviewing official should make a final determination in writing not later than 30 days from the date the appeal was received. The 30-day period may be extended for good cause. Notice of the extension and the reasons therefor will be sent to the data subject within the 30-day period.

(b) If the OGE Director or agency reviewing official determines that the record(s) should be amended in accordance with the data subject's request, the OGE Director or agency reviewing official will take the necessary steps to advise the data subject, and to direct the appropriate system manager:

(1) To amend the record(s), and

(2) To notify previous recipients of the record(s) for which there is an accounting of disclosure that the record(s) have been amended.

(c) If the appeal decision does not grant in full the request for amendment, the decision letter will notify the data subject that he may:

(1) Obtain judicial review of the decision in accordance with the terms of the Privacy Act at 5 U.S.C. 552a(g); and

(2) File a statement setting forth his reasons for disagreeing with the decision.

(d)(1) A data subject's disagreement statement must be concise. The appropriate system manager has the authority to determine the "conciseness" of the statement, taking into account the scope of the disagreement and the complexity of the issues.

(2) In any disclosure of information about which an individual has filed a statement of disagreement, the appropriate system manager will clearly note any disputed portion(s) of the record(s) and will provide a copy of the statement to persons or other agencies to whom the disputed record or records has been disclosed and for whom an accounting of disclosure has been maintained. A concise statement of the reasons for not making the amendments requested may also be provided.

[FR Doc. 03–12856 Filed 5–21–03; 8:45 am]
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DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 28

[CN–02–006]

RIN 0581–AC17

Revision of User Fees for 2003 Crop Cotton Classification Services to Growers

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: The Agricultural Marketing Service (AMS) is maintaining user fees for cotton producers for 2003 crop cotton classification services under the Cotton Statistics and Estimates Act at the same level as in 2002. This is in accordance with the formula provided in the Uniform Cotton Classing Fees Act of 1987. The 2002 user fee for this classification service was $1.45 per bale. This final rule would maintain the fee for the 2003 crop at $1.45 per bale. The fee and the existing reserve are sufficient to cover the costs of providing classification services, including costs for administration and supervision.

EFFECTIVE DATES: July 1, 2003.

FOR FURTHER INFORMATION CONTACT: Norma McDill, Deputy Administrator, Cotton Program, AMS, USDA, Room 2641–S, STOP 0224, 1400 Independence Avenue, SW., Washington, DC 20250–0224. Telephone (202) 720–2145, facsimile (202) 690–1718, or e-mail *norma.mcdill@usda.gov.*

SUPPLEMENTARY INFORMATION: A proposed rule detailing the revisions was published in the **Federal Register** on March 31, 2003. (68 FR 15385). A 15-day comment period was provided for interested persons to respond to the proposed rule. No comments were received and no changes have been made in the provisions of the final rule.

Executive Order 12866

This final rule has been determined to be not significant for purposes of Executive Order 12866; and, therefore has not been reviewed by the Office of Management and Budget (OMB).

Executive Order 12988

This final rule has been reviewed under Executive Order 12988, Civil Justice Reform. It is not intended to have retroactive effect. This rule would not preempt any state or local laws, regulations, or policies unless they present an irreconcilable conflict with this rule. There are no administrative procedures that must be exhausted prior to any judicial challenge to the provisions of this rule.

Regulatory Flexibility Act

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*) AMS has considered the economic impact of this action on small entities and has determined that its implementation will not have a significant economic impact on a substantial number of small businesses.

The purpose of the RFA is to fit regulatory actions to the scale of businesses subject to such actions so that small businesses will not be disproportionately burdened. There are an estimated 35,000 cotton growers in the U.S. who voluntarily use the AMS cotton classing services annually, and the majority of these cotton growers are small businesses under the criteria established by the Small Business Administration (13 CFR 121.601). Continuing the user fee at the 2002 crop level as stated will not significantly affect small businesses as defined in the RFA because:

(1) The fee represents a very small portion of the cost-per-unit currently borne by those entities utilizing the services. (The 2002 user fee for classification services was $1.45 per bale; the fee for the 2003 crop will be maintained at $1.45 per bale; the 2003 crop is estimated at 17,200,000 bales).

(2) The fee for services will not affect competition in the marketplace; and

(3) The use of classification services is voluntary. For the 2002 crop, 17,145,000 bales were produced; and, virtually all of these bales were voluntarily submitted by growers for the classification service.

(4) Based on the average price paid to growers for cotton from the 2001 crop of 29.8 cents per pound, 500 pound bales of cotton are worth an average of $149 each. The user fee for classification services, $1.45 per bale, is less than one percent of the value of an average bale of cotton.

Paperwork Reduction Act

In compliance with OMB regulations (5 CFR part 1320), which implement the Paperwork Reduction Act (PRA) (44 U.S.C. 3501 *et seq.*), the information collection requirements contained in the provisions to be amended by this proposed rule have been previously approved by OMB and were assigned OMB control number 0581–0009 under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*).

Fees for Classification Under the Cotton Statistics and Estimates Act of 1927

The user fee charged to cotton producers for High Volume Instrument (HVI) classification services under the Cotton Statistics and Estimates Act (7 U.S.C. 473a) was $1.45 per bale during the 2002 harvest season as determined by using the formula provided in the Uniform Cotton Classing Fees Act of 1987, as amended by Public Law 102–237. The fees cover salaries, costs of equipment and supplies, and other overhead costs, including costs for administration, and supervision. These changes will be made effective July 1, 2003, as provided by the Cotton Statistics and Estimates Act.

This final rule establishes the user fee charged to producers for HVI classification at $1.45 per bale during the 2003 harvest season.

Public Law 102–237 amended the formula in the Uniform Cotton Classing Fees Act of 1987 for establishing the producer's classification fee so that the producer's fee is based on the prevailing method of classification requested by producers during the previous year. HVI classing was the prevailing method of cotton classification requested by producers in 2002. Therefore, the 2003 producer's user fee for classification service is based on the 2002 base fee for HVI classification.

The fee was calculated by applying the formula specified in the Uniform

Cotton Classing Fees Act of 1987, as amended by Public Law 102–237. The 2002 base fee for HVI classification exclusive of adjustments, as provided by the Act, was $2.28 per bale. An increase of .84 percent, or 2 cents per bale, increase due to the implicit price deflator of the gross domestic product added to the $2.28 would result in a 2003 base fee of $2.30 per bale. The formula in the Act provides for the use of the percentage change in the implicit price deflator of the gross national product (as indexed for the most recent 12-month period for which statistics are available). However, gross *national* product has been replaced by gross *domestic* product by the Department of Commerce as a more appropriate measure for the short-term monitoring and analysis of the U.S. economy.

The number of bales to be classed by the United States Department of Agriculture from the 2003 crop is estimated at 16,793,610 bales. The 2003 base fee was decreased 15 percent based on the estimated number of bales to be classed (1 percent for every 100,000 bales or portion thereof above the base of 12,500,000, limited to a maximum adjustment of 15 percent). This percentage factor amounts to a 35 cents per bale reduction and was subtracted from the 2003 base fee of $2.30 per bale, resulting in a fee of $1.95 per bale.

With a fee of $1.95 per bale, the projected operating reserve would be 51.09 percent. The Act specifies that the Secretary shall not establish a fee which, when combined with other sources of revenue, will result in a projected operating reserve of more than 25 percent. Accordingly, the fee of $1.95 must be reduced by 50 cents per bale, to $1.45 per bale, to provide an ending accumulated operating reserve for the fiscal year of 25 percent of the projected cost of operating the program. This would establish the 2003 season fee at $1.45 per bale.

Accordingly, § 28.909, paragraph (b) would be revised to reflect the continuation of the HVI classification fee at $1.45 per bale.

As provided for in the Uniform Cotton Classing Fees Act of 1987, as amended, a 5 cent per bale discount would continue to be applied to voluntary centralized billing and collecting agents as specified in § 28.909 (c).

Growers or their designated agents receiving classification data would continue to incur no additional fees if only one method of receiving classification data was requested. The fee for each additional method of receiving classification data in § 28.910 would remain at 5 cents per bale.

Growers or their designated agents receiving classification data would continue to incur no additional fees if only one method of receiving classification data was requested. The fee in § 28.910 (b) for an owner receiving classification data from the central database would remain at 5 cents per bale, and the minimum charge of $5.00 for services provided per monthly billing period would remain the same. The provisions of § 28.910 (c) concerning the fee for new classification memoranda issued from the central database for the business convenience of an owner without reclassification of the cotton will remain the same.

The fee for review classification in § 28.911 would be maintained at $1.45 per bale.

The fee for returning samples after classification in § 28.911 would remain at 40 cents per sample.

List of Subjects in 7 CFR Part 28

Administrative practice and procedure, Cotton, Cotton samples, Grades, Market news, Reporting and record keeping requirements, Standards, Staples, Testing, Warehouses.

For the reasons set forth in the preamble, 7 CFR Part 28 is amended as follows:

PART 28—[AMENDED]

■ 1. The authority citation for 7 CFR Part 28, Subpart D, continues to read as follows:

Authority: 7 U.S.C. 471–476.

■ 2. In § 28.909, paragraph (b) is revised to read as follows:

§ 28.909 Costs.

* * * * *

(b) The cost of High Volume Instrument (HVI) cotton classification service to producers is $1.45 per bale.

* * * * *

■ 3. In § 28.911, the last sentence of paragraph (a) is revised to read as follows:

§ 28.911 Review classification.

(a) *** The fee for review classification is $1.45 per bale.

* * * * *

Dated: May 16, 2003.

A.J. Yates,

Administrator, Agricultural Marketing Service.

[FR Doc. 03–12806 Filed 5–21–03; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 1205

[Doc. # CN–03–002]

Cotton Board Rules and Regulations: Adjusting Supplemental Assessment on Imports, (2003 Amendments)

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: The Agricultural Marketing Service (AMS) is amending the Cotton Board Rules and Regulations by lowering the value assigned to imported cotton for the purpose of calculating supplemental assessments collected for use by the Cotton Research and Promotion Program. An adjustment is required on an annual basis to ensure that the assessments collected on imported cotton and the cotton content of imported products remain similar to those paid on domestically produced cotton.

EFFECTIVE DATE: June 23, 2003.

FOR FURTHER INFORMATION CONTACT: Whitney Rick, Chief, Research and Promotion Staff, Cotton Program, AMS, USDA, Stop 0224, 1400 Independence Ave., SW., Washington, DC 20250–0224, telephone (202) 720–2259, facsimile (202) 690–1718, or email at *whitney.rick@usda.gov.*

SUPPLEMENTARY INFORMATION:

Executive Order 12866

The Office of Management and Budget has waived the review process required by Executive Order 12866 for this action.

Executive Order 12988

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. It is not intended to have retroactive effect. This rule would not preempt any state or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

The Cotton Research and Promotion Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 12 of the Act, any person subject to an order may file with the Secretary a petition stating that the order, any provision of the plan, or any obligation imposed in connection with the order is not in accordance with law and requesting a modification of the order or to be exempted therefrom. Such person is afforded the opportunity for a hearing on the petition. After the hearing, the Secretary would rule on the petition. The Act provides that the District Court of the United States in any district in which the person is an inhabitant, or has his principal place of business, has jurisdiction to review the Secretary's ruling, provided a complaint is filed within 20 days from the date of the entry of ruling.

Regulatory Flexibility Act

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*) AMS has considered the economic impact of this action on small entities and has determined that its implementation will not have a significant economic impact on a substantial number of small businesses.

There are an estimated 10,000 importers who are presently subject to rules and regulations issued pursuant to the Cotton Research and Promotion Order. This rule would affect importers of cotton and cotton-containing products. The majority of these importers are small businesses under the criteria established by the Small Business Administration. This rule would lower the assessments paid by the importers under the Cotton Research and Promotion Order. Even though the assessment would be lowered, the decrease is small and will not significantly affect small businesses. The current assessment on imported cotton is $0.00862 per kilogram of imported cotton. The new assessment is $0.008267, a decrease of $0.000353 or a 4.1 percent decrease. From January through December 2002 approximately $24 million was collected. Should the volume of cotton products imported into the U.S. remain at the same level in 2003, one could expect the decreased assessment to generate approximately $23 million or a 4.1 percent decrease from 2002.

Paperwork Reduction

In compliance with Office of Management and Budget (OMB) regulations (5 CFR part 1320), which implement the Paperwork Reduction Act (PRA) (44 U.S.C. 3501 *et seq.*), the information collection requirements contained in the regulation to be amended have been previously approved by OMB and were assigned control number 0581–0093.

Background

The Cotton Research and Promotion Act Amendments of 1990 enacted by Congress under Subtitle G of Title XIX of the Food, Agriculture, Conservation and Trade Act of 1990 on November 28, 1990, contained two provisions that authorized changes in the funding procedures for the Cotton Research and Promotion Program.

These provisions are: (1) The assessment of imported cotton and cotton products; and (2) termination of the right of cotton producers to demand a refund of assessments.

An amended Cotton Research and Promotion Order was approved by producers and importers voting in a referendum held July 17–26, 1991, and the amended Order was published in the **Federal Register** on December 10, 1991, (56 FR 64470). A proposed rule implementing the amended Order was published in the **Federal Register** on December 17, 1991, (56 FR 65450). Implementing rules were published on July 1 and 2, 1992, (57 FR 29181) and (57 FR 29431), respectively.

This rule will decrease the value assigned to imported cotton in the Cotton Board Rules and Regulations (7 CFR 1205.510(b)(2)). This value is used to calculate supplemental assessments on imported cotton and the cotton content of imported products. Supplemental assessments are the second part of a two-part assessment. The first part of the assessment is levied on the weight of cotton produced or imported at a rate of $1 per bale of cotton which is equivalent to 500 pounds or $1 per 226.8 kilograms of cotton.

Supplemental assessments are levied at a rate of five-tenths of one percent of the value of domestically produced cotton, imported cotton, and the cotton content of imported products. The agency has adopted the practice of assigning the calendar year weighted average price received by U.S. farmers for Upland cotton to represent the value of imported cotton. This is done so that the assessment on domestically produced cotton and the assessment on imported cotton and the cotton content of imported products remain similar. The source for the average price statistic is "Agricultural Prices," a publication of the National Agricultural Statistics Service (NASS) of the Department of Agriculture. Use of the weighted average price figure in the calculation of supplemental assessments on imported cotton and the cotton content of imported products yields an assessment that approximates assessments paid on domestically produced cotton in the prior calendar year.

The current value of imported cotton as published in the **Federal Register** (67 FR 36793) on May 28, 2002, for the purpose of calculating supplemental assessments on imported cotton is $.8422 per kilogram. This number was calculated using the annual weighted average price received by farmers for Upland cotton during the calendar year 2001 which was $0.382 per pound and multiplying by the conversion factor 2.2046. Using the Average Weighted Price Received by U.S. farmers for Upland cotton for the calendar year 2002, which is $0.35 per pound, the new value of imported cotton is $0.7716 per kilogram. The amended value is $.0706 per kilogram less than the previous value.

An example of the complete assessment formula and how the various figures are obtained is as follows:

One bale is equal to 500 pounds.

One kilogram equals 2.2046 pounds.

One pound equals 0.453597 kilograms.

One Dollar per Bale Assessment Converted to Kilograms

A 500 pound bale equals 226.8 kg. (500 × .453597).

$1 per bale assessment equals $0.002000 per pound (1/500) or $0.004409 per kg. (1/226.8).

Supplemental Assessment of 5/10 of One Percent of the Value of the Cotton Converted to Kilograms

The 2002 calendar year weighted average price received by producers for Upland cotton is $0.35 per pound or $0.7716 per kg. (0.35 × 2.2046).

Five tenths of one percent of the average price in kg. equals $0.003858 per kg. (0.7716 × .005).

Total Assessment

The total assessment per kilogram of raw cotton is obtained by adding the $1 per bale equivalent assessment of $0.004409 per kg. and the supplemental assessment $0.003858 per kg. which equals $0.008267 per kg.

The current assessment on imported cotton is $0.008620 per kilogram of imported cotton. The amended assessment is $0.008267, a decrease of $0.000353 per kilogram. This decrease reflects the decrease in the Average Weighted Price of Upland Cotton Received by U.S. Farmers during the period January through December 2002.

Since the value of cotton is the basis of the supplemental assessment calculation and the figures shown in the right hand column of the Import Assessment Table 1205.510(b)(3) are a result of such a calculation, the figures in this table have been revised. These figures indicate the total assessment per kilogram due for each Harmonized Tariff Schedule (HTS) number subject to assessment.

A proposed rule with request for comments was published in the **Federal Register** (68 FR 12310) on March 14,

2003. No comments were received during the period (March 14 through April 14, 2003).

List of Subjects in 7 CFR Part 1205

Advertising, Agricultural research, Cotton, Marketing agreements, Reporting and recordkeeping requirements.

■ For the reasons set forth in the preamble, 7 CFR Part 1205 is amended as follows:

PART 1205—COTTON RESEARCH AND PROMOTION

■ 1. The authority citation for Part 1205 continues to read as follows:

Authority: 7 U.S.C. 2101–2118.

■ 2. In § 1205.510, paragraph (b)(2) and the table in paragraph (b)(3)(ii) are revised to read as follows:

§ 1205.510 Levy of assessments.

* * * * *

(b) * * *

(2) The 12-month average of monthly weighted average prices received by U.S. farmers will be calculated annually. Such weighted average will be used as the value of imported cotton for the purpose of levying the supplemental assessment on imported cotton and will be expressed in kilograms. The value of imported cotton for the purpose of levying this supplemental assessment is $0.8267 per kilogram.

(3) * * *

(ii) * * *

IMPORT ASSESSMENT TABLE

[Raw Cotton Fiber]

HTS No.	Conv. fact.	Cents/kg.
5201000500	0	0.8267
5201001200	0	0.8267
5201001400	0	0.8267
5201001800	0	0.8267
5201002200	0	0.8267
5201002400	0	0.8267
5201002800	0	0.8267
5201003400	0	0.8267
5201003800	0	0.8267
5204110000	1.1111	0.9185
5204200000	1.1111	0.9185
5205111000	1.1111	0.9185
5205112000	1.1111	0.9185
5205121000	1.1111	0.9185
5205122000	1.1111	0.9185
5205131000	1.1111	0.9185
5205132000	1.1111	0.9185
5205141000	1.1111	0.9185
5205210020	1.1111	0.9185
5205210090	1.1111	0.9185
5205220020	1.1111	0.9185
5205220090	1.1111	0.9185
5205230020	1.1111	0.9185
5205230090	1.1111	0.9185
5205240020	1.1111	0.9185
5205240090	1.1111	0.9185

IMPORT ASSESSMENT TABLE—Continued

[Raw Cotton Fiber]

HTS No.	Conv. fact.	Cents/kg.
5205310000	1.1111	0.9185
5205320000	1.1111	0.9185
5205330000	1.1111	0.9185
5205340000	1.1111	0.9185
5205410020	1.1111	0.9185
5205410090	1.1111	0.9185
5205420020	1.1111	0.9185
5205420090	1.1111	0.9185
5205440020	1.1111	0.9185
5205440090	1.1111	0.9185
5206120000	0.5556	0.4593
5206130000	0.5556	0.4593
5206140000	0.5556	0.4593
5206220000	0.5556	0.4593
5206230000	0.5556	0.4593
5206240000	0.5556	0.4593
5206310000	0.5556	0.4593
5207100000	1.1111	0.9185
5207900000	0.5556	0.4593
5208112020	1.1455	0.9470
5208112040	1.1455	0.9470
5208112090	1.1455	0.9470
5208114020	1.1455	0.9470
5208114060	1.1455	0.9470
5208114090	1.1455	0.9470
5208118090	1.1455	0.9470
5208124020	1.1455	0.9470
5208124040	1.1455	0.9470
5208124090	1.1455	0.9470
5208126020	1.1455	0.9470
5208126040	1.1455	0.9470
5208126060	1.1455	0.9470
5208126090	1.1455	0.9470
5208128020	1.1455	0.9470
5208128090	1.1455	0.9470
5208130000	1.1455	0.9470
5208192020	1.1455	0.9470
5208192090	1.1455	0.9470
5208194020	1.1455	0.9470
5208194090	1.1455	0.9470
5208196020	1.1455	0.9470
5208196090	1.1455	0.9470
5208224040	1.1455	0.9470
5208224090	1.1455	0.9470
5208226020	1.1455	0.9470
5208226060	1.1455	0.9470
5208228020	1.1455	0.9470
5208230000	1.1455	0.9470
5208292020	1.1455	0.9470
5208292090	1.1455	0.9470
5208294090	1.1455	0.9470
5208296090	1.1455	0.9470
5208298020	1.1455	0.9470
5208312000	1.1455	0.9470
5208321000	1.1455	0.9470
5208323020	1.1455	0.9470
5208323040	1.1455	0.9470
5208323090	1.1455	0.9470
5208324020	1.1455	0.9470
5208324040	1.1455	0.9470
5208325020	1.1455	0.9470
5208330000	1.1455	0.9470
5208392020	1.1455	0.9470
5208392090	1.1455	0.9470
5208394090	1.1455	0.9470
5208396090	1.1455	0.9470
5208398020	1.1455	0.9470
5208412000	1.1455	0.9470
5208416000	1.1455	0.9470

IMPORT ASSESSMENT TABLE—Continued

[Raw Cotton Fiber]

HTS No.	Conv. fact.	Cents/kg.
5208418000	1.1455	0.9470
5208421000	1.1455	0.9470
5208423000	1.1455	0.9470
5208424000	1.1455	0.9470
5208425000	1.1455	0.9470
5208430000	1.1455	0.9470
5208492000	1.1455	0.9470
5208494020	1.1455	0.9470
5208494090	1.1455	0.9470
5208496010	1.1455	0.9470
5208496090	1.1455	0.9470
5208498090	1.1455	0.9470
5208512000	1.1455	0.9470
5208516060	1.1455	0.9470
5208518090	1.1455	0.9470
5208523020	1.1455	0.9470
5208523045	1.1455	0.9470
5208523090	1.1455	0.9470
5208524020	1.1455	0.9470
5208524045	1.1455	0.9470
5208524065	1.1455	0.9470
5208525020	1.1455	0.9470
5208530000	1.1455	0.9470
5208592025	1.1455	0.9470
5208592095	1.1455	0.9470
5208594090	1.1455	0.9470
5208596090	1.1455	0.9470
5209110020	1.1455	0.9470
5209110035	1.1455	0.9470
5209110090	1.1455	0.9470
5209120020	1.1455	0.9470
5209120040	1.1455	0.9470
5209190020	1.1455	0.9470
5209190040	1.1455	0.9470
5209190060	1.1455	0.9470
5209190090	1.1455	0.9470
5209210090	1.1455	0.9470
5209220020	1.1455	0.9470
5209220040	1.1455	0.9470
5209290040	1.1455	0.9470
5209290090	1.1455	0.9470
5209313000	1.1455	0.9470
5209316020	1.1455	0.9470
5209316035	1.1455	0.9470
5209316050	1.1455	0.9470
5209316090	1.1455	0.9470
5209320020	1.1455	0.9470
5209320040	1.1455	0.9470
5209390020	1.1455	0.9470
5209390040	1.1455	0.9470
5209390060	1.1455	0.9470
5209390080	1.1455	0.9470
5209390090	1.1455	0.9470
5209413000	1.1455	0.9470
5209416020	1.1455	0.9470
5209416040	1.1455	0.9470
5209420020	1.0309	0.8522
5209420040	1.0309	0.8522
5209430030	1.1455	0.9470
5209430050	1.1455	0.9470
5209490020	1.1455	0.9470
5209490090	1.1455	0.9470
5209516035	1.1455	0.9470
5209516050	1.1455	0.9470
5209520020	1.1455	0.9470
5209590025	1.1455	0.9470
5209590040	1.1455	0.9470
5209590090	1.1455	0.9470
5210114020	0.6873	0.5682

IMPORT ASSESSMENT TABLE—Continued

[Raw Cotton Fiber]

HTS No.	Conv. fact.	Cents/kg.
5210114040	0.6873	0.5682
5210116020	0.6873	0.5682
5210116040	0.6873	0.5682
5210116060	0.6873	0.5682
5210118020	0.6873	0.5682
5210120000	0.6873	0.5682
5210192090	0.6873	0.5682
5210214040	0.6873	0.5682
5210216020	0.6873	0.5682
5210216060	0.6873	0.5682
5210218020	0.6873	0.5682
5210314020	0.6873	0.5682
5210314040	0.6873	0.5682
5210316020	0.6873	0.5682
5210318020	0.6873	0.5682
5210414000	0.6873	0.5682
5210416000	0.6873	0.5682
5210418000	0.6873	0.5682
5210498090	0.6873	0.5682
5210514040	0.6873	0.5682
5210516020	0.6873	0.5682
5210516040	0.6873	0.5682
5210516060	0.6873	0.5682
5211110090	0.6873	0.5682
5211120020	0.6873	0.5682
5211190020	0.6873	0.5682
5211190060	0.6873	0.5682
5211210025	0.6873	0.5682
5211210035	0.4165	0.3443
5211210050	0.6873	0.5682
5211290090	0.6873	0.5682
5211320020	0.6873	0.5682
5211390040	0.6873	0.5682
5211390060	0.6873	0.5682
5211490020	0.6873	0.5682
5211490090	0.6873	0.5682
5211590025	0.6873	0.5682
5212146090	0.9164	0.7576
5212156020	0.9164	0.7576
5212216090	0.9164	0.7576
5509530030	0.5556	0.4593
5509530060	0.5556	0.4593
5513110020	0.4009	0.3314
5513110040	0.4009	0.3314
5513110060	0.4009	0.3314
5513110090	0.4009	0.3314
5513120000	0.4009	0.3314
5513130020	0.4009	0.3314
5513210020	0.4009	0.3314
5513310000	0.4009	0.3314
5514120020	0.4009	0.3314
5516420060	0.4009	0.3314
5516910060	0.4009	0.3314
5516930090	0.4009	0.3314
5601210010	1.1455	0.9470
5601210090	1.1455	0.9470
5601300000	1.1455	0.9470
5602109090	0.5727	0.4735
5602290000	1.1455	0.9470
5602906000	0.526	0.4348
5604900000	0.5556	0.4593
5607909000	0.8889	0.7349
5608901000	1.1111	0.9185
5608902300	1.1111	0.9185
5609001000	1.1111	0.9185
5609004000	0.5556	0.4593
5701104000	0.0556	0.0460
5701109000	0.1111	0.0918
5701901010	1.0444	0.8634

IMPORT ASSESSMENT TABLE—Continued

[Raw Cotton Fiber]

HTS No.	Conv. fact.	Cents/kg.
5702109020	1.1	0.9094
5702312000	0.0778	0.0643
5702411000	0.0722	0.0597
5702412000	0.0778	0.0643
5702421000	0.0778	0.0643
5702913000	0.0889	0.0735
5702991010	1.1111	0.9185
5702991090	1.1111	0.9185
5703900000	0.4489	0.3711
5801210000	1.1455	0.9470
5801230000	1.1455	0.9470
5801250010	1.1455	0.9470
5801250020	1.1455	0.9470
5801260020	1.1455	0.9470
5802190000	1.1455	0.9470
5802300030	0.5727	0.4735
5804291000	1.1455	0.9470
5806200010	0.3534	0.2922
5806200090	0.3534	0.2922
5806310000	1.1455	0.9470
5806400000	0.4296	0.3552
5808107000	0.5727	0.4735
5808900010	0.5727	0.4735
5811002000	1.1455	0.9470
6001106000	1.1455	0.9470
6001210000	0.8591	0.7102
6001220000	0.2864	0.2368
6001910010	0.8591	0.7102
6001910020	0.8591	0.7102
6001920020	0.2864	0.2368
6001920030	0.2864	0.2368
6001920040	0.2864	0.2368
6003203000	0.8681	0.7177
6003306000	0.2894	0.2392
6003406000	0.2894	0.2392
6005210000	0.8681	0.7177
6005220000	0.8681	0.7177
6005230000	0.8681	0.7177
6005240000	0.8681	0.7177
6005310010	0.2894	0.2392
6005320010	0.2894	0.2392
6005330010	0.2894	0.2392
6005340010	0.2894	0.2392
6005410010	0.2894	0.2392
6005420010	0.2894	0.2392
6005430010	0.2894	0.2392
6005440010	0.2894	0.2392
6005310080	0.2894	0.2392
6005320080	0.2894	0.2392
6005330080	0.2894	0.2392
6005340080	0.2894	0.2392
6005410080	0.2894	0.2392
6005420080	0.2894	0.2392
6005430080	0.2894	0.2392
6005440080	0.2894	0.2392
6006211000	1.1574	0.9568
6006221000	1.1574	0.9568
6006231000	1.1574	0.9568
6006241000	1.1574	0.9568
6006310040	0.1157	0.0956
6006320040	0.1157	0.0956
6006330040	0.1157	0.0956
6006340040	0.1157	0.0956
6006310080	0.1157	0.0956
6006320080	0.1157	0.0956
6006330080	0.1157	0.0956
6006340085	0.1157	0.0956
6006420085	0.1157	0.0956

IMPORT ASSESSMENT TABLE—Continued

[Raw Cotton Fiber]

HTS No.	Conv. fact.	Cents/kg.
6006430085	0.1157	0.0956
6006440085	0.1157	0.0956
6101200010	1.0094	0.8345
6101200020	1.0094	0.8345
6102200010	1.0094	0.8345
6102200020	1.0094	0.8345
6103421020	0.8806	0.7280
6103421040	0.8806	0.7280
6103421050	0.8806	0.7280
6103421070	0.8806	0.7280
6103431520	0.2516	0.2080
6103431540	0.2516	0.2080
6103431550	0.2516	0.2080
6103431570	0.2516	0.2080
6104220040	0.9002	0.7442
6104220060	0.9002	0.7442
6104320000	0.9207	0.7611
6104420010	0.9002	0.7442
6104420020	0.9002	0.7442
6104520010	0.9312	0.7698
6104520020	0.9312	0.7698
6104622006	0.8806	0.7280
6104622011	0.8806	0.7280
6104622016	0.8806	0.7280
6104622021	0.8806	0.7280
6104622026	0.8806	0.7280
6104622028	0.8806	0.7280
6104622030	0.8806	0.7280
6104622060	0.8806	0.7280
6104632006	0.3774	0.3120
6104632011	0.3774	0.3120
6104632026	0.3774	0.3120
6104632028	0.3774	0.3120
6104632030	0.3774	0.3120
6104632060	0.3774	0.3120
6104692030	0.3858	0.3189
6105100010	0.985	0.8143
6105100020	0.985	0.8143
6105100030	0.985	0.8143
6105202010	0.3078	0.2545
6105202030	0.3078	0.2545
6106100010	0.985	0.8143
6106100020	0.985	0.8143
6106100030	0.985	0.8143
6106202010	0.3078	0.2545
6106202030	0.3078	0.2545
6107110010	1.1322	0.9360
6107110020	1.1322	0.9360
6107120010	0.5032	0.4160
6107210010	0.8806	0.7280
6107220015	0.3774	0.3120
6107220025	0.3774	0.3120
6107910040	1.2581	1.0401
6108210010	1.2445	1.0288
6108210020	1.2445	1.0288
6108310010	1.1201	0.9260
6108310020	1.1201	0.9260
6108320010	0.2489	0.2058
6108320015	0.2489	0.2058
6108320025	0.2489	0.2058
6108910005	1.2445	1.0288
6108910015	1.2445	1.0288
6108910025	1.2445	1.0288
6108910030	1.2445	1.0288
6108920030	0.2489	0.2058
6109100005	0.9956	0.8231
6109100007	0.9956	0.8231
6109100009	0.9956	0.8231
6109100012	0.9956	0.8231

IMPORT ASSESSMENT TABLE—Continued
[Raw Cotton Fiber]

HTS No.	Conv. fact.	Cents/kg.
6109100014	0.9956	0.8231
6109100018	0.9956	0.8231
6109100023	0.9956	0.8231
6109100027	0.9956	0.8231
6109100037	0.9956	0.8231
6109100040	0.9956	0.8231
6109100045	0.9956	0.8231
6109100060	0.9956	0.8231
6109100065	0.9956	0.8231
6109100070	0.9956	0.8231
6109901007	0.3111	0.2572
6109901009	0.3111	0.2572
6109901049	0.3111	0.2572
6109901050	0.3111	0.2572
6109901060	0.3111	0.2572
6109901065	0.3111	0.2572
6109901090	0.3111	0.2572
6110202005	1.1837	0.9786
6110202010	1.1837	0.9786
6110202015	1.1837	0.9786
6110202020	1.1837	0.9786
6110202025	1.1837	0.9786
6110202030	1.1837	0.9786
6110202035	1.1837	0.9786
6110202040	1.1574	0.9568
6110202045	1.1574	0.9568
6110202065	1.1574	0.9568
6110202075	1.1574	0.9568
6110909022	0.263	0.2174
6110909024	0.263	0.2174
6110909030	0.3946	0.3262
6110909040	0.263	0.2174
6110909042	0.263	0.2174
6111201000	1.2581	1.0401
6111202000	1.2581	1.0401
6111203000	1.0064	0.8320
6111205000	1.0064	0.8320
6111206010	1.0064	0.8320
6111206020	1.0064	0.8320
6111206030	1.0064	0.8320
6111206040	1.0064	0.8320
6111305020	0.2516	0.2080
6111305040	0.2516	0.2080
6112110050	0.7548	0.6240
6112120010	0.2516	0.2080
6112120030	0.2516	0.2080
6112120040	0.2516	0.2080
6112120050	0.2516	0.2080
6112120060	0.2516	0.2080
6112390010	1.1322	0.9360
6112490010	0.9435	0.7800
6114200005	0.9002	0.7442
6114200010	0.9002	0.7442
6114200015	0.9002	0.7442
6114200020	1.286	1.0631
6114200040	0.9002	0.7442
6114200046	0.9002	0.7442
6114200052	0.9002	0.7442
6114200060	0.9002	0.7442
6114301010	0.2572	0.2126
6114301020	0.2572	0.2126
6114303030	0.2572	0.2126
6115198010	1.0417	0.8612
6115929000	1.0417	0.8612
6115936020	0.2315	0.1914
6116101300	0.3655	0.3022
6116101720	0.8528	0.7050
6116926420	1.0965	0.9065
6116926430	1.2183	1.0072

IMPORT ASSESSMENT TABLE—Continued
[Raw Cotton Fiber]

HTS No.	Conv. fact.	Cents/kg.
6116926440	1.0965	0.9065
6116928800	1.0965	0.9065
6117809510	0.9747	0.8058
6117809540	0.3655	0.3022
6201121000	0.948	0.7837
6201122010	0.8953	0.7401
6201122050	0.6847	0.5660
6201122060	0.6847	0.5660
6201134030	0.2633	0.2177
6201921000	0.9267	0.7661
6201921500	1.1583	0.9576
6201922010	1.0296	0.8512
6201922021	1.2871	1.0640
6201922031	1.2871	1.0640
6201922041	1.2871	1.0640
6201922051	1.0296	0.8512
6201922061	1.0296	0.8512
6201931000	0.3089	0.2554
6201933511	0.2574	0.2128
6201933521	0.2574	0.2128
6201999060	0.2574	0.2128
6202121000	0.9372	0.7748
6202122010	1.1064	0.9147
6202122025	1.3017	1.0761
6202122050	0.8461	0.6995
6202122060	0.8461	0.6995
6202134005	0.2664	0.2202
6202134020	0.333	0.2753
6202921000	1.0413	0.8608
6202921500	1.0413	0.8608
6202922026	1.3017	1.0761
6202922061	1.0413	0.8608
6202922071	1.0413	0.8608
6202931000	0.3124	0.2583
6202935011	0.2603	0.2152
6202935021	0.2603	0.2152
6203122010	0.1302	0.1076
6203221000	1.3017	1.0761
6203322010	1.2366	1.0223
6203322040	1.2366	1.0223
6203332010	0.1302	0.1076
6203392010	1.1715	0.9685
6203399060	0.2603	0.2152
6203422010	0.9961	0.8235
6203422025	0.9961	0.8235
6203422050	0.9961	0.8235
6203422090	0.9961	0.8235
6203424005	1.2451	1.0293
6203424010	1.2451	1.0293
6203424015	0.9961	0.8235
6203424020	1.2451	1.0293
6203424025	1.2451	1.0293
6203424030	1.2451	1.0293
6203424035	1.2451	1.0293
6203424040	0.9961	0.8235
6203424045	0.9961	0.8235
6203424050	0.9238	0.7637
6203424055	0.9238	0.7637
6203424060	0.9238	0.7637
6203431500	0.1245	0.1029
6203434010	0.1232	0.1018
6203434020	0.1232	0.1018
6203434030	0.1232	0.1018
6203434040	0.1232	0.1018
6203498045	0.249	0.2058
6204132010	0.1302	0.1076
6204192000	0.1302	0.1076
6204198090	0.2603	0.2152
6204221000	1.3017	1.0761

IMPORT ASSESSMENT TABLE—Continued
[Raw Cotton Fiber]

HTS No.	Conv. fact.	Cents/kg.
6204223030	1.0413	0.8608
6204223040	1.0413	0.8608
6204223050	1.0413	0.8608
6204223060	1.0413	0.8608
6204223065	1.0413	0.8608
6204292040	0.3254	0.2690
6204322010	1.2366	1.0223
6204322030	1.0413	0.8608
6204322040	1.0413	0.8608
6204423010	1.2728	1.0522
6204423030	0.9546	0.7892
6204423040	0.9546	0.7892
6204423050	0.9546	0.7892
6204423060	0.9546	0.7892
6204522010	1.2654	1.0461
6204522030	1.2654	1.0461
6204522040	1.2654	1.0461
6204522070	1.0656	0.8809
6204522080	1.0656	0.8809
6204533010	0.2664	0.2202
6204594060	0.2664	0.2202
6204622010	0.9961	0.8235
6204622025	0.9961	0.8235
6204622050	0.9961	0.8235
6204624005	1.2451	1.0293
6204624010	1.2451	1.0293
6204624020	0.9961	0.8235
6204624025	1.2451	1.0293
6204624030	1.2451	1.0293
6204624035	1.2451	1.0293
6204624040	1.2451	1.0293
6204624045	0.9961	0.8235
6204624050	0.9961	0.8235
6204624055	0.9854	0.8146
6204624060	0.9854	0.8146
6204624065	0.9854	0.8146
6204633510	0.2546	0.2105
6204633530	0.2546	0.2105
6204633532	0.2437	0.2015
6204633540	0.2437	0.2015
6204692510	0.249	0.2058
6204692540	0.2437	0.2015
6204699044	0.249	0.2058
6204699046	0.249	0.2058
6204699050	0.249	0.2058
6205202015	0.9961	0.8235
6205202020	0.9961	0.8235
6205202025	0.9961	0.8235
6205202030	0.9961	0.8235
6205202035	1.1206	0.9264
6205202046	0.9961	0.8235
6205202050	0.9961	0.8235
6205202060	0.9961	0.8235
6205202065	0.9961	0.8235
6205202070	0.9961	0.8235
6205202075	0.9961	0.8235
6205302010	0.3113	0.2574
6205302030	0.3113	0.2574
6205302040	0.3113	0.2574
6205302050	0.3113	0.2574
6505302070	0.3113	0.2574
6205302080	0.3113	0.2574
6206100040	0.1245	0.1029
6206303010	0.9961	0.8235
6206303020	0.9961	0.8235
6206303030	0.9961	0.8235
6206303040	0.9961	0.8235
6206303050	0.9961	0.8235
6206303060	0.9961	0.8235

IMPORT ASSESSMENT TABLE—Continued
[Raw Cotton Fiber]

HTS No.	Conv. fact.	Cents/kg.
6206403010	0.3113	0.2574
6206403030	0.3113	0.2574
6206900040	0.249	0.2058
6207110000	1.0852	0.8971
6207199010	0.3617	0.2990
6207210030	1.1085	0.9164
6207220000	0.3695	0.3055
6207911000	1.1455	0.9470
6207913010	1.1455	0.9470
6207913020	1.1455	0.9470
6208210010	1.0583	0.8749
6208210020	1.0583	0.8749
6208220000	0.1245	0.1029
6208911010	1.1455	0.9470
6208911020	1.1455	0.9470
6208913010	1.1455	0.9470
6209201000	1.1577	0.9571
6209203000	0.9749	0.8059
6209205030	0.9749	0.8059
6209205035	0.9749	0.8059
6209205040	1.2186	1.0074
6209205045	0.9749	0.8059
6209205050	0.9749	0.8059
6209303020	0.2463	0.2036
6209303040	0.2463	0.2036
6210109010	0.2291	0.1894
6210403000	0.0391	0.0323
6210405020	0.4556	0.3766
6211111010	0.1273	0.1052
6211111020	0.1273	0.1052
6211118010	1.1455	0.9470
6211118020	1.1455	0.9470
6211320007	0.8461	0.6995
6211320010	1.0413	0.8608
6211320015	1.0413	0.8608
6211320030	0.9763	0.8071
6211320060	0.9763	0.8071
6211320070	0.9763	0.8071
6211330010	0.3254	0.2690
6211330030	0.3905	0.3228
6211330035	0.3905	0.3228
6211330040	0.3905	0.3228
6211420010	1.0413	0.8608
6211420020	1.0413	0.8608
6211420025	1.1715	0.9685
6211420060	1.0413	0.8608
6211420070	1.1715	0.9685
6211430010	0.2603	0.2152
6211430030	0.2603	0.2152
6211430040	0.2603	0.2152
6211430050	0.2603	0.2152
6211430060	0.2603	0.2152
6211430066	0.2603	0.2152
6212105020	0.2412	0.1994
6212109010	0.9646	0.7974
6212109020	0.2412	0.1994
6212200020	0.3014	0.2492
6212900030	0.1929	0.1595
6213201000	1.1809	0.9763
6213202000	1.0628	0.8786
6213901000	0.4724	0.3905
6214900010	0.9043	0.7476
6216000800	0.2351	0.1944
6216001720	0.6752	0.5582
6216003800	1.2058	0.9968
6216004100	1.2058	0.9968
6217109510	1.0182	0.8417
6217109530	0.2546	0.2105
6301300010	0.8766	0.7247

IMPORT ASSESSMENT TABLE—Continued
[Raw Cotton Fiber]

HTS No.	Conv. fact.	Cents/kg.
6301300020	0.8766	0.7247
6302100005	1.1689	0.9663
6302100008	1.1689	0.9663
6302100015	1.1689	0.9663
6302215010	0.8182	0.6764
6302215020	0.8182	0.6764
6302217010	1.1689	0.9663
6302217020	1.1689	0.9663
6302217050	1.1689	0.9663
6302219010	0.8182	0.6764
6302219020	0.8182	0.6764
6302219050	0.8182	0.6764
6302222010	0.4091	0.3382
6302222020	0.4091	0.3382
6302313010	0.8182	0.6764
6302313050	1.1689	0.9663
6302315050	0.8182	0.6764
6302317010	1.1689	0.9663
6302317020	1.1689	0.9663
6302317040	1.1689	0.9663
6302317050	1.1689	0.9663
6302319010	0.8182	0.6764
6302319040	0.8182	0.6764
6302319050	0.8182	0.6764
6302322020	0.4091	0.3382
6302322040	0.4091	0.3382
6302402010	0.9935	0.8213
6302511000	0.5844	0.4831
6302512000	0.8766	0.7247
6302513000	0.5844	0.4831
6302514000	0.8182	0.6764
6302600010	1.1689	0.9663
6302600020	1.052	0.8697
6302600030	1.052	0.8697
6302910005	1.052	0.8697
6302910015	1.1689	0.9663
6302910025	1.052	0.8697
6302910035	1.052	0.8697
6302910045	1.052	0.8697
6302910050	1.052	0.8697
6302910060	1.052	0.8697
6303110000	0.9448	0.7811
6303910010	0.6429	0.5315
6303910020	0.6429	0.5315
6304111000	1.0629	0.8787
6304190500	1.052	0.8697
6304191000	1.1689	0.9663
6304191500	0.4091	0.3382
6304192000	0.4091	0.3382
6304910020	0.9351	0.7730
6304920000	0.9351	0.7730
6505901540	0.181	0.1496
6505902060	0.9935	0.8213
6505902545	0.5844	0.4831

* * * * *

Dated: May 16, 2003.

Kenneth C. Clayton,

Acting Administrator, Agricultural Marketing Service.

[FR Doc. 03–12802 Filed 5–21–03; 8:45 am]

BILLING CODE 3410–02–P

NUCLEAR REGULATORY COMMISSION

10 CFR Part 20

RIN 3150–AH07

Radiation Exposure Reports: Labeling Personal Information, Confirmation of Effective Date

AGENCY: Nuclear Regulatory Commission.

ACTION: Direct final rule: Confirmation of effective date.

SUMMARY: The Nuclear Regulatory Commission (NRC) is confirming the effective date of June 9, 2003, for the direct final rule that was published in the **Federal Register** on March 25, 2003 (68 FR 14307). This direct final rule amended the NRC's regulations on written event reports submitted to the NRC that contain personal information.

DATES: The effective date of June 9, 2003, is confirmed for this direct final rule.

ADDRESSES: Documents related to this rulemaking, including comments received, may be examined at the NRC Public Document Room, Room O–1F23, 11555 Rockville Pike, Rockville, MD. These same documents may also be viewed and downloaded electronically via the rulemaking Web site (*http://ruleforum.llnl.gov*). For information about the interactive rulemaking Web site, contact Ms. Carol Gallagher at (301) 415–5905; e-mail *CAG@nrc.gov*.

FOR FURTHER INFORMATION CONTACT: Merri Horn, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555, telephone (301) 415–8126 (e-mail: *mlh1@nrc.gov*.).

SUPPLEMENTARY INFORMATION: On March 25, 2003 (68 FR 14307), the NRC published in the **Federal Register** a direct final rule amending its regulations in 10 CFR part 20 requiring licensees to clearly label any section of the written event report containing personal information "Privacy Act Information: Not for Public Disclosure." In the direct final rule, NRC stated that if no significant adverse comments were received, the direct final rule would become final on June 9, 2003. The NRC did not receive any comments that warranted withdrawal of the direct final rule. Therefore, this rule will become effective as scheduled.

Dated at Rockville, Maryland, this 16th day of May, 2003.

For the Nuclear Regulatory Commission.

Michael T. Lesar,

Chief, Rules and Directives Branch, Division of Administrative Services, Office of Administration.

[FR Doc. 03–12847 Filed 5–21–03; 8:45 am]

BILLING CODE 7590–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 573

[Docket No. 02F–0327]

Food Additive Permitted in Feed and Drinking Water of Animals; Feed-Grade Biuret

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the regulations for food additives to provide for the safe use of feed-grade biuret in lactating dairy cattle feed. This action is in response to a food additive petition filed by ADM Alliance Nutrition, Inc.

DATES: This rule is effective May 22, 2003; written objections and request for hearing should be submitted by July 23, 2003.

ADDRESSES: Submit written objections to the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852.

FOR FURTHER INFORMATION CONTACT: Sharon Benz, Center for Veterinary Medicine (HFV–228), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301–827–6656.

SUPPLEMENTARY INFORMATION:

I. Background

In a notice published in the **Federal Register** of August 28, 2002 (67 FR 55269), FDA announced that a food additive petition (FAP 2248) had been filed by ADM Alliance Nutrition, Inc., 1000 North 30th St., P.O. Box C1., Quincy, IL 62305–7100. The petition proposed to amend the food additive regulations in Part 573 *Food Additives Permitted in Feed and Drinking Water of Animals* (21 CFR part 573) to provide for the use of feed grade biuret in the diets of lactating dairy cows. The notice of filing provided for a 75-day comment period on the petitioner's environmental information. No substantive comments have been received.

II. Conclusion

FDA has evaluated data submitted by the sponsor of the petition and concludes that the data establish the safety and functionality of feed-grade biuret for use as proposed.

III. Public Disclosure

In accordance with § 571.1(h) (21 CFR 571.1(h)), the petition and the documents that FDA considered and relied upon in reaching its decision to approve the petition are available for inspection at the Center for Veterinary Medicine by appointment with the information contact person listed above. As provided in § 571.1(h), the agency will delete from the documents any materials that are not available for public disclosure before making the documents available for inspection.

IV. Environmental Impact

The agency has determined under 21 CFR 25.32(r) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

V. Objections and Hearing Requests

Any person who will be adversely affected by this regulation may at any time on or before July 23, 2003, file with the Dockets Management Branch (address above) written objections thereto. Each objection shall be separately numbered, and each numbered objection shall specify with particularity the provisions of the regulation to which objection is made and the grounds for the objection. Each numbered objection on which a hearing is requested shall specifically so state. Failure to request a hearing for any particular objection shall constitute a waiver of the right to a hearing on that objection. Each numbered objection for which a hearing is requested shall include a detailed description and analysis of the specific factual information intended to be presented in support of the objection in the event that a hearing is held. Failure to include such a description and analysis for any particular objection shall constitute a waiver of the right to a hearing on the objection. Three copies of all documents shall be submitted and shall be identified with the docket number found in brackets in the heading of this document. Any objections received in response to the regulation may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

List of Subjects in 21 CFR Part 573

Animal feeds, Food additives.

■ Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Veterinary Medicine, 21 CFR part 573 is amended as follows:

PART 573—FOOD ADDITIVES PERMITTED IN FEED AND DRINKING WATER OF ANIMALS

■ 1. The authority citation for 21 CFR part 573 continues to read as follows:

Authority: 21 U.S.C. 321, 342, 348.

§ 573.220 Feed-grade biuret.

■ 2. Section 573.220 *Feed-grade biuret* is amended by removing paragraph (c)(1)(iii).

Dated: May 14, 2003.

Stephen F. Sundlof,

Director, Center for Veterinary Medicine.

[FR Doc. 03–12785 Filed 5–21–03; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF DEFENSE

Office of the Secretary

32 CFR Part 207

RIN 0790–AH02

Implementation of Section 740 of the Wendell H. Ford Aviation Investment and Reform Act for the 21st Century as Amended by Section 1051 of the National Defense Authorization Act for Fiscal Year 2003

AGENCY: Department of Defense.

ACTION: Interim final rule.

SUMMARY: This rule prescribes regulations to implement Section 740 of the Wendell H. Ford Aviation Investment and Reform Act for the 21st Century as amended by Section 1051 of the National Defense Authorization Act for Fiscal Year 2003. The regulations will establish procedures for the sale of excess Department of Defense aircraft to persons or entities that provide oil spill response services (including the application of oil dispersants by air) pursuant to an oil spill response plan that has been approved by the Secretary of the Department in which the Coast Guard is operating.

DATES: Effective May 22, 2003 until September 30, 2006. Comments are requested by July 21, 2003.

ADDRESSES: Forward comments to the Assistant Deputy Under Secretary of Defense (Supply Chain Integration), 3500 Defense Pentagon, Room 3B730, Washington, DC 20301–3500.

FOR FURTHER INFORMATION CONTACT: Debra Bennett (703) 692–6031.

SUPPLEMENTARY INFORMATION:

I. Background

Section 740 of the Wendell H. Ford Aviation Investment and Reform Act for the 21st Century (Public Law 016–181, 114 Stat. 173) states that, notwithstanding section 202 of the Federal Property and Administrative Services Act of 1949 (40 U.S.C. 483) and subject to subsections (b) and (c), the Secretary of Defense may sell, during the period beginning on the date of enactment of this Act and ending September 30, 2002, certain aircraft and aircraft parts to a person or entity that provides oil spill response services (including the application of oil dispersants by air) pursuant to an oil spill response plan that has been approved by the Secretary of the Department in which the Coast Guard is operating. Section 740 states that, as soon as practicable after the date of enactment of the Act, the Secretary of Defense, in consultation with the Secretary of Transportation and the Administrator of General Services, shall prescribe regulations relating to the sale of aircraft and aircraft parts under this section. Section 1051 of the National Defense Authorization Act for Fiscal Year 2003 (Pub. L. 107–314, 116 Stat. 2648) provides for a four-year extension to this authority. This interim final rule prescribes such regulations.

II. Administrative Requirements

A. Executive Order 12866

It has been determined that 32 CFR 207 is not a significant regulatory action. The rule does not (1) have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or state, local, or tribal governments or communities; (2) create a serious inconsistency or otherwise interfere with an action taken or planned by another agency; (3) materially alter the budgetary impact of entitlements, grants, user fees, or loan programs, or the rights and obligations of the recipients thereof; or (4) raise novel legal or policy issues arising out of legal mandates, the President priorities, or the principles set forth in this Executive Order.

B. Unfunded Mandates Reform Act

It has been certified that 32 CFR part 207 does not contain a Federal Mandate that may result in the expenditure by State, local, and tribal governments, in aggregate, or by the private sector, of $100 million or more in any one year.

C. Regulatory Flexibility Act

It has been determined that this rule is not subject to the Regulatory Flexibility Act (5 U.S.C. 601) because it would not, if promulgated, have a significant economic impact on a substantial number of small entities. This rule applies only to the sale of certain aircraft and aircraft parts to those entities that provide oil spill response services. The U.S. Department of Transportation provides the list of eligible entities that may bid on aircraft and aircraft parts.

D. Paperwork Reduction Act

It has been certified that 32 CFR part 207 does not impose any reporting or record-keeping requirements under the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 44).

E. Executive Order 13132

It has been certified that 32 CFR part 207 does not have federalism implications, as set forth in Executive Order 13132.

List of Subjects in 32 CFR Part 207

Aircraft, Oil spill, Oil dispersant.

■ Accordingly, 32 CFR Part 207 is added to read as follows:

PART 207—IMPLEMENTATION OF SECTION 740 OF THE WENDELL H. FORD AVIATION INVESTMENT AND REFORM ACT FOR THE 21ST CENTURY AS AMENDED BY SECTION 1051 OF THE NATIONAL DEFENSE AUTHORIZATION ACT FOR FISCAL YEAR 2003

Sec.

207.1 Background and purpose.
207.2 Applicability.
207.3 Restrictions.
207.4 Qualifications.
207.5 Sale procedures.
207.6 Reutilization and transfer procedures.
207.7 Reporting requirements.
207.8 Expiration.

Authority: Section 740 of Public Law 106–181, 114 STAT. 173 as amended by Section 1051 of Public Law 107–314, 116 STAT. 2648.

§ 207.1 Background and purpose.

Section 740 of the Wendell H. Ford Aviation Investment and Reform Act for the 21st Century, as amended, allows the Department of Defense (DoD), during the period 4 April 2000 through 30 September 2006, to sell aircraft and aircraft parts to a person or entity that provides oil spill response services (including the application of oil dispersants by air). This part implements that section.

§ 207.2 Applicability.

The sections in this part apply to the sale of aircraft and aircraft parts determined to be DoD excess under the definition of the Federal Property Management Regulations (FPMR) or the Federal Management Regulation (FMR), and listed in Attachment 1 of Chapter 4 of DoD 4160.21–M (August 1997) [1] as Category A aircraft authorized for commercial use, to contractors providing oil spill response services.

§ 207.3 Restrictions.

(a) Aircraft and aircraft parts sold under the Act shall be used primarily for oil spill spotting, observation, and dispersant delivery, and may not have a secondary purpose that interferes with oil spill response efforts under an oil spill response plan. Use for a secondary purpose requires the prior written approval of the Secretary of Defense and the Secretary of Transportation, and a certificate from the Federal Aviation Administration, to be obtained in advance, for the proposed secondary use.

(b) Aircraft may not be flown outside of or removed from the U.S. except for the purpose of fulfilling an international agreement to assist in oil spill dispersing efforts, for immediate response efforts for an oil spill outside United States waters that has the potential to threaten United States waters, or for purposes that are jointly approved by the Secretary of Defense and the Secretary of Transportation.

(c) The DoD sale of aircraft and aircraft parts sold under the Act shall not extend past the time limits of the Act.

§ 207.4 Qualifications.

The Secretary of Transportation must certify in writing to the Secretary of Defense prior to sale that the person or entity is capable of meeting the terms and conditions of a contract to perform oil spill response services by air, and that the overall system to be employed by the person or entity for the delivery and application of oil spill dispersants has been sufficiently tested to ensure that the person or entity is capable of participating in an oil spill response plan that has been approved by the Secretary of the Department in which the Coast Guard is operating.

(a) Prior to sales offerings of aircraft or aircraft parts, the U.S. Department of Transportation (DoT) must provide to

[1] Copies may be obtained via Internet at *http://www.dla.mil/dlaps/dod/41602lm/guide.asp.*

the Defense Reutilization and Marketing Service (DRMS), in writing, a list or persons or entities eligible to bid under this Act, including expiration date of each DOT contract, and locations covered by the DOT contract.

(b) This requirement may not be delegated to the U.S. Coast Guard (USCG).

§ 207.5 Sale procedures.

Sale of aircraft and aircraft parts must be in accordance with the provisions of Chapter 4 of DoD 4160.21–M (August 1997), paragraph B 2, and with other pertinent parts of this manual, with the following changes and additions:

(a) Sales shall be limited to the aircraft types listed in Attachment 1 of Chapter 4 of DoD 4160.21–M (August 1997), and parts thereto.

(b) Sales shall be made at fair market value (FMV), as determined by the Secretary of Defense and, to the extent practicable, on a competitive basis.

(1) DRMS must conduct sales utilizing FMVs that are either provided by the Military Services on the Disposal Turn-In Documents (DTIDs) or based on DRMS's professional expertise and knowledge of the market. Advice regarding FMV shall be provided to DRMS by DOT, as appropriate.

(2) If the high bid for a sale item does not equal or exceed the FMV, DRMS is vested with the discretion to reject all bids and reoffer the item:

(i) As excess property on another oil spill sale, if there is indication that reoffer may be successful; or,

(ii) As surplus property if, after reporting the aircraft to the General Services Administration (GSA) for utilization and donation screening, there are no Federal or State Agency requirements as determined by GSA.

(3) Disposition of proceeds from sale of aircraft under the Act, net of DRMS's expenses, will be to the general fund of the United States Treasury as miscellaneous receipts.

(c) Purchasers shall certify that aircraft and aircraft parts will be used only in accordance with conditions stated in § 207.3.

(1) Sales solicitations will require bidders to submit end-use certificates with their bids, stating the intended use and proposed areas of operation.

(2) The completed end-use certificates shall be used in the bid evaluation process.

(d) Sales contracts shall include terms and conditions for verifying and enforcing the use of the aircraft and aircraft parts in accordance with provisions of the guidance.

(1) The DRMS Sales Contracting Officer (SCO) is responsible for verifying and enforcing the use of aircraft and aircraft parts in accordance with the terms and conditions of the sales contract.

(i) Sales contracts include provisions for on-site visits to the purchaser's place(s) of business and/or worksite(s).

(ii) Sales contracts require the purchaser to make available to the SCO, upon his or her request, all records concerning the use of aircraft and aircraft parts.

(2) DOT shall nominate in writing, and the SCO shall appoint, qualified Government employees (not contract employees) to serve as Contracting Officer's Representatives (CORs) for the purpose of conducting on-site verification and enforcement of the use of aircraft and aircraft parts for those purposes permitted by the sales contract.

(i) COR appointments must be in writing and must state the COR's duties, the limitations of the appointment, and the reporting requirements.

(ii) DOT bears all COR costs.

(iii) The SCO may reject any COR nominee for cause, or terminate any COR appointment for cause.

(3) Sales contracts require purchasers to comply with the Federal Aviation Agency (FAA) requirements in Chapter 4 of DoD 4160.21–M (August 1997), paragraphs B 2 b (4) (d) *2* through B 2 b (4) (d) *5*.

(4) Sales contracts require purchasers to comply with the Flight Safety Critical Aircraft Parts regime in Chapter 4 of DoD 4160.21–M (August 1997), paragraph B 26 c and d, and in Attachment 3 to Chapter 4 of DoD 4160.21–M (August 1997).

(5) Sales contracts require purchasers to obtain the prior written consent of the SCO for resale of aircraft or aircraft parts purchased from DRMS under this Act. Resales are only permitted to other entities that, at time of resale, meet the qualifications required of initial purchasers. The SCO must seek, and DOT must provide, written assurance as to the acceptability of a prospective repurchaser before approving resale. Resales will normally be approved for oil spill response contractors that have completed their contracts, or that have had their contracts terminated, or that can provide other valid reasons for seeking resale that are acceptable to the SCO.

(i) If it is determined by the SCO that there is no interest in the aircraft or aircraft parts being offered for resale among entities deemed qualified repurchasers by DOT, the SCO may permit resale to entities outside the oil spill response industry.

(ii) When an aircraft or aircraft parts are determined to be uneconomically repairable and suitable only for cannibalization and/or scrapping, the purchaser shall advise the SCO in writing and provide evidence in the form of a technical inspection document from a qualified FAA airframe and powerplant mechanic, or equivalent.

(iii) The policy outlined in paragraph (d)(5) of this section also applies to resales by repurchasers, and to all other manner of proposed title transfer (including, but not limited to, exchanges and barters).

(iv) Sales of aircraft and aircraft parts under the Act are intended for principals only. Sales offerings will caution prospective purchasers not to buy with the expectation of acting as brokers, dealers, agents, or middlemen for other interested parties.

(6) The failure of a purchaser to comply with the sales contract terms and conditions may be cause for suspension and/or debarment, in addition to other administrative, contractual, civil, and criminal (including, but not limited to, 18 U.S.C. 1001) remedies which may be available to the Department of Defense.

(7) Aircraft parts will be made available as follows:

(i) DRMS may, based on availability and demand, offer for sale under the Act whole unflyable aircraft, aircraft carcasses for cannibalization, or aircraft parts, utilizing substantially the same provisions outlined in paragraphs (a) through (d)(6) of this section for flyable aircraft.

(ii) Sales contracts for unflyable aircraft shall contain a restriction in perpetuity against use for flight. DRMS will not issue a bill of sale for these aircraft. When unflyable aircraft or aircraft residue is to be sold for parts use, the data plates must be removed and destroyed by the owning military service prior to releasing the aircraft to the contractor.

(iii) If DOT requests that DRMS set aside parts for sale under Act, DOT must provide listings of parts required, by National Stock Number and Condition Code.

(iv) Only qualified oil spill response operators who fly the end-item aircraft will be allowed to purchase unflyable aircraft, aircraft carcasses, or aircraft parts applicable to that end-item.

(v) FMVs are not required for aircraft parts. DRMS will utilize historic prices received for similar parts in making sale determinations.

§ 207.6 Reutilization and transfer procedures.

Prior to any sales effort, the Secretary of Defense shall, to the maximum extent practicable, consult with the Administrator of GSA, and with the heads of other Federal departments and agencies as appropriate, regarding reutilization and transfer requirements for aircraft and aircraft parts under this Act (see Chapter 4 of DoD 4160.21–M (August 1997), paragraphs B 2 b (1) through B 2 b (3)).

(a) DOT shall notify Army, Navy, and/or Air Force, in writing, of their aircraft requirements as they arise, by aircraft type listed in Attachment 1 of Chapter 4 of DoD 4160.21–M (August 1997).

(b) When aircraft become excess, the owning Military Service will screen for reutilization requirements within the Department of Defense, and those requirements shall take precedence over DOT requirements under this Act.

(c) *Federal agency transfer:* (1) The Military Service shall report aircraft that survive reutilization screening to GSA Region 9 on a Standard Form 120. The Military Service must advise GSA Region 9 if DOT has lodged a written requirement for the aircraft for use in oil spill response. GSA will screen for Federal agency transfer requirements in accordance with the FMR.

(2) If a Federal agency requirement exists, GSA shall advise the owning Military Service, in writing, of its intent to issue the aircraft to satisfy the Federal agency requirement. The Military Service will notify DOT of the competing Federal requirement for the aircraft. If DOT disputes the priority given to the Federal requirement, it shall end a written notice of dispute to the owning Military Service and to the Deputy Under Secretary of Defense (Logistics and Materiel Readiness (DUSD (L&MR)) within thirty (30) days of receipt of notice from the Military Service. DUSD (L&MR) shall then resolve the dispute, in writing. The aircraft cannot be issued until notification is given and any dispute is resolved.

(d) The Military Services shall: (1) Respond to the DOT, in writing, when excess aircraft that can meet DOT's stated requirements have survived reutilization and transfer screening.

(2) Report excess aircraft that survive reutilization and transfer screening and are available for sale to Headquarters, Defense Reutilization and Marketing Service, ATTN: DRMS–LMI, Federal Center, 74 Washington Avenue North, Battle Creek, Michigan 49017–3092. The Military Services must use a DD Form 1348–1A, DTID, for this purpose.

(3) Transfer excess aircraft that survive reutilization and transfer screening to the Aerospace Maintenance and Regeneration Center (AMARC), Davis-Monthan AFB, AZ, and place the aircraft in an "excess" storage category while aircraft are undergoing oil spill response sale. Aircraft shall not be made available or offered to oil spill response operators from the Military Service's airfield. The Military Service shall be responsible for the AMARC aircraft induction charges. The aircraft purchaser will be liable for all AMARC withdrawal charges, to include any aircraft preparation required from AMARC. Sale of parts required for aircraft preparation is limited to those not required for the operational mission forces, and only if authorized by specific authority of the respective Military Service's weapon system program manager.

§ 207.7 Reporting requirements.

Not later than 31 March 2003, the Secretary of Defense must submit to the Committees on Armed Services and Commerce, Science, and Transportation of the Senate and the Committees on National Security and Transportation and Infrastructure of the House of Representatives a report setting forth the following:

(a) The number and type of aircraft sold under this authority, and the terms and conditions under which the aircraft were sold.

(b) The persons or entities to which the aircraft were sold.

(c) An accounting of the current use of the aircraft sold.

(d) DOT must submit to Headquarters, Defense Reutilization and Marketing Service, ATTN: DRMS–LMI, Federal Center, 74 Washington Avenue North, Battle Creek, Michigan, 49017–3092, not later than 1 February 2006, a report setting forth an accounting of the current disposition of all aircraft sold under the authority of the Act.

(e) DRMS must compile the report, based on sales contract files and (for the third report element) input from the DOT. The report must be provided to Headquarters Defense Logistics Agency not later than 1 March 2006. Headquarters Defense Logistics Agency shall forward the report to Deputy Under Secretary of Defense (Logistics & Materiel Readiness) not later than 15 March 2006.

§ 207.8 Expiration.

This part expires on 30 September 2006.

Dated: May 12, 2003.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 03–12552 Filed 5–21–03; 8:45 am]

BILLING CODE 5001–08–M

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 160

[USCG–2002–11865]

RIN 1625–AA41

Notification of Arrival in U.S. Ports

AGENCY: Coast Guard, DHS.

ACTION: Final rule; partial suspension of regulation.

SUMMARY: The Coast Guard is suspending the Notification of Arrival requirement to electronically submit cargo manifest information, (Customs Form 1302) to Customs and Border Protection. This requirement was published on Feb 28, 2003 and was to be implemented by July 1, 2003. The Coast Guard is suspending this submission requirement pending new Customs and Border Protection regulations.

DATES: This suspension is effective May 22, 2003.

ADDRESSES: Material received from the public, as well as documents mentioned in this preamble as being available in the docket, are part of docket USCG–2002–11865 and are available for inspection or copying at the Docket Management Facility, U.S. Department of Transportation, room PL–401, 400 Seventh Street SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. You may also find this docket on the Internet at *http://dms.dot.gov*.

FOR FURTHER INFORMATION CONTACT: If you have questions on this rule, call LTJG Kimberly B Andersen, U.S. Coast Guard (G–MPP), at 202–267–2562. If you have questions on viewing or submitting material to the docket, call Dorothy Beard, Chief, Dockets, Department of Transportation, at 202–366–5149.

SUPPLEMENTARY INFORMATION:

Background and Purpose

On February 28, 2003, the Coast Guard published its "Notification of Arrival in U.S. Ports" in the **Federal Register** (68 FR 9537). This final rule, which became effective on April 1,

2003, permanently replaced the Coast Guard's temporary requirements for Notification of Arrival in U.S. Ports published on October 4, 2001, in the **Federal Register** (66 FR 50565) and was in addition to the Customs October 31, 2002 rule requiring cargo information 24 hours prior to lading (67 FR 66318).

This final rule requires electronic submission of cargo manifest (Customs form 1302) to Customs and Border Protection via the Automated Manifest System (AMS). Implementation of the requirement for electronic submission of cargo manifest is not required until July 1, 2003.

The cargo manifest submission requirement was established to capture electronically the information on cargo manifest from vessels that were not filing the information electronically with the Customs and Border Protection. While July 1, 2003, is the date for implementing the requirement to electronically transmit data through AMS that is set forth in the Final Rule published on February 28, 2003, the Coast Guard, in consultation with Customs and Border Protection, has decided to suspend the July 1, 2003 implementation date. The date is suspended pending further Custom and Border Protection regulatory action under recent legislation, including the Trade Act of 2002, which should eliminate the need for this requirement in Coast Guard regulations. In that event, the Coast Guard would remove the suspended provisions from its regulation.

List of Subjects in 33 CFR Part 160

Administrative practice and procedure; Harbors; Hazardous materials transportation; Marine safety; Navigation (water); Reporting and recordkeeping requirements; Vessels; Waterways.

■ For the reasons discussed in the preamble, the Coast Guard amends 33 CFR Part 160 as follows:

PART 160—PORTS AND WATERWAYS SAFETY—GENERAL

Subpart C—Notifications of Arrival, Departures, Hazardous Conditions, and Certain Dangerous Cargoes

■ 1. The authority citation for Part 160 is revised to read as follows:

Authority: 33 U.S.C. 1223, 1226, 1231; Department of Homeland Security Delegation No. 0170.

§ 160.203 [Amended]

■ 2. In § 160.203, paragraphs (d) and (e) are suspended.

§ 160.206 [Amended]

■ 3. In § 160.206, item (8) in table 160.206, is suspended.

§ 160.210 [Amended]

■ 4. In § 160.210, in paragraph (b), the last sentence in the paragraph is suspended; in paragraph (c), the last sentence in the paragraph is suspended; and paragraph (d) is suspended.

§ 160.212 [Amended]

■ 5. In § 160.212, paragraph (c) is suspended.

Dated: May 5, 2003.

Paul J. Pluta,

Assistant Commandant for Marine Safety, Security and Environmental Protection.

[FR Doc. 03–12887 Filed 5–21–03; 8:45 am]

BILLING CODE 4910–15–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[MT–001–0010; MT–001–0028; FRL–7489–5]

Approval and Promulgation of Air Quality Implementation Plans; Montana; Billings/Laurel Sulfur Dioxide State Implementation Plan

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is partially approving some, and limitedly approving and limitedly disapproving other, revisions to the Billings/Laurel sulfur dioxide (SO2) State Implementation Plan (SIP) submitted by the State of Montana on July 29, 1998 and May 4, 2000. The May 4, 2000 SIP revision was submitted to satisfy earlier commitments made by the Governor. The intended effect of this action is to make federally enforceable those provisions that EPA is partially and limitedly approving, and to limitedly disapprove those provisions that are not fully approvable. EPA is taking this action under sections 110 and 179 of the Clean Air Act (Act).

DATES: This final rule is effective June 23, 2003.

ADDRESSES: Copies of the documents relevant to this action are available for public inspection during normal business hours at the Air and Radiation Program, Environmental Protection Agency, Region 8, 999 18th Street, Suite 300, Denver, Colorado, 80202 and copies of the Incorporation by Reference material may be inspected at the Air and Radiation Docket and Information Center, U.S. Environmental Protection Agency, Room B–108 (Mail Code 6102T), 1301 Constitution Ave., NW., Washington, DC 20460. Copies of the State documents relevant to this action are available for public inspection at the Montana Department of Environmental Quality, Air and Waste Management Bureau, 1520 E. 6th Avenue, Helena, Montana 59620.

FOR FURTHER INFORMATION CONTACT: Laurie Ostrand, EPA, Region 8, (303) 312–6437.

SUPPLEMENTARY INFORMATION:

Table of Contents

Definitions
I. Summary of EPA's Final Action on Portions of the State of Montana's July 29, 1998 Submittal and all of the May 4, 2000 Submittal
II. Background
III. Statutory and Executive Order Reviews

Definitions

For the purpose of this document, we are giving meaning to certain words or initials as follows:

(i) The words or initials *Act* or *CAA* mean or refer to the Clean Air Act, unless the context indicates otherwise.

(ii) The initials *CO* mean or refer to carbon monoxide.

(iii) The words *EPA, we, us* or *our* mean or refer to the United States Environmental Protection Agency.

(iv) The initials *SIP* mean or refer to State Implementation Plan.

(v) The initials *SO2* mean or refer to sulfur dioxide.

(vi) The words *State* or *Montana* mean the State of Montana, unless the context indicates otherwise.

(vii) The initials *SWS* mean or refer to sour water stripper.

(viii) The initials *YELP* mean or refer to the Yellowstone Energy Limited Partnership.

I. Summary of EPA's Final Action on Portions of the State of Montana's July 29, 1998 Submittal and All of the May 4, 2000 Submittal

We are approving the following provisions:

• YELP's emission limits in sections 3(A)(1) through (3) and reporting requirements in section 7(C)(1)(b) of YELP's exhibit A submitted on May 4, 2000.

• Provisions related to the burning of SWS overheads in the F–1 Crude Furnace (and exhausted through the F–2 Crude/Vacuum Heater stack) at ExxonMobil in sections 3(E)(4) and 4(E) (excluding "or in the flare" and "or the flare" in both sections), 3(A)(2), and 3(B)(3) of ExxonMobil's exhibit A, submitted on July 29, 1998 and method #6A–1 of attachment #2 of ExxonMobil's exhibit A, submitted on May 4, 2000.

• Minor changes in sections 3, 3(A) and 3(B) (only the introductory paragraphs); and sections 3(E)(3), 6(B)(7), 7(B)(1)(d), 7(B)(1)(j), 7(C)(1)(b), 7(C)(1)(d), 7(C)(1)(f), and 7(C)(1)(l) of ExxonMobil's exhibit A, submitted on May 4, 2000.

We are limitedly approving and limitedly disapproving the following provisions:

• Provisions related to the fuel gas combustion emission limitations at ExxonMobil in sections 3(B)(2), 4(B), and 6(B)(3) of ExxonMobil's exhibit A, submitted on July 29, 1998 and section 3(A)(1) of ExxonMobil's exhibit A, submitted on May 4, 2000.

• Provisions related to ExxonMobil's coker CO-boiler emission limitation in sections 2(A)(11)(d), 3(B)(1) and 4(C) of ExxonMobil's exhibit A, submitted on May 4, 2000.

• Provisions related to the burning of SWS overheads at Cenex in sections 3(B)(2) and 4(D) (excluding "or in the flare" and "or the flare" in both sections), 3(A)(1)(d), and 4(B) of Cenex's exhibit A, submitted on July 29, 1998, and method #6A–1 of attachment #2 of Cenex's exhibit A, submitted on May 4, 2000.

We caution that if sources are subject to more stringent requirements under other provisions of the Act (*e.g.*, section 111 new source performance standards; Title I, Part C, (prevention of significant deterioration); or SIP-approved permit programs under Title I, Part A), our approval and limited approval of the SIP (including emission limitations and other requirements), would not excuse sources from meeting these other more stringent requirements. Also, our action on this SIP is not meant to imply any sort of applicability determination under other provisions of the Act (*e.g.*, section 111; Title I, Part C; or SIP-approved permit programs under Title I, Part A).

II. Background

On May 2, 2002, 67 FR 22242, we proposed action on portions of the State of Montana's July 29, 1998 submittal and all of the May 4, 2000 submittal. No comments were received on our proposed action. We are finalizing our action as proposed. For further information regarding the basis for this action, the reader should refer to our proposed action.

Once we approve a SIP, or parts of a SIP, the portions approved are legally enforceable by us and citizens under the Act. Once we limitedly approve/disapprove a SIP, or parts of a SIP, the portions limitedly approved/disapproved are also legally enforceable by us and citizens under the Act. Under a limited approval/disapproval action, we approve and disapprove the entire rule even though parts of it do and parts do not satisfy requirements under the Act. The rule remains a part of the SIP, however, even though there is a disapproval, because the rule strengthens the SIP. The disapproval only concerns the failure of the rule to meet specific requirements of the Act and does not affect incorporation of the rule as part of the approved, federally enforceable SIP. By disapproving parts of the plan, we are determining that the requirements necessary to demonstrate attainment in the area have not been met and we may develop a plan or parts of a plan to assure that attainment will be achieved.

EPA believes partially and limitedly approving the Billings/Laurel SO2 SIP meets the requirements of section 110(l) of the Act. The provisions of the plan that we are partially and limitedly approving strengthen the Montana SIP by providing specific emission limits for several SO2 sources in Billings/Laurel. This will achieve progress toward attaining the SO2 NAAQS.

III. Statutory and Executive Order Reviews

A. Executive Order 12866, Regulatory Planning and Review

The Office of Management and Budget (OMB) has exempted this regulatory action from Executive Order 12866, entitled "Regulatory Planning and Review."

B. Paperwork Reduction Act

Under the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*, OMB must approve all "collections of information" by EPA. The Act defines "collection of information" as a requirement for "answers to * * * identical reporting or recordkeeping requirements imposed on ten or more persons * * *" 44 U.S.C. 3502(3)(A). Because this rule does not impose an information collection burden, the Paperwork Reduction Act does not apply.

C. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) generally requires an agency to conduct a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and small governmental jurisdictions.

This partial and limited approval rule will not have a significant impact on a substantial number of small entities because SIP approvals under section 110 and subchapter I, part D of the Clean Air Act do not create any new requirements but simply approve requirements that the State is already imposing. Moreover, due to the nature of the Federal-State relationship under the Clean Air Act, preparation of flexibility analysis would constitute Federal inquiry into the economic reasonableness of state action. The Clean Air Act forbids EPA to base its actions concerning SIPs on such grounds. *Union Electric Co.*, v. *U.S. EPA*, 427 U.S. 246, 255–66 (1976); 42 U.S.C. 7410(a)(2).

Moreover, EPA's limited disapproval will not have a significant impact on a substantial number of small entities because the limited disapproval action only affects two industrial sources of air pollution in Billings/Laurel, Montana: Cenex Harvest Cooperatives and ExxonMobil Company, USA. Only a limited number of sources are impacted by this action. Furthermore, as explained in this action, the submission does not meet the requirements of the Clean Air Act and EPA cannot approve the submission. The limited disapproval will not affect any existing State requirements applicable to the entities. Federal disapproval of a State submittal does not affect its State enforceability. Therefore, I certify that this action will not have a significant economic impact on a substantial number of small entities.

D. Unfunded Mandates Reform Act

Under section 202 of the Unfunded Mandates Reform Act of 1995 ("Unfunded Mandates Act"), signed into law on March 22, 1995, EPA must prepare a budgetary impact statement to accompany any proposed or final rule that includes a Federal mandate that may result in estimated costs to State, local, or tribal governments in the aggregate; or to the private sector, of $100 million or more. Under section 205, EPA must select the most cost-effective and least burdensome alternative that achieves the objectives of the rule and is consistent with statutory requirements. Section 203 requires EPA to establish a plan for informing and advising any small governments that may be significantly or uniquely impacted by the rule.

EPA has determined that the partial and limited approval and limited disapproval actions do not include a Federal mandate that may result in estimated costs of $100 million or more to either State, local, or tribal

governments in the aggregate, or to the private sector. This Federal action partially and limitedly approves and limitedly disapproves pre-existing requirements under State or local law, and imposes no new requirements. Accordingly, no additional costs to State, local, or tribal governments, or to the private sector, result from this action.

E. Executive Order 13132, Federalism

Federalism (64 FR 43255, August 10, 1999) revokes and replaces Executive Orders 12612 (Federalism) and 12875 (Enhancing the Intergovernmental Partnership). Executive Order 13132 requires EPA to develop an accountable process to ensure "meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications." "Policies that have federalism implications" is defined in the Executive Order to include regulations that have "substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government." Under Executive Order 13132, EPA may not issue a regulation that has federalism implications, that imposes substantial direct compliance costs, and that is not required by statute, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by State and local governments, or EPA consults with State and local officials early in the process of developing the proposed regulation. EPA also may not issue a regulation that has federalism implications and that preempts State law unless the Agency consults with State and local officials early in the process of developing the proposed regulation.

This rule will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132, because it merely partially or limitedly approves and limitedly disapproves a state rule implementing a federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. Thus, the requirements of section 6 of the Executive Order do not apply to this rule.

F. Executive Order 13175, Consultation and Coordination With Indian Tribal Governments

Executive Order 13175, entitled "Consultation and Coordination with Indian Tribal Governments" (65 FR 67249, November 6, 2000), requires EPA to develop an accountable process to ensure "meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications." This final rule does not have tribal implications, as specified in Executive Order 13175. It will not have substantial direct effects on tribal governments, on the relationship between the Federal government and Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes. This action does not involve or impose any requirements that affect Indian Tribes. Thus, Executive Order 13175 does not apply to this rule.

G. Executive Order 13045, Protection of Children From Environmental Health and Safety Risk

Protection of Children from Environmental Health Risks and Safety Risks (62 FR 19885, April 23, 1997), applies to any rule that: (1) Is determined to be "economically significant" as defined under Executive Order 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency.

This rule is not subject to Executive Order 13045 because it does not involve decisions intended to mitigate environmental health or safety risks.

H. Executive Order 13211, Actions That Significantly Affect Energy Supply, Distribution, or Use

This rule is not subject to Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use" (66 FR 28355, May 22, 2001) because it is not a significant regulatory action under Executive Order 12866.

I. National Technology Transfer and Advancement Act

Section 12 of the National Technology Transfer and Advancement Act (NTTAA) of 1995 requires Federal agencies to evaluate existing technical standards when developing a new regulation. To comply with NTTAA, EPA must consider and use "voluntary consensus standards" (VCS) if available and applicable when developing programs and policies unless doing so would be inconsistent with applicable law or otherwise impractical.

The EPA believes that VCS are inapplicable to this action. Today's action does not require the public to perform activities conducive to the use of VCS.

J. Congressional Review Act

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. Section 804, however, exempts from section 801 the following types of rules: rules of particular applicability; rules relating to agency management or personnel; and rules of agency organization, procedure, or practice that do not substantially affect the rights or obligations of non-agency parties. 5 U.S.C. 804(3). EPA is not required to submit a rule report regarding this action under section 801 because this is a rule of particular applicability.

K. Petitions for Judicial Review

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by July 21, 2003. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (*See* section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Reporting and recordkeeping requirements, Sulfur oxides.

Dated: April 17, 2003.

Robert E. Roberts,

Regional Administrator, Region 8.

■ 40 CFR part 52 is amended to read as follows:

PART 52—[AMENDED]

■ 1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

Subpart BB—Montana

■ 2. Section 52.1370 is amended by adding paragraph (c)(52) to read as follows:

§ 52.1370 Identification of plan

* * * * *

(c) * * *

(52) The Governor of Montana submitted sulfur dioxide (SO_2) SIP revisions for Billings/Laurel on July 29, 1998 and May 4, 2000. EPA is approving some of the provisions of the July 29, 1998 submittal that it did not approve before. The May 4, 2000 submittal revises some previously approved provisions of the Billings/Laurel SO_2 SIP and adds new provisions.

(i) Incorporation by reference.

(A) Sections 3(B)(2) and 4(D) (excluding "or the flare" and "or the flare" in both sections), 3(A)(1)(d) and 4(B) of Cenex Harvest States Cooperatives' exhibit A to the stipulation between the Montana Department of Environmental Quality and Cenex Harvest States Cooperatives, adopted June 12, 1998 by Board Order issued by the Montana Board of Environmental Review.

(B) Board Order issued March 17, 2000 by the Montana Board of Environmental Review adopting and incorporating the February 14, 2000 stipulation between the Montana Department of Environmental Quality and Cenex Harvest States Cooperatives. This stipulation revises attachment #2 to Cenex Harvest States Cooperatives' exhibit A to require the use of method #6A–1.

(C) Sections 3(E)(4) and 4(E) (excluding "or in the flare" and "or the flare" in both sections), 3(A)(2), 3(B)(2), 3(B)(3), 4(B) and 6(B)(3) of Exxon's exhibit A to the stipulation between the Montana Department of Environmental Quality and Exxon, adopted June 12, 1998 by Board Order issued by the Montana Board of Environmental Review.

(D) Board Order issued March 17, 2000, by the Montana Board of Environmental Review adopting and incorporating the February 14, 2000 stipulation between the Montana Department of Environmental Quality and Exxon Mobil Corporation. The stipulation adds the following to Exxon Mobil Corporation's exhibit A: method #6A–1 of attachment #2 and sections 2(A)(11)(d), 4(C), 7(B)(1)(j) and 7(C)(1)(l). The stipulation revises the following sections of Exxon Mobil Corporation's exhibit A: 3 (introductory text only), 3(A) (introductory text only), 3(A)(1), 3(B) (introductory text only), 3(B)(1), 3(E)(3), 6(B)(7), 7(B)(1)(d), 7(C)(1)(b), 7(C)(1)(d), and 7(C)(1)(f).

(E) Board Order issued on March 17, 2000, by the Montana Board of Environmental Review adopting and incorporating the February 14, 2000 stipulation between the Montana Department of Environmental Quality and Yellowstone Energy Limited Partnership (YELP). The stipulation revises the following sections of YELP's exhibit A: sections 3(A)(1) through (3) and 7(C)(1)(b).

■ 3. In § 52.1384, add paragraph (e) to read as follows:

§ 52.1384 Emission control regulations.

* * * * *

(e) In 40 CFR 52.1370(c)(52), we approved portions of the Billings/Laurel Sulfur Dioxide SIP for the limited purpose of strengthening the SIP. Those provisions that we limitedly approved are hereby limitedly disapproved. This limited disapproval does not prevent EPA, citizens, or the State from enforcing the provisions. This paragraph identifies those provisions of the Billings/Laurel SO_2 SIP identified in 40 CFR 52.1370(c)(52) that have been limitedly disapproved.

(1) Sections 3(B)(2) and 4(D) (excluding "or in the flare" and "or the flare" in both sections, which was previously disapproved in paragraphs (d)(1)(i)(B) and (C) above), 3(A)(1)(d) and 4(B) of Cenex Harvest State Cooperatives' exhibit A to the stipulation between the Montana Department of Environmental Quality and Cenex Harvest State Cooperatives, adopted June 12, 1998 by Board Order issued by the Montana Board of Environmental Review.

(2) Method #6A–1 of attachment #2 of Cenex Harvest State Cooperatives' exhibit A, as revised pursuant to the stipulation between the Montana Department of Environmental Quality and Cenex Harvest State Cooperatives, adopted by Board Order issued on March 17, 2000, by the Montana Board of Environmental Review.

(3) Sections 3(B)(2), 4(B), and 6(B)(3) of Exxon's exhibit A to the stipulation between the Montana Department of Environmental Quality and Exxon, adopted on June 12, 1998 by Board Order issued by the Montana Board of Environmental Review.

(4) Sections 2(A)(11)(d), 3(A)(1), 3(B)(1) and 4(C) of Exxon Mobil Corporation's exhibit A, as revised pursuant to the stipulation between the Montana Department of Environmental Quality and Exxon Mobil Corporation, adopted by Board Order issued on March 17, 2000, by the Montana Board of Environmental Review.

[FR Doc. 03–12616 Filed 5–21–03; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 62

[VT–1226a; FRL–7502–1]

Approval and Promulgation of State Plans for Designated Facilities and Pollutants: Vermont; Negative Declaration

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is approving the sections 111(d) negative declaration submitted by the Vermont Department of Environmental Conservation (DEC) on August 20, 1996. This negative declaration adequately certifies that there are no existing municipal solid waste (MSW) landfills located in the state of Vermont that have accepted waste since November 8, 1987 and that must install collection and control systems according to EPA's emissions guidelines for existing MSW landfills. EPA publishes regulations under sections 111(d) and 129 of the Clean Air Act requiring states to submit control plans to EPA. These state control plans show how states intend to control the emissions of designated pollutants from designated facilities (*e.g.*, landfills). The state of Vermont submitted this negative declaration in lieu of a state control plan.

DATES: This direct final rule is effective on July 21, 2003 without further notice unless EPA receives significant adverse comment by June 23, 2003. If EPA receives adverse comment, we will publish a timely withdrawal of the direct final rule in the **Federal Register** and inform the public that the rule will not take effect.

ADDRESSES: You should address your written comments to: Mr. Steven Rapp, Chief, Air Permits, Toxics & Indoor Programs Unit, Office of Ecosystem Protection, U.S. EPA, One Congress Street, Suite 1100 (CAP), Boston, MA 02114–2023.

Copies of the documents relevant to this action are available for public inspection during normal business hours, by appointment at the Office of Ecosystem Protection, U.S.

Environmental Protection Agency, Region I, One Congress Street, 11th floor, Boston, MA.

FOR FURTHER INFORMATION CONTACT: John J. Courcier, (617) 918–1659.

SUPPLEMENTARY INFORMATION:

Table of Contents

I. What action is EPA taking today?
II. What is the origin of the requirements?
III. When did the requirements first become known?
IV. When did Vermont submit its negative declaration?
V. Regulatory Assessment Requirements

I. What Action Is EPA Taking Today?

EPA is approving the negative declaration submitted by the state of Vermont on August 20, 1996.

EPA is publishing this negative declaration without prior proposal because the Agency views this as a noncontroversial amendment and anticipates no adverse comments. However, in the proposed rules section of this **Federal Register**, EPA is publishing a separate document that will serve as the proposal to approve this negative declaration should relevant adverse comments be filed. If EPA receives no significant adverse comment by June 23, 2003, this action will be effective July 21, 2003.

If EPA receives significant adverse comments by the above date, we will withdraw this action before the effective date by publishing a subsequent document in the **Federal Register**. EPA will address all public comments received in a subsequent final rule based on the parallel proposed rule published in today's **Federal Register**. EPA will not institute a second comment period on this action. Any parties interested in commenting on this action should do so at this time. If EPA receives no comments, this action will be effective July 21, 2003.

II. What Is the Origin of the Requirements?

Under section 111(d) of the Clean Air Act, EPA published regulations at 40 CFR part 60, subpart B which require states to submit plans to control emissions of designated pollutants from designated facilities. In the event that a state does not have a particular designated facility located within its boundaries, EPA requires that a negative declaration be submitted in lieu of a control plan.

III. When Did the Requirements First Become Known?

On May 30, 1991 (56 FR 24468), EPA proposed emission guidelines for existing MSW landfills. This action enabled EPA to list existing MSW landfills as designated facilities. EPA specified non-methane organic compounds (NMOC) as a designated pollutant by proposing the emission guidelines for existing MSW landfills. These guidelines were published in final form on March 12, 1996 (61 FR 9905).

IV. When Did Vermont Submit Its Negative Declaration?

On August 20, 1996, the Vermont Department of Environmental Conservation (DEC) submitted a letter certifying that there are no existing MSW landfills subject to 40 CFR part 60, subpart B. Section 111(d) and 40 CFR 62.06 provide that when no such designated facilities exist within a state's boundaries, the affected state may submit a letter of "negative declaration" instead of a control plan. EPA is publishing this negative declaration at 40 CFR 62.11485.

V. Regulatory Assessment Requirements

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a "significant regulatory action" and therefore is not subject to review by the Office of Management and Budget. For this reason, this action is also not subject to Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use" (66 FR 28355, May 22, 2001). This action merely approves state law as meeting Federal requirements and imposes no additional requirements beyond those imposed by state law. Accordingly, the Administrator certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this rule approves pre-existing requirements under state law and does not impose any additional enforceable duty beyond that required by state law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4).

This rule also does not have tribal implications because it will not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000). This action also does not have Federalism implications because it does not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999), because it merely approves a state rule implementing a federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. This rule also is not subject to Executive Order 13045 "Protection of Children from Environmental Health Risks and Safety Risks" (62 FR 19885, April 23, 1997), because it is not economically significant.

In reviewing sections 111(d)/129 State Plans, EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. In this context, in the absence of a prior existing requirement for the State to use voluntary consensus standards (VCS), EPA has no authority to disapprove a state plan for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews a state plan, to use VCS in place of a submission that otherwise satisfies the provisions of the Clean Air Act. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*)

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a "major rule" as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by July 21, 2003. Interested parties should comment in response to the proposed rule rather than petition for judicial review, unless the objection arises after the comment period allowed for in the proposal. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 62

Environmental protection, Administrative practice and procedure, Air pollution control, Intergovernmental relations, Reporting and recordkeeping requirements, Waste treatment and disposal.

Dated: May 8, 2003.

Robert W. Varney,

Regional Administrator, EPA New England.

■ 40 CFR part 62 is amended as follows:

PART 62—[AMENDED]

■ 1. The authority citation for part 62 continues to read as follows:

Authority: 42 U.S.C. 7401–7671q.

Subpart UU—Vermont

■ 2. Subpart UU is amended by adding a new § 62.11485 and a new undesignated center heading to read as follows:

Emission From Existing Municipal Solid Waste Landfills

§ 62.11485 Identification of Plan—negative declaration.

On August 20, 1996, the Vermont Department of Environmental Conservation submitted a letter certifying that there are no existing municipal solid waste landfills in the state subject to the emission guidelines under part 60, subpart B of this chapter.

[FR Doc. 03–12863 Filed 5–21–03; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 63

[OAR–2002–0086, FRL–7461–3]

RIN 2060–AG93

National Emission Standards for Hazardous Air Pollutants for Semiconductor Manufacturing

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This action promulgates national emission standards for hazardous air pollutants (NESHAP) for new and existing semiconductor manufacturing operations located at major sources of emissions of hazardous air pollutants (HAP). The final standards implement section 112(d) of the Clean Air Act (CAA), which requires the Administrator to regulate emissions of HAP listed in section 112(b) of the CAA. The intent of the standards is to protect public health and the environment by requiring new and existing major sources to control emissions to the level attainable by implementing the maximum achievable control technology (MACT). The primary HAP that will be controlled with this action include hydrochloric acid (HCl), hydrogen flouride (HF), methanol, glycol ethers, and xylene. Exposure to these substances has been demonstrated to cause adverse health effects such as irritation of the lung, eye, and mucous membranes; effects on the central nervous system; liver and kidney damage; and, possibly cancer. We do not have the type of current detailed data on each of the facilities and the people living around the facilities covered by today's final rule for this source category that would be necessary to conduct an analysis to determine the actual population exposures to the HAP emitted from these facilities and the potential for resultant health effects. Therefore, we do not know the extent to which the adverse health effects described above occur in the populations surrounding these facilities. However, to the extent the adverse effects do occur, and today's final rule reduces emissions, subsequent exposures will be reduced.

EFFECTIVE DATE: May 22, 2003.

ADDRESSES: Docket No. A–97–15 and E-Docket No. OAR–2002–0086 contain supporting information used in developing the standards for the semiconductor manufacturing source category. The docket is located at EPA Docket Center (Air Docket), U.S. EPA, 1301 Constitution Avenue, NW., Room B108, Mail Code: 6102T, Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: Mr. John Schaefer, U.S. EPA, Office of Air Quality Planning and Standards, Emission Standards Division (C504–05), Research Triangle Park, NC 27711, telephone number (919) 541–0296, electronic mail (e-mail) address: *schaefer.john@epa.gov*.

SUPPLEMENTARY INFORMATION: *Docket.* The docket is an organized and complete file of all the information considered by the EPA in the development of the rule. The docket is a dynamic file because material is added throughout the rule development process. The docketing system is intended to allow members of the public and industries involved to readily identify and locate documents so that they can effectively participate in the rule development process. Along with the proposed and promulgated standards and their preambles, the contents of the docket will serve as the record in the case of judicial review. (See section 307(d)(7)(A) of the CAA.) The regulatory text and other materials related to the final rule are available for review in the docket or copies may be mailed on request from the Air and Radiation Docket and Information Center by calling (202) 566–1742. A reasonable fee may be charged for copying docket materials.

Electronic Docket Access. You may access the final rule electronically through the EPA Internet under the "**Federal Register**" listings at *http://www.epa.gov/fedrgstr/*. An electronic version of the public docket is available through EPA's electronic public docket and comment system, EPA Dockets. You may use EPA Dockets at *http://www.epa.gov/edocket/* to view public comments, access the index listing of the contents of the official public docket, and to access those documents in the public docket that are available electronically. Although not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the docket facility in the above paragraph entitled "Docket." Once in the system, select "search," then key in the appropriate docket identification number.

World Wide Web (WWW). In addition to being available in the docket, an electronic copy of the final rule will also be available on the WWW through the EPA's Technology Transfer Network (TTN). Following signature by the EPA Administrator, a copy of the final rule will be posted on the TTN's policy and guidance page for newly proposed or promulgated rules at *http://www.epa.gov/ttn/oarpg*. The TTN provides information and technology exchange in various areas of air pollution control. If more information regarding the TTN is needed, call the TTN HELP line at (919) 541–5384.

Regulated Entities. Categories and entities potentially regulated by this action include those listed on the following table. This table is not intended to be exhaustive, but is just a guide to entities likely to be regulated by these standards. It lists the types of entities that may be regulated, but you

should examine the applicability criteria in §§ 63.7181 and 63.7182 of the final rule to decide whether your facility is regulated by the standards. If you have any questions about whether your facility is subject to the standards, call the person listed in the preceding **FOR FURTHER INFORMATION CONTACT** section.

CATEGORIES AND ENTITIES POTENTIALLY REGULATED BY THE STANDARDS

Category	NAICS code	SIC code	Examples of regulated entities
Industrial	334413	3674	Semiconductor crystal growing facilities, semiconductor wafer fabrication facilities, semiconductor test and assembly facilities.

Judicial Review. Under section 307(b) of the CAA, judicial review of the final rule is available only by filing a petition for review in the United States Court of Appeals for the District of Columbia Circuit by July 21, 2003. Under section 307(d)(7)(B) of the CAA, only an objection to the rule which was raised with reasonable specificity during the period for public comment can be raised during judicial review. Moreover, under section 307(b)(2) of the CAA, the requirements established by this final action may not be challenged separately in any civil or criminal proceeding we bring to enforce these requirements.

Outline. The information presented in this preamble is organized as follows:

I. Background
A. What Is the Source of Authority for Development of NESHAP?
B. What Criteria Do We Use in the Development of NESHAP?
II. What Changes and Clarifications Have We Made for the Final Standards?
A. MACT Floors and Emission Limits
B. Compliance Options and Procedures
III. Response to Comments on the Proposed NESHAP for Semiconductor Manufacturing
IV. What Are the Final Standards?
A. What Is the Source Category?
B. What Is the Affected Source?
C. What Are the Emission Standards?
V. When Must I Comply With the Final Rule?
VI. What Are the Testing and Initial Compliance Requirements?
A. Test Methods and Procedures
B. Monitoring Requirements
VII. What Notification, Recordkeeping, and Reporting Requirements Must I Follow?
VIII. What Are the Environmental, Energy, and Economic Impacts of the Final Rule?
A. What Are the Secondary and Energy Impacts?
B. What Are the Cost Impacts?
C. What Are the Economic Impacts?
IX. Statutory and Executive Order Reviews
A. Executive Order 12866: Regulatory Planning and Review
B. Paperwork Reduction Act
C. Regulatory Flexibility Act
D. Unfunded Mandates Reform Act
E. Executive Order 13132: Federalism
F. Executive Order 13175: Consultation and Coordination With Indian Tribal Governments
G. Executive Order 13045: Protection of Children From Environmental Health & Safety Risks
H. Executive Order 13211: Actions That Significantly Affect Energy Supply, Distribution, or Use
I. National Technology Transfer Advancement Act
J. Congressional Review Act

I. Background

A. What Is the Source of Authority for Development of NESHAP?

Section 112 of the CAA requires us to list categories and subcategories of major sources and area sources of HAP and to establish NESHAP for the listed source categories and subcategories. On July 16, 1992, major source categories covered by the NESHAP were listed under the Semiconductor Manufacturing industry group (57 FR 31576). Major sources of HAP are those that have the potential to emit considering controls, in the aggregate, 10 tons per year (tpy) or more of any HAP or 25 tpy or more of any combination of HAP.

B. What Criteria Do We Use in the Development of NESHAP?

Section 112 of the CAA requires that we establish NESHAP for the control of HAP from both new and existing major sources. The CAA requires the NESHAP to reflect the maximum degree of reduction in emissions of HAP that is achievable. This level of control is commonly referred to as MACT.

The MACT floor is the minimum control level allowed for NESHAP and is defined under section 112(d)(3) of the CAA. In essence, the MACT floor ensures that the standard is set at a level that assures that all major sources achieve the level of control at least as stringent as that already achieved by the better-controlled and lower-emitting sources in each source category or subcategory. For new sources, the MACT floor cannot be less stringent than the emission control that is achieved in practice by the best-controlled similar source. The MACT standards for existing sources can be less stringent than the standards for new sources, but they cannot be less stringent than the average emission limitation achieved by the best performing 12 percent of existing sources in the category or subcategory (or the best performing five sources for categories with fewer than 30 sources).

In developing MACT, we also consider control options that are more stringent than the floor. We may establish standards more stringent than the floor based on consideration of the cost of achieving the emission reductions, any health and environmental impacts, and energy requirements.

II. What Changes and Clarifications Have We Made for the Final Standards?

In response to public comments received on the proposed standards, we made several changes in developing the final rule. Some of the changes had a direct effect on the MACT floors and emission limits, while other changes clarified the substantive requirements for the final rule. A more comprehensive summary of comments and responses can be found in Docket No. A–97–15 and E–Docket No. OAR–2002–0086.

A. MACT Floors and Emission Limits

Process vents. When we developed the original MACT floors for process vents, we first determined the control efficiency, expressed as percent emission reduction, for each process vent for which we had inlet and outlet HAP concentration data. We then ranked the process vents based on the control efficiency achieved. Based on the best performing five process vents, we determined that thermal oxidation was used for emission control on four of them. Consequently, we selected thermal oxidation as the MACT floor. For the emission limit, we chose 98 percent control as representative of the level of control typically achieved by thermal oxidizers in practice. We decided not to base the emission limit on the reported performance of the thermal oxidizers because, in all cases, the inlet streams were high volume with low concentration of HAP. Under those conditions, measurements of the actual performance of a thermal oxidizer can be unreliable. As such, we believe

choosing 98 percent control efficiency is more representative of what the thermal oxidizers can consistently achieve in practice.

One commenter objected to this procedure, stating that the CAA directs us to consider only the actual performance of the sources used to establish the MACT floor. The commenter believed that we should revise the MACT floor and emission limits based on the reported performance of the five best performing sources. While we agree that the CAA directs us to base the MACT floors on actual performance, we believe that the test data do not accurately represent actual performance because of the high-volume, low-concentration nature of the emission streams.

In response to this comment, we decided to reevaluate the process vent MACT floor by considering organic and inorganic streams separately, as suggested by another commenter. By doing so, we can more accurately assess the performance of the different control devices used for these two types of emission streams.

Organic emission streams are almost always controlled by some type of thermal oxidation. As discussed above, measurements of thermal oxidizer performance can be unreliable for high-volume, low-concentration streams. Thus, we continue to believe that the test data for organic HAP emission control we obtained for thermal oxidizers controlling semiconductor manufacturing process vents may not accurately portray actual performance. Thus, our original selection of a known achievable emission reduction percentage, as used for MACT in rules such as the Hazardous Organic NESHAP or HON (57 FR 19402), better represents actual performance as directed by the CAA. For the final rule, we retained 98 percent control as the emission limit for organic emission streams from process vents. We also retained the alternative emission limit of 20 parts per million by volume (ppmv) for organic emission streams.

For inorganic emissions from process vents, all the data we obtained showed that scrubbers were used to control those emissions. Unlike thermal oxidizers, scrubbers experience less erratic performance characteristics with high-volume, low-concentration emission streams. Accordingly, we were able to use the actual performance data to establish the MACT floor for the control of inorganic emissions from process vents. Again, using the top five best performing process vents, we established the MACT floor as 95 percent control. Based on the actual outlet emissions of those five process vents, we established the alternative emission limit as 0.42 ppmv.

Storage tanks. We received comments on whether all of the tanks we included in the MACT floor analysis were the type of tank we intended to regulate through the rulemaking. The comments provided additional clarifying information on a number of the tanks we used to develop the MACT floor. Specifically, the comments questioned whether storage tanks for wastewater with very low concentration of HAP, waste storage tanks already covered under the Resource Conservation and Recovery Act (RCRA), and wastewater treatment tanks should have been included in the MACT floor analysis.

With the exception of wastewater treatment tanks, it was our intent to include all of these types of tanks in the affected source. However, based on the additional information provided by the industry, we have concluded that it was not appropriate to develop one MACT floor for all types of tanks due to the wide range of emissions from the each type of tank. Therefore, we developed separate MACT floors for chemical storage tanks (including waste storage tanks regulated under RCRA) and wastewater storage tanks.

We found that the level of control, based on the top five best performing sources in each data set, is the same for each type of tank. The level of control is to reduce emissions through the use of a scrubber and is identical to the level of control used to establish the MACT floor that was the basis of the emission limits in the proposed rule. However, based on other comments we received, we have decided not to use the same MACT floor procedure for the final rule.

Since the semiconductor industry storage tank emission streams will have similar characteristics to those of process vents (*i.e.*, low pollutant concentration), rather than hydrochloric acid production industry storage tanks, we now believe the most representative similar sources for evaluating the MACT floor for storage tanks are the semiconductor industry process vents. Therefore, in response to the comments concerning our use of hydrochloric acid production industry storage tanks as the most representative similar source, we are adopting the process vent inorganic HAP emission limits for all storage tanks required to control emissions in the final rule.

The comments we received clarified that the reported wastewater treatment tanks were not actually storage tanks but flow-through tanks used for certain continuous treatment processes such as pH adjustment. The tank volume merely allows for a buffer so that the treatment can be adequately carried out. All of the flow-through tanks in the data supplied by the industry are controlled by scrubbers. However, the industry also provided information that the purpose of all of these scrubbers was primarily to control ammonia odors. We do not believe that requiring scrubbers on flow-through tanks would result in significant reductions of HAP emissions, nor was it our intent in the proposed rule to regulate such tanks. Therefore, the definition of storage tank that we added to the final rule clarifies that flow-through tanks are not considered storage tanks for the purposes of the final rule.

We made an additional change for the final rule based on our revised storage tank MACT floor analysis. Because we eliminated several tanks from the data set used in the MACT floor analysis, the cutoff for the smallest size tank for which the final rule applies increased from 800 gallons to 1,500 gallons. We also revised our analysis of alternatives more stringent than the MACT floor to reflect the increased tank size. We found that the cost per ton of additional emission reduction (approximately $300,000/ton) is still too great to warrant a more stringent level of control. We have also included a definition for "storage tank" to 40 CFR 63.7195 to clarify which tanks we intended to be subject to the final rule.

B. Compliance Options and Procedures

As part of our reevaluation of the MACT floors for process vents as described above, we also considered other compliance options to reflect our position on the performance of control devices. While we believe the performance of scrubbers controlling high-volume, low-concentration emission streams can be measured, we also recognize that control efficiency cannot always be reliably predicted for such streams. Also, facilities may choose to use a control device other than a scrubber which may be more difficult to measure performance. For these situations, we have included a compliance option to the final rule (see 40 CFR 63.7187(i)) that allows a source to perform a design evaluation of the add-on control device. If the inlet concentration of inorganic HAP is less than or equal to 20 ppmv, then the facility may choose to perform a design evaluation of the control device that demonstrates the device is capable of achieving the required control efficiency.

We chose 20 ppmv as the cutoff for allowing a design evaluation because the data we obtained showed erratic

performance measurement values below this level. The test results show control device performance decreasing as the inlet concentration decreases. However, the last entry shows that even at very low inlet concentrations, control device performance can sometimes be high. These data show the difficulty of measuring control device performance with high-volume, low-concentration inlet streams, and why we believe a design evaluation procedure is necessary. In the final rule, we have adopted the design evaluation procedure alternative from the Pharmaceuticals Production NESHAP (40 CFR part 63, subpart GGG).

During our review of the proposed rule, we realized that we inadvertently omitted Method 26A of 40 CFR part 60, appendix A, for analysis of emission streams for inorganic HAP. The final rule includes this test method.

III. Response to Comments on the Proposed NESHAP for Semiconductor Manufacturing

Comment: One commenter requested that EPA consider providing exemptions that would exclude insignificant sources from regulation. The commenter argued that the administrative burdens associated with the proposed rule are unwarranted for such sources. The commenter further argued that if additional add-on control devices would be required, it would result in insignificant HAP reductions. Another commenter suggested that storage tanks are insignificant HAP emission sources and should be excluded from the final rule.

Response: While we understand the commenters' concern with the burden imposed by regulation of sources with low annual emissions, the CAA does not provide a mechanism by which we can exempt such emission sources from the affected source solely on the basis of emissions. Additionally, some facilities in the semiconductor industry are characterized by multiple point sources of emissions, many of which have low annual emissions. If we exempted all such sources, there is a possibility that a large portion of the emissions from the facility could escape regulation. For these reasons, we are not exempting sources with low HAP emissions from the final rule.

Comment: One commenter contended that EPA's exemption of sources during periods of startup, shutdown, and malfunction is a violation of the requirement for continuous compliance. The commenter argued that EPA may only allow unavoidable deviations from emissions standards and must require that sources use best air pollution control practices during those periods.

Response: We disagree with the commenter's interpretation of the proposed rule. The General Provisions at 40 CFR 63.6(e)(1)(i) require that sources must at all times, including periods of startup, shutdown, and malfunction, maintain the affected source in a manner such that emissions are minimized to the level required by the relevant standard. That section further clarifies that this means to "meet the emission standards or comply with the startup, shutdown, and malfunction plan." The purpose of the startup, shutdown, and malfunction plan (SSMP), as described in 40 CFR 63.6(e)(3)(i)(A), is to:

> [e]nsure that, at all times, the owner or operator operate and maintain affected sources, including associated air pollution control and monitoring equipment, in a manner consistent with safety and good air pollution control practices for minimizing emissions to at least the levels required by the relevant standards.

A properly written SSMP does not allow the source to emit at whatever levels they want merely because they comply with what they have written in the SSMP. Under the SSMP, the source must detail the procedures that will be used to maintain emissions within the limits set by the rule during periods of startup, shutdown, and malfunction. In this case, the SSMP is analogous to parameter monitoring for evaluating continuous compliance of add-on control devices. Just as maintaining the temperature of a thermal oxidizer at the proper operating temperature as determined during the initial compliance demonstration is deemed to be compliance with the emission limits, following the SSMP is deemed to be compliance with emission limits during periods of startup, shutdown, and malfunction.

Comment: One commenter was concerned with the burden of compliance as proposed at facilities that are classified as major sources of HAP due to processes other than semiconductor manufacturing and that only conduct minimal production of semiconductors for research and development purposes. The commenter requested that EPA add a *de minimis* threshold for rule applicability.

Response: Through our data gathering efforts, we found that research and development activities are often integrated into the production activities at semiconductor manufacturing facilities. Such research and development activities are often used in actual production because the technology upon which the manufacturing process is based undergoes substantial change every few years. This extremely short technology life cycle results in constant research and development efforts geared toward developing and implementing new manufacturing technologies. The continual research and development efforts result in an ongoing integration of new technologies into mainstream production operations. New manufacturing operations are typically not developed apart from existing manufacturing operations, but rather side-by-side with them. The new operations are gradually integrated into mainstream production. As such, the majority of research and development work is done in a manner nearly indistinguishable from the existing manufacturing process.

Given the manner in which research and development activities are integrated into production, there is no bright line distinction between research and development and production. They are located in the same clean rooms and, more importantly, share the same exhaust plenums and emission control devices. For these reasons, the research and development activities are considered part of the production process and are within the affected source.

We note, however, that the research and development operations have to be located at a semiconductor manufacturing facility to be considered a semiconductor manufacturing process unit. Therefore, research and development activities that are not used to produce semiconductors for commerce, or produce them only for captive use, would not be semiconductor manufacturing process units and would not be subject to the final rule. Nor would research and development operations that are stand alone activities (that is, not integrated into the production process) be subject to the final rule. We modified 40 CFR 63.7182(b) of the final rule to clarify this point.

Comment: One commenter argued that EPA must regulate all major sources and believed the proposed rule fails to do this because it does not apply to sources that installed add-on control devices after the facility was designed and commenced operation. The commenter interpreted the court's ruling in *Alabama Power* (*Alabama Power Co.* v. *U.S. EPA*, 636 F.2d 323 (DC Cir. 1979)) as specifying that controls must be incorporated into the original design of the facility in order to be considered when calculating the facility's potential to emit.

Response: We believe the commenter incorrectly interpreted the court's decision in *Alabama Power*. That case addressed, in part, the interpretation of "potential to emit" in the definition of major source in the prevention of significant deterioration (PSD) regulations (also part of the CAA, but unrelated to hazardous air pollutant regulations). The court found that EPA "must look to the facility's 'design capacity' a concept which not only includes a facility's maximum productive capacity * * * but also takes into account the anticipated functioning of the air pollution control equipment designed into the facility." (*Alabama Power*, 636 F.2d at 353). The commenter has interpreted this statement to mean that only controls that were part of the original design of the facility can be taken into account when calculating potential to emit. Nowhere does the court state or even imply such a result in its decision. The commenter failed to take into account that the PSD regulations define a *preconstruction* permitting process. Because the air emission sources under consideration in the PSD process have yet to be constructed, the permitting process must necessarily deal with only designs of future air emission sources. We believe the court's language reflects only this aspect of the PSD review process, not the interpretation given by the commenter.

The NESHAP program, on the other hand, is concerned with air emission sources already in existence, as well as new sources. If we were to apply the wording of *Alabama Power* to the NESHAP program, our interpretation would be that the phrase "designed into the facility" means any air emission control equipment in use at the facility at the time a major source determination must be made, not the interpretation given by the commenter. This is reflected in our memorandum [1] on the interim policy on federal enforceability of limitations on potential to emit. In this memorandum, we stated:

> [T]he EPA regulations provide that "controls" (*i.e.*, both pollution control equipment and operational restrictions) that limit a source's maximum capacity to emit a pollutant may be considered in determining its potential to emit. Historically, large numbers of new or modified sources that otherwise would be subject to PSD and NSR permitting requirements have limited their PTE in order to obtain "synthetic minor" status and thereby avoid major source requirements. With the advent of operating permit programs under Title V and the MACT program under section 112, many sources that otherwise would be subject to these new requirements under the Clean Air Act Amendments of 1990 also have obtained, or plan to obtain, PTE limits to avoid coverage.

The phrase "have obtained, or plan to obtain" implies that these sources will be adding controls to limit emissions. Since these controls would be added to an existing facility, they could not have been designed into the facility before it was ever constructed. Thus, the commenter's interpretation is incorrect, and we have made no changes for the final rule in response to this comment.

Comment: One commenter requested that a definition for "process vent" be added to the final rule. Additionally, the commenter further argued that if EPA cannot exclude research and development vents from the definition of process vents, then the final rule must provide an exemption for research and development activities consistent with section 112(c)(7) of the CAA.

A second commenter was also concerned with the absence of a definition for process vent. The commenter pointed out that the absence of a definition results in ambiguity regarding compliance obligations. The commenter also suggested that a process vent definition would allow EPA to exclude categories of emission points with negligible emissions potential.

Response: We agree that a definition of "process vent" would be beneficial in determining which emission points at a semiconductor manufacturing facility are subject to the emission limitations in 40 CFR 63.7184 of the final rule. Because the affected source is defined in terms of semiconductor manufacturing process units (see 40 CFR 63.7182), the process vents subject to regulation necessarily must originate from these process units. Therefore, we have included the following definition to 40 CFR 63.7195: *Process vent* means the point at which HAP emissions are released to the atmosphere from a semiconductor manufacturing process unit or storage tank by means of a stack, chimney, vent, or other functionally equivalent opening. The HAP emission points originating from wastewater treatment equipment, other than storage tanks, are not considered to be a process vent, unless the wastewater treatment equipment emission points are connected to a common vent or exhaust plenum with other process vents.

We do not believe any of the other process vent exemptions requested by these commenters are appropriate. Research and development operations are considered to be part of the overall semiconductor manufacturing process unless they are stand alone operations. We believe that relief valve discharge points, process analyzers, and conservation vents can be adequately connected to process vent exhaust ducts, if this is not already the case. Emergency electrical generators are not included in the definition of semiconductor manufacturing process unit, so there is no need to exclude them from the definition of process vent.

Comment: One commenter was concerned about the broad definition of "control device" in 40 CFR 63.981(a). According to the commenter, this paragraph could be interpreted to mean that certain devices that are part of the process (not an add-on control device) would be subject to the rule.

Response: We agree that there are certain devices used by the semiconductor industry that could be construed as control devices but are in fact an inherent part of the process, and that clarification is necessary in the final rule. In response, we have included the following definition to 40 CFR 63.7195: *Control device* means a combustion device, recovery device, recapture device, or any combination of these devices used for the primary purpose of reducing emissions to comply with this subpart. Devices that are inherent to a process or are integral to the operation of a process are not considered control devices for the purposes of this subpart, even though these devices may have the secondary effect of reducing emissions.

Comment: One commenter objected to the EPA's approach of using area source information to establish the MACT floor as being inconsistent with section 112(d)(3) of the CAA. The commenter believed that area sources are not part of the semiconductor manufacturing category for major sources and should not be relied on for establishing the MACT floor.

Response: Section 112(a)(1) of the CAA defines major source as "any stationary source or group of stationary sources * * * that emits or has the potential to emit considering controls, in the aggregate, 10 tpy or more of any hazardous air pollutant or 25 tpy or more of any combination of hazardous air pollutants." An area source is then defined in section 112(a)(2) as any stationary source that is not a major source. The facilities which we used to establish the MACT floor were "synthetic minor" sources, meaning that they reduced their potential to emit below the major source threshold (here, through the use of add-on control devices and material substitution). Without these controls, these facilities

[1] "Release of Interim Policy on Federal Enforceability of Limitations on Potential to Emit" (January 22, 1996) (available at *http://www.epa.gov/ttn/oarpg/t5/memoranda/pte122.pdf*).

would have the potential to emit at major source levels.

We disagree that the MACT floors must be based solely on major sources of HAP emissions. Section 112(d)(1) of the CAA directs us to promulgate rules for categories of major and area sources of HAP emissions. Then, section 112(d)(2) mandates that these standards "shall require the maximum degree of reduction in emissions * * * achievable for new or existing sources." Section 112(d)(3) specifies how we are to determine the maximum degree of emission reduction and describes it as "not less stringent than the emission control that is achieved in practice by the best controlled similar source" for new sources, and for existing sources describes it as "the average emission limitation achieved by the best performing 12 percent of the existing sources * * *" Even though Congress saw fit to distinguish between major and area sources in many other places in section 112 of the CAA, they specifically did not require that the floor be based on major sources. Throughout section 112(d), Congress simply used the term "source." We interpret this to mean that Congress left it to our discretion to determine the most appropriate sources on which to base the MACT floors. Accordingly, for the proposed rule we used both major sources and synthetic minor sources as the basis of the MACT floors. We believe our interpretation of section 112(d) of the CAA is correct, and no changes were made for the final rule as a result of these comments.

Comment: One commenter contended that EPA may not set floors for process vents based on the technology of thermal oxidizers, but must identify the best performing process vents, determine their actual performance, and calculate floors based on the average of that performance. Another commenter questioned the validity of establishing a single concentration for total HAP emissions from process vents and requested that different control and concentration limits be set for the organic HAP and inorganic HAP emissions.

Response: After reviewing the procedure we used to establish the MACT floors in light of these comments, we agree that we should first establish a MACT floor for both organic and inorganic HAP emissions from process vents (other than storage tanks) and then evaluate the appropriate emission limits for each. Based on a revised analysis, we calculated the MACT floor for organic process vents to be 98 percent control, or an organic HAP emission limit of 20 ppmv, which were the emission limits in the proposed rule. For inorganic HAP, we calculated the MACT floor to be 95 percent control or an inorganic emission limit of 0.42 ppmv. We have written 40 CFR 63.7184 of the final rule to reflect these revised MACT floors.

Comment: One commenter had several concerns with the approach used to establish the MACT floor for storage tanks. The commenter believed that area source semiconductor manufacturing facilities and HCl production sources are not part of the major source semiconductor manufacturing category and should not have been relied on to set the storage tank MACT floor. Two commenters requested that any storage tank limits should be limited specifically to tanks storing HCl or hydrofluoric acid (HF).

Another commenter argued that EPA improperly based floors for storage tanks over 800 gallons on the performance of scrubbers. The commenter stated that EPA must identify the relevant best performing storage tanks, determine their actual performance, and recalculate floors for storage tanks over 800 gallons based on the average of that performance. The commenter also contended that EPA must conduct beyond-the-floor analysis for storage tanks under 800 gallons to determine the maximum degree of emissions reductions achievable.

One commenter argued that any final rule should exclude hazardous waste storage tanks and vessels storing wastewater. The commenter contended that EPA has not made the required MACT finding for hazardous waste storage tanks and vessels storing wastewater. The commenter further argued that hazardous waste storage vessels and vessels storing wastewater have low HAP concentrations and do not warrant regulation beyond RCRA requirements.

Response: We agree that the procedure outlined by these commenters is the best procedure for determining the MACT floors, assuming that the appropriate data are available. In the case of storage tanks, we had no such data. The only data the industry could provide to us were the size of the tank, contents of the tank, and whether emissions from the tank were controlled. No performance data were available for the tank emission controls used by the semiconductor industry. For these reasons, we used data on the performance of the most representative similar source for which data were available, which were for scrubbers on HCl storage tanks obtained from the HCl manufacturing industry. Based on these comments, we now believe it is more appropriate to develop separate MACT floors for the different types of storage tanks in the semiconductor industry, and that it was inappropriate to use storage tanks from the HCl production industry as the most representative similar source.

It was always our intent to include all storage and wastewater tanks containing HAP in the affected source. However, based on the additional information provided by the industry, we have concluded that it was not appropriate to develop one MACT floor for all types of tanks due to the wide range of emissions from the each type of tank. While we cannot exempt an emission source solely due to the low annual emissions from that source, we thought that the MACT floor level of control could be influenced by the level of emissions from each type of tank and the existing regulations (*i.e.*, RCRA) to which some tanks may be subject. Therefore, we developed separate MACT floors for chemical storage tanks (including waste storage tanks regulated under RCRA), wastewater storage tanks, and wastewater treatment tanks.

We found that the MACT floor level of control for both chemical storage tanks and wastewater storage tanks, based on the top five best performing sources in each data set, is the same for each type of tank. The level of control is to reduce emissions through the use of a scrubber and is identical to the level of control used to establish the emission limits as proposed. However, based on other comments we received, we decided not to use the same procedure to establish the emission limits for the final rule. For wastewater treatment tanks, we determined the MACT floor level of control to be no emissions reduction.

The data set we used to establish the original MACT floor for storage tank emissions included the type of control (*e.g.*, scrubbers), but no information on the performance of the control devices or pollutant concentration in the outlet streams. In order to establish emission limits, we previously relied on the performance of controls used by the HCl production industry on HCl storage tanks. We used these data because the majority of tanks reported by the semiconductor industry contained HCl as well. We considered the HCl production industry data to be the most representative similar source for which we had data.

The comments we received questioned whether these storage tanks were representative, similar sources. In response to these comments, we further investigated the similarities and differences of the semiconductor manufacturing industry storage tanks and the HCl production industry tanks. We first determined that there is a large size differential between the tanks used by the semiconductor industry and those used by the HCl production industry. The largest reported semiconductor industry storage tank was 16,000 gallons, and most were less than 10,000 gallons. In contrast, most of the storage tanks reported by the HCl production industry ranged from 200,000 gallons to over 2 million gallons. We then determined that the HCl stored by the semiconductor industry was often diluted, while the HCl production industry almost exclusively stored concentrated HCl. Based on the larger tank size and the higher concentration of material stored, the emission streams from the HCl production industry storage tanks will have a considerably higher pollutant concentration than from the semiconductor industry storage tanks. We believe this is a more important consideration when establishing emission limits than simply looking at the similarity of the material stored. Thus, we expect that the emissions streams from the semiconductor manufacturing industry storage tanks will have a very low concentration of pollutants.

Since the semiconductor industry storage tank emission streams will have similar characteristics to those of process vents (*i.e.*, low pollutant concentration), we now believe the most representative similar sources for evaluating the MACT floor for storage tanks are the semiconductor industry process vents. Therefore, in response to the comments concerning our use of HCl production industry storage tanks as the most representative similar source, we are adopting the process vent inorganic HAP emission limits for storage tanks in the final rule.

We also agree that we should have given further consideration to controls more stringent than the MACT floor for storage tanks less than 800 gallons (now 1,500 gallons in the final rule as discussed below) and wastewater treatment tanks. The MACT floor for both of these types of tanks was determined to be no control. However, controls more stringent than the MACT floor (*i.e.*, scrubbers) are technically feasible as demonstrated by the data provided by the industry on tanks greater than 1,500 gallons.

In order to include emission limits more stringent than the MACT floor level of control in the final rule, they must be feasible on both a technical and cost basis. Technical feasibility is assumed based on similar control on larger tanks as reported by the industry. To evaluate cost feasibility, we estimated the HAP emissions from a 1,500 gallon tank containing concentrated HCl, assuming one complete turnover per day. These parameters will result in the maximum amount of HAP emissions from the tank that we would expect for the semiconductor manufacturing industry. We then estimated the cost of a scrubber to control these emissions by 99 percent. Finally, we calculated the cost per ton of additional HAP emission reduction achieved above the MACT floor level of control, which was more than $285,000 per ton. Based on this result, we considered this level of control to be infeasible on a cost basis and did not require emission control more stringent than the MACT floor for storage tanks less than 1,500 gallons or wastewater treatment tanks in the final rule.

We made an additional change for the final rule based on our revised storage tank MACT floor analysis. Because we eliminated several tanks from the data set used in the MACT floor analysis, the cutoff for the smallest size tank for which the final rule applies increased from 800 gallons to 1,500 gallons.

While the storage tanks that were used to establish the MACT floor level of control stored either HCl or HF, we believe this level of control is applicable to any material stored by a semiconductor manufacturing facility. Therefore, we do not believe that the emission limits must necessarily be limited to these two chemicals, as suggested by one of the commenters.

In our final analysis, we determined that the level of control already existing on waste storage tanks regulated under RCRA is equivalent to the storage tank MACT floor level of control. We also determined that the MACT floor for wastewater treatment tanks was no emissions reduction. Accordingly, we excluded both types of tanks from any requirements in the final rule. We added the following definition (based on the definition of "tank" in 40 CFR 63.901, (subpart OO—National Emission Standards for Tanks-Level 1) and 40 CFR 63.1101 (subpart YY—National Emission Standards for Hazardous Air Pollutants for Source Categories: Generic Maximum Achievable Control Technology Standards)) for "storage tank" to 40 CFR 63.7195 that clarifies which tanks we intended to be covered under the final rule: *Storage* tank means a stationary unit that is constructed primarily from nonearthen materials (such as wood, concrete, steel, fiberglass, or plastic) which provides structural support and is designed to hold an accumulation of liquids or other materials used in or generated by a semiconductor manufacturing process unit. The following are not storage tanks for the purposes of the final rule:

- Tanks permanently attached to motor vehicles such as trucks, railcars, barges, or ships;
- Flow-through tanks where wastewater undergoes treatment (such as pH adjustment) before discharge, and are not used to accumulate wastewater;
- Bottoms receiver tanks; and
- Surge control tanks.

Comment: One commenter reiterated a previous request for EPA to delist the Semiconductor Manufacturing source category and provided information to support their request. The commenter claimed that this information shows that there will be no stand alone semiconductor manufacturing facilities. Therefore, since EPA listed this category on the MACT source category list at a time when there were stand alone facilities that were major sources, the basis for listing the category no longer exists. The commenter cited the preamble language from the initial source category listing notice (57 FR 31576, July 16, 1992) and the first notice revising the list (61 FR 28200, June 4, 1996) to support their interpretation of when a category should be included on the source category list. The commenter stated that if a stand alone major source did come into existence in the future, EPA could promulgate a MACT standard at that time. Additionally, the commenter pointed out that case-by-case MACT determinations under section 112(g) of the CAA could also be used to control emissions from such a source.

The commenter also pointed to other EPA actions to support their position. The commenter noted that EPA guidance issued after the National Mining Association court case (*National Mining Association* v. *U.S. EPA*, 59 F.3d 1351 (D.C. Cir. 1995)) states that section 112(d) standards should be applied to source categories that contain stand alone major sources or that have sources "commonly located" at major source facilities. The commenter also noted that EPA, in promulgating MACT standards for industrial process cooling towers (IPCT), had found that co-location of an IPCT on a major source site is not sufficient to trigger applicability of the rule, rather, the IPCT must be co-located and an integral part of the facility.

The commenter disagreed with EPA's interpretation that a source category delisting can proceed only under section 112(c)(9) of the CAA. The commenter believed that EPA has a non-discretionary duty under section

112(c)(1) to periodically revise the list in response to new information. Under the provisions specified in section 112(c)(1), which the commenter believes are wholly separate from the delisting procedure in section 112(c)(9), EPA has the authority and the latitude to remove a previously listed source category from the MACT standard source category list.

Response: In the preamble to the proposed rule for semiconductor manufacturing, we acknowledged receipt of the pre-proposal request to remove the Semiconductor Manufacturing source category from the list of source categories and indicated we would respond in the final rulemaking (67 FR 30852, May 8, 2002).

Section 112(d)(1) of the CAA directs EPA to promulgate regulations for categories of major sources of HAP emissions. We interpret section 112(a) as requiring consideration of all emissions sources in determining major source status. Thus, if a source emits 10 tons or more per year of any single HAP or 25 tons or more per year of any combination of HAP, it is a major source. Similarly, if a source is co-located with sources in other categories and the aggregate emissions of the combined sources is 10 or more tons per year of a single HAP or 25 tons or more per year of any combination of HAP, that group of co-located sources is a major source. This interpretation is consistent with the legislative history on the definition of "major source," which indicates clearly that all portions of a major source are subject to MACT even if, standing alone, individual portions of that source would not qualify as major. [136 Cong. Rec. S. 16927 (October 27, 1990)].

The definition of major source also includes provisions to assure that stationary sources which would otherwise be subject to the emissions standards are not excluded from control requirements as the result of arbitrary subdivision or description of the source. A stationary source potentially subject to an emissions standard because it emits a listed air pollutant is to be defined to include all emission points and units of such source located within a contiguous area and under common control.

Because the statute instructs EPA to consider co-located sources as major sources, we believe we must list and promulgate standards for source categories that are major sources as a result of co-location. Accordingly, when we published the initial list of source categories, we "includ[ed] categories of major sources where there was reasonable certainty that at least one stationary source is a major source or where sources in the category [were] commonly located on the premises of major sources." (57 FR 31576, July 16,1992). The EPA continues to believe that major source determinations must be based on facility-wide emissions and that a major source can be either a stand alone major source or co-located with other sources that in combination emit or have the potential to emit over the major source threshold.

We disagree with the commenter's reading of the preamble to the IPCT MACT standard. In promulgating the MACT standard, we said that even though no individual source in the IPCT source category is itself a major source, we promulgated a MACT standard in light of IPCT being co-located with other major sources of HAP (59 FR 46339, September 8, 1994). The IPCT MACT provides clear precedent both for promulgating a semiconductor MACT standard and to not remove the Semiconductor Manufacturing source category from the list of source categories.

Accordingly, because section 112(d) requires EPA to promulgate MACT standards for all major sources, and since the Semiconductor Manufacturing source category is a category of major sources, albeit, because existing sources are co-located with other sources that in combination emit or have the potential to emit over the major source thresholds, EPA will not revise the list of source categories to remove the Semiconductor Manufacturing source category.

Finally, we also believe this source category is not static and that changes (either economic or process) may trigger operational changes that could result in increased HAP emissions. Thus, it is not entirely clear whether those sources that are currently "synthetic area sources" will continue to be "synthetic area sources." And accordingly, it is not inconceivable that the MACT standards promulgated today will eventually be applicable to more than the one currently co-located facility. In addition, there is always the possibility of new major sources being constructed in the future.

Comment: One commenter requested that EPA reconsider delisting this source category using *de minimis* principles under section 112(c)(1) of the CAA. The commenter proposed exemption of all nonmajor semiconductor process units from regulation in a manner consistent with the approach to applicability in section 112(g) of the CAA.

Response: The commenter's suggested *de minimis* cutoff levels are inconsistent with the CAA's prescribed method for determining the MACT floor. We do not believe that the CAA authorizes exempting an emission source solely due to the low annual emissions from that source. The outlet concentration limits for both inorganic and organic emissions serve as the minimum applicable limits for the affected sources. If the outlet concentration is below the applicable emission limit, no controls are required to demonstrate compliance.

IV. What Are the Final Standards?

A. What Is the Source Category?

The Semiconductor Manufacturing source category includes operations used to manufacture p-type and n-type semiconductors and active solid-state devices from a wafer substrate. Research and development activities located at a site manufacturing p-type and n-type semiconductors and active solid-state devices are integrated into the manufacturing process (that is, they are not stand alone operations), and these are included in the definition of semiconductor manufacturing. Examples of semiconductor or related solid-state devices include semiconductor diodes, semiconductor stacks, rectifiers, integrated circuits, and transistors. The source category includes all manufacturing from crystal growth through wafer fabrication, and test and assembly.

The crystal growing stage is where crystalline wafers of silicon or other specific semiconducting materials are manufactured for use as the substrate in the wafer fabrication process. Crystal growing begins with storage of the raw materials (usually trichlorosilane, which is refined from ordinary sand) and ends with the final polishing of a wafer.

The wafer fabrication process is where a group of integrated circuits are created on the wafer through a series of pattern-forming processes. Wafer fabrication begins at the point where the wafer receives its first protective oxidative layer and ends when a functional integrated circuit or circuits have been created on a wafer.

The test and assembly process is the final step in the integrated circuit manufacturing process and begins when a wafer is cut into individual chips. The chips are then mounted onto a metal frame, connected to the leads, and enclosed in a protective housing. The process endpoint is the last test performed at an assembly facility to verify proper function of a completed integrated circuit housing.

B. What Is the Affected Source?

We define an affected source as a stationary source, group of stationary sources, or part of a stationary source to which specific NESHAP apply. Within a source category, we select the specific emission sources (emission points or groupings of emission points) that will make up the affected source for that category. To select these emission sources, we mainly consider the constituent HAP and quantity emitted from individual or groups of emission points.

For the Semiconductor Manufacturing source category, the affected source includes the collection of all semiconductor manufacturing units used to manufacture p-type and n-type semiconductors and active solid-state devices from a wafer substrate, research and development activities integrated into the manufacturing process at a semiconductor manufacturing site, and storage tanks located at a major source.

A semiconductor manufacturing process unit is the equipment assembled and connected by duct work or hard piping including: Furnaces and associated unit operations; associated wet and dry work benches; associated recovery devices; feed, intermediate, and product storage tanks; product transfer racks and connected ducts and piping; pumps, compressors, agitators, pressure-relief devices, sampling connection systems, open-ended valves or lines, valves, connectors, and instrumentation systems; and control devices. We have identified three distinct processes used in the manufacture of these semiconductors and devices: Crystal growing, wafer fabrication, and assembly and test. A semiconductor manufacturing unit is typically engaged in one of these processes.

C. What Are the Emission Standards?

Emission limits. We are promulgating standards that regulate HAP emissions from process vents and storage tank vents at semiconductor manufacturing facilities. The standards are the same for existing and new sources. All major sources must reduce process vent organic HAP outlet concentrations by 98 percent from their uncontrolled levels and reduce uncontrolled inorganic HAP outlet concentrations by 95 percent. As an alternative, process vents may be controlled to a level below 20 ppmv organic HAP and 0.42 ppmv inorganic HAP. In addition, all major sources must reduce storage tank vent HAP outlet inorganic HAP concentrations by 95 percent from their uncontrolled levels. As an alternative, storage tank vents may be controlled to a level below 0.42 ppmv inorganic HAP.

General Provisions. The General Provisions (40 CFR part 63, subpart A) also apply to you as outlined in the final rule. The General Provisions codify certain procedures and criteria for all 40 CFR part 63 NESHAP. The General Provisions contain administrative procedures, preconstruction review procedures for new sources, and procedures for conducting compliance-related activities such as notifications, reporting, and recordkeeping, performance testing, and monitoring. The final rule refers to individual sections of the General Provisions to emphasize key sections that you should be aware of. However, unless otherwise specifically excluded in the final rule, all of the relevant General Provisions requirements apply to you.

V. When Must I Comply With the Final Rule?

Existing semiconductor manufacturing affected sources must comply with the final rule no later than 3 years after May 22, 2003. The effective date is May 22, 2003. New or reconstructed affected sources must comply upon start-up or May 22, 2003, whichever is later. Details of the compliance requirements can be found in the General Provisions, as outlined in Table 2 to the subpart.

VI. What Are the Testing and Initial Continuous Compliance Requirements?

In addition to the specific testing and monitoring requirements specified below for the affected source, the final rule adopts the testing requirements specified in 40 CFR 63.7.

We are promulgating testing and initial and continuous compliance requirements that are, where appropriate, based on procedures and methods that we have previously developed and used for sources similar to those for which standards are being promulgated today. For example, we are promulgating compliance determination procedures, performance tests, and test methods to determine what level of control a process vent needs to achieve to demonstrate compliance with the standards. We are promulgating compliance procedures to determine process vent and storage tank vent flow rates and HAP concentrations. The promulgated test methods parallel what we have used for process vents in previous organic HAP emissions standards (*e.g.*, the HON) and inorganic HAP emission standards. For measuring vent stream flow rate, you must use Method 2, 2A, 2C, 2D, 2F, or 2G of 40 CFR part 60, appendix A. For measuring total vent stream organic HAP concentration to determine whether it is below a specified level, you must use Method 18 of 40 CFR part 60, appendix A. For measuring the total HAP concentration of emission streams with inorganic HAP to determine if it is below a specified level, you must use Method 320 of 40 CFR part 60, appendix A. For measuring inorganic HAP that are hydrogen halides, such as HCl or HF, you must use Method 26A of 40 CFR part 60, appendix A.

Additionally, we are requiring initial performance tests for all process vent and storage tank vent HAP emission control devices other than flares and certain boilers and process heaters. For vents controlled using flares, we are not requiring performance tests because we have developed design specifications that ensure these devices will achieve 98 percent destruction efficiency. As with the HON, we are not promulgating a requirement to perform an initial performance test for boilers and process heaters larger than 44 megawatts (MW) because they operate at high temperatures and residence times. In general, the higher the temperature and residence time, the greater the level of HAP destruction that is achieved by a control device. Therefore, boilers and process heaters larger than 44 MW easily achieve the required 98 percent destruction efficiency or the alternative requirement to reduce outlet concentrations below 20 ppmv.

For all other types of control devices, the final rule requires you to conduct a performance test to demonstrate that the control device can achieve the required control level and to establish operating parameters to be maintained to demonstrate continuous compliance. The testing requirements for semiconductor manufacturing list the parameters that can be monitored for the common types of combustion devices. For other control devices, we require that you establish site-specific parameter ranges for monitoring purposes through the Notification of Compliance Status report and through the facility's operating permit. Parameters selected are required to be good indicators of continuous control device performance.

VII. What Notification, Recordkeeping, and Reporting Requirements Must I Follow?

We are promulgating notification, recordkeeping, and reporting requirements in accordance with 40 CFR part 63, subpart A and other previously promulgated NESHAP for similar source categories.

We are requiring that owners or operators of semiconductor manufacturing affected sources submit the following four types of reports: An Initial Notification report, a Notification of Compliance Status report, periodic compliance reports, reports of changes and other specified events. Records of reported information and other information necessary to document compliance with the promulgated standards are required to be kept for 5 years. Equipment design records would be required to be kept for the life of the equipment.

For the Initial Notification report, we are requiring that you list the semiconductor manufacturing operations at your facility, and the provisions of the final rule that may apply. The Initial Notification report must also state whether your facility can achieve compliance by the specified compliance date. You must submit this notification by May 21, 2004, for existing sources, and within 180 days before commencement of construction or reconstruction of an affected source.

For the Notification of Compliance Status report, we are requiring that you submit the information necessary to demonstrate that compliance has been achieved, such as the results of performance tests and design analyses. For each test method that you use for a particular kind of emission point (*e.g.*, process vent), you must submit one complete test report. This notification must also include the specific range established for each monitored parameter for each emission point for demonstrating continuous compliance, and the rationale for why this range indicates proper operation of the control device.

We are requiring that you submit semiannual compliance reports. These reports must include a statement that no deviations from the emission limitations occurred during the reporting period, and that no continuous monitoring system (CMS) was inoperative, inactive, malfunctioning, out-of-control, repaired, or adjusted. Additionally, a statement must be included if you had a startup, shutdown, or malfunction during the reporting period, and you took actions consistent with your SSMP. For process and storage tank vents, records of continuously monitored parameters must be kept. Records that such inspections or measurements were performed must be kept, but results are included in your periodic report only if there is a deviation from the operating limit. For each deviation from an emission limit, the semiannual compliance reports must document the time periods of each deviation; its cause; whether it occurred during a period of startup, shutdown, or malfunction; and whether and what time periods the CMS was inoperative or out of control.

We are requiring that you submit an immediate startup, shutdown, and malfunction report if you had a startup, shutdown, or malfunction that is not consistent with your SSMP.

Other reporting requirements include reports to notify the regulatory authority before or after a specific event (*e.g.*, if a process change is made, requests for extension of repair period).

VIII. What Are the Environmental, Energy, and Economic Impacts of the Final Rule?

This section presents projected impacts for existing sources only. We did not calculate impacts for new sources because we do not project any new major sources will commence construction in the foreseeable future. We expect that any new sources will have HAP emissions below major source thresholds. The industry trend over the past several years has been that HAP emissions have decreased while semiconductor production has increased. As a result, only one source in the industry is still a major source of HAP, and only because it is collocated at a facility with other HAP-emitting operations. We do not project that any other new semiconductor sources will be built on the site of another major HAP emitting operation. We also project that the types of technologies that have evolved (*e.g.*, producing larger wafers), which are in general emit fewer HAP per chip manufactured, will continue.

A. What Are the Secondary and Energy Impacts?

We do not anticipate any significant increase in national annual energy usage as a result of the final rule. Energy impacts include changes in energy use, typically increases, and secondary air impacts associated with increased energy use. Increases in energy use are associated with the operation of control equipment—in this case, the use of thermal oxidizers and scrubbers—to control process vents. Secondary air impacts associated with increased energy use are the emission of particulates, sulfur oxides (SO_X), and nitrogen oxides (NO_X). These secondary impacts are associated with power plants that would supply the increased energy demand. Since we project the final rule will apply to only one existing major source, no significant new control equipment requirements are expected. Therefore, secondary and energy impacts will be negligible.

B. What Are the Cost Impacts?

Although we estimate there are approximately 127 facilities engaged in semiconductor production, we estimate that the source category contains only one existing major source subject to the regulatory provisions specified under the final rule. The remaining facilities are either area sources or synthetic minor sources, which are sources that have the potential to emit above major source thresholds but have taken enforceable permit conditions limiting their HAP emissions to below these major source thresholds.

We estimate the annualized cost for the one major source affected by this final rule to be $2,300, solely to comply with monitoring, inspecting, reporting and recordkeeping requirements. (**Note:** This source meets the CAA section 112 definition of "major source" not because it emits 10 tons or more of any one HAP or 25 tons or more of HAP in aggregate, but because it is collocated at a plant site that is a major source subject to other NESHAP. We estimate this semiconductor manufacturing source emits less than one ton of HAP per year.) We project there will be no capital or operating costs for control equipment. Further, we estimate a one-time total cost of $33,000 for the approximately 126 non-major sources to read the rule. We estimate that there will be no impacts on new sources because we do not project that any new major sources will be built over the next 3 years.

C. What Are the Economic Impacts?

The final rule applies to only one major existing source, and no significant new control equipment requirements are expected. We estimate the MIRR costs for this facility to be only $6,956 over a 3-year period. Therefore, no economic impact on the industry is expected.

IX. Statutory and Executive Order Reviews

A. Executive Order 12866: Regulatory Planning and Review

Under Executive Order 12866 (58 FR 51735, October 4, 1993), we must determine whether the regulatory action is "significant" and therefore subject to review by the Office of Management and Budget (OMB) and the requirements of the Executive Order. The Executive Order defines "significant regulatory action" as one that is likely to result in a rule that may:

(1) Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities;

(2) create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) materially alter the budgetary impact of entitlements, grants, user fees, or loan programs, or the rights and obligation of recipients thereof; or

(4) raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

It has been determined that this rule is not a "significant regulatory action" under the terms of Executive Order 12866 and is therefore not subject to OMB review.

B. Paperwork Reduction Act

The information collection requirements in the final rule have been submitted for approval to OMB under the Paperwork Reduction Act, 44 U.S.C. 3501, *et seq.* An Information Collection Request (ICR) document has been prepared by EPA (ICR No. 2042.01) and a copy may be obtained from Susan Auby by mail at the Collection Strategies Division (2822), U.S. EPA, 1200 Pennsylvania Avenue, NW., Washington, DC 20460, by e-mail at *auby.susan@epa.gov*, or by calling (202) 566–1672. A copy may also be downloaded off the internet at *http://www.epa.gov/icr*. The information requirements are not *enforceable* until OMB approves them.

The information requirements are based on notification, recordkeeping, and reporting requirements in the NESHAP General Provisions (40 CFR part 63, subpart A), which are mandatory for all operators subject to national emission standards. These recordkeeping and reporting requirements are specifically authorized by section 114 of the CAA (42 U.S.C. 7414). All information submitted to EPA pursuant to the recordkeeping and reporting requirements for which a claim of confidentiality is made is safeguarded according to Agency policies set forth in 40 CFR part 2, subpart B.

The annual monitoring, reporting, and recordkeeping burden for this collection, as averaged over the first 3 years after the effective date of the rule, is estimated to be 41 labor hours per year at a total annual cost of $2,319. This estimate includes a one-time plan for demonstrating compliance, annual compliance certification reports, notifications, and recordkeeping. Total labor burden associated with the monitoring requirements over the 3-year period of the ICR are estimated at $6,956.

Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR part 9 and 48 CFR, chapter 15. The OMB control number for the information collection requirements in this rule will be listed in an amendment to 40 CFR part 9 in a subsequent **Federal Register** document after OMB approves the ICR.

C. Regulatory Flexibility Act

The EPA has determined that it is not necessary to prepare a regulatory flexibility analysis in connection with the final rule. The EPA has also determined that this final rule will not have a significant economic impact on a substantial number of small entities. For purposes of assessing the impacts of this final rule on small entities, small entity is defined as: (1) A small business according to Small Business Administration (SBA) size standards for NAICS code 334413 (*i.e.*, semiconductor crystal growing facilities, semiconductor wafer fabrication facilities, semiconductor test and assembly facilities) whose parent company has 500 or fewer employees; (2) a small governmental jurisdiction that is a government of a city, county, town, school district or special district with a population of less than 50,000; and (3) a small organization that is any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.

After considering the economic impacts of today's final rule on small entities, EPA has concluded that this action will not have a significant economic impact on a substantial number of small entities. Based on the above definition of small entities, the EPA has determined that there are no small businesses within this source category that would be subject to the final rule.

D. Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. Under section 202 of the UMRA, EPA generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rule with "Federal mandates" that may result in expenditures to State, local, and tribal governments, in the aggregate, or to the private sector, of $100 million or more in any 1 year. Before promulgating an EPA rule for which a written statement is needed, section 205 of the UMRA generally requires EPA to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective, or least burdensome alternative that achieves the objectives of the rule. The provisions of section 205 do not apply when they are inconsistent with applicable law. Moreover, section 205 allows EPA to adopt an alternative other than the least costly, most cost-effective, or least burdensome alternative if the Administrator publishes with the final rule an explanation why that alternative was not adopted. Before EPA establishes any regulatory requirements that may significantly or uniquely affect small governments, including tribal governments, it must have developed under section 203 of the UMRA a small government agency plan. The plan must provide for notifying potentially affected small governments, enabling officials of affected small governments to have meaningful and timely input in the development of EPA regulatory proposals with significant Federal intergovernmental mandates, and informing, educating, and advising small governments on compliance with the regulatory requirements.

The EPA has determined that the final rule does not contain a Federal mandate that may result in expenditures of $100 million or more to State, local, and tribal governments, in the aggregate, or the private sector in any 1 year. The maximum total annual cost of the final rule for any year has been estimated to be about $35,800. Thus, the final rule is not subject to the requirements of sections 202 and 205 of the UMRA. In addition, EPA has determined that the standards contains no regulatory

requirements that might significantly or uniquely affect small governments because it contains no requirements that apply to such governments or impose obligations upon them.

E. Executive Order 13132: Federalism

Executive Order 13132, entitled "Federalism" (64 FR 43255, August 10, 1999), requires the EPA to develop an accountable process to ensure "meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications." "Policies that have federalism implications" are defined in the Executive Order to include regulations that have "substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government."

The final rule does not have federalism implications. It will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132. Thus, Executive Order 13132 does not apply to the rule. Although section 6 of Executive Order 13132 does not apply to the rule, EPA did consult with State and local officials to enable them to provide timely input in the development of the final rule.

F. Executive Order 13175: Consultation and Coordination With Indian Tribal Governments

Executive Order 13175, entitled "Consultation and Coordination with Indian Tribal Governments" (65 FR 67249, November 9, 2000), requires the EPA to develop an accountable process to ensure "meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications." The final rule does not have tribal implications, as specified in Executive Order 13175. No tribal governments own or operate semiconductor manufacturing facilities. Thus, Executive Order 13175 does not apply to the final rule.

G. Executive Order 13045: Protection of Children From Environmental Health & Safety Risks

Executive Order 13045 (62 FR 19885, April 23, 1997) applies to any rule that: (1) Is determined to be "economically significant" as defined under Executive Order 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the EPA must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency.

The EPA interprets Executive Order 13045 as applying only to those regulatory actions that are based on health or safety risks, such that the analysis required under section 5–501 of the Executive Order has the potential to influence the regulation. The final rule is not subject to Executive Order 13045 because it is based on technology performance and not on an assessment of health or safety risks. Furthermore, the final rule has been determined not to be "economically significant" as defined under Executive Order 12866.

H. Executive Order 13211: Actions That Significantly Affect Energy Supply, Distribution, or Use

The final rule is not subject to Executive Order 13211 (66 FR 28355, May 22, 2001) because it is not a significant regulatory action under Executive Order 12866.

I. National Technology Transfer Advancement Act

Section 12(d) of the National Technology Transfer and Advancement Act (NTTAA) of 1995 (Pub. L. No. 104–113; 15 U.S.C. 272 note) directs the EPA to use voluntary consensus standards in their regulatory and procurement activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (*e.g.*, materials specifications, test methods, sampling procedures, business practices) developed or adopted by one or more voluntary consensus bodies. The NTTAA directs EPA to provide Congress, through annual reports to the Office of Management and Budget (OMB), with explanations when an agency does not use available and applicable voluntary consensus standards.

The final rule involves technical standards. The EPA cites the following standards in this rule: EPA Methods 1, 1A, 2, 2A, 2C, 2D, 2F, 2G, 3, 3A, 3B, 4, 18, 25, 25A, 26, 26A, and 320. Consistent with the NTTAA, EPA conducted searches to identify voluntary consensus standards in addition to these EPA method. No applicable voluntary consensus standards were identified for EPA Methods 1A, 2A, 2D, 2F, 2G. The search and review results have been documented and are placed in the docket A–97–15 for the final rule.

The voluntary consensus standard ASTM D6420–99, "Standard Test Method for Determination of Gaseous Organic Compounds by Direct Interface Gas Chromatography-Mass Spectrometry (GC/MS)," is appropriate in the cases described below for inclusion in this rule in addition to EPA Method 18 codified at 40 CFR Part 60 Appendix A for the measurement of toluene and total organic HAP.

Similar to EPA's performance-based Method 18, ASTM D6420–99 is also a performance-based method for measurement of gaseous organic compounds. However, ASTM D6420–99 was written to support the specific use of highly portable and automated GC/MS. While offering advantages over the traditional Method 18, the ASTM method does allow some less stringent criteria for accepting GC/MS results than required by Method 18. Therefore, ASTM D6420–99 is a suitable alternative to Method 18 only where: (1) The target compound(s) are those listed in Section 1.1 of ASTM D6420–99, and (2) the target concentration is between 150 ppbv and 100 ppmv.

For target compound(s) not listed in Section 1.1 of ASTM D6420–99, *but potentially detected by mass spectrometry,* the regulation specifies that the additional system continuing calibration check after each run, as detailed in Section 10.5.3 of the ASTM method, must be followed, met, documented, and submitted with the data report even if there is no moisture condenser used or the compound is not considered water soluble. For target compound(s) not listed in Section 1.1 of ASTM D6420–99, and not amenable to detection by mass spectrometry, ASTM D6420–99 does not apply.

As a result, EPA will cite ASTM D6420–99 in this rule. The EPA will also cite Method 18 as a gas chromatography (GC) option in addition to ASTM D6420–99. This will allow the continued use of GC configurations other than GC/MS.

In addition to the voluntary consensus standard EPA cites in this rule, the search for emissions measurement procedures identified 14 other voluntary consensus standards. The EPA determined that 11 of these 14 standards identified for measuring emissions of the HAPs or surrogates subject to emission standards in this rule were impractical alternatives to EPA test methods for the purposes of this rule. Therefore, EPA does not intend to adopt these standards for this purpose. The reasons for this determination for the 11 methods are discussed in the docket.

Two of the 14 voluntary consensus standards identified in this search were not available at the time the review was conducted for the purposes of the final rule because they are under development by a voluntary consensus body: ASME/BSR MFC 13M, "Flow Measurement by Velocity Traverse," for EPA Method 2 (and possibly 1); and ASME/BSR MFC 12M, "Flow in Closed Conduits Using Multiport Averaging Pitot Primary Flowmeters," for EPA Method 2.

The voluntary consensus standard ASTM D6348–98, "Determination of Gaseous Compounds by Extractive Direct Interface Fourier Transform (FTIR) Spectroscopy," has been reviewed by the EPA as a potential alternative to EPA Method 320. Suggested revisions to ASTM D6348–98 were sent to ASTM by the EPA that would allow the EPA to accept ASTM D6348–98 as an acceptable alternative. The ASTM Subcommittee D22–03 is currently undertaking a revision of ASTM D6348–98. Because of this, we are not citing this standard as a acceptable alternative for EPA Method 320 in the final rule today. However, upon successful ASTM balloting and demonstration of technical equivalency with the EPA FTIR methods, the revised ASTM standard could be incorporated by reference for EPA regulatory applicability. In the interim, facilities have the option to request ASTM D6348–98 as an alternative test method under 40 CFR 63.7(f) and 63.8(f) on a case-by-case basis.

Table 1 to subpart BBBBB lists the EPA testing methods included in the final rule. Under 40 CFR 63.7(f) and 63.8(f) of subpart A, a source may apply to EPA for permission to use alternative test methods or alternative monitoring requirements in place of any of the EPA testing methods, performance specifications, or procedures.

J. Congressional Review Act

The Congressional Review Act, 5 U.S.C. 801, *et seq.*, as added by the SBREFA, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. The EPA will submit a report containing the rule and other required information to the United States Senate, the United States House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a "major rule" as defined by 5 U.S.C. 804(2). The rule will be effective May 22, 2003.

List of Subjects in 40 CFR Part 63

Environmental protection, Air pollution control, Hazardous substances, Intergovernmental relations, Reporting and recordkeeping requirements.

Dated: February 28, 2003.

Christine T. Whitman,

Administrator.

■ For the reasons stated in the preamble, title 40, chapter I, part 63 of the Code of the Federal Regulations is amended as follows:

PART 63—[AMENDED]

■ 1. The authority citation for part 63 continues to read as follows:

Authority: 42 U.S.C. 7401, *et seq.*

■ 2. Part 63 is amended by adding subpart BBBBB to read as follows:

Subpart BBBBB—National Emission Standards for Hazardous Air Pollutants for Semiconductor Manufacturing

Sec.

What This Subpart Covers

63.7180 What is the purpose of this subpart?
63.7181 Am I subject to this subpart?
63.7182 What parts of my facility does this subpart cover?
63.7183 When do I have to comply with this subpart?

Emission Standards

63.7184 What emission limitations, operating limits, and work practice standards must I meet?

Compliance Requirements

63.7185 What are my general requirements for complying with this subpart?
63.7186 By what date must I conduct performance tests or other initial compliance demonstrations?
63.7187 What performance tests and other compliance procedures must I use?
63.7188 What are my monitoring installation, operation, and maintenance requirements?

Applications, Notifications, Reports, and Records

63.7189 What applications and notifications must I submit and when?
63.7190 What reports must I submit and when?
63.7191 What records must I keep?
63.7192 In what form and how long must I keep my records?

Other Requirements and Information

63.7193 What parts of the General Provisions apply to me?
63.7194 Who implements and enforces this subpart?
63.7195 What definitions apply to this subpart?

Tables to Subpart BBBBB of Part 63

Table 1 to Subpart BBBBB of Part 63—Requirements for Performance Tests
Table 2 to Subpart BBBBB of Part 63—Applicability of General Provisions to Subpart BBBBB

What This Subpart Covers

§ 63.7180 What is the purpose of this subpart?

This subpart establishes national emission standards for hazardous air pollutants (NESHAP) for semiconductor manufacturing facilities. This subpart also establishes requirements to demonstrate initial and continuous compliance with the emission standards.

§ 63.7181 Am I subject to this subpart?

(a) You are subject to this subpart if you own or operate a semiconductor manufacturing process unit that is a major source of hazardous air pollutants (HAP) emissions or that is located at, or is part of, a major source of HAP emissions.

(b) A major source of HAP emissions is any stationary source or group of stationary sources located within a contiguous area and under common control that emits or has the potential to emit, considering controls, in the aggregate, any single HAP at a rate of 10 tons per year (tpy) or more or any combination of HAP at a rate of 25 tpy or more.

§ 63.7182 What parts of my facility does this subpart cover?

(a) This subpart applies to each new, reconstructed, or existing affected source that you own or operate that manufactures semiconductors.

(b) An affected source subject to this subpart is the collection of all semiconductor manufacturing process units used to manufacture p-type and n-type semiconductors and active solid-state devices from a wafer substrate, including research and development activities integrated into a semiconductor manufacturing process unit. A semiconductor manufacturing process unit includes the equipment assembled and connected by ductwork or hard-piping including furnaces and associated unit operations; associated wet and dry work benches; associated recovery devices; feed, intermediate, and product storage tanks; product transfer racks and connected ducts and piping; pumps, compressors, agitators, pressure-relief devices, sampling connecting systems, open-ended valves

or lines, valves, connectors, and instrumentation systems; and control devices.

(c) Your affected source is a new affected source if you commence construction of the affected source after May 8, 2002, and you meet the applicability criteria in § 63.7181 at the time you commence construction.

(d) Your affected source is a reconstructed affected source if you meet the criteria for "reconstruction," as defined in § 63.2.

(e) Your source is an existing affected source if it is not a new or reconstructed affected source.

§ 63.7183 When do I have to comply with this subpart?

(a) If you have a new or reconstructed affected source, you must comply with this subpart according to paragraphs (a)(1) and (2) of this section.

(1) If you start up your affected source before May 22, 2003, then you must comply with the emission standards for new and reconstructed sources in this subpart no later than May 22, 2003.

(2) If you start up your affected source after May 22, 2003, then you must comply with the emission standards for new and reconstructed sources in this subpart upon startup of your affected source.

(b) If you have an existing affected source, you must comply with the emission standards for existing sources no later than 3 years from May 22, 2003.

(c) If you have an area source that increases its emissions or its potential to emit such that it becomes a major source of HAP and an affected source subject to this subpart, paragraphs (c)(1) and (2) of this section apply.

(1) Any portion of your existing facility that is a new affected source as specified at § 63.7182(c), or a reconstructed affected source as specified at § 63.7182(d), must be in compliance with this subpart upon startup.

(2) Any portion of your facility that is an existing affected source, as specified at § 63.7182(e), must be in compliance with this subpart by not later than 3 years after it becomes a major source.

(d) You must meet the notification requirements in § 63.7189 and in subpart A of this part. You must submit some of the notifications (*e.g.*, Initial Notification) before the date you are required to comply with the emission limitations in this subpart.

Emission Standards

§ 63.7184 What emission limitations, operating limits, and work practice standards must I meet?

(a) If you have a new, reconstructed, or existing affected source, as defined in § 63.7182(b), you must comply with all applicable emission limitations in this section on and after the compliance dates specified in § 63.7183.

(b) *Process vents—organic HAP emissions.* For each process vent that emits organic HAP, other than process vents from storage tanks, you must limit organic HAP emissions to the level specified in paragraph (b)(1) or (2) of this section. These limitations can be met by venting emissions from your process vent through a closed vent system to any combination of control devices meeting the requirements of § 63.982(a)(2).

(1) Reduce the emissions of organic HAP from the process vent stream by 98 percent by weight.

(2) Reduce or maintain the concentration of emitted organic HAP from the process vent to less than or equal to 20 parts per million by volume (ppmv).

(c) *Process vents—inorganic HAP emissions.* For each process vent that emits inorganic HAP, other than process vents from storage tanks, you must limit inorganic HAP emissions to the level specified in paragraph (c)(1) or (2) of this section. These limitations can be met by venting emissions from your process vent through a closed vent system to a halogen scrubber meeting the requirements of §§ 63.983 (closed vent system requirements) and 63.994 (halogen scrubber requirements); the applicable general monitoring requirements of § 63.996; the applicable performance test requirements; and the monitoring, recordkeeping and reporting requirements referenced therein.

(1) Reduce the emissions of inorganic HAP from the process vent stream by 95 percent by weight.

(2) Reduce or maintain the concentration of emitted inorganic HAP from the process vent to less than or equal to 0.42 ppmv.

(d) *Storage tanks.* For each storage tank, 1,500 gallons or larger, you must limit total HAP emissions to the level specified in paragraph (d)(1) or (2) of this section if the emissions from the storage tank vent contains greater than 0.42 ppmv inorganic HAP. These limitations can be met by venting emissions from your storage tank through a closed vent system to a halogen scrubber meeting the requirements of §§ 63.983 (closed vent system requirements) and 63.994 (halogen scrubber requirements); the applicable general monitoring requirements of § 63.996; the applicable performance test requirements; and the monitoring, recordkeeping and reporting requirements referenced therein.

(1) Reduce the emissions of inorganic HAP from each storage tank by 95 percent by weight.

(2) Reduce or maintain the concentration of emitted inorganic HAP from the process vent to less than or equal to 0.42 ppmv.

(e) You must comply with the applicable work practice standards and operating limits contained in § 63.982(a)(1) and (2). The closed vent system inspection requirements of § 63.983(c), as referenced by § 63.982(a)(1) and (2), do not apply.

Compliance Requirements

§ 63.7185 What are my general requirements for complying with this subpart?

(a) You must be in compliance with the requirements of § 63.7184 at all times, except during periods of startup, shutdown, or malfunction.

(b) You must always operate and maintain your affected source, including air pollution control and monitoring equipment, according to the provisions in § 63.6(e)(1)(i).

(c) You must develop and implement a written startup, shutdown, and malfunction plan (SSMP). Your SSMP must be prepared in accordance with the provisions in § 63.6(e)(3).

(d) You must perform all the items listed in paragraphs (d)(1) through (3) of this section:

(1) Submit the necessary notifications in accordance with § 63.7189.

(2) Submit the necessary reports in accordance with § 63.7190.

(3) Maintain all necessary records you have used to demonstrate compliance with this subpart in accordance with § 63.7191.

§ 63.7186 By what date must I conduct performance tests or other initial compliance demonstrations?

For each process vent or storage tank vent emission limitation in § 63.7184 for which initial compliance is demonstrated by meeting a percent by weight HAP emissions reduction, or a HAP concentration limitation, you must conduct performance tests or an initial compliance demonstration within 180 days after the compliance date that is specified for your source in § 63.7183 and according to the provisions in § 63.7(a)(2).

§ 63.7187 What performance tests and other compliance procedures must I use?

(a) You must conduct each performance test in Table 1 to this subpart that applies to you as specified for process vents in § 63.982(a)(2) and storage tanks in § 63.982(a)(1). Performance tests must be conducted under maximum operating conditions or HAP emissions potential. Section 63.982(a)(1) and (2) only includes methods to measure the total organic regulated material or total organic carbon (TOC) concentration. The EPA Methods 26 and 26A are included in Table 1 to this subpart in addition to the test methods contained within § 63.982(a)(1) and (2). The EPA Method 26 or 26A must be used for testing regulated material containing inorganic HAP. Method 320 of 40 CFR part 63, appendix A, must be used to measure total vapor phase organic and inorganic HAP concentrations.

(b) If, without the use of a control device, your process vent stream has an organic HAP concentration of 20 ppmv or less or an inorganic HAP concentration of 0.42 ppmv or less, or your storage tank vent stream has an inorganic HAP concentration of 0.42 ppmv or less, you may demonstrate that the vent stream is compliant by engineering assessments and calculations or by conducting the applicable performance test requirements specified in Table 1 to this subpart. Your engineering assessments and calculations, as with performance tests (as specified in § 63.982(a)(1) and (2)), must represent your maximum operating conditions or HAP emissions potential and must be approved by the Administrator. You must demonstrate continuous compliance by certifying that your operations will not exceed the maximum operating conditions or HAP emissions potential represented by your engineering assessments, calculations, or performance test.

(c) If you are using a control device to comply with the emission limitations in § 63.7184 and the inlet concentration of HAP to the control device is 20 ppmv or less, then you may demonstrate that the control device meets the percent by weight HAP emission reduction limitation in § 63.7184(c)(1) or (d)(1) by conducting a design evaluation as specified in paragraph (i) of this section. Your design evaluation must represent your maximum operating conditions or HAP emissions potential and must be approved by the Administrator. You must demonstrate continuous compliance by certifying that your operations will not exceed the maximum operating conditions or HAP emissions potential represented by your design evaluation.

(d) During periods of startup, shutdown, and malfunction, you must operate in accordance with your SSMP.

(e) For each monitoring system required in this section, you must develop and submit for approval a site-specific monitoring plan that addresses the criteria specified in paragraphs (e)(1) through (3) of this section.

(1) Installation of the continuous monitoring system (CMS) sampling probe or other interface at a measurement location relative to each affected process unit such that the measurement is representative of control of the exhaust emissions (*e.g.*, on or downstream of the last control device);

(2) Performance and equipment specifications for the sample interface, the pollutant concentration or parametric signal analyzer, and the data collection and reduction system; and

(3) Performance evaluation procedures and acceptance criteria (*e.g.*, calibrations).

(f) In your site-specific monitoring plan, you must also address the procedural processes in paragraphs (f)(1) through (3) of this section.

(1) Ongoing operation and maintenance procedures in accordance with the general requirements of § 63.8(c)(1), (3), (4)(ii), (7), and (8);

(2) Ongoing data quality assurance procedures in accordance with the general requirements of § 63.8(d); and

(3) Ongoing recordkeeping and reporting procedures in accordance with the general requirements of § 63.10(c), (e)(1), and (e)(2)(i).

(g) You must conduct a performance evaluation of each CMS in accordance with your site-specific monitoring plan.

(h) You must operate and maintain the CMS in continuous operation according to the site-specific monitoring plan.

(i) *Design evaluation.* To demonstrate that a control device meets the required percent by weight inorganic HAP emission reduction limitation in § 63.7184(c)(1) or (d)(1), a design evaluation must address the composition of the inorganic HAP concentration of the vent stream entering the control device. A design evaluation also must address other vent stream characteristics and control device operating parameters as specified in any one of paragraphs (i)(1) through (5) of this section, depending on the type of control device that is used. If the vent stream is not the only inlet to the control device, the efficiency demonstration must also consider all other vapors, gases, and liquids, other than fuels, received by the control device.

(1) For a condenser, the design evaluation shall consider the vent stream flow rate, relative humidity, and temperature and shall establish the design outlet organic HAP compound concentration level, design average temperature of the condenser exhaust vent stream, and the design average temperatures of the coolant fluid at the condenser inlet and outlet. The temperature of the gas stream exiting the condenser must be measured and used to establish the outlet organic HAP concentration.

(2) For a carbon adsorption system that regenerates the carbon bed directly onsite in the control device such as a fixed-bed adsorber, the design evaluation shall consider the vent stream flow rate, relative humidity, and temperature and shall establish the design exhaust vent stream organic compound concentration level, adsorption cycle time, number and capacity of carbon beds, type and working capacity of activated carbon used for carbon beds, design total regeneration stream mass or volumetric flow over the period of each complete carbon bed regeneration cycle, design carbon bed temperature after regeneration, design carbon bed regeneration time, and design service life of carbon. For vacuum desorption, the pressure drop shall be included.

(3) For a carbon adsorption system that does not regenerate the carbon bed directly onsite in the control device such as a carbon canister, the design evaluation shall consider the vent stream mass or volumetric flow rate, relative humidity, and temperature and shall establish the design exhaust vent stream organic compound concentration level, capacity of carbon bed, type and working capacity of activated carbon used for carbon bed, and design carbon replacement interval based on the total carbon working capacity of the control device and source operating schedule.

(4) For a scrubber, the design evaluation shall consider the vent stream composition, constituent concentrations, liquid-to-vapor ratio, scrubbing liquid flow rate and concentration, temperature, and the reaction kinetics of the constituents with the scrubbing liquid. The design evaluation shall establish the design exhaust vent stream organic compound concentration level and will include the additional information in paragraphs (i)(5)(i) and (ii) of this section for trays and a packed column scrubber.

(i) Type and total number of theoretical and actual trays;

(ii) Type and total surface area of packing for entire column, and for individual packed sections if column contains more than one packed section.

§ 63.7188 What are my monitoring installation, operation, and maintenance requirements?

If you comply with the emission limitations of § 63.7184 by venting the emissions of your semiconductor process vent through a closed vent system to a control device, you must comply with the requirements of paragraphs (a) and (b) of this section.

(a) You must meet the applicable general monitoring, installation, operation, and maintenance requirements specified in § 63.996.

(b) You must meet the monitoring, installation, operation, and maintenance requirements specified for closed vent systems and applicable control devices in §§ 63.983 through 63.995. If you used the design evaluation procedure in § 63.7187(i) to demonstrate compliance, you must use the information from the design evaluation to establish the operating parameter level for monitoring of the control device.

Applications, Notifications, Reports, and Records

§ 63.7189 What applications and notifications must I submit and when?

(a) You must submit all of the applications and notifications in §§ 63.7(b) and (c); 63.8(e), (f)(4) and (f)(6); and 63.9(b) through (e), (g) and (h) that apply to you by the dates specified.

(b) As specified in § 63.9(b)(2), if you start up your affected source before May 22, 2003, you must submit an Initial Notification not later than 120 calendar days after May 22, 2003.

(c) As specified in § 63.9(b)(3), if you start up your new or reconstructed affected source on or after May 22, 2003. you must submit an Initial Notification not later than 120 calendar days after you become subject to this subpart.

(d) If you are required to conduct a performance test, you must submit a notification of intent to conduct a performance test at least 60 calendar days before the performance test is scheduled to begin as required in § 63.7(b)(1).

(e) If you are required to conduct a performance test or other initial compliance demonstration, you must submit a Notification of Compliance Status according to § 63.9(h)(2)(ii) and according to paragraphs (e)(1) and (2) of this section.

(1) For each initial compliance demonstration that does not include a performance test, you must submit the Notification of Compliance Status before the close of business on the 30th calendar day following the completion of the initial compliance demonstration. If you used the design evaluation procedure in § 63.7187(i) to demonstrate compliance, you must include the results of the design evaluation in the Notification of Compliance Status.

(2) For each initial compliance demonstration required that includes a performance test conducted according to the requirements in Table 1 to this subpart, you must submit a notification of the date of the performance evaluation at least 60 days prior to the date the performance evaluation is scheduled to begin as required in § 63.8(e)(2).

§ 63.7190 What reports must I submit and when?

(a) You must submit each of the following reports that apply to you.

(1) *Periodic compliance reports.* You must submit a periodic compliance report that contains the information required under paragraphs (c) through (e) of this section, and any requirements specified to be reported for process vents in § 63.982(a)(2) and storage tanks in § 63.982(a)(1).

(2) *Immediate startup, shutdown, and malfunction report.* You must submit an Immediate Startup, Shutdown, and Malfunction Report if you had a startup, shutdown, or malfunction during the reporting period that is not consistent with your SSMP. Your report must contain actions taken during the event. You must submit this report by fax or telephone within 2 working days after starting actions inconsistent with you SSMP. You are required to follow up this report with a report specifying the information in § 63.10(d)(5)(ii) by letter within 7 working days after the end of the event unless you have made alternative arrangements with your permitting authority.

(b) Unless the Administrator has approved a different schedule for submission of reports under § 63.10(a), you must submit each report by the date according to paragraphs (b)(1) through (5) of this section.

(1) The first periodic compliance report must cover the period beginning on the compliance date that is specified for your affected source in § 63.7183 and ending on June 30 or December 31, whichever date is the first date following the end of the first 12 calendar months after the compliance date that is specified for your source in § 63.7183.

(2) The first periodic compliance report must be postmarked or delivered no later than July 31 or January 31, whichever date follows the end of the first 12 calendar months after the compliance date that is specified for your affected source in § 63.7183.

(3) Each subsequent periodic compliance report must cover the semiannual reporting period from January 1 through June 30 or the semiannual reporting period from July 1 through December 31.

(4) Each subsequent periodic compliance report must be postmarked or delivered no later than July 31 or January 31, whichever date is the first date following the end of the semiannual reporting period.

(5) For each affected source that is subject to permitting regulations pursuant to 40 CFR part 70 or 40 CFR part 71, and if the permitting authority has established dates for submitting semiannual reports pursuant to 40 CFR 70.6(a)(3)(iii)(A) or 40 CFR 71.6(a)(3)(iii)(A), you may submit the first and subsequent periodic compliance reports according to the dates the permitting authority has established instead of according to the dates in paragraphs (b)(1) through (4) of this section.

(c) The periodic compliance report must contain the information specified in paragraphs (c)(1) through (5) of this section.

(1) Company name and address.

(2) Statement by a responsible official with that official's name, title, and signature, certifying the truth, accuracy, and completeness of the content of the report.

(3) Date of report and beginning and ending dates of the reporting period.

(4) If there are no deviations from any emission limitations that apply to you, a statement that there were no deviations from the emission limitations during the reporting period and that no CMS was inoperative, inactive, malfunctioning, out-of-control, repaired, or adjusted.

(5) If you had a startup, shutdown, or malfunction during the reporting period and you took actions consistent with your SSMP, your periodic compliance report must include the information in § 63.10(d)(5) for each startup, shutdown, and malfunction.

(d) For each deviation from an emission limitation that occurs at an affected source where you are not using a CMS to comply with the emission limitations, the periodic compliance report must contain the information in paragraphs (d)(1) through (2) of this section.

(1) The total operating time of each affected source during the reporting period.

(2) Information on the number, duration, and cause of deviations (including unknown cause), if applicable.

(e) For each deviation from an emission limitation occurring at an affected source where you are using a CMS to demonstrate compliance with the emission limitation, you must include the information in paragraphs (e)(1) through (8) of this section.

(1) The date and time that each malfunction started and stopped, and the reason it was inoperative.

(2) The date and time that each CMS was inoperative, except for calibration checks.

(3) The date and time that each CMS was out-of-control, including the information in § 63.8(c)(8).

(4) The date and time that each deviation started and stopped, and whether each deviation occurred during a period of startup, shutdown, or malfunction or during another period, and the cause of the deviation.

(5) A summary of the total duration of the deviation during the reporting period, and the total duration as a percent of the total source operating time during that reporting period.

(6) A summary of the total duration of CMS downtime during the reporting period, and the total duration of CMS downtime as a percent of the total source operating time during the reporting period.

(7) An identification of each HAP that was monitored at the affected source.

(8) The date of the latest CMS certification or audit.

§ 63.7191 What records must I keep?

(a) You must keep the records listed in paragraphs (a)(1) through (3) of this section.

(1) A copy of each notification and report that you submitted to comply with this subpart, including all documentation supporting any Notification of Compliance Status and periodic report of compliance that you submitted, according to the requirements in § 63.10(b)(2)(xiv).

(2) The records in § 63.6(e)(3)(iii) through (v) related to startup, shutdown, and malfunctions.

(3) Records of performance tests and performance evaluations as required in § 63.10(b)(2)(viii).

(b) For each CMS, you must keep the records listed in paragraphs (b)(1) through (5) of this section.

(1) Records described in § 63.10(b)(2)(vi) through (xi).

(2) All required measurements needed to demonstrate compliance with a relevant standard (*e.g.*, 30-minute averages of CMS data, raw performance testing measurements, raw performance evaluation measurements).

(3) All required CMS measurements (including monitoring data recorded during unavoidable CMS breakdowns and out-of-control periods).

(4) Records of the date and time that each deviation started and stopped, and whether the deviation occurred during a period of startup, shutdown, or malfunction or during another period.

(5) Records for process vents according to the requirements specified in § 63.982(a)(2) and storage tank vents according to the requirements specified in § 63.982(a)(1).

§ 63.7192 In what form and how long must I keep my records?

(a) Your records must be in a form suitable and readily available for expeditious review, according to § 63.10(b)(1).

(b) As specified in § 63.10(b)(1), you must keep each record for 5 years following the date of each occurrence, measurement, maintenance, corrective action, report, or record.

(c) You must keep each record on site for at least 2 years after the date of each occurrence, measurement, maintenance, corrective action, report, or record, according to § 63.10(b)(1). You can keep the records offsite for the remaining 3 years.

Other Requirements and Information

§ 63.7193 What parts of the General Provisions apply to me?

Table 2 to this subpart shows which parts of the General Provisions in §§ 63.1 through 63.13 apply to you.

§ 63.7194 Who implements and enforces this subpart?

(a) This subpart can be implemented and enforced by us, the U.S. Environmental Protection Agency (EPA), or a delegated authority such as your State, local, or tribal agency. If the U.S. EPA Administrator has delegated authority to your State, local, or tribal agency, then that agency has the authority to implement and enforce this subpart. You should contact your U.S. EPA Regional Office to find out if this subpart is delegated to your State, local, or tribal agency.

(b) In delegating implementation and enforcement authority of this subpart to a State, local, or tribal agency under 40 CFR part 63, subpart E, the authorities contained in paragraph (c) of this section are retained by the U.S. EPA Administrator and are not transferred to the State, local, or tribal agency.

(c) The authorities that will not be delegated to State, local, or tribal agencies are as listed in paragraphs (c)(1) through (4) of this section.

(1) Approval of alternatives to the non-opacity emission limitations in § 63.7184 under § 63.6(g).

(2) Approval of major alternatives to test methods under § 63.7(e)(2)(ii) and (f) and as defined in § 63.90.

(3) Approval of major alternatives to monitoring under § 63.8(f) and as defined in § 63.90.

(4) Approval of major alternatives to recordkeeping and reporting under § 63.10(f) and as defined in § 63.90.

§ 63.7195 What definitions apply to this subpart?

Terms used in this subpart are defined in the Clean Air Act, in §§ 63.2 and 63.981, the General Provisions of this part (40 CFR part 63, subpart A), and in this section as follows:

Control device means a combustion device, recovery device, recapture device, or any combination of these devices used for the primary purpose of reducing emissions to comply with this subpart. Devices that are inherent to a process or are integral to the operation of a process are not considered control devices for the purposes of this subpart, even though these devices may have the secondary effect of reducing emissions.

Process vent means the point at which HAP emissions are released to the atmosphere from a semiconductor manufacturing process unit or storage tank by means of a stack, chimney, vent, or other functionally equivalent opening. The HAP emission points originating from wastewater treatment equipment, other than storage tanks, are not considered to be a process vent, unless the wastewater treatment equipment emission points are connected to a common vent or exhaust plenum with other process vents.

Semiconductor manufacturing means the collection of semiconductor manufacturing process units used to manufacture p-type and n-type semiconductors or active solid state devices from a wafer substrate, including processing from crystal growth through wafer fabrication, and testing and assembly. Examples of semiconductor or related solid state devices include semiconductor diodes, semiconductor stacks, rectifiers, integrated circuits, and transistors.

Semiconductor manufacturing process unit means the collection of equipment used to carry out a discrete operation in the semiconductor manufacturing process. These

operations include, but are not limited to, crystal growing; solvent stations used to prepare and clean materials for subsequent processing or for parts cleaning; wet chemical stations used for cleaning (other than solvent cleaning); photoresist application, developing, and stripping; etching; gaseous operation stations used for stripping, cleaning, doping, etching, and layering; separation; encapsulation; and testing. Research and development operations associated with semiconductor manufacturing and conducted at a semiconductor manufacturing facility are considered to be semiconductor manufacturing process units.

Storage tank means a stationary unit that is constructed primarily from nonearthen materials (such as wood, concrete, steel, fiberglass, or plastic) which provides structural support and is designed to hold an accumulation of liquids or other materials used in or generated by a semiconductor manufacturing process unit. The following are not storage tanks for the purposes of this subpart:

(1) Tanks permanently attached to motor vehicles such as trucks, railcars, barges, or ships;

(2) Flow-through tanks where wastewater undergoes treatment (such as pH adjustment) before discharge, and are not used to accumulate wastewater;

(3) Bottoms receiver tanks; and

(4) Surge control tanks.

Tables to Subpart BBBBB of Part 63

As stated in § 63.7187, you must comply with the requirements for performance tests in the following table:

TABLE 1 TO SUBPART BBBBB OF PART 63.—REQUIREMENTS FOR PERFORMANCE TESTS

For . . .	You must . . .	Using . . .	According to the following requirements . . .
1. Process or storage tank vent streams.	a. Select sampling port's location and the number of traverse ports.	Method 1 or 1A of 40 CFR part 60, appendix A.	Sampling sites must be located at the inlet (if emission reduction or destruction efficiency testing is required) and outlet of the control device and prior to any releases to the atmosphere.
	b. Determine velocity and volumetric flow rate.	Method 2, 2A, 2C, 2D, 2F, or 2G of 40 CFR part 60, appendix A.	For HAP reduction efficiency testing only; not necessary for determining compliance with a ppmv concentration limit.
	c. Conduct gas molecular weight analysis.	i. Method 3, 3A, or 3B of 40 CFR part 60, appendix A.	For flow rate determination only.
		ii. ASME PTC 19.10–1981–Part 10.	You may use ASME PTC 19.10–1981–Part 10 (available for purchase from Three Park Avenue, New York, NY 10016–5990) as an alternative to EPA Method 3B.
	d. Measure moisture content of the stack gas.	Method 4 of 40 CFR part 60, appendix A.	For flow rate determination and correction to dry basis, if necessary.
2. Process vent stream	a. Measure organic and inorganic HAP concentration (two method option).	i. Method 18, 25, or 25A of 40 CFR part 60, appendix A, AND ii. Method 26 or 26A of 40 CFR part 60, appendix A.	(1) To determine compliance with the percent by weight emission reduction limit, conduct simultaneous sampling at inlet and outlet of control device and analyze for same organic and inorganic HAP at both inlet and outlet; and (2) If you use Method 25A to determine the TOC concentration for compliance with the 20 ppmv emission limitation, the instrument must be calibrated on methane or the predominant HAP. If you calibrate on the predominant HAP, you must comply with each of the following: —The organic HAP used as the calibration gas must be the single organic HAP representing the largest percent of emissions by volume. —The results are acceptable if the response from the high level calibration gas is at least 20 times the standard deviation of the response from the zero calibration gas when the instrument is zeroed on its most sensitive scale. —The span value of the analyzer must be less than 100 ppmv.
	c. Measure organic and inorganic HAP simultaneously (one method option).	Method 320 of 40 CFR part 63, appendix A.	To determine compliance with 98 percent reduction limit, conduct simultaneous sampling at inlet and outlet of control device and analyze for same organic and inorganic HAP at both inlet and outlet. To determine compliance with the percent by weight emission reduction limit, conduct simultaneous sampling at inlet and outlet of control device and analyze for same organic and inorganic HAP at both inlet and outlet.
3. Storage tank vent stream	Measure inorganic HAP concentration.	Method 26 or 26A of 40 CFR part 60, appendix A, or Method 320 of 40 CFR part 63, appendix A.	To determine compliance with percent by weight emission reduction limit, conduct simultaneous sampling at inlet and outlet of control device and analyze for same inorganic HAP at both inlet and outlet.

As stated in § 63.7193, you must comply with the applicable General Provisions requirements according to the following table:

TABLE 2 TO SUBPART BBBBB OF PART 63.—APPLICABILITY OF GENERAL PROVISIONS TO SUBPART BBBBB

Citation	Subject	Applicable to Subpart BBBBB?
§ 63.1	Applicability	Yes.
§ 63.2	Definitions	Yes.
§ 63.3	Units and Abbreviations	Yes.
§ 63.4	Prohibited Activities and Circumvention	Yes.
§ 63.5	Construction and Reconstruction	Yes.
§ 63.6	Compliance with Standards and Maintenance	Yes.
§ 63.7	Performance Testing Requirements	Yes, with the exception of § 63.7(e)(1). The requirements of § 63.7(e)(1) do not apply. Performance testing requirements that apply are specified in this subpart, and in § 63.982(a)(1) and (2).
§ 63.8	Monitoring Requirements	Monitoring requirements are specified in this subpart and in § 63.982(a)(1) and (2). The closed vent system inspection requirements of § 63.983(c), as referenced by § 63.982(a)(1) and (2), do not apply.
§ 63.9	Notification Requirements	Yes.
§ 63.10	Recordkeeping and Reporting Requirements	Yes, with the exception of § 63.10(e). The requirements of § 63.10(e) do not apply. In addition, the recordkeeping and reporting requirements specified in this subpart apply.
§ 63.11	Flares	Yes.
§ 63.12	Delegation	Yes.
§ 63.13	Addresses	Yes.
§ 63.14	Incorporation by Reference	Yes.
§ 63.15	Availability of Information	Yes.

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 300

[FRL–7500–8]

National Oil and Hazardous Substance Pollution Contingency Plan; National Priorities List

AGENCY: Environmental Protection Agency.

ACTION: Direct Final Notice of Deletion of the Rose Park Sludge Pit Superfund Site From the National Priorities List.

SUMMARY: The Environmental Protection Agency (EPA) Region 8 is publishing a Direct Final Notice of Deletion of the Rose Park Sludge Pit Superfund Site (Site), located in Salt Lake City, Utah, from the National Priorities List (NPL).

The NPL, promulgated pursuant to Section 105 of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) of 1980, as amended, is appendix B to 40 CFR part 300, the National Oil and Hazardous Substances Pollution Contingency Plan (NCP). This direct final deletion is being published by EPA with the concurrence of the State of Utah, through the Utah Department of Environmental Quality (UDEQ), based on EPA's determination that all appropriate response actions under CERCLA, other than five-year reviews and operation & maintenance, have been completed at the Site and, therefore, further remedial action pursuant to CERCLA is not appropriate.

DATES: This direct final deletion will be effective June 30, 2003, unless EPA receives adverse comments by June 23, 2003. If EPA receives significant adverse comment(s), EPA will withdraw the Direct Final Notice of Deletion and it will not take effect.

ADDRESSES: Comments should be mailed to: Armando Saenz, Remedial Project Manager (RPM), Mail Code: 8EPR–SR, U.S. EPA Region 8, 999 18th Street, Suite 300, Denver, Colorado, 80202–2466.

Information Repositories: Comprehensive information is available for viewing and copying at the following information repositories for the Site: (1) U.S. EPA Region 8 Superfund Records Center, 999 18th Street, Fifth Floor, Denver, Colorado 80202–2466, Monday through Friday, 8 a.m.—4:30 p.m.; and, (2) Utah Department of Environmental Quality, Division of Environmental Response & Remediation, 168 North 1950 West, Salt Lake City, Utah 84116.

FOR FURTHER INFORMATION CONTACT: Armando Saenz, 303–312–6559, Remedial Project Manager (RPM), Mail Code: 8EPR–SR, U.S. EPA Region 8, 999 18th Street, Suite 300, Denver, Colorado, 80202–2466.

SUPPLEMENTARY INFORMATION:

Table of Contents

I. Introduction
II. NPL Deletion Criteria
III. Deletion Procedures
IV. Basis for Site Deletion
V. Deletion Action

I. Introduction

EPA Region 8 is publishing this Direct Final Notice of the Deletion of the Rose Park Sludge Pit Superfund Site from the NPL.

The EPA identifies sites that appear to present a significant risk to public health or the environment and maintains the NPL as the list of those sites. As described in § 300.425(e)(3) of the NCP, sites deleted from the NPL remain eligible for remedial actions if conditions at a deleted site warrant such action, pursuant to EPA's authority under CERCLA and the NCP.

Because EPA considers this action to be noncontroversial, this action is being taken without prior publication of a notice of intent to delete. This action will be effective June 30, 2003 unless EPA receives adverse comments by June 23, 2003 on this document. If adverse comments are received within the 30-day public comment period on this document, EPA will publish a timely withdrawal of this direct final deletion before the effective date of the deletion and the deletion will not take effect. EPA will, as appropriate, prepare a response to comments and continue with the deletion process on the basis of this Notice and the comments already received. There will be no additional opportunity to comment on this deletion process.

Section II of this document explains the criteria for deleting sites from the NPL. Section III discusses procedures that EPA is using for this action. Section

IV discusses the Rose Park Sludge Pit Superfund Site and demonstrates how it meets the deletion criteria. Section V discusses EPA's action to delete the Site from the NPL unless adverse comments are received during the public comment period.

II. NPL Deletion Criteria

Section 300.425(e) of the NCP provides that sites may be deleted from the NPL where no further response is appropriate. In making a determination to delete a site from the NPL, EPA shall consider, in consultation with the State, whether any of the following criteria have been met:

i. Responsible parties or other persons have implemented all appropriate response actions required;
ii. All appropriate Fund-financed (Hazardous Substance Superfund Response Trust Fund) response under CERCLA has been implemented, and no further response action by responsible parties is appropriate; or
iii. The remedial investigation has shown that the release poses no significant threat to public health or the environment and, therefore, the taking of remedial measures is not appropriate.

Even if a site is deleted from the NPL, where hazardous substances, pollutants, or contaminants remain at the deleted site above levels that allow for unlimited use and unrestricted exposure, EPA policy requires that a subsequent review of the site be conducted at least every five years after the initiation of the remedial action at the deleted site to ensure that the action remains protective of public health and the environment. If new information becomes available which indicates a need for further action, EPA may initiate or order remedial actions. Whenever there is a significant release from a site deleted from the NPL, the deleted site may be restored to the NPL without application of the hazard ranking system.

III. Deletion Procedures

The following procedures apply to deletion of the Site:

(1) The EPA, lead agency for the Site, consulted with Utah on the deletion of the Site from the NPL prior to developing this direct final notice of deletion.

(2) Utah concurred with deletion of the Site from the NPL.

(3) Concurrent with the publication of this Direct Final Notice of Deletion, a notice of the availability of the parallel Notice of Intent to Delete was published today in the "Proposed Rules" section of the **Federal Register**, is being published in a major local newspaper of general circulation at or near the Site and is being distributed to appropriate federal, state and local government officials and other interested parties; the newspaper notice announces the 30-day public comment period concerning the Notice of Intent to Delete the Site from the NPL.

(4) The EPA placed copies of documents supporting the deletion in the Site information repositories identified above.

(5) If adverse comments are received within the 30-day public comment period on this notice, EPA will publish a timely notice of withdrawal of this Direct Final Notice of Deletion before its effective date and will prepare a response to comments and continue with the deletion process on the basis of the notice of intent to delete and the comments already received.

Deletion of a site from the NPL does not itself create, alter or revoke any individual's rights or obligations. Deletion of a site from the NPL does not in any way alter EPA's right to take enforcement actions, as appropriate. The NPL is designed primarily for informational purposes and to assist EPA management. Section 300.425(e)(3) of the NCP states that the deletion of a site from the NPL does not preclude eligibility for future response actions, should future conditions warrant such actions.

IV. Basis for Site Deletion

The following information provides EPA's rationale for deleting the Site from the NPL:

Site Location & History

The Site is located in Salt Lake City, Utah at approximately 1300 North Boy Scout Drive (1200 West). The Site is bordered by vacant, undeveloped land to the north and Rose Park to the east, west, and south. Rose Park is maintained by Salt Lake City Corporation and includes tennis courts, baseball and soccer fields, picnic areas, parking lots, and restrooms. Residential neighborhoods are located south of Rose Park.

Utah Oil and Refining Company disposed of acidic waste sludges in an unlined pit on-site from the 1930s until 1957. This waste material was generated from the petroleum refinery located east of the site. Salt Lake City purchased the property in 1957 to prevent further dumping of the waste material. In 1960 Salt Lake City Corporation removed 40 to 100 truck-loads of sludge and covered the remaining waste sludge with a soil cap.

Salt Lake City rediscovered the waste disposal site in 1976 during expansion of the adjacent city park. Due to state and local concerns, EPA and Amoco conducted a number of site investigations between 1979 and 1981. The sludge pit covered an area of approximately 5.5 acres and the waste material was found as deep as 20 feet below ground surface (bgs). The shallow, unconfined aquifer was approximately eight to ten feet bgs and flowed towards the northwest. Because the Site was considered the State of Utah's top priority, it was listed on the NPL on September 8, 1983.

Remedial Actions

Salt Lake City Corporation, Salt Lake City/County Health Department, the Utah State Department of Health, EPA, and Amoco Oil Company signed an Intergovernmental/Corporate Cooperation Agreement (ICCA) on October 29, 1982. The ICCA required Amoco to conduct remedial activities on-site, which included constructing a bentonite slurry wall around the perimeter of the site and capping the waste material. The primary objectives of the containment remedy were to prevent exposure to the acid waste sludge, eliminate potentially unhealthy odors and vapors, and prevent off-site migration of the sludge through surface water and groundwater.

Amoco conducted remedial activities at the Site between 1982 and 1984. First, a two-foot wide and 30-feet deep bentonite slurry wall was constructed around the perimeter of the site. This wall was installed ten feet below the deepest known contamination. Construction of the slurry wall was completed on January 17, 1983. Following installation of the slurry wall, Amoco constructed a cap over the waste material. This protective cover included a sand layer, fabric membrane, compacted clay layer, and 18-inches of soil. Placement of the cap was completed on July 22, 1983. The surface of the cap was then graded to control surface water run-on and run-off. The final seeding of the topsoil was completed in the spring of 1984. Lastly, vehicular barriers and warning signs were placed around the perimeter of the repository in October 1984.

The U.S. Army Corps of Engineers (COE) provided construction oversight for the EPA. The COE indicated in their progress reports that the slurry wall and cap were constructed according to the design and there were no deficiencies. EPA also determined the remedy; as designed and implemented; was protective of human health and the environment because all exposure pathways had been addressed.

Institutional Controls (ICs) and Operation & Maintenance (O&M)

ICs and O&M requirements for the Site were also included in the ICCA. The ICs prevent excavation activities or the installation of any underground utilities on the Site. BP/Amoco recorded the ICCA in the chain-of-title for the Site at the Salt Lake County Recorders Office in 1985. The recording provides a public record of the ICs and background information in the event of a transfer of ownership.

O&M activities at the Site included groundwater monitoring and sampling, site inspections, and well integrity testing. Salt Lake City Corporation conducted O&M activities from 1984 through 1992. Because the EPA, State of Utah, and BP/Amoco identified several deficiencies regarding O&M activities during this time period, BP/Amoco took over the responsibility of O&M from the Salt Lake City Corporation in 1992. Since taking over this duty in 1992, BP/Amoco has documented the O&M activities from each year in an annual report.

Five-Year Reviews

Three Five-Year Reviews have been conducted at the Site. The reviews were completed on June 1, 1992, August 5, 1997 and September 19, 2002, respectively. These reviews indicated that the remedy was protective of human health and the environment.

The last review, conducted by UDEQ, found that the cap is in good condition thus preventing exposure to the waste material in the repository. A chain-link fence and guardrail around the perimeter of the repository prevent public access to the Site and caution signs on each side of the repository warn park visitors of the Site. Groundwater monitoring data indicate the waste material remains contained within the repository. ICs for the Site prevent excavation activities or the installation of underground utilities on the Site. Three issues that did not immediately impact protectiveness were identified and have subsequently been addressed by BP/Amoco.

Policy reviews are required at the Site every five years because remedial activities were completed prior to the passage of the Superfund Amendments and Reauthorization Act (SARA) of 1986 and waste material was left on-site, which prevents unrestricted exposure and unlimited use of the Site. Therefore, the next Five-Year Review for this Site will be conducted by September 19, 2007.

Community Involvement

Public participation activities have been satisfied as required in CERCLA section 113(k), 42 U.S.C. 9613(k), and CERCLA section 117, 42 U.S.C. 9617. Documents in the deletion docket, which EPA relied on for recommendation of the deletion from the NPL, are available to the public in the information repositories.

V. Deletion Action

The EPA, with concurrence from the State of Utah through UDEQ, has determined that all appropriate responses under CERCLA have been completed, and that no further response actions, under CERCLA, other than five-year reviews and operation & maintenance, are necessary. Therefore, EPA is taking this action to delete the Site from the NPL.

Because EPA considers this action to be noncontroversial, this action is being taken without prior publication of a notice of intent to delete. This action will be effective June 30, 2003, unless EPA receives adverse comments by June 23, 2003. If adverse comments are received within the 30-day public comment period on this document, EPA will publish a timely withdrawal of this direct final deletion before the effective date of the deletion and the deletion will not take effect. EPA will, as appropriate, prepare a response to comments and continue with the deletion process on the basis of the notice of intent to delete and the comments already received. There will be no additional opportunity to comment on this deletion process.

List of Subjects in 40 CFR Part 300

Environmental protection, Air pollution control, Chemicals, Hazardous waste, Hazardous substances, Intergovernmental relations, Penalties, Reporting and recordkeeping requirements, Superfund, Water pollution, Water supply.

Dated: May 2, 2003.

Robert E. Roberts,

Regional Administrator, Region 8.

■ For the reasons set out in this document, 40 CFR Part 300 is amended as follows:

PART 300—[AMENDED]

■ 1. The authority citation for Part 300 continues to read as follows:

Authority: 33 U.S.C. 1321(c)(2); 42 U.S.C. 9601–9657; E.O. 12777, 56 FR 54757, 3 CFR, 1991 Comp., p.351; E.O. 12580, 52 FR 2923, 3 CFR, 1987 Comp., p.193.

Appendix B—[Amended]

■ 2. Table 1 of Appendix B to Part 300 is amended under "Utah" by removing the entry for "Rose Park Sludge Pit".

[FR Doc. 03–12612 Filed 5–21–03; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 300

[FRL–7500–6]

National Oil and Hazardous Substance Pollution Contingency Plan; National Priorities List

AGENCY: Environmental Protection Agency.

ACTION: Direct final notice of deletion of the Petrochem Recycling Corp./Ekotek, Inc., Superfund Site from the National Priorities List.

SUMMARY: The Environmental Protection Agency (EPA) Region 8 is publishing a Direct final Notice of Deletion of the Petrochem Recycling Corp./Ekotek, Inc., Superfund Site (Site), located in Salt Lake City, Utah, from the National Priorities List (NPL).

The NPL, promulgated pursuant to Section 105 of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) of 1980, as amended, is Appendix B to 40 CFR Part 300, the National Oil and Hazardous Substances Pollution Contingency Plan (NCP). This direct final deletion is being published by EPA with the concurrence of the State of Utah, through the Utah Department of Environmental Quality (UDEQ), based on EPA's determination that all appropriate response actions under CERCLA have been completed at the Site and, therefore, further remedial action pursuant to CERCLA is not appropriate.

DATES: This direct final deletion will be effective June 30, 2003, unless EPA receives adverse comments by June 23, 2003. If EPA receives significant adverse comment(s), EPA will withdraw the Direct Final Notice of Deletion and it will not take effect. EPA will, as appropriate, address all public comments in a subsequent final deletion notice based on this Notice.

ADDRESSES: Comments should be mailed to: Armando Saenz, Remedial Project Manager (RPM), Mail Code: 8EPR–SR, U.S. EPA Region 8, 999 18th Street, Suite 300, Denver, Colorado, 80202–2466.

Information Repository: Comprehensive information is available

for viewing and copying at the information repository for the Site located at: U.S. EPA Region 8 Superfund Records Center, 999 18th Street, Fifth Floor, Denver, Colorado 80202–2466, Monday through Friday, 8:00 a.m.–4:30 p.m.

FOR FURTHER INFORMATION CONTACT: Armando Saenz, 303–312–6559, Remedial Project Manager (RPM), Mail Code: 8EPR–SR, U.S. EPA Region 8, 999 18th Street, Suite 300, Denver, Colorado 80202–2466.

SUPPLEMENTARY INFORMATION:

Table of Contents

I. Introduction
II. NPL Deletion Criteria
III. Deletion Procedures
IV. Basis for Site Deletion
V. Deletion Action

I. Introduction

EPA Region 8 is publishing this Direct Final Notice of Deletion of the Petrochem Recycling Corp./Ekotek, Inc., Superfund Site from the NPL.

The EPA identifies sites that appear to present a significant risk to public health or the environment and maintains the NPL as the list of those sites. As described in 40 CFR 300.425(e)(3) of the NCP, sites deleted from the NPL remain eligible for remedial actions if conditions at a deleted site warrant such action, pursuant to EPA's authority under CERCLA and the NCP.

Because EPA considers this action to be noncontroversial, this action is being taken without prior publication of a notice of intent to delete. This action will be effective June 30, 2003 unless EPA receives adverse comments by June 23, 2003 on this document. If adverse comments are received within the 30-day public comment period on this document, EPA will publish a timely withdrawal of this direct final deletion before the effective date of the deletion and the deletion will not take effect. EPA will, as appropriate, prepare a response to comments and continue with the deletion process on the basis of this Notice and the comments already received. There will be no additional opportunity to comment on this deletion process.

Section II of this document explains the criteria for deleting sites from the NPL. Section III discusses procedures that EPA is using for this action. Section IV discusses the Petrochem Recycling Corp./Ekotek, Inc., Superfund Site and demonstrates how it meets the deletion criteria. Section V discusses EPA's action to delete the Site from the NPL unless adverse comments are received during the public comment period.

II. NPL Deletion Criteria

Section 300.425(e) of the NCP provides that sites may be deleted from the NPL where no further response is appropriate. In making a determination to delete a site from the NPL, EPA shall consider, in consultation with the State, whether any of the following criteria have been met:

i. Responsible parties or other persons have implemented all appropriate response actions required;

ii. All appropriate Fund-financed (Hazardous Substance Superfund Response Trust Fund) response under CERCLA has been implemented, and no further response action by responsible parties is appropriate; or

iii. The remedial investigation has shown that the release poses no significant threat to public health or the environment and, therefore, the taking of remedial measures is not appropriate.

Even if a site is deleted from the NPL, where hazardous substances, pollutants, or contaminants remain at the deleted site above levels that allow for unlimited use and unrestricted exposure, CERCLA section 121(c), 42 U.S.C. 9621(c), requires that a subsequent review of the site be conducted at least every five years after the initiation of the remedial action at the deleted site to ensure that the action remains protective of public health and the environment. If new information becomes available which indicates a need for further action, EPA may initiate or order remedial actions. Whenever there is a significant release from a site deleted from the NPL, the deleted site may be restored to the NPL without application of the hazard ranking system.

III. Deletion Procedures

The following procedures apply to deletion of the Site:

(1) The EPA, lead agency for the Site, consulted with Utah on the deletion of the Site from the NPL prior to developing this direct final notice of deletion.

(2) Utah concurred with deletion of the Site from the NPL.

(3) Concurrent with the publication of this Direct Final Notice of Deletion, a notice of the availability of the parallel Notice of Intent to Delete was published today in the "Proposed Rules" section of the **Federal Register**, is being published in a major local newspaper of general circulation at or near the Site and is being distributed to appropriate federal, state and local government officials and other interested parties; the newspaper notice announces the 30-day public comment period concerning the Notice of Intent to Delete the Site from the NPL.

(4) The EPA placed copies of documents supporting the deletion in the Site information repository identified above.

(5) If adverse comments are received within the 30-day public comment period on this notice, EPA will publish a timely notice of withdrawal of this Direct Final Notice of Deletion before its effective date and will prepare a response to comments and continue with the deletion process on the basis of the notice of intent to delete and the comments already received.

Deletion of a site from the NPL does not itself create, alter or revoke any individual's rights or obligations. Deletion of a site from the NPL does not in any way alter EPA's right to take enforcement actions, as appropriate. The NPL is designed primarily for informational purposes and to assist EPA management. Section 300.425(e)(3) of the NCP states that the deletion of a site from the NPL does not preclude eligibility for future response actions, should future conditions warrant such actions.

IV. Basis for Site Deletion

The following information provides EPA's rationale for deleting the Site from the NPL:

Site Location & History

The Site is located in Township 1 North, Range 1 West, Section 23, and occupies approximately seven acres in an industrial corridor in the northern section of Salt Lake City, Utah. The Site was originally owned and operated as an oil refinery by O. C. Allen Oil Company, from 1953 to 1968. In 1968, Flinco, Inc., purchased the facility and operated the refinery until 1978. During that time Flinco changed its name to Bonus International Corp. In 1978, Axel Johnson, Inc., acquired the facility and operated it through its Delaware-based subsidiary, Ekotek, Inc. At that time, Ekotek, Inc., converted the Site into a hazardous waste storage and treatment and petroleum recycling facility. In 1981, the Site was reincorporated as Ekotek Incorporated, a Utah corporation.

From 1980 to 1987, the facility operated under Resource Conservation and Recovery Act (RCRA) Interim Status, and received a hazardous waste storage permit, issued by UDEQ, in July 1987 for a limited number of activities. Ekotek, Inc., declared bankruptcy in November of 1987. Petrochem Recycling Corp. leased the facility in 1987 from Ekotek, Inc., and continued operations until February 1988.

Site operations were shut down in February 1988 after the issuance to Petrochem Recycling Corp. of a Notice of Violation by the Utah Bureau of Solid and Hazardous Waste and the Bureau of Air Quality. In November 1988, Region 8 EPA Emergency Response Branch initiated an emergency surface removal action at the Site.

On August 2, 1989, an Administrative Order on Consent (AOC) for Emergency Surface Removal (Docket CERCLA–VIII–89–25) was issued to 27 Potentially Responsible Parties (PRPs) to undertake actions to clean up the Site. These PRPs operated as members of a voluntary association termed the ESRC (Ekotek Site Remediation Committee.) As part of the emergency surface removal action, the ESRC removed surface and underground storage tanks, containers, contaminated sludges, pooled liquids and processing equipment from the Site.

In November 1989, EPA began site assessment field operations. The Site was proposed for listing on the National Priorities List (NPL) on July 29, 1991. The Site was listed on the NPL on October 14, 1992. Only one operable unit was designated for the Site.

Remedial Investigation and Feasability Study (RI/FS)

An Administrative Order on Consent (AOC) for the performance of the Remedial Investigation/Feasibility Study (RI/FS) was signed in July 1992 (Docket No. CERCLA (106) VIII–92–21). Members of the ESRC were Respondents for the RI/FS AOC. The Phase I field investigation was undertaken from December 1992 to March 1993 and Phase II investigations were conducted from August to October 1993. A final RI report was issued in July 1994 and the final FS report was issued in January 1995. Two addenda to the FS were submitted on February 24, 1995 and April 7, 1995. EPA published the notice of completion for the FS and the Proposed Plan for remedial action on July 19, 1995.

The results of the remedial investigation indicated that surface soils on the property contained petroleum hydrocarbon contaminants, including semivolatile organic compounds (SVOCs) and polychlorinated biphenyls (PCBs). Contaminated soil extended to the water table in the vicinity of the former tank farm/processing area where a plume of light non-aqueous phase liquids (LNAPL) was present. Groundwater analytical results collected during the RI indicated that vinyl chloride, cis-1,2-DCE, benzene, and arsenic were present at concentrations above their maximum contaminant levels (MCLs). The feasibility study was completed in January 1995 and included development and evaluation of ten site-wide remedial alternatives. The alternatives consisted of various combinations of technologies for soil and groundwater remediation, including soil excavation and disposal or treatment, containment, LNAPL removal, groundwater extraction and disposal, and intrinsic groundwater remediation.

Record of Decision (ROD) and Explanations of Significant Differences (ESDs)

EPA's remedy decision was embodied in a final ROD signed on September 27, 1996. The components of the selected remedy included:

- Removal/Disposal of Hot Spot Soils
- Consolidation/Capping of Soils that Exceed Soil Performance Standards
- Partial Removal/Disposal of Soil and Buried Debris and Cap Remaining Debris
- Removal/Treatment of 100% of the LNAPL
- Natural Attenuation/Intrinsic Remediation of Ground Water
- Access and Land Use Restrictions for the Site

An ESD was issued on December 9, 1997, by EPA to modify certain remediation criteria established in the 1996 Record of Decision. The significant differences addressed in the ESD were: corrected and revised soil performance standard values for 2,3,7,8,-TCDD(TEF) and PCBs; revised soil hot spot performance standard value for PCBs; and an alternative to permit discharge of water to re-injection wells or to a surface water/storm drain via the substantive requirements of a UPDES permit.

A second ESD was issued on May 11, 1999, by EPA. The second ESD modified two aspects of the 1996 Record of Decision; first it deleted manganese as a designated contaminant of concern in the ground water, and second it increased the volume of contaminated soil destined for off-site disposal.

Changes to the original remedy due to the two ESDs resulted in the following remedy:

- Removal/Disposal of soils exceeding hot spot and soil performance standards
- Removal/Incineration of floating LNAPL down to 0.02 feet thickness
- Natural Attenuation/Intrinsic Remediation of groundwater
- Backfilling excavations with clean soil and regrading/restoration of Site

Response Actions

Removal Action. An Administrative Order on Consent for Removal Action was issued on December 22, 1997 (Docket No. CERCLA (106) VIII–98–05) for the performance of Drum and Sludge Removal. Members of the ESRC were Respondents for the Administrative Order on Consent for Removal Action. The actions under this AOC were completed prior to the Remedial Design and Remedial Action (RD/RA) Consent Decree in order to expedite and facilitate the remedial action. The actions completed under the Drum and Sludge Removal included the following: the characterization of drummed waste and filter cake sludge, the disposal of approximately 230 drums and the associated waste at a permitted RCRA facility and the disposal of approximately 450 cubic yards of filter cake sludge at a permitted RCRA facility. A final Drum and Sludge Removal Completion Report was issued in December 1998.

Remedial Actions. EPA and the ESRC representatives negotiated an agreement to implement the remedy selected in the ROD. This agreement, in the form of a consent decree for remedial design and remedial action (RD/RA Consent Decree), was lodged on March 4, 1998, and entered on April 27, 1998, in the U.S. District Court for Utah.

Remedial actions were conducted in four stages:

- Stage 1: Building Demolition
- Stage 2: Site Demolition, Hot Spot and Removal of Buried Debris
- Stage 3: Soil Excavation and Disposal and LNAPL Excavation and Incineration
- Stage 4: Groundwater Studies

All remedial actions were conducted in accordance with the ROD, ESDs, Remedial Design (May 1999) and Consent Decree. Groundwater studies supported the choice of monitored natural attenuation/intrinsic remediation for the groundwater component of the remedy. Confirmatory sampling verified that the Site achieved the ROD cleanup objectives for soil and groundwater and that all cleanup actions specified in the ROD and ESDs had been implemented.

Operation & Maintenance (O&M)

Disposal of hazardous materials, identified in the ROD and ESDs, to a permitted off-site disposal facility and the achievement of the groundwater remediation levels has eliminated the need for O&M at the Site.

Five-Year Review

Pursuant to CERCLA section 121(c), 42 U.S.C. 9621(c), five-year reviews are required at sites with remaining hazardous substances, pollutants, or contaminants above levels that allow for

unlimited use and unrestricted exposure. Hazardous substances above health-based levels were removed from the Site, eliminating the five-year review requirement.

Community Involvement

The impacted community, near the Site, has been represented by the Capital Hill Neighborhood Council (Council). The Council was funded by a Technical Assistance Grant from EPA. Mr. Paul Anderson acted as the Council's advisor and actively participated as a stakeholder during the planning and cleanup of the Site. Community relation activities included public meetings, site tours and fact sheets.

Public participation activities have been satisfied as required in CERCLA section 113(k), 42 U.S.C. 9613(k), and CERCLA section 117, 42 U.S.C. 9617. Documents in the deletion docket, which EPA relied on for recommendation of the deletion from the NPL, are available to the public in the information repository.

V. Deletion Action

The EPA, with concurrence from the State of Utah through UDEQ, has determined that all appropriate responses under CERCLA have been completed, and that no further response actions, under CERCLA are necessary. Therefore, EPA is taking this action to delete the Site from the NPL.

Because EPA considers this action to be noncontroversial, this action is being taken without prior publication of a notice of intent to delete. This action will be effective June 30, 2003, unless EPA receives adverse comments by June 23, 2003. If adverse comments are received within the 30-day public comment period on this document, EPA will publish a timely withdrawal of this direct final deletion before the effective date of the deletion and the deletion will not take effect. EPA will, as appropriate, prepare a response to comments and continue with the deletion process on the basis of the notice of intent to delete and the comments already received. There will be no additional opportunity to comment on this deletion process.

List of Subjects in 40 CFR Part 300

Environmental protection, Air pollution control, Chemicals, Hazardous waste, Hazardous substances, Intergovernmental relations, Penalties, Reporting and recordkeeping requirements, Superfund, Water pollution, Water supply.

Dated: May 2, 2003.

Robert E. Roberts,

Regional Administrator, Region 8.

■ For the reasons set out in this document, 40 CFR Part 300 is amended as follows:

PART 300—[AMENDED]

■ 1. The authority citation for Part 300 continues to read as follows:

Authority: 33 U.S.C. 1321(c)(2); 42 U.S.C. 9601–9657; E.O. 12777, 56 FR 54757, 3 CFR, 1991 Comp., p. 351; E.O. 12580, 52 FR 2923, 3 CFR, 1987 Comp., p. 193.

Appendix B—[Amended]

■ 2. Table 1 of Appendix B to Part 300 is amended under "Utah" by removing the entry for "Petrochem Recycling Corp./Ekotek, Plant".

[FR Doc. 03–12614 Filed 5–21–03; 8:45 am]

BILLING CODE 6560–50–P

GENERAL SERVICES ADMINISTRATION

41 CFR Parts 301–53 and 301–74

[FTR Case 2003–304; FTR Amendment 2003–04]

RIN 3090–AH81

Federal Travel Regulation; Using Promotional Materials; Conference Planning

AGENCY: Office of Governmentwide Policy, General Services Administration (GSA).

ACTION: Final rule.

SUMMARY: This final rule amends the Federal Travel Regulation (FTR) by clarifying provisions regarding promotional benefits or materials that a conference planner receives from a travel service provider. The explanation of changes is addressed in the supplementary information below.

DATES: Effective Date: May 22, 2003.

FOR FURTHER INFORMATION CONTACT: The Regulatory Secretariat, Room 4035, GS Building, Washington, DC 20405, (202) 208–7312, for information pertaining to status or publication schedules. For clarification of content, contact Mr. Jim Harte, Office of Governmentwide Policy, Travel Management Policy, at (202) 501–0438. Please cite FTR case 2003–304, FTR Amendment 2003–04.

SUPPLEMENTARY INFORMATION:

A. Background

The changes in this final rule clarify existing sections of chapter 301 as follows:

1. In § 301–53.2 a new note is added.
2. Section 301–53.3 is revised.
3. Section 301–74.1 is revised by redesignating paragraph (d) as paragraph (e) and adding a new paragraph (d).

B. Executive Order 12866

This is not a significant regulatory action and, therefore, was not subject to review under section 6(b) of Executive Order 12866, Regulatory Planning and Review, dated September 30, 1993. This rule is not a major rule under 5 U.S.C. 804.

C. Regulatory Flexibility Act

This final rule is not required to be published in the **Federal Register** for notice and comment; therefore, the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, does not apply.

D. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the changes to the FTR do not impose recordkeeping or information collection requirements, or the collection of information from offerors, contractors, or members of the public that require the approval of the Office of Management and Budget under 44 U.S.C. 3501, *et seq.*

E. Small Business Regulatory Enforcement Fairness Act

This final rule is also exempt from congressional review prescribed under 5 U.S.C. 801 since it relates solely to agency management and personnel.

List of Subjects in 41 CFR Parts 301–53 and 301–74

Government employees, Travel and transportation expenses.

Dated: May 12, 2003.

Stephen A. Perry,

Administrator of General Services.

■ For the reasons set forth in the preamble, under 5 U.S.C. 5701–5709, GSA amends 41 CFR parts 301–53 and 301–74 as set forth below:

PART 301–53—USING PROMOTIONAL MATERIALS AND FREQUENT TRAVELER PROGRAMS

■ 1. The authority citation for 41 CFR part 301–53 continues to read as follows:

Authority: 5 U.S.C. 5707, 31 U.S.C. 1353.

■ 2. Amend § 301–53.2 by adding a note to read as follows:

§ 301–53.2 What may I do with promotional benefits or materials I receive from a travel service provider?

* * * * *

Note to § 301–53.2: Promotional benefits or materials you receive from a travel service provider in connection with your planning and/or scheduling an official conference or other group travel (as opposed to performing official travel yourself) are considered property of the Government, and you may only accept the benefits or materials on behalf of the Federal Government (*see* § 301–74.1(d) of this chapter).

■ 3. Revise § 301–53.3 to read as follows:

§ 301–53.3 How may I use promotional materials and frequent traveler benefits?

Promotional materials and frequent traveler benefits may be used as follows:

(a) You may use frequent traveler benefits earned on official travel to obtain travel services for a subsequent official travel assignment(s); however, you may also retain such benefits for your personal use, including upgrading to a higher class of service while on official travel.

(b) If you are offered such benefits as a result of your role as a conference planner or as a planner for other group travel, you may not retain such benefits for your personal use (*see* § 301–53.2 of this chapter). Rather, you may only accept such benefits on behalf of the Federal Government. Such accepted benefits may only be used for official Government business.

PART 301–74—CONFERENCE PLANNING

■ 4. The authority citation for 41 CFR part 301–74 continues to read as follows:

Authority: 5 U.S.C. 5707.

■ 5. Amend § 301–74.1 by redesignating paragraph (d) as paragraph (e) and adding a new paragraph (d) to read as follows:

§ 301–74.1 What policies must we follow in planning a conference?

* * * * *

(d) Ensure that the conference planner or designee does not retain for personal use any promotional benefits or materials received from a travel service provider as a result of booking the conference (*see* §§ 301–53.2 and 301–53.3 of this chapter); and

* * * * *

[FR Doc. 03–12896 Filed 5–21–03; 8:45 am]

BILLING CODE 6820–14–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Substance Abuse and Mental Health Services Administration

42 CFR Part 8

RIN 0910–AA52

Opioid Drugs in Maintenance and Detoxification Treatment of Opiate Addiction; Addition of Buprenorphine and Buprenorphine Combination to List of Approved Opioid Treatment Medications

AGENCY: Substance Abuse and Mental Health Services Administration (SAMHSA), Department of Health and Human Services.

ACTION: Interim final rule.

SUMMARY: This interim final rule amends the Federal opioid treatment program regulations by adding buprenorphine and buprenorphine combination products to the list of approved opioid treatment medications that may be used in federally certified and registered opioid treatment programs. The Food and Drug Administration (FDA) recently approved Subutex® (buprenorphine) and Suboxone® (buprenorphine in fixed combination with naloxone) for the treatment of opiate dependence. These two products will join methadone and ORLAAM® as medications that may be used in opioid treatment programs for the maintenance and detoxification treatment of opioid dependence. Opioid treatment programs that choose to use these new products in the treatment of opioid dependence will adhere to the same Federal treatment standards established for methadone and ORLAAM®. The Secretary invites public comments on this action.

DATES: This interim final rule is effective May 22, 2003. This interim final rule is also being presented here for public comments. Written comments must be received by the Substance Abuse and Mental Health Services Administration (SAMHSA) on or before July 21, 2003.

ADDRESSES: Comments should be submitted to the Division of Pharmacologic Therapy, Center for Substance Abuse Treatment, Rockwall II, Room 6–18, 5600 Fishers Lane, Rockville, MD, 20857; Attention: DPT Federal Register Representative.

FOR FURTHER INFORMATION CONTACT: Nicholas Reuter, Center for Substance Abuse Treatment (CSAT), Division of Pharmacologic Therapy, SAMHSA, Rockwall II Room 6–18, 5600 Fishers Lane, Rockville, MD 20857, 301–443–0457, email: *nreuter@samsha.gov.*

SUPPLEMENTARY INFORMATION:

Background

In a rule document published in the **Federal Register** of January 17, 2001 (66 FR 4076, January 17, 2001), the Substance Abuse and Mental Health Services Administration (SAMHSA) issued final regulations for the use of narcotic drugs in maintenance and detoxification treatment of opioid addiction. That final rule established an accreditation-based regulatory system under 42 CFR part 8 ("Certification of Opioid Treatment Programs," "OTPs"). The regulations also established (under § 8.12) the Secretary's standards for the use of opioid medications in the treatment of addiction, including standards regarding the quantities of opioid drugs which may be provided for unsupervised use.

Section 8.12(h) sets forth the standards for medication administration, dispensing and use. Under this section, OTPs shall use only those opioid agonist treatment medications that are approved by the Food and Drug Administration under section 505 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 355) for use in the treatment of opioid addiction. The regulation listed methadone and levomethadyl acetate (ORLAAM®) as the opioid agonist treatment medications considered to be approved by the FDA for use in the treatment of opioid addiction.

On October 8, 2002, FDA approved two new opioid treatment medications, buprenorphine and buprenorphine combination for the treatment of opioid addiction. These medications are controlled under schedule III of the Controlled Substances Act ("CSA," 21 U.S.C. 812). *See* final rule published October 7, 2002 (67 FR 62354). By adding these two medications to the previous list of approved opioid treatment medications, the Secretary allows OTPs to use buprenorphine and buprenorphine combination for the treatment of opioid addiction. OTPs will apply the same treatment standards that were finalized on January 17, 2001, for methadone and ORLAAM®.

Summary of Regulation

The opioid treatment program regulations (42 CFR part 8) establish the procedures by which the Secretary will determine whether a practitioner is qualified under section 303(g) of the CSA (21 U.S.C. 823(g) (1)) to dispense certain therapeutic narcotic drugs in the treatment of individuals suffering from narcotic addiction. These regulations

also establish the Secretary's standards regarding the appropriate quantities of narcotic drugs that may be provided for unsupervised use by individuals undergoing such treatment (21 U.S.C. 823(g) (3)). (*See also* 42 U.S.C. 257a.)

This interim final rule does not change any of the provisions in subpart A (Accreditation) or subpart C (Procedures for Review of Suspension or Proposed Revocation of OTP Certification, and of Adverse Action Regarding Withdrawal of Approval of an Accreditation Body). Instead, the rule provides for a minor amendment to subpart B, Certification and Treatment Standards. The rule amends only one section of subpart B, section 8.12(h)(2) Medication administration, dispensing, and use.

Under 42 CFR 8.12(h)(2), OTPs are limited to using only those opioid agonist treatment medications that are approved by the Food and Drug Administration under section 505 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 355). This section notes that "currently the following medications will be considered to be approved by the Food and Drug Administration for use in the treatment opioid addiction: (i) Methadone; and (ii) levomethadyl acetate (LAAM)." The effect of this rule is to add buprenorphine and buprenorphine combination to this list by adding a new item (iii).

Justification for Interim Final Rule

The Administrative Procedure Act (5 U.S.C. 553) requires agencies to follow certain procedures for informal rulemaking, including publication of proposed rules in the **Federal Register** with an opportunity for public comment. Section 553(b)(B) allows agencies to dispense with prior notice and opportunity for public comment if the agency finds for good cause that use of such procedures is impracticable, unnecessary, or contrary to the public interest. Section 553(d)(3) permits the Secretary to waive the 30 day effective date if it is contrary to the public interest.

The Secretary has determined that good cause exists for publication of this rule without prior notice and opportunity for public comment and without a delayed effective date since such procedures are contrary to the public interest and unnecessary. It is contrary to the public interest to deny OTPs' access to this important new medication for the treatment of persons addicted to opioids. As compared to methadone and ORLAAM®, buprenorphine and buprenorphine combination are particularly useful in treating patients who have had a shorter course of addiction. Similarly, it would be contrary to the public interest to deny patients access to such prescription drugs from OTPs particularly in areas in which there are no physicians who have obtained a waiver under the Drug Addiction Treatment Act of 2000 ("DATA," section 3502 of Pub. L. 106–310).

To further elaborate, while OTPs may continue to use methadone and ORLAAM® for medicated assisted treatment, buprenorphine and buprenorphine combinations will provide OTPs with an important additional option for the treatment of addiction. Indeed, because of its "partial" agonist pharmacology, buprenorphine will provide programs with more flexibility in finding the most appropriate medication for each patient. It would thus be contrary to the public interest to delay the availability of buprenorphine products.

In addition to the public interest in having buprenorphine and buprenorphine combination products available for treatment use as soon as possible, prior notice and comment procedures are unnecessary. Currently, the rule states: "OTPs shall use only those opioid agonist treatment medications that are approved by the Food and Drug Administration * * * for use in the treatment of opioid addiction * * *. Currently the following opioid agonist treatment medications will be considered to be approved by the Food and Drug Administation for use in the treatment of opioid addiction: (i) Methadone; and (ii) Levomethadyl acetate (LAAM)." Because the buprenorphine products have been approved by the FDA as required by section 8.12(h)(2), the proposed modification is technical in nature in that it simply adds buprenorphine and buprenorphine combination to the list of FDA-approved medications that may be used by OTPs. Thus, comment is not necessary before finalizing this change to the regulation.

Although we are making the rule effective immediately without first obtaining public comment, we are providing for a 60-day comment period after publication. Specifically, we seek comments on the applicability of the existing OTP rules to these newly approved medications.

Analysis of Economic Impacts

The Secretary has examined the impact of this interim final rule under Executive Order 12866. Executive Order 12866 directs Federal agencies to assess all costs and benefits of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages, distributive impacts, and equity). This interim final rule does not establish additional regulatory requirements, it allows an activity that is otherwise prohibited. According to Executive Order 12866, a regulatory action is "significant" if it meets any one of a number of specified conditions, including having an annual effect on the economy of $100 million; adversely affecting in a material way a sector of the economy, competition, or jobs; or if it raises novel legal or policy issues. A detailed discussion of the Secretary's analysis is contained in the recent opioid treatment final rule published in the **Federal Register** of January 17, 2001 (66 FR 4086–4090). That notice described the impact of the opioid treatment regulations, analyzed alternatives, and considered comments from small entities.

The Secretary also finds that this rule is a not a significant regulatory action as defined by Executive Order 12866. The rule merely adds buprenorphine and buprenorphine combination products to the list of medications that may be used in the detoxification or maintenance treatment of opioid dependence. If opioid treatment programs choose to use the new medications, the new medications will be used in accordance with the standards set forth in the January 17, 2001, final rule (66 FR 4090). No new regulatory requirements are imposed by this interim final rule.

For the reasons outlined above, the Secretary has determined that this interim final rule will not have a significant impact upon a substantial number of small entities within the meaning of the Regulatory Flexibility Act (5 U.S.C. 605(b)). Therefore an initial regulatory flexibility analysis is not required for this interim final rule.

The Secretary has determined that this rule is not a major rule for the purpose of congressional review. For the purpose of congressional review, a major rule is one which is likely to cause an annual effect on the economy of $100 million; a major increase in costs or prices; significant effects on competition, employment, productivity, or innovation; or significant effects on the ability of U.S.-based enterprises to compete with foreign-based enterprises in domestic or export markets. This is not a major rule under the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA).

The Secretary has examined the impact of this rule under the Unfunded Mandates Reform Act of 1995 (UMRA) (Pub. L. 104–4). This rule does not trigger the requirement for a written statement under section 202(a) of the UMRA because it does not impose a mandate that results in an expenditure of $100 million (adjusted annually for inflation) or more by State, local, and tribal governments in the aggregate, or by the private sector, in any one year.

Environmental Impact

The Secretary has previously considered the environmental effects of this rule as announced in the final rule (66 FR 4076 at 4088). No new information or comments have been received that would affect the agency's previous determination that there is no significant impact on the human environment and that neither an environmental assessment nor an environmental impact statement is required.

Executive Order 13132: Federalism

The Secretary has analyzed this interim final rule in accordance with Executive Order 13132: Federalism. Executive Order 13132 requires Federal agencies to carefully examine actions to determine if they contain policies that have federalism implications or that preempt State law. As defined in the Order, "policies that have federalism implications" refer to regulations, legislative comments or proposed legislation, and other policy statements or actions that have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.

The Secretary is publishing this interim final rule to modify minimally treatment regulations that provide for the use of approved opioid agonist treatment medications in the treatment of opiate addiction. The Narcotic Addict Treatment Act (the NATA, Pub. L. 93–281) modified the Controlled Substances Act (CSA) to establish the basis for the Federal control of narcotic addiction treatment by the Attorney General and the Secretary. Because enforcement of these sections of the CSA is a Federal responsibility, there should be little, if any, impact from this rule on the distribution of power and responsibilities among the various levels of government. In addition, this interim final rule does not preempt State law. Accordingly, the Secretary has determined that this interim final rule does not contain policies that have federalism implications or that preempt State law.

Paperwork Reduction Act of 1995

This interim final rule adds buprenorphine and buprenorphine combination products to the list of approved medications that may be used in SAMHSA-certified opioid treatment programs. The interim final rule establishes no new reporting or recordkeeping requirements beyond those discussed in the January 17, 2001, final rule (66 FR 4076 at 4088). The Office of Management and Budget has approved the information collection requirements of the final rule under control number 0930–0206.

Executive Order 13175: Consultation and Coordination With Indian Tribal Governments

Executive Order 13175 (65 FR 67249, November 6, 2000) requires us to develop an accountable process to ensure "meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications." "Policies that have tribal implications" defined in the Executive Order to include regulations that have "substantial direct effects on one or more Indian tribes, on the relationship between the Federal government and the Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes."

This interim final rule does not have tribal implications. It will not have substantial direct effects on tribal governments, on the relationship between the Federal government and Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes, as specified in Executive Order 13175.

Dated: May 5, 2003.

Tommy G. Thompson,

Department of Health and Human Services.

List of Subjects in 42 CFR Part 8

Health professions, Levo-Alpha-Acetyl-Methadol (LAAM), Methadone, Reporting and recordkeeping requirements.

■ For the reasons set forth above, part 8 of title 42 of the Code of Federal Regulations is amended as follows:

PART 8—CERTIFICATION OF OPIOID TREATMENT PROGRAMS

■ 1. The authority citation for part 8 continues to read as follows:

Authority: 21 U.S.C. 823; Sections 301(d), 543, and 1976 of the 42 U.S.C. 257a, 290aa(d), 290 dd–2, 300x–23, 300x–27(a), 300y–11.

■ 2. Section 8.12(h) (2) is revised to read as follows:

§ 8.12 Federal opioid treatment standards.

* * * * *

(h)* * *

(2) OTPs shall use only those opioid agonist treatment medications that are approved by the Food and Drug Administration under section 505 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 355) for use in the treatment of opioid addiction. In addition, OTPs who are fully compliant with the protocol of an investigational use of a drug and other conditions set forth in the application may administer a drug that has been authorized by the Food and Drug Administration under an investigational new drug application under section 505(i) of the Federal Food, Drug, and Cosmetic Act for investigational use in the treatment of opioid addiction. Currently the following opioid agonist treatment medications will be considered to be approved by the Food and Drug Administration for use in the treatment of opioid addiction:

(i) Methadone;

(ii) Levomethadyl acetate (LAAM); and

(iii) Buprenorphine and buprenorphine combination products that have been approved for use in the treatment of opioid addiction.

* * * * *

[FR Doc. 03–11469 Filed 5–21–03; 8:45 am]

BILLING CODE 4160–20–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 03–1477; MB Docket No. 02–255; RM–10524]

Radio Broadcasting Services; Cottage Grove, Depoe Bay, Garibaldi, Toledo, and Veneta, OR

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document at the request of Alexandra Communications, Inc. licensee of Station KDEP(FM), Depoe Bay, Oregon, Signal Communications, Inc., licensee of Station KEUG, Inc., Cottage Grove, Oregon, and Agpal Broadcasting, Inc., licensee of Station KPPT(FM), Toledo, Oregon, substitutes channel 288A for channel 288C3 at Depoe Bay, Oregon, reallots channel 288A from Depoe Bay to Garibaldi, Oregon, and modifies the license of Station KDEP(FM) to specify the new community. It also substitutes channel 283C3 for Channel 288A at Cottage

Grove, Oregon, reallots channel 288C3 to Veneta, Oregon, and modifies the license of station KEUG(FM) to specify the new community. Finally, it reallots channel 264C2 from Toledo, Oregon to Depoe Bay, and modifies the license of station KPPT(FM) to specify the new community. Channel 288A can be allotted at Garibaldi at a site 11 kilometers (6.8 miles) south of the community at coordinates NL 45–27–50 and WL 123–56–37. Channel 288C3 can be allotted at Veneta at a site 4.8 kilometers (3.0 miles) southwest of the community at coordinates NL 44–01–56 and WL 123–24–19. Channel 264C2 can be allotted at Depoe Bay at station KPPT(FM)'s current site 5.9 kilometers (3.7 miles) south of the community at coordinates NL 44–45–23 and WL 124–03–01.

DATES: Effective June 19, 2003.

ADDRESSES: Secretary, Federal Communications Commission, Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Victoria M. McCauley, Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MB Docket No. 02–255, adopted April 30, 2003, and released May 5, 2003. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC's Reference Information Center at Portals II, CY–A257, 445 Twelfth Street, SW., Washington, DC. This document may also be purchased from the Commission's duplicating contractors, Qualex International, Portals II, 445 12th Street, SW., Room CY–B402, Washington, DC 20554, telephone 202–863–2893, or via e-mail *qualexint@aol.com*.

List of Subjects in 47 CFR Part 73

Radio, Radio broadcasting.

■ Part 73 of Title 47 of the Code of Federal Regulations is amended as follows:

PART 73—RADIO BROADCAST SERVICES

■ 1. The authority citation for Part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303, 334 and 336.

§ 73.202 [Amended]

■ 2. Section 73.202(b), the Table of FM Allotments under Oregon, is amended by removing channel 288A and adding channel 264C2 at Depoe Bay, by removing channel 288A at Cottage Grove, by removing Toledo, channel 264C2, by adding Garibaldi, channel 288C3, and by adding Veneta, channel 288C3.

Federal Communications Commission.

John A. Karousos,

Assistant Chief, Audio Division, Media Bureau.

[FR Doc. 03–12792 Filed 5–21–03; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 03–1227; MB Docket No. 02–199; RM–102–199; RM–10514]

Radio Broadcasting Services; Magnolia, AR and Oil City, LA

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: In this document, at the request of Columbia Broadcasting Company, Inc., licensee of Station KVMA–FM, Magnolia, Arkansas, the Commission substitutes channel 300C2 for 300C1 at Magnolia, Arkansas and reallots Channel 300C2 from Magnolia to Oil City, Louisiana, as the community's first local transmission service, and modifies Station KVMA's authorization to specify Oil City as the community of license. Comments filed by Access.1 Communications—Shreveport, LLC opposing the reallotment are dismissed. Channel 300C2 can be reallotted from Magnolia to Oil City at petitioner's proposed site 27.6 kilometers (17.1 miles) northeast of the community at coordinates 32–54–06 NL and 93–44–01 WL.

DATES: Effective June 16, 2003.

FOR FURTHER INFORMATION CONTACT: Victoria M. McCauley, Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MB Docket No. 02–199, adopted, April 28, 2003, and released April 30, 2003. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Center (Room 239), 445 12th Street, SW., Washington, DC. This document may also be purchased from the Commission's duplicating contractor, Qualex International, Portals II, 445 12th Street, SW., Room CY–B402, Washington, DC, 20554, telephone 202–863–2893, facsimile 202–863–2898, or via e-mail *qualexint@aol.com*.

List of Subjects in 47 CFR Part 73

Radio, Radio broadcasting.

■ Part 73 of Title 47 of the Code of Federal Regulations is amended as follows:

PART 73—RADIO BROADCAST SERVICES

■ 1. The authority citation for Part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303, 334, and 336.

§ 73.202 [Amended]

■ 2. Section 73.202(b), the Table of FM Allotments under Arkansas, is amended by removing Magnolia, channel 300C1.

■ 3. Section 73.202(b), the Table of FM Allotments under Louisiana, is amended by adding Oil City, channel 300C2.

Federal Communications Commission.

John A. Karousos,

Assistant Chief, Audio Division, Media Bureau.

[FR Doc. 03–12791 Filed 5–21–03; 8:45 am]

BILLING CODE 6712–01–P

Proposed Rules

Federal Register

Vol. 68, No. 99

Thursday, May 22, 2003

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 205

[Docket Number TM–03–02]

RIN 0581–AC27

National Organic Program; Proposed Amendments to the National List of Allowed and Prohibited Substances

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

SUMMARY: This proposed rule would amend the U.S. Department of Agriculture's (USDA) National List of Allowed and Prohibited Substances (National List) to reflect recommendations submitted to the Secretary by the National Organic Standards Board (NOSB) from November 15, 2000 through September 17, 2002. Consistent with recommendations from the NOSB, this proposed rule would: add five substances, along with any restrictive annotations, to the National List, and revise the annotation of one substance.

DATES: Comments must be received by June 2, 2003.

ADDRESSES: Interested persons may comment on this proposed rule using the following procedures:

- Mail: Comments may be submitted by mail to: Richard H. Mathews, Program Manager, National Organic Program, USDA–AMS–TMP–NOP, 1400 Independence Ave., SW., Room 4008–So., Ag Stop 0268, Washington, DC 20250.
- E-mail: Comments may be submitted via the Internet to: *National.List@usda.gov*.
- Fax: Comments may be submitted by fax to: (202) 205–7808.
- Written comments on this proposed rule should be identified with the docket number TMD–03–02. Commenters should identify the topic and section number of this proposed rule to which the comment refers.
- Clearly indicate if you are for or against the proposed rule or some portion of it and your reason for it. Include recommended language changes as appropriate.
- Include a copy of articles or other references that support your comments. Only relevant material should be submitted.

It is our intention to have all comments to this proposed rule, whether submitted by mail, e-mail, or fax, available for viewing on the NOP homepage. Comments submitted in response to this proposed rule will be available for viewing in person at USDA–AMS, Transportation and Marketing, Room 4008–South Building, 1400 Independence Ave., SW., Washington, DC, from 9 a.m. to 12 noon and from 1 p.m. to 4 p.m., Monday through Friday (except official Federal holidays). Persons wanting to visit the USDA South Building to view comments received in response to this proposed rule are requested to make an appointment in advance by calling (202) 720–3252.

FOR FURTHER INFORMATION CONTACT: Toni A. Strother, Agricultural Marketing Specialist, Telephone: (202) 720–3252; Fax: (202) 205–7808.

SUPPLEMENTARY INFORMATION:

I. Background

On December 21, 2000 the Secretary established, within the National Organic Standards (NOS) (7 CFR part 205), the National List (§§ 205.600 through 205.607). The National List is the Federal list that identifies synthetic substances and ingredients that are allowed and nonsynthetic (natural) substances and ingredients that are prohibited for use in organic production and handling. Since established, the National List has not been amended. However, under the authority of the Organic Foods Production Act of 1990 (OFPA), as amended (7 U.S.C. 6501 *et seq.*), the National List can be amended by the Secretary based on proposed amendments developed by the NOSB.

This proposed rule would amend the National List to reflect recommendations submitted to the Secretary by the NOSB from November 15, 2000 through September 17, 2002. Between the specified time period, the NOSB has recommended that the Secretary add five substances to § 205.605 of the National List based on petitions received from industry participants. These substances were evaluated by the NOSB using the criteria specified in OFPA (7 U.S.C. 6517 and 6518) and the NOS. The NOSB also recommended that the Secretary revise the annotation of one substance included within section 205.605.

The NOSB has recommended that the Secretary add additional substances to sections 205.605 and 205.606 which have not been included in this proposed rule but are under review and, as appropriate, will be included in future rulemaking.

II. Overview of Proposed Amendments

The following provides an overview of the proposed amendments made to designated sections of the National List:

§ 205.605 Nonagricultural (nonorganic) substances allowed as ingredients in or on processed products labeled as "organic" or "made with organic (specified ingredients or food group(s))."

This proposed rule would amend paragraph (a) of § 205.605 by adding calcium sulfate—mined and glucono delta-lactone. This proposed rule would also amend paragraph (b) of § 205.605 by adding animal enzymes—without Lysosyme, cellulose, and tetrasodium pyrophosphate.

This proposed rule would revise current paragraph (b) of § 205.605 by amending an annotation to read as follows:

Potassium hydroxide—prohibited for use in lye peeling of fruits and vegetables except when used for peeling peaches during the Individually Quick Frozen (IQP) production process.

III. Related Documents

Eight notices were published regarding the meetings of the NOSB and its deliberations on recommendations and substances petitioned for amending the National List. Substances and recommendations included in this proposed rule were announced for NOSB deliberation in the following **Federal Register** Notices: (1) 65 FR 64657, October 30, 2000, (Animal enzymes); (2) 66 FR 10873, February 20, 2001, (Calcium sulfate); (3) 66 FR 48654, September 21, 2001, (Cellulose, and Potassium hydroxide); and (4) 67 FR 54784, August 26, 2002, (Glucono delta-lactone, and Tetrasodium pyrophosphate).

IV. Statutory and Regulatory Authority

The Organic Foods Production Act of 1990 (OFPA), as amended (7 U.S.C. 6501 *et seq.*), authorizes the Secretary, at § 6517 (d)(1), to make amendments to the National List based on proposed amendments developed by the NOSB. Sections 6518 (k)(2) and 6518 (n) of OFPA authorize the NOSB to develop proposed amendments to the National List for submission to the Secretary and establish a petition process by which persons may petition the NOSB for the purpose of having substances evaluated for inclusion onto or deletion from the National List. The National List petition process is implemented under § 205.607 of the NOS. The current petition process (65 FR 43259) can be accessed through the NOP Web site at *http://www.ams.usda.gov/nop*.

A. Executive Order 12866

This action has been determined to be non-significant for purposes of Executive Order 12866, and therefore, does not have to be reviewed by the Office of Management and Budget.

B. Executive Order 12988

Executive Order 12988 instructs each executive agency to adhere to certain requirements in the development of new and revised regulations in order to avoid unduly burdening the court system. The final rule was reviewed under this Executive Order and no additional related information has been obtained since then. This proposed rule is not intended to have a retroactive effect.

States and local jurisdictions are preempted under section 2115 of the Organic Foods Production Act (OFPA) (7 U.S.C. 6514) from creating programs of accreditation for private persons or State officials who want to become certifying agents of organic farms or handling operations. A governing State official would have to apply to USDA to be accredited as a certifying agent, as described in section 2115 (b) of the OFPA (7 U.S.C. 6514 (b)). States are also preempted under sections 2104 through 2108 of the OFPA (7 U.S.C. 6503 through 6507) from creating certification programs to certify organic farms or handling operations unless the State programs have been submitted to, and approved by, the Secretary as meeting the requirements of the OFPA.

Pursuant to section 2108(b) (2) of the OFPA (7 U.S.C. 6507(b) (2)), a State organic certification program may contain additional requirements for the production and handling of organically produced agricultural products that are produced in the State and for the certification of organic farm and handling operations located within the State under certain circumstances. Such additional requirements must: (a) Further the purposes of the OFPA, (b) not be inconsistent with the OFPA, (c) not be discriminatory toward agricultural commodities organically produced in other States, and (d) not be effective until approved by the Secretary.

Pursuant to section 2120 (f) of the OFPA (7 U.S.C. 6519 (f)), this regulation would not alter the authority of the Secretary under the Federal Meat Inspection Act (21 U.S.C. 601 *et seq.*), the Poultry Products Inspections Act (21 U.S.C. 451 *et seq.*), or the Egg Products Inspection Act (21 U.S.C. 1031 *et seq.*), concerning meat, poultry, and egg products, nor any of the authorities of the Secretary of Health and Human Services under the Federal Food, Drug and Cosmetic Act (21 U.S.C. 301 *et seq.*), nor the authority of the Administrator of the Environmental Protection Agency (EPA) under the Federal Insecticide, Fungicide and Rodenticide Act (7 U.S.C. 136 *et seq.*).

Section 2121 of the OFPA (7 U.S.C. 6520) provides for the Secretary to establish an expedited administrative appeals procedure under which persons may appeal an action of the Secretary, the applicable governing State official, or a certifying agent under this title that adversely affects such person or is inconsistent with the organic certification program established under this title. The OFPA also provides that the U.S. District Court for the district in which a person is located has jurisdiction to review the Secretary's decision.

C. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*) requires agencies to consider the economic impact of each rule on small entities and evaluate alternatives that would accomplish the objectives of the rule without unduly burdening small entities or erecting barriers that would restrict their ability to compete in the market. The purpose is to fit regulatory actions to the scale of businesses subject to the action.

Pursuant to the requirements set forth in the RFA, the Agricultural Marketing Service (AMS) performed an economic impact analysis on small entities in the final rule published in the **Federal Register** on December 21, 2000. AMS has also considered the economic impact of this action on small entities. Due to the changes reflected in this proposed rule that allow the use of additional substances in agricultural production and handling, the Administrator of AMS certifies that this proposed rule will not have a significant economic impact on a substantial number of small entities. This action relaxes the regulations published in the final rule and provides small entities with more tools to use in day-to-day operations. Small agricultural service firms, which include producers, handlers, and accredited certifying agents, have been defined by the Small Business Administration (SBA) (13 CFR 121.201) as those having annual receipts of less than $750,000 and small agricultural producers are defined as those having annual receipts of less than $5,000,000.

The U.S. organic industry at the end of 2001 included nearly 6,600 certified crop and livestock operations, including organic production and handling operations, producers, and handlers. These operations reported certified acreage totaling more than 2.34 million acres, 72,209 certified livestock, and 5.01 million certified poultry. Data on the numbers of certified handling operations are not yet available, but likely number in the thousands, as they would include any operation that transforms raw product into processed products using organic ingredients. Growth in the U.S. organic industry has been significant at all levels. From 1997 to 2001, the total organic acreage grew by 74 percent; livestock numbers certified organic grew by almost 300 percent over the same period, and poultry certified organic increased by 2,118 percent over this time. Sales growth of organic products has been equally significant, growing on average around 20 percent per year. Sales of organic products were approximately $1 billion in 1993, but are estimated to reach $13 billion this year, according to the Organic Trade Association (the association that represents the U.S. organic industry). In addition, USDA has accredited 81 certifying agents who have applied to USDA to be accredited in order to provide certification services to producers and handlers. A complete list of names and addresses of accredited certifying agents may be found on the AMS NOP Web site, at *http://www.ams.usda.gov/nop*. AMS believe that most of these entities would be considered small entities under the criteria established by the SBA.

Additional regulatory flexibility analysis beyond the regulatory flexibility analysis published in the NOP final rule on December 21, 2000, is not required for the purposes of this proposed rule. Comments from small entities affected by parts of this proposed rule will be considered in relation to the requirements of the RFA. These comments must be submitted separately and cite 5 U.S.C. 609 in the correspondence.

D. Paperwork Reduction Act

Pursuant to the Paperwork Reduction Act of 1995, the existing information collection requirements for the NOP are approved under OMB number 0581–0181. No additional collection or recordkeeping requirements are imposed on the public by this proposed rule. Accordingly, OMB clearance is not required by section 350(h) of the Paperwork Reduction Act, 44 U.S.C. 3501, *et seq.*, or OMB's implementing regulation at 5 CFR Part 1320.

E. General Notice of Public Rulemaking

This proposed rule reflects recommendations submitted to the Secretary by the NOSB. The five substances proposed to be added to the National List were based on petitions from the industry and evaluated by the NOSB using criteria in the Act and the regulations. Because these substances are critical to organic production and handling operations, producers and handlers should be able to use them in their operations as soon as possible. Accordingly, AMS believes that a 10-day period for interested persons to comment on this rule is appropriate.

List of Subjects in 7 CFR Part 205

Administrative practice and procedure, Agriculture, Animals, Archives and records, Imports, Labeling, Organically produced products, Plants, Reporting and recordkeeping requirements, Seals and insignia, Soil conservation.

For the reasons set forth in the preamble, 7 CFR Part 205, Subpart G is proposed to be amended as follows:

PART 205—NATIONAL ORGANIC PROGRAM

1. The authority citation for 7 CFR Part 205 continues to read as follows:

Authority: 7 U.S.C. 6501–6522.

2. Section 205.605 (proposed to be revised at 68 FR 18560, April 16, 2003) is amended by:

a. Adding two substances to paragraph (a).

b. Adding three substances to paragraph (b).

c. Revising Potassium hydroxide in paragraph (b).

The additions and revisions read as follows:

§ 205.605 Nonagricultural (nonorganic) substances allowed as ingredients in or on processed products labeled as "organic" or "made with organic (specified ingredients or food group(s))."

* * * * *

(a) * * *

* * * * * *

Calcium sulfate—mined.

* * * * *

Glucono delta-lactone.

* * * * *

(b) * * *

Animal enzymes—(Rennet—animals derived; Catalase—bovine liver; Animal lipase; Pancreatin; Pepsin; and Trypsin).

* * * * *

Cellulose—for use in regenerative casings, as an anti-caking agent (non-chlorine bleached) and filtering aid.

* * * * *

Potassium hydroxide—prohibited for use in lye peeling of fruits and vegetables except when used for peeling peaches during the Individually Quick Frozen (IQP) production process.

* * * * *

Tetrasodium pyrophosphate—for use only in textured meat analog products.

* * * * *

Dated: May 16, 2003.

Kenneth C. Clayton,

Acting Administrator, Agricultural Marketing Services.

[FR Doc. 03–12803 Filed 5–21–03; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 930

[Docket No. FV03–930–2 PR]

Tart Cherries Grown in the States of Michigan, et al.; Increased Assessment Rate

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

SUMMARY: This proposed rule would increase the assessment rate for tart cherries that are utilized in the production of tart cherry products other than juice, juice concentrate, or puree from $0.00175 to $0.0019 per pound. It would also increase the assessment rate for cherries utilized for juice, juice concentrate, or puree from $0.000875 to $0.0019 per pound. The single assessment rate for all assessable tart cherries was recommended by the Cherry Industry Administrative Board (Board) under Marketing Order No. 930 for the 2002–2003 and subsequent fiscal periods. The Board is responsible for local administration of the marketing order which regulates the handling of tart cherries grown in the production area. Authorization to assess tart cherry handlers enables the Board to incur expenses that are reasonable and necessary to administer the program. The fiscal period began July 1, 2002, and ends June 30, 2003. The assessment rate would remain in effect indefinitely unless modified, suspended, or terminated.

DATES: Comments must be received by June 2, 2003.

ADDRESSES: Interested persons are invited to submit written comments concerning this proposed action. Comments must be sent to the Docket Clerk, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence Avenue, SW., STOP 0237, Washington, DC 20250–0237; Fax: (202) 720–8938, or E-mail: *moabdocket.clerk@usda.gov*. All comments should reference the docket number and the date and page number of this issue of the **Federal Register** and will be made available for public inspection in the Office of the Docket Clerk during regular business hours or can be viewed at: *http://www.ams/usda.gov/fv/moab/html*.

FOR FURTHER INFORMATION CONTACT: Patricia A. Petrella or Kenneth G. Johnson, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, Suite 2A04, Unit 155, 4700 River Road, Riverdale, MD 20737, telephone: (301) 734–5243, or Fax: (301)–734–5275; or George Kelhart, Technical Advisor, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence Avenue, SW., STOP 0237, Washington, DC 20250–0237; telephone: (202) 720–2491, or Fax: (202) 720–8938.

Small businesses may request information on complying with this regulation by contacting Jay Guerber, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence Avenue, SW., STOP 0237, Washington, DC 20250–0237; telephone: (202) 720–2491, Fax: (202) 720–8938, or e-mail: *Jay.Guerber@usda.gov*.

SUPPLEMENTARY INFORMATION: This proposed rule is issued under Marketing Agreement and Order No. 930 (7 CFR part 930), regulating the handling of tart cherries grown in the States of Michigan, New York, Pennsylvania, Oregon, Utah, Washington, and Wisconsin, hereinafter referred to as the "order." The marketing agreement and order are effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the "Act."

The Department of Agriculture (USDA) is issuing this proposed rule in

conformance with Executive Order 12866.

This proposed rule has been reviewed under Executive Order 12988, Civil Justice Reform. Under the marketing order now in effect, tart cherry handlers are subject to assessments. Funds to administer the order are derived from such assessments. It is intended that the assessment rate as issued herein would be applicable to all assessable tart cherries beginning July 1, 2002, and continue until amended, suspended, or terminated. This proposed rule will not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this proposed rule.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may file with USDA a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and request a modification of the order or to be exempted therefrom. Such handler is afforded the opportunity for a hearing on the petition. After the hearing USDA would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his or her principal place of business, has jurisdiction to review USDA's ruling on the petition, provided an action is filed not later than 20 days after the date of the entry of the ruling.

This proposed rule would increase the assessment rate established for the Board for the 2002–2003 and subsequent fiscal periods for cherries that are utilized in the production of tart cherry products other than juice, juice concentrate, or puree from $0.00175 to $0.0019 per pound of cherries. The assessment rate for cherries utilized for juice, juice concentrate, or puree would also be increased from $0.000875 to $0.0019 per pound.

The tart cherry marketing order provides authority for the Board, with the approval of USDA, to formulate an annual budget of expenses and collect assessments from handlers to administer the program. The members of the Board are producers and handlers of tart cherries. They are familiar with the Board's needs and with the costs for goods and services in their local area and are thus in a position to formulate an appropriate budget and assessment rate or rates as appropriate. The assessment rates are formulated and discussed in a public meeting. Thus, all directly affected persons have an opportunity to participate and provide input.

For the 2001–2002 fiscal period, the Board recommended, and the Department approved, assessment rates that would continue in effect from fiscal period to fiscal period unless modified, suspended, or terminated by the USDA upon recommendation and information submitted by the Board or other information available to USDA.

Section 930.42(a) of the order authorizes a reserve sufficient to cover one year's operating expenses. The increased rates are expected to generate enough income to meet the Board's operating expenses in 2002–2003.

The Board met on January 24, 2002, and unanimously recommended 2002–2003 expenditures of $522,500. The Board also recommended that an assessment rate of $0.0019 be established for all tart cherry products if an amendment to do so passed in a May 2002 referendum of producers and processors. The amendment passed and was finalized by USDA on August 8, 2002 (67 FR 51698). The provisions requiring the establishment of different assessment rates for different products were removed. In their place, the Board is required to consider the volume of cherries used in making various products and the relative market value of those products in deciding whether the assessment rate should be a single, uniform rate applicable to all cherries or whether varying rates should be recommended for cherries manufactured into different products. Prior to the amendment passing in referendum, the Department issued a proposed rule on June 10, 2002 (67 FR 39637) proposing a dual assessment rate at higher amounts ($0.0021 and $0.00105, respectively, for high and low value cherry products) since the uniform assessment rate amendment was not yet effective. A rule withdrawing that proposal was published on April 2, 2003 (68 FR 15971). This proposal reflects the amended provisions and the Board's January 24, 2002 recommendation.

The amended assessment provisions allow the Board to recommend a uniform single assessment rate for all assessable tart cherries handled, or variable rates depending on the quantities and values of the cherries used in the various products. A two-tiered assessment rate scheme may be appropriate in some years, it may not be in others.

The amended order specifically provides that under § 930.41(f)(1) and (2) the established assessment rates may be uniform, or may vary depending on the product the cherries are used to manufacture. The Board may consider the differences in the number of pounds of cherries utilized for various cherry products and the relative market values of such cherry products. The Board considered the above items and decided that one assessment rate should be recommended for all assessable tart cherries for the 2002–2003 fiscal period.

According to the Board, processors have developed a strong market for juice and concentrate products over the past few years. There is considerable belief that juice will be one of the growth outlets for tart cherries. This derives from the industry's promotional efforts being undertaken for juice and concentrate products, the segmentation of the market into retail and industrial components and the nutritional/nutraceutical profile of the product. As a result, there has been an increase in consumer recognition, acceptance, purchases, and the value of tart cherry juice and concentrate. According to the Board, prices received for tart cherry juice concentrate are now $25.00 per gallon or more. This is derived by using the fairly common conversion ratio of 100 pounds to the gallon for mid-west production, which has a raw product value of $0.25 per pound. Using a 50 gallon conversion for the product, as has been used on the west coast, this represents a per pound value of $0.50. The difference in the west and mid-west conversion factors is that tart cherries produced in the western United States generally have a higher sugar content and larger fruit size, thus fewer raw product is needed. The average grower price received ranges between $0.17 to $0.20 per pound.

According to the Board, puree products are as valuable and comparable to juice and juice concentrate products. The Board reported that the spot price for single strength puree for 2001–02 was about $0.60 cents per pound. The raw product equivalent (RPE) volume of pureed fruit was 539,504 pounds which is about 0.15 percent of all processed fruit. The Board also reported for 2001–02 that the price for five plus one product was $0.67 cents per pound. Five plus one is a product of cherries and sugar which is manufactured by many processors (25 pounds of cherries and five pounds of sugar to make a 30 pound commercial container). It is the main product that handlers produce. Five plus one cherries are primarily sold and remanufactured into assorted bakery items, canned pie fill, and dried cherries. Since juice, juice concentrate, and puree are not considered to be low value products at this time, the Board considers one assessment to be appropriate. It is important to understand that product is moved around between production areas and may be converted into puree or concentrate at a later date. The market drives the processing of these various products each season.

In comparing the prices of juice, juice concentrate, and puree with the 5 plus 1 product, the Board determined that current prices for these products are similar. The information received from the Board indicates that puree products are becoming a viable market and should be assessed at a higher assessment rate.

As a result of this season's 2002–2003 short crop, much of the tart cherry products released from inventory were in the form of tart cherry juice and/or juice concentrate. There is not much, if any, of this product available on the market today. The Board contends that given these factors, it is hard to suggest that juice/concentrate, or puree, are of lesser value than are the more traditional products such as pie-fill or individually quick frozen tart cherries. Thus, the Board determined that one assessment rate is appropriate for the 2002–03 fiscal period.

Last year's budgeted expenditures were $442,500. The recommended assessment rate of $0.0019 is higher than the current rates of $0.00175 for cherries used in the production of other than juice, juice concentrate, or puree products, and $0.000875 for cherries used for juice, juice concentrate or puree products.

The major expenditures recommended by the Board for the 2002–2003 fiscal period include $85,000 for meetings, $170,000 for compliance, $185,000 for personnel, $80,000 for office expenses, and $2,500 for industry educational efforts. Budgeted expenses for those items in 2001–2002 were $80,000 for meetings, $100,000 for compliance, $185,000 for personnel, $75,000 for office expenses, and $2,500 for industry educational efforts, respectively. As discussed below, the Board's staff has taken steps to reduce actual expenditures for 2002–03 due to the assessment revenue shortfall. In comparison, last year's budgeted expenditures were $442,500. The recommended assessment rate of $0.0019 is higher than the current rates of $0.00175 and $0.000875, respectively. The Board recommended an increased assessment rate to generate larger revenue to meet its expenses and keep its reserves at an acceptable level.

In deriving the recommended assessment rates, the Board determined assessable tart cherry production for the fiscal period at 260 million pounds. However, the tart cherry industry experienced a severe frost, mainly in Michigan, which significantly reduced the crop. The tart cherry industry is expected to only produce 60 million pounds. The Board staff has responded to this decrease in funds by reducing staff and Committee travel for meetings and is expected to use reserve funds to continue administrative operations this season. Therefore, total assessment income for 2002–2003 is estimated at $114,000. This amount plus adequate funds in the reserve and interest income would be adequate to cover budgeted expenses. Funds in the reserve (approximately $233,000) would be kept within the approximately six months' operating expenses as recommended by the Board consistent with § 930.42(a).

The assessment rate established in this proposed rule would continue in effect indefinitely unless modified, suspended, or terminated by USDA upon recommendation and other information submitted by the Board or other available information.

Although the assessment rates are effective for an indefinite period, the Board would continue to meet prior to or during each fiscal period to recommend a budget of expenses and consider recommendations for modification of the assessment rates. The dates and times of Board meetings are available from the Board or the USDA. Board meetings are open to the public and interested persons may express their views at these meetings. USDA will evaluate Board recommendations and other available information to determine whether modifications of the assessment rates are needed. Further rulemaking would be undertaken as necessary. The Board's 2002–2003 budget and those for subsequent fiscal periods would be reviewed and, as appropriate, approved by the USDA.

The Regulatory Flexibility Act and Effects on Small Businesses

The Agricultural Marketing Service (AMS) has considered the economic impact of this action on small entities and has prepared this initial regulatory flexibility analysis. The Regulatory Flexibility Act (RFA) allows AMS to certify that regulations do not have a significant economic impact on a substantial number of small entities. However, as a matter of general policy, AMS's Fruit and Vegetable Programs (Programs) no longer opts for such certification, but rather performs regulatory flexibility analyses for any rulemaking that would generate the interest of a significant number of small entities. Performing such analyses shifts the Programs' efforts from determining whether regulatory flexibility analyses are required to the consideration of regulatory options and economic or regulatory impacts.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and the rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are approximately 40 handlers of tart cherries who are subject to regulation under the order and approximately 900 producers of tart cherries in the regulated area. Small agricultural service firms have been defined by the Small Business Administration (13 CFR 121.201) as those having annual receipts less than $5,000,000, and small agricultural producers are those whose annual receipts are less than $750,000. A majority of the tart cherry handlers and producers may be classified as small entities.

The Board unanimously recommended 2002–2003 expenditures of $522,500 and assessment rate increases from $0.00175 to $0.0019 per pound for cherries that are utilized in the production of tart cherry products other than juice, juice concentrate, or puree, and from $0.000875 to $0.0019 per pound for cherries utilized for juice, juice concentrate, or puree.

This proposed rule would increase the assessment rate established for the Board and collected from handlers for the 2002–2003 and subsequent fiscal periods for cherries that are utilized in the production of tart cherry products to $0.0019 per pound. The Board unanimously recommended 2002–2003 expenditures of $522,500. The quantity of assessable tart cherries expected to be produced during the 2002–2003 crop year was estimated at 260 million pounds. However, the tart cherry industry experienced a severe frost, mainly in Michigan, which has significantly reduced the crop. The tart cherry industry is expecting to only produce 60 million pounds during 2002–03. The Board staff has responded to this decrease in funds by reducing staff and Committee travel for meetings and is expected to use reserve funds to continue administrative operations this season. Assessment income, based on this crop, along with interest income and reserves, would be adequate to cover budgeted expenses.

The major expenditures recommended by the Board for the 2002–2003 fiscal period include $85,000 for meetings, $170,000 for compliance, $185,000 for personnel, $80,000 for office expenses, and $2,500 for industry educational efforts. Budgeted expenses for those items in 2001–2002 were $80,000 for meetings, $100,000 for compliance, $185,000 for personnel, $75,000 for office expenses, and $2,500 for industry educational efforts, respectively.

The Board discussed the alternative of continuing the existing assessment rates, but concluded that would cause the amount in the operating reserve to be reduced to an unacceptable level.

The principal demand for tart cherries is in the form of processed products. Tart cherries are dried, frozen, canned, juiced, and pureed. Data from the National Agricultural Statistics Service (NASS) states that during the period 1995/96 through 2002/03, approximately 92 percent of the U.S. tart cherry crop, or 285.7 million pounds, was processed annually. Of the 285.7 million pounds of tart cherries processed, 58 percent was frozen, 30 percent was canned, and 12 percent was utilized for juice.

Based on NASS data, acreage in the United States devoted to tart cherry production has been trending downward. Since 1987/88 tart cherry bearing acres have decreased from 50,050 acres, to 36,900 acres in the 2002/03 crop year. In 2002/03, 93 percent of domestic tart cherry acreage was located in four States: Michigan, New York, Utah, and Wisconsin. Michigan leads the nation in tart cherry acreage with 74 percent of the total production. Michigan produces about 75 percent of the U.S. tart cherry crop each year. Tart cherry acreage in Michigan decreased from 28,500 acres in 2000–2001, to 27,400 acres in 2002–2003.

A review of historical information and preliminary information pertaining to the 2002–2003 fiscal period indicates that the grower price could range between $0.448 and $0.45 cents per pound of tart cherries. This is a high price due to the short crop this year. Therefore, the estimated assessment revenue for the 2002–2003 fiscal period as a percentage of total grower revenue could be less than one-half of one percent.

While this action will impose additional costs on handlers, the costs are in the form of assessments which are applied uniformly. Some of the costs may also be passed on to producers. However, these costs are offset by the benefits derived from the operation of the marketing order. The Board's meeting was widely publicized throughout the tart cherry industry and all interested persons were invited to attend the meeting and participate in Board deliberations on all issues. Like all Board meetings, the January 24, 2002, meeting was a public meeting and all entities, both large and small, were able to express views on this issue. Finally, interested persons were invited to submit information on the regulatory and informational impacts of this action on small businesses.

This action will impose no additional reporting or recordkeeping requirements on either small or large tart cherry handlers. As with all Federal marketing order programs, reports and forms are periodically reviewed to reduce information requirements and duplication by industry and public sector agencies.

USDA has not identified any relevant Federal rules that duplicate, overlap, or conflict with this rule.

A small business guide on complying with fruit, vegetable, and specialty crop marketing agreements and orders may be viewed at: *http://www.ams.usda.gov/fv/moab/html*. Any questions about the compliance guide should be sent to Jay Guerber at the previously mentioned address in the **FOR FURTHER INFORMATION CONTACT** section.

A 10-day comment period is provided to allow interested persons to respond to this proposed rule. Ten days is deemed appropriate because: (1) The 2002–2003 fiscal period began on July 1, 2002, and ends on June 30, 2003, and the marketing order requires that the rates of assessment for each fiscal period apply to all assessable tart cherries handled during such fiscal period; (2) the Board needs the funds to operate the program; and (3) handlers are aware of this action which was unanimously recommended by the Board at a public meeting. All written comments timely received will be considered before a final determination is made on this matter.

List of Subjects in 7 CFR Part 930

Marketing agreements, Reporting and recordkeeping requirements, Tart cherries.

For the reasons set forth in the preamble, 7 CFR part 930 is proposed to be amended as follows:

PART 930—TART CHERRIES GROWN IN THE STATES OF MICHIGAN, NEW YORK, PENNSYLVANIA, OREGON, UTAH, WASHINGTON, AND WISCONSIN

1. The authority citation for 7 CFR part 930 continues to read as follows:

Authority: 7 U.S.C. 601–674.

2. Section 930.200 is revised to read as follows:

§ 930.200 Handler assessment rate.

On and after July 1, 2002, the assessment rate imposed on handlers shall be $0.0019 per pound of cherries handled for tart cherries grown in the production area.

Dated: May 16, 2003.

Kenneth C. Clayton,

Acting Administrator, Agricultural Marketing Service.

[FR Doc. 03–12804 Filed 5–21–03; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA 2003–15124; Airspace Docket No. 03–ASO–5]

Proposed Amendment of Class E5 Airspace; Augusta, GA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to amend Class E5 airspace at Augusta, GA. A Area Navigation (RNAV) Global Positioning System (GPS) Runway (RWY) 17 Standard Instrument Approach Procedure (SIAP) to Augusta Regional at Bush Field Airport has been developed. Additionally, it has been determined a modification should be made to the Augusta, GA, Class E5 airspace area to contain the Nondirectional Radio Beacon (NDB) or GPS RWY 17 SIAP to Augusta Regional at Bush Field Airport. Controlled airspace extending upward from 700 feet Above Ground Level (AGL) is needed to contain these SIAPs.

DATES: Comments must be received on or before June 23, 2003.

ADDRESSES: Send comments on this proposal to the Docket Management System, U.S. Department of Transportation, Room Plaza 401, 400 Seventh Street, SW., Washington, DC 20590–0001. You must identify the docket number FAA–2003–15124/ Airspace Docket No. 03–ASO–5, at the beginning of your comments. You may also submit comments on the Internet at *http://dms.dot.gov*. You may review the public docket containing the proposal, any comments received, and any final disposition in person in the Dockets Office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Docket office (telephone 1–800–647–5527) is on the plaza level of the Department of Transportation NASSIF Building at the above address.

An informal docket may also be examined during normal business hours at the office of the Regional Air Traffic Division, Federal Aviation Administration, Room 550, 1701 Columbia Avenue, College Park, Georgia 30337.

FOR FURTHER INFORMATION CONTACT: Walter R. Cochran, Manager, Airspace Branch, Air Traffic Division, Federal Aviation Administration, P.O. Box 20636, Atlanta, Georgia 30320; telephone (404) 305–5627.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify both docket numbers and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. FAA–2003–15125/Airspace Docket No. 03–ASO–5." The postcard will be date/time stamped and returned to the commenter. All communications received before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in light of the comments received. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed on the docket.

Availability of NPRMs

An electronic copy of this document may be downloaded through the Internet at *http://dms.dot.gov*. Recently published rulemaking documents can also be accessed through the FAA's Web page at *http://www.faa.gov* or the Superintendent of Document's Web page at *http://www.access.gpo.gov/nara*. Additionally, any person may obtain a copy of this notice by submitting a request to the Federal Aviation Administration, Office of Air Traffic Airspace Management, ATA–400, 800 Independence Avenue, SW., Washington, DC 20591, or by calling (202) 267–8783. Communications must identify both docket numbers for this notice. Persons interested in being placed on a mailing list for future NPRMs should contact the FAA's Office of Rulemaking, (202) 267–9677, to request a copy of Advisory Circular No. 11–2A, Notice of Proposed Rulemaking Distribution System, which describes the application procedure.

The Proposal

The FAA is considering an amendment to Part 71 of the Federal Aviation Regulations (14 CFR Part 71) to amend Class E5 airspace at Augusta, GA. Class E airspace designations for airspace areas designated as airspace areas extending upward from 700 feet or more above the surface of the earth are published in Paragraph 6005 of FAA Order 7400.9K, dated August 30, 2002, and effective September 16, 2002, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designations listed in this document would be published subsequently in the Order.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore, (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a Regulatory Evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (Air).

The Proposed Amendment

In consideration of the foregoing, the Federal Aviation Administration proposes to amend 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A, CLASS B, CLASS C, CLASS D, AND CLASS E AIRSPACE AREAS; AIRWAYS; ROUTES; AND REPORTING POINTS

1. The authority citation for Part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g); 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9K, Airspace Designations and Reporting Points, dated August 30, 2002, and effective September 16, 2002, is amended as follows: Paragraph 6005 Class E Airspace Areas Extending Upward from 700 feet or More Above the Surface of the Earth.

* * * * *

ASO GA E5 Augusta, GA [REVISED]

Augusta Regional At Bush Field Airport, GA
(Lat. 33°22′12″ long. 81°57′52″)
Bushe NDB
(Lat. 33°17′13″ long. 81°56′49″)
Emory NDB
(Lat. 33°27′46″ long. 81°59′49″)
Daniel Field
(Lat. 33°27′59″ long. 82°02′21″)
Burke County Airport
(Lat. 33°02′28″ long. 82°00′14″)
Burke County NDB
(Lat. 33°02′33″ long. 82°00′17″)

That airspace extending upward from 700 feet above the surface within an 8.2-mile radius of Augusta Regional At Bush Field Airport, and within 8 miles west and 4 miles east of the 172° bearing from the Bushe NDB extending from the 8.2-mile radius to 16 miles south of Bushe NDB, and within 8 miles west and 4 miles east of the 349° bearing from the Emory NDB extending from the 8.2-mile radius to 16 miles north of Emory NDB, and within a 6.3-mile radius of Daniel Field, and within a 6.2-mile radius of Burke County Airport and within 3.5 miles each side of the 243° bearing from the Burke County NDB extending from the 6.2-mile radius to 7 miles southwest of the NDB.

* * * * *

Issued in College Park, Georgia on May, 2003.

Walter R. Cochran,

Acting Manager, Air Traffic Division, Southern Region.

[FR Doc. 03–12818 Filed 5–21–03; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

14 CFR Part 255 and Part 399

[Dockets Nos. OST–97–2881, OST–97–3014, OST–98–4775, and OST–99–5888]

RIN 2105–AC65

Computer Reservations System (CRS) Regulations; Statements of General Policy

AGENCY: Office of the Secretary, Department of Transportation.

ACTION: Notice of change in time of public hearing; notice of procedures for hearing.

SUMMARY: On Thursday, May 22, 2003, at 9 a.m., the Department will conduct a public hearing on its pending rulemaking on computer reservations systems (CRSs). The public hearing will be held at the Marriott at Metro Center, 775 12th Street, NW., Washington, DC. This notice changes the beginning time from 9:30 a.m. to 9 a.m., sets forth the procedures for the hearing, and lists the speakers in order of appearance.

FOR FURTHER INFORMATION CONTACT: Thomas Ray, Office of the General Counsel, 400 Seventh St., SW., Washington, DC 20590, (202) 366–4731.

SUPPLEMENTARY INFORMATION: The Department is conducting a rulemaking to determine whether its rules governing CRS operations, 14 CFR part 255, remain necessary and, if so, whether the current rules are effective. Our notice of proposed rulemaking set forth our tentative proposals regarding the existing rules and our tentative belief that we should not extend the rules to cover the sale of airline tickets through the Internet. 67 FR 69366, November 15, 2002. While interested persons have the opportunity to file comments and reply comments, we are also holding a public hearing on May 22 where interested persons may present their views on the major issues. 68 FR 25844, May 14, 2003. Michael Reynolds, the Deputy Assistant Secretary for Aviation and International Affairs, will preside. We must limit each speaker's time and the number of persons who may speak, because the hearing will last only one day. Persons who are unable to speak at the hearing may, of course, present their views on the issues (and on statements made at the hearing) in their reply comments.

We initially planned to begin the hearing at 9:30 a.m. We have now decided to begin at 9 a.m., which will allow us to give each speaker more time for his or her presentation.

We asked persons who wished to speak at the hearing to submit requests to us as soon as possible. We received 26 requests by noon on Friday, May 16. We have determined to allow all 26 persons to speak. Each of them will have fifteen minutes to speak, which will include any time needed for answering questions from Mr. Reynolds. If we have additional time at the end of the hearing, we may allow others to speak as well. We are not allowing rebuttals, and we have decided that organizing the hearing in panel form would be impracticable due to the number of speakers and the complexity of the issues.

We plan to have the following persons speak in the morning session, in the following order: Sabre, Amadeus, Worldspan, TechNet Texas, Galileo, Orbitz, America West, American, Travelers First, and United. The speakers in the afternoon session will be as follows: Delta, Continental, U.S. Airways, Northwest, Southwest, Shepherd Systems, Air Carrier Association, Travelocity, American Society of Travel Agents, Expedia, Large Agency Coalition, Stratton Travel Management, Interactive Travel Services Association, Competitive Enterprise Institute, Progress & Freedom Foundation, and Mercatus.

Speakers need not provide written statements at the hearing. If they choose to do so, they must also submit a copy to the docket for this proceeding.

A transcript of the hearing prepared by a court reporter will be put in the docket for this rulemaking, so that anyone who is unable to attend the hearing can learn what was said. We plan to place the transcript in the docket within one week of the hearing.

Issued in Washington, DC, on May 19, 2003.

Read C. Van de Water,

Assistant Secretary for Aviation and International Affairs.

[FR Doc. 03–12943 Filed 5–20–03; 8:53 am]

BILLING CODE 4910–62–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[CGD05–02–099]

RIN 1625–AA11 (Formerly RIN 2115–AE84)

Regulated Navigation Area in Hampton Roads, VA

AGENCY: Coast Guard, DHS.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard proposes to revise the Regulated Navigation Area in Hampton Roads, Virginia, by imposing vessel reporting requirements and speed limit restrictions in certain areas of the port. These measures are necessary because of the unique physical characteristics and resources contained in the port. These regulations will enhance the safety and security of vessels and property in the Hampton Roads port complex while minimizing, to the extent possible, the impact on commerce and legitimate waterway use.

DATES: Comments and related material must reach the Coast Guard on or before July 21, 2003.

ADDRESSES: You may mail comments and related material to the Marine Safety Division, Fifth Coast Guard District, 431 Crawford Street, Portsmouth, Virginia 23704. The Marine Safety Division of the Fifth Coast Guard District maintains the public docket for this rulemaking. The docket, as well as documents indicated in this preamble as being available in the docket, will be available for inspection or copying at the Coast Guard Fifth District, between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Lieutenant Commander Roger Smith, Marine Safety Division, Fifth Coast Guard District, (757) 398–6389, between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

Request for Comments

We encourage you to participate in this rulemaking by submitting comments and related material. If you do so, please include your name and address, identify the docket number for this rulemaking (CGD05–02–099), indicate the specific section of this document to which each comment applies, and give the reason for each comment. Please submit all comments and related material in an unbound format, no larger than 8½ by 11 inches, suitable for copying. If you would like to know they reached us, please enclose a stamped, self-addressed postcard or envelope. We will consider all comments and material received during the comment period. We may change this proposed rule in view of them.

Public Meeting

We do not now plan to hold a public meeting. You may submit a request for a meeting by writing to the Marine Safety Division at the address under **ADDRESSES**, explaining why one would be beneficial. If we determine that one would aid this rulemaking, we will hold one at a time and place announced by a later notice in the **Federal Register**.

Background and Purpose

History

Terrorist attacks on September 11, 2001, inflicted catastrophic human casualties and property damage. These attacks highlighted the terrorists' ability and desire to utilize multiple means in different geographic areas to increase their opportunities to successfully carry out their mission, thereby maximizing destruction using multiple terrorist acts.

Since the September 11, 2001 terrorist attacks on the World Trade Center in New York, the Pentagon in Arlington, Virginia and Flight 93, the Federal Bureau of Investigation (FBI) has issued several warnings concerning the potential for additional terrorist attacks within the United States. The threat of maritime attacks is real as evidenced by the October 2002 attack on a tank vessel off the coast of Yemen and the prior attack on the USS COLE. These attacks manifest a continuing threat to U.S. assets as described in the President's finding in Executive Order 13273 of August 21, 2002 (67 FR 56215, September 3, 2002) that the security of the U.S. is endangered by the September, 11, 2001 attacks and that such disturbances continue to endanger the international relations of the United States. See also Continuation of the National Emergency with Respect to Certain Terrorist Attacks, (67 FR 58317, September 13, 2002); Continuation of the National Emergency With Respect To Persons Who Commit, Threaten To Commit, Or Support Terrorism, (67 FR 59447, September 20, 2002). The U.S. Maritime Administration (MARAD) in Advisory 02–07 advised U.S. shipping interests to maintain a heightened state of alert against possible terrorist attacks. MARAD more recently issued Advisory 03–01 informing operators of maritime interests of increased threat possibilities to vessels and facilities and a higher risk of terrorist attack to the transportation community in the United States. The ongoing hostilities in Afghanistan and growing tensions in Iraq have made it prudent for U.S. ports and waterways to be on a higher state of alert because the al Qaeda organization and other similar organizations have declared an ongoing intention to conduct armed attacks on U.S. interests worldwide.

Due to increased awareness that future terrorist attacks are possible, the Coast Guard as lead federal agency for maritime homeland security, has determined that the District Commander must have the means to be aware of, deter, detect, intercept, and respond to asymmetric threats, acts of aggression, and attacks by terrorists on the American homeland while still maintaining our freedoms and sustaining the flow of commerce. A Regulated Navigation Area is a tool available to the Coast Guard that may be used to control vessel traffic by specifying times of vessel entry, movement, or departure to, from, within, or through ports, harbors, or other waters.

On October 24, 2001, we published a temporary final rule entitled, "Regulated Navigation Area; Chesapeake Bay Entrance and Hampton Roads, VA and Adjacent Waters," in the **Federal Register** (66 FR 53712). The temporary final rule required that all vessels of 300 gross tons or greater to reduce speed to eight knots in the vicinity of Naval Station Norfolk, in order to improve security measures and reduce the potential threat to Naval Station Norfolk security that may be posed by these vessels. We have received no comments since the publication of this rule.

On December 27, 2001, we published a temporary final rule entitled, "Regulated Navigation Area; Chesapeake Bay Entrance and Hampton Roads, VA and Adjacent Waters," in the **Federal Register** (66 FR 66753). The temporary rule expanded the geographic definitions of the Hampton Roads Regulated Navigation Area to include the waters of the 12 nautical mile territorial sea off the Coast of Virginia and added new port security measures. The port security measures required that vessels in excess of 300 gross tons, including tug and barge combinations in excess of 300 gross tons combined, perform the following. Check in with the Captain of the Port or his representative at least 30 minutes prior to entry to obtain permission to transit the Regulated Navigation Area. The vessel may enter the Regulated Navigation Area upon authorization and approval by the Captain of the Port or his representative. A vessel that receive permission to enter the Regulated Navigation Area remain subject to a Coast Guard port security boarding. Thirty (30) minutes prior to getting underway, vessels departing or moving within the Regulated Navigation Area must contact the Captain of the Port or his representative via VHF–FM channel 13 or 16, call (757) 444–5209/5210 or (757) 441–3298 for the Captain of the Port Duty Officer. We have received no comments since the publication of this rule.

This rule proposes to update the Regulated Navigation Area to encompass aspects of navigational safety and security in a post September 11, 2001 environment. The reporting and speed limit restrictions will enable the COTP to closely monitor vessel movements in the Regulated Navigation Area.

Discussion of Proposed Rule

Regulated Navigation Area

Offshore Zone: The proposed rule will expand the geographical definition of the Hampton Roads Regulated Navigation Area to include the waters of the 12 nautical mile territorial sea off the Coast of Virginia.

Inland Zone: The geographical boundaries of the inland waters included in the existing Regulated Navigation Area will be unchanged under the proposed rule.

Definitions

The proposed rule will expand the definition section of the existing Regulated Navigation Area to define I–664 Bridge, Designated Representative of the Captain of the Port, Offshore waters, Inland waters, and Coast Guard Patrol Commander.

Applicability

This section will be unchanged by the proposed rule.

Regulations

Anchoring Restrictions: The proposed rule will simplify anchoring restrictions. Under the proposed rule vessels may anchor in all areas of the offshore waters of the Regulated Navigation Area except for the entrances to the shipping channels without prior permission from the Captain of the Port. No vessel over 65 feet long may anchor or moor in the inland waters of the Regulated Navigation Area outside the anchorage designated in § 110.168 of 33 CFR unless the vessel has the permission of the Captain of the Port or has an emergency. Vessels may not anchor within the confines of Little Creek Harbor, Desert Cove, or Little Creek Cove without the permission of the Captain of the Port.

Anchoring Detail Requirements: The proposed rule will not change the Anchoring Detail Requirements section, but places it immediately after the Anchoring Restrictions section.

Secondary Towing Rig Requirements: This section will be unchanged by the proposed rule.

Thimble Shoals Channel Controls: The proposed rule will combine the Draft Limitation section and Traffic Direction sections of the existing

Regulated Navigation Area into one section.

Restrictions on Vessels with Impaired Maneuverability: The proposed rule will simplify this section by preventing vessels over 100 gross tons, with impaired maneuverability, from entering the Regulated Navigation Area without the permission of the Captain of the Port. The proposed rule will require vessels over 100 gross tons that experience impaired maneuverability, while operating within the Regulated Navigation, to report the impairment to the Captain of the Port.

Requirements for Navigation Charts, Radars and Pilots: The proposed rule will exempt naval and public vessels from maintaining corrected charts of the Regulated Navigation Area if the naval or public vessel carries electronic charting and navigation systems that have met the applicable agency regulations regarding navigation safety.

Emergency Procedure: The proposed rule will simplify this section by removing many of the existing restrictions. The proposed rule will allow any vessel experiencing an emergency to deviate from the regulations in this section to the extent necessary to avoid endangering the safety of persons, property, or the environment. The proposed rule will require that vessels over 100 gross tons with an emergency that is within two nautical miles of the CBBT or I–664 Bridge Tunnel to notify the Captain of the Port of its location and the nature of the emergency as soon as possible.

Vessel Speed Limits: The proposed rule will consolidate the Vessel Speed Limits sections into one section. The proposed rule will incorporate the vessel speed limit for the Norfolk Harbor Reach, as originally published as a temporary final rule in the **Federal Register** (66 FR 53712). Under the proposed rule vessels 300 gross tons or greater may not transit through the Southern Branch of the Elizabeth River alongside Naval Station Norfolk Restricted Area at a speed in excess of 8 knots. This speed restriction does not apply to public vessels as defined in 33 U.S.C. 1321(a)(4). The vessel speed limits on Little Creek and the Southern Branch of the Elizabeth River will be unchanged by the proposed rule.

Port Security Requirements: The proposed rule will incorporate the additional port security measures for all vessels over 300 gross tons, as originally published as a temporary final rule in the **Federal Register** (66 FR 66753). Under the proposed rule the additional port security measures will require that vessels over 300 gross tons, including tug and barge combinations in excess of 300 gross tons combined to do the following. Obtain authorization from the Captain of the Port, or the designated representative of the Captain of the Port, prior to entering the Regulated Navigation Area. Ensure that no person who is not a permanent member of the vessel's crew, or a member of a Coast Guard boarding team, boards the vessel without a valid purpose and photo identification. Report any departure from or movement within the Regulated Navigation Area to the designated representative of the Captain of the Port prior to getting underway. The designated representative of the Captain of the Port shall be contacted on VHF–FM channel 12, or by calling (757) 444–5209, (757) 444–5210, or (757) 668–5555. All vessels entering or remaining in the Regulated Navigation Area may be subject to a vessel port security inspection. Vessels awaiting a port security inspection or Captain of the Port authorization to enter may be directed to anchor in a specific location.

The proposed rule will expand port security measures for vessels over 300 gross tons operating inside inland waters. All vessels over 300 gross tons, including tug and barge combinations in excess of 300 gross tons, must receive authorization from the Captain of the Port prior to any vessel movement. This requirement enables the Captain of the Port to maintain maritime domain awareness.

Waivers

This section will be unchanged by the proposed rule.

Control of Vessels Within the Regulated Navigation Area

The proposed rule will make minor grammatical and syntax changes to the existing section.

Deleted Sections

Section (d)(11), Restrictions on Vessel Operations During Aircraft Carrier and Other Large Naval Transits of the Elizabeth River will be deleted under the proposed rule. This section is no longer necessary because the Coast Guard published 33 CFR 165.2025, Protection of Naval Vessels, which creates a naval vessel protection zone around U.S. naval vessels greater than 100 feet in length overall at all times in the navigable waters of the United States.

Section (d)(12), Restrictions on Vessel Operations During Liquefied Petroleum Gas Carrier Movements on the Chesapeake Bay and Elizabeth River will be deleted under the proposed rule. Liquefied Petroleum Gas and Liquefied Natural Gas Carriers will be addressed in a future notice of proposed rulemaking.

Section (d)(13), Restrictions on the Use of the Elizabeth River Ferry Dock at the Foot of High Street, Portsmouth, Virginia will be deleted under the proposed rule. The Elizabeth River Ferry Dock has been removed and replaced by a cove at the Foot of High Street, Portsmouth, Virginia. This section was a necessary safety measure to avoid potential collisions between Elizabeth River traffic and the Elizabeth River Ferry when the ferry operated from the then existing dock. Since the dock has been removed and the Elizabeth River Ferry embarks and disembarks passengers within a cove, there is no longer a need for this section.

Additional grammar and syntax changes have been made throughout this proposed rule.

Regulatory Evaluation

This proposed rule is not a "significant regulatory action" under section 3(f) of Executive Order 12866, Regulatory Planning and Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that Order. It is not "significant" under the regulatory policies and procedures of the Department of Homeland Security (DHS).

We expect the economic impact of this proposed rule to be so minimal that a full Regulatory Evaluation under the regulatory policies and procedures of DHS is not necessary. The eight knot speed limit restriction for the Norfolk Harbor Reach will apply to vessels 300 gross tons or greater. Vessels under 300 gross tons will be exempt. The speed limit requirements will only be in effect for less than four miles, and typical vessel speed will be 10 knots, so the actual delay for each vessel will be less than 6 minutes in each direction. Therefore, the delay caused by the two-knot reduction in speed will be minimal. The proposed port security measures will affect only those vessels in excess of 300 gross tons that enter or move within the Port of Hampton Roads.

Based upon the information received in response to this NRPM, the Coast Guard intends to carefully consider the costs and benefits associated with this rulemaking. Accordingly, comments, information and data are solicited on the economic impact of any proposed recommendation for changes to the Fifth District regulations as mentioned in *Background and Purpose,* above.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), we have considered whether this proposed rule would have a significant economic impact on a substantial number of small entities. The term "small entities" comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000.

The Coast Guard certifies under 5 U.S.C. 605(b) that this proposed rule would not have a significant economic impact on a substantial number of small entities. The proposed rule would affect the following entities, some of which might be small entities: Shipping companies, towing companies, dredging companies, commercial fishing vessels, small passenger vessels and recreational vessels that operate within the Regulated Navigation Area.

If you think that your business, organization, or governmental jurisdiction qualifies as a small entity and that this rule would have a significant economic impact on it, please submit a comment (see **ADDRESSES**) explaining why you think it qualifies and how and to what degree this rule would economically affect it.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we want to assist small entities in understanding this proposed rule so that they can better evaluate its effects on them and participate in the rulemaking. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact Lieutenant Commander Roger Smith, Marine Safety Division, Fifth Coast Guard District, (757) 398–6389.

Collection of Information

This proposed rule would call for no new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

Federalism

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on State or local governments and would either preempt State law or impose a substantial direct cost of compliance on them. We have analyzed this proposed rule under that Order and have determined that it does not have implications for federalism.

Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of $100,000,000 or more in any one year. Though this proposed rule would not result in such expenditure, we do discuss the effects of this rule elsewhere in this preamble.

Taking of Private Property

This proposed rule would not affect a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

Civil Justice Reform

This proposed rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

Protection of Children

We have analyzed this proposed rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and would not create an environmental risk to health or risk to safety that might disproportionately affect children.

Indian Tribal Governments

This proposed rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it would not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

To help the Coast Guard establish regular and meaningful consultation and collaboration with Indian and Alaskan Native tribes, we published a notice in the **Federal Register** (66 FR 36361, July 11, 2001) requesting comments on how to best carry out the Order. We invite your comments on how this proposed rule might impact tribal governments, even if that impact may not constitute a "tribal implication" under the Order.

Energy Effects

We have analyzed this proposed rule under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. We have determined that it is not a "significant energy action" under that order because it is not a "significant regulatory action" under Executive Order 12866 and is not likely to have a significant adverse effect on the supply, distribution, or use of energy. It has not been designated by the Administrator of the Office of Information and Regulatory Affairs as a significant energy action. Therefore, it does not require a Statement of Energy Effects under Executive Order 13211.

Environment

We have considered the environmental impact of this proposed rule and concluded that, under figure 2–1, paragraph (34)(g), of Commandant Instruction M16475.lD, this rule is categorically excluded from further environmental documentation. A "Categorical Exclusion Determination" is available in the docket where indicated under **ADDRESSES**.

List of Subjects in 33 CFR 165

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, Waterways.

For the reasons discussed in the preamble, the Coast Guard proposes to amend 33 CFR part 165 as follows:

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

1. The authority citation for part 165 continues to read as follows:

Authority: 33 U.S.C. 1231; 50 U.S.C. 191; 33 CFR 1.05–1(g), 6.04–1, 6.04–6, and 160.5; 49 CFR 1.46.

2. Revise § 165.501 to read as follows:

§ 165.501 Chesapeake Bay entrance and Hampton Roads, VA and adjacent waters—regulated navigation area.

(a) *Location.* The waters enclosed by the shoreline and the following lines are a Regulated Navigation Area:

(1) *Offshore zone.* A line drawn due East from the mean low water mark at the North Carolina and Virginia border at latitude 36°33′03″ N, longitude 75°52′00″ W, to the Territorial Seas boundary line at latitude 36°33′05″ N, longitude 75°36′51″ W, thence generally Northeastward along the Territorial Seas boundary line to latitude 38°01′39″ N, longitude 74°57′18″ W, thence due West to the mean low water mark at the Maryland and Virginia border at latitude 38°01′39″ N, longitude 75°14′30″ W,

thence South along the mean low water mark until Cape Charles Light, thence South along the inland waters boundary line at the entrance to Chesapeake Bay.

(2) *Inland Zone.*—

(i) A line drawn across the entrance to Chesapeake Bay between Wise Point and Cape Charles Light, and then continuing to Cape Henry Light.

(ii) A line drawn across the Chesapeake Bay between Old Point Comfort Light and Cape Charles City Range "A" Rear Light.

(iii) A line drawn across the James River along the eastern side of U.S. Route 17 highway bridge, between Newport News and Isle of Wight County, Virginia.

(iv) A line drawn across Chuckatuck Creek along the northern side of the north span of the U.S. Route 17 highway bridge, between Isle of Wight County and Suffolk, Virginia.

(v) A line drawn across the Nansemond River along the northern side of the Mills Godwin (U.S. Route 17) Bridge, Suffolk, Virginia.

(vi) A line drawn across the mouth of Bennetts Creek, Suffolk, Virginia.

(vii) A line drawn across the Western Branch of the Elizabeth River along the eastern side of the West Norfolk Bridge, Portsmouth, Virginia.

(viii) A line drawn across the Southern Branch of the Elizabeth River along the northern side of the I–64 highway bridge, Chesapeake, Virginia.

(ix) A line drawn across the Eastern Branch of the Elizabeth River along the western side of the west span of the Campostella Bridge, Norfolk, Virginia.

(x) A line drawn across the Lafayette River along the western side of the Hampton Boulevard Bridge, Norfolk, Virginia.

(xi) A line drawn across Little Creek along the eastern side of the Ocean View Avenue (U.S. Route 60) Bridge, Norfolk, Virginia.

(xii) A line drawn across Lynnhaven Inlet along the northern side of Shore Drive (U.S. Route 60) Bridge, Virginia Beach, Virginia.

(b) *Definitions.* In this section:

(1) *CBBT* means the Chesapeake Bay Bridge Tunnel.

(2) *Thimble Shoal Channel* consists of the waters bounded by a line connecting Thimble Shoal Channel Lighted Bell Buoy 1TS, thence to Lighted Gong Buoy 17, thence to Lighted Buoy 19, thence to Lighted Buoy 21, thence to Lighted Buoy 22, thence to Lighted Buoy 18, thence to Lighted Buoy 2, thence to the beginning.

(3) *Thimble Shoal North Auxiliary Channel* consists of the waters in a rectangular area 450 feet wide adjacent to the north side of Thimble Shoal Channel, the southern boundary of which extends from Thimble Shoal Channel Lighted Buoy 2 to Lighted Buoy 18.

(4) *Thimble Shoal South Auxiliary Channel* consists of the waters in a rectangular area 450 feet wide adjacent to the south side of Thimble Shoal Channel, the northern boundary of which extends from Thimble Shoal Channel Lighted Bell Buoy 1TS, thence to Lighted Gong Buoy 17, thence to Lighted Buoy 19, thence to Lighted Buoy 21.

(5) *I–664 Bridge* means the Monitor Merrimac Bridge Tunnel.

(6) *Designated representative of the Captain of the Port* means a person, including the duty officer at the Coast Guard Marine Safety Office Hampton Roads, the Joint Harbor Operations Center watchstander, or the Coast Guard or Navy patrol commander who has been authorized by the Captain of the Port to act on his or her behalf and at his or her request to carry out such orders and directions as needed. All patrol vessels shall display the Coast Guard Ensign at all times when underway.

(7) *Offshore waters* means waters seaward of the COLREGS Line of Demarcation.

(8) *Inland waters* means waters within the COLREGS Line of Demarcation.

(9) *Coast Guard Patrol Commander* is a Coast Guard commissioned, warrant or petty officer who has been designated by the Commander, Coast Guard Group Hampton Roads.

(c) *Applicability.* This section applies to all vessels operating within the Regulated Navigation Area, including naval and public vessels, except vessels that are engaged in the following operations:

(1) Law Enforcement.

(2) Servicing aids to navigation.

(3) Surveying, maintenance, or improvement of waters in the Regulated Navigation Area.

(d) *Regulations.* (1) *Anchoring Restrictions.* (i) Vessels may anchor in all areas of the offshore waters of the Regulated Navigation Area except for the entrances to the shipping channels without prior permission from the Captain of the Port.

(ii) No vessel over 65 feet long may anchor or moor in the inland waters of the Regulated Navigation Area outside an anchorage designated in § 110.168 of this title, with these exceptions:

(A) The vessel has the permission of the Captain of the Port.

(B) Only in an emergency, when unable to proceed without endangering the safety of persons, property, or the environment, may a vessel anchor in a channel.

(C) A vessel may not anchor within the confines of Little Creek Harbor, Desert Cove, or Little Creek Cove without the permission of the Captain of the Port. The Captain of the Port shall consult with the Commander, Naval Amphibious Base Little Creek, before granting permission to anchor within this area.

(2) *Anchoring Detail Requirements.* A self-propelled vessel over 100 gross tons, which is equipped with an anchor or anchors (other than a tugboat equipped with bow fenderwork of a type of construction that prevents an anchor being rigged for quick release), that is underway within two nautical miles of the CBBT or the I–664 Bridge Tunnel shall station its personnel at locations on the vessel from which they can anchor the vessel without delay in an emergency.

(3) *Secondary Towing Rig Requirements on Inland Waters.* (i) A vessel over 100 gross tons may not be towed in the inland waters of the Regulated Navigation Area unless it is equipped with a secondary towing rig, in addition to its primary towing rig, that:

(A) Is of sufficient strength for towing the vessel.

(B) Has a connecting device that can receive a shackle pin of at least two inches in diameter.

(C) Is fitted with a recovery pickup line led outboard of the vessel's hull.

(ii) A tow consisting of two or more vessels, each of which is less than 100 gross tons, that has a total gross tonnage that is over 100 gross tons, shall be equipped with a secondary towing rig between each vessel in the tow, in addition to its primary towing rigs, while the tow is operating within this Regulated Navigation Area. The secondary towing rig must:

(A) Be of sufficient strength for towing the vessels.

(B) Have connecting devices that can receive a shackle pin of at least two inches in diameter.

(C) Be fitted with recovery pickup lines led outboard of the vessel's hull.

(4) *Thimble Shoals Channel Controls.* (i) A vessel drawing less than 25 feet may not enter the Thimble Shoal Channel, unless the vessel is crossing the channel. Channel crossings shall be made as perpendicular to the channel axis as possible.

(ii) Except when crossing the channel, a vessel in the Thimble Shoal North Auxiliary Channel shall proceed in a westbound direction.

(iii) Except when crossing the channel, a vessel in the Thimble Shoal South Auxiliary Channel shall proceed in an eastbound direction.

(5) *Restrictions on Vessels with Impaired Maneuverability.* (i) *Before entry.* A vessel over 100 gross tons, whose ability to maneuver is impaired by heavy weather, defective steering equipment, defective main propulsion machinery, or other damage, may not enter the Regulated Navigation Area without the permission of the Captain of the Port.

(ii) *After entry.* A vessel over 100 gross tons, which is underway in the Regulated Navigation Area, that has its ability to maneuver become impaired for any reason, shall, as soon as possible, report the impairment to the Captain of the Port.

(6) *Requirements for Navigation Charts, Radars, and Pilots.* No vessel over 100 gross tons may enter the Regulated Navigation Area, unless it has on board: (i) Corrected charts of the Regulated Navigation Area. In lieu of corrected paper charts, naval and public vessels may carry electronic charting and navigation systems that have met the applicable agency regulations regarding navigation safety;

(ii) An operative radar during periods of reduced visibility;

(iii) When in inland waters, a pilot or other person on board with previous experience navigating vessels on the waters of the Regulated Navigation Area.

(7) *Emergency Procedures.* (i) Except as provided in paragraphs (d)(7)(b) of this section, in an emergency any vessel may deviate from the regulations in this section to the extent necessary to avoid endangering the safety of persons, property, or the environment.

(ii) A vessel over 100 gross tons with an emergency that is located within two nautical miles of the CBBT or I–664 Bridge Tunnel shall notify the Captain of the Port of its location and the nature of the emergency, as soon as possible.

(8) *Vessel Speed Limits.* (i) *Little Creek.* A vessel may not proceed at a speed over five knots between the Route 60 bridge and the mouth of Fishermans Cove (Northwest Branch of Little Creek).

(ii) *Southern Branch of the Elizabeth River.* A vessel may not proceed at a speed over six knots between the junction of the Southern and Eastern Branches of the Elizabeth River and the Norfolk and Portsmouth Belt Line Railroad Bridge between Chesapeake and Portsmouth, Virginia.

(iii) *Norfolk Harbor Reach.* Nonpublic vessels of 300 gross tons or more may not proceed at a speed over eight knots between the Elizabeth River Channel Lighted Gong Buoy (LL 9470) of Norfolk Harbor Reach (southwest of Sewells Point) at approximately 36°58′00″ N, 076°20′00″ W, and gated Elizabeth River Channel Lighted Buoys 17 (LL 9595) and 18 (LL 9600) of Craney Island Reach (southwest of Norfolk International Terminal at approximately 36°54′17″ N, and 076°20′11″ W.

(9) *Port Security Requirements.* Vessels in excess of 300 gross tons, including tug and barge combinations in excess of 300 gross tons (combined), shall not enter the Regulated Navigation Area, move within the Regulated Navigation Area, or be present within the Regulated Navigation Area, unless they comply with the following requirements.

(i) Obtain authorization to enter the Regulated Navigation Area from the designated representative of the Captain of the Port prior to entry. All vessels entering or remaining in the Regulated Navigation Area may be subject to a Coast Guard boarding.

(ii) Ensure that no person who is not a permanent member of the vessel's crew, or a member of a Coast Guard boarding team, boards the vessel without a valid purpose and photo identification.

(iii) Report any departure from or movement within the Regulated Navigation Area to the designated representative of the Captain of the Port prior to getting underway.

(iv) The designated representative of the Captain of the Port shall be contacted on VHF–FM channel 12, or by calling (757) 444–5209, (757) 444–5210, or (757) 668–5555.

(v) In addition to the authorities listed in this Part, this paragraph is promulgated under the authority under 33 U.S.C. 1226.

(e) *Waivers.* (1) The Captain of the Port may, upon request, waive any regulation in this section.

(2) An application for a waiver must state the need for the waiver and describe the proposed vessel operations.

(f) *Control of Vessels Within the Regulated Navigation Area.* (1) When necessary to prevent damage, destruction or loss of any vessel, facility or port infrastructure, the Captain of the Port may direct the movement of vessels or issue orders requiring vessels to anchor or moor in specific locations.

(2) If needed for the maritime, commercial or security interests of the United States, the Captain of the Port may order a vessel to move from the location in which it is anchored to another location within the Regulated Navigation Area.

(3) The master of a vessel within the Regulated Navigation Area shall comply with any orders or directions issued to the master's vessel by the Captain of the Port.

Dated: April 16, 2003.

James D. Hull,

Vice Admiral, Coast Guard, Commander, Fifth Coast Guard District.

[FR Doc. 03–12549 Filed 5–21–03; 8:45 am]

BILLING CODE 4910–15–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 62

[VT–1226b; FRL–7501–9]

Approval and Promulgation of State Plans for Designated Facilities and Pollutants: Vermont; Negative Declaration

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA proposes to approve the sections 111(d) negative declaration submitted by the Vermont Department of Environmental Conservation (DEC) on August 29, 1996. This negative declaration adequately certifies that there are no existing municipal solid waste (MSW) landfills located in the state of Vermont that have accepted waste since November 8, 1987 and that must install collection and control systems according to EPA's emissions guidelines for existing MSW landfills.

DATES: EPA must receive comments in writing by June 23, 2003.

ADDRESSES: You should address your written comments to: Mr. Steven Rapp, Chief, Air Permits, Toxics & Indoor Programs Unit, Office of Ecosystem Protection, U.S. EPA, One Congress Street, Suite 1100 (CAP), Boston, Massachusetts 02114–2023.

Copies of documents relating to this proposed rule are available for public inspection during normal business hours at the following location: Environmental Protection Agency, Air Permits, Toxics & Indoor Program Unit, Office of Ecosystem Protection, One Congress Street, Suite 1100, Boston, Massachusetts 02114–2023. The interested persons wanting to examine these documents should make an appointment with the appropriate office at least 24 hours before the day of the visit.

FOR FURTHER INFORMATION CONTACT: John Courcier, Office of Ecosystem Protection (CAP), EPA-New England, Region 1, Boston, Massachusetts 02203, (617) 918–1659, or by e-mail at *courcier.john@epa.gov*. While the public may forward questions to EPA via e-

mail, it must submit comments on this proposed rule according to the procedures outlined above.

SUPPLEMENTARY INFORMATION: Under section 111(d) of the Clean Air Act, EPA published regulations at 40 CFR part 60, subpart B which require states to submit control plans to control emissions of designated pollutants from designated facilities. In the event that a state does not have a particular designated facility located within its boundaries, EPA requires that a state submit a negative declaration in lieu of a control plan.

The Vermont DEC submitted the negative declaration to satisfy the requirements of 40 CFR part 60, subpart B. In the Final Rules Section of this **Federal Register**, EPA is approving the Vermont negative declaration as a direct final rule without a prior proposal. EPA is doing this because the Agency views this action as a noncontroversial submittal and anticipates that it will not receive any significant, material, and adverse comments. A detailed rationale for the approval is set forth in the direct final rule. If EPA does not receive any significant, material, and adverse comments to this action, then the approval will become final without further proceedings. If EPA receives adverse comments, we will withdraw the direct final rule and EPA will address all public comments received in a subsequent final rule based on this proposed rule. EPA will not begin a second comment period.

Dated: May 8, 2003.

Robert W. Varney,

Regional Administrator, EPA New England.

[FR Doc. 03–12864 Filed 5–21–03; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 300

[FRL–7500–7]

National Oil and Hazardous Substance, Pollution Contingency Plan; National Priorities List

AGENCY: Environmental Protection Agency.

ACTION: Notice of Intent to Delete the Rose Park Sludge Pit Superfund Site from the National Priorities List.

SUMMARY: The Environmental Protection Agency (EPA) Region 8 is issuing a Notice of Intent to Delete the Rose Park Sludge Pit Superfund Site (Site) located in Salt Lake City, Utah, from the National Priorities List (NPL) and requests public comments on this Notice. The NPL, promulgated pursuant to section 105 of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) of 1980, as amended, is found at Appendix B of 40 CFR Part 300, the National Oil and Hazardous Substances Pollution Contingency Plan (NCP). The EPA and the State of Utah, through the Utah Department of Environmental Quality (UDEQ), have determined that all appropriate response actions under CERCLA, other than five-year reviews and operation & maintenance, have been completed at the Site. However, this deletion does not preclude future actions under Superfund if determined necessary by EPA.

In the "Rules and Regulations" section of today's **Federal Register**, EPA is publishing a Direct Final Notice of Deletion of the Rose Park Sludge Pit Superfund Site without prior notice of intent to delete because EPA views this as a non-controversial action. EPA has explained its reasons for this deletion in the preamble to the Direct Final Notice of Deletion. If EPA receives no significant adverse comment(s) on the Direct Final Notice of Deletion, EPA will not take further action on this Notice of Intent to Delete and deletion of the Site will proceed. If EPA receives significant adverse comment(s), EPA will withdraw the Direct Final Notice of Deletion and it will not take effect. EPA will, as appropriate, address all public comments in a subsequent final deletion notice based on this Notice of Intent to Delete. EPA will not institute a second comment period on this Notice of Intent to Delete. Any parties interested in commenting must do so within the time frame noted below. For additional information, see the Direct Final Notice of Deletion, located in the "Rules and Regulations" section of this **Federal Register**.

DATES: Comments concerning this Site must be received by June 23, 2003.

ADDRESSES: Written comments should be addressed to: Armando Saenz, Remedial Project Manager (RPM), Mail Code: 8EPR–SR, U.S. EPA Region 8, 999 18th Street, Suite 300, Denver, Colorado, 80202–2466.

FOR FURTHER INFORMATION CONTACT: Armando Saenz, 303–312–6559, Remedial Project Manager (RPM), Mail Code: 8EPR–SR, U.S. EPA Region 8, 999 18th Street, Suite 300, Denver, Colorado, 80202–2466.

SUPPLEMENTARY INFORMATION: For additional information, see the direct final Notice of Deletion published in the "Rules and Regulations" section of this **Federal Register**.

Information Repositories

Repositories at the following addresses have been established to provide detailed information concerning this decision and all documents forming the basis for the response actions taken at this Site as well as documentation of the completion of those actions: (1) U.S. EPA Region 8 Superfund Records Center, 999 18th Street, Fifth Floor, Denver, Colorado 80202–2466, Monday through Friday, 8 a.m.–4:30 p.m.; and, (2) Utah Department of Environmental Quality, Division of Environmental Response & Remediation, 168 North 1950 West, Salt Lake City, Utah 84116.

List of Subjects in 40 CFR Part 300

Environmental protection, Air pollution control, Chemicals, Hazardous waste, Hazardous substances, Intergovernmental relations, Penalties, Reporting and recordkeeping requirements, Superfund, Water pollution, Water supply.

Authority: 33 U.S.C. 1321(c)(2); 42 U.S.C. 9601–9657; E.O. 12777, 56 FR 54757, 3 CFR, 1991 Comp., p. 351; E.O. 12580, 52 FR 2923; 3 CFR, 1987 Comp., p. 193.

Dated: May 2, 2003.

Robert E. Roberts,

Regional Administrator, Region 8.

[FR Doc. 03–12613 Filed 5–20–03; 8:45 am]

BILLING CODE 5560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 300

[FRL–7500–5]

National Oil and Hazardous Substance, Pollution Contingency Plan; National Priorities List

AGENCY: Environmental Protection Agency.

ACTION: Notice of intent to delete the Petrochem Recycling Corp./Ekotek, Inc., Superfund Site from the National Priorities List.

SUMMARY: The Environmental Protection Agency (EPA) Region 8 is issuing a Notice of Intent to Delete the Petrochem Recycling Corp./Ekotek, Inc., Superfund Site (Site) located in Salt Lake City, Utah, from the National Priorities List (NPL) and requests public comments on this Notice. The NPL, promulgated pursuant to section 105 of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) of 1980, as amended, is found at Appendix B of 40 CFR part 300, the National Oil and Hazardous Substances Pollution Contingency Plan (NCP). The EPA and the State of Utah, through the Utah Department of Environmental Quality (UDEQ), have determined that all appropriate response actions under CERCLA have been completed at the Site. However, this deletion does not preclude future actions under Superfund if determined necessary by EPA.

In the "Rules and Regulations" section of today's **Federal Register**, EPA is publishing a Direct Final Notice of Deletion of the Petrochem Recycling Corp./Ekotek, Inc., Superfund Site without prior notice of intent to delete because EPA views this as a non-controversial action. EPA has explained its reasons for this deletion in the preamble to the Direct Final Notice of Deletion. If EPA receives no significant adverse comment(s) on the Direct Final Notice of Deletion, EPA will not take further action on this Notice of Intent to Delete and deletion of the Site will proceed. If EPA receives significant adverse comment(s), EPA will withdraw the Direct Final Notice of Deletion and it will not take effect. EPA will, as appropriate, address all public comments in a subsequent final deletion notice based on this Notice of Intent to Delete. EPA will not institute a second comment period on this Notice of Intent to Delete. Any parties interested in commenting must do so within the time frame noted below. For additional information, see the Direct Final Notice of Deletion, located in the "Rules and Regulations" section of this **Federal Register**.

DATES: Comments concerning this Site must be received by June 23, 2003.

ADDRESSES: Written comments should be addressed to: Armando Saenz, Remedial Project Manager (RPM), Mail Code: 8EPR–SR, U.S. EPA Region 8, 999 18th Street, Suite 300, Denver, Colorado, 80202–2466.

FOR FURTHER INFORMATION CONTACT: Armando Saenz, 303–312–6559, Remedial Project Manager (RPM), Mail Code: 8EPR–SR, U.S. EPA Region 8, 999 18th Street, Suite 300, Denver, Colorado, 80202–2466.

SUPPLEMENTARY INFORMATION: For additional information, see the Direct Final Notice of Deletion published in the "Rules and Regulations" section of this **Federal Register**.

Information Repository

A repository at the following address has been established to provide detailed information concerning this decision and all documents forming the basis for the response actions taken at this Site as well as documentation of the completion of those actions: U.S. EPA Region 8 Superfund Records Center, 999 18th Street, Fifth Floor, Denver, Colorado 80202–2466, Monday through Friday, 8 a.m.–4:30 p.m.

List of Subjects in 40 CFR Part 300

Environmental protection, Air pollution control, Chemicals, Hazardous waste, Hazardous substances, Intergovernmental relations, Penalties, Reporting and recordkeeping requirements, Superfund, Water pollution, Water supply.

Authority: 33 U.S.C. 1321(c)(2); 42 U.S.C. 9601–9657; E.O. 12777, 56 FR 54757, 3 CFR, 1991 Comp., p. 351; E.O. 12580, 52 FR 2923; 3 CFR, 1987 Comp., p. 193.

Dated: May 2, 2003.

Robert E. Roberts,

Regional Administrator, Region 8.

[FR Doc. 03–12615 Filed 5–21–03; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF THE INTERIOR

Office of the Secretary

43 CFR Part 4

RIN 1090–AA84

General Rules Relating to Procedures and Practice; Special Rules Applicable to Public Land Hearings and Appeals

AGENCY: Office of the Secretary, Interior.

ACTION: Proposed rule.

SUMMARY: The Office of Hearings and Appeals (OHA) is proposing to revise its existing regulations governing petitions for stays and requests to put bureau decisions into immediate effect. The revisions would specifically authorize OHA administrative law judges to decide such petitions and requests, which arise most frequently in the context of appeals from grazing decisions that the Bureau of Land Management (BLM) issues. This change would expedite the administrative review process by eliminating an inefficient division of authority. The revisions would also improve the format and clarity of the regulations.

DATES: You should submit your comments by July 21, 2003.

ADDRESSES: Send comments to: Director, Office of Hearings and Appeals, Department of the Interior, 801 N. Quincy Street, Suite 300, Arlington, VA 22203.

FOR FURTHER INFORMATION CONTACT: Will A. Irwin, Administrative Judge, Interior Board of Land Appeals, U. S. Department of the Interior, 801 N. Quincy Street, Suite 300, Arlington, VA 22203, Phone: 703–235–3750. Persons who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at (800) 877–8339, 24 hours a day, 7 days a week.

SUPPLEMENTARY INFORMATION:

I. *Public Comment Procedures*
II. *Background*
III. *Review Under Procedural Statutes and Executive Orders*

I. Public Comment Procedures

A. How Do I Comment on the Proposed Rule?

You may submit your comments by mailing or delivering them to Director, Office of Hearings and Appeals, Department of the Interior, 801 N. Quincy Street, Suite 300, Arlington, VA 22203, Attn: RIN 1090–AA84.

Please make your comments on the proposed rule as specific as possible, confine them to issues pertinent to the proposed rule, and explain the reason for any changes you recommend. Where possible, your comments should refer to the specific section or paragraph of the proposal that you are addressing.

The Department of the Interior will not necessarily consider or include in the Administrative Record for the final rule comments that we receive after the close of the comment period (*see* **DATES**) or comments delivered to an address other than that listed above (*see* **ADDRESSES**).

B. How Do I Review Comments Submitted by Others?

Comments, including names and street addresses of respondents, will be available for public review at the address listed under **ADDRESSES** during regular business hours (9 a.m. to 5 p.m.), Monday through Friday, except holidays.

Individual respondents may request confidentiality, which we will honor to the extent allowable by law. If you wish to withhold your name or address, except for the city or town, you must state this prominently at the beginning of your comment. We will make all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, available for public inspection in their entirety.

II. Background

The existing regulations governing hearings and appeals of BLM grazing decisions allocate responsibility for deciding petitions for a stay of such decisions to the Interior Board of Land Appeals (IBLA) and the Director, OHA. Responsibility for conducting the hearing, ruling on other motions, and

making the initial decision on the appeal, however, rests with administrative law judges (ALJs) in the Hearings Division, OHA.

When an appeal of a grazing decision is filed with BLM, BLM currently forwards the decision and accompanying record to the Hearings Division office in Salt Lake City, Utah. If a petition for a stay of the decision accompanies the notice of appeal, the Hearings Division must forward the record to IBLA in Arlington, Virginia. Under 43 CFR 4.21(b)(4), IBLA (or the Director) has 45 days to decide whether or not to grant the petition; after IBLA decides, it returns the record to the Hearings Division in Salt Lake City. In the meantime, the ALJ to whom the case is assigned normally waits to schedule the hearing and to rule on any motions concerning the appeal, such as a motion to intervene in the appeal or a motion by BLM to dismiss the appeal. IBLA does not have authority to rule on such motions. The same situation applies, but less frequently, to requests to place grazing decisions into immediate effect under 43 CFR 4.21(a)(1) if BLM has not done so under 43 CFR 4160.3(f).

This division of responsibility results in delays and inefficiencies that would be alleviated if the ALJs also had authority to rule on petitions for a stay and requests to place grazing decisions into immediate effect. For example, IBLA sometimes finds during its consideration of a stay petition that a motion to dismiss should be granted. However, under the existing regulations, IBLA cannot grant the motion but must proceed to decide the stay petition and then refer the case, including the motion to dismiss, back to the Hearings Division. If the ALJ had authority to rule on petitions for a stay and requests to place decisions into immediate effect, he or she could consider any other pending motions at the same time and, where appropriate, grant a motion to dismiss without having to rule on the petition or request. Moreover, under the existing regulations, IBLA must thoroughly review the record in deciding whether to grant a stay petition, and the ALJ must then do the same in deciding the merits of the case. This is an unnecessary duplication of effort and takes time away from IBLA's consideration of other appeals.

By contrast, the regulations governing hearings under the Surface Mining Control and Reclamation Act of 1977 authorize an ALJ to consider whether to grant a motion for temporary relief (which is comparable to a petition for a stay) and also to decide the merits. IBLA gets involved in temporary relief cases only if a party appeals an ALJ's decision. *See, e.g.*, 43 CFR 4.1267, 4.1367(f), 4.1376(h). OHA has found these procedures workable and cost-effective. ALJs are also authorized to grant stays of decisions issued under BLM's onshore oil and gas operations regulations, *see* 43 CFR 3165.3(e), 3165.4(c), and of civil penalties issued by the Minerals Management Service, *see* 30 CFR 241.55(b).

Therefore, OHA proposes amendments to the existing regulations to provide the authority to ALJs to rule on petitions for a stay of BLM grazing decisions and requests to place these decisions into immediate effect. We also propose that any party may appeal to the IBLA an order of an ALJ granting or denying (1) a petition for a stay, or (2) a request to place a decision into immediate effect. Any party (other than BLM) wishing to appeal an order of an ALJ denying a petition for a stay or granting a request to place a decision into immediate effect may seek judicial review instead of appealing to IBLA.

The proposed rule would revise both 43 CFR 4.21, which applies to OHA proceedings generally, and 43 CFR 4.470–4.478, which apply to appeals from BLM grazing decisions. Currently OHA does not encounter the inefficient division of responsibility described above outside the context of grazing appeals. However, by revising § 4.21, we would eliminate the same inefficiency should it arise in some other context where the merits of the appeal were pending before the Hearings Division but, under current regulations, a stay petition must be decided by IBLA. In any case in which the ALJ has jurisdiction of the merits, we believe the ALJ should be authorized to decide a stay petition or a request to place a bureau decision in immediate effect. By revising § 4.21 as well as § 4.477, we would be keeping the two sets of provisions consistent.

OHA is also proposing to revise the existing regulatory language to make it clearer and to conform to Departmental requirements for writing rules in plain language. *See* 318 DM 4.2. We propose to do so by defining terms, creating more sections, reorganizing the provisions to put the main ideas first, and shortening sentences. In 43 CFR part 4, subpart B, we propose to revise existing § 4.21, to add new §§ 4.22 through 4.26, and to redesignate existing §§ 4.22 through 4.31 as §§ 4.27 through 4.36, respectively. Similarly, in 43 CFR part 4, subpart E, we would revise existing § 4.470, add new §§ 4.471 and 4.472, and redesignate existing §§ 4.471 through 4.478 as §§ 4.473 through 4.480, respectively. We would add paragraph (c) to newly redesignated § 4.474, and revise newly redesignated §§ 4.478 and 4.479. If this proposed rule becomes final, BLM would have to amend its regulations that refer to existing §§ 4.21 through 4.31 or §§ 4.470 through 4.478 to update the cross-references.

III. Review Under Procedural Statutes and Executive Orders

A. Regulatory Planning and Review (E.O. 12688)

In accordance with the criteria in Executive Order 12866, we find that this document is not a significant rule. The Office of Management and Budget has not reviewed this rule under Executive Order 12866.

1. This rule would not have an annual economic effect of $100 million or adversely affect an economic sector, productivity, competition, jobs, the environment, public health or safety, or other units of government. A cost-benefit and economic analysis is not required. These amended rules would have virtually no effect on the economy because they would only add authority for ALJs to decide petitions for a stay of grazing decisions and to place such decisions into immediate effect.

2. This rule would not create inconsistencies with or interfere with other agencies' actions. The rules propose to amend existing OHA regulations to add authority for ALJs to decide petitions for a stay of grazing decisions and to place such decisions into immediate effect.

3. This rule would not alter the budgetary effects of entitlements, grants, user fees, loan programs, or the rights and obligations of their recipients. These regulations have to do only with the procedures for hearings and appeals of BLM grazing decisions, not with entitlements, grants, user fees, loan programs, or the rights and obligations of their recipients. The proposed rule would only add authority for ALJs to decide petitions for a stay of grazing decisions and to place such decisions into immediate effect.

4. This rule does not raise novel legal or policy issues. The rule would simply extend ALJs' existing authority to include the authority to decide petitions for a stay of BLM grazing decisions and requests to place such decisions into immediate effect.

B. Regulatory Flexibility Act

The Department of the Interior certifies that this rule would not have a significant economic effect on a substantial number of small entities as defined under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). The extension of authority to ALJs to decide petitions for a stay of BLM grazing decisions and to place such decisions into immediate effect would have no effect on small entities. A Small Entity Compliance Guide is not required.

C. Small Business Regulatory Enforcement Fairness Act

This rule is not a major rule under 5 U.S.C. 804(2), the Small Business Regulatory Enforcement Fairness Act. This rule:

1. Would not have an annual effect on the economy of $100 million or more. Granting authority to ALJs to decide petitions for a stay of BLM grazing decisions and to place such decisions into immediate effect should have no effect on the economy.

2. Would not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions. Granting ALJs authority to decide petitions for a stay of BLM grazing decisions and to place such decisions into immediate effect would not affect costs or prices for citizens, individual industries, or government agencies.

3. Would not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises. Extending authority to ALJs to decide petitions for a stay of BLM grazing decisions and to place such decisions into immediate effect should have no effects, adverse or beneficial, on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises.

D. Unfunded Mandates Reform Act

In accordance with the Unfunded Mandates Reform Act (2 U.S.C. 1531 *et seq.*), we find that:

1. This rule would not have a significant or unique effect on state, local, or tribal governments or the private sector. Small governments do not often appeal BLM grazing decisions. Authorizing ALJs to decide petitions for a stay of such decisions and to place such decisions into immediate effect would neither uniquely nor significantly affect these governments because such authority currently exists elsewhere. A statement containing the information required by the Unfunded Mandates Reform Act, 2 U.S.C. 1531 *et seq.*, is not required.

2. This rule would not produce an unfunded Federal mandate of $100 million or more on State, local, or tribal governments or the private sector in any year, *i.e.*, it is not a "significant regulatory action" under the Unfunded Mandates Reform Act.

E. Takings (E.O. 12630)

In accordance with Executive Order 12630, we find that the rule would not have significant takings implications. A takings implication assessment is not required. These amendments to existing rules authorizing ALJs to decide petitions for a stay of BLM grazing decisions and to place such decisions into immediate effect should have no effect on property rights.

F. Federalism (E.O. 13132)

In accordance with Executive Order 13132, we find that the rule does not have sufficient federalism implications to warrant the preparation of a federalism assessment. There is no foreseeable effect on states from extending to ALJs the existing authority to decide petitions for a stay of BLM grazing decisions and to place such decisions into immediate effect. A federalism assessment is not required.

G. Civil Justice Reform (E.O. 12988)

In accordance with Executive Order 12988, the Office of the Solicitor has determined that this rule does not unduly burden the judicial system and does not meet the requirements of sections 3(a) and 3(b)(2) of the Order. These regulations, because they simply extend to ALJs already existing authority to decide petitions for a stay of BLM grazing decisions and to place such decisions into immediate effect, will not burden either administrative or judicial tribunals.

H. Paperwork Reduction Act

This proposed rule wold not require an information collection from 10 or more parties, and a submission under the Paperwork Reduction Act is not required. An OMB form 83–I has not been prepared and has not been approved by the Office of Policy Analysis. These regulations would only extend authority to ALJs to decide petitions for stay of BLM grazing decisions and to place such decisions into immediate effect; they would not require the public to provide information.

I. National Environmental Policy Act

The Department has analyzed this rule in accordance with the National Environmental Policy Act of 1969 (NEPA), 42 U.S.C. 4321 *et seq.*, Council on Environmental Quality (CEQ) regulations, 40 CFR part 1500, and the Department of the Interior Departmental Manual (DM). CEQ regulations, at 40 CFR 1508.4, define a "categorical exclusion" as a category of actions that the Department has determined ordinarily do not individually or cumulatively have a significant effect on the human environment. The regulations further direct each department to adopt NEPA procedures, including categorical exclusions. 40 CFR 1507.3. The Department has determined that the proposed rule is categorically excluded from further environmental analysis under NEPA in accordance with 516 DM 2, Appendix 1, which categorically excludes "[p]olicies, directives, regulations and guidelines of an administrative, financial, legal, technical or procedural nature." In addition, the Department has determined that none of the exceptions to categorical exclusions, listed in 516 DM 2, Appendix 2, applies to the proposed rule. The proposed rule is an administrative and procedural rule, relating to the authority of ALJs to decide petitions for stays of BLM grazing decisions and requests to place such decisions into immediate effect. The rule would not change the requirement that projects must comply with NEPA. Therefore, neither an environmental assessment nor an environmental impact statement under NEPA is required.

J. Government-to-Government Relationship With Tribes

In accordance with the President's memorandum of April 29, 1994, "Government-to-Government Relations with Native American Tribal Governments" (59 FR 22951), E.O. 13175, and 512 DM 2, the Department of the Interior has evaluated potential effects of these rules on Federally recognized Indian tribes and has determined that there are no potential effects. These rules would not affect Indian trust resources; they would provide authority to ALJs to decide petitions for a stay of BLM grazing decisions and to place such decisions into immediate effect.

K. Effects on the Nation's Energy Supply

In accordance with Executive Order 13211, we find that this regulation does not have a significant effect on the nation's energy supply, distribution, or use. The extension of authority to ALJs to decide petitions for a stay of BLM grazing decisions and to place such decisions into immediate effect would not affect energy supply or consumption.

L. Clarity of This Regulation

Executive Order 12866 requires each agency to write regulations that are easy to understand, including answers to the

following: (1) Are the requirements in the rule clearly stated? (2) Does the rule contain technical language or jargon that interferes with its clarity? (3) Does the format of the rule (grouping and order of sections, use of headings, paragraphing, etc.) aid or reduce its clarity? (4) Would the rule be easier to understand if it were divided into more (but shorter) sections? (A "section" appears in bold type and is preceded by the symbol "§" and a numbered heading; for example, § 4.21 General provisions.) (5) Is the description of the rule in the **SUPPLEMENTARY INFORMATION** section of the preamble helpful in understanding the proposed rule? (6) What else could we do to make the rule easier to understand?

Send a copy of any comments that concern how we could make this rule easier to understand to: Office of Regulatory Affairs, Department of the Interior, Room 7229, 1849 C Street, NW., Washington, DC 20240. You may also e-mail the comments to this address: *Exsec@ios.doi.gov*.

List of Subjects in 43 CFR Part 4

Administrative practice and procedure; Grazing lands; Public lands.

For the reasons set forth in the preamble, under authority delegated to the Director, Office of Hearings and Appeals, by the Secretary of the Interior, part 4, subparts B and E, of title 43 of the Code of Federal Regulations are proposed to be amended as set forth below:

Dated: May 13, 2003.

Robert S. More,

Director, Office of Hearings and Appeals.

PART 4—[AMENDED]

1. The authority for 43 CFR part 4 continues to read as follows:

Authority: R.S. 2478, as amended, 43 U.S.C. sec. 1201, unless otherwise noted.

Subpart B—General Rules Relating to Procedures and Practice

§§ 4.22 through 4.31 [Redesignated as §§ 4.27 through 4.36].

2. Sections 4.22 through 4.31 are redesignated as §§ 4.27 through 4.36.

3. Section 4.21 is revised and new §§ 4.22 through 4.26 are added to read as follows:

§ 4.21 Definitions of terms used in this subpart.

As used in this subpart:

Appropriate official means the Director of the Office of Hearings and Appeals, an Appeals Board, or an administrative law judge, as applicable in a particular situation.

Bureau means a bureau or office of the Department of the Interior.

Days means calendar days unless otherwise stated.

Decision means a written determination or, if applicable, a portion of a written determination.

§ 4.22 Effect of a decision pending appeal.

(a) The provisions of this section apply to any decision by a bureau that includes a right of appeal to the Office of Hearings and Appeals, unless a law or other applicable regulation provides otherwise.

(b) No such bureau decision is effective during the period of time allowed for filing an appeal, unless it is made immediately effective under paragraph (c)(2) of this section.

(c) A bureau decision becomes effective as shown in the following table:

If . . .	And . . .	Then . . .
(1) A statute or other regulation provides that the bureau decision will not take effect pending a decision on an appeal,	a person who has a right of appeal files a notice of appeal,	the bureau decision will become effective if and when it is affirmed by the Office of Hearings and Appeals or the appeal is dismissed.
(2) A person who has a right of appeal under § 4.410 or other applicable regulation files a timely notice of appeal,	a party to the appeal demonstrates that the public interest requires making the bureau decision effective immediately,	the appropriate official (see § 4.21) may provide that the bureau decision becomes effective immediately.
(3) A person who has a right of appeal under § 4.410 or other applicable regulation files a timely notice of appeal and a petition for a stay,	the appellant satisfies the requirements of § 4.23,	the appropriation official may stay the effect of the bureau decision under § 4.24, and the bureau decision will become effective if and when it is affirmed by the Office of Hearings and Appeals or the appeal is dismissed.
(4) A person who has a right of appeal under § 4.410 or other applicable regulation files a timely notice of appeal and a petition for a stay,	the appellant does not satisfy the requirements of § 4.23,	the bureau decision becomes effective when the appropriate official denies the petition.
(5) A person who has a right of appeal under § 4.410 or other applicable regulation files a timely notice of appeal and a petition for a stay,	the appropriate official does not act on petition within 45 days of the end of the appeal period,	the decision becomes effective on the 46th day after the end of the appeal period.

§ 4.23 How to petition for a stay of the effective date of a decision.

(a) To request a stay of a bureau decision, an appellant must file a notice of appeal and a petition for a stay as required under paragraphs (b) and (c) of this section. The appellant must file these documents before the end of the appeal period specified in the bureau decision. The provisions of this section apply unless a law or other applicable regulation provides otherwise.

(b) To obtain a stay under this section, an appellant must:

(1) Be a person who has a right of appeal under § 4.410 or other applicable regulation; and

(2) Demonstrate that the appropriate official should grant a stay based on the following standards:

(i) The relative harm to the parties if the stay is granted or denied;

(ii) The likelihood of the appellant's success on the merits;

(iii) The likelihood of immediate and irreparable harm if the appropriate official does not grant the stay; and

(iv) Whether the public interest favors granting the stay.

(c) The appellant must serve a copy of the notice of appeal and petition for a stay on each of the following simultaneously:

(1) The appropriate official before whom the appeal is pending;

(2) The bureau official who made the decision being appealed; and

(3) Each party, if any, named in the bureau decision that is being appealed.

§ 4.24 Action on a petition for a stay.

(a) Any party who is served with a copy of a stay petition under § 4.23(c) may file a response but must do so within 10 days after service. This includes the bureau official who made the decision being appealed.

(1) The responding party must serve the response on the persons listed in § 4.23(c) either by delivering it personally or by registered or certified mail, return receipt requested.

(2) The appropriate official will not grant a stay by default merely because no response to a petition has been filed.

(b) Within 45 days after the end of the time for filing an appeal, the appropriate official must grant or deny any petition for a stay.

(c) Any person who has a right of appeal under § 4.410 or other applicable regulation may appeal to the appropriate Appeals Board from an order of an administrative law judge to:

(1) Grant or deny a petition for a stay; or

(2) Make a bureau decision effective immediately.

(d) As an alternative to paragraph (c) of this section, any party other than the bureau may seek judicial review under 5 U.S.C. 704 of an order of an administrative law judge to:

(1) Deny a petition for a stay (either directly or by failing to meet the deadline in paragraph (b) of this section); or

(2) Make a bureau decision effective immediately.

(e) If a party appeals under paragraph (c) of this section, the Appeals Board must issue an expedited briefing schedule and expeditiously issue a decision on the appeal.

(f) Unless the Appeals Board or the court orders otherwise, an appeal under paragraph (c) of this section does not:

(1) Suspend the effectiveness of the decision of the administrative law judge; or

(2) Suspend further proceedings before the administrative law judge.

§ 4.25 Decisions subject to judicial review.

This section applies to any bureau decision that can be appealed to the Office of Hearings and Appeals. The bureau decision is not final agency action subject to judicial review under 5 U.S.C. 704 unless it has become effective under § 4.22 or other applicable regulation.

§ 4.26 Finality and reconsideration of decisions.

(a) A decision by the Director or an Appeals Board is final for the Department and cannot be appealed. However, the Director or an Appeals Board may reconsider a decision if either:

(1) In the judgment of the Director or the Appeals Board there exist extraordinary circumstances and sufficient reason for reconsideration; or

(2) Other regulations allow for reconsideration under standards other than those set forth in paragraph (a)(1) of this section.

(b) To request reconsideration under paragraph (a) of this section, an appellant must:

(1) File the request promptly, or within the time required by the regulations relating to the type of proceeding concerned; and

(2) State clearly and completely the nature of the error prompting the request for reconsideration.

(c) Filing a request for reconsideration does not stay the effectiveness of the decision unless the Director or the Appeals Board so orders.

(d) An appellant does not have to file a request for reconsideration in order to exhaust administrative remedies.

Subpart E—Special Rules Applicable to Public Land Hearings and Appeals

4. The authority for 43 CFR part 4, subpart E is revised to read as follows:

Authority: 43 U.S.C. 1201 and 315a.

5. In § 4.421, revise paragraph (c) to read as follows:

§ 4.421 Definitions.

* * * * *

(c) *Bureau* or *BLM* means the Bureau of Land Management.

* * * * *

§§ 4.471 through 4.478 [Redesignated as §§ 4.473 through 4.480].

6. Sections 4.471 through 4.478 are redesignated as §§ 4.473 through 4.480, respectively.

7. Section 4.470 is revised and §§ 4.471 and 4.472 are added to read as follows:

§ 4.470 How to appeal a BLM decision to an administrative law judge.

(a) Any person who has a right of appeal under § 4.410 or other applicable regulation may appeal a final bureau decision within 30 days after receiving it. To do this, the person must file a notice of appeal with the BLM field office that issued the decision.

(b) The notice of appeal must state clearly and concisely the reasons why the appellant thinks the BLM decision is wrong.

(c) Any ground for appeal not included in the notice of appeal is considered waived. The appellant may not present a waived ground for appeal at the hearing unless permitted to do so by the administrative law judge.

(d) Any person who, after proper notification, does not appeal a final BLM decision within the period allowed in the decision may not later challenge the matters adjudicated in the final decision.

(e) An administrative law judge may consolidate appeals for purposes of hearing and decision when:

(1) Appellants file separate appeals; and

(2) The issues involved are common to two or more appeals.

(f) Filing a notice of appeal does not by itself change the effective date of the decision. To request a change in the effective date, *see* § 4.471.

§ 4.471 How to request a change in the effective date of a final BLM decision.

(a) An appellant under § 4.470 may petition for a stay of the BLM decision pending appeal. The appellant must do this within 30 days after receiving the BLM decision by filing a petition for stay together with the notice of appeal required by § 4.470.

(b) An appellant under § 4.470 may request that a BLM decision become effective immediately. The appellant must do this within 30 days after receiving the BLM decision by filing a request for an immediate effective date together with the notice of appeal required by § 4.470.

(c) The appellant must file documents required by this section with both:

(1) The BLM office that issued the decision; and

(2) The Hearings Division, Office of Hearings and Appeals, 801 North Quincy Street, Suite 300, Arlington, VA 22203.

(d) The standards and procedures for obtaining a stay or requesting an immediate effective date are those set forth in §§ 4.22 through 4.24.

§ 4.472 Action on appeals and requests for effective date changes.

(a) The BLM field office must promptly forward to the State Director any documents received under §§ 4.470 and 4.471. If the State Director does not file a motion to dismiss under paragraph (b) of this section:

(1) The State Director must promptly forward all documents and the administrative record to the Office of Hearings and Appeals; and

(2) An administrative law judge will rule on the appeal and any motion or request.

(b) Within 30 days after receiving documents submitted under paragraph (a) of this section, the State Director may file a motion to dismiss the appeal for one or more of the following reasons:

(1) The appeal is frivolous;

(2) The appeal was filed late;

(3) The errors are not clearly and concisely stated;

(4) The issues are immaterial; or

(5) The issues have been previously adjudicated in an appeal involving the same grazing preference, the same parties, or their predecessors in interest.

(c) The State Director must send a copy of the motion to the appellant.

(d) The appellant may file a written answer with the State Director within 30 days after receiving the motion to dismiss.

(e) The State Director will transmit the appeal, any petition or request, motion to dismiss, and answer, along with the administrative record, to the Hearings Division, Office of Hearings and Appeals, 801 North Quincy Street, Suite 300, Arlington, VA 22203.

(f) An administrative law judge will rule on the motion to dismiss and, if the motion is sustained, dismiss the appeal by written order.

8. In newly redesignated § 4.474, add paragraph (c) to read as follows:

§ 4.474 Authority of administrative law judge.

* * * * *

(c) The administrative law judge may consider and rule on all motions and petitions, including:

(1) A petition for a stay of a final grazing decision of the BLM field office; and

(2) A request that a final grazing decision of the BLM field office become effective immediately.

9. Revise newly redesignated § 4.478 to read as follows:

§ 4.478 Appeals to the Board of Land Appeals.

(a) A person who has a right of appeal under § 4.410 or other applicable regulation may appeal under § 4.24(c) an order of an administrative law judge to:

(1) Grant or deny a petition for a stay; or

(2) Make a final grazing decision effective immediately.

(b) Any party affected by the administrative law judge's decision on the merits, including the State Director, has the right to appeal to the Board of Land Appeals under the procedures in this part.

10. Revise newly redesignated § 4.479 to read as follows:

§ 4.479 Effect of decision during appeal.

(a) A BLM decision may provide that the decision will be effective immediately pending decision on an appeal from the BLM decision. This paragraph applies:

(1) Notwithstanding the provisions of § 4.22(b) pertaining to the period during which a final decision will not be in effect; and

(2) Consistent with the provisions of § 4160.3.

(b) An administrative law judge or the Board may change or revoke any action that BLM takes pursuant to a BLM decision on appeal.

(c) This paragraph applies to any BLM decision that, at the time it is made, is subject to appeal before a superior authority in the Department. In order to ensure the exhaustion of administrative remedies before resort to court action, the BLM decision is not final agency action subject to judicial review under 5 U.S.C. 704 unless the BLM decision has become effective under this section or § 4.22.

[FR Doc. 03–12504 Filed 5–21–03; 8:45 am]

BILLING CODE 4310–79–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 03–1473, MB Docket No. 03–111, RM–10701]

Radio Broadcasting Services; Kernville, CA

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition filed by Linda A. Davidson proposing the allotment of Channel 289A at Kernville, CA, as that community's second local service. Channel 289A can be allotted to Kernville, consistent with the minimum distance separation requirements of the Commission's Rules, provided there is a site restriction of 5.6 kilometers (3.5 miles) northeast of the community. The reference coordinates for Channel 289A at Kernville are 35–46–29 North Latitude and 118–22–09 West Longitude.

DATES: Comments must be filed on or before June 26, 2003, and reply comments on or before July 11, 2003.

ADDRESSES: Federal Communications Commission, 445 Twelfth Street, SW., Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, as follows: Linda A. Davidson, 2134 Oak Street, Unit C, Santa Monica, CA 90405.

FOR FURTHER INFORMATION CONTACT: Rolanda F. Smith, Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rule Making, MB Docket No. 03–111, adopted April 30, 2003, and released May 5, 2003. The full text of this Commission decision is available for inspection and copying during normal business hours in the Commission's Reference Center 445 Twelfth Street, SW., Washington, DC 20554. The complete text of this decision may also be purchased from the Commission's duplicating contractor, Qualex International Portals II, 445 12th Street, SW., Room CY–B402, Washington, DC 20554, telephone 202–863–2893, facsimile 202–863–2898, or via e-mail *qualexint@aol.com*.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. *See* 47 CFR 1.1204(b) for rules governing permissible *ex parte* contact.

For information regarding proper filing procedures for comments, *see* 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio, Radio broadcasting.

For the reasons discussed in the preamble, the Federal Communications Commission proposes to amend 47 CFR part 73 as follows:

PART 73—RADIO BROADCAST SERVICES

1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303, 334 and 336.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under California, is amended by adding Channel 289A at Kernville.

Federal Communications Commission.

John A. Karousos,

Assistant Chief, Audio Division, Media Bureau.

[FR Doc. 03–12793 Filed 5–21–03; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 03–1474; MM Docket No. 01–169; RM–10145]

Radio Broadcasting Services; Danville & Nonesuch, KY

AGENCY: Federal Communications Commission.

ACTION: Proposed rule; denial.

SUMMARY: Action in this document denies a petition for rule making filed by Clear Channel Broadcasting Licenses, Inc., requesting the reallotment of Channel 296A from Danville, Kentucky to Nonesuch, Kentucky, and modification of the license for Station WHIR–FM to specify operation on Channel 296A at Nonesuch. *See* 66 FR 41489, August 8, 2001. Based on the information provided by Clear Channel Broadcasting Licenses, Inc., we believe it has failed to establish that Nonesuch qualifies as a community for allotment purposes and therefore it would not serve the public interest to reallot Channel 296A from Danville to Nonesuch, Kentucky. With this action, this proceeding is terminated.

FOR FURTHER INFORMATION CONTACT: Kathleen Scheuerle, Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No. 01–169, adopted April 30, 2003, and released May 5, 2003. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC's Reference Information Center at Portals II, 44512th Street, SW., Room CY–A257, Washington, DC 20554. The document may also be purchased from the Commission's duplicating contractor, Qualex International, Portals II, 445 12th Street, SW., Room CY–B402, Washington, DC 20554, telephone: 202 863–2893, facsimile: 202 863–2898, or via e-mail *qualexint@aol.com*.

Federal Communications Commission.

John A. Karousos,

Assistant Chief, Audio Division, Media Bureau.

[FR Doc. 03–12794 Filed 5–21–03; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018–AH53

Endangered and Threatened Wildlife and Plants; Delisting the Plant *Frankenia johnstonii* (Johnston's frankenia) and Notice of Petition Finding

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), announce a proposal to remove the plant *Frankenia johnstonii* (Johnston's frankenia) from the List of Endangered and Threatened Wildlife and Plants under the Endangered Species Act of 1973, as amended (Act). This species is endemic to three counties in south Texas and an adjacent area in northeastern Mexico. Due to an expansion of our knowledge of the species' known range, the number of newly discovered populations, some with large numbers of individual plants, increased knowledge of the life history requirements of this species, and clarification of the degree of threats to its continued existence, we have determined that Johnston's frankenia is not in danger of extinction throughout all or a significant portion of its range now or within the foreseeable future. This proposed rule also constitutes our 90-day and 12-month finding for the petition to delist *Frankenia johnstonii*.

DATES: We will consider comments on this proposal if they are received by August 20, 2003. Public hearing requests must be received by July 7, 2003.

ADDRESSES: Written comments and materials concerning this proposal should be sent to: Field Supervisor, Ecological Services Field Office, U.S. Fish and Wildlife Service, c/o TAMU–CC, Campus Box 338, 6300 Ocean Drive, Corpus Christi, Texas 78412. The proposal, supporting data, and comments are available for public inspection, by appointment, during normal business hours at the above address.

FOR FURTHER INFORMATION CONTACT: Robyn Cobb, U.S. Fish and Wildlife Service, at the above address, or telephone 361–994–9005 or e-mail to *robyn_cobb@fws.gov*.

SUPPLEMENTARY INFORMATION:

Background

Frankenia johnstonii (Correll) was first collected in 1966 in Zapata County, Texas, by Dr. D. S. Correll who later named the species in honor of Dr. M. C. Johnston (Correll 1966). *Frankenia johnstonii* is a low, somewhat sprawling, perennial shrub, in the Frankeniaceae Family. Mature plants are approximately 30 centimeters (cm) (12 inches (in)) in height, 30 to 60 cm (12 to 24 in) wide, and rounded or sphere-shaped in appearance. This spineless subshrub has a woody, trunk-like stem which gives rise to several-to-many ascending or recurved (bent or curved downward or backward) herbaceous stems. The entire plant may be grayish-green or bluish-green in color most of the year, turning crimson red in late fall when it is easily detected among its surrounding deciduous neighbors. This color change can also be brought on by severe drought conditions (Janssen and Williamson 1994). The gray-green leaf surfaces are haired, with salt crystals frequently visible on the underside of the leaves. Leaf margins are somewhat rolled or turned under. Flowers are small, with five slightly fringed or toothed white petals and a distinct yellow center. Flowering occurs from April to November, especially when stimulated by rainfall events (Janssen and Williamson 1994).

Frankenia johnstonii generally grows on open or sparsely vegetated, rocky, gypseous hillsides or saline flats. In Texas, this species is endemic to Webb, Zapata and Starr Counties, where it occurs within the mesquite-blackbrush community encompassed in the South Texas Plains vegetation zone as described by McMahan (*et al.* 1984). *Frankenia johnstonii* populations have a clumped distribution, occurring in openings of the Tamaulipan thornscrub where the plant thrives in a high light intensity setting. Populations of this species appear to be restricted to pockets of hyper-saline soil, analysis of which shows salinity and sodium content that is approximately 10 times greater than that found in soils occurring outside the populations (Janssen and Williamson 1994). The population in Mexico occurs in the transition zone between the Tamaulipan Scrub and the Chihuahuan Desert (Whalen 1980).

Frankenia johnstonii was listed August 7, 1984 (49 FR 31418), as an endangered species under the Act. Critical habitat was never designated for this species. The Johnston's Frankenia (*Frankenia johnstonii*) Recovery Plan, completed in 1988, did not quantify criteria for down-listing or delisting due

to a lack of basic knowledge about the species (USFWS 1988). Instead the recovery plan concentrated on the major actions believed necessary to recover *Frankenia johnstonii*. These actions included maintenance of known populations through landowner cooperation and habitat management, provision of permanent Service or conservation group protection of at least one site, establishment of populations in botanical gardens, obtaining biological information needed to effectively manage the species, and developing public support for the preservation of the species. Among the potential threats to *Frankenia johnstonii* identified in the recovery plan were habitat modification by land management practices that included overgrazing, blading, and bulldozing. The recovery plan also recognized the risk of population losses from intensive land uses and non-specific habitat alterations, including a variety of construction activities. The low reproductive potential of this species was considered another threat to its continued existence since the restricted number of individual plants was thought to imply a small gene pool with limited variability, thereby potentially diminishing the species' ability to tolerate stress and threats (USFWS 1988). Since 1993, intensive surveys in Webb, Zapata, and Starr Counties in South Texas, as well as additional information from Mexico have shown this species to be more widespread and abundant than was previously known (Janssen 1999).

At the time it was listed, *Frankenia johnstonii* was known from only four sites in Texas, two each in Zapata and Starr Counties, and from one locality in Mexico. When the recovery plan for this species was finalized in 1988, seven populations (including the original five) had been identified, all occurring on private land. At that time, the six Texas populations were encompassed within a 56-kilometer (km) (35-mile (mi)) radius, with the population in Mexico located approximately 201 km (125 mi) to the west. Since 1988, the discovery of new populations has extended the species' range to north and west of Laredo in Webb County, farther east in Zapata County, and farther south in Starr County. Currently a total of four populations are known from Mexico. Three of the four populations in Mexico are in relatively close proximity to one another along Highway 53 in the State of Nuevo Leon, while the fourth population location extends the species' range north-northeast to the vicinity of Nuevo Laredo in western Tamaulipas (Janssen 1999).

Frankenia johnstonii was first collected by Dr. D. S. Correll in 1966 in Zapata County, Texas, about 40 km (25 mi) northeast of San Ygnacio, and soon thereafter at a second site in Starr County, just east of El Sauz (Correll and Johnston 1970). The continued existence of *Frankenia johnstonii* at Correll's first site was confirmed by Poole in 1986, and the population at the second site was revisited by Poole, Turner, and Whalen at various times (USFWS 1988). The species was also found in 1966 by A. D. Wood in the hills northeast of Roma, Starr County (USFWS 1988). In 1967, Correll found a second Zapata County population about 8 km (5 mi) south of Zapata. Although Whalen was unable to relocate the Roma population during her doctoral research, she did relocate Correll's second Zapata County population (USFWS 1988). Collectors James Everitt and R. J. Fleetwood found *Frankenia johnstonii* at a site approximately 21 km (13 mi) north of Roma, Starr County, in 1974. Four different investigators had revisited this population by 1986 (USFWS 1988). In 1971, Turner identified what he considered to be a new species of *Frankenia* from a location 100 km (62 mi) northwest of Monterrey, Mexico, and named it *Frankenia leverichii* (Turner 1973). Whalen later studied specimens from this population as part of her doctoral research on the genus *Frankenia* and concluded that it was not distinct from *Frankenia johnstonii* (Whalen 1980), thus this was the single Mexican population referenced in the listing rule and the recovery plan.

An intensive status survey and study of ecological and biological characteristics of *Frankenia johnstonii* was conducted by Texas Parks and Wildlife Department (TPWD) botanist Gena Janssen between 1993 and 1999. The final report for this 6-year study contained documentation for 58 populations of *Frankenia johnstonii* in the U.S. and 4 in Mexico (Janssen 1999). Four of the 62 total populations reported by Janssen (1999) were part of the 7 populations referenced in the recovery plan. The results of this recent status survey have dramatically increased the known numbers of individual plants, from approximately 1,500 at the time of listing to greater than 9 million by 1999. The TPWD status survey resulted in an expansion of the species' known range to the northwest, east and south in Texas, and to the north of the previously known location in Mexico (Janssen 1999).

All 58 U.S. populations of *Frankenia johnstonii* identified in Janssen's 1999 report occur primarily on private land, but a portion of one population in Starr County is located on a Lower Rio Grande Valley National Wildlife Refuge (LRGVNWR) tract. A second population occurs, partially, in the Texas Department of Transportation's (TDOT) Highway 83 right-of-way in Zapata County. A third population, found growing on three private ranches in western Zapata County, also extends onto land below the 307-foot elevation mark adjacent to Falcon Reservoir. All property below this elevation mark is controlled by the International Boundary and Water Commission (IBWC). A fourth population, also in close proximity to Falcon Reservoir, may also be on IBWC-controlled land but Janssen was unable to determine exact land ownership for this population (Janssen 1999).

Using Pavlik's suggested method of deriving an estimated minimum viable population size (MVP) (Pavlik 1996), we calculated that approximately 2,000 individual plants may constitute a conservative estimate for a *Frankenia johnstonii* MVP. We used this estimated MVP to evaluate the distribution of known *Frankenia johnstonii* populations in relation to threats to those sites. Table 1 displays the numbers of small, intermediate-sized, and large populations in each Texas county and in Mexico, grouped with the smallest populations numbering below the calculated MVP, the intermediate-sized populations containing between 2,000 to 5,000 plants, and the largest populations consisting of greater than 5,000 individuals.

TABLE 1.—NUMBER AND LOCATION OF SMALL, INTERMEDIATE-SIZED AND LARGE FRANKENIA JOHNSTONII POPULATIONS

Number of individual plants	Starr County, TX	Zapata County, TX	Webb County, TX	Mexico
Less than 2,000	5	16	1	1
Between 2,000 and 5,000	1	6	2	1
Greater than 5,000	1	13	4	0

TABLE 1.—NUMBER AND LOCATION OF SMALL, INTERMEDIATE-SIZED AND LARGE FRANKENIA JOHNSTONII POPULATIONS—Continued

Number of individual plants	Starr County, TX	Zapata County, TX	Webb County, TX	Mexico
Unknown # of plants	9	0	0	2
Total number of Populations	16	35	7	4

Of the 7 *Frankenia johnstonii* populations confirmed in Webb County, 4 have greater than 5,000 individual plants, and 1 of the 4 is described as containing "hundreds of thousands of plants" (Janssen 1999). Two of the 7 populations consist of between 2,000 and 5,000 plants, and 1 has less than 2,000 plants.

Thirty-five *Frankenia johnstonii* populations are documented in Zapata County, 13 of which have greater than 5,000 plants, with several of the 13 composed of more than a million individuals (Janssen 1999). Six of the 35 populations have between 2,000 and 5,000 plants, and 16 have less than 2,000 plants.

For the 16 *Frankenia johnstonii* populations reported from Starr County, only 7 were confirmed by Janssen's site visits (Janssen 1999). One of the 16 had approximately 10,000 plants, 1 had approximately 2,000 plants, and 5 had less than 2,000 plants. For the 9 Starr County populations not visited by the TPWD principal investigator, locality information was provided by another biologist who furnished no data on numbers of individuals or condition of the plants (Janssen 1999).

A total of 5,600 individual plants were estimated from two of the four Mexican *Frankenia johnstonii* populations. Although the individual plant numbers are not available for the remaining two populations, one was described by a Mexican botanist as being "Abundante!" (Janssen 1999).

In Texas, approximately 80% of potential habitat has been surveyed for *Frankenia johnstonii* (Gena Janssen, Janssen Biological, pers. comm. 2001). Landowner permission for access was one of the primary factors affecting the extent of potential habitat covered by surveys, since parts of all populations located to date occur on privately owned land. Within Texas, a greater extent of suitable habitat, defined by the presence of the correct types of soils, exists in Zapata County rather than in the neighboring Starr or Webb Counties (Janssen, pers. comm. 2000). Zapata was the county most intensively surveyed by Janssen between 1993 and 1996, and the relatively higher numbers of landowners willing to grant access in this county may be correlated with an extensive landowner outreach campaign conducted by TPWD (Janssen 1996, 1999). In some cases in Zapata County, there was high potential for the presence of additional populations on land that adjoined ranches with known populations, however permission to access these areas was not attainable, therefore presence/absence could not be confirmed. Landowner contacts were not as readily available for Starr and Webb Counties, and additional population locations are possible in those counties. In Mexico, the level of effort to survey for *Frankenia johnstonii* has been limited. It is probable that populations remain undiscovered throughout suitable habitat in all three Texas counties, with the highest potential in Zapata County, and in Mexico (Janssen, pers. comm. 2001). Although only locality data has been documented thus far for plants in the nine Starr County populations, further assessment of these plants (such as their numbers and condition) is a possibility in the future.

At the time of listing, we considered *Frankenia johnstonii* to be vulnerable to extinction due to the following: (1) The low number and restricted distribution of populations; (2) low numbers of individual plants; (3) threats to the integrity of the species' habitat such as clearing and planting to improve pasture species, including introduced grasses; and (4) direct loss from construction associated with highways, residential development, and oil- and natural gas-related activities; and (5) the species' low reproductive potential.

The intensive survey effort by TPWD in South Texas has shown *Frankenia johnstonii* to be much more widespread and abundant than was known at the time of listing or when the recovery plan was prepared. Initial fears regarding the species' vulnerability to competition from exotic plant species such as buffelgrass (*Pennisetum ciliare*) have been alleviated by the results of biological and ecological research on this species. Analysis of data collected for soils, structural characteristics, and composition of the surrounding plant community show *Frankenia johnstonii* to be well adapted to the harsh environment in which it is a dominant vegetative component. This plant is a halophytic (salt-loving) perennial, suited to life in hyper-saline soils in which the elevated salinity and sodium levels are likely to exclude buffelgrass, the grass species that is most frequently planted for pasture improvement purposes in Webb, Zapata, and Starr Counties (John Lloyd-Reilley, U.S. Department of Agriculture, Natural Resource Conservation Service, pers. comm. 2001). In fact, *Frankenia johnstonii* is the dominant woody species within the plant community where it is found (Janssen 1999).

Mechanical and chemical brush-clearing practices that are commonly used prior to planting pasture grasses can, however, adversely impact *Frankenia johnstonii* populations or portions thereof by uprooting or damaging plants. In order to address conservation concerns associated with land management practices, TPWD conducted an extensive endangered and rare species education and outreach campaign in Webb, Zapata, and Starr Counties that encompassed activities such as landowner meetings, coordination with the U.S. Department of Agriculture's (USDA) Natural Resource Conservation Service (NRCS), county fair exhibits, development of printed information, and school presentations. This campaign promoted conservation of *Frankenia johnstonii*, in part by sharing the results of Janssen's field studies on the ecology and biology of this species. In October 2000, a presentation was made to NRCS District Conservationists from Webb, Zapata, and Starr Counties to emphasize their agency's role in helping landowners identify and avoid impacts to *Frankenia johnstonii* population sites, especially in light of the futility of converting the land on these hyper-saline sites to pastures of buffelgrass. The inability of buffelgrass to tolerate the high soil salinities typically found at *Frankenia johnstonii* sites results in the failure of grass plantings to thrive, the associated loss of time, energy, and money in trying to establish the grass, and an increased potential for soil erosion since the site is left without vegetative cover (Janssen 1999).

In a further effort to promote conservation of populations occurring on private land, TPWD initiated a voluntary conservation agreement in 1995 that was designed to protect *Frankenia johnstonii* from mechanical and chemical habitat alteration and overstocking of cattle. These agreements have been signed by 10 landowners controlling 19 of the largest populations and will endure for 10 years from the date of signature (Janssen 1999).

Protection for *Frankenia johnstonii* on public land is assured for the portion of the one population that extends onto a Lower Rio Grande Valley National Wildlife Refuge tract. The refuge monitors the status of these plants and considers protection of that part of the population whenever activities are being planned for that tract. At the TDOT's Highway 83 right-of-way population site, installation of reflector stakes is used to protect the plants from mowing and from Border Patrol maintenance activities (Janssen, pers. comm. 2001).

We used a Geographic Information System (GIS)-based analysis of the distribution of *Frankenia johnstonii* populations in relation to locations of existing and proposed highways, and residential developments (Shelley and Pulich 2000), to pinpoint the U.S. populations most likely to be threatened by these types of activities, as well as those populations furthest removed from them. The results of this analysis showed that 18 of the intermediate-sized and largest populations remain in remote locations on rangeland, where threats from road and residential construction activities are diminished (Janssen 1999, Shelley and Pulich 2000). Portions of 10 of the intermediate-sized and largest populations occur within 1 mile of State Highway 83, State Highway 16, or State Highway 359, 3 of the main transportation arteries in this region.

Thirteen of the smallest (less than 2,000 individuals) *Frankenia johnstonii* populations occur on remote rangeland, removed from road and residential construction threats. Of the remaining 10 smaller populations, 3 occur within 1 mile of State Highway 83 while 4 others are found in close proximity to Falcon Reservoir where residential construction is likely to remain a threat.

Oil and gas exploration and production activities, which can pose threats to portions of populations via road or well-pad construction or clearing of seismic lines, were nearly impossible to quantify or to project in terms of future geographic sitings. The TPWD did offer to search for populations and delineate perimeters, thereby helping companies to avoid *Frankenia johnstonii*, but no companies have signed any type of agreements to date. However, the landowner conservation agreements include provisions for landowners to contact TPWD whenever damage, including that caused by oil and gas activities, accidentally occurs or is anticipated so that TPWD can inspect populations and make recommendations for avoidance or recovery.

Rare species can be vulnerable to reproductive failure, and low reproductive potential was considered a potential threat to *Frankenia johnstonii* (Turner 1980, USFWS 1988). Among the factors that can contribute to the risk of reproductive failure in plants are high dependence on specialized pollinators, absence of back-up reproductive mechanisms such as self-fertilization and vegetative reproduction, and poor ability to compete for pollinators (Janssen 1999). The results of reproductive biology studies for *Frankenia johnstonii*, as reported in Janssen and Williamson (1996) and Janssen (1999), show that this species is a generalist rather than a specialist with regard to insect pollinators, hosting a variety of bees and flies. This reduces the danger associated with declines in any specific pollinator species. The high rates of floral visitation at *Frankenia johnstonii* by these insects shows the plant to be competing successfully for pollinators, and it is readily cross pollinated (Janssen 1999).

Previous Federal Action

Federal government actions on this species began with section 12 of the Act, which directed the Secretary of the Smithsonian Institution to prepare a report on those plants considered to be endangered, threatened, or extinct. This report (House Document No. 94–51), which included *Frankenia johnstonii* in the endangered category, was presented to Congress on January 9, 1975. On July 1, 1975, we published a notice in the **Federal Register** (40 FR 27823) that formally accepted the Smithsonian report as a petition within the context of section 4(c)(20), now section 4(b)(3)(A), of the Act, and of our intention thereby to review the status of those plants. *Frankenia johnstonii* was included as endangered in this notice. On June 16, 1976, we published a notice in the **Federal Register** (41 FR 24524) soliciting comments on the Smithsonian report in order for the finally adopted rule to be as accurate and effective as possible. *Frankenia johnstonii* was proposed for listing as an endangered species on July 8, 1983 (48 FR 31414). The final rule listing *Frankenia johnstonii* as an endangered species was published August 7, 1984 (49 FR 31418). The Johnston's Frankenia Recovery Plan was completed in 1988 (USFWS 1988).

Federal involvement with *Frankenia johnstonii* subsequent to listing has included funding for activities such as surveys for new locations, monitoring of known and new populations, and collection and analysis of ecological and biological data. A GIS-based approach for analyzing threats to the continued existence of the species was contracted by us to Southwest Texas State University (Shelley and Pulich 2000). The species has been included in all informal section 7 consultations over Federal projects occurring in suitable habitat in Starr and Zapata Counties, and more recently in Webb County, Texas, as new populations were delimited. This species has not been included in any formal consultations.

On February 8, 1997, we received a petition dated February 3, 1997, from the National Wilderness Institute. The petitioner requested that the Service remove *Frankenia johnstonii* from the List of Endangered and Threatened Wildlife and Plants on the basis of original data error. We were not able to act on this petition upon receipt due to the low priority assigned to delisting activities in our Fiscal Year 1997 Listing Priority Guidance which was published in the **Federal Register** on December 5, 1996 (61 FR 64475). That guidance clarified the order in which the Service would process rulemakings following two related events—(1) the lifting on April 26, 1996, of the moratorium on final listings imposed on April 10, 1995 (Pub. L. 104–6), and (2) the restoration of significant funding for listing through the passage of the omnibus budget reconciliation law on April 26, 1996, following severe funding constraints imposed by a number of continuing resolutions between November 1995 and April 1996.

The Fiscal Year 1997 Listing Priority Guidance identified delisting activities as the lowest priority (Tier 4). Due to the large backlog of higher priority listing actions, we did not conduct any delisting activities during Fiscal Year 1997. In Fiscal Year 1998, with a reduced backlog of higher priority listing actions, we were able to return to a more balanced listing program. We also placed delisting activities within Tier 2 in our Fiscal Years 1998 and 1999 Listing Priority Guidance, published in the **Federal Register** on May 8, 1998 (63 FR 25502).

We began to process the *Frankenia johnstonii* petition under the 1998 guidance. At that time we believed that the petitioners did not adequately present information about the status, distribution, and abundance of the species and that they did not address any of the potential threats to the species. The petition requested that we remove this plant from the List of Endangered and Threatened Wildlife and Plants on the basis of original data error and cited the Report to Congress on the Endangered and Threatened Species Recovery Program, USFWS, 1990, Washington DC, as stating that "New populations have been found in the lower Rio Grande Valley and this species now appears to be more abundant and widespread than previously thought." The petitioner also indicated that information already in our possession showed that this plant was significantly more abundant than known at the time of listing.

Although the petitioner referred to sufficient information being in our possession to validate their request for delisting, we did not have this level of data within our files at that time. We also did not have locality maps, size or viability information for all the known populations, or the data to analyze threats to these populations at the time of the draft administrative finding. We also anticipated extensive new information being made available in the near future from an ongoing study of the species by TPWD. Thus we did not go forward with a finding at that time.

We received the TPWD report, dated December 15, 1999, in the spring of 2000. Based upon information contained in the report, as discussed throughout this proposed rule, we made a determination to proceed with a proposed rule to delist *Frankenia johnstonii*. Thus, this proposed rule constitutes our 90-day and 12-month finding for the petition to delist *Frankenia johnstonii*.

Summary of Factors Affecting the Species

After a thorough review and consideration of all the available information, including the TPWD's 1999 status report, we have determined that *Frankenia johnstonii* (Correll) should be removed from the List of Endangered and Threatened Wildlife and Plants. Section 4(a)(1) of the Act and regulations (50 CFR part 424) issued to implement the listing provisions of the Act set forth the procedures for adding species to the Federal lists of threatened and endangered species. The same procedures apply to reclassifying species or removing them from these lists. A species may be determined to be an endangered or threatened species based on the best scientific and commercial information available regarding one or more of the five factors described in section 4(a)(1). These factors and their application to *Frankenia johnstonii* (Correll) (Johnston's frankenia) are as follows:

A. The Present or Threatened Destruction, Modification, or Curtailment of Its Habitat or Range

The extent of past land conversion activities across the range of *Frankenia johnstonii*, including brush control, planting of buffelgrass or other non-native grasses, or construction activities that may have resulted in the loss of this plant, has not been quantified (Janssen, pers. comm. 1998). In the 1990s, road construction proliferated across the South Texas landscape, concentrating in corridors along the Rio Grande with the growth of small towns and multiplication of international bridges. Oil and gas exploration and production activities have proceeded throughout the region, accompanied by associated pipeline construction, including extensions of pipelines into Mexico. Fiber optic lines and cellular communication towers are frequent additions to the landscape as we have seen from the increasingly visible presence of the towers and section 7 consultations for these structures. These types of construction activities have accelerated since the passage of the North American Free Trade Agreement and have the potential to fragment habitat and destroy portions of *Frankenia johnstonii* populations (Shelley and Pulich 2000).

Frankenia johnstonii is restricted to highly specialized habitats with high salt, and sometimes gypsum content, in the soils. Although the historical land use at these locations has primarily been livestock grazing, the recovery plan alludes to additional intensive land uses (*e.g.*, road construction, oil and gas activities, and gypsum mining, as well as other widespread, non-specific habitat alterations such as residential development and reservoir construction) which can destroy these specialized habitats (USFWS 1988).

Across the South Texas Plain, the practice of woody brush eradication, frequently undertaken to improve pasture for grazing, has the potential to adversely affect *Frankenia johnstonii* populations or parts of populations. These brush removal efforts have generally been accomplished with mechanical means such as bulldozing, blading, root plowing and/or chaining, or by use of herbicides. After clearing, the land is often reseeded with highly competitive, non-native grasses, primarily buffelgrass in this region of Texas. The practice of root plowing (pulling a plow equipped with 3 to 6-foot-long tines) has historically been the favored technique for brush clearing in this region of south Texas, although this practice has diminished in recent years as cost-share funding for brush clearing has declined. Fluctuating cattle markets and continuing drought in the area have provided impetus to south Texas ranchers to diversify their sources of income. As a result many ranchers have shown increased interest in retaining native brush habitat to enhance wildlife habitat and hunting opportunities, and this has also decreased brush clearing and pasture improvement activities (Arturo Ibarra, USDA NRCS, pers. comm. 2001).

Although the actual mechanical and chemical means of brush clearing can directly destroy individual plants (USFWS 1988), ecological research shows that long-term replacement of *Frankenia johnstonii* by buffelgrass or other improved range grass species is unlikely due to the extraordinarily harsh conditions of the soils underlying *Frankenia johnstonii* populations. Janssen (1999) reported soil analyses from within and outside of *Frankenia johnstonii* populations that showed soil salinity, sodium and sodium absorption ratios differed drastically between the two areas. Soil salinity within populations averaged 4,444 parts per million (ppm), ranging from 949 to 10,400 ppm. Outside populations, this parameter averaged 423 ppm, ranging from 123 to 1,430 ppm. Soil sodium averaged 4,429 ppm within populations (1,011 to 112,404 ppm), while outside of the populations, the average was 383 ppm (21 to 2,983 ppm). Sodium absorption ratios averaged 19.02 (5.84–55.52) within the populations, while 3.38 (0.34–10.05) was the average outside. Janssen (1999) found *Frankenia johnstonii* growing in and/or recolonizing areas that were root plowed 6, 10, or 15 years in the past. She observed regrowth of this plant in eight populations or subpopulations and described one subpopulation, still replowed annually, as having "pockets of *Frankenia johnstonii* hanging on."

Frankenia johnstonii has leaves with a number of structural features characteristic of both halophytes and xerophytes, enabling the plant to tolerate extremely saline soils. As a halophyte, the plant can absorb and accumulate salt. This salt accumulation within the plant changes the osmotic gradient, allowing the root cells to absorb water from the soil solution. Salt glands within the leaves then extrude the salt onto the leaf surface. These structural adaptations equip the species

to live in extremely salty soils. Although *Frankenia johnstonii* is found in arid, saline, gypseous (relatively high gypsum content) habitat in open areas with high light intensities, it is not found in adjacent, less saline soils. The patchy occurrence of these high-salinity soil pockets or inclusions (units too small to be mapped within a soil series) within larger areas of less saline soils results in the characteristic clumped pattern of *Frankenia johnstonii's* distribution. Relatively few other plant species occur within the *Frankenia johnstonii* populations, but this species assemblage is consistently found at all *Frankenia johnstonii* sites. Janssen (1999) suggests that this species successfully competes within, but not outside, these saline pockets of soil.

Since nearly all of the known populations of *Frankenia johnstonii* occur on private land, the TPWD's voluntary landowner conservation agreements were designed to help conserve the species using recommendations concerning certain land management practices. These recommendations included avoiding root plowing, bulldozing, disking, roller chopping and herbicide applications in *Frankenia johnstonii* sites, as well as relieving areas containing populations from grazing pressure associated with overstocking of animal units. The agreements also provided TPWD personnel access for purposes of monitoring populations at least once annually. For the 13 populations that contain greater than 10,000 individual plants, 12 are covered under signed voluntary conservation agreements. For the 14 populations that contain between 2,000 and 10,000 plants, 7 populations are covered by signed voluntary conservation agreements. The earliest signatures were obtained in June 1996, and the most recent was signed in July 1998.

The impacts of construction projects on *Frankenia johnstonii* populations, especially highway improvements and/or commercial or residential building that is stimulated by highway construction or improvements, may be limited to the footprint of the project. Twelve of the known U.S. populations of *Frankenia johnstonii* occur within 1 mile of Highways 83, 16, or 359, three of the largest roads crossing the Texas range of this species. These highways are also among the roads most likely to undergo expansions as trade from Mexico, and commercial and residential development, increases.

Human population growth in Webb, Zapata, and Starr Counties has more than doubled since 1970 and is projected to double or triple again by 2030; however, this growth is not uniformly distributed across the three counties. Instead, people are concentrating residential development in a few geographic areas, with the highest level of growth in and around the City of Laredo in Webb County. Major areas of growth follow the primary transportation corridors including Interstate 35 and Highway 83, and along the Rio Grande downstream of the Falcon Lake Reservoir (Shelley and Pulich 2000). According to Shelley and Pulich (2000), relatively few people are living far from the cities and highways. If the current trend in population growth holds, this growth is unlikely to impact those individual populations or subpopulations of *Frankenia johnstonii* that are distant from centers of residential development or transportation corridors. The fact that much of the land within these three counties is away from the well-established transportation corridors should have the effect of discouraging explosive growth. Additionally, the high salinity of the soils supporting *Frankenia johnstonii*, in conjunction with the arid climate of the area, results in highly erodible soils that will not support plant communities desired by most real estate developers (Shelley and Pulich 2000). Existing *Frankenia johnstonii* populations that are distant from current development are likely to thrive in their unique environment (Shelley and Pulich 2000).

The development of colonias, or low-income, unincorporated settlements that lack running water, wastewater treatment, or other services, has generally occurred outside of incorporated communities. The largest concentrations of colonias are found near the transportation corridors and near the cities at the international boundary along the Rio Grande (Shelley and Pulich 2000). The majority of colonias in Starr County are found along Highway 83 and the Rio Grande. One population of *Frankenia johnstonii* that faces potential impacts from developing colonias also extends onto a national wildlife refuge tract and would therefore be partially protected.

In Zapata County, there are fewer recorded colonias, with the majority located near the northern end of Falcon Reservoir along Highway 83. Two *Frankenia johnstonii* populations appear to be most at risk from colonias in this geographic area. One of these is found within a subdivision, and its future is unclear because it consists of three "neighborhood" subpopulations that extend onto property with multiple ownerships and existing homes, suggesting that further development may be forthcoming. The plants were described as being in excellent-to-good condition when the population was surveyed (Janssen 1999). The second population, although close to Highway 83, has remained in good shape over the 30 years since it was first reported (Janssen 1999). This population extends partially on TDOT's roadway right-of-way. The TDOT and TPWD have enacted a verbal agreement providing for reflector posts around the population to protect it from mowing and Border Patrol maintenance activities (Janssen, pers. comm. 2001).

In Webb County, the majority of colonias are south, east, and north of Laredo, concentrated along Highway 83 and the Rio Grande, Farm to Market Road 1472 and the Rio Grande, and to the east along Highway 359 (Shelley and Pulich 2000). In these areas, the *Frankenia johnstonii* population appearing to be most vulnerable occurs within a colonia, and future prospects for its long-term survival are described as "grim" (Janssen 1999).

B. Overutilization for Commercial, Recreational, Scientific, or Educational Purposes

There is no evidence to indicate that this species is collected for commercial, recreational, scientific, or educational purposes.

C. Disease or Predation

Turner's 1980 status report and the species' recovery plan allude to *Frankenia johnstonii* plants under heavy grazing pressure having a "hedged or clipped appearance common in plants grazed by cattle." The detrimental effects referred to in the recovery plan (USFWS 1988) were browsing of tender, new growth that might contribute to lowered reproductive success and direct trampling of young plants or seedlings, as well as soil compaction, which may negatively affect germination. Janssen (Janssen and Williamson 1993) observed that the population showing the most harmful effects of grazing was one where the fenced area was inadequate to support the number of cattle being stocked and the animals were not receiving any type of supplemental feed. R. Cobb observed cottontail rabbits and jackrabbits nibbling on *Frankenia johnstonii*, and she surmises that other mammals may also browse on it. Janssen (1999) summarized anecdotally that she had seen little difference in the appearance of *Frankenia johnstonii* populations between ranches with and without cattle in 6 years of field observations and concluded that grazing is not a direct threat, except possibly to those sites under poor range management.

D. The Inadequacy of Existing Regulatory Mechanisms

Endangered plants do not receive a high degree of protection on private property under the Act. If the landowner is not using Federal funding or does not require any type of Federal permit or authorization, listed plants may be removed at any time unless prohibited by State law. Under chapter 88 of the Texas Parks and Wildlife Code, any Texas plant that is placed on the Federal list as endangered is also required to be listed by the State as endangered. In addition to the State of Texas regulations pertaining to listing, other State laws may apply. The State prohibits taking and/or possession of listed plants for commercial sale, or sale of all or any part of an endangered, threatened, or protected plant from public land. Scientific permits are required for purposes of collection of endangered plants or plant parts from public lands for scientific or educational purposes. Commercial permits must be obtained from the Texas Parks and Wildlife Department to collect endangered plants from private land—only if the collector intends to sell the plants or plant material. The destruction or removal of any plant from a State park without a permit from the TPWD Director is unlawful. If this proposed delisting rule is finalized, we anticipate that Texas will also remove *Frankenia johnstonii* from its State list of endangered species.

Section 9(a)(2)(B) of the Act, as amended in 1982, prohibits removal and possession of endangered plants from areas under Federal jurisdiction. A portion of one population of *Frankenia johnstonii* is located in one of our National Wildlife Refuges. A small portion of another population is growing in a highway right-of-way where it is afforded some protection from TDOT mowing and Border Patrol maintenance activities. Portions of one, and possibly two, other Zapata County populations extend onto IBWC-controlled property. The remainder of the 4 aforementioned populations, as well as the other 54 populations found in the United States, are on privately owned land. The regulations described above, and the conservation activities agreed upon for 19 populations between the landowners and the TPWD, help to provide protection for a number of the U.S. populations.

We are not aware of any measures being taken by Mexico to protect *Frankenia johnstonii*. It appears that the populations known to us are all on ranchland. We will be contacting the Mexican Government during the comment period for this proposed rule for any additional information that they may have on the status of the species in Mexico.

E. Other Natural or Manmade Factors Affecting Its Continued Existence

Certain inherent biological characteristics, including small numbers of individuals, restricted distribution, and low reproductive potential, were also thought to affect the continued existence of *Frankenia johnstonii* (USFWS 1988). Turner (1980) observed seed set at less than 50 percent in the natural habitat, and Poole noted that seedlings are rarely seen (USFWS 1988). The recovery plan for *Frankenia johnstonii* referred to the approximately 1,500 plants known at the time of listing, and their occurrence in small populations with none greater than a few hundred plants, as implying a small gene pool with limited variability and therefore a diminished capacity for tolerating stresses and threats. The recovery plan indicated that scattered populations and disjunct distributions are commonly seen in the genus *Frankenia*. Whalen's (1980) reproductive data in the systematic analysis of the genus *Frankenia* showed *Frankenia johnstonii* had little propensity to reproduce. Turner (1980) found low seed viability (<50%) and had problems germinating seeds.

Janssen collected data on reproductive characteristics from six large populations in Webb (2), Zapata (3), and Starr (1) Counties. All attempts at germination in a greenhouse ended in failure, which was attributed to insufficient light conditions within the greenhouse (Janssen and Williamson 1996, Janssen 1999). Results of field observations showed that this species flowers throughout the year, but less abundantly in winter, with the highest numbers of flowers and fruit in spring/early summer. The flowers show no apparent morphological barriers to self-pollination. For plants having a reproductive system where gametophytic (the sexual generation of a plant which produces gametes) incompatibility is the case, the incompatibility can show up as an inhibition of pollen tube growth, but differential pollen tube growth was not observed in *Frankenia johnstonii*. Analysis of pollen grain viability resulted in a variance from 94–100% with an average of 96%. A large variety of diurnal pollinators visited *Frankenia johnstonii* flowers including flies, bees, and butterflies, with bee flies and bees being the most common. Within the fruit, only one of three ovules typically developed into a seed; the other two aborted (Janssen 1999). The percentage of seed set among populations that Janssen studied ranged from 15–30 percent. Using seed viability tests, 31 percent of the seeds were found to be viable. Results of soil seed bank analysis from three populations, over 1 year's time, yielded the germination of only four total seedlings. Seedling recruitment, as monitored within two populations, showed 82 and 85 percent recruitment.

The results of Janssen and Williamson's reproductive analysis of *Frankenia johnstonii* showed this species to be a generalist with respect to pollinators. Floral visitation rates were high, and the species appeared to successfully compete for pollinators. Although *Frankenia johnstonii* is readily cross-pollinated, this species also has a floral morphology that allows self-pollination, and self-compatibility is indicated (Janssen and Williamson 1996, Janssen 1999). Janssen (1999) concluded that "although self-pollination can result in less genetic variability, it may not be so detrimental for plants that occupy narrow ecological habitats."

Plant population growth and stability can be limited by the production of viable seeds, especially if there is not asexual reproduction. *Frankenia johnstonii* does not reproduce vegetatively, so seed production is critical. Seed production depends on plant size, fruit-to-flower ratio, and number of seed-producing ovules. With respect to the three aforementioned factors, *Frankenia johnstonii* has low fruit-to-flower ratio, low seed set, and low seed viability. Janssen (1999) acknowledged that her results regarding these factors may reflect decreased vigor in the limited number of populations on which she was able to conduct reproductive studies.

With respect to long-term survival of the seeds, the seed bank does not appear to be a persistent reservoir of buried viable seeds. The seeds are small in size, may remain for the most part in the above-ground litter, and probably could not emerge if buried deep. The seed's thin coat does not favor long-term survival in the soil, but is suited for taking in water fast and then subsequently germinating. This may be the reason that, despite low seed set and viability, those seeds that do germinate have a high rate of recruitment (82 percent and 85 percent in the two populations studied). The fruit does not appear to be specialized for dispersal, and the seedlings are always found in close proximity to the parent. Timing of

germination and seedling size are critical in determining the fate of seedlings. The variation in timing of germination and seedling survival seen in *Frankenia johnstonii* may be tied to rainfall amounts. Seedling loss seems to be primarily a result of browsing, trampling, and drought stress (Janssen 1999).

Frankenia johnstonii occurs in well-defined clumps within well-delineated salt flats or saline openings in the brush (Janssen and Williamson 1994). This species lives in open areas (amount of bare ground equaling 50 percent within populations) where it is subjected to high light intensities. The plant assemblages within *Frankenia johnstonii* populations differ from those in the brush community outside of those populations. Line intercept sampling data from 29 populations showed a distinct, recurring assemblage of plants at each *Frankenia johnstonii* population site (Janssen 1999). This species is the woody dominant where it occurs, having the highest relative dominance, frequency, density, and coverage compared to other woody species within this hypersaline environment. *Frankenia johnstonii* also has the highest importance value in this species assemblage, followed by *Varilla texana*, *Prosopis reptans*, *Thymophylla pentachaeta*, and *Opuntia leptocaulis*, respectively. The importance value provides an indication of the importance of the species in the habitat since its value is equal to the sum of the relative density, relative dominance, and relative frequency of the species. These five plant species are consistently found at each *Frankenia johnstonii* population site (Janssen 1999).

In summary, the threats to *Frankenia johnstonii's* future, as discussed in Factor E, focused on the species' small number of individuals, restricted distribution, and low reproductive potential. With regard to the small number of individuals, it is now known that *Frankenia johnstonii* is much more prevalent than originally thought, with greater than 9 million plants found between 1993 and 1999. The discovery of 51 new populations since the time the recovery plan was approved has brought the total to 58 known locations. These new population discoveries have expanded the geographic range of the species to include a third county in Texas and a third state in Mexico. Although the reproductive characteristics of *Frankenia johnstonii* may contribute to a reproductive potential that is relatively lower than many flowering plant species, this plant appears to be adapted to the arid climate and the saline soils which it inhabits. This species can take advantage of sporadic rainfall events, using the available moisture to germinate quickly. It readily cross pollinates, but also has the capability to self-fertilize. This plant hosts a variety of pollinators, reducing its dependence on the survival of any one pollinator species. It is unlikely that human activities have altered the effectiveness of *Frankenia johnstonii's* reproduction, except in cases where seedling survival has been adversely impacted by livestock trampling, a situation exacerbated by overstocking.

The regulations at 50 CFR 424.11(d) state that a species may be delisted if (1) it becomes extinct, (2) it recovers, or (3) the original classification data were in error. We conclude that the data supporting the original classification were incomplete, and new data show that removing *Frankenia johnstonii* from the List of Endangered and Threatened Wildlife and Plants is warranted. After conducting a review of the species' status, we determine that the species is not in danger of extinction throughout all or a significant portion of its range, nor is it likely to become in danger of extinction within the foreseeable future throughout all or a significant portion of its range. Given the expanded range, number of newly discovered population locations and individuals, the lack of competition from introduced grasses, the remoteness of some of the larger populations, and the protection offered by a number of landowners who control those populations, we conclude, based on the best scientific and commercial information, that *Frankenia johnstonii* does not warrant the protection of the Act.

The Act requires us to make biological decisions based upon the best scientific and commercial data available. In accordance with our peer review policy (59 FR 34270), we will solicit the expert opinions of three appropriate and independent specialists regarding pertinent scientific or commercial data and assumptions relating to the taxonomy, population models, and supportive biological and ecological information on this proposed rule.

Effect of Delisting

Removal of *Frankenia johnstonii* from the List of Endangered and Threatened Wildlife and Plants would relieve Federal agencies from the need to consult with us to insure that any action they authorize, fund, or carry out is not likely to jeopardize the continued existence of this species.

The 1988 amendments to the Act require that all species which have been delisted due to recovery efforts be monitored for at least 5 years following delisting. *Frankenia johnstonii* is being proposed for delisting primarily due to new information about this species, rather than due to recovery. This new information has expanded the species' known range, has greatly increased number of known populations and individual plants, and has clarified life history requirements that apparently give *Frankenia johnstonii* a competitive advantage in the unique habitat it occupies. The Act does not require a post-delisting monitoring plan for *Frankenia johnstonii*. However, some voluntary monitoring will occur, covering 19 populations on private land and a portion of 1 population on refuge land. Ten landowners have signed conservation agreements, covering 19 separate populations, with the TPWD agreeing to protect this species on their property and allowing annual monitoring of its status.

The objectives listed in the Johnston's Frankenia Recovery Plan include protecting the existing habitat in the United States, identifying essential habitat required for the species' continued existence, contacting landowners and working together to create management plans to protect the plants, and obtaining permanent protection of at least one site. The TPWD has (beginning in 1999) initiated photo-monitoring at those populations located on properties for which voluntary conservation agreements were signed. Monitoring will continue at those sites for 10 years. The Service's Lower Rio Grande Valley National Wildlife Refuge will continue to monitor *Frankenia johnstonii* on the one refuge tract where it occurs, as well as surveying for this species on any new tracts which are being considered for purchase. Samples of *Frankenia johnstonii* seeds will be collected for cryogenic storage as part of a seed collection project targeting listed and priority plant species of the Lower Rio Grande area, a cooperative effort between the Service and the San Antonio Botanical Garden.

National Environmental Policy Act

The Service has determined that an Environmental Assessment, as defined under the authority of the National Environmental Policy Act of 1969, need not be prepared in connection with regulations adopted pursuant to section 4(a) of the Act. A notice outlining the Service's reasons for this determination was published in the **Federal Register** on October 25, 1983 (48 FR 49244).

Government-to-Government Relationship With Tribes

In accordance with the President's memorandum of April 29, 1994, "Government-to-Government Relations with Native American Tribal Governments" (59 FR 22951) and 512 DM 2, we have determined that this rule will have no effect on Federally recognized Indian tribes.

Clarity of Regulations

Executive Order 12866 requires each agency to write regulations that are easy to understand. We invite your comments on how to make this rule easier to understand, including answers to questions such as the following: (1) Are the requirements in the rule clearly stated? (2) Does the rule contain technical language or jargon that interferes with its clarity? (3) Does the format of the rule (grouping and order of sections, use of headings, paragraphing, etc.) aid or reduce its clarity? (4) Would the rule be easier to understand if it were divided into more (but shorter) sections? (5) Is the description of the rule in the **SUPPLEMENTARY INFORMATION** section of the preamble helpful in understanding the interim rule? What else could we do to make the rule easier to understand?

Send a copy of any comments about how we could make this rule easier to understand to: Office of Regulatory Affairs, Department of the Interior, Room 7229, 1849 C Street, NW., Washington, DC 20240. You also may e-mail comments to: *Exsec@ios.doi.gov*.

Our practice is to make comments, including names and home addresses of respondents, available for public review during regular business hours. You may call 361/994–9005 to make an appointment to view the files. Individual respondents may request that we withhold their home address from the rulemaking record, which we will honor to the extent allowable by law. Under limited circumstances, as allowable by law, we can withhold from the rulemaking record a respondent's identity. If you wish us to withhold your name and/or address, you must state this prominently at the beginning of your comment. However, we will not consider anonymous comments. We will make all submissions from organizations or businesses, and from individuals identifying themselves as representing an organization or business, available for public inspection in their entirety.

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Author

The primary author of this document is Robyn Cobb, U.S. Fish and Wildlife Service (see **ADDRESSES** section).

List of Subjects in 50 CFR Part 17

Endangered and threatened species, Exports, Imports, Reporting and record-keeping requirements, Transportation.

Proposed Regulation Promulgation

For the reasons given in the preamble, we propose to amend part 17, subchapter B of chapter I, title 50 of the Code of Federal Regulations, as set forth below:

PART 17—[AMENDED]

1. The authority citation for part 17 continues to read as follows:

Authority: 16 U.S.C. 1361–1407; 16 U.S.C. 1531–1544; 16 U.S.C. 4201–4245; Pub. L. 99–625, 100 Stat. 3500; unless otherwise noted.

2. Amend § 17.12(h) by removing the entry "*Frankenia johnstonii*" under "FLOWERING PLANTS" from the List of Endangered and Threatened Wildlife and Plants.

Dated: August 9, 2003.

Steve Williams,

Director, U.S. Fish and Wildlife Service.

[FR Doc. 03–12748 Filed 5–21–03; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 660

[I.D. 051503A]

Western Pacific Fishery Management Council; Public Meetings

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of public meetings and hearings.

SUMMARY: The Western Pacific Fishery Management Council (Council) Advisory Panels (APs) will meet on June 6 and 7, 2003, and the Council will hold its 118th meeting June 10 through 13, 2003, in Honolulu, HI. (see **SUPPLEMENTARY INFORMATION** for specific times, dates, and agenda items).

ADDRESSES: The AP meetings will be held at the Council Office Conference Room, 1164 Bishop St., Suite 1400, Honolulu, HI; telephone: 808 522–8220. The Council meeting will be held at the Ala Moana Hotel, 410 Atkinson Drive, Honolulu, HI; telephone: 808–955–4811.

FOR FURTHER INFORMATION CONTACT: Kitty M. Simonds, Executive Director; telephone: 808–522–8220.

SUPPLEMENTARY INFORMATION:

Dates and Times

APs

The Commercial, Recreational, Subsistence/Indigenous and Ecosystem and Habitat sub-panels will meet jointly on Friday, June 6, 2003, from 8:30 a.m. to noon. Sub-panels will meet individually on Friday, June 6, 2003, from 1:30 p.m. to 5 p.m. and continue on Saturday, June 7, 2003, from 8:30

a.m. to 12 noon. Panels will meet in a plenary session from 1:30 p.m. to 5 p.m. on Saturday, June 7, to review recommendations. The agenda for the Advisory Panel meetings will include the items listed below. Public comment periods will be provided throughout the agenda. The order in which agenda items are addressed may change. The APs will meet as late as necessary to complete scheduled business.

Friday, June 6, 2003

1. Welcome and introductions
2. Status of previous advisory panel recommendations
3. Overview of Council decision-making process
4. Report from Island coordinators
5. Report on oceanic conditions (water temperature) surrounding the Commonwealth of the Northern Mariana Islands (CNMI) archipelago
6. Bottomfish fisheries
A. Guam offshore bottomfish management
B. Community demonstration project Mau Zone new entry criteria
C. Bottomfish overfishing/overfished control rule
D. Status of State of Hawaii bottomfish area closures
7. Marine protected areas (MPAs)
A. Establishing process for identifying reserve preservation areas in the Northwestern Hawaiian Islands (NWHI)
B. Use of MPAs in fishery management (e.g. Hawaii legislature initiative, California Channel Islands and longline closures)
C. Comments on reserve preservation areas in the NWHI.
8. Pelagic fisheries
A. Marlin management
B. Seabird mitigation
C. Sea Turtle mitigation
D. Growing use of personal fish aggregation devises
9. Small boat outreach issues
10. Report on finfish farming
11. Sub-panel break-out sessions to discuss issues and develop recommendations

Saturday, June 7, 2003

12. Sub-panel break-out sessions continue from 8:30 a.m. to 12 noon
13. Joint panel session reconvenes at 1:30 p.m. to review and finalize recommendations to the Council

Committee Meetings

The following Standing Committees of the Council will meet on June 10, 2003. Enforcement/Vessel Monitoring System (VMS) from 7:30 a.m. to 9 a.m.; Fishery Rights of Indigenous People from 7:30 a.m. to 9 a.m.; International Fisheries/Pelagics from 9 a.m. to 12 noon; Bottomfish from 9:00 a.m. to 12 noon; Ecosystem and Habitat from 1:30 p.m. to 3 p.m.; Crustaceans from 3 p.m. to 4:30 p.m.; and Executive/Budget and Program from 4:30 p.m. to 6 p.m.

In addition, the Council will hear recommendations from its APs, plan teams (PTs), scientific and statistical committees (SSCs), and other ad hoc groups. Public comment periods will be provided throughout the agenda. The order in which agenda items are addressed may change. The Council will meet as late as necessary to complete scheduled business.

Public Hearings

Public hearings will be held at 3:30 p.m. on Thursday, June 12, 2003, on the issues of management of marlin fisheries in Hawaii, and sea turtle conservation measures; at 11:30 a.m on Friday, June 13, 2003, on the issuance of community development program (CDP) Mau Zone bottomfish permits; and at 11:45 a.m. on Friday, June 13, 2003, on managing Guam's offshore bottomfish fishery. The agenda during the full Council meeting will include the items listed here.

Wednesday, June 11, 2003

1. Introductions
2. Approval of Agenda
3. Approval of 117th Meeting Minutes
4. Island Reports
A. American Samoa
B. Guam
C. Hawaii
D. CNMI
5. Regional constituent meeting with Bill Hogarth
6. Reports from Federal fishery agencies and organizations
A. Department of Commerce
(1) NMFS
(a) Pacific Islands Region
(b) Pacific Island Fisheries Science Center
(2) NOAA General Counsel, Pacific Islands Region
(3) National Ocean Service (NOS)
(a) National Marine Sanctuaries Program
(b) Pacific Services Center
B. Department of the Interior, U.S. Fish and Wildlife Service
C. U.S. State Department
7. Enforcement and VMS
A. U.S. Coast Guard activities
B. NMFS activities
C. Enforcement activities of local agencies
D. Status of violations
E. Report on enforcement meeting
(1) Outreach efforts
(2) American Samoa vessel monitoring system costs
(3) Electronic data reporting for Hawaii longline fleet
8. Precious coral fisheries: Status of industry
9. Crustaceans fisheries
A. Main Hawaiian Islands lobster stock assessment
B. Lobster tagging administrative report

Thursday, June 12, 2003

Guest speaker: David Pauley: "The Sea Around Us Project"
10. Pelagic fisheries
A. 2002 annual report
B. Report on American Samoa scientific data collection project
C. Report on Hawaii longline observer program
D. Report on phase two of chute trials for seabird conservation
E. Turtle conservation
(1) Implementation plan for conservation activities
(2) Fishery management alternatives (action item)
F. Marlin management (Action item)
G. Status of environmental impact statements (EISs)
(1) Supplemental pelagic EIS
(2) Main Hawaiian Islands turtle EIS
(3) Observer program EIS
(4) Turtle experiment EIS
H. Small boat outreach issues
I. International meetings and issues
(1) FAO Committee on Fisheries meeting
(2) NMFS turtle bycatch meeting
(3) 23rd turtle symposium
J. Public hearing on turtle conservation measures, and on management of marlin fisheries in Hawaii. Current turtle conservation measures for turtles which interact with the Hawaii-based longline fishery include a complete closure of all shallow set swordfish target longline fishing north of the equator and a seasonal closure in April and May each year of fishing grounds south of the Hawaiian Islands (from 15° N. lat. to the equator, and from 145° W. long. to 180° long.). The Council will consider whether to amend the Fishery Management Plan for the Pelagics Fishery of the Western Pacific Region (Pelagics FMP) and eliminate the southern April/May closure, or to modify the closure so that some areas would remain open during April and May. The Council will take public comment on modifications to the current management regime before taking further action on this issue.

The Council staff will consider a range of alternatives to address the fact that Pacific blue marlin landings are reportedly approaching maximum sustainable yield (MSY). Under new overfishing control rules recommended by the Council in its recent Sustainable Fisheries Act amendments, the Council will be required to reduce fishing mortality if overfishing is determined to be occurring, if the stock is determined to be overfished, or if the fishery is identified to be approaching an overfished condition. The degree to which fishing mortality by Council managed fisheries should be reduced is unclear given that these fisheries are a small percentage of Pacific-wide harvests. The Council will deliberate on the appropriate scale of response, and on the appropriate measures that it could adopt as a preferred alternative in an amendment to the Pelagics FMP, should this be required. The Council will take public comment on whether an amendment to the Pelagics FMP is necessary, and if so, what should be the preferred alternative in the amendment to the Pelagics FMP.

11. Indigenous fishery rights
A. Transmittal of Hawaii marine conservation plans
B. Community demonstration projects program
(1) Report on first solicitation
(2) Report on 2nd Solicitation
C. Mau Zone community development program (see bottomfish)
D. Annual Report to Congress

Friday, June 13, 2003

12. Ecosystems and Habitats
A. Report on the NOS NWHI Reserve Science Workshop
B. NMFS/Council NWHI symposium
C. Report from Council MPAs working group
D. Report on Secretariat of the Pacific Communities Coastal Fishery Management Meeting
E. Report on the U.S. Coral Reef Task Force Meeting
(1) February 26 Meeting
(2) Pacific coral reef fisheries management workshop
F. Status of the Coral Reef Ecosystem Fishery Management Plan
13. Bottomfish Fisheries
A. 2002 Annual report modules
B. Status of Main Hawaiian Island management program
C. Overfishing control rule/MSY
D. Report on NWHI bottomfish observer program
E. New entry criteria for Mau Zone community development program bottomfish permits (Action item)
F. Guam offshore bottomfish management (Action Item)
G. Public hearing on final action for Mau Zone community development program bottomfish permits and Guam offshore bottomfish management.

The Council will consider alternatives to take final action on a process for issuing NWHI Mau Zone bottomfish CDP permits. The three alternatives to be considered for selecting participants for the program include a random selection process (lottery), a weighted point system, and evaluation criteria. Each alternative will be used in concert with the Western Pacific community eligibility criteria as described in a **Federal Register** document published on April 16, 2002 (67 FR 18512). The Council's preferred alternative adopted by the Council at is 117th meeting in Saipan on February 12, 2003, was incorporated into the existing draft framework amendment "Measure to Establish Eligibility Criteria for New Entry into the Northwestern Hawaiian Islands Mau Zone Limited Access System". The revised framework regulatory amendment incorporates the CDP permit issuance process to be presented and considered for final action by the Council at this meeting.

The Council will also consider alternatives and intends to take final action to manage Guam's offshore bottomfish fishery. The Council considered management alternatives at its 117th Council meeting in February 2003, and selected, as its preferred alternative, the option to prohibit targeting of bottomfish management unit species (BMUS) using vessels longer than 50 ft(15.24 m) that fish in Federal waters within 50 nautical miles from shore. In addition the preferred alternative would require Federal permits and reports for all vessels over 50 ft (15.24 m) in length that land BMUS in Guam.

Recent entry of larger vessels into the Guam bottomfish fishery has raised concerns regarding data collection gaps and resource status. These vessels harvest deep-slope species on offshore seamounts (or "banks") in Federal waters, land the bottomfish at Guam's commercial port, and export the bottomfish to Japan. Neither the level of fishing effort nor the amount of bottomfish harvested, which is believed to have started in 2001, is known. Guam's creel survey does not cover fish landed at the commercial port and the exported fish are not sold through any establishments that participate in the voluntary sales ticket monitoring program. Onaga (Etelis coruscans) appears to be the primary species that is targeted.

The southern banks have been fished for many years by Guam-based bottomfish fishermen using smaller vessels that engage in a mix of subsistence, recreational, and small-scale commercial fishing, particularly in the summer months, when weather conditions tend to be calmer. Most of the vessels fishing on the southern banks target the shallow-water bottomfish complex, but some target the deep-water complex.

It is unknown at this time whether the new component of the fishery is having significant impacts on marine resources. Initial discussions with fishery managers and Guam's fishing community (through a public scoping meeting held on Guam August 8, 2002 and February 8, 2003), indicate that the catch of fish by this new component may lead to localized overfishing of the bank area.

14. Program Planning
A. Legislation updates
B. Status of Pacific Islands Region
C. Pacific fishery management coordinating consultation
D. Social science research planning
E. Exclusive Economic Zone data collection
F. Report on fishery data coordination committee meeting/WPacFIN
15. Administrative matters
A. Financial reports
B. Administrative reports
C. Upcoming meetings and workshops including the 119th Council meeting
D. AP, SSC, PT and Sea turtle working group appointments
16. Other business

Although non-emergency issues not contained in this agenda may come before the Council for discussion, those issues may not be the subject of formal Council action during this meeting. Council action will be restricted to those issues specifically listed in this document and any issue arising after publication of this document that requires emergency action under section 305(c) of the Magnuson-Stevens Fishery Conservation and Management Act, provided the public has been notified of the Council's intent to take final action to address the emergency.

Special Accommodations

These meetings are physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Kitty M. Simonds, 808–522–8220 (voice) or 808–522–8226 (fax), at least 5 days prior to the meeting date.

Authority: 1801 *et seq.*

Dated: May 16, 2003.

Richard W. Surdi,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 03–12743 Filed 5–21–03; 8:45 am]
BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 660

[I.D.051403C]

RIN 0648–AQ68

Fisheries off West Coast States and in the Western Pacific; Pacific Coast Groundfish Fishery; Amendment 17

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of availability of an amendment to a fishery management plan; request for comments.

SUMMARY: NMFS announces that the Pacific Fishery Management Council (Council) has submitted Amendment 17 to the Pacific Coast Groundfish Fishery Management Plan (FMP) for Secretarial review. Amendment 17 would revise the Council's annual groundfish management process so that it would become a biennial process with a NMFS public notice and comment period prior to implementation of the biennial specifications and management measures. Amendment 17 is intended to ensure that the specifications and management measures process comports with a Court ruling to make the Council's development process for specifications and management measures more efficient, and to streamline the NMFS regulatory process for implementing the specifications and management measures.

DATES: Comments on Amendment 17 must be received on or before July 21, 2003.

ADDRESSES: Comments on Amendment 17 or supporting documents should be sent to D. Robert Lohn, Administrator, Northwest Region, NMFS, Sand Point Way NE., BIN C15700, Seattle, WA 98115–0070; or to Rodney McInnis, Acting Administrator, Southwest Region, NMFS, 501 West Ocean Boulevard, Suite 4200, Long Beach, CA 90802–4213.

Copies of Amendment 17 and the Environmental Assessment/ Regulatory Impact Review (EA/RIR) are available from Donald McIsaac, Executive Director, Pacific Fishery Management Council, 2130 SW Fifth Ave., Suite 224, Portland, OR 97201.

FOR FURTHER INFORMATION CONTACT: Yvonne deReynier (Northwest Region, NMFS), phone: 206–526–6140; fax: 206–526–6736 and; e-mail: *yvonne.dereynier@noaa.gov*.

SUPPLEMENTARY INFORMATION:

Electronic Access

This **Federal Register** document is also accessible via the Internet at the Web site of the Office of the **Federal Register**'s Web site at: *http://www/access/gpo.gov/su_docs/aces140.html*.

The Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) requires each regional fishery management council to submit fishery management plans or plan amendments to NMFS for review and approval, disapproval, or partial approval. The Magnuson-Stevens Act also requires NMFS, immediately upon receiving a fishery management plan or amendment, to publish notification in the **Federal Register** that the fishery management plan or plan amendment is available for public review and comment. At the end of the comment period, NMFS considers the public comments received during the comment period described above in determining whether to approve, partially approve, or disapprove the fishery management plan or plan amendment.

Amendment 17 is administrative in nature and is intended to revise Council and NMFS processes associated with the specifications and management measures. This annual process establishes harvest "specifications," which are harvest levels or limits such as acceptable biological catches, optimum yields, or allocations for different user groups. Management measures, such as trip limits, closed times and areas, and gear restrictions are also set in the annual regulatory process. Since 1990, in order to use the most recent scientific information possible, the Council has annually developed its recommendations for specifications and management measures in a two-meeting process (usually its September and November meetings) followed by a NMFS final action published in the **Federal Register** and made available for public comment after the effective date of the action. In 2001, NMFS was challenged on this process in *Natural Resources Defense Council, Inc.* v. *Evans*, 168 F.Supp. 2d 1149 (N.D. Cal. 2001) and the Court ordered NMFS to provide prior public notice and allow public comment on the annual specifications. Amendment 17 would amend the FMP's framework for developing annual specifications and management measures to include time for NMFS to publish a proposed rule for the specifications and management measures, followed by a final rule.

In addition to needing to revise the notice and comment procedure associated with the specifications and management measures, the Council wished to take a new look at efficiency in the annual management process. Groundfish management workload levels have grown in recent years, particularly those associated with setting annual harvest levels for both depleted and healthy stocks. Because of the increasing workload associated with developing specifications and management measures, the Council and NMFS have had less time for addressing many other important groundfish fishery management issues. NMFS has recently asked all of the fishery management councils to consider how they might streamline their processes for developing regulatory recommendations. Amendment 17 responds to this request by setting the specifications and management measures process for biennial, rather than annual, development and implementation.

Public comments on Amendment 17 must be received by July 21, 2003, to be considered by NMFS in the decision whether to approve, disapprove, or partially approve Amendment 17. A proposed rule to implement Amendment 17 has been submitted for Secretarial review and approval. NMFS expects to publish and request public comment on proposed regulations to implement Amendment 17 in the near future.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: May 16, 2003.

Bruce C. Morehead,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 03–12885 Filed 5–21–03; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration (NOAA)

50 CFR Part 660

[Docket No. 030430106–3106–01; I.D. 040103C]

RIN 0648–AQ58

Fisheries Off West Coast States and in the Western Pacific; Pacific Coast Groundfish Fishery; Vessel Monitoring Systems

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Proposed rule; request for comments.

SUMMARY: NMFS is proposing a rule that would require vessels registered to Pacific Coast groundfish fishery limited entry permits to carry and use mobile vessel monitoring system (VMS) transceiver units while fishing in the exclusive economic zone (EEZ) off the coasts of Washington, Oregon, and California. This action is necessary to monitor compliance with large-scale depth-based restrictions for fishing across much of the continental shelf.

This proposed rule also requires the operators of any vessel registered to a limited entry permit and any other commercial or tribal vessel using trawl gear, including exempted gear used to take pink shrimp, spot and ridgeback prawns, California halibut and sea cucumber, to declare their intent to fish within a conservation area specific to their gear type, in a manner that is consistent with the conservation area requirements. This action is intended to further the conservation goals and objectives of the Pacific Coast Groundfish Fishery Management Plan(FMP) by allowing fishing to continue in areas and with gears that can harvest healthy stocks with little incidental catch of low abundance species.

DATES: Comments must be received by July 21, 2003.

ADDRESSES: Send comments to, D. Robert Lohn, Administrator, Northwest Region, NOAA Fisheries, 7600 Sand Point Way, NE, Seattle, WA 98112, Attn: Becky Renko. Comments also may be sent via facsimile (fax) to 206–526–6736. Comments will not be accepted if submitted via e-mail or Internet.

Copies of the environmental assessment/regulatory impact review/ initial regulatory flexibility analysis (EA/RIR/IRFA) prepared for this action may be obtained from the Pacific Fishery Management Council (Council) by writing to the Council at 7700 NE Ambassador Place, Portland, OR 97220, phone: 503–820–2280, or may be obtained from William L. Robinson, Northwest Region, NMFS, 7600 Sand Point Way N.E., BIN C15700, Bldg. 1, Seattle, WA 98115–0070. Send comments on collection-of-information requirements to the NMFS address above and to the Office of Information and Regulatory Affairs (OIRA), Office of Management and Budget (OMB), Washington DC 20503 (Attn: NOAA Desk Officer).

FOR FURTHER INFORMATION CONTACT: Becky Renko or Yvonne deReynier (Northwest Region, NMFS) 206–526–6140.

SUPPLEMENTARY INFORMATION: This rule is accessible via the Internet at the Office of the Federal Register's Web site at *http://www.access.gpo.gpv/su-docs/aces/aces140.htm*. Background information and documents are available at the NMFS Northwest Region Web site at *http://www.nwr.noaa.gov/1sustfsh/gdfsh01.htm* and at the Council's Web site at *http://www.pcouncil.org*.

Specific Request for Comments

NMFS is specifically seeking comment on: the requirements to send declaration reports prior to leaving port; prohibition of vessels registered to limited entry permits with trawl endorsements from activities other than continuous transit through the Trawl Rockfish Conservation Area; and the requirement for continuous VMS position reports, particularly as it applies to small vessels that are regularly removed from the water.

Background

In general, a variety of methods are used to routinely monitor fishing fleets to ensure that vessel operators comply with fishery regulations. Traditional techniques used to monitor marine fisheries have been relatively limited and include monitoring from air and surface craft, through on-board observer programs, and by analyzing catch records and vessel logbooks. The efficiency of these traditional monitoring techniques can be enhanced by the addition of VMS and the use of declaration reports.

VMS is a tool that allows vessel activity to be monitored in relation to geographically defined management areas. VMS transceiver units installed aboard vessels automatically determine the vessel's position and transmit that position to a processing center via a communication satellite. At the processing center, the information is validated and analyzed before being disseminated for various purposes, which may include fisheries management, surveillance and enforcement. VMS transceivers automatically determine the vessel's position using Global Positioning System (GPS) satellites. Generally, the vessel's position is determined once per hour, but the position determinations may be more or less frequent depending on the fishery. VMS transceivers are designed to be tamper resistant. In most cases, the vessel owner is not aware of exactly when the unit is transmitting and is unable to alter the signal or the time of transmission. On September 23, 1993 (58 FR 49285)and March 31, 1994 (59 FR 15181) NMFS published VMS standards for transceiver units and service providers used for Federal fisheries management.

Information collected under a VMS program is subject to the confidentiality provisions of Section 402 of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act), 6 U.S.C. 1881 a(b), and implementing regulations at 50 CFR part 600, Subpart E. These authorities specify in detail who may access and use the information and for what purposes.

Amendment 13 to the Pacific Coast groundfish FMP recognized the value of VMS systems in enforcing closed areas established to reduce bycatch levels. Amendment 13 also identified VMS as a technological tool that could be used to improve bycatch management by providing location data that can be used in conjunction with observer data collections.

Time and area closures have long been used in the Pacific Coast groundfish fishery to restrict fishing activity in order to keep harvests within sector allocations and at sustainable levels and to prohibit the catch of certain species. Until September 2002, geographically-defined areas tended to be in nearshore areas or defined by simple latitude and longitude lines. On September 13, 2002, NMFS took emergency action to implement the first depth-based management measures (67 FR 57973). This emergency rule restricted trawling north of 40°10′ N. lat., in the months of September-December 2002, to depths where darkblotched rockfish, an overfished species, was not expected to be encountered. These measures were taken to keep the total catch of darkblotched rockfish below the 2002 Optimum Yield level. The Darkblotched Rockfish Conservation Area was a depth-based management area based on bottom depth ranges where darkblotched rockfish commonly occur (100–250 fm). This large, irregularly-shaped geographical area was defined by a series of latitudinal and longitudinal coordinates which generally follow depth (fathom) contours. This area differed from previously closed areas because it extends far offshore making air and surface craft enforcement difficult.

For 2003, the Council sought a management strategy that would allow fishing to continue in areas and with gear that can harvest healthy stocks with little incidental catch of low abundance species such as bocaccio, yelloweye, canary and darkblotched rockfish. Measures must be taken to protect these

stocks and rebuild them to sustainable biomass levels. Therefore, the Council recommended that NMFS define additional management areas for the groundfish fishery that are based on bottom depth ranges where these low abundance species are commonly found. For 2003, large-scale depth-related closed areas, referred to as rockfish conservation areas or RCAs, are being used to restrict both commercial and recreational fishing across much of the Continental Shelf. Different RCAs are established for different gear types, as not all gear types encounter each overfished species at the same rate or in similar areas. For example, groundfish bottom trawling is banned in some RCAs (known as trawl RCAs); use of non-trawl gear – such as limited entry and open access longline, pot or trap is banned in other RCAs (known as non-trawl RCAs).

Within the RCAs, fishing likely to result in the catch of substantial amounts of overfished species is banned, while other fishing is allowed. In addition, transit of the RCAs by fishing vessels headed for open areas seaward of the RCAs is allowed.

The depth-based management strategy associated with the RCAs is designed to allow fishing for healthy stocks to continue, while protecting overfished species. However, it presents new enforcement challenges, and requires new tools such as VMS to supplement existing enforcement mechanisms. NMFS and cooperating enforcement agencies (such as the U.S. Coast Guard and state marine law enforcement agencies) will continue to use traditional enforcement methods such as aerial surveillance and marine patrols that have proved effective in the past. Adding requirements for VMS and declaration reports will allow the enforcement agencies to continuously monitor vessels fishing in, and transiting through, the RCAs.

At its September 2002 meeting, the Council indicated that the information provided by a VMS program will be beneficial to managing the groundfish fishery, specifically, in maintaining the integrity of new, depth-based management measures. At this same meeting, the Council requested that NMFS further analyze a VMS program and develop implementing regulations.

At its November 2002 meeting, following public comment and Council discussion, the Council recommended that NMFS move forward with a proposed rule to implement a VMS program for the Pacific Coast groundfish fishery in 2003. During the initial phase of this program the Council recommended starting with requiring vessels registered to limited entry permits fishing in the EEZ off the Washington, Oregon, and California coasts to have VMS transceiver units. This is intended to be a pilot program that begins with the sector that is allocated the majority of the groundfish resources. In order to implement a VMS program effectively, the Council also recommended requiring the operator of any vessel registered to a limited entry permit; and any commercial or tribal vessel using trawl gear, including, exempted gear used to take pink shrimp, spot and ridgeback prawns, California halibut and sea cucumber, to declare their intent to fish within a conservation area specific to their gear type, in a manner that is consistent with the conservation area requirements.

Although the Council recommended that NMFS fully fund a VMS monitoring program, it is not possible at this time because neither state nor Federal funding is available for purchasing, installing, or maintaining VMS transceiver units, nor is funding available for data transmission. Because of the critical need to monitor the integrity of conservation areas that protect overfished stocks, while allowing for the harvest of healthy stocks, NMFS believes it is necessary to proceed with this rulemaking. To move this rulemaking forward at this time it is necessary to require fishery participants to bear the cost of purchasing, installing, and maintaining VMS transceiver units, VMS data transmissions, and reporting costs associated with declaration requirements. If state or Federal funding becomes available, fishery participants may be reimbursed for all or a portion of their VMS expenses.

Declaration Reports

Before the vessel is used to fish in any trawl RCA or the Cowcod Conservation Areas (CCA) in a manner that is consistent with the requirements of the conservation areas, a declaration report will be required from (1) any vessel registered to a limited entry permit with a trawl endorsement; (2) any vessel using trawl gear, including exempted gear used to take pink shrimp, spot and ridgeback prawns, California halibut and sea cucumber; and (3) any tribal vessel using trawl gear. In addition, declaration reports will be required from vessels registered to limited entry permits with longline and pot endorsements, before these vessels can be used to fish in any Non-trawl RCA or the CCA. The declaration report must be submitted before the vessel leaves port on the trip to fish in an RCA or CCA. Each declaration report will be valid until cancelled or revised by the vessel operator. The declaration report must state the type of fishing in which the vessel will engage. If the type of fishing changes, a new declaration report must be submitted.

During the period that a vessel has a valid declaration report on file with NMFS, it cannot fish with a gear other than a gear type that is within the gear category (50 CFR 660.303 (b)(5)) declared by the vessel. In addition, on any trip on which a vessel fishes in an RCA or CCA, the vessel cannot participate in any fishing that is inconsistent with the restrictions that apply within the RCA or CCA.

Declaration reports will be submitted to NMFS by using the VMS system or another approved method, such as email, facsimile or telephone, as identified by NMFS. Vessel operators making declaration reports will receive a confirmation notice or number that verifies that the reporting requirements were satisfied.

Declaration Requirements Example #1: If a vessel registered to a limited entry permit with a trawl endorsement leaves port on a trip to harvest Pacific whiting during the primary season, and the vessel is not used in another commercial fishery in the EEZ off the coasts of Washington, Oregon, or California during the year, a declaration report will be required before the vessel leaves port on its trip to harvest Pacific whiting with midwater trawl gear in the Trawl RCA. This is the only declaration report required for this vessel.

Declaration Requirements Example #2: If a vessel registered to a limited entry permit with a trawl endorsement is used to harvest pink shrimp inside the Trawl RCA from April to June; Pacific whiting inside the Trawl RCA from June to September; flatfish from areas not inside the Trawl RCA from September to December; and crab both inside the Trawl RCA and from areas not inside the Trawl RCA in December; the following declarations will be required: in April a declaration will be required to identify the gear as pink shrimp, spot and ridgeback prawn trawl gear; in June a declaration will be required to identify the gear as limited entry midwater trawl gear; in September a declaration will be sent to cancel the declaration to fish in a conservation area; in December a declaration will be sent identifying the gear type as crab or lobster gear. Each declaration report would be sent before the vessel leaves port on the first trip under that declaration.

VMS

Under this proposed rule, any vessel registered to a limited entry permit for the Pacific Coast groundfish fishery will be required to have an operating NMFS type-approved VMS transceiver unit on board while fishing in the EEZ off the states of Washington, Oregon and California. Type-approved VMS transceiver units may include but are not limited to, the following features: automatically generated position reports from transceivers with a fully integrated, tamper proof GPS, two-way communications for sending and receiving messages, global or near global coverage, delays between position transmission and receipt at processing center that averages 5 minutes, ability to add sensors and data input devices, sleep modes that detect lack of vessel movement (in port) and stop sending position reports (greatly reducing power consumption) until the vessel begins moving again, and visual or audible alarms for malfunctions.

Currently, the cost of a NMFS type-approved VMS transceiver unit, suitable for the Pacific Coast groundfish fishery, ranges from approximately $2,000 to $6,000. The charges for the transmission of VMS position data from these units ranges from $1.00 to $5.00 per day. NMFS is in the process of revising VMS standards for type-approved models and testing new, less expensive, VMS transceiver technologies for agency approval. NMFS intends to complete this approval process and provide the public with a list of type-approved transceiver units before NMFS implements a final rule requiring the use of VMS transceivers in the fishery. The cost for some of the VMS units that are being tested for type-approval are expected to be less expensive than the prices quoted above.

A list of VMS transceivers that have been type-approved by NMFS will be mailed to the permit owner's address of record. NMFS will also distribute installation and activation instructions for the affected vessel owners. The installation of the VMS transceiver is expected to take less than 4 hours and will be the responsibility of the vessel owners. Prior to fishing, the vessel owner will be required to fax an activation report to NMFS to verify that the unit was installed correctly and has been activated. This regulatory amendment will require that the vessel owner or operator of a vessel registered to a limited entry groundfish permit use a NMFS type-approved VMS transceiver at all times when participating in any and all fisheries in the U.S. West Coast EEZ. A vessel owner required to continuously operate a VMS transceiver, may choose to send an exemption report to discontinue transmissions during a period when the vessel will be continuously out of the water for more than 7 consecutive days, or if the vessel is operating seaward of the EEZ off Washington, Oregon, or California for more than 7 consecutive days.

The 2003 Annual Specifications and Management Measures

The 2003 Annual Specifications and Management Measures implemented gear restrictions that affect this rulemaking. When the annual specifications and management measures became effective on March 1, 2003 (68 FR 11182), it became unlawful to take and retain, possess, or land groundfish taken with limited entry groundfish trawl and open access exempted trawl gear in the Trawl RCA. The only exceptions are for exempted trawl gear that is used to harvest pink shrimp coastwide and prawns north of 4°10′ N. lat.; and for limited entry midwater trawl gear used to harvest yellowtail rockfish, widow rockfish or Pacific whiting during the primary whiting season. Similarly, recreational fishing for groundfish was prohibited within the Yelloweye RCA and directed fishing with non-trawl gear (open access or limited entry) was prohibited within the Non-trawl RCA. As it was in 2002, recreational and commercial fishing for groundfish continues to be prohibited within the CCA, except that recreational and commercial fishing for rockfish and lingcod is permitted in waters inside 20 fathoms (36.9 m).

Trawl vessels may transit through the Trawl RCA, with or without groundfish on board, provided all groundfish trawl gear is stowed either: (1) below deck; or (2) if the gear cannot readily be moved, in a secured and covered manner, detached from all towing lines, so that it is rendered unusable for fishing; or (3) remaining on deck uncovered if the trawl doors are hung from their stanchions and the net is disconnected from the doors. If a vessel fishes in an RCA, it may not participate in any fishing on that same trip that is inconsistent with the restrictions that apply within the RCA. In addition, a vessel is prohibited from having more than one type of trawl gear on board if it is trawling within an RCA and may only have trawl gear authorized for use within an RCA on board.

Classification

NMFS prepared an IRFA that describes the economic impact this proposed rule, if adopted, would have on small entities. The IRFA is available from NMFS (see **ADDRESSES**). A summary of the IRFA follows:

A description of the action, why it is being considered, and the legal basis for this action are contained in the SUMMARY and at the beginning of this section of this proposed rule. This proposed rule does not duplicate, overlap, or conflict with other Federal rules.

A range of five alternative actions were considered and analyzed. The alternative monitoring systems included: (1) the status quo, (2) a declaration system, (3) a basic VMS program with 1–way communications (the proposed action), (4) an upgraded VMS program with 2–way communications, and (5) the expanded use of fishery observers. Vessel plotters were recommended as a monitoring system by the industry. After consideration, it was determined that vessel plotters, which were designed as a navigational aid, would not be an adequate enforcement monitoring tool for depth-based management.

Under the status quo (Alternative 1) for 2003, large-scale depth-related closed areas, referred to as rockfish conservation Areas or RCAs, are being used to restrict both commercial and recreational fishing across much of the Continental Shelf. The depth-based management strategy associated with the RCAs is designed to allow fishing for healthy stocks to continue, while protecting overfished species. However, this management system presents new enforcement challenges, and requires new tools to supplement existing enforcement mechanisms. These measures would remain in place under all alternatives, with increased access allowed to restricted areas as conditioned by the different alternatives.

Declaration reports (Alternative 2) alone were not considered to be as effective as VMS in monitoring vessels location in relation to restricted areas. Much of the information collected by observers (Alternative 5) goes beyond the identified need and was by far the most expensive alternative.

A VMS program is an effective tool for monitoring vessel location. The two approaches to VMS were: a basic VMS system (Alternative 3–proposed action) and an upgraded VMS system (Alternative 4). The primary difference between the two alternatives was that the upgraded system uses two-way communications between the vessel and shore such that full or compressed data messages can be transmitted and received by the vessel, while the basic system only transmits positions to a shore station. It was determined that the

basic system was the minimum system that would maintain the integrity of the closed areas. However, this action will not preclude vessels from installing an upgraded VMS system.

A VMS program that identified the sectors of the groundfish fleet that would be required to have a VMS or observer monitoring system was considered. The alternative coverage levels ranged from limited entry vessels actively fishing off the West Coast to all limited entry, open access, and recreational charter vessels regardless of where fishing occurs. During the initial phase of this program the Council recommended starting with vessels registered to limited entry permits fishing in the EEZ off the Washington, Oregon, and California coasts to be required to have VMS transceiver units. This is intended to be a pilot program that begins with the sector that is allocated the majority of the groundfish resources. In addition, alternative approaches for funding the purchasing, installation, and maintenance of VMS transceiver units, as well as the responsibilities for transmission of reports and data were considered and included the following alternatives: Vessel pays all costs, vessel pays only for the transceiver, NMFS pays for initial transceiver, and NMFS pays all costs.

Although the Council recommended that NMFS fully fund a VMS monitoring program, it is not possible at this time because neither state nor Federal funding is available for purchasing, installing, or maintaining VMS transceiver units, nor is funding available for data transmission. Because of the critical need to monitor the integrity of conservation areas that protect overfished stocks, while allowing for the harvest of healthy stocks, NMFS believes it is necessary to proceed with this rulemaking.

Approximately 424 vessels that are registered to limited entry permits that operate in the EEZ off the states of Washington, Oregon or California would be required to carry and operate a NMFS type-approved VMS transceiver unit. All but 10 of the affected entities qualify as small businesses. Vessels required to carry VMS transceiver units will provide installation/activation reports, hourly position reports, and exemption reports. As this proposed rule was developed, the burden on fishery participants was considered and changes were made to ensure that only the minimum data needed to monitor compliance with regulations are being required.

In addition to VMS requirements, declaration report requirements would apply to vessels registered to limited entry permits with trawl endorsements (262 vessels); other vessels using trawl gear, including exempted gear used to take pink shrimp, spot and ridgeback prawns, California halibut and sea cucumber (299 vessels); and tribal vessels using trawl gear, before these vessel are used to fish in any trawl RCA or the CCA. In addition, declaration reports would be required from vessels registered to limited entry permits with longline and pot endorsements (167), before the vessel could be used to fish in any non-trawl RCA or the CCA.

The Council's VMS Committee initially considered declaration reports as "per trip" reports. Following consultation with fishery participants, it was determined that the needs of NMFS and the USCG could be met with less frequently made declaration reports. Therefore, it was determined that a declaration report identifying the type of gear being used by a vessel would remain valid until cancelled or revised by the vessel operator. This results in a significant reduction in the number of reports. Following consultation with fishery participants, it was determined that some vessels may prefer to reduce the costs of reporting when leaving the EEZ off the coasts of Washington, Oregon, and California. A substantial number of permitted vessels also fish in waters off Alaska and in areas seaward of the EEZ. In addition, vessels are commonly pulled out of the water for extended periods. To reduce the reporting burden on vessels outside the EEZ, an optional exemption report was proposed to allow vessels to reduce or discontinue VMS hourly position reports when they are out of the EEZ for more than 7 consecutive days.

The proposed measure (alternative 3), which would require limited entry vessels to purchase and operate a VMS in the EEZ off of Washington, Oregon, and California, is expected to increase the profitability of individual vessels that participate in the VMS program. To determine profitability, the Council compared the costs of purchasing and operating a VMS unit to the increase in revenue that would be obtained from expanded fishing opportunities under the depth management program. Since revenue data for individual vessels were not readily available, the Council used average annual revenue per vessel as a proxy. In the absence of vessel operating cost data, the Council considered only the cost of purchasing and maintaining a VMS unit and assumed other costs to be constant.

The VMS units that have been type-approved for this fishery range in costs and service features. This allows the vessel owner the flexibility in choosing the model that best fits the needs of his or her vessel. NMFS would pay for all costs associated with polling (when the processing center queries the transceiver, outside of regular transmission, for a position report). The costs of installation are minimal because the transceivers can be installed by the vessel operator. Vessels that already have VMS transceiver units installed for other fisheries or personal purposes could use their current unit, providing it is a model that has been type-approved for the Pacific Coast groundfish fishery and the software has been upgraded to meet the defined requirements.

The Council estimated that, under the proposed VMS measure, costs of purchasing and installing the unit would be between $800 and $3800 per individual vessel, and between $548 and $1698 per year to operate and maintain the unit. Revenues from expanded fishing were estimated to increase $26,000 per year for limited entry trawl vessels and $14,000 per year for limited entry longline and pot vessels, far exceeding the exceeding the estimated start-up and maintenance costs of the VMS.

While ex-vessel revenues appear higher on average for vessels likely to be required to use VMS under the depth-based management regime, it should be noted that fishing costs may also be higher, offsetting some of the apparent gain. Unfortunately, vessel cost data necessary to estimate this effect are currently not available. It is also important to keep in mind that using average revenues masks the variability of ex-vessel revenues in each vessel class. While on average, additional revenues appear greater than VMS-related costs, for some individual vessels in each class this will not be the case.

Alternative 4, which would implement a two-way VMS, would produce higher costs per vessel (year 1 at $3,878-$7,607; subsequent years at $1,063-$2,342) and would yield less profit, ceteris paribis, than the proposed VMS alternative. Alternative 5, which would implement observer coverage, would be very costly at $300 per day, or $36,000 per year assuming 10 fishing days per month, and would most likely produce economic losses for the majority of limited entry vessels.

Alternative 2, which would allow expanded fishing by use of declaration only, would be more profitable to limited entry vessels than the proposed VMS measure, since they would earn the same revenue at a minimal cost. However, the Council believes that

mandatory VMS will allow for better enforcement of fishing regulations and provide a more accurate database of fishing activity to better meet the conservation goals of the Pacific Groundfish FMP.

The proposed measure to require all trawl vessels to declare their intentions to fish is expected to have only a minimal impact on individual trawlers since the cost of a declaration is minimal.

Most vessels affected by this action have gross annual receipts of under $3.5 million and are defined as small entities under Section 601 of the Regulatory Flexibility Act, however, there are approximately 10 vessels defined as large entities operating in the limited trawl fishery. There could be some disproportionate economic impacts on small entities versus large entities for the group of limited entry vessels that are less than 40 ft (12.192 m) in length and have relatively low gross annual receipts. These include 90 limited entry vessels, comprised of 5 trawl vessels and 85 longline and pot vessels. Depending upon the cost of the VMS, some of these smaller vessels would be forced to pay a relatively larger share of their annual expenditures for purchase of the VMS compared to the larger vessels. All vessels that fish in conservation areas would increase their gross receipts by being able to fish in more productive areas, having the effect of increasing profitability and mitigating the cost of the VMS. This mitigation would be less for smaller vessels, due to their smaller catches and, therefore, income from groundfish.

This proposed rule contains collection-of-information requirements subject to review and approval by OMB under the Paperwork Reduction Act (PRA). These requirements have been submitted to OMB for approval. Public reporting burden for these collections is estimated to average as follows: 4 minutes for a declaration report; 4 hours for installation of a VMS transceiver unit; 4 hours for annual maintenance of a VMS transceiver unit; 5 minutes for an installation/activation report; 5 seconds for each automated hourly position report; and 4 minutes for an exemption report. These estimates include the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection information.

Public comment is sought regarding whether this proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; the accuracy of the burden estimate; ways to enhance the quality, utility, and clarity of the information to be collected; and ways to minimize the burden of the collection of information, including through the use of automated collection techniques or other forms of information technology. Send comments on these or any other aspects of the collection of information to NMFS (see **ADDRESSES**) and to OMB at the Office of Information and Regulatory Affairs, OMB, Washington, DC 20503 (Attn: NOAA Desk Officer).

Notwithstanding any other provision of the law, no person is required to respond to, nor shall any person be subject to a penalty for failure to comply with, a collection of information subject to the requirements of the PRA, unless the collection of information displays a currently valid OMB Control Number.

NMFS issued Biological Opinions (BOs) under the Endangered Species Act on August 10, 1990, November 26, 1991, August 28, 1992, September 27, 1993, May 14, 1996, and December 15, 1999, pertaining to the effects of the groundfish fishery on chinook salmon (Puget Sound, Snake River spring/summer, Snake River fall, upper Columbia River spring, lower Columbia River, upper Willamette River, Sacramento River winter, Central Valley, California coastal), coho salmon (Central California coastal, southern Oregon/northern California coastal, Oregon coastal), chum salmon (Hood Canal, Columbia River), sockeye salmon (Snake River, Odette Lake), and steelhead (upper, middle and lower Columbia River, Snake River Basin, upper Willamette River, central California coast, California Central Valley, south-central California, northern California, and southern California). During the 2000 Pacific whiting season, the whiting fisheries exceeded the chinook bycatch amount specified in the Pacific whiting fishery's Biological Opinion's (whiting BO) (December 19, 1999) incidental catch statement estimate of 11,000 fish, by approximately 500 fish. In the 2001 whiting season, however, the whiting fishery's chinook bycatch was about 7,000 fish, which approximates the long-term average. After reviewing data from, and management of, the 2000 and 2001 whiting fisheries (including industry bycatch minimization measures), the status of the affected listed chinook, environmental baseline information, and the incidental catch statement from the 1999 whiting BO, NMFS determined in a letter dated April 25, 2002, that a re-initiation of the 1999 whiting BO was not required. NMFS has concluded that implementation of the FMP for the Pacific Coast groundfish fishery is not expected to jeopardize the continued existence of any endangered or threatened species under the jurisdiction of NMFS, or result in the destruction or adverse modification of critical habitat. This action is within the scope of these consultations.

This proposed rule has been determined to be not significant for purposes of Executive Order 12866.

Dated: May 15, 2003.

Rebecca Lent,

Deputy Assistant Administrator for Regulatory Programs, National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR part 660 is proposed to be amended as follows:

PART 660—FISHERIES OFF THE WEST COAST STATES AND IN THE WESTERN PACIFIC

1. The authority citation for part 660 continues to read as follows:

Authority: 16 U.S.C. 1801 *et seq.*

Subpart G—West Coast Groundfish Fisheries

2. In § 660.302, add " Address of record", "Groundfish Conservation Area or GCA", "Mobile transceiver unit", "Office for Law Enforcement", and "Vessel monitoring system or VMS", in alphabetical order to read as follows:

§ 660.302 Definitions.

Address of record means the business address of a person, partnership, or corporation used by NMFS to provide notice of actions.

* * * * *

Groundfish Conservation Area or GCA means a geographic area defined by coordinates expressed in degrees latitude and longitude, created and enforced for the purpose of contributing to the rebuilding of overfished West Coast groundfish species. Specific GCAs are referred to or defined at § 660.304(c).

* * * * *

Mobile transceiver unit means a device installed on board a vessel that is used for monitoring a vessel and for transmitting the vessel's position as required by this subpart.

Office for Law Enforcement (OLE) refers to the National Marine Fisheries Service, Office for Law Enforcement, Northwest Division.

* * * * *

Vessel monitoring system or VMS means a vessel monitoring system or mobile transceiver unit as set forth in § 660.359 and approved by NMFS for use on vessels that take (directly or

incidentally) species managed under the Pacific Coast Groundfish FMP, as required by this subpart.

3. Section 660.303 is revised to read as follows:

§ 660.303 Reporting and recordkeeping.

(a) This subpart recognizes that catch and effort data necessary for implementing the PCGFMP are collected by the States of Washington, Oregon, and California under existing state data collection requirements. Telephone surveys of the domestic industry may be conducted by NMFS to determine amounts of whiting that may be available for reallocation under 50 CFR 660.323(a)(4)(vi). No Federal reports are required of fishers or processors, so long as the data collection and reporting systems operated by state agencies continue to provide NMFS with statistical information adequate for management.

(b) Any person who is required to do so by the applicable state law must make and/or file, retain, or make available any and all reports of groundfish landings containing all data, and in the exact manner, required by the applicable state law.

(c) Any person landing groundfish must retain on board the vessel from which groundfish is landed, and provide to an authorized officer upon request, copies of any and all reports of groundfish landings containing all data, and in the exact manner, required by the applicable state law throughout the cumulative limit period during which a landing occurred and for 15 days thereafter.

(d) *Reporting requirements for vessels fishing in conservation areas*—(1) *Declaration reports for trawl vessels intending to fish in a conservation area.* The operator of any vessel registered to a limited entry permit with a trawl endorsement; any vessel using trawl gear, including exempted gear used to take pink shrimp, spot and ridgeback prawns, California halibut and sea cucumber; or any tribal vessel using trawl gear must provide NMFS with a declaration report, as specified at paragraph 660.303(d)(5), of this section to identify the intent to fish within the CCA, as defined at § 660.304, or any trawl RCA, as defined in the groundfish annual management measures that are published in the **Federal Register**.

(2) *Declaration reports for non-trawl vessels intending to fish in a conservation area.* The operator of any vessel registered to a limited entry permit with a longline or pot endorsement must provide NMFS OLE with a declaration report, as specified at paragraph (d)(5) of this section, to identify the intent to fish within the CCA, as defined at § 660.304, or any non-trawl RCA, as defined in the groundfish annual management measures that are published in the **Federal Register**.

(3) *When a declaration report for fishing in a conservation area is required,* as specified in paragraphs (d)(1) and (d)(2) of this section, it must be submitted before the vessel leaves port:

(i) On a trip in which the vessel will be used to fish in a conservation area for the first time during the calendar year;

(ii) On a trip in which the vessel will be used to fish in a conservation area with a gear type that is different from the gear declaration provided on a valid declaration report as defined at paragraph 660.303 (d)(6) of this section; or

(iii) On a trip in which the vessel will be used to fish in a conservation area for the first time after a declaration report to cancel fishing in a conservation area was received by NMFS.

(4) *Declaration report to cancel fishing in a conservation area.* The operator of any vessel that provided NMFS with a declaration report for fishing in a conservation area, as required at paragraphs (d)(1) or (d)(2) of this section, must submit a declaration report to NMFS OLE to cancel the current declaration report before the vessel leaves port on a trip in which the vessel is used to fish with a gear that is not in the same gear category set out in paragraph 660.303 (d)(5)(i) declared by the vessel in the current declaration.

(5) *Declaration reports will include:* the vessel name and/or identification number, and gear declaration (as defined in paragraph 660.303(d)(5)(i)). Upon receipt of a declaration report, NMFS will provide a confirmation code or receipt. Retention of the confirmation code or receipt to verify that the declaration requirement was met is the responsibility of the vessel owner or operator.

(i) One of the following gear types must be declared:

(A) Limited entry fixed gear,

(B) Limited entry midwater trawl,

(C) Limited entry bottom trawl,

(D) Trawl gear including exempted gear used to take pink shrimp, spot and ridgeback prawns, California halibut south of Pt. Arena, CA, and sea cucumber.

(E) Tribal trawl,

(F) Other gear including: gear used to take spot and ridgeback prawns, crab or lobster, Pacific Halibut, Salmon, California halibut, California sheephead, species managed under the Highly Migratory Species Fishery Management Plan, species managed under the Coastal Pelagic Species Fishery Management Plan, and any species in the gillnet complex as managed by the State of California.

(G) Non-trawl gear used to take groundfish.

(ii) Declaration reports must be submitted through the VMS or another method that is approved by NMFS OLE and announced in the **Federal Register**. Other methods may include email, facsimile, or telephone. NMFS OLE will provide, through appropriate media, instructions to the public on submitting declaration reports. Instructions and other information needed to make declarations may be mailed to the limited entry permit owner's address of record. NMFS will bear no responsibility if a notification is sent to the address of record and is not received because the permit owner's actual address has changed without notification to NMFS, as required at § 660.335 (a)(2). Owners of vessels that are not registered to limited entry permits and owners of vessels registered to limited entry permits that did not receive instructions by mail are responsible for contacting NMFS OLE during business hours at least 3 days before the declaration is required to obtain information needed to make declaration reports. NMFS OLE must be contacted during business hours (Monday through Friday between 0800 and 1700 Pacific Time).

(6) *A declaration report will be valid until* a declaration report to revise the existing gear declaration or a declaration report to cancel fishing in a conservation area is received by NMFS OLE. During the period that a vessel has a valid declaration report on file with NMFS, it cannot fish with a gear other than a gear type that is within the gear category (50 CFR 660.303 (d)(5)) declared by the vessel. After a declaration report to cancel fishing in the RCA is received, that vessel must not fish in a conservation area until another declaration report for fishing by that vessel in a conservation area is received by NMFS.

4. Section 660.304 is revised to read as follows:

§ 660.304 Management areas, including conservation areas, and commonly used geographic coordinates.

(a) *Management areas*

(1) *Vancouver.* (i) The northeastern boundary is that part of a line connecting the light on Tatoosh Island, WA, with the light on Bonilla Point on Vancouver Island, British Columbia (at 48°35′75″ N. lat., 124°43′00″ W. long.) south of the International Boundary between the U.S. and Canada (at 48° 29′37.19″ N. lat., 124°43′33.19″ W. long.), and north of the point where that line intersects with the boundary of the U.S. territorial sea.

(ii) The northern and northwestern boundary is a line connecting the following coordinates in the order listed, which is the provisional international boundary of the EEZ as shown on NOAA/NOS Charts #18480 and #18007:

Point	N. lat.	W. long.
1	48°29′37.19″	124°43′33.19″
2	48°30′11″	124°47′13″
3	48°30′22″	124°50′21″
4	48°30′14″	124°54′52″
5	48°29′57″	124°59′14″
6	48°29′44″	125°00′06″
7	48°28′09″	125°05′47″
8	48°27′10″	125°08′25″
9	48°26′47″	125°09′12″
10	48°20′16″	125°22′48″
11	48°18′22″	125°29′58″
12	48°11′05″	125°53′48″
13	47°49′15″	126°40′57″
14	47°36′47″	127°11′58″
15	47°22′00″	127°41′23″
16	46°42′05″	128°51′56″
17	46°31′47″	129°07′39″

(iii) The southern limit is 47°30′ N. lat.

(2) *Columbia.* (i) The northern limit is 47°30′ N. lat.

(ii) The southern limit is 43°00′ N. lat.

(3) *Eureka.* (i) The northern limit is 43°00′ N. lat.

(ii) The southern limit is 40°30′ N. lat.

(4) *Monterey.* (i) The northern limit is 40°30′ N. lat.

(ii) The southern limit is 36°00′ N. lat.

(5) *Conception.* (i) The northern limit is 36°00′ N. lat.

(ii) The southern limit is the U.S.-Mexico International Boundary, which is a line connecting the following coordinates in the order listed:

Point	N. lat.	W. long.
1	32°35′22″	117° 27′49″
2	32°37′37″	117°49′31″
3	31°07′58″	118°36′18″
4	30°32′31″	121°51′58″

(b) *Commonly used geographic coordinates.*

(1) Cape Falcon, OR—45°46′ N. lat.

(2) Cape Lookout, OR——45°20′15″ N. lat.

(3) Cape Blanco, OR—42°50′ N. lat.

(4) Cape Mendocino, CA—40°30′ N. lat.

(5) North/South management line—40°10′ N. lat.

(6) Point Arena, CA—38°57′30″ N. lat.

(7) Point Conception, CA—34°27′ N. lat.

(c) *Groundfish Conservation Areas (GCAs).* In § 660.302, a GCA is defined as "a geographic area defined by coordinates expressed in latitude and longitude, created and enforced for the purpose of contributing to the rebuilding of overfished West Coast groundfish species." Specific GCAs may be defined here in this paragraph, or in the **Federal Register**, within the harvest specifications and management measures process. While some GCAs may be designed with the intent that their shape be determined by ocean bottom depth contours, their shapes are defined in regulation by latitude/longitude coordinates and are enforced by those coordinates. Fishing activity that is prohibited or permitted within a particular GCA is detailed in **Federal Register** documents associated with the harvest specifications and management measures process.

(1) *Rockfish Conservation Areas (RCAs).* RCAs are defined in the **Federal Register** through the harvest specifications and management measures process. RCAs may apply to a single gear type or to a group of gear types, such as "trawl RCAs" or "non-trawl RCAs".

(2) *Cowcod Conservation Areas (CCAs).* (i) The Western CCA is an area south of Point Conception that is bound by straight lines connecting all of the following points in the order listed:

33°50′ N. lat., 119°30′ W. long.;
33°50′ N. lat., 118°50′ W. long.;
32°20′ N. lat., 118°50′ W. long.;
32°20′ N. lat., 119°37′ W. long.;
33°00′ N. lat., 119°37′ W. long.;
33°00′ N. lat., 119°53′ W. long.;
33°33′ N. lat., 119°53′ W. long.;
33°33′ N. lat., 119°30′ W. long.;
and connecting back to 33°50′ N. lat., 119°30′ W. long.

(2) The Eastern CCA is a smaller area west of San Diego that is bound by straight lines connecting all of the following points in the order listed:

32°42′ N. lat., 118°02 W. long.;
32°42′ N. lat., 117°50 W. long.;
32°36′42″ N. lat., 117°50 W. long.;
32°30′ N. lat., 117°53′30″ W. long.;
32°30′ N. lat., 118°02 W. long.;
and connecting back to 32°42′ N. lat., 118°02′ W. long.

(d) *Yelloweye Rockfish Conservation Area (YRCA).* The YRCA is a C-shaped area off the northern Washington coast that is bound by straight lines connecting all of the following points in the order listed:

48°18′ N. lat., 125°18′ W. long.;
48°18′ N. lat., 124°59′ W. long.;
48°11′ N. lat., 124°59′ W. long.;
48°11′ N. lat., 125°11′ W. long.;
48°04′ N. lat., 125°11′ W. long.;
48°04′ N. lat., 124°59′ W. long.;
48°00′ N. lat., 124°59′ W. long.;
48°00′ N. lat., 125°18′ W. long.;
and connecting back to 48°18′ N. lat., 125°18′ W. long.

(e) *International boundaries.* (1) Any person fishing subject to this subpart is bound by the international boundaries described in this section, notwithstanding any dispute or negotiation between the United States and any neighboring country regarding their respective jurisdictions, until such time as new boundaries are established or recognized by the United States.

(2) The inner boundary of the fishery management area is a line coterminous with the seaward boundaries of the States of Washington, Oregon, and California (the "3–mile limit").

(3) The outer boundary of the fishery management area is a line drawn in such a manner that each point on it is 200 nm from the baseline from which the territorial sea is measured, or is a provisional or permanent international boundary between the United States and Canada or Mexico.

* * * * *

5. In § 660.306, new paragraphs (z), (aa) and (bb) are added to read as follows:

§ 660.306 Prohibitions.

* * * * *

(z) *Vessel monitoring systems.* (1) Use any vessel registered to a limited entry permit to operate in the EEZ off the States of Washington, Oregon or California unless that vessel carries a NMFS OLE type-approved mobile transceiver unit and complies with the requirements described at § 660.359.

(2) Fail to install, activate, repair or replace a mobile transceiver unit prior to leaving port as specified at § 660.359.

(3) Fail to operate and maintain a mobile transceiver unit on board the vessel at all times as specified at § 660.359.

(4) Tamper with, damage, destroy, alter, or in any way distort, render useless, inoperative, ineffective, or inaccurate the VMS, mobile transceiver unit, or VMS signal required to be installed on or transmitted by a vessel as specified at § 660.359.

(5) Fail to contact NMFS OLE or follow NMFS OLE instructions when automatic position reporting has been interrupted as specified at § 660.359.

(aa) *Fishing in conservation areas.* (1) Fish with any trawl gear, including exempted gear used to take pink shrimp, spot and ridgeback prawns, California halibut south of Pt. Arena, CA, and sea cucumber; or with trawl gear from a tribal vessel or with any gear from a vessel registered to a groundfish limited entry permit in a conservation area

unless the vessel owner or operator has a valid declaration confirmation code or receipt for fishing in conservation area as specified at § 660.303(d)(5).

(bb) Operate any vessel registered to a limited entry permit with a trawl endorsement in a Trawl Rockfish Conservation Area (as defined at 660.302), except for purposes of continuous transiting, provided that all groundfish trawl gear is stowed in accordance with 660.322(b)(8) or as authorized in the annual groundfish management measures published in the **Federal Register**.

6. In § 660.322, new paragraph (b)(7) is added to read as follows:

§ 660.322 Gear restrictions.

(b) * * *

(7) Trawl vessels may transit through the trawl RCA, with or without groundfish on board, provided all groundfish trawl gear is stowed either:

(i) Below deck; or

(ii) If the gear cannot readily be moved, in a secured and covered manner, detached from all towing lines, so that it is rendered unusable for fishing; or

(iii) Remaining on deck uncovered if the trawl doors are hung from their stanchions and the net is disconnected from the doors.

7. Section 660.359 is added to subpart G to read as follows:

§ 660.359 Vessel Monitoring System (VMS) requirements.

(a) *What is a VMS?* A VMS consists of a NMFS OLE type-approved mobile transceiver unit that automatically determines the vessel's position and transmits it to a NMFS OLE type-approved communications service provider. The communications service provider receives the transmission and relays it to NMFS OLE.

(b) *Who is required to have VMS?* A vessel registered for use with a Pacific Coast groundfish limited entry permit that fishes in the EEZ off the States of Washington, Oregon or California is required to install a NMFS OLE type-approved mobile transceiver unit and to arrange for an NMFS OLE type-approved communications service provider to receive and relay transmissions to NMFS OLE, prior to fishing in the EEZ.

(c) *How are mobile transceiver units and communications service providers approved by NMFS OLE?* (1) NMFS OLE will publish type-approval specifications for VMS components in the **Federal Register** or notify the public through other appropriate media.

(2) Mobile transceiver unit manufacturers or communication service providers will submit products or services to NMFS OLE for evaluation based on the published specifications.

(3) NMFS OLE may publish a list of NMFS OLE type-approved mobile transceiver units and communication service providers for the Pacific Coast groundfish fishery in the **Federal Register** or notify the public through other appropriate media. As necessary, NMFS OLE may publish amendments to the list of type-approved mobile transceiver units and communication service providers in the **Federal Register** or through other appropriate media. A list of VMS transceivers that have been type-approved by NMFS OLE may be mailed to the permit owner's address of record. NMFS will bear no responsibility if a notification is sent to the address of record and is not received because the applicant's actual address has changed without notification to NMFS, as required at § 660.335 (a)(2).

(d) *What are the vessel owner's responsibilities?* If you are a vessel owner that must participate in the VMS program, you or the vessel operator must:

(1) Obtain a NMFS OLE type-approved mobile transceiver unit and have it installed on board your vessel in accordance with the instructions provided by NMFS OLE. You may get a copy of the VMS installation and operation instructions from the NMFS OLE Northwest, VMS Program Manager upon Request at 7600 Sand Point Way NE, Seattle, WA 98115–6349, phone: (206)526–6133.

(2) Activate the mobile transceiver unit, submit an activation report, and receive confirmation from NMFS OLE that the VMS transmissions are being received before participating in a fishery requiring the VMS. Instructions for submitting an activation report may be obtained from the NMFS OLE, Northwest VMS Program Manager upon request at 7600 Sand Point Way NE, Seattle, WA 98115–6349, phone: (206)526–6133. An activation report must again be submitted to NMFS OLE following reinstallation of a mobile transceiver unit or change in service provider before the vessel may participate in a fishery requiring the VMS.

(i) *Activation reports.* If you are a vessel owner who must use VMS and you are activating a VMS transceiver unit for the first time or reactivating a VMS transceiver unit following a reinstallation of a mobile transceiver unit or change in service provider, you must fax NMFS OLE an activation report that includes: Vessel name; vessel owner's name, address and telephone number, vessel operator's name, address and telephone number, USCG vessel documentation number/state registration number; if applicable, the groundfish permit number the vessel is registered to; VMS transceiver unit manufacturer; VMS communications service provider; VMS transceiver identification; and a statement signed and dated by the vessel owner confirming compliance with the installation procedures provided by NMFS OLE.

(ii) [Reserved]

(3) Operate the mobile transceiver unit continuously 24 hours a day throughout the calendar year, unless such vessel is exempted under paragraph(d)(4)of this section.

(4) *VMS exemptions.* A vessel that is required to operate the mobile transceiver unit continuously 24 hours a day throughout the calendar year may be exempted from this requirement if a valid exemption report, as described at paragraph (d)(4)(iii) of this section, is received by NMFS OLE and the vessel is in compliance with all conditions and requirements of the VMS exemption identified in this section.

(i) *Haul out exemption.* When it is anticipated that a vessel will be continuously out of the water for more than 7 consecutive days and a valid exemption report has been received by NMFS OLE, electrical power to the VMS mobile transceiver unit may be removed and transmissions may be discontinued. Under this exemption VMS transmissions can be discontinued from the time the vessel is removed from the water until the time that the vessel is placed back in the water.

(ii) *Outside areas exemption.* When the vessel will be operating seaward of the EEZ off Washington, Oregon, or California for more than 7 consecutive days and a valid exemption report has been received by NMFS OLE, the VMS mobile transceiver unit transmissions may be reduced or discontinued from the time the vessel leaves the EEZ off the coasts of Washington, Oregon or California until the time that the vessel re-enters the EEZ off the coasts of Washington, Oregon or California. Under this exemption, the vessel owner or operator can request that NMFS OLE reduce or discontinue the VMS transmissions after receipt of an exemption report, if the vessel is equipped with a VMS transceiver unit that NMFS OLE has approved for this exemption.

(iii) Exemption reports must be submitted through the VMS or another method that is approved by NMFS OLE and announced in the **Federal Register**. Other methods may include email, facsimile, or telephone. NMFS OLE will provide, through appropriate media, instructions to the public on submitting exemption reports. Instructions and other information needed to make exemption reports may be mailed to the limited entry permit owner's address of record. NMFS will bear no responsibility if a notification is sent to the address of record and is not received because the permit owner's actual address has changed without notification to NMFS, as required at § 660.335 (a)(2). Owners of vessels registered to limited entry permits that did not receive instructions by mail are responsible for contacting NMFS OLE during business hours at least 3 days before the exemption is required to obtain information needed to make exemption reports. NMFS OLE must be contacted during business hours (Monday through Friday between 0800 and 1700 Pacific Standard Time).

(iv) Exemption reports must be received by NMFS at least 2 hours and not more than 24 hours before the exempted activities defined at paragraphs (d)(4)(i) and (ii) of this section occur. An exemption report is valid until NMFS receives a report canceling the exemption. An exemption cancellation must be received at least 2 hours before the vessel re-enters the EEZ following an outside areas exemption or at least 2 hours before the vessel is placed back in the water following a haul out exemption.

(5) When aware that transmission of automatic position reports has been interrupted, or when notified by NMFS OLE that automatic position reports are not being received, contact NMFS OLE at 7600 Sand Point Way NE, Seattle, WA 98115–6349, phone: (206)526–6133 and follow the instructions provided to you. Such instructions may include, but are not limited to, manually communicating to a location designated by NMFS OLE the vessel's position or returning to port until the VMS is operable.

(6) After a fishing trip during which interruption of automatic position reports has occurred, the vessel's owner or operator must replace or repair the mobile transceiver unit prior to the vessel's next fishing trip. Repair or reinstallation of a mobile transceiver unit or installation of a replacement, including change of communications service provider shall be in accordance with the instructions provided by NMFS OLE and require the same certification.

(7) Make the mobile transceiver units available for inspection by NMFS OLE personnel, U.S. Coast Guard personnel, state enforcement personnel or any authorized officer.

(8) Ensure that the mobile transceiver unit is not tampered with, disabled, destroyed or operated improperly.

(9) Pay all charges levied by the communication service provider as necessary to ensure continuous operation of the VMS transceiver units.

[FR Doc. 03–12884 Filed 5–21–03; 8:45 am]

BILLING CODE 3510–22–S

Notices

Federal Register
Vol. 68, No. 99
Thursday, May 22, 2003

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Grain Inspection, Packers and Stockyards Administration

[03–02–A]

Opportunity for Designation in the Frankfort (IN), Indianapolis (IN), and Virginia Areas, and Request for Comments on the Official Agencies Serving These Areas

AGENCY: Grain Inspection, Packers and Stockyards Administration, USDA.

ACTION: Notice.

SUMMARY: The designations of the official agencies listed below will end in December 2003. Grain Inspection, Packers and Stockyards Administration (GIPSA) is asking persons interested in providing official services in the areas served by these agencies to submit an application for designation. GIPSA is also asking for comments on the services provided by these currently designated agencies: Frankfort Grain Inspection, Inc. (Frankfort); Indianapolis Grain Inspection & Weighing Service, Inc. (Indianapolis); and Virginia Department of Agriculture and Consumer Services (Virginia).

DATES: Applications and comments must be postmarked or electronically dated on or before July 1, 2003.

ADDRESSES: Submit applications and comments to USDA, GIPSA, Janet M. Hart, Chief, Review Branch, Compliance Division, STOP 3604, Room 1647-S, 1400 Independence Avenue, SW., Washington, DC 20250–3604; FAX 202–690–2755. If an application is submitted by FAX, GIPSA reserves the right to request an original application. All applications and comments will be made available for public inspection at Room 1647-S, 1400 Independence Avenue, SW., during regular business hours.

FOR FURTHER INFORMATION CONTACT: Janet M. Hart at 202–720–8525, e-mail *Janet.M.Hart@usda.gov*.

SUPPLEMENTARY INFORMATION: This Action has been reviewed and determined not to be a rule or regulation as defined in Executive Order 12866 and Departmental Regulation 1512–1; therefore, the Executive Order and Departmental Regulation do not apply to this Action.

Section 7(f)(1) of the United States Grain Standards Act, as amended (Act), authorizes GIPSA's Administrator to designate a qualified applicant to provide official services in a specified area after determining that the applicant is better able than any other applicant to provide such official services.

Section 7(g)(1) of the Act provides that designations of official agencies shall end not later than triennially and may be renewed according to the criteria and procedures prescribed in Section 7(f) of the Act.

1. Current Designations being Announced for Renewal

Official agency	Main office	Designation start	Designation end
Frankfort	Frankfort, IN	3/01/2001	12/31/2003
Indianapolis	Indianapolis, IN	3/01/2001	12/31/2003
Virginia	Richmond, VA	2/01/2001	12/31/2003

a. Pursuant to Section 7(f)(2) of the Act, the following geographic area, in the State of Indiana, is assigned to Frankfort.

Bounded on the North by the northern Fulton County line;

Bounded on the East by the eastern Fulton County line south to State Route 19; State Route 19 south to State Route 114; State Route 114 southeast to the eastern Fulton and Miami County lines; the northern Grant County line east to County Highway 900E; County Highway 900E south to State Route 18; State Route 18 east to the Grant County line; the eastern and southern Grant County lines; the eastern Tipton County line; the eastern Hamilton County line south to State Route 32;

Bounded on the South by State Route 32 west to the Boone County line; the eastern and southern Boone County lines; the southern Montgomery County line; and

Bounded on the West by the western and northern Montgomery County lines; the western Clinton County line; the western Carroll County line north to State Route 25; State Route 25 northeast to Cass County; the western Cass and Fulton County lines.

Frankfort's assigned geographic area does not include the following grain elevators inside Frankfort's area which have been and will continue to be serviced by the following official agency: Titus Grain Inspection, Inc.: The Andersons, Delphi, Carroll County; Frick Services, Inc., Leiters Ford, Fulton County; and Cargill, Inc., Linden, Montgomery County.

b. Pursuant to Section 7(f)(2) of the Act, the following geographic area, in the State of Indiana, is assigned to Indianapolis.

Bartholomew; Brown; Hamilton, south of State Route 32; Hancock; Hendricks; Johnson; Madison, west of State Route 13 and south of State Route 132; Marion; Monroe; Morgan; and Shelby Counties.

c. Pursuant to Section 7(f)(2) of the Act, the following geographic area, the entire State of Virginia, except those export port locations within the State, is assigned to Virginia.

2. Opportunity for Designation

Interested persons, including Frankfort, Indianapolis, and Virginia, are hereby given the opportunity to apply for designation to provide official services in the geographic areas specified above under the provisions of Section 7(f) of the Act and section 800.196(d) of the regulations issued thereunder. Designation in the specified geographic areas is for the period beginning January 1, 2004, and ending December 31, 2006. Persons wishing to apply for designation should contact the Compliance Division at the address listed above for forms and information, or obtain applications at the GIPSA website, *www.usda.gov/gipsa/oversight/parovreg.htm*.

3. Request for Comments

GIPSA also is publishing this notice to provide interested persons the opportunity to present comments on the Frankfort, Indianapolis, and Virginia official agencies. Commenters are encouraged to submit pertinent data concerning these official agencies, including information on the timeliness, cost, quality, and scope of services provided. All comments must be submitted to the Compliance Division at the above address.

Applications, comments, and other available information will be considered in determining which applicant will be designated.

Authority: Pub. L. 94–582, 90 Stat. 2867, as amended (7 U.S.C. 71 *et seq.*).

Dated: May 19, 2003.

Donna Reifschneider,

Administrator, Grain Inspection, Packers and Stockyards Administration.

[FR Doc. 03–12853 Filed 5–21–03; 8:45 am]

BILLING CODE 3410–EN–P

DEPARTMENT OF AGRICULTURE

Grain Inspection, Packers and Stockyards Administration

[03–a–s]

Designation for the Mississippi Area

AGENCY: Grain Inspection, Packers and Stockyards Administration, USDA.

ACTION: Notice.

SUMMARY: Grain Inspection, Packers and Stockyards Administration (GIPSA) announces the designation of Memphis Grain Inspection Service (Memphis) to provide official services under the United States Grain Standards Act, as amended (Act).

EFFECTIVE DATE: June 1, 2003.

ADDRESSES: USDA, GIPSA, Janet M. Hart, Chief, Review Branch, Compliance Division, STOP 3604, Room 1647–S, 1400 Independence Avenue, SW., Washington, DC 20250–3604.

FOR FURTHER INFORMATION CONTACT: Janet M. Hart at 202–720–8525, e-mail *Janet.M.Hart@usda.gov*.

SUPPLEMENTARY INFORMATION: This action has been reviewed and determined not to be a rule or regulation as defined in Executive Order 12866 and Departmental Regulation 1512–1; therefore, the Executive Order and Departmental Regulation do not apply to this action.

In the January 29, 2003, **Federal Register** (68 FR 4445), GIPSA announced that the Mississippi Department of Agriculture and Commerce was ceasing official inspection services, effective June 30, 2003, and asked persons interested in providing official services in the Mississippi geographic area to submit an application for designation. Applications were due by February 28, 2003. Subsequently, the Mississippi Department of Agriculture and Commerce officials asked GIPSA to move their voluntary cancellation date to May 31, 2003.

Memphis was the sole applicant for designation to provide official services in the area specified in the January 29, 2003, **Federal Register**. GIPSA asked for comments on Memphis in the March 24, 2003, **Federal Register** (68 FR 14179). We received one favorable comment from an official agency manager by the closing date, April 23, 2003.

GIPSA evaluated all available information regarding the designation criteria in Section 7(f)(l)(A) of the Act and, according to Section 7(f)(l)(B), determined that Memphis, main office in Memphis, Tennessee, is able to provide official services in the geographic area specified in the January 29, 2003, **Federal Register**, for which they applied, in addition to the areas they are already designated to serve. The designation is effective June 1, 2003, and ends March 31, 2006, concurrent with their present designation. Interested persons may obtain official services by calling Memphis at 901–942–3216.

Authority: Pub. L. 94–582, 90 Stat. 2867, as amended (7 U.S.C. 71 *et seq.*).

Dated: May 19, 2003.

Donna Reifschneider,

Administrator, Grain Inspection, Packers and Stockyards Administration.

[FR Doc. 03–12852 Filed 5–21–03; 8:45 am]

BILLING CODE 3410–EN–P

DEPARTMENT OF AGRICULTURE

Grain Inspection, Packers and Stockyards Administration

[02–04–S]

Designation for the Kansas (KS), Minot (ND), and Cincinnati (OH) Areas

AGENCY: Grain Inspection, Packers and Stockyards Administration, USDA.

ACTION: Notice.

SUMMARY: Grain Inspection, Packers and Stockyards Administration (GIPSA) announces designation of the following organizations to provide official services under the United States Grain Standards Act, as amended (Act): Kansas Grain Inspection Service, Inc. (Kansas); Minot Grain Inspection, Inc. (Minot); and Tri-State Grain Inspection Service, Inc. (Tri-State).

EFFECTIVE DATE: July 1, 2003.

ADDRESSES: USDA, GIPSA, Janet M. Hart, Chief, Review Branch, Compliance Division, STOP 3604, Room 1647-S, 1400 Independence Avenue, SW., Washington, DC 20250–3604.

FOR FURTHER INFORMATION CONTACT: Janet M. Hart at 202–720–8525, e-mail *Janet.M.Hart@usda.gov*.

SUPPLEMENTARY INFORMATION: This action has been reviewed and determined not to be a rule or regulation as defined in Executive Order 12866 and Departmental Regulation 1512–1; therefore, the Executive Order and Departmental Regulation do not apply to this action.

In the November 22, 2002, **Federal Register** (67 FR 70397), GIPSA asked persons interested in providing official services in the geographic areas assigned to the official agencies named above to submit an application for designation. Applications were due by January 2, 2003.

Kansas, Minot, and Tri-State were the sole applicants for designation to provide official services in the entire area currently assigned to them, so GIPSA did not ask for additional comments on them.

GIPSA evaluated all available information regarding the designation criteria in Section 7(f)(l)(A) of the Act and, according to Section 7(f)(l)(B), determined that Kansas, Minot, and Tri-State are able to provide official services in the geographic areas specified in the November 22, 2002, **Federal Register**, for which they applied. Interested persons may obtain official services by calling the telephone numbers listed below.

Official agency	Headquarters location and telephone	Designation start-end
Kansas	Topeka, KS 785–233–7063	07/01/2003–06/30/2006.
	Additional Service Locations: Colby, Concordia, Cummings, Dodge City, Hutchinson, Kansas City, Salina, and Wichita, KS; Commerce City and Haxtun, CO; and Sidney, NE.	
Minot	Minot, ND 701–838–1734	07/01/2003–06/30/2006.
Tri-State	Cincinnati, OH 513–251–6571	07/01/2003–03/30/2006.

Authority: Pub. L. 94–582, 90 Stat. 2867, as amended (7 U.S.C. 71 *et seq.*).

Dated: May 19, 2003.

Donna Reifschneider,

Administrator, Grain Inspection, Packers and Stockyards Administration.

[FR Doc. 03–12851 Filed 5–21–03; 8:45 am]

BILLING CODE 3410–ED–P

DEPARTMENT OF AGRICULTURE

Grain Inspection, Packers and Stockyards Administration

Advisory Committee Meeting

AGENCY: Grain Inspection, Packers and Stockyards Administration, USDA.

ACTION: Notice of advisory committee meeting.

SUMMARY: Pursuant to the Federal Advisory Committee Act (5 U.S.C. App. II), this Constitutes notice of the upcoming meeting of the Grain Inspection Advisory Committee ("the Committee").

DATES: June 3, 2003, 7:30 a.m. to 5 p.m.; and June 4, 2003, 7:30 a.m. to 12 p.m.

ADDRESSES: The advisory committee meeting will take place at the Embassy Suites Hotel-Kansas City Country Club Plaza, 220 West 43rd Street, Kansas City, MO.

Requests to address the Committee at the meeting or written comments may be sent to: Administrator, GIPSA, U.S. Department of Agriculture, 1400 Independence Avenue, SW., STOP 3601, Washington, DC 20250–3601. Requests and comments may also be Faxed to (202) 205–9237.

FOR FURTHER INFORMATION CONTACT: Ms. Terri Henry, (202) 205–8281 (telephone); (202) 205–9237 (facsimile).

SUPPLEMENTARY INFORMATION: The purpose of the Committee is to provide advice to the Administrator of the Grain Inspection, Packers and Stockyards Administration with respect to the implementation of the U.S. Grain Standards Act (7 U.S.C. 71 *et seq.*).

The agenda will include financial status, general program plans, and wheat end-use functionality research.

Public participation will be limited to written statements, unless permission is received from the Committee Chairman to orally address the Committee. The meeting will be open to the public.

Persons with disabilities who require alternative means of communication of program information or related accommodations should contact Terri Henry, at the telephone number listed above.

Dated: May 19, 2003.

Donna Reifschneider,

Administrator.

[FR Doc. 03–12854 Filed 5–21–03; 8:45 am]

BILLING CODE 3410–EN–U

DEPARTMENT OF AGRICULTURE

Rural Utilities Service

Information Collection Activity; Comment Request

AGENCY: Rural Utilities Service, USDA.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35, as amended), the Rural Utilities Service (RUS) invites comments on this information collection for which RUS intends to request approval from the Office of Management and Budget (OMB).

DATES: Comments on this notice must be received by July 21, 2003.

FOR FURTHER INFORMATION CONTACT: F. Lamont Heppe, Jr., Director, Program Development and Regulatory Analysis, Rural Utilities Service, 1400 Independence Ave., SW., STOP 1522, Room 4036, South Building, Washington, DC 20250–1522. Telephone: (202) 720–9550. Fax: (202) 720–4120.

SUPPLEMENTARY INFORMATION: The Office of Management and Budget's (OMB) regulation (5 CFR part 1320) implementing provisions of the Paperwork Reduction Act of 1995 (Pub. L. 104–13) requires that interested members of the public and affected agencies have an opportunity to comment on information collection and recordkeeping activities (*see* 5 CFR 1320.8(d)). This notice identifies an information collection that RUS is submitting to OMB for reinstatement.

Comments are invited on: (a) Whether this collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of appropriate automated, electronic, mechanical or other technological collection techniques or other forms of information technology. Comments may be sent to F. Lamont Heppe, Jr., Director, Program Development and Regulatory Analysis, Rural Utilities Service, U.S. Department of Agriculture, STOP 1522, 1400 Independence Ave., SW., Washington, DC 20250–1522. Fax: (202) 720–4120.

Title: 7 CFR Part 1738, Rural Broadband Loan and Loan Guarantee

Type of Request: Revision of a currently approved information collection.

Abstract: The Rural Utilities Service (RUS) amended its regulations in order to establish the Rural Broadband Access Loan and Loan Guarantee Program as authorized by the Farm Security and Rural Investment Act of 2002 (Pub. L. 101–171) (2002 Act). Section 6103 of the Farm Security and Rural Investment Act of 2002 amended the Rural Electrification Act of 1936, as amended (RE Act), to add Title VI, Rural Broadband Access, to provide loans and loan guarantees to fund the cost of construction, improvement, or acquisition of facilities and equipment for the provision of broadband service in eligible rural communities. The rule prescribes the types of loans available, facilities financed, and eligible applicants, as well as minimum credit support requirements to be considered for a loan. In addition, the rule prescribes the process through which RUS will consider applicants under the priority consideration and the state allocations required in Title VI.

This information collection is being revised to include only those hours associated with the pre-loan procedures.

Estimate of Burden: Public reporting burden for this collection of information is estimated to average 98 hour per response.

Respondents: Businesses, not-for-profit institutions and others.

Estimated Number of Respondents: 300.

Estimated Number of Responses per Respondent: 11.

Estimated Total Annual Burden on Respondents: 28,475 hours.

Copies of this information collection can be obtained from Dawn Wolfgang, Program Development and Regulatory Analysis, at (202) 720–0812. Fax: (202) 720–4120.

All responses to this notice will be summarized and included in the request for OMB approval. All comments will also become a matter of public record.

Dated: May 15, 2003.

Hilda Gay Legg,

Administrator, Rural Utilities Service.

[FR Doc. 03–12855 Filed 5–21–03; 8:45 am]

BILLING CODE 3410–15–U

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Order No. 1276]

Expansion and Reorganization of Foreign-Trade Zone 226 Merced, Madera, Fresno and Tulare Counties, CA

Pursuant to its authority under the Foreign-Trade Zones Act of June 18, 1934, as amended (19 U.S.C. 81a-81u), the Foreign-Trade Zones Board (the Board) adopts the following Order:

Whereas, the County of Merced, California, grantee of Foreign-Trade Zone 226, submitted an application to the Board for authority to expand and reorganize FTZ 226 to relocate Site 2 (251 acres) to the Mid-State 99 Distribution Center, to expand Site 10 to include a temporary area (25 acres) at the Fresno Yosemite International Airport and to delete certain parcels/sites from the zone plan, within and adjacent to the Fresno Customs port of entry area (FTZ Docket 33–2002, filed 8/26/02);

Whereas, notice inviting public comment was given in the **Federal Register** (67 FR 56984, 9/6/02) and the application has been processed pursuant to the FTZ Act and the Board's regulations; and,

Whereas, the Board adopts the findings and recommendations of the examiner's report, and finds that the requirements of the FTZ Act and the Board's regulations are satisfied, and that the proposal is in the public interest;

Now, therefore, the Board hereby orders:

The application to expand FTZ 226 is approved, subject to the Act and the Board's regulations, including Section 400.28, and further subject to the Board's standard 2,000-acre activation limit for the overall zone project.

Signed at Washington, DC, this 14th day of May 2003.

Jeffrey A. May,

Acting Assistant Secretary of Commerce for Import Administration, Alternate Chairman, Foreign-Trade Zones Board.

Attest:

Dennis Puccinelli,

Executive Secretary.

[FR Doc. 03–12880 Filed 5–21–03; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zone Board

[Order No. 1275]

Termination of Foreign-Trade Subzone 25A, Weston, FL

Pursuant to the authority granted in the Foreign-Trade Zones Act of June 18, 1934, as amended (19 U.S.C. 81a–81u), and the Foreign-Trade Zone Board Regulations (15 CFR part 400,) the Foreign-Trade Zones Board has adopted the following order:

Whereas, on December 23, 1996, the Foreign-Trade Zones Board issued a grant of authority to the Port Everglades Department of Broward County (the Port), authorizing the establishment of Foreign-Trade Subzone 25A at the Federal Mogul Corporation plant in Weston, Florida (Board Order 860, 62 FR 1314, 1/9/97);

Whereas, the Port advised the Board on July 22, 2002 (FTZ Docket 7–2003), that zone procedures were no longer needed at the facility and requested voluntary termination of Subzone 25A;

Whereas, the request has been reviewed by the FTZ Staff and Customs officials and approval has been recommended;

Now, therefore, the Foreign-Trade Zones Board terminates the subzone status of Subzone 25A, effective this date.

Signed at Washington, DC, this 14th day of May 2003.

Jeffrey A. May,

Acting Assistant Secretary of Commerce for Import Administration, Alternate Chairman, Foreign-Trade Zone Board.

COM048[FR Doc. 03–12879 Filed 5–21–03; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Order No. 1274]

Termination of Foreign-Trade Subzone 9C; Honolulu, HI

Pursuant to the authority granted in the Foreign-Trade Zones Act of June 18, 1934, as amended (19 U.S.C. 81a–81u), and the Foreign-Trade Zone Board Regulations (15 CFR part 400,) the Foreign-Trade Zones Board has adopted the following order:

Whereas, on July 26, 1985, the Foreign-Trade Zones Board issued a grant of authority to the State of Hawaii Department of Business, Economic Development & Tourism (the State), authorizing the establishment of Foreign-Trade Subzone 9C at the Dole Packaged Foods Company plant in Honolulu, Hawaii (Board Order 308, 50 FR 31210, August 1, 1985);

Whereas, the State advised the Board on June 18, 2002 (FTZ Docket 5–2003), that zone procedures were no longer needed at the facility and requested voluntary termination of Subzone 9C;

Whereas, the request has been reviewed by the FTZ Staff and Customs officials and approval has been recommended;

Now, therefore, the Foreign-Trade Zones Board terminates the subzone status of Subzone 9C, effective this date.

Signed at Washington, DC, this 14th day of May, 2003.

Jeffrey A. May,

Acting Assistant Secretary of Commerce for Import Administration, Alternate Chairman, Foreign-Trade Zones Board.

[FR Doc. 03–12878 Filed 5–21–03; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Docket 24–2003]

Foreign-Trade Zone 43—Battle Creek, MI; Application for Subzone; Perrigo Company (Pharmaceutical Products); Allegan and Muskegon Counties, MI

An application has been submitted to the Foreign-Trade Zones Board (the Board) by the City of Battle Creek, Michigan, grantee of FTZ 43, requesting special-purpose subzone status for the pharmaceutical manufacturing and distribution facilities of Perrigo Company (Perrigo) at locations in Allegan and Muskegon Counties, Michigan. The application was submitted pursuant to the provisions of the Foreign-Trade Zones Act, as amended (19 U.S.C. 81a–81u), and the regulations of the Board (15 CFR part 400). It was formally filed on May 13, 2003.

Perrigo's Michigan operation is comprised of five sites in Allegan and Muskegon Counties (Site 5 only): *Site 1* (119,700 sq. ft. on 4.5 acres)—Plant #1, located at 117 Water Street, Allegan; *Site 2* (133 acres)—Eastern Avenue Site, located at Hooker Road and Eastern Avenue in Allegan; including Plant #4 (198,597 sq. ft., with a possible expansion of 100,000 sq. ft., on 4.6 acres), Plant #5 (323,568 sq. ft. with a possible expansion of 100,000 sq. ft., on 7.4 acres), and Plant #7 (402,216, sq. ft. on 9.23 acres); *Site 3* (520,613 sq. ft. on 11.95 acres)—Allegan Logistics Center, located at 900 Industrial Center, Allegan; *Site 4* (123,295 sq. ft., with a possible expansion of 200,000 sq. ft., on 2.8 acres)—Airport Center, located at 1761 Airport Court, Holland; and, *Site 5* (87,048 sq. ft. on 2 acres)—North Labs, located at 8060 Whitbeck Road, Montague, Muskegon County.

The facilities (2,800 employees) produces over-the-counter (OTC) pharmaceutical and nutritional products. Foreign-sourced materials will account for some 14–50 percent of finished product value, and include items from the following general categories: Animal or vegetable oils, chemically pure sugars, protein concentrates, natural magnesium phosphates and carbonates, petroleum jelly, paraffin and waxes, other inorganic acids or compounds of nonmetals, artificial corundum, aluminum oxide, aluminum hydroxide, acyclic hydrocarbons, derivatives of phenols or peroxides, ethers and ether-alcohols, acetals and hemiacetals, aldehydes and derivatives, ketone function compounds, phosphoric esters and their salts, esters of other organic acids, amine function compounds, oxygen function compounds, quaternary ammonium salts, carboxymide function compounds, nitrile compounds, diazo-compounds, organic derivatives of hydrazine, compounds of other nitrogen function, organo-sulfur compounds, heterocyclic compounds, sulfonamides, provitamins, hormones, glycosides, vegetable alkaloids, antibiotics, medicaments in bulk or in measured doses, synthetic coloring matter, color lakes, organic surface active products for use in soap, dextrines and modified starches, chemical products not provided elsewhere, vinyl acetate polymers, acrylic polymers, cellulose, and natural polymers, such as alginic acid.

Zone procedures would exempt Perrigo from Customs duty payments on foreign materials used in production for export. Some two percent of the plant's shipments are currently exported. On domestic sales, the company would be able to choose the duty rates that apply to the finished products (primarily duty-free), rather than the duty rates that would otherwise apply to the foreign-sourced materials noted above (duty-free to 10.9 percent). At the outset, zone savings would primarily involve choosing the finished product duty rate on either bulk or dosage packaged pharmaceutical products (HTSUS 3003 and 3004, duty-free), instead of the duty rates on aspirin (HTSUS 2918.22.1000, 6.9%), acetaminophen (HTSUS 2924.29.6210, 6.5%), and ibuprofen (HTSUS 2916.39.1500, 6.5%). Certain aspirin imports from China are subject to anti-dumping/countervailing (AD/CVD) duties. The application indicates that the savings from zone procedures will help improve the plant's international competitiveness.

In accordance with the Board's regulations, a member of the FTZ Staff has been designated examiner to investigate the application and report to the Board.

Public comment is invited from interested parties. Submissions (original and 3 copies) shall be addressed to the Board's Executive Secretary at one of the following addresses:

1. *Submissions Via Express/Package Delivery Services:* Foreign-Trade-Zones Board, U.S. Department of Commerce, Franklin Court Building—Suite 4100W, 1099 14th St., NW., Washington, DC 20005; or

2. *Submissions Via the U.S. Postal Service:* Foreign-Trade-Zones Board, U.S. Department of Commerce, FCB—Suite 4100W, 1401 Constitution Ave., NW., Washington, DC 20230.

The closing period for their receipt is [60 days from date of publication]. Rebuttal comments in response to material submitted during the foregoing period may be submitted during the subsequent 15-day period (to August 5, 2003).

A copy of the application and accompanying exhibits will be available for public inspection at the Office of the Foreign-Trade Zones Board's Executive Secretary at address Number 1 listed above, and at the U.S. Department of Commerce Export Assistance Center, 401 W. Fulton St., Suite 309–C, Grand Rapids, Michigan 49504.

Dated: May 14, 2003.

Dennis Puccinelli,

Executive Secretary.

[FR Doc. 03–12877 Filed 5–21–03; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Order No. 1273]

Grant of Authority for Subzone Status Bulova Corporation (Watch and Clock Products), Woodside and Brooklyn, NY

Pursuant to its authority under the Foreign-Trade Zones Act of June 18, 1934, as amended (19 U.S.C. 81a–81u), the Foreign-Trade Zones Board (the Board) adopts the following order:

Whereas, the Foreign-Trade Zones Act provides for "* * * the establishment * * * of foreign-trade zones in ports of entry of the United States, to expedite and encourage foreign commerce, and for other purposes," and authorizes the Foreign-Trade Zones Board to grant to qualified corporations the privilege of establishing foreign-trade zones in or adjacent to U.S. Customs ports of entry;

Whereas, the Board's regulations (15 CFR Part 400) provide for the establishment of special-purpose subzones when existing zone facilities cannot serve the specific use involved, and when the activity results in a significant public benefit and is in the public interest;

Whereas, the City of New York, grantee of Foreign-Trade Zone 1, has made application to the Board for authority to establish special-purpose subzone status at the watch and clock warehousing/distribution/repair facilities of Bulova Corporation, located in Woodside and Brooklyn, New York (FTZ Docket 37–2002, filed 9/23/02);

Whereas, notice inviting public comment has been given in the **Federal Register** (67 FR 61849, 10/2/02)); and,

Whereas, the Board adopts the findings and recommendations of the examiner's report, and finds that the requirements of the FTZ Act and Board's regulations are satisfied, and that approval of the application is in the public interest;

Now, therefore, the Board hereby grants authority for subzone status at the watch and clock products warehousing/distribution/repair facilities of Bulova Corporation, located in Woodside and Brooklyn, New York (Subzone 1B), at the locations described in the application, and subject to the FTZ Act and the Board's regulations, including § 400.28.

Signed at Washington, DC, this 14th day of May 2003.

Jeffrey A. May,

Acting Assistant Secretary of Commerce for Import Administration, Alternate Chairman, Foreign-Trade Zones Board.

[FR Doc. 03–12881 Filed 5–21–03; 8:45 am]

BILLING CODE 3510–DS–U

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Order No. 1277]

Expansion of Foreign-Trade Zone 84; Houston, TX

Pursuant to its authority under the Foreign-Trade Zones Act of June 18, 1934, as amended (19 U.S.C. 81a–81u), the Foreign-Trade Zones Board (the Board) adopts the following order:

Whereas, the Port of Houston Authority, grantee of Foreign-Trade Zone 84, submitted an application to the Board for authority to expand FTZ 84 to include the Katoen Natie Gulf Coast site (72 acres) on a permanent basis and to restore FTZ status to the Bulk Materials Handling plant (97 acres) on the Houston Ship Channel, within the Houston-Galveston Customs port of entry area (FTZ Docket 36–2002; filed 9/12/02);

Whereas, notice inviting public comment was given in the **Federal Register** (67 FR 59250, 9/20/02) and the application has been processed pursuant to the FTZ Act and the Board's regulations; and,

Whereas, the Board adopts the findings and recommendations of the examiner's report, and finds that the requirements of the FTZ Act and the Board's regulations are satisfied, and that the proposal is in the public interest;

Now, therefore, the Board hereby orders:

The application to expand FTZ 84 is approved, subject to the Act and the Board's regulations, including Section 400.28.

Signed at Washington, DC, this 14th day of May 2003.

Jeffrey A. May,

Acting Assistant Secretary of Commerce for Import Administration, Alternate Chairman, Foreign-Trade Zones Board.

[FR Doc. 03–12882 Filed 5–21–03; 8:45 am]

BILLING CODE 3510–DS–U

DEPARTMENT OF COMMERCE

International Trade Administration

[A–337–803]

Fresh Atlantic Salmon From Chile: Amended Final Results of Antidumping Duty Changed Circumstances Review In Accordance With Court Decision

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: On January 17, 2003, the Department of Commerce (the Department) issued its final results of redetermination pursuant to the remand order of the U.S. Court of International Trade (the Court) in *Marine Harvest (Chile) S.A.* v. *United States,* Slip Op. 02–134 (October 31, 2002). Pursuant to the remand order, the Department refunded any cash deposits paid by Marine Harvest (Chile) S.A. (Marine Harvest) between the preliminary results of the changed circumstances review and the implementation of the instructions to the U.S. Bureau of Customs and Border Protection (Customs) issued after the final results of the changed circumstances review. In addition, the Department determined that the post-merger Marine Harvest was the successor-in-interest to both the pre-merger Marine Harvest and the former Pesquera Mares Australes, Ltda. (Mares Australes).

EFFECTIVE DATE: May 22, 2003.

FOR FURTHER INFORMATION CONTACT: Constance Handley or Carol Henninger, at (202) 482–0631 or (202) 482–3003, respectively; AD/CVD Enforcement, Office 5, Group II, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street & Constitution Avenue, NW., Washington, DC 20230.

SUPPLEMENTARY INFORMATION:

Background

On August 28, 2000, the Department published in the **Federal Register** the preliminary results of the changed circumstances antidumping duty review with respect to the antidumping duty order on fresh Atlantic salmon from Chile. *See Notice of Initiation and Preliminary Results of Changed Circumstances Antidumping Duty Review: Fresh Atlantic Salmon from Chile,* 65 FR 52065 (Aug. 28, 2000) *(Changed Circumstances Preliminary).* In those preliminary results, the Department conducted a successor-in-interest analysis and concluded that the post-merger Marine Harvest was a new entity. The Department assigned the post-merger Marine Harvest a cash deposit rate of 2.23 percent, the cash deposit rate of Mares Australes.

On August 13, 2001, the Department published the final results of the changed circumstances review. *See Notice of Final Results of Changed Circumstances Antidumping Duty Review: Fresh Atlantic Salmon from Chile,* 66 FR 42506 (August 13, 2001) *(Changed Circumstances Final).* In those final results, the Department continued to find that the post-merger Marine Harvest was a new entity. The Department assigned Marine Harvest a zero cash deposit rate, which was the rate calculated for the combined entity of the pre-merger Marine Harvest and the former Mares Australes in the second administrative review. *See Notice of Final Results of Antidumping Duty Administrative Review and Partial Rescission of Antidumping Duty Administrative Review: Fresh Atlantic Salmon from Chile,* 66 FR 42505 (August 13, 2001) *(Salmon II).*

On October 12, 2001, Marine Harvest filed a complaint with the Court challenging certain aspects of the Department's preliminary and final results of the changed circumstances review. In addition, on March 19, 2002, Marine Harvest filed a Motion for Judgment Upon the Agency Record.

On October 31, 2002, the Court issued its remand order, in which it held that the imposition of a cash deposit simultaneously with publication of the initiation and preliminary results in a changed circumstances review, without prior notice, was not in accordance with law, and ordered the Department to refund the cash deposits in a timely manner. In addition, the Court held that the Department's determination that Marine Harvest is a new entity was neither supported by substantial evidence nor in accordance with law, and ordered that, on remand, the Department reassess its successor-in-interest analysis. *See Marine Harvest (Chile) S.A.* v. *United States,* Slip Op. 02–134 (October 31, 2002).

Pursuant to the Court's remand order, the Department issued the final results of redetermination on January 17, 2003. In those results, the Department determined that the post-merger Marine Harvest is the successor-in-interest to both the pre-merger Marine Harvest and to the former Mares Australes and stated that it would refund any deposits paid by Marine Harvest between the *Changed Circumstances Preliminary* and the implementation of the Customs instructions issued after the *Changed Circumstances Final.*

On March 4, 2003, the Court ordered that the Department's January 17, 2003, remand results be sustained in their entirety, and thus dismissed the case. *See Marine Harvest (Chile) S.A.* v. *United States,* Slip Op. 03–22 (March 4, 2003). The Court's ruling constitutes a "final and conclusive" decision in this case which is "not in harmony" with the Department's original determination. Accordingly, we have prepared these amended final results.

Amended Final Results of Changed Circumstances Review

As a result of the Department's redeterminations on court remand, we have determined that Marine Harvest is the successor-in-interest to the pre-merger Marine Harvest and the former Mares Australes and have refunded any cash deposits paid by Marine Harvest between the *Changed Circumstances Preliminary* and the implementation of Customs instructions issued after the

Changed Circumstances Final. These deposits were paid on entries covered by the third period of review, for which the Department recently published its final results. *See Notice of Final Results of Antidumping Duty Administrative Review, Final Determination to Revoke the Order in Part, and Partial Rescission of Antidumping Duty Administrative Review: Fresh Atlantic Salmon from Chile*, 68 FR 6878 (February 11, 2003).

We are issuing and publishing these results and notice in accordance with sections 751(a)(1) and 777(i) of the Tariff Act of 1930, as amended.

Dated: May 15, 2003.

Jeffrey May,

Acting Assistant Secretary for Import Administration.

[FR Doc. 03–12875 Filed 5–21–03; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–583–816]

Stainless Steel Butt-Weld Pipe Fittings From Taiwan: Extension of Time Limit for the Preliminary Results of the Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of extension of time limit for the preliminary results of antidumping duty administrative review.

EFFECTIVE DATE: May 22, 2003.

FOR FURTHER INFORMATION CONTACT: Jon Freed, AD/CVD Enforcement, Group III, Office 9, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington DC 20230; telephone: (202) 482–3818.

Background

On June 5, 2002, the Department of Commerce ("Department") published a notice of opportunity to request an administrative review of the Antidumping Duty Order on Stainless Steel Butt-Weld Pipe Fittings from Taiwan for the period June 1, 2001, through May 31, 2002. *See Notice of Opportunity to Request Administrative Review of Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation*, 67 FR 38640 (June 5, 2002). On June 25, 2002, Markovitz Enterprises, Inc. (Flowline Division), Shaw Alloy Piping Products Inc., Gerlin, Inc., and Taylor Forge Stainless, Inc. ("petitioners") requested an antidumping duty administrative review for the following companies: Ta Chen Stainless Pipe Co., Ltd. ("Ta Chen"), Liang Feng Stainless Steel Fitting Co., Ltd. ("Liang Feng"), and Tru-Flow Industrial Co., Ltd. ("Tru-Flow") for the period June 1, 2001, through May 31, 2002. On June 28, 2002, Ta Chen requested an administrative review of its sales to the United States during the period of review ("POR"). On July 24, 2002, the Department published in the **Federal Register** a notice of initiation of this antidumping duty administrative review for the period June 1, 2001, through May 31, 2002. *See Notice of Initiation of Antidumping and Countervailing Duty Administrative Reviews and Request for Revocation In Part*, 67 FR 48435 (July 24, 2002). On March 3, 2003, the Department extended the time limit for the preliminary results of this administrative review. *See Stainless Steel Butt-Weld Pipe Fittings from Taiwan: Extension of Time Limit for the Preliminary Results of the Antidumping Duty Administrative Review*, 68 FR 9977 (March 3, 2003). The preliminary results are currently due no later than June 2, 2003.

Extension of Time Limit for Preliminary Results

Section 751(a)(3)(A) of the Tariff Act of 1930, as amended ("the Act"), states that the administering authority shall make a preliminary determination within 245 days after the last day of the month in which occurs the anniversary of the date of publication of the order, finding, or suspension agreement for which the review under Section 751(a)(1) is requested. If it is not practicable to complete the review within the foregoing time, the administering authority may extend that 245 day period to 365 days. Completion of the preliminary results within the 245 day period is impracticable for the following reasons: (1) This review involves certain complex Constructed Export Price ("CEP") adjustments including, but not limited to CEP profit and CEP offset; (2) this review involves complex cost issues with respect to subcontractors' costs of production; and (3) this review involves a complex affiliation issue.

Because it is not practicable to complete this review within the time specified under the Act, we are extending the due date for the preliminary results by 28 days until June 30, 2003, in accordance with section 751(a)(3)(A) of the Act. The final results continue to be due 120 days after the publication of the preliminary results.

Dated: May 16, 2003.

Barbara E. Tillman,

Acting Deputy Assistant Secretary for Import Administration, Group III.

[FR Doc. 03–12876 Filed 5–21–03; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

North American Free-Trade Agreement (NAFTA), Article 1904 NAFTA Panel Reviews; Decision of the Panel

AGENCY: NAFTA Secretariat, U.S. Section, International Trade Administration, Department of Commerce.

ACTION: Notice of decision of NAFTA panel.

SUMMARY: On April 28, 2003 the NAFTA Panel issued its decision on the re-determination on remand in the matter of Pure Magnesium from Canada, Secretariat File No. USA–CDA–00–1904–06.

FOR FURTHER INFORMATION CONTACT: Caratina L. Alston, U.S. Secretary, NAFTA Secretariat, Suite 2061, 14th and Constitution Avenue, Washington, DC 20230, (202) 482–5438.

SUPPLEMENTARY INFORMATION: Chapter 19 of the North American Free-Trade Agreement ("Agreement") establishes a mechanism to replace domestic judicial review of final determinations in antidumping and countervailing duty cases involving imports from a NAFTA country with review by independent binational panels. When a Request for Panel Review is filed, a panel is established to act in place of national courts to review expeditiously the final determination to determine whether it conforms with the antidumping or countervailing duty law of the country that made the determination.

Under Article 1904 of the Agreement, which came into force on January 1, 1994, the Government of the United States, the Government of Canada and the Government of Mexico established *Rules of Procedure for Article 1904 Binational Panel Reviews* ("Rules"). These Rules were published in the **Federal Register** on February 23, 1994 (59 FR 8686). The panel review in this matter was conducted in accordance with these Rules.

Background Information: On October 15, 2002, the Panel issued a remand decision in the matter of Pure Magnesium from Canada, with instructions to the Department of Commerce to issue a determination on remand consistent with the instructions set forth in the Panel's decision. The Panel instructed the DOC to provide a report within 45 days detailing how it would comply with their instructions and to complete the remand (within 60 days) not later than January 28, 2003.

The Department of Commerce issued its remand determination on January 28, 2003.

Panel Decision: The Panel, in its decision of April 28, 2003, ordered the Department to revoke the antidumping order.

Dated: May 8, 2003.

Caratina L. Alston,

U.S. Secretary, NAFTA Secretariat.

[FR Doc. 03–12883 Filed 5–21–03; 8:45 am]

BILLING CODE 3510–GT–M

DEPARTMENT OF COMMERCE

National Institute of Standards and Technology

Announcing a Meeting of the Information Security and Privacy Advisory Board

AGENCY: National Institute of Standards and Technology.

ACTION: Notice of meeting

SUMMARY: Pursuant to the Federal Advisory Committee Act, 5 U.S.C. App., notice is hereby given that the Information Security and Privacy Advisory Board (ISPAB) will meet Tuesday, June 10, 2003, from 8:30 a.m. until 5 p.m., Wednesday, June 11, 2003, from 8:30 a.m. until 5 p.m. and on Thursday, June 12, from 8:30 a.m. until 3 p.m. All sessions will be open to the public. The Advisory Board was established by the Computer Security Act of 1987 (Pub. L. 100–235) and amended by the Federal Information Security Management Act of 2002 (Pub. L. 107–347) to advise the Secretary of Commerce and the Director of NIST on security and privacy issues pertaining to federal computer systems. Details regarding the Board's activities are available at *http://csrc.nist.gov/csspab/*.

DATES: The meeting will be held on June 10, 2003, from 8:30 a.m. until 5 p.m., June 11, 2003, from 8:30 a.m. until 5 p.m., and June 12, 2003, from 8:30 a.m. until 3 p.m.

ADDRESSES: The meeting will take place at the DoubleTree Hotel and Executive Meeting Center, 1750 Rockville Pike, Rockville, Maryland.

Agenda

—Welcome and Overview
—ISPAB Work Plan Updates
—One-Day Panel on e-Authentication:
- Session 1—e-Authentication Systems for Government: Understanding the Benefits and Risks of Existing and Emerging Models
- Session 2—Security and Privacy Issues in e-Authentication

—Panel Discussion on Accuracy Requirements for the FBI's National Crime Information Center (NCIC)
—Briefing on Activities of the National Science Foundation's Trusted Computing Program
—Briefing on Information Security Professionals Certification Programs
—Agenda Development for September 2003 ISPAB Meeting
—Wrap-Up

Note that agenda items may change without notice because of possible unexpected schedule conflicts of presenters.

Public Participation: The Board agenda will include a period of time, not to exceed thirty minutes, for oral comments and questions from the public. Each speaker will be limited to five minutes. Members of the public who are interested in speaking are asked to contact the Board Secretariat at the telephone number indicated below. In addition, written statements are invited and may be submitted to the Board at any time. Written statements should be directed to the ISPAB Secretariat, Information Technology Laboratory, 100 Bureau Drive, Stop 8930, National Institute of Standards and Technology, Gaithersburg, MD 20899–8930. It would be appreciated if 35 copies of written material were submitted for distribution to the Board and attendees no later than June 9, 2003. Approximately 15 seats will be available for the public and media.

FOR FURTHER INFORMATION CONTACT: Ms. Joan Hash, Board Secretariat, Information Technology Laboratory, National Institute of Standards and Technology, 100 Bureau Drive, Stop 8930, Gaithersburg, MD 20899–8930, telephone: (301) 975–3357.

Dated: May 15, 2003.

Arden L. Bement, Jr.,

Director.

[FR Doc. 03–12786 Filed 5–21–03; 8:45 am]

BILLING CODE 3510–CN–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Announcement of Intent To Initiate the Process To Consider Marine Reserves in the Channel Islands National Marine Sanctuary; Intent To Prepare a Draft Environmental Impact Statement

AGENCY: Marine Sanctuaries Division (MSD), National Ocean Service (NOS), National Oceanic and Atmospheric Administration (NOAA), Department of Commerce (DOC).

ACTION: Notice.

SUMMARY: In accordance with the National Marine Sanctuaries Act, as amended, (NMSA) (16 U.S.C. 1431 et seq.), NOAA's National Marine Sanctuary Program (NMSP) is considering the establishment of a network of marine reserves within the Channel Islands National Marine Sanctuary (CINMS or Sanctuary) to maintain the natural biological communities, and to protect, and, where appropriate, restore and enhance natural habitats, populations, and ecological processes.

Marine reserves are one of a variety of resource management tools used to manage and protect marine resources. This action is being considered to complement the State of California's recent establishment of a network of marine reserves and protected areas within the State waters of the CINMS.

The NMSP will prepare an environmental impact statement which will examine a range of management and regulatory alternatives associated with consideration of marine reserves within the Sanctuary. The NMSP will conduct three public scoping meetings during the scoping period to gather information and other comments from individuals, organizations, and government agencies on the scope, types and significance of issues related to consideration of marine reserves in the Sanctuary. The dates and locations of the public scoping meetings are listed below.

DATES: Written comments must be received on or before July 23, 2003.

ADDRESSES: Written comments may be sent to the Channel Islands National Marine Sanctuary, attn. Sean Hastings, 113 Harbor Way, Suite 150, Santa Barbara, California 93109, by fax to (805) 568–1582, or by electronic mail to *reservesprocess@noaa.gov*. Comments will be available for public review at the same address.

FOR FURTHER INFORMATION CONTACT: Sean Hastings, (805) 966–7107, Ext. 472.

SUPPLEMENTARY INFORMATION: The Sanctuary was designated in September 1980, and consists of 1,252 square nautical miles of open ocean and near shore habitat approximately 25 miles off the coast of Santa Barbara, California, encompassing the waters surrounding San Miguel, Santa Rosa, Santa Cruz, Anacapa and Santa Barbara Islands from mean high tide to six nautical miles offshore. The NMSP's primary goal is the protection of the Sanctuary's natural and cultural resources contained within its boundaries. The NMSP uses a variety of non-regulatory and regulatory management measures to protect its resources. The Sanctuary is an area of national significance because of its exceptional natural beauty and marine and cultural resources.

In April 1999, the Sanctuary and the California Department of Fish and Game (CDFG) developed a joint Federal and State partnership to consider establishing marine reserves within the Sanctuary. Marine reserves are one of a variety of resource management tools used to manage and protect marine resources. The Channel Islands Marine Reserves Process was initiated in July of 1999, when the Sanctuary Advisory Council (SAC) created a multi-stakeholder Marine Reserves Working Group (MRWG) to seek agreement on the potential establishment of marine reserves within the Sanctuary. Included in the Channel Islands Marine Reserves Process were a SAC designated Science Advisory Panel and a NOAA led Socio-economic Team made up of blue ribbon scientists, academics and practitioners. Extensive scientific and socioeconomic data were collected in support of the reserves process. From July 1999 to May 2001, the MRWG met monthly to receive, weigh, and integrate advice from technical advisors and the public and to develop a recommendation for the SAC. In May 2001, the results of the Channel Islands Marine Reserves Process were forwarded to the SAC, including the MRWG consensus agreements, areas of disagreement, Science Panel advice and socio-economic analysis. A composite map with two reserve network options ranging from 12 to 29 percent of the Sanctuary was also forwarded. In June 2001, the SAC transmitted the full public record of the MRWG and the SAC to the CINMS and CDFG, and charged the agencies with crafting a final recommendation for the California Fish and Game Commission (FGC).

Sanctuary and CDFG staff continued to work with stakeholders in crafting a recommendation. On August 24, 2001 the Sanctuary and CDFG forwarded the results of the Channel Islands Reserves Process and recommended to the FGC a network of reserves and protected areas that would include approximately 25% of the Sanctuary.

The CDFG prepared environmental review documents pursuant to the California Environmental Quality Act (CEQA), which included an analysis of a range of alternative reserves networks, including identifying the Sanctuary and CDFG recommended option as the preferred alternative. On October 23, 2002, the FGC approved the preferred alternative and the establishment of a network of marine reserves and protected areas within State waters of the Sanctuary (approximately 10%). The FGC decision was made based on the culmination of the Channel Islands Marine Reserves Process and the CDFG and NOAA supported alternative for a network of marine reserves in the Sanctuary. The State's network went into effect on April 9, 2003.

The NMSP is initiating a process to consider the establishment of marine reserves within the Sanctuary to complement the State's network of reserves and protected areas. This review process will build upon the nearly four years of work to date on this matter, including the information and analyses contained in the State's CEQA environmental documents. The NMSP anticipates completion of the environmental review process and concomitant documents will require approximately eighteen to twenty-four months.

The NMSP will prepare an environmental impact statement, proposed regulations, and any proposed modifications to the Sanctuary's designation document, as warranted. The environmental impact statement will examine a range of management and regulatory alternatives associated with consideration of marine reserves within the Sanctuary. Any change to the Sanctuary's terms of designation will be pursuant to the requirements of the National Marine Sanctuaries Act, including necessary consultations with Federal and State agencies, the Pacific Fishery Management Council (PFMC), and others, and submission of the environmental impact statement, proposed regulations and any proposed changes to the designation document to Congress, the Governor of the State of California, and the public for comment. Further, the PFMC will be provided the opportunity to prepare draft Sanctuary fishing regulations for the Exclusive Economic Zone portion of the Sanctuary for any marine reserve proposal. Finally, any change to a term of designation would not apply to State waters if the Governor objects during the requisite review period.

For a complete history of the Channel Islands Marine Reserves Process and the State's Environmental Documents please see *http://www.dfg.ca.gov/mrd/channel_islands/* and/or *http://www.cinms.nos.noaa.gov/marineres/main.html*. The same information can also be obtained by contacting John Ugoretz with California Department of Fish and Game, (805) 560–6758 and/or the contact information below.

The Sanctuary is also revising its 1983 Management Plan. A Final EIS and Management Plan are expected by the end of 2003. Please see *http://www.cinms.nos.noaa.gov/marineres/manplan.html* for more information on this independent process.

Public Scoping Meetings: Dates and Locations

The NMSP will conduct three public scoping meetings to gather information and other oral or written comments from individuals, organizations, and government agencies on the scope, types and significance of issues related to consideration of marine reserves in the Sanctuary. These meetings will be conducted in a format to maximize the opportunity for all attendees to provide public comment. The dates, times and location of the meetings are as follows:

(1) Thursday, June 5, 2003, 6:30–9 p.m., Orvene S. Carpenter Community Center, 550 Park Avenue Pt. Hueneme, CA.

(2) Thursday, June 12, 2003, 6:30–9 p.m., Santa Barbara Public Library, Faulkner Gallery, 40 E. Anapamu Street, Santa Barbara, CA.

(3) Friday, July 18, 2003, 1:30–4 p.m., Four Points by Sheraton, 1050 Schooner Drive, Ventura, CA. This meeting will be held with the Sanctuary Advisory Council.

Dated: May 16, 2003.

Jamison S. Hawkins,

Acting Assistant Administrator for Ocean Services and Coastal Zone Management.

[FR Doc. 03–12815 Filed 5–21–03; 8:45 am]

BILLING CODE 3510–08–M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 050903A]

Marine Mammals; File No. 369–1440–01

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Issuance of permit amendment.

SUMMARY: Notice is hereby given that Dr. Bruce R. Mate, Oregon State University, Newport, Oregon 97365–5296, has been issued an amendment to Permit No. 369–1440–01 to take various species of large whales and opportunistically take by Level B harassment other species of marine mammals, for purposes of scientific research.

ADDRESSES: The amendment and related documents are available for review upon written request or by appointment in the following offices:

Permits and Documentation Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13705, Silver Spring, MD 20910 (301/713–2289);

Assistant Regional Administrator for Protected Resources, Northeast Region, NMFS, One Blackburn Drive, Gloucester, MA 01930–2298; phone (508)281–9346; fax (508)281–9371; and

Assistant Regional Administrator for Protected Resources, Southeast Region, NMFS, 9721 Executive Center Drive North, St. Petersburg, FL 33702–2432; phone (813)570–5301; fax (813)570–5517.

FOR FURTHER INFORMATION CONTACT: Ruth Johnson 301/713–2289.

SUPPLEMENTARY INFORMATION: On January 28, 2003, notice was published in the **Federal Register** (68 FR 4178) that an amendment of Permit No. 369–1440–01, issued April 19, 1999 (64 FR 19135), had been requested by the above-named individual. The requested amendment has been granted under the authority of the Marine Mammal Protection Act of 1972, as amended (16 U.S.C. 1361 *et seq.*), the provisions of § 216.39 of the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR part 216), the Endangered Species Act of 1973, as amended (ESA; 16 U.S.C. 1531 *et seq.*), and the regulations governing the taking, importing, and exporting of threatened and endangered fish and wildlife (50 CFR 222.226).

The amendment authorizes the applicant to tag and biopsy sample fin whales in international water in the Mediterranean Sea and extends the expiration date through October 2004.

Issuance of this amendment, as required by the ESA was based on a finding that such permit (1) was applied for in good faith, (2) will not operate to the disadvantage of the endangered species which is the subject of this permit, and (3) is consistent with the purposes and policies set forth in section 2 of the ESA.

Dated: May 13, 2003.

Stephen L. Leathery,

Chief, Permits and Documentation Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 03–12886 Filed 5–21–03; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

Technology Administration

[Docket No.: 030423100–3100–01]

The United States-Greek Initiative for Technology Cooperation With the Balkans (ITCB)'s Joint Science and Technology Cooperation Advisory Council

AGENCY: Technology Administration, Department of Commerce.

ACTION: Notice; request for nominations for joint council member.

SUMMARY: The Technology Administration invites nominations of individuals for appointment to a vacancy on the Joint Science and Technology Cooperation Advisory Council established under a Memorandum of Understanding between the United States Department of Commerce and the Greek Ministry of National Economy concerning technology cooperation with the Balkans. The Technology Administration also invites nominations for appointment of three alternate Joint Council members. The Technology Administration will consider all nominations received in response to this notice.

DATES: Nominations must be received at the address below by no later than June 30, 2003.

ADDRESSES: Please submit nominations to Ken Ferguson, ITCB Program Officer, Office of Technology Policy, Technology Administration, U.S. Department of Commerce, Room 4411, 14th and Constitution Avenues, NW., Washington, DC 20230. Nominations may also be submitted by fax or e-mail to Ken Ferguson, ITCB Program Officer at 202–219–3310 or *kferguson@ta.doc.gov* if followed up with a hard copy sent by mail or courier.

FOR FURTHER INFORMATION CONTACT: Ken Ferguson, ITCB Program Officer, telephone: 202–482–0150; fax: 202–219–3310, e-mail: *kferguson@ta.doc.gov*.

Goals of the Memorandum of Understanding

On January 17, 1998, the United States Department of Commerce and the Greek Ministry of National Economy (hereinafter known as the "Participants") entered into a Memorandum of Understanding (MOU) concerning technology cooperation with the Balkans, to be known as "The United States-Greek Initiative for Technology Cooperation with the Balkans" (ITCB). A Joint Science and Technology Cooperation Advisory Council (hereinafter "the Joint Council") operates under the MOU.

The Participants recognize that working together to foster collaborative and mutually beneficial technology cooperation with countries in the Balkan region will provide economic benefits to the Balkan region, the United States and Greece. The goal of the Participants is to foster collaboration among public and private entities in the Participants' countries with public and private entities in the Balkan region in order to enhance scientific and technological capabilities in the Balkan region, enhance the relationship between U.S. and Greek public and private sector entities, and promote the development of stable, free market economies in the Balkan region. Emphasis is placed on both the fostering of the exchange of scientific and technical knowledge and personnel, and on building private sector technology capacities of Balkan ITCB member states through partnership with U.S. and Greek business. For the purposes of the MOU, countries in the Balkan region that are currently members of the ITCB are: Albania, Bulgaria, Romania and the Former Yugoslavian Republic of Macedonia. Membership may expand to other countries in the region that the Participants may mutually agree to include.

Cooperative Activities

Cooperative activities under this MOU include: Coordinated and joint research and technology projects, studies, and investigations; joint technological courses, workshops, conferences and symposia; exchanges of science and technology information and documentation in the context of cooperative activities; exchanges of scientists, specialists, and researchers; exchanges or sharing of equipment or materials; and other forms of scientific and technological cooperation that may be deemed appropriate. One of the goals is to create three-way partnerships between private and public technology companies, non-governmental organizations and other institutions from Greece, the United States and Balkan member states of the ITCB. Cooperative activities should reflect technological strengths in the Unites

States and Greece, be responsive to scientific and technological needs in the Balkan member states, and should be structured to provide an appropriate collaborative role for three way partnerships.

Information on the Joint Council

For the purposes of implementing this MOU, the Participants have established a Joint Science and Technology Cooperation Advisory Council consisting of six members—three designated by, and serving at the pleasure of the Government of Greece, and three designated by and serving at the pleasure of the U.S. Department of Commerce. Each participant may designate alternate members. The Greek Secretariat for the ITCB is located at the Technology Park in Thessaloniki, Greece. The U.S. Secretariat for the ITCB is administered by Ashford Associates of Cambridge, Massachusetts.

Responsibilities of Joint Council Members and Alternates

The members of the Joint Council carry out the following functions:

1. Recommend to the Participants overall policies under the MOU.
2. Identify fields and forms of cooperation in accordance with the goals and objectives of the MOU.
3. Review, assess and make specific recommendations concerning cooperative activities.
4. Prepare periodic reports concerning the Joint Council and cooperative activities undertaken under the MOU for submission to the Participants.
5. Undertake such further functions as may appropriately be approved by the Participants.
6. The Participants may designate alternates to substitute for permanent council members at particular meetings or events, or to work on specific projects and initiatives.
7. When appropriate, alternates shall cast votes in lieu of permanent members. Respondents to this notice should indicate whether they are willing to serve as alternates, as permanent members, or as either to the ITCB Joint Council.

Meetings of the Joint Council

The Council meets every three to four months, usually in Thessaloniki or Athens, Greece, or as determined by the Participants. U.S. Council member's travel and living expenses associated with attending these meetings may be provided by a fund administered by the U.S. Secretariat for the ITCB.

Length of Service

A U.S. member's length of service on the Joint Council is not stipulated in the MOU and is discretionary with the U.S. Department of Commerce. Individuals chosen for membership will serve a term that best fits the needs and objectives of the Joint Council although the term's duration is normally two-three years. Upon the completion of a U.S. member's term, the U.S. Department of Commerce will either repeat this recruitment and selection process or extend the member's term as long as the member proves to work effectively on the Joint Council and his/her expertise is still needed.

Membership Criteria and Requirements

The U.S. members of the Joint Council are eminent leaders, broadly representative of industry, academia or government, who have experience in science and technology development, technology diffusion, or international technology collaboration. They shall be U.S. citizens. They shall be familiar with the business climate and the status of technology and economic development in Greece and the Balkans, with Greek and Balkan industry, and/or with Greek and Balkan academic institutions. Members of the Joint Council shall serve without compensation.

The U.S. Department of Commerce is committed to equal opportunity in the workplace, and seeks a broad-based and diverse Joint Council membership.

Conflict of Interest

Nominees will be evaluated for their ability to contribute to the goals and objectives of the MOU. Nominees will be vetted in accordance with processes established by the U.S. Department of Commerce in February 1997, as soon as possible following tentative selection. The vetting system has three components: (1) An internal review for possible appearance of conflict problems; (2) an external review for possible appearance of problems; and (3) a recusal/ethics agreement review.

Dated: May 19, 2003.

Christian Israel,

Deputy Assistant Secretary for Technology Policy.

[FR Doc. 03–12833 Filed 5–21–03; 8:45 am]

BILLING CODE 3510–GH–P

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Denial of Commercial Availability Request under the United States - Andean Trade Promotion and Drug Eradication Act (ATPDEA)

May 16, 2003.

AGENCY: The Committee for the Implementation of Textile Agreements (CITA).

ACTION: Denial of the request alleging that certain cotton corduroy fabrics, for use in apparel articles, cannot be supplied by the domestic industry in commercial quantities in a timely manner under the ATPDEA.

SUMMARY: On March 17, 2003 the Chairman of CITA received a petition from Breaker Jeanswear/ARC International alleging that certain dyed cotton corduroy fabrics (see Annex I for product specifications), classified in subheading 5801.22.90 of the Harmonized Tariff Schedule of the United States (HTSUS), for use in apparel articles including men's and boys' jackets and pants, women's and girls' jackets, dresses, skirts, shorts, and pants, cannot be supplied by the domestic industry in commercial quantities in a timely manner. It requested that apparel of such fabrics be eligible for preferential treatment under the ATPDEA. Based on currently available information, CITA has determined that these subject fabrics can be supplied by the domestic industry in commercial quantities in a timely manner and therefore denies the request.

EFFECTIVE DATE: May 22, 2003.

FOR FURTHER INFORMATION CONTACT: Richard Stetson, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482-3400.

SUPPLEMENTARY INFORMATION:

Authority: Section 204 (b)(3)(B)(ii) of the ATPDEA, Presidential Proclamation 7616 of October 31, 2002, Executive Order 13277 of November 19, 2002, and the United States Trade Representative's Notice of Further Assignment of Functions of November 25, 2002 (67 FR 71606).

BACKGROUND:

The ATPDEA provides for quota- and duty-free treatment for qualifying textile and apparel products. Such treatment is generally limited to products manufactured from yarns and fabrics formed in the United States or a beneficiary country. The ATPDEA also provides for quota- and duty-free treatment for apparel articles that are both cut (or knit-to-shape) and sewn or otherwise assembled in one or more ATPDEA beneficiary countries from fabric or yarn that is not formed in the United States or a beneficiary country, if it has been determined that such fabric or yarn cannot be supplied by the domestic industry in commercial quantities in a timely manner. Pursuant to Executive Order No. 13277 (67 FR 70305) and the United States Trade Representative's Notice of Redelegation of Authority and Further Assignment of Functions (67 FR 71606), the President's authority to determine whether yarns or fabrics cannot be supplied by the domestic industry in commercial quantities in a timely manner under the ATPDEA is exercised by CITA.

On March 17, 2003, the Chairman of CITA received a petition from Breaker Jeanswear/ARC International of Miami, Florida, alleging that certain dyed cotton corduroy fabrics, (see Annex I for product specifications), classified in subheading 5801.22.90 of the Harmonized Tariff Schedule of the United States (HTSUS), for use in apparel articles including men's and boys' jackets and pants, women's and girls' jackets, dresses, skirts, shorts, and pants, cannot be supplied by the domestic industry in commercial quantities in a timely manner and requesting quota- and duty-free treatment under the ATPDEA for apparel articles that are both cut and sewn in one or more ATPDEA beneficiary countries from such fabrics.

On March 24, 2003, CITA solicited public comments regarding this request, particularly with respect to whether these fabrics can be supplied by the domestic industry in commercial quantities in a timely manner. On April 10, 2003, CITA and the Office of the U.S. Trade Representative offered to hold consultations with the relevant Congressional committees. We also requested the advice of the U.S. International Trade Commission and the relevant Industry Sector Advisory Committees.

CITA has determined that certain dyed cotton corduroy fabrics, classified in subheading 5801.22.90 of the Harmonized Tariff Schedule of the United States (HTSUS), for use in apparel articles including men's and boys' jackets and pants, women's and girls' jackets, dresses, skirts, shorts, and pants, can be supplied by the domestic industry in commercial quantities in a timely manner. Breaker Jeanswear/ARC International's request is denied.

D. Michael Hutchinson,

Acting Chairman, Committee for the Implementation of Textile Agreements.

Annex I

Product Specifications:		
1. Dyed Corduroy Fabric:		
	Fiber Composition:	100 % cotton
	Fabric weight:	271 g/m2 (grams per square meter)
	Construction:	Woven 20 x 45, 16s x 16s 6 - 8 wales per centimeter
2. Dyed Corduroy Fabric:		
	Fiber Composition(s):	98% cotton, 2% spandex 97% cotton, 3% spandex
	Fabric weight:	271g/m2 (grams per square meter)
	Construction:	Woven 20 x 45, 16s x 16s plus 70 denier (spandex) 6-8 wales per centimeter

[FR Doc. 03–12897 Filed 5–21–03; 8:45 am]

BILLING CODE 3510–DR–S

DEPARTMENT OF ENERGY

[Number DE–PS36–03GO93012]

Million Solar Roofs Initiative Small Grant Program for State and Local Partnerships

AGENCY: Golden Field Office, U.S. Department of Energy.

ACTION: Notice of issuance of solicitation for financial assistance applications.

SUMMARY: The U.S. Department of Energy (DOE), pursuant to the DOE Financial Assistance Rules, 10 CFR 600.8, is announcing its intention to solicit applications from State and Local Partnerships under the Million Solar Roofs (MSR) Program. DOE's Office of Energy Efficiency and Renewable Energy will consider proposals from interested State and Local Partnerships to help fund their MSR program development and implementation activities.

DATES: The solicitation will be issued early May 2003.

ADDRESSES: A copy of the solicitation will be accessible through the Golden Field Office Home Page at *http://www.go.doe.gov/businessopportunities.html* under "Solicitations." The Golden Home Page will provide direct access to the solicitation and provide instructions on using the DOE Industry Interactive Procurement System (IIPS) Web site. The solicitation can also be obtained directly through IIPS at *http://e-center.doe.gov/* by browsing opportunities by Program Office for those solicitations issued by the Golden Field Office. DOE will not issue hard copies of the solicitation.

FOR FURTHER INFORMATION CONTACT: James McDermott, Contacting Officer, at 215–656–6976 or electronically at *james.mcdermott@ee.doe.gov*. Responses to questions will be posted on the DOE IIPS website.

SUPPLEMENTARY INFORMATION: The Department of Energy's MSR Initiative is an initiative to support State and Local Partnerships who agree to install solar energy systems on one million buildings in the United States (U.S.) by 2010. This effort includes two types of solar energy technology: (1) Solar electric (photovoltaic) systems that produce electricity from sunlight, and (2) solar thermal systems panels that produce heat for domestic hot water, for space heating or for heating swimming pools. The Partnerships bring together business, government and community organizations at the regional level with a commitment to install a pre-determined number (at least 500) of solar energy systems.

A complete description of partnerships and their representative activities can be found on the MSR Web site at *http://www.MillionSolarRoofs.org*.

Applications under the solicitation must further the work of State and Local Partnerships, including partners in the building industry, state and local governments, utilities, the solar energy industry, financial institutions and non-governmental organizations, to remove market barriers to solar energy use and to develop and strengthen local demand for solar energy products and applications.

There are two types of grants available: Phase 1—New Partnership grants, and Phase 2—Meeting the Commitment grants. Only one application may be submitted per partnership in one or the other of the categories, but not both. Partnerships that have been awarded prior MSR partnership grants in the past may not apply for a Phase 1—New Partnership grant. Newly formed or existing partnerships that have not received prior MSR grants may apply for a Phase 1—New Partnership grant. Any partnership with the prerequisites may apply for a Phase 2—Meeting the Commitment grant.

The project or activity must be conducted in a designated MSR State and Local Partnership area. There is no cost sharing requirement for these

grants, although cost sharing will be one of the criteria considered. Subject to the availability of funds, multiple awards for a total of $1,500,000 (DOE funding) in Fiscal Year 2003 are anticipated as a result of this Solicitation. The selected applicants will receive financial assistance under a grant. DOE will fund up to $50,000 per project. DOE anticipates funding approximately 30 to 40 grants in the amount of $10,000 to $50,000 each.

Solicitation number DE–PS36–03GO93012 will include complete information on the program, including technical aspects, funding, application preparation instructions, application evaluation criteria, and other factors that will be considered when selecting applications for funding. No pre-application conference is planned. Issuance of the solicitation is planned for early May 2003, with applications due 45 days after the solicitation has been issued.

Issued in Golden, Colorado, on May 6, 2003.

Jerry L. Zimmer,

Director, Office of Acquisition and Financial Assistance.

[FR Doc. 03–12872 Filed 5–21–03; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP03–99–001]

CenterPoint Energy Gas Transmission Company; Notice of Compliance Filing

May 15, 2003.

Take notice that on May 12, 2003, CenterPoint Energy Gas Transmission Company (CEGT) tendered for filing as part of its FERC Gas Tariff, Sixth Revised Volume No. 1, First Revised Sheet No. 681, with an effective date of May 12, 2003.

CEGT states that the filing is being made in compliance with the Commission's order issued April 25, 2003 in Docket No. RP03–99–000.

CEGT states that copies of the filing have been mailed to each of CEGT's customers and interested state commissions.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link.

Protest Date: May 27, 2003.

Magalie R. Salas,

Secretary.

[FR Doc. 03–12829 Filed 5–21–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER03–262–004]

The New PJM Companies: American Electric Power Service Corporation, On Behalf of its Operating Companies: Appalachian Power Company, Columbus Southern Power Company, Indiana Michigan Power Company, Kentucky Power Company, Kingsport Power Company, Ohio Power Company and Wheeling Power Company; Commonwealth Edison Company and Commonwealth Edison Company of Indiana, Inc.; The Dayton Power and Light Company; Virginia Electric and Power Company and PJM Interconnection, L.L.C.; Notice Amending Prior Notices

May 15, 2003.

On May 1, 2003, American Electric Power Service Corporation, Commonwealth Edison Company, Dayton Power and Light Company, Virginia Electric and Power Company, and PJM Interconnection, LLC (collectively, New PJM Companies) filed a compliance filing in the above-docketed proceeding. This compliance filing was noticed by the Commission on May 8, 2003 and established a May 22, 2003 comment deadline. On May 6, 2003 and May 7, 2003, the New PJM Companies filed erratas to their original compliance filing. The Commission issued a notice on May 13, 2003, establishing a May 28, 2003, deadline for filing comments on the second errata filing. This notice amends the prior notices issued in these dockets and establishes a new date for filing comments.

Notice is hereby given that comments, protests and motions in response to the original compliance filing and the two erratas filed in this subdocket on May 6 and May 7, 2003, should be filed on or before June 4, 2003.

Magalie R. Salas,

Secretary.

[FR Doc. 03–12825 Filed 5–21–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP03–329–001]

ANR Pipeline Company; Notice of Compliance Filing

May 15, 2003.

Take notice that on May 9, 2003, ANR Pipeline Company (ANR), tendered for filing for as part of its FERC Gas Tariff, Second Revised Volume No. 1, the following tariff sheet, with an effective date of May 1, 2003:

Substitute Second Revised Sheet No. 101A
Substitute Original Sheet No. 101B

ANR states that the tariff sheets are being filed in compliance with the Commission's April 30, 2003 order accepting ANR's proposal of certain changes to ANR's Rate Schedule FSS in order to provide more flexibility to its current firm storage service, primarily by modifying the timeframe within which storage and transportation services can be sold.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii), and the instructions on the Commission's Web site under the "e-Filing" link.

Protest Date: May 21, 2003.

Magalie R. Salas,

Secretary.

[FR Doc. 03–12828 Filed 5–21–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP95–408–052]

Columbia Gas Transmission Corporation; Notice of Filing

May 15, 2003.

Take notice that on May 9, 2003, Columbia Gas Transmission Corporation (Columbia) tendered for filing its report on the sharing with its customers of a portion of the profits from the sale of certain base gas as provided in Columbia's Docket No. RP95–408 rate case settlement. *See* Stipulation II, Article IV, Sections A through E, in Docket No. RP95–408 approved at Columbia Gas Transmission Corp., 79 FERC 61,044 (1997). Columbia states that sales of base gas have generated additional profits of $9,064,557 (above a $41.5 million threshold) requiring a sharing of 50 percent of the excess profits with customers in accordance with Stipulation II, Article IV, Section C.

Columbia states that $4,593,505, inclusive of interest, has been allocated to affected customers and credited to their March invoices.

Columbia states that copies of its filing have been mailed to all firm customers, interruptible customers and affected state commissions.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed on or before the protest date below. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link.

Protest Date: May 21, 2003.

Magalie R. Salas,

Secretary.

[FR Doc. 03–12830 Filed 5–21–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER03–843–000]

Entergy Services, Inc.; Notice of Filing

May 15, 2003.

Take notice that on May 13, 2003, Entergy Services, Inc. (Entergy Services), on behalf of Entergy Arkansas, Inc., formerly Arkansas Power & Light Company (APL), tendered for filing a Notice of Termination of Contract between APL and the United States of America, represented by the Secretary of Energy, acting by and through the Administrator, Southwestern Power Administration, an Administration within the Department of Energy.

Any person desiring to intervene or to protest this filing should file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. All such motions or protests should be filed on or before the comment date, and, to the extent applicable, must be served on the applicant and on any other person designated on the official service list. This filing is available for review at the Commission or may be viewed on the Commission's Web site at *http://www.ferc.gov* , using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or for TTY, contact (202) 502–8659. Protests and interventions may be filed electronically via the Internet in lieu of paper; *see* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link. The Commission strongly encourages electronic filings.

Comment Date: June 3, 2003.

Magalie R. Salas,

Secretary.

[FR Doc. 03–12826 Filed 5–21–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP03–290–000]

Northwest Pipeline Corporation; Notice of Request Under Blanket Authorization

May 15, 2003.

Take notice that on May 5, 2003, Northwest Pipeline Corporation (Northwest), 295 Chipeta Way, Salt Lake City, Utah 84158, filed in Docket No. CP03–290–000 a request pursuant to Sections 157.205 and 157.208 of the Federal Energy Regulatory Commission's regulations (18 CFR Sections 157.205 and 157.208) under the Natural Gas Act (NGA) for authorization to construct and operate approximately 3.3 miles of 26-inch replacement pipeline (five segments) and a new 26-inch mainline valve near Machias in Snohomish County, Washington, under Northwest's blanket certificate issued in Docket No. CP82–433–000, pursuant to Section 7 of the NGA, all as more fully set forth in the application which is on file with the Commission and open to public inspection. This filing is available for review at the Commission or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or for TTY, contact (202) 502–8659.

Northwest states that as a result of housing development in the vicinity of Northwest's mainline near Machias,

Washington, five segments of its existing 26-inch Ignacio to Sumas mainline have had a class location change under Department of Transportation's regulations from a Class 2 to a Class 3 location. Accordingly, Northwest proposes to replace these five segments of pipeline totaling approximately 3.3 miles, with thicker walled pipe (from 26-inch 0.281" wall thickness Grade X–52 to 26-inch 0.312" wall thickness Grade X–70) and to install a new 26-inch mainline valve at milepost 1411.32 to meet the spacing requirements for Class 3 areas. Northwest states that approximately 865 feet of the replaced segments of pipeline will be abandoned in place, purged, packed with nitrogen and capped and the remainder will be removed. Northwest states that the new replacement pipeline will be installed within its existing 75-foot permanent right-of-way, but a wider construction right-of-way will be required in certain areas, along with additional temporary construction workspace.

According to Northwest, the proposed like-size replacement of segments of pipeline will not change the existing daily design capacity, daily maximum capacity or operating pressures on its system. Northwest states that the total estimated cost for this proposed pipeline replacement project is approximately $9.1 million, including the approximately $380,000 cost of removing replaced segments of pipeline.

Any questions concerning this request may be directed to Gary K. Kotter, Manager, Certificates and Tariffs—3F3, Northwest Pipeline Corporation, PO Box 58900, Salt Lake City, Utah 84158–0900, at (801) 584–7117 or fax (801) 584–7764 or *garold.k.kotter@williams.com*.

Any person or the Commission's staff may, within 45 days after issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to Section 157.205 of the regulations under the NGA (18 CFR 157.205), a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the allowed time for filing a protest, the instant request shall be treated as an application for authorization pursuant to Section 7 of the NGA.

Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link. The Commission strongly encourages electronic filings.

Magalie R. Salas,

Secretary.

[FR Doc. 03–12821 Filed 5–21–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. OR03–4–000]

Plantation Pipe Line Company, Complainant, v. Colonial Pipeline Company, Respondent; Notice of Complaint

May 16, 2003.

Take notice that on May 15, 2003, pursuant to Rule 206 of the Commission's Rules of Practice and Procedure (18 CFR 385.206) and the Procedural Rules Applicable to Oil Pipeline Procedures (18 CFR 343.1(a)), Plantation Pipe Line Company (Plantation) filed a complaint in the captioned proceeding. Plantation alleges that Colonial Pipeline Company (Colonial) has violated and continues to violate the Interstate Commerce Act, 49 U.S.C. App.1 *et seq.*, by refusing to permit an interconnection with Plantation's pipeline at Greensboro, North Carolina as more fully set forth in the complaint.

Plantation requests that the Commission: (1) Direct Colonial to cooperate in the installation of the requested interconnection; and (2) establish through routes for volumes received from Plantation through the interconnection to Colonial destinations downstream of Greensboro.

Plantation states that it has served the complaint on Colonial.

Any person desiring to be heard or to protest this filing should file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. The answer to the complaint and all comments, interventions or protests must be filed on or before the comment date below. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or for TTY, contact (202) 502–8659. The answer to the complaint, comments, protests and interventions may be filed electronically via the Internet in lieu of paper; *see* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link. The Commission strongly encourages electronic filings.

Comment Date: June 4, 2003.

Magalie R. Salas,

Secretary.

[FR Doc. 03–12916 Filed 5–21–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP03–294–000]

Portland Natural Gas Transmission System; Notice of Request Under Blanket Authorization

May 15, 2003.

Take notice that on May 8, 2003, Portland Natural Gas Transmission System (PNGTS) filed a prior notice request pursuant to Sections 157.205 and 157.211(a)(2) of the Federal Energy Regulatory Commission's Regulations under the Natural Gas Act, and PNGTS's blanket certificate issued in Docket No. CP96–238 *et al.*, for authorization to construct and operate new metering and related facilities in Westbrook, Maine.

PNGTS states that it is proposing to construct the facilities in compliance with Section 4.3 of its rate settlement approved by the Commission in Docket No. RP02–13–000 on January 14, 2003, which requires PNGTS to construct facilities to allow for the bi-directional flow of gas on its system north of its Westbrook interconnect. PNGTS states that the proposed facilities consist of a pipeline meter, meter runs, and various valves, which will enable PNGTS to receive gas from the Maritimes & Northeast Pipeline, L.L.C. (Maritimes) system. PNGTS states that the proposed facilities will be constructed and reside entirely within the existing meter station site where PNGTS and Maritimes interconnect. PNGTS estimates the cost of constructing the proposed facilities is $539,000.

Any questions regarding this filing should be directed to David B. Morgan, Director, Marketing and Rates, Portland Natural Gas Transmission System, One Harbour Place, Suite 375, Portsmouth, New Hampshire 13801; or by telephone at (603) 559–5503 or FAX at (603) 427–2807.

Any person or the Commission's staff may, within 45 days after issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to Section 157.205 of the regulations under the NGA (18 CFR 157.205), a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the allowed time for filing a protest, the instant request shall be treated as an application for authorization pursuant to Section 7 of the NGA.

Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link. The Commission strongly encourages electronic filings.

Magalie R. Salas,

Secretary.

[FR Doc. 03–12822 Filed 5–21–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP96–312–121]

Tennessee Gas Pipeline Company; Notice of Negotiated Rate

May 15, 2003.

Take notice that on May 1, 2003, Tennessee Gas Pipeline Company (Tennessee), tendered for filing its Negotiated Rate Tariff Filing.

Tennessee states that its filing requests that the Commission approve a March 25, 2003, negotiated rate arrangement between Tennessee and Nicor Gas Company. Tennessee requests that the Commission accept and approve the negotiated rate arrangement as soon as possible but no later than June 15, 2003, to be effective November 1, 2003.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link.

Comment Date: May 22, 2003.

Magalie R. Salas,

Secretary.

[FR Doc. 03–12831 Filed 5–21–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP96–312–123]

Tennessee Gas Pipeline Company; Notice of Negotiated Rates

May 15, 2003.

Take notice that on May 7, 2003, Tennessee Gas Pipeline Company (Tennessee), tendered for filing its Negotiated Rate Agreement Amendment Filing.

Tennessee states that its filing requests that the Commission approve its Negotiated Rate Agreement Amendment to its FT–A Service Agreement dated March 17, 2003 between Tennessee and Kerr McGee Corporation. Tennessee requests that the Commission grant such approval effective May 1, 2003.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link.

Comment Date: May 19, 2003.

Magalie R. Salas,

Secretary.

[FR Doc. 03–12832 Filed 5–21–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. ER03–167–000, et al.]

The Empire District Electric Company, et al.; Electric Rate and Corporate Filings

May 14, 2003.

The following filings have been made with the Commission. The filings are listed in ascending order within each docket classification:

1. The Empire District Electric Company

[Docket No. ER03–167–001]

Take notice that on May 12, 2003, pursuant to the January 10, 2003 Letter Order in Docket No. ER03–167–000, The Empire District Electric Company submitted for filing a version of the Attachment A Form of Service Agreement for Ancillary Services that includes designations as required by Order No. 614.

Comment Date: June 2, 2003.

2. Illinois Power Company

[Docket No. ER03–249–003]

Take notice that on May 12, 2003, Illinois Power Company (Illinois Power) filed an unexecuted First Revised Interconnection and Operating Agreement with Franklin County Power of Illinois, LLC. Illinois Power states that the purpose of the filing is to comply with the Commission's Order issued on April 10, 2003, "Order Conditionally Accepting Interconnection and Operating Agreement for Filing" in Docket No. ER03–249–000 and ER03–249–001.

Illinois Power requests an effective date of November 17, 2002 for the Agreement. Illinois Power states that it has served a copy of the filing on Franklin County Power of Illinois, LLC and each person designated on the official service list.

Comment Date: June 2, 2003.

3. Entergy Services, Inc.

[Docket Nos. ER03–583–001, ER03–681–001, ER03–682–002 and ER03–744–001]

Take notice that on May 12, 2003, Entergy Services, Inc.(ESI),as supplemented on May 14, 2003, on behalf of the Entergy Operating Companies, filed information as directed by the May 2, 2003 letter order issued by the Director, Division of Tariffs and Market Development—South in the above-referenced proceedings.

ESI states that copies of this filing were served on the affected state utility commissions, and on each person designated on the official service list compiled by the Secretary in the above-referenced proceedings.

Comment Date: May 23, 2003.

4. New York Independent System Operator, Inc.

[Docket No. ER03–836–000]

Take notice that on May 9, 2003, the New York Independent System Operator, Inc. (NYISO), filed proposed revisions to the NYISO's Market Administration and Control Area Services Tariff (Services Tariff). NYISO states that the proposed revisions would remove the current bid cap on 10-minute non-spinning reserves, and make certain related changes in the Services Tariff. The NYISO has requested that the Commission make the filing effective on July 8, 2003.

The NYISO states it has mailed a copy of the filing to all parties that have executed Service Agreements under the NYISO's Open-Access Transmission Tariff or Services Tariff, to the New York State Public Service Commission and to the electric utility regulatory agencies in New Jersey and Pennsylvania.

Comment Date: May 30, 2003.

5. Avista Corporation

[Docket No. ER03–837–000

Take notice that on May 9, 2003, Avista Corporation (Avista) submitted a Notice of Cancellation of Rate Schedule No. 263 which is a netting agreement with Mirant Americas Energy Marketing, LP, (formerly Southern Company Energy Marketing, LP). Rate Schedule No. 263. Avista seeks all waivers necessary to allow the cancellation to be effective as of April 30, 2003.

Avista states that copies of the filing has been provided to Mirant Americas Energy Marketing, LP.

Comment Date: May 30, 2003.

6. Power Contract Financing, L.L.C.

[Docket No. ER03–838–000]

Take notice that on May 9, 2003, Power Contract Financing, L.L.C., filed a Notice of Succession to adopt CES Marketing, LLC's market-based rate authorizations.*Comment Date:* May 30, 2003.

7. Carolina Power & Light Company

[Docket No. ER03–839–000]

Take notice that on May 9, 2003, Carolina Power & Light Company, d/b/a Progress Energy Carolinas, Inc. (CP&L) amended a Power Supply Agreement dated November 2, 1998, between North Carolina Electric Membership Corporation (NCEMC) and CP&L, Rate Schedule FERC No. 134. CP&L respectfully requests waiver of the Commission's notice of filing requirements to allow the amendment to become effective on January 1, 2001.

CP&L states that copies of the filing were served upon NCEMC, the North Carolina Utilities Commission and the South Carolina Public Service Commission.

Comment Date: May 30, 2003.

8. El Paso Electric Company, Public Service Company of New Mexico, Texas-New Mexico Power Company

[Docket No. ER03–840–000]

Take notice that on May 9, 2003, El Paso Electric Company, Public Service Company of New Mexico, and Texas-New Mexico Power Company (collectively, Utilities) jointly tendered for filing under their respective Open Access Transmission Tariffs First Revised Interconnection Agreement (Agreement) between the Utilities and Duke Energy Luna, LLC. The Utilities seek an effective date for the Agreement of April 30, 2003.

Comment Date: May 30, 2003.

9. Duke Energy Power Marketing, LLC

[Docket No. ER03–841–000]

Take notice that on May 12, 2003, Duke Energy Power Marketing, LLC (DEPM) filed revisions to its FERC Electric Tariff, Original Volume No. 1 (Tariff), specifically (1) enumerating ancillary service products sold into the ancillary service markets operated by independent system operators, (2) providing for the resale of firm transmission rights and other similar congestion contracts, and (3) reflecting the Commission's current language preferences with respect to (a) use of an Internet site with respect to the provision of certain ancillary services and (b) obtaining Commission approval for certain affiliate transactions. No other changes were made to the Tariff, which was accepted for filing by the Commission in Docket No. ER01–1129–000.

Comment Date: June 2, 2003.

Standard Paragraph

Any person desiring to intervene or to protest this filing should file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. All such motions or protests should be filed on or before the comment date, and, to the extent applicable, must be served on the applicant and on any other person designated on the official service list. This filing is available for review at the Commission or may be viewed on the Commission's Web site at *http://www.ferc.gov* , using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or for TTY, contact (202) 502–8659. Protests and interventions may be filed electronically via the Internet in lieu of paper; *see* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link. The Commission strongly encourages electronic filings.

Magalie R. Salas,

Secretary.

[FR Doc. 03–12824 Filed 5–21–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EC03–86–000, et al.]

Electric Rate and Corporate Regulation Filings

May 15, 2003.

The following filings have been made with the Commission. The filings are listed in ascending order within each docket classification.

1. Calpine California Equipment Finance Company, LLC

[Docket No. EC03–86–000]Company, LLC
Creed Energy Center, LLC
Goose Haven Energy Center, LLC
Lambie Energy Center, LLC
Gilroy Energy Center, LLC
King City Energy Center, LLC
Feather River Energy Center, LLC
Yuba City Energy Center, LLC
Wolfskill Energy Center, LLC
Riverview Energy Center, LLC

Take notice that on May 6, 2003, Calpine California Equipment Finance Company, LLC, Creed Energy Center, LLC, Goose Haven Energy Center, LLC, Lambie Energy Center, LLC, Gilroy Energy Center, LLC, King City Energy Center, LLC, Feather River Energy Center, LLC, Yuba City Energy Center, LLC, Wolfskill Energy Center, LLC and Riverview Energy Center, LLC (Applicants) tendered for filing with the Federal Energy Regulatory Commission (Commission) an application under section 203 of the Federal Power Act for approval of the disposition of jurisdictional facilities and the acquisition of securities of a public utility in connection with the financing of certain generation facilities in the State of California.

Comment Date: May 27, 2003.

2. UGI Utilities, Inc.

[Docket No. EC03–87–000]

Take notice that on May 8, 2003, UGI Utilities, Inc. (UGI Utilities) tendered for filing with the Federal Energy Regulatory Commission (Commission) an application, pursuant to Section 203 of the Federal Power Act, requesting authorization to transfer its interests in UGI Development Company, UGI Hunlock Development Company, and Hunlock Creek Energy Ventures, to its affiliate UGI Enterprises, Inc., as part of UGI Corporation's corporate restructuring plan.

Comment Date: May 29, 2003.

3. Mesquite Power, LLC, Sempra Energy Resources

[Docket No. EC03–88–000]

Take notice that on May 12, 2003, Mesquite Power, LLC (Mesquite) and Sempra Energy Resources (SER) (together, Applicants) tendered for filing an application, pursuant to Section 203 of the Federal Power Act, for authorization of a disposition of jurisdiction facilities whereby a synthetic lease facility would be assigned by SER to Mesquite. Applicants state that the proposed transaction is intended to effectuate an intra-corporate transaction that will have no effect on competition, rates or regulation.

Comment Date: May 27, 2003.

4. Midwest Independent Transmission System Operator, Inc.

[Docket Nos. ER98–1438–019 and ER02–111–009]

Take notice that on May 13, 2003, the Midwest Independent Transmission System Operator, Inc. (Midwest ISO) tendered for filing with the Federal Energy Regulatory Commission (Commission), a supplement to its compliance filing in this proceeding. The Midwest ISO states that it submitted proposed revisions to further modify the definition of "Load Serving Entity" in the Agreement of Transmission Facilities Owners to Organize the Midwest Independent Transmission System Operator, Inc. (Transmission Owners Agreement) in compliance with the Commission's Order (Order) in Midwest Independent Transmission System Operator Inc., 103 FERC ¶ 61,038 (2003). The Midwest ISO has requested an effective date of April 1, 2003, consistent with the Order.

The Midwest ISO has also requested waiver of the service requirements set forth in 18 CFR 385.2010. The Midwest ISO states that it has electronically served a copy of this filing, with attachments, upon all Midwest ISO Members, Member representatives of Transmission Owners and Non-Transmission Owners, the Midwest ISO Advisory Committee participants, Policy Subcommittee participants, as well as all state commissions within the region. In addition, Midwest ISO states that the filing has been electronically posted on the Midwest ISO's Web site at www.midwestiso.org under the heading "Filings to FERC" for other interested parties in this matter, and that they will provide hard copies to any interested parties upon request.

Comment Date: June 3, 2003.

5. Southern Company Services, Inc.

[Docket No. ER02–851–008]

Take notice that on May 1, 2003, Southern Company Services, Inc., acting as agent for Alabama Power Company, Georgia Power Company, Gulf Power Company, Mississippi Power Company, and Savannah Electric and Power Company (collectively, Southern Companies), tendered for filing with the Federal Energy Regulatory Commission (Commission), an informational filing. Southern Companies states that the purpose of this informational filing is to update the data inputs to the formula rate adopted by Southern Companies in this proceeding and thereby establish updated charges for the use of their bulk transmission facilities under their Open Access Transmission Tariff (FERC Electric Tariff, Fourth Revised Volume No. 5).

Comment Date: May 29, 2003.

6. Southwest Power Pool, Inc.

[Docket No. ER03–547–001]

Take notice that on May 12, 2003, Southwest Power Pool, Inc. (SPP) submitted for filing with the Federal Energy Regulatory Commission (Commission), revisions of Attachment L to its open access transmission tariff, in compliance with the Commission's April 10, 2003 Order (April 10 Order) in the above-referenced docket, 103 FERC ¶ 61,027 (2003). SPP states that Attachment L now incorporates the agreement submitted by SPP and the participating SPP Transmission Owners to upgrade the 345 kV LaCygne-Stilwell transmission line. SPP further states that it has also made the revisions required by the Commission's April 10 Order to the body of the agreement.

SPP states that a copy of this filing has been served on the SPP Transmission Owners and all of the parties on the official service list compiled by the Secretary in this docket.

Comment Date: June 2, 2003.

7. Southwest Reserve Sharing Group

[Docket No. ER03–842–000]

Take notice that on May 13, 2003, Tucson Electric Power Company tendered for filing on behalf of the members of the Southwest Reserve Sharing Group an amendment to the Southwest Reserve Sharing Group Participation Agreement.

Comment Date: June 3, 2003.

8. Entergy Services, Inc.

[Docket No. ER03–843–000]

Take notice that on May 13, 2003, Entergy Services, Inc. (Entergy Services), on behalf of Entergy Arkansas, Inc., formerly Arkansas Power & Light Company (APL), tendered for filing a Notice of Termination of Contract between APL and the United States of America, represented by the Secretary of Energy, acting by and through the Administrator, Southwestern Power Administration, an Administration within the Department of Energy.

Comment Date: June 3, 2003.

9. Northern Indiana Public Service Company

[Docket No. ER03–844–000]

Take notice that on May 13, 2003, Northern Indiana Public Service Company (Northern Indiana) filed a Service Agreement pursuant to its Wholesale Market-Based Rate Tariff with ConocoPhillips Company (ConocoPhillips). Northern Indiana has requested an effective date of May 13, 2003.

Northern Indiana states that copies of this filing have been sent to ConocoPhillips, the Indiana Utility Regulatory Commission, and the Indiana Office of Utility Consumer Counselor.

Comment Date: June 3, 2003.

Standard Paragraph

Any person desiring to intervene or to protest this filing should file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. All such motions or protests should be filed on or before the comment date, and, to the extent applicable, must be served on the applicant and on any other person designated on the official service list. This filing is available for review at the Commission or may be viewed on the Commission's Web site at *http://www.ferc.gov* , using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number filed to access the document. For assistance, contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or for TTY, contact (202) 502–8659.

Magalie R. Salas,

Secretary.

[FR Doc. 03–12915 Filed 5–21–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 2105–089]

Pacific Gas and Electric Company, P–233–081–CA; Notice of Extension of Time To Provide Comments on Draft Environmental Impact Statement

May 16, 2003.

On March 14, 2003, Commission staff made available to the public its draft Environmental Impact Statement (DEIS) on the proposed relicensing of the Pit 3, 4, 5 Hydroelectric Project, located in the Pit River Basin in Shasta County, California. The deadline for providing comments on the DEIS was established as May 21, 2003.

Notice is hereby given that the deadline for providing comments on the DEIS is extended to June 20, 2003.

Magalie R. Salas,

Secretary.

[FR Doc. 03–12917 Filed 5–21–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 6514–009]

Notice of Application Tendered for Filing with the Commission, Soliciting Additional Study Requests, and Establishing Procedural Schedule for Relicensing and a Deadline for Submission of Final Amendments

May 15, 2003.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection.

a. *Type of Application:* Subsequent Minor License.

b. *Project No.:* 6514–009.

c. *Date Filed:* May 2, 2003.

d. *Applicant:* City of Marshall, Michigan.

e. *Name of Project:* City of Marshall Hydroelectric Project.

f. *Location:* On the Kalamazoo River near the City of Marshall, in Calhoun County, Michigan. The project does not affect federal lands.

g. *Filed Pursuant to:* Federal Power Act 16 U.S.C.791(a)-825(r).

h. *Applicant Contact:* Keith Zienert, Power Plant Superintendent, City of Marshall, 906 S. Marshall, Marshall, MI 49068, (269) 781–8631; or John Fisher, Chairman, Lawson-Fisher Associates P.C., 525 West Washington Avenue, South Bend, IN 46601, (574)234–3167.

i. *FERC Contact:* Peter Leitzke, (202) 502–6059 or *peter.leitzke@ferc.gov*.

j. *Cooperating agencies*: We are asking Federal, state, local, and tribal agencies with jurisdiction and/or special expertise with respect to environmental issues to cooperate with us in the preparation of the environmental document. Agencies who would like to request cooperating status should follow the instructions for filing comments described in item l below.

k. Pursuant to section 4.32(b)(7) of 18 CFR of the Commission's regulations, if any resource agency, Indian Tribe, or person believes that an additional scientific study should be conducted in order to form an adequate factual basis for a complete analysis of the application on its merit, the resource agency, Indian Tribe, or person must file a request for a study with the Commission not later than 60 days from the date of filing of the application, and serve a copy of the request on the applicant.

l. *Deadline for filing additional study requests and requests for cooperating agency status*: July 2, 2003.

All documents (original and eight copies) should be filed with: Magalie R. Salas, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC, 20426. Please include the project number (P–6514) on any documents filed.

The Commission's rules of practice require all intervenors filing documents with the Commission to serve a copy of that document on each person on the official service list for the project. Further, if an intervenor files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

Additional study requests may be filed electronically via the Internet in lieu of paper. The Commission strongly encourages electronic filing. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site (*http://www.ferc.gov*) under the "e-Filing" link. After logging into the e-Filing system, select "Comment on Filing" from the Filing Type Selection screen and continue with the filing process."

m. This application is not ready for environmental analysis at this time.

n. The existing City of Marshall Hydroelectric Project consists of the following existing facilities: (1) The 12-foot-high, 215-foot-long Perrin No. 1 Dam; (2) the 12-foot-high, 90-foot-long Perrin No. 2 Dam; (3) a 130-acre reservoir with a normal pool elevation of 899 feet msl; (4) a 140-foot-long canal-type forebay; (5) a powerhouse containing three generating units with a total installed capacity of 463 kW; and (6) other appurtenances.

o. A copy of the application is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866)208–3676, or for TTY, contact (202)502–8659. A copy is also available for inspection and reproduction at the address in item h above.

p. With this notice, we are initiating consultation with the Michigan State Historic Preservation Officer (SHPO), as required by section 106, National Historic Preservation Act, and the regulations of the Advisory Council on Historic Preservation, 36 CFR 800.4.

q. *Procedural schedule and final amendments*: The application will be processed according to the following Hydro Licensing Schedule. Revisions to the schedule will be made as appropriate.

Issue Acceptance or Deficiency Letter—October 2003

Issue Scoping Document—November 2003

Notice that application is ready for environmental analysis—February 2004

Notice of the availability of the EA July 2004

Ready for Commission decision on the application—September 2004

Unless substantial comments are received in response to the EA, staff intends to prepare a single EA in this case. If substantial comments are received in response to the EA, a final EA will be prepared with the following modifications to the schedule.

Notice of the availability of the final EA—October 2004

Ready for Commission's decision on the application—November 2004

Final amendments to the application must be filed with the Commission no later than 30 days from the issuance date of the notice of ready for environmental analysis.

Register online at *http://www.ferc.gov/esubscribenow.htm* to be notified via email of new filings and issuances related to this or other pending projects. For assistance, contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at 1–866–208–3676, or for TTY, (202) 502–8659.

Magalie R. Salas,

Secretary.

[FR Doc. 03–12827 Filed 5–21–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. ER02–2001–000 and RM01–8–000]

Electric Quarterly Reports, Revised Public Utility Filing Requirements; Notice of Extension of Time

May 15, 2003.

On April 25, 2002, the Commission issued Order No. 2001,[1] a final rule which requires public utilities to file Electric Quarterly Reports (EQR). Order 2001–C, issued December 18, 2002, instructs all public utilities to file these reports using Electric Quarterly Report Submission Software, beginning with the report due on or before January 31, 2003 (extended to February 21, 2003). On March 28, 2003, the Commission issued Order 2001–D, requiring public utilities to review their fourth quarter 2002 EQR submissions to ensure that the data filed was correct. Utilities were directed to re-submit their corrected data by April 11, 2003, which was extended to April 18, 2003.

On April 23, 2003, FERC staff discovered a problem in the "Copy Forward" feature of the EQR submission software. Although the feature has been fixed, filers who used this feature before it was fixed may have to re-enter some data that was previously manually entered into the software. The Commission is committed to ensuring that high quality in the data be filed in the EQRs and subsequently extended the filing deadline for first quarter 2003 EQRs to May 15, 2003.

Several companies have requested further extensions to the filing deadlines to resolve problems they experienced with their EQR filings. We would like to allow these utilities the time needed to ensure that they can successfully file high quality data. Notice is hereby given that the time to file corrections to the fourth quarter 2002 EQR as required by Order 2001–D is extended to the date listed for each company identified in the attachment to this notice.

Magalie R. Salas,

Secretary.

ATTACHMENT

Utility	Quarters requested	Date of requested extension
The ANP Companies[2]	2nd, 3rd, and 4th Quarters 2002 and 1st Quarter 2003.	May 16, 2003.
Capital Energy, Inc	2nd, 3rd, and 4th Quarter 2002	April 25, 2003.
California Independent System Operator Corporation	4th Quarter Revisions	May 30, 2003.
California Independent System Operator Corporation	1st Quarter 2003	June 10, 2003.
Dominion Resources Services and Affiliates	4th Quarter 2002	May 16, 2003.
Exelon[3]	4th Quarter 2003 and 1st Quarter 2003	May 30, 2003.
Indeck-Olean and Indeck-Oswego	4th Quarter 2002 and 1st Quarter 2003	May 15, 2003.
Sempra Energy Trading Corp	4th Quarter 2002	May 29, 2003.

[1] Revised Public Utility Filing Requirements, Order No. 2001, 67 FR 31043, FERC Stats. & Regs. ¶ 31,127 (April 25, 2002); reh'g denied, Order No. 2001–A, 100 FERC ¶ 61,074, reconsideration and clarification denied, Order No.2001–B, 100 FERC ¶ 61,342 (2002).

[2] The ANP Companies includes the following companies: ANP Funding I, LLC, ANP Marketing Company, ANP Bellingham Energy Company, LLC, ANP Blackstone Energy Company, LLC and Milford Power Limited Partnership.

[3] Exelon includes the following companies: Exelon Generation Company, LLC, Exelon Energy Company, AmerGen Energy Company, LLC, Southeast Chicago Energy Project, LLC and Exelon New England Power Marketing, LP.

ATTACHMENT—Continued

Utility	Quarters requested	Date of requested extension
Southern California Edison Company	1st Quarter 2003	June 3, 2003

[FR Doc. 03–12823 Filed 5–21–03; 8:45 am]
BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7502–5]

Agency Information Collection Activities OMB Responses

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notices.

SUMMARY: This document announces the Office of Management and Budget's (OMB) responses to Agency clearance requests, in compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*). An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR part 9 and 48 CFR chapter 15.

FOR FURTHER INFORMATION CONTACT: Susan Auby (202) 566–1672, or email at *auby.susan@epa.gov* and please refer to the appropriate EPA Information Collection Request (ICR) Number.

SUPPLEMENTARY INFORMATION:

OMB Responses to Agency Clearance Requests

OMB Approvals

EPA ICR No. 1891.03; NESHAP for Publicly Owned Treatment Works (POTW) Facilities; was approved 05/01/2003; in 40 CFR part 63, subpart VVV; OMB Number 2060–0428; expires 05/31/2006.

EPA ICR No. 1894.03; NESHAP for Secondary Aluminum Production (Final Rule); was approved 05/01/2003; in 40 CFR part 63, subpart RRR; OMB Number 2060–0433; expires 07/31/2003.

EPA ICR No. 1954.02; NESHAP for Surface Coating of Large Household and Commercial Appliances (Final Rule); was approved 05/01/2003; in 40 CFR part 63, subpart NNNN; OMB Number 2060–0457; expires 05/31/2006.

EPA ICR No. 2034.02; NESHAP for the Wood Building Products Surface Coating Industry (Final Rule); was approved 05/01/2003; in 40 CFR part 63, subpart QQQQ; OMB Number 2060–0510; expires 05/31/2006.

EPA ICR No. 1773.06; NESHAP for Hazardous Waste Combustors; was approved 05/01/2003; in 40 CFR part 63, subpart EEE; OMB Number 2050–0171; expires 05/31/2006.

EPA ICR No. 1541.07; NESHAP: Benzene Waste Operations; was approved 05/01/2003; in 40 CFR part 61, subpart FF; OMB Number 2060–0183; expires 05/31/2006.

Correction

This is to correct expiration date for EPA ICR No. 0663.08, NSPS for Beverage Can Surface Coating; in 40 CFR part 60, subpart WW; from 04/20/2003 to 04/30/2006.

Dated: May 13, 2003.

Oscar Morales,

Director, Collection Strategies Division.

[FR Doc. 03–12867 Filed 5–21–03; 8:45 am]
BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[OAR–2002–0094; FRL–7502–6]

Agency Information Collection Activities; Proposed Collection; Comment Request; (EPA ICR No. 2100.01)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this document announces that the following Information Collection Request (ICR) has been forwarded to the Office of Management and Budget (OMB) for review and approval: Reporting Requirements Under EPA's Climate Leaders Program, (EPA ICR No. 2100.01). This ICR describes the nature of the information collection and its estimated burden and cost.

DATES: Additional comments may be submitted on or before June 23, 2003.

ADDRESSES: Follow the detailed instructions in **SUPPLEMENTARY INFORMATION.**

FOR FURTHER INFORMATION CONTACT: Tom Kerr, Climate Protection Partnerships Division, Office of Atmospheric Programs, Office of Air and Radiation, Mailcode 6202J, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: 202–564–0047; fax number: 202–565–2134; e-mail address: *kerr.tom@epa.gov.*

SUPPLEMENTARY INFORMATION: EPA has submitted the following ICR to OMB for review and approval according to the procedures prescribed in 5 CFR 1320.12. On June 18, 2002 (67 FR 117), EPA sought comments on this ICR pursuant to 5 CFR 1320.8(d). EPA received 2 comments and has addressed them in the program design.

EPA has established a public docket for this ICR under Docket ID No. OAR–2002–0094, which is available for public viewing at the Air and Radiation Docket and Information Center in the EPA Docket Center (EPA/DC), EPA West, Room B102, 1301 Constitution Ave., NW., Washington, DC. The EPA Docket Center Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Reading Room is (202) 566–1744, and the telephone number for the Air and Radiation Docket and Information Center is (202) 566–1742. An electronic version of the public docket is available through EPA Dockets (EDOCKET) at *http://www.epa.gov/edocket.* Use EDOCKET to submit or view public comments, access the index listing of the contents of the public docket, and to access those documents in the public docket that are available electronically. Once in the system, select "search," then key in the docket ID number identified above.

Any comments related to this ICR should be submitted to EPA and OMB within 30 days of this notice, and according to the following detailed instructions: (1) Submit your comments to EPA online using EDOCKET (our preferred method), by e-mail to *a-and-r-docket@epamail.epa.gov,* or by mail to: EPA Docket Center, Environmental Protection Agency, Mailcode: 6202J, 1200 Pennsylvania Ave., NW., Washington, DC 20460, and (2) Mail your comments to OMB at: Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Attention: Desk Officer for EPA, 725 17th Street, NW., Washington, DC 20503.

EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing in EDOCKET as EPA receives them and without change, unless the comment contains copyrighted material, CBI, or other information whose public disclosure is restricted by statute. When EPA identifies a comment containing copyrighted material, EPA will provide a reference to that material in the version of the comment that is placed in EDOCKET. The entire printed comment, including the copyrighted material, will be available in the public docket. Although identified as an item in the official docket, information claimed as CBI, or whose disclosure is otherwise restricted by statute, is not included in the official public docket, and will not be available for public viewing in EDOCKET. For further information about the electronic docket, *see* EPA's **Federal Register** notice describing the electronic docket at 67 FR 38102 (May 31, 2002), or go to *http://www.epa.gov/edocket.*

Title: Reporting Requirements Under EPA's Climate Leaders Program (EPA ICR Number 2100.01). This is a request for a new collection.

Abstract: Climate Leaders is an EPA-sponsored, voluntary program that encourages companies to undertake greenhouse gas (GHG) reduction goals and to develop a corporate GHG inventory to demonstrate progress towards that goal. It is run through EPA's Climate Protection Partnerships Division (CPPD) in the Office of Air & Radiation. Companies report their GHG inventories to EPA on an annual basis to demonstrate their progress toward their GHG reduction goal. This reporting allows EPA to offer highly credible public recognition to companies that have demonstrated leadership by meeting or exceeding their goals.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR part 9 and 48 CFR chapter 15, and are identified on the form and/or instrument, if applicable.

Burden Statement: The annual public reporting and recordkeeping burden for this collection of information is estimated to average 73 hours per response. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

Respondents/Affected Entities: large companies/private entities.

Estimated Number of Respondents: 70.

Frequency of Response: annual.

Estimated Total Annual Hour Burden: 5,114 hours.

Estimated Total Annual Cost: $433,390, includes $5,810 annualized capital or O&M costs.

Changes in the Estimates: This is a new information collection, and as such, this section is not applicable.

Dated: May 8, 2003.

Oscar Morales,

Director, Collection Strategies Division.

[FR Doc. 03–12868 Filed 5–21–03; 8:45 am]
BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7502–2]

Gulf of Mexico Program Citizens Advisory Committee Meeting

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of meeting.

SUMMARY: Under the Federal Advisory Committee Act (Public Law 92–463), EPA gives notice of a meeting of the Gulf of Mexico Program (GMP) Citizens Advisory Committee (CAC).

DATES: The meeting will be held on Tuesday, June 24, 2003, from 1 p.m. to 5 p.m. and on Thursday, June 26, 2003, from 1 p.m. to 2:30 p.m.

ADDRESSES: The meeting will be held at the Embassy Suites Hotel, 315 Julia Street, New Orleans, LA 70130 (504–525–1993).

FOR FURTHER INFORMATION CONTACT: Gloria D. Car, Designated Federal Officer, Gulf of Mexico Program Office, Mail Code EPA/GMPO, Stennis Space Center, MS 39529–6000 at (228) 688–2421.

SUPPLEMENTARY INFORMATION: Proposed agenda is attached.

The meeting is open to the public.

Dated: May 9, 2003.

Gloria D. Car,

Designated Federal Officer.

Gulf of Mexico Program; Citizens Advisory Committee Meeting

Embassy Suites, New Orleans, Louisiana, June 24–26, 2003

Tuesday, June 24

1–1:30 p.m., Opening Remarks/ Introductions, Brian Grantham, Chair and Robert Crowe, Vice-Chair
- Updates on resignations, new members
- Follow-up on Louisiana Resolution
- MC, PRB overview

1:30–1:45 p.m., Expectations for CAC Activities and Measures Discussion, Jim Kachtick, former CAC Chair
1:45–2:30 p.m., GMP Director's Report, Bryon Griffith, GMPO Acting Director
- Update of the Executive Order

2:30–3:15 p.m., Hypoxia Action Plan, Bill Franz, Upper Mississippi River Coordinator, EPA Region 5
3:15–3:30 p.m., Break
3:30–4:15 p.m., Nutrient Enrichment—Lower MS River Sub Basin Committee, Doug Daigle, Mississippi River Basin Alliance
4:15–5 p.m., Pipeline Presentation, Al Taylor, Gulfstream
5 p.m., Wrap-up

Thursday, June 26

1–1:30 p.m., Recap of focus team/ committee meetings from previous days
1:30–2 p.m., Marine Debris Presentation, Charles Barr, Ocean Conservancy
2–2:30 p.m. Citizens Advisory Committee Wrap-up
- Discussion and Recommendations
- Collect Questionnaires

2:30 p.m., Adjourn

[FR Doc. 03–12869 Filed 5–21–03; 8:45 am]
BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7502–3]

Clean Air Act Advisory Committee Notice of Meeting

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The Environmental Protection Agency established the Clean Air Act Advisory Committee (CAAAC) on November 19, 1990, to provide

independent advice and counsel to EPA on policy issues associated with implementation of the Clean Air Act of 1990. The Committee advises on economic, environmental, technical scientific, and enforcement policy issues.

Open Meeting Notice: Pursuant to 5 U.S.C. App. 2 section 10(a)(2), notice is hereby given that the Clean Air Act Advisory Committee will hold its next open meeting on Thursday, June 12, 2003, from approximately 8:30 a.m. to 2:30 p.m. at the Sheraton Crystal City Hotel, 1880 Jefferson Davis Highway, Arlington, Virginia. Seating will be available on a first come, first served basis. Three of the CAAC's Subcommittees (the Linking Energy, Land Use, Transportation, and Air Quality Concerns Subcommittee; the Permits/NSR/Toxics Subcommittee; and the Economics Incentives and Regulatory Innovations Subcommittee) will hold meetings on Wednesday, June 11, 2003 from approximately 1 p.m. to 7 p.m. at the Sheraton Crystal City Hotel, the same location as the full Committee. The schedule for the three Subcommittees meetings is: Linking Energy, Land Use, Transportation, and Air Quality—1 p.m. to 3 p.m.; Permits/NSR/Toxics—3 p.m. to 5 p.m.; and Economics Incentives and Regulatory Innovations—5 p.m. to 7 p.m.

Inspection of Committee Documents: The Committee agenda and any documents prepared for the meeting will be publicly available at the meeting. Thereafter, these documents, together with CAAC meeting minutes, will be available by contacting the Office of Air and Radiation Docket and requesting information under docket item A–94–34 (CAAAC). The Docket office can be reached by telephoning 202–260–7548; FAX 202–260–4400.

FOR FURTHER INFORMATION CONTACT: For further information concerning this meeting of the full CAAAC, please contact Paul Rasmussen, Office of Air and Radiation, U.S. EPA (202) 564–1306, FAX (202) 564–1352 or by mail at U.S. EPA, Office of Air and Radiation (Mail code 6102 A), 1200 Pennsylvania Avenue, NW., Washington, DC 20004. For information on the Subcommittee meetings, please contact the following individuals: (1) Linking Transportation, Land Use and Air Quality Concerns—Robert Larson, 734–214–4277; Debbie Stackhouse, 919–541–4354; and (2) Economic Incentives and Regulatory Innovations—Paul Rasmussen, 202–564–1306. Additional information on these meetings and the CAAAC and its Subcommittees can be found on the CAAAC Web site: *http://www.epa.gov/oar/caaac/*.

Dated: May 13, 2002.

Robert D. Brenner,

Principal Deputy Assistant Administrator for Air and Radiation.

[FR Doc. 03–12866 Filed 5–21–03; 8:45 am]

BILLING CODE 6560–50–M

ENVIRONMENTAL PROTECTION AGENCY

[OPPT–2003–0023; FRL–7309–1]

Approval of Test Marketing Exemption for a Certain New Chemical

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces EPA's approval of an application for test marketing exemption (TME) under section 5(h)(1) of the Toxic Substances Control Act (TSCA) and 40 CFR 720.38. EPA has designated this application as TME–03–0004. The test marketing conditions are described in the TMB application and in this notice.

DATES: Approval of this TME is effective May 9, 2003. Comments, identified by docket ID number OPPT–2003–0023 and the TME number, must be received on or before June 6, 2003.

ADDRESSES: Comments may be submitted electronically, by mail, or through hand delivery/courier. Follow the detailed instructions as provided in Unit I. of the **SUPPLEMENTARY INFORMATION**.

FOR FURTHER INFORMATION CONTACT: *For general information contact*: Barbara Cunningham, Director, Environmental Assistance Division (7408M), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (202) 554–1404; e-mail address: *TSCA-Hotline@epa.gov*.

For technical information contact: Miriam Wiggins-Lewis, Chemical Control Division, (7405M), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (202) 564–9373; e-mail address: *Wigginslewis.Miriam@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

This action is directed in particular to the chemical manufacturer and/or importer who submitted the TME to EPA. This action may, however, be of interest to the public in general. Since other entities may also be interested, the Agency has not attempted to describe all the specific entities that may be affected by this action. If you have any questions regarding the applicability of this action to a particular entity, consult the technical person listed under **FOR FURTHER INFORMATION CONTACT**.

B. How Can I Get Copies of this Document and Other Related Information?

1. *Docket.* EPA has established an official public docket for this action under docket identification (ID) number OPPT–2003–0023. The official public docket consists of the documents specifically referenced in this action, any public comments received, and other information related to this action. Although a part of the official docket, the public docket does not include Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. The official public docket is the collection of materials that is available for public viewing at the EPA Docket Center, Rm. B102-Reading Room, EPA West, 1301 Constitution Ave., NW., Washington, DC. The EPA Docket Center is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The EPA Docket Center Reading Room telephone number is (202) 566–1744 and the telephone number for the OPPT Docket, which is located in EPA Docket Center, is (202) 566–0280.

2. *Electronic access.* You may access this **Federal Register** document electronically through the EPA Internet under the "**Federal Register**" listings at *http://www.epa.gov/fedrgstr/*.

An electronic version of the public docket is available through EPA's electronic public docket and comment system, EPA Dockets. You may use EPA Dockets at *http://www.epa.gov/edocket/* to submit or view public comments, access the index listing of the contents of the official public docket, and to access those documents in the public docket that are available electronically. Although not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the docket facility identified in Unit I.B.1. Once in the system, select "search," then key in the appropriate docket ID number.

Certain types of information will not be placed in the EPA Dockets. Information claimed as CBI and other information whose disclosure is restricted by statute, which is not included in the official public docket, will not be available for public viewing

in EPA's electronic public docket. EPA's policy is that copyrighted material will not be placed in EPA's electronic public docket but will be available only in printed, paper form in the official public docket. To the extent feasible, publicly available docket materials will be made available in EPA's electronic public docket. When a document is selected from the index list in EPA Dockets, the system will identify whether the document is available for viewing in EPA's electronic public docket. Although not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the docket facility identified in Unit I.B.1. EPA intends to work towards providing electronic access to all of the publicly available docket materials through EPA's electronic public docket.

For public commenters, it is important to note that EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing in EPA's electronic public docket as EPA receives them and without change, unless the comment contains copyrighted material, CBI, or other information whose disclosure is restricted by statute. When EPA identifies a comment containing copyrighted material, EPA will provide a reference to that material in the version of the comment that is placed in EPA's electronic public docket. The entire printed comment, including the copyrighted material, will be available in the public docket.

Public comments submitted on computer disks that are mailed or delivered to the docket will be transferred to EPA's electronic public docket. Public comments that are mailed or delivered to the docket will be scanned and placed in EPA's electronic public docket. Where practical, physical objects will be photographed, and the photograph will be placed in EPA's electronic public docket along with a brief description written by the docket staff.

C. How and to Whom Do I Submit Comments?

The notice of receipt was published late in the 45–day review period; however, an opportunity to submit comments is being offered at this time.

You may submit comments electronically, by mail, or through hand delivery/courier. To ensure proper receipt by EPA, identify the appropriate docket ID number and the TME number in the subject line on the first page of your comment. Please ensure that your comments are submitted within the specified comment period. Comments received after the close of the comment period will be marked "late." EPA is not required to consider these late comments. If you wish to submit CBI or information that is otherwise protected by statute, please follow the instructions in Unit I.D. Do not use EPA Dockets or e-mail to submit CBI or information protected by statute.

1. *Electronically.* If you submit an electronic comment as prescribed in this unit, EPA recommends that you include your name, mailing address, and an e-mail address or other contact information in the body of your comment. Also include this contact information on the outside of any disk or CD ROM you submit, and in any cover letter accompanying the disk or CD ROM. This ensures that you can be identified as the submitter of the comment and allows EPA to contact you in case EPA cannot read your comment due to technical difficulties or needs further information on the substance of your comment. EPA's policy is that EPA will not edit your comment, and any identifying or contact information provided in the body of a comment will be included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment.

i. *EPA Dockets.* Your use of EPA's electronic public docket to submit comments to EPA electronically is EPA's preferred method for receiving comments. Go directly to EPA Dockets at *http://www.epa.gov/edocket*, and follow the online instructions for submitting comments. Once in the system, select "search," and then key in docket ID number OPPT–2003–0023. The system is an "anonymous access" system, which means EPA will not know your identity, e-mail address, or other contact information unless you provide it in the body of your comment.

ii. *E-mail.* Comments may be sent by e-mail to *oppt.ncic@epa.gov*, Attention: Docket ID Number OPPT–2003–0023 and the TME number. In contrast to EPA's electronic public docket, EPA's e-mail system is not an "anonymous access" system. If you send an e-mail comment directly to the docket without going through EPA's electronic public docket, EPA's e-mail system automatically captures your e-mail address. E-mail addresses that are automatically captured by EPA's e-mail system are included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket.

iii. *Disk or CD ROM.* You may submit comments on a disk or CD ROM that you mail to the mailing address identified in Unit I.C.2. These electronic submissions will be accepted in WordPerfect or ASCII file format. Avoid the use of special characters and any form of encryption.

2. *By mail.* Send your comments to: Document Control Office (7407M), Office of Pollution Prevention and Toxics (OPPT), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001.

3. *By hand delivery or courier.* Deliver your comments to: OPPT Document Control Office (DCO) in EPA East Building Rm. 6428, 1201 Constitution Ave., NW., Washington, DC. Attention: Docket ID Number OPPT–2003–0023 and the TME number. The DCO is open from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The telephone number for the DCO is (202) 564–8930.

D. How Should I Submit CBI To the Agency?

Do not submit information that you consider to be CBI electronically through EPA's electronic public docket or by e-mail. You may claim information that you submit to EPA as CBI by marking any part or all of that information as CBI (if you submit CBI on disk or CD ROM, mark the outside of the disk or CD ROM as CBI and then identify electronically within the disk or CD ROM the specific information that is CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

In addition to one complete version of the comment that includes any information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket and EPA's electronic public docket. If you submit the copy that does not contain CBI on disk or CD ROM, mark the outside of the disk or CD ROM clearly that it does not contain CBI. Information not marked as CBI will be included in the public docket and EPA's electronic public docket without prior notice. If you have any questions about CBI or the procedures for claiming CBI, please consult the technical person listed under **FOR FURTHER INFORMATION CONTACT**.

E. What Should I Consider as I Prepare My Comments for EPA?

You may find the following suggestions helpful for preparing your comments:

1. Explain your views as clearly as possible.
2. Describe any assumptions that you used.
3. Provide copies of any technical information and/or data you used that support your views.
4. If you estimate potential burden or costs, explain how you arrived at the estimate that you provide.
5. Provide specific examples to illustrate your concerns.
6. Offer alternative ways to improve the notice or collection activity.
7. Make sure to submit your comments by the deadline in this document.
8. To ensure proper receipt by EPA, be sure to identify the docket ID number assigned to this action and the TME number in the subject line on the first page of your response. You may also provide the name, date, and **Federal Register** citation.

II. What is the Agency's Authority for Taking this Action?

Section 5(h)(1) of TSCA and 40 CFR 720.38 authorizes EPA to exempt persons from premanufacture notification (PMN) requirements and permit them to manufacture or import new chemical substances for test marketing purposes, if the Agency finds that the manufacture, processing, distribution in commerce, use, and disposal of the substances for test marketing purposes will not present an unreasonable risk of injury to health or the environment. EPA may impose restrictions on test marketing activities and may modify or revoke a test marketing exemption upon receipt of new information which casts significant doubt on its finding that the test marketing activity will not present an unreasonable risk of injury.

III. What Action is the Agency Taking?

EPA has approved the above-referenced TME. EPA has determined that test marketing the new chemical substance, under the conditions set out in the TME application and in this notice, will not present any unreasonable risk of injury to health or the environment.

IV. What Restrictions Apply to this TME?

The test market time period, production volume, number of customers, and use must not exceed specifications in the application and this notice. All other conditions and restrictions described in the application and in this notice must also be met.

TME–03–0001.

Date of Receipt: March 17, 2003.

Notice of Receipt: April 21, 2003 (68 FR 19532).

Applicant: PPG Industries, Inc.

Chemical: Modified Polyol.

Use: Component of coating with open use.

Production Volume: 4,000 Kiligram/year.

Number of Customers: One.

Test Marketing Period: 270 to 365 days, commencing on first day of commerical manufacture.

The following additional restrictions apply to this TME. A bill of lading accompanying each shipment must state that the use of the substance is restricted to that approved in the TME. In addition, the applicant shall maintain the following records until 5 years after the date they are created, and shall make them available for inspection or copying in accordance with section 11 of TSCA:

1. Records of the quantity of the TME substance produced and the date of manufacture.
2. Records of dates of the shipments to each customer and the quantities supplied in each shipment.
3. Copies of the bill of lading that accompanies each shipment of the TME substance.

V. What was EPA's Risk Assessment for this TME?

EPA identified no significant health or environmental concerns for the test market substance. Therefore, the test market activities will not present any unreasonable risk of injury to human health or the environment.

VI. Can EPA Change Its Decision on this TME in the Future?

Yes. The Agency reserves the right to rescind approval or modify the conditions and restrictions of an exemption should any new information that comes to its attention cast significant doubt on its finding that the test marketing activities will not present any unreasonable risk of injury to human health or the environment.

List of Subjects

Environmental protection, Test marketing exemptions.

Dated: May 9, 2003.

Miriam Wiggins-Lewis,

Acting Chief, New Chemicals Prenotice Management Branch, Office of Pollution Prevention and Toxics.

[FR Doc. 03–12870 Filed 5–21–03; 8:45 am]

BILLING CODE 6560–50–S

FEDERAL ELECTION COMMISSION

[Notice 2003–11]

Filing Dates for the Texas Special Election in the 19th Congressional District

AGENCY: Federal Election Commission.

ACTION: Notice of filing dates for special election.

SUMMARY: Texas has scheduled a special runoff election on June 3, 2003, to fill the U.S. House of Representatives seat in the Nineteenth Congressional District vacated by Representative Larry Combest. On May 3, 2003, a Special General Election was held, with no candidate achieving a majority vote. Under Texas law, a Special Runoff Election will now be held with the two top vote-getters participating.

Committees participating in the Texas Special Runoff Election are required to file pre- and post-election reports.

FOR FURTHER INFORMATION CONTACT: Mr. Kevin R. Salley, Information Division, 999 E Street, NW., Washington, DC 20463; Telephone: (202) 694–1100; Toll Free (800) 424–9530.

SUPPLEMENTARY INFORMATION:

Principal Campaign Committees

All principal campaign committees of candidates participating in the Texas Special Runoff Election shall file a 12-day Pre-Runoff Report on May 22, 2003; and a 30-day Post-Runoff Report on July 3, 2003. (See chart below for the closing date for each report).

Unauthorized Committees (PACs and Party Committees)

Political committees that file on a semiannual basis in 2003 are subject to special election reporting if they make previously undisclosed contributions or expenditures in connection with the Texas Special Runoff Election by the close of books for the applicable report(s). (See chart below for the closing date for each report).

Committees filing monthly that support candidates in the Texas Special Runoff Election should continue to file according to the monthly reporting schedule.

CALENDAR OF REPORTING DATES FOR TEXAS SPECIAL ELECTION COMMITTEES INVOLVED IN THE SPECIAL RUNOFF (06/03/03) MUST FILE

Report	Close of books [1]	Reg./Cert. mailing date [2]	Filing date
Pre-Runoff	05/14/03	05/19/03	05/22/03
Post-Runoff	06/23/03	07/03/03	07/03/03

[1] The period begins with the close of books of the last report filed by the committee. If the committee has filed no previous reports, the period begins with the date of the committee's first activity.

[2] Pre- and Post-Runoff Reports sent registered or certified mail must be postmarked by the mailing date; otherwise, they must be received by the filing date. Committees should keep the mailing receipt with its postmark as proof of filing.

Dated: May 16, 2003.

Ellen L. Weintraub,

Chair, Federal Election Commission.

[FR Doc. 03–12790 Filed 5–21–03; 8:45 am]

BILLING CODE 6715–01–P

FEDERAL MARITIME COMMISSION

Sunshine Act Meeting

AGENCY HOLDING THE MEETING: Federal Maritime Commission.

TIME AND DATE: 10 a.m.—May 28, 2003.

PLACE: 800 North Capitol Street, NW., First Floor Hearing Room, Washington, DC.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Fact Finding Investigation No. 25—Practices of Transpacific Stabilization Agreement Members Covering the 2002–2003 Service Contract Season.

CONTACT PERSON FOR MORE INFORMATION: Bryant L. VanBrakle, Secretary, (202) 523–5725.

Bryant L. VanBrakle,

Secretary.

[FR Doc. 03–12990 Filed 5–20–03; 11:46 am]

BILLING CODE 6730–01–M

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR Part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The application also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States. Additional information on all bank holding companies may be obtained from the National Information Center Web site at *www.ffiec.gov/nic/.*

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than June 16, 2003.

A. Federal Reserve Bank of Dallas (W. Arthur Tribble, Vice President) 2200 North Pearl Street, Dallas, Texas 75201-2272:

1. Afin, Ltd., and Anvest, Inc., both of Cleburne, Texas; to become bank holding companies by acquiring 85.42 percent of the voting shares of Grandview Bancshares, Inc., Grandview, Texas, and thereby indirectly acquire voting shares of First State Bank, Grandview, Texas.

Board of Governors of the Federal Reserve System, May 16, 2003.

Jennifer J. Johnson,

Secretary of the Board.

[FR Doc. 03–12811 Filed 5–21–03; 8:45 am]

BILLING CODE 6210–01–S

FEDERAL RESERVE SYSTEM

Notice of Proposals to Engage in Permissible Nonbanking Activities or to Acquire Companies that are Engaged in Permissible Nonbanking Activities

The companies listed in this notice have given notice under section 4 of the Bank Holding Company Act (12 U.S.C. 1843) (BHC Act) and Regulation Y (12 CFR Part 225) to engage *de novo*, or to acquire or control voting securities or assets of a company, including the companies listed below, that engages either directly or through a subsidiary or other company, in a nonbanking activity that is listed in § 225.28 of Regulation Y (12 CFR 225.28) or that the Board has determined by Order to be closely related to banking and permissible for bank holding companies. Unless otherwise noted, these activities will be conducted throughout the United States.

Each notice is available for inspection at the Federal Reserve Bank indicated. The notice also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether the proposal complies with the standards of section 4 of the BHC Act. Additional information on all bank holding companies may be obtained from the National Information Center Web site at *www.ffiec.gov/nic/.*

Unless otherwise noted, comments regarding the applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than June 5, 2003.

A. Federal Reserve Bank of Dallas (W. Arthur Tribble, Vice President) 2200 North Pearl Street, Dallas, Texas 75201-2272:

1. Inwood Bancshares, Inc. Dallas, Texas; to engage *de novo* through its subsidiary, Inwood Asset Management, Inc., Dallas, Texas, in financial and investment advisory activities pursuant to section 225.28(b)(6)(i) of Regulation Y.

Board of Governors of the Federal Reserve System, June 16, 2003.

Jennifer J. Johnson,

Secretary of the Board.

[FR Doc.03–12810 Filed 5–21–03; 8:45 am]

BILLING CODE 6210–01–S

GENERAL SERVICES ADMINISTRATION

[OMB Control No. 3090–0278]

National Contact Center; Customer Evaluation Survey

AGENCY: Citizen Services and Communications, Federal Citizen Information Center, (GSA).

ACTION: Notice of a new one-time collection.

SUMMARY: Under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the General Services Administration, Office of Citizen Services and Communications (OSCS), Federal Citizen Information Center, National Contact Center (NCC) has submitted to the Office of Management and Budget (OMB) a request to review and approve a new information collection requirement concerning Customer Evaluation Survey. A request for public comments was published at 68 FR 5293, February 3, 2003. No comments were received.

This information collection will be used to assess the public's satisfaction with the NCC service, to assist in increasing the efficiency in responding to the public's need for Federal information, and to assess the effectiveness of marketing efforts. The respondents include users of the NCC.

Public comments are particularly invited on: Whether this collection of information is necessary for the proper performance of the functions of the agency including whether it will have practical utility; whether our estimate of the public burden of this collection of information is accurate, and based on valid assumptions and methodology; ways to enhance the quality, utility, and clarity of the information to be collected, including through the use of automated collection techniques or other forms of information technology.

DATES: Submit comments on or before: June 23, 2003.

FOR FURTHER INFORMATION CONTACT: Tonya Beres, Office of Citizens Services and Communications, at (202) 501–1803.

ADDRESSES: Submit comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden to Ms. Jeanette Thornton, GSA Desk Officer, OMB, Room 10236, NEOB, Washington, DC 20503, and a copy to General Services Administration, Regulatory and Federal Assistance Publications Division (MVA), 1800 F Street, NW., Room 4035, Washington, DC 20405. Please cite OMB Control Number 3090–0278.

SUPPLEMENTARY INFORMATION:

A. Purpose

This information collection will be used to assess the public's satisfaction with the NCC service, to assist in increasing the efficiency in responding to the public's need for Federal information, and to assess the effectiveness of marketing efforts.

B. Annual Reporting Burden

Respondents: 2,250.
Responses Per Respondent: 1.
Total Responses: 2,250.
Hours Per Response: .05 (3 minutes).
Total Burden Hours: 112.5.

Obtaining Copies of Proposals: Requesters may obtain a copy of the information collection documents from the General Services Administration, Regulatory and Federal Assistance Publications Division (MVA), 1800 F Street, NW., Room 4035, Washington, DC 20405, telephone (202) 208–7312, or by faxing your request to (202) 501–4067. Please cite 3090–0278, National Contact Center Customer Evaluation Survey in all correspondence.

Dated: May 15, 2003.

Michael W. Carleton,

Chief Information Officer (I).

[FR Doc. 03–12894 Filed 5–21–03; 8:45 am]

BILLING CODE 6820–CX–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Disease, Disability, and Injury Prevention and Control Special Emphasis Panel: Research on the Impact of Law on Public Health, Program Announcement #03049 Correction

ACTION: Notice; correction.

Name: Disease, Disability, and Injury Prevention and Control Special Emphasis Panel (SEP): Research on the Impact of Law on Public Health, Program Announcement #03049.

Times and Dates: 3 p.m.–3:30 p.m., May 27, 2003 (open). 3:30 p.m.–7 p.m., May 27, 2003 (closed). 8 a.m.–5 p.m., May 28, 2003 (closed).

Place: Marriott Perimeter Center, 246 Perimeter Center Parkway, NE., Atlanta, GA 30346, Telephone 770.270.0422.

Correction

In the **Federal Register** of May 8, 2003, volume 68, number 89, notice, page 24746 "Date and Time" should read: May 27, 2003, through May 28, 2003.

Contact Person for More Information: Joan Karr, Ph.D., Scientific Review Administrator, Public Health Program Practice Office, CDC, 4770 Buford Highway, NE., MS–K–38, Atlanta, GA 30341, Telephone 770.488.2597.

The Director, Management Analysis and Services Office has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities, for both the Centers for Disease Control and Prevention and the Agency for Toxic Substances and Disease Registry.

Dated: May 14, 2003.

Alvin Hall,

Director, Management Analysis and Services Office, Centers for Disease Control and Prevention (CDC).

[FR Doc. 03–12707 Filed 5–21–03; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Citizens Advisory Committee on Public Health Service Activities and Research at Department of Energy (DOE) Sites: Idaho National Engineering and Environmental Laboratory Health Effects Subcommittee (INEELHES)

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), the Agency for Toxic Substances and Disease Registry (ATSDR) and the Centers for Disease Control and Prevention (CDC) announce the following meeting.

NAME: Citizens Advisory Committee on Public Health Service Activities and Research at DOE Sites: INEELHES.

TIMES AND DATES: 8:30 a.m.–4 p.m., July 1, 2003.

8:30 a.m.–10:45 a.m., July 2, 2003.

PLACE: The Grove Hotel, A WestCoast Grand Hotel, 245 South Capitol Boulevard, Boise, Idaho 83702, telephone 208–333–8000, fax 208–333–8800.

STATUS: Open to the public, limited only by the space available. The meeting room accommodates approximately 50 people.

BACKGROUND: Under a Memorandum of Understanding (MOU) signed in December 1990 with DOE, and replaced by MOUs signed in 1996 and 2000, the Department of Health and Human Services (HHS) was given the responsibility and resources for conducting analytic epidemiologic investigations of residents of communities in the vicinity of DOE facilities, workers at DOE facilities, and other persons potentially exposed to radiation or to potential hazards from non-nuclear energy production use. HHS delegated program responsibility to CDC.

In addition, an MOU was signed in October 1990 and renewed in 1992, 1996, and 2000, between ATSDR and DOE. The MOU delineates the responsibilities and procedures for ATSDR's public health activities at DOE sites required under sections 104, 105, 107, and 120 of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA or "Superfund"). These activities include health consultations and public health assessments at DOE sites listed on, or proposed for, the Superfund National Priorities List and at sites that are the subject of petitions from the public; and other health-related activities such as epidemiologic studies, health surveillance, exposure and disease registries, health education, substance-specific applied research, emergency response, and preparation of toxicological profiles.

PURPOSE: This subcommittee is charged with providing advice and recommendations to the Director, CDC, and the Administrator, ATSDR, regarding community concerns pertaining to CDC's and ATSDR's public health activities and research at this DOE site. The purpose of this meeting is to provide a forum for community interaction and to serve as a vehicle for community concerns to be expressed as advice and recommendations to CDC and ATSDR.

MATTERS TO BE DISCUSSED: Agenda items include a presentation on Concentrations of Pollutants in the Aquifer over a Long Period of Time; Status Report on Dose Reconstruction; DOE Low-Level Radiation Research Program; and a presentation by ATSDR on the Public Comment Draft of the Public Health Assessment. Agenda items are subject to change as priorities dictate.

CONTACT PERSON FOR MORE INFORMATION: Natasha Friday, Executive Secretary, INEELHES, Radiation Studies Branch, Division of Environmental Hazards and Health Effects, National Center for Environmental Health, CDC, 1600 Clifton Road, NE., (E–39), Atlanta, Georgia 30333, telephone 404–498–1800, fax 404–498–1811.

The Director, Management Analysis and Services Office, has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities for both CDC and ATSDR.

Dated: May 15, 2003.

Alvin Hall,

Director, Management Analysis and Services Office, Centers for Disease Control and Prevention (CDC).

[FR Doc. 03–12837 Filed 5–21–03; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare and Medicaid Services

[Document Identifier: CMS–R–240]

Agency Information Collection Activities: Submission for OMB Review; Comment Request

AGENCY: Centers for Medicare and Medicaid Services.

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Centers for Medicare and Medicaid Services (CMS) (formerly known as the Health Care Financing Administration (HCFA), Department of Health and Human Services, is publishing the following summary of proposed collections for public comment. Interested persons are invited to send comments regarding this burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

(1) *Type of Information Collection Request:* Extension of a currently approved collection; *Title of Information Collection:* Prospective Payments for Hospital Outpatient Services and Supporting Regulations in 42 CFR 413.24, 413.65, and 419.42; *Form No.:* CMS–R–240 (OMB# 0938–0798); *Use:* As required by sections 4521, 4522, and 4523 of the Balanced Budget Act of 1997, CMS–1005FC eliminates the formula driven overpayment for certain outpatient hospital services, extends reductions in payment for costs of hospital outpatient services, and establishes in regulations a prospective payment system for hospital outpatient services. The rule also establishes in regulations the requirements for designating certain entities as provider-based or as a department of a hospital; *Frequency:* Other—as needed; *Affected Public:* Business or other for-profit, and not-for-profit institutions; *Number of Respondents:* 750; *Total Annual Responses:* 2,272; *Total Annual Hours:* 41,063.

To obtain copies of the supporting statement and any related forms for the proposed paperwork collections referenced above, access CMS Web site address at *http://cms.hhs.gov/regulations/pra/default.asp*, or e-mail your request, including your address, phone number, OMB number, and CMS document identifier, to *Paperwork@hcfa.gov*, or call the Reports Clearance Office on (410) 786–1326. Written comments and recommendations for the proposed information collections must be mailed within 30 days of this notice directly to the OMB desk officer: OMB Human Resources and Housing Branch, Attention: Brenda Aguilar, New Executive Office Building, Room 10235, Washington, DC 20503. Fax Number: (202) 395–6974.

Dated: May 15, 2003.

Dawn Willinghan,

CMS Reports Clearance Officer, Division of Regulations Development and Issuances, Office of Strategic Operations and Regulatory Affairs.

[FR Doc. 03–12800 Filed 5–21–03; 8:45 am]

BILLING CODE 4120–03–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare and Medicaid Services

[Document Identifier: CMS–684A–I, CMS–685, and CMS–10084]

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Centers for Medicare and Medicaid Services.

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Centers for Medicare and Medicaid Services (CMS) (formerly known as the Health Care Financing Administration (CMS)), Department of Health and Human Services, is publishing the following summary of proposed collections for public comment. Interested persons are invited to send comments regarding this burden

estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

1. *Type of Information Collection Request:* Extension of a currently approved collection; *Title of Information Collection:* End-Stage Renal Disease (ESRD) Network Business Proposal Forms and Supporting Regulations in 42 CFR 405.2110 and 405.2112; *Form No.:* CMS–684A–I (OMB# 0938–0658); *Use:* The submission of business proposal information by current ESRD networks and other bidders, according to the business proposal instructions, meets CMS's need for meaningful, consistent, and verifiable data when evaluating contract proposals; *Frequency:* Other: every 3 years; *Affected Public:* Not-for-profit institutions; *Number of Respondents:* 18; *Total Annual Responses:* 36; *Total Annual Hours:* 1,080.

2. *Type of Information Collection Request:* Extension of a currently approved collection; *Title of Information Collection:* End-Stage Renal Disease (ESRD) Network Semi-Annual Cost Report Forms and Supporting Regulations in 42 CFR 405.2110 and 405.2112; *Form No.:* CMS–685 (OMB# 0938–0657); *Use:* Submission of semi-annual cost reports allows CMS to review, compare, and project ESRD network costs. The reports are used as an early warning system to determine whether the networks are in danger of exceeding the total cost of the contract. Additionally, CMS can analyze line item costs to identify any significant aberrations; *Frequency:* Semi-annually; *Affected Public:* Not-for-profit institutions; *Number of Respondents:* 18; *Total Annual Responses:* 36; *Total Annual Hours:* 108.

3. *Type of Information Collection Request:* Extension of a currently approved collection; *Title of Information Collection:* Design and Implementation of a Targeted Beneficiary Survey on Access to Physician Services Among Medicare Beneficiaries; *Form No.:* CMS–10084 (OMB# 0938–0890); *Use:* This survey of Medicare beneficiaries in targeted communities will be used to obtain information on whether they are experiencing problems accessing physician services. CMS will use data collected to determine if access problems exist at all, where and why problems may arise, whom they affect, and what the consequences are for Medicare beneficiaries. CMS will also learn the extent to which physician access problems are Medicare-specific.; *Frequency:* One-time; *Affected Public:* Individuals or Households; *Number of Respondents:* 4,000; *Total Annual Responses:* 4,000; *Total Annual Hours:* 958.

To obtain copies of the supporting statement and any related forms for the proposed paperwork collections referenced above, access CMS's Web site address at *http://cms.hhs.gov/regulations/pra/default.asp*, or E-mail your request, including your address, phone number, OMB number, and CMS document identifier, to *Paperwork@cms.hhs.gov*, or call the Reports Clearance Office on (410) 786–1326. Written comments and recommendations for the proposed information collections must be mailed within 60 days of this notice directly to the CMS Paperwork Clearance Officer designated at the following address: CMS, Office of Strategic Operations and Regulatory Affairs, Division of Regulations Development and Issuances, Attention: Dawn Willinghan, Room: C5–14–03, 7500 Security Boulevard, Baltimore, Maryland 21244–1850.

Dated: May 15, 2003.

Dawn Willinghan,

CMS Reports Clearance Officer, Division of Regulations Development and Issuances, Office of Strategic Operations and Strategic Affairs.

[FR Doc. 03–12801 Filed 5–21–03; 8:45 am]

BILLING CODE 4120–03–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Request for Public Comment on the Improvement of the Adoption and Foster Care Analysis and Reporting System (AFCARS)

AGENCY: Administration on Children, Youth and Families (ACYF), ACF, DHHS.

ACTION: Correction to notice of request for public comment.

SUMMARY: On April 28, 2003, ACF published a notice of request for comments on the Adoption and Foster Care Analysis and Reporting System (AFCARS). There is an error in the mailbox address set up to receive e-mail written comments on AFCARS. The correct address is *AFCARS_Project@acf.hhs.gov* (there is an underscore between "AFCARS" and "Project"). Likewise, the section regarding further information should reflect the corrected e-mail address: *AFCARS_Project@acf.hhs.gov*.

FOR FURTHER INFORMATION: Questions regarding this correction may be submitted to and will be answered by e-mail at the *AFCARS_Project@acf.hhs.gov* or via the Children's Bureau address, 330 "C" St., SW., Washington, DC 20447, Attention: Penelope L. Maza.

Dated: May 16, 2003.

Frank Fuentes,

Deputy Commissioner, Administration on Children, Youth and Families.

[FR Doc. 03–12797 Filed 5–21–03; 8:45 am]

BILLING CODE 4184–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 95F–0221]

DuCoa L.P. ; Filing of Food Additive Petition (Animal Use); Natamycin; Change of Petitioner's Name

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) has been notified by the petitioner, DuCoa L.P., that it has changed its name to Arkion Life Sciences, doing business at the same address. On September 20, 1995 (60 FR 48715), a **Federal Register** notice announced that a food additive petition (FAP 2234) had been filed by DuCoa L.P. proposing the use of natamycin as a mold retardent in broiler chicken feed.

FOR FURTHER INFORMATION CONTACT: Karen Ekelman, Center for Veterinary Medicine (HFV–228), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301–827–6653, e-mail: *kekelman@cvm.fda.gov*.

Dated: May 14, 2003.

Stephen F. Sundlof,

Director, Center for Veterinary Medicine.

[FR Doc. 03–12784 Filed 5–21–03; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4818–N–06]

Notice of Proposed Information Collection for Public Comment: Notice of Funding Availability for the Alaskan Native/Native Hawaiian Institutions Assisting Communities (AN/NHIAC) Program

AGENCY: Office of the Assistant Secretary for Policy Development and Research, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below will be submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

DATES: *Comment Due Date:* July 21, 2003.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB Control Number and should be sent to: Reports Liaison Officer, Office of Policy Development and Research, Department of Housing and Urban Development, 451 7th Street, SW., Room 8228, Washington, DC 20410–6000.

FOR FURTHER INFORMATION CONTACT: Susan Brunson, 202–708–3061, ext. 3852 (this is not a toll-free number), for copies of the proposed forms and other available documents.

SUPPLEMENTARY INFORMATION: The Department of Housing and Urban Development will submit the proposed extension of information collection to OMB for review, as required by the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35, as amended).

This notice soliciting comments from members of the public and affected agencies concerning the proposed collection of information to: (1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (3) enhance the quality, utility, and clarity of the information to be collected; and (4) minimize the burden of the collection of information on those who are to respond; including through the use of appropriate automated collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

This notice also lists the following information:

Title of Proposal: Notice of Funding Availability for the Alaskan Native/Native Hawaiian Institutions Assisting Communities (AN/NHIAC) Program.

OMB Control Number: 2528–0206 (exp. 05/31/03).

Description of the Need for the Information and Proposed Use: The information is being collected to select applicants for award in this statutorily created competitive grant program and too monitor performance of grantees to ensure they meet statutory and program goals and requirements.

Agency Form Numbers: HUD 424, HUD 424B, HUD–424C, HUD–424–CB, SFLLL, HUD 2880, HUD 2991, HUD 2990, HUD 2993, and HUD 2994.

Members of the Affected Public: Alaskan Native Institutions (ANI) and Native Hawaiian Institutions (NHI) of higher education that meet the statutory definition established in title III, part A, section 317 of the Higher Education Act of 1965, as amended by the Higher Education Amendments of 1998 (Pub. L. 105–244; enacted October 7, 1998).

Estimation of the total number of hours needed to prepare the information collection including number of respondents, frequency of response, and hours of response: Information pursuant to grant award will be submitted once a year. The following chart details the respondent burden on an annual and semi-annual basis:

	Number of respondents	Total annual responses	Hours per response	Total hours
Applicants	20	20	40	800
Semi-Annual Reports	10	20	6	120
Final Reports	10	10	8	80
Recordkeeping	10	10	5	50
Total			59	1050

Status of the proposed information collection: Pending OMB approval.

Authority: Section 3506 of the Paperwork Act of 1995, 44 U.S.C. chapter 35, as amended.

Dated: May 15, 2003.

Christopher D. Lord,

Deputy Assistant, Secretary for Policy Development.

[FR Doc. 03–12799 Filed 5–21–03; 8:45 am]

BILLING CODE 4210–62–M

DEPARTMENT OF THE INTERIOR

Office of the Secretary

EXXON VALDEZ Oil Spill Trustee Council; Invitation for Proposals

AGENCY: Office of the Secretary, Department of the Interior.

ACTION: Notice.

SUMMARY: The EXXON VALDEZ Oil Spill Trustee Council is asking the public, private organizations, and government agencies to submit proposals for implementation of the Gulf Ecosystem Monitoring and Research Program. The Invitation to Submit Restoration Proposals for Federal Fiscal Year 2004 is available on the Trustee Council Internet site.

DATES: Proposals are due June 16, 2003.

ADDRESSES: EXXON VALDEZ Oil Spill Trustee Council, 441 West 5th Avenue, Suite 500, Anchorage, Alaska 99501.

FOR FURTHER INFORMATION CONTACT: The Trustee Council Office, 907–278–8012 or toll free at 800–478–7745 (in Alaska) or 800–283–7745 (outside Alaska) or via Internet at *http://www.oilspill.state.ak.us.*

SUPPLEMENTARY INFORMATION: Following the EXXON VALDEZ oil spill in March 1989, a Trustee Council of three state and three federal trustees, including the Secretary of the Interior, was formed. The Trustee Council prepared a restoration plan for the injured resources and services within the oil spill area. The restoration plan called for annual work plans identifying projects to accomplish restoration. An

extension of the Restoration Plan, the Gulf Ecosystem Monitoring and Research Program, also requires implementation through annual work plans. Each year proposals for restoration, monitoring, and research projects are solicited from a variety of organizations, including the public.

Willie R. Taylor,

Director, Office of Environmental Policy and Compliance.

[FR Doc. 03–12850 Filed 5–21–03; 8:45 am]

BILLING CODE 4310–RG–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[OR–025–03–1430–EU: G–3–0142]

Realty Action: Sale of Public Land in Harney County, OR

AGENCY: Bureau of Land Management (BLM), Interior.

ACTION: Notice of realty action.

SUMMARY: The following described parcels of public land in Harney County, Oregon, have been found suitable for sale under Sections 203 and 209 of the Federal Land Policy and Management Act of 1976, as amended, (90 Stat. 2750, 43 U.S.C. 1713 and 1719) at not less than their respective appraised market value. All parcels proposed for sale are identified for disposal in the Three Rivers Resource Management Plan. All of the land described is within the Willamette Meridian.

Parcel No.	Legal description	Acres	Market value/minimum bid	Bidding procedures	Designated bidders
OR–57461 ...	T. 20S., R. 35E., sec. 7, E½SE¼; sec. 8, W½SW¼.	160	$24,800	Competitive	None.
OR–57462 ...	T. 21S., R. 31E., sec. 5, lots 5, 6, 7 and 8	109.42	15,900	Competitive	None.
OR–57463 ...	T. 22S., R. 29E., sec. 28, W½SW¼	80	12,800	Competitive	None.
OR–57464 ...	T. 22S., R. 33E., sec. 22, NW¼NW¼	40	3,000	Modified Competitive	Temple and Temple, Lost Springs Ranch, LLC.
OR–57465 ...	T. 22S., R. 33E., sec. 22, SW¼SW¼	40	3,000	Modified Competitive	Temple and Temple, Lost Springs Ranch, LLC, Bailey and Barton.
OR–57466 ...	T. 26S., R. 24E., sec. 34, NW¼NE¼	40	2,600	Competitive	None.
OR–57467 ...	T. 25S., R. 32E., sec. 29, NE¼	160	16,600	Competitive	None.
OR–57468 ...	T. 26S., R. 31E. (North of Malheur Lake), sec. 1, NE¼.	160	11,600	Modified Competitive	Tyler Brothers, Ralph Tice c/o Wallace M. Tice.
OR–57469 ...	T. 26S., R. 32E. (North of Malheur Lake), sec. 6, lot 3.	40.62	3,050	Modified Competitive	Tyler Brothers, Ralph Tice c/o Wallace M. Tice, Bethany Evangelical Free Church c/o Jamie Porter.
OR–57470 ...	T. 26S., R. 32E. (North of Malheur Lake), sec. 6, N½SE¼.	80	5,800	Modified Competitive	Tyler Brothers, Ralph Tice c/o Wallace M. Tice, William D. Cramer c/o Daniel L. Cronin.
OR–57471 ...	T. 26S., R. 30E., (North of Harney Lake), sec. 12, SW¼SW¼; sec. 13, NW¼NW¼.	80	6,000	Competitive	None.
OR–57472 ...	T. 26S., R. 30E., (North of Harney Lake), sec. 15, S½SE¼; sec. 22, NW¼NE¼.	120	8,400	Competitive	None.
OR–57473 ...	T. 26S., R. 30E., (North of Harney Lake), sec. 24, NE¼SE¼.	40	3,000	Competitive	None.
OR–57474 ...	T. 26S., R. 31E. (North of Malheur Lake), sec. 18, lot 4.	39.18	3,150	Competitive	None.
OR–57475 ...	T. 26S., R. 34E sec. 27, N½SW¼; sec. 28, NE¼SE¼.	120	8,400	Modified Competitive	Zachary O. Sword, Nevin and Shirley Thompson, Trustees.
OR–57476 ...	T. 26S., R. 34E., sec. 29, NE¼NE¼	40	3,200	Modified Competitive	Zachary O. Sword, Nevin and Shirley Thompson, Trustees.

Parcel No.	Legal description	Acres	Market value/minimum bid	Bidding procedures	Designated bidders
OR–57477 ...	T. 26S., R. 34E., sec. 29, SW¼NE¼	40	3,200	Modified Competitive	Zachary O. Sword, Nevin and Shirley Thompson, Trustees.

The 17 parcels described above contain 1,389.22 acres in Harney County, Oregon.

The following parcels were originally offered in 2001 and 2002 under Notices of Realty Action published in the **Federal Register** on November 16, 2000 and May 1, 2002. No bids were received and these parcels were subsequently declared unsold under the provisions of those notices. They have been reappraised and are being reoffered competitively.

Parcel No.	Legal description	Acres	Market value/Minimum bid	Bidding procedures	Designated bidders
OR–55323 ...	T. 25S., R. 31E., sec. 1, lots 1 and 2	79.79	$5,600	Competitive	None.
OR–56574 ...	T. 22S., R. 33E., sec. 28, E½	320	40,000	Competitive	None.
OR–56575 ...	T. 27S., R. 34E., sec. 6, lots 3, 4, 5, SE¼NW¼	145.56	21,100	Competitive	None.
OR–56576 ...	T. 27S., R. 34E., sec. 9, SW¼SW¼	40	3,600	Competitive	None.
OR–56577 ...	T. 27S., R. 34E., sec. 21, NE¼SE¼	40	3,200	Competitive	None.
OR–56579 ...	T. 27S., R. 34E., sec. 23, S½SW¼; sec. 26, N½NW¼	160	11,200	Competitive	None.

The six parcels described above contain 785.35 acres in Harney County, Oregon. The total area of these six parcels plus the preceding 17 parcels amount to 2,174.57 acres. The following rights, reservations, and conditions will be included in the conveyances of the land:

All parcels—A reservation for a right-of-way for ditches and canals constructed thereon by the authority of United States.

OR–56574—The sale of this parcel would be subject to a right-of-way for electric distribution line purposes granted to Harney Electric Cooperative (ORE–05183); a right-of-way for electric transmission line purposes granted to Idaho Power Company (ORE–012080); a right-of-way for buried communication cable purposes (OR–54600) and buried fiber optics facilities (OR–54915) granted to CenturyTel; a right-of-way for highway purposes granted to Oregon Department of Transportation (TD–030389); and a right-of-way for buried fiber optics facilities granted to Williams Communications, LLC (OR–54252).

OR–56575—The conveyance document for this parcel would contain a wetland/riparian covenant pursuant to the authority contained in Section (4) of Executive Order 11990 of May 24, 1977. The sale of this parcel would be subject to a right-of-way for public road purposes granted to Harney County (OR–56834).

OR–56576—The sale of this parcel would be subject to a right-of-way for power transmission and distribution line purposes granted to Harney Electric Cooperative (ORE–05183) and a right-of-way for telephone line purposes held by CenturyTel (ORE–018562).

OR–57461—The sale of this parcel would be subject to a right-of-way for electric power transmission and distribution purposes granted to Idaho Power (ORE–0874); a right-of-way for county road purposes granted to Oregon Department of Transportation, on behalf of Harney County (ORE–03347); a right-of-way for buried communication cable purposes granted to CenturyTel of Oregon, Inc. (OR–55250); a right-of-way for road purposes granted to Richard D. Boatwright, Jr. (OR–57058), and a right-of-way for road purposes granted to Charles Dunten (OR–58413).

OR–57462—The sale of this parcel would be subject to a right-of-way for electric power transmission purposes granted to Oregon Trail Electric Cooperative (ORE–016812).

OR–57463—The sale of this parcel would be subject to a right-of-way for road purposes held by Harney County (OR–20557).

OR–57467—The conveyance document for this parcel would contain a wetland/riparian covenant pursuant to the authority contained in Section (4) of Executive Order 11990 of May 24, 1977 and a floodplain covenant pursuant to the authority contained in Section 3(d) of Executive Order 11988 of May 24, 1977.

OR–57468—The conveyance document for this parcel would contain a floodplain covenant pursuant to the authority contained in Section 3(d) of Executive Order 11988 of May 24, 1977.

OR–57469—The conveyance document for this parcel would contain a floodplain covenant pursuant to the authority contained in Section 3(d) of Executive Order 11988 of May 24, 1977.

OR–57470—The conveyance document for this parcel would contain a floodplain covenant pursuant to the authority contained in Section 3(d) of Executive Order 11988 of May 24, 1977.

Access will not be guaranteed to any of the parcels that may be sold, nor will any warranty be made as to the title or use of the property in violation of applicable land use laws and regulations. Each parcel will be sold in "as is" condition. Before submitting a bid, prospective purchasers should check with the appropriate city or county planning department to verify approved uses. All persons, other than the successful bidders, claiming to own unauthorized improvements on the land are allowed 60 days from the date of sale to remove the improvements.

Each of the above described parcels is hereby segregated from appropriation under the public land laws, including the mining laws, until conveyance of the land pending disposition of this action, or until February 17, 2004, whichever occurs first.

Bidding Procedures

Competitive Procedures

The Federal Land Policy and Management Act and its implementing sale regulations (43 CFR part 2710) provide that competitive bidding will be

the general method of selling land supported by factors such as competitive interest, accessibility, and usability of the parcel, regardless of adjacent ownership.

Under competitive procedures the land will be sold to any qualified bidder submitting the highest bid. Bidding will be by sealed bid followed by an oral auction to be held at 2 p.m. PST on Wednesday, August 13, 2003, at the Burns District Office, Bureau of Land Management, 28910 Hwy 20 West, Hines, Oregon.

To qualify for the oral auction bidders must submit a sealed bid meeting the requirements as stated below. The highest valid sealed bid will become the starting bid for the oral auction. Bidding in the oral auction will be in minimum increments of $100. The highest bidder from the oral auction will be declared the prospective purchaser.

If no valid bids are received, the parcel will be declared unsold and offered by unsold competitive procedures on a continuing basis until sold or withdrawn from sale.

Modified Competitive Procedures

Modified competitive procedures are allowed by the regulations (43 CFR 2710.0–6(c)(3)(ii)) to provide exceptions to competitive bidding to assure compatibility with existing and potential land uses.

Under modified competitive procedures the designated bidders identified in the table above will be given the opportunity to match or exceed the apparent high bid.

The apparent high bid will be established by the highest valid sealed bid received in an initial round of public bidding. If two or more valid sealed bids of the same amount are received for the same parcel, that amount shall be determined to be the apparent high bid. The designated bidders are required to submit a valid bid in the initial round of public bidding to maintain their preference consideration. The bid deposit for the apparent high bid(s) and the designated bidders will be retained and all others will be returned.

The designated bidders will be notified by certified mail of the apparent high bid. Where there are two or more designated bidders for a single parcel, they will be allowed 30 days to provide the authorized officer with an agreement as to the division of the property or, if agreement cannot be reached, sealed bids for not less than the apparent high bid. Failure to submit an agreement or a bid shall be considered a waiver of the option to divide the property equitably and forfeiture of the preference consideration. Failure to act by all of the designated bidders will result in the parcel being offered to the apparent high bidder or being declared unsold, if no bids were received in the initial round of bidding.

Unsold Competitive Procedures

Unsold competitive procedures will be used after a parcel has been unsuccessfully offered for sale by competitive or modified competitive procedures.

Unsold parcels will be offered competitively on a continuous basis until sold. Under competitive procedures for unsold parcels the person making the highest valid bid received during the preceding month, and not less than the appraised market value at the time, will be declared the purchaser. Sealed bids will be accepted and held until the second Wednesday of each month at 2 p.m. PST when they will be opened. Bid openings will take place every month until the parcels are sold or withdrawn from sale.

All sealed bids must be submitted to the Burns District Office, no later 2 p.m. PST on Wednesday, August 13, 2003, at the time of the bid opening and oral auction. The outside of bid envelopes must be clearly marked with "BLM Land Sale," the parcel number and the bid opening date. Bids must be for not less than the appraised market value (minimum bid). Separate bids must be submitted for each parcel. Each sealed bid shall be accompanied by a certified check, postal money order, bank draft, or cashier's check made payable to the Department of the Interior—BLM for not less than 20 percent of the amount bid. The bid envelope must also contain a statement showing the total amount bid and the name, mailing address, and phone number of the entity making the bid. A successful bidder for competitive parcels shall make an additional deposit at the close of the auction to bring the total bid deposit up to the required 20 percent of the high bid. Personal checks or cash will be acceptable for this additional deposit only.

Federal law requires that public land may be sold only to either (1) Citizens of the United States 18 years of age or older; (2) corporations subject to the laws of any State or of the United States; (3) other entities such as an association or a partnership capable of holding land or interests therein under the laws of the State within which the land is located; or (4) a State, State instrumentality or political subdivision authorized to hold property. Certifications and evidence to this effect will be required of the purchaser prior to issuance of a patent.

Prospective purchasers will be allowed 180 days to submit the balance of the purchase price. Failure to meet this timeframe shall cause the deposit to be forfeited to the BLM. The parcel will then be offered to the next lowest qualified bidder, or if no other bids were received, the parcel will be declared unsold.

The BLM has determined that each of the above described parcels have no known mineral values, as defined in 43 CFR 2720.0–5(b). A successful bid on a parcel constitutes an application for conveyance of these mineral interests, pertaining to that parcel, under the authority of section 209(b) of the Federal Land Policy and Management Act of 1976. In addition to the full purchase price for each parcel, a nonrefundable fee of $50 will be required from the prospective purchaser in conjunction with the purchase of the mineral interests to be conveyed simultaneously with the purchase and sale of the surface estate.

DATES: On or before July 7, 2003, any person may submit written comments regarding the proposed sale to the Three Rivers Resource Area Field Manager at the address described below. Comments or protests must reference a specific parcel and be identified with the appropriate serial number. In the absence of any objections, this proposal will become the determination of the Department of the Interior.

ADDRESSES: Comments, bids, and inquiries should be submitted to the Three Rivers Resource Area Field Manager, Bureau of Land Management, 28910 Hwy 20 West, Hines, Oregon 97738.

FOR FURTHER INFORMATION CONTACT: Detailed information concerning this public land sale is available on the Internet at <*http://www.or.blm.gov/Burns*> or may be obtained from Joan Suther, Field Manager; Skip Renchler or Holly LaChapelle, Realty Specialists, Three Rivers Resource Area at the above address, phone (541) 573–4400.

Dated: April 8, 2003.

Joan M. Suther,

Three Rivers Resource Area Field Manager.

[FR Doc. 03–12910 Filed 5–19–03; 3:15 pm]

BILLING CODE 4310–33–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[ID–957–1120–BJ]

Idaho: Filing of Plats of Survey

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of filing of plats of surveys.

SUMMARY: The Bureau of Land Management (BLM) has officially filed the plats of survey of the lands described below in the BLM Idaho State Office, Boise, Idaho, effective 9 a.m., on the dates specified.

FOR FURTHER INFORMATION CONTACT: Bureau of Land Management, 1387 South Vinnell Way, Boise, Idaho, 83709–1657.

SUPPLEMENTARY INFORMATION: These surveys were executed at the request of the Bureau of Land Management to meet certain administrative needs of the Bureau of Land Management. The lands we surveyed are:

The plat representing the dependent resurvey of portions of the west boundary and subdivisional lines, the subdivision of section 30, the metes-and-bounds survey of the center line of a strip of land in section 30, and the metes-and-bounds survey of Parcels A, C, and D in section 30, T. 3 N., R. 4 E., Boise Meridian, Idaho, was accepted November 13, 2001.

The plat representing the dependent resurvey of a portion of the subdivision of section 20, and the survey of the 2001 meanders of Crow Island and two unnamed islands in the Snake River, T. 7 N., R. 5 W., Boise Meridian, Idaho, was accepted December 7, 2001.

The plat representing the entire survey record of the dependent resurvey of a portion of the 1910 meander lines of the right bank of the South Fork of the Payette River, and the metes-and-bounds survey of lot 10, in section 20, T. 9 N., R. 4 E., Boise Meridian, Idaho, was accepted June 14, 2002.

The plats constituting the entire survey record of the dependent resurvey of a portion of the subdivisional lines, the subdivision of section 26, and the metes-and-bounds survey of Parcel A and two easements in section 26, in T. 5 N., R. 1 E., Boise Meridian, Idaho, was accepted February 4, 2003.

The plats representing the dependent resurvey of a portion of the Idaho-Washington State Boundary, a portion of the subdivisional lines, and the subdivision of section 24, in T. 46 N., R. 6 W., Boise Meridian, Idaho, were accepted April 1, 2003.

The plat constituting the entire survey record of the dependent resurvey of a portion of the south and west boundaries and a portion of the subdivisional lines, designed to restore the corners in their true original locations according to the best available evidence, and a metes-and-bounds survey of a portion of the Craters of the Moon National Monument in sections 30 and 31, in T. 6 S., R. 27 E., Boise Meridian, Idaho, was accepted April 3, 2003.

The plat representing the dependent resurvey and metes-and-bounds survey of a portion of lot 13, section 31, in T. 2 N., R. 4 W., Boise Meridian, Idaho, was accepted April 14, 2003.

The plat representing the dependent resurvey of a portion of the subdivisional lines, and the 1879 meander lines of the left bank of the Snake River in section 7, and the survey of a fixed and limiting boundary in sections 7 and 18, and the survey of the 2002 meander lines of the left bank of the Snake River in sections 7 and 18, in T. 5 N., R. 38 E., Boise Meridian, Idaho, was accepted April 17, 2003.

SUMMARY: The Bureau of Land Management (BLM) will file the plat of survey of the lands described below in the BLM Idaho State Office, Boise, Idaho, 30 days from the date of publication in the **Federal Register**.

The plat representing the dependent resurvey of portions of the 5½ Standard Parallel North, on the south boundary of Township 26 North, Range 1 East, the subdivisional lines, the boundaries of certain mineral and segregation surveys in sections 11, 12, and 14, the record meanders of the Salmon River in sections 2 and 11, and the subdivision of section 11, and the further subdivision of section 11, and subdivision of section 2, and survey of a portion of the 2000 meanders of the Salmon River in sections 2 and 11, and the Salmon River Scenic Easement boundary line through the S½ of the SE¼ of the NW¼ of section 2, T. 25 N., R. 1 E., Boise Meridian, Idaho, was accepted May 14, 2003.

Dated: May 16, 2003.

Duane E. Olsen,

Chief Cadastral Surveyor for Idaho.

[FR Doc. 03–12835 Filed 5–21–03; 8:45 am]

BILLING CODE 4310–GG–P

INTERNATIONAL TRADE COMMISSION

[USITC SE–03–013]

Sunshine Act Meeting

AGENCY HOLDING THE MEETING: International Trade Commission.

TIME AND DATE: May 29, 2003 at 11 a.m.

PLACE: Room 101, 500 E Street SW., Washington, DC 20436, Telephone: (202) 205–2000.

STATUS: Open to the public.

MATTERS TO BE CONSIDERED:

1. Agenda for future meetings: none.
2. Minutes.
3. Ratification List.
4. Inv. No. 731–TA–1033 (Preliminary) (Hydraulic Magnetic Circuit Breakers from South Africa)—briefing and vote. (The Commission is currently scheduled to transmit its determination to the Secretary of Commerce on May 29, 2003; Commissioners' opinions are currently scheduled to be transmitted to the Secretary of Commerce on or before June 5, 2003.)
5. Outstanding action jackets: none.

In accordance with Commission policy, subject matter listed above, not disposed of at the scheduled meeting, may be carried over to the agenda of the following meeting.

By order of the Commission.

Issued: May 20, 2003.

Marilyn R. Abbott,

Secretary to the Commission.

[FR Doc. 03–13052 Filed 5–20–03; 2:14 pm]

BILLING CODE 7020–02–P

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Under the Comprehensive Environmental Response, Compensation, and Liability Act

Pursuant to 28 CFR 50.7, notice is hereby given that on April 23, 2003, a proposed Consent Decree in *United States and State of Arizona* v. *Arizona Public Service Company*, Civil Action Number 03–0767–PHX–PGR, was lodged with the United States District Court for the District of Arizona.

In the civil action, the United States and the State of Arizona alleged claims against Arizona Public Service Company ("APS") under Section 107 of the Comprehensive Environmental Response, Compensation, and Liability Act ("CERCLA"), 42 U.S.C. 9607, for the recovery of costs incurred in responding to a release or threatened release of hazardous substances at and from the South Indian Bend Wash Superfund Site in Tempe, Arizona (the "Site"). The proposed Consent Decree requires APS to pay the United States $2,320,000 and to pay the Arizona Department of Environmental Quality ("ADEQ") $400,000.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments relating to the Consent Decree. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611, and should refer to *United*

States and State of Arizona v. *Arizona Public Service Company*, DOJ Ref. #90–11–2–413/3.

The Consent Decree may be examined at the Office of the United States Attorney, Two Renaissance Square, 40 N. Central, Suite 1200, Phoenix, Arizona and at U.S. EPA Region 9, 75 Hawthorne Street, San Francisco, CA 94105. During the public comment period, the Consent Decree may also be examined on the following Department of Justice Web site: *http://www.usdoj.gov/enrd/open.html*. A copy of the Consent Decree may also be obtained by mail from the Consent Decree Library, P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611, or by faxing or e-mailing a request to Tonia Fleetwood, *tonia.fleetwood@usdoj.gov*, Fax No. (202) 514–0097, phone confirmation number (202) 514–1547. In requesting a copy from the Consent Decree Library, please enclose a check in the amount of $8.00 (25 cents per page reproduction cost) payable to the U.S. Treasury.

Ellen M. Mahan,

Assistant Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 03–12788 Filed 5–21–03; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Pursuant to the Comprehensive Environmental Response, Compensation and Liability Act

Under Section 122(d)(2) of CERCLA, 42 U.S.C. 9622(d)(2) and 28 CFR 50.7, notice is hereby given that on May 7, 2003, a proposed consent decree in *United States* v. *Tecumseh Products Company*, Civil Action No. 03–C–0401, was lodged with the United States District Court for the Eastern District of Wisconsin.

In this action, the United States sought the implementation of response action and reimbursement of response costs pursuant to the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. 9601, *et seq.*, ("CERCLA"), for costs incurred by the United States in responding to a release or threat of release of hazardous substances in the Upper River section of the Sheboygan River and Harbor Superfund Site in Sheboygan County, Wisconsin (the "Site"). The United States alleges that Tecumseh Products Company ("Tecumseh") arranged for disposal of hazardous substances in the Upper River portion of the Site and is liable for costs incurred by the United States in responding to releases of hazardous substances at the Site pursuant to Section 107(a)(1) of CERCLA. The Consent Decree requires Tecumseh to implement the remedial action for the Upper River portion of the Site selected by the U.S. Environmental Protection Agency in a Record of Decision dated May 12, 2000, and to reimburse the United States at least $2,100,000.00 for response costs incurred in connection with the Site.

The Department of Justice will receive, for a period of thirty (30) days from the date of this publication, comments relating to the proposed consent decree. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, U.S. Department of Justice, P.O. Box 7611, Washington, DC 20044–7611, and should refer to *United States* v. *Tecumseh Products Company*, DOJ Ref. #90–11–2–06440. Commenters may request an opportunity for a public meeting in the affected area, in accordance with Section 7003 of RCRA, 42 U.S.C. § 6973(d).

The proposed consent decree may be examined at the office of the United States Attorney, 517 E. Wisconsin Avenue, Suite 530, Milwaukee, Wisconsin 53202, and the Region 5 Office of the Environmental Protection Agency, 77 West Jackson Boulevard, Chicago, IL 60604. During the public comment period, the proposed consent decree may also be examined on the following Department of Justice Web site, *http://www.usdoj.gov/enrd/open.html*. A copy of the proposed consent decree may also be obtained by mail from the Consent Decree Library, P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611 or by faxing or e-mailing a request to Tonia Fleetwood (*tonia.fleetwood@usdoj.gov*), fax no. (202) 514–0097, phone confirmation number (202) 514–1547. In requesting a copy from the Consent Decree Library, please enclose a check in the amount of $51.00 (25 cents per page reproduction cost) payable to the U.S. Treasury.

William D. Brighton,

Assistant Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 03–12787 Filed 5–21–03; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF JUSTICE

Notice of Lodging of the "VEPCO" Proposed Consent Decree Under the Clean Air Act

Notice is hereby given that on April 21, 2003, a proposed Consent Decree ("proposed Decree") in *United States* v. *Virginia Electric and Power Co. ("VEPCO")*, Civil Action No. 03–517–A, was lodged with the United States District Court for the Eastern District of Virginia.

In this civil enforcement action under the federal Clean Air Act ("Act"), the United States alleges that VEPCO—an electric utility—failed to comply with certain requirements of the Act intended to prevent deterioration of air quality. The complaint alleges that for some of the units at two of its coal-fired, energy generation stations—Mount Storm (located in northeastern West Virginia) and Chesterfield (located in Chesterfield County, Virginia)—VEPCO failed to seek permits prior to making major modifications to units at those stations and also failed to install appropriate pollution control devices to reduce emissions of air pollutants from units at those stations. The complaint seeks both injunctive relief and civil penalty.

The proposed Decree lodged with the Court addresses units at the Mount Storm and Chesterfield Stations as well as units at these other energy generation stations owned or operated by VEPCO: Bremo Power Station (in Fluvanna County, Virginia), Chesapeake Energy Center (near Chesapeake, Virginia), Clover Power Station (in Halifax County, Virginia), North Branch Power Station (in northeastern West Virginia), Possum Point Power Station (about 25 miles south of Washington, D.C.), and Yorktown Power Station (in Yorktown, Virginia).

The proposed Decree requires installation, upgrading, and operation of pollution control devices on a number of the units at these various VEPCO generation stations on a schedule running through 2012. Some of the control and emission requirements and conditions specified by the proposed Decree cover particular units while others address the aggregate performance of the units subject to the proposed Decree.

VEPCO also will carry out under the Decree a series of environmental mitigation projects. They are described in the proposed Decree and are valued at about $13.9 million. VEPCO also will pay the United States a civil penalty of $5.3 million.

Joining in the proposed Decree as co-plaintiffs are the States of New York, New Jersey, Connecticut, and West Virginia, as well as the Commonwealth of Virginia.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments relating to the proposed Decree. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611, and should refer to, *United States* v. *Virginia Electric and Power Co.*, D.J. Ref. 90–5–2–1–07122.

The proposed Decree may be examined at the offices of the United States Attorney, Eastern Division of Virginia, 2100 Jamieson Avenue, Alexandria, Virginia, and at the offices of U.S. EPA, Region 3, 1650 Arch Street, Philadelphia, PA 19103–2029.

During the public comment period, the proposed Decree may also be examined on the following Department of Justice Web site, *http://www.usdoj.gov/enrd/open.html*. A copy of the proposed Decree may also be obtained by mail from the consent Decree Library, P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611 or by faxing or e-mailing a request to Tonia Fleetwood (*tonia.fleetwood@usdoj.gov*), fax no. (202) 514–0097, phone confirmation number (202) 514–1547. In requesting a copy from the Consent Decree Library, please enclose a check in the amount of $29.25 (25 cents per page reproduction cost) payable to the U.S. Treasury.

Thomas A. Mariani, Jr.,

Assistant Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 03–12789 Filed 5–21–03; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF JUSTICE

Federal Bureau of Investigation

Agency Information Collection Activities: Proposed Collection; Comments Requested

ACTION: 30-day Notice of Information Collection Under Review: Extension of a currently approved collection, Bioterrorism Preparedness Act: Entity/Individual Information.

The Department of Justice, Federal Bureau of Investigation has submitted the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995. The proposed information collection is published to obtain comments from the public and affected agencies. This proposed information collection was previously published in the **Federal Register** Volume 68, Number 42, page 10268 on March 4, 2003, allowing for a 60-day comment period.

The purpose of this notice is to allow for an additional 30 days for public comment until June 23, 2003. This process is conducted in accordance with 5 CFR 1320.10.

Written comments and/or suggestions regarding the items contained in this notice, especially the estimated public burden and associated response time, should be directed to the Office of Management and Budget, Office of Information and Regulation Affairs, Attention: Department of Justice Desk Officer, Washington, DC 20503.

Request written comments and suggestions from the public and affected agencies concerning the proposed collection of information. your comments should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agencies estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology; *e.g.*, permitting electronic submission of responses.

Overview of this information:

(1) *Type of information collection:* Extension of a currently approved collection.

(2) *The title of the form/collection:* Bioterrorism Preparedness Act: Entity/Individual Information.

(3) The agency form number, if any, and the applicable component of the department sponsoring the collection: FD–961 (2–24–03), Federal Bureau of Investigation, Department of Justice.

(4) *Affected public who will be asked or required to respond, as well as brief abstract:* Primary: Individuals or households. Other. Business or other for profit; Not-for-profit institutions; State, Local or Tribal Government. The Public Health Security and Bioterrorism Preparedness and Response Act of 2002 is designed to prevent bioterrorism and other public health emergencies. The law requires entities and persons possessing agents or toxins deemed to be a severe threat to human, animal or plant health, or to animal or plant products, to be registered with the Secretary of Agriculture or Secretary of Health and Human Resources. Under the act the Attorney General has the responsibility to determine whether any individual is a restricted person, as that term is defined in 18 U.S.C. 175b(d) or is reasonably suspected by any Federal law enforcement or intelligence agency of committing a Federal crime of terrorism, or having knowing involvement with an organization that engages in domestic or international terrorism, or with any other organization that engages in intentional crimes of violence; or an agent of a foreign power. The Attorney General delegated this responsibility to the Federal Bureau of Investigation (FBI). The collection of this information is necessary for the FBI to make the required determination.

(5) An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond/reply. It is estimated 20,000 entities/individuals will complete the information in approximately 30 minutes.

(6) An estimate of the total public burden (in hours) associated with the collection: The estimated public burden associated with this application is 10,000 hours.

If additional information is required contact: Robert B. Briggs, Department Clearance Officer, Information Management and Security Staff, Justice Management Division, United States Department of Justice, 601 D Street NW., Patrick Henry Building, Suite 1600, NW., Washington, DC 20530.

Dated: May 14, 2003.

Robert B. Briggs,

Department Clearance Officer, Department of Justice.

[FR Doc. 03–12782 Filed 5–21–03; 8:45 am]

BILLING CODE 4410–02–M

DEPARTMENT OF LABOR

Employee Benefits Security Administration

[Application No. D–11004, et al.]

Proposed Exemptions; Deutsche Bank AG (DB)

AGENCY: Employee Benefits Security Administration, Labor.

ACTION: Notice of proposed exemptions.

SUMMARY: This document contains notices of pendency before the Department of Labor (the Department) of proposed exemptions from certain of the prohibited transaction restrictions of the Employee Retirement Income Security Act of 1974 (the Act) and/or the Internal Revenue Code of 1986 (the Code).

Written Comments and Hearing Requests

All interested persons are invited to submit written comments or requests for a hearing on the pending exemptions, unless otherwise stated in the notice of proposed exemption, within 45 days from the date of publication of this **Federal Register** notice. Comments and requests for a hearing should state: (1) the name, address, and telephone number of the person making the comment or request, and (2) the nature of the person's interest in the exemption and the manner in which the person would be adversely affected by the exemption. A request for a hearing must also state the issues to be addressed and include a general description of the evidence to be presented at the hearing.

ADDRESSES: All written comments and requests for a hearing (at least three copies) should be sent to the Employee Benefits Security Administration (EBSA), Office of Exemption Determinations, Room N–5649, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210. Attention: Application No. _____, stated in each notice of proposed exemption. Interested persons are also invited to submit comments and/or hearing requests to EBSA via e-mail or FAX. Any such comments or requests should be sent either by e-mail to: *"moffitt.betty@dol.gov"*, or by FAX to (202) 219–0204 by the end of the scheduled comment period. The applications for exemption and the comments received will be available for public inspection in the Public Documents Room of the Employee Benefits Security Administration, U.S. Department of Labor, Room N–1513, 200 Constitution Avenue, NW., Washington, DC 20210.

Notice to Interested Persons

Notice of the proposed exemptions will be provided to all interested persons in the manner agreed upon by the applicant and the Department within 15 days of the date of publication in the **Federal Register**. Such notice shall include a copy of the notice of proposed exemption as published in the **Federal Register** and shall inform interested persons of their right to comment and to request a hearing (where appropriate).

SUPPLEMENTARY INFORMATION: The proposed exemptions were requested in applications filed pursuant to section 408(a) of the Act and/or section 4975(c)(2) of the Code, and in accordance with procedures set forth in 29 CFR part 2570, subpart B (55 FR 32836, 32847, August 10, 1990). Effective December 31, 1978, section 102 of Reorganization Plan No. 4 of 1978, 5 U.S.C. App. 1 (1996), transferred the authority of the Secretary of the Treasury to issue exemptions of the type requested to the Secretary of Labor. Therefore, these notices of proposed exemption are issued solely by the Department.

The applications contain representations with regard to the proposed exemptions which are summarized below. Interested persons are referred to the applications on file with the Department for a complete statement of the facts and representations.

Deutsche Bank AG (DB), located in Germany, with affiliates in New York, New York and other locations; and JPMorgan Chase Bank, located in New York, New York; (collectively, with their Affiliates, the Applicants). (Application Nos. D–11004 and D–11106).

Proposed Exemption

Under the authority of section 408(a) of the Employee Retirement Income Security Act of 1974 (the Act) and section 4975(c)(2) of the Internal Revenue Code of 1986 (the Code) and in accordance with the procedures set forth in 29 CFR part 2570, subpart B (55 FR 32836, 32847, August 10, 1990), the Department is considering amending the following individual prohibited transaction exemptions (PTEs) and authorization made pursuant to PTE 96–62 (61 FR 39988, July 31, 1996—referred to herein as "EXPRO"): PTE 2000–25 (65 FR 35129, June 1, 2000), issued to Morgan Guaranty Trust Company of New York and J.P. Morgan Investment Management, Inc., and PTE 2000–27, issued to the Chase Manhattan Bank (65 FR 35129, June 1, 2000), and Final Authorization Number (FAN) 2001–19E, issued to DB and its Affiliates (June 23, 2001).[1]

Section I—Transactions

If the proposed exemption is granted, the restrictions of section 406 of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) of the Code, shall not apply to the purchase of any securities by the Asset Manager on behalf of employee benefit plans (Client Plans), including Client Plans investing in a pooled fund (Pooled Fund), for which the Asset Manager acts as a fiduciary, from any person other than the Asset Manager or an affiliate thereof, during the existence of an underwriting or selling syndicate with respect to such securities, where the Affiliated Broker-Dealer is a manager or member of such syndicate (an "affiliated underwriter transaction" (AUT)), and/or where an Affiliated Trustee serves as trustee of a trust that issued the securities (whether or not debt securities) or serves as indenture trustee of securities that are debt securities (an "affiliated trustee transaction" (ATT)), provided that the following conditions are satisfied:

(a) The securities to be purchased are—

(1) Either:

(i) Part of an issue registered under the Securities Act of 1933 (the 1933 Act) (15 U.S.C. 77a *et. seq.*) or, if exempt from such registration requirement, are (A) issued or guaranteed by the United States or by any person controlled or supervised by and acting as an instrumentality of the United States pursuant to authority granted by the Congress of the United States, (B) issued by a bank, (C) exempt from such registration requirement pursuant to a Federal statute other than the 1933 Act, or (D) are the subject of a distribution and are of a class which is required to be registered under section 12 of the Securities Exchange Act of 1934 (the 1934 Act) (15 U.S.C. 781), and the issuer of which has been subject to the reporting requirements of section 13 of that Act (15 U.S.C. 78m) for a period of at least 90 days immediately preceding the sale of securities and has filed all reports required to be filed thereunder with the Securities and Exchange Commission (SEC) during the preceding 12 months; or

(ii) Part of an issue that is an "Eligible Rule 144A Offering," as defined in SEC rule 10f–3 (17 CFR 270.10f–3(a)(4)). Where the Eligible Rule 144A Offering is of equity securities, the offering syndicate shall obtain a legal opinion regarding the adequacy of the disclosure in the offering memorandum;

(2) Purchased prior to the end of the first day on which any sales are made, at a price that is not more than the price paid by each other purchaser of securities in that offering or in any concurrent offering of the securities, except that —

(i) If such securities are offered for subscription upon exercise of rights, they may be purchased on or before the fourth day preceding the day on which the rights offering terminates; or

(ii) If such securities are debt securities, they may be purchased at a price that is not more than the price paid by each other purchaser of securities in that offering or in any concurrent offering of the securities and may be purchased on a day subsequent to the end of the first day on which any sales are made, provided that the interest rates on comparable debt securities offered to the public subsequent to the first day and prior to the purchase are less than the interest rate of the debt securities being purchased; and

(3) Offered pursuant to an underwriting or selling agreement under which the members of the syndicate are committed to purchase all of the securities being offered, except if—

(i) Such securities are purchased by others pursuant to a rights offering; or

(ii) Such securities are offered pursuant to an over-allotment option.

(b) The issuer of such securities has been in continuous operation for not less than three years, including the operation of any predecessors, unless —

(1) Such securities are non-convertible debt securities rated in one of the four highest rating categories by at least one nationally recognized statistical rating organization, *i.e.*, Standard & Poor's Rating Services, Moody's Investors Service, Inc., Duff & Phelps Credit Rating Co., or Fitch IBCA, Inc., or their successors (collectively, the Rating Organizations); or

(2) Such securities are issued or fully guaranteed by a person described in paragraph (a)(1)(i)(A) of this exemption; or

(3) Such securities are fully guaranteed by a person who has issued securities described in (a)(1)(i)(B), (C), or (D), and who has been in continuous operation for not less than three years, including the operation of any predecessors.

(c) The amount of such securities to be purchased by the Asset Manager on behalf of a Client Plan does not exceed three percent of the total amount of the securities being offered. Notwithstanding the foregoing, the aggregate amount of any securities purchased with assets of all Client Plans (including Pooled Funds) managed by the Asset Manager (or with respect to which the Asset Manager renders investment advice within the meaning of 29 CFR 2510.3–21(c)) does not exceed:

(1) 10 percent of the total amount of any equity securities being offered;

(2) 35 percent of the total amount of any debt securities being offered that are rated in one of the four highest rating categories by at least one of the Rating Organizations; or

(3) 25 percent of the total amount of any debt securities being offered that are rated in the fifth or sixth highest rating categories by at least one of the Rating Organizations; and

(4) If purchased in an Eligible Rule 144A Offering, the total amount of the securities being offered for purposes of determining the percentages for (1)-(3) above is the total of:

(i) The principal amount of the offering of such class sold by underwriters or members of the selling syndicate to "qualified institutional buyers" (QIBs), as defined in SEC rule 144A (17 CFR 230.144A(a)(1)); plus

(ii) The principal amount of the offering of such class in any concurrent public offering.

(d) The consideration to be paid by the Client Plan in purchasing such securities does not exceed three percent of the fair market value of the total net assets of the Client Plan, as of the last day of the most recent fiscal quarter of the Client Plan prior to such transaction.

(e) The transaction is not part of an agreement, arrangement, or understanding designed to benefit the Asset Manager or an affiliate.

(f) If the transaction is an AUT, the Affiliated Broker-Dealer does not receive, either directly, indirectly, or through designation, any selling concession or other consideration that is based upon the amount of securities purchased by Client Plans pursuant to this exemption. In this regard, the Affiliated Broker-Dealer may not receive, either directly or indirectly, any compensation that is attributable to the fixed designations generated by purchases of securities by the Asset Manager on behalf of its Client Plans.

(g) If the transaction is an AUT,

(1) The amount the Affiliated Broker-Dealer receives in management, underwriting or other compensation is not increased through an agreement, arrangement, or understanding for the purpose of compensating the Affiliated Broker-Dealer for foregoing any selling concessions for those securities sold pursuant to this exemption. Except as described above, nothing in this paragraph shall be construed as precluding the Affiliated Broker-Dealer from receiving management fees for serving as manager of the underwriting or selling syndicate, underwriting fees for assuming the responsibilities of an underwriter in the underwriting or selling syndicate, or other consideration that is not based upon the amount of securities purchased by the Asset Manager on behalf of Client Plans pursuant to this exemption; and

(2) The Affiliated Broker-Dealer shall provide to the Asset Manager a written certification, signed by an officer of the Affiliated Broker-Dealer, stating the amount that the Affiliated Broker-Dealer received in compensation during the past quarter, in connection with any offerings covered by this exemption, was not adjusted in a manner inconsistent with section I, paragraphs (e), (f), or (g), of this exemption.

(h) In the case of a single Client Plan, the covered transaction is performed under a written authorization executed in advance by an independent fiduciary (Independent Fiduciary) of the Client Plan.

(i) Prior to the execution of the written authorization described in paragraph (h) above, the following information and materials (which may be provided electronically) must be provided by the Asset Manager to the Independent Fiduciary of each single Client Plan:

(1) A copy of the notice of proposed exemption and of the final exemption, if granted, as published in the **Federal Register**; and

(2) Any other reasonably available information regarding the covered transactions that the Independent Fiduciary requests.

(j) Subsequent to an Independent Fiduciary's initial authorization permitting the Asset Manager to engage in the covered transactions on behalf of a single Client Plan, the Asset Manager will continue to be subject to the requirement to provide any reasonably available information regarding the covered transactions that the Independent Fiduciary requests.

(k) In the case of existing plan investors in a Pooled Fund, such Pooled Fund may not engage in any covered

[1] *See also* PTE 2000–26 (65 FR 35129, June 1, 2000), issued to Goldman, Sachs & Co., and its Affiliates; PTE 2000–29 (65 FR 35129, June 1, 2000), issued to Morgan Stanley Dean Witter & Co. and its Affiliates; FAN 2001–24E (October 6, 2001), issued to Barclays Global Investors N.A., Barclays Capital, Inc. and their Affiliates; and FAN 2002–09E (September 14, 2002), issued to The TCW Group, Inc., and its Affiliates. The Department will separately consider similar amendments to those exemptions and authorizations upon the receipt of applications or submissions relating thereto from such entities.

transactions pursuant to this exemption, unless the Asset Manager has provided the written information described below to the Independent Fiduciary of each plan participating in the Pooled Fund. The following information and materials (which may be provided electronically) shall be provided not less than 45 days prior to the Asset Manager's engaging in the covered transactions on behalf of the Pooled Fund pursuant to the exemption:

(1) A notice of the Pooled Fund's intent to purchase securities pursuant to this exemption and a copy of the notice of proposed exemption and of the final exemption, if granted, as published in the **Federal Register**;

(2) Any other reasonably available information regarding the covered transactions that the Independent Fiduciary requests; and

(3) A termination form expressly providing an election for the Independent Fiduciary to terminate the plan's investment in the Pooled Fund without penalty to the plan. Such form shall include instructions specifying how to use the form. Specifically, the instructions will explain that the plan has an opportunity to withdraw its assets from the Pooled Fund for a period at least 30 days after the plan's receipt of the initial notice described in subparagraph (1) above and that the failure of the Independent Fiduciary to return the termination form by the specified date shall be deemed to be an approval by the plan of its participation in covered transactions as a Pooled Fund investor. Further, the instructions will identify the Asset Manager and its Affiliated Broker-Dealer and/or Affiliated Trustee and state that this exemption may be unavailable unless the Independent Fiduciary is, in fact, independent of those persons. Such fiduciary must advise the Asset Manager, in writing, if it is not an "independent Fiduciary," as that term is defined in section II(g) of this exemption.

For purposes of this paragraph, the requirement that the authorizing fiduciary be independent of the Asset Manager shall not apply in the case of an in-house plan sponsored by the Applicants or an affiliate thereof. However, in-house plans must notify the Asset Manager, as provided above.

(l) In the case of a plan whose assets are proposed to be invested in a Pooled Fund subsequent to implementation of the procedures to engage in the covered transactions, the plan's investment in the Pooled Fund is subject to the prior written authorization of an Independent Fiduciary, following the receipt by the Independent Fiduciary of the materials described in subparagraphs (1) and (2) of paragraph (k). For purposes of this paragraph, the requirement that the authorizing fiduciary be independent of the Asset Manager shall not apply in the case of an in-house plan sponsored by the Applicants or an affiliate thereof.

(m) Subsequent to an Independent Fiduciary's initial authorization of a plan's investment in a Pooled Fund that engages in the covered transactions, the Asset Manager will continue to be subject to the requirement to provide any reasonably available information regarding the covered transactions that the Independent Fiduciary requests.

(n) At least once every three months, and not later than 45 days following the period to which such information relates, the Asset Manager shall:

(1) Furnish the Independent Fiduciary of each single Client Plan, and of each plan investing in a Pooled Fund, with a report (which may be provided electronically) disclosing all securities purchased on behalf of that Client Plan or Pooled Fund pursuant to the exemption during the period to which such report relates, and the terms of the transactions, including:

(i) The type of security (including the rating of any debt security);

(ii) The price at which the securities were purchased;

(iii) The first day on which any sale was made during this offering;

(iv) The size of the issue;

(v) The number of securities purchased by the Asset Manager for the specific Client Plan or Pooled Fund;

(vi) The identity of the underwriter from whom the securities were purchased;

(vii) In the case of an AUT, the spread on the underwriting;

(viii) In the case of an ATT, the basis upon which the Affiliated Trustee is compensated;

(ix) The price at which any such securities purchased during the period were sold; and

(x) The market value at the end of such period of each security purchased during the period and not sold;

(2) Provide to the Independent Fiduciary in the quarterly report (i) in the case of AUTs, a representation that the Asset Manager has received a written certification signed by an officer of the Affiliated Broker-Dealer, as described in paragraph (g)(2), affirming that, as to each AUT covered by this exemption during the past quarter, the Affiliated Broker-Dealer acted in compliance with section I, paragraphs (e), (f), and (g) of this exemption, and that copies of such certifications will be provided to the Independent Fiduciary upon request, and (ii) in the case of ATTs, a representation of the Asset Manager affirming that, as to each ATT, the transaction was not part of an agreement, arrangement or understanding designed to benefit the Affiliated Trustee;

(3) Disclose to the Independent Fiduciary that, upon request, any other reasonably available information regarding the covered transactions that the Independent Fiduciary requests will be provided, including, but not limited to:

(i) The date on which the securities were purchased on behalf of the plan;

(ii) The percentage of the offering purchased on behalf of all Client Plans and Pooled Funds; and

(iii) The identity of all members of the underwriting syndicate;

(4) Disclose to the Independent Fiduciary in the quarterly report, any instance during the past quarter where the Asset Manager was precluded for any period of time from selling a security purchased under this exemption in that quarter because of its status as an affiliate of the Affiliated Broker-Dealer or of an Affiliated Trustee and the reason for this restriction;

(5) Provide explicit notification, prominently displayed in each quarterly report, to the Independent Fiduciary of a single Client Plan, that the authorization to engage in the covered transactions may be terminated, without penalty, by the Independent Fiduciary on no more than five days' notice by contacting an identified person; and

(6) Provide explicit notification, prominently displayed in each quarterly report, to the Independent Fiduciary of a Client Plan investing in a Pooled Fund, that the Independent Fiduciary may terminate investment in the Pooled Fund, without penalty, by contacting an identified person.

(o) Each single Client Plan shall have total net assets with a value of at least $50 million. In addition, in the case of a transaction involving an Eligible Rule 144A Offering on behalf of a single Client Plan, each such Client Plan shall have at least $100 million in securities, as determined pursuant to SEC rule 144A (17 CFR 230.144A).[2] In the case of a Pooled Fund, the $50 million requirement will be met if 50 percent or more of the units of beneficial interest in such Pooled Fund are held by plans having total net assets with a value of at least $50 million. For purchases involving an Eligible Rule 144A Offering on behalf of a Pooled Fund, the $100 million requirement will be met if 50 percent or more of the units of beneficial interest in such Pooled Fund are held by plans having at least $100 million in assets and the Pooled Fund itself qualifies as a QIB, as determined pursuant to SEC rule 144A (17 CFR 230.144A(a)(F)).

For purposes of the net asset tests described above, where a group of Client Plans is maintained by a single employer or controlled group of employers, as defined in section 407(d)(7) of the Act, the $50 million net asset requirement or the $100 million net asset requirement may be met by aggregating the assets of such Client Plans, if the assets are pooled for investment purposes in a single master trust.

(p) The Asset Manager qualifies as a "qualified professional asset manager" (QPAM), as that term is defined under part V(a) of Prohibited Transaction Exemption 84–14 (49 FR 9494, 9506, March 13, 1984) and, in addition, has, as of the last day of its most recent fiscal year, total client assets under its management and control in excess of $5 billion and shareholders' or partners' equity in excess of $1 million.

(q) No more than 20 percent of the assets of a Pooled Fund, at the time of a covered transaction, are comprised of assets of employee benefit plans maintained by the Asset Manager, the Affiliated Broker-Dealer, the Affiliated Trustee or an affiliate thereof for their own employees, for which the Asset Manager, the Affiliated Broker-Dealer, or an affiliate exercises investment discretion.

(r) The Asset Manager, and the Affiliated Broker-Dealer, as applicable, maintain, or cause to be maintained, for a period of six years from the date of any covered transaction such records as are necessary to enable the persons described in paragraph (s) of this proposed exemption to determine whether the conditions of this exemption have been met, except that—

(1) No party in interest with respect to a Client Plan, other than the Asset Manager and the Affiliated Broker-Dealer or Affiliated Trustee, as applicable, shall be subject to a civil penalty under section 502(i) of the Act or the taxes imposed by section 4975(a) and (b) of the Code, if such records are not maintained, or not available for examination, as required by paragraph (s); and

(2) This record-keeping condition shall not be deemed to have been violated if, due to circumstances beyond the control of the Asset Manager or the Affiliated Broker-Dealer, or Affiliated Trustee, as applicable, such records are lost or destroyed prior to the end of the six-year period.

(s)(1) Except as provided in subparagraph (2) of this paragraph (s) and notwithstanding any provisions of subsections (a)(2) and (b) of section 504 of the Act, the records referred to in paragraph (r) are unconditionally available at their customary location for examination during normal business hours by—

(i) Any duly authorized employee or representative of the Department, the Internal Revenue Service, or the SEC; or

(ii) Any fiduciary of a Client Plan, or any duly authorized employee or representative of such fiduciary; or

(iii) Any employer of participants and beneficiaries and any employee organization whose members are covered by a Client Plan, or any authorized employee or representative of these entities; or

(iv) Any participant or beneficiary of a Client Plan, or duly authorized employee or representative of such participant or beneficiary;

(2) None of the persons described in paragraphs (s)(1)(ii)—(iv) shall be authorized to examine trade secrets of the Asset Manager or the Affiliated Broker-Dealer, or the Affiliated Trustee or commercial or financial information which is privileged or confidential; and

(3) Should the Asset Manager or the Affiliated Broker-Dealer or the Affiliated Trustee refuse to disclose information on the basis that such information is exempt from disclosure pursuant to paragraph (s)(2) above, the Asset Manager shall, by the close of the thirtieth (30th) day following the request, provide a written notice advising that person of the reasons for the refusal and that the Department may request such information.

(t) An indenture trustee whose affiliate has, within the prior 12 months, underwritten any securities for an obligor of the indenture securities will resign as indenture trustee if a default occurs upon the indenture securities.

Section II—Definitions

(a) The term "Asset Manager" means any asset management affiliate of the Applicants (as "affiliate" is defined in paragraph (c)) that meets the requirements of this proposed exemption.

(b) The term "Affiliated Broker-Dealer" means any broker-dealer affiliate of the Applicants (as "affiliate" is defined in paragraph (c)) that meets the requirements of this exemption. Such Affiliated Broker-Dealer may participate in an underwriting or selling syndicate as a manager or member. The term "manager" means any member of an underwriting or selling syndicate who, either alone or together with other members of the syndicate, is authorized to act on behalf of the members of the syndicate in connection with the sale and distribution of the securities being offered, or who receives compensation from the members of the syndicate for its services as a manager of the syndicate.

(c) The term "affiliate" of a person includes:

(1) Any person directly or indirectly through one or more intermediaries, controlling, controlled by, or under common control with such person;

(2) Any officer, director, partner, employee, or relative (as defined in section 3(15) of the Act) of such person; and

(3) Any corporation or partnership of which such person is an officer, director, partner, or employee.

(d) The term "control" means the power to exercise a controlling influence over the management or policies of a person other than an individual.

(e) The term "Client Plan" means an employee benefit plan that is subject to the fiduciary responsibility provisions of the Act and whose assets are under the management of the Asset Manager, including a plan investing in a Pooled Fund (as "Pooled Fund" is defined in paragraph (f) below).

(f) The term "Pooled Fund" means a common or collective trust fund or pooled investment fund maintained by the Asset Manager.

(g)(1) The term "Independent Fiduciary" means a fiduciary of a Client Plan who is unrelated to, and independent of, the Asset Manager, the Affiliated Broker-Dealer and the Affiliated Trustee. For purposes of this exemption, a Client Plan fiduciary will be deemed to be unrelated to, and independent of, the Asset Manager, the Affiliated Broker-Dealer and the Affiliated Trustee if such fiduciary represents that neither such fiduciary, nor any individual responsible for the decision to authorize or terminate authorization for transactions described in section I, is an officer, director, or

[2] SEC rule 10f-3(a)(4), 17 CFR 270.10f-3(a)(4), states that the term "Eligible Rule 144A Offering" means an offering of securities that meets the following conditions:

(i) The securities are offered or sold in transactions exempt from registration under section 4(2) of the Securities Act of 1933 (15 U.S.C. 77d(d)), rule 144A thereunder (§ 230.144A of this chapter), or rules 501–508 thereunder (§§ 230.501–230–508 of this chapter);

(ii) The securities are sold to persons that the seller and any person acting on behalf of the seller reasonably believe to include qualified institutional buyers, as defined in § 230.144A(a)(1) of this chapter; and

(iii) The seller and any person acting on behalf of the seller reasonably believe that the securities are eligible for resale to other qualified institutional buyers pursuant to § 230.144A of this chapter.

highly compensated employee (within the meaning of section 4975(e)(2)(H) of the Code) of the Asset Manager, the Affiliated Broker-Dealer or the Affiliated Trustee and represents that such fiduciary shall advise the Asset Manager if those facts change.

(2) Notwithstanding anything to the contrary in this section II(g), a fiduciary is not independent if:

(i) Such fiduciary directly or indirectly controls, is controlled by, or is under common control with the Asset Manager, the Affiliated Broker-Dealer or the Affiliated Trustee;

(ii) Such fiduciary directly or indirectly receives any compensation or other consideration from the Asset Manager, the Affiliated Broker-Dealer or the Affiliated Trustee for his or her own personal account in connection with any transaction described in this exemption;

(iii) Any officer, director, or highly compensated employee (within the meaning of section 4975(e)(2)(H) of the Code) of the Asset Manager, responsible for the transactions described in section I, is an officer, director, or highly compensated employee (within the meaning of section 4975(e)(2)(H) of the Code) of the Client Plan sponsor or of the fiduciary responsible for the decision to authorize or terminate authorization for transactions described in section I. However, if such individual is a director of the Client Plan sponsor or of the responsible fiduciary, and if he or she abstains from participation in (A) the choice of the Plan's investment manager/adviser and (B) the decision to authorize or terminate authorization for transactions described in section I, then section II (g)(2)(iii) shall not apply.

(3) The term "officer" means a president, any vice president in charge of a principal business unit, division or function (such as sales, administration or finance), or any other officer who performs a policy-making function for the entity.

(4) In the case of existing Client Plans in a Pooled Fund, at the time the Asset Manager provides such Client Plans with initial notice pursuant to this exemption, the Asset Manager will notify the fiduciaries of such Client Plans that they must advise the Asset Manager, in writing, if they are not independent, within the meaning of this section II (g).

(h) The term "security" shall have the same meaning as defined in section 2(36) of the Investment Company Act of 1940 (the 1940 Act), as amended (15 U.S.C. 80a–2(36)(1996)). For purposes of this exemption, mortgage-backed or other asset-backed securities rated by a Rating Organization will be treated as debt securities.

(i) The term "Eligible Rule 144A Offering" shall have the same meaning as defined in SEC rule 10f–3(a)(4) (17 CFR 270.10f–3(a)(4)) under the 1940 Act.

(j) The term "qualified institutional buyer" or "QIB" shall have the same meaning as defined in SEC rule 144A (17 CFR 230.144A(a)(1)) under the 1933 Act.

(k) The term "Rating Organizations" means Standard & Poor's Rating Services, Moody's Investors Service, Inc., Duff & Phelps Credit Rating Co., or Fitch IBCA, Inc., or their successors.

(l) The term "Affiliated Trustee" means the Applicants and any bank or trust company affiliate of the Applicants (as "affiliate" is defined in paragraph (c)(1)) that serves as trustee of a trust that issues securities which are asset-backed securities or as indenture trustee of securities which are either asset-backed securities or other debt securities that meet the requirements of this proposed exemption. For purposes of this proposed exemption, other than section I(t), performing services as custodian, paying agent, registrar or in similar ministerial capacities is also considered serving as trustee or indenture trustee.

Preamble

This document contains a notice of pendency before the Department of a proposed individual exemption which, if granted, would amend: PTE 2000–25, issued to Morgan Guaranty Trust Company of New York and J.P. Morgan Investment Management, Inc. (65 FR 35129, June 1, 2000), PTE 2000–27, issued to the Chase Manhattan Bank (65 FR 35129, June 1, 2000), and FAN 2001–19E, issued to DB and its Affiliates (June 23, 2001), pursuant to EXPRO. The exemptions, and EXPRO authorization, respectively, permit purchases of securities by the Applicants' asset management affiliate on behalf of employee benefit plans for which such asset management affiliate is a fiduciary, from underwriting or selling syndicates where the Applicants' broker-dealer affiliate participates as a manager or syndicate member. If granted, this proposed amendment would permit a plan's asset manager to acquire securities, on behalf of the plan, in an initial public offering (IPO) when it or its affiliate is the trustee, indenture trustee or a similar functionary for the trust which issued the securities. Thus, the relief requested is designed to cover acquisitions of asset-backed securities by plans where the plans' asset manager is affiliated with such a trustee for an issuing trust, as described herein. If adopted, this proposed amendment would affect the participants and beneficiaries of the plans involved in such transactions and the fiduciaries with respect to such plans.

Summary of Facts and Representations

The facts and representations contained in the applications are summarized below. Interested persons are referred to the applications on file with the Department (*see* D–11004 and D–11106) for the complete representations of the Applicants.

1. DB is a German banking corporation and a leading commercial bank, with total assets of 928,994 million euros and shareholders equity of 43,683 million euros, as of 2001. DB and its Affiliates (including the New York Branch of Deutsche Bank (DBNY)) provide a wide range of banking, fiduciary, record keeping, custodial, brokerage and investment services to corporations, institutions, governments, employee benefit plans, governmental retirement plans and private investors worldwide. DB is regulated by the Bundesanstalt fuer Finanzdienstleistungsaufsicht (the "BAFin") in Germany.

2. Deutsche Bank Trust Company Americas ("DBTCA") is a New York banking corporation and member bank of the U.S. Federal Reserve System. Deutsche Asset Management, Inc. ("DeAM Inc.") is an investment adviser registered under the Investment Advisors Act of 1940. Both DBTCA and DeAM Inc. are indirect wholly-owned subsidiaries of DB. DBTCA and DeAM Inc., among other DB Affiliates, provide investment management and investment advisory services to plans covered by the Act. Hereinafter, DB, DBTCA, and DeAM Inc., and their other current and future asset management affiliates, shall be collectively referred to as the "Asset Manager" when discussing DB's activities relating to investment management or investment advisory services. Collectively, assets under management by DB and its Affiliates through collective trusts, separately managed accounts, and mutual funds currently exceed $585 billion.

3. Deutsche Banc Securities, Inc., a wholly-owned subsidiary of DB, is a registered broker-dealer (hereinafter, collectively with any other current and future broker-dealer affiliates, the "Affiliated Broker-Dealer") and regulated by the United States Securities & Exchange Commission ("SEC") under Section 15 of the Securities Exchange Act of 1934. The Affiliated Broker-Dealer serves, and engages in transactions with, plans covered by the Act.

4. J.P. Morgan Chase & Co. ("J.P. Morgan Chase") is a financial holding company incorporated under Delaware law in 1968 and headquartered in New York, New York. As of December 31, 2001, after giving effect to the merger referred to below, J.P. Morgan Chase was the second largest banking institution in the United States, with approximately $694 billion in assets and approximately $41 billion in stockholders' equity. On December 31, 2000, J.P. Morgan & Co. Incorporated merged with and into The Chase Manhattan Corporation. Upon completion of the merger, The Chase Manhattan Corporation changed its name to "J.P. Morgan Chase & Co."

J.P. Morgan Chase is a global financial services firm with operations in over 60 countries, and has as its principal bank subsidiaries: JPMorgan Chase Bank, a New York banking corporation headquartered in New York City, which was formed in November 2001 by the merger of The Chase Manhattan Bank and Morgan Guaranty Trust Company of New York; and Chase Manhattan Bank USA, National Association, headquartered in Delaware.

The principal non-bank subsidiary of J.P. Morgan Chase is its investment bank subsidiary, J.P. Morgan Securities Inc. ("J.P. Morgan Securities"). J.P. Morgan Investment Management Inc. ("JPMIM") is a wholly-owned subsidiary of J.P. Morgan Chase. J.P. Morgan Fleming Asset Management (USA) Inc. (JPMFAM), which was formerly known as Chase Asset Management, Inc., is a wholly-owned subsidiary of JPMorgan Chase Bank.

The activities of J.P. Morgan Chase are internally organized, for management reporting purposes, into five major businesses:

- Investment Banking, which includes securities underwriting and financial advisory, trading, mergers and acquisitions advisory, and corporate lending and syndication businesses;
- Investment Management and Private Banking, which includes an asset management business, including mutual funds; institutional money management and cash management businesses; and a private bank, which provides wealth management solutions for a global client base of individuals and families;
- Treasury & Securities Services, which provides information and transaction processing services, and moves securities and cash daily for its wholesale clients. Treasury & Securities Services includes custody, cash management, investor and institutional trust service businesses;
- J.P. Morgan Partners, a large and diversified private equity investment firm, with total funds under management in excess of $30 billion; and
- Retail and Middle Market Financial Services, which serves over 30 million consumers, small business and middle-market customers nationwide. Retail and Middle Market Financial Services offers a wide variety of financial products and services, including consumer banking, credit cards, mortgage services and consumer finance services, through a diverse array of distribution channels, including the internet and branch and ATM networks.

Requested Exemption

5. The Applicants seek to amend existing individual exemptions (*i.e.*, PTE 2000–25 (JP Morgan); PTE 2000–27 (Chase)) and an authorization made pursuant to PTE 96–62 a/k/a/ EXPRO (*i.e.*, FAN 2001–19E (DB)) that deal with the situation where an Asset Manager seeks to purchase securities for an employee benefit plan, in an initial offering, where the Asset Manager's Affiliate is a manager or member of the underwriting syndicate for such securities. Such a transaction is described herein as an Affiliated Underwriter Transaction or "AUT". The amendment proposed by the Applicants would add relief for two other transactions: (i) Where the Asset Manager is related to the trustee of the trust that issued the securities being underwritten or the indenture trustee of securities that are debt securities but its Affiliated Broker-Dealer is not part of the underwriting syndicate (*i.e.*, an Affiliated Trustee Transaction or "ATT"); and (ii) where the Asset Manager is related both to the trustee and to a member or manager of the underwriting syndicate (*i.e.*, both an "AUT" and an "ATT" at the same time).

Therefore, the Applicants represent that the exemption, if granted, could be used in any of the following circumstances:

(i) Where an Asset Manager seeks to purchase securities (equities, debt, or asset-backed securities, regardless of whether the latter are treated for tax purposes as equity or debt) in an initial offering where an Affiliate of the Asset Manager is a manager or member of the underwriting syndicate but where, in the case of a debt security or an asset-backed security, the trustee or indenture trustee is an unaffiliated entity;

(ii) Where an Asset Manager seeks to purchase securities (debt or asset-backed securities, regardless of whether the latter are treated for tax purposes as equity or debt) in an initial offering where an Affiliate of the Asset Manager is the trustee or indenture trustee but where no member or manager of the underwriting syndicate is an Affiliate of the Asset Manager; or

(iii) Where an Asset Manager seeks to purchase securities (debt or asset-backed securities, regardless of whether the latter are treated for tax purposes as equity or debt) in an initial offering where an Affiliate of the Asset Manager is both the trustee or indenture trustee and a manager or member of the underwriting syndicate.

In such instances involving an "AUT", the exemption (if granted) would permit an Asset Manager to purchase for its Client Plans, or Pooled Funds, securities in an initial public offering (*i.e.*, an IPO) from underwriting or selling syndicates in which the Affiliated Broker-Dealer participates as a manager or member. In such instances involving an "ATT", DB or JPMorgan Chase Bank or an Affiliate of either, will act as a trustee, indenture trustee, or similar functionary (collectively, a "Trustee") with respect to the issuer of the securities (*i.e.*, a trust). The Applicants state that all such purchases of securities, whether in an "AUT" or "ATT" or both, would be made from an underwriter or broker-dealer other than the Affiliated Broker-Dealer and that the Affiliated Broker-Dealer would not receive any selling concessions with respect to the securities sold to Client Plans. Thus, the proposed exemption would not cover any purchases of securities for a plan by an Asset Manager directly from the Asset Manager's Affiliate.[3]

6. The Applicants represent that where the Affiliated Broker-Dealer is a member of an underwriting or selling syndicate, the Asset Manager generally makes purchases of securities for its Client Plans in compliance with part III of PTE 75–1, 40 FR 50845 (October 31, 1975). PTE 75–1, part III, provides a class exemption, under certain conditions, for a plan fiduciary to purchase securities from an underwriting or selling syndicate of which the fiduciary or an affiliate is a member. However, relief under PTE 75–1 is unavailable if the fiduciary or its affiliate is a manager of the underwriting or selling syndicate.

7. PTE 2000–25, PTE 2000–27 and FAN 2001–19E expanded the relief

[3] With respect to possible acquisitions of asset-backed securities that could be made by plans in the secondary market, where the plans' asset manager has an affiliate that acts as a sub-servicer for the issuing trust, *see* DOL Adv. Op. 99–03A (January 25, 1999).

afforded under PTE 75–1 to, among other things, situations where the Affiliated Broker-Dealer is a manager of the underwriting or selling syndicate. However, neither PTE 75–1, PTE 2000–25, PTE 2000–27 nor FAN 2001–19E currently addresses the situation where the fiduciary or its affiliate serves as Trustee with respect to a trust that is the issuer of the securities. Such trusts are normally associated with so-called asset-backed securities (ABS). ABS are usually issued as certificates representing an undivided interest in a trust which holds a portfolio of assets (*e.g.*, secured consumer receivables or credit instruments that bear interest).[4]

With respect to the types of Trustees that would be covered by the proposed exemption, the Applicants state that in asset-backed securities, which are structured as pass-through securities, there is generally a trustee of the pool of assets. In certain transactions, such as offerings of collateralized bond obligations (CBOs), there may also be an indenture trustee to hold the debt obligation of the obligor. In more traditional public debt offerings, there is generally only an indenture trustee, who holds the debt obligation of the obligor, holds any assets pledged as collateral to secure payment of the debt obligation, makes required payments and keeps records, and in the event of a default, acts for the note holders. The Applicants represent that the functions and obligations of an indenture trustee are aligned with the interests of the note holders because such a trustee is generally appointed only to perform such ministerial functions (*i.e.*, hold collateral, maintain records, and make payments when due). In this regard, the proposed exemption would also cover situations where an Asset Manager's Affiliate serves as a custodian, paying agent, registrar or other similar ministerial capacities (see Definition of "Affiliated Trustee" in section II(l) above).

8. The Applicants state that the Affiliated Broker-Dealer is frequently involved in offerings of ABS and other securities where the Asset Manager or its Affiliate serves as a Trustee for the trust which issues such securities. The inability of the Asset Manager to purchase ABS or other securities for its Client Plans in such cases can be detrimental to those accounts because the accounts can lose important fixed-income investment opportunities that are relatively less expensive or qualitatively better than other available opportunities in such securities.

9. The Applicants represent that the frequency of such offerings of ABS or other securities results from consolidation in the banking industry and the attendant reduction in the number of banks participating in the corporate trust business. Many factors that have made participation in the trust business less attractive to banks have contributed to this trend. On the income side, these factors include competitive pressure on pricing corporate trust services and loss of transactional fees and traditional "float" income due to the growth in book entry securities. On the expense side, the Applicants represent that the cost of entry into the corporate trust business and the cost of remaining competitive in the business have increased dramatically. This increase includes both technological and personnel costs which are necessary to remain competitive. The cost increase is particularly acute in the structured finance sector of the corporate trust business, where both systems and staff need to have the capability of supporting increasingly complex transactions.

10. The Applicants represent that equally significant are the changes in the securities underwriting business, including increased participation by banks and bank affiliates, and consolidation within the industry. In 1990, Morgan Guaranty was the only bank in the corporate trust business that also had a significant underwriting affiliate. By 2000, four of the top ten underwriters for structured finance transactions, such as ABS, had affiliated corporate trust businesses. Eight of the top ten trustees of trusts issuing ABS, a group with a combined market share of over 76 percent in 2000, were affiliates of underwriters active in the structured finance sector.[5]

11. The Applicants represent that currently most providers of corporate trust and related services in the structured finance marketplace are large banks that have the requisite staff and systems resources to efficiently serve the various types of ABS that are common to this marketplace. Most of these same banks, particularly those that are profitable and well capitalized, have expanded into the securities underwriting business, including underwriting of structured finance transactions. The Applicants represent that not only will plan investors be disadvantaged if banks and their affiliates that underwrite securities continue to be precluded from providing trustee services, but, further, it is clearly not in the best interest of plan investors to eliminate those banks—often the most competent in the servicing of structured finance transactions—from the pool of available corporate trust service providers.

12. The Applicants state that the Trustee in a structured finance transaction for ABS, while involved in complex calculations and reporting, typically does not perform any discretionary functions. Such a Trustee operates as a stakeholder and strictly in accordance with the explicit terms of the governing agreements, so that the intent of the crafters of the transaction may be carried out. These functions are essentially ministerial and include establishing accounts, receiving funds, making payments, and issuing reports, all in a predetermined manner. Unlike trustees for corporate or municipal debt, Trustees in structured finance transactions for ABS need not assume discretionary functions to protect the interests of debt holders in the event of default or bankruptcy because structured finance entities are designed to be bankruptcy remote vehicles. The Applicants represent that there is no "issuer" outside the structured transaction to pursue for repayment of the debt. The Trustee's role is defined by a contract-explicit structure that spells out the actions to be taken upon the happening of specified events. The Applicants state that there is no opportunity (or incentive) for the Trustee in a structured finance transaction, by reason of its affiliation with an underwriter, asset manager, or otherwise, to take or not to take actions that might benefit the underwriter or asset manager to the detriment of plan investors.

With respect to offerings of more traditional public debt securities that are not part of a structured finance transaction, the Applicants state that an indenture trustee may have more discretion when the issuer of the securities is not bankruptcy remote.[6] In such instances, indenture trustees generally exercise meaningful discretion only in the context of a default, at which time the indenture trustee has the duty to act for the bondholders, in a manner consistent with the interests of investing plans (and other investors) and not with the interests of the issuer. In such situations, an indenture trustee may be an affiliate of an underwriter for the securities. In the event of a default, the duty of an indenture trustee in pursuing the bondholders' rights against the issuer might conflict with the indenture trustee's other business interests. However, the Applicants represent that under the Trust Indenture Act of 1939 (the Trust Indenture Act), an indenture trustee whose affiliate has, within the prior 12 months, underwritten any securities for an obligor of the indenture securities generally must resign as indenture trustee if a default occurs upon the indenture securities. Thus, the Applicants maintain that this requirement and other provisions of the Trust Indenture Act are designed to protect bondholders from conflicts of interest to which an indenture trustee may be subject.[7]

13. According to the Applicants, the role of the underwriter in a structured financing for a series of ABS involves, among other things, assisting the sponsor or originator of the applicable receivables or other assets in structuring the contemplated transaction. The Trustee becomes involved later in the process, after the principal parties have agreed on the essential components, to review the proposed transaction from the limited standpoints of technical workability and potential Trustee liability. After the issuance of securities to plan investors in a structured financing, while the Trustee performs its role as Trustee over the life of the transaction, the underwriter of the securities has no further role in the transaction. In addition, the Trustee has no opportunity to take or not take action, or to use information in ways that might advantage the underwriter to the detriment of plan investors. The Applicants state that an underwriter, in order to protect its reputation, clearly wants the transaction to succeed as it was structured, which includes the Trustee performing in a manner independent of the underwriter.

14. The Applicants represent that, in many offerings of ABS or other securities, the Trustee's fee is a fixed dollar amount that does not depend on the size of the offering. In such cases, the Asset Manager has no conflict of interest in an ATT because it cannot increase the Trustee's fee by causing Client Plans to participate in the offering. Where the Trustee's fee in an ATT is a portion of the principal amount of outstanding securities to be offered, the Asset Manager could conceivably cause Client Plans to participate to affect the size of the offering and thus the Trustee's fee.[8] The Applicants further represent that the protective conditions of the requested exemption (*e.g.*, the requirement of advance approval by an independent fiduciary and reporting of the basis for the Trustee's fee) render this possibility remote.

In this regard, the Applicants state that the present conditions of the proposed exemption, which are based on the prior individual exemptions granted by the Department for an "AUT", impose adequate safeguards as well for an "ATT" in order to prevent possible abuse. First, there are significant limitations on the quantity of securities that the Asset Manager may acquire for a Client Plan, meaning not only that there will be significant limitations on the ability of the Asset Manager to affect the fees of its Affiliate, but also insuring that significant numbers of independent investors also decided that the securities were an appropriate purchase. Second, the Asset Manager must obtain the consent of an independent fiduciary to engage in these transactions. Third, regular reporting of the subject transactions to an independent fiduciary will take place. Fourth, an independent fiduciary must be provided information on how securities purchased under the proposed exemption actually performed. Finally, the consent of the independent fiduciary may be revoked if it suspects that purchases by the Asset Manager have been motivated by a desire to generate fees for its Affiliated Trustee.

Investments in Offered Securities

15. The Applicants represent that the Asset Manager makes investment decisions on behalf of, or renders investment advice to, its Client Plans in accordance with the governing document of the particular Client Plan or Pooled Fund and the guidelines and objectives established in the investment management or advisory agreement. Since the Client Plans are covered by Title I of the Act, such investment decisions are also subject to the fiduciary responsibility provisions of the Act.[9]

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[4] For a discussion of prohibited transactions under the Act and exemptions relating to a plan's acquisition and holding of ABS, interested persons should review PTE 2002–41 (67 FR 54487, August 22, 2002) and the so-called "Underwriter Exemptions" listed therein, as well as PTE 2002–19 (67 FR 14979, March 28, 2002), which amended three of the Underwriter Exemptions granted to J.P. Morgan Chase and certain Affiliates prior to the general amendment to the other Underwriter Exemptions provided by PTE 2002–41.

Thus, the proposed exemption, if granted, would provide relief for prohibited transactions relating to a plan's acquisition and holding of ABS where a Plan's Asset Manager is affiliated with the Trustee of an issuing trust for a series of ABS (*i.e.*, an ATT). However, other prohibited transactions that may be involved with the plan's investment in ABS would have to be covered by an existing Underwriter Exemption (absent any other applicable exemption), including amendments relating thereto as described in PTEs 2002–19 and 2002–41. Interested persons should also review the Department's regulations defining "plan assets" for purposes of plan investments (*see* 29 CFR 2510.3–101, Definition of "plan assets"—plan investments).

The Department notes that a fiduciary or other party in interest desiring relief afforded by one or the other of these exemptions would have to ensure that the applicable conditions of the appropriate exemption are met. Thus, for example, if the securities sold in an underwriting are asset-backed securities, both the proposed exemption and the existing exemptions involving asset-backed securities referred to above may be relevant for the contemplated transactions. However, it should be noted that the party seeking the relief offered by a particular exemption must ensure that the conditions of the exemption have been met.

[5] Under the Gramm-Leach-Bliley Act, signed into law by the President on November 12, 1999, certain provisions of the Glass-Steagall Act and the Bank Holding Company Act of 1956, as amended, are repealed. The Department notes that the effect of such law will likely be further consolidation of the financial services industry. The new law will facilitate cross-ownership and control among bank holding companies and securities firms through the creation of "financial holding companies" that will be permitted to engage in a broad range of financial and related activities, including underwriting and dealing activities.

[6] The amount of discretion possessed by an indenture trustee will depend on the terms of the particular indenture, and factual issues, such as whether a default has occurred.

[7] The Applicants submit that the Trust Indenture Act addresses analogous circumstances and is thus instructive regarding potential conflicts of interest. DB represents that the Trust Indenture Act was amended in 1990 to correct unnecessarily restrictive provisions that deemed a conflict of interest to exist where an indenture trustee or its affiliate simultaneously acts in other capacities (*e.g.*, underwriter) for the issuer of the debt securities. The Applicants state that the U.S. Congress, at the SEC's instigation, determined that an indenture trustee and its affiliates could act in multiple capacities (including as trustee and underwriter for the issuer) absent a default under the governing trust indenture. According to the Applicants, the premise for this change was that until such a default occurs, there is no risk that the trustee could or would act in any way that might conflict with the interests of security holders (*i.e.*, certificate holders of ABS). One of the reasons for the amendments to the Trust Indenture Act was the recognition of the alternative: withdrawal from the corporate trust business of the largest and best service providers, whose management would undoubtedly be attracted to the greater profitability of underwriting as opposed to the steady, but smaller profits from acting as an indenture trustee. According to the Applicants, the amendment to the Trust Indenture Act has in fact proved to be a benefit to the public in encouraging the best providers of trustee services to continue to provide such services.

[8] The Applicants note that this theoretical conflict is directly addressed by the protective conditions in the Underwriter Exemptions and in this proposed exemption. In this regard, the Applicants state that the exemption (if granted) will apply only to firm commitment underwritings, where, by definition, the entire issue of securities will be purchased, either by the public or the underwriters (*see* section I(a)(3) above). Thus, where the trustee's fee would be a fixed percentage of the total dollar amount of the securities issued in the offering, the amount of the trustee's fee would be, in fact, a fixed dollar amount that would be known to plan investors as part of disclosures made relating to the offering (*e.g.*, the prospectus or private placement memorandum). The Department notes that plan fiduciaries would have a duty to adequately review, and effectively monitor, all fees paid to service-providers, including those paid to parties affiliated with an Asset Manager.

[9] By proposing this exemption, the Department is not expressing an opinion regarding whether any investment decisions or other actions taken by an

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16. The Applicants state that a decision by an Asset Manager for a Client Plan to invest in particular securities is made on the basis of price, value, and the particular Client Plan's investment criteria, not on whether the Trustee with respect to the securities is, or is affiliated with, the Asset Manager. The Applicants further assert that the Asset Manager has little incentive to make purchases for Client Plans in IPOs involving an ATT that are not in the interests of the Client Plans because the Asset Manager's compensation for its services is generally based upon total assets under its management. If the assets under its management do not perform well, the Asset Manager will receive less compensation and could lose the Client Plan's future business.

According to the Applicants, the proposed exemption would be in the interest of a Client Plan's participants and beneficiaries because it will increase investment opportunities for such plans in ABS or other securities. Failure to grant the exemption will unnecessarily restrict the investment opportunities available to Client Plans in fixed-income securities.

17. In summary, the Applicants represent that the proposed transactions will satisfy the statutory criteria for an exemption under section 408(a) of the Act because:

(a) The Client Plans will gain access to desirable investment opportunities;

(b) In each offering, the Asset Manager will purchase the securities for its Client Plans from an underwriter or broker-dealer other than the Affiliated Broker-Dealer;

(c) Conditions similar to those of PTE 75–1, part III, will restrict the types of securities that may be purchased, the types of underwriting or selling syndicates and issuers involved, and the price and timing of the purchases;

(d) The amount of securities that the Asset Manager may purchase on behalf of Client Plans will be subject to percentage limitations;

(e) The Affiliated Broker-Dealer will not be permitted to receive, either directly, indirectly, or through designation, any selling concessions with respect to the securities sold to the Asset Manager;

(f) Prior to any purchase of securities, the Asset Manager will make the required disclosures to an Independent Fiduciary of each Client Plan and obtain written authorization for such transaction (*i.e.*, an ATT);

(g) The Asset Manager will provide regular reporting to an Independent Fiduciary of each Client Plan with respect to all securities purchased pursuant to the exemption, if granted, including all ATTs;

(h) Each Client Plan participating in these transactions will be subject to a minimum size requirement of at least $50 million ($100 million for "Eligible Rule 144A Offerings"), with certain exceptions for Pooled Funds;

(i) The Asset Manager must have total assets under management in excess of $5 billion and shareholders' or partners' equity in excess of $1 million; and

(j) The Trustee will be unable to subordinate the interests of the investing Client Plans to those of the Asset Manager.

For a complete discussion of the facts and representations supporting the Department's decision to grant the original exemptions for JPMorgan Chase Bank and its Affiliates (*i.e.*, PTEs 2000–25 and 2000–27) for AUTs, interested persons should review the notice of proposed exemption for Morgan Guaranty Trust of New York, *et al.*, published in the **Federal Register** on February 8, 2000 (65 FR 6229).

Copies of all documents relating thereto are available for public inspection and may be obtained by interested persons from the Public Documents Room, Employee Benefits Security Administration, U.S. Department of Labor, Room N–1513, 200 Constitution Avenue, NW., Washington, DC 20210.

Interested persons should request File Numbers D–10119 and D–10120, and D–10779 with respect to the application for JPMorgan Chase Bank (formerly, Morgan Guaranty Trust of New York and The Chase Manhattan Bank). With regard to FAN 2001–19E for DB and its Affiliates, interested persons should request File Number E–00226.

Notice to Interested Persons: The Applicants represent that because those potentially interested Client Plans that may invest in securities, involving either an AUT or an ATT (or both), cannot all be identified, the only practical means of notifying such Client Plans of this proposed exemption is by the publication of this notice in the **Federal Register**. Comments and requests for a hearing must be received by the Department not later than 30 days from the date of publication of this notice of proposed exemption in the **Federal Register**.

Asset Manager regarding the acquisition and holding of ABS or other securities in an ATT would be consistent with its fiduciary obligations under part 4 of title I of the Act. In this regard, section 404 of the Act requires, among other things, that a plan fiduciary act prudently, solely in the interest of the plan's participants and beneficiaries, and for the exclusive purpose of providing benefits to participants and beneficiaries when making decisions on behalf of a plan.

FOR FURTHER INFORMATION CONTACT: Gary Lefkowitz of the Department, telephone (202) 693–8546. (This is not a toll-free number). IBEW Local No. 1 Health and Welfare Fund, (the Welfare Fund) and IBEW Local No. 1, Apprenticeship and Training Fund, (the Training Fund; collectively, the Funds or the Applicants), located in St. Louis, MO. (Application Nos. L–11155 and L–11156, respectively.)

Proposed Exemption

The Department is considering granting an exemption under the authority of section 408(a) of the Act (or ERISA) and in accordance with the procedures set forth in 29 CFR part 2570, subpart B (55 FR 32836, 32847, August 10, 1990). If the exemption is granted, the restrictions of section 406(a) of the Act shall not apply to the lease of certain classroom space and supplemental facilities (the Lease) by the Welfare Fund to the Training Fund, a party in interest with respect to the Welfare Fund.

The proposed exemption is subject to the following conditions:

(1) The terms of the Lease are at least favorable to the Welfare Fund and the Training Fund as those obtainable in an arm's length transaction with an unrelated party.

(2) Qualified, independent appraisers have determined the initial amount of the Lease payments.

(3) A qualified, independent fiduciary, The Philip Company (TPC), has approved the Lease and has agreed to monitor the terms of the exemption, at all times, on behalf of the Welfare Fund.

(4) The independent fiduciary agrees to take whatever actions are necessary and proper to enforce the Welfare Fund's rights under the Lease and to protect the participants and beneficiaries of the Welfare Fund.

(5) The rental payments under the Lease are adjusted once every five years by the independent fiduciary to ensure that such Lease payments are not greater than or less than the fair market rental value of the leased space.

(6) The fair market rental amount for the leased space, at no time, will exceed 25 percent of the assets of either Fund, including any improvements that are constructed thereon.

(7) The independent fiduciary and the Board of Trustees of the Welfare Fund (the Welfare Fund Trustees) have determined that the Lease is an appropriate investment for the Welfare Fund and is in the best interest of the Welfare Fund's participants and beneficiaries.

(8) The Board of Trustees of the Training Fund (the Training Fund Trustees) has determined that the Lease transaction is an appropriate investment for the Training Fund and is in the best interest of the Training Fund's participants and beneficiaries.

Summary of Facts and Representations

1. The Welfare Fund, which operates under a formal Trust Agreement, is a collectively-bargained, multiemployer joint welfare plan. The Welfare Fund provides medical and related benefits to union electricians and their families. The Welfare Fund was established by Local 1, of the International Brotherhood of Electrical Workers, AFL–CIO (Local 1), a labor organization, and the St. Louis Chapter, of the National Electrical Contractors Association (St. Louis Chapter, NECA), an employer association.

The benefits provided by the Welfare Fund are funded by contributions made by the employers pursuant to collective bargaining agreements between Local 1 and the St. Louis Chapter, NECA. As of December 31, 2001, the Welfare Fund had net assets available for benefits of $87,890,891 based upon audited financial statements.[10] As of April 30, 2003, the Welfare Fund had 4,782 participants. The Welfare Fund's operations are located at 3260 Hampton Avenue, St. Louis, Missouri.

2. The Training Fund, which is administered under a formal Trust Agreement, is a collectively-bargained, multiemployer joint apprenticeship training plan. The Training Fund was established by Local 1 and the St. Louis Chapter, NECA. The Training Fund provides training and educational benefits to electrical apprentices and journeymen. The benefits are funded by contributions made by the employers to the Training Fund pursuant to collective bargaining agreements between Local 1 and the St. Louis Chapter, NECA. The Training Fund is a party in interest with respect to the Welfare Fund because employees of the Training Fund are participants in the Welfare Fund. As of December 31, 2002, the Training Fund had net assets available for benefits of $4,998,407 based upon audited financial statements.[11] As of April 30, 2003, the Training Fund had 3,267 participants. The Training Fund's present facility is located at 2300 Hampton Avenue, St. Louis, Missouri (the 2300 Hampton Avenue Building).

3. The Welfare Fund is administered by six trustees. Three of the Welfare Fund Trustees are appointed by Local 1 while the remaining three Welfare Fund Trustees have been appointed by the St. Louis Chapter, NECA. The Local 1 appointed Welfare Fund Trustees are Messrs. Stephen P. Schoemehl, James Reinheimer and Mathew Lampe. The St. Louis Chapter, NECA appointed trustees of the Welfare Fund are Messrs. Douglas R. Martin, Robert Kaemmerlen and Eric Aschinger.

The Training Fund is also administered by six trustees, three of whom are appointed by Local 1, and three of whom are appointed by the St. Louis Chapter, NECA. The Local 1 appointed Training Fund Trustees are Messrs. Stephen P. Schoemehl, Thomas E. George, and Dan King. The St. Louis Chapter, NECA appointed Training Fund Trustees are Messrs. Douglas R. Martin, T. Michael Fogarty, and Stephen J. Kohnen. As noted herein, Messrs. Stephen P. Schoemehl and Douglas Martin are common Trustees to both Funds.

4. The IBEW–NECA Service Center (the Service Center), which is a "not for profit" Missouri corporation, is a party in interest with respect to the Welfare Fund because it is an employer whose employees participate in such Fund. The Board of Directors of the Service Center are appointed by the Business Manager of Local 1 and the St. Louis Chapter, NECA. The Service Center provides employee benefit plan administration to approximately 17 welfare and pension funds, including the Funds. The largest group of employee benefits funds administered by the Service Center were established by Local 1 and the St. Louis Chapter, NECA pursuant to collective bargaining. The Service Center also administers employee benefit funds established by Local 257, IBEW, and the St. Louis Chapter, NECA, and a pension fund established by the Illinois Chapter, NECA and several locals of the IBEW. The Service Center's costs of administration are allocated among the various employee benefit funds that the Service Center administers.

The Service Center's sole administrative facility is located at 3260 Hampton Avenue, St. Louis, Missouri. There, the Service Center leases portions of three separate two-story buildings (the 3260 Hampton Avenue Buildings) from the Local 1, IBEW Pension Benefit Trust Fund (the Pension Fund), which is the owner of the 3260 Hampton Avenue Buildings. The Pension Fund is one of the employee benefit plans administered by the Service Center. The three 3260 Hampton Avenue Buildings comprise a total of 12,600 square feet of space. Of this total, the Service Center leases 9,300 square feet of space in these premises.[12] Two unrelated tenants occupy the remaining space in the 3260 Hampton Avenue Buildings.

The Welfare Fund is administered by the Service Center in the 3260 Hampton Avenue Buildings. Of the 9,300 square feet of space leased by the Service Center, employees of the Service Center perform work for the Welfare Fund within approximately 3,965 square feet of space.

The parking facilities at the 3260 Hampton Avenue Buildings are limited with a total of 45 spaces, of which 13 spaces are leased to the two outside tenants. There is no convenient overflow parking at the 3260 Hampton Avenue Buildings.

5. Under section 4.05 of the Welfare Fund Trust Agreement, the Welfare Fund Trustees are authorized to invest in real estate. Therefore, on September 26, 2002, the Welfare Fund Trustees signed a contingent sales contract for the purchase of a two-story, concrete block building, with office and training center facilities, located at 5735 Elizabeth Avenue, St. Louis, Missouri (the 5735 Elizabeth Avenue Building) with the owner, the Plumbers' and Pipefitters' Welfare Educational Fund, an unrelated party. Following the initial planning meetings, Messrs. Schoemehl and Martin, who are the common Trustees of the Welfare Fund and the Training Fund, did not participate in the decisions to purchase the 5735 Elizabeth Avenue Building or to lease it, in accordance with the Lease described herein.

Under the terms of the contingent sales contract, the Welfare Fund must satisfy the purchaser's contingencies prior to the last day of the applicable contingency period. The contingencies to be satisfied contemplate the Welfare Fund (a) obtaining any and all inspections and assessment reports pertaining to the 5735 Elizabeth Avenue Building; (b) obtaining a commitment for title insurance; (c) obtaining a survey of the 5735 Elizabeth Avenue Building

[10] According to the Applicants, the Welfare Fund's 2002 audit report has not been completed. However, draft balance sheets for this Fund show net assets available for benefits of $91,586,030 as of December 31, 2002, and $89,305,694, as of March 31, 2003.

[11] Based on an unaudited financial statement, the Training Fund had net assets available for benefits of $4,832,184.44 as of March 31, 2003.

[12] As noted above, the Pension Fund currently leases portions of its 3260 Hampton Avenue Buildings to the Service Center, a party in interest with respect to the Pension Fund. The Applicants represent that the current lease satisfies the terms and conditions of Prohibited Transaction Exemptions (PTEs) 76–1 and 77–10 (41 FR 12740, March 26, 1976 and 42 FR 33918, July 1, 1977, respectively). However, the Department expresses no opinion herein on whether such lease satisfies the terms and conditions of these class exemptions.

by a licensed Missouri land surveyor; (d) obtaining verification that the present zoning and deed restrictions of the 5735 Elizabeth Avenue Building will permit the Welfare Fund's intended commercial use and development; (e) reviewing and approving all documents and contracts pertaining to the 5735 Elizabeth Avenue Building; (f) receiving evidence satisfactory to the Welfare Fund in all respects as to the economic feasibility of acquiring, developing, and improving the 5735 Elizabeth Building; and (g) obtaining, from the Department, an individual exemption from the Act's prohibited transactions rules in order to engage in the subject Lease of a portion of the 5735 Elizabeth Avenue Building by the Welfare Fund to the Training Fund.

The relevant terms of the proposed sale contemplate that the 5735 Elizabeth Avenue Building will be sold to the Welfare Fund for $1,070,000 on an "as is" basis. The sale will take place approximately 30 days from the date the Department publishes the notice granting the requested exemption in the **Federal Register**.

6. Under section 3.03(a)(3) of the Training Fund Trust Agreement, the Training Fund Trustees are authorized to enter into a lease of buildings related to the training program. In this regard, the Applicants represent that the Training Fund requires overflow classroom and lab space at a location which is conveniently located to the Training Fund's 2300 Hampton Avenue Building. The Applicants state that the lease of the second floor of the 5735 Elizabeth Avenue Building would present an attractive opportunity for the Training Fund to acquire overflow classroom and lab space at a location that is one block away from the Training Fund's existing facility in the 2300 Hampton Avenue Building, and close to the Local 1 office.

The Training Fund Trustees represent that the Training Fund cannot meet current and anticipated demand for training programs at the 2300 Hampton Avenue Building. This is because the 2300 Hampton Avenue Building is located on a landlocked parcel. The Training Fund Trustees also state that constructing on the existing land parcel would be disruptive and costly for the Training Fund. Furthermore, the Training Fund Trustees maintain that leaving the existing facility at 2300 Hampton Avenue would not be an option for the Training Fund because it owns the property and, as of 1999, renovations costing $1,600,000 were made to the building.

7. The Applicants state that the Welfare Fund and its administrator, the Service Center, also require additional space for claims administration offices. The Applicants assert that the first floor of the 5735 Elizabeth Avenue Building will present an opportunity to expand and consolidate the Service Center's administrative offices on a single floor at a location that is convenient to many participants because of its proximity to the Training Fund and Local 1, one block apart in distance. The Applicants represent that the proposed lease of office space between the Welfare Fund and the Service Center, a participating employer, will be subject to the exemptive relief provided under PTEs 76–1 and 77–10. The Applicants further explain that it is the parties' intention that the Service Center Lease will comply with the terms and conditions of these class exemptions.[13] Therefore, the Applicants do not request additional administrative exemptive relief from the Department regarding such Lease.

8. Accordingly, with respect to the second floor of the 5735 Elizabeth Avenue Building, the Applicants request an administrative exemption from the Department that will permit, if granted, the Welfare Fund to lease classroom space and supplemental facilities to the Training Fund. The exemption transaction and related transactions will be structured as follows:

(a) The Welfare Fund will purchase the 5735 Elizabeth Avenue Building for a purchase price of $1,070,000, contingent upon, among other things, the Department granting this exemption;

(b) The Welfare Fund and the Training Fund will enter into the subject Lease for classroom space and supplemental facilities on the second floor of the 5735 Elizabeth Avenue Building; and

(c) The Welfare Fund and the Service Center will enter into the Service Center Lease on the first floor of the 5735 Elizabeth Avenue Building in a manner that is designed to comply with PTEs 76–1 and 77–10.

9. The construction costs in renovating the 5735 Elizabeth Avenue Building are estimated at $1,503,934, with an estimated additional $115,000 in professional costs related to architectural, legal, and appraisal services.[14] The Training Fund will contribute $426,207 to fund its allocated share of the second floor construction costs. This will result in a total net cost to the Welfare Fund of $2,262,727 for the purchase price and renovation costs of the 5735 Elizabeth Avenue Building. However, such costs will not exceed 5 percent of the assets of the Welfare Fund.

10. The second floor Lease of the 5735 Elizabeth Avenue Building to the Training Fund is for 8,309 square feet in "white box" condition, with renovations completed to bring the second floor into compliance with applicable building codes.[15] Initially, the Training Fund's base rent was set at $10.50 per square foot [16] based upon an independent appraisal (the Appraisal) of the property that was performed on November 20, 2002 by Messrs. Edward W. Dinan, MAI, CRE and Mark B. Baffa, Appraiser/Analyst, who are qualified, independent appraisers (the Appraisers), employed by Dinan Real Estate Advisors of St. Louis, Missouri. (*See* Representation 14 for further details about the Appraisal.) The Appraisers concluded that the market rent for the first floor Service Center Lease was $14.50 per square foot, and for the second floor Training Fund Lease, $10.50 per square foot. The $10.50 per square foot rental amount was based on the assumption that the Welfare Fund would fund the full $426,207 of construction costs for the renovation and any rehabilitation of the second floor of the 5735 Elizabeth Avenue Building. However, the Training Fund Trustees decided to

[13] The Welfare Fund Trustees represent that the Service Center Lease will satisfy the terms and conditions of PTEs 76–1 and 77–10. However, the Department expresses no opinion herein on whether such lease will satisfy the terms and conditions of these class exemptions.

[14] It is contemplated that Kadean Construction Company (Kadean), a general contractor, will perform the renovation work to be performed for the Training Fund. Kadean is not a party in interest to the Welfare Fund or the Training Fund because it is not a contributing employer. However, Kadean will subcontract the electrical work on the project to signatory employers who are parties in interest to the Training and Welfare Funds as contributing employers.

The Department is providing no opinion in this proposed exemption on whether the contemplated expenditures to be made by the Training Fund for the construction of the second floor of the 5735 Elizabeth Avenue Building are (or will be) consistent with the fiduciary responsibilities contained in part 4 of title I of the Act. In this regard, the Department notes that section 404(a) of the Act requires, among other things, that plan fiduciaries act prudently and solely in the interest of the plan and its participants and beneficiaries when providing benefits to such participants and beneficiaries and defraying reasonable expenses of administering the plan.

[15] The Applicants represent that the Welfare Fund and the independent fiduciary are required to approve any alterations, additions, modifications, or improvements of a permanent nature to the second floor. During the term of the Lease, the alterations are the property of the Training Fund, and the Training Fund is required to reimburse the Welfare Fund for any additional taxes, inspections, and fees that are attributable in any way to such alterations. At the expiration of the Lease, or sooner termination, the alterations automatically become the property of the Welfare Fund.

[16] Or $7,270 monthly and $87,245 annually.

finance the second floor improvements by agreeing to pay the Welfare Fund $426,207, thereby buying down the Training Fund's rent to $6 per square foot.[17]

11. The Training Fund Lease is a written, triple net lease, having an initial term of five years and two five year renewal options. The Training Fund will pay 41.25 percent of the operating costs of the Building. Among others, these operating expenses include real estate taxes and insurance. At the time the Lease options are to be exercised, rent is to be set by the Welfare Fund's independent fiduciary, who has experience in real estate valuations.

Section 2.2 of the Training Fund Lease provides that the rent may be increased by the independent fiduciary, at the time of renewal, but in no event can the rent drop below the preceding term's rent. In this respect, the Welfare Fund is assured that the base rent amount remains at $6 per square foot. However, the Training Fund will have the right to terminate its exercise of a renewal option if the Training Fund does not accept the independent fiduciary's determination of rent payable during the renewal term.

12. The first floor lease of the 5735 Elizabeth Avenue Building to the Service Center, which the Applicants believe will be covered under PTEs 76–01 and 77–10, is for 11,836 square feet of finished office space. The Service Center's rent is set at $14.50 per square foot. The Service Center Lease is a written, triple net lease having a 10 year term, with one five year renewal option. The Service Center Lease provides for yearly termination during the initial term as of the last day of each lease year, provided that the Service Center gives at least 6 months prior written notice of such termination and pays a termination fee equal to the amount of unamortized improvement costs and a penalty of three months' rent. At the time the lease option is to be exercised, rent is to be set by the Welfare Fund's independent fiduciary.

Section 2.2 of the Service Center Lease provides that the rent may be increased by the independent fiduciary, at the time of renewal, but in no event can the rent drop below the preceding term's rent. In this respect, the Welfare Fund is assured that the base rent will remain at $14.50 per square foot. The Service Center will also pay 58.75 percent of the operating costs associated with the 5735 Elizabeth Avenue Building.

13. The Welfare Fund anticipates a rate of return on the 5735 Elizabeth Building of between 8.5 percent to 9.5 percent. With the assistance of the independent fiduciary, TPC, the Welfare Fund has established a contingency reserve of 10 percent of the projected construction costs ($150,000). If the entire contingency reserve is used, the Welfare Fund's projected return is 8.55 percent.

14. As noted briefly in Representation 10, on November 25, 2002, the Welfare Fund Trustees obtained an independent appraisal report (the Appraisal Report) of the 5735 Elizabeth Avenue Building. In the Appraisal Report, the Appraisers also valued the proposed improvements and the contemplated Leases.

Initially, the Appraisers determined that the fair market value of a fee simple interest in the 5735 Elizabeth Avenue Building was $1,070,000 as of November 20, 2002, in an "as is" condition. The Appraisers then valued the 5735 Elizabeth Avenue Building as of September 1, 2003, on an "as proposed basis" using both a "direct capitalization" valuation ($2,690,000) and a sales comparison approach ($2,620,000).

The Appraisal Report also included a survey of area rents. Under the survey, the Appraisers concluded that the market rent for the first floor Service Center Lease was $14.50 per square foot, and $10.50 per square foot for the second floor Training Fund Lease.

15. As noted above, the proposed rental under the Training Fund Lease was adjusted to $6 per square foot based upon the Training Fund agreeing to fund its allocated share of the construction costs. These costs include, among others, new mechanical, electrical and plumbing systems for the 5735 Elizabeth Avenue Building. The Appraisers, in a letter dated December 16, 2002, considered $6 per square foot "market rent," given the assumption that the Training Fund was financing its own improvements. The Appraisers also adjusted the direct capitalization valuation of the 5735 Elizabeth Avenue Building downward to $2,290,000 in order to take into account the reduction in the Training Fund's rent to $6 per square foot. However, the Appraisers' sales comparison valuation remained unchanged at $2,690,000.

16. In addition to its short term obligations, the Welfare Fund is funding retiree medical benefits which is a long term funding goal similar to a pension benefit. The Welfare Fund's projected investment in the 5735 Elizabeth Avenue Building of approximately $2,290,000, with a projected return ranging from 8.5 percent to 9.5 percent, represents approximately 2.6 percent of the Welfare Fund's assets. The Welfare Fund's investment consultant, Mr. Randall Kirkland, has reviewed the contemplated purchase and has concluded that it does not represent an over-concentration in real estate and will fit the long term investment goals of the Welfare Fund which is funding for retiree medical. Furthermore, the Welfare Fund Trustees, and for that matter, the Training Fund Trustees, have determined that the Lease is an appropriate transaction for the Funds and is in the best interests of the participants and beneficiaries of such Funds.

17. The Welfare Fund Trustees have retained TPC to serve as independent fiduciary with respect to the Training Fund Lease and the Service Center Lease. Mr. Philip Hulse, the President of TPC, will undertake the specific duties of the independent fiduciary. Mr. Hulse is a real estate broker and a member of several real estate organizations, including the Society of Industrial and Office Realtors, National Association of Realtors, St. Louis Association of Realtors, Missouri Association of Realtors, and the Missouri State Bank Board of Directors. In addition, Mr. Hulse has partial ownership interests in several real estate partnerships of over two million square feet of office, industrial, and commercial space throughout the St. Louis metropolitan market. Since 1985, Mr. Hulse's firm, TPC, has been involved in the St. Louis, Missouri commercial and industrial real estate community where it has assisted clients in a variety of capacities, including tenant and buyer representation, site selection, asset disposition, investment, and development.

On December 17, 2002, the Welfare Fund Trustees and Mr. Hulse on behalf of TPC, entered into and executed an independent fiduciary engagement agreement. Pursuant to this agreement, TPC has agreed to (a) evaluate and make recommendations relating to the provisions on the fair market rental value of the 5735 Elizabeth Avenue Building (and any proposed amendments thereto); (b) evaluate and make recommendations on the provisions of the sales contact for the 5735 Elizabeth Avenue Building (and any proposed amendments thereto); (c) evaluate and make recommendations on the provisions of the Training Fund and Service Center Leases (and any proposed amendments thereto), and make a determination and

[17] Or $4,155 monthly and $49,854 annually. With the payment of renovation costs and first year rent, the Training Fund's total investment in the 5735 Elizabeth Avenue Building ($476,061) would represent approximately 10 percent of the Training Fund's assets.

recommendation to the Welfare Fund Trustees whether such Leases would be in the best interest and protective of the Funds; (d) monitor the transactions related to the Training Fund Lease, including verification that monthly rent has been timely paid; (e) monitor the exemption to ensure that the terms are complied with and take all appropriate actions to ensure that the Training Fund Lease is protective and in the best interest of the Welfare Fund; and (f) recommend to the Welfare Fund Trustees whether the Leases should be terminated or the amount of the Lease payment adjustments when the five year options under the Training Fund Lease becomes due.

On behalf of TPC, Mr. Hulse represents that both he and the firm are independent of, and unrelated to either Applicants. In addition, Mr. Hulse states that he has been advised by legal counsel to the Welfare Fund regarding his fiduciary obligations under ERISA and he acknowledges and accepts such duties, responsibilities and liabilities as an ERISA fiduciary for the Welfare Fund.

In his fiduciary capacity, Mr. Hulse has reviewed and made recommendations to the Welfare Fund Trustees on the purchase of the 5735 Elizabeth Avenue Building and contemplated leases involving the Training Fund and the Service Center. Prior to making its determination, Mr. Hulse represents that he has examined the Welfare Fund's overall investment portfolio, considered the liquidity requirements of the Welfare Fund, considered the diversification of the portfolio in light of the proposed transactions, and considered whether the proposed transactions herein comply with the Welfare Fund's investment objectives and policies. Lastly, Mr. Hulse explains that he has reviewed the Training Fund's creditworthiness to enter into the contemplated Lease.

Based on his review, Mr. Hulse has determined that both the purchase and Lease transactions are suitable for the Welfare Fund and its participants and beneficiaries. Mr. Hulse also believes that the Training Fund's "rent buy down" represents a common practice within the real estate industry and is, therefore, appropriate in this transaction. Further, Mr. Hulse represents that due to his commercial leasing experience, he has the ability to procure a fair market valuation of the rental space once the option to renew comes due five years from the inception of the Lease.

18. In summary, the Applicants represent that the transaction will satisfy the statutory criteria for an exemption under section 408(a) of the Act because:

(a) The terms of the Lease will be at least favorable to the Welfare Fund and the Training Fund as those obtainable in an arm's length transaction with an unrelated party.

(b) Qualified, independent appraisers have determined the initial amount of the Lease payments.

(c) A qualified, independent fiduciary has approved the Lease and will monitor the terms of the exemption, at all times, on behalf of the Welfare Fund.

(d) The independent fiduciary will take whatever actions are necessary and proper to enforce the Welfare Fund's rights under the Lease and to protect the participants and beneficiaries of the Welfare Fund.

(e) The rental payments under the Lease will be adjusted once every five years by the independent fiduciary to ensure that such rental payments are not greater than or less than the fair market rental value of the leased space.

(f) The fair market rental amount for the leased space, at no time, will exceed 25 percent of the assets of either Fund, including any improvements that are constructed thereon.

(g) The independent fiduciary, the Welfare Fund Trustees and the Training Fund Trustees have determined that the Lease is an appropriate investment for the Welfare Fund and is in the best interest of the participants and beneficiaries of the respective Funds.

Notice to Interested Persons

Notice of proposed exemption will be provided to all interested persons by first class mail within 10 days of publication of the notice of pendency in the **Federal Register**. Such notice shall include a copy of the notice of pendency of the exemption, as published in the **Federal Register**, and a supplemental statement, as described at 29 CFR 2570.43(b)(2). Such notice will inform interested persons of their right to comment on the proposed exemption. Comments are due within 40 days of the date of publication of the proposed exemption in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Ms. Silvia M. Quezada of the Department, telephone (202) 693–8553. (This is not a toll-free number.)

General Information

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption under section 408(a) of the Act and/or section 4975(c)(2) of the Code does not relieve a fiduciary or other party in interest or disqualified person from certain other provisions of the Act and/or the Code, including any prohibited transaction provisions to which the exemption does not apply and the general fiduciary responsibility provisions of section 404 of the Act, which, among other things, require a fiduciary to discharge his duties respecting the plan solely in the interest of the participants and beneficiaries of the plan and in a prudent fashion in accordance with section 404(a)(1)(b) of the Act; nor does it affect the requirement of section 401(a) of the Code that the plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries;

(2) Before an exemption may be granted under section 408(a) of the Act and/or section 4975(c)(2) of the Code, the Department must find that the exemption is administratively feasible, in the interests of the plan and of its participants and beneficiaries, and protective of the rights of participants and beneficiaries of the plan;

(3) The proposed exemptions, if granted, will be supplemental to, and not in derogation of, any other provisions of the Act and/or the Code, including statutory or administrative exemptions and transitional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption is not dispositive of whether the transaction is in fact a prohibited transaction; and

(4) The proposed exemptions, if granted, will be subject to the express condition that the material facts and representations contained in each application are true and complete, and that each application accurately describes all material terms of the transaction which is the subject of the exemption.

Signed in Washington, DC, this 19th day of May, 2003.

Ivan Strasfeld,

Director of Exemption Determinations, Employee Benefits Security Administration, Department of Labor.

[FR Doc. 03–12889 Filed 5–21–03; 8:45 am]

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DEPARTMENT OF LABOR

Employee Benefits Security Administration

Prohibited Transaction Exemption 2003–09; [Exemption Application No. D–11042] et al. Grant of Individual Exemptions; Metropolitan Life Insurance Company (MetLife)

AGENCY: Employee Benefits Security Administration, Labor.

ACTION: Grant of individual exemptions.

SUMMARY: This document contains exemptions issued by the Department of Labor (the Department) from certain of the prohibited transaction restrictions of the Employee Retirement Income Security Act of 1974 (the Act) and/or the Internal Revenue Code of 1986 (the Code).

A notice was published in the **Federal Register** of the pendency before the Department of a proposal to grant such exemption. The notice set forth a summary of facts and representations contained in the application for exemption and referred interested persons to the application for a complete statement of the facts and representations. The application has been available for public inspection at the Department in Washington, DC. The notice also invited interested persons to submit comments on the requested exemption to the Department. In addition the notice stated that any interested person might submit a written request that a public hearing be held (where appropriate). The applicant has represented that it has complied with the requirements of the notification to interested persons. No requests for a hearing were received by the Department. Public comments were received by the Department as described in the granted exemption.

The notice of proposed exemption was issued and the exemption is being granted solely by the Department because, effective December 31, 1978, section 102 of Reorganization Plan No. 4 of 1978, 5 U.S.C. App. 1 (1996), transferred the authority of the Secretary of the Treasury to issue exemptions of the type proposed to the Secretary of Labor.

Statutory Findings

In accordance with section 408(a) of the Act and/or section 4975(c)(2) of the Code and the procedures set forth in 29 CFR part 2570, Subpart B (55 FR 32836, 32847, August 10, 1990) and based upon the entire record, the Department makes the following findings:

(a) The exemption is administratively feasible;

(b) The exemption is in the interests of the plan and its participants and beneficiaries; and

(c) The exemption is protective of the rights of the participants and beneficiaries of the plan.

Metropolitan Life Insurance Company (MetLife) Located in New York, NY [Prohibited Transaction Exemption 2003–09; Exemption Application No. D–11042]

Exemption

The restrictions of sections 406(a), 406(b)(1) and 406(b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code,[1] shall not apply, effective April 6, 2001, to the cash sale (the Sale) to MetLife of a note (the Note), issued by the Pacific Gas & Electric Company (PG&E), by MetLife's Liquidity Plus Account (the Account) for which MetLife acts as investment manager and is a party in interest with respect to employee benefit plans (the Plans) invested in such Account.

This exemption is subject to the following conditions:

(a) The Sale was a one-time transaction for cash.

(b) The sales price for the Note was based upon an amount representing the greater of the Note's outstanding principal balance, plus accrued interest, or the Note's fair market value as determined by independent broker-dealers.

(c) The Account did not pay any fees, commissions or other expenses in connection with the Sale.

(d) As manager of the Account, MetLife determined, at the time of the transaction, that the Sale was appropriate for, and in the best interests of, the Account, the Plans investing therein, and their participants and beneficiaries.

(e) MetLife took all appropriate actions necessary to safeguard the interests of the Account and the Plans in connection with the Sale.

(f) If the exercise of any of MetLife's rights, claims or causes of action in connection with its ownership of the Note results in MetLife recovering from PG&E an aggregate amount that is greater than the sales price for such Note, MetLife will refund such excess amount to the Account.

Effective Date: This exemption is effective as of April 6, 2001.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption, refer to the notice of proposed exemption published on March 3, 2003 at 68 FR 10041.

FOR FURTHER INFORMATION CONTACT: Ms. Anna M.N. Mpras of the Department, telephone (202) 693–8565. (This is not a toll-free number.)

The JPMorgan Chase Bank (Located in New York, New York)

[Prohibited Transaction Exemption 2003–10; Application No. D–11062]

Exemption

Section I—Transactions

The restrictions of sections 406(a), 406(b)(1) and 406(b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A)–(E) of the Code, shall not apply as of December 31, 2000, to:

(A) the continuation of a lease (the Lease), by the Commingled Pension Trust Fund (Strategic Property) of JPMorgan Chase Bank (the Fund) with respect to which JPMorgan Chase Bank (JPMCB) is the trustee (the Trustee), of office space in a certain commercial office building (the Property) to Chase Global Funds Service Company (CGF), a party in interest with respect to employee benefit plans whose assets are invested in the Fund (Plans) and an affiliate of JPMCB; and

(B) the continued and future provision by JPMCB or its affiliates of letters of credit (Letter(s) of Credit) to guarantee the obligations of unrelated third-party tenants to pay rent to the Fund under commercial real estate leases.

This exemption is subject to the conditions set forth in Section II.

Section II—Conditions

(A) The Fund is represented by a fiduciary independent of JPMCB and its affiliates (the independent fiduciary) with respect to the Lease to perform the following functions:

(1) Confirm that when the Lease originally was entered into, and as modified to date, all the terms and conditions of the Lease, including those relating to renewal options and rights of first refusal, were commercially reasonable and at least as favorable to the Plans as those terms and conditions which could have been obtained at arm's length with an unrelated third party;

(2) determine, based upon a written appraisal report by a qualified appraiser independent of JPMCB and its affiliates, that the leasing renewal rate the Fund will charge CGF if CGF elects to exercise

[1] For purposes of this exemption, references to provisions of Title I of the Act, unless otherwise specified, refer also to corresponding provisions of the Code.

its renewal options under the Lease, effective in 2004 and thereafter, and that the leasing rate with respect to any space leased by CGF in the Property pursuant to any rights of first refusal CGF has under the Lease, accurately reflect at least fair market rental value;

(3) negotiate and approve, subject to the appropriate ERISA fiduciary standards, such amendments to the Lease upon renewal(s) as it deems appropriate, including, for example: (i) a shorter renewal term than the current five year term; (ii) additional renewal period(s) (provided that the rent paid in any time periods after February 28, 2009, under any newly granted renewal option(s) would be at 100% of fair rental value, as opposed to the 95% of fair rental value that applies for periods through February 28, 2009); (iii) the lease of less square footage than the current square footage covered under the Lease; (iv) the lease of more square footage than the current square footage covered under the Lease (provided that the rent paid for any square footage in excess of the current square footage would also be leased at 100% of fair rental value, and not 95% of fair rental value); (v) using a "base year" under the Lease (upon which certain periodic increases such as taxes are calculated) updated to the year 2004, and (vi) allowing CGF to install shatter-proof glass in the space it leases; provided that all such amendments are not more favorable to the lessee than the terms generally available in arm's length transactions between unrelated parties, as determined by the independent fiduciary; and

(4) represent the Fund and the participants (Participants) in the Plans as independent fiduciary in any circumstances in addition to those described in subsection (3) above while the Lease (including any periods of renewal) is in effect which would present a conflict of interest for the Trustee, including but not limited to: default by CGF or disagreement on an economic computation under the Lease.

(B) The Fund is represented by an independent fiduciary with respect to any existing or future Letters of Credit to perform the following functions:

(1) monitor monthly reports of rental payments of tenants utilizing a Letter of Credit issued by JPMCB or any affiliate to guarantee their lease payments;

(2) confirm whether an event has occurred that calls for the Letter of Credit to be drawn upon; and

(3) represent the Fund and the Participants as an independent fiduciary in any circumstances with respect to the Letters of Credit which would present a conflict of interest for the Trustee, including but not limited to: the need to enforce a remedy against itself or an affiliate with respect to its obligations under a Letter of Credit.

(C) Future Letters of Credit are issued by JPMCB or an affiliate to guarantee the obligations of third-party tenants to pay rent to the Fund under commercial real estate leases only if the following additional conditions are met:

(1) JPMCB or its affiliate, as the issuer of a Letter of Credit, has at least an "A" credit rating by at least one nationally recognized statistical rating service at the time of the issuance of the Letter of Credit;

(2) the Letter of Credit has objective market drawing conditions and states precisely the documents against which payment is to be made;

(3) JPMCB does not "steer" the Fund's tenants to itself or its affiliates in order to obtain the Letter of Credit;

(4) Letters of Credit are issued only to tenants which are unrelated to JPMCB; and

(5) The terms of any future Letters of Credit are not more favorable to the tenants than the terms generally available in transactions with other similarly situated unrelated third-party commercial clients of JPMCB or its affiliates.

Section III—Definitions

(A) The term "independent fiduciary" means Aon Fiduciary Counselors, Inc. (AFC) or any successor independent fiduciary, provided that AFC or the successor independent fiduciary is: (1) independent of and unrelated to JPMCB and its affiliates, and (2) appointed to act on behalf of the Fund for the purposes described in conditions II(A) and (B) above. For purposes of this exemption, a fiduciary will not be deemed to be independent of and unrelated to JPMCB if: (1) Such fiduciary directly or indirectly controls, is controlled by or is under common control with JPMCB, (2) such fiduciary directly or indirectly receives any compensation or other consideration in connection with any transaction described in this exemption, except that an independent fiduciary may receive compensation for acting as an independent fiduciary from JPMCB in connection with the transactions contemplated herein if the amount or payment of such compensation is not contingent upon or in any way affected by the independent fiduciary's ultimate decision and (3) more than 5 percent of such fiduciary's annual gross revenue in its prior tax year will be paid by JPMCB and its affiliates in the fiduciary's current tax year.

(B) The term "affiliate" means:

(1) Any person directly or indirectly through one or more intermediaries, controlling, controlled by, or under common control with the person,

(2) any officer, director, employee, relative or partner in any such person; and

(3) any corporation or partnership of which such person is an officer, director, partner or employee.

(C) The term "control" means the power to exercise a controlling influence over the management or policies of a person other than an individual.

Effective Date: The exemption is effective as of December 31, 2000.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption, refer to the notice of proposed exemption published on March 21, 2003, at 68 FR 13954.

FOR FURTHER INFORMATION CONTACT: Karen E. Lloyd of the Department, telephone (202) 693–8540. (This is not a toll-free number).

General Information

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption under section 408(a) of the Act and/or section 4975(c)(2) of the Code does not relieve a fiduciary or other party in interest or disqualified person from certain other provisions to which the exemption does not apply and the general fiduciary responsibility provisions of section 404 of the Act, which among other things require a fiduciary to discharge his duties respecting the plan solely in the interest of the participants and beneficiaries of the plan and in a prudent fashion in accordance with section 404(a)(1)(B) of the Act; nor does it affect the requirement of section 401(a) of the Code that the plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries;

(2) This exemption is supplemental to and not in derogation of, any other provisions of the Act and/or the Code, including statutory or administrative exemptions and transactional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption is not dispositive of whether the transaction is in fact a prohibited transaction; and

(3) The availability of this exemption is subject to the express condition that the material facts and representations contained in the application accurately describes all material terms of the transaction which is the subject of the exemption.

Signed at Washington, DC, this 19th day of May, 2003.

Ivan Strasfeld,

Director of Exemption Determinations, Employee Benefits Security Administration, Department of Labor.

[FR Doc. 03–12888 Filed 5–21–03; 8:45 am]

BILLING CODE 4510–29–P

DEPARTMENT OF LABOR

Employee Benefits Security Administration

[Application No. D–10269]

Withdrawal of the Notice of Proposed Exemption Involving the Travelers Group Inc. 401(k) Savings Plan (the Plan) Located in New York, NY

In the **Federal Register** dated December 30, 1996, (61 FR 68794), the Department of Labor (the Department) published a notice of proposed exemption from the prohibited transaction restrictions of the Employee Retirement Income Security Act of 1974 and from certain taxes imposed by the Internal Revenue Code of 1986. The notice of proposed exemption concerned: (1) The in-kind contribution by Travelers Group Inc. (TGI) of certain options (the Stock Option or Stock Options) into the accounts in the Plan of eligible employees of TGI and its subsidiaries and affiliates (the Employees or Employee); (2) the holding of the Stock Options by such accounts; and (3) the exercise of such Stock Options by Employees in order to purchase shares of common stock of TGI.

By letter dated April 29, 2003, Citigroup Inc., (formerly TGI) and its affiliates requested that the application for exemption be withdrawn.

Accordingly, the notice of proposed exemption is hereby withdrawn.

Signed at Washington, DC, this 19th day of May 2003.

Ivan L. Strasfeld,

Director of Exemption Determinations, Employee Benefits Security Administration, Department of Labor.

[FR Doc. 03–12890 Filed 5–21–03; 8:45 am]

BILLING CODE 4510–29–P

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

[Docket No. NRTL2–92]

Canadian Standards Association; Application for Expansion of Recognition

AGENCY: Occupational Safety and Health Administration (OSHA), Labor.

ACTION: Notice.

SUMMARY: This notice announces the application of Canadian Standards Association (CSA) for expansion of its recognition as a Nationally Recognized Testing Laboratory under 29 CFR 1910.7, and presents the Agency's preliminary finding. This preliminary finding does not constitute an interim or temporary approval of the application.

DATES: You may submit comments in response to this notice, or any request for extension of the time to comment, by (1) regular mail, (2) express or overnight delivery service, (3) hand delivery, (4) messenger service, or (5) FAX transmission (facsimile). Because of security-related problems there may be a significant delay in the receipt of comments by regular mail. Comments (or any request for extension of the time to comment) must be submitted by the following dates:

Regular mail and express delivery service: Your comments must be postmarked by June 6, 2003.

Hand delivery and messenger service: Your comments must be received in the OSHA Docket Office by June 6, 2003. OSHA Docket Office and Department of Labor hours of operation are 8:15 a.m. to 4:45 p.m.

Facsimile and electronic transmission: Your comments must be sent by June 6, 2003.

ADDRESSES: *Regular mail, express delivery, hand-delivery, and messenger service:* You must submit three copies of your comments and attachments to the OSHA Docket Office, Docket NRTL2–92, Room N–2625, U.S. Department of Labor, Occupational Safety and Health Administration, 200 Constitution Avenue, NW., Washington, DC 20210. Please contact the OSHA Docket Office at (202) 693–2350 for information about security procedures concerning the delivery of materials by express delivery, hand delivery and messenger service.

Facsimile: If your comments, including any attachments, are 10 pages or fewer, you may fax them to the OSHA Docket Office at (202) 693–1648. You must include the docket number of this notice, Docket NRTL2–92, in your comments.

Internet access to comments and submissions: OSHA will place comments and submissions in response to this notice on the OSHA Web page *http://www.osha.gov*. Accordingly, OSHA cautions you about submitting information of a personal nature (*e.g.*, social security number, date of birth). There may be a lag time between when comments and submissions are received and when they are placed on the Web page. Please contact the OSHA Docket Office at (202) 693–2350 for information about materials not available through the OSHA Web page and for assistance in using the Web page to locate docket submissions. Comments and submissions will also be available for inspection and copying at the OSHA Docket Office at the address above.

Extension of Comment Period: Submit requests for extensions concerning this notice to: Office of Technical Programs and Coordination Activities, NRTL Program, Occupational Safety and Health Administration, U.S. Department of Labor, Room N3653, 200 Constitution Avenue, NW., Washington, DC 20210. Or fax to (202) 693–1644.

FOR FURTHER INFORMATION CONTACT: Sherry Nicolas, Office of Technical Programs and Coordination Activities, NRTL Program, Room N3653 at the address shown immediately above for the program, or phone (202) 693–2110.

SUPPLEMENTARY INFORMATION:

Notice of Application

The Occupational Safety and Health Administration (OSHA) hereby gives notice that Canadian Standards Association (CSA) has applied for expansion of its current recognition as a Nationally Recognized Testing Laboratory (NRTL). CSA's expansion request covers the use of additional test standards. OSHA's current scope of recognition for CSA may be found in the following informational Web page: *http://www.osha-slc.gov/dts/otpca/nrtl/csa.html*.

OSHA recognition of an NRTL signifies that the organization has met the legal requirements in section 1910.7 of title 29, Code of Federal Regulations (29 CFR 1910.7). Recognition is an acknowledgment that the organization can perform independent safety testing and certification of the specific products covered within its scope of recognition and is not a delegation or grant of government authority. As a result of recognition, OSHA can accept products "properly certified" by the NRTL.

The Agency processes applications by an NRTL for initial recognition or for

expansion or renewal of this recognition following requirements in Appendix A to 29 CFR 1910.7. This appendix requires that the Agency publish two notices in the **Federal Register** in processing an application. In the first notice, OSHA announces the application and provides its preliminary finding and, in the second notice, the Agency provides its final decision on an application. These notices set forth the NRTL's scope of recognition or modifications of this scope.

The most recent notices published by OSHA for CSA's recognition covered a renewal and expansion of recognition, which OSHA announced on March 16, 2001 (66 FR 15280) and granted on July 3, 2001 (66 FR 35271).

The current addresses of the testing facilities (sites) that OSHA recognizes for CSA are:

Canadian Standards Association, Etobicoke (Toronto), 178 Rexdale Boulevard, Etobicoke, Ontario, M9W 1R3.
CSA International, Pointe-Claire (Montreal), 865 Ellingham Street, Pointe-Claire, Quebec H9R 5E8.
CSA International, Richmond (Vancouver), 13799 Commerce Parkway, Richmond, British Columbia V6V 2N9.
CSA International, Edmonton, 1707–94th Street, Edmonton, Alberta T6N 1E6.
CSA International, Cleveland, 8501 East Pleasant Valley Road, Cleveland, Ohio 44131 (formerly part of the American Gas Association).
CSA International, Irvine, 2805 Barranca Parkway, Irvine, California 92606.

General Background on the Application

CSA has submitted a request, dated March 27, 2002 (*see* Exhibit 30), to expand its recognition as an NRTL to use 17 additional test standards. The NRTL Program staff has determined that nine of these standards cannot be included in the expansion because they are not "appropriate test standards," within the meaning of 29 CFR 1910.7(c). The staff makes similar determinations in processing expansion requests from any NRTL. Therefore, OSHA would approve eight test standards for the expansion, which are listed below. Through no fault of CSA, the application has been delayed in processing.

CSA seeks recognition for testing and certification of products for demonstration of conformance to the following additional test standards.

ANSI Z21.19 Refrigerators Using Gas Fuel
ANSI Z21.42 Gas-Fired Illuminating Appliances
ANSI Z21.45 Flexible Connectors of Other Than All-Metal Construction for Gas Appliances
ANSI Z21.54 Gas Hose Connectors for Portable Outdoor Gas-Fired Appliances
ANSI Z21.57 Recreational Vehicle Cooking Gas Appliances
ANSI Z21.58 Outdoor Cooking Gas Appliances
ANSI Z21.74 Portable Refrigerators for Use With HD–5 Propane Gas
ANSI Z21.76 Gas-Fired Unvented Catalytic Room Heaters for Use With Liquefied Petroleum (LP) Gases
UL 2017 General Purpose Signaling Devices and Systems

The designations and titles of the above test standards were current at the time of the preparation of this notice.

OSHA recognition of any NRTL for a particular test standard is limited to equipment or materials (*i.e.*, products) for which OSHA standards require third party testing and certification before use in the workplace. Consequently, an NRTL's scope of recognition excludes any product(s) falling within the scope of the test standard for which OSHA has no testing and certification requirements. CSA seeks recognition for testing and certification of products to demonstrate compliance with the following nine standards.

The Underwriters Laboratories Inc. (UL) test standard listed above also is approved as an American National Standard by the American National Standards Institute (ANSI). However, for consistency in our treatment of such standards in previous notices, we use the designation of the standards developing organization (*e.g.*, UL 2017) for the standard, as opposed to the ANSI designation (*e.g.*, ANSI/UL 2017). Under our procedures, any NRTL recognized for an ANSI-approved test standard may use either the latest proprietary version of the test standard or the latest ANSI version of that standard. Contact "NSSN" (*http://www.nssn.org*), an organization partially sponsored by ANSI, to find out whether or not a test standard is currently ANSI-approved.

Preliminary Finding on the Application

CSA has submitted an acceptable request for expansion of its recognition as an NRTL. In connection with this request, OSHA did not perform an on-site review of CSA's NRTL testing facilities. However, NRTL Program assessment staff reviewed information pertinent to the request and recommended that CSA's recognition be expanded to include the additional test standards listed above (*see* Exhibit 31).

Following a review of the application file, the assessor's recommendation, and other pertinent documents, the NRTL Program staff has concluded that OSHA should grant to CSA the expansion of recognition as an NRTL to use the additional test standards listed above. The staff, therefore, recommended to the Assistant Secretary that the application be preliminarily approved.

Based upon the recommendations of the staff, the Agency has made a preliminary finding that the Canadian Standards Association can meet the requirements, as prescribed by 29 CFR 1910.7, for the expansion of recognition. This preliminary finding does not constitute an interim or temporary approval of the application.

OSHA welcomes public comments, in sufficient detail, as to whether CSA has met the requirements of 29 CFR 1910.7 for expansion of its recognition as a Nationally Recognized Testing Laboratory. Your comment should consist of pertinent written documents and exhibits. To consider it, OSHA must receive the comment at the address provided above (*see* **ADDRESSES**) no later than the last date for comments (*see* **DATES** above). Should you need more time to comment, OSHA must receive your written request for extension at the address provided above no later than the last date for comments. You must include your reason(s) for any request for extension. OSHA will limit an extension to 15 days unless the requester justifies a longer period. We may deny a request for extension if it is frivolous or otherwise unwarranted. You may obtain or review copies of CSA's request, the recommendation on the expansion, and all submitted comments, as received, by contacting the Docket Office, Room N2625, Occupational Safety and Health Administration, U.S. Department of Labor, at the above address. You should refer to Docket No. NRTL 2–92, the permanent record of public information on CSA's recognition.

The NRTL Program staff will review all timely comments, and after resolution of issues raised by these comments, will recommend whether to grant CSA's expansion request. The Agency will make the final decision on granting the expansion, and in making this decision, may undertake other proceedings that are prescribed in Appendix A to 29 CFR section 1910.7. OSHA will publish a public notice of this final decision in the **Federal Register**.

Signed in Washington, DC, this 23rd day of April, 2003.

John L. Henshaw,

Assistant Secretary.

[FR Doc. 03–12845 Filed 5–21–03; 8:45 am]

BILLING CODE 4510–26–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice (03–053)]

NASA Advisory Council, Planetary Protection Advisory Committee; Meeting

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of meeting; supplementary information addition.

SUMMARY: In accordance with the Federal Advisory Committee Act, Public Law 92–463, as amended, the National Aeronautics and Space Administration announces an administrative oversight in the **SUPPLEMENTARY INFORMATION** previously provided for the forthcoming meeting of the NASA Advisory Council (NAC), Planetary Protection Advisory Committee (PPAC); Notice Number 03–051. This notice corrects that oversight by providing additional information.

DATES: Thursday, May 29, 2003, 6:30 p.m. to 9:15 p.m., Friday, May 30, 2003, 8:30 a.m. to 5 p.m., and Saturday, May 31, 2003, 8:30 a.m. to 2:30 p.m.

ADDRESSES: Hilton Cocoa Beach, 1550 North Atlantic Avenue, Cocoa Beach, Florida 32931.

FOR FURTHER INFORMATION CONTACT: Ms. Marian Norris, Code SB, National Aeronautics and Space Administration, Washington, DC 20546, 202/358–4452.

PREVIOUSLY ANNOUNCED SUPPLEMENTARY INFORMATION: The meeting will be closed to the public on Friday, May 30, 2003, 11 a.m. to noon, in accordance with the Government Sunshine Act, 5 U.S.C. 552b(c), to hear a briefing on Mars Planetary Protection issues associated with an ongoing procurement. All other times of the meeting will be open to the public up to the capacity of the room. The agenda for the meeting includes the following topics:

—Planetary Protection Program Status/ Plans
—Mars Planetary Protection and Current Standards
—Communications Issues in Planetary Protection
—Solar System Exploration Planetary Protection Status

ADDITION TO SUPPLEMENTARY INFORMATION: The meeting will be closed to the public on Friday, May 30, 2003, 11 a.m. to 12:15 p.m., in accordance with section 10(d) of the Federal Advisory Committee Act (5 U.S.C. app.) (FACA) and the Government Sunshine Act, 5 U.S.C. 552b(c)(3) and 552b(c)(4), to hear a briefing on Mars Planetary Protection issues associated with an ongoing procurement and are exempt from public disclosure under 10 U.S.C. 2305(g). It is imperative that the meeting be held on these dates to accommodate the scheduling priorities of the key participants. Visitors will be requested to sign a visitor's register.

June W. Edwards,

Advisory Committee Management Officer, National Aeronautics and Space Administration.

[FR Doc. 03–12898 Filed 5–21–03; 8:45 am]

BILLING CODE 7510–01–P

NUCLEAR REGULATORY COMMISSION

Agency Information Collection Activities: Submission for the Office of Management and Budget (OMB) Review; Comment Request

AGENCY: U.S. Nuclear Regulatory Commission (NRC).

ACTION: Notice of the OMB review of information collection and solicitation of public comment.

SUMMARY: The NRC has recently submitted to OMB for review the following proposal for the collection of information under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35). The NRC hereby informs potential respondents that an agency may not conduct or sponsor, and that a person is not required to respond to, a collection of information unless it displays a current valid OMB control number.

1. *Type of submission, new, revision, or extension:* Revision.

2. *The title of the information collection:* 10 CFR part 60—"Disposal of High-Level Radioactive Wastes in Geologic Repositories".

3. *The form number if applicable:* Not applicable.

4. *How often the collection is required:* The information need only be submitted one time.

5. *Who will be required or asked to report:* State or Indian Tribes, or their representatives, requesting consultation with the NRC staff regarding review of a potential high-level radioactive waste geologic repository site, or wishing to participate in a license application review for a potential geologic repository (other than a potential geologic repository site at Yucca Mountain, Nevada, currently under investigation by the U.S. Department of Energy, which is now regulated under 10 CFR part 63).

6. *An estimate of the number of annual responses:* None are expected in the next three years.

7. *The estimated number of annual respondents:* None are expected in the next three years.

8. *An estimate of the total number of hours needed annually to complete the requirement or request:* 121 hours; however, none are expected in the next three years.

9. *An indication of whether Section 3507(d), Pub. L. 104–13 applies:* Not applicable.

10. *Abstract:* Part 60 requires States and Indian Tribes to submit certain information to the NRC if they request consultation with the NRC staff concerning the review of a potential repository site, or wish to participate in a license application review for a potential repository (other than the Yucca Mountain, Nevada site proposed by the U.S. Department of Energy). Representatives of States or Indian Tribes must submit a statement of their authority to act in such a representative capacity. The information submitted by the States and Indian Tribes is used by the Director of the Office of Nuclear Material Safety and Safeguards as a basis for decisions about the commitment of NRC staff resources to the consultation and participation efforts. As provided in § 60.1, the regulations in 10 CFR part 60 no longer apply to the licensing of a geologic repository at Yucca Mountain. All of the information collection requirements pertaining to Yucca Mountain were included in 10 CFR part 63, and were approved by the Office of Management and Budget under control number 3150–0199. The Yucca Mountain site is regulated under 10 CFR part 63 (66 FR 55792, November 2, 2001).

A copy of the final supporting statement may be viewed free of charge at the NRC Public Document Room, One White Flint North, 11555 Rockville Pike, Room O–1 F21, Rockville, MD 20852. OMB clearance requests are available at the NRC worldwide Web site: *http://www.nrc.gov/public-involve/doc-comment/omb/index.html*. The document will be available on the NRC home page site for 60 days after the signature date of this notice.

Comments and questions should be directed to the OMB reviewer listed below by June 23, 2003. Comments received after this date will be considered if it is practical to do so, but assurance of consideration cannot be given to comments received after this date.

Bryon Allen, Office of Information and Regulatory Affairs (3150–0127), NEOB–10202, Office of Management and Budget, Washington, DC 20503.

Comments can also be submitted by telephone at (202) 395–3087.

The NRC Clearance Officer is Brenda Jo. Shelton, 301–415–7233.

Dated at Rockville, Maryland, this 15th day of May, 2003.

For the Nuclear Regulatory Commission.

Beth St. Mary,

Acting NRC Clearance Officer, Office of the Chief Information Officer.

[FR Doc. 03–12848 Filed 5–21–03; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: U.S. Nuclear Regulatory Commission (NRC).

ACTION: Notice of pending NRC action to submit an information collection request to OMB and solicitation of public comment.

SUMMARY: The NRC is preparing a submittal to OMB for review of continued approval of information collections under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35).

Information pertaining to the requirement to be submitted:

1. The title of the information collection: NRC Form 398, "Personal Qualification Statement—Licensee".
2. Current OMB approval number: 3150–0090.
3. How often the collection is required: On occasion and every six years (at renewal).
4. Who is required or asked to report: Individuals requiring a license to operate the controls at a nuclear reactor.
5. The number of annual respondents: 1,155.
6. The number of hours needed annually to complete the requirement or request: 1,465 or approximately 1.3 hours per response (1,465 hours ÷ 1,155 applications (new, re-applications, renewals and waivers = 1,155) = 1.3 hours per response).
7. Abstract: NRC Form 398 requests detailed information that should be submitted by a licensing applicant and facility licensee when applying for a new or renewal license to operate the controls at a nuclear reactor facility. This information, once collected, would be used for licensing actions and for generating reports on the Operator Licensing Program.

Submit, by July 21, 2003 comments that address the following questions:

1. Is the proposed collection of information necessary for the NRC to properly perform its functions? Does the information have practical utility?
2. Is the burden estimate accurate?
3. Is there a way to enhance the quality, utility, and clarity of the information to be collected?
4. How can the burden of the information collection be minimized, including the use of automated collection techniques or other forms of information technology?

A copy of the draft supporting statement may be viewed free of charge at the NRC Public Document Room, One White Flint North, 11555 Rockville Pike, Room O–1 F23, Rockville, MD 20852. OMB clearance requests are available at the NRC Worldwide Web site: *http://www.nrc.gov/public-involve/doc-comment/omb/index.html*. The document will be available on the NRC home page site for 60 days after the signature date of this notice.

Comments and questions about the information collection requirements may be directed to the NRC Clearance Officer, Brenda Jo. Shelton, U.S. Nuclear Regulatory Commission, T–5 C3, Washington, DC 20555–0001, by telephone at 301–415–7233, or by Internet electronic mail at *infocollects@nrc.gov*.

Dated at Rockville, Maryland, this 15th day of May 2003.

For the Nuclear Regulatory Commission.

Beth St. Mary,

Acting NRC Clearance Officer, Office of the Chief Information Officer.

[FR Doc. 03–12849 Filed 5–21–03; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 030–05219, 030–14482, and 070–00124]

Notice of Finding of No Significant Impact and Availability of Environmental Assessment for License Amendment of Materials License Nos. 29–00055–06, 29–00055–15, AND SNM–107 (Teledyne Brown Engineering, Inc., Westwood, NJ)

I. Introduction

The U.S. Nuclear Regulatory Commission (NRC) is considering issuing license amendments to Teledyne Brown Engineering, Inc. for Materials License Nos. 29–00055–06, 29–00055–15, and SNM–107, to authorize release of its facilities in Westwood and Plainfield, New Jersey, for unrestricted use and has prepared an Environmental Assessment (EA) in support of this action in accordance with the requirements of 10 CFR part 51. Based on the EA, the NRC has concluded that a Finding of No Significant Impact (FONSI) is appropriate.

II. EA Summary

The purpose of the proposed action is to allow for the release of the licensee's Westwood and Plainfield, New Jersey, facilities for unrestricted use. Teledyne Brown Engineering, Inc. has been authorized by NRC since 1964 to use radioactive materials for analytical services, research and development, precious metals recovery, and other similar purposes at these sites. On February 7, 2003, Teledyne Brown Engineering, Inc. requested that NRC release the facilities for unrestricted use. Teledyne Brown Engineering, Inc. has conducted surveys of the facilities and determined that the facilities meet the license termination criteria in subpart E of 10 CFR part 20.

III. Finding of No Significant Impact

The NRC staff has evaluated Teledyne Brown Engineering's request and the results of the surveys and has concluded that the completed action complies with 10 CFR part 20. The staff has prepared the EA (summarized above) in support of the proposed license amendment to terminate the license and release the facility for unrestricted use. On the basis of the EA, NRC has concluded that the environmental impacts from the proposed action are expected to be insignificant and has determined not to prepare an environmental impact statement for the proposed action.

IV. Further Information

The EA and the documents related to this proposed action, including the application for the license amendment and supporting documentation, are available for inspection at NRC's Public Electronic Reading Room at *http://www.nrc.gov/reading-rm/adams.html* (ADAMS Accession No. ML031350057). Any questions with respect to this action should be referred to Betsy Ullrich, Nuclear Materials Safety Branch 2, Division of Nuclear Materials Safety, Region I, 475 Allendale Road, King of Prussia, Pennsylvania, 19406, telephone (610) 337–5040, fax (610) 337–5269.

Dated at King of Prussia, Pennsylvania this 15th day of May, 2003.

For the Nuclear Regulatory Commission

John D. Kinneman,

Chief, Nuclear Materials Safety Branch 2, Division of Nuclear Materials Safety, Region I.

[FR Doc. 03–12846 Filed 5–21–03; 8:45 am]

BILLING CODE 7590–01–P

SECURITIES AND EXCHANGE COMMISSION

Issuer Delisting; Notice of Application To Withdraw From Listing and Registration on the American Stock Exchange LLC (Kadant Inc., Common Stock, $.01 Par Value) File No. 1–11406

May 16, 2003.

Kadant Inc., a Delaware corporation ("Issuer"), has filed an application with the Securities and Exchange Commission ("Commission"), pursuant to section 12(d) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 12d2–2(d) thereunder,[2] to withdraw its Common Stock, $.01 par value ("Security"), from listing and registration on the American Stock Exchange LLC ("Amex" or "Exchange").

The Issuer stated in its application that it has met the requirements of Amex Rule 18 by complying with all applicable laws in State of Delaware, in which it is incorporated, and with the Amex's rules governing an issuer's voluntary withdrawal of a security from listing and registration.

The Board of Directors ("Board") of the Issuer unanimously approved a resolution on March 6, 2003 to withdraw the Issuer's Security from listing on the Amex and to list the Security on the New York Stock Exchange, Inc. ("NYSE"). The Board of the Issuer considered such action to be in the best interest of the Issuer and its stockholders. In addition, the Board states that the reasons for such change in listing include: (i) Increasing the Company's visibility in the global investment community; (ii) the prestige associated with being a NYSE-listed company; and (iii) avoiding the direct and indirect costs and the division of the market resulting from dual listing on the AMEX and the NYSE.

The Issuer's application relates solely to the withdrawal of the Security from listing on the Amex and from registration under section 12(b) of the Act[3] shall not affect its obligation to be registered under section 12(g) of the Act.[4]

Any interested person may, on or before June 10, 2003, submit by letter to the Secretary of the Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609, facts bearing upon whether the application has been made in accordance with the rules of the Amex and what terms, if any, should be imposed by the Commission for the protection of investors. The Commission, based on the information submitted to it, will issue an order granting the application after the date mentioned above, unless the Commission determines to order a hearing on the matter.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[5]

Jonathan G. Katz,

Secretary.

[FR Doc. 03–12808 Filed 5–21–03; 8:45 am]

BILLING CODE 8010–01–P

[1] 15 U.S.C. 78*l*(d).

[2] 17 CFR 240.12d2–2(d).

[3] 15 U.S.C. 78*l*(b).

[4] 15 U.S.C. 78*l*(g).

[5] 17 CFR 200.30–3(a)(1).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 35–27679]

Filings Under the Public Utility Holding Company Act of 1935, as Amended ("Act")

May 16, 2003.

Notice is hereby given that the following filing(s) has/have been made with the Commission pursuant to provisions of the Act and rules promulgated under the Act. All interested persons are referred to the application(s) and/or declaration(s) for complete statements of the proposed transaction(s) summarized below. The application(s) and/or declaration(s) and any amendment(s) is/are available for public inspection through the Commission's Branch of Public Reference.

Interested persons wishing to comment or request a hearing on the application(s) and/or declaration(s) should submit their views in writing by June 10, 2003, to the Secretary, Securities and Exchange Commission, Washington, DC 20549–0609, and serve a copy on the relevant applicant(s) and/or declarant(s) at the address(es) specified below. Proof of service (by affidavit or, in the case of an attorney at law, by certificate) should be filed with the request. Any request for hearing should identify specifically the issues of facts or law that are disputed. A person who so requests will be notified of any hearing, if ordered, and will receive a copy of any notice or order issued in the matter. After June 10, 2003, the application(s) and/or declaration(s), as filed or as amended, may be granted and/or permitted to become effective.

Unitil Corporation et al. (70–10120)

Unitil Corporation ("Unitil"), 6 Liberty Lane West, Hampton, New Hampshire, 03842–1270, a registered holding company under the Act, and its wholly owned subsidiary companies, Fitchburg Gas and Electric Light Company ("Fitchburg"), Unitil Energy Systems, Inc., Unitil Power Corp., Unitil Realty Corp., Unitil Resources, Inc. and Unitil Service Corp. ("Unitil Service") (the "Subsidiaries" or "Money Pool Participants" and together with Unitil the "Applicants") have filed an application-declaration under sections 6, 7, 9(a), 10 and 12(b) of the Act and rules 43 and 45 thereunder.

By order dated June 9, 2000 (HCAR No. 27182), Applicants were authorized to make unsecured short-term borrowings and to operate a system money pool ("Money Pool") through June 30, 2003. The Applicants now request authority to make additional short-term borrowings and extend the operation of the Money Pool through June 30, 2006 ("Authorization Period").

Unitil requests authorization for short-term borrowing on a revolving basis from certain banks up to an aggregate amount of $55,000,000 from time to time through the Authorization Period.

In addition, Fitchburg requests authorization for short-term borrowings from the Money Pool, and direct borrowings from commercial banks, in an aggregate principal amount at any one time outstanding not to exceed $35,000,000 from time to time through the Authorization Period.

Unitil believes that an increase to its borrowing authority is beneficial because it will allow the company to respond to increased working capital requirements as a result of commodity volatility and restructuring charges, as well as necessary facility system improvements and growth.

Unitil's existing and proposed borrowing arrangements will provide for borrowings at (1) "base" or "prime" rates publicly announced by a bank as the rate charged on loans to its most creditworthy business firms; or (2) "money market" rates (market-based rates that are generally lower than base or prime rates, made available by banks on an offering or "when available" basis). In addition, borrowings may be based on the daily federal funds rate. Borrowings under the credit arrangements will mature not more than nine months from the date of issue. In the future, the Company may choose to formalize its banking relationship with its banks through a syndicated credit facility. The duration of any such facility would not exceed 365 days.

Unitil expects to use the proceeds from the requested borrowings for (1) loans or advances to subsidiaries through the Money Pool; (2) payment of

outstanding indebtedness; (3) short-term cash needs that may arise due to payment timing differences; and (4) other general corporate purposes.

Any of the proposed short-term borrowings by Fitchburg from commercial banks will be under terms and conditions substantially similar to those of the borrowing arrangements between Unitil and its commercial bank lenders, described above. Fitchburg will use the proceeds from these borrowings to meet working capital requirements, provide interim financing for construction expenditures, and to meet debt and preferred stock sinking fund requirements.

In connection with the continued use of the Money Pool by the Applicants under the Cash Pooling and Loan Agreement ("Pooling Agreement") among Unitil and the Money Pool Participants dated as of February 1, 1985, as amended, Fitchburg requests authorization to make loans to the other Money Pool Participants and incur borrowings from Unitil and the other Money Pool Participants, and the Applicants request authorization to make loans to Fitchburg, both through the Authorization Period. Under the Pooling Agreement, Unitil and the Subsidiaries invest their surplus funds, and the Subsidiaries borrow funds, from the money pool. Unitil Service administers the money pool on an "at cost" basis. The purpose of the Money Pool is to provide the Subsidiaries with internal and external funds and to invest surplus funds of Unitil and the Subsidiaries in short-term money market instruments. The Applicants state that the Money Pool provides the Subsidiaries with lower short-term borrowing costs due to elimination of banking fees; a mechanism to earn a higher return on interest from surplus funds that are loaned to other Subsidiaries; and decreased reliance on external funding sources.

Applicants state that the authorization sought shall be conditioned on Unitil, Unitil Energy and Fitchburg maintaining a common equity (as reflected in the most recent 10–K or 10–Q filed with the Commission under the Securities Exchange Act of 1934, as amended ("1934 Act"), adjusted to reflect changes in capitalization since the balance sheet date therein) of at least 30% of its consolidated capitalization (common equity, preferred stock, long-term and short-term debt) during the period of authorization. In addition, no borrowings under bank credit facilities may be made in reliance upon any order issued in this matter unless: (i) The debt security to be issued, if rated, is rated investment grade; (ii) all outstanding securities of the issuer that are rated are rated investment grade; and (iii) all outstanding securities of Unitil that are rated are rated investment grade.

For purposes of this condition, a security will be considered rated investment grade if it is rated investment grade by at least one nationally recognized statistical rating organization, as that term is used in paragraphs (c)(2)(vi)(E), (F) and (H) of rule 15c3–1 under the 1934 Act.

For the Commission by the Division of Investment Management, pursuant to delegated authority.

J. Lynn Taylor,

Assistant Secretary.

[FR Doc. 03–12809 Filed 5–21–03; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–47878]

Notice of Intention To Cancel Registrations of Certain Transfer Agents

May 15, 2003.

Notice is given that the Securities and Exchange Commission ("Commission") intends to issue an order, pursuant to section 17A(c)(4)(B) of the Securities Exchange Act of 1934 (Exchange Act),[1] canceling the registrations of the transfer agents whose names appear in the attached Appendix.

FOR FURTHER INFORMATION CONTACT: Jerry W. Carpenter, Assistant Director, or Lori R. Bucci, Special Counsel, at 202/942–4187, Division of Market Regulation, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–1001.

Background

Section 17A(c)(4)(B) of the Exchange Act provides that if the Commission finds that any transfer agent registered with the Commission is no longer in existence or has ceased to do business as a transfer agent, the Commission shall by order cancel that transfer agent's registration. Accordingly, at any time after June 23, 2003, the Commission intends to issue an order canceling the registrations of any or all of the transfer agents listed in the Appendix.

The Commission has made efforts to locate and determine the status of each of the transfer agents listed in the Appendix. In some cases, the Commission was unable to locate the transfer agent, and in other cases, the Commission learned that the transfer agent was no longer in existence or had ceased doing business as a transfer agent. Based on the facts it has, the Commission believes that each of the transfer agents listed in the Appendix are no longer in existence or have ceased doing business as a transfer agent.

Any transfer agent listed in the Appendix that believes its registration should not be cancelled must notify the Commission in writing prior to June 23, 2003. Written notifications must be mailed to: Lori R. Bucci, Division of Market Regulation, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–1001, or be sent by facsimile to Lori R. Bucci at (202) 824–5049.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[2]

J. Lynn Taylor,

Assistant Secretary.

APPENDIX

Registration number	Name
(84–5920)	The Axess Media Group, LTD
(84–5826)	Corey L. Lewis
(84–5847)	Financial Strategies, LLC
(84–1883)	ICOA Incorporated
(84–5756)	IDM Corporation
(84–5727)	Impact Administrative Services, Inc.
(84–1208)	MLH Depositary Inc
(84–5875)	NAVCAP Securities Inc.
(84–5647)	Penn Street Advisors, Inc.
(84–5834)	Reserve General Escrow Company
(84–682)	Swiss Chalet, Inc.
(84–191)	Texaco Inc.
(84–986)	The Troy Investment Fund
(84–1947)	Vermont Fund Advisors, Inc.

[FR Doc. 03–12807 Filed 5–21–03; 8:45 am]

BILLING CODE 8010–01–P

[1] 15 U.S.C. 78q–1(c)(4)(B).

[2] 17 CFR 200.30–3(a)(22).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–47876; File Nos. SR–NASD–2003–79; SR–NYSE–2003–17]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Changes by the National Association of Securities Dealers, Inc. and the New York Stock Exchange, Inc. Relating to Establishing Effective Dates for Certain Provisions of NASD Rule 2711, Research Analysts and Research Reports, and NYSE Rule 472, Communications with the Public

May 15, 2003.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on May 6, 2003, the National Association of Securities Dealers, Inc. ("NASD"), and on May 9, 2003, the New York Stock Exchange, Inc. ("NYSE" or "Exchange"), filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule changes as described in Items I, II, and III below, which Items have been prepared by the respective self-regulatory organizations ("SROs"). The SROs have designated the proposed rule changes as constituting stated policies, practices, or interpretations with respect to the meaning, administration, or enforcement of an existing rule series under paragraph (f)(1) of Rule 19b–4 under the Act,[3] which render the proposals effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule changes from interested persons.

I. Self-Regulatory Organizations' Statements of the Terms of Substance of the Proposed Rule Changes

A. NASD

NASD is filing with the SEC a proposed rule change to establish July 30, 2003, or until a superseding permanent exemption is approved by the SEC and becomes effective, as the effective date for NASD Rules 2711(b) and (c) for members that over the previous three years, on average, have participated in 10 or fewer investment banking transactions as manager or co-manager and generated $5 million or less in gross investment banking revenues from those transactions. NASD Rules 2711(b) and (c), when effective, prohibit a research analyst from being subject to the supervision or control of any employee of a member's investment banking department, and will further require legal or compliance personnel to intermediate certain communications between the research department and either the investment banking department or the company that is the subject of a research report or recommendation ("subject company").

B. NYSE

The NYSE is filing with the SEC a proposed rule change that would establish July 30, 2003, or until such date as a permanent exemption is approved by the SEC and becomes effective, as the effective date for certain provisions of Rule 472 ("Communications with the Public") for certain members and member organizations.

II. Self-Regulatory Organizations' Statements of the Purpose of, and Statutory Basis for, the Proposed Rule Changes

In their original rule filings with the Commission, the SROs included statements concerning the purpose of, and basis for, the proposed rule changes and discussed any comments they received on the proposed rule changes. The text of these statements may be examined at the places specified in Item IV below. The SROs have prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organizations' Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Changes

1. NASD's Purpose

NASD is filing the proposed rule change to establish July 30, 2003, or until the date a superseding permanent exemption is approved by the SEC and becomes effective, as the effective date for NASD Rules 2711(b) and (c) for members that over the previous three years, on average per year, have participated in 10 or fewer investment banking transactions as manager or co-manager and generated $5 million or less in gross investment banking revenues from those transactions. Pursuant to the SEC's approval of SR–NASD–2002–87[4] and SR–NASD–2002–161[5], NASD Rules 2711(b) and (c), as applied to this class of members, otherwise would have gone into effect on May 5, 2003. NASD seeks to delay implementation of these provisions for these members while it finalizes a proposal to create a permanent exemption for firms that engage in limited underwriting activity. The purpose of the delayed implementation—and ultimately a permanent exemption—is to preserve the role of certain smaller firms that often are the sole or primary source of underwriting and research coverage for some smaller or regional companies.

On May 10, 2002, the Commission approved new NASD Rule 2711, which governs conflicts of interest when research analysts recommend equity securities in research reports and during public appearances.[6] The Commission approved a staggered implementation period for the rule. Most provisions of the rule became effective on July 9, 2002, including those that restrict supervision and control of research analysts by the investment banking department. The "gatekeeper" provisions, described below, became effective September 9, 2002. The remaining provisions of the Rule became effective on November 6, 2002.

NASD Rule 2711(b) contains provisions that generally restrict the relationship between the research and investment banking departments, including "gatekeeper" provisions that require a legal or compliance person to intermediate certain communications between the research and investment banking departments. NASD Rule 2711(b)(1) prohibits a research analyst from being under the control or supervision of any employee of the investment banking department. NASD Rule 2711(b)(2) prohibits employees in the investment banking department from reviewing or approving any research report prior to publication. NASD Rule 2711(b)(3) creates an exception to (b)(2) to allow investment banking personnel to review a research report prior to publication to verify the factual information contained therein and to screen for potential conflicts of interest. Any permissible written communications must be made through an authorized legal or compliance official or copied to such official. Oral communications must be made through, or in the presence of, an authorized legal or compliance official and must be documented.

Similarly, NASD Rule 2711(c) restricts communications between a member and the subject company of a research report, except that a member

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 17 CFR 240.19b–4(f)(1).

[4] *See* Securities Exchange Act Release No. 46165 (July 3, 2002), 67 FR 46555 (July 15, 2002).

[5] *See* Securities Exchange Act Release No. 46949 (December 4, 2002), 67 FR 76202 (December 11, 2002).

[6] *See* Securities Exchange Act Release No. 45908 (May 10, 2002), 67 FR 34968 (May 16, 2002) ("May 10th order").

may submit sections of the research report to the company to verify factual accuracy and may notify the subject company of a ratings change after the "close of trading" on the business day preceding the announcement of the ratings change. Submissions to the subject company may not include the research summary, the rating or the price target, and a complete draft of the report must be provided beforehand to legal or compliance personnel. Finally, any change to a rating or price target after review by the subject company must first receive written authorization from legal or compliance.

As the Commission noted in the May 10th order, several commenters argued that the gatekeeper provisions would impose significant costs, especially for smaller firms that would have to hire additional personnel. Commenters also noted that personnel often wear multiple hats in smaller firms, thereby causing a greater burden to comply with the restriction on supervision and control by investment banking personnel over research analysts. NASD received similar comments in response to *Notice to Members* 02–44, which sought comment on whether certain members should be exempted from certain provisions of the Rule and what criteria should be employed to fashion such an exemption.

NASD received 10 comments in response to the *Notice to Members*.[7] Generally, the comments emphasized the financial and administrative burdens imposed by NASD Rule 2711 to implement the gatekeeper provisions and to structure firms so that research personnel are not subject to supervision by investment banking personnel. Commenters argued that the conflicts addressed by NASD Rule 2711 are less pronounced with respect to smaller firms and that the burdens of compliance could force firms to discontinue their research business.

In response to the comments, NASD has been developing a proposed permanent exemption to preserve the role of smaller firms in the capital raising process and to ensure research coverage for smaller or regional companies.

NASD believes that compliance with both NASD Rules 2711(b) and (c) continues to pose financial and administrative challenges for certain smaller firms. As such, NASD believes it appropriate to extend the effective date of those provisions for members that over the previous three years, on average per year, have participated in 10 or fewer investment banking transactions as manager or co-manager and generated $5 million or less in gross investment banking revenues from those transactions. NASD proposes to delay the effective date of NASD Rules 2711(b) and (c) until July 30, 2003, or until the date a superseding permanent exemption is approved by the SEC and becomes effective.

As a further condition for the delayed implementation date, those firms that meet the eligibility requirements outlined above would be required to maintain records of communications that would otherwise be subject to the gatekeeper provisions of NASD Rules 2711(b) and (c).

2. NASD's Statutory Basis

NASD believes that the proposed rule change is consistent with the provisions of section 15A(b)(6) of the Act,[8] which requires, among other things, that NASD's rules must be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest. NASD believes that this proposed rule change would reduce or expose conflicts of interest and thereby significantly curtail the potential for fraudulent and manipulative acts. NASD further believes that the proposed rule change will provide investors with better and more reliable information with which to make investment decisions.

3. NYSE's Purpose

The Exchange is filing the proposed rule change to establish July 30, 2003, or until such date as a permanent exemption is approved by the SEC and becomes effective, as the effective date for NYSE Rule 472(b)(1), (2) and (3), subject to certain conditions, for members and member organizations that over the previous three years, on average per year, have participated in ten or fewer investment banking services transactions as manager or co-manager and generated $5 million or less in gross investment banking revenues from those transactions (hereinafter referred to as "small firms").

In the May 10th order, the Commission approved amendments to NYSE Rules 351 ("Reporting Requirements") and 472, which place prohibitions and/or restrictions on Investment Banking Department, Research Department, and Subject Company relationships and communications and impose new disclosure requirements on members and member organizations and their associated persons. At the same time, the Commission also approved a staggered implementation period for the rules. Most provisions of the rules became effective on July 9, 2002, including those that restrict supervision and control of associated persons by the investment banking department and those that require disclosure of investment banking compensation received from a subject company. The "gatekeeper" provisions, described below, became effective on September 9, 2002.

On July 9, 2002, the Exchange filed, for immediate effectiveness, SR–NYSE–2002–23[9] that extended the effective date to November 6, 2002 for NYSE Rule 472(b)(1), (2) and (3) ("gatekeeper" provisions) for small firms.

On November 7, 2002, the Exchange filed, for immediate effectiveness, SR–NYSE–2002–60,[10] which extended the delayed effective date of the gatekeeper provisions for small firms until May 5, 2003.

Small Firm Relief

NYSE Rule 472 contains provisions that generally restrict the relationship between the research and investment banking departments, including "gatekeeper" provisions that require a legal or compliance person to intermediate certain communications between the research and investment banking departments. NYSE Rule 472(b)(1) prohibits an associated person (also referred to throughout this filing as a "research analyst") from being under the control or supervision of any employee of the investment banking department.

NYSE Rule 472(b)(1) also prohibits the investment banking department from reviewing or approving any research reports prior to distribution. NYSE Rule 472(b)(2) creates an exception to the prohibition of (b)(1) to allow investment banking personnel to review a research report prior to publication to verify the accuracy of information contained therein and to review for any potential conflicts of interest. Any permissible written communications must be made through legal or compliance or copied to legal or compliance. Oral communications must be made through, or in the presence of, legal or compliance personnel and must be documented.

Similarly, NYSE Rule 472(b)(3) restricts communications between a member or member organization and the subject company of a research report, except that a member or member organization may submit sections of the research report to the subject company to verify factual accuracy and may notify the subject company of a ratings change after the "close of trading" on the business day preceding the announcement of the ratings change. Submissions to the subject company may not include the research summary, the rating or the price target, and a complete draft of the research report must be provided beforehand to legal or compliance personnel. Finally, any change to a rating or price target after review by the subject company must first receive written authorization from legal or compliance.

As the Commission noted in the May 10th order, several commenters argued that the "gatekeeper" provisions would impose significant costs, especially for smaller firms that may have to hire additional personnel to comply with the requirements. Commenters also noted that personnel often wear multiple hats in smaller firms, thereby causing a greater burden to comply with the restriction on supervision and control by investment banking personnel over research analysts. These comments raised the prospect that the Rules might force some firms out of the investment banking or research business and/or reduce important sources of capital and research coverage for smaller companies.

Accordingly, the Exchange is proposing to delay implementation of NYSE Rules 472(b)(1), (2), and (3) until July 30, 2003, or until a permanent exemption is approved by the SEC and becomes effective, for small firms. Those members or member organizations that meet the eligibility requirements outlined above for the delayed implementation date would also be required to maintain records of communications that would otherwise be subject to the gatekeeper provisions of NYSE Rule 472(b).

4. NYSE's Statutory Basis

The statutory basis for the proposed rule change is section 6(b)(5) of the Exchange Act[11] which requires, among other things, that the rules of the Exchange be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade and in general to protect investors and the public interest.

B. Self-Regulatory Organizations' Statements on Burden on Competition

The SROs do not believe that the proposed rule changes will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act, as amended.

C. Self-Regulatory Organizations' Statements on Comments on the Proposed Rule Changes Received From Members, Participants, or Others

The NASD and NYSE have not solicited or received written comments on the proposed rule changes.

III. Date of Effectiveness of the Proposed Rule Changes and Timing for Commission Action

The proposed rule changes have been filed by the SROs as stated policies, practices, or interpretations with respect to the meaning, administration, or enforcement of an existing rule series under Rule 19b–4(f)(1) under the Act.[12] Consequently, they have become effective pursuant to section 19(b)(3)(A) of the Act[13] and Rule 19b–4(f)(1) thereunder.[14]

At any time within 60 days of the filing of such proposed rule changes, the Commission may summarily abrogate such rule changes if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing including whether the proposed rule changes are consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW, Washington, DC 20549–0609. Copies of the submissions, all subsequent amendments, all written statements with respect to the proposed rule changes that are filed with the Commission, and all written communications relating to the proposed rule changes between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filings will also be available for inspection and copying at the principal offices of the SROs. All submissions should refer to the file numbers SR–NASD–2003–79 and SR–NYSE–2003–17 and should be submitted by June 12, 2003.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[15]

Jill M. Peterson,

Assistant Secretary.

[FR Doc. 03–12873 Filed 5–21–03; 8:45 am]

BILLING CODE 8010–01–P

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[7] Letter from David Amster, CRT Capital Group, dated August 19, 2002; Letter from Peter V.B. Unger, Fulbright & Jaworski, LLP, dated August 30, 2002; Letter from First Analysis Securities Corp., dated August 30, 2002; Letter from Scott Cleland and John Eade, Investorside Research Association, dated August 29, 2002; Letter from W. Gray Medlin, The Carson Medlin Co., dated August 29, 2002; Letter from Cathryn Streeter, BioScience Securities, Inc., dated August 28, 2002; E-mail from James Nelson, Minnesota Valley Investments, dated July 31, 2002; E-mail from Joe B. Kercheville, Kercheville & Company, dated August 28, 2002; E-mail from Ray Chin, DBS Vickers Securities (USA) Inc., dated July 29, 2002; Letter from Stuart J. Kaswell, Securities Industry Association, dated August 30, 2002.

[8] 15 U.S.C. 78o–3(b)(6).

[9] *See* Securities Exchange Act Release No. 46182 (July 11, 2002), 67 FR 47013 (July 17, 2002).

[10] *See* note 5 *supra*.

[11] 15 U.S.C. 78f(b)(5).

[12] 17 CFR 240.19b–4(f)(1).

[13] 15 U.S.C. 78s(b)(3)(A).

[14] 17 CFR 240.19b–4(f)(1).

[15] 17 CFR 200.30–3(a)(12).

DEPARTMENT OF STATE

[Public Notice 4369]

Determination and Certification Under Section 40A of the Arms Export Control Act

Pursuant to section 40A of the Arms Export Control Act (Pub. L. 90–629—22 U.S.C. 2771 *et seq.*), as added by section 330 of the Antiterrorism and Effective Death Penalty Act of 1996 (Public Law 104–132), and Executive Order 11958, as amended, I hereby determine and certify to the Congress that the following countries are not cooperating fully with United States antiterrorism efforts:

Cuba;
Iran;
Libya;
North Korea;
Sudan;
Syria.

This determination and certification shall be transmitted to the Congress and published in the **Federal Register**.

Dated: May 15, 2003.

Richard L. Armitage,

Deputy Secretary of State , Department of State.

[FR Doc. 03–12874 Filed 5–21–03; 8:45 am]

BILLING CODE 4710–10–P

TENNESSEE VALLEY AUTHORITY

Paperwork Reduction Act of 1995, As Amended by Public Law 104–13; Proposed Collection; Comment Request

AGENCY: Tennessee Valley Authority.

ACTION: Proposed collection; comment request.

SUMMARY: The proposed information collection described below will be submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35, as amended). The Tennessee Valley Authority is soliciting public comments on this proposed collection as provided by 5 CFR section 1320.8(d)(1). Requests for information, including copies of the information collection proposed and supporting documentation, should be directed to the Agency Clearance Officer: Wilma H. McCauley, Tennessee Valley Authority, 1101 Market Street (EB 5B), Chattanooga, Tennessee 37402–2801; (423) 751–2523.

Comments should be sent to the Agency Clearance Officer no later than July 21, 2003.

SUPPLEMENTARY INFORMATION:

Type of request: Regular submission, proposal to extend without revision a currently approved collection of information (OMB control number 3316–0016).

Title of Information Collection: Farmer Questionnaire-Vicinity of Nuclear Power Plants.

Frequency of Use: On occasion.

Type of Affected Public: Individuals or households, and farms.

Small Business or Organizations Affected: No.

Federal Budget Functional Category Code: 271.

Estimated Number of Annual Responses: 300.

Estimated Total Annual Burden Hours: 150.

Estimated Average Burden Hours Per Response: .5.

Need For and Use of Information: This survey is used to locate, for monitoring purposes, rural residents, home gardens, and milk animals within a five mile radius of a nuclear power plant. The monitoring program is a mandatory requirement of the Nuclear Regulatory Commission set out in the technical specifications when the plants were licensed.

Jacklyn J. Stephenson,

Senior Manager, Enterprise Operations, Information Services.

[FR Doc. 03–12834 Filed 5–21–03; 8:45 am]

BILLING CODE 8120–08–P

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

Aviation Proceedings, Agreements Filed the Week Ending May 9, 2003

The following agreements were filed with the Department of Transportation under the provisions of 49 U.S.C. sections 412 and 414. Answers may be filed within 21 days after the filing of the application.

Docket Number: OST–2003–15109.
Date Filed: May 5, 2003.
Parties: Members of the International Air Transport Association.
Subject:

PTC3 0644 dated 6 May 2003 r1–r5
Mail Vote 299—Resolution 010n
Special Passenger Amending Resolution between Afghanistan and Pakistan
Intended effective date: 15 May 2003

Dorothy Y. Beard,

Chief, Docket Operations & Media Management, Federal Register Liaison.

[FR Doc. 03–12814 Filed 5–21–03; 8:45 am]

BILLING CODE 4910–62–P

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

Notice of Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits Filed Under Subpart B (Formerly Subpart Q) During the Week Ending May 9, 2003

The following applications for certificates of public convenience and necessity and foreign air carrier permits were filed under subpart B (formerly subpart Q) of the Department of Transportation's procedural regulations (See 14 CFR 301.201 *et. seq.*). The due date for answers, conforming applications, or motions to modify scope are set forth below for each application. Following the answer period DOT may process the application by expedited procedures. Such procedures may consist of the adoption of a show-cause order, a tentative order, or in appropriate cases a final order without further proceedings.

Docket Number: OST–2003–15130.
Date Filed: May 7, 2003.
Due Date for Answers, Conforming Applications, or Motion to Modify Scope: May 28, 2003.
Description: Application of Northwest Airlines, Inc., pursuant to 49 U.S.C. sections 41101 and 41102 and subpart B, requesting a certificate of public convenience and necessity authorizing Northwest to provide scheduled foreign air transportation of persons, property, and mail between any point or points in the United States, via intermediate points, and any point or points in Iraq and beyond. Northwest also requests, that the Department integrate this certificate authority with all of its existing certificate and exemption authority to the extent consistent with U.S. bilateral agreements and DOT policy.

Docket Number: OST–2003–15138.
Date Filed: May 7, 2003.
Due Date for Answers, Conforming Applications, or Motion to Modify Scope: May 28, 2003.
Description: Application of Aviation Concepts, Inc., pursuant to 49 U.S.C. section 41102 and subpart B, requesting a certificate of public convenience and necessity to engage in foreign charter air transportation of persons, property, and mail.

Docket Number: OST–2003–15139.
Date Filed: May 7, 2003.
Due Date for Answers, Conforming Applications, or Motion to Modify Scope: May 28, 2003.
Description: Application of Aviation Concepts, Inc., pursuant to 49 U.S.C. section 41102 and subpart B, requesting a certificate of public convenience and necessity to engage in interstate charter air transportation of persons, property, and mail.

Dorothy Y. Beard,

Chief, Docket Operations & Media Management, Federal Register Liaison.

[FR Doc. 03–12813 Filed 5–21–03; 8:45 am]

BILLING CODE 4910–62–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Intent To Prepare an Environmental Assessment and Conduct Scoping for Air Traffic Procedural Changes Associate With the Midwest Airspace Plan

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of Intent to prepare an Environmental Assessment (EA) and conduct scoping meetings.

SUMMARY: The Federal Aviation Administration (FAA), Central Region, is issuing this notice to advise the public, pursuant to the National Environmental Policy Act of 1969, as amended, (NEPA) 42 U.S.C. 4332(2)(C) that the FAA intends to prepare an EA for the proposed Midwest Airspace Plan (MAP). While not required for an EA, the FAA is issuing this Notice of Intent to facilitate public involvement. This EA will assess the potential environmental impacts resulting from proposed modifications to air traffic routings in the metropolitan St. Louis, Missouri and surrounding areas. Airports in this area include Lambert-St. Louis International Airport, Spirit of St. Louis Airport, St. Louis Downtown Airport, St. Louis Regional Airport, Scott Air Force Base/Mid-America Airport, as well as other smaller general aviation use airports. All reasonable alternatives will be considered including a no action alternative/option.

FOR FURTHER INFORMATION CONTACT: Donna O'Neill, Airspace Branch, ACE–520, Air Traffic Division, Federal Aviation Administration, 901 E. Locust, Kansas City, MO 64106; telephone: (816) 329–2560.

SUPPLEMENTARY INFORMATION: The FAA issued its Final Environmental Impact Statement (FEIS) on W–1–W, a new staggered parallel runway at St. Louis-Lambert International Airport on December 19, 1997. The subsequent Record of Decision (ROD) on Improvements to Lambert-St. Louis International Airport, dated September 30, 1998 directed that action be taken to develop air traffic control and airspace management procedures to effect the safe and efficient movement of air traffic to and from the proposed new runway, including the development of a system for the routing of arriving and departing traffic and the design, establishment, and publication of standardized flight operating procedures including instrument approach procedures and standard instrument departure procedures.

The FAA's Midwest Airspace Plan examines alternative ways to modify air traffic routes and procedures to enhance safety and improve operational efficiency in the St. Louis airspace environment. The Midwest Airspace Plan encompasses a geographic area of approximately 75 miles around the Lambert-St. Louis International Airport. Airports in the study area include: Lambert-St. Louis International Airport, Spirit of St. Louis Airport, St. Louis Downtown Airport, St. Louis Regional Airport, Scott Air Force Base/Mid-America Airport, as well as other smaller general aviation use airports.

The FAA will examine methods that will take advantage of new and emerging ATC technologies, improved performance characteristics of modern aircraft, as well as improvements in navigation capabilities. The proposal will address the merits of alternative airspace design scenarios that safely and efficiently use regional airspace and utilize the additional runway being constructed at the Lambert-St. Louis International Airport.

As part of the airspace redesign effort, the FAA will conduct detailed analyses, which will be used to evaluate the potential environmental impacts in the study area. During scoping, and upon publication of a draft EA and a final EA, the FAA will be contacting and coordinating with federal, state, and local agencies, as well as the public, to obtain comments and suggestions regarding the EA for the proposed project. The EA will assess impacts and reasonable alternatives including a no action alternative, pursuant to NEPA; FAA Order 1050.1, Policies and Procedures for Assessing Environmental Impacts; DOT Order 5610.1, Procedures for Considering Environmental Impacts; and the President's Council on Environmental Quality (CEQ) Regulations implementing the provisions of NEPA, 40 CFR Parts 1500–1508, and other appropriate Agency guidance.

Public Scoping Process: While not required for an EA, the FAA will use the scoping process as outlined in the Council on Environmental Quality (CEQ) Regulations and guidelines to facilitate public involvement. Concerned individuals and agencies are invited to express their views either in writing or by providing oral comments at a scoping meeting. The purpose of the scoping process is: (1) To provide a description of the proposed action, (2) to provide an early and open process to determine the scope of issues to be addressed and to identify potentially significant issues or impacts related to the proposed action that should be analyzed in the EA, (3) to identify other coordination and any permit requirements associated with the proposed action, (4) to identify and eliminate from detailed study those issues that are not significant or those that have been adequately addressed during a prior environmental review process.

The FAA has scheduled four public scoping meetings. Each meeting will be held from 7 p.m. to 9 p.m. at sites listed below. Each of the meetings will begin with an overview of the project (7 p.m.–7:15 p.m.), followed by an informal open house period (7:15 p.m.–8:30 p.m.) and will conclude with a question and answer session (8:30 p.m.–9 p.m.). The open house portion of each public scoping meeting will include redesign displays and graphics and will provide an opportunity for one-on-one interaction between representatives of the FAA and the general public. Comments will be received via court recorder or written form throughout the duration of the meeting.

Scoping Meeting dates and locations are:

—June 11, 2003—Collinsville, IL Holiday Inn
—June 17, 2003—Kirkwood, MO Holiday Inn
—June 18, 2003—St. Peters, MO City Hall
—June 19, 2003—Alton, IL Holiday Inn

In meeting with NEPA coordination requirements, the FAA has scheduled one meeting that will be dedicated primarily to federal, state and local agency staff, and Native American governments. This meeting is scheduled on June 11 from 1 to 3 p.m. at the Sheraton St. Louis City Center Hotel, St. Louis, MO. Although this meeting will be held primarily for the benefit of federal, tribal, state and local agency staff, it will also be open to the public.

The scoping period begins with this announcement. To ensure that all issues are identified, the FAA is requesting comments and suggestions on the project scope from all interested federal, state and local agencies and other interested parties. In furtherance of this effort, the FAA has established an Internet Web site that can be accessed at: *http://www.faa.gov/ats/central/enviro/map.html.* Additional information about the Midwest Airspace Plan, including the scoping meeting schedule and meeting locations can be found at this internet site. Additionally, the FAA will be maintaining the following telephone number for general information: 816–329–2560.

Dates: The FAA will accept formal scoping comments through July 18, 2003. Written comments should be directed to the following address: Federal Aviation Administration, 901 E. Locust, Attn: ACE–520–MAP, Kansas City, MO 64106. Comments will also be accepted electronically via *http://www.faa.gov/ats/nar/central/enviro/map.html.*

Issued in Kansas City, Missouri on May 6, 2003.

Paul J. Sheridan,

Acting Manager, Air Traffic Division, Central Region.

[FR Doc. 03–12819 Filed 5–21–03; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Intent To Rule on Application (03–03–C–00–HLN) To Impose and Use the Revenue From a Passenger Facility Charge (PFC) at Helena Regional Airport, Submitted by the Helena Regional Airport Authority, Helena Regional Airport, Helena, MT

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of intent to rule on application.

SUMMARY: The FAA proposes to rule and invites public comment on the application to impose and use PFC revenue at Helena Regional Airport under the provisions of 49 U.S.C. 40117 and Part 158 of the Federal Aviation Regulations (14 CFR 158).

DATES: Comments must be received on or before June 23, 2003.

ADDRESSES: Comments on this application may be mailed or delivered in triplicate to the FAA at the following address: David S. Stelling, Manager; Helena Airports District Office, HLN–ADO; Federal Aviation Administration; 2725 Skyway Drive, Suite 2, Helena, MT 59602.

In addition, one copy of any comments submitted to the FAA must be mailed or delivered to Ronald S. Mercer, Airport Director, at the following address: 2850 Skyway Drive, Helena, MT 59602.

Air Carriers and foreign air carriers may submit copies of written comments previously provided at Helena Regional Airport, under section 158.23 of part 158.

FOR FURTHER INFORMATION CONTACT: David S. Stelling, 406–449–5271, Airports District Office, 2725 Skyway Drive, Suite 2, Helena, MT 59602. The application may be reviewed in person at this same location.

SUPPLEMENTARY INFORMATION: The FAA proposes to rule and invites public comment on the application (03–03–C–00–HLN) to impose and use PFC revenue at Helena Regional Airport, under the provisions of 49 U.S.C. 40117 and part 158 of the Federal Aviation Regulations (14 CFR part 158).

On May 13, 2003, the FAA determined that the application to impose and use the revenue from a PFC, submitted by Helena Regional Airport, Helena, Montana, was substantially complete within the requirements of section 158.25 of part 158. The FAA will approve or disapprove the application, in whole or in part, no later than August 22, 2003. The following is a brief overview of the application.

Level of the proposed PFC: $4.50.

Proposed charge-effective date: October 1, 2003.

Proposed charge-expiration date: June 1, 2010.

Total requested for use approval: $2,350,897.

Brief description of proposed projects: Disabled Passenger Access Lift Acquisition; Southside Taxilane Construction—Phase I; Southside Taxilane Construction—Phase II; Loop Road and Parking Lot Improvements; Runway 9 perimeter Access Road; Terminal Building Expansion and Remodel; Snow Removal Equipment Acquisition; and Aircraft Rescue and Fire Fighting Equipment Acquisition.

Class or classes of air carriers that the public agency has requested not be required to collect PFC's: On-demand, Air Taxi/Commercial Operators (ATCO).

Any person may inspect the application in person at the FAA office listed above under **FOR FURTHER INFORMATION CONTACT** and at the FAA Regional Airports Office located at: Federal Aviation Administration, Northwest Mountain Region, Airports Division, ANM–600, 1601 Lind Avenue SW., Suite 315, Renton, WA 98055–4056.

In addition, any person may, upon request, inspect the application, notice and other documents germane to the application in person at the Helena Regional Airport.

Issued in Renton, Washington on May 13, 2003.

David A. Field,

Manager, Planning, Programming and Capacity Branch, Northwest Mountain Region.

[FR Doc. 03–12820 Filed 5–21–03; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

Environmental Impact Statement: Rail Corridor—Petersburg, Virginia (Collier Yard) to Raleigh, North Carolina (Boylan Wye)

AGENCY: Federal Railroad Administration (FRA), Department of Transportation (DOT).

ACTION: Notice of intent to prepare an Environmental Impact Statement.

SUMMARY: The FRA is issuing this notice to advise the public that a Tier II Environmental Impact Statement (EIS) will be prepared for a 138-mile portion of the Southeast High Speed Rail (SEHSR) Corridor from Petersburg, Virginia (Collier Yard) to Raleigh, North Carolina (Boylan Wye).

FOR FURTHER INFORMATION CONTACT: Mr. David Foster, Rail Environmental Programs Manager, North Carolina Department of Transportation Rail Division, 1553 Mail Service Center, Raleigh, NC, 27699–1553, telephone (919) 508–1917; or Mr. David Valenstein, Environmental Program Manager, Federal Railroad Administration (FRA), 400 Seventh Street, SW., MS 20, Washington, DC 20590, telephone (202) 493–6368.

SUPPLEMENTARY INFORMATION: The FRA, in cooperation with the Federal Highway Administration (FHWA), the North Carolina Department of Transportation (NCDOT), and the Virginia Department of Rail and Public Transportation (VDRPT), will prepare a Tier II Environmental Impact Statement for a 138-mile portion of the SEHSR Corridor from Petersburg, Virginia at Collier Yard to Raleigh, North Carolina at the Boylan Wye. This study will evaluate alternatives and environmental impacts within the preferred corridor (Alternative A) described in the Tier I Record of Decision for the SEHSR Corridor from Washington, DC to Charlotte, North Carolina. The study corridor generally follows the Burgess Connector rail line from Collier Yard to Burgess, Virginia and the former Seaboard Air Line (S-line) from Burgess to Raleigh, North Carolina.

Multiple options within the preferred corridor exist to connect the S-line from Burgess to Main Street Station in Richmond, Virginia, which is the destination for intercity rail service in this segment of the SEHSR Corridor. VDRPT and the FRA propose to address options in this area in separate environmental documentation to be prepared prior to construction of the SEHSR between Richmond, Virginia and Raleigh, North Carolina. Different routings are possible through Petersburg and capacity issues exist on the A-line particularly crossing the Appomattox River would be considered in the separate documentation.

This environmental process has four basic goals: (1) Reiterate the purpose and need as established in the Tier I EIS for the Washington DC to Charlotte NC portion of the SEHSR corridor; (2) develop alternatives within the study corridor; (3) conduct a detailed evaluation of environmental impacts for the alternatives; and (4) select a preferred alternative.

Scoping and Comments: FRA encourages broad participation in the EIS process during scoping and subsequent review of the resulting environmental documents. Comments and suggestions are invited from all interested agencies and the public at large to insure the full range of issues related to the proposed action and all reasonable alternatives are addressed and all significant issues are identified. Public agencies with jurisdiction are requested to advise the FRA and NCDOT of the applicable permit and environmental review requirements of each agency, and the scope and content of the environmental information that is germane to the agency's statutory responsibilities in connection with the proposed improvements. Agency scoping meetings have been scheduled for June 17 and 18, 2003 at the following locations:

- June 17, 10:30 am, VDRPT Executive Conference Room, 1313 East Main Street, Suite 300, Richmond, VA.
- June 18, 10:00 am, NCDOT Photogrammetry Conference Room, Room 322–A, 1020 Birch Ridge Drive, Building B, Raleigh, NC.

Letters describing the proposed action and soliciting comments will be sent to appropriate Federal, State, and local agencies in North Carolina and Virginia. An iterative public involvement/information program will support the process. The program will involve newsletters, a project hotline, informational workshops, small group meetings, and other methods to solicit and incorporate public input throughout the planning process.

Comments and questions concerning the proposed action should be directed to NCDOT or to the FRA at the addresses provided above. Additional information can be obtained by visiting the project Web site at *http://www.sehsr.org* or calling the toll-free project number 1–877–749–RAIL (7245).

Issued in Washington DC on May 15, 2003.

Mark E. Yachmetz,

Associate Administrator for Railroad Development.

[FR Doc. 03–12812 Filed 5–21–03; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Finance Docket No. 34343]

International Steel Group Inc.—Continuance in Control Exemption—ISG Railways, Inc.

International Steel Group Inc. (ISG), a noncarrier, has filed a verified notice of exemption to continue in control of ISG Railways, Inc. (ISG Railways),[1] upon ISG Railways becoming a Class II rail carrier.

This transaction is related to a simultaneously filed verified notice of exemption in STB Finance Docket No. 34344, *ISG Railways, Inc.—Acquisition of Control Exemption—Assets of Keystone Railroad LLC d/b/a Philadelphia, Bethlehem and New England Railroad Company, Conemaugh & Black Lick Railroad Company LLC, Steelton & Highspire Railroad Company LLC, Lake Michigan & Indiana Railroad Company LLC, Brandywine Valley Railroad Company LLC, Upper Merion & Plymouth Railroad Company LLC, Patapsco & Back Rivers Railroad Company LLC, and Cambria and Indiana Railroad, Inc.*, wherein ISG Railways seeks to acquire the rail lines and substantially all other assets of Keystone Railroad LLC d/b/a Philadelphia, Bethlehem and New England Railroad Company, Conemaugh & Black Lick Railroad Company LLC, Steelton & Highspire Railroad Company LLC, Lake Michigan & Indiana Railroad Company LLC, Brandywine Valley Railroad Company LLC, Upper Merion & Plymouth Railroad Company LLC, Patapsco & Back Rivers Railroad Company LLC, and Cambria and Indiana Railroad, Inc., all Class III rail carrier subsidiaries of Bethlehem Steel Corporation.

The proposed transaction was scheduled to be consummated on or after April 29, 2003, the effective date of the exemption (7 days after the exemption was filed).

ISG currently indirectly controls two existing Class III railroads: ISG South Chicago & Indiana Harbor Railway Company, operating in Illinois and Indiana, and ISG Cleveland Works Railway Company, operating in Ohio.[2]

ISG states that: (1) The rail lines to be acquired by ISG Railways will not connect with the rail lines of any existing rail carrier in the ISG corporate family; (2) this control transaction is not part of a series of anticipated transactions that would result in such a connection; and (3) this control transaction does not involve a Class I carrier. Therefore, the transaction is exempt from the prior approval of requirements of 49 U.S.C. 11323. *See* 49 CFR 1180.2(d)(2).

[1] ISG Railways, is a wholly owned subsidiary of ISG Acquisition, Inc., which is a wholly owned subsidiary of ISG.

[2] *See International Steel Group, Inc.—Continuance in Control Exemption—ISG South Chicago & Indiana Harbor Railway Company and ISG Cleveland Works Railway Company*, STB Finance Docket No. 34201 (STB served May 19, 2002).

Under 49 U.S.C. 10502(g), the Board may not use its exemption authority to relieve a rail carrier of its statutory obligation to protect the interests of its employees. Because the transaction involves at least one Class II and one or more Class III rail carriers, the exemption is subject to labor protection requirements of 49 U.S.C. 11326(b).

If the verified notice contains false or misleading information, the exemption is void *ab initio*. Petitions to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction.

An original and 10 copies of all pleadings referring to STB Finance Docket No. 34343, must be filed with the Surface Transportation Board, 1925 K Street, NW., Washington, DC 20423–0001. In addition, a copy of each pleading must be served on Kevin M. Sheys, Kirkpatrick & Lockhart LLP, 1800 Massachusetts Avenue, NW.,—2nd Floor, Washington, DC 20036.

Board decisions and notices are available on our Web site at *www.stb.dot.gov*.

Decided: May 15, 2003.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 03–12858 Filed 5–21–03; 8:45 am]

BILLING CODE 4915–00–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Finance Docket No. 34344]

ISG Railways, Inc.—Acquisition of Control Exemption—Assets of Keystone Railroad LLC d/b/a Philadelphia, Bethlehem and New England Railroad Company, Conemaugh & Black Lick Railroad Company LLC, Steelton & Highspire Railroad Company LLC, Lake Michigan & Indiana Railroad Company LLC, Brandywine Valley Railroad Company LLC, Upper Merion & Plymouth Railroad Company LLC, Patapsco & Back Rivers Railroad Company LLC, and Cambria and Indiana Railroad, Inc.

ISG Railways, Inc. (ISG Railways),[1] a noncarrier, has filed a verified notice of exemption to acquire, pursuant to an asset purchase agreement, the rail lines and substantially all other assets of Keystone Railroad LLC d/b/a Philadelphia, Bethlehem and New

[1] ISG Railways is a wholly owned subsidiary of ISG Acquisition, Inc., which is a wholly owned subsidiary of International Steel Group Inc.

England Railroad Company (Keystone), Conemaugh & Black Lick Railroad Company LLC (CBLR), Steelton & Highspire Railroad Company LLC (SHP), Lake Michigan & Indiana Railroad Company LLC (LMIC), Brandywine Valley Railroad Company LLC (BVRY), Upper Merion & Plymouth Railroad Company LLC (UMP), Patapsco & Back Rivers Railroad Company LLC (PBR), and Cambria and Indiana Railroad, Inc. (C&I), all Class III rail carrier subsidiaries of Bethlehem Steel Corporation (Bethlehem), operating in Delaware, Indiana Maryland, and Pennsylvania.[2]

This transaction is related to a simultaneously filed verified notice of exemption in STB Finance Docket No. 34343, *International Steel Group Inc.—Continuance in Control Exemption—ISG Railways, Inc.*, wherein International Steel Group Inc. seeks to continue in control of ISG Railways upon ISG Railways becoming a Class II rail carrier pursuant to this proceeding.

The proposed transaction was scheduled to be consummated on or after April 29, 2003, the effective date of the exemption (7days after the exemption was filed).

ISG Railways states that: (i) The railroads do not connect with each other or any railroad in their corporate family; (ii) the acquisition of control is not part of a series of anticipated transactions that would connect the railroads with each other or any railroad in their corporate family; and (iii) the transaction does not involve a Class I carrier. Therefore, the transaction is exempt from the prior approval requirements of 49 U.S.C. 11323. *See* 49 CFR 1180.2(d)(2).

Under 49 U.S.C. 10502(g), the Board may not use its exemption authority to relieve a rail carrier of its statutory obligation to protect the interests of its employees. Section 11326(c), however, does not provide for labor protection for transactions under sections 11324 and 11325 that involve only Class III rail carriers. Because this transaction involves Class III rail carriers only, the Board, under the statute, may not impose labor protective conditions for this transaction.

If the notice contains false or misleading information, the exemption is void *ab initio*. Petitions to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction.

[2] ISG Railways states that Bethlehem is operating under bankruptcy protection, but Keystone, CBLR, SHP, LMIC, BVRY, UMP, PBR and C&I are not.

An original and 10 copies of all pleadings, referring to STB Finance Docket No. 34344, must be filed with the Surface Transportation Board, 1925 K Street, NW., Washington, DC 20423–0001. In addition, a copy of all pleadings must be served on Kevin M. Sheys, Kirkpatrick & Lockhart LLP, 1800 Massachusetts Avenue, NW.,—2nd Floor, Washington, DC 20036.

Board decisions and notices are available on our Web site at *www.stb.dot.gov*.

Decided: May 15, 2003.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 03–12859 Filed 5–21–03; 8:45 am]

BILLING CODE 4915–00–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Docket No. AB–603 (Sub–No. 1X)]

V and S Railway, Inc.—Abandonment Exemption—In Barber County, KS

On May 2, 2003, V and S Railway, Inc. (VSR), filed with the Surface Transportation Board (Board) a petition under 49 U.S.C. 10502 for exemption from the provisions of 49 U.S.C. 10903 to abandon a 20-mile line of railroad extending from milepost 21.0, at Medicine Lodge, to the end of the line at milepost 41.0, at Sun City, in Barber County, KS. The line traverses United States Postal Service Zip Codes 67071, 67104, and 67143.

The line does not contain Federally granted rights-of-way. Any documentation in VSR's possession will be made available promptly to those requesting it.

The interest of railroad employees will be protected by the conditions set forth in *Oregon Short Line R. Co.—Abandonment—Goshen*, 360 I.C.C. 91 (1979).

By issuing this notice, the Board is instituting an exemption proceeding pursuant to 49 U.S.C. 10502(b). A final decision will be issued by August 20, 2003.

Any offer of financial assistance (OFA) under 49 CFR 1152.27(b)(2) will be due no later than 10 days after service of a decision granting the petition for exemption. Each OFA must be accompanied by a $1,100 filing fee. *See* 49 CFR 1002.2(f)(25).

All interested persons should be aware that, following abandonment of rail service and salvage of the line, the line may be suitable for other public use, including interim trail use. Any request for a public use condition under 49 CFR 1152.28 or for trail use/rail banking under 49 CFR 1152.29 will be due no later than June 11, 2003. Each trail use request must be accompanied by a $150 filing fee. *See* 49 CFR 1002.2(f)(27).

All filings in response to this notice must refer to STB Docket No. AB–603 (Sub-No. 1X) and must be sent to: (1) Surface Transportation Board, 1925 K Street, NW., Washington DC 20423–0001; and (2) Karl Morell, Of Counsel, Ball Janik LLP, 1455 F Street, NW., Suite 225, Washington DC 20005. Replies to the petition are due on or before June 11, 2003.

Persons seeking further information concerning abandonment procedures may contact the Board's Office of Public Services at (202) 565–1592 or refer to the full abandonment and discontinuance regulations at 49 CFR part 1152. Questions concerning environmental issues may be directed to the Board's Section of Environmental Analysis (SEA) at (202) 565–1552. (Assistance for the hearing impaired is available through the Federal Information Relay Service (FIRS) at 1–800–877–8339.)

An environmental assessment (EA) (or an environmental impact statement (EIS), if necessary), prepared by SEA, will be served upon all parties of record and upon any agencies or other persons who commented during its preparation. Other interested persons may contact SEA to obtain a copy of the EA (or EIS). EAs in these abandonment proceedings normally will be made available within 60 days after the filing of the petition. The deadline for submission of comments on the EA will generally be within 30 days of its service.

Board decisions and notices are available on our Web site at *http://www.stb.dot.gov*.

Decided: May 16, 2003.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 03–12860 Filed 5–21–03; 8:45 am]

BILLING CODE 4915–00–P

DEPARTMENT OF THE TREASURY

Departmental Offices

Privacy Act of 1974, Systems of Records

AGENCY: Departmental Offices, Treasury.

ACTION: Notice of Revised Privacy Act Systems of Records.

SUMMARY: In accordance with the Privacy Act of 1974, as amended, the Treasury Inspector General for Tax Administration (TIGTA) gives notice of a revised Privacy Act system of records.

DATES: Comments must be received by June 23, 2003. The proposed new system of records will become effective July 1, 2003, unless comments are received which would result in a contrary determination.

ADDRESSES: Comments should be sent to Lori Creswell, Assistant Chief Counsel, Treasury Inspector General for Tax Administration, 1125 15th Street, Room 700A, Washington, DC 20005, 202–622–4068. Comments will be made available for inspection upon written request.

FOR FURTHER INFORMATION CONTACT: Lori Creswell, Assistant Chief Counsel, Treasury Inspector General for Tax Administration, 1125 15th Street, Room 700A, Washington, DC 20005, 202–622–4068.

SUPPLEMENTARY INFORMATION: The Treasury Inspector General for Tax Administration (TIGTA) was established pursuant to the Internal Revenue Service Restructuring and Reform Act of 1998. TIGTA's duties and operating authority are set forth in the Inspector General Act of 1978, 5 U.S.C app. 3. TIGTA exercises all duties and responsibilities of an Inspector General with respect to the Department and the Secretary on all matters relating to the Internal Revenue Service (IRS). TIGTA conducts, supervises, and coordinates audits and investigations relating to the programs and operations of the IRS and related entities. TIGTA is organizationally placed within the Department of the Treasury, but is independent of the Department and all other Treasury offices.

The powers and responsibilities of the Office of Chief Inspector for the Internal Revenue Service, except for the conducting of background checks and the providing of physical security were transferred to TIGTA. The following systems of records maintained by the Chief Inspector's Office of the Internal Revenue Service, published at 63 FR 69905–69913, are being consolidated and renamed as Treasury/DO .311–TIGTA Office of Investigations Files:

IRS 60.001—Assault and Threat Investigation Files, Inspection;

IRS 60.002—Bribery Investigation Files, Inspection;

IRS 60.003—Conduct Investigation Files, Inspection;

IRS 60.004—Disclosure Investigation Files, Inspection;

IRS 60.005—Enrollee Applicant Investigation Files, Inspection;

IRS 60.006—Enrollee Charge Investigation Files, Inspection;

IRS 60.007—Miscellaneous Information File, Inspection;

IRS 60.009—Special Inquiry Investigation Files, Inspection, and

IRS 60.010—Tort Investigation Files, Inspection.

This amendment reflects the transfer of investigative responsibility to TIGTA.

A notice of final rulemaking, is being published separately in the **Federal Register** to amend 31 CFR 1.36. The amendment reflects the consolidation of the above systems of records and transfers the responsibility for the systems from the Internal Revenue Service (IRS) to the Departmental Offices (DO). The exemptions claimed for the systems of records were last published in their entirety on November 21, 2000, at 65 FR 69865.

The revised system of records report, required by the Privacy Act, 5 U.S.C. 552a(r), has been submitted to the Committee on Government Reform and Oversight of the House of Representatives, the Committee on Governmental Affairs of the Senate, and the Office of Management and Budget, pursuant to Appendix 1 to OMB Circular A–130, Federal Agency Responsibilities for Maintaining Records About Individuals, dated November 30, 2000.

The revised system of records, Treasury/DO .311–TIGTA Office of Investigations Files, is published in its entirety below.

Dated: May 8, 2003.

W. Earl Wright, Jr.,

Chief Management and Administrative Programs Officer.

Treasury/DO .311

SYSTEM NAME:

TIGTA Office of Investigations Files.

SYSTEM LOCATION:

National Headquarters, Office of Investigations, 1125 15th Street, NW., Washington, DC 20005 and Field Division offices listed in Appendix A.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

(1) The subjects or potential subjects of investigations; (2) The subjects of complaints received by TIGTA; (3) Persons who have filed complaints with TIGTA; (4) Confidential informants; and (5) TIGTA Special Agents.

CATEGORIES OF RECORDS IN THE SYSTEM:

(1) Reports of investigations, which may include, but are not limited to, witness statements, affidavits, transcripts, police reports, photographs, documentation concerning requests and approval for consensual telephone and consensual non-telephone monitoring, the subject's prior criminal record, vehicle maintenance records, medical records, accident reports, insurance policies, police reports, and other exhibits and documents collected during an investigation; (2) Status and disposition information concerning a complaint or investigation including prosecutive action and/or administrative action; (3) Complaints or requests to investigate; (4) General case materials and documentation including, but not limited to, Chronological Case Worksheets (CCW), fact sheets, agent work papers, Record of Disclosure forms, and other case management documentation; (5) Subpoenas and evidence obtained in response to a subpoena; (6) Evidence logs; (7) Pen registers; (8) Correspondence; (9) Records of seized money and/or property; (10) Reports of laboratory examination, photographs, and evidentiary reports; (11) Digital image files of physical evidence; (12) Documents generated for purposes of TIGTA's undercover activities; (13) Documents pertaining to the identity of confidential informants; and, (14) Other documents collected and/or generated by the Office of Investigations during the course of official duties.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. app. 3 and 5 U.S.C. 301.

PURPOSE(S):

The purpose of this system of records is to maintain information relevant to complaints received by TIGTA and collected as part of investigations conducted by TIGTA's Office of Investigations. This system also includes investigative material compiled by the IRS' Office of the Chief Inspector, which was previously maintained in the following systems of records: Treasury/IRS 60.001–60.007 and 60.009–60.010.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Disclosure of returns and return information may be made only as provided by 26 U.S.C. 6103. Records other than returns and return information may be used to:

(1) Disclose pertinent information to appropriate Federal, State, local, or foreign agencies, or other public authority responsible for investigating or prosecuting the violations of, or for enforcing or implementing a statute, rule, regulation, order, or license, where the disclosing agency becomes aware of a potential violation of civil or criminal law or regulation;

(2) Disclose information to a Federal, State, local, or other public authority maintaining civil, criminal, or other relevant enforcement information or other pertinent information, which has requested information relevant to or necessary to the requesting agency's, bureau's, or authority's hiring or retention of an individual, or issuance of a security clearance, license, contract, grant, or other benefit;

(3) Disclose information in a proceeding before a court, adjudicative body, or other administrative body before which TIGTA is authorized to appear when (a) the agency, or (b) any employee of the agency in his or her official capacity, or (c) any employee of the agency in his or her individual capacity where the Department of Justice or the agency has agreed to represent the employee, or (d) the United States, when the agency determines that litigation is likely to affect the agency, is a party to litigation or has an interest in such litigation, and the use of such records by the agency is deemed to be relevant and necessary to the litigation or administrative proceeding and not otherwise privileged;

(4) Disclose information to a court, magistrate or administrative tribunal in the course of presenting evidence, including disclosures to opposing counsel or witness in the course of civil discovery, litigation, or settlement negotiations or in connection with criminal law proceedings or in response to a subpoena where arguably relevant to a proceeding;

(5) Disclose information to the Department of Justice for the purpose of litigating an action or seeking legal advice;

(6) Provide information to third parties during the course of an investigation to the extent necessary to obtain information pertinent to the investigation;

(7) Provide information to a congressional office in response to an inquiry made at the request of the individual to whom the record pertains;

(8) Provide information to the news media in accordance with guidelines contained in 28 CFR 50.2;

(9) Disclose information to the Equal Employment Opportunity Commission, Merit Systems Protection Board, arbitrators, and other parties responsible for processing personnel actions or conducting administrative hearings or appeals, or if needed in the performance of other authorized duties;

(10) In situations involving an imminent danger of death or physical injury, disclose relevant information to an individual or individuals who are in danger; and

(11) Provide information to other Offices of Inspectors General, the President's Council on Integrity and Efficiency, and the Department of Justice, in connection with their review of TIGTA's exercise of statutory law enforcement authority, pursuant to Section 6(e) of the Inspector General Act of 1978, as amended, 5 U.S.C.A. Appendix 3.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPENSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper records and electronic media.

RETRIEVABILITY:

By name, Social Security Number, and/or case number.

SAFEGUARDS:

The records are accessible to TIGTA personnel, all of whom have been the subject of background investigations, on a need-to-know basis. Disclosure of information through remote terminals is restricted through the use of passwords and sign-on protocols, which are periodically changed; these terminals are accessible only to authorized persons. Paper records are maintained in locked facilities and/or cabinets with restricted access.

RETENTION AND DISPOSAL:

Some of the records in this system are maintained and disposed of in accordance with a record disposition schedule approved by the National Archives and Records Administration. TIGTA is in the process of requesting approval of new records schedules concerning all records in this system of records. Records not currently covered by an approved record retention schedule will not be destroyed until TIGTA receives approval from the National Archives and Records Administration.

SYSTEM MANAGER(S) AND ADDRESS:

Deputy Inspector General for Investigations, Office of Investigations, TIGTA, 1125 15th Street, NW., Room 700A, Washington, DC 20005.

NOTIFICATION PROCEDURE:

Individuals seeking notification and access to any record contained in this system of records, or seeking to contest its content, may inquire in writing in accordance with instructions appearing at 31 CFR part 1, subpart C, appendix A. Written inquiries should be addressed to the Office of Chief Counsel, Disclosure Section, Treasury Inspector General for Tax Administration, 1125 15th Street, NW., Room 700A, Washington, DC 20005. This system of records may contain records that are exempt from the notification, access, and contesting records requirements pursuant to the provisions of 5 U.S.C. 552a(j)(2) and (k)(2).

RECORD ACCESS PROCEDURES:

See "Notification Procedures" above.

CONTESTING RECORD PROCEDURES:

See "Notification Procedures" above.

RECORD SOURCE CATEGORIES:

Some records contained within this system of records are exempt from the requirement that the record source categories be disclosed pursuant to the provisions of 5 U.S.C. 552a(j)(2) and (k)(2). Non-exempt record source categories include the following: Department of the Treasury personnel and records, complainants, witnesses, governmental agencies, tax returns and related documents, subjects of investigations, persons acquainted with the individual under investigation, third party witnesses, Notices of Federal Tax Liens, court documents, property records, newspapers or periodicals, financial institutions and other business records, medical records, and insurance companies.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

Some records contained within this system of records are exempt from 5 U.S.C. 552a (c)(3), (c)(4), (d)(1), (d)(2), (d)(3), (d)(4), (e)(1), (e)(2), (e)(3), (e)(4)(G), (e)(4)(H), (e)(4)(I), (e)(5), (e)(8), (f), and (g) of the Privacy Act pursuant to 5 U.S.C. 552a (j)(2) and (k)(2).

Appendix A

Office of Investigations, TIGTA

Field Division SAC Offices

Treasury IG for Tax Administration, 401 West Peachtree St., Atlanta, GA 30365
Treasury IG for Tax Administration, 550 Main Street, Cincinnati, OH 45202
Treasury IG for Tax Administration, 200-W. Adams, Chicago, IL 60606
Treasury IG for Tax Administration, 4050 Alpha Rd., Dallas, TX 75244–4203
Treasury IG for Tax Administration, 600 17th St., Denver, CO 80202
Treasury IG for Tax Administration, 200 W. Forsyth St., Jacksonville, FL 32202
Treasury IG for Tax Administration, 312 East First Street, Los Angeles, CA 90012
Treasury IG for Tax Administration, 201 Varick Street, New York, NY 10008
Treasury IG for Tax Administration, 600 Arch Street, Philadelphia, PA 19106
Treasury IG for Tax Administration, 1301 Clay Street, Oakland, CA 94612
Treasury IG for Tax Administration, New Carrollton Federal Bldg., 5000 Ellin Road, Lanham, MD 20706
Treasury IG for Tax Administration, 1739–H Brightseat Road, Landover, MD 20785
Treasury IG for Tax Administration, 8484 Georgia Ave., Silver Spring, MD 20910

[FR Doc. 03–12795 Filed 5–21–03; 8:45 am]

BILLING CODE 4810–04–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

[EE–175–86]

Proposed Collection; Comment Request for Regulation Project

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning an existing final regulation, EE–175–86, (TD 8357), Certain Cash or Deferred Arrangements and Employee and Matching Contributions Under Employee Plans (§§ 1.401(k)–1, 1.401(m)–1, and 54.4979–1).

DATES: Written comments should be received on or before July 21, 2003 to be assured of consideration.

ADDRESSES: Direct all written comments to Glenn P. Kirkland, Internal Revenue Service, room 6411, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of regulations should be directed to Carol Savage at Internal Revenue Service, room 6407, 1111 Constitution Avenue NW., Washington, DC 20224, or at (202) 622–3945, or through the Internet at *CAROL.A.SAVAGE@irs.gov*.

SUPPLEMENTARY INFORMATION:

Title: Certain Cash or Deferred Arrangements and Employee and Matching Contributions Under Employee Plans.

OMB Number: 1545–1069.

Regulation Project Number: EE–175–86.

Abstract: This regulation provide the public with the guidance needed to comply with sections 40(k), 401(m), and 4979 of the Internal Revenue Code. The regulation affects sponsors of plans that contain cash or deferred arrangements or employee or matching contributions, and employees who are entitled to make elections under these plans.

Current Actions: There are no changes to this existing regulation at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit organizations, not-for-profit institutions, farms, and state, local, or tribal governments.

Estimated Number of Respondents: 355,500.

Estimated Time Per Respondent: 3 hours.

Estimated Total Annual Burden Hours: 1,060,000.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record.

Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: May 16, 2003.

Glenn P. Kirkland,

IRS Reports Clearance Officer.

[FR Doc. 03–12778 Filed 5–21–03; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Form 5735 and Schedule P (Form 5735)

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Form 5735, Possessions Corporation Tax Credit (Under Sections 936 and 30A), and Schedule P (Form 5735), Allocation of Income and Expenses Under Section 936(h)(5).

DATES: Written comments should be received on or before July 21, 2003 to be assured of consideration.

ADDRESSES: Direct all written comments to Glenn Kirkland, Internal Revenue Service, room 6411, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to Allan Hopkins at Internal Revenue Service, Room 6407, 1111 Constitution Avenue NW., Washington, DC 20224, or at (202) 622–6665, or through the Internet at *Allan.M.Hopkins@irs.gov*.

SUPPLEMENTARY INFORMATION:

Title: Possessions Corporation Tax Credit (Under sections 936 and 30A), and Allocation of Income and Expenses Under Section 936(h)(5).

OMB Number: 1545–0217.

Form Number: Form 5735 and Schedule P (Form 5735).

Abstract: Form 5735 is used to compute the possessions corporation tax credit under sections 936 and 30A. Schedule P (Form 5735) is used by corporations that elect to share their income or expenses with their affiliates. The forms provide the IRS with information to determine if the corporations have computed the tax credit and the cost-sharing or profit-split method of allocating income and expenses.

Current Actions: There are no changes being made to the forms at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit organizations.

Estimated Number of Respondents: 1,371.

Estimated Time Per Respondent: 24 hrs., 53 min.

Estimated Total Annual Burden Hours: 34,126.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: May 15, 2003.

Glenn Kirkland,

IRS Reports Clearance Officer.

[FR Doc. 03–12779 Filed 5–21–03; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Form 2438

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Pub. L. 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Form 2438, Undistributed Capital Gains Tax Return.

DATES: Written comments should be received on or before July 21, 2003 to be assured of consideration.

ADDRESSES: Direct all written comments to Glenn Kirkland, Internal Revenue Service, room 6411, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to Allan Hopkins, Internal Revenue Service, room 6407, 1111 Constitution Avenue NW., Washington, DC 20224, or at (202) 622–6665, or through the Internet at *Allan.M.Hopkins@irs.gov.*

SUPPLEMENTARY INFORMATION:

Title: Undistributed Capital Gains Tax Return.

OMB Number: 1545–0144.

Form Number: 2438.

Abstract: Form 2438 is used by regulated investment companies to compute capital gains tax on undistributed capital gains designated under Internal Revenue Code section 852(b)(3)(D). The IRS uses this information to determine the correct tax.

Current Actions: There are no changes being made to the form at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit organizations.

Estimated Number of Respondents: 100.

Estimated Time Per Respondent: 8 hrs., 35 mins.

Estimated Total Annual Burden Hours: 859.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: May 15, 2003.

Glenn Kirkland,

IRS Reports Clearance Officer.

[FR Doc. 03–12780 Filed 5–21–03; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

[LR–185–84]

Proposed Collection; Comment Request for Regulation Project

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning an existing final regulation, LR–185–84 (TD 8086), Election of $10 Million Limitation on Exempt Small Issues of Industrial Development Bonds; Supplemental Capital Expenditure Statements (§ 1.103–10(b)(2)(vi)).

DATES: Written comments should be received on or before July 21, 2003 to be assured of consideration.

ADDRESSES: Direct all written comments to Glenn Kirkland, Internal Revenue Service, room 6411, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection should be directed to Allan Hopkins at Internal Revenue Service, room 6407, 1111 Constitution Avenue NW., Washington, DC 20224, or at (202) 622–6665, or through the Internet at *Allan.M.Hopkins@irs.gov.*

SUPPLEMENTARY INFORMATION:

Title: Election of $10 Million Limitation on Exempt Small Issues of Industrial Development Bonds; Supplemental Capital Expenditure Statements.

OMB Number: 1545–0940.

Regulation Project Number: LR–185–84.

Abstract: This regulation liberalizes the procedure by which a state or local government issuer of an exempt small issue of tax-exempt bonds elects the $10 million limitation upon the size of such issue and deletes the requirement to file certain supplemental capital expenditure statements.

Current Actions: There is no change to this existing regulation.

Type of Review: Extension of a currently approved collection.

Affected Public: State, local or tribal governments.

Estimated Number of Respondents: 10,000.

Estimated Time Per Respondent: 6 minutes.

Estimated Total Annual Burden Hours: 1,000.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: May 15, 2003.

Glenn Kirkland,

IRS Reports Clearance Officer.

[FR Doc. 03–12781 Filed 5–21–03; 8:45 am]

BILLING CODE 4830–01–P

Corrections

Federal Register
Vol. 68, No. 99
Thursday, May 22, 2003

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 72

[USCG–2001–10714]

RIN 1625–AA34 (Formerly RIN 2115–AG25)

Update of Rules on Aids to Navigation Affecting Buoys, Sound Signals, International Rules at Sea, Communications Procedures, and Large Navigational Buoys

Correction

In proposed rule document 03–11987 beginning on page 25855 in the issue of Wednesday, May 14, 2003, make the following correction:

§ 72.05–10 [Corrected]

On page 25859, in § 72.05–10, in the third column, in the **Note**, in the fourth and fifth lines, "*https://pollux.nss.nima.mil/pubs/USCGLL/pubs_j_uscgll_list*" should read, "*http://pollux.nss.nima.mil/pubs/USCGLL/pubs_j_uscgll_list.html*".

[FR Doc. C3–11987 Filed 5–21–03; 8:45 am]
BILLING CODE 1505–01–D

Federal Register

Thursday,
May 22, 2003

Part II

Department of the Interior

Fish and Wildlife Service

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; Designation of Critical Habitat for Five Plant Species From the Northwestern Hawaiian Islands, Hawaii; Final Rule

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018–AH09

Endangered and Threatened Wildlife and Plants; Designation of Critical Habitat for Five Plant Species From the Northwestern Hawaiian Islands, Hawaii

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), designate critical habitat pursuant to the Endangered Species Act of 1973, as amended (Act), for five of six plant species known historically from the Northwestern Hawaiian Islands. The five species are *Amaranthus brownii, Mariscus pennatiformis, Pritchardia remota, Schiedea verticillata*, and *Sesbania tomentosa*. A total of approximately 493 hectares (1,219 acres) of land on Nihoa, Necker, and Laysan Islands fall within the boundaries of the seven critical habitat units designated for the five species. This critical habitat designation requires the Service to consult under section 7 of the Act with regard to actions carried out, funded, or authorized by a Federal agency. Section 4 of the Act requires us to consider economic and other relevant impacts when specifying any particular area as critical habitat. We solicited data and comments from the public on all aspects of the proposed rule, including data on economic and other impacts of the designation.

DATES: This rule becomes effective on June 23, 2003.

ADDRESSES: Comments and materials received, as well as supporting documentation, used in the preparation of this final rule will be available for public inspection, by appointment, during normal business hours at U.S. Fish and Wildlife Service, Pacific Islands Office, 300 Ala Moana Blvd., Room 3–122, P.O. Box 50088, Honolulu, HI 96850–0001.

FOR FURTHER INFORMATION CONTACT: Paul Henson, Field Supervisor, Pacific Islands Office, at the above address (telephone 808/541–3441; facsimile 808/541–3470).

SUPPLEMENTARY INFORMATION:

Background

In the List of Endangered and Threatened Plants (50 CFR 17.12(h)), there are six plant species that, at the time of listing, were reported from the Northwestern Hawaiian Islands (NWHI). *Amaranthus brownii, Pritchardia remota*, and *Schiedea verticillata* are endemic to the NWHI, while *Cenchrus agrimonioides, Mariscus pennatiformis*, and *Sesbania tomentosa* are reported from several other Hawaiian islands in addition to the NWHI (see Table 1).

TABLE 1.—SUMMARY OF ISLAND DISTRIBUTION OF SIX SPECIES FROM THE NWHI

Species	Island distribution						
	Kauai	Oahu	Molokai	Lanai	Maui	Hawaii	NWHI, Kahoolawe, Niihau
Amaranthus brownii (no common name)	.....	.....	.....	.....	.....	.....	Nihoa (C)
Cenchrus agrimonioides (kamanomano)	.....	C	.....	H	C	R	Kure (H*), Laysan (H), Midway (H)
Mariscus pennatiformis (no common name)	H	H	.....	.....	C	R	Laysan (C)
Pritchardia remota (loulu)	.....	.....	.....	.....	.....	.....	Nihoa (C), Laysan(**)
Schiedea verticillata (no common name)	.....	.....	.....	.....	.....	.....	Nihoa (C)
Sesbania tomentosa (ohai)	C	C	C	H	C	C	Niihau (H), Kahoolawe (C), Necker (C), Nihoa (C)

Key:
C (Current)—occurrence last observed within the past 30 years.
H (Historical)—occurrence not seen for more than 30 years.
R (Reported)—reported from undocumented observations.
* *Cenchrus agrimonioides* var. *laysanensis* was last observed 23 years ago.
** It has been suggested that *Pritchardia remota* was the species of *Pritchardia* once extant on Laysan; however, this is not known for certain.
NWHI include Kure Atoll, Midway Atoll, and Laysan, Necker, Nihoa islands.

Although we considered designating critical habitat on the NWHI for each of the six plant species, for the reasons described below, the final designation includes critical habitat for five of six plant species. Species that also occur on other islands may have critical habitat designated on other islands in previous or subsequent rulemakings.

The Northwestern Hawaiian Islands

The NWHI are a chain of islands that extend along a linear path for approximately 1,600 kilometers (km) (1,000 miles (mi)) in a northwestern direction from Nihoa Island to Kure Atoll and include the following: Nihoa Island, Necker Island, French Frigate Shoals, Gardner Pinnacles, Maro Reef, Laysan Island, Lisianski Island, Pearl and Hermes Atoll, Midway Atoll, and Kure Atoll (Figure 1). They are remnants of once larger islands that have slowly eroded and subsided and that exist today as small land masses or coral atolls covering the remnants of volcanic islands (Department of Geography 1998; Service 1998).

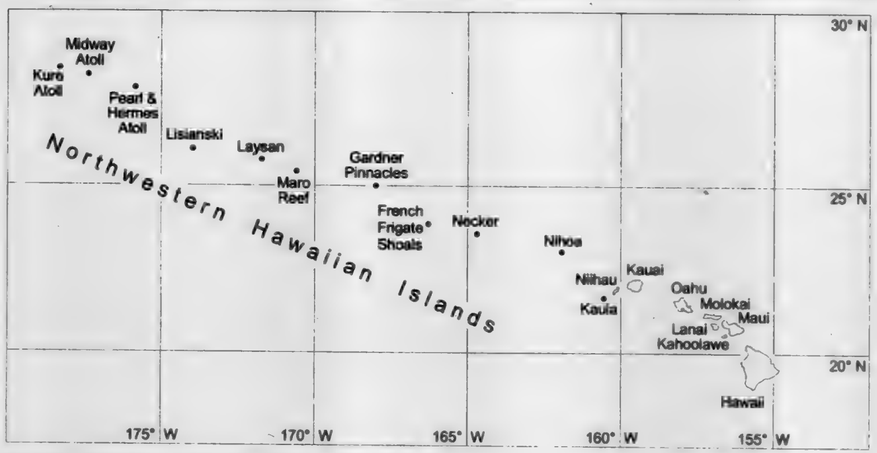


Figure 1. Northwestern Hawaiian Islands

Nihoa rises approximately 274 meters (m) (900 feet (ft)) above sea level and has an area of approximately 69 hectares (ha) (171 acres (ac)). Its steep topography and crater shape reveal its volcanic origin. Necker Island, less than 92 m (300 ft) in elevation and 19 ha (46 ac) in area, consists of thin-layered, weathered lava flows. La Perouse Pinnacles at French Frigate Shoals and Gardner Pinnacles are the last exposed volcanic remnants in the archipelago. French Frigate Shoals is a crescent-shaped atoll nearly 29 km (18 mi) across. More than a dozen small sandy islands dot the fringes of this atoll. Maro Reef is a largely submerged area marked by breakers and a few pieces of coral that intermittently protrude above the waterline. Laysan Island is approximately 405 ha (1,002 ac) in size and fringed by a reef. In the center of the island is a 52 ha (129 ac) hypersaline lagoon. Lisianski Island is 147 ha (364 ac) in size and bounded to the north by an extensive reef system. The central lagoon once found on this island has filled with sand. Pearl and Hermes Reef, an inundated atoll, includes nearly 40,469 ha (100,000 ac) of submerged reef and seven small sandy islets totaling less than 34 ha (85 ac). Midway Atoll is approximately 8 km (5 mi) in diameter and includes three islands: Sand, Eastern, and Spit. Both Sand and Eastern Islands have been highly altered by man. Kure Atoll is the northernmost exposed land in the Hawaiian archipelago. Two islands, Green and Sand, are found on the southern edge of the atoll and are included in the Hawaii State Seabird Sanctuary System. Green Island was altered considerably in the past and today suffers from enormous nonnative species problems (Elizabeth Flint, Service, pers. comm., 2000).

One of the six listed plants was historically known from Kure Atoll (*Cenchrus agrimonioides* var. *laysanensis*), two were known from Laysan (*C. agrimonioides* var. *laysanensis* and *Mariscus pennatiformis* ssp. *bryanii*), one from Midway (*C. agrimonioides* var. *laysanensis*), four from Nihoa (*Amaranthus brownii, Pritchardia remota, Schiedea verticillata*, and *Sesbania tomentosa*), and one from Necker (*Sesbania tomentosa*) (see Table 1 above).

Nihoa (209 km (140 mi) from Niihau) and Necker (an additional 290 km (180 mi) northwest of Nihoa) are the islands in the northwestern group that are closest to the main Hawaiian Islands. Both are small, residual fragments of volcanoes that formed approximately 7.2 and 10.3 million years ago, respectively (Service 1986). Although both of these islands were uninhabited at the time of their modern discovery in the late eighteenth century, there is an extensive heiau (indigenous place of worship or shrine) complex on Necker, and agricultural terraces and other Hawaiian archaeological features can be found on Nihoa (Cleghorn 1984; Department of Geography 1998; Service 1986).

In 1892, a guano mining business began operation on Laysan and flourished until 1904. During this time, rabbits were introduced to Laysan for a rabbit canning industry, and the rabbits were allowed to reproduce and roam freely (Morin and Conant 1998; Tomich 1986). This failed as a profitable business, and no attempt was made to control the number of rabbits on the island. The rabbits were finally eradicated from Laysan Island in the early 1920s, although not before the vegetation had been thoroughly devastated. Since then, the vegetation of Laysan has recovered to a remarkable degree, although some species, like the native palms (*Pritchardia* sp.) (lolou), are no longer naturally extant on the island (Tomich 1986; E. Flint, pers. comm., 2000).

Midway Atoll was discovered and named Middlebrook Islands in 1859 by Captain Nick Brooks. The atoll was taken into possession by the United States in 1867, and in 1903, President Theodore Roosevelt placed the atoll under the control of the U.S. Navy. In 1935, Pan American World Airways set up an airbase for the weekly Trans-Pacific Flying Clipper Seaplane service. In 1941, the Japanese attacked Midway Atoll on their return from the attack on Pearl Harbor. In 1942, the United States defeated the Japanese Fleet north of the atoll, turning the tide of World War II in the Pacific. In 1988, the atoll was added to the National Wildlife Refuge (NWR) system, and in 1996, the jurisdiction of Midway Atoll was transferred from the U.S. Navy to the Department of the Interior (Service 2000). Despite this evidence of human use, these islands continue to support an assemblage of endemic plants and animals not found elsewhere in the archipelago (Department of Geography 1998).

Kure Atoll was discovered and named in 1827 by the captain of a Russian vessel. Between 1876 and 1936, Australian Copra & Guano Ltd. mined guano from Green Island and Sand Island, the two islands that make up Kure Atoll. Military bases were built on the islands during World War II, and a Loran C station with two 158 m (518 ft) high masts was operated until 1998. The towers are no longer on the islands. The airstrip built on Green Island is no longer usable, and landing is only possible by boat (Service 1998a).

Hawaiian Islands National Wildlife Refuge

The reefs and islets of the Northwestern Hawaiian chain from Nihoa Island through Pearl and Hermes Atoll are protected as the Hawaiian Islands National Wildlife Refuge (HINWR). The HINWR was established in 1909 to protect the large colonies of seabirds, which were being slaughtered for the millinery trade, and a variety of other marine organisms, including sea turtles and the critically endangered Hawaiian monk seal (*Monachus schauinslandi*), as well as to address the commercial exploitation of wildlife resources (Executive Order 1019). Within the refuge's boundaries are eight islands and atolls: Nihoa, Necker, French Frigate Shoals, Gardner Pinnacles, Maro Reef, Laysan, Lisianski, and Pearl and Hermes Atoll. There is no public or recreational use allowed at HINWR. Access is strictly regulated through a permit system because of the sensitivity of the organisms on these islands to human disturbance and the high risk of importation of nonnative plant and invertebrate species. For those who do access the refuge, strict quarantine procedures are in effect. Other than the refuge staff, only individuals conducting scientific research or undertaking natural history film recording have been granted official permission to visit the HINWR (E. Flint, pers. comm., 2002).

Northwestern Hawaiian Islands Coral Reef Ecosystem Reserve

On December 4, 2000, President Clinton issued an Executive Order establishing the 33,993,594 ha (84 million ac) Northwestern Hawaiian Islands Coral Reef Ecosystem Reserve. This reserve includes the marine waters and submerged lands of the NWHI and covers an area approximately 2,222 km (1,200 nautical mi) long and 185 km (100 nautical mi) wide. The reserve is adjacent to State of Hawaii waters and submerged lands and the Midway Atoll NWR and includes the HINWR outside of State waters.

Discussion of Plant Taxa

Species Endemic to the Northwestern Hawaiian Islands

Amaranthus brownii (No Common Name (NCN))

Amaranthus brownii, a member of the amaranth family (Amaranthaceae), is an herbaceous annual with leafy upright or ascending stems, 30 to 90 centimeters (cm) (1 to 3 ft) in length. The slightly hairy, alternate leaves are long, narrow, and more or less folded in half lengthwise. The species is monoecious, with male and female flowers being found on the same plant. *Amaranthus brownii* can be distinguished from other Hawaiian members of the genus by its spineless leaf axils (the points between the stem and a leaf branch), linear leaves, and indehiscent (remaining closed at maturity) fruits (Wagner *et al.*, 1999).

The growing season for *Amaranthus brownii* extends from December to June or July. Conant (1985) reported finding plants in an early flowering stage in February and collected seed from dead plants during June. Phenology may vary somewhat from year to year, depending on rainfall and climatic factors. Pollination vectors, seed dispersal agents, specific environmental requirements, and limiting factors for this species are unknown (Service 1998d).

Amaranthus brownii is currently the rarest native plant on Nihoa (Conant 1985). When it was first collected in 1923, it was "most common on the ridge leading to Miller's Peak, but abundant also on the ridges to the east" (Herbst 1977). In 1983, the two known groups of colonies were separated by a distance of 0.4 km (0.25 mi) and contained a total of approximately 35 plants: one occurrence of about 23 plants near Miller's Peak and a second occurrence of approximately a dozen plants in three small groups in Middle Valley. No plants have been seen at either location since 1983, even though Service staff have surveyed for the species annually (Service 1998d). None of the surveys conducted since 1983 have been conducted in the winter months when this annual species is easiest to find and identify. Access to the island is particularly limited during the winter due to difficult and dangerous landing conditions (Cindy Rehkemper, Service, pers. comm., 2001).

Amaranthus brownii typically grows in shallow soil on rocky outcrops. It is found in fully exposed locations at elevations between 30 and 242 m (100 and 800 ft). Associated native plant taxa include *Chenopodium oahuense* (aheahea), *Eragrostis variabilis* (kawelu), *Ipomoea indica* (koali awa), *Ipomoea pes-caprae* ssp. *brasiliensis* (pohuehue), *Panicum torridum* (kakonakona), *Scaevola sericea* (naupaka), *Schiedea verticillata* (NCN), *Sicyos pachycarpus* (kupala), *Sida fallax* (ilima), and *Solanum nelsonii* (akia) (Hawaii Natural Heritage Program (HINHP) Database 2000).

The threats to *Amaranthus brownii* on Nihoa include competition with the nonnative plant *Portulaca oleracea* (pigweed), alteration of substrate, fire, potential introduction of rats and mice, human disturbances, a risk of extinction from naturally occurring events (such as hurricanes), and reduced reproductive vigor due to the small number of extant individuals (Service 1998d).

Pritchardia remota (loulu)

Pritchardia remota, a member of the palm family (Arecaceae), is a tree 4 to 5 m (13 to 16 ft) tall with a ringed, wavy trunk about 15 cm (5.9 in) in diameter. The rather ruffled, fan-shaped leaves are approximately 80 cm (31 in) in diameter and somewhat waxy to pale green with a few tiny scales on the lower surface. The flowering stalks, which can be up to 30 cm (12 in) in length, are branched, and the flowers are arranged spirally along the hairless stalks. *Pritchardia remota* is the only species of *Pritchardia* on Nihoa and can be distinguished from other species in the genus by its wavy leaves; short, hairless inflorescences; and small, round fruits (Read and Hodel 1999; 61 FR 43178).

Pritchardia remota is a long-lived perennial, and populations on Nihoa have remained stable for several years. Conant (1985) reported finding plants with fruit and flowers in the spring and summer. Phenology may vary somewhat from year to year, depending on rainfall and climatic factors. Pollination vectors, seed dispersal agents, specific environmental requirements, and limiting factors for this species are unknown (Service 1998d).

Pritchardia remota occurs on Nihoa at elevations between 15 and 151 m (50 and 500 ft) and may have historically occurred on Laysan Island as well (Beccari and Rock 1921). Currently, *Pritchardia remota* is known from four colonies on Nihoa that are found along 0.2 km (0.1 mi) of the length of two valleys on opposite sides of the island, approximately 0.6 km (0.4 mi) apart. More than 680 plants, including seedlings, are found in West Palm Valley and at least 392 plants are found in East Palm Valley (HINHP Database 2000). A few individuals are also found at the bases of basalt cliffs on the steep outer slopes of each of the two valleys

(HINHP Database 2000). *Pritchardia remota* is also present in a shadehouse on Laysan Island as seedlings, from seeds collected at Nihoa for outplanting on Laysan as part of identified recovery efforts for this species (Service 1998d).

Pritchardia remota is one of the few Hawaiian members of the genus that occurs in relatively dry climates like that found on Nihoa. Its distribution on Nihoa, however, may be related to availability of water since many individuals are found in valleys and near freshwater seeps (Service 1998d). In the *Pritchardia remota* coastal forest community, this species assumes complete dominance, creating a closed canopy and understory of thick layers of fallen fronds (Gagne and Cuddihy 1999). Native plants which occur nearby include *Chenopodium oahuense*, *Sesbania tomentosa* (ohai), *Sida fallax*, and *Solanum nelsonii*, (Service 1998d).

The threats to *Pritchardia remota* on Nihoa include competition with nonnative plants, potential introduction of rats and mice, possible herbivory by nonnative insect species, fire, human disturbances, a risk of extinction from naturally occurring events (such as landslides), and reduced reproductive vigor due to the small number of extant individuals (Service 1998d).

Schiedea verticillata (NCN)

Schiedea verticillata, a member of the pink family (Caryophyllaceae), is a perennial herbaceous species, which dies back to an enlarged root during the dry season. Stems, which can reach 0.4 to 0.6 m (1.3 to 2 ft) in length, are both upright or pendant (drooping). The stalkless leaves are fleshy, broad, and pale green and are usually arranged in threes. *Schiedea verticillata*, the only member of its genus to grow in the NWHI, is distinguished from other species in the genus by its exceptionally large sepals and (usually) three leaves per node (Wagner *et al.*, 1999).

Schiedea verticillata is a short-lived perennial. Dr. Steve Weller, University of California at Irvine, found that *Schiedea verticillata* produces more seeds and more nectar than any other species in its genus. It also has the highest degree of genetic diversity among individuals of any species in the genus (Service 1998d). This species' reproductive cycle may not be seasonal, since Conant (1985) has found many life stages simultaneously throughout the year. Her observations also indicate that individual plants flower, set seed, and disperse seed in a relatively short period of time. Pollination vectors, seed dispersal agents, specific environmental requirements, and limiting factors for this species are unknown (Service 1998d).

All but one of the historic colonies of *Schiedea verticillata* are known to be extant on Nihoa. Colony locations and plant numbers appear to shift, but total numbers islandwide have remained relatively stable for several years. Seven colonies, containing a total of 497 individuals, were documented between 1980 and 1983 (HINHP Database 2000). In 1992, Service staff counted between 170 and 190 plants in 6 colonies. In 1996, a total of 359 plants, distributed in 10 colonies primarily on the western half of the island, were identified, with an occurrence of 13 plants on the east spur of the island near Tunnel Cave. Two previously unobserved colonies of 2 and 99 plants were located on the north cliffs above Miller's Valley. Other colonies included 24 plants at Dog's Head, 37 plants at Devil's Slide, 10 plants near Miller's Peak, a previously unknown occurrence of 62 plants on the ridge separating West and West Palm valleys, 80 plants near lower West Valley, 28 individuals near Pinnacle Peak, and 4 plants northeast of Pinnacle Peak (Service 1998).

Schiedea verticillata typically grows in rocky scree, soil pockets, and cracks in coastal cliff faces and in *Pritchardia remota* coastal mesic forest at elevations between 30 and 242 m (100 and 800 ft). Associated native plant taxa include *Eragrostis variabilis*, *Rumex albescens* (huahuako), *Tribulus cistoides* (nohu), and lichens (HINHP Database 2000).

The threats to *Schiedea verticillata* on Nihoa include competition with nonnative plant species, possible herbivory by nonnative insect species, potential introduction of rats and mice, human disturbances, a risk of extinction from naturally occurring events (such as rockslides), and reduced reproductive vigor due to the small number of individuals (Conant 1985; Service 1998d).

Multi-Island Species

Cenchrus agrimonioides (kamanomano)

Cenchrus agrimonioides, a short-lived perennial member of the grass family (Poaceae), has leaf blades that are flat or folded and a prominent midrib. The species is distinguished from others in the genus by a cylindrical to lance-shaped bur and the arrangement and position of the bristles on the bur (O'Connor 1999; Wagner *et al.*, 1999). The two varieties, *C. agrimonioides* var. *laysanensis* and *C. agrimonioides* var. *agrimonioides*, differ from each other in that *C. agrimonioides* var. *laysanensis* has smaller burs, shorter stems, and narrower leaves.

Little is known about the life history of *Cenchrus agrimonioides*. It has been observed to produce fruit year round (Service 1999), but other information about its flowering, pollination vectors, seed dispersal agents, longevity, specific environmental requirements, and limiting factors is generally unknown.

Historically, *Cenchrus agrimonioides* var. *agrimonioides* was known from Oahu, Lanai, Maui, and (in an undocumented report) the island of Hawaii (61 FR 53108; 65 FR 79192). *Cenchrus agrimonioides* var. *laysanensis* was historically known from Laysan and Midway Islands and Kure Atoll in the NWHI but has not been seen there since about 1980 (HINHP Database 2000; O'Connor 1999). It occurred on coastal sandy substrate in *Scaevola sericea-Eragrostis variabilis* scrub at an elevation of 5 m (16 ft). Morin and Conant (1998) report that *C. agrimonioides* var. *laysanensis* disappeared from Laysan before 1923, from Midway Atoll sometime shortly after 1902, and was last seen on Green Island (Kure Atoll) in about 1980. *Cenchrus agrimonioides* var. *laysanensis* has not been relocated during periodic monitoring on Laysan for more than 20 years and has not been seen on Midway during recent surveys in 1995 and 1999. It has not been seen on Kure Atoll for over 20 years, in spite of DOFAW's annual seabird surveys and a botanical survey conducted there as recently as 2001. In addition, no viable genetic material of this variety is known to exist. We believe that it is extremely unlikely that individual plants will be rediscovered on these three islands and atolls.

Mariscus pennatiformis (NCN)

Mariscus pennatiformis is a member of the sedge family (Cyperaceae). It is a short-lived perennial with a woody root system covered with brown scales. The stout, three-angled stems are between 0.4 and 1.2 m (1.3 and 4 ft) tall. This species differs from other members of the genus by its slightly concave, smooth stems; the length and number of spikelets (elongated flower-clusters); leaf width; and the length and diameter of stems. The two subspecies, *M. pennatiformis* ssp. *bryanii* and *M. pennatiformis* ssp. *pennatiformis*, are distinguished by the length and width of the spikelets; shape and length of the fruit; and color, length, and width of the glumes (scaly floral bracts) (Koyama 1990).

At the time *Mariscus pennatiformis* was listed in 1994 (59 FR 94559), we followed the taxonomic treatments in the *Manual of the Flowering Plants of Hawaii* (Wagner *et al.* 1990). Subsequent

to this, we became aware of a new taxonomic treatment for the species and plan to publish a notice of taxonomic change to formalize this change after publication of this final rule.

Individuals of *Mariscus pennatiformis* on Laysan Island were closely monitored for 10 years, but the only flowering observed was of one individual from November to December, coinciding with record high rainfall (Service 1999). Little else is known about this plant's flowering cycles, pollination vectors, seed dispersal agents, longevity, specific environmental requirements, or limiting factors (Service 1999).

Historically, *Mariscus pennatiformis* was found on Kauai, Oahu, Maui, Hawaii, and Laysan Island. Currently, *M. pennatiformis* ssp. *pennatiformis* is found on Maui while *M. pennatiformis* ssp. *bryanii* is known only from Laysan Island. This subspecies, *M. pennatiformis* ssp. *bryanii*, was found until recently on the southeast end of the central lagoon and the west and northeast sides of Laysan (HINHP Database 2000; Koyama 1990). Numbers have fluctuated from as many as 200 to only 1 individual over the past 10 years. Currently, a single occurrence of about 200 individuals of *M. pennatiformis* ssp. *bryanii* remains on the southeast end of the lagoon (Service 1999).

Mariscus pennatiformis ssp. *bryanii* is found on coastal sandy substrate at an elevation of 5 m (16 ft). Associated native species include *Cyperus laevigatus* (makaloa), *Eragrostis variabilis*, and *Ipomoea* sp. (HINHP Database 2000; Koyama 1990).

The threats to *Mariscus pennatiformis* ssp. *bryanii* on the island of Laysan include seed predation by the endangered Laysan finch (*Telespiza cantans*) and burrowing activities of nesting seabirds. The native plant *Ipomoea pes-caprae* (beach morning glory) is another possible threat since it periodically overgrows *Mariscus* individuals (Service 1999). In addition, native *Sicyos* spp. (anunu) vines, *Eragrostis variabilis*, and *Boerhavia repens* (alena) appear to impede natural dispersal of *M. pennatiformis* ssp. *bryanii* into other suitable locations (Schultz 2000).

Sesbania tomentosa (ohai)

Sesbania tomentosa, a member of the legume family (Fabaceae), is typically a sprawling short-lived perennial shrub to small tree. Each compound leaf consists of 18 to 38 oblong to elliptic leaflets that are usually sparsely to densely covered with silky hairs. The flowers are salmon-colored tinged with yellow, orange-red, scarlet, or, rarely, pure yellow. *Sesbania tomentosa* is the only endemic Hawaiian species in the genus, differing from the naturalized *Sesbania sesban* in flower color, petal and calyx length, and the number of seeds per pod (Geesink *et al.* 1999).

The pollination biology of *Sesbania tomentosa* has been studied by Dr. David Hopper as part of his dissertation research conducted at the University of Hawaii. His findings suggest that although many insects visit *Sesbania* flowers, the majority of successful pollination is accomplished by native bees of the genus *Hylaeus* and that colonies at Kaena Point on Oahu are probably pollinator-limited. Flowering at Kaena Point is highest during the winter-spring rains and gradually declines throughout the rest of the year. Other aspects of this plant's life history are unknown (Service 1999).

Currently, *Sesbania tomentosa* occurs on six of the eight main Hawaiian Islands (Kauai, Oahu, Molokai, Kahoolawe, Maui, and Hawaii) and on Nihoa and Necker. Although once found on Niihau and Lanai, it is no longer extant on those islands (Geographic Decision Systems International (GDSI) 2000; HINHP Database 2000; Service 1999; 54 FR 56333). On Nihoa, this species has been described as relatively common in some areas, with one population consisting of several thousand plants. On Necker Island, *S. tomentosa* is known from the tops of all hills of the main island. A few individuals are found on the Northwest Cape as well (Service 1999).

Sesbania tomentosa is found in shallow soil on sandy beaches and dunes in *Chenopodium oahuense* coastal dry shrubland or mixed coastal dry cliffs at elevations up to 84 m (276 ft) (HINHP Database 2000). Associated plant species include *Pritchardia remota*, *Scaevola sericea*, *Sida fallax*, and *Solanum nelsonii* (Geesink *et al.* 1999; HINHP Database 2000; Service 1999).

The primary threats to *Sesbania tomentosa* on Nihoa and Necker include competition with various nonnative plant species, lack of adequate pollination, potential introduction of rats and mice, predation by nonnative insects, and fire (Service 1999).

Previous Federal Action

Federal action on these plants began as a result of section 12 of the Endangered Species Act of 1973, as amended (Act) (16 U.S.C. 1531 *et seq.*), which directed the Secretary of the Smithsonian Institution to prepare a report on plants considered to be endangered, threatened, or extinct in the United States. This report, designated as House Document No. 94–51, was presented to Congress on January 9, 1975. In that document *Pritchardia remota* and *Sesbania tomentosa* (as *S. hobdyi* and *S. tomentosa* var. *tomentosa*) were considered endangered. On July 1, 1975, we published a notice in the **Federal Register** (40 FR 27823) of our acceptance of the Smithsonian report as a petition within the context of section 4(c)(2) (now section 4(b)(3)) of the Act, and we gave notice of our intention to review the status of the plant taxa named therein. As a result of that review, on June 16, 1976, we published a proposed rule in the **Federal Register** (41 FR 24523) to determine endangered status pursuant to section 4 of the Act for approximately 1,700 vascular plant taxa, including *Amaranthus brownii*, *Cenchrus agrimonioides* var. *laysanensis*, and *Sesbania tomentosa*. The list of 1,700 plant taxa was assembled on the basis of comments and data received by the Smithsonian Institution and the Service in response to House Document No. 94–51 and the July 1, 1975, **Federal Register** publication (40 FR 27823).

General comments received in response to the 1976 proposal were summarized in an April 26, 1978, **Federal Register** publication (43 FR 17909). In 1978, amendments to the Act required that all proposals over 2 years old be withdrawn. A 1-year grace period was given to proposals already over 2 years old. On December 10, 1979, we published a notice in the **Federal Register** (44 FR 70796) withdrawing the portion of the June 16, 1976, proposal that had not been made final, along with four other proposals that had expired. The Service published updated Notices of Review for plants on December 15, 1980 (45 FR 82479), September 27, 1985 (50 FR 39525), February 21, 1990 (55 FR 6183), and September 30, 1993 (58 FR 51144). We listed *Amaranthus brownii*, *Cenchrus agrimonioides*, *Mariscus pennatiformis*, *Pritchardia remota*, *Schiedea verticillata*, and *Sesbania tomentosa* as endangered between 1994 and 1996. A summary of the listing actions can be found in Table 2, and a summary of the critical habitat actions can be found in Table 3.

TABLE 2.—SUMMARY OF LISTING ACTIONS FOR SIX PLANT SPECIES FROM THE NWHI

Species	Federal status	Proposed rule		Final rule	
		Date	Federal Register	Date	Federal Register
Amaranthus brownii	Endangered	03/24/93	58 FR 15828	08/21/96	61 FR 43178
Cenchrus agrimonioides	Endangered	10/2/95	60 FR 51417	10/10/96	61 FR 53108
Mariscus pennatiformis	Endangered	09/14/93	58 FR 48012	11/10/94	59 FR 56333
Pritchardia remota	Endangered	03/24/93	58 FR 15828	08/21/96	61 FR 43178
Schiedea verticillata	Endangered	03/24/93	58 FR 15828	08/21/96	61 FR 43178
Sesbania tomentosa	Endangered	09/14/93	58 FR 48012	11/10/94	59 FR 56333

TABLE 3.—SUMMARY OF CRITICAL HABITAT ACTIONS, TO DATE, FOR SIX PLANT SPECIES FROM THE NORTHWESTERN HAWAIIAN ISLANDS

Species	Proposed critical habitat designations or nondesignations		Final critical habitat	
	Date(s)	Federal Register	Date(s)	Federal Register
Amaranthus brownii	05/14/02	67 FR 34522	(1)	This final rule.
Cenchrus agrimonioides	12/18/00	65 FR 79192	05/14/03	68 FR 25934.
	04/03/02	67 FR 15856		
	03/04/02	67 FR 9806		
Mariscus pennatiformis	12/18/00	65 FR 79192	02/27/03	68 FR 9116.
	01/28/02	67 FR 3940	05/15/03	68 FR 25934.
	04/03/02	67 FR 15856		
	05/14/02	67 FR 34522		
	05/28/02	67 FR 15856		
	05/28/02	67 FR 36968		
Pritchardia remota	05/14/02	67 FR 34522	(1)	This final rule.
Schiedea verticillata	05/14/02	67 FR 34522	(1)	This final rule.
Sesbania tomentosa	11/07/00	65 FR 66806	02/27/03	68 FR 9116.
	12/18/00	65 FR 79192	03/18/03	68 FR 12982.
	12/29/00	65 FR 83158	05/14/03	68 FR 25934.
	01/28/02	67 FR 3940	(1)	This final rule.
	04/03/02	67 FR 15856		
	03/04/02	67 FR 9806		
	04/05/02	67 FR 16492		
	05/14/02	67 FR 34522		
	05/28/02	67 FR 37108		
	05/28/02	67 FR 36968		

[1] See **DATES** section of this rule.

At the time each of the six plants were listed, we determined that designation of critical habitat was not prudent because it would not benefit the plant or would increase the degree of threat to the species. The not prudent determinations for these species, along with others, were challenged in *Conservation Council for Hawaii* v. *Babbitt*, 2 F. Supp. 2d 1280 (D. Haw. 1998). On March 9, 1998, the United States District Court for the District of Hawaii directed us to review the prudency determinations for 245 listed plant species in Hawaii, including *Amaranthus brownii*, *Cenchrus agrimonioides*, *Mariscus pennatiformis*, *Pritchardia remota*, *Schiedea verticillata*, and *Sesbania tomentosa*. Among other things, the court held that in most cases we did not sufficiently demonstrate that the species are threatened by human activity or that such threats would increase with the designation of critical habitat. The court also held that we failed to balance any risks of designating critical habitat against any benefits (*id.* at 1283–85).

On August 10, 1998, the court ordered us to publish proposed critical habitat designations or nondesignations for at least 100 species by November 30, 2000, and to publish proposed designations or nondesignations for the remaining 145 species by April 30, 2002 (*Conservation Council for Hawaii* v. *Babbitt*, 24 F. Supp. 2d 1074 (D. Haw., 1998)).

On November 30, 1998, we published a notice in the **Federal Register** requesting public comments on our reevaluation of whether designation of critical habitat is prudent for the 245 Hawaiian plants at issue (63 FR 65805). The comment period closed on March 1, 1999, and was reopened from March 24, 1999, to May 24, 1999 (64 FR 14209). We received more than 100 responses from individuals, nonprofit organizations, county governments, the State's Division of Forestry and Wildlife (DOFAW), and Federal agencies (U.S. Department of Defense—Army, Navy, Air Force). Only a few responses offered information on the status of individual plant species or on current management actions for one or more of the 245 Hawaiian plants. While some of the respondents expressed support for the designation of critical habitat for 245 Hawaiian plants, more than 80 percent opposed the designation of critical habitat for these plants. In general, these respondents opposed designation because they believed it would cause economic hardship, chill cooperative projects, polarize relationships with hunters, or potentially increase trespass or vandalism on private lands. In addition, commenters also cited a lack of information on the biological and ecological needs of these plants, which, they suggested, may lead to designation based on guesswork. The respondents who supported the designation of critical habitat cited that designation

would provide a uniform protection plan for the Hawaiian Islands, promote funding for management of these plants, educate the public and State government, and protect partnerships with landowners and build trust.

On November 7, 2000, we published the first of the court-ordered proposed critical habitat designations or nondesignations for Kauai and Niihau plants (65 FR 66808). The proposed critical habitat designations or nondesignations for Maui and Kahoolawe plants were published on December 18, 2000 (65 FR 79192), for Lanai plants on December 27, 2000 (65 FR 82086), and for Molokai plants on December 29, 2000 (65 FR 83158). All of these proposed rules had been sent to the **Federal Register** by, or on, November 30, 2000, as required by the court's order. In those proposals, we proposed that critical habitat was prudent for three of the NWHI species (*Cenchrus agrimonioides, Mariscus pennatiformis,* and *Sesbania tomentosa*) that are reported from Kauai and/or Niihau, as well as from Maui and Molokai. Critical habitat was proposed for *Cenchrus agrimonioides* and *Mariscus pennatiformis* on Maui, and for *Sesbania tomentosa* on Kauai, Maui, and Molokai.

On October 3, 2001, we submitted a joint stipulation with Earthjustice to the U.S. District Court requesting extension of the court order for the final rules to designate critical habitat for plants from Kauai and Niihau (July 30, 2002), Maui and Kahoolawe (August 23, 2002), Lanai (September 16, 2002), and Molokai (October 16, 2002), citing the need to revise the proposals to incorporate or address new information and comments received during the comment periods. The joint stipulation was approved and ordered by the court on October 5, 2001.

On January 28, 2002, we published revised proposed critical habitat designations or nondesignations for plant species from Kauai and Niihau (67 FR 3940), for plant species from Lanai on March 4, 2002 (67 FR 9806), for plant species from Maui and Kahoolawe on April 3, 2002 (67 FR 15856), and for plant species from Molokai on April 5, 2002 (67 FR 16492); these proposals included critical habitat on one or more islands for three of the NWHI species: *Cenchrus agrimonioides, Mariscus pennatiformis,* and *Sesbania tomentosa.*

On May 14, 2002, we published the proposed critical habitat designations or nondesignations for plant species from the NWHI (67 FR 34522), for Hawaii Island plants on May 28, 2002 (67 FR 36968), and for Oahu plants on May 28, 2002 (67 FR 37108). These proposed rules were sent to the **Federal Register** by April 30, 2002, as required by the 1998 court order.

In the May 14, 2002, proposal, critical habitat was proposed for 493 ha (1,219 ac) on Nihoa, Necker, and Laysan Islands. In that proposed rule, we indicated that critical habitat was prudent, and we proposed critical habitat, for *Amaranthus brownii, Pritchardia remota,* and *Schiedea verticillata.* We also proposed critical habitat for *Mariscus pennatiformis* and *Sesbania tomentosa.* Critical habitat was not proposed for *Cenchrus agrimonioides* in the NWHI because the only variety of that species that occurs there, *C. a* var. *laysanensis,* has not been seen in the wild for over 20 years and no genetic material of this variety is known to exist. Publication of the proposed rule opened a 60-day public comment period.

On July 11, 2002, we submitted joint stipulations with Earthjustice to the U.S. District Court requesting extension of the court orders for the final rules to designate critical habitat for plants from Lanai (December 30, 2002), Kauai and Niihau (January 31, 2003), Molokai (February 28, 2003), Maui and Kahoolawe (April 18, 2003), the Northwestern Hawaiian Islands (April 30, 2003), Oahu (April 30, 2003), and the island of Hawaii (May 30, 2003), citing the need to conduct additional review of the proposals, address comments received during the public comment periods, and to conduct a series of public workshops on the proposals. The joint stipulations were approved and ordered by the court on July 12, 2002.

On September 12, 2002, we published a notice announcing the availability of the draft economic analysis on the proposed critical habitat for NWHI (67 FR 57784). We accepted comments on the draft analysis until the comment period closed on October 15, 2002.

Summary of Comments and Recommendations

In the proposed rule published on May 14, 2002 (67 FR 34522), we requested that all interested parties submit written comments on the proposed designation or nondesignation of critical habitat for six plant species from the NWHI. We also contacted all appropriate Federal, State, and local agencies, scientific organizations, and other interested parties and invited them to comment. No request for a public hearing was received. We received individually written letters from 13 parties, including 4 of the 13 designated peer reviewers, 2 State agencies, 2 branches of the military, and 5 private organizations or individuals. The majority of commenters supported the designation of critical habitat for the NWHI, and no commenters were expressly opposed to the designation.

Peer Review

In accordance with our policy published on July 1, 1994 (59 FR 34270), we solicited independent opinions from 13 knowledgeable individuals with expertise in one or several fields, including familiarity with the species, the geographic region that the species occurs in, and knowledge of the principles of island conservation biology. We received comments from four of these individuals who generally supported our methods and conclusion and who provided additional information. Comments received from peer reviewers are summarized in the following section and were considered in the development of the final rule.

All comments received were reviewed for substantive issues, notation of errors, and new information regarding critical habitat for *Amaranthus brownii, Cenchrus agrimonioides, Mariscus pennatiformis, Pritchardia remota, Schiedea verticillata,* and *Sesbania tomentosa.* Similar comments received were grouped into four general issues and are addressed in the following summary.

Issue 1: Biological Justification and Methodology

(1) *Comment:* One peer reviewer questioned the Service for considering all three critical habitat units (Nihoa, Necker, and Laysan Islands) to be critical habitat for *Amaranthus brownii, Mariscus pennatiformis, Pritchardia remota, Schiedea verticillata,* and *Sesbania tomentosa* as there is no record that any of these species occurred on all three islands and as at least one species (*i.e., Mariscus pennatiformis* ssp. *bryanii*) is a single-island endemic.

Our Response: All three islands are not considered to be critical habitat for all five of the species. On Nihoa Island, critical habitat is designated for *Amaranthus brownii, Pritchardia remota, Schiedea verticillata,* and *Sesbania tomentosa.* On Necker Island, critical habitat is designated for *Sesbania tomentosa,* and on Laysan Island critical habitat is designated for *Mariscus pennatiformis* and *Pritchardia remota* (as a recovery population). The critical habitat units on each island are designated for species within extant or historic range or within areas identified in the recovery plans for conservation of the species.

Issue 2: Effects of Critical Habitat Designation

(2) *Comment:* One peer reviewer noted that while the designation of critical habitat is unlikely to have a major impact on the future of NWHI plant species, it would increase awareness of the unique biological attributes of these islands and ultimately increase the likelihood that these species will persist. Another reviewer supported the designation of critical habitat stating that such designation would provide an added, and much needed, layer of protection for plant habitat insofar as: (1) The Departments of the Interior and Commerce disagree on the seaward boundaries of the HINWR; (2) the State of Hawaii has overlapping jurisdiction with the HINWR; (3) a public process is currently in motion to establish a National Marine Sanctuary in the NWHI, which could create an increased commercial interest in eco-tourism in the area; and (4) the native Hawaiian community has expressed a desire for access to Nihoa and Necker Islands for ceremonial purposes. A final reviewer stated that, although the protection afforded by the designation of critical habitat is unclear, such designation has advocacy value because the courts are more likely to find violations of the Act for listed species within such habitat.

Our Response: Critical habitat is one of a number of conservation tools established in the Act.

(3) *Comment:* One reviewer commented that the Service should consider unoccupied, historic habitat that falls outside of the HINWR (*i.e.,* Kure Atoll) for designation as critical habitat as some plant species may need to be re-introduced into such habitat to avoid extinction. Another reviewer expressed concern that the Service was restricting the designation of critical habitat to areas within the HINWR in order to avoid public controversy.

Our Response: We recognize that the long-term conservation of the NWHI species is dependent upon the protection of existing populations and the establishment and protection of additional populations within the historic range (*i.e.,* unoccupied habitat) of each species or within areas identified in the recovery plans for conservation of the species. As such, we examined the current and historically occupied habitat, and areas identified in the recovery plans for conservation of the species. For *Amaranthus brownii, Pritchardia remota,* and *Schiedea verticillata,* species known only from the islands within the NWHI, we were able to locate sites within the HINWR that: (1) Contain the primary constituent elements that are essential to the conservation of one or more of the species; (2) are within the historical range or are identified in the recovery plans for conservation of one or more of the species; and (3) are sufficient to meet our overall recovery goals for these species. For *Mariscus pennatiformis,* the only subspecies known from the NWHI is *M. p.* ssp. *bryanii.* Critical habitat also is designated for this taxon on Laysan Island. Critical habitat also was designated for *M. p.* ssp. *pennatiformis* on Kauai and Maui (68 FR 9116, 68 FR 25934, May 14, 2003) and is proposed on Oahu (67 FR 37108). Critical habitat was designated on Nihoa and Necker for *Sesbania tomentosa* as well as Kauai, Molokai, and Maui (68 FR 9116, 68 FR 12982, 68 FR 25934, May 14, 2003) and is proposed on Oahu and the island of Hawaii (67 FR 37108, 67 FR 36968).

We are not designating critical habitat for *Cenchrus agrimonioides* at this time for the following reasons: *C. a.* var. *laysanensis,* the only variety of this species known from the NWHI, is historically known from Laysan, Midway, and Kure Atoll. This plant has not been reported on Laysan and Midway for over 70 and 100 years, respectively. A permanent year-round camp on Laysan, staffed by paid employees and volunteers, conducts periodic monitoring of both native and nonnative plant species, and *C. a.* var. *laysanensis* has not been seen during these monitoring efforts. On Midway, *C. a.* var. *laysanensis* was not seen during the most recent botanical surveys of 1995 and 1999. *Cenchrus agrimonioides* var. *laysanensis* has not been seen on Kure Atoll for over 20 years though the State DOFAW conducts annual seabird surveys and a botanical survey was conducted there as recently as 2001. In addition, no viable genetic material of this variety is known to exist (see D. *Criteria Used to Identify Critical Habitat*). The rediscovery of currently unknown individual plants on these three islands and atolls is believed to be extremely unlikely.

(4) *Comment:* The Office of Hawaiian Affairs, a State agency, commented that critical habitat must allow traditional cultural gathering rights of Native Hawaiians as reflected in Article XII of the State constitution and upheld by the Hawaii Supreme Court in the Public Access Shoreline Hawaii and Ka Pa akai o Ka Aina decisions.

Our Response: We understand and support the cultural significance of these islands to the Native Hawaiian people, and it is our policy to permit religious and ceremonial gatherings as long as they do not result in effects that are deleterious to habitat for listed species or biota of the islands or that could compromise human safety. Typically, access to Federal lands that are designated as critical habitat is not restricted unless access is determined to result in the destruction or adverse modification of the critical habitat. However, Nihoa, Necker, and Laysan Islands, and their surrounding reefs, are part of the HINWR, which we manage in accordance with the National Wildlife Refuge System Administration Act of 1966. There is no general public or recreational use allowed at HINWR. Access is strictly regulated through a permit system because of the sensitivity of the organisms on these islands to human disturbance and the high risk of importation of nonnative plant and invertebrate species. Other than the refuge staff, only individuals conducting scientific research or undertaking natural history film recording have been granted official permission to visit the HINWR, and these persons are required to apply for a Special Use Permit and abide by the terms and conditions set forth in this permit in order to ensure that the biological integrity, diversity, and environmental health of the refuge are maintained for the benefit of present and future generations of Americans (E. Flint, pers. comm., 2002). Examples of preventative measures put in place by the Special Use Permit program include quarantine protocols to prevent introduction of unwanted plants or insects, and a limitation on the number of people on the island(s) at any one time. In addition, through the Special Use Permit program, we are able to protect the cultural artifacts present on these islands.

Issue 3: Species-Specific Biological Comments

(5) *Comment:* One peer reviewer found it unlikely that the species of *Pritchardia* that once occurred on Laysan Island would have been *Pritchardia remota.* Species of this genus are single-island endemics, and no collections of *Pritchardia remota* are known from Laysan Island. This reviewer did feel that the introduction of Pritchardia remota to Laysan Island was ecologically appropriate given that there is suitable habitat for the species and that the species of *Pritchardia* that once occurred on Laysan Island is no longer extant.

Our Response: The now extinct species of *Pritchardia* that once occurred on Laysan Island was not clearly identified; however, the idea that *P. remota* did occur on Laysan was suggested by Joseph Rock in 1921. We have revised the text in the final rule to

reflect the uncertainty of the species that was once extant on Laysan. *Pritchardia remota* has been recommended as a replacement because it is believed to be closest to the species of *Pritchardia* that once was present on the island. The recovery plan prepared for three plant species on Nihoa Island, including *P. remota*, proposes establishing a population on Laysan Island as part of the recovery process for this species. HINWR staff are working with staff from our Ecological Services, Pacific Islands Office, in this effort. At one time, there were 11 palms outplanted on Laysan from seeds brought directly from Nihoa Island. These survived until they were flooded by high lake levels and died. HINWR staff now have approximately 400 seedlings (from seed gathered at Nihoa Island) in a shade house on Laysan Island. These will be outplanted to suitable habitat on Laysan (E. Flint, pers. comm., 2002).

(6) *Comment:* One peer reviewer commented that it is essential that surveys for *Amaranthus brownii* be conducted on Nihoa Island in the winter to maximize its detection. This reviewer feels that it is inappropriate to recommend protective measures for a plant whose population has not been assessed in 20 years.

Our Response: Amaranthus brownii was last seen on Nihoa Island in 1983 as two colonies that totaled 35 plants. We have surveyed Nihoa for this species for over 20 years. While we agree that the winter months are the optimal time to survey for this winter annual species, as it is more easily detected during this period, access to the island during this season is extremely limited. Landings during the winter months can be difficult and dangerous due to sea conditions that can change without warning, stranding visitors on an island with a limited source of fresh water and no regular food supply. Because *Amaranthus brownii* was detected on Nihoa Island in 1983 and habitat conditions are the same, we consider the species to be extant (as a seedbank) and have found it appropriate to designate critical habitat for this species on Nihoa Island.

(7) *Comment:* One peer reviewer requested that the Service use *Cyperus pennatiformis*, the currently accepted name for *Mariscus pennatiformis*. Concern was expressed, as the current nomenclature is what will be used in scientific and grey literature, that there could be confusion otherwise. The reviewer also noted that *Cyperus pennatiformis* ssp. *bryanii* occurs only on Laysan Island and that *C. p.* ssp. *pennatiformis* occurs on Kauai, Maui, Oahu, and Hawaii. As such, *C. p.* ssp. *bryanii* should be acknowledged as a distinct genetic population, even if the subspecies are not separately listed under the Act.

Our Response: We acknowledge that the current accepted nomenclature for this species has changed since the final rule listing *Mariscus pennatiformis* as endangered was published in 1994 (59 FR 94559). At that time, however, we followed the accepted taxonomic treatment in *The Manual of Flowering Plants of Hawaii* (Wagner *et al.* 1990). In the revised edition of the manual (Wagner *et al.* 1999), the species has been assigned to the genus *Cyperus*, and its subspecies are now varieties (Strong & Wagner 1997; Wagner *et al.* 1999). We plan to publish a notice revising the name for this species; however, this could not be accomplished prior to the completion of this final rule. The discussion of *Mariscus pennatiformis* in the section on Multi-Island Species under "Discussion of Plant Taxa" states that *M. p.* ssp. *bryanii* occurs only on Laysan Island. Listing as endangered at the species level provides protection for all varieties and subspecies of the species. Critical habitat is designated on Laysan Island for *M. p.* ssp. *bryanii*. Critical habitat was designated for *M. p.* ssp. *pennatiformis* on Kauai and Maui (68 FR 9116, 68 FR 25934, May 14, 2003) and is proposed on Oahu (67 FR 37108).

(8) *Comment:* One reviewer expressed concern regarding the Service's decision not to designate critical habitat for *Cenchrus agrimonioides* var. *laysanensis* because the taxon had not been seen in the wild for over 20 years and no viable genetic material is known to exist. The reviewer asserts that there have been no comprehensive botanical surveys of all of the islands where the taxon was known to exist, citing that the Service had made a similar decision for another plant species on Kauai, only to have it rediscovered.

Our Response: Critical habitat is not designated for *Cenchrus agrimonioides* var. *laysanensis*, the only variety of this species known from the NWHI, for the following reasons: *C. a.* var. *laysanensis* is historically known from Laysan, Midway, and Kure Atoll. This plant has not been reported on Laysan and Midway for over 70 and 100 years, respectively. A permanent year-round camp on Laysan, staffed by paid employees and volunteers, conducts periodic monitoring of both native and nonnative plant species, and *C. a.* var. *laysanensis* has not been seen during these monitoring efforts. On Midway, *C. a.* var. *laysanensis* was not seen during the most recent botanical surveys of 1995 and 1999. *Cenchrus agrimonioides* var. *laysanensis* has not been seen on Kure Atoll for over 20 years though the State DOFAW conducts annual seabird surveys and a botanical survey was conducted there as recently as 2001. In addition, no viable genetic material of this variety is known to exist. The rediscovery of currently unknown individual plants on these three islands and atolls is believed to be extremely unlikely (see D. *Criteria Used to Identify Critical Habitat*).

Issue 4: Nonnative Species

(9) *Comment:* One peer reviewer commented that the most important factor in maintaining biota on these remote islands is to have a vigorous and comprehensive quarantine system and a method to eliminate and investigate unauthorized landings. Additionally, the reviewer stressed the crucial nature of both an active and proactive eradication and management scheme for nonnative species.

Our Response: We have in place quarantine procedures for the HINWR, which include very strict measures to prevent the introduction of invasive invertebrate and vertebrate species. On islands where invasive nonnative species have already been introduced, we are implementing measures targeted at their eradication. In those areas where such eradication efforts have not yet been initiated, we are gathering information on methods by which we can best control and eliminate invasive taxa. Text was also provided in the "Discussion of Plant Taxa" to make it clear that the presence of rats and mice on Nihoa, Necker, and Laysan was a potential threat as these nonnative species are not currently present.

Summary of Changes From the Proposed Rule

Based on a review of public comments received on the critical habitat proposal, we have included the following several changes in this final rule:

(1) Based upon more refined GIS analysis, we corrected the total land area, 498 ha (1,232 ac) proposed as critical habitat for *Pritchardia remota* and *Mariscus pennatiformis* on Laysan Island to 493 ha (1,219 ac) designated as critical habitat for *Pritchardia remota* and *Mariscus pennatiformis* on Laysan Island.

(2) At the time we listed *Mariscus pennatiformis* (59 FR 94559), we followed the taxonomic treatment in the widely used and accepted *Manual of the Flowering Plants of Hawaii* (Wagner *et al.*, 1990). Since that time, the species has been assigned to the genus *Cyperus* (Wagner *et al.*, 1999). We plan to publish a notice of name change for *Mariscus pennatiformis* subsequent to publishing this final rule.

(3) We revised the text to reflect that the species of *Pritchardia* historically extant on Laysan Island is uncertain but that it had been suggested that the species may have been *P. remota* (Wagner *et al.*, 1999). We have also revised the primary constituent elements for *P. remota* on Laysan and Nihoa.

(4) We revised the list of excluded, manmade features in the "*Criteria Used to Identify Critical Habitat*" and section 17.99 "*Critical Habitat-Plants*" to delete from the final rule reference to roads, aqueducts, radar, missile launch sites, airports, paved areas, or rural landscaping because these features either do not exist on these islands or do not contain primary constituent elements for these plants on these islands.

Critical Habitat

Critical habitat is defined in section 3 of the Act as—(i) the specific areas within the geographical area occupied by a species, at the time it is listed in accordance with the Act, on which are found those physical or biological features (I) essential to the conservation of the species and (II) that may require special management considerations or protection; and (ii) specific areas outside the geographical area occupied by a species at the time it is listed, upon a determination that such areas are essential for the conservation of the species. "Conservation," as defined by the Act, means the use of all methods and procedures that are necessary to bring an endangered or threatened species to the point at which listing under the Act is no longer necessary.

Critical habitat receives protection under section 7 of the Act through the prohibition against destruction or adverse modification of critical habitat with regard to actions carried out, funded, or authorized by a Federal agency. Section 7 also requires conferences on Federal actions that are likely to result in the destruction or adverse modification of proposed critical habitat. In our regulations at 50 CFR 402.02, we define destruction or adverse modification as "direct or indirect alteration that appreciably diminishes the value of critical habitat for both the survival and recovery of a listed species. Such alterations include, but are not limited to, alterations adversely modifying any of those physical or biological features that were the basis for determining the habitat to be critical." The relationship between a species' survival and its recovery has been a source of confusion to some in the past. We believe that a species' ability to recover depends on its ability to survive into the future when its recovery can be achieved; thus, the concepts of long-term survival and recovery are intricately linked. However, in the March 15, 2001, decision of the United States Court of Appeals for the Fifth Circuit (*Sierra Club* v. *U.S. Fish and Wildlife Service et al.*, 245 F.3d 434) regarding a not prudent finding, the court found our definition of destruction or adverse modification as currently contained in 50 CFR 402.02 to be invalid. In response to this decision, we are reviewing the regulatory definition of adverse modification in relation to the conservation of the species.

In order to be included in a critical habitat designation, habitat in areas known to be occupied at the time of listing must contain physical or biological features essential to the conservation of the species and which may require special management considerations or protection. Outside the areas known to have been occupied at the time of listing, an area must be essential to the conservation of the species in order to qualify for designation. Thus, critical habitat designations identify, to the extent known, using the best scientific and commercial data available, habitat areas that provide essential life-cycle needs of the species (*i.e.*, areas on which are found the primary constituent elements, as defined at 50 CFR 424.12(b)).

Section 4 requires that we designate critical habitat for a species, to the extent such habitat is determinable, at the time of listing. When we designate critical habitat at the time of listing or under short court-ordered deadlines, we may not have sufficient information to identify all the areas essential for the conservation of the species. Nevertheless, we are required to designate those areas we believe to be critical habitat, using the best information available to us.

Our regulations state that "The Secretary shall designate as critical habitat areas outside the geographical area presently occupied by a species only when a designation limited to its present range would be inadequate to ensure the conservation of the species' (50 CFR 424.12(e)). Accordingly, when the best available scientific and commercial data do not indicate that the conservation needs of the species require designation of critical habitat outside of occupied areas, we will not designate critical habitat in areas outside the geographic area occupied by the species.

Our Policy on Information Standards Under the Endangered Species Act, published in the **Federal Register** on July 1, 1994 (59 FR 34271), provides criteria, establishes procedures, and provides guidance to ensure that our decisions represent the best scientific and commercial data available. It requires our biologists, to the extent consistent with the Act and with the use of the best scientific and commercial data available, to use primary and original sources of information as the basis for recommendations to designate critical habitat. When determining which areas are critical habitat, a primary source of information should be the listing package for the species. Additional information may be obtained from recovery plans, articles in peer-reviewed journals, conservation plans developed by States and counties, scientific status surveys and studies, and biological assessments or other unpublished materials.

It is important to clearly understand that critical habitat designations do not signal that habitat outside the designation is unimportant or may not be required for recovery. Areas outside the critical habitat designation will continue to be subject to conservation actions that may be implemented under section 7(a)(1) and to the regulatory protections afforded by the Act's 7(a)(2) jeopardy standard and section 9 prohibitions, as determined on the basis of the best available information at the time of the action. We specifically anticipate that federally funded or assisted projects affecting listed species outside their designated critical habitat areas may still result in jeopardy findings in some cases. Similarly, critical habitat designations made on the basis of the best available information at the time of designation will not control the direction and substance of future recovery plans, habitat conservation plans, or other species conservation planning efforts if new information available to these planning efforts calls for a different outcome. Furthermore, we recognize that designation of critical habitat may not include all of the habitat areas that may eventually be determined to be necessary for the recovery of the species.

A. Prudency

The designation of critical habitat is not prudent when the species is threatened by taking or other human activity, and identification of critical habitat can be expected to increase the degree of such threat to the species (50 CFR 424.12(a)(1)).

To determine whether critical habitat would be prudent for *Amaranthus brownii, Pritchardia remota,* and *Schiedea verticillata,* we analyzed the potential threats and benefits for each species in accordance with the court's order. Due to low numbers of individuals and populations and their inherent immobility, the three plants may be vulnerable to unrestricted collection, vandalism, or disturbance, though this is unlikely given their inaccessibility. Recently, we received information on the commercial trade in palms conducted through the Internet (Grant Canterbury, Service, *in litt.,* 2000). Several nurseries advertise and sell seedlings and young plants, including 13 species of Hawaiian *Pritchardia.* Seven of these species are federally protected, including *Pritchardia remota.* While we have determined that designation of critical habitat is not prudent for other species of *Pritchardia* because the benefits of designating critical habitat do not outweigh the potential increased threats from vandalism or collection (65 FR 66808, 65 FR 83158), we do not believe this species is threatened by these same activities because of its inaccessibility. Nihoa is more than 273 km (170 mi) from Lihue, Kauai, and more than 1,600 km (1,000 mi) from Midway. It is a part of the HINWR, and a permit is required for access to the island. Access to the island is further limited due to difficult and dangerous landing conditions. Passengers must be dropped off and the boat sent back out to sea, as there are no mooring docks or beaches. The boat must return later to pick up the passengers, when conditions allow. Sea conditions are apt to change without warning, stranding visitors on this inhospitable island that has no fresh water and no regular food supply (C. Rehkemper, pers. comm., 2001).

We examined the evidence available for *Amaranthus brownii* and *Schiedea verticillata* and have not, at this time, found specific evidence of taking, vandalism, collection, or trade of these taxa or of similar species. Therefore, consistent with applicable regulations (50 CFR 424.12(a)(1)(i)) and the court's discussion of these regulations, we do not believe that these three species are currently threatened by taking or other human activity, which would be exacerbated by the designation of critical habitat.

Therefore, we believe that designation of critical habitat is prudent for *Amaranthus brownii, Pritchardia remota,* and *Schiedea verticillata.* The reasons why we believe designation of critical habitat is prudent for *Sesbania tomentosa* and *Mariscus pennatiformis* are contained in the final rules published on January 9, 2003, and February 27, 2003, respectively (68 FR 1220 and 68 FR 9116). The reasons why we believe designation of critical habitat is prudent for *Cenchrus agrimonioides* are contained in the final rule published on January 9, 2003 (68 FR 1220). Although critical habitat for *Cenchrus agrimonioides* is not being designated on the NWHI (as it has not been seen there for over 20 years and no viable genetic material exists), we are designating critical habitat for this species on Maui (68 FR 25934, May 14, 2003).

B. Methods

As required by the Act and regulations (section 4(b)(2) and 50 CFR 424.12), we used the best scientific information available to determine areas that contain the physical and biological features that are essential for the conservation of *Amaranthus brownii, Mariscus pennatiformis, Pritchardia remota, Schiedea verticillata,* and *Sesbania tomentosa.* Using the best information available, we could not identify areas in the NWHI that are essential for *Cenchrus agrimonioides* for the reasons described in section D. *Criteria Used to Identify Critical Habitat.* This information included the known locations and site-specific species information from the HINHP database and our own rare plant database; species information from the Center for Plant Conservation's (CPC) rare plant monitoring database housed at the University of Hawaii's Lyon Arboretum; islandwide Geographic Information System (GIS) coverages (*e.g.,* vegetation, soils, annual rainfall, elevation contours, landownership); the final listing rules for these species; the May 14, 2002, proposal of critical habitat; information received during the public comment period; recent biological surveys and reports; recovery plans for these species; discussions with botanical experts; and recommendations from the Hawaii and Pacific Plant Recovery Coordinating Committee (HPPRCC) (see also the discussion below) (CPC *in litt.* 1999; GDSI 2000; HINHP Database 2000; HPPRCC 1998; Service 1998d, 1999; 59 FR 56333; 61 FR 43178; 61 FR 53108; 65 FR 83158; 67 FR 16492; 67 FR 34522).

In 1994, the HPPRCC initiated an effort to identify and map habitat it believed to be important for the recovery of 282 endangered and threatened Hawaiian plant species. The HPPRCC identified these areas on most of the islands in the Hawaiian chain, and in 1999, we published them in our *Recovery Plan for the Multi-Island Plants* (Service 1999). The HPPRCC expects that there will be subsequent efforts to further refine the locations of important habitat areas and that new survey information or research may also lead to additional refinement of identifying and mapping of habitat important for the recovery of these species.

The HPPRCC identified essential habitat areas for all listed, proposed, and candidate plants and evaluated species of concern to determine if essential habitat areas would provide for their habitat needs. However, the HPPRCC's mapping of habitat is distinct from the regulatory designation of critical habitat as defined by the Act. More data have been collected since the recommendations made by the HPPRCC in 1998. Much of the area that was identified by the HPPRCC as inadequately surveyed has now been surveyed to some degree. New location data for many species have been gathered. Also, the HPPRCC identified areas as essential based on species clusters (areas that included listed species, as well as candidate species and species of concern) while we have only delineated areas that are essential for the conservation of the specific listed species at issue. As a result, the critical habitat designations in this rule include not only some habitat that was identified as essential in the 1998 recommendations but also habitat that was not identified as essential in those recommendations.

C. Primary Constituent Elements

In accordance with section 3(5)(A)(i) of the Act and regulations at 50 CFR 424.12, in determining which areas to propose as critical habitat, we are required to base critical habitat determinations on the best scientific and commercial data available and to consider those physical and biological features (primary constituent elements) that are essential to the conservation of the species and that may require special management considerations or protection. These features include, but are not limited to: Space for individual and population growth, and for normal behavior; food, water, air, light, minerals, or other nutritional or physiological requirements; cover or shelter; sites for breeding, reproduction, or rearing of offspring, germination, or seed dispersal; and habitats that are protected from disturbance or are representative of the historic geographical and ecological distributions of a species.

Much of what is known about the specific physical and biological requirements of *Amaranthus brownii, Mariscus pennatiformis, Pritchardia remota, Schiedea verticillata,* and *Sesbania tomentosa* is described in the "Background" section of this final rule.

All areas designated as critical habitat are within the historical range or have been identified in the recovery plans for these species as sites for conservation of one or more of the five species at issue, and contain one or more of the physical or biological features (primary constituent elements) essential for the conservation of the species.

As described in the discussions for each of the five species for which we are designating critical habitat, we are defining the primary constituent elements on the basis of the habitat features of the areas from which the plant species are reported, as described by the type of plant community (*e.g., Pritchardia remota* mesic coastal forest), associated native plant species, locale information (*e.g.,* steep rocky cliffs, talus slopes, gulches), and elevation. The habitat features provide the ecological components required by the plant. The type of plant community and associated native plant species indicate specific microclimate (localized climatic) conditions, retention and availability of water in the soil, soil microorganism community, and nutrient cycling and availability. The locale indicates information on soil type, elevation, rainfall regime, and temperature. Elevation indicates information on daily and seasonal temperature and sun intensity. Therefore, the descriptions of the physical elements of the locations of each of these species, including habitat type, plant communities associated with the species, location, and elevation, as described in the **SUPPLEMENTARY INFORMATION:** *Discussion of Plant Taxa* section above, constitute the primary constituent elements for these species in the NWHI.

D. Criteria Used To Identify Critical Habitat

The Service considered a number of factors in the selection and proposal of specific boundaries for critical habitat. For each, the overall recovery strategy outlined in the recovery plans includes: (1) Stabilization of existing wild populations, (2) protection and management of habitat, (3) enhancement of existing small populations and reestablishment of new populations within historic range or within areas identified in the recovery plans for conservation of the species, and (4) research on species biology and ecology (Service 1998d, 1999). Thus, the long-term recovery of these species is dependent upon the protection of existing population sites and potentially suitable unoccupied habitat within their historic range.

The lack of detailed scientific data on the life history of these plant species makes it impossible for us to develop a robust quantitative model (*e.g.,* a population viability analysis) to identify the optimal number, size, and location of critical habitat units needed to achieve recovery (Beissinger and Westphal 1998; Burgman *et al.* 2001; Ginzburg *et al.* 1990; Karieva and Wennergren 1995; Menges 1990; Murphy *et al.* 1990; Taylor 1995). At this time, and consistent with the listing of these species and their recovery plans, the best available information leads us to conclude that the current size and distribution of the extant populations are not sufficient to expect a reasonable probability of long-term survival and recovery of these plant species. We used the same information, along with the opinions of scientists familiar with these species, to identify potentially suitable habitat within the known historic range of each species.

The recovery goals stated in the recovery plans for these species include the following: Establishment of 8 to 10 populations with a minimum of 300 mature, reproducing individuals per population for *Mariscus pennatiformis* and *Sesbania tomentosa* distributed among the islands of each species known historic range (Service 1999). For purposes of this discussion, a population, as defined in the recovery plan for these species, is a unit in which the individuals could be regularly cross-pollinated and influenced by the same small-scale events (such as landslides), and which contains a minimum of 300 mature, reproducing individuals for these short-lived perennial species (Service 1999).

Within the five species at issue, there are three exceptions to this general recovery goal of 8 to 10 populations for species that are believed to be very narrowly distributed. The recovery goals for *Amaranthus brownii, Pritchardia remota,* and *Schiedea verticillata* include one to three additional colonies of each species on an island other than Nihoa (Service 1998d). In the case of *Pritchardia remota,* Laysan Island should be considered, since a palm that may have been this species formerly occurred there. For *Amaranthus brownii* and *Schiedea verticillata,* Necker Island should be considered since it is adjacent to Nihoa, has similar habitat, and is protected as a U.S. Fish and Wildlife Service refuge (Service 1998d). Should establishment of one to three colonies of any or all of these taxa on an island other than Nihoa occur, delisting may be considered when they have reached a minimum of 100 mature individuals per colony for *Pritchardia remota,* a minimum of 300 mature individuals per colony for *Schiedea verticillata,* and a minimum of 500 mature individuals for *Amaranthus brownii.* Each colony should be stable or increasing for a minimum of five consecutive years. If the establishment of additional colonies on an island other than Nihoa proves infeasible for these taxa, they may be considered recovered if five colonies of each species reach the population targets described above (Service 1998d). The critical habitat designations reflect these exceptions for these species.

By adopting these specific recovery objectives, the adverse effects of genetic inbreeding and random environmental events and catastrophes, such as landslides, hurricanes, or tsunamis, which could destroy a large percentage of a species at any one time, may be reduced (Menges 1990; Podolsky 2001). These recovery objectives were initially developed by the HPPRCC and are found in all of the recovery plans for these species. While they are expected to be further refined as more information on the population biology of each species becomes available, the justification for these objectives is found in the current conservation biology literature addressing the conservation of rare and endangered plants and animals (Beissinger and Westphal 1998; Burgman *et al.* 2001; Falk *et al.* 1996; Ginzburg *et al.* 1990; Hendrix and Kyhl 2000; Karieva and Wennergren 1995; Luijten *et al.* 2000; Meffe and Carroll 1996; Menges 1990; Murphy *et al.* 1990; Podolsky 2001; Quintana-Ascencio and Menges 1996; Taylor 1995; Tear *et al.* 1995; Wolf and Harrison 2001). The overall goal of recovery in the short-term is a successful population that can carry on basic life history processes, such as establishment, reproduction, and dispersal, at a level where the probability of extinction is low. In the long-term, the species and its populations should be at a reduced risk of extinction and be adaptable to environmental change through evolution and migration.

Many aspects of species life history are considered to determine guidelines for species' interim stability and recovery, including longevity, breeding system, growth form, fecundity, ramet (a plant that is an independent member of a clone) production, survivorship, seed longevity, environmental variation, and successional stage of the habitat. Hawaiian species are generally poorly studied, and the only one of these characteristics that can be uniformly determined for all Hawaiian plant

species is longevity (*i.e.*, long-lived perennial, short-lived perennial, and annual). In general, long-lived woody perennial species would be expected to be viable at population levels of 50 to 250 individuals per population, while short-lived perennial species would be viable at population levels of 1,500 to 2,500 individuals or more per population. The HPPRCC revised these population numbers for Hawaiian plant species due to the restricted distribution of suitable habitat and the likelihood of smaller genetic diversity of several species that evolved from a single introduction. For recovery of Hawaiian plants, the HPPRCC recommended a general recovery guideline of 100 mature, reproducing individuals per population for long-lived perennial species, 300 mature, reproducing individuals per population for short-lived perennial species, and 500 mature, reproducing individuals per population for annual species (HPPRCC 1994).

The HPPRCC recommended the conservation and establishment of 8 to 10 populations of multi-island plant species and establishment of additional colonies on other islands for Nihoa plant species in order to address the numerous risks to the long-term survival and conservation of these species. Although absent the detailed information inherent to population viability analysis models (Burgman *et al.* 2001), this approach employs two widely recognized and scientifically accepted goals for promoting viable populations of listed species: (1) The creation or maintenance of multiple populations so that a single or series of catastrophic events cannot destroy the entire listed species (Luijten *et al.* 2000; Menges 1990; Quintana-Ascencio and Menges 1996); and (2) increasing the size of each population in the respective critical habitat units to a level where the threats of genetic, demographic, and normal environmental uncertainties are diminished (Hendrix and Kyhl 2000; Luijten *et al.* 2000; Meffe and Carroll 1996; Podolsky 2001; Service 1997; Tear *et al.* 1995; Wolf and Harrison 2001). In general, the larger the number of populations (or colonies) and the larger the size of each population (or colony), the lower the probability of extinction (Meffe and Carroll 1996; Raup 1991). This basic conservation principle of redundancy when applied to Hawaiian plant species reduces the threats represented by a fluctuating environment and offers the species a greater likelihood of achieving long-term survival and recovery. Conversely, loss of one or more of the plant populations (colonies) within any critical habitat unit could result in an increase in the risk that the entire listed species may not survive and recover. Similarly, actions that eliminate, or reduce the function of, a primary constituent element could result in an increase in the risk of adverse modification of critical habitat.

Due to the reduced size of suitable habitat areas for these Hawaiian plant species, they are more susceptible to the variations and weather fluctuations affecting quality and quantity of available habitat, as well as direct pressure from hundreds of species of nonnative plants and animals. Establishing and conserving the specific target number of populations or colonies on one or more islands within the historic range of the species will provide each species with a reasonable expectation of persistence and eventual recovery, even with the high potential that one or more of these populations will be eliminated by normal or random adverse events, such as the hurricanes which occurred in 1982 and 1992 on the island of Kauai, fires, and nonnative plant invasions (HPPRCC 1994; Luijten *et al.* 2000; Mangel and Tier 1994; Pimm *et al.* 1998; Stacey and Taper 1992). Based upon this information, we conclude that designation of adequate suitable habitat to meet recovery goals for these five plant species is essential to give each of the species a reasonable likelihood of long-term survival and recovery.

All currently or historically occupied sites or sites identified as conservation areas within the recovery plans for these species, containing one or more of the primary constituent elements considered essential to the conservation of the five plant species were examined to determine if special management considerations or protection are required. We reviewed all available management information on these plants at these sites including published and unpublished reports, surveys, and plans; internal letters, memos, trip reports; and, section 7 consultations. Additionally, we contacted staff of the HINWR to discuss their current management for these plants on national wildlife refuge lands.

Pursuant to the definition of critical habitat in section 3 of the Act, the primary constituent elements as found in any area so designated must require "special management considerations or protections." In determining and weighing the relative significance of the threats that would need to be addressed in management plans or agreements, we considered the following:

—The factors that led to the listing of the species, as described in the final rules for listing each of the species. For all or nearly all endangered plants in the NWHI, the major threats include adverse impacts due to nonnative plants and invertebrates, seed or fruit predation by rats and mice, and fire (USFWS 1998d, 1999; 59 FR 56333; 61 FR 43178).
—The recommendations from the HPPRCC in their 1998 report to the Service ("Habitat Essential to the Recovery of Hawaiian Plants").
—The management actions needed for assurance of survival and ultimate recovery of Hawaii's endangered plants. These actions are described in the Service's recovery plans for these five species (USFWS 1998d, 1999) and in the 1998 HPPRCC report to the Service (HPPRCC 1998). These actions include, but are not limited to, the following: (1) Nonnative plant control; (2) rodent control; (3) invertebrate pest control; (4) fire control; (5) maintenance of genetic material of the endangered plants species; (6) propagation, reintroduction, and/or augmentation of existing populations into areas deemed essential for the recovery of these species; (7) ongoing management of the wild, outplanted (the planting of propagated plants (material) into the wild)), and augmented populations; (8) habitat management and restoration in areas deemed essential for the recovery of these species; and (9) monitoring of the wild, outplanted, and augmented populations.

In general, taking all of the above recommended management actions into account, the following management actions are ranked in order of importance. It should be noted, however, that, on a case-by-case basis, some of these actions may rise to a higher level of importance for a particular species or area, depending on the biological and physical requirements of the species and the location(s) of the individual plants: (1) Nonnative plant control; (2) Rodent control; (3) Invertebrate pest control; (4) Fire control; (5) Maintenance of genetic material of the endangered plant species; (6) Propagation, reintroduction, and/or augmentation of existing populations into areas deemed essential for the recovery of the species; (7) Ongoing management of the wild, outplanted, and augmented populations; (8) Maintenance of natural pollinators and pollinating systems, when known; (9) Habitat management and restoration in areas deemed essential for the recovery of the species; (10) Monitoring of the wild, outplanted, and augmented populations; (11) Rare plant surveys; and (12) Control of human activities/access.

All five species of plants are known from Federal lands within the HINWR. Management of the HINWR has been guided by the 1986 HINWR Master Plan/Environmental Impact Statement, which places primary emphasis on protecting and enhancing refuge wildlife resources, particularly threatened and endangered species (USFWS 1986). This plan does not specifically document management actions that maintain or enhance populations of endangered plants or their habitat on the islands of the HINWR. We are aware that current management actions within HINWR for these species include monitoring of populations and potential pests, and control or eradication of some alien plants (E. Flint, pers. comm., 2000; Morin and Conant 1998; Shultz 2000; USFWS 1998d). However, funding limitations and the difficulty of travel logistics allow only a maximum of one short visit per year to Nihoa Island, and less frequent visits to Necker.

Morin and Conant's draft "Laysan Island Ecosystem Restoration Plan" (1998), a long-term planning document that was developed as an integrated approach to managing the entire biota of Laysan Island, outlines conservation management actions for the endangered plant species on Laysan. These conservation management actions include the prevention of new plant or animal introductions to the island, restoration of the Laysan Island ecosystem that was present prior to major human-caused habitat modification, control/eradication of nonnative species, reintroduction of native species which are currently extinct on the island, and establishment of periodic comprehensive ecosystem monitoring (Morin and Conant 1998). A permanent year-round camp on Laysan, staffed by paid employees and volunteers, has enabled some control of nonnative plant species, propagation and outplanting of native plants for restoration efforts, and periodic monitoring of both native and nonnative plant species (E. Flint, pers. comm., 2000; Morin and Conant 1998). In the future, the plan may serve as a guiding document for endangered plant species management on other NWHI as well. However, because the plan is not fully funded or implemented yet, and because is has not yet been adopted for the other islands on which these plants occur, we know of no areas in the HINWR at this time that do not require special management or protection for the five species for which we have designated critical habitat.

In summary, the long-term conservation of Hawaiian plant species requires the designation of critical habitat units on one or more of the Hawaiian islands with suitable habitat in accordance with species-specific recovery goals as outlined in adopted recovery plans. Some of this designated critical habitat is currently unoccupied by these species but in order to recover the species, it is essential to conserve suitable habitat in these unoccupied units. This, in turn, will allow for the establishment of additional populations through natural recruitment or managed reintroduction. Establishment of these additional populations (colonies) will increase the likelihood that the species will survive and recover in the face of normal and stochastic events (Mangel and Tier 1994; Pimm *et al.*, 1998; Stacey and Taper 1992).

In this rule, we have defined the primary constituent elements based on the general habitat features of the areas from which the plants are reported, such as the type of plant community, the associated native plant species, the physical location (*e.g.*, steep rocky cliffs, talus slopes), and elevation. The areas we are designating as critical habitat provide some or all of the habitat components essential for the conservation of the five plant species.

Our approach to delineating critical habitat units was applied in the following manner:

(1) Critical habitat was proposed and will be designated on an island-by-island basis for ease of understanding for landowners and the public, for ease of conducting the public hearing process, and for ease of conducting public outreach. In Hawaii, landowners and the public are most interested and affected by issues centered on the island on which they reside.

(2) We focused on designating units representative of the known current and historical geographic and elevation range of each species; and

(3) Critical habitat units were designed to allow for expansion of existing wild populations and reestablishment of wild populations within the historic range, or within sites identified as conservation areas in the recovery plans for these species.

For *Amaranthus brownii, Mariscus pennatiformis, Prichardia remota, Schiedea verticillata,* and *Sesbania tomentosa,* currently and historically occupied habitat was examined in identifying and designating critical habitat. Critical habitat boundaries were delineated to include the entire island on which the species are found or were historically found.

Critical habitat is not designated for *Cenchrus agrimonioides* in the NWHI for the following reasons. In the NWHI, this taxon is historically known from only Laysan and Midway Islands, and Kure Atoll. It has not been reported on Laysan and Midway for over 70 and 100 years, respectively. A permanent year-round camp on Laysan, staffed by paid employees and volunteers, conducts periodic monitoring of both native and nonnative plant species, and *Cenchrus agrimonioides* has not been seen during these monitoring efforts (Morin and Conant 1998). On Midway, *Cenchrus agrimonioides* was not seen during the most recent botanical surveys conducted in 1995 and 1999 (Chris Swenson, Service, pers. comm., 2002). *Cenchrus agrimonioides* has not been seen on Kure Atoll for over 20 years even though DOFAW conducts annual seabird surveys and a botanical survey was conducted there as recently as 2001 (DOFAW 2001). In addition, no viable genetic material of this the specific variety that occurs in the NWHI is known to exist. The rediscovery of currently unknown individual plants on these three islands and atolls is believed to be extremely unlikely because we believe this perennial plant would have been seen during these surveys. Although genetic material of the closely related *Cenchrus agrimonioides* var. *agrimonioides* exists, this variety is known only from mountainous habitat on Oahu, which is very different from the habitat on the NWHI where *Cenchrus agrimonioides* var. *laysanensis* occurred. We would not use var. *agrimonioides* for restoration purposes in the NWHI because this variety is not known from the NWHI and its preferred habitat is not available in the NWHI.

Following publication of the proposed critical habitat rules for the 245 Hawaiian plants (67 FR 3940, 67 FR 9806, 67 FR 15856, 67 FR 16492, 67 FR 34522, 67 FR 36968, 67 FR 37108), some of which were revised, we reevaluated proposed critical habitat for *Mariscus pennatiformis* and *Sesbania tomentosa,* Statewide, using the recovery guidelines to determine if we had inadvertently proposed for designation too much or not enough habitat to meet the essential recovery goals for these species distributed among the islands of its known historic range (HINHP Database 2000, 2001; Wagner *et al.* 1990, 1999). We then further evaluated areas of the proposed critical habitat for all five species for the existing quality of the primary constituent elements (*i.e.*, intact native plant communities and

predominance of associated native plants versus nonnative plants), potential as a recovery area, and current or expected management of known threats (*e.g.*, weed control and nonnative insect, slug, and snail control). Areas that contain high quality primary constituent elements, are zoned or managed specifically for conservation, and have ongoing or expected threat abatement actions were considered the most essential within these areas, and we selected adequate area to meet recovery goals (*e.g.*, 8 to 10 populations).

Of the proposed critical habitat for *Mariscus pennatiformis* and *Sesbania tomentosa*, areas that did not contain high quality constituent elements and that may provide habitat for populations above the recovery goal of 8 to 10 populations were determined not essential for the conservation of the species and excluded from final designation. However, all of the proposed critical habitat for *Sesbania tomentosa* on Nihoa and Necker and all of the proposed critical habitat on Laysan for *Mariscus pennatiformis* was considered essential for conservation of these species and is designated as critical habitat. For *Amaranthus brownii*, *Pritchardia remota*, and *Schiedea verticillata*, taxa known only from the NWHI, we determined that critical habitat on the islands of Laysan and Nihoa was essential for their conservation because it contains occupied habitat important for the expansion of current colonies and the establishment of additional colonies. In addition, these areas may require special management considerations or protection in order to address the threats to each species.

Within the critical habitat boundaries, section 7 consultation is generally necessary, and adverse modification could occur only if the primary constituent elements are affected. Therefore, not all activities within critical habitat would trigger an adverse modification conclusion. In addition, existing manmade features and structures within boundaries of the mapped unit do not contain one or more of the primary constituent elements and would be excluded under the terms of this proposed regulation. Federal actions limited to those areas would not trigger a section 7 consultation unless they affect the species or primary constituent elements in adjacent critical habitat.

In summary, the critical habitat areas described below constitute our best assessment of the physical and biological features needed for the conservation of *Amaranthus brownii*, *Mariscus pennatiformis*, *Pritchardia remota*, *Schiedea verticillata*, and *Sesbania tomentosa* and the special management needs of these species, and are based on the best scientific and commercial information available and described above. We publish this final rule acknowledging that we have incomplete information regarding many of the primary biological and physical requirements for these species. However, both the Act and the relevant court orders require us to proceed with designation at this time based on the best information available. As new information accrues, we may consider reevaluating the boundaries of areas that warrant critical habitat designation.

The approximate areas of the designated critical habitat by landownership or jurisdiction are shown in Table 4.

TABLE 4.—APPROXIMATE CRITICAL HABITAT DESIGNATED AREA BY UNIT AND LANDOWNERSHIP OR JURISDICTION, NORTHWESTERN HAWAIIAN ISLANDS, HAWAII

Unit name	State/local	Private	Federal	Total
Nihoa 1—*Amaranthus brownii*	none	none	69 ha (171 ac)	69 ha (171 ac)
Nihoa 2—*Pritchardia remota*	none	none	69 ha (171 ac)	69 ha (171 ac)
Nihoa 3—*Scheidea verticillata*	none	none	69 ha (171 ac)	69 ha (171 ac)
Nihoa 4—*Sesbania tomentosa*	none	none	69 ha (171 ac)	69 ha (171 ac)
Necker 1—*Sesbania tomentosa*	none	none	19 ha (46 ac)	19 ha (46 ac)
Laysan 1—*Mariscus pennatiformis*	none	none	405 ha (1,002 ac)	405 ha (1,002 ac)
Laysan 2—*Pritchardia remota*	none	none	405 ha (1,002 ac)	405 ha (1,002 ac)
Grand Total	none	none	493 ha (1,219 ac)	493 ha (1,219 ac)

Critical habitat includes habitat for these five species on the islands of Nihoa, Necker, and Laysan. Lands designated as critical habitat are under Federal ownership and managed by the Department of the Interior (the Service). The designated lands have been divided into seven units. A brief description of each unit is presented below.

Descriptions of Critical Habitat Units

Nihoa 1—*Amaranthus brownii*

This unit is critical habitat for *Amaranthus brownii* and is 69 ha (171 ac) on federally owned land. It includes the entire island, which is part of the HINWR. The unit is currently unoccupied but provides habitat that is essential to the conservation of up to 500 reproducing individuals of this annual species endemic to Nihoa. The area designated as critical habitat is considered to be the most likely to contain a viable seed bank of *Amaranthus brownii*. The habitat features contained in this unit that are essential for this species include, but are not limited to, shallow soil and rocky outcrops in fully exposed locations that contain one or more of the following associated native plant species: *Chenopodium oahuense*, *Eragrostis variabilis*, *Ipomoea indica*, *Ipomoea pes-caprae* ssp. *brasiliensis*, *Panicum torridum*, *Scaevola sericea*, *Schiedea verticillata*, *Sicyos pachycarpus*, *Sida fallax*, and *Solanum nelsonii*. This critical habitat unit is essential to the conservation of the species because it supports habitat for the re-establishment of populations of this endemic species.

Nihoa 2—*Pritchardia remota*

This unit is critical habitat for *Pritchardia remota* and is 69 ha (171 ac) on federally owned land. It includes the entire island, which is part of the HINWR. This unit, which contains at least 4 colonies that consist of at least 1,074 individuals (including seedlings) of *P. remota*, provides habitat that is essential to the conservation of 100 mature, reproducing individuals of this long-lived perennial species. The habitat features contained in this unit that are essential for this species include, but are not limited to, a coastal forest community that contains one or more of the following associated native plant species: *Chenopodium oahuense*, *Sesbania tomentosa*, *Solanum nelsonii*, and *Sida fallax*. This unit is essential to the conservation of the species because it supports the only extant wild occurrence of this species and is geographically separated from the designated critical habitat unit on Laysan Island to avoid destruction by one naturally occurring catastrophic event.

Nihoa 3—*Schiedea verticillata*

This unit is critical habitat for *Schiedea verticillata* and is 69 ha (171 ac) on federally owned land. It includes the entire island, which is part of the HINWR. The unit provides habitat that is essential to the conservation of 300 mature, reproducing individuals of this short-lived perennial and, based on surveys conducted in 1996, contained at least 11 colonies and a total of at least 372 individuals. The habitat features contained in this unit that are essential for this species include, but are not limited to, rocky scree, soil pockets, and cracks on coastal cliff faces and in *Pritchardia remota* coastal mesic forest that contain one or more of the following associated native species and lichens: *Eragrostis variabilis*, *Rumex albescens*, and *Tribulus cistoides*. This critical habitat unit is essential to the conservation of the species because it supports extant colonies of *S. verticillata* and includes habitat that is important to the expansion of the present population on Nihoa.

Nihoa 4—*Sesbania tomentosa*

This unit is critical habitat for *Sesbania tomentosa* and is 69 ha (171 ac) on federally owned land. It includes the entire island, which is part of the HINWR. The unit contains habitat essential to the conservation of 300 mature, reproducing individuals of this short-lived perennial and contains one island-wide population of at least 1,000 individuals. The habitat features contained in this unit that are essential for this species include, but are not limited to, shallow sandy soils on beaches and dunes in *Chenopodium oahuense* coastal dry shrubland that contain one or more of the following associated native plant species: *Pritchardia remota*, *Scaevola sericea*, *Sida fallax*, and *Solanum nelsonii*. This critical habitat unit is essential to the conservation of the species because it supports extant colonies of *Sesbania tomentosa* and is also geographically separated from designated critical habitat on other islands to avoid destruction by one naturally occurring catastrophic event.

Necker 1—*Sesbania tomentosa*

This unit is critical habitat for *Sesbania tomentosa* and is 19 ha (46 ac) on federally owned land. It includes the entire island, which is part of the HINWR. The unit contains Annexation and Summit Hills, is occupied by one population of undetermined size, and provides habitat that is essential for the conservation of up to one population of 300 mature, reproducing individuals of this short-lived perennial species. The habitat features contained in this unit that are essential for this species include, but are not limited to, shallow sandy soils on beaches and dunes in *Chenopodium oahuense* coastal dry shrubland that contain one or more of the following associated native plant species: *Sida fallax*, *Scaevola sericea*, *Solanum nelsonii*, and *Pritchardia remota*. This unit is essential to the conservation of *Sesbania tomentosa* because it supports the only extant colony of the species on Necker. This unit also includes habitat that is important for the expansion of the present population, which is currently considered not viable. This unit is located at the westernmost range of this multi-island species and is geographically separated from designated critical habitat on other islands to avoid destruction by one naturally occurring catastrophic event.

Laysan 1—*Mariscus pennatiformis*

This unit is critical habitat for *Mariscus pennatiformis* and is approximately 405 ha (1,002 ac) in size, which includes a 52 ha (129 ac) hypersaline lagoon in its center. It is all on Federal land and is part of the HINWR. The unit is occupied by one occurrence of approximately 200 individuals and provides habitat essential to the conservation of 300 reproducing individuals. The habitat features contained in this unit that are essential for this species include, but are not limited to, coastal sandy substrate that contains one or more of the following associated native plant species: *Cyperus laevigatus*, *Eragrostis variabilis*, and *Ipomoea* sp: This critical habitat unit is essential to the conservation of *Mariscus pennatiformis* ssp. *bryanii* because it supports the only extant colony, which is currently considered not viable. It also contains habitat that is important to the expansion of this taxon.

Laysan 2—*Pritchardia remota*

This unit is critical habitat for *Pritchardia remota* and is approximately 405 ha (1,002 ac) in size, which includes a 52 ha (129 ac) hypersaline lagoon in its center. It is all on Federal land and is part of the HINWR. The unit is currently unoccupied but provides habitat essential to the conservation of 100 reproducing individuals of this long-lived perennial species. The habitat features contained in this unit that are essential for this species include, but are not limited to, the coastal strand community that contains one or more of the following associated native plant species: *Chenopodium oahuense* and *Solanum nelsonii*.

This unit is currently unoccupied but is essential to the conservation of *Pritchardia remota* because it provides habitat for the establishment of a new colony in order to achieve recovery goals for the species. This unit is also geographically separated from the occupied designated critical habitat unit on Nihoa, which serves to avoid the destruction of both colonies by one naturally occurring catastrophic event.

Effects of Critical Habitat Designation

Section 7 Consultation

Section 7(a) of the Act requires Federal agencies, including the Service, to ensure that actions they fund, authorize, or carry out are not likely to destroy or adversely modify critical habitat. Destruction or adverse modification of critical habitat occurs when a Federal action directly or indirectly alters critical habitat to the extent that it appreciably diminishes the value of critical habitat for the conservation of the species. Individuals, organizations, States, local governments, and other non-Federal entities are directly affected by the designation of critical habitat when their actions occur on Federal lands, require a Federal permit, license, or other authorization, or involve Federal funding.

Section 7(a) of the Act requires Federal agencies, including the Service, to evaluate their actions with respect to any species that is proposed or listed as endangered or threatened, and with respect to its critical habitat, if any is designated or proposed. Regulations implementing this interagency cooperation provision of the Act are codified at 50 CFR part 402. Section 7(a)(4) of the Act requires Federal agencies (action agency) to confer with us on any action that is likely to jeopardize the continued existence of a species proposed for listing or result in destruction or adverse modification of proposed critical habitat.

If a species is listed or critical habitat is designated, section 7(a)(2) of the Act requires Federal agencies to ensure that actions they authorize, fund, or carry out are not likely to jeopardize the continued existence of such a species or destroy or adversely modify its critical habitat. If a Federal action may affect a listed species or its critical habitat, the responsible Federal action agency must

enter into consultation with us. Through this consultation, the action agency would ensure that the permitted actions do not destroy or adversely modify critical habitat.

Regulations at 50 CFR 402.16 require Federal agencies to reinitiate formal consultation on previously reviewed actions under certain circumstances, including instances where critical habitat is subsequently designated and the Federal agency has retained discretionary involvement, or control has been retained or is authorized by law. Consequently, some Federal agencies may request reinitiation of consultation or conferencing with us on actions for which formal consultation has been completed, if those actions may affect designated critical habitat or adversely modify or destroy proposed critical habitat.

If we issue a biological opinion concluding that a project is likely to result in the destruction or adverse modification of critical habitat, we also provide "reasonable and prudent alternatives" to the project, if any are identifiable. Reasonable and prudent alternatives are defined at 50 CFR 402.02 as alternative actions identified during consultation that can be implemented in a manner consistent with the intended purpose of the action, that are consistent with the scope of the Federal agency's legal authority and jurisdiction, that are economically and technologically feasible, and that the Director believes would avoid the likelihood of resulting in destruction or adverse modification of critical habitat. Reasonable and prudent alternatives can vary from slight project modifications to extensive redesign or relocation of the project. Costs associated with implementing a reasonable and prudent alternative are similarly variable.

Activities on Federal lands that may affect critical habitat of *Amaranthus brownii, Mariscus pennatiformis, Pritchardia remota, Schiedea verticillata,* or *Sesbania tomentosa* will require section 7 consultation.

Section 4(b)(8) of the Act requires us to briefly describe and evaluate in any proposed or final regulation that designates critical habitat those activities involving a Federal action that may adversely modify such habitat or that may be affected by such designation. We note that such activities may also jeopardize the continued existence of the species.

Activities that, when carried out, funded, or authorized by a Federal agency, may directly or indirectly destroy or adversely modify critical habitat include, but are not limited to:

(1) Activities that appreciably degrade or destroy habitat defined in the discussion of the primary constituent elements including, but not limited to: Clearing or cutting of native live trees and shrubs, whether by burning or mechanical, chemical, or other means (*e.g.*, woodcutting or herbicide application); introducing or enabling the spread of nonnative species; and taking actions that pose a risk of fire;

(2) Construction activities by the U.S. Department of the Interior (the Service);

(3) Research activities funded by the U.S. Department of the Interior (the Service) or National Oceanic and Atmospheric Administration (National Marine Sanctuaries Program, National Marine Fisheries Service); and

(4) Activities not mentioned above funded or authorized by the Department of the Interior (U.S. Geological Survey, National Park Service), Department of Commerce (National Oceanic and Atmospheric Administration), Western Pacific Regional Fisheries Council, or any other Federal Agency.

If you have questions regarding whether specific activities will likely constitute adverse modification of critical habitat, contact the Field Supervisor, Pacific Islands Ecological Services Field Office (see **ADDRESSES** section). Requests for copies of the regulations on listed wildlife and plants, and inquiries about prohibitions and permits, may be addressed to the U.S. Fish and Wildlife Service, Division of Endangered Species, 911 N.E. 11th Ave., Portland, OR 97232–4181 (telephone 503/231–2063; facsimile 503/231–6243).

Economic Analysis

Exclusions Under Section 4(b)(2)

Section 4(b)(2) of the Act requires us to designate critical habitat on the basis of the best scientific and commercial information available, and to consider the economic and other relevant impacts of designating a particular area as critical habitat. We may exclude areas from critical habitat upon a determination that the benefits of such exclusions outweigh the benefits of specifying such areas as critical habitat. We cannot exclude areas from critical habitat when the exclusion will result in the extinction of the species concerned.

Economic Impacts

Following the publication of the proposed critical habitat designation on May 14, 2002, a draft economic analysis was conducted to estimate the potential economic impact of the designation, in accordance with recent decisions in the *N.M. Cattlegrowers Ass'n* v. *U.S. Fish and Wildlife Serv.*, 248 F.3d 1277 (10th Cir. 2001). The draft analysis was made available for review on September 12, 2002 (67 FR 57784). We accepted comments on the draft analysis until the comment period closed on October 15, 2002.

No comments addressing the economic analysis were received, and no information has come to light that might change the conclusions of the draft economic analysis. Therefore, the draft analyses constitutes the final economic analysis for this rule. The economic analysis estimates that, over the next 10 years, the designation may result in potential economic effects of approximately $30,800, and that economic benefits from the designation of critical habitat would not be significant. A more detailed discussion of our economic analysis is contained in the draft economic analysis and the addendum. Both documents are included in our administrative record and are available for inspection at the Pacific Islands Fish and Wildlife Office (see **ADDRESSES** section). We do not believe the economic impacts of this designation, which would result primarily from section 7 consultations on FWS, NMS, and private research activities, would be significant. Therefore, no critical habitat units in the proposed rule were excluded or modified due to economic impacts.

As described above, section 4(b)(2) of the Act also requires us to consider other relevant impacts, in addition to economic impacts, of designating critical habitat. No critical habitat units were excluded or modified due to non-economic impacts.

Required Determinations

Regulatory Planning and Review

In accordance with Executive Order 12866, the Office of Management and Budget (OMB) has determined that this critical habitat designation is not a significant regulatory action. This rule will not have an annual economic effect of $100 million or more or adversely affect any economic sector, productivity, competition, jobs, the environment, or other units of government. This designation will not create inconsistencies with other agencies' actions or otherwise interfere with an action taken or planned by another agency. It will not materially affect entitlements, grants, user fees, loan programs, or the rights and obligations of their recipients. Finally, this designation will not raise novel legal or policy issues. Accordingly, OMB has not reviewed this final critical habitat designation.

Regulatory Flexibility Act (5 U.S.C. 601 et seq.)

Under the Regulatory Flexibility Act (RFA) (as amended by the Small Business Regulatory Enforcement Act (SBREFA) of 1996), whenever an agency is required to publish a notice of rulemaking for any proposed or final rule, it must prepare and make available for public comment a regulatory flexibility analysis that describes the effects of the rule on small entities (*i.e.*, small businesses, small organizations, and small government jurisdictions).

However, no regulatory flexibility analysis is required if the head of the agency certifies the rule will not have a significant economic impact on a substantial number of small entities. SBREFA amended the RFA to require Federal agencies to provide a statement of the factual basis for certifying that a rule will not have a significant economic impact on a substantial number of small entities.

SBREFA does not explicitly define either "substantial number" or "significant economic impact." Consequently, to assess whether a "substantial number" of small entities is affected by this designation, this analysis considers the relative number of small entities likely to be impacted in the area. Similarly, this analysis considers the relative cost of compliance on the revenues/profit margins of small entities in determining whether or not entities incur a "significant economic impact." Only small entities that are expected to be directly affected by the designation are considered in this portion of the analysis. This approach is consistent with several judicial opinions related to the scope of the RFA. (*Mid-Tex Electric Co-Op, Inc.* v. *F.E.R.C.* and *America Trucking Associations, Inc.* v. *EPA.*)

In today's rule, we are certifying that the designation of critical habitat for the five plant species on the NWHI will not have a significant effect on a substantial number of small entities. The following discussion explains our rationale.

Federal courts and Congress have indicated that an RFA/SBREFA analysis is appropriately limited to impacts to entities directly regulated by the requirements of the regulation (Service 2002). As such, entities not directly regulated by the critical habitat designation are not considered in this section of the analysis.

Small entities include small organizations, such as independent nonprofit organizations and small governmental jurisdictions, including school boards and city and town governments that serve fewer than 50,000 residents, as well as small businesses. Small businesses include manufacturing and mining concerns with fewer than 500 employees, wholesale trade entities with fewer than 100 employees, retail and service businesses with less than $5 million in annual sales, general and heavy construction businesses with less than $27.5 million in annual business, special trade contractors doing less than $11.5 million in annual business, and agricultural businesses with annual sales less than $750,000. The RFA/SBREFA defines "small organization" as any not-for-profit enterprise that is independently owned and operated and is not dominant in its field (5 U.S.C. 601).

For the purposes of the RFA/SBREFA, Federal agencies (*e.g.*, the Service, U.S. Geological Survey, National Park Service, National Oceanic and Atmospheric Administration, National Marine Fisheries Service, and Western Pacific Regional Fisheries Council) are not considered small governments and thus are not small entities. State governments are not considered small governmental entities and thus DLNR is not considered a small entity. The University of Hawaii is a large State university system, so it is also not a small entity. The Bishop Museum, which may sponsor research, is not likely to be considered a small organization because it is the largest museum in the State and thus is dominant in its field.

Thus, none of the entities potentially impacted by the designation of critical habitat are likely to be considered a small entity under the RFA/SBREFA. For these reasons, we are certifying that the designation of critical habitat for *Amaranthus brownii, Mariscus pennatiformis, Pritchardia remota, Schiedea verticillata,* and *Sesbania tomentosa* will not have a significant economic impact on a substantial number of small entities. Therefore, a regulatory flexibility analysis is not required.

Small Business Regulatory Enforcement Fairness Act (5 U.S.C. 804(2))

Under the Small Business Regulatory Enforcement Fairness Act (5 U.S.C. 801 *et seq.*), this rule is not a major rule. Our assessment of the economic effects of this designation are described in the economic analysis. Based on the effects identified in this analysis, we believe that this rule will not have an effect on the economy of $100 million or more, will not cause a major increase in costs or prices for consumers, and will not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises. Refer to the economic analysis for a discussion of the effects of this determination.

Executive Order 13211

On May 18, 2001, the President issued Executive Order 13211, on regulations that significantly affect energy supply, distribution, and use. Executive Order 13211 requires agencies to prepare Statements of Energy Effects when undertaking certain actions. According to OMB, this rule is not a significant regulatory action under Executive Order 12866, and we do not expect it to significantly affect energy production supply and distribution facilities because no energy production, supply, and distribution facilities are included within designated critical habitat. Further, for the reasons described in the economic analysis, we do not believe the designation of critical habitat for the five NWHI plants will affect future energy production. Therefore, this action is not a significant energy action, and no Statement of Energy Effects is required.

Unfunded Mandates Reform Act (2 U.S.C. 1501 et seq.)

In accordance with the Unfunded Mandates Reform Act (2 U.S.C. 1501 *et seq.*):

(a) This rule will not "significantly or uniquely" affect small governments. A Small Government Agency Plan is not required. All of the land being designated as critical habitat in this rule is owned by the Federal government and is managed as a National Wildlife Refuge by the Service. Small governments will not be affected unless they propose an action affecting the refuge and requiring Federal funds, permits, or other authorizations. Any such activities will require that the Federal agency ensure that the action will not adversely modify or destroy designated critical habitat.

(b) This rule will not produce a Federal mandate on State or local governments or the private sector of $100 million or greater in any year; that is, it is not a "significant regulatory action" under the Unfunded Mandates Reform Act. For the reasons described above, the designation of critical habitat imposes no obligations on State or local governments.

Takings

In accordance with Executive Order 12630 ("Government Actions and Interference with Constitutionally Protected Private Property Rights"), we have analyzed the potential takings

implications of designating critical habitat for the five species from the NWHI in a takings implication assessment. The takings implications assessment concludes that this final rule does not pose significant takings implications.

Federalism

In accordance with Executive Order 13132, this final rule does not have significant Federalism effects. A Federalism assessment is not required. In keeping with Department of Interior policy, we requested information from appropriate State agencies in Hawaii.

Because all of the designated critical habitat, including the unoccupied unit, is on Federal land, there should be no impact on State and local governments and their activities as a result of the designation of critical habitat in currently unoccupied areas of the NWHI.

Civil Justice Reform

In accordance with Executive Order 12988, the Department of the Interior's Office of the Solicitor has determined that this rule does not unduly burden the judicial system and does meet the requirements of sections 3(a) and 3(b)(2) of the Order. We have designated critical habitat in accordance with the provisions of the Endangered Species Act. The rule uses standard property descriptions and identifies the primary constituent elements within the designated areas to assist the public in understanding the habitat needs of the five plant species from the NWHI.

Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq.)

This rule does not contain any information collection requirements that require OMB approval under the Paperwork Reduction Act. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a valid OMB control number.

National Environmental Policy Act

We have determined that we do not need to prepare an Environmental Assessment and/or an Environmental Impact Statement as defined by the National Environmental Policy Act of 1969 in connection with regulations adopted pursuant to section 4(a) of the Endangered Species Act. We published a notice outlining our reason for this determination in the **Federal Register** on October 25, 1983 (48 FR 49244). This determination does not constitute a major Federal action significantly affecting the quality of the human environment.

Government-to-Government Relationship With Tribes

In accordance with the President's memorandum of April 29, 1994, "Government-to-Government Relations with Native American Tribal Governments" (59 FR 22951), Executive Order 13175, and the Department of the Interior's manual at 512 DM 2, we readily acknowledge our responsibility to communicate meaningfully with recognized Federal Tribes on a government-to-government basis. We have determined that there are no Tribal lands essential for the conservation of these five plant species. Therefore, designation of critical habitat for these five species does not involve any Tribal lands.

References Cited

A complete list of all references cited in this final rule is available upon request from the Pacific Islands Fish and Wildlife Office (see **ADDRESSES** section).

Authors

The primary authors of this final rule are staff of the Pacific Islands Fish and Wildlife Office (see **ADDRESSES** section).

List of Subjects in 50 CFR Part 17

Endangered and threatened species, Exports, Imports, Reporting and recordkeeping requirements, Transportation.

Regulation Promulgation

■ Accordingly, we hereby amend part 17, subchapter B of chapter I, title 50 of the Code of Federal Regulations as set forth below:

PART 17—[AMENDED]

■ 1. The authority citation for part 17 continues to read as follows:

Authority: 16 U.S.C. 1361–1407; 16 U.S.C. 1531–1544; 16 U.S.C. 4201–4245; Pub. L. 99–625, 100 Stat. 3500; unless otherwise noted.

■ 2. Amend § 17.12(h) by revising the entries for *Amaranthus brownii, Mariscus pennatiformis, Pritchardia remota, Schiedea verticillata,* and *Sesbania tomentosa* under FLOWERING PLANTS in the List of Endangered and Threatened Plants to read as follows:

§ 17.12 Endangered and threatened plants.

* * * * *

(h) * * *

Species		Historic range	Family	Status	When listed	Critical habitat	Special rules
Scientific name	Common name						
FLOWERING PLANTS							
Amaranthus brownii.	None	U.S.A. (HI)	Amaranthaceae	E	587	17.99(g)	NA
Mariscus pentiformis.	None	U.S.A. (HI)	Cyperaceae	E	559	17.99(a)(1), (e)(1), (g).	NA
Pritchardia remota	Loulu	U.S.A. (HI)	Arecaceae	E	587	17.99(g)	NA
Schiedea verticillata.	None	U.S.A. (HI)	Caryophyllaceae	E	587	17.99(g)	NA
Sesbania tomentosa.	Ohai	U.S.A. (HI)	Fabaceae	E	559	17.99(a)(1), (c), (e)(1), (g).	NA

■ 3. Amend § 17.99 as set forth below:
■ (1) By revising the section heading to read as follows; and
■ (2) By adding new paragraphs (g) and (h) to read as follows:

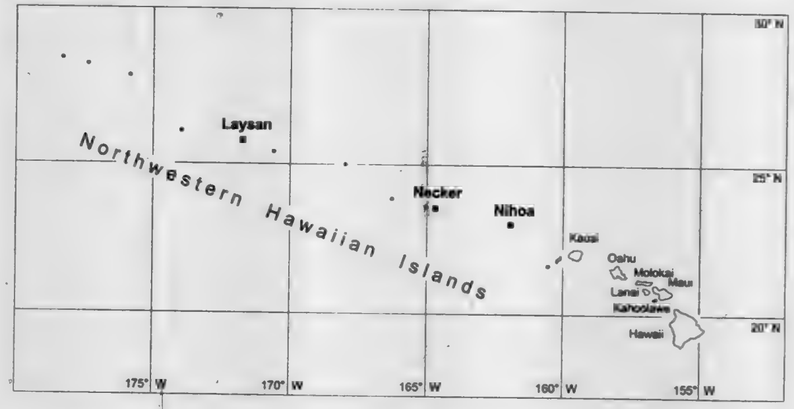
§ 17.99 Critical habitat; plants on the islands of Kauai, Niihau, and Molokai, HI, and on the Northwestern Hawaiian Islands.

* * * * *

(g) *Maps and critical habitat unit descriptions for the Northwestern Hawaiian Islands.* The following paragraphs contain the legal descriptions of the critical habitat units designated for the Northwestern Hawaiian Islands. Existing manmade features within boundaries of the mapped areas, such as water features, telecommunications equipment, arboreta and gardens, and heiau (indigenous places of worship or shrines) and other archaeological sites do not contain one or more of the primary constituent elements described for each species in paragraphs (h) of this section and therefore are not included in the critical habitat designations. Coordinates are in WGS84 datum. See Map 1 for the the general locations of the seven critical habitat units designated for the islands of Laysan, Nihoa, and Necker.

(1) Index map—Map 1—follows:

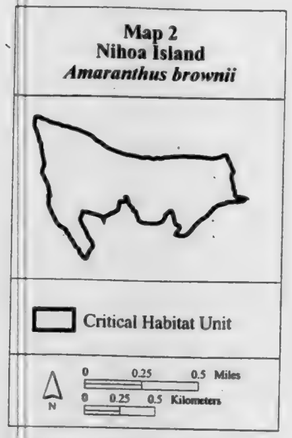
Map 1 - General Locations of Units for Five Species of Plants
Islands of Laysan, Necker, and Nihoa



(2) Nihoa 1—*Amaranthus brownii*—entire island (approximately 69 ha; 171 ac).

(i) Nihoa Island is located between 23°3′ N. and 23°4′ N. and between 161°54′ W. and 161°56′ W.

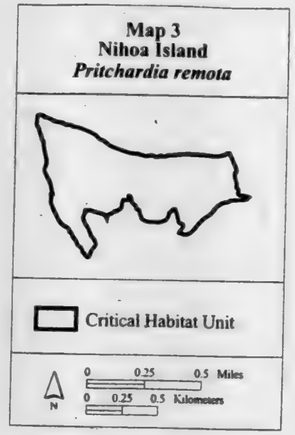
(ii) **Note:** Map 2 follows:



(3) Nihoa 2—*Pritchardia remota*—entire island (approximately 69 ha; 171 ac).

(i) Nihoa Island is located between 23°3′ N. and 23°4′ N. and between 161°54′ W. and 161°56′ W.

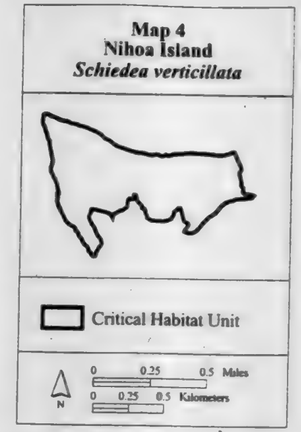
(ii) **Note:** Map 3 follows:



(4) Nihoa 3—*Schiedea verticillata*—entire island (approximately 69 ha; 171 ac).

(i) Nihoa Island is located between 23°3′ N. and 23°4′ N. and between 161°54′ W. and 161°56′ W.

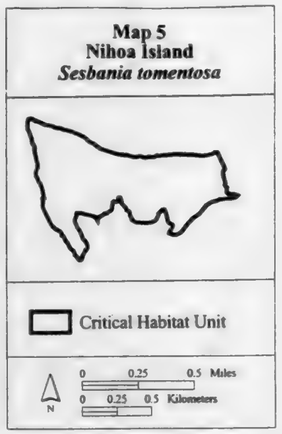
(ii) **Note:** Map 4 follows:



(5) Nihoa 4—*Sesbania tomentosa*—entire island (approximately 69 ha; 171 ac).

(i) Nihoa Island is located between 23°3′ N. and 23°4′ N. and between 161°54′ W. and 161°56′ W.

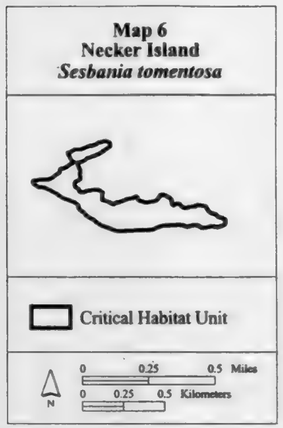
(ii) **Note:** Map 5 follows:



(6) Necker 1—*Sesbania tomentosa*—entire island (approximately 18 ha; 46 ac).

(i) Necker Island is located between 23°34′ N. and 23°35′ N. and between 164°41′ W. and 164°43′ W.

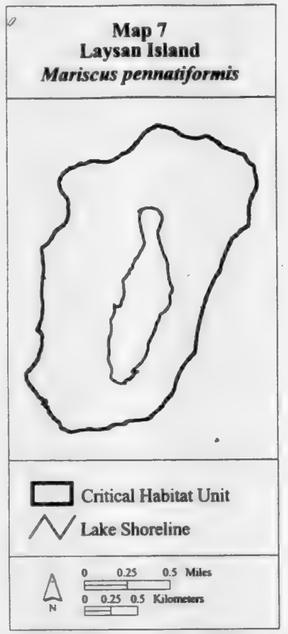
(ii) **Note:** Map 6 follows:



(7) Laysan 1—*Mariscus pennatiformis*—entire island (approximately 405 ha; 1,219 ac).

(i) Laysan Island is located between 25°45′ N. and 25°47′ N. and between 171°43′ W. and 171°45′ W.

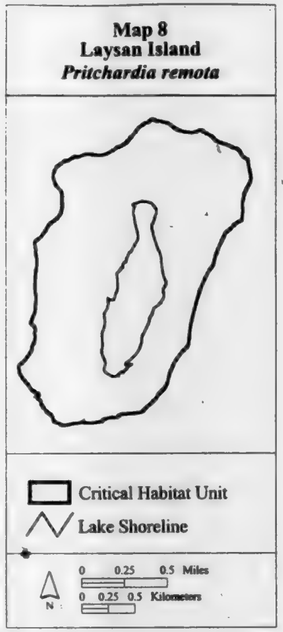
(ii) **Note:** Map 7 follows:



(8) Laysan 2—*Pritchardia remota*—entire island (approximately 405 ha; 1,219 ac).

(i) Laysan Island is located between 25°45′ N. and 25°47′ N. and between 171°43′ W. and 171°45′ W.

(ii) **Note:** Map 8 follows:



(9) Table of protected species within each critical habitat unit for the Northwestern Hawaiian Islands.

Island	Species—Occupied	Species—Unoccupied
Laysan	*Mariscus pennatiformis*	*Pritchardia remota*
Necker	*Sesbania tomentosa.*	
Nihoa	*Pritchardia remota, Schiedea verticillata, Sesbania tomentosa.*	*Amaranthus brownii*

(h) *Plants on the Northwestern Hawaiian Islands; Constituent elements.*

Family Amaranthaceae: *Amaranthus brownii* (NCN)

Nihoa 1—*Amaranthus brownii*, identified in the legal description in paragraph (g) of this section, constitutes critical habitat for *Amaranthus brownii*. On Nihoa, the currently known primary constituent elements of critical habitat include, but are not limited to, the habitat components provided by:

(1) Shallow soil in fully exposed locations on rocky outcrops and containing one or more of the following associated native plant species: *Chenopodium oahuense, Eragrostis variabilis, Ipomoea indica, Ipomoea pes-caprae* ssp. *brasiliensis, Panicum torridum, Scaevola sericea, Schiedea verticillata, Sicyos pachycarpus, Sida fallax*, or *Solanum nelsonii;* and (2) Elevations between 30 and 242 m (100 and 800 ft).

Family Arecaceae: *Pritchardia remota* (loulu)

Nihoa 2—*Pritchardia remota*, and Laysan 2— *Pritchardia remota*, identified in the legal descriptions in paragraph (g) of this section, consitute critical habitat for *Pritchardia remota*.

(1) On Nihoa, the currently known primary constituent elements of critical habitat include, but are not limited to, the habitat components provided by:

(i) *Pritchardia remota* coastal forest community and containing one or more of the following associated native plant species: *Chenopodium oahuense, Sesbania tomentosa, Sida fallax*, or *Solanum nelsonii;* and

(ii) Elevations between sea level and 151 m (500 ft).

(2) On Laysan Island, the currently known primary constituent elements of critical habitat include, but are not limited to, the habitat components provided by:

(i) Coastal strand habitat with *Chenopodium oahuensee* and *Solanum nelsonii;* and

(ii) Elevations between sea level to 12 m (0 to 40 ft).

Family Caryophyllaceae: *Schiedea verticillata* (NCN)

Nihoa 3—*Schiedea verticillata*, identified in the legal description in paragraph (g) of this section, constitutes critical habitat for *Schiedea verticillata*. On Nihoa, the currently known primary constituent elements of critical habitat for *Schiedea verticillata* include, but are not limited to, the habitat components provided by:

(1) Rocky scree, soil pockets, and cracks on coastal cliff faces and in *Pritchardia remota* coastal mesic forest and containing one or more of the following associated native plant species: *Eragrostis variabilis, Rumex albescens, Tribulus cistoides*, or lichens; and

(2) Elevations between 30 and 242 m (100 and 800 ft).

Family Cyperaceae: *Mariscus pennatiformis* (NCN)

Laysan 1—*Mariscus pennatiformis*, identified in the legal description in paragraph (g) of this section, constitutes critical habitat for *Mariscus pennatiformis*. On Laysan Island, the currently known primary constituent elements of critical habitat for *Mariscus pennatiformis* include, but are not limited to, habitat components provided by:

(1) Coastal sandy substrate containing one or more of the following associated native plant species: *Cyperus laevigatus, Eragrostis variabilis*, or *Ipomoea* sp.; and

(2) Elevation of 5 m (16 ft).

Family Fabaceae: *Sesbania tomentosa* (ohai)

Nihoa 4—*Sesbania tomentosa*, and Necker 1—*Sesbania tomentosa*, identified in the legal descriptions in paragraph (g) of this section, constitute critical habitat for *Sesbania tomentosa*. On Nihoa and Necker, the currently known primary constituent elements of critical habitat for *Sesbania tomentosa* include, but are not limited to, habitat components provided by:

(1) Shallow soil on sandy beaches and dunes in *Chenopodium oahuense* coastal dry shrubland or mixed coastal dry cliffs and containing one or more of the following associated native plant species: *Pritchardia remota, Scaevola sericea, Sida fallax*, or *Solanum nelsonii;* and

(2) Elevations between sea level and 84 m (0 and 276 ft).

Dated: April 30, 2003.

Craig Manson,

Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 03–11157 Filed 5–21–03; 8:45 am]

BILLING CODE 4310–55–P

Federal Register

Thursday,
May 22, 2003

Part III

Department of Defense
General Services Administration
National Aeronautics and Space Administration

48 CFR Chapter I, et al
Federal Acquistion Circular 2001–14; Final Rules

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Chapter 1

Federal Acquisition Circular 2001–14; Introduction

AGENCIES: Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Summary presentation of final rules and technical amendments.

SUMMARY: This document summarizes the Federal Acquisition Regulation (FAR) rules agreed to by the Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council in this Federal Acquisition Circular (FAC) 2001–14. A companion document, the Small Entity Compliance Guide (SECG), follows this FAC. The FAC, including the SECG, is available via the Internet at *http://www.arnet.gov/far*.

DATES: For effective dates and comment dates, see separate documents which follow.

FOR FURTHER INFORMATION CONTACT: The FAR Secretariat, Room 4035, GS Building, Washington, DC 20405, (202) 501–4755, for information pertaining to status or publication schedules. For clarification of content, contact the analyst whose name appears in the table below in relation to each FAR case or subject area. Please cite FAC 2001–14 and specific FAR case number(s). Interested parties may also visit our Web site at *http://www.arnet.gov/far*.

Item	Subject	FAR case	Analyst
I	Geographic Use of the Term "United States"	1999–400	Davis.
II	Miscellaneous Cost Principles	2001–029	Loeb.
III	Prompt Payment Under Cost-Reimbursement Contracts for Services	2000–308	Loeb.
IV	Electronic Signatures	2000–304	Smith.
V	Increased Federal Prison Industries, Inc. Waiver Threshold (interim)	2003–001	Nelson.
VI	Past Performance Evaluation of Federal Prison Industries Contracts	2001–035	Smith.
VII	Contract Terms and Conditions Required to Implement Statute or Executive Orders—Commercial Items.	2000–009	Moss.
VIII	Technical Amendments.		

SUPPLEMENTARY INFORMATION:

Summaries for each FAR rule follow. For the actual revisions and/or amendments to these FAR cases, refer to the specific item number and subject set forth in the documents following these item summaries.

FAC 2001–14 amends the FAR as specified below:

Item I—Geographic Use of the Term "United States" (FAR Case 1999–400)

This final rule amends the FAR to clarify the use of the term "United States," when used in a geographic sense. The term "United States" is defined in FAR 2.101 to include the 50 States and the District of Columbia. Where a wider area of applicability is intended, the term is redefined in the appropriate part or subpart of the FAR, or supplemented by listing the additional areas of applicability each time the term is used. This rule corrects and updates references to the United States throughout the FAR, including a new definition of "outlying areas" of the United States, a term that encompasses the named outlying commonwealths, territories, and minor outlying islands.

Item II—Miscellaneous Cost Principles (FAR Case 2001–029)

This final rule amends the FAR by deleting the cost principle at FAR 31.205–45, Transportation costs, and streamlining the cost principles at FAR 31.205–10, Cost of money; FAR 31.205–28, Other business expenses; and FAR 31.205–48, Deferred research and development costs. The rule will only affect contracting officers that are required by a contract clause to use cost principles for the determination, negotiation, or allowance of contract costs.

Item III—Prompt Payment Under Cost-Reimbursement Contracts for Services (FAR Case 2000–308)

The interim rule published in the **Federal Register** at 66 FR 53485, October 22, 2001, is converted to a final rule, without change, to implement statutory and regulatory changes related to late payment of an interim payment under a cost-reimbursement contract for services. The rule is of special interest to contracting officers that award or administer these type of contracts.

The **Federal Register** notice published in conjunction with the FAR interim rule stated that "The policy and clause apply to all covered contracts awarded on or after December 15, 2000 * * * agencies may apply the FAR changes made by this rule to contracts awarded prior to December 15, 2000, at their discretion * * *." This was consistent with OMB regulations. Subsequently, as a result of enactment of the National Defense Authorization Act for Fiscal Year 2002 (Pub. L. 107–107) on December 28, 2001, agencies no longer have this discretion. Section 1007 of Public Law 107–107 states that this policy applies to cost-reimbursement contracts for services awarded before, on, or after December 15, 2000. Section 1007 retains the prohibition against payment of late payment interest penalty for any period prior to December 15, 2000.

Item IV—Electronic Signatures (FAR Case 2000–304)

Recent laws eliminate legal barriers to using electronic technology in business transactions, such as the formation and signing of contracts. This final rule furthers Government participation in electronic commerce when conducting Government procurements by adding a statement at FAR Subpart 4.5, Electronic Commerce in Contracting, clarifying that agencies are permitted to accept electronic signatures and records in connection with Government contracts.

Item V—Increased Federal Prison Industries, Inc. Waiver Threshold (FAR Case 2003–001)

This interim rule revises the Federal Acquisition Regulation to increase the Federal Prison Industries, Inc.'s (FPI) clearance exception threshold at 8.606(e) from $25 to $2,500 and eliminates the criterion that delivery is required within 10 days. Federal agencies will not be required to make purchases from FPI of products on FPI's Schedule that are at or below this threshold.

Item VI—Past Performance Evaluation of Federal Prison Industries Contracts (FAR Case 2001–035)

This final rule requires agencies to evaluate Federal Prison Industries (FPI) contract performance. This change will permit Federal customers to rate FPI performance, compare FPI to private sector providers, and give FPI important feedback on previously awarded contracts. It is expected that this change will give FPI the same opportunity that we give private sector providers, to improve their customer satisfaction, in general, and their performance on delivery, price, and quality, specifically.

Item VII—Contract Terms and Conditions Required to Implement Statute or Executive Orders—Commercial Items (FAR Case 2000–009)

This final rule amends the clause at 52.212–5, Contract Terms and Conditions Required to Implement Statute or Executive Orders—Commercial Items, to ensure that required statutes enacted subsequent to FASA that contain civil or criminal penalties or specifically cite their applicability to commercial items are included on the list, and to ensure that any post-FASA items that did not meet this criteria are deleted from the list. In addition, the pre-FASA clauses and alternates that were inadvertently left off the list are added. The date of each clause is added to the list to identify what revision of the listed clause applies when this clause is added to a contract.

Item VIII—Technical Amendments

These amendments update references and make editorial changes at FAR 52.213–4(a)(2)(vi), 52.244–6 section and clause headings, and 52.247–64(a).

Dated: May 13, 2003.

Laura G. Smith,

Director, Acquisition Policy Division.

Federal Acquisition Circular

Federal Acquisition Circular (FAC) 2001–14 is issued under the authority of the Secretary of Defense, the Administrator of General Services, and the Administrator for the National Aeronautics and Space Administration.

Unless otherwise specified, all Federal Acquisition Regulation (FAR) and other directive material contained in FAC 2001–14 are effective June 23, 2003, except for Items III, V and VIII which are effective May 22, 2003.

Dated: May 9, 2003.

Deidre A. Lee,

Director, Defense Procurement and Acquisition Policy.

Dated: May 5, 2003.

David A. Drabkin,

Deputy of Acquisition Policy, General Services Administration.

Dated: May 5, 2003.

Tom Luedtke,

Assistant Administrator for Procurement, National Aeronautics and Space Administration.

[FR Doc. 03–12300 Filed 5–21–03; 8:45 am]

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DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 2, 3, 4, 5, 6, 8, 9, 14, 19, 22, 23, 25, 26, 28, 29, 31, 35, 36, 42, 45, 47, 52, and 53

[FAC 2001–14; FAR Case 1999–400; Item I]

RIN 9000–AI99

Federal Acquisition Regulation; Geographic Use of the Term "United States"

AGENCIES: Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Final rule.

SUMMARY: The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (Councils) have agreed on a final rule amending the Federal Acquisition Regulation (FAR) to clarify the use of the term "United States" in the FAR, in accordance with the FAR Drafting Guide.

DATES: *Effective Date:* June 23, 2003.

FOR FURTHER INFORMATION CONTACT: The FAR Secretariat, Room 4035, GS Building, Washington, DC 20405, (202) 501–4755, for information pertaining to status or publication schedules. For clarification of content, contact Ms. Cecelia Davis, Procurement Analyst, at (202) 219–0202. Please cite FAC 2001–14, FAR case 1999–400.

SUPPLEMENTARY INFORMATION:

A. Background

This rule amends the FAR to clarify the use of the term "United States," when used in a geographic sense. The term "United States" is defined in FAR 2.101 to include the 50 States and the District of Columbia. Where a wider area of applicability is intended, the term is redefined in the appropriate part or subpart of the FAR, or supplemented by listing the additional areas of applicability each time the term is used. This rule corrects and updates references to the United States throughout the FAR, including a new definition of "outlying areas" of the United States, a term that encompasses all outlying commonwealths; territories, and minor outlying islands.

DoD, GSA, and NASA published a proposed rule in the **Federal Register** at 66 FR 39230, July 27, 2001. No public comments were received. The Councils have agreed to convert the proposed rule to a final rule with only minor editorial changes.

This is not a significant regulatory action and, therefore, was not subject to review under section 6(b) of Executive Order 12866, Regulatory Planning and Review, dated September 30, 1993. This rule is not a major rule under 5 U.S.C. 804.

B. Regulatory Flexibility Act

The Department of Defense, the General Services Administration, and the National Aeronautics and Space Administration certify that this final rule will not have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, because the rule simply standardizes terminology and clarifies existing meaning. This rule is not intended to make policy changes.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the changes to the FAR do not impose information collection requirements that require the approval of the Office of Management and Budget under 44 U.S.C. 3501, *et seq.*

List of Subjects in 48 CFR Parts 2, 3, 4, 5, 6, 8, 9, 14, 19, 22, 23, 25, 26, 28, 29, 31, 35, 36, 42, 45, 47, 52, and 53

Government procurement.

Dated: May 13, 2003.

Laura G. Smith,

Director, Acquisition Policy Division.

■ Therefore, DoD, GSA, and NASA amend 48 CFR parts 2, 3, 4, 5, 6, 8, 9, 14, 19, 22, 23, 25, 26, 28, 29, 31, 35, 36, 42, 45, 47, 52, and 53 as set forth below:

■ 1. The authority citation for 48 CFR parts 2, 3, 4, 5, 6, 8, 9, 14, 19, 22, 23, 25, 26, 28, 29, 31, 35, 36, 42, 45, 47, 52, and 53 is revised to read as follows:

Authority: 40 U.S.C. 121(c); 10 U.S.C. chapter 137; and 42 U.S.C. 2473(c).

PART 2—DEFINITIONS OF WORDS AND TERMS

■ 2. Amend section 2.101 by adding, in alphabetical order, the definitions "Contiguous United States (CONUS)", "Customs territory of the United States", and "Outlying areas"; by removing the definition "Possessions"; and by revising the definition "State and local taxes". The added and revised text reads as follows:

2.101 Definitions.

* * * * *

Contiguous United States (CONUS) means the 48 contiguous States and the District of Columbia.

* * * * *

Customs territory of the United States means the 50 States, the District of Columbia, and Puerto Rico.

* * * * *

Outlying areas means—

(1) *Commonwealths.* (i) Puerto Rico.

(ii) The Northern Mariana Islands;

(2) *Territories.* (i) American Samoa.

(ii) Guam.

(iii) U.S. Virgin Islands; and

(3) *Minor outlying islands.* (i) Baker Island.

(ii) Howland Island.

(iii) Jarvis Island.

(iv) Johnston Atoll.

(v) Kingman Reef.

(vi) Midway Islands.

(vii) Navassa Island.

(viii) Palmyra Atoll.

(ix) Wake Atoll.

* * * * *

State and local taxes means taxes levied by the States, the District of Columbia, outlying areas of the United States, or their political subdivisions.

* * * * *

PART 3—IMPROPER BUSINESS PRACTICES AND PERSONAL CONFLICTS OF INTEREST

3.303 [Amended]

■ 3. Amend section 3.303 in paragraph (e) by removing the comma after the word "States" and adding "and its outlying areas," in its place.

■ 4. Amend section 3.801 by revising the definition "State" to read as follows:

3.801 Definitions.

* * * * *

State, as used in this section, means a State of the United States, the District of Columbia, an outlying area of the United States, an agency or instrumentality of a State, and multi-State, regional, or interstate entity having governmental duties and powers.

PART 4—ADMINISTRATIVE MATTERS

■ 5. Amend section 4.603 in paragraph (a)(1) by removing "The contracting officer shall insert" and adding "Insert" in its place; and by revising paragraph (b) to read as follows:

4.603 Solicitation provisions.

* * * * *

(b) Insert the provision at 52.204–5, Women-Owned Business (Other Than Small Business), in solicitations that—

(1) Are not set aside for small business concerns;

(2) Exceed the simplified acquisition threshold; and

(3) Are for contracts that will be performed in the United States or its outlying areas.

PART 5—PUBLICIZING CONTRACT ACTIONS

■ 6. Amend section 5.202 by revising the first sentence of paragraph (a)(12) to read as follows:

5.202 Exceptions.

* * * * *

(a) * * *

(12) The proposed contract action is by a Defense agency and the proposed contract action will be made and performed outside the United States and its outlying areas, and only local sources will be solicited. * * *

* * * * *

5.303 [Amended]

■ 7. Amend section 5.303 in paragraph (a)(2) by removing "or its possessions" and adding "and its outlying areas" in its place.

PART 6—COMPETITION REQUIREMENTS

■ 8. Amend section 6.302–3 by revising paragraph (b)(1)(v) to read as follows:

6.302–3 Industrial mobilization; engineering, developmental, or research capability; or expert services.

* * * * *

(b) * * *

(1) * * *

(v) Create or maintain the required domestic capability for production of critical supplies by limiting competition to items manufactured in—

(A) The United States or its outlying areas; or

(B) The United States, its outlying areas, or Canada.

* * * * *

6.401 [Amended]

■ 9. Amend section 6.401 in the first sentence of paragraph (b)(2) by removing ", its possessions, or Puerto Rico" and adding "and its outlying areas" in its place.

PART 8—REQUIRED SOURCES OF SUPPLIES AND SERVICES

■ 10. Amend section 8.1100 by revising the last sentence to read as follows:

8.1100 Scope of subpart.

* * * It does not apply to motor vehicles leased outside the United States and its outlying areas.

8.1104 [Amended]

■ 11. Amend section 8.1104 in the introductory text by removing "The contracting officer shall insert" and adding "Insert" in its place; and in paragraph (d) by removing "(see 41 CFR 101–38.6)" and adding "(see subpart B of 41 CFR 102–34)" in its place.

PART 9—CONTRACTOR QUALIFICATIONS

9.102 [Amended]

■ 12. Amend section 9.102 in paragraph (a)(1) by removing ", its possessions, or Puerto Rico" and adding "or its outlying areas" in its place.

■ 13. Amend section 9.406–2 by adding an introductory paragraph; revising the introductory text of paragraph (a), and paragraphs (a)(4), (b)(1) introductory text, (b)(1)(iii), the first sentence in (b)(2), and (c) to read as follows:

9.406–2 Causes for debarment.

The debarring official may debar—

(a) A contractor for a conviction of or civil judgment for—

* * * * *

(4) Intentionally affixing a label bearing a "Made in America" inscription (or any inscription having the same meaning) to a product sold in or shipped to the United States or its outlying areas, when the product was not made in the United States or its outlying areas (see Section 202 of the Defense Production Act (Public Law 102–558)); or

* * * * *

(b)(1) A contractor, based upon a preponderance of the evidence for—

* * * * *

(iii) Intentionally affixing a label bearing a "Made in America" inscription (or any inscription having the same meaning) to a product sold in or shipped to the United States or its outlying areas, when the product was not made in the United States or its outlying areas (see Section 202 of the Defense Production Act (Public Law 102–558)).

* * * * *

(2) A contractor, based on a determination by the Attorney General of the United States, or designee, that the contractor is not in compliance with Immigration and Nationality Act employment provisions (see Executive Order 12989). * * *

(c) A contractor or subcontractor based on any other cause of so serious or compelling a nature that it affects the present responsibility of the contractor or subcontractor.

■ 14. Amend section 9.407–2 by revising paragraph (a)(5) to read as follows:

9.407–2 Causes for suspension.

(a) * * *

(5) Intentionally affixing a label bearing a "Made in America" inscription (or any inscription having the same meaning) to a product sold in or shipped to the United States or its outlying areas, when the product was not made in the United States or its outlying areas (see Section 202 of the Defense Production Act (Public Law 102–558));

* * * * *

PART 14—SEALED BIDDING

■ 15. Revise section 14.203–1 to read as follows:

14.203–1 Transmittal to prospective bidders.

Invitations for bids or presolicitation notices must be transmitted as specified in 14.205 and shall be provided to others in accordance with 5.102. When a contracting office is located in the United States, any solicitation sent to a prospective bidder located outside the United States shall be sent by electronic data interchange or air mail if security classification permits.

PART 19—SMALL BUSINESS PROGRAMS

■ 16. Amend section 19.000 by revising paragraph (b) to read as follows:

19.000 Scope of part.

* * * * *

(b) This part, except for subpart 19.6, applies only in the United States or its outlying areas. Subpart 19.6 applies worldwide.

■ 17. Amend section 19.001 by revising the definition "Concern" to read as follows:

19.001 Definitions.

* * * * *

Concern means any business entity organized for profit (even if its ownership is in the hands of a nonprofit entity) with a place of business located in the United States or its outlying areas and that makes a significant contribution to the U.S. economy through payment of taxes and/or use of American products, material and/or labor, etc. "Concern" includes but is not limited to an individual, partnership, corporation, joint venture, association, or cooperative. For the purpose of making affiliation findings (see 19.101), include any business entity, whether organized for profit or not, and any foreign business entity, *i.e.*, any entity located outside the United States and its outlying areas.

* * * * *

19.101 [Amended]

■ 18. In section 19.101, amend the last sentence of the definition "Affiliates" by removing "inside the United States" and adding "in the United States or its outlying areas" in its place.

■ 19. Amend section 19.102 by revising the introductory text of paragraph (f), (f)(1), and (f)(7) to read as follows:

19.102 Size standards.

* * * * *

(f) Any concern submitting a bid or offer in its own name, other than on a construction or service contract, that proposes to furnish an end product it did not manufacture (a "nonmanufacturer"), is a small business if it has no more than 500 employees, and—

(1) Except as provided in paragraphs (f)(4) through (f)(7) of this section, in the case of Government acquisitions set-aside for small businesses, furnishes in the performance of the contract, the product of a small business manufacturer or producer. The end product furnished must be manufactured or produced in the United States or its outlying areas. The term "nonmanufacturer" includes a concern that can, but elects not to, manufacture or produce the end product for the specific acquisition. For size determination purposes, there can be only one manufacturer of the end product being acquired. The manufacturer of the end product being acquired is the concern that, with its own forces, transforms inorganic or organic substances including raw materials and/or miscellaneous parts or components into the end product. However, see the limitations on subcontracting at 52.219–14 that apply to any small business offeror other than a nonmanufacturer for purposes of set-asides and 8(a) awards.

* * * * *

(7) The SBA provides for an exception to the nonmanufacturer rule if—

(i) The procurement of a manufactured end product processed under the procedures set forth in part 13—

(A) Is set aside for small business; and

(B) Is not anticipated to exceed $25,000; and

(ii) The offeror supplies an end product that is manufactured or produced in the United States or its outlying areas.

* * * * *

■ 20. Amend section 19.307 by revising paragraphs (a)(1) and (c) to read as follows:

19.307 Solicitation provisions.

(a)(1) Insert the provision at 52.219–1, Small Business Program Representations, in solicitations exceeding the micro-purchase threshold when the contract will be performed in the United States or its outlying areas.

* * * * *

(c) When contracting by sealed bidding, insert the provision at 52.219–2, Equal Low Bids, in solicitations when the contract will be performed in the United States or its outlying areas.

■ 21. Amend section 19.702 by revising paragraph (b)(3) to read as follows:

19.702 Statutory requirements.

* * * * *

(b) * * *

(3) For contracts or contract modifications that will be performed entirely outside of the United States and its outlying areas; or

* * * * *

■ 22. Amend section 19.708 by—

■ a. Revising the introductory text of paragraph (a) and (a)(2);

■ b. Removing from the first sentence of paragraph (b)(1) the words "The contracting officer shall, when contracting by negotiation, insert" and adding "Insert" in its place; and

■ c. Removing from paragraph (b)(2) "The contracting officer shall insert" and adding "Insert" in its place. The revised text reads as follows:

19.708 Contract clauses.

(a) Insert the clause at 52.219–8, Utilization of Small Business Concerns, in solicitations and contracts when the contract amount is expected to exceed the simplified acquisition threshold unless—

* * * * *

(2) The contract, together with all of its subcontracts, will be performed entirely outside of the United States and its outlying areas.

* * * * *

■ 23. Amend section 19.1202–2 by revising paragraph (b)(4) to read as follows:

19.1202–2 Applicability.

* * * * *

(b) * * *

(4) Contract actions that will be performed entirely outside of the United States and its outlying areas.

PART 22—APPLICATION OF LABOR LAWS TO GOVERNMENT ACQUISITIONS

22.102–2 [Amended]

■ 24. Amend section 22.102–2 in the first sentence of paragraph (b) by adding "U.S." before the word "Virgin".

■ 25. Amend section 22.103–1 by revising the introductory text of the definition "Normal workweek" to read as follows:

22.103–1 Definition.

Normal workweek as used in this subpart, means, generally, a workweek of 40 hours. Outside the United States and its outlying areas, a workweek longer than 40 hours is considered normal if—

* * * * *

■ 26. Amend section 22.202 by revising the introductory paragraph to read as follows:

22.202 Contract clause.

Insert the clause at 52.222–3, Convict Labor, in solicitations and contracts above the micro-purchase threshold, when the contract will be performed in the United States, Puerto Rico, the Northern Mariana Islands, American Samoa, Guam, or the U.S. Virgin Islands; unless—

* * * * *

■ 27. Revise section 22.305 to read as follows:

22.305 Contract clause.

Insert the clause at 52.222–4, Contract Work Hours and Safety Standards Act—Overtime Compensation, in solicitations and contracts (including, for this purpose, basic ordering agreements) when the contract may require or involve the employment of laborers or mechanics. However, do not include the clause in solicitations and contracts—

(a) Valued at or below the simplified acquisition threshold;

(b) For commercial items;

(c) For transportation or the transmission of intelligence;

(d) To be performed outside the United States, Puerto Rico, American Samoa, Guam, the U.S. Virgin Islands, Johnston Island, Wake Island, and Outer Continental Shelf lands as defined in the Outer Continental Shelf Lands Act (43 U.S.C. 1331) (29 CFR 5.15);

(e) For work to be done solely in accordance with the Walsh-Healey Public Contracts Act (see subpart 22.6);

(f) For supplies that include incidental services that do not require substantial employment of laborers or mechanics; or

(g) Exempt under regulations of the Secretary of Labor (29 CFR 5.15).

■ 28. Revise section 22.603 to read as follows:

22.603 Applicability.

The requirements in 22.602 apply to contracts (including for this purpose, indefinite-delivery contracts, basic ordering agreements, and blanket purchase agreements) and subcontracts under Section 8(a) of the Small Business Act, for the manufacture or furnishing of supplies that—

(a) Will be performed in the United States, Puerto Rico, or the U.S. Virgin Islands;

(b) Exceed or may exceed $10,000; and

(c) Are not exempt under 22.604.

■ 29. Amend section 22.604–2 by revising paragraph (a)(2) to read as follows:

22.604–2 Regulatory exemptions.

(a) * * *

(2) Supplies manufactured outside the United States, Puerto Rico, and the U.S. Virgin Islands.

* * * * *

■ 30. Amend section 22.801 by revising the definition "United States" to read as follows:

22.801 Definitions.

* * * * *

United States means the 50 States, the District of Columbia, Puerto Rico, the Northern Mariana Islands, American Samoa, Guam, the U.S. Virgin Islands, and Wake Island.

■ 31. Amend section 22.1001 by revising the definition "United States" to read as follows:

22.1001 Definitions.

* * * * *

United States means the 50 States, the District of Columbia, Puerto Rico, the Northern Mariana Islands, American Samoa, Guam, the U.S. Virgin Islands, Johnston Island, Wake Island, and Outer Continental Shelf lands as defined in the Outer Continental Shelf Lands Act (43 U.S.C. 1331, *et seq.*,) but does not include any other place subject to U.S. jurisdiction or any U.S. base or possession in a foreign country (29 CFR 4.112).

* * * * *

■ 32. Amend section 22.1408 by revising the introductory text of paragraph (a) and (a)(1) to read as follows:

22.1408 Contract clause.

(a) Insert the clause at 52.222–36, Affirmative Action for Workers with Disabilities, in solicitations and contracts that exceed or are expected to exceed $10,000, except when—

(1) Both the performance of the work and the recruitment of workers will occur outside the United States, Puerto Rico, the Northern Mariana Islands, American Samoa, Guam, the U.S. Virgin Islands, and Wake Island; or

* * * * *

PART 23—ENVIRONMENT, ENERGY AND WATER EFFICIENCY, RENEWABLE ENERGY TECHNOLOGIES, OCCUPATIONAL SAFETY, AND DRUG-FREE WORKPLACE

■ 33. Amend section 23.200 by revising paragraph (b) to read as follows:

23.200 Scope.

* * * * *

(b) This subpart applies to acquisitions in the United States and its outlying areas. Agencies conducting acquisitions outside of these areas must use their best efforts to comply with this subpart.

■ 34. Amend section 23.501 by revising the introductory pâragraph and paragraphs (a), (b), and (c); and in paragraph (d) by removing "Contracts by" and adding "By" in its place. The revised text reads as follows:

23.501 Applicability.

This subpart applies to contracts, including contracts with 8(a) contractors under FAR subpart 19.8 and modifications that require a justification and approval (see subpart 6.3), except contracts—

(a) At or below the simplified acquisition threshold; however, the requirements of this subpart apply to all contracts of any value awarded to an individual;

(b) For the acquisition of commercial items (see part 12);

(c) Performed outside the United States and its outlying areas or any part of a contract performed outside the United States and its outlying areas;

* * * * *

■ 35. Revise section 23.505 to read as follows:

23.505 Contract clause.

Except as provided in 23.501, insert the clause at 52.223-6, Drug-Free Workplace, in solicitations and contracts.

■ 36. Amend section 23.804 by revising the introductory paragraph to reads as follows:

23.804 Contract clauses.

Except for contracts that will be performed outside the United States and its outlying areas, insert the clause at:

* * * * *

■ 37. Amend section 23.903 by revising paragraph (b)(2) to read as follows:

23.903 Applicability.

* * * * *

(b) * * *

(2) Contractor facilities located outside the United States and its outlying areas.

■ 38. Amend section 23.906 by revising paragraph (a)(2)(v) to read as follows:

23.906 Requirements.

(a) * * *

(2) * * *

(v) Are not located in the United States and its outlying areas.

* * * * *

■ 39. Revise section 23.1002 to read as follows:

23.1002 Applicability.

The requirements of this subpart apply to facilities owned or operated by an agency in the customs territory of the United States.

PART 25—FOREIGN ACQUISITION

■ 40. Amend section 25.003 by removing the definition "Customs territory of the United States"; and revising the definition "United States" to read as follows:

25.003 Definitions.

* * * * *

United States means the 50 States, the District of Columbia, and outlying areas.

* * * * *

PART 26—OTHER SOCIOECONOMIC PROGRAMS

■ 41. Amend section 26.300 by revising paragraph (b) to read as follows:

26.300 Scope of subpart.

* * * * *

(b) This subpart does not pertain to contracts performed entirely outside the United States and its outlying areas.

PART 28—BONDS AND INSURANCE

28.202 [Amended]

■ 42. Amend section 28.202 in paragraph (a)(1) by removing ", its possessions, or Puerto Rico" and adding "or its outlying areas" in its place.

■ 43. Amend section 28.203–2 by revising the first sentence of paragraph (b)(4) and paragraph (c)(3)(i) to read as follows:

28.203–2 Acceptability of assets.

* * * * *

(b) * * *

(4) Real property owned in fee simple by the surety without any form of concurrent ownership, except as provided in paragraph (c)(3)(iii) of this subsection, and located in the United States or its outlying areas. * * *

* * * * *

(c) * * *

(3) * * *

(i) Real property located outside the United States and its outlying areas.

* * * * *

28.301 [Amended]

■ 44. Amend section 28.301 in the introductory text by removing "be required to"; and in the third sentence of paragraph (b) by removing ", its possessions, and Puerto Rico" and adding "and its outlying areas" in its place.

■ 45. Amend section 28.310 by revising the introductory text of paragraph (a) and paragraph (a)(2) to read as follows:

28.310 Contract clause for work on a Government installation.

(a) Insert the clause at 52.228–5, Insurance—Work on a Government Installation, in solicitations and contracts if a fixed-price contract is contemplated, the contract amount is expected to exceed the simplified acquisition threshold, and the contract will require work on a Government installation, unless—

* * * * *

(2) All work on the Government installation will be performed outside the United States and its outlying areas.

* * * * *

PART 29—TAXES

■ 46. Amend section 29.202 by revising paragraph (b) to read as follows:

29.202 General exemptions.

* * * * *

(b) Shipment for export to a foreign country or an outlying area of the United States. Shipment must occur within 6 months of the time title passes to the Government. When the exemption is claimed, the words "for export" must appear on the contract or purchase document, and the contracting officer must furnish the seller proof of export (*see* 26 CFR 48.4221–3).

* * * * *

■ 47. Revise section 29.401–1 to read as follows:

29.401–1 Indefinite-delivery contracts for leased equipment.

Insert the clause at 52.229–1, State and Local Taxes, in solicitations and contracts for leased equipment when—

(a) A fixed-price indefinite-delivery contract is contemplated;

(b) The contract will be performed wholly or partly in the United States or its outlying areas; and

(c) The place or places of delivery are not known at the time of contracting.

■ 48. Amend section 29.401–3 by revising paragraph (a)(1) to read as follows:

29.401–3 Federal, State, and local taxes.

(a) * * *

(1) The contract is to be performed wholly or partly in the United States or its outlying areas;

* * * * *

PART 31—CONTRACT COST PRINCIPLES AND PROCEDURES

31.205–46 [Amended]

■ 49. Amend section 31.205–46 in paragraph (a)(2)(i) by removing "conterminous 48" and adding "contiguous" in its place; and in paragraph (a)(2)(ii) by removing "The Commonwealth of Puerto Rico, and territories and possessions" and adding "and outlying areas" in its place.

PART 35—RESEARCH AND DEVELOPMENT CONTRACTING

35.014 [Amended]

■ 50. Amend section 35.014 in paragraph (d)(1) by removing from the quoted text "States" and adding "States or its outlying areas" in its place.

PART 36—CONSTRUCTION AND ARCHITECT–ENGINEER CONTRACTS

■ 51. Amend section 36.103 by revising paragraph (a) to read as follows:

36.103 Methods of contracting.

(a) The contracting officer shall use sealed bid procedures for a construction contract if the conditions in 6.401(a) apply, unless the contract will be performed outside the United States and its outlying areas. (See 6.401(b)(2).)

* * * * *

■ 52. Revise section 36.609–4 to read as follows:

36.609–4 Requirements for registration of designers.

Insert the clause at 52.236–25, Requirements for Registration of Designers, in architect-engineer

contracts, except that it may be omitted when the design will be performed—

(a) Outside the United States and its outlying areas; or

(b) In a State or outlying area of the United States that does not have registration requirements for the particular field involved.

■ 53. Amend section 36.702 by revising paragraph (a) to read as follows:

36.702 Forms for use in contracting for architect-engineer services.

(a) Contracting officers must use Standard Form 252, Architect-Engineer Contract, to award fixed-price contracts for architect-engineer services when the services will be performed in the United States or its outlying areas.

* * * * *

PART 42—CONTRACT ADMINISTRATION AND AUDIT SERVICES

42.1402 Volume movements within the contiguous United States.

■ 54. Revise the heading of section 42.1402 to read as set forth above.

■ 55. Amend section 42.1404–1 by revising paragraph (c) to read as follows:

42.1404–1 Parcel post eligible shipments.

* * * * *

(c)(1) When a contractor uses its own label to ship to a post office servicing military and other agency consignees outside the customs territory of the United States, the contractor shall stamp or imprint the parcel immediately above the label in ¼-inch block letters with the—

(i) Name of the agency; and

(ii) Words "Official Mail—Contents for Official Use— Exempt from Customs Requirements."

(2) This marking permits identification and expedites handling within the postal system, but the contractor must pay postage if—

(i) Required by the contract; or

(ii) The contract provides for reimbursement for the cost of postage.

* * * * *

PART 45—GOVERNMENT PROPERTY

■ 56. Amend section 45.601 by revising the definition "Public body" to read as follows:

45.601 Definitions.

* * * * *

Public body means any State, any outlying area of the United States, any political subdivision thereof, the District of Columbia, any agency or instrumentality of any of the foregoing, any Indian tribe, or any agency of the Federal Government.

PART 47—TRANSPORTATION

47.001 [Amended]

■ 57. Amend section 47.001 by removing the definition "CONUS" or "Continental United States".

47.302 [Amended]

■ 58. Amend section 47.302 in the first sentence of paragraph (a) by removing "Continental" and adding "Contiguous" in its place.

47.304–1 [Amended]

■ 59. Amend section 47.304–1 in paragraphs (g)(1) and (g)(2) by removing "the continental United States" and adding "CONUS" in their place.

47.304–3 [Amended]

■ 60. Amend section 47.304–3 in the introductory text of paragraph (a) by removing "the United States" and adding "CONUS" in its place.

■ 61. Amend section 47.401 by revising the definitions "United States" and "U.S.-flag air carrier" to read as follows:

47.401 Definitions.

* * * * *

United States means the 50 States, the District of Columbia, and outlying areas of the United States.

U.S.-flag air carrier means an air carrier holding a certificate under section 401 of the Federal Aviation Act of 1958 (49 U.S.C. 41102).

■ 62. Revise section 47.402 to read as follows:

47.402 Policy.

Federal employees and their dependents, consultants, contractors, grantees, and others must use U.S.-flag air carriers for U.S. Government-financed international air travel and transportation of their personal effects or property, if available (section 5 of the International Air Transportation Fair Competitive Practices Act of 1974 (49 U.S.C. 40118) (Fly America Act)).

PART 52—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

■ 63. Amend section 52.203–12 by revising the date of the clause; and in paragraph (a) by revising the definition "State" to read as follows:

52.203–12 Limitation on Payments to Influence Certain Federal Transactions.

* * * * *

Limitation on Payments to Influence Certain Federal Transactions (June 2003)

(a) * * *

State, as used in this clause, means a State of the United States, the District of Columbia, or an outlying area of the United States, an agency or instrumentality of a State, and multi-State, regional, or interstate entity having governmental duties and powers.

* * * * *

■ 64. Amend section 52.212–3 by revising the date of provision, the introductory text of paragraph (c), (f)(1), and (g)(1)(i) to read as follows:

52.212–3 Offeror Representations and Certifications—Commercial Items.

* * * * *

Offeror Representations and Certifications—Commercial Items (June 2003)

* * * * *

(c) Offerors must complete the following representations when the resulting contract will be performed in the United States or its outlying areas. Check all that apply.

* * * * *

(f) * * *

(1) The offeror certifies that each end product, except those listed in paragraph (f)(2) of this provision, is a domestic end product and that the offeror has considered components of unknown origin to have been mined, produced, or manufactured outside the United States. The offeror shall list as foreign end products those end products manufactured in the United States that do not qualify as domestic end products. The terms "component," "domestic end product," "end product," "foreign end product," and "United States" are defined in the clause of this solicitation entitled "Buy American Act—Supplies."

* * * * *

(g)(1) * * *

(i) The offeror certifies that each end product, except those listed in paragraph (g)(1)(ii) or (g)(1)(iii) of this provision, is a domestic end product and that the offeror has considered components of unknown origin to have been mined, produced, or manufactured outside the United States. The terms "component," "domestic end product," "end product," "foreign end product," and "United States" are defined in the clause of this solicitation entitled "Buy American Act—North American Free Trade Agreement—Israeli Trade Act."

* * * * *

■ 65. Amend section 52.213–4 by revising the date of clause and paragraphs (a)(1)(i), (a)(1)(iv) and the introductory text of paragraph (b)(1)(viii) to read as follows:

52.213–4 Terms and Conditions—Simplified Acquisitions (Other Than Commercial Items).

* * * * *

Terms and Conditions—Simplified Acquisitions (Other Than Commercial Items) (June 2003)

(a) * * *

(1) * * *

(i) 52.222–3, Convict Labor (June 2003) (E.O. 11755).

* * * * *

(iv) 52.225–13, Restrictions on Certain foreign Purchases (June 2003) (E.O.'s 12722, 12724, 13059, 13067, 13121, 13129).

* * * * *

(b) * * *

(1) * * *

(viii) 52.225–1, Buy American Act—Supplies (June 2003) (41 U.S.C. 10a–10d) (Applies to contracts for supplies, and to contracts for services involving the furnishing of supplies, for use in the United States or its outlying areas, if the value of the supply contract or supply portion of a service contract exceeds the micro-purchase threshold and the acquisition—

* * * * *

■ 66. Amend section 52.219–5 by revising the date of the clause, paragraph (c), and Alternate II to read as follows:

52.219–5 Very Small Business Set-Aside.

* * * * *

Very Small Business Set-Aside (June 2003)

* * * * *

(c) *Agreement.* A very small business concern submitting an offer in its own name shall furnish, in performing the contract, only end items manufactured or produced by small business concerns in the United States or its outlying areas.

(End of clause)

* * * * *

Alternate II (June 2003). As prescribed in 19.905(b), substitute the following paragraph (c) for paragraph (c) of the basic clause:

(c) *Agreement.* A very small business concern submitting an offer in its own name shall furnish, in performing the contract, only end items manufactured or produced by domestic firms in the United States or its outlying areas.

■ 67. Amend section 52.219–6 by revising the date of the clause and paragraph (c) to read as follows:

52.219–6 Notice of Total Small Business Set-Aside.

* * * * *

Notice of Total Small Business Set-Aside (June 2003)

* * * * *

(c) *Agreement.* A small business concern submitting an offer in its own name shall furnish, in performing the contract, only end items manufactured or produced by small business concerns in the United States or its outlying areas. If this procurement is processed under simplified acquisition procedures and the total amount of this contract does not exceed $25,000, a small business concern may furnish the product of any domestic firm. This paragraph does not apply to construction or service contracts.

(End of clause)

* * * * *

■ 68. Amend section 52.219–7 by revising the date of clause and paragraph (c) to read as follows:

52.219–7 Notice of Partial Small Business Set-Aside.

* * * * *

Notice of Partial Small Business Set-Aside (June 2003)

* * * * *

(c) *Agreement.* For the set-aside portion of the acquisition, a small business concern submitting an offer in its own name shall furnish, in performing the contract, only end items manufactured or produced by small business concerns in the United States or its outlying areas. If this procurement is processed under simplified acquisition procedures and the total amount of this contract does not exceed $25,000, a small business concern may furnish the product of any domestic firm. This paragraph does not apply to construction or service contracts.

(End of clause)

* * * * *

■ 69. Amend section 52.219–18 by revising the date of clause and paragraph (d)(1) to read as follows:

52.219–18 Notification of Competition Limited to Eligible 8(a) Concerns.

* * * * *

Notification of Competition Limited to Eligible 8(a) Concerns (June 2003)

* * * * *

(d)(1) *Agreement.* A small business concern submitting an offer in its own name shall furnish, in performing the contract, only end items manufactured or produced by small business concerns in the United States or its outlying areas. If this procurement is processed under simplified acquisition procedures and the total amount of this contract does not exceed $25,000, a small business concern may furnish the product of any domestic firm. This paragraph does not apply to construction or service contracts.

* * * * *

■ 70. Amend section 52.219–23 by revising the date of clause; removing from paragraph (a) the definition "United States"; and by revising paragraph (d)(2) and Alternate I to read as follows:

52.219–23 Notice of Price Evaluation Adjustment for Small Disadvantaged Business Concerns.

* * * * *

Notice of Price Evaluation Adjustment for Small Disadvantaged Business Concerns (June 2003)

* * * * *

(d) * * *

(2) A small disadvantaged business concern submitting an offer in its own name shall furnish in performing this contract only end items manufactured or produced by small disadvantaged business concerns in the United States or its outlying areas. This paragraph does not apply to construction or service contracts.

(End of clause)

Alternate I (June 2003). As prescribed in 19.1104, substitute the following paragraph (d)(2) for paragraph (d)(2) of the basic clause:

(2) A small disadvantaged business concern submitting an offer in its own name shall furnish in performing this contract only end items manufactured or produced by small business concerns in the United States or its outlying areas. This paragraph does not apply to construction or service contracts.

* * * * *

■ 71. Revise section 52.222–3 to read as follows:

52.222–3 Convict Labor.

As prescribed in 22.202, insert the following clause:

Convict Labor (June 2003)

(a) Except as provided in paragraph (b) of this clause, the Contractor shall not employ in the performance of this contract any person undergoing a sentence of imprisonment imposed by any court of a State, the District of Columbia, Puerto Rico, the Northern Mariana Islands, American Samoa, Guam, or the U.S. Virgin Islands.

(b) The Contractor is not prohibited from employing persons—

(1) On parole or probation to work at paid employment during the term of their sentence;

(2) Who have been pardoned or who have served their terms; or

(3) Confined for violation of the laws of any of the States, the District of Columbia, Puerto Rico, the Northern Mariana Islands, American Samoa, Guam, or the U.S. Virgin Islands who are authorized to work at paid employment in the community under the laws of such jurisdiction, if—

(i) The worker is paid or is in an approved work training program on a voluntary basis;

(ii) Representatives of local union central bodies or similar labor union organizations have been consulted;

(iii) Such paid employment will not result in the displacement of employed workers, or be applied in skills, crafts, or trades in which there is a surplus of available gainful labor in the locality, or impair existing contracts for services;

(iv) The rates of pay and other conditions of employment will not be less than those paid or provided for work of a similar nature in the locality in which the work is being performed; and

(v) The Attorney General of the United States has certified that the work-release laws or regulations of the jurisdiction involved are in conformity with the requirements of Executive Order 11755, as amended by Executive Orders 12608 and 12943.

(End of clause)

■ 72. Revise section 52.222–29 to read as follows:

52.222–29 Notification of Visa Denial.

As prescribed in 22.810(g), insert the following clause:

Notification of Visa Denial (June 2003)

It is a violation of Executive Order 11246 for a Contractor to refuse to employ any

applicant or not to assign any person hired in the United States, Puerto Rico, the Northern Mariana Islands, American Samoa, Guam, the U.S. Virgin Islands, or Wake Island, on the basis that the individual's race, color, religion, sex, or national origin is not compatible with the policies of the country where or for whom the work will be performed (41 CFR 60–1.10). The Contractor shall notify the U.S. Department of State, Assistant Secretary, Bureau of Political-Military Affairs (PM), 2201 C Street NW., Room 6212, Washington, DC 20520, and the U.S. Department of Labor, Deputy Assistant Secretary for Federal Contract Compliance, when it has knowledge of any employee or potential employee being denied an entry visa to a country where this contract will be performed, and it believes the denial is attributable to the race, color, religion, sex, or national origin of the employee or potential employee.
(End of clause)

■ 73. Amend section 52.223–13 by revising the date of the provision and paragraph (b)(2)(v) to read as follows:

52.223–13 Certification of Toxic Chemical Release Reporting.

* * * * *

Certification of Toxic Chemical Release Reporting (June 2003)

* * * * *

(b) * * *

(2) * * *

[ ] (v) The facility is not located in the United States or its outlying areas.

(End of provision)

■ 74. Amend section 52.223–14 by revising the date of the clause, and the introductory text of paragraph (b) and paragraph (b)(5) to read as follows:

52.223–14 Toxic Chemical Release Reporting.

* * * * *

Toxic Chemical Release Reporting (June 2003)

* * * * *

(b) A Contractor-owned or -operated facility used in the performance of this contract is exempt from the requirement to file an annual Form R if—

* * * * *

(5) The facility is not located in the United States or its outlying areas.

* * * * *

■ 75. Amend section 52.225–1 by revising the date of the clause; and in paragraph (a) by revising the definition "United States" to read as follows:

52.225–1 Buy American Act—Supplies.

* * * * *

Buy American Act—Supplies (June 2003)

(a) * * *

United States means the 50 States, the District of Columbia, and outlying areas.

* * * * *

■ 76. Amend section 52.225–2 by revising the date of the provision and paragraph (a) to read as follows:

52.225–2 Buy American Act Certificate.

* * * * *

Buy American Act Certificate (June 2003)

(a) The offeror certifies that each end product, except those listed in paragraph (b) of this provision, is a domestic end product and that the offeror has considered components of unknown origin to have been mined, produced, or manufactured outside the United States. The offeror shall list as foreign end products those end products manufactured in the United States that do not qualify as domestic end products. The terms "component," "domestic end product," "end product," "foreign end product," and "United States" are defined in the clause of this solicitation entitled "Buy American Act—Supplies."

* * * * *

■ 77. Amend section 52.225–3 by revising the date of the clause; and in paragraph (a) by revising the definition "United States" to read as follows:

52.225–3 Buy American Act—North American Free Trade Agreement—Israeli Trade Act.

* * * * *

Buy American Act—North American Free Trade Agreement—Israeli Trade Act (June 2003)

(a) * * *

United States means the 50 States, the District of Columbia, and outlying areas.

* * * * *

■ 78. Amend section 52.225–4 by revising the date of the provision and paragraph (a) to read as follows:

52.225–4 Buy American Act—North American Free Trade Agreement—Israeli Trade Act Certificate.

* * * * *

Buy American Act—North American Free Trade Agreement—Israeli Trade Act Certificate (June 2003)

(a) The offeror certifies that each end product, except those listed in paragraph (b) or (c) of this provision, is a domestic end product and that the offeror has considered components of unknown origin to have been mined, produced, or manufactured outside the United States. The terms "component," "domestic end product," "end product," "foreign end product," and "United States" are defined in the clause of this solicitation entitled "Buy American Act—North American Free Trade Agreement—Israeli Trade Act."

* * * * *

■ 79. Amend section 52.225–5 by revising the date of the clause; and in paragraph (a) by revising the definition "United States" to read as follows:

52.225–5 Trade Agreements.

* * * * *

Trade Agreements (June 2003)

(a) * * *

United States means the 50 States, the District of Columbia, and outlying areas.

* * * * *

■ 80. Amend section 52.225–9 by revising the date of the clause; and in paragraph (a) by revising the definition "United States" to read as follows:

52.225–9 Buy American Act—Construction Materials.

* * * * *

Buy American Act—Construction Materials (June 2003)

(a) * * *

United States means the 50 States, the District of Columbia, and outlying areas.

* * * * *

■ 81. Amend section 52.225–11 by revising the date of the clause; and in paragraph (a) by revising the definition "United States" to read as follows:

52.225–11 Buy American Act—Construction Materials under Trade Agreements.

* * * * *

Buy American Act—Construction Materials Under Trade Agreements (June 2003)

(a) * * *

United States means the 50 States, the District of Columbia, and outlying areas.

* * * * *

52.225–13 [Amended]

■ 82. Amend section 52.225–13 by revising the date of the clause to read "(June 2003)"; and in the first sentence of paragraph (a) by removing "States" and adding "States and its outlying areas" in its place.

■ 83. Amend section 52.228–3 by revising the introductory paragraph to read as follows:

52.228–3 Workers' Compensation Insurance (Defense Base Act).

As prescribed in 28.309(a), insert the following clause:

* * * * *

■ 84. Amend section 52.228–4 by revising the introductory paragraph to read as follows:

52.228–4 Workers' Compensation and War-Hazard Insurance Overseas.

As prescribed in 28.309(b), insert the following clause:

* * * * *

■ 85. Amend section 52.229–1 by revising the introductory text to read as follows:

52.229–1 State and Local Taxes.

As prescribed in 29.401–1, insert the following clause:

* * * * *

■ 86. Amend section 52.229–6 by—
■ a. Revising the date of the clause;
■ b. Revising paragraph (a);
■ c. Removing the designation of paragraph (b);
■ d. Adding a new paragraph (b) introductory text; and
■ e. Removing ", as used in this clause," from the definition "Contract date"; revising the definition "Country concerned"; and removing ", as used in this clause," from the definitions "Tax" and "taxes", "All applicable taxes and duties", "After-imposed tax", "After-relieved tax", and "Excepted tax". The added and revised text reads as follows:

52.229–6 Taxes—Foreign Fixed-Price Contracts.

* * * * *

Taxes—Foreign Fixed-Price Contracts (June 2003)

(a) To the extent that this contract provides for furnishing supplies or performing services outside the United States and its outlying areas, this clause applies in lieu of any Federal, State, and local taxes clause of the contract.

(b) *Definitions.* As used in this clause—

* * * * *

Country concerned means any country, other than the United States and its outlying areas, in which expenditures under this contract are made.

* * * * *

■ 87. Revise section 52.236–25 to read as follows:

52.236–25 Requirements for Registration of Designers.

As prescribed in 36.609–4, insert the following clause:

Requirements for Registration of Designers (June 2003)

Architects or engineers registered to practice in the particular professional field involved in a State, the District of Columbia, or an outlying area of the United States shall prepare or review and approve the design of architectural, structural, mechanical, electrical, civil, or other engineering features of the work.

(End of clause)

■ 88. Revise section 52.242–12 to read as follows:

52.242–12 Report of Shipment (REPSHIP).

As prescribed in 42.1406–2, insert the following clause:

Report of Shipment (REPSHIP) (June 2003)

(a) *Definition. Domestic destination,* as used in this clause, means—

(1) A destination within the contiguous United States; or

(2) If shipment originates in Alaska or Hawaii, a destination in Alaska or Hawaii, respectively.

(b) Unless otherwise directed by the Contracting Officer, the Contractor shall—

(1) Send a prepaid notice of shipment to the consignee transportation officer—

(i) For all shipments of—

(A) Classified material, protected sensitive, and protected controlled material;

(B) Explosives and poisons, classes A and B;

(C) Radioactive materials requiring the use of a III bar label; or

(ii) When a truckload/carload shipment of supplies weighing 20,000 pounds or more, or a shipment of less weight that occupies the full visible capacity of a railway car or motor vehicle, is given to any carrier (common, contract or private) for transportation to a domestic destination (other than a port for export);

(2) Transmit the notice by rapid means to be received by the consignee transportation officer at least 24 hours before the arrival of the shipment; and

(3) Send, to the receiving transportation officer, the Government bill of lading, commercial bill of lading or letter or other document containing the following information and prominently identified as a "Report of Shipment" or "REPSHIP FOR T.O."

Message Example:

REPSHIP FOR T.O. 81 JUN 01
TRANSPORTATION OFFICER
DEFENSE DEPOT, MEMPHIS, TENN.
SHIPPED YOUR DEPOT 1981 JUN 1 540 CTNS MENS COTTON TROUSERS, 30,240 LB, 1782 CUBE, VIA XX–YY*
IN CAR NO. XX 123456**–GBL***–C98000031**** CONTRACT DLA ETA*****–JUNE 5 JONES & CO., JERSEY CITY, N.J.

* Name of rail carrier, trucker, or other carrier.
** Vehicle identification.
*** Government bill of lading.
**** If not shipped by GBL, identify lading document and state whether paid by contractor.
***** Estimated time of arrival.

(End of clause)

■ 89. Amend section 52.245–2 by revising the date and paragraph (1) of the clause; revising the date of Alternate II and amending paragraph (c)(5) of Alternate II by removing "States" and adding "States or its outlying areas" in its place. The revised text reads as follows:

52.245–2 Government Property (Fixed-Price Contracts).

* * * * *

Government Property (Fixed-Price Contracts) (June 2003)

* * * * *

(l) *Overseas contracts.* If this contract is to be performed outside of the United States and its outlying areas, the words "Government" and "Government-furnished" (wherever they appear in this clause) shall be construed as "United States Government" and "United States Government-furnished," respectively.

(End of clause)

* * * * *

Alternate II (June 2003) * * *

* * * * *

■ 90. Amend section 52.245–4 by revising the date of the clause and paragraph (e) to read as follows:

52.245–4 Government-Furnished Property (Short Form).

* * * * *

Government-Furnished Property (Short Form) (June 2003)

* * * * *

(e) If this contract is to be performed outside the Untied States and its outlying areas, the words "Government" and "Government-furnished" (wherever they appear in this clause) shall be construed as "United States Government" and "United States Government-furnished," respectively.

(End of clause)

■ 91. Amend section 52.245–5 by revising the date of the clause; amending paragraph (1) by removing "of America, its territories, or possessions" and adding "and its outlying areas" in its place; by revising the date of Alternate I; and amending paragraph (c)(5) of Alternate I by removing "States" and adding "States or its outlying areas" in its place. The revised text reads as follows:

52.245–5 Government Property (Cost-Reimbursement, Time-and-Material, or Labor-Hour Contracts).

* * * * *

Government Property (Cost-Reimbursement, Time-and-Material, or Labor-Hour Contracts) (June 2003)

* * * * *

(End of clause)

Alternate I (June 2003)

* * * * *

52.245–11 [Amended]

■ 92. Amend section 52.245–11 by revising the date of Alternate I to read "*(June 2003)*"; and amending paragraph (c)(6) of Alternate I by removing "States" and adding "States or its outlying areas" in its place.

52.245–15 [Amended]

■ 93. Amend section 52.245–15 by revising the date of the clause to read "(June 2003)"; and amending paragraph (b) by removing "States" and adding "States or its outlying areas" in its place.

52.246–17 [Amended]

■ 94. Amend section 52.246–17 by revising the date of the clause to read

"(June 2003)"; and amending paragraph (c)(3)(ii)(C) by removing "continental" and adding "contiguous" in its place.

■ 95. Revise section 52.247–47 to read as follows:

52.247–47 Evaluation—F.o.b. Origin.

As prescribed in 47.305–3(f)(2), insert the following provision. When it is appropriate to use methods other than land transportation in evaluating offers; *e.g.*, air, pipeline, barge, or ocean tanker, modify the provision accordingly.

Evaluation—F.o.b. Origin (June 2003)

(a) The Government normally uses land methods of transportation by regulated common carrier for shipment within the contiguous United States.

(b) To evaluate offers, the Government will consider only these methods to establish the cost of transportation between offeror's shipping point and destination (tentative or firm, whichever is applicable) in the contiguous United States.

(c) This transportation cost will be added to the offer price to determine the Government's overall cost.

(d) When tentative destinations are indicated, the Government will use them only for evaluation purposes. The Government has the right to use any other means of transportation or any other destination at the time of shipment.

(End of provision)

■ 96. Amend section 52.247–55 by revising the introductory text, the date of the clause, and paragraphs (a) and (b) of the clause to read as follows:

52.247–55 F.o.b. Point for Delivery of Government-Furnished Property.

As prescribed in 47.305–12(a)(2), insert the following clause:

F.o.b. Point for Delivery of Government-Furnished Property (June 2003)

(a) Unless otherwise specified in this solicitation, the Government will deliver any Government-furnished property for use within the contiguous United States or Canada to a point specified by the Contractor in the offer. If the Government makes delivery by railroad, the f.o.b. point will be private siding, Contractor's plant. If the Contractor's plant is not served by rail, the f.o.b. point will be railroad cars in the same or nearest city having rail service. The Government may choose the mode of transportation and the carriers and will bear the cost of all line-haul transportation to the specified destination.

(b) If the destination of the Government-furnished property is a Contractor's plant located outside the contiguous United States or Canada, the f.o.b. point for Government delivery of Government-furnished property will be a Contractor-specified location in the contiguous United States. If the Contractor fails to name a point, the Government will select as the f.o.b. point the port city in the contiguous United States nearest to the Government-furnished property that has regular commercial water transportation services to the offshore port nearest the Contractor's plant.

* * * * *

■ 97. Amend section 52.247–63 by revising the date of the clause and paragraphs (a) and (c) to read as follows:

52.247–63 Preference for U.S.—Flag Air Carriers.

* * * * *

Preference for U.S.—Flag Air Carriers (June 2003)

(a) *Definitions.* As used in this clause—

International air transportation means transportation by air between a place in the United States and a place outside the United States or between two places both of which are outside the United States.

United States means the 50 States, the District of Columbia, and outlying areas.

U.S.-flag air carrier means an air carrier holding a certificate under 49 U.S.C. Chapter 411.

* * * * *

(c) If available, the Contractor, in performing work under this contract, shall use U.S.-flag carriers for international air transportation of personnel (and their personal effects) or property.

* * * * *

PART 53—FORMS

53.228 [Amended]

■ 98. Amend section 53.228 in paragraph (e) by removing "(*Rev. 6/96*)" and adding "(*Rev. 6/03*)" in its place.

■ 99. Revise section 53.301–28 to read as follows:

53.301–28 Affidavit of Individual Surety.

BILLING CODE 6820–EP–P

AFFIDAVIT OF INDIVIDUAL SURETY
(See instructions on reverse)

OMB No.: 9000-0001

Public reporting burden for this collection of information is estimated to average 3 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Regulatory Secretariat (MVA), Office of Acquisition Policy, GSA, Washington, DC 20405.

STATE OF

COUNTY OF SS.

I, the undersigned, being duly sworn, depose and say that I am: (1) the surety to the attached bond(s); (2) a citizen of the United States; and of full age and legally competent. I also depose and say that, concerning any stocks or bonds included in the assets listed below, that there are no restrictions on the resale of these securities pursuant to the registration provisions of Section 5 of the Securities Act of 1933. I recognize that statements contained herein concern a matter within the jurisdiction of an agency of the United States and the making of a false, fictitious or fraudulent statement may render the maker subject to prosecution under Title 18, United States Code Sections 1001 and 494. This affidavit is made to induce the United States of America to accept me as surety on the attached bond.

1. NAME *(First, Middle, Last) (Type or Print)*	2. HOME ADDRESS *(Number, Street, City, State, ZIP Code)*
3. TYPE AND DURATION OF OCCUPATION	4. NAME AND ADDRESS OF EMPLOYER *(If Self-employed, so State)*
5. NAME AND ADDRESS OF INDIVIDUAL SURETY BROKER USED *(If any) (Number, Street, City, State, ZIP Code)*	6. TELEPHONE NUMBER HOME - BUSINESS -

7. THE FOLLOWING IS A TRUE REPRESENTATION OF THE ASSETS I HAVE PLEDGED TO THE UNITED STATES IN SUPPORT OF THE ATTACHED BOND:

(a) Real estate *(Include a legal description, street address and other identifying description; the market value; attach supporting certified documents including recorded lien; evidence of title and the current tax assessment of the property. For market value approach, also provide a current appraisal.)*

(b) Assets other than real estate *(describe the assets, the details of the escrow account, and attach certified evidence thereof).*

8. IDENTIFY ALL MORTGAGES, LIENS, JUDGEMENTS, OR ANY OTHER ENCUMBRANCES INVOLVING SUBJECT ASSETS INCLUDING REAL ESTATE TAXES DUE AND PAYABLE.

9. IDENTIFY ALL BONDS, INCLUDING BID GUARANTEES, FOR WHICH THE SUBJECT ASSETS HAVE BEEN PLEDGED WITHIN 3 YEARS PRIOR TO THE DATE OF EXECUTION OF THIS AFFIDAVIT.

DOCUMENTATION OF THE PLEDGED ASSET MUST BE ATTACHED.

10. SIGNATURE	11. BOND AND CONTRACT TO WHICH THIS AFFIDAVIT RELATES *(Where appropriate)*

12. SUBSCRIBED AND SWORN TO BEFORE ME AS FOLLOWS:

a. DATE OATH ADMINISTERED (MONTH / DAY / YEAR)	b. CITY AND STATE *(Or other jurisdiction)*	
c. NAME AND TITLE OF OFFICIAL ADMINISTERING OATH *(Type or print)*	d. SIGNATURE	e. MY COMMISSION EXPIRES

Official Seal

AUTHORIZED FOR LOCAL REPRODUCTION
Previous edition is not usable

STANDARD FORM 28 (REV. 6/2003)
Prescribed by GSA-FAR (48 CFR) 53.228(e)

INSTRUCTIONS

1. Individual sureties on bonds executed in connection with Government contracts must complete and submit this form with the bond. (See 48 CFR 28.203, 53.228(e).) The surety must have the completed form notarized.

2. No corporation, partnership, or other unincorporated association or firm, as such, is acceptable as an individual surety. Likewise, members of a partnership are not acceptable as sureties on bonds that a partnership or an association, or any co-partner or member thereof, is the principal obligor. However, stockholders of corporate principals are acceptable provided (a) their qualifications are independent of their stockholdings or financial interest therein, and (b) that the fact is expressed in the affidavit of justification. An individual surety will not include any financial interest in assets connected with the principal on the bond that this affidavit supports.

3. United States citizenship is a requirement for individual sureties for contracts and bonds when the contract is awarded in the United States. However, when the Contracting Officer is located in an outlying area or a foreign country, the individual surety is only required to be a permanent resident of the area or country in which the contracting officer is located.

4. All signatures of the affidavit submitted must be originals. Affidavits bearing reproduced signatures are not acceptable. An authorized person must sign the bond. Any person signing in a representative capacity (e.g., an attorney-in-fact) must furnish evidence of authority if that representative is not a member of a firm, partnership, or joint venture, or an officer of the corporation involved.

STANDARD FORM 28 (REV. 6/2003) BACK

[FR Doc. 03–12301 Filed 5–21–03; 8:45 am]
BILLING CODE 6820–EP–C

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 2, 31, 47, and 52

[FAC 2001–14; FAR Case 2001–029; Item II]

RIN 9000–AJ33

Federal Acquisition Regulation; Miscellaneous Cost Principles

AGENCIES: Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Final rule.

SUMMARY: The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (Councils) have agreed on a final rule amending the Federal Acquisition Regulation (FAR) to delete the cost principle concerning transportation costs and to revise the cost principles concerning cost of money, other business expenses, and deferred research and development costs.

DATES: *Effective Date:* June 23, 2003.

FOR FURTHER INFORMATION CONTACT: The FAR Secretariat, Room 4035, GS Building, Washington, DC 20405, (202) 501–4755, for information pertaining to status or publication schedules. For clarification of content, contact Mr. Edward Loeb at (202) 501–1224. Please cite FAC 2001–14, FAR case 2001–029.

SUPPLEMENTARY INFORMATION:

A. Background

DoD, GSA, and NASA published a proposed rule in the **Federal Register** at 67 FR 13072, March 20, 2002, with request for comments. Two respondents submitted public comments. The Councils considered all comments and concluded that the proposed rule should be converted to a final rule with the following changes to the proposed rule:

1. Revise the language at FAR 31.205–10(b)(1) to state that cost of money "is measured, assigned, and allocated to contracts in accordance with 48 CFR 9904.414 or measured and added to the cost of capital assets under construction in accordance with 48 CFR 9904.417, as applicable."

2. Change the word "cost" in paragraph 31.205–10(b)(3) to "cost of money" to maintain clarity and consistency at FAR 31.205–10. A discussion of the comments is provided below:

Comment: Respondent recommends that paragraph (a)(2) of FAR 31.205–10 be revised to state that cost of money "shall be treated like an incurred cost for cost-reimbursement purposes."

Councils' response: Do not concur. The Councils believe FAR 31.205–10(a)(1) of the proposed rule clearly specifies that cost of money is an imputed cost (as opposed to an incurred cost). Paragraph (a)(2) further states that, for cost-reimbursement purposes, this imputed cost is an "incurred cost." The Councils do not believe this language would permit a contractor to argue that cost of money is not an imputed cost. In fact, the cost principle at FAR 31.205–10 has referred to cost of money as being, for cost-reimbursement purposes, an "incurred cost" since at least as early as 1984, but has also always specifically stated that it is actually an "imputed cost."

Comment: Respondent recommends revising the language in the proposed rule at FAR 31.205–10(b)(1) for cost of money that states "it is measured, assigned, and allocated to contracts in accordance with 48 CFR 9904.414 or 48 CFR 9904.417, as applicable." Respondent notes that 48 CFR 9904.417—Cost of Money as an Element of the Cost of Capital Assets under Construction (CAS 417), addresses the measurement of cost of money attributable to assets being constructed rather than contract costs.

Councils' response: Concur. The Councils revised the rule at paragraph (b)(1) to state that cost of money "is measured, assigned, and allocated to contracts in accordance with 48 CFR 9904.414 or measured and added to the cost of capital assets under construction in accordance with 48 CFR 9904.417, as applicable."

Comment: Respondent recommends revising FAR 31.205–10(b)(1) by changing the word "cost" to "imputed cost" or "cost of money," to make it consistent with the other language in the cost principle.

Councils' response: Concur. The Councils changed the word "cost" in paragraph (b)(3) to "cost of money."

This is not a significant regulatory action and, therefore, was not subject to review under Section 6(b) of Executive Order 12866, Regulatory Planning and Review, dated September 30, 1993. This rule is not a major rule under 5 U.S.C. 804.

B. Regulatory Flexibility Act

The Department of Defense, the General Services Administration, and the National Aeronautics and Space Administration certify that this final rule will not have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, because most contracts awarded to small entities use simplified acquisition procedures or are awarded on a competitive, fixed-price basis, and do not require application of the cost principles discussed in this rule.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the changes to the FAR do not impose information collection requirements that require the approval of the Office of Management and Budget under 44 U.S.C. 3501, *et seq.*

List of Subjects in 48 CFR Parts 2, 31, 47, and 52

Government procurement.

Dated: May 13, 2003.

Laura G. Smith,

Director, Acquisition Policy Division.

■ Therefore, DoD, GSA, and NASA amend 48 CFR parts 2, 31, 47, and 52 as set forth below:

■ 1. The authority citation for 48 CFR parts 2, 31, 47, and 52 is revised to read as follows:

Authority: 40 U.S.C. 121(c); 10 U.S.C. chapter 137; and 42 U.S.C. 2473(c).

PART 2—DEFINITIONS OF WORDS AND TERMS

■ 2. In section 2.101, add the definition "Facilities capital cost of money", in alphabetical order, to read as follows:

2.101 Definitions.

* * * * *

Facilities capital cost of money means "cost of money as an element of the cost of facilities capital" as used at 48 CFR 9904.414—Cost Accounting Standard—Cost of Money as an Element of the Cost of Facilities Capital.

* * * * *

PART 31—CONTRACT COST PRINCIPLES AND PROCEDURES

31.001 [Amended]

■ 3. In section 31.001, remove the definitions "Cost of capital committed to facilities" and "Facilities capital."

■ 4. Revise section 31.205–10 to read as follows:

31.205–10 Cost of money.

(a) *General.* Cost of money—

(1) Is an imputed cost that is not a form of interest on borrowings (see 31.205–20);

(2) Is an "incurred cost" for cost-reimbursement purposes under applicable cost-reimbursement contracts and for progress payment purposes under fixed-price contracts; and

(3) Refers to—

(i) Facilities capital cost of money (48 CFR 9904.414); and

(ii) Cost of money as an element of the cost of capital assets under construction (48 CFR 9904.417).

(b) Cost of money is allowable, provided—

(1) It is measured, assigned, and allocated to contracts in accordance with 48 CFR 9904.414 or measured and added to the cost of capital assets under construction in accordance with 48 CFR 9904.417, as applicable;

(2) The requirements of 31.205–52, which limit the allowability of cost of money, are followed; and

(3) The estimated facilities capital cost of money is specifically identified and proposed in cost proposals relating to the contract under which the cost is to be claimed.

(c) Actual interest cost in lieu of the calculated imputed cost of money is unallowable.

■ 5. In section 31.205–28, revise the introductory text to read as follows:

31.205–28 Other business expenses.

The following types of recurring costs are allowable:

* * * * *

31.205–45 [Reserved]

■ 6. Remove and reserve section 31.205–45.

31.205–48 Research and development costs.

■ 7. Amend section 31.205–48 by revising the section heading to read as set forth above; and in the first sentence by removing the word "section" and adding "subsection" in its place.

PART 47—TRANSPORTATION

47.300 [Amended]

■ 8. Amend section 47.300 in the introductory text of paragraph (b) by removing "(see 31.205–45)".

PART 52—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

■ 9. Amend section 52.215–16 by revising the date of the provision and paragraph (a) to read as follows:

52.215–16 Facilities Capital Cost of Money.

* * * * *

Facilities Capital Cost of Money (June 2003)

(a) Facilities capital cost of money will be an allowable cost under the contemplated contract, if the criteria for allowability in FAR 31.205–10(b) are met. One of the allowability criteria requires the prospective Contractor to propose facilities capital cost of money in its offer.

* * * * *

[FR Doc. 03–12302 Filed 5–22–03; 8:45 am]

BILLING CODE 6820–EP–P

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 2, 32, and 52

[FAC 2001–14; FAR Case 2000–308; Item III]

RIN 9000–AJ17

Federal Acquisition Regulation; Prompt Payment Under Cost-Reimbursement Contracts for Services

AGENCIES: Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Final rule.

SUMMARY: The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (Councils) have agreed on a final rule amending the Federal Acquisition Regulation (FAR) to adopt, as final, the interim rule published at 66 FR 53485, October 22, 2001. This rule requires an agency to pay an interest penalty whenever it makes an interim payment under a cost reimbursement contract for services more than 30 days after the agency receives a proper invoice from the contractor.

DATES: *Effective Date:* May 23, 2003.

Applicability Date: This final rule applies to cost-reimbursement contracts for services, irrespective of award date, if interim payments requests under such contracts are due on or after December 15, 2000. In no event may agencies pay late payment penalty interest for any delay in payment that occurred prior to December 15, 2000.

FOR FURTHER INFORMATION CONTACT: The FAR Secretariat, Room 4035, GS Building, Washington, DC, 20405, (202) 501–4755, for information pertaining to status or publication schedules. For clarification of content, contact Mr. Edward Loeb at (202) 501–0650. Please cite FAC 2001–14, FAR case 2000–308.

SUPPLEMENTARY INFORMATION:

A. Background

DoD, GSA, and NASA published an interim rule in the **Federal Register** at 66 FR 53485, October 22, 2001, with request for comments. This FAR amendment eliminated the prior policy and contract clause prohibition on payment of late payment penalty interest for late interim finance payments under cost-reimbursement contracts for services. It added new policy and a contract clause, Alternate I to the FAR clause at 52.232–25, to provide for those penalty payments.

The interim FAR rule implemented section 1010 of the Floyd D. Spence National Defense Authorization Act for Fiscal Year 2001 (Pub. L. 106–398). Section 1010 requires an agency to pay an interest penalty, in accordance with regulations issued by the Office of Management and Budget (OMB), whenever an interim payment under a cost reimbursement contract for services is paid more than 30 days after the agency receives a proper invoice from the contractor. The Act does not permit payment of late payment interest penalty for any period prior to December 15, 2000. OMB published an interim rule in the **Federal Register** at 65 FR 78403, December 15, 2000, and a final rule at 67 FR 79515, December 30, 2002. OMB's rule revised the prompt payment regulations at 5 CFR part 1315 to implement section 1010 of Public Law 106–398.

The Councils received no public comments to the interim FAR rule and have agreed to convert the interim rule to a final rule without change. The applicability date, however, has changed as explained below. The **Federal Register** notice published in conjunction with the FAR interim rule stated that "The policy and clause apply to all covered contracts awarded on or after December 15, 2000 * * * agencies may apply the FAR changes made by this rule to contracts awarded prior to December 15, 2000, at their discretion * * *." (66 FR 53485, October 22, 2001.) This was consistent with OMB regulations. Subsequently, as a result of enactment of the National Defense Authorization Act for Fiscal Year 2002 (Pub. L. 107–107) on December 28, 2001, agencies no longer have this discretion. Section 1007 of Public Law 107–107 states that this policy applies to cost-reimbursement contracts for services awarded before, on, or after December 15, 2000. Section 1007 retains the prohibition against payment of late payment interest penalty for any period prior to December 15, 2000. For this reason, the applicability of the rule has been revised to reflect this change.

This is not a significant regulatory action and, therefore, was not subject to review under Section 6(b) of Executive Order 12866, Regulatory Planning and Review, dated September 30, 1993. This rule is not a major rule under 5 U.S.C. 804.

B. Regulatory Flexibility Act

The Department of Defense, the General Services Administration, and the National Aeronautics and Space Administration certify that this final rule will not have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, because the rule only applies to the very limited number of contractors that are awarded cost-reimbursement service contracts and that are paid more than 30 days after the agency receives a proper invoice.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the changes to the FAR do not impose information collection requirements that require the approval of the Office of Management and Budget under 44 U.S.C. 3501, *et seq.*

List of Subjects in 48 CFR Parts 2, 32, and 52

Government procurement.

Dated: May 13, 2003.

Laura G. Smith,

Director, Acquisition Policy Division.

Interim Rule Adopted as Final Without Change

■ Accordingly, DoD, GSA, and NASA adopt the interim rule amending 48 CFR parts 2, 32, and 52 which was published in the **Federal Register** at 66 FR 53485, October 22, 2001, as a final rule without change.

Authority: 40 U.S.C. 121(c); 10 U.S.C. chapter 137; and 42 U.S.C. 2473(c).

[FR Doc. 03–12303 Filed 5–22–03; 8:45 am]

BILLING CODE 6820–EP–P

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Part 4

[FAC 2001–14; FAR Case 2000–304; Item IV]

RIN 9000–AI94

Federal Acquisition Regulation; Electronic Signatures

AGENCIES: Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Final rule.

SUMMARY: The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (Councils) have agreed on a final rule amending the Federal Acquisition Regulation (FAR) to clarify that agencies are permitted to accept electronic signatures and records in connection with Government contracts.

DATES: *Effective Date:* June 23, 2003.

FOR FURTHER INFORMATION CONTACT: The FAR Secretariat, Room 4035, GS Building, Washington, DC, 20405, (202) 501–4755, for information pertaining to status or publication schedules. For clarification of content, contact Ms. Laura Smith, Procurement Analyst, at (202) 501–7279. Please cite FAC 2001–14, FAR case 2000–304.

SUPPLEMENTARY INFORMATION:

A. Background

On October 21, 1998, the Government Paperwork Elimination Act (Title XVII of Division C of Public Law 105–277) was enacted. On June 30, 2000, the Electronic Signatures in Global and National Commerce Act (E–SIGN) (Pub. L. 106–229) was enacted. These laws eliminate legal barriers to using electronic technology in business transactions, such as the formation and signing of contracts. The Office of Management and Budget (OMB) has issued guidance on both of these laws. See Memorandum M–00–15, "OMB Guidance on Implementing the Electronic Signatures in Global and National Commerce Act," dated September 25, 2000, and Memorandum M–00–10, "OMB Procedures and Guidance on Implementing the Government Paperwork Elimination Act," dated April 25, 2000. These memoranda are available on the OMB Homepage at *http://www.omb.gov.*

This final rule furthers Government participation in electronic commerce when conducting Government procurements by adding a statement at FAR Subpart 4.5, Electronic Commerce in Contracting, clarifying that agencies are permitted to accept electronic signatures and records in connection with Government contracts.

DoD, GSA, and NASA published a proposed rule in the **Federal Register** at 65 FR 65698, November 1, 2000. In addition to proposing a policy statement recognizing the use of electronic signatures, the proposed rule would have revised the current FAR definitions of "in writing" and "signature" at FAR 2.101 to clarify that these terms include electronic, in addition to paper, transactions. It also would have made minor changes to the definition of electronic commerce. Twenty-five sources submitted comments in response to the proposed rule. All comments were considered in the development of the final rule.

Several surety companies expressed support for greater use of electronic technologies for the filing of bid, performance, and payment bonds and associated powers of attorney. They noted that such technologies will "streamline the procurement process, reduce costs, and increase efficiency for all trading partners." However, they cautioned that FAR coverage should not result in reliance on a single proprietary system for electronic signatures for the entire Federal government. They further recommended a phase-in period so sureties that are not yet automated have alternative means of transacting with the Government in the near term.

With respect to the choice of technology, the final rule simply states, "agencies may accept electronic signatures and records in connection with Government contracts." The choice of technology for implementing electronic signatures is left to each agency. As for the execution of bonds and powers of attorney, the rule does not require that these documents be submitted electronically, which will allow time for parties to effectively transition to electronic transactions.

One commenter made several recommendations regarding the definitions. In particular, the commenter asserted that—

- A definition for "electronic commerce" is unnecessary and should be removed from the FAR;
- The current FAR definition of "signature" should be replaced by the E–SIGN definition of "electronic signature"; and
- The E–SIGN definition of electronic record should be substituted for the

current and proposed definitions of "in writing," "writing," and "written," because the latter definitions are too narrow. The Councils disagree with the recommended changes to the definitions.

The current FAR definition of "electronic commerce" is consistent with that set forth in section 30 of the Office of Federal Procurement Policy Act. The Councils believe the statutory definition should be reflected in the FAR. At the same time, the Councils recognize the value in evaluating the continued need for, and appropriateness of this definition as electronic commerce continues to become more institutionalized in the Government.

The commenter's proposed definition of electronic signature does not reflect intention to authenticate. This concept is important to contracting-related transactions, electronic or otherwise. As noted in a September 12, 1951, Comptroller General decision (B–104590), courts have held that "a signature consists of the writing of one's name and of the intention that it *authenticate* the instrument, and, therefore, any symbol adopted as one's signature when affixed with his knowledge and consent is a binding and legal signature * * *" This was reiterated in a September 20, 1984, Comptroller General decision (B–216035). Consistent with this reasoning, FAR case 91–104 incorporated the concept of authentication into the definition of "signature." That case established the premise that either hand scribed or other format signatures indicate an intent to authenticate (or be bound).

Similarly, the Councils believe that the proposed definition for "electronic record" is insufficient. The Councils maintain that the definition of "in writing" should reflect the requirement to store because agencies ask for information in writing when they intend to keep it as a record. Therefore, storage, reproduction, and later retrieval are all salient characteristics of a record. After further deliberation and consideration of the public comments regarding the proposed changes to the definitions, the Councils have determined that the current FAR definitions are sufficient and appropriately capture the necessary salient characteristics required of a "writing" and a "signature." Likewise, the Councils concluded that there was no significant value achieved through the proposed change to the definition of "electronic commerce."

Therefore, this final rule makes no changes to the current FAR definitions.

This is not a significant regulatory action and, therefore, was not subject to review under Section 6(b) of Executive Order 12866, Regulatory Planning and Review, dated September 30, 1993. This rule is not a major rule under 5 U.S.C. 804.

B. Regulatory Flexibility Act

The Department of Defense, the General Services Administration, and the National Aeronautics and Space Administration certify that this final rule will not have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, because the rule does not change the procedures for award or administration of contracts, but rather, clarifies that the use of electronic signatures and electronic methods are permitted in Government procurement.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the changes to the FAR do not impose information collection requirements that require the approval of the Office of Management and Budget under 44 U.S.C. 3501, *et seq.*

List of Subjects in 48 CFR Part 4

Government procurement.

Dated: May 13, 2003.

Laura G. Smith,

Director, Acquisition Policy Division.

■ Therefore, DoD, GSA, and NASA amend 48 CFR part 4 as set forth below:

PART 4—ADMINISTRATIVE MATTERS

■ 1. The authority citation for 48 CFR part 4 is revised to read as follows:

Authority: 40 U.S.C. 121(c); 10 U.S.C. chapter 137; and 42 U.S.C. 2473(c).

■ 2. Amend section 4.502 by adding paragraph (d) to read as follows:

4.502 Policy.

* * * * *

(d) Agencies may accept electronic signatures and records in connection with Government contracts.

[FR Doc. 03–12304 Filed 5–22–03; 8:45 am]

BILLING CODE 6820–EP–P

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Part 8

[FAC 2001–14; FAR Case 2003–001; Item V]

RIN 9000–AJ62

Federal Acquisition Regulation; Increased Federal Prison Industries, Inc. Waiver Threshold

AGENCIES: Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Interim rule with request for comments.

SUMMARY: The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (Councils) have agreed on an interim rule amending the Federal Acquisition Regulation (FAR) to increase the blanket waiver threshold for small dollar value purchases from Federal Prison Industries (FPI) by Federal agencies. By increasing this threshold to $2,500, Federal agencies will not be required to make purchases from FPI of products on FPI's Schedule that are at or below this threshold. Federal agencies, however, may continue to consider and purchase products from FPI that are at or below $2,500.

DATES: *Effective Date:* May 22, 2003.

Comment Date: Interested parties should submit comments to the FAR Secretariat at the address shown below on or before June 23, 2003 to be considered in the formulation of a final rule.

ADDRESSES: Submit written comments to—General Services Administration, FAR Secretariat (MVA), 1800 F Street, NW., Room 4035, Attn: Ms. Laurie Duarte, Washington, DC 20405.

Submit electronic comments via the Internet to—*farcase.2003–001@gsa.gov*. Please submit comments only and cite FAC 2001–14, FAR case 2003–001, in all correspondence related to this case.

FOR FURTHER INFORMATION CONTACT: The FAR Secretariat, Room 4035, GS Building, Washington, DC 20405, (202) 501–4755, for information pertaining to status or publication schedules. For clarification of content, contact Ms. Linda Nelson, Procurement Analyst, at (202) 501–1900. Please cite FAC 2001–14, FAR case 2003–001.

SUPPLEMENTARY INFORMATION:

A. Background

The Federal Prison Industries (FPI) Board of Directors recently adopted a resolution increasing the blanket waiver threshold for small dollar-value purchases from Federal Prison Industries by Federal agencies. The resolution adopted by the FPI Board increases the FPI clearance exception threshold at 8.606(e) from $25 to $2,500 and eliminates the criterion that delivery is required within 10 days. The objective of the rule is to increase the dollar threshold necessary to obtain a clearance from FPI. By increasing this threshold to $2,500, Federal agencies will not be required to make purchases from FPI of products on FPI's Schedule that are at or below this threshold. Federal agencies, however, may continue to consider and purchase products from FPI that are at or below $2,500. FPI is a mandatory acquisition program established under 18 U.S.C. 4124. Agencies would still be required to purchase products on FPI's Schedule from FPI above the $2,500 threshold unless a clearance is obtained pursuant to FAR 8.605.

This is not a significant regulatory action and, therefore, was not subject to review under Section 6(b) of Executive Order 12866, Regulatory Planning and Review, dated September 30, 1993. This rule is not a major rule under 5 U.S.C. 804.

B. Regulatory Flexibility Act

The Regulatory Flexibility Act does not apply to this rule. This interim rule does not constitute a significant FAR revision within the meaning of FAR 1.501 and Public Law 98–577, and publication for public comments is not required. However, the Councils will consider comments from small entities concerning the affected FAR part 8, in accordance with 5 U.S.C. 610. Interested parties must submit such comments separately and should cite 5 U.S.C. 601, *et seq.*, (FAC 2001–14, FAR case 2003–001), in correspondence.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the changes to the FAR do not impose information collection requirements that require the approval of the Office of Management and Budget under 44 U.S.C. 3501, *et seq.*

D. Determination To Issue an Interim Rule

There is no requirement to publish this rule for public comment, as it is not a significant FAR revision. This rule only covers very-small-dollar supply purchases now being made from Federal Prison Industries, part of the Department of Justice, another Federal executive agency. FPI will continue to be a source, but optional rather than mandatory, for these very-small-dollar purchases. This change does not originate from the FAR regulation, but is only an update to show a change in policy made by the Federal Prison Industries itself. No public comments are required under 41 U.S.C. 418b(a), and under (a) and (d) therefore no determination either for compelling circumstances, or for urgent and compelling circumstances needs to be made in order for the case to go into effect immediately. Even though not required to do so, the Councils would, nevertheless, like to obtain public comments. No determination of urgent and compelling circumstances is necessary under the statute to obtain optional public comments.

However, pursuant to Public Law 98–577 and FAR 1.501, the Councils will consider public comments received in response to this interim rule in the formation of the final rule.

List of Subjects in 48 CFR Part 8

Government procurement.

Dated: May 13, 2003.

Laura G. Smith,

Director, Acquisition Policy Division.

■ Therefore, DoD, GSA, and NASA amend 48 CFR part 8 as set forth below:

PART 8—REQUIRED SOURCES OF SUPPLIES AND SERVICES

■ 1. The authority citation for 48 CFR part 8 is revised to read as follows:

Authority: 40 U.S.C. 121(c); 10 U.S.C. chapter 137; and 42 U.S.C. 2473(c).

■ 2. Amend section 8.606 by revising paragraph (e) to read as follows:

8.606 Exceptions.

* * * * *

(e) Orders are for listed items totaling $2,500 or less.

[FR Doc. 03–12305 Filed 5–21–03; 8:45 am]

BILLING CODE 6820–EP–P

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 8 and 42

[FAC 2001–14; FAR Case 2001–035; Item VI]

RIN 9000–AJ45

Federal Acquisition Regulation; Past Performance Evaluation of Federal Prison Industries Contracts

AGENCIES: Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Final rule.

SUMMARY: The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (Councils) have agreed on a final rule amending the Federal Acquisition Regulation (FAR) to require evaluation of Federal Prison Industries (FPI) contract performance.

DATES: *Effective Date:* June 23, 2003.

FOR FURTHER INFORMATION CONTACT: The FAR Secretariat, Room 4035, GS Building, Washington, DC, 20405, (202) 501–4755, for information pertaining to status or publication schedules. For clarification of content, contact Ms. Laura Smith, Procurement Analyst, at (202) 208–7279. Please cite FAC 2001–14, FAR case 2001–035.

SUPPLEMENTARY INFORMATION:

A. Background

This final rule amends FAR Subparts 8.6 and 42.15 to require agencies to evaluate Federal Prison Industries (FPI) contract performance. This change will permit Federal customers to rate FPI performance, compare FPI to private sector providers, and give FPI important feedback on previously awarded contracts. It is expected that this change will give FPI the same opportunity that we give private sector providers to improve their customer satisfaction, in general, and their performance on delivery, price, and quality, specifically. While the change does not negate the requirements of FAR 8.602 or 8.605, it will allow the information to be used to support a clearance request per FAR 8.605.

DoD, GSA, and NASA published a proposed rule in the **Federal Register** at 67 FR 55680, August 29, 2002. Ten respondents submitted public comments. The Councils considered the

public comments before agreeing to convert the proposed rule to a final rule with minor changes. A summary of the comments is provided below:

Comment: To avoid potential misinterpretation, the rule should more clearly call attention to the mandatory source requirement for purchase of FPI products and more clearly point out that a negative past performance evaluation may be used as a basis for a waiver request.

Response: We agree. The intent of the rule is to ensure contracting officers understand that the waiver process is still in effect and that performance evaluations may be used to support future award decisions. Therefore, the final rule amends FAR 8.607 and 42.1503(b) to more clearly articulate that the waiver requirement, referred to at FAR 8.605 as a clearance, still applies and that a negative performance evaluation can be used to support clearance requests.

Comment: There is no basis for an assessment of FPI's past performance. FPI's past performance is irrelevant to whether an agency is required to obtain goods from FPI because of its mandatory source status. Therefore, the collection of data is a patent waste of Government resources since it cannot be used for source selection purposes.

Response: We believe that there is benefit to assessing FPI's performance. The May 2000 Office of Federal Procurement Policy (OFPP) guide "Best Practices for Collecting and Using Current and Past Performance Information" states that the active dialog that results from assessing a contractor's current performance results in better performance on the instant contract, and that such assessments are a basic best practice for good contract administration. As previously stated, this information can also be used to support FPI clearance requests.

Comment: What is the relationship between this rule and Section 811 of the National Defense Authorization Act of FY 2002? Section 811 does not apply to agencies outside of DoD.

Response: This rule has no relationship to Section 811 of the FY 2002 National Defense Authorization Act. The genesis of this case was a memorandum from FPI requesting past performance evaluations on their contracts.

This is not a significant regulatory action and, therefore, was not subject to review under Section 6(b) of Executive Order 12866, Regulatory Planning and Review, dated September 30, 1993. This rule is not a major rule under 5 U.S.C. 804.

B. Regulatory Flexibility Act

The Department of Defense, the General Services Administration, and the National Aeronautics and Space Administration certify that this final rule will not have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, because extending the collection of past performance data to include FPI contracts can be accomplished within our normal means of performing business and further serves to promote competition among offerors.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the changes to the FAR do not impose information collection requirements that require the approval of the Office of Management and Budget under 44 U.S.C. 3501, *et seq.*

List of Subjects in 48 CFR Parts 8 and 42

Government procurement.

Dated: May 13, 2003.

Laura G. Smith,

Director, Acquisition Policy Division.

■ Therefore, DoD, GSA, and NASA amend 48 CFR parts 8 and 42 as set forth below:

■ 1. The authority citation for 48 CFR parts 8 and 42 is revised to read as follows:

Authority: 40 U.S.C. 121(c); 10 U.S.C. chapter 137; and 42 U.S.C. 2473(c).

PART 8—REQUIRED SOURCES OF SUPPLIES AND SERVICES

■ 2. Add section 8.607 to read as follows:

8.607 Evaluating FPI performance.

Agencies shall evaluate FPI contract performance in accordance with subpart 42.15. Performance evaluations do not negate the requirements of 8.602 and 8.605, but they may be used to support a clearance request in accordance with 8.605.

PART 42—CONTRACT ADMINISTRATION AND AUDIT SERVICES

42.1502 [Amended]

■ 3. Amend section 42.1502 in the first sentence of paragraph (b) by removing "subparts 8.6 and" and adding "subpart" in its place.

■ 4. Amend section 42.1503 in paragraph (b) by adding a new seventh sentence to read as follows:

42.1503 Procedures.

* * * * *

(b) * * * Evaluation of Federal Prison Industries (FPI) performance may be used to support a clearance request (see 8.605) when FPI is a mandatory source in accordance with subpart 8.6. * * *

* * * * *

[FR Doc. 03–12306 Filed 5–21–03; 8:45 am]

BILLING CODE 6820–EP–P

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Part 52

[FAC 2001–14; FAR Case 2000–009; Item VII]

RIN 9000–AJ34

Federal Acquisition Regulation; Contract Terms and Conditions Required To Implement Statute or Executive Orders—Commercial Items

AGENCIES: Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Final rule.

SUMMARY: The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (Councils) have agreed on a final rule amending the Federal Acquisition Regulation (FAR) to update the clause regarding commercial items contract terms and conditions required to implement statute or Executive orders.

DATES: Effective Date: June 23, 2003.

FOR FURTHER INFORMATION CONTACT: The FAR Secretariat, Room 4035, GS Building, Washington, DC 20405, (202) 501–4755, for information pertaining to status or publication schedules. For clarification of content, contact Ms. Victoria Moss, Procurement Analyst, at (202) 501–4764. Please cite FAC 2001–14, FAR case 2000–009.

SUPPLEMENTARY INFORMATION:

A. Background

Federal Acquisition Regulation Part 12, Acquisition of Commercial Items, was developed to implement Title VIII of the Federal Acquisition Streamlining Act of 1994 (FASA) (Pub. L. 103–355). The regulations became effective on October 1, 1995. Several areas have been identified that need updating and clarification. This rule addresses some of those changes.

The list of contract terms and conditions required to implement statutes or Executive orders in the clause at FAR 52.212–5, Contract Terms and Conditions Required to Implement Statutes or Executive Orders—Commercial Items, is amended to ensure that required statutes enacted subsequent to FASA that contain civil or criminal penalties or specifically cite their applicability to commercial items are included on the list, and to ensure that any post-FASA items that did not meet this criteria are deleted from the list. In addition, the pre-FASA clauses and alternates that were inadvertently left off the list are added. The date of each clause is added to the list to identify what revision of the listed clause applies when this clause is added to a contract.

DoD, GSA, and NASA published a proposed rule in the **Federal Register** at 67 FR 13076, March 20, 2002. The 60-day comment period ended May 20, 2002. Two sources submitted comments on the proposed rule. Both comments suggested revisions to paragraph 52.212–5(e) to clarify flow-down requirements. Accordingly, paragraph 52.212–5(e) is revised in the final rule to flow down clauses that are applicable to the subcontract and required to implement statute or Executive order.

This is not a significant regulatory action and, therefore, was not subject to review under Section 6(b) of Executive Order 12866, Regulatory Planning and Review, dated September 30, 1993. This rule is not a major rule under 5 U.S.C. 804.

B. Regulatory Flexibility Act

The Department of Defense, the General Services Administration, and the National Aeronautics and Space Administration certify that this final rule will not have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, because the rule does not impose a new policy requirement on small entities. The changes made by the rule update clause references, clarify language, and do not change existing policy.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the changes to the FAR do not impose information collection requirements that require the approval of the Office of Management and Budget under 44 U.S.C. 3501, *et seq.*

List of Subjects in 48 CFR Part 52

Government procurement.

Dated: May 13, 2003.

Laura G. Smith,

Director, Acquisition Policy Division.

■ Therefore, DoD, GSA, and NASA amend 48 CFR part 52 as set forth below:

PART 52—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

■ 1. The authority citation for 48 CFR part 52 is revised to read as follows:

Authority: 40 U.S.C. 121(c); 10 U.S.C. chapter 137; and 42 U.S.C. 2473(c).

■ 2. Amend section 52.212–5 by revising the date of the clause and paragraphs (a), (b), (c), and (e) to read as follows:

52.212–5 Contract Terms and Conditions Required to Implement Statutes or Executive Orders—Commercial Items.

* * * * *

Contract Terms and Conditions Required To Implement Statutes or Executive Orders—Commercial Items (June 2003)

(a) The Contractor shall comply with the following Federal Acquisition Regulation (FAR) clause, which is incorporated in this contract by reference, to implement provisions of law or Executive orders applicable to acquisitions of commercial items: 52.233–3, Protest after Award (AUG 1996) (31 U.S.C. 3553).

(b) The Contractor shall comply with the FAR clauses in this paragraph (b) that the Contracting Officer has indicated as being incorporated in this contract by reference to implement provisions of law or Executive orders applicable to acquisitions of commercial items: [Contracting Officer check as appropriate.]

__(1) 52.203–6, Restrictions on Subcontractor Sales to the Government (JUL 1995), with Alternate I (OCT 1995) (41 U.S.C. 253g and 10 U.S.C. 2402).

__(2) 52.219–3, Notice of Total HUBZone Set-Aside (JAN 1999) (15 U.S.C. 657a).

__(3) 52.219–4, Notice of Price Evaluation Preference for HUBZone Small Business Concerns (JAN 1999) (if the offeror elects to waive the preference, it shall so indicate in its offer) (15 U.S.C. 657a).

__(4)(i) 52.219–5, Very Small Business Set-Aside (JUNE 2003) (Pub. L. 103–403, section 304, Small Business Reauthorization and Amendments Act of 1994).

__(ii) Alternate I (MAR 1999) of 52.219–5.

__(iii) Alternate II (JUNE 2003) of 52.219–5.

__(5)(i) 52.219–6, Notice of Total Small Business Set-Aside (JUNE 2003) (15 U.S.C. 644).

__(ii) Alternate I (OCT 1995) of 52.219–6.

__(6)(i) 52.219–7, Notice of Partial Small Business Set-Aside (JUNE 2003) (15 U.S.C. 644).

__(ii) Alternate I (OCT 1995) of 52.219–7.

__(7) 52.219–8, Utilization of Small Business Concerns (OCT 2000) (15 U.S.C. 637(d)(2) and (3)).

__(8)(i) 52.219–9, Small Business Subcontracting Plan (JAN 2002) (15 U.S.C. 637(d)(4)).

__(ii) Alternate I (OCT 2001) of 52.219–9.

__(iii) Alternate II (OCT 2001) of 52.219–9.

__(9) 52.219–14, Limitations on Subcontracting (DEC 1996) (15 U.S.C. 637(a)(14)).

__(10)(i) 52.219–23, Notice of Price Evaluation Adjustment for Small Disadvantaged Business Concerns (JUNE 2003) (Pub. L. 103–355, section 7102, and 10 U.S.C. 2323) (if the offeror elects to waive the adjustment, it shall so indicate in its offer).

__(ii) Alternate I (JUNE 2003) of 52.219–23.

__(11) 52.219–25, Small Disadvantaged Business Participation Program—Disadvantaged Status and Reporting (OCT 1999) (Pub. L. 103–355, section 7102, and 10 U.S.C. 2323).

__(12) 52.219–26, Small Disadvantaged Business Participation Program—Incentive Subcontracting (OCT 2000) (Pub. L. 103–355, section 7102, and 10 U.S.C. 2323).

__(13) 52.222–3, Convict Labor (JUNE 2003) (E.O. 11755).

__(14) 52.222–19, Child Labor—Cooperation with Authorities and Remedies (SEP 2002) (E.O. 13126).

__(15) 52.222–21, Prohibition of Segregated Facilities (FEB 1999).

__(16) 52.222–26, Equal Opportunity (APR 2002) (E.O. 11246).

__(17) 52.222–35, Equal Opportunity for Special Disabled Veterans, Veterans of the Vietnam Era, and Other Eligible Veterans (DEC 2001) (38 U.S.C. 4212).

__(18) 52.222–36, Affirmative Action for Workers with Disabilities (JUN 1998) (29 U.S.C. 793).

__(19) 52.222–37, Employment Reports on Special Disabled Veterans, Veterans of the Vietnam Era, and Other Eligible Veterans (DEC 2001) (38 U.S.C. 4212).

__(20)(i) 52.223–9, Estimate of Percentage of Recovered Material Content for EPA-Designated Products (AUG 2000) (42 U.S.C. 6962(c)(3)(A)(ii)).

__(ii) Alternate I (AUG 2000) of 52.223–9 (42 U.S.C. 6962(i)(2)(C)).

__(21) 52.225–1, Buy American Act—Supplies (JUNE 2003) (41 U.S.C. 10a–10d).

__(22)(i) 52.225–3, Buy American Act—North American Free Trade Agreement—Israeli Trade Act (JUNE 2003) (41 U.S.C. 10a–10d, 19 U.S.C. 3301 note, 19 U.S.C. 2112 note).

__(ii) Alternate I (MAY 2002) of 52.225–3.

__(iii) Alternate II (MAY 2002) of 52.225–3.

__(23) 52.225–5, Trade Agreements (JUNE 2003) (19 U.S.C. 2501, *et seq.*, 19 U.S.C. 3301 note).

__(24) 52.225–13, Restrictions on Certain Foreign Purchases (JUNE 2003) (E.O. 12722, 12724, 13059, 13067, 13121, and 13129).

__(25) 52.225–15, Sanctioned European Union Country End Products (FEB 2000) (E.O. 12849).

__(26) 52.225–16, Sanctioned European Union Country Services (FEB 2000) (E.O. 12849).

__(27) 52.232–29, Terms for Financing of Purchases of Commercial Items (FEB 2002) (41 U.S.C. 255(f), 10 U.S.C. 2307(f)).

__(28) 52.232–30, Installment Payments for Commercial Items (OCT 1995) (41 U.S.C. 255(f), 10 U.S.C. 2307(f)).

__(29) 52.232–33, Payment by Electronic Funds Transfer—Central Contractor Registration (MAY 1999) (31 U.S.C. 3332).

__(30) 52.232–34, Payment by Electronic Funds Transfer—Other than Central Contractor Registration (MAY 1999) (31 U.S.C. 3332).

__(31) 52.232–36, Payment by Third Party (MAY 1999) (31 U.S.C. 3332).

__(32) 52.239–1, Privacy or Security Safeguards (AUG 1996) (5 U.S.C. 552a).

__(33)(i) 52.247–64, Preference for Privately Owned U.S.-Flag Commercial Vessels (APR 2003) (46 U.S.C. Appx 1241 and 10 U.S.C. 2631).

__(ii) Alternate I (APR 1984) of 52.247–64.

(c) The Contractor shall comply with the FAR clauses in this paragraph (c), applicable to commercial services, that the Contracting Officer has indicated as being incorporated in this contract by reference to implement provisions of law or Executive orders applicable to acquisitions of commercial items: [Contracting Officer check as appropriate.]

__(1) 52.222–41, Service Contract Act of 1965, as Amended (MAY 1989) (41 U.S.C. 351, *et seq.*).

__(2) 52.222–42, Statement of Equivalent Rates for Federal Hires (MAY 1989) (29 U.S.C. 206 and 41 U.S.C. 351, *et seq.*).

__(3) 52.222–43, Fair Labor Standards Act and Service Contract Act—Price Adjustment (Multiple Year and Option Contracts) (MAY 1989) (29 U.S.C. 206 and 41 U.S.C. 351, *et seq.*).

__(4) 52.222–44, Fair Labor Standards Act and Service Contract Act—Price Adjustment (February 2002) (29 U.S.C. 206 and 41 U.S.C. 351, *et seq.*).

__(5) 52.222–47, SCA Minimum Wages and Fringe Benefits Applicable to Successor Contract Pursuant to PreDecemberessor Contractor Collective Bargaining Agreements (CBA) (May 1989) (41 U.S.C. 351, *et seq.*).

* * * * *

(e)(1) Notwithstanding the requirements of the clauses in paragraphs (a), (b), (c), and (d) of this clause, the Contractor is not required to flow down any FAR clause, other than those in paragraphs (i) through (vi) of this paragraph in a subcontract for commercial items. Unless otherwise indicated below, the extent of the flow down shall be as required by the clause—

(i) 52.219–8, Utilization of Small Business Concerns (October 2000) (15 U.S.C. 637(d)(2) and (3)), in all subcontracts that offer further subcontracting opportunities. If the subcontract (except subcontracts to small business concerns) exceeds $500,000 ($1,000,000 for construction of any public facility), the subcontractor must include 52.219–8 in lower tier subcontracts that offer subcontracting opportunities.

(ii) 52.222–26, Equal Opportunity (April 2002) (E.O. 11246).

(iii) 52.222–35, Equal Opportunity for Special Disabled Veterans, Veterans of the Vietnam Era, and Other Eligible Veterans (December 2001) (38 U.S.C. 4212).

(iv) 52.222–36, Affirmative Action for Workers with Disabilities (June 1998) (29 U.S.C. 793).

(v) 52.222–41, Service Contract Act of 1965, as Amended (May 1989), flow down required for all subcontracts subject to the Service Contract Act of 1965 (41 U.S.C. 351, *et seq.*).

(vi) 52.247–64, Preference for Privately Owned U.S.-Flag Commercial Vessels (April 2003) (46 U.S.C. Appx 1241 and 10 U.S.C. 2631). Flow down required in accordance with paragraph (d) of FAR clause 52.247–64.

(2) While not required, the contractor May include in its subcontracts for commercial items a minimal number of additional clauses necessary to satisfy its contractual obligations.

(End of clause)

* * * * *

[FR Doc. 03–12307 Filed 5–21–03; 8:45 am]

BILLING CODE 6820–EP–P

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Part 52

[FAC 2001–14; Item VIII]

Federal Acquisition Regulation; Technical Amendments

AGENCIES: Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Final rule.

SUMMARY: This document makes amendments to the Federal Acquisition Regulation (FAR) in order to update references and make editorial changes.

DATES: *Effective Date:* June 23, 2003.

FOR FURTHER INFORMATION CONTACT: The FAR Secretariat, Room 4035, GS Building, Washington, DC 20405, (202) 501–4755, for information pertaining to status or publication schedules. Please cite FAC 2001–14, Technical Amendments.

List of Subjects in 48 CFR Part 52

Government procurement.

Dated: May 13, 2003.

Laura G. Smith,

Director, Acquisition Policy Division.

■ Therefore, DoD, GSA, and NASA amend 48 CFR part 52 as set forth below:

PART 52—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

■ 1. The authority citation for 48 CFR part 52 is revised to read as follows:

Authority: 40 U.S.C. 121(c); 10 U.S.C. chapter 137; and 42 U.S.C. 2473(c).

52.213–4 [Amended]

■ 2. Amend section 52.213–4 in paragraph (a)(2)(vi) by removing "(Dec 2001)" and adding "(Apr 2003)" in its place.

52.244–6 Subcontracts for Commercial Items.

■ 3. In section 52.244–6, revise the section heading to read as set forth above; and in the clause heading, remove the words "and Commercial Components".

52.247–64 [Amended]

■ 4. Amend section 52.247–64 in the first parenthetical in the introductory text of paragraph (a) by adding "Appx" after "U.S.C.".

[FR Doc. 03–12308 Filed 5–21–03; 8:45 am]

BILLING CODE 6820–EP–P

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Chapter 1

Federal Acquisition Regulation; Small Entity Compliance Guide

AGENCIES: Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Small Entity Compliance Guide.

SUMMARY: This document is issued under the joint authority of the Secretary of Defense, the Administrator of General Services and the Administrator for the National Aeronautics and Space Administration. This *Small Entity Compliance Guide* has been prepared in accordance with Section 212 of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121). It consists of a summary of the rules appearing in Federal Acquisition Circular (FAC) 2001–14 which amends the FAR. An asterisk (*) next to a rule indicates that a regulatory flexibility analysis has been prepared in accordance with 5 U.S.C. 604. Interested parties may obtain further information regarding these rules by referring to FAC 2001–14 which precedes this document. These documents are also available via the Internet at *http://www.arnet.gov/far.*

FOR FURTHER INFORMATION CONTACT: Laurie Duarte, FAR Secretariat, (202) 501–4225. For clarification of content, contact the analyst whose name appears in the table below.

LIST OF RULES IN FAC 2001–14

Item	Subject	FAR case	Analyst
I	Geographic Use of the Term "United States"	1999–400	Davis
II	Miscellaneous Cost Principles	2001–029	Loeb
III	Prompt Payment Under Cost-Reimbursement Contracts for Services	2000–308	Loeb
IV	Electronic Signatures	2000–304	Smith
V	Increased Federal Prison Industries, Inc. Waiver Threshold (Interim)	2003–001	Nelson
VI	Past Performance Evaluation of Federal Prison Industries Contracts	2001–035	Smith
VII	Contract Terms and Conditions Required to Implement Statute or Executive Orders—Commercial Items	2000–009	Moss
VIII	Technical Amendments		

SUPPLEMENTARY INFORMATION:

Summaries for each FAR rule follow. For the actual revisions and/or amendments to these FAR cases, refer to the specific item number and subject set forth in the documents following these item summaries.

FAC 2001–14 amends the FAR as specified below:

Item I—Geographic Use of the Term "United States" (FAR Case 1999–400)

This final rule amends the FAR to clarify the use of the term "United States," when used in a geographic sense. The term "United States" is defined in FAR 2.101 to include the 50 States and the District of Columbia. Where a wider area of applicability is intended, the term is redefined in the appropriate part or subpart of the FAR, or supplemented by listing the additional areas of applicability each time the term is used. This rule corrects and updates references to the United States throughout the FAR, including a new definition of "outlying areas" of the United States, a term that encompasses the named outlying commonwealths, territories, and minor outlying islands.

Item II—Miscellaneous Cost Principles (FAR Case 2001–029)

This final rule amends the FAR by deleting the cost principle at FAR 31.205–45, Transportation costs, and streamlining the cost principles at FAR 31.205–10, Cost of money; FAR 31.205–28, Other business expenses; and FAR 31.205–48, Deferred research and development costs. The rule will only affect contracting officers that are required by a contract clause to use cost principles for the determination, negotiation, or allowance of contract costs.

Item III—Prompt Payment Under Cost-Reimbursement Contracts for Services (FAR Case 2000–308)

The interim rule published in the **Federal Register** at 66 FR 53485, October 22, 2001, is converted to a final rule, without change, to implement statutory and regulatory changes related to late payment of an interim payment under a cost-reimbursement contract for services. The rule is of special interest to contracting officers that award or administer these type of contracts.

The **Federal Register** notice published in conjunction with the FAR interim rule stated that "The policy and clause apply to all covered contracts awarded on or after December 15, 2000 * * * agencies may apply the FAR changes made by this rule to contracts awarded prior to December 15, 2000, at their discretion * * *." This was consistent with OMB regulations. Subsequently, as a result of enactment of the National Defense Authorization Act for Fiscal Year 2002 (Pub. L. 107–107) on December 28, 2001, agencies no longer have this discretion. Section 1007 of Public Law 107–107 states that this policy applies to cost-reimbursement contracts for services awarded before, on, or after December 15, 2000. Section 1007 retains the prohibition against payment of late payment interest penalty for any period prior to December 15, 2000.

Item IV—Electronic Signatures (FAR Case 2000–304)

Recent laws eliminate legal barriers to using electronic technology in business transactions, such as the formation and signing of contracts. This final rule furthers Government participation in electronic commerce when conducting Government procurements by adding a statement at FAR subpart 4.5, Electronic Commerce in Contracting, clarifying that agencies are permitted to accept electronic signatures and records in connection with Government contracts.

Item V—Increased Federal Prison Industries, Inc. Waiver Threshold (FAR Case 2003–001)

This interim rule revises the Federal Acquisition Regulation to increase the Federal Prison Industries, Inc.'s (FPI) clearance exception threshold at 8.606(e) from $25 to $2,500 and eliminates the criterion that delivery is required within 10 days. Federal agencies will not be required to make purchases from FPI of products on FPI's Schedule that are at or below this threshold.

Item VI—Past Performance Evaluation of Federal Prison Industries Contracts (FAR Case 2001–035)

This final rule requires agencies to evaluate Federal Prison Industries (FPI) contract performance. This change will permit Federal customers to rate FPI performance, compare FPI to private sector providers, and give FPI important feedback on previously awarded contracts. It is expected that this change will give FPI the same opportunity that we give private sector providers, to improve their customer satisfaction, in general, and their performance on delivery, price, and quality, specifically.

Item VII—Contract Terms and Conditions Required To Implement Statute or Executive Orders—Commercial Items (FAR Case 2000–009)

This final rule amends the clause at 52.212–5, Contract Terms and Conditions Required to Implement Statute or Executive Orders—Commercial Items, to ensure that required statutes enacted subsequent to FASA that contain civil or criminal penalties or specifically cite their applicability to commercial items are included on the list, and to ensure that any post-FASA items that did not meet this criteria are deleted from the list. In addition, the pre-FASA clauses and alternates that were inadvertently left off the list are added. The date of each clause is added to the list to identify what revision of the listed clause applies when this clause is added to a contract.

Item VIII—Technical Amendments

These amendments update references and make editorial changes at FAR

52.213–4(a)(2)(vi), 52.244–6 section and clause headings, and 52.247–64(a).

Dated: May 13, 2003.

Laura G. Smith,

Director, Acquisition Policy Division.

[FR Doc. 03–12309 Filed 5–21–03; 8:45 am]

BILLING CODE 6820–EP–P

Federal Register

Thursday,
May 22, 2003

Part IV

Department of Housing and Urban Development

24 CFR Part 5

Open Competition and Government Neutrality Towards Government Contractors' Labor Relations on Federal and Federally Funded Construction Projects; Interim Rule

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

24 CFR Part 5

[Docket No. FR–4695–I–01]

RIN 2501–AC98

Open Competition and Government Neutrality Towards Government Contractors' Labor Relations on Federal and Federally Funded Construction Projects

AGENCY: Office of the Secretary, HUD.

ACTION: Interim rule.

SUMMARY: This interim rule provides for codification of the requirements of Executive Order 13202 (the Executive Order), entitled "Preservation of Open Competition and Government Neutrality Towards Government Contractors' Labor Relations on Federal and Federally Funded Construction Projects." The Executive Order provides that, to the extent permitted by law, agencies may not permit inclusion of contract conditions requiring or prohibiting entering into or adhering to agreements with a labor organization, or otherwise discriminating against parties entering into or adhering to such agreements, as a condition for award of any federally funded contract or subcontract for construction. The purpose of this rule is to ensure compliance by all HUD grantees, recipients of financial assistance, parties to cooperative agreements, contractors, and subcontractors with the requirements of open competition and government neutrality in awarding federally funded contracts or subcontracts for construction.

DATES: *Effective Date:* June 23, 2003.

Comment Due Date: July 21, 2003.

ADDRESSES: Interested persons are invited to submit comments regarding this rule to the Rules Docket Clerk, Office of General Counsel, Room 10276, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410–0500. Communications should refer to the above docket number and title. Facsimile (FAX) comments are not acceptable. A copy of each communication submitted will be available for public inspection and copying between 7:30 a.m. and 5:30 p.m. weekdays at the above address.

FOR FURTHER INFORMATION CONTACT: Aaron Santa Anna, Assistant General Counsel for Regulations, Office of General Counsel, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410–8000; telephone (202) 708–3055 (this is not a toll-free number). Hearing- or speech-impaired individuals may access this number via TTY by calling the toll-free Federal Information Relay Service at (800) 877–8339.

SUPPLEMENTARY INFORMATION:

I. Background

On February 17, 2001, President George W. Bush signed Executive Order 13202, entitled "Preservation of Open Competition and Government Neutrality Towards Government Contractors' Labor Relations on Federal and Federally Funded Construction Projects" (Executive Order 13202 was published in the **Federal Register** on February 22, 2001, at 66 FR 11225). The Executive Order prohibits the inclusion of requirements for affiliation with a labor organization as a condition for award of any federally funded contract or subcontract for construction.

Executive Order 13202 was amended by Executive Order 13208, issued on April 6, 2001. The amendment was to add a paragraph (c) to section 5 of Executive Order 13202. New paragraph (c) addresses exemption of a project from the provisions of sections 1 and 3 of the Executive Order. (Executive Order 13208 was published in the **Federal Register** on April 11, 2001, at 66 FR 18717.)

In issuing Executive Order 13202, the President revoked Executive Order 12836 of February 1, 1993, and the Presidential Memorandum of June 5, 1997, entitled "Use of Project Labor Agreements for Federal Construction Projects."

The purposes of Executive Order 13202 are to:

- Promote and ensure open competition on federal and federally funded or assisted construction projects;
- Maintain government neutrality toward government contractors' labor relations on federal and federally funded or assisted construction projects;
- Reduce construction costs to the federal government and to the taxpayers;
- Expand job opportunities, especially for small and disadvantaged businesses;
- Prevent discrimination against government contractors or their employees based upon labor affiliation or lack thereof; thereby promoting the economical, nondiscriminatory, and efficient administration and completion of federal and federally funded or assisted construction projects.

The Executive Order is intended to improve the internal management of the Executive Branch. The Executive Order provides that agencies may not require or prohibit bidders, offerors, contractors, or subcontractors from entering into or adhering to agreements with one or more labor organizations. The Executive Order also permits agency heads to exempt a project from its requirements under special circumstances, but the exemption may not be related to the possibility of or an actual labor dispute.

II. This Interim Rule

This interim rule provides for the codification of the requirements of Executive Order 13202 for HUD programs. The interim rule adds a new § 5.108 to HUD's regulations in 24 CFR part 5, subpart A. The regulations in subpart A of part 5 contain the definitions and federal requirements generally applicable to all of HUD's programs. By placing the requirements of the Executive Order in those HUD regulations that contain across-the-board requirements, HUD is ensuring the broadest applicability of the requirements of Executive Order 13202. The specific regulatory amendments that are being made by this interim rule are as follows:

A. Scope of Interim Rule Limited to Federally Funded Contracts

As noted above, Executive Order 13202 applies to both construction contracts awarded by a federal agency as well as to federally funded construction contracts awarded by the recipient of federal financial assistance. This interim rule codifies the requirements for HUD-funded construction contracts, but not for construction contracts awarded by HUD. The Federal Acquisition Regulatory (FAR) Council has issued government-wide regulations implementing the requirements regarding federal construction contracts contained in Executive Order 13202 (see the final rule published on November 22, 2002, at 67 FR 70518). The regulations issued by the FAR Council apply to construction contracts awarded by federal agencies, including those awarded by HUD. Interested readers should refer to the November 22, 2002, final rule for additional information regarding the requirements applicable to federal construction contracts.

B. Neutrality Towards Government Contractors' Labor Relations on Federally Funded Construction Projects

The new § 5.108 provides that, to the extent permitted by law, the bid specifications, project agreements, or other controlling documentation for a construction contract awarded by a HUD grantee, recipient of financial assistance from HUD, or party to a cooperative agreement with HUD for a construction project (or a construction manager acting on their behalf) shall not:

1. Require or prohibit bidders, offerors, contractors, or subcontractors to enter into or adhere to agreements with one or more labor organizations on the same or other related federally funded construction project; or
2. Otherwise discriminate against bidders, offerors, contractors, or subcontractors for becoming or refusing to become or remain signatories, or otherwise adhere to agreements with one or more labor organizations, on the same or other related federally funded construction project.

C. Definitions

The Executive Order defines several of the terms used throughout the Order, such as "construction contract" and "labor organization," and the interim rule adopts these definitions. Accordingly, the new § 5.108 provides that the term "construction contract" means a contract for the construction, rehabilitation, alteration, conversion, extension, or repair of buildings, highways, or other improvements to real property, including any subcontracts awarded pursuant to such a contract. The interim rule also provides, in accordance with the Executive Order, that the term "labor organization" has the same meaning it has in 42 U.S.C. 2000e(d).

The Executive Order, however, does not establish a definition of the term "financial assistance." The term "financial assistance" is a key term used throughout the Executive Order, and HUD believes that a definition is required to ensure the clarity and uniform enforcement of the new § 5.108. HUD is adopting, for purposes of § 5.108, a definition of the term "federal financial assistance" that is based on the definition of that term contained in other HUD regulations. These other regulations include 24 CFR part 1, regarding nondiscrimination in HUD programs under title VI of the Civil Rights Act of 1964 (*see* 24 CFR 1.2), 24 CFR part 3, regarding nondiscrimination on the basis of sex in education programs or activities receiving federal financial assistance (*see* 24 CFR 3.105), and 24 CFR part 8, regarding nondiscrimination based on handicap in federally assisted HUD programs and activities (*see* 24 CFR 8.3). HUD believes that the adoption of a similar definition will help to ensure consistency throughout HUD's programs and facilitate compliance with the new regulatory requirements.

The interim rule defines the term "financial assistance" to include:

1. Grants, loans, and advances of federal funds; or
2. Proceeds from loans guaranteed under section 108 of the Housing and Community Development Act of 1974, as amended (42 U.S.C. 5301 *et seq.*) and title VI of the Native American Housing Assistance and Self-Determination Act of 1996 (25 U.S.C. 4101 *et seq.*). The term "financial assistance" does not include any other contract of insurance or guaranty.

Under the section 108 and Title VI loan guarantee programs, recipients must pledge a portion of their block grant formula allocations as security for the guaranteed loans. Accordingly, the proceeds from the loan guarantees are appropriately considered part of the recipient's grant, and within the scope of the definition of "financial assistance." Other HUD loan insurance programs (such as those of the Federal Housing Administration) are not dependent on the provision of a HUD grant, and therefore not considered to be "financial assistance" for purposes of this interim rule.

D. Exemptions

As noted above in this preamble, the Executive Order authorizes HUD to exempt a construction project from the requirements under certain circumstances, and the interim rule contains comparable provisions tracking this language.

E. Sanctions

The interim rule provides that if HUD determines that a HUD grantee, recipient of financial assistance from HUD, or party to a cooperative agreement with HUD (or a construction manager acting on their behalf), performs in a manner contrary to the requirements of the Executive Order, HUD will take such action, consistent with law and regulations, as HUD determines appropriate.

F. Voluntary Project Labor Agreements

In accordance with the Executive Order, the interim rule specifies that nothing in § 5.108 prohibits contractors or subcontractors from voluntarily entering into project labor agreements.

III. Justification for Interim Rulemaking

HUD generally publishes a rule for public comment before issuing a rule for effect, in accordance with its own regulations on rulemaking in 24 CFR part 10. However, part 10 provides for exceptions to the general rule if the agency finds good cause to omit advanced notice and public participation. The good cause requirement is satisfied when prior public procedure is "impractical, unnecessary, or contrary to the public interest" (*see* 24 CFR 10.1). For the following reasons, HUD has determined that it is unnecessary to delay the effectiveness of this rule in order to solicit prior public comments.

To a large extent, the new § 5.108 repeats the language of Executive Order 13202, and does not elaborate on or modify these provisions. The Executive Order contains specific and detailed requirements concerning the use of project labor agreements in federally funded construction projects, leaving few areas to the discretion of individual federal agencies. Accordingly, HUD's authority to revise these provisions of the interim rule in response to public comment would be limited. Where Executive Order 13202 provides room for agency flexibility (such as, for example, in the definition of the term "financial assistance"), HUD has exercised its discretion narrowly, in order to ensure consistency throughout its programs and facilitate compliance with the new regulatory requirements. For example, the interim rule contains a definition of "financial assistance" that is based on the definition of that term contained in other HUD program regulations.

Although HUD believes that good cause exists to publish this rule for effect without prior public comment, HUD recognizes the value of public comment in the development of its regulations. HUD has, therefore, issued these regulations on an interim basis and has provided the public with a 60-day comment period. HUD welcomes comments on the regulatory amendments made by this interim rule. The public comments will be addressed in the final rule.

IV. Findings and Certifications

Regulatory Flexibility Act

The Secretary, in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)), has reviewed this rule before publication and by approving it certifies that this rule does not have a significant economic impact on a substantial number of small entities. The interim rule implements Executive Order 13202, which revokes previous requirements encouraging the inclusion of project labor agreements as a condition for award of federally funded contracts or subcontracts on construction projects. The Executive Order directs government neutrality towards the use of such agreements, thus placing the decision of whether to enter into a project labor

agreement with individual contractors and subcontractors.

This applies equally to large and small entities that seek federally funded construction contracts and does not establish requirements applicable to entities based on their size. Further, HUD neither requires nor prohibits the use of project labor agreements on HUD-funded construction projects. Although some HUD-funded construction projects are subject to project labor agreements, in many instances this is due to the voluntary decision of individual contractors and subcontractors. Therefore, the interim rule will not significantly revise existing practices or hiring costs for small contractors and subcontractors participating in HUD's construction programs. To the extent the rule has an impact on small entities, it should be a positive economic impact on those small entities that are not union shops, because the rule may provide additional opportunities to work on federally funded construction projects by non-union small businesses.

Notwithstanding HUD's determination that this rule will not have a significant economic effect on a substantial number of small entities, HUD specifically invites comments regarding any less burdensome alternatives to this rule that will meet HUD's objectives as described in this preamble.

Environmental Impact

A Finding of No Significant Impact with respect to the environment has been made in accordance with HUD regulations at 24 CFR part 50, which implement section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332). The Finding of No Significant Impact is available for public inspection between the hours of 7:30 a.m. and 5:30 p.m. weekdays in the Office of the Rules Docket Clerk, Office of General Counsel, Room 10276, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410–0500.

Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) (2 U.S.C. 1531–1538) establishes requirements for federal agencies to assess the effects of their regulatory actions on state, local, and tribal governments and the private sector. This interim rule does not impose any federal mandates on any state, local, or tribal governments or the private sector within the meaning of the UMRA.

Executive Order 13132, Federalism

Executive Order 13132 (entitled "Federalism") prohibits, to the extent practicable and permitted by law, an agency from promulgating a regulation that has federalism implications and either imposes substantial direct compliance costs on state and local governments and is not required by statute, or preempts state law, unless the relevant requirements of section 6 of the Executive Order are met. This rule does not have federalism implications and does not impose substantial direct compliance costs on state and local governments or preempt state law within the meaning of the Executive Order.

List of Subjects in 24 CFR Part 5

Administrative practice and procedure, Aged, Claims, Drug abuse, Drug traffic control, Grant programs—housing and community development, Grant programs—Indians, Individuals with disabilities, Loan programs—housing and community development, Low and moderate income housing, Mortgage insurance, Pets, Public housing, Rent subsidies, Reporting and recordkeeping requirements.

■ Accordingly, for the reasons described in the preamble, HUD amends 24 CFR part 5 as follows:

PART 5—GENERAL HUD PROGRAM REQUIREMENTS; WAIVERS

■ 1. The authority citation for 24 CFR part 5 continues to read as follows:

Authority: 42 U.S.C. 3535(d), unless otherwise noted.

■ 2. Add § 5.108 to read as follows:

§ 5.108 Preservation of Open Competition and Government Neutrality Towards Government Contractors' Labor Relations on Federally Funded Construction Projects.

(a) *Purpose.* This section implements Executive Order 13202 (issued on February 17, 2001), as amended by Executive Order 13208 (issued on April 6, 2001), entitled "Preservation of Open Competition and Government Neutrality Towards Government Contractors' Labor Relations on Federal and Federally Funded Construction Projects."

(b) *Definitions.* For purposes of this section:

Construction contract means a contract for the construction, rehabilitation, alteration, conversion, extension, or repair of buildings, highways, or other improvements to real property, including any subcontracts awarded pursuant to such a contract.

Financial assistance includes:

(i) Grants, loans, and advances of federal funds; or

(ii) Proceeds from loans guaranteed under section 108 of the Housing and Community Development Act of 1974, as amended (42 U.S.C. 5301 *et seq.*) and title VI of the Native American Housing Assistance and Self-Determination Act of 1996 (25 U.S.C. 4101 *et seq.*). The term "financial assistance" does not include any other contract of insurance or guaranty.

Labor organization has the same meaning it has in 42 U.S.C. 2000e(d).

(c) *Neutrality towards government contractors' labor relations.* To the extent permitted by law, the bid specifications, project agreements, or other controlling documents for a construction contract awarded on or after June 23, 2003, by a HUD grantee, recipient of financial assistance from HUD, or party to a cooperative agreement with HUD, for a construction project (or a construction manager acting on their behalf) shall not:

(1) Require or prohibit bidders, offerors, contractors, or subcontractors to enter into or adhere to agreements with one or more labor organizations on the same or other related federally funded construction project; or

(2) Otherwise discriminate against bidders, offerors, contractors, or subcontractors for becoming or refusing to become or remain signatories, or otherwise adhere to agreements with one or more labor organizations, on the same or other related federally funded construction project.

(d) *Exemptions*—(1) *Exemptions due to special circumstances.* HUD may exempt a particular construction project, construction contract, subcontract, grant, or cooperative agreement from any requirement of this section, if HUD determines that special circumstances require an exemption in order to avert an imminent threat to public health or safety or to serve the national security. HUD will not base a finding of "special circumstances" on the possibility or presence of a labor dispute concerning the use of contractors or subcontractors who are non-signatories to, or otherwise do not adhere to, agreements with one or more labor organizations, or concerning employees on the construction project who are not members of, or affiliated with, a labor organization.

(2) *Exemption of construction projects subject to project labor agreements entered into as of June 23, 2003.* HUD may exempt a particular construction project from any requirement of this section upon written request from the HUD grantee, recipient of financial assistance from HUD, or party to a cooperative agreement with HUD (or a construction manager acting on their behalf), if HUD determines that:

(i) The HUD grantee, recipient of financial assistance from HUD, or party to the cooperative agreement with HUD (or a construction manager acting on their behalf) issued, or was a party to, as of June 23, 2003, bid specifications, project agreements, agreements with one or more labor organizations, or other controlling documents with respect to a particular construction project, that contain any of the requirements or prohibitions contained in paragraph (c) of this section; and

(ii) One or more construction contracts subject to such requirements or prohibitions was awarded as of June 23, 2003.

(e) *Sanctions.* If HUD determines that a HUD grantee, recipient of financial assistance from HUD, or party to a cooperative agreement with HUD (or a construction manager acting on their behalf) performs in a manner contrary to the requirements of this section, HUD will take such action, consistent with law and regulations, as HUD determines appropriate.

(f) Voluntarily entering into project labor agreements. Nothing in this section prohibits contractors or subcontractors from voluntarily entering into project labor agreements.

Dated: April 30, 2003.

Mel Martinez,

Secretary.

[FR Doc. 03–12798 Filed 5–21–03; 8:45 am]

BILLING CODE 4210–32–P

Federal Register

Thursday,
May 22, 2003

Part V

Department of Defense

General Services Administration

National Aeronautics and Space Administration

48 CFR Part 31

Federal Acquisition Regulation; Application of Cost Principles and Procedures and Accounting for Unallowable Costs; Proposed Rule

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Part 31

[FAR Case 2002–006]

RIN: 9000–AJ65

Federal Acquisition Regulation; Application of Cost Principles and Procedures and Accounting for Unallowable Costs

AGENCIES: Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Proposed rule.

SUMMARY: The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (Councils) are proposing to amend the Federal Acquisition Regulation (FAR) sections relating to accounting for unallowable costs and application of cost principles and procedures.

DATES: Interested parties should submit comments in writing on or before July 21, 2003 to be considered in the formulation of a final rule.

ADDRESSES: Submit written comments to—General Services Administration, FAR Secretariat (MVA), 1800 F Street, NW., Room 4035, Attn: Laurie Duarte, Washington, DC 20405.

Submit electronic comments via the Internet to—*farcase.2002–006@gsa.gov*.

Please submit comments only and cite FAR case 2002–006 in all correspondence related to this case.

FOR FURTHER INFORMATION CONTACT: The FAR Secretariat, Room 4035, GS Building, Washington, DC, 20405, at (202) 501–4755 for information pertaining to status or publication schedules. For clarification of content, contact Mr. Edward Loeb at (202) 501–0650. Please cite FAR case 2002–006.

SUPPLEMENTARY INFORMATION:

A. Background

The DoD Director of Defense Procurement established a special interagency ad hoc committee to perform a comprehensive review of policies and procedures in FAR Part 31, Contract Cost Principles and Procedures, related to cost measurement, assignment, and allocation to evaluate the need for each specific requirement in light of the evolution of generally accepted accounting principles and experience gained from implementation.

The Director of Defense Procurement announced a series of public meetings in the **Federal Register** at 66 FR 13712, March 7, 2001 (with a "correction to notice" published in the **Federal Register** at 66 FR 16186, March 23, 2001). Attendees at the public meetings (held on April 19, 2001, May 10–11, 2001, and June 12, 2001) included representatives from industry, Government, and other interested parties who provided views on potential areas for revision in FAR part 31. The ad hoc committee reviewed the cost principles and procedures and the public comments; identified potential changes to the FAR; and submitted several reports, including draft proposed rules for consideration by the Councils.

The Councils have reviewed the reports related to FAR 31.201–6, Accounting for unallowable costs, and FAR 31.204, Application of principles and procedures, and propose the following revisions:

- Add paragraph (c)(2) to FAR 31.201–6 to provide specific criteria on the use of sampling as a method to identify unallowable costs and the acceptability of contractor sampling methods.
- Revise the current paragraph (b) of FAR 31.204, which addresses the allowability of subcontract costs, to clarify the language.
- Make a number of editorial changes.

This is not a significant regulatory action and, therefore, was not subject to review under Section 6(b) of Executive Order 12866, Regulatory Planning and Review, dated September 30, 1993. This rule is not a major rule under 5 U.S.C. 804.

B. Regulatory Flexibility Act

The Councils do not expect this proposed rule to have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, because most contracts awarded to small entities use simplified acquisition procedures or are awarded on a competitive, fixed-price basis and do not require application of the cost principles and procedures that are discussed in this rule. An Initial Regulatory Flexibility Analysis has, therefore, not been performed. We invite comments from small businesses and other interested parties. The Councils will consider comments from small entities concerning the affected FAR part 31 in accordance with 5 U.S.C. 610. Interested parties must submit such comments separately and should cite 5 U.S.C. 601, *et seq.* (FAR case 2002–006), in correspondence.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the proposed changes to the FAR do not impose information collection requirements that require the approval of the Office of Management and Budget under 44 U.S.C. 3501, *et seq.*

List of Subjects in 48 CFR Part 31

Government procurement.

Dated: May 16, 2003.

Laura G. Smith,

Director, Acquisition Policy Division.

Therefore, DoD, GSA, and NASA propose amending 48 CFR part 31 as set forth below:

PART 31—CONTRACT COST PRINCIPLES AND PROCEDURES

1. The authority citation for 48 CFR part 31 is revised to read as follows:

Authority: 40 U.S.C. 121(c); 10 U.S.C. chapter 137; and 42 U.S.C. 2473(c).

2. Revise section 31.201–6 to read as follows:

31.201–6 Accounting for unallowable costs.

(a) Costs that are expressly unallowable or mutually agreed to be unallowable, including mutually agreed to be unallowable directly associated costs, shall be identified and excluded from any billing, claim, or proposal applicable to a Government contract. A directly associated cost is any cost that is generated solely as a result of incurring another cost, and that would not have been incurred had the other cost not been incurred. When an unallowable cost is incurred, its directly associated costs are also unallowable.

(b) Costs that specifically become designated as unallowable or as unallowable directly associated costs of unallowable costs as a result of a written decision furnished by a contracting officer shall be identified if included in or used in computing any billing, claim, or proposal applicable to a Government contract. This identification requirement applies also to any costs incurred for the same purpose under like circumstances as the costs specifically identified as unallowable under either this paragraph or paragraph (a) of this subsection.

(c)(1) The practices for accounting for and presentation of unallowable costs must be those described in 48 CFR 9904.405, Accounting for Unallowable Costs.

(2) Statistical sampling is an acceptable practice for accounting and presenting unallowable costs provided—

(i) The statistical sampling results in an unbiased sample that accurately represents the sampling universe; and

(ii) The statistical sampling permits audit verification.

(d) If a directly associated cost is included in a cost pool that is allocated over a base that includes the unallowable cost with which it is associated, the directly associated cost shall remain in the cost pool. Since the unallowable costs will attract their allocable share of costs from the cost pool, no further action is required to assure disallowance of the directly associated costs. In all other cases, the directly associated costs, if material in amount, must be purged from the cost pool as unallowable costs.

(e)(1) In determining the materiality of a directly associated cost, consideration should be given to the significance of—

(i) The actual dollar amount;

(ii) The cumulative effect of all directly associated costs in a cost pool; and

(iii) The ultimate effect on the cost of Government contracts.

(2) Salary expenses of employees who participate in activities that generate unallowable costs shall be treated as directly associated costs to the extent of the time spent on the proscribed activity, provided the costs are material in accordance with paragraph (f)(1) of this subsection (except when such salary expenses are, themselves, unallowable). The time spent in proscribed activities should be compared to total time spent on company activities to determine if the costs are material. Time spent by employees outside the normal working hours should not be considered except when it is evident that an employee engages so frequently in company activities during periods outside normal working hours as to indicate that such activities are a part of the employee's regular duties.

(3) When a selected item of cost under 31.205 provides that directly associated costs be unallowable, such directly associated costs are unallowable only if determined to be material in amount in accordance with the criteria provided in paragraphs (f)(1) and (f)(2) of this subsection, except in those situations where allowance of any of the directly associated costs involved would be considered to be contrary to public policy.

3. Amend section 31.204 in the first sentence of paragraph (a) by removing "shall be allowed" and adding "are allowable" in its place; revising paragraph (b); and redesignating paragraph (c) as paragraph (d) and adding a new paragraph (c) to read as follows:

31.204 Application of principles and procedures.

* * * * *

(b)(1) For the following subcontract types, costs incurred as reimbursements or payments to a subcontractor are allowable to the extent the reimbursements or payments are for costs incurred by the subcontractor that are consistent with part 31:

(i) Cost-reimbursement.

(ii) Fixed-price incentive.

(iii) Price redeterminable (*i.e.*, fixed-price contracts with prospective price redetermination and fixed-ceiling-price contracts with retroactive price redetermination).

(2) The requirements of paragraph (b)(1) of this section apply to any tier above the first firm-fixed-price subcontract or fixed-price subcontract with economic price adjustment provisions.

(c) Costs incurred as payments under firm-fixed-price subcontracts or fixed-price subcontracts with economic price adjustment provisions or modifications thereto, for which subcontract cost analysis was performed, are allowable if the price was negotiated in accordance with 31.102.

* * * * *

[FR Doc. 03–12892 Filed 5–21–03; 8:45 am]

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Federal Register

Vol. 68, No. 99

Thursday May 22, 2003

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FEDERAL REGISTER PAGES AND DATE, MAY

23183–23376	1
23377–23568	2
23569–23884	5
23885–24332	6
24333–24604	7
24605–24858	8
24859–25278	9
25279–25478	12
25479–25808	13
25809–26200	14
26201–26456	15
26457–26980	16
26981–27426	19
27427–27726	20
27727–27890	21
27891–28110	22

CFR PARTS AFFECTED DURING MAY

At the end of each month, the Office of the Federal Register publishes separately a List of CFR Sections Affected (LSA), which lists parts and sections affected by documents published since the revision date of each title.

3 CFR

Proclamations:
7668 23821
7669 23823
7670 23825
7671 23827
7672 23829
7673 24333
7674 25277
7675 26195
7676 26197
7677 26199
7678 27427
7679 27889

Executive Orders:
12863 (Amended by 13301) 26981
12865 (Revoked by 13298) 24857
13069 (Revoked by 13298) 24857
13070 (Amended by 13301) 26981
13047 (Continued by Notice of May 16, 2003) 27425
13098 (Revoked by 13298) 24857
13298 24857
13299 25477
13300 25807
13301 26981
13212 (Amended by 13302) 27429
13302 27429

Administrative Orders:
Memorandums:
Memorandum of May 6, 2003 25275
Memorandum of May 7, 2003 26457
Presidential Determinations:
No. 2003-22 of May 6, 2003 25809
No. 2003-23 of May 7, 2003 26459
Notices:
Notice of May 16, 2003 27425

5 CFR

213 24605
Ch. XIV 23885
2424 23885
2429 23885
2471 23885
2472 23885
2606 27891

Proposed Rules:
2601 23876

7 CFR

1 27431
2 27431
6 25479
15 27431
15f 27431
28 27897
29 25484
46 23377
56 25484
301 ..... 24605, 24613, 26983
371 27431
868 24589
932 23378
985 ..... 23569, 25486
989 25279
1205 27898
1410 24830
1424 24596
1491 26461
1710 24335

Proposed Rules:
205 27941
274 23927
276 23927
278 23927
279 23927
280 23927
319 27480
360 23425
930 27943
1530 23230

9 CFR

82 ..... 26986, 26988
91 26990

Proposed Rules:
2 24052
130 25308

10 CFR

20 27903
40 25281
70 23574
71 23574
72 23183
73 23574
150 25281

Proposed Rules:
20 23618
50 26511
490 23620

11 CFR

Proposed Rules:
104 26237
107 26237
110 26237
9003 26237
9004 26237
9008 26237
9032 26237

9033.....26237
9034.....26237
9035.....26237
9036.....26237
9038.....26237

12 CFR

21.....25090
208.....25090
211.....25090
326.....25090
563.....25090
740.....23381
748.....25090

Proposed Rules:

11.....27753
16.....27753
Ch. 6.....26551
613.....23425, 23426, 27757
614.....27757
618.....27757

14 CFR

1.....25486
11.....25486
25.....24336, 24338, 26991
39.....23183, 23186, 23190, 23384, 23387, 23575, 23886, 24614, 24861, 25488, 25811, 26201, 26478, 26481, 26482, 27450
71.....23577, 23579, 23580, 23581, 23682, 24340, 24341, 24342, 24864, 24866, 24868, 24869, 24870, 24871, 24872, 24874, 25489, 25491, 25492, 25493, 25494, 25495, 25684, 26202, 26687, 26993, 26994
73.....25495
77.....23583
97.....23888, 23889, 26484, 26486
382.....24874

Proposed Rules:

3.....23808, 27006
25.....26237
39.....23231, 23235, 23427, 23620, 24383, 25543, 26239, 26242, 26244, 26552, 26553, 27006, 27492
71.....23622, 23624, 23625, 23626, 27007, 27946
119.....24810
121.....24810
135.....24810
145.....24810
255.....24896, 25844, 27948
330.....23627
399.....24896, 25844, 27948

15 CFR

0.....24878
270.....24343
902.....24615

16 CFR

305.....23584

Proposed Rules:

309.....24669

17 CFR

42.....25149
211.....26840
230.....25788
232.....24345, 25788
239.....25788
240.....25788
241.....25281
249.....25788
250.....25788
259.....25788
260.....25788
269.....25788
270.....25131
274.....25788

Proposed Rules:

240.....27722

18 CFR

375.....25814
376.....25814

Proposed Rules:

35.....24679

19 CFR

178.....24052

20 CFR

Proposed Rules:

404.....23192, 24896
416.....23192, 24896

21 CFR

Ch. 1.....24879
10.....25283
14.....25283
20.....25283
310.....24347
314.....25283
358.....24347
510.....26995
522.....26995
520.....26204
522.....26205
558.....27727
573.....27904
720.....25283
1300.....23195
1310.....23195

Proposed Rules:

1.....23630, 25242, 25188
11.....25188
16.....25242
101.....23930
111.....27008
112.....27008
315.....27008
601.....27008
1308.....26247
1310.....24689

22 CFR

32.....26488
42.....24638
121.....25088
228.....23891

23 CFR

140.....24639
646.....24639
661.....24642

Proposed Rules:

630.....23239, 24384

24 CFR

5.....28102
200.....26946
203.....23370

Proposed Rules:

1000.....26555

25 CFR

Proposed Rules:

170.....23631

26 CFR

1.....23586, 24349, 24351, 24644, 24880
301.....24644
602.....24644

Proposed Rules:

1.....23632, 23931, 24404, 24405, 24406, 24898, 24903, 25310, 25845, 27493
54.....24406
602.....24406

27 CFR

Proposed Rules:

4.....24903
5.....24903
7.....24903
9.....25851
13.....24903

28 CFR

Proposed Rules:

513.....25545

29 CFR

Proposed Rules:

1480.....23634
1910.....23528
4022.....26206
4044.....26206

30 CFR

36.....23892
917.....24644
948.....24355
950.....24647

31 CFR

103.....25090, 25149, 25113, 25163, 26489, 26996
315.....24794
351.....24794
353.....24794
359.....24794
360.....24794
363.....24794

Proposed Rules:

103.....23640, 23646, 23653, 25163

32 CFR

3.....27452
207.....27904
311.....24880
505.....25816
806B.....24881

Proposed Rules:

3.....27497
701.....24904

33 CFR

100.....25817, 25818, 27459
110.....25496
117.....23390, 23590, 24882, 24883, 25818, 26208, 27460
160.....27907
165.....23390, 23393, 23399, 23591, 23594, 23595, 23893, 23894, 23896, 24359, 24361, 24883, 25288, 25498, 25500, 25818, 26208, 26490, 27462, 27464, 27466, 27469, 27727

Proposed Rules:

62.....25855
66.....25855
67.....25855
72.....25855, 28052
100.....27498
110.....27501
117.....27498, 27504
165.....23935, 24406, 24408, 26247, 27501, 27948
401.....25546

34 CFR

674.....25821
682.....25821
685.....25821

36 CFR

Proposed Rules:

251.....25748, 25751
1280.....23430

37 CFR

Proposed Rules:

262.....23241, 27506

38 CFR

2.....25503
4.....25822

Proposed Rules:

39.....23249

39 CFR

Proposed Rules:

111.....23937, 27760

40 CFR

51.....25684
52.....23206, 23207, 23404, 23597, 23604, 24363, 24365, 24368, 24885, 25414, 25418, 25442, 25504, 26210, 26212, 26492, 26495, 27471, 27908
62.....23209, 25291, 27911
63.....23898, 24562, 24653, 26690, 27646, 27913
71.....25507
80.....24300
81.....24368, 25418, 25442, 26212
89.....25823
180.....24370, 25824, 25831, 27729, 27740
271.....23407, 23607
300.....23211, 27746, 27931, 27933
312.....24888
438.....25686

Proposed Rules:

Ch. 1.....24410, 25312
52.....23270, 23430, 23661, 23662, 24416, 24417, 25547, 26248, 26556, 27513
60.....24692
62.....23272, 25313, 27953
63.....26249
71.....25548
80.....24311
81.....26248
146.....23666, 23673
258.....25550
300.....23939, 27954

41 CFR

301-53.....27936

301-74.....27936

42 CFR

8.....27937

Proposed Rules:

409.....26758
412.....26786, 27154
413.....26758, 27154
440.....26758
483.....26758

43 CFR

Proposed Rules:

4.....27955

44 CFR

64.....23408
65.....27473
67.....23898, 27477

Proposed Rules:

67.....23941, 27514, 27515

45 CFR

2.....25838
32.....24052
148.....23410
301.....25293
302.....25293
303.....25293
304.....25293
307.....25293
1309.....23212

46 CFR

Proposed Rules:

540.....23947

47 CFR

0.....26997
Ch. 1.....25840
1.....23417, 25841, 26997
2.....25512
52.....25843
73.....23613, 23900, 23901, 25512, 25542, 26220, 26497, 27478, 27939, 27940
74.....25512, 26220
76.....26997
78.....26997
80.....25512
90.....25512
97.....25512

Proposed Rules:

1.....23431
15.....23677
64.....25313
73.....24417, 26556, 26557, 27767, 27960, 27961

48 CFR

Ch. 1.....28078, 28098
2.....28079, 28091, 28092
3.....28079
4.....28079, 28093
5.....28079
6.....28079
8.....28079, 28094, 28095
9.....28079
14.....28079
19.....28079
22.....28079
23.....28079
25.....28079
26.....28079
28.....28079
29.....28079
31.....28079, 28091
32.....28092
35.....28079
36.....28079
42.....28079, 28095
45.....28079
47.....28079, 28091
52.....28079, 28091, 28092, 28096, 28098
53.....28079

Proposed Rules:

511.....24372
516.....24372
532.....24372
538.....24372
546.....24372
552.....24372
1802.....23423
1806.....23423
1815.....23423
1816.....23423
1843.....23423
1845.....23424

Proposed Rules:

31.....28108
208.....26265
219.....26265
252.....26265
245.....25313

49 CFR

107.....23832, 24653
171.....23832, 24653
173.....24653
176.....23832
177.....23832, 24653
180.....24653
209.....24891
383.....23844
384.....23844
571.....23614, 24664
1510.....27747
1511.....27747
1570.....23852
1572.....23852

Proposed Rules:

193.....23272
571.....26269, 26384
572.....24417
1137.....23947, 25859

50 CFR

17.....25934, 26498, 28054
216.....24905
300.....23224, 23901
600.....23901, 26230
660.....27004
622.....26230
648.....24914, 25305, 26510
660.....23901, 23913, 23924
679.....23925, 24615, 24667, 24668, 27479

Proposed Rules:

17.....27961
18.....24700
20.....24324
216.....24905
622.....23686
648.....23275, 23948, 23949, 24914, 27516, 27768, 27774
660.....26557, 27969, 27972

REMINDERS

The items in this list were editorially compiled as an aid to Federal Register users. Inclusion or exclusion from this list has no legal significance.

RULES GOING INTO EFFECT MAY 22, 2003

DEFENSE DEPARTMENT
Federal Acquisition Regulation (FAR):
- Cost-reimbursement contracts for services; prompt payment: published 5-22-03
- Federal Prison Industries, Inc.; increased waiver threshold; published 5-22-03
- Technical amendments; published 5-22-03

Wendell H. Ford Aviation Investment and Reform Act for 21st Century; implementation:
- Excess DOD aircraft sales to persons or entities providing oil spill response services; published 5-22-03

ENVIRONMENTAL PROTECTION AGENCY
Air pollutants, hazardous; national emission standards:
- Semiconductor manufacturing operations; published 5-22-03

FEDERAL COMMUNICATIONS COMMISSION
Radio frequency devices:
- Ultra-wideband transmission systems; unlicensed operation; published 4-22-03

GENERAL SERVICES ADMINISTRATION
Federal Acquisition Regulation (FAR):
- Cost-reimbursement contracts for services; prompt payment; published 5-22-03
- Federal Prison Industries, Inc.; increased waiver threshold; published 5-22-03
- Technical amendments; published 5-22-03

Federal travel:
- Promotional materials; conference planning; clarification; published 5-22-03

GOVERNMENT ETHICS OFFICE
Privacy Act; implementation; published 5-22-03

HEALTH AND HUMAN SERVICES DEPARTMENT
Food and Drug Administration
Animal drugs, feeds, and related products:
- Biuret, feed-grade; published 5-22-03

HEALTH AND HUMAN SERVICES DEPARTMENT
Human drugs:
- Opiate addiction; opioid drugs use in maintenance and detoxification treatment
- List additions; published 5-22-03

HOMELAND SECURITY DEPARTMENT
Coast Guard
Drawbridge operations:
- Massachusetts; published 5-14-03
- Texas; published 5-15-03

Ports and waterways safety:
- Vessels arriving in or departing from U.S. ports; notification requirements
- Partial suspension; published 5-22-03

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION
Federal Acquisition Regulation (FAR):
- Cost-reimbursement contracts for services; prompt payment; published 5-22-03
- Federal Prison Industries, Inc.; increased waiver threshold; published 5-22-03
- Technical amendments; published 5-22-03

TRANSPORTATION DEPARTMENT
Federal Aviation Administration
Airworthiness directives:
- Air Tractor, Inc.; published 4-3-03
- British Aerospace; published 4-3-03
- Eurocopter France; published 4-17-03
- McDonnell Douglas; published 4-17-03
- Stemme GmbH & Co. KG; published 4-3-03

COMMENTS DUE NEXT WEEK

AGRICULTURE DEPARTMENT
Food Safety and Inspection Service
Meat and poultry inspection:
- Safe and suitable binder or antimicrobial agent usage in products with standards of identity or composition; comments due by 5-29-03; published 4-29-03 [FR 03-10392]

COMMERCE DEPARTMENT
National Oceanic and Atmospheric Administration
Fishery conservation and management:
- Alaska; fisheries of Exclusive Economic Zone—
  - Bering Sea and Aleutian Islands groundfish; Pacific cod; comments due by 5-27-03; published 4-25-03 [FR 03-10282]
- Caribbean, Gulf, and South Atlantic fisheries—
  - Gulf of Mexico shrimp; comments due by 5-29-03; published 4-29-03 [FR 03-10558]
- Northeastern United States fisheries—
  - Northeast multispecies; comments due by 5-27-03; published 4-24-03 [FR 03-10163]

COMMERCE DEPARTMENT
Patent and Trademark Office
Patent cases:
- Fee revisions (2004 FY); comments due by 5-30-03; published 4-30-03 [FR 03-10583]

Trademarks:
- Madrid Protocol Implementation Act; rules of practice—
  - International applications and registrations; trademark-related filings; comments due by 5-27-03; published 3-28-03 [FR 03-07392]

ENVIRONMENTAL PROTECTION AGENCY
Air quality implementation plans; approval and promulgation; various States:
- Alabama; comments due by 5-27-03; published 4-24-03 [FR 03-10061]
- California; comments due by 5-27-03; published 4-25-03 [FR 03-10267]
- Florida; comments due by 5-27-03; published 4-24-03 [FR 03-10063]
- Idaho and Oregon; comments due by 5-27-03; published 4-24-03 [FR 03-10066]
- California; comments due by 5-27-03; published 4-15-03 [FR 03-09164]
- Florida; comments due by 5-27-03; published 4-15-03 [FR 03-09165]
- Texas; comments due by 5-27-03; published 4-15-03 [FR 03-09170]

FEDERAL MARITIME COMMISSION
Passenger vessel financial responsibility:
- Performance and casualty rules, Alternative Dispute Resolution program, etc.; miscellaneous amendments; oral comments and hearing; comments due by 5-30-03; published 4-8-03 [FR 03-08611]

HOMELAND SECURITY DEPARTMENT
Coast Guard
Ports and waterways safety:
- Hampton Roads, VA; regulated navigation area; comments due by 5-29-03; published 4-29-03 [FR 03-10214]
- Port Valdez and Valdez Narrows, AK; security zone; comments due by 5-27-03; published 3-27-03 [FR 03-07299]
- Portland Captain of Port Zone, OR; safety zones; comments due by 5-27-03; published 3-27-03 [FR 03-07300]

Regattas and marine parades:
- Thunder on the Narrows boat races; comments due by 5-30-03; published 3-31-03 [FR 03-07545]

HOMELAND SECURITY DEPARTMENT
Customs Service
Andean Trade Promotion and Drug Eradication Act; implementation; comments due by 5-27-03; published 3-25-03 [FR 03-06867]

INTERIOR DEPARTMENT
Minerals Management Service
Outer Continental Shelf; oil, gas, and sulphur operations:
- OCS rights-of-use and easement and pipeline rights-of-way; requirements revision; comments due by 5-27-03; published 4-24-03 [FR 03-10173]

Royalty management:
- Marginal properties; accounting and auditing relief; comments due by 5-30-03; published 3-31-03 [FR 03-06703]

- Relief or reduction in rates; deep gas provisions; comments due by 5-27-03; published 3-26-03 [FR 03-07353]

INTERIOR DEPARTMENT
Surface Mining Reclamation and Enforcement Office
Permanent program and abandoned mine land reclamation plan submissions:
- Kentucky; comments due by 5-29-03; published 4-29-03 [FR 03-10533]

SOCIAL SECURITY ADMINISTRATION
Organization and procedures:
- Assignment of Social Security numbers for nonwork purposes; evidence requirements; comments due by 5-27-03; published 3-26-03 [FR 03-07188]

TRANSPORTATION DEPARTMENT
Federal Aviation Administration
Airworthiness directives:
- Boeing; comments due by 5-27-03; published 5-1-03 [FR 03-10727]
- Bombardier; comments due by 5-29-03; published 4-29-03 [FR 03-10235]
- CFM International; comments due by 5-27-03; published 3-25-03 [FR 03-07003]
- Empresa Brasileira de Aeronautica, S.A. (EMBRAER); comments due by 5-29-03; published 4-29-03 [FR 03-10236]
- Pratt & Whitney; comments due by 5-27-03; published 3-25-03 [FR 03-06997]
- Rolls-Royce plc; comments due by 5-27-03; published 3-25-03 [FR 03-07004]
- Textron Lycoming; comments due by 5-27-03; published 3-25-03 [FR 03-06998]

Airworthiness standards:
- Special conditions—
  - Learjet Model 24/25 Series airplanes; comments due by 5-29-03; published 4-29-03 [FR 03-10450]
- Class E airspace; comments due by 5-29-03; published 3-31-03 [FR 03-07663]

TRANSPORTATION DEPARTMENT
Maritime Administration
Coastwise trade laws; administrative waivers for eligible vessels; comments due by 5-30-03; published 4-30-03 [FR 03-10578]

TREASURY DEPARTMENT
Alcohol and Tobacco Tax and Trade Bureau
Alcohol; viticultural area designations:
- Red Hill, Douglas County, OR; comments due by 5-27-03; published 4-24-03 [FR 03-10095]

VETERANS AFFAIRS DEPARTMENT
Adjudication; pensions, compensation, dependency, etc.:
- Chronic lymphocytic leukemia; presumptive service connection; comments due by 5-27-03; published 3-26-03 [FR 03-07221]

LIST OF PUBLIC LAWS

This is a continuing list of public bills from the current session of Congress which have become Federal laws. It may be used in conjunction with "PLUS" (Public Laws Update Service) on 202–741–6043. This list is also available online at *http://www.nara.gov/fedreg/plawcurr.html*.

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H.R. 289/P.L. 108–23
Ottawa National Wildlife Refuge Complex Expansion and Detroit River International Wildlife Refuge Expansion Act (May 19, 2003; 117 Stat. 704)

Last List May 16, 2003

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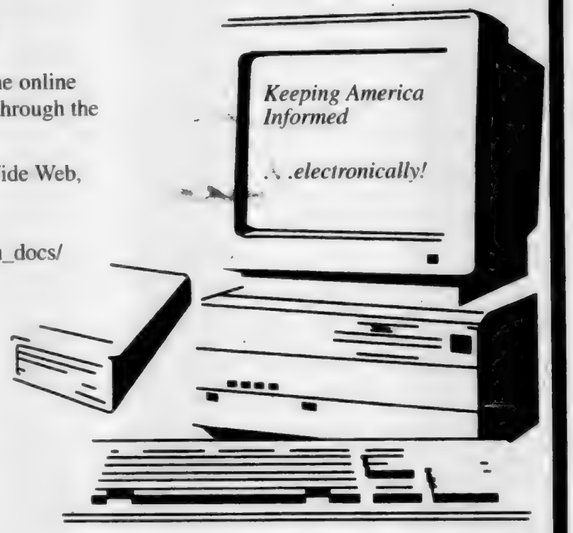
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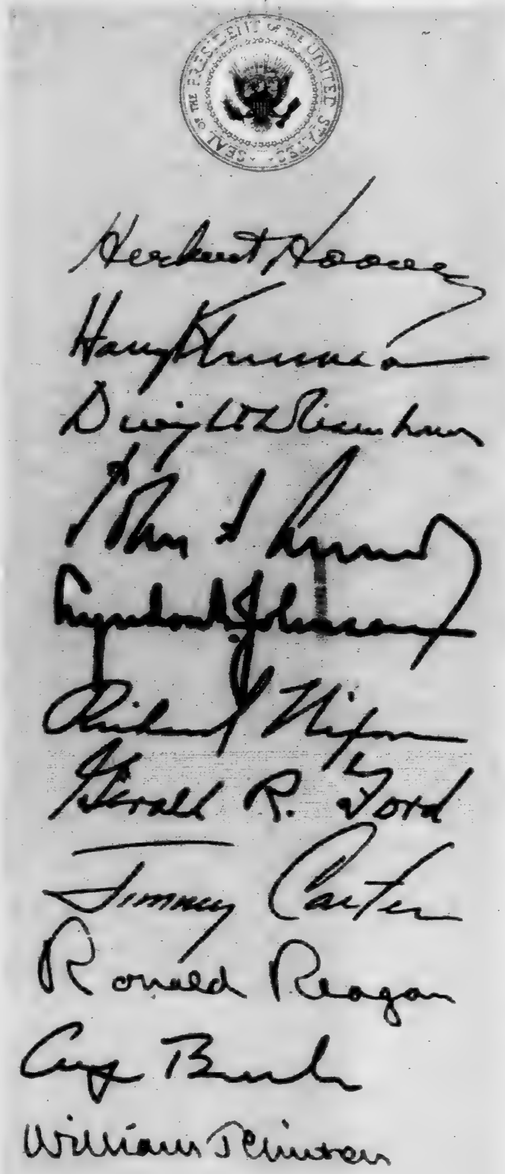
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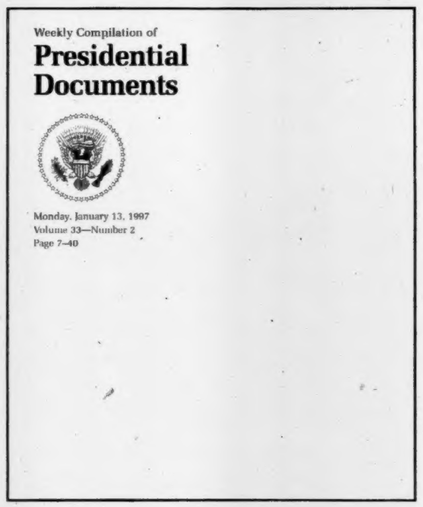
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